IN THE MATTER OF AN ARBITRATION PURSUANT TO S. 148.2 OF THE INSURANCE (VEHICLE) REGULATION, B.C. Reg. 447/83 and the ARBITRATION ACT [SBC 2020] c. 2

BETWEEN:

EM

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

AWARD

Counsel for the Claimant, EM	Tyler F. Dennis
Counsel for the Respondent, Insurance Corporation of British Columbia	Joseph P. Cahan
Date of Hearing:	January 2-3, 6-8, 10, 2025
Place of Hearing:	Vancouver, BC
Date of Award:	February 26, 2025
Arbitrator:	Dennis C. Quinlan, K.C.

TABLE OF CONTENTS

I. INTRODUCTION

[1] At approximately 7:00 a.m. on November 28, 2016, EM (the "Claimant") was crossing Kingsway at Victoria Drive in a marked crosswalk with a pedestrian crossing signal in her favor, when she was hit on the back and right side by a vehicle turning left (the "Accident").

[2] It was dark, and the driver never saw the Claimant before impact.

[3] The Claimant was 21 years old at the time of the Accident. She was taken by ambulance to Burnaby General Hospital with numerous soft tissue and contusion type injuries.

[4] Leading up to the Accident, the Claimant was attending Simon Fraser University ("SFU") and working part time as a teller at TD Canada Trust ("TDCT").

[5] She had contemplated attending law school and becoming a lawyer.

[6] Following the Accident, the Claimant was off work at TDCT for six weeks. She continued her studies at SFU where she had been on academic probation due to low marks.

[7] On July 4, 2024, the Claimant was accepted into Bond University in Australia with the plan being to complete a two-year program leading to a juris doctorate in law and return to British Columbia to practice law.

[8] On July 18, 2017, the Claimant through legal counsel commenced an action in the Supreme Court of British Columbia against the driver and owner of the vehicle that struck her (collectively the "Defendant").

[9] The action was settled on October 26, 2021 for the Defendant's insurance limits of $200,000, with the Respondent consenting to the Claimant submitting her claim for underinsured motorist protection ("UMP") to arbitration pursuant to section 148.2 (1) of the **Insurance Vehicle Regulation** B.C. Reg. 447/83 (the "Regulation") and the **Arbitration Act** [SBC 2020] c.2.

[10] This arbitration involves quantification of the UMP compensation to which the Claimant is entitled arising from the legal liability of the Defendant.

[11] While liability and all heads of damage are contested, the main issue for determination is the claim for loss of earning capacity. The Claimant asserts her ability to earn income as a practicing lawyer in British Columbia has been significantly impaired due to injuries sustained in the Collision.

[12] The parties view the totality of the claim very differently. The Claimant seeks an award totaling $2,220,000 whereas the Respondent submits the appropriate compensation is in the range of $142,000.

II. CREDIBILITY AND RELIABILITY

[13] In cases where a claim is made for personal injury, the most important witness in determining the outcome is the party advancing the claim: *Sharma v. Bhullar*, 2020 BCSC 379 at paras. 57, 58.

[14] The Respondent generally accepted the factual evidence given by the Claimant but parted way as to the conclusions that ought to be drawn.

[15] I agree the Claimant was generally a good witness, both from a credibility and reliability perspective.

[16] At times there was a lack of precision in the evidence and submissions as to the timing of events or in what order, but that was not surprising given the Accident occurred over eight years ago. I was careful in my assessment of the evidence to separate sweeping statements about the past from the reality of the present.

[17] The Claimant was emotional when testifying about certain matters, but this reaction was in my view a function of her personality and upbringing.

[18] I add that the Claimant's mother, husband and two friends who testified were balanced witnesses and helpful to my assessment of the claim.

III. THE CLAIMANT'S LIFE BEFORE THE ACCIDENT

[19] The Claimant was born July 21, 1995, in British Columbia. Her parents worked hard as a sanitary worker and seamstress, resulting in the grandparents playing a significant role in her upbringing.

[20] She enjoyed her elementary and high school years achieving A's and B's and was active in extracurricular activities including a leadership program in grades 6 and 7, scouts until grade 8 or 9, and later volunteering at a neighborhood house.

[21] The Claimant participated in soccer, track and field, badminton, swimming, cross country, martial arts and playing the piano.

[22] The Claimant graduated from Gladstone Secondary School in June 2013 with a scholarship for citizenship. Her interest in becoming a lawyer began when she was part of a high school mentorship program with a practicing lawyer which included watching a trial.

[23] In the fall of 2013 the Claimant enrolled at SFU to pursue an arts degree in criminology although she soon transferred into psychology. While attending university, she commuted to SFU from home and worked part time at an arcade and then at a clothing store.

[24] Initially the Claimant felt things were going well. However, in 2014 her grandfather became sick, and he eventually died in 2015. She found this to be a very difficult time given the close relationship with her grandparents and the fact she was involved in his care.

[25] She began missing classes, and her marks dropped leading to her being placed on academic probation in the summer of 2014 and requiring her to take tutorial courses to improve her standing.

[26] The Claimant remained on probation until the fall of 2017.

[27] At the time of the Accident in November 2016, her GPA had slipped to 1.93 which was equivalent to a C average. She attributed her ongoing low marks to the grieving process following her grandfather's death in 2015.

[28] In March 2016, the Claimant began working at a TDCT branch close to her parents' home. Her first position was as a Customer Experience Associate, which required her to work as a teller. She enjoyed this position and had no difficulty doing the job, which required a lot of standing.

[29] Leading up to the Accident the Claimant testified her health was good. She had some clicking in the hip and periodic headaches but nothing that affected her functionally.

[30] The Claimant obtained her N driver's license at the age of 16 and drove one to two times a month without anxiety. She and her boyfriend would go on road trips to Washington State, hike Joffrey Lake and Garibaldi and camp outside with a foam sleeping pad. She enjoyed socializing with the other bank employees.

[31] The Claimant's family travelled to China every two years for a holiday, and she had no difficulty sitting on the thirteen-hour flights.

IV. FAULT FOR THE ACCIDENT

[32] The Respondent submits that while the Defendant was primarily at fault, the Claimant must bear some responsibility for failing to maintain the requisite degree of attention and awareness necessary to allow her to safely cross Kingsway, which is a very busy roadway.

[33] An Agreed Statement of Facts signed by counsel for the parties provided that at the time of the Accident, the Claimant was a pedestrian crossing Kingsway from the southwest to northwest corner within the confines of a marked crosswalk and the Defendant was attempting a left turn from Victoria onto Kingsway.

[34] The Claimant read into evidence the Defendant driver's examination for discovery testimony that his attention was focused on a pedestrian at the northwest corner, and he never saw the Claimant until after contact had been made.

[35] Dashcam footage taken from the perspective of the vehicle immediately behind the Defendant clearly shows the mechanics and circumstances of the Accident.

[36] The Claimant is plainly visible entering the marked crosswalk with the pedestrian walk sign in her favor, crossing three lanes for traffic coming from her left and then entering the first lane for traffic approaching from her right when she is hit by the Defendant's vehicle.

[37] The dashcam shows that as the Claimant approached the center dividing line three to four seconds before impact, the pedestrian walk sign switched from white walk to flashing red and began to count down. The Defendant's vehicle hit the Claimant at sixteen seconds.

[38] Mr. Cahan, counsel for the Respondent suggested to the Claimant on cross-examination that she was looking at her cell phone as she crossed Kingsway. The Claimant admitted she was holding the cell phone in her hand as she always did, but denied she was looking at it.

[39] I accept the Claimant's evidence that she was not looking at her cell phone as she crossed Kingsway. There is nothing in the dashcam footage to suggest she was.

[40] I conclude there is no evidence to support the finding that the Claimant was crossing Kingsway other than in a safe and prudent manner and in accordance with her legal duty.

[41] I find the Defendant to be 100% at fault.

V. INJURIES AND LIFE FOLLOWING THE ACCIDENT

[42] The Claimant testified she felt immediate pain in her right ankle, hip, and wrist. She was taken by ambulance to Burnaby Hospital where the records reflect a diagnosis of soft tissue injury to the hip and ankle. The Claimant denied hitting her head or losing consciousness. She was examined and discharged around noon that day.

[43] Upon arriving home, the Claimant took a nap. She woke up in pain with a headache, had difficulty breathing, felt nauseous, vomited and saw black dots. Her brother took her back to Burnaby Hospital around 8:00 pm.

[44] The Claimant was X-rayed and sent home with Tylenol. By that time her neck and back were sore.

[45] While at home recovering, the Claimant was unhappy her mother thought she was faking. At the same time, the bank manager made her feel guilty by encouraging her to come back to work because of short staffing.

[46] The Claimant returned to SFU without missing classes but had difficulty sitting through the three-hour lectures because of neck and low back pain.

[47] While the Claimant returned to work on January 11, 2017, her manager was not prepared to accommodate by allowing her to sit down while working at the teller station. She felt bullied and her mental health began to suffer as she sensed her co-workers thought she was not carrying her share of the work.

[48] The Claimant said she stopped going out socially with the other bank employees. Fatigue was an issue, and she would go home at lunch to rest and lie down at the end of the day after work. She felt her performance was suffering as her neck and back hurt and the headaches became worse.

[49] In the spring of 2020, the Claimant graduated from SFU with a Bachelor of Arts degree in Psychology, having attained a GPA of 2.53 which was equivalent to a C+ average.

[50] Once the Claimant obtained her degree from SFU it was her plan to increase her hours at TDCT to full time. However, the onset of covid resulted in the Claimant having her hours reduced which she then made up for by obtaining part time employment as a medical office assistant starting July 2020.

[51] On February 1, 2021, the Claimant was promoted to the full-time position of Personal Banking Associate at TDCT which involved direct interaction with bank clients and their financial needs.

[52] The position paid a salary of $41,825.

[53] In May 2021 the Claimant was disciplined for conduct described as a serious breach of the bank's Code of Conduct and Ethics. She did not dispute the decision but blamed her manager at the time who subsequently left TDCT.

[54] The Claimant married in 2021 after having met her husband before the Accident while both were working at TDCT. In 2017 they started dating and in 2018 purchased a pre-sale condo in Langley which they moved into after construction was completed in 2022.

[55] In 2022, the Claimant took courses through the Canadian Securities Institute and obtained licenses in Investment Funds in Canada and Personal Financial Services Advice.

[56] On May 16, 2022, the Claimant was promoted to the full-time position of Personal Banker that paid a salary of $54,000 which increased to $62,000 on January 1, 2023. She testified that because of her plan of going to law school, she had not contemplated further advancement at TDCT.

[57] The Claimant testified her ongoing pain made it difficult to focus while in client meetings and she was falling short in generating business and meeting her targets.

[58] The Claimant's employee reviews were positive except for the 2022 Q4 review which was noted as "Developing". This was her first review after the May, 2022 promotion and her co-worker testified it was not unusual following a promotion for the employee to take some time to adjust to the new position.

[59] In July 2023 the Claimant went on maternity leave shortly before the birth of her daughter on August 21, 2023.

[60] The Claimant described pain in her back and shooting pain in her leg during pregnancy. Caring for the baby has been difficult and the Claimant's

symptoms have worsened as the baby has grown. She worries about dropping her.

[61] There is tension and bickering with her husband, and they fight about changing the diapers. The Claimant finds it difficult to do the housekeeping tasks and the house is messy.

[62] In the middle of June 2024, the Claimant applied to law school at Bond University. No application fee was needed, and the only requirement was that she send her SFU transcript. She was accepted on July 4, 2024, with a commencement date of January 2025.

[63] The Claimant explained she applied to Bond University because she wanted to travel, and because it was not a requirement for admission that she write the LSAT which she understood required intense studying.

[64] She also indicated the Bond program could be completed in two years as opposed to three years in Canada which would allow her to start her career sooner.

[65] The Claimant was not otherwise aware of the requirements for admission to Canadian law schools or what steps were necessary to transfer her degree to Canada other than "to challenge the exams".

[66] The tuition cost to go to Bond University for two years is $140,000 AUD and the Claimant has saved $400,000 to cover the tuition and living costs.

[67] The Claimant decided to defer her commencement date to January 2026. The plan is for her mother and father to accompany she and her husband together with their daughter to Australia in the fall of 2025 and stay for the first year.

[68] In the meantime, the Claimant plans on returning to full-time employment at TDCT on January 27, 2025, but is worried about meeting the bank's performance standards.

[69] The Claimant testified that because of her ongoing pain she is no longer able to take part in recreational activities resulting in a weight gain of twenty pounds.

[70] Since the Accident she has gone on various trips with her family, husband and girlfriends to Panama, Costa Rica, China, Japan, Korea, Taiwan, Thailand, Singapore, Malaysia, Hawaii, Mexico and a Caribbean cruise.

[71] The Claimant described the pain and difficulties she experienced on those trips.

[72] The Claimant underwent some 300 physio, massage, and chiropractic therapy treatments over eight years together with kinesiology and active rehab. She presently goes to chiro and physiotherapy on a weekly basis and would continue if the cost was paid for.

[73] The Pharmanet report indicates the Claimant in the year following the Accident was prescribed anti-inflammatory, muscle relaxant and pain medication. The last prescription was filled in August 2022.

[74] No records were put into evidence, but the Claimant testified she received periodic counselling for panic attacks. There was only one session between February 2017 and October 2023 and the counselling resumed in 2024.

VI. LAY EVIDENCE

SQY (MOTHER)

[75] SQY is sixty years old and retired in 2018 from her occupation as a seamstress.

[76] SQY described her daughter before the Accident as obedient, independent and active in recreational activities. There was no need to worry about how she did in school, and she had no health issues.

[77] Since the Accident, their relationship has worsened because the Claimant does not seem able to work as hard, which leads to arguments

usually about changing diapers. She complains about neck and back pain and often breaks down and cries. Her mood is affected by the crying of the baby.

[78] SQY testified her daughter had difficulty coping with the death of her grandfather in 2015 and after his passing, she tattooed the date of his death on her forearm.

[79] The Claimant told SQY she wanted to be a lawyer. SQY's advice to both of her children was to do what they thought was their career path.

[80] According to SQY, the Claimant did not apply to a law school in Canada because the exam would be difficult for her, and she could complete the program sooner in Australia than Canada.

RC (HUSBAND)

[81] RC was born May 10, 1980 in Panama and came to Canada in 2002. He became a Canadian citizen in 2024 and is now employed as a letter carrier with Canada Post.

[82] RC testified that when he met the Claimant in 2016 at TDCT, she was happy, outgoing and active. They spent time together at work and then on weekends would go hiking and play badminton.

[83] Following the Accident he observed the Claimant to be in pain and frequently sitting down while at work. Over time she stopped her recreational activities and appeared "down".

[84] In July 2017 RC and the Claimant began to date. By that time, he had left the employment of TDCT, as he was waiting for his permanent resident permit. Much of his time was spent driving the Claimant to SFU, who he described as an anxious back seat driver. She tried to drive herself on a couple of occasions but would break down in tears.

[85] In 2018 they purchased the Langley pre-sale condo because he thought they had a future together. They married in 2021.

[86] In terms of their present relationship they do not venture far outside the home. RC stated they argue constantly over parenting styles. Things pile up resulting in the house being messy. Once their daughter was born, the physical demands increased but they were able to manage with the help of her parents who come over twice a week. The hope is they have another child but not anytime soon.

[87] Physical intimacy is lacking as in his words, "her back is sore, and she is not in the mood". RC noted his back was also sore because he was involved in his own car accident in October 2024.

[88] As RC described the present situation, his life is spent driving the Claimant to appointments and doing things for her such that he does not have a lot of time for himself.

[89] RC testified the Claimant expressed interest in going to law school when they were dating, and he has always supported her in that goal. She applied to Australia because she wanted to travel outside of Canada. He will take a leave of absence from his work to be with her.

PL (CO-WORKER)

[90] PL was born in China in 1987 and came to Canada in 2008. She has a bachelor's degree in international trade from China and a master's degree in education from Brock University in Ontario.

[91] PL started at TDCT in 2012 and began working with the Claimant shortly before the 2016 Accident. At that time, the Claimant was like any other co-worker.

[92] Following the Accident the Claimant appeared to be in pain and would sometimes break down in tears. She would frequently sit down and ask for Advil.

[93] PL described the various positions at TDCT. Personal banking is a sales position built on personal relationships which are formed by reaching out to clients, volunteering, social networking and attending community events.

[94] It can be challenging to meet goals, and the environment is a competitive one. The bank will provide opportunities, but the employee must show initiative.

[95] PL described the Claimant as being well suited to her positions at the bank in that she was good with both clients and co-workers. As PL described her, "she was a good fit". PL agreed the Claimant had issues with a manager but in PL's words, the manager was not pleasant.

[96] In 2019 PL moved to the Langley TDCT branch and has not worked with the Claimant since. She sees her once every few months as they both live in Langley.

JT (FRIEND)

[97] JT is 29 years old and has a Bachelor of Science degree in Food and Nutrition. She and the Claimant have been best friends since the age of 14 when they were in grade 9 together.

[98] JT described the Claimant before the Accident as a social person who was fun, bubbly, kind and very active. She participated in track and field, sprinting, hiking, badminton and going to the gym.

[99] They would see each other frequently to shop, have coffee and go on picnics. JT said not more than a couple of weeks would go by without them seeing each other.

[100] The Claimant often talked about being a lawyer. She and JT would volunteer together at the community center by helping younger children, taking part in a focus group and cleaning up garbage.

[101] JT testified that after the Accident they kept in contact and even now are in group chats and see each other every one to two weeks.

[102] The Claimant seems to be withdrawn and closed off. She keeps to herself and does not go out, even when JT invites her. She seems anxious about her new baby becoming sick.

[103] JT went so far as to say she worries about the Claimant.

VII. EXPERT EVIDENCE

[104] The Claimant tendered two medical experts and three reports. The Respondent tendered one expert and one report and an addendum report.

Dr. Waseem, Physiatrist

[105] Dr. Waseem was tendered on behalf of the Claimant as a medical doctor having expertise in the field of physical medicine and rehabilitation and qualified to provide opinion evidence as to the diagnosis, prognosis and management of physical injury and chronic pain.

[106] He prepared two reports dated November 8, 2019, and February 12, 2023.

[107] Dr. Waseem first examined the Claimant on October 23, 2019. His diagnosis was that the Claimant initially sustained contusion and soft tissue injuries predominately of the cervical, thoracic and lumbar spines.

[108] Those injuries resulted in chronic myofascial pain of the spine, cervicogenic headaches, chronic right upper and lower extremity pain and deconditioning.

[109] Dr. Waseem opined that the prognosis for full symptomatic recovery was poor given the symptoms were long-standing and there were objective findings on examination. While further improvement was possible, she would continue to experience pain such that her physical condition should be considered chronic and unremitting and therefore permanent.

[110] Dr. Waseem maintained on cross examination he would not have made a diagnosis of chronic myofascial pain unless there were objective findings. When referred on cross examination to his report where he indicated there were no objective findings (lines 305 to 315), he testified those references were typographical errors. His examination notes did not clarify the apparent contradiction.

[111] Were it not for the fact that the Respondent's physiatrist agreed the Claimant's condition met the definition of chronic pain, I would be more troubled by the evidence of Dr. Waseem.

[112] Dr. Waseem opined that the Claimant was unable to work as many hours and perform her household chores as often as she did prior to the Accident. He felt these limitations would continue.

[113] On cross examination, Dr. Waseem agreed he was not suggesting the Claimant could not work full-time in a sedentary position, only that "disruptions" might occur such that she "may" not "will" require accommodations from her employer.

[114] Dr. Waseem examined the Claimant again on February 12, 2023.

[115] She reported no change in her functional status and indicated that starting in February 2021 she had been working full-time as a personal banking associate and then later as a personal banker.

[116] Dr. Waseem agreed it was common for neck and back pain to increase during pregnancy.

[117] Dr. Waseem concluded by saying the opinions expressed in his original report remained unchanged.

Russell McNeil, Occupational Therapist

[118] Mr. McNeill was tendered on behalf of the Claimant and qualified as an occupational therapist able to give opinion evidence with respect to functional and work capacity as well as recommendations for the cost of future care.

[119] He assessed the Claimant on December 1, 2019, and prepared a report dated December 17, 2019. He did not see her for a follow up assessment.

[120] Based upon the assessment, Mr. McNeill concluded the Claimant was physically capable of work in occupations that fell within the sedentary physical demands. He opined she would struggle with prolonged sitting

combined with static positioning and would require accommodation to pace herself.

[121] As a result she would have difficulty maintaining a productive work pace and due to the need for accommodation ". . . may be affected in her ability to compete for work in the open job market."

[122] Mr. McNeil added that if the Claimant was to go on to train as a lawyer or other occupation in an office setting, ". . .she would likely be capable of full-time work with accommodation, but she would benefit from ergonomic accommodations in order to manage pain while also trying to remain productive."

[123] Mr. McNeil made various future care recommendations. Given his assessment was performed in December 2019, the opinion was of limited assistance in determining the Claimant's needs going forward in 2025.

Dr. Joseph Wong, Physiatrist

[124] Dr. Wong was tendered on behalf of the Respondent as a medical doctor with a specialty in physical medicine and rehabilitation who was qualified to provide opinion evidence concerning the diagnosis, prognosis, and treatment of physical injury and chronic pain.

[125] Dr. Wong assessed the Claimant on October 11, 2019, and prepared a report of the same date. He also provided an addendum report dated November 12, 2024, which was prepared following a review of additional documents.

[126] Dr. Wong who practices in Ontario, has more than once been the subject of negative comment in British Columbia courts. In terms of how he gave his evidence, I had no concerns.

[127] However his initial opinion struck me as so simplistic as to lack reality.

[128] Dr. Wong agreed he found the Claimant to be straight forward and very honest. He accepted that the person best positioned to describe the pain is the person experiencing it.

[129] Dr. Wong testified he assessed the Claimant early in the morning, at which time she told him she had no pain but that her pain would come on in the afternoon.

[130] Dr. Wong relied upon the Claimant's statement that she had no pain at the precise time he examined her, to arrive at the opinion that she had recovered with no impairment or disability.

[131] Dr. Wong seemingly chose to ignore the Claimant's evidence that her pain would occur in the afternoon.

[132] Perhaps recognizing the flaw in his approach, Dr. Wong modified his opinion in the addendum report of November 12, 2024:

> "…in my medical opinion, [the Claimant] may have a Grade 1 type of very mild myofascial injury, which can be asymptomatic at times and not detectable during routine physical examination, but the pain may flare up with more strenuous activities."

[133] On cross examination Dr. Wong agreed the Claimant's current pain problem was caused by the Accident. He conceded she met the criteria for a diagnosis of chronic pain which was worsened by stress and insomnia such that she was in a chronic pain loop.

[134] Dr. Wong said the relevant question was to what extent that pain was functionally disabling. In his opinion, her condition was mild.

VIII. POSITION OF THE PARTIES

[135] The Claimant submits she sustained physical injury that has "flipped her life upside down" and left her with chronic pain, headaches, sleeplessness, anxiety and depression.

[136] She asserts her career plan to become a lawyer is significantly impaired sufficient to warrant an award of $1,300,000.

[137] She advances a future care claim of $510,000 of which $380,000 is for driving assistance based upon it not being safe for her to drive due to mental

injuries suffered in the Accident. A separate claim for past and future loss of housekeeping capacity is advanced in the amount of $153,000.

[138] The Respondent submits the Claimant puts forward an overstated demand based upon evidence in which there is a substantial gap, including no psychological, psychiatric or vocational testimony.

[139] The Respondent points to there being no evidence from a recruiter as to the value or transferability of a Bond University degree, or how attractive such a graduating student is to a Canadian law firm.

[140] The submission is made that the Claimant has established a career in banking and there has been no change to her career path. She is still able to return to school, continue her banking career or attempt to become a lawyer.

[141] As such the Respondent submits the Claimant sustained no loss of future earning capacity, but alternatively if she did, it should be valued at no more than one year of her present annual income.

IX. CAUSATION

Physical injuries

[142] The Claimant's physical injuries were largely self-evident. Those injuries resulted in chronic pain that developed into a chronic pain loop with symptoms of anxiety, irritability and fatigue.

Concussion

[143] It was submitted that the Claimant sustained a concussion in the Accident. The evidence in support of this assertion was lacking.

[144] The Claimant agreed she did not hit her head and the dashcam footage confirms this to be the case.

[145] There was brief reference to a concussion in the records from Burnaby General Hospital and the Claimant's family doctor, but those records were not admitted for the truth of any opinion stated therein.

[146] Dr. Wong agreed on cross examination the Claimant "may" have suffered a mild concussion, but this line of questioning was not pursued in terms of whether there were any ongoing sequelae.

[147] Most significantly Dr. Waseem who assessed the Claimant on two occasions, confirmed he did not diagnose a concussion.

[148] I conclude the Accident did not cause the Claimant to suffer a concussion.

Mental Injury

[149] It was also submitted the Claimant suffered a "mental injury".

[150] Mr. Dennis, counsel for the Claimant, agreed there was no expert evidence in support of this conclusion. He asserted however that based upon the Supreme Court of Canada decision in *Saadati v Moorehead*, 2017 SCC 28 expert evidence was not necessary and such conclusion was established on the Claimant's own evidence.

[151] The issue in *Saadati* was whether claimants who allege mental injury must prove the injury with expert evidence that shows a recognizable psychiatric illness.

[152] In rejecting that premise the Court first considered at para. 37 the standard to be met for proof of a mental injury:

> [37] Further, and as *Mustapha* makes clear, mental *injury* is not proven by the existence of mere psychological *upset*. While, therefore, tort law protects persons from negligent interference with their mental health, there is no legally cognizable right to happiness. Claimants must, therefore, show much more --- that the disturbance suffered by the claimant is "serious and prolonged and rise[s] above the ordinary annoyances, anxieties and fears" that come with living in civil society (citation omitted).
>
> Emphasis added

[153] In commenting on the need for expert evidence, the Court stated:

> [38] … while relevant expert evidence will often be helpful in determining whether the claimant has proven a mental injury, it is not required as a matter of law. Where a psychiatric diagnosis is unavailable, it remains open to a trier of fact to find on other evidence adduced by the claimant that he or she has proven on a balance of probabilities the occurrence of mental injury"
>
> Emphasis added

[154] It would not have been difficult to obtain the requisite expert evidence. There is nothing novel about the onset of depression following a traumatic event such as a motor vehicle accident. However, as *Saadati* says, expert evidence is not necessarily required if there is other evidence.

[155] The evidence of JT was that the Claimant appeared withdrawn, closed off and anxious about her baby becoming sick. Both the Claimant's mother and husband focused on the Claimant's irritability in dealing with the changing of diapers and disagreement as to style of parenting. The Claimant herself testified about the challenges of having a newborn.

[156] Most new parents can testify to the stress, anxiety, and fatigue that comes from starting a family.

[157] The evidence of Dr. Waseem was informative. He indicated the Claimant on both assessments denied ongoing symptoms of mood disturbance or generalized anxiety, although she did experience some pedestrian and vehicle anxiety. She did not tell him about any emotional difficulties she may have had when her grandfather was ill. In cross examination Dr. Waseem testified he thought a mental health practitioner might be helpful to "tease out what was going on".

[158] In circumstances where Dr. Waseem, a physiatrist well versed in the emotional aspects of chronic pain, is not prepared to venture into diagnosing a mental injury, I follow his caution.

[159] In summary the evidence does not establish "…the occurrence of a serious and prolonged disturbance rising above the ordinary annoyances, anxieties and fears that come with living in civil society….".

[160] I conclude the Accident did not cause the Claimant to sustain a mental injury.

X. FINDINGS OF FACT

[161] I have reviewed the evidence and am able to make the following findings of fact relevant to the assessment of damages:

- the Claimant is an earnest and hardworking young person who has strived to be the best she can within her level of ability;
- she had a normal and healthy upbringing during which she was able to combine above average marks in high school with an active extracurricular and social life;
- at the time of the Accident in late 2016 the Claimant was struggling emotionally due to the passing of her grandfather, but managing to work part time at TDCT while also attending SFU where she was on academic probation until the fall of 2017;
- following graduation from SFU in 2020, the Claimant in February 2021 began working full-time at TDCT. She advanced her banking qualifications by completing two licensing certifications which resulted in two promotions leading up to her going on maternity leave in July 2023;
- the Claimant continues to experience a modest level of neck, back, right wrist and right ankle pain, and headaches which are made worse by pregnancy and family responsibilities. At times she is irritable, anxious, tired and withdrawn;
- the Claimant has a poor prognosis for a full symptomatic recovery from her Accident caused injuries;

- the Claimant remains capable of full-time work in occupations which fall within sedentary physical demands so long as she has ergonomic accommodation to manage her pain;
- should the Claimant go on to train as a lawyer or other occupations in an office setting, she will likely be capable of full-time employment with accommodation.

XI. ASSESSMENT OF DAMAGES

Non-pecuniary

[162] Non-pecuniary damages compensate for pain, suffering and loss of enjoyment of life and amenities. Comparison to other cases of similar injury can be helpful but the award in each case will depend on its own facts: D*ebruyn v. Kim*, 2021 BCSC 620 at paras. 120-121.

[163] In *Stapeley v. Hejslet*, 2006 BCCA 34 at para. 46, the Court of Appeal outlined the non-exhaustive factors to be considered in awarding non-pecuniary damages including age of the Claimant, nature of the injury, severity and duration of pain, extent of any disability, extent of emotional suffering, and impairments to the Claimant's life such as family, marital and social relationships, loss of lifestyle and physical and mental abilities.

[164] I accept the Claimant has ongoing pain which impacts her employment and non-working life to some degree. However, the characterization that because of the Accident her life has been "flipped upside down" is in my view a significant overstatement.

[165] I recognize care must be taken not to penalize the Claimant for any stoicism or perseverance which she has shown: *Giang v. Clayton*, 2005 BCCA 54 at para. 55. While that side of the ledger must be given due weight, I am not to ignore what the Claimant has been able to accomplish since the Accident, and as best one can forecast, what the future holds.

[166] The Claimant seeks a non-pecuniary award of $210,000, relying upon *J.D. v. Chandra*, 2014 BCSC 466; *Sebaa v. Ricci*, 2015 BCSC 1492; *Gill v. Dhaliwal*, 2021 BCSC 1562; and *Khosa v. Kalamatimaleki*, 2014 BCSC 2060.

[167] The non-pecuniary awards in the decisions cited by the Claimant range from $100,000 in *J.D.* ($130,000 in 2025 dollars) to $180,000 in *Sebaa* ($229,000 in 2025 dollars), with *Khosa* ($140,000 being $180,000 in 2025 dollars) and *Gill* ($180,000 being $229,000 in 2025 dollars) falling in between.

[168] It is important to recognize that in each of *Sebaa*, *Khosa* and *Gill* there was expert evidence which resulted in findings being made that the plaintiffs had sustained significant psychological injury.

[169] The Respondent in submitting non-pecuniary damages in the range of $80,000 to $100,000 relies upon *Dhudwal v Davis*, 2021 BCSC 374; *Boudreau v. Zhang*, 2019 BCSC 1347; *Pelly v. Frederickson*, 2021 BCSC 82; and *Harmati v. Williams*, 2016 BCSC 2199.

[170] Each of the decisions referred to by the Respondent involved female plaintiffs in their thirties who sustained soft tissue injuries which lead to chronic pain including headaches, emotional upset and symptoms of irritability, sleep difficulties, and cognitive issues. Adjusting for inflation, those awards ranged between $110,000 to $135,000.

[171] I also note the recent decision in *Homan v. Modi*, 2024 BCSC 612, where an award of $130,000 was made to a 48-year-old longshoreman who was diagnosed with chronic myofascial neck, periscapular and upper back pain together with sleep disruption, deconditioning, irritability and short temperedness. The award was augmented in consideration of the plaintiff's loss of housekeeping capacity.

[172] From my review of the authorities it is apparent there is a very wide range in non-pecuniary awards for chronic pain. It is also clear the awards have increased over the past decade in addition to an inflationary component: *Valdez v. Neron*, 2022 BCCA 301 at para. 58.

[173] Considering the authorities referred to by the parties, I am satisfied an award of $175,000 properly compensates the Claimant in respect to her non-pecuniary claim. As explained later, this amount has been augmented to recognize a loss of housekeeping capacity.

Past Loss of Earning Capacity

[174] Compensation for past loss of earning capacity is based upon what the Claimant would have, not could have earned but for the injuries sustained in the Accident: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30.

[175] The test is whether on a balance of probabilities, there was a real and substantial possibility the Claimant but for the Accident would have worked more hours or sought different opportunities: *Malakoe v. Harris*, 2024 BCSC 1178 at para. 129.

[176] If so, the task is to then assess the loss including an allowance for the chance that the assumptions upon which the award is based, may prove to be wrong: *Debruyn v. Kim*, 2021 BCSC 620 at para. 133.

[177] The Claimant submits that, but for the Accident, she would have worked more hours and obtained promotions earlier because she was an outgoing, happy, and sociable person before the Accident whereas after the Accident she broke down at work, isolated from co-workers and missed networking events.

[178] The Claimant seeks an award of $40,000 net of income tax based upon a loss of $5,000 per year for the last eight years.

[179] The Respondent accepts the Claimant was completely off work until January 11, 2017, and thereafter missed shifts on a periodic basis until October 2017. The Respondent submits the past income loss is no more than $10,000.

[180] At the time of the Accident the Claimant was working 26 hours per week at a rate of $20,641.89 per year. After her return in January 2017, she continued working part time at TDCT and attending SFU as she had done

before the Accident. Upon graduation from SFU the Claimant worked full time hours between TDCT and the medical office until February 2021 when she accepted a full-time position at TDCT.

[181] There was no evidence that the Claimant was passed over for any promotions due to injuries sustained in the Accident. The evidence was that she was promoted in February 2021 and then again in May 2022.

[182] I also do not accept there was evidence to support the submission the Claimant would have worked more hours than she otherwise did. As already mentioned, she worked part time while attending SFU and then full-time upon graduation, albeit initially between two jobs.

[183] I accept the Respondent's submission that the Claimant's past income loss is $10,000.

Future Loss of Earning Capacity

(a) The Rab three-step pathway

[184] The central task in assessing a claim for loss of earning capacity is to compare the Claimant's likely working life with and without the Accident. The degree of impairment depends on the type and severity of the injuries and nature of the anticipated employment at issue: *Gregory v Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32.

[185] The decision of *Rab v. Prescott*, 2021 BCCA 345 at para. 47 sets out the three-step pathway for considering such claims:

> (a) assess whether the evidence discloses a potential future event that could lead to a loss of capacity;
>
> (b) if so, assess whether on the evidence there is a real and substantial possibility that the future event in question will cause a pecuniary loss;
>
> (c) if so, assess the value of that possible future loss, including the relative likelihood of the possibility occurring.

[186] The loss may be quantified using either an earnings or capital asset approach: *Perren v. Lalani*, 2010 BCCA 140 at para. 32. The earnings approach is typically used in cases where there is an identifiable loss of income. The capital asset approach is followed where there is no or little loss of income at the time of assessment, but an impairment has been suffered which could impact the Claimant's ability to work in the future: *Ploskon-Ciela v. Brophy*, 2022 BCCA 217 at paras. 16, 17.

(b) Real and substantial possibility of pecuniary loss

[187] As referenced at paragraph 142, I concluded the Claimant sustained contusion and soft tissue injuries to her cervical, thoracic and lumbar spines which evolved into a chronic myofascial pain loop that carries with it a poor prognosis for full symptomatic recovery. One aspect of her condition is fatigue.

[188] Dr. Waseem opined that while further improvement with treatment was possible, the Claimant would continue to experience pain and her physical condition would be "…considered chronic and unremitting and, therefore, permanent".

[189] Chronic pain was identified in *Rab* as a potential event leading to a loss of capacity. However as pointed out in *Davies v. Penner*, 2023 BCCA 300 at para. 42, the mere fact a person experiences chronic pain does not on its own satisfy the first step in *Rab*.

[190] Any inference to be drawn must be based on "all of the medical and lay evidence about the nature and extent of the claimant's injuries, the claimant's circumstances and the impact that work has on their ability to function: *Davies*, at para. 44.

[191] I recognize the principle repeated in *Gill v. Davis*, 2023 BCCA 381 at para. 12 that as a matter of common sense, continuous pain will take its toll over time and have a detrimental effect on a person's ability to work.

[192] Dr. Waseem opined that the Claimant would be unable to work as many hours as she did prior to the Accident and "disruptions" would continue such

that the employer needed to be aware of her injuries and recognize that pain was a medical condition requiring accommodation.

[193] Although Mr. McNeil's report suffered from the weakness his assessment was conducted in 2019, I accept his opinion that the Claimant would struggle with prolonged sitting, standing, and maintaining a productive work pace. In his view, the need for accommodation to be able to pace herself could affect her ability to compete for work in the open job market.

[194] In *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353 the court set out a list of factors to be considered in assessing the impairment of the capital asset:

> (a) the claimant has been rendered less capable overall from earning income from all types of employment;
>
> (b) the claimant is less marketable or attractive as an employee to potential employers;
>
> (c) the claimant has lost the ability to take advantage of all job opportunities which might otherwise have been open to her, had she not been injured; and
>
> (d) the claimant is less valuable to herself as a person capable of earning an income in a competitive labour market.

[195] Based upon the evidence of Dr. Waseem and Mr. McNeil together with the Claimant's own evidence, I accept the Claimant has established a potential future event that could lead to a modest loss of capacity resulting in a real and substantial possibility of a pecuniary loss.

[196] Simply put, the Claimant is less capable of earning income from all sources and is less valuable to herself as a person capable of earning an income in a competitive labour market.

(c) The Pallos means of assigning value

[197] The difficult question is how to value that pecuniary loss.

[198] The parties agree the capital asset method should be employed to assess the Claimant's loss of earning capacity. They part company on how that should be done.

[199] The Court in *Pallos v. Insurance Corporation of British Columbia*, 1995 CanLII 2871 at para. 43 suggested three means of assigning a dollar value to the loss of earning capacity:

> (a) multiply an annual projected loss of income by the number of years remaining and calculate the present value,
>
> (b) multiply a nominal percentage loss per annum against the Claimant's expected annual income and calculate the present value,
>
> (b) award the entire annual income for one or more years,

[200] The Claimant adopted method (b) and submitted a 25% reduced capacity should be applied to lifetime earnings of $5,046,780 for a British Columbia lawyer.

[201] The Respondent applied method (c) and submitted an award based upon one year of annual income as a personal banker.

(d) Real and substantial possibility of becoming a lawyer

[202] The approach asserted by the Claimant raises the question of whether there is a real and substantial possibility the Claimant will become a practicing lawyer in British Columbia.

[203] The only evidence on the issue was that the Claimant since high school had expressed an interest in becoming a lawyer, and then in June 2024 applied and was accepted three weeks later to the law program at Bond University in Australia.

[204] I start by referencing certain observations of Griffin, J, as she then was in *J.D. v. Chandra,* 2014 BCSC 466:

> [152] University is often the place where a young person's dreams meet up with the practical realities of the person's abilities. Mere desire and hard work is sometimes not enough. Most people have talents but not many people have every talent.
>
> [153] ...the evidence has to be more than a mere hope and desire.

[205] In my view it would be a quantum leap across an evidentiary void to jump from the Claimant being accepted into the law program at Bond University to the real and substantial possibility she will be called to the bar and practice law in BC.

[206] To the extent there was evidence, it was that the Claimant:

- graduated from SFU with a Bachelor of Arts and a GPA of 2.53 which was equivalent to a C+ average
- made no inquiries into the requirements for acceptance into a Canadian law school
- told her mother she did not apply to a Canadian law school because the exam would be difficult for her
- did not write the LSAT because she understood it required intense study
- applied to Bond University because she wanted to travel, and the law program was for two years
- had no knowledge of what was necessary to transfer a Bond University degree to Canada other than she had to "challenge the exams"

[207] As asserted by the Respondent, there was no evidence as to the chances of the Claimant successfully completing the Bond University program, the requirements to transfer her Bond University degree to British Columbia, the chances of her obtaining an articling position and passing

PLTC, the value of a Bond University degree in British Columbia and the chances of the Claimant obtaining an associate or partnership position with a British Columbia law firm.

[208] The insufficiency of evidence was addressed recently by the Court in *Lee v. Bolduc,* 2024 BCCA 7:

> [60] Any shortcomings in the extent of the evidence adduced at trial on this issue rests with Ms. Bolduc since she bore the onus of proof. It is perplexing that there was no additional evidence led on this point such as:
>
> - Testimony from individuals who were accepted to Canadian medical schools, in particular BC, which included their undergraduate marks and course of studies. . .
>
> - Evidence from persons with an expertise in admissions to Canadian medical schools, in particular UBC, as to the likelihood of admission for a hypothetical applicant with Ms. Bolduc's academic and extracurricular background
>
> Emphasis added

[209] The Claimant agreed there was an evidentiary void but submitted I was entitled to draw the inference that but for the Accident, the Claimant had "…a very high probability of attending law school in Australia and then coming back to Canada to practice law."

[210] I do not agree with the Claimant on this point.

[211] A finding or inference of fact must be supported by the evidence and if not, it is merely speculation or conjecture. If there are no proven facts, the method of inference fails: *Lee* at para. 21 (Newbury J.A. dissenting as to result).

[212] I am not able to conclude on the evidentiary record that there is a reasonable and substantial possibility the Claimant will become a lawyer practicing in British Columbia. I adopt the following comments of Justice Kirchner in the similar case of *Sankey v. Balabag*, 2023 BCSC 1727:

> [106] A real and substantial possibility must be established with *evidence*. Unfortunately, there is no evidence of the admissions criteria for a Bachelor of Education program at Simon Fraser University or elsewhere. Thus.... there is no way to assess whether the grades she has achieved might meet the standard for admissions in SFU's Faculty of Education.
>
> . . . .
>
> [113] For these reasons, I can only conclude that the evidence does not allow me to find there was a real and substantial possibility that Ms. Sankey would have become a teacher. That does not mean that I believe she had no chance of becoming a teacher. Rather, it means that the evidentiary requirements of *Rab* to establish that as a real and substantial possibility have not been met. A real and substantial possibility is not a heavy onus, but that onus must be met on the evidence: *Kim v. Morier*, 2014 BCCA 63 at para. 7
>
> Emphasis added

[213] I emphasize the Claimant may still succeed in becoming a lawyer in BC. Indeed, one hopes she is successful. However, for the purpose of assessing her loss of earning capacity, the evidence does not allow me to use as a base the income figures for a lawyer in BC as postulated by Ms. Clark.

(e) Percentage reduced capacity versus annual income approach

[214] Notwithstanding my conclusion that the Claimant has not established a real and substantial possibility of becoming a lawyer and practicing law in British Columbia, she remains entitled to an award for loss of capacity.

[215] I pause here to say I agree with the Respondent's submission that the Claimant remains on the same career path at the time of the Accident in that

she can continue her banking career or return to school and attempt to become a lawyer. The Accident has not changed that path.

[216] In *Rab*, and subsequently in *Davies v. Penner* at para. 49 and *Charters v. Jordan*, 2024 BCCA 351 at para. 131, the Court endorsed the "rough and ready" annual income approach articulated in *Pallos* as being appropriate where the claimant continues to earn at or close to pre-accident levels but has suffered an impairment which may impact her ability to do so in the future. I conclude this is the appropriate approach for these circumstances.

[217] The Claimant since beginning to work full time at TDCT has in fact increased her level of earnings through promotion. Both Dr. Waseem and Mr. McNeil opined that she would likely be capable of full-time work in the future although she may require accommodation.

[218] Given this opinion evidence, it would be inconsistent in my view to assess her loss of earning capacity using an annual projected income or percentage loss multiplied by her remaining years of working life.

[219] I am required by *Rab* to consider the likelihood of the loss and reasonableness of the award and ensure the factors I consider are tied to the evidence. In addition to the expert evidence already referred to, I am cognizant of Dr. Waseem's opinion in his first report that any further disabilities not already apparent were unlikely to surface in the future. Dr. Waseem in his second report confirmed this opinion remained unchanged.

[220] In summary I conclude a fair and reasonable award for the Claimant's future loss of earning capacity is be valued at $100,000 which is roughly equivalent to eighteen months of employment using the Claimant's salary at the time she went off on maternity leave in 2023.

[221] As a check against my conclusion, the present value of the Claimant's annual income of $65,000 to age 65 is approximately $1,760,000. Applying a 5% "modest" impaired capacity factor, yields a loss of earning capacity of $90,000 which is in the range of my assessment of $100,000.

Loss of Housekeeping Capacity

[222] The Claimant asserts that with working and giving birth to her daughter, she does not have the energy to complete the required housework. She performs most of her household activities less frequently and avoids bathroom cleaning and floor washing. The home is a "mess", and things must be "kicked aside to clear a path".

[223] Relying upon the recommendation of Mr. McNeil, the Claimant seeks an award of $153,160 based upon two hours a week of homemaking assistance plus seasonal cleaning until age 75.

[224] The Respondent rejects the claim for loss of housekeeping capacity.

[225] In *McKee v. Hicks*, 2023 BCCA 109, the Court succinctly clarified the previous debate on whether such loss should be compensated as a non-pecuniary loss or as a segregated pecuniary head of damage:

> [112] To sum up, pecuniary awards are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and necessary household work. In such cases, the trial judge retains the discretion to address the plaintiff's loss in the award of non-pecuniary damages. On the other hand, pecuniary awards are not appropriate where a plaintiff can perform usual and necessary household work, but with some difficulty or frustration in doing so. In such cases, non-pecuniary awards are typically augmented to properly and fully reflect the plaintiff's pain, suffering and loss of amenities.

[226] As noted in *Kim v. Lin*, 2018 BCCA 374 at para 30, it may be ". . .a fine line between situations of diminished capacity to perform tasks and when the plaintiff completes tasks with difficulty".

[227] Although I view this as one of those cases close to the line, I conclude the loss is one that should properly be reflected in the award for non-pecuniary damage. It is not that the Claimant is unable to perform the necessary work but more she is only able to do it with difficulty or getting by without doing or intending to do the tasks: *Kim*, at para. 30.

[228] I referred at paragraphs 75 and 76 to the various trips the Claimant has taken since the Accident with family and girlfriends to China, Japan, Korea, southeast Asia, central America, Mexico, Hawaii and the Caribbean, and the pain those trips caused her.

[229] Without equating the inherent nature of household duties to the discomforts of traveling, I do view the Claimant's stated desire and ability to travel to the extent she has, as being somewhat incongruous with the suggestion she is unable to carry out the necessary household chores.

[230] In my view the difficulties experienced by the Claimant in performing those tasks are properly recognized in the augmented award of $175,000 for non-pecuniary damages. As a contingency factor, it will be evident in my award for future care that I allowed $10,000 for seasonal cleaning as recommended by Mr. McNeill.

Cost of Future Care

[231] Costs awarded for future care should encompass treatments or items that are linked to accident-related injuries, reasonable and the Claimant will likely use and benefit from: *Malakoe v. Harris*, 2024 BCSC 1178 at para. 149.

[232] The Claimant seeks damages of $514,648 for future care, of which $380,000 is for driving assistance and $86,531 for pain management, homemaking assistive devices, and rehabilitation/health maintenance.

[233] The claim for driving assistance is based upon the submission that it is necessary for the Claimant's husband to "drive her around to work, appointments and everything else" two hours per day, 365 days per year for every year until age 75 at a cost based upon minimum wage.

[234] The claim for driving assistance is premised on the causal link that it is not safe for the Claimant to drive "…due to mental injury sustained in the Accident".

[235] I have already concluded the Claimant did not sustain mental injury in the Accident and therefore I award nothing for driving assistance.

[236] Dr. Waseem recommended intermittent chiropractic care six to eight times per year to maintain her level of function, Triptan and Amitriptyline medication to target headaches and a self-directed exercise program. Dr. Waseem also recommended a trial of trigger point injections, but the Claimant testified she had a phobia of needles and would not pursue that treatment. There was no evidence as to the cost of the recommended medication.

[237] Mr. McNeill following his assessment on December 1, 2019, recommended assistive devices for pain management, homemaking and ergonomics, together with occupational and rehabilitation therapy, and a pain management program.

[238] The Respondent without providing any breakdown suggested a future care award of $25,000,

[239] Doing the best I can on the evidence available including Ms. Clark's present value evidence, I award the following for future care:

(a) Assistive devices (Mr. McNeill)	$5,000
(b) Seasonal cleaning (Mr. McNeill)	$10,000
(c) Chiropractic therapy (Dr. Waseem)	$5,000
(e) Pain management program (Mr. McNeill)	$10,000
TOTAL	$30,000

Special damages

[240] The Claimant sought special damages of $9,062.69 and the Respondent agreed to $7,652.68. Unless counsel wish to make further submissions, I award $9,000.

XII. CONCLUSION

[241] I award the Claimant the following:

Non-Pecuniary Damages	$175,000
Past Loss of Earning Capacity	$ 10,000
Future Loss of Earning Capacity	$100,000
Cost of Future Care	$ 30,000
Special Damages	$ 9,000
TOTAL	$324,000

[242] The Claimant is entitled to her costs unless there are considerations of which I am not aware.

[243] If the parties wish to make submissions on deductible amounts, costs, or special damages, a telephone call can be scheduled to arrange the necessary steps going forward.

Dated: February 26, 2025

_____

Arbitrator—Dennis C. Quinlan, KC