IN THE MATTER OF AN ARBITRATION PURSUANT TO S. 148.2(1) OF THE REVISED REGULATION 1984 UNDER THE INSURANCE (VEHICLE) ACT, B.C. REG 447/83

BETWEEN:

JLS

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

ARBITRATION AWARD

Counsel for the Claimant, JLS	Robert C. Marcoux & Meghan Neathway
Counsel for the Respondent, Insurance Corporation of British Columbia	Farzana Mohamed & Daniel Jaccard
Date of Hearing:	March 22 – April 1, 2021
Place of Hearing:	Vancouver, BC
Arbitrator:	Dennis C. Quinlan, QC
Date of Award:	May 14, 2021

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I. INTRODUCTION

1. This is an Underinsured Motorist Protection ("UMP) Arbitration conducted pursuant to section 148.2 of Part 10 of the **Insurance (Vehicle) Regulation B.C. Reg. 447/83** to the **Insurance (Vehicle) Act RSBC 1996, c.231.**

2. On October 29, 2014, the sixteen year old claimant JLS ("hereinafter referred to as the "Claimant") was a pedestrian involved in a hit and run incident that occurred on 32nd Avenue in Langley in the early evening hours (the "Collision").

3. The Claimant was walking on the side of the road with a friend when a pick-up truck pulled up on 32nd Avenue, reversed over the Claimant's left foot and then left the scene. The Claimant sustained physical and emotional injuries, including multiple fractures to her left foot which ultimately required four surgeries.

4. The Claimant is an insured for the purposes of UMP as defined in section 148.1 of the **Insurance (Vehicle) Regulation (**the "**Regulation**"). She has settled her claim arising under section 24 of the **Insurance (Vehicle) Act** (the "**Act"**) and the parties have agreed to resolve the balance of her claim through Arbitration.

5. It is the position of the Claimant that the Collision irreparably altered the course of her life, both in terms of making worse an already precarious psychiatric condition, and leaving her with physical pain and limitations which have reduced her income earning capacity by thirty to fifty per cent.

6. The Respondent accepts that the Claimant sustained a significant physical injury to her foot, but says the psychiatric issues experienced by her following the Collision were largely a continuum of her pre-Collision condition.

7. The issues to be determined are the amount of damages to which the Claimant is entitled under UMP and the applicable deductible amounts pursuant to section 148.1(1) of the **Regulation**.

8. Most notably, this Arbitration requires me to determine the extent to which the Claimant's position pre-Collision arising from active psychological and psychiatric issues, has played and continues to play a role in the Claimant's post-Collision position.

II. CREDIBILITY AND RELIABILITY OF THE CLAIMANT AND HER PARENTS

9. The Respondent's position is that the evidence of both the Claimant and her parents (who are no longer together) should be viewed with caution, not on the basis that they were deliberately untruthful but rather because their view of history and in particular the Claimant's pre and post-Collision difficulties were not truly reflective of what occurred.

10. The argument advanced by the Respondent is reflective of the distinction between credibility and reliability as discussed by the Court in *Radacina v Aquino* 2020 BCSC 1143 paras 94 to 96.

11. I agree with the Respondent. It became apparent as the evidence was given, that life for the Claimant and her parents during the important years, was a blur. To build a timeline based solely upon their evidence would be dangerous.

12. Mr. Marcoux, counsel for the Claimant, fairly conceded this difficulty. As he put it, I would have to do my best to piece together the future with the past to determine the extent to which the two differed as a result of the Collision, so as to arrive at fair compensation for the Claimant.

13. Fortunately the documentary evidence and in particular the medical and school records allowed me to do that. The fact I was able to conclude the Claimant was doing her best

to give her evidence truthfully and accurately in the circumstances, made my task easier.

14. As a general comment, I found the Claimant presented well in the sense that she was thoughtful and articulate. Given the life events which befell her, it is not surprising her evidence at times did not match up with other evidence I received. As was stated by Madam Justice Dillon in *Bradshaw v. Stenner* 2010 BCSC 1398 at para. 186, the Claimant's version of events did not always "....harmonize with independent evidence that [was] accepted."

15. I observed the parents to be caring of their daughter as one would expect. Their evidence was supportive but did not cross over into embellishment or exaggeration. They without hesitation agreed she was doing much better in recent months, which indicated to me they had her best interests at heart, rather than giving evidence that might be seen as simply advancing her position in this Arbitration.

16. However I concluded I must approach their evidence with caution, particularly when it came to the sequencing and intensity of events. In addition to difficulties with their recollection, they also faced the reality that each was not present with the Claimant for certain lengthy periods of time and thus any information they received was often second hand. There were a number of serious incidents involving the Claimant which they apparently were not aware of and their focus on positive aspects of the Claimant's life to the exclusion of negative events, did at times appear scripted.

17. Notwithstanding those concerns, I was of the view that their inherent bias as parents did not override their obligation to give evidence truthfully and accurately as best they could.

III. PRE-COLLISION LIFE OF THE CLAIMANT

18. Given the importance of having a clear understanding of the Claimant's pre-Collision life or "original position", I will set out in detail the path her life took up until the time of the Collision. As will soon become evident, she had a difficult and turbulent upbringing.

19. The Claimant was born November 20, 1997 in New Westminster and at the time of the Accident was almost seventeen years old. In her very early years she lived in Coquitlam with her mother, father and older brother. She also had other half siblings through a relationship of her mother, but they lived elsewhere.

20. Suddenly when the Claimant was six years old, her mother suddenly left the family and eventually moved to Kelowna. Initially the Claimant continued to live in Coquitlam with her father, but after a period of time she and her brother left Coquitlam and went to live with their mother. The Claimant testified she felt abandoned by her mother leaving the family unit.

21. The life move to Kelowna turned out to be tumultuous for the Claimant.

22. The living arrangements in Kelowna were that the Claimant and her brother were living with their mother and their mother's new boyfriend in a low income housing complex. The boyfriend was described as "not a good person". He was emotionally abusive, controlling, addicted to crack cocaine and only in the home when he wanted to be. The Claimant said he made unwelcome sexual advances towards her. Life in her words was "chaos".

23. The Claimant finished grade two in Kelowna and then completed grades three through six, describing this schooling in a positive way, saying she had lots of friends and achieved average marks as reflected in her school records.

24. However in August 2009, matters changed for the worse when she entered grade seven at Dr. Knox Middle School. Her friends had moved on to a different school and she became a loner. Life at home was described as "hectic" and she felt depressed although she testified this feeling was situational in that it was related to what was happening in her life, as opposed to a chemical imbalance.

25. The boyfriend was still in the home and he was a smoker who would blow smoke into the Claimant's face. He made hurtful and demeaning statements to her. The Claimant's mother at the same time was struggling with her own addiction and mental health issues related to bipolar disorder, which had a corresponding negative impact on the Claimant.

26. The Claimant said that when she turned twelve, she was diagnosed with depression and anxiety and treated with Cipralex. She began cutting herself due to feelings she said were a result of not receiving enough attention from her mother. Eating issues developed and she began binging and purging. She was drinking alcohol and smoking marijuana and a pack of cigarettes a day.

27. The Claimant testified she told her mother about the boyfriend's behaviour, particularly the blowing of smoke into her face, but nothing changed. The Claimant said she was hurt by her mother's inaction and felt the boyfriend was being favoured over her.

28. Through grades eight and nine, the Claimant had few friends. She was bullied at school, was overweight and had body image issues. Her absences from class were increasing while her grades were dropping. The Claimant thought she underwent Dialectical Behavioural Therapy (DBT) at some point in her early teenage years for treatment of Borderline Personality Disorder. Whether such diagnosis was ever properly made was not established in the Arbitration.

29. Through these turbulent years, it is significant to recognize that the Claimant at a young age went out and found part time employment.

30. In 2010 and 2011 while in grades seven and eight, she worked on weekends as a busser at Ricky's All Day Grill in Kelowna. She obtained this employment with the assistance of her mother and step-sister who already worked there. Given her young age, she had no social insurance number and was paid cash.

31. The Ricky's job came to an end and the Claimant found employment in 2011 and 2012 at a White Spot in Kelowna as a host/busser. She found this position on her own initiative with the assistance of a friend who worked there. The Claimant was thirteen years old at the time and attending grades eight and nine. She could not remember if she had a social insurance number by this point.

32. In August 2012, the Claimant started Grade 10 at Kelowna Secondary School. Things continued to be chaotic both inside and outside the home, and finally matters came to a head with her mother, resulting in the Claimant leaving Kelowna in October, 2012 to go and live with her father in Surrey.

33. The Claimant described her mother's mental health as unstable. She felt her mother had given up on her, and was choosing the boyfriend over her. The Claimant felt betrayed and untrusting towards her mother. At the same time, her father was offering a fresh start.

34. At first things seemed good living with her father and his girlfriend. The Claimant said there was a nice feeling in the home and her father made her feel that she was the most important person to him. She enrolled in Cloverdale Learning Centre for the continuation of grade 10 which she seemed to enjoy.

35. Unfortunately the nice feeling in the home did not continue. The Claimant testified that her father's girlfriend soon became jealous of her. She described a physical altercation

in April, 2013 which involved the girlfriend on top of her, pinning her down. There was reference in the evidence to a knife being involved. Feeling that her father was picking his girlfriend over her, the Claimant took a bus and returned to Kelowna. It was only supposed to be a visit, but she ended up moving there, staying with a girlfriend and her family.

36. The Claimant admitted to occasionally selling drugs during this time. She was drinking heavily and getting into fights. Alcoholic black outs were occurring. She described one incident where she was so drunk she ended up being defenceless and woke up with her head bleeding.

37. On May 18, 2013, the Claimant was admitted to Kelowna General Hospital where she was seen by a psychiatrist Dr. Derry for suicidal ideation. The records indicate she was previously seeing another psychiatrist Dr. Latimer on a weekly basis. Her psychiatric history as reflected in the Psychiatric Discharge Summary dated May 20, 2013, included depression, emotional dysregulation, chronic self harm, disordered eating, alcohol abuse and chronic suicidal ideation. The Claimant was discharged into the care of her sister, with the recommendation that she engage in alcohol and drug counselling.

38. Shortly thereafter, the Claimant returned to Surrey to live with her father as he told her that the girlfriend who had been involved in the previous altercation had left. Almost immediately the Claimant found employment starting June 13, 2013 at Toys R Us in Langley as a cashier/sales associate. She described with some pride, how she was very good at selling the buyer protection plans. In her words she was good at "finessing" them. The Claimant said she worked there full time during the summer and then part time until November, 2013. Over that period, she earned $3,912.13.

39. The hospital records of Langley Memorial Hospital record that on August 10, 2013, the Claimant was admitted for an attempted overdose on Cipralex, She agreed she told the medical staff she was drinking "a lot, 8 to 9 beers regularly".

40. In September, 2013, the Claimant enrolled at Lord Tweedsmuir Secondary School in Surrey. The school records through to June 2014 for combined grade ten and eleven courses show a high degree of absenteeism, below average grades and in some courses, failing grades.

41. In April 2014, a notice was sent home to her parent indicating that poor attendance and incomplete assignments in math eleven were contributing to her low grade. The Claimant admitted in cross examination that she could not really remember this time but the frequency of absences reflected what was going on in her life.

42. In August 2014, she was involved in a fight where she was drinking. One thing lead to another and a girl smashed a bottle over her head.

43. She also admitted she was continuing to engage in cutting herself up until the time of the Collision, perhaps as frequently as once a month, although "maybe I exaggerated…..it was an easy guess….yet it was often".

44. In September 2014 the Claimant enrolled in grade eleven at Lord Tweedsmuir as she continued to live with her father.

45. Within the backdrop of what occurred from the time she was a young girl, the Claimant testified in her direct evidence that in the months leading up to the Accident her life was much better and not so chaotic. She testified she was seeing a counsellor, undergoing therapy, had good friends, and was spending quality time with her father. Within the home, she was doing all the housework, including the laundry, sweeping, mopping, and cleaning the fridge and bathroom. She said she liked things to be clean.

46. The Claimant further stated her mental health was improving, sleep was fine, panic attacks were few and she was not having nightmares. She conceded she was continuing to smoke cigarettes and marijuana, and drink alcohol, but "not as much". She stated she was hiking, jogging and staying fit. Her stated goals in life in the

months leading up to the Collision were to graduate from Grade twelve, become an emergency room nurse, marry and have a family.

47. The Collision then occurred October 29, 2014.

IV. SUMMARY OF THE CLAIMANT'S PRE-COLLISION POSITION

48. Overall I found the Claimant to be candid about her pre-Collision issues, although not surprisingly given the passage of time and the nature of certain events being discussed, she was often not clear on dates as to when those events occurred or in what order.

49. I also appreciate that within the backdrop of litigation, there can be the temptation to portray pre-Collision life in a more positive light than was actually the case. I found there was an element of such temptation in the Claimant's evidence, particularly when it came to describing the months leading up to the Collision.

50. In arriving at this conclusion, I do not suggest the Claimant was attempting to mislead me in her evidence. Human nature can be such that the good times are remembered better, and the bad times worse, than they actually were.

51. In conclusion, while I accept there may have been some short term relief in the immediate months before the Collision, I do not accept that everything was as positive and healthy as she or her parents testified. The psychological and psychiatric difficulties the Claimant was facing at the time of the Collision were active, ongoing and difficult, with a very uncertain future.

52. Juxtaposed against these significant difficulties was a young woman who displayed the character traits of resiliency and motivation sufficient to keep her moving through the school system and engaging in part time work.

V. THE COLLISION AND THE CLAIMANT'S LIFE THEREAFTER

THE COLLISION AND INJURY

53. The circumstances leading up to the Collision were vague. The Claimant said she was at her girlfriend's home to celebrate the girlfriend's birthday when they decided to go for a walk. As they were walking down the road, a white pickup drove by, stopped, and then began to back up. The vehicle ran over a mail box before driving over the Claimant's left foot. The vehicle then started forward, running over the Claimant's foot again and speeding off.

54. On cross examination the Claimant agreed this was not quite the entire story as she and her girlfriend had just purchased pot brownies. She denied having consumed any or being high. It was suggested to the Claimant she had knowledge as to who the driver was, which was denied.

55. As liability was admitted by the Respondent, this evidence had only marginal relevance to the issues in the Arbitration.

56. The Claimant described being in complete shock and having the thought that she and her girlfriend were about to be kidnapped. The events happened so fast she did not know what to think. After the vehicle sped off, the Claimant felt safe.

57. She was taken by ambulance to Langley Memorial Hospital where she recalled experiencing the most excruciating pain she had ever felt, no doubt caused by a crush fracture to her left foot. The emergency room orthopaedic surgeon performed open reduction, internal fixation surgery of the fractured left navicular bone, and fitted her with a hard cast below the left knee. The Claimant was discharged from hospital on November 1, 2014.

58. For the first month after the Collison the Claimant could not leave the house. Her mother came down from Kelowna to look after her and assist with almost all activities of daily living. The Claimant said it was particularly difficult sleeping with the cast because of the feeling of blood rushing to her foot and the sensation of pressure and a "thousand needles". She wore the cast for four and one half months.

59. The Claimant began experiencing nightmares related to vehicles chasing her one to two weeks after the Collision. She testified she was terrified to fall asleep for fear of waking up in a nightmare and gasping for air. She also said she would experience flashbacks which lead to panic attacks, especially when outside in traffic. Physical symptoms accompanied the panic attacks and included shaking, hot and clammy feelings, vomiting, headaches, and difficulty swallowing. Disagreements with her father which pre-Collision amounted to temper tantrums now became full blown panic attacks where she did not want "to be in her own skin".

60. Feelings of paranoia developed which the Claimant described as thinking there were listening devices in the home because someone was "trying to set her up". She was scared to go outside and felt she could not trust anyone. She began smoking cigarettes and marijuana in her bedroom. Her marijuana consumption increased by seventy per cent which she said was to help with her pain and panic attacks.

61. The Claimant testified that at some point, she was diagnosed with Post Traumatic Stress Disorder (PTSD), although it was not clear who made this diagnosis or if it was made by a treating doctor.

POST COLLISION SCHOOLING AND SECOND SURGERY MAY 17, 2015

62. Soon after the Collision, the Claimant returned to Lord Tweedsmuir High School. It was difficult for her because she was on crutches and had to travel by bus. The Claimant soon found Lord Tweedsmuir to be too much, and in January 2015 she registered at Cloverdale Learning Centre where she had previously attended for part of grade ten.

She found this was a much better fit as the learning was geared to students who were experiencing some form of difficulty and she could go at her own pace.

63. The panic attacks remained severe when she returned to school, although they decreased in frequency. At some point the Claimant said she stopped using marijuana because she was prescribed painkillers for her pain. The evidence was not clear as to when this occurred, although the Pharmanet printout shows that the first prescription for Tylenol #3 with codeine appears in 2017-2018.

64. Upon returning to school, the Claimant described her foot as being painful and very stiff with the feeling that it was made of stone.

65. The Claimant agreed on cross examination that her grades after the Collision were similar to what they were before the Collision.

66. On May 7, 2015, the Claimant underwent a second surgery for the removal of the hardware inserted in the first surgery. This helped to alleviate some of her pain and stiffness.

67. It was also in May, 2015 that the Claimant enrolled in a work experience program known as Express to Success which was intended to assist with the building of a job resume. Through this program, the Claimant was placed into a position at Shoppers Drug Mart where she was to work five days a week, eight hours a day stocking shelves. After two weeks however, the Claimant's employment was terminated, apparently because she was unable to do the job due to pain and balance difficulties she was having with her foot. The Claimant earned $986.06 in this position.

68. In September, 2015, the Claimant registered in grade eleven with several grade twelve courses at Cloverdale Learning Centre. School was difficult for her as she was only attending three to four days a week because of anxiety and feeling overwhelmed. She

testified she was experiencing increased eating disorder issues. Her energy level was low.

69. In November 2015 the Claimant saw Dr. Khan, psychiatrist who suggested a diagnosis of Borderline Personality Disorder. As previously mentioned, this diagnosis was never established for the purpose of the Arbitration.

70. The hospital records record two emergency admissions for drug overdoses in the second half of 2015.

EMPLOYMENT AT LIDS 2016

71. The Claimant graduated in June, 2016 although there were no school records to show her level of attendance, how she did or what category of graduation she achieved.

72. After graduating, the Claimant obtained employment in late October, 2016 at LIDS, which was a retail outlet in Abbotsford selling sport hats. According to the Claimant she was quite good at up-selling, where if the customer bought one hat, they could buy a second at half price.

73. Although the Claimant liked the job, she testified she had difficulty working a full eight hour shift because of increasing pain in her foot. She found it hard to climb up ladders to access the store product. The Claimant said her foot would swell and she would feel pins and needles. She left the LIDS job on January 4, 2017 after earning $1,741.36, with the thought being she needed a job where she was off her feet.

74. The hospital records record seven emergency admissions for overdose and cutting incidents throughout 2016.

DR MATTHEW CONSULTATION OF MARCH 8, 2017

75. Starting February 20, 2017, the Claimant obtained a minimum wage position at Pacific Injection Moulding Ltd, which was a business in Langley where her father worked as a salesman. According to the Claimant, the job was supposed to be secretarial, but it turned out to be as a machine operator where she had to pull down a lever to stamp berry trays. She testified she was supposed to stamp fifty trays an hour but was only able to do thirty five to forty.

76. The position at Pacific Injection Moulding required the Claimant to wear steel toed shoes which she found difficult. She said she was taking Tylenol 3's for her pain and tried to decrease the length of her shifts from eight hours to four hours, but this was not possible.

77. On March 8, 2017, the Claimant saw an orthopaedic surgeon Dr. Matthew complaining of ongoing pain around her midfoot on the dorsum (top). A CT scan performed March 12, 2017 showed minor degeneration in the calcaneocuboid joint and significant degenerative change in the naviculocuneiform joints. Given the CT findings and the progressive worsening of her symptoms, Dr. Matthew placed the Claimant on his surgical wait list for mid-foot fusion.

78. On March 18, 2017, the Claimant left her job at Pacific Injection Moulding, having earned $692.90. She did not work for the balance of 2017, saying it was difficult to find a secretarial position because prospective employers wanted experience and she did not have any.

79. The Claimant testified Dr. Matthew told her to stop working because she was putting herself "through constant pain". However Dr. Matthew in his evidence denied saying that and added he never tells patients to quit their jobs.

80. During the spring and summer of 2017, the Claimant and her then boyfriend were living with her father and his girlfriend and her two children in Surrey. However her father bought a house in Mission and according to the Claimant, he "kicked us out" as he wanted "us to grow up". She and her then boyfriend went and lived on farmland, far from buses.

81. The Claimant was on social assistance for the balance of 2017. She was anxious and depressed, in part due to her financial situation. It was also in this time period that she felt she began to develop an addiction problem from the prescribed painkiller.

82. The hospital records record four emergency admissions throughout 2017 for feelings of hopelessness combined with family turmoil and foot pain.

EMPLOYMENT AT PHOENIX FIRE PROTECTION JANUARY 1, 2018

83. On January 1, 2018, the Claimant found a position working at Phoenix Fire Protection Inc. in Langley as an administrative assistant.

84. Her precise role was to contact customers to make appointments for the service people to do their inspections and maintenance. She also started making cold calls to other businesses to encourage them to change their service contracts to Phoenix. The Claimant testified she was good at this job as she had always been a good salesperson.

THIRD AND FOURTH SURGERIES MARCH 12 AND JULY 20, 2018

85. The Claimant worked successfully in this position until March 9, 2018 when she went off work to undergo the previously recommended fusion surgery on the naviculocuneiform joints. This third surgery was performed by Dr. Matthew on March 12, 2018. Dr. Matthew noted that prior to this surgery, the Claimant was complaining of "severe left foot pain affecting her quality of life".

86. The Claimant testified the surgery triggered her PTSD as it brought back memories of the Collision. She also had continuing panic attacks.

87. Following four months off work after the March 12, 2018 surgery, the Claimant returned to Phoenix Fire on July 16, 2018. Four days later on July 20, 2018, she underwent her fourth surgery when Dr. Matthew removed the hardware he had inserted.

88. Dr. Matthew last saw the Claimant on September 6, 2018 at which time he noted the area of the surgery was no longer painful but she was complaining of new lateral pain.

89. Dr. Matthew's plan to address the new pain was for the Claimant to have physiotherapy and a CT scan, with follow up in his office. The Claimant agreed she did not follow through with the plan.

EMERGENCY HOSPITAL ADMISSIONS 2015 TO 2018

90. Dr. Matthew prepared a medical legal report dated October 1, 2018 wherein he referenced a suicide attempt by the Claimant from a drug overdose on June 5, 2018, resulting in her attending Peace Arch Hospital.

91. The Claimant in her cross examination was referred to the June 5, 2018 admission and the thirteen other hospital admissions post-Collision referenced earlier. The majority of these admissions were for relationship and family reasons similar to what she had experienced pre-Collision although two of the admissions in 2017 reflected feelings of despair associated with her foot pain.

92. Some of the hospital admissions the Claimant admitted and some she did not, saying she could not recall them. Given the number of incidents, I accept that the Claimant truthfully did not remember all of them. However the hospital records in question were admitted as business records and in particular as admissible evidence, inter alia, that

the Claimant attended upon the medical professional on the date indicated and received the treatment recorded, and as proof of the fact of their occurrence.

93. I accept that these events occurred. I am mindful that the hospital records were not admissible as proof of statements which appeared to have been made by the Claimant unless she adopted those statements on cross examination.

RESIGNATION FROM PHOENIX FIRE SEPTEMBER 12, 2018

94. I described earlier that the Claimant, following her fusion surgery, returned to her position at Phoenix Fire on July 16. As time went on, she felt she was unfairly being taken advantage of, as she was bringing in business and doing more than what she was hired to do. She said she was promised a bonus, but that never came to fruition. In short, she felt she was not being paid appropriately.

95. The Claimant decided to look for another job. She testified she found a position as a dispatcher at Accusource Communications LP which was the corporate name of the Mainroad Road Maintenance group of companies. This position offered an increase in compensation of two dollars per hour plus benefits which she was not receiving at Phoenix Fire.

96. The Claimant testified she went to her supervisor at Phoenix Fire, Reg Ofreno, and offered him the opportunity to match the pay increase and benefits. According to the Claimant, Mr. Ofreno said he could match the two dollar increase but not the requested benefits. As a result the Claimant resigned her position at Phoenix Fire on September 12, 2018. During her two periods of employment which totalled four months, the Claimant earned $7,286.

97. Mr. Ofreno was called as a witness by the Respondent. He worked at Phoenix Fire for four and a half years in charge of invoicing and the collection of money from customers.

Mr. Ofreno testified the Claimant was the company's front end person responsible for administration, fielding telephone calls, scheduling, and coordinating the dispatch of technicians to the correct customer.

98. He also explained that the office building was two storeys and the Claimant had her own office located on the first floor or street level, with desk, computer and printer. The bathroom and coffee room were located on the second floor and the Claimant was free to go upstairs whenever she wanted. Most of the time she worked on her own and in the words of Mr. Ofreno, she had "full rein of the office".

99. Mr. Ofreno said the Claimant's work day was 7 am to 3 pm. There were no issues with her job performance or attendance and if there was a position for her now, she would certainly be hired back. He did not recall whether the Claimant gave a specific reason for leaving her employment.

100. On cross examination, Mr. Ofreno agreed that the Claimant's job was seated work, she did not have to stand for any period of time and she had no responsibilities of a physical nature. He confirmed the Claimant had a strong work ethic and performed all of her duties and "a bit above". She was not a complainer. Mr. Ofreno was asked about the cold calls the Claimant testified she was making. He said she enjoyed that work and was good at it, adding "probably better than most".

101. As mentioned, he could not recall why the Claimant left her job. He was not questioned about a bonus arrangement or the Claimant's evidence that she gave him the opportunity to match the salary and benefits being offered by Accusource.

102. I found Mr. Ofreno to be a candid witness and I accept his evidence as both credible and reliable.

EMPLOYMENT AT ACCUSOURCE SEPTEMBER 17, 2018

103. The Claimant described her dispatching position with Accusource as receiving constant calls about debris on the highway and other events which required a road maintenance vehicle to be sent to a specific location.
104. The Claimant said she did not have any physical difficulties performing this job. However she did receive a couple of calls involving serious accidents where there were bad injuries or death. Those calls affected her and triggered panic attacks, nightmares and anxiety.

105. The Claimant only remained in the Accusource position for six weeks. Her last day of work was November 9, 2018 and during this employment she earned $4,970.50. The principle reason given by the Claimant for leaving the Accusource position centered on the fact that she and her boyfriend broke up and she decided to go and live with her father in Mission.

106. The Claimant has not worked since November 9, 2018.

CHARLESFORD HOUSE 2019

107. At some point in 2019, the Claimant checked herself into Charlesford House for Women, which I understood was a treatment centre. There was limited evidence as to what treatment if any was provided at Charlesford House.

108. In the time leading up to her entry into Charlesford, the Claimant testified she was abusing prescription painkillers, drinking a lot, hungover all the time, partying, and "losing who she was". One day she hit rock bottom and decided to seek help.

109. Her time at Chesterfield was very difficult. She was crying every second day and telling the counsellor "she could not do it". She felt very alone. During her time there, she was admitted to hospital on two occasions for suicidal ideation. After thirty four days

she checked herself out of Charlesford and returned to live with her father in Mission. She could no longer obtain Tylenol 3 prescriptions, and in substitution she went to Shoppers Drug Mart and purchased Tylenol 1's. She testified she took six to fifteen tablets twice a day, for a year and a half.

110. On June 11, 2020 the Claimant was admitted to Abbotsford Regional Hospital after cutting herself and feeling suicidal because her best friend was hanging out with her ex-boyfriend. There was also reference to the Claimant using cocaine. On cross examination the Claimant admitted she had used cocaine in the past but not on this particular occasion.

CHANGE IN LIFE PATH

111. Following the June 11, 2020 hospital admission, the Claimant testified she came to the realization that it was necessary to change her life. She said her father played a large role in this decision. He had his own mental health and addiction difficulties centering on PTSD and heroin addiction, but since the age of twenty-one he had been clean, in part because he was on methadone.

112. The Claimant said her father suggested she see an addiction doctor in Mission which she did. Various medications were prescribed, none of which proved helpful. It was not until her father suggested methadone that things began to improve, as in her words "methadone saved my life".

113. No evidence was introduced from any treating addiction doctors.

114. In October, 2020, the Claimant moved to Salmon Arm to be closer to her mother who now lives there. The Claimant is living on her own in a rental home which she described as a positive experience. She has been sober and off drugs for the past nine months, and continues to receive addiction counselling from a doctor in Salmon Arm.

115. The Claimant said she recognizes she has been through a lot and caused a lot of damage both to herself and other people in her life who she loves. She testified that she wants to live a better life and does in fact feel her life is improving. She feels the chaos previously experienced is no longer there as she has successfully pushed away those people who caused that chaos. In giving this evidence, the Claimant had a large smile on her face, which I took to be a show of pride in her achievement.

116. The Claimant stated she is thinking about returning to work and/or going back to school to find a career, possibly as a forensic psychologist, veterinarian, veterinarian assistant or paramedic. Her immediate focus however is her mental health and maintaining her sobriety.

117. In terms of the Claimant's present physical situation, she testified she feels pain every day in her foot which impacts her ability to stand or walk for any length of time. She spoke of nerve pain in the area of scarring from her surgeries near her big toe, which varies between numbness and pins and needles. The Claimant acknowledged she has had no further physiotherapy or any other rehabilitation treatment for her foot injury since the last surgery of July 20, 2018.

118. As to her emotional issues, she testified she has nightmares one to two times a week and panic attacks once monthly. Anxiety comes and goes depending on what she is doing. She takes anti-depressants and neuropathic pain medication.

VI. EVIDENCE OF PARENTS

FATHER

119. The Claimant's father testified that the Claimant had a happy upbringing until about the age of six when he and the Claimant's mother separated. He said he was going through a hard time in that period and needed to take care of himself.

120. After some years, the Claimant came back to live with him because she was not getting along with her mother's boyfriend. He testified he was aware of his daughter's mental health issues in that she was always very sensitive, or as he said, "she was just born that way. He described her as getting hurt easily and going from "zero to one hundred". Her feelings were not well regulated and she would act without thinking about the consequences, which he characterized as emotional dysregulation. She had feelings of being left out.

121. Prior to the Collision, he was aware of her cutting incidents and the fact that she was taking pills. He also described conflict between the Claimant and his girlfriends, both before and after the Collision. Alcohol was involved along with physical altercations.

122. In the months leading up to the Collision, the Claimant's father said his daughter was getting her life back on track, as she was exercising all the time and had a job (although she had not worked for a year before the Collision).

123. He said the Collision set her off on a different path in that she was more depressed and in a lot of pain. He thought she was taking painkillers whereas before the Collision she would not even take Tylenol.

124. In the time leading up to the Claimant's admission to Charlesford House in 2019, her father said she was going through a hard time with alcohol, painkillers, and drugs. Once she returned from Charlesford, he said she tried to appear as if everything was fine, but he could see she was struggling. As an example he noted there were Tylenol 1 bottles "all over the place".

125. The Claimant's father said that recently she is emotionally doing "really well.....the best he had seen her in a long time". Physically he said she has difficulty walking and standing for any length of time.

126. It was evident that the Claimant's father had strong feelings for his daughter. He testified that he "loved her more than life" and wanted whatever was the best for her.

MOTHER

127. The Claimant's mother is presently sixty, lives in Salmon Arm with her partner and is semi-retired working part time as a bookkeeper. In 2009 she was diagnosed with Bipolar 1 disease which put her into a psychosis that lead to a number of hospital admissions.

128. She stated that her decision to leave the family when the Claimant was six years old was caused by her own illness at the time. Had she been healthy, she said she would never have left. She said it was only later she became aware that by leaving the family, she caused the Claimant to have feelings of abandonment. She volunteered that she put herself before her children.

129. The Claimant's mother said it was when the Claimant was about twelve years old that serious problems began to arise. Issues of depression became evident for which anti-depressants were prescribed. The Claimant was cutting herself and visits to the hospital emergency department had started.

130. She recalled the incident of the Claimant writing her a note describing how she felt. At that time the Claimant's mother did not appreciate the seriousness of what her daughter was saying. In that regard, she testified she was not aware her daughter was drinking to excess or taking zoplicone for sleep difficulties. As time went on, the problems became overwhelming and she contacted the Claimant's father to ask if the Claimant could go and live with him. He agreed and from her understanding the Claimant began to do better in the time leading up to the Collision as her mood was relatively happy.

131. At the time of the Collision, the Claimant's mother said she was living in Kelowna. She received a telephone call from the Claimant's father saying their daughter had been

involved in an accident. She immediately came to Vancouver and stayed with the Claimant for a few months to help her through the initial difficulties arising from the foot fractures. She noted that the Claimant's mood became "really dark" and the depression became worse.

132. At present the mother described the Claimant as being in pain and having difficulty walking. She has observed the foot swelling up and the Claimant walking with a limp. She has difficulty standing for any length of time.

133. Overall though, the Claimant's mother said the Claimant is "really doing much better". She has been sober and clean from drugs for nine months, and has become more independent. The Claimant is taking care of herself and is thinking of getting a job or going back to school. In one word, her mother said the Claimant is "stable" which she expanded upon to say "stable means pretty stable"

VII. EXPERT EVIDENCE

134. The Claimant called expert evidence from a psychiatrist, chronic pain specialist, orthopaedic surgeon, podiatrist, occupational therapist, vocational consultant and economist.

135. The Respondent called expert evidence from an orthopaedic surgeon.

136. Unfortunately all of the expert evidence introduced by the parties with the exception of two short rebuttal reports and the economic evidence, was authored in 2018 such that the opinions provided were not current,

137. None of the experts had reviewed clinical records post 2018, nor did they have any knowledge as to what had transpired in the Claimant's life subsequent to the date of their reports, or how she was doing at present. As a result, the opinions were somewhat weakened by the passage of time.

DR. MISRI PSYCHIATRIST

138. Dr. Misri was qualified as a medical specialist in psychiatry. She interviewed the Claimant on May 16, 2018 and prepared a report dated July 18, 2018.

139. Dr. Misri was an objective witness whose opinion I accepted albeit within the bounds of the information she was provided and one other issue which I will address. Given the issues in the Arbitration, Dr. Misri and the Claimant were the most important witnesses.

140. The Respondent did not introduce any psychiatric opinion evidence.

141. Dr. Misri opined that as a result of the Collision, the Claimant suffered from the following psychiatric consequences:

1. Posttraumatic Stress Disorder, moderate to severe
2. Persistent Depressive Disorder, pre-existing and more intense since the Collision
3. Panic Disorder, more intense since the Collision
4. Unspecified Feeding and Eating Disorder, now mild
5. Substance Use Disorder, pre-existing, but worsened since the Collision

142. In her view, the psychiatric consequences from the Collision changed the course of the depressive illness:

> [The Claimant] had a long-standing history of depression prior to the accident. However the MVA resulted in PTSD, panic disorder, persistent pain and increased substance use which changed the course of the depressive illness and its prognosis. Post-injury the physical discomfort, social isolation and the feeling of being a failure accelerated the depressive symptomatology, which has not responded to treatment as yet. Despite treatments such as surgery, physical therapy and massage, there has not been much of a shift in her foot pain. Had the accident not taken place, these persistent pain issues would not have perpetuated her depressive symptoms, in my opinion.

143. Similarly, Dr. Misri was of the opinion that the Collision did not cause the Substance Use Disorder, but it certainly exacerbated the condition.

144. In terms of functional impairment, Dr. Misri opined that work, activities of daily living and leisure activities were all limited by her physical limitations, which only served to increase her depressive and anxiety symptoms. Dr. Misri made various treatment recommendations including psychological counselling for her PTSD, panic attacks and eating disorder. The evidence was not clear as to the extent these recommendations were followed.

145. Dr. Misri was of the view that complete recovery from the psychiatric diagnoses ranged from guarded (Persistent Depressive Disorder, Panic Disorder and Unspecified Feeding and Eating Disorder) to poor (Post Traumatic Stress Disorder and Substance Use Disorder).

146. On cross examination Dr. Misri agreed she was not provided with any records from the Claimant's schooling, employment, Surrey Memorial Hospital, Abbotsford Hospital or any records from alcohol or drug treatment providers. While it would have been preferable for Dr. Misri to have these records, it was not established on cross examination that her opinions would have changed, although she did agree that by not having the hospital records, she was not aware as to the reasons for the emergency admissions post-Collision.

147. The Respondent's overriding theme that the Claimant's pattern of behaviour after the Collision was a continuation of a well established pattern pre-Collision, was put to Dr. Misri on cross examination. She answered that question by stating that life was an ongoing struggle for the Claimant and she clearly had "troubles".

148. Dr. Misri went on to say there were pre-Collision issues and some new issues, and the Collision made all of these issues more intense. She expanded on that answer by saying that PTSD is a complex disorder and when there is PTSD combined with depression and pain, any treatment will be difficult, persistent and ongoing.

149. Dr. Misri referenced in her report that Dr. Khan had diagnosed the Claimant with Borderline Personality Disorder (BPD) in November, 2015, which diagnosis he subsequently changed in April 2016 to "traits" of BPD. The significance of a BPD diagnosis is that such disorder would not have been caused by the injuries sustained in the Collision, although the condition could be worsened by them.

150. Dr. Misri said that based upon her assessment, she did not gain the impression the Claimant suffered from this disorder, adding that a diagnosis of BPD evolves over time and is difficult to diagnose in one interview. There is also a stigma to BPD and thus one must be sure of the diagnosis before it is made.

151. Dr. Misri was cross examined at some length as to whether the Claimant met the BPD diagnosis. In particular Dr. Misri was referred to various medical records she had not seen where the diagnosis was apparently made by others. Dr. Misri agreed that having seen the additional references, she would definitely consider a diagnosis of BPD if she had a second chance to assess the Claimant. She went so far as to say it was possible the Claimant met the criteria as there were symptoms pointing towards it. In short, a diagnosis of BPD could not be ruled out.

152. The Respondent urged me to conclude that the Claimant met the diagnosis of BPD by referring me to the DSM 5 criteria for BPD. However in the absence of properly admissible opinion evidence to that effect, I am not prepared to accede to the Respondent's request. As noted, the Respondent did not tender any psychiatric opinion evidence reaching that conclusion.

153. Dr. Misri confirmed she had reviewed no further records from those she saw when she prepared her July 18, 2018 report, and that she did not know how the Claimant was presently doing. Somewhat surprisingly however, it came out on cross examination that Dr. Misri had actually spoken "briefly" to the Claimant on March 15, 2021, who told her she was "doing better". No other information was elicited from the Claimant and there was no evidence from Dr. Misri as to how the conversation came to be arranged.

154. Given that Dr. Misri's opinion and understanding of the facts were nearly three years out of date, it would have been of assistance had she updated herself as to the status of the Claimant's condition. As a result I am left in some doubt as to what her current opinion would be, given the events that have transpired since July 2018.

155. Dr. Misri was able to say it was "great news" if the Claimant was sober. She said the Claimant's first priority should be to remain sober, as this would now set the stage for treatment of the psychological pain.

DR. MACINNES ANESTHESIOLOGIST

156. Dr. MacInnes was trained as an anesthesiologist who then completed a sub speciality in chronic pain. He was qualified as an expert in the diagnosis and assessment of chronic pain and pain management. On this important issue, Dr. MacInnes was a very helpful witness. He conducted an interview of the Claimant on October 12, 2018 and prepared a report dated November 3, 2018.

157. The diagnosis of Dr. MacInnes based upon his assessment and review of the records was as follows:

1. Chronic nociceptive and neuropathic left foot pain;
2. Nociceptive (soft tissue) pain of the lower back, knees and left shoulder;
3. Depression and anxiety symptoms in the setting of pre-existing psychiatric diagnoses;
4. Sleep disruption

158. Dr. MacInnes said it is not known why some people develop chronic pain although there are known risk factors, one of them being depression. He said it was clear the Claimant had a complex psychiatric history, such that she was already in a compromised position pre-Collision. The very nature of psychiatric issues is that they wax and wane, such that fluctuating mental health will over time affect a person's physical pain.

159. It was Dr. MacInnes' opinion that the crush injury sustained to the left foot, and subsequent surgeries, were the cause of the Claimant's chronic soft tissue and neuropathic pain in her left foot.

160. As the Claimant had remained symptomatic for greater than four years since the Collision, it was the opinion of Dr. MacInnes that her symptoms were unlikely to resolve and she would be left with some amount of ongoing pain symptoms. He also thought the Claimant would be prone to unprovoked flare ups of her pain that could limit her ability to work and care for her home.

161. Dr. MacInnes stated there was a well accepted interplay between mood, pain, anxiety and sleep, such that those conditions were known to influence each other and an exacerbation of one condition could have a negative impact on the other conditions.

162. In respect to future management, Dr. MacInnes recommended that the Claimant engage in an active rehabilitation program which would assist her in tolerating employment and better manage her symptoms. However such a program should be seen as management of the pain rather than a cure.

163. Dr. MacInnes also recommended active self management which he said should be a key component in the overall treatment plan for the management of the Claimant's chronic pain symptoms. He referenced two programs available through Self-Management BC and Pain BC. There was no evidence that the Claimant took part in either the active rehabilitation program or the self management modules.

164. In conclusion Dr. MacInnes stated that the Claimant could expect to gain some further functional improvements through the active rehabilitation program and self management module, but that until she had implemented these strategies, he could not predict her level of function. It was his opinion there was a low possibility of complete resolution of her chronic pain symptoms.

DR. MATTHEW ORTHOPAEDIC SURGEON

165. Dr. Matthew was qualified as having a medical speciality in orthopaedic surgery, with a sub-speciality in lower limb reconstruction, including foot and ankle.

166. Dr. Matthew had the advantage of being the Claimant's treating orthopaedic surgeon, after having first assessed her on March 8, 2017. He subsequently prepared a report dated October 1, 2018 and a rebuttal report of February 12, 2020.

167. Dr. Matthew provided his evidence in a straight forward and even handed manner, consistent with his duty as an expert witness.

168. His opinion was summarized as follows:

> In summary [the Claimant] had a severe injury to her left foot. It was a mid-foot injury involving the navicular bone as well as the calcaneocuboid joint. The navicular bone is the central bone of the foot and as such it involves the talonavicular articulation and naviculocuneiform articulations. The calcaneocuboid joint fractures were not particularly severe but were intraarticular.
>
> Surgical course involved ORIF of the navicular fracture followed by hardware removal. She now has solid fusion of the 1-3 naviculocuneiform joints but is developing lateral pain and has ongoing less severe hindfoot degenerative change.

169. The initial diagnosis by the emergency room surgeon Dr. Hicks following the Collision was that the navicular fracture was displaced with some comminution. Dr. Matthew explained that comminution meant "in multiple pieces".

170. As noted Dr. Matthew saw the Claimant for the first time on March 8, 2017 when she was two years and four months from the Collision. Her ongoing pain symptoms in her left mid-foot area were progressively worsening and radiological investigations confirmed naviculocuneiform joint arthritis. The Claimant was placed on Dr. Matthew's surgical wait list.

171. The Claimant returned a year later on March 2, 2018 complaining of severe left foot pain affecting her quality of life. Dr. Matthew then performed the fusion surgery of the naviculocuneiform joints on March 12, 2018 under general anesthesia. Dr. Matthew said the surgery was difficult but the Claimant post-operatively did well. Dr. Matthew performed further surgery on July 20, 2018 to remove the hardware.

172. Dr. Matthew saw the Claimant for the last time on September 6, 2018, and summarized her status as follows:

> Things have changed since I first started seeing [the Claimant]. Her original major diagnosis was that of naviculocuneiform arthritis with secondary lateral findings. These symptoms are now almost completely improved but she is now having worsening of lateral pain and symptoms which could be progression of degenerative changes laterally. As mentioned a CT scan is pending to try and determine the exact etiology and location of these pains.

173. The plan to investigate the lateral pain, which Dr. Matthew noted was not yet particularly severe, was for the Claimant to have physiotherapy and undergo a CT Scan, and then return to him. Dr. Matthew confirmed he did not see the Claimant again.

174. Dr. Matthew described the expected level of impairment following the fusion surgery as follows:

> Impairment, limitations and disability following successful fusion from these joints are minimal. These are not joints with significant mobility and as such the disability from this is minimal. She now has further lateral symptoms. She had an injury within the calcaneocuboid joint and she is developing progressive symptoms. The navicular bone also involves the talonavicular articulation on the peroneal side. Any future degenerative change within this joint would have severe impact in her foot range of motion which would limit 50% of her subtalar complex motion.

175. In terms of prognosis, Dr. Matthew opined that it was guarded. From a fusion point of view, he said things were going very well and he did not anticipate "too much trouble

moving forward". The concern was what was going on with the lateral side pain in her foot:

> I think the biggest issue moving forward with Ms. Sharp is the future of her foot injury. The worst case scenario from a fusion perspective would be that of a talonavicular fusion with a calcaneocuboid fusion. This would leave her with stiffness of the hindfoot.
>
> The best case scenario is no further surgery. She will likely have ongoing mild symptoms of her talonavicular and calcaneocuboid joints. Moving forward it is certainly possible that she requires further follow up visits, further investigations, further injections, further imaging and further surgery.

176. Dr. Matthew clarified that while the development of Complex Regional Pain was a risk in July 2018, it was now no longer a risk given the passage of time.

177. Last Dr. Matthew in his rebuttal report of February 12, 2020, indicated that while the Claimant had some numbness and pain, there was nothing orthopedically preventing her from returning to work.

DR. YU PODIATRIC SURGEON

178. Dr. Yu is a podiatric surgeon, who while not a medical doctor, has gone to podiatric medical school for four years followed by specialization in foot and ankle surgery. He has taken peripheral nerve training at Mayo Clinic. Dr. Yu was qualified as having expert qualifications in surgical and non-surgical issues involving the foot and ankle. Dr. Yu assessed the Claimant on October 30, 2018 and prepared a report dated November 15, 2018.

179. To a large extent the report and opinions of Dr. Yu supplemented the opinions of Dr. Matthew. I did find the explanations offered by Dr. Matthew to be clearer than those of Dr. Yu and to the extent their language differed, I preferred that of Dr. Matthew.

180. Dr. Yu made a number of treatment recommendations including orthotic therapy, physiotherapy, anti-inflammatories, a Ritchie brace and supportive shoes. There was no evidence the Claimant took any steps to follow the recommendations of Dr. Yu.

RUSSELL MCNEIL, OCCUPATIONAL THERAPIST

181. Mr. McNeil was qualified as an Occupational Therapist and Work Capacity Evaluator. He conducted a Functional Capacity Evaluation of the Claimant on December 15, 2018 and prepared a report dated December 19, 2018.

182. On physical testing the Claimant showed restrictions for sitting, standing and walking tolerance. It was Mr. McNeil's opinion that the Claimant was capable of at least part time work in occupations falling within the physical requirements of sedentary work and that she would likely be able to maintain a productive work pace with some accommodations. She also had the capacity to meet the strength demands of light work occupations, but she would not be capable of performing jobs that required frequent standing and walking.

183. The Claimant would be further restricted in her capacity to perform work requiring prolonged or repetitive vertical and horizontal reaching.

184. I did find it somewhat unusual that Mr. McNeil, given his expertise and experience, would not agree on cross examination that most office jobs allow people to move about. He actually stated he did not know what office employers required of their employees. Eventually he agreed the Claimant could work full time in a sedentary position such as a dispatcher or receptionist.

DR. HALL, VOCATIONAL CONSULTANT

185. Dr. Hall was qualified as a vocational and rehabilitation professional. She conducted a vocational assessment of the Claimant on December 4, 2018 and prepared a report dated December 27, 2018.

186. It was Dr. Hall's opinion that on vocational testing the Claimant's performance indicated average to below average academic potential. She was a candidate for post-secondary training at the certificate or diploma level so long as advanced Math skills were not required.

187. Dr. Hall's vocational opinion was as follows:

> In my opinion, [the Claimant] has suffered notable vocational limitations as a result of the injury and residuals stemming from the MVC of October 24, 2014. She still retains the capacity for gainful employment; however, she is at a disadvantage because of her limitations for prolonged standing and walking, chronic pain, and psychological diagnoses both originating from the MVC and exacerbated by the MVC.

.

188. Dr. Hall further stated that it would be beneficial for the Claimant to pursue further training and education at the certificate or diploma level so as to improve her options. She suggested the part time BCIT Marketing Management Program, would be an option, consistent with the Claimant's abilities.

189. Dr. Hall agreed with the recommendations of others that it would be beneficial for the Claimant to participate in an active rehabilitation program.

DR. HUMMELL, ORTHOPAEDIC SURGEON

190. Dr. Hummell was called as an expert witness by the Respondent. He was qualified as an orthopaedic surgeon having a subspecialty for lower extremities, which included the hip, foot, knee and ankle. Dr. Hummell conducted an assessment of the Claimant on December 14, 2018 and authored a report dated December 25, 2018. A rebuttal report dated February 7, 2020 was also provided. Generally his opinions accorded with those of Dr. Matthew.

191. Dr. Hummell explained that there are three main bones of the ankle, namely the talus, navicular and cuneiform. The surgery performed by Dr. Matthew was to deal with the

developing arthritis at the junction of the navicular and cuneiform bones. The joint was effectively taken away and fixed together as one bone.

192. Dr. Hummell was of the opinion that as of the date of his report, the Claimant was able to return to work, starting on a graduated basis. He felt she had some diminished range of motion and pain when standing for long periods, but those limitations should not interfere with her ability to return to work.

193. Dr. Hummell agreed that the surgery performed by Dr. Matthew did not deal with the Claimant's subsequent complaint of pain on the lateral side of the foot.

VIII. LEGAL FRAMEWORK AND FINDINGS OF FACT

194. I will set forth the legal principles which I view as governing my decision in this Arbitration.

195. The Claimant must establish on the balance of probabilities that the tortfeasor's negligence caused or materially contributed to her injuries. The primary test for causation is the "but for "test which requires the Claimant to show that the injury would not have occurred but for the negligence of the tortfeasor: *Athey v. Leonati*, [1996] 3 SCR 458 at paras. 13-17.

196. Once causation is established, the role of damages is to place the Claimant in the same position she would have been had the Collision not occurred – no better, no worse. This objective is accomplished by determining not only what the Claimant's position was after the Collision (the "injured position") but also what the Claimant's position was before the Collision (the "original position"). The difference between these two positions represents her loss: *Athey*, para 32, *Blackwater v. Plint,* 2005 SCC 58 at para 78.

197. The concepts of "thin skull" and "crumbling skull" become relevant when there is a pre-existing condition. The Court in *Athey* at para. 35 after describing how the thin skull rule makes the tortfeasor liable for the plaintiff's injuries even if the injuries are

unexpectedly more severe owing to a pre-existing condition, addressed the concept of crumbling skull:

> 35 The so-called "crumbling skull" rule simply recognizes that the pre-existing condition was inherent in the plaintiff's "original position". The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing damage (citation omitted).....This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and shortcomings, and not a better position.
>
> [emphasis added]

198. It is important to recognize that characterizing a plaintiff as thin skull or crumbling skull is rarely determinative. A proper analysis requires a detailed consideration of the Claimant's pre and post Collision condition as well as an assessment of the likelihood that she would have suffered similar losses even in the absence of the Collision: *Radacina v. Aquino*, 2020 BCSC 1143 at para. 126.

199. It is this framework that I will now follow.

200. The Respondent agrees that the tortfeasor's negligence caused the physical injuries to the Claimant's foot as described in the evidence above, and that it is thereby responsible for the resulting damages. Where the parties diverge is whether the injuries sustained by the Claimant caused her life course to be irreparably altered, or alternatively whether the difficulties she has faced since the Collision are the same difficulties she would have faced in any event as a result of her pre-Collision psychiatric condition.

201. The Claimant asserts that her condition is to be characterized as "thin skull" in that her vulnerabilities and fragilities were part of her makeup and the tortfeasor must thereby take his victim as he finds her.

202. The Respondent submits the Claimant falls within the description of "crumbling skull" in that her post-Collision issues are a continuation of her pre-Collision difficulties. The Claimant agrees it is liable for the additional damage caused by the tortfeasor, but not for any pre-existing damage.

203. I have already found at paragraph 51 that the Claimant's pre-Collision position in respect to her psychiatric condition was "active, ongoing and difficult with a very uncertain future". That finding defines the Claimant's pre-Collision psychiatric position. In order for me to determine whether there is then damage for which the Respondent is liable, I must determine the Claimant's psychiatric position as it became post-Collision.

204. In essence, it is the position of the Respondent that the tortfeasor's negligence caused little change to the Claimant's psychiatric position. I do not agree.

205. A tortfeasor is responsible for psychiatric injury that is consequential to the physical injury caused: *Hussack v. Chilliwack School District No. 33*, 2011 BCCA 258 at para. 74.

206. The evidence establishes that the Claimant sustained a severe crush injury to her left foot, involving multiple comminuted fractures. Such injury would be painful to anyone and certainly painful to a person dealing with the psychiatric issues which were part of the Claimant's original position.

207. I have already reviewed in some detail the expert evidence which addresses the link between physical trauma causing pain and psychiatric consequences. That same expert evidence provides the opinions that the pain resulting from the Collision had both an exacerbating effect on all of the Claimant's pre-Collision psychiatric difficulties and caused a new condition, namely PTSD. Those opinions were not challenged by contrary opinion and I accept them.

208. I reiterate however that the Respondent is only responsible for the additional damage caused, given my view that the Claimant's pre-Collision psychiatric issues were active and ongoing with an uncertain future. I reject the Claimant's position based upon her submission that she should be viewed as a thin skull.

209. Having found that the injuries sustained in the Collision exacerbated her pre-Collision difficulties, I must consider whether such elevated level of exacerbation continues to the present time, or whether the Claimant has returned to baseline in respect to those pre-Collision psychiatric issues.

210. The answer to that question is complicated by the fact that the expert evidence was not current, and the recommendations for treatment made by Dr. Misri, Dr. MacInnes and Dr. Matthew were seemingly not followed by the Claimant post 2018.

211. There can be many reasons why a person does not follow treatment recommendations. The person may not know of the recommendations, the treatment may be risky, the person may simply not be motivated, or the person may not feel her complaints are sufficiently serious so as to require treatment.

212. No explanation was offered by the Claimant. As such, and in the absence of medical evidence providing an explanation, it is my conclusion the Claimant did not seek treatment, (particularly that recommended by her treating orthopaedic surgeon in 2018), because her level of pain was not at such a level that she thought treatment was needed.

213. Significantly though, the Claimant is receiving addiction counselling and has been sober and off drugs for the last nine months. By her own report and that of her parents she is stable, taking ownership for her life, more independent and making plans to return to work and/or further her education. There is no doubt these are the positive developments in the life of the Claimant.

214. I acknowledge the evidence that psychiatric conditions can wax and wane and the events of the past nine months may be a period of waning. However there was a period of waning immediately before the Collision which Dr. Misri opined was a positive development for her future.

215. The burden rests with the Claimant to establish that her psychiatric pre-Collision issues continue at a heightened level: *Debruyn v. Kim*, 2021 BCSC 620 at para. 143. Having considered the evidence available to me post 2018, it is my conclusion that those pre-Collision issues were exacerbated by the physical injuries suffered in the Collision and remained so for some five years, but that over the past year, they have largely returned to baseline, relevant to where they were immediately before the Collision.

216. In summary I make the following findings of fact:

(a) at the time of the Collision, the Claimant was dealing with psychiatric issues which were active, ongoing, and difficult with a very uncertain future;

(b) the Claimant was a young woman who to the time of the Collision had shown the character traits of resiliency and motivation sufficient to keep her moving through the school system and working from time to time;

(c) as a result of the Collision, the Claimant sustained severe fracture injuries, which injuries will likely leave the Claimant with some level of pain and functional disability for the remainder of her life;

(d) as a result of the Collision, the Claimant developed chronic nociceptive and neuropathic left foot pain which would make her prone to flare ups of her pain symptoms,

(e) as a result of the circumstances of the Collision, the Claimant suffered PTSD, which condition remains with the Claimant but not to any significant level;

(f) as a result of trauma and physical injury sustained in the Collision, the Claimant suffered an exacerbation of her pre-Collision psychiatric issues;

(g) to the extent that the Claimant's pre-Collision psychiatric issues were exacerbated, they have now largely returned to baseline; and

(h) the Claimant is capable of working full time in sedentary employment positions, and part time in light positions with some accommodation, commensurate with her education.

IX. ASSESSMENT OF DAMAGES

NON-PECUNIARY DAMAGES

217. Non-pecuniary damages compensate for pain, suffering and the loss of enjoyment of life and amenities. While comparison to other cases of similar injury can be helpful, the award made in each case will depend on its own facts: *Debruyn v. Kim*, 2021 BCSC 620 at paras. 120-121

218. The Court of Appeal outlined the non-exhaustive factors to be considered in awarding non-pecuniary damages in *Stapeley v. Hejslet*, 2006 BCCA 34 at para. 46. They included age of the plaintiff, nature of the injury, severity and duration of the injury, disability, emotional suffering, loss or impairment of life, impairment of family, marital, and social relationships, impairment of physical and mental abilities, loss of lifestyle and stoicism, a factor which should not held against an injured person.

219. The parties did not differ significantly in their suggested amounts to be awarded. The Claimant provided a range of $175,000 to $200,000 whereas the Respondent submitted an amount between $125,000 to $150,000.

220. In my view, the most important factors relevant to the Claimant are her young age, the circumstances and severity of the Collision itself, the ongoing pain associated with the foot fractures, and the impact the physical injuries have had on her psychiatric makeup and personal relationships. I am also mindful that the Claimant has had virtually no treatment for her foot injury since the end of 2018 and few complaints of pain since the middle of 2019.

221. I have reviewed the decisions provided to me by both counsel. The decisions of *J.J. v. Barton* 2017 BCSC 1196 and *Ishi v. Wong* 2015 BCSC 922 provided by Mr. Marcoux and *Lewis v. Gibson* 2018 BCSC 1713 submitted by Ms. Mohammed most closely approach the factual matrix of the Claimant's case.

222. The decisions of *J.J.* and *Ishi* both involved plaintiffs of a similar age to the Claimant who sustained orthopaedic injuries requiring surgery and psychiatric sequellae. Awards were made for non-pecuniary damages of $175,000 and $150,000 respectively. The orthopaedic injuries sustained by the plaintiff in J.J. were more significant than those suffered by the Claimant.

223. In *Lewis*, the plaintiff sustained a significant injury to his knee which required surgical repair of his meniscus. He also had an aggravation of his chronic anxiety and depression. An award of $150,000 was made in that case. However the distinguishing feature in Lewis was that the plaintiff was forty six years old at the time of trial, and thus further advanced in life.

224. In conclusion after having reviewed the decisions provided to me and taking into account the factors set out in *Stapley,* I award $165,000 for non-pecuniary damages.

PAST LOSS OF EARNING CAPACITY

225. Compensation for past loss of earning capacity is based on what the Claimant would have, not could have, earned but for the injuries sustained in the Collision: *Fletcher v Biu*, 2020 BCSC 1304 at para. 77.

226. In *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30, the Court stated:

> ...[A] claim for what is often described as "past loss of income" is actually a claim for loss of earning capacity; that is, a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury.

227. The test is whether on the balance of probabilities, there was a real and substantial possibility that she would have been able to do so but for the Collision. If so, the task is to then make an assessment of the loss including an allowance for the chance that the assumptions upon which the award is based, may prove to be wrong: *Debruyn*, at para. 133.

228. The Claimant last worked in 2018, during which year she worked six months earning just over $12,000, was off four months recovering from surgery and then did not work two months for her own reasons. On an annual basis had she worked the full year, her earnings would have been approximately $24,000.

229. Mr. Curtis Peever on behalf of the Claimant, authored an economist's report dated February 12, 2021 wherein he was asked to assume that the Claimant had the capacity to earn an income consistent with that of the average BC female high school graduate, following deduction for "risk only" labour market contingencies.

230. Based upon the assumptions he was given, Mr. Peever calculated the Claimant's "without Collision" earnings to be approximately $120,000 from July 1, 2015 (when the Claimant graduated from high school) until March 22, 2021.

231. Taking "without Collision" earnings of $120,000, and then deducting earnings of $14,787, social assistance payments of $38,248, and income tax at 9.6%, the Claimant submitted she was entitled to net past loss of earning capacity of between $60,000 and $72,000.

232. The Respondent's position was that the Claimant from the time of the Collision until the end of 2019, would have worked part time earning approximately $10,000 to $12,000 annually for a gross loss before deductions of $50,000 to $60,000. Thereafter the Respondent says that the Claimant should have returned to work such that there was no further loss beyond the $50,000 to $60,000.

233. In respect to deductions, the Respondent took a slightly different approach from the Claimant, by saying that income earned (which it said was $17,080) and social assistance benefits ($38,248) received from the date of the Collision were deductible amounts pursuant to section 148.1 (1) of the Regulation. In my view, actual income earned and social assistance benefits are to be deducted along with income tax from the gross income loss. The Supreme Court of Canada in *M.B. v. British Columbia*, 2003 SCC 53 at para 28 held that social assistance benefits are in the form of wage

replacement and thereby deductible from claims for past wage loss. Either way both the Claimant and Respondent agreed that such amounts were deductible.

234. In order for me to assess the Claimant's loss of past earning capacity, I must ask myself what the plaintiff would have earned but for the collision. Such question requires the consideration of hypothetical events, which can be taken into account so long as they are real and substantial and not mere speculation: *Athey*, para 27.

235. Doing the best I can on somewhat limited evidence, I have concluded that following graduation from high school in June, 2015, the Claimant would have began working part time earning $10,000 until the end of 2017 at which time she would have been twenty years old. Starting in 2018, she would have transitioned towards full time employment earning $20,000 to $25,000 annually, such that her "without Collision" income would have ranged between $90,000 and $110,000, before deductions.

236. In arriving at this conclusion, it is implicit that I am rejecting the Respondent's argument that the Claimant ought to have been able to return to work by the end of 2019. In my view, the Claimant was still dealing throughout 2020 with the exacerbation of her pre-Collision psychiatric issues caused by the physical injuries sustained in the Collision.

237. I recognize that the approach I have taken reflects the use of mathematical anchors, to which must be applied an exercise of judgment, so that the measure of loss is an assessment and not a calculation: *Westbroek v. Brizuela,* 2014 BCCA 48 at paras 64-65; Rosvold v. Dunlop, 2001 BCCA 1 at para. 18.

238. In arriving at my decision, I have taken into account the contingency factors associated with the level of earnings the Claimant might have achieved and the possibility that she would have experienced periods of absence due to her pre-Collision psychiatric issues in any event of the Collision. As best I can say the contingencies associated with those uncertainties cancel each other out.

239. In conclusion I award the sum of $45,000 for past loss of earning capacity, which amount is net of income tax, post Collision earnings, and social assistance payments.

FUTURE LOSS OF EARNING CAPACITY

240. The overriding legal principle governing a claim for loss of future earning capacity is that the Claimant is to be put in the position she would have been in, but for injuries caused by the tortfeasor: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32.

241. In order to put the Claimant back to her original position, a comparison must be made as to the "likely future of the plaintiff if the accident had not happened and the Claimant's likely future after the accident has happened.": *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 11.

242. The two step test for establishing a claim for loss of future earning capacity is set out in *Perren v. Lalari*, 2010 BCCA 140 at para. 32 where Garson, J.A. summarized the law as follows:

> [32] A plaintiff must <u>always</u> prove, as was noted by Donald, J.A. in *Steward*, by Bauman J. in *Chang* and by Tysoe, J.A. in *Romanchych* that there is a real and substantial possibility of a future event leading to an income loss. If the plaintiff discharges that burden of proof, then depending on the facts of the case, the plaintiff may prove the quantification of that loss of earning capacity, either on an earnings approach as in *Steenblok*, or a capital asset approach, as in *Brown.*
>
> Emphasis in Judgment

243. Both the earnings approach and the capital asset approach are correct and their appropriateness will depend on whether in the circumstances the loss can be quantified in a measurable way. The earnings approach is used where the plaintiff has an established earnings history so as to make the loss more easily measurable. As was stated in *Karim v. Li*, 2015 BCSC 498 at para. 149, the earning approach is "a form of math-oriented methodology".

244. The capital asset approach is employed when future loss cannot be measured in a pecuniary way and is often applied in cases of young plaintiffs with uncertain

employment paths. Finch J., as he then was in *Brown v. Golaiy* (1985), 26 B.C.L.R (3d) 353 at 356, set out the now well known factors to consider in the capital asset approach, namely the plaintiff has been rendered less capable overall from earning income from all types of employment, is less marketable or attractive as an employee, has lost the ability to take advantage of all job opportunities otherwise open to her and is less valuable to herself as a person capable of earning income in a competitive labour market.

245. Applying the capital asset approach, the courts have awarded one or more years of the plaintiff's salary as the measure of damages: *Mackie v. Gruber*, 2010 BCCA 464 at para. 14.

246. The Claimant and Respondent agree that the appropriate way to assess loss of future earning capacity is the capital asset approach. They differ significantly on how that approach should be used.

247. The Claimant submits that the correct way to proceed is to first determine the Claimant's without Collision lifetime earnings based upon the assumption she would have achieved the statistical average earnings of women with a high school education. To determine what those lifetime earnings would be, the Claimant says that one can look to Table 3 of Mr. Peever's report where he provided three scenarios:

FULL TIME, FULL YEAR EARNINGS	$1,608,073
ADJUSTED FOR RISK ONLY CONTINGENCIES	$1,389,478
ADJUSTED FOR RISK AND CHOICE CONTINGENCIES	$ 896,478

248. By way of explanation, risk only contingencies account for the average probabilities that a BC female could be forced out of the labour market, into unemployment, or into part-time work. Risk and choice contingencies take into consideration the average probability that a BC female may choose to be out of the labour market and not looking for work, or to work part-time.

249. The Claimant then submits that the Claimant has lost 30% to 50% of her pre-Collision earning capacity, such that the award for loss of future earning capacity should be $450,000 to $500,000.

250. In support of such an approach, the Claimant relies upon *Ishi* at paras. 178 -- 182

251. The Respondent agrees that some jobs requiring prolonged standing will now be closed to the Claimant. However the Respondent says the evidence of Mr. McNeill and Dr. Hall was that the Claimant is able to work full time in sedentary positions such as reception and dispatch which is what she was employed at during 2018 before leaving both positions for her own reasons.

252. The Respondent submits there is no evidentiary basis to support a loss of earning capacity of 30% to 50% and that such number is arbitrary.

253. In summary the Respondent submits that using the capital asset approach, the evidence supports an award of $75,000 based upon three years of income at $25,000 per year.

254. I agree that given the Claimant's young age and lack of an established employment path, the capital asset approach is the appropriate way in which to assess her loss of future earning capacity claim.

255. The decision of *Ishi* which the Claimant relies upon is in my view distinguishable from the present factual circumstances. In *Ishi,* the court made a finding of fact that the plaintiff had the interest and ability pre-accident to successfully pursue the automechanic trade he was planning on prior to the accident. No such finding of fact has been made in respect to the Claimant as her employment path was far less certain.

256. Having said that, I have not lost sight of my finding that the Claimant was a "young woman who had shown the character traits of resiliency and motivation sufficient to keep her moving through the school system and working from time to time". In fact having observed the Claimant over the course of three days, her most significant capital

assets are her personality and people skills. She showed this asset pre-Collision in her employment positions, and it was evident at the Arbitration that this asset remains intact, particularly if she is able to maintain her lifestyle of the past nine months.

257. The Claimant characterizes her approach which I summarized at paragraphs 247 and 249, as the capital asset approach but in reality it is the earnings approach: *Reddy v. Enokson*, 2021 BCSC 412 at paras 186 – 188, 191. Such approach could be used in every case where there was uncertainty surrounding a plaintiff's career path, by simply saying she could have been average as reflected by statistics to which is then applied a percentage loss of work capacity. In my view, such approach artificially attempts to give certainty where certainty does not exist.

258. It is clear as conceded by the Respondent, that the Claimant has lost the ability to take advantage of all job opportunities that might otherwise have been open to her, had she not been injured. The loss of employment opportunities related to occupations involving standing and walking is clearly established on the evidence.

259. Further and based upon the expert medical evidence and the Claimant's own evidence, I also conclude that the other factors set out in *Brown* are applicable, in that as a result of the foot injury sustained in the Collision, the Claimant is less capable overall from earning income from all types of employment, is less marketable and/or attractive to potential employers and is less valuable to herself as a person capable of earning income in a competitive labour market.

260. The Claimant as she goes forward in life will still have to deal with her psychiatric issues, but as I have found, she has returned to the baseline of her pre-Collision state. The Respondent is not liable for any losses associated with those ongoing pre-Collision difficulties.

261. I do however take into account the contingent possibilities that the Claimant as she grows older, will develop arthritis, undergo further surgery and experience flare ups of her pain, which are all events that could limit her ability to work. Based upon the

opinions of Dr. Matthew and Dr. MacInnes, these possibilities rise to the level of real and substantial.

262. In conclusion I award the Claimant the sum of $130,000 which equates to three years of salary based upon $35,000 annually (as reflected in Mr. Peever's report), plus an additional amount to capture the contingent difficulties which she may experience in the future.

COST OF FUTURE CARE

263. The legal principles governing an award for future care are concisely summarized in *Harris v. Doe #1*, 2021 BCSC 162 at para 188:

> [188] The principles applicable to an assessment of any future care award are discussed in *Dzumhur v. Davoody*, 2015 BCSC 2316 at para. 244 and in *Woelders v. Gaudette*, 2016 BCSC 1066 at paras. 159-161. In summary, these damages are intended to provide a plaintiff with physical care or assistance in order to maintain or promote the plaintiff's health as a result of injuries. There must be medical justification for the items claimed, which does not mean medical necessity, and the items claimed must be reasonable.

264. It is generally not appropriate to make provision for items and services of care which the Claimant has not used in the past or is unlikely to use in the future: *Izony v. Weidlich*, 2006 BCSC 1315 at para. 74.

265. The Claimant seeks an award of $53,668 based upon recommendations made in 2018 by the various medical experts, including counselling ($2,250), active rehabilitation and physical assessment ($3,351), orthotic footwear and support ($25,406), Ritchie brace ($10,4610) and vocational retraining $12,200). The difficulty with this proposal is that the Claimant for her own reasons, has seemingly not followed up on most of these recommendations which were made in 2018.

266. The Respondent submits that an award of $25,000 to provide the Claimant with cognitive behavioural therapy, a pain clinic and a gymn program is sufficient to

reasonably maintain or promote the Claimant's health as a result of the injuries caused by the Collision.

267. I largely agree with the Respondent. Using the costs put forward by the Claimant as a guide, I award $25,550 made up of the following items and services which are medically justified:

(a) $2,250 for counselling and therapy

(b) $3,300 for active rehabilitation and physical assessment

(c) $10,000 for supportive footwear, orthotics and brace

(d) $10,000 for vocational retraining

268. In arriving at the above award, I have followed the recommendations of Dr. Matthew and Dr. MacInnes, whose opinions I preferred over those of Dr. Yu. To the extent the Claimant requires ongoing psychiatric treatment, the Respondent is not liable for such costs, for the reason previously stated.

LOSS OF HOUSEKEEPING CAPACITY

269. Depending on the nature of the claim and the evidence, loss of housekeeping capacity may be dealt with as an element of non-pecuniary damages or a separate pecuniary award: *Radacina*, at para. 189.

270. The Court of Appeal in *Kim v. Lin*, 2018 BCCA 77 at para. 33, set out the following principles related to a loss of housekeeping capacity:

> [33] Therefore, where a plaintiff suffers an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work – i.e., where the plaintiff has suffered a true loss of capacity – that loss may be compensated by a pecuniary damages award. Where the plaintiff suffers a loss that is more in keeping with a loss of amenities, or

> increased pain and suffering, that loss may instead be compensated by a non-pecuniary damages award.

271. The Claimant seeks an award of $10,000 for loss of past housekeeping capacity on the basis that in the past she has struggled to keep up with the cleaning because of her low tolerance for standing and walking.

272. She submits that it has been 333.6 weeks since the Collision occurred (as at April 1, 2021) and therefore she should be compensated on the basis of $15 per hour X two hours per week X 333.6 weeks, which equals $10,008.

273. In my view, the Claimant's loss as described, is more in keeping with a loss of amenities which has already been compensated for under non-pecuniary damages.

274. Further the evidence does not support the claim. The Claimant's father testified that while he would ask the Claimant to assist around the home, her contribution was the "best that you could get a teenager to do". He also said he was not sure if her excuses were "her foot or being a teenager". Additionally Mr. McNeill in his report of December 19, 2018 noted that the Claimant was living with her sister and able to perform all of the housework if she paced herself.

275. I decline to make an award for loss of past housekeeping capacity.

276. The Claimant also seeks an award for future loss of housekeeping capacity of $50,000, on the basis that as she grows older, she will struggle with heavier housekeeping tasks, and these difficulties will be magnified if she starts a family.

277. I agree there is a real and substantial possibility that as time goes on, her foot pain will increase such that she will require housekeeping assistance for heavier housework. I am satisfied that such loss in that circumstance is more than a loss of amenities. I assess the chance of that possibility occurring as 50%.

278. I assess the damages for future loss of housekeeping capacity as $10,000.

SPECIAL DAMAGES

279. The parties have agreed on special damages in the amount of $9,398.37, of which $2,173.07 has already been paid by the Respondent under Part 7 of the *Regulation*.

DEDUCTIBLE AMOUNTS

280. The parties agreed to leave the determination of deductible amounts under section 148.1(1) of the *Regulation* until after delivery of my award, either by way of agreement or further submissions if necessary.

X. CONCLUSION

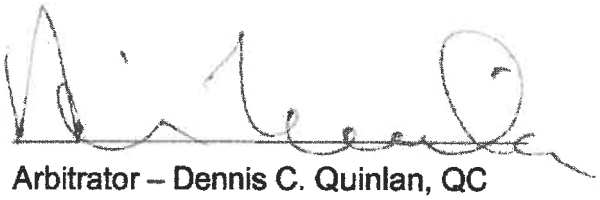
281. I award the Claimant the following:

Non Pecuniary Damages	$165,000
Past Loss of Income and Earning Capacity	$ 45,000
Loss of Future Earning Capacity	$130,000
Cost of Future Care	$ 25,550
Loss of Future Housekeeping Capacity	$ 10,000
Special Damages	$ 9,398.37
Total	**$384,948.37**

282. The Claimant in her opening statement indicated she would seek an order to structure the judgment amount, and she is given leave to make submissions if the Respondent takes issue with that order.

283. If the parties wish to make submissions on costs, deductible amounts or any other issue, a telephone conference can be arranged to discuss how best to proceed.

Dated: May 14, 2021



Arbitrator – Dennis C. Quinlan, QC