IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *George v. Doe,*
2015 BCSC 442

Date: 20150323
Docket: M102563
Registry: Vancouver

Between:

Timothy "Tim" George

Plaintiff

And

John Doe and Insurance Corporation of British Columbia

Defendants

Before: The Honourable Madam Justice Baker

Corrected Reasons: these Reasons for Judgment have been corrected on the cover page on March 24, 2015.

Corrected Reasons for Judgment

Counsel for the Plaintiff:	Jeffrey Locke Tony Eden, A/S
Counsel for the Defendants:	David Cheifetz
Place and Dates of Trial:	Vancouver, B.C. March 10-14, 17-18, 2014
Place and Date of Judgment:	Vancouver, B.C. March 23, 2015

[1] Timothy George ("Mr. George" or "Timothy George") was injured on June 21, 2009 when the vehicle he was driving was struck by a vehicle driven by an unidentified driver, named in the style of cause as the defendant John Doe. Mr. George says the negligence of John Doe was the sole cause of the accident. He alleges that he has suffered permanent injury and he seeks damages.

[2] The defendant Insurance Corporation of British Columbia ("ICBC") did not admit liability on behalf of John Doe, but did not lead evidence to attempt to establish negligence on the part of Mr. George. ICBC says that Mr. George failed to make all reasonable efforts to ascertain the identity of the unknown driver and the defendant relies on s. 24(5) of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, as a bar to recovery of damages by Mr. George. ICBC also disputes the nature, severity and duration of Mr. George's alleged injuries.

CIRCUMSTANCES OF THE COLLISION

[3] Between 9:30 and 10:30 pm on June 21, 2009, the plaintiff Mr. George was driving the 2007 Honda Civic belonging to his friend and cousin, Matthew George, westbound on Marshall Road in Abbotsford, British Columbia. With him in the vehicle were Matthew George and friend Kyle Allen. Mr. George was the designated driver for the evening. It had rained in the area earlier in the day and the roads were wet. It was dark outside. The intersection where the accident occurred is near the TransCanada Highway and the intersection is lit by overhead streetlights mounted on poles.

[4] Mr. George's vehicle came around a curve and was westbound on Marshall Road. As his vehicle approached the intersection of Marshall Road and Clearbrook Road the light turned green for westbound traffic on Marshall. There was an eastbound vehicle stopped on the opposite side of the intersection. Mr. George's vehicle had already entered the intersection when the eastbound vehicle suddenly turned left (north) across the path of the George vehicle. Mr. George steered to the right to attempt to avoid being struck by the left-turning vehicle, but the vehicle driven by John Doe collided with the George vehicle, striking the rear of the front

driver-side door and the front of the rear quarter panel. The force of the impact caused the George vehicle to spin 180 degrees and roll backward 10 feet, leaving it facing east.

LIABILITY

[5] At the start of trial, counsel for ICBC informed the court that while liability was not admitted, the defendants would not lead any evidence to attempt to establish that the accident had been caused by negligence on the part of Mr. George.

[6] The evidence at trial does not indicate that Mr. George failed to meet the standard of care expected of a reasonably prudent driver. I conclude that the accident was caused solely by the negligence of John Doe, who made a left turn across the path of the vehicle driven by Mr. George at a time when Mr. George had the right of way. Mr. George had a green light, he was travelling straight through the intersection, and he had already entered the intersection when John Doe commenced his left turn. I am satisfied that John Doe failed to comply with s. 174 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318; and failed to yield the right of way when obliged to do so. I infer that the left-turning driver either underestimated either the speed of the George vehicle; or misjudged the proximity of the George vehicle. I am satisfied that making a left turn in the circumstances was a breach of the standard of care expected of a reasonably prudent driver.

[7] I am not persuaded that Mr. George breached the standard of care. He had not been consuming alcohol as he was the "designated driver" while his two companions - Matthew George and Kyle Allen - had both been drinking. The evidence does not establish that Mr. George was driving at an excessive rate of speed or failing to pay attention. There is no reason to doubt his testimony that he entered the intersection on a green light, and had no reason to believe, until he was already in the intersection, that John Doe was going to turn left across his path. When he realized the vehicle driven by John Doe was going to turn left he took evasive action by steering his vehicle to the right, but could not avoid the impact.

FACTS, CONTINUING

[8] Following the collision, the vehicle driven by John Doe did not stop but continued through the intersection and headed north on Clearbrook Road. Mr. George did not get a look at the driver of the John Doe vehicle and did not see a licence plate number. His impression was that the vehicle was an early 90's model Dodge Neon, dark in colour, possibly dark blue or dark green. He could not recall whether there were any passengers in the John Doe vehicle. Matthew George had a similar impression of the make and model of the car but also could not provide any information about anyone in the John Doe vehicle.

[9] Mr. George did not recall seeing any other vehicles in the vicinity at the time of the collision. Matthew George recalled that there were no other vehicles or pedestrians in the vicinity.

[10] On impact, air bags inside the George vehicle deployed. In particular, two air bags deployed on the driver's side of the vehicle. After the vehicle came to a stop Mr. George, Matthew George and Kyle Allen got out of the vehicle. Matthew George used his cellular phone to call the police.

[11] A short time later a police officer driving a police vehicle arrived at the scene. The officer told the young men that another driver had told the officer there had been an accident at the intersection, but the police officer had not obtained the name or licence plate number of the driver who provided the information. The George vehicle could not be driven and the police officer called for a tow truck to remove the vehicle from the scene. Matthew George called a friend, who arrived 20 or 30 minutes later and drove the three young men to Kyle Allen's home.

DID THE PLAINTIFF FAIL TO MAKE ALL REASONABLE EFFORTS TO ASCERTAIN THE IDENTITY OF THE UNKNOWN DRIVER?

[12] Section 24(5) of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, prohibits the giving of a judgment against ICBC unless all reasonable efforts have been made by "the parties" to ascertain the identity of the unknown driver.

[13] In this case, Mr. George admits that he did not personally make any efforts to ascertain the identity of the unknown driver. He relies, however, on efforts made on his behalf by Matthew George, and the lawyer, Wesley Mussio, whose firm represents Mr. George in this litigation.

[14] Matthew George is Mr. George's cousin. He is a year older than Mr. George. The two men have been friends their entire lives. Timothy George knew that Matthew George was the owner of the Honda Civic. Mr. Mussio practises primarily in the area of personal injury claims. Mr. George says he reasonably relied on his agents - Mr. George and Mr. Mussio - to make all reasonable efforts to identify the John Doe driver, and that they did so.

[15] I have already said that it was dark at the time the accident occurred. Traffic was light. Neither Matthew George nor Mr. George noticed any other vehicles, or pedestrians, in the vicinity before the collision happened, or immediately after. The George vehicle was spun around by the force of the impact. The airbags that deployed would, I conclude, have effectively prevented Mr. George from being able to quickly exit the Honda Civic in an attempt to observe the John Doe vehicle as it drove away from the scene.

[16] Photographs and descriptions of the accident scene indicate that it is a large multi-lane interchange located near a freeway exit. It is not a residential area. There are some commercial buildings near the interchange but they are set back some distance from the intersection. There is a car dealership to the north but I infer that it is unlikely to have been open so late in the evening. There is also a low-rise travellers' hotel - a "Comfort Inn" - on another corner, but it is separated from the interchange by a parking area for guest vehicles.

[17] Mr. George testified that he felt quite shaken after the collision. Matthew George was very upset about the damage to his vehicle. The Honda Civic could not be driven, so Mr. George did not have the ability to attempt to immediately pursue the John Doe vehicle. From the evidence that the police officer remained at the scene until a tow truck arrived, I infer that the officer made no attempt at pursuit of

the John Doe vehicle. As leaving the scene of an accident is an offence, I infer from the officer's failure to pursue the John Doe vehicle that he considered there to be little or no prospect of locating the suspect.

[18] The morning after the accident - June 22, 2009 - Timothy George called Mr. Mussio at the suggestion of Kyle Allen. As I understand it, Mr. Mussio was already representing Matthew George and Kyle Allen in relation to another motor vehicle injury claim. Kyle Allen is related to one of Mr. Mussio's employees. Mr. Mussio was also acquainted with Matthew George's father. In addition to speaking to Timothy George twice on June 22, Mr. Mussio also spoke with Matthew George and Kyle Allen.

[19] Mr. Mussio testified that he advised all three men to report the accident to ICBC within the next 24 hours; to call the police and report the accident; and to put up a sign at the location of the accident asking for possible witnesses to come forward.

[20] Mr. Mussio testified that he usually relies on the registered owner of the vehicle to be responsible for making the necessary efforts to attempt to identify the unknown driver in a hit and run situation. He understood that Matthew George was the registered owner. Mr. Mussio recommended that Matthew George put an advertisement in a local newspaper or on the popular internet site known as "craigslist" asking for witnesses to the accident to make contact.

[21] Mr. Mussio testified he usually gives or sends to clients involved in an alleged "hit and run" accident a brochure or excerpts from a book he had self-published that includes information about s. 24(5) of the *Insurance (Vehicle) Act*, but does not recall and made no record of whether he did so in this case.

[22] Matthew George testified that he telephoned ICBC's "Dial-a-Claim" number on the afternoon of June 22, and reported the accident. He, accompanied by Timothy George, subsequently went to an ICBC centre where the Honda Civic was

examined by an ICBC estimator. Matthew George testified the repair cost was estimated to be around $12,000.

[23] Matthew George made a hand-printed sign and posted it on a pole at the intersection of Marshall Road and Clearbrook Road. He said the writing on the sign was quite large and he believed it could be read by drivers travelling southbound on Clearbrook Road if travelling at a moderate speed. The notice included his telephone number. Mr. George took a photograph of the sign before it was posted at the intersection. Matthew George recalled that the sign stayed up for some time after he posted it. He identified the pole where he recalled posting the sign on a photograph of the intersection.

[24] Matthew George also posted a notice asking for witnesses to come forward on a popular internet site called "craigslist". Matthew George testified that he believes he took both of those steps on June 23, 2009. Matthew George did not retain a print-out of the notice he posted on craigslist. He testified that he took a photograph of the sign but not after it was posted at the intersection.

[25] Matthew George testified that he and Timothy George did not specifically discuss what steps Matthew George was taking to attempt to identify the unidentified driver of the other vehicle involved in the collision; and Timothy George did not specifically ask him if a sign had been posted, but that Timothy George knew that Matthew George was taking steps. Timothy George was told by Mr. Mussio that Matthew George would take the necessary steps to attempt to identify the driver of the other vehicle involved in the collision.

[26] Timothy George recalled having spoken with Mr. Mussio the day following the accident. He recalled Mr. Mussio telling him about the procedure to be followed in a hit and run type of accident and that Mr. Mussio told him that Matthew George would do what was necessary. Timothy George recalled going with Matthew George to the ICBC vehicle inspection location to which Matthew George's vehicle had been towed.

[27] Timothy George recalled that he kept in touch with Mr. Mussio and Matthew George following the accident. He recalled that although Matthew George did not give him any specifics, Matthew George told him that steps were being taken to try to identify the driver of the vehicle that collided with the George vehicle. On examination for discovery, Mr. George said he had not talked to Matthew George about what he was doing to try to identify the other driver. Despite this apparent conflict in the testimony, I accept Matthew George's evidence, and Mr. George's testimony at trial, that Mr. George was told that the necessary steps were being taken to attempt to identify the unknown driver.

[28] Matthew George testified that he was living in Langley in June 2009. He believes that Abbotsford may have had either a daily or a weekly newspaper at the time of the accident, but he was not sure about that. He did not make any inquiries at the time as he did not think about doing so. He testified that he thought that an ad on craigslist was more likely to result in a response than a newspaper ad in any event. He had seen similar advertisements on craigslist asking for witnesses to accidents to come forward. No evidence was led by the defendants to establish that there is a daily or weekly newspaper published in the Abbotsford area.

[29] Matthew George could not recall the precise wording of the notice he had posted on craigslist and by time of trial he no longer had the computer on which he had saved a copy of the notice. He said he believed the advertisement on craigslist stated that there had been a hit and run collision at the intersection of Marshall Road and Clearbrook Road on June 21, 2009; described the vehicles, and asked for anyone who had witnessed the accident to phone the cellular number given. He believed that he had received e-mail confirmation that the ad had been posted and that he looked at the ad the day after he posted it.

[30] Timothy and Matthew George had both spoken with the police officer at the scene of the accident and had asked if the officer had got the name of the driver who had told police about the accident. Timothy George asked if the officer had got that driver's licence number. The officer replied no to both inquiries. Mr. Mussio's office

also contacted the police and asked for any information the police had about the identity of the driver who had apparently alerted the attending police officer to the fact an accident had happened. The police again reported that the officer had not obtained a name or any identifying information about the reporting party. There is no evidence that this person actually witnessed the collision. It is equally probable that he or she had witnessed the damaged Honda Civic and the three young men who had exited the vehicle, after the collision happened.

[31] In the circumstances of this case, I am satisfied that Mr. George can rely on the efforts made by Matthew George and his then-counsel, Mr. Mussio, to attempt to ascertain the identity of the unknown driver. I am satisfied that Matthew George and Mr. Mussio made all reasonable efforts, in the circumstances, to attempt to identify John Doe. I conclude that the identity of the unknown driver is not ascertainable.

[32] It would be preferable, in my view, for any driver or passenger of a vehicle who intends to make a claim for damages, to personally and directly make all reasonable efforts to attempt to identify an unknown driver. A plaintiff who relies on others to make efforts on his or her behalf runs the risk that the "agent" relied on may not take adequate, or any steps. I am not persuaded, however, that a party may not rely on the actions taken by an agent or agents in order to comply with the statutory obligation. In many circumstances, the claimant may be unable to personally take steps - because he or she has suffered a significant injury, for example, or is hospitalized following the accident.

[33] Where there are a number of parties involved in an accident, each of whom is advancing a claim for damages, as in this case, it makes little sense to require that each of them personally post signs at the accident scene or place advertisements.

[34] In *Goncalves v. John Doe and ICBC*, 2010 BCSC 1241, Justice Harris found the plaintiff bus driver had failed to comply with s. 24(5). In that case, the plaintiff was a bus driver employed by a bus company and the bus he was driving was involved in a collision with a driver that left the scene of the accident. The plaintiff reported the accident to his employer, but took no steps to identify the driver of the

other vehicle. He did not report the accident to ICBC or to the police. The plaintiff believed his employer would report the accident, but he did not follow up to see if the employer had done so. The plaintiff took no steps - did not post a sign or an advertisement asking for witnesses to come forward. The employer also took no steps to report the accident or identify the hit and run driver.

[35] Justice Harris said, at paragraph 25:

> I do not think it is open to Mr. Goncalves to say that by relying on his employer he had done all that he reasonably could, even though his employer had not done all that was reasonable.

[36] The *Goncalves* case is not authority for the proposition that a plaintiff may not rely on an agent or agents to make all reasonable efforts on his or her behalf. It is authority for the proposition that the plaintiff's claim may be barred by s. 24(5) if the agent on whom he or she has relied has not made all reasonable efforts to identify the unknown driver.

[37] Counsel for the defendants submitted that it would have been reasonable for Mr. George to go to the hotel and the car dealership located near the interchange to attempt to locate witnesses. I consider it highly unlikely, if not impossible, that even someone in the parking area or the hotel or the dealership would have been able to offer any identifying information about the John Doe vehicle given the darkness and the distance from the site of the collision and it would therefore be unreasonable to require the plaintiff or his agent to have made these fruitless inquiries.

[38] I conclude that Mr. George, through the steps taken by Matthew George and Mr. Mussio on his behalf, made all reasonable efforts to ascertain the identity of the John Doe driver and he is not barred from obtaining judgment by reason of s. 24(5) of the *Insurance (Vehicle) Act*.

THE PLEA OF ESTOPPEL

[39] At the outset of trial, plaintiff's counsel applied to amend the Notice of Claim to include a plea that the defendants are estopped from relying on s. 24(5) by reason

of their conduct; in other words, that they represented to the plaintiff by the conduct of their employees and agents that they did not intend to rely on s. 24(5). Having found that Mr. George did make all reasonable efforts, it is not strictly necessary for me to address the issue raised by the amendment but it may be helpful for me to state my conclusion that the plea of estoppel could not succeed in the circumstances of this case. The defendants pleaded reliance on s. 24(5) in the Statement of Defence and never withdrew this pleading or waived their right to rely on s. 24(5). Counsel for the plaintiff led evidence that there had been settlement discussions and a failed mediation in which representatives of the defendants participated, and that during the discussions and the mediation no mention was made of the s. 24(5) defence. Mr. Mussio recalled that Matthew George's claim for injuries resulting from the June 21, 2009 collision was settled as part of a global settlement of that claim and his previous personal injury claim.

[40] Plaintiff's counsel submitted that by their conduct the defendants had represented that they would not rely on the pleaded defence, and were therefore estopped from doing so at trial.

[41] The plea of promissory estoppel requires evidence that the plaintiff reasonably relied on the defendants' representation and suffered detriment as a result. In this case, all of the actions relied upon as constituting representations by conduct occurred well after the time period during which the plaintiff was reasonably required to take steps to attempt to identify the John Doe driver. In order to be "reasonable", those efforts had to be made soon after the collision happened - not years after the accident when there was no reasonable prospect that a potential witness could be found who would be able to recall anything that would help to identify the John Doe driver. The plaintiff had no reason to believe, in the days, weeks and months immediately following the accident, that the defendant ICBC would not rely on s. 24(5). His decision about what efforts to make (or refrain from making) was not influenced by anything said or done by the insurer. For this reason alone, the plea of estoppel could not succeed.

[42] I consider it unnecessary and inadvisable, in the circumstances of this case, to address whether a plea of estoppel by conduct can ever succeed in the face of the legislative provision.

FACTS ABOUT THE PLAINTIFF, HIS HISTORY AND THE ACCIDENT INJURIES

[43] Mr. George was born in 1988. When the accident happened on June 21, 2009, Mr. George was about to turn 21 years of age. He was 25 at time of trial.

[44] Mr. George grew up in Langley. With the exception of a short period of time in 2007 when he shared a home with his then-girlfriend, he lived in his parents' home in Langley until he moved in with his current partner in 2012.

[45] Mr. George was an active and athletic young man who participated in numerous recreational sports and activities. Mr. George testified that before the accident in June 2009, he was active in several recreational sports including wakeboarding, skiing, snowboarding, tubing, dirt-biking, camping, Tae Kwan Do and Akido. He played soccer and baseball with family and friends. Mr. George gave conflicting reports to various doctors and medical practitioners, and at trial, about the extent to which he had been able to resume some of these activities.

[46] I note at this point that Mr. George proved to be a very poor historian and as a witness demonstrated no recall, partial recall, or in some instances, inaccurate recall, of many of the events and time periods relevant to this lawsuit. There are inconsistencies between Mr. George's testimony and the testimony of other witnesses; and inconsistencies between Mr. George's testimony and records or reports entered into evidence that I consider to be reliable. I have not concluded that Mr. George was intentionally attempting to mislead the court, or that he was clearly embellishing his testimony, but I am satisfied that some of his evidence is unreliable.

[47] Mr. George testified that his first job was doing general labour in his father's steel shop but he gave no indication of how old he was when he began doing this work. Mr. George's father, Richard George (I shall refer to him as "Mr. George, Sr."

in these Reasons) owns and operates Brookswood Ironworks Ltd. a company that designs, fabricates, supplies and erects steel structures. Mr. George filed an income tax return and declared income in the year 2005, when he was still in high school, and I infer that this income may have come from work done for his father. Mr. George also testified, however, that at some point he had worked a few days at an uncle's lumberyard; and also did some construction work for an uncle's company and for his former girlfriend's father. No time periods were specified.

[48] On June 25, 2006, when Mr. George was in the midst of writing his Grade 12 examinations, he was injured in a motor vehicle accident. His injuries caused neck and back pain, for which he received treatment, including chiropractic treatment. Mr. George testified that he failed some of his high school examinations and as a result did not graduate with his Grade 12 diploma.

[49] Mr. George testified that the neck and low back pain he experienced following the June 25, 2006 accident had resolved completely more than a year prior to the June 21, 2009 accident. I am satisfied, however, that Mr. George had ongoing complaints of neck and back pain following the 2006 accident that had not resolved by the time the June 21, 2009 accident happened; and that Mr. George had continued to have chiropractic treatment for neck and back pain as late as May 2009.

[50] Mr. George testified that Dr. Riz Somani had been his family doctor since 2006, and that Dr. Somani was the doctor who treated him for symptoms resulting from the 2006 motor vehicle accident. Dr. Somani is one of the doctors practising at Glover Medical Clinic.

[51] Dr. Somani testified that he did not become Mr. George's family doctor until after the June 21, 2009 motor vehicle accident. He testified that prior to the June 21, 2009 accident, Mr. George had no regular family doctor; that he was considered to be a "walk-in" patient at Glover Medical Clinic, and was seen by any doctor who was available to see him. Dr. Somani said his knowledge of Mr. George's medical

complaints before June 2009 was based on his reading of the clinical records maintained at Glover Medical Clinic.

[52] The parties put into evidence an excerpt from the Glover Medical Clinic clinical records relating to Mr. George starting with an entry in July 2004. The first reference to back pain in the clinical records is an entry made on May 19, 2005 recording a complaint by Mr. George of "lower back pain". The first entry in relation to the June 25, 2006 motor vehicle accident is dated June 27, 2006. Subsequent entries record ongoing complaints of neck, middle back, and lower back pain. On January 4, 2007 the physician who saw Mr. George wrote a note stating he discussed chronic pain with Mr. George and gave him advice about the nature of chronic pain.

[53] Mr. George testified that he thought he had had physiotherapy treatments in 2006 but could not recall if he had physiotherapy in 2007 or 2008. On August 23, 2007, Mr. George was assessed by chiropractor Sean Kilgannon. The pain diagram completed that day indicates Mr. George reported pain at all levels of his back; both sides of his spine, and also pain in his neck. Between August 24, 2007 and November 22, 2007 Mr. George was treated by chiropractor Sean Kilgannon on 11 occasions. He had a twelfth treatment on February 14, 2008.

[54] An entry in the Glover Medical Clinic clinical record indicates Mr. George reported in September 2008 that the low back pain related to the 2006 motor vehicle accident had not gone away. The clinical record indicates that Mr. George was advised to use heat, do stretching exercises and take Robaxacet. There are no further entries in the Glover Medical Clinic clinical records from September 11, 2008 until June 22, 2009, the day after the 2009 motor vehicle accident.

[55] Dr. Somani initially interpreted the fact that Mr. George had not been seen at the Glover Medical Clinic between September 11, 2008 and June 22, 2009 as an indication that Mr. George had stopped experiencing problems with his neck or back. Dr. Somani was then referred, however, to Dr. Kilgannon's chiropractic records for the fall of 2008 and spring of 2009. Those records indicate that Mr. George did not

have chiropractic treatments between February 2008 and October 2008, but on October 25, 2008 Mr. George resumed chiropractic treatment with Dr. Kilgannon. He was treated by Dr. Kilgannon on October 25, November 25, December 2, and December 19, 2008 and on May 25, 2009, only a month before the June 21, 2009 motor vehicle accident.

[56] The notes made by Dr. Kilgannon are not easy to decipher but do indicate that he was treating Mr. George in the fall of 2008 and May 2009 for the same symptoms Mr. George had been complaining of since the 2006 motor vehicle accident. On May 25, 2009, Dr. Kilgannon wrote "Same from MVA", and noted Mr. George was continuing to experience problems with pain in his cervical, thoracic and lumbar spine.

[57] When told about Mr. George's visits to the chiropractor in the fall of 2008 and May of 2009, Dr. Somani's opinion about the post-2009 causes of Mr. George's symptoms changed. Dr. Somani testified that if Mr. George was still having neck and back pain in the fall of 2008 and spring of 2009, he would consider the June 2009 motor vehicle accident to have caused an exacerbation or significant aggravation of pre-existing pain caused by the 2006 motor vehicle injuries.

[58] There is little or no evidence about Mr. George's school or work activities between June 2006 and September 2007. When interviewed in July 2013 by Derek Nordin, a vocational evaluator retained by plaintiff's counsel, Mr. George reported he could not recall if he had worked at all in 2007. An entry in the Glover Medical Clinic clinical records dated January 4, 2007 indicates Mr. George was having persistent back pain and also states: "Pt work 2-3 wks. roofing".

[59] Mr. George testified that in September 2007 he enrolled at Langley Education Centre ("LCE") to attempt to complete his Grade 12 requirements by taking a course in English and a course in Marketing. Records from LCE around the time of enrollment indicate that Mr. George expected to complete the courses by January 2008. A report dated November 2007 in relation to the marketing course states Mr. George had not turned in any work during that term, but in June 2008

Mr. George completed "Marketing 12" with a grade of 70%. I could not find a record for the English 12 course. Mr. George testified he was unsuccessful in obtaining his Grade 12 diploma through LCE in 2008 and I infer from that he did not complete, or failed, the English 12 course.

[60] In September 2008 Mr. George apparently told the doctor he saw at Glover Medical Clinic that he was unemployed. In August 2013 Mr. George told vocational consultant Derek Nordin that he had worked as a labourer for his uncle for several months in 2008. At trial Mr. George did not testify that he had worked for his uncle in 2008.

[61] A record of employment from Pro Image Gutters Ltd. indicates that Mr. George worked for that company starting October 14, 2008 and was paid up until June 15, 2009. According to the record of employment, Mr. George earned gross wages of $15,335 during the eight months he worked for Pro Image Gutters. Mr. George said his job was installing gutters; that the job involved climbing tall ladders and lots of bending; and that it was "piece work". Mr. George perceived he was doing well and was going to be offered a position as foreman, but was then laid off because there was not enough work.

[62] At trial, Mr. George testified that he could not recall if he had started looking for a new job right after he was laid off by the gutter company. He testified that he thought that he would probably have looked for an outdoor job because he liked working outdoors. At his examination for discovery on October 28, 2010, however, Mr. George testified that after he was laid off he did not check back with the gutter installation company because he did not want to work outside anymore. He said he was focusing on finding "office-type" work.

[63] At his examination for discovery Mr. George testified that he also did not speak to his father about working at Brookswood after he was laid off by the gutter installation company in June 2009. He said "I didn't want to work for him". Counsel for the defendant asked:

> Because of your injuries or just other reasons?

Mr. George replied:

> Both.

[64] In 2011, Mr. George told Dr. Robert McGraw, a medical specialist to whom he was referred by his counsel, that he had worked in his father's shop at some point before the motor vehicle accident in 2009 but found the work was too heavy and aggravated his back.

[65] As related earlier in these Reasons, Mr. George was with his cousin Matthew George and his friend Kyle Allen when the collision happened on June 21, 2009. They had been socializing and they were heading to Kyle Allen's home. The friend who came to the scene to pick up Mr. George and his two passengers drove the three young men to Mr. Allen's home.

[66] Mr. George testified that he felt quite shook up following the accident, but he did not testify in any detail about the onset or development of symptoms in the hours, days or weeks immediately following the accident. He testified that he could not recall how he felt the day after the accident, but that in the first week post-accident he had neck pain, low back pain and left shoulder pain.

[67] Mr. George testified he could not recall if any other symptoms developed in 2009 or 2010. He said he could not recall if his condition got better or worse or changed at all in 2010 or 2011. He said he could not recall what treatment he had in 2011 or 2012 or if there had been any change in his condition. He said he believed he had gone to "Reactive Therapy" for physical therapy in 2013, but he could not recall how many sessions he had had and could not recall if the physiotherapy had helped him. He thought his neck and lower back symptoms got worse while he was attending Vancouver Community College. In general Mr. George testified that he has pain or discomfort in his neck, left shoulder, middle back and lower back. He testified that he also gets migraine headaches that he believes are caused by neck pain.

[68] Mr. George described an episode where his left shoulder seemed to "pop out" and then pop back in. He said he passed out when this happened. He could not recall when this occurred. He thought it might have been in the year after the accident. He was at the Langley swimming pool when it happened and he went to Langley Memorial Hospital to be checked out. He recalled his shoulder was sore for a few days or a week. He believes that his shoulder "popped out" again one later time, but that it was not as painful the second time. There is no medical evidence establishing the timing of these events. More significantly, there is no medical evidence establishing a causal relationship between these events and the accident injuries.

[69] Mr. George testified at trial that although he still experiences discomfort if he sleeps on his left side, his shoulder pain goes away if he finds a good sleeping position. He does not have constant pain in his left shoulder. He testified he believes he has full range of motion in his shoulder, but lifting is difficult for him.

[70] Although Mr. George testified at one point that he could not recall if his condition had improved or worsened over time, he later testified that his neck pain had worsened over time and that the frequency of headaches had also increased over time. He described his neck pain as constant - an aching sensation down both sides of his neck. He testified that when he has headaches - once a week or more - he is sensitive to light. He testified that his morning headaches are like migraines and he described the headaches he has at night as "pulsing".

[71] Mr. George testified that he has pain in his middle back occasionally and that the pain feels like "pinching" if he takes a deep breath. He testified his mid-back pain had not improved at all since the accident.

[72] Mr. George testified that pain in his lower back had become worse in the years since the accident; that he has stiffness and reduced range of motion in his lower back and that in cold wet weather he gets more pain in his lower back and other joints. The lower back pain sometimes radiates down the back of his left leg to

his knee and is succeeded by a "numb" sensation. Standing for prolonged periods causes the pain to worsen.

[73] At trial, Mr. George ranked his lower back as the worst source of pain; followed by his neck and headaches; and said his shoulder is now the least problematic area.

[74] Mr. George was very vague about the treatment he had had for the 2009 accident injuries. He recalled having had two rounds of 10 sessions each at KARP Rehabilitation, although he thought he had missed some of the sessions. He thought he had attended another rehabilitation program but gave no name or details. He said he had also done some work with a personal trainer - he thought he had 30 sessions but could not recall when that was. He believed that in the two years prior to trial he had had physiotherapy treatments, but was not clear about the timing. He thought perhaps he had had 40 treatments and had also been given a regimen of daily stretches to help him manage pain. At one point in his testimony he said that the physiotherapy was helpful - that he had increased range of motion and decreased pain, but that the improvement did not last. He said he still did a few exercises, but did not have a gym membership at time of trial. Later he said that he does do stretches regularly, about three times a week - using a sheet that someone gave him - possibly KARP Rehabilitation. He testified that doing the exercises helps to relieve his pain a little; and also helps with his range of motion, but not a lot.

[75] Mr. George was unsure but thought he had had chiropractic treatment after the June 2009 accident. He could not recall when he had had chiropractic treatment.

[76] Mr. George testified that medications have been prescribed for him. He said he had been taking a medication called Tramocet for a couple of years (the claim for special damages for the cost of this prescription begins August 20, 2012) and that he is supposed to take it "as needed". He testified that he does not need the medication every day but takes it every day anyway - that it helps relieve his pain a little bit and enables him to be more active. However he said at time of trial that he

had run out of the medication and was not taking it. He testified he often ran out and went without the medication for a week or two.

[77] In September 2009, approximately two and half months after the June 21 accident, Mr. George re-enrolled at Langley Education Centre to attempt again to obtain the necessary qualifications for his Grade 12 diploma. Records in evidence indicate he enrolled in a course called "Communications 12" that began on October 15, 2009. He successfully completed the course in June 2010 with a mark of 82%. I infer that he was then able to obtain his Grade 12 diploma.

[78] There is little evidence about anything else that Mr. George did to occupy his time between June 2009 and August 2010. Neither Mr. George nor Mr. George, Sr. testified that Mr. George worked at Brookswood Ironworks in 2009 or 2010 but Chelsea George, Mr. George's sister, testified that she worked at Brookswood full time between January 2008 and September 2010 and that both she and Mr. George were working at Brookswood for about two years of that time period. The discrepancy between Ms. George's evidence and Timothy George's evidence was never explained. I conclude that Ms. George may have been mistaken. Other parts of her testimony were also not consistent with Mr. George's evidence. She testified, for example, that on June 21, 2009 Mr. George was supposed to have been at her parents' home for dinner and that he did not show up so she called him and he said he was just leaving the hospital. There is no evidence that Mr. George went to the hospital on the evening of June 21, 2009. Mr. George did not testify that he had gone to hospital. Ms. George also recalled that the accident had happened in the afternoon but I am satisfied that the accident happened between 9:30 and 10:30 at night as Mr. George and Matthew George both testified.

[79] In August 2013, Mr. George told vocational consultant Derek Nordin that he was unsure whether he had worked at all during 2010. Mr. George did not testify that he could not work because of his accident injuries. The evidence does not establish that Mr. George was told by his doctor that he should not work.

[80] Mr. George did recall that the first job he had after the June 21, 2009 accident was working at a Chevrolet Oldsmobile dealership in Langley. When he testified at trial he could not recall when he had started that job - not even what year. He told Derek Nordin in July 2013 that he had done auto parts delivery for several months in 2011. A record of employment filed by the employer - Preston Chevrolet Oldsmobile - with Services Canada indicates Mr. George actually worked for the dealership in 2010. He started working for Preston Chevrolet Oldsmobile on August 3, 2010 and was paid up to December 31, 2010. The occupation listed on the record of employment was "parts shipper", and the reason given for termination was "Quit - Health Reasons".

[81] Mr. George testified he worked full time at the dealership - 40 hour weeks - but that there was no opportunity to work overtime. He said for about the first month his job was delivering parts to local auto body shops for which he was paid $9.50 an hour. The van he drove was uncomfortable so he asked for different work and then worked as a shipper/receiver, for which he was paid $10.00 an hour. He said this work was also problematic because of having to stock shelves. He said he sometimes missed work due to pain. He said he quit the job because he felt bad about his absences.

[82] In October 2010, during the time Mr. George was working at the dealership, he also enrolled at Kwantlen Polytechnic University in a Program of study directed at a diploma in business administration. Mr. George took two courses - "Writing Skills" and "Fundamentals of Business" but did not complete either. Mr. George told Mr. Nordin that he had taken an English course and a business course at Kwantlen Polytechnic University but "…obtained F's on both courses".

[83] Mr. George testified at trial that the Writing Skills course was recommended to him by an advisor at the University but that he eventually dropped the class because he thought the Grade 12 English course he had taken at LCE was sufficient. He testified that he took the business course because he was planning to work for his father's company and thought the course would be useful. He thought

he was doing well in that course, but was voted out of the group to which he had been assigned to do a group project. He would have had to do the project alone and instead chose to drop out. Mr. George did not attribute his failure to complete either of these courses to the 2009 motor vehicle accident injuries.

[84] There is no evidence about Mr. George's employment, or efforts to find employment, after he left the job at the car dealership in December 2010. In the fall of 2011 Mr. George enrolled in the "Drafting Technical - Steel Detailing Program" at Vancouver Community College. The skills taught in this program are directly applicable to the business owned by Mr. George, Sr. Mr. George said the job seemed simple to him, and he decided to train for this work because he could not do physical work. The course began September 6, 2011 and was expected to take 11 months.

[85] Mr. George testified that the course required attendance eight hours a day, five days a week, with only two short coffee breaks and one hour for lunch. Mr. George was living at his parents' home in Langley at the time, and drove himself to and from the VCC Campus in downtown Vancouver - a commute of 90 minutes morning and night.

[86] Mr. George testified that he had no difficulty with the class content, but I note that Mr. George's official VCC transcript indicates he did have difficulty with some aspects of the course work. He obtained good grades in basic drafting but a failing grade in Applied Geometry and an "unsatisfactory" in "Job Search Skills".

[87] Mr. George testified that while attending VCC he had ongoing problems with back pain. He found the plastic chairs used in the classroom to be uncomfortable and sometimes experienced pain in his lower back that radiated to his knee. He also had neck pain. He said he took medication but sometimes missed classes. He did not get up and move around during classes as he perceived that his instructor would not approve of him doing so.

[88] Graham Huckin, the course instructor, had previously been employed by Mr. George Sr. at Brookswood Ironworks. Mr. George testified that Mr. Huckin advised him that he should speak to a College counsellor to arrange for special accommodation. Mr. George said he did speak to a counsellor and was awaiting the delivery of a special chair when Mr. Huckin notified him that he was being dropped from the program because he had missed too many classes. I infer from this that Mr. George did not make the request for special accommodation until he had been in the program for several months.

[89] In evidence is a document titled "Department Required to Withdraw/Discontinuation" completed by Mr. Huckin on April 26, 2012 indicating that Mr. George was withdrawing from the program as of April 18, 2012. The reason for discontinuing is stated to be "Excessive Absence due to Medical Condition". Mr. George testified that he had been told that if he missed 10% of the classes, he would have to leave.

[90] By May 12, 2012 Mr. George was working full time at Brookswood Ironworks, doing structural steel detailing. Mr. George told occupational therapist Paul Pakulak in August 2013 that although he had not completed the VCC program, he had done enough of the course work to "…gain some credentials in the steel detailing field"; and that the training he had completed "…was sufficient for him to begin working for his father's company".

[91] Mr. George's father, Richard George, testified that Mr. George's instructor at VCC told him that Timothy George was one of only a few students in the class who knew what he wanted to do; and that Timothy George had told the instructor he wanted to take over his Dad's business.

[92] Mr. George, Sr. testified that he had been told by the instructor at VCC that if Timothy George came back to VCC at a later date, he could complete the course in structural steel detailing. Mr. George testified that when he left VCC he was told that if he returned to VCC he would get credit for his previous course work and would be able to finish the course in one month. In direct examination at trial Timothy George

was asked whether he had considered returning to VCC to complete the structural steel course in the fall of 2013. Mr. George replied that he had thought about it but by then was living with his girlfriend and needed to pay the rent. He said he also did not want to leave his father in the lurch. At this point in the direct examination, Mr. George's counsel asked Mr. George a leading question as to whether pain would also have been an issue for him if he returned to school, and in response to that, Mr. George said that it would.

[93] Mr. George continued to be employed full time at Brookswood Ironworks as a steel detailer at time of trial. He told occupational therapist Paul Pakulak that he primarily works at a computer work station with two monitors and that he has a standard computer task chair. He reads structural and architectural drawings and develops plans and drawings from these.

[94] Mr. George testified that his work at Brookswood involves more 3-dimensional modelling than steel detailing. He said he models entire buildings. He said when he started working for his father in May 2012 he was paid $14.00 per hour but his pay has increased incrementally as he proved himself to be a more valuable employee, and at time of trial he was earning $22.00 per hour. Mr. George, Sr. testified that Timothy George already knew how to run the basic programs when he started the job and that he took to the work well - that he can visualize what he is working on. He testified that Timothy George works with another employee who has a lot more experience but that Timothy George is better at the job. He testified that around the same time he hired Timothy George he hired another employee who had been in the same class at VCC but had completed the program. He said that employee is no longer with Brookswood because he had no spatial sense. He said Mr. George has spatial sense.

[95] Mr. George, Sr. testified, however, that Timothy George has missed a lot of work for various reasons, including doctors' appointments, specialists' appointments, and because of pain.

[96] Mr. George testified he has no problem doing the work at Brookswood Ironworks but does experience pain after long periods of sitting and finds working indoors to be a little depressing. He testified he had missed some days of work due to neck or back pain and occasionally left work early. He testified that he has to get up and stretch and walk around to ease his discomfort. He testified that the chair he had been using at work is "terrible"; that it reclines easily and that he has to hold his neck forward and that posture causes pain and headaches. He testified that for the past one and a half years he had been asking his father to provide him with a more comfortable chair at work. He said he could not afford to purchase the chair himself.

[97] Mr. George's evidence about the chair was different from his father's evidence. Mr. George, Sr. said that Timothy George had tried out two or three different chairs at work but had not yet found one that was comfortable.

[98] Mr. George testified that there are prospects for his advancement at Brookswood Ironworks. He said he could become an estimator; or even take over the entire company from his father. He testified that he does not love his job but was not intending to quit and had no plan to do any other kind of work. He said he is not sure that he wants to be in the steel fabricating industry for the rest of his life. He said the business is stressful for his father because there are problems getting customers to pay the full contract price on almost every job. He testified that he believes he would take over the business if it was offered to him but would need more experience before taking on the management of the company himself.

[99] A rough analysis of Mr. George's Brookswood pay records indicates he earned about $43,000 gross pay in 2013. I infer he probably earned more than $43,000 in 2014 given the incremental increases in his hourly wage rate.

THE EXPERT EVIDENCE

[100] The day after the June 21, 2009 accident Mr. George went to Glover Medical Clinic and was seen by Dr. Somani. Dr. Somani subsequently wrote three medical-legal reports, dated July 10, 2010, January 25, 2012, and February 21, 2013.

According to Dr. Somani's medical-legal report, when he saw Mr. George on June 22, 2009 Mr. George had an abrasion on the back of his left shoulder - an injury attributed to one of the air bags that had deployed. Mr. George complained of pain on both sides of his upper spine; tenderness in the left trapezius muscle, and stiffness of his neck on rotation. Dr. Somani assessed reduced range of motion in the neck by 10 to 15 degrees. Mr. George reported pain when Dr. Somani palpated the thoracic spine muscles. No report of lower back pain is recorded in the clinical record for June 22, 2009. Dr. Somani prescribed Naproxen for pain and gave Mr. George a referral for physiotherapy.

[101] Mr. George was next seen on August 14, 2009. It is difficult to decipher Dr. Somani's notes, but Dr. Somani noted "now LBP", which I understand to mean "now lower back pain" - a symptom which apparently had developed between June 22 and August 14. Mr. George also complained of left shoulder pain at this visit, as well as neck pain. Mr. George reported he had been having physiotherapy.

[102] Mr. George did not go to the clinic again until February 2, 2010, six months after his second post-accident visit. The notes in the clinical record indicate that Mr. George needed a follow-up report for ICBC. The notes record that Mr. George said he was going to school and that sitting was causing him to have back pain.

[103] Dr. Somani's clinical records indicate he completed a follow-up report for ICBC on March 12, 2010 but the notes do not indicate whether Dr. Somani saw Mr. George on that date. Mr. George was seen for unrelated reasons on March 24, 2010.

[104] The next visit at which symptoms attributed to the accident were noted appears to be June 17, 2010. An x-ray of Mr. George's cervical spine indicated no abnormalities.

[105] Dr. Somani noted on June 17, 2010 that Mr. George's left shoulder discomfort had resolved. Mr. George was still complaining of right-sided pain in the back of his neck; and upper and lower back pain. There continued to be mild reduction in

rotation of the neck to the right side. Dr. Somani's diagnosis was neck and lumbar strain. Dr. Somani noted that Mr. George had had eight physiotherapy sessions, but had missed two appointments and all further appointments had been cancelled.

[106] The records of KARP Rehabilitation indicate that Mr. George first attended there to work with a kinesiologist on October 23, 2009. I infer that this program of treatment was arranged through ICBC as report letters were sent by KARP Rehabilitation to ICBC. KARP's records indicate Mr. George was shown how to do neck, shoulder and back stretches; and advised to do the stretching exercises at home. He had a second treatment on October 26 and reported that after the first session he felt "pretty loose" and "relaxed". At his third session on October 28 he reported he had had some left shoulder pain after the second session. Mr. George did not attend for his fourth session - he called in to say he had over-slept. At the fifth session on November 4, 2009 he reported that he had felt pretty good over the weekend but had felt some pain in his shoulder when he lifted a log. At each session new exercises were demonstrated. Mr. George did not attend for his sixth session. He called at 8:30 am stating that he was in Port Coquitlam and would not make it in time. On November 12, 2009 he was 15 minutes late for his appointment and said he had forgotten about it. He reported that he had been feeling pretty good but that his left shoulder hurt after certain activities.

[107] On November 23, 2009 Mr. George reported he was experiencing intermittent pain over the previous week, mostly in his lower back and the right side of his neck. He said he had been driving for three days during that week. On November 25, 2009 he reported that he had been feeling pretty good and was continuing to do the exercises he had been given.

[108] On December 2, 2009 Mr. George reported that he had been helping a friend move and his lower back had been bothering him. Mr. George missed his appointment on December 9. On December 14, 2009 he reported he was having occasional lower back pain.

[109] Mr. George was seen at KARP Rehabilitation for a final assessment on January 8, 2010. The report indicates Mr. George exhibited slight improvement in his neck and trunk range of motion; maintained his average shoulder range of motion; and maintained above average grip and abdominal strength. The report noted that Mr. George continued to complain that his neck occasionally "locks up" with certain movements, such as right shoulder checks. He continued to complain of lower back pain but stated it occurred less often and no longer radiated into his hip. The lower back pain was reduced after stretching and exercises. He still reported stiffness and soreness in his middle back when standing or lifting; but had not lately experienced pain or a "dislocated-like" sensation in his left shoulder. Mr. George reported that it still took him some time to find a comfortable sleeping position and fall asleep, but no longer took one hour. He said he still avoided most physical activity due to his injuries, but had gone snowboarding once and described the experience as "not too bad". Mr. George said he was not taking any medication.

[110] The KARP therapist recommended that Mr. George continue to do the exercises he had learned.

[111] On June 17, 2010 Mr. George told Dr. Somani he had not done any dirt biking for two months after the accident, but had then resumed this activity in a limited way. By June 2010 he reported that he was riding 30 to 60 minutes at a time but testified that before the accident he sometimes would go out riding all day. He reported having refrained from various water sports. He said he did not do any heavy lifting and had been unable to work in the garden (I infer this was his parents' garden) for two months after the June 21, 2009 accident. He said he was sleeping in a waterbed because sleeping on a regular bed worsened his back pain and impaired his sleep.

[112] In his report dated July 10, 2010 Dr. Somani noted that he thought Mr. George had had insufficient therapy. He recommended that Mr. George join a gym and see a personal trainer for six to eight weeks. He said he expected that

Mr. George would have "significant improvement over the next few months", but that "Mr. George may have recurrences of back pain in the future".

[113] Mr. George had a lumbar spine x-ray on December 31, 2010. This x-ray showed slight narrowing at the L5-S1 level; with "slight levo-convex spine". A lumbar spine MRI done on February 9, 2011 showed "relatively marked lumbar spondylosis" and "focal disc protrusion" at L3-4, and L5-S1.

[114] On March 3, 2011 Mr. George was examined by orthopaedic surgeon Dr. Robert McGraw, who saw Mr. George at the request of plaintiff's counsel. Mr. George told Dr. McGraw he was not taking any medication or having any treatment at that time.

[115] Although Mr. George had told the KARP kinesiologist and Dr. Somani that he had resumed some of his pre-accident recreational activities, he apparently reported to Dr. McGraw that he was not doing any leisure activities. He told Dr. McGraw he was living with his parents and was not obliged to do any household maintenance, although he did the dishes occasionally.

[116] There are no notes in Dr. Somani's reports indicating Mr. George had complained to Dr. Somani of headache, but Mr. George told Dr. McGraw he continued to have headache that was related to neck pain. He told Dr. McGraw he had almost continuous neck pain localized to the back of his neck but also radiating to his shoulders and upper arms. He said he had only recently begun to have days during which he did not have pain in his upper back. He reported constant pain in his low back and said that "recently, on occasion", he (had) noticed pain radiating into the centre of his left thigh; but that there was no associated numbness or tingling. On examination Dr. McGraw found no signs of weakness in the left leg.

[117] Mr. George reported that he had had a "grinding sensation" in his left shoulder following the accident that he noticed when he was swimming, in particular when he was doing the breaststroke. There is no note that Mr. George told Dr. McGraw about any incidents of his shoulder "popping out". Dr. McGraw detected

no "obvious abnormalities" on examination of the left shoulder. He opined the grinding sensation might be due to inflammation of the bursa deep to the scapula, but had no specific diagnosis or recommendation for treatment.

[118] Dr. McGraw's diagnosis was soft tissue injury to the cervical and lumbar spine not associated with neurological impairment or fracture. Dr. McGraw noted that the medical records indicated that Mr. George had been experiencing neck and lower back symptoms before the accident in June 2009. Dr. McGraw opined that given the previous history and Mr. George's ongoing complaints of "almost daily pain"; the prognosis for complete resolution of symptoms was "guarded". It is Dr. McGraw's opinion however, that Mr. George will not develop post-traumatic degenerative osteoarthritis as a result of the accident injuries.

[119] Dr. McGraw looked at the MRI study of Mr. George's lumbar spine that had been done on January 28, 2011. He noted that the degenerative changes revealed by the scan were "…considerable for a 22 year old male". Dr. McGraw's opinion is that the degenerative changes pre-dated even the 2006 motor vehicle accident and are not causally related to the 2009 accident. He opined that Mr. George had "…chronic mechanical back pain aggravated by physical activity" prior to the 2009 accident. His opinion is that the 2009 accident "…aggravated a pre-existing history of mechanical low back pain". He said prognosis for complete resolution of the low back pain was guarded and:

> Given the extensive nature of the spondylosis in the lumbar spine, it is probable that Mr. George will have ongoing difficulties with his lumbar spine.

[120] Mr. George told Dr. McGraw that he had attempted to work in his father's shop at some point before the June 21, 2009 accident but had found that the work was too heavy and aggravated his back pain. Dr. McGraw recommended that Mr. George avoid manual labour. When seen by Dr. McGraw in March 2011 Mr. George told Dr. McGraw he wanted to take an 11-month drafting course with a view to "…maybe taking up this position in his father's business". Dr. McGraw told Mr. George he would support this career goal.

[121] Mr. George told Dr. McGraw that the program at KARP Rehabilitation had helped him and Dr. McGraw recommended that if Mr. George had future treatment, it should be a supervised active exercise program of three to four months' duration, conducted by a university-educated kinesiologist or personal trainer.

[122] In August 2011, counsel for the defendants retained Dr. D. G. Connell, a radiologist with subspecialty training in musculoskeletal radiology and asked Dr. Connell to review pre- and post-accident x-rays of Mr. George's spine; as well as the January 28, 2011 MRI results. Dr. Connell was asked to provide his opinion about whether the degenerative disc disease revealed on the January 2011 MRI was related to the June 2009 MRI. Dr. Connell wrote a report dated August 23, 2011.

[123] Dr. Connell had also been given x-rays of Mr. George's lumbar spine done in May 2007. According to Dr. Connell, the 2007 x-ray showed slight disc space narrowing at the L2-3 level and a slight posterior disc space narrowing at the L5-S1 level. He compared that x-ray to the x-ray done on June 17, 2010 and found there had been no change in the appearance of the lumbar spine.

[124] Dr. Connell noted that the disc degeneration shown in the x-rays and the MRI was "multilevel". He said that disc degeneration is most often related to genetic factors. In his opinion, Mr. George's disc degeneration "…is not related to the motor vehicle accident".

[125] Dr. McGraw was asked by plaintiff's counsel to review Dr. Connell's report and he wrote a short report on January 19, 2012 indicating, essentially, that he agreed with Dr. Connell's opinion. Dr. McGraw's opinion is that Mr. George's degenerative disc disease had already manifested itself before June 2009 and is not causally related to the motor vehicle accident of June 21, 2009.

[126] Dr. Scott Paquette, a neurosurgeon, assessed Mr. George at the request of defendants' counsel on September 23, 2011 and wrote a report on the same date.

Mr. George was enrolled in the steel detailing course at VCC at the time he was interviewed and examined by Dr. Paquette.

[127] Mr. George told Dr. Paquette that he felt that his low back pain was stable and was:

> …similar to the difficulties he was having with his back prior to this motor vehicle accident.

[128] Mr. George reported that his shoulder was almost back to normal, but he continued to have neck pain that bothered him when he was driving. He told Dr. Paquette he used to ride dirt bikes and snowboard on a regular basis but had given up both of those activities:

> …because of progression in his back pain symptoms.

[129] He told Dr. Paquette that he was less active than he had been before the accident but was still able to be quite active. He reported he was still playing hockey and baseball with his friends and swimming on a regular basis.

[130] Dr. Paquette noted that Mr. George's neurological examination was "normal". Range of motion on flexion and lateral bending was reduced as Mr. George reported stiffness and pain in his lower back. Mr. George had a full range of motion in his neck.

[131] Dr. Paquette reviewed the January 29, 2011 MRI of Mr. George's lower back and noted:

> This MRI shows quite advanced degenerative disease for such a young individual, showing disc protrusions at L3-4, L4-5, and L5-S1.

[132] Dr. Paquette noted a history of mechanical low back pain dating back to 2005. His opinion is stated in these terms:

> It is my opinion that the increase in pain that Mr. George has experienced through this motor vehicle accident is a direct result of this motor vehicle accident causing an exacerbation of his pre-existing degenerative disease. It is my opinion that in the absence of this motor vehicle accident that

> Mr. George would have continued on with degenerative disease in his spine with relapsing and recurring bouts of mechanical low back pain. It is my opinion that while this motor vehicle accident has clearly caused a flare-up of back pain for the gentleman I do not feel that this accident will have structurally changed his back and I do not believe that this will lead to any long-term changes in his expected course of back problems. While I feel this accident has aggravated his symptoms, I expect he will recover from this aggravation and will get back to his baseline pattern of mechanical low back pain.

[133] Dr. Paquette also opined on the impact of the accident injuries on Mr. George's capacity to do manual labour. He said:

> I think it is unlikely that he will be able to engage in any occupation that requires manual labour. I believe this course was already set prior to this motor vehicle accident and I do not believe this accident materially contributes to his need to give up manual labour.

[134] Dr. Somani's third and last report is dated February 21, 2013. His report indicates that the frequency of Mr. George's visits in the last year had increased significantly from what it had been in the first years after the accident. Dr. Somani reported that Mr. George had been to see him 13 times since January 2012.

[135] Dr. Somani noted that Mr. George reported having had approximately 36 sessions with an occupational therapist and over 36 sessions with a personal trainer at a gym. He also noted that Mr. George reported exercising and stretching on a regular basis at home. He wrote that Mr. George "…has been diligent with exercising…" It is difficult to reconcile this information with the content of a report written by Dr. John le Nobel on July 10, 2013. Dr. le Nobel saw Mr. George on July 8, 2013. According to Dr. le Nobel's report, Mr. George was "deconditioned" because of reduced activity over the past four years. He said Mr. George reported "…having not done recent cardiovascular fitness". Among other things, Dr. le Nobel recommended that Mr. George do stretching exercises and cardiovascular fitness training. He did note in his report that Mr. George said he was doing some exercises at home, but had not increased the number of repetitions in the past two or more years.

[136] Dr. le Nobel wrote a report dated July 10, 2013 at the request of counsel for the plaintiff. Dr. le Nobel opined that absent the June 21, 2009 accident, the degenerative changes in Mr. George's back would have been "…less likely". Dr. Somani was also of this opinion, but he went even further and opined that the accident had caused the changes in Mr. George's spine.

[137] In my view, there are several problems with Dr. le Nobel's report that cause me to reject his opinions on causation of the degenerative changes in Mr. George's back. On this issue, I prefer and accept the opinions of Drs. McGraw, Connell and Paquette and I do not accept the opinions of Drs. le Nobel and Somani. In my view, Dr. Somani has far less expertise on this issue than the three experts whose opinions impressed me. He also does not appear to have had access to the pre-2009 x-ray results. His opinions did not fare well during cross-examination at trial.

[138] Under the heading "Factual Assumptions", Dr. le Nobel included the following:

> From (Mr. George's) account his spinal symptoms resolved a year or more before the June 21, 2009 motor vehicle collision.

[139] I am satisfied that this assumption is contradicted by the evidence I accept; and I have already stated my conclusion that Mr. George was continuing to experience back pain similar to that he reported after the 2006 accident, immediately prior to the June 21, 2009 accident.

[140] Dr. le Nobel noted that Mr. George was doing physically active work before the June 21, 2009 accident. Mr. George has testified that he was doing work as a gutter installer. However Mr. George does not appear to have told Dr. le Nobel that even before the June 21, 2009 accident he had found working in his father's steel fabricating shop to be too difficult because it aggravated his back pain.

[141] Dr. le Nobel noted that the earlier episodes of spinal pain rendered Mr. George "…at increased vulnerability for more severe consequences from the June 21, 2009 motor vehicle collision". He did not, however, directly address the implications of the pre-existing degenerative changes in his report.

[142] Dr. le Nobel appears to have accepted Mr. George's statement that he was not having any therapy in 2008 or early 2009, despite having been referred to the records of Dr. Kilgannon indicating he was still treating Mr. George for symptoms related to the 2006 accident as late as May 25, 2009.

[143] Dr. le Nobel noted that Mr. George's low back and left lower limb symptoms had increased in the years before the accident but provided no convincing explanation for why Mr. George's symptoms would be greater four years after the accident than they were in the months immediately following the accident if attributable to the accident.

[144] I conclude that Mr. George's symptoms have increased because the symptoms he is currently experiencing are primarily symptoms caused by the deterioration of Mr. George's spine resulting from degenerative disc disease.

SUMMARY

[145] I conclude that Mr. George had degenerative changes in his back, in particular in his lower back, that were symptomatic and caused mechanical back pain, before the accident that happened on June 21, 2009; and probably even before the accident in June 2006. I conclude that when the June 2009 accident happened, Mr. George had not fully recovered from the injuries to his neck and back caused by the 2006 motor vehicle accident. The 2009 accident aggravated the pre-existing injuries and caused a temporary exacerbation of the pre-existing symptoms.

[146] I conclude that even if the June 21, 2009 accident had not happened, Mr. George would have had increasing neck and back pain - in particular, lower back pain, due to the deteriorating condition of his spine.

[147] I conclude that but for the pre-existing degenerative changes in Mr. George's spine, he would largely have recovered from the injuries caused by the 2009 motor vehicle accident by time of trial and that the symptoms he currently experiences are primarily, but not entirely, caused by the degenerative changes in his spine.

[148] I conclude that in the near future the accident injuries will cease to contribute to the symptoms experienced by Mr. George and the pain in his back and neck will be no worse than what he would have experienced even if the 2009 accident had not happened.

DAMAGES

Past Loss of Income or the Opportunity to Earn Income

[149] Counsel for Mr. George submits that an award of $24,832 should be made for loss of income or the opportunity to earn income, to the date of trial. This is based on the theory that but for the accident, Mr. George would have found work as a labourer, either working at Brookswood Ironworks; or elsewhere, perhaps in construction. Plaintiff's counsel submits that the court should accept the testimony of Mr. George, Sr. that Mr. George had lost approximately $20,000 in gross earnings since beginning his employment at Brookswood in May 2012 until date of trial, due to medical appointments and other absences attributable to the accident injuries. Plaintiff's counsel also submits that Mr. George "…was forced to leave his job with the Chevrolet dealership…" due to his accident injuries.

[150] Counsel for the defendants submits that Mr. George has failed to prove any loss of income or the opportunity to earn income caused by the accident injuries.

[151] Mr. George had worked only sporadically in the years between graduating from high school and the accident in June 2009.

[152] No income tax record was produced for the year 2006, from which I infer that Mr. George did not earn any income from employment in that year. Income tax records in evidence indicate the following income reported by Mr. George in the years 2005 to 2012:

2005	$ 4,140.00
2007	10,191.00
2008	5,365.00

2009	13,127.00	(including $2,871 of employment insurance benefits)
2010	7,442.00	(including $522 of employment insurance benefits)
2011	3,006.00	(including $2,730 of employment insurance benefits)
2012	19,258.00	

[153] As stated earlier in these Reasons, Mr. George was taking classes at LCE from September 2007 until June 2008; from September 2009 until June 2010; and he was at VCC full time from September or early October 2011 until April 18, 2012.

[154] At time of trial Mr. George had not filed his 2013 tax return and no T4 is in evidence. A rough calculation of his 2013 income derived from a record provided by Brookswood Ironworks (Mr. George's mother is the bookkeeper for the company) indicates Mr. George earned about $43,000 gross in 2013. I conclude he probably earned more than that in 2014 as he had received incremental pay increases.

[155] Mr. George was sent by his counsel to Paul Pakulak, an occupational therapist, who conducted two "functional capacity evaluations". The first was done on October 3, 2011 resulting in a report dated December 5, 2011; and the second on August 21, 2013, resulting in a report dated October 29, 2013.

[156] Based on the two assessments conducted by Mr. Pakulak, Mr. Pakulak is of the opinion that Mr. George has the physical capacity to be employed on a full-time basis as a steel draftsman/detailer, and that he demonstrated the capacity to do this work at a competitive and sustainable pace on a full- or part-time basis. Mr. Pakulak was of the view that Mr. George would be able to manage the increase in symptoms caused by prolonged periods of sitting with periodic breaks to stretch and move about, and with ergonomic seating.

[157] This assessment is consistent with the fact that at time of trial Mr. Pakulak had been successfully working as a steel draftsman/detailer for nearly two years, success demonstrated both by his father's testimony that Mr. George had become

an increasingly valuable employee; and by the periodic increases in Mr. George's rate of remuneration.

[158] Mr. Pakulak's assessment in 2011 and 2013 was that Mr. George did not demonstrate the capacity to work as a roofer - which he equated with the work of a gutter installer - at a competitive or sustainable pace on a full- or part-time basis.

[159] Vocational consultant Derek Nordin conducted a "vocational assessment" of Mr. George on July 10, 2013 and wrote a report dated July 25, 2013. Mr. Nordin included a number of opinions in his report that are, in my view, outside his area of expertise, and/or usurp the function of the court. Mr. Nordin purported to assess Mr. George's "residual employability potential", which assumes that Mr. George's employability potential has been lost or impaired. Mr. Nordin assumed that Mr. George is "…afforded accommodations working for his father that would not be offered him by another employer", although no evidence was given at trial that such accommodations have been afforded; or that accommodations would not be offered by other employers. Mr. George testified he had been asking his father for a more comfortable chair for a year and a half, without a positive response.

[160] Mr. George, Sr. testified that he would not have paid Mr. George a higher starting wage even if he had successfully completed the course at VCC; that there is a level of learning that has to be acquired on the job; and that employees need to earn their way up. He testified that Timothy George is going to be a very good detailer and could be in demand across the industry.

[161] There are problems with the assessment of past loss of income. As stated earlier, Mr. George had worked only sporadically in the years after he left high school in 2006. The longest continuous period of pre-accident employment established by the evidence was the eight months Mr. George worked for the gutter installation company before being laid off in June 2009. During that eight-month period Mr. George earned only $15,000 in gross pay - less than $2,000 a month. Mr. George did not leave this job because of the accident. He had been laid off and there is evidence that he did not plan to return to the job even if the accident had not

happened. He said he did not want to work outdoors and was planning to look for an office job but had no experience doing that kind of work.

[162] Mr. George testified on examination for discovery that he did not want to work as a labourer at Brookswood Ironworks. In the past he had found the work was too heavy and aggravated his back pain.

[163] I accept that there was probably a period of time right after the June 2009 accident during which Mr. George's symptoms prevented him from working and but for the accident, he would have worked during at least the summer of 2009 and possibly part time after returning to school in the fall of 2009. I am not persuaded that Mr. George could not work at all in the first half of 2010 because of his injuries. I accept that it is probable that working would have caused an increase in Mr. George's neck and back pain but the medical evidence does not establish that he was incapacitated from work, particularly if he had taken analgesic medication to manage his symptoms. Mr. George did not testify that he could not work in the first half of 2010 because of pain from his injuries.

[164] Mr. George chose to go to school in the fall of 2009 to try to obtain sufficient credits to get his Grade 12 diploma. Although he had been unsuccessful on his first attempt to complete the requirements in 2007/2008, Mr. George was able to successfully acquire the necessary credits to get his Grade 12 diploma in June 2010.

[165] Mr. George's first employment after the accident on June 21, 2009 was working for Preston Chevrolet Oldsmobile from August 2010 until December 2010. Mr. George voluntarily chose to leave that job. I accept that the work was causing him discomfort but he was not "forced" to leave the job - he said he chose to leave because he felt bad about his absences. By voluntarily leaving his employment he failed to mitigate his loss of income.

[166] Mr. George was paid by the hour when he worked at Preston Chevrolet Oldsmobile. There is no evidence about what income he would have earned but for

his absences, but I conclude he did have a loss of income due to absences from work with that employer.

[167] While working at the car dealership Mr. George was also taking two courses at Kwantlen College. He was unsuccessful in both, but the evidence does not establish that his lack of success was caused by the accident injuries.

[168] There is no evidence that Mr. George attempted to work, or was incapacitated from work in 2011 but there is no evidence about any work he did or attempted to do in that year. His income tax return indicates his income in 2011 was $3,006 of which $2,730 was employment insurance benefits. The balance may have been holiday pay or some residual payment from Preston Chevrolet Oldsmobile. In the fall of 2011 Mr. George became a full-time student at Vancouver Community College.

[169] Mr. George, Sr. estimated that Mr. George could have earned as much as $20,000 more than he has earned if he had not missed work for medical appointments and due to pain. I consider this an over-estimate based on the pay record from Brookswood Ironworks but I accept that Mr. George did miss hours and some days of work for the reasons stated and lost income as a result.

[170] I must also take into account the conclusion I have reached that Mr. George would have had back pain, particularly low back pain, even if the accident had not happened, due to the degenerative changes in his back that were already symptomatic before the accident.

[171] I accept that Mr. George's failure to complete the program at Vancouver Community College was related to the accident injuries, but I am also satisfied that Mr. George failed to mitigate any loss resulting from his lack of certification when he decided that he would not return to Vancouver Community College to complete the parts of the course he had missed in either the fall of 2012 or 2013.

[172] Since starting his work as a steel detailer at Brookswood Ironworks, Mr. George has been earning a reasonable income. The evidence does not establish that Mr. George is earning less working for his father than he would if he

was working elsewhere; or that he is being paid less than he would have been paid if he had completed the program at VCC. There was some evidence in Mr. Nordin's report indicating that the average income of draftsmen is higher than the income Mr. George is currently earning, but it is reasonable to conclude that recent entrants like Mr. George earn less than the average wage.

[173] This is not a case in which an arithmetic calculation of lost wages is possible. Taking into account the period immediately after the accident; the absences from work at Preston Chevrolet Oldsmobile in the period August to December 2010; and the work that Mr. George has missed at Brookswood due to absences for medical treatment and because of pain, I assess damages for past loss of income or past impairment of capacity to earn income at $20,000.

Damages for Loss of the Capacity to Earn Income in Future

[174] The assessment of damages for the loss or impairment of capacity to earn income in future is also complicated by several factors. As stated earlier, Mr. George had not demonstrated much capacity to earn income prior to the accident. He had not obtained his Grade 12 diploma and had worked only sporadically. Even before the accident in 2006 he had reported symptoms of back pain that I conclude were caused by very early degenerative changes in his spine. He had not, I have concluded, fully recovered from the injuries caused by the 2006 accident before the June 21, 2009 accident happened.

[175] The expert medical evidence I have accepted - the opinions of Drs. Paquette, McGraw, and Connell - all indicate that Mr. George had chronic mechanical low back and neck pain before the accident, caused by degenerative changes in his spine. Dr. Paquette's opinion was that the temporary exacerbation of symptoms caused by the 2009 accident had largely resolved and that ongoing symptoms were more probably caused by the pre-existing degenerative condition. I interpreted the opinions of Drs. McGraw and Connell to be that the accident injuries may have continued to make some contribution to the symptoms, but that Mr. George would have had chronic back pain even if the accident had not happened.

[176] The medical records, and some of Mr. George's testimony indicates that over time, Mr. George's symptoms have become worse, which is inconsistent with the normal course of recovery for a muscle strain and consistent with the credible medical opinion evidence that Mr. George's pre-existing condition was exacerbated by the accident injuries but that the symptoms he continues to experience are primarily caused by the deteriorating condition of his spine. Mr. George saw Dr. Somani only a couple of times immediately after the accident, followed by a gap in visits of six months. On the evidence Mr. George did not require analgesics to manage his pain in 2010 and 2011 (there is no evidence about whether he did use painkillers in 2009). In 2012 Mr. George began using prescription medication regularly to manage pain.

[177] I conclude that the symptoms from the accident injuries, added to the pre-existing back problems, did make it more difficult for Mr. George to successfully complete his training at VCC and the lack of a certificate may have an impact on Mr. George's future earnings if he leaves his father's employ. I have already said, however, that Mr. George could have mitigated that potential loss by returning to VCC to complete the Steel Detailing Program. Mr. George chose not to return to school. The defendants are not liable to compensate Mr. George for losses that he could have prevented.

[178] I am not persuaded that the accident injuries were no longer making any contribution to Mr. George's symptoms at time of trial. I conclude that for a few years post-trial he will continue to have absences from work to which the accident symptoms contribute. I am persuaded, however, that even if the accident had not happened, Mr. George would have ongoing mechanical pain in his neck and back caused by the degenerative changes that would impair his capacity to earn income. I am also persuaded that in the not too distant future, the accident injuries will have resolved to the point that they are no longer contributing to the pain or discomfort experienced by Mr. George and will no longer be the cause of any impairment of his capacity to earn income.

[179] Mr. George is seeking an award of $280,000 for loss of the capacity to earn income in future. In light of the expert evidence and the conclusions I have outlined above, an award of that magnitude is not warranted. I award $20,000 for impairment of the capacity to earn income in future.

Special Damages

[180] Mr. George is seeking an award of $8,271 for out-of-pocket expenses incurred to date of trial. As with so many other aspects of the evidence, the calculation of this amount is problematic.

[181] $2,328 of this amount is claimed for mileage for trips to Glover Medical Clinic, KARP Rehabilitation, Reactive Injury Management, and to Dr. Jaworski, who did not testify at trial. I award $2,328 for mileage expenses.

[182] Mr. George is claiming the cost of two MRI scans that were done privately, rather than through the medical services plan, at a total cost of $2,985. I infer that the scans were done privately because they were required for the purposes of this litigation. The bills for both scans are addressed to Mr. Mussio's law firm. There is no evidence that Dr. Somani or any other treating physician required the scans or recommended that the scans be done. I am of the view that these costs are more appropriately claimed as disbursements in the litigation.

[183] Mr. George is claiming $2,563 for a Fitness World membership and the cost of a personal trainer. I am satisfied that these expenses were incurred to help Mr. George achieve better physical conditioning to assist in alleviating discomfort from the accident injuries, as well as the pre-existing back problems.

[184] Mr. George is also claiming reimbursement of $1,222 for various medications purchased between February 22, 2012 and January 14, 2014.

[185] Dr. Somani's first report, dated July 10, 2010, indicates that he recommended that Mr. George take the medication Naproxen, but there is no evidence that Mr. George purchased this medication. There is a note in the clinical records that in

September 2008 Dr. Somani recommended that Mr. George take Robaxacet, an over the counter medication. In his two later reports Dr. Somani did not list prescription medication (or any medication) under the heading "Treatment". In his final report, dated February 21, 2013, Dr. Somani said it was likely Mr. George "will" require analgesics. The clinical records in evidence do not record prescriptions for analgesics.

[186] Mr. George told Dr. McGraw in April 2011 that he was not taking any medication.

[187] In September 2011, Mr. George told Dr. Paquette that he was not taking any medication.

[188] Mr. George testified at trial that he had been taking medication for the past couple of years prior to trial. In October 2011, Mr. George told Mr. Pakulak that the only medication he was taking was extra strength Tylenol, two to four tablets per month.

[189] According to Dr. le Nobel's July 10, 2013 report, Mr. George told Dr. le Nobel he was using extra strength Tylenol one or two times a week; Ibuprofen tablets once or twice a month, Diclofenac every second week and three tablets of Tramacet once or twice daily.

[190] According to Mr. Pakulak's report, Mr. George told him in October 2013 that he was taking only two to three Tramacet tablets each week; and four tablets of extra strength Tylenol weekly. He did not report taking Ibuprofen or Diclofenac. Mr. George testified at trial that he stopped taking the Diclofenac because it upset his stomach.

[191] Given Mr. George's pre-existing back problems, I consider it more probable than not that he would have required analgesics to relieve back pain even if the accident had not happened. I note that in the first several years after the accident, Mr. George was not taking any medication. I infer from his use of medication more recently that the deteriorating condition of his spine is the primary source of the

symptoms he has experienced in recent years; and that he would have needed analgesics even if the accident had not happened. I award the sum of $800 for prescription medications.

[192] In summary, I award the sum of $5,700 for special damages.

Cost of Future Care

[193] Mr. Pakulak's assessment indicated that Mr. George demonstrated the capacity to complete all aspects of household chores required of him in his present residence, although physically demanding tasks requiring below waist level or overhead work may result in increased symptoms. At the time of the assessment in 2013, Mr. George was living with his girlfriend in a rented two bedroom loft. Mr. George told Mr. Pakulak that he was able to complete all required household chores but experienced increases in symptoms with some more physically demanding chores.

[194] Counsel for Mr. George submitted that an award of $35,500 should be made for the cost of future care - $15,000 for the spinal injections recommended by Dr. le Nobel; $10,000 for gym memberships and personal training, and $10,000 for medications.

[195] I have rejected Dr. le Nobel's opinion that the accident caused or contributed to the development of degenerative changes in Mr. George's neck or back. If Mr. George requires spinal injections in future, the treatment will address a problem that was not caused by the accident. I make no award for the cost of injections.

[196] I accept that it is important for Mr. George to continue to maintain good physical conditioning to cope with his symptoms from both the residual strain caused by the accident, and the degenerative changes in his back. As time goes on, the accident injuries will cease to be a contributing factor. I award $2,500 for the cost of a gym membership and personal training.

[197] Mr. George's need for analgesic medication will, I conclude, cease to be causally related to the accident injuries in the near future. In the two years prior to trial he had incurred only $1,221 for the purchase of prescription medication and I concluded that his recent use of medication was primarily to address symptoms of the degenerative spinal condition. I award the sum of $500 for analgesic medication.

[198] In summary, I award the sum of $3,000 for the cost of future care.

Non-Pecuniary Damages

[199] Counsel for Mr. George has submitted than an award of $100,000 should be made for pain, suffering and loss of enjoyment of life. Counsel for the defendants submits that an award of $25,000 is appropriate in the circumstances. Both counsel provided the court with numerous authorities in relation to non-pecuniary damages including: *Hartnett v. Leischner*, 2008 BCSC 1589; *Peso v. Hollaway*, 2012 BCSC 1763; *Demllo v. Chaput*, 2013 BCSC 106; *Olson v. Ironside*, 2012 BCSC 546; *Whyte v. Morin*, 2007 BCSC 1329; *Boutin v. MacPherson*, 2012 BCSC 1814; *Dang v. Chao*, 2013 BCSC 740; *Chingcuangco v. Herback*, 2013 BCSC 268; *Peck v. Peck*, 2012 BCSC 1617; and *Johal v. Meyede*, 2013 BCSC 2381.

[200] In *Stapley v. Hejslet*, 2006 BCCA 34, our Court of Appeal set out some of the factors to be considered in determining an award of non-pecuniary damages. I have considered these factors although I do not propose to enumerate them here or relate each individual factor to the evidence in this case.

[201] Mr. George is not one of those plaintiffs whose life was transformed by the negligence of the defendant. I have concluded that the 2009 accident caused a significant exacerbation of symptoms that Mr. George was already experiencing caused by degenerative disc disease and the injuries sustained in a previous accident. The degenerative changes have worsened over time and I have concluded that in the near future - within a couple of years - Mr. George's condition

will be no different or worse than it would have been if the June 21, 2009 accident had not happened.

[202] Mr. George is entitled to be compensated, however, for the increase in symptoms caused by the defendant's negligence. The evidence about the extent to which, and when, Mr. George was able to resume his pre-accident recreational activities is inconsistent. Mr. George's testimony that he had not returned to any of his pre-accident activities was contradicted by reports he gave to various doctors who treated or assessed him post-accident. I accept, however, that his recreational activities were significantly curtailed after the accident. Within two months he had resumed dirt bike riding, but he was not able to engage in that activity for as many hours, or as often, as he had prior to the accident. Eventually he abandoned this activity. He tried snowboarding but also abandoned that activity. Mr. George told Dr. Paquette in September 2011 that he had resumed playing hockey and baseball and was swimming on a regular basis. Mr. George testified at trial that he also flies remote control planes. Mr. George was cross-examined about a report prepared by Dr. Jaworski - the report was not entered as an exhibit and Dr. Jaworski did not testify at trial - and agreed with Dr. Jaworski's report that Mr. George had resumed many of his pre-accident activities, including biking 10 to 30 kilometres once a week, sometimes on trails; playing street hockey with friends; playing doubles badminton; backyard paintball; and bocce ball. His sister testified that Mr. George had declined to play on her baseball team.

[203] Mr. George was a very young man when the accident happened. He was not employed regularly and was living in his parents' home. He had much more time for sports and recreational activities then. It is reasonable to infer that once Mr. George was either working or in school full time and was living with a partner, his participation in some of these activities would have been abandoned in any event.

[204] I am also satisfied that the degenerative changes in his spine would also have caused him to eventually limit his participation in activities that caused pain or posed a significant risk of injury to his neck or back.

[205] Dr. le Nobel was of the opinion that Mr. George was showing some signs of depression when he saw him in 2011 but Mr. George has never sought treatment for depression and Dr. Somani did not mention a diagnosis of depression or depressed mood in any of his reports. Mr. George testified at trial that he has no problems with anxiety. I am not persuaded that Mr. George has suffered from depression as a result of the accident injuries.

[206] Mr. George reported having problems with sleep primarily caused by pain in his left shoulder. There is not much evidence that the accident injuries interfered with Mr. George's ability to household tasks. There was evidence that he did not do gardening work in his parents' garden for about two months. It does not appear that he was required to do household chores or maintenance. Mr. George and his girlfriend live in a townhouse. Mr. George says he has to put garbage into smaller bags because carrying a large bag causes discomfort, but he did not otherwise indicate he has had difficulty with household chores.

[207] Having considered the authorities, all of the testimony, and the factors enumerated in *Stapley v. Hejslet*, cited earlier, I conclude that an award of $50,000 is warranted for non-pecuniary losses caused by the accident injuries.

Summary of Damages

[208] I award the following damages:

Non-pecuniary damages	$50,000.00
Special damages	5,700.00
Past loss of income	20,000.00
Future loss of capacity	20,000.00
Future cost of care	3,000.00
TOTAL	**$98,700.00**

COSTS

[209] I am aware of no reason why Mr. George should not have his costs of the action, assessed on the ordinary scale. If there are factors that should be brought to my attention, such as offers of settlement, counsel may either submit written submissions about costs or make arrangements through Trial Management to appear to make oral submissions. Otherwise the order shall be for costs to Mr. George on Scale B.

"BAKER J."