

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Foster v. Kindlan and Pineau*,  
2012 BCSC 681

Date: 20120511  
Docket: M094347  
Registry: Vancouver

Between:

**Tracey Lynn Foster**

Plaintiff

And:

**Carolyn Marie Kindlan  
and Justin Thomas Pineau**

Defendants

Before: The Honourable Mr. Justice Savage

## **Reasons for Judgment**

Counsel for the Plaintiff:

M.A. Kazimirski  
P. Gardikiotis

Counsel for the Defendants:

L.G. Harris, Q.C.  
K.R. Tonge

Place and Date of Trial:

Vancouver, B.C.  
February 20-24, 27-29, 2012,  
and March 1-2, 5-6, 8-9, 12, 2012

Place and Date of Judgment:

Vancouver, B.C.  
May 11, 2012

**I. Introduction**

[1] The Plaintiff Tracy Lynn Foster (“Ms. Foster”) alleges she was injured in two motor vehicle accidents which are admitted to be the result of the negligence of the Defendants. She is currently a licensed practical nurse (“LPN”) but was formerly employed as a personal trainer and exercise instructor.

[2] The first accident occurred in Maple Ridge on September 25, 2007 when a vehicle owned and negligently driven by the Defendant Carolyn Marie Kindlan rear-ended Ms. Foster’s vehicle (the “2007 Accident”). The second accident occurred in Port Coquitlam on May 5, 2009 when a vehicle owned and negligently driven by the Defendant Justin Thomas Pineau rear-ended Ms. Foster’s vehicle (the “2009 Accident”).

[3] Prior to the 2007 Accident Ms. Foster had been in two earlier motor vehicle accidents, one in 1999 and one on February 1, 2005. Between the 2007 Accident and the 2009 Accident Ms. Foster had been in a workplace incident on November 3 2008 in which she sustained an injury while restraining a combative patient (the “2008 Workplace Incident”).

[4] The Defendants deny that the 2007 Accident or the 2009 Accident are related to any of Ms. Foster’s current complaints. The Defendants say that Ms. Foster is a “crumbling skull”, having sustained pre-accident injuries of a significant nature, which had effects that were still symptomatic at the time of the accidents. Alternatively, the Defendants say that Ms. Foster is a “thin skull” and causal issues related to pre-existing and subsequent conditions are relevant.

[5] The Defendants say that one of Ms. Foster’s injuries, a hip injury, was not caused by either the 2007 Accident or the 2009 Accident, but was either caused by a the 2008 Workplace Incident, or by prior unrelated causes. Thus the parties are far apart on the various heads of damage including non-pecuniary damages, past wage loss, loss of earning capacity, the cost of future care and special damages.

**II. Issues**

[6] The primary issues are (1) whether the Plaintiff's injuries were caused by the 2007 Accident and 2009 Accident or by some other cause; and (2) the damages suffered because of the two accidents. Fundamental to the position of the Defendants is the Plaintiff's credibility.

**III. Background**

[7] Ms. Foster is 47 years old. She is a single parent who lives with her 18 year old daughter in Maple Ridge, B.C. Prior to 2004 she worked as a health care aide. From November 2004 to 2007 she was employed as a personal trainer and fitness instructor at Good Life Fitness in Pitt Meadows, B.C.

[8] On February 1, 2005 Ms. Foster was involved in a motor vehicle accident (the "2005 Accident") which is not the subject of this action. When stopped, her vehicle was struck by another car. She saw her family physician Dr. Sam 3 days after the 2005 Accident. Her major complaints at that time were a sore neck and shoulder and stiffness in her lower back. Ms. Foster had x-rays of her lumbar spine and pelvis and hips in August 2005. By January 2006 she reported that she was 60-70% recovered. Ms. Foster continued with her exercise classes but at reduced intensity. By the end of 2006 Ms. Foster had made significant recovery from these injuries. She continued, however, to see a chiropractor, Dr. Pollard, for periodic "tune-ups" and was not completely asymptomatic.

[9] In July 2007 Ms. Foster commenced a Licensed Practical Nurse ("LPN") course at Vancouver Career College in Abbotsford, B.C. This is a yearlong course which she completed in July 2008. Nursing had long been a goal of hers as her mother had been a registered nurse, but she put this ambition on hold while raising her daughter. She took out student loans to help finance the course. She ceased most personal training and fitness instructing in 2007 and has worked as an LPN since she received her certification.

[10] The 2007 Accident occurred on September 25, 2007 on the Lougheed Highway near the intersection of Dewdney Trunk Road, in Maple Ridge, B.C. The Defendant Carolyn Kindlan was driving a 1997 Honda Civic that “rear-ended” Ms. Foster’s 2005 Honda Civic. The damage to both vehicles, including labour, was less than \$3,000. The parties had a polite interaction at the scene and Ms. Kindlan recalls receiving a phone call from Ms. Foster later inquiring after her health. Ms. Kindlan, who is now 25, was not injured.

[11] Ms. Foster saw Dr. Sam on October 4, 2007 following the 2007 Accident. She complained of soreness to her neck, mid back and right arm; pain with head and shoulder movement; and low back stiffness although she had good range of movement in her head and shoulder. Ms. Foster saw various care providers after the 2007 Accident including a physiotherapist, a massage therapist, a personal trainer and her chiropractor, Dr. Pollard.

[12] On July 24, 2008 Ms. Foster was hired as a casual LPN at Ridge Meadows Hospital (“RMH”). Effective August 25, 2008, she obtained a permanent part-time position as an LPN at RMH, which was .43 of a full time equivalent (“FTE”) position. She later obtained a .91 FTE position, followed by a .73 FTE position that afforded her less physically demanding tasks.

[13] On November 3, 2008 Ms. Foster was involved in a Workplace Incident. A “code white” was called when a patient in withdrawal tried to escape and became fractious. She was pushed forcefully to the floor while standing near the patient, landing on the left side of her body. Ms. Foster felt pain in her left knee, left buttock area, left lower back and left side of her neck. A WorkSafe BC incident report was completed. As a result of her injuries she missed shifts on November 5-8, 2008, for which she received wage loss benefits.

[14] She saw Dr. F.S. Lim regarding the Workplace Incident. His diagnosis was of “Contusion L buttock, lower back strain”. He estimated that Ms. Foster would be off work for one to six days. Under the heading “Clinical Information”, he wrote: “Fell at work while trying to take down an agitated patient. Landed on buttock. Onset of

pain L buttock + L knee thereafter. Worked yesterday + worse. Tender L buttock over ischial tuberosity. SLR [normal]. Tender L [sacroiliac joint]. L hip - internal rotation [caused] pain in groin. L knee- ROM full - stable. Rx advil...”.

[15] In 2009 before the 2009 Accident, Ms. Foster obtained a temporary 0.84 position at the Gardenview unit of RMH. This was a temporary position and intended to continue until August 2009 at which time she would return to her .43 FTE position. In the spring of 2009 Ms. Foster also took motorcycle training. She obtained her licence and in April 2009 went to Victoria to pick up a 1300 CC motorcycle which she had purchased.

[16] On May 5, 2009 she was involved in the 2009 Accident. This was also a rear-end collision. The Defendant Justin Thomas Pineau was 18 at the time of the 2009 Accident. He was driving a 1996 Nissan Altima that collided with Ms. Foster’s 2005 Civic, which was stopped on the Mary Hill Bypass in Port Coquitlam, B.C. Damage to the Defendant’s vehicle was estimated to be \$1,943.47 but the older vehicle was determined to be a total loss. There was damage and cracking to the rear bumper of Ms. Foster’s vehicle. Mr. Pineau testified that he saw Ms. Foster throw her hands up in the air after the collision in evident frustration. Despite this, they had a polite exchange after Mr. Pineau called his father on his cell phone. Mr. Pineau was not injured.

[17] On May 6, 2009 Ms. Foster attended at the RMH Care Clinic. She complained of a sore neck, upper back and low back, left and right knee, stiff muscles and a headache. She said she would not miss work. On May 19, 2009 she attended Dr. Sam’s office. She complained of pain to the left knee, left hip and neck, and low back soreness.

**IV. Credibility of the Plaintiff**

[18] The Defendants raise as an issue the credibility of the Plaintiff. The Defendants say that there are at least 12 different matters that give rise to significant questions about the credibility and veracity of the Plaintiff’s evidence, including (1) false statements she made to Workplace BC, (2) statements made concerning the

hours worked, (3) failing to disclose her full medical history to her examining doctors, (4) misrepresenting her health immediately before the 2007 Accident, (5) misrepresenting a health care provider as doing a study on her condition, (6) blaming weight gain on the accidents, (7) blaming her financial circumstances on the accidents, (8) activities she did while on disability, (9) misrepresenting her mental state, (10) acting inconsistently, (11) testimony about hours worked, and (12) her manner of giving evidence.

[19] The Plaintiff, *contra*, says that while there may be occasional inconsistencies, it is an error to give too much weight to them, as the circumstances testified about occurred years before, and the record taker may have differing concerns. For example, in considering inconsistencies between testimony and clinical records in *Carvalho v. Angotti*, 2007 BCSC 1760, N. Smith J. noted that “it is a rare case...where such inconsistencies cannot be found” (see paras. 14-16). Parrot J., in *Burke-Pietramala v. Samad*, 2004 BCSC 470 at para. 104 found “little surprising in the variations of the plaintiff’s history...given the human tendency to reconsider, review and summarize history in light of new information”. I agree with those observations, although I note that it is entirely appropriate that such matters be pursued in cross-examination, as was done here, as part of the pursuit of truth.

[20] The first matter concerns a statement made to WorkSafe BC on July 13, 2011, following a back injury suffered while moving a patient on July 3, 2011. Ms. Foster was off work from July 4 until she returned to work July 12, 2011. The WorkSafe BC record contains the following statements: “Worker denies any prior problems to her back”, “She stated she was in a MVA in 2009 but injured her hip and pelvis” and “Worker stated she has not sought medical treatment or lost time from work in the past due to back problems”. It is apparent that Ms. Foster has had prior back problems. The context of this report must be borne in mind. The concern was the immediate injury for which she had been off work for a very limited time, for a period commencing a few days earlier, and following which she had already returned to work. The statements do not purport to be direct quotes, nor do we know the questions asked.

[21] The second matter concerns a statement recorded in notes made by Derek Nordin, a vocational rehabilitation consultant, that she had worked 3,000 hours in the ten months between July 2008, when she commenced work, and May 5, 2009, the date of the 2009 Accident. Ms. Foster acknowledged that if the statement was recorded in the notes she must have made it, but the statement is obviously wrong. This statement is clearly and obviously in error, as can readily be shown by employment records. Ms. Foster did not remember making it. The Defendants say “The statement amounts to a knowing misrepresentation by the plaintiff of her work history to her vocational expert on a significant point”. Why Ms. Foster would want to mislead her vocational expert on a significant but readily verifiable point is not said. Ms. Foster suggested she may have added up wrongly the workplace records. The workplace records produced by Ms. Doutaz were confusing, so much so that the Defendants themselves reformatted that information into a much more readily understandable format, which was of benefit to all of the parties and the Court. I cannot conclude that Ms. Foster deliberately misled anyone on this point, or that the vocational expert fell into error because of it.

[22] The Defendants say that Ms. Foster failed to disclose her full history to her examining doctors. In particular, she failed to disclose evidence of long-standing problems in the general hip area. This is important as the etymology of the labral tear in her left hip is the main issue in this trial. There is evidence of hip pain in the records, in particular the documents found in tabs 1-6, 8-11 in Ex. 46. The Defendants say that “The plaintiff attempted to explain these records by stating that ‘when I said ‘hip’, I really meant ‘lower back and glute...’ However, there are enough obvious references by medical practitioners to the ‘hip joint’ to suggest that this is a later attempt to cover up her inaccurate history.”

[23] The Plaintiff’s theory of the case is that the labral tear was caused by the 2009 Accident. The 2009 Accident is the first occasion that the plaintiff complains of anterior hip pain, pain in the area on the anterior aspect where the thigh meets the pelvis (the “anterior hip”). The Defendants argue that this is not so, pointing to the above referenced evidence and the important evidence of Dr. Lim. They say that

evidence belies the Plaintiff's assertion that she had never experienced pain in the anterior hip. Dr. Lim's evidence concerns the Workplace Incident, which occurred in November 2008. At that time, the Plaintiff presented with pain in the left buttock and left knee. On internal rotation of the left hip she experienced pain in the groin. Dr. Lim's diagnosis, however, was "Contusion L buttock" and "lower back strain", not any injury to her hip. Nor does the record indicate that she presented complaining of any pain in her hip; rather, on Dr. Lim performing the internal rotation he elicited a report of pain in the groin.

[24] It is apparent that Ms. Foster saw a variety of physicians and health care providers over an extended period for her various complaints. I cannot conclude, however, that by not providing a "full history", as revealed by a thorough analysis of all of her clinical records, that she ever sought to mislead her examining doctors as the Defendants allege.

[25] The Defendants argue that Ms. Foster was misleading in describing her pre-2007 Accident condition. Specifically, they say that the evidence of Dr. Pollard shows that she continued to have symptoms following her 2005 Accident at the time of the 2007 Accident. Dr. Pollard considered a once-a-month visit a "tune up". Her records show that Ms. Foster attended at her clinic on two occasions in May 2005, three occasions in June 2005, 3 occasions in July 2005, 5 occasions in August 2005, 3 occasions in September 2005, 3 occasions in October 2005, once in January 2006, once in March 2006, twice in May 2007, twice in June 2007, once in August 2007 and once in September 2007 until the 2007 Accident. The records reveal that she was attending Dr. Pollard with declining frequency. On balance these records reveal that Ms. Foster was *at or near* what Dr. Pollard would describe as a "tune-up" schedule prior to the 2007 Accident.

[26] The Defendants say that Ms. Foster misrepresented to her physician that Dean Kotopski was doing a study on labral tears. As a result Dr. Sam recommended she see Mr. Kotopski. This is significant because she had earlier seen Robert Gander who had recommended that "Ms. Foster would benefit from



participating in an occupational rehabilitation program (OR) as a precursor to an eventual GRTW program”. Based on Mr. Gander’s report she “could have returned to work by July 6, 2010 and should have returned to work at the latest by August 15, 2010”. This then delayed Ms. Foster’s return to work which belies her assertion that she was anxious to return to work.

[27] It is agreed that Mr. Kotopski was not doing a study on labral tears. It is unclear to me why Ms. Foster would have thought this. Mr. Kotopski did testify that he focused on hip injuries and had a lot of experience with labral tear injuries, so it is possible that Ms. Foster was confused. In any event, there is no evidence before me that any misstatement was made with the intent to deceive. The proposition that one is asked to infer from this, however, is not supported by the evidence.

[28] With respect, I do not read Mr. Gander’s report as supporting the propositions alleged. While Mr. Gander supported participating in an occupational rehabilitation program, he said that “...consideration should be given to Ms. Foster’s potential barriers to realizing a relatively expeditious and durable return to work....” She “...requires re-gaining her confidence in her capacities to perform the full scope of her pre-disability LPN duties and establishing her durability, via undertaking graduated exposure to potentially provocative activities. She would benefit from increasing the strength and functioning of her low back and left hip musculature with the aim of improving her function and durability....”

[29] In abiding her family physician’s advice, Ms. Foster was doing no more or less than attending to her long term medical care giver’s recommendations. The consequence of failing to abide such advice, in other contexts, can result in negative inferences: See *Chiu v. Chiu*, 2002 BCCA 618, 8 B.C.L.R. (4th) 227, at para. 57; *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144, 17 B.C.L.R. (5th) 101; *Wahl v. Sidhu*, 2012 BCCA 111 at para. 31-32.

[30] The Defendants say that Ms. Foster is incorrect that her weight gain is consequential on the motor vehicle accidents. In support they reference the surveillance photographs taken in August 2009 which they say “suggest the plaintiff

has roughly the same physical appearance as she has today”. Try as I may, I am quite unable to draw the conclusion the Defendants seek based upon my courtroom observations.

[31] It is asserted that Ms. Foster wrongly blames her poor financial circumstances on the accidents. In doing so, the Defendant’s reference, in part, her earnings in 2007 and 2008. Of course in half of each of those years she was not working because she was taking the LPN training, so those years are not good comparators. Nor do I infer that Ms. Foster’s blames her financial situation on the accidents. There is a confluence of circumstances that include her age, her previous work history, her marital status, her existing debt and her late entry into a new career. All those circumstances were acknowledged to contribute to her stress.

[32] The Defendants further attack Ms. Foster’s credibility saying that she “marshalled activities around disability”, or the collection of disability benefits. It is agreed that Ms. Foster was on short-term disability from June 16, 2009, to September 14, 2009. Further she was on long-term disability from November 17, 2009, to April 18, 2011. The activities so marshalled included motorcycle trips, a holiday, and elective breast-reduction surgery.

[33] During these periods Ms. Foster did go on a couple of significant motorcycle trips with friends. The Defendants introduced surveillance video showing Ms. Foster riding her motorcycle. There is no suggestion that Ms. Foster ever denied taking such trips or being capable of doing so. There is no medical opinion evidence before me that a person with her injuries is or should be incapable of such trips. It was Ms. Foster’s evidence that she found riding her motorcycle easier than driving an automobile. She and her companions testified about these trips. They stopped every hour or hour and a half to rest and stretch.

[34] Also while on disability, Ms. Foster took a three-week holiday in the Philippines to attend her brother’s wedding. She also had elective breast-reduction surgery in November 2010. However, as counsel for the Plaintiff notes, Ms. Foster was also undergoing various treatments during the disability period, although not

immediately following recovery from the breast reduction surgery. Those treatments are referenced in the treatment records of Golden Ears Orthopaedic & Sports Physiotherapy, Westgate Wellness, and Kotoposki Physio.

[35] Ms. Foster testified that during her disability period she was at times despondent and emotional. Some of her friends testified that she was absent from their lives and was not herself. She returned to work in April 2011. Another friend, Susan Taylor, testified that she attended a birthday party for Ms. Foster in 2011 which was a good party with socialization and dancing. Although the Defendants admit that this is “a small detail”, they say it is “wholly inconsistent” with the evidence of an emotional withdrawal prior to her return to work. I agree that this is a small detail. An occasional cheerful episode is not inconsistent with the weight of the evidence that Ms. Foster had periods of general malaise while off work during this period.

[36] In 2011 Ms. Foster applied for and accepted a full time job at Chilliwack Hospital. This was a permanent full-time job. After reflection Ms. Foster declined to take the job. She said she was concerned about her ability to do what the job demanded. Although these decisions show prevarication on her part on an important matter, this speaks less about general credibility than to her ability for self-assessment.

[37] The Defendants assert that the records show some discrepancy between the hours Ms. Foster says she is capable of working, and the hours she actually worked. The Defendants make special mention of the hours worked in October, November, and December 2011. They say that this shows that Ms. Foster is capable of more work effort than she claims to be capable of. As I understand the evidence, however, her financial circumstances made it incumbent on her to work more, and she did so by taking the less eventful night shifts. This matter will be elaborated on further in the reasons which follow.

[38] As a general point, the Defendants say that less weight should be given to Ms. Foster’s evidence because of leading questions and matters raised on re-

examination. Both parties at times used leading questions with their witnesses. It is, of course, not always immediately apparent that part of what otherwise appears to be narrative touches on a matter that is in issue. In this case the Plaintiff was testifying as to matters which occurred over a relatively protracted period, at times as early as seven years before. At other times the Plaintiff may not have understood the nuance of the questions and was directed to the topic at hand. Of course, witnesses vary in perspicacity. Ms. Foster is who she is. I am not prepared to draw an adverse inference simply from the manner or method of questioning in this case.

## V. Causation

### A. Generally

[39] In this case there is a serious issue regarding causation. The parties agree that the test for causation in the law of negligence is the “but for” test. The Plaintiff bears the burden of showing that “but for” the negligent act or omission of the defendants the injury would not have occurred: *Resurface Corp. v. Hanke*, [2007] 1 S.C.R. 333, 2007 SCC 7 at para. 21.

[40] The “but for” test is not one demanding scientific certainty but is to be proven on a balance of probabilities. It must be more likely than not that without the tort the injury or medical condition would not have occurred: *Tsalamandris v. MacDonald*, 2011 BCSC 1138, per Griffin J. at paras. 143-144, *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 16.

[41] In determining liability it is not necessary to show that a defendant’s tortious conduct is the sole cause of the injury: *Athey* at para. 17. However, the Plaintiff must establish that there is a substantial connection beyond the *de minimus* range between the injury and defendant’s negligence in order to find a defendant liable: *Sam v. Wilson*, 2007 BCCA 622 at para. 109, *Farrant v. Laktin*, 2011 BCCA 336 at paras. 10-11.

### B. The Medical Opinions on Causation

[42] There are opinions on causation from four physicians.

[43] Dr. Janie Sam is a general practitioner and has been Ms. Foster's family physician since 1991. She attributes Ms. Foster's right shoulder injury to the 2007 Accident and the labral tear of her left hip to the 2009 Accident.

[44] Dr. Russell O'Connor is a physiatrist. In his opinion the 2007 Accident caused musculoligamentous strain to Ms. Foster's neck, mid-back and low back, and the 2009 Accident caused left knee pain and left hip pain and was the cause of the labral tear of her left hip.

[45] Dr. Gilbert is an orthopaedic surgeon. It is Dr. Gilbert's opinion that "...the condition of Ms. Foster's right shoulder, neck and upper back pain is related to the first motor vehicle accident of September 25, 2007". He continues "Ms. Foster then suffered from an aggravation of her neck and upper back pain, as well as a new injury and pain in the left side of her low back, left hip, left knee, left ankle and left foot during the second motor vehicle accident of May 5, 2009". In a second opinion Dr. Gilbert said "...I cannot see any evidence of her medical notes of documented clinical findings consistent with labral pathology that pre-existed this May 5, 2009 motor vehicle accident".

[46] Dr. Brian Day is a highly qualified orthopaedic surgeon who pioneered labral surgery. Based on his review of the clinical records he "could not find any direct correlation between her apparent ongoing disability with respect to the left hip joint and the motor vehicle accident of May 5, 2009". Following examination he continued of this view, noting that "There appears to be a significant history of recurrent hip problems that preceded the accident of May 5, 2009" and "There are also documented clinical findings consistent with labral pathology that pre-existed the motor vehicle accident". It was his opinion that the 2009 Accident was not the cause of the labral hip tear although he conceded in cross-examination that it may have aggravated a pre-existing injury.

[47] The Plaintiff says that her experts' opinions are to be preferred because her experts took a more detailed history, at least when confronted with the causation issue. That history revealed facts that allow them to pinpoint the cause of the labral

tear as the 2009 Accident. The Plaintiff says that Dr. Day produced his opinion without seeing her or taking a history, and when he did examine Ms. Foster he did so inevitably trammelled by his previous conclusion.

[48] The Defendants say that the opinion of Dr. Day is to be preferred over the other expert medical witnesses because he formed his opinion only after having done a more thorough review of the clinical records. Dr. Sam is Ms. Foster's long time general practitioner and more an advocate than an independent expert. Drs. O'Connor and Gilbert ignored the evidence of previous hip pathology and accepted unreliable accounts from Ms. Foster concerning her history, which might be summarized as "when I said 'hip' I really meant 'lower back'".

### **C. Discussion and Analysis**

[49] The causation issue concerns the most serious of Ms. Foster's injuries, the labral tear to her left hip. The clinical records show that Ms. Foster had previously reported pain in her hips to her family physician, Dr. Sam and to her chiropractor, Dr. Pollard.

[50] Dr. Sam testified that, prior to the 2009 Accident Ms. Foster's prior hip complaints involved pain in the posterior aspect of the hip and in the area of the low back. Following the 2009 Accident Ms. Foster's complaints were of pain in the anterior aspect of the hip and in the groin.

[51] Ms. Foster's reports eventually led Dr. Sam to suspect a labral tear in the left hip such that she ordered an MRI, which was done on February 1, 2010. The results of the MRI eventually crystallized in the diagnosis of a labral tear, a diagnosis with which all the medical practitioners agree.

[52] While I accept that Dr. Sam is Ms. Foster's long-time general practitioner, and for that reason a sympathetic listener, I do not consider her testimony before the Court to have been tainted by this fact. I also accept the evidence that complaints about non-specific pain in the hips can actually reference injury to the back.

[53] The previous complaints of hip pain date to late 2005 and early 2006. At that time Ms. Foster was a fitness instructor. There is no reference to hip pain following 2006, except in the record of Dr. Lim in November 2008 following his examination of Ms. Foster consequent to the Workplace Incident. That was not a matter of Ms. Foster presenting with a complaint of anterior hip pain, but rather Dr. Lim eliciting a report of hip pain on him performing interior rotation of the joint. Despite this report, Dr. Lim did not diagnose any injury to the hip.

[54] Ms. Foster was back to work within a few days of the Workplace Incident and there were no further reports of hip pain until after the 2009 Accident. When Ms. Foster returned to work in November 2008 she reported that she was able to perform all of the duties of an LPN as she had prior to the Workplace Incident. She continued to perform those duties until the 2009 Accident, and for several weeks thereafter. The employment records bear this out.

[55] These facts led to the opinions of Dr. O'Connor and Dr. Gilbert that the 2009 Accident, not the Workplace Incident, caused the labral tear in the left hip. Dr. Gilbert said that "Although she clearly did have some intermittent documentation of low back and 'hip' pain, I cannot see any evidence of her medical notes of documented clinical findings consistent with labral tear pathology that pre-existed this May 5, 2009 motor vehicle accident".

[56] Concerning the mechanism of injury, Dr. O'Connor considered Ms. Foster's reported leg position in the vehicle at the time of the 2009 Accident. Although the Defendant emphasized the nature of the collision as a factor for consideration, it has not been opined that such collision was incapable of creating the injury.

[57] On balance I accept the opinion evidence of Drs. O'Connor, Gilbert, and Sam over that of Dr. Day. On the evidence before me I find that, on a balance of probabilities, the 2009 Accident caused the labral tear in Ms. Foster's left hip. I accept the opinions of the physicians that the historical evidence of what Ms. Foster was able to do both before and after the 2009 Accident, in the context of the factual

matrix of this case, proves on a balance of probabilities that the labral tear occurred at the time of that accident.

[58] Concerning her other injuries there is no opinion evidence contrary to that of Dr. Sam, Dr. O'Connor and Dr. Gilbert. If I were to accept the Defendants submission that these injuries were overuse injuries that pre-existed the accidents, it would be based on speculation rather than evidence. I accept the evidence of the Plaintiff's experts that the right shoulder, neck and back injuries were caused or contributed to by the 2007 Accident. Ms. Foster experienced improvement in those injuries leading up to the 2009 Accident. Those injuries were also aggravated by the 2009 Accident.

[59] With respect to the knee injury, Ms. Foster reported a knee injury to Dr. Lim following the Workplace Incident. Dr. Lim noted that the knee was stable and had full range of motion. Thereafter Ms. Foster did not report any further left knee pain to her treatment providers until after the 2009 Accident. In my opinion her left knee injury is as a result of the 2009 Accident.

## **VI. Non-Pecuniary Damages**

[60] The rationale for non-pecuniary damages is articulated by the Supreme Court of Canada in *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 at p. 262. There the Court acknowledged that restitution is impossible and thus "[m]oney is awarded because it will serve a useful function in making up for what has been lost in the only way possible" since what has been lost cannot be directly replaced.

[61] In *Lindal v. Lindal*, [1981] 2 S.C.R. 629 the Court emphasized at p. 637 the need to appreciate the individual's loss, eschewing a 'tariff' and noting that the need for solace will not necessarily correlate with the seriousness of the injury, a matter emphasized by McLachlin J., as she then was in *Milina v. Bartsch*, (1985), 49 B.C.L.R. (2d) 33. The need for a particularized award was emphasized by the Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34. However, a plaintiff's stoicism should not penalize or minimize consideration of the injury: *Giang v. Clayton, Liang and Zheng*, 2005 BCCA 54 at paras. 54-55.



[62] The parties are significantly apart on non-pecuniary damages. The Plaintiff argues that non-pecuniary damages should be set at \$100,000, relying on *Grant v. Gonella*, 2008 BCSC 1454 (\$70,000), *Bove v. Lauritzen*, 2009 BCSC 1698 (\$70,000), *Gosal v. Singh*, 2009 BCSC 1471 (\$95,000), *MacKenzie v. Rogalasky*, 2011 BCSC 54 (\$100,000), *Fox v. Danis*, 2005 BCSC 102 (\$100,000), *Gosselin v. Neal*, 2010 BCSC 456 (\$100,000), *Foran v. Nguyen et. al.*, 2006 BCSC 605 (\$90,000), and *Crane v. Lee*, 2011 BCSC 898 (\$100,000).

[63] The Defendants say that non-pecuniary damages should be in the \$40,000 to \$60,000 range, distinguishing the cases cited by the Plaintiff and relying on cases such as *Pavlovic v. Shields and Pavlovic v. Dickinson*, 2009 BCSC 345 (\$40,000), *Wilkinson v. Whitlock*, 2011 BCSC 1781 (\$40,000), *Fortin v. Lowden*, 2009 BCSC 1123 (\$50,000), *Grant v. Gonella*, 2008 BCSC 1454 (\$70,000).

[64] In this case the Plaintiff suffered soft tissue injuries to the neck, back, knee, and shoulder and a labral tear to her left hip. Prior to the 2007 Accidents she led a physically demanding lifestyle working as a fitness instructor, and had a high level of physical fitness. She was, however, transitioning out of this employment at the time of the 2007 Accident, by training for career as an LPN that would not involve fitness as part of her daily employment activity.

[65] Ms. Foster was not entirely asymptomatic from her 2005 Accident at the time of the 2007 Accident. It is also apparent that she has had ongoing back issues that required periodic chiropractic treatment unrelated to the 2007 Accident and 2009 Accident. She also had an earlier knee injury that required surgery. These factors affect the “original position” to which Ms. Foster must be returned by the award of damages.

[66] I find it unlikely that Ms. Foster will have surgery to the labral tear, based on the opinions of Dr. O'Connor and Dr. Gilbert, whose opinions are to be preferred over that of Dr. Sam. Dr. O'Connor and Dr. Gilbert have more specialized experience in this area than Dr. Sam, who is a general family physician. While Ms. Foster experiences pain during her physically demanding employment activities,

she is able to take extended (one week or longer) motorcycle trips without any impairment that is apparent to her companions. The videotape evidence shows a cautious rider but not one prevented from enjoying this pursuit.

[67] Ms. Foster has suffered emotionally during periods where she has not been able to work. However, her emotional state has not prevented her from taking foreign holidays and motorcycle trips to the Sunshine Coast, Tofino, the East Kootenays and Idaho, and local trips to Chilliwack, Harrison Hot Springs and the Tri-cities area. Moreover, her emotional issues have had a variety of causes, including relationship issues which are admittedly unrelated to the two accidents.

[68] I have reviewed the cases provided by counsel. There are aspects of those cases that are helpful, but there are also differences that prevent direct application. The Defendants' cases generally involve less seriously injured persons. Many of the cases submitted by the Plaintiff involve a prognosis for chronic daily pain. That is not the prognosis for Ms. Foster. In the circumstances, I award \$75,000 in non-pecuniary damages.

**VII. Loss of Capital Asset / Earning Capacity**

[69] Ms. Foster claims damages for future loss of earning capacity in the amount of \$500,000. It is argued that the medical evidence shows Ms. Foster has a permanent partial disability and "cannot sustain her present occupation" such that it is anticipated that she "will have to go to part time hours, she will be seeking light work whenever it is available, and she will not be able to work overtime in any meaningful/longterm capacity".

[70] On the other hand the Defendants say that Ms. Foster's recent record of employment shows that she is able to work in excess of 40 hours a week for successive weeks, including more than 50 or 60 hours a week on a "not-infrequent basis". Since she returned to work in May 2011, she has not had any time loss owing to the issues she says were due to the accidents. According to the Defendants, Ms. Foster either has not shown any diminishment in earning capacity,

or if she has shown a substantial likelihood of sustaining pecuniary loss, it is minimal at best.

[71] The Plaintiff's estimate of loss of earning capacity involves certain assumptions, including working to age 70 and sustaining overtime work over much of that period. Neither of those assumptions, in my opinion, has been proven on a balance of probabilities as a reasonable assumption to apply to Ms. Foster but for the accident. That is, nothing in her past work history in my view supports these assumptions over the long term, nor is there statistical evidence that suggests these are reasonable assumptions to make for LPNs generally.

[72] Regarding capacity, in Dr. O'Connor's report of April 7, 2011 he opined that "At present, I do think that is capable of returning to work at her previous position in a graduated return to work fashion" although he also said that it is "too early to determine if she will be able to remain a durable employee at either part-time or potentially full-time intensity". Although there would be a challenge for her to maintain her physical condition and work he noted that "...she has made such good progress with the active strength and conditioning, there is quite a good chance that she will be able to cope with this with the passage of time".

[73] In fact, since Ms. Foster returned to work in May 2011, she has worked the hours set out in Schedule 1(although she also testified that such a schedule was not sustainable).

[74] This recent history certainly supports the proposition that Ms. Foster is capable of performing the duties of an LPN with extra hours over a period of 4-5 months, including work on night and evening shifts. I note that the work on evening shifts involves some of the heavier duties of an LPN. Ms. Foster says that she did this motivated in part by financial pressures. She also says this is not sustainable for a combination of reasons.

[75] The legal approach to considering such claims is aptly described in the decision of Garson J.A. in *Perren v. Lalari*, 2010 BCCA 140 at paras. 25-32, which I summarize as follows:

- (1) A plaintiff must first prove there is a real and substantial possibility of a future event leading to an income loss before the Court will embark on an assessment of the loss;
- (2) A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation;
- (3) A plaintiff may be able to prove that there is a substantial possibility of a future income loss despite having returned to his or her employment;
- (4) An inability to perform an occupation that is not a realistic alternative occupation is not proof of a future loss;
- (5) It is not the loss of earnings but rather the loss of earning capacity for which compensation must be made;
- (6) If the plaintiff discharges the burden of proof, then there must be quantification of that loss;
- (7) Two available methods of quantifying the loss are (a) an earnings approach or (b) a capital asset approach;
- (8) An earnings approach will be more useful when the loss is more easily measurable;
- (9) The capital asset approach will be more useful when the loss is not easily measurable.

[76] In my opinion the Plaintiff has met the initial burden of proof. That is, she has shown, based on her evidence and the medical opinions, that there is a real and substantial possibility of a future event leading to an income loss.

[77] The Plaintiff, although doing the job presently, is still impaired from performing the most difficult physical tasks of an LPN, which probably go beyond the de facto job description. She is at an increased risk for injury. Such an injury could entail time missed from work or even a period of retraining in some other area of the health care industry.

[78] Robert Carson, an economist, testified on behalf of the Plaintiff. Part of his evidence included what he called a “multiplier table”, which could be used to calculate the present value of any pattern of future earnings or loss of earnings. The multipliers were calculated using an annual discount rate of 2.5%, the rate required by s. 1(a) of the *Law and Equity Regulation*, B.C. Reg. 352/81. Madam Justice Deschamps explained it this way in *Townsend v. Kroppmanns*, [2004] 1 S.C.R. 315, 2004 SCC 10 at para. 5:

Compensation aims at restoring the victim to the position that person would have been in had no loss been incurred. Compensation is awarded in the form of a lump sum payment. The dollar amount received for future costs is actually lower than projected costs because it is assumed that the amount paid will be invested and will earn income before being used for future needs. The same reasoning applies for loss of future income. The victim is awarded a lower amount for income than that person would have actually earned at a future date. In other words, the amounts are discounted to reflect the present value of the expenses incurred or the income earned at a future date, taking inflation adjustments into consideration. The purpose of the discount rate is thus to insure that victims will be fully compensated but that defendants will not be called on to overpay.

[79] Although this methodology might be useful in some cases I do not find it helpful here in determining this loss. What I am considering are future or hypothetical possibilities. The method requires that I forecast losses into the future work period. There is simply no evidence before me that is capable of supporting the specific projections which would allow me to instantiate the variables in this method.

[80] This methodology, in another context, is known as a “discounted cash flow”. Instead of calculating the present value of future losses, the method is applied to calculate a present value of a stream of income. The method, while appearing mathematically precise, invites one to be captive of the method instead of exercising the broad judgment necessary for determination of such losses: see, for example, in another context the decision in *Cypress Anvil Mining Corp. v. Dickson* (1986), 8 B.C.L.R. (2d) 145 (C.A.).

[81] In British Columbia, it has long been established that the Court's task is to assess damages, not to calculate them according to some mathematical formula: *Mulholland (Guardian ad litem of) v. Riley Estate* (1995), 12 B.C.L.R. (3d) 428. The Court of Appeal for British Columbia explained the method of assessing loss of future earning capacity in *Rosvold v. Dunlop*, 2001 BCCA 1 at paras. 10-11:

[10] The trial judge's task is to assess the loss on a judgmental basis, taking into consideration all the relevant factors arising from the evidence: *Mazzuca v. Alexakis*, [1994] B.C.J. No. 2128 (S.C.) (Q.L.) at para. 121, aff'd [1997] B.C.J. No. 2178 (C.A.) (Q.L.). Guidance as to what factors may be relevant can be found in *Parypa v. Wickware*, *supra*, at para. 31; *Kwei v. Boisclair* (1991), 60 B.C.L.R. (2d) 126 (C.A.); and *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 (S.C.) *per* Finch J. They include:

- [1] whether the plaintiff has been rendered less capable overall from earning income from all types of employment;
- [2] whether the plaintiff is less marketable or attractive as an employee to potential employers;
- [3] whether the plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to him, had he not been injured; and
- [4] whether the plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

[11] The task of the court is to assess damages, not to calculate them according to some mathematical formula: *Mulholland (Guardian ad litem of) v. Riley Estate* (1995), 12 B.C.L.R. (3d) 248 (C.A.). Once impairment of a plaintiff's earning capacity as a capital asset has been established, that impairment must be valued. The valuation may involve a comparison of the likely future of the plaintiff if the accident had not happened with the plaintiff's likely future after the accident has happened. As a starting point, a trial judge may determine the present value of the difference between the amounts earned under those two scenarios. But if this is done, it is not to be the end of the inquiry: *Ryder (Guardian ad litem of) v. Jubbal*, [1995] B.C.J. No. 644 (C.A.) (Q.L.); *Parypa v. Wickware*, *supra*. The overall fairness and reasonableness of the award must be considered taking into account all the evidence.

[82] Mr. Carson estimated the current average full time earnings of LPNs working in public health care facilities to be \$49,900. Ms. Foster's LPN program took one year to complete although it is now a two-year program. Were some future event to require her to retrain she could lose up to twice that amount of annual income.

[83] There is some cost associated with retraining, however, these funds would be expended in the future, and these losses would occur in the future, so some discounting would apply. There are, of course, other contingencies that might cut short her working life, as well as positive contingencies. In the circumstances, in my view an award of \$125,000 is appropriate in this case.

#### **VIII. Past Loss of income**

[84] Ms. Foster claims past loss of income in the amount of approximately \$118,000. This is based on her working full time plus an additional 10-15 hours a week. Past income loss is calculated from May 5, 2009. The hours worked leading up to the accident of May 5, 2009 are set out in Schedule 2.

[85] Based on this information, and the other income figures in evidence I am not prepared to base past income loss on full-time work and doing an additional 10-15 hours per week. Although Ms. Foster said that absent her injuries she would have worked full time hours plus taken as much overtime as available, in my view the best indicator of that is past work history, rather than stated intentions. Of course, the availability of overtime work is something outside the control of the employee.

[86] Nor do I think it fair to base past wage loss on Ms. Foster's most recent work history. She indicated that she was in need of funds and worked exceptionally hard in the months leading up to trial. She also indicated that such a level of work was not sustainable. I do not think it appropriate to project that period backwards to calculate past wage loss.

[87] As I see it, the correct approach in this case is to base the award on Ms. Foster's previous work history, but reduce it by the period of time she was off work during elective surgery, and for an amount based on her history of unrelated work absences.

[88] In total, Ms. Foster was off work for between one and a half and two years, including accident-related sick days following her return to work. She should be compensated for those days, as well as for the loss of her employer-paid pension

contributions, which are not paid while an employee is on long term disability leave. That amount must be reduced for any time Ms. Foster would not have worked due to her unrelated surgery and occasional sick days.

[89] In my opinion, her gross past income loss is \$65,500, and I award damages based on this amount.

### **IX. Cost of Future Care**

[90] An award for cost of future care is a pecuniary claim for those expenses that may reasonably be expected to be expended in returning the injured party to the position she would have been in if she had not sustained the injury: *Andrews* at p. 241. The standard of proof is the balance of probabilities: *Athey* at para. 28.

[91] In *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9, [2002] 1 S.C.R. 205, the Court explained the method of assessing damages for future care at paras. 21-22:

Damages for cost of future care are a matter of prediction. No one knows the future. Yet the rule that damages must be assessed once and for all at the time of trial (subject to modification on appeal) requires courts to peer into the future and fix the damages for future care as best they can. In doing so, courts rely on the evidence as to what care is likely to be in the injured person's best interest. Then they calculate the present cost of providing that care and may make an adjustment for the contingency that the future may differ from what the evidence at trial indicates.

The resulting award may be said to reflect the reasonable or normal expectations of what the injured person will require. Jane Stapleton, "The Normal Expectancies Measure in Tort Damages" (1997), 113 *L.Q.R.* 257, thus suggests, at pp. 257-58, that the tort measure of compensatory damages may be described as the "normal expectancies' measure", a term which "more clearly describes the aim of awards of compensatory damages in tort: namely, to re-position the plaintiff to the destination he would normally have reached ... had it not been for the tort". The measure is objective, based on the evidence. This method produces a result fair to both the claimant and the defendant. The claimant receives damages for future losses, as best they can be ascertained. The defendant is required to compensate for those losses. To award less than what may reasonably be expected to be required is to give the plaintiff too little and unfairly advantage the defendant. To award more is to give the plaintiff a windfall and require the defendant to pay more than is fair.



[92] Because the overriding principle is returning the Plaintiff to the position she would be in had the injury not occurred, it is important that the Plaintiff not be overcompensated by an award of future care costs that includes costs that the Plaintiff would have incurred despite the accident. Accordingly, in cases like this one where the plaintiff will continue to lead basically be same life had she not been injured, but with the aid of additional assistance and physical facilities, Courts will total the cost of the extra assistance and facilities that the Plaintiff will require: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33, 30 A.C.W.S. (2d) 257 at para. 187. As I see it, this means that if a Plaintiff would have chosen to expend funds on recommended care in any event, those costs should not be included in the award for future care.

[93] The parties are again far apart on the cost of future care. The Plaintiff claims \$36,301 in future care costs, although that initial position was revised during final argument. In final argument, the Plaintiff conceded that the cost of future care award should not include the cost of a gym pass because Ms. Foster would likely have maintained a gym pass despite the accidents. I accept that concession, and will not include the gym pass in the award for cost of future care.

[94] The Plaintiff primarily relies on the recommendations made in an expert report prepared by Mr. Russell McNeill, an occupational therapist and work evaluator.

[95] The Defendants takes issue with many of Mr. McNeill's recommendations, and suggest an award of \$2,500.

[96] Mr. McNeill recommends that Ms. Foster attend a gym to perform pool-based exercises. He recommends six ninety-minute sessions with a kinesiologist to review and outline a light program for her. He advises that this will result in a total cost of \$540.00 plus mileage, travel time and applicable taxes. The Defendants point out that Ms. Foster indicated that she does not like the water and would not be likely to participate in a water-based program. If the evidence shows that a Plaintiff would not accept or use recommended care, that is a relevant consideration in determining the amount of a future care award: *O'Connell v. Yung*, 2012 BCCA 57 at para. 60. Based on Ms. Foster's own evidence, she would not be likely to use a pool-based

fitness program if one was designed for her. Accordingly, I decline to award Ms. Foster the cost of kinesiology sessions.

[97] Dr. O'Connor opined that Ms. Foster will require intermittent use of Tylenol or Advil. Mr. McNeill agreed, and estimated the cost at \$18.00 per month. The Defendants point out that Ms. Foster did not produce any receipts for Advil in her list of special damages. Accordingly, in the Defendants submission, payment for the cost of Advil is not justified.

[98] Although Ms. Foster did not produce receipts I accept that she had some of this expense. On the other hand, a physically active person, such as she was, and is, is likely to require use of this medication in any event. I would allow one half of this expense.

[99] Mr. McNeill recommends pain management devices such as hot and cold gel packs and a hot medicated patch to provide temporary relief or to reduce neck and back pain at a yearly cost of \$145.60 per year. Mr. McNeill also recommends several devices to assist Ms. Foster with her pain while sleeping: an aerus memory foam topper at a cost of \$429.99 to be replaced every three years; a contoured cervical pillow at a cost of \$89.95 to be replaced every year; a full body pillow at a cost of \$157.85 to be replaced every three years; and a back wedge at a cost of \$119.45 to be replaced every 5 years.

[100] The Defendants point out that Mr. McNeill admitted that each of these devices could be purchased at a much more reasonable cost from other suppliers. They also say that no physician has recommended these items, and that the Plaintiff may have been able to seek funding for these devices through her disability carrier. I decline to award any of these amounts.

[101] Mr. McNeill also recommends a back support for home and vehicle use at a cost of \$144.99 to be replaced every five years. I accept this item as a reasonable expense.

[102] Mr. McNeill recommends that Ms. Foster purchase a portable TENS machine at a cost of \$186.99, to be replaced every 10 years. The Tens machine would include that additional cost of replacing TENS electrodes at a cost of \$19.04 per year. He also opines that Ms. Foster would need six physiotherapy sessions to instruct her how to use the machine, for a total cost of \$360.00. The Defendants say that this is an extravagant recommendation, and point out that none of Ms. Foster's treating physicians have recommended this. They further say that the physiotherapy treatments to address the TENS machine are "overkill".

[103] Ms. Foster also claims for ongoing physiotherapy. In my view this claim overlaps with the claim for a continuation of physiotherapy.

[104] Ms. Foster asks for continuation of physiotherapy on an intermittent basis as recommended by Dr. Gilbert and Dr. O'Connor. She specifically requests 12 sessions per year at \$60.00 per session, for a cost of about \$720.00 per year for the balance of her working life. The Defendants say that Ms. Foster has already had a considerable amount of therapy. I allow this amount, based on a working life to age 65, and decline to award the costs associated with the purchase of a TENS machine

[105] Ms. Foster also requests homemaking expenses under the future care costs. She explains that her daughter has helped with many heavier household tasks. She says that in the future her daughter will no longer live with her, and Ms. Foster will require some assistance. Mr. McNeill recommends some homemaking assistive devices that will assist her in the future: a telescopic handy scrub, at a one-time cost of \$20.95; a telescopic handy scrub replacement head at a cost of \$15.95, to be replaced every year; a long handle toilet brush at a cost of \$14.95 to be replaced every two years; and a feather light vacuum at a cost of \$59.99 to be replaced every three years. The Defendants concede that these are appropriate expenses. I therefore accept that these are appropriate future care expenses.

[106] Finally, it is possible that Ms. Foster will require surgery to the labral tear of her left hip. If that circumstances arises, then Mr. McNeill recommends the following: three physiotherapy sessions per week for sixteen weeks, for a total cost

of \$2,880.00; six sessions with a kinesiologist to create an exercise therapy program at a cost of \$540.00, plus mileage and travel time; four hours of homemaking assistance per week for four months for a cost of \$1,547.00; a bathtub seat or shower chair at a one-time cost of \$129.99; a hand held shower at a one-time cost of \$73.25; a bathtub grab bar at a one-time cost of \$98.95; a shower grab bar at a one-time cost of \$229.00; non-slip bath mat at a one-time cost of \$189.99; and a Hip Kit at a one-time cost of \$123.85. The Defendants say that since future surgery is unlikely, any recommendations concerning care after such surgery should not be given any weight.

[107] The proper approach to awarding damages for hypothetical future events is set out in *Athey*. There, Mr. Justice Major explained that damages should be adjusted for contingencies. Hypothetical events need not be proven on the balance of probabilities. Instead, so long as they are real and substantial possibilities and not mere speculation, they are given weight according to their relative likelihood. Accordingly, if there is a 30% chance that a plaintiff will require surgery, then the damages award will be increased by 30% of the costs associated with that surgery: *Athey* at para. 27.

[108] In this case, Dr. O'Connor opined that there is a 10-20% chance that the Plaintiff will require surgery to repair the labral tear to her left hip. Accordingly, I will award her 15% of the future care costs associated with that surgery.

[109] However, I am not satisfied that all of the costs outlined by Mr. McNeill are reasonable. For example, Mr. McNeill opined that Mr. Foster would require a non-slip bath mat at a cost of \$189.99. In my view, this is an unreasonably high cost for a bath mat. I will accordingly reduce the cost of these items to values that I believe to be more reasonable.

[110] Unlike the quantification of loss of earning capacity, these ongoing costs are matters that are appropriate to apply the methodology suggested by Mr. Carson. I have evidence before me of the precise type of care that Ms. Foster may require in the future. The "multiplier tables" can be used to reduce the overall amount of this

award to account for contingent future events, as well as discount the probable cost to a present value. The amounts are set out in Schedule 3, below. In my opinion, Ms. Foster is entitled to \$19,336.09 for the cost of her future care.

**X. Special Damages**

[111] Consistent with the governing precept that an individual is to be restored to the position she would have been in had an accident not occurred (*Milina* at 78), the Plaintiff is entitled to recover for those reasonable expenses she incurred before trial arising out of the Defendants' negligence.

[112] The Plaintiff claims \$40,418.71 in special damages. She originally also included in her claim transportation costs. However, the Plaintiff conceded that the cost of transportation to and from appointments should be offset against the cost of not traveling to work, a concession that I accept. The amount of \$40,418.71 does not include the transportation costs.

[113] The Defendants accept a number of the Plaintiffs claims for special damages. Specifically, they agree to pay the costs of 18 physiotherapy sessions with Shannon Blackburn at a cost of \$270.00; as well as the cost of the MRIs.

[114] The Defendants also agree to compensate the Plaintiff for those benefits that she paid herself while on leave following the second accident, but asks that those benefits be pro-rated to account for the fact that the Plaintiff should have returned to work sooner. I have already rejected the argument that the Plaintiff ought to have returned to work sooner to mitigate her loss. Accordingly, I decline to pro-rate the costs of the self-paid benefits as requested by the Defendants.

[115] The Defendants say that a number of other expenses were not reasonably incurred or attributable to either accident.

[116] The Plaintiff also claims for expenses related to chiropractic visits with Westgate Wellness. The Defendants say that they should not be responsible for the fees associated with many of those visits because the Plaintiff has a history of

attending physiotherapy on a regular basis, and would have attended chiropractic sessions despite the accident. The Defendants also say that some of the physiotherapy visits should be attributed to the Plaintiff commencing her employment with Ridge Meadows Hospital. Accordingly, the Defendants submit that they should not be liable for half to two-thirds of the 26 visits in 2008; the three visits in 2009 that pre-date the second accident; half the remaining visits in 2009; and all visits in 2010 or 2011.

[117] I accept that the Plaintiff would have attended chiropractic sessions at a “maintenance” level- or one session per month- if the accidents had not occurred. As such, I will reduce the number of chiropractic sessions for which the defendants are liable by one per month since the First Accident.

[118] The Plaintiff claims expenses arising out of regular massage therapy treatments between November 2007 and December 2007, then again in February, March, May and June 2008, and sporadically thereafter until November 2009. The Defendants submit that only the first ten sessions, between November 2007 and December 12, 2007, are appropriate out of pocket expenses.

[119] The Defendants say that the latter sessions are not attributable to the accidents. In that respect, the Defendants rely on the notations in the chart from the latter visits indicating that the Plaintiff reported stress and the Workplace Incident to her massage therapist. The Defendants also rely on the long gap between the second accident and any massage therapy treatments for the proposition that the visits subsequent to the Second Accident cannot be attributed to that event.

[120] Ms. Foster did not have a history of attending massage therapy as she did for chiropractic visits. She sought a variety of treatments at various times in the course of her recovery. It should not be held against her that she only attended massage therapy sporadically as her condition improved. That said, she did report other incidents to her massage therapist that may have related to her decision to attend treatments. I would therefore allow the treatments between November 2007 and January 2008, and then half of the treatments thereafter.

[121] The Plaintiff claims expenses for pilates sessions commencing in March 2009. The Defendants dispute those expenses on the basis that they are not therapeutic treatments provided by a registered professional, relying on *Raguin v. Insurance Corporation of British Columbia*, 2011 BCCA 482. The Defendants also say that the Plaintiff only began attending the sessions nearly a year and a half after they were initially recommended by Dr. Sam, which they say supports the therapy is not properly attributed to the accidents.

[122] In *Raguin*, the Court considered whether massage therapy was a treatment that ICBC was obliged to pay for under s. 88(1) of the *Insurance (Motor Vehicle) Act Regulation*, B.C. Reg. 447/83. That provision provides that ICBC is obliged to pay reasonable expenses for physical therapy, amongst other types of therapy. The gravamen of that decision is that massage is included in physical therapy for the purposes of the *Insurance (Motor Vehicle) Act Regulation*. Of course, claims for special damages are not as limited as Part 7 “no-fault” benefits provided pursuant to statute and an insurance contract. Notably, however, in reaching their decision, the Court said at para. 59:

In this case, the respondents’ doctor recommended massage therapy as part of the infant plaintiffs’ recovery. There is no suggestion that the recommended treatment was unnecessary or provided by someone other than a registered massage therapist, or that the expense was unreasonable.

[123] In this case, pilates was recommended by Dr. Sam as part of the Plaintiff’s recovery following the first accident. Ms. Foster declined to heed Dr. Sam’s advice for some period of time. However, she did begin the program because of her discussions with Dr. Sam in an attempt to improve her physical condition following the accidents. I am therefore satisfied that the cost of the classes was reasonably incurred.

[124] The Plaintiff claims special damages for the expense of receiving naturopathic treatments at Kotopski Physiotherapist Corporation/naturopathic including B12 injections, herbal laxatives and energy formulas. The Defendants say that these treatments cannot be reasonably attributed to accidents. However, I note

that Ms. Foster attended Kotopski Physiotherapy at the suggestion of her physician. I accept that these treatments assisted her rehabilitation and would allow this expense.

[125] The Plaintiff additionally seeks compensation for the cost of her student loans. In her submission, had the accidents not occurred, she would have been able to work at Fraser Canyon Hospital and had her loans forgiven. The Defendants oppose those expenses, saying that the Plaintiff is still physically capable of returning to work at Fraser Canyon Hospital. They also point out that the Plaintiff had not applied for the loan forgiveness program at the time of the Second Accident. Further, in their submission, the Plaintiff has received a taxable benefit arising out of the payment of interest on the loans.

[126] I agree with the Defendants. The loss of ability to apply for a student loan forgiveness program is too remote of a possibility to qualify as special damages. The loans are not a reasonable expense incurred before trial as a result of the Plaintiffs' injuries. Moreover, it is not clear to me that Ms. Foster might not still qualify for such loan forgiveness.

[127] Special damages are also sought for payments made by Great West Life. These include physical therapy sessions with Momentum Therapeutics, which the defendants agree to pay since causation is proven for the labral tear.

[128] The fees paid by Great West Life also include user fees paid to Kotopski Physiotherapy, which the Defendants dispute because Dr. Sam should not have recommended the therapy in light of the fact that Mr. Kotopski was not, in fact, doing a study on labral tears. I have already explained why I believe that it was reasonable for Ms. Foster to attend that therapy, and the Defendants will be liable to Great West Life for the associated costs.

[129] Great West Life also paid benefits to Maureen Chapman for counselling services. The Defendants oppose paying for those expenses because the Plaintiff discussed matters with Ms. Chapman that are unrelated to either accident. While



this is true, I also accept that the accidents caused Ms. Foster some mental and emotional distress for which some counselling was necessary. Accordingly, the Defendants will be liable for one half of the fees associated with the counselling sessions.

[130] The Defendant did not address the benefits the Plaintiff paid herself during her leave. I accept that those are reasonable out-of-pocket expenses.

[131] A summary of those fees is included in Schedule 4, below. In total, the Plaintiff is entitled to \$17,563.09 in special damages.

**XI. Summary**

[132] The Defendants are liable for all of Ms. Foster’s injuries. In summary, in my opinion, the Plaintiff has established that she is entitled to the following damages:

<b>Description</b>	<b>Amount</b>
Non-Pecuniary Damages:	\$75,000.00
Loss of Capital asset/Earning Capacity:	\$125,000.00
Past Income Loss:	\$65,500.00
Cost of Future Care:	\$19,336.09
Special Damages:	\$17,653.09
<b>TOTAL:</b>	<b><u><u>\$302,489.18</u></u></b>

**XII. Costs**

[133] Unless counsel wish to bring to my attention some matters of which I am unaware, the Plaintiff is entitled to her costs on a party and party basis.

***“The Honourable Mr. Justice Savage”***

### Schedule 1

<b>Week Ending</b>	<b>Code</b>	<b>Total - Hours Worked</b>
28/04/11	GRTW R/R	12 @ reg = <b>12</b>
05/05/11	GRTW R/R	16 @ reg = <b>16</b>
12/05/11	GRTW R/R	26 @ reg = <b>26</b>
19/05/11	GRTW R/R LTD >20	28 @ reg = <b>28</b>
26/05/11	Regular GRTW R/R Stat Prm Eve @ 0.95	15 @ reg 7.5 @ stat prm 15 @ eve = <b>37.5</b>
02/06/11	Regular Swap Sft Eve @ 0.95	7.5 @ reg 22.5 @ eve = <b>30</b>
09/06/11	Sick Unpd Sck	9.660 sick pay = <b>0</b>
16/06/11	S TopLTD Orient'n LOA <20 LTD <20 Unpd Sck	7.5 @ reg = <b>7.5</b>
23/06/11	Reg Ngt @ 1.75 Wk @ 1.00	7.5 @ reg 7.5 @ ngt 15 @ ngt & wknd = <b>30</b>
30/06/11	Reg wk @ 1.00	22.5 @ reg 15 @ wknd = <b>37.5</b>
07/07/11	Reg WCB Net Unpd Sck Wk @ 1.00	15 @ wknd = <b>15</b>
14/07/11	Regular Sick WCB Net WCB Adj Unpd Sck Eve @ 0.95	15 @ reg = <b>15</b>
21/07/11	Regular LOA <20 Eve @ 0.95	15 @ reg 15 @ eve = <b>30</b>
28/07/11	Regular Sick Eve @ 0.95 Ngt @ 1.75	7.5 @ eve 7.5 @ ngt 7.5 @ ngt & wknd = <b>22.5</b>

Week Ending	Code	Total - Hours Worked
	Wk @ 1.00	
04/08/11	Regular Orient'n Stat Prm Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00	11 @ reg 7.5 @ eve .75 @ ngt 15 @ ngt & wknd 6.75 @ stat prm & ngt = <b>41</b>
11/08/11	Regular Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00	7.5 @ reg 7.5 @ eve 15 @ ngt & wknd = <b>30</b>
18/08/11	Regular Ngt @ 1.75 Wk @ 1.00	7.5 @ reg 7.5 @ ngt 15 @ ngt & wknd = <b>30</b>
25/08/11	Regular Swap sft Ngt @ 1.75 Wk @ 1.00	23.25 @ ngt 21.75 @ ngt & wknd = <b>45</b>
1/09/11	Sick Unpd Sck	= <b>0</b>
08/09/11	Regular Workload Unpd Sck Eve @ 0.95	15 @ eve = <b>15</b>
15/09/11	Regular Unpd cas Eve @ 0.95	15 @ eve = <b>15</b>
22/09/11	Regular Orient'n Ngt @ 1.75 Wkd @ 1.00	30 @ ngt incl 7.5 wknd 2 orientation = <b>32</b>
29/09/11	Regular Workload Sick Meal 1.0 Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00	7.5 @ eve 22.5 @ ngt 7.5 @ ngt & wknd = <b>37.5</b>
06/10/11	Regular O/T Meal 1.0 Banked Ngt @ 1.75 Wk @ 1.00	22.5 @ ngt 4.25 @ 2x ngt 15 @ ngt @ wknd 6.75 @ 2x nght & wknd = <b>48.5</b>

Week Ending	Code	Total - Hours Worked
13/10/11	Regular Workload Unsck Cas O/T RF Care Stat Prm Eve @ 0.95 Ngt @ 1.00 Meal/Heu OT Bal	30 @ ngt 15 @ eve & wknd 2 @ 1.5x eve & wknd 5.5 @ 2x eve & wknd = <b>52.5</b>
20/10/11	Regular Unsck Cas O/T Ngt @ 1.75 Wk @ 1.00 Meal/Heu	7.5 @ reg 2 @ 1.5x reg 2 @ 2x reg 15 @ ngt 4.25 @ 2x ngt 6.75 @ 2x ngt & wknd = <b>37.5</b>
27/10/11	Regular Workload Vacation O/T Meal @ 1.00 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	19.25 @ ngt 2 @ 1.5x ngt 2 @ 2x ngt 6.75 @ ngt & wknd = <b>30</b>
03/11/11	Regular Workload Med/Dtl Orient'n O/T Banked Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	11.5 reg 7.75 reg banked 7.5 wknd 7.5 eve 7.5 ngt 7.5 eve & wknd banked 2 @ 1.5x ngt 4 x 2x eve 5.5 @ 2x ngt & wknd = <b>60.75</b>
10/11/11	Regular Workload Vacation O/T Banked Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	2 @ 1.5x reg 3.25 @ 2x reg 2.5 @ ngt 7.5 @ eve 4 @ 1.5x eve 4 @ 2x eve 7.5 @ eve & wknd 12.5 @ ngt & wknd 2 @ 1.5x ngt & wknd 5.5 @ 2x ngt & wknd = <b>51.75</b>

Week Ending	Code	Total - Hours Worked
17/11/11	Regular Workload O/T Stat Prm Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	4 @ reg 7.5 @ eve 15 @ ngt 15 @ ngt & wknd 2 @ 1.5x ngt & wknd 2 @ 2x ngt & wknd = <b>45.5</b>
24/11/11	Regular Workload O/T Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	2.93 @ 1.5x reg 2 @ 2x reg 7.5 @ eve 2 @ 1.5x eve 5.5 @ 2x eve 22.5 @ ngt 7.5 @ 2x ngt 7.5 @ ngt & wknd 2 @ 1.5x ngt & wknd 2 @ 2x ngt & wknd = <b>61.43</b>
01/12/11	Regular Workload O/T Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	30 @ ngt 4 @ 1.5x ngt 4 @ 2x ngt 18.5 @ ngt & wknd 5.25 @ 2x eve = <b>61.75</b>
08/12/11	Regular Workload Sick O/T Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	30 @ ngt 2 @ 1.5x ngt 2 @ 2x ngt 11 @ ngt & wknd 4 @ 2x eve = <b>49</b>

## Schedule 2

Week Ending	Code	Total - Hours Worked
31/07/08	Orient'n	7.5 @ reg = <b>7.5</b>
07/08/08	Orient'n Eve @ 0.95	22.5 @ eve = <b>22.5</b>
14/08/08	Orient'n Eve @ 0.95	17 @ reg 7.5 @ eve = <b>24.5</b>
21/08/08	Orient'n	14.25 @ reg = <b>14.25</b>
28/08/08	Workload Orient'n Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00	7.5 @ ngt & wknd 7.5 @ eve & wknd 7.5 @ ngt = <b>22.5</b>
04/09/08	Regular Unpd Cas Eve @ 0.95 Wk @ 1.00	7.5 @ ngt & wknd 7.5 @ ngt = <b>15</b>
11/09/08	Regular LOA <20 O/T Eve @ 0.95 Meal/Heu	15 @ reg 2 @ 1.5x eve 6 @ 2x eve = <b>23</b>
18/09/08	Regular Orient'n O/T RF Vac Eve @ 0.95 Wk @ 1.00 Meal/Heu	15 @ reg 2.5 @ eve & wknd 4 @ 2x eve 2 @ 1.5x wknd 2 @ 2x wknd = <b>25.5</b>
25/09/08	Regular Workload LOA < 20 O/T Relief Eve @ 0.95 Wk @ 1.00 Meal/Heu	6.5 @ reg 7.5 @ eve 2.5 @ 1.5x eve 2 @ 2x eve 14.75 @ wknd 4 @ 2x wknd = <b>48.75</b>

Week Ending	Code	Total - Hours Worked
02/10/08	Regular Workload LOA < 20 O/T Banked O/T Eve @ 0.95 Ngt @ 1.75 Wk @ 1.00 Meal/Heu	= <b>26.25</b>
09/10/08	Regular	22.5 @ reg = <b>22.5</b>
16/10/08	Workload RF Sick Eve @ 0.95 Wk @ 1.00	7.5 @ eve 7.5 @ eve & wknd 5 @ wknd 3 workload = <b>23</b>
23/10/08	Regular Insuf No Insuf @ 2 Banked O/T Eve @ 0.95 Wk @ 1.00 Meal/Heu	7.5 @ eve 7.5 @ eve & wknd 4 @ 1.5x wknd 11.5 @ 2x wknd = <b>30.5</b>
30/10/08	Regular Banked O/T Wkd @ 1.00 Meal/Heu	7.5 @ reg 2 @ 1.5x 2 @ 2x 15 @ wknd 2 @ 1.5x wknd 2 @ 2x wknd = <b>30.5</b>
06/11/08	Regular Workload O/T Banked O/T RF Sick Eve @ 0.95 Wk @ 1.00 Meal/Heu	7.5 @ reg 9 @ 1.5x reg 0.5 @ 2x reg 15 @ eve 15 @ eve & wknd 2 @ 1.5x wknd 4 @ 2x wknd = <b>54.5 (+8.5 @ 1.5x??)</b>
13/11/08	Regular Workload O/T Relief Eve @ 0.95 Wk @ 1.00 Meal/Heu OT Bal	7.5 @ eve & wknd 2 @ 1.5x wknd 2 @ 2x wknd 22.5 @ eve 0.5 @ 1.5x reg = <b>34.5</b>

Week Ending	Code	Total - Hours Worked
20/11/08	Regular Sick O/T Eve @ 0.95 Wk @ 1.00 Meal/Heu	15 @ reg 7.5 @ 2x eve & wknd 11 @ 2x wknd = <b>33.5</b>
27/11/08	Sick Relief Eve @ 0.95 Wk @ 1.00	7.5 @ eve 7.5 @ eve & wknd = <b>15</b>
04/12/08	Regular Swap Sft O/T Relief Eve @ 0.95 Wk @ 1.00	7.5 @ reg 15 @ eve 5 @ 2x eve 7.5 @ eve & wknd = <b>35</b>
11/12/08	Regular Workload Insuf No. Insuf @ 2 Eve @ 0.95 Wk @ 1.00 OT Bal	11.5 @ reg 7.5 @ eve 3.5 @ wknd 2 @ 1.5x wknd 2 @ 2x wknd = <b>26.5</b>
18/12/08	Regular Relief Eve @ 0.95	7.5 @ reg 15 @ eve = <b>22.5</b>
25/12/08	Regular Workload Swaft Sft O/T Banked O/T Relief Eve @ 0.95 Wk @ 1.00 Meal/Heu	7.5 @ reg 0.5 @ 1.5x reg 7.5 @ 2x reg 14 @ wknd 15 @ eve 1.5 @ 1.5x eve 6.75 @ 2x eve 2 @ 1.5x eve & wknd 2 @ 2x eve & wknd = <b>60.75</b>
01/01/09	Sick Unpd Sck	15.867 @ sick pay = <b>0</b>
08/01/09	Unpd Sck	= <b>0</b>
15/01/09	Sick unpd Sck	4.180 @ sick pay = <b>0</b>
22/01/09	Regular OT Bal	7.5 @ reg 24 OT out = <b>7.5</b>



Week Ending	Code	Total - Hours Worked
29/01/09	Regular Workload Vacancy Banked O/T Eve @ 0.95 Wk @ 1.00 Meal/Heu	7.5 @ reg 7.75 @ 2x reg 4 @ 1.5x reg 4 @ 2x reg 15 @ wknd 7.5 @ eve 7.5 @ 2x eve = <b>53.25</b>
05/02/09	Regular O/T Relief Eve @ 0.95 Wk @ 1.00 OT Bal	22.5 @ eve 4 @ 2x eve 15 @ eve & wknd = <b>41.5</b>
12/02/09	Regular Workload Banked O/T Eve @ 0.95 Wk @ 1.00 Meal/Heu	22.5 @ reg 8 @ 2x reg 2 @ 1.5x eve 2 @ 2x eve 11.5 @ wknd 2 @ 1.5x wknd 2 @ 2x wknd = <b>53.5</b>
19/02/09	O/T Banked O/T Relief Eve @ 0.95 Wk @ 1.00 Meal/Heu OT Bal	11 @ 2x reg 7.5 @ wknd 11 @ 2x wknd 11.5 @ eve = <b>41</b>
26/02/09	Workload Vacancy Vacation Sick O/T Eve @ 0.95 Ngt @ 1.75 Meal/Heu	4 @ eve & ngt 3.5 vacancy 2 @ 1.5x ngt 5.5 @ 2x ngt = <b>15</b>
05/03/09	Sick Unpd Sck Unsck >20	3.257 Sick Pay = <b>0</b>
12/03/09	Regular Vacancy Eve @ 0.95 Wk @ 1.00	7.5 @ eve & wknd 22.5 @ eve = <b>30</b>

Week Ending	Code	Total - Hours Worked
19/03/09	Regular Vacancy O/T Banked O/T Relief Eve @ 0.95 Wk @ 1.00 Meal/Heu OT Bal	22.5 @ eve 7.5 @ wknd 7.5 @ 2x wknd 4 @ 2x eve & wknd = <b>41.5</b>
26/03/09	Regular LOA <20 LOA >20	15 @ reg = <b>15</b>
02/04/09	Sick Unsch >20 OT Bal	5.770 sick pay 70 O/T paid out = <b>0</b>
09/04/09	Regular Eve @ 0.95 Wk @ 1.00	7.5 @ super Stat 15 @ wknd = <b>22.5</b>
16/04/09	Regular Sup. Stat Wk @ 1.00	7.5 @ super Stat 15 @ wknd = <b>22.5</b>
23/04/09	Regular Eve @ 0.95	15 @ eve = <b>15</b>
30/04/09	Regular	15 @ reg = <b>15</b>
07/05/09	Orient'n	7.5 @ reg = <b>7.5</b>
14/05/09	Regular Vacancy Orient'n Eve @ 0.95	22.5 @ reg 7.5 @ eve = <b>30</b>

### Schedule 3

Frequency	Item/Service	Costs commencing in year	Amount	Present value multiplier	Present value of costs	HST	Total
<b>Pain management</b>							
Every 5 years	Obus forme back support	2012	\$144.99	4.464	\$647.24	\$77.67	\$724.90
<b>Rehabilitation/Health</b>							
Annual	Physiotherapy	2012	\$960.00	13.604	\$13,059.84	\$1567.18	\$14627.02
<b>Homemaking Expenses</b>							
One time	Telescopic handy scrub	2012	\$20.95	0.982	\$20.57	\$2.47	\$23.04
Annual	Telescopic handy scrub replacement	2012	\$15.95	20.284	\$323.53	\$38.82	\$362.35
Every 2 years	Long Handle Toilet brush	2012	\$14.95	10.392	\$25.34	\$3.04	\$28.38
Every 3 years	Feather light vacuum	2012	\$59.99	7.097	\$425.75	\$51.09	\$476.84
<b>Medication</b>							
Annual	Medication/Advil	2012	\$108.00	20.284	\$2190.24	\$262.82	\$2453.07
<b>Future Surgery</b>							
One time	Physiotherapy	2022	\$2,880.00	0.678	\$1,952.64		
One time	Exercise therapy	2022	\$540.00	0.678	\$366.12		
One Time	Assistive Devices						
	Bathtub/shower seat	2022	\$129.99	0.678	\$88.13		
	Hand held shower	2022	\$73.25	0.678	\$49.66		
	Grab bar	2022	\$229.00	0.678	\$155.26		
	non-slip bath mat	2022	\$100.00	0.678	\$67.80		
	hip kit	2022	\$123.85	0.678	\$83.97		
	homemaking assistance	2022	\$1,547.00	0.678	\$1,048.87		
Sub-total: surgery-contingent costs					\$3,812.45		
15%					\$571.87	\$68.62	\$640.49
<b>TOTAL</b>					<b>\$17,264.38</b>	<b>2,071.71</b>	<b>\$19,336.09</b>

### Schedule 4

Date	Paid To	Item	Amount
<b>Treatments</b>			
Nov 2/07	Westgate Wellness	Massage	32.00
Nov 5/07	Westgate Wellness	Massage	17.00
Nov 10/07	Westgate Wellness	Massage	17.00
Nov 14/07	Westgate Wellness	Massage	17.00
Nov 21/07	Westgate Wellness	Massage	30.00
Nov 29/07	Westgate Wellness	Massage	30.00
Dec 5/07	Westgate Wellness	Massage	30.00
Dec 7/07	Westgate Wellness	Massage	30.00
Dec 12/07	Westgate Wellness	Massage	30.00
Dec 19/07	Westgate Wellness	Massage	30.00
Feb 29/08	Westgate Wellness	Massage	30.00
May 28/08	Westgate Wellness	Massage	30.00
June 4/08	Westgate Wellness	Massage	30.00
June 18/08	Westgate Wellness	Massage	30.00
June 23/08	Westgate Wellness	Chiro	15.00
June 25/08	Westgate Wellness	Chiro	15.00
June 27/08	Westgate Wellness	Chiro	15.00
June 30/08	Westgate Wellness	Chiro	15.00
July 4/08	Westgate Wellness	Massage	40.00
July 4/08	Westgate Wellness	Chiro	15.00
July 7/08	Westgate Wellness	Chiro	15.00
July 9/08	Westgate Wellness	Chiro	15.00
July 16/08	Westgate Wellness	Chiro	38.00
July 28/08	Westgate Wellness	Chiro	25.00
July 30/08	Westgate Wellness	Chiro	25.00
Aug 8/08	Westgate Wellness	Chiro	25.00
Aug 20/08	Westgate Wellness	Chiro	25.00
Aug 22/08	Westgate Wellness	Chiro	25.00
Oct 3/08	Westgate Wellness	Chiro	25.00
Oct 11/08	Westgate Wellness	Chiro	25.00
Oct 22/08	Westgate Wellness	Chiro	25.00
Oct 27/08	Westgate Wellness	Chiro	25.00
Oct 29/08	Westgate Wellness	Chiro	25.00
Oct 29/08	Westgate Wellness	Massage	35.00
Nov 12/08	Westgate Wellness	Chiro	25.00
Nov 28/08	Westgate Wellness	Chiro	25.00
Jan 28/09	Westgate Wellness	Chiro	25.00
Mar 2/09	Fusion 3 Pilates	Personal training	525.00
Mar 31/09	Fusion 3 Pilates	Personal training	525.00
Apr 29/09	Fusion 3 Pilates	Personal training	262.50
June 2/09	Golden Ears Ortho	Physio	15.00
June 8/09	Golden Ears Ortho	Physio	15.00
June 15/09	Golden Ears ortho	Physio	15.00
June 17/09	Golden Ears Ortho	Physio	15.00
June 19/09	Golden Ears Ortho	Physio	15.00
June 22/09	Golden Ears Ortho	Physio	15.00

Date	Paid To	Item	Amount
Jul 8/09	Golden Ears Ortho	Physio	15.00
Jul 10/09	Golden Ears Ortho	Physio	15.00
Jul 13/09	Golden Ears Ortho	Physio	15.00
Jul 17/09	Golden Ears Ortho	Physio	15.00
Jul 21/09	Golden Ears Ortho	Physio	15.00
Jul 21/09	Golden Ears Ortho	Physio	15.00
Jul 29/09	Golden Ears Ortho	Physio	15.00
Jul 30/09	Golden Ears Ortho	Physio	15.00
Aug 6/09	Golden Ears Ortho	Physio	15.00
Aug 7/09	Golden Ears Ortho	Physio	15.00
Aug 9/10	Fusion 3 Pilates	Pilates personal Training	560.00
Aug 10/09	Fusion 3 Pilates	Personal training	525.00
Aug 18/09	Golden Ears Ortho	Physio	15.00
Aug 21/09	Golden Ears Ortho	Physio	15.00
Aug 25/09	Golden Ears Ortho	Physio	15.00
Nov 5/09		Massage	45.00
Dec 10/09	Fusion 3 Pilates	Pilates personal training	525.00
Feb 4/10	CMI	MRI Services (left hip arthrogram)	1095.00
Sept 2/10	Kotopski Physio	Naturopathic (Victor Chan)	64.20
Sept 8/10	Kotopski Physio	Naturopathic	64.20
Sept 10/10	Kotopski Physio	Naturopathic	64.20
Sept 21/10	Kotopski Physio	Naturopathic	64.20
Sept 21/10	Kotopski Physio	Naturopathic	25.90
Oct 20/10	Kotopski Physio	Naturopathic	64.20
Oct 27/10	Kotopski Physio	Naturopathic	64.20
Oct 27/10	Kotopski Physio	Naturopathic	64.60
Nov 2/10	CMI	MRI Services (Right Shoulder)	995.00
Dec 3/10	Fusion 3 Pilates	Pilates personal training	560.00
Jan 21/11	Westgate Wellness	Chiro	20.00
Jan 26/11	Westgate Wellness	Chiro	20.00
Feb 11/11	Westgate Wellness	Chiro	20.00
Feb 25/11	Westgate Wellness	Chiro	20.00
Jul 6/11	Westgate Wellness	Chiro	40.00
Dec 23/11	Westgate Wellness	Chiro	40.00
<b>TREATMENTS SUBTOTAL</b>			<b>\$7464.20</b>
<b>Great West Life Reimbursement</b>			
Sept 14/10	Kotopski Physio	Physio	50.00
Sept 23/10	Kotopski Physio	Physio	264.20
Oct 5/10	Kotopski Physio	Physio	135.80
Oct 4 & 12/10	Kotopski Physio	Physio	100.00
Nov 5/10	Kotopski Physio	Report	305.00
Jan 10/11	Kotopski Physio	Physio	270.00
Jan 3/11	Kotopski Physio	Physio	60.00
Jan 18/11	Kotopski Physio	Physio	60.00
Feb 1/11	Kotopski Physio	Physio	380.00
Dec 10 & 15/10	Kotopski Physio	Physio	120.00
Feb 17/11	Kotopski Physio	Physio	370.00

Date	Paid To	Item	Amount
Mar 3/11	Kotopski Physio	Kinesiologist	255.00
April 25/11	Kotopski Physio	Physio	300.00
Mar 11/11	Kotopski Physio	Physio	120.00
Jun 6/11	Kotopski Physio	Physio	120.00
Jun 20/11	Kotopski Physio	Report	125.00
Jan 10/11	Maureen Chapman	Counselling	490.00
Jul 7/11	Maureen Chapman	Counselling	175.00
Apr 6/10	Momentum Therapeutics	Report	200.00
Apr 6/10	Momentum Therapeutics	Assessment	95.00
Apr 6/10	Momentum Therapeutics	Chiro	75.00
Apr 6/10	Momentum Therapeutics	Chiro	75.00
Apr 6/10	Momentum Therapeutics	Chiro	75.00
Apr 6/10	Momentum Therapeutics	Chiro	75.00
Apr 22/10	Momentum Therapeutics	Chiro re-evaluation and report	140.00
May 4/10	Momentum Therapeutics	Chiro	300.00
Jul 6/10	Momentum Therapeutics	Chiro	375.00
Jan 20/11	Performance Institute	Assessment	135.00
Jul 11/11	Performance Institute	Physio	875.00
<b>SUBTOTAL: GREAT WEST LIFE REIMBURSEMENTS</b>			<b>\$6,120.00</b>
<b>Self-Paid benefits During Leave</b>			
Jul 1/09-Aug 31/09	Fraser Health	MSP	1046.44
Jul 1/09-Aug 31/09	Fraser Health	Dental	1007.53
Jul 1/09-Aug 31/09	Fraser Health	Exh	1497.60
Jun 17/09- Sept 9/09	Fraser Health	LTD	410.82
Jul 1/09-Aug 31/09	Fraser Health	Group Life/AD&D	16.50
<b>SUB TOTAL: SELF-PAID BENEFITS DURING LEAVE</b>			<b>\$3978.89</b>
<b>TOTAL SPECIAL DAMAGES</b>			<b>\$17,563.09</b>