

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JULIA ROSE MACGILLIVRAY

PLAINTIFF

AND:

LANE AUSTIN HOLTHE,
CANADIAN CAR AND TRUCK RENTAL LTD.

DEFENDANTS

PLAINTIFF'S BRIEF: OPENING SUBMISSIONS

INTRODUCTION OF THE RULES

1. Members of the jury, trials like this exist to make sure that there is a fair and just outcome when someone does something that harms another person.
2. This trial is the application of a fundamental rule in our society that you are responsible for what you do.
3. In this case, you are going to be asked to apply that rule in circumstances where someone causes serious injuries in an automobile collision.
4. My name is Monica Klimo and with me is Michael Huot. We have the honour of representing the Plaintiff, Ms. Julia MacGillivray in this trial. Ms. MacGillivray, you will learn, was injured in a serious car crash caused by the Defendant Lane Austin Holthe (the "Defendant Holthe").
5. In this opening statement, I am going to summarize the evidence and issues I expect in this trial.

THE ACCIDENT

6. The accident happened on March 10, 2016 at the intersection of 197a Street and 16th

Avenue in Langley, British Columbia.

7. Ms. MacGillivray was driving her 1994 Ford Mustang eastbound on 16th Avenue. She was stopped, waiting to turn left onto 197a Street. Two of her co-workers/friends were travelling with her.
8. The Defendant Holthe was driving a 2016 Dodge Ram truck that he leased from the Defendant Canadian Car and Truck Rental.
9. The Defendant Holthe was driving eastbound on 16th Avenue, approaching the intersection at 197a Street. He was driving above the speed limit and was not paying attention to the other vehicles on the roadway.
10. There was nothing obstructing the Defendant Holthe's visibility or view of intersection.
11. The Defendant Holthe crashes the Dodge Ram truck into the back of Ms. MacGillivray's vehicle.
12. The collision was violent and devastating, crushing the back of Ms. MacGillivray's car like a tin can.
13. The passenger in the back of Ms. MacGillivray's vehicle, Mr. Shaun Sutton, dies instantly.
14. As a result of the impact, Ms. MacGillivray has a gap of time in her memory and suffered a head injury – she believes she blacked out for a period of time.
15. The passenger in the front seat of Ms. MacGillivray's vehicle, Ms. Jodi Johnston, is screaming.
16. Ms. Johnston tells Ms. MacGillivray not to look in the back, but it is too late.
17. Ms. MacGillivray sees Mr. Sutton in the back of her car. It is obvious that he is dead – that image haunts Ms. MacGillivray to this day.
18. Both Ms. MacGillivray and Ms. Johnston try to get out of the vehicle but the doors will not open.
19. Ms. MacGillivray is frantic.
20. A person comes up to the side of her vehicle and smashes the passenger front window with a crow-bar so they can get out.
21. They crawl out through the broken window with some assistance.
22. Again, they see Mr. Sutton's dead body in the back seat.

23. The police and emergency vehicles are called to the scene.
24. A person puts blankets around Ms. MacGillivray and Ms. Johnston.
25. The ambulance arrives and both Ms. MacGillivray and Ms. Johnston are taken to Royal Columbian Hospital.
26. Ms. MacGillivray is treated and eventually discharged.
27. On March 16, 2016, six days after the Accident, Ms. MacGillivray attends to see Dr. Shore, her family physician. She reports that she “blacked out” in the collision and that she had headaches, neck pain, bilateral trapezius pain, and back pain. She was emotionally distraught over the loss of her friend. She was sleeping poorly. Dr. Shore diagnosed her with soft tissue injuries, concussion, and PTSD.
28. Over the following weeks and months it becomes apparent that Ms. MacGillivray was emotionally and psychologically traumatized by the accident, suffered ongoing pain, cognitive issues, depression, and severe anxiety.
29. In February 2017, Ms. MacGillivray attends for an MRI scan of the brain due to her ongoing cognitive issues. The MRI showed a lesion in the left premotor cortex at the grey-white matter junction consistent with a “hemorrhagic shear injury”. The MRI confirms that Ms. MacGillivray suffered a traumatic brain injury in the accident.
30. Over the following weeks and months, Ms. MacGillivray’s doctors recommend numerous treatments, therapies and medications. This has included two rounds of active rehabilitation, numerous chiropractic appointments, massage therapy, physiotherapy, pharmacotherapy and yoga. In addition, Ms. MacGillivray has attended for numerous counselling sessions.
31. Ms. MacGillivray has diligently done everything her doctors and therapists have recommended. To date, she has gone to almost 300 treatments and/or appointments but her pain and symptoms have not gone away.
32. In May 2017 Ms. MacGillivray began seeing Dr. Trent Faraday, G.P, with musculoskeletal interest. Dr. Faraday prepared a medical legal report that summarizes his diagnosis, prognosis and treatment of Ms. MacGillivray’s injuries. Dr. Faraday is going to testify in this trial and explain that Ms. MacGillivray’s injuries will affect her for the rest of her life.
33. Ms. MacGillivray has been assessed by very experienced medical experts, who are leading specialists in their respective fields.
34. They will explain to you that Ms. MacGillivray has been diagnosed with:

- a chronic pain condition,
- a traumatic brain injury,
- PTSD – post traumatic stress disorder
- depression,
- severe anxiety, and
- emotional injuries.

35. The medical experts will explain that the psychological injuries, by themselves, are disabling, however, the combined affect with physical injuries has been devastating!

36. Dr. Anton, Physiatrist, Dr. Anderson, Psychiatrist, and Dr. Kaushansky, Neuropsychologist, will explain at trial that Ms. MacGillivray's injuries are serious and that they will affect every aspect of her functioning. They will also explain that her injuries limit her ability to work and will cause lifelong disability and that she will need ongoing care for the rest of her life to maintain her current level of functioning and to help with the things that she can no longer do.

THE DEFENDANTS

37. I would like to talk briefly about our legal process and the people involved in this trial.

38. In a case like this, the injured person, Ms. MacGillivray, is called the "plaintiff" and she is required to sue the people that were involved in the accident.

39. You heard at the very beginning of this trial (when we doing the jury selection) who those people are.

40. Ms. MacGillivray is suing the Defendant Holthe because he was driving the vehicle involved in the accident.

41. Ms. MacGillivray is suing the Defendant Canadian Car and Truck Rental Ltd because they owned the vehicle that was leased to the Defendant Holthe.

42. Collectively, Lane Austin Holthe and Canadian Car and Truck Rental are called the "Defendants" in this trial.

43. As our learned trial judge will explain and you will see in a moment when I read you the Statement of Facts that the Defendants Counsel and the Plaintiff's Counsel have agreed occurred – the Defendants have admitted that they are negligent and wholly responsible for the accident. Ms. MacGillivray did nothing wrong.

44. The judge is going to instruct you about the law at the end of this case. One of the things the judge will explain is that the law requires you, the jury, to hold the Defendants responsible for any damage, injury, harm or financial loss they have caused Ms. MacGillivray.

45. The purpose of civil cases like this one is to make sure that there is fair, just and reasonable compensation for people, like Ms. MacGillivray, who have been harmed by the negligent actions of someone else.
46. Your job as the jury in this trial is to determine the fair compensation owed to Ms. MacGillivray for her injuries, harms and losses.

MS. MACGILLIVRAY'S BACKGROUND

47. To understand the impact of Ms. MacGillivray's injuries we will be calling witnesses at trial to explain her background and her goals for the future.
48. Ms. MacGillivray was born on December 12, 1997. She is now 21 years old.
49. At the time of the Accident, Ms. MacGillivray was 18 years old, she had just finished high-school at Langley Fundamental Secondary School and she lived at home with her parents and older brother.
50. In high school, Ms. MacGillivray was an average student but talented artistically. After high school, she hoped to work in hairdressing.
51. To further her goal of working in hairdressing, in high school Ms. MacGillivray did a work-experience placement at the ACEIT Apprenticeship Program and obtained, in January 2015, a hairdressing certificate.
52. Throughout high school, Ms. MacGillivray was a hard-worker and wanted to "pay her own way" – she started working at A&W in grade 12 so that she would have her own money.
53. In June 2015, when Ms. MacGillivray graduated high school, she continued working at A&W.
54. Prior to the Accident, Ms. MacGillivray was young, healthy, social, working and making money – she was looking forward to a very bright future, she planned to move out of her parent's house, and she had unlimited opportunities. She was at a pivotal time in her life.
55. She had nothing wrong with her: physically, psychologically, emotionally. She was like any other 18 year old girl.
56. She was the life of the party, had lots of friends, was empathetic and stable. She was outgoing and polite. Mature for her age.
57. She was a hard-worker.

58. She enjoyed dancing, music, singing, fashion, camping, dirt-biking and being with her friends.

IMPACT OF INJURIES ON EVERY ASPECT OF FUNCTIONING

59. The Accident has had a profound impact on all aspects of Ms. MacGillivray's life.

60. Physically, Ms. MacGillivray has changed. Following the Accident, she gained a lot of weight. Of recent, she has worked hard to lose it. Even though she is limited in what she can do, she has focused on her diet and has lost about 30 pounds.

61. Emotionally, Ms. MacGillivray is quite volatile – little things set her off and she becomes tearful and frustrated, she has lost her resilience and grit, at times she has thought “this is not a life worth living”.

62. Socially, Ms. MacGillivray has become isolated and rarely sees her friends because she cannot do the things they like to do.

63. The Accident has caused her severe anxiety, depression, PTSD, and cognitive difficulties – these things have completely changed her and limited her.

64. Because of these psychological disorders and her brain injury, she cannot solve problems, deal with conflict, focus, plan or multi-task.

65. At home, Ms. MacGillivray lives with her family and is embarrassed that she is unable to cope with many of the basic activities of daily living. She relies on her family to help with shopping, cooking, cleaning and driving to her numerous medical and therapeutic appointments – she has lost her independence and says that she just wants her life back.

66. Ms. MacGillivray's relationships have changed with her family and friends. As she has struggled to adjust to daily pain, depression, financial and physical dependence on others, her relationships have suffered.

67. We expect the evidence at trial from friends, family, co-workers and medical experts will show that Ms. MacGillivray's injuries have had a profound affect on every aspect of her life.

DAMAGES

68. The judge will tell you more explicitly and authoritatively what we have to prove and the law that will be applied in this case.

69. At the very beginning of this case I explained the rule that, when a driver is negligent and injures another person, they are required to compensate that person for all of their harms and losses.

70. In our system of justice, the judge will explain that the only way to make restitution is through an award or payment of monetary damages.

71. And that is why we are here, to make right the damages caused by the Defendants and to decide the fair and proper monetary damages Ms. MacGillivray should receive for the things that she has lost because of the Defendants' negligence.

72. And so, I want to finish off by summarizing what Ms. MacGillivray has lost and what you will be asked to compensate her for at the end of this trial.

- a. Ms. MacGillivray has lost her health and will live with chronic injuries for the rest of her life. At the end of the case, you will be asked to value Ms. MacGillivray's pain and suffering for her ongoing injuries and the impact this has had on his life;
- b. Ms. MacGillivray, as a result of her chronic injuries, has suffered a loss of her past and prospective housekeeping capacity. At the end of the case, you will be asked to value Ms. MacGillivray's diminished domestic capacity;
- c. Ms. MacGillivray has had her employment prospects and ability to work severely limited. Given her injuries and limitations, she is not competitively employable and is unlikely to get back to work in any meaningful capacity.

At the end of this case, you will be asked to value MacGillivray loss of income earning capacity, both in the past and that may reasonably arise in the future due to her injuries;

- d. Following the Accident, Ms. MacGillivray's mother, Ms. Antonella MacGillivray, provided and continues to provide Ms. MacGillivray with personal care and household assistance as a consequence of the injuries she sustained in the Accident. At the end of the case, you will be asked to value an in-trust claim on behalf and Ms. MacGillivray's mother, Ms. Antonella MacGillivray;
- e. Ms. MacGillivray will require ongoing medical treatments, therapy and medications for her injuries and these expenses may run to the end of her life. We have agreed with the Defendants what this amount is and I will tell you that in a moment; and
- f. Ms. MacGillivray has lost money she has spent on treatment, therapy, medication and travel to medical appointments in the 3.5 years since the Accident. These are called "out of pocket expenses" or "special damages". We have also agreed with the Defendants what that amount is and I will tell you that in a moment as well.

73. Over the course of this trial, you will hear from Julia MacGillivray herself, her mother,

her friends, other family members, her employers, her treating physician, and specialists.

74. We know you will do your best to consider what you hear and do your job as members of the jury.

Thank you for your attention and your involvement in this trial.