

SUPREME COURT OF NOVA SCOTIA

Citation: *Stephen v. Baker*, 2026 NSSC 112

Date: 20260414

Docket: Hfx No. 477984

Registry: Halifax

Between:

Wallace Stephen

Plaintiff

v.

Stephen William Baker, as representative of the Estate of Irene Baker and Stephen
William Baker

Defendants

Docket: Hfx No. 481100

Registry: Halifax

Between:

Wallace Stephen

Plaintiff

v.

Amber Seretha Gerrard

Defendant

DECISION

Judge: The Honourable Justice James L. Chipman

Heard: January 27, 30; February 2, 3, 9, 10, 11, 12, 13, 17, 18, 19, 23, 24, 25 and
26, 2026, in Halifax, Nova Scotia

Counsel: Brian Hebert, Mark Raftus and Ella Johnson (articled clerk), for the Plaintiff
Ian Dunbar, Robert Mroz and Audrey Fulham (articled clerk), for the Baker
Defendants
W. Harry Thurlow, K.C., Ben Johnson and Ailin Chant (articled clerk), for
the Gerrard Defendant

By the Court:

INTRODUCTION

[1] Almost ten years ago, Wallace (Wally) Stephen was involved in two car accidents, three months apart. The accidents were not overly serious, and whereas many involved in similar collisions may have had uncomplicated recoveries, Mr. Stephen has never recovered. Indeed, he has gone on to develop chronic pain and has received a diagnosis of somatic symptom disorder (SSD).

[2] Mr. Stephen alleges that his chronic pain and SSD are life altering. Given that he says his conditions were caused by the accidents, he seeks significant compensation from the drivers/owners of the cars that hit his vehicle in the accidents.

[3] Mr. Stephen originally commenced separate lawsuits against the defendants. By Order filed January 27, 2022, the parties consented to the lawsuits being heard together. The trial took place over the course of 15 days in the winter of this year. The plaintiff called himself, his wife, his two sons, his former business associate, three women from his community, six treatment providers, and four experts. As well, it was agreed that two of Mr. Stephen's physicians' files would be entered without the doctors being called as witnesses.

[4] The driver involved in the initial accident, Irene Baker, died before the trial, so the action was amended to name her estate. Ms. Baker's discovery evidence was entered as well as the report of Dr. Edwin Rosenberg, who also died before the trial began. The defendants called two other expert medical specialists and an actuary. The driver involved in the second accident, Amber Gerrard, was scheduled to testify but on the day she opened her case, she admitted liability.

[5] The parties consented to the admission of 46 exhibits, with the first exhibit consisting of six volumes and 3800 pages. Mr. Stephen was cross-examined on a surveillance videotape which was entered for the sole purpose of impeachment and not for the truth of its contents.

[6] Mr. Stephen testified over the course of five days. His testimony was not consecutive on account of snowstorms, a pre-arranged schedule with certain days off, and because he reported that he was unable to continue testifying for a day and a half due to pain. During his testimony Mr. Stephen sat in a high-back desk chair, provided by his lawyers. Once he completed his testimony, I permitted Mr. Stephen to observe the remainder of the trial via video link from his home. This

accommodation was requested at the pre-trial conferences and reiterated after Mr. Stephen finished his testimony. I granted the request due to the difficulties he expressed with attending in person, and given his agreement to sign an undertaking not to record the proceeding.

FIRST ACCIDENT

[7] The First Accident occurred on the morning of July 6, 2016, at a T-shaped intersection between Highway 357 and Highway 7 in Musquodoboit Harbour, Nova Scotia.

[8] The late Ms. Baker was driving a black 2008 Nissan, registered to Stephen Baker, on Highway 7, when she made a left turn toward Highway 357. There was no stop sign or any other traffic marking controlling Ms. Baker's left turn.

[9] Mr. Stephen was on Highway 357 in his 2014 Volkswagen Jetta, near the stop sign controlling his entrance to Highway 7.

[10] The weather conditions were clear, the roads were dry, and there were no issues with visibility. The speed limit on Highway 7 at the intersection where the First Accident occurred was 50 km/hour. The front driver's side fender of Ms. Baker's vehicle struck the front of Mr. Stephen's vehicle in the course of making the turn. Airbags did not deploy.

[11] Liability for the First Accident is in dispute. Mr. Stephen claims his vehicle was entirely behind the white stop line, that he was intending to turn right, and that he was stationary when the First Accident occurred. The Baker defendants dispute this and say that Mr. Stephen's vehicle was most likely moving across the yellow centre line intending to turn left, which led to his vehicle being struck by Ms. Baker's vehicle.

[12] The Baker defendants say that Ms. Baker was entitled to rely upon Mr. Stephen not having his vehicle partially in the left lane of Highway 357 when she was executing her turn. The Baker defendants assert that Mr. Stephen was negligent and that liability should be shared, with 25 percent attributable to Mr. Stephen.

[13] Mr. Stephen relies on the January 9, 2025, report of accident reconstruction expert, Gregory W. Sypher, P.Eng. The expert's conclusions regarding the First Collision are as follows:

Question 1: Did the collision take place in Wallace Stephen's lane of travel?

Yes. I am reasonably certain that Wallace Stephen's blue coloured 2014 Volkswagen Jetta TDI sedan was fully in the southbound lane of Highway 357 (Meagher's Grant Road) when the right front end of this vehicle was first contacted by the left front corner of the 2008 Nissan Altima 3.5 SE coupe being driven by Irene Baker (see the animations entitled "AERIAL.mp4", "NORTHEAST.mp4" and "SOUTHWEST.mp4" that accompany this report).

Question 2: Did the collision take place with Wallace Stephen's vehicle located behind the 'stop line' for his lane of travel?

Yes. I am reasonable certain that the front end of Wallace Stephen's sedan was located at or just rearward (north) of a white coloured painted 'stop line' for the southbound lane of Highway 357, at the intersection with Highway 7, as it was struck by the coupe being driven by Irene Baker (see the animations entitled "AERIAL.mp4", "NORTHEAST.mp4" and "SOUTHWEST.mp4" that accompany this report).

Question 3: Did the collision take place in the lane of travel assigned to Irene Baker, as she executed the left turn on the roadway?

No. I am reasonably certain that Irene Baker's coupe was completely in the oncoming (southbound) lane of Highway 357 as it struck the right front end of Wallace Stephen's sedan. This vehicle positioning explains why the coupe came to rest predominantly in the southbound (oncoming) lane of Highway 357, rather than the northbound lane. It also explains why the left front corner of the coupe collided with the right front corner of the sedan. Simply put, it appears that Irene Baker turned into the wrong (oncoming) travel lane as she turned left from Highway 7. A proper path for turning left from Highway 7 would have had the coupe travelling approximately five metres right of the path apparently taken by Baker's vehicle at the time of the collision (see the animation entitled "CORRECT PATH.mp4" that accompanies this report).

[Emphasis in original report]

[14] Mr. Sypher has been investigating motor vehicle accidents for 30 years, with the first half spent with Transport Canada and the last 15 years as a hired consultant. He was cross-examined on his report. He reviewed extensive documents before writing his report. He did not speak with the drivers.

[15] Mr. Sypher agreed that since he did not attend the scene or view the vehicles, his opinion is based on a "desktop" study. He did not have any computer information from the involved vehicles. His opinions are based on his analysis of the provided materials.

[16] He is aware that for the first accident, the RCMP did not issue any tickets. He said his role was to determine "what likely happened." He agreed that his thesis was

that Mr. Stephen's front tires were pushed over the center yellow line at impact. He said Mr. Stephen's vehicle "rotated and translated."

[17] Mr. Sypher believes that some of the Jetta's front end damage may have occurred because the vehicle was "hit again" in the process of the collision. He would not accept that Mr. Stephen's front tires were turned left as he approached the intersection. He agreed that his report does not include that Mr. Stephen said he had his brakes on at impact. He said the absence of skid or tire marks on the road could be because Mr. Stephen's foot slipped off the brake.

[18] Mr. Sypher said that he applied "physics and force factors" to surmise how the accident happened. He added that "Mr. Stephen's account results in the vehicles ending up where we observe." He testified that Mr. Stephen's vehicle was "significantly behind the stop sign." Conversely, Mr. Sypher stated, "I don't see a scenario Irene Baker describes that the vehicles end up in the positions they did." He added that "their final resting positions are indicative that Mr. Stephen was in his lane when stopped."

[19] Ms. Baker's discovery evidence establishes that Ms. Baker did not see Mr. Stephen's vehicle as she made the turn until the impact. She confirmed that the photos accurately depicted the damage to both vehicles and final resting location of both vehicles. She testified that she had taken the turn widely enough to turn into the proper lane of Highway 357 but could not explain how her car came to rest in Mr. Stephen's lane after the collision.

[20] Ms. Baker also testified that her view of Mr. Stephen's lane would have been unobstructed as she approached the intersection and began her turn, implying that she could have seen Mr. Stephen's vehicle if she had looked. She recalled that before the collision she was looking straight ahead, further down Highway 7. She did not sound her horn, hit the brakes, or take any other evasive action to avoid the impact.

[21] Ms. Baker recalled apologizing to Mr. Stephen but did not recall telling him that the collision was her fault. She agreed, however, that it was possible that she might have. She agreed that her car was written off. She stated that she had no evidence that Mr. Stephen had done anything to contribute to the collision or to support the allegations contained in the Baker Defence.

[22] On cross-examination Mr. Stephen did not agree that he was "not stopped" when the First Accident occurred. Shown post-accident scene photos of his vehicle with the front end somewhat over the yellow centre line, Mr. Stephen maintained

that the force of Ms. Baker's vehicle hitting his Jetta moved the car. Shown various photos of the damage to the front end of his car, Mr. Stephen held to his position that he was hit by Ms. Baker while stopped.

[23] On cross-examination Mr. Stephen agreed that the emergency room record refers to Ms. Baker traveling at 80 kms per hour when she hit him. Although he would not agree that she may have been driving at a slower speed, he agreed that the speed he gave at the hospital was "just a guess."

[24] On cross-examination Mr. Stephen was shown an appraisal estimate showing approximately \$10,000.00 in damage to his car. He agreed that on discovery he suggested that there was \$13,000.00 in damage to the Jetta. Mr. Stephen was not prepared to acknowledge the \$10,000 figure; "I'd rather see the final invoice." Mr. Stephen's car was subsequently repaired for \$8,325.76 and the Baker vehicle for \$7,875.05.

[25] Given the *viva voce* evidence of Mr. Stephen and Mr. Sypher (along with his report), coupled with the photos and the discovery evidence of the late Ms. Baker, I find that the July 6, 2016, accident occurred at about 10:15 a.m. on a sunny day. The accident happened while Mr. Stephen was stopped in his 2014 Volkswagen Jetta at a stop sign. I find that he was stopped approximately two feet behind the white stop line.

[26] In turning left at the intersection, Ms. Baker had the following duties under the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293:

- (a) s. 100 – duty to drive carefully;
- (b) s. 101 – duty to operate her vehicle at a careful and prudent rate of speed;
- (c) s. 118(b) – duty to turn onto a roadway to the right of the centre line; and
- (d) s. 119 – duty before turning from a direct line to first see that the movement can be made in safety when making a turn.

[27] *Tripp v. Peck*, [2000] N.S.J. No. 417 (S.C.) considered the standard of care for drivers making left turns at intersections. Justice MacAdam confirmed a driver's duty to ensure that the left turn may be made safely and to yield the right of way to any vehicle in the intersection or so close as to constitute an immediate hazard. Although that case dealt with a left turn in front of an oncoming vehicle, it is of assistance. At paras. 30-32, Justice MacAdam held:

30 The third party refers to ss. 118(1), 119(1) & (2) and 122(3) of the *Motor Vehicle Act*, R.S., c. 293 (herein "the *Act*"). These statutory provisions recite the onus on a driver turning left at an intersection, the obligation of the driver of a left turning vehicle to first see that the turn may be made in safety and to give a signal to any vehicle that may be affected by the turn, and the duty of the left turning vehicle to yield the right of way to any vehicle that has entered the intersection or is so close as to constitute an immediate hazard.

31 In her written pre trial submission, counsel for the third party references the dissenting reasons of Currie J. in *Robar v. MacKenzie*, [1952] 2 D.L.R. 678 (N.S.S.C.A.D.), and in particular at pg. 689:

A movement in front of oncoming traffic, whether it takes the form of wrongfully crossing at any intersection, or of what is known as "cutting in" after passing another car, or of turning in front of an oncoming car, is a movement fraught with grave and horrible consequences. It is a movement which in a frightening number of instances makes it difficult for an oncoming car to know what to do about a vehicle that is on its wrong side of the road in a sideways position.

32 The Supreme Court of Canada, in the unanimous reasons of Kellock J., appears to have adopted the position stated by Currie J. ([1953] 1 D.L.R. 449). The head note reads:

Where a vehicle turning left across a highway collides with another one approaching from the opposite direction, even presuming the latter vehicle to have been traveling in excess of a reasonable speed, unless there is evidence that its speed contributed to the accident there can be no basis for a finding of contributory negligence on the part of the operator of the approaching vehicle.

[28] Based on all of the evidence, I find that Ms. Baker, while driving her 2008 Nissan, attempted to turn left off of Highway 357 onto Highway 7. While doing so, she cut the corner too tightly such that the driver's side of her car clipped the front of Mr. Stephen's Jetta. Accordingly, I find the Baker defendants solely at fault for the First Accident. In this regard, I am not persuaded that Mr. Stephen contributed in any way to the cause of the First Accident. He was appropriately stopped in his lane of travel when Ms. Baker struck his car. On all of the evidence, I find that there was nothing he could have done to avoid the collision.

[29] Given that no contributory negligence arises when a defendant driver turns left in the path of an oncoming car, I find that there is no contributory negligence in this case. In all of the circumstances, I find that Mr. Stephen was stopped in his own lane at a stop sign at the intersection and was unable to avoid the collision. In the result, I find the Baker defendants one hundred percent liable for the First Accident.

SECOND ACCIDENT

[30] With respect to the Second Accident, the evidence confirms that on October 10, 2016, Ms. Gerrard's vehicle struck the rear of Mr. Stephen's vehicle on Highway 7 while he was stopped waiting to make a left turn. After the Second Accident, Mr. Stephen drove his vehicle home, which was about a kilometer from the scene, and sought treatment the next day.

[31] As Mr. Stephen was stopped on Highway 7 waiting to turn left onto Pearson Drive, he saw (through his rearview mirror) an "SUV coming into the back end of my car." He responded by taking his feet off the pedals and his hands off the steering wheel. He learned of this "strategy" through "driver training." On impact, he was pushed forward and his knees hit the dash. His body twisted and he instantly felt in "a great deal of pain."

[32] He was driving the same Jetta (repaired since the First Accident). The damage appraisal shows \$5,590.00 for repairs, primarily to the rear end of the Jetta.

[33] Given the *viva voce* evidence of Mr. Stephen and Mr. Sypher (along with his report), together with the exhibits, I find that the October 10, 2016, accident occurred at about 1 - 1:30 p.m. on a rainy afternoon. Given the facts and liability admission, I find Ms. Gerrard fully at fault for the Second Accident.

APPORTIONMENT BETWEEN THE ACCIDENTS

[34] The parties took no position on apportionment. On all of the evidence, I find that the defendants are equally responsible for the damages owing to the plaintiff.

WALLACE STEPHEN - BACKGROUND

[35] Mr. Stephen, age 68, lives in Gaetz Brook with his common law spouse of 26 years, Mary-Alice Betlam. They each have two adult sons from previous marriages. The couple have eight grandchildren. Mr. Stephen's 93-year-old mother suffers with severe dementia. His father died roughly twenty years ago.

[36] Mr. Stephen graduated high school from King's (now King's-Edgehill) in Windsor, Nova Scotia, in 1976. He went on to University of King's College in Halifax, graduating with a Bachelor of Arts degree in 1980. Over the years through his employment, he took various courses.

Pre-Accident Employment / Unemployment and Various Businesses

[37] Mr. Stephen worked in numerous jobs over a period of approximately 35 years. He moved to Toronto in the early 80s and started as a driver with Insurance Courier Service. Over time, he advanced to a management position and then left for a job with Sameday Courier, coordinating air transportation. By the mid 80s, the plaintiff moved on to a job as operations supervisor with CP Express. Around 1987, he left this position to become a franchisee for a national courier company. He then sold the franchise and became employed by Newfoundland Capital Corporation (NCC), selling advertising.

[38] After approximately eight years with NCC, Mr. Stephen left on account of a “personal crisis.” He separated from his first wife in 1997 and was going through a divorce. He became self-employed, forming Wallace Stephen and Associates. He spent a great deal of time co-parenting his sons. This included volunteering as a leader with Beavers and later with Scouts. By the late 90s, Mr. Stephen also began volunteering with local political campaigns.

[39] After a brief stint working in sales with Advocate Printing, Mr. Stephen was hired by Creative Atlantic where he worked in sales between 1999 – 2001. His next job was in account management with Ryan Burkin Design. He left this company to start his own business, Pavlov Marketing. After 3 – 4 years of being self-employed, Mr. Stephen took a position with Chebucto Publishing.

[40] By 2007, Mr. Stephen and Ms. Betlam wanted to buy their own home. Given that the lending institution required “T-4 income”, he left Chebucto and took a sales position for a year with News 95-7.

[41] After his time with the radio station, Mr. Stephen worked as a paid campaign manager for a number of NDP campaigns in Nova Scotia and for one in St. John’s, Newfoundland. He then took a marketing and management consultant position with MacDonald Fencing. While in this role, he was offered a paid position by Martin Singh, a national NDP leadership aspirant. Mr. Stephen accepted and worked as campaign manager for seven months, ending in March 2012.

[42] In the spring of 2012, Mr. Stephen became unemployed, albeit he worked on a New Brunswick political campaign for perhaps five weeks. He then found employment in sales with Town and Country Homes (T&C). Over the course of two years with T&C, Mr. Stephen sold approximately a dozen homes. Mr. Stephen had an opportunity to purchase T&C; however, in the process of exploring this possibility, he learned that T&C sold to Prestige Homes.

[43] When Mr. Stephen was considering purchasing T&C he connected with Nathan Hill, the brother of Martin (Hill) Singh. Mr. Stephen became close with Mr. Hill during Mr. Singh's campaign. Mr. Stephen described Mr. Hill as a "business guy," adding that Mr. Hill offered to finance a future project for Mr. Stephen.

[44] While in negotiations to buy T&C, Mr. Stephen collaborated with Mr. Hill. Mr. Stephen wrote out a "SWOT analysis", analyzing T&C's "strengths, weaknesses, opportunities and threats."

[45] Once Prestige Homes took over T&C, Mr. Stephen was getting ready to leave when they approached him to stay on. Mr. Stephen accepted their offer in September 2014; however, by his own admission, Mr. Stephen was "not a fit" and they parted ways within three months.

[46] On cross-examination Mr. Stephen was taken through his employment history in a very detailed fashion. He ultimately conceded that when he started a convenience store in 2015, this was his 23rd job / business venture within 35 years. Shown various records, he acknowledged four significant times off work within his career. Further, through the records, he accepted that several of his terminations were for failing to meet sales targets and not being the "right fit." He also agreed that over the years, the records confirm that he averaged a year to a year and a half in one position.

[47] With respect to his history of RSP withdrawals, he concurred that they were as follows:

YEAR	AMOUNT
2013	\$16,794.00
2014	\$ 2,778.00
2015	\$ 9,983.00
2016	\$ 6,699.00
TOTAL	\$36,154.00

[48] He agreed that the 2016 withdrawal represented the last of his RSP funds. He stated that the pre-2015 RSP withdrawals were "to keep the boat afloat", as he had no other sources of income. He accepted that as of 2016, he had no retirement savings and that if he was not successful with business ventures, he would only receive (what he relies on now), CPP income.

[49] Mr. Stephen's sole source of income is his government of Canada old age pension. His wife contributes by cleaning houses and taking shifts at a local

convenience store “to keep us afloat.” Mr. Stephen said he would work if he could, but that his injuries and their effects make it such that he “cannot be relied upon in a consistent way.” He added that he is “classified as handicapped by the government of Canada.”

Central Energy Systems Limited (CES)

[50] Between December 2014 and September 2015, Mr. Stephen was unemployed and drew employment insurance (EI) benefits. During this time, he looked for jobs and business opportunities. He ultimately decided to start up a heat pump business. He discussed his idea for selling and installing ductless mini split heat pumps with Mr. Hill, who agreed to help him launch the company. Mr. Hill agreed to provide modest financial backing and an initial source of business. He would be a “50 percent partner” for the company, CES.

[51] On May 26, 2015, Messrs. Stephen and Hill signed a Shareholders Agreement (SA). It was agreed that Mr. Stephen would operate the business while Mr. Hill would be the “silent investor.” CES was financed by way of two \$5,000.00 credit cards issued by the Bank of Montreal. Mr. Hill also contributed approximately \$2,000.00 for the development of a company website.

[52] Messrs. Stephen and Hill agreed that year-end profits were to be divided on an equal basis between themselves. Clause 12.1(d) of the SA reads:

The Board of Directors shall seek and follow the direction of the Shareholder in determining whether to distribute the profits by way of wage, salary, bonus, service fee, management fee or dividends, or a combination thereof, taking into account in good faith the reasonable requests of the Shareholders in that regard, and the objective of equalizing the pre-tax entitlements of the Shareholders to the profits of the Company.

[53] The CES business model (which was followed for the duration of the company) involved customers providing a 50 percent deposit, with the balance to be paid once the equipment was installed. The equipment wholesaler was Wolseley Canada, distributors of LG heat pumps. If a customer required financing, lending would be arranged through RBC or a class B or C lender. Mr. Stephen did the leg work to establish these line of credit financing options.

[54] CES’s office was in Mr. Stephen’s house; however, he subsequently set up a show room in a Musquodoboit Harbour building owned by Mr. Hill. The show room

did not prove to be conducive to sales. In any event, Mr. Stephen eventually had products shipped to his (soon to be opened) store in Musquodoboit Harbour.

[55] Under his agreement with Mr. Hill, Mr. Stephen's remuneration was \$1,000.00 per heat pump interior "head." As well, Mr. Stephen was to receive dividends, albeit none were paid out at the time of the First Accident.

[56] Messrs. Stephen and Hill came up with what Mr. Stephen described as a "formal business plan." He referred to a "mind map" (a concentric diagram he prepared) as evidence of "all things we were exploring." By Mr. Stephen's estimation, he "was doing a lot of planning, selling." Promotion of the business occurred through CES's website, newspaper advertisements, and signage placed in and around Musquodoboit Harbour and Elmsdale. The latter community was tapped given that a salesman, Randy Van Zeumesen, lived there. Mr. Van Zeumesen received commissions for sales. The heat pump installers were P.T. Fisher and one of Mr. Stephen's sons, Zachery Stephen.

[57] Asked about long-term plans for CES, Mr. Stephen answered, "Continued expansion," citing Elmsdale and an aborted expansion into Ottawa.

[58] Mr. Stephen's role involved what would typically be an initial 1 – 1.5-hour home visit. He carried out an inside and outside home perimeter inspection and examined the electrical panel. The house was measured, and Mr. Stephen determined its volume along with the heat pump(s) placement and capacity. If the prospect was interested, Mr. Stephen would prepare a formal quotation. If the customer signed and paid (50 percent), the job would be scheduled, and Mr. Stephen would place the order with Wolseley. If required by the customer, Mr. Stephen arranged financing.

[59] During the "early days" of installations, Mr. Stephen usually attended and assisted the installers and electrician as a "gofer." He prepared the final invoice and while on site, did the final collection.

[60] With respect to CES's finances, Mr. Stephen agreed that the company sent funds to his convenience store through transfers, totalling \$12,700.00. He agreed that there are no documents explaining what the transfer of funds were for. He added that CES lent the money "to cover rent or payroll." He agreed that his store did not repay the funds.

[61] Mr. Stephen was taken through a series of financial documents demonstrating that CES extended funds to his store. Asked about the details of various loans, Mr.

Stephen answered, “Again, these documents were prepared by the accountants and they made the decisions.” Although he maintained that he “did focus on finances at the micro level in 2015 and 2016,” the documents were provided to his accountants in subsequent years.

[62] On cross-examination Mr. Stephen agreed that of the 32 CES invoices, perhaps half pertained to friends or family.

[63] Mr. Stephen agreed that CES’s first sales (to three individuals closely connected to the plaintiff) did not take place until May 2015. He was shown further invoices and agreed that CES’s sales did not double in the first half of 2016; however, he qualified this by adding, “I made my calculations based on the number of units [sold], not [number of] invoices.”

[64] Mr. Stephen admitted that CES’s sales did not double in the first half of 2016. Shown CES income statements, it was put to Mr. Stephen that the cost of their subcontractors significantly increased over time. Mr. Stephen replied, as he did to many of the questions referable to financials, “I relied on the accountant to do all of this.” He agreed that there are no documents demonstrating that the invoices were actually collected.

[65] Mr. Stephen was asked about a \$100,000.00 dividend he received from CES. This was paid out in 2018 but attributed to 2015 and 2016. He agreed that the 2015 and 2016 revenues did not account for how this money could have been dispersed. He acknowledged that Mr. Hill did not receive a like dividend. Pressed for details, Mr. Stephen again deferred to his accountant and added, “I don’t get into the minute details ...it wasn’t a matter of me getting \$100,000.00, if that’s what you’re saying.” Mr. Stephen was then reminded of his April 18, 2024, motion and his cross-examination answers; he acknowledged receiving \$56,2018 in 2016 as “cash extracted from CES.”

[66] Mr. Stephen agreed that “a small amount” of heat pumps were sold in 2017, 2018 and 2019. Although he maintained that the dividend money came from heat pump sales, he agreed that none of the years produced “an extra \$50,000.00.”

[67] Mr. Stephen was shown various CES credit card expenditures, including transactions in New Brunswick, Quebec and Ontario in late 2015. He could not recall if he took a trip. He denied using the card for personal expenses, albeit he acknowledged that CES did not sell heat pumps outside of Nova Scotia. He then said

that he could not recall if he sold heat pumps on this trip, adding that any personal expenditures “would be accounted for as money coming to me.”

Musgo Convenience (Musgo)

[68] Mr. Hill owned a building located at 7907 Trunk 7, Musquodoboit Harbour, which housed a pizza take-out and convenience store. By 2015 the lessee was encountering financial difficulty. Mr. Hill approached Mr. Stephen, asking if he knew of anyone who might want to operate a similar business. The plaintiff discussed the possibility with his wife, and they decided to open Musgo. They incorporated on January 12, 2016, and their business name was registered soon thereafter. The business had three shareholders: Mr. Hill (through a holding company), Mr. Stephen, and Ms. Betlam. None of the shareholders put up funds. The business was financed (\$85,000.00) by Mr. Hill through RBC. There was no formal business plan.

[69] In addition to the \$85,000.00 initial loan, Mr. Hill backed two \$5,000.00 credit cards for Musgo’s operations. A Loan Agreement (LA) was signed, securing a private loan with one of Mr. Hill’s business colleagues, Albert Fudge. The LA was to have been paid out over six months; however, the time period was extended and “eventually paid.”

[70] Mr. Stephen agreed on cross-examination that Mr. Hill obtained financing from RBC by signing as a guarantor. He acknowledged that the building where the store was located was owned by Mr. Hill and that this was collateral for the loan. In March 2016 an additional loan of \$25,000.00 was obtained from Mr. Fudge at an interest rate of 12 percent.

[71] A five-year lease was prepared between Musgo and another of Mr. Hill’s companies. Mr. Stephen approached the former tenant about purchasing their equipment and fixtures. Given their asking price, Mr. Stephen ended up purchasing new equipment and fixtures. He then carried out renovations and cleaning. At the same time, approval and permits were secured, and an Atlantic Lottery license was obtained. After the final inspection, Musgo opened on April 13, 2016, and the kitchen was up and running by mid-May 2016.

[72] The front of Musgo was stocked with products purchased from TRA, a division of Sobeys. The kitchen menu was developed by Mr. Stephen and his wife. Ms. Betlam ran Musgo on a daily basis, with Mr. Stephen opening the store on

weekdays, working from 6 – 10 a.m. As well, Mr. Stephen usually worked two evenings a week and the weekend nights.

[73] Mr. Stephen described his (pre-accidents) routine once Musgo opened as getting up around 5 a.m. to open the store at 6 a.m. After his shift was over at 10 a.m., he would often meet with his accountant or do a supply run in Halifax. Mr. Stephen also routinely relieved his wife at the store. As well, he attended to CES business on a regular basis. Mr. Stephen estimated that he was working 80-90 hours per week in the time leading up to the accidents.

[74] Ms. Betlam ordered the food inventory and Mr. Stephen shopped for it at a wholesale store on Chebucto Road in Halifax. Ms. Betlam looked after staffing and inventory control. Items were scanned at point of sale, which provided regular reporting.

[75] Mr. Stephen described being “at a 40,000-foot level, I was monitoring profit and loss, I did category analysing.” He was initially placed on Musgo’s payroll, grossing \$1,100.00 every two weeks. He thought this was roughly based on “\$25.00 an hour for twenty hours a week.” Referring to himself and his wife, Mr. Stephen stated, “We were basically salaried.”

[76] Prior to the First Accident, Mr. Stephen had plans to expand Musgo. He conducted a SWOT analysis, determining that a single entity store was “marginal at best.” His goal was to expand to five to ten stores and thought that there were opportunities. He explained that by having more stores, there were economies of scale. Ultimately, Mr. Stephen forecast selling a number of stores as a package to a bigger company.

[77] Prior to the First Accident, Mr. Stephen “started negotiating a second location in Lake Echo ...we got to the point of due diligence.” He added that he and Mr. Hill “were only interested if we could buy the building.”

[78] Mr. Stephen’s plan involved meals ready to go (“MRG”), as well as “freeze to go” pizzas. He also described a “social enterprise” involving delivering groceries to several nearby group homes. Although this service was “not so much” for profit, the plaintiff said the products would be “guaranteed sold, always fresh.” Mr. Stephen took on this project and negotiated through the spring of 2016 with Metro Community Housing (partially owned by Mr. Fudge). He elaborated that Metro’s 32 group homes presented “quite a logistical challenge.”

[79] Mr. Stephen said his plan to build up and sell his business was “effectively my RSP.” Whereas Musgo was “quite a challenge,” he “very much enjoyed” CES and wanted to work “until at least 70.” Prior to the First Accident, Mr. Stephen drew out his remaining \$9,883.00 RSP in 2015, leaving him with no savings at the time of the First Accident.

[80] On cross-examination he agreed that Musgo’s monthly rent was \$4,218.00. After being taken through detailed records, Mr. Stephen agreed that Mr. Hill entirely forgave rent or accepted partial payment over the course of Musgo. As of November 26, 2022, there were rental arrears of \$230,862.00.

[81] On cross-examination Mr. Stephen agreed that he swore to an affidavit on March 25, 2024, as part of his motion for summary judgment and an interim payment. He described himself as follows at para. 10 of his affidavit:

I have been a “serial entrepreneur” my whole life and have managed my corporate and tax affairs with a businessman’s intellect and lived well as a result.

[82] He added that he “feels this way now.” Challenged with his work history showing three attempts in 35 years to start his own business, Mr. Stephen said, “I believe there were more than three, in the workplace for others I was entrepreneurial.”

[83] On cross-examination Mr. Stephen said that Musgo’s location was “very important” for business. He agreed that a large part of this was the proximity of the local high school. The students provided business and a staffing source. He was taken through Musgo’s sales showing revenue as follows:

YEAR	SALES REVENUE
2016	\$360,000.00
2017	\$430,000.00
2018	\$521,000.00
2019	\$671,000.00
2020	\$486,000.00
2021	\$479,000.00
2022	\$211,000.00

[84] On cross-examination Mr. Stephen agreed that an August 2019 review demonstrated that Musgo was “tracking 42 percent higher than the previous year.” He credited this to “M-A’s excellent job in running Musgo.” He agreed with his discovery evidence that this was due to a “combination of things,” including his

wife's efforts, and that they had "developed the kitchen and there was a recent closing of another [nearby convenience] store."

[85] He acknowledged that 2019 represented the "peak of sales." The plaintiff was then asked about the 2019 opening of another convenience store, Route 66. He agreed that the new store had gas pumps and that a Tim Horton's opened beside it. He acknowledged that both new businesses were located closer to the high school than Musgo.

[86] Mr. Stephen was asked about the nearby high school closing and moving to a new building in the East Chezzetcook Industrial Park. He agreed that the new high school was about a 12-minute drive from Musgo and "not walkable." He acknowledged that this change had a "negative impact" on Musgo, as they lost the students' business and a potential staffing pool. It was put to the plaintiff that Musgo would lose about 20 percent of its business and he "believed that was a potentiality." He added, "I don't know" when asked if a 20 percent drop in business could seriously jeopardize the viability of Musgo.

[87] Mr. Stephen was asked about an Application for Judicial Review which he filed along with two other individuals in the Supreme Court of Nova Scotia in 2021. He confirmed his involvement in the proceeding and agreed that he swore a March 10, 2021, affidavit which includes:

...

5. I have been a business owner for most of my adult life.
6. When I was considering the feasibility of creating this business, I took into consideration the presence of the Eastern Shore High School, which is within an easy walking distance of the store location. I also considered the various community facilities within Musquodoboit Harbour, including the rink and library, and I believe that these and the nearby school are critical to the success of my business.

...

10. If the Eastern Shore school is moved to the East Chezzetcook Industrial Park, I would lose a significant portion of my customer base, as well as opportunities to hire staff. I believe that such a loss could jeopardize the existence of my business.

...

[88] Mr. Stephen acknowledged the above, noting, "I was certainly concerned."

Nathan Hill

[89] Nathan Hill is a Musquodoboit Harbour area businessman. He met Mr. Stephen when he was the leadership-campaign manager for Mr. Hill's brother. They stayed in touch and Mr. Hill was approached by Mr. Stephen when he was considering purchasing T & C. The purchase did not "pan out" and they next discussed a cellular phone repair business, which did not materialize. After this, Mr. Stephen next contacted Mr. Hill about starting a heat pump business.

[90] Mr. Hill testified that he and Mr. Stephen had "numerous conversations" and ultimately decided to form a company, CES. He allowed, "I didn't do a whole lot of research, he looked at the marketplace ...the basics." One of Mr. Hill's companies, BoomerAlert, was a fifty percent shareholder, and Mr. Stephen was the other fifty percent shareholder.

[91] Through "brainstorming sessions", Messrs. Hill and Stephen decided that CES would "focus on installing mini split heat pumps ...the main line of sale." They discussed "advertising, marketing, random stuff." Mr. Hill's role was "to help with the strategic part of the business." He was the passive investor. Mr. Stephen was the "active owner, running CES." For income, Mr. Stephen "would collect income from it as he's running it ...at year end we'd decide if dividends were to be given out of profit."

[92] Mr. Hill "really likes start ups and the [CES] business model." He added, "I knew and liked Wally and offered to help him out." He recalled that Mr. Stephen "communicated with customers" and did site visits. CES had a "basic website and community signage." Mr. Stephen "would make arrangements with engineering technicians to do installs."

[93] Mr. Hill said he had "quite a bit" of direct dealings with Mr. Stephen during the start-up. Mr. Hill was aware of gross sales and Mr. Stephen advised him what the technicians were paid and what he took out (as commission) per unit sold. Given that it was "not a super large company", Mr. Hill did not expect to receive any income for the first two – three years.

[94] With respect to prospective business for CES, Mr. Hill owned a number of buildings requiring heat pumps. He recalled that there was a Nova Scotia government rebate program for heat pump installations.

[95] On cross-examination he acknowledged that Mr. Stephen had no background in the heat pump business and did not provide a formal business plan. He agreed that what he saw on paper was “fairly basic” and that there was no CES sales forecast. Mr. Hill had no idea how much money he provided for the start up of CES.

[96] Shown the CES SA, Mr. Hill confirmed that he is a principal of BoomerAlert, but not the only shareholder. The plan was to achieve revenue minus expenses, and the difference would be split between BoomerAlert and Mr. Stephen. Mr. Hill understood that he would be paid out of profits; albeit, he has never received any profits. He agreed that if Mr. Stephen “pulled out too much money, nothing would be left for him.” He acknowledged that there was no written agreement outlining how Mr. Stephen would be compensated. He thought that Mr. Stephen would be paid “from sales of heat pumps, that’s it.”

[97] Mr. Hill owned a commercial property in Musquodoboit Harbour. The long-term tenant had a health issue and was not looking to renew her convenience store and pizza restaurant lease. Mr. Hill was looking for a tenant and spoke with Mr. Stephen, who “would take a stab at it, run the same type of company.” It was ultimately decided that Mr. Hill, Mr. Stephen, and Ms. Betlam would be one-third shareholders of Musgo. Mr. Hill was to be the “passive investor” who “helped them with back-end business decisions.”

[98] Mr. Hill recalled that Mr. Stephen did finishing work, painting, and shelving prior to Musgo’s opening. Mr. Hill periodically stopped in during the February and March 2016 set up. The store opened on April 12, 2016. Mr. Hill noted the plan was to start with Musgo and “collect together a number of locations and sell as a package, like my pharmacy experience.”

[99] In addition to the convenience store / restaurant model, the plan was to bring in grocery products to sell and deliver to small options homes. On cross-examination Mr. Hill was reminded of his July 2023 discovery evidence and accepted that the grocery delivery business did not work out because of issues with ordering on the customers’ side. Mr. Hill acknowledged that Musgo could not make this aspect of the business profitable.

[100] Mr. Hill noted that by eventually having several store locations, there would be advantages related to one POS system and a larger volume of purchasing power. He recalled that the Musgo POS system “gave lots of reports ...was easy to use.”

[101] On cross-examination Mr. Hill agreed that he understood that Ms. Betlam would run the “kitchen aspect” of Musgo. He said Mr. Stephen was there to help out with “administration and marketing”, as Mr. Stephen would primarily work with CES. There were no formal business plans or projections for Musgo, albeit they “had some information from the previous owner.” Once again, Mr. Hill was a “silent partner.” He agreed that once Musgo fell into rental arrears, no interest was charged. Ultimately the unpaid rent was “written off as an unrecoverable debt.”

CES and Musgo, Post Accidents

[102] Given the effects of the two accidents, Mr. Stephen found it very difficult to carry out his duties at CES and Musgo. Due to pain, he had poor endurance and found it hard to concentrate. With CES, the business trailed off and Mr. Van Zeumesen took business away from Mr. Stephen. With Musgo, Mr. Stephen had to hire someone to do deliveries, and he could no longer stand on the concrete store floors. As well, he could no longer assist with the store’s daily operations, and the lottery had to be given up. In his words, Musgo went from a “mom and pop operation” to a “mom operation.”

[103] Mr. Stephen noted that his work at CES and Musgo was further compromised. With respect to CES, he said it was “important to do sales calls”; however, he could not walk on uneven ground given problems with his right knee and left foot.

[104] Mr. Stephen went through a number of the post-accidents CES invoices. He provided context and in one example said that it took him “a day and a half to do [what would have been before the accidents] a two-hour job.” He elaborated, “My company was tanking and I just tried to keep it afloat.”

[105] With respect to Musgo, Mr. Stephen said that by the time of the Second Accident, “I was not really involved in the business.” He tried a “sitting and standing” stool to no avail. By the end of 2017, he obtained orthotics which helped with his left toe issues.

[106] Mr. Stephen said that his wife tried to fill the void at Musgo; however, she had neither the “experience nor demeanor to be hard nosed.” In the end he felt he could not “carry my end of the bargain” and, beginning in early 2017, tried to sell Musgo. He engaged a broker by mid-2017; he acknowledged, however, that due to “no track record and a rural business”, Musgo would be difficult to sell. Then Mr. Stephen had a heart attack and the Covid pandemic hit. The business did not sell and was ultimately shuttered in the spring of 2022.

[107] On cross-examination the plaintiff agreed, after his August 20, 2019, discovery evidence was put to him, that prior to the First Accident, he was considering moving Musgo's store opening from 6:00 a.m. to 8:00 a.m. He agreed that he did a point-of-sale review and that between 6 – 8 a.m., there would be “no loss” and that between 8 – 10 a.m., there would be “marginal loss.”

[108] While Musgo was in decline, Mr. Stephen explored a couple of other business opportunities to no avail.

[109] Mr. Stephen was referred to his income tax returns, noting that in the fall of 2016 he retained Jreige Accountants to do his business taxes. He stated that “without telling me”, Jreige Accountants filed personal returns for him and Ms. Betlam. Whereas Mr. Stephen had retained Mr. Jreige, Sr., he soon retired and his son, Andrew Jreige took over. According to Mr. Stephen, this change resulted in his accounting services “not going well.” Later he allowed, “I gave the accountant records and let him do the accounting.”

[110] Mr. Stephen declared a year end for CES as at June 2016; however, due to dealing with his accidents-related injuries, he “didn't get to it.” He added that CRA filing “was not the highest priority in my life.” In the result, a number of his business and personal returns were not filed on time.

[111] Mr. Stephen agreed that there are various physiotherapy notes stating that he continued working and helped with a music festival in July of both 2016 and 2017. The festival was sponsored by Musgo and he acknowledged “probably shuttling staff down to the site ...we were selling pizza.”

[112] Mr. Stephen said that his doctor told him to stop working in the spring of 2017, or perhaps earlier in the year. He was then shown a series of notes (from his car insurance company, doctor and physiotherapists) documenting various times that he worked up until the spring of 2017, and a note as late as July 24, 2017, stating that he was busy for six hours on his feet at the music festival.

[113] When the plaintiff was shown a CPP disability form that he signed where he filled in “October 2017” as the date he was no longer involved in his business, he said, “That's just wrong.” He was then reminded of his August 2019 plans to set up a cannabis nursing business. He agreed that he “looked at a building” and (when his August 20, 2019, discovery evidence was shown to him) that there was a “third version” of a business plan created in August 2019. He also acknowledged that he

had chaired meetings involving potential investors and that he was to have been the “managing director” of the business.

[114] Nathan Hill said that the business “was going fine and then Wally was in the accident and it stopped it.” He said that Mr. Stephen had “lots of energy ...put in long hours” but that the accident “shut him down” and “he couldn’t do what he did before.” Mr. Hill said he would go visit Mr. Stephen and “he looked like a quadriplegic in a La-Z-Boy.” He said that Ms. Betlam tried to hold Musgo together but eventually cash pressures led to its closure.

[115] Mr. Hill was not involved with income tax filings for Musgo or CES and had no knowledge of why CES was subsequently reassessed by Revenue Canada. He had no knowledge of Mr. Stephen’s CES dividends of \$54,960.67 in 2016 or \$56,218.24 in 2017. Mr. Hill did not receive any dividends. He could not say when Mr. Stephen stopped working for CES. Mr. Hill could not provide answers to a number of financially related questions and agreed that he was “hands off.”

[116] Mr. Hill received no return on his Musgo investment. He agreed that when Jordan Stephen, another of Mr. Stephen’s sons, looked at buying Musgo, he decided not to “because there were too many liabilities ...he didn’t want to take on debt.” On cross-examination Mr. Hill agreed that the high school moving was a “big negative” for Musgo.

[117] On cross-examination Mr. Hill said that he “shut Wally down on the cannabis business, he talked to me about it ...asked me to be a partner in it.” Mr. Hill explained that such a business would not work given his (then) pharmacy businesses.

[118] Jordan Stephen, age 34, was aware of his father’s two businesses as of 2016. He said that after the accidents, Ms. Betlam “took over” what his father had been doing at Musgo. Jordan understood that the plan for Musgo was “to get to five locations.” Jordan testified that he “did look into stepping into the company [Musgo] a couple of years after the accidents.” He went through financials with Mr. Hill but determined that there was “\$150,000.00 debt” and he “backed out.”

[119] On cross-examination Jordan acknowledged that he knew of no details with respect to Musgo’s financials. He had no idea what his father earned at Musgo.

[120] Carolyn Mitchell is 56 years of age. She worked at Musgo from 2016 to 2022, with a five-to-six-month hiatus around 2019. While at Musgo, Ms. Mitchell worked

mainly as a cashier and cook. Ms. Betlam was her supervisor and “ran the operation.” She said that Mr. Stephen did the administrative work.

[121] Ms. Mitchell thought that Mr. Stephen had been involved in accidents in 2017. She said that prior to the accidents, he was “quite involved” with Musgo “...ordering things, getting shelving set up.” She described him as being “bubbly, lots of energy.” She described him after the collisions as slower, albeit she “didn’t see him a whole lot.” Ms. Mitchell testified that after 2018, she never saw Mr. Stephen. On cross-examination she said she had seen him at a jam session at a nearby pub.

[122] At one point Ms. Mitchell was approached about “buying out” Ms. Betlam and Mr. Stephen; however, she was not interested as she would have had to “put up my home for collateral.”

[123] Rebecca Geddes is 23 years old. When she was a high school student, she worked at Musgo for four years, beginning in October 2017. She recalled that the store opened at 9:00 a.m. and closed about 12 hours later.

[124] She occasionally saw Mr. Stephen come into the store and observed that he limped and could not sit or stand for any length of time. A sometime musician, Ms. Geddes saw Mr. Stephen “play a song or two” in local venues where she played.

[125] Zachery Stephen was hired as a contractor by CES and was paid by e-transfer from the CES account for the jobs where he installed heat pumps. He estimated working on perhaps a dozen installs. He formed the impression that the start-up business was “unable to continue, even though the phone kept ringing.” Zachery learned about heat pumps when he worked for another local installation company. He did not recall any problems with the CES work, “only warranty issues ...happy when resolved.”

[126] On cross-examination Zachery said he was a student at Acadia University when he did “gig work” installing for CES. He agreed that he occasionally picked up and delivered the heat pumps to the work site. He agreed that the last CES e-transfer to his company was in mid June 2016. He thought that his father attempted to work at CES after the accidents, then added, “But I really don’t know.”

[127] Jacqueline Sanford worked for the local newspaper for a number of years. She recalled having interactions with Mr. Stephen, including when he placed advertisements in the paper for CES and Musgo. She thought that CES had a series

of advertisements up until the late fall of 2016 and that Musgo advertisements kept running into 2017.

Pre-Accidents Status

[128] Mr. Stephen went over his past medical history. He generally described himself as “in fine health.” He weighed 165 pounds, his same weight as at age 18.

[129] In 2008, Mr. Stephen had carpal tunnel surgery performed on his right wrist. By early February 2010, he was experiencing tingling in his right hand, prompting a specialist referral. A subsequent carpal tunnel surgery took place in 2011. The next year it was noted that he had osteo arthritis in his right big toe. There was follow-up treatment. Mr. Stephen experienced episodic left-side sciatica in his mid to low back on account of extensive computer work. He received physiotherapy to the L5-S1 area in July 2010.

[130] Mr. Stephen’s last pre-accidents medical records relate to bumping into a door on April 10, 2015. He described a “mild concussion” from hitting his head on a steel entry door. There was no follow-up treatment as the injury resolved. Mr. Stephen stated that he took no time off work in several years preceding the First Accident.

[131] Mr. Stephen described his family home in detail. The 1.5-storey chalet-style log home has 3 bedrooms. Ongoing maintenance is required, including re-staining the logs every five years. Whereas Mr. Stephen did this himself twice in the years before the accidents, it has not been done for ten years.

[132] In terms of other pre-accidents household chores, Mr. Stephen testified to:

- doing most of the lawn maintenance and snow shoveling;
- having wood for their wood stove delivered, chopping it and tending to his wood stove;
- having a “fairly equal” division of chores with him doing “a little more cooking” and Ms. Betlam “a little more cleaning ...the laundry and floor washing.”

[133] Asked about “hobbies” prior to the First Accident, Mr. Stephen recalled:

- “a lot” of walking and hiking;

- being a “voracious reader” with “three to four books on the go at one time”;
- carrying out “lots of chores around the house”;
- woodworking, including building his decks;
- playing guitar everyday with “jams a couple of times a week”;
- watching Formula 1 racing and playing a Formula 1 video game on his iPad.

[134] In terms of social life, Mr. Stephen described a “fairly regular Friday jam in our neighbourhood.” This involved him playing guitar with perhaps a half dozen other musicians. The plaintiff recalled attending seven Formula 1 races in Montreal with the last attendance in 2015.

Post-Accidents Status

[135] With the First Accident, immediately prior to the impact, Mr. Stephen “clenched ...my left foot almost went through the floor on the clutch ...I gripped the steering wheel tightly.” The impact caused him to “twist about ...my head bounced off the hard liner ...just above the windshield.” He added that his knees were impacted.

[136] Asked of his injuries arising from the First Accident, Mr. Stephen recalled:

- banged head;
- whiplash;
- thumbs sprained;
- wrists sprained;
- sore knees, especially the right knee;
- mid to low section of back “eventually” became sore;
- shoulders injured.

[137] Recalling his interactions with the paramedics, he said he was “in excruciating pain, tears in my eyes pain.” Mr. Stephen declined to ride in the ambulance as he was concerned about the cost. Accordingly, he drove his Jetta the approximate one kilometer to Twin Oaks Memorial Hospital. He had X-rays and a physical examination. The ER doctor recommended that he make an appointment with his doctor. He was told to take extra strength Tylenol and get physiotherapy. He was advised to “go home and lay on ice.”

[138] The diagnosis was “soft tissue injuries.” The hospital emergency record also noted “past medical history” of “low back pain.” Mr. Stephen thought he told the attending physician of this, adding that the post First Accident back pain was much more severe than the back pain he experienced in the past. He thought that the X-rays showed a fracture in one of his vertebrae.

[139] Mr. Stephen agreed that X-rays were taken of his left knee, left thumb, and back. Shown the reference to degenerative disc disease (DDD), he reluctantly agreed that “at least part of the pain was not new.” He acknowledged that “heat and Tylenol” were advised but no prescription drugs. When it was pointed out that his left shoulder was not documented as injured, he stated, “I would refer you to the physiotherapy records ...I was obviously in shock.” Mr. Stephen was also reminded that the emergency room record does not document any injury to his wrists or any part of his right side.

[140] On cross-examination the plaintiff agreed that the emergency room note reference to DDD means that the note taker was indicating degenerative discs in his back and neck. He acknowledged another emergency room note stating “\$20,000.00 / year”, but he did not agree that he told the person that his yearly income was \$20,000.00.

[141] Referred to a July 8, 2016, physiotherapy intake form, Mr. Stephen agreed that there is no reference to shoulder pain or a thumb injury. Shown the “arthritis” reference (right big toe, knee and wrist), Mr. Stephen said he had “fully recovered” from carpal tunnel surgery. He was then confronted with a contemporaneous note in which he reported that he was “75 percent recovered” and he replied, “I don’t recall saying that, I’m not sure.”

[142] Mr. Stephen said that he was “mighty sore” in the neck, shoulders and wrists; “I went from 100 to zero in terms of miles per hour ...I was moving very slowly.” He added that the collision caused swelling in his left foot.

[143] Mr. Stephen went to his family physician, Dr. Robert Merritt, initially after the First Accident, on August 24, 2016. The recommended treatment included heat and ice applications, along with acupuncture and use of the recumbent bicycle, with nothing providing a “lasting impact.” Having said this, Mr. Stephen acknowledged that by the time of the Second Accident that there was improvement with his knees and his left thumb, wrist, and shoulder. Nevertheless, his other problems persisted, and he developed “persistent headaches” prior to the Second Accident. Dr. Merritt prescribed pain medication; however, Mr. Stephen was initially reluctant to take narcotics. At Mr. Stephen’s suggestion, Dr. Merritt prescribed medical cannabis.

[144] Mr. Stephen was still in active physiotherapy when he was involved in the Second Accident. The physiotherapy notes reveal “overall mild” and “60-70 percent” improvement (following treatment) in the weeks preceding October 10, 2016.

[145] On cross-examination Mr. Stephen said that he was first aware of Ms. Gerrard’s vehicle “just before the hit.” He said that it was at this point that he took his hands off the wheel and his foot off the brake. He acknowledged that he did not hit his head or wrist in this accident. He agreed that he initially had neck, back, and knee pain, along with headaches. Mr. Stephen acknowledged that although Dr. Merritt’s chart note refers to Ms. Gerrard going 80 kms per hour when she struck him, he was unaware of her speed.

[146] After the Second Accident, Mr. Stephen drove home and applied ice and heat to his affected areas. He had a physiotherapy appointment booked for the following day. He called the clinic to advise that he would now need to be assessed for this accident. In terms of injuries, Mr. Stephen stated, “Everything I injured before hurt again.”

[147] Upon attending at physiotherapy on October 11, 2016, Mr. Stephen’s treatment was altered to focus on reducing swelling and getting his pain under control.

[148] Early in 2017, Dr. Merritt suspected that Mr. Stephen had complex regional pain syndrome (CRPS) and referred him to specialists. He was also referred for psychological counselling and, in the spring of 2017, began to see Phillipe Isler. By June, he received psychological therapy and realized that he harboured “a lot of anger, rage, irrational behaviour.”

[149] Mr. Stephen agreed that he has attended numerous sessions with Mr. Isler over many years “to deal with stress and anxiety regarding various insurance companies and this lawsuit.” He described the latter as “obviously an aggravating factor.” He agreed that Mr. Isler and others have advised him that he will be “in a better position to recover once this [lawsuit] is over.” He said that cognitive behavioural therapy (CBT) is part of his treatment. He denied that Mr. Isler told him that his stress reactions to the litigation are “disproportionate, overreactions.” Asked if it was reasonable to believe that the end of the legal proceedings would lessen his stress and symptoms, he replied, “It’s hard for me to say, I’ve been in stress going on ten years.”

[150] Mr. Stephen was taken to a number of Mr. Isler’s notes, including one stating that Mr. Stephen did not want to read an IME report received on November 18, 2019, because it would “trigger” him. He was shown an August 12, 2019, note stating that the medication he was taking made it “difficult to review and prepare” for discovery. He recalled that he was taking Gabapentin which caused “brain fog.” He was shown notes describing him as being in a “rage” regarding his discovery and describing the “attack of the second lawyer, palpable.” Mr. Stephen refused to adopt this, stating, “Those are your words, not mine... ask Mr. Isler.”

[151] Mr. Stephen was asked about Mr. Isler’s note that Mr. Stephen described his experience being cross-examined at the April 18, 2024, motion as “the most abusive experience of my life.” He admitted that he felt this way. When asked about a reference that he “hates lawyers,” Mr. Stephen allowed, “I may have said that ...it may have been an outburst in a psychotherapy session, for most people private.”

[152] Mr. Stephen agreed that he had a very difficult relationship with his parents, who were both alcoholics. He said that he was “occasionally” physically abused by his father. The plaintiff was shown Mr. Isler’s September 24, 2018, note with respect to an incident that happened when Mr. Stephen was 12 or 13 (and his parents were going through a divorce). The note states that he was in a car driven by his mother when they were “chased” by his father (in his vehicle) who “rammed” into them. Mr. Stephen could not be sure if he connected the subject accidents with this childhood trauma. Pressed further he said, “I don’t recall the exact conversation, you’ll have to take it up with Mr. Isler.” He acknowledged that “for a long period of time” he endured “flashbacks” of the First Accident, but that now “it doesn’t trigger memories.”

[153] Mr. Stephen was questioned about his therapy involving “positive affirmations.” He was referred to a note of Mr. Isler’s in relation to “visualization of having 2,000,000.00 dollars” and denied discussing this with his therapist.

[154] Mr. Stephen described the changes as “pretty life altering”, adding that he went from being healthy and active to “a wounded bear.” He said that his social life “went to zero” and his love life was impacted. He cannot “carry my end of the chores.” Given his pain, he can no longer do his hobbies and related activities.

[155] Mr. Stephen noted that he developed “sensitivity to light touch.” He experienced ongoing pain, especially in his right hand, up the arm, and in his mid to lower back. By times, Mr. Stephen’s right arm involuntarily shakes and spasms. He is “not a happy guy” and finds this “frightening.” Continuous treatment and adaptations have not provided relief.

[156] Asked about a typical week, Mr. Stephen explained that he spends a great deal of time on his iPad sitting in his “La-Z-Boy” recliner. Beyond this, he regularly attends for his physiotherapy and massage treatments, along with his psychology sessions and other appointments and errands. He watches Formula 1 racing and on Sundays jams with local musicians.

[157] Mr. Stephen plays guitar more often now, at least “every other day”, and said that the jam sessions can last up to two hours.

[158] On cross-examination Mr. Stephen denied any lasting pre-existing sciatica; “I had physio for it and it resolved.” He maintained that he took Celebrex only on account of an arthritic big toe. He acknowledged taking Elavil for back pain prior to the accidents, albeit chart notes reflect both Celebrex and Elavil having been prescribed for this issue.

[159] Mr. Stephen saw a pain specialist, Dr. Hernandez, and she diagnosed CRPS. The pain medication she prescribed made it “hard for me to put thoughts together ...like walking through cotton candy.” Mr. Stephen went off Gabapentin over a three-year period about three or four years ago. Mr. Stephen found the entire experience “pretty scary”, adding that for a time, his right hand, arm, and back area was “mottled purple” in colour.

[160] Dr. Hernandez encouraged Mr. Stephen to play guitar “even if five minutes.” He ultimately received a prescription for a smaller guitar as he could not play his standard size guitar.

[161] The plaintiff continues to take medical cannabis (THC and CBD oil), twice daily. He finds the THC oil “good for acute pain and anxiety.” He added that he suffers from “PTSD, high anxiety, and tinnitus.” Mr. Stephen described the CBD oil as “quite miraculous”, noting that it helps with “inflammation, pain, sleep and anxiety.”

[162] Mr. Stephen said that “fear of the future” triggers his anxiety. He cited CBT and related treatments initiated by Mr. Isler as helping with anxiety. He allowed that it sounds “voodoo ...but repetitive sentences to manage energy flows” have proved beneficial. He added that breathing exercises help as he has “a lot of rage associated with what I’ve gone through.”

[163] Referred to three hospital visits in late December 2017, Mr. Stephen acknowledged an injury to his left shoulder that put him “into a panic attack.” About a month later – on January 25, 2018 – he had a heart attack. This was precipitated by dealing with his Section B insurance company “cutting me off ...I was in a rage.” At the same time, he was “overdoing it” on the recumbent bicycle at the physiotherapy clinic. He returned home and felt “very unwell.” Mr. Stephen then presented at the Dartmouth General Hospital emergency room and “they saved my life.”

[164] Mr. Stephen was transferred to the Queen Elizabeth Health Sciences Centre and had a pacemaker and defibrillator inserted. He was discharged on February 6, 2018. He was placed on “heart regulator meds” and “returned to my routine, over time.” After his pacemaker and defibrillator were adjusted, he has had no issues; he said, “I don’t have heart disease, I’m fine.”

[165] In late December 2018, Mr. Stephen had the flu and got up in the middle of the night. He felt weak, fainted, and fell down stairs. This resulted in “a few bruises” and a cut that created a permanent “dimple” on his left cheek. In all, Mr. Stephen said that the fall caused “no real damage.”

[166] In terms of his current state of health, Mr. Stephen recited a litany of issues, expanding upon his earlier testimony. In addition to ongoing headaches, he referred to excruciating pain throughout his body, including his mid-to-lower back area. He used to refer to this area as “alien”, but through treatment and his psychologist’s suggestion, he now calls this area “Henry”, named after the 1960’s cartoon character who “makes his feelings known.” He elaborated that this section of his back “swells up like a slab of liver ...it radiates to my right hip, a constant knot.”

[167] With respect to treatment, Mr. Stephen attends for physiotherapy twice a week, with massage therapy occurring once a week. Due to finances, he has reduced psychological treatment from once a week to every two weeks; he would like to return to the weekly regime. Mr. Stephen is of the view that his treatments are what enable him to function and said that he “has made a lot of progress, I’m much improved today.” He noted that he regressed during a five-to-six-week Covid hiatus, adding, “I don’t go there for the social life, I go to keep moving.”

[168] On cross-examination Mr. Stephen allowed that he is “not usually supervised” while doing various exercises at the physio clinic. He agreed that he attends at the clinic for treatments on a regular basis – in the order of 140 attendances a year – and that the frequency has remained constant since the accidents. It was put to Mr. Stephen that notwithstanding these treatments, his “list of ailments has grown substantially.” Mr. Stephen responded by stating that over time he has improved.

[169] Mr. Stephen was reminded that following his heart attack, he had a hiatus from physiotherapy and that some of his symptoms subsided. He responded, “No question when I do less, I hurt less.” When he was reminded of the opinions of several experts (including his own) doubting the utility of ongoing physiotherapy, he maintained his view that the treatment is helpful. As support for this, he repeated that during Covid he relapsed. He added that because of the treatment, his “pain management has improved.”

[170] Mr. Stephen cited several accidents-related limitations including:

- sitting tolerance of 30 to 45 minutes;
- standing;
- “incredibly intrusive” tinnitus, which he likened to “singing in the wires”;
- driving tolerance of 30 to 60 minutes;
- walking tolerance of 10 to 30 minutes;
- difficulties getting in and out of the bathtub;
- inability to use power tools;
- inability to read (poor concentration);

- inability to have a social life;
- inability to carry out housework;
- inability to deal with wood for his woodstove (the stove has been taken out of the home);
- inability to play “GT Racing” a reality-based Formula 1 game he once played on his iPad.

[171] He added that he now must use his left hand to shave. His attendance at family functions is greatly restricted; “I’m in pain ...I don’t like to share pain.” He can no longer “rough house” with his grandchildren. Mr. Stephen expanded upon “intimacy issues” with his wife. In summarizing his plight, he stated, “Life altering to say the least...I’ve become an old man before my time.”

[172] Jacqueline Sanford is in her early 50s and has been next door neighbour to Mr. Stephen and Ms. Betlam ever since the couple moved into their log home. She currently works as a gardener and Ms. Betlam works for her part-time as a “helper.” Some years ago, Ms. Sandford’s daughter worked part-time at Musgo. She described a “good, friendly” relationship with Mr. Stephen and his wife.

[173] Ms. Sandford knew Mr. Stephen had been in accidents in 2016 and contrasted his pre and post collisions activities. Whereas she formerly observed him as being active around his property, she “never sees him anymore” outside. She noted later in her testimony that if she did see him, “he looked laboured, slow, he looked more frail, older.” She has generally seen Mary-Alice doing the yard work with help from Zachery Stephen on occasion.

[174] Mr. Stephen was asked a series of questions about his ability to carry out routine daily tasks, such as eating food. This established a (proper, in my view) foundation for an approximate four-minute video surveillance sequence that was then shown in court during Mr. Stephen’s cross-examination. The surveillance was taken on February 6, 2026 (Mary-Alice’s birthday) and showed Mr. Stephen and his wife having brunch at an Eastern Shore restaurant. The two are videoed seated in a booth at the Hungry Beagle. The camera must have been surreptitiously pointed directly at Mr. Stephen from close range (perhaps an across the way booth). Mr. Stephen is shown smiling, carrying on an animated conversation (gesticulating) with his wife. When his food arrives, he uses his left hand to apply salt and pepper. He uses both hands to cut his food and eat.

[175] On cross-examination Mr. Stephen agreed that he is able to open doors and drive his vehicle, albeit “with difficulty.” He agreed that he can handle utensils and cut food but said that he “alternates which hand holds the utensils.” As for playing guitar, he agreed that he does “finger picking” and sometimes “strums” with his right hand and “chords” the (smaller than normal) guitar with his left hand.

[176] It was put to Mr. Stephen that whereas he can do the above referenced activities, he needed someone to turn the pages of the exhibits for him in court. It was also put to him that the “special chair” he sat on throughout his testimony is not relied on when he plays guitar at jam sessions. Mr. Stephen repeated that the combination of attempting to look down and turn pages would involve “repetitive muscle” movements, such that it would slow the process down. He said that after sitting in court previously, his (right) arm was “completely numb.” He added that playing guitar gave him “one of the few sources of joy” in his life.

[177] Jordan Stephen said that his father changed after the accidents. He described his father as “injury centric” and said that he lost his “spark.” He said their relationship changed and that he noticed that his father lost stamina. He testified that Mr. Stephen could not partake in grandfatherly activities, such as picking up his grandchildren. On cross-examination he admitted that when his now five-year-old daughter was younger, Mr. Stephen picked her up.

[178] Jordan Stephen stated that his dad found concrete floors difficult and that his walking tolerance was restricted to “maybe 500 meters.” He has witnessed his father’s “anxiety attacks” and drastic weight changes over time.

[179] Zachery Stephen is 37 years old. His children are six and eight. They live a short distance from the Stephen / Betlam home, in the same subdivision.

[180] Zachery referred to his father prior to the accidents as “determined and fierce.” Since the First Accident he saw a “marked difference, only worsened after the second [accident].” In the years since, he has watched his father “trying to exist, in pain.” He feels “these proceedings” have caused Mr. Stephen “a lot of grief.” After the accidents he saw that his father had restricted movements and that he experienced “chills and pain” in his arm.

[181] Zachery is also a musician, and over the years he has played music with his dad. Now his father is “limited in how much he can play” and is restricted to a small guitar. On cross-examination he agreed that his father played for two hours at the Hungry Beagle on February 8, 2025. Asked if his father was sitting in an “ordinary

chair”, he responded, “I didn’t look that closely.” He said that his father can no longer work around his yard or travel as before.

Mary-Alice Betlam

[182] Ms. Betlam has been Mr. Stephen’s common law spouse for the past twenty-five years. She has a background in early childhood education and as a personal care worker. In her late teens, she worked in retail.

[183] Ms. Betlam explained the background leading up to the opening of Musgo. Her evidence in this area was largely consistent with Mr. Stephen’s.

[184] With respect to Mr. Stephen’s pre-accident health, she said it was “good, he could keep up with me and I’m hyper.” She recalled his activities ranging from picking up grandchildren to swimming in the lake. On the homefront, Ms. Betlam said that her husband can no longer assist with the chores.

[185] On cross-examination Ms. Betlam agreed that prior to the accidents, her household chores portion “was 70 percent.” She agreed that she did most of the laundry, floor washing, and lawn mowing. She proudly asserted that gardening was her “happy place” and her “domain.” She agreed that they now have a house cleaner and that the woman, Glenda Smith, does many of the chores that she used to do, with the exception of dusting, which had been one of Mr. Stephen’s chores.

[186] Ms. Betlam reviewed her husband’s weekly routine which largely corresponded with Mr. Stephen’s testimony in this area.

[187] Ms. Betlam said “intimacy” is “directly impacted” on account of Mr. Stephen’s accidents-related injuries. She worries about causing him pain and says that “the spirit is willing, but his body is not.” Ms. Betlam said her husband can no longer shovel, vacuum, or sweep. He cannot go to the grocery store or help unpacking groceries.

[188] Describing her husband’s gait, Ms. Betlam said, “He’s sometimes got a bit of a tilt.”

[189] At night, she hears him moaning in pain by times such that she almost always leaves to go to their downstairs bedroom.

[190] Ms. Betlam came upon the scene of the First Accident and then drove with her spouse to the Twin Oaks emergency room. She recalled that Mr. Stephen was in

pain, especially when the doctor examined his spine. She recalled that due to pain, her husband booked physiotherapy. While initially in a lot of pain she recalled that by the end of the summer “he seemed to be moving better.”

[191] Ms. Betlam said that one of her sons took over the log home maintenance that her husband had planned to do that summer. With Musgo, she noted that Mr. Stephen was having difficulty standing on the concrete floors and that an occupational therapist attended and special mats and chairs were brought in to assist.

[192] After the Second Accident, Ms. Betlam said, her husband “got worse, he was able to do less, there was more pain and irritability.” With their delivery service, she noted that another worker was hired between the fall of 2016 and winter of 2017 to help Mr. Stephen deliver groceries to group homes. She said that by the spring of 2017, “things came to a point, he had to stop going to work everyday.” She noted that he started taking Gabapentin and this led to challenges with his mental cognition.

[193] By late 2017 and into 2018, Ms. Betlam was doing most of the Musgo bookkeeping and there were “difficulties with the accountant.” Ms. Betlam was put in charge of “templates for other locations” and she “hated doing them.” She then focussed on kitchen work but “Wally and Nathan expressed frustration; they didn’t want a pizza cook as a business partner.” She noted further problems with Musgo, including the lottery business being removed. Regarding potential expansion, she said that she is “risk averse” and “could not come up with ideas.”

[194] Ms. Betlam said that after Mr. Stephen had his heart attack, she would not always be with him as she had to keep working. She expanded on the status of Musgo through the years, including through Covid. By the fall of 2022, the business was listed for sale. Apart from a “couple of low-ball offers”, there was no uptake and by early April 2023, Ms. Betlam declared that she was “finished” with trying to carry on with Musgo.

[195] On cross-examination Ms. Betlam agreed that Musgo operated between April 2016 and April 2023, and that she was “responsible for the day-to-day operations.” She acknowledged that she had no prior convenience store experience, nor did she have experience operating a kitchen/restaurant. In her words, “Musgo was my first foray into business.” She acknowledged that her T4 or T4A earnings ranged between a low of \$24,960.00 in 2018 and a high of \$52,520 in 2021.

[196] On cross-examination she accepted that Musgo never operated at a profit, except for in 2022. She was then shown documents confirming that Mr. Hill wrote off significant rental arrears (\$230,862.00) in that year, such that in reality there was no profit. Shown further documents, she agreed that Musgo's sales increased year over year until 2020 when "Covid hit". She also acknowledged that the move of the local high school "absolutely" adversely affected Musgo's sales and operation. She was not a party in the judicial review challenging the decision to move the school; however, she knew that her husband was.

[197] Ms. Betlam also admitted that the opening of a new convenience store (with gas pumps) and a Tim Horton's (also closer to the new high school than Musgo) were adverse developments for Musgo. Shown further exhibits, she admitted that sales dropped by \$200,000.00 in 2020, and for the next year, sales decreased further and costs were up. She allowed, "The price of things were going up ... ingredients for pizza." Ms. Betlam acknowledged that after RBC called their loan, Musgo got into the "risky endeavour" of high interest loans of 12 and 15 percent.

[198] On cross-examination Ms. Betlam said that she was finished with Musgo and was "giving it a year." She said she "wanted a vacation" and "wanted to call in sick." She agreed that the store closed before a buyer picked it up; she said, "We couldn't sell, the business was closed down, and then certain assets were sold." When there was an agreement to sell the store equipment on May 31, 2023, she felt "relief". The buyer then stopped making payments in 2024, causing more stress.

[199] Ms. Betlam gave evidence concerning her employment since Musgo closed. She currently works at the local Lawtons and expects to be back gardening with Ms. Sandford's business this spring. She noted their monthly expenses include \$340.00 for Ms. Stephen's physiotherapy and massage treatments, along with \$450.00 for his bi-monthly sessions with Mr. Isler. She noted his cannabis costs approximately \$200.00 per month and \$180.00 goes to Ms. Smith for her cleaning. Her husband's pension income is around \$2,200.00 per month. Ms. Betlam believes that all of the treatments are beneficial to Mr. Stephen. They have no medical insurance coverage.

[200] Ms. Betlam has observed of late that Mr. Stephen is "happier" and "smiling more." She attributes this to his return to "jamming" and the "positive impact ... they thank him for organizing." She added that his communications with the other musicians are helpful.

[201] Most days when Ms. Betlam returns from a work shift, Mr. Stephen has their supper ready. She said that apart from slowly preparing food, he fills his days by

sitting in this chair watching comedy, speaking with relatives on the phone, and face timing. She noted that he cannot read so she sometimes reads to him. They occasionally visit family, but road trips are challenging for Mr. Stephen.

[202] Ms. Betlam testified that Andrew Jreige prepared her personal income tax return for 2016 when he “was not asked.” She added that when there were problems with their returns, her husband “did not want to talk about it, he found it anxiety producing.”

[203] On cross-examination, when shown documents, she agreed that RSPs had been pulled out as early as 2013 as there were “bills to pay.”

COST OF VALUABLE SERVICES/COST OF CARE – DISCUSSION OF THE KEY EVIDENCE

[204] Mr. Stephen and his spouse purchased a log home kit in 2007. Once the home was erected, Mr. Stephen did the inside finishing. This involved framing and electrical work on his part, with his wife assisting with the work and managing the finances.

[205] In 2007 – 2008, Zachery Stephen helped his father work on the log home interior. He observed his father as a most capable worker. He formed the same impression when his father worked for Zachery’s lawn mowing business, noting that Wally “did the whipper snipping and pushed the mower.”

[206] Mr. Stephen noted that his home has not been modified, except for the bathroom where “assists” had been installed back when his mother-in-law lived there.

[207] Mr. Stephen still owns the (manual transmission) Jetta, which he occasionally drives. He and his wife also have a small (automatic) pick-up truck, which he rarely drives.

[208] On cross-examination he acknowledged that he continues to cook but that he no longer assists his wife with the laundry. He attends to personal hygiene, adding that he showers and dresses “with difficulty.”

[209] On cross-examination Mr. Stephen agreed (after his August 20, 2019, discovery evidence was shown to him) that pre-accident he “probably did about 30 percent of the cleaning and 70 percent of the cooking.” He said that he can still cook “at a much slower pace.”

[210] Mr. Stephen disagreed that his wife did most of the pre-accidents lawn mowing, but after he was reminded of his discovery evidence, he agreed that this was the case as she “did it for exercise.”

[211] Jordan Stephen noted that his father’s common law spouse has been doing the majority of the housework since the accidents, allowing that it was “equal parts” prior to 2016. He allowed that his father enjoys cooking; “the ability is still there.” He noted what used to be routine tasks cannot now be completed by his father, or they take an inordinate amount of time. He has observed his father playing his smaller guitar and the duration is limited. On cross-examination he said he was aware that Wally “jammed” with a friend group, sometimes at Porter’s Lake Pub.

[212] On cross-examination Jordan said that he had not lived in his father’s home since 2009. He could not be sure after the accidents when his father stopped working.

[213] Glenda Smith is in her late 50s. She previously worked for Musgo Rider. In this capacity, she drove Mr. Stephen to some of his medical and related appointments. She observed that he was “very nervous in the car” and that he had a “mobility issue.”

[214] On cross-examination she agreed that the Musgo Rider invoices show that she first started driving Mr. Stephen in April 2018 after his January 2018 heart attack. She understood that he was not permitted to drive for six months after the cardiac event.

[215] Ms. Smith started working for Mr. Stephen and his wife on October 13, 2021, cleaning their home generally every two weeks up until the present. The summary of her services confirms this and that on each occasion, she cleans for three hours. Her hourly rate was originally \$25.00 per hour, increasing to \$30.00 per hour in January 2024. The printouts total almost \$15,000.00 (inclusive of HST). On cross-examination she said that all of the amounts shown have been paid.

[216] Ms. Smith described the layout of the two-level log home, noting that her work includes washing floors and windows and vacuuming. She brings her own cleaning supplies. She does not attend to repairs.

Linda Stanley

[217] Retired occupational therapist Linda Stanley completed a cost of future care assessment on July 28, 2021, and an updated report on January 13, 2025. In that

report, Ms. Stanley continues to outline various physical therapies (physiotherapy twice a week and massage once a week) and various pain aids (heating pads, adjustable bed, etc.) and discusses Mr. Stephen's use of cannabis. She outlines psychological counselling and therapies and discusses housekeeping needs.

[218] Linda Stanley was cross-examined on her reports. She was not provided with the defence IME reports of Drs. King and Rosenberg. Ms. Stanley conducted two interviews with Mr. Stephen at his home in advance of preparing her reports.

[219] Ms. Stanley was referred to the sections of her reports where she excerpts diagnoses from doctors, and she accepted that she had been selective in her quotations. Despite being shown several passages where she did not include the entire excerpt in context, Ms. Stanley would only say that she "wasn't sure why" and that she "tried to be concise as possible." When pressed concerning her omission of key (unfavourable to Mr. Stephen) passages in Dr. Koshi's report, she stated, "The reader of my report has probably also read all the reports on file so would understand the context."

[220] Ms. Stanley conceded that she did not refer to neurosurgeon Dr. Sean Barry's September 3, 2019, report and his opinion as follows:

It is my opinion that there are no medical limitations or restrictions on Mr. Stephen's activities whatsoever, be it daily activities or work related activities as a result of either 2016 accident. That is to say, there are no normal activities of daily living or work related activities which will bring him harm. He may be limited functionally by pain, stress and anxiety.

[221] She allowed that she was not sure why the report was not referenced and said, "I guess I'm looking for words that would describe that he would eventually improve or get worse."

[222] Ms. Stanley conceded that her only source to describe Mr. Stephen's mobility restrictions came from him during her interviews. She did not consider the medical reports. When it was put to her that many of the doctors did not mention that Mr. Stephen was restricted with walking down hill, she responded, "They probably didn't ask him." She maintained that her approach, mainly relying on Mr. Stephen's self-reporting, made her "more balanced."

[223] Ms. Stanley agreed that Mr. Stephen has had close to ten years of physiotherapy and massage therapy, yet she calls for continuation of these therapies. Even though she agreed that such treatments are not recommended for this

many years, she said, “I considered for Mr. Stephen ...helping him maintain the progress he had made and that when he didn’t have physiotherapy, his symptoms worsened ...to give him the benefit of doubt.”

[224] She maintained this position knowing that Dr. Merritt and numerous specialists did not endorse continued physiotherapy and massage therapy. She ultimately did agree that she defers to the doctors.

[225] Ms. Stanley recommended further cannabis at four grams per day “just to be on the safe side,” because Dr. Merritt had at one time prescribed this amount. Here she agreed that she went by what was in the medical records and not by what she was told by Mr. Stephen, who has for many years been using less than one gram per day. She then stated, “I don’t know if Mr. Stephen told me how much he was using, he might have told me how much he spends per month.” She later apologized when shown that her latest report indicated that he told her he used less than half a gram a day. She did not know that he was using that amount before the accidents, adding, “He didn’t tell me.”

[226] It was put to Ms. Stanley that many of her recommendations for daily living devices and the like may be unnecessary and conflict with the medical advice for Mr. Stephen to try to carry out activities of daily living. She responded, “I’m not saying he can’t do them but because [with the devices] he’d be more functional.” She agreed that Mr. Stephen advised her that he was using his right hand for shaving when she saw him in early 2025.

[227] Ms. Stanley acknowledged her \$1,000.00 line item was for Mr. Stephen’s next vehicle having an automatic transmission. She said that this figure was “based on my own research” but could not back it up. Further, she was unaware that he had a second (automatic) vehicle. She said that her housecleaning recommendation was “reflective of knowing that Mr. Stephen did 30 percent of the pre-accident housework.” She was not advised that Ms. Betlam did all of the laundry prior to the accidents. With regard to her house repairs estimate, Ms. Stanley acknowledged that she was not provided with any documents. When it was put to her that “exterior house painting” could not pertain to the log home, she said it “could have been staining the decks too.”

[228] Ms. Stanley agreed that none of the reports call for a stairlift, as she recommended. She added that medical reports “usually don’t go into projections that far ahead.”

[229] The plaintiff referred to his treatment costs as set out in several documents. He noted that up until October 2018, his Section B insurance company paid for the treatment. Since then, he and his wife have paid the costs, and he obtained “a very high interest loan [Seahold Loans] to continue paying for medical care.” Referred to the Seahold printout, he confirmed the effective interest rate (compounding) of 28.80 percent. The balance shows \$69,429.71 (as of January 15, 2026) owing, with one payment for \$2,927.11 made on May 19, 2023. This payment was made approximately 1 week following receipt of a \$100,000.00 interim payment from the defendants.

[230] On cross-examination Mr. Stephen agreed that he opened two Section B claims and these availed him of \$100,000.00 for medical and related expenses. He was shown his spreadsheet of ongoing expenses and agreed that the alleged \$48,427.26 spent did not account for \$21,993.43 paid to him as a lump sum by one of the Section B insurance companies to pay out “their” \$50,000.00. Further, he was taken to the amounts he spent on drugs and through an example (November 2018) agreed that about 80 percent was attributable to heart medication and the like. Mr. Stephen then replied, “To my mind the heart attack was as a result of the accidents.”

[231] On cross-examination Mr. Stephen was referred to a print-out of his prescription medications and agreed that by August 2021, he was off Gabapentin. He currently takes medication for high cholesterol as well as for his heart, along with cannabis (as detailed earlier).

[232] On cross-examination the plaintiff acknowledged replacing his mattress “at some point” and that his sleep problems have improved.

[233] On cross-examination the plaintiff agreed that he has received a combined Section B weekly indemnity and lump sum amount of \$181,749.50. As for CPP disability payments, he acknowledged receiving (retroactive to 2020 and through to 2023 when he turned 65) \$43,235.00.

[234] On cross-examination Mr. Stephen confirmed that he received the \$100,000.00 advance payment on May 11, 2023. He also acknowledged that \$19,051.68 CPP disability arrears were paid to him in 2021.

[235] Mr. Stephen was also asked about the money spent on the Musgo Rider driving service. He agreed that he continued to drive following both accidents but that after his heart attack he was put off driving for six months.

MR. STEPHEN'S TREATMENT PROVIDERS

Dr. Robert Merritt

[236] Dr. Merritt was Mr. Stephen's family physician for many years – pre and post the accidents – until his recent retirement.

[237] Dr. Merritt's practice involved obtaining a history from the patient at each visit and, when necessary, conducting physical examinations. He agreed that his practice when taking notes is to put the patient's words in quotation marks.

[238] Dr. Merritt confirmed that Mr. Stephen regularly used cannabis prior to the accidents. He agreed that Mr. Stephen was not using four grams a day for most of the time in the post-accidents years.

[239] Dr. Merritt stepped through a number of his notes and confirmed various referrals, including to Drs. MacDougall and Hernandez. In June 2008, he sent Mr. Stephen to Dr. MacDougall because he had "nerve symptoms prior to carpal tunnel surgery."

[240] The referral to Dr. Hernandez initially came after the First Accident. Given the long wait at the pain clinic, Dr. Merritt felt Dr. Hernandez would be able as a "pain specialist" to assess Mr. Stephen. He agreed that the overall advice was that Mr. Stephen should "stay active." Dr. Merritt agreed that "physiotherapy is not a long-term solution for problems."

[241] By the spring of 2019, Dr. Merritt noted that Mr. Stephen was having "exquisite" pain in his arms. He agreed that by the fall of 2024, the progression meant that his concerns "shifted from pain to neuropathy."

[242] Dr. Merritt agreed that the July 6, 2016, emergency room reference to "DDD" would not surprise him, as "it's very common, often a default cause of back pain in people as opposed to neuropathy."

[243] Dr. Merritt said that he was "disappointed" with Mr. Stephen's "progress over the years ...the low rate [of recovery] was discouraging." On redirect examination he said that Mr. Stephen "in general is keen to comply with treatment ...he was keen to put effort into getting better."

Dr. Alexander MacDougall

[244] Neurologist Dr. MacDougall first saw Mr. Stephen about eight years before the First Accident on referral from Dr. Merritt. Mr. Stephen was complaining of pain and numbness in his right arm and hand, brought on by activity. Dr. MacDougall arranged for electrodiagnostic studies which came back as normal, so he ruled out carpal tunnel syndrome. Dr. MacDougall later became aware of Mr. Stephen undergoing carpal tunnel surgery in 2010.

[245] When he next saw Mr. Stephen on July 13, 2017, Dr. MacDougall noted “DDD”, referencing degenerative disc disease in the patient’s cervical spine. He also recorded no ill effects from the carpal tunnel surgery. On September 11, 2017, he interpreted an MRI to conclude that Mr. Stephen’s symptoms were “musculoskeletal, not neuropathic.”

[246] Dr. MacDougall last saw Mr. Stephen on March 15, 2018. Mr. Stephen told him that he fell early in the year and developed left-sided pain. Dr. MacDougall opined in his March 15, 2018, report:

I think this gentleman did have a vasovagal syncopal spell back in September of 2017. The clinical features would strongly favor that etiology rather than a seizure or cardiac syncope. His chronic myofascial pain remains a problem but it does seem to be improving and I think stress management is going to be very helpful in that. I reassured him today that there is no evidence of neurologic cause for his chronic pain and I would still be optimistic that things will gradually improve.

He agreed that what he said about chronic pain was based on Mr. Stephen’s reporting. He agreed that his objective findings were normal.

Dr. Maria del Rosario Hernandez

[247] Dr. Merritt referred Mr. Stephen to Dr. Hernandez, an anesthesiologist who was qualified by the Court as an expert in the field of anesthesiology and pain management. She saw him for the first time in November 2017. She recalled that he had “significant pain, more than what I would expect” given the car accident of over a year previous.

[248] Mr. Stephen’s main complaint was significant pain in the neck, shoulder, and upper limb. His pain was pronounced in his right arm and hand, brought on by very light touch / pressure. He had temperature asymmetry with there being more than one degree difference from the right to left hand. There was decreased range of motion in the right wrist and shoulder. Dr. Hernandez felt this was in relation to allodynia. Although she detected a temperature difference, she did not use a

thermometer, which she now has in her clinic. In subsequent visits, she did not find any temperature difference.

[249] Mr. Stephen had pain when he tried to move his right upper limb. Dr. Hernandez found him “very sensitive” to light touch or pin prick. She wrote a November 27, 2017, letter to Dr. Merritt diagnosing CRPS.

[250] On cross-examination she agreed that she termed the CRPS as “possible” and not a definite diagnosis. She said that she would have told Mr. Stephen of this “possible CRPS.”

[251] Dr. Hernandez agreed on cross-examination that whereas she used the Budapest Consensus to diagnose CRPS, Mr. Stephen did not exhibit all of the criteria. She did not detect any difference in color between his left and right arms. She agreed that Mr. Stephen did not complain about the left side of his body. She did not perform a grip test or have him lift weight.

[252] Dr. Hernandez agreed that it is important to know a patient’s medical history. She was not told about his prior right carpal tunnel syndrome and surgery. She agreed that carpal tunnel syndrome causes numbness and sensitivity in the index and middle fingers; however, it is “very different than what he was experiencing.”

[253] Dr. Hernandez used a tape measure and initially found right bicep atrophy. Within a month, there was no atrophy found. She agreed that the initial measurement had to be inaccurate or that he put on muscle.

[254] Dr. Hernandez agreed that her June 5, 2018, note referenced a fall Mr. Stephen had taken over Christmas. He injured his left shoulder. She reviewed further visit notes and agreed that she always took down the subjective reporting from Mr. Stephen, in keeping with her practice. This “informs the plan” which involved light therapy for Mr. Stephen.

[255] Referred to all of the June 2018 visits, Dr. Hernandez agreed that the left shoulder was the “more focal point of treatment.” She agreed that by July 6, 2018, her notes recorded that Mr. Stephen’s right arm and hand were “basically back to normal.” The main issues pertained to pain in the low back and left shoulder. By August 27, 2018, there was full range of motion in the right shoulder. She demonstrated how Mr. Stephen was able to move his right arm up and down, both from the side and when holding his arm in front of his body.

[256] By December 21, 2018, she recorded that Mr. Stephen was able to play his guitar for an hour. On February 27, 2019, Dr. Hernandez noted that Mr. Stephen was “cheerful / stable.”

[257] Dr. Hernandez agreed that her fellowship is in anaesthesiology, not pain. She has referred patients to Dr. Koshi if they need fluoroscopy. The last chart note produced is on April 24, 2019, although Dr. Hernandez believes she saw Mr. Stephen after that date and he improved and was discharged.

Phillipe Isler

[258] Phillippe Isler has been a registered psychologist in Nova Scotia since 2004. He has treated the plaintiff from April 14, 2017, to the present. Since Covid, his sessions with Mr. Stephen have been exclusively by telephone. In all, he has provided in the order of 350 sessions in close to nine years. Unfortunately, his notes for 140 of the sessions were not in production as he could not locate them.

[259] Mr. Isler uses many methods and approaches in his practice, which he describes as “integrative.” His sessions combine aspects of CBT, psychodynamic therapy, trauma therapy, and energy psychology. The latter includes logosynthesis, which he “discovered” around 2009.

[260] In treating Mr. Stephen, Mr. Isler uses an integrative approach combining aspects of what is outlined above and other modalities. He focusses on the body and “tuning into what one is feeling rather than thinking.”

[261] Mr. Isler described his voluminous handwritten notes as “working notes.” He takes notes “for most every session.” He added, however, that “if there’s more of a conversation, check in, I may not make notes that day.” Mr. Isler said that phrases in quotations typically represent the patient’s words. For example, on May 17, 2017, he placed in quotes, “I am a sensitive person”, which is how Mr. Stephen described himself. Mr. Isler explained other shorthand, acronyms, and “coding” to assist the reader of his notes.

[262] Mr. Isler referenced a number of his notes regarding Mr. Stephen mentioning “anxiety” and its connection to pain. In treating Mr. Stephen, he described “an ongoing process ...how to deal with stressors.”

[263] A number of questions were posed regarding a September 24, 2018, note concerning Mr. Stephen’s traumatic experience when he was 12 – 13 years of age.

Mr. Isler said that it was “very common with trauma therapy” for prior trauma to be brought up by a patient. On cross-examination he explained that the “all the damage done” includes the fact that Ms. Stephen’s older son has also been adversely affected by Mr. Stephen’s mother’s behavior. He added that “the whole process activated reflections and memories.”

[264] Notwithstanding the content of the note of September 24, 2018, Mr. Isler confirmed that Mr. Stephen made no other mention of childhood trauma in all of the subsequent sessions. In Mr. Isler’s words, “[The childhood trauma] is not a significant point of the whole process.”

[265] Mr. Isler said that during a number of sessions, Mr. Stephen raised litigation-related concerns and that he exhibited feelings of “revictimization, ...helplessness, anger”, adding that this was “part and parcel of trauma.”

[266] Mr. Isler was referred to several passages referable to the litigation on cross-examination. For example, a November 18, 2018, note where Mr. Stephen had received an IME report but would not read it himself. Mr. Isler read the report to him, and this sparked anger. Mr. Stephen was annoyed with errors he believed were in the report and Mr. Isler “tried to bring down the anger.”

[267] On August 12, 2019, Mr. Isler’s notes record Mr. Stephen’s extreme upset with his recent discovery examination.

[268] A week later, Mr. Stephen felt his CRPS was getting worse and Mr. Isler recorded, “probably stress with discovery.” On cross-examination Mr. Isler allowed, “It’s pretty evident conditions like that would trigger physical symptoms.”

[269] Mr. Isler was referred to other notes with respect to “financial stress” and “insurance companies’ games.” Mr. Isler said that this was not the first time he heard these kinds of complaints and that injured people such as Mr. Stephen often feel vulnerable.

[270] On balance, Mr. Isler agreed that the legal process for Mr. Stephen was lengthy and that it caused “significant agitation.” He added that certain phases in the lawsuit have exacerbated Mr. Stephen’s stress and that he has assisted him with dealing with it.

[271] It was put to Mr. Isler that during one third of the sessions, between 2019 and late 2025, Mr. Stephen had raised concerns about the legal process. Mr. Isler was

not surprised by this and added that Mr. Stephen was experiencing stress due to the litigation. He also agreed that it was “a normal human function” for pain symptoms to flow from the stress experienced.

[272] Mr. Isler recalled that Mr. Stephen was “very reactive to that sense of being unjustly treated.”

[273] Mr. Isler said that his September 4, 2024, note referencing \$2,000,000.00 was arrived at from him asking Mr. Stephen, “How much money would you need to feel safe?”

[274] Overall, Mr. Isler believes that his “sessions went well in terms of helping him when he needs help ...it’s a bit of a roller coaster, the process, in the past year there’s been significant progress regarding self-regulation ...more acceptance of impairment, a focus on working out a balance ...doing things for quality of life.” He added that by playing guitar Mr. Stephen has received “a sense of joy ...its worth experiencing pain to do it.”

[275] Mr. Isler said that Mr. Stephen is now using logosynthesis on his own. He continues to treat Mr. Stephen every two weeks and the plan is to continue “as long as needed” at this interval, “with spacing out more and more” in the future. He added that there “are a lot of unknowns”, as Mr. Stephen could encounter “further life stressors.”

[276] On cross-examination Mr. Isler expanded on logosynthesis. He explained his view that CBT usually involves a “targeted amount of time” but that “every individual is different ...CBT is not sufficient to change long-term.” He acknowledged “absolutely” that there is a debate about the effectiveness of CBT and energy psychology. Challenged with Dr. Waisman’s view that energy psychology is not evidence-based, Mr. Isler pushed back, noting that there “are close to 20 studies in energy psychology ...there’s a lot of evidence for it.” He added that it is still difficult to get all in the field to accept the approach.

[277] On cross-examination Mr. Isler clarified that “tapping” is not part of his treatment for Mr. Stephen. He added that he has found “logosynthesis much more useful than tapping” and emphasized that “logosynthesis is within the umbrella of energy psychology.”

[278] On cross-examination Mr. Isler said that one of his main goals is to “keep working on the possibility of a future with no injury.”

[279] Mr. Isler praised Mr. Stephen's "unquestionable commitment" to the process. He said this was in keeping with his make-up, "so driven", adding that he thought Mr. Stephen initially "pushed himself too hard" to get better.

[280] On cross-examination he allowed that the plan was to reduce sessions in the future. He agreed that there has been an increase in Mr. Stephen's ability to deal with his reaction to pain and pain management. He acknowledged that removing stressors helps Mr. Stephen.

[281] On cross-examination Mr. Isler acknowledged that CBT is typically a structured therapy involving six to 20 sessions. It was then put to him that he has provided Mr. Stephen with almost 20 times the number of treatments considering the upper limit of the range. Mr. Isler responded that his treatment is broader than CBT. On redirect examination he said that what happens in practice is not necessarily reflected in the articles he was referred to on cross-examination. He emphasized that his "multiple variations" of CBT are of assistance.

Ashley Bellefontaine

[282] Ashley Bellefontaine is a full-time, qualified, registered physiotherapist. She has worked at Physiolink Porter's Lake (Physiolink) for twenty years. Between August and December 2007, she treated Mr. Stephen for a right wrist injury. He was discharged and "doing well."

[283] Mr. Stephen returned to the clinic in 2010 due to a "spraining injury" involving his low back and shoulder.

[284] Ms. Bellefontaine next saw Mr. Stephen in November 2016, after she took over his care from another physiotherapist. She has continued from this time until the present as his regular physiotherapist. Ms. Bellefontaine provided a comprehensive overview of her hundreds of treatments over the period of close to nine years. She detailed Mr. Stephen's current twice weekly physiotherapy regime at the Physiolink. She stated, "His physiotherapy has evolved over time because he's improved over time."

[285] Ms. Bellefontaine noted that Mr. Stephen's shoe orthotics (inserts) and "special type" of orthotic shoes have helped him.

[286] Ms. Bellefontaine stated that Mr. Stephen is now less sensitive to touch than in the beginning of his treatment. Over the years, she has observed Mr. Stephen

exhibit pain such that he's been brought to tears and screamed. She added that she has seen him smile while in pain. She noted "unusual triggers", and that he has light sensitivity which brings on headaches. She recalled his sensitivity to certain fabrics and recounted an experience with synthetic pillow covers at the clinic.

[287] Ms. Bellefontaine said that Mr. Stephen is in a worsened condition after a prolonged absence from physiotherapy or massage treatments.

[288] On cross-examination Ms. Bellefontaine allowed that she prepared for court by reading his file "a lot, and working with Wally for all this time." Asked about his pain, she stated, "It hasn't gone away ...its probably not going to go away." She noted the treatment goals were directed at Mr. Stephen's quality of life. Ms. Bellefontaine later said that the physiotherapy was to "manage his chronic symptoms." She described both the sessions at the clinic and her directions to Mr. Stephen for his home exercise program.

[289] On cross-examination Ms. Bellefontaine maintained that Mr. Stephen has increased his activities over the years, noting that he now plays guitar "multiple times a week." She encourages this, adding that it is both a "functional and enjoyable" activity. She similarly thought that Mr. Stephen's recent return to swimming and increased walking are positive developments.

[290] Ms. Bellefontaine stated that Physiolink charges Mr. Stephen \$300.00 per week for his regime of physiotherapy (2 x \$90.00) and massage (1 x \$120.00). Adding HST brings the total \$342.00.

[291] She said that "progressing to exercises at home has come up ...not discussed in any detail." She is not "specifically aware" of any medical opinion to the effect that the treatments should conclude by now. She acknowledged "absolutely" the goal to switch to home exercise but noted there currently is no plan in place for this to happen.

[292] Ms. Bellefontaine understands that Mr. Stephen has financial struggles and has recently provided some sessions free of charge.

Robyn During

[293] Robyn During is a full-time qualified, registered massage therapist at Physiolink where she has worked for about fifteen years. Mr. Stephen began receiving massage therapy in the fall of 2016. Ms. During became his primary

massage therapist in late 2018. She noted Mr. Stephen's "hypersensitive, unusual pain" sometimes prevents her from treating all required areas of Mr. Stephen's body, particularly the right arm. Over the years, Mr. Stephen's treatment has gone from twice a week to once a week for an hour.

[294] Ms. During has observed redness in the tissues of Mr. Stephen's "trunk and torso ...its very unusual." She added that this area of his body fluctuates and is often "warmer or colder than it should be." She's often aware when Mr. Stephen is in the clinic because she hears him "yelling" while he receives acupuncture treatments.

[295] Ms. During noted that Mr. Stephen has "pet names" for four areas of his body (involving the right arm, thoracic / lumbar joints and neck) that are especially painful. She notices when he has had a lapse in physiotherapy or massage treatments because he reacts with more pain.

[296] On cross-examination Ms. During was taken through a series of her notes and agreed that the subjective part is what she is being told by Mr. Stephen. She agreed that there are several references to him "playing music", including "overdid it ...5 hours of guitar on Friday night" reported in her note of December 5, 2024.

[297] Ms. During agreed that when Mr. Stephen is "more stressed that there is more inflammation." On redirect examination she noted that by times Mr. Stephen brings in his own CBD cream, which she applies.

Drs. Howes and Van Zoost

[298] By agreement the files of Dr. Adam Howes and Dr. Colin Van Zoost went into evidence. Both physicians are experts in the field of internal medicine and cardiology. Having considered their files, I find that Mr. Stephen's heart attack and resultant sequelae have resolved. For example, in Dr. Van Zoost's January 17, 2020, report to Dr. Merritt, he stated:

Impression: Wallace is currently stable from a cardiac perspective. He has no active symptoms of angina, heart failure or arrhythmia. There has been no further ventricular arrhythmia based on his ICD interrogations.

RULE 55 EXPERT MEDICAL EVIDENCE

[299] All of the expert physicians were qualified to give expert evidence according to their education, training, and experience. Mr. Stephen attended five separate independent medical assessments (IMEs). The following medical experts testified:

- Dr. Koshi;
- Dr. Millard;
- Dr. Waisman; and
- Dr. King.

[300] There is an additional expert report from Dr. Rosenberg who did not give evidence at trial, as he died in early December 2025.

Dr. Edvin Koshi

[301] The first IME was conducted by Dr. Koshi on August 17, 2020. In his report, Dr. Koshi opined that Mr. Stephen's injuries were not overly significant and possibility related only to "psychosocial barriers":

In summary, if anything, Mr. Stephen suffered soft tissue injuries in the form of sprain and strain to the cervical spine (WAD Grade II), sprain and strain to the thoracic spine, and bruising and hematoma to the left knee and left thumb in these accidents. These injuries have a very good prognosis and resolve in a short time, often in the absence of treatment. Today's assessment was not in keeping with any ongoing pathology to explain the symptoms. Mr. Stephen's self-report of high level of pain and disability and the course of his symptoms are not in keeping with the natural history of his conditions, or what is medically expected from their recovery.

Given the above, it is likely that social barriers (being in litigation) and/or psychological barriers (depression, anxiety, or any condition that falls in the category of Somatic Symptom and Related Disorders) are affecting his symptom-report style. I recommend a referral to a Psychiatrist.

[302] Dr. Koshi went on to say that Mr. Stephen did not suffer from CRPS, but that he needs to be educated on the "benign nature of the accident-related injuries." Dr. Koshi also highlighted several inconsistencies in Mr. Stephen's presentation and reporting of symptoms. For example, he stated:

...I found it very difficult to determine what injuries (if any) he suffered in the subject accidents, mainly due to his abnormal self-report style and the numerous inconsistencies in his presentation. The symptoms are vague and widespread (involve multiple sites), and it is difficult to bring the whole history together ...it is likely that psychological barriers are playing a role in his presentation.

[303] Dr. Koshi was cross-examined on his August 19, 2020, report. He was referred to a number of physiotherapy and physician notes referencing pre-accidents

treatment and medications. He acknowledged that Mr. Stephen was not receiving any active treatment for neck pain in the lead-up to the First Accident.

[304] Dr. Koshi agreed that Mr. Stephen's medical records date back to 1994 and the first references to treatment for neck pain occurred after the First Accident. He accepted that there are a high percentage of individuals with degenerative neck issues without neck pain. Dr. Koshi agreed that there is no record of pre-accidents X-rays of Mr. Stephen's neck.

[305] Dr. Koshi agreed that Mr. Stephen reported neck pain following the First Accident. He acknowledged that on July 8, 2016, the physiotherapist reported "movement of neck painful." Dr. Koshi maintained his opinion that Mr. Stephen would have had neck pain even in the absence of the accident.

[306] Dr. Koshi conceded that it was a "mistake" that he did not mention that Mr. Stephen experienced right wrist and arm pain two days after the First Accident. He acknowledged that Mr. Stephen reported "right arm numbness and tingling" to the physiotherapist. Dr. Koshi was aware that Mr. Stephen had a right hand and arm injury on June 27, 2008, which caused swelling and that carpal tunnel syndrome was suspected. He was referred to Dr. Davis's notes, and it was pointed out that his treatment did not involve "the entire right arm, only the forearm." Dr. Koshi agreed that the records do not show Mr. Stephen complaining of any right arm pain in the lead-up to the accidents. He agreed that his right arm complaints re-emerged after the accident for the first time in years.

[307] Dr. Koshi agreed that Mr. Stephen had mild DDD for many years prior to the accidents. He agreed that the medical records first mention pain in the back in June 2010. Shown a spinal joint assessment, Dr. Koshi agreed that Mr. Stephen reported back pain on account of repetitive strain and there was a reference to "possible DDD" on the same form. Dr. Koshi accepted that the earlier records show that Mr. Stephen took "Celebrex as needed", perhaps for his right toe, but that by the time of the First Accident, he was not taking any medication.

[308] It was put to Dr. Koshi that Mr. Stephen's first report of back pain was immediately after the First Accident. Dr. Koshi initially answered by stating that this is "unknown" but then allowed, "Yes, according to the records." He then took issue with the physiotherapists' notes stating, "Physiotherapists don't make diagnoses." He then allowed that Mr. Stephen had told him that he began experiencing low back pain "one month after the First Accident."

[309] It was also put to Dr. Koshi that the emergency room record confirms that Mr. Stephen reported back pain. Dr. Koshi agreed that back pain can be caused by a front-end collision like the First Accident. As for rear end collisions (Second Accident), he stated, “The research is very clear, unless the seat breaks, back pain cannot be caused by the forces involved in a rear-end collision.” He held to his opinion even though it was put to him that “thousands complain of back pain after rear-end collisions.”

[310] Dr. Koshi agreed that Mr. Stephen was reporting intermittent back pain on the eve of the Second Accident. He was reminded of Mr. Stephen’s complaints post the Second Accident involving “constant pain in the back and decreased range of motion.” Dr. Koshi took issue with any connection with what he termed “non-specific back pain” to the accidents and would not accept that the “two accidents could have exacerbated whatever caused the low back pain.”

[311] Dr. Koshi did not accept that “many pains do not show up immediately after an accident.” He countered that “they usually do, major ones always do.”

[312] Dr. Koshi was referred to a number of records pertaining to the right arm. He pointed out that Mr. Stephen had carpal tunnel surgery despite a normal EKG.

[313] Dr. Koshi said he diagnosed SSD because it “best explained” what is going on with Mr. Stephen and “everyone after agreed.”

[314] Dr. Koshi confirmed his WAD II diagnosis to the neck and thoracic spine. He does not believe the lower back was affected by the accident. He accepted that the First Accident caused a right wrist injury.

[315] With respect to CRPS, he accepted that sprains and strains could lead to this diagnosis. In his experience, CRPS would “clinically manifest within four to six weeks.” He accepted that CRPS is commonly initially diagnosed in the upper limbs, with spreading to other areas over time. It was suggested that the medical literature says that CRPS could start in a right arm and go down to a left leg and foot. Dr. Koshi agreed with this, with the caveat that it is “very rare.”

[316] Dr. Koshi explained why he does not believe that Mr. Stephen meets the criteria for CRPS, noting his disagreement with Dr. Hernandez’s “possible CRPS” diagnosis. He agreed that Gabapentin is one drug of choice in the treatment of CRPS. He noted that physiotherapy and “topicals” are best in terms of initial treatments.

[317] Dr. Koshi is of the view that there is no anatomical reason for Mr. Stephen's pain. While this lack of findings is consistent with CRPS, he does not believe all of the CRPS criteria is met. He noted that he carried out pin prick test and other testing which demonstrated "no obvious signs of pain." He also found no allodynia.

[318] Dr. Koshi agreed that in 2016, the term "nociplastic or centralized pain" was introduced, and is defined as follows:

...“an amplification of neural signaling within the central nervous system (CNS) that elicits pain hypersensitivity.” In other words, the brain and the spinal cord “turn up the volume” in response to any potentially unpleasant stimulus. This results in hyperalgesia (ie, an increased response to a painful stimulus) and allodynia (ie, pain following a stimulus that is typically not noxious). Nociplastic pain begins and is perpetuated by CNS alterations, but it can be aggravated by peripheral sources (eg, neuropathic pain, or nociceptive pain in joints or muscles).

He agreed that for those who do not fall into CRPS, nociplastic pain is a new classification.

[319] On redirect examination Dr. Koshi said that nociplastic pain “attempts to explain pain”, adding that its origins go back to what was once referred to as chronic pain. He added that any pain is a symptom. He said that with this case, “Ten years after the accident, the pain is still there, that’s the problem I have ...so unusual.”

Dr. Julie Millard

[320] On November 19, 2020, physiatrist Dr. Millard conducted an IME, requested by Mr. Stephen's counsel. Dr. Millard's report noted the following injuries:

...

Posttraumatic headache – migraine features. Query possible diagnosis of chronic migraine headaches. Referral to a headache specialist suggested.

Cervical, thoracic, and lumbar musculoligamentous/tendinous sprain injury. Chronic. Superimposed on prior degenerative change and prior injury.

Bilateral knee contusion and residual pain. Chronic. Superimposed on prior injury.

Right and left wrist sprain/strain injury. Left wrist resolved.

Left thumb sprain/strain – resolved.

Post motor vehicle accident psychological sequela – deferred to mental health

Probable right upper extremity complex regional pain syndrome – resolving.

Bilateral lower extremity meralgia paresthetica

Left foot sprain/strain

Chronic pain/probable chronic pain syndrome with central facilitation features.

[321] Dr. Millard described Mr. Stephen's various pre-accident issues but found that he was fairly healthy prior to the accidents. With respect to prognosis, Dr. Millard opined:

No medical restriction would be placed on Mr. Stephen as there is no musculoskeletal or neurologic impairment that would result in harm or tissue damage should he continue to reengage in his daily functional activities, recreational activities, and/or choose to return to the workforce in some capacity.

...

Although I cannot state that he is totally disabled from choosing to returning to the workforce in some capacity or from functioning on a day-to-date basis, Mr. Stephen experiences less pain when he functions in a less physically demanding manner (limits engaging in more physically demanding activities). Therefore, there is evidence to suggest that his ability to tolerate working and/or functioning at a certain level (i.e., in his pre-accident employment(s)) has been impacted firstly by the July 6, 2016, and subsequently and perhaps to a greater extent by the October 10, 2016.

Considering the amount of time that has elapsed since both accidents in my opinion, the likelihood that Mr. Stephen will return to the work force in a meaningful way (although he could and may choose to do so), decreased significantly over time. ...

[322] Mr. Stephen returned to see Dr. Millard on November 21, 2024, for an updated IME. Dr. Millard produced an updated report dated December 10, 2024. She confirmed that Mr. Stephen was still going to physiotherapy twice a week, doing at home exercises, going to massage once a week, and seeing a psychologist two to three times a month.

[323] Dr. Millard noted that Mr. Stephen described himself as 60 percent to 70 percent better, that his headaches were less frequent, and that he "feels stronger." In her report she also outlined Mr. Stephen's current medications, noting that all are unrelated to his injuries except for his use of cannabis.

[324] Dr. Millard concluded her updated report as follows:

I can accept that Mr. Stephen has a level of disability for his normal daily functional activities, recreational and vocational activities which has been present

since MVC1 and MVC2. It is apparent from review of medical documents that he did not have a significant level of disability prior to MVC1 and/or MVC2 and was functioning at a high level and working. I can accept that his current level of disability was probably initiated and triggered by both MVC1 and MVC2; however, I do also recognize that there are other contributing factors related to his psychological/psychosocial state that have probably contributed to and influenced the development of chronic pain and chronic pain related disability. Notably the soft tissue injuries sustained, and the impairments identified on physical examination and investigation are not of the magnitude that would produce the level of disability with which he is presenting.

No medical restriction would be placed on Mr. Stephen as there is no musculoskeletal or neurologic impairment that would result in harm or tissue damage should he gradually reengage in his daily functional activities, recreational activities and/or choose to return to the workforce in some capacity.

[325] On cross-examination Dr. Millard confirmed that she classified Mr. Stephen as “crippled” on account of his neck pain and ability to function. She agreed that Mr. Stephen’s Oswestry Back Questionnaire responses scored in the “highest bracket possible.” She allowed that his results “are not what we expect from sprain, strain and contusion post MVA ...it would be what I might expect in a patient with chronic pain.”

[326] Dr. Millard confirmed that her physical examinations showed normal muscle bulk and no allodynia. Further, she did not detect temperature asymmetry or skin colour changes in Mr. Stephen’s arms. Dr. Millard acknowledged her view that Mr. Stephen’s pain reports “may be influenced by psychological factors.” She added that “social factors” could be included. With respect to Mr. Stephen’s heart attack, “there may be psychological consequences flowing ...also part of the problem.”

[327] She said there was “no physical impairment that would harm him if he tried re-entry in daily activities, return to the work force ...I wouldn’t place a restriction on him.” She agreed that it was “an individual choice” for one to play guitar but not read a book.

[328] Dr. Millard allowed that Mr. Stephen may choose not to engage in more activities “as assessed by his own tolerance of pain.” Dr. Millard’s second report clarifies that Mr. Stephen’s headaches are “secondary with migraine features ...I did not diagnose chronic migraine ...the car accidents wouldn’t necessarily cause migraine headaches, but he could go on to develop.”

[329] Dr. Millard agreed that in her latest report, she changed “probable” CRPS to “possible” because she had tested twice and not found the condition; however, “he could have met the criteria ...it’s not to say he’s not experiencing pain.” She allowed that “chronic widespread pain is being reported” and spoke of the DSM 5 and somatic pain, “a clinical construct, clinical finding by psychiatric sequela.”

[330] Dr. Millard agreed that Mr. Stephen’s situation “may suggest symptom magnification ...this might also go along with chronic pain catastrophization.” Dr. Millard accepted that heart disease, old age, socio-economic factors, and obesity are risk factors for developing chronic pain. On redirect examination she stated that chronic pain involves “a central sensitization process ...a lowering of threshold ...an increase in sensitivity.” She added that a sufferer’s “central nervous system is on overdrive.” She noted that there can be a “fear of activity” and this can lead to obesity.

Dr. Zohar Waisman

[331] On January 29, 2023, Mr. Stephen attended at a virtual IME with Dr. Waisman, requested by his counsel. In his report dated March 20, 2023, Dr. Waisman assessed Mr. Stephen’s mental injuries sustained in the 2016 collisions. Following evaluation of Mr. Stephen, assessment of the history provided by Mr. Stephen, and review of all medical and psychological records, Dr. Waisman identified that Mr. Stephen suffers “from Major Depressive Disorder, moderate and non-psychotic, and Somatic Symptom Disorder with predominant pain, moderate and persistent.”

[332] He commented that these disorders cause significant impairment for Mr. Stephen and, given the time that has elapsed since the accidents, these are likely permanent impairments. He opined that Mr. Stephen should be referred to a multidisciplinary pain management program and psychotherapy using cognitive behavioural approaches and mindfulness-based stress reduction, once per week for two years.

[333] Dr. Waisman was cross-examined on his report. His opinion is based on an approximate one-hour virtual assessment of Mr. Stephen. He went through his “standard sequence.” He agreed that Mr. Stephen was “well groomed and able to give detailed answers.” He confirmed that the assessment is based on his interview and the documents he reviewed. He acknowledged that a “complete and accurate history is critical.”

[334] Dr. Waisman did not delve into Mr. Stephen's pre-existing DDD and back pain, as it is not in the scope of his practice, which is psychiatry. He was aware of his past divorce, history of depression, and difficult childhood, with both parents being alcoholics. He did not learn of the "car ramming" episode. Dr. Waisman had Dr. Isler's notes from early 2019 until late 2023. He could not be sure if all of what is now in production was available to him.

[335] Dr. Waisman agreed that Mr. Stephen's "functional ability" is based on the information he provided. He said that he focussed on the "mental aspect" and that there could be a "lack of motivation rather than physical inability ...whenever there's chronic pain I always ask about motivation, a hallmark, fatigue too." He added that he always looks for "verbal and non-verbal clues."

[336] Dr. Waisman explained that he diagnosed Mr. Stephen with SSD based on the DSM. He said that the former "somatoform disorder" was in the (pre-2013) DSM 4. He reiterated his opinion as follows:

The criteria for somatic symptoms disorders are as follows:

- A. One or more somatic symptoms that are distressing or result in significant disruption of daily life.
- B. Excessive thoughts, feelings or behaviors related to the somatic symptoms with associated health concerns are manifested by at least one of the following:
 - 1. Disproportionate and persistent thoughts about the seriousness of one's symptom.
 - 2. Persistently higher level of anxiety about health or symptoms.
 - 3. Excessive time and energy devoted to these symptoms or health concerns.
- C. Although any one somatic symptom may not be continuously present, the state of being symptomatic is persistent, typically more than six months.

[337] He added that patients with SSD "will seek medical treatments for somatic symptoms because they're in distress and want help ...we don't blame people for seeking treatments that are not exactly appropriate for their condition." Dr. Waisman allowed that the "character [of SSD patients] is such that if there's no physical explanation today, there will be tomorrow."

[338] Dr. Waisman explained that SSD is “an emotional reaction to a medical condition.” He stated that it’s “not correct at all to say that there is no physical explanation”, adding that just because the current technology (MRI, CT scans) does not show the problem does not mean that it does not exist. He added that “physical testing not available to the public would show [SSD].”

[339] Dr. Waisman stated that SSD is a psychiatric condition with underlying pathology. He said that chronic pain is a spectrum disorder with “one end having no psychiatric disorder and on the other end exercising an emotional reaction that meets SSD.” He noted that with Mr. Stephen:

He presents with excessive thoughts and feelings related to his pain symptoms that are manifested by persistently higher level of anxiety about his pain symptoms and excessive energy devoted to his pain symptoms and health concerns.

[340] Dr. Waisman reiterated his recommended treatment.

He requires psychotherapy using cognitive behavioural approaches and mindfulness based stress reduction once per week for two years and then to be reassessed for future sessions. I suggest a referral to a multidisciplinary pain management program.

Within my scope of practice, I agree with the proposed treatments made by Ms. Stanley.

[341] He said that cognitive behavioral approaches are the same as CBT. He said that the overall prognosis is poor but that there is “hope the patient will improve ...I see more so improvement in quality of life and to prevent further decompensation.” Dr. Waisman was not familiar with several of the treatment modalities provided by Mr. Isler to Mr. Stephen. He did not have these therapies in mind when he recommended CBT.

[342] Dr. Waisman provided his understanding of Mr. Stephen’s pre-accidents situation “working three jobs” and contrasted it with his current plight. He said that with time “chronic pain symptoms and thoughts regarding chronic pain cycle and lead to inactivity; deconditioning.” He added that there are typically “financial issues, lack of enjoyment of life, daily thoughts.”

[343] Dr. Waisman agreed that he was under the impression that Mr. Stephen had been “doing well and that changed after the successive accidents.”

Dr. David King

[344] On September 2, 2023, Mr. Stephen attended at an IME with neurologist Dr. King. In his report dated September 18, 2023, Dr. King reviewed a detailed history and various studies to eventually conclude that Mr. Stephen does not have CRPS:

As far as patient credibility is concerned, this is unlikely to be an organic presentation. By organic, I mean related to a definable structural neurologic disease such as reflex sympathetic dystrophy or complex regional pain syndrome. This presentation is in keeping with what psychiatry has described as a somatic system disorder.

...

Given that this man has been seen by now two neurologists, a neurosurgeon, two physiatrists, and a chronic pain specialist, various diagnoses that have been entertained are inadequate to explain his problems. There are insufficient criteria to make a diagnosis of complex regional pain syndrome in the right arm. His diffuse pain syndrome is afar and away beyond what one would see with either of the two accidents. No physical findings justify an anatomic diagnosis. Even if one were to assume that the original injuries of facet joint problems or myofascial pain were legitimate entities, his complaints far exceed those.

[345] Dr. King went on to describe the symptoms and stages involved in CRPS and concluded that “there is no question that this man does not fit into any of these stages.” Instead, he opined that he does not believe that Mr. Stephen is malingering, but that any physical injuries suffered in the accidents have resolved. He added that Mr. Stephen “does not describe any of the symptoms commonly associated with PTSD” and his only remaining diagnosis is that of SSD, the likelihood of which is “definite.”

[346] Dr. King believes that Mr. Stephen requires psychological intervention only, but that his “barriers to recovery will be his fixation on a diagnosis of complex regional pain syndrome.” He noted further that “there would be no medical reason why he cannot return to work allowing for the normal wear and tear of age” and that some recovery is expected.

[347] Dr. King was cross-examined on his report. He confirmed his opinion at page 131:

I cannot see how his physical injuries related directly to these accidents has [*sic*] caused a persisting pain for in excess of seven years which has gradually increased with the passage of time and led to more profound disability despite hours of treatment. While a diagnosis of complex regional pain syndrome has been entertained the support for such a diagnosis is dependent on his subjective reporting not on demonstrable abnormalities.

[348] When referred to an earlier section of his report, he agreed that his diagnosis should also reference “soft tissue hyper extension injury to the right wrist.” He agreed that Ms. Stephen could also have “compressed nerves ...numbness and tingling” in the right arm.

[349] Having reviewed Mr. Stephen’s medical records, Dr. King ruled out an “organic cause of his chronic symptoms and complaints.” He agreed that Mr. Stephen had prior low back pain and right-hand discomfort. He does not believe that these pre-existing conditions “account for his current symptoms.”

[350] Dr. King agreed that he spent approximately ten pages on credibility in his report. He said he believes that “credibility is very important with an IME.” Dr. King reiterated his opinion at page 88:

It is well within the scope of neurologic practice to express opinions of non-organicity, somatic symptom disorders, conversion reaction, functional neurologic disorders or Munchausen’s syndrome.

[351] He added that a person can have psychiatric illness which causes pain. He clarified that when a person has no physical or psychiatric illness but complains of illness then the person is not credible. This is what he means by “non-organic”, adding that psychologic disease is real but “when a person is making it up, they’re malingering.”

[352] Dr. King was asked about the “scales” that he developed and discussed with respect to Mr. Stephen at pp. 88 – 96 of his report. He confirmed his conclusions at p. 98:

We can conclude based on this analysis of [Mr. Stephen] that this is likely a non-organic presentation primarily due to symptom exaggeration complicated by psychiatric issues before and since the accident.

Mr. Stephen was said by his family doctor to have largely an uneventful, or at least irrelevant medical history, prior to his motor vehicle accident of 6th of July 2016.

An extensive review of his medical records indicate this wasn’t entirely the case.

He was subject to a significant emotional trauma in childhood. This is felt to be important for the development of psychological based illnesses in adulthood.

[353] Dr. King agreed that his scales are not peer reviewed “but based on many years of experience.”

[354] Dr. King confirmed his opinion that Mr. Stephen has no medical restrictions with respect to self-care; mobility; activities involved in homemaking; driving; and interactions with friends, family or strangers.

[355] He does not believe that Mr. Stephen is malingering; however, he believes that there is “symptom exaggeration.”

[356] Dr. King agreed that “you just can’t detect whether someone has pain with central sensitization ...there’s no test.” Referred to “nociplastic pain”, Dr. King noted that this is a “new term” as of 2016 or 2017. He added that it represents a “reformulation of chronic pain syndrome”, adding that pain can result from damage to the central nervous system. He explained that “chronic pain can lead to anxiety and depression and the reverse.”

Dr. Edwin Rosenberg

[357] In Dr. Rosenberg’s report, dated December 6, 2023, he stated that he agreed with the SDD diagnosis. He also diagnosed Mr. Stephen with Major Depressive Disorder, and Posttraumatic Embitterment Disorder. Dr. Rosenberg’s report states:

In somatic symptom disorder, individuals suffering with this condition generally have multiple, current, somatic symptoms that are distressing and may result in significant disruption of daily life. Not uncommonly, one symptom, most commonly pain, is present. It is not uncommon for individuals suffering with this condition to utilize medical and paramedical care utilization, which may or may not alleviate an individual’s concerns.

In a major depressive episode, augmenting and sustaining factors may contribute to the persistence of pain symptomatology. It should also be noted that both of these conditions may present with somatic preoccupation, problems with sleep, concentration difficulties, and generalized worry. Management is best undertaken in a multidisciplinary manner with all care-providers acting as one to achieve functional status in the suffering individual.

Posttraumatic embitterment disorder is not currently listed in DSM-5TR although it may be considered a sub-type of adjustment disorder. In PTED, the individual suffering this condition may experience the following symptoms in response to significant life events (such as motor vehicle accidents). Impaired emotional modulation; thoughts of revenge; feelings of helplessness; dysphoria; unspecific somatic complaints; pain. ...

The above conditions are frequently comorbid with overlapping symptomatology.

[358] Dr. Rosenberg believed that Mr. Stephen's prognosis for recovery is good, so long as he engages in cognitive behavioral therapy:

In my opinion, the prognosis for Mr. Stephen's recovery remains good until proven otherwise by a failure of management. As well, a resolution to the current and ongoing legal proceedings involving Mr. Stephen and his insurer will contribute to his recovery by easing the burdens/stressors implied in the diagnoses offered in this report.

ACTUARIAL EXPERTS

Matthew Krofchick

[359] Matthew Krofchick was certified as an expert in the field of chartered professional accounting and business valuation, capable of giving opinion evidence on the subjects of valuating a business as well as general actuarial services, including but not being limited to providing present value calculation of future pecuniary losses.

[360] Mr. Krofchick confirmed that in preparation for testifying, he read his two reports dated July 30, 2022, and January 21, 2025. Mr. Krofchick does not believe that he has ever spoken to Mr. Stephen. His associate, Daniel Wagner, prepared the first draft of the reports and Mr. Krofchick said that he thought that Mr. Wagner spoke with Mr. Stephen. In between Mr. Krofchick's first late afternoon of testimony and the next day, the file notes from Mr. Wagner's discussion with Mr. Stephen were produced. There were no notes referencing Mr. Wagner's apparent conversation with Richard Ross, the late principal of Sunshine Renewables, a heat pump company once operating in Nova Scotia.

[361] Mr. Krofchick testified that he reviewed, "provided commentary", and finalized Mr. Wagner's reports. George Krofchick, Matthew's father, also signed the reports and "he would have done a similar type of analysis" as his son.

[362] Mr. Stephen testified that he provided documents and had discussions with someone at Krofchick Business Valuators. With respect to CES, he said, "I would have indicated a fairly high growth rate in the industry at the time." He subsequently acknowledged that there was "not a lot of history because of the accident[s] ...I extrapolated to give him an idea of where our numbers would be." He allowed that at the time he spoke with the expert, he was "on Gabapentin and may have provided confusing information."

[363] It was put to Mr. Stephen that some of the information he provided to the Krofchicks was incorrect. He admitted that he was wrong when he told the actuaries that CES sold 70 heat pumps in 2016. When it was suggested that he did not point out this error in a timely way, he stated, “It’s very difficult for me to read these documents ...I was not aware of the specific mistake.” He was then reminded of his lawyer’s December 20, 2024, letter pointing out numerous mistakes with Dr. Millard’s report, and agreed that he “clarified in the interest of accuracy ...I’m in a better state of mind now than in the earlier years.”

[364] Mr. Krofchick agreed that although he is a certified business valuator (CBV), he was not asked to do a formal business valuation of either Musgo or CES. He relied on the material provided by Mr. Stephen’s counsel, Mr. Hebert, and on the information that Mr. Wagner received from Mr. Stephen. He agreed that the Krofchicks were not provided with:

- financial prognostications;
- forecasts;
- business notes or the like.

[365] Mr. Krofchick was not provided with the “mind map” that Mr. Stephen claimed was an important planning document. For CES, he had information from Mr. Ross and general market trends. Mr. Krofchick was not provided with Mr. Stephen’s discovery transcript. He agreed that the CBV standards apply to his reports and confirmed the minimum standard.

[366] Through cross-examination Mr. Krofchick acknowledged that his reports assume that CES’s revenues would remain steady and get adjusted annually for inflation. The reports do not account for possible setbacks in Musgo’s business. For example, he did not consider the potential impact of competition from new stores or the relocation of the high school. Indeed, the report considered expansion of Musgo but the authors had no information from prospective convenience stores in the area. Mr. Krofchick was unaware that Mr. Stephen and Mr. Hill had looked at purchasing one particular convenience store, but that the numbers did not work.

[367] Mr. Krofchick was not provided with Mr. Stephen’s (or Ms. Betlam’s) work history. He only had a general knowledge of Mr. Hill’s background and never spoke with him. Through further questioning and references to specific documents, it became apparent that Mr. Krofchick had no appreciation of the financial legalities (pre or post accidents) of Musgo or CES. He was not aware that Sunshine

Renewables declared bankruptcy last year and that Mr. Ross died. Mr. Krofchick ultimately conceded that there was no point in applying a discount rate to a forecast if the forecast was ill-conceived.

[368] The most effective cross-examination of Mr. Krofchick by Mr. Dunbar resulted in a methodical dismantling of the authors' entire opinions. Having regard to the reports and overall evidence, I am left to entirely disregard the opinions of the Krofchicks. The reports' foundations are entirely fanciful and not in keeping with the evidence led or the facts found at this trial. It is not surprising that in his closing submissions, Mr. Hebert chose to abandon the Krofchick reports and focus on the evidence of the defendants' actuarial expert.

Nikki Robar

[369] Nikki Robar co-authored the Valor reports of December 19, 2023, and July 31, 2025, commissioned by the defendants. She is the only signatory of the latter report, and it was prepared under her direction. Ms. Robar was qualified in a like manner to Mr. Krofchick.

[370] On cross-examination Ms. Robar agreed that it is "fairly common" for business owners to take money out of their companies throughout the year and then seek an accountant's advice on how to treat the income. Ms. Robar acknowledged that accountants routinely advise clients to take out dividends.

[371] She agreed that if a company's fiscal year ended on December 31st, their taxes would be due six months hence. She noted that it is the responsibility of clients to prepare financial statements.

[372] In Ms. Robar's experience, it is not uncommon for shareholders to have different day-to-day roles in a company. She agreed that shareholders are entitled to return on investment. Asked about Ms. Betlam's "salary" at Musgo, Ms. Robar said, "I would call it compensation because it's not a stable amount ...she received money even though the company was not profitable those years."

[373] With regard to CES, Ms. Robar was asked about her growth projections and confirmed that she assumed a 6.1 percent rate of growth. She confirmed that she arrived at the number from what was contained in the Krofchick report. She agreed that there is heat pump data "readily available" and was shown charts from Natural Resources Canada (NRC) referable to heat pump sales in Nova Scotia.

[374] She agreed that the NRC data shows about a 12 percent rate of growth of heat pump sales in Nova Scotia between 2015 and 2022. Nevertheless, Ms. Robar said that she based her numbers on the “received information on the sales of heat pumps ...to reflect activities in the business we saw.”

[375] Asked about an error in certain of the CES invoices showing sales in 2015 when they occurred in 2016, she answered that she included the sales for both years. She added that the records showed fewer sales between May and July in 2016 than 2015, and this caused her to wonder if CES “didn’t get off the ground.”

[376] Ms. Robar allowed that there was “not great accuracy” with the invoices or generally “great financial information.” She added, “The invoices don’t show what the financial statements say.” She demonstrated that even if the 28 heat pumps figure for 2015 was changed to 23 and the five were moved into 2016, the overall numbers show that CES was is “still on a downward trajectory.”

[377] Ms. Robar explained how she utilized “mortality rates for males” and “participation rates.” The latter refers to an “overall workplace adjustment for why people leave the work force.” She agreed that the assumption is made that people tend to retire between 60 and 75, but “you don’t know what’s going to happen.” She acknowledged that some work longer and “some don’t have a choice” to retire. She agreed that if she changed the assumptions, her multiplier would adjust upwards. Ms. Robar accepted that her assumptions mean that there is “only a 30 percent chance that Mr. Stephen would be in the work force in 2026 and 2027.”

SURVEILLANCE VIDEO

[378] Before closing their case, the defendants played an approximate 50-minute video (without audio) taken on Sunday, February 22, 2026. The video is almost exclusively taken from the inside of the Hungry Beagle restaurant in Porter’s Lake. The video begins at approximately 2:10 p.m.

[379] The video shows seven musicians gathered in a semi-circle facing a large window. There do not appear to be blinds or curtains covering the windows and there is bright sun shining through the glass. The camera is positioned behind the musicians, and one may infer that the operator surreptitiously videoed them. Towards the middle of the group is Mr. Stephen. He is seated on a regular chair strumming a guitar and by times, singing.

[380] The scene is undoubtedly what Mr. Stephen and others in their trial testimony referred to as a “jam session.” The video captures the back (and from time to time, side glances) of Mr. Stephen as he is seated on the chair. From the beginning until the end, he can be observed throughout:

- smiling;
- moving his head from side to side;
- moving his head up and down;
- laughing;
- singing;
- talking in between songs;
- gesticulating;
- at one point, moving his right arm fully up and pointing upwards;
- at one point, pouring a can into a glass with this left arm and hand.

[381] After the first song, there is a short break. Mr. Stephen stands, freely removes his coat, and places it on the back of his chair. Afterwards he quickly resumes playing with the other musicians. The video continues until approximately 3 p.m. At this point, the jam session appears to be continuing but the video ends.

[382] During the 50-minute segment, one of the seven musicians can be seen getting up on a few occasions to change instruments. I note that but for the brief moment in the beginning when he removed his coat, Mr. Stephen stays seated for the entire time. He does not exhibit any pain behaviors. To the contrary, he appears jovial with no outward indications that he is suffering any discomfort.

[383] The entire jam session presentation is completely at odds with both Mr. Stephen’s testimony and his deportment at trial. For example, he spoke of sensitivity to light and wore tinted glasses in court and when he was at home watching the trial via video link. He also testified that his lawyer’s office chair (which he sat in throughout his testimony) and home La-Z-Boy chair (which he sat in while watching the trial) were required to cope with sitting for extended periods of time. When he testified about playing his guitar, he said that he predominately “finger picked” and required a smaller guitar.

[384] The video evidence stands in direct contrast to the above. The sun is shining brightly, and Mr. Stephen is situated in a seat directly facing the window (when seats where others are sitting are less exposed to the sun). He is wearing glasses, but it is difficult to tell if they are tinted. He is seated in what appears to be a regular chair, which is not high backed or apparently ergonomically supportive. His guitar playing appears rather vigorous and he is clearly strumming with his right hand for extended periods of time. Mr. Stephen's guitar may be smaller than what he once played, but it does not appear to be markedly smaller than a standard guitar. It is certainly nothing near ukulele size.

[385] The final segment of the video is in keeping with Mr. Stephen's trial presentation. The seconds-long segment is from the same afternoon and begins at approximately 5:18 p.m. The video starts with a view of the outside of the Hungry Beagle. Mr. Stephen and his wife can be seen walking out of the front door. Ms. Betlam is carrying Mr. Stephen's guitar case. Mr. Stephen slowly and gingerly exits the building and walks the short distance to their Jetta. He opens the passenger door and gets in and closes the door. Ms. Betlam then drives the vehicle away with Mr. Stephen as her front seat passenger.

CREDIBILITY AND RELIABILITY

[386] As the trial judge, it is incumbent upon me to evaluate each witnesses' credibility and reliability. On balance, I found all of the witnesses provided generally reliable evidence. As for credibility, I had concerns with Mr. Hill and two of Mr. Stephen's experts – Mr. Krofchick and Ms. Stanley – as well as with Mr. Stephen. As for the defendants' experts, I had concerns with Dr. Koshi's credibility.

[387] With Mr. Hill, he was impeached on cross-examination with numerous references to his 2023 discovery testimony. While all of the plaintiff's lay witnesses were close to him, Mr. Hill came across as very much in Mr. Stephen's corner, such that I came to question his veracity. For example, he was prone to exaggerate Mr. Stephen's post-accidents situation, such as when he compared the plaintiff's presentation as being "like a quadriplegic."

[388] My credibility concerns with the three experts are apparent from my review of their cross-examination evidence. Unlike the majority of the experts and other professionals called at this trial, I found Dr. Koshi, Ms. Stanley, and Mr. Krofchick came across more like advocates for the side that retained them. These three individuals seemed as though they were invested in the process and, at varying times, gave rather emotional responses. To a person, they were, by times, wedded to

illogical positions that were not founded on the evidence they had reviewed. Concessions came reluctantly and belatedly.

[389] With Mr. Stephen, I am mindful of both surveillance videos juxtaposed with his presentation at trial. Both videos were taken in February 2026, while this trial was ongoing. In the courtroom, Mr. Stephen was very much the picture of pain and discomfort. The opposite presentation is seen in the vast majority of the video footage. From the surveillance videos, he appears to be very much enjoying himself and not exhibiting pain behavior. The only exception to this occurs at the very end of the second video (also tendered for the truth of its contents) when he is seen walking out of the restaurant and getting into the front passenger seat of his car.

[390] Returning to Mr. Stephen's pain presentation at trial, this was evident not only from observing him in the (special) witness chair but from watching him as he connected from his home to observe the proceedings. On the former, he did not stand when the court recessed or when it reconvened. He audibly gasped at times, which I took to be expressions of pain.

[391] Throughout the process, Mr. Stephen maintained that he was incapable of turning pages. After enduring several days of Mr. Thurlow's very measured cross-examination, Mr. Dunbar then took over. Perhaps owing to a change in style and more pointed questions, after less than an hour of questioning, Mr. Stephen declared that he could not continue. The noon break was taken early, with the understanding that Mr. Stephen would return to see if he could resume testifying. Instead, when court reconvened, Mr. Stephen was no longer present. His counsel advised that he returned home, as he was in too much discomfort to continue.

[392] Mr. Stephen ultimately returned to the stand a day and a half later, and his cross-examination was completed. The court then encouraged him to remain for the next witness; however, Mr. Stephen expressed upset with coming to court, explaining that the entire experience contributed to his pain. Arrangements were then carried out (as had been forecast by Mr. Hebert on the record at the pre-trial conferences) for Mr. Stephen to watch the proceedings from his home. This was achieved and Mr. Stephen's face could be seen on the large courtroom monitor for the duration of the trial. Situated in his living room, seated in his La-Z-Boy chair, he impassively watched the proceedings.

[393] It is very difficult for me, as trier of fact, to reconcile the diametrically opposed versions of Mr. Stephen. Of all that might be said about the incongruities, I have determined that having considered everything – both demeanor and given his

answers (particularly on cross-examination) to the myriad of questions, I find that I cannot accept the veracity of all of his evidence. On balance, I find that this critical credibility finding causes me to conclude that although he has been diagnosed with SSD, he exaggerates his level of disability. What this means, from a practical perspective, is that I am satisfied on a balance of probabilities that although Mr. Stephen is disabled from the workforce, he is capable of doing more home and related work. Further, I am of the view that his pain and suffering is not at the severe level that he attempted to portray.

[394] Furthermore, I have determined that I must give Mr. Stephen's evidence about his accidents-related injuries and symptoms less weight, unless they are supported by contemporaneous or near-contemporaneous medical records and/or the testimony of other credible witnesses. I will also give little to no weight to portions of the expert opinions, to the extent that they rely on Mr. Stephen's self-reporting, where these self-reports are not supported by contemporaneous or near contemporaneous medical records and/or the testimony of other credible witnesses.

[395] On matters of credibility, I find guidance in our Court of Appeal's decisions in *J.L.T. v. Nova Scotia (Community Services)*, 2017 NSCA 68, and recently in *R. v. Best*, 2026 NSCA 15. The former decision approved of Justice Forgeron's "stated approach to the assessment of credibility" at para. 28. Justice Bourgeois went on to uphold Justice Forgeron's credibility analysis and findings.

[396] In any event, I am alive to the above in conducting my credibility analysis. With respect to more recent authority, I am cognizant of *Best* and Justice Gogan's references therein to *R. v. Cooke*, 2020 NSCA 66, and *R. v. Stanton*, 2021 NSCA 57. The latter decision offers a helpful summary set forth by Justice Derrick at para. 67.

[397] As well, I draw guidance from our Court of Appeal's very recent decision in *Anderson v. Gagne*, 2026 NSCA 25. At paras. 2 – 3, Justice Farrar approvingly referred to Justice Gatchalian's analysis as follows:

[2] Further, the arguments ignore the trial judge's findings of credibility and reliability in her decision as follows:

Conclusion re: Credibility and Reliability

[35] Ms. Anderson appeared to be doing her best to answer questions truthfully. I do not believe that she was being dishonest. However, I conclude that her evidence regarding the accidents and her accident-related symptoms is not reliable. I come to this conclusion because of the above-noted inconsistencies between her evidence and the medical records, which

were not adequately explained by Ms. Anderson, and because of the significant passage of time since the accidents.

[36] I will therefore give Ms. Anderson's evidence about the accident and her accident-related symptoms little or no weight, unless it is supported by contemporaneous or near-contemporaneous medical records and/or the testimony of other witnesses. I will also give little to no weight to the expert opinions to the extent that they rely on Ms. Anderson's self-reporting, where those self-reports are not supported by contemporaneous or near-contemporaneous medical records and/or the testimony of other witnesses.

[3] The trial evidence must be viewed in light of these findings. The trial judge's decision was well supported by the evidentiary record and the findings of fact she made. The appeal is dismissed.

[398] Once again, Mr. Stephen's trial presentation was far removed from what is shown on the videos and from his prior discovery examination and court attendance. At trial, he almost exclusively sat upright in the ergonomic chair and barely moved his head. He professed to be unable to turn the pages of the various exhibits he was asked to review. There were no page-turning limitations when he was cross-examined on the motion before Justice Smith two years ago. There were no page-turning complaints expressed at his discovery back in August 2019 (referenced during impeachment and portions provided at the close of the defendants' case).

[399] As I have already remarked, Mr. Stephen's video presentation is completely different from his presentation at trial. He freely moves his head up and down, as well as from side to side. He handles cutlery and a guitar with dexterity. With respect to the guitar, he can be seen vigorously strumming with his right hand and arm. He is not seated in a special chair.

[400] While it is true, as Mr. Hebert points out, that Mr. Stephen is walking stiffly when he emerges from the restaurant later in the afternoon, I am not persuaded that it is on account of "paying the price" for his earlier jamming. Rather, having reflected on all of the evidence, I have determined on a balance of probabilities that what was later captured on video was an exaggerated pain presentation.

[401] In any case, it is more than the irreconcilable trial and other presentations that cause me to question Mr. Stephen's credibility. Whereas he provided detailed, upbeat answers when being questioned by his own counsel, his demeanor changed markedly when questioned by defence counsel. He closed his eyes throughout most of the questions, and he was often evasive when asked difficult questions. Mr. Stephen was vague at times and answered innumerable questions (framed to have

him confirm what he had told various medical professionals) with, “You’ll have to ask [the treatment provider].” He similarly refused to answer questions about his lack of financial records by blaming his accountant. On balance, I found Mr. Stephen to lack credibility in several critical areas of his testimony.

KEY FACTUAL FINDINGS

[402] Having regard to all of the evidence, I make the following key findings of fact:

- Mr. Stephen suffered injuries in the motor vehicle accidents, both from a physical and psychological standpoint;
- as a result of the accidents, the plaintiff developed SSD and likely an exacerbation of Major Depressive Disorder;
- given his current diagnosis, he requires further (limited) psychological treatment to eliminate some of the limitations he currently suffers;
- he should receive further (limited) physiotherapy and massage therapy to transition and provide direction with regard to a home exercise program;
- he has lost a modest amount of future earning capacity.

[403] The below damages discussion and awards are based on the above critical findings of fact.

GENERAL DAMAGES

[404] The defendants suggest that an appropriate range for damages for pain and suffering, along with loss of amenities, should be in the realm of \$75,000.00 - \$125,000.00. The plaintiff counters that the range should be between \$150,000 - \$200,000. Mr. Hebert adds that anything less would be “a disservice.”

[405] Mr. Stephen argues that the accidents caused a multitude of injuries inclusive of CRPS and SSD.

[406] When I distill all of the evidence, I conclude that Mr. Stephen exacerbated previous musculoskeletal and spinal issues and suffered soft tissue injuries as a result of the 2016 accidents. I find that he has also struggled with symptoms of chronic pain, as well as debilitating negative thoughts, anxiety, and depression attributable

to his pain, prognosis, dealings with the insurance companies, and the litigation. I find that as he has been diagnosed by Drs. Waisman, King, Koshi and Mr. Isler, he meets the criteria for a diagnosis of SSD.

[407] On all of the evidence, I find that the physical injuries suffered in the accidents have somewhat resolved, and that Mr. Stephen does not meet the criteria for CRPS. I make this finding based on my distillation of the expert medical opinion evidence. The plaintiff's own experts, Drs. Hernandez and Millard, were of the view that CRPS was "possible." Given my reservations about Dr. Koshi's credibility, I was not persuaded by his evidence in this area. Nevertheless, having considered Dr. King's evidence and the totality of the evidence on CRPS, I conclude that the diagnosis has not, on a balance of probabilities, been established. As opined by Dr. Rosenberg, Mr. Stephen's remaining issues are psychiatric in nature.

[408] In *Trainor v. DeArcos*, 2025 NBCA 131, the New Brunswick Court of Appeal set aside the trial judge's finding that the plaintiff's psychological injuries were too remote. Justice LeBlanc's discussion of causation at paras. 63 – 67 is of assistance here. Ultimately, Justice LeBlanc relied on established authority in finding that all of Ms. Trainor's injuries were foreseeable consequences of the accident:

83 The judge gave no reasons for concluding that the TMD injuries were too remote to warrant recovery. Her finding that the "root of the TMD [...] is the chronic pain [...]" suggests that she considered the TMD unforeseeable, because she found the chronic pain itself was not a foreseeable consequence of the accident. In my view this amounts to an error of law, as it turns on how the injury developed rather than on whether it was reasonably foreseeable.

84 Ms. Trainor submits that case law has recognized that the injuries she sustained in the accident (chronic pain, TMD and injuries to the right leg) are types of injuries which are reasonably foreseeable as flowing from motor vehicle accidents (*Greenway-Brown v. MacKenzie*, 2019 BCCA 137, [2019] B.C.J. No. 700 (QL)). In *Greenway-Brown*, Fisher, J.A., writing for the Court of Appeal of British Columbia wrote:

[94] ...Here, the appellant had to show that it was reasonably foreseeable that a person of ordinary fortitude would suffer soft tissue injuries in one or more minor motor vehicle accidents, leading to chronic pain and other psychological problems. These are not the kinds of injuries that are too remote to allow recovery for negligence in a motor vehicle accident. ...

85 Much like in *Greenway-Brown*, the injuries sustained by Ms. Trainor in this case, are not the types of injuries that are too remote to allow recovery for negligence in a motor vehicle accident: chronic pain, TMD and leg injuries flowing from motor vehicle accidents are not novel issues.

[409] On all of the evidence, I find that Mr. Stephen's multiplicity of physical and psychiatric injuries (including SSD) arose as a result of the accidents.

[410] In *Trainor*, the New Brunswick Court of Appeal replaced the trial judge's general damages award of \$150,000.00 with what had been her provisional award of \$200,000.00.

[411] Ms. Trainor was 20 years old at the time of the first of three motor vehicle accidents. Objectively viewed, her injuries from the accidents were much more serious than Mr. Stephen's. For example, Justice LeBlanc's summary reveals an array of injuries beginning in late March 2014. After reviewing the progression, the Court of Appeal noted:

23 By the fall of 2016, Ms. Trainor continued to struggle with anxiety, PTSD, and chronic pain. In November 2016, her medical chart noted femoral, back, neck and widespread pain that affected her mental health. She was taking multiple medications for anxiety, depression and personality disorder, and also using cannabis. At a December follow-up with her orthopedic surgeon, she reported pain throughout her body, including her jaw. This generalized pain had emerged approximately 18 months after the accident. Around the same time, her dentist, Dr. Foreman, attributed her jaw pain to teeth grinding, though he could not identify the origin of her TMD.

...

25 As noted, in July 2011, Dr. Allanach performed femoral anteversion surgery on Ms. Trainor and advised that a similar surgery would eventually be needed on her right leg. In December 2017, she underwent this second surgery. Following the operation, she reported being able to feel the pins placed on the outside of her knee.

...

27 In the three years following surgery, Ms. Trainor's condition worsened. Pain that began in her knee and back spread to her skin, arms and legs.

28 By February 2018, she was walking with a cane. In August 2018, the pins in her right knee were surgically removed. Because of a contraindication regarding her medications, she could not undergo general anesthesia and instead received Valium and a spinal anesthetic, requiring her to remain horizontal for four days. She later reported that the puncture site in her spine did not close. In November 2018, a nurse practitioner in her family physician's office referred Ms. Trainor to physiotherapy, noting she had not yet received physiotherapy and exhibited muscle weakness.

[412] A more analogous case in terms of a general damages award comes from our court. In *Landry v. Chisholm*, 2022 NSSC 207, there was debate as to whether the

limitations and disability the plaintiff complained of were related to physical injury and/or psychological injury. Having regard for all the circumstances, including the conflicting expert evidence, Justice Lynch concluded as follows:

65 Colin Landry has lost the life he knew prior to the accident. He has lost family relationships, his marriage, his friends. Colin Landry has become a different person than he was prior to the accident of June 2, 2017. The pain has endured for five years and is not expected to ease. His ability to work and his ability to perform the functions of daily living have been severely diminished.

...

67 The Plaintiff has provided case law from British Columbia which I do not find helpful in assessing damages. The Plaintiff has also provided *MacDonald v. MacVicar*, 2018 NSSC 271 where the general damages awarded for physical disabilities were \$75,000 and *Trenholm v. H & C Trucking Ltd.*, 2014 NSSC 90 where the general damages awarded were \$75,000 for a psychological injury.

68 Colin Landry has both physical and psychological disabilities as a result of the accident. I award him damages in the amount of \$100,000.

[413] The above cases from our region do not deal with SSD. Indeed, there are no reported decisions on general damages for SSD in Atlantic Canada. The precursor to SSD, somatoform disorder, was found to exist with the plaintiff in *Vienneau v. Brideau*, 2023 NBKB 170, where Justice Robichaud awarded \$150,000.00 for general damages. In that case, the plaintiff was just 23 at the time of the accident and also suffered significant orthopedic injuries.

[414] There are several decisions in other jurisdictions dealing with SSD, sometimes under a different name but each sharing a common reported feature – the real experience of pain without an obvious organic cause, which is attributed to the plaintiff’s psychological condition:

- *Khairati v. Prasad*, 2002 BCSC 360 – Ms. Khairati suffered “mild to moderate soft tissue injuries to her neck, shoulders and back” when she was rear-ended (para. 229). More significantly, these soft tissue injuries led to “Somatoform Pain Disorder, or a Somatization Disorder and Major Depression” (para. 251). At para. 293, general damages of \$125,000.00 were awarded.
- *Samuel v. Levi*, 2008 BCSC 1447 – Ms. Samuel’s chief concern at the time of trial was complex somatoform disorder which manifested in weakness and pain on the left side of her body and left her unable to

return to work indefinitely. At para. 98, general damages of \$100,000.00 were awarded.

- *Russell v. Thurcott*, 2009 ABQB 19 – the 21-year-old plaintiff suffered whiplash injuries and developed a somatic symptom disorder accompanied by severe depression. She also received diagnoses of non-reducible intrascapular disc displacement of bilateral TMJs, chronic pain syndrome, PTSD, fibromyalgia, Generalized Anxiety Disorder, and Major Depressive Disorder. She experienced widespread pain and associated depression, social isolation, physical deconditioning, and catastrophic thinking about her fears and pains. While her symptoms also waxed and waned, the court accepted that the condition presented variable symptoms and determined that she was not malingering, nor was any reduction made for pre-existing issues. At para. 277, the court awarded \$115,000 in general damages.
- *Sheldon v. Reyna*, 2018 ONSC 5611 – the plaintiff was 51 at the time of a rear-end motor vehicle accident. The accident had a significant impact on her life and derailed her career as a senior engineer with Canada Post. She was diagnosed with chronic pain disorder, adjustment disorder with primary depressed mood, and somatic symptom disorder, with a variety of pain symptoms throughout her body and difficulties sleeping. The court awarded \$100,000.00 in general damages at para. 464.
- *Brundige v. Bolton*, 2018 BCSC 1843 – following a motor vehicle accident, Mrs. Brundige suffered from “neck, back and pelvic myofascial and musculoskeletal injuries. Specifically, grade II soft tissue injuries to her neck and back and a musculoligamentous injury to her left hip” (para. 121). These injuries would not have been debilitating but for her adjustment disorder and somatic symptom disorder. She was still “able to manage the end of her dysfunctional marriage. She has been an active and effective volunteer at her children’s school. She is able to fully carry out her role as mother and homemaker. She has also been able to take part in outdoor recreational activities” (para. 129). At para. 130, \$204,126 in general damages were awarded.
- *Gabert v. Krist*, 2018 BCSC 2109 – as a result of a motor vehicle accident, Ms. Gabert suffered chronic headaches, tinnitus, chronic fatigue syndrome and fibromyalgia all of which manifest as chronic,

debilitating pain. These resulted in an inability to enjoy her “golden years” as a retiree. At para. 90, \$160,000.00 in general damages were awarded.

- *Solanki v. Reilly*, 2021 ONSC 6694 – the male plaintiff (47 years old at the time of trial) was injured in a low-speed motor vehicle accident. He had experienced prior discrete episodes of chronic back pain. He was diagnosed with chronic pain syndrome as a result of the accident, as well as Major Depressive Disorder and Somatoform Disorder. At trial, he was found to be disabled from competitive employment, with no evidence of pre-accident mental health issues. At para. 112, the court awarded him \$110,000.00 in general damages.
- *Fraser v. Persaud*, 2023 ONSC 1449,– at the time of trial, the court found Ms. Fraser suffered from depression, PTSD, chronic pain, adjustment disorder, and fibromyalgia which caused permanent disability including an inability to work or engage socially as she had pre-accident. At para. 593, the court awarded \$175,000.00 in general damages.

[415] I recognize that all of the above-referenced general damages awards ought to be adjusted upward for inflation. In arriving at my general damages figure for Mr. Stephen, I bear this in mind, along with the specifics of his pain and suffering and loss of amenities of life.

[416] In *Bezanson v. Sun Life Assurance Company*, 2015 NSSC 1, Justice Boudreau considered a plaintiff who testified to debilitating pain yet was exposed through surveillance videos to be functional “and in good cheer” in various activities (para. 136). At para. 155, Justice Boudreau remarked:

155 Despite the pain she experiences, the Plaintiff is able to participate in certain aspects of life; perhaps those she finds most appealing or worthwhile. She has travelled to vacation destinations, involving air travel of multiple hours. She has cared for children in her home, at scheduled times, never missing any period of time for which she was responsible. She routinely attends hockey events for her children, multiple times per week, involving hours of standing and sitting in hockey arenas. She travels for some of those events as well, enduring multiple hours of car and/or air travel, and even overnight stays. These activities have not significantly been curtailed.

[417] She went on to explain why she could not accept that the surveillance videos were only showing a “good day” (paras. 156, 157). At paras. 161 and 162, Justice Boudreau ultimately made conclusions along the lines of my findings in this case:

161 In contrast, in the surveillance videos, it must be said that the Plaintiff looks to be enjoying herself. She does not look in pain, nor does she look "medicated". She looks alert, happy, interacting with others, moving freely and unconsciously. She does not behave like the person I observed in court.

162 I am persuaded that the Plaintiff has some degree of pain. However, I also find that she is able to function fairly well, despite that pain, where the activity is one that she is interested in or committed to.

[418] *Bezanson* is a total disability case and the court ultimately found that the plaintiff was not totally disabled and thus dismissed her claim. Here, the court is grappling with a tort case, and I must ultimately assess appropriate damages.

[419] On all of the evidence, I find that Mr. Stephen experiences ongoing but improving pain with psychiatric overlay. I find that he suffers from SSD but not CRPS. I accept that he is totally disabled from the workforce yet paradoxically, is able to function well when he engages in activities that he is interested in and enjoys.

[420] In all of the circumstances, I am satisfied that Mr. Stephen’s general damages are beyond the range established by our Court of Appeal nearly 35 years ago in *Smith v. Stubbart* (1992), 117 N.S.R. (2d) 118 (C.A.) and reiterated by the same court in *Hayward v. Young*, 2013 NSCA 64. At para. 50 of *Hayward*, Justice Saunders noted:

50 In *Smith v. Stubbart*, Chipman, J.A. set the range at between \$18,000 to \$40,000 so that in 1992 \$40,000 represented the maximum one could expect to receive for non-pecuniary damages in cases where soft tissue injuries had led to "long-term discomfort which almost invariably brings on emotional problems", and leaving the plaintiff with "persistingly troubling but not totally disabling injury". For the purposes of this appeal it is not disputed that \$40,000 in 1992 would translate into the sum of \$57,149.64 in 2011, that being the year when the judge filed this decision (these figures provided by counsel based on the Bank of Canada inflation calculator).

[421] Since I have found that Mr. Stephen is totally disabled and because I have found that he has SSD, it is perhaps easy to understand why I find his damages are beyond the range outlined above. The question remains as to what constitutes an appropriate award of general damages for Mr. Stephen.

[422] While Mr. Stephen has experienced SSD, there is a real chance that with concentrated therapy, including appropriate CBT, along with the conclusion of this litigation, he will be able to overcome his limitations in the future.

[423] In arriving at an award of general damages to Mr. Stephen for pain, suffering and loss of amenities, I am mindful of all of the evidence and authorities. Having analyzed the totality of the evidence and cases, I award Mr. Stephen \$125,000.00 in general damages.

LOSS OF INCOME / EARNING CAPACITY

[424] In his pre-trial submission, Mr. Stephen claimed for loss of past and future losses, broken down as \$560,000.00 past loss and \$240,000.00 future loss. The overall claim of \$800,000.00 was primarily reliant on the opinions of the Krofchicks in their two reports.

[425] In his closing submission, Mr. Stephen modified his claim to a global submission of “at least \$500,000.00.” In support of this position, the plaintiff handed up a chart drawing on Ms. Robar’s report and positing a total past and future loss ranging between \$416,981.54 and \$677,041.65.

[426] When I consider all of the evidence led at this trial, I must conclude (as detailed earlier in this decision) that Mr. Krofchick’s assumptions are flawed because they do not reflect Mr. Stephen’s employment history or actual earnings. This finding does not end my analysis. Indeed, I am alive to Mr. Stephen’s pitch (in his counsel’s closing submission) that I must still consider the claim for damages for loss of past and future income. For authority, I refer to *MacVicar Estate v. MacDonald*, 2019 NSCA 90, where Justices Saunders and Farrar (with Wood, C.J.N.S. concurring) upheld at para. 62 what I will term the hybrid approach used by the trial judge:

62 We respectfully disagree. Murray, J. recognized that choosing an actuarial versus global approach need not be an "either/or" proposition. He said:

[371] ... The most important approach is the one that arrives at the fairest and most just result. As such, a judge is not constrained by expert reports and should be given liberty to determine an appropriate amount. Although not a Nova Scotia case, *Briffett v. Gander and District Hospital*, (1996), 137 Nfld. and P.E.I.R. 271, [1996] N.J. No. 34 (Nfld. C.A.), is instructive. In *Briffett*, Marshall, J.A. said, for the court:

197. Moreover, it should be underscored that resort to one method does not foreclose the utility of the other. Thus, even where sound actuarial evidence affords sufficient basis to frame an award, a judge may still make a global assessment to further test the fairness of the award. If the initial actuarial projection appears out of line, a revisiting of the postulates on which the calculations are made may be in order before arriving at final decisions. On the other hand, where actuarial evidence is insufficient, recourse may well be had to reliable proportions of the statistical evidence in framing the global award. Moreover, reference to the structure provided by the actuarial method may assist in giving a measure of assurance that all relevant factors and contingencies legitimately bearing on the award were addressed. Chief Justice Goodridge, in his decision of the components contained in the actuarial formula in *Dobbin v. Alexander Enterprises Limited* (1987) 63 Nfld. & P.I.E.R. 1 at pp. 9 - 12, outlines a compendium of these relevant elements. **For the foregoing reasons, therefore, neither method should be treated as mutually exclusive, but as complimentary, one to the other.**

198. ... **The method that should have been used depends upon the nature and quality of the evidence available to the assessing judge.** [Emphasis added by Murray, J.]

[372] I find this is not a case where the only option available to this Court is to select an award on a global basis. In my view, there is merit in using aspects of the actuarial report that assist in determining a just and reasonable amount for loss of future income for the Plaintiff. In my view it would not be prudent to ignore the figures contained therein. Indeed it is an exercise in speculation to some degree. ...

[427] Bearing the above in mind, I return to the nature and quality of the evidence as I assess this head of damages. I am drawn to the defendants' suggested approach, as opposed to the invitation by plaintiff's counsel to globally award \$500,000.00. In coming to this determination, I have drawn upon the *Dobbin* case cited above by our Court of Appeal. Then Newfoundland and Labrador Chief Justice Goodridge, in discussing the trial judge's award in this area, noted at paras. 54 and 56 – 57:

54 The trial judge heard the evidence and made his own assessment of it. Based on what he heard, he determined that the working pattern of the respondent would have continued for the years to the date of trial upon much the same pattern as had been established in the preceding years. This pattern was some weeks employment and some weeks of unemployment insurance in every year.

...

56 The trial judge did not see fit to attribute any monetary value to the somewhat vague prospects of employment for the period mentioned in the evidence and reached his conclusion on what he described as the only reliable evidence of the plaintiff's income. This conclusion can be sustained.

57 With respect to pre-trial income losses, the measure of a person's lost earning capacity is equal or nearly equal to the income that he would have earned during the period if he had not been injured. There may, in a given case, be factors that have a positive or negative impact on such a projection. In this case, the evidence was very general and the trial judge is not in error in disregarding factors not proven or inadequately proven.

[428] To my mind, because it is practically founded, C.J. Goodridge's analysis from 40 years ago stands the test of time.

[429] I heard the evidence. I have made my own assessment of it. I have determined that the working pattern of Mr. Stephen would have continued for the years to the date of this trial upon much the same pattern as was established in preceding years. This pattern was as exposed through Mr. Stephen's confirmation on cross-examination that he had 23 positions in 35 years. The pattern included periods of unemployment and employment insurance. The pattern involved three businesses which were not sustainable.

[430] I do not see fit to attribute any actuarial projections to value Mr. Stephen's income in the years after the accidents and given the decline of both Musgo and CES. In my view, the evidence is crystal clear that these businesses were not sustainable, with or without the accidents. Dressing up Ms. Robar's cross-examination answers in an attempt to justify a burgeoning heat pump business is not rooted in reality. As Justice Saunders wrote in *Campbell-MacIsaac v. Deveaux*, 2004 NSCA 87, at paras. 101 – 103:

101 The analysis undertaken by Justice Oland in *Kern v. Steele*, [2003] N.S.J. No. 478, 2003 NSCA 147 beginning at para 56, is most instructive. Her approach, together with the authorities upon which she relies, may be briefly summarized. When assessing contingencies the court is engaged in the exercise of examining possibilities, probabilities and chances against the likelihood that they might prevail in any given factual situation. The evidence upon which such estimations are based must be "cogent evidence and not evidence which is speculative" (*Schrump, et al v. Koot et al* (1977), 82 D.L.R. (3d) 553 (Ont. C.A.)). Evidence which supports a contingency must show a "realistic as opposed to a speculative possibility" (*Graham v. Rourke* (1990), 75 O.R. (2d) 622 (Ont. C.A.)). Justice Oland also endorsed the approach in *Graham, supra*, which was to distinguish general contingencies from special ones. Into the category of general contingencies

fall those features of human experience that are likely to be common to all of us, things like the aging process, sickness, or promotions at work; whereas circumstances falling into the category of special contingencies are peculiar to that particular claimant. For example, remarkable talents, education, a unique illness or a poor employment history would be characterized as special contingencies.

102 As was noted in *Graham*, supra, and endorsed by Oland, J.A., in *Kern*, the impact of general contingencies may not be easily susceptible to formal proof. A trial judge has a discretion whether to adjust an award for future pecuniary loss in order to take into account general contingencies, but any such adjustment ought to be a modest one. Where, however, a party relies upon a specific contingency, whether negative or positive, there must be sufficient proof on the record which would support an allowance for that type of contingency. At all events, as noted by Oland, J.A., the overall approach is that which best achieves fairness between the parties (*Keizer v. Hanna*, [1978] 2 S.C.R. 342, wherein Dickson, J. (as he then was)) held at page 351 that:

... At the end of the day the only question of importance is whether, in all the circumstances, the final award is fair and adequate. Past experience should make one realize that if there is to be an error in the amount of an award it is likely to be one of inadequacy.

103 Fairness and adequacy are concepts rooted in fact and also to some extent in inferences drawn from facts. As such, in the assessment of fairness and adequacy, considerable deference is owed to the findings of a trial court.

[431] The reality is that the one person beyond the plaintiff that Mr. Krofchick's assistant chose to ask about the heat pump business in Nova Scotia undoubtedly saw (before his death) his business go into decline, because it is now in bankruptcy. Obviously a generally positive sector of the economy can nevertheless give rise to business casualties.

[432] Given the extensive evidence led with respect to Mr. Stephen's employment history and with his nascent businesses, I cannot accept the prognostications he testified about/provided to his actuary. Rather, I find on all of the evidence that the calculations relevant to income loss are as suggested by the defendants. In this regard, I find that the calculations relevant to past income loss are Mr. Stephen's demonstrated employment income amounts, as follows:

- 2010 - \$28,998
- 2011 - \$23,350
- 2012 - \$20,009

- 2013 - \$25,400
- 2014 - \$47,742
- 2015 - EI of \$22,827
- 2016 - 41,200

[433] The First Accident occurred about halfway through 2016, and the Second Accident was three months later. In order to arrive at the full year calculation for 2016, I have calculated Musgo income for Mr. Stephen at \$1,100 bi-weekly, for a total of \$28,600.00. As for CES income, the etransfer history offers the only reliable, true income source. When I add up all of Mr. Stephen's etransfer income, I arrive at \$12,600.00. The total for Musgo (\$28,600) and CES (\$12,600) is \$41,200.00.

[434] Taking all of the years into account, Mr. Stephen's seven-year employment income average yields an average of \$26,671.28 (gross income) per annum. The gross income figure amounts to \$2,222.61 per month. There are 115 months from July 2016 (First Accident) to the beginning of the trial. Accordingly, the total gross loss of past income to the present is \$255,600.15 (115 x \$2,222.61).

[435] The \$255,600.15 is offset by the amounts received by Mr. Stephen for Section B weekly indemnity (\$181,749.50) and CPP disability (\$42,070.00). These figures total \$223,819.50, approximately \$32,000 less than Mr. Stephen's demonstrated loss of past income. Nevertheless, when I consider the fact that any award must be based on net past loss of income, the figures are a wash. In the result, I find that Mr. Stephen has sustained no loss of past income.

FUTURE LOSS OF EARNINGS / DIMINUTION OF EARNING CAPACITY

[436] I have concluded above that no past loss of income has been proven. For the same reasons, I conclude that an actuarially projected future loss of income has not been established.

[437] With respect to diminished earning capacity, I refer to *Zwicker v. Canada (Attorney General)*, 2023 NSSC 44. Justice Gabriel provided a helpful analysis of diminished earning capacity at paras. 371 – 375. At paras. 374 – 375, he concluded:

- 374 One of the cases referenced by the Plaintiff is *L.M.M. v. Nova Scotia (Attorney General)*, 2010 NSSC 44. Therein, the Court discusses the criteria to be considered in assessing such an award:

Damages for loss of future earning capacity are intended to compensate a plaintiff whose earning capacity has been affected by defendants wrongdoing. The loss is of a capital asset. Some of the considerations to take into account were set out in *Brown v. Golaiy*, [1985] BC J No 31 (BC SC):

1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
2. The plaintiff is less marketable or attractive as an employee to potential employers;
3. 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. The plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

The court must assess the chance that such a loss will occur. As noted above future hypothetical events need not be proven on a balance of probability; they are simply given weight according to the relative likelihood: *Athey, supra*.

375 In *Earnshaw v. Despins*, [1990] BC J No 944 (BCCA), the Court put it thus:

In my opinion, the true questions the [trier of fact] must address in a claim such as this are:

1. Has the plaintiff's earning capacity been impaired to any degree by his injuries?
2. If so, what amount in the light of all of the evidence should be awarded for that impairment?

[438] With Mr. Stephen, I am alive to his current age of 68 which is well within the range of when many (as Ms. Robar testified) retire. Indeed, the defendants have argued that his advanced age, coupled with his pre-existing and ongoing health situation (absent the accidents), militate against an award under this head of damages.

[439] They add that Mr. Stephen's current CPP disability income is in line with his former level of pay. In any case, I have already demonstrated that Mr. Stephen's past seven years of gross income averaged \$2,222.61 per month. Beyond this calculation, there is a paucity of cogent, reliable evidence. In the circumstances, I bear in mind what former Chief Justice MacKeigan said in *Whitehead v. Misner* (1982), 51 N.S.R. (2d) 111 (C.A.) at para. 57:

To determine what damages should be awarded to Mr. Whitehead for loss of future income, we cannot simply go through exercises in mathematics. Although we should take actuarial estimates into account, we must not abdicate to an actuary the judicial duty of arriving at a fair and just result. The determination should be made after considering, on the evidence, the relative probability of possible incomes that Mr. Whitehead might have earned in the future had he not been injured and the relative probability of the possible incomes that he may in fact earn. The determination should weigh and consider the divers mathematical estimates based on those incomes. In doing so, it should consider the relative probability of the various assumptions inherent in the estimates - such as the assumptions as to retirement, and the universal assumption that the income postulated will in each case continue unchanged until retirement except for the inflationary allowance built into the multipliers. The result must be appraised by judgment to ensure that it is not "inordinately high" or "unusually low": *Lewis v. Todd et al.*, [1980] 2 S.C.R. 694 p. 708, quoted above. The determination must on the bottom line make a "judgment call" as to what allowance for loss of future income is just and reasonable in the light of all the evidence.

[440] I therefore must make a judgment call based upon evidence which is not speculative. I must assess the possible income Mr. Stephen might have earned, as well as the effect of his health conditions on his age of retirement.

[441] Upon carefully considering Mr. Stephen's work history and the fact that he did not have a pension (at anytime) or RSP savings at the time of the accidents, I am prepared to award him a relatively modest amount of diminished earning capacity. In all of the circumstances and given the evidence, I am of the view that \$40,000.00 represents an appropriate sum for compensation in this area.

LOSS OF VALUABLE SERVICES

[442] Our Court of Appeal addressed loss of valuable services in *Awalt v. Blanchard*, 2013 NSCA 11. Justice Bryson considered an appeal of an award of zero under this head of damages. Bryson J.A. drew on earlier authorities at the outset of discussing this:

47 Loss of valuable services can only be recovered if direct economic loss can be proved:

[50] The question becomes to what extent, if at all, have the injuries impaired the claimant's ability to fulfill homemaking duties in the future? Thus, in order to sustain a claim for lost housekeeping services one must offer evidence capable of persuading the trier of fact that the claimant has suffered a direct economic loss, in that his or her ability or capacity to perform pre-accident duties and functions around the home has been

impaired. Only upon proper proof that this capital asset, that is the person's physical capacity to perform such functions, has been diminished will damages be awarded to compensate for such impairment. For an excellent and comprehensive analysis of this subject see the paper presented by W. Augustus Richardson to the Nova Scotia CLE Society in January, 2001.

[*Leddicote*, para. 50]

48 It is not necessary that expenditure be incurred, provided there is an impairment of one's physical capacity to perform pre-accident services and functions.

49 Ms. Awalt sought \$30,000.00 for loss of valuable services. Such a sum warrants a sound evidentiary foundation. The trial judge was unpersuaded. Certainly the evidence was very modest.

[443] The Court of Appeal went on to uphold the trial judge's finding that Ms. Awalt's post accident housekeeping was not impaired to the degree that she sustained economic loss.

[444] I previously reviewed the evidence of the plaintiff, his wife, neighbour, sons, house cleaner, and Ms. Stanley in this area. During final submissions, Mr. Stephen (through his counsel) maintained that the court should adopt Ms. Stanley's loss of valuable services numbers, as projected in the Krofchick reports. I decline this invitation. Given the overall evidence, I cannot accept Ms. Stanley's numbers because they are not rooted in reality.

[445] Mr. Thurlow's able cross-examination of Ms. Stanley exposed her opinions as devoid of an evidentiary foundation. The reality is that Mr. Stephen did a modest amount of house and related work prior to the accidents. Given his advancing age and other medical issues, he undoubtedly would have, in any event, been unable to continue with his former levels of this type of work.

[446] Having regard to all of the evidence and Nova Scotia authorities, I award the plaintiff \$10,000.00 for loss of past and future valuable services.

COST OF CARE (PAST AND FUTURE)

[447] With respect to past cost of care, I have considered the parties' positions against the backdrop of all of the evidence. I do not find the actuarial analysis helpful in this area because the inputted figures (predominantly from Ms. Stanley's reports) are not reliable.

[448] The plaintiff produced a spreadsheet totalling nearly \$50,000.00 for prescription drugs, Mr. Isler's treatments (up until the summer of 2020), cannabis, physiotherapy and massage treatments (up until late 2019), along with travel costs (Musgo Rider) and miscellaneous expenses. In addition, Mr. Isler's treatments (summer of 2020 to the start of trial) were calculated at close to \$45,000.00. Further Physioliink expenditures were shown to be close to \$60,000.00.

[449] Having reviewed the evidence, I have some difficulty with the latter figures of \$44,380.00 and \$58,719.45. In this regard, I am of the view that the plaintiff chose to carry on with these treatments in the absence of recommendations from most of the medical experts he saw. Nevertheless, no physician instructed him to stop with the treatment and, on balance, I conclude that Mr. Stephen ought to be reimbursed for his expenditures in this area, for a total of \$103,099.45. To account for further sessions with Mr. Isler up to the time of trial, I am prepared to round this figure up to \$105,000.00.

[450] As for the \$50,000.00 set out on the spreadsheet, I accept the defendants' submissions that they are not responsible to pay for drugs for the medical conditions unrelated to the accidents. As well, I accept that the Musgo Rider, additional cannabis, and miscellaneous expenses were not proven/shown to be related to the accidents. For example, the evidence revealed and I find that it was Mr. Stephen's heart attack (which I find to be unrelated to the accidents – given that there is no medical opinion to support his belief that the accidents caused the heart attack) that required him to stop driving for approximately six months. In the result, I accept the defendants' proposed revised figure in this area totalling \$35,606.13. This figure must be offset by the Section B medical expense payout of \$21,993.42.

[451] In the result, the net revised total is (\$35,606.13 - \$21,993.42) for a net total of \$13,612.71, plus the past cost of \$105,000.00, for a subtotal of \$118,612.71. The advance payment of \$100,000.00 made on May 11, 2023, shall be applied to this amount for a net total loss of past care of \$18,612.71.

[452] For future cost of care, I am of the view that Mr. Stephen requires a limited amount of CBT sessions with a licensed psychologist aimed at coping strategies and the like. Further, I am prepared to include under this heading a limited number of physiotherapy and massage sessions, with an eye to transitioning the plaintiff to an appropriate home exercise regime.

[453] In all, I award Mr. Stephen \$7,500.00 for cost of future care.

LITIGATION LOAN INTEREST

[454] The Seahold Investments Inc. loan consists of seven advances as detailed in an April 24, 2020, letter to Mr. Stephen’s counsel. On May 29, 2025, Spartan Services Inc. wrote to Mr. Stephen’s lawyer advising that Spartan “have been appointed as the replacement servicer of the loan.” A Spartan statement of account dated January 15, 2026, was placed in evidence as follows:

Seahold Legal Finance					
Client Name	Date of Advance	Principal Borrowed	Interest Rate	Accrued Interest	Outstanding Balance
Wallace Stephen - 1st loan	30/08/2019	\$ 5,000.00	28.80%	\$ 9,426.68	\$ -
Payment	19/05/2023	-\$ 5,000.00	28.80%	-\$ 9,426.68	\$ -
Wallace Stephen - 2nd loan	07/11/2019	\$ 2,800.00	28.80%	\$ 4,855.77	\$ -
Wallace Stephen - 2nd loan	05/12/2019	\$ 2,800.00	28.80%	\$ 4,690.44	\$ -
Payment	19/05/2023	-\$ 5,600.00	28.80%	-\$ 9,546.21	\$ -
Wallace Stephen - 3rd loan	08/01/2020	\$ 2,800.00	28.80%	\$ 9,590.17	\$ 9,590.17
Wallace Stephen - 3rd loan	06/02/2020	\$ 2,800.00	28.80%	\$ 12,272.60	\$ 14,945.49
Payment	19/05/2023	-\$ 2,927.11	28.80%	\$ -	\$ -
Wallace Stephen - 4th loan	13/03/2020	\$ 2,900.00	28.80%	\$ 12,423.93	\$ 15,323.93
Wallace Stephen - 4th loan	13/04/2020	\$ 2,900.00	28.80%	\$ 12,057.98	\$ 14,957.98
Wallace Stephen - 4th loan	13/05/2020	\$ 2,900.00	28.80%	\$ 11,712.14	\$ 14,612.14
Total		\$ 11,372.89		\$ 58,056.82	\$ 69,429.71

Please note this report is a summary of the accounts currently outstanding with Seahold Legal Finance and not a payout statement. For specific client payout information please contact us.

[455] As part of his claim, Mr. Stephen seeks recovery of the \$58,056.82 accrued interest. The defendants vigorously contest this claim, submitting that it is not foreseeable and usurious.

[456] The plaintiff provided no authorities for his position that the defendants ought to compensate him for the accrued interest. On the other hand, the Baker defendants submitted these cases in support of their position: *Mann v. Jefferson*, 2019 ONSC 422; *Cabana v. Newfoundland and Labrador et al*, 2016 NLCA 75; *MacKenzie v. Rogalasky*, 2014 BCCA 446; *Giuliani v. Halton (Regional Municipality)*, 2011 ONSC 5119; and *Rezai et al v. Kumar et al*, 2024 ONSC 4497.

[457] Having reviewed the evidence in this area and the caselaw, I find that there is no basis for the plaintiff's claim for accrued interest. With respect to foreseeability, I refer to *Mann* and Justice Trimble's analysis at paras. 20 – 22:

[20] For evidence to be admissible at trial, it must be probative of some issue in the action. In order for evidence concerning litigation loans to be admissible at trial, the loans themselves must be recoverable as damages.

[21] Neither the principle [*sic*] nor interest on litigation loans are recoverable as damages. They are too remote.

[22] As a general rule, it is not foreseeable to the Defendant, at the time of the loss, that litigation loans were necessary. In *Mustapha v. Culligan of Canada*, 2008 SCC 27, at paragraph 13, the Supreme Court of Canada defined 'reasonably foreseeable':

The Parties raise the question of whether a reasonably foreseeable harm is one whose occurrence is probable or merely possible. In my view, these terms are misleading. Any harm which has actually occurred is "possible"; it is therefore clear that possibility alone does not provide a meaningful standard for the application of reasonable foreseeability. The degree of probability that would satisfy the reasonable foreseeability requirement was described in the *Wagon Mound (No. 2)* as a "real risk", i.e. "one which would occur to the mind of a reasonable man in the position of the defendan[t]...and which he would not brush aside as far-fetched."

[458] Justice Trimble applied the foreseeability test and determined that the loans in question were not foreseeable to the tortfeasor. At para. 36, he added:

[36] *Leblanc* is of little assistance. It, like all other cases cited other than those discussed above, addresses recoverability of interest on litigation loans as a disbursement, not as a head of damage. Recoverability of disbursements is determined based on disbursement recovery legislation, Rules of Court, and to an extent, the common law. I note that in Ontario, all cases have denied recovery of litigation loan interest as a disbursement (see, for instance, *Poile v. Collins*, 2015 ONSC 916).

[459] I concur with Justice Trimble's analysis and application. Further, I find that as with Mr. Mann, Mr. Stephen did not repay the loans when he reasonably should have. In this regard, we know that soon after he received the \$100,000.00 interim payment, he made a very modest payment of \$2,927.11 on the then-balance. It is indeed curious to me as to why he did not fully pay off the loan. More generally, I invoke the public policy commentary addressed in many of the cases and at para. 43 in *Mann*. There was no evidence led concerning any efforts to obtain financing at a more competitive interest rate. For instance, whereas the evidence revealed that Mr.

Stephen refinanced his businesses with loans of 12 and 15 percent, the Seahold/Spartan loan's interest rate approached 30 percent.

[460] In *Cabana*, former Newfoundland and Labrador Chief Justice Green discussed "conflicting decisions" as to whether loan interest can be included in a costs award (para. 48). The Newfoundland and Labrador Court of Appeal ultimately relied on *MacKenzie v. Rogallasky*, 2014 BCCA 446, leave to appeal to Supreme Court of Canada refused, [2015] SCCA No. 24, in concluding at paras. 54 – 56:

[54] Third, I interpret Rule 14-1(5) in the context of the purposes of a costs regime drawing on and applying the principles laid out by the Supreme Court of Canada in *Walker*. The purpose of a costs regime reinforces the interpretation that out-of-pocket interest expenses are not recoverable.

Grammatical and ordinary meaning

[55] In my view, the ordinary meaning of "disbursement" offers little determinative assistance to resolve the issues on appeal. In its most basic meaning, the word refers simply to the payment out of money from a fund. It captures any out-of-pocket payments. As such, the definition is broad. But it does not follow that every out-of-pocket expense connected to a proceeding is a potentially recoverable disbursement or that the meaning of the word "disbursement" is not limited by the context of the rule or the rest of the wording of the rule.

[56] This point is illustrated by *Attorney General of Canada v. British Columbia Ferry Corporation* (1981), 33 B.C.L.R. 7, 134 D.L.R. (3d) 29 (C.A.), in which this Court considered whether wages paid to an employee corresponding to the time spent investigating facts involved in an action were recoverable under the then existing costs rule, Rule 57(4). That rule was differently worded to the current rule. The rule did not contain an explicit reference to disbursements "incurred in the conduct of the proceeding", for example. Rather, the rule simply referred to necessary or proper disbursements or expenses. Mr. Justice Lambert, for the Court, upheld an order that the wages were not a recoverable disbursement. In doing so, he observed that:

In their ordinary meaning those words have a very general breadth. They can, in any particular case, have attributed to them shades of meaning that narrow their applicability. What they mean in a taxation statute might be quite different from what that mean in a rule relating to costs. (p. 9)

[461] I am persuaded that the above analysis and commentary is sound and equally applicable in Nova Scotia.

[462] Having regard to the evidence and authorities, I dismiss Mr. Stephen's claim for accrued interest on his litigation loan.

PREJUDGMENT INTEREST

[463] With regard to applicable prejudgment interest rates and duration, I have the benefit of the submissions of counsel and case authority, including *Ogilvie v. Windsor Elms Village for Continuing Care Society*, 2022 NSSC 144. Justice Keith provided a comprehensive overview surrounding applicable prejudgment interest and the period of time during which this interest rate accrues. As Justice Keith noted at paras. 4 and 5:

[4] As indicated, Section 41 of the *Judicature Act* confirms the Court's discretion to establish a prejudgment interest rate as it sees fit for a certain period of time leading up to judgment.

[5] Civil Procedure Rule 70.07 provides for a presumptive interest rate of five percent (5%) per year calculated simply "unless a party satisfies a judge that the rate or calculation should be otherwise."

[464] With respect to duration, *Ogilvie* continues at para. 11:

[11] Section 41(i) of the *Judicature Act* states that prejudgment interest applies "for the period between the date when the cause of action arose and the date of judgment after trial or after any subsequent appeal." However, as indicated, the Court retains the discretion to reduce that period if there has been undue delay by the party claiming prejudgment interest. The party seeking to reduce the time during which prejudgment interest is payable has the burden of establishing undue delay by the claimant.

[465] Justice Keith concluded his analysis with this overview at para. 19:

[19] Overall, prejudgment interest would be payable over a period of 6 years and 9 months. In closing, I note that the duration of prejudgment interest must be determined based on the unique facts of each case. However, from a broader, systemic perspective, this period of time is not inordinate. For example:

1. In *Boutilier v Percy*, 2011 NSSC 307, prejudgment interest was limited to 4 years; however, that case did not involve an adjournment of trial dates;
2. In *Mielke v Harbour Ridge Apartment Suites Ltd.*, 2011 NSSC 313, there was almost 11 years between the cause of action and the judgment. The Court ultimately permitted prejudgment interest for 6 years having regard to a delay in reporting the incident;
3. In *Couse v. Goodyear Canada Inc.* (2005), 2005 CarswellNS 112, 2005 NSCA 46 (N.S. C.A.), the Court of Appeal confirmed prejudgment interest for 6 years in a matter that did not involve a trial adjournment;

4. In *Tapics v. Dalhousie*, 2018 NSSC 273, 2018 CarswellNS 813 (N.S. S.C.), the Court awarded prejudgment interest at 5 years and 5 months, with 4 months being deducted for delays related to the filing of an amended affidavit. Again, this case did not involve a trial adjournment; and

5. *Matthews v Ocean Nutrition Canada Limited*, 2022 NSSC 118, the cause of action arose on July 18, 2012. The trial decision was released on January 20, 2017 with additional reasons released on May 12, 2017. Excluding subsequent appeals that eventually ended in the Supreme Court of Canada, the amount of time to take the matter to the additional and final trial reasons released May 12, 2017 was about 4 years and 10 months. No time was lost due to trial adjournment although, in this case, 6 months was deducted for initial delay.

[466] In advance of their closing submissions, I asked counsel to address the length of time that prejudgment interest should run. In this regard, as I have remarked more than once, the matter was in trial almost ten years after the accident. On its face, this period of time strikes me as lengthy. Whereas in some personal injury cases such a delay may be warranted (for example, where a plaintiff's injuries are truly evolving and indeterminate over the course of many years), on the evidence I do not find that to be the case with Mr. Stephen such that it justifies nearly ten years.

[467] The parties confirmed that Mr. Stephen was discovered in August 2019 but that the defendants (and Mr. Hill's) discovery did not occur until 2023. The fact that the defendants were not discovered until three years ago delayed the filing of the Request For Date Assignment documents, which led to a much later Date Assignment Conference and assigning of trial dates.

[468] Having regard to the litigation history, the parties agree that not all of the nine and one half years should count. The plaintiff raised the Covid pandemic as an intervening factor, outside of his control. On this point, I am prepared to recognize that some months of the delay may be mitigated but not the overall amount of lost time. In any case, on balance and to do justice between the parties, I hereby exercise my discretion to substitute the approximate nine and one half years with a period of seven years for the calculation of prejudgment interest.

CONCLUSION

[469] To recapitulate, I make the following awards, to be evenly divided between the defendants:

HEADING	AMOUNT
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General Damages	\$125,000.00
Loss of Past Income	Nil
Diminished Earning Capacity	\$ 40,000.00
Loss of Valuable Services (Past and Future)	\$ 10,000.00
Past Cost of Care (\$118,612.71 - \$100,000.00 advance payment)	\$ 18,612.71
Future Cost of Care	\$ 7,500.00
TOTAL	\$201,112.71

[470] To these amounts I apply prejudgment interest for a period of seven years at a rate of 2.5 percent on general damages and 5 percent on past cost of care.

[471] If the parties cannot agree on costs, I invite written submissions within thirty days of this decision.

Chipman, J.