IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singer v. Guidi,*
2023 BCSC 837

Date: 20230517
Docket: M178409
Registry: Vancouver

Between:

Walter Elmer Singer

Plaintiff

And

Stefani Marie Guidi

Defendant

- and -

Docket: M200789
Registry: Vancouver

Between:

Walter Elmer Singer

Plaintiff

And

Ryan Cai Paproski

Defendant

Before: The Honourable Justice Douglas

Reasons for Judgment

Counsel for the Plaintiff: S. Wheeldon
K. McStravick

Counsel for the Defendants: S.P. Murphy
U. Urosevic

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Place and Dates of Trial:	Vancouver, B.C. March 27-30, 2023 April 3-4, 2023
Place and Date of Judgment:	Vancouver, B.C. May 17, 2023

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I. INTRODUCTION

[1] The plaintiff, Walter Elmer Singer, was involved in two rear-end collisions (collectively, the "Accidents") on October 26, 2015 ("MVA #1") and February 3, 2019 ("MVA #2").

[2] Thereafter, Mr. Singer commenced two separate actions seeking damages for personal injuries arising from the Accidents. The defendants admitted liability and the actions proceeded to trial together on damages issues only. At trial, Mr. Singer abandoned his claims for the loss of future earning capacity and future care costs and confined his claim to non-pecuniary damages, special damages, and damages for the past loss of earning capacity.

[3] The defendants submit that the Accidents temporarily aggravated Mr. Singer's longstanding pre-existing neck, back, and headache pain. They deny that he suffered any Accident-related income loss. The parties agree on special damages. They do not ask me to apportion damages as between the Accidents.

[4] The parties' central dispute relates to causation. They disagree about whether Mr. Singer's Accident-related injuries caused him to cease operating a care home.

II. BEFORE THE ACCIDENTS

[5] Mr. Singer was born into a large family in Saskatchewan in 1947. His parents, whom Mr. Singer described as hardworking and religious, immigrated to Canada as refugees from Russia. Mr. Singer was 67 years old at the time of MVA #1 and 75 years old at the date of trial.

[6] Mr. Singer enjoyed the social life high school offered but was otherwise not an engaged student. He left high school before graduating, returning to finish grade 12 as an adult before pursuing some university courses.

[7] Mr. Singer has a diverse work history. He testified about it at length. He joined the Canadian military in 1965, training as a radar technician before transitioning into

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munitions and weapons. He left the military in 1968 or 1969 and spent the next three and a half years travelling around the world.

[8] In the early 1970s, after returning to Canada, Mr. Singer held a variety of jobs, including working at a lumber mill and for a company that manufactured trailer homes. In 1973, he was called to serve a two-year mission for his church in New York City. On his return in 1976, he found work as a sales representative for a vitamin supplement company in Burnaby. He later began taking night school courses with a view to completing a degree in urban economics. In April 1978, he and Janelle Singer married. They subsequently had four children together.

[9] In 1981, Mr. Singer moved to Ontario with the intention of completing a business degree. In 1982, he returned to BC and worked as a general insurance agent until 1998. In 1985, Mr. Singer and his wife began providing home care to an adult woman with developmental disabilities.

[10] Mr. Singer was involved in two motor vehicle accidents in the 1980s; he was uncertain about precisely when they occurred. He admitted that the first one was significant: he was rear-ended by a truck carrying a load of paper and suffered neck and back injuries and post-accident headaches. The second accident was a head-on collision; Mr. Singer broke his collar bone, fractured his ribs, sustained a concussion, and experienced post-accident arm and elbow pain. This accident aggravated his pre-existing injuries and increased the frequency and intensity of his headaches.

[11] Mrs. Singer was in the car with Mr. Singer at the time of the head-on collision; she sustained significant injuries of her own including a concussion, post-accident headaches, panic attacks, and PTSD. Thereafter, the Singers terminated their contract with the Fraser Health Authority (the “FHA”) and ceased providing home care.

[12] Following these two car accidents in the 1980s, Mr. Singer gradually began to reintroduce gentle exercise in the form of walking, swimming, and using an elliptical machine. His headaches were triggered by twisting, lifting, and jarring movements.

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He conceded that he has had some degree of headache pain almost constantly since the 1980s. He has treated his headache pain with Fiorinal, an analgesic medication, daily for about 25 years.

[13] In the early 1990s, the Singers started caring for foster children in their home; in 1998, they began doing so on a full-time basis. In 1999, Mr. Singer was accepted into a full-time university social work program. He admitted that he had ongoing neck and back pain but said that his headaches were then no longer crippling.

[14] At some point in the 2000s, the Singers decided that they would like to open a licensed home care facility. They purchased a seven-bedroom 4,000 square foot house in White Rock for that purpose.

[15] In early 2000, Mr. Singer was involved in another motor vehicle accident; it worsened his pre-existing symptoms. Thereafter, he found it difficult to concentrate and study. He withdrew from his social work program and put his study plans on hold. By then, he had completed about 50% of the course requirements. It had been the Singers' plan to expand their care home once Mr. Singer had completed his social work degree. Ultimately, he never did so.

[16] In 2001, the Singers began providing home care to E.M. and J.S., two adult men with acquired brain injuries.

[17] In 2006, Mr. Singer attempted to resume the social work program he had started previously. By then, the program had changed. Mr. Singer was given no credit for the courses he had already completed and he decided to abandon his plan to obtain a degree in social work. Without this qualification, the Singers' care home could not be licensed and they were restricted to providing home care to only two clients. The Singers also provided foster care in their home until about 2008. Thereafter, they converted their basement into a two-bedroom rental suite.

[18] Mr. Singer and his wife both have a long history of involvement in multiple motor vehicle accidents before October 2015. Neither was able to provide precise dates for when they occurred. Based on the revised information that Mr. Singer

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provided to Dr. John Le Nobel, his physiatrist expert, as outlined in Dr. Le Nobel's report dated November 29, 2022, he was involved in about ten accidents before October 2015. In addition to the head-on collision in 1987, Mr. Singer had two other car accidents in the 1980s. He was rear-ended in the early 2000s and had another accident in or about the same timeframe. Mr. Singer had no recollection of being involved in any car accidents between 2005 and 2015 (i.e., the ten years before MVA #1).

[19] Mr. Singer admitted in cross-examination that he was not certain precisely how many accidents he had been in before MVA #1. He agreed that the rear-end collision in the early 2000s that prompted him to withdraw from his social work program increased the frequency and intensity of his headaches and caused them to be triggered more easily. He admitted that pain interrupted his sleep thereafter.

[20] Mr. Singer conceded in cross-examination that the rear-end collision involving a truck carrying a load of paper was very serious, and more serious than either of the Accidents which are the subject of his present claims. He admitted that this is when his headaches started and that he has taken Fiorinal continuously since then. He agreed that he was assessed by many neurologists for headache pain before the Accidents. None testified at trial.

[21] Mrs. Singer also has a long history of involvement in multiple car accidents. She too was vague about their dates and particulars. For the purposes of these actions, the plaintiff admits that Mrs. Singer was involved in several accidents in the 1990s, four more in the early 2000s, and another two between 2012 and 2014. On Mr. Singer's evidence, his wife's activities were significantly curtailed by early 2000 as a result of her car accident injuries and she was very limited in her ability to assist him in their care home business. The Singers agreed that Mr. Singer was then doing most of the work required by their care home business. Mrs. Singer testified that she suffered massive headaches following a significant rear-end collision sometime after 2010 but before the Accidents.

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[22] Between 2000 and 2010, Mr. Singer was actively involved in his church. He did some volunteer work. He enjoyed maintaining his garden and the back alley and boulevard in his neighborhood.

[23] In the five years before MVA #1, Mr. Singer remained actively involved in his church. He continued to enjoy gardening and periodically worked out at the gym. The Singers agreed that he was then doing most of the work involved in caring for their two adult clients. Mr. Singer "guesstimated" that he did 75-90% of this work; his wife suggested that Mr. Singer did about 75% of it.

[24] While Mr. Singer admitted that he always had a low-grade headache of some kind in the five years before the Accidents, he denied that it prevented him from doing what he wanted. On his evidence, he had disabling migraines about once a week, if he did something to trigger them. He admitted that he likely also had some neck and back pain but he denied that it was crippling. He conceded that he had low back pain before 2015 but could not recall if he also had upper back pain.

III. THE ACCIDENTS

[25] MVA #1 occurred in Kelowna. Mr. Singer had stopped his 2012 Toyota Rav4 when the defendant, Stefani Marie Guidi, struck him from behind with his 2003 Chevrolet Blazer. Mr. Singer's vehicle sustained $1,656.35 in damages.

[26] MVA #2 occurred in Nanaimo. Mr. Singer was stopped when the defendant, Ryan Cai Paproski, rear-ended him with his 2004 Mazda 3. Mr. Singer's 2012 Toyota Rav4 sustained $1,046.60 in damages.

IV. AFTER THE ACCIDENTS

A. MVA #1

[27] Mr. Singer described an immediate resurgence of his pre-existing injuries after MVA #1. He found that certain movements triggered migraine headaches and he became more careful about what he did. He estimated that he had three or four migraines per week immediately after MVA #1, describing them as occasionally crippling. They limited his ability to engage in certain activities. Mr. Singer also

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experienced increased neck pain (although it was not his major concern) and recurring back pain.

[28] Mrs. Singer was in the vehicle with Mr. Singer at the time of MVA #1. She understood that he had more headache pain following MVA #1; her pre-existing headaches were similarly exacerbated.

[29] Mr. Singer's predominant concerns after MVA #1 were his headaches and back pain. Pain impaired his sleep. He treated his symptoms with stretching and pain medication. He admitted in cross-examination that he did not attend at the hospital for any of the injuries he sustained in MVA #1. He first saw a doctor about one month thereafter. No clinical records from that physician are in evidence.

[30] Mr. Singer pursued chiropractic and massage therapy for his neck and back symptoms after MVA #1. He had not been engaged in this kind of treatment in the ten years before MVA #1. He continued to take Fiorinal, at the same frequency and dosage as he had before the Accidents.

[31] On January 1, 2016, Mr. Singer fell off a stool, scraping his back against a counter. He went to the hospital after this fall. No hospital records are in evidence.

[32] After MVA #1, Mr. Singer continued to provide home care to their two adult clients. He occasionally hired help to do some of the things that he would previously have done himself, including some landscaping and heavy cleaning. He continued to do lighter housework once a week although doing so triggered headache pain. He cut his own grass but not to the same standard that he had previously. He stopped lifting weights at the gym as doing so triggered migraines.

[33] In May 2016, E.M., one of the Singers' home care clients, died unexpectedly at the age of 57. Mr. Singer was then 67; Mrs. Singer was 59. Their home care income was immediately reduced by 50%. They were then living in a seven-bedroom house in South Surrey. It was no longer financially viable for the Singers to operate a care home with only one paying client. Mr. Singer realized that they needed to formulate a new plan.

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[34] According to Mr. Singer, he and his wife decided that they were unable to do what would have been necessary to assume the care of a new adult client with acquired brain injuries. His back and neck pain still triggered headaches and affected his sleep. Mr. Singer described the additional challenges that he anticipated he would face if a new client were introduced into their residence, saying that this can alter the dynamics in a care home. He suspected that J.S. might be jealous and violent; this had been a problem briefly when the Singers first assumed responsibility for E.M.'s care in 2001, about 15 years earlier. The Singers made no efforts to find a new client to replace their lost income after E.M.'s death.

[35] The Singers concluded that the only realistic downsized housing options available to them in their area in 2016 were strata units; both said that none of the strata buildings they approached (only one of which was identified by name) allowed them to provide home care to paying clients. On their evidence, they investigated the possibility of moving to either Kelowna or to Vancouver Island with J.S., their one remaining client. Based on their inquiries, both understood that neither the Interior Health Authority ("IHA") nor the Vancouver Island Health Authority ("VIHA") had the capacity to add J.S. to their existing caseloads. The defendants object to this evidence on the basis that it is inadmissible hearsay. No one from the IHA or VIHA testified at trial. I conclude that these uncorroborated statements are inadmissible hearsay and I do not rely on them for their truth.

[36] The Singers ceased operating their care home in August 2016. They did not consider hiring someone to provide home care to J.S.; on Mr. Singer's evidence, doing so would have cost them more than they were earning. He denied that it would have been financially feasible for them to have hired someone to maintain their care home, saying that this would have increased their expenses at a time when their income had been reduced by half.

[37] In August 2016, the Singers moved to Kelowna. Mrs. Singer admitted in cross-examination that, "when all is said and done", they did so to support their daughter who lived there and who was then involved in an acrimonious divorce.

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Shortly thereafter, Mr. Singer was diagnosed with pneumonia. He admitted that he was weak for many months thereafter. When in Kelowna, he was referred to a specialist who did not testify at trial. Mr. Singer understands that he now has some residual scarring on his lungs.

[38] Mr. Singer admitted in cross-examination that he has been diagnosed with idiopathic pulmonary fibrosis ("IPF") since the Accidents. His wife corroborated this evidence. Mr. Singer understands that IPF is a serious and incurable lung disease with a high mortality rate, and that his diagnosis might be related to his past exposure to irritants when working at a nickel mine. Mr. Singer also admitted that he was a heavy smoker in his youth. When confronted in cross-examination with a January 30, 2016 report prepared following an x-ray of Mr. Singer's chest, the plaintiff's physiatrist expert, Dr. Le Nobel, agreed that it disclosed chronic interstitial markings that are consistent with a diagnosis of IPF. However, Dr. Le Nobel also conceded that he is not a pulmonary specialist.

[39] In April 2018, the Singers relocated to Nanaimo. They did so, at least in part, based on their understanding that the air quality there would be better for Mr. Singer given his lung problems. They hired a professional mover to pack, transport, and unpack their belongings. Mr. Singer hired someone to install a brick patio in their back yard; he was no longer lifting weights or going to the gym. He said that he had learned to be careful with his movements in order to avoid triggering headaches and that his neck pain remained unresolved. Mr. Singer said that he was occasionally unable to participate in some family activities after the Accidents.

B. MVA #2

[40] MVA #2 occurred on February 3, 2019. According to Mr. Singer, it aggravated all of his pre-existing injuries. He said that his back seized up again and that this triggered headache pain. Pain impaired his sleep. Mrs. Singer understands that MVA #2 worsened her husband's headaches.

[41] In December 2020, the Singers bought a townhouse and moved to Calgary, Alberta where they currently reside. According to Mr. Singer, they decided that they

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no longer had the ability to maintain a house. Since moving to Calgary, Mr. Singer has purchased artificial plants for his yard and stopped gardening.

C. Current Status

[42] Mr. Singer now has a gym membership and has resumed using the elliptical machine and light weights about three times a week, followed by about an hour of walking. He continues to do house chores, albeit with some aggravation of his symptoms. He tries to avoid lifting, jarring movements, or prolonged physical effort as this often triggers headaches. He denies that his condition has returned to his pre-Accidents baseline.

[43] Mr. Singer submits that he and his wife would still be operating a care home, but for the Accidents. Neither had a specific retirement date in mind before the Accidents; rather, they planned to continue providing home care for their two adult clients for as long as they remained able to do so.

[44] Mr. Singer now has event-driven headaches; he can control them to some extent by avoiding certain activities. He has ongoing neck and back pain. On his evidence, it differs in degree and frequency compared to what he experienced before the Accidents. Mr. Singer is currently pursuing no treatment for his Accident-related injuries. He continues to take four tablets of Fiorinal daily in the same manner that he has for more than two decades. He is not currently under the care of a neurologist. No treating health care professionals testified at trial. No clinical records are in evidence.

V. MEDICAL EVIDENCE

[45] Three medical experts testified at trial. The plaintiff called:

a) Occupational therapist, Russell McNeil; and

b) Physiatrist, Dr. John Le Nobel.

[46] The defendants called physiatrist, Dr. Zeeshan Waseem.

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A. Russell McNeil, Occupational Therapist

[47] At the request of plaintiff's counsel, Mr. McNeil conducted a functional capacity evaluation of Mr. Singer on November 6, 2019 (the "FCE"). The defendants did not cross-examine Mr. McNeil and his November 7, 2019 report was admitted into evidence unchallenged. Mr. McNeil was qualified by consent as an expert in the area of occupational therapy, capable of giving opinion evidence about functional capacity evaluations.

[48] Mr. McNeil concluded that Mr. Singer's reports of pain were consistent with his measured and observed abilities. Mr. McNeil detected no inappropriate illness behavior. He concluded that Mr. Singer expended his best effort and that the FCE results are an accurate and reliable assessment of his overall physical capacity.

[49] Based on the FCE results, Mr. McNeil opines that Mr. Singer is capable of full-time light to medium work, with restrictions and accommodations. He identified the following specific areas of restriction in Mr. Singer's functional capacity:

a) Trunk strength (i.e., the ability to use abdominal and lower back muscles to support part of the body repeatedly or continuously over time without "giving out" or fatiguing);

b) Static strength (i.e., the ability to exert maximum muscle force to lift, push, pull, or carry objects);

c) Extent flexibility (i.e., the ability to bend, stretch, twist, or reach with the body, arms and/or legs);

d) Dynamic strength (i.e., the ability to exert muscle force repeatedly or continuously over time); and

e) Explosive strength (i.e., the ability to use short bursts of muscle force to propel oneself (as in jumping or sprinting) or to throw an object.

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[50] Mr. McNeil does not opine that Mr. Singer is unable to do these things. It is unclear on the trial evidence the extent to which these restrictions might impair Mr. Singer's ability to engage in the routine tasks required when operating a care home.

B. Dr. Le Nobel, Physiatrist

[51] Dr. Le Nobel was qualified as an expert in the area of physical medicine and rehabilitation able to offer opinion evidence regarding the diagnosis, management, and treatment of musculoskeletal disorders and chronic pain. He authored two reports dated October 23, 2019 and November 29, 2022, at the request of plaintiff's counsel.

[52] Dr. Le Nobel was aware that Mr. Singer had neck pain, headaches, and chronic ongoing migraines before MVA #1. He understood that those symptoms were well-controlled with medication and that Mr. Singer was more functional before MVA #1 than he was after the Accidents. He admitted in cross-examination that he had no opportunity to assess Mr. Singer before the Accidents; he agreed that the accuracy of his opinions was dependent on information that Mr. Singer provided.

[53] Dr. Le Nobel diagnosed Mr. Singer with the following conditions:

a) Chronic cervical, lumbar, and paraspinal pain due to myofascial tissue injury;

b) Chronic post-traumatic headache generated, at least in part, in the cervical spine; and

c) Deconditioning due to reduced physical activity.

[54] Dr. Le Nobel explained that myofascial injuries involve the soft and connective tissues that cover muscles, nerves, and blood vessels. On his evidence, injury can cause tearing and bleeding in these tissues, triggering an inflammatory response that can result in the formation of scar tissue. Dr. Le Nobel testified that

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the presence of scar tissue can put traction on nerves, distort how joints move, and cause pain.

[55] In Dr. Le Nobel's October 23, 2019 report, he describes Mr. Singer's prognosis as guarded, which he explained means uncertain. He concluded that Mr. Singer will have increased pain and will be disabled in his work and recreational pastimes as a result of the injuries he sustained in MVA #1. In his view, MVA #2 likely caused a temporary increase in Mr. Singer's cervical, paraspinal, and headache pain.

[56] Dr. Le Nobel authored a second report dated December 2, 2022, following his reassessment of Mr. Singer on November 29, 2022. Based on new information from Mr. Singer, he revised the number of motor vehicle accidents in which Mr. Singer had been involved before 2015 from 20 or more to about 10–12.

[57] Dr. Le Nobel's diagnoses did not change. However, he noted in his second report that Mr. Singer's myofascial tissue injuries are superimposed on cervical and lumbar spine imaging abnormalities disclosed in March 2016 (but not referenced in Dr. Le Nobel's 2019 report). He admitted that the presence of imaging abnormalities due to degenerative disc disease is explained by long term wear and tear. He would not consider those findings to be surprising in a 69-year-old. Dr. Le Nobel admitted that he could not rule out a corresponding contribution to Mr. Singer's ongoing disability as a result of these degenerative findings. In his view, the presence of these imaging abnormalities probably means that Mr. Singer was at an increased risk of worse consequences from his Accident-related injuries.

[58] Dr. Le Nobel conceded in cross-examination that migraines are neurological and not musculoskeletal in origin. He would defer to the expertise of a neurologist on this matter and recommended that Mr. Singer be assessed by a neurologist, advice Mr. Singer did not follow. Dr. Le Nobel admitted that Mr. Singer's headaches apparently improved somewhat after the Accidents, despite him not pursuing this kind of treatment.

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C. Dr. Waseem, Physiatrist

[59] Dr. Waseem has been in active clinical practice as a physiatrist in Ontario since 2011. He was qualified as an expert in the area of physical medicine and rehabilitation, able to offer opinions regarding soft tissue injuries and headaches. He assessed Mr. Singer on January 30, 2020, and prepared a report dated February 3, 2020.

[60] Dr. Waseem concluded that Mr. Singer had provided a consistent history that included stable, non-disabling pre-Accident migraines of variable frequency and moderate intensity, managed with Fiorinal. In his opinion, Mr. Singer sustained soft tissue neck and lower back injuries in MVA #1 that aggravated his pre-existing migraines and resulted in chronic, mechanical neck and lower back pain.

[61] Based on his examination findings, Dr. Waseem opines that Mr. Singer's headaches are due to a greater occipital neuralgia. In his view, greater occipital nerve blocks offer favourable prospects for further recovery. Based on the FCE results, Dr. Waseem concludes that Mr. Singer should be capable of meeting the strength demands of his pre-Accident employment.

[62] Dr. Waseem admitted in cross-examination that pain has a subjective component; he relies heavily on his patients' history when assessing their pain. He agreed that headache pain can be disabling. He understood that Mr. Singer avoided certain physical activities after MVA #1 in order to avoid triggering headache pain.

VI. CREDIBILITY AND RELIABILITY OF THE EVIDENCE

[63] The relevant principles to be applied when assessing the credibility of interested witnesses are discussed in the frequently cited passages of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) and Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186. I have applied those principles here.

[64] Mr. Singer's credibility was not seriously challenged. He was somewhat vague when discussing the details of his work and accident history but I did not find

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that to be surprising given the passage of time. It was my general impression that Mr. Singer did his best to provide accurate and responsive answers. While his evidence occasionally strayed beyond the questions he was asked, I do not find that he was intentionally evasive. Mr. Singer presented as an engaging individual with an obvious sense of humour who clearly enjoys recounting a narrative.

[65] Several members of Mr. Singer's family testified at trial. They included: his wife, Janelle Singer; their daughter, Shannon Michal Dykes; her husband and the Singers' son-in-law, Benjamin Dykes; and the Singers' daughter-in-law, Erin Singer.

[66] While clearly not disinterested witnesses, I found that Mr. Singer's family members all gave evidence in a forthright and straightforward manner. However, the incomplete information that many of them had about Mr. Singer's health history undermined the weight which can be attributed to some of this evidence. While these witnesses all recounted their observations of Mr. Singer and the changes that they noticed in him after the Accidents, none was qualified to attribute any of those changes to the Accidents.

[67] Mr. Singer's family members also gave evidence about his abilities as a home care provider. Bryan Perreault, a former foster child who was once in the Singers' care; E.M.'s brother; and Louise Scott, E.M.'s half-sister, all testified about Mr. Singer's skill as a home care provider. This evidence was not seriously challenged. I accept that Mr. Singer was a capable, conscientious, and well-liked home care provider whose clients respected him.

[68] Neither Mr. Perreault nor E.M.'s brother has maintained regular close contact with Mr. Singer in many years. The same can be said of Mr. Singer's long-term friend, Gordon McCrae, and his former church colleague and Kelowna home care worker, Angela Greenfield, both of whom testified at trial. While I found all of these individuals to be candid witnesses, their evidence was limited by their incomplete knowledge of Mr. Singer's pre and post-Accident health. Much of it was only peripherally relevant to the matters in dispute.

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[69] Some of Dr. Le Nobel's evidence gave rise to questions about his objectivity. In cross-examination, he suggested that Mr. Singer lost about a quarter of his body mass after the Accidents, thereby resulting in him being less able to project himself as a strong person who could control and intimidate his clients with his dominant physical presence. Those comments were unsupported by the trial evidence.

[70] Dr. Le Nobel admitted that one of the stated factual assumptions in his 2019 report is actually an opinion: namely, that Mr. Singer's difficulty recalling milestones did not mean that he did not feel injured as a result of MVA #1. Dr. Le Nobel is not in a position to offer opinions about Mr. Singer's feelings and I attribute no weight to those statements. Dr. Le Nobel included in his reports some gratuitous commentary which he admitted in cross-examination had no medical relevance. For example, he noted that none of Mr. Singer's many car accidents had been his fault. The cumulative effect of these statements undermined some of Dr. Le Nobel's opinions.

VII. CAUSATION

[71] The basic test for determining causation is the "but for" test. The plaintiff bears the burden of establishing that but for the defendant's negligent act or omission, the injury would not have occurred: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at para. 21; *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13–14, 1996 CanLII 183 [*Athey*]. The "but for" test must be proven on a balance of probabilities: *Athey* at para. 13. The Accidents need not be the only cause of the plaintiff's injuries but they must be a causal factor beyond the *de minimis* range: *Athey* at para. 15.

[72] As noted by Justice Skolrood (then of this Court) in *Raikou v. Spencer*, 2014 BCSC 1 at para. 62, a trial judge must consider the relationship between a plaintiff's pre-existing conditions and their current complaints:

> [62] Where, as here, a plaintiff has pre-existing conditions, the court must consider the relationship of those conditions to the current complaints. A defendant tortfeasor is liable for all injuries caused by the tort even if those injuries are more severe than might otherwise be the case due to the pre-existing condition (the "thin skull rule"). However, the defendant is liable only for the injuries actually caused by the accident and not for any effects of the pre-existing condition that the plaintiff would have experienced in any event

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> (the “crumbling skull rule”). Put another way, the defendant is liable for the additional damage but not the pre-existing damage (*Athey*, at paras. 34-35).

[73] Dr. Le Nobel opines that MVA #1 caused Mr. Singer’s headaches, cervical and paraspinal pain, and deconditioning. In his view, none of Mr. Singer’s pre-existing injuries would have caused his post-Accident symptoms, or affected him detrimentally in the future, absent the Accidents. In my view, those opinions minimize the effect of Mr. Singer’s longstanding pre-Accident history of unresolved injuries from multiple car accidents. On Mr. Singer’s own evidence, he had ongoing neck, back, and headache pain before MVA #1. I conclude that this pain would likely have continued absent the Accidents and periodically impaired his ability to engage in various activities.

[74] In my view, Dr. Waseem offered a more balanced opinion on the causation issues and I prefer it to Dr. Le Nobel’s to the extent they differ.

[75] I find that Mr. Singer’s pre-existing neck, back, and headache pain was aggravated by the Accidents. I am unable to conclude on the trial evidence, taken as a whole, that the negative cumulative effects of the trauma from the Accidents were only temporary. I accept Mr. Singer’s evidence that his post-Accident headache pain is now more severe, disabling, and easily triggered than it was before the Accidents and that he has limited his activities accordingly. I also accept his evidence that his neck and back pain has not returned to its pre-Accident baseline.

[76] The preponderance of trial evidence supports the conclusion that Mr. Singer is currently less active than he was before the Accidents. However, he is now 75 years old and has been diagnosed with medical conditions that are unrelated to the Accidents. On his own evidence, his general health is now less robust for reasons that are unrelated to the Accidents. While many of the lay witnesses who testified on Mr. Singer’s behalf observed that he now seems to have less energy and reduced stamina compared to before the Accidents, the evidence does not equip me to find that the Accidents probably caused those problems. In other words, I am unable to conclude that, but for the Accidents, Mr. Singer would not have those problems now.

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VIII. GENERAL DAMAGES

[77] The factors to be weighed when assessing general damages are set out in the well-known decision of *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46 [*Stapley*]. They include: the plaintiff's age; the nature of the injury; the severity and duration of pain and suffering; the nature and extent of resulting disability; the degree of emotional suffering; the loss or impairment of life; the impairment of family, marital and social relationships; loss of lifestyle; and impairment of physical and mental abilities: *Stapley* at para. 46. A plaintiff ought not to be penalised for being stoic: *Stapley* at para. 46, *Stare v. Whitehouse*, 2019 BCSC 1445 at para. 167.

[78] A fundamental principle of tort law is that a plaintiff should be placed in the same position they would have been in absent the accident, to the extent a monetary award can do so: *Parypa* v. *Wickware*, 1999 BCCA 88 at para. 29. Mr. Singer was not in pristine good health before the Accidents; since the Accidents, he has been diagnosed with a non-Accident related lung condition and celiac disease. Dr. Le Nobel acknowledged the presence of degenerative conditions associated with long term wear and tear reported after cervical and lumbar spine x-rays in March 2016.

[79] Mr. Singer presented as an engaging, charismatic, and optimistic individual. It was my general impression that he tends to put a positive spin on life's challenges. I conclude that he has approached his Accident-related injuries in the same manner and accept that he ought not to be penalized for his stoicism.

[80] While occasionally a somewhat vague historian, I generally accept Mr. Singer's evidence regarding his post-Accident condition, including his reported increase in neck, back, and headache pain. I accept that his Accident-related pain occasionally impairs his sleep. I am unable to find that his post-Accident fatigue and reduced energy are due to the Accidents.

[81] Mr. Singer has pursued limited treatment for his Accident-related injuries. It was confined to chiropractic and massage therapy until July 2016. Notably, his Fiorinal consumption has not changed since the Accidents. He has not pursued a

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neurology referral for debilitating migraine headache pain since the Accidents. In my view, this relatively modest treatment is some indication of the severity of his ongoing symptoms.

[82] On Mr. Singer's own evidence, he has enjoyed some improvement in his Accident-related injuries. There has been an increase in his activity level. He has now resumed walking, attending at the gym three times a week, and using the elliptical machine. He continues to do indoor house chores and manages pain flares by avoiding certain activities.

[83] The plaintiff assesses general damages in the amount of $100,000, citing:

a) *Fell v. Morton*, 2012 BCSC 428 ($65,000);

b) *Konnert v. Buonassisi*, 2019 BCSC 1648 ($90,000);

c) *Danroth v. Dufresne*, 2021 BCSC 864 ($100,000); and

d) *Prasad v. Ross-Smith*, 2023 BCSC 513 ($95,000).

[84] Plaintiff's counsel suggests that the "golden years" doctrine supports a higher general damages award because Mr. Singer is now precluded from enjoying the kind of retirement that he had contemplated before the Accidents: *Fata v. Heinonen*, 2010 BCSC 385 at para. 88.

[85] The defendants assess general damages in the amount of $65,000, citing:

a) *Stewart v. Dhoulthon*, 2020 BCSC 1439 ($55,000);

b) *Thind v. Mole*, 2022 BCSC 979 ($75,000); and

c) *Dhugga v. Poirier*, 2020 BCSC 914 ($65,000).

[86] I have reviewed the authorities cited by counsel. As expected, none precisely mirrors the facts of this case. All involve plaintiffs who are substantially younger than Mr. Singer. Some sustained more significant injuries and, unlike Mr. Singer, suffered

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constant pain and psychological problems. Some involved plaintiffs whose evidence raised credibility concerns that are not present here.

[87] Ultimately, I conclude that the decisions referenced by defence counsel are generally more analogous. While comparable decisions offer some guidance as to appropriate awards, each case must be decided on its own unique facts.

[88] I assess general damages in the amount of $80,000. Having regard to Mr. Singer's pre-existing injuries, degenerative disc disease, unresolved pre-Accident neck, back, and headache pain, and his unrelated post-Accident medical conditions, I conclude that a $5,000 reduction in this award is appropriate. Applying this discount results in a net general damages award of $75,000. I have considered the "golden years" doctrine in awarding damages in this amount.

[89] In my view, this award is reasonable and fair to all parties.

IX. SPECIAL DAMAGES

[90] The parties have agreed on special damages of $3,835.84. This amount includes costs that Mr. Singer incurred to attend chiropractic treatments and massage therapy and to maintain his yard after the Accident. I accept that these costs are reasonable and were incurred as a result of the Accident. I award special damages in this amount.

X. PAST LOSS OF EARNING CAPACITY

[91] The relevant principles applicable to an assessment of past loss of earning capacity were succinctly summarized by Justice Basran in the recent decision of *Prasad v. Ross-Smith*, 2023 BCSC 513 at para. 99 [*Prasad*] as follows:

> [99] The principles applicable to the assessment for past loss of income-earning capacity are:
>
> a) An assessment of a loss of income involves a consideration of hypothetical events.
>
> b) The plaintiff need not prove these hypothetical events on a balance of probabilities.

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c) A hypothetical possibility will be taken into account provided that the plaintiff establishes that it is a real and substantial possibility, and not mere speculation.

d) Once a hypothetical possibility is established, the court must consider the likelihood of the event occurring in determining the measure of damages.

e) A causal connection must be established, on a balance of probabilities, between the Accident and the pecuniary loss claimed.

f) It is up to the trial judge to determine what approach to use to quantify the loss (i.e., an earnings approach or a capital asset approach).

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[92] The award is properly characterized as a loss of earning capacity: *Bradley v. Bath*, 2010 BCCA 10 at paras. 31–32; *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 153. The assessment is a matter of judgment and not a mathematical calculation: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18.

[93] Mr. Singer seeks damages for past income loss in the amount of $430,000. This figure is based in part on an annual loss of $61,074.96 (or 75% of $81,433.32, the Singers' net income from their care home before the Accidents). The allocation of 75% of the Singers' net care home income to Mr. Singer is premised on the assumption that he is entitled to 75% of this income because he was doing about 75% of the work at the Singers' care home immediately before MVA #1.

[94] Plaintiff's counsel submits that, absent the Accidents, Mr. Singer could have found a replacement client between May and August 2016, after E.M. died. He argues that the Singers loved their White Rock home, its garden, and their church congregation and would not have moved to Kelowna but for the Accidents. He submits that, absent the Accidents, Mr. Singer would have worked continuously to his age 75.

[95] Mr. Singer seeks an additional award representing what his lawyer describes as a 50% share of the Singers' net annual income from the rental of their basement suite in the amount of $3,300 per year from 2015 to the date of trial. Based on the report of Christiane Clark, the economist retained by plaintiff's counsel, the Singers

collected gross annual income of $14,400 for the rental of this basement suite, with each declaring 50% of this income on their respective tax returns. Ms. Clark assumed that, after expenses, they received annual net rental income in 2015 of $6,596. Neither Mr. Singer nor Mrs. Singer verified the accuracy of this factual information at trial.

[96] The combined total of 75% of the Singers' net annual income from their care home ($61,074.96), plus 50% of their net annual rental income (approximately $3,300), is approximately $64,375. Plaintiff's counsel submits that this is a conservative estimate of Mr. Singer's income loss because it does not account for the real and substantial possibility that, absent the Accidents, he would have worked past age 75, or the recent impact of inflation.

[97] The defendants deny that Mr. Singer is entitled to any damages for past income loss.

[98] From 2001 until May 2016, the Singers provided home care for J.S. and E.M. They ceased doing so on August 24, 2016, about three months after E.M. died. The same day, the Singers were notified by the FHA that J.S. would no longer be requiring residential care services.

[99] The Singers received non-taxable income from a variety of sources for the home care services they provided. The parties agree that the Singers' net annual income for the home care they provided to J.S. and E.M. in 2015 was $81,433.32.

[100] The Singers earned income in the two years before MVA #1 as set out below.

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Source of Income	**Date**	**Amount**	**# of Clients**
FHA	April 1, 2013 to March 31, 2014	$90,039.06	2
FHA	April 1, 2014 to March 31, 2015	$89,934.66	2
FHA	April 1, 2015 to March 31, 2016	$90,944.34	2
Public Guardian and Trustee ("PGT")	2016	$589/month	1 [J.S.]
PGT	2016	$900.58/month	1 [E.M.]
Ministry of Social Development	2016	$213.30/month	1 [J.S.]

[101] Mr. Singer admitted that he made no efforts to secure additional clients in the two years before MVA #1. Their unlicensed care home was then at capacity. Mr. Singer agreed that their care home remained unlicensed because the injuries he had sustained in a previous car accident had prevented him from completing his social work degree.

[102] Mr. Singer conceded in cross-examination that he was not required to maneuver their care home clients physically. On his evidence, his typical daily home care duties involved ensuring that J.S. and E.M. got up in the morning, ate breakfast, maintained proper hygiene, and were transported to their day programs, medical appointments, and various outings. He was required to record their daily activities. Once J.S. and E.M. had made their initial transition into the Singer family home, neither had any violent outbursts. On Mr. Singer's evidence, he was only ever

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required to call the police once, not to manage a violent altercation but to help locate J.S. after he wandered away from the temple where he had been dropped off.

[103] Mr. Singer agreed that he was only required to restrain J.S. once in the 15 or so years J.S. had lived in the Singer home; he admitted that this occurred very early in J.S.' placement and that it was an extraordinary occurrence and not a regular event. Mr. Singer confirmed that E.M. was never violent. According to Mr. Singer, J.S. was aggressive only at the beginning of his placement and his opposition ceased at an early stage, once he adopted the Singers as his family.

[104] The Singers continued to operate their care home for about three months after MVA #1, until E.M. died. In my view, E.M.'s death was the catalyst that prompted the Singers to confront their changed reality. As Mr. Singer put it, he realised that he and his wife had to come up with a new plan after E.M. died. They were then living in a seven-bedroom house with only one paying client. Their income had effectively been cut in half. Mrs. Singer was then significantly disabled as a result of past injuries and minimally involved in the operation of the Singers' care home. Mr. Singer was approaching 70 years of age and had non-Accident related medical issues of his own.

[105] Ultimately, I am not persuaded that Mr. Singer's Accident-related injuries caused him to cease providing home care. Notably, he continued to do so for three months after MVA #1. On his own evidence, he made no efforts to find another paying client within the FHA after E.M. died. The Singers' evidence about their conversations with various strata corporations in their immediate area was imprecise, uncorroborated, and inadmissible hearsay.

[106] It is unclear on the evidence whether the Singers could have found a new client to supplement their income after moving to Kelowna. Their evidence about what they were told by someone in the IHA about taking J.S. with them to Kelowna was also uncorroborated and inadmissible hearsay. On the Singers' evidence, their wish to support their daughter during her contentious divorce was another compelling reason that prompted them to relocate to Kelowna in 2016.

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[107] In my view, if E.M. had not died unexpectedly in May 2016, the Singers would probably have continued to operate their care home. Ultimately, I conclude that it was E.M.'s death, and not the Accidents, that prompted them to close their care home. Based on the FCE findings, I conclude that Mr. Singer could probably still do this kind of work. On his own evidence, it was not physically demanding. Mr. Singer assumed (but did not know) that J.S. would have reacted negatively to the introduction of a new client. By his own admission, the difficulties the Singers had with J.S. showing some past aggression were brief and had not recurred for about 15 years. By all accounts, J.S. was a well-established member of the Singer family by 2015. I find that Mr. Singer has not established that the Accidents caused his alleged past loss of earning capacity on a balance of probabilities.

[108] I reject Dr. Le Nobel's suggestion that Mr. Singer was precluded from operating the Singers' care home after MVA #1 because he was no longer physically intimidating, having lost a substantial percentage of his body mass. It is unclear on the evidence whether Mr. Singer actually lost a substantial amount of weight after the Accidents, if so, when that occurred, and whether any such weight loss was due to his diagnosis of celiac disease. Based on an extract from the Eldergrove Medical Centre records put to Dr. Le Nobel in cross-examination, Mr. Singer weighed 87 kg (or 187 lbs.) on August 17, 2012. Dr. Le Nobel admitted that he understood Mr. Singer had lost about one-quarter of his body mass after MVA #2; he therefore presumed that Mr. Singer would have felt less intimidating. Based on subsequent chiropractic records put to Dr. Le Nobel in cross-examination, Mr. Singer weighed 179.2 lbs. on June 17, 2016, representing a loss of about 8 lbs. approximately eight months after MVA #2. There is no evidence that Mr. Singer ever used his physical presence to intimidate, control, or dominate his clients, contrary to what Dr. Le Nobel apparently assumed.

[109] If an intervening event would have adversely affected a plaintiff's original position in any event, the net loss attributable to the tort will not be as great and damages will be reduced proportionately: *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at para. 36. This principle is applicable to damages for past

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loss of impairment of earning capacity: *Burke v. Schwetje*, 2017 BCSC 2098 at para. 141. In my view, E.M.'s death was such an intervening event.

[110] In the circumstances, I award no damages for the past loss of income-earning capacity. In my view, such an award is not supported by the trial evidence.

XI. MITIGATION

[111] The defendants argue that, if Mr. Singer is awarded any damages for the past loss of earning capacity, it is appropriately discounted because of his failure to mitigate.

[112] I have awarded no damages for the loss of past earning capacity. It is therefore unnecessary for me to address this issue.

XII. DISPOSITION

[113] I award damages as follows:

a) General Damages - $75,000

b) Special Damages - $3,835.84

c) Past Loss of Earning Capacity - $0

TOTAL: $78,835.84

[114] Absent information about which I am unaware that might alter this view, Mr. Singer is entitled to costs on the ordinary scale.

"Douglas J."

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