IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ding v. Prévost, A Division of Volvo Group Canada Inc.,* 2023 BCSC 518

Date: 20230403
Docket: M166513
Registry: Vancouver

Between:

Jie Ding

Plaintiff

And

Brian Spittal, Western Bus Lines Ltd., Canam Super Vacation Inc. d.b.a. Super Vacation, Prévost, A Division of Volvo Group Canada Inc., Mark Yu, Universal Coach Line Ltd., Laurels Tak Lau and Paul Tao Way Chan

Defendants

- and -

Docket: M166164
Registry: Vancouver

Between:

Hua Li Pan

Plaintiff

And

Brian Spittal, Western Bus Lines Ltd., Canam Super Vacation Inc. d.b.a. Super Vacation, Prevost, A Division of Volvo Group Canada Inc., Laurels Lau, Paul Tao Way Chan, Universal Coach Line Ltd. And Tat Chi Yu a.k.a. Mark Ewan and Mark Yu

Defendants

Before: The Honourable Justice E.M. Myers

Ruling on Costs

Counsel for the Plaintiff, Jie Ding:	Michael Slater, K.C. Vivian Cheung Ryan Matheuszik
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Counsel for the Defendants, Brian Spittal and Western Bus Lines Ltd.:	Danine Griffin
Counsel for the Defendant, Universal Coach Line Ltd.	Harley Harris
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Place and Date of Hearing:	Vancouver, B.C. January 12, 2023
Place and Date of Judgment:	Vancouver, B.C. April 3, 2023

[1] This is an application for costs following a trial in which I dismissed the action against all the defendants, except for Western Bus and Mr. Spittal, who had admitted liability on the eve of trial. My trial judgement is indexed as 2022 BCSC 215.

[2] The action concerned the crash of a tour bus on the Coquihalla Highway on August 28, 2014. Fifty-five passengers were on board. Each passenger commenced their own action. With the agreement of counsel, I ordered that Ms. Ding's and Ms. Pan's claims proceed to trial as bellwether cases.

[3] The costs issues for determination are:

a) whether Western should be liable for costs, or vice versa;

b) the scale of costs;

c) whether the scale amount should be increased as "uplift costs";

d) whether a *Bullock* or *Sanderson* order should be made against Western & Spittal so that they, instead of the plaintiff, would be responsible for the costs of the defendants Prévost, Canam and Universal.

I. THE PARTIES' ROLES AND THE CLAIMS MADE AGAINST THEM

[4] The defendants had distinct roles in the bus trip and crash. The allegations against them, or at least groups of them, were distinct. As will be seen, these roles affect the costs issues.

[5] Western Bus was the owner of the bus that crashed and the employer of the driver, Mr. Spittal. (I will often refer to them collectively as Western.)

[6] The basis of the claim against Mr. Spittal was negligent operation of the bus. It was alleged that he fell asleep. He admitted liability on the basis that the accident was caused by a momentary lapse in attention. He denied that he fell asleep.

[7] The claim against Western – apart from vicarious liability for the negligence of Mr. Spittal – was that it failed to train and properly supervise Mr. Spittal and that it should have provided a bus with seatbelts. Western admitted at the outset of the trial on the basis that it was vicariously responsible for the negligence of Mr. Spittal. It did so on the basis that the accident was caused by inattention and not by fatigue.

[8] Canam Super Vacation Inc. organised the tour. The passengers either booked the tour directly with Canam or indirectly through a travel agent.

[9] Canam contracted with Universal Coach Line Ltd. for the provision of a bus and driver for the tour. However, Universal did not have an available bus so it sub-contracted the job to Western.

[10] The claim against both Universal and Canam was that they were negligent in selecting Western because the bus did not have seatbelts and Western had no training programme in place which would allow driver fatigue to be identified. Initially, the plaintiffs also claimed that Universal and Canam were responsible for the negligence of Western based on vicarious liability, agency, and non-delegable duty. However, that aspect of the claim was dropped during argument.

[11] Prévost was the manufacturer of the bus. The plaintiffs claimed that the bus had a design defect because it did not have seatbelts or proper glass. There had been a claim of negligent design because the bus did not have other electronic safety measures, but that was not pursued at trial.

[12] In addition, the plaintiffs alleged that the defendants had a duty to warn the plaintiff passengers that the bus did not have seatbelts and the consequent danger of injury, particularly in a roll-over crash.

[13] The alleged liability of Prévost did not depend on what caused the accident; rather the claim was that injuries were made worse than they would have been had the bus had seatbelts and laminate glass. Apart from failure to warn, the allegations made against the other non-Western defendants largely depended on the accident having been caused by fatigue.

[14] Western and Spittal initially denied liability and, in their Responses, alleged that the other defendants were negligent and that the negligence caused or contributed to the injuries of the plaintiffs. On the eve of trial, Western and Spittal admitted liability and filed an amended response, which stated:

> 1. The Defendants Western and Spittal admit for this proceeding only that the accident referred to in the Second Amended Consolidated Notice of Civil Claim was caused by the negligence of Spittal but deny the particular allegations of negligence or that the Plaintiff suffered the injury, loss or damage as alleged.
>
> 2. In the alternative, In further answer to the Second Amended Consolidated Notice of Civil Claim the Defendants Western and Spittal say if the collision occurred as alleged and that if the Plaintiff has suffered injury, loss or damage as alleged or at all, all of which is not admitted but specifically denied, then the Defendants Western and Spittal say that at all material times the injury, loss or damage suffered by the Plaintiff was caused or contributed to by the negligence of the other named Defendants herein, jointly and/or severally, and the Defendants Western and Spittal repeat and adopt the allegations of negligence against the other named Defendants as alleged in Part 1 and Part 3 of the Second Amended Consolidated Notice of Civil Claim.
>
> 3. In the further alternative, the Defendants Western and Spittal say that if the Plaintiff suffered any injury, loss or damage as alleged or at all, then such injury, loss or damage was caused or contributed by the negligence of the Plaintiff as follows:

Paragraphs 2 and 3 of the amended pleading echoed what had been pleaded in prior versions.

II. COSTS TO OR FROM WESTERN?

[15] Costs are to be awarded to the successful party unless the court orders otherwise. Because Western has been held to be liable, it was not the successful party. However, it argues that it should be awarded the costs of the trial portion of this action.

> [16] Western's argument is based on its admission of liability at the start of the trial which I quoted above. In its opening at trial, Western elaborated on the admission:
>
> 1. The accident which occurred on August 28, 2014, was a tragic event. The Defendants Western Bus Lines Ltd. ("Western Bus") and Brian Spittal (collectively, "these Defendants") admit liability for this accident; however, they dispute the particular allegations of negligence claimed against them.
>
> 2. These Defendants accept the conclusion of the RCMP investigation; namely, that based on the video, electronic and physical evidence, this

> accident was likely caused by non-cognitive driving actions. In other words, a momentary lack of concentration, followed by an over-steering reaction. This is a case of simple human error.
>
> 3. These Defendants specifically dispute the allegations that a failure to train or supervise Mr. Spittal, or a failure to follow WorkSafe BC guidelines, caused or contributed to this accident in any way.

[17] Western argues that despite the admission, the plaintiffs at trial pursued the allegation that the accident was caused by lack of training and safety procedures resulting in Mr. Spittal being fatigued. (As I said above, this was necessary for the plaintiff's theory of liability of the other defendants.) Those allegations were dismissed, as was the allegation of failure to warn.

[18] The governing rule is 14-1(15):

> Costs of whole or part of proceeding
>
> (15) The court may award costs
>
> (a) of a proceeding,
>
> (b) that relate to some particular application, step or matter in or related to the proceeding, or
>
> (c) except so far as they relate to some particular application, step or matter in or related to the proceeding
>
> and in awarding those costs the court may fix the amount of costs, including the amount of disbursements.

[19] In *Sutherland v. Canada* 2008 BCCA 27, the Court of Appeal set out the considerations in the application of the Rule:

> 29 A plain reading of the rule appears to give the judge a broad discretion to award costs to an unsuccessful party, or to deny costs to a successful party, with respect to an identifiable issue or part of the proceeding. As with every discretionary power, it must be exercised on a principled basis.
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> 30 *British Columbia v. Worthington (Canada) Inc.* is the leading case with respect to the application of Rule 57(15). It affirms that under Rule 57(15) the Court has full power to determine by whom the costs related to a particular issue are to be paid. As Esson J.A. states in *Worthington*, the discretion of trial judges under Rule 57(15) is very broad, and must be exercised judicially, not arbitrarily or capriciously. There must be circumstances connected with the case which render it manifestly fair and just to apportion costs.

> 31 The test for the apportionment of costs under Rule 57(15) can be set out as follows:
>
> > (1) the party seeking apportionment must establish that there are separate and discrete issues upon which the ultimately unsuccessful party succeeded at trial;
> >
> > (2) there must be a basis on which the trial judge can identify the time attributable to the trial of these separate issues;
> >
> > (3) it must be shown that apportionment would effect a just result.

[20] A successful litigant has a reasonable expectation of payment of its costs. The onus of the party urging departure from the general rule is a “substantial” one. The order should only be made in relatively rare cases: *Briante (Litigation Guardian of) v. Vancouver Island Health Authority*, 2017 BCCA 148 at paras.198 and 200.

[21] Normally, if liability is found against a party for negligence, the court will not parse out which basis of the claim succeeded and then apportion costs between it and the unsuccessful bases. For example, if two breaches of duty are alleged, one being successful and the other not, the court will not normally apportion costs. As was stated by the Court of Appeal in *Loft v. Naft*, 2014 BCCA 108 at para. 46, the successful party is the plaintiff who establishes liability under a cause of action and obtains a remedy, or a defendant who obtains a dismissal of the plaintiff's case.

[22] With respect to Western’s argument that it is entitled to costs, it appears to me that a major consideration is whether it was reasonable for Western to have actively participated in the trial after it admitted liability (there is no debate that it had the *right* to do so). If it was not reasonable, there would be no basis to award it costs.

[23] Western submits it had to actively participate in the trial because a finding of negligence relating to Western’s business practices could have had insurance consequences. Further, if the other defendant were found liable, a finding of negligence with respect to the safety allegations may have had negative consequences with respect to apportionment of liability.

[24] In addition, Western argues that the reputations of its employees who have remained in the transportation industry were at stake. These were not anonymous employees; they were identified people who were witnesses at the trial. Western points out that in his opening, Ms. Pan's counsel said that Western was "a disaster of a company", with "incompetent management" and a "culture of indifference towards the safety of both its employees and passengers".

[25] I do not think that Western can rely on potential damage to its employees, who were not parties to the litigation. I also do not think I can place any weight on the insurance aspect alluded to by Western because it did not put forward evidence as to what that issue was. On the other hand, there is force to the argument regarding Western being justified in defending the safety and fatigue issues in the trial because of the potential effect on apportionment of damages.

[26] I conclude it was reasonable for Western to have participated in the trial. However, that does not mean it was necessary for it to be at trial when the scheduled witnesses were speaking to topics concerning the other parties or the non-safety, fatigue issues. Western says it estimates that 48 out of the 72-day trial concerned its liability. The plaintiff did not comment on that, and not having counted the days myself, I will accept that.

[27] This case does not fit into the "normal" paradigm, because of the admission of liability. Once that admission was made, there was only one theory left for trial regarding the cause of the accident. This was that Spittal had fallen asleep, which in turn was based on lack of training and safety measures. It was not proved that Spittal fell asleep nor that there were insufficient safety measures or training at Western. Moreover, it was not shown what further measures ought to have been taken and whether the accident would have been avoided if those measures or training were in place. Therefore, the only theory of liability that was alive when the trial started was unsuccessful.

[28] Ms. Ding submitted that:

> The Plaintiff was required to prove certain facts related to Western and Mr. Spittal in order to pursue her case against the other Defendants, but the Defendants Western and Mr. Spittal was (*sic*) not required to defend specific particulars of negligence given that they had already admitted liability. The Plaintiff was substantially successful as against the Defendants Western and Mr. Spittal.

In some ways, this makes Western's point. It may have been necessary for the plaintiffs to try to prove the fatigue argument vis-à-vis their claim against the other defendants, but that does not mean that Western should bear the costs of that.

[29] That said, the lateness of the admission must be considered. As stated, the admission was made when the trial began. In its argument, Western stated that its liability was never seriously in question. That being the case, Western could obviously have made that admission much earlier so as not to have sprung it on the plaintiff who was denied the opportunity to plan accordingly.

[30] In the unique circumstances of this case, I conclude that Western, Spittal and the plaintiffs should bear their own costs of the trial. There is no question that the plaintiffs are entitled to their costs against Western up to the time of trial.

III. SHOULD THERE BE A *BULLOCK* OR *SANDERSON* ORDER

A. The legal considerations

[31] The authority in the Rules for a *Bullock* or *Sanderson* order is in Rule 30 (18) which allows for the order to be made if "the costs of one defendant against a plaintiff ought to be paid by another defendant". It is a discretionary order.

[32] The rule does not list any criteria for the exercise of the discretion, but the cases have established a two part test: whether it was reasonable for the plaintiff to have joined the successful defendant in the action and whether it is just and fair in the circumstances to make the order. The first part of the test has been referred to as a threshold issue: *Provost v. Dueck Downtown Chevrolet Buick GMC Limited*, 2021 BCCA 15 at para. 17.

[33] The first part of the test appears to address the reasonableness of the joinder of the parties. I take that from three Court of Appeal decisions.

[34] First, in *Robertson v. Wing* (1980), 26 B.C.L.R. 225 (C.A.) at para. 11, the Court of Appeal adopted the following from a decision of the English Court of Appeal as expressing the first threshold question:

> Under these circumstances, was it a reasonable thing for the plaintiff in his action against a man who ultimately turns out to be in fact the wrong-doer to join the other defendant in order that the matter might be thoroughly threshed out?

[35] Second, In *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528 the court said:

> 55 Examining the question in the context of this case, it is reasonably apparent that the appellant can satisfy the first part of the test - was it reasonable for the appellant to join both Tahtsa and Mr. Brienen in one action? In light of the appellant's conspiracy theory, apart from its merit, it likely made sense to have the two claims joined in one action.

[36] Third, more recently, in *Provost v. Dueck Downtown Chevrolet Buick GMC Limited*, 2021 BCCA 15 the Court of Appeal reaffirmed what was said in *Davidson*:

> [19] In *Davidson*, this Court held that a *Sanderson* or *Bullock* order requires some conduct on the part of the unsuccessful defendant in order to justify the award": at para. 54. There, even though the Court found that it was reasonable for the appellant to have joined both defendants in one action, it was not just and fair in the circumstances to make a *Sanderson* or *Bullock* order because there was no credible evidence to support the claim against the successful defendant: at para. 56.

[37] With respect to the second part of the test, the quoted paragraph from *Provost* is authority for the proposition that the strength of the case against the successful defendant is a relevant factor to the exercise of the discretion under the second part of the test for the *Bullock* or *Sanderson* order.

[38] The second part of the test involves the consideration as to whether the unsuccessful defendant did something to justify a *Bullock* or *Sanderson* order. In *Provost*, the Court said:

> [18] In *Grassi*, Justice Southin noted that "[t]here must be something which the unsuccessful defendant did, such as asserting the other defendant was the culprit in the case, to warrant his being made to reimburse the plaintiff for

> the successful defendant's costs": at para. 33 (emphasis added). Justice Southin elaborated:
>
> > 34 … orders under Rule 57(18) [now Rule 14-1(18)] are not restricted to cases where the unsuccessful defendant in the course of the litigation has blamed the successful defendant but may extend to acts of the unsuccessful defendant which caused the successful defendant to be brought into the litigation.

[39] Once the threshold is met, the rest of the analysis is highly contextualised and fact-based. In *Robertson v. Wing* Lambert J.A. noted:

> 14 Once the threshold question is answered affirmatively then the discretion of the trial judge arises. Of course, he may exercise it either way. It is a true discretion. Whether he grants a *Bullock* order, or not, must depend on his assessment of the circumstances of the case. In my opinion it is inappropriate to trammel that discretion by endeavouring to extract principles from those cases where the discretion was exercised and from those cases where it was refused. The threshold question must be answered affirmatively; the discretion must be exercised judicially; and that is all.

B. Analysis

[40] I think the plaintiff meets the threshold test: it was reasonable to have all the claims joined in one action.

[41] The issue here is the second part of the test. I will deal first with the strength of the claims against the non-successful defendants.

[42] While the accident happened due to lack of attention, there was no evidence that the lack of attention was caused by fatigue. There was no evidence that Spittal drove more than the allowable hours. There was no evidence of insufficient training by Western. There was no evidence that Western was negligent in hiring Mr. Spittal. There was no case law to support the proposition that Universal or Canam had a duty to go behind the license of Western and make inquiries as to its safety programme. Moreover, even if there was such a duty it flows from what I have said that the inquiry would not have discovered anything untoward.

[43] With respect to failure to warn, the standard in Canada was not to have seatbelts in highway coaches. There was no industry or other standard with respect to providing warnings regarding seatbelts.

[44] Even assuming that there was a duty to warn, the only defendant that could have given a meaningful warning - namely a warning in advance of the tour - was Canam, with whom the plaintiffs booked the tour. Universal had no relationship with the passengers and did not own the bus. Prévost and Western, not having any relationship with the plaintiffs, could only have placed a warning sign in the bus itself, by which time the passengers would have been on it or boarding.

[45] The case against Prévost with respect to lack of seatbelts was marginally stronger.

[46] There was no case to be made against Prévost with respect to glass, because the only credible engineering evidence was that laminated glass instead of tempered glass would have made no difference to the injuries of the passengers. The plaintiff relied on an expert who performed a - metaphorically speaking – backyard experiment dragging a dog food bag laid on the door of a car to simulate a complicated bus roll-over crash. By the end of the case, the plaintiff conceded that the case "was not about glass".

[47] The plaintiff did not make the argument that it could not have assessed the strength of evidence until it had the expert reports in hand, but the answer to that would be that it did not have to carry the allegations through to a lengthy trial after having received the reports.

[48] The other consideration is whether Western did something to merit it being responsible for the costs of the other defendants. The plaintiffs rely on the pleadings that I referred to above, which pleaded that the actions of the other defendants caused or contributed to the plaintiffs' injuries. They rely on the statement of Southin J.A. quoted by the Court of Appeal in *Provost*. I set this out above, and repeat part of it here:

> In *Grassi*, Justice Southin noted that "[t]here must be something which the unsuccessful defendant did, such as asserting the other defendant was the culprit in the case, to warrant his being made to reimburse the plaintiff for the successful defendant's costs" [emphasis added]

[49] The plaintiffs argue that a mere pleading alleging responsibility of other defendants is sufficient conduct to justify a *Bullock* or *Sanderson* order. But they also stress that the position was maintained through to argument, pointing out the following from Western's written argument:

> 14. The duty to warn is generally owed by a manufacturer to an ultimate consumer. As argued by the Plaintiffs, Prevost had specialized knowledge with respect to the particular hazards associated with the lack of seatbelts combined with the switch to tempered glass windows in their buses. Prevost neglected to share that safety information with Western Bus. Prevost sent only one email to its customers indicating a seatbelt retrofit was available, and did not include any information related to potential hazards.
>
> 15. The decision in *Hollis v. Dow Corning*, (1995) 4 SCR 634, 1995 CanLII 55 (SCC) addresses the duty owed by manufacturers. It also outlines the circumstances in which a "learned intermediary" may owe a duty to warn. This represents an exception to the general manufacturers' duty to warn the consumer, and is only imposed on a learned intermediary once they are fully apprised by the manufacturer of all risks.
>
> 16. These Defendants submit there was no duty owed by Western Bus to warn its passengers in this case. Western Bus was not a learned intermediary, and was not apprised by the manufacturer, Prevost, of any risks associated with the lack of seatbelts on the Bus. . . .
>
> 189. If there was any specific risk posed by lack of seatbelts in Prevost buses, the Defendants say that Prevost, as the manufacturer, was in the best position to be aware of such risk, and should have communicated that risk to its customers, including Western Bus.
>
> 190. Neither Mr. Millie nor Mr. Therrien recall receiving any notice from Prevost that a seatbelt retrofit kit was available for its buses. Regardless, the advertisement produced by Prevost in this matter does not include any warning of safety concerns and was insufficient to alert carriers to any potential risks of failing to retrofit their vehicles with seatbelts. It contained minimal information, and did not provide any estimates of the cost or downtime associated with a retrofit.
>
> 191. There was no follow-up with Western Bus, and Mr. Millie does not recall receiving any notices about regulatory changes regarding seatbelts or anything specific to rollovers. It is noteworthy that the retrofit offer was taken up by very few owners of Prevost buses.
>
> 192. At the time of the Accident, Mr. Millie was not aware that Prevost had begun to manufacture buses with seatbelts.
>
> 193. Most of Mr. Millie's knowledge about seatbelts, aside from general knowledge, was learned after the Accident. . . .

> 239. As set out above, the duty to warn in this case is owed by the manufacturer to the bus passengers. Prevost had specialized knowledge of the particular hazards associated with the lack of seatbelts in combination with the switch to tempered glass windows. Prevost neglected to share that safety information with its customers, including Western Bus. . .

[50] The plaintiffs' position effectively was that any pleading filed by the liable defendant alleging responsibility of the non-liable defendants was enough to merit – even mandate – a *Bullock* order. While some of the cases have, without analysis, referred to *any* pleading referring to the fault of co-defendants as a virtual trigger for a *Bullock* order, that black and white position cannot be correct. First, it would remove the court's discretion and make for an overly simplistic analysis. Second, the result would encourage plaintiffs to name multiple defendants and pursue them through to trial with no reasonable prospect of liability in order to "bring them to table" while having no exposure to costs.

[51] I do not think the plaintiffs' position is supported by *Provost*, the main case relied on by the plaintiff. In that case the court was influenced by the fact that the liable defendant had stolen a car from the non-liable defendant and rammed it into the plaintiffs' (at para. 22). Further, the Court noted that in one of the three actions concerned, the liable defendant had filed a third-party notice against the other defendants. And finally, in another one of the actions the liable defendant denied that he had *caused* the accident. That is not the case here: Western did not allege that the *accident* was caused by any other defendants; rather its position was that if they were liable, they contributed to the damages. Western was following the plaintiff's theory of the case: that the lack of seatbelts and choice of glass made the injuries more severe than they would otherwise have been. It is to be recalled there was never any issue that the accident was caused by the non-Western/Spittal defendants.

[52] In my view, Western's Response to Civil Claim was a *pro forma* pleading allowing for contribution from the other defendants if the plaintiff made out its case against them.

[53] With respect to Western's argument quoted at length above (para. 49), this was an answer to the plaintiff's failure to warn allegations. The same allegations were made against all the defendants by the plaintiff. It should be open for a defendant to say it did not have the duty of care alleged, but the other defendants did, without exposing itself to bear the cost of the other defendants who were brought into the action by the plaintiff. Put colloquially, the plaintiff called the party and decided who to invite, without input from Western.

[54] Finally, the plaintiffs argue that a consideration is that these were bellwether cases. I agree that this was beneficial; indeed, it was I who suggested it during the pre-trial process and pointed out that the trial of 55 actions at the same time or back-to-back would be unmanageable. (The plaintiff had originally set over 12 months of hearing time.) Nevertheless, I do not see this justifies Western bearing the costs. If anything, there could have been an agreement amongst the 53 other plaintiffs (the majority of which were represented by the same counsel as in the actions here) to share the costs because they were the main beneficiaries of the bellwether procedure.

[55] Taking all the above into account, I do not think it would be just, fair or equitable for Western to bear the costs to which the other defendants are entitled.

[56] I add that I would come to this conclusion even if I had awarded the plaintiffs their costs against Western.

IV. SCALE OF COSTS AND UPLIFT COSTS

[57] All of the defendants argue that costs should be assessed at Scale C ("more than ordinary difficulty") and that they be entitled to "uplift" costs.

A. Scale

[58] The scale of costs is dealt with in Appendix B of the Rules. The relevant sections are:

> 2 (1) If a court has made an order for costs, it may fix the scale, from Scale A to Scale C in subsection (2), under which the costs will be assessed, and

> may order that one or more steps in the proceeding be assessed under a different scale from that fixed for other steps.
>
> (2) In fixing the scale of costs, the court must have regard to the following principles:
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> (a) Scale A is for matters of little or less than ordinary difficulty;
>
> (b) Scale B is for matters of ordinary difficulty;
>
> (c) Scale C is for matters of more than ordinary difficulty.
>
> (3) In fixing the appropriate scale under which costs will be assessed, the court may take into account the following:
>
> (a) whether a difficult issue of law, fact or construction is involved;
>
> (b) whether an issue is of importance to a class or body of persons, or is of general interest;
>
> (c) whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied.

[59] In my view, one need only review the table of contents of my reasons to conclude that this case was complex and more than the ordinary level of difficulty both with respect to facts and legal issues. In some ways it was an inquiry into the history and regulation of seat belts and glass in motorcoaches in Canada and the United States, and to a lesser extent internationally. The plaintiffs themselves collated every single bus roll-over crash in North America.

[60] If more be needed than what is apparent from the reasons for judgement, some of the “statistics” are:

- 72 days of trial which included 10 days of closing submissions
- 33 trial witnesses
- More than 45,000 pages of document disclosure
- A common document book of 12,000 pages
- Arguments of the following length:
    - Plaintiffs’ closing arguments: 321 pages

- Plaintiffs' reply arguments: 119 pages
- Prévost closing argument: 704 pages

- 24 judicial case management conferences
- 16 expert reports from the Plaintiff's and 7 from Prévost

[61] Prévost points out that it its document disclosure went as far back as 1968 through changing information management technologies and in various languages.

[62] The case also raised a novel point of product liability law. There was no prior case in which a manufacturer's standard of care obligations were evaluated in relation to how the manufacturer balanced various safety issues as opposed to just eliminating a hazard without contemplation of other hazards.

[63] The phrase "more than the ordinary level of difficulty" invokes a comparative or relative analysis and I will therefore observe that if this is not a complex case, I do not know what case would be.

B. Uplift costs

[64] The authority to order an increase from the tariff amount is in Appendix B of the Rules, sections 2(5) to (6):

> (5) If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).
>
> (6) For the purposes of subsection (5) of this section, an award of costs is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which that party would be entitled under the scale of costs fixed under subsection (1) or (4).

[65] In the recent case of *Shen v. West Continent Development Inc*. 2022 BCSC 462, Maisonville J. thoroughly summarised the case law regarding uplift costs. I will

not repeat that here, but only note that three of the circumstances mentioned justify an award of uplift costs to Prévost.

[66] First, there is the importance of the case to Prévost. A finding against it with respect to seatbelts or glass would have ramifications for any accidents involving similar factors. A negative decision with respect to a failure to issue a recall notice and retrofit for seat belts at its own costs would obviously also have profound ramifications for it.

[67] Second, the case was of significance to the coach industry in Canada as a whole. As I stated in my trial judgement, "[f]or me to conclude that Prévost was negligent in not installing seatbelts, I would have to conclude that NHTSA, Transport Canada, and other bus manufacturers in North America were equally negligent."

[68] Finally, there is the complexity of the case against Prévost, which in my view justified having several counsel.

[69] I do not find those factors apply to the other parties. The ramifications for them were not the same as for Prévost. While I concluded that the case was complex enough for all parties to justify an award at Scale C, I do not find the difficulty rises to a higher level to justify uplift costs for the other defendants.

[70] It is no disrespect to observe that Prévost did the heavy lifting with respect to the issue of whether buses ought to have been equipped with seatbelts and it was the only defendant which had to defend the glass issue.

[71] I do not find any of the other factors noted in *Shen* apply to the other defendants. The fact that a case was bought against them and was dismissed does not in itself justify uplift costs.

[72] In my view the tariff award at Scale C is an appropriate and fair costs order for the non-Prévost defendants.

V. CONCLUSION

[73] In summary, I find that:

a) The plaintiffs are entitled to their costs against Western and Mr. Spittal up to the start of the trial.

b) Western, Mr. Spittal and the plaintiffs are to bear their own costs for the time of the trial.

c) All the defendants except for Western and Mr. Spittal are entitled to their costs at Scale C.

d) Only Prévost is entitled to uplift costs.

"E.M. Myers J."