CITATION: Akeelah v. Clow, 2018 ONSC 3410
COURT FILE NO.: 14-49091
DATE: 20180720

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
Dawood Yousef Akeelah	)	Gary Mazin, for the Plaintiff
Plaintiff	)	
– and –	)	
Allen W. Clow and Information Communication Services Inc. (Also known as ICS Inc.)	)	Michael Blinick and Sophia Souffrant for the Defendants
Defendants	)	
	)	**HEARD: October10, 11, 12, 16, 18, 19, 23, 24, 25, 26, 27, 30, November 30, 2017 and final submissions January 23, 2018**

THE HONOURABLE MR. JUSTICE R. J. NIGHTINGALE

[1] The plaintiff brings this action for his damages sustained as a result of injuries he suffered in a motor vehicle accident that occurred on November 18, 2013.

Liability

[2] The defendants admit liability for causing the accident by their vehicle striking the plaintiff vehicle from the rear when it was stopped on the highway. The exact speed of their vehicle at the time of impact is in dispute. The examination for discovery transcript of the defendant driver's evidence read in by the plaintiff as part of his case is that his speed was a lot less than 70 km per hour at the time of impact. The plaintiff at trial

referred to and filed as an exhibit the police motor vehicle accident report noting the defendants' vehicle's speed of 40 km per hour at the time of impact.

[3] The plaintiff's evidence at trial was that he believed the defendant vehicle was traveling about 140 km per hour at the time of impact with his stopped vehicle is not reasonable nor consistent in my view with this evidence and the photographic evidence that does not show any significant damage to the rear of the plaintiff's vehicle which the plaintiff said was only scratched because of the impact. The plaintiff's vehicle had approximately $7700 in damages mostly to the front end as it collided with the vehicle ahead of it. The defendants' vehicle's front hood, grill and bumper were damaged but not extensively. The plaintiff's evidence was that there was major damage to the defendants' vehicle including its engine being pushed onto its floor but there were no photographs confirming that .

[4] The impact nevertheless was likely an unexpected shock to the plaintiff's body but at a much lower speed as indicated by the evidence above other than the plaintiff's evidence which I do not find was reliable or accurate evidence in the circumstances.

Parties' Positions at Trial

[5] The defendants concede that the plaintiff's present medical condition and his pain and suffering have resulted in his inability to work for the foreseeable future and possibly ever again and that he likely requires a significant amount of therapy, care and assistance to have any chance of returning to the semblance of a normal life.

[6] However, the defendant's position is that the plaintiff's injuries following the November 2013 accident were limited to low-level soft tissue pain complaints with minor cognitive impairments and only a temporary inability to work. The defendants state that the plaintiff's initial medical condition was also exacerbated by a subsequent motor vehicle accident he was involved in on February 3, 2014 and that it was following that accident that the plaintiff abandoned his attempt to return to work.

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[7] Most significantly, the plaintiff suffered from a stroke on October 19, 2015. The plaintiff's position is that the stroke was caused by the initial car accident involving the defendants even though it occurred almost 2 years after the accident and that the defendants are responsible for the plaintiff's damages caused by the stroke.

[8] The defendants' position is that the stroke is unrelated to the initial car accident and that the plaintiff's evidence does not establish that but for that November 18, 2013 accident, the plaintiff would have suffered a stroke with his much worse medical condition resulting because of that stroke.

[9] Accordingly, the defendants' position is that the plaintiff's damages from the November 2013 accident are substantially less than those damages claimed by the plaintiff because of his significantly worsened medical condition due to his subsequent but unrelated stroke.

Plaintiff Dawood Akeelah ("David")

Pre-Accident Medical Condition

[10] The 42-year-old single plaintiff at trial indicated he was quite proud of his physical condition before the car accident of November 18, 2013. He said he was the strongest person at his place of employment, regularly went to the gym to lift weights, played soccer and had no psychological problems or use of medication before the first accident. He lived with his parents, regularly attended for his religious activities and did all the yard work around the house. He stated he enjoyed his job working for the Region of Halton in the waterworks department.

[11] His supervisor George Trencs confirmed he was a good - average and trustworthy employee before the car accident involved with general housekeeping and maintenance of equipment. He took his job obligations seriously which required mostly physical work including opening valves and cleaning reservoirs.

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[12] The plaintiff denied having any neck pain before the first accident although at trial in cross- examination he admitted he had physiotherapy in April and May 2009 because of complaints of lower back pain.

[13] Although at trial he again denied having ongoing lower back pain, his chiropractic records confirmed that on October 23, 2012 he did complain of lower back pain and had chiropractic treatment for that.

[14] At trial, he stated he didn't suffer from migraine headaches before the car accident. However, he was somewhat evasive when shown his medical records of February 11, 2012 confirming he did complain then of suffering from migraine headaches before the first accident. He then suggested he may have had some only when he was constipated.

[15] He initially stated at trial he did not suffer from dizziness before the accident but then changed his evidence to say he only did because of an ozone problem while at work. His doctor's records suggested that incident was in 2008 but on August 13, 2013 the records confirm he complained to his doctor of dizziness and his inability to go to work. He was vague while giving this evidence.

[16] Most significantly, he was hesitant and evasive in explaining the Juravinski Hospital record of November 4, 2013 shortly before the car accident. He attended there because after straining with a bowel movement, he said he felt dizzy, had severe rectal pain, tingling in his chest and collapsed at home. He admitted the accuracy of the report but stated he did not recall saying that.

[17] The plaintiff nevertheless worked on a full-time basis and carried on with his daily activities but this evidence is of some limited relevance to the overall reliability of the plaintiff's recollection of and his evidence at trial regarding his medical condition at various stages including before and after his stroke of October 2015 which was very much in issue at the trial.

Plaintiff's Complaints after the November 18, 2013 Accident

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[18] The plaintiff said he was tired , sleepy , dizzy and in pain at the scene of the accident but denied immediate medical attention including refusing an ambulance to take him to the hospital. He drove his vehicle home.

[19] The next day he testified he had “unbelievable pain” all over, headaches and nausea and attended at the emergency department at Hamilton Health Sciences. No particular medical treatment was provided and he said he was told he was suffering from muscle spasms and a possible concussion. He was given pain medication.

[20] He went to the Queenston Walk-in Clinic later that same day complaining of neck pain, dizziness and headaches. He was advised to use Naproxen.

[21] He remained off work and then attended another walk-in clinic 10 days later on November 29, 2013 complaining of body aches, neck pain, lower back pain and headaches.

[22] X-rays taken of his cervical and lumbar spine on December 2 and December 27, 2013 confirmed no fractures and no bone or joint abnormality and only early degenerative changes in the L1 – L2 discs.

[23] The plaintiff stated in his evidence that he always accurately reported his condition and complaints to his treating doctors and medical personnel.

[24] He reported to a doctor at the Queenston Walk-in Clinic on December 5, 2013 that his lower back pain and neck pain were gradually improving. However, he then said at trial it was impossible that he had said that to the doctor but also said he doesn’t remember saying it. At trial, the plaintiff said that he was always in bed at the time and couldn’t walk but the medical records at the time do not suggest or confirm that. He began physio and chiropractic therapy.

[25] On December 11, 2013 his physiotherapist confirmed on his assessment that he had normal range of motion in his lumbar and cervical spines and no experience of pain on

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motion. However, he stated twice at trial that that was impossible as his neck was "stiff like a board" and that he could not move.

[26] The next day on December 12, 2013 when he attended at the Queenston Walk-in Clinic, he said to the doctor that he still had some neck and lower back pain but it was better than before. He again denied the accuracy of that record even though he conceded at the outset of his evidence in cross-examination that he accurately told his medical personnel what his complaints were.

[27] What is significant is that on January 3, 2014 he reported to his then doctor, Dr. Movsesyan, that his dizziness, neck pain and back pain were all getting better.

[28] Despite the plaintiff's evidence that he accurately told all his doctors how he felt on his examination, he stated he didn't recall saying that to him and then denied at trial he ever said that to Dr. Movsesyan. His evidence at trial was that he was already "on a decline" before the second car accident. He doubted the accuracy of that record and then dismissed the doctor as being useless who didn't help him with anything. Nevertheless, he did return to work later that month with shorter hours and on modified duties with no physical work as confirmed by George Trencs but on seeing Dr. Movsesyan on January 10, 2014, he complained of head numbness, nausea, headache and back pain.

[29] None of these medical witnesses gave evidence at trial for the plaintiff.

[30] The Plaintiff at trial then described the extent of his injuries from that accident as including severe upper and lower back pain, severe damage to his hands, loss of strength, always sleeping because of his pain, very strong headaches, significant pain in the right side of his neck and shoulder, constant left arm numbness and depression. He attributes his suicide attempt of July 13, 2017 to the accident because of his pain sustained in it.

[31] He stated he did no cleaning in his house and having no appetite.

Plaintiff's Complaints after the February 3, 2014 Accident

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[32] While on his way to work where he was performing modified duties, the plaintiff was involved in another motor vehicle accident on February 3, 2014. It appears he was at fault for that accident as he rear-ended a third-party vehicle at low speed causing some minor damage to both vehicles. The plaintiff at trial stated that he suffered no injuries or more pain because of this accident and he went to work for two more weeks driving that same vehicle.

[33] However, the plaintiff's medical records and what he told his medical providers suggest otherwise. On February 7, 2014 he advised the doctor at the Queenston Walk-in Clinic that he had neck pain and now complained of lower back pain radiating into his lower and upper limbs. The medical records do not confirm he complained of that radiating pain condition after the first motor vehicle accident and before the second. He made similar complaints on February 15 and 18, 2014 of shooting pain down into his right leg.

[34] The medical records confirm that he advised the caseworker at the Acquired Brain Injury Clinic ("ABI") at Hamilton Health Sciences on March 3, 2014 that the second car accident increased the symptoms of dizziness, headaches and pain he suffered in the first accident. Despite his earlier evidence that he was accurate in reporting his symptoms, at trial he denied the accuracy of those records stating that was impossible and there was nothing out of the ordinary because of the second car accident. No one from ABI gave evidence at trial.

[35] On March 5, 2014 he attended before a chiropractor, Dr. Heidack, who examined him. He said he told that chiropractor that he did not suffer any injuries in the second accident but that the chiropractor told him he wanted to use the second car accident as it was easier in order to get him pre-approved for payment of medical benefits from his insurance company. That chiropractor provided a report that the plaintiff could not return to work because of his medical condition caused by the second car accident of February 3, 2014. The evidence is concerning but the chiropractor was also not called by the plaintiff as a witness at trial to provide any explanation or verification of the plaintiff's evidence.

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[36] On March 13, 2014 he told the staff at ABI that he experienced increased neck pain and memory challenges after the second car accident. He rambled in his evidence at trial denying he said that and suggested ABI made a mistake in recording what he said.

[37] He told his family doctor, Dr. Hanna, according to his records of March 25, 2014 that his neck pain was now on and off and that he was pain-free in his lower back. He stated at trial he disagreed with the record and that it wasn't accurate.

[38] The June 4, 2014 records of Dr. Hanna confirm his complaints to him of mild to moderate back pain but no other complaints. He again disagreed with that stating he also had neck pain. Dr. Hanna's evidence will be discussed in more detail below.

[39] He agreed that at the Pain Clinic on June 24, 2014 he said he was getting better and his pain was now intermittent. However, at trial he suggested he was spending most of his time lying in bed.

[40] He disagreed at trial that he told Dr. Hanna on August 5, 2014 he was feeling better, was able to sleep and that that was the case as well on August 19, 2014 even though those records confirm he did.

[41] He then arranged a trip and traveled to Jordan for approximately 4 weeks in September 2014 on his own to meet and potentially marry a woman he had met over the Internet but did not and returned home with his sister.

[42] On November 5, 2014 he told Dr. Demian at the Centre of Pain Management that his pain medication provided 90% pain relief with his pain now being only 2 on a scale of 1 to 10.

[43] Video surveillance taken of the plaintiff on November 12 and 14, 2014 clearly confirmed the plaintiff being quite physically active, driving his vehicle, walking quickly and jogging at times into a home building store, carrying lumber back to his vehicle by himself and showing no signs of any physical disability. At trial, he stated that he was

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pushing and forcing himself to run but suggested he may have slept in bed for a week after that outing.

[44] On December 17, 2014, he told Dr. Demian the same thing he had told him on November 5, 2014.

[45] The plaintiff advised Dr. Hanna on January 29, 2015 that he had upper back pain and neck pain but improved low back pain and requested to return to work.

[46] At trial he suggested he did no housecleaning including in his bathroom and found it very hard to shower since the first motor vehicle accident. However, he admits he told Brenda Whittaker, his case manager for his LTD benefits claim, on March 4, 2015 that he had experienced significant progress in the management of his physical symptoms in the past month. He stated then that his headaches were almost completely gone, his back and knee symptoms were reduced, he could sleep 5-6 hours without medication and he had significant improvements in his physical function. He said he shoveled snow, ran errands and drove his parents for their needs, did his own laundry, tidied his room and did all his personal care. He stated he was able to tolerate walking and stairs but avoided repetitive lifting or bending. He stated to her that his depression, frustration and forgetfulness were significantly improved.

[47] He admitted he told Dr. Hanna on March 26, 2015 that he now had less neck pain and headaches and that he was generally feeling better.

[48] His evidence at trial was that he was not active and that he could not walk after the motor vehicle accident, that he laid down and slept most of the time since the first accident. However, he told the staff at the Pain Care Clinics on April 1, 2015 that he was now being active again.

[49] At a work conditioning assessment on April 20, 2015, he told the physiotherapist there that he was feeling much better although he stated he still had pain and stiffness in his neck and intermittent mild low back pain. He was able to do a series of squats and toe raises but suggested at trial that he slept after that while in pain. He did not deny that he

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told his family doctor, Dr. Hanna, on June 3, 2015 that he was in the process of returning to work.

[50] He reported again on May 25 and July 29, 2015 to Dr. Demian that he had improved physical functioning and sleep patterns which at trial he admitted was true.

[51] He participated in a work hardening program in September 2015 stating he stopped it because of his pain. He went to only 6 of 24 approved sessions and admits he exercised on the treadmill and on the stationary bike which was observed to be at a quick steady pace but he couldn't recall how long he did so.

[52] The plaintiff told his LTD benefits assessor on September 10, 2015 that he was able to do various tasks around the house including cleaning, laundry, grocery, mowing the lawn and cleaning the bathroom. He reported ongoing headaches and difficulties with his concentration. However, contrary to that evidence, at trial he stated that he was using a cane or walker for some time before his stroke which does not appear to be the case as noted below.

[53] On October 5, 2015, he stated he saw Dr. Hanna and told him he was feeling depressed and in a lot of pain suggesting he had suicidal thoughts and stated he received some medication.

[54] He admitted he then told the occupational therapist Tina Cagampan on October 7, 2015, 12 days before his stroke, that he could walk independently without a cane in his house, go up and down stairs independently, and do complete full squats without aids. He told her that he did not require any physical assistance including for his personal care. He then at trial denied the accuracy of those records and insisted he was using a cane before his stroke but then conceded he may not be remembering correctly which appears to be the case. Ms. Cagampan was not called as a witness at trial to provide any explanation of that evidence and his statements to her.

[55] He reported to Dr. Hanna on March 15, 2016, 5 months after his stroke referred to below, that he started to use a cane four days before, i.e., on March 11, 2016 because of his leg

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swelling. At trial, he also denied the accuracy of those reports even though he was the one who provided the information to the doctor. He also told Dr. Hanna on December 1, 2016 that he was now using a walker confirming the significant deterioration in his medical condition after the stroke.

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Plaintiff's Stroke of October 19, 2015

[56] The plaintiff's evidence was that he very stressed and in pain when he stopped at Tim Horton's where he noticed he could not speak and they told him to go to the hospital. Instead, he drove and went to see Dr. Hanna who sent him by ambulance to Joseph Brant Hospital. He said he could not speak but checked himself out against medical advice before any tests were conducted on him.

[57] The next day he went to Hamilton General Hospital where he stayed for three days but he again went home against medical advice before they could conduct the recommended tests on him.

[58] He said he could not speak the first few weeks after his stroke. As noted below, the evidence confirms that his medical condition physically and cognitively deteriorated very significantly after the stroke.

Was the Plaintiff's stroke caused by the motor vehicle accident of November 18, 2013?

[59] In order to establish the defendants' liability for the damages of the plaintiff resulting from his stroke of October 19, 2015, the plaintiff must prove on a balance of probabilities that the stroke was caused by the defendants' negligence i.e. but for the defendants' negligence, the plaintiff's injuries from the stroke would not have occurred. *Clements (litigation guardian of) v. Clements*, 2012 SCC 32 paras. 8-9.

[60] The "but for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendant's conduct is

present. It ensures that the defendant will not be held liable for the plaintiff's injuries where those injuries may very well be due to factors unconnected to the defendant but not the fault of anyone. *Hanke v. Resurface*, 2007 SCC 7 para. 23.

[61] If the plaintiff is not able to establish the causal relation between the defendants' negligence and his stroke, the plaintiff must establish on a balance of probabilities that the injuries and damages he sustained from the motor vehicle accident of November 18, 2013 were caused by the defendants' negligence i.e. but for that negligence, the plaintiff would not have suffered those injuries and damages.

[62] The plaintiff wished to file an extensive joint medical brief at the outset of the trial on the consent of the defendants. However, I wanted to be clear as to what use I could make of those records at trial.

[63] At that time and also at several other instances during the trial, counsels for the parties made it clear that they agreed that the only purpose for which the contents of those medical reports and records would be admissible evidence at trial would be to confirm the observations of the doctors or other medical personnel of the plaintiff and that the plaintiff had made certain statements to the doctors or medical personnel regarding his symptoms and complaints without the necessity of either party having to call the doctor or other medical personnel as a witness to prove that the statements or observations were made.

[64] The parties' agreed that the statements in those records made by the plaintiff to the doctors and other medical personnel would not be admissible for the truth of their contents but only that they were made by the plaintiff. In addition, the parties agreed and I understood that the contents of the medical records were not admissible to establish the conclusions of those doctors or medical personnel with respect to the plaintiff's condition.

[65] The joint medical brief was accordingly filed as a lettered exhibit for identification purposes only and not a numbered exhibit. During the trial, counsel for the parties made

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references to excerpts from some of those reports from that joint brief which I have considered in my decision only for the purposes indicated and agreed to by counsel.

Evidence of Dr. Hanna

[66] It is important to review and consider the evidence of Dr. Hanna, the plaintiff's family doctor, to understand and appreciate the plaintiff's medical condition before his stroke.

[67] Dr. Samin Hanna became the plaintiff's family doctor on February 18, 2014 which was only after the plaintiff's second motor vehicle accident.

[68] Dr. Hanna was not asked at trial and did not provide an opinion on the relationship between the plaintiff's medical condition or complaints made to him throughout the years he treated him and the November 2013 car accident, the February 3, 2014 car accident, the plaintiff's pre-November 2013 medical condition or the stroke that he suffered on October 19, 2015. He gave no opinion on the cause of the plaintiff's medical condition or on the threshold issue of whether he suffered from a serious permanent impairment of an important physical, mental or psychological function because of any injuries he sustained in the November 2013 car accident. He admitted that he did not know the plaintiff before the motor vehicle accident of November 18, 2013 and that he simply understood that he was relatively healthy before that accident.

[69] He saw the plaintiff at regular intervals from February 19, 2014 to November 2014 during which time the plaintiff complained of neck pain, low back pain including decreased range of motion, headaches and some depression but no other complaints. Dr. Hanna prescribed pain medication and physiotherapy for his chronic back pain and made a referral to a pain clinic and to a neurologist. He said he noticed the plaintiff had some difficulty at times expressing himself and understanding his instructions and advice to him but made no notes of any cognitive changes.

[70] The plaintiff complained to him of having headaches and neck pain in mid-2014. The plaintiff's complaint to him of depression on July 29, 2014 was related to his having erectile dysfunction and not because of his being anxious or suicidal.

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[71] When he examined him on October 14, 2014, the plaintiff advised him that he had stopped using all his medication with no side effects and had decreased back pain and some depression.

[72] On November 11, 2014 the plaintiff said he was feeling better and there was good range of motion in his back with only mild and almost no pain. Pain medication was being used only as needed.

[73] He said he recommended that the plaintiff jog and exercise and confirmed that the plaintiff exhibited no functional limitations and walked freely during that November 11 examination.

[74] Dr. Hanna viewed the videotape surveillance of the plaintiff taken by the defendants' representatives on November 12 and 14, 2014. That surveillance was most telling confirming that the plaintiff drove his vehicle, walked quickly and jogged and carried lumber perfectly normally without any signs of pain or restrictive movements. Dr. Hanna agreed that the video surveillance also confirmed that the plaintiff was walking freely exhibiting no functional limitations which is what he had just seen himself.

[75] On January 29, 2015 the plaintiff now complained of upper back and neck but improved low back pain and he requested to return to work.

[76] He saw the plaintiff again on March 21 and March 26, 2015, 4 months later and noted he had improved generally from his previous complaints of neck pain, was generally feeling better with less headaches and neck pain. Dr. Hanna said he looked similar to what he looked like on the November 2014 surveillance videos.

[77] Dr. Hanna saw him next on June 3, 2015 when the plaintiff said he was in the process of returning to work although he had some tenderness in his low back and some neck pain.

[78] He did not see him again for any medical assessment or treatment until October 5, 2015 when the plaintiff complained of not getting better mentally and physically and still suffering from pain, depression and interrupted sleep. The doctor ordered blood tests and

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considered referring him to a psychiatrist because of his depression. Those blood tests results on October 15, 2015 indicated nothing to Dr. Hanna of any potential blood clots in the plaintiff. He did not suspect and he also did not see any change in his physical state or vision and confirmed the plaintiff did not use a cane or walker or any mobility aids prior to his stroke.

[79] This was the plaintiff's last appointment with Dr. Hanna before the plaintiff's stroke of October 19, 2015. Dr. Hanna stated that there was nothing in the plaintiff's physical medical condition prior to that date that suggested to him that he might suffer a stroke. There was no suggestion by the plaintiff to him that he was bedridden because of his pain. Had that been the case, he would have referred him to a specialist but he did not. He did not even recommend the use of aspirin medication for him.

[80] Dr. Hanna stated that he believed the plaintiff was experiencing some cognitive issues including difficulty expressing himself and understanding instructions before his stroke. He then suggested at trial that the plaintiff's condition was deteriorating from February 2014 to October 2015. However, his records certainly did not confirm or state that and at times as indicated above, actually confirmed some significant improvement in his range of motion and pain throughout 2015.

[81] On October 19, 2015 the plaintiff visited his clinic and he immediately arranged for his emergency entrance to the hospital because of the plaintiff's stroke.

[82] Dr. Hanna continued to treat the plaintiff for his stroke initially suspending his driver's license. He also saw him on December 3, 2015 when the plaintiff stated he was in the same pain as always but he then refused to attend a stroke clinic for treatment .He noted in further sessions in 2016 that the plaintiff stated he was depressed and Dr. Hanna prescribed medication for his pain and depression as well as further physiotherapy and pain management. The plaintiff's similar complaints continued in 2016 and he noted on March 1 that the plaintiff was deteriorating mentally with more depression and the plaintiff was talking about suicidal thoughts in March 2016. From March to June 2016,

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the plaintiff complained of his legs swelling, limping, chronic back pain, falling and falling asleep in his clinic.

[83] He stated when he examined him on December 1, 2016 that the plaintiff's medical condition had deteriorated functionally and that he was now using a walker after repeated falls and walking with difficulty .The plaintiff said he felt depressed, had poor energy and concentration with interrupted sleep and intermittent suicidal thoughts. He scheduled a psychiatrist's assessment.

[84] Dr. Hanna did not see the plaintiff from December 1, 2016 until March 13, 2017 at which time the plaintiff said he had worsened back pain, depression and anxiety and the doctor changed his medication.

[85] Again Dr. Hanna expressed no opinion regarding the cause of the plaintiff's present complaints and medical condition including whether it was related to the 2013 or 2014 car accidents, his pre-existing medical condition or his stroke.

Plaintiff's Smoking Habits

[86] For the reasons noted below, the extent of the plaintiff's smoking cigarettes prior to his car accident of November 18, 2013 became a very relevant issue at trial regarding the potential cause of the plaintiff's stroke.

[87] The plaintiff's initial evidence at trial was that before the first car accident of November 2013, he smoked half a pack of cigarettes daily, that he would not normally be smoking at work but would smoke on the way to work. His evidence at trial was that after the November 2013 car accident, he "became a chimney" always smoking in his bedroom up to five to six packs per day.

[88] However, that evidence is rather convenient evidence for the plaintiff and I do not accept it as being accurate. It is likely neither reliable nor credible given his own history of his smoking habits that he provided to his doctors both before and after his November 2013 car accident.

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[89] For example, on November 4, 2013, two weeks before the November 18, 2013 car accident, he attended Hamilton General Hospital at Juravinski after he had collapsed at home when he suffered from weakness and dizziness. He told the attendant there that he smoked two to three packs of cigarettes per day.

[90] On April 7, 2016 he told the Adult Tobacco Use Assessor at Hamilton Health Sciences that he had been smoking two packs of cigarettes for the last 20 years.

[91] The evidence of Petra Fisher, the plaintiff's former girlfriend, that the plaintiff did not smoke in her presence does not assist the plaintiff as their relationship terminated in 2010 or 2011 and does not mean he did not in fact smoke two or three packages per day then or after their breakup as he stated.

[92] He made statements to his various doctors suggesting his smoking from two to three packs of cigarettes since the November 2013 car accident.

[93] In my view, the reliable evidence which I accept is that the plaintiff was a very significant smoker of cigarettes before the accident of up to two or three packs per day just as he had stated on November 4, 2013 when his memory of his smoking habits then would obviously have been clearer and on April 7, 2016 when there also was no reason for him not to be totally frank and honest on that issue.

Dr. Vincenzo Basile

[94] Dr. Basile is a neurologist with a sub speciality practice in strokes and is the medical director and stroke consultant at McKenzie Health Hospital. He was qualified to give his opinion as to the cause of the plaintiff's stroke in this case.

[95] He did not meet with or examine the plaintiff himself. He stated that the plaintiff's history in his medical records that he reviewed was enough for him to be able to provide his expert opinion on that issue.

[96] His opinion was that the November 18, 2013 motor vehicle accident was the cause of the plaintiff's stroke.

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[97] Dr. Basile explained that the plaintiff had a pre-existing hole in the top part of his heart known as a Patent Foramen Ovale (a "PFO") that did not close as it should have after birth. His opinion was that the plaintiff developed a blood clot or deep vein thrombosis ("DVT") in his leg with a subsequent paradoxical embolus passing through the PFO causing the stroke. His further opinion was that the plaintiff's sedentary lifestyle and his significant increase in and his heavy on smoking after the November 2013 motor vehicle accident because of his injuries increased the chances of the plaintiff having a DVT and a stroke.

[98] Dr. Basile referred to other causes of strokes in people including high blood pressure, high cholesterol, unhealthy lifestyle and diet, and medical conditions such as diabetes.

[99] He ruled out the other types of strokes and based on the plaintiff's medical records suggested there was no evidence that his stroke was caused by a vascular or cardio embolic condition or atrial fibrillation. His opinion was that holes in a patient's heart were routinely treated until 2012 by surgical closure because of the increased risk of stroke the longer the patient had the hole. However, because of recent studies on the risk of stroke, he now again recommends the surgical closure of the hole.

[100] His opinion was that the chances of the plaintiff suffering a DVT was increased by 50% because of his sedentary lifestyle and 30% because of his heavy smoking after his car accident.

[101] The basis for his opinion was several references of the plaintiff's statements before his stroke in the plaintiff's medical brief of his sedentary lifestyle and in particular his being in pain and sleeping for lengthy periods of time.

[102] He also referred to the plaintiff's statements made to his treating neurologists and other medical specialists of his fatigue and lack of energy. He vaguely defined a sedentary lifestyle as being a reduction in a person's usual activity.

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[103] However, he admitted in cross-examination that his definition of "heavy smoking" was at least one pack a day. As indicated above, the plaintiff smoked two or three packs of cigarettes per day prior to the car accident.

[104] None of the plaintiff's medical specialists including neurologists who actually treated him with respect to his stroke gave evidence at trial and their reports and records were not admissible as evidence to establish their conclusions or diagnoses, prognosis or course of treatment with respect to his stroke including the cause of the plaintiff's stroke.

[105] Dr. Basile nevertheless believed based on the records that he reviewed that it was a DVT that caused his stroke even though the medical records of the plaintiff confirm his heavy smoking before the accident and do not confirm his significantly increased smoking after the car accident.

[106] When he reviewed the video surveillance of the plaintiff of November 2014, he agreed that the plaintiff was certainly not sedentary at all then but then appeared to become somewhat of an advocate for the plaintiff stating it was only two days of footage confirming his being quite active.

[107] Moreover, he noted that persons tend to gain weight because of their sedentary lifestyle but then admitted that he saw no evidence of that in the plaintiff in this case.

[108] He also initially made a reference to some of the plaintiff's statements in the medical records of his fatigue and sedentary lifestyle. However, he did not dispute that the plaintiff was also stating to his doctors as indicated above including to his work conditioning program assessors in 2015 that he was becoming more active, walking more and exhibited little pain behavior. The doctor stated despite that, he could still be at the risk of a DVT.

[109] Dr. Basile admitted there was no proof that the plaintiff's stroke was caused by a DVT and that no tests including an MRI, transesophageal echocardiogram and ultrasound of the lower legs were performed to show its existence or to rule it out as a cause at the time of the stroke on October 19, 2015. He confirmed that had the appropriate testing

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recommended been done, which the plaintiff declined by checking himself out of the hospital against medical advice, it would have confirmed whether the DVT existed giving a clear picture of the cause of the stroke.

[110] Dr. Basile also conceded that cryptogenic strokes occur when there was no identifiable cause of the stroke. This happens in about 30% of cases and within that 30%, approximately 40% of patients are found to have PFO. He admitted that the plaintiff's scenario fits this profile.

Dr. Chantal Vaidyanath

[111] Dr. Vaidyanath is a physiatrist in physical medicine and rehabilitation retained by plaintiff's counsel presently with the St. Michael's Head Injury Clinic and the Toronto Rehabilitation Institute Brain and Spinal Cord Programme. She treats patients with severe strokes and chronic pain and prepared two reports of September 4, 2016 and September 15, 2017.

[112] Because of her experience and qualifications in stroke rehabilitation and treatment and the risk factors in patients that lead to strokes, she was permitted to give opinion evidence restricted to common lifestyle-type risk factors as they pertain to stroke in general.

[113] Dr. Vaidyanath was not a treating doctor of the plaintiff but did conduct an examination of him at the request of plaintiff's Counsel on July 15, 2016 and reviewed his medical charts.

[114] Her opinion was that the plaintiff's increased smoking, stress and reduced activity and sedentary lifestyle after the car accident of November 18, 2013 increased the risk of his suffering a stroke. She admitted that she was not an expert in the cause of strokes but in her opinion, these consequences from his motor vehicle accident injuries indirectly and more than minimally contributed to his symptoms causing his stroke.

[115] However, she also admitted that 40% of strokes suffered by patients are from an undetermined cause or source. She noted that the plaintiff's treating stroke specialists at

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the hospital on October 19, 2015 wanted to do a series of tests to rule out a blood clot in the vein in his legs as the cause of the stroke but the plaintiff declined and discharged himself.

[116] She admitted that she had assumed in formulating her opinion that the plaintiff had significantly increased his smoking after the first car accident of November 2013 as he told her he only smoked one half pack of cigarettes per day before the accident but was chain smoking three packs a day at the time of her examination in July 2016.

[117] Accordingly, her opinion that the plaintiff's increased and heavy smoking after the accident increased his risk of stroke was significantly undermined by her admission that she had not reviewed the plaintiff's entire records that had been provided to her. She admitted that she in fact missed the plaintiff's statement and admission in his medical chart of November 4, 2013 two weeks before the car accident that he was then smoking two or three packs per day.

[118] She also did not initially refer to the plaintiff's statement and admission of April 27, 2016 to his assessors at the Adult Tobacco Use department at Hamilton Health Sciences that he had smoked two packs of cigarettes a day for the last 20 years.

[119] Dr. Vaidyanath also conceded that smoking more than one pack of cigarettes a day significantly increases the risk of suffering a stroke. She also admitted that smoking was only one of ten risk factors associated with 90% of the risk of stroke.

[120] As indicated above, the plaintiff smoked two or three packs of cigarettes per day prior to his motor vehicle accident and there was no significant increase in his smoking habits until his stroke in October 2015 and examination by Dr. Vaidyanath in July 2016.

[121] With respect to the plaintiff's increased sedentary lifestyle, it became clear that Dr. Vaidyanath had simply accepted the plaintiff's statements he made to her including that he could hardly get out of bed before the stroke in October 2015. As indicated above, the plaintiff's contradictory statements he made to his doctors, LTD benefits assessors and

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treating medical personnel, Dr. Hanna's records and observations of him and the November 2014 video surveillance all referred to above strongly suggest otherwise.

[122] She admitted that she simply had taken the history given by the plaintiff as it was. That unfortunately was obvious as she admitted after her review of the November 2014 video surveillance which was after her assessment of the plaintiff and her first report of September 2016, that she did not expect to see him walking briskly and jogging then given that he had described himself as suffering from chronic widespread pain and that he had said that for approximately 2 1/2 years following the first accident, he rarely left the basement of his house which I find was not established on the evidence.

[123] In particular, in concluding that his ability to walk, manage stairs, doing his usual activities such as bathing and dressing were significantly affected by his injuries, Dr. Vaidyanath did not refer to or consider the evidence described above wherein the plaintiff himself admitted being able to conduct his daily living activities including his household chores, mowing the lawn, shoveling snow , grocery shopping, laundry, cleaning his room and taking care of all of his personal hygiene needs including showering in 2015 including shortly before his stroke.

[124] She also readily conceded and confirmed that based on her review of the medical documentation and her own assessment, both the plaintiff's physical and cognitive condition deteriorated significantly after he suffered his stroke of October 19, 2015.

Dr. Manu Mehdiratta

[125] Dr. Mehdiratta is a duly licenced neurologist and is presently the Medical Director of the Trillium Brain and Spine Institute. His practice involves the clinical assessment and treatment of stroke and cerebrovascular syndromes. He has considerable teaching experience at the Neurology Divisions of McMaster University and the University of Toronto. He has been the primary investigator in a clinical stroke research program since 2007 involving clinical studies worldwide of embolic strokes of unknown origin in young patients under the age of 50. He was qualified to give opinion evidence of the cause of strokes and lifestyle factors as a cause of strokes.

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[126] He was retained by the defendants' counsel and did not examine the plaintiff similarly to Dr. Basile but also provided his expert opinion based on his review of the plaintiff's medical records.

[127] His opinion is that the plaintiff suffered from a stroke of unknown origin on October 19, 2015 and that there was no clear causal relationship between the stroke and the motor vehicle accident of November 18, 2013. He disagreed with Dr. Basile who stated that the plaintiff had likely developed a clot as a result of a DVT and a subsequent embolism going through the plaintiff's PFO causing a stroke.

[128] Although he conceded that a DVT going through the PFO was a possibility, Dr. Mehdiratta's opinion was that the medical evidence was such that it could not be said that that was the likely cause of the stroke. He believed that the plaintiff fell in the category of one out of four young patients who suffer a stroke the cause of which cannot be determined. Dr. Basile had also opined that this happens in 30% of the cases and that the plaintiff's scenario fits this profile.

[129] Dr. Mehdiratta also confirmed that where a DVT is present, in the majority of cases there would be physical manifestations of the symptoms of DVT including a hot swollen red leg. He confirmed that there was no such medical evidence to that effect regarding the plaintiff's condition on October 19, 2015. He also stated that although some people don't have physical symptoms of a DVT, the necessary tests that would typically be performed including angiogram, transesophageal echocardiogram and ultrasound of the lower legs to look for evidence of a DVT were not done as the plaintiff had discharged himself from the hospital against medical advice.

[130] He noted that Dr. Hanna, the plaintiff's family physician, examined the plaintiff on October 5, 2015 a few days before the stroke and did not then suspect or believe that the plaintiff had a blood clot in his lungs or legs prior to suffering his stroke. Blood tests Dr. Hanna received on October 15, 2015 did not suggest any indication of a condition that could potentially cause a stroke. Dr. Hanna also noted that none of the plaintiff's treating

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doctors suggested he was at an increased risk of stroke after the accident and that none had prescribed blood thinners for him.

[131] In addition, there was no evidence in any of the plaintiff's medical records following the stroke to indicate he had suffered a DVT earlier. An ultrasound of March 16, 2016 showed no clinical evidence of any clotting in the legs that could have resulted in a paradoxical embolism although Dr. Mehdiratta frankly conceded he would not expect that unless the original clot was an ongoing large one. D-Dimer Level testing that same day was not associated with an underlying cause of stroke.

[132] The conclusion from Dr. Mehdiratta's evidence suggested that even if the DVT was the probable cause of the plaintiff's stroke, it was not caused by his car accident injuries. Dr. Mehdiratta confirmed that there was no temporal connection with the stroke suffered by the plaintiff on October 19, 2015 to the motor vehicle accident of November 18, 2013 which he felt was an important factor to consider. His opinion was that for a causal relationship to exist, usually a temporal relationship of a few days or even one week post-accident occurs but not two years. His firm opinion was that as two years had elapsed between the motor vehicle accident and the stroke, it was not possible to establish a causal connection between them on a balance of probabilities.

[133] He also noted that in patients under 55 who have suffered a stroke, in approximately 50-60% of those patients, the cause of stroke cannot be found and the determination was that these individuals suffered from an embolic stroke of undetermined cause. He also said that one out of four young patients such as the plaintiff fell in the category of having suffered an embolic stroke of undetermined cause as the cause of the stroke could not be found.

[134] He pointed out that none of the records of any of the plaintiff's treating doctors including the several neurologists who had examined and treated him including before and after the stroke at any time suggested that his stroke was related to or caused by the motor vehicle accident of November 18, 2013. Again, none of those treating doctors gave evidence at trial suggesting such a causal relationship.

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[135] Dr. Mehdiratta also stated that smoking increases one's risk of stroke because of clotting and that the experts usually universally agree that about one pack per day significantly increases the risk of suffering a stroke.

[136] He confirmed that the plaintiff by smoking likely two packs of cigarettes per day for the past 20 years and well before the accident was at a very high risk of suffering a stroke.

[137] Dr. Mehdiratta was also clear in his opinion that for a sedentary lifestyle to be a significant factor in causing a stroke, the patient would have had to be practically immobile or stasis where there is no movement of the blood. That was not the plaintiff's condition after the car accident and before his stroke and accordingly, the plaintiff's lifestyle after the accident was not a contributing cause of the plaintiff's stroke. He pointed out that even people who are in bed all day do not develop blood clots. None of his treating doctors had prescribed blood thinners for him prior to his stroke out of a concern for his risk of blood clots. He confirmed his clinical practice does not include counseling on the risk of a sedentary lifestyle causing a stroke as it is not indicated in the guidelines as a risk factor unlike smoking or hypertension.

[138] Dr. Mehdiratta also referred to the plaintiff because of his symptoms possibly suffering from a transient ischemic attack ("TIA") on November 4, 2013 experiencing stroke- like symptoms. Dr. Basile agreed that was a possibility and that patients suffering from a TIA are at greater risk for stroke.

Dr. Max Kleinman

[139] Dr. Kleinman is a duly licensed physiatrist certified in physical medicine and rehabilitation and was retained by the defendants' counsel to conduct an independent medical examination of the plaintiff. He was formerly the head of the Department of Rehabilitation Medicine at Baycrest Hospital and is presently on staff there and at Humber River Regional Hospital. He examined the plaintiff on July 20, 2017.

[140] His comments with respect to plaintiff's complaint of chronic pain after his motor vehicle accident injuries will be noted in more detail below.

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[141] Similar to Dr. Vaidyanath, he deferred to the neurologists as far as diagnosing a cause of the plaintiff's stroke. However, he also noted there was no temporal relationship between the stroke and the plaintiff's motor vehicle accident related injuries given that it happened two years later. At this point, he said the stroke was not related to the accident as there were other explanations for it other than the plaintiff's motor vehicle accident related injuries.

[142] He also disagreed with Dr. Vaidyanath's opinion that the plaintiff's decreased level of activity and sedentary lifestyle after his car accident was a contributing factor to his stroke. He referred to the evidence described above that the plaintiff was in fact much more functional before his stroke than the plaintiff's history she referred to. He agreed with Dr. Vaidyanath that the plaintiff's physical and mental condition deteriorated significantly after suffering his stroke including his now having to use a walker.

[143] In his view, a sedentary lifestyle was not a probable cause of the plaintiff suffering a stroke and that a patient's sedentary lifestyle was not at the top of the list of risks for stroke unlike smoking.

Analysis - Causal Connection of the Stroke

[144] In my view, the plaintiff has not established on a balance of probabilities that the stroke he suffered on October 19, 2015 was caused by the motor vehicle accident in which he was involved on November 18, 2013. In other words, the plaintiff has not established that but for that motor vehicle accident and the injuries he sustained therein, the plaintiff would not have suffered his stroke on October 19, 2015.

[145] With due respect to Dr. Basile and Dr. Vaidyanath, I prefer and accept the expert opinion evidence of Dr. Mehdiratta and Dr. Kleinman that the medical evidence does not establish that the plaintiff suffered a DVT causing his stroke and that even if it did, that the DVT was related to or caused by his accident injuries and medical condition, and in particular his alleged heavy increased smoking and sedentary lifestyle after the motor vehicle accident of November 2013.

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[146] I find the evidence of Dr. Mehdiratta to be persuasive, fair, and balanced and that he gave his evidence in an impartial and frank manner to assist the Court based on his particular expertise and substantial studies in the area of causes of strokes in young men such as the plaintiff that he has conducted over the years.

[147] He pointed out, as conceded by Dr. Basile, the possibility that the plaintiff may have suffered a transient ischemic attack ("TIA") on November 4, 2013 which may have rendered him at a greater risk for stroke. He also stated that the plaintiff's heavy smoking prior to the accident confirmed that the stroke was more likely related to the plaintiff's underlying physiology.

[148] He also referred to the complete absence of any medical information or suggestion that the plaintiff had swelling or pain in his legs at the hospital on October 19, 2015 indicative of a DVT at the time of his stroke and the absence of any medical tests being performed on the plaintiff then that would have confirmed the cause of the plaintiff's stroke due to his self-discharge from the hospital at the time. He also noted the absence of any medical findings after the stroke confirming his having earlier suffered from a DVT.

[149] Drs. Basile, Vaidyanath and Mehdiratta all confirmed that significant smoking would increase one's risks of stroke because of the buildup of plaque inside the arteries thereby raising the risk of developing a blood clot and stroke. However, as indicated above, the evidence in my view establishes that the plaintiff likely smoked cigarettes in a very significant amount of two to three packs per day for many years before the car accident.

[150] I accept the opinion evidence of Dr. Mehdiratta that the plaintiff's smoking cigarettes in those amounts for years prior to the accident put him at a very high risk of suffering a stroke in any event even if there may have been some increase in his smoking after the accident .The evidence does not establish that there was any significant increase up to the date of his suffering his stroke.

[151] Accordingly, even if the plaintiff suffered from a DVT that caused his stroke, the increased 30% risk factor of the plaintiff's smoking and his suffering a stroke is related in

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this case to his pre-accident smoking habits as a cause of his stroke rather than his motor vehicle accident of November 2013 that caused his injuries.

[152] With respect to the plaintiff's sedentary lifestyle, although the plaintiff was suffering from neck and back pain and headaches after his November 18, 2013 car accident, I do not accept that the plaintiff's condition before his stroke of October 19, 2015 was such that he was regularly bedridden for lengthy periods of time although that appears to have been the case after the stroke.

[153] Dr. Hanna at no time was told by the plaintiff before his stroke that he was bedridden and could barely get out of bed because of his pain. Dr. Hanna also stated that had he been told by the plaintiff of his lack of mobility and being bedridden, he would have considered addressing that potential risk of stroke by describing a blood thinner medication or making a medical specialist referral but he did not.

[154] The evidence confirms that although the plaintiff may have been potentially suffering from some pain, he was particularly mobile and able to walk briskly, jog and exercise which in fact he was recommended to do so by Dr. Hanna in November 2014 as was evident in the surveillance videos. Dr. Hanna said the plaintiff's physical condition was the same in March 2015 as it was in November 2014.

[155] In summary, the evidence does not establish that the plaintiff's sedentary lifestyle prior to his stroke reached the level of his being immobile or being confined to bed for lengthy periods of time unable to move because of his pain. Although he likely did lay down at times to address his pain, he was regularly mobile without the use of any walking aids and regularly attended medical and religious appointments during that time even though he was not working. He told his doctors, therapists and advisors in 2015 that he was improving and at times was much better. The plaintiff was able to walk and appeared to be progressing well in his work hardening and exercise program in September 2015 and said he was walking in his house without the use of aids in October 2015.

[156] I prefer the evidence of Dr. Mehdiratta and Dr. Kleinman and over that of Dr. Vaidyanath and Dr. Basile that the level of the plaintiff's sedentariness level after his

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motor vehicle accident due to his injuries was not a significant increased risk factor related to the cause of his stroke in October 2015.

[157] Although the expert opinions of Dr. Basile and Dr. Vaidyanath regarding the causal effect of the plaintiff's heavy smoking and sedentary lifestyle after the accident regarding his stroke are admissible, I am not able to attach much weight to them as those foundational facts that essentially came from the plaintiff litigant's statements in his medical reports and during Dr. Vaidyanath's assessment of him and that formed the basis of their opinions have not been established *Marchand (Litigation Guardian of) v. Public General Hospital* 2000 CarswellOnt 4362. The plaintiff's heavy smoking in fact predated the car accident and his sedentary lifestyle after the accident was not significant enough to suggest that it materially contributed to his suffering his stroke in October 2015.

[158] Although Dr. Basile and Dr. Vaidyanath in giving their opinions referred to the consultation records of the plaintiff's treating doctors, any conclusions of those doctors who did not testify at trial are not admissible except for the limited purpose of evaluating the opinions of Dr. Basile and Dr. Vaidyanath and not as proof of the facts in those conclusions. *R. v. Lavalee*, [1990] 1S.C.R. 852 (S.C.C.), Sopinka J pp.899-900; *R. v. B. (S.A.)*, 2003 SCC 60. Again, the parties agreed that none of the conclusions of those treating doctors in their records were admissible in evidence at this trial.

[159] Lastly, the plaintiff's stroke occurred almost 2 years after his November 2013 car accident and the absence of that close temporal connection, as noted by Dr. Mehdiratta and Dr. Kleinman, confirms as a matter of common sense and reasonableness that there is no causal connection between the two.

[160] Accordingly, the plaintiff has not established on a balance of probabilities that but for the injuries the plaintiff suffered in the motor vehicle accident of November 18, 2013 caused by the defendants, the plaintiff would not have suffered his stroke of October 2015.

Plaintiff's Injuries Caused by the November 2013 Car Accident

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Plaintiff's present condition

[161] The plaintiff's evidence is that he believes his present medical condition as follows was caused by the first motor vehicle accident which he states destroyed his life :

a) severe right-sided neck pain down his right shoulder down his side.

b) strong head pain

c) constant numbness in both arms

d) lower back and tailbone pain radiating into his legs

e) difficulty making decisions, not able to focus on anything, and inability to control his emotions

f) having suicidal thoughts, constant crying and significant depression including no desire to see his friends, not cleaning his basement bedroom or bathroom, not showering himself, loss of appetite - "I am dead but I am alive",

g) loss of strength, being clumsy including burning himself with cigarettes that fall from his hand

h) being constantly in bed sleeping because of the pain

i) smoking cigarettes constantly including in his bedroom and bathroom of five to six packs per day

j) presently taking different types of pain medication and not having bowel movements

k) rarely going to his place of worship

[162] As indicated earlier, the defendants do not dispute the plaintiff's significant and disabling medical condition he presently suffers. Their position is the plaintiff's physical and cognitive medical condition deteriorated significantly after and because of his unrelated stroke on October 19, 2015 for which they are not responsible.

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[163] The plaintiff's personal support worker Christina Mann, who only first met the plaintiff in April 2017, confirmed his significantly physically disabled state including his needing a walker for support, having difficulty getting out of bed, not attending to his personal hygiene and showering, laundry, cleaning his room and providing for his own meals. She helps him by taking him to his medical appointments and confirmed his suicidal attempt of July 13, 2017. She confirmed she had seen the plaintiff drive a car recently.

[164] She currently provides approximately 20 hours a week (82 hours per month) of attendant care for him. She admitted she could provide no evidence of the impact of the October 2015 stroke on the plaintiff's present condition.

[165] Todd Gillies, a social worker, has provided assistance to the plaintiff since January 2016, three months after his stroke. He confirmed his present significant physical disability including his suffering falls, confusion and memory issues resulting in his lack of organizational ability and difficulty following through with medical appointments. He confirmed the plaintiff's medical condition has got worse and the plaintiff now spends most of his day in bed. He also was aware of the plaintiff's suicidal attempt on July 13, 2017 and his stated lack of joy and depression because he is not able to work.

[166] He also is not a medical professional and could not comment on whether the plaintiff's present medical condition was caused by or related to his motor vehicle accident of November 18, 2013 or his stroke of October 2015. However, he did admit his review of the records that the plaintiff told the occupational therapist Tina Cagampan on October 7, 2015 shortly before his stroke that he was independent in self-care, able to go up and down stairs, riding a bike for 15 minutes and that he had normal range of motion in his neck and back. He also admitted that he had reviewed the video surveillance of the plaintiff of November 2014 before his stroke and January 11, 2017 which indicated that he was quite active physically on both occasions. Mr. Gillies simply said that he had never seen the plaintiff mobilize like that for the two years he has been seeing him after his suffering his stroke.

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[167] The plaintiff's obligation is to establish on a balance of probabilities to what extent his present medical condition was caused by the motor vehicle accident injuries as compared to his stroke.

[168] Unfortunately, other than Dr. Hanna, none of the plaintiff's treating medical practitioners or therapists either before his motor vehicle accident of November 2013 or until the date of and after his stroke gave evidence at trial.

[169] There is no evidence from any of them including any opinion evidence from his treating neurologists Dr. Savelli (from 2014 to 2016), Dr. Yegapam, Dr. Perara, Dr. Fawcett, and Dr. Rathbone, his treating physiatrists at ABI, Dr. Hosseini and Dr. Demian, and neuropsychologist Dr. Velikonja regarding any conclusions, diagnosis, prognosis or course of treatment they made of the plaintiff including for his injuries and /or stroke during that time.

[170] The Court was advised the plaintiff had applied for benefits from his accident benefits insurer on the basis that he was catastrophically impaired because of his injuries sustained in the November 18, 2013. None of those medical specialists who examined him on that issue and his accident related injuries gave evidence at this trial.

[171] Although there may have been a complaint of depression by the plaintiff shortly before his stroke of October 2015, the evidence at trial clearly establishes that there was very significant deterioration in the plaintiff's medical condition physically and cognitively including the plaintiff's falling only after the stroke.

[172] Dr. Hanna confirmed that significant deterioration. Dr. Vaidyanath also confirmed that based on her review of the medical information she had and her own assessment of the plaintiff, he had deteriorated significantly both physically and cognitively after his stroke. She also agreed that he was likely psychologically distressed from having a stroke which included his having an increased perception of pain and insensitivity to hot and cold after the stroke.

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[173] Although the plaintiff's evidence at trial in effect was that the severity of his chronic pain and cognitive issues were not significantly different before his stroke compared to after it occurred, I am not satisfied that was the case given the evidence of Dr. Hanna, the video surveillance evidence of November 2014 and the statements made by the plaintiff to Dr. Hanna and his other doctors and LTD assessors.

[174] In particular, on February 24, 2016 he told the staff at St. Joseph's Hospital that he had lost most of his social contacts since his stroke.

[175] On March 15, 2016, he stated to emergency department staff at Hamilton General Hospital that his legs started swelling with pain four days before and he was now using a walking cane.

[176] In addition, the plaintiff told Dr. Yegapam on July 4, 2016 that all of his stroke symptoms had become worse and that he said he was getting worse in his general symptoms of pain, weakness and depression since the stroke.

[177] I appreciate that the plaintiff's cognitive difficulties, expressive dysphasia and difficulty expressing himself caused by his stroke that he presently has now likely have had a significant effect on his ability to provide a complete and accurate history of what his medical condition was before his stroke compared to how it is now. I am most sympathetic to the plaintiff because of his present medical condition and although he clearly is not a good historian, I am not suggesting that his testimony is such that he is not trying to be accurate and truthful although there was evidence of his exaggeration of his complaints. Rather his evidence, unfortunately, because of his poor memory and cognitive issues now after his stroke is not reliable and at times not credible in that regard.

[178] I have considered as well the evidence of the plaintiff's younger sister Huda Akeelah who confirmed she had a close relationship with the plaintiff and described him as being very strong and active prior to the car accident. In fairness to her, she had moved out of her parents' house in August 2014. Accordingly, the reliability of her evidence is of concern to the court that he had been sleeping constantly with headaches and pain in the basement

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since the car accident as it has to be considered in light of her other evidence that he also since the car accident was also having difficulty walking and using a walker and couldn't do anything around the house or take care of himself. That evidence is contrary to the plaintiff's own statements to his medical and LTD assessors, Dr. Hanna's evidence and the surveillance evidence that that was not the case before the stroke in October 2015 although it likely certainly was after.

[179] The plaintiff's older sister Haifa Shalik also had a close relationship with the plaintiff before the accident and also confirmed his being healthy, active and strong.

[180] Although she stated that the plaintiff slept for long periods in pain and was not active after the November 2013 accident, that she noticed his slurred speech and that he expressed an intention of suicide at times, I am also most concerned with the reliability of that evidence that that in fact was the case ever since the motor vehicle accident especially when that evidence does not coincide with and even contradicts at times the plaintiff's statements given to his doctors, Dr. Hanna and his LTD assessors, the evidence of Dr. Hanna and the videotape surveillance evidence.

[181] Moreover, she had moved out of the family house 17 years ago. She also suggested he may have been using his cane before the stroke whereas the evidence clearly confirms it was not until a few months later.

[182] She was rather dismissive and argumentative about what the surveillance of November 12 and 14, 2014 actually depicted stating "this is nothing" on several occasions.

[183] She stated the plaintiff smoked very little before the accident but that clearly was not case based on the evidence that I have accepted. She appeared to minimize the effects of the stroke on him stating only that his speech was slurred and he talked slowly but mentioned none of the other serious deteriorating effects both physical and mental they have obviously had on him.

[184] Her evidence does confirm the plaintiff's present medical condition since his suffering the stroke as admitted by the defendants.

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[185] I accept the evidence Huda Akeelah and Haifa Shalik with respect to the plaintiff's present medical condition after his stroke of October 2015 but do not give their evidence of his condition before that and since the first car accident any significant weight.

[186] As indicated above, none of the plaintiff's treating medical doctors or other medical practitioners provided any expert evidence as to whether or not the plaintiff suffered from a serious permanent impairment of an important physical, mental or psychological function as a result of his injuries sustained in the motor vehicle accident of November 18, 2013. That task was left to their litigation expert doctors Dr. Vaidyanath, Dr. Frank, a psychologist and Dr. Wilson, an orthopedic surgeon.

Dr. Dana Wilson Impairment of Physical Function

[187] Dr. Wilson is an orthopedic surgeon at the Trillium Health Centre for the past 27 years whose practice is restricted to spinal surgery.

[188] At the request of plaintiff's counsel to conduct an independent medical assessment of him, Dr. Wilson examined the plaintiff on December 19, 2016 and reviewed his medical charts.

[189] He stated that there was no significant pre-accident medical condition of the plaintiff and although there were pre-existing changes in his spine, he thought the plaintiff's pre-accident condition was quite active with normal function.

[190] The plaintiff, who Dr. Wilson said was then using a walker and whose thought process was a bit off with slow speech, provided him with a history of the accident. He noted the plaintiff's complaints of pain in his neck and low back and pain radiating into his right leg. His examination of the plaintiff noted restricted range of motion and he believed that the plaintiff's symptoms of neck and low back pain resulted from soft tissue injuries to his neck and back with ongoing mechanical issues with significant restrictions of function.

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[191] He believed the symptoms were caused by the November 18, 2013 accident but that they increased because of the second February 2014 accident. However, he did not attribute his present symptoms to that second accident and thought it might have resulted in only temporary changes in his condition caused by the first.

[192] Given that the plaintiff's condition was now two years past the November 2013 accident, he believed it was not likely to improve and that the medical plan would be to maintain his status. He believed the plaintiff's injuries rendered him currently disabled from an orthopedic perspective which he believed pre dated the stroke and were permanent and serious. He did not elaborate on that conclusion.

[193] However, he readily conceded that the physical condition that he observed of the plaintiff in December 2016 during his examination when he was using a walker was much different than what he saw of the plaintiff on the video surveillance of November 12 and 14, 2014 where he obviously was noted to function much better.

[194] He did not think there were changes in the plaintiff's orthopedic status as a result of the stroke the cause of which he did not know. In his opinion, the plaintiff was already disabled from an orthopedic perspective before his stroke. Again, he did not elaborate on the extent of that disability.

[195] However, the plaintiff told Dr. Wilson that he had experienced some improvement in his condition prior to his stroke.

Dr. Chantal Vaidyanath Chronic Pain, Concussion and Impairment of Physical Function

[196] Dr. Vaidyanath's opinion was that the plaintiff had suffered a concussion/mild traumatic brain injury with persistent symptoms, cervical sprain/ strain injury (Whiplash Associated Disorder Grade 3), chronic neck and upper limb pain and widespread chronic pain syndrome as a result of his injuries in the motor vehicle accident of November 18, 2013.

[197] With respect to the concussion, her opinion was that he was still suffering from those symptoms including headaches, pain, mood changes ,hearing and vision problems,

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balance changes, low-energy, cognitive tolerance, fatigue and cognitive difficulties. She noted that his speech remains slow and slightly slurred, he had memory impairments, mental slowing asphasia, and slurred speech resulting in significant impairment of his verbal communication abilities.

[198] With respect to his chronic pain, her opinion was that he suffered from chronic widespread pain from head to toe, decreased balance and mobility. Her opinion was that for a period of greater than three months, he has had widespread bodily pain, severe non-restorative sleep pattern, severe fatigue and severe cognitive dysfunction.

[199] She stated that the nature of his impairment involved neurological impairment of the brain and the pain sensing mechanism of the central and peripheral nervous system along with musculoskeletal impairments predominantly to the neck and low back as well as to the shoulders.

[200] Her opinion was that the impairment was permanent as over two years had passed since the November 18, 2013 motor vehicle accident, his injuries had been continuous since the accident and were not expected to substantially improve and were expected to continue without substantial improvement.

[201] She opined that his tolerance for any activities including prolonged sitting, standing , his ability to walk, manage stairs and do activities such as bathing and dressing were significantly affected. He reported having repeated falls and his range of functional range of motion was affected as well as the sensory function of his right upper limb.

[202] The functions impaired were important to him including his basic activities of daily living, housekeeping, home maintenance and his ability to work as a laborer and enjoy his social life.

[203] Accordingly, her opinion was that he had suffered a permanent and serious impairment of an important physical function as a result of the November 18, 2013 motor vehicle accident.

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[204] However, it is clear that Dr. Vaidyanath's opinion was based on the condition he was in when she examined him on July 27, 2016, more than nine months after he had sustained his stroke.

[205] As indicated above, the plaintiff has not established that the stroke he suffered was related to or caused by his motor vehicle accident related injuries of November 18, 2013.

[206] As further indicated above, the medical evidence, the evidence of the plaintiff and surveillance evidence clearly confirms that the plaintiff's medical condition including his physical condition and cognitive deficits deteriorated significantly after his stroke. Dr. Vaidyanath agreed that based on both the plaintiff and defence based reports following the time of the plaintiff's stroke that there had been a progressive physical and functional decline in the plaintiff from the time of the stroke. The plaintiff now after his stroke was suffering from falls, requiring his use of and heavily leaning on a cane and then a walker which was not the case prior to his stroke.

[207] By April 2015 before his stroke, the plaintiff complained that his pain averaged only approximately 3 (from 2 to 5) on a scale out of 10 for pain according to the plaintiff's complaints to his pain clinic assessors in his medical records.

[208] At the time of his assessment on July 27, 2016, he told Dr. Vaidyanath that he experienced pain then on an average of 7/10 suffering maximum pain at times of 10 out of 10.

[209] Furthermore, the plaintiff stated to his doctors including Dr. Yegapam in July 2016 that all of his stroke symptoms had become worse and that he was getting worse in his general symptoms of pain, weakness and depression since the stroke.

[210] Dr. Vaidyanath also conceded that the plaintiff was likely psychologically distressed from having the stroke which included his suffering from an increase in his perception of pain because of it.

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[211] She also stated that his stroke has left him with expressive asphasia and difficulty expressing himself likely both verbally and in written form as well as slurred and slow speech. His speech remains slow and slightly slurred and the combination of his memory impairments, mental slowing, the asphasia and the slurred speech result in his significant impairment of his verbal communication abilities.

Dr. Max Kleinman

[212] Dr. Kleinman's opinion was that the plaintiff likely sustained myofascial sprain /strain injuries to his neck, upper and lower back resulting from the accident of November 18, 2013. In his opinion, the plaintiff had sustained a WAD II injury as there was evidence of pain and reduction in his range of motion without any neurological involvement. He also suffered from chronic posttraumatic headaches with no evidence of musculoskeletal impairments to explain them.

[213] His opinion evidence was based on his conclusion that the plaintiff's October 2015 stroke and the significant deterioration in his condition thereafter was not caused by or related to his motor vehicle accident injuries.

[214] His opinion based on his review of the plaintiff's medical charts and his examination was that the plaintiff in fact had significant physical capabilities prior to his stroke and that he was much more independent and was functioning reasonably well. When cross-examined by plaintiff's counsel, he noted that the plaintiff's complaints of pain prior to the stroke only ranged between 2 and 5 on a scale of 10 and not significantly higher.

[215] During the examination of July 20, 2017, the plaintiff rated his pain in his headaches, neck and back at generally 8/10 with 10 being the worst pain experienced in one's life but also up to 20/10 with no improvement since the time of the accident.

[216] He noted that the plaintiff's presentation was one of inappropriate illness behavior and symptom magnification. Given his expertise, he could not provide a psychological or psychiatric diagnosis of the plaintiff's condition.

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[217] He did not believe that the plaintiff was substantially disabled with respect to his pre-accident employment as a result of the motor vehicle accident related injuries. Similarly, the plaintiff was not disabled with respect to avocational activities that he performed prior to the accident.

[218] He noted that the findings of Dr. Vaidyanath were based on her assessment of the plaintiff one year after the plaintiff's stroke before which the plaintiff was much more independent. In his view, her findings regarding the plaintiff's complaints of chronic pain were disproportionate to the injury mechanism when one considers the length of time since the accident, the nature of the injuries and the documentation he reviewed.

[219] His opinion was that the plaintiff did not suffer from physical impairments that were serious, permanent and important as it related to his injuries sustained in the motor vehicle accident of November 18, 2013 and did not suffer from chronic pain prior to the stroke.

Dr. Jeremy Frank - Psychological Impairment

[220] Dr. Frank was retained by plaintiff's counsel to conduct an independent psychological assessment of him.

[221] Dr. Frank practices in clinical rehabilitation psychology. He has a doctorate in psychology and has conducted a large number of psychological assessments and is a member of the College of Psychologists of Ontario. He is not a medical doctor .His practice also includes conducting clinical psychological assessments of patients with chronic pain and was found qualified by me to provide an expert opinion in that area.

[222] He examined the plaintiff in September 2016 and September 2017, being approximately three years after the first car accident and one and two years respectively after the plaintiff's stroke of October 2015. He provided two reports of November 4, 2016 and September 12, 2017. He saw the plaintiff for litigation purposes and not for any treatment. In fact, none of the plaintiff's treating psychologists gave evidence for the plaintiff at trial.

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[223] On his examinations, the plaintiff reported clinically significant depressive symptomology, sadness, marked loss of interest, persistent low-energy, lack of concentration, excessive somnolence, suicidal ideation, pervasive feelings of guilt, shame, hopelessness and worthlessness.

[224] Dr. Frank's opinion was that there was evidence of clinically significant symptoms of anxiety, posttraumatic stress, vehicle anxiety and generalized anxiety. He diagnosed him with major depressive disorder, single episode, chronic and severe under both DSM-IV and DSM-V. He also diagnosed under DSM-IV an anxiety disorder not otherwise specified. Under DSM-V, he diagnosed him with unspecified anxiety disorder as there was enough anxiety from different domains that it was clinically significant and warranting of a diagnosis.

[225] He also stated that he suffered from the pain disorder associated with both psychological factors and a general medical condition.

[226] His opinion was that the plaintiff was suffering from these psychological factors and impairments as the direct result of the accident as well as chronic pain. He based that on his review of the plaintiff's medical history that he had no pre-existing psychological condition according to the plaintiff and that the medical documentation confirms that his pain and psychological symptoms were present after the accident and before his stroke.

[227] He believed the plaintiff's psychological impairments collectively resulted in severe self-limiting behavior patterns and prevented him from performing a broad range of activities. He admitted that the stroke could have a negative impact on an individual's psychological and emotional condition and in this case likely resulted in some exacerbation of the plaintiff's depressive symptoms, anxiety, and health concerns.

[228] He admitted that the plaintiff was highly pain focused now. The plaintiff now described his post stroke pain in his neck and back as much more severe than it was prior to the stroke averaging 8 on a scale of 10 in September 2016 and 7 on the same scale in September 2017. The plaintiff now had "catastrophic thoughts" about his pain to the

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point that he laid on the floor during his examination of. I find on the evidence that that was not the case prior to his stroke.

[229] He believed the second February 2014 motor vehicle accident was minor with no compelling evidence to suggest this accident had any long-standing emotional effects on him.

[230] His opinion was that the plaintiff suffered a serious and permanent impairment of an important psychological function as a result of the November 18, 2013 accident. He stated that his mental difficulties have affected his ability to continue his previous activities of daily living in recreational, housekeeping activities and impacted his functioning and his being able to work since the accident.

[231] Dr. Frank stated that he was limited from full or part-time sedentary employment and that the plaintiff could no longer perform labour work psychologically because of the limits in his stamina and ability due to the aggravating activities. The challenge for him would be to maintain even sedentary part-time work because of that but also because of his significant stroke- caused speech difficulties as he had difficulty finding words, was stuttering and slurring his speech.

[232] He admitted that the plaintiff had reported bizarre and unlikely symptoms to his other previous assessors which he also did during his own PAI testing of the plaintiff. He admitted that the plaintiff over reported his symptoms but in his view, as a cry for help and sense of justice because he felt he was wronged by the motor vehicle accident. He admitted the plaintiff could have been simply exaggerating his symptoms but did not think it was intentional over reporting.

[233] Dr. Frank indicated that he relied extensively on assessment reports in the plaintiff's medical file from other treating psychologists and psychiatrists and medical doctors. Again, none of those or other doctors' evidence of their conclusions, diagnoses, prognoses and recommended course of treatment (other than the evidence of the family doctor, Dr. Hanna) was provided either orally by them or as part of admissible medical records at trial. Dr. Frank could not give evidence about their opinions for the truth of its

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contents as it would be hearsay. Although he was entitled to refer to other experts' reports to explain how he reached his conclusions, the medical basis for those conclusions have not been proven in evidence which significantly affects the weight I should give to his evidence. *Westerhof v. Gee Estate*, 2015 ONCA 206.

[234] He was not aware that the plaintiff had arranged on his own his lengthy trip to Jordan in September 2014 within the first year of the accident.

[235] He also admitted that the plaintiff's condition was much more functional physically and that he was performing normally with no gait issue at all as depicted in his surveillance video of November 2014 compared to when he first saw and assessed him long after his stroke in September 2016 when he walked very slowly with the aid of a walker.

[236] Dr. Frank said he thought the plaintiff was a good historian yet, as indicated above, at the same time, he admitted that there was significant evidence of the plaintiff's over reporting of his symptoms. However, it appears he simply accepted the plaintiff's explanation to him before the trial of that video that he simply didn't remember that that was what he was like at the time, that he was surprised at its contents including that it showed he was not walking with a cane and in fact running at the time and then said he believed the video was edited and doctored. Dr. Frank was not aware of that video until shortly before this trial and after he had provided his initial opinion in his first report.

[237] Unfortunately, Dr. Frank, who I accept was initially trying to be objective in his evidence, with due respect ,then appeared to advocate for the plaintiff suggesting that the video was just a snapshot of his condition while stating that after that video his pain got worse.

[238] Dr. Frank, who has not authored any article of the psychological effects of strokes in patients, then proceeded to comment on an "alternative explanation" for the physical deterioration in the plaintiff after his stroke even though he admitted it was beyond the scope of practice to speculate on the physical effects of the plaintiff's stroke.

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[239] He speculated beyond the scope of his expertise stating that in his opinion, the plaintiff's physical deterioration since the surveillance of November 2014 and after his stroke was not sufficient evidence that the stroke was the cause of all of his problems. He went further however to speculate that the video surveillance does not establish whether the plaintiff's present impairments were completely stroke related and that a "plausible" alternative explanation for his physical deterioration was because he had an accident related pain disorder that was managed at the time of the surveillance and that became more severe over time as a result of a number of factors including but not limited to his stroke, increased feelings of hopelessness and victimization and increased deconditioning and weight gain due to inactivity.

[240] Nevertheless, he agreed that the stroke would have increased his depression and resulted in a higher pain experience from his injuries in the accident.

[241] When shown the medical records including the plaintiff's statements that there was improvement is his medical condition throughout 2015 including his functioning, he did not disagree with them that his depression appeared to be under control prior to the stroke because of his effective use of antidepressant medication which he cannot prescribe as a psychologist.

[242] Dr. Frank suggested that the plaintiff had not received appropriate psychological treatment. He suggested that the plaintiff needed extensive psychological treatment for 1.25 hours @ $225/hour weekly over two years which may possibly result in some degree of improvement in this symptoms, function and pain management skills and a decline in his anxiety and depression.

Dr. Zohar Waisman

[243] Dr. Waisman is medical physician and a licensed forensic psychiatrist with a large clinical practice most of which involves examining and treating patients with chronic pain and also providing psychiatric rehabilitative care for stroke patients.

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[244] He examined the plaintiff at the request of defendants' counsel on July 19, 2017 at his office. Dr. Waisman admitted that the plaintiff had suffered some pain and emotional problems following the motor vehicle accident of November 18, 2013. However, like Dr. Frank, he noted that the plaintiff was not complaining of depression initially after the accident until July 29, 2014 to Dr. Hanna. His complaint then was actually of erectile dysfunction.

[245] Dr. Waisman noted that Dr. Hanna's records thereafter suggested some improvement including the plaintiff's ability to organize his trip to Jordan in September 2014. Dr. Waisman indicated that someone suffering from major depression or an adjustment disorder would not be expected to be able to do this.

[246] He stated that the medical records confirmed that the plaintiff's depression appeared to be resolving until Dr. Hanna's entry of October 5, 2015 which was shortly before the plaintiff's stroke. Dr. Waisman did not believe there was evidence of a decline in the plaintiff's mental health prior to that or any objective data linking his symptoms on that date to the motor vehicle accident.

[247] Dr. Waisman diagnosed the plaintiff as suffering from an adjustment disorder after and related to the car accident as that diagnosis is based on significant distress that is out of proportion to and attributable to the accident that resulted in it. However, he was clear that in his view, the plaintiff now currently suffers from a major depressive disorder after and because of his stroke.

[248] His opinion was that many of his present complaints were explainable by his stroke which was the most significant event given that his health dramatically deteriorated after his stroke. He noted that his stroke in the frontal lobes of his brain affected his areas of the brain dealing with memory, speech production, understanding, mood and behavior. He also confirmed that patients such as the plaintiff who suffered such a stroke often experienced severe depression following the stroke. Dr. Frank had also conceded that a patient suffering a stroke likely results in suffering increased depression.

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[249] He disagreed with Dr. Frank's opinion that the plaintiff suffered from a pain disorder as that diagnosis no longer exists. He did not diagnose a Somatic Symptom Disorder as the plaintiff suffered a stroke and his emotional response to the stroke was in keeping with the stroke- caused damage to his brain.

[250] Furthermore, his opinion was that Dr. Frank over diagnosed the plaintiff to the point that he placed too much reliance on his subjective symptoms reported by the plaintiff to Dr. Frank despite the contents of the medical records and inappropriately relied on the findings of the unreliable psychometric test results.

[251] Dr. Waisman's opinion was that the plaintiff was improperly trying to attribute all of his problems to the motor vehicle accident rather than his stroke and other falls he has suffered after that. Dr. Waisman admitted that the plaintiff now suffers from significant complaints of depression which he stated are explainable by the stroke. He includes that had the plaintiff received psychiatric treatment and not have suffered his stroke, he would have been much improved and his chances of returning to work and his usual daily living activities were good.

Analysis of the threshold issue of a permanent serious impairment of important physical, mental or psychological function

[252] In order for the plaintiff to recover general damages for his pain and suffering and for his past and future health care expenses, section 267.5 of the *Insurance Act* R.S.O. 1990, c.1.8 requires the plaintiff to establish that his bodily injury arising directly or indirectly from the use or operation of the defendants' motor vehicle is such that he sustained a permanent serious impairment of an important physical, mental or psychological function. The plaintiff must establish this on a balance of probabilities.

[253] The Ontario Court of Appeal in *Meyer v. Bright* (1993), 15 O.R. (3d) 129 confirmed the test in determining whether the plaintiff falls within the statutory exceptions to immunity from payment of general damages. That test continues to apply after subsequent statutory amendments. The applicable questions are:

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1. Has the injured person sustained permanent impairment of a physical, mental or psychological function?

2. If the answer to the above question is yes, is the permanently impaired function an important one?

3. If the function is important, is its impairment serious?

[254] The evidence in this case confirms that the plaintiff complained of neck and lower back pain the day of the November 2013 car accident when he first sought medical treatment. He also complained of dizziness and had some physiotherapy and chiropractic care in December 2013 and January 2014. There was some evidence of improvement and an attempted return to work on a modified basis in January 2014 for a few days but that stopped because of his recurring complaints of pain.

[255] He then attempted to return to work and was in fact on the way to work when he was involved in the second car accident of February 3, 2014.

[256] The evidence appears that that was a minor collision and the plaintiff complained of a temporary increase in symptoms. He continued nonetheless with his attempts to carry on with his modified return to work on a part time basis but was unable to continue and stopped in March 2014.

[257] He saw his family doctor, Dr. Hanna, regularly in 2014 with complaints of neck and back pain and received some treatment for his concussion symptoms from his doctors at ABI after a referral from Dr. Hanna. The plaintiff remained off work but was able to organize on his own and travel in September 2014 for an extended trip to Jordan.

[258] Dr. Hanna noted that the condition he saw the plaintiff on November 11, 2014 was as depicted in the video surveillance showing that he was quite active which remained the case when he saw him again in March 2015. I am concerned with Dr. Hanna's evidence that he believed the plaintiff's condition was deteriorating in 2015 given the absence of that suggestion in his own notes, his notes that there was some improvement in the

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plaintiff's medical condition then and the plaintiff's statements of his condition and capabilities to other doctors and assessors in 2015 as noted above. Accordingly, I do not give any significant weight to that suggestion.

[259] However, he was still not capable of returning to his physical job on a full-time basis at the Region of Halton and did not do so in 2015.

[260] Although Dr. Hanna did not provide an opinion of the extent and cause of the plaintiff's accident related injuries or his diagnosis, Dr. Wilson did. His evidence stated that the cause of the plaintiff's neck and back pain was soft tissue injuries with mechanical issues caused by the impact of the November 18, 2013 accident. He further opined that the second accident of February 3, 2014 was a minor accident that may have provided a temporary exacerbation of the plaintiff's injuries caused by the first accident.

[261] I accept the evidence of Dr. Wilson, who provided his opinion that the plaintiff's neck and back pain was a physical impairment that was serious and permanent, but only to the extent that it prevented him from doing the physical demands of his job on a full-time basis at the time of his stroke. The plaintiff was a strong man before the accident and had no significant pre-existing conditions relating to his back and neck pain that he suffered after the accident. Dr. Wilson's interpretation of the minor temporary effects of the February 2014 action also appears logical and reasonable given the evidence at trial.

[262] Dr. Wilson did not provide any opinion evidence on whether the plaintiff was not capable of ever being able to perform any other kind of physical work or other modified work including work that was more sedentary in nature in the future. Dr. Wilson did not comment on whether any of the plaintiff's daily living activities and functions were impaired because of his mechanical neck and low back pain.

[263] However, I accept his evidence to the effect that the plaintiff's medical condition caused by the motor vehicle at the time of his stroke appears to have been permanent at least in the sense of his having a weakened condition lasting into the indefinite future affecting his ability to do significant physical work. *Mayer et al v. 1474479 Ontario Inc.*, 2013

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ONSC 6806. The plaintiff's symptoms may not have been constant and unrelenting and may have waxed and waned which does not mean they were not permanent.

[264] However, he admitted that the plaintiff's condition as depicted in the November 2014 video surveillance was much different than when he examined him while he used a walker. This was long after his physical condition had deteriorated and his pain, or at least his perception of his pain, had increased significantly after his stroke.

[265] Accordingly, I accept the evidence of Dr. Wilson to the extent that the plaintiff's physical injuries resulting in his suffering neck and low back pain because of the November 2013 car accident, although mild to moderate at the time, were still disabling him from completing all the physical demands of his job at the Region of Halton and to the extent that it interfered with his capacity to work until he suffered his stroke in October 2015.

[266] I also accept the evidence of Dr. Vaidyanath over that Dr. Kleinman but only to the extent that the plaintiff has established that he was suffering from some chronic pain as a result of his motor vehicle accident related injuries and was still suffering from that at the time of the stroke in October 2015.

[267] I am satisfied the plaintiff's pain before the stroke persisted beyond the normal healing time for the underlying injuries and is disproportionate to the injuries and whose existence is not supported by objective findings at the site of the injury under current medical techniques; Gonthier J, in *Martin v. Nova Scotia* (Workers Compensation Board), [2003] 2 S.C.R. 504 (S.C.C.).

[268] I accept that the plaintiff's chronic pain he had was interfering with his ability to return to the physical demands of his own work on a full-time basis at the time of his suffering his stroke in October 2015. However, based on all the evidence, the chronic pain then was mild to moderate at worst and not nearly as severe as the chronic pain he now suffers after and because of his stroke when his significantly deteriorated physical and cognitive functions and other effects of the stroke have resulted in his present severe disabling condition.

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[269] Furthermore, the evidence which I have accepted, including the plaintiff's own evidence of the levels of his pain to his assessors in 2015, does not establish that the plaintiff's mechanical pain and chronic pain then was so extensive and disabling that he would not have been able to return to work at all in the future either performing physical demands on a full-time basis or in a more sedentary capacity before suffering his stroke in October 2015.

[270] It is this interference with the plaintiff's ability of his returning to his work in the same physical capabilities he had before the car accident of November 2013 because of his mechanical neck and back pain and chronic pain and effects of his concussion that results in his establishing an impairment of a physical function that is both serious and permanent. This was even though he was in a work conditioning program shortly before the time of stroke so that he could eventually return to work in some fashion.

[271] The evidence including by reasonable and logical inference establishes however that his total disability from now returning to work in any form was after and because of his unrelated stroke of October 2015. How that affects the plaintiff's claims for his damages will be discussed below.

[272] I do not accept the evidence of Dr. Frank that the plaintiff sustained a serious and permanent impairment of an important psychological function as a result of his bodily injuries sustained in the motor vehicle accident of November 18, 2013.

[273] Dr. Frank did not examine the plaintiff until one and two years after his stroke of October 2015 when his physical and cognitive condition had already significantly deteriorated because of and after that stroke.

[274] He did not appear to have considered the plaintiff's disability from performing labour work psychologically because of the serious effects the stroke had on his deteriorated physical and cognitive functions; rather, he suggested that disability was because of his pre-stroke psychological condition.

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[275] Unfortunately, and with due respect , he appeared at times to become an advocate for the plaintiff suggesting that the video surveillance of the plaintiff in November 2014 was of little significance and attempting to provide an alternative explanation for his physical deterioration after his stroke even though he admitted he had no such expertise.

[276] Again, none of the plaintiff's treating psychologists, neuropsychologists or medical experts gave evidence at trial with respect to the extent of and their conclusions regarding the plaintiff's psychological problems, if any, sustained because of his motor vehicle accident injuries only before his stroke. Their conclusions of any psychological impairments before and after his stroke would have been helpful to the Court without which it is difficult to attach much weight to Dr. Frank's opinion.

[277] The evidence of Dr. Waisman is that the plaintiff's present complaints are explainable because of his stroke and the dramatic deterioration in his health after his stroke. The stroke in the frontal lobes of his brain affected his memory, speech production, understanding, mood and behavior. That evidence makes common sense and Dr. Vaidyanath admitted the significant deterioration in his condition after his stroke including being left with expressive asphasia, difficulty expressing himself, slurred and slow speech resulting in significant impairment of his verbal communication abilities.

[278] I accept his evidence that the plaintiff initially suffered from an adjustment disorder because of the car accident injuries but now suffers from a major depressive disorder because of his stroke and is experiencing severe depression that has followed that stroke.

[279] I understand and agree with his evidence that the plaintiff was unfortunately attempting to attribute all his medical problems to the motor vehicle accident injuries rather than his stroke of October 2015 and the other falls and deteriorated medical condition that he has suffered since. As noted above, the plaintiff is entitled to be compensated for his injuries caused by the defendants' negligence but not for his condition as a result of some other unrelated cause after the accident.

[280] Furthermore, Dr. Frank admitted that unlike Dr. Waisman, he is not a medical doctor but rather is a trained psychologist. There was no evidence from Dr. Hanna, the plaintiff's

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treating family doctor or other treating doctors that the plaintiff suffered any kind of psychological impairment, let alone one that was serious and permanent, because of his accident related injuries.

[281] Dr. Waisman was the physician at trial who commented on the issue of the plaintiff's psychological impairment caused by the motor vehicle accident. His evidence essentially was that the plaintiff's major depressive disorder from which he suffers was caused by the stroke and not the car accident. His significant expertise also includes the effect of strokes on a patient's depression and providing rehabilitative treatment and psychiatric care for patients suffering from strokes whereas Dr. Frank does not. I prefer to and accept the evidence of Dr. Waisman over that of Dr. Frank.

[282] Section the 4(3)(2) of Regulation 461/96 requires the plaintiff to produce evidence from one or more physicians to explain the nature of the plaintiff's impairment and its permanence, the specific function that is impaired and the importance of that function to the plaintiff.

[283] The defendants did not raise at trial or make any submissions on the issue of whether the plaintiff has satisfied the mandatory evidentiary requirements under that Regulation regarding proof of the plaintiff's psychological impairment caused by the motor vehicle accident because of Dr. Frank not being a "physician" under that regulation. They did not object to his evidence at trial. Based on that and my other findings noted above, I do not need to and do not make any finding on that issue.

[284] In applying the "but for" causation test on all of the evidence at trial in a robust common sense fashion as noted in *Clements v. Clements*, above, the plaintiff has not established he sustained a permanent serious impairment of an important psychological function as a result of bodily injuries sustained in the November 18, 2013 accident.

General damages

[285] The plaintiff is entitled to be compensated for his injuries and damages sustained but for the negligence of the defendants causing the November 18, 2013 car accident.

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[286] The plaintiff is now totally disabled from working and unable to perform the majority of his daily activities because of his present medical condition. Unfortunately, although the plaintiff did sustain soft tissue injuries and mechanical neck and low back pain, likely a mild concussion with some mild to moderate chronic pain because of his motor vehicle accident of November 18, 2013, his unfortunate stroke that he suffered in October 2015 resulted in and caused the significant deterioration of his physical, cognitive and mental condition for which the defendants are not liable.

[287] The evidence I have accepted suggests that in 2015 prior to his stroke there was no significant deterioration in the plaintiff's physical functioning and in fact there was some improvement in it at various times. That included his ability to perform his daily living tasks inside and outside the home.

[288] The plaintiff had attempted on two occasions in early 2014 to return to his work on a modified part-time basis but was not successful in doing that. He had not yet returned to work at the time of his stroke in October 2015 even though he had shown signs of improvement and participated in a work conditioning program to assist him in returning to work. However, he was likely still disabled at that time from returning to work on a full-time basis to his regular physical labour job due to his injuries in the motor vehicle accident of November 18, 2013.

[289] It was likely that he would still have continued to suffer from some mechanical low back and neck pain and chronic pain on a minor to moderate basis that would interfere with his capacity to earn an income from his previous full-time physical employment before he suffered his stroke. However, the evidence that I have accepted does not establish that his accident related injuries before his suffering his stroke would have prevented him from ever returning to the same work he had prior to the accident on a full-time basis or any other realistic gainful employment in the future, both physical and sedentary, until his retirement.

[290] As noted by the reasoning in *Gulati v. Chan* 2015 BCSC 431, the plaintiff's stroke that he suffered in October 2015 is quite distinct and divisible from the injuries he sustained as a

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result of the November 2013 car accident. It represents an intervening event that needs to be considered when assessing the damages the plaintiff is entitled to in this action when trying to place the plaintiff in the position he would have been absent the defendant's negligence.

[291] In my view, the evidence establishes that the plaintiff's present total disability is because of his significant perception of severe pain, depression, suicidal thoughts, falling and cognitive impairments, memory and significant impairment in his verbal communication abilities resulting from his stroke and not because of his original motor vehicle accident related injuries. The plaintiff nevertheless before the stroke had mechanical low back and neck pain, some minor to moderate chronic pain, the effects of the concussion and some complaints of depression.

[292] I am not satisfied on the evidence that the second car accident of February 3, 2014 resulted in anything other than a temporary exacerbation of the plaintiff's injuries sustained in the first car accident of November 18, 2013. There was no medical evidence from any of the doctors called at trial establishing that that second accident had a significant and permanent effect on his existing condition caused by the first car accident. The fact that he stopped working altogether one month later in March 2014 does not establish that it was because of that second accident rather than because of his injuries sustained in the original accident.

[293] Accordingly, this is not a case where an apportionment of the plaintiff's damages ought to be considered with respect to that second accident of February 2014 and I decline to do so.

[294] In *Rizzi v. Marvos*, 2008 ONCA 172, the Ontario Court of Appeal confirmed that a review of recent Ontario trial decisions indicated awards of non-pecuniary damages for chronic pain in a range of $55,000-$120,000. The court confirmed an award of $80,000 for the previously active young adult whose employment had been compromised and whose overall life had been seriously affected by his accident injuries. The court

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confirmed that award was slightly above the mid-range of awards for debilitating conditions of this nature.

[295] The effects of the plaintiff's chronic pain in this case on him are somewhat similar although the plaintiff also suffered from the effects of a mild concussion. After considering that decision of 10 years ago and the case law provided by the parties, the plaintiff's present medical condition and his condition not caused by the motor vehicle accident of November 18, 2013, I assess the plaintiff's general damages caused by his injuries in the motor vehicle accident of November 18, 2013 in the amount of $100,000.

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Damages for loss of marriage potential and shared family income

[296] The plaintiff has advanced a claim that he has suffered a future monetary loss as a result of the injuries he sustained in the November 2013 car accident because he will not marry or enter into a common-law relationship with someone resulting in his future loss of sharing the costs of household expenses. This loss is otherwise known as known as a loss of interdependent relationship. *Walker v. Ritchie*, 2005 Canlii 13776 (ON CA).

[297] The evidence at trial was that the plaintiff wanted to get married and have a family before and after the accident of November 18, 2013. He then travelled to Jordan in September 2014 after his car accident in part to meet someone he had met over the internet for the purpose of marriage. There was no evidence that that marriage did not take place because of his accident related injuries at the time.

[298] The plaintiff's present condition, if caused by his motor vehicle accident injuries including his significantly deteriorated physical and cognitive condition after and because of his stroke in October 2015, may have been relevant in determining whether the plaintiff is entitled to those kinds of damages.

[299] However, in this case, the stroke and his significantly deteriorated physical and cognitive condition and depression were not caused by the motor vehicle accident injuries. Moreover, there was no evidence that the plaintiff's physical and/or mental condition after the car accident but before his stroke was such that there was a real and substantial

possibility that his condition then would have prevented or hindered his ability to form a permanent interdependent co-habitational relationship with a woman.

[300] The only evidence from the plaintiff at trial was that the live in relationship he had with his former girlfriend Petra Fischer for a few years had terminated in approximately 2010 long before the car accident. He stated that the reason for that was that he was too serious and she was not, that their relationship had a lot of difficulty, and that he didn't like the way she dressed.

[301] Ms. Fischer's evidence was that she and the plaintiff lived together for approximately 5 years and broke up in 2010 or 2011 because of their cultural and religious differences. She saw him for the first time just before the trial and confirmed his present condition was not at all like the strong, vibrant and handsome man she knew then.

[302] In addition, there was no evidence at trial that the plaintiff shared and if so, to what extent, expenses with her before the car accident. There was no evidence that the plaintiff's medical condition prior to his suffering his stroke in October 2015 would possibly have interfered with or prevented his having a long-term cohabitation or marriage relationship with another woman including with a woman who would be gainfully employed and significantly contributing to the household expenses and be economically advantageous to him.

[303] The plaintiff stated that the relationship he had with another girlfriend at the time of the accident failed as she was too preoccupied with her new business venture and her children and because they did not spend much time together. He gave no evidence that their relationship terminated because of his accident related injuries. In addition, no evidence from that girlfriend was led at trial regarding their relationship before or after the November 2013 accident, the reason for their breakup, whether she was gainfully employed, and whether there was ever any prospect of permanent cohabitation and the potential of permanent financial interdependency between them because of their sharing of expenses.

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[304] Mr. Nafekeh, the plaintiff's forensic accountant, assumed that had the collision of November 2013 not occurred, the plaintiff would have entered into a permanent relationship of interdependency by the date of trial. He then used an annual income available to the plaintiff from his potential spouse's income that he has lost because of the accident of approximately $4400 per year after applying a negative 80% contingency factor due to the uncertainty of his ability to sustain an interdependent financial relationship and considering average marriage and divorce statistics. He calculated the present value of his future loss of the shared family income to age 65 at approximately $90,000.

[305] However, the evidence led by the plaintiff at trial has not established that his accident related injuries result in a reasonable and substantial risk of his not being able to enter into a permanent relationship of independency in the future. The evidence has not reached the level of proof necessary before consideration of this kind of damages can be made which are at best speculative and too remote. *Bartosek (Litigation Guardian of) v. Turret Realties Inc.* 2001 CarswellOnt 4292; affirmed 2004 CarswellOnt 1044 (Ont.C.A.).

[306] Based on the evidence before me, no award for this head of damages is allowed for the plaintiff.

Past and Future Income Loss Damages

[307] The parties have agreed that the plaintiff's past income loss to the date of trial after deducting amounts he received for income replacement benefits and short-term and long-term disability benefits is $6749 and is accordingly allowed in that amount.

[308] Principe Nafekh, the plaintiff's forensic accountant calculated the present value of the plaintiff's future income loss assuming he would have continued at his job with the Region of Halton until a retirement age of either 61 or 65 years of age. He assumed for that purpose that the plaintiff's car accident and related injuries disabled him from working until his retirement.

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[309] The plaintiff did not give any evidence himself at trial as to how long he expected to work as an employee of the Region or at any other place of employment. In particular, he did not say that he intended to work until age 65.

[310] The evidence established that the average retirement age for an OMERS member would be 58 years and the plaintiff would be approximately 61 years of age when he achieved his 30 years of service entitling him to retire on a full pension.

[311] Mr. Nafekh's assumed that the plaintiff would be earning approximately $66,543 gross annually as of the date of trial. His opinion that the present value of the plaintiff's future income loss to a retirement age of 65 was approximately $1,396,000 which assumed he was not able to work at all. It also was before any consideration of negative and positive contingencies or any consideration of his entitlement to long-term or Canada Pension Plan disability benefits and income replacement benefits in the future.

[312] Melissa Joynt, the defendants' forensic accountant, used the average retirement age in the public sector of 61.8 years to calculate the plaintiff's future income loss to age 61 in the amount of $1,185,512. She admitted the calculation would be $1,401,156 using a retirement age to 65. She also assumed that he would not be able to work at all for the purpose of that calculation.

[313] She pointed out that the plaintiff was receiving monthly LTD benefits of $2944 payable until age 65 under his plan and suggested deductions of the present value of those amounts, future CPP disability and income replacement amounts all totaling $814,772 resulting in a net future loss of income claim using a retirement age 61 of approximately $370,007.

[314] I disagree with the position of the defendants that the calculation of the plaintiff's future losses including losses of income and medical care costs should be done on the basis suggested by Ms. Joynt that credit should be allowed now to the defendants by way of a deduction of the present value of those future collateral benefits that the plaintiff may be receiving from his respective insurers.

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[315] Section 267.8(9) and (12) of the *Insurance Act* is the complete answer to the defendants' position. Unlike calculations of past income and health care losses, the legislation imposes a trust for the benefit of the defendants for any payments the plaintiff receives in the future for his loss of income or health care expenses or the imposition of an assignment in favour of the defendants of the plaintiff's entitlement in the future to payment of those expenses.

[316] Those issues can be dealt with by way of further submissions from the parties after the rendering of my judgment.

[317] The test for granting an award for a future income loss is whether the plaintiff has established because of his accident related injuries that there is the real and substantial possibility that the plaintiff would suffer that loss in the future. *Graham v. Rourke* 1990 Canlii 7005 (ONCA), (1990), 75 O.R. (2d) 622 (C.A.).

[318] Moreover, the plaintiff who establishes a real and substantial risk of future pecuniary loss is not necessarily entitled to the full measure of that potential loss. Entitlement to compensation depends, in part at least, on the degree of risk established. Risk in this sense refers to the risk of future loss – not the degree to which causation was established. The measure of compensation will also depend on the possibility, if any, that the plaintiff would have suffered some or all of the projected losses even in the wrong done to him or her had not occurred: *Graham v. Rourke*, pp. 634-635*; Beldycki Estate v. Jaipargas*, 2012 ONCA 537.

[319] In this case, it was the intervening and unrelated act of the plaintiff's stroke in October 2015 that resulted in his significantly deteriorated physical and cognitive condition, serious depression, falls, and significant impairment of his verbal communication abilities which is now rendering him completely unable to work in any capacity. The evidence does not establish that it was because of his accident related injuries that there was a real and substantial possibility he would not be able to do any remunerative work until his retirement age.

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[320] The plaintiff's future loss of income claim because of his present totally disabling condition is approximately $1.2 million before considering contingencies based on the likely retirement age of approximately 61 years, which I find to be the reasonable projected retirement date of the plaintiff given his entitlement to collect his unreduced pension then and there being no evidence that he was considering working beyond that age. However, the defendants are not responsible for those damages as they are not responsible for his present totally disabling condition.

[321] As indicated above, I am prepared to find on the evidence that but for the plaintiff's injuries sustained in the car accident of November 2013 that initially there was a real and substantial possibility that the plaintiff had suffered a loss of his income earning capacity prior to his stroke of October 2015. This was because of his mechanical back and neck pain and mild to moderate chronic pain that fluctuated in intensity at times rendering him still unable at the time of his stroke to perform all of the physical labour duties of his work on a full time basis at the Region of Halton.

[322] The plaintiff in the months before his October 2015 stroke indicated his desire to return to work. He had participated in a work conditioning program and was able to perform the exercises recommended for him. However, on his own choosing, he did not complete the program at the time of his stroke.

[323] I take into account the fact that the plaintiff was a good and valued employee of the Region of Halton with no indication that he could not expect to continue to work for them until his retirement age.

[324] The physical restrictions and mechanical and chronic pain that he had because of his accident related injuries just before the time of his stroke confirm the real and substantial possibility of his being restricted to some extent and for some time in the future after his stroke in his job capabilities including the potential of his inability to continue to work on a full-time basis doing his physical work duties when he returned to work at the Region of Halton. He may have been rendered less capable overall from earning income from all

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types of employment, less marketable as an employee to potential employers and not able to take advantage of all job opportunities which might otherwise have been open to him.

[325] It is difficult on the evidence to assess the time period over which the plaintiff has suffered his loss of income earning capacity because of his accident related injuries prior to his stroke. Already two years have passed from the date of his stroke to the date of trial and the parties have agreed on the value of the plaintiff's special damages for his loss of income to the date of trial. How long in the future is there a reasonable and substantial risk of the future income loss resulting from his income earning capacity continuing because of his accident related injuries?

[326] The issue for determination is how to assess what the plaintiff's loss of income earning capacity caused by his accident related injuries prior to his stroke in a fair and reasonable fashion taking into account all of the relevant evidence.

[327] In my view, because of the arbitrariness and speculation involved in calculating the value of that claim based on an estimated loss of income per year for a fixed number of years, it is more appropriate to assess the loss of earning capacity of the plaintiff caused by his accident related injuries according to the capital asset approach, i.e., the loss of his asset being his capacity to earn.

[328] In my view, given the plaintiff's age, the physical nature of his work at the Region of Halton, his physical restrictions that still existed at the time of his stroke, his potential reduction in his job marketability to employers and his annual employment income, the plaintiff has established that he had initially suffered a real and substantial possibility of a loss of earning capacity claim because of his accident related injuries which I would have assessed in the amount of $200,000.

[329] However, as noted above, the plaintiff has not established on the evidence on a balance of probabilities a causal link between his suffering his totally disabling stroke of October 2015 and the injuries he sustained in the motor vehicle accident of November 18, 2013.

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[330] The law is clear that the defendants are not liable to compensate the plaintiff for his injuries and damages that were not caused by their negligence. In compensating the plaintiff for the loss caused by the defendants, the plaintiff is to be put in no better position than he would have been but for the defendants' negligence. Separation of distinct and divisible injuries is permitted where some of the injuries have tortious causes and some of the injuries have non-tortious causes. *Athey v. Leonati*, [1996] 3 SCR 458.

[331] The Supreme Court of Canada in that decision approved the reasoning and decision of *Penner v. Mitchell* (1978), 89 D.L.R (3d) 343 and *Jobling v. Associated Dairies Limited* (1981) 2 All E.R. 752 (HL).

[332] The intervening act in the *Penner v. Mitchell* decision was the plaintiff's subsequent heart condition that would have caused her to miss three months of work in any event and which was unrelated to the accident causing her original injuries. Her income loss damages were reduced by those three months.

[333] The plaintiff in *Jobling v. Associated Dairies Ltd.* suffered from myelopathy that was totally unrelated to and after his accident caused by the defendant's negligence. The myelopathy in any event would have totally disabled him three years after the original accident. The plaintiff was not entitled to any damages for future loss of earnings after that subsequent intervening medical disability.

[334] The learned authors of *Personal Injury Damages in Canada*, 3d. edition @ pp. 1142-1143 confirmed that numerous Canadian courts have recognized and accepted this principle that for personal injury cases, a non-culpable sufficient cause will lead to no liability in the defendant because no compensable loss is suffered:

> Where one of two sufficient causes is non-compensable, there is no compensable "loss" recognized by civil law, because non-compensable sufficient causes are simply part of the backcloth of normal events or everyday circumstance that actually is or would have been the plaintiff's life; they are part of the very yardstick against which loss is measured and cannot themselves constitute loss causing events, i.e. "the original position".

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[335] The authors confirmed the principle in *Penner v. Mitchell* at page 1159 that failing to take into account future contingencies arising in non-culpable circumstances would result in an injured person being overcompensated. They confirmed that the same reasoning applied to a contingency that in fact was realized before trial. In my view, the plaintiff's stroke in this case is such a realized contingency.

[336] The Ontario Court of Appeal in *Parsons Estate v. Guymer* 1993 Canlii 8603 approved the decision and reasoning in *Penner v. Mitchell* that the plaintiff is not entitled to any claim for future loss of earnings after the date he would have been rendered disabled by a subsequent intervening but unrelated medical condition.

[337] Rosenberg J in *Teitelbaum v. Sinopoli* 1993 CarswellOnt 2867, [1993] O.J. No. 461 followed the decision of *Jobling v. Associated Dairies Ltd*. In rather similar circumstances to this case, the plaintiff had not proven that her chordoma tumor of her spine that she suffered after her car accident caused by the defendant's negligence was caused by the accident rather than was totally unrelated to it. Her subsequent spinal operation and medical treatment then rendered her totally disabled in any event.

[338] Rosenberg J noted that the plaintiff's back injury from the car accident clearly impaired his capacity to work and he would have assessed those damages for loss of competitive position in the workplace at approximately $25,000. However, the plaintiff's subsequent unrelated spinal disease was the cause of his being rendered totally unfit for work and obliterated the loss of competitive position from the car accident. Accordingly, Rosenberg J made no award for the loss of income earning capacity claim.

[339] Unfortunately for the plaintiff in this case and notwithstanding his initial loss of earning capacity claims due to his car accident injuries before suffering his disabling stroke which stroke is non-compensable, I am required to apply those legal principles to this case.

[340] The plaintiff's present total disability and his substantial future loss of earnings in this case were caused by his unrelated stroke of October 2015 which resulted in his now significantly deteriorated physical and cognitive condition, serious depression, expressive

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asphasia and speech difficulties resulting in his significant impairment of his verbal communication abilities. The plaintiff's loss of income earning capacity damages he sustained because of his accident related injuries, using the vernacular of Rosenberg J, were effectively obliterated because of the subsequent but unrelated stroke.

[341] Accordingly, no compensable loss was suffered by the plaintiff and no claim can be made for his future loss of income or loss of income earning capacity after the date of the trial and none is allowed.

Past and Future Care Costs

[342] Similar to the plaintiff's claim for his future income losses, in order to claim damages for his costs of medical and attendant care and other pecuniary expenses in the future, the plaintiff must establish that because of his accident related injuries, there is a real and substantial risk of his incurring those future pecuniary losses before he is entitled to compensation. *Graham v. Rourke*, above.

Home Modification Costs

[343] Jeffrey Baum of Adaptable Design Group was retained by plaintiff's counsel and prepared a detailed report recommending accommodations to the house of the plaintiff's parents where he resides including making it walker accessible. With these changes, his house would be more accessible to him because of his current physical impairments. The changes would also make his life easier including assisting him in his daily activities, meal preparation and personal hygiene.

[344] The total cost of the housing accommodations would be approximately $330,000.

[345] Mr. Baum however readily conceded that his proposed costs were based on the plaintiff's needs and current physical impairments that he considered on January 25,

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2017. This was over three years after the plaintiff's November 2013 car accident and 15 months after his October 2015 stroke and at a time when the plaintiff's physical condition had significantly deteriorated because of his stroke including his now suffering from falls.

[346] Mr. Baum did not consider whether the plaintiff's needs and present condition were the result of or caused by the motor vehicle accident of November 2013.

[347] Furthermore, he readily conceded when shown the November 2014 video surveillance of the plaintiff, that in his view, the plaintiff observed in that video surveillance would not require any home modifications. He also admitted that the surveillance evidence did not reflect a description of the plaintiff's physical condition as he had reviewed it in the medical reports provided to him when he made his assessment and calculations.

[348] As noted below , there was no evidence tendered at trial that the plaintiff required any home modifications to accommodate any physical restrictions that he had because of his motor vehicle accident related injuries which do not include his significantly deteriorated condition because of and after his stroke of October 2015.

[349] Accordingly, the plaintiff is not entitled to any damages under that head of damages and I do not allow any amount for them.

Future Attendant Care and Medical Care Costs

[350] No claim was made at trial for any damages for any past attendant care or medical care costs incurred by the plaintiff to the date of trial.

[351] The plaintiff is claiming damages for the present value of future attendant care costs for the plaintiff based on his now requiring 24-hour attendant care.

[352] The evidence of Dr. Vaidyanath was that the plaintiff because of his condition at the time of her assessment in September 2016 required 24 hour attendant care. However, as

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indicated above and as I have found, the basis of that opinion for that requirement and amount of attendant care was because of the significantly deteriorated physical and cognitive condition of the plaintiff and significant increase in his pain after and caused by his stroke. Her evidence was that the care was required because of his now repeated falls, the need to provide assistance in his routine schedule, and safety concerns over his cognitive and physical restrictions including at night.

[353] The plaintiff's personal support worker Christine Mann confirmed the extent of the plaintiff's present serious and disabling medical condition including his physical disability and suicidal thoughts and her helping him when he attempted suicide in July 2017. However, she candidly admitted that she only started helping him in April 2017 and could give no evidence regarding his accident related injuries as compared to the impact of his stroke on his current condition. She spends her time of approximately 20 hours a week helping with his household activities, cleaning his bedroom, assisting with his regularly taking his medication and in the past, taking him for his medical appointments.

[354] Similarly, Todd Gillies, the plaintiff's social worker, confirmed the serious present state of disability of the plaintiff. He also did not start seeing the plaintiff or helping him until January 2016 after his stroke. He candidly admitted that his evidence with respect to his condition and need for assistance is limited to the period after he started seeing him and not before his stroke. He also admitted that the plaintiff's physical condition as depicted in the November 2014 surveillance was very different compared to his present condition after his stroke.

[355] There was no admissible evidence at trial from any of the plaintiff's treating doctors that the plaintiff required any attendant care because of his medical condition caused by and from the date of the November 2013 accident until prior to his stroke and if so, in what amount let alone 24 hour daily attendant care. There was no evidence of the plaintiff suffering from falls prior to his stroke and he did not require the use of a cane or walker prior to the stroke both of which was the case after it.

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[356] Plaintiff's counsel obtained an expert's report from an occupational therapist Deborah Prestwood who assessed the plaintiff's medical condition in 2017 for the purpose of determining his attendant care needs. However, the plaintiff chose not to call that expert witness at trial and accordingly there was no admissible evidence from her with respect to her conclusions reached in her report regarding the plaintiff requiring any attendant care including attendant care on a 24-hour daily basis.

[357] As noted below, the plaintiff also did not call any admissible evidence from any other occupational therapist to provide an opinion or conclusion on the plaintiff's attendant care needs based on his medical condition after the car accident but prior to his stroke.

[358] The parties at trial agreed that the reports of the SABs insurer's occupational therapy examination of the plaintiff by Tina Cagampan of October 7, 2015 and the SABs insurer's assessment by the psychologist Mr. Salerno of December 22, 2014 could be used in evidence only for the purposes of the assessor's observations of the plaintiff and the plaintiff's statements made to them for narrative only but not for the truth of the statements or the conclusions of the assessors.

[359] Accordingly, if Dr. Vaidyanath meant to suggest in her evidence that that the plaintiff required 24 hour attendant care even prior to the stroke, I do not attach any significant weight to that evidence.

Michelle Voorberg

[360] The plaintiff then called an expert future care planner Ms. Voorberg, a life care planner, to testify with respect to the costs of the plaintiff's future attendant care and medical care needs. She was not called as an expert to testify specifically with respect to the plaintiff's need for 24-hour attendant care and her expert's report provided to the defendant before trial did not include that opinion in her report.

[361] In addition, Ms. Voorberg admitted at trial that she could not give an opinion on the cause of the plaintiff's symptomology she observed during her meeting with him on January 11, 2017 i.e. whether it was caused by the November 2013 motor vehicle

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accident injuries or his stroke as that was outside the scope of her expertise and role as a life care planner.

[362] She also admitted that although she spoke to the plaintiff's social worker Todd Gillis who only first started seeing the plaintiff after his stroke, she did not ask him about the plaintiff's medical and attendant care needs prior to his stroke.

[363] She was candid in her evidence that the plaintiff admitted to her that his health got worse after his stroke, that the medical records confirmed he talked about suicide after the stroke and that he started using a cane and eventually a walker only after his stroke and not before.

[364] She stated she relied on the conclusions in the occupational therapy report of Deborah Prestwood. She also said she considered reports of other occupational therapists Tonya Enns, who was retained by the plaintiff's lawyer and who provided a report of December 6, 2015, and Lauren Okell also retained by the plaintiff's lawyer and who provided a report of November 7, 2014. However, none of these occupational therapists gave evidence at trial and their conclusions in their reports regarding the plaintiff's need for attendant care were not admissible as evidence at trial.

[365] For the same reason, the conclusions from the report of the SABs insurer's occupational therapist, Tina Cagampan, who assessed the plaintiff on October 7, 2015 prior to the plaintiff's stroke that the plaintiff did not require attendant care because of his injuries caused by the motor vehicle accident were also not admissible at trial.

[366] Although Ms. Voorberg also stated she agreed with Ms. Prestwood of the plaintiff's need for 24-hour attendant care based on her meeting with the plaintiff and her own experience as an occupational therapist, which opinion was not in her expert's report, I am accordingly not prepared to give any weight to the evidence of Ms. Voorberg with respect to the plaintiff's need for 24-hour daily attendant care as being related to or consequent to only his injuries sustained in the motor vehicle accident of November 2013.

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[367] Moreover, she in cross-examination said that the plaintiff told her on January 11, 2017 that he did not drive much. When shown other video surveillance of the plaintiff of January 2017 taken by the SABs insurer's investigators which confirmed his driving his car, dropping off a passenger, exiting the vehicle at a service station, moving around easily and pumping air into his tires while bending over continuously, she agreed that the video matched the functionality she observed of the plaintiff on January 11, 2017.

[368] She said her recommendation for 24-hour attendant care was based on the present need to keep him safe while living in his own home. However, the bulk of the care was required to provide basic supervisory care and safety for the plaintiff in the event of an emergency because of his cognitive concerns and his required use of mobility devices including a walker due to his falls. Again, she did not and could not state it was needed because of his motor vehicle accident injuries of November 2013.

[369] She also admitted that she was not aware that the plaintiff was receiving as of the trial only approximately 82 hours per month of PSW care which only commenced after his stroke although it was not at all clear on the evidence how it was calculated or how it was being paid for.

[370] Ms. Voorberg calculated the cost of a personal support worker for 24 hour daily care at $30.63 per hour and an annual recurring cost of $264,398. She then considered the scenario of his having a reduced need for attendant care of 12 hours daily starting two years from now in 2020 if a rehabilitation plan and home modifications were implemented with the resulting annual recurring cost of $134,199.

[371] Mr. Nafekh calculated the present value of those two scenarios over the plaintiff's lifetime at approximately $8.4 million and $4.6 million respectively before contingencies.

[372] Ms. Voorberg then calculated his future medication costs for his lifetime based on all the 12 medications he was currently using. She used the annual cost estimate for those 12 medications of approximately $15,400. The plaintiff is actually paying none of these medication costs as they are presently being covered by Manulife, the plaintiff's medical care cost insurer.

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[373] No medical evidence from any doctor was called at trial confirming that all or some of those drugs were and would reasonably be required for the plaintiff's medical needs in the future for his lifetime because of his injuries caused by the motor vehicle accident as compared to because of his stroke condition.

[374] Based on the recommendations and conclusions of the occupational therapist Deborah Prestwood which was not in evidence, she then provided her opinion on the cost of the plaintiff's need for a rollator walker, scooter and its maintenance, electrical adjustable bed with orthopedic mattress, electric chair lift and other devices. There was no medical evidence confirming the plaintiff required those devices in the future because of his accident related injuries as compared to conditions because of his stroke. The annual medication and assistive devices costs she stated totaled $16,417.

[375] Mr. Nafekh confirmed the present value of the future medication costs and cost of assistive devices for his lifetime at $535,000 before contingencies.

[376] Ms. Voorberg then considered the opinion of Dr. Frank that the plaintiff would require psychological counseling for two years, then potentially one year of decreased counseling and after that, once a month for the rest of his life. That total projected costs including transportation expenses for that counseling was approximately $27,000 and the potential of annual costs for his lifetime another approximately $2700.

[377] She suggested based on Ms. Prestwood's conclusions that the plaintiff would need occupational therapy services of eight hours a month for two years, then 48 hours in year 3 totaling approximately $29,000 and 16 hours per year thereafter at an annual cost of $2000. Neither Ms. Prestwood's conclusions nor any supporting medical or occupational therapy opinions for the need for these services and the cost because of the plaintiff's accident related injuries were part of the evidence at trial.

[378] She also included the cost of a rehabilitation support worker for two years for three hour sessions of two or three times a week, then for one year once or twice a week and then three hours a week for phase 3. Those projected costs she opined were approximately

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$48,800, $14,600 and $9700 respectively. Again, no medical basis for that requirement was led in evidence.

[379] She also included a figure of approximately $4000 for 32 sessions for physiotherapy treatment including transportation, approximately $1100 for massage therapy treatment and $4900 for three years costs of a gym program. Again, no expert opinion evidence from any therapist or medical doctor recommending and confirming the possible need for those items in the future because of the plaintiff's accident related injuries was tendered at trial.

[380] She also suggested the cost of a case manager for the plaintiff for six to ten hours per month for three years totaling $36,000 and annual ongoing costs of 12 to 24 hours per year of $2237.

[381] Mr. Nafekh suggested a value of $389,000 for case management fees to manage the anticipated substantial financial economic loss award at trial calculated at a cost of 0.2% of that award. Again, there was no admissible evidence requiring the plaintiff's need for that in the future due to his accident related injuries.

Future Housekeeping and Home Maintenance Costs

[382] Ms. Voorberg suggested costs for the plaintiff having to hire someone to do heavy housecleaning annually of $2000, grass cutting of $850, snow removal of $730 and handyman tasks of $2400, all of which annual sum totaling $6000 was calculated up to age 75. That date was chosen because of natural aging and that he would not have been able to do it anyway after that age.

[383] Mr. Nafekh estimated the present value of those proposed future housekeeping and home maintenance services expenses at approximately $162,000.

[384] No medical doctor, occupational therapist or other medical specialists testified that he was not able to do these tasks himself because of his accident related injuries and the plaintiff's own statements in 2015 to some of his doctors and LTD assessors before his

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stroke was that he was able to do most of those tasks himself.

Suzanne Beausoleil

[385] Suzanne Beausoleil is also a certified life care planner retained by the defendants to provide her expert opinion regarding the cost of the plaintiff's future care needs. She assessed the plaintiff at his residence on July 24, 2017.

[386] Ms. Beausoleil did not seriously dispute the need by the plaintiff for significant medical care costs and 24 hour attendant care costs as suggested by Ms. Voorberg if the stroke suffered by the plaintiff and his present medical condition were caused by the motor vehicle accident injuries of November 18, 2013.

[387] As indicated at the outset of my reasons, the defendants also do not dispute the plaintiff now requires 24-hour attendant care because of his present medical condition but rather they dispute their liability for that on the basis that it was not caused by the motor vehicle accident. Their position is that it was caused by the stroke which is not related to or caused by his car accident. They further dispute the actual costs of the attendant care.

[388] Ms. Beausoleil also could not provide an opinion of the cause of the plaintiff's present medical condition i.e. whether it was caused by the motor vehicle accident injuries or his stroke acknowledging that that was not within the expertise of a life care planner.

[389] However, her analysis was based on the plaintiff's need for future medical and attendant care costs prior to the stroke and presently now after his stroke. She noted that his present medical condition was now significantly worse than it was prior to his stroke based on the medical reports she reviewed which was also the evidence at trial by the doctors. She was asked to provide her opinion on the need for the future care costs suggested by Ms. Voorberg if the plaintiff's stroke was not caused by the motor vehicle accident.

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[390] With that assumption, her evidence was that was no need for any attendant care or assistive devices for the plaintiff including the use of a rollater walker, scooter, electrical lift chair, and orthopedic bed and mattress.

[391] She also stated that the plaintiff's claim for future psychological treatment costs was not a proper claim if they were necessary because of the plaintiff's post stroke condition and not the original motor vehicle accident injuries. I did not accept Dr. Frank's evidence on the extent of the plaintiff's psychological problems caused by the accident and I also do not accept that the possible need for such psychological sessions because of his accident related injuries has been established.

[392] She also conceded based on the medical records that the plaintiff may have required some short-term occupational therapy for eight to ten sessions followed by a couple of follow-up sessions but stated that there was nothing to suggest he would require lifelong occupational therapy and those were not proper claims. Again, no occupational therapist or medical doctor at trial confirmed they were required because of his accident related injuries.

[393] She disagreed that a rehabilitation support worker was needed for any significant period of time if his present condition was not caused by the motor vehicle accident. She stated the reasonable period at most would be very short and time limited of once or twice per week for 12 months.

[394] She suggested a short-term period of physiotherapy followed by a community exercise program was initially needed but no more was required if the plaintiff's present condition was not caused by the motor vehicle accident. No time period dates were offered by her.

[395] She stated a lifetime gym membership was not reasonable and necessary if the impairments were not accident related. Rather, two or three years was reasonable if the stroke was not related.

[396] She suggested nothing be allowed for case management services if the plaintiff's present medical condition was not accident related.

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[397] If the stroke was not related or caused by the motor vehicle accident injuries, she felt the plaintiff may have reasonably required some vocational services to help him return to work which would include the initial assessment costs of $4000 for vocational counseling and 15 to 20 sessions at $120 an hour for total vocational services of $5565.

[398] She agreed that some allowance should be made for the plaintiff's housekeeping and home maintenance costs even if the plaintiff's present condition was not related to his stroke. She suggested those costs for approximately $120 per week for 26 weeks totaling $3120.

[399] She also stated there was no need for any possibility of future costs for home or motor vehicle modifications or transportation costs if his stroke or his present medical condition was not caused by the motor vehicle accident.

[400] She disagreed that the cost of fire or smoke alarms was a reasonable claim because of his injuries as they were simply ordinary normal expenses for everyone.

Analysis -Future Attendant Care, Medical Care and Housekeeping and Home Maintenance Costs

[401] Although I agree that the plaintiff because of his present medical condition does require considerable medical care for his future needs including attendant care, the plaintiff has not established the real and substantial possibility that he will be incurring those costs in the future because of his accident related injuries. The need for those expenses or at least almost all of them was because of his significantly deteriorated physical and cognitive condition caused by his stroke of October 2015 and not his motor vehicle accident related injuries of November 18, 2013.

[402] In that regard, the expert opinion of Ms. Beausoleil with respect to the plaintiff's future medical and attendant care needs as a result of the motor vehicle accident injuries is more reasonable and plausible than that of Ms. Voorberg who did not seek to differentiate his needs because of his present condition due to his disabling stroke as compared to his needs because of his motor vehicle accident related injuries.

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[403] I accept the expert opinion evidence of Ms. Beausoleil over that of Ms. Voorberg for that reason, the evidence at trial, the lack of supporting evidence of the plaintiff's claims and my findings described above. Accordingly, I find that the plaintiff's entitlement for damages for his future medical care, attendant care costs (except for his future medication costs as calculated below) and other future costs because of his injuries sustained in November 18, 2013 accident is as follows:

Attendant Care	$0	
Assistive Devices	$0	
Psychological Treatment	$0	
Home and Motor Vehicle Modifications	$0	
Case Management Services	$0	
Occupational Therapy	$1500	12 sessions at approximately $122 per session
Rehabilitation Support Worker	$6000	Approximately 8 times per month of 12 months at $63
Two Year Gym Membership	$1650	
Physiotherapy	$1130	10 sessions at $130 including transportation
Vocational Services	$5565	
Housekeeping Services	$3120	
Total	$18965	

[404] With respect to the plaintiff's future medication costs, the plaintiff's evidence was that he was only taking four drugs being Lyrica, Tramadol, Cipralex and Percocet for his pain in 2015 before his stroke for his accident related injuries. There was no evidence from any medical doctor at trial specifically stating that there was a real and substantial possibility that he would require them in the future for treatment of his accident related injuries and if so for what length of time and in what amounts.

[405] The evidence of Ms. Voorberg was that at the time of her assessment of the plaintiff on February 15, 2017, long after his stroke, he was now taking 12 drugs being Cambia, Pragabalin, Venlafaxine, Clonazepam, Oxycodone, Oxycocet, Novo Prazin, Apo Atorvastatin, Rabeprazole, Abilify, Tylenol and Aspirin. There was no evidence at trial from any doctor including Dr. Hanna that these 12 drugs were required for the plaintiff's

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future treatment due to his accident related injuries or whether they were to treat him for his present stroke related condition that was not caused by the accident.

[406] The difference is significant as Ms. Voorberg estimated the annual recurring costs of those 12 drugs at approximately $15,400.

[407] In my view, a reasonable inference can be drawn because the plaintiff was taking some prescribed medications for his accident related injuries at the time of the stroke, that there was a real and substantial possibility of that continuing at least for some period of time in the future. I am not prepared to find on the evidence before me, including the lack of evidence, that the plaintiff has established on a real and substantial possibility that his use of medications would be required because of his accident related injuries for a lengthy period of time.

[408] It would also not be appropriate to simply use an annual medication cost of approximately $5000, being one third of that $15,400 amount suggested by Ms. Voorberg, because of the plaintiff only using four drugs for his accident related injuries compared to the twelve drugs he is now using that she considered. There is simply no evidence of what the cost of those four drugs are, what dosage would be required and if so, for how long.

[409] Rather, it is reasonable and appropriate to try and determine as best as possible and in fairness to both parties, a reasonable estimate of the future medication costs for his accident related injuries. That estimate is $25,000 which I allow in that amount.

[410] Given the limited timeframe for payment of the plaintiff's future losses, in my view it is not appropriate to make any reduction of those damages for general contingencies of life affecting the plaintiff.

[411] As no future income loss was awarded, the general contingencies and specific negative contingency of the plaintiff's significant smoking and his not being able to work until retirement is of not applicable.

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[412] In the circumstances, I decline to increase or reduce the award of the plaintiff's future medical care costs because of negative or positive contingencies.

Plaintiff's Duty to Mitigate His Damages

[413] The defendant's position is that the plaintiff failed to mitigate his damages by not participating in appropriate medical treatment after his injuries and stroke.

[414] The plaintiff is bound to act not only in his own interests but in the interests of the defendants who would have to pay his damages and keep down the damages as far as reasonable and proper by acting reasonably. If any part of the plaintiff's damages was sustained due to his own negligent and unreasonable behavior, the plaintiff will not be recouped as to that part. *Janiak v. Ippolito*, [1985] 1 SCR 146.

[415] The evidence at trial established that the plaintiff did have medical and some physiotherapy treatment and attended pain clinics recommended by his family doctor including by his treating neurologists and neuropsychologists and pain specialists. Unfortunately, those medical practitioners other than Dr. Hanna did not give evidence at trial but that does not mean that the defendants have established that the plaintiff did not follow the appropriate medical advice and treatment he was receiving. He was under the regular care of Dr. Hanna who did not state that the plaintiff did not follow their recommended medical treatment.

[416] The evidence only establishes that the plaintiff completed six out of the twenty four work hardening program sessions by October 2015 shortly before his disabling stroke.

[417] The fact that the plaintiff did not follow the advice of his doctors to stop smoking and discharged himself from hospital against medical advice before proper tests were conducted to determine the cause of his stroke is simply not relevant to his claims for damages as the stroke is unrelated to his claim for his accident caused injuries.

[418] The defendants have not established on a balance of probabilities that the plaintiff failed to mitigate his damages.

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Conclusion

[419] The defendants are liable for the plaintiff's damages sustained in the motor vehicle accident on November 18, 2013.

[420] For the reasons noted above, I assess those damages as follows:

General Damages	$100,000	(subject to the applicable deductible amount under the *Insurance Act* to be addressed in further submissions by counsel)
Loss of Marriage and Shared Family Expenses Damages	$0	
Net Past Income Loss	$6749	
Future Income Loss	$0	
Future Healthcare Costs	$43,965	

[421] If the parties are unable to agree on the amount of the deductible applicable to the general damages, the applicability of the trust and assignment provisions of the plaintiff's future collateral health care benefits to the defendants, prejudgment interest and costs of this action, the parties can make arrangements through the Trial Coordinators' office in Hamilton to arrange for further written submissions or for a further appearance before me to review those issues.

The Honourable Mr. Justice R.J. Nightingale

Released: July 20, 2018

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CITATION: Akeelah v. Clow, 2018 ONSC 3410

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Dawood Yousef Akeelah

Plaintiff

– and –

Allen W. Clow and Information Communication Services Inc. (Also known as ICS Inc.)

Defendants

REASONS FOR JUDGMENT

The Honourable Mr. Justice R.J. Nightingale

Released: July 20**,** 2018