IN THE MATTER OF AN ARBITRATION PURSUANT TO S. 148.2 OF THE INSURANCE (VEHICLE) REGULATION, B.C. Reg. 447/83 and the Arbitration Act [SBC 2020] c. 2

BETWEEN:

BC

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

AWARD

Counsel for the Claimant, BC	Randall Taneda
Counsel for the Respondent, Insurance Corporation of British Columbia	C. Peter Collins
Date of Hearing	June 19 – 23, 26, 2023
Place of Hearing	Vancouver, B.C.
Arbitrator:	Dennis C. Quinlan, K.C.
Date of Award:	July 19, 2023

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I. OVERVIEW

1. This is an Underinsured Motorist Protection ("UMP") Arbitration conducted pursuant to the *Arbitration Act* [SBC 2020] Chapter 2 and section 148.2 of Part 10 of the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83 (the "Regulation").

2. On September 6, 2016, BAC (the "Claimant") was operating a BMW Enduro motorcycle at or near Highway 91A in New Westminster, British Columbia, when while stopped for traffic, he was hit from behind by a Cadillac Escalade operated by PD (the "Accident").

3. The force of the impact caused the Claimant to be thrown from his motorcycle.

4. Liability is in dispute.

5. The Claimant who is now 40 years old, alleges he sustained various soft tissue injuries and a traumatic brain injury, which have left him with ongoing pain, emotional dysfunction and cognitive deficits.

6. The Claimant was an insured for the purpose of UMP as defined in section 148.1 of the Regulation. The remaining policy limits in the underlying tort claim of $194,591.30 were tendered on behalf of PD, and the Insurance Corporation of British Columbia (the "Respondent) agreed the Claimant could pursue the balance of his claim through arbitration in accordance with Part 10 of the Regulation.

7. At the time of the Accident, the Claimant was employed at Roberts Bank as a heavy duty mechanic with both Delta Port and Westshore Terminals. Through seniority he had worked his way up to "A Board". Following the Accident, he returned to work in December, 2016 and later became a

member of the International Longshore and Warehouse Union Local 502 ("ILWU") on June 14, 2021.

8. The parties differ both as to whether the Claimant sustained a traumatic brain injury, and the extent to which he has residual deficits caused by the Accident that impair various aspects of his life and in particular his earning capacity.

9. The Claimant asserts that were it not for his residual difficulties, he would have applied for and been promoted to the position of foreman, resulting in his annual income increasing from $150,000 to between $350,000 and $400,000.

10. The Respondent disputes there are residual issues of any significance resulting from the Accident. It submits the Claimant has since December, 2016 continued to work full time earning more each year, and for reasons unrelated to the Accident, made the personal choice not to apply for the position of foreman.

11. One of the main issues in this arbitration requires consideration of whether the Claimant's own perception of his disability can support a claim for loss of earning capacity, in circumstances where there is no functional or vocational assessment.

II. BACKGROUND OF THE CLAIMANT

12. The Claimant successfully completed high school in 2001 and went to work for a tug boat company as a deck hand.

13. In 2004 he sustained a serious work injury which resulted in the amputation of two fingers on his left hand, leaving him with ongoing phantom pain that continues to the present time. Oxycodone was prescribed to help alleviate the pain.

14. Following the 2004 hand injury, the Claimant returned to work within 90 days. However he decided to change career and in May 2005, enrolled at Vancouver Community College in the one year heavy duty mechanic program. Following successful completion, the Claimant was accepted into a four year apprenticeship program which he completed in three years entitling him to his red seal endorsement.

15. In December 2009, the Claimant was laid off from the employer where he had completed his apprenticeship. Following a friend's suggestion, he took his resume to the docks and started work on February 11, 2010, which as he described it, was the day after Sidney Crosby's Golden Goal in the 2010 Olympics.

16. Employment on the waterfront requires a new employee such as the Claimant to be dispatched through the union, which in this case was the ILWU. Initially the employee is casual and must work his way up through a series of "boards" before ultimately being accepted into union membership.

17. Union membership carries with it a number of benefits including not having to meet a targeted number of hours to avoid demotion to a lower board, and greater choice in the jobs and shift hours available for acceptance.

18. The Claimant's pre-Accident T4 earnings in 2014 and 2015 were $101,529 and $132,194 respectively.

19. The Claimant had reached A board at the time of the Accident, which was the last board before acceptance into the union. As a certified tradesman, the Claimant was in demand and earning more than other employees who did not have such training.

20. In addition to the left hand injury in 2004, the Claimant had a number of other injuries prior to the Accident, including a 2007 fracture to the left foot, a 2011 fracture to the right hand, a 2012 fracture to the right fibula at the ankle joint, and fractures to the right hand in 2013 and 2015.

21. Clinical records in 2015 and 2016 referenced ongoing phantom pain in the left hand especially when exposed to cold temperatures during the winter. Oxycodone and naproxen were periodically prescribed for pain relief.

22. The Claimant stopped taking oxycodone around the time of the Accident due to the death of a friend who overdosed.

23. In March, 2016, the Claimant considered seeking a work exemption to allow him to work in warmer environments in the winter, but did not pursue that step.

24. Outside of work, the Claimant was an outdoor enthusiast who snow boarded, played hockey, hiked, camped, hunted and rode his motorcycle.

III. THE ACCIDENT

25. The Claimant testified he was travelling to work on Highway 91A when he decided to pull off to the right shoulder to tighten the chin strap on his helmet. He described the traffic as stop and go.

26. Once there was a gap in the traffic he pulled back into the left lane of the two lanes going in his direction. At some point he noticed a SUV travelling ahead of him in the right lane, which from time to time was drifting into his lane of traffic. The Claimant also noticed the SUV would on “multiple times” slow down allowing a gap to form in front, and then rapidly accelerate to close the gap.

27. The Claimant decided that due to the erratic actions of the SUV, he would drive ahead of the SUV and move into his lane so as to put some distance between the two of them.

28. In cross examination, the Claimant agreed this was a “stupid thing to have done”.

29. After moving past the SUV and changing into the right hand travelling lane, he eventually came to a stop due to the traffic in front of him. The Claimant testified he had been stopped for 7 to 15 seconds when suddenly he was hit from behind by the SUV.

30. The Claimant said he did not recall the initial impact but did remember hitting the ground and then trying to move out of the way of the traffic before eventually sitting on one of the concrete barriers. On cross examination, he indicated he went over his motorcycle on the right side and then landed on the pavement. The Claimant was unable to provide an estimate of the speed of the SUV.

31. The driver of the SUV (previously identified as PD) gave evidence at the arbitration hearing. His evidence was confusing, in part because of language difficulties and also because he testified virtually while walking around what appeared to be a worksite.

32. His version of events was that the motorcycle came up from behind on the right side shoulder and then suddenly cut in front, leaving PD insufficient space and time to stop. PD initially stated he was travelling 30 to 40 kilometres per hour, but on cross examination when referred to his examination for discovery evidence, agreed he had said his speed was 30 to 40 miles per hour.

33. PD testified the Claimant was still seated on his motorcycle following the impact. He denied the Claimant was knocked off the motorcycle and instead said the Claimant put his kick stand on and then dismounted.

34. There was an independent witness to the Accident who attended the arbitration and gave evidence.

35. LD was a 59 year old man who works as a control technician at BC Place.

36. He described the day of the Accident as clear and dry. He was driving a "cab over 5 ton truck", which allowed him to sit up higher than most of the other drivers. The traffic was heavy, stop and go, and bumper to bumper.

37. LD indicated he had followed the SUV for approximately one kilometre. In that time the driver of the SUV was not travelling in the same manner as the rest of traffic. The driver would wait until there was a large gap between him and the vehicle in front and then shoot forward to close the gap. LD said this occurred at least three times.

38. He observed the motorcycle come in from the right shoulder and merge safely into the lane of traffic. The motorcycle was ahead of the SUV for approximately a minute and then the SUV shot ahead and struck the motorcycle from behind. LD described the events as "like a rubber band" as the motorcycle was hit with a rapid movement.

39. LD observed the motorcyclist go over the right side of the bike although he did not see his head hit the pavement. After the impact LD got out of his vehicle and went over to the motorcyclist who by that time was standing up and limping in a hunched over manner.

40. The motorcyclist indicated he was “ok” in the sense he was alive and walking whereupon LD thought it safe to leave the scene and continue on his way.

41. LD was both a reliable and credible witness. While the evidence differed between LD and the Claimant as to how the Claimant ended up in front of the SUV, I have no difficulty concluding based upon the evidence of LD that PD was 100% at fault for the Accident.

IV. POST ACCIDENT INJURIES, TREATMENT AND EMPLOYMENT

42. The Claimant was taken by ambulance to Royal Columbian Hospital. The ambulance crew recorded the Claimant appeared slightly stunned with no apparent loss of consciousness. He had been able to immediately get up and move out of traffic, and was able to walk around easily with no confusion.

43. The Claimant was wearing full riding polyamide clothing. The ambulance crew reported no damage to his helmet.

44. The ambulance crew rated the Claimant’s Glasgow Coma Scale as 15, indicating he was alert and oriented when they arrived at the scene. The Claimant was complaining of headache, nausea, neck, low back and wrist pain. An incident of vomiting was noted and a concussion was queried.

45. At the hospital it was reported the Claimant had no loss of consciousness, was alert and oriented. He had complaints of headache, neck pain and major blunt trauma. After a period of evaluation he was discharged home with a diagnosis of multiple contusions. No imaging was performed.

46. The Claimant returned to work within a couple of days. However he soon had to stop because of pain, dizziness and poor sleep. Knee pain

was reported. Following an incident of dizziness and vomiting, he went to see his family doctor on September 15, 2016 who advised him to attend the emergency department if the symptoms did not resolve.

47. The dizziness and vomiting continued and on September 23, 2016 the Claimant was evaluated in the emergency department. A CT head scan was normal. Post concussion syndrome was diagnosed and the Claimant was advised to stay off work and given a referral to a concussion clinic.

48. By October 7, 2016 the Claimant was feeling better after attending the concussion clinic. He had received physiotherapy for muscle pain in his shoulder and back, the dizziness was resolving and the Claimant felt he could return to work on November 22, 2016.

49. The Claimant's T4 earnings for 2016 were $117,206

50. Upon returning to work in December, 2016, the Claimant began experiencing left knee pain which was aggravated by climbing stairs on the cranes. By February, 2017, the family doctor reported the concussion symptoms had resolved. Physiotherapy for the Claimant's neck and back continued throughout 2017.

51. Bilateral wrist and forearm pain developed six months after the Accident leading to a likely diagnosis of carpal tunnel syndrome. The medical consensus was that this condition was unrelated to the Accident.

52. The Claimant returned to playing men's recreational hockey in September, 2017 and according to scoresheets played a number of games in 2018 and on into June, 2019. He was competitive as indicated by penalties he was assessed for hooking, tripping, boarding and body checking.

53. The Claimant's T4 earnings for 2017 were $138,536.

54. In March 2018, the Claimant had a relapse of his headaches, was reporting poor concentration and focus at work, and the knee pain was continuing. As a result the family doctor arranged MRI investigations of the brain and left knee that were performed in March, 2018 and July, 2018 respectively.

55. The brain MRI was normal and the left knee MRI showed a lateral meniscus tear.

56. The Claimant's T4 earnings for 2018 were $141,982.

57. The Claimant stopped playing hockey in 2019 because of what he described as a "quality of life decision", meaning hockey was having a detrimental effect on his work life.

58. The Claimant's T4 earnings for 2019 were $142,071.

59. The Claimant's knee pain continued through 2019 and 2020 and on December 11, 2020, he underwent surgery to repair the tear. The surgery was largely successful in relieving the pain. The Claimant was off work six weeks because of the surgery.

60. The Claimant's T4 earnings for 2020 were $160,273. In addition he had gross business income of $12,326 and a net business loss of $11,277 working for his friend BC at Fraser Health.

61. The Claimant achieved union membership on June 14, 2021. It was thereafter he stopped working graveyard shifts for what he again described as a "quality of life" issue. He was however able to replace those shifts with afternoon shifts because he was in demand.

62. The Claimant's T4 income for 2021 was $148,960. In addition he had gross business income of $57,855 and net business income of $22,909 working for his friend BC at Fraser Health.

63. In taking on this work at Fraser Health, the Claimant was considering starting his own business.

64. There was no evidence as to what the Claimant earned in 2022 either as a heavy duty mechanic or through Fraser Health, because he did not file an income tax return and gave no evidence when he testified.

65. During the winter of 2022/2023 the Claimant successfully completed three, one week courses in Non Destructive Testing. He was considering an alternative career to being a longshoreman but the income would be significantly less.

66. The Claimant gave evidence that about three weeks before the arbitration hearing, he lost a position as a crane runner because he missed the fact that gauges had been turned off. He asserted this was a basic mistake which occurred as a result of not being well rested due to neck pain. He was asleep on the jobsite when the call came in for his services.

67. The foreman who reprimanded the Claimant did not testify.

68. The Claimant also mentioned he had made mistakes about de-energizing equipment, but no specifics were provided.

69. The Claimant's Schedule of Special Damages indicate the physiotherapy visits stopped in February, 2018 but then resumed in March, 2020 and continue to the present time.

70. The only other referenced treatment is three recent counselling sessions on January 31, April 4 and April 19, 2023 for memory, sleep, concentration and multitasking issues.

71. At present the Claimant describes varying symptoms related to weekly headaches, neck and back pain, concentration problems, short-tem memory difficulties, reduced focus and challenges in multitasking.

V. LAY WITNESSES

BC

72. BC had known the Claimant since they were 17 years old. BC said they were best friends and before the Accident would once a month go dirt biking, rock climbing, camping, hiking or snow boarding.

73. Since the Accident they have not hiked together and only tried dirt biking once. BC said they now get together once a year.

74. Last year BC went camping with the Claimant and heard him complain about his back and body. The Claimant was also not involved in the planning of the trip, which was something he would be part of before the Accident.

75. Further the Claimant's tidiness and organization had "gone downhill" as demonstrated by his home which is no longer tidy and has paper scattered about. BC spoke of an incident of rotting meat coming from a shed that the Claimant seemed disinclined to deal with.

76. BC was employed as a Project Manager with Fraser Health. He has tried to involve the Claimant in a few projects but the Claimant does not seem to have the organizational talents. Consequently BC gives him projects which do not involve paper work.

77. BC said he stills views the Claimant as a friend but sees him as absent minded and distant. Questions have to be repeated and there is a bewildered look on his face.

78. On cross examination BC agreed that since the Accident he has gone on trips with the Claimant to South America, Spain and China. There was no evidence of any difficulties on those trips.

79. BC stated he was not aware of whether the Claimant had any experience as a general contractor, although becoming a foreman at the docks was something which might have been mentioned.

EM

80. EM is a maintenance foreman at Westshore Terminals who started as a longshoreman in 2006. EM was accepted into the ILWU thirteen years later in May, 2019 and then became a foreman in October, 2019.

81. EM has known the Claimant for thirteen years. They worked together several times when paired up. The Claimant's skills were as good as any other heavy duty mechanic. He was competent, his trouble shooting skills were good and he had no difficulty doing any of the work.

82. ED testified all heavy duty mechanics want to become a foreman because of the substantial increase in pay. ED testified he earned $340,000 in 2021, $320,000 in 2022, and for the first six months of 2023, $200,000.

83. At present there are two openings for foreman positions.

84. Foremen usually work more than a tradesman as they often have to work double shifts, which can include a graveyard shift. Employees with union membership and seniority try and avoid the graveyard shifts.

85. The Claimant is still able to do the job but if there is an option, ED will give him a less technical assignment.

86. ED recalled one specific incident after the Accident where the Claimant had difficulty trouble shooting an electrical problem. It took him two shifts to figure out what normally should have taken two to four hours.

87. ED has observed the Claimant working in the winter and operating vibrating tools. EM himself has hand pain as a result of using those tools.

88. In summary EM said the Claimant does his job and there have not been many incidents where there was a problem.

89. There are 12 foreman at Westshore Terminals who are responsible for 40 to 50 tradesman.

CR

90. CR is the Claimant's younger sister by three years. She lives in Yellowknife where she works for the Northwest Territories Human Rights Commission doing mediations and human rights matters.

91. They lived together until she was 13 and he was 16. She described her brother as very active. Together they would canoe, hike, camp and share a meal together. They were close and would see each other four to five times a year and speak on the phone every two to three weeks.

92. CR described a number of recent events where she saw changes in her brother, including a canoe portage where he was unable to carry the canoe, taking an inordinate amount of time to change the tire on her car, overreacting when she was driving in traffic, displaying an inability to focus on their conversation and cook a meal at the same time, losing track of where he was in a conversation, keeping his house in what she

described as a “disaster” and openly being more emotional, including crying.

93. CR testified the Claimant would call her saying he was depressed, scared, and worried about his future and “quality of life”.

94. On cross examination, CR agreed the Claimant had mentioned phantom pain in his hands which bothered him when cutting up meat after hunting. She was not aware he had taken oxycodone for relief of the pain.

95. CR was also unaware her brother was receiving a Disability Tax Credit or a Fuel Tax Refund for marked impairment in activities of daily living associated with the loss of two fingers in 2004.

VI. EXPERT EVIDENCE

DR JAMES MUGISHA, FAMILY DOCTOR

96. Dr. Mugisha was qualified as a medical doctor with expertise in family medicine. He has been the Claimant’s family doctor since 2000 and prepared a report dated April 9, 2020.

97. The Claimant was first seen after the Accident on September 9, 2016 at which time he complained of neck pain, stiffness, dizziness, blurred vision, twisted left knee joint and right wrist pain.

98. Dr. Mugisha under the heading Past Medical History only referenced a crush injury of the left index finger with partial amputation in March 2004, and a fractured right ankle that was surgically treated in 2011.

99. On cross examination he agreed the Claimant had a number of other fractures in 2007, 2013 and 2015, and that Oxycodone had been prescribed for pain at various times.

100. In his April 9, 2020 report Dr. Mugisha summarized the Claimant's current status as back and left knee pain, with stiffness on prolonged sitting or lifting. For treatment, he was stretching and attending sauna and massage to achieve some relief.

101. Dr. Mugisha's opinion was that the Claimant was totally disabled from September 9, 2016 to December 7, 2016 and partially disabled currently.

102. Dr. Mugisha opined that once the Claimant underwent arthroscopic surgery on his left knee, he would not suffer any permanent disability although the duration might be prolonged. He encouraged the Claimant to remain as active as possible which Dr. Mugisha opined should resolve the back and neck pain, together with the headaches.

DR. MEHDIRATTA, NEUROLOGIST

103. Dr. Mehdiratta was retained by the Claimant and qualified as a medical doctor with expertise in neurology. He assessed the Claimant by videoconference on November 24, 2020 and prepared a report dated March 3, 2021.

104. It was the opinion of Dr. Mehdiratta that based upon his review of the file material and his assessment, the Claimant sustained a closed head injury resulting in a concussion.

105. After reviewing several research studies, Dr. Mehdiratta opined as follows:

> In summary, based on the above research and the ongoing functional limitations described by the Claimant, involving physical, cognitive, sleep, and emotional aspects related to post concussion syndrome, as well as the duration of the symptoms, I am concerned about ongoing symptoms. It is important to accurately diagnose and realize the risk of ongoing symptoms as they are more likely than not to have a significant impact on his occupation as a heavy equipment mechanic or any occupation for which he is reasonably suited by education, training or experience. Over the long term, I feel that he is likely to have increasing difficulty at work, which would affect his income and ability to progress in his career.

106. Dr. Mehdiratta concluded by opining the prognosis was poor. In view of the symptoms having existed for more than 1 ½ years, Dr. Mehdiratta stated the Claimant was more likely than not to have permanent post-concussion symptoms due to mild traumatic brain injury.

107. It is noteworthy Dr. Mehdiratta did not have the benefit of the neuropsychology report from Dr. Schmidt when he prepared his report, nor did he comment on Dr. Schmidt's conclusions when he gave his evidence in the arbitration.

108. Dr. Mehdiratta made a number of treatment recommendations, including a sleep study, occupational therapy assessment, trial of Elavil and concussion rehabilitation. None of the treatment recommendations were followed.

DR. SCHMIDT, NEUROPSYCHOLOGIST

109. Dr. Schmidt was retained by the Claimant and qualified as having expertise in clinical psychology and neuropsychology. He saw the Claimant for an evaluation of psychological and neuropsychological status on August 31 and September 1, 2021, and prepared a report dated January 18, 2022.

110. I found the report of Dr. Schmidt and his evidence to be even handed and very helpful.

111. In order to answer the questions posed in the letter of instruction from counsel, Dr. Schmidt reviewed the records provided to him, conducted interviews, and administered a battery of tests designed to assess cognitive functioning and emotional/behavioural functioning.

112. Dr. Schmidt noted he was not provided with any pre-accident medical or educational records.

113. Dr. Schmidt found there was variable effort on some of the cognitive tests, and indications the Claimant may have tended to over-report cognitive and memory problems. Ultimately however Dr. Schmidt concluded there were a sufficient number of valid test results to allow him to draw conclusions as to whether cognitive deficits continued as a result of a brain injury.

114. Formal testing revealed intermittent problems with attention and processing speed, which in turn seemed to have an impact on tests of learning, memory and executive functioning. It was Dr. Schmidt's opinion that such weaknesses were more likely than not manifestations of non-neuropsychological processes, including anxiety, low frustration, tolerance and pain.

115. Summarizing, Dr. Schmidt stated:

> Taking all of the information together, it is my opinion possible but by no means certain that the Claimant suffered a neuropsychologically significant mild traumatic brain injury in the accident in question. That said, it is my opinion more likely than not that even if he did suffer such an injury it has left no persisting cognitive, emotional, or behavioural problems. Although he does show ongoing cognitive disruption it is in my opinion more likely than not that this arises from the combined effects of pain and emotional dysfunction rather than any sort of neuropsychological problem. In particular it is my opinion he is suffering, at a minimum, from an Adjustment Disorder with mixed anxiety and depressed mood and may well be suffering from a Somatic Symptom Disorder with predominant pain.
>
> It is my opinion that the above problems are a direct result of the accident in question and its sequelae, and that but for the accident he would not now be showing these forms of emotional disruption.

116. Dr. Schmidt described an Adjustment Disorder as a psychological dysfunctional reaction to stress, whereas a Somatic Symptom Disorder involves a person having an undue focus on physical symptoms which creates disruption in their life.

117. An Adjustment Disorder is usually shorter in time than a Somatic Symptom Disorder.

118. Dr. Schmidt agreed on cross examination that the Claimant did not meet the diagnosis of either major depressive disorder or generalized anxiety disorder.

119. In respect to employment, Dr. Schmidt said there was no reason to suspect the Claimant would not be able to maintain stable employment into the future. As to whether the Claimant's ability to advance at work and in particular to a foreman position had been impacted, Dr. Schmidt was careful to say the answer to that question was beyond the scope of his assessment. The most he would say was the type of difficulties displayed would make it more difficult for the Claimant in the future.

120. Dr. Schmidt suggested that if the Claimant was interested, he would benefit from psychological intervention through a combination of Mindfulness Training and Cognitive Behavioural Therapy which would allow him to recognize and gain control over his dysfunctional emotions.

DR. WOOLFENDEN, NEUROLOGIST

121. Dr. Woolfenden was retained by the Respondent and qualified as a medical doctor with an expertise in neurology. He evaluated the Claimant in person on October 11, 2022 and prepared a report dated January 31, 2023.

122. Dr. Woolfenden diagnosed the Claimant as having sustained a spinal strain injury and mild traumatic brain injury, both of which were due to the Accident, and carpal tunnel syndrome which was unrelated to the Accident.

123. Dr.Woolfenden agreed with Dr. Schmidt that the Claimant's post-accident cognitive complaints were likely not the result of a mild traumatic brain injury for several reasons, including the improvement indicated in the clinical records, scoring in the average range on

neuropsychological testing, the evidence of non-brain injury factors similar to symptoms seen by a person who has a Somatic Symptom Disorder, and the normal brain MRI.

124. The diagnosis and prognosis of psychological issues were in the view of Dr. Woolfenden, best addressed by a psychiatrist.

125. Dr.Woolfenden agreed on cross examination that the Claimant had acted reasonably in making the choice to avoid working graveyard shifts, although he noted that sleep difficulties will be seen in any individual who works graveyard. He added that the best way to assess whether the Claimant was capable of working such shifts was have him undergo a work trial.

126. Dr. Woolfenden did not anticipate any employment disability over the long term.

127. Dr. Woolfenden and Dr. Mehrdiratta disagreed on the applicability of certain studies and what conclusions could be taken from them. Having heard them cross examined, it was evident to me they agreed to disagree. For the purpose of the conclusions I must draw, and with Dr. Schmidt holding the tie vote, it is not necessary to go beyond that result.

128. As for treatment, Dr. Woolfenden recommended the Claimant undergo a work hardening program for his spinal strain injury and be reassured he has likely recovered from the effects of a mild traumatic brain injury.

DR TRAVLOS, PHYSIATRIST

129. Dr. Travlos was retained by the Respondent and qualified as a medical doctor with an expertise in physical medicine and rehabilitation, known as physiatry. He undertook an evaluation of the Claimant in person on August 2, 2022 and prepared a report of the same date.

130. On the principal issue of whether the Claimant sustained a brain injury, it was Dr. Travlos' initial opinion that while he could not with 100% certainty exclude that conclusion, he thought it unlikely.

131. On cross examination however, Dr. Travlos agreed he had failed to see the reference in the records to vomiting on the day of the Accident and dizziness three days after and then continuing, as opposed to dizziness and vomiting starting on day nine, which was partially the basis of his conclusion that it was unlikely the Claimant had sustained a concussion or brain injury.

132. As a result, Dr. Travlos amended his opinion to there being a 30% chance that a concussion was suffered by the Claimant.

133. Dr. Travlos referred to the notes of Dr. Mugasha that the Claimant had recovered from his concussion in February, 2017. He also noted the Claimant told him he was the preferred go-to individual for more complex, complicated tasks at work.

134. Dr. Travlos did opine the left knee symptoms were initiated by the Accident, and thus the need for surgery and subsequent time off from work were also caused by the Accident.

135. In respect to employment, it was Dr. Travlos' opinion that the Claimant still has symptoms that will interfere with his endurance for overtime work and he may therefore choose to work less overtime than he otherwise would have at this stage of his life. He was "nevertheless capable of gainful full-time and overtime work".

136. Dr.Travlos recommended strengthening exercises for the Claimant's neck which would also help with the headaches, conditioning for the low back, and five to seven sessions with an occupational therapist to improve his

structure and organization. Dr. Travlos stated there was room for improvement if the recommendations were followed.

VII. LEGAL FRAMEWORK AND FINDINGS OF FACT AS TO CAUSATION

137. The Claimant must establish on the balance of probabilities that the tortfeasor's negligence caused or materially contributed to his injuries. The primary test for causation is the "but for" test which requires the Claimant to show the injury would not have occurred but for the negligence of the tortfeasor: *Athey v. Leonati*, [1996] 3 SCR 458 at paras. 13-17.

138. Once causation is established, the role of damages is to place the Claimant, as best money can do, in the same position he would have been in had the Accident not occurred – no better, no worse.

139. This objective is accomplished by determining not only what the Claimant's position was after the Accident (the "injured position") but what the Claimant's position was before the Accident (the "original position).

140. The difference between these two positions represents his loss: *Athey*, para. 32, *Blackwater v. Plint*, 2005 SCC 58 at para. 78.

141. As was concisely stated in *Athey* at para. 35,

> …the defendant is liable for the additional damage but not the pre-existing damage….this is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and shortcomings, and not a better position.

142. Much time was taken up in the arbitration with whether the Claimant hit his head following the impact and if he did, were the criteria for a concussion/traumatic brain injury met.

143. In my view the debate became academic.

144. The clear consensus of the expert evidence with the exception of Dr. Mehdiratta, was that even if the Claimant sustained a traumatic brain injury, he was left with no ongoing or permanent cognitive, emotional or behavioural deficits.

145. This is not to say the Claimant does not show "cognitive disruption" as the term was used by Dr. Schmidt and which he attributed to the combined effects of pain and emotional dysfunction.

146. I have reviewed the report of Dr. Mehdiratta. With respect, it appears he interviewed the Claimant, accepted his statements without question, applied an academic study and without any further investigation, provided the opinion that all of the Claimant's symptoms were as a result of head trauma which will impact him negatively into the future and for which the prognosis is poor.

147. One of the important issues in this arbitration is the quantitative measure of any difficulties the Claimant has. Dr. Woolfenden made the point that neuropsychological testing can offer assistance in answering that question.

148. Dr. Mehdiratta did not have the benefit of, or take advantage of, the insight provided by Dr. Schmidt. His opinion, based almost solely on what he was told by the Claimant, was therefore of limited assistance to me.

149. In summary, I make the following findings of fact:

- the Claimant sustained physical injuries of some significance which left him with varying back pain, neck pain and headaches;

- the Claimant suffered an injury to his left knee as a result of the Accident which developed into a torn meniscus for which surgery was required;

- the Claimant had a good outcome from the knee surgery and while he may have some periodic pain it is not significant;

- to the extent the Claimant sustained a concussion/traumatic brain injury, he has not been left with ongoing cognitive, behavioural or emotional difficulties;

- the Claimant does have some cognitive disruption in the form of anxiety and depressed mood, which at a minimum meets the criteria of an Adjustment Disorder due to pain and emotional upset, and on the continuum, may meet the criteria for Somatic Symptom Disorder with predominant pain;

- the Claimant suffers ongoing phantom pain in his hands and carpel tunnel syndrome in his wrists and arms, neither of which are attributable to the Accident;

- the Claimant will be able to continue working full time for the foreseeable future as he has over the past 5 ½ years, but there is a real and substantial possibility that the symptoms of cognitive disruption in combination with his ongoing pain will have some financial impact on his employment going forward.

- further improvement can be achieved for both his pain and emotional upset if he was to follow recommended treatment, which as outlined by the experts is not onerous;

VIII. ASSESSMENT OF DAMAGES

NON-PECUNARY DAMAGES

150. Non-pecuniary damages compensate for pain, suffering and the loss of enjoyment of life and loss of amenities. While comparison to other cases of similar injury can be instructive, the award will vary to meet the circumstances of the individual case: *Debruyn v Kim*, 2021 BCSC 620 at paras. 120-121.

151. The non-exhaustive factors to be considered in awarding non-pecuniary damages are set forth in the well known decision of *Stapeley v Hejslet*, 2006 BCCA 34 and include the age of the Claimant, nature of the injury, severity and duration of pain, disability, emotional suffering and loss or impairment of life.

152. I would note at the outset that the Respondent did not take strong issue with the credibility of the Claimant. The Respondent referenced a tendency to over report symptoms which was noted on testing by Dr. Schmidt.

153. In my view the Claimant was generally credible and reliable, subject to the caveat of some over reporting and from time to time the inclination to be his own advocate. Perhaps more importantly and as Mr. Collins, counsel for the Respondent said in closing argument, the Claimant was a good communicator. This talent should bode well for him in the future.

154. The parties diverged significantly on what the appropriate award for non-pecuniary damages should be. The Claimant submitted an award in the range of $200,000 based upon the decision of *Lo v Vos* 2021 BCCA 421, whereas the Respondent argued for an award ranging between $75,000 to $90,000 supported by a number of decisions.

155. I have reviewed the appellate decision of *Lo* where on appeal the application of a 20% negative contingency factor by the trial judge was set aside and an award of $175,000 for non-pecuniary damages substituted.

156. The injuries and impact of those injuries on the plaintiff in *Lo* were in my view much more serious than faced by the Claimant.

157. Ms. Lo was forcefully rear-ended (not unlike the Claimant) in a 2014 motor vehicle accident resulting in physical injuries that contributed to chronic low back pain which lead to her developing psychological conditions including a major depressive disorder as well as PTSD and anxiety that might well continue indefinitely .

158. Those injuries permanently impaired her income earning capacity as a teacher such that there was a real and substantial possibility she would never work again in her chosen occupation.

159. It is insightful that in *Lo* the plaintiff tendered expert reports from two psychologists and two psychiatrists to deal with the plaintiff's psychological and psychiatric injuries.

160. I found the decisions cited by the Respondent to be of greater assistance. In that regard the decision of *Celones v Chandra* 2023 BCSC 38 established what I might describe as a low water mark in awarding $80,000.

161. In *Celones*, the 28 year old plaintiff was in a rear end accident and sustained neck, shoulder and chronic back pain together with headaches. He was able to continue with his employment but his social life diminished, a relationship ended, his mood was subdued, fatigue was an issue and his recreational activity was curtailed.

162. In making the award of $80,000, the court noted the plaintiff had not experienced cognitive difficulties, had not been diagnosed with any emotional or psychological disorder and there was no brain injury.

163. The decision of *Gill v McChesney*, 2016 BCSC 1416 was very similar in terms of the injuries and issues to be addressed. The court found the plaintiff sustained a head injury and soft tissue injuries to her neck, low back, and upper back together with headaches and anxiety.

164. In respect to the head injury, the plaintiff was found to have sustained an alteration to her mental state at the time of the accident so as to meet the criteria for a traumatic brain injury or concussion. However the brain injury was at the "lesser end of the scale" and to the extent there were any cognitive issues as a result of the brain injury, they had resolved within 18 to 24 months.

165. There were some ongoing mild cognitive issues involving short term memory and concentration, but they were due to other life induced reasons and not related to the Accident.

166. An award of $80,000 was made for non-pecuniary damages.

167. In conclusion after reviewing the decisions provided to me, and taking into account the nature of the injuries sustained by the Claimant as explained by the expert evidence, all of which is within the evidentiary backdrop that he has except for three months continued to work full time in a physical job, returned to playing hockey within a year and generally maintained his lifestyle of travel and personal relationships, I award $110,000 for pain, suffering and loss of enjoyment of life.

PAST LOSS OF EARNING CAPACITY

168. Compensation for past loss of earning capacity is based upon what the Claimant would have, not could have, earned but for the injuries sustained in the Accident: *Fletcher v Biu*, 2020 BCSC 1304 at para. 77.

169. The test is whether on the balance of probabilities, there was a real and substantial possibility that he would have been able to do so but for the Accident. If so, the task is to then make an assessment of the loss including an allowance for the chance that the assumptions upon which the award is based, may prove to be wrong: *Debruyn,* at para. 133.

170. The Claimant makes a three pronged submission for past loss, namely the three month period off work following the Accident, the six week period off work following the knee surgery, and an annual claim since the Accident based upon the assertion that he missed seven to fourteen days per year as a result of his injuries.

171. The Respondent does not take issue with the first two prongs and they can be dealt with summarily.

172. Dealing with the three months off work following the Accident, the Claimant earned $117,206 in the nine months in 2016 that he did work. Extrapolating those earnings to twelve months, yields earnings of $156,274 or a difference of $39,068.

173. The parties agreed to a tax rate of 25% and applying that percentage to $39,068 results in a net loss after tax of $29,301.

174. The Claimant's knee surgery occurred in December, 2020. Utilizing 2020 T4 earnings of $160,273 for what was effectively eleven months, and applying the same formula, the past loss of income net of tax related to the surgery is $16,391.

175. I understand the Claimant received weekly disability benefits of $1,500 which the parties agree would be a deductible amount under UMP.

176. The third prong of the Claimant's submission is more problematic.

177. The Respondent submits, with some justification, that there is no documentary support for the Claimant's assertion that he has missed 7 to 14 shifts a year since the accident. The mere fact that the Claimant provides a range is indicative of the uncertainty for what is being put forward. As the Respondent says, the Claimant seems to be pulling numbers out of the air.

178. The Claimant says there is no documentation that could be provided. The onus is on the Claimant to prove his claim and presumably he could have kept a record of the days he had to turn down shifts for reasons related to his Accident. He did not do that.

179. In certain circumstances the evidence of the Claimant might be sufficient to establish this type of loss. Prima facie, I should have no reason to doubt what the Claimant is saying, but on the other hand I have no confidence that the mere fact of turning down a shift results in a financial loss. The Claimant might well have worked a "replacement" shift that he would not have otherwise worked had he accepted the initial shift.

180. Interestingly, the first reference I can find in the expert reports to the Claimant reporting he was having to take seven to fourteen shifts off work per year, or any days off other than the first three months, is the last assessment conducted by Dr. Woolfenden on October 11, 2022.

181. In fact, Dr. Travlos in his report of August 2, 2022 wrote as follows on page 5 in respect to the history reported to him by the Claimant:

> 1 (f) He returned to regular full duties on his return to work and, other than taking six weeks off again following his knee surgery in 2020, he has been working full time and managing the work.

182. A similar statement appears in the earlier reports of Dr. Mehdiratta at page 6 and Dr. Schmidt at page 7.

183. In the result I decline to make an award for past loss of earning capacity based upon the Claimant's bare statement without more, that he has missed seven to fourteen shifts per year since the Accident.

184. I thereby award $46,000 for past loss of earning capacity before taking into account any deductible amounts pursuant to section **148.1** (1) of the Regulation.

FUTURE LOSS OF EARNING CAPACITY

185. The focus of the exercise for determining a loss of future earning capacity involves a comparison between the Claimant's likely future had the accident not occurred and his likely future now that the accident has occurred: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32.

186. The award is an assessment and not a mathematical calculation. Such assessment will depend on the type and severity of the Claimant's injuries and the nature of the anticipated employment in issue: *Gregory* at para. 32.

187. In *Grewal v. Naumann*, 2017 BCCA 158, Justice Goepel described the assessment as follows:

> [48] In summary, an assessment of loss of both past and future earning capacity involves a

> consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility, the Court must then determine the measure of damages by assessing the likelihood of the event. Depending on the facts of the case, a loss may be quantified either on an earnings approach or on a capital asset approach: *Perren v. Lalari,* 2010 BCCA 140 at para. 32.

188. In *Rab v. Prescott*, 2021 BCCA 345 at para. 47, the Court provided a three-step process to assess claims for loss of future earning capacity:

> (1) does the evidence disclose a potential future event that could lead to a loss of capacity?
>
> (2) if so, is there a real and substantial possibility that the future event will cause a pecuniary loss to the plaintiff; and
>
> (3) if there is a real and substantial possibility, what is the value of that possible future loss, given the relative likelihood of it occurring?

189. Once the future loss has been assessed, it is incumbent that the overall fairness and reasonableness of the award be considered taking into account all of the evidence: *Rosvold v. Dunlop,* 2001 BCCA 1 at para. 1.

190. The Claimant submitted in argument that had the Accident not occurred, he would have become a foreman earning between $350,000 and $400,000. Given the increase from his present earnings of $150,000, he is suffering an annual loss of between $200,000 and $250,000, which

extrapolated to age 65, and taking into account contingencies, results in an award in excess of $3,000,000.

191. Alternatively, the Claimant asserted that if as a result of treatment he was able to improve such that he becomes a foreman in five to ten years, the loss could be determined on that basis.

192. I pause to say there was no evidence to support this hypothesis.

193. In the further alternative the Claimant submitted the award should be based upon the Claimant's evidence that he was having to miss seven to fourteen shifts per year due to accident related injuries. Such hypothesis if extrapolated to age 65 with the Civil Jury Instruction multiplier of 19.803, results in a loss ranging between $95,000 and $190,000.

194. The Respondent submitted the Claimant was not able to satisfy the first step from *Rab* as the evidence did not disclose a future event leading to a loss of earning capacity. The Claimant was working full time and earning more each year. If he was to take advantage of the recommended treatment, he would, according to the expert evidence, achieve further improvement.

195. Alternatively if there was evidence to prove a real and substantial possibility of a future event leading to a pecuniary loss, then any award for loss of earning capacity should be based upon the capital asset approach utilizing annual income as suggested in *Pallos v. Insurance Corp of British Columbia* (1995), 100 BCLR (2d) 260 (CA) (the "Pallos Approach").

196. The Respondent proposed $75,000 to $80,000 based upon six months of income.

197. As to the Claimant's assertion that he would have become a foreman earning between $350,000 and $400,000, the Respondent submitted this was mere speculation.

198. The Claimant never applied for such position, there was no evidence from the employer that it had concerns about his performance such that he might not have qualified had he ever applied, and there was no expert evidence to support a functional limitation negatively impacting his ability to become a foreman.

199. The Respondent says that given his seniority and membership in the union, the Claimant retains the opportunity of applying for the foreman position if he so chooses.

200. I have already concluded the evidence discloses a real and substantial possibility of there being a potential future event that could give rise to a loss of earning capacity causing a pecuniary loss to the Claimant.

201. Dr. Travlos accepted the Claimant still had symptoms which would interfere with his endurance for overtime work such that he might reasonably choose to work less overtime than he otherwise would have had the Accident not occurred, resulting in the real and substantial possibility of a pecuniary loss.

202. Dr. Woolfenden agreed it was reasonable for the Claimant to avoid working graveyard shifts and in fact recommended he do so. Given the difference in hourly pay between graveyard and day shift/afternoon shift, this event would also raise a real and substantial possibility of the Claimant suffering a financial loss.

203. Dr. Schmidt opined that the Claimant showed ongoing cognitive disruption with a diagnosis of Adjustment Disorder with mixed anxiety

and depressed mood and possibly Somatic Symptom Disorder with predominant pain.

204. Dr. Schmidt also opined, albeit within the context of becoming a foreman, that the type of cognitive, emotional and behavioural difficulties displayed by the Claimant would make employment more difficult.

205. The opinions of Dr. Schmidt again raise the spectre of a real and substantial possibility of a loss of capacity giving rise to a pecuniary loss in the context of the Claimant being less valuable to himself as a person capable of earning income in a competitive market: *Brown v. Golaiy* (1985) (3d) 353 (SC)

206. The question becomes what is the value of this possible future loss.

207. Before doing so, I will address the submission of the Claimant that absent the Accident, he would have become a foreman earning substantially greater income.

208. The Claimant's evidence as to why he had not applied for the position of foreman was that he "has concerns" about his cognitive and physical abilities to perform a foreman's position because he would have to take a shift on short notice and work double shifts with only eight hours between. He felt he might let the other employees down, given a foreman is responsible for their safety.

209. Significantly in my view, the evidence was that the position of foreman is a less physical job than that of a tradesman because foremen are not permitted to "work on the tools" pursuant to the terms of the collective agreement.

210. It strikes me therefore that at least from a physical perspective, the Claimant's "concerns" are lacking in substance.

211. In my view, it would have made more sense for the Claimant to apply for the foreman position if he was truly interested in it, given the physical injuries and difficulties he alleges as a result of the Accident and his non-accident related injuries, which include the significant 2004 left hand injury that has left him with phantom pain and is worse in the winter months when it is cold, and the bilateral carpel tunnel syndrome that developed post accident.

212. Notably the evidence of EM was that he himself has been left with hand pain as a result of working with vibrating tools before becoming a foreman.

213. The Claimant's statement to Dr. Travlos that "….he is still the preferred go-to individual for more complex, complicated tasks at work…" casts doubt on his evidence regarding concerns about his cognitive abilities.

214. As was stated in *Roberts v. Kim* (1998) BCLR (3d) 326 at para. 31 (CA) and more recently in *Kim v. Moirer*, 2014 BCCA 63 at para. 8, it is not sufficient to equate the loss of capital asset with the Claimant's own perception, without showing a "functional" element.

215. In the absence of a functional element, such statement of perception is merely speculative: *Kim* at para. 8

216. Similar to the situation in *Roberts*, the Claimant introduced no psychiatric evidence as to the lasting problems of a psychological nature, or expert evidence in the form of functional capacity, vocational or sleep assessments to provide the functional element necessary to buttress the stated perceptions of the Claimant.

217. It is significant Dr. Mehdiratta recommended in March 2021 both a functional capacity and sleep assessment, neither of which occurred.

218. I recognize Dr. Schmidt offered some evidence as to the psychological impact of the Claimant's Accident related difficulties, but in my view this limited evidence was insufficient to establish a real and substantial possibility that the Claimant has lost the opportunity to become a foreman as a result of the Accident: *Kim* at para. 8.

219. My conclusion is reinforced by Dr. Schmidt's opinion that the Claimant "…should he be interested…" would benefit from psychological intervention which would allow him to gain control of his dysfunctional emotions.

220. In the result, I make no award in respect to this submission.

221. Returning to valuation of the claim for loss of earning capacity, I agree with the Respondent that the "rougher and readier" *Pallos* Approach is most applicable in the circumstances: *Rab* at para. 66.

222. By and large the Claimant has continued to work full time without loss of income. The basis for arriving at my conclusion for there being a real and substantial possibility of a future event giving rise to a pecuniary loss as set out in paragraphs 200 to 205 herein, is not easily quantifiable, particularly given the lack of evidence as to the value of overtime and shift differential to the Claimant.

223. The Claimant is a relatively young man who has 20 to 25 years of working life ahead of him, in a physical position that requires working in difficult environmental conditions.

224. Having said that, I view the impairment of the Claimant's earning capacity as being at the low end of the scale.

225. The Respondent suggested an award based upon six months of income.

226. In my view taking into account the Claimant's age and the nature of his ongoing complaints of pain and fatigue in conjunction with his future employment, an appropriate award is $150,000 representing approximately one year of income based upon his 2021 tax return after adjustment upward to reflect the lost income associated with the knee surgery, and a 10% negative contingency reflecting the reasonable possibility for further improvement following treatment as opined by Dr. Schmidt and Dr. Travlos.

227. I am supported in this conclusion by the Claimant's second alternate submission for an award based upon a suggested annual loss of seven to fourteen shifts, which to age 65 and taking the mid-point of 10.5 shifts, yields a loss in the same range.

228. While I did not accept the hypothesis of seven to fourteen days in respect to past loss of earning capacity due to a lack of proof, it is reflective of one way in which the Claimant himself views his loss.

229. In the circumstances, I am satisfied an award of $150,000 is fair and reasonable after considering all of the evidence.

230. I would add that I did take into account the evidence of the Claimant's sister CR, his friend BC and foreman EM as to their observations, given it was generally consistent and fit within the "cognitive disruption" term used by Dr. Schmidt.

COST OF FUTURE CARE

231. There was limited evidence as to the requirement for and cost of future care. The Claimant sought amounts for house cleaning, counselling and

lawn mowing, in addition to recommendations scattered throughout the various expert reports.

232. There was no cost of care report from an occupational therapist as is often seen in these type of cases.

233. The Respondent suggested an award of $5,000 to $7,500 to account for treatment recommendations made by Dr. Schmidt, Dr. Woolfenden and Dr. Travlos.

234. Those recommendations included instruction in a gymnasium for proper exercise techniques, active rehabilitation, modalities such as acupuncture to reduce neck symptoms, occasional ibuprofen to treat neck pain and headaches, and an initial course of 12 sessions of Mindfulness Training and Cognitive Behavioral Therapy by a registered psychologist as recommended by Dr. Schmidt.

235. In respect to Dr. Schmidt's recommendation, I note the Claimant in his Schedule of Special Damages referenced three counselling sessions which he went to in January and April of this year.

236. As mentioned earlier, Dr. Mehdiratta recommended inter alia, a sleep study, an occupational therapy assessment and a trial of Elavil.

237. Given the paucity of evidence, I award the sum of $10,000 which will include the recommendations as suggested by the Respondent and a contribution to the recommendations of Dr. Mehdiratta for a sleep study and occupational therapy assessment. I have not included any amount for housekeeping or lawn mowing.

SPECIAL DAMAGES

238. The Claimant seeks special damages totalling $4,743 comprised of $1,633 for mileage to physiotherapy and other medical appointments, $62.01 for medication, $800 for grass cutting which the Claimant agreed sounded high, $995 for the knee MRI and $1,245 for the brain MRI.

239. The Respondent submitted that the amounts for the brain MRI and grass cutting should be excluded, such that the proper amount is $2,698.31.

240. The Respondent submits the brain MRI was not prescribed by a medical doctor but rather was initiated by the Claimant himself because it was faster. The Respondent further asserts that the MRI was undertaken on March 27, 2018, which it says was long after cognitive issues due to a traumatic brain injury would have resolved.

241. The Respondent's latter submission is correct but only in hindsight now that the result is known. I will award 50% of the cost for the brain MRI.

242. I agree the claim for grass cutting should be excluded as I do not accept the Claimant is unable to mow his lawn as a result of any injuries sustained in the Accident.

243. In conclusion, I award the sum of $3,312.51 for special damages.

IX. CONCLUSION

244. I award the Claimant the following:

Non Pecuniary Damages	$110,000
Past Loss of Earning Capacity	$ 46,000*
Future Loss of Earning Capacity	$150,000

Cost of Future Care	$ 10,000
Special Damages	$ 3,312.51
TOTAL	**$ 319,312.51**

**Before deductible amount of $1,500 weekly disability benefits*

245. Subject to any factors which I am not aware of, I award the Claimant his costs on a party and party basis as prescribed by section **148.2** (3) of the Regulation.

246. If the parties wish to make submissions on deductible amounts that cannot be agreed upon, costs or any other issue, a telephone conference can be arranged to discuss how best to proceed.

Dennis Quinlan

Dated: July 19, 2023 _____

Arbitrator – Dennis C. Quinlan, KC