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MEMORANDUM

TO: Client

FROM: Linda Rondinelli, Taran Virtual Associates

RE: Quantum of General Damages

DATE: August 22, 2013

BRIEF DESCRIPTION OF ASSIGNMENT

You have asked us to find personal injury cases where plaintiffs have suffered the same or similar injuries to your client's injuries with a view to determining a realistic expectation of general damages for pain and suffering. The facts are more particularly set out below under the heading "FACTS AND ISSUES".

FACTS AND ISSUES

You act for the plaintiff.

You allege that as a result of the defendant's negligence, your client suffered and/or continues to suffer the following injuries:

- Fractured dislocation of right ankle
- Intra-articular injury with intra-articular cartilage damage
- 2 surgeries: open reduction, internal fixation, followed by second surgery to remove the hardware
- Plaster cast to the knee and crutches for 6 weeks
- Scar on right ankle (11 cm on outside and 6 cm on inside)
- May require further surgery
- High risk for arthritis
- Cannot stand/walk for long periods
- No athletic pursuits

You have asked us to conduct research into what amount of general damages have been awarded to plaintiffs who have suffered the same or similar injuries. Please note that the research will not look into the issue of liability, and assumes that liability can be proven.

SUMMARY OF CASES

Attached is a list of 19 cases that I deemed to be the most relevant, in order of highest award to lowest. I tried to find cases where the only or main injury to the Plaintiff was the same as your client's injury - however, you will see that some of the cases are more severe, and some less so than your client's. The range of damages (original awards before inflation) is from \$150,000 on the high end to \$20,000 on the low end. The full texts of the cases were downloaded and I attach them for your review. Please note that I have not reviewed the full

cases (just their summaries), as the time budget did not allow it. The databases I searched were the *Carlson Personal Injury Quantum of Damages* (Quicklaw), and the *Personal Injury Quantum Service* (Westlaw Litigator). There were enough similar fact cases that I was able to focus on Ontario cases only.

All cases decided prior to 2011 have been increased for inflation using the Bank of Canada's inflation calculator.

Case Summaries

Daniel-Cuffy v. Pereira, 2005 CarswellOnt 3859 (S.C.J.)

- \$150,000 (**\$172,591 in 2013 dollars**)
- 44-year-old nurse - motor vehicle accident
- permanent serious injury to foot
- four separate foot fractures, as well as an ankle fracture
- permanent damage to cartilage
- at risk for post-traumatic arthritic changes
- ankle placed in a cast for six weeks
- gradually advanced from a walker to a tripod cane to a single cane
- continued to wear a brace as well as custom orthotic shoes
- severity of fracture was a nine on a scale from one to 10
- permanently disabled
- could not return to job as a nurse
- injury was serious, debilitating, and permanent
- caused intense pain, decreased mobility, the loss of employment, and impairment of the enjoyment of life
- probable ankle fusion operation in the future, with a long recovery and uncertain results

Schneider v. St. Clair Region Conservation Authority, 2009 CarswellOnt 5197 (C.A.)

- \$90,000 (**\$96,177 in 2013 dollars**)
- struck a snow-embedded concrete wall while cross-country skiing
- compound fracture of three bones in ankle
- surgery for the insertion of a plate and screws under general anaesthesia
- two days in hospital, two weeks on non-weight bearing crutches, and then six weeks in a non-weight bearing air cast boot
- further surgery was performed seven-months post-accident to remove the plate and all but one screw
- additional four weeks on crutches
- difficulty walking, and could not stand for very long
- regime of physiotherapy and massage therapy for several months
- returned to some sporting activities within one year, but performance in those activities had been dramatically affected
- former elite athlete

Cerilli v. Ottawa (City) [2006] O.J. No. 4850 (S.C.J.)

- \$70,000 (**\$78,630 in 2013 dollars**)
- Slip & fall on ice
- tibial plafond fracture
- open reduction & internal fixation

- pain in ankle
- swelling in ankle & leg
- surgery to remove hardware
- unsightly & permanent scarring on leg & ankle
- osteoarthritis in ankle
- limp
- the Court of Appeal varied parts of the award, but the trial judge's general damages award remained intact - see [2008] O.J. No. 138 (C.A)

13 Case summaries omitted for the purposes of this sample.

Rappos v. Corp. of the Cave Inc. Lafèche, 2012 CarswellOnt 4576 (S.C.J.)

- \$65,000
- fall while riding on defendant's ziplining course
- severe damage to ankle in addition to other injuries
- Two surgical interventions were required to repair ankle
- several months in outpatient care and rehabilitation therapy
- after discharge from rehabilitation plaintiff continued to see physician for issues of pain and weight gain associated with several months of immobility and struggle to return to very physically demanding work

Lambert v. Fort William Indian Band, 2006 CarswellOnt 8027 (S.C.J.)

- \$55,000.00 (\$61,780 in 2013 dollars)
- slip and fall
- trimalleolar fracture dislocation of ankle
- Doctors initially tried to externally manipulate the dislocation
- surgery was performed the following day
- fracture was secured with the insertion of a plate and screws
- non-weight bearing cast for six weeks
- required extensive physiotherapy, and needed considerable assistance around her home and to get around town
- off work for three months
- high-grade fracture, and prognosis poor
- Post-traumatic arthritis would likely develop within a few years
- might require further surgery

Roach v. Mississauga (City), 2007 CarswellOnt 5744 (S.C.J)

- \$27,500 (\$30,227 in 2013 dollars)
- slip and fall
- fractured ankle
- cast for six weeks
- physiotherapy
- expected to suffer ongoing pain and some limitation on a permanent basis as a result of her injury