SUPREME COURT OF QUEENSLAND

CITATION:	*Thomson v State of Queensland & Anor* [2019] QSC 95
PARTIES:	**STEPHEN THOMSON** (plaintiff) **v** **STATE OF QUEENSLAND** (first defendant) and **QUEENSLAND POLICE-CITIZENS YOUTH WELFARE ASSOCIATION (ACN 009 666 193)** (second defendant)
FILE NO:	BS 8331 of 2014
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	10 April 2019
DELIVERED AT:	Brisbane
HEARING DATE:	11, 12, 13 and 14 February 2019 and 28 March 2019
JUDGE:	Applegarth J
ORDERS:	**1. Judgment for the plaintiff against the first defendant in the sum assessed against it.** **2. Judgment for the plaintiff against the second defendant in the sum assessed against it.** **3. Within seven days the parties bring in minutes of judgments, including any orders for contribution between defendants and proposed orders as to costs.** **4. Liberty to apply.**
CATCHWORDS:	DAMAGES – PARTICULAR AWARDS OF GENERAL DAMAGES – QUANTUM – where the plaintiff contracted Q Fever and Q Fever Debility Syndrome and a consequential serious psychiatric injury after working on a school farm – where the plaintiff was an employee of the second defendant and the farm was operated by the first defendant – where the plaintiff sued each defendant for breach of duty of care – where each defendant admits liability to the plaintiff – what the plaintiff's likely employment and health would have been had he not contracted Q Fever – what is an appropriate assessment of damages

DAMAGES – MEASURE AND REMOTENESS OF DAMAGES IN ACTIONS FOR TORT – MEASURE OF DAMAGES – PERSONAL INJURIES – LOSS OF EARNINGS AND EARNING CAPACITY – EXPENSE FLOWING FROM PLAINTIFF'S INABILITY TO WORK – GRATUITOUS AND COMMERCIAL CARE – where the plaintiff's Q Fever Debility Syndrome and chronic major depressive disorder create a need for daily care – where care provided by the plaintiff's wife – what is an appropriate assessment for past and future care

Workers' Compensation and Rehabilitation Act 2003 ch 5, pt 8, pt 9, s 306N(1)
Workers' Compensation and Rehabilitation Regulation 2003 sch 9, sch 12

Guirguis Pty Ltd v Michel's Patisserie System Pty Ltd [2018] 1 Qd R 132; [2017] QCA 083 cited
Graham v Baker (1961) 106 CLR 340 cited
Watts v Rake (1960) 108 CLR 158 cited
Shaw v Menzies [2011] QCA 197 cited

COUNSEL: G J Cross and O Perkiss for the plaintiff
M T O'Sullivan for the first defendant
C S Harding for the second defendant

SOLICITORS: The Personal Injury Lawyers for the plaintiff
Crown Solicitor for the first defendant
McInnes Wilson Lawyers for the second defendant

[1] The plaintiff, Mr Thomson, was employed by the second defendant as a Project Supervisor (Carpenter). In late 2011 he was required to supervise a project to upgrade cattle yards and other items at the Southport High School Farm. This exposed him to the risk of the bacterium which causes Q Fever. He contracted Q Fever in January 2012 and, as a result, Q Fever Debility Syndrome. In turn, he developed a chronic Major Depressive Disorder and an Adjustment Disorder.

[2] He sued the first defendant which operated the farm. He also sued his employer for breach of duty. Each defendant denied liability and the trial occupied four days of evidence. The evidence established that the State of Queensland was well aware of the risk of Q Fever in the school farm environment, but did not disclose that risk to the plaintiff or his employer. The evidence also suggested that the second defendant's risk assessment was inadequate to detect the risk and to ensure that adequate steps were taken to meet the risk of infection, for example, a Q Fever vaccination which provides a very high level of protection against the disease. After the evidence concluded, but before written submissions were made, the issue of liability was resolved by the parties. Each defendant admitted liability to the plaintiff. The defendants have resolved contribution proceedings between them on the basis that the first defendant is 80 per cent and the second defendant is 20 per cent responsible for the plaintiff's loss and damage.

[3] The remaining issue is the assessment of an appropriate amount to compensate the plaintiff for his loss and damage. It is common ground that damages against the first defendant are to be assessed in accordance with common law principles.[1] Damages against the second defendant are to be assessed pursuant to Chapter 5, Part 8 and Part 9 of the *WCRA* (Reprint No 5E).

[4] The substantial issues include:

(a) an appropriate award of general damages;

(b) the plaintiff's likely employment and income if he had not contracted Q Fever in January 2012, including the prospect that he would have continued to work after turning 65;

(c) special damages;

(d) future medical and other expenses;

(e) past and future care.

As to the last matter, the plaintiff accepts in his pleading in reply that by virtue of the provisions of the *WCRA*, he is precluded from being awarded damages against the second defendant in respect of any care and assistance provided to him, either in the past or future.

Overview of the evidence

[5] The plaintiff was a highly valued employee and enjoyed his work supervising disadvantaged individuals on programs which gave them work experience and improved their skills and employability. He was born on 18 April 1954 and after leaving a technical school, completed an apprenticeship and became a sign writer. Over the following decades he worked for himself or was employed, either as a sign writer or in carpentry work. In addition, he became a Tae Kwon Do instructor and earned income teaching Tae Kwon Do. His association with the Police and Citizens Youth Club (PCYC) led him into being employed to act as a supervisor in the late 1990s. This included supervising "work for the dole" projects where he would teach individuals skills.

[6] Before the plaintiff contracted Q Fever he planned to continue to work for the second defendant as a supervisor because he enjoyed the work and needed to earn an income to support himself and his wife. His wife and he each planned to work for as long as possible, and to eventually retire to a home they planned to build at Ashby on the Clarence River in northern New South Wales.

[7] Some people who contract Q Fever hardly notice it and are not diagnosed because their immune system conquers the infection.[2] In other cases, Q Fever is in an acute form and occasionally it can be a chronic illness. The plaintiff probably became infected with a

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1 The *Civil Liability Act* 2003 does not apply as the harm resulting from the breach of duty is or includes an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act* 2003 ("*WCRA*").

2 Some evidence suggests 60 per cent of cases in adults are asymptomatic.

bacterial organism called *Coxiella burnetii* in December 2011, shortly before he and others went on Christmas holidays. The likely source was from dust or from soil that he dug up or came in contact with on the farm. The "modal incubation period"[3] is between 14 and 21 days. The plaintiff's Q Fever symptoms became severe in early January 2012, but unfortunately he was not diagnosed with Q Fever for a substantial time. The acute Q Fever which he suffered, followed by Q Fever Debility Syndrome, meant that he never returned to work.

[8] Several years after contracting Q Fever, the plaintiff remains in a parlous physical and psychological state. His and his wife's plans to work for as long as they could and then to retire and enjoy life have been shattered. The plaintiff's state is such that his wife provides a high level of care. With medical and other advice, the plaintiff has tried to rehabilitate himself and become more active. However, there is no indication that either his physical or psychological condition is likely to improve substantially.

Q Fever Debility Syndrome

[9] Professor Whitby explained that the plaintiff is suffering from Q Fever Debility Syndrome. This is quite different to a diagnosis of chronic Q Fever which implies ongoing infection of the Q Fever organism within the body which may affect heart valves or the liver. Q Fever Debility Syndrome (which is also known as Q Fever Fatigue Syndrome) has a more complex set of symptoms. The pathogenesis of Q Fever Debility Syndrome is unknown. The features of the syndrome are non-specific and variable, and tend to include profound fatigue. These symptoms continue to occur despite apparently adequate treatment with an appropriate antibiotic for the initial, infective symptoms of Q Fever.

[10] Persons who have this syndrome frequently complain of loss of libido and loss of enjoyment in life. Although there is some evidence that the syndrome can be treated with Selective Serotonin Reuptake Inhibitors ("SSRIs"), which are also used as anti-depressants, this does not mean that people with Q Fever Debility Syndrome are depressed. Instead, according to Professor Whitby, there is some neuro-transmitter change in the brain which is altered by Q Fever.

[11] Mr Thomson has the classic symptoms of Q Fever Debility Syndrome including lethargy, disrupted sleep pattern, loss of libido and loss of the enjoyment of life.

[12] Professor Whitby's opinion, which I accept, is that it is not possible to prognosticate on the duration of the disability. While the vast majority of patients improve spontaneously over a period of months, some patients' symptoms persist for years.

[13] There are approaches recommended by the Royal Australasian Colleges of Physicians and Psychiatrists in the management of similar syndromes, and these have been tried by the plaintiff.

The plaintiff's work, family life and plans for the future before he contracted Q Fever

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[3] This is the most common incubation period, and in terms of epidemiology, it means that 95 per cent of infections will occur during that period.

[14] Over the years the plaintiff has lived in the Beenleigh-Waterford-Wolfdene area. His children became involved with the PCYC and, as a result, the plaintiff became interested in Tae Kwon Do. He became an instructor and reached a fourth dan black belt stage in around 2006. He was physically fit. He taught Tae Kwon Do at the PCYC and began working as a supervisor on its "work for the dole" and other programs. He also did some signwriting work on the weekends.

[15] The plaintiff's first wife died in 2002 and he overcame his grief with the assistance of some counselling. Apart from that period of grief, he had no psychiatric or psychological issues.

[16] The plaintiff met his wife, Carole, in 2005 and they married in March 2007. Mrs Thomson's previous marriage had been an unhappy one. She was subject to violence and when she left that relationship she owned very little, despite having worked all of her life. By the time she met the plaintiff she was working in a pharmacy, and enjoyed that work.

[17] The first four years of the plaintiff's marriage, before he was infected with Q Fever, were happy ones. The plaintiff and his wife had a wonderful relationship. They enjoyed life and recreations like dancing. They shared the house which he owned at Mount Tamborine. The plaintiff had his Tae Kwon Do. The plaintiff enjoyed his work and his wife enjoyed hers.

[18] In about 2008 the plaintiff sold his property at Mount Tamborine. He and his wife moved to live with his parents at Eagleby near Beenleigh. The plaintiff's elderly parents needed support.

[19] Work had always been a big part of the plaintiff's life, and it was also a big part of his wife's life. As she explained, she had worked all of her life and enjoyed work. As a pharmacy assistant she enjoyed interacting with people. The plaintiff also had an extraordinary work ethic. He intended to work "until probably 70-ish because I really enjoyed all the projects". The plaintiff's wife had a shared view about their future. She explained how she and her husband were "both exactly the same" and were "one hundred miles an hour in doing something and we can't sit still. Well, now that's changed." When asked when the plaintiff would have stopped working, she answered "I'd say the same as me; until his bones couldn't get him in the car and he couldn't do it."

[20] The plaintiff and his wife purchased an eight acre property at Ashby near the Clarence River. They planned to build a house which they would go down to on weekends and eventually have as a "retirement sort of holiday place". They engaged a builder to construct a home on that property and construction started in 2011. There were some problems with the supervision of the building, with reports that the builders were not devoting the time that they claimed. As a result, the plaintiff and his wife had to supervise progress more closely in late 2011.

[21] Historically the plaintiff had worked a five day work week. However, not long after the Southport State High School project commenced, his employer agreed that he could reduce to three days a week, and another supervisor did his job on the other two days. This enabled the plaintiff to spend Friday and the weekends living in a shed on the property at Ashby. Another reason the plaintiff reduced his working week from five

days to three days commencing in late September 2011 was to address some issues in relation to his father's dementia and to make sure that his father was being looked after and his pension being appropriately used. He would spend Thursday nights at his parents' home.

[22] In November 2011 the construction of the weekender/retirement home at Ashby had progressed to a stage that the plaintiff and his wife were able to occupy it. The plaintiff planned to do some of the internal carpentry like architraves. However, his illness meant this never occurred and contractors had to be engaged to complete this work.

[23] A contentious issue is what the plaintiff's work and income would have been had he not been affected by Q Fever Debility Syndrome and his chronic mental illness. The plaintiff's evidence is that he would have returned to work early in the new year, tidied up and completed the Southport State High School project, moved on to another project, and resumed a five day working week. The next project had already been identified and it was supposed to start after the farm project.

[24] The plaintiff's case that he would have resumed a five day working week in early 2012 is supported by the fact that he enjoyed his work, needed the income and was a highly valued employee.

[25] Subject to issues concerning his physical health (to be discussed below) I think it highly probable that the plaintiff would have returned to work in January 2012 and remained employed as a supervisor. He probably would have resumed a five day working week. Most of the PCYC projects were near Beenleigh or on the Gold Coast. As a result, the plaintiff would have either continued to live with or close to his parents at Beenleigh, where the PCYC was based. The plaintiff's wife would have supported this, and also lent support to the plaintiff's parents. The plaintiff's father experienced the onset of dementia and his mother suffered from emphysema. There is no reason to suppose that the plaintiff and his wife would not have continued to share his parents' home during the week, and spent time at the "weekender" they had just built at Ashby. Depending upon financial and family circumstances, the plaintiff might have reduced his work to four days a week, if that suited his employer, in order to spend long weekends at Ashby. The plaintiff and his wife had financial reasons to continue working. He had to service a substantial mortgage. They only had a small amount of superannuation. Eventually, when the plaintiff stopped working, he and his wife would have moved to the Ashby house permanently.

[26] As matters transpired, the plaintiff's and his wife's plans to continue working for as long as they were physically able to do so, retire to Ashby and enjoy their retirement were dashed by the plaintiff's illness and incapacity. The plaintiff fell ill during his Christmas holidays at Ashby. Rather than eventually being a retirement home, it became, in effect, a nursing home and the plaintiff's wife became his nurse.

[27] The health of the plaintiff's parents did not improve and his mother wanted his father to be placed in a nursing home. The plaintiff did not favour this and, as a result, his parents moved to a house that the plaintiff and his wife purchased for them near Ashby. After the plaintiff's parents moved to the Clarence region in 2014, their home at Eagleby was sold.

[28] The defendants question whether the plaintiff would have resumed working a five day week in 2012. They submit that he probably would not have increased his working days beyond three per week because of his responsibility for the care of his parents and his desire to spend more time at Ashby, doing work on the interior of the house and any landscaping work. The defendants also point out that if the plaintiff and his wife had established a permanent home at Ashby, and if because of his parents' health they also moved to live in that area, it would have been "crazy" for the plaintiff to commute each day from Ashby to work for the PCYC. He would not have undertaken the six hour round trip each day. I accept this submission. However, it does not address the question of when the plaintiff and his wife would have established a permanent home at Ashby, with the result that the plaintiff would not commute each day. Also, the fact that the plaintiff's parents relocated close to Ashby in 2014 and sold their home some time thereafter does not mean that they would have done these things in 2014 if the plaintiff had not contracted Q Fever.

[29] The second defendant submits that after 2014 the plaintiff would not have been able to utilise his parents' home at Eagleby to enable him to continue his work with the second defendant. However, I do not accept this argument. If the plaintiff had not become ill with Q Fever in early 2012 then it is unlikely that his parents would have moved from their home in Eagleby to Ashby in 2014. It is far more likely that they would have remained in their home, with the plaintiff and his wife living there during the week and spending weekends or long weekends at Ashby. If his parents had relocated, for example, to a nursing home or to another home, it probably would have been in the vicinity of Beenleigh or the Gold Coast. The plaintiff would have lived during the week either at his parents' home or elsewhere close to his work.

[30] I conclude that, subject to the state of his physical health, the plaintiff would have continued to work for the second defendant after January 2012 for at least four days per week. He would have been able to finish the interior carpentry at the "weekender" at Ashby at weekends. His and his wife's financial situation suggests that he would have worked five days per week, if possible, after January 2012. More generally, I accept the plaintiff and the plaintiff's wife's evidence that the plaintiff would have continued to work for the second defendant for as long as he could. The plaintiff had employment which he enjoyed with the second defendant. His and his wife's plan in late 2011 was to build a "weekender" which would have been their retirement home. They did not intend to reside permanently at Ashby after that house was built. There was no similar employment available to the plaintiff in the Clarence region, and he would not have wished to sustain an incredibly long commute each working day. Therefore, he and his wife probably would have continued to live in or around Beenleigh or the Gold Coast, worked as much as they could and also supported the plaintiff's parents. Over time, and depending upon their financial and family circumstances, the plaintiff may have been inclined to reduce his working week from five days a week to four days a week, if this suited his employer, in order to spend long weekends at his "weekender", and also to spend some time each week checking on the health and welfare of his parents.

[31] In summary, had the plaintiff not contracted Q Fever he would have continued to work for the PCYC for as long as he physically could, and for as long as work was available to him there. There was no retirement age, he wanted to work and the second defendant wanted him to continue to work. That said, the evidence of Mr Haestier, the Beenleigh PCYC branch manager is that the Skilling of Queenslanders for Work Program undertaken by the PCYC concluded in 2017. Without funding there were no further

contracts for the supervisors. However, up until then, the plaintiff probably would have continued to work as a supervisor with the second defendant.

The plaintiff's health before he contracted Q Fever

[32] The evidence is that the plaintiff generally was in good health over the years before he contracted Q Fever.

[33] The first defendant points to an entry in the records of the Clarence Medical Centre on 10 November 2010. The plaintiff attended an appointment with Dr Thakur as a result of a wound infection. It appears that he had wounded his left foot some time earlier while gardening, and developed a headache, fever and bodyache which he treated with pain killers. However, the pain extended to his groin. The plaintiff received medication for the infection and his pain and follow-up consultations indicated that matters had resolved. The first defendant directs attention to an entry in the medical records for 10 October 2010: "Long history of headaches and bodyache. They have been present once a month for the 4 years".

[34] The plaintiff could not recall giving such a history, but mentioned that he did experience headaches from sinus. The plaintiff's wife could not recall anything which would make accurate the history of headaches and bodyache recorded in the entry for 10 November 2010.

[35] Dr Thakur was called to give evidence but had no independent recollection of the entry which I have quoted. More importantly, the other medical records do not suggest that the plaintiff had a history of headaches and bodyaches over the previous four years. The reference to headaches is, however, consistent with headaches from sinus.

[36] In addition, if the plaintiff had reported a long history of headaches and bodyache from unknown causes, it is likely that Dr Thakur would have undertaken some investigation or relevant entries would appear in a follow-up consultation. They do not. The entry which I have quoted appears to have been in error, or perhaps a reference to regular sinus headaches and/or occasional aches which the plaintiff experienced through physical work or exercise. The entry is a brief, incidental note taken during a consultation which was focused on something else: the plaintiff's wound infection and its symptoms. I accept the evidence of the plaintiff and of his wife about his general state of health since they are consistent with the medical records. This odd entry does not support the conclusion that the plaintiff had debilitating headaches and bodyaches. No-one observed him suffering from those conditions or received reports of those ailments during his lengthy history of employment at the PCYC.

[37] Next, there is evidence that the plaintiff injured his elbow during the project, and also injured his right shoulder in around 2011 when putting a concrete mixer into a utility. As to the elbow injury, the plaintiff's evidence was that he hurt his elbow once during the project and that he received treatment for it. Medical records show that he had a sore right elbow for five days, that he was prescribed anti-inflammatory medication and that he had a steroid injection. As to his right shoulder, a physiotherapy entry for 20 June 2013 records that he injured his shoulder two years earlier and had two cortisone injections and that his shoulder never recovered. The plaintiff's evidence is that the shoulder injury recovered during the time he has not been doing heavy work, but that it kept getting aggravated when he was working. Dr Ringrose examined the plaintiff in May 2013 and this examination revealed "significant arthropathy with marked tenderness and pain on passive movement" of the plaintiff's right shoulder and left knee. This entry was not explored in evidence, including the extent to which the

plaintiff's sedentary life for more than a year and chronic pain syndrome may have affected his reported pain on movement of these joints.

[38] Account should be taken in assessing the plaintiff's damages, particularly his past and future economic loss, of the risk that continuing to work would have resulted in injury or an aggravation of his shoulder condition.

[39] The injury which the plaintiff suffered to his right elbow on 13 September 2011 was not a major injury. The medical records suggest that his elbow was sore for five days and was the result of carrying heavy weights or twisting his elbow in an awkward way. Whilst his elbow required treatment, it did not require him to have days off work. Nor, it seems, did his shoulder.

[40] Moreover, there is no evidence from co-workers or a manager that the plaintiff's injuries were serious, or so serious as to prevent or inhibit him from continuing with the high school project or starting a new project. In circumstances in which it seems the plaintiff was not required to take any time off work for his elbow or shoulder injury, the probability is that he would have continued to work. If he injured himself or aggravated his previous elbow or shoulder injury then he probably would have received appropriate treatment or been advised to concentrate on supervising others and do light work, leaving the heavy work to the group which he supervised.

[41] Overall, and subject to certain specific ailments, such as headaches from sinus, the plaintiff was in good health before he contracted Q Fever. He was very fit for his age, and able to undertake demanding physical work in his employment and also teach and practise Tae Kwon Do. The plaintiff impressed me as an honest witness. Some recollection of detail on his part may have been impaired by a poor memory or his depressed mood and psychological state in giving evidence. However, I found his evidence generally reliable. The plaintiff's wife was an extremely impressive witness. Their evidence, the medical records and the absence of contradictory evidence from witnesses who were in a position to observe the plaintiff over the years at work suggests that, prior to contracting Q Fever, he was generally physically fit and likely to continue to have the capacity to work as a supervisor for many years to come.

The plaintiff's condition

[42] The plaintiff's present condition is parlous. He is easily exhausted. His constant fatigue and lethargy are consistent with Q Fever Debility Syndrome, as compounded by his Chronic Major Depressive Disorder. On a good day, he is able to get out of bed and move around the home until about midday when he needs to rest. Some days he needs help from his wife to get out of bed. On bad days, he will remain in bed all day.

[43] The plaintiff has been in this parlous condition for years. It is unnecessary to descend into the detail of his medical records in relation to the onset of Q Fever, the development of Q Fever Debility Syndrome and his severe, secondary mental illness. A summary will suffice.

[44] In early January 2012 the plaintiff became severely ill. He required hospitalisation. His symptoms included fever, headaches, severe sweats, nausea, vomiting, dizziness (described as a feeling of impending fainting), inability to stand and profound weight loss. Early investigations did not detect Q Fever, but then as a result of serology, the

disease was diagnosed. He received drug treatment but his condition did not improve. He remained a hospital inpatient for some time. He required regular treatment for symptoms associated with Q Fever Debility Syndrome. The medical records from 2012 onwards contain numerous entries in relation to his aches and pains, tiredness, sleep disturbance, dizziness and nausea.

[45] In May 2013 the plaintiff was examined by Dr Ringrose, a consultant physician, at the request of WorkCover. At that time, the plaintiff's symptoms included "continual joint aches in the arms, legs and shoulders of variable intensity". The pain was increased by minor exertion. The plaintiff also experienced recurrent bouts of fever and weakness and an inability to work. Dr Ringrose noted that these symptoms had recurred for the previous 17 months and were also associated with nausea and vomiting. All the plaintiff could do when he became unwell was to lie down. This, in turn, made him depressed. The plaintiff complained of severe fatigue.

[46] The plaintiff's symptoms did not improve. He sought treatment and there are reports of an attendance at a pain management clinic at the Maclean Hospital in mid-2014 at which he was asked to climb a ramp as part of a program used for cardiac patients, whereupon he became dizzy and collapsed.

[47] The plaintiff was examined by Professor Whitby for medico-legal purposes in November 2014, who diagnosed the plaintiff as suffering from Q Fever Debility Syndrome. Professor Whitby noted that the plaintiff's ongoing symptoms were "contiguous and continuous with the symptoms of Q Fever" and included lethargy, disturbed sleep pattern and loss of libido. The plaintiff's fever, rigours and other symptoms of Q Fever continued despite apparently adequate treatment with an appropriate antibiotic. According to Professor Whitby, the plaintiff had the classical symptoms of Q Fever Debility Syndrome.

[48] The plaintiff was examined by another consultant general physician, Dr Parkes, on 14 April 2015. Dr Parkes is deceased and because he was not available for cross-examination I place little weight on the opinions recorded in his report. However, his report of the plaintiff's symptoms in April 2015 is consistent with other reports and medical records:

> "Fatigue dominates his clinical picture. He has substantial sleep disturbance, waking at 1.00 am and retiring when exhausted. He describes an ache in his muscles, arms/legs and a soreness in his abdomen. He experiences a headache radiating from the frontal area to the vertex over the back of his skull. He experiences episodic dizziness associated with balance difficulties, a feeling of being light headed, nausea, sweats and a feeling of heat. These symptoms are helped by rest, prochlorperazine and betahistine. He complains of a profound loss of energy. He has become depressed, agitated and irritable."

[49] The reference by various doctors, including Dr Ringrose and Dr Parkes, to the plaintiff's depression leads me to the psychiatric opinion in this proceeding.

[50] Dr Foxcroft, a psychiatrist, reviewed relevant medical files and reports and examined the plaintiff in November 2014. The report he took of constant muscle aches and pains was consistent with earlier reports. Dr Foxcroft notes that physicians had regularly told

the plaintiff that he would get better eventually and that the plaintiff became increasingly despondent and pessimistic about these assurances. He became severely depressed with suicidal ideation, and ongoing anxiety symptoms about never being able to work or function again. Dr Foxcroft concluded that the plaintiff had developed a moderately severe Major Depressive Disorder arising as a consequence of his chronic physical condition. In November 2018 Dr Foxcroft reported that the plaintiff was suffering from Chronic Major Depressive Disorder.

[51] The plaintiff was examined by Professor Whiteford in February 2015 who noted the plaintiff's history of unremitting fatigue with pain in his limbs and trunk, a constant headache, recurrent dizziness, insomnia (due to the pain) and fluctuating appetite and weight. From a psychiatric perspective, Professor Whiteford noted that the plaintiff had understood from PCYC that "a job would always be there". However, in April 2014 the plaintiff was advised that his employment had been terminated and he was "shattered". Professor Whiteford diagnosed the plaintiff as having an adjustment disorder with depressed mood. The adjustment disorder arose secondary to his chronic pain and chronic fatigue and restrictions on vocational and recreational activities. The condition was described as chronic and unlikely to improve unless there was improvement in the plaintiff's physical condition. In a supplementary report after seeing the plaintiff on 5 February 2019, Professor Whiteford noted that the plaintiff's depression had, if anything, worsened. He reported that the plaintiff met the diagnostic criteria for Persistent Depressive Disorder.

[52] Over the years, the plaintiff has received treatment, including cognitive behaviour therapy, to address his chronic depression and other conditions.

[53] The plaintiff has no social life, and has lost all interest in socialising. He is not physically intimate with his wife, and has no libido. He does not contribute to housekeeping and is unable to maintain any garden or yard.

[54] Acting on the advice of doctors and occupational therapists, the plaintiff has tried to rehabilitate himself. He has received drug and psychological treatment, but without any real improvement in his symptoms or mood. His wife explained how, on his doctor's advice, he tries to do things, and then "he has to pay the price to be exhausted and rest". On rare good days he still finds things difficult. Sometimes "his stubbornness pushes him to do things", however, he becomes impatient, annoyed and frustrated. Before he contracted Q Fever, the plaintiff was a pleasant, caring and kind man. Now he becomes easily tired, annoyed and aggressive.

[55] The plaintiff displays symptoms of anxiety and worries about his future. He has progressively become more pessimistic, since predictions by physicians that his condition would improve have not been realised. He has very poor sleep patterns. He is forgetful and, for example, cannot be relied upon to pay bills. He cannot always shower himself and he has lost interest in his appearance and self-care. He needs support with simple tasks like washing his hair. Before his illness, he was immaculate in his personal care and cared about his appearance. Now he neglects matters and does not care what he wears. His attitude is "Why do I have to even think about it? Who cares? Why? What am I doing?" He can drive only short distances and can only lift light weights.

[56] Some of the consequences of the plaintiff's Q Fever Debility Syndrome overlap with the symptoms of his secondary Chronic Major Depressive Disorder/Persistent Depressive Disorder. In some quarters, a fatigue syndrome may be regarded as a psychiatric illness and assessed accordingly. However, the plaintiff's diagnosed psychiatric conditions are secondary to his Q Fever Debility Syndrome. Before the onset of those psychiatric conditions, the plaintiff displayed a complex variety of symptoms which did not exist before he contracted Q Fever. His symptoms extend well beyond the constant fatigue which has dominated his life. Since the onset of Q Fever in early 2012, he has consistently reported pain in his muscles, joints and abdomen.[4] The plaintiff's clinical condition over the years since he was infected with Q Fever and developed Q Fever Debility Syndrome has included recurrent bouts of fever, dizziness and nausea. The plaintiff is easily exhausted. He is confined to bed for long periods, and has very little strength. Due to his poor health, lack of strength, headaches, episodic dizziness, nausea, sweats and frail physical state, he requires care and assistance with ordinary tasks around the home and with his personal care.

[57] In short, the plaintiff is severely debilitated by pain and chronic fatigue, as well as chronic depression which arose secondary to the impact of Q Fever and Q Fever Debility Syndrome. His fatigue and exhaustion give rise to a significant need for daily care and require his wife to attend to tasks which he once undertook. His condition makes him unemployable. Despite treatment and attempts at self-rehabilitation, his condition has, if anything, become worse in recent years.

The plaintiff's prognosis

[58] The plaintiff's prognosis is poor. As noted, he has received the kind of treatment which Professor Whitby recommends for someone with Q Fever Debility Syndrome, including SSRIs, counselling and attempts at a graduated, physical rehabilitation program. The possibility exists that his physical symptoms will improve. However, no expert in the field of Q Fever and its aftermath could point to any treatment or program which has not been tried and which is likely to lead to a significant improvement in the plaintiff's symptoms.

[59] As to the plaintiff's psychological condition, Dr Foxcroft considers that his prognosis is poor. The outcome of his psychological condition is likely to correlate with the outcome of his physical condition. His overall prognosis is poor and his symptoms are likely to persist. Dr Foxcroft's most recent assessment of the plaintiff's Chronic Major Depressive Disorder is that his condition has worsened. Prior to the injury, the plaintiff was functioning well with no evidence of any psychiatric impairment. In November 2014,

Dr Foxcroft assessed the plaintiff as having moderately severe Major Depressive Disorder arising out of a chronic Adjustment Disorder with Depressed Mood due to a chronic physical condition. He assessed a whole person impairment according to the PIRS scale of 17 per cent. In November 2018, Dr Foxcroft confirmed the diagnosis of Chronic Major Depressive Disorder and that the plaintiff is permanently incapacitated for work by reason of his psychiatric condition alone. Dr Foxcroft thought the plaintiff's PIRS had increased from 17 to 19 per cent as a result of an increase in his impairment for social functioning.

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[4] Dr Ringrose's 23 May 2013 report suggests the plaintiff's abdominal pain may be associated with a very tender liver, and other evidence notes that the Q Fever organism may infect the liver.

[60] Professor Whiteford provided a report on behalf of the second defendant dated 3 March 2015. It concluded that it is unlikely that any further psychiatric treatment will improve the plaintiff's condition. His psychiatric prognosis was said to be "tied to that of his physical condition" and that it is unlikely that there will be any improvement in his adjustment disorder unless there is an improvement in his chronic pain and chronic fatigue. In February 2019 Professor Whiteford wrote that the prognosis is "guarded" and that the removal of stressors maintaining his depression would be necessary for a better prognosis.

Meniere's disease and hearing loss

[61] In July 2016 the plaintiff consulted his GP about problems with his left ear and tinnitus, and he was referred to Dr Allison, an ear, nose and throat surgeon, for an assessment.

[62] In August 2016 the plaintiff was diagnosed with left-sided Meniere's disease by Dr Allison. In a letter to the plaintiff's GP, Dr Allison explained that Meniere's disease (the cause of which is unknown) causes increasing hypofunction in both the labyrinth and cochlear and that it could be treated in different ways, including by a very low salt diet. Dr Allison also advised in August 2016 that the plaintiff would get back to him if he had another attack, at which point there might be a need for further treatment.

[63] It seems that the plaintiff did not need to seek further treatment from Dr Allison for Meniere's disease. An entry in his GP records on 2 September 2016 involved a follow-up in light of Dr Allison's letter dated 22 August 2016. The plaintiff's GP noted that a low salt diet was recommended and referred the plaintiff to a dietician who, in turn, recommended a low salt diet and gave the plaintiff other advice about his diet. The only other reference to Meniere's disease is a brief note recorded by a medical student who sat in on a consultation between the plaintiff and his GP, Dr Davey, on 30 October 2017. That consultation was for the purpose of the plaintiff's care plan and followed previous consultations about the plaintiff's Q Fever Debility Syndrome and his depression. The entry records matters in relation to the plaintiff's low mood and a need for a new Mental Health Care Plan and a new counsellor to give him strategies for avoiding negative thought spirals and ongoing thoughts of self-harm. The entry continues "Still suffering with Meniere's disease – dizzy, hearing loss".

[64] The evidence that the plaintiff is suffering from Meniere's disease is extremely limited. The entry of 30 October 2017 is suggestive of it, but the issue was not explored in evidence with the plaintiff's treating doctors, with Dr Allison or with any other medical expert. The evidence from Dr Allison consists of two letters he wrote to the plaintiff's GP in August 2016, the first of which raised the possibility of Meniere's disease in addition to Q Fever, and the second of which reported the results of investigation that showed hypofunction in the plaintiff's left vestibular attributable to Meniere's disease. The first letter reported that the plaintiff's Q Fever had caused dizziness and nausea over the years. It also reported that the plaintiff had an attack of vertigo with vomiting at the time of the onset of his tinnitus, and so he had assumed that the vertigo and the Q Fever were related. The second letter presumed that the plaintiff's left sided Meniere's disease was not associated with his Q Fever, whilst noting that "we do not know the cause of Meniere's disease so there could be some obscure relationship".

[65] On the limited evidence before me about the onset of the plaintiff's left sided tinnitus and left sided Meniere's disease, I proceed on the basis that the plaintiff began to suffer

those conditions in July 2016. Medical records from the plaintiff's general practitioner for
13 July 2016 record increasing deafness, tinnitus and dizziness. Another consultation on 22 July 2016 relevantly records: "Left ear tinnitus, no off balance, no headaches", and suggest the need for a hearing assessment/ENT referral. The plaintiff attended his GP again on 1 August 2016, this time for gastritis, and the entry refers to tinnitus. He received a referral to Dr Allison that day. On the evidence before me it is reasonable to infer that:

(a) vertigo is associated with Meniere's disease (there is no direct evidence of this, however, it seems implicit from Dr Allison's letters);

(b) the dizziness and nausea that the plaintiff had experienced for a number of years prior to July 2016 were associated with his Q Fever Debility Syndrome;

(c) the plaintiff assumed the vertigo he experienced in July 2016 was due to Q Fever;

(d) there may be some obscure relationship between Q Fever and Meniere's disease (the cause of which is unknown), however, the onset of tinnitus and Meniere's disease in the plaintiff's left ear is probably unrelated to his Q Fever infection and its aftermath.

[66] The evidence does not lead me to conclude that:

(a) the plaintiff is currently experiencing the symptoms of Meniere's disease; or

(b) the episodes of dizziness he experiences (and has experienced since 2012) are attributable to Meniere's disease, with the possible exception of episodes of vertigo in around July 2016.

The evidence does not permit me to be sure that the vertigo (or dizziness) that the plaintiff experienced in July 2016 (and in October 2017) were related to Meniere's disease rather than some other condition. However, the evidence leaves open the distinct possibility that the plaintiff's vertigo in July 2017 was attributable to Meniere's disease and I will proceed on the basis that it was. As noted, the passing reference in the consultation record for 30 October 2017 to Meniere's disease does not provide a strong foundation to conclude that the plaintiff was suffering to any great extent from Meniere's disease at that time. The absence of any other entries to Meniere's disease or its treatment since 2016 suggests that the plaintiff's Meniere's disease was treated in 2016, and has not been a significant problem since then.

[67] Another condition unrelated to Q Fever and its aftermath has been the decline in the plaintiff's hearing. It has worsened in recent years and the plaintiff wears a hearing aid. The plaintiff has also experienced tinnitus. As noted, he had an onset of left-sided tinnitus in 2016 which was initially distressing but settled significantly.

Dizziness

[68] The plaintiff has experienced episodic dizziness since he contracted Q Fever in early 2012. Dizziness was not specifically pleaded by the plaintiff as one of the consequences of Q Fever. Instead, his pleading stated that he had developed, amongst other things, Q Fever Debility Syndrome. The second defendant admitted this fact.

Remarkably, the first defendant's amended pleading denied that the plaintiff suffered this condition. However, the evidence clearly establishes this fact. This includes Professor Whitby's January 2015 report which described the non-specific and variable features of Q Fever Debility Syndrome. Under cross-examination, Professor Whitby advised that the diagnosis of Q Fever Debility Syndrome is subjective and there is no objective test for it. Instead, the temporal progression of the symptoms the patient has is important. As an example, he noted that sometimes individuals suffer headaches. The symptoms are characteristic of the fatigue syndrome "as long as they occur immediately after the Q Fever. Not three years later". In that evidence Professor Whitby was alluding to other conditions which the plaintiff had reported and which were the subject of cross-examination a few minutes earlier, particularly a reported loss of the sense of smell, a decline in hearing, sore eyes and a metallic taste. As Professor Whitby noted, if someone had Q Fever and then "three years later developed these symptoms, that's not Q Fever Debility Syndrome". An important point made by Professor Whitby in his oral evidence and in his report is the necessity for ongoing symptoms to be "contiguous and continuous with the symptoms of acute Q-Fever". As he stated in his oral evidence, the predominant symptom of Q Fever Debility Syndrome is lethargy and tiredness. However, a diagnosis of Q Fever Debility Syndrome would be based on a number of symptoms, particularly fatigue, if they occurred immediately after the Q Fever and were continuous. As he stated of persons who suffer from the syndrome, "they've got a group of symptoms which occur in continuum with the original Q Fever, which I think define … the illness".

[69] The plaintiff's medical history, as earlier summarised, involved the onset of a group of symptoms after he contracted Q Fever. These included pain, aches, nausea, episodic dizziness associated with balance difficulties and fatigue. The episodic dizziness which the plaintiff experienced for years after 2012 cannot be reasonably attributed to Meniere's disease, which the plaintiff experienced along with left sided tinnitus in July 2016. Leaving aside Meniere's disease during that period, one needs to consider other unknown causes of the dizziness which the plaintiff experienced after 2012. None were nominated by the defendants so as to discharge the evidentiary burden of showing that part of the plaintiff's condition is traceable to causes other than the contraction of Q Fever and that, had he not contracted Q Fever, the plaintiff would have suffered that condition.[5]

[70] The evidence of the plaintiff and his wife establishes that after the onset of Q Fever he suffered pain, muscle ache, exhaustion and other symptoms which required him to, in effect, take to his bed. His fatigue was such that he lost physical fitness. His general condition was one of extreme weakness and exhaustion. He went from someone who had excellent balance related to Tae Kwon Do to someone who had poor balance. His condition was such that he was fatigued, experienced episodic dizziness, had poor balance and regularly required assistance. Whether described as dizziness or vertigo, the plaintiff's dizziness and other symptoms, like poor balance, arose after his Q Fever infection and the development of Q Fever Debility Syndrome. They appear to be part of the complex symptoms associated with that syndrome.

[71] The plaintiff was cross-examined about his dizziness, agreed that he has a problem with vertigo and said that part of the problem is that "you don't know when it's going to

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[5] *Watts v Rake* (1960) 108 CLR 158 at 159-160; *Seltsam Pty Ltd v Ghaleb* [2005] NSWCA 208 at [104], cited with approval in *Phillips v MCG Group Pty Ltd* [2013] QCA 83 at [57].

happen". He added that it "comes on more so when I'm having a real bad day". Because of that vertigo the plaintiff has difficulties, for example, with transferring in the shower. After agreeing that he has a major problem with vertigo, the plaintiff also agreed with the proposition that he has had that problem since he was diagnosed with Meniere's disease. Having had the advantage of hearing the plaintiff give his evidence, including some difficulty in concentrating, I do not regard that answer as the plaintiff accepting or asserting that he has only experienced a major problem with vertigo or dizziness since August 2016. Instead, the answer was to the effect that his problem with vertigo has continued since then. The evidence in its entirety, including medical records and reports dating back to 2012 - 2013, establishes that the plaintiff experienced episodic dizziness or vertigo for many years after he contracted Q Fever.[6]

[72] In summary, the plaintiff's dizziness dates from the onset of Q Fever Debility Syndrome. It did not arise some years later with the onset in July 2016 of the symptoms of Meniere's disease. Dizziness is one of a cluster of symptoms that define the plaintiff's Q Fever Debility Syndrome. Whilst Professor Whitby was not specifically asked about it during his cross-examination, his evidence is consistent with the conclusion that episodic dizziness is one of a number of symptoms which date from the onset of the plaintiff's Q Fever and is one of the many and varied symptoms of his Q Fever Debility Syndrome.

[73] Neither defendant pleads that the plaintiff's symptoms of nausea, sweats, dizziness, muscle ache and pain which date from 2012 were symptoms of Meniere's disease or indeed, symptoms of some other illness or disease unrelated to Q Fever Debility Syndrome. In any case, to the extent that the defendants argue that any disability or incapacity is or was due to a cause unrelated to Q Fever Debility Syndrome and its aftermath, they have not discharged the evidentiary burden of showing that the plaintiff's episodic dizziness dating from 2012 is attributable to some other condition. Instead, the evidence suggests that in July 2016 the plaintiff suffered episodes of vertigo with nausea and vomiting. Whilst these, like earlier episodes of vertigo and nausea, may have been part of his Q Fever Debility Syndrome, I conclude, on the basis of the generally inadequate evidence about Meniere's disease, that the episodes in July 2016 were associated with the onset of Meniere's disease which was subsequently treated and which did not affect the plaintiff to any great extent after 2016.

General damages – assessment as against the first defendant

[74] In assessing general damages against the first defendant, it is necessary to recognise the fact that whilst a chronic fatigue syndrome like Q Fever Debility Syndrome is included under the DSM4-5, and Professor Whitby thought impairment best assessed by a Consultant Psychiatrist, I am required to assess the plaintiff's overall pain, suffering and loss of amenity, both past and future. This includes the initial pain and suffering encountered from the Q Fever infection, followed by years of pain and chronic fatigue from Q Fever Debility Syndrome. The plaintiff is also entitled to be compensated for the separate and additional consequences of his diagnosed psychiatric illness. He is not entitled to be double-compensated for the same loss, for example, the loss of the social life and recreational pursuits that he is unable to pursue as a result of both his Q Fever Debility Syndrome and chronic depression. He is, however, entitled to be adequately

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[6] Ms Stephenson's 2015 report addressed the effects of his fatigue, weakness, dizziness and other conditions on his daily living.

compensated for the compounding and cumulative effects of his physical and psychological injuries.

[75] The plaintiff is not entitled to be compensated for the separate consequences of an unrelated condition like Meniere's disease, or the loss of some of the amenities of life caused by a deterioration in his hearing. However, these conditions are relatively minor compared to the conditions for which he is entitled to be compensated, and their ongoing consequences.

[76] The plaintiff's life has been transformed from one in which he undertook meaningful and fulfilling work as a supervisor, supplemented his income by being an instructor in his favoured sport and had a happy and romantic home life. Although there were stresses in his life, particularly concerns about the welfare of his parents, the plaintiff did not suffer from any psychological illness. He was a fit and happy individual who had much to look forward to in life.

[77] The plaintiff's current condition, and foreseeable future, is debilitated by pain and chronic fatigue. He is severely depressed, anxious and at times aggressive due to his frustrations and disappointments.

[78] The plaintiff seeks $120,000 in general damages against the first defendant. The first defendant contends that the award should be $70,000. Neither party seeks to justify the figure by reference to a comparable case decided according to common law principles.

[79] I assess general damages against the first defendant of $100,000.

Interest on general damages – first defendant

[80] Given the likely duration of the plaintiff's pain, suffering and loss of the amenities of life and the poor prognosis for an improvement, interest on general damages should be awarded on half the amount, at two per cent per annum for a period of 7.25 years,[7] producing a figure of $7,250.

General damages – second defendant

[81] General damages as against the second defendant must be assessed in accordance with the *Workers' Compensation and Rehabilitation Regulation* 2003 ("the Regulation") current at the time he was injured in late December 2011. The plaintiff's condition does not fit neatly within any of the items in Schedule 9 of the Regulation. The approach of the specialists has been to regard his impairment as involving a Serious Mental Disorder which has an Injury Scale Value ("ISV") range of between 11 and 40. There is no contest that the plaintiff has a serious mental disorder. One approach to the issue, as advanced by Professor Whitby, is to assess the plaintiff's Q Fever Debility Syndrome for compensation purposes as an adjustment disorder under DSM4-5, requiring an assessment by a psychiatrist. As noted, Dr Foxcroft has assessed a whole person impairment on the PIRS scale of 19 per cent. However, Professor Whiteford adopted a different approach and assessed a PIRS rating of five per cent in his report of 3 March 2015, and six per cent in a report dated 6 February 2019. Professor Whiteford explained his different approach to that of Dr Foxcroft because Professor Whiteford's

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[7] In general, I shall adopt a period of 7.25 years as reflective of the start of the plaintiff's loss in early January 2012 to early April 2019 (the date of judgment).

PIRS rating did not include the plaintiff's chronic pain or chronic fatigue, whereas Dr Foxcroft's PIRS assessment did. In my view, it is preferable to adopt Dr Foxcroft's approach.

[82] The legislation requires guidance to be drawn from the description of a Serious Mental Disorder at Item 11 of Schedule 9. I should have regard to Dr Foxcroft's PIRS rating of 19 per cent which is around the mid-point of the 11 to 30 per cent range.

[83] The second defendant submits that it is appropriate to assess an ISV of approximately 24, or slightly below the middle of the ISV range allowed in the Regulation for Serious Mental Disorder. This equates to an award of general damages of $40,170 for an injury sustained on or after 1 July 2011. The plaintiff submits that the Regulation should be applied to an ISV of 40, leading to an award of general damages against the second defendant of $82,350.

[84] Schedule 9 of the Regulation gives examples of factors affecting ISV assessments for items 10 to 13 which include:

- PIRS rating
- Degree of insight
- Age and life expectancy
- Pain and suffering
- Loss of amenities of life

[85] In my view, appropriate regard must be had to the fact that the plaintiff's Serious Mental Disorder for the purposes of an assessment in accordance with the relevant Schedule is a disorder that involves chronic pain and other physical symptoms of fatigue and exhaustion. It is not simply a case of a serious depression without those physical sensations. On any view, the disorder is extremely debilitating. The plaintiff is a shadow of his former self. He is heavily reliant upon his wife for his care and is so fatigued and debilitated that he spends much of his time in bed or is unable to move about much. He cannot undertake ordinary activities around the house or yard, let alone work or pursue any of the recreational activities which he used to enjoy. He suffers great mental anguish because of his disability. Such is his parlous state that he needs to be encouraged to maintain personal hygiene. His prognosis is poor and he has little or no hope for the future. His relationship with his wife is more akin to that of a patient and a nurse, rather than a loving, mutually supportive relationship.

[86] The plaintiff cannot live independently of support from his wife. He needs her care, and prompting to self-care. His social and recreational activities are severely restricted. He cannot travel without support. His relationship with his wife is severely strained. He needs a high level of assistance from her to perform even simple tasks. He is unemployable. He has insight into what he has lost and, as a result, is extremely frustrated and despondent. In addition, he suffers symptoms of pain and physical exhaustion because of his Q Fever Disability Syndrome.

[87] Accordingly, I consider that his condition warrants an ISV of 38. Schedule 12 of the Regulation produces a figure for general damages of $76,530. A court cannot award interest on such general damages.[8]

Past economic loss

[88] The only income from employment which the plaintiff received in the financial years ending 30 June 2009, 30 June 2010 and 30 June 2011 was from his employment with the second defendant. The plaintiff calculated his average net income per week in those three financial years as $788.91, and the second defendant accepts that calculation.

[89] The first defendant points out that in the year prior to the plaintiff's illness, he earned an average of $795.25 net per week, based on a five day work week.

[90] In the circumstances, it seems appropriate to adopt as a starting point a figure of $795 per week, based on a five day work week. An assessment of past economic loss requires consideration of a number of contingencies, mostly negative. They include the contingency, previously discussed, that the plaintiff would have reduced his working week from five days to four days, or even three days per week, depending upon his financial and family circumstances. That contingency does not justify a calculation based upon a high probability that he would have reduced his working week to three days per week as early as 2012 or in the following years. In all the circumstances, I consider it unlikely that he would have. Instead, the contingency that he would have reduced his workload from five days warrants a significant, but not excessive discount. Another contingency is injury or illness, notwithstanding the plaintiff's generally good health and fitness and his ability to work, despite injuries to his elbow and shoulder. If, for example, the plaintiff's shoulder had become troublesome then, rather than give up work entirely, it is more likely that the plaintiff would have reduced his exposure to heavy work and spent more time on supervision, or reduced his working week to four or even three days whilst the problem persisted.

[91] Another contingency, commencing in mid-2016, is the consequences of Meniere's disease, particularly the plaintiff's dizziness. Any dizziness related to Meniere's disease in 2016 may not have precluded him from working, or only precluded from working when he required treatment.

[92] I should have regard to positive contingencies, particularly the contingency of an increase in his weekly wage or salary. This issue was not explored and I conclude that any increase probably would have been very small. Overall, the contingencies, both positive and negative, justify a reduction from the starting point of $795 to a figure of $650 per week for the calendar years 2012, 2013, 2014 and 2015.

[93] In the 2016 calendar year, the figure of $650 per week should be reduced to $600 per week to reflect the additional contingency of the effect of Meniere's disease, and the increasing prospect of reducing to a shorter working week.

[94] The evidence did not indicate when in 2017 the PCYC projects came to an end, being the date upon which the plaintiff's employment would have ceased. It seems fair to adopt

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[8] *WCRA* s 306N(1).

30 June 2017 as the date upon which the plaintiff's employment would have ceased with the second defendant and to calculate economic loss for the first half of 2017 at a rate of about $600 per week or $31,200 per annum.

[95] As for the period after 30 June 2017, the plaintiff was still aged under 65, possessed of a strong work ethic and had skills and experience which equipped him to undertake at least part-time or casual work. It is unlikely that he would have secured work on a similar project with another employer, although that possibility cannot be excluded. He and his wife were not rich and needed an income to support themselves and, if possible, to save for their eventual retirement. Whilst the plaintiff had some ailments, he would have been physically and mentally capable of undertaking work as a handyman or paid work which did not require his carpentry and other skills, such as mowing, gardening or caretaking.

[96] The plaintiff lost the opportunity to earn income during the second half of 2017, all of 2018 and the first three months of 2019. To reflect his loss it is appropriate to adopt a net weekly loss of $300 to reflect the varying possibilities of obtaining full-time work as a caretaker, gardener or some other job, as well as the possibility of undertaking work on average a few days a week as a handyman where he could use his skills as a carpenter. He also would have retained the opportunity to obtain income as a Tae Kwon Do instructor. An appropriate amount is a lost income of $15,000 per annum.

[97] I assess his past economic loss as follows:

2012	$33,800 [$650 x 52]
2013	$33,800
2014	$33,800
2015	$33,800
2016	$31,200
2017	$15,600 (first half of calendar year)
2017-2018	$15,000 (financial year)
2018-2019	$11,250 (nine months to 30 March 2019)
Total	**$208,250**

Interest on past economic loss

[98] The plaintiff received weekly WorkCover compensation payments of $137,386.56 and Centrelink payments of $64,348.20. These total $201,734.76. Therefore, interest should be awarded on past economic loss of $6,515.24 from 11 December 2014 (the date his weekly WorkCover compensation benefits ceased), namely 4.3 years, at the rate of 2.75 per cent, or $770 against the first defendant and at the rate of 1.135 per cent or $318 against the second defendant.

Future loss of earning capacity

[99] A claimant for an award in respect of future economic loss needs to show, not only a loss of earning capacity, but that the loss of capacity is or may be productive of financial loss.[9] I consider that the plaintiff has done so. The age of 65 (the age the plaintiff soon will be) was not a natural retirement age for him. As discussed, he planned to work for as long as he could. The end of available employment as a project supervisor with the PCYC would have removed a source of employment that was personally rewarding and fulfilling. However, the plaintiff had a financial incentive to continue to earn an income and marketable skills, and was physically fit. The defendants' negligence and its aftermath means that the opportunity to earn an income for a number of years after the age of 65 has been lost to him.

[100] I consider that there is a reasonable degree of probability that he would have sought and obtained at least part-time work. The extent of his loss depends, to some extent, upon whether he and his wife would have continued to work and live in the Beenleigh/Gold Coast area or moved their principal place of residence to Ashby after 2017. The plaintiff did not have established connections in the Ashby community, but still had the chance to gain part-time work as a handyman, caretaker or gardener, or some other form of employment with an employer who could use someone with his skills, work ethic and experience. Whilst the difficulties of persons aged in their 60's obtaining full-time employment are notorious, this is not to say that the plaintiff could not have obtained some work. He would have been able to earn an income as a self-employed handyman or gardener, if he did not obtain part-time or full-time employment.

[101] Over time it is likely that he would have been less motivated to do heavy work which might aggravate his shoulder or other conditions.

[102] Overall, I consider it appropriate to adopt a conservative figure for the period from 10 April 2019 to age 70 (18 April 2024), namely a period of approximately five years. I will adopt a weekly figure of $150 per week. The five per cent multiplier for five years is 231 and therefore the present value of $150 per week for five years is $34,650. This figure incorporates contingencies including intervening serious injury or illness**.**

Past and future loss of superannuation

[103] The plaintiff claims past loss of his employer-funded superannuation benefits at 9.25 per cent up to 30 June 2014 and thereafter at 9.5 per cent. For the future, the agreed rate is 11.33 per cent. The appropriate rate for the calendar years of 2012 and 2013 and the first half of 2014 is at the rate of 9.25 per cent. The loss during this period at the rate of $650 per week up to 30 June 2014 = $84,500 multiplied by 9.25 per cent = $7,816. The balance of past economic loss of $123,750 at the rate of 9.5 per cent would be $11,756. However, some of the plaintiff's work after 1 July 2017 would have been part time or self-employed and not attracted superannuation, and so I shall reduce this figure to $8,500. Past loss of superannuation will be assessed at $16,316. Any future loss of superannuation will be small and I have incorporated it into the award for future economic loss.

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[104] The amount of these damages has been agreed at $6,733.

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[9] *Graham v Baker* (1961) 106 CLR 340 at 347.

Special damages

[105] The plaintiff claims $67,848. This covers WorkCover Hospital, Medical, Rehabilitation and Travel Expenses as paid and refundable to WorkCover of $44,607.54 (Exhibit 52); Medicare Notice of Charge (as at 29 January 2019) $6,438.05 (Exhibit 51); Medical, Travel, Pharmaceuticals and Medical Aids not covered by Medicare and/or WorkCover $16,802.41 (see pp 1-2 of the Updated Statement of Loss and Damage and Exhibits 12, 13 and 14). The defendants submit that some of these claims are excessive. They submit that some of the claims for the cost of purchasing items such as pillows, a mattress, an electric blanket and sheets are costs which would have been incurred by the plaintiff in any event. The same applies to the plaintiff's purchase of a TENS machine which was purchased prior to his contracting Q Fever. In addition, the defendants dispute the travelling expenses which include 16 attendances by the plaintiff on his general practitioner at the Clarence Medical Centre in Maclean when he was residing at Mapleton. I agree with the defendants that these claims are unsustainable since, despite his close therapeutic relationship with his GP, Dr Davey, he could have consulted a local general practitioner. In any event, the claimed distance seems excessive. Taking account of these objections, an appropriate amount for special damages is $61,000.

[106] Interest on $11,000 for 7.25 years at 2.75 per cent (first defendant) and at 1.135 per cent (the second defendant) is $2,193 and $905 respectively.

Future out of pocket expenses

[107] The plaintiff claims $53,824 for future medical and other expenses, as particularised at pages 14-17 of his updated statement of loss and damage. I have regard to the submissions about previous recommendations for psychological counselling and recommended prescription drugs. The first defendant favours a global assessment under this head. The second defendant has regard to the evidence about the plaintiff's current medication and lack of evidence about current suggested treatment. The second defendant accepts the treatment recommended by Professor Whiteford costing $3,945.

[108] In my view, it is appropriate to make a global assessment, having regard to the plaintiff's acknowledged need to undergo further treatment and his ongoing need for a variety of prescription medications as well as drugs to treat his pain. The plaintiff will also need to travel for counselling and medical appointments. Having regard to the amounts referred to in the evidence, including the cost of consultations, I consider that an appropriate global assessment for future out of pocket expenses is $25,000.

Past and future care

[109] As noted, the plaintiff does not seek to recover damages against the second defendant in respect of this head of damages.

[110] The general nature of the plaintiff's need for care and his wife's role in meeting those needs has been outlined. Before the plaintiff became ill, his wife was working on a permanent part-time basis as a pharmacy assistant. In 2012 she ceased her employment to care for him full-time, and since he fell ill, she has had to provide him with care on a daily basis.

[111] For past gratuitous and paid care, the plaintiff claims 28.88 hours per week of gratuitous care at the rate of $33 per hour, together with the cost of having the plaintiff's lawn mown regularly.

[112] The plaintiff's physical and psychological problems necessitate a high degree of care, even on "good days". The plaintiff and his wife gave oral evidence about his needs and how they are addressed. They also prepared detailed summaries of their household and other duties before the plaintiff fell ill, the limited tasks he has been able to perform from time to time since he became ill and the care which the plaintiff's wife provides. These detailed statements were confirmed in oral evidence and they include a tabulation of care provided, together with the average time spent per day which totals 30.375 hours per week.

[113] The plaintiff's claim is also supported by the report and evidence of Ms Stephenson, an Occupational Therapist, who undertook a detailed assessment in April 2015 (Exhibit 9). At that time it was assessed that the plaintiff's wife was providing, on average, 27.62 hours per week of gratuitous care to her husband. Ms Stephenson signed a file note dated 27 November 2018 (Exhibit 10) and gave oral evidence. Some of the assistance, which included assistance with transfers, dressing and washing was due to the plaintiff's poor health, lack of strength, poor balance and "vertigo". In her oral evidence Ms Stephenson noted that at times, the plaintiff needed assistance putting on clothing, washing and brushing his hair, and transferring on and off the toilet. She believed it was more due to the plaintiff's fatigue and "general weakness", but acknowledged his difficulties transferring could also be due to vertigo.

[114] The first defendant notes that Ms Stephenson has not assessed the plaintiff since 2015. However, the evidence is that his condition has worsened, not improved, in recent years. I accept the opinions of Ms Stephenson, including those contained in her report. To the extent that her opinions were based on written instructions from the solicitors for the plaintiff, those instructions are supported by the evidence of the plaintiff and his wife, which I accept.

[115] The first defendant notes that the plaintiff and his wife did not keep a weekly diary recording the care he received from his wife. It submits that it is common practice that solicitors advise clients making a claim that includes a component for gratuitous care to keep a weekly diary recording tasks and time to perform them by family members. This is a good practice, particularly where there are statutory thresholds on the amount of care provided per week.[10] I accept the first defendant's submission that a contemporary recording kept when care was provided, in the form of a diary, would be more reliable than one created later. However, detailed instructions were given to Ms Stephenson in 2015 and, in more recent times, the plaintiff and his wife, in consultation with their solicitors have provided detailed instructions about the nature of the care provided and the time taken by the plaintiff's wife to perform those tasks.

[116] The first defendant submits that the claim is "excessive and not supported by a contemporary note recording of any kind". The submission that the claim is excessive is not based on any cross-examination of the plaintiff or his wife about the details of their evidence in relation to care, tasks and time spent to do them.

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[10] *Shaw v Menzies* [2011] QCA 197 at [73].

[117] The first defendant submits that the plaintiff's claim does not take account of the fact that any care provided to him "is influenced by his good days/bad days and as Mrs Thomson stated when it was put to her that he did not require the amount of care claimed – responded 'He does need it at times'". This submission seizes upon one question and answer. Its fuller context is revealing:

> "MR O'SULLIVAN: What I'm putting to you is that your husband doesn't require the amount of care that you say that he requires, for example, to get out of bed?---On his bad days he does need help to get out of bed because he has no balance and no – no strength in his limbs and arms. So I don't – I gather you've never been pregnant, but when your limbs and arms are exhausted or when you're ill it is very hard to push up. So, yes, sir, he does need it at times."

[118] As appears, the witness' answer focused upon the example of getting out of bed. Neither the plaintiff nor his wife claimed in their evidence, including their detailed care statements, that the plaintiff needed help to get out of bed every day. Their evidence and their care statements also acknowledged that there were tasks that the plaintiff has been able to perform from time to time and that the tasks that the plaintiff is able to complete on any particular day depend on how he is feeling. If he is feeling well enough, he will attempt to do some tasks such as the dishes, folding washing and dusting. On days when he is feeling unwell, he simply cannot do anything of substance. Also, if he tries to perform too many tasks on any particular day, the next day he will be unwell and completely exhausted. If the first defendant wished to demonstrate that the evidence of the plaintiff and his wife about his condition and the tasks he was able to perform was inaccurate, or that the average time taken each day or week to provide care was overstated and did not take sufficient account of his "good days", then this matter should have been the subject of appropriate cross-examination. The isolated passage to which the first defendant points in submissions did not call into serious question the evidence of the plaintiff or his wife about his needs and the time his wife takes to attend to them.

[119] The first defendant further submits that the plaintiff's claim is excessive because "no account is given to any improvement in his condition as evidenced by his return to signwriting and to his other unrelated medical conditions…" The first defendant submits that an appropriate assessment is seven hours per week. Those submissions do not explain or justify such a low figure. The reference to "his return to signwriting" seizes upon a single entry in the records of a general practitioner on 1 May 2014 which records that the plaintiff had "recently resumed sign painting" and they "discussed importance of perseverance".

[120] There is no other evidence that the plaintiff resumed sign painting. The plaintiff denied that he had undertaken sign painting in 2014, and denied that he told Dr Davey on 1 May 2014 that he had recently resumed sign painting. The plaintiff's recollection is that he had not been involved in sign painting since he left Mount Tamborine. The evidence is that some years earlier the plaintiff was still running a part-time signwriting business on the side, doing some signs on the weekend, but that this business had "fizzled out", particularly with the onset of digital technology. The plaintiff may have done a sign for free when he was working at the PCYC for a Blue Light Disco.

[121] The first defendant's submission that the plaintiff's condition has improved, as evinced by his return to signwriting, is unsupported by the evidence. It is possible that Dr Davey on 1 May 2014 misunderstood something the plaintiff said about sign painting. In any case, the consultation on 22 April 2014 and on other dates around that time confirm the severity of the plaintiff's Q Fever Debility Syndrome, including the plaintiff's inability to do much exercise. For example, the entry on 16 June 2014 is consistent with ongoing pain, poor mood and that low-level exercise was followed by an inability to do anything the following day and worse pain. In context, and in light of all of the evidence, it seems improbable that the plaintiff had the ability in 2014 to return to signwriting to any extent, or did so. There is no reliable evidence that he did in fact return to signwriting and the first defendant's submission that he did is completely unpersuasive.

[122] The first defendant submits that the claim for past and future care "rests almost entirely on the reliability of the evidence provided by the plaintiff and his wife". Whilst there were no other lay witnesses, such as family members, who corroborated this part of the claim, I found the plaintiff and his wife to be credible witnesses. The fact that they have a strong obvious interest in the case is not a sufficient reason to disbelieve them. I need to consider objective facts, proved independent of their testimony, including the contents of contemporaneous documents, if they are reliable.[11] However, the first defendant does not point to any reliable, independent, objective evidence which discredits the plaintiff's claim or his and his wife's evidence. A single entry in a medical record "recently resumed sign painting" does not discredit the plaintiff's case or his evidence.

[123] The plaintiff's claim about the nature and extent of his disability (and therefore an inability to resume signwriting) is supported by the substantial medical evidence in the case concerning his condition, including medical records of his GP and others.

[124] I mention that the first defendant engaged private investigators to undertake surveillance of the plaintiff. That surveillance did not disclose anything which was inconsistent with the evidence of the plaintiff and his wife about the nature and extent of his difficulties. A couple of still photographs that were shown to the plaintiff and to his wife certainly did not prove that the plaintiff had greater endurance or did not require the care claimed. The images were consistent with what was written in his and his wife's care statements.

[125] The principles governing an award for gratuitous or paid care are not contentious. I remind myself that this head relates to the plaintiff's needs, and is not intended to compensate the plaintiff's wife for her extraordinary care and devotion or for what she has lost in life as a result of the plaintiff's illness and its aftermath.

[126] The plaintiff is not entitled to the cost of care which his wife would have provided in any event, for example, if he had not been infected with Q Fever and they had continued their normal lives with a sharing of many domestic tasks. Also, the plaintiff is not entitled to be compensated for any care provided in relation to unrelated medical conditions such as the symptoms of Meniere's disease or a condition unrelated to the illnesses for which he is to be compensated.

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[11] *Guirguis Pty Ltd v Michel's Patisserie System Pty Ltd* [2018] 1 Qd R 132; [2017] QCA 083 at [50] – [51].

[127] I am prepared to act upon the accuracy of the instructions given to, and the assessment of, Ms Stephenson in 2015 about the plaintiff's disability, his need for care and the amount of care required, on average, each week. As noted, the current level of care is 30.375 hours per week, whereas in April 2015 it was estimated to be 27.62 hours per week of gratuitous care. Whilst the plaintiff's compensable psychiatric condition has deteriorated in recent years, it is likely that some additional care has been required to address unrelated medical conditions such as the symptoms of Meniere's disease. In the circumstances, I will discount both the 2015 and the 2019 hours and adopt an average figure of 25 hours per week for past care.

[128] The reasonableness of this figure is supported by the high level of care required and the varying times of the day which it is required. The variety of needs which the plaintiff's parlous condition has generated has required the plaintiff's wife to become something akin to a live-in nurse. The fact that some days are better than others does not reduce his need for care to nil or a small amount on "good days". Even on good days, he requires a high level of care and support. The figures advanced by the plaintiff are averages, not simply hours spent on days when the plaintiff's condition is at its worst.

[129] I will adopt a figure of $33 per hour which is less than the commercial cost. The calculation will be 25 hours per week x $33 per hour x 378 weeks, for a total of $311,850. The figure of 377 is derived from 52 weeks in each calendar year from 2012 to 2018 (inclusive), or 364 weeks with an added 14 weeks in 2019.

[130] As for the past cost for lawn mowing, I have had regard to the plaintiff's claims from the periods from March 2015 to October 2017 (135 weeks) and the period that followed. However, this figure should be discounted for the fact that in the period leading up to the trial, the plaintiff has lived at his brother-in-law's unit. A reasonable figure for the cost of lawn mowing prior to trial is $1,900. The total for past care is $313,750.

Interest on past care

[131] Interest on past gratuitous and past paid care at the rate of 2.75 per cent per annum over a period of 7.25 years applied to $313,750 yields $62,554.

Future care

[132] The plaintiff has an ongoing need for care. He claims a sum of $599,919.93 being 30.38 hours per week at a cost of $33 per hour for 22 years (life expectancy) reduced on the five per cent discount tables, and further reduced by 15 per cent for contingencies.

[133] In my view, this claim is excessive. The starting point should be 25 hours per week. A present need of 25 hours per week is attributable to the compensable injuries and their aftermath. The cost of $33 is not contested. The claim should be discounted by more than 15 per cent for contingencies. Although the plaintiff was very fit before he contracted Q Fever, and might have been expected to work for a long time and enjoy a healthy retirement thereafter, there are the contingencies of supervening illnesses and injuries and a corresponding need for care. Leaving aside the care which would have needed to have been provided to the plaintiff when the symptoms of those illnesses or injuries became severe, the plaintiff inevitably would have required increasing care as he aged. Had he not contracted Q Fever then there would have been a point, possibly in his late 70's or early 80's when he would have required additional care at home or

required nursing care. One simply cannot predict whether he might have been affected by dementia or a similar illness requiring a high level of care. However, those and other contingencies should be taken into account. An additional contingency is that, had he not contracted Q Fever, his wife may have predeceased him or, at some stage, required care in a nursing home. The plaintiff and his wife may have decided to live in a retirement home or nursing home together. Had the plaintiff not suffered the compensable injuries then he would have required care at different stages and, towards the end of his life, increasing care. Whilst the actuarial life expectancy is to be taken into account, there is no evidence as to whether the plaintiff's current condition, including his sedentary condition, will reduce or prolong what otherwise would have been his life expectancy.

[134] Presently the plaintiff's wife receives a carer's pension. At some uncertain future date, when she is not physically capable of caring for him, others will be required to provide care.

[135] As is apparent, there is considerable uncertainty as to the period over which the plaintiff will require care in relation to needs which have been generated by his compensable injuries, and which would not otherwise have arisen. The plaintiff's prognosis is poor or at least guarded. His condition may deteriorate, increasing his need for care, it may improve or it may remain the same.

[136] Overall, I consider that an appropriate assessment for the future is 25 hours per week over a period of 15 years, further reduced by 25 per cent for contingencies. The present value of $825 per week on the five per cent tables for a period of 15 years (multiplier 555) is $457,875. Discounting it by 25 per cent, results in a figure of $343,406.

Summary – assessment of damages

Item	First defendant	Second defendant
General damages	$100,000	$76,530
Interest on general damages	$7,250	-
Past economic loss	$208,250	$208,250
Interest on past economic loss	$770	$318
Future loss of earning capacity	$34,650	$34,650
Loss of superannuation	$16,316	$16,316
Fox v Wood	$6,733	$6,733
Special damages	$61,000	$61,000
Interest on special damages	$2,193	$905
Future expenses	$25,000	$25,000

Past care	$311,750	-
Interest on past care	$62,554	-
Future care	$343,406	-
Total	$1,179,872	$429,702
Less Workers Compensation Refund	-	$188,727
Judgment Sum	**$1,179,872**	**$240,975**