

SUPREME COURT OF QUEENSLAND

CITATION: *Walker v Newlands Northern Underground Pty Ltd* [2019] QSC 96

PARTIES: **DANIEL WALKER**
(plaintiff)
v
NEWLANDS NORTHERN UNDERGROUND PTY LTD
(defendant)

FILE NO/S: No S315 of 2016

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court at Rockhampton

DELIVERED ON: 11 April 2019

DELIVERED AT: Rockhampton

HEARING DATE: 18, 19 and 20 March 2019

JUDGE: Crow J

ORDER: **1. Judgment for the Plaintiff for \$999,506.50**
2. The Defendant's insurer pay the Plaintiff's costs on the standard basis from 17 March 2016.

CATCHWORDS: TORTS – NEGLIGENCE – GENERALLY – where plaintiff claims damages for injuries suffered in the course of employment with the defendant – where liability is admitted – where causation and quantum are remaining issues in dispute – whether plaintiff suffered subsequent chronic pain disorder – whether plaintiff suffered neuropathic pain as a result of the initial injury – whether plaintiff suffered psychiatric injuries as a result of the injury

Workers' Compensation and Rehabilitation Act 2003 (Qld), 305D(1)
Workers' Compensation and Rehabilitation Regulation 2003 (Qld), s 9

Tabet v Gett (2010) 240 CLR 537
Wichmann v Dormway Pty Ltd [2019] QCA 31
Grant v John Grant and Sons Pty Ltd [1954] 91 CLR 112
Kovan v Hail Creek Coal [2011] QSC 051

COUNSEL: P Cullinane QC for the Plaintiff
G O'Driscoll for the Defendant

SOLICITORS: Taylors Solicitors for the Plaintiff
 BT Lawyers for the Defendant

Introduction

- [1] The plaintiff, Daniel Walker, sustained personal injury in the course of his employment as an underground miner on 7 April 2013. At the commencement of trial liability was admitted in full with counsel for the defendant, identifying causation and quantum as the relevant issues to be determined.
- [2] Mr Walker is currently 32 years of age having been born on 22 February 1987. Mr Walker has no formal qualifications having left school after completing grade 10. Mr Walker has worked in a number of different manual occupations prior to obtaining employment in the coal mining industry in early 2009. After commencing in the coal mining industry Mr Walker obtained a crane operator's licence, a forklift driver's licence, supervisor qualifications, a senior first aid certificate, a working in confined spaces certificate, and a work at height certificate.
- [3] On 13 July 2011, Mr Walker obtained employment with the defendant at the Newlands underground coal mine. Mr Walker was allocated to the development crew and was involved in working with a team of several crew members who were tasked to build roadways underground. Mr Walker's unchallenged evidence was that he was extremely happy working underground at Newlands, that he considered it was the career path that he had been looking for the whole of his life and that he took a pay cut from his previous mining job to take up work at Newlands.¹ At Newlands, Mr Walker obtained "numerous black coal competencies"²
- [4] After working with the development crew from 13 July 2011 until March 2013 Mr Walker was redeployed to an outbye crew. That meant instead of cutting coal and building underground roadways and other production type duties in the mine Mr Walker was redeployed to undertake support work for the mine.

¹ Ex 1 paragraph 23.

² Ex 1 paragraph 152.

- [5] It was whilst undertaking support work on 7 April 2013 that Mr Walker sustained his injury. Mr Walker explains that at the time of the injury he was installing a bolt into a roof of the mine, and was positioned on the back of a QDS (Quick Detachable System) bolter. A QDS bolter is essentially a high powered hydraulic drill which is attached to an underground mining vehicle so that it can be moved around an underground mine and deployed to perform the necessary drilling into the roof or ribs of a mine. Typically the hydraulic drill will drill a hole into the structure of the mine and thereafter it is retrieved and a bolt placed into the drill hole to secure the mine.
- [6] At approximately 5.30pm on 7 April 2013 Mr Walker's right hand came into contact with the sharp surface inside the boom of the roof bolter. As a result of that contact Mr Walker suffered a deep cut to his right hand.

Pleadings

- [7] The issues in respect of quantum and causation are principally defined by paragraph 7 of the Statement of Claim (SOC) and paragraph 6 of the Further Amended Defence (FAD) of the defendant. In paragraph 7 of the Statement of Claim the plaintiff alleges:

- “7. As a result of the incident, the plaintiff sustained certain personal injuries (hereinafter referred to as the ‘injuries’), namely:-
- (a) a transverse laceration across the dorsum of the metacarpophalangeal joint of the right middle finger;
 - (b) abscess formation at the dorsum of the metacarpophalangeal joint of the right middle finger (treated surgically);
 - (c) subsequent complication of chronic pain disorder and/or neuropathic pain to the right hand and middle finger; and
 - (d) psychological and/or psychiatric injuries including a major depressive disorder, an adjustment disorder and/or depression.

- [8] The defendants response in paragraph 6 of the FAD is as follows:

- “6. The Defendant denies the allegations in paragraph 7 of the Statement of Claim because:
- (a) The Defendant does not know and cannot admit that the incident occurred as alleged;
 - (b) The Defendant admits that the Plaintiff:

- (i) suffered a transverse laceration across the right middle finger in the course of his employment with the Defendant on 7 April 2013;
- (ii) subsequently developed an infection of the laceration requiring surgical treatment;
- (c) The Plaintiff does not suffer, as a consequence of any injury sustained in the course of his employment with the Defendant:
 - (i) chronic pain disorder;
 - (ii) neuropathic pain in the right and middle finger
 - (iii) a psychological injury, illness or disorder;
- (d) If the Plaintiff suffers psychiatric disorder, which is not admitted, such disorder is the consequence of:
 - (i) Marital disharmony and separation;
 - (ii) Separation from the Plaintiff's children;
 - (iii) Loss of employment and consequential financial hardship consequent upon the Plaintiff's employment with the Defendant being lawfully made redundant on 31 July 2013;
 - (iv) Subsequent loss of employment as a salesman with Wurth in or about 2015;
 - (v) Other personal stressors unrelated to employment with the Defendant, are causally independent of any injury suffered in the incident and not compensable which are known to the Plaintiff but not known to the Defendant."

[9] It can be observed that paragraph 7(a) of the SOC is essentially admitted. The initial injury is a transverse laceration across the dorsum (i.e. back) of the metacarpophalangeal joint (or knuckle) of the right middle finger. The injury was observed by Mr Walker to be a deep laceration to the top of the right hand right knuckle in the vicinity of the right middle finger. There was a large open wound on the hand as indicated and it was observed to be bleeding profusely. Mr Walker's evidence that he could see the white tissue where the skin had peeled back was not challenged and I accept that evidence. After the injury Mr Walker was taken to the surface first aid room. There the wound was scrubbed and found to be a deep wound, a number of butterfly type band aids were applied to the wound, betadine was supplied to the wound and it was dressed. Mr Walker then went home.

- [10] Mr Walker planned to go and see his doctor the next day about the wound for further medical advice however at approximately 7.00am on 8 April 2013 Mr Walker was telephoned by Mr Armstrong the Newland's mine co-ordinator and told "not to worry about it and to just come in to work and they would give [him] suitable duties."³ Mr Walker accepted the mine co-ordinator's advice. Mr Walker knew that had he not arrived for work then it would be necessary to classify his injury as a lost time injury which might affect bonuses paid to his fellow employees and to his supervisor. Mr Walker attended work with his right hand bandaged and assumed that he would be deployed to light duties.
- [11] Rather than being provided with suitable duties Mr Walker was sent back into the mine and asked to perform bolting on a continuous miner. As he was working in an underground mine the dressing became contaminated. Mr Walker changed his dressing on five occasions after it had been covered with coal, oil, water and other substances. Mr Walker told the mine deputy, Mr Skelton, that he was suffering from a lot of pain in his right hand and he was worried about his wound. Mr Walker persevered and worked the full shift. Mr Walker says, and I accept, that by the time he got home on 8 April 2013 his right hand was throbbing with pain and he was unable to return to work the next day. Mr Walker's right hand began to swell and he developed a fever. On 14 April 2013, Mr Walker attended at the ambulance station in Glenden and was asked by the ambulance officer to go immediately to the Mackay hospital as his hand was infected and required immediate treatment.
- [12] Dr Salman an orthopaedic surgeon reviewed Mr Walker on 14 April 2013 at the Mater Hospital in Mackay and observed that Mr Walker had developed an abscess overlying the dorsal aspect of the right middle finger. Dr Salman further observed "there was weakness of extension of the affected finger [and Mr Walker] was mildly febrile."⁴ Dr Salman took Mr Walker to the operating theatre on 14 April 2013. In his report of 3 June 2013⁵ Dr Salman said of the operating procedure:

"The main finding was significant abscess that was communicating with the extensor tendon of the right middle finger. The capsule of the metacarpophalangeal was not

³ Ex 1 at p 4 para 44.

⁴ Ex 21.

⁵ Ex 21.

breached. The drainage of the abscess was performed. Non-viable soft tissues were debrided. A specimen was sent for microbiology. He had a thorough dressing of the wound and splintage applied. The subsequently pathology result came back as streptococcus pyogenes.”

[13] From the above it may be seen that paragraph 7(b) of the SOC has been proved; indeed from the medical report of Dr Salman⁶ which was tendered by the defendant. It is concluded that the nature and extent of the primary physical injury is not in dispute.

[14] What is plainly in dispute however are paragraphs 7(c) and (d), namely, the consequential injuries of a chronic pain disorder and neuropathic pain in the right hand and middle finger, and the psychological and/or psychiatric injuries including a major depressive disorder, an adjustment disorder or depression. The resolution of these issues, as they commonly do, depends upon the factual findings concerning the nature and extent of the injury sustained by Mr Walker which in turn affects the factual basis for the variety of expert opinion which has been tendered in numerous medical reports. As is common in many personal injury cases, the credit of the plaintiff was placed in issue and findings concerning this issue are critical to the acceptance or rejection of expert evidence which properly underpins an assessment of causation and quantum in Mr Walker’s case.

Credit of Mr Walker

[15] Mr Walker provided his evidence in a straightforward manner and without any hint of exaggeration. Mr Walker’s credit was however challenged in cross-examination specifically in respect of the history of manual work that he provided to Dr Cook, Dr Rodney, Dr Chung, and Dr Gervais.

[16] As to the history provided by Mr Walker to Dr Allan Cook, Orthopaedic Surgeon on assessment on 14 June 2018, it was suggested that Mr Walker deliberately misled Dr Cook as to the type of physical work that Mr Walker was engaged in whilst working for Dawson’s. In particular⁷ it was put by counsel for the defendant to Mr Walker as follows:

⁶ Ex 21.

⁷ T2-27/30-31.

“MR O’DRISCOLL: Well, I put to you that you did in fact tell the doctor that you weren’t doing any physical work?”

MR WALKER: I don’t believe that’s correct.”

- [17] The cross-examination was referenced to the information contained in the report of Dr Cook of 9 July 2018.⁸ The relevant information is contained on pages 7 and 8 of Dr Cook’s report as follows:

“... in about October, 2017 got a job as a Spotter. He advised this job required him to stay outside the area of work but where he had clear vision of his workmate to ensure that they were having no difficulties or problems. He advised that these situations occur when another employee was working in a confined space or difficult cramped situation and that his job continued to about the end of May or early June, 2018 when this contract finished and he became unemployed.”

- [18] This issue was taken up with Dr Cook in cross-examination.⁹ With respect to the above detail, Dr Cook’s evidence was that “I asked him what the work as a spotter entailed, and that was what he informed me.”¹⁰ As is recorded in the medico-legal report of Dr Cook dated 9 July 2019, Dr Cook had a copy of the report of Dr Gervais, Orthopaedic Surgeon of 31 January 2018.¹¹ Dr Gervais’ report records that on 9 January 2018, Dr Gervais examined Mr Walker. On page 3 of that report, Dr Gervais recorded as at 9 January 2018:

“Despite his perception of ongoing symptoms, he mentioned that he has started to adapt. He feels that his grip strength has improved although not fully. He is now working as a spotter for an engineering/labour hire company. He is not involved with any physical activity. He is merely watching other employees in potentially dangerous situations and looking out for hazards. He is employed on a casual contract and his hours of work vary each week He seems to be coping with his role as a spotter. He mentioned that he struggles to wear work gloves for long as they cause irritation to the back of his hand.”

⁸ Ex 9.

⁹ T2-49/40 - T2-50/35.

¹⁰ T2-50/1-2.

¹¹ Dr Cook’s Report Ex 9 p 2 and Dr Gervais’ Report Ex 18.

- [19] Mr Walker commenced employment with Dawson's Maintenance Contractors Pty Ltd on 28 September 2017 and ceased employment on 5 June 2018. The type of work from which Mr Walker was employed at Dawson's varied markedly. It is apparent that from 29 September 2017 until sometime in January 2018, Mr Walker was employed by Dawson's relining division however when the work at Dawson's relining concluded sometime in January in 2018 Mr Walker was transferred to the boiler making division located in Mt Isa where he worked from sometime in January 2018 until 5 June 2018. In his evidence-in-chief Mr Walker said that he predominantly performed spotting duties but occasionally performed some limited and light manual work. This is the subject also of paragraph 243 of Mr Walker's Quantum Statement.¹² Three days before Dr Cook examined Mr Walker, Dr Rodney, Psychiatrist, assessed Mr Walker.
- [20] On page 4 Dr Rodney's report of 13 June 2018 Dr Rodney recorded Mr Walker as informing him on 11 June 2018 that he had been working as a spotter in a "mining type work though there was very little menial (sic) activities associated with the role".¹³ Dr Rodney further recorded Mr Walker reporting that he was enjoying his work, that his physical symptoms were improving and that "he can manage light physical work however cannot manage heavy physical work with tools and vibrating instruments hence the job that he has been doing has been quite suitable for him. He does not believe that he will return to heavy menial (sic) work but he is optimistic that there may be more work in this area that will allow him to develop long term employment."
- [21] In his report Dr Rodney had recorded Mr Walker's self-report of a significant improvement in his physical symptoms and in his mental condition.
- [22] On 9 March 2018, Dr Alfred Chung, Psychiatrist, examined Mr Walker. Dr Chung's report of 4 April 2018¹⁴ records Mr Walker's self-report of work history. It states:¹⁵

"He is currently working as a contractor and therefore his hours are unpredictable. He works as a spotter in confined spaces for Xstrata, Glen Corp, in an underground mine. He feels that he is coping with this work. He struggles somewhat mentally although he feels he is improving. He claims that he had not been coping with unemployment."

¹² Ex 1 paragraph 243.

¹³ Ex 5

¹⁴ Ex 14

¹⁵ Ex 14 p 10

[23] The last comment namely that Mr Walker had not been coping with unemployment is a comment that Mr Walker has repeatedly made to the numerous medical practitioners that have examined him from the very outset of the injury and as is supported by the note made by Ms Bauer (the Defendant's claims advisor) on 13 February 2014 recorded as follows:¹⁶

“Daniel also reports that Marlee from KINNECT asked Daniel to see his GP to obtain a total incapacity medical certificate as Marlee was finding it difficult to find host employment for Daniel with his restrictions. Daniel advises that he has gone out of his way to return Marlee's calls and emails and that he has always expressed his desire to return to work.”

[24] Properly analysed it may be seen that due to the changing nature of Mr Walker's role (namely, that first he was employed predominantly as a spotter at Dawson relining division then later as a trades assistant performing boiler making type duties at Dawson Engineering in Mt Isa) there has been different descriptions of Mr Walker's work tasks during the relevant period. The various descriptions, even in comparison with those contained in paragraphs 241 to 243 of the Mr Walker's Quantum Statement does not cause me to doubt Mr Walker's credibility. Mr Walker's credibility ought to be judged by his actions in obtaining work despite his disability and by repeatedly expressing his desire to work and admitting to vast improvements in his physical and mental health.

[25] As to the statement that the work required of a reline technician is essentially light work I have the benefit of the Statement of Lauren Louise Candy.¹⁷ Ms Candy was called to give evidence and entered the witness box however was not sworn as defence counsel indicated that the contents of Ms Candy's statement were not in issue. Ms Candy has known Mr Walker since Christmas Day 2016 and their relationship had advanced to the point where they have now been living together for 18 months and Ms Candy is pregnant with their first child who is due on 29 May 2019. Ms Candy gives corroborative evidence not only of the difficulties that Mr Walker has with his hand but also the effect of Mr Walker's depression. In the period from December 2017 until June 2018 Ms Candy also worked for Dawson Maintenance Contractor's Pty Ltd.

[26] Ms Candy records that she worked for Dawson Maintenance Contractors between December 2017 and June 2018 and in the same role as Mr Walker, namely, as a trade's

¹⁶ Ex 40.

¹⁷ Ex 25.

assistant for the boilermakers and fitters. Ms Candy could be described as a petit person (according to paragraph 14 of her statement, weighing approximately 62 kilograms). Mr Walker is not petit (he is 193cm tall and weighs about 100kg). Ms Candy describes the work as being “not very heavy work”. Ms Candy confirms that any significant lifting was done with hydraulic lifting gear or by crane. Ms Candy confirms that she worked at the Mt Isa mine and Ernst Henry mine near Cloncurry at the same time as Mr Walker. Indeed on two occasions they worked the same shift. Ms Candy’s unchallenged statement confirms Mr Walker’s evidence that the work duties required of him at Dawson Maintenance Contractors Pty Ltd, even after January 2018 when he was employed in the Mt Isa branch could not be considered heavy nor arduous work. Further, Ms Lucey, a slight young woman (50kg) worked as a reline technician for seven years and performed all the required duties.¹⁸ I do not accept therefore any suggestion that Mr Walker misled any of the examining medical practitioners.

[27] I would join in Dr Labrom’s description of Mr Walker as “genuine in his presentation”.¹⁹ Indeed coupled with his repetitively expressed desire to return to work and his very significant improvement over a period of time defence counsel in address, after a thorough cross-examination testing credit, conceded that Mr Walker was an honest and impressive witness. Accepting as I do without reservation, the evidence of Mr Walker I find that in addition to the laceration which he suffered, he has continued to suffer painful symptoms in the vicinity of the laceration, and that he has continued to suffer a reduced grip strength in his dominant right hand.

[28] Accepting (as I do) Mr Walker’s complaints of ongoing pain and disability in his right hand allows conclusions to be drawn upon the injuries referred to paragraph 7(c) of the SOC. Although the subject of some medical evidence I reject the finding that Mr Walker suffers from a chronic pain disorder. The defendant has succeeded in its pleaded claim in paragraph 6(c)(i) of the FAD. I do however accept that it is proper to conclude that the ongoing pain that Mr Walker has suffered in his right hand, the vicinity of his injury, having no distinct orthopaedic basis is properly characterised as neuropathic pain. In this regard I accept the opinion of Dr Cook as supported by Dr O’Callaghan,

¹⁸ Ex 37 paragraph 19.

¹⁹ Ex 16 and T3-41/31-34

the pain specialist, and Dr Gervais²⁰. In coming to this view I am conscious of the opinion expressed by the psychiatrist Dr Rodney that a psychiatric injury such as depression or a major depressive illness can amplify or magnify the pain which is generally being suffered. The psychiatric illness however that Mr Walker has suffered from developed from late 2013 and was not diagnosed until 2014. Mr Walker has suffered neuropathic pain since April 2013.

[29] In Mr Walker's Quantum Statement at paragraphs 77 and 78, he records that even when he was performing light duties (in the role on the surface of the coal mine as a Tomlinson boiler operator) he was having problems with his right hand and that it was tender if knocked and the scar remained irritable. From that period forward whilst at work, if Mr Walker bumped his right hand he would suffer from extreme pain and swelling. Mr Walker's complaints have been verified by his co-worker Mr Michael Davies.²¹ Therefore the neuropathic pain existed well prior to the suggestion of development of any psychological or psychiatric condition. I accept Mr Walker's oral evidence, that when he returned to work if he bumped the area of the injury particularly over the scar tissue he would not only get a sensation of pain around the arm and the scar tissue, but the pain would radiate up his arm and that at that point using the right hand by grasping something heavy that would also cause pain to radiate up his right arm.²²

[30] On 19 December 2013, Dr James O'Callaghan, Pain Specialist, examined Mr Walker's right hand. Mr Walker complained of persisting pain over the back of the right hand since the original accident, that the scar and the area would cause him to suffer from severe shooting pain. Dr O'Callaghan's unchallenged opinion is that Mr Walker presented with typical neuropathic pain as a result of the laceration on the back of his hand. Dr O'Callaghan prescribed Endep tabs and Lignocaine patches.²³ In his report of 12 November 2014, Dr O'Callaghan describes neuropathic pain as follows:²⁴

“Neuropathic pain is due to either injury or dysfunction in the nervous system. It can develop either from a specific injury to the nervous system or it may develop due to dysfunction in the nervous system. If there is direct

²⁰ Ex 17 p 9.

²¹ Ex 33.

²² T2-39

²³ Ex 30.

²⁴ Ex 31

trauma to a nerve then neuropathic pain should start immediately. Following surgery it is possible that scar tissue can form which over time may irritate a nerve and therefore neuropathic pain may begin weeks or months later.”

[31] Dr O’Callaghan’s conclusion that Mr Walker has as a result of the injury suffered from neuropathic pain is supported by the opinions of Dr Allan Cook, Orthopaedic Surgeon and Dr Trevor Gervais, Orthopaedic Surgeon. Additionally and importantly, Mr Walker’s General Practitioner, Dr John Goldston had diagnosed neuropathic pain as early as 5 August 2013.²⁵ As set out by Dr Goldston in both of his reports²⁶ it was not until late 2013 or early 2014, and despite multiple medical appointments in the interim, that Mr Walker’s psychiatric injury emerged.

[32] After Dr O’Callaghan diagnosed neuropathic pain on assessment of Mr Walker on 19 December 2013, Mr Walker was sent for a review by the defendant’s insurer. On 20 February 2014 Dr Ness, Orthopaedic Surgeon, examined Mr Walker and concluded that Mr Walker did not suffer from neuropathic pain and had not suffered from a complex regional pain syndrome nor a chronic pain syndrome. Dr Ness accepted:

“It is possible although unlikely that this type of injury Mr Walker sustained would cause neuropathic pain.

...

I cannot comment on whether there was evidence of neuropathic pain at medical examinations prior to my examination as I was not present at those examinations. He would not have developed neuropathic pain after my examination of him. It is possible that he had neuropathic earlier on in the course of his condition but it settled by the time I examined him.”²⁷

[33] Yet Dr Ness accepts that “neuropathic pain can be continuous or episodic”.²⁸

[34] Dr Ness also expressed the view that Mr Walker had no ongoing incapacity for work.²⁹ I do not accept the opinions of Dr Ness because they do not accord with the account of the injuries that Mr Walker has deposed to which I accept to be truthful and which has been verified by unchallenged evidence of Mr Michael Davies.³⁰ I accept the opinion of

²⁵ Ex 29.

²⁶ Ex 28 and 29

²⁷ Ex 20 p 6.

²⁸ Ex 20 p 5

²⁹ Ex 19.

³⁰ Ex 33.

the general practitioner Dr Goldston who had recognised as early as 5 August 2013 the difficulties that Mr Walker was suffering as a result of neuropathic pain. On his examination on 22 October 2014, Dr Cook, accepted as truthful Mr Walker's complaints of pain and concluded that Mr Walker had suffered a "complication of chronic regional pain syndrome/sympathetic dystrophy neuropathic pain in the right hand and middle finger." Dr Cook was careful to express his view,³¹ that the injury would not be properly diagnosed as a complex regional pain syndrome but rather had some features of it. As expressed on page 7 Dr Cook's report dated 6 March 2015³², Dr Cook has ventured a differential diagnosis of some features of chronic regional pain syndrome or some form of neuropathic pain. I accept the latter of Dr Cook's differential diagnosis, that is, that Mr Walker has suffered from neuropathic pain as it accords with the facts that I have accepted and Dr O'Callaghan and Dr Goldston's opinion.

Psychiatric injury – SOC Paragraph 7(d)

- [35] The principal argument of the defence case is that Mr Walker has not proved satisfactorily and in accordance with s 305D(1) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) ('*WCRA*') that Mr Walker has suffered a psychiatric injury as a result of the physical injury sustained on 7 April 2019. The defendant's argument is that as a result of the entry into the Deed of Release³³ in respect of Mr Walker's redundancy on 31 July 2013, Mr Walker cannot claim for any damage arising from any injury which has resulted from the redundancy. Senior Counsel for the plaintiff does not dispute that submission however submits that Mr Walker has proved factual causation as required by s 305D(1) in that the psychiatric injury that Mr Walker has sustained was factually caused by the injury to which he sustained and not one particular sequela of the injury being the redundancy of 31 July 2013.
- [36] Despite the effect of the redundancy upon Mr Walker being alleged in the defence case as being highly or primarily causative of Mr Walker's depressive illness, the issue received no attention during the lengthy cross-examination of Mr Walker. In Mr Walker's cross-examination, Mr Walker confirmed that he read the medical reports of

³¹ Ex 8 p 9.

³² Ex 8 p 7.

³³ Ex 38.

Dr Allan Cook, Dr Jim Rodney and his General Practitioner, Dr Goldston and the facts recorded in those reports and Mr Walker considered the facts recorded in those reports were accurate.³⁴ Mr Walker said that at the end of 2015 his depression was at its highest.³⁵ Mr Walker explained that when his depression hit its highest he lost motivation to attend the gymnasium which had been an extremely regular feature of his life. Mr Walker confirmed that “even after the initial accident” and “even after the redundancy” he remained regularly attending the gymnasium until the end of 2015, early 2016.³⁶ Mr Walker confirmed that he ceased going to the gym because of his psychological issues not because of pain in his hand.³⁷ Mr Walker had explained that he had been able to undertake exercise at the gym which did not place pressure upon his injured hand.

[37] Mr Walker’s evidence of the deepest state of his depression being at the end of 2015 is in accord with the objective evidence. Paragraphs 205 to 208 of Mr Walker’s Quantum Statement examines the period from May 2014 until his termination from Wurth’s Australia on 8 September 2015. Mr Walker says, and I accept, that he found it extremely difficult to be a good salesman working for Wurth’s Australia and he slowly became increasingly anxious and depressed such that he was taking sick leave without medical certificates and becoming withdrawn and antisocial. The depression suffered since late 2013 or early 2014 placed considerable strain upon Mr Walker’s marriage and he and his wife separated in June 2015.

[38] Soon after that event on 8 September 2015, Mr Walker was terminated by Wurth’s Australia for a number of matters including excess sick leave taken without medical certificates. Although he had been terminated Mr Walker accepted that the grounds for termination were valid because he was unable to perform his duties at that stage. Mr Walker apologised in writing to his manager at Wurth’s, Mr Mills, for his poor work performance, thanked him for being “a great boss” and stating:

“I appreciate the help you have offered along the way and completely accept responsibility for the outcome of today. I’m disappointed I won’t have the chance to give this job my full effort but that is my own doings that caused this outcome. All in all thanks for everything sorry I let you down.”

³⁴ T2-3 - T2-4.

³⁵ T2-13/10-20.

³⁶ T2-15/5-10.

³⁷ T2-18/15 – 20.

[39] Mr Walker's evidence as to the cause of his mental illness accords with the contemporaneous medical notes and reports; that is, for approximately five months after the redundancy on 31 July 2013 there was no suggestion of a mental illness. Thereafter from approximately mid December 2013 with attendances upon Dr Goldston, Mr Walker's psychiatric symptoms steadily increased into a full-blown major depressive disorder which significantly interfered with his ability to function throughout the 2015 calendar year during which he separated from his wife and children, lost his subsequent employment at Wurth's Australia and ceased all effective exercise in or about December 2015. The mental illness continued to severely affect Mr Walker's function throughout the 2016 calendar year. As Mr Walker concedes, Mr Walker's psychiatric illness substantially reduced in severity when he re-partnered with Ms Candy.³⁸

[40] Ms Candy's statement³⁹ confirms her observations of Mr Walker's depressive illness from Christmas Day 2016, that is initially she had difficulty with him in that Mr Walker did not wish to leave his house and had many anti-social traits. In Ms Candy's observation Mr Walker has improved immensely although she still observes him to be anxious from time to time and still has difficulty mixing with people. Of his current function Ms Candy says:

"I have to say however that since I first met Dan and with him being employed he is improving socially with people. He still has his moments. He is down sometimes for a couple of days. He becomes agitated and some moments are worse than others."⁴⁰

[41] It is plain in the primary evidence provided to the court that the redundancy of 31 July 2013 does not rate a mention in the cause of Mr Walker's major depressive disorder. Similarly in the treating practitioners' numerous reports depression does not rate a mention until 11 December 2013.

[42] Dr John Goldston, General Practitioner, at the Shakespeare Medical Centre examined Mr Walker on several occasions during August, September and October 2013. In these consultations there was no suggestion of any psychological illness. In Dr Goldston's report of 9 December 2014, Dr Goldston records:⁴¹

³⁸ T2-34/20 – 20.

³⁹ Exhibit 25

⁴⁰ Exhibit 25 para 27.

⁴¹ Exhibit 29.

“He presented again on December 11, 2013 complaining of hair loss, weight gain ... On examination no medical problem was found and a psychological cause was raised with the patient ...

He represented on 13th of February 2014. He complained of being tired on the medication prescribed by Dr James O’Callaghan. He also gave a history of anhedonia and had significant psychological symptoms. On further interrogation of his symptoms he gave a significant history of poor sleep, early morning waking, depressed mood, low self-esteem and irrational fears. He denied any compulsive behaviour. He was not ruminating over any aspects of his life other than his chronic pain syndrome ... In view of his deteriorating psychological condition, without abnormal pathology tests in recent months, a diagnosis of reactive depression was made.” (my underlining).

- [43] Dr Goldston thereafter commenced Mr Walker on anti-depressants and referred him to the psychologist Jane Murdoch. Dr Goldston then records:

“On further discussion Mr Daniel Walker described himself as a hard worker and always works hard in manual labour and heavy industry, however he felt a sense of failure. His anhedonia increased and his motivation towards life was poor ... In summary Mr Daniel Walker was diagnosed with Reactive Depression on the basis of severe symptoms of anhedonia, anergia, poor motivation, lack of self-worth and mood change. Mr Walker clearly is a hard working young man. His main goal in life was to support his wife and children. He suffered from deteriorating psychological state as a result of poor management and lack of medical attention of his initial injury. He subsequently faced difficulty and painful periods with wound infection and Orthopaedic Management. The chronic pain and disuse of his right third finger resulted in a Psychological condition. The illness was exacerbated by his termination of his employment when poorly managed by the human resources supervisors at his workplace ...” (my underlining).

- [44] I accept Dr Goldston’s opinion that “[t]he chronic pain and disuse of his right third finger resulted in a psychological condition.” Dr Goldston who had contemporaneous multiple consultations with Mr Walker, including a consultation on 5 August 2013, only five days after Mr Walker’s forced redundancy, did not consider redundancy as a causal fact of any significance in the development of Mr Walker’s depressive illness but rather and retrospectively noted it as an “exacerbating” factor. As an experienced general practitioner who was in fact consulting Mr Walker at the relevant time I consider it reasonable to place weight on Dr Goldston’s opinion.

[45] On assessment on 20 February 2014 Dr James Rodney, Psychiatrist, described Mr Walker as “[a]n open and honest historian. There were no discrepancies or inconsistencies in his history.”

[46] Dr Rodney was the first psychiatrist to examine Mr Walker. Mr Rodney’s report⁴² contains a full history of Mr Walker’s injury and subsequent symptoms. It includes relevantly:⁴³

“In mid 2013 the pain got so bad that Mr Walker went to see a general practitioner and has not worked since July 2013. During the time he was off on sick leave he was made redundant. The company have reopened his case on his application.

... Mr Walker said the main problem is the future. He said he feels very stressed by financial difficulties and the fact that he thinks that it will be unlikely that he will ever return to specific manual labouring. He is now currently living back in Mackay with his wife and two children. Mr Walker said he has been getting down in the dumps and dispirited over the last few months. He said he is very concerned about supporting his family. He said he has constant headaches and worries about his future.

... Mr Walker said he has become increasingly irritable and difficult to live with at home. He is avoiding all types of socialisation, friends contact him however he refuses to go out ... There is no past history of psychological problems.”

[47] In the long and detailed history taken by Dr Rodney mention is made⁴⁴ on only one occasion of Mr Walker being made redundant. On 20 February 2014 Mr Walker provided an accurate history to Dr Rodney that it was only in the last few months i.e. from perhaps in or about December 2013 that Mr Walker had become psychologically affected by his injury. Dr Rodney diagnosed an adjustment disorder of a depressed type with chronic pain syndrome. Upon mental state examination Dr Rodney recorded that Mr Walker:

“was a very large mesomorphic gentleman, very muscular and fit looking with tattoos on his arms. He was easy to establish rapport with. He was quite open and clearly depressed about his current life circumstances. His affect was notably depressed.

... Subjectively Mr Walker feels quite hopeless and helpless. He said he is unsure where his life will go now because he has always been a very

⁴² Ex 2

⁴³ Ex 2 p 7.

⁴⁴ Ex 2 p 7.

physical person. This loss of athleticism has been an enormous trauma for him.

... He was a man of below average intelligence with some insight into his problems.”

[48] As Dr Rodney said on page 15 and 16 of his report dated 24 February 2014:

“His depressive disorder appears to be causally related to the accident at work and the subsequent pain syndrome.

... The major difficulty at present is depression and pain. This is maintaining Mr Walker’s incapacity to work.”

[49] I accept Dr Rodney’s reasoned opinion expressed in his report of 24 February 2014 that attributes Mr Walker’s psychiatric injury to his injury and pain and not in any way to Mr Walker’s redundancy. Further information was sought from Dr Rodney and Dr Rodney has provided further guidance his report of 29 October 2014.⁴⁵ Dr Rodney said (on page 7):

“All depressive disorders are multifactorial and complex. Mr Walker of course focuses on his pain syndrome. There may well be other factors in his private and external life that add to this diagnosis.”

[50] On page 8 Dr Rodney opined:

“I have no doubt that Mr Walker’s loss of employment and consequent financial hardships have had an exacerbatory effect on his psychiatric disorder.”

[51] I would regard this opinion as being similar to that expressed by Dr John Goldston, namely, the injury and chronic neuropathic pain which has caused the psychiatric illness. On page 9 of Dr Rodney’s report dated 29 October 2014, Dr Rodney commented that family and marital pressures including a requirement to adopt a parenting role for his young children would play “some role in Mr Walker’s ongoing disabilities.”⁴⁶

[52] On 7 October 2015, Dr Rodney examined Mr Walker for the second time and detected a very significant deterioration in this condition. Dr Rodney records on interview that Mr Walker was “persistently agitated, weepy and markedly dysphoric, quite different to the

⁴⁵ Ex 3

⁴⁶ Ex 3 p 8.

past contact I have had with him in February 2014. Despite that there were no discrepancies or inconsistencies in his current history.”⁴⁷

[53] Dr Rodney’s records of 9 October 2015 record⁴⁸ Mr Walker’s self-report that he was having ongoing difficulties with his right hand which was “still painful, exquisitely sensitive”⁴⁹ and that he had changed his life completely causing him to lose his mining job and another job. Dr Rodney described Mr Walker as being “patently profoundly depressed” and presenting with “a quite marked neurovegetative shift”. Dr Rodney diagnosed a major depressive disorder and a chronic pain disorder describing stressors as incapacity to work, financial stress and marital rupture.

[54] On page 16 of his 9 October 2015 report, Dr Rodney said:⁵⁰

“It would appear that Mr Walker’s depressive disorder commenced following the minor hand injury at work over two years ago. Like all depressive disorders, they are always multifactorial and hence, it is somewhat difficult to pinpoint one major aetiological feature, although the hand injury and the subsequent pain syndrome appear to be the primary causality.”*[sic]*

[55] Dr Rodney considered that in his assessment of 7 October 2005, Mr Walker was unable to work as a consequence of his mental illness, held a poor prognosis and was “in need of urgent psychiatric or psychological treatment.” On 7 October 2015, Dr Rodney assessed Mr Walker as suffering from a 17 per cent PIRS.

[56] On the third consultation of 11 June 2018, Dr Rodney noted that Mr Walker had made a vast improvement. Dr Rodney assessed a 5 per cent PIRS as fairly representing Mr Walker’s illness. Dr Rodney records Mr Walker’s self-report “that his hand has slowly gotten better over the last three years. He still admits to hypersensitivity and irritation with touch. He said he has probably adjusted to it over the years and he feels that it is slowly receding.”⁵¹ Dr Rodney recorded that Mr Walker’s psychological condition had clearly improved however Dr Rodney records some ongoing difficulties with social withdrawal, anxiety, poor concentration, and poor tolerance to frustration. Dr Rodney

⁴⁷ Ex 4 p 4.

⁴⁸ Ex 6

⁴⁹ Ex 6 p 5

⁵⁰ Ex 4 p 16.

⁵¹ Ex 5 p 4.

diagnosed a major depressive disorder with chronic pain slowly resolving. On page 11 Dr Rodney says:

“In my opinion, Mr Walker’s psychological problems are cause and effect related to the injuries he sustained in the workforce in 2013.”

[57] In a file note signed by Dr Rodney he described Mr Walker’s marital breakdown as “a secondary factor ... only a minor factor” and that Dr Rodney said that because Mr Walker “has had a major depressive disorder, this is likely to reoccur”.⁵² Dr Rodney opined that when he saw Mr Walker in 2015 he had very severe and significant depression and that Mr Walker’s condition is more likely to result in a relapse at some point than not.

[58] In a file note signed by Dr Rodney on 13 March 2019 he records:⁵³

“The Plaintiff’s redundancy was probably a blow to his self-esteem and ability to manage his life, his body, his family and so forth.”

[59] In considering Dr Rodney’s opinion it is important to have reference to the factual basis underpinning Dr Rodney’s opinion. Mr Walker acknowledged that there were “various things that were occurring to [him] in [his] life”⁵⁴ Mr Walker’s evidence was that the redundancy did not stop Mr Walker from attending at the gymnasium.⁵⁵ Mr Walker gave evidence that following his injury he did return back to underground mining work however it was not his normal development crew work but rather the lighter outbye work.⁵⁶ During that period from May to 31 July when he was made redundant Mr Walker performed the lighter outbye duties whilst continuing to seek medical treatment and taking the prescribed medication. Furthermore, prior to being made redundant Mr Walker’s WorkCover claim was closed, however after the redundancy Mr Walker applied for and succeeded in having his WorkCover claim reopened which involved Mr Walker attempting to obtain suitable alternative duties. In this regard he was assisted by the offices of the defendant’s insurer Xtracare.⁵⁷

⁵² Ex 6.

⁵³ Ex 7.

⁵⁴ T2-4/5-7.

⁵⁵ T2-15/8.

⁵⁶ T2-57

⁵⁷ T2-57 - T2-58.

[60] Post-redundancy and after the claim had been reopened Xtracare provided considerable assistance to Mr Walker in the terms of medical treatment, occupational therapy treatment and assistance with job placement.⁵⁸ After the redundancy Mr Walker said that he⁵⁹ would have liked to have continued his occupation. Mr Walker said⁶⁰ that he believed the redundancy was unfair and that he had been targeted because he had made an application for compensation. Mr Walker made it plain he could not perform his normal work but rather was doing the lighter outbye work. Mr Walker accepted he was doing “a full day’s shift” as an outbye worker but he strongly disagreed with the suggestion that he was pulling his weight.⁶¹ Importantly,⁶² Mr Walker said that, consistent with his early evidence, that he would like to have kept working underground but his capacity was limited.⁶³

[61] In cross-examination⁶⁴ Dr Rodney’s evidence was:

“MR O’DRISCOLL: And with respect to the factors that were causative of the depression can you list those for the court?

DR RODNEY: Yes. Beginning with what appeared to be a relatively minor physical injury that obviously led to sort of complications and ongoing difficulties, ie, chronic pain and depression. That was obviously the major factor that I initially saw him for, and my report suggested that that was, you know, causally related to his depressive disorder. Now, the depressive disorder evolved...”

[62] Thereafter,⁶⁵ Dr Rodney accepted a chronological sequence that Mr Walker was physically injured, became depressed and then was made redundant. As discussed above this is incorrect. However, Dr Rodney clearly said,⁶⁶ “I think with that injury that led to the depression and then to a redundancy, I think was a major factor.” Dr Rodney thereafter commented that “psychiatry is a complex beast ... so it’s a bit like there’s an evolution of factors ... there’s always a bidirectional movement between chronic pain and depression.”

⁵⁸ T2-58.

⁵⁹ T2-58/45-46.

⁶⁰ T2-59.

⁶¹ T2-59/32.

⁶² T2-60.

⁶³ T2-60/1-9.

⁶⁴ T2-77/4-8.

⁶⁵ T2-77/10-11 and 15.

⁶⁶ T2-77/15-16.

- [63] Dr Rodney's assumption that Mr Walker was not only physically injured but also suffering depression prior to his redundancy is factually incorrect. It has been recalled that the redundancy occurred on 31 July 2013. In the period between the sustaining of the injury on 7 April 2013 and the redundancy on 31 July 2013 Mr Walker had attended upon numerous medical and allied health experts without the slightest suggestion that he suffered from any form of depressive illness. In that period, Mr Walker was under the care of the orthopaedic surgeon, Dr Salman, the occupational therapist, Ms Popp, medical practitioners at the Glenden Medical Centre (on 22, 23, 24 April 2013). In addition he was working with at least two case officers from Xtracare and an external consultant from Kinnect. Mr Walker also had numerous dealings with Mr Chris Schneider, the defendant's safety co-ordinator. No one was called to suggest that there was any depressive type illness occurring prior to the redundancy on 31 July 2013 and there is no evidence at all to support such an assumption.
- [64] Mr Walker attended upon Dr John Goldston, the general practitioner at Shakespeare Medical Centre in Mackay on 5 August 2013 as well as in September and October 2013. Again there was not the slightest suggestion in that period that Mr Walker was suffering any psychological condition. As stated above on 11 December 2013, the first indication of a psychiatric illness was detected by Dr Goldston. Despite the chronological error in Dr Rodney's evidence, which is absent in his medical reports, Dr Rodney has expressed the consistent view that it is the injury which has caused chronic pain and then led to the depression and accordingly Dr Rodney's view is that the major factor in causing the depressive illness is the injury.
- [65] Dr Rodney was asked⁶⁷ to expand upon the opinion he expressed in paragraph 8 of the conference note dated 13 March 2019.⁶⁸ Dr Rodney after reflecting that the issues of causation are "an inexact science" expressed the view that Mr Walker's "loss of athleticism" was "probably one of the main ones." Dr Rodney again demonstrated an important element in his reasoning with respect to the effect of the redundancy was the assumption that Mr Walker was suffering depression before his was made redundant.⁶⁹ It is on this basis that Dr Rodney expressed his opinion that the redundancy would have been a major contributing factor. I reject the factual basis of the opinion and accordingly

⁶⁷ At T2-78/25-45

⁶⁸ Ex 7.

⁶⁹ At T2-80/5-10.

reject that opinion. I accept the opinion of Dr Rodney's original opinion expressed in his report dated 24 February 2014⁷⁰ and in his original cross-examination.⁷¹ I consider it important that in Dr Goldston's report of 9 December 2014,⁷² Dr Goldston, the first person to notice and diagnose the depressive illness does not mention the word "redundancy".

[66] I do not accept Dr Rodney's evidence with respect to the redundancy that "it is a major factor. [A] major contributing factor was the fact he tried to return to work, felt that he could do it despite the pain and depression, but then was found to be not capable of doing it ..." I further note the question which elicited the answer does not accurately detail all of the relevant matters in existence prior to the redundancy. The questions which precede the passage at T2-79 l 5 is a requirement for Dr Rodney to accept the hypothesis that Mr Walker "was in fact back working as an underground miner".

[67] Mr Walker did state that he thought the redundancy was unfair.⁷³ Mr Walker did accept that he returned to work as an underground miner but was careful to emphasise that it was outbye work, much lighter work and that he did so in pain and with limitations, and that he was unable to "pull his weight" within his own crew. When the accurate facts were placed before Dr Rodney,⁷⁴ Dr Rodney expressed the view of the redundancy that "Well, I think that it would have ... played a role." When pressed to further define where the redundancy on the correct factual basis would have played a role in the hierarchy of multifactorial stresses Dr Rodney answered:

"Yes, well, it's very difficult to answer that, to be honest with you, I don't, you know if – if – if an unknown part of the equation. I mean, yes. In some cases, it would lead to a deepening of depression. In other cases, it would lead to a lightening of depression. It is just an unknown – a lot of uncertainty and that's sort of part of the equation."

[68] Accepting (as I do) Mr Walker's description of his work role when he returned to work after his surgery, it is Dr Rodney's opinion that the redundancy is "an unknown part of the equation" in terms of causation, factually and chronologically, I do not accept that the redundancy caused or contributed to Mr Walker suffering a mental illness.

⁷⁰ Ex 2.

⁷¹ T2-77/5-10.

⁷² Ex 29.

⁷³ T2-58 - T2-60.

⁷⁴ T2-82/15-23.

[69] Section 305D(1) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) provides:

305D General Principles

(1) A decision that a breach of duty caused particular injury comprises the following elements -

(a) the breach of duty was a necessary condition of the occurrence of the injury (*factual causation*);

(b) it is appropriate for the scope of the liability of the person in breach to extend to the injury so caused (*scope of liability*).

[70] Section 305E provides:

305E Onus of Proof

In deciding liability for a breach of a duty, the worker always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

[71] In *Tabet v Gett*⁷⁵ Keifel J (as she then was) said at paragraphs 111 to 113 as follows:

“[111] The common law requires proof, by the person seeking compensation, that the negligent act or omission caused the loss or injury constituting the damage. All that is necessary is that, according to the course of common experience, the more probable inference appearing from the evidence is that a defendant's negligence caused the injury or harm. "More probable" means no more than that, upon a balance of probabilities, such an inference might reasonably be considered to have some greater degree of likelihood; it does not require certainty.

[112] The "but for" test is regarded as having an important role in the resolution of the issue of causation, although more as a negative criterion than as a comprehensive test. The resolution of the question of causation has been said to involve the common sense idea of one matter being the cause of another. But it is also necessary to understand the purpose for making an inquiry about causation and that may require value judgments and policy choices.

[113] Once causation is proved to the general standard, the common law treats what is shown to have occurred as certain. The purpose of proof at law, unlike science or philosophy, is to apportion legal responsibility. That requires the courts, by a judgment, to "reduce to

⁷⁵ (2010) 240 CLR 537.

legal certainty questions to which no other conclusive answer can be given." The result of this approach is that when loss or damage is proved to have been caused by a defendant's act or omission, a plaintiff recovers the entire loss (the "all or nothing" rule).

[72] In respect of causation I find:

- (1) As a result of the incident on 7 April 2013 Mr Walker sustained a laceration to the dorsum of his right hand;
- (2) That the wound subsequently became infected requiring Mr Walker to undergo surgery on 14 April 2013;
- (3) That despite successful surgery Mr Walker continued to suffer from pain and disability in his right hand;
- (4) That Mr Walker suffered as a consequence of the injury neuropathic pain in his right hand;
- (5) As a result of suffering from the injury and neuropathic pain Mr Walker developed a depressive psychiatric illness in mid-December 2013, initially diagnosed as reactive depression then as an adjustment disorder of the depressive type;
- (6) As a result of ongoing pain and disability in the right hand Mr Walker's adjustment disorder of a depressive type decompensated into a major depressive disorder in late 2015; and
- (7) That over a period of time, with the support of his partner and the obtaining of suitable light employment, Mr Walker's psychiatric condition has improved from a PIRS of 17 per cent to adjustment disorder with a 5 per cent PIRS assessment.

[73] I find that but for the incident of 7 April 2013 Mr Walker would not have suffered from any type of psychiatric illness and that the breach of duty which is admitted by the

defendant was a necessary condition of the occurrence of the injury to Mr Walker's right hand, the subsequent and consequent neuropathic pain suffered by Mr Walker's right hand and the psychiatric illness as described above has been suffered by Mr Walker.

- [74] In terms of s 305D(1)(b), Scope of Liability Causation, there is no submission from the defendant that scope of liability causation has not been satisfied. I observe that as an ordinary master servant relationship, as a matter of course, given the duties owed by an employer to his employee, the responsibility for the injury should be imposed upon the defendant.

Deed of Release

- [75] The parties entered into a Deed of Release in respect of Mr Walker's claim for unfair dismissal. The Deed of Release,⁷⁶ was entered into entirely comprising any claim in respect of the redundancy expressly by Clause 3. Mr Walker's personal injury is a matter which has been subject to the compromise. By oral and written submissions counsel for the defendant asserts that "by virtue of the ...the release and discharge entered into by the Plaintiff, the redundancy cannot be relitigated and the causal effects of the redundancy on the Plaintiff's psychiatric condition cannot be taken into account as it is non-compensable."
- [76] Counsel for the defendant cites the recent decision of *Wichmann v Dormway Pty Ltd*⁷⁷ in support of this submission. Certainly the first proposition in this submission, that the redundancy cannot be re-litigated, may be accepted as being correct. Mr Walker's rights in respect of the claim for compensation in respect of his unfair dismissal has been completely compromised by the Deed. However the second proposition that "the causal effects of the redundancy and the plaintiff's psychiatric condition cannot be taken garners no support from the cited authorities. To the contrary as the President said in paragraph 5 and 6 as follows:

"[5] As long ago as 1751 it has been settled law that a release would be construed so that it related to the particular matter that was in the contemplation of the parties. That principle of interpretation was

⁷⁶ Ex 38.

⁷⁷ [2019] QCA 31 and *Grant v John Grant and Sons Pty Ltd* [1954] 91 CLR 112.

authoritatively reaffirmed by Lord Westbury in *London and South East Railway Co. v Blackmore*. There are abundant cases, both old and new, which have applied it and it has never been doubted.

[6] In *Cloutte v Storey*, Farwell LJ summarised the principle as follows:

‘It is not in accordance with principle or authority to construe deeds of compromise of ascertained specific questions so as to deprive any party thereto of any right not then in dispute and not in contemplation by any of the parties to such deed.’” (footnotes omitted)

[77] In construing the Deed of Release, it is plain that the particular matter in the contemplation of the parties which was to be compromised was the plaintiff’s claim for unfair dismissal. The Deed expressly by Clause 3 exempts the operation of the Deed from the consideration of Mr Walker’s personal injury claim. I consider that the second proposition asserted by counsel for the defendant is incorrect.

Medical evidence

[78] After performing the surgery on Mr Walker’s right hand on 14 April 2013 Dr Salman further examined Mr Walker on 26 April 2013. In Dr Salman’s report of 3 June 2013 Dr Salman recorded:⁷⁸

“I saw him again for follow up review on 26/04/2013. The surgical wound had healed well. He had an excellent range of motion in his finger and he was completely pain free. There was no recurrence of the infection.”

[79] It is not disputed that whilst being examined in his medical suite and not actively using his dominant right hand Mr Walker was completely pain free and had an excellent range of motion. That of course does not infer that Mr Walker had made a complete recovery from his injury. Indeed Dr Salman issued a restricted suitable duty certificate restricting Mr Walker from performing underground work, driving heavy machinery and advising that the wound ought to be kept clean and dry with “preferably office-based or supervisory duties”. It is apparent that the defendant complied with the request as best as it could by taking Mr Walker away from the heavy developmental duties and placing him on outbye duties however the outbye duties, although light, were underground and accordingly the wound could not be kept clean and dry.

⁷⁸ Ex 21.

- [80] After Mr Walker's return to work on 1 May 2013 he was first provided with the surface role as the Tomlinson Boiler Operator and then sent underground on outbye duties. Even on his first day at work Mr Walker not only experienced significant pain but reported significant pain to the Kinnect officer (named Kristy-Anne) who had been retained to assist him with his return to work. Mr Walker complained of ongoing painful symptoms to Kristy-Anne of Kinnect and to Mr Schneider the Safety Co-ordinator. There is no dispute that following his return to work, Mr Walker suffered significant pain whilst attempting to perform the lighter outbye duties. Mr Walker had attended upon Dr Goldston on 5 August 2013 who contemporaneously recorded his ongoing complaints of pain. Indeed on a review by Dr Salman in September 2013, Mr Walker continued to complain of the pain he was suffering from his injury which he had hoped had healed despite him undertaking all postoperative hand therapy and ingesting the prescribed medications. Dr Salman's response to the complaints was to advise that Mr Walker continue to take painkillers as required and that he would need to get a second opinion "if there was an ongoing problem with him." Clearly there was an ongoing problem and Mr Walker sought and received the second opinion from Dr O'Callaghan, the pain specialist, who has diagnosed neuropathic pain.
- [81] Despite his consistent and contemporaneous complaints of ongoing pain since the injury and the diagnosis of neuropathic pain, and despite complaints of same being made to the orthopaedic surgeon Dr David Ness, Dr Ness after assessment on 20 February 2014 concluded that "I identified no ongoing incapacity for work."⁷⁹ I accept, from an orthopaedic perspective Dr Ness' diagnosis of a laceration complicated by infection resolved. That is, I accept that there was a laceration that it did become infected, that due to the surgical treatment by Dr Salman and by prescription of antibiotics the infection was cured and the laceration sutured. I further accept, and Dr Cook does not dispute, that it is improper to diagnose a complex regional pain syndrome. I accept from an orthopaedic perspective that Mr Walker may have had no incapacity for work, however I reject Dr Ness' opinion that in fact Mr Walker had no incapacity for work as Mr Walker was suffering from neuropathic pain in his right hand which substantially impeded Mr Walker's ability to carry out manual work.

⁷⁹ Ex 19 p 12.

- [82] In Dr Ness' medico-legal report dated 15 September 2014, Dr Ness records "Neuropathic pain is largely diagnosed on symptoms reported rather than objective evidence" and although Mr Walker did complain of ongoing pain and disability in his right hand Dr Ness concluded that Mr Walker was not suffering from neuropathic pain. Further, Dr Ness observed that Dr O'Callaghan, the pain specialist, had diagnosed neuropathic pain and did not dispute Dr O'Callaghan's diagnosis but simply stated on his examination Mr Walker did not suffer from neuropathic pain.⁸⁰ Dr Ness did accept that neuropathic pain may be episodic. I accept Dr O'Callaghan's expert opinion as a pain specialist in respect of the diagnosis of neuropathic pain which was unchallenged. I prefer the diagnosis of the pain specialist, Dr O'Callaghan, to the opinion of the orthopaedic surgeon, Dr Ness, upon the issue of neuropathic pain.
- [83] Paragraphs 171 to 193 of Mr Walker's quantum statement, all of which were unchallenged, set out the history concerning the diagnosis and treatment of the neuropathic pain. It is a history of significant lost opportunity. Despite an experienced pain specialist diagnosing neuropathic pain and despite an experienced general practitioner, Dr Goldston, supporting the diagnosis the defendant's insurer rejected Mr Walker's claim for neuropathic pain preferring instead the opinion of Dr Ness, an orthopaedic surgeon. The insurer's rejection of the neuropathic pain claim, was supported by the Regulator. On 10 November 2015 the Queensland Industrial Relations Commission overturned the Regulator's decision. In short, a patently honest man who had described significant pain and problems in his right hand since the May of 2013 and had a diagnosis by a respected specialist in neuropathic pain, was denied assistance to help him with that condition. The independent arbiter, the Queensland Industrial Relations Commission preferring, Dr O'Callaghan's opinion, as I do, found that neuropathic pain was caused by the incident.
- [84] One does not need to be a psychiatrist to imagine the effect of the neuropathic pain upon Mr Walker's mental condition during the period from late 2013 to November 2015. It is no coincidence that upon the review in late 2015 by Dr Rodney, Mr Walker's mental condition had deteriorated to such a severe degree. Whilst I accept that Dr Ness' opinion on orthopaedic issues I reject his opinion on issues with respect to a diagnosis of neuropathic pain. I accept the opinion of Dr Cook expressed in his

⁸⁰ Ex 20 p 6.

reports in Exhibits 8, 9 and 10. A proper diagnoses includes not only the transverse laceration as described and the complication of infection but the complication of neuropathic pain in the right and middle finger.

[85] The psychiatrist Dr Chung accepted that it is inappropriate for him to make a comment upon the issue of neuropathic pain which is not a psychiatric diagnosis. Dr Chung rejects a diagnosis of the chronic pain syndrome, a psychiatric diagnosis and I accept Dr Chung's opinion in this regard. On his examination of 13 November 2015, Dr Chung did diagnose a major depressive disorder. On his first examination on 15 November 2015, Dr Chung reasoned that because the Medical Assessment Tribunal had not accepted that Mr Walker did not suffer from a chronic pain syndrome he could not entertain such a diagnosis. Dr Chung then⁸¹ went on to state that "I do not believe that Mr Walker has a psychiatric injury as a result of the work injury." I do not accept Dr Chung's opinion and prefer Dr Rodney's opinion based on his assessment of 20 February 2014 and his latter assessments of 7 October 2015 and 11 June 2018.

[86] Although I accept Dr Chung's opinion that a chronic pain disorder ought not to be diagnosed there is an absence of reasoning in his report of 27 May 2015⁸² as to whether there is some other diagnosis. It is unhelpful for any expert to state "I do not believe ..." that any person has a psychiatric illness without explaining why. The closest Dr Chung's reasoning comes in his report of 27 May 2015, is on page 17 Item II:

"I do not believe that Mr Walker has a psychological injury as a result of redundancy. There are secondary gain factors that need to be taken into consideration and put into perspective. There is a significant drop in income as a result of his redundancy and he has difficulty seeking alternative employment due to lack of qualification and work experience. He was dissatisfied with any work that would pay him less due to financial constraints associated with his financial obligations. These secondary gain issues may have perpetuated ongoing litigation and claims."

[87] It may be observed that the first sentence in the above quote from the report (tendered by the defendant) scuttles the defendant's main argument concerning the effect of the redundancy (an argument which I have rejected in any event). The more difficult aspect is the second sentence and reference to "secondary gain factors". I interpret that Dr Chung's opinion is that Mr Walker is deliberately exaggerating or extending his painful

⁸¹ Ex 12 p 16.

⁸² Ex 12

symptoms in order to obtain some financial gain from his compensation claim and that he is exaggerating the effect of his injuries. As stated above defence counsel quite properly abandons any argument that Mr Walker is a dishonest man. I reject the basis of Dr Chung's opinion namely that Mr Walker has ordered his life so in order to obtain "secondary gain factors."

[88] I find that Mr Walker has done precisely the opposite. This may be demonstrated by his return to work on light non-underground duties as recommended by his specialist but in fact complying with his employee's request and going underground and by Mr Walker's repeated attempts, eventually successfully to obtain suitable employment. Rather than exaggerate or attempt to obtain "secondary gain" I find Mr Walker has significantly downplayed the nature and extent of his symptoms. I reject the balance of the opinion of Dr Chung. In particular the opinions expressed by Dr Chung on page 20 of his 27 May 2015 report, are based on an assumption that "the symptoms reported in the claimant's hand are not genuine". As I find that the symptoms are genuine, I reject Dr Chung's opinions that "being made redundant is a major contributing factor".

[89] I consider that the opinions of Dr Trevor Gervais do support the plaintiff's claim. In particular Dr Gervais' opinion that Mr Walker's "limitation" is the use of his dominant right hand is "based upon his perception of discomfort" such that he can use his hand as much as tolerated.⁸³

[90] In summary, I accept the opinions of Dr Cook, Dr O'Callaghan and Dr James Rodney (as expressed in his initial report⁸⁴) as the logical opinions which are based on correct facts and accord with my own views concerning the nature and extent of the injuries sustained by Mr Walker.

General damages

[91] Counsel for the plaintiff and defendant agree that the dominant injury is the right hand injury and it is properly classified as an Item 118 moderate hand injury within Schedule 9 of the *Workers' Compensation and Rehabilitation Regulation 2003* (Qld). The ISV range for a moderate hand injury Item 118 is 6 to 15. Counsel for the defendant

⁸³ Ex 18 p 7.

⁸⁴ Ex 2.

contends that an ISV ought to be assessed in the middle of the range at an ISV of 10 resulting in an award of general damages of \$14,000. Counsel for the plaintiff submits that the ISV ought to be assessed at 19 being an ISV at the top of the range at 15 together with a 25 per cent uplift in account of the multiple injuries and in particular the psychiatric injury.

[92] I note that the rate of permanent impairment with Item 118 is 5 to 12 per cent and that Dr Cook's assessment, which I accept, of 6 per cent whole person impairment in respect of the right hand injury of itself would place the injury towards the bottom end of the ISV range. Whilst an assessment of permanent impairment is important in proper qualification of an ISV it is by no means the only relevant matter. In the present case in addition to his penetrating right hand injury Mr Walker has undergone surgery and developed a neuropathic pain disorder. The injury has been occasioned to Mr Walker's dominant right hand and Mr Walker is a relatively young man currently aged 32 years. In respect of the right hand injury and its consequent neuropathic pain disorder I accept the defendant's counsel's written submissions at paragraph 71:

“For the laceration to the hand, the plaintiff is left with something no more than a moderate hand injury, giving a fairly modest range of general damages of \$14,000.”

[93] Accepting as I do however that the psychiatric illness sustained by Mr Walker was accident related it is necessary to increase the ISV to reflect the effect of psychiatric injury. The psychiatric injury has, as is ordinarily the case, varied markedly in its depth and effect in the almost six years since the accident. Dr Rodney has reduced his estimate of the effect of the psychiatric injury from a 17 per cent PIRS to a 5 per cent PIRS. The psychiatric injury is therefore properly quantified as an Item 12 moderate mental disorder with an ISV range of 2 to 10. In Item 12 moderate mental disorder the example of the injury is “[a] mental disorder with a PIRS rating between 4 per cent and 10 per cent.” Of itself, Dr Rodney's current assessment of 5 per cent the ISV for the moderate mental disorder places the injury at the bottom of the ISV range of 2 to 10.

[94] The difficulty with the assessment is that as Mr Walker has suffered from a major depressive disorder it is more likely than not that he will suffer from a relapse at some point in his life. At that point as the level of impairment may rise as high as the 17 per

cent PIRS assessment recorded by Dr Rodney after assessment on 7 October 2015⁸⁵. If the psychiatric injury were to be assessed alone I would conclude it would be properly assessed to an ISV of 6 which is essentially in the middle of an Item 12 ISV range of 2 to 10. Applying Schedule 8 s 3 subsection 2 of the Regulation, and in order to reflect the adverse impact of the multiple injuries on Mr Walker I consider it is proper to assess the ISV for the multiple injuries as being higher in the range of the ISV for the dominant injury on account of the multiple injuries. Applying Schedule 8 section 3 subsection 2, I consider it is appropriate to characterise the effect of the multiple injuries at the top of the Item 118 range that is at an ISV of 15. Senior Counsel for the plaintiff seeks an uplift of 25 per cent pursuant to Schedule 8 section 4 which allows for an uplift of 25 per cent “[i]f a court considers the level of adverse impact of multiple injuries on an injured worker is so severe that the maximum dominant ISV is inadequate to reflect the level of impact.”

- [95] Had an assessment of Mr Walker’s injuries been undertaken approximately three years post-accident in March 2016 and relying upon Dr Rodney’s 17 per cent PIRS assessment, the dominant injury would have been an Item 11 Serious Mental Disorder and an ISV assessment would have exceeded 30. One of the (many) fallacies in the Regulation Scheme of Classification of Injuries is the assessment of a psychiatric impairment based on a PIRS, is intended to be an assessment of the permanent psychiatric impairment when medical evidence almost invariably shows that psychiatric conditions and their effect can vary significantly over a period of time. Section 4 subsection 1 of Schedule 8 uses the verb “is” to denote an assessment of the present tense that is the present state of the injury. The assessment is at trial date and because of Mr Walker’s sheer determination to improve his mental condition I cannot consider that the level of adverse impact for the multiple injuries is not adequately reflected in an ISV above 15. I accordingly find that an ISV of 15 is the appropriate injury score value and that equates to general damages of \$22,950.00.

Past economic loss

- [96] Senior Counsel for the plaintiff in paragraph 64 of his submissions submits that a proper quantification for past economic loss is a loss of Mr Walker’s proven earning capacity

⁸⁵ Ex 4.

as a miner at \$2,000 net per week from 1 August 2013 until the present, some 293 weeks, the sum of \$586,000 less Mr Walker's actual earnings over the period of \$106,191.13 quantifying the loss at \$479,808.87. Such a quantification assumes that Mr Walker would have obtained work as an underground miner as soon as he was made redundant on 31 July 2013 and continued to earn \$2,000 net per week. The evidence does not rise to the level of showing that it was a certainty that Mr Walker would have received employment as an underground miner for each and every week since 31 July 2013.

[97] Whilst Mr Walker's Schedule of Earnings⁸⁶, shows an earning capacity of \$2,000 per week I note that the period from 31 July 2013 until present earnings of other miners have exceeded \$2,000 net per week.⁸⁷ I accept that absent the injury and following his redundancy on 31 July 2013 had Mr Walker been able to obtain employment as a miner he would have earned at least \$2,000 net per week.

[98] Exhibit 34 is the Statement of Mr Steve Pearce. Mr Pearce has been working in the coal mining industry since 1982 with experience in open cut coal mining and underground coal mining. Mr Pearce is currently the District Vice-President of the CFMEU, a position he has held since the year 2000. Mr Pearce is familiar with all of the nine underground coal mines in the Bowen basin and the 31 open cut coal mines in the Bowen basin. For the last 19 years Mr Pearce has been negotiating enterprise agreements for CFMEU members in the Bowen basin and accordingly has accumulated a vast amount of knowledge with respect of employment opportunities and rates of remuneration. Mr Pearce confirms that "many of the miners who were made redundant at Newlands Northern Underground mine later got employment back in the industry at other underground mines. Mr Pearce has had access to Mr Walker's list of competencies and records that "if Daniel Walker had been fit to work he would have been an attractive employee for work at other underground coal mines in the Bowen Basin."

[99] I would assess that Mr Walker would have more likely than not been one of the "many" who would have found work as an open cut miner following his redundancy on 31 July

⁸⁶ Ex 43,

⁸⁷ See Ex 26 Statement of Mr Bucknall and Ex 27 Statement of Mr Curnow.

2013. I am conscious that Mr Walker's brother, Michael Walker, obtained a plant operators role with DBS Plant Hire, the employment being offered to the plaintiff in late 2013 or early 2014.⁸⁸ Although Michael Walker earns \$1,900 each week I do not know when the employment commenced and if and when the employment ceased. In those circumstances I consider it proper application of principle to assess the loss of chance of obtaining employment in accordance with *Malec v JC Hutton Pty Ltd*⁸⁹ principles. I assess the chance of obtaining mining work as certain at some point in 2013 or 2014. I consider that it is appropriate to deduct 25 per cent off the quantified damages of \$479,808.87 to reflect all contingencies including the contingency that it may have taken a period of time in order for Mr Walker to obtain alternative employment as a coal miner following the 31 July 2013 redundancy (absent any injury). I therefore propose to deduct 25 per cent off the quantified figure and assess past economic loss at \$359,856.

- [100] Loss of superannuation benefits are assessed at 9.5 per cent of that sum, a further amount of \$34,186.

Fox v Wood

- [101] The *Fox v Wood* component of the claim is agreed by the parties at \$22,500.

Special damages

- [102] Past special damages paid by the plaintiff are agreed at the sum of \$3,177.60. Payments made by the defendant's insurer on behalf of the defendant in respect of special damages are recorded the list of statutory payments set out in Exhibit 44.

Loss of economic capacity

- [103] It is common ground that Mr Walker has suffered a loss of economic capacity. In his written submissions at paragraph 90, counsel for the defendant submits that there ought to be a modest global assessment. Senior counsel for the plaintiff submits that it is appropriate that the award be \$812,136 being an assessment adopting the methodology

⁸⁸ Exhibit 1 para 195

⁸⁹ (1990) 169 CLR 638.

of McMeekin J in *Kovan v Hail Creek Coal*.⁹⁰ Essentially the *Kovan* methodology adopts the differential between ordinary mining wages \$2,200 net per week and the plaintiff's residual income earning ability, here at \$1,000 per week to age 60 (28 year 5 per cent discount factor 796.60) less 20 per cent for contingencies, a loss of \$764,736. The period from age 60 to normal retirement age of 67 years a similar loss of \$1,200 net per week is claimed (875.60 minus 796.6) = 79 x \$1,200 net per week is \$94,800 discount for all contingencies by 50 per cent to \$47,400.)

[104] It is implicit in the quantification of loss of economic capacity at \$812,136 that it must be assumed that Mr Walker, had he not been injured, would have worked as a coal miner for 80% of the work time until age 60 years. Although I have found that it is more probable than not that Mr Walker would have returned to coal mining had he not been injured that does not equate to a finding that Mr Walker had the certainty of obtaining work as a coal miner for 22 of the next 28 years. As may be demonstrated by the facts in Mr Walker's case, coal mines do close, redundancies are offered and whilst most experienced coal miners obtain alternative work, some do not. As McMeekin J reflected in *Kovan* much depends upon international demand for coal. Senior Counsel for the plaintiff accepts a deduction for contingencies ought to be made and urges adoption of the contingencies found appropriate in *Kovan*. I consider there are significant differences between Kovan's case and Mr Walker's case. Mr Kovan was 46 years of age when injured, 50 years at the time of trial and had worked as a coal miner for only four years. Mr Kovan was an employee at the Hail Creek Mine which is still operational whereas Newlands underground is no longer operational and of course Mr Kovan was not made redundant post-accident.

[105] In examining the period for the proper quantification of damages for loss of economic capacity in *Kovan*, McMeekin J had to consider 15 prospective years whereas in the present case with Mr Walker being aged 32 it is the next 35 years which is being considered. Counsel for the defendant submits that Mr Walker has capacity to work underground and that Mr Walker would have been unlikely due to the cervical spine injuries to have returned to the mining industry in any event.⁹¹ Counsel for the

⁹⁰ [2011] QSC 051 [22] – [51].

⁹¹ Paragraph 68 of the Plaintiff's written submissions.

defendant refers to an injury sustained to Mr Walker's cervical spine in Bali as "the Bali incident."

[106] Mr Walker admits that in April 2016 while holidaying in Bali and intoxicated he foolishly performed a back flip off a sailing boat landing on his neck and jarring his neck awkwardly. On his return to Australia and attendance at the Townsville Hospital, MRI scans performed on 25 April 2016 confirmed an acute disc prolapse at both C4, 5 and C5 6 levels. Dr Labrom, orthopaedic surgeon examined Mr Walker's cervical spine on 14 November 2018. On that assessment Mr Walker did not have any pain in his neck or left arm and no pain with movement of the neck nor any weakness nor any sensory disturbance in the left arm. It was in all respects completely unrestricted in respect of his cervical spine. On examination Mr Walker's cervical spine was normal.

[107] Dr Labrom assessed a zero per cent impairment. Although a zero per cent impairment was assessed Dr Labrom opined that the injury was a high force injury in a young patient causing a dual level injury. Dr Labrom commented:⁹²

"I would suggest that Mr Walker should be very careful with regards any physical labour, particularly with overhead work and any work in confined spaces or closed confined areas ... he would require very cautious activity such that he did not sustain any direct compressive load to his skull or neck considering the previous injury to multiple levels of discs in the cervical spine."

Dr Labrom then concluded on page 6 that:

"I think Mr Walker would be suited to perhaps less intensive roles into the future."

[108] Dr Labrom opined that "Mr Walker more likely than the average citizen at risk of seeing further injury to the cervical region, if he was involved in some sort of compressive load twisting and etcetera."⁹³ Dr Labrom commented that "a cough or a severe sneeze [is] enough in patients with this sort of disc prolapse at one of both levels to see further amount of compressive loading cause a herniation of disc material."⁹⁴ Dr Labrom confirmed that he was unable to predict when Mr Walker may suffer from

⁹² Ex 16 p 5.

⁹³ T3-43/45.

⁹⁴ T3-45/25-3.

severe cervical symptoms nor may suffer from any further pain or suffering in his neck nor the level of symptoms that may be suffered.”⁹⁵

[109] In summary, I accept that the Bali incident represents a causally independent subsequent injury but not of a sufficient nature to stop Mr Walker returning to mining work absent the index injury. The Bali incident causing degeneration to the cervical spine does place Mr Walker at a greater risk than the average person suffering from further neck symptoms at some point in time. In those circumstances it is appropriate to provide a larger than usual discount of economic loss, see *Hopkins v WorkCover*⁹⁶. I propose to allow a contingency of neck pain together with general contingencies and the contingency that absent the incident Mr Walker may not have worked as a coal miner through to age 60 or 67 by discounting the Senior Counsel for the plaintiff’s *Kovan* calculation by a further 33 per cent. Accordingly I quantify loss of economic capacity at \$541,424.

[110] Loss of future superannuation ought to be allowed at 11.33 per cent.⁹⁷ There is a claim for \$61,343 for future special damages. Senior Counsel for the plaintiff submits that an award of \$12,000 on global basis ought to be allowed. Counsel for the defendant submits a range of \$5,000 to \$10,000. It is appropriate that a global award will be made as it is impossible to accurately predict the future need for special damages. I allow \$11,000 for future special damages, an allowance of about \$12 per week for 40 years (917).

[111] In summary I assess Mr Walker’s award as follows:

Heads of damage	Amount
General damages ISV 15	\$22,950.00
Past economic loss – \$479,808 less 25%	\$359,856.00

⁹⁵ T3-46

⁹⁶ *Hopkins v WorkCover Qld* [2004] QCA 155.

⁹⁷ *Heywood v Commercial Electrical Pty Ltd* [2013] QCA 270.

Interest on \$359,856 less \$27,982 (Centrelink) less (76342 – 22,500) net weekly benefits at 1.15% (half of 2.29%) for 6 years	\$19,184.00
Past loss of superannuation at 9.5%	\$34,186.00
Fox v Wood (agreed)	\$22,500.00
Past special damages - plaintiff	\$3,177.60
Self-insured – defendant	\$33,056.48
Interest on past special damages \$3,177.60 at 1.15% per annum for 6 years	\$219.00
Loss of economic capacity	\$541,424.00
Future superannuation benefits at 11.33%	\$61,343.00
Future special damages	\$11,000.00
Sub total	\$1,108,896.00
Less refund to self-insured defendant	\$109,389.50
Total	<u>\$999,506.50</u>