SUPREME COURT OF QUEENSLAND

CITATION:	*Schultz v William Allen & Ors* [2003] QSC 058
PARTIES:	**MARGARET ROSE SCHULTZ** (Plaintiff) v **WILLIAM STEPHEN ALLEN, ALFRED KENNAUGH, ZUILL WREN (now PRENTIS), OWEN PRENTIS, GORDON KENNETH MALCOLM, JOHN HARDY, BERNARD KIOTKA, ROBERT BOLAND, DENNIS MUNT Sued on behalf of themselves and on behalf of all the other members of the unincorporated association known as the RETURNED SERVICE LEAGUE OF AUSTRALIA (QUEENSLAND BRANCH) ATHERTON SUB-BRANCH** (Defendants)
FILE NO/S:	84 of 1996
DIVISION:	Trial
PROCEEDING:	Personal Injury – Liability and Quantum
ORIGINATING COURT:	Supreme Court, Cairns
DELIVERED ON:	12 February 2003
DELIVERED AT:	Cairns
HEARING DATES:	26 March 2002; 20 May 2002; 20 June 2002; 29 July 2002; 2 September 2002; 6 September, 2002; 12 February 2003; 19 February 2003.
JUDGE:	Jones J
ORDER:	**1. Judgment for the plaintiff in the sum of $1,087,856.85.**
CATCHWORDS:	
COUNSEL:	J R Baulch SC with G J Houston, for the plaintiff J R Webb for the defendants
SOLICITORS:	Lilley Grose & Long for the plaintiff Pinder Gandini for the defendants

[1] The plaintiff claims damages for personal injury which she alleges resulted from falls which she suffered at the premises of the Returned Services League of Australia (Queensland Branch) Atherton Sub-Branch, at Atherton in the State of Queensland.

[2] The defendants at all material times were members of the executive committee of the sub-branch which owned the subject premises and thereon conducted the

activities of the association. The rights and responsibilities of the sub-branch are set out in the Rules and By-Laws of the Queensland Branch of the Returned Services Leagues of Australia.[1] Various activities within the sub-branch were undertaken by committees such as the Social and Recreation Committee. There was also a group known as the Women's Auxiliary which was also provided for under the Rules and By-laws.[2] The Women's Auxiliary was at all times under the control and guidance of the sub-branch.[3] The level of control of the Women's Auxiliary by the sub-branch is further illustrated in tendered documents which show that the executive committee set out the conditions of the operation of the kitchen by the Women's Auxiliary and which indicates the way in which requests for equipment were dealt with.[4] Although the Women's Auxiliary was a separate group, I am satisfied that it was at all times accountable to the executive committee of the sub-branch and that it operated under the control and direction of that committee. Also I am satisfied that the sub-branch, as owner and occupier of the premises, was responsible for the condition of the premises at all material times.

[3] The plaintiff was a volunteer worker for the defendant. She was at the material time President of the Women's Auxiliary. In August 1990, as appears from exhibit 7, the Women's Auxiliary took over the catering operations at the defendant's premises. This included catering for RSL club functions and for others who hired the defendant's premises. The Women's Auxiliary also provided snacks to be served in the bar. In particular, bar snacks were provided on Saturday mornings when a Goose Club raffle was undertaken.

[4] In her Statement of Claim the plaintiff alleges she fell on two occasions at the defendant's premises. The first fall occurred in an area described as the pantry and the second fall in the kitchen adjacent to the sink. On each occasion the plaintiff claimed she slipped on the floor which had become wet. Although pleaded as a separate incident causing damage to the plaintiff, by the end of the trial it was clear that no new injury was caused by the second incident. The plaintiff described the incident as follows:-

> "I slipped again but I stopped the fall by grabbing the table and the sink and it stopped me from falling but it jarred my back."[5]

She experienced an increase in pain but it was in the same area which she claimed she had been injured in the first fall. Dr. Low regarded that event as causing a temporary exacerbation of the plaintiff's pain in her back. As a consequence the plaintiff does not now pursue any separate claim in respect of the second pleaded incident.[6]

Date of the incident

[5] By her further Amended Plaint, the plaintiff asserted that the incident occurred on or about "25th or 27th day of May 1991". The choice of date ultimately settled upon by the plaintiff was 25 May 1991 because that was a Saturday, on which day the work, which the plaintiff alleges she was undertaking at the time of her fall, was typically

---

1 Ex 4 – Rule 74 at p 22
2 Ex 4 – p 41
3 Ex 4 – p 41 Para 4
4 See ex 7, 10, 11, 12 and 13
5 Transcript 49/15
6 Written address on behalf of the plaintiff para 3.10

performed. Dr. Thurling, in his medical records, also has noted the date "25 May" but this notation was made sometime after the plaintiff's first visit to him and he does not specifically recall when the notation was made or the source of the information which caused him to make it. The first visit by the plaintiff to Dr. Thomas after the alleged fall was on 4 or 6 June when she complained of pain in her knee. On her next visit 12 June 1991 she complained of back pain also relating the onset of that pain to the fall. The addition of the notation "25th May" was raised in the cross-examination of Dr. Thurling in the following exchange:-

> "And nor can you recall when it was written there? – No, not really no.
>
> But you think that date at some time was supplied to you by Mrs. Schultz, is that so? -- I think that's possible because at the time I may not have thought it was that important, but when she came back, possibly the second time, or the next time, I realised that her problem was going to be – I may have then asked her, "When did you have the fall?".
>
> Or it may have been when solicitors were asking you in relation to matters to prepare your first report? – Well, I just – I have thought about this later. This was photocopied in – before 1993 when I changed the card system over to a – a file system, so it must have been – it had to be somewhere between the 4th of the 6th [1992] and 1993."

The plaintiff's action was not commenced until 16 May 1994.

[6] At the time of her fall the plaintiff was working with Doris May Shanahan who was also a member of the Women's Auxiliary. Mrs Shanahan recalled that the plaintiff suffered a fall about the time of a particular party and prior to her taking an overseas trip in July 1991.[7] She recalled that the fall occurred on a Saturday because she was involved in the preparation of the bar snacks for the Goose Club.[8] Mrs Shanahan's recollections are supported by Minutes of the Women's Auxiliary meeting of 14 May 1991[9] where there was a discussion about a forthcoming crystal party.

[7] The basis of the defendants' challenge to the date of the incident lies in the allegation that the plaintiff had more than one fall, that the subject incident could have occurred in May 1990 or alternatively that it did not occur at all. Of particular importance in fixing the date is the fact that, if the injury causing incident occurred prior to 16 May 1991, the plaintiff's claim would be statute barred.

[8] Mr. Webb of Counsel, for the defendants, argues that the plaintiff is not a credible witness and, that being so, no reliance can be placed upon her fixing of the date. He suggested that it was curious that the plaintiff did not consult Dr. Thurling until 10 days after the alleged fall and that the plaintiff's failure to link the fall to some other significant event in her life or to make any record of it was also unusual. He also suggested that a fall, described by Dr. Beecher (deceased) as having occurred in September 1991, may have been the precipitating event for the back injury.

[9] The primary attack upon the plaintiff's credibility related to economic claims. The defendant pointed to the fact that the plaintiff's answers to Interrogatory No.7 (ex

---

7 See transcript at p 109

8 See transcript p 109/60

9 Ex 49 p 5

26) claimed that she had received, from John Cole Toyota, earnings as a car detailer in the financial years 1998, 1989, 1990 in the respective amounts of $23,400, $23,400 and $17,500. These figures were clearly not accurate and not supported by any evidence. However, her answer to Interrogatory No.8 (ex 35) contradicted her previous answer asserting that in the "three years prior to the date of the accident [she] had not been employed at any time." In her loss and damage statement the following assertion is made:-

> "During the three years immediately before the plaintiff's injury, the plaintiff was not in permanent employment. From time to time, she worked as a casual car detailer and when working earned an average of $450 per week. Income from this did not exceed $5,000 per annum. The plaintiff did not lodge tax returns with respect to these earnings."[10]

[10] When cross-examined about the contents of her answer to Interrogatory No.7 the plaintiff could not explain the amounts referred to above and conceded that they were not correct. Whilst it is no excuse for the plaintiff swearing a document with false facts I observe that the asserted annual incomes merely reflect a constant weekly wage of $450 per week. The main fault may therefore lie with the person who drafted the document. Of more concern to me on the issue of credibility is that the plaintiff continued to assert receipt of income from John Cole Toyota in the order of $5,000 per annum. The principal of that business Mr. John Cole had no recollection of the plaintiff ever working for the business. It was not the practice of the business to pay people without tax being deducted. Mr. Ian Cole also worked in the business as a service adviser between 1985 and the date of the incident. He had no recollection of the plaintiff ever being at the business premises during that period. Neither witness was able to refer to records to determine who were the car detailers employed during the 1980's. Each believed that car detailers were employed on a permanent and not a casual basis. In cross-examination the plaintiff claimed that she received the money by cash, that she wasn't on the payroll and had been told by John and Ian Cole, or either of them, that they or he would never disclose that she was working for the business. The existence of such an arrangement was denied by Mr. John Cole. In my view it would be unlikely for a business of this kind regularly to employ car detailers on a cash basis. This would deny the business the opportunity to claim a legitimate taxation deduction.

[11] Whilst there remains a possibility that the plaintiff may have done some minor casual work for the company prior to 1998 I am not persuaded that she had the work relationship of the type she claimed, nor that she earned income of $5,000 per annum in those relevant years, or indeed, in any earlier year. In cross-examination she claimed that reference to the years 1988-1990 was "a mistake" and that she was wasn't working at John Cole Toyota when she was doing voluntary work at the RSL Club. In her statement to Mrs Coles in November 2000 she said she had not worked "in a paid capacity after about 1986".[11] Whilst I can readily accept that reference to those earnings in those particular years was a mistake no explanation was given why the mistake was repeated in various documents which the plaintiff signed. The effect of these matters and of her continuing to claim earnings at this level which cannot be substantiated, impacts on the plaintiff's credibility and causes me to seek

---

10 Ex 27 para 2

11 Ex 8 doc 23 at p 13

independent, confirmatory evidence on the important issues on which the success of her claim depends.

[12] The defendants sought to rely also upon the recollections of a Mr. Hardy who, on one occasion, assisted the plaintiff following her falling in the kitchen area of the Club premises. Mr. Hardy thought that incident may have occurred when he was a member of the Executive Committee of the defendant. Mr. Hardy relinquished that position in February 1991 when he moved from Atherton to Mareeba to live. As a consequence of the move he was not such a frequent visitor to the Club. This appears to be the basis for Mr. Webb's submitting that the incident must have occurred during the year 1990. But when referred to the actual dates in the final pleading, namely Monday 27 May 1991, Mr. Hardy thought that he would have been at work then, except that if the incident had occurred on a Saturday it was "a fair chance [he] could have been at the RSL"[12] and that would have been so whether it was during the time he was on the committee or afterwards. It should be noted that Mr. Hardy's recollection of the incident included the fact that the kitchen floor was wet on that occasion and that when he saw the plaintiff later she had a swelling to her knee. Mr. Hardy also recalled that there had been comments about the condition of the floor and refrigerators in the kitchen area and that these comments had come to the attention of the Executive Committee prior to February 1991.

[13] The defendant relies also on the recollection of a Mrs. Kennaugh who was a member of the Women's Auxiliary until she resigned in February 1991. Mrs Kennaugh describes an occasion when she had been shopping at Woolworths to prepare for "a big catering job"[13]. When she returned she saw the plaintiff sitting on the chair outside the kitchen. The plaintiff told her she had fallen pointing to an area near the three-door stainless steel refrigerator. Mrs Kennaugh did not see any wetness in the area nor dampness on the plaintiff's clothing. Mrs Kennaugh was not able to fix the precise date of that incident but its timing does seem to be at odds with other evidence which suggests that on the date which the plaintiff alleged she had the subject fall, there was no function organised for that evening. Much of the thrust of Mrs Kennaugh's evidence went to the question of whether the plaintiff asked her to make a statement as being a witness to the fall which Mrs Kennaugh said she had never in fact seen. As Mrs Kennaugh had been asked to recall the detail of the incident to which she referred and the subsequent conversations only a month before giving evidence (i.e. some 8 to 10 years after the events) her evidence is not particularly helpful on questions of fact or of credibility.

[14] I am satisfied on the balance of probabilities that the plaintiff sustained her injury on a Saturday, that is consistent with the type of duties which were being undertaken in the kitchen by the plaintiff and Mrs Shanahan. I am satisfied that the notation made by Dr. Thurling in his notes was made at a time where there was a need for him to have some precision about when the incident occurred and that the notation was made well before the commencement of the proceedings and before there could be any suggestion that the limitation period had any relevance to the plaintiff's proposed claim. The notation was certainly made before 1993 and more likely at the time when Dr. Thurling was referring the plaintiff to Dr. Thomas. I accept also that the time frame within which the injury occurred is defined by the recollection of Mrs Shanahan as being a short time prior to the "crystal party" which is referred

---

12 Transcript 424/22

13 Transcript 400/55

to in the diary of events kept by the defendant.[14] That diary notes that party as having occurred on 4 June 1991. The diary also notes that on 25 May 1991 that a function was to be held at Mareeba. Other evidence was to the effect that the diary was maintained to avoid clashes between functions to be held in Atherton and those at Mareeba. This rather suggests that, if weight were given to Mrs Kennaugh's recollection, the "big catering function" to which she referred would certainly not have been held on the evening of the incident.

[15] I find therefore that the date on which the plaintiff sustained her injury was the 25 May 1991 and that consequently the defence, that the action was commenced after expiry of the period of limitation, has not been made out.

The incident

[16] The plaintiff states that the incident occurred on Saturday, 25 May 1991. The plaintiff and another volunteer Mrs. Shanahan were engaged in cleaning the refrigerators, the shelves and the pantry. The refrigerators had been switched off the night before in order to defrost them. As a consequence there was water on the floor. They had mopped up the water but water continued to leak on to the floor. The plaintiff was engaged in moving food in and out of the pantry and in preparing snack food to be served to the patrons of the Club's Goose Club.

[17] The layout of the kitchen at that time, as the plaintiff recalls it, is the subject of a sketch (ex 25), which shows a doorway between the kitchen and the area described as the pantry. Inside the pantry were three refrigerators and a freezer and on one wall shelves containing foodstuffs. A similar sketch was introduced into evidence by Mr Allen – ex 52. This identified some changes to the locations of the various appliances which had in fact been implemented, but there is no clear evidence as to when.

[18] As the plaintiff was moving from the kitchen to the pantry she passed through a doorway and had on her left a large three door stainless steel refrigerator. Along the wall to her right were two smaller refrigerators. She was, at the time, carrying a large bowl which she intended to take into the pantry area. As she was passing by the refrigerator she slipped and fell, landing on her back. The point of the fall is indicated in ex 25 by an area marked with the word "water". Mrs Shanahan, who was working with the plaintiff, was then at the sink in the kitchen area. She heard the plaintiff call out and went to her aid. Mrs Shanahan was able to lift the plaintiff into a sitting position but was not able to do more. She sought help from others in the building. One of those persons the plaintiff has identified as Mr John Hardy to whom reference has already been made. Mr. Hardy recollects that there was, at that time, "water on the floor from a leaking refrigerator in the pantry".[15] The plaintiff recalls also that her shirt and undergarments were wet.

[19] The plaintiff gave evidence that there was often water on the floor in this area of the pantry because of the condition of the large refrigerator. It was an old refrigerator which had previously been used in the bar. According to Mrs Shanahan it had defective seals which resulted in excessive build-up of condensation. To take away the condensation the refrigerator had been fitted with a makeshift drainage system, namely a hose carrying the water to a bucket. It was suggested that the bucket

---

14 See ex 53

15 Transfer 420/10

sometimes overflowed. Whether the bucket had overflowed on this occasion is not known. That, it seems to me, is but one of a number of explanations as to how water might have come to be on the floor in this area.

[20] The problem was the floor itself, which was covered either with old lino or sheet vinyl at the time. Prior to this incident, extensive renovations had been undertaken at the Club premises. In 1990 the kitchen area had been remodelled, creating the two areas of the kitchen and the pantry. According to Mr Allen the pantry area was finished in early 1991.[16] His sketch plan showing the layout as described by the plaintiff bears the date 20 February 1991.

[21] The plaintiff's recollection is that the renovations had been done but the floor covering had not changed at the time of the incident, although it was replaced later. She describes the relevant floor covering as "old lino…but it had been there about 35 years roughly. It was very shiny and very worn, badly worn."[17] Mrs Shanahan described the lino as having "had it and slippery".[18]

[22] If the pantry area had been refurbished at the time it is likely the floor covering was indeed vinyl. The renovations had been carried out under the supervision of consulting engineers, Gutteridge Haskins & Davies, and I expect that part of the contract work would have involved the laying of new flooring after the completion of the structural changes. If this was so, then the flooring was that as ultimately tested by Mr Shepherd on behalf of The Intersafe Group Pty Ltd, consulting engineers.

[23] It was common ground that there was no non-slip matting on the floor at that time. Such matting was provided in "late 1991 or 1992".[19] Mr. Allen was aware of complaints about condensation from the refrigerators leaking on to the floor, though he said this only arose when the members of the Women's Auxiliary forgot to shut the doors. He was aware also of complaints about water being on the floor of the pantry and the kitchen. One other member of the Women's Auxiliary also found the floor slippery. Mrs Kennaugh, who was with the Women's Auxiliary for about 13 months, found the vinyl floor slippery if you had the wrong shoes on. She seemed to be referring to the vinyl in its dry state.

[24] On behalf of the defendants two former members of the Women's Auxiliary claimed they did not have any difficulty with the floor. The first of these, Mrs Cole, claimed she had no difficulty with the floor and did not find it slippery. She spoke of the condensation coming out of the refrigerator as being a very small drip which she did not see as problematic. In the kitchen sometimes the floor became wet but a potato sack was used to soak up the water. She also described such a sack being used on the floor around the refrigerator prior to the bucket being used. Mrs Cole was not a frequent attendee at the kitchen during 1990 or 1991. She had spent much of the earlier year caring for her husband before his death on 13 February 1991 and she was not much involved in the Women's Auxiliary affairs after that. The second person, Mrs Walker, was the Secretary of the Women's Auxiliary until about 1990 but did not have much to do with the Auxiliary after 1991 because she too had suffered the loss of her husband at about that time. That would mean her relevant

---

16 Transcript 432/5
17 Transcript 37/20
18 Transcript 97/60
19 Transcript 436/40

experience in the kitchen was largely at a time prior to when the renovations took place and the locating of the refrigerators in the pantry area.

[25] The flooring was tested by Mr. Garth Sheppard of The Intersafe Group Pty Ltd on 22 February 2001. He furnished a report, dated 27 March 2001, which is ex 5. The photographs attached to his report depict the vinyl flooring as it appeared on that day. It also shows the coverage of the vinyl floor by non-slip matting in the areas which were heavily trafficked by staff. Mr. Sheppard carried out slip-resistance tests as required by the relevant Australian Standard. These tests revealed an average co-efficient of friction of 0.29 which was significantly below the minimum Australian Standards in wet conditions. This test caused Mr Sheppard to assume that the surface existing at the time of the accident would perform "similarly (or worse) based on Mrs Schultz's description". Mr. Sheppard concluded that a "slip and fall was a highly predictable outcome of the conditions described [by the plaintiff]).[20] Mr Sheppard identified a range of controlled measures which could have been adopted to the situation in the defendants' pantry area. The most obvious of these was the measure which was ultimately followed, namely the provision of non-slip matting. Other control measures could include providing proper equipment such as refrigerators which did not cause the floors to become wet.

[26] It is clear to me that the plaintiff and Mrs Shanahan had spent a great deal more time than some others in the kitchen and pantry area carrying out the work of the Women's Auxiliary. Their evidence, together with the findings of the consulting engineer Mr. Shepherd, in addition to the ultimate decision in late 1991 to equip the pantry area with non-slip matting, leads me to prefer the evidence of the plaintiff, Mrs Shanahan and Mrs Kennaugh as to the slipperiness of the floor in the pantry area.

[27] Mr. Hardy, called as a witness by the defendants, said he was aware that comments had been made about the presence of water on the floor from a leaking refrigerator (T425/1); that this fact was the subject of conversation at the club premises; that he, as a council member, was aware of the problem but that nothing had been done to remedy the problem (425/50). I accept this evidence and find that the defendant was aware of the problems associated with the presence of water on the pantry floor.

[28] The plaintiff's evidence is thus supported by the evidence of Mrs Shanahan and Mr Hardy, both of whom I find to be credible and reliable witnesses. Although the plaintiff delayed seeking medical advice I am satisfied that she initially regarded the injuries as minor and that, when they did not improve, she sought help from Dr. Thurling. The notation in Dr. Thurling's notes as to the date of the incident I infer was made at a time when it became important to clarify the event and certainly well before any issue of whether the fall actually occurred became contentious. I accept the plaintiff's evidence as to how the fall occurred and I find that the injuries of which she complained to Dr. Thurling were caused as a consequence of the fall.

Duty of care

[29] There can be no doubting that the defendants owed to the plaintiff a duty of care. Mr Webb of Counsel on behalf of the defendants conceded as much.[21] The evidence shows that the defendants had control of the premises; and the plaintiff

---

20 Ex 5 at p 18

21 Transcript 488/30

and other members of the Women's Auxiliary worked at the invitation of the defendant to provide services and to gain profit for members of the RSL Club. As voluntary workers engaged for that purpose there was a relationship characterised by the law as understood in established cases.[22] The defendant did not argue to the contrary.

Breach of duty

[30] The plaintiff asserts that the defendants were, or ought to have been, aware that the refrigerators, particularly the large one, leaked water on to the floor and that it was in such a condition that it had to be defrosted frequently. Despite the defrosting, condensation still leaked on to the floor.

[31] It is not clear how water came to be on the floor on the occasion of the incident. The plaintiff said that one of the early tasks on this particular day was the defrosting of the refrigerator and that the water which came on to the floor was mopped up. There was further mopping of water on the floor on at least two occasions during the morning.[23] The plaintiff's fall occurred in the early afternoon. Her recollection was that the floor by that time had "dried off a fair bit" compared with what it was like in the morning.[24] However she did say in cross-examination that the floor had never dried off completely.

[32] Mrs Shanahan could not say whether the floor had been mopped on that particular Saturday, but described the usual practice of mopping up water from the floor a number of times during the day – "if water was there and we noticed it, we would mop it".[25] Mrs Shanahan described the floor as "easy to slip on because even though it was mopped regularly it was often wet and damp".[26] She recalls that when she went to offer assistance to the plaintiff her skirt was wet. She also stated that she had spent most of the time performing tasks in the kitchen area and that it was the plaintiff who was going in and out of the pantry area.

[33] I accept the evidence of Mr Garth Shepherd as to the nature of the floor and that a slip or a fall was "highly predictable outcome". The control measures he identified were relatively inexpensive and ought to have been implemented prior to the fall. No compelling reason was given by the defendant as to why this could not have been done at that time as it ultimately had come to be done later. I find that the defendant was negligent in failing to provide safe premises and safe plant; in failing to provide non slip matting and in failing to warn the plaintiff of the dangers. I am satisfied that the plaintiff's fall and the injuries identified hereafter were caused by this negligence.

Volens and contributory negligence?

[34] The defendants by their Third Amended Defence raised issues of "volenti non fit injuria" and contributory negligence on a number of grounds as set out in the pleadings. These related, particularly, to the plaintiff wearing inadequate or inappropriate footwear, her failing to keep a proper look out and by her remaining

---

22 *Australian Safeway Stores v Zaluzna* (1987) 162 CLR 479; *Pyrenees Shire Council v Day* (1998) 72 ALJR 152

23 Transcript 159/30

24 Transcript 160/

25 Transcript 116/18

26 Transcript 98/12

on the defendant's premises when she had no obligation to do so and when she was aware of the condition of the floor. Other grounds pleaded were not pursued but a further ground was added after the close of evidence suggesting that the plaintiff performed the defrosting of the refrigerators in a manner which caused water to come on to the floor and then failed to remove the water.

[35] With the respect to the defence of volens the plaintiff must not only know of the risk of danger but must "fully comprehend the nature and extent of it and accept the whole risk".[27] I am satisfied that there was no acceptance of the risk by the plaintiff, here, but rather considerable efforts to mitigate the risk which would have prevented her from carrying out for the benefit of the defendant a task which she regarded as important. I accept the plaintiff's evidence that she, from time to time, made complaints to Mr. Allen and to others about the nature of the flooring in the kitchen and pantry. Whilst she worked on a voluntary basis, and therefore could have resigned from her position at any time, her continued presence working for the benefit of the defendants cannot be seen as an acceptance of the risk. Her activities, as a member of the Women's Auxiliary, had become for her a consuming interest from which the members of the RSL Club were the main beneficiaries. The proposed defence, in my view, is both wrong in law and unmeritorious.

[36] The onus of proof of contributory negligence is on the defendants. They refer to the plaintiff's choice of shoes, her method of defrosting the refrigerators, failing to mop properly and failing to walk carefully in an area which might be wet. The evidence going to the state of the plaintiff's shoes comes only from the plaintiff herself. She describes the shoes as having leather uppers and polyurethane soles. She reports that, when she noticed the shoes becoming slippery, she would arrange for the soles to be roughened so that they were not slippery. The shoes were not available for examination or testing, nor was there any evidence of instructions having been given to the plaintiff as to the type of shoes that ought to be worn in this part of the defendants' premises. It would seem from the evidence of Mr Sheppard that the only way to counter the inadequate slip-resistance of the floor's surface would be the provision of specialised footwear which are marketed as "non-slip".[28] Even then Mr. Sheppard regarded this as the least effective control measure. As to matters of the adequacy of the method of defrosting and mopping, the evidence of the plaintiff and Mrs Shanahan is to be preferred to that of Mesdames Walker and Cole whose involvement in the kitchen I have already observed was of limited duration and not frequent in the 12 months prior to this incident. I accept therefore that the plaintiff and Mrs Shanahan were involved in the defrosting of the refrigerators in the early part of the morning and that they had attended to the mopping of affected areas after the defrosting process had been completed. The incident occurred in the early afternoon at which time the ladies were involved in tasks unrelated to the defrosting of the refrigerators and the mopping of the floors. I have no doubt that their attention was focused on the carrying out of those other tasks and that they ought to have been in a position of being able to do so in premises which were reasonably safe for the purpose. The plaintiff's evidence that by the time of her fall she thought that the surface was mainly dry was, for her, a reasonable conclusion. I conclude that the floor was, in fact, not dry based on the evidence of Mrs Shanahan as to the wetness of the plaintiff's clothes when she went to her aid. In the circumstances where the plaintiff was necessarily focused on carrying out her tasks, I am not

---

27 *Roggenkamp v Bennett* (1950) 80 CLR 292

28 See ex 5 p 17

persuaded there has been any want of care on her part to take care of herself. I conclude therefore that the plaintiff was not guilty of contributory negligence.

[37] A further ground of contributory negligence argued was that the plaintiff returned to work when she should have been convalescing. It was alleged that the fall in May 1992 contributed to the failure of the spine to heal. No medical opinion to this effect was adduced in evidence. I accept the plaintiff's evidence that this incident caused temporary exacerbation of pain. I find the incident was not causative of further injury.

Quantum

[38] At the time of this incident the plaintiff was almost 40 years old, having been born on 23 June 1951. She lives with her husband John Scultz, whom she married on 20 September 1986. Mr Schultz is now 55 years of age. He is in receipt of a Veteran's Affairs Pension as a result of a disability in his back. That disability has restricted his movements and made necessary modifications in his bathroom and toilet. He was admitted to the full rate of the pension in 1995. Prior to his succumbing to these disabilities Mr. Schultz worked as an interstate transport operator.

[39] The pre-incident health status of the plaintiff was rigorously explored during cross-examination based mainly on defence counsel's perception of the seriousness of the various physical conditions for which the plaintiff had sought treatment. The plaintiff generally was under the care of her general practitioner, Dr. Thurling. On a few occasions she was seen also by general practitioner, Dr. Simmonds. The records of each of these practitioners have been tendered in their entirety and are exhibits respectively 37 and 46.

[40] Dr. Thurling commenced to treat the plaintiff in 1985. I accept his description of her pre-accident health status and particularly her psychological reaction to pain.

[41] The plaintiff had long standing problems with chronic asthma and chronic migraine headaches. She also suffered, less frequently, with abdominal problems in the nature of irritable bowel syndrome. The plaintiff was a heavy smoker but only a social user of alcohol. The plaintiff had a low tolerance to pain and when consulting Dr. Thurling she would complain of pain in what appears to have been an exaggerated manner. Dr. Thurling explained her behaviour in this way –

> "…Margaret was the sort of person when she got into pain, she would start to panic and she'd become hysterical. She couldn't tolerate any oral medication. Or she would vomit it up and often she was vomiting when she was in pain. I think she was vomiting on this occasion.
> And so any oral medication would have been a waste of time and what usually happened is that she would ring me up – if I did give her oral medication, she'd ring me back later saying she couldn't keep it down. And often if it was in the middle of the night or late at night, because you'd have to give her an injection – that she was in pain so I'd give her an injection.
> It was mainly because of the way she used to respond to pain.
> She responded very badly to pain."[29]

---

[29] Transcript 247/40-60

[42] As a consequence Dr. Thurling administered pain relief by injections and often injections of narcotic drugs such as pethidine and morphine or the drug phenergrin. The plaintiff was not addicted to the drugs but she had become psychologically dependent on them.[30] Concerned, however, at the amount of these drugs she was taking, Dr. Thurling at times used the drugs in a diluted form, or alternatively used a placebo if he thought her pain distress was purely psychologically based.[31]

[43] When asked whether the plaintiff's account of her condition could be relied upon Dr Thurling answered:-

> "Oh, she tended to exaggerate things a bit but – I don't mean – she didn't set out to do that purposely she just – her perception of pain was always far worse than what it was."[32]

[44] The first recorded complaint of back pain by the plaintiff was in March 1987 which resulted from her lifting concrete. There was an occasion about this time also when the plaintiff hurt her back whilst working in the cold room at the RSL premises but neither instance resulted in any ongoing problem or continuing treatment.

[45] In 1989 the plaintiff complained of back pain in three visits to Dr Thurling, the last of which was on 14 July 1989 on account of a fall on to her sacrum. An X-ray was taken on this occasion. The X-ray did not disclose any structural problems in her spine nor any sign of degeneration.[33]

[46] In 1990 the plaintiff consulted Dr Thurling on five occasions complaining of back pain. They were on 8 March when pain was relieved by an injection of pethidine; on 15 May when a manipulation was undertaken; on two further occasions in September when further manipulation was performed; and on 10 October 1990 when the plaintiff was treated with a pethidine injection and an X-ray was ordered. That X-ray, however, was not made available at the hearing.

[47] The plaintiff next returned to Dr Thurling complaining of back pain on 8 April 1991 with left-sided sciatica pain which apparently was relieved by an injection. That therefore was the level of pre-accident complaint which the plaintiff had made about her back. Dr Thurling described her condition as showing "recurrent back pain rather than chronic back pain. She was usually very well between attacks."[34] Dr Thurling considered that this history of pain taken together with the X-ray findings did not constitute "a severe back problem at all".[35] He expected that the history of complaint about her back would have continued "unless she changed her personality or life style or whatever"[36] and he commented –

> "She was a person that suffered with – psychologically: if she had pain she became very distressed. I didn't think she had a particular back problem prior to the fall."[37]

---

30 Transcript 256/10
31 Transcript 248/30-60
32 Transcript 251/5-11
33 Transcript 289/15-20
34 Transcript 272/27
35 Transcript 274/40
36 Transcript 279/20
37 Transcript 279/30

[48] After the fall the plaintiff was seen by Dr Thurling on 4 June 1991 in connection with her knee which was still swollen and painful as a result of the fall. He referred her to Dr Thomas, orthopaedic surgeon, who had performed surgery on that same knee in 1988. However, before the plaintiff visited Dr Thomas, she returned to Dr Thurling and on this occasion complained of back pain. This caused Dr Thurling to add a handwritten postscript to his referral letter inviting Dr Thomas to look also at the plaintiff's back.

[49] Dr Thomas in his report thought that the plaintiff may have had some earlier degenerative changes or even some low-grade chronic soft tissue strain in the lumbar spine. He did not consider there was any significant disability other than what could be kept under control with conservative measures. That was the only occasion Dr Thomas examined the plaintiff's back. On his assessment of the plaintiff's complaints and his clinical examination he came to the view that the plaintiff had suffered "a sprain to her back" which "may have highlighted the pre-existing changes or aggravated them to some extent."[38] He arranged for plain X-rays to be taken which revealed some early degenerative changes. Dr. Thomas suggested the plaintiff undertake a course of rehabilitation.

[50] The plaintiff continued to suffer severe pain and was referred to Dr. Beecher for a second opinion. He arranged for a CT scan of the plaintiff's spine which revealed a broad based prolapse of L4-5 disc "apparently compressing the left L4 nerve root and possibly the L5 nerve root".[39] His clinical examination found significant reduction in the range of straight leg raising. He formed the opinion that the condition warranted surgical intervention.

[51] Dr. Beecher also considered that the state of the plaintiff's right knee required surgery which surgery was to be carried out first in order to improve her mobility. She had undergone surgery on this knee in 1988 and had experienced some continuing problems, but these had not greatly restricted her capacity to work. Further surgery on her knee was carried out on 15 July 1991 and her knee condition stabilised over the next six months. There was a suggestion that the plaintiff delayed the healing of this condition by returning to voluntary work and suffering a fall. Notwithstanding this, it seems the knee healed satisfactorily resulting in a 15% loss of use of which 7.5% is attributable to the subject fall. The condition in her right knee was further aggravated by the altered gait which came as a result of the progressive deterioration in her spine. Since 1999 the plaintiff has largely been confined to a wheel chair because of her back disability. The loss of function in her right leg is now considered mainly in terms of loss of stability when transferring to and from the wheel chair.

[52] The plaintiff again consulted Dr. Beecher about her back in February 1992. He ordered a further CT scan which did not reveal any disc bulge but the doctor determined that there was instability at L4-5 level. The plaintiff underwent surgery on 17 February 1992 to fuse the vertebrae using a Hartshill rectangle. Sound fusion was not achieved and the plaintiff continued to suffer severe pain. In this period the incident of slipping whilst in the kitchen occurred as referred to in paragraph 4 above.

---

38 T346/40)

39 Ex 8 Doc No 5

[53] The failure of this surgery led to the plaintiff being referred to Dr. Low, orthopaedic surgeon, and thereafter she underwent surgery to her back. There was a series of operations which caused a cascading deleterious effect on the plaintiff's spine resulting now in her being wheel chair bound. I shall refer in a summary way to the main surgical procedures undertaken by Dr. Low and others.

April 1993 - Anterior fusion

May 1993 - Fusion of L3-S1 using rods and screws

February 1994 -Removal of metal apparatus and posterior fusion using steffi plates

April 1996 - Removal of steffi plate

November 1996 - Reduction of dislocation L3-4 (Dr. Ryan)

Early 1998- Anterior fusion T6-S1 (with Dr. Scott-Young)

July 1999- Fusion of sacroiliac joint

In all the plaintiff underwent surgery on her spine 13 times in the 10 year period.

[54] It is common ground that, prior to the subject fall, the plaintiff had early degenerative changes in her spine, particularly at L4-5 level. This is clear from the various imaging reports arranged before the surgical procedures were undertaken. What the future effects of that condition were likely to be is not something which medical specialists could forecast with precision. Dr. Thomas thought that the plaintiff "could have slowly got worse as the years went on with natural aging processes and there may be other factors coming into it, but that was a possibility".[40] Dr. Shepherd considered that, without the fall, the plaintiff would have ended up in her pre-surgery position (ex 58) in five to ten years. He thought that "her level of function would have deteriorated and her level of symptoms would have increased over time… and her exercise tolerance and work capabilities would have reduced at the time".[41]

[55] Dr. Low, who was cross-examined at length about the effect of prior back complaints and other health conditions, said that the progression of symptoms arising from the degenerative changes was "totally unpredictable".[42] However he regarded the fall as a significant event "in that before [the fall] her pain seemed to settle down, but this time the pain didn't seem to settle down and it led to spinal fusion".[43]

[56] That assessment of Dr. Low is descriptive of the events that led to the initial surgery. Bearing in mind the back surgery was delayed until some eight months after the incident, there was ample time for the symptoms to abate.

[57] Some inquiry was made as to whether the initial surgery should have been undertaken. The orthopaedists who gave evidence expressed doubt that they would have operated in the circumstances. But this surgery was undertaken when different

---

40 Transcript 347/40
41 Transcript 525/25
42 Transcript 186/5
43 Transcript 188/40

views prevailed as to when surgery was indicated. Dr. Low, particularly, referred to this by noting that in 1991 spinal fusion was a "very common operation and the indication to do that was chronic low back pain which [the plaintiff] suffered".[44]

[58] I am satisfied that the plaintiff suffered low back pain as a consequence of the fall. I am satisfied that she made a complaint of this symptom to Dr. Thurling at that time but this symptom was seen as less serious than the injury to the plaintiff's right knee which had been the site of earlier surgery. There was no suggestion of any incident having occurred, which would have led to the onset of symptoms in her back, between 25 May 1991 and the date when Dr. Thurling made the note in his referral letter to Dr. Thomas.

[59] The plaintiff's response to pain and the potential for complaints to be exaggerated undoubtedly complicated assessment of the impact of the fall. Nevertheless I accept that the pain she experienced in her back following the fall did not settle and that she continued to suffer with pain over the eight months leading to the surgery performed by Dr. Beecher. There was no suggestion that the plaintiff acted unreasonably in pursuing the treatment recommended by Dr. Beecher. In those circumstances the unfortunate consequences of that surgery and the attempts to remediate that harm flowed directly from the defendants' negligent act and the plaintiff is entitled to be compensated therefor. I reject the submission that the plaintiff, in undertaking this surgery on Dr. Beecher's advice rather than accepting Dr. Thomas' advice, was guilty of contributory negligence or was volens.

[60] When it became clear that no further surgery would improve the plaintiff's physical functioning, attention turned to alleviating her pain which, by this time, was constant and not relieved by standard medication. She was, at this time, receiving high doses of narcotic medications which not only did not provide adequate relief but introduced other dangers. On 16 October 2001 the pain management was undertaken by Atherton Hospital. In December 2001 the plaintiff was referred as an outpatient to the Pain Clinic at Townsville for a two day assessment. On 1 February she was admitted as an inpatient for the trialling of medication and the installation of a pump for the controlled delivery of narcotic medication. After her discharge on 22 February 2002 the plaintiff was reviewed periodically at Atherton Hospital but by April 2002 she had developed a staph infection which necessitated the removal of the pump and a return to oral medication. Since then the plaintiff has been weaned off the more addictive medication and now controls pain with oral methadone. For this she needs to obtain a prescription every two or three days at a cost of $3.60 per script.

[61] The plaintiff's present condition is such that she spends much of her time in a wheel chair but occasionally uses a walking frame inside the house. She continues to suffer with constant pain in her lower back, buttocks, legs and pelvis. She has intermittent pain in her upper body and pain and stiffness in her neck. Her mobility is seriously compromised and she has poor balance. Her inactivity has led to weight gain. She has difficulty with bowel movements and often experiences increasing pain when evacuating her bowels.

[62] The plaintiff describes the change in her emotional state from being outgoing and happy-go-lucky to now being angry, frustrated and depressed. She has attempted

---

44 Transcript 193/35

suicide on two occasions. Mr. Walkely, psychologist, described the plaintiff at the time of his examination in 1995 as being severely depressed and potentially suicidal. At the time of his latest examination in January 2001 he found that she had improved significantly and that suicidal ideation was not present. She was, at that time, taking anti-depressant medication. He assessed her as having a significant risk of relapse into depression. Understandably the plaintiff has good days and bad days with respect both to pain and to her mood.

[63] Mrs Helen Coles, occupational therapist, interviewed the plaintiff at her Yungaburra residence on 26 November 2000. Mrs Coles observed the plaintiff's capacity to move around the home and to perform simple tasks and reported on the plaintiff's deficiencies in functional capacities, particularly mobility, balance and posture. Mrs Coles opines that "the effects of the injuries and lack of long term success of ensuing medical procedures has impacted on virtually every facet of Mrs Schultz's lifestyle, personally, by loss of her personal privacy, dignity and independence*;* interpersonally, by loss of her former satisfying sexual relationship and personal intimacy with her husband; recreationally, by loss of her enjoyment, involvement in dancing, hobbies, community activities; vocationally, by inability to resume her involvement, albeit voluntary, with the RSL Atherton."[45]

[64] In weighing this impact on the plaintiff's life it is necessary that I also take into account the fact that, before the accident, the plaintiff's enjoyment of life was restricted to some extent by her pre-accident health issues, which included a history of right knee instability, recurrent back problems, migraine headaches, asthma, hypothyroidism, irritable bowel syndrome, heavy smoking and depression. The prospect was that these conditions would increasingly impact on the plaintiff's wellbeing as she grew older.

[65] The plaintiff is now 52.5 years of age having been born on 23 June 1951. The life tables suggest a life expectancy for a woman of that age of 30 years. According to Dr. Kearney the plaintiff's life expectancy has been reduced by the secondary effects of her disability by a minimum of five years. Though pressed to do so, he was, understandably, not able to suggest any upper limit to the range. For purposes of calculation of future loss and future expenses I will adopt a life expectancy of 20 years. I do so because of the plaintiff's long history of constant medical problems, her smoking addition, her susceptibility to other trauma and some residual risk of suicide.

[66] For pain suffering and loss of amenities I would assess an allowance of $130,000 of which $60,000 should be attributed to the past and thereby attract interest at 2% for 12 years – a further allowance of $15,600.

Economic Loss

[67] The plaintiff was not in paid employment at the time of the incident and had no fixed plans for employment in the future. She had for approximately five years prior to the incident worked on a voluntary basis at the RSL Club. She had, at various times in her life, gained employment as a shop assistant, student nurse, sales representative, bar attendant, kitchen hand, cook and car detailer. In her statement (exhibit 17) she raised the possibility that she might return to work in a variety of occupations such as correctional services officer, bar attendant or cleaner. I find

---

45 Ex 8 doc 23 p 17

that the plaintiff's voluntary work at the RSL Club was a matter of consuming interest to her and that while she was able to continue in that role she would have done so. This would have precluded her from engaging in any other work returning significant remuneration. If for any reason she had ceased her voluntary work the plaintiff was, prior to this incident, the primary carer for her husband who had had surgery on his back leaving him with significant disability. He was in receipt of a pension and the plaintiff was entitled to a service pension also. It is not clear on the evidence whether remunerated work would have an impact on such a pension or whether the plaintiff's position, as primary carer of her husband, would have reduced her opportunity for anything other than work of a most limited nature. On balance I find that, had the plaintiff not been injured in this incident, her capacity for work was already reduced by physical limitations and family obligations. Her loss of that capacity has been productive of relatively minor financial loss. I assess this loss for both the past and the future in the sum of $20,000 which sum includes allowance for interest and loss of superannuation benefit.

Past and future care

[68] The parties agreed that the allowances for care should be calculated on the basis of an hourly rate of $10 past care and $12 for future care.

[69] There can be no doubt that the plaintiff cannot now live independently. There is, however, disagreement as to the amount of care that has been made necessary by her injury. The plaintiff experienced an increasing degree of disability and dependence on others from the time of the first operation on her back. It is probably after her fourth operation by Dr. Low, and the subsequent dislocation in her spine, that there was a significant loss of independence. This occurred in 1996.

[70] The situation is complicated by the fact that the plaintiff's husband has serious physical limitations following his back surgery in 1990. Initially the plaintiff was his carer, but the tables have turned to the point where she now requires more assistance from him. Mrs Helen Coles described the situation in the following terms:-

> "From what you could observe of him, did you believe that you would be able to provide the level of care that she required? – Independently and without anyone else's assistance?
>
> Yes? – I believe he would try as much as he possibly could and they would probably, between them, get by. It wouldn't surprise me, because of the quality of their relationship, that they – if they had no other assistance, if the daughter and partner were off the scene, he would.
>
> …I think he would get by but they would work their way around the difficulty and get by, so physically there are various ways you can get by if you cannot do particular tasks, it's just a quality of life would be even worse than it currently is or it was with the assistance that they were getting…if he had to get by without any other assistance I believe he was in the situation he was on the day that I

was talking to him, that he possibly could, but both their quality of life would be poor."[46]

[71] The other principal carers for the past have been the plaintiff's daughter Anita and her partner. Initially the daughter received a carer's pension in this capacity until she herself was injured. Her partner thereafter took over the role and received the pension. That is the arrangement that continued to the date of trial.

[72] The plaintiff requires a high level of assistance to undertake the physical elements of her care. In the period when her medication was administered by injection she needed assistance for that task. She also needs what Mrs Coles describes as "therapeutic companionship"[47] which is provided by her husband and carers. The nature of all the assistance required is detailed in Mrs Coles' report. Having observed both the plaintiff and her husband, when each gave evidence, and there having been no evidence to contradict the opinions of Mrs Coles and Mrs Glen, I accept in the main what each has said about the level of care required at present. But there is little guidance as to what will be required in the future.

[73] Translating those needs to the hours required I have made some adjustment to the table at paragraph 19 of Mrs Coles' report[48] to account for changes in the medication regime since her report and to reflect my view that the allowance for "comfort and companionship" should be absorbed into other areas of direct personal interaction. I would allow the following:-

Personal Care (to include nursing and companionship)	18 hours per week
Domestic Assistance	10 hours
Gardening	1 hour
Accompaniment at appointments	1 hour
Total	**30 hours per week**

[74] In the early period following the accident, the plaintiff did not require care at this level. But I must take account of the fact that, in her post-operative periods of convalescence at home, she would have required more constant care than is indicated by the above figures. She was encased in a body cast for substantial periods so all her physical needs would have needed to have been met by others. Also the period over which the past care claim applies must be reduced by the time of actual hospitalisation which was in excess of 100 weeks.[49] During this period some continuing support was, however, provided by Mr Schultz and the plaintiff's daughter and the times of convalescence and travel imposed increased demands on carers.

[75] It is now over 600 weeks since the plaintiff was hospitalised for her knee surgery in 1991. Balancing all these factors, the allowance I make for past care is for a period of 500 weeks at $300 per week - $150,000. This sum will bear interest at 5% for 10 years adding a further component of $75,000.

---

46 Transcript 291/15-42
47 Transcript 294/18-52
48 Ex 8 doc 23 at p 18
49 Mrs Glenn reports – ex 8 docs 24-26

[76] For the future there is a likelihood that the level of care will increase. The plaintiff's declining strength will make much more difficult transfers to and from the wheel chair. Perhaps different strategies will need to be put in place for her care and much will depend on her husband's capacity and the willingness of her daughter's partner to continue in this role. One expects there will need to be some supervision during the hours when a carer is not present. There is a prospect of her requiring a live-in carer and there is also the possibility that the plaintiff will be institutionalised if present care arrangements fail and her need for medical supervision increases. The evidence is left in an uncertain state and I have no details either of the nature of fulltime 24 hour a day care nor of cost of care in an institution.

[77] Mr Baulch, senior counsel for the plaintiff, argues that the cost of meeting the plaintiff's needs in the future is $900 per week. He relies on calculations made by Mrs Glenn in her three reports.[50] I do not accept these figures as accurately setting out the plaintiff's likely needs. Moreover the figures do not make allowance for the progressive degenerative changes in the plaintiff's back and the further deterioration in the various debilitations the plaintiff suffers. Even without the subject fall the plaintiff was facing in any event a future of some physical and social limitations.

[78] The defendant argues that the plaintiff would have come to her present level of disability even if she had not had the fall. The basis for that argument seems to be that the plaintiff would have presented, within some short period after 1991, with increasing symptoms. She would have described those symptoms as severe and this would have led to the surgery with the same catastrophic results.

[79] I reject this argument as not being in accord with the evidence. The radiological evidence shows that the plaintiff had early degenerative changes only at one level of her spine. She had no significant symptoms of discogenic pain prior to 1991. At the RSL she was able to undertake cooking and cleaning tasks, which would have exposed any weakness in her back had it been present. No doubt degenerative changes would progress, but it is not possible to say at what rate nor with what symptoms. Even if the plaintiff were destined to experience severe symptoms in the ensuing decade it cannot be said, as a matter of probability, that she would have undergone the same treatment nor have been left with the same outcomes.

[80] The principles which guide the assessment of future care have been discussed in many cases since *Griffiths v Kerkemeyer* and the principles have not always been uniformly applied nor have the principles been free of criticism. See per Kirby J in *Grincelis v House*[51]

[81] The method of assessing the allowance is to establish the market cost or value of the services provided gratuitously. The market costs of services which are required by a plaintiff in any particular case is "a question of fact which will be affected by the nature of the services required by that plaintiff and the capacity of the plaintiff to engage in and organise those services". *Goode v Thompson*[52]. Here the parties have agreed the market cost at $12 per hour which is less than the market rates (even excluding agency fees) identified by Mrs Glen in her reports. But the difficult task remains in determining what will be the nature of the services required by the

---

50 Ibid

51 (2000) 201 CLR 347 at p 332

52 (2002) QCA 138

plaintiff. The plaintiff's needs over the immediate past period I have assessed at 30 hours per week. I take the view that, with the passage of time, the plaintiff will have an increased need for such services and I expect that such need might become as extensive as requiring around-the-clock supervision. Obviously these anticipated demand for services must be averaged out over the period, but I regard the plaintiff's attempt to do this by suggesting $900 per week (i.e. 85 hours per week at $12 per hour) is too high. The approach which I would adopt is to allow 40 hours per week for the first 10 years (multiplier 413) leading to an allowance of $198,240 and for the second period 65 hours per week for the balance 10 year period (multiplier 666 – 413) which leads to a calculation of $197,340. The total of these two components so calculated is $395,580 which I would round off to $400,000.

Future expenses

[82] The plaintiff has suggested a list of future costs and expenses which includes continuing medication, visits to medical practitioners, travelling expenses, provisions of aides and requirements and additional costs for travel and accommodation whilst on holidays.

[83] The claim for future pharmaceutical expenses is based on past use of medications. Since early 2002 the plaintiff's medication regime changed from daily injections of narcotics to Physeptone tablets at a stated cost of $3.60per script (i.e. $8.40 per week). The plaintiff also requires other medications, the prices for which are set out in ex 43. Applying the quantities of drugs said to be required in paragraph 13 of the Quantum Statement (ex 17) and disregarding the medications for unrelated conditions, I cannot see any justification for an allowance beyond $40 per week. Over a 20 year period this calls for a total allowance of $26,000.

[84] The plaintiff claimed as special damages various pharmaceutical and associated expenses incurred in the past. These have not been particularised in any reliable way but are based upon estimates of frequency of use over a 10 year period. The costs appear to be based on present day costs for each item. I am not persuaded that these costs have been identified with sufficient accuracy to be a claim for special damages and I propose therefore to make an allowance here for what seems to me to be a reasonable component for past pharmaceutical expenses. On the evidence available to be that allowance should be $35,000 inclusive of the allowance for interest.

[85] Visits to a general practitioner are unlikely to be as constant in the future given that the plaintiff's pain management has become stable and there is no prospect of further surgical procedures. An allowance for a monthly visit to a general practitioner would, in my view, be adequate at a cost of $10 per week and a specialist's review at $200 per annum or $4 per week would appear reasonable. This allowance should be rounded off to $9,500.

[86] Claims for travelling expenses associated with medical and related appointments should be similarly reduced. I would allow $5 per week, rounded off to $3,500 in total.

[87] The claim for future aides has been based on the schedule to Mrs Coles' report and has not been the subject of serious challenge, I will allow on this account the sum of $15,000.

[88] Mrs Coles also identifies that there will be additional costs associated with travel and accommodation on which account I will allow the sum of $10,000.

[89] Allowances for future expenses are –

Pharmaceutical (past & future)	$ 61,000.00
Medical	$ 9,500.00
Motor vehicle	$ 3,500.00
Equipment and aids	$ 15,000.00
Travel and accommodation	$ 10,000.00
	$ 99,000.00

Special Damages

[90] The plaintiff's claim for special damages has been agreed in part. The claim for travelling expenses has been challenged. The difference between the parties concerns the appropriate per kilometre rate to be charged with respect to the vehicle used by the plaintiff. The plaintiff claims a rate of 50 cents per kilometre, the defendant suggests the appropriate rate is 35 cents per kilometre, this being based on some survey undertaken by the RACQ, details of which have been made ex 55 in these proceedings. I do not see any advantage in fine analysis of these competing claims, but will simply allow the sum of $17,500 as a compromise figure. Interest should be allowed on that sum at 5 per cent for 10 years which adds a further component of $8,750.

[91] In summary then I will allow special damages as follows:-

Medical Expenses (HIC)	$49,464.04	
Items covered by medical benefits	$79,663.95	
Interest thereon	$ 1,022.86	
Hospital expenses – Atherton	$ 6,383.00	
Hospital expenses – Townsville	$36,673.00	
Travelling expenses	$17,500.00	
Interest thereon	$ 8,750.00	$199,456.85

[92] In summary then damages are assessed as follows:-

General damages	$ 130,000.00
Interest thereon	$ 14,400.00
Economic loss – past & future	$ 20,000.00
Past care	$ 150,000.00

Interest thereon	$ 75,000.00
Future care	$ 400,000.00
Future expenses (inc past pharmaceuticals)	$ 99,000.00
Special damages	$ 199,456.85
	$1,087,856.85

Orders

[93] 1. Judgment for the plaintiff in the sum of $1,087,856.85.