

COURT FILE NO.: **99-CV-175773**
DATE: 2006/11/06

2006 CanLII 37421 (ON S.C.)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
EVA WEBB, SAMANTHA WEBB,) LEONARD H. KUNKA and
SARAH WEBB, EVA HAJCSAR,) DARCY MERKUR
ERNO HAJCSAR, ERNST HAJCSAR,) for the Plaintiffs
ERIKA VANDOORMAL and)
ROSEMARY WOODS)
Plaintiffs)
)
- and -)
)
DR. OTTO WEIGLEIN, THE CENTRE) WILLIAM D. BLACK and
FOR PERSONAL SURGERY, PENNY) KEARY GRACE
LOWRY and MARGARET SMITH) for the Defendants
)
Defendants)
)

HEARD: October 16, 17, 18, 19, 20,
24, 25 and 26, 2006

Jennings J.

JUDGMENT

OVERVIEW

[1] The Plaintiffs' claim for damages for injuries received by Eva Webb following abdominoplasty, or tummy tuck, performed on February 2, 1999. Mrs. Webb received a third degree burn to her abdomen during immediate post-operative care. Six days later, she suffered a Deep Vein Thrombosis ("DVT") and Pulmonary Embolism ("PE"). Liability for the burn has been admitted. Liability for DVT and PE is denied. The *Family Law Act* claims have been resolved.

[2] The issues tried by me were:

- (i) Whether the burn caused or materially contributed to the DVT and PE, and
- (ii) Damages

FACTS

[3] Eva Webb is an attractive, well groomed, extremely articulate women of 57 years of age. Following her graduation from high school in 1969, she worked in a secretarial position with the City of Burlington for one year. There she met her husband who was also a City employee. Because of a City policy about employing family members, Ms. Webb resigned her position upon her marriage and took a position as secretary to the National Sales Manager of British Leyland Motors. She worked at that job until 1974, retiring just before the birth of her first child.

[4] She had a second child not long after the birth of her first child and as a result she remained at home for the next 20 years, raising her 2 children and running the household. She had no housekeeping assistance other than that provided by the members of her family. She did all of the household chores including the gardening and minor household repairs.

[5] In the spring of 1994, because of her fondness for gardening, she applied for a job at Terra Greenhouses, a large concern run by a friend. She began working at Terra in March, 1994. She did planting, flower and plant arranging, care of plantings and

flowers, and customer assistance. She was required to put pots on benches or in hangers which involved lifting. She worked 40 hours per week plus overtime on Saturdays. She worked for several months until the beginning of August 1994 when the season was ending and her assistance was no longer required.

[6] In October of 1994 she asked her friend if she could be re-employed and at Christmas of that year, she was offered full-time employment. She accepted the offer and worked until June 16, 1995. She left her work at that time because she said that her husband was unhappy that she working on Saturdays.

[7] In the fall of 1995, she sought employment not at Terra, but elsewhere. She did not accept the position.

[8] She and her husband separated in May of 1996 after some 27 years of marriage. She was upset by the separation and was put on a course of medication to relieve depression and anxiety. Ms. Webb had a history of low back pain, hip pain and knee pain, which was probably caused by the heavy work that she was required to do during the time she worked at Terra. She had become overweight and at the time of her divorce in June 1998, she was clinically obese.

[9] In the fall of 1998, she was determined to make some changes in her life. She wished to return to work at Terra, because she had been happy there. Prior to re-entering the work force, she wanted to improve her appearance, which she thought could be achieved by surgical means. She believed that by removing excess fat in her abdomen she would not only improve her appearance but as well strengthen her abdominal muscles and thereby alleviate her back problems.

[10] In January 1999 on the recommendation of several friends, she consulted the Defendant, Dr. Weiglen, who was the Director of the Defendant centre. He was at that time and is today a plastic surgeon with considerable experience. Ms. Webb arranged to have abdominoplasty consisting of a large transverse hip-to-hip super pubic incision. She gave informed consent, reading and understanding a comprehensive information booklet given to her by Dr. Weiglein concerning the operation, its risks and after effects.

She was specifically, and somewhat graphically, warned by Dr. Weiglein of the risks of DVT and PE.

[11] Dr. Weiglein performed the surgery in his centre on February 2, 1999. It was apparently uneventful and no complaint is made in these proceedings regarding it.

[12] In the recovery room, according to the nursing notes, Ms. Webb complained of feeling cold and a heating pad was placed on her abdomen. The next morning prior to her discharge home, Ms. Webb was seen by Dr. Weiglein. He discovered at that time, a burn caused by the heating pad. The burn was treated by him. Ms. Webb was discharged with instructions to dress the burn. She was reminded of the necessity of keeping mobile as set out in the brochure that she had been given. She was instructed to return in 2 days so that Dr. Weiglein could re-assess the extent of the burn, which by that time would have become more apparent.

[13] At home that day and the next, Ms. Webb walked about every hour rather than every 2 hours as she had been instructed. On February 4, 1999, she showered and saw for the first time the burn that she had received. She was horrified at its appearance, which is dramatically presented in a photograph that she had her mother take the following day. At this time, Ms. Webb was experiencing pain.

[14] On February 5, 1999, she returned to see Dr. Weiglein. He inspected, debrided and dressed the burn. He indicated that a skin graft might be required but he could not yet be certain, and he asked Ms. Webb to return to see him on February 8, 1999.

[15] At home Ms. Webb continued walking every hour on February 5 and 6. By February 7, her pain had increased and the frequency of her walking was reduced to every 1½ hours and subsequently to every 3 hours.

[16] By February 8, 1999, Ms. Webb was experiencing shortness of breath. She also had cramping, swelling and heat in her left leg. She saw Dr. Weiglein as planned that afternoon and he advised her that she would definitely require a skin graft, which he would perform. Ms. Webb and Dr. Weiglein discussed the donor site of the proposed

graft. Ms. Webb did not tell Dr. Weiglein of her problems with breathing or with her left leg. She said that she meant to do so but there was not sufficient time. Ms. Webb required assistance from a staff member in entering the examination room, something that Dr. Weiglein would have seen. Dr. Weiglein noted that apart from the burn, Ms. Webb was systemically normal. At trial, he said her movements and breathing appeared to him to be consistent with her recent abdominoplasty.

[17] Upon her return home, Ms. Webb's condition deteriorated. She was unable to contact Dr. Weiglein at the telephone number that he had provided. She spoke to her brother who was a medical student and he along with his wife, who is family physician, came to Ms. Webb's home. He immediately drove her to McMaster University Medical Centre where she was quickly admitted and treated for DVT and PE.

[18] Because of the burn, on February 9, 1999, Ms. Webb was seen in hospital by Dr. James Bain, Chief of Service, Plastic Surgery. Dr. Bain found a 20 cm. by 20 cm. area of full thickness burn on the anterior wall of her abdomen. The burn area "...was completely insensate."

[19] Ms. Webb asked Dr. Bain to assume responsibility for the care of her burn. He agreed to do so and on February 12, 1999, under general anesthesia, he carried out a skin graft from Ms. Webb's thigh. She had many follow up attendances with Dr. Bain, who reported on May 12, 1999 that "...things are healing very, very nicely." Ms. Webb had been placed on a course of Coumadin, an anticoagulant blood thinner, which was discontinued in June 1999.

[20] Ms. Webb continued to have significant abdominal wall pain and she complained of a feeling of pulling and tightening in her abdomen when she moved. On March 2, 2000, Dr. Bain carried out reversionary surgery and liposuction. On March 15, 2000, Dr. Bain reported that Ms. Webb's wounds were well healed and that she was "...quite pleased with her result."

[21] On October 25, 2000, Dr. Bain reported that further surgery was required to remove the area of skin grafting on the upper abdomen, revise the scarring on the abdominoplasty wound site, and to repair an umbilical hernia that had developed.

[22] That surgery was performed by Dr. Bain on April 8, 2002. On April 24, 2002, Dr. Bain reported that her "...wounds are healing beautifully and she is very pleased with the early post-operative result."

[23] On July 17, 2002, Dr. Bain reported a nicely healed scar and no trace of hernia. Ms. Webb complained of a minor degree of tightness in her abdomen and occasional cramps and was reassured that the tightness was "...part and parcel of the reconstructive procedure following her abdominoplasty."

[24] A subsequent procedure requiring same-day surgery under local anesthesia to further revise the lower abdominal scar was addressed and considered. After consideration, Ms. Webb elected not to proceed.

[25] Photographs taken a month prior to trial show that Ms. Webb is left today, well over 7 years post-surgery, with a relatively faint Y-shaped scar running under her ribcage and down to her navel, and with a much more pronounced and unattractive scar directly below her navel on what has been described as the bikini line incision site required for the original abdominoplasty. As well, she has a faint rectangular discoloration on her upper thigh at the graft donor site. It is unlikely that there can be any significant improvement in the appearance of the scarring.

[26] At the time of trial, Ms. Webb continued to live in the former matrimonial home. She lives there alone, her two children having moved away to establish their own homes. The home is described as large, on a large lot with an inground swimming pool in the garden. Ms. Webb owns the home outright having received it as part of her property settlement in the divorce proceedings. She supports herself on open ended support payments from her former husband in the present amount of approximately \$3,950.00 per month, indexed to the cost of living.

[27] She will shortly complete a course in interior decorating at Sheridan College. She has established her own interior decorating business which she intends to operate from her home. She has undertaken a few commissions in which she charges her time at \$50.00 per hour for consultation, and \$20.00 per hour for labour.

LIABILITY FOR THE DVT AND PE

[28] The Plaintiff's theory at the outset of trial was that the burn in itself caused or contributed to the DVT. That was the hypothesis of Dr. Bain whose knowledge of DVT and PE was obtained as incidental to his practice in plastic surgery. DVT and PE are known risks of abdominoplasty, the risk factor being something less than five (5) per cent.

[29] Dr. Noble who testified on behalf of the defence, had specific and extensive expertise with PE as shown by the studies he has undertaken and articles he has published on the subject, as set in his Curriculum Vitae. His evidence, which I accept, was that although extensive burns can create a risk of DVT and PE, the description of Ms. Webb's burns as being dry, her fluid balances after surgery, and her normal hemoglobin count upon admission to McMaster Hospital were all inconsistent with a causal connection between the burn and the DVT. His firm opinion was that the burn did not contribute to the DVT and that the DVT was not in any way related to the burn.

[30] Undoubtedly that evidence accounted for the position taken by counsel at the end of the trial that the burn contributed to the DVT not in and of itself, but solely because it restricted Ms. Webb's ability to be mobile following the surgery, as was required to prevent DVT. That position was consistent with the evidence of Dr. Carlsen, a very experienced plastic surgeon called by the Plaintiff. Dr. Carlsen made it clear that any connection the burn had on the onset of DVT was due to the burn's impact on Ms. Webb's ability to be mobile after her surgery.

[31] The problem that I had with the lack of mobility theory is that all the doctors agree that the activity that Ms. Webb described as being undertaken by her between February 3 and February 8, 1999 was more than appropriate and

recommended to guard against the onset of DVT. Further, Dr. Carlsen agreed that Ms. Webb's post-operation activity was very good and well within what one could expect for a post abdominoplasty patient.

[32] Counsel agreed that the law of causation in this province for medical malpractice cases has been recently accurately and comprehensively summarized in *Aristorenas v Comcare Health Services*, (Ont. C.A.) #C42475, released 11/10/2006. Assuming that on this issue, the “but for” test is less appropriate than the “material contribution” test, and that I may take a “robust and pragmatic” approach to factual analysis, I turn to the direction given to me by the Court of Appeal in paragraph 54 of *Aristorenas* as follows:

[54] The “robust and pragmatic” approach is not a distinct test for causation but rather an approach to the analysis of the evidence said to demonstrate the necessary causal connection between the conduct and the injury. Importantly, a robust and pragmatic approach must be applied to evidence: it is not a substitute for evidence to show that the Defendants’ negligent conduct caused the injury.

[33] The evidence is that the burn did not sufficiently impact upon Ms. Webb’s mobility so as to prevent her from carrying out the required frequency and duration of periodic activity to combat DVT. It is therefore simply not possible to find on the balance of probabilities on the evidence I heard that the Plaintiff has established a causal connection between the burn and the DVT.

[34] In what counsel described as a “fall-back” position, it was submitted that Dr. Weiglein was negligent in not diagnosing the DVT when he saw Ms. Webb on February 8, 1999 in his office, and in discharging her home rather than sending her directly to the hospital. Assuming for the sake of this submission, that it was probable that the DVT had been experienced at the time of the visit to Dr. Weiglein, and assuming that notwithstanding the Plaintiff’s lack of complaint regarding her symptoms, Dr. Weiglein ought to have diagnosed the possibility of the onset of DVT, there is absolutely no evidence than an earlier diagnosis would have made the slightest difference to the

result. Counsel fairly conceded that he could not suggest any consequence that might have arisen had the Plaintiff presented at the hospital a few hours before her ultimate attendance and admission.

GENERAL DAMAGES

[35] If I have erred in holding that the burn did not contribute to the DVT, I will assess the damages related to the DVT. There was virtually no evidence as to how the DVT and PE exacerbated the significant injury that Ms. Webb received from the burn. It is likely that absent the PE, her initial corrective plastic surgery could have been accelerated and her subsequent hospital stay shortened by perhaps a day or two. Her 5 month course of Coumadin of course would have been avoided. She has been off that medication since June 1999. There was no evidence of any complication or future concerns arising out of the PE. Accordingly, I would assess damages for the PE at \$10,000.00.

[36] Eva Webb suffered a severe third degree full thickness burn to her abdomen. Fortunately although severe, the burn was by reason of the area affected – about 2 to 4 per cent of her body's surface – not as serious as would have been the case with a larger burn. She has had two operations under general anesthesia subsequent to the original skin graft, both attempting to improve the appearance of the scarring, and to recreate the abdominal wall so that there would be easier and less painful movement. She still complains of tightness and a pulling sensation over the scar sites upon movement. This is associated with pain. That situation is by now permanent. She complains of difficulty sitting for longer periods and in walking. She is upset at the appearance of her scars. She is on that account reluctant to display her abdomen in a gym or pool. She cannot tolerate weight on her abdomen, which has affected her ability to enjoy sexual relations. She feels embarrassed at revealing her scarring during moments of intimacy. She no longer takes long walks or plays golf, activities she used to enjoy.

[37] She has suffered post-incident depression, which is controlled by medication. Dr. Miller, a psychologist retained by Ms. Webb for forensic purposes, testified that his test results revealed moderate levels of depression with which Ms. Webb is coping well and which should not keep her from the work place.

[38] She complains of spasms in her abdominal area caused by repeated activities, which create an urgent feeling of an impending bowel movement. Ignoring those feelings has resulted in embarrassing consequences.

[39] No medical evidence was called to dispute Ms. Webb's complaints or the medical findings of her physicians. That said there was evidence which indicated to me that Ms. Webb was unduly focused on her physical symptoms, which caused her to overstate their severity, and the limitations they imposed.

[40] In her testimony at trial, Ms. Webb told me of the many difficulties that she had in walking, bending, entering and leaving her car, and twisting. She expressed concern that vigorous movement could cause tearing in her abdominal wall notwithstanding Dr. Bain's evidence that not only was there no such danger, but that he encouraged exercise to assist healing and reduce pain. Indeed, the evidence was that in the fall of 2001, Ms. Webb began to play badminton twice a week.

[41] Ms. Webb's description of her limitations was quite inconsistent with the surveillance videos taken on December 27, 2004, June 13, June 19, and July 17, 2006. I tend to regard videotaped surveillance with a healthy grain of salt, but these as Ms. Webb herself admitted in cross-examination, showed her doing the following with no apparent difficulty:

- dragging and pushing garbage cans across the street;
- folding and tearing large cardboard boxes;
- bending easily at the waist;
- entering and exiting her car easily and fluidly;

- putting on her seatbelt;
- turning to reverse her car;
- carrying a bag containing two small dogs;
- walking with and tending to her infant granddaughter;
- walking easily and smoothly with no guarded or careful gait.

[42] Dr. Miller testified that Ms. Webb told him that she never required medication or counselling prior to her burn and that she was hospitalized for one month post-surgery with "...necrotized (*sic*) fasciitis". Dr. Miller said that he had not reviewed Dr. Robinson's charts and he agreed upon doing so that they showed Ms. Webb to have incorrectly reported to him the details of her pre-surgery state of health.

[43] There was no evidence of necrotizing fasciitis and Ms. Webb was hospitalized for twelve days not one month.

[44] Dr. Miller agreed that when he saw Ms. Webb, she did not show marked pain behaviour and sat for a two-hour interview prior to a six-hour assessment without any apparent difficulty.

[45] At trial, I observed Ms. Webb while she was in the witness box for almost two full days and I saw no obvious discomfort. To be fair, following her testimony she remained in the courtroom for the duration of the trial and would from time to time, stand against the wall after a period of being seated.

[46] Lastly, there are the records of the family doctor, Dr. Robinson. He saw Ms. Webb post-surgery throughout the next seven years on a frequency that varied from about once a week to every other month. Dr. Robinson described his role as being a provider of supportive therapy. He knew Ms. Webb had no one else with whom she could share personal confidences. He said he did his best to record all of the issues that she raised and that they addressed. He recorded a wealth of material that they

discussed, including litigation strategy, her relationship with her lawyers, difficulties with family members, but he recorded very little complaints of physical pain and prescribed no medication for physical pain. He made no referrals to specialists for pain management, sexual dysfunction or bowel or urological problems. He prescribed medication for depression and anxiety but made no referrals for psychotherapy or occupational therapy. I am forced to conclude that Dr. Robinson, her family physician, with whom she was in constant contact, did not believe her ongoing symptoms were sufficiently serious to warrant further intervention from that which he offered.

[47] Counsel for the Defendant has referred me to a number of cases in the Book of Authorities filed in which damages for burns have been assessed. Plaintiff's counsel has referred me to cases dealing with general principles of assessment in cases of serious injury, but not with respect to burns.

[48] I accept from the cases to which I have referred that the upper end of the range for damages for burn injuries is attracted to cases in which children have received visible burns and scarring which will effect their appearance and reaction of others to the disfigurement for the balance of their lives.

[49] Ms. Webb is 57 years of age and her scarring while real and permanent is generally not visible given that her ongoing weight problems will likely dictate her mode of dress. That said, she suffered a painful disfigurement, three surgical procedures each accompanied by painful periods of recovery, and she now has permanent scarring, some psychological injury, and ongoing and probably permanent discomfort on the burn site. Her ability to enjoy a sexual relationship has been compromised.

[50] Taking all of the foregoing into account, I consider an award of \$100,000.00 to be appropriate.

PAST INCOME LOSS

[51] The parties are agreed that Ms. Webb was planning to return to work at Terra on May 1, 1999 had there had been no complications following surgery. They also

agree that from May 1, 1999 to trial, her earning capacity was \$31,000.00 per year, which I understood to be what she could have expected to earn at Terra.

[52] Based on the evidence of the doctors who treated Ms. Webb, I find that as a result of the burn she received and the subsequent surgeries, post-injury, she was unable, and remains today unable, to return to the physically demanding job that she did at Terra when she worked there in 1995. That job required heavy lifting and carrying incidental to her position as a greenhouse worker-planter.

[53] The evidence of Dr. Bain persuades me that it would have been unrealistic to expect Ms. Webb to have returned to work of any sort until well after the second surgery of March 2, 2000.

[54] By the end of the year 2000, Dr. Robinson's notes indicate that Ms. Webb was generally feeling good about herself and that her abdominal surgery was "...ok". She was doing volunteer work. Dr. Robinson noted an improved mood, as she was making plans for her daughter's wedding that was to take place in the summer of 2001. Ms. Webb agreed at trial, that by this time she had "...turned a corner".

[55] On the evidence that I heard, I find that two years after having received her burn, a period which I will extend to May 1, 2001, Ms. Webb had recovered sufficiently so as to permit her to seek some form of employment if she was of a mind to do so. I put it that way because Ms. Webb's past work history since 1974 was simply not sufficient to persuade me that work outside the home was something she really was interested in doing. Since her separation in 1996, there does not appear to have been a financial motivator to require her to return to Terra or to seek any other job. She enjoyed gardening as a hobby and it seems to me to be in that spirit that she worked at Terra for the few months that she did in 1994 and 1995. Similarly, her intention to return to Terra after her abdominal surgery seems to have been as much for therapeutic reasons as for any other reason, being part of a decision to improve her physical appearance and make a change in her lifestyle.

[56] Accordingly, considering the agreement between counsel, I find that Ms. Webb was unable to earn \$31,000.00 a year for the period May 1999 to April 30, 2001 for a gross wage loss of \$62,000.00. However, given her past record at Terra and in light of the physical problems she experienced during her work there, and for the reasons I have just set out, I am not satisfied that she would have worked without interruption for the full two year period. In my opinion, a reduction of 15% should be taken to account for the contingency that she would have been unable or unwilling to continue to work throughout that period, leaving a net loss of income for the time period of $(\$62,000.00 - \$9,300.00) = \$52,700.00$.

[57] For the period from May 2001 until trial, apart from a period of say three months to allow for her recuperation from the corrective surgery of April 2, 2002, I find Ms. Webb could have been able to work in Dr. Bain's words in a position that did not require physical effort and provided her with flexible hours.

[58] The evidence of Dr. Miller was that the tests he administered showed Ms. Webb to have done well on most of the physical/work related tests and to have an I.Q. in the 98th percentile. The psychological inventory tests that he administered did not reveal any emotional difficulty. He found she coped well emotionally with her pain. He agreed that Ms. Webb could train for a number of jobs but was of the opinion that she would have difficulty obtaining employment due to her age rather than her physical condition. As he said "...if she was thirty, we would be having a different discussion." I do not accept that evidence. Ms. Webb struck me as being an extremely capable and talented woman. The business plan, which she prepared for her fledgling interior decorating business, is impressive and very well laid out. Her secretarial skills have clearly not diminished and she appears to have mastered the word processing functions of a computer. In the time between May 2001 and trial, I find she could have earned income had she attempted to seek employment. Taking into account a period for start up and time off for her surgery, I would assess her income loss for that period of time at an average of about \$6,000.00 a year for a total loss of (rounded) \$33,000.00.

FUTURE LOSS OF INCOME

[59] Ms. Webb has taken an interior decorating course at Sheridan College. She says she has always wanted to be a decorator. She will complete the course in June 2007 although she has already taken on two or three projects and been paid for them. She bills her time at \$50.00 per hour for consultations and \$20.00 per hour for her labour.

[60] Counsel have agreed that her post-trial earnings would without incident have been \$35,000.00 per year. If Ms. Webb works at her new profession of decorating and bills 20 hours a week for 40 weeks of the year, she will exceed the agreed income level. Considering her age, the physically demanding work at Terra, and her pre-surgery health, I find it unlikely that Ms. Webb would have worked at Terra until age 65. I would have thought it far more likely that she would have ceased work at age 60.

[61] Allowing for that contingency and considering some start up time required to launch her new business, I allow a future income loss of \$25,000.00.

OUT OF POCKET EXPENSES INCLUDING PAST CARE COSTS

[62] Ms. Webb claims \$34,560.00 (rounded). All of these expenses were well documented in Exhibit #7. Counsel for the Defendant submits that the expenses incurred by Ms. Webb for tuition fees, books and materials in connection with her course at Sheridan College, amounting to \$9,663.00, ought not to be borne by the Defendants because it was not necessary for Ms. Webb to take the course in order to obtain suitable employment. Notwithstanding that there is a degree of force to that submission, in my opinion, Ms. Webb has mitigated her damages by taking the course. She should be able to earn more than she could have earned as a labourer at Terra and she will be self-employed in a field where she can set out her own hours. Her medical advisors approve of her decision in that regard. The Defendants will receive some benefit from her retraining. Accordingly, I think it fair to allow her something towards her retraining expense and I set the figure at \$5,000.00.

[63] The clothing expenses of \$2,552.00 (rounded) do not appear to me to have been required because of the surgery. They are consistent with the condition of obesity from which Ms. Webb suffers. I would disallow this expense.

[64] I see no reason to vary any other expense claimed under this head and I allow $(\$34,560.00 - \$7,215.00) = \$27,345.00$ under this head.

COSTS OF FUTURE CARE

[65] The Plaintiff called as its future care needs expert, Ms. Dimple Mukherjee. The Defendants called Ms. Sandra Vellone. Ms. Mukherjee based her assessment in many areas on observations she made of the Plaintiff's difficulty in carrying out various activities, which Ms. Webb demonstrated for her during a visit to Ms. Webb's home. Those difficulties were simply not borne out by the surveillance films. Ms. Mukherjee also calculates her home care expenses to the age of 75.

[66] Ms. Vellone was a highly qualified expert of considerable experience over some 27 years in the field. I found her approach to the assessment to be far more realistic than that of Ms. Mukherjee. She assumed that by age 67, Ms. Webb would have required assistance with homecare regardless of the injury she received. She modified the medication requirements in keeping with the evidence. She considered what I find to be the very real contingency that within a few years, Ms. Webb would tire of living by herself in a very large home with all of its attendant expenses of upkeep, and downsize to a smaller home or more likely a condominium, which would either reduce or eliminate entirely, many of the home maintenance costs.

[67] Ms. Vellone accepted many of the needs, especially therapeutic needs, suggested by Ms. Mukherjee, but placed what I found to be sensible limits on the amount and duration of assistance that Ms. Webb would require.

[68] Having regard to the recommendations of Ms. Vellone and the real possibility that Ms. Webb will want to move to less demanding and more accommodating premises, I assess her future care costs at \$100,000.00.

SUBROGATED INTEREST CLAIM

[69] Counsel are agreed that the amount of OHIP's claim on the basis that the DVT and PE were not caused by the burn is \$18,618.37.

CONCLUSION

[70] There will be a Judgment in Ms. Webb's favour on her claim for damages as follows:

HEADS OF DAMAGES	AMOUNT AWARDED
General Damages	\$100,000.00
Past Income Loss	\$ 85,700.00
Future Income Loss	\$ 25,000.00
Out of Pocket Expenses	\$ 27,345.00
Cost of Future Care	\$100,000.00
(OHIP) Subrogated Claims	\$ 18,618.37

[71] The *Family Law* claims have been resolved.

[72] Ms. Webb is entitled to Prejudgment Interest on the sums awarded as provided for in the *Rules*.

[73] If counsel are unable to agree on costs, they may make written submissions not to exceed three (3) pages exclusive of any offers to settle within 30 days of the release of these Reasons.

Released: 2006/11/06

Jennings J.

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VANDOORMAL and
ROSEMARY WOODS

Plaintiffs

- and -

DR. OTTO WEIGLEIN, THE CENTRE FOR
PERSONAL SURGERY, PENNY LOWRY and
MARGARET SMITH

Defendants

REASONS FOR JUDGMENT

Released: November 06, 2006

Jennings J.