

## **MEDIATION MEMORANDUM OF THE PLAINTIFF**

### **OVERVIEW**

Prior to the accident, Jessica was constantly on the go. She thrived in her academics and was on track to be a tennis star. She was a happy and energetic young woman with a bright future. This accident has had a devastating impact on her life in every way. All of the doctors who have seen Jessica, agree that she continues to suffer from very serious impairments as a result of this accident.

### **LIABILITY**

On July 1, 2016, Jessica was at a party at Bart's house. Like every person at the party, Jessica engaged in drinking alcoholic beverages. She had 6 wine coolers over the course of a few hours. Marge and Homer knew that the children in their house were drinking. They did nothing about it. Marge testified at her examination for discovery that she remembered coming down at one point and seeing Jessica inebriated. She did nothing about it. Since Jessica always rode her bike home when leaving Bart's house, there is no reason to think that that Marge and Homer would have assumed anything different. They took no extra steps to ensure Jessica got home safe. The case law on social host liability is clear. The duty of care analysis involves three elements.

Was the injury reasonably foreseeable?

Was there sufficient proximity such that there is a duty to act?

Was the duty, if any, negated by policy considerations?

There is no doubt that this duty would be imposed on the Simpsons. All of the criteria are established.

With respect to the defendant Otto and Shelbyville Shipping, simply put, Otto should have known better than to drive while under the influence of marijuana. He was distracted. His evidence at his examination was that he could not recall if he used his turn signal. There is no doubt that liability will be found as against Otto.

With respect to the Town of Springfield, if the Town had had a bike lane north of the intersection, it is possible this entire accident could have been avoided. The representative for the Town conceded at examinations that Springfield is a biking community. She also confirmed that at town hall meetings, there had been discussions about constructing a bike lane on Maple (north of the intersection), but it was not economically viable at the time.

A jury will find that each of the Defendants will be found negligent and will bear some of the responsibility.

### **POST-ACCIDENT SUMMARY**

After being struck, Jessica was taken by ambulance to Springfield Community Hospital. Imaging revealed a comminuted fracture of the tibia requiring surgery and internal fixation. Despite wearing her helmet, Jessica's helmet flew off by the force of the impact of Otto's truck causing Jessica to suffer a traumatic brain injury. She was immediately transported from

Springfield Community Centre to Sick Kids Hospital in Toronto where she remained for a significant period of time.

When she was discharged home, Jessica was cared for by her mother and father. Jessica's family doctor made a series of in-home visits. Jessica returned frequently to visit her doctor at Sick Kids Hospital over the course of the following year. Jessica's treating physicians have concerned about her future.

Jessica was sent for a defence medical examination by the defendants to both a psychiatrist (Dr. Burns) and neurologist (Dr. Flanders). Both defence experts agreed that Jessica had sustained serious and significant injuries. Dr. Burns noted that, in his opinion, the "physical impairments were caused by the accident in question. There is no reported or documented evidence of similar pre-existing findings."

### **TREATMENT REGIME**

Jessica has diligently attended the treatment recommend by her healthcare providers since the accident. She delayed her college entrance for a year during which time she focused on her recovery. Despite being 3 years post-accident, Jessica continues to receive orthopedic treatment, massage therapy, physiotherapy, and counselling. She is required to miss school for these visits.

### **FUTURE CARE COSTS**

The report of Mr. Skinner outlines Jessica's future care. Jessica has a 70 year life expectancy.

<b>Description</b>	<b>Annual Cost</b>	<b>Frequency</b>	<b>Total Costs</b>
Osteopathy and Massage Therapy	\$5,000	Lifetime	\$350,000
Personal Trainer	\$1,000	4-6 years	\$4,000 to \$6,000
Physiotherapy	\$2,000	4-6 years	\$8,000 to \$12,000
Psychological counselling	\$2,000	4-6 years	\$8,000 to \$12,000
<b>TOTAL</b>			<b>\$370,000 to \$380,000</b>

### **SPECIAL DAMAGES – TUITION AND INCOME**

Jessica was on track to be a tennis star. She had received a full scholarship to college to play tennis. Despite trying her best, Jessica was forced to leave the program and enter a General Arts and Sciences program. She lost her tennis scholarship. Damages for her tuition will be assessed at **\$60,000 (\$15,000 for a 4 year program)**.

Jessica had to delay college by one-year. This will have a detrimental impact on her future income and employment opportunities. There is a future loss of income claim.

### **GENERAL DAMAGES**

General Damages will be assessed at **\$200,000** and the deductible will not apply.

### **ACCIDENT BENEFITS**

Jessica has accident benefits through her mother's insurance. Jessica has not yet made a CAT application but is considering bringing one. Jessica has maxed out her education benefit of \$15,000 and is looking to the tort defendants. Jessica is also looking for non-earner benefits.

Benefits paid as of March 20, 2019 for medical rehabilitation benefits: **\$30,000**