

COURT FILE NO.: CV-17-2394-00 (Brampton)
CV-17-1826-00 (Brampton)
CV-19-00621896 (Toronto)

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: Dhaliwal By His Litigation Guardian V. Guard Me Intern'l Ins. and
Old Republic Ins. Co. Of Canada

AND:

Dhaliwal V. Gill et al.

AND:

Salvation Army Toronto Grace Health Centre v. Dhaliwal

BEFORE: Justice J. K. Trimble

COUNSEL: Ryan M. Naimark, for the Plaintiffs
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HEARD: April 18, 2023, in writing

ENDORSEMENT

- [1] There are three motions for approval of settlements between the Plaintiff, an incompetent, and various Defendants.

THE ACCIDENT

- [2] There are four actions that arise a result of a motor vehicle collision that occurred on July 6, 2014, in The Town of South Bruce Peninsula at the intersection of Silver Lake Road and Allen Ford Road in the Town of South Bruce Peninsula. Varinder Dhaliwal was a passenger in a car driven by Manpreet Singh,

SUMMARY

- [3] I approve of the settlement of Mr. Dhaliwal's action against Guard Me/Old Republic, and the action by Scarborough Grace against Mr. Dhaliwal. The sums paid in settlement are reasonable given the risks involved in the litigation.
- [4] I approve of the quantum of the settlement in the tort action (Dhaliwal v. Gill).
- [5] I approve of the two proposed structures in the tort action as a reasonable step to maximize the return on the investment on Mr. Dhaliwal's behalf.
- [6] I approve of the fees charged by the Plaintiff's law firm in the tort action. The time expended and the risks in proving liability and damages that the firm incurred were high. The possibility was high that the actions would not recover sufficient funds to meet Mr. Dhaliwal's basic needs. The contingent fee agreement is both fair and reasonable, and the fees charged under it were justified.
- [7] The foregoing should free up funds to pay for Varinder's ongoing daily care costs until final approval of the entire settlement in the tort action is obtained.
- [8] I do not approve the balance of the settlement of the tort action, including the appointment of a guardian for property, and the new Management Plan. The new Management Plan dated 10 February 2023 must be provided to the Public

Guardian and Trustee, and a further affidavit filed providing the PGT's comments on the settlement and Management Plan, and the guardian ad litem's response.

[9] I remain seized of the approval motions.

BACKGROUND

[10] Varinder was born in India on March 13, 1991. He was 23 years old at the time of the accident. He is now 32 years old.

[11] In July 2014, Varinder was an international student from India studying in Canada under a Canadian student visa. He was enrolled in a Computer Engineering Technician Program at Sheridan College.

[12] From October 14, 2013, to July 4, 2014, Varinder also worked as an office clerk at Air & Oceanland Inc. Varinder did not have access to collateral healthcare benefits through his employment. As a non-resident, Varinder did not have access to OHIP coverage. His T4 employment earnings were \$5,193 in 2013 and \$21,412 in 2014.

[13] Varinder two sisters and one brother, all of whom live in India. On July 18, 2014, Varinder's mother came to Canada to care for Varinder and has remained here since. She visits her son Varinder daily, taking public transit from Brampton to Union Station and from Union to Toronto Grace. Ms. Dhaliwal became a permanent resident on 10 April 2021. The proceedings to make Varinder a permanent resident are ongoing.

[14] Varinder purchased an Emergency Healthcare Policy issued by the Defendants, Guard Me International Insurance and Old Republic Insurance Company of Canada.

THE ACCIDENT

[15] Varinder was a passenger in a car driven by Manpreet Gill, which was owned by Ram Singh Gill. Manpreet was given the keys to Ram Singh's car by another

person, not by Ram Singh directly. Ram Singh took the position that Manpreet had no consent to use the car. His insurer, TD, defended Manpreet and Ram Singh under a reservation of rights.

[16] Manpreet was travelling north on Allenford Road approaching Silver Lake Rad in South Bruce. Christian Karn was travelling on Silver Lake Road toward Allenford. The two cars collided in the intersection. Manpreet was convicted of failing to yield. He said it is discovery that he had stopped at the intersection at the stop sign for 2 to 3 seconds and did not see any vehicles approaching before he entered intersection.

[17] South Bruce was responsible for the intersection, including maintaining the roads, placing signs, and trimming trees around the intersection. There was an issue as to whether the stop sign was a proper size, and whether trees and shrubs were allowed to obstruct the view of drivers approaching the intersection such that they could not perceive dangers in time to react to avoid a collision.

INJURIES

[18] Varinder suffered a severe and catastrophic brain injury as a result of the accident, including an epidural hematoma with midline shift and subsequent infarcts. He underwent two surgeries at London Health Sciences Centre: a trauma flap and epidural evacuation and a decompressive craniotomy. While his Glasgow Coma Scale went up to a score of 4, he continued to show little neurological improvement. He is in a vegetative or a minimally conscious state. He is unable to walk, is dependent on gastrostomy feeding, has no consistent functional hand use, has no consistent means of communication or interaction with others, and shows some eye tracking and some head movement which the doctors believe is involuntary. There is no expectation that he will improve. He requires constant care.

[19] Varinder was taken first to Warton Hospital, where he was stabilized and transferred by air ambulance to the London Health Sciences Centre. On August

15, 2015, Varinder was discharged from London Health Sciences and was transferred to William Osler Health Centre (Brampton Civic Hospital), and on 23 December 2014, he was discharged Salvation Army Toronto Grace Health Centre where he remains, receiving 24 hour a day care.

[20] Varinder's accident benefits insurer was initially paying for Varinder's stay and treatment at Toronto Grace until his \$1,000,000.00 medical rehabilitation limits were exhausted and no further payments were made to Toronto Grace by the accident benefits insurer. Varinder's accident benefits claim with TD Insurance Company settled on April 10, 2018, and was approved by the Court. Those funds have been paying for Varinder's care at Scarborough Grace but are running out. The cost of his daily stay has increased from approximately \$514.95 in May 2019 to \$1,069 per day today.

THE ACTIONS

[21] As a result of Varinder's his injuries, four actions have been started:

- a. *Dhaliwal v. Old Republic*, CV-17-2394-00 (Brampton), for benefits under the extended health policy. This action is settled for \$90,000 all-inclusive, subject to court approval.
- b. *Dhaliwal v. TD Insurance* (accident benefits file), CV-18-590223-00 (Toronto). This action was settled for the sum of \$1,153,500, and approved by Archibald, J., on 12 February 2018.
- c. *Dhaliwal v Gill et al.* (tort file), CV-17-1826-00 (Brampton). This statement of claim in this tort claim was originally issued in Toronto then transferred to Brampton. This matter is now settled for \$6,000,000.00, subject to court approval.
- d. *The Salvation Army Toronto Grace Health Centre v. Dhaliwal*, CV-19-00621896 (Toronto). The hospital sued Mr. Dhaliwal for the cost of care at

the hospital, which he requires, 24 hours a day. This action was settled on a full and final basis, subject to court approval, for \$30,000.00 together with 35% of the amounts invoiced to date, and to be invoiced from the date of settlement through to discharge.

The of invoices to the end of February 2023 total \$1,642,362.41 which is expected to increase by \$30,000 per month on an undiscounted basis.

The total settlement to the end of February 2023 is approximately \$574,826.84, 35% of invoiced amounts thereafter.

THE SETTLEMENTS

Dhaliwal v. Old Republic, CV-17-2394-00 (Brampton)

Result

[22] This settlement is approved as reasonable.

[23] I find that with respect to the Guard Me policy issued by Old Republic:

- a. The Policy provided for health and medical care for Mr. Dhaliwal. Its coverage, however, is excess coverage to the statutory accident benefits coverage available to Mr. Dhaliwal through TD Ins. Co.;
- b. Once Mr Dhaliwal, a non-resident with no status to remain in Canada, was cleared for repatriation to India, the Guard Me policy paid for the cost of transferring Mr. Dhaliwal back to India but paid for nothing further.

[24] The settlement was for \$90,000, inclusive of damages, interest, costs, disbursements, and HST, and included a component of \$13,000 for costs, disbursements, and HST.

[25] The cost of transferring Mr. Dhaliwal back to India as of the date he was cleared medically to make the trip was \$81,679.01 CAD.

- [26] Accordingly, the settlement is reasonable.
- [27] Mr. Dhaliwal's guardian and the Plaintiff's law firm entered into a contingent fee agreement (CFA) whereby the fee would be 30%, plus disbursements and HST, with the contingent fee calculated upon the settlement for damages and interest, excluding costs.
- [28] Over the course of the litigation, the law firm reduced its contingent fee to 22%.
- [29] The CFA is not binding on this court because the Plaintiff is incompetent. I find, however, that the CFA, in all the circumstances, was fair when entered into and reasonable in its application at the time that the claim was settled. The law firm prepared pleadings and conducted examinations for discovery of all of the parties. Undertakings were answered. The settlement was reached shortly after oral discoveries. The law firm accepted substantial risk given that the Old Republic policy was access and coverage was limited once repatriation was permitted.
- [30] Based on the foregoing, the settlement of this claim is approved as follows:

total settlement:	\$90,000 (\$13,000 for costs, disb's, HST)
legal fees at 22% of \$77,000	\$16,940.00
HST on fees:	\$2202.20
total payable to Plaintiff:	\$70,857.80.

The Salvation Army Toronto Grace Health Centre v. Varinder Dhaliwal, CV-19-00621896 (Toronto).

- [31] I agree that the settlement of this action, on its face, is a reasonable resolution of the claim against Varinder Dhaliwal, especially since no fees are to be taken in respect of this action.

Dhaliwal v Gill et al, CV-17-1826-00 (Brampton) – The Tort Action

The Settlement

[32] On 4 May 2022, this matter settled on the following basis, subject to court approval:

- a. \$6,000,000.00, inclusive of interest, costs, disbursements, and H.S.T. for all Plaintiffs' claims comprising \$5,925,000.00 for the claims of Varinder, and \$75,000.00 for all FLA claims;
- b. Contingency Fee Agreement with Naimark Law Firm of 22% for total legal fees in the amount of \$1,149,412.00
- c. H.S.T. on legal fees in the amount of \$149,423.56.
- d. disbursements in the amount of \$104,448.65 (\$110,948.65 less \$6,500.00 from the legal costs held in trust from the motion to strike the jury notice), inclusive of H.S.T.
- e. re-payment to Naimark Law Firm for amounts paid on behalf of the Plaintiff in the amount of \$49,201.83 comprising:
 - i. Massage therapist, Chelsea Russell Account - \$ 11,935.00
 - ii. Disclosure file from CWC Immigration Solutions Inc. - \$ 565.00
 - iii. Payment to CWC Immigration Solutions Inc for Application for extension of visitor visa and application for residency - \$ 3,390.00
 - iv. Eisen Law account for Guardianship Order - \$ 5,000.01
 - v. Goddard LLP account for management plan and passing of accounts - \$ 28,311.82.

[33] In addition, the Plaintiff seeks approval of the following:

- a. An Order approving Baljeet Kaur Dhaliwal's Fresh as Amended Management Plan dated February 10, 2023, for the Plaintiff under disability, Varinder Singh Dhaliwal;
- b. An Order that the non-structured portion of Varinder Singh Dhaliwal's settlement funds are distributed in accordance with the breakdown as set out in paragraph 1 of the Draft Order attached as at Tab 32 of the Motion Record.
- c. An Order that The Office of the Public Guardian and Trustee approve Baljeet Kaur Dhaliwal's Fresh as Amended Management Plan, dated February 10, 2023, for the Plaintiff under disability, Varinder Singh Dhaliwal, within 30 days of receipt of this Order and Fresh as Amended Management Plan.
- d. An Order that any further proposed amendments to Baljeet Kaur Dhaliwal's Fresh as Amended Management Plan, dated February 10, 2023, are required to be approved by both this Honourable Court, and by The Office of the Public Guardian and Trustee before such amendments can be made.
- e. An Order that the within action, all crossclaims and third party claims be dismissed without costs.

Result

[34] For reasons set out below, the overall settlement of the tort action of \$6 million is approved as reasonable, as are the two proposed structures and the fees. The guardian ad litem must submit the new management plan to the Office of the Public Guardian and Trustee for its comment, and provide an affidavit providing the PGT's response, and how the guardian has responded to the PGT's positions and concerns. I remain seized of the approval process.

The Proceedings

- [35] This action was commenced in Toronto but transferred to Brampton by order dated 1 March 2017. All Defendants defended. The claim was amended twice and defended by all Defendants. Most Defendants brought a Third Party Claim against The Corporation of the Town of South Bruce Peninsula. Jury notices were filed by Defendants other than the Town. On 8 February 2018, Tzimas, J., Imposed a timetable.
- [36] A companion action was issued on behalf of other passengers in Manpreet Gill's vehicle which, pursuant to the 14 March 2018 order of Emery, J., was ordered tried together with the main action. On 3 July 2019 the passengers in the companion action withdrew their claims.
- [37] Examinations for discovery were held over at minimum, five days.
- [38] The mandatory mediation (because this is a motor vehicle case) which took place on 3 May 2019 was not successful. The offers at that time were \$1.5 million plus costs and disbursements on behalf of all of the Defendants, and \$5,950,000 plus costs and disbursements on behalf of the Plaintiffs.
- [39] At the assignment Court of 30 September 2019, the pretrial date was set of 28 April 2021.
- [40] The Plaintiffs brought several motions for such things as an expedited pretrial conference, an expedited trial date, an order striking the jury notice, all of which were opposed.
- [41] Due to the suspension of court operations as a result of the Covid – 19 pandemic, and the Defendant's refusal to participate in the pretrial by Zoom, no earlier date than 28 April 2021 the pretrial conference was available. That pretrial date was cancelled because of the shutdown of court operations.

- [42] Ultimately, pretrial was held before Ricchetti, RSJ on 28 June 2021. He placed the matter into the May 2022 sittings, with an estimated length of 30 days. The pretrial conference was rescheduled to 3 November 2021.
- [43] At the November 2021 pretrial conference, the matter did not settle. The Defendants made an all inclusive offer of \$3,600,000. The Plaintiff's final offer was \$6 million plus costs and disbursements.
- [44] The Plaintiffs were successful in their motion to strike the jury notice. The trial was scheduled to proceed as a judge alone trial, for 30 days, commencing on 9 May 2022.
- [45] The matter settled on 4 May 2022.

Liability

- [46] There is no liability issue with respect to the Plaintiff's right of recovery against a Defendant. He was a passenger. The liability situation with respect to the Defendants, however, was hotly contested, and uncertain. The Plaintiff had the burden of proof.
- [47] Recovery by the Plaintiff was not assured. The risk of a total loss, or of recovery of a sum insufficient to pay for Varinder's daily needs was quite high.
- [48] Varinder was a passenger in a car driven by Manpreet Gill, which was owned by Ram Singh Gill. Ram Singh Gill said that Manpreet did not have consent to drive the car. His insurer, however, extended a defence to Manpreet, who was otherwise uninsured, defending under a reservation of rights letter on the basis of consent.
- [49] Manpreet was travelling north on Allenford Road approaching Silver Lake Rd. Christian Karn was driving his vehicle on Silver Lake Rd. There was a collision in the intersection between the cars. Fault was contested. Manpreet was convicted of failing to yield. He said it is discovery, however, that he had stopped at the

intersection at the stop sign for 2 to 3 seconds and had not seen any vehicles approaching before he entered intersection.

[50] Notwithstanding that Manpreet was clearly liable and judgment would have issued against him, recovery from Manpreet at trial would have been uncertain. Manpreet had no motor vehicle liability policy. Ram Singh maintained that he did not consent, directly or through another, to Manpreet driving his car. There was conflicting evidence as to how Manpreet got the keys to the car. While Ram Singh had a valid motor vehicle liability policy, a judgment may not have issued against him,

[51] Were Ram Singh successful in his consent defence, there would have been no insurance available to Manpreet as he had no other coverage available, such as the OPCF – 44R.

[52] In the event that Manpreet had no insurance, the Plaintiff's only recourse would have been against the Motor Vehicle Accident Claims Fund. The limits available under that scheme are \$200,000. In order to access that coverage, Manpreet would have had to try the case against all Defendants MVAC is a payer of last resort any pays only with respect to judgments, where there is no insurance available to any Defendant.

[53] Whether the Town would have been liable is also questionable.

[54] There was conflicting evidence as to the visibility at the intersection, and whether motorists' views of the intersection were obstructed by trees. The maintenance of the intersection and the trimming of trees fell within the Town's purview. Expert reports were provided by most parties. The city's expert said that although the stop sign was undersized because Manpreet said he stopped at the stop sign, the size of the stop sign was not a contributing factor. That expert said that the views were not obstructed by trees. Other experts reported that the visibility was restricted due to trees and bushes which limited motorists' ability to perceive dangers and take evasive action. There were other failures attributed to the city.

- [55] It is uncertain whether the other driver, Mr. Karn, would have been found liable. He said at his Discovery that he was going more than 25 km over the 80 km speed limit. The event data recorder on his car indicated he was going 32 km over the speed limit five seconds prior to the accident. Mr. Karn was aware that visibility in the intersection was blocked due to trees, but he admitted he did not adjust his speed accordingly. The OPP noted that the headlight switch on the Karn vehicle was in the off position after the collision.
- [56] Had the court accepted the Town's expert report, there may not have been liability on behalf of the other driver, Karn, notwithstanding that he testified to have been speeding and that his lights were likely off.
- [57] There was significant risk to the Plaintiff in proceeding with this action.
- [58] Notwithstanding the various defences, the \$6 million settlement was funded as follows:
- a. By Christian Karn and ElectriTech Services Inc. (Federated Insurance/Northbridge): \$3,800,000.00 from a policy with limits of \$5,000,000.00, with the limits inclusive of damages, interests and costs.
 - b. By The Corporation of The Town of South Bruce Peninsula: \$1,100,000.00.
 - c. By Manpreet Singh Gill, Ram Singh Gill (TD Insurance): \$1,100,000.00 on a policy with limits of \$1,000,000.00, exclusive of costs.

Damages

Future Care Cost

- [59] Any reasonable assessment of damages in this case is well in excess of the settlement achieved.

- [60] The Plaintiff's life expectancy was a contentious issue. The Plaintiff's normal life expectancy is 54.3 years. The Defence expert opined that Varinder's additional life expectancy given his injuries was 10 years because of the profundity of his injuries. The Plaintiff's expert estimated an additional 13.9 years.
- [61] The cost for 24-hour care through to the end of February 2023, at the Toronto Scarborough Grace Hospital was \$1,642,362.41, with an estimated monthly cost of approximately \$30,000.
- [62] Because the Plaintiff is not a Canadian citizen or landed immigrant, he has no OHIP coverage. His parents wished for him to remain in Canada because of the significantly higher quality of medical care here when compared to India.
- [63] At the Plaintiff's whole life expectancy of 52.8 years, future care costs are estimated at approximately \$24 million. Using his reduced life expectancy of a total of an additional 14 years (per the Plaintiff's Expert) or 10 years (per the Defence Expert), the future care estimates range from a high of \$8,019,941 to \$2,114,000, assuming he remained in Canada. If he returned to India, the low end of the estimate was \$1,101,000. There was no reasonable possibility that Varinder would return to India.

Economic Loss

- [64] The Plaintiff was a student in Canada on a three year student visa which expired on 31 August 2014. He was permitted to have part-time work as a student. At the time of the accident, he had applied to be readmitted to the Computer Engineering Technician course at Sheridan College to complete his final course, having been placed on academic probation during the winter 2012/spring 2013 semester, due to problems with his grades. There was a risk that the Plaintiff would not complete his course and would be required to return to India had visa not being extended.
- [65] The Plaintiff received \$278.80 per week in income replacement benefits, payable beginning one week following the accident through and up to retirement of the limit

of the benefit. \$280,000 of the overall accident benefit settlement was attributed to IRB's.

[66] Given the IRB's paid, the Defendants took the position that there was nominal economic loss of \$71,000 if the Plaintiff returned to in India and \$797,000 if he did not. This assumed a net loss of \$20,000 per year in wages. The Plaintiff's expert put the economic loss at between \$1.99 million and \$2,870,000, assuming retirement age of 65 years, and that the Plaintiff remained in Canada.

General Damages

[67] General damages would have assessed at the top of the range under the trilogy, which in current dollars is approximately \$445,000.00.

Conclusion

[68] Based on the foregoing, the \$6 million settlement is reasonable overall, and is approved. The two proposed structures are also approved as a reasonable method of maximizing the Plaintiff's recovery over time.

[69] I am not able to approve the balance of the proposed settlement in the tort claim as the new Management Plan has not yet been reviewed by the Office of the Public Guardian and Trustee, and its comments and the Plaintiffs' response thereto have not been provided to the Court.

Management Plan

[70] The settlement proposes that of the \$4,444,363.07 of Varinder's portion of the settlement (after deducting fees, disbursements, HST, and repayment of funds paid by the law firm for Varinder's care and structuring \$2.5 million), \$1,944,363.07 remains unstructured.

[71] The Plaintiffs have submitted the Fresh as Amended Management Plan dated 10 February 2023 which reflects the payments as set out in the various settlements.

The new Management Plan, however, has not been submitted to the Public Guardian and Trustee's office. Until that management plan has been submitted to the PGT, and the PGT's comments have been received and responded to, I cannot approve the overall settlement and management plan. I will remain seized of the matter. An affidavit providing the correspondence to the PGT's office and PGT's response, and the Plaintiff's response to the recommendations of the PGT can be provided to me for consideration.

FLA claims

[72] The \$75,000 all inclusive allotment to the FLA claims of the siblings appears to be reasonable.

Structure

[73] The Plaintiff's plan to structure \$2.5 million in two separate structures. The first structure is of \$1.6 million which will generate \$5,480.78 per month beginning October 2022, increasing annually by 2%. The second structure is of \$900,000 which will generate y \$4,074.69 per month beginning 8 April 2023, increasing annually by 2%. As indicated, the structures are approved.

Fees

[74] The guardian ad litem and the Plaintiff's firm entered into a CFA wherein the Guardian agreed to fees of 30% plus HST and disbursements. The 30% was calculated on the settlement less costs. This was then reduced to 22% plus HST and disbursements.

[75] As the Plaintiff is an incompetent, I am not bound by the CFA.

[76] In this case, the Plaintiff's firm carried four files, for seven years, facing significant risk. The work was also significant.

- [77] On the other hand, the fees must be considered on an overall basis, not assessed individually in each action brought by the Plaintiffs, in isolation of the other actions.
- [78] I note that Archibald, J., approved a 22% contingency fee in the accident benefit action settlement approval. This is a very generous contingency rate for an accident benefit settlement.
- [79] I do not have jurisdiction to go behind Archibald, J.'s approval of the contingency fee. I note, however, that contingency fees on accident benefits files are generally awarded at 15% or slightly higher where the matter is complex. The philosophy behind the lower contingency range for accident benefit files is that accident benefit files are "no fault", that is the claimant's entitlement is determined by the wording of the statute, the regulations, and the policy and, once entitlement is established, benefits flow. The AB scheme is designed to pay all the allowable claims efficiently and effectively, at minimum cost, and provides for a relatively speedy, low-cost dispute resolution process (see: *Adler (Litigation Guardian of) v. State Farm (2008)*, 2008 CanLII 32809 (ON SC), 92 O.R. 3d 266 at paras. 33-38; *Aywas v. Kirwan*, 2010 ONSC 2278, at para. 2).
- [80] Where an AB case is complex, the settlement achieved in the accident benefits claim is a good settlement, and where the case carried a much higher risk than a typical accident benefit case, a fee outside the range is warranted (see: *Mujlhall v. Fraser*, [2017] O.J. No. 5621 (S.C.J.) where the court reduced fee from the 27.5% agreed to, to 17%, and *Treleaven v. Kilgour*, 2021 ONSC 646 para. 8 ff. where I set the fee at 17%).
- [81] Often, as in this case, a Plaintiff must bring several actions arising from the same accident. Assessing fees in a settlement approval where there are several actions is done on a holistic basis. In other words, the Court must be satisfied that the fees, overall, are reasonable and fair. I consider the percentage Archibald, J., approved in the accident benefits settlement approval to be high. I do not have the record in front of me that was available to Archibald, J., and have no jurisdiction to

review his approval. However, any generosity in that approved fee approval is more than justified by the work and risk accepted by the law firm in the Scarborough Grace Hospital action, and the fact that the law firm seeks no fees with respect to that action. In other words, looking at fees claimed in each action, and holistically, are reasonable.

Disbursements

[82] The firm incurred reasonable disbursements of \$104,448.65 on a net basis, and a further amount of \$49,201.83 in relation to payments made on the Plaintiff's behalf for treatment, all of which appears to be reasonable.

[83] In addition, there are amounts owed to third-party service providers who have provided treatment services to Varinder and the payment of these accounts are sought from the settlement. The outstanding accounts are as follows:

- a. \$17,182.89 payable for Complete Rehab Centre account.
- b. \$10,968.00 payable for Dr. Yin Seid, Toronto Grace

[84] These appear to be reasonable.

Allowance for Costs

[85] The \$6 million settlement in the tort action was an all inclusive amount. The Plaintiff's law firm has accounted for a contribution towards costs by the Defendants of \$595,951.40 and backed that amount out of the \$6 million settlement for the purposes of calculating the fee. The costs amount comprises \$527,390.62, plus HST and is calculated based on 15% of the first \$100,000 of the total damages and 10% on all amounts of thereafter. This is the standard costs calculation applied by insurers. It is reasonable for the law firm to back that costs component out of the figure on which the contingency fee is calculated.

[86] The fees claimed, based on the foregoing, are \$1,149,412, plus HST of \$149,423.56, and disbursements of hundred and \$104,448.65.

NEXT STEPS

[87] The guardian ad litem shall submit the new Management Plan to the PGT, forthwith, in order to obtain the PGT's comments on the Management Plan. The guardian ad litem shall submit a further affidavit outlining the PGT's comments on the new Management Plan, and how the guardian ad litem will or has addressed those concerns.

[88] I remain seized of the settlement approval and appointment of the guardian for Varinder.

Trimble, J.