Date of Release: January 15, 1993

No. C913715
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:	
IRENE LANDREY	
PLAINTIFF	**REASONS FOR JUDGMENT**
AND:	
THE CORPORATION OF THE CITY OF NORTH VANCOUVER, THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER and NORTH VANCOUVER RECREATION COMMISSION	**OF THE HONOURABLE MR. JUSTICE COULTAS**
DEFENDANTS	

Counsel for the Plaintiff: Gary Baldwin

Counsel for the Defendants: S.B. Margolis

Place and Date of Trial: Vancouver, B.C.
December 2nd and 3rd, 1992

On February 4th, 1991, the Plaintiff was curling at the Lonsdale Recreation Centre located at 123 East 23rd Street in the City of North Vancouver. She alleges that she tripped on a loose piece of plywood placed to cover rotting platform boards located at the end of the curling rink, fell, and fractured her ankle. At the material time the City of North Vancouver owned a 35%

interest and the District of North Vancouver a 65% interest in the subject premises, and jointly these two Defendants operated the Defendant North Vancouver Recreation Commission, which in turn maintained the Lonsdale Recreation Centre and directed its operations. On February 4th, 1991, the Defendants collectively were occupiers of the Lonsdale Recreation Centre (the Centre) pursuant to the *Occupiers Liability Act*, R.S.B.C. 1979, c. 303.

The issues are liability, damages and the Plaintiff's failure to give notice in writing pursuant to s. 755 of the *Municipal Act*, R.S.B.C. 1979, c. 290, within two months from the date of her injury.

THE CURLING RINK

Located within the Centre, the rink comprised six sheets of ice, each 14' 2" wide. At each end of the rink was a wooden platform approximately 3' wide and raised some 6" above the ice. These platforms were used for "measuring" (a curling term) and as a place for curlers to stand while the game is in play. The ice sheets ran east/west and under the platform at the west end of the ice lay a concrete trench designed to remove excess water from the ice during weekly ice preparation. A hose used in ice grooming, directed into the trench, was constantly running with hot water to prevent its freezing. Thus, that part of the trench

on the west end of the rink, adjacent to the ice sheets 1 - 3, was constantly soaked with hot water and the wooden platform over that part was permanently wet from steam and hot water.

Along the whole length of the ice sheets at both ends, foam rubber bumpers were placed on the ice, resting against the platforms to prevent the curling rocks from striking them. These bumpers were not fixed to anything.

THE PLAINTIFF

On February 4th, 1991, Irene Landrey was 68 years of age and in excellent health, with good vision. In the spring and summer she golfed, walked and gardened, and in the winter she curled and had done so for 15 years, very frequently at the Centre and on ice sheet 3.

She commenced playing on that sheet in the afternoon and had completed six ends so that she had been on the west platform three times during play. On those occasions she stepped up on the platform but not on the carpeted area. She was wearing curling shoes - the left shoe had a Teflon "slider" and the right shoe a "gripper" to prevent falling. She had worn the same kind of footwear for 15 years and had never slipped or fallen before. In her evidence in chief she described the accident:

> At about 3:30 p.m., I was proceeding onto the platform, left foot first, and my toe hit the edge of the plywood that was covered by the carpet. My foot went out behind me and hit the bumper and the bumper became entangled with my left leg or ankle and that turned me around in a half circle and I fell backwards onto the platform. I did not see the plywood before stepping up. As I stepped up I was looking straight ahead of me.
>
> (My notes)

Under Cross-Examination Mrs. Landrey testified:

A At each end of the sheets adjacent to the ice, a red carpet was laid over the platforms. This carpet was provided for rubbing one's shoes.

. . .

Before falling I did not know plywood was there. I had not seen it.

Q You have described your toe hitting the plywood?

A Yes. That is what I felt. I'm sure of it.

Q I am saying you have reconstructed what occurred relying on what you learned subsequently?

A No. I felt my foot was on the plywood, although I did not see it. I was told later it was there.

Q I have been instructed that the plywood was not flush.

A I disagree, because if it had been back of the edge, I would have felt it... When my foot touched the platform I felt a little movement and then I fell.

Q Do you have any information that causes you to disagree that the plywood was back from the edge?

A My foot hit it and I felt a little movement so it must have been close to the edge of the platform.

On Discovery, she testified that she could not say if the plywood extended to the edge of the platform. She was asked:

156 Q To actually understand the way you tripped, are you saying that what really happened is, as you stepped up onto the platform, your foot sort of slipped off the platform, pushing you back towards the ice, at which point your feet got tangled in the foam rubber bumper?
A Well, I tripped on something there, and that caused me to fall.
157 Q I'm just trying to understand what happened, and I had the impression coming into this today that what happened is that you tripped going up onto the platform, falling forward onto the platform --
A No.
158 Q -- but what I hear you telling me today is that, as you were attempting to get up on the platform with your left foot, you tripped, or your foot slipped back in some way, throwing you back toward the ice, at which point your feet tangled up in the rubber mat -- or, the rubber bumper, causing you to turn around such that your feet ended up on the ice, with your body lying on the platform; is that correct?
A Yes, that's correct.

And in questions 226 - 230 she said:

226 Q Okay. Just so I'm clear on where it was that you fell off of, as I understand from what you are saying, your left foot never came down fully on top of the platform; is that correct?
A That's correct.
227 Q You stumbled in some way before you got up there?
A That's correct.
228 Q Like probably on the lip of the platform; is that right?
A Could be, yes.
229 Q Would you agree that the only way you would have come into contact with plywood would have

been if that plywood piece was flush up against the edge of the platform at the ice surface?
A That's right.
230 Q So then, if the plywood was in fact back from the edge of the platform, your foot would not have come into contact with it as you were leaving the ice?
A That's right.

Over the objection of counsel for the Defendants, for he did not wish to adopt it as part of his case, the court ordered that question 223 be read:

223 Q So when you say you hit something with your toe, are you saying you hit something with your toe other than the platform?
A No, I didn't realize at the time that's what it was. I tripped on something as I went up. It turned out later on that there was a piece of plywood that I didn't know was there, you see.

Mrs. Landrey confirmed as true the Discovery evidence that I have just recited.

THE CONDITION OF THE PLATFORM

The evidence concerning the platform is found in the Trial evidence of Mr. Bill Yerama, a former employee at the Centre, in the Trial evidence of Nelson Smith, a present employee of it, and the Discovery evidence of David Matthew Shaw, the maintenance supervisor there. There are significant conflicts between the

evidence given by Yerama and Smith and these conflicts are material.

EVIDENCE OF MR. YERAMA

Forty-two years of age, Mr. Yerama has worked for 14 years in curling and skating rinks. He is presently an ice maker working for Royal City Curling Rink. He worked at the Lonsdale Centre from September 1989 to July 1991. There is no suggestion that he was not a satisfactory employee.

Mr. Yerama was employed there as a utility maintenance worker; Mr. Nelson Smith was employed there in the same capacity, but on a different shift. David Shaw was their immediate supervisor.

Mr. Yerama had Sundays and Mondays off and returned to work at 4:00 p.m. on Tuesday, February 5th, 1991, the day after the accident. Coming on shift, he noticed a piece of plywood with carpeting covering it located on the platform at the west end of sheet 3. He had not seen it before. He moved the plywood with his foot. When he saw it, the plywood extended right to the edge of the platform. It was not nailed down or secured in any other fashion. The piece of plywood he saw was 24" long by 18"

wide and save for the side of it facing the ice rink, was completely covered by the carpet.

The plywood's location was very familiar to Mr. Yerama, for the platform in that location was waterlogged and rotten. The platform was made in sections, designed to be swung up against the wall so that the ice could be properly watered. The west walkway adjacent to ice sheets 4 - 6 was always dry in contrast to the area adjacent to ice sheets 1 - 3 where the walkway was always soaked. Pieces of the boards on the underneath side of the walkway were rotten and falling away in that area. Mr. Yerama had noticed this every time the platform was raised to form the ice, once weekly.

He had spoken to Mr. Shaw frequently about the rotten condition of the platform and brought it to the attention of Mr. Shaw's superiors on two separate occasions prior to February 4th, 1991. He at first noticed some damage in that area in October 1989 and said it had deteriorated further over time. In 1989, plywood had been used to cover a hole caused by rot adjacent to ice sheet 1 and that piece of plywood had been nailed down - it was approximately 12" by 12".

At the back of the platform, adjacent to the wall, were two hinges; on February 5th the plywood he saw did not extend to

those hinges. Had it done so, it would not have extended to the edge of the platform (ice side). When Mr. Yerama moved the plywood with his foot, the carpet moved off of it.

He was shown two photographs that were taken by the Plaintiff's husband on April 27th, 1991. They depict the area where the plywood was placed and on the platform a hole with rot around its edges can be seen. A long streak of rotten wood extending to the ice edge of the platform also can be seen. Mr. Yerama testified that he had noticed the streak for a considerable time before February 4th, 1991, and it was the condition of the platform, as depicted in the photographs, that caused him to bring it to the attention of others.

EVIDENCE OF NELSON SMITH

Mr. Smith has worked at the Centre for seven years.

He came on duty at 6:00 a.m. on February 4th, 1991, and proceeded to groom the ice. He noticed a hole in the platform. He described it as broken wood and, In Chief, confirmed that the photograph spoken of previously depicts the condition of the platform as he saw it on February 4th. He had not noticed any broken area at any time prior to seeing it on that day. He denied Mr. Yerama's evidence that the area depicted in the

photograph had been in that condition for a long time, for had it been, he said, it would have been repaired or at least seen by the safety committee that inspects once monthly.

Seeing the damaged area on February 4th, Mr. Smith went to the carpenter's shop and obtained a piece of plywood 2' wide by 38" - 40" long. He placed it, extending over the line dividing two sections of platform, resting against the two hinges in order to prevent it slipping backwards. He attached the plywood to the wooden deck of the platform using four screws, one at each corner. The plywood did not extend to the ice edge of the platform but about 4" back from it.

The carpet did not completely cover the plywood. In Chief, Mr. Smith said that 2" of plywood on either side and about 4" in front would not be covered by the carpet. The plywood was attached about 1:00 p.m. on February 4th and he left the premises at 2:00 p.m.

When he returned to work on February 5th, Mr. Smith learned of the Plaintiff's injury and checked the plywood. It was still secured. He removed it and replaced it with a larger piece of plywood, 2' by 4' which he screwed down. When asked why he had done this he replied:

> They wanted to make it a little safer and more visible.

Under Cross-Examination, Mr. Smith was asked to confirm his earlier evidence that the condition of the platform shown in the photograph was an accurate depiction of what he saw on February 4th, but would not confirm it, saying, "The big long split (I have referred to it as a 'streak' of rotten wood) was not there." He said (transcript):

> A Just the hole was there. The split has been probably from being lifted up and down and up and down all the time... (The hole) may not have been as big as that at the first morning because that's had a lot of wear and tear on since that picture there was taken.
> Q Well, how is there a lot of war and tear if it's covered?
> A It's been lifted every week.
> Q Oh, I see. That condition of rot doesn't happen suddenly, does it?...
> A No. It goes over the years...
> Q And you say you didn't notice it until that day, February 4, 1991?
> A That's right.
> Q But when you saw it it looked something like that?
> A Approximately, yes.

He testified that the boards used to form the deck of the platform were two inches thick, tongue and groove construction.

He was asked why he felt the need to place a larger piece of plywood than he had affixed initially:

THE COURT:
All right. Now, I have one more question. You said that you put a larger piece of plywood down to make it a little safer and more visible?
A Mm hmm.
THE COURT:
And in what way did you think the larger piece would make things safer?
A Just spread over a bigger area, that's all, a longer area.
THE COURT:
How would that make it safer than a piece --
A Well, it would be over more of the meat (sic: meet) -- well, what I call meat. It would be more over the boards themselves where you can get more bearing support on it. You know what I mean?
THE COURT:
Not quite, no. Why would you need bearing support if you had put down four screws?
A Well, just to make it safer, to my mind. To me it felt safer. That's the way I can explain it. To me it felt much safer to have it that way than have a smaller one in there. Does that answer your question.
THE COURT: I think so.
A Yes. No, it was my own feeling.

DISCOVERY EVIDENCE OF DAVID SHAW

No other witness for the Defendants was called. The Plaintiff read in certain Discovery evidence of David Matthew Shaw, the man in charge of maintaining the facility. He testified that some of the boards in the platform at the west end of sheet 3, in February 1991, were suffering from rot, and rot had started in boards at the west end of sheet 5. The rot in the platform at the end of sheet 3 was worse than at sheet 5. He testified that the plywood had been attached by Mr. Smith, not on

February 4th, but on February 3rd. (That conflict was not resolved).

The carpet covering the platform was not affixed to anything, but left loose. Mr. Smith testified that rot in the boards was caused by the coldness of the area and the humidity, being very wet.

The rotten boards at the end of sheet 3 were repaired at the end of the curling season in April or May 1991. The work consisted of replacing four boards at a cost of $20 for lumber and six hours of Mr. Smith's time.

CREDIBILITY

I found Mrs. Landrey to be credible. I noted at the conclusion of Mr. Yerama's evidence that he was a good witness. For reasons which I shall shortly mention, I did not find Mr. Nelson Smith credible and where his evidence conflicts with that of Mr. Yerama, I prefer that of Mr. Yerama.

FINDINGS OF FACT CONCERNING LIABILITY

1. I accept that the rot depicted in the two photographs (exhibit 2) was longstanding and apparent to employees of

the Defendants prior to February 4th, 1991. Mr. Yerama was not Cross-Examined and no evidence was called to rebut his statement that he had brought the rotting condition of the platform to his superior's attention on a number of occasions prior to the February 4th incident. I find that he did so.

2. Mr. Smith's evidence that he had not seen any sign of rot in the platform prior to February 4th, 1991, is not believable. Initially in his evidence he testified that what he saw on February 4th, 1991, is depicted in the photographs. He then changed his evidence to say that the streak of rotten wood was not present on February 4th; later he said that he didn't believe that the streak was there. He attributed the streak of rot to the raising and lowering of the platform once weekly between February 4th and April 27th, the date the photographs were taken. He conceded that there was nothing on the wall against which the platform rested when raised, to puncture the boards which were 2" thick. It defies belief that the rot shown in the photographs occurred within a two-month period, particularly in view of plywood being placed over the rotten area during that time.

3. Mr. Smith's evidence that he placed the plywood against the hinges to prevent the plywood slipping back is not reasonable, given his evidence that he screwed down all four corners of it. I conclude he gave that evidence in an attempt to counter any suggestion that the plywood extended to the outer edge of the platform on the ice side.

4. I find that the plywood did extend to the outer edge when Mr. Yerama saw it on February 5th and likely did so when it was laid initially by Mr. Smith, and likely was at the outer edge when Mrs. Landrey put her foot on it.

I find, too, that the plywood was not screwed or otherwise fixed to the deck when it was first laid down or at the time that Mrs. Landrey's accident occurred.

5. The plywood seen by Mr. Yerama was 24" by 18". I do not accept Mr. Smith's evidence that on the morning of February 5th, 1991, he replaced the original piece of plywood by another 2' by 4'. If he had screwed down the initial piece of plywood there was no good reason for replacing it on the 5th, for he said he did not have any particulars of Mrs. Landrey's accident, save for the area in which it occurred.

6. When stepping onto the platform, Mrs. Landrey's foot came in contact with a piece of plywood which moved under her foot causing her foot to go out from her and hit the bumper, causing her to pivot and fall backwards, and in the agony of the fall her ankle was fractured.

7. Mrs. Landrey did not fail to take reasonable precautions for her own safety. She was not aware of the plywood, for it was covered by carpet.

8. The platform was unsafe due to rot and the Defendants knew it. They had been advised of its condition before the date of the accident and Mr. Smith knew it was unsafe on the morning of February 4th; the attempt he made to make it less unsafe, only served to make it more so. The plywood should have been securely attached to the deck of the platform to prevent its movement.

9. The Defendants failed to give curlers warning of the unsafe condition of the platform by placing a sign, or in any other way.

THE INJURY

In her fall, Mrs. Landrey fractured her right ankle. On February 4th, 1991, an open reduction was carried out. The lateral malleolar fracture showed some anterior comminution. Fixation was obtained using screws and a plate. She remained in hospital five days. She was kept in a cast for six weeks.

On March 13th, her surgeon, Dr. Gregory Clark, decided to remove the syndesmotic screw from the ankle and did so on March 21st under a general anaesthetic. Stitches were removed on April 3rd and physiotherapy prescribed on that day.

On May 1st, she was complaining of posterior knee pain due to her stiff ankle and gait. She continued to have pain and swelling in her ankle and marked limitation in plantar flexion and eversion of the ankle. She was last seen by Dr. Clark on August 7th, 1991.

In his Report of November 9th, 1992, Dr. Clark wrote, at p. 4:

> This type of ankle fracture does carry with it some risk of post-traumatic degenerative change in the ankle joint. At the time of last review Mrs. Landrey had no evidence of any significant developing degenerative change, although the fact that she still had some residual stiffness as well

> as pain and swelling, suggested that she may still be at risk for this complication.

And at p. 5:

> Mrs. Landrey has metal implanted in her ankle. At the time of her last review this did not seem to be causing her any symptoms, but a portion of patients will experience irritation from the plate in the subcutaneous tissues, especially with certain types of footwear, and some patients will be troubled by cold weather, and in some of these patients their symptoms will be improved by removal of the plate. In the absence of symptoms related to the plate, I do not generally recommend that the plate be removed...
>
> In the absence of any degenerative change or significant residual symptomatology the patient is likely to go on to have a reasonably functional ankle which is not likely to greatly impair her from her activities of daily living. However, it is difficult for me to comment on the patient's functional level, given that at the time of her last review she seemed to be continuing to show evidence of gradual improvement, and at her last review she was only approximately six monthly following her surgical procedure.

Mrs. Landrey has not seen any doctor in respect to her ankle since her last visit to Dr. Clark on August 7th, 1991.

CONCLUSIONS

1. Failure to Give Notice Pursuant to S. 755 of the *Municipal Act*

Section 755 reads:

> **Notice to municipality after damage**
>
> **755.** The municipality is in no case liable for damages unless notice in writing, setting forth the time, place and manner in which the damage has been sustained, is delivered to the clerk within 2 months from the date on which the damage was sustained. In case of the death of a person injured the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes there was reasonable excuse and that the defendant has not been prejudiced by it in its defence.

The Plaintiff testified that she was unaware of the requirement to give notice of damage in writing. She did not see a lawyer until April, 26th, 2 months and 22 days from the date of her injury, for she was recovering from her injuries. Upon her release from hospital she was in bed at home for most of the first month. For the next two months she was housebound on crutches, finding it very difficult to move about. She left her home to see her surgeon to have the stitches removed and her cast

changed. On March 21st she underwent further surgery under a general anaesthetic to have the screw removed. On April 3rd, her stitches placed during that surgery, were removed and weight bearing was initiated.

Counsel for the Defendants concedes that his clients have not been prejudiced by the Plaintiff's failure to give the required notice, for they were aware of the accident while Mrs. Landrey was still in the building before being taken to hospital and conducted their own internal investigation within a day or two of the accident.

Section 755 of the *Municipal Act* has been recently considered by the Court of Appeal of this Province in ***Teller*** v. ***Sunshine Coast Regional District*** (1990), 43 B.C.L.R. (2d) 376, with particular reference to the concluding words of this section "reasonable excuse". In ***Teller*** one of the grounds advanced in supported of a "reasonable excuse" was an ignorance of the statutory requirement (s. 755).

At p. 388, Southin J.A., delivering the Judgment of the court, said:

> For my part, I do not find it necessary to call in aid concepts of equity. I simply say that the maxim "ignorance of the law is no excuse" is not a

rule of law determinative of an issue of statutory interpretation in every instance.

> In the end, the question is simply what do the words at issue mean in the context. In my opinion, ignorance of the law is a factor to be taken into account. So for that matter is knowledge of the law. But all matters put forward as constituting either singly or together a reasonable excuse must be considered.
>
> Those decisions of the court below which exclude ignorance of the law as a factor are, therefore, overruled.
>
> *Judgment*
>
> The plaintiff asserts that his "reasonable excuse" consists of:
>
> 1) Ignorance of who placed the post and chains and who was in occupation and control of the road;
>
> 2) The gravity of his injury not becoming apparent until after the expiry of the period of notice;
>
> 3) Ignorance of the statutory requirement.
>
> In my view, taken together those amount to a "reasonable excuse" within the statute.

The court further found that the defendant had not been prejudiced in its defence.

Mrs. Landrey did not know of the statutory requirement, and her physical condition prior to April 26th, 1991, made it difficult for her to learn of it. Seeing a lawyer would not be a high priority for her considering her injuries and surgical interventions. Her restricted mobility resulting in a delay in obtaining legal advice is significant when considering

"reasonable excuse". The day she sought legal advice, her lawyer sent the required Notice pursuant to s. 755, supra.

I find that there is a reasonable excuse for failure to give notice within the prescribed time. The Defendants concede that they have not been prejudiced in their defence, by the delay.

2. Liability

The relevant provision of the *Occupiers Liability Act* , R.S.B.C. 1979, c. 303 in these circumstances is s. 3(1):

> **3.** (1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and his property, on the premises, and property on the premises of a person, whether or not that person himself enters on the premises, will be reasonably safe in using the premises.

For the reasons contained in my findings of fact previously recited (pp. 13 - 16), I find that the Defendants failed in their duty to take the care that the Act requires and that failure caused the Plaintiff to injure herself. The Plaintiff did not willingly accept the risk, for she did not know of it. Accordingly, I find the Defendants liable as occupiers of the premises for any damages sustained by the Plaintiff attributable to her fall.

3. Damages

The Plaintiff has made an excellent recovery. She experiences some discomfort when curling and golfing but it subsides when the games are over. She does not seem to have developed any degenerative changes, nor does the metal implanted in her ankle cause symptoms requiring further surgery. She speaks of her ankle being very tender at times and not feeling "as it should" but she wishes to avoid further surgery which is understandable given her age. She has been compelled to give up gardening, for crouching was too painful. No claim has been advanced for any compensation due to her having to give up her home and move to a single level accommodation.

In submission, her counsel spoke of non-pecuniary damages of $50,000. At the time he did so, I said that figure was well beyond the range of damages for the injury and recovery of this Plaintiff. In support of his submission, the Plaintiff's counsel relies on three cases: ***Bains*** v. ***Hill*** (1992), 93 D.L.R. (4th) 117 (B.C.C.A.); ***Zubert*** v. ***Faulkner*** (13 November 1987), Vancouver B842584 (B.C.S.C.) and ***Boyle*** v. ***Taylor*** (19 December 1991), Vancouver B901883 (B.C.S.C.).

In ***Bains,*** supra, the Trial judge dismissed the action but fixed the plaintiff's non-pecuniary loss at $18,000. The Court

of Appeal reversed the Trial Judgment, found liability and fixed non-pecuniary damages at $35,000. Delivering the Judgment of the court, at pp. 122 - 123, Mr. Justice Goldie said:

> **Damages.**
>
> Mrs. Bains suffered a fractured right ankle which has not mended satisfactorily. There is, in addition, degenerative conditions which will not improve. The medical evidence at trial consisted of reports by two orthopaedic surgeons. The trial judge, although dismissing her action, addressed the nature of her injuries as follows:
>
> > Mrs. Bains suffered an injury to her right ankle which involved a fracture of the lower end of the fibula and as well severe strains to various ligaments. This injury has not yet settled itself. She has a residual disability which I find was a serious one and the prognosis as to complete recovery is doubtful. There is as well the degenerative arthritis which can be attributable to the injury.
>
> He fixed her non-pecuniary loss at $18,000. It is apparent from the medical records that Mrs. Bains has experienced pain, discomfort and a restriction on her activities which may be permanent. Her enjoyment in walking and shopping has been largely reduced. She underwent a surgical procedure in August, 1990 which caused some discomfort at the time. She may in the future face an ankle fusion - an operation which eliminates pain at the cost of movement. In my view, the award of $18,000 is inordinately low. A more appropriate award for an injury with the serious residual effect present here would be in the order of $35,000.

Clearly Ms. Bains' injuries were more serious and the permanent disability resulting from them greater than those experienced by Mrs. Landrey.

In ***Zubert,*** supra, the plaintiff's sural nerve was injured in a motor vehicle accident. The plaintiff underwent five operations, two of which were to remove sutures. The Trial judge found that the plaintiff had suffered pain as a result of the injuries (he did not specify anything more than that) and would continue to suffer discomfort in the future. He gave damages for loss of earnings for one year and concluded, saying:

> I consider that she has suffered considerably from this accident... Bearing in mind all of her pain and suffering and future discomfort I make an award of $30,000 for non-pecuniary damages.

It is difficult to determine the extent of pain endured and to be endured by Ms. Zubert and for this reason I do not find this case useful in assessing damages.

In ***Boyle***, supra, the plaintiff experienced a severe fracture of the right ankle and general bruising. He had two surgical interventions, including a fusion and a bone transplant. He underwent prolonged physiotherapy and had to be treated by two psychiatrists for stress arising from his injuries. His marriage was seriously affected. The restraint upon his physical activities were permanent. He had a past wage loss of some $88,000 and was awarded damages for future loss of employment earnings of $175,000. Mr. Justice Clancy awarded $50,000 non-

pecuniary damages. The injuries and their aftermath experienced by Mr. Boyle are so dissimilar to those in the case at bar, that the case is of little help.

Counsel for the Defendant has submitted the cases of ***Williams*** v. ***Corey*** (8 January 1991), Vancouver B884978 (B.C.S.C.) and ***Wisniewski*** v. ***Jim Pattison Lease*** (19 October 1990), Vancouver B881884 (B.C.S.C.).

In ***Williams***, supra, the plaintiff suffered a "nasty" comminuted tri malleolar fracture of the right ankle with significant dislocation of the talus. Ten months after the accident she was still suffering ankle pain. She was totally disabled for nearly six months. The Trial judge found she had sustained a serious ankle injury and likely arthritis would develop, causing her some permanent discomfort and disability. He awarded $16,000 for non-pecuniary damages.

In ***Wisniewski***, the plaintiff suffered a fractured right ankle. He was in hospital for eight days and was discharged with a knee cast which was replaced twice. He used crutches for four months. The court found that it was unlikely that arthritis would develop. He was awarded non-pecuniary damages of $15,000.

JUDGMENT

For non-pecuniary damages, I award Mrs. Landrey the sum of $16,000.

For special damages, I award her the sum of $43.32.

I have not taken into consideration the factor of inflation to the date of Trial. The Plaintiff is entitled to court order interest at the Registrar's rates fixed from time to time.

Costs follow the event at scale 3.

"G.R. COULTAS, J."

Vancouver, B.C.
15 January 1993