SUPERIOR COURT OF JUSTICE

PAUL BUCKLAND AND LINDA JOANNE BUCKLAND

Plaintiff

AGAINST

THOMAS GOUGH, ROSS GOUGH, and
MARY-ANNE GOUGH

Defendants

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R U L I N G

BEFORE THE HONOURABLE JUSTICE J. JENKINS,
on Thursday, the 13th day of May, 1999,
at Barrie, Ontario

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APPEARANCES:

R.G. Oatley, Esq., Counsel for Plaintiffs
D.K. Carroll, Q.C., Counsel for Defendants

THURSDAY, MAY 13, 1999

R U L I N G

J. JENKINS (Orally):

In my view, anything that will assist a jury to better understand medical evidence, should be encouraged, not discouraged, particularly where you have a knee injury which has very many moveable parts and components which are subject to evidentiary interpretation. You can have models, which have been filed here, you can explain, pointing at models, various issues, but six lay people have to comprehend the injury that has occurred.

This is not a case where the plaintiff says there is a serious injury to the knee, and the defence says there is no injury to the knee, then it could be argued the illustration is very misleading and prejudicial to the defence, to show a series of photographs in animation form, one following the other, showing a severely damaged knee, when the defence is it is not damaged at all could be prejudicial. The evidence, as I comprehend it, is going to be that both the plaintiff's doctors, Dr. Cameron and Dr. Richards, are going to testify that there is a significant injury to the knee of a certain type. Dr. James acknowledges there is injury to the knee

but has a different version of the type of injury that it is and the treatment.

The factors as set out in the case law indicate I have a discretion to decide whether it is admissible, and I also have a discretion on whether it is relevant and accurate. As far as the medical accuracy of the design of the knee and the parts, there is no issue on that. The architect of the animation was created by Steve Mader, who has credibility in this area. Dr. Cameron has used him for illustrations in medical journals. Dr. James acknowledged there was nothing wrong with the actual depiction. Dr. James issue is that it does not accurately depict the injury that he claims took place and that is where the conflict is. As far as the creation of the video or the animation, I have no problem with it being correctly done and medically sound. I find it admissible and relevant, prepared by experts who prepared it correctly.

The big argument for the defence, and I appreciate that is that, is it necessary for the jury to comprehend the plaintiff's case. I would like to say that in my view, it would be of great assistance to them. It may shorten the trial by some extent. It would prevent further coloured photographs to be prepared or illustrations to be prepared.

The big issue to me is whether or not it is prejudicial to the defence. I rule it is not because, first of all, when I instruct the jury at the conclusion of this trial, I am going to remind them that it is an illustration only for their assistance, and if they find that the injuries are in line with Dr. James, there are to disregard those parts of the video illustration that say otherwise. Secondly, Dr. James can go down to the screen with a pointer when we get to this part when he gives his evidence, and he can show in his own way, where he disagrees with Dr. Cameron, and presumably, Dr. Richards, as to the type of injury it is.

I cannot see any prejudice to the defence at all, and I think it would be of great assistance to the jury in this case, and I rule accordingly.

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CERTIFIED CORRECT AS APPROVED

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Margaret E. Wickett
Certified Court Reporter