MR. LITTLEJOHN: That's right.

THE COURT: All right, we'll take our recess.

R E C E S S (11:33 a.m.)

U P O N R E S U M I N G : (11:49 a.m.)

THE COURT: Has any decision been reached on these charts yet?

MR. EDGELL: No, sir. I'm afraid I'm objecting to them and Mr. Littlejohn is adamant of putting them in, in the form they're in.

THE COURT: All right. Do you want to tell me what ah, well, perhaps you can tell me Mr. Edgell, what's the problem with the form they're in?

MR. EDGELL: The problem is, firstly, that the charts are incomplete. They don't list all the dates of appointments. Secondly, I can point out with Dr. Pezuk, for example - this chart is devoted to Dr. Pezuk - it makes no mention of any of the dates following September 28th, 1989, when Dr. Pezuk indicated that this plaintiff's jaw discomfort was discussed.

There are dates missing, as well, from Dr. Morris's chart.

As well, they are separated on the acetates as being injury related and not injury related, and even if they were complete and accurate in that regard, that's the very issue before the court, what's related.

Secondly, the doctors haven't been given an oppor-

tunity to comment on whether the visits were related or multi-purposed. In fact, I think Dr. Morris's evidence as I recall it, was that some of them were, during the prenatal period. There's certainly a record of back complaints and neck complaints in his prenatal records. And anyway, the doctors have not been able to comment on these charts and because of the way it's divided I think fundamentally they are argument, sir.

If Mr. Littlejohn wants to file a list of dates, a complete list of dates without comment which Dr. Pezuk saw Mrs. Brandon or a complete list of dates without comment on when Dr. Morris saw Mrs. Brandon, then that might be appropriate. That really would be a subset of what we had done here which is a list of dates without comment, in Exhibit Two.

THE COURT: All right. Do you wish to respond, Mr. Littlejohn?

MR. LITTLEJOHN: Yes, Your Honour. It seems to me that just listing the dates without comment is patently unfair because it doesn't indicate what this lawsuit is about. It seems to me that there has to be two sides to the story and I think the jury has to have an opportunity to respond.

Now, these charts may go up to February 5th, 1990 but an arrow is drawn to show that further, further appointments are made.

Similarly with Dr. Pezuk, the last date, the date

that he referred to the TMJ thing, that continues along.

Now, these aren't intended to be separate on their own. They are supposed to be interpreted along with the charts that have already been placed into evidence by Mr. Oatley. It would seem to me that it would be fundamentally unfair not to allow the defence to have placed these charts into evidence and allow the jury to weigh the evidence that it has before it makes a decision. I just can't understand what the issue is? These charts are in evidence. These charts should be in evidence. Why not?

THE COURT: All right, in answer to your objection, first of all, the charts that you've referred to that are in evidence, Exhibit Two and Three, they were put in on consent by you. You consented to those going in. Mr. Oatley is not consenting, er and Mr. Edgell is not consenting to these proposed charts and in fact are taking objection to them. That's one fundamental difference.

The other difference as I understand it, is Exhibit Two and Three simply describe, without argument, dates of visits and prescriptions taken at various dates which are accurate. There was one change on the date which was an error. But they simply describe certain dates of treatment.

MR. LITTLEJOHN: But, Your Honour...

THE COURT: On your chart, your charts according to

Mr. Edgell - and I'll examine them if necessary - are incomplete and contain some argument.

MR. LITTLEJOHN: I would argue the same thing for these charts.

THE COURT: Excuse me, you -- the others have already been admitted on consent. And the objection, you know if you had proposed to file charts or submit them for evidence you probably should have got, seen if they were going in on consent and then objected to two and three. But it's quite common to put in a list, either in chart form or a list of prescription drugs or whatever in evidence to assist the jury because they can't make notes.

But I'm ruling that you cannot file your two charts the way you've indicated over objection of counsel.

MR. LITTLEJOHN: What changes could be made to allow them to be filed?

THE COURT: I'm not going to tell you how to conduct your lawsuit. Bring in the jury, please. Perhaps the issue of the seat belts should be put on the record some time so there's no dispute about when people were informed about that. It may be relevant on the issue of costs.

MR. OATLEY: I believe the discussion we had earlier was on the record, was it not?

THE COURT: All right, then that's the first time the court has been informed that the seat belt issue is no longer an issue.