IN THE ONTARIO COURT (GENERAL DIVISION)

KELLY HUNT, AARON CHRISTOPHER HUNT
and ANDREW NATHAN HUNT, by their
Litigation Guardian, Kelly Hunt

Plaintiffs

and

JOHN MOORES

Defendant

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RULING ON MOTION TO USE DEMONSTRATIVE AIDS DURING THE OPENING ADDRESS TO THE JURY

GIVEN ORALLY BY THE HONOURABLE MR. JUSTICE S. H. MURPHY on the 23rd day of October, 1996 at PETERBOROUGH, Ontario

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APPEARANCES:

J. Vigmond, Esq. Counsel for the Plaintiffs

D. Zuber, Esq. Counsel for the defendant

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RULING ON MOTION

MURPHY, O.C.J.G.D. (Orally):

The plaintiffs have applied to use six blown up drawings dealing with the jaw. The plaintiff's counsel proposes to use these to demonstrate and inform the jury.

The defense counsel objects to these exhibits. The basis of his objection is that they are unnecessary and they would be prejudicial to the defendant.

The defendant relies on the decision of the Ontario Court of Appeal, Shipman et al v. Antoniadis et al, which is reported at 8 O.R. (2d) at page 449. The judgment was delivered by Justice Kelly. The objection there was to: "...vividly coloured chart drawn to depict the human trunk laid open to disclose it's internal organs. It appears to be material which would be a teaching aid of medical students - various colours, not the exact reproduction of natural colours, appear on it to distinguish organs or systems sought to be depicted." The court went on to hold at page 449, "Its use was quite unnecessary for the understanding of the continuing permanent disabilities which form the most substantial part of the damages claimed by Barbara." At page 450, "The dangers of the inflammatory effect on a jury would so far outweigh the possible value of the evidence as

probative of compensable damage that courts should be loath to run the risk of impairing the integrity of the trial by allowing the introduction of such evidence and the use of exhibits for purposes not more closely related to the proof of the essential issues the trial Judge is called upon to leave to the jury."

Counsel for the plaintiff argues that these diagrams would be useful to the jury to understand the location of the muscles that were injured and the workings of the jaw. Counsel relies on two unreported decisions. One of Justice Logan in Whitford v. Swan, in which he held that the exhibits in that case did not offend the comments made by Justice Kelly. He found that the aids in question would not have such an inflammatory effect.

The court has to balance the use of the aids, would they assist the jury without prejudice to the defendant? As Justice Logan pointed out: "Demonstrative depictions in the opening statement may assist the jury in understanding their subsequent trial responsibilities. If, on the other hand, the demonstrative depictions mislead or inflame the jury, they should be excluded from the opening statement. Each aid must be assessed on its own merit. It may mislead if counsel does not undertake in advance to prove the aid. It may inflame the jury if common sense dictates that the aid in question is excessively demonstrative."

I have reviewed the exhibits and I am satisfied that they do not offend the comments made by Justice Kelly in Shipman. I am satisfied that they do not offend the suggestion that they are quite unnecessary and in my judgment they would be of assistance to the jury in understanding the injuries that were involved. I would allow their use in the plaintiff's opening.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from the record made by sound recording apparatus, to the best of my skill and ability.

K. Colacci

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K. Colacci,
Certified Court Reporter.