Court File No. 1236/91

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

DELPHIS HOULE, ARMANDE HOULE,
and JOHN HOULE

Plaintiffs

and

DANE KIRBY, CHOICE REEFER SYSTEMS LTD., L/F
JIM PATTERSON, L/T DENNIS LEOHARDT, and
ZURICH INSURANCE LIMITED

Defendants

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OPENING REMARKS BY MR. OATLEY TO JURY
and EVIDENCE OF DR. M. L. TRUCHON

Before THE HONOURABLE JUSTICE BOLAN and a JURY, at
NORTH BAY, Ontario on SEPTEMBER 7 & 9, 1994

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APPEARANCES

R. Oatley (Oatley, Purser) — Counsel for the Plaintiffs

M. Birnie (Donnelly, Birnie) — Counsel for Defendants D. Kirby, Choice Reefer Systems Ltd. & D. Leohardt

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ONTARIO COURT (GENERAL DIVISION)

T A B L E O F C O N T E N T S

Opening remarks by Mr. Oatley Put on page 2

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Evidence In-Chief of Doctor M. L. Truchon Put on page 20

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MR. OATLEY: (Opening remarks to the Jury)
Thank you Your Honour.
Good morning. As His Honour told you my name is Roger Oatley and Mr. Edgill and I have the honour of having been asked by Del Houle and his wife - excuse me I am sorry. We have been asked by Del Houle and his wife to be their lawyers and to ask for justice for them.
As the lawyer for Del and Armande I am obliged to tell you as His Honour said what the case is about and what the facts are that you will hear from the witnesses who will testify.
Del Houle is now 63. He was 58 when he was stopped waiting to make a left-hand turn and when he was struck violently, suddenly and needlessly from the rear by a transport-trailer.
His aging but reliable dump truck was ruined. And as far as he and his wife are concerned so is their future.
Del is from Astorville. His father was a lumberjack. When Del was only four his father took his own life. Del's mother was left to raise five kids on Mother's Allowance. Del was a poor student. With his family facing poverty, Del left school at age 13 when he was in grade four. So Del cannot read and he cannot write but he has worked hard all of his life.
Del and Armande, you will learn, married when they were very young. Del was only 17, Armande only 15. She was expecting Del's child. Armande dropped out of school in grade eight to get married to Del and to raise their baby. Within four years and by age

Armande was raising four children. They resided in Goward for awhile before coming to live in North Bay for about 10 years. And for the past 45 years or so they have lived in Corbeil.

They have been married to each other for over 45 years. They have raised their three daughters and their son. They have been good partners, good parents, good citizens. They have given love to their four children, their six grandchildren and their four great-grandchildren.

You will learn from Del and Armande about their first 18 years together. Shortly after dropping out of school Del became an alcoholic. Del worked every day and he drank every weekend. Often he drank so much that he ran afoul of the law. But 28 years ago when Del was 35 something wonderful happened. Del joined Alcoholics Anonymous. And after he stopped drinking he started his business.

He learned to play the guitar and to sing. And he performed with a band at A.A. weddings and dances. Over time he gave employment to other recovering alcoholics and helped to counsel them. He helped to establish a treatment centre for alcoholics and sat on it's Board of Directors.

And do you know how often Del has broken his pledge to A.A. and to Armande never to drink again? The answer we will learn is not once. Not once in 27 years since he joined A.A. has Del Houle had a single drop of alcohol.

We will see for ourselves what kind of man Del Houle is. We will see that he is a humble, simple, shy man that cannot read or write. Communication, you

will notice, is not easy for him. Sometimes Del does not let on if he does not understand because he gets embarrassed. We will see for ourselves that Del is a man who is used to struggling, of facing challenges and to overcoming them.

And because of Del's very limited education his only means of supporting himself and his family has been hard physical work. At age 13 he found work with the C.N.R. building railway tracks. Later he worked in saw mills and lumber camps and at various other labouring jobs.

His ambition was always to have his own truck. And over 20 years ago he started Del Houle Sand, Fill, Gravel, Excavating and Bulldozing which he operated for 25 years until the collision which I will tell you about later.

He looked after all the maintenance and repairs for his equipment. He was operating his dump truck in the course of making his living when this ruinous crash took away his ability to work forever.

Del and Armande are depending on you and me to each do our part. It is my obligation to present the case brief fairly and courteously and clear - and clearly as I can. It is your obligation - and yours alone - that after hearing all the evidence to determine the degrees of fault and what compensation Del and Armande deserve. You alone have the powers to make these determinations, to give fairness to Del and Armande and to give them justice.

A week Thursday the date will be September 15th. That day will be the fifth anniversary of the collision. Del and Armande have waited a long time

for justice.

On Friday, the 15th day of September, 1989, the leaves were starting to turn and fall was closing in. The air was cool and fresh. There were patches of morning mist. It was perfect for working.

That Friday started out like any other working day for Del. At six o'clock he gets up. He cleans up and dresses for work. He and Armande have breakfast together. He eats bacon, eggs, coffee and toast.

At about 6:30 he goes outside to his truck. Del takes about 10 minutes to check his truck over.

He sets out from his house on highway 17 for his gravel and sand pit at about 6:45. Del travels a short distance on 17, then a mile south on 94, then west to East Ferris on the Corbeil/Astorville Road. Then Del goes west again on the Lavigne Road for one mile and reaches the sand and gravel pits at about 6:45. The pits are part of a 200 acre parcel acquired over the years by Del and Armande. It is the only pit in East Ferris township. And as Del drives onto his land he feels proud.

By the time the crash occurs shortly after 8:30 that morning, Del has been working for just over two hours.

Del's first job for the day is to deliver a load of sand to Mr. Dennis Lablonde who is building a house. Del has supplied many loads of fill for this project. And on September 15th he is delivering a lot of sand for backfilling around the foundation.

So Del parks his truck at the sand pit and walks over to his gravel pit to get his front-end loader. One of the tires had been flat so he pumps it up.

His son John helps him grease the loader.
By eight o'clock he is ready to start loading sand into the truck. He loads it and he is back into his truck in about five minutes and ready to go around 8:05. So far Del's day has been like any other.
Del is about to make a routine delivery like countless others totally unaware that this is a trip that will change his life forever. A trip that will end in the ruin of his truck, the ruin of his business and the ruin of his life as he knew it.
What Del does not know as he starts his trip is that a loaded tractor-trailer owned by a Corporation called Choice Reefer Systems is heading towards him along highway 17 on its way to Pembroke at a speed of between 80 and 90 kilometres per hour.
This is an 18-wheeler, a freezer trailer carrying steaks which we will learn had a weight somewhere between 50 and 100 tons.
Del makes a couple of stops along his route because he finds himself behind a school bus that is stopping to pick up local children on their way to school. Del retraces his route until he gets to the intersection of highway 17 and Johnson Road. There he must turn left to get to Mr. and Mrs. Lablonde's.
He has noticed there is some fog so he has his headlights on. The Choice Reefer Corporation's loaded tractor-trailer is not far behind Del when Del stops.
Where the crash occurs highway 17 is fairly flat and beds grade for a long way in either direction. It is a two-lane road with one lane for eastbound and one lane for westbound traffic and the speed limit

is 80 kilometres an hour. Del stops his dump truck just before the intersection with Johnson. He checks to make sure it is safe to turn left across the westbound lane. He has to wait because it is not safe to turn in front of some oncoming traffic. He sees three sets of lights coming towards him. As he waits he sees for the first time the Choice Reefer Corporation's tractor-trailer coming up behind him.

You will hear from the investigating officer that the defendant driver admitted to him that he was going between 80 and 90 kilometres when he first noticed Del.

Del watches but does not detect the tractor-trailer slowing down. The driver of the tractor does not realize at first that Del is stopped so he keeps on coming towards Del at between 80 and 90.

By the time he realizes that Del is not moving it is too late to stop. So the driver of the tractor-trailer pulls out into the passing lane to go around Del and avoid ramming him, if he can, from behind.

As Del watches these events unfold he freezes in his seat. Del watches the distance narrowing between the tractor-trailer and the oncoming cars.

Now this little sketch is pretty rough and pretty crude and it is not intended to show the size of anything or the distance of anything because we do not know. But it does give you an idea of the position of these vehicles so far.

We have Del's truck stopped waiting to make a left-hand turn.

We have the tractor-trailer coming up behind Del now

in the other lane and cars with three headlights coming toward the tractor-trailer on the other side of Johnson.

Del watches the distance narrowing between the tractor-trailer and the oncoming cars. Then suddenly, when he realizes that there is a vehicle in his path heading towards him, the defendant driver pulls back into the eastbound lane behind Del's truck. He heads for the eastbound shoulder. He does not make it and he slams into the rear of Del's truck.

We will hear from a driver of an oncoming car who knows she would not be able to testify today or later this week if she had been hit instead of Del. The force of the collision was so violent that it lifted Del and his dump truck and shot it forward about 25 feet.

With Your Honour's permission these photographs I am showing you which are numbered one, two, three and four will give - give us a sense of the mass of the rig and some of the damage which it sustained. Perhaps if you would like to pass it down among yourselves.

Perhaps you could give them to the Sheriff's Constable. Thank you.

Del's memory for what happened after this is fuzzy. But he thinks that because he was worried about the oncoming traffic he tried to steer to the right after he was hit. He thinks that he was struck a second time. Somehow - Del does not know - he ends up at the back of his truck on the asphalt. His recollection of what happened afterwards is sketchy.

A passing motorist who knows Del rushes home to get Armande. And you may have noticed the woman over a blanket on the road by the truck who you will learn later was - was Armande.

Armande stays with Del in the ambulance that takes him to Civic Hospital. Little does Armande know then that her husband and her family and her life will never be the same.

Fortunately none of the oncoming drivers were hurt. And fortunately the 19 year old driver of the Choice Reefer Corporation's tractor-trailer was able to walk away.

Now I want to be entirely fair with you by telling you that Del was not wearing the lap belt that was in his truck. Because of it's age the truck did not have a shoulder harness. I expect that counsel for the defence is going to try to tell you that the - that Del is partially responsible for his injuries because he was not wearing the lap belt. But it will be for you alone to decide whether a lap belt would have made any difference in such a violent collision that was so severe that it - that it - the dump truck was written off.

We will learn from Dr. Peter Knight who is a medical doctor with training and experience in assessing the effectiveness of seatbelts in crashes that he studied this collision and he will give you his opinion for your consideration.

At the end of the trial you will be asked to answer some questions and one of them will be whether Del's - Del's not wearing his lap belt in any way contributed to his injuries.

All that Del and Armande ask is that you be fair after you have heard all the evidence on that point. And you must decide the issue on the basis of the evidence and not on the basis of any sense that we all share that it is wrong not to wear seat belts. At the conclusion of the trial I have another opportunity to discuss the case with you. At that time I am going to ask you to award damages in the hundreds of thousands of dollars to Del Houle and his wife Armande.

And now I would like to tell you why I will make that request.

It is very important for us to know that Del's physical health and personality made him unusually vulnerable to the very type of injuries which occurred. We already know Del was an alcoholic. And we will learn more about the personality which lead to alcoholism and how that made him more vulnerable than you or I might be with such an injury. Understanding this vulnerability is critical if we are to appreciate fully why Del has never recovered.

We will learn that the discs in Del's spin were deteriorating before the accident. That he had some arthritis. As a result Del has had some problems with his health over the years. But we will learn that until he was subjected to the powerful forces of this crash that these problems were being managed and were under control so that he could work and enjoy life.

We will learn all about Del's health before the collision.

We will hear that in 1977 - going back that far - he began to have problems with his right knee and needed to have his thyroid regulated. We will learn from his family doctor that it took some time to get the thyroid under control and to deal with some concerns Del had about chest pains.
We will learn that in 1978 Del hurt his right leg. The right leg was a problem for awhile and we will learn that Del made an insurance claim because he could not work for about a year and a half.
The family doctor will tell us that he thought Del probably had arthritis in his right knee.
We will also learn - and this is important - that as a result of rest and medication Del's knee cleared up and he was back to work full time and without restrictions in June of 1980. And he worked pretty well continuously afterwards until the collision occurred. With one problem in 1980 with low back pain and he lost a bit more time off work.
But then in 1983 Del developed problems in his low back and his right leg. And they were bad enough that the family doctor referred him to an orthopaedic surgeon. The orthopaedic surgeon recommended hospitalization but Del went to a chiropractor rather than take time off work.
The chiropractor who treated him back in 1983 and has treated him from time to time since and the family doctor will tell us that between 1983 and 1989 when the crash occurred, a period of six years, Del was not ever off work because of these difficulties.
He was off briefly in 1986 because of smoke

inhalation when the family home burned down but he overcame that and got back on the job right away. The chiropractor will tell you that he treated Del for low back or right knee pain on four occasions only between 1983 and 1989. There were a total of 25 treatments in those six years spread among those four occasions. One of those periods was the two weeks immediately before the crash occurred in September of '89.

The family doctor and the chiropractor will tell you that this occasional treatment kept Del's problems under control.

But we will learn that an injury to a healthy back is one thing. An injury to a back which is already vulnerable is quite another.

We will learn that the problem that Del had before the accident was down here in his lumbar spine. This is the - the hips, more or less. And this is the spine with the head up here. The problems that Del had were down here at the bottom of his spine in the lumbar area.

We will also learn that there were traces of arthritis up and down his spine that were notice on x-rays taken right after the accident and more serious indications of arthritis and degeneration in the discs between C-4 and C-7, right up here at the base of the neck. But what we will learn is that the discs at the base of the neck were what the doctors call asymptomatic which means there were no symptoms. The symptoms were from the bottom where there also was some arthritis in Del's back. But you will hear from doctors that will explain to you

more about that.
As you might expect it was at those levels because they were vulnerable where some of Del's worst pain developed after the crash. A chain, after all, is only as strong as it's weakest link.
If we were to be fair to Del we need to keep in mind two very, very important things as you hear the evidence. Number one; in spite of his vulnerable back and knee he functioned quite well. Number two; our law is very clear that someone who wrongs another takes his victim as he finds him. In other words, if Del was more vulnerable to injuries than a 20 year old with a completely healthy spine, that is not held against Del. You take your victim as you find him.
Under our law it is entirely the defendant's problem that he injured someone who was more prone to injury or more vulnerable than someone else might have been. Fairness and common sense requires that approach. After all Del was leading a productive life until he was hit from the rear by the tractor-trailer and he did not ask to be injured. Del was keeping the problems, you will hear, under control. Any problems he had with his low back and right knee were being managed until the crash which so injured those vulnerable parts of his body that the body would not heal.
The defence may ask you to accept that Del's very serious current disabilities are no worse than the problems he had before the accident. I do not know for sure if you will be asked to make that finding but you might. And if you are please remember that

you will hear evidence from Del's own doctors who have looked after him for years that they disagree. And, in fact - Your Honour's indulgence. We are going to later prove in evidence all of these medications and treatments that Del has had to the period going back to 1983. And these charts, in a glance, show you on your left-hand side, the year is 1983 - going over to my left-hand side and your right-hand side - to 1994. And the charts are - we believe the evidence will show complete right up until last month. So what you will hear is evidence to explain that this chart shows all of the doctors' visits, chiropractic treatments and psychotherapy treatments. And I am afraid you will have to improvise a bit here. But you will see that when the accident happened in September '89 the chart starts to fill up. And that prior to 1989 when the collision occurred right back to 1983 there is not a lot of visits. But the visits to Dr. Brandon the chiropractor that I mentioned earlier, are in green. You will see visits show up in '83 and the beginning of '84 and then again just before the collision in September of '89.

Similarly with the medications that we will tell you about you will see from the charts that, now that you know how the chart works, in 1983 right over to when the accident - the collision occurred in 1989 - there were medications but not many. And a great many after that.

At the end of the trial all I will ask you to do is to be fair. And I will suggest to you then that the fair thing is to make an allowance in your award for

the occasional time off that you might reasonably expect Del to need from time to time in case his problems fared up as they had occasionally in the past.

Del will tell you he planned to work until he was 70. So you might expect this need to arrive. Common sense and fairness to the defendant would require that you - that you consider that possibility.

We will learn that Del was taken by ambulance to North Bay Civic. And that his legs felt numb. That he had no feeling in his right hip. And that he could not walk. Still Del will tell you that he was hopeful that he would make a full and speedy recovery and get back to work. But we are going to hear that this has never happened.

Since the collision was on Friday Del saw Doctor Truchon his family doctor on Monday. Del told Doctor Truchon about problems with his head, his neck, his right shoulder, his hip, that he could hardly move his head and had sever headaches, that his right hand and fingers were going numb. He says he could not put pressure on his hip. He could not walk. And later that he was experiencing dizziness, problems with his balance, blurred vision, mood swings, anger, frustration and problems with his memory. A far cry from the man we knew before the crash.

We will learn that when Del did not get better Dr. Truchon sent him to see a specialist Dr. Mitchell who prescribed physiotherapy. But we will learn that the physiotherapy did not - did not

help. In fact, it seemed to make things worse.
We will learn that by the end of 1989 Del tried to work an hour a day but he found it too painful. And that in the summer of 1990 Dr. Mitchell saw Del again and told him there was little he could do.
Del was still experiencing headaches, neck pain, right should pain, back pain, pain in his right hip and leg virtually all the time.
They also found that from time to time he had episodes of numbness in the right arm and leg and then he suddenly would fall. With these episodes he will tell you that he had slurred speech and difficulty with memory.
We will hear from Dr. Truchon and Dr. Mitchell and from a doctor who recently figured out what was causing Del's headaches, dizziness, blurred vision, occasional numbness and falling.
Because Del did not improve, he could not work.
He grew more and more happy (sic) you will learn.
His financial problems became severe.
His problems took quite a toll on his relationship with Armande even though she had been doing her best to support him. So Dr. Truchon referred them to a marriage counsellor by the name of Paul Smith because this marriage of 45 years was in jeopardy of falling apart. Del and Armande, you will learn, still see Paul Smith who will tell you about their struggle and how it is far from over. We will learn from Paul Smith that Del became so depressed that he contemplated ending it all.
Throughout it all though Del resisted resorting to alcohol.

Del went to see a Dr. Chapman another specialist in May of 1991 because he still was not getting better. He still could not get back to work. Dr. Chapman, I suspect you will hear, suggested an injection. But we will learn that because Del was frightened at the thought of this procedure that he spoke to Dr. Truchon about it. Del will tell you that Dr. Truchon discouraged him because of the risk.

The defence may, I do not know for sure, but may try to tell you to conclude that Del could be rid of this pain if he had taken Dr. Chapman's advice. But please remember that Del is not a well-educated man. You will come to a fair conclusion on this point after you get to know Del and after he explains why he put his faith in his family doctor instead of a specialist he saw only once.

You will learn that things got so tough for Del that he had to go on welfare, that he had to give his pit to his son so he could take over the mortgage payments.

You will ask yourself whether a man who had to overcome so many challenges in his life would suffer such indignities if he felt there was any reasonable alternative.

I will always try to be entirely fair. So I want to tell you that the defence hired two doctors to assess Del. They each saw him once. I do not know whether they will be asked to testify but to the extent that their opinions might differ from doctor - from Mr. Houle's doctors. I know you will consider them fairly and make up your own mind who is probably right.

I also want to tell you that the defence will probably call a private investigator it hired to watch Del and to take movies of him without Del knowing. If you get the see the movies - I do not know for sure they will be shown to you - they will show Del working on a truck, sliding under it on his back, operating his front-end loader and moving about among other things. And you might ask yourself what this is all about if Del is not claiming that he is completely disabled and he is not.

I expect what the defence will try to tell you is that Del is not a believable man because he swore under oath on an earlier occasion that he could not do some of these things. I intend to ask Del directly about this. And we will learn his explanations and you will decide fairly if he is a man who would knowingly try to mislead.

We will learn from Del, his wife, his family, his friends and customers and his doctors that he has not improved much and remains very disabled. Because he is in constant pain all his activities are severely curtailed, including his ability to take care of his home.

In fact we will learn that Del spends a good part of each day doing nothing but resting in bed despite the continued use of medication.

You will also learn that because work was critical to Del's self-esteem that the loss of the ability to work has taken its toll on his emotional health.

We will learn that at night Del cannot sleep because of the pain and because of worry.

You will hear from a psychiatrist - will - who will tell us just how bad Del's emotional injuries are. Sadly he is not a well man.

We will also hear from Dr. Barry Malcolm who saw Del at my request just a few weeks ago. He is a doctor who treats people like Del and who assesses them for the Workers' Compensation Hospital. He will tell us that the cause of Del's problems are due to the crash of September 15th; 1989.

So at the end of the trial when I speak to you again I will be asking for a substantial award of damages to compensate Del for his losses and we will learn why the losses are in the hundreds of thousands of dollars.

In addition to an award for his pain and suffering, for his loss of enjoyment of life, for the loss of the amenities of life I will be asking you to make a fair assessment of his income losses and a fair assessment of the costs Del will experience for his care and the care of his home.

We will learn that because most of the business records were destroyed in the fire I told you about and because Del did not declare most of his income that you are going to have to do your best to make a fair estimate of what income has been lost.

All we ask for in this case is that you be fair.

I know you will be and that you will award fair and reasonable compensation because this man will never work. He will never look after his home. He will never support his family.

We will also ask for fair and reasonable compensation for Armande. We will hear about the

impact of this collision on her too, about her sacrifices, her suffering and her sorrows as the other innocent victim.

At the end of the case I am going to ask you to do only one thing to be fair to be reasonable for Del. Under the law that is all the jury can do and that is all we are going to ask. When the case is over fairness and reasonableness will demand a substantial verdict because these injuries and losses are lifelong and profound. And because this was a horrendous event and should not have happened. Thank you.

...TRIAL CONTINUES...

M. L. TRUCHON: SWORN

EXAMINATION IN-CHIEF BY MR. OATLEY:

Q. Good morning doctor.

A. Hum.

MR. OATLEY: Your Honour Mr. Birnie and I have agreed with Your Honour's permission that the Court may regard Dr. Truchon as an expert witness namely as a medical doctor with an M.D. degree licensed to practice family medicine in the Province of Ontario.

THE COURT: Mr. Birnie?

MR. BIRNIE: That is correct sir.

THE COURT: Okay.

Q. Dr. Truchon would you tell us please how long you have been a family doctor?

A. Approximately 12 years.

Q. And during what period of time have you been a family doctor in this area?

A. 12 years I guess, yeah.

Q. And can you tell us please how long you have been Del Houle's family doctor?

A. 12 years I guess.

Q. What - when we received all of your notes from your file we received as well clinical notes from a Dr. C. F. Wallace. Was Dr. Wallace Del Houle's family doctor before you?

A. Yes.

Q. And am I correct that Dr. Wallace started seeing Del in August of 1977?

A. That's right.

Q. Did you take over Dr. Wallace's practice?

A. That's right.

Q. So if we - if we have confidence in Dr. Wallace's notes as being comprehensive we have a record of Del's health going back to 1977?

A. That's right.

Q. Have you had a chance to review, again in preparation for this morning, Dr. Wallace's records?

A. That's right.

Q. And, indeed, were those records reviewed with Del from time to time over the years as you - as you looked after him?

A. Yes. I'd go through them I guess.

Q. I wonder if I can, first of all, ask you please to cast your mind back to the period before Del was involved in this collision in September of '89 so that we can review for the jury his health prior to that time. Am I correct that Dr. Wallace's notes first indicate that Del had some problems with his knee starting in 1977?

A. That's right.

Q. And that the notes Dr. Wallace made indicate that there were some additional difficulties with his right leg as well as his nerves in February of 1978?

A. That's right.

Q. And some record which appears to indicate that he may have had another injury to his right leg in April of '79.

A. Mm mm - that's right.

Q. And do the records also indicate that he came to see Dr. Wallace in February of 1979 about dizziness?

A. Mm - that's right.

Q. And is there a letter in the file from Dr. Yadav - Y-A-D-A-V - which states and reports to Dr. Wallace that Del had been off work for approximately a year to a year and a half ending in March of 1980?

A. I believe so - yeah.

Q. And is it your understanding from the notes that that absence had to do with the right knee?

A. That's right.

Q. And do the notes also indicate that Del went to see Dr. Wallace in October of 1980 about low back pain?

A. Can I - can I review my notes there?

Q. Sure.

A. Sure. Sorry, what - what month?

Q. October - in fact October first of 1980?

A. Mm mm. That's right.

Q. And he, in fact, reported on that occasion that it was worse when he was bending over or sitting too long?

A. That's right.

Q. He came back in did he, according to the notes, in November of 1980 about low back pain and left hip pain with heavy work?

A. That's right.

THE COURT: I am sorry. What date? All on...

Q. That was November...

THE COURT: ...the first of October?

Q. November of 1980.

THE COURT: Oh.

Q. And he came in to see you about some anxiety in September of '84?

A. September - yeah, that's right.

Q. Yes. There is a letter in your file is there not from Dr. Holmes an orthopaedic surgeon on Cassells Street in North Bay dated November 30th, 1983?

A. That's right.

Q. Is there attached to that letter an emerg record from - from North Bay Civic?

A. Yeah, that's right.

Q. Do you know how Del came to see Dr. Holmes?

A. I'm not quite sure. I - I thought he saw an emerg position and that's - and the emerg position might have referred him to Dr. Holmes. My secretary made a note on that emerg sheet with regards to a referral to Dr. Holmes.

Q. In any event the letter from Dr. Holmes which is in the record for the jury to see indicates, does it not, Del was obviously limping and favouring his right leg in November of 1983?

A. That's correct.

Q. And he was complaining of some pain when Dr. Holmes knocked against the lumbar region of his spine?

A. Mm, that's correct.

Q. And he was having trouble flexing his - his - to the - to about - he could only flex to about the knee level and was experiencing pain in his right leg?

A. That's correct.

Q. Dr. Holmes reported to you, did he not, that Del had considerable right sciatica which was not improving with medication?

A. That's right.

Q. So he - he recommended admitting him to North Bay Civic for some physio, some rest and perhaps a myelogram?

A. That's correct.

Q. And that Del was going to continue with medication a little longer and that if there was no improvement that would be the approach Dr. Holmes would recommend?

A. That's right.

Q. Are you aware doctor from your time with Del and from your chart that, in fact, after seeing Dr. Holmes Del did not go into the hospital but, in fact, went to see a chiropractor Dr. Brandon at the end of 1984 - 83 and the beginning of 1984?

A. That's correct.

Q. And are the records correct that Del never did go back to see Dr. Holmes and never did proceed into hospital to have the physio or the myelogram that Dr. Holmes thought might be necessary?

A. That's right.

Q. After Dr. Holmes and Dr. Brandon looked after Del at the end of '83 - beginning of '84 - is there anything at all in 1985 in your charts showing a visit to you from Del about anything?

A. From '85?

Q. Well let's - perhaps your - your question is a - is a good one. Am I correct that after this incident with Holmes and Brandon there are only two visits to you in '84, one in May and one in September?

A. That's correct.

Q. And - and in a nut shell can you tell us what he

came to see you about on those two occasions?

A. The visit in May was for a routine physical.

Q. Yes?

A. There was no major - there were no major complaints at that time. And in September 20th, 1984 it was just for some counselling with regard to his anxiety and a blood pressure ~~ch~~eck. There is no mention of back pain there.

Q. Blood pressure okay then?

A. That's right.

Q. And in '85 were there any visits at all?

A. No.

Q. And in '86 are there three visits? One in February, one in March and one in April?

A. That's correct.

Q. And can you tell us again in a nut shell what he came to see you about those three times?

A. I believe there was a house fire and he was in just for a check up with regards to smoke inhalation I think. I believe he had been at the hospital - had been admitted at hospital and had trouble with a cough and all three visits were with regard to the - that incident.

Q. So am I right so far that after the Holmes/Brandon treatment at the beginning of '84 there is nothing in '85 and there is nothing in '86 about any musculoskeletal problems?

A. That's right.

Q. In other words nothing about knee problems, back problems, neck problems anything like that?

A. That's correct.

Q. Then in 1987 am I correct that there is only one visit in April of '87?

A. That's right.

Q. And what did he come to see you about in April of '87?

A. A routine physical.

THE COURT: I am sorry?

A. A routine physical.

THE COURT: Okay.

Q. Any complaints about back problems, knee problems, anything of that kind?

A. No sir.

Q. So am I correct then that after the brief period in '84 we are now looking at a period of almost four years in which there has been no complaint to you of - of leg, knee, back pain?

A. That's right.

Q. Then in 1988 am I correct that there are no visits to you until November of '88?

A. That's correct.

Q. And what did he come to see you about?

A. I believe he injured his left leg. He had a fall and there was no major - I felt it was more of a muscle strain and - and prescribed some Tylenol-2's. And that's about all he was in for that visit.

Q. There was one apparently on the 9th and one on the 10th. Were they both about that problem?

A. Oh, sorry - yeah. I missed the 9th. That's right. He had seen - on the 9th he had seen Dr. Hopkins downstairs. And he diagnosed a contusion to his left thigh and I - I believe I agreed with that. I saw him on March 10th I guess. I'm sorry - November 10th.

Q. So we have now another 11 months to add to our period of time in which there have been no complaints of right knee or - or back problems?

A. That's correct.

Q. Then we know from the record that has been filed that at the end of 1988 Del went to see the chiropractor again for five treatments. Did you know anything about that?

A. No sir.

Q. So he did not come in to see you. He just went to see Dr. Brandon?

A. That's correct.

Q. You were not called upon, I take it, to prescribe any medication for his - with whatever he went to see Dr. Brandon about?

A. No.

Q. Then going into 1989 am I correct that there are no visits to you until the collision occurs?

A. That's right, 18th of September '89.

Q. I would be correct then that Del did not come to see you at any time in 1989 either about problems with his back or his - his right leg?

A. That's right.

Q. Am I correct then, just to summarize for the jury, that we have no complaints at all in the four years '85, '86, '87 and '88? No complaints to you after he has seen Dr. Holmes at the end of '83 and no complaints to you in all of '89 until after the collision?

A. That's right.

Q. I want to ask you if you had a chance to review with me before we started this morning the medication chart which I am holding up right now?

A. That's right.

Q. And were you able to confirm, prior to our getting underway, that in the years we have just discussed '83 right through until when the collision occurred there were

ptions of medications by you in June of '83 for Serax?

A. That's correct.

Q. And what was that for?

A. Anxiety.

Q. And in September of '83 for Oxazepam. What that be for?

A. That's another anxiolytic.

Q. And in December '83 for Serax and 282's?

A. That's correct.

Q. The Serax again is for anxiety?

A. That's right, another name for Oxazepam.

Q. And 282's do you know what they were for?

A. What month was that sir?

Q. That is December of - of '83.

A. I'm not sure. I just renewed it for him. No.

THE COURT: Well he had see Dr. Holmes on November 30 of '83 or thereabouts...

A. That's right.

THE COURT: ...for pain to his knee and his legs, things like that.

Q. Is that likely what it would be related to?

A. Most likely, yeah.

Q. Yes. Thanks Your Honour. And then in '84 there appears to be one prescription for Oxazepam. I take it, again, for some anxiety related...

A. That's...

Q. ...problem?

A. ...right.

Q. And in '85 one prescription for more Oxazepam?

A. That's right.

Q. Again, anxiety?

A. Excuse me. That's right.

Q. And in '86 one prescription for Oxazepam in March and one for Serax in April both for anxiety?

A. That's correct.

Q. Nothing in the next two years '87 and '88?

A. That's right.

Q. And nothing in '89 until the collision occurred?

A. That's right.

Q. Do I have it correct if we summarize for the jury then doctor, that between the years 1983 and 1989 until the collision occurred with the one exception of the 282's at the end of 1983, there were no prescribed medications for any musculoskeletal problems?

A. That's right.

Q. And no prescribed meds for - in other words the right knee or the back or any such...

A. That's...

Q. ...things?

A. ...right.

Q. In your opinion doctor, as Del's family physician, did you know him well enough to tell us with confidence whether or not immediately prior to this collision and during the, at least, six years we have in detail on these charts, Del Houle had any physical disabilities?

A. I'd say no. The...

Q. Did - first of all, did you know him well enough to form an opinion on that?

A. I'd say yes - yeah - mm mm.

Q. And what - what is your view as to whether he had any disabilities of a physical nature with respect to his recreational activities, his social activities or his working activities?

A. I'd say he didn't have any major disability. I think he was fairly active and...

Q. Did he have any minor...

A. Or...

Q. Did he have any minor disabilities?

A. I guess a few minor his anxiety but other than that nothing major.

Q. Thank you. Do you know how long after the collision it was before you saw Del?

A. I guess it would've been about three days.

Q. And what kind of shape was he in?

A. Well he was having low - low and upper back pain. He was fairly stiff and - and sore. And I referred him to Dr. Mitchell at that time on the 18th of September.

Q. Doctor can I stop you because I forgot something? We had noticed that there was a - a gap in our medication chart and can you confirm that you and I took a look at your notes to - to see if we could find an explanation this morning?

A. Mm mm.

Q. And I am going to ask, with Your Honour's permission then Mr. Birnie's consent, if Mr. Edgill would write on the missing medications. Could you turn to your notes doctor for November of 1989? What medications were prescribed in that month?

A. Feldene and Nov...

THE COURT: I am sorry. What is it?

A. Feldene.

THE COURT: What is that?

A. An anti-inflammatory.

THE COURT: Okay.

Q. And what is the other word?

A. Novasen.
THE COURT: Is that...
A. ...which is...
THE COURT: ...pain?
A. It's a - like an aspirin - like compound - yeah.
Q. You will agree doctor that you have a doctor's handwriting. And it is understandable the law clerk missed the...
A. Okay.
Q. ...the references. Feldene is F-E-L-D-E-N-E?
A. That's correct.
Q. And can you help us with the other spelling?
A. You mean the generic name for it or...
Q. No, sorry. The other drug?
A. Novasen - N-O-V-A-S-E-N.
Q. And then in January of 1990, where right now we have a gap, am I correct that there is Feldene again?
A. That's correct.
Q. And that other drug that starts with N?
A. That's correct, Novasen.
Q. And then in February of 1990 we have the same two? No. We have Feldene and Naprosyn don't we?
A. Yeah. I think I stopped the Feldene and started him on Naprosyn.
Q. N-A-P-R-O-S-Y-N?
A. S-Y-N, that's correct.
Q. All right. And now the chart is right and we can follow it all through. Thank you. Going back you were telling us about how Del was when he first came to see you. Would you tell us please why you referred Del to Dr. Mitchell?
A. I thought that he'd benefit probably from some physiotherapy. And I thought - I thought his condition was such

that he - he needed a referral to a specialist. He was fairly stiff and sore and I thought we should get another opinion with regards to maybe specialized treatment.

Q. Excuse me Your Honour. I do not know whether anyone else is finding that the mic is - is muffling the doctor just a little bit. Perhaps if you could sit back...

A. Okay.

Q. ...from the mic a bit?

A. Sorry.

Q. Thank you. Dr. Mitchell I understand is a physiatrist?

A. That's right.

Q. And that means that he is a doctor who has special training in - in the rehabilitation of physically injured people?

A. That's correct.

Q. And why did you chose Dr. Mitchell?

A. I guess he's the only one in town that has - that does that speciality.

Q. And that particular speciality was important for what reason?

A. Well I didn't believe this was a surgical case. I felt that probably physiotherapy and that type of conservative treatment would be more appropriate to Mr. Houle's condition.

Q. And I understand that Dr. Mitchell has a physiotherapy clinic which he - which he supervises and directs?

A. That's right.

Q. Could you tell us please what your - your notes record as to Del's complaints at the beginning when he saw you on the 18th of September, the Monday following the collision?

A. He seemed to be having some low back and upper back - mid-back pain. It was - it didn't initially I

think...

THE COURT: Sorry?

A. He didn't initially have neck pain. He seemed to develop it that a bit later on in November I believe. But mainly his low back and mid-upper back.

Q. You referred him off to Dr. Mitchell and then saw him ~~a~~gain on the 26th about a week later. How was he then?

A. Well - that's right. I missed that one. He was about the same.

Q. And according to the records he was in Dr. Mitchell's hands during October. You did not see him?

A. That's - that's correct.

Q. And did he come back to see you at the beginning of November?

A. Yeah, the 28th.

Q. And can you tell us how he was then after being with Dr. Mitchell and physiotherapy for a month or so?

A. Well it seemed that for some reason he had gotten a bit worse here. He started having his neck pain and he mentioned to me that the physiotherapy seemed to be aggravating his condition. He was still having some low back pain. And...

Q. And did you see him again doctor later on the 24th of - of November '89?

A. Mmm, no.

THE COURT: I am sorry. This date that you saw him was November...

A. 28th.

THE COURT: ...28th?

A. That's right.

THE COURT: Yes.

Q. That was the 28th?

A. Mm mm.

THE COURT: Yes.

Q. And did you see him again the next day?

A. No.

Q. Just the 28th was it?

A. That's right.

Q. Did you continue to follow him after the end of 1989?

A. You mean '89 or...

Q. After the end of '89 you - you still saw him in 1990?

A. That's right - mm mm.

Q. In fact, am I correct that you had pretty much followed him throughout with the occasional exception of - almost every month until - until - until now?

A. That's correct.

Q. Can you tell us in general how his condition today compares with the condition that you were seeing and hearing about at the end of 1989 shortly after the collision?

A. I think it's progressively gotten worse. He's having a - quite a bit more pain in his neck and lower back. And he seemed to be having a lot more problems with his right leg. Overall I would say he's worse.

THE COURT: Give that to me again now. You say that he has got progressively worse?

A. That's correct.

THE COURT: With what? Describe or tell me the pain now?

A. Basically his neck pain and his low back pain with radiation to his right leg.

THE COURT: Okay. Neck pain, low back, radiation to right or left leg?

A. Right leg.

THE COURT: Okay. Thank you.

Q. And doctor last evening you had an opportunity, at my request, to review a - a video...

A. That's correct.

Q. ...that you were given?

A. Mm mm.

Q. A video that I have advised you was made in March and April of 1992?

A. That's correct.

Q. This is important so I would appreciate you're telling us carefully whether, in your view, Del's condition today currently is the same or better or worse than it was when that video was taken in March and April of 1992?

A. I'd - I'd say worse.

Q. How much worse is it?

A. Well I'd say quite a bit - mm mm.

Q. Can you tell us how he has deteriorated and why, in your opinion, it has happened?

A. Sorry, why it's happened or...

Q. Tell us how he has - how he has become worse, in what ways?

A. Mmm.

Q. And what do you think that it - has happened?

A. I think it's gotten a lot worse and that he's doing a lot less around the house and - and having a lot more difficultly walking, standing, sitting. It seems like everything he does seems to aggravate his condition. He's limited, I guess, in the amount of shopping he can do. And overall he - he's basically gone..

Q. Can I...

A. ...down.

Q. ...stop you please?

A. Mm mm.

Q. And ask you - because it is so important - if you could keep your voice up a bit and speak a little bit more slowly?

A. Sorry.

Q. Thanks. You were telling us that there - there are ways in - that aggravate his - his problem. Why don't you go over that again?

A. Basically he's very limited in the amount of walking he can do. Sitting seems to aggravate it - his condition. He's having a - quite a bit of trouble sleeping. That's always been a problem I guess but, it seems that everything seems to aggravate him just a bit more than it did initially. Why that is I'm not sure. I guess it's just a - a slow progression of - of the - of the problem.

Q. Does it have anything to do with - with his - his mind and his emotions?

A. Well I think that plays a bit part. I think that's all - well I think we forget about the - the emotional part of it and I think that's the big part of it also, sure.

Q. Could - could you explain to us as lay people how the mind interacts with the whole body to make physical problems worse?

A. That's right. But I think - I think he's probably chronically depressed over all this. And I - I think people who are somewhat depressed react a bit differently to - to pain. Whether there's been a head injury with the accident it's hard to - to tell. But I think depression and - and chronic pain also plays a big part. And I think the fact that he's been in so much pain for so long it tends to affect his overall emotional well-being also.

Q. We heard an opinion from Mr. Paul Smith

yesterday. Was he someone to whom you referred Del and Armande?

A. I'm not sure how he - I think it might - perhaps his previous lawyer -lawyer made a - a referral there.

Q. I see. In any event is he a - a psychologist in whom you have faith?

A. That's right.

Q. He explained that there was a cycle of chronic pain in which the victim experiences pain which produces anxiety and sleeplessness. And that the anxiety and sleeplessness produce more pain and that pain in turn produces more anxiety and sleeplessness. Is - is that a - a medically accepted theory of chronic pain in your opinion?

A. I'd say so.

Q. And is your opinion that - is it your opinion that Del's worsening is consistent with that view?

A. I'd say for sure - yeah. That's right.

Q. And doctor as you saw Del's condition worsening what - what did you do by way of attempting to treat him?

A. I believe I - we tried a few different types of medication. But they - I would have to say that none of them seemed to - to help him all that much. I think I suggested maybe - perhaps we try some physiotherapy but the fact that the physiotherapy didn't help in the - in the past he was a bit reluctant to - to go back.

MALE VOICE: I am sorry. I didn't hear that answer Your Honour.

Q. The - the fact that the physiotherapy did not seem to help him in the past he was a bit reluctant to go back?

A. That's correct.

Q. It may sound loud to you up there but out here it is a big room and if you could...

A. Sorry.

Q. ...keep your voice up? Thank you. The records that the jury will have to review reflect initially a prescription by you of Robax - Robaxisal?

A. That's correct.

Q. R-O-B-A-X-I-S-A-L?

A. That's right.

THE COURT: The date?

Q. That is in September - September 18th of 1989. What - what is that medication for?'

A. Muscle relaxant.

Q. Obviously you - you felt he needed that and that it might help?

A. That's correct.

Q. And then on October 11th you tried Tylenol number 3. I take it that is for pain?

A. That's correct.

Q. And then in November you prescribed three new medications, Piroxicam - P-I-R-O-X-I-C-A-M...

THE COURT: What is that?

Q. ...Feldene...

A. That...

THE COURT: What is that for?

A. That's the same as Feldene.

Q. Sorry?

THE COURT: I am sorry.

Q. Piroxicam is P-I-R-O-X-I-C-A-M...

THE COURT: No. What is it for?

A. An anti-inflammatory. It's a...

THE COURT: Anti-inflammatory.

A. Yeah.

Q. And it is - it is a brand name of Feldene?

A. That's correct.

Q. And Novasen - N-O-V-A-S-E-N - what is that for?
A. That's another pain medicine. That's aspirin.
THE COURT: Yes?
Q. The medication prescriptions continue in the following months do they not?
A. That's correct. We're at March '90 are we?
Q. We are at the beginning - 1990 so far.
A. Mm mm.
Q. And then in April of '90 there are some new ones. Demazepam - D-E-M-A-Z-E-P-A-M?
A. That's right.
Q. And what is - what is that for?
A. Sleeping medication - hypnotic.
Q. Why was a sleeping medication prescribed?
A. Well he was having difficulty sleeping.
Q. And Furosemide - F-U-R-O-S-E-M-I-D-E - the 19th of April, 1990. What is that for?
A. That month - most likely it was for his blood pressure.
Q. Is that in any way related to the collision of September '89?
A. The - the medication?
Q. The high blood pressure?
A. Oh, the high blood pressure, sorry. I'd say no.
Q. So that medication then he may need it but it is - it is...
A. That's right.
Q. ...not the fault of - of Dane Kirby?
A. That's right.
Q. And then in May of 1991 there is some other new medication Acebutolol - A-C-E-B-U-T-O-L-O-L - what is that for?
A. His blood pressure.

Q. Again, not related?
A. That's right.
Q. Tiaprotenic acid -T-I-A-P-R-O-T-E-N-I-C - what is that for?
A. That's another pain medication.
Q. Why the change in pain medication?
A. Well he didn't seem to be getting - really any relief from his other medications so I guess we - we were thinking about trying something - something new.
Q. Can you give us some sense of - of the strength of this pain medication?
A. I guess it'd be not quite as strong as a Tylenol-2 or - excuse me - Tylenol-3. It's sort of a conventional type of a medication.
Q. And then Nitrazepam - N-I-T-R-A-Z-E-P-A-M - that is a new one too, isn't it?
A. I believe that was for sleeping also, yes.
Q. Oh, yes. Yes. We had that before. And Yohimbine - Y-O-H-I-M-B-I-N-E?
A. That's right.
Q. What is that for?
A. That's for impotence.
Q. Impotence?
A. Mm mm.
Q. I take it that he had spoken to you about a sexual inadequacy that he perceived?
A. That's correct.
Q. Can you tell us how concerned he was about that?
A. Well I feel - I felt - I feel that he - I remember him saying that it - it was leading to a lot of - I guess you'd call it marital distress or a bit of stress there.
Q. And it was, in fact, within a couple of months

that he started seeing Mr. Smith?

A. I believe so, yeah.

Q. And then in June of 1991 we see the same - the same names turning up. And am I correct that you may have varied them a bit but essentially you kept him on the same regiment of medications throughout 1991?

A. That's right.

Q. And the same regiment of medications right down until August of 1992?

A. That's right.

Q. Now this is, of course, several months after the video tape that you saw last night?

A. That's correct.

Q. And there are some additional drugs prescribed are there not, one being Voltaren - V-O-L-T-A-R-E-N?

A. That's right.

Q. What is that for?

A. Another anti-inflammatory for pain.

Q. On that same day there was also a prescription for Tylenol number three for pain?

A. What month are we at?

Q. We are looking at August the 10th, 1992?

A. That's right.

Q. And Sectral - S-E-C-T-R-A-L - what is that for?

A. Blood pressure.

Q. And Novoflupam and that, again, is for what?

A. I believe that's for his sleeping patterns.

Q. Is the fact that you prescribed two different medications for - among other things perhaps the treatment of pain - to tell us anything about the level of his complaints at that stage?

A. Well we were having - I think we were having

trouble controlling his pain. And we were trying to adjust his medication to maybe find one that would work better for him.

Q. And, in fact, am I correct that this particular month is the first month since the collision in which there have been seven separate prescriptions written for different drugs?

A. Mm mm.

Q. Correct?

A. That's right.

Q. And the regiment remains essentially the same does it not doctor right through until April of 1993 when the drugs we have just looked at are continuing but we have, for the first time, something called Hydrocodone - H-Y-D-R-O-C-O-D-O-N-E - Vitar - V-I-T-A-R. Can you tell us what that is for?

A. That's for a - a cough. Like it's a cough suppressant.

Q. Cough suppressant. And I take it that had nothing to do with the collision and the...

A. That's right.

Q. ...musculoskeletal problem? And also Nadostine - N-A-D-O-S-T-I-N-E?

A. I'm not sure what that is. I might...

Q. Amoxicillin I take that is a Penicillin-related drug that has to do...

A. That's right.

Q. ...with the..

A. I'm thinking he came in with the sore throat and...

Q. And am I correct in suggesting to you that we continue to see the same regiment of drugs carried through until the beginning of 1994?

A. That's right.

Q. And I see a couple of new ones appearing.

Docusate sodium - D-O-C-U-S-A-T-E - what is that for?

A. Constipation.

Q. Constipation?

A. To the...

Q. What would be causing the constipation? Do you know?

A. Most likely is - he was taking Tylenol-3 or pain medication might - most likely would cause that.

Q. If you are prescribing that drug can you tell us the degree of the constipation and the extent to which it was a problem?

A. I guess - I don't remember clearly. I wouldn't say it was a major problem. I guess - no.

Q. Thank you. And then there is a drug called Visacodyl - V-I-S-A-C-O-D-Y-L. What is that for please

A. That's another for constipation.

Q. It is another...

A. Mm mm.

Q. ...drug for...

A. Mm mm.

Q. ...constipation? And Novodifenax - which is N-O-V-O-D-I-F-E...

A. That's Voltaren another anti-inflammatory.

Q. Alprazolam - A-L-P-R-A-Z-O-L-A-M - what is that for?

A. That's an anxiolytic - anxiety.

Q. Is - is it correct to say that anxiety-related problems were being treated both by psychotherapy and by medication?

A. I'd say so, yes - mm mm.

Q. There is a - a new - a couple of new drugs in May of '94, Cefaclor - C-E-F-A-C-L-O-R - what is that for?

A. He was having a cough at the time - bronchitis - defer...

Q. Again, nothing to do with...

A. No...

Q. ...the collision?

A. ...an antibiotic, no.

Q. Omeprazole - O-M-E-P-R-A-Z-O-L-E?

A. That's a stomach related. Again, nothing to do with back pain.

Q. And is Del still taking essentially the same spectrum of medications?

A. I believe so - yes.

Q. Are they helping him?

A. I'd say no. I guess they're - perhaps mildly. But I'd have to say not really dramatically.

Q. Is there any reasonable medical hope doctor that these medications or any others that you might try over the years will cure him?

A. I'd say no.

Q. There has been another suggestion in this trial about a cure. And I would like to read you the report of Dr. M. T. Chapman an orthopaedic surgeon in Toronto which, before the jury came in this morning, it became exhibits 14...

VOICE: 15.

Q. ...15 in this trial. Before I do may I ask you if - when you - may I ask you if you recall after Del saw Dr. Chapman in September of 1991 discussing the visit with Del?

A. With Dr. Chapman?

Q. Yes?

A. I remember discussing it, yes - yeah.

Q. Well let me read it to you so the jury has it. 'This man was seen and examined on the 22nd of May, 1991. At the

time he presented to my office he was 59 years. He is a self-employed dump truck driver. On the 15th of September he was driving his dump truck. He was attempting to make a left-hand turn when he was hit from the side by a transport truck travelling at a "high speed". The dump truck was a total write-off.' The words 'high speed' are in quotation marks. 'He doesn't know whether he was thrown out or not. But when he (quote) became apparent of his surroundings' - he came apparent of his surroundings is also a quote. 'He was on the ground. He complained of immediate tingling in both lower extremities. He was taken to the North Bay Civic Hospital by ambulance. His complaints were that of severe low back pain and pain in his neck. He was examined there. He was not admitted to hospital but was sent home on medication. He subsequently attended physiotherapy for his back and neck for the next three months. When he came to see me he had residual problems referable to his low back and his neck. His low back pain consisted of pain in the lumbo-sacro area.' That is down here just above the hip?

A. That's right.

Q. Lumbo-sacro - 'with radiation' - that means movement of the pain?

A. That's correct.

Q. 'Down his right leg to his foot. There was no tingling. There were no signals of muscle dysfunction. The pain in his neck was located at the junction of his cervical and thoracic spine.' Is that down towards the bottom of the neck?

A. That's right.

Q. 'This, the neck pain, was associated with a headache. The pain did not improve by simple measures of rest. I was impressed that he told his story in a straightforward manner. Examination of his neck demonstrated a restrictive range of motion.' What does that mean, restrictive range of motion

doctor?

A. Basically he can't move his neck well - forward, backwards, rotation.

Q. 'At the C-5-6 level' - Your Honour's permission I am showing you what I think is a spine?

A. That's right.

Q. At the bottom of the spine we have some pelvic bones?

A. Mm mm.

Q. And at the top of the spine we have a piece of this gentleman's skull?

A. Mm mm.

Q. Can you show the jury please where the C-5-6 level is?

A. That has to do with your neck. So you count down one, two, three, four, five. Six would be C-5/C-6 at the base of the - as far as the lower part of the neck there.

Q. And similarly this lumbo - lumbo-sacro level is...

A. Right here basically. This is your last lumbar. This is your sacro up here - down - down here.

Q. Able to see it down here? 'He was able to extent his neck but this was painful.' What does that mean extension?

A. Bringing it backwards.

Q. Rotation I thought was quite normal?

A. That's right.

Q. Moving from side to side. 'Neurological examination of the upper extremities I felt was also normal. Upper extremities, the arms?

A. That's right.

Q. Neurological examination?

A. The nervous system.

Q. 'Examination of his lumbar spine showed a slight flattening of the lumbar lordosis.' What does that mean?

A. Normally you have a mild curvature of the spine. And people with back - back problems it's - rather than being curved it's - it's straight up so there's - there's less curvature to it.

Q. 'He had a gross reversal of the normal spinal rhythm when he came from a flexed to an extended position.' What does that mean?

A. It would mean coming from bending over to backwards. I'm not quite sure what he means by - sorry. The - what - what were the words?

Q. He called it a 'gross reversal of the normal spinal rhythm'.

A. I'm not quite sure what he means there but...

Q. All right. 'Neurological examination of his lower extremities I felt was normal also. X-ray reports confirm multi-segmental osteoarthritis both in the neck and in the lumbar spine.' What does that mean?

A. Basically it means arthritic changes in his spine.

Q. In - in these two areas where I have my hands...

A. That's right.

Q. ...up near the neck...

A. That's right.

Q. ...and down at the bottom?

A. That's right.

Q. What does that mean that there are osteoarthritic changes?

A. It means a bit of bone growth around the - around the fac - around the joints and perhaps a bit of narrowing

of the discs spaces. Rather than being...

Q. Might some of us have that and not know it?

A. That's right.

Q. Is that because it's possible to have these osteoarthritic changes as we age but not have any symptoms?

A. That's right.

Q. So Del's telling us that he had no symptoms in the neck prior to the collision. Is that consistent with what Dr. Chapman tells us that the x-rays show osteoarthritic changes in that neck region?

A. That's right.

Q. 'I certainly felt that as a direct result of this high velocity injury he had sustained a ligamentous injury to a previously virtually asymptomatic joint in his neck and lumbar spine.' A ligamentous injury what does that mean?

A. Well your neck is - and your - your spine is surrounded by - or it's held together with ligaments and tendons. And I think he's basically saying the ligaments and tendons were ripped apart, if you want to call it that, with the accident.

Q. 'To a previously virtually asymptomatic joint in his neck and his lumbar spine.' What does he mean virtually asymptomatic?

A. He was not having any symptoms or pain or sickness with that area prior to the accident.

Q. Might you conclude that Dr. Chapman did not know about the visits to the chiropractor the week before the collision or is there any inconsistency in your view?

A. No I don't think he'd know about that, no.

Q. Does that - does his not knowing about that, in your view, affect the substance of the opinion?

A. I'd say no.

Q. 'It was my clinical opinion', he says, 'that he

suffered the majority of his neck injury at the C-5-6 level and the majority of the lumbar injury at the L-4-5 level. That is these - these two levels again?

A. That's right.

Q. Am I right then that Dr. Chapman is saying that the majority of the injury was at the same point where he had this virtually asymptomatic osteoarthritis in the spine before the collision?

A. I guess so, yeah - yes.

Q. 'I could not find any evidence of any neurological impairment. I was also of the opinion that he would benefit from a facet-joint injection' - that is a needle right?

A. Correct.

Q. ...'at C-5-6 and at L-4-5.' So that is a needle up in the neck and a needle down - just above the hip?

A. That's right.

Q. I am going to read that sentence to you again and as I read it would you keep this question in mind. The question is, does Dr. Chapman say or even suggest that this injection will be a cure or that it will rid Del from his pain or that it will get him back to work? That is the question and here is the sentence again. 'I was also of the opinion that he would benefit from a facet-joint injection at C-5-6 and L-4-5.' Now as a doctor do you interpret that as Dr. Chapman suggesting that that would be a cure?

A. I'd say no.

Q. To you knowledge doctor is there any injection of any drug that over the years would have cured Del Houle?

A. Mm, I'd say no.

Q. 'This procedure involves the installation of a long-acting local anaesthetic and anti-inflammatory by means of a needle inserted directly into the facet-joints at the

aforementioned levels.' What are the facet-joints?

A. These are the little joints on the side of your spine.

Q. They are little joints up the side of the spine?

A. That's correct.

Q. Where is the spinal column in relation to those facet-joints?

A. It's - it's within the vertebrae. It's within the - the bones towards the back.

Q. Are there any sensitive tissues in a man's spine that you would not want to hit with a needle?

A. I guess you'd want to stay away from the nerves. That might cause a problem if you hit a nerve. You wouldn't want to hit the spinal cord either I suppose.

Q. What would happen if you hit the spinal cord?

A. I suppose you could cause some paralysis or some damage to the nervous - spinal cord which would be fairly serious.

Q. 'It is apparent with regards to his work that he will have pain by driving a dump truck. The pain should be mainly felt in his low back. Because of his education it is very unlikely that he is a suitable candidate for any vocational rehabilitation. I would think his spine has been render more vulnerable to trauma in the future and that his working life has probably been shortened by five years. Yours truly, M. T. Chapman, M.D., F.R.C.S.(C)' What do you remember doctor about the discussion that you had with Del after he saw Dr. Chapman and was told about this - this needle he could have?

A. I think he came into the office for some counselling with regards to the needle. I didn't have Dr. Chapman's report and I - I believe I misinterpreted what type of injection he was going to get. I understood that it was going

to be an injection into the - the disc space itself with what they call chymopapain which is a - basically a meat tenderizer that dissolves the - the disc. That type of injection, I believe, is a bit more involved. It's a bit closer to the spinal cord. So I explained this Mr. Houle and he - he was a bit apprehensive about getting that type of injection. But I believe Dr. Chapman was talking about a different type of injection. And I suppose if I would have had the report I could have explained to him a bit better. So I - I believe he did not go ahead and have the injection because of that.

Q. Can you recall if he had some anxiety about the injection?

A. I believe so, yes. That's why he didn't have - he didn't - didn't go ahead and have it done.

Q. Given that this injection, according to Dr. Chapman, is an anaesthetic and an anti-inflammatory is it a - an injection of drugs which will deaden the pain and reduce the inflammation around the joints?

A. That's correct.

Q. Are you able to express an opinion for us as to whether, in time, the effects of those two drugs would have worn off?

A. I'd say probably, yes.

Q. Are you able to express any opinion for us as to whether, once those drugs wore off - have worn off, Del's course and his eventual condition, as we have it today, would be essentially the same?

A. I would say yes.

Q. Doctor what, in your medical opinion as Del's family physician of 12 years, is his current condition?

A. I'd say he suffers from chronic pain, stiffness and he's very limited in activities he can do. And his condition

has basically deteriorated. I'd say...

THE COURT: I am sorry. Chronic pain...

A. And the stiffness.

THE COURT: Yes.

A. And that his condition has basically deteriorated over the - since the accident. And I would say he's quite disabled at the present time.

Q. Is he able to work?

A. I'd say no.

Q. Will he ever be able to work?

A. I'd say no.

Q. In your view would you ever recommend vocational rehabilitation for a man of 63 or even 58 with a grade four education?

A. No.

Q. Has he complained to you over the years, in addition to these musculoskeletal problems, about dizziness?

A. I believe so, yes.

Q. And about memory problems?

A. That's right.

Q. And about falling?

A. That's correct.

Q. And about the fogginess of his head?

A. Mm mm - that's right.

Q. And headaches?

A. Correct.

Q. And sometimes blurred vision?

A. That's right.

Q. And sometimes slurred speech?

A. Yeah, that's right.

MR. OATLEY: I wonder - Your Honour I wonder if now I could ask for some help and we will move this

overhead projector into place. That is fine. There was an overhead on that machine. Do you know what has happened to it? Maybe it has been put back here. Yes. It is here. It is here. Great! My heart can start again. Doctor I will do my best to get this to the point that we can all see it. And then I will stand out of the way so - we had another copy. I was looking for a copy for Your Honour to write on.

THE COURT: It is all right.

Q. And we had it but we have misplaced it. There it is. Wonderful. I have a copy as well. Doctor we will have copies of this for the jury to look at later. And we are going to - to hear from the Occupational Therapist who has put it together. Her name is Debra Stock and I take it that she has discussed the contents of her report with you?

A. That's right.

Q. And what we are looking at right now is a summary table at the end of her report. Is that correct?

A. That's right.

Q. And the first portion of the report lists some medications. The first one is Losec - L-O-S-E-C. Can you tell us please what that is for and whether you think that is necessary for Mr. Houle's long-term care?

A. That's a - a - I guess you'd call a stomach pill. It's for things like heartburn, ulcers. I believe he was having a bit difficulty with his stomach awhile ago. And we tried him out on that.

Q. Is that something he needs because of the effect of the other drugs?

A. That's correct.

Q. And Tylenol-3 we know that is for pain. Will he

need that?

A. I'd say yes. That's right.

Q. Nortriptyline we saw on the charts. And can you remind us, again, what that is for?

A. It's an antidepressant.

Q. Will he need that?

A. I'd say yes.

Q. Sectral we saw before. That's for...

A. Blood pressure.

Q. That's for his blood pressure?

A. That's right.

Q. So that, in fairness, should not be included in this chart should it?

A. I suppose so, yeah. That's right.

Q. Novodifenac is the next one. We saw that before and remind us what is that for?

A. It's an anti-inflammatory. It's another type of pain pill.

Q. And Alprazolam again?

A. Anxiolytic - for anxiety.

Q. Will he continue to need that?

A. I'd say yes.

Q. Is it medically probable doctor that Mr. Houle will need these drugs for the rest of his life?

A. I'd say probably.

Q. Is it possible he may need additional medications as he ages?

A. That's correct.

Q. The next section has to do with equipment. And...

...OBJECTION BY MR. BIRNIE...

...JURY EXCUSED... (11:15 a.m.)

...DISCUSSIONS...

R E C E S S (11:20 a.m.)

U P O N R E S U M I N G : (11:40 a.m.)

...JURY RETURNED... (11:41 a.m.)

THE COURT: Okay. Mr. Oatley go ahead.

Q. Thank you Your Honour. I wonder if you would mind flicking that back on for me. And I think we perhaps had a light or two. Did we? All right. We dealt with the medication. And the next item is under a heading equipment and it is a lift-chair. Can you tell us please what that is?

A. I believe that's a chair to help him in and out of the bathtub.

Q. In your...

THE COURT: No. There is another area for that. There is a hydraulic bath lift. Item four that is on the next page. I just mention that to you now because you will come to that again.

Q. Thank you.

A. Oh, sorry. That's - I think that's a chair that's out of a - sorry that's a Lazy-boy chair that, I think, helps him get from a sitting position to a standing position.

Q. Thank you. Doctor in your view is that something which would help improve the quality of Del's life?

A. I'd say yes, mm mm.

Q. You would recommend that?

A. Yes.

Q. What is a high-back obus form?

A. It's sort of a cushion that you place on certain chairs inside your car or your couch just to sort of increase the posture of your back - sort of support your back and...

Q. How does that differ from the next item, an obus

seat?

A. I believe the obus seat is just something that you place on the - on the bottom of the chair.

Q. I see.

A. Just...

Q. Are both of those items recommended?

A. I'd say yes, mm mm.

Q. The sock-aid, I take it, that is just something to assist putting on the socks so he does not have to bend over?

A. That's right.

Q. Is that recommended?

A. I'd say yes.

Q. And the long-handled shoehorn similarly?

A. That's right.

Q. The TENS unit, we heard about the TENS unit. He went to see the physiotherapist at St. Joseph's in February of '93 did he not, to try that out?

A. That's right.

Q. Do you recommend that he have that available to him?

A. I would say that would be of help, yes.

Q. And why would he need an adjustable bed?

A. Just that he has so much trouble, I believe, finding a comfortable position in bed. I thought with the - an electrical bed he might find a better position and sleep a bit better during the night.

Q. Do you recommend that too?

A. I'd say yes.

Q. Is a dental assessment to re-fit his bridge related in any way to the collision?

A. I'm not too - too sure about that. He hasn't - he hasn't really mentioned that to me you know.

Q. Perhaps that, in fairness, should be excluded?
A. That's right.
Q. The next item is T.M.J. assessment which is, I take it is Tempo Mandibular Joint...
A. That's right.
Q. ...assessment?
A. That's your...
Q. It is...
A. ...jaw joint
Q. ...the joint at the back...
A. That's right.
Q. ...of the jaw?
A. Mm mm.
Q. Do you recommend that?
A. I guess an assessment wouldn't hurt. I believe he's been - there's a mention - Mrs. - the lady who did the rehab mentioned that he was having trouble with his jaws. And I guess it wouldn't hurt to have him assessed.
THE COURT: Well what has that got to do with the accident?
A. I...
Q. Does it have anything to do with the collision?
A. Well I believe there was a - a mention after the accident that he was having trouble with his jaw or - I'm not sure if he clenched his jaw at the time of the accident or - he hasn't really mentioned anything to me, eh? But I - looking through the papers I...
Q. All right. So the jury will have to consider
A. Mm mm.
Q. ...the relevance of that?
A. Mm mm.
Q. It appears to be a $50 item. Now the next item

is a Neuropsychological Assessment that Mr. Birnie asked about earlier when Mr. Smith was testifying. That is an assessment by a psychologist to determine if there are any cognitive difficulties, emotional difficulties for someone who may have had a head injury or is having difficulties for any reason?

A. I think that would be helpful.

Q. Why would that be helpful?

A. I think just to put everything together. His emotional state right now and his physical state - I think try and put everything together.

Q. Would the results of a Neuropsychological Assessment be of any benefit to you or perhaps Paul Smith in treating Mr. Houle?

A. I think it would help me out, yes.

Q. Just to be comprehensive with the exception of these last two items, these assessments, are the other equipment items, items which Mr. Houle will need for the rest of his life?

A. I'd say yes.

Q. And then under non-medical there is a small item for an emergency response system and its monitoring. What is that for?

A. I guess that is in case he falls at home and there is no one - no one around. They - they have these special units that you - I guess you press a button and a message is relayed to maybe answer service or the police so that someone can check in on them I believe.

Q. Excuse me. Oh, we are - we are onto the next sheet aren't we? Sorry about that. So the first two items, the T.M.J. assessment, Neuropsychological assessment at the top of the page and the item we are discussing now is the emergency response system. Is that - that something which you would recommend that this man have?

A. I guess it would be of help. I would say that maybe, perhaps the items we mentioned before would be more important but I guess it would be of help for him, sure.

Q. Then there is a new section entitled mobility isn't there? And we see the first three items have to do with - with walking don't they?

A. That's correct.

Q. There is a cane, a rubber tip and an ice tip for the cane?

A. That's right.

Q. Do you recommend that for Del?

A. Yes. He comes in the office with his cane often and I believe he'd benefit from that, sure.

Q. Will he - will he need that for the rest of his life in your view?

A. Most likely, yes.

Q. We have an item here, a larger one for a scooter. Could you tell us what - what the scooter looks like and what it is for?

A. Usually they're a three-wheeled vehicle that runs on batteries. It usually helps people get around malls and things like this.

Q. Is that something that you recommend for Del?

A. I think we talked about that, yes. He's having so much trouble walking in malls and I thought it would help him out in that way, sure.

Q. Now the next item is a very large one. And we may hear from the Occupational Therapist about that. It is a van with a scooter lift. And the van is a - a pretty large item. Can you describe for us what is so special about this kind of equipment?

A. I'm not sure if I'm qualified to...

Q. All right. You prefer we left that for the...
A. Mm mm.
Q. ...Occupational Therapist?
A. Mm mm.
Q. Then there are walking shoes. Does he need special shoes of some kind in your view?
A. Not that I'm aware of.
Q. All right. So we will leave it...
A. Mm mm.
Q. ...that for later and the van for later. C.A.A. membership. I take it that is to obtain road-side assistance in the event of...
A. I suppose.
Q. ...break down?
A. Right, mm mm.
Q. Is that, in your view, something that...
A. Sure that...
Q. ...would be helpful?
A. ...would be of benefit, sure.
Q. And there is a suggestion from the Occupational Therapist about a cellular telephone. Do you know what that is for?
A. I believe that's to keep him - perhaps breaks down on the road. And I guess she's thinking maybe he couldn't walk to the pay phone type of thing there.
Q. That is really not a medical issue either...
A. That's right.
Q. ...is it?
A. Yeah.
Q. And then we get to personal care doctor. And there is a recommendation for a hydraulic bath lift. That is the confusion we had a moment or two ago and that is the item for

helping him getting...

A. That's right.

Q. ...getting out of the bath?

A. Mm mm.

Q. Is that something that he needs...

A. I'd say...

Q. ...in your view?

A. ...that'd - that'd be helpful, sure.

Q. And similarly he will need that for the rest of his life?

A. That's right.

Q. Then we get to some recommended professional services. The first one is independent counselling, one or two sessions a month, for a duration that is not determined. Now that - since it does not appear anywhere else - would it appear to be a counsellor like Paul Smith?

A. That's right.

Q. In your view is that medically - is it medically probable that Del will require that for the rest of his life?

A. He might not need it for the rest of his - his life but he might benefit from it for...

Q. Some period of time?

A. That's right.

Q. Physiotherapy is recommended for a brief period of eight weeks. Do you know why that recommendation is there?

A. No. I'm not sure, no.

Q. We will ask the Occupational Therapist then. And we are on to the last page. It has a mind of it's own. We have occupational therapy. It appears for a brief period of time, an assessment and three or four follow-up home visits. Do you know what that is for?

A. I'm not quite sure. I think they perhaps send

somebody in to asses the house and to see if there's any improvements like - I guess ramps and things like this that they might - that Mr. Houle might benefit from.

Q. Are you able to express any - any opinion medically as to whether that is...

A. I guess...

Q. ...desirable?

A. ...that would be helpful, sure.

Q. Then there is a new heading personal support services and a recommendation for what is call respite or respite care, a homemaker three hours a day, one week per year. And then if, and only if, Mrs. Houle is not available to help out a homemaker 14 to 20 hours a week. Can you express any medical opinion on that?

A. I guess the respite hair - sorry - respite care would be helpful towards - with respect to Mrs. Houle. I think she's been tied down to the house quite a bit and I think that would be a benefit. I guess you'd have to speak to Mrs. Houle with regards to the homemaking perhaps. But I think respite care is important for - with respect to Mrs. Houle.

Q. And then there is a large one-time item related to paving the driveway, the parking area, and building a ramp to the door. Can you help us as to whether that is desirable?

A. I'm not quite sure what that's about, sorry.

Q. All right. We will ask the other expert. Are you able to help us with the riding lawnmower and the snow removal and the firewood?

A. Well I guess I'd leave that up to somebody else you know.

Q. That is fine. Doctor I have just one final question and we can turn off our - our machine. You have seen Del come in and out of your office and sit in your office now for

a period of almost five years almost every month?

A. That's right.

Q. In your opinion have you seen him often enough throughout that period to know throughout that period his - or to have a sense throughout that period of - of his - of his - of his physical functioning?

A. I'd say yes.

Q. Have you ever, at any time, throughout that entire period seen him function in any way which is inconsistent with the complaints he has described to you?

A. No sir.

MR. OATLEY: Those are my questions. Thank you.

...TRIAL CONTINUES...

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This is a transcription typed from the tapes and notes of Crystal Wraight to the best of my skill and ability.

.....H.Bradford.....

Helen Bradford, Certified Court Reporter