
O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF
SOUTH AUSTRALIA

B E T W E E N :

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE
EARLE (Defendants) Appellants

- and -

ANTHONY HOWARD RENDELL (Plaintiff) Respondent

RECORD OF PROCEEDINGS

LINKLATERS & PAINES,
Barrington House,
59/67 Gresham Street,
London
EC2V 7JA.

Solicitors for the Appellants

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF
SOUTH AUSTRALIA

B E T W E E N :

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE
EARLE (Defendants) Appellants

- and -

ANTHONY HOWARD RENDELL (Plaintiff) Respondent

R E C O R D O F P R O C E E D I N G S

I N D E X O F R E F E R E N C EP A R T I

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
	<u>IN THE SUPREME COURT OF SOUTH AUSTRALIA</u>		
1.	Writ of Summons	8th October 1976	1
2.	Statement of Claim	19th October 1976	3
3.	Transcript of Evidence taken before The Honourable Mr. Justice Hogarth on the 5th and 6th days of July 1978.	5th and 6th July 1978	8

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
	<u>Plaintiff's Evidence</u>		
	<u>RENDELL</u> Anthony Howard		9
	Examination		
	Cross Examination		
	<u>SPITZER</u> Alex George		27
	Examination		
	Cross Examination		
	Re-Examination		
	<u>CARNEY</u> Paul Graham		74
	Examination		
	Cross Examination		
	<u>LEONARD</u> Frank Muir		92
	Examination		
	Cross-Examination		
	<u>CHELLEW</u> John Charles		99
	Examination		
	Cross-Examination		
4.	Reasons for Judgment of the Honourable Mr. Justice Hogarth	4th August 1978	102
5.	Formal Judgment	4th August 1978	112
	<u>IN THE FULL COURT OF THE SUPREME COURT OF SOUTH AUSTRALIA</u>		
6.	Notice of Appeal (as amended)	15th August 1978	113
7.	Reasons for Judgment of the Honourable The Chief Justice- (The Honourable Mr. Justice Walters and Mr. Justice White concurring).	25th October 1979	115
8.	Formal Judgment on Appeal	25th October 1979	128

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
9.	Notice of Motion for Leave to Appeal to Her Majesty in Council	12th November 1979	129
10.	Affidavit of Anne Marie Harrison in support of Motion for Leave to Appeal to Her Majesty in Council	12th November 1979	131
11.	Formal Order granting Conditional Leave to Appeal to Her Majesty in Council	6th December 1979	133
12.	Formal Order granting Final Leave to Appeal to Her Majesty in Council	6th December 1979	134

PART II

<u>No.</u>	<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
<u>EXHIBITS</u>				
1.	P 1	Report of Dr. Brian L. Cornish	16th March 1976	136
2.	P 2	Report of Dr. Alex G. Spitzer	30th May 1977	139
3.	P 3	Photographs of the Respondent (marked (a)-(m)).	Undated	Original available for inspection
4.	P 4	Reports of Dr. P.G. Carney	10th June 1976 17th September 1976 31st May 1978	140
4.	P 5	Actuarial Certificates prepared by Campbell Cook and Stratford	30th June 1978	146
5.	P 6	Copy of Government Gazette of Manufacturing and Wholesale Chemists and Grocers Conciliation Committee Award	15th June 1978	150
6.	D 7	Report of Dr. Harold Schaeffer	13th December 1976	176
7.	D 8	Report of Dr. Richard Dunstan	17th February 1977	179

DOCUMENTS TRANSMITTED TO THE
PRIVY COUNCIL BUT NOT REPRODUCED

PART III

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>
	<u>IN THE SUPREME COURT OF</u> <u>SOUTH AUSTRALIA</u>	
1.	Appearance of Percival James George Earle	21st October 1976
2.	Appearance of Leon Stewart Paul	28th October 1976
3.	Defence of Leon Stewart Paul	28th October 1976
4.	Contribution Notice of Leon Stewart Paul to Percival James George Earle	28th October 1976
5.	Contribution Notice of Percival James George Earle to Leon Stewart Paul	1st November 1976
6.	Defence of Percival James George Earle	1st November 1976
7.	Interrogatories of Percival James George Earle for the Examination of Anthony Howard Rendell	1st November 1976
8.	Answers of Anthony Howard Rendell to Interrogatories delivered by Percival James George Earle	3rd May 1977
9.	Summons for Directions	1st July 1977
10.	Memorandum	1st July 1977
11.	Reply of Anthony Howard Rendell to the Defence of Leon Stewart Paul	7th July 1977
12.	Reply of Anthony Howard Rendell to the Defence of Percival James George Earle	7th July 1977

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>
13.	Request for Discovery by Anthony Howard Rendell to Leon Stewart Paul	7th July 1977
14.	Request for Discovery by Anthony Howard Rendell to Percival James George Earle	7th July 1977
15.	List of Documents of Anthony Howard Rendell	7th July 1977
16.	List of Documents of Percival James George Earle	1st September 1977
17.	Summons	7th September 1977
18.	Memorandum	7th September 1977
19.	Order with Directions as to Contribution Notices and for Leave to Set Down	21st September 1977
20.	Praecipe to Set Down	24th October 1977
21.	Affidavit of Robert Paul Anderson	26th October 1977
22.	Praecipe to Seal Writ of Subpoena Ad Testificandum	11th May 1978
23.	Plaintiff's List of Authorities	5th July 1978
24.	Associate's Certificate	4th August 1978
25.	Summons	19th February 1979
26.	Affidavit of Robert Paul Anderson	19th February 1979
27.	Praecipe to Set Down Appeal to Full Court	4th May 1979
28.	Praecipe to Set Down Appeal to Full Court	6th September 1979

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>
29.	List of Authorities (Respondent)	2nd October 1979
30.	Further List of Authorities (Respondent)	4th October 1979
31.	Associate's Certificate	25th October 1979
32.	Summons	26th November 1979
33.	Affidavit of Anne Marie Harrison	26th November 1979
34.	Affidavit of Anne Marie Harrison and exhibit thereto	6th December 1979
35.	Respondent's List of Authorities	6th December 1979
36.	Associate's Certificate	6th December 1979
37.	Clinical Summary of Dr. P.G. Carney	2nd August 1975
38.	Letter from Dr. P.G. Carney to Mr. A.G. Spitzer	19th November 1975
39.	Letter from Dr. P.G. Carney to Mr. A.G. Spitzer	25th September 1975
40.	X-ray report from Mr. Freeman	28th May 1976.

THIS INDEX OF REFERENCE is prepared by BAKER McEWIN & CO.
of National Mutual Centre 80 King William Street, Adelaide.
Solicitors for the Appellants.

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF
SOUTH AUSTRALIA

B E T W E E N :

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE
EARLE (Defendants) Appellants

- and -

10 ANTHONY HOWARD RENDELL (Plaintiff) Respondent

RECORD OF PROCEEDINGS

No. 1

Writ of Summons dated 8th October 1976

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1642 of 1976

BETWEEN ANTHONY HOWARD RENDELL

and

LEON STEWART PAUL

and

PERCIVAL JAMES GEORGE
EARLE

STAMPED
SUPREME COURT
SOUTH
AUSTRALIA
8 OCT 1976

Plaintiff

First Defendant

Second Defendant

ELIZABETH the Second, by the Grace of God
Queen of Australia and her other Realms and
Territories, Head of the Commonwealth.

To: LEON STEWART PAUL of 42 Daly Street, South
Plympton in the State of South Australia

In the Supreme
Court of South
Australia

No. 1
Writ of Summons
8th October 1976

In the Supreme Court of South Australia

AND TO: PERCIVAL JAMES GEORGE EARLE of 21 McGilp Avenue, Glengowrie in the said State

No. 1
Writ of Summons
8th October
1976.
(cont'd)

We command you, that within eight (8) days after the Service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of South Australia in an action at the suit of ANTHONY HOWARD RENDELL of Flat 3, 12 Hendrie Street, Morphettville in the said State, and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

10

Witness, the Honourable John Jefferson Bray
Chief Justice of our said Supreme Court at
Adelaide, the 8th day of October 1976.

N.B. This Writ is to be served within twelve calendar months from the date hereof, or if renewed, within the period for which the same is renewed and not afterwards.

A defendant may appear to this writ by entering an appearance either personally or by Solicitor at the Master's Office, Supreme Court House, Victoria Square, Adelaide.

20

The Plaintiff's claim is for personal injuries and damage suffered in a motor vehicle accident on the 1st day of March, 1975 at the intersection of Marion Road with Hawson Avenue and Laverack Road, Plympton North in the State of South Australia as a result of a collision between a motor vehicle registration No. RZX-910 and motor vehicle registration No. SGT-241. The said collision and consequent damage was caused by the negligence of the Defendants or alternatively one or other of them.

30

This writ was issued by ANDERSON, EVANS & CO. of 41 Carrington Street, Adelaide, South Australia whose address for service is 41 Carrington Street, Adelaide, South Australia.

Solicitor for the said plaintiff, who resides at Flat 3, 12 Hendrie Street, Morphettville, South Australia.

40

This writ was served by me at _____ on the defendant _____ on _____ day the _____ day of _____ 1976.
Indorsed the _____ day of _____ 1976.

Statement of Claim dated 19th October
1976

In the Supreme
Court of South
Australia

No. 2
Statement of
Claim, 19th
October 1976

SOUTH AUSTRALIA
IN THE SUPREME COURT
No. 1642 of 1976

BETWEEN: ANTHONY HOWARD RENDELL Plaintiff
 - and -
 LEON STEWART PAUL First Defendant
 - and -
 PERCIVAL JAMES GEORGE
EARLE Second Defendant

STATEMENT OF CLAIM

(Writ issued on the 8th day of October 1976)

1. On the 1st day of March, 1975 the Plaintiff was riding his motor cycle registration No. SA SX-260 in a southerly direction along Marion Road, Plympton in the State of South Australia toward the intersection of Marion Road, Laverack Road and Hawson Avenue, Plympton aforesaid (hereinafter called "the said intersection").

2. At the same time the Defendant LEON STEWART PAUL (hereinafter called "the first defendant") was driving his motor vehicle registration No. SA RZX-910 in an easterly direction along Hawson Avenue, Plympton aforesaid toward the said intersection.

3. At the same time the Defendant PERCIVAL JAMES GEORGE EARLE (hereinafter called "the second defendant") was driving his motor vehicle registration No. SA STG-241 in a northerly direction along Marion Road, Plympton aforesaid toward the said intersection.

4. At or about the said intersection the motor vehicle being driven by the first Defendant came into collision with the motor vehicle being driven by the second Defendant which said vehicle came into collision with the Plaintiff's motor cycle.

In the Supreme
Court of South
Australia

No. 2
Statement of
Claim, 19th
October 1976.
(cont'd)

5. The said collision and consequent damage sustained by the Plaintiff was caused by the negligence of the Defendants or alternatively one or other of them.

PARTICULARS OF NEGLIGENCE OF THE FIRST
DEFENDANT

6. The first Defendant was negligent in that he -

- (a) failed to give way to traffic approaching from his right.
- (b) failed to keep a proper or any lookout. 10
- (c) failed to exercise proper control over his said motor vehicle.
- (d) failed to stop, slow, swerve or otherwise direct control or manoeuvre his said motor vehicle so as to avoid the said collision.
- (e) failed to have his said motor vehicle equipped with any or sufficient brakes and/or failed to apply such brakes in time to avoid the said collision.
- (f) drove his said motor vehicle at an excessive speed in the circumstances. 20
- (g) failed to sound any or sufficient warning of his approach.
- (h) drove his said motor vehicle without due care or attention or without reasonable consideration for other persons using the road.

PARTICULARS OF NEGLIGENCE OF THE SECOND
DEFENDANT

7. The second Defendant was negligent in that he -

- (a) Failed to exercise proper control over his said motor vehicle. 30
- (b) failed to keep a proper or any lookout.
- (c) failed to stop, slow, swerve or otherwise direct control or manoeuvre his said motor vehicle so as to avoid the said collision.

- (d) failed to have his said motor vehicle equipped with any or sufficient brakes and/or failed to apply such brakes in time to avoid the said collision.
- (e) drove his said motor vehicle at an excessive speed in the circumstances.
- (f) failed to sound any or sufficient warning of his approach.
- (g) drove his said motor vehicle without due care or attention or without reasonable consideration for other persons using the road.

In the Supreme Court of South Australia

No. 2
Statement of Claim, 19th October 1976.
(cont'd)

10

PARTICULARS OF PLAINTIFF'S INJURIES

8. Following the collision the Plaintiff was taken by ambulance to the Royal Adelaide Hospital and there admitted.

Upon examination his injuries included the following -

- (a) Concussion
- (b) Multiple severe abrasions of the upper limbs
- (c) Brachial plexus lesion and partial severance of the muscles and nerves of the left upper arm
- (d) fracture of the midshaft of the right femur with extensive soft tissue contusion
- (e) A comminuted fracture of the lower third of the left tibia and fibula
- (f) Fractures of the carpus and second metacarpal of the left wrist.

20

30

The Plaintiff was admitted to the Intensive Care Ward. His wounds were excised and stabilization of the fractures was commenced.

Subsequently the Plaintiff underwent operative treatment under general anaesthetic and the right femur was controlled by insertion of a Kuntchner Nail and the left tibia controlled by a pin through the os calcis. The Plaintiff had sustained a traction

In the Supreme
Court of South
Australia

No. 2
Statement of
Claim, 19th
October 1976.
(cont'd)

injury high in the brachial plexus affecting the fifth and sixth cervical nerve roots with partial involvement of the seventh cervical nerve root. On the 29th day of April, 1975 the Plaintiff was mobilized and discharged from the Royal Adelaide Hospital. He underwent further Out-patient treatment.

On the 30th day of July, 1975 he was re-admitted for further surgery when exploration of the musculo-cuntaneous nerve of the left arm was carried out and confirmed the findings in relation to the traction injury. 10

The Plaintiff re-commenced employment in mid-May of 1975 but has found substantial difficulty in his work. Prior to the accident the Plaintiff was left handed and had to learn writing with his right hand.

On the 8th day of June, 1976 the Plaintiff was re-admitted to hospital and under general anaesthetic the Kuntchner Nail was removed. 20

As a result of the said collision the Plaintiff has sustained severe injuries. He is unable to use the left arm, has limited movement of the left hand, a pronounced limp of the left leg, shortening and deformity of the left leg and movement in the left knee and ankle is restricted and he has scarring. The Plaintiff has suffered and continues to suffer pain and discomfort. Medical Treatment is still being undertaken and at present the extent of his recovery is uncertain. 30

As a result of the injuries he suffered the Plaintiff's working capacity and his ability to enjoy the amenities of life has been severely restricted.

PARTICULARS OF SPECIAL DAMAGES

Loss of wages from 1/3/'75 to 24/5/'75 @ \$135-00 per week	\$1,620-00	
Royal Adelaide Hospital	1,751-00	
Memorial Hospital	111-00	
Fire Brigade Board	3-00	40

	Taxi fares	£ 58-00	In the Supreme Court of South <u>Australia</u> No. 2 Statement of Claim, 19th October 1976. (cont'd)
	St. John Ambulance	479-00	
	A.G. Spitzer	369-00	
	Anax Pty. Ltd.	3-90	
	Flinders Trading Company	15-95	
	Mr. P.G. Carney	254-50	
	Southern Clinic	16-50	
	Dr. J.S. Willoughby	46.50	
	Suzanne Howell	42-00	
10	Mr. M.C. Pfitzner	<u>16-50</u>	
		<u>£4,803-80</u>	

20 AND the Plaintiff claims a Declaratory Judgment in his favour and an adjournment of the final assessment of his damages and he will on the hearing of this action seek an order that the Defendants make such payment on account of the Plaintiff's damages to be assessed as the Court seeks just in addition to such order the Plaintiff will seek an order for the Defendants to make periodic payments to the Plaintiff on account of his damages to be assessed pursuant to the provisions of Section 30(b) of the Supreme Court Act 1935-1974.

DATED this 19th day of October 1976.

THIS STATEMENT OF CLAIM is filed and delivered on the 19th day of October 1976 by ANDERSON, EVANS & CO. on behalf of the Plaintiff whose address for service is 41 Carrington Street, Adelaide, Telephone 87-5931.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978

No. 3

Transcript of Evidence taken before
the Honourable Mr. Justice Hogarth
dated 5th and 6th July
1978

IN THE SUPREME COURT OF SOUTH AUSTRALIA

CIVIL JURISDICTION

ADELAIDE

BEFORE THE HONOURABLE THE ACTING CHIEF JUSTICE

No. 1642/76

10

ANTHONY HOWARD RENDELL

Plaintiff

v.

LEON STEWART PAUL

and

PERCIVAL JAMES GEORGE EARLE

(Assessment of Damages)

TRANSCRIPT OF PROCEEDINGS

Wednesday, 5th July 1978 at 10.30 a.m.

MR. P. ANDERSON for Plaintiff
MR. D. MARTIN for both defendants.

20

MR. MARTIN: Both defendants admit liability. I
am not seeking any order as to apportionment -
that has been agreed between the parties.

On application of MR. MARTIN, witnesses ordered out
of court.

MR. ANDERSON: We have agreed special damages. I
will tender a list after the lunch break.
We have agreed the loss of net wages that the
plaintiff would have earned if he had worked from
the time of the accident until the present time
as \$2850.

30

MR. MARTIN: That is agreed on the basis that he
would have earned that amount net had he

continued working during that time. It is not agreed as being his loss. It is agreed that he did not earn it.

In the Supreme Court of South Australia

EXHIBIT P1 Report of Mr. Brian Cornish, 16 March 1976, admitted by consent on the basis that the report contains the substance of what Mr. Cornish would say if called to give evidence - tendered by MR. ANDERSON.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978.
(cont'd)

10 MR. ANDERSON CALLS

ANTHONY HOWARD RENDELL
Flat 3, No. 12 Hendry Street,
MORPHETVILLE

Factory Manager

SWORN

EXAMINATION BY MR. ANDERSON

- Q. Mr. Rendell, I think at the time of the accident you were 26 years old. A. That is right.
- Q. You are now 30 years old. A. Yes.
- 20 Q. I think subsequently to your accident you married - you were single at the time of the accident. A. Yes.
- Q. You said you are a factory manager. A. Yes.
- Q. You manage a factory called Spex S.A. Pty. Ltd. A. Yes.
- Q. Do you recall the day when the accident happened on 1 March 1975. A. Yes, I recall the day.
- 30 Q. I wonder if very briefly you could tell us what your first memory is after the accident.
- HIS HONOUR
- Q. Do you remember the impact. A. No, nothing.
- Q. What is the last you remember before the accident. Were you on the motor cycle somewhere.
- A. I was on the motor bike on Marion Road.

In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978.
(cont'd)

Q. What is the first thing you remember after the accident.

A. Just looking at myself.

Q. Where were you. A. In hospital.

XN

Q. Now, I wonder if you could tell the court the injuries that you received, just an outline of the various injuries.

A. Both me arms were wrapped up, me left leg was compound fractured. 10

Q. Above the knee or below the knee.

A. Below.
Right leg was broken up to the top, between me knee and hip.

HIS HONOUR

Q. Above the knee. A. Yes. Me right foot was severely cut to pieces, plus me right leg, my right arm, my left arm. I had a severe cut on me chest, just cuts everywhere.

Q. And bruises, I suppose. 20

A. I believe one of the doctors said I didn't bleed because I lost too much blood.

XN

Q. When you were in the hospital do you recall whether you had any sort of transfusion or anything.

A. I can't be certain on that, I believe so, that I did have blood transfusions.

Q. Do you recall being x rayed. A. Not really.

Q. Do you remember going to the theatre for an operation. 30

A. When I first went there, I did wake up for about half a minute and me parents were there and that is all I remember.

Q. What is your next memory.

HIS HONOUR

In the Supreme
Court of South
Australia

Q. Were you in a ward when you remember next.

A. Yes, I was in a ward.

XN.

Q. Do you remember anything about your leg,
your right leg.

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978.
(cont'd)

10

A. Yes, it was stuck up in the air with weights
on the end of the foot. I had a pin through
me, just below me right knee cap.

Q. A pin going across.

A. Straight across, through the bone.
Below the knee c ap straight through.

Q. What about your left leg.

A. That was in plaster right from the foot
right up to the hip. I had a pin put through
the bottom of my left heel.

Q. Going from side to side. A. Yes.

Q. Then sticking out of the plaster. A. Yes.

20

(Continued)

A. (continuing) and I had a window cut below the
foot at the bottom of the leg, I had a window
cut out of the plaster because it was a compound
fracture.

Q. What about your right forearm.

A. The right forearm was just all wrapped up in
bandages.

Q. And your left arm.

30

A. The pain was so great that was wrapped up in
bandages, the top was left open because I had a
severe wound in the muscle.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978 (cont'd)

Q. Do you remember a few days later on 5 March going back to theatre again. A. Vaguely.

Q. Do you remember you had to have some skin grafting.

A. The skin graft I believe didn't take place until may be a month later, they took the skin off my right leg and kept it in the 'fridge.

Q. Then put it on to the wound at the bottom of the left leg. 10

A. Yes while I was conscious.

Q. Can you explain how that was carried out.

A. They told me I was going to be operated on, however, I was not.

HIS HONOUR

Q. Did you have an anaesthetic. A. No.

Q. Did they give you a local. A. I can't remember.

XN

Q. They just applied the skin they had taken and bandaged it on. 20

A. Yes.

Q. Do you remember going back to theatre again on about 23 April that year to have a further operation on your femur or upper leg.

A. Yes they took me back in and had to re-open my right leg that was stitched up to put a K nail back in.

Q. Was your leg still up when you woke up.

A. No it was down there lying on the bed. 30

Q. It was bandaged up or in plaster.

A. Bandaged up not in plaster.

Q. And was your right arm which had been in plaster was that still in plaster or out of plaster at that stage.

In the Supreme Court of South Australia

A. Out of plaster then.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

Q. And your left leg was still in plaster.
A. Yes.

Q. What about your left arm was that in a sling or still bandaged up.

10

A. Still bandaged up but I would not let anybody touch the arm for about ten or eleven weeks.

Q. Tell me are you left-handed or right-handed.

A. I was a left-hander.

Q. During that period in hospital did you undergo some tests for your left arm.

A. Yes they gave me tests of E.M.Gs.

Q. What did they do.

20

A. Put pins in connected to wires on a machine all over my body and arm just to see if there was any nerves there.

Q. When you were first in hospital were you able to pass water naturally.

A. No I had to have a...

Q. A catheter.

A. Yes one of those in.

Q. How long did that remain in.

A. It remained in for about a month.

Q. Had any problems with your bowels.

30

A. Yes they had to put suppositories. I had to have them for about two months.

Q. And used a bed pan.

In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978 (cont'd)

A. Yes they had to lift me up and put me on it.

Q. While you were lying in bed did you have any problems with your skin.

A. Yes I did I received quite a few bed sores.

Q. I think on 24 May you were first discharged home from hospital. A. That is right.

Q. Were you then re-admitted to hospital on 31 July 1975 for some further operation.

A. Yes re-admitted for micro-surgery.

Q. On your left arm. A. On my left arm.

10

Q. What was the object of the surgery.

A. They had to re-open the wound in my arm to discover whether the nerve was cut. They discovered the nerve was cut and they had to take another nerve out of my left arm and transplant it into where the original cut was.

Q. Was that operation successful or not. A. No.

Q. When you were first discharged from hospital and up to the time you were re-admitted were you able to get about.

20

A. With help.

Q. How did you manage to walk or get along.

A. Well I had one crutch.

Q. Under your right arm.

A. Under my right arm, my left leg was completely plastered my left arm was how it is now and I just gradually hobbled along.

Q. And during that time did you go back to out-patients. A. Yes.

Q. And Physiotherapy. A. Yes.

30

Q. And how did you get there.

A. By taxi sometimes or sometimes ambulance.

- Q. How frequently did you have physiotherapy treatment at that time. A. Two or three times a week.
- Q. I think you were admitted to hospital in June 1976 in Memorial Hospital. A. Yes.
- Q. What was the purpose of that.
- A. To remove the K nail out of the right femur.
- Q. How long were you in hospital on that occasion. A. Three days.
- 10 Q. How long off work at that time.
- A. About a week I think.
- Q. For how long did you continue to have physiotherapy threatment.
- A. About six or seven months.
- Q. Did you also go to Ashford Hospital at one stage.
- A. I went there about two weeks ago.
- Q. What was that for.
- 20 A. To remove glass out of my right forearm and right kneecap.
- Q. How long were you in there. A. $2\frac{1}{2}$ days.
- Q. Any further time off from work after you were discharged. A. No.
- Q. Just taking you back for a moment when you were first in hospital were you in a lot of pain at this stage. A. Yes I was.
- Q. In any particular part of your body.
- A. The most severe pain in my left arm.
- Q. Whereabouts in your arm.
- 30 A. Right from the neck right down to the tips of the fingers.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

- Q. Did you have any drugs or injections for the pain.
- A. The first couple of weeks I tried not to because I was a little bit afraid I might get addicted because some of the reports I heard some patients had got addicted after a certain time but I got to the stage I could not stand it any more.
- Q. After a couple of weeks in hospital what did you have then.
- A. Every two hours they gave me injections or whenever they had to lift me up to be massaged they had to give me injections then.
- Q. Whenever you were moved or lifted did that increase the pain. A. Yes very much.
- Q. For how long.
- A. It would just start to get quiet and they would have to do it again.
- Q. For how long did they leave you on injections for pain.
- A. About to the end of the first week in May.

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(Continued)

- Q. After that, did you have any tablets, or anything else, for the pain.
- A. After the injections; when they finished the injections?
- Q. Yes. A. Yes, they did give me -
- Q. What - tablets. A. Yes.
- Q. And you were still in pain in early May. A. Yes, I was.
- Q. As much as before, or not.
- A. Not as much, but still very bad.
- Q. Worse when you were lifted. A. Very worse.

30

Q. What about after each of the operations. Did that have any effect on the level of the pain you were in.

In the Supreme Court of South Australia

A. Yes, it did.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

Q. In what respect; what happened.

A. Well, after each operation, when I woke up, everything just stirred up again.

10

Q. Now, when you were first immobilized, when they started to get you on your feet and use crutches, did that have any effect on the pain and discomfort you felt.

A. Yes, it did. It got so bad the first time they picked me up they had to put me back in bed again for a couple of days.

Q. And after you were discharged from hospital and were getting about on one crutch, what was the effect of walking; did that have any effect on the discomfort you were experiencing.

20

A. Yes, it did. I didn't do hardly any walking at all; I stayed in bed for the first two weeks after I got out of hospital, and I didn't do much walking at all, and I was very unsure of myself.

Q. By the time you had been discharged from hospital could you bend your right leg - that is, the one with the nail in it - was it stiff or -

A. Hardly at all.

30

Q. You told us you used to go to physiotherapy two or three times a week. A. Yes.

Q. Was part of that physiotherapy treatment to try and get your right leg to bend more. A. Yes.

Q. Was that painful treatment. A. Yes, it was.

Q. What did they do.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. I was laid down on my back and they tried to push my knee up to my chest, but the pin - the 'K' nail - was so big in my leg it just interfered with my hip.
- Q. And would you be in pain for a period of time after the completion of that treatment. A. I would.
- Q. For how long. A. About half an hour.
- Q. And at that time, after you had been released from hospital, the first time, was your left arm still painful. A. Yes, it was.
- Q. And has the level of the pain gone down a bit or is it still the same.
- A. It has gone down a fair bit, but it is still there.
- Q. For how long did you continue to take tablets for pain, as near as you can remember. On a regular basis, I mean.
- A. Well, when I was prescribed by the doctors to take one at night I was taking about four and this went on for -
- Q. This is in 1975 - the year of the accident.
- A. It went on, 1975 to early 1976.

HIS HONOUR

- Q. You were on four, were you, during that period.
- A. Well, every time I could take the prescription from the doctor, I would take four instead of one.
- Q. You were prescribed one, but you would take four. A. Yes.

XN

- Q. During 1976 did you still take a lot of tablets for the pain. A. Not very much.
- Q. You eased them back.

A. When the cold weather came I could not sleep at night so I would get another prescription from the doctor.

In the Supreme Court of South Australia

Q. About 1976 did the level of pain and discomfort settle down to a fairly constant level. A. Yes.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

Q. Was that about the level that it is now.

HIS HONOUR

10

Q. Roughly about what time in 1976 would that be; when did you reach the present level.

A. Oh, just after I had the nail removed out of my right femur.

Q. When was that.

XN

Q. That was when you went to the Memorial Hospital in June.

A. That was in June.

Q. Did that stir up the pain in your leg when you had that removed.

20

A. It did for a while; it did get slightly infected, but that went down after a couple of weeks.

Q. So from about mid-June 1976 the pain and discomfort has been at a reasonably constant level.
A. It has.

Q. Now, let us just take various parts of your injuries; your left arm, for a start, the most serious one.

HIS HONOUR: This is the present stage?

30

XN

Q. From 1976, right up to now, and at the present stage. Would you try and describe the level of discomfort that you have in that from day to day.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978.
(cont'd)

A. The discomfort I have is embarrassing.

HIS HONOUR

Q. Well, that is not physical - physical pain, I think, really, Mr. Anderson is thinking about. We can just deal with the other matters afterwards.

A. The physical pain is just that ache that I get all the time in the arm.

Q. Now, whereabouts: all up the arm, or in any particular place.

10

A. Right through; it goes right through, apart from my little finger.

Q. Right up to the shoulder. A. Yes.

XN

Q. The little finger; there is no feeling in that.

A. Feeling, but no pain at all.

Q. What about the rest of the arm generally.

A. I won't let anybody touch it.

Q. If somebody, banged it, or maybe you did with the other hand, can you feel that - any sensation.

20

A. A slight pain, but -

HIS HONOUR

Q. But the actual pain you feel is something entirely different. A. Yes.

XN

Q. Does the pain vary according to the time of the year, or the weather conditions.

A. In the summer the arm is just a normal dull ache, but in the winter it gets very bad.

30

HIS HONOUR

Q. Does that depend on how cold the weather is during the winter. A. Yes.

In the Supreme Court of South Australia

XN

Q. What if somebody either grabs or bangs your arm - by 'bangs' I mean accidentally bumps into it.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th
July 1978
(cont'd)

A. I have to sit down straight away.

HIS HONOUR

10 Q. What sensation do you get. You are telling the result of some sensation, but I do not know what the sensation is.

A. Just very severe pain.

Q. In the arm. A. Yes.

XN

Q. How long would that persist for, if somebody banged your arm, or grabbed you. A. Half an hour.

HIS HONOUR

20 Q. Is this a shooting pain, or aching pain - how would you describe it.

A. It is a pain - it just gets very red hot and just stays there.

Q. As if it was a burning sensation. A. Yes.

Q. And gradually cools off a bit.

A. Cools off a bit.

XN

Q. Now, what about your left leg now. On a normal day, in, say, the summer, do you notice it, or get any pain in it, or discomfort.

30 A. I get a lot of discomfort if I have got to walk, and I have got to be careful with my leg. If I bump it, I get very severe pain where the compound fracture was.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. If you walk about for a long distance, or are on it for a long time, do you get pain in the fracture site, where it was broken. A. Yes.

Q. Would you just point that out to his Honour.

WITNESS INDICATES AREA JUST BELOW HALFWAY UP THE TIBIA.

(continued)

Q. What about your ankle; do you get any discomfort there.

A. I do slightly. When I do walk a distance it will tend to swell a fraction, just in the ankle. 10

Q. What about your right leg; have you had pain and discomfort in that.

A. I get a lot of discomfort in the winter in the hip where they had to operate.

Q. Where they put the nail in. A. Yes.

Q. And not much in the summer. A. No.

HIS HONOUR

Q. Whereabouts in the hip was this.

A. They had to bore a hole here. 20

(WITNESS INDICATES AN AREA PRACTICALLY OVER THE HIP BONE)

XN

Q. That is noticeable mostly in winter. A. Yes.

Q. Is it made worse by strenuous exercise, or a lot of walking. A. Yes.

Q. Is the pain in your left leg worse in winter than in summer.

A. It is worse in the winter.

Q. Any cramping of your legs. 30

A. I do get it in the calf of the muscles of both legs.

- Q. How often. A. Only when I walk long distances.
- Q. Do you have any particular discomfort when you wake in the mornings.
- A. Sleeping only on my back I do because for the first five minutes my back is very sore because I can only sleep in that position. I cannot sleep on my right side because I do not know where to put my left arm, and I cannot sleep on my left arm.
- Q. You mentioned that your legs ache if you walk long distances - what do you mean by a long distance.
- A. If I have to walk very far - say from here to Rundle Mall - it would start aching.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

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HIS HONOUR

- Q. That is about half a mile. A. Yes.

XN

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- Q. You no doubt do a lot of walking at work - if you can sit and walk, mix it up, does that help. A. Yes.
- Q. Is one leg shorter than the other.
- A. My left leg is 2.5 c.m. short - about an inch.
- Q. Do you wear anything on your shoes.
- A. Yes, I had my shoe built up an inch; all my shoes have to be built up.

HIS HONOUR

- Q. This is on the left side. A. Yes.

XN

30

- Q. Is that just the heel or the heel and the sole.
- A. It is the whole shoe.
- Q. It is an inch thicker. A. Yes, right through.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Since the incident have you had more headaches than before.

A. A couple, not very many.

Q. And that was only in the initial stages.

A. Yes.

Q. So you don't have problems now with extra headaches. A. No.

HIS HONOUR

Q. You were wearing a crash helmet. A. Yes.

XN

10

Q. I think you had as a child some ear trouble.

A. Yes, I was hit by a car when I was very young on the right side, this is what I believe, and my ear went deaf on my right side.

Q. You have always had hearing problems in your right ear. A. Yes.

Q. After this accident did you have any problems of hearing through your left ear.

A. I did for a couple of weeks. I trained my left ear to be the whole ear.

20

HIS HONOUR

Q. This is before the accident.

A. Yes. After the accident I had trouble for a couple of weeks and it just went down to a dull ache for a while, and even now I still find it very hard - if anyone talks to me I have to turn my head to listen.

Q. Previously did you not have to do that. A. No.

XN

Q. Have you any restriction in movement of your right knee.

30

A. I have a bit of restriction. I can't bend down like I used to.

- Q. You can't squat down. A. No.
- Q. What about your left knee.
- A. That is about the same too.
- Q. Would you squat down as far as you can so his Honour can see.
- A. That is about as far as I can go.
- Q. Is that a little further on the right side than the left.
- A. It could be because I am throwing my weight.

In the Supreme Court of South Australia

No. 3
 Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
 5th and 6th July 1978
 (cont'd)

10 WITNESS DEMONSTRATES SQUATTING AS FAR AS HE IS ABLE TO. IT IS AGREED THAT THIS LEAVES A GAP OF APPROXIMATELY FOUR INCHES BETWEEN HIS BUTTOCKS AND THE HEELS - HE THEN FALLS FORWARD SO THAT HIS KNEES REST ON THE GROUND IN A KNEELING POSITION WITH APPROXIMATELY THE SAME GAP BETWEEN HEELS AND BUTTOCKS.

XN

- Q. Have you any restriction of movement of your right hip.
- 20 A. Not very much.
- Q. You mentioned you had lacerations of the foot -- was that the right foot. A. Yes.
- Q. Have you lost any feeling in your foot.
- A. Yes, I have lost it on the top of the - beginning of the toes running around on the outside to the back of my heel.
- Q. There is no feeling. A. No.
- Q. Can you bend your toes in a normal fashion on the right side.
- 30 A. I can up to a point, but not as much as I used to.
- Q. Not as much as the left side. A. No.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

- Q. Did you have any operation on your great toe nail on the right side.
- A. Yes, they had to remove that and now it tends to grow in a bit.
- Q. Is one leg worse than the other.
- A. Yes, my left leg is not as strong.
- Q. Your left arm and shoulder - is there any movement in that at all. A. No.
- Q. Can you move your shoulder up and down.
- A. There is just nothing there. 10

WITNESS DEMONSTRATES EFFORT TO MOVE THE LEFT SHOULDER BUT SUCCEEDS ONLY IN MOVING THE RIGHT SHOULDER WITHOUT MOVING THE LEFT.

(Continued)

XN

- Q. Can you lift your arm away from your body, left arm that is.
- A. No, nothing at all.
- Q. Can you flex or bend the elbow. A. No.
- Q. Can you move the wrist back and forth. 20
- A. I can move the hand a bit. There is part movement there.

(WITNESS DEMONSTRATES MOVEMENT OF THE HAND FLEXING THROUGH ABOUT 15 DEGREES AND OPENING AND CLOSING OF FINGERS).

- Q. Is there much strength in the grip of your left hand. A. No.
- Q. Now, in addition to not being able to move it, have you lost any bulk or size in your arm.
- A. Yes, I have lost all my muscle completely from the back of the shoulder down to as far as the elbow. 30

Q. And below the elbow.

A. It has wasted away on the elbow and the hand has gone smaller.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

BY CONSENT DR . SPITZER INTERPOSED.
PLAINTIFF LEAVES THE COURTROOM.

(Continued)

MR. ANDERSON INTERPOSES

ALEX GEORGE SPITZER
63 Palmer Place,
NORTH ADELAIDE.
LQMP.

SWORN

10

EXAMINATION BY MR. ANDERSON

Q. Mr. Spitzer, I wonder if you could tell the court a brief outline of your qualifications and experience.

A. I am a Fellow of the Royal College of Surgeons, Edinburgh and London and Fellow of the Royal College of Surgeons of Australasia.

20

Q. When did you become a Fellow of the Royal College of Surgeons.

A. 1969.

Q. Have you been in practice in Adelaide as an orthopaedic surgeon.

A. Yes, for about eight years.

Q. You have appointments at hospitals as well.
A. Yes.

Q. Now, I think you know the plaintiff in this matter, Mr. Rendell. A. Yes.

30

Q. Have you some notes with you made on the patient. A. Yes.

PERMISSION TO REFER TO NOTES, MR. MARTIN NOT
OBJECTING
HIS HONOUR

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- Q. Do you recognise this as a report that you gave, Mr. Spitzer. A. Yes.
- Q. That report and annexures set out the history that you were given as a result of your clinical examinations and your opinions. A. Yes.

EXHIBIT P 2 Report of Mr. Spitzer tendered by Mr. ANDERSON.

XN

- Q. I think generally speaking your treatment of this man was confined to his two lower leg injuries. A. Yes. 10
- Q. You did at one stage consider some operative treatment for his Brachial Plexus.
- A. Shoulder, yes.
- Q. But nothing was done about it. A. No.
- Q. How long is it since you have seen him.
- A. I last saw him on 9 May this year.
- Q. As a result of that examination can you give us a prognosis of each leg in turn. 20
- A. He has some shortening of the left leg in the lower leg as a result of the fracture, the shortening is about half an inch.
- Q. Pausing there, is it a little less than it was earlier on.
- A. Not really, I thought it was about half an inch short as a result of the fracture when I saw him the time before on 28 May 1976. I think that shortening is probably significant and I think that he will have some permanent disability as a result of that fracture and I think in my previous report which I confirmed recently I thought it was in the order of 10%. As far as the right lower limb is concerned he had a fracture of the femur and it was internally fixed with a Kunschner Nail, an intramedullary nail, which was subsequently removed. He has 30

done better than average I thought as far as the femoral fracture despite all of the trauma in the muscles in getting it nailed and I thought when I saw him on both occasions that his residual disability in the right lower limb might be as little as 5% ultimately, although in average cases it is often more than that.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

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Q. In respect of both legs has he got some restrictions of ability to flex his knees.

A. He has some restriction of range of movement in both, in all the joints actually, but not significantly enough to interfere with function.

HIS HONOUR

Q. Just knees and ankles. A. Yes.

Q. In movements, also. A. No.

Q. You were referring to knees. A. Yes.

XN

20

Q. Would it affect his ability to squat on his haunches in the normal fashion.

A. I didn't think it should unduly, the amount of restriction, although it would to some extent.

Q. Perhaps restricting for how long he could squat before getting discomfort.

A. Possibly yes.

Q. Has there been any damage done to either or both knees.

30

A. I didn't think so no.

Q. Do you expect that he will get any arthritic, degenerative type changes in the future in either knees or both.

A. I think development of arthritic changes depends on the amount or quality of normal use of those joints. I thought that this man was fairly

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

highly motivated and that he would use his knees in the normal, as normally as he can, and therefore would minimize any precipitous arthritic changes.

Q. In other words if he uses them as normally as he can it will help keep them mobile. A. Yes.

Q. But there might be some acceleration of the arthritic changes. A. There may be.

Q. I take it you wouldn't expect it would be so serious as to require any sort of operative treatment.

10

A. Not in him, no.

Q. He has given evidence that if he were to walk a distance of half a mile, from here to the Rundle Mall then his legs would ache, would it be consistent with the injuries. A. Yes.

(Continued)

Q. Would that be consistent with the injuries. A. Yes.

Q. And he has given evidence that his legs are much worse, the aching is more worse in winter particularly that weather and the changes in weather and not so bad in summer.

20

A. That is a reasonable symptom.

Q. I think although you have not treated his left shoulder you are aware of the problem and have examined it. A. Yes.

Q. I want to put some things to you and it will have to be hypothetical because we have not evidence from the plaintiff yet so in each case I will ask you to assume a set of facts and comment on them. This is taking his injuries into account overall including the shoulder. I want you to assume the plaintiff had difficulty in using public transport and getting up and down and on and off a bus or that sort of thing and avoided it would that be reasonable for him with his injuries. A. Yes I think so.

30

Q. On any occasion I am putting it but perhaps more particularly when it is busy and he is likely to get knocked.

In the Supreme Court of South Australia

A. I think it is reasonable for him to avoid public transport.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
{cont'd}

HIS HONOUR

Q. On account of difficulty in getting into and out of the vehicle speaking of buses, the M.T.T. type buses, difficulty getting into or out of or problems he may have once he gets in.

10

A. There are problems here perhaps I have not elaborated in my report, one being because of the paralysis of one upper limb he has some skeletal imbalance, this is aggravated by a shortening in one leg which makes him less securely balanced in any case and apart from the fact he has only one arm, and I think for that reason predominantly it would be reasonable to accept that he cannot or should not use public transport because of the risk of further injury in his relatively doubtful fully balanced state.

20

Q. I am trying to visualise what sort of injury you have in mind.

A. Fall over and break something else.

Q. That is if standing in the bus.

A. I think once he gets into the bus and sits down he would be all right.

30

XN

Q. I would imagine probably using the front door of the bus with somewhat less high steps he would probably negotiate that but not the centre door getting out.

A. Well even getting in in terms of the steps, although I have not been on those buses for a long time, I think they are a high step.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Assuming a jolting around people get would it be reasonable for the plaintiff to complain that jolting would stir up discomfort in the upper arm. A. Yes.

HIS HONOUR

Q. If standing or sitting on some surface which involves jolting.

A. Yes I think theoretically I think muscles on which the limb would depend are not working correctly and any sort of stress on the joint be it the shoulder joint or other joint cannot be controlled as well so there would be some chronic or recurrent chronic straining effect on the covering of the joints which in turn would cause a degree of discomfort but I think that is a theoretical explanation rather than specifically applied to this man.

10

XN

Q. Would you expect this man with his injuries to have difficulty in negotiating a flight of steps up and down.

20

A. Yes I think I would expect him to have more difficulty negotiating steps both up and down not only because he only has the use of one limb but because of the general skeletal imbalance.

Q. The type of steps you sometimes get with a bannister on only one side, if the bannister is on his left side he has only the right arm to support himself you would expect that to make it much more difficult to get down. A. Yes.

30

HIS HONOUR

Q. Do you have experience of escalators. A. Yes.

Q. How would he go on an escalator.

A. I think he would probably get on better than with ordinary steps because I think the escalator situation is a more controlled situation and although he might have a little bit of difficulty with that first step on and the first step off the rest of the ride should

40

be fairly well controlled because he does not have to juggle his body in terms of balance.

In the Supreme Court of South Australia

XN

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogart
5th and 6th July 1978
(cont'd)

Q. You would expect would you not the plaintiff would need an automatic car to drive. A. Yes.

Q. Would it be reasonable for him to have one with power assisted steering.

A. I think in certain circumstances it would be difficult to safely turn the steering wheel without power steering using only one hand.

10

Q. I want you to assume the plaintiff can only drive for shortish distances and every couple of hours he has to get out and stretch and have a bit of a walk around for a few minutes before continuing on if he is on a long journey would that be a reasonable method of going on a long drive - would you expect he would have to ease himself a bit and get out from time to time.

A. Unless he specifically complains of backache because of the skeletal imbalance, and he has not specifically complained of backache to me although he has had some curvature of the spine -

20

(Continued)

- scoliosis; unless he specifically complains of back ache then I would not really have expected him to have any more difficulty than the average person, but if he does get some back ache from his skeletal imbalance, then I would suggest that he would have greater difficulty than the average person in maintaining the same sitting posture for more than, say, an hour.

30

Q. I want you to assume that the plaintiff was left-handed prior to the accident, and now complains - assuming that he complains he cannot play tennis, would that be a reasonable complaint. A. Yes.

Q. Table tennis; taking the same factors into account - he claims that he cannot play table tennis now.

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In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

HIS HONOUR

- Q. Are you an expert in table tennis; can you express an opinion.
- A. Well, I am sure he cannot play left-handed any of those games. I do not know how good he is right-handed, or how ambidextrous he might have been. Some people only write with their cominant hand but can do most other things with both hands, so it really depends on their dexterity with the normal upper limb.

10

XN

- Q. You would expect, would you not, that the fact that his left arm is just hanging, would affect his balance, to play any game with any skill.

A. Yes.

- Q. What about the case of playing squash - would you expect that -

HIS HONOUR: I do not know what your attitude is, Mr. Martin, I have not heard your case at all, but from what I have heard of the shortening of the leg and one arm, I would think that playing sport is out of the question. Would you like time to discuss it?

20

MR. ANDERSON: I will not continue with that, but it was because I had interposed Mr. Spitzer that I thought I should raise these things.

HIS HONOUR: Could I do this, Mr. Martin, by a note on the file? Tell me if you accept this, Mr. Martin, that, in view of the evidence as to disability in the left arm and shortening of one leg and in general, it is accepted that he would not now be able to play any normal sport.

30

MR. MARTIN: I perhaps would not go quite that far, but certainly I believe sports involving quick movement and possible contact -

HIS HONOUR: Any sport involving physical effort; sustained rapid movement.

MR. ANDERSON: Or physical contact.

MR. MARTIN: Yes, I would accept that.

XN

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

10 Q. Just one last matter, in relation to this man's potential for work, his working capacity in the future, and talking into account all of his injuries - not just the leg injuries that you specifically treated - could you tell his Honour in what areas he would be restricted, assuming that he has got no particular skills - by that I mean academic skills, or technical qualifications.

20 A. I do not think he would be substantially able to do any labouring job that involved being constantly on his feet for a whole day. I do not think he would be able to do any manual work which, even intermittently, necessitated the use of both hands. I do not think he would be able to do any sort of work which involved maintenance of the same posture, be it sitting, crouching, standing, or whatever, for any length of time.

Q. What about work involving intermittent lifting of heavy weights.

A. Well, I think he could only do this one-handed.

Q. Anything involving work on rough ground, would that be a problem for him.

A. No, I don't think that would be a substantial problem, as much as sustained work in the one posture.

30 Q. Could you - you may not be able to do this - but could you put a percentage on the loss of his earning capacity.

OBJECTION MR. MARTIN objects, on grounds witness not able to answer question.
Argument ensued.

QUESTION NOT PROCEEDED WITH

CROSS-EXAMINATION BY MR. MARTIN

Q. Mr. Spitzer, just on the question of occupations open to him, clearly any occupation which involved him in no heavy lifting, involved

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

him in moving about a factory, for example, doing supervisory work, involved him stopping and starting, not being continually on his feet all the time, would be well within his capabilities.

A. I think so, yes.

Q. Now, you said you last saw him on 9 May 1978, and you noticed, for the second time, a shortening of his left leg by half an inch; at that time did you note whether he had a built-up shoe.

10

A. No, I did not record it and I cannot remember from memory.

Q. Assuming that he is currently wearing a built-up shoe to compensate for that, and assuming he is able to wear that built-up shoe whenever a shoe is required - obviously he cannot compensate for bare feet - assuming all that, would you agree that there is probably no significance now in his shortening of the leg in the terms of arthrodesis, or any problems with his back.

20

A. Oh, I do not think the shortening would have caused any complications, per se, other than, possibly, the development of some back ache, which has already predominantly been at risk as a result of the upper trunk imbalance, and I think that a built-up shoe would prevent these sort of complications that you are talking about.

Q. Now, you saw Mr. Rendell for the purpose of considering a left shoulder arthrodesis: how would that assist his condition.

30

A. The muscles connected to the shoulder blade are still, to some extent, functioning, so the shoulder blade movement is present. If you can transfer some of that movement to the upper limb - to, perhaps, the upper arm - that might be useful - assuming that he has got some sort of hand function, or can use the hand, but because he has also got an elbow which is uncontrolled, to some extent. I don't think that stopping movement at the shoulder joint by fusing it would be of great practical benefit

40

to him - although he would be able to move his arm better.

In the Supreme Court of South Australia

Q. He would be able to move his arm away from his body.

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978 (cont'd)

A. Yes, by using his shoulder blade.

Q. He would not be able to move the elbow.

A. No, but you could also consider fusing the elbow joint and making that stiff as well, so that he could perhaps use the hand to hold things down or push them away slightly but it would interfere with other things like hygiene and it would be a permanent stiffening. The other reason for not encouraging him to have operative fixation is because of the current development of appliances that can make arms move.

10

Q. And that is a continuing science. A. Yes.

Q. There are new discoveries being made every day. A. Yes.

20

Q. I think they are further advanced in America than in Australia. A. To some extent.

Q. Are you aware of any appliances available at present in America that might assist.

A. Yes, there are, but I think they are at the moment so cumbersome that you would need to balance putting them on and getting them to work and the cost of the appliance, against the ultimate benefit.

30

Q. Take the hypothetical situation of the present injury of the plaintiff and the present appliances that are available in America - could you describe what sort of improvement he would get in the left arm by using such appliances.

A. I think he could bend his elbow and I think he could probably get some sort of pincer grip in his fingers so that he could hold things.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Would he be able to improve the movement of his shoulder by the use of a similar splint.

A. I don't think that would be appropriate and it might be more appropriate to stiffen his shoulder.

RE-EXAMINATION BY MR. ANDERSON

Q. You were asked whether the built-up shoe would prevent any back condition developing and you said 'Yes, except so far as he is already at risk from a back condition due to his upper arm and shoulder'. A. Yes. 10

Q. Could you elaborate on that. Is he likely to get back-aches or a back condition.

A. I think so. I am surprised he has not so far complained a lot about back-ache because he already has a curvature of the spine and I think the predominant causation of potential back-ache that he might get would be more attributable to his arm problem than the leg problems, because it is unbalances. 20

Q. Would that cause a straining of the ligaments or arthritis, or what.

A. In succession, it would cause firstly a straining of the ligaments, the joint capsule, straining of the muscles, a chronic posterial ache, which might then go on to earlier arthritis of the joints.

Q. Would it affect the discs.

A. And possibly affect prematurely some of the discs; but once again, if he keeps himself fairly mobile and active he would probably minimise the risk of that. 30

Q. In your opinion is it more likely than not that he will get some back-aches and back degeneration as he gets older.

A. Everybody gets back-ache and degeneration as they get older.

Q. More than the normal rate of degeneration.

A. I think that depends entirely on how active he keeps himself and I would have thought that this particular man is going to - on a personality basis - keep himself fairly active and minimise the amount of trouble he gets. But taking an average individual I think they would be more likely to develop earlier back problems than the average individual.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978.
(cont'd)

10 Q. The question of these appliances, as they are now - are they in the experimental stage and not really of much practical value for day-to-day living.

20 A. The available non-experimental appliances I think are of little value in this sort of situation, especially where he is not keen - this particular man - to be too interfered with. As far as the experimental ones - the bionic situation - and that does not mean the six-million-dollar type, but the real bionics where you get sensor and pressor electronic gadgetry that make the fingers and the joints move by means of external splints - the external splints are connected to the fingers which then move by little electric and electronic motors -

Q. If his muscles are withered and atrophied now does that mean that they would not be able to re-activate.

30 A. Not from those muscles, but you can get the message sent from other muscles around the shoulder or neck. It applies to the same as when you turn your head to one side, you can get an arm or a lower limb moving in the opposite direction, and you can enhance that possibly by some electronic device. But I don't think in this situation they would be applicable nor do I think it is worth considering.

40 HIS HONOUR

Q. This would be more appropriate to a quadriplegic in bed or something of that sort.

A. It may be applicable there as well, but it would

In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978.
(cont'd)

probably be most applicable in someone who has actually had their arm cut off and at the stump there is still some good nerve and muscle activity.

NO FURTHER QUESTIONS

WITNESS RELEASED

A.H. RENDELL FURTHER EXAMINATION BY MR. ANDERSON

Q. Now, Mr. Rendell, you are still under oath.
A. Yes.

Q. I want to turn to the question of any scars or cosmetic disabilities that you have got resulting from the accident. First of all referring to your left arm and shoulder - have you got any wasting of the shoulder muscles in the upper arm.

10

A. Yes, I have.

Q. Before we go any further, did you have some photographs taken recently. A. Yes.

Q. When was that, A. About six weeks.

Q. Do they show you in a pair of bathers from various positions. A. Yes.

20

Q. Would you just have a look at four sets of photographs which have been mounted on paper.
A. Yes.

EXHIBIT P 3 Four sheets of photographs tendered by MR. ANDERSON.

Q. Now, I think you have got an operation scar under the left upper arm. A. Yes, I have.

Q. How long is that scar. A. About six, seven inches.

30

Q. Where does it start.

A. From underneath the arm pit, inside the muscle down not quite to the elbow.

Q. How wide is it.

HIS HONOUR

Q. I suppose it is a bit difficult for you to see it.

A. I could say quarter of an inch wide in places.

MR. ANDERSON: Does your Honour want to see the scars themselves, photographs don't always give a good picture.

HIS HONOUR: Perhaps you can agree something during the adjournment rather than have him undress here.

10

XN

Q. Is the underarm scar shown in the pictures.

A. I don't think so.

Q. What colour is the scar. A. The scar is very dark brown.

Q. Is it raised up or indented or level with the rest of your skin.

HIS HONOUR

20

Q. Puckered.

A. All shrunk. Q. Puckered. A. Yes.

XN

Q. You have got a scar on your left arm.

A. Yes, I have one near the elbow where they had to take out the nerves.

Q. An operation scar. A. Yes.

Q. How long is that one. A. Five inches.

Q. How wide. Thin scar is it, or a thicker one.

A. Half of a quarter of an inch.

30

Q. Eighth of an inch - and is it a straight scar or bent.

In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978 (cont'd)

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

A. Yes, it is a straight scar.

Q. What colour is it. A. Pink.

HIS HONOUR

Q. Is that on the back of your arm, a little
below the elbow.

A. It is in the front (WITNESS INDICATING FRONT
OF ELBOW)

XN

Q. Have you a third scar on your left arm as well.

A. That is on the hand. 10

Q. What part of the hand. (WITNESS INDICATES TOP
OF HAND JUST BELOW WRIST)

Q. That is not an obvious one. A. No.

Q. Turning to your right arm, have you any scars
on the right arm.

A. I have a severe scar on the elbow.

Q. Right elbow. A. Yes.

Q. How big is that scar.

A. Three quarters of an inch in diameter.

Q. A circular kind of scar. A. Yes. 20

Q. What colour. A. Pink.

Q. Is it puckered up. A. Yes.

Q. Have you since the accident developed some
unusual swelling in your right arm, your good
arm.

A. Yes, I have received a swelling in the right
arm, the forearm.

Q. Could you point to it, or can't you.

A. Half way down.

HIS HONOUR

Q. Outside or inside.

A. A lump, it was a lump.

Q. Whereabouts. A. On the top.

Q. On the outer aspect of the arm. A. Yes.

XN

Q. Now, have you scars on the right side of your buttock.

A. Yes, I have one big long scar.

10 Q. When you say a big long scar, how long.

A. 2½ inches.

Q. How wide is it, how thick.

A. About an inch.

Q. What colour. A. Pink.

Q. Is it a sort of puckered up or raised scar.

A. Puckered up scar and it is left a little bit hollow.

Q. Hollowed out. A. Yes.

20 Q. Have you a second scar on your buttock or is it the only one.

A. Only one.

HIS HONOUR

Q. Looking at this photograph from Exhibit P 3, is that the scar you are talking about. A. Yes.

HIS HONOUR: We will mark that one Exhibit P 3 (A).

XN

Q. Now, on your right leg, have you got any scars.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Yes, I have one long scar about 14 inches long on the top of my leg.
- Q. On the outside of your thigh. A. Yes.
- Q. Is it a thin scar or thick scar.
- A. There are scars everywhere, but it is continuously curved.
- Q. Is it an operation scar or laceration from a wound.
- A. It was a laceration from a wound which had to be sewn up and re-cut later. 10
- Q. What colour is that.
- A. Pink and dark brown.
- Q. Is that raised up or indented or what. A. Indented.
- Q. Looking at photograph marked B at the top of the page does that show the scar you have just described on the outside of your upper right leg. A. Yes.
- Q. Now have you got further scarring on your right leg. 20
- A. Yes further scarring down on the foot.
- Q. And looking at photograph marked E, looking at the bottom photograph does that show the scarring on your right foot.
- A. Yes.
- Q. It was your right foot I think you said had skin grafts on. A. On the heel.
- Q. Looking at photograph marked L does that photograph show the skin grafted area. A. Yes.
- Q. And how big is the area of skin grafting. 30
- A. An inch in diameter.
- Q. The scarring on the front of your right foot how big is that.

- | | | | |
|----|----|---|--|
| | A. | On top of the foot from the big toe to the little toe there is a scar from there right across four inches long by half an inch wide. | In the Supreme Court of South Australia |
| | Q. | What colour. | No. 3 |
| | A. | Pink. From on the side of the foot going down to the back heel it would be approximately six inches. | Transcript of Evidence taken before the Honourable Mr. Justice Hogarth |
| | Q. | Another scar. A. Yes. | 5th and 6th July 1978 |
| | Q. | How wide would that one be. | (cont'd) |
| 10 | A. | Very thin scar. | |
| | Q. | What colour is that. | |
| | A. | Very dark red. | |
| | Q. | And just going back to the skin grafted area is the colour of the skin graft the same as the rest of your foot. | |
| | A. | No it is darker, it is dark brown. | |
| | Q. | Now on your left leg is there an area of scarring there. | |
| 20 | A. | Yes there is on the front of the leg just above the foot is more severe scarring there. | |
| | Q. | Looking at photographs C, D, E, and K on two different sheets do those photographs show the scarring on your left leg. A. Yes. | |
| | Q. | Looking at photographs F, G, H, and I you have already described to the court the wasting effect on your upper left arm do those photographs depict the look of the arm as it is now. A. Yes. | |
| 30 | Q. | And would you look at photograph D, does that depict the way the arm hangs, the left arm. | |
| | A. | That is right. | |
| | Q. | Finally could you just look at photographs J, L, and M are they further photographs showing the left arm and the wasting effect. A. Yes. | |

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- Q. What effect do those scars have on you generally.
- A. They cause me embarrassment because I have to hide them.
- Q. Do you find anyone makes comments on them.
A. They do.
- Q. Ask questions about them. A. Yes.
- Q. How does this affect you.
A. It affects me greatly because I have just to either tell them what happened or just ignore them.
- Q. It upsets and embarrasses you. A. Yes.
- Q. Prior to the accident had you used to go to the beach. A. Yes.
- Q. And swim. A. Yes.
- Q. How frequently in the summer season. A. Every weekend.
- Q. Since the accident do you go to the beach.
A. Haven't been.
- Q. Do you swim at all. A. I don't swim at all.
- Q. Have you been in any pool.
A. I have been in a private pool in a friend's place just standing in the water splashing around on my own.
- Q. What did you wear.
A. I wore a T shirt and a pair of shorts.
- Q. Why did you wear a T shirt.
A. I just did not want people to look at my arm.
- Q. When you are going about your normal business from day to day do you have your arm in a sling as it is today. A. Yes.

10

20

30

Q. And people appear to look at that. A. They do, straight away. In the Supreme Court of South Australia

Q. Does this have any effect on you. A. It does. No. 3

Q. You still feel embarrassed by it. A. Yes. Transcript of Evidence taken before the Honourable Mr. Justice Hogarth

Q. Prior to the accident did you used to work with your coat on. A. No. 5th and 6th July 1978

Q. What would be your normal dress. (cont'd)

A. My normal is just a pair of shorts and a T shirt.

10

Q. Since the accident do you wear a T shirt at work.

A. With a shirt and jumper over it.

Q. In other words, you cover your arm. A. Yes.

Q. Have your nerves been affected by the accident.

A. My nerves have been -

OBJECTION MR. MARTIN objects on the ground that the question calls for an opinion

XN

20

Q. Have you noticed anything different about your nervous condition since the accident than before the accident.

A. Yes, I have. I am very nervous generally in with the public people or anywhere I go, going out or anything like that. I am nervous that people are going to ask me questions.

Q. Are you nervous in any other situation.

A. If I watch TV or see some accident or anything like that that does affect me.

30

Q. What about in the normal situation of driving a motor vehicle.

A. If I am driving and I either see an accident or have a close call myself I have just got to pull over because I just get a very sharp, severe pain in the left arm.

- Q. Before the accident did you have any nervous condition. A. No.
- Q. You have mentioned that you have a bulging of the right forearm. That is only since the accident. A. Yes.
- Q. Does it cause you any discomfort. A. It has, yes.
- Q. In what circumstances.
- A. Only if I rest my arm on a table or try to do too much work.

Q. What happens then. 10

A. The swelling becomes bigger.

Q. Is there any discomfort in it. A. Yes.

Q. In what circumstances do you get discomfort.

A. It gets sore.

Q. What do you have to do before it gets sore.

A. Rest my arm on a table or a bench or pick up a bucket or something like that.

Q. I want to ask you some questions about the sort of activities that you used to engage in before the accident, the sort of leisure activities, and I want to ask you how they have been affected by the accident. Generally speaking, what sort of person were you before the accident in terms of physical activity. 20

A. What do you mean by my personality?

Q. Not your personality; generally speaking what sort of -

HIS HONOUR: What sort of activities did you indulge in.

XN

30

Q. Were you a generally active or passive sort of person.

A. Yes, I was, very active.

HIS HONOUR

In the Supreme
Court of South
Australia

Q. What did you do in the way of leisure activities.

A. I used to go a lot of dancing.

XN

Q. How often would you go to a dance.

A. Every Saturday night.

Q. Would you go to a discoteque or a dinner dance.

10 A. Yes, we would go to a discoteque.

HIS HONOUR

Q. What other activites did you indulge in.

A. Shooting.

Q. What sort of shooting is that.

A. Rabbit shooting and things like that.
Swimming, water skiing, I played a lot of
billiards, table tennis, tennis, volley ball
and mainly just used to hop on my bike a lot
every Sunday and just go up in the country
and just run around in the hills and that and
things like that.

20

XN.

Q. You have told us you used to go to a dance about once a week before the accident. A. Yes.

Q. Have you been dancing since the accident.

A. Only on my wife's sake.

Q. When you go to a dance do you get up and dance or do you sit and watch.

30

A. If it is a slow waltz it is not so bad as long as I am on the outside of the crowd.

HIS HONOUR

Q. What sort of dancing do you go to.

In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978 (cont'd)

- A. Prior to the accident or now? Q. Now.
- A. I just go to a hotel and have dinner where it is 40/60.
- Q. Ballroom dancing type thing, not discoteque.
A. No.
- XN
- Q. Do you dance as well with slow dances as you could before the accident. A. No.
- Q. What about the more vigorous discoteque type of dance. A. No. 10
- Q. How often would you go to a dance now with your wife.
- A. Maybe once every three months.
- Q. You have said that you used to play tennis. How frequently did you play before the accident.
- A. I played about twice a month.
- Q. Where would you play. A. I would play at the national park.
- Q. On picnics and that sort of thing. A. Yes.
- Q. Have you attempted to play tennis since the accident. 20
- A. I have tried with my right arm but I am impossible.
- Q. You mentioned that you used to play table tennis before the accident; did you play it at a competitive level. A. Yes.
- Q. Where did you play.
- A. I played up the Eastwood Club.
- Q. How often would you play.
- A. Once a week. That is in competition. 30
- Q. And practice as well. A. Practice was twice a week.

- Q. Have you attempted to play table tennis since the accident. A. I have.
- Q. With your right hand. A. Yes.
- Q. With what effect. A. Hopeless.
- Q. And you do not play now. A. No.
- Q. Did you play squash before the accident. A. Yes, I did.
- Q. For how long, for how many years or months.
- 10 A. I took squash up about twelve months prior to the accident and we used to play every week.
- Q. Once a week. A. Yes.
- Q. This was socially with friends, was it. A. Yes.
- Q. Have you attempted to play squash since the accident. A. No.
- Q. Did you play ten pin bowling before the accident.
- A. Yes, I used to play every week.
- Q. Whereabouts was that.
- A. At the Cross Road Bowls.
- 20 Q. Have you attempted to play ten pin bowling since the accident.
- A. I did try but I have lost my balance and I have had no aim for the ball.
- Q. And you had to use your right arm. A. Yes.
- Q. So you have given that away. A. Yes.
- HIS HONOUR
- Q. For ten pin bowling you really have to use both arms, wouldn't you, to carry the ball up and swing it with the other.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Usually with ten pin bowling one arm is to balance yourself while you throw the other arm with the ball. That is if the ball is not too heavy.
- Q. Now, you have already mentioned that you used to like the beach and to go swimming, prior to the accident. Were you a good swimmer. A. Very good.
- Q. Did you swim competitively, or just as a hobby, sort of thing. A. Just socially. 10
- Q. And can you actually swim at all. A. No.
- Q. Now, I think you used to go water skiing, before the accident. A. Yes, we did.
- Q. And how frequently would you go water skiing.
- A. This was about once a month in the summer, and as much as we could, when it was available.
- Q. So you did not have your own boat. A. No.
- Q. And, of course, you have not been able to even try water skiing since the accident. A. No.
- Q. Did you play billiards before the accident. 20
- A. Played billiards quite a lot.
- Q. Once a week, or less than that, or what.
- A. Oh, once a week; every Saturday afternoon.
- Q. Have you attempted to play billiards since the accident. A. I have attempted.
- Q. And can you play. A. Very little.
- Q. How do you manage to play since the accident - what do you do.
- A. Well, what I have done now, I just put my left arm on the table and I put the cue on top of the arm and I just hit the ball, and I've got to put the cue back in my arm to hit the ball, if the ball is coming back again. 30
- Q. To get your arm out of the way. A. Yes.

- Q. If the ball bounces off the cushion. A. Yes. In the Supreme Court of South Australia
- Q. Do you find it frustrating. A. Oh, Yes.
- Q. Do you still play now. A. Very little. No. 3
- Q. How often would you play now. Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
- A. Maybe once every three months. 5th and 6th July 1978 (cont'd)
- Q. Before the accident did you do any gymnastics.
- A. I did gymnastics, yes.
- Q. Where. A. Up at the Cross Road Bowls.
- 10 Q. And was that the same time when you used to go ten pin bowling. A. Yes.
- Q. On a weekly basis. A. Yes.
- Q. Of course you can't do any of that now. A. No.
- Q. What sort of gymnastics did you used to do.
- A. Gymnastics using the spring board, and the horse, vault pole, volley ball, on the trampoline; that would be just about it.
- Q. Did you do any jogging, or any running, before the accident.
- 20 A. Yes; I did a bit of it, yes.
- Q. Regularly, or spasmodically. A. Spasmodically.
- Q. And have you attempted - A. I have attempted, yes.
- Q. And what effect does it have on you - jogging.
- A. I can't do it like I used to; it's just a hobble now. I can't run properly.
- Q. Do you do it now. A. No.
- Q. You mentioned you used to go shooting before the accident. A. Yes.
- Q. Shooting rabbits. A. Yes.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

- Q. And anything else. A. Roo shooting.
- Q. And would you, in conjunction with shooting, go camping and sort of hiking around in the hills. A. Yes.
- Q. How often would you do that before the accident.
- A. Once a month.
- Q. With a group of friends. A. Yes.
- Q. Have you done any shooting since the accident.
- A. Yes we have. 10
- Q. In what circumstances.
- A. We go out camping but, specially night shooting, I just hold the spotlight; I can't hold the rifle.
- Q. You go spotlight shooting with friends, but you hold the light, while they do the shooting. A. Yes.
- Q. Can you shoot at all now with the rifle. A. No.
- Q. Were you a good shot before the accident. A. Yes.
- Q. Now, I think you have married since the accident. A. Yes. 20
- Q. Have you attempted to do any gardening since you have been married. A. I have tried.
- Q. And what type of gardening have you tried to do - just what have you tried. A. Mowing -
- Q. Mowing the lawn. A. Yes.
- Q. How have you managed that. A. It is a bit awkward.
- Q. What about digging.
- A. Oh, I couldn't do digging.
- Q. Pulling out weeds - planting. 30
- A. I have pulled out weeds, but not so much on planting.

- 10 Q. Although you didn't actually do any gardening before the accident, did you have any thoughts on whether you would have done gardening when you were married and had a house.
- A. Indoor plants.
- Q. Prior to the accident, did you do any painting. A. I did.
- Q. I am talking about sort of painting pictures, not houses, at this time.
- A. Yes, I did that as a pastime.
- Q. Did you do art at school. A. Yes.
- Q. Have you attempted to paint anything since the accident, in the way of a picture. A. No.
- Q. That was only an occasional hobby, I think, before the accident. A. Yes.
- Q. Before the accident were you a handyman or not. A. Oh yes.
- Q. Did you fix things -
- 20 A. I could fix practically anything.
- Q. If flex on an iron, or something, broke, would you be able to turn your hand to fixing it.
- A. Prior to the accident?
- Q. Yes. A. Yes.
- Q. And what about mechanical repairs to your motor bike.
- A. Oh yes, I could change my tyres, and that.
- Q. What about grease and oil changes. A. Yes.
- 30 Q. What actual mechanical repairs did you do, anything - A. Oh -
- Q. Not really. A. Not really.
- Q. Are you able to do any of the normal handyman tasks, like fixing flex and things now.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Not really, no.
- Q. Now, when you first got out of hospital, did you have any difficulty with dressing and undressing.
- A. I did; my parents had to do it for me.
- Q. Did you gradually learn to overcome these problems.
- A. Slowly, yes.
- Q. Are there any things that you cannot do, or you have difficulty in doing now, at the present time, in relation to dressing or undressing.
- A. Doing my shoes up; I can't do them up unless I buy shoes without laces. Putting my tie on; I can't do that without buying a tie with -

10

HIS HONOUR

- Q. Clip-on tie. A. Yes, or the elastic band one.

XN

- Q. What about tucking shirts in, or things like that.
- A. I can get on my right side, tucking them in, but my wife does on the opposite.
- Q. What about buttoning up things.
- A. I can't button my right sleeves up, or anything like that.
- Q. What do you do about that. A. The Wife.
- Q. How about getting things off, like a jumper, that you have to pull over your head.
- A. Well, after the accident I bought jumpers that didn't have zippers in the front and I found that trying to get them off I would stretch them and ruin them. Now I just get jumpers that have got zips in the front.
- Q. Do you have any difficulty folding up clothes, and putting them away. A. I don't fold them up.

20

30

Q. You have told us that you were left-handed before the accident. Can you write with your right hand or -

A. I can't write any more; I can only print with a scrawl.

Q. You don't write cursive writings. A. No.

Q. You print your letters. A. Yes.

Q. Are you slower than you were with your left hand. A. Very slow.

10 Q. Do you have to write in your job. A. Yes.

Q. What do you have to write.

A. I have to write down orders, write up invoices, stock-take, mostly this is done now by a typewriter, one hand, I don't use a pen, I use a typewriter.

Q. When you left hospital did you have difficulties with washing and drying yourself.

20 A. Yes; because I couldn't get in a bath, because I could never get out. When I had a shower, I never let the shower get on the left side of my body because the water interferes with my arm.

Q. When you say interferes with it - it makes it hurt. A. Yes.

Q. What about scrubbing or cleaning your nails.

A. I just stick my hand in bleach solution.

Q. How about drying yourself after a shower; do you have difficulty with that.

30 A. I still do; but I don't use a towel any more, I put a bath robe on and let it soak the water up.

Q. Can you cut the nails, particularly those of your right hand.

A. I get the wife to do those.

Q. And your feet.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. I can do them myself.
- Q. Have any difficulty shampooing your hair.
- A. Yes - so I let the wife do that.
- Q. Shaving - before the accident did you use an electric razor or a blade razor or what.
- A. I used to use a safety razor.
- Q. What do you use now.
- A. Electric razor, but it interferes with my skin.
- Q. You had to learn to do that with your right hand. A. Yes.
- Q. The same, I suppose, with cleaning your teeth. A. Yes.
- Q. Did you smoke before the accident. A. Yes.
- Q. Tailor-made, or roll-your-own. A. Rolled my own.
- Q. Can you roll your own with one hand. A. No.
- Q. How much tobacco did you buy before the accident.
- A. A tin of tobacco cost me \$1.50 and would last me a fortnight.
- Q. How long does a packet of 20 cigarettes last you now. A. About a day.
- Q. It costs you about 80 cents a day. A. Yes.
- Q. Have any difficulties with going shopping.
- A. I do, in carrying the parcels, or wheeling the trolleys around, just generally being afraid if it is a crowded shop that people will knock my arm.

ADJOURNED 1. P.M.

RESUMING 2.30 p.m.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Mr. Rendell, I want to ask you some questions about your working experience before the accident in places that you worked. Now, I think you were brought up as a result of a broken home in a Salvation Army Boys Home.

A. That is right.

Q. You went to High School or to a Technical High School. A. Yes.

10

Q. How far did you go. A. Second year high.

HIS HONOUR

Q. This was Technical. A. Yes.

XN

Q. What was the first job that you had.

A. Farming.

Q. Was that at Bexley. A. Yes.

Q. It was a farm labouring job. A. Yes.

Q. How long did you stay there. A. About eight months.

20

Q. I think you came to Adelaide then and obtained a job as a spray painter. A. That is right.

Q. Who did you work for. A. Ackland Motors.

Q. You wanted to get an apprenticeship, I think.

A. No, I wanted to join the Navy.

Q. Well, after leaving Ackland Motors did you get another job as a spray painter.

A. Yes, at Classic Weld.

Q. Later did you obtain a job as a storeman.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Yes, at Associated Co-Op Wholesalers.
- Q. I think you remained there for a couple of years. A. Yes.
- Q. Then I think you went to Sydney, or to N.S.W. to obtain work. A. Yes.
- Q. And obtained a job in New Castle. A. Yes.
- Q. Who did you work for. A. I worked for Henry Lanes.
- Q. What sort of work did you do there.
- A. Well, I was an ordinary labourer, on a machine. 10
- Q. What sort of products did Henry Lane's make.
- A. Rabbit traps, locks, things like that.
- Q. I think you returned to Adelaide and worked at Wunderlich's.
- A. Wunderlich Tiles, yes.
- Q. Again as a labourer. A. Yes.
- Q. You obtained the job with your present employer.
- A. I was employed there as a labourer and then a couple of months later as a factory manager. 20
- Q. At Spex. A. Yes.
- Q. All your jobs have been basically unskilled jobs.
- A. That is right.
- Q. Now, I want you to tell us what was involved in your work at Spex before the accident when you were promoted. Was your work mostly on the production line side or the selling side.
- A. Mostly on the production side and when the production side was quiet it was on the selling side. 30

- Q. Now, at the time that you were working for Spex before the accident, would you tell His Honour how many employees there were, both full-time and part-time, in South Australia.
- A. There was two full-time employees, myself and another lad and eight casual women.
- Q. What, called them in on a regular basis, or when needed.
- 10 A. On an afternoon from 12.30 until 4.30 - over-time if necessary.
- Q. Perhaps you could tell us what a typical weeks work involved for you - what you actually had to do prior to the accident.
- A. Of a morning there is detergent to be made ready for the afternoon.
- Q. Where did the chemical come from.
- A. Allbrite Mawson in Adelaide in 44 gallon drums in a truck - nine or ten of them which have to be loaded off a truck on a fork lift, not a mobile forklift, a hand-pushed one.
- 20 Q. Before the accident did you do that aspect of the work. A. Yes.
- Q. Now, you have to put these drums onto a forklift and pull them along. A. Yes.
- Q. One hand or two handed job.
- A. Two handed job.
- Q. Then what - stack them?
- 30 A. These have to be taken outside and stood up the right way.
- Q. That is heavy work. A. Yes.
- Q. Now then, having got the chemicals into the factory, what was involved in actually mixing them to make a batch of detergent in bulk.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. There are so many different things - one batch of chemical that would have to be weighed out into a drum and then lifted up straight into the mixer itself.
- Q. Now, the mixer, what is the mixer - how big is it.
- A. It is a big stainless steel tank holding about 500 gallons of detergent.
- Q. What would its diameter be.
- A. 5 feet across and six feet off the ground. 10
- Q. You would lift the chemicals up to tip them in. A. Yes.
- Q. Then there would be some means of mixing them.
- A. There is an electronic propeller that is in the bottom that mixes it.
- Q. Now, when the product has been mixed up and is ready, what, you then bottle it.
- A. It is pumped into an overhead tank ready for the afternoon when the casual women come in at 12.30 and that is when it comes in from the overhead tank into a small tank and the machine fills the bottles. It is a manual machine. 20
- Q. What, you actually turn it on and off with a bottle underneath.
- A. 12 bottles go into the machine and a handle to be pushed down so the bottles have to be filled and then the handle released slowly to take the pressure off.
- Q. A difficult job.
- A. If somebody doesn't know what you are doing. 30
- Q. Is it a heavy job. A. Yes.
- Q. Heavy lever. A. Yes.
- Q. When the bottles are filled, what happens next.
- A. Well, they are labelled, from the line they are

pushed onto a conveyer belt and women are capping the bottles there, and then transferred to a -

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

- 10 Q. Who would do the work of filling the bottles prior to the accident. A. I would.
- Q. You would push them onto a conveyer belt to go to the women. A. Yes.
- Q. Who would in turn cap them and label them.
- A. Yes. Then, after being labelled put them into boxes and go down a conveyer line ready to be put into pellets ready for shipment out.
- Q. Who put them into boxes and on the conveyor line and into pellets.
- A. I did that at that time or the other lad did.
- Q. You both did it, depending on how busy it was. A. Yes.
- Q. When the truck came to take the orders out to the various supermarkets and things who would load the truck.
- 20 A. I would or the young lad, it just depends on what he was doing or what I was doing.
- Q. I think there was more than one product made.
- A. Yes Spex detergent.
- Q. Was that your biggest line. A. Yes.
- Q. What was the other major thing.
- A. Spex Laundry Bleach.
- Q. Was that made in much the same way.
- 30 A. That is different, this bleach you have three tanks two for bleach and one for sodium hypo. The sodium hypo has to be siphoned into a tank at a special level.
- Q. Was that heavy work.
- A. Yes because there is a lot of climbing to do.
- Q. Having mixed it is it bottled in the same

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the

Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

fashion as the detergent.

- A. Yes apart from mixing, it is not mixed the same, it is mixed with a plunger standing on the top of the tank kneeling on the roof of the ceiling there is a big plunger you have to do this manually.
- Q. Did you used to do this before the accident.
A. Yes.
- Q. Apart from your work in the factory side producing various products did you do any office work. 10
- A. Yes all of the office work was my responsibility, that of sending orders out, taking telephone calls, stocktaking, checking the right stock to be brought in and sent out.
- Q. What about banking.
- A. Yes and doing the wages and ordering all of the goods, chemicals, bottles, etc.
- Q. What about selling the product did you just wait for people to come and order it. 20
- A. A lot of orders came in by 'phone, a lot of customers not happy it was my job to go out there and go to the customers who had not ordered for a while or try and get new business.
- Q. When you had your accident you were off work for a lengthy period of time. A. Yes.
- Q. About 21 weeks. A. Yes.
- Q. When you returned to work were you physically in as good a condition as you are now.
- A. No I was worse. 30
- Q. You didn't have an aid to walk you could walk all right.
- A. I still had my crutch when I went back to work with the full length plaster.

HIS HONOUR

Q. Some reference in the report about you going back to work after your clearance by the doctor is that right.

In the Supreme Court of South Australia

A. When I first came out of hospital.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

Q. Yes. A. Yes.

XN

Q. Within a couple of days of being cleared by the doctor you were back at work.

A. Something like that yes.

10 Q. When you went back to work that was before you had the nail taken out of your femur was it. A. Yes.

Q. When you went back to work what staff was there.

A. When I went back to work there was a full time man there, two full time women and casual how we wanted them.

20 Q. In the place of the eight casual women you talked about there were then two full time women plus casual as you needed them. A. Yes.

Q. And in place of yourself and the lad there was yourself and a man. A. Yes.

Q. Did that sort of staff arrangement go on for some time. A. It did.

Q. Did you gradually get less staff. A. Yes.

Q. What was the reason for that.

A. The reason for this was because sales in the company dropped considerably.

30 Q. It was just in the industry was it. A. This is right.

Q. Over the last twelve months what would be the staff situation.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

A. In the last twelve months there was a full time lad there until May last year and since then only myself and a full time woman and casuals.

Q. Casuals as you need them. A. Yes.

Q. I think your employers have to some extent tailored the job to help you, they have put in some extra equipment. A. Yes.

Q. What is it.

A. For the heavy lifting for the making of detergent so they made a special pump up to the scales, all that had to be done was bucket the chemicals into this pump and sent straight into the detergent, pump it straight in. 10

Q. I think that the truck drivers assist you.

A. All the truck drivers unload their own gear and load their own gear.

Q. That is only as a result of your injury and since the accident. A. This is right.

Q. Now since the accident have you still done all the office work you did before. A. Yes. 20

Q. Does it take you longer. A. Yes.

Q. Is that because of the writing. A. Yes.

Q. And have you still had to do as much of the production side as you can within the limits of your physical capabilities. A. Yes.

Q. Now getting a 44 gallon drum on to a forklift truck are you able to do that now. A. No

Q. Lifting buckets of chemicals into the tank could you do that. A. No. 30

Q. You can manage to get them in with the pump now. A. Yes.

Q. What about the operation of lowering the twelve jets into the bottles to fill them. A. No.

Q. What about labelling or capping bottles.

A. I am unable to do that it is a two handed job.

Q. That is up to the stage to steady them so that you can screw them up. A. Yes.

Q. What about stacking cartons of detergent.

A. I cannot do that at all.

Q. You have told us that the business has gradually run down and gradually there has been less and less staff can you give us some approximate figures of what the company used to put out in years gone by going up to the present time in its two major products, first of all taking the detergent.

A. 1974 when I started with the company, I looked at the figures for 1973 and there was an average of about 30,000 cartons Spex sold that year, roughly in 1974 there was 23,000 to 24,000 cartons, 1975.

Q. That was the year of your accident.

A. This was hard hit I think this may have dropped down to 16,000 cartons, this is due to one reason, the chemicals we used in the detergent were reduced, this was the reason.

Q. A different formula was used to make it.

A. The reason they dropped this was because the chemicals were cut, less used in the making of a batch of detergent.

Q. So anyway, the amount that was sold was then down to about 16,000 cartons. A. Yes.

Q. What about in 1976.

A. 1976 could be an average of about 14,000.

Q. And last year, 1977.

A. That was an average of possibly 12,000.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

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In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the

Honourable Mr. Justice Hogarth

5th and 6th

July 1978

(cont'd)

- Q. There has been a little over six months of this year gone by. Are the sales generally fairly even throughout the year or do you sell more at different times.
- A. It all depends if the company want to promote the product.
- Q. Taking the first six months approximately how many cartons of Spex would have been sold this year for the six months period. A. 6,000.
- Q. So you would expect it to be around about the level that it was last year. A. Yes.
- Q. The other major product you mentioned was a bleach.
- A. Spex Bleach, yes.
- Q. Can you tell us the approximate number of cartons that have been sold over the years up to the present time.
- A. The survey I did in 1973 on the bleach could be round about 10,000 to 12,000 cartons sold in that year. We would be supplying every store which was Coles, Woolworths and Associated Co-op plus we were supplying Victoria Woolworths and their client companies bleach.
- Q. In 1974 approximately how many cartons of bleach were sold; it was the first year -
- A. An average of about 7,000 cartons.
- Q. And in 1975. A. Possibly an average of about 5,000.
- Q. When you say 'possibly' are you guessing or do you know.
- A. I know by what the work was done there.
- Q. It was approximately 5,000. A. Yes.
- Q. In 1976.
- A. 1976 was an average of about 3,000 cartons, a little bit over.

10

20

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Q. What about last year, 1977.

A. Last year was hard hit. 1975 was hard hit because there was only one store taking it and last year was very hard hit because there is only one store taking it now and that would have been an average of, we would have been lucky, 2,500 cartons.

Q. Is there any other major line that has been developed by the company that they sell. A. Demineralized water.

Q. For how long have they been selling that.

A. They had been selling it there going back since 1972.

Q. Have the sales of that been dropping off or not.

A. No, the sales have increased this year up to February this year.

HIS HONOUR

Q. What is that used for

A. That is a purified water for steam irons, car batteries.

XN

Q. Can you go back as 1973 or not with demineralized water. A. No, I cannot.

Q. Can you remember from the time you started in 1975.

A. Yes, 1974 there had been a possibility of -

Q. Can you tell us it if was just a smallish line.

A. It was very small. The amount of cartons that were sent out from 1974 right up till last year I would not know off hand.

Q. What about last year.

A. Last year was very high.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

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In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978
(cont'd)

Q. How many, approximately. Would there have been more cartons of demineralized water than detergent.

A. Yes, there would have been. At least 60 per cent more.

Q. So perhaps up to 20,000 cartons. A. Yes.

Q. In terms of money does that mean a lot to the company or is it a cheap line. A. No, it doesn't.

Q. Do you expect this trend for demineralized water to continue. 10

A. No, it will not continue because another company by the name of Diggers Packing Company have come out with a five litre of distilled water. It is similar to demineralized for the price of 60 cents. Spex demineralized water is a four litre at 65, so 30 per cent of the stores in Adelaide have taken Diggers Distilled Water.

Q. So the trend this year is to go down in sales.

A. I would say it will. 20

Q. With the amount of work that has been done over the last, say, twelve months when you have only had yourself and another woman as a casual if you had not had the accident could an active man handle that on his own, the whole operation. A. He could.

Q. Do you feel that your position in the company is secure at the moment. A. No, I do not.

OBJECTION MR. MARTIN objects.

HIS HONOUR: The answer was given before your objection is made and it is on the notes now so I will note your objection. 30

XN

Q. Before your accident what was your ambition as far as work goes.

A. My ambitions with the company were to see it grow. Furthermore, it is to get enough experience so I could branch out.

In the Supreme Court of South Australia

Q. You mean apply for jobs with other companies. A. Yes.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th
July 1978
(cont'd)

HIS HONOUR: Before the accident?

MR. ANDERSON: Yes.

XN

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Q. Had you made any attempts to branch out before the accident or not.

A. No, I never did this because I never had the experience.

HIS HONOUR

Q. When you say branching out, do you mean branch out into other lines while still employed by the company.

A. No, what I meant by this was as soon as I had the experience was to find another job, a bigger job with better prospects.

20

XN

Q. Since the accident have you applied for any other jobs.

A. I have applied for other jobs.

Q. Could you tell us the first one that you applied for.

A. I cannot recall the first one.

Q. Perhaps if not in the order would you tell us the names of the companies.

30

A. I did apply to one place by the name of St. Clements Fruit Juices as a production foreman there.

Q. Did you get that job. A. No, I never got the job.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

Q. Did you apply anywhere else.

A. I did apply for other jobs, Paul Young and Associates, as a production manager.

HIS HONOUR

Q. Well, that is a sort of employment agency, I think, is it. A. Yes.

XN

Q. And for what company were they interviewing you.

A. That I don't know. 10

Q. And I take it you did not get that job either. A. No.

Q. Did you go to some other employment agency for another managerial type of position - as a warehouse manager.

A. Yes, I did apply as a warehouse manager; I am just trying to think -

Q. Was that through John Clemens Pty. Ltd.

A. Yes, that's right, yes.

Q. Did you get that job. A. No. 20

Q. And did you apply to a group of chartered accountants named Ashman, Illman and Combe.

A. As a warehouse manager.

Q. Did you get that job. A. No.

HIS HONOUR

Q. How far did your applications go. Were you interviewed, or was it a written application and nothing further.

A. I was interviewed twice out of that lot, your Honour, and the other two were kind letters. 30

XN

Q. So at least in two of the jobs your qualifications interested them enough to look at you.

OBJECTION MR. MARTIN objects.

OBJECTION UPHELD

10 Q. So after applying for those jobs, and not getting any of them, did you apply for any others or not, or did you just stay back in the job you have got.

A. I just stayed where I was.

Q. I suppose you cannot say why it was that you did not get those jobs. A. Not really.

Q. Now, just a couple of final matters, Mr. Rendell. You told us that you have married since the accident.

A. That's right.

Q. And have you had any marital problems.

A. Yes I have.

20 Q. As a result of physical disabilities; without going to a great deal of detail, in what respect.

A. Is this as regards our sexual life?

Q. Have you got any difficulties there. A. I have.

Q. How do your injuries affect it. If you hurt yourself with your arm, your arm gets knocked while having intercourse, or is it some -

A. It does; this will tend to put me off.

30 HIS HONOUR

Q. This is the problem, is it.

A. This is the problem. I don't know where to put my arm.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

In the Supreme XN
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Have you had to get separate beds to sleep in.

A. This will eventuate, yes.

Q. You have not yet. A. Not yet.

Q. Does it cause any problem in your marriage
with your wife.

A. It does cause problems.

Q. Tension. A. I beg your pardon?

Q. Sort of tension. A. There is tension there,
yes. 10

Q. Well, now, the last matter I want to deal with,
Mr. Rendell, is do you feel that you have
changed, in yourself, since the accident.

A. Yes, I have changed.

Q. In what respects. How are you different to
what you were.

A. Well, I am different because I am hiding
something that a lot of people know about.
My attitude towards life is different.

Q. Are you less out-going than you were. 20

A. I am less out-going, yes.

Q. Do you get depressed, down in the dumps.

A. Yes, I do.

MR. ANDERSON CALLS

PAUL GRAHAM CARNEY (Interposed)
32 Avenel Gardens Road,
Medindie.
Neuro-Surgeon. SWORN

EXAMINATION BY MR. ANDERSON

Q. Mr. Carney, I wonder if you could outline for
the court your qualifications and your
experience, please. 30

A. I have the M.B.B.S. from the University of Adelaide 1964, and a Fellowship of the Royal Australasian College of Surgeons in Neuro-surgery 1971, and I have been practising in neuro-surgery as a consultant for the last six years.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978
(cont'd)

Q. And you have got a position in the Royal Adelaide Hospital, I think, to work there.
A. Yes.

10 Q. You know the plaintiff, Mr. Rendell. A. Yes, I do.

Q. Have you some notes of some treatment and examinations. A. Yes, I have.

BY CONSENT PERMISSION TO REFER TO NOTES

Q. Now Mr. Carney, you have supplied us with three medical reports on different occasions.
A. I have.

Q. Would you just briefly have a look through them. A. Yes.

20 Q. And the contents of those reports and the opinions you have expressed, I think you still adhere to those.

A. Yes; in general terms.

HIS HONOUR

Q. These reports set out the history that you were given, the results of your examination, and your opinions. A. Yes.

Q. Those three reports -

30 EXHIBIT P4 Three reports prepared by Mr. Carney tendered by MR. ANDERSON. Admitted.

Q. I think your treatment of the plaintiff's injuries was confined to the brachial plexus injury of the left arm. A. Yes.

Q. For all practical purposes, has he virtually lost the effective use of his left arm.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
Before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

A. I think so, for practical purposes, meaning work purposes, yes.

Q. Was there some suggestion at one time that he might even have had it amputated. A. Yes.

Q. Is it likely to deteriorate and get worse.

A. No, I don't think so.

HIS HONOUR

Q. He complains of pain in the arm if it is touched or knocked. A. Yes.

Q. Do you accept that as the sort of disability from which he might suffer. 10

A. Yes, that is very common.

Q. Is there any way of treating that.

A. No - for example, amputating the arm would make it worse.

Q. Except it would not be knocked as much.

A. If the stump were knocked he would suffer worse pain than if the intact arm were knocked. I would not recommend amputation because of pain. There are techniques for dealing with these pain problems but at the moment I think he is handling it himself in the best possible manner. 20

XN

Q. By putting up with it and living with it, you mean. A. Yes.

Q. He claims that if someone bumps it or grabs it he gets a shooting or burning pain in his arm; would that be expected. A. Yes.

Q. Will that go on for the rest of his life. 30

A. I think it quite possibly will, yes.

Q. At the present stage of development of medical science, these suggestions of bionic devices that they are talking about - are they of any practical use to him. A. No.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

HIS HONOUR: That is covered in the report.

CROSS EXAMINATION BY MR. MARTIN

10 Q. Mr. Rendell has complained today of a bulging in the middle of his right forearm. Have you examined his right arm at all in the course of your treatment.

A. No - well, I would have on occasions, but I have not examined it recently, not specifically for that symptom.

HIS HONOUR: Assuming the witness was asked the question and answers which follow - page 48 -

20 'Q. You have mentioned that you have a bulging of the right forearm. This is only since the accident. A. Yes.

Q. Does it cause you any discomfort. A. It has, yes.

Q. In what circumstances.

A. Only if I rest my arm on a table or try to do too much work.

Q. What happens then. A. The swelling becomes bigger.

Q. Is there any discomfort in it. A. Yes.

30 Q. In what circumstances do you get discomfort.

A. It gets sore.

Q. What do you have to do before it gets sore.

A. Rest my arm on a table or a bench or pick up a bucket or something like that.'

previously he had said that this lump was on the outer aspect of the arm between wrist and elbow. Assume that.

XXN

40 Q. Assuming that that passage of evidence has taken place - have you seen any swelling in the arm at all.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. This is the right arm?
Q. The right forearm.
A. No, I haven't, but I haven't examined with that symptom presented to me.
Q. Mr. Rendell has also complained of a dull ache in his arm generally all the time. It is worse in winter than in summer. This is the left arm. Is there a basis for that.
A. I think so, yes.

NO FURTHER QUESTIONS

10

WITNESS RELEASED

PLAINTIFF RECALLED

CROSS EXAMINATION BY MR. MARTIN (PLAINTIFF RESUMING)

- Q. Towards the end of your evidence you talked about the work you performed before the accident and the work you performed after the accident and you described the work you did on an average day before the accident. A. Yes.
Q. In the morning it was necessary to unload the chemical drums. A. Yes.
Q. Was that done every morning.
A. No, this was done once or twice a week.
Q. Was it the situation that everytime it was unloaded, you unloaded it, or did sometimes the other lad unload it - this is before the accident.
A. No, I unloaded it. He would throw the drums onto the forklift.
Q. And your unloading, what did that involve, dropping them off the truck.
A. Dropping them off the truck then rolling them outside, then they would have to be stood up.
Q. And he would stand them up or you would.

20

30

- A. What, outside?
- Q. Yes. A. I would stand them up.
- Q. What is the situation now by you unloading the trucks.
- A. The situation is now that the drums would be rolled off onto the fork lift.
- Q. Who rolls them off. A. He does.
- Q. Is that the same fork lift used before the accident. A. Yes.
- 10 Q. Why before the accident weren't the drums rolled onto the fork lift.
- A. They were rolled onto the fork lift before the accident.
- Q. To get this clear, before the accident your task involved tipping the drum onto its side on the truck.
- A. No, the driver himself laid the drums down on the truck and rolled them onto the fork lift.
- 20 Q. To be clear on this I am talking now about before the accident. A. Yes.
- Q. Not now. What happened before the accident. A. Yes.
- Q. Before the accident the driver used to lay the drums down on the truck. A. Yes.
- Q. Who would roll them on. A. He would roll them on.
- Q. And the fork lift was then used to lower the drums. A. Yes.
- 30 Q. Was it lowered to the ground outside the truck, alongside the truck. A. Just about, yes.
- Q. Then it was put into a position.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. It was taken - the fork lift was then taken outside to the back entrance and the drums were put down on the ground and stood up again.
- Q. The only physical work you had to do was in moving the fork lift and in straightening up the drums when they were brought to rest outside. A. Yes.
- Q. The fork lift you said was not a mechanical one, one that had to be pulled. A. Yes. 10
- Q. On wheels. A. Yes.
- Q. Was it power assisted in any way to move.
- A. Only up and down.
- Q. Before the accident when it was loaded, was there only one drum put on at a time. A. Yes.
- Q. Before the accident who moved the fork lift around to the position where the drum was lowered. A. Before the accident?
- Q. Yes. A. I did.
- Q. Are you able to move it now. A. No. 20
- Q. Have you tried to move it since the accident. A. Not really.
- Q. Before the accident when you did move the fork lift did you use both hands or only one. A. Both hands.

HIS HONOUR

- Q. How did you use it, by pushing or pulling.
- A. Pulling.
- Q. Had a sort of harness did it.
- A. There was a handle across the fork lift and you just grab it with both hands. 30

XXN

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- Q. You have got the same fork lift now you had then. A. Yes.
- Q. Is that a heavy fork lift to move itself.
- A. It is very heavy, yes.
- Q. Without any load. A. Yes.
- Q. Could you move it now without a load.
- A. Yes, but not very good.
- 10 Q. Before the accident your practice then was to unload the truck in the manner you described which means lowering the fork lift, move the fork lift to a position, lowering the fork lift again and getting the drum off and standing it upright. A. Yes.
- Q. Did you always do those 3 operations, that is the lowering from the truck, the moving of the fork lift and the placing and turning upright of the drum. A. Yes.
- 20 Q. What did the other lad do while you were doing that.
- A. He could either have been with the girls either manufacturing the mineralized water or generally just doing something else at the time, because it was my duty to make sure the right drums were there with the right brands on them.
- Q. I got the impression these deliveries were made in the morning, they were made any time during the day.
- 30 A. Not really, the drivers with their containers can come any time because there is drivers in and out all the time at the company.
- Q. So 2 or 3 days a week before the accident you were involved at some stage of the day with the unloading you described.
- A. With drums, yes.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- Q. You also said you were involved in making up detergent. A. Yes.
- Q. You are currently involved in making it, there is no change there.
- A. From then to now?
- Q. Yes, different mechanical way of doing it but you are still involved in making it up. A. Yes.
- Q. How often did you make up a batch of detergent, now and before the accident.
- A. Before the accident it used to be could make up from 9 batches a week, that will cover like on the Monday 2 would have to be made to last to the afternoon. The following day one would be made because I would still have half of -
- Q. Wednesday too. A. Yes.
- Q. Now you are making less than that, obviously because your sales are down.
- A. This is right.
- Q. Obviously it would follow if your sales are down your delivery requirements are also down. A. This is right.
- Q. Now the unloading is done by the person who brings the truck, the truck driver. A. Yes.
- Q. Who not only rolls it onto the fork lift but put it into position. A. Yes.
- Q. Before the accident one of your functions was to work the lever to fill the bottles. A. Yes.
- Q. You are not able to do that now. A. No.
- Q. Before the accident were you able to do that with one hand. A. Yes.
- Q. Obviously because you were left-handed then you used your left hand. A. Yes.
- Q. Have you tried using your right hand.

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A. I have tried with this but the simple reason I can not because I have to lower myself right down to grab the handle. Now there is a spring on the back of the handle which could be around the 30 or 40 pound pressure on it. With me bending down I can not do it because my arm just dangles outwards.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

10

Q. Who does the filling now. A. One of the girls.

Q. Before the accident you did office work, you answered telephones. A. Yes.

Q. You did the stock taking and wages and you went out and saw customers. A. Yes.

Q. That is all done during the normal working day.

A. Not every day. It would be once a week. Any time that I could get away without being there to supervise would be okay, and I had a girl there who had been there for many years that knew what to do.

20

Q. You are still doing these activities now since the accident. A. To a point, yes.

Q. Bearing in mind that the operations wound down you are still doing these activities but not as many of them, is that correct. A. Yes.

Q. That is because the company has wound down but not because of your accident. A. This is right.

Q. What hours did you work before the accident.

30

A. This went from 7.00 in the morning 'till possibly 6.00 at night.

Q. What hours is the factory operating now.

A. The hours now are from 8.00 'till 5.00.

Q. And you are working for the whole of those hours.

A. We have breaks.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Apart from normal breaks anyone else is taking, you are fully occupied from 8.00 'til 5.00 of each day.

A. When we have something to occupy us with, yes.

HIS HONOUR

Q. I think this is the point of Mr. Martin's question, do you have something to occupy yourself, or are there times when you have not got anything to do.

NO ANSWER

10

Q. I think the point of Mr. Martin's question was whether you have always got something to occupy yourself with or whether there are times when you have got nothing to do. Did you hear me.

NO ANSWER

KXN

Q. You said that you are fully occupied when there is something to do. A. Yes.

Q. Periods when there is nothing to do or not very much to do is that because there are not enough orders going out. A. Yes.

20

Q. Because everybody is idle. A. Yes.

Q. But when everybody is working you are working as well. A. Yes.

Q. What is your average day now, how do you fill in your day at work now.

NO ANSWER

Q. You still do all the office work. A. Yes.

Q. Still do the wages. A. Yes.

30

Q. Still answer the telephone. A. Yes.

Q. Still go out and visit people. A. No.

- Q. You don't now. A. Not so much now.
- Q. Because there is not a need to do it.
- A. There is no need to do it for one, if there was I don't think I would have had any.
- Q. You are still mixing the detergent. A. Yes.
- Q. You are still mixing the bleach. A. The girl does that now.
- Q. She loads, fills the bottles. A. Yes.
- Q. And caps and labels them.
- 10 A. Yes, with the casual woman that comes in.
- Q. But, you said in answer to my learned friend that you thought you would be able to cope with the whole operation now on your own.
- A. I could cope on my own?
- Q. Could you cope with the production involved in filling bottles and also answering the telephone.

OBJECTION Mr. Anderson objects on ground that that question is ambiguous.

20 OBJECTION UPHELD

- Q. I think it is your opinion that an active, fit man could by himself handle the whole operation presently being conducted by Spex. A. Yes.
- Q. Presumably that active fit man would be involved in mixing detergent. A. Yes.
- Q. Filling bottles, labelling and capping and all the other operations that you described. A. Yes.
- 30 Q. Would that person also have the time to cope with the office work, the invoicing. A. Yes, he would.
- Q. That is because he can arrange his day.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. He could arrange his day, yes.
- Q. What about the telephone, where he couldn't arrange his time.
- A. Well, if on one job and the telephone rang he would drop that job and go to the telephone - exactly what I did prior to the accident.
- Q. Going to the bank - same thing. A. Yes.
- Q. How often do you go to the bank now.
- A. Once a week.
- Q. You have described how the detergent and bleach is manufactured - what is involved with the demineralised water. 10
- A. You just press a button and the machine generates itself and the water is pumped automatically into a 500 overhead tank, there is a hose with a tap and the cartons are put on the ground and filled from the tap.
- Q. That is an operation that you could perform.
- A. Yes, I can do it one handed.
- Q. Who usually does that operation, you or the girl. 20
- A. She will do it of a morning.
- Q. What would you be doing while she was doing that.
- A. Probably sitting in the office.
- Q. Doing your office work.
- A. Something like that.
- Q. Your answer was ambiguous - is the situation that you are sitting in the office doing nothing or sitting in the office doing work while she is doing that. 30
- A. Well, I would be sitting in the office in the morning doing my bookwork or whatever work is available. If the work is not available in the office I will go out and help her, fill the bottles while she puts them on the pellet.

Q. You have married since the accident - when did you get married.

A. 1976, October.

Q. Did you meet your wife since the accident.

A. I knew her, but just to say hello to.

HIS HONOUR

Q. You knew her beforehand. You knew her before the accident - is that what you mean.

10 A. Only through the girl I was going with - they were girlfriends and I was going with the other girl.

XXN

Q. You started courting your wife after the accident. A. Yes.

Q. You met her through a friend you were also going out with at that stage.

20 A. No, her brother is a male sister at the Adelaide Hospital who was looking after me at that time and I didn't know who he was until I had a photo of her, when everybody was at a party and there was a Father Christmas there and she happened to be in the photo and he said it was his sister.

Q. I am not certain I understand your answer. You knew your wife before the accident to say hello to. A. Yes.

Q. Was she one of a group you associated with or an old school friend or what.

30 A. Not a friend or anything like that.

Q. How did you come to know her prior to the accident.

A. Through her girlfriend.

Q. How did you know the girlfriend.

In the Supreme Court of South Australia

No. 3

Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978 (cont'd)

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Picked her up at a dance one night.
- Q. Now, you are a very outgoing, or at least before the accident, you were a very outgoing and active person. Does that description fit your wife or is she more passive.
- A. No, very well outgoing, always has been.
- Q. Do you know whether she likes going to discotheques. A. She likes it.
- Q. Does she play sport, does she play sport now. A. No.
- Q. She isn't interested in sport.
- A. I don't think she ever has been.
- Q. Is she interested in camping.
- A. She likes it yes.
- Q. You described a very active life that you had before the accident. A. Yes.
- Q. You were in a number of things, at the time, and probably it is fair to suggest that from the list you gave you were doing something almost every night and every weekend..
- A. Yes.
- Q. Was that the situation up to the accident. Did you get less time to do the things because of your work.
- A. I still found time even though I worked late at night. I still found time to go out because I never had any strings.
- Q. The situation is that if you hadn't had the accident and you were now married you wouldn't anticipate the situation to be different. You wouldn't be going out every night and every weekend, would you. A. Oh yes.
- Q. You said that you played billiards. Where did you use to play billiards. A. At the local pub.

10

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Q. Do you go to the local pub now. A. No.

In the Supreme
Court of South
Australia

Q. What exercise are you now getting. A. In myself.

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Yes, what physical exercise.

A. Just walking from here to there and everywhere.

Q. You are keeping fairly physically active.

A. Well, I am trying to.

10 Q. There is no trap to that - I mean, you haven't

put on any weight since the accident.

A. No, I haven't. I would be lucky if I put on two pounds.

Q. Do you enjoy walking.

A. Yes, not especially in Adelaide but especially in the hills.

Q. Is that a pass-time that you undertake now.

A. Beg your pardon?

Q. Is that a pass-time that you have undertaken since the accident, going walking in the hills.

20 A. Oh yes.

Q. With your wife. A. Not really.

Q. She isn't interested in that.

A. Not really. She just sits in the car and goes to sleep.

Q. Now, you have described a history of jobs that you were doing before the accident, some of which you think you kept for two years - storeman at Associated Co-op Wholesalers. Did you keep any of the other jobs for longer than two years.

30 A. The job I had in Sydney I kept that for quite a while.

Q. Do you remember how long.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Maybe two, three years.
- Q. You became a manager before the accident, and you enjoyed that work, the managerial type of work.
- A. I loved it yes.
- Q. I suggest you took to it like a duck to water, you enjoyed it and you have a flair for it.
A. Yes.
- Q. Do you see yourself in that type of job - that is the type of job you will always be looking for. A. Yes. 10
- Q. Those were types of jobs you would apply for.
A. Yes.
- Q. You have described various pain in your arm and pain when knocked, particularly in winter over your body is that something you notice all the time or as niggly annoyances.
- A. Notice all the time.
- Q. Are you taking drugs for it.
- A. Not now I have cut myself out of it. 20
- Q. What were you taking.
- A. Fortral and another name Pnt something, I cannot pronounce it.
- Q. Were those drugs all prescribed. A. yes.
- Q. Was it your decision not to take any more of those drugs. A. Yes.
- Q. Were they helping with the pain.
- A. Yes but reason I kicked it is because I was afraid it may lead to something else.
- Q. Did you take any analgesics, Bex, aspirin. 30
- A. I took an occasional Panadol.
- Q. Does that help with the pain.

A. Not really because the pain is continuous.

In the Supreme
Court of South
Australia

Q. When you were describing your scars and described various colours it does not mean much unless you tell us what you normally describe your skin colour as, what colour is your flesh. A. It is white.

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. When you say pink it is a different colour than your skin.

A. It is a different colour yes.

10

Q. You said you were embarrassed by your arm particularly and your other scars is that an embarrassment that is getting less as time goes on.

A. Not it is getting worse, simple reason is because a lot of times I know if I have to go in front of public I have to be in the background of the public.

HIS HONOUR

20

Q. You have told us how you occupied your leisure time before the accident with a lot of sport. A. Yes.

Q. How do you occupy your leisure time now.

A. Well we never go out during the week.

Q. What do you do.

A. Sit home and watch T.V. of a weekend I watch T.V. all day Saturday and Saturday night we go out to dinner and just watch a show or something like that. That is about all we do and that is about all we have done or go for an ordinary Sunday drive.

30

Q. What about driving your car how do you get on with that.

A. I have a car with power steering and automatic, with a spinner on the steering wheel, it is easy to control.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- Q. A spinner that is a sort of knob. A. Yes.
- Q. You have one of those. A. Yes.
- Q. How do you get on putting it into 'park' and 'drive'.
- A. I reach across.
- Q. Is it on the floor.
- A. The first car on the steering column and the other one on the floor, I just reach across.
- Q. You can handle the steering wheel with the spinner.
- A. Yes the same as they use for forklifts.
- Q. Does your wife have a driving licence.

10

NO FURTHER QUESTIONS

COURT ADJOURNS at 3.47 P.M. UNTIL 10.30 A.M.
THURSDAY, 6 JULY 1978

RENDELL v PAUL & EARLE

THURSDAY, 6 JULY 1978

RESUMING 10.33 am

MR. ANDERSON CALLS

FRANK MUIR LEONARD
27 Wienhall Street,
OXENFORD

Sales Manager

SWORN

20

EXAMINATION BY MR. ANDERSON

- Q. I think you are the Australian Sales Manager for Spex Australia Pty. Ltd. A. Yes.
- Q. And an associated company called Domino Chemicals. A. Yes.
- Q. You know the plaintiff in this action, Mr. Rendell. A. Yes, I do.

30

Q. I think you originally employed him - you personally. A. Yes.

In the Supreme
Court of South
Australia

Q. Before his accident that was.

No. 3

A. Quite a while before his accident.

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Could you tell us what sort of worker he was before his accident.

A. He was very active and very competent.

Q. Reliable. A. Extremely.

10 Q. Hard working. A. We have never had any complaints.

Q. After his accident you held the job open for him.

A. Yes, because he was such a good employee we decided we would keep him on and with a little bit of help and more equipment, well we -

Q. Is it fair to say that you had to tailor the job to suit him a bit after the accident.
A. Yes.

20 Q. What was that in respect to, both equipment and other staff.

A. We had to put in new equipment and gave Tony the authority to hire other staff as he needed it.

Q. What sort of extra equipment did you put in.

A. The electric lifts and a different set of electric pumps.

Q. The additional staff I think you replaced a lad with a grown man. That is basically the situation.

30 A. Yes, we got rid of a junior and got a senior to take his place.

Q. To do the work. A. Yes.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- Q. You have been in the position of Sales Manager for a good number of years with the company. A. I have.
- Q. Over the last three or four years what has the position been in respect to sales in the company in this state particularly. A. A decline unfortunately.
- Q. A steady decline.
- A. Well it has been a decline over the past three years - in some instances it would be a sudden drop and other instances maintained a steady decline. 10
- Q. The trend has been - A. Down.
- Q. Is that anything to do, due to the plaintiff's disabilities.
- A. Oh no, his disabilities wouldn't have any reflection on that.
- Q. It is just the general conditions in industry.
- A. In our industry.
- Q. Are you able to say whether people are using less of these detergents or other companies are getting a bigger share of the market. 20
- A. I think our market has been taken over by larger companies. People who spend much more money on advertising.
- Q. As the decline in business has taken place have you affected staff reductions to try to cut costs.
- A. We have had to.
- Q. At the present time what is the staff situation in Adelaide. 30
- A. There are two people that are employed in the factory.

Q. That is Mr. Rendell. A. Mr. Rendell and another lady who are there full-time and as I said, Mr. Rendell has the authority to hire casual staff as he needs them.

In the Supreme Court of South Australia

Q. I think that while you are based in Queensland you come to Adelaide regularly. A. I do.

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

Q. And from time to time stand in and actually help out in the factory. A. Yes.

10

Q. With the amount of work that is needed to be done in Adelaide at the present time and with the present level of sales, with an active fully fit man what would be the situation.

A. If Mr. Rendell were as active now as he was prior to his accident he could do the work himself.

Q. On his own. A. Yes.

20

Q. Now, if the down-turn in the sales continues what situation will be reached.

A. Well you eventually are going to reach a point where it is an economical necessity to get the one able bodied person to do the job.

Q. Will it need to be a dramatic drop from the present level or not very much from the present level.

30

A. If the trend keeps going as it is, time is something that nobody can answer - I can't put a date on it, but I can't see it extending past 12 months.

Q. If your present sales continue to decline within the next 12 months you would expect the economics of the position -

A. This would be the cut off time.

HIS HONOUR

Q. You are speaking of the South Australian operations. A. Yes.

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

Q. Is the same trend noticeable in other states.

A. Yes, it is.

Q. What states do you function in.

A. Two states, Queensland and South Australia. Fortunately for us our company in Queensland, we have maintained our market there, possibly because it is our home state. Other people have felt in Queensland what we have felt here in South Australia in relation to market trend.

10

XN

Q. You had a small operation you attempted to start in Victoria.

A. Yes, we attempted to start in Victoria but the big people are too far in front of us for that and they don't like that.

Q. Can you give us your opinion as to whether or not you expect the downturn in sales to continue.

OBJECTION MR. MARTIN objects, saying that witness is not qualified to answer this question.

20

OBJECTION UPHELD

Q. Have you got access from time to time to findings of surveys of market trends of what particular companies have got of the share of the market.

A. There are companies who do publish these things and we do read them.

Q. Do you read them from time to time or as you get them. A. Yes.

30

Q. From your studies of the surveys of market trends in the detergent industry and the allied industries can you say whether you expect the downturn in Spex sales to continue.

OBJECTION MR. MARTIN objects.

QUESTION NOT PRESSED

- Q. What is Mr. Rendell's net rate of pay at the present time.
- A. I think he takes home 133 or in that vicinity.
- Q. Do you know his gross pay. A. 180.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth
5th and 6th July 1978
(cont'd)

CROSS-EXAMINATION BY MR. MARTIN

- 10 Q. Your company is based in Queensland, you have said, and you have a larger operation in Queensland than you have in South Australia, I presume. A. yes.
- Q. How many people are employed in Queensland.
- A. May I have a moment? 15.
- Q. We have heard from the plaintiff that currently there are three basic products being manufactured in South Australia - the detergent, the bleach and the demineralized water: what products are you manufacturing in Queensland.
- 20 A. We have disinfectants and antiseptics, shampoo and we bottle hydrochloric acid or spirits of salts.

HIS HONOUR

- Q. That is in addition to the three lines just mentioned to you. A. Yes.

XXN

- Q. You have introduced a new line in the last two or three years in South Australia, namely the demineralized water. A. Yes.
- 30 Q. That has been successful in the sense that it has had a high volume of turnover. A. Yes.
- Q. Are you aware of any plans in the company to introduce the other lines not manufactured in South Australia - the shampoo, et cetera.

In the Supreme Court of South Australia

No. 3
Transcript of Evidence taken before the Honourable Mr. Justice Hogarth 5th and 6th July 1978
(cont'd)

A. No, I am not aware of any intention of doing that.

Q. Does your position as sales manager also include the hire and placement of staff in South Australia and Queensland. A. Yes.

Q. You personally have a high regard for the plaintiff's ability as a workman. A. Yes.

Q. And his motivation. A. Yes.

Q. His reliability. A. Very.

Q. If the situation is such that the plaintiff is not employable in South Australia is it possible you might make an opening for him in Queensland. A. No.

10

Q. Why not.

A. Because there would be no opening for him there. We have people doing that job there now.

Q. If it were the situation that the company was required to dispense with the plaintiff's services in the future I would presume that having regard to your high opinion of him you would be giving him an excellent reference.

20

A. I would personally, yes.

NO FURTHER QUESTIONS

WITNESS RELEASED

EXHIBIT P5

Actuarial certificates, tendered by MR. ANDERSON. Admitted by consent on the basis that they set out the opinions which Mr. Stratford would express if called to give evidence.

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EXHIBIT P6

Copy of Government Gazzette of Manufacturing and Wholesale Chemists and Grocers Concilliation Committee Award report, page 1557, tendered by MR. ANDERSON, by consent. Admitted.

MR. ANDERSON CALLS:

JOHN CHARLES CHELLEW.
21 Hardy Street,
Croydon Park.
Mail officer.

SWORN

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

EXAMINATION BY MR. ANDERSON

10

Q. You know the plaintiff, Mr. Rendell. A. I do.

Q. How long have you known him. A. Approximately four years.

Q. You knew him before he had his accident. A. Yes, I did.

Q. I think you met him through a mutual acquaintance. A. I did.

Q. You developed a friendship. A. I did.

Q. Did you go out together before his accident. A. Many times.

20

Q. Could you tell the court what sort of personality Mr. Rendell had before the accident.

A. Very sociable, very outgoing, always wanted to mix with company, wanted to get around all the time.

Q. Like to go to social outings.

A. Yes, we always went to discos etc. together.

Q. Did you go to any sporting events with him.

A. We often went to water skiing, ten pin bowling.

Q. Did he play these sports well. A. Yes, very well.

30

Q. Was he a popular person. A. Very popular.

Q. Have you kept up your friendship with him since his accident.

A. Yes, to a certain extent.

Q. Less since he has been married than before.

In the Supreme
Court of South
Australia

No. 3

Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

- A. Of course, yes.
- Q. Have you noticed any difference in his personality and his general outlook on things.
- A. Yes, he is not as outgoing etc. as he used to be. He doesn't really want to socialise as much as far as the public goes.
- Q. Was that the situation before he was married but after the accident. A. After the accident it is, since the accident.
- Q. But before he was married as well as after he was married. 10
- A. Yes, that's correct.
- Q. Did you continue to go out with him from time to time to different places.
- A. Occasionally, mainly just private things we did. We might have a party or something at my place, something to this effect but nothing social.
- Q. Did he go to a disco with you.
- A. No, he didn't want to go to a disco. 20
- Q. You met his wife. A. Yes.
- Q. Has his changed outlook appeared to have any effect on the marriage.

OBJECTION Objection by MR. MARTIN

OBJECTION ALLOWED

XN

- Q. How does his energy and ability to keep going compare before the accident with now.
- A. He is very lethargic now, doesn't seem to have any get-up-and-go in him any more, as far as that aspect is concerned. 30
- Q. He had a lot of that before the accident.
A. Definitely.

CROSS-EXAMINATION BY MR. MARTIN

Q. Are you married. A. No.

NO FURTHER QUESTIONS

WITNESS RELEASED

LIST OF AGREED FACTS:

1. Special damages are agreed at the sum of \$4,260.49c

ADJOURNED 11.00 A.M.

RESUMING 11.05 A.M.

10 LIST OF AGREED FACTS CONTINUING:

2. That the time during which the plaintiff was off work following the accident was as a result of the injuries received in the accident.

CASE FOR THE PLAINTIFF

MR. MARTIN INTIMATES THAT HE DOES NOT PROPOSE TO CALL ANY ORAL EVIDENCE.

20 EXHIBIT D7 Report of Mr. Harold Schaeffer,
tendered by Mr. Martin.
Admitted by consent.

EXHIBIT D8 Report of Mr. Richard Dunstan,
tendered by Mr. Martin.
Admitted by consent.

CASE FOR THE DEFENDANT

COUNSEL ADDRESS

In the Supreme
Court of South
Australia

No. 3
Transcript of
Evidence taken
before the
Honourable Mr.
Justice Hogarth
5th and 6th
July 1978
(cont'd)

In the Supreme
Court of South
Australia

No. 4
Reasons for
Judgment of
the Honourable
Mr. Justice
Hogarth - 4th
August 1978.

No. 4

Reasons for Judgment of the Honourable
Mr. Justice Hogarth dated 4th August 1978

DELIVERED 4th August 1978

RENDELL v. PAUL AND EARLE

No. 1642 of 1976

Dates of Hearing: 5th & 6th July 1978

J U D G M E N T of the Honourable the Acting
Chief Justice

✓ Damages - personal injuries - complete loss of use of left arm - loss of future earning capacity ✓ 10

Counsel for the Plaintiff: Mr. R.P. Anderson
Solicitors for the Plaintiff: Anderson, Evans & Co.

Counsel for the Defendants: Mr. E.H. Martin
Solicitors for Defendant Paul: Baker, McEwin & Co.
Solicitors for Defendant Earle: Ward & Partners

Judgment No. 3928

RENDELL v. PAUL AND EARLE

Hogarth A.C.J.

This is an action for damages for bodily injuries which were sustained by the plaintiff in a road traffic accident on the 1st March 1975. The plaintiff was riding a motor cycle south along Marion Road, Plympton when he was injured. He does not remember the accident, and no evidence of the facts was led; but it appears from the pleadings that there was a collision nearby between vehicles driven respectively by the two defendants, after which the vehicle driven by the defendant Earle collided with the plaintiff's motor cycle. When the case was called on counsel for the defendants intimated that they both admitted liability.

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30

Following the collision the plaintiff was taken by ambulance to the Royal Adelaide Hospital where he was admitted suffering from multiple injuries. These included:

In the Supreme Court of South Australia

No. 4
Reasons for Judgment of the Honourable Mr. Justice Hogarth
4th August 1978
(cont'd)

1. Concussion.
2. Fracture of the mid shaft of the right femur.
- 10 3. Compound and comminuted fracture of the lower thirds of the left tibia and fibula, and a further fracture involving the upper third of this fibula.
4. An undisplaced fracture through the base of the second left metacarpal bone.
5. A deep laceration involving the upper third of the left arm, on its antero-medial aspect, complicated by local nerve and muscle damage.
6. Damage to the brachial plexus at the root of the neck on the left side.
- 20 7. Multiple lacerations elsewhere, involving particularly, the right foot and to a lesser extent the right upper thigh.

The plaintiff was in a state of considerable shock, and was treated by intravenous infusions of plasma, saline and blood. When his condition permitted he was taken to the operating theatre where all wounds were debrided under general anaesthetic, and left open for delayed primary closure a few days later. In the depths of the left upper arm wound the short head of the biceps was found to be severed, and the adjacent muscular-cutaneous nerve seemed to be avulsed. No attempt to repair it was made at this stage.

The fractured right femur and the comminuted fractures of the left tibia and fibula were stabilized by traction in Thomas Splints. The fractured metacarpal bone was immobilized in a fore-arm plaster.

On the 5th March 1975 closure of all wounds was performed under general anaesthetic, except a wound

In the Supreme Court of South Australia

overlying the comminuted fracture of the left tibia where skin loss had occurred, and a split skin graft was applied.

No. 4
Reasons for Judgment of the Honourable Mr. Justice Hogarth
4th August 1978
(cont'd)

The plaintiff's general condition remained satisfactory in the circumstances, but further neurological changes developed in the region of the left arm and shoulder, suggesting a partial brachial plexus injury affecting the uppermost fibres, and involving the nerve supply of the muscles of the shoulder girdle, and partially involving the left radial and ulnar nerves.

10

The plaintiff had suffered an injury to the right ear some twenty years earlier, resulting in deafness on the right side. Some variation in his hearing occurred on the left side towards the end of his first week in hospital. This condition was investigated, but, apparently, no treatment was prescribed; and although he says that his hearing on the left side is not as good as it was previously, it seems not to be seriously affected.

20

The right femur was treated by internal fixation of a Kuntschner nail on the 23rd March 1975, and at the same time the original wound on the side of the thigh was excised, and also extended to permit this procedure. This has left an indented scar on the thigh which will be permanent. At the same operation the fractured fragment of bone at the base of the second left metacarpal bone was removed. The right leg was removed from its splint a few days later and exercises were commenced. The fractured femur healed satisfactorily. The left tibia and fibula healed in satisfactory position. The Kuntschner nail was removed at the Memorial Hospital in June 1976. The wounds healed leaving some scars which are depicted in photographs (exhibit P.3). The scars are not grossly disfiguring, but are prominent enough to cause comment if the plaintiff is seen, for example, in bathing trunks.

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The injuries to the left upper arm have proved to have the most serious consequences. Partial recovery of the affected radial and ulnar nerves occurred within a week or two of the accident, but there was no sign of recovery of those muscles innervated by the upper branches of the brachial

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plexus (including the deltoid, supraspinatus and infraspinatus) nor of the muscular cutaneous nerve and those muscles innervated by it, including the two biceps muscles and the brachials, which are responsible for flexion of the elbow. The plaintiff was referred to Mr. Paul Carney, neuro-surgeon, on the 2nd April 1975. He gave evidence of the plaintiff's treatment and three reports by him were admitted in evidence. I do not find it necessary to review in detail the history of the condition in the arm, except to say that the plaintiff was admitted to hospital under the care of Mr. Carney from 30th July 1975 until 2nd August 1975, while a further operation was carried out in an effort to carry out a nerve graft. This operation did not prove a success.

In the Supreme Court of South Australia

No. 4
Reasons for Judgment of the Honourable Mr. Justice Hogarth
4th August 1978
(cont'd)

The plaintiff, who is left-handed, has a left arm which to all intent and purposes has been permanently rendered useless. He has no useful movement at either shoulder or elbow. He has some movement of the thumb and fingers but has lost sensation in all fingers except the small finger. The arm becomes extremely painful, with a burning sensation, if it is bumped or if somebody takes hold of it. In such a case he says that he feels he has to sit down, and it is about half an hour before the sensation wears off. The plaintiff has been married since the accident. He says that his inability to use his arm makes sexual activity difficult, and that this has led to tension between himself and his wife. The plaintiff now finds it necessary to sleep on his back, because if he sleeps on either side he has difficulty in placing his injured arm.

Since the accident the plaintiff has suffered from a bulging of the right forearm. This causes discomfort if he has to rest his arm on a table, or if he tries to do too much work. In such cases the swelling becomes bigger and causes soreness as well as discomfort. There is no medical evidence to explain the cause or nature of the swelling; but in my opinion the evidence justifies a finding to the effect that, whatever its exact cause, and whatever its nature, it is one of the sequelae of the accident.

At first sight it might seem better if the arm were amputated, but Mr. Carney said that this would present worse problems in the form of phantom limb pain. There is therefore no prospect of the limb being amputated in the near future. The plaintiff carries it in a cuff sling. For practical purposes he has the disabilities of a one-armed man, with all that implies in the way of difficulties in dressing himself, caring for himself generally and in his activities at large. Photographs of the plaintiff (exhibit P.3) show that the musculature on his left shoulder has wasted considerably, so that when his upper body is unclothed he has an obvious lopsided appearance. This is noticeable even when he is dressed, but not to the same extent as when he is undressed. This is likely to have an effect on his spine. He already complains of some lumbar pain, and, I think, on the balance of probabilities, that the condition of his left arm will lead to an arthritic condition in the lumbar spine.

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The injuries to the legs have cleared up reasonably well, but with shortening of approximately 2.5 centimetres (one inch) in the left leg, for which the plaintiff now wears a built-up boot or shoe. He has some little limitation in the flexion of his knees. The plaintiff finds that his legs ache after he has been walking about half a mile. He finds that the left leg is not as strong as the right leg.

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Before the accident the plaintiff was a most energetic sportsman. He engaged in swimming, water skiing, billiards, lawn tennis, table tennis, volleyball, and ten pin bowling. He also used to indulge in gymnastics using springboard, horse, vaulting pole, volleyball and the trampoline. He used to go to a dance at a discotheque about once a week and would often ride his bike at weekends in the hills. Even without the disability of a useless arm the plaintiff finds that he cannot perform well with his right arm in substitution for the left. He sometimes goes out to dinner with his wife, in which case he may engage in a dance such as a slow waltz, so long as he can keep away from the centre of the floor. He used to play table tennis on a competitive basis, playing once a week and practising twice a week. He has tried

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10 playing with his right hand since the accident but found it hopeless. He has tried ten pin bowling, but again without success. He used to swim socially but now avoids doing this because of his unusual appearance when undressed. He has tried to play billiards, playing his left arm on the table with his right arm, and putting the cue on top of the arm; but with little success. He also used to go on rabbit and kangaroo shooting expeditions; and camping in the hills. He would do this with a group of friends about once a month. He still goes camping, but finds that he cannot hold a rifle and that all he can do is hold a spotlight for his friends.

In the Supreme Court of South Australia

No. 4
Reasons for Judgment of the Honourable Mr. Justice Hogarth
4th August 1978
(cont'd)

20 I am satisfied that the plaintiff, with his dual disabilities, first, of a shortened leg and some limitation in flexion of the knees, and secondly, of his useless left arm, is debarred from active sport to all intents and purposes. Naturally, he is unable to do small jobs around the house which require the use of two hands. He has tried to learn to write with his right hand, but finds that he can only print with a scrawl. At work he has learned to type one handed, using his right hand. The plaintiff described other difficulties in every day living which he has experienced through being effectively one-handed; I will not repeat these in detail, because in general they are what naturally followed from this condition. In addition to this he complains that he is now unable to roll his own cigarettes, and has to buy ready-made cigarettes at additional expense. It is possible that in time bionic devices will be developed which could assist the plaintiff in making the most of the residual use which he has of his arm; but no worthwhile device is available at the present time.

40 The plaintiff has suffered considerable pain. He has been prescribed pain-killing drugs, but is reluctant to use them to any great extent for fear of becoming addicted to them. He still has a continuous pain to some extent, and I am satisfied that he will continue to suffer pain, particularly in the left arm when it is held or bumped.

In the Supreme
Court of South
Australia

No. 4
Reasons for
Judgment of the
Honourable Mr.
Justice Hogarth
4th August 1978
(cont'd)

I found the plaintiff an honest witness. He did not exaggerate his disabilities, and I accept his evidence without qualification.

It is apparent that the plaintiff has been doing his best to get over his disabilities. He is courageous, and faces up to his disabilities bravely. This is apparent when one considers the pattern of his employment.

The plaintiff went to a technical high school until second year. He then left, and took on farm labouring for about eight months. After that he came to Adelaide and worked in a number of different unskilled occupations such as spray painting and general labouring. He then went to Newcastle, New South Wales, and worked as a labourer. He returned to Adelaide and again worked as a labourer in various capacities. Eventually he obtained employment as a labourer with his present employer, a manufacturer of detergents and the like. The head office of the business is in Brisbane, and a small branch of the business is conducted in South Australia. The plaintiff was engaged as a labourer, but his application and ability were recognized by employers, and after a few months he was promoted to factory manager. This involved not only organizing the local branch, but included a considerable amount of manual work. At the time of the accident the South Australian operation employed only two full-time people: the plaintiff and a lad. There were also eight women employed on a casual basis, who worked daily from 12.30 p.m. to 4.30 p.m., and sometimes also overtime.

The work performed by the plaintiff before the accident involved operating a hand-pushed mobile forklift to unload and store chemicals as they arrived at the plant in 44-gallon drums, weighing out and mixing chemicals, and pumping the mixture into an overhead tank ready to feed into the filling machine when the women employees signed on soon after midday. The plaintiff was involved in filling bottles and pushing them on to a conveyor belt to the women for labelling and capping and the like. In addition to the manual work which he did, it was his responsibility to carry out the office work generally, including

preparation of invoices, sending out orders, taking phone calls, stocktaking, banking, arranging payment of wages, ordering goods such as chemicals and the bottles, and visiting customers and prospective customers. The plaintiff said that, by gaining this experience, he hoped that he would qualify himself for a better job as time went on, perhaps with another employer.

In the Supreme
Court of South
Australia

No. 4
Reasons for
Judgment of the
Honourable Mr.
Justice Hogarth
4th August 1978
(cont'd)

10 The plaintiff returned to work as soon as permitted by the doctors, after an absence of about 21 weeks. The full-time staff which was then employed (in addition to the plaintiff) consisted of one man and two women, together with casual labour as required. Since then, however, sales in South Australia have dropped off considerably. This has resulted in a decline in staff so that, by May 1977, the full-time staff
20 consisted of only one lad in addition to the plaintiff. Since then the full-time staff has been one woman and the plaintiff, with casual women being called in as required.

The plaintiff said that the employers have done whatever they can to provide him with mechanical assistance towards carrying out the work, and the drivers who bring the heavy drums of chemicals to the premises go out of their way to assist, including unloading and stacking the drums.

30 I have already said that the plaintiff finds it very difficult to write with his right hand. He is able to achieve only a clumsy sort of scrawl. He has, however, taught himself to type one-handed on the typewriter, and he gets through the office paper work in his manner. With all the assistance he gets, however, there is a great deal of manual work which he previously did, which he is now
40 unable to do. Not all of this was heavy work; for example, labelling the bottles. Even this, as he explained, is a two-handed job, since a bottle has to be steadied with one hand as the label is applied with the other.

In spite of his disabilities, I am satisfied on the evidence that the plaintiff's employers will continue to employ him so long as this is

In the Supreme
Court of South
Australia

No. 4
Reasons for
Judgment of the
Honourable Mr.
Justice Hogarth
4th August 1978
(cont'd)

economically feasible. How long that will be is open to doubt. Mr. Leonard, the company's sales manager from Brisbane, gave evidence to the effect that one fully fit active man would be able to handle the whole of the work in South Australia, aided as need be by casual women employees. He said that if the present trend of falling sales continues the company will be forced to economize and to find one fully fit employee to replace the plaintiff and the women who are now employed on a full-time basis. Mr. Leonard, of course, was not qualified to express an opinion as to whether the present trend will indeed continue, but he said that if it continued, he did not expect that the company could continue to employ the plaintiff for more than another twelve months.

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If, in spite of the sympathy and help given by his employers, the plaintiff loses his present job, I see little prospect for his obtaining other work outside a sheltered workshop. In this state of uncertainty I suggested that the parties might consider that the case was an appropriate one for a declaratory judgment, with an interim award to cover all aspects of the case except an allowance for future economic loss; but both parties opposed the suggestion, and I proceed to assess the plaintiff's damages, including an allowance for economic loss, to the best of my ability, but with the practical certainty that whatever basis I adopt for assessing future economic loss, it will in the event be proved to be wrong. The plaintiff may continue indefinitely in his employment with the present employers, as I am satisfied will be the case unless sales from the business fall to such an extent that the company finds it not worthwhile to continue its operation in South Australia. If the plaintiff can continue in his present employment, his main loss under this head would relate to his inability to change jobs to his advantage. This, in my judgment, would still be a substantial disadvantage which must be reflected in his general damages. On the other hand, it may be that within the next 12 months the plaintiff will cease to be employable except on the odd-job market; and even employment of that nature I think would be highly unlikely, except in a sheltered workshop.

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I propose to approach the problem by adopting the second basis, and then discounting it to make allowance for the possibility that the plaintiff will be able to continue in his employment with his present employers or, if not, that he will have some small residual earning capacity even if only in a sheltered workshop. I will assume that the plaintiff can continue in his present employment for approximately the next 12 months, whatever may happen. I think that the prospect of the plaintiff ceasing work early for some cause not taken into account in the actuarial tables is to be equated approximately with his prospects of advancement had he continued to enjoy good health. I accept the actuarial evidence, therefore, and deal with it on the assumption that these two elements in effect cancel each other out.

In the Supreme
Court of South
Australia

No. 4
Reasons for
Judgment of the
Honourable Mr.
Justice Hogarth
4th August 1978
(cont'd)

The parties have agreed that the plaintiff's special damages are \$4,260.49. This amount, however, as I understand it, includes loss of wages suffered by the plaintiff up to the present time as a result of the accident, amounting to \$2,850. On this basis I assess special damages proper at \$1,410.49. I assess the plaintiff's damages arising out of future economic loss at \$70,000. I assess his general damages, excluding the element for economic loss, at \$50,000. I do this, bearing in mind that I must guard against any duplication in my assessment under the separate heads for future loss. I therefore assess the plaintiff's total damages at \$124,260.49.

I assess interest at 10% from the issue of the writ (8th October 1976) on the whole of the damages except special damages. Some of these items may not yet have been paid; and if some items have been paid, I do not know when. In case the parties wish me to reconsider this aspect, I reserve to them liberty to speak to the minutes in Chambers. For the present, on the basis which I have mentioned, I assess interest on \$122,850 for 17 months, namely \$17,403.75.

There will be judgment for the plaintiff for \$141,664.24.

In the Supreme
Court of South
Australia

No. 5

Formal Judgment dated 4th August 1978

No. 5
Formal Judgment
4th August 1978

SOUTH AUSTRALIA
IN THE SUPREME COURT

No. 1642 of 1976

BETWEEN: ANTHONY HOWARD RENDELL Plaintiff

- and -

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE Defendants

BEFORE THE HONOURABLE MR. JUSTICE HOGARTH (ACTING
CHIEF JUSTICE) FRIDAY THE 4TH DAY OF AUGUST 1978

10

THIS ACTION coming on for trial before the Honourable Mr. Justice Hogarth (Acting Chief Justice) on the 5th and 6th day of July 1978 in the presence of Mr. R.P. Anderson of counsel for the plaintiff and Mr. E.H. Martin of counsel for the defendant AND the Judge having this day assessed the plaintiff's general damages at the sum of \$120,000.00 plus agreed special damages in the sum of \$4,260.49 and having awarded interest in favour of the plaintiff in the lump sum of \$17,403.75 AND having ordered that judgment be entered for the plaintiff accordingly with costs to be taxed IT IS THIS DAY ADJUDGED that the plaintiff recover from the defendants the sum of \$141,664.24 and costs to be taxed.

20

BY THE COURT

Sgd. E.R.E. Greger

CHIEF CLERK

THIS JUDGMENT is filed by ANDERSON EVANS & CO. of 41 Carrington Street, Adelaide, Solicitors for the Plaintiff.

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No. 6

Notice of Appeal (as amended) dated 15th
August, 1978

In the Full
Court of the
Supreme Court
of South
Australia

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1642 of 1976

Amended as per order of
The Honourable the Chief
Justice 5th October 1979
A.M. Harrison
Baker McEwin & Co.

No. 6
Notice of Appeal
(as amended)
15th August 1978

10 BETWEEN LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE Appellants
(Defendants)

- and -

ANTHONY HOWARD RENDELL Respondent
(Plaintiff)

20 TAKE NOTICE that the Full Court will be moved by
way of Appeal at the first sittings of the Full
Court to be held after the expiration of fourteen
(14) days from the service of this Notice upon you
exclusive of the day of such service or so soon
thereafter as Counsel can be heard, by Counsel on
behalf of the abovenamed Appellants for an order
that the Judgment of the Honourable Mr. Justice
Hogarth given and pronounced in this action on the
4th day of August 1978 when the Appellants were
Defendants and the Respondent was Plaintiff and
wherein it was ordered that Judgment be entered
for the Respondent against the Appellants in the
sum of \$141,664.24 together with costs to be taxed
30 be varied by reducing the amount of damages thereby
awarded and that Judgment for the Respondent for
such lesser amount as to the Full Court seems just
be substituted therefor

AND FURTHER TAKE NOTICE that the Appellants complain
of the whole of the said Judgment.

The grounds of such appeal are:-

1. that the said award of damages was manifestly
excessive
2. that the amount of \$70,000 for damages arising
out of future economic loss was on the evidence
manifestly excessive

In the Full
Court of the
Supreme Court
of South
Australia

No. 6
Notice of Appeal
(as amended)
15th August 1978
(cont'd)

3. that the learned trial Judge erred in finding that the Respondent would cease to be employable except on the odd-job market within twelve months next of the date of trial of action
4. that the learned trial Judge erred in assessing damages for future economic loss on the basis of the finding complained of in paragraph 3 hereof
5. that the learned trial Judge should have found that the Respondent would continue in his present employment
6. that in so far as the learned trial Judge allowed interest on damages for future effects of loss of earning capacity such allowance was bad in law.

10

DATED the 15th day of August 1978

Sgd. Baker McEwin & Co.
of and whose address
for service is :
80 King William Street,
ADELAIDE.

20

TO: The Master,
Supreme Court,
ADELAIDE

AND The Respondent by his solicitors
TO: Messrs. Anderson Evans & Co.,
41 Carrington Street,
ADELAIDE.

THIS NOTICE OF APPEAL is filed by BAKER McEWIN & CO.
of 80 King William Street, Adelaide, Solicitors for
the Appellants (Defendants).

30

(7) That the learned trial judge erred in failing to divide the award of general damages, excluding the element for economic loss, into pre trial and post trial losses.

- (8) That the learned trial judge erred in allowing interest on those elements of post trial losses referred to in paragraph 7 hereof.
- (9) That the learned trial judge should only have allowed interest on the plaintiff's pre trial losses.

In the Full Court of the Supreme Court of South Australia

No. 6
Notice of Appeal
(as amended)
15th August 1978
(cont'd)

No. 7

No. 7

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Reasons for Judgment of the Honourable
The Chief Justice dated 25th October 1979

Reasons for Judgment of the Honourable The Chief Justice 25th October 1979.

DELIVERED 25th OCTOBER 1979

RENDELL v. PAUL & EARLE

No. 1642 of 1976

Date of Hearing: 5th October 1979

IN THE FULL COURT

Coram: King C.J., Walters and White JJ.

J U D G M E N T of the Honourable the Chief Justice

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(The Hon. Mr. Justice Walters and The Hon. Mr. Justice White concurring)

(On appeal from The Hon. Mr. Justice Hogarth)

(Damages - personal injury - rate of interest appropriate for actuarial calculation discussed - Belleli v McSkimming 1970 S.A.S.R. 313 disapproved of and Hawkins v. Lindsley (1974) 4 A.L.R. 697 applied - Incidence of tax - Atlas Tiles Ltd. v. Briers (1978) 21 A.L.J.R. 129 and McGuire v. S.G.I.C. 82 L.S.J.S. 305 applied - Interest in judgment - Paull v. Gloede (1979) 83 L.S.J.S. 157 applied.)

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Counsel for the Appellants: Mr. B.T. Lander
Solicitors for the Appellants: Baker, McEwin & Co.

Counsel for the Respondent: Mr. T.A. Gray
Solicitors for the Respondent: Anderson, Evans & Co.

Judgment No. 4549

In the Full
Court of the
Supreme Court
of South
Australia

RENDELL v. PAUL & EARLE

Full Court
King C.J.

No. 7
Reasons for
Judgment of the
Honourable The
Chief Justice
25th October
1979.
(cont'd)

This is a defendant's appeal against an assessment of damages by Mr. Justice Hogarth for injuries which the respondent sustained in a road accident which occurred on the 1st March 1975. The learned judge assessed the damages at \$124,260.49, made up of \$4,260.49 special damages, \$70,000 future economic loss and \$50,000 for elements of general damages other than economic loss. He included the sum of \$17,403.75 for interest making a total judgment of \$141,664.24.

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The respondent's injuries were severe. They consisted of:

1. Concussion
2. Fracture of the mid shaft of the right femur.
3. Compound and comminuted fracture of the lower thirds of the left tibia and fibula, and a further fracture involving the upper third of this fibula.
4. An undisplaced fracture through the base of the second left metacarpal bone.
5. A deep laceration involving the upper third of the left arm on its antero-medial aspect, complicated by local nerve and muscle damage.
6. Damage to the brachial plexus at the root of the neck on the left side.
7. Multiple lacerations elsewhere, involving particularly the right foot and to a lesser extent the right upper thigh.

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The respondent underwent some months of treatment and undoubtedly suffered much pain and discomfort, especially in the early stages. The treatment included a period of traction with both legs in Thomas splints and the immobilization of the fractured metacarpal bone in a forearm plaster. He underwent a number of operations under general anaesthetic in relation to the legs and the arm.

The respondent has been left with severe permanent disabilities. The learned judge described the residual effects of the injuries to the legs as follows:

In the Full Court of the Supreme Court of South Australia

10 "The injuries to the legs have cleared up reasonably well, but with shortening of approximately 2.5 cms. (1") in the left leg, for which the plaintiff now wears a built up boot or shoe. He has some little limitation in the flexion of his knees. The plaintiff finds that his legs ache after he has been walking for about half a mile. He finds that the left leg is not as strong as the right leg."

No. 7
Reasons for Judgment of the Honourable The Chief Justice
25th October 1979.
(cont'd)

By far the most serious permanent disability is that of the left arm, which is the respondent's dominant arm. The learned judge describes it as follows:

20 "The plaintiff, who is left-handed, has a left arm which to all intent and purposes has been permanently rendered useless. He has no useful movement at either shoulder or elbow. He has some movement of the thumb and fingers but has lost sensation in all fingers except the small finger. The arm becomes extremely painful, with a burning sensation, if it is bumped or if somebody takes hold of it. In such a case he says
30 he feels he has to sit down, and it is about half an hour before the sensation wears off ... For practical purposes he has the disabilities of a one-armed man, with all that implies in the way of difficulties in dressing himself, caring for himself generally and in his activities at large."

40 The musculature of his left shoulder has wasted considerably producing a lopsided effect. This is likely to have an effect on his spine and the learned judge found on the balance of probabilities that the condition of the left arm would lead to an arthritic condition in the lumbar spine, by which, I think, on the evidence he must have meant that arthritic degeneration would occur earlier than it would in an uninjured man. The respondent also suffers from bulging in the right forearm which

In the Full
Court of the
Supreme Court
of South
Australia

No. 7
Reasons for
Judgment of the
Honourable The
Chief Justice
25th October
1979.

(cont'd)

causes discomfort if used excessively and there is permanent unsightly scarring of the left arm and the legs.

Counsel for the appellants attacked the amount awarded for non-economic factors as excessive. The respondent was 26 years of age at the date of the accident and unmarried. The consequences of the respondent's injuries upon his way of life and his enjoyment of life have been devastating and those consequences are permanent. The learned judge described them as follows:

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"Before the accident the plaintiff was a most energetic sportsman. He engaged in swimming, water-skiing, billiards, lawn tennis, table tennis, volley ball, and ten pin bowling. He also used to indulge in gymnastics using springboard, horse, vaulting pole, volley ball and the trampoline. He used to go to a dance at a discotheque once a week and would often ride his bike at the week-ends in the hills. Even without the disability of a useless arm the plaintiff finds that he cannot perform well with his right arm in substitution for the left. He sometimes goes out to dinner with his wife, in which case he may engage in a dance such as the slow waltz, so long as he can keep away from the centre of the floor. He used to play table tennis on a competitive basis, playing once a week and practising twice a week. He has tried playing with his right hand since the accident but found it hopeless. He has tried ten pin bowling, but again without success. He used to swim socially but now avoids doing this because of his unusual appearance when undressed. He has tried to play billiards, placing his left arm on the table with his right arm, and putting the cue on top of the arm; but with little success. He also used to go on rabbit and kangaroo shooting expeditions; and camping in the hills. He would do this with a group of friends about once a month. He still goes camping, but finds that he cannot hold a rifle and that all he can do is hold a spotlight for his friends.

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I am satisfied that the plaintiff, with his dual disabilities, first, of a shortened leg

and some limitation in flexion of the knees, and secondly, of his useless left arm, is debarred from active sport to all intents and purposes. Naturally, he is unable to do small jobs around the house which require the use of two hands. He has tried to learn to write with his right hand, but finds that he can only print with a scrawl. At work he has learned to type one-handed, using his right hand. The plaintiff described other difficulties in everyday living which he has experienced through being effectively one-handed; I will not repeat these in detail, because in general they are what naturally followed from this condition. In addition to this he complains that he is now unable to roll his own cigarettes, and has to buy ready-made cigarettes at additional expense. It is possible that in time bionic devices will be developed which could assist the plaintiff in making the most of the residual use which he has of his arm; but no worthwhile device is available at the present time.

The plaintiff has suffered considerable pain. He has been prescribed pain-killing drugs, but is reluctant to use them to any great extent for fear of becoming addicted to them. He still has a continuous pain to some extent, and I am satisfied that he will continue to suffer pain, particularly in the left arm when it is held or bumped".

The helplessness and dependence on others of a man who has for all practical purposes completely lost the use of his dominant arm, with the embarrassment and loss of the sense of independence and self-reliance necessarily involved, of itself, calls for substantial compensation. When this is considered, together with the pain and suffering and loss of the amenities of life recounted by the learned judge and established by the evidence, I do not think that the sum of \$50,000 for non-economic factors is excessive.

Counsel for the appellants also contended that the sum of \$70,000 for future economic loss was excessive. Counsel for the respondent not only denied this, but asked us to increase this amount and to

In the Full
Court of the
Supreme Court
of South
Australia

No. 7
Reasons for
Judgment of the
Honourable The
Chief Justice
25th October
1979.
(cont'd)

In the Full Court of the Supreme Court of South Australia

No. 7

Reasons for Judgment of the Honourable The Chief Justice
25th October 1979.
(cont'd)

increase the total amount of the judgment accordingly. No cross-appeal has been filed, but Mr. Gray for the respondent relied upon Order 58 Rule 14 of the Rules of the Supreme Court which deals with the powers of the Court on appeal. Sub-rules (2) and (3) are as follows:

"(2) The Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require.

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(3) The powers aforesaid may be exercised by the Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision".

In Falidis v. Silvertop Taxi Service Pty. Ltd. & Anor. (an unreported judgment delivered on the 25th November 1968) the Full Court held that Order 58 Rule 14 enabled the Court, on a defendant's appeal on the ground that the damages were excessive, to substitute a greater award of damages for that made in the judgment appealed from. I think that we should follow that decision. It is, of course, in the discretion of the Court as to whether an argument in favour of increasing the damages will be entertained where there is no cross-appeal. Where a plaintiff desires to complain that the damages are insufficient he should appeal or cross-appeal as the case may be. If he fails to do so, he cannot assume that he will be allowed to raise the point on the defendant's appeal. Whether it is fair and just that he should be allowed to do so will depend upon the circumstances. In this case, the appellants did not oppose the raising of the point, because they desired to amend their notice of appeal to raise points which had emerged from cases decided since the filing of the notice of appeal. We therefore allowed Mr. Gray to contend that the award of damages was inadequate.

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The respondent was educated at a Technical High School and left after the second year. He

worked at a succession of occupations all of a manual kind and all requiring two useful arms. His employer at the time of the accident was Spex Australia Pty. Limited, a manufacturer and distributor of a particular brand of detergent. The South Australian operation was a small one, there being one full-time employee other than the respondent and 8 casuals. The respondent was employed as a labourer, but after a time he took over the office work including, apparently, some managerial functions and performed this additional work in conjunction with his labouring duties. Since the accident he has been unable to perform any manual work. The company has installed some new equipment to enable him to carry on and an adult has been employed in place of a junior previously employed. This has enabled the respondent to confine himself to non-manual work. His position in the company is, however, precarious. There has been a decline over the past three years in the company's share of the South Australian market and the decline is continuing. The company's Australian Sales Manager gave evidence and he thought that if the trend continued, it would be necessary to dispense with the respondent's services and to employ one able-bodied person to do the job. He thought that if the present trend continued this stage would be reached within the next 12 months. The learned judge found that the respondent would probably no longer be employed by his present employer after 12 months. I think that this is the proper conclusion on the evidence. If the respondent loses his present job, it is obvious that he will have the gravest difficulty in finding alternative employment. He has no skills and little residual capacity for unskilled work. He learned judge accepted that the respondent had some residual earning capacity, but thought that if he lost his present job it would be highly unlikely that he would obtain employment except in a sheltered workshop.

In the Full Court of the Supreme Court of South Australia

No. 7
Reasons for Judgment of the Honourable The Chief Justice
25th October 1979.
(cont'd)

The judgment appealed from was delivered on the 4th August 1978, that is, prior to the delivery of the judgment of the High Court in Atlas Tiles Ltd. v. Briers (1978) 21 A.L.J.R. 129. It may be assumed and both Counsel assumed, that His Honour assessed damages on the basis of the net earnings of

In the Full
Court of the
Supreme Court
of South
Australia

No. 7
Reasons for
Judgment of the
Honourable The
Chief Justice
25th October
1979.
(cont'd)

the respondent after tax. In the light of the decision of the High Court just referred to, the assessment was therefore made upon a wrong principle. The error is significant because the evidence shows that the respondent's gross weekly wage at the date of trial was \$180 and his net weekly wage after tax \$133. It follows that the learned judge's assessment in respect of economic loss cannot stand and that this Court must make its own assessment.

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The learned judge said that he approached the problem by making use of actuarial evidence on the basis that the respondent would cease to be employable after the expiration of 12 months and then discounting for the respondent's residual earning capacity, including the possibility of the continuance of his employment by his present employer. He did not disclose the precise steps in his calculation and we do not know therefore how precisely he used the actuarial evidence.

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An actuarial report was in evidence and it provides a number of calculations. In arriving at the appropriate rate of interest, the actuary has used the net return on a notional investment of the amount of damages after tax on the gross income from the notional investment has been paid. This raises the question discussed by Walters J. in McGuire v. State Government Insurance Commission Vol. 82 L.S.J.S. p.305 at p.309 "whether in light of the decision in Taylor v. O'Connor 1971 A.C.115, allowance should be made in the assessment of the plaintiff's damages for future economic loss for the incidence of taxation upon the notional investment of the amount to be awarded to him". I think that the considerations which led the majority of the Court in Atlas Tiles v. Briers (supra) to conclude that the incidence of tax should be disregarded in assessing damages for personal injuries lead logically to the conclusion that the tax which would be payable upon the income from the notional investment of the award of damages should also be disregarded. Whatever the position might have been if the Atlas Tiles case had been decided the other way, I think that the principle established by that case provides the solution to the problem now under discussion.

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The rates of interest recommended by the actuary, in addition to taking into account the incidence of taxation on the notional investment of the award of damages, were based upon the current yield from longterm Government stock.

In the Full Court of the Supreme Court of South Australia

No. 7
Reasons for Judgment of the Honourable The Chief Justice
25th October 1979.
(cont'd)

10 In Santos Limited v. Ironside Vol.79 L.S.J.S 464 at pp.472 and 473, the Full Court referred to Sharman v. Evans 13 A.L.R. 57 at p.78 and pointed out that if the present high interest rates are used in an actuarial calculation for the purpose of assessing damages for the future impact of impaired earning capacity and the resultant figure is not adjusted, the extent of a plaintiff's loss might be seriously underestimated. The reason is stated in the joint judgment of Gibbs and Stephen JJ in Sharman v. Evans at p.78, in the passage quoted in Santos Limited v. Ironside,
20 as follows:

30 "It presupposes investment at what, some years ago, would have seemed very high rates of interest. Those high rates are in part a reflection of anticipated future inflation; yet the essence of the process of assessment the result of which is to be tested by this means is that the effect of future inflation is to be ignored. So the high yield from the award should, to be consistent, be regarded as received year by year over a long period over which rapidly progressing inflation has its effect upon costs; so regarded the apparently very large future disposable income of the plaintiff may be seen in proper perspective."

40 See also Jacobs v. Varley (1975) 9 A.L.R. 219 per Murphy J at p. 236; Beneke v. Franklin (1975) 1 N.S.W.L.R. 571 per Glass JA. at pp.589-594; Armstrong v. Rudd (1978) 21 A.L.R. 166 per Brennan J. at p.171, per Deane J. at p.180.

The task of the judge in assessing damages is to arrive at a lump sum which fairly compensates the plaintiff for his injuries. If in doing so he decides to proceed by way of actuarial calculation, he may choose what he considers to be the appropriate

In the Full
Court of the
Supreme Court
of South
Australia

No. 7

Reasons for
Judgment of the
Honourable The
Chief Justice
25th October
1979.
(cont'd)

rate of interest having regard to the factors
mentioned in the judgments to which I have
referred. This is made clear in the joint
judgment of Gibbs, Stephen and Mason JJ. in
Hawkins v. Lindsley (1974) 4 A.L.R. 697. At
p.703 their Honours say:

"It is to be borne in mind, as the learned
trial judge said, that the ultimate task as
the law stands is to assess a lump sum, and
if it be that the sum fixed in any particular
case is one within the limits of a sound
discretion then it matters not that in making
his assessment a judge had regard to a rate
of interest which other judges may for the
time being consider is 1 per cent too high.
It is not possible, either by law or by
mathematics, to determine a formula
according to which the rate of interest
which may be used at a particular time is
to be determined. Could that be done there
would be some basis for judging whether or
not there had been error in choosing a
particular rate in any particular case.
Without it, however, there is no standard
for accurately fixing an interest rate
although, of course, the rate actually
chosen in a particular case could be palpably
wrong."

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It is implicit in Hawkins v. Lindsley that the
trial judge may choose the rate of interest
without the aid of evidence and it follows that
he may decline to act on opinions of actuaries
or other experts as to the appropriate rate of
interest. In my opinion the majority view in
Belleli v. McSkimming 1970 S.A.S.R. 313, to the
extent that it holds that a trial judge is bound
by expert evidence as to the appropriate rate of
interest or that he may not select a rate of
interest without evidence, is inconsistent with
Hawkins v. Lindsley supra and should not be
followed. In selecting a rate of interest, the
judge may take judicial notice, in accordance
with established principles, of such knowledge as
he possesses in common with other members of the
community as to general economic trends the
effects of inflation, prevailing rates of interest
and returns on investments.

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10 In Jacobs v. Varley supra Murphy J. considered a rate of 5% to be reasonable and this was the rate adopted by Brennan J. in Armstrong v. Rudd supra and by Gallop J. in Meadwell v. Barber and Others (unreported judgment of the Supreme Court of the Northern Territory delivered 5th April 1979). Under current conditions, and bearing in mind the extent to which the rate of interest on long term Government loans is influenced by inflationary expectations, and the current yield on sound equity stocks which might be thought to provide some limited protection against erosion of the value of the investment by inflation, it must be difficult to justify the use of a rate higher than 5%.

In the Full Court of the Supreme Court of South Australia

No. 7
Reasons for Judgment of the Honourable The Chief Justice
25th October 1979.
(cont'd)

20 Actuarial calculations can, of course, be no more than guides, particularly where there is a residual earning capacity. Nevertheless it is instructive to approach the task of assessment in the manner adopted by the learned trial judge, but basing the calculation upon the respondent's gross income at the date of trial, namely \$180 per week. The lowest rate of interest used in the actuarial calculations which are in evidence is 5.5%. Using that rate of interest, the present value of an annuity of \$180 per week ceasing on the attainment of age 65 or prior death is \$141,660. Allowance must be made for the amount which the respondent would probably earn in the 12 months following trial from his present employer and a fair allowance for that might reduce the figure to \$132,000. In order to determine what would be a proper award if the respondent were compensated on the basis of total loss of earning capacity after the expiration of about 12 months, it would be necessary to allow for the contingencies of life. His Honour took the view that the adverse contingencies of life were balanced in this case by the prospects which the respondent would have of advancing himself if there had been no accident. It is true that the respondent was a fit and energetic young man who had managed to advance himself somewhat. Nevertheless the advancement was modest. The position which he occupied, although having some managerial functions, produced an income of only \$180 per week and was, to say the least, precarious.

In the Full
Court of the
Supreme Court
of South
Australia

No.7
Reasons for
Judgment of the
Honourable The
Chief Justice
25th October
1979.
(cont'd)

With his education and experience, I cannot feel that he had any great prospects of advancement. On the other hand, the usual adverse contingencies, namely the prospect of premature termination or reduction of earning capacity due to illness or unemployment, are emphasized in this case by the precarious economic position of his employer. There is also a significant residual earning capacity whether it is exercised with his present employer or on the labour market. I agree in substance with what the learned judge has said about the residual earning capacity, but it exists and must be taken into account. I think that the respondent would be fairly compensated for the future impact of his impaired earning capacity by an amount of \$80,000.

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It appears that due to a misunderstanding the learned judge failed to appreciate that an amount of \$2,850 for past loss of earnings was to be included in the award in addition to the special damages.

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The aggregate of the figures thus arrived at for the component parts of the general damages is \$132,850. In my opinion, considered as a global figure, this sum, together with the special damages, represents fair compensation to the respondent for the consequences, both economic and non-economic, of his injuries and disabilities.

There remains the question of interest. The judgment appealed from was delivered before the decision of the Privy Council in Thompson v. Faraonio 24 A.L.R.1 and before the publication of the judgment of the High Court in Fire and All Risks Insurance Co. Ltd. v. Callinan 52 A.L.J.R. 637. The interest has been calculated therefore on what turns out to be a wrong basis. In Paull v. Gloede (1979) 83 L.S.J.S. 157 the Full Court interpreted those decisions as meaning that a trial judge should apportion the award for both economic and non-economic factors between detriments suffered by the plaintiff prior to trial and detriments to be suffered by the plaintiff in the future and should include in the judgment interest only on the former. Mr. Gray for the respondent asked us not to follow this case but to allow interest from the date of the writ on the whole of the amount

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awarded for non-economic factors. This Court departs from its previous decisions only when they are shown to be clearly wrong. I see no reason why this Court should depart from its previous decision in Paull v. Gloede. Counsel agreed that of the sum of \$50,000 for non-economic factors, \$30,000 should be regarded, for the purpose of calculating interest, as attributable to pre-trial detriments. There are no details as to the special damages and I assume that the respondent was out of pocket to the extent of the agreed special damages at the date of the issue of the writ. The sum of \$2,850 before the trial loss of earnings was also suffered before the issue of the writ. Interest at 10% per annum upon \$37,110 for 22 months is \$6,803. There must be some reduction for the fact that the non-economic detriments continued to be suffered from the date of the issue of the writ to the date of trial and had not wholly accrued at that date. I think that \$6000 would be an appropriate amount for interest.

In my opinion therefore the appeal should be dismissed. I would, however, pursuant to Order 58 Rule 14, substitute for the judgment for \$141,664.24 judgment for the respondent in the sum of \$143,110 with costs.

WALTERS J.: The circumstances out of which this appeal arises and the issues involved are set out in the judgment of the learned Chief Justice which I have had the benefit of reading. I concur with his Honour's reasons and with the orders proposed by him.

WHITE J.: I agree with the reasons of the learned Chief Justice.

In the Full Court of the Supreme Court of South Australia

No. 7
Reasons for Judgment of the Honourable The Chief Justice
25th October 1979.
(cont'd)

In the Full
Court of the
Supreme Court
of South
Australia

No. 8

Formal Judgment on Appeal dated 25th
October 1979

No. 8
Formal Judgment
on Appeal
25th October
1979.

SOUTH AUSTRALIA
IN THE SUPREME COURT
No. 1642 of 1976

BETWEEN: ANTHONY HOWARD RENDELL Plaintiff
- and -

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE Defendants 10

BEFORE THE HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
KING
THE HONOURABLE MR. JUSTICE WALTERS AND
THE HONOURABLE MR. JUSTICE WHITE
THURSDAY THE 25TH DAY OF OCTOBER 1979

THIS APPEAL by the above named defendants from the
judgment herein of the Honourable Mr. Justice
Hogarth (Acting Chief Justice) given and pronounced
on the 4th day of August 1978 coming on for hearing
on the 5th day of October 1979 UPON READING the 20
Notice of Appeal herein dated the 15th day of
August 1979 AND UPON HEARING Mr. Lander of counsel
for the defendants and Mr. T.A. Gray of counsel for
the plaintiff AND counsel for the plaintiff
requesting pursuant to Order 58 Rule 14 of the
Supreme Court Rules that the amount of the judgment
in favour of the plaintiff be increased THE COURT
DID RESERVE JUDGMENT and the same standing for
judgment this day THIS COURT DOETH ORDER:

1. That the appeal by the defendants be dismissed. 30
2. That in lieu of the amount of the judgment in
the said judgment dated the 4th day of August
1978 there be substituted judgment for the
plaintiff for the sum of \$143,110.00 and costs
to be taxed AND DOETH ADJUDGE the same
accordingly AND IT IS FURTHER ORDERED that
the defendants do pay to the plaintiff his
costs of and incidental to the appeal to be
taxed.

BY THE COURT

Sgd. R.E. Greger

CHIEF CLERK

THIS JUDGMENT is filed by BAKER McEWIN & CO. of National Mutual Centre 80 King William Street Adelaide. Solicitors for the Defendants.

In the Full Court of the Supreme Court of South Australia

No. 8
Formal Judgment on Appeal
25th October 1979.
(cont'd)

No. 9

10 Notice of Motion for Leave to Appeal to Her Majesty in Council dated 12th November 1979

No. 9

Notice of Motion for Leave to Appeal to Her Majesty in Council
12th November 1979

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1642 of 1976

BETWEEN: LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE
Applicants

- and -

ANTHONY HOWARD RENDELL Respondent

20 TAKE NOTICE that the Full Court will be moved at the first sittings of the Full Court to be held after the expiration of fourteen (14) days from the service of this Notice upon you exclusive of the day of such service or so soon thereafter as counsel can be heard by counsel on behalf of the abovenamed Applicants for an Order:-

- 30 1. That pursuant to Rule 2 of the Order in Council Regulating Appeals to Her Majesty in Council from the Supreme Court of the State of South Australia made on the 15th day of February 1909 the Applicants be granted leave to appeal on such conditions as the Court shall impose to Her Majesty in Council from the judgment of the Full Court comprising The Honourable The Chief Justice, The Honourable Mr. Justice Walters and The Honourable Mr.

In the Full
Court of the
Supreme Court
of South
Australia

No. 9
Notice of Motion
for Leave to
Appeal to Her
Majesty in
Council
12th November
1979.
(cont'd)

Justice White given and pronounced on the appeal to the Full Court in this matter on the 25th day of October 1979 whereby the Full Court dismissed the Applicants' appeal and pursuant to Order 58, Rule 14 of the Supreme Court Rules substituted for the sum of \$141,664.24 ordered by the learned trial judge The Honourable Mr. Justice Hogarth the sum of \$143,110.00 and entered judgment accordingly and ordered that the Applicants pay the Respondent's costs. 10

2. That upon proof of the compliance by the Applicants with such conditions as the Court shall impose the Applicants be granted final leave to appeal to Her Majesty in Council from the aforesaid judgment.
3. For such further Order as to the Court may seem just.

DATED the 12th day of November 1979.

Sgd. Baker McEwin & Co. 20
National Mutual Centre,
80 King William Street,
ADELAIDE.

Solicitors for the
Applicants.

TO: The Respondent,
Anthony Howard Rendell,
C/- Anderson Evans & Co.,
41 Carrington Street,
ADELAIDE. 30

THIS NOTICE OF MOTION is given by BAKER McEWIN & CO.
of National Mutual Centre, 80 King William Street,
Adelaide. Solicitors for the Applicants.

No. 10

Affidavit of Anne Marie Harrison dated
12th November 1979

In the Full
Court of the
Supreme Court
of South
Australia

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1642 of 1976

No. 10
Affidavit of
Anne Marie
Harrison
12th November
1979.

BETWEEN: LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE

Applicants

- and -

ANTHONY HOWARD RENDELL Respondent

I, ANNE MARIE HARRISON of 80 King William Street
Adelaide in the State of South Australia Solicitor,
MAKE OATH AND SAY as follows:-

1. I am a member of the firm of Baker McEwin &
Co. Solicitors for the Applicants and am a
person cognisant of the facts of this case.
2. I have been instructed to file a Notice of
Motion to the Full Court seeking leave to
appeal to Her Majesty in Council from the
judgment of the Full Court comprising The
Honourable The Chief Justice, The Honourable
Mr. Justice Walters and The Honourable Mr.
Justice White given and pronounced in this
matter on the 25th day of October 1979.
3. On the 25th day of October 1979 the Full
Court dismissed the Applicants' appeal and
pursuant to Order 58 Rule 14 substituted for
the sum of \$141,664.24 ordered by the learned
Trial Judge The Honourable Mr. Justice Hogarth
the sum of \$143,110.00 and entered judgment
accordingly and ordered that the Applicants
pay the Respondent's costs.
4. The Applicants seek leave pursuant to Order 2
of the Order in Council Regulating Appeals to
Her Majesty in Council from the Supreme Court
of the State of South Australia made on the
15th day of February 1909 to appeal to Her

In the Full
Court of the
Supreme Court
of South
Australia

No. 10
Affidavit of
Anne Marie
Harrison
12th November
1979
(cont'd)

Majesty in Council from the judgment
referred to in paragraph 3 here on such
terms and conditions as the Full Court shall
impose.

5. The proposed appeal of the Applicants involves a final judgment of this Honourable Court where the matter in dispute on the proposed appeal is in excess of the sum of £500 sterling.
6. Further the proposed appeal involves directly a claim or question respecting a civil right amounting to or the value of £500 sterling. 10
7. It is respectfully submitted further that the proposed appeal involves questions of great general or public importance namely:
 - (a) Whether or not a Court in assessing damages for loss of earning capacity should take into account the income tax which would have been paid or would be payable on the earnings that the person injured would have received but for the loss of or diminution in his earning capacity. 20
 - (b) whether or not a Court may without evidence select a rate of interest in the actuarial calculation to be used in aid of the assessment of damages for loss of earning capacity:
 - (c) whether or not a Court may have regard to the fear and expectation of inflation and/or the effects of inflation in the assessment of damages for loss of earning capacity. 30
8. It is respectfully submitted that this Honourable Court is frequently required to determine the issues referred to in paragraph 7 herein.
9. I know the facts deposed to herein of my own knowledge except as where otherwise appears.

SWORN at ADELAIDE)
by the said ANNE)
MARIE HARRISON this) Sgd. A.M. Harrison
12th day of)
November 1979)
Before me:)

In the Full
Court of the
Supreme Court
of South
Australia

No. 10
Affidavit of
Anne Marie
Harrison
12th November
1979.
(cont'd)

10 Sgd. J.G. Wadlow
A Commissioner for taking
affidavits in the Supreme
Court of South Australia.

THIS AFFIDAVIT is filed by BAKER McEWIN & CO. of
National Mutual Centre 80 King William Street
Adelaide. Solicitors for the Applicants.

No. 11

Formal Order granting Conditional Leave
to Appeal to Her Majesty in Council dated
6th December 1979

No. 11

Formal Order
granting
Conditional
Leave to Appeal
to Her Majesty
in Council
dated 6th
December 1979.

SOUTH AUSTRALIA
IN THE SUPREME COURT

20 No. 1642 of 1976

BETWEEN: ANTHONY HOWARD RENDELL Plaintiff
- and -
LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE Defendants

BEFORE THE HONOURABLE THE CHIEF JUSTICE (MR.
JUSTICE KING)
THE HONOURABLE MR. JUSTICE SANGSTER AND
THE HONOURABLE MR. JUSTICE MOHR
THURSDAY THE 6TH DAY OF DECEMBER 1979

30 UPON MOTION made unto this Court this day on behalf
of the above named defendants for leave to appeal to
Her Majesty in Council from the judgment herein of
the Full Court of this Court dated the 25th day of
October 1979 pursuant to notice of motion dated the

In the Full
Court of the
Supreme Court
of South
Australia

No. 11
Formal Order
granting
Conditional
Leave to Appeal
to Her Majesty
in Council
dated 6th
December 1979.
(cont'd)

12th day of November 1979 UPON READING the
said notice of motion and the affidavit of Anne
Marie Harrison filed herein on the 12th day of
November 1979 AND UPON HEARING Mr. Lander and Mr.
Worthington of counsel for the defendants and Mr.
T.A. Gray of counsel for the plaintiff THIS COURT
DOTH ORDER that the defendants be and are hereby
granted conditional leave to appeal to Her Majesty
in Council from the said judgment of the Full Court 10
upon condition that the defendants do within 21 days
from this date enter into good and sufficient
security to the satisfaction of the Court in the sum
of five hundred pounds (Sterling) for the due
prosecution of the appeal and the payment of all
such costs as may become payable to the plaintiff
in the event of the defendants not obtaining an
order granting them final leave to appeal or of
the appeal being dismissed for non-prosecution
or of Her Majesty in Council ordering the
defendants to pay the costs of the appeal (as the 20
case may be).

BY THE COURT

Sgd. E.E. Greger

CHIEF CLERK

THIS ORDER is filed by BAKER McEWIN & CO. of
National Mutual Centre 80 King William Street,
Adelaide. Solicitors for the Defendants.

No. 12

Formal Order
granting -
Final Leave
to Appeal to
Her Majesty
in Council
dated 6th
December
1979

No. 12

Formal Order granting Final Leave to
Appeal to Her Majesty in Council dated
6th December 1979

30

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 1642 of 1976

BETWEEN:

ANTHONY HOWARD RENDELL

Plaintiff

- and -

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE EARLE

Defendants

In the Full
Court of the
Supreme Court
of South
Australia

BEFORE THE HONOURABLE THE CHIEF JUSTICE (MR.
JUSTICE KING)

THE HONOURABLE MR. JUSTICE SANGSTER AND
THE HONOURABLE MR. JUSTICE MOHR

THURSDAY THE 6TH DAY OF DECEMBER 1979

No. 12
Formal Order
granting
Final Leave
to Appeal to
Her Majesty
in Council
dated 6th
December
1979.
(cont'd)

10

UPON MOTION made unto this Court this day on behalf of the above named defendants for final leave to appeal to Her Majesty in Council from the Judgement herein of the Full Court of this Court dated the 25th day of October 1979 pursuant to notice of motion dated the 12th day of November 1979 UPON HEARING Mr. Lander and Mr. Worthington of counsel for the defendants and Mr. T.A. Gray of counsel for the plaintiff AND this Court being satisfied that the condition upon which conditional leave to appeal was granted by order dated this day has been complied with THIS COURT DOTH ORDER that the defendants be and are hereby granted final leave to appeal to Her Majesty in Council.

20

BY THE COURT

Sgd. E.E. Greger

CHIEF CLERK

30

THIS ORDER was filed by BAKER McEWIN & CO. of National Mutual Centre 80 King William Street Adelaide. Solicitors for the Defendants.

No. 1 P.1

Report of
Dr. Brian L.
Cornish
16th March
1976

EXHIBITS

PLAINTIFF'S EXHIBITS

No. 1 P.1

Report of Dr. Brian L. Cornish

BRIAN L. CORNISH
F.R.C.S., F.R.A.C.S.

DAVID C. DAVIDSON
F.R.C.S. (ED.),
F.R.A.C.S.

Orthopaedic Surgeons 16th March 1976

BLC/GN 327 South Terrace
Adelaide, S.A.5000

10

Telephone 223 2066

STAMPED
18 MAR 1976

Anderson, Evans & Co.,
Barristers & Solicitors,
17 Carrington St.,
ADELAIDE SA.5000

Your Ref: R/D94/5

Dear Sirs,

re: MR. ANTHONY HAROLD RENDELL

In reply to your letter dated 20th November 1975 there follows a medical report relating to injuries sustained by this patient in a vehicular accident 1.3.75 based on an examination carried out 16.2.76 and the Royal Adelaide Hospital records which have only just been obtained. Incidentally the R.A.H. Unit Record No. is 123962.

20

Mr. Rendell is now 27 years of age, single and manager of Spex Detergent.

On 1.3.75 he was riding his motor cycle (Honda 750) when he came in to collision with a motor car sustaining the following injuries:-

30

1. Concussion.
2. Multiple severe abrasions of both upper limbs.
3. Brachial plexus lesion and partial severance of muscles and nerves in the left upper limb.

4. Fracture of the midshaft of the right femur with extensive soft tissue contusion.
5. A comminuted fracture of the lower third of the left tibia and fibula.
6. Fractures of the carpus and second metacarpal left wrist.

No. 1 P.1
Report of
Dr. Brian L.
Cornish
16th March
1976
(cont'd)

Initial management consisted of life support measures followed by wound excisions and initial stabilisation of fractures.

10 Subsequently the right femur was controlled by the insertion of a Kuntchner nail and the left tibia continued to be controlled by a pin through the os calcis - more direct control being difficult because of the extent of the comminution.

20 A good deal of time and effort was expended by the Neurosurgeons and Neurologists in evaluation of the neurological deficit in the left upper limb. It appears that the final consensus is that he sustained a traction injury high in the brachial plexus affecting the 5th and 6th cervical nerve roots with some partial involvement of the 7th.

Exploration of the musculo-cutaneous nerve in the left arm in a subsequent admission - 30.7.75 to 2.8.75 - confirmed these findings.

The patient was gradually mobilised and finally discharged using a right crutch on 29.4.75 and he was subsequently followed in both the Orthopaedic and Neurosurgical Outpatients clinics.

30 He states that he resumed work two days after discharge, carrying out office work only. These has been of extreme difficulty because of the damage to his left upper limb, his dominant one. Since then he has been able to learn to write, to some extent, with his right hand.

40 His main complaints when seen on 16.2.76 were of pain in the left arm which extends through the limb and affects him particularly at night. He has a pronounced limp due to shortening of the left leg and the nail still remains in his right femur.

No. 1 P.1
Report of
Dr. Brian L.
Cornish
16th March
1976
(cont'd)

Examination of the right lower limb revealed good function with no stiffness in hip or knee and a well developed thigh musculature.

In the left lower limb, there is deformity present just below the knee from overlapping bony fragments which are adherent to a lengthy scar on the shin. The movement in the knee is somewhat restricted with movement in the ankle lacking some ten degrees of both flexion and extension.

The right upper limb is normal but on the left side there are gross disabilities. The shoulder and elbow have virtually no active control and the limb must be supported in a special sling. In the forearm there is a weak movement allowing the hand to be turned in to a palm down position (pronation) but there is no power at all in the reverse movement of supination. In the hand there is weak control of the wrist and weak finger flexion and extension. There is reasonable sensation in the 5th left digit but otherwise only a coarse definite sense of feeling in the rest of the hand. There is no real appreciation of hot or cold.

10

20

In summary therefore this patient has sustained a very severe injury to his left upper limb which is, or was, his dominant side. It would appear that these effects are permanent. It is possible that some slight improvement in finger control may develop, in which case there could possibly be some question of stabilising the more proximal joints.

As far as the lower limbs are concerned, treatment is completed except for the possible removal of the Kuntchner nail in the right femur.

30

He will of course need to wear a raise on his left heel to accommodate the established shortening in the tibia.

This report may seem somewhat open-ended in regard to the major left upper limb injury which could be covered by the general term of a brachial plexus lesion but it is in the nature of these things that some eighteen months must be allowed for recovery to declare itself; as that time approaches, consideration of salvage procedures will become irrelevant.

40

Yours faithfully,
Sgd. B.L. Cornish.
B. L. CORNISH

ALEX G. SPITZER
M.B., B.S., F.R.C.S. (ED.)
F.R.C.S. F.R.A.C.S.
Orthopaedic Surgeon
Telephone 267 4666

Harley Chambers
63 Palmer Place
North Adelaide 5006
30th May, 1977

Anderson, Evans & Co.,
234 St. Vincent Street,
Port Adelaide, 5000.

10

Dear Sirs,

re: Mr. Anthony Rendell

The above-named was first seen by me in my rooms on 30.10.75 having previously been in the Royal Adelaide Hospital because of a brachial plexus lesion.

He was referred to me for consideration of left shoulder arthrodosis, and it was decided in the first instance to treat him with physiotherapy and review the situation some six months later.

20

When reviewed on 28.5.76, he seemed fairly happy with his left arm, despite the fact that there was no shoulder nor elbow function.

He had also previously been treated for a left tibial fracture and a right femoral fracture, the latter which was internally fixed with a 'K' nail.

He desired removal of the 'K' nail, and this was undertaken on 8.6.76.

Post-operatively he made a relatively uneventful recovery although it became obvious that he would be left with some disability because of the left leg shortening due to the tibial fracture.

30

I enclose photo-copies of his x-ray reports, as well as letters from Mr. P. Carney and a summary of his Royal Adelaide Hospital case notes whilst he was under the care of Mr. Carney, for your information.

No. 2 P.2

Report of Dr.
Alex G. Spitzer
30th May 1977
(cont'd)

With reference to disability assessment of the brachial plexus injury, Mr. Carney would be in the best position to elaborate on it.

With respect to his orthopaedic problems, I feel that he will be left with a residual disability amounting to 5% loss of use of the right lower limb and 10% loss of use of the left lower limb, assessed as disability on the general labour market normally available to him.

Yours faithfully,
Sgd. Alex G. Spitzer

10

No. 4 P.4

Reports of Dr.
P.G. Carney

No. 4 P.4

Reports of Dr. P.G. Carney

MEDICAL REPORT ON ANTHONY RENDELL

Mr. Rendell was admitted to the Royal Adelaide Hospital in the care of Mr. Spitzer on 1.3.75. A history was obtained that he had been riding a motor bicycle when hit by a car and thrown off. He sustained concussion, fracture of the left tibia and fibula (compound) a fractured right femur, fractured base of second metacarpal and multiple lacerations. In addition there was a down driving injury of the left shoulder producing partial avulsion of the brachial plexus. On admission extreme swelling with severe abrasions of both upper arms was noted. Closed reduction of the fractured tibia and closed reduction of the right femur was performed on 1.3.75 and other wounds debrided. It was noted that the left musculocutaneous nerve was damaged and no suture of it was performed. On 20.3.75 the right femur was repaired by an intra-medullary K nail.

20

30

I first saw Mr. Rendell on 2.4.75. I noted two superimposed neurologic lesions. There was gross weakness and wasting of all shoulder girdle muscles maximal in spinati and deltoid. There was good pectoral muscle function, a flicker only of triceps function and elbow flexion with the

biceps jerk just present. The forearm groups and small muscles of the hand were all weak, maximal in median and radial nerve distribution. I found dense sensory loss in C5-6 dermatomes with partial loss in C7. I thought there was superimposed sensory loss in the distribution of the musculo-cutaneous nerve. There were no long tract signs. I felt that there was avulsion of the nerve roots of C5, C6 and probably C7 with associated damage to the musculo-cutaneous nerve possible division, possibly avulsion.

An E.M.G. was performed which showed complete denervation in the C5-6 muscles with severe partial denervation in C7, some evidence of denervation in C8 and T1 muscles. The findings also indicated that the sensory lesion was proximal to the dorsal root ganglion in keeping with the avulsion of nerve roots from the spinal cord.

In an attempt to improve elbow flexion exploration of the musculo-cutaneous nerve was undertaken on 31.7.75. This revealed an extensive traction injury of the nerve and cable grafting was performed. This histopathology performed in detail subsequently suggested that there were not significant numbers of axons within the nerve anyway indicating that its motor component was almost certainly evulsed from the spinal cord.

Mr. Rendell has made no further recovery and is left with gross disablement of the left arm. He has also continued to suffer from pain in the distribution of the avulsed nerves and although requiring only mild intermittent analgesics for this, quite severe pain is frequently associated with these injuries and continues for many years.

SUMMARY AND PROGNOSIS

In addition to other injuries which are mainly orthopedic in nature Mr. Rendell suffered a minor concussion in the accident of 1.3.75 and has made a complete recovery from this. He also sustained an avulsion of the C5-6 and most of C7 nerve roots from the spinal cord with paralysis in the groups of muscles supplied by these nerves, and loss of sensation with associated pain in the distribution of the same nerve roots. In consequence he is

No. 4 P.4

Reports of Dr.
P.G. Carney
(cont'd)

unable to bend his arm at the elbow and unable to move the arm away from the side at the shoulder, move it forwards or backwards effectively at the shoulder and has only weak movement towards the body at the shoulder. Extension of the arm at the elbow is weak. In the hand and forearm all groups are moderately weak with clumsy function with some impaired sensation.

Mr. Rendell may require the help of subsequent surgical procedures to fuse the elbow and shoulder. It may be also possible to fit him with a mechanical splint to assist elbow flexion. This line of management is being explored but such devices are probably only available in America and may be expensive.

10

I consider that Mr. Rendell's deficit will be permanent and that it amounts to a 95% loss of function in the left arm plus a considerable element of pain and suffering which will continue.

10th June, 1976 Signed. P.G. Carney, F.R.A.C.S.

20

MEDICAL REPORT ON ANTHONY RENDELL

Mr. Rendell was admitted to the Royal Adelaide Hospital on 1.3.75 in the care of Mr. A.G. Spitzer, being discharged on 29.4.75. I saw him in consultation on 2.4.75 and I have seen him at intervals since that time.

Mr. Rendell was admitted with a history that he had been struck by a car whilst riding a motor cycle. There had been a moderate concussion and he had sustained a down driving injury to the left shoulder together with lacerations of the inner aspect of the left arm. Severe abrasions of the upper arms on both sides were noted, worse on the left with bruising of the left hand. The right thigh was swollen with an obvious compound fracture of the left tibia and fibula. X Rays confirmed fracture of the mid shaft of the right femur and a comminuted fracture of the lower 1/3rd of the left tibia and fibula with an undisplaced fracture of the second left metacarpal bone. On the day of

30

4P

admission closed reduction of fractures was carried out together with debridement of wounds. In exploring the wound of the left arm it was noted that there was an avulsion of the left musculo-cutaneous nerve. Post-operatively, in addition to a left musculo-cutaneous palsy weakness of muscle groups innervated by other nerves in the left arm was also noted. On 20.3.76 a K nail was used to repair the fracture of the right femur.

No. 4 P.4

Reports of Dr.
P.G. Carney
(cont'd)

10

When I saw Mr. Rendell on 2.4.75 I was informed that Mr. Rendell's forearm and wrist weakness had improved over 10 days from the time of operative exploration and that there had been no recovery in deltoid triceps and elbow flexors. I also noted that there had been recovery of sensation in the left upper arm. I noted gross weakness and wasting of all shoulder girdle muscles on the left side maximally affecting the spinati and deltoid muscles. He had good flexor muscle function at 3 to 4/6ths of normal power. I felt that there was a flicker of triceps function and also of elbow flexion and I noted his biceps tendon jerk was just present. Forearm groups and small muscles of the hand all functioned at 4 to 5/6ths of normal although I felt that there was some increase in weakness in median and radial compared to ulnar nerve distribution.

20

I noted dense sensory loss in C5 with partial loss in C6 and C7 dermatome distribution. I felt that there was a superimposed diminution in sensation in musculo-cutaneous nerve distribution in excess of the other nerves. I found no long tract signs within the spinal cord nor any evidence of a Harner's syndrome. Mr. Rendell told me that he felt the injury had been a down driving one to the left shoulder.

30

I felt that Mr. Rendell had suffered a root avulsion or traction injury affecting the C5 and 6 nerve roots with some damage to the C7 nerve root. I felt there was definite associated damage to the musculo-cutaneous nerve and possibly a neuropraxia affecting the median and ulnar nerve from contusion of the arm. I found the gross triceps weakness very hard to interpret in the presence of good wrist and finger extension. I felt that some further investigations

40

No. 4 P.4

Reports of Dr.
P.G. Carney
(cont'd)

and continued observation was warranted. An electromyogram was carried out which showed complete denervation in the C5-6 innervated muscles with severe partial denervation in C7 and some evidence of some denervation in C8-T1 muscle. The median nerve was found to maintain its motor conduction velocity and the sensory action potential was present indicating that the sensory lesion probably lay proximal to the dorsal root ganglion, in other words a finding consistent with root avulsion.

10

Mr. Rendell was admitted in my care from 30.7.75 until 2.8.75. It was felt that there was some coraco brachialis movement and that it might be possible to restore some elbow flexion by exploring and attempting repair of the musculocutaneous nerve. The nerve was identified but found to be very atrophic despite this a cable graft was performed in the hope that there might be some recovery.

20

Subsequent histologic examination of the nerve demonstrated some axons to be present, but it was likely that these were purely sensory axons in view of the subsequent lack of any further recovery.

I subsequently reviewed Mr. Rendell on the 22.9.75, 6.2.76 and 28.5.76. In view of the lack of recovery and the evidence of local damage to the nerve I felt that further nerve grafting procedures were not warranted and recommended in about two months from the time of review consideration be given to fusion procedures. I also requested the splint maker to explore possible assistance from mechanical aids to flexing and extending the elbow. I noted that there was considerable shaking in the left hand with poor sensation in the thumb and index finger and reduced power due to partial median nerve damage or possibly root or plexus damage, the latter being a little more likely. This I felt reduced the hand function to crude levels only. Mr. Rendell was a little unstable on his feet but I felt that this was due to fracturing of the limbs rather than to any damage to the nervous system itself.

30

40

SUMMARY AND PROGNOSIS

No. 4 P.4

Reports of Dr
P.G. Carney
(cont'd)

10 I consider that in the accident which occurred on 1.3.75 Mr. Rendell sustained a moderate concussion from which he has made a full recovery. He also sustained extensive lower limb fractures and contusions and abrasions to the upper arms. The major complication has been an avulsion of the C5 and C6 nerve roots on the left side and almost complete avulsion of the C7
15 nerve root and partial avulsions of C8 and T1 nerve roots. This has left Mr. Rendell with a residual disability in the left arm which amounts to 80% of arm function. I do not consider there is any reasonable prospect of recovery from this level of disability. In addition he has problems from limb fractures which appear to be causing only minor disability however I feel that expert orthopedic opinion should be sought on this matter.
20 I consider that for medico-legal purposes the neurologic deficit can be regarded as permanent.

17th September, 1976. Signed P.G. Carney, F.R.A.C.S.

MEDICAL REPORT ON ANTHONY RENDELL

30 I reviewed Mr. Rendell for the purposes of this report on the 29th May, 1978. This report is supplementary to a report provided on the 10th June, 1976. Mr. Rendell told me that there had been no real change in sensation in the left arm. He had noted a little improvement in the movement of the left hand and some improvement in his pain
35 problem. At one stage he had been taking large quantities of analgesics but had realised that this was of little benefit and now took only an occasional mild analgesic. He still suffered from pain in the region of the left shoulder from time to time and some radiating pain in the left arm.

40 Re-examination confirmed for practical purposes a complete paralysis of muscles innervated by the C5 and C6 spinal cord segments and a severe but incomplete paralysis of those muscles supplied by the C7 cord segment. He has sensory loss in the same
45 distribution. The sensory loss is particularly disabling to hand function and Mr. Rendell

No. 4 P.4

Reports of Dr.
P.G. Carney
(cont'd)

commented that he would often lose objects because he had placed them in the left hand and was then unaware of their presence, for example he had lost a bunch of keys for some hours because of this.

As a result of the wasting of muscles there was some deformity of the left shoulder joint resulting in disfigurement. Mr. Rendell said he normally left the arm dangling at his side but occasionally if the shoulder began to ache or it was in his way at work he would tuck the arm into his jacket or shirt front. The arm was of very little use in any occupation. He had given consideration to amputation but had decided against it for the time being. I think it is unlikely that he will decide to have an amputation but occasionally the damaged limb is sufficiently in the way to warrant this step. Attempts at fitting mechanical splints including a B.R.A.D.U. splint have failed to work and it seems highly improbable that any present available rehabilitation programme or splint will enable better use to be made of the arm and hand. I think that the comment made in the report of the 10th June, 1976 that Mr. Rendell's deficit will be permanent and amounts to a 95% loss of function in the left arm can be re-stated.

31st May, 1978 Signed P.G. Carney F.R.A.C.S.

No. 4 P.5

Actuarial
Certificates
prepared by
Campbell Cook
and Stratford
dated 30th
June 1978

No. 4 P.5

Actuarial Certificates prepared by
Campbell Cook and Stratford dated 30th
June 1978

CAMPBELL, COOK & STRATFORD,
Consulting Actuaries.
Epworth Building 33 Pirie Street, Adelaide 5000
Telephone 212 4402

Mr. Anderson

30th June, 1978

Messrs. Anderson, Evans & Co.,
Barristers & Solicitors,
41 Carrington Street,
ADELAIDE, S.A. 5000.

Dear Sirs,

No. 4 P.5

re: ANTHONY RENDELL - MALE AGED 30 - DAMAGES CLAIM

Actuarial
Certificates
prepared by
Campbell Cook
and Stratford
dated 30th
June 1978
(cont'd)

I certify that the annuity values below have been calculated using the mortality of the Australian Life Tables 1970/72 (Males).

10 Annuity values are deemed to commence on the attainment by the male of age 30. Losses from the date of accident until that date are in addition to losses calculated with the assistance of the values below.

20 In determining the appropriate interest rate to use in any given case it is my opinion that one must firstly make an assumption regarding the appropriate investment medium and its current interest yield and then modify this interest rate to allow for the impact of taxation upon the interest earnings on the award or settlement. Taxation at current rates is assumed. Inflation of earnings in future will be ignored.

In my opinion the appropriate investment medium is long term government stock on which the current pre-tax yield is 8.5% p.a. The income derived from the investment of the award or settlement will normally be subject to tax and the amount of this tax will depend upon:

- 30
- (1) The size of the award or settlement;
 - (2) The anticipated duration of income loss;
 - (3) Any other income the plaintiff has from earnings.

The size of the award or settlement is dependent upon the level of net income lost and the factor (2) above.

In Table 1 below I give my recommendations for interest rates to be used in conjunction with the annuity values in Table 2.

No. 4 P.5

Actuarial
Certificates
prepared by
Campbell Cook
and Stratford
dated 30th
June 1978
(cont'd)

TABLE 1

RECOMMENDED INTEREST RATES

GROSS INCOME REMAINING	<u>NET WEEKLY LOSS</u>				
	<u>£100</u>	<u>£130</u>	<u>£160</u>	<u>£190</u>	<u>£220</u>
0	7.75	7.25	7.00	6.75	6.50

Values of annuities of £1 per week to a male aged 30, the annuities ceasing on the attainment of age 65 or prior death.

TABLE 2

ANNUITY VALUES

<u>INTEREST RATE</u>	<u>VALUE</u>
7.75%	£ 625
7.25	655
7.00	672
6.75	689
6.50	707

10

A detailed explanation of the effect of taxation will be supplied upon request.

Yours faithfully,

Sgd. P.D.C. Stratford.

20

CAMPBELL, COOK & STRATFORD
Consulting Actuaries.
Epworth Building 33 Pirie Street Adelaide 5000
Telephone 212 4402

Your ref: Mr. Anderson 30th June, 1978

Messrs. Anderson, Evans & Co.,
Barristers & Solicitors,
41 Carrington Street,
ADELAIDE, S.A. 5000.

Dear Sirs,

30

RE: MR. ANTHONY RENDELL - MALE AGED 30 - DAMAGES CLAIM

I certify that the annuity values below have been calculated using the mortality of the Australian Life Tables 1970/72 (Males).

No. 4 P.5
 Actuarial
 Certificates
 prepared by
 Campbell Cook
 and Stratford
 dated 30th
 June 1978
 (cont'd)

Annuity values are deemed to commence on the attainment by the male of age 30. Losses from the date of accident until that date are in addition to losses calculated with the assistance of the values below.

10 In determining the appropriate interest rate to use in any given case it is my opinion that one must firstly make an assumption regarding the appropriate investment medium and its current interest yield and then modify this interest rate to allow for the impact of taxation upon the interest earnings on the award or settlement. Taxation at current rates is assumed. Inflation of earnings in future will be ignored.

20 In my opinion the appropriate investment medium is long term government stock on which the current pre-tax yield is 8.50% p.a. The income derived from the investment of the award or settlement will normally be subject to tax and the amount of this tax will depend upon:

- (1) The size of the award or settlement;
- (2) The anticipated duration of income loss;
- (3) Any other income the plaintiff has from earnings.

30 The size of the award or settlement is dependent upon the level of net income lost and the factor (2) above.

In Table 1 below I give my recommendations for interest rates to be used in conjunction with the annuity values in Table 2.

<u>GROSS INCOME REMAINING</u>	<u>RECOMMENDED INTEREST RATES</u>				
	<u>£ 10</u>	<u>£ 40</u>	<u>£ 70</u>	<u>£100</u>	<u>£130</u>
£170	5.75	5.75	5.75	5.75	5.50
180	5.75	5.75	5.75	5.75	5.50

No. 4 P.5

Actuarial
Certificates
prepared by
Campbell Cook
and Stratford
dated 30th
June 1978
(cont'd)

Values of annuities of \$1 per week to a male aged 30, the annuities ceasing on the attainment of age 65 or prior death.

TABLE 2

ANNUITY VALUES

<u>INTEREST RATE</u>	<u>VALUE PER \$1 PER WEEK</u>
5.75%	\$766
5.50	787

A detailed explanation of the effect of taxation will be supplied on request.

Yours faithfully,

10

Sgd. P.D.C. Stratford.

No. 5 P.6

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June 1978

No. 5 P.6

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Award dated 15th June, 1978

June 15,
1978

SOUTH AUSTRALIAN INDUSTRIAL
GAZETTE

THE INDUSTRIAL CONCILIATION AND ARBITRATION ACT,
1972-1975

20

MANUFACTURING AND WHOLESALE CHEMISTS AND GROCERS
CONCILIATION COMMITTEE AWARD (10/4/78)

THE award of the Conciliation Committee,
constituted by the Minister of Labour and Industry
by notice published in the Government Gazette on
the 19th day of May, 1977, in respect of:-

(1) The trades or businesses (except as to clerks)
of -

(a) Wholesale grocers, tea merchants, and
dairy produce salesmen.

30

(b) Pulping, testing, grading, cleaning and
packing of eggs.

(c) Wholesale chemists and druggists.

No. 5 P.6

(d) Manufacturing chemists and manufacturing grocers (including the treatment of the by-products produced in either form of manufacture).

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Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

(e) Processing of nuts and potato crisps, farinaceous food and food products.

10 (2) The occupations of storemen and packers engaged in the trades or businesses mentioned in (1)(a), (b), (c), (d) and (e) is as follows:-

Clause 1. Arrangement

This award is arranged as follows:-

Clause No.	Subject Matter of Clause
1	Arrangement
2	Definitions
3	Wages
4	Penalties Etc.
5	Calculation of Juniors' Rates
20 6	Improvers
7	Minimum Wage - Adult Employees
8	Mixed Functions
9	Hours
10	Overtime
11	Casual Employees
12	Regular Part-time Employment
13	Saturdays, Sundays and Public Holidays
14	Meal Allowances
15	Tea Break
30 16	Uniforms
17	Shift Work
18	Piecework
19	Heavy Weights
20	Terms of Contract
21	Sick Leave
22	Annual Leave
23	Bereavement Leave
24	Protective Clothing
25	Existing Conditions
26	Period of Operation

40 Clause 2. Definitions

In this award unless the contrary intention appears:-

No. 5 P.6

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and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

- (a) Senior leading hand means an employee who is in charge of one or more leading hands.
- (b) Leading hand means and adult employee, who, notwithstanding such employee may be under the orders of a superior, has three or more employees regularly under his direction.
- (c) Casual employee means an employee whose contract of hiring is less than a contract of hiring by the week but shall not include a part-time worker as defined in clause 12. 10
- (d) Weekly hand means an employee who is engaged for a fortnight or more continuously, and whose engagement may be terminated by a weeks notice on either side: Provided that the weeks notice cannot be given until one week has been worked.
- (e) Storeman and/or packer means an employee who in a store or in any place where goods are handled for the purpose of being received into, stored in or dispatched from a store is engaged in so receiving, storing or dispatching them or in any place is engaged in packing them and in such receiving, storing, dispatching or packing is required to use a degree of skill, judgment or responsibility similar to that which has been usually required from a storeman or packer but does not include - 20
- (i) an employee who in the course of a manufacturing or packing business merely encloses goods in the uniform container or containers in which such goods are ordinarily sold by the manufacturer or packer; or 30
- (ii) a leading hand or other person in charge in such store or place who does not ordinarily work manually therein as a storeman or packer.
- (f) Assembler means an employee working in a warehouse or store who is engaged in assembling orders which are subsequently checked and packed by a storeman and/or packer. 40

- (g) Storeman driver means an employee who may be required from time to time to drive a company vehicle.
- (h) The Union means the Manufacturing Grocers Employees Federation of Australia, South Australian Branch.
- 10 (i) Shift worker means an employee giving at least five shifts in any one week either before or after the prescribed working hours under this award.
- (j) Cereal cooker means any employee who converts the raw material to the cooked material.
- 20 (k) Fork lift driver means a person engaged in operating a power driven and operated vehicle constructed for driving and operation by an operator seated on the vehicle and for the purpose of lifting, carrying and/or stacking goods, merchandise, materials etc. (whether as units, in batches etc., or in pallet loads, by means of fork arms or other appropriate fitments, according to the nature of the load), or alternatively any other fork lift having capacity in excess of 2,500 kilograms.
- 30 (l) Process worker means any employee engaged under the coverage of clause 3(b) or clause 3(c) as a chemical worker and who is without a plant operator's grading or any other employee in any other section of this award who is not elsewhere classified (but shall not apply to clause 3(d)).
- (m) Plant operator means a process worker who is classified to operate efficiently one or more "plant units", within his department, without direct supervision.
- 40 (n) Plant units are such items of plant as are at present grouped as units, and as may be grouped by future requirements. Schedules itemising the grouping of plants as "plant units" will be displayed permanently on notice boards throughout the works.

No. 5 P.6

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Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

(o) Plant operators may be graded I, II, III, IV, V, VI, VII, VIII or IX in direct relation to the number of "plant units" which they can operate efficiently without direct supervision.

(p) Finished product worker is an employee engaged in the final preparation of and packing of the finished drugs or their by-products.

Note:- Definitions (l) to (p) inclusive shall apply only to the classifications listed in clause 3(c). 10

Clause 3. Wages

The minimum weekly rate of wage payable to employees who are covered by this award for work in ordinary time are contained in Schedule 1, Wages, attached hereto.

Clause 4. Penalties Etc.

In addition to the rates set out in clause 3(c) "Manufacture of Fine Chemicals", the following penalties shall be paid to employees engaged under classifications set out in that subclause. 20

(a) Any employee engaged per day or part thereof in -

	Per day or part thereof when so engaged ₹	
(i) Feeding slack lime to elevator	0.50	30
(ii) Operating cocoa mill	0.40	
(iii) Loading or unloading bags of cocoa or lime	0.25	
(iv) Working ground cocoa feed bin	0.25	
(v) Shovelling spent cocoa mixture in percolation tanks	0.30	
(vi) Operating the theobromide extraction liquor pumping plant	0.30	40

For any
week or
part
thereof
when so
engaged

No. 5 P.6
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Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

10 (b) Any employee engaged in the
manufacture of phenacetin,
sodium nitrophenate, nitro-
phenetol, crude or distilled
phenetidine (but not including
an employee engaged solely in
the grinding and packing of
phenacetin) shall be paid per
week an amount of 2.00

20 (c) Any employee engaged in the
manufacture of phenacetin who
may be called upon to centrifuge
crude sodium thiosulphate, crush
and/or weigh paranitrochlorbenzene,
charge solid paranitrochlorbenzene,
charge sodium nitrophenate, or
clean phenetidine filter, shall be
paid per week (in addition to
clause 3(b)) an amount of 1.00

30 Per hour of
part thereof
when so
engaged

40 (d) Any employee required to -
work on the bottom of the
concrete percolation tanks, or
clean out the bottom of steel
neutraliser tanks, or
clean cesspool, or
work in the inside of a
phenacetin acetylator or
crystalliser for cleaning
purposes,
shall be paid per hour an
amount of 0.30

Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

Per day or
part thereof
when so
engaged
§

- | | | | |
|------|--|------|----|
| (e) | Any process worker who is required to operate per day or part thereof any - | | |
| (i) | hydrolysis autoclave, sodium nitrophenate, crystallisation plant, ethylation autoclave, ethylation alcohol recovery still, reduction autoclave, phenetidine still, or acetylator | 0.30 | 10 |
| (ii) | cocoa mill, the bromine extraction pumping plant, caffeine autoclave, or caffeine recovery plant | 0.30 | |
| (f) | Any cleaner washing or cleaning floors where intermediate products or by-products of phenacetin are processed or stored, shall receive per day or part thereof an additional | 0.20 | 20 |
| (g) | Any employee responsible for the stock and dispatch of orders in the finished product section shall receive per day or part thereof an additional | 0.30 | 30 |

NOTE:- If juniors are engaged on any work set out in paragraphs (a) to (g) inclusive of this clause, such juniors shall receive those additional rates.

Clause 5. Calculation of Juniors' Rates

Rates for improvers and juveniles are calculated to the nearest 10 cents per week, any fraction less than 5 cents to go to the lower multiple and 5 cents or more to go to the higher. 40

Clause 6. Improvers

No. 5 P.6

(a) In the Warehouse or Store section of this award, the number of improvers shall not exceed one improver for every two adult workers or fraction of two adult workers.

(b) In the Factory section of this award, the number of improvers shall not exceed four to each adult worker.

Clause 7. Minimum Wage - Adult Employees

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Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

10 Refer to Schedule 1C.

Clause 8. Mixed Functions

An employee engaged on duties carrying a higher rate than his ordinary classification for more than two hours on any day shall be paid the higher rate for the whole day.

Clause 9. Hours

20 (a) The ordinary hours of work for day work shall be 40 per week, to be worked between the hours of 7 a.m. and 6 p.m. on Monday to Friday inclusive, with a period for lunch of not less than 30 minutes, between the hours of 12 noon and 2 p.m.

Provided that the hours within which and the days on which the 40 hours shall be worked may be altered by mutual agreement in writing between employers and the union but only because of the mutual bona fide religious beliefs of the parties.

30 (b) Employees engaged in the manufacture of fine chemicals shall be allowed five minutes at the end of the days work as changing time, provided however, that employees engaged in the manufacture of phenacetin and its intermediate products and by-products shall be allowed 10 minutes during which period they shall be required to change from their working clothes and to cleanse themselves as required by the employer. This subclause shall apply only to those employees who are classified under clause 3(c) of this award and engaged as such.

Clause 10. Overtime

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and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

Any employee who works for any time in excess of the number of hours as prescribed by this award and/or before the fixed starting time or after the fixed finishing time, respectively, shall for such extra time be paid at the rate of time and a half for the first three hours and double time thereafter: Provided that in the calculation of overtime each days work shall stand alone. Provided further that in the case of any female employee who on being asked to work does work overtime for more than three days in any one week double time shall be paid after the first 12 hours overtime for that week.

10

An employee working overtime shall be allowed a crib time of 20 minutes, with pay at the appropriate rate, after each four hours of overtime worked.

An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of three hours work at the appropriate rate.

20

Clause 11. Casual Employees

(i) (a) The minimum rate of wages which shall be paid to a casual worker for work performed in ordinary time shall be a minimum rate higher by 20 per centum than the appropriate ordinary hourly rate (computed as 1/40th of the appropriate weekly rate prescribed in this award).

(b) Work performed by casual workers in or during overtime, shall be paid for at the appropriate rate prescribed in this clause for ordinary workers plus the penalties prescribed in this award for overtime.

30

(c) A casual worker shall not be entitled to sick leave, annual leave or payment for public holidays as prescribed by this award.

Clause 12. Regular Part-Time Employment

A regular part-time worker is an employee on a weekly contract of hire to work a specified lesser

40

number of hours (which must be at least 20 hours in any one week) within the hours of 7 a.m. and 6 p.m. Work performed outside those hours by such a part-time worker shall attract the appropriate penalty provisions of this award for shift workers.

No. 5 P.6
Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

- 10 (a) Such employee shall be paid a proportion of the appropriate wages or rates prescribed in the wage clause for 40 hours of work according to the number of hours actually worked. Provided that any hours worked on Saturdays, Sundays or the public holidays named in this award shall incur the penalty elsewhere prescribed for those days.
- (b) Such employees shall be entitled to pro rata annual leave and pro rata sick leave as prescribed in the relevant clauses of this award.
- 20 (c) If such employee usually works on a day of the week on which a public holiday occurs and he is not required to work on that day, he shall be paid for the hours which he would normally have worked on that day.

Clause 13. Saturdays, Sundays and Public
Holidays

(a) Saturday Work

30 All work performed by employees (other than shift workers) on a Saturday shall be paid for at the rate of time and a half for the first three hours and at the rate of double time thereafter

(b) Sunday Work

All work performed by employees (other than shift workers) on a Sunday shall be paid for at the rate of double time.

(c) Work on Public Holidays

(i) All employees on a weekly contract of hiring shall be entitled to the following public holidays without deduction of pay, namely, New Years Day, Australia Day, Good Friday, Easter

Saturday, Easter Monday, Anzac Day, the third Monday in May (Adelaide Cup Day), Queen's Birthday, Labour Day, Christmas Day and Commemoration Day, and any other day which by Act of Parliament or proclamation may be created a public holiday, or may be substituted for any of such holidays, provided that an employee who fails to attend for work on the working day before and/or the working day after such public holiday without reasonable excuse shall not be entitled to be paid for such holiday.

10

(ii) All work performed by employees on a weekly contract of hiring on any of the public holidays listed above shall be paid for at the rate of time and a half, in addition to the normal rate.

(d) Minimum Payment

Employees other than those on shift work, required to work on Sundays or public holidays shall be paid for a minimum of three hours work, or in the case of supply of urgent medicine as otherwise agreed between the union and the employer.

20

Clause 14. Meal Allowance

An employee called upon to work overtime exceeding two hours on any day after a normal days work shall, unless notified the previous day or earlier that he will be so required to work, receive a meal allowance of \$2.00.

30

Clause 15. Tea Break

Employees shall be entitled to a tea break in the employer's time of 10 minutes each morning or alternatively at the employer's discretion, five minutes each morning and afternoon.

Clause 16. Uniforms

A maximum of one pair per annum of overalls, and/or uniform free of cost will be supplied to each employee. Undue wear and tear excepted.

Clause 17. Shift Work

No. 5 P.6

Where shifts are worked the ordinary hours for any one shift shall not exceed eight hours consecutively inclusive of a crib time of 20 minutes for employees working a five day week or eight hours consecutively inclusive of a crib time of 20 minutes for employees working other than a five-day week or 40 hours in any week.

Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

10

Crib Time means time for crib to be taken at suitable opportunities in any shift or period, so as not to interfere with the employee's duties.

Afternoon Shift means any shift finishing after 6 p.m. and at or before midnight. "Night Shift" means any shift finishing subsequent to midnight and at or before 8 a.m.

20

Employees employed on afternoon or night shift shall be paid 15 per cent additional to day rates. This additional rate shall apply for the whole of the week in cases where the employer changes an employee from the afternoon or night shift to day work before the employee has completed a full week on the afternoon or night shift.

Shift workers shall be paid ordinary overtime rates for all time worked in excess of ordinary hours of shift.

Shift workers shall be paid for all time worked on Sundays and the public holidays named in this award at the following rates:-

30

- Shift Workers on continuous work - time and a half
- Shift workers on non-continuous work - double time.

Continuous Work means work carried out with consecutive shifts of men throughout the 24 hours of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

Clause 18. Piecework

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Government
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Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

Any employer may fix and pay piecework rates to any person or persons or classes of persons in the process, trade, or business of wholesale grocers, tea merchants, and dairy produce salesmen, pulping, testing, grading, cleaning and packing of eggs, and wholesale chemists and druggists: Provided that such employer shall base such piecework rates on the earnings of an average worker working under like conditions, and that such piecework rates shall be fixed so that an average worker has the opportunity of earning not less than the minimum wage fixed for such work plus an additional 10 per cent.

10

Clause 19. Heavy Weights

No employer shall require any female person under the age of 18 years to lift or carry a greater weight than 12 kilograms nor shall a female person of any age be required to lift or carry a greater weight than 16 kilograms.

20

Clause 20. Terms of Contract

The contract of hiring of every employee bound by this award shall, in the absence of an express contract to the contrary, be deemed to be a contract of hiring by the week.

Provided further that the employer shall have the right to dismiss any employee without notice for malingering or misconduct or dishonesty and shall have the right to deduct payment for any day on which any employee cannot be usefully employed because of a strike in the trades or businesses covered by this award or elsewhere or through any breakdown of machinery or any stoppage of work for which the employer cannot reasonably be held responsible.

30

Clause 21. Sick Leave

(a) Every full time employee who is unable to attend or remain at this place of employment by reason of illness and who complies with the conditions prescribed in subclause (b) hereof shall be granted by his employer paid leave not exceeding the sick leave credit of that employee.

40

(b) The said leave shall be granted and the employee shall be entitled to pay in respect thereof on compliance with the following conditions:-

No. 5 P.6
Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

10

- (1) within 24 hours after the commencement of the absence the employee shall inform his employer of his inability to attend for duty and, as far as practicable, of the nature of the illness and the estimated duration of the absence; and
- (2) if so required by his employer, the employee shall produce to the employer a medical certificate or other reasonable evidence to prove that he was unable to attend for duty on the day or days in respect of which he claims sick leave.

20

(c) For the purposes of this clause the word "illness" includes personal injury but does not include an injury for which compensation is payable under the Workmen's Compensation Act, 1971, as amended.

30

(d) For the purpose of subclause (a) of this clause the sick leave credit of an employee with an employer shall be determined by adding to the accumulation of the sick leave, if any, standing to the credit of that employee with that employer (pursuant to this or any other award or industrial agreement relating to the industry of the occupations to which this award relates) immediately before the 4th day of January, 1973, the amount of leave that the employee is entitled to be granted by the employer pursuant to this clause, and deducting from the total so obtained the amount of sick leave that has, pursuant to this clause, been so granted by the employer.

40

- (e) In respect of -
- (i) the first year of service with an employer that follows the 4th day of January, 1973, a full time employee shall be entitled to a grant of leave on full pay under this clause by that employer of 1-7/13 hours per week; and

(ii) the succeeding years of continuous service with that employer, such an employee shall, on or after the commencement of each such year, be entitled to a grant of leave under this clause by that employer equal to 10 days on full pay.

Clause 22. Annual Leave

(a) Period of Leave

10

A period of 28 consecutive days paid leave shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave) as an employee on weekly hiring.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause the annual leave prescribed by this clause shall be exclusive of the public holidays named in this award and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day for each such holiday falling as aforesaid.

20

Where a holiday falls as aforesaid and the employee fails without reasonable cause proof whereof shall be upon the employee to attend for work at the employee's ordinary starting time on the working day immediately following the last day of the period of the employee's annual leave the employee shall not be entitled to be paid for any such holiday.

30

(c) Calculation of Continuous Service

For the purposes of this clause service shall be deemed to be continuous notwithstanding:-

(i) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

40

(ii) any absence from work on account of personal sickness or accident or on account of leave granted imposed or agreed to by the employer; or

(iii) any absence with reasonable cause proof whereof shall be upon the employee.

10 In cases of personal sickness or accident or absence with reasonable cause the employee to become entitled to the benefit of this subclause shall notify the employer if practicable within 48 hours of the commencement of such absence of the employee's inability to attend for duty.

In calculating the period of 12 months continuous service any such absence as aforesaid shall not except to the extent of not more than 14 days in a 12-monthly period in the case of sickness or accident, be taken into account in calculating the period of 12 months continuous service.

20 Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the continuity of service for the purposes of this clause unless the employer within 14 days of the termination of the absence notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

(d) Calculation of Service

30 Service before the date of this variation shall be taken into consideration for purposes of calculating annual leave but an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or payment in lieu thereof has been allowed or made under the current award of the manufacturing and Wholesale Chemists' and Grocers Conciliation Committee. Provided, however, that in respect of such service, the amount of leave to be allowed
40 at the rate of 13 $\frac{1}{2}$ hours for each completed month of continuous service: Provided, however, that nothing herein contained shall prejudice the rights of employees which had already accrued to

No. 5 P.6

Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

the date thereof under clause 3(b)(iv) of this Part as it existed immediately prior to this award. The period of annual leave to be allowed under this subclause shall be calculated to the nearest day any broken part of a day in the result not exceeding half a day to be disregarded.

Where the employer is a successor or assignee or transmittee of a business, if an employee was in the employment of the employer's predecessor at the time when he became such successor or assignee or transmittee the employee in respect of the period during which the employee was in the service of the predecessor shall for the purposes of this clause be deemed to be in the service of the employer.

10

(e) Calculation of Month

For the purposes of this clause a month shall be reckoned as commencing with the beginning of the first day of the employment or period of employment in question and as ending at the beginning of the day which in the latest month in question has the same date number as that which the commencing day had in its month and if there be no such day in such subsequent month shall be reckoned as ending at the end of such subsequent month.

20

(f) Leave to be Taken

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by sub-clause (j) hereof payment shall not be made or accepted in lieu of annual leave.

30

(g) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than six weeks notice to the employee.

An employee entitled to 28 days annual leave in accordance with the provisions of subclause (a) heretofore shall, where practicable, be granted such leave in one continuous period, provided,

40

10 however, the employer may at his discretion, allow annual leave in two separate periods of which no period shall be less than seven days; provided further that where a working day occurs between two public holidays or between a Sunday and a public holiday (or vice versa) such day may by agreement between the employer and the union be observed as a holiday and a corresponding reduction of one day may be made from the employee's annual leave or in separate portion thereto. Where in the exercise of his discretion an employer decides to allow annual leave in two periods, the employee concerned shall be notified of the fact within six weeks of becoming entitled to the leave.

No. 5 P.6
Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

(h) Leave Allowed Before Due Date

20 An employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual leave shall not commence to accrue until after the expiration of the 12 months in respect of which annual leave had been taken before it accrued.

30 Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months continuous service in respect of which the leave was granted the employer may for each completed month of the qualifying period of 12 months not served by the employee deduct from whatever remuneration is payable upon the termination of employment 1/12th of the amount of wage paid on account of the annual leave, which amount shall not include any sums paid for any of the said holidays.

(i) Payment of Period of Leave

40 (i) Each employee before going on leave shall be paid his wages at the rate prescribed by this award for the occupation in which the employee was ordinarily employed immediately prior to the commencement of his leave.

(ii) In addition to the above payment prescribed by paragraph (i) hereof, each employee

shall be paid a loading of $17\frac{1}{2}$ per centum calculated on the rates prescribed by the appropriate wages clauses in this award.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(j) Proportionate Leave on Dismissal

If after one month's continuous service in any qualifying 12-monthly period an employee entitled to annual leave leaves his or her employment, or his or her employment is terminated by the employer, the employee shall be paid at his or her ordinary rate of wage for $13\frac{1}{3}$ hours at the same rate in respect of each completed month of continuous service; the service in each case being service in respect of which leave has not been granted hereunder.

10

(k) Annual Close-Down

Where an employer closes down his establishment, or a section or sections thereof, for the purpose of allowing annual leave to all or the bulk of the employees in the establishment or section or sections concerned, the following provisions shall apply:-

20

(i) He may stand off for the duration of the close-down all employees in the establishment or section or sections concerned and allow to those who are not then qualified for four full weeks leave paid leave on a proportionate basis of $\frac{1}{3}$ rd of a weeks leave for each completed month of continuous service.

30

(ii) An employee who has then qualified for four full weeks leave and has also completed a further month or more of continuous service shall be allowed his or her leave, and shall also be paid $\frac{1}{3}$ rd of a weeks wages in respect of each completed month of continuous service performed since the close of his or her last 12-monthly qualifying period.

40

(iii) The next 12-monthly qualifying period for each employee affected by such close-down

shall commence from the day on which the establishment or section or sections concerned is re-opened for work.

No. 5 P.6

Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

- 10 (iv) If in the first year of his or her service with an employer an employee is allowed proportionate annual leave under paragraph (i) hereof, and subsequently within such year leaves his or her employment or his or her employment is terminated by the employer, the employee shall be entitled to the benefit of subclause (j) of this clause, subject to adjustment for any proportionate leave which he may have been allowed as aforesaid.

(1) Leave in Separate Periods

20 Notwithstanding the provisions of subclauses (a) and (k) of this clause, an employer may make an arrangement whereby the annual leave granted by him to the employees in his plant or any section thereof shall be taken by such employees in one period or in two separate periods one of which must at least be 21 consecutive days by means of either -

- 30 (1) two periods during which the employers plant or any section or sections thereof is or are closed down for the purpose of allowing annual leave to all or to the bulk of employees in the plant or section or sections concerned; or
- (2) the rostering of the periods during which annual leave shall be taken by employees in the plant or the section or sections concerned; or
- (3) a combination of one period of close-down of the plant or section or sections concerned together with the rostering of the periods during which the employees therein shall take annual leave.

40 Leave shall not be taken otherwise except by agreement with the union.

Clause 23. Bereavement Leave

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Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

An employee shall on the death within Australia of a wife, husband, father, mother, brother, sister, child, step-child, father-in-law and mother-in-law be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days work. Proof of such death shall be furnished by the employee to the satisfaction of the employer if he so requests. 10

Provided that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of leave.

For the purpose of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a de facto wife or husband. 20

Clause 24. Protective Clothing

Oil skins and gum boots shall be provided for employees required to work in the rain or wet places.

Clause 25. Existing Conditions

Unless otherwise expressly stipulated by this award or specified in any subsequent variation thereof, no employee shall be reduced in status or position or have his rate of remuneration reduced or any of his conditions of employment adversely affected merely as a consequence of making of this award. 30

Clause 26. Period of Operation

This award shall come into operation from the beginning of the first full pay period to commence on or after the 10th April, 1978 and shall remain in force for a period of three calendar months therefrom.

Dated this 10th day of April, 1978.

G.M. STEVENS, Chairman.

40

This award is published pursuant to Section 76 of the Industrial Conciliation and Arbitration Act, 1972, as amended.

Dated this 17th day of May, 1978.

R.L. HOLLAND, Acting Industrial Registrar

MANUFACTURING AND WHOLESALE CHEMISTS AND GROCERS CONCILIATION COMMITTEE AWARD

A. WAGES.

No. 5 P.6
Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

10

SCHEDULE 1. WAGES

This schedule shall operate from the beginning of the first full pay period to commence on or after the 10th April, 1978.

(a) Warehouse or Store- Adults

The minimum weekly wages, prices or rates to be paid to Adult persons for work in ordinary time shall be as follows:-

20

Leading Hand, that is an employee who is authorised to exercise and who does exercise supervision over work of other employees; he or she shall be paid the following loading above the highest functions set out in section (a) of this clause that either he or she performs or is performed by a person under his or her supervision -

3-10 employees	₹ 6.70 per week
11 employees or over	₹ 11.70 per week

Total
₹

30

Fork lift driver	145.90
Storeman/woman and packer	141.10
Warehouse employee	129.80
Assembler	129.40
Canteen Attendant	128.80

Juveniles, the minimum weekly wages, prices or rates payable to Juveniles for work in ordinary time shall be based on the following percentages of the Assembler Rate (₹129.40).

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 Government
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 and Wholesale
 Chemists and
 Grocers
 Conciliation
 Committee
 Award - 15th
 June 1978
 (cont'd)

	Per cent	Total
	%	₹
16 years	50	64.70
17 years	60	77.60
18 years	70	90.60
19 years	80	103.50
20 years	Appropriate Adult Rate	

Any Juvenile, called upon to test and/or pulp eggs shall receive an additional 40 cents a week above the rates prescribed above. 10

(b) Factory - Adults

The minimum weekly wages, prices or rates payable to adult persons for work in ordinary time shall be as follows:-

	Total	
	₹	
Group 1		
Process Worker	128.80	
Cleaner	128.80	20
Canteen Attendant	128.80	
Group 2		
Bottler of liquids	130.10	
Sugar mill operator	130.10	
Machine Operator Grade 1	130.10	
Group 3		
Paste maker and hydraulic or screw press operator (including macaroni and allied products)	134.50	
Coffee Roaster	134.50	30
Tea Blending Hand	134.50	
Finished product worker	134.50	
Machine Operator Grade 2	134.50	
Group 4		
Potato Crisp Cooker	138.50	
Roaster and/or cooker of nuts	138.50	
Mixer liquid detergent	138.50	
Operator of automatic mixing and pressing machine	138.50	
Grading, machine packing, hand or machine pulping or testing eggs	138.50	40
Cereal Cooker and/or cereal process line operator	138.50	
Machine Operator Grade 3	138.50	

	Total \$	<u>No. 5 P.6</u>
Group 5		Copy of Government Gazette of Manufacturing and Wholesale Chemists and Grocers Conciliation Committee
Food mixer	139.80	
Drug mixer	139.80	
Mill hand	139.80	
Employee mixing and/or blending polishes	139.80	
Group 6		Award - 15th June 1978 (cont'd)
10 Pea and Barley Processor	145.20	
Machine Operator Grade 4	145.20	
Other Classification		
Fork lift driver	145.90	
Storeman/woman and packer	141.10	

20 Leading Hand, that is an employee who is authorised to exercise and who does exercise supervision over work of other employees. he or she shall be paid the following loading above the highest functions set out in section (b) of this clause that either he or she performs or is performed by a person under his or her supervision -

3-10 employees	\$ 6.70
11 employees or over	\$11.70

Factory - Juveniles

The minimum weekly wages, prices or rates payable to Juveniles for work in ordinary time shall be based on the following percentages of the Process Worker Rate (\$128.80).

	<u>Per cent</u> %	<u>Total</u> \$
16 years	50	64.40
17 years	60	77.30
18 years	70	90.20
19 years	80	103.00
20 years	Appropriate Adult Rate	

40 Any Juvenile, called upon to test and/or pulp eggs shall receive an additional 40 cents a week above the rate prescribed in this award.

(c) Manufacture of Fine Chemicals - Adults

Copy of Government Gazette of Manufacturing and Wholesale Chemists and Grocers Conciliation Committee Award - 15th June 1978 (cont'd)		Total ₹	
	Plant operator grade IX	146.50	
	Plant operator grade VIII	144.30	
	Plant operator grade VII	142.40	
	Plant operator grade VI	140.40	
	Plant operator grade V	138.50	
	Plant operator grade IV	136.40	
	Plant operator grade III	134.50	10
	Plant operator grade II	132.50	
	Plant operator grade I	130.40	
	Process worker	128.80	
	Finished product worker	134.50	
Cleaner	127.30		
Canteen Attendant	128.80		

Juveniles

The minimum weekly wages, prices or rates payable to Juveniles for work in ordinary time shall be based on the following percentages of the Process Worker Rate (₹128.80). 20

	Per cent %	Total ₹
16 years	50	64.40
17 years	60	77.30
18 years	70	90.20
19 years	80	103.00
20 years	Appropriate Adult Rate	

Provided that if Juveniles are engaged on any of the work set out in clause 4, Penalties Etc. of this award, for which additional rates are payable, such Juveniles shall receive those additional rates. 30

(d) F.H. Faulding and Co. Ltd.

The provisions of this subclause shall apply only to the operations of F.H. Faulding and Co. Ltd. in respect of its operations in its factory and factory bulk store.

		Total	<u>No. 5 P.6</u>
Adults		\$	
	Senior Leading Hand	157.10	Copy of
	Leading Hand	151.70	Government
	Process worker grade III	146.50	Gazette of
	Process worker grade II	137.00	Manufacturing
	Process worker grade I	130.40	and Wholesale
	Storeman/woman and packer	141.10	Chemists and
	Fork lift driver	146.50	Grocers
10	Cleaner	128.60	Conciliation
			Committee
			Award - 15th
			June 1978
			(cont'd)
	Juveniles		

The minimum weekly wages, prices or rates payable to Juveniles for work in ordinary time shall be based on the following percentages of the Process Worker Rate Grade I (\$130.40).

		Per cent	Total
		%	\$
	16 years	50	65.20
	17 years	60	78.20
20	18 years	70	91.30
	19 years	80	104.30
	20 years	Appropriate	Adult
		Rate	

B. CALCULATION

Rates for Juveniles in all sections are calculated to the nearest 10 cents per week, any fraction less than 5 cents to go to the lower multiple and 5 cents or more to go to the higher.

C. MINIMUM WAGE - ADULT EMPLOYEES

30 (1) The provisions of this clause shall not apply to any employee who in any week, for the working of ordinary hours, receives payment in excess of the relevant minimum wage through over-award payments.

(2) No adult employee shall be paid as ordinary pay in respect of the hours of work performed in ordinary time as prescribed by this award less than \$113.50.

40 (3) Where an employee, to which the rates prescribed in part (2) hereof apply has been

No. 5. P.6

Copy of
Government
Gazette of
Manufacturing
and Wholesale
Chemists and
Grocers
Conciliation
Committee
Award - 15th
June 1978
(cont'd)

absent from duty in any week in circumstances entitling the employer to deduct payment for the time of non-attendance, he shall be paid for the hours worked in ordinary time during such week pro rata at the rates prescribed in part (2) hereof.

(4) In the case of employees to which the rates prescribed in part (2) hereof apply, payments during paid leave and for holidays shall be calculated at the rates prescribed in part (2) hereof.

10

(5) In the case of employees to which the rates prescribed in Part (2) hereof apply calculations for overtime, penalty rates, shift work, or other payments under this award shall be made at the rates prescribed elsewhere in this award and not the rates prescribed in part (2) hereof.

NOTE - The purpose of fixing the minimum wage at the amount(s) above set out is to ensure to each adult worker a minimum wage for a weeks work performed in ordinary time. The fixation of the minimum wage at the amount(s) mentioned does not give any reason for the change in the award rates of pay which are below or above the appropriate minimum wage.

20

No. 6 D.7

Report of Dr.
Harold
Schaeffer
13th December
1976.

No. 6 D.7.

Report of Dr. Harold Schaeffer dated
13th December, 1976

HAROLD SCHAEFFER
F.R.C.S.(Ed), F.R.A.C.S.
Your reference: BTL/32211
Mr. B.T. Lander,
Baker McEwin & Co.,
G.P.O. Box 1272,
ADELAIDE, 5001.

Florey House,
16 Bagot Street
North Adelaide
5006
Telephone 267 2255
267 2256

30

13th December 1976

Dear Sir,

Medical Report Re: Anthony Howard Rendell

I examined the above named at my rooms on 10.12.76 and I am forwarding this medical report in reply to your letter dated 18.11.76.

No. 6 D.7
Report of Dr.
Harold
Schaeffer
13th December
1976.
(cont'd)

10 Anthony Rendell told me that he is aged 28 years. He was born in S.A. He has recently got married. His educational attainment was limited. He left school at the age of 14 or 15 years in first year. He subsequently did a number of different jobs including spray painting and he was also a storeman and a driver at one stage.

About a year before the subject accident he obtained a job working as a manager of a detergent firm and apparently did fairly well in this capacity.

20 He gave no history of any serious illnesses in his past life. He used to be a very active person playing many different sports. He gave no history of any previous accidents or of any nervous disorders.

30 He told me that on 1.3.75 he was riding a motor cycle and was wearing a helmet at the time. A collision occurred close to him between two cars and one of the cars smashed into him, knocking him off his cycle. He has no memory of this at all. He does recall being on the motor cycle just before the accident and he recalls becoming conscious at the scene of the accident and giving somebody his telephone number. He was then admitted to the R.A.H. and he was in hospital until the end of May on account of a fracture of the right femur, a fracture of the left tibia and a severe injury to his left arm.

He recalls his stay in hospital perfectly well.

40 The lower limb fractures healed reasonably well following treatment. He said that his left leg is now shorter than the right, but that his main trouble has been the severe injury to the nerves of the left arm. He had been re-admitted to the R.A.H. on account of this injury on 30.7.75 and underwent operative treatment to a nerve in the left arm, but this did not help.

No. 6 D.7

Report of Dr.
Harold
Schaeffer
13th December
1976.
(cont'd)

I questioned him about his progress and the present situation and he said that he has never regained any movement of the left shoulder or elbow. He does have some movement in the left hand, but basically the left arm is virtually useless. The thumb, index, middle and ring fingers all feel numb, but the little finger has normal feeling in it. He wears a collar and cuff for the left arm and he becomes very self conscious about it.

10

He was off work for 5 months after the accident and then returned to his usual work as a manager.

He did not suffer any significant head injury. He said that his memory is satisfactory and he copes - with his work all right. His vision, sense of smell and hearing have all remained normal. There is no history of epilepsy.

At my examination of 10.12.76 I found him to be a pleasant genuine type of lad. There was a very obvious left brachial plexus lesion. The muscles of the left shoulder girdle had wasted away altogether. Similarly there was marked wasting of the left biceps muscle and less severe wasting of the left triceps. No shoulder movement was possible and there was no elbow flexion but there was weak elbow extension. There was weak wrist extension and finger extension and comparatively weak movements of the intrinsic muscles of the left hand. Abduction of the thumb was quite well preserved and there was a reasonably good grip of the left hand, although it was by no means as good as the right.

20

30

There was loss of sensation over the C5/6 and C7 dermatomes of the left upper limb. C8 and T1 were spared. Joint position sense was impaired in the index and middle fingers of the left hand.

There were operation scars over the left elbow and left upper arm. He is naturally left handed.

CONCLUSION. I am dealing here only with injuries which fall within the scope of my own speciality and for this reason I am not considering the fractures of the right femur and of the left tibia and fibula. I am also not considering the fractures of the left wrist.

40

He did not receive any significant concussional head injury and there is no medical evidence to suggest that he has suffered any disability arising from head injury.

No. 6 D.7

Report of Dr.
Harold
Schaeffer
13th December
1976.
(cont'd)

10

However, the brachial plexus injury is another matter. This injury is a particularly severe one with total loss of function of the left shoulder and virtually complete loss of function of the left elbow. There is only a little preservation of function of the muscles of the left hand and he can grip with the left hand, but this is of very limited use to him. It will be noted also that there is loss of sensation over the thumb, index and middle fingers.

20

It is my opinion that this unfortunate lad has suffered a very nearly total loss of function of the left upper limb and he is accordingly no longer fit for any manual work. He would appear to be fortunate to have a managerial type of job. It is also obvious that he will be markedly handicapped by the loss of use of the arm in general activities.

It is now more than 21 months since the date of injury and at this stage I would say that there is no prospect of improvement.

Yours faithfully,

Sgs. H.R. Schaeffer
Neurosurgeon.

No. 7 D.8

No. 7 D.8.

30

Report of Dr. Richard Dunstan dated 17th
February, 1977.

Report of Dr.
Richard
Dunstan
17th February
1977.

RICHARD DUNSTAN
M.B., B.S., F.R.C.S.,
F.R.A.C.S.

329 Wakefield Street
Adelaide 5000.

RED:JKS
Telephone 223 2337
Residence 223 3260

17th February 1977

40

Messrs. Baker McEwin & Co.,
G.P.O. Box 1272,
ADELAIDE S.A. 5001.

No. 7 D.8

Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

Dear Sirs,

re: Anthony Howard RENDELL. Your Ref. BTL/32211

Thank you for your letter dated 18th November 1976, outlining the injuries he sustained in an accident on 1st of March 1975, and his subsequent progress. I examined Mr. Rendell as arranged on 14.2.77.

At the time of the accident on 1.3.75, he was approaching an intersection on his motor cycle, when a collision occurred between two cars at the intersection just ahead of him, and he collided with one of the cars which veered across his path after the first collision. He was unconscious for a brief period following the accident, but he vaguely recalls talking to the Ambulance Personnel at the scene of the accident, and he is reported to have been conscious on arrival at the Royal Adelaide Hospital, where he was taken by Ambulance.

10

PROGRESS AND TREATMENT :

His multiple injuries included -

20

1. Concussion.
2. Fracture of the mid shaft of the right femur.
3. Compound and comminuted fracture of the lower thirds of the left tibia and fibula, and a further fracture involving the upper third of this fibula.
4. An undisplaced fracture through the base of the second left metacarpal bone.
5. A deep laceration involving the upper third of the left arm, on its antero-medial aspect, complicated by local nerve and muscle damage.
6. Damage to the brachial plexus at the root of the neck on the left side.
7. Multiple lacerations elsewhere, involving particularly, the right foot and to a lesser extent the right upper thigh.

30

He was naturally in considerable shock as a result of these multiple severe injuries, but nevertheless well compensated at the time of his admission, and this condition was treated by intravenous infusions of plasma, saline, and blood.

No. 7 D.8
Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

Xrays confirmed the fractures mentioned above, and excluded fractures involving the cervical spine, left shoulder and skull.

10 When his condition permitted, he was taken to theatre, where under general anaesthetic, all wounds were debrided and left open for delayed primary closure a few days later. In the depths of the left upper arm wound, the short head of biceps was found to be severed, and the adjacent musculo-cutaneous nerve was seen to be avulsed. No attempt at repair was made at that stage.

20 The fractured right femur was stabilised by means of skeletal traction in a Thomas Splint, and the comminuted fractures of the left tibia and fibula were likewise stabilised by means of skeletal traction, with the leg immobilised in a Thomas Splint. The fractured metacarpal bone was immobilised in a fore-arm plaster.

On 5.3.75, delayed closure of all wounds was performed under general anaesthetic, except for the wound overlying the comminuted fracture of the left tibia, where skin loss had occurred, and a split skin graft was applied.

30 His general condition remained satisfactory under the circumstances, but further Neurological changes developed in the left arm and shoulder region, suggestive of a partial brachial plexus injury, affecting its uppermost fibres, and involving the nerve supply of the muscles of the shoulder girdle, and partially involving the left radial and ulna nerves.

40 He had previously suffered an injury to the right ear in an accident in 1955, resulting in deafness on this side, and some variation in his hearing on the left side, occurred towards the end of his first week in hospital on this occasion. He was seen at that stage by the E.N.T. Registrar, but apparently these symptoms cleared up, as there is no further mention in his Case Notes, of any other E.N.T. examination.

No. 7 D.8

Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

Right femur - This fracture was treated by internal fixation by means of a Kuntscher Nail on 23.3.75. In doing so, the original wound on the lateral aspect of the thigh was excised, and extended to permit this procedure. When this procedure was completed, the fractured fragment of bone at the base of the second left metacarpal bone of the left hand was removed.

The right leg was removed from its splint a few days later, and exercises were commenced. The fractured femur continued to heal satisfactorily.

10

Left tibia and fibula - This limb had been immobilised in a plaster cast when the split skin graft had been applied, with a window in the plaster, so that healing of the graft could be observed, and the bony fragments remained in a satisfactory position throughout the period of immobilisation, and there were no subsequent complications until healing was eventually complete. The lacerations all healed well.

20

Of all his injuries, those involving the upper left arm and the left brachial plexus were obviously the most serious. Partial recovery of the effected radial and ulna nerves occurred quite quickly, that is within a week or two, but there was no sign of recovery of those muscles innervated by the upper branches of the brachial plexus, including the deltoid, supraspinatus and infraspinatus, nor was there any recovery of course, at this stage, of the musculocutaneous nerve and those muscles innervated by it, including the two biceps muscles, and the brachialis, which are responsible for flexion of the elbow.

30

He was seen by Mr. Paul Carney, Neurosurgeon, on several occasions, in regard to his nerve injuries, and electromyogram tests were performed.

In the meantime, he had been gradually mobilised, with some difficulty owing to the multiple injuries, and he was discharged home on 29.4.75. He has subsequently attended both the Orthopaedic and Neurosurgical Out Patients for follow up treatment.

40

On 30.7.75, he was re-admitted to Hospital for exploration of the left upper arm, at the site of

the previous injury, in the hope that the damaged musculo-cutaneous nerve could be repaired. This nerve was found to be completely divided, and approximately 6 cms. of atrophied nerve was resected and a nerve graft performed. It was not anticipated that any significant function would be regained.

No. 7 D.8
Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

10 In June 1976, the Kuntscher Nail was removed from the right femur at Memorial Hospital, where he remained for a day or two, and he was off work for approximately 10 days on this occasion.

PRESENT DISABILITIES :

20 On examination on 14.2.77, he informed me that he had been able to resume his work as the Manager of a small business towards the end of 1975, and that there had at no stage been any significant post-concussion symptoms or any apparent deterioration in his mental acuity. He had obviously suffered very considerable restriction of most of his activities however, as a result of his multiple trauma.

30 As far as his legs were concerned, he complained of some sensory loss on the outer aspect of the right thigh, just distal to the compound fracture wound, and at the base of the toes; and on the outer side of the right foot. These areas coincided with the lacerations which had been sutured, and he also complained of some degree of weakness of extension of the lateral fore toes of this foot.

His left leg was shortened, causing a slight limp, and he complained of some tenderness at the site of the fractured tibia, anteriorly, where the skin graft had been applied, if it was knocked, even very gently. He also complained of some restriction of flexion of both knees, making it uncomfortable and difficult for him to fully squat down.

40 He found that in spite of these symptoms, that he could walk more or less normally, and for an unlimited distance. He was able to run, but with considerable difficulty owing to the condition of his left arm.

No. 7 D.8

Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

He found that the left arm was pretty well useless, with no muscular function of the shoulder or shoulder girdle, and in addition, his complete inability to flex the elbow, together with very weak extension at this site. He complained of widespread sensory loss of this limb, and although the fore-arm muscles and intrinsic muscles of the hand and fingers were intact, he found it difficult at this stage anyway, to make any satisfactory use of them. During his rehabilitation period, he had been learning to do more and more with the right arm, but he seemed to be making rather slow progress in this regard. There had been great progress initially, with the aid of physiotherapy, in the condition of his left fore-arm and hand, but he felt that there had been no further improvement during the last 12 months.

10

On examination, he was a fit well built young man, who gave a good and unemotional account of the accident, and the events which followed, and with no attempt to exaggerate the serious effects of his injuries. He walked well, with a barely noticeable limp, and his general physical fitness emphasized the obvious wasting which was apparent around the left shoulder girdle, and upper arm. The left arm was held in a collar and cuff sling, and when it was freed from this, it hung limply by his side. The left fore-arm and hand looked surprisingly normal.

20

Examination of the head and neck was normal clinically, including the cranial nerves which were intact.

30

The upper part of the left trapezius muscle running from the spine of the scapula to the side of the neck, was somewhat wasted and weak, presumably from disuse, and elevation of the left shoulder was considerably weakened. There was gross wasting of the supra and infra spinati muscles over the scapula, and of the deltoid muscle around the shoulder, all of which showed complete loss of function. There was also gross wasting and complete loss of function of the biceps and brachialis muscles, and thus, a complete absence of any active movement of the shoulder. At the back of the arm, the triceps group of muscles was fairly grossly wasted, but he was able to contract these to some degree against resistance. There was a full range of passive movement of both the shoulder and elbow.

40

More distally, the muscles of the fore-arm and hand, innervated by the median, Radial, and ulnar nerves, appeared to be functioning reasonably well, and there was minimal wasting, if any, of these muscle groups. Sensation was absent over the antero-lateral aspect of the arm and fore-arm, due to the damaged musculo-cutaneous nerve, and there seemed to be some patchy sensory loss over the distribution on the hand and fingers of the median nerve.

No. 7 D.8
Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

10

In the lower limbs, there was no obvious muscle wasting in either calf or thigh, confirmed by measurement, and the power in these muscle groups appeared to be within normal limits. There was some obvious shortening of the left leg, below the knee, and measurements confirmed this to be 2.5 cms.

20

On the right side, there was a long vertical 'S' shaped scar on the lateral aspect of the thigh where the wound had been excised and the Kuntscher Nail inserted, and this was well healed. There were multiple small and irregular well healed scars in the upper thigh anteriorly, and a narrow strip of sensory loss in the lower third of the thigh, on its antero-lateral aspect.

30

On the right foot, there was a transverse scar across the base of the lateral three toes, along the lateral border of the heel, and a third curved scar just below the lateral malleolus. There was no significant sensory loss in these areas, and although extension of these toes was somewhat weakened, there appeared to be little impairment of function.

Flexion of the right knee was slightly limited - that is by about 10° , and the ligaments were intact. A full range of painless movement of the ankle was present.

40

On the left side, there was some deformity at the fracture site in the lower third of the tibia, which was widened and irregular, and covered anteriorly by a split skin graft measuring approximately 6 cms. in diameter, and roughly circular in shape. Some bony prominence was visible and palpable on the outer border of the fibula at this same level, and some further irregularity due to callus at the site of fracture near its upper end, where another small circular and well healed scar was present.

No. 7 D.8

Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

Movements of the left knee were unrestricted apart from some minor degree of limitation of flexion, similar to that on the right side. These ligaments were also intact, and the ankle joint distal to the fracture, was clinically normal.

PERMANENT DISABILITIES:

He has made a splendid recovery from the bilateral compound lower limb fractures. The resultant shortening of 2.5 cms. of the left leg is of little significance, although I was surprised to hear that he had not been advised to have the heel of his left shoes built up to counteract this shortening, and counteract the minor degree of tilting of the pelvis and spine, which occurs naturally under these circumstances. I presume this will be done at some stage, and that no long term sequelae will eventuate.

10

He has minor residual symptoms at the fracture site on the left side, but I anticipate that these will soon disappear. I do not consider the small areas of diminished sensation and sensory loss are of any consequence. He has already regained almost full function of both knees, and complete recovery should occur at these sites.

20

The shortened left leg and deformity at the fracture sites, together with the skin changes in front of the lower leg, represent in my opinion, the loss of 15 - 20% of function of this limb, whilst I consider there will be no significant permanent disability on the right side.

30

There will obviously be a serious and permanent disability of the left arm and shoulder. It would appear that no further improvement of nerve function can be expected, and in its present state, the remaining function of the distal portion of this limb is not of much use to him, all the more so, as he was left handed. There is complete loss of function of the shoulder, and an almost complete loss of function of the elbow, and a serious disability more distally due to sensory loss. In a left handed person, this must represent the loss of approximately 75 - 80% of the function of the limb as a whole.

40

I am not sufficiently trained in Orthopaedics to comment about the possibilities of arthrodesis of the shoulder or elbow, or both, or of the use of various appliances which could be made by a Splint Maker, but I presume you will have had an Orthopaedic opinion in this regard, and the likelihood of further improvement.

No. 7 D.8
Report of Dr.
Richard
Dunstan
17th February
1977.
(cont'd)

I enclose my account for this examination and report.

Yours faithfully,

Sgd. Richard Dunstan.

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IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME
COURT OF SOUTH AUSTRALIA

B E T W E E N :

LEON STEWART PAUL and
PERCIVAL JAMES GEORGE
EARLE

(Defendants) Appellants

- and -

ANTHONY HOWARD RENDELL

(Plaintiff) Respondent

RECORD OF PROCEEDINGS

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