

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE ESTATE OF LEROY IZZARD,
deceased, by his Administrator VERA
JACQUELINE IZZARD; LILLIAN MARIE
IZZARD, HARVEY IZZARD, BRENDA
IZZARD, DAVID IZZARD and PAUL
IZZARD

Plaintiffs

- and -

ROBINSON'S TRUCKING LTD. and
DALE DAVID LYLE

Defendants;

AND BETWEEN:

THE ESTATE OF MILES WILSON,
deceased, by his Administrator CARLA
ELLEN WILSON; CARLA ELLEN
WILSON and CHELSEY TAYLOR by her
next friend, SHIRLEY TAYLOR

Plaintiffs

- and -

ROBINSON'S TRUCKING LTD. and
DALE DAVID LYLE

Defendants;

AND BETWEEN:

GEORGE SMITH and GEORGE SMITH
TRUCKING LTD.

Plaintiffs

- and -

ROBINSON'S TRUCKING LTD. and
DALE DAVID LYLE

Defendants.

Action for damages arising from a highway collision dismissed.

Heard at Yellowknife on February 28th 1994

Judgment filed: June 21st 1994

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Plaintiffs:

Adrian C. Wright, Esq.
Ms. Katherine D. Dann

Counsel for the Defendants:

Pierre Mousseau, Esq.
Ms. Sharon R. Stefanyk

CV 00321
CV 00352
CV 00353

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REASONS FOR JUDGMENT

I. Introduction

1 A collision occurred on St. Valentine's Day, February 14th 1985, between two heavy tractor-trailer vehicle combinations at a point some kilometers south of Rae-Edzo on the Yellowknife Highway (No. 3) in the Northwest Territories. Two men, the driver and co-driver of the northbound combination, died as a result of the collision. Fortunately, the driver of the southbound combination, the defendant Dale David Lyle ("Lyle"), survived.

2 Heading north, the deceased Leroy Izzard ("Izzard") drove a tractor unit owned by the plaintiff George Smith ("Smith") towing a trailer unit owned by George Smith Trucking Ltd. ("GSTL"). The southbound combination comprised a tractor and trailer (loaded with a second trailer) owned by the defendant Robinson's Trucking Ltd. ("RTL").

3 The deceased Miles Wilson ("Wilson"), Izzard's co-driver, was apparently asleep on a bunk in the cab of the northbound tractor unit at the time of the collision.

4 In these three actions the plaintiffs are the estates of the driver and co-driver of the northbound vehicles, their dependants at the time of the collision and the owners of those vehicles. The plaintiffs claim damages against RTL and Lyle, together with pre-judgment interest and costs, on the basis of Lyle's alleged negligence in driving RTL's southbound vehicles as an employee of RTL. The actions have been consolidated by consent of all the parties.

All liability is denied by RTL and Lyle in each of the three actions.

II. Issues

6 Was Lyle negligent in his driving of the southbound vehicle combination at the time of the collision? And, if so, did his negligence cause or contribute to causing the collision?

7 It is only if the plaintiffs have shown that these questions have an affirmative answer, on the balance of probabilities, that any issue as to damages will require consideration. No issue is raised as to the quantum of damages; and no evidence has been adduced on that point. The only issues in respect of damages are as to the extent to which any damages to be awarded should be apportioned among the parties pursuant to the *Contributory Negligence Act*, R.S.N.W.T. 1974, c. C-13 and, to the extent applicable, the *Vehicles Act*, R.S.N.W.T. 1974, c. V-2 (as amended) and the *Workers Compensation Act*, S.N.W.T. 1977 (1st), c.7.

III. Facts

1. The Scene

8 The stretch of highway where the collision occurred had a hard-packed lightly snow-covered gravel surface, was between seven and eight meters (or approximately 23 to 26 feet) wide, and had no marked centre line. Most of the traffic kept close to the centre (or travelled) portion of the roadway, which was about 14 feet

wide and sloped slightly from the crown down to the edges on either side. In consequence of the traffic keeping close to the centre, the edges of the roadway were covered with soft snow which, for the most part, had not been packed down.

9 This stretch of the highway was relatively straight and uniform in width. And it was bordered by a treeless strip or ditch on each side, which was perhaps a foot or two lower in elevation than the highway itself. Beyond these strips there were trees, relatively short in stature, on each side. A line of poles stood in the strip to the right of the highway as one faced North. These poles were spaced quite widely apart and carried a single line attached to their tops, some 30 feet above ground.

10 Although the highway undulated to a slight extent, there was no marked rise or fall on the stretch where the collision took place; at most there was a gentle rise as the road continued southwards past the area of the collision.

2. The Conditions

11 From the photographs taken by Corporal H.E. Hibbs, a forensic identification specialist of the Royal Canadian Mounted Police, who attended at the scene of the collision at about 5.00 p.m. on February 14th 1985, it is apparent that there was sufficient daylight at that time to provide visibility for several hundred meters (or yards) along the length of the highway, though some snow was falling and a snowy mist obscured the highway at a distance of about 500 meters. There was a grey overcast of cloud or snow.

Prior to the collision at about 2.45 p.m. the highway was in good condition, being classed as an "all weather" gravel (i.e. unpaved) highway. In the area of the collision, it is shown in the photographs as being covered with snow, apparently hard-packed where traffic had passed over it, and it was probably likewise snow-covered there at the time of collision.

13 The posted vehicular speed limit for the stretch of highway where the collision occurred was 90 kilometers per hour.

3. Northbound Traffic

14 At or shortly before 2.30 p.m. on the day of the collision, a vehicle described by the witness Gary Nault as a "Merv. Townsend truck with a load of propane" passed a point on the highway south of the scene of the collision, heading North and followed shortly afterwards by a "Cab-over GMC, bluish-green, (towing) a reefer van with metal sides" which travelled down the middle of the road at a speed estimated by Mr. Nault (an experienced truck driver at the time) at 60 miles per hour (96 kilometers per hour). He saw the latter vehicle on its side in the ditch off the righthand (Northbound) edge of the highway sometime around 2.50 p.m. that day. He also saw the "Merv. Townsend truck" parked on the left hand (Southbound) edge of the highway a short distance before he reached the GMC vehicle combination in the ditch.

15 Another witness, namely Lloyd Skiffington of Bona Vista Bay, Newfoundland, described a "blue and white transport truck" passing him as he was stopped to service a vehicle at Mosquito Creek on the Yellowknife Highway (No. 3) about

15 kilometers south of Rae-Edzo, estimating that the transport truck was "going fast, speeding" as it headed North on the highway. He was getting into his own vehicle to head back North to Yellowknife when this occurred. As he followed the transport truck, it pulled ahead of him. He next saw it in the right hand (Northbound) ditch off the highway at the scene of the collision.

16 A third witness, Richard Lafferty of Fort Rae, Northwest Territories, testified that on February 14th 1985 he had been down the highway in his half-ton truck to get a load of wood and was driving North towards home at Fort Rae when he noticed a truck come up behind him, he believed with its lights on, so that he pulled over and gave it room to pass. It was snowing at the time and the sky was cloudy. Mr. Lafferty estimated that he himself was travelling at from 70 to 80 kilometers per hour. However, he slowed down after the truck passed him, since it threw up a cloud of snow behind it. He believed that he slowed down to about 60 or 65 kilometers per hour.

17 Mr. Lafferty, who was 16 years old at the time, gave a statement later to the police in which he described this occurrence and his having met, shortly afterwards, a red vehicle also passing him (but in a southerly direction). He told the police then that neither of these two vehicles had seemed to bother him when they passed him. However, at trial some nine years later, he recalled that the northbound vehicle had come "all of a sudden", that it held the centre of the road so that he pulled well over to his right to avoid it, and that it scared him. His explanation for the difference between his testimony at trial and what he told the police is that he was scared that day, being only 16 years old and not sure where he stood in the matter. I accept his explanation and his

trial testimony, noting its consistency with the testimony of both Gary Nault and Lloyd Skiffington.

18 I infer that the incident described by Mr. Lafferty, where he was overtaken by the vehicle which he saw in the ditch about a minute or so later, took place only about one or two kilometers from the collision and within one or two minutes, at most, of the collision. This is rendered more certain by Mr. Lafferty's identification, on the blue-print diagram exhibit, of the details of the highway at the places where he was overtaken and where the collision occurred. As a local resident he knew then, and knew even better at trial, those details of the highway.

4. Southbound Traffic

19 Although a number of other vehicles were on the highway travelling southwards towards the scene of the collision after it had occurred, it is only necessary to deal in any detail with the two RTL vehicle combinations, travelling together one behind the other, only the second (or hindmost) of which was involved directly in the collision.

20 The first of those two vehicle combinations was driven by Bruce Flesjer, then an employee of RTL with ten years of accident-free experience as a truck driver in the Northwest Territories. Mr. Flesjer gave evidence at trial that he and Lyle left Yellowknife together at 1.00 p.m. on February 14th 1985, he driving an RTL tractor towing a van and Lyle driving an RTL Mack tractor towing a flat-deck trailer loaded with a second such trailer. They had stopped at Boundary Creek to check their rigs before continuing southwards. According to Mr. Flesjer the road was in fairly good winter

driving condition and it was snowing.

21 A short distance after passing the Rae intersection Mr. Flesjer met a truck in the centre of the road coming towards him. It is Mr. Flesjer's testimony that this truck, a "Cab-over dark in colour" was not moving over to allow for their passing so that he was forced right over on to the extreme southbound shoulder of the roadway. As this was occurring, Mr. Flesjer called Lyle on the radio to warn him. A minute or so later, Lyle called back to say that the truck had run into him. On hearing this, Mr. Flesjer stopped and backed up his combination until he could see the northbound vehicle in the ditch, whereupon he stopped.

22 It was Mr. Flesjer's evidence, which I accept, that he did not meet any other vehicle travelling northward on the highway that day, to the best of his recollection. The significance of this for the evidence of Paul Ladobruk, a truck operator and driver for almost 40 years, is that the "cab-over" "two-tone blue and white tractor-trailer out of Winnipeg", which he recognized as belonging to GSTL and which he saw approaching him at about noon that day, as he drove an RTL vehicle south on the Yellowknife Highway (No. 3) at a point about 50 miles from Fort Providence, could only have been the vehicle which later collided with the RTL combination driven by Lyle a few kilometers south of the Rae-Edzo intersection. According to Mr. Ladobruk, the GSTL vehicle combination did not slow down as they approached; and it continued to hold the centre of the highway so that he was forced completely over to the right hand (southbound) edge of the road as it passed very close and at high speed in the centre of the highway.

Under cross-examination, Mr. Ladobruk acknowledged that the oncoming northbound vehicle may have moved over to its right; but he remained firmly of the view that, if it did so, the movement was minimal. It was his assessment that the oncoming vehicle was on the southbound half of the road as they passed.

5. The Vehicles in the Collision

(a) Northbound

24 The vehicle owned by Smith and driven by Izzard was a blue 1979 GMC Astro 95 cab-over tractor, towing a silver Fruehauf Reefer semi-trailer van loaded with packaged frozen food, the property of GSTL. Both tractor and trailer had a normal width of 2.4 metres (8 feet) before the collision.

25 Sergeant R.N. Sargent and Constable A.W. Harding of the Rae detachment, Royal Canadian Mounted Police, arrived at the scene of the collision at about 3.10 p.m. on February 14th 1985. Among other things, they found a television set affixed to the roof of the GMC tractor cab near the front window, showing a grey-white haze on the screen (it was switched on). Cst. Harding took possession of the set before leaving the scene. This explains why it does not appear in the photographs taken later.

26 I infer that the television set was visible to Izzard as he was driving, whether or not he was watching it just before the collision. And Izzard did not have a valid driver's licence at the time.

The GMC tractor's tachometer was stuck after the collision at a reading of

1600 revolutions per minute; and the speedometer was likewise stuck at a reading of 88 kilometers per hour. I infer that this was the actual speed of the northbound combination at the moment of impact during the collision.

(b) Southbound:

28 RTL's combination, driven by Lyle, consisted of a 1984 Mack tractor towing a flatbed (or flat deck) trailer loaded "piggy-back" with a second such trailer ("the B-train") aligned with its tail to the front of the carrying trailer ("the A-train").

29 According to the specifications for the trailer quoted by Clifford J. Anderson, P.Eng., at page 9 of his exhibited report, the trailer's width was 10 feet; but Lyle in his testimony was adamant that it was no more than 8½ feet wide at most. Both sources agree that the RTL tractor was 8 feet wide. Given the evidence as a whole, I do not find much significance in this discrepancy in the evidence of the RTL trailers' widths. The damage done to the northbound vehicle combination is not explicable by the extra width of a foot on each side of the RTL tractor, if indeed the specifications given by Mr. Anderson are correct and Lyle is in error on that point.

30 Unlike the Smith tractor, which had no tachographic equipment, RTL's tractor did. Analysis of the record produced by this equipment is not in dispute. It shows that Lyle had been travelling at about 10 k.p.h. above the 90 k.p.h. speed limit for a time before the collision. He admitted to having been given a ticket by police afterwards for speeding before that. In the final 21 seconds before the collision, the record shows that Lyle had gradually increased and then decreased his speed from 89 k.p.h. to 96 k.p.h.

and back down again over an 18-second interval, followed by a rapid deceleration to 52 k.p.h. over three seconds, at which point the collision took place.

6. The Collision

(a) Lyle's testimony

31 Trained and employed at the time of trial as a heavy duty mechanic at Edmonton, Alberta, Lyle had been employed by RTL driving heavy vehicles between Yellowknife and Edmonton during the winter of 1984-85. He had hauled on the same route for another employer during previous summers, having also worked for Byers Transport, and having had experience driving a gravel truck for about a year as well.

32 On February 14th 1985, as previously mentioned, he and Mr. Flesjer were driving South on the Yellowknife Highway (No. 3) on behalf of RTL. Lyle's evidence is that he had taken the precaution of adding extra chains to secure the B-train on the A-train of his trailer unit. He and Mr. Flesjer had stopped at Boundary Creek to the North of the Rae intersection to check their rigs, particularly the brakes, wheels and trailers. This was a routine first stop on the usual run to Edmonton.

33 Lyle testified in chief that Mr. Flesjer proceeded first, and that he followed at a sufficient distance to allow him to see any vehicle coming out of the "dust" (or snow) thrown up by the vehicle combination travelling South ahead of him. He estimated that there was a distance of about 400 yards (or meters) between himself and Mr. Flesjer's combination. A short distance South of Edzo, Lyle saw a truck coming towards him out

of the cloud thrown up by Mr. Flesjer's combination. He said that he himself drove with his left front wheel on the crown of the road; but that the other vehicle came directly at him down the centre of the highway, so that when it was getting close (about 60 feet away) he slowed down, turning his tractor to the right to try to escape impact with the other vehicle. As the other vehicle passed, he noticed that its driver seemed to be immobile, "not budging".

34 Under cross-examination, Lyle admitted that he had been travelling above the speed limit earlier that day and had been given a ticket for this by the police. And he agreed that he could not, in fact, see the vehicle ahead of him, driven by Mr. Flesjer, owing to the "dust" cloud it was throwing up. He was unable to recall if he had switched on the Dynatard brake mechanism in his tractor unit, the effect of which was to brake the vehicle automatically when the driver removed pressure from the accelerator. It was his evidence that he would have switched it on if the road was slippery.

35 Pressed by counsel for the plaintiffs as to where his vehicle combination was in terms of the width of the roadway, Lyle denied that he also had straddled the travelled portion across the crown as the other vehicle approached him. His evidence is that his left front wheel was on the crown and that this put his vehicle partly on the softer snow on the right, though he took care to avoid the edge there. He said that he tried to be conscious of both his left and right wheels as he drove. He felt that he was able to gauge where the edge was at all times and that he was as close as two feet from it as the vehicles approached one another.

In weighing Lyle's testimony, I am greatly assisted by the testimony of the other witnesses who described the manner in which the GMC tractor was being driven by Izzard within a short time before the collision. Their evidence provides independent confirmation for that of Lyle as to the GMC tractor having straddled the crown of the road while proceeding at a speed in excess of the speed limit. And there is further confirmatory evidence which I shall mention.

(b) Physical evidence

37 The damage to the two tractor units provides a clear indication of their relative positions at the time of impact. The left front wheel of the GMC tractor had struck one of the left hand rear wheels of the Mack tractor. And the front left hand dual wheels of the GMC unit had also collided with the left hand duals of the Mack, breaking the axle and the suspension casting. No damage was sustained by the left front wheel of the Mack tractor. But the outer left hand rims of that unit's rear wheels show that they were struck twice, with force being applied by the left front drive wheels of the GMC tractor.

38 I infer that the Mack tractor had clearly turned right before the impact and that the GMC tractor was also beginning to do so when the impact occurred. It is apparent, furthermore, from the overall damage to the GMC tractor that the extent to which it had turned at the moment of impact was minimal. That damage occurred quite clearly from contact with the trailer unit of the southbound combination, as did the damage to the northbound trailer.

39 The positions of the vehicles after the collision, as shown in the photographs and as described in the evidence of the investigating police officers, as well as that of the experts and their reports, provide further confirmation for the foregoing conclusions as to the nature of the impact between the vehicle combinations at the time of the collision. I shall further examine this aspect of the matter when considering that evidence and those reports.

40 Lloyd Skiffington, who arrived at the scene before the police, and while Mr. Flesjer was still backing up his combination, noticed an odour of diesel fuel as he approached the northbound combination lying in the ditch. Mr. Skiffington testified that there was diesel fuel on the road, mostly in the southbound lane, with only a little in the northbound lane further North as he was travelling; his interest was taken because of his concern about possible fire resulting.

41 As the photographs show, the fuel tank on the left of the GMC tractor was removed during the collision, whereas that on the left of the Mack tractor was undamaged. The diesel fuel on the road, I therefore infer, came from the GMC tractor. That the fuel was spilled in the southbound lane, only showing on the other side of the crest further to the North, is indicative of the location of the GMC tractor at the moment of impact and its subsequent path northwards into the ditch on the northbound side of the highway.

42 Also significant is Mr. Skiffington's observation of tire tread marks in the snow on the shoulder of the southbound lane heading North from the area of the diesel

fuel. I infer that those tread marks came from the southbound combination, confirming Lyle's testimony that he was driving well over to his side of the road as the northbound vehicle approached him straddling the crown of the highway.

43 Further confirmation of Lyle's testimony as to the relative positions of the two vehicle combinations on the highway as they came together is provided by the testimony of Mr. Nault. His evidence is that he observed one set of vehicle tracks in the southbound lane, in freshly packed snow, and a further set of tracks, of which one was on the crown or centre of the road with the second in the southbound lane. On following this further set of tracks, Mr. Nault found that it led him to the northbound combination in the ditch without any break in the tracks.

44 Like Mr. Skiffington, Mr. Nault was also at the scene within minutes of the collision before the police arrived, so that no other heavy vehicle could have made the tracks which he observed. And, once again, his evidence provides independent confirmation of that given by Lyle as to the relative positions on the highway of the two vehicles as the collision took place. It deserves to be mentioned that the two young men in a car who arrived at the scene immediately after the collision while Lyle was checking the GMC tractor in the ditch were not called as witnesses (and it is not clear if they arrived from the North or from the South); but according to Lyle (and there is only his discovery testimony on the point) they left almost immediately northbound for Rae-Edzo to fetch an ambulance (thus also alerting the police, no doubt). There is nothing to suggest that the tracks observed by Mr. Nault and Mr. Skiffington were made by the car.

(c) The police investigation:

45 According to Sgt. Sargent, the first concerns of the police on arrival at the scene were to render assistance, as indicated by determining the status of any injured individuals who required it. It was only as a secondary objective that they also sought to determine the point of impact by looking for debris on the road surface. His recollection is that they found an area about six to eight feet in diameter in what he took to be the centre of the roadway which he concluded to have been the point of impact. However, this area was not marked or cordoned off; and in due course it was obliterated by the grader which he had directed to clear the roadway of debris to enable traffic to pass in safety. He made a visual estimate only of the distances from this impact point to the vehicles in their positions at rest in the ditches on each side of the highway, these estimates being about 50 feet to the RTL combination and 150 to 200 feet to the northbound trailer unit. He could not recall at trial that any measurements were taken at the scene.

46 Cst. Harding estimated the place where the colliding vehicles met as also being in the centre of the travelled portion of the highway, describing the area of debris from which he drew this conclusion as being about 3 to 5 feet in diameter. None of the photographs which he took showed this area of debris as distinct from the other debris scattered about on the roadway. Cst. Harding observed skid marks running from the area of debris towards the RTL vehicle; and he noticed tire tracks leading from the travelled portion of the highway into the northbound ditch where the GMC tractor and its trailer lay. He was unable to give a measurement for these tracks or for the skid marks, not

having made or taken part in making any measurements at the scene.

47 Cpl. Hibbs arrived at the scene only at about 5.00 p.m. on February 14th 1985, when he also took photographs. By then, of course, the grader had done its work clearing the southbound lane. Cpl. Hibbs saw no signs of spilled fuel; presumably these had been removed by the grader. According to his view of the scene at that time, most of the debris was on the East side of the highway; but the wind was blowing from the West and, as already noted, the West side had been cleared by the grader before his arrival. Cpl. Hibbs set up a transit on the highway and began to take measurements with it, starting at 5.36 p.m., and used these to prepare a diagram of the scene showing the vehicles in their respective ditches.

48 Under cross-examination, Cpl. Hibbs acknowledged that he had not noted down any measurement of the width of the roadway at the scene and that the conditions at the time were poor for the making of his measurements, so that minor inaccuracies may have crept in. He himself took no measurements to indicate the impact point of the colliding vehicles.

49 Given the incompleteness of the police investigation, at least to the extent revealed in the evidence at trial, it is not surprising that no charges were laid against Lyle other than for exceeding the 90 k.p.h. speed limit as shown on the tachographic record.

50 In weighing the testimony of Sgt. Sargent and Cst. Harding, it is to be noticed that they made somewhat varying estimates of the size of the area of debris which they took to mark the point of impact of the vehicles, that they took no steps to

cordon off or otherwise preserve that area, that at best they could only say at trial (nine years later) that it was in the centre of the travelled portion of the highway, and that there is no evidence as to exactly where it was in fact located. The indications are moreover, that the area of debris was in fact obliterated when the grader cleared the southbound lane of the highway, which is consistent with this location having been in that lane rather than in the centre of the travelled portion straddling the crest of the highway.

51 Upon weighing carefully the testimony of the three police officers, given the difficult circumstances left by the collision, it is therefore more likely, it seems to me, that the debris on the roadway marking the point of impact was in the southbound lane rather than in the centre of the travelled portion of the highway, even if the recollections of Sgt. Sargent and Cst. Harding (unaided by notes, diagram or measurements made at the scene in respect of the location of the debris) were to the contrary at trial nine years later.

52 By way of footnote to the discrepancy earlier mentioned, as to the width of the southbound piggy-backed trailers, I notice that a pencilled note appears on the original pencilled sketch (exhibit P-10) prepared by Cpl. Hibbs, indicating that the width of these trailers (or "trains") was 9 feet (108"), which is closer to the evidence given by Lyle than the "specifications" of 10 feet given in Mr. Anderson's report. I infer that the correct width, as actually measured by Cpl. Hibbs, was 9 feet.

7. Expert opinions

(a) Plaintiffs' expert witness

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Mr. Anderson gave evidence on behalf of the plaintiffs as an expert in vehicle dynamics and motor vehicle accident reconstruction. His report, as earlier mentioned, is filed as a trial exhibit. In addition, there is his exhibited *curriculum vitae* outlining his extensive experience as a witness before the courts in such matters, in addition to his professional and academic qualifications and his professional experience.

54

Mr. Anderson very fairly mentioned in his testimony that he much prefers to visit the scene of a highway accident in person immediately after it has occurred. In this case that was not possible. He made his first visit to the scene over a year later. And so he was obliged to rely not on first hand observation but rather on the police report, the photographs taken by Cpl. Hibbs some hours after the collision, the diagram and measurements made then by Cpl. Hibbs, and his own examination of the remains of the northbound vehicle in the RTL yard at Yellowknife some time after he was retained in July 1986. As these circumstances indicate, the opinions ultimately reached by Mr. Anderson must be weighed accordingly.

(b) Defendants' expert witness

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Peter G. Keith, P.Eng. gave evidence on behalf of the defendants as an expert in vehicle dynamics and motor vehicle accident reconstruction. His report is filed as a trial exhibit. And his exhibited *curriculum vitae* outlines his experience as an expert witness before the courts in such matters as well as his professional and academic qualifications and his professional experience.

56 Like Mr. Anderson, Mr. Keith did not have the important advantage of attending the scene of the collision immediately after its occurrence, so that he also was obliged to rely to a large extent on secondary sources such as the police report, police photographs and police diagrams and measurements. In addition, Mr. Keith also examined the remains of the northbound vehicle combination in the RTL yard at Yellowknife a considerable time after the collision.

(c) Photographs and diagrams

57 In addition to the police photographs and certain photographs of the scene taken by RTL personnel shortly after the collision, both Mr. Anderson and Mr. Keith took photographs of the scene and of the highway as it extends beyond the immediate scene of the collision. Mr. Anderson did so in June 1993; Mr. Keith's photographs were taken in October that year. As noted by Mr. Keith at page 9 of his report, the road bed had evidently been widened and raised since the date of the accident. And although this was not mentioned by Mr. Anderson, it is apparent from his photographs that the same was true in June 1993.

58 Considering the visibility of the two vehicle combinations as they approached the collision scene, each as viewed by the driver of the other, and bearing in mind the blowing snow and lighting conditions at 2.45 p.m. on February 14th 1985 as well as the likelihood that the rise and fall of the highway was then substantially the same as shown in the 1993 photographs taken by Mr. Anderson and Mr. Keith, I accept Mr.

Keith's statement that when they were about 400 meters apart, about 200 meters from the point of impact, each vehicle combination was visible from the other, as the photographs taken in 1993 reveal. This is further substantiated by the profiles of this stretch of highway prepared by Mr. Anderson and Mr. Keith from their measurements at the scene that year.

59 In coming to this conclusion, I note that it is fully consistent with Lyle's testimony that he first saw the northbound combination as it emerged from the "dust" thrown up by Mr. Flesjer's vehicles ahead of him, at which point the northbound combination was about 400 meters away. And I accept, in consequence, Mr. Keith's calculation that the two vehicle combinations which collided very shortly afterwards were then far enough apart that their drivers, given the speeds at which they were both travelling, each had about 8 seconds within which to take appropriate avoiding action by braking and moving over, so as to prevent the otherwise inevitable collision.

60 Mr. Keith states at the top of page 9 of his report that the photographs taken by RTL personnel about an hour after the collision (but before the police arrived) show that the roadway at the collision scene was clearly wide enough for two trucks to pass each other without difficulty. This view is further confirmed by the police photographs (exhibit P-12 in particular). And it is consistent with the overall width of the highway (8 metres or 26 feet) given by Mr. Anderson. (His report, at page 10, paragraph 6.1.4, states that this width was derived by him from Cpl. Hibbs' scale drawing; though Cpl. Hibbs admitted at trial to not having measured the width of the highway at all.)

61 The photographs of the damage done in the collision to each of the colliding vehicle combinations are particularly revealing. As noted by Mr. Keith at page 14 of his report, the greatest extent of the penetration of the panel to the driver's left of the radiator and above the headlamp assembly of the GMC tractor was 40 cm (or 16 inches). And this penetration continued along the length of the driver's side of the cab of the GMC tractor, as shown in photographs 75 to 83 of his report. A similar degree of penetration is shown to the GSTL trailer for almost the entire length of its left side, as shown in photographs 102 and 104 to 107 of that report. Similar photographs are included in Mr. Anderson's report.

62 Whether the degree of penetration diminished because, after impact, the GMC tractor was deflected to its right as a result of the impact; or whether it veered to its right, after impact, because Izzard had at the last second tried to move to his right, beginning to turn the GMC tractor at least slightly in that direction (and possibly both factors were present); it is apparent that the GMC tractor and its trailer headed off to the right into the ditch where they fell over on their right sides. It is also possible that the impact on the RTL trailer and its load caused them to rebound at least to a degree so as to reduce the degree of penetration of the GSTL trailer, before losing contact with it as it headed for the ditch.

63 What emerges very clearly from the photographic evidence, taken as a whole, is that there was an obvious overlap in the widths of the two vehicle combinations; so that when they struck there was a deep penetration of the northbound combination far exceeding the six inches by which the RTL trailer and its load protruded

beyond the left side of the RTL cab as it was proceeding straight ahead along the highway. And had the RTL tractor not turned right just before the impact, it would have come into direct head-on contact with the GMC tractor, so that damage would have been inflicted on the RTL tractor similar to that sustained by the GMC tractor, with the result that Lyle might very well have lost his life.

64 Mr. Anderson has made a particular point of what he describes at page 12 (paragraph 6.4.7) of his report as an "undisturbed snow windrow" evident "along the west portion of the roadway immediately north of the rest position" of the RTL tractor. He refers to two photographs (S6 and S7) in his report by way of illustration of this point. In the absence of any suggestion to the contrary, I infer that these are copies of photographs taken by Cpl. Hibbs beginning at about 5.00 p.m. on February 14th 1985.

5 Exhibit P-6 is an enlarged version of the photograph S6. I assume that the windrow referred to by Mr. Anderson is the slightly mounded ridge of snow from the outer side of which there is a growth of some sort along the right outside edge of the highway as it fringes the ditch. A piece of crumpled metal rests about halfway along on this feature, between the edge of the picture and the end of the RTL trailer on the shoulder of the roadway.

66 The significance of this feature, if I correctly understand Mr. Anderson's analysis, is that it reinforces his conclusion that the RTL vehicle combination was not travelling close to the west edge of the roadway immediately prior to the impact. That conclusion is nevertheless based primarily on the jack-knifed rest position of the RTL

combination, with very clear skid marks on the road from the rear wheels of the A-train, indicating a sharp angle of departure from the roadway towards the edge, all of which is consistent with the B-train resting beside the A-train in the ditch.

67 With great respect, I am unable to attach much significance to this windrow of snow since there is nothing inconsistent, as I see it, between the existence of that feature and the evidence of Lyle to the effect that he was as close as two feet from the southbound edge of the roadway, but no closer, as the vehicle combinations approached one another prior to the collision. Had his evidence been that he went along the very edge, or over it, one might have grounds to question his recollection in view of that windrow of snow, even if one would still have to allow for about 2 ½ hours of windblown snow accumulating since the collision before Cpl. Hibbs took the photographs in question. However, Lyle's evidence is quite specific, going no further than to say that he was conscious of the position on the road of both his front wheels; and that his right front wheel was two feet from the edge of the roadway, which would have kept it off the windrow.

68 As to the various diagrams in the experts' reports, it is apparent that these are all based upon the measurements made by Cpl. Hibbs, and his resulting sketch. It must be borne in mind that Cpl. Hibbs did not attempt to measure the width of the highway. And he made no measurement with respect to the area of debris noticed by Sgt. Sargent and Cst. Harding, which they concluded to be indicative of the point of impact. The black dot on the sketch had been placed there to reflect information not made available in evidence at trial. There is simply no evidence to show that this dot

accurately pinpoints the first impact of the colliding vehicles.

(d) The jack-knifing factor

69 Mr. Anderson has also made a particular point of the angle between the RTL Mack tractor and its trailer at the moment of impact, resulting in the cab of that tractor escaping all but very minor damage. As I understand, his point is that the sudden heavy braking of that tractor by Lyle, coupled with his sharply turning it to the right, would have caused the trailer in tow to jack-knife or move laterally leftwards into the path of the oncoming GMC tractor. I may not have grasped the point, however, for I notice that the diagrams included in Mr. Anderson's report do not show any reliance upon such a lateral displacement. Instead, they only show the RTL tractor having moved sufficiently to its right to escape contact, with its trailer still aligned along the original direction of travel on the highway at the moment of impact.

70 The photographs clearly show the RTL combination in a jack-knife position at rest after the collision. But this is plainly the result of it having received the primary impact of the collision on the drive wheels of the tractor at a point behind the cab and close to the fulcrum of the combination, where the trailer was attached to the tractor. Moreover, the sideways rebound of the RTL combination following the collision is demonstrated by the skid marks and the final positions of those vehicles in the snow across the windrow and into the ditch, with the tractor pointing back towards the highway due to the impact received towards its left rear.

While the northbound vehicle combination was apparently fully loaded, the

weights mentioned in the reports are not, I believe, other than approximations of the actual weight of that combination. Furthermore, as already mentioned, there is a discrepancy in the width of the southbound trailers as measured by Cpl. Hibbs and the "specifications" for that width relied upon by Mr. Anderson. The speed of the northbound combination, at 88 k.p.h., was not quite twice that of the southbound combination at the moment of impact; and the latter by then had its brakes fully on. It is not possible to say exactly what the effect of the relative weights was; but it is apparent that the northbound combination was somewhere between 50% and 100% heavier than the southbound combination; and there is no indication that the former had its brakes on.

72 It is in my view entirely consistent with these aspects of the collision that the distances from the point of impact to their respective points of rest were in a ratio of more than 3 : 1 for the northbound and southbound combinations respectively. The experts differ on this, with Mr. Anderson reaching a result close to 2 : 1 while Mr. Keith reaches a result of slightly more than 3 : 1. I prefer Mr. Keith's opinion on this point (and his manner of calculating the distances with reference to the rates of deceleration of the vehicles) to that of Mr. Anderson. As a result, I prefer Mr. Keith's estimate of the north-south location of the impact point to that of Mr. Anderson.

(e) The point of impact

73 It is impossible, it seems, to say exactly where the colliding vehicles came into contact. But my consideration of the evidence on this point does not leave me in any doubt as to whether the point of impact was in the northbound or the southbound lane,

or somewhere close to the centre of the highway. The evidence points strongly to the point of impact as having been in the southbound lane, approximately ten feet from the southbound edge of the highway or some three feet or more from the notional centre line.

74 This conclusion is consistent with the opinion of Mr. Keith on that point. The contrary opinion given by Mr. Anderson is evidently based to a significant extent upon the mysterious dot plotted on Cpl. Hibbs' sketch on the basis of information (which he said he had received from someone over the telephone) indicating the area of debris noticed by Sgt. Sargent and Cst. Harding. As I have already mentioned, the location of the debris would appear to have been in the southbound, not the northbound, lane. I prefer the opinion of Mr. Keith to that of Mr. Anderson in respect of this important fact.

IV. Conclusion

75 It is the plaintiff's contention that Lyle was negligent in operating the southbound vehicle combination in that:

- (a) he was travelling southbound when he was substantially in the northbound lane;
- (b) he applied his brakes and simultaneously steered his vehicles when he knew or ought to have known that this would cause the front of the trailers to be thrust into the path of the oncoming northbound combination;
- (c) he operated his vehicles too close to the unmarked centre of the road for him to safely get by the northbound vehicles; or operated his vehicles in the northbound lane when it was unsafe to do so;
- (d) he followed Mr. Flesjer's vehicles too closely;

- (e) he failed to keep a proper lookout; and
- (f) he operated his vehicles at a rate of speed that was too fast in view of the prevailing road and weather conditions.

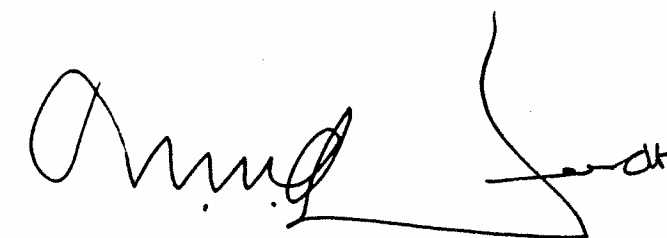
76 I am unpersuaded that Lyle was in fact negligent on any of these grounds, on the balance of probabilities. While he was operating his vehicles at a speed in excess of the posted limit as the vehicles were approaching each other, he was sufficiently far back from Mr. Flesjer's vehicles to see the GMC tractor in ample time to move over to the right and slow down, as he did. He was by then travelling about two feet from the southbound edge of the highway, and had reached a reduced speed of 52 k.p.h. when the collision occurred. If he had not, at the last second, managed to turn his tractor to the right and out of the path of the GMC tractor, he too might have lost his life. There is no basis for the contention that the collision occurred because he made that turn, or that his vehicles actually jack-knifed into the northbound combination, as a result of that turn. But even if his vehicles did begin to jack-knife at the moment of impact, it has not been shown that this caused the collision, which came about only because the northbound combination was straddling the crest of the highway to the extent that it made contact with the other vehicles.

V. Disposition

77 Having found that Lyle was not negligent in the operation of his vehicles and that the collision was not the result of any negligence on his part, it is not necessary for me to consider the issues in respect of damages earlier mentioned.

78

The plaintiffs' action is dismissed. Costs may be spoken to if necessary.



M.M. de Weerd
J.S.C.

Yellowknife, Northwest Territories
June 21st 1994

Counsel for the Plaintiffs:

Adrian C. Wright, Esq.
Ms. Katherine D. Dann

Counsel for the Defendants:

Pierre Mousseau, Esq.
Ms. Sharon R. Stefanyk

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

THE ESTATE OF LEROY IZZARD,
deceased, by his Administrator VERA
JACQUELINE IZZARD; LILLIAN MARIE
IZZARD, HARVEY IZZARD, BRENDA
IZZARD, DAVID IZZARD and PAUL
IZZARD

Plaintiffs

- and -

ROBINSON'S TRUCKING LTD. and DALE
DAVID LYLE

Defendants;

AND BETWEEN:

THE ESTATE OF MILES WILSON,
deceased, by his Administrator CARLA
ELLEN WILSON; CARLA ELLEN WILSON
and CHELSEY TAYLOR by her next friend,
SHIRLEY TAYLOR

Plaintiffs

- and -

ROBINSON'S TRUCKING LTD. and DALE
DAVID LYLE

Defendants;

AND BETWEEN:

GEORGE SMITH and GEORGE SMITH
TRUCKING LTD.

Plaintiffs

- and -

ROBINSON'S TRUCKING LTD. and DALE
DAVID LYLE

Defendants.

REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE M.M. de WEERD

