

OIC A95-000256

BETWEEN:

JOHN PLUT

APPLICANT

and

CANADIAN GENERAL INSURANCE COMPANY

INSURER

DECISION

Issues:

The Applicant, John Plut, was injured in a motor vehicle accident on July 5, 1991. He applied for and received statutory accident benefits from the Insurer, Canadian General Insurance Company (“Canadian General”), payable under Ontario Regulation 672.¹ Weekly income benefits were terminated by the Canadian General on July 12, 1994. Mr. Plut claims ongoing weekly benefits under section 12 (5)(b) of the *Schedule*. The parties were unable to resolve their dispute through mediation and Mr. Plut applied for arbitration under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended (the “*Act*”).

The issues in this hearing are:

¹ Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule — Accidents Before January 1, 1994*. In this decision, the term “*Schedule*” will be used to refer to Regulation 672.

1. Is Mr. Plut entitled to ongoing weekly income benefits from July 13, 1994 onwards under section 12 (5)(b) of the *Schedule*, on the basis that his injuries continue to prevent him from engaging in any occupation or employment for which he is reasonably suited by education, training or experience?

Mr. Plut also claims interest on any amounts owing, and his expenses incurred in the hearing.

Result:

1. Mr. Plut is entitled to receive ongoing weekly income benefits under section 12(5)(b) of the *Schedule* from July 13, 1994 onwards.
2. Mr. Plut is entitled to his expenses incurred in respect of the hearing.

HEARING:

The hearing was held for five days before Arbitrator, Beth Allen. Four days of the hearing were held in Kitchener, Ontario on April 15, 16, 17 and 18, 1996. The fifth day of hearing was held in Toronto, Ontario on April 29, 1996. Counsel for Mr. Plut delivered his final submission orally on April 29, 1996. Counsel for Canadian General delivered written submissions on May 6, 1996.

Present at the hearing:

Applicant:	John Plut
Applicant's Representative:	David B. Hayward Barrister and Solicitor Wayne Gardner Student-at-Law

Insurer's
Representative: Douglas Dawson
Colin Osterberg
Barristers and Solicitors

Insurer's
Officer: Mark Sones
Accident Benefits Claims Manager

Witnesses:

For the Applicant: John Plut
Vera Plut (Applicant's wife)
Dr. David Cameron (family doctor)
David Polomski (physiotherapist)
John Galasso (classmate)
Michael Dragas (business associate)

For the Insurer: Oona Burkhardt (physiotherapist)
Scott Davidson (kinesiologist)
Mindy Aziz (vocational consultant)
Dr. Gary Moddel (neurologist)
Dr. Arthur Ameis (physiatrist)

Exhibits: Exhibits are listed on Schedule "A."

The parties agreed that only those documents introduced as evidence at the hearing would be marked and listed as exhibits.

Authorities: Counsel for both parties submitted briefs of legal authorities.

FACTUAL BACKGROUND

MR. PLUT'S EDUCATION:

Mr. John Plut, age 53, was born in the former Yugoslavia and emigrated to Canada in September 1967. He married his wife, Vera in January 1967.

In 1963, Mr. Plut completed a four-year college program in mechanical engineering in Yugoslavia and received a diploma in 1963. In 1967, after arriving in Canada, he took an English course at a local high school. In addition to being literate in English, Mr. Plut is also literate in Slovenian, Croatian, Serbian and German.

MR. PLUT'S EMPLOYMENT EXPERIENCE:

Mr. Plut began working three weeks after arriving in Canada and continued to work steadily, changing jobs occasionally, until his automobile accident on July 5, 1991. He worked as an inspector for Abex Aircraft Manufacturing from 1968 until about 1971 when the factory moved to Quebec. In 1971, he began working as an inspector for Joy Manufacturing, a company that produced mining equipment. This plant also closed and moved to the United States in about 1972.

In 1972, Mr. Plut decided to run his own business. He took over a company called Correct Motors Limited ("Correct Motors") which in the beginning offered an automobile repair service. Mr. Plut and his wife became the directors of this company. Mr. Plut later applied for and received a licence to buy and sell automobiles. He eventually operated the business at three locations where he sold cars and did auto body and mechanical repairs. He also ran towing and

snow removal services from these locations. In 1976 Mr. Plut had 11 employees. He took an

active part in the activities of the business, including preparing the business' financial documents for the accountants.

Mr. Plut operated the business from 1972 to 1978 on a full-time basis. By 1978 the business began to fail so he decided to close it and return to work full-time.

In 1978 Mr. Plut began work as an inspector with Waterloo Manufacturing, a manufacturer of paper mill machinery. He worked there until 1982.

In 1982 Mr. Plut began a job at Chicopee Aircraft Manufacturing ("Chicopee"), an airplane manufacturer. Chicopee was his employer at the time of his accident 1991.

At Chicopee, Mr. Plut was a first inspector. In this capacity, he inspected raw materials and the first cut of parts and laid out the parts. He also monitored the operators who performed the second cut, and inspected the final cut.

Mr. Plut indicated that during a shift he was required to stand for about seven hours and to sit for about four hours. He would be required to carry and push parts weighing up to 70 pounds when doing layouts. More than ten percent of the job involved lifting. He climbed up to four feet to the machine inspection tables, frequently bending and twisting at the waist when doing layouts .

Mr. Plut had been working at Chicopee for about nine years when the accident occurred. He never returned to work after the accident. Mr. Plut claims that although he loved his job and his profession, he cannot return to this job or his profession because of the disabilities he suffered as a result of the accident. Chicopee held Mr. Plut's job open for him until October 5, 1992.

In addition to working full-time at Chicopee at the time of the accident, Mr. Plut also operated a business on a part-time basis. In the late 1980s, he started a business operating under the name Correct Motors Sales (“CMS”). Through this business Mr. Plut sold cars with a silent partner named Mr. John Mojse.

THE ACCIDENT:

On July 5, 1991, Mr. Plut was driving to Guelph, Ontario with Mr. Mojse to pay for cars they had purchased there through CMS. Mr. Plut’s car was stopped, waiting to make a left turn when it was rear-ended. Mr. Plut was wearing a seat belt at the time. Mr. Plut remembers the sound of the impact. His next memory is that of the rescue crew prying open the car with the jaws of life.

Mr. Plut testified that he did not remember the ambulance ride to Guelph General Hospital. He remembers awaking in the hospital while a nurse was taking him for x-rays. Mr. Plut recalled that at the hospital he complained of a headache and back and neck pain. He was given medication for this. He also complained of dizziness. The hospital discharged Mr. Plut on the same day. The attending physician gave Mrs. Plut instructions on how to treat Mr. Plut's concussion.

MR. PLUT’S INJURIES:

The hospital took x-rays of Mr. Plut’s cervical spine on the day of the accident. The x-ray report dated July 5, 1991 reveals no fractures, no dislocations or significant bone abnormalities. However, the report records some minor degenerative changes at C4-5 and C6-7.

On July 9, 1991 Mr. Plut visited Dr. Cameron, his family doctor since 1990. Dr. Cameron has practised medicine since 1983. On an Ontario Automobile Insurance Medical or Psychological Report dated July 9, 1991, Dr. Cameron records complaints by Mr. Plut of severe headaches, sore neck and an inability to hold his head up. Mr. Plut also complained of right shoulder and right rib

pain as well as numbness and weakness in his arms. Mr. Plut reported that his thinking and memory were also impaired. Dr. Cameron prescribed Tylenol No. 3 and Norflex for pain. By July 25, Mr. Plut reported that his rib, chest and shoulder pain had resolved and that his headaches varied in intensity. On August 27, 1991 he complained of dizziness.

A cervical spine x-ray performed on August 27, 1991 revealed evidence of nerve impingement at C 4-5. In Dr. Cameron's opinion this finding is consistent with Mr. Plut's complaints of head and neck pain and numbness and weakness in his right arm.

On Dr. Cameron's recommendation, Mr. Plut received treatments in August 1991 at the Physiotherapy Centre. These did not improve his condition. Traction aggravated his pain and was discontinued.

Dr. Cameron admitted Mr. Plut into St. Mary's General Hospital on September 19, 1991, for five days, to investigate his headache complaints. The discharge summary dated September 24, 1991 concludes that Mr. Plut's condition results from a whiplash with superficial nerve involvement. The cervical spine x-ray revealed some nerve impingement at C 5-6.

MR. PLUT'S DISABILITY:

Headaches:

Although Mr. Plut has continued to experience numbness in his right arm and shoulder, he admits that this condition, while uncomfortable, is not disabling. His major complaint is of continuing, severe and disabling headaches. Mr. Plut described the severe headaches as involving a burning sensation which extends from the right nape of his neck, up over the right side of his head to behind his right eye. Mr. Plut characterizes days with these headaches as his "bad days."

Mr. Plut testified that his severe headaches are intermittent and unpredictable, occurring two to three times monthly, at times lasting up to seven consecutive days. Mrs. Plut estimated that he suffers from severe headaches for eight to ten days in a 30-day period. To relieve the pain Mr. Plut takes two to three Tylenol No. 3s per day. He described himself as zombie-like when under the influence of this medication. During the severe headache episodes he must go to bed and close the blinds. He remains in his darkened bedroom and does not leave his house due to his intolerance to light, his dizziness and blurry vision. At these times he attempts to sleep by practising the relaxation exercises learned in his pain management program. Mr. Plut testified that his headache pain plateaued around February 1992.

Mr. Plut explained that, while his moderate and mild headaches are bothersome, they do not seriously restrict his activities. Mrs. Plut testified that on his “good days,” Mr. Plut can do a little gardening and can help with grocery shopping and dusting around the house. Mr. Plut testified that on his “good days” he could do light or sedentary work.

Mrs. Plut’s account of the effect on Mr. Plut of his headaches concurred with that of her husband. The clinical notes of both Dr. Cameron and Mr. Polomski also support Mr. Plut’s testimony.

In his evidence Mr. Plut complained that his injuries have prevented him from returning to the job and profession he loves. He explained that as a European man it is a matter of pride to him that he financially support his family and be the “head of the household.” As noted earlier, Mr. Plut began working in Canada shortly after his arrival and he continued to work, with little absenteeism, until his accident in 1991. He also expresses regret that he can no longer hunt, fish, garden or engage in sports and the social activities of the Slovenian community, as he had previously done. At times, he has felt very frustrated and depressed by the effects of his injuries.

In fact, Mr. Plut developed suicidal thoughts and upon the recommendation of Dr. Cameron, he sought the assistance of Dr. Kaplan, a psychologist, in 1992, 1993 and in early 1994. Mr. Plut

testified that therapy with Dr. Kaplan helped alleviate his depression and feelings of hopelessness.

Pre-existing Condition:

In 1989 or 1990, Mr. Plut was diagnosed with a progressive liver disease. By September 1993 his liver disorder had become acute. In an October 20, 1993 entry in his clinical notes and records, Dr. Cameron indicated that he spoke to Mr. Plut about the possibility of a liver transplant. In a letter dated February 5, 1996, Dr. Ghent, chief of hepatology at University Hospital in London, Ontario, reported that Mr. Plut's liver disorder was not debilitating until about October 1994. By November 1994, his condition had become so precarious that he was recommended for a liver transplant and was put on the active transplant list to await a donor. He underwent a liver transplant on February 9, 1995.

Mr. Plut claims, and the medical evidence confirms, that he never complained of headaches before the accident. The intensity and frequency of his headaches plateaued in February 1992 and they have remained the same until the present. Mr. Plut testified, and Dr. Cameron confirmed, that he suffered the same type of headache before and after the liver transplant.

Notwithstanding that Mr. Plut did not recall pre-accident nosebleeds, the medical records indicate that he suffered nosebleeds before the accident until his liver transplant. Although the medical evidence indicates that the nosebleeds were a symptom of his liver disorder, Mr. Plut recalled that he frequently got a nosebleed with the onset of a severe headache.

I am satisfied by the evidence before me that Mr. Plut's headache condition was not affected by his intervening liver dysfunction or the transplant surgery. Despite the fact that his general health improved after surgery his headaches have persisted.

PHYSICAL REHABILITATION, ASSESSMENT AND TREATMENT:

Dr. Cameron referred Mr. Plut to see David Polomski, a physiotherapist in practice since 1972. He described himself as a specialist in the cervical and lumbar spine and a specialist in cervical and thoracic spine manipulation.

Mr. Polomski first saw Mr. Plut on October 17, 1991. He testified that Mr. Plut complained of pain over the upper cervical and sub-occipital areas, describing the pain as “a hot knife type sensation, which sometimes changed into a hammering and whistling in his ears.” In his report dated August 4, 1994, Mr. Polomski noted complaints by Mr. Plut of pain over his right eye with neck movement, pain with lengthy stays in one position and dizziness with neck extension.

Mr. Polomski testified that he decided after his examination of Mr. Plut on October 17, 1991 that he should not continue to treat him without further investigation. The protective muscle spasms and dizziness with neck movement and palpation were, in his opinion, “very acute reactions indicative of serious pathology.” Mr. Polomski testified that he feared further examination might lead to paralysis. Mr. Plut was not engaged in active physiotherapy from 1991 until he returned to Mr. Polomski in September 1993.

Canadian General retained Innovative to manage a return to work program for Mr. Plut from mid - 1992 to the fall of 1993. The aim of this program was to assess Mr. Plut’s medical and vocational ability one year post-accident and hopefully to prepare him to return to his pre-accident employment by October 5, 1992. Canadian General also retained Restorative Solutions (“Restorative”) to engage Mr. Plut in a work hardening program. The program involved occupational therapy to recondition him for the physical demands of his job and psychological counselling to assist with relaxation exercises and pain management.

Restorative reported that Mr. Plut made significant gains in his attitude toward his pain and in his physical tolerance. In testimony Mr. Plut admitted that he regularly practised the pain management and relaxation techniques and benefited from this part of his rehabilitation. However, throughout the program Mr. Plut continued to complain of intermittent severe headaches and right upper extremity weakness and pain, despite the fact that, in Restorative's estimation, he "diligently pursued the physical goals of the program." The final report from Restorative dated October 1, 1992 states:

Overall, progress to date has been very positive and encouraging. John's ability to cope with his headaches has improved and his general tolerance for physical tasks has increased. ...In addition, his strength appears to fluctuate dramatically from day to day, primarily when he is having a headache, and there appears to be no predictability as to when the headaches will occur.

Restorative conducted a vocational assessment in December 1992 to determine vocational alternatives for Mr. Plut. Again, Mr. Plut was assessed as being "cooperative and genuinely interested in the outcome of the assessment." Academic upgrading was recommended to allow Mr. Plut to apply his transferrable skills to a more sedentary job. However, Restorative warned that that Mr. Plut's headaches could potentially affect his ability to pursue a training program. Mr. Plut pursued an academic upgrading program in 1993. Although his academic performance was exemplary, his headaches dogged him continuously throughout the program, frequently rendering him bedridden after class.

In January 1993, Mr. Plut began an adult education program at the St. Louis Adult Learning Centre. He studied grades 10, 11 and 12 English and grades 11 and 12 mathematics. He attended school from January to June and September to December 1993. He attended school every day for four hours per day, from 8:00 a. m. to 1:00 p.m. He completed his courses by the end of 1993 with an average of 98 percent in mathematics and 78 percent in English.

On August 24, 1993 Dr. Imrie, an occupational physician conducted a medical assessment of Mr. Plut on behalf of Canadian General. Dr. Imrie concluded, in his report dated August 31, 1993 that: "Ability to perform consistently in any job in the future will require better control of his headaches." He went on to remark: "I am impressed by the efforts of mitigation that Mr. Plut put forth today." Dr. Imrie recommended an intensive rehabilitation program for Mr. Plut.

Mr. Plut recommenced physiotherapy treatment with Mr. Polomski in September 1993. He has continued this therapy to the present. He also started a reconditioning exercise program at the YMCA in early 1994, at the suggestion of Mr. Polomski.

On February 8, 1994 Canadian General retained Crawford Health Care Management ("Crawford") to manage Mr. Plut's rehabilitation program by coordinating his medical treatment, conducting a skills transfer analysis and assisting him with job searches.

A functional capacity evaluation (FCE) was scheduled for Mr. Plut with the Canadian Back Institute (the "CBI") for March 8 and 9, 1994. Mr. Plut was only able to attend day one of testing. Halfway through day one, Mr. Plut experienced headache symptoms and a nosebleed during several activities. He had requested periodic breaks. Mr. Davidson, a kinesiologist with CBI, suggested that Mr. Plut not resume the assessment that day, but Mr. Plut insisted that he continue and he did complete the requirements of day one. However, he presented at the CBI on day two with a severe headache. Ms. Burkhardt, the physiotherapist involved with Mr. Plut's assessment, Mr. Davidson and Mr. Plut all agreed that he should not resume the second day of evaluation.

The FCE report dated March 15, 1994 concluded that, owing to his severe headaches and nose bleeds, Mr. Plut lacked the capacity to return to his previous employment. The report indicated that Mr. Plut provided consistent results and put forth maximal effort.

An MRI scan was conducted on Mr. Plut on March 23, 1994. The MRI report dated March 23, 1994 reveals herniated discs at the C3-4, C4-5 and C5-6 levels. Dr. Cameron testified that the herniated disc at C 5-6 is consistent with Mr. Plut's head and neck pain as well as the pain in his right arm and shoulder. Dr. Moddel and Dr. Ameis, testifying on behalf of Canadian General, gave different interpretations of the MRI results.

Dr. Moddel, a neurologist who has practised in this field since 1976, examined Mr. Plut on February 29, 1996. He testified that the MRI results are of "no clinical significance." In his opinion, the MRI report reveals no clinical cause for Mr. Plut's headaches. In cross-examination Dr. Moddel stated that he had no reason to doubt Mr. Plut's truthfulness about the effects of his headaches. However, he concluded that his headaches are not such that they should prevent him from returning to his previous occupation.

Dr. Ameis is a physiatrist who has practised in this area in Ontario since 1979. He saw Mr. Plut on one occasion, April 19, 1994, at which time he conducted a medical assessment and prepared a report dated May 18, 1994. He prepared a further report dated April 12, 1996 based on medical documents provided to him. Dr. Ameis stated in his April 12, 1996 report that, while the MRI report seems to account for the neck pain, it might be misleading in other respects. In Dr. Ameis' opinion, the MRI results are inconsistent with Mr. Plut's complaints of numbness and weakness in his right arm and hand.

Dr. Ameis deferred to the opinion of Dr. Moddel in concluding that Mr. Plut's headaches and neck pain are not disabling to him.

EMPLOYMENT FOR WHICH MR. PLUT IS REASONABLY SUITED:

Canadian General submits that, while Mr. Plut is not capable of returning to his pre-accident work, there are jobs he is capable of performing. According to Canadian General, Mr. Plut does

not meet the disability test provided in 12 (5)(b) of the *Schedule*:

12(5) The insurer is not required to pay a weekly benefit under subsection (1),

- (b) for any period in excess of 156 weeks unless it has been established that **the injury continuously prevents the insured from engaging in any occupation or employment for which he or she is reasonably suited by education, training or experience.** [emphasis added]

Canadian General argues, based on the opinions of Dr. Moddel and Dr. Ameis, that Mr. Plut is not disabled from returning to work by his headache condition. Specifically, it contends, based on the results of a skills transfer study prepared by Crawford, that Mr. Plut is suited for a number of occupations on the basis of his education, training and experience. The occupations identified by Crawford in its report of April 20, 1994 were:

- a tool designer
- a mechanical engineering technician
- a materials scheduler
- an automotive services manager
- an automotive parts manager

In its April 20, 1994 report, Crawford classified these positions as light work requiring lifting of no more than a maximum of 20 pounds. Crawford suggested that Mr. Plut was physically capable of undertaking these jobs but queried whether he could perform them in spite of his headaches. Dr. Ameis testified that he reviewed the descriptions of the jobs proposed by Crawford and concluded that Mr. Plut was physically capable of performing these jobs. However, Dr. Ameis did acknowledge in his report dated April 12, 1996, that Mr. Plut's conditions "would impose impediments to certain forms of demanding work activity and make preferable, more neck-sparing work in the sedentary to light industrial category."

Mr. Plut contends that his severe headaches render him incapable of any work, full-time or part-time, either employed or self-employed.

Dr. Cameron highlighted the importance of recognizing the effect of the headaches on Mr. Plut. He stressed that, because of the unpredictability, intermittency and debilitating nature of his severe headaches, he would have great difficulty performing **any job** on a regular and full-time basis. He agreed with Mr. Plut's self-assessment that he would be capable of working at light or sedentary work on his "good days," but is wholly debilitated by severe headaches on his "bad days." Dr. Cameron described Mr. Plut as a well motivated man who is today still compliant with any treatment suggested to him and who has put forth his best effort, despite his headaches. However, Dr. Cameron confirmed Mr. Plut's concern about whether any employer would hire a person whose attendance at work would be unpredictable.

Dr. Cameron conceded that Mr. Plut might be able to work in a flexible, self-employed capacity where he could organize his work hours around his severe headaches. In cross-examination Canadian General's counsel suggested to Mr. Plut that he could return to the used car sales business. Mr. Plut denied this, stressing that he could no longer endure the travel involved in attending car auctions to purchase cars; nor could he bear the bending and stretching involved in car inspections; nor even on the "good days" did he have the concentration skills to negotiate and finalize a good car deal.

Regarding his capacity to work on a part-time basis, Mr. Plut referred to the effect on him of his daily, four-hour attendance at his secondary school upgrading program. He testified that he routinely developed a severe headache each day after sitting in class. On several occasions he went home early. His headaches were such that they required him to lie down at the end of each day. Mr. Plut's classmate, Mr. Galasso, confirmed Mr. Plut's testimony that he regularly took breaks from class and sat in his car or wandered around to get relief from his headaches. Mr. Galasso recalled a few absences from class on Mr. Plut's part when he would deliver Mr. Plut's assignments to him at his home and find that Mr. Plut had been bedridden for the day due to headaches.

CONCLUSIONS:

Mr. Plut presented as a credible and believable witness who sincerely regrets the turn his life has taken since the accident. He testified in a forthright and graphic manner about the debilitating effect of headaches on his life. He provided convincing details of a day in his life when a severe headache strikes him. I found Mrs. Plut's testimony about Mr. Plut's severe headaches persuasive and in basic accord with that of Mr. Plut. Their evidence was supported by two treating medical practitioners, Dr. Cameron, Mr. Plut's family doctor who has treated him for six years and Mr. Polomski, his physiotherapist who has treated him for about three years. The records and testimonies of the medical practitioners supported the evidence about Mr. Plut's "bad days."

Canadian General does not dispute that Mr. Plut suffers from headaches. It brought no convincing evidence to refute Mr. Plut's evidence that this condition has developed as a result of the accident.

The reports of medical practitioners and rehabilitative facilities which examined Mr. Plut on behalf of Canadian General have also acknowledged the crucial part Mr. Plut's headaches play in an assessment of his ability to work. For instance: Restorative acknowledged in October 1992 that Mr. Plut's strength fluctuated with his unpredictable headaches; Dr. Imrie noted in August 1993 that any prospect for Mr. Plut to perform consistently in a future job would require control of his headaches; in March 1994 the CBI reported that with maximal effort on a functional capacity evaluation Mr. Plut suffered a painful headache and nosebleed. In August 1994 Crawford queried whether given his headaches, Mr. Plut could perform the proposed jobs. In April 1996 Dr. Ameis noted that Mr. Plut's headaches would be an impediment to certain types of work.

Mr. Plut is a resourceful and industrious man. He has over twenty years' technical experience as a

mechanical engineer/inspector, nearly ten years' self-employment experience in car sales\auto mechanics. He excelled in his mathematics and English high school upgrading program. He has computer skills and is literate in five languages. He has displayed a high level of cooperation and motivation in his rehabilitation programs. He contends that his severe headaches are the obstacle to his returning to even those jobs for which he possesses the required skills.

I am persuaded that despite Mr. Plut's many talents and skills, the debilitating nature, intermittency and unpredictability of his severe headaches prevent him from engaging in even those occupations which, but for his headaches, he might be able to perform. I am particularly convinced by the evidence of the frequency of the severe headaches. I accept that without warning Mr. Plut can be bedridden with severe pain for eight to ten days in a month, at times for periods of up to seven consecutive days.

Considering the practical realities of Mr. Plut's circumstances, I also accept Mr. Plut's contention that he is not capable performing any full-time or part-time job because of the intermittency and unpredictability of his headaches. He could possibly be absent up to one-third of a month and it is not, in my view, reasonable to expect a prospective employer to be flexible enough to accommodate this reality. It is equally unreasonable to expect that Mr. Plut could successfully operate his own business despite his periods of disability, given the continuous responsibilities of small business entrepreneurs.

The evidence is that from about February 1992 to the present Mr. Plut's headaches have remained basically unchanged. Hence, in accordance with section 12 (5)(b) of the *Schedule*, Mr. Plut's headaches continuously prevent him from engaging in employment for which he is reasonably suited by education, training or experience. For this reason, Mr. Plut is entitled to ongoing weekly income benefits from July 13, 1994 onwards.

EXPENSES:

In view of my decision, I exercise my discretion under section 282 (11) of the “Act” to award Mr. Plut his expenses of the arbitration.

Order:

1. Canadian General shall pay to Mr. Plut ongoing weekly income benefits from July 13, 1994 onwards.
2. Canadian General shall pay to Mr. Plut his expenses incurred in respect of the arbitration.

July 2, 1996

Beth Allen
Arbitrator

Date

SCHEDULE "A"

***Exhibits from the bound brief entitled "Arbitration Index":**

Exhibit 1	(tab 23)	Innovative Rehabilitation Inc., Job Analysis
Exhibit 2	(tab 78)	Medical report by Dr. Garry Moddel dated February 29, 1996.
Exhibit 3	(tab 22)	Innovative Rehabilitation Inc., Vocational Assessment
Exhibit 4	(tab 80)	Letter from Dr. James R. Brow dated March 28, 1996
Exhibit 7	(tab 6)	St. Mary's General Hospital Admission Record dated September 19, 1991
Exhibit 8	(tab 58)	Letter from Crawford & Company dated April 21, 1994
Exhibit 9	(tab 54)	Letter from Crawford & Company dated March 17, 1994
Exhibit 11	(tab 57)	Letter from Crawford & Company dated April 20, 1994
Exhibit 12	(tab 67)	Letter from Crawford & Company dated September 1, 1994
Exhibit 13	(tab 68)	Letter from Dr. Arthur Ameis dated September 30, 1994
Exhibit 14	(tab 78)	Medical report from Dr. G. Moddel dated February 29, 1996
Exhibit 16	(tab 3)	OAI Medical or Psychological Report undated
Exhibit 17	(tab 79)	Post-mva clinical notes and records of Dr. David Cameron
Exhibit 18	(tab 12)	Discharge summary from St. Mary's General Hospital dated October 1, 1991
Exhibit 19	(tab 8)	Radiological Consultation Report from St. Mary's General Hospital date September 20, 1991
Exhibit 20	(tab 15)	Medical report from Dr. Rory MacCon dated October 18, 1991
Exhibit 21	(tab 24)	Letter from Innovative Rehabilitative Inc. dated June 26, 1992
Exhibit 22	(tab 26)	Letter from Dr. David Cameron date July 8, 1992
Exhibit 23	(tab 31)	Medical report from Dr. Kennely J. Ho dated August 21, 1992
Exhibit 24	(tab 38)	Letter from Innovative Rehabilitation Inc. dated January 21, 1993
Exhibit 25	(tab 39)	Letter from Dr. David Cameron dated January 22, 1993
Exhibit 26	(tab 40)	Letter from Dr. David Cameron dated March 9, 1993
Exhibit 27	(tab 43)	Letter from Dr. David Cameron dated April 23, 1993
Exhibit 28	(tab 49)	Letter from Innovative Rehabilitation Inc. dated October 14, 1993
Exhibit 29	(tab 63)	EMG laboratory report from St. Mary's General Hospital dated July 12, 1994
Exhibit 30	(tab 55)	Radiological Consultation from University Hospital dated March 24, 1994
Exhibit 31	(tab 5)	Canada Life Attending Physician's Statement dated August 27, 1991
Exhibit 32	(tab 9)	Consultation record, St. Mary's General Hospital, By Dr. Kennely Ho, dated September 20, 1991

Exhibit 33	(tab 13)	OAI Medical or Psychological Report dated September 26, 1991
Exhibit 34	(tab 17)	The Prudential Attending Physician's Statement of Disability dated December 20, 1991
Exhibit 35	(tab 48)	Letter from Dr. David Cameron dated June 24, 1993
Exhibit 38	(tab 47)	Letter from Dr. David Cameron dated June 24, 1993
Exhibit 41	(tab 65)	Letter from Crawford & Company dated June 13, 1994
Exhibit 44	(tab 44)	Medical report of Dr. Ronald Kaplan dated May 4, 1993
Exhibit 45	(tab 50)	Medical report of Dr. Ronald Kaplan dated December 10, 1993
Exhibit 46	(tab 51)	Medical report from Dr. Ronald Kaplan dated January 31, 1994
Exhibit 47	(tab 59)	Medical report from Dr. Ronald Kaplan dated May 10, 1994
Exhibit 48	(tab 34)	Report from Restorative Solutions dated October 1, 1992
Exhibit 49	(tab 49)	Letter from Innovative Rehabilitation Inc. Dated October 14, 1993
Exhibit 51	(tab 53)	Functional Capacity Evaluation dated March 15, 1994
Exhibit 56	(tab 56)	Canadian Back Institute Addendum Report dated April 6, 1994
Exhibit 58	(tab 66)	Letter from Crawford & Company dated August 17, 1994
Exhibit 59	(tab 71)	Letter from Crawford & Company dated October 21, 1994
Exhibit 65	(tab 60)	Medical report of Dr. Arthur Ameis dated May 18, 1994
Exhibit 67	(tab 45)	Letter from Innovative Rehabilitation Inc. dated May 18, 1993
Exhibit 68	(tab 46)	Letter from Innovative Rehabilitation Inc. dated May 18, 1993
Exhibit 70	(tab 14)	Letter from Dr. David Cameron dated October 10, 1991
Exhibit 71	(tab 18)	OAI, Medical or Psychological Report dated January 31, 1992
Exhibit 72	(tab 21)	Letter from Dr. James Brow dated June 10, 1992
Exhibit 73	(tab 37)	Restorative Solutions Vocational Assessment Report dated December 22, 1992
Exhibit 74	(tab 34)	Restorative Solutions Final Report Functional Restoration dated October 1, 1992
Exhibit 75	(tab 72)	Medical report of Dr. Otto F. Veidlinger dated January 24, 1995
Exhibit 76	(tab 73)	Medical report of Dr. Gerhardt E. Fischer dated January 25, 1995
Exhibit 77	(tab74)	Liver Transplant Discharge Data dated February 22, 1995

***Exhibits from the bound brief entitled "Supplementary Medical Brief of John Plut"**

Exhibit 5	(tab 6)	Medical letter from Dr. C.N. Ghent dated February 5, 1996
Exhibit 15	(tab 6F)	Medical Report from Dr. Kennely Ho dated April 11, 1996
Exhibit 36	(tab A1)	Outpatient Note University Hospital dated October 28, 1994
Exhibit 37	(tab H)	Attendance letter from St. Louis Adult Learning Centres dated November 16, 1993
Exhibit 39	(tab E)	Letter from Dr. James Brow dated June 13, 1993

Exhibit 55 (tab A2) Outpatient note University Hospital dated December 12, 1994
Exhibit 68 (tab 46) Letter from Innovative Rehabilitation Inc. Dated May 18, 1993
Exhibit 69 (tab B2) Letter from Dr. S. P. Pandya dated September 21, 1994

Unbound Exhibits:

Exhibit 6 Pictures of Mr. Plut's car post-accident (three pictures)
Exhibit 10 Medical Report of David Polomski dated August 4, 1994
Exhibit 40 Medical report from Dr. Imrie's dated August 31, 1993
Exhibit 42 Curriculum Vitae of Dr. Moddel
Exhibit 43 Video surveillance tape
Exhibit 50 Post-mva clinical notes and records of David Polomski
Exhibit 51(a) Letter from Oona Burkhardt and D. Scott Davidson
Exhibit 52 Articles of Incorporation for Correct Motors Inc, dated April 20, 1990
Exhibit 53 Set of Ministry of Transportation vehicle registration searches (11 pages)
Exhibit 54 Set of Ministry of Transportation vehicle registration searches (21 pages)
Exhibit 54(a) Set of Ministry of Transportation vehicle registration searches (12 pages)
Exhibit 57 Skills Transfer Analysis by Crawford & Company
Exhibit 60 Letter from Dr. Arthur Ameis dated July 28, 1994
Exhibit 61 Curriculum vitae of Mindy Aziz
Exhibit 62 Surveillance report by Churchill & Associates
Exhibit 78 Copy of excerpts from Kitchener Street Directory 1988 (12 pages)

*The bound briefs are also marked as exhibits: the "Arbitration Index" marked as Exhibit 63 and the Supplementary Medical Brief of John Plut marked as Exhibit 64.