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IN THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN.

Informant,

- and -

HUGH MUNRO CONSTRUCTION LTD. .

Accused,

Proceedings had and taken before His Honour Judge Nerton, at 373 Broadway, in the City of Winnipeg, Province of Manitoba, on April 15, 1987 at 10:00 o'clock in the forenoon.

APPEARANCES:

Mr. M. Conklin appeared on behalf of the Crown.

Mr. M. Finlayson appeared on behalf of the Accused.

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MR. CONKLIN: William DeRuddere, please.

BILL DERUDDERE, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. CONKLIN:

Q. Do I pronounce your name correctly.  
DeRuddere?

A. Yes.

Q. I understand, Mr. DeRuddere, that you  
were employed by the defendant, Hugh Munro Construction  
Ltd. on March the 13th and 14th, 1986?

A. Yes.

Q. In fact, you had been employed for, on  
six years by that time?

A. Right.

Q. By that same firm. And your job was  
as a mechanic in the maintenance shop repairing heavy  
equipment owned by that company?

A. Right.

Q. In all that six years time that is  
what you were doing? You were working in the

1 maintenance snop?

2 A. Right.

3 Q. And you are a journeyman mechanic?

4 A. Yes.

5 Q. And that entitles you to work alone  
6 and if necessary to train persons who are apprentices,  
7 apprentice mechanics, is that correct?

8 A. Right.

9 Q. And you hold papers issued by the  
10 Department of Labor?

11 A. Yes, I do.

12 Q. And as I understand it as well David  
13 Cherepak with whom you worked was also a journeyman  
14 mechanic?

15 A. Yes, he was.

16 Q. Who was David Cherepak's employer?

17 A. Hugh Munro.

18 Q. Hugh Munro Construction Ltd?

19 A. Yes.

20 Q. Now, on those days, March the 13th and  
21 14th, 1986, who was your boss? Who was your foreman?

22 A. Bob Bouchard (phonetic).

23 Q. Was he also David Cherepak's foreman?

24 A. Yes, he was.

25 Q. How about Raymond Kryschuck

Kryschuck

1 (phonetic)? Was he also his foreman?

2 A. Right.

3 Q. Did you receive instruction from Mr.  
4 Bouchard (phonetic) as to what you were to do on March  
5 the 13th and 14th,?

6 A. Repair the hydraulic cylinders.

7 Q. On what?

8 A. On the loader and the leaks.

9 Q. So there was leaks in the cylinders  
10 themselves?

11 A. Yeah. and then the lines.

12 Q. Looking at Exhibit 1, perhaps we will  
13 move to photograph three and four. Is this the loader  
14 that you are talking about?

15 A. Yes. it was.

16 Q. And I am correct in characterizing  
17 that as a Caterpillar Model 966C Wheel Loader?

18 A. Right.

19 Q. Okay. Now. I show you a photograph  
20 which is on page six of a manual entitled Disassembly  
21 and Assembly 966 Wheel Loader Vehicle Systems. Would  
22 you say that that is a drawing or a picture of the wheel  
23 loader in question?

24 A. Yes.

25 Q. All right. Now perhaps you could

1 stand up here and --

2 THE COURT: I think you should identify  
3 the manual first. Mr. Conklin.

4 CONKLIN: I think my learned friend will  
5 have no objection to the manual going in.

6 Mr. Finlayson: I have no objection to the  
7 manual going in. There will be some dispute about when  
8 the manual came out and whether our people had that  
9 manual or not.

10 MR. CONKLIN: Yes. As a matter of fact we  
11 can take care of that now. This manual that I referred  
12 to, the 966 Wheel Loader Vehicle Systems Manual put out  
13 by Caterpillar Tractor Company on April 10th, it's  
14 printed on April, 1980. Exhibit 3. and a service manual  
15 entitled Disassembly and Assembly 966 Vehicle Systems,  
16 published by the Caterpillar Tractor Company in January  
17 of 1974, will be Exhibit 4.

18 THE COURT: Both publications by  
19 Caterpillar are they?

20 MR. CONKLIN: That's correct.

21  
22 966 WHEEL LOADER VEHICLE SYSTEMS  
23 MANUAL BY CATERPILLAR TRACTOR COMPANY,  
24 APRIL 10th, 1980. produced and marked  
25 as EXHIBIT 3.

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SERVICE MANUAL ENTITLED  
DISASSEMBLY AND ASSEMBLY 966 VEHICLE  
SYSTEMS, BY CATERPILLAR TRACTOR COMPANY,  
JANUARY 1974, produced and marked as  
EXHIBIT 4.

BY MR. CONKLIN:

Q. Referring to Exhibit 3, the 1980  
publication, Your Honour, this is as you have said at  
page six, a photograph in effect of the wheel loader  
that you were working on?

A. Yes, it is.

Q. Now, if you could stand up sir, I  
want His Honour to see this. You were instructed to  
remove the cylinders?

A. Right. Repair them.

Q. Repair them. Did that require the  
removal of them?

A. Yes, it did.

Q. Which cylinders were you required to  
repair?

A. The two tilt and the two lift.

Q. Now, on this photograph we can see  
that the tilt cylinders are the cylinders which are on

1 the outside of the arms of the bucket?

2 A. Right.

3 Q. And the lift cylinders in the  
4 photograph are seen, I take it, on the inside of the  
5 arms of the bucket?

6 A. Right.

7 Q. So you had to do both? You had to  
8 repair and remove both the lift and the tilt cylinders?

9 A. Yes.

10 MR. CONKLIN: Perhaps His Honour may wish  
11 to look at that? I don't have another photograph of  
12 that. Your Honour, so it is difficult to have the  
13 witness explain to you his evidence, but perhaps a copy  
14 could be made of that during the break. Page six, Your  
15 Honour.

16

17 BY MR. CONKLIN:

18 Q. Now, Mr. DeRuddere you received these  
19 instructions to do this job from Mr. Bob Bouchard?

20 (Phonetic)

21 A. Right.

22 Q. Is Mr. Bouchard (phonetic) still among  
23 us?

24 A. No, he is not.

25 Q. Did he die last year?

1 A. Yes.

2 Q. That was of course after the incident?

3 A. Yes, it was.

4 Q. Now, did he tell you anything about  
5 how to do the job?

6 A. No, he never.

7 Q. Who was to do the job? Who were the  
8 instructions to remove the cylinders and repair them  
9 given to?

10 A. Well, Dave and myself to repair the  
11 leaks of the loader.

12 Q. Okay, repair the leaks of the loader.  
13 And Dave being David Cherepak?

14 A. Right.

15 Q. And so when did you commence doing  
16 that work?

17 A. On the 13th.

18 Q. Of March 1986?

19 A. Right.

20 Q. And was the work done in the  
21 maintenance shop that is seen in photographs in Exhibit  
22 1?

23 A. Yes, it was.

24 Q. Could you tell us then how you  
25 proceeded to do the work?



1                   A. Well, we first blocked it up. We  
2 removed the hydraulic cylinders and then from there we  
3 started to remove the hydraulic lines. That's when the  
4 accident occurred.

5                   Q. When did you start to work? Do you  
6 remember?

7                   A. On the 13th.

8                   Q. Do you remember morning or afternoon?

9                   A. It would have been in the afternoon.

10                  Q. And when you say the first thing you  
11 did was block the bucket --

12                  A. Hm-hmm.

13                  Q. -- could you tell me how you did that?

14                  A. We just raised it and we rolled the  
15 bucket all the way back and we blocked it underneath the  
16 bucket, in the middle.

17                  THE COURT: Can you review that again,  
18 please?

19                  THE WITNESS: We raised the loader of the  
20 bucket and we rolled the bucket all the way back and we  
21 blocked underneath the center of the bucket.

22                  THE COURT: Blocked from underneath?

23                  THE WITNESS: Right.

24

25

BY MR. CONKLIN:

1 Q. Now, who actually raised the bucket?

2 A. Dave Cherepak raised and it and I  
3 blocked it.

4 Q. How did he raise it?

5 A. With the hydraulic controls.

6 Q. He was at the controls of the loader?

7 A. Right.

8 Q. And by blocking it, what in fact did  
9 you do? What did you use?

10 A. Oh, a tripod stand.

11 Q. And I show you photograph number ten  
12 in Exhibit 1. is that the tripod stand that you used?

13 A. Right. Yes, it is.

14 Q. Can you tell me who decided that that  
15 is how you do the job?

16 A. Well, that's the way we have done them  
17 before and that's just the way we done it that day.

18 Q. Okay. You told His Honour that you  
19 rolled the bucket back. Can you explain what you mean  
20 by that?

21 A. We just had it rolled all the way back  
22 so as we could block underneath the bucket on a solid  
23 base.

24 Q. The photograph that His Honour has at  
25 page six, the position of the bucket, how does that

1 compare with what you had it at?

2 A. The same.

3 Q. Was it -- so it is rolled back just as  
4 we see here. Was the height of the bucket the same as  
5 it was when you blocked it?

6 A. No, it isn't. It was lower.

7 Q. How much lower was it than in this  
8 photograph?

9 A. Well, in between six and seven feet I  
10 would say.

11 Q. Okay.

12 A. From the bottom of the bucket.

13 Q. So the bottom of the bucket to the  
14 floor was six or seven feet in between that?

15 A. Yes.

16 Q. So the only thing, if I get this  
17 right, the only thing holding the bucket up was the  
18 tripod stand?

19 A. Right.

20 THE COURT: That's six to seven feet off  
21 the floor or lower than that?

22 THE WITNESS: No, off the floor.

23 THE COURT: Off the floor?

24 THE WITNESS: Yeah.

25

1 BY MR. CONKLIN:

2 Q. So the first step was to block the  
3 bucket with the stand, and then how did you proceed  
4 after that?

5 A. We removed the hydraulic cylinders.

6 Q. Which ones did you do? Did you do the  
7 tilt cylinders first?

8 A. Oh, I can't remember.

9 Q. And in the photograph -- rather on  
10 page six of Exhibit 4, I am sorry Exhibit 3, when you  
11 removed the cylinders that would mean that there was  
12 nothing to hold the bucket up in the air and the arms of  
13 the bucket other than the jack stand?

14 A. Right.

15 Q. Because they perform that function  
16 when they are connected?

17 A. Right.

18 Q. So you say that work carried on in the  
19 afternoon of March the 13th and into the morning of the  
20 14th,?

21 A. Right.

22 Q. Can you tell us particularly in the  
23 morning of the 14th, what work you were doing on this  
24 job?

25 A. We were removing the hydraulic

1 cylinders lines to repair the leaks, replacing o rings  
2 (phonetic)

3 Q. So you had done the job on the  
4 Thursday, the 13th of March, of removing the cylinders?

5 A. Probably both the morning and the  
6 afternoon. I can't remember now.

7 Q. Of the 13th?

8 A. Of the 13th.

9 Q. So it was just the lines then that you  
10 were working on on the 14th?

11 A. Right.

12 Q. Was Mr. Cherepak working with you on  
13 this job?

14 A. Yes, he was.

15 Q. And where was Mr. Bouchard? (phonetic)

16 A. At the time of the accident?

17 Q. During the time that you were doing  
18 this work on the 13th and the 14th of March?

19 A. Within the shop and picking up parts.

20 Q. Going out to the shop to pick up parts  
21 you mean?

22 A. Right.

23 Q. Did he give any instruction to you or  
24 Mr. Cherepak while you were doing this job?

25 A. No. Just to repair the leaks.

1 Q. Just told you to do that? Okay. In  
2 in the course of your doing the job did he come by at  
3 all do you remember?

4 A. No.

5 Q. Now, on the morning of March the 14th,  
6 tell us what happened?

7 A. We were both working on the 966 and  
8 Ray had come over and asked for help to move the  
9 overhead hoist.

10 Q. That's Ray?

11 A. Ray.

12 Q. Kryschuk?

13 A. Right. So I came from underneath the  
14 machine and I helped him. I was on the east side of the  
15 overhead hoist and Ray was on west side of it, and we  
16 were wheeling it over the loader and then across the  
17 front of the loader towards the west, and we were  
18 rolling it back towards the north, caught the top corner  
19 of the bucket and the bucket started to rock causing the  
20 stand to come out and the bucket fell.

21 Q. How did the bucket -- did it go  
22 straight down or did it swing around?

23 A. It started to come back. From the  
24 roll back position it came back pretty well level, the  
25 stand fell out and it fell with the bucket laying flat

1 on the floor.

2 Q. Where was Mr. Cherepak at that time?

3 A. He was on the front of the machine.

4 Q. What happened to him?

5 A. He got squashed.

6 Q. And did he die as a result of that?

7 A. Yes, he did.

8 Q. So you say that Mr. Cherepak was  
9 working on the lines?

10 A. Right.

11 Q. Perhaps again you can look at this.

12 Where would he be in relation to this photograph, page  
13 six, Exhibit 3?

14 A. These guards weren't on, but he was in  
15 there, that area. There was a stand he was standing on  
16 nere.

17 Q. He was not standing on the floor?

18 A. No. There is a stand -- two steps and  
19 he was crouched in the front.

20 Q. So he was working?

21 A. Inside behind the guards.

22 Q. And that would have been on the lift  
23 cylinders then he was working on at that time?

24 A. No. The lift cylinders were out. It  
25 was just the lines for the --

1 Q. Just the lines inside?

2 A. Right.

3 Q. That is inside the front of this?

4 A. Right.

5 Q. Now, whose idea was it to move this

6 hoist to -- out from its position over top of the <sup>ifs</sup>  
7 bucket of the 966 loader?

8 A. Well. Ray needed for to work on this  
9 machine here and that was the only possible way to get  
10 it across.

11 Q. You have just pointed to Exhibit 2.  
12 the sketch to what is labelled a Cat 1313 Track Crawler?

13 A. Right.

14 Q. And it was essentially positioned  
15 immediately to the west inside the maintenance shop to  
16 the west of the 966 loader?

17 A. Right.

18 Q. You see in the sketch, Exhibit 2, a  
19 black I shaped object right over top of the bucket of  
20 the loader. What does that represent to you in this  
21 sketch?

22 A. The overhead hoist.

23 Q. And we can see the overhead hoist in  
24 Exhibit 1 and 2 sitting almost directly over top of  
25 the -- I am sorry in Exhibit 1 photographs one and two,



1 almost directly over top of the bucket?

2 A. Yes, it was.

3 Q. So it really runs on wheels this  
4 A-frame hoist on the floor?

5 A. That's right.

6 Q. So Ray and you were trying to get this  
7 hoist from one place in the maintenance shop over top of  
8 the loader and then to come over top of the track  
9 crawler?

10 A. Right.

11 Q. But you didn't quite make it because  
12 it caught the edge of the bucket is what you are saying?

13 A. That's right.

14 Q. Did Mr. Bouchard (phonetic) have any  
15 instructions for you about doing that?

16 A. No. He wasn't there at the time.

17 Q. -Now, did you ever have any dealings  
18 with the president of the company?

19 A. Meaning?

20 Q. Mr. Munro?

21 A. Meaning what?

22 Q. Was he working -- is he located there  
23 at that shop?

24 A. Yes, he is. Yes.

25 Q. Did Mr. Munro instruct you with

1 respect to work that had to be done on machines?

2 A. Sometimes, yes.

3 Q. With respect to this one?

4 A. No.

5 Q. This 966 loader? And Mr. Munro, would  
6 you recognize him if you saw him again?

7 A. Yes, I would.

8 Q. Would you point him out please?

9 MR. CONKLIN: Indicating the gentlemen  
10 who is seated beside Mr. Finlayson. I understand that  
11 is Mr. Munro.

12 MR. FINLAYSON: Yes it is. Your Honour.

13

14 BY MR. CONKLIN:

15 Q. To what extent was Mr. Munro at the  
16 maintenance shop to give instructions or supervision if  
17 anything?

18 A. He would tell the foremans what had to  
19 be done and the foremans would come to us.

20 Q. And your foreman was Mr. Bob Bouchard  
21 (phonetic)?

22 A. Right.

23 Q. Now, can you tell me whether the  
24 method of blocking, so to speak, this bucket on the 966  
25 loader was one that you had any opinion about?

1 A. Meaning?

2 Q. Well, was it the only method, the best  
3 method, what?

4 A. Looking at it now, no.

5 Q. Why do you say that?

6 A. Because when you look at it after it's  
7 obvious to see it was unsafe.

8 Q. Why do you say that?

9 A. Because there was nothing holding the  
10 bucket from tipping and there was no other support  
11 holding it in the air.

12 Q. How many jack stands of the type seen  
13 in Exhibit 1, photograph 10, did you have available to  
14 you?

15 A. One.

16 Q. That was the only one?

17 A. Yes.

18 Q. Did you have any written terms of any  
19 kind available to you on the 13th or 14th of March to  
20 assist you to do this work?

21 A. We have manuals in the shop.

22 Q. Did you consult them in connection  
23 with this job?

24 A. No, we never.

25 Q. Neither you nor Mr. Cherepak I take

1 it?

2 A. (Nods head).

3 Q. And the manual pertaining to this  
4 loader, Exhibit 4, is this the manual that you had in  
5 the shop for this loader?

6 A. You can't really tell unless you have  
7 the outside cover of the manual, serial numbers with the  
8 cover.

9 Q. Now, what I would like to know is had  
10 you been given any instruction as to whether you should  
11 consult the manuals or not by anybody?

12 A. The manuals are there for our use if  
13 we needed them. The manuals and Bob Bouchard (phonetic)  
14 for advice.

15 Q. But you did not look at the manual on  
16 this occasion?

17 A. No, we never.

18 Q. Can you tell me why you didn't -- can  
19 you first of all tell me whether Mr. Cherepak did?

20 A. No, he never.

21 Q. Why not? Why didn't you look at it?

22 A. We blocked it like that before to do  
23 similar work, not the same, and we just did it again.

24 Q. What was different about this job than  
25 the jobs you had done in the past?

1 A. We didn't have all four cylinders out.

2 Q. Perhaps you can explain to His Honour  
3 the reason why you mention that. What is the  
4 significance of taking all four cylinders off?

5 A. We could have left the two lift  
6 cylinders in you would have had other means of support  
7 to keep the bucket raised in the air and whereas if we  
8 would have had the tilt cylinders locked up the bucket  
9 couldn't rock on the stand in which way it did.

10 Q. But you took all four off, so what was  
11 the effect of that?

12 A. No other support keeping the loader  
13 frame in the air and nothing to keep the bucket from  
14 rocking.

15 Q. When you were working in the area of  
16 the lines prior to the terrible accident to Mr.  
17 Cherepak, how did -- what did you feel about the safety  
18 of the job at the time?

19 A. I felt it was safe at the time.

20 Q. When you were moving the A-frame hoist  
21 with Mr. Kryschuk, did you feel anything at all about  
22 the safety or otherwise?

23 A. After we moved and we bumped it and we  
24 saw the bucket rocking I noticed it was unsafe, but the  
25 rocking didn't stop so.

1 Q. Those are my questions. Thank you.

2 THE COURT: Mr. Finlayson?

3 CROSS-EXAMINATION BY MR. FINLAYSON:

4 Q. Mr. DeRuddere, you told my learned  
5 friend, Mr. Conklin that you had been employed prior to  
6 this accident at Hugh Munro Construction for about six  
7 years?

8 A. Right.

9 Q. Only five of those years were in the  
10 shop though?

11 A. Right.

12 Q. And in the course of those five years  
13 you attended off and on classes in Brandon?

14 A. Yes. I did.

15 Q. And those classes were with a view to  
16 obtaining your qualifications from the Department of  
17 Labor as a journeyman heavy equipment mechanic?

18 A. Right.

19 Q. And from time to time while you took  
20 those classes you would have had tests or exams?

21 A. Yes.

22 Q. And one part of the classes and the  
23 tests or examinations would have been related to safety?

24 A. Yes.

25 Q. You completed the course and obtained

1 your certificate from the Department of Labour in April  
2 of 1985?

3 A. Somewhere around there. I don't  
4 remember the date.

5 Q. And what that meant was that you were  
6 certified by the Province of Manitoba through the  
7 Department of Labour to be able to work on your own as a  
8 heavy equipment mechanic?

9 A. Right.

10 Q. And in fact it meant that you could  
11 work without supervision?

12 A. Right.

13 Q. It meant that you could train and  
14 instruct other apprentice mechanics?

15 A. Right.

16 Q. And the 966C Caterpillar Tractor is  
17 heavy equipment within the qualification you obtained?

18 A. Yes, it is.

19 Q. Now, your apprenticeship and the  
20 classes you took were over the same period of time  
21 roughly as David Cherepak's?

22 A. Yes, they were.

23 Q. Did you attend some classes together?

24 A. Yes. The first two months.

25 Q. And he obtained his certificate ~~at that time~~  
?

1 of standing as a journeyman heavy equipment mechanic  
2 just a couple of months before you?

3 A. Right.

4 Q. Now, would it be fair to say, Mr.  
5 DeRuddere, that David Cherepak was a good worker?

6 A. Yes, he was.

7 Q. That he was an intelligent man?

8 A. Yes, he was.

9 Q. And that he was ambitious?

10 A. Yes, he was.

11 Q. And he was fairly aggressive as well?

12 A. Right.

13 Q. You considered him a friend?

14 A. Yeah.

15 Q. During the course of your respective  
16 apprenticeships, both you and David Cherepak received  
17 training from Robert Bouchard (phonetic)?

18 A. Yes.

19 Q. As you told Mr. Conklin, Mr. Bouchard  
20 (phonetic) was a shop foreman?

21 A. Yes, he was.

22 Q. And Mr. Bouchard (phonetic) had been  
23 the shop foreman for as long as you were with Hugh Munro  
24 construction?

25 A. Yes.



1 Q. He was a good mechanic?

2 A. Yes, he was.

3 Q. And you learned a lot from him?

4 A. Yeah.

5 Q. And he was prepared to assist you at  
6 any time, is that right?

7 A. That's right.

8 Q. And in addition to yourself and David  
9 Cherepak, there were in March of 1986, approximately  
10 five other mechanics working --

11 A. Yes.

12 Q. -- in the shop, is that right?

13 A. That's right.

14 Q. Now you indicated to Mr. Conklin that  
15 at the time of this accident there was a manual  
16 available in the shop for you to consult at any time?

17 A. Yes, there was.

18 Q. Was there more than one manual?

19 A. There was two.

20 Q. And they were identical?

21 A. Yes.

22 Q. Where was the manual in the shop?

23 A. In the office.

24 Q. And that office was how many feet from  
25 where the accident occurred?

1 A. Within 50.

2 Q. Just walk out of the shop down the  
3 hall and into the office?

4 A. Yeah. Right out --right from the shop  
5 into the office.

6 Q. And the desk -- there was a desk in  
7 that office?

8 A. Yes. there was.

9 Q. And it was understood that that office  
10 was for you and other workers to consult manuals or for  
11 other reasons at any time?

12 A. Right.

13 Q. Nobody had ever objected in the past  
14 when you had consulted a manual?

15 A. No.

16 Q. And you in fact were encouraged to  
17 consult the manual whenever necessary?

18 A. Yes, we were.

19 Q. Now, do I understand from your  
20 responsees to Mr. Conklin's questions that you cannot  
21 say for certain that Exhibit number 4 was or is one of  
22 the manuals or one part of the manual that was at Hugh  
23 Munro at the time of the accident?

24 A. No. There's is no way to really tell.

25 Q. You can't tell from the grime and

1 grease on it?

2 A. No.

3 Q. I want to go over some of the area  
4 that you covered with Mr. Conklin in a bit more detail.  
5 There are two pair of hydraulic cylinders on the 966?

6 A. Yes.

7 Q. Two of them are used to lift the  
8 entire loader arm assembly?

9 A. Right.

10 Q. To which I the bucket is attached?

11 A. Right.

12 Q. And the other two are used to tilt the  
13 bucket up or down?

14 A. Right.

15 Q. Now, as I understand it, and you  
16 correct me if I am wrong, it is's not necessary to have  
17 the bucket off the ground when the tilt cylinders are  
18 repaired, or is it the other way around?

19 A. It is the other way around.

20 Q. You don't have to have the bucket off  
21 the ground when the lift cylinders are repaired?

22 A. Right.

23 Q. But when you want to remove the tilt  
24 cylinders the lift arms must be raised?

25 A. Yeah.

1 Q. Now, the instructions that Mr.  
2 Bouchard (phonetic) gave you in connection with this  
3 particular ~~it~~ 966C Caterpillar Tractor before you  
4 started work on it with Mr. Cherepak, were not to remove  
5 all four hydraulic cylinders, right?

6 A. No.

7 *in*  
8 Q. What he said to you was repair the  
9 hydraulics?

9 A. Right.

10 Q. And when you blocked the bucket of the  
11 tractor you were not aware in fact that you would be  
12 repairing or removing all four hydraulic cylinders, is  
13 that right?

14 A. That's right.

15 Q. What happened was you blocked it and  
16 you started and you finished one cylinder and you looked  
17 at the next it was bad, right?

18 A. That's right.

19 Q. You went to the next one?

20 A. Right.

21 Q. And you just carried on?

22 A. Right.

23 Q. And at no time did you pause to  
24 reflect on the instability that would arise by taking  
25 all four cylinders out?

1 A. True.

2 Q. Now, I think it is's fair to say, you  
3 tell me if I am right, that if the lift cylinders had  
4 been left in along with the hoses but the tilt cylinders  
5 removed, this accident probably would not have occurred?

6 A. True.

7 Q. Because when the bucket was knocked,  
8 even if the bucket had rocked and the jack stand had  
9 fallen, the pressure in the hydraulic lift cylinders  
10 would have kept the loader arm assembly up?

11 A. Right.

12 Q. Or at least it would have fallen far  
13 more slowly?

14 A. Right.

15 Q. And Mr. Cherepak would have had time  
16 to get out of the way?

17 A. Right.

18 Q. On the other hand, if the lift  
19 cylinders had been taken out but the tilt cylinders had  
20 been left in that would have meant that when the bucket  
21 was knocked it would not have been as unstable?

22 A. Right.

23 Q. Because the tilt hydraulic cylinders  
24 would have had enough force to keep it steady?

25 A. Right.

1 Q. And as I understand it at no point had  
2 you ever in the past used this manner of blocking the  
3 956 or any type of equipment where you have taken all  
4 four cylinders out?

5 A. Right. We never did.

6 Q. And you don't know of any case where  
7 that has happened in the past?

8 A. No.

9 Q. Is that right?

10 A. That's right.

11 Q. And I realize it is easy to say now,  
12 but it is fair to say Mr. DeRuddere, that this  
13 instability should have been obvious to you then?

14 A. It should have been.

15 Q. And to Mr. Cherepak?

16 A. It should have been.

17 Q. Now, Mr. Munro never, so far as you  
18 know, observed that you had taken out all four  
19 cylinders?

20 A. No.

21 Q. Nor had Mr. Bouchard (phonetic)?

22 A. No.

23 Q. When you take out all four hydraulic  
24 cylinders the bucket is only attached to the housing of  
25 the caterpillar by the two hinge pins?

1 A. That's right.

2 Q. That is the only connection?

3 A. Right.

4 Q. The jack stand or tripod that was used  
5 in this case had been used many times before?

6 A. Yes.

7 Q. Without any problem at all?

8 A. No problem.

9 Q. In fact the tripod or jack stand in  
10 this case didn't fail from the weight of the lift arm  
11 assembly did it?

12 A. No never.

13 Q. It was knocked out when the bucket  
14 started to rock?

15 A. Right.

16 Q. And it is indicated that at some point  
17 in time the tripod had a fracture in the leg of it?

18 A. Right.

19 Q. That wasn't because of the weight of  
20 the bucket it was because it had tilted when the bucket  
21 rocked?

22 A. Right.

23 Q. And as the bucket came down it smashed  
24 on one leg?

25 A. That's right.

1 Q. Mr. Munro was in the shop when you  
2 worked with some frequency I understand?

3 A. Hm-hmm.

4 Q. Is that right?

5 A. That's right.

6 Q. Would it be fair to say that when he  
7 was not out on a job and he was in the shop he would --  
8 and he was on the premises I mean he would walk through  
9 the shop at least once a day?

10 A. Yes. he would.

11 Q. And did he from time to time tell you  
12 or other workers to do this or that in connection with  
13 safety?

14 A. Yes. he would.

15 Q. Now, you indicated that the A-frame  
16 hoist that you and Mr. Kryschuk were moving at the time  
17 had been located around and above the bucket of the 966?

18 A. Right.

19 Q. Mr. Kryschuk was a journeyman  
20 mechanic?

21 A. I do not know.

22 Q. He would have been able to see what  
23 you and David Cherepak were doing?

24 A. Right.

25 Q. He would have observed the way the



1 bucket was blocked?

2 A. Yes.

3 Q. Just so I am clear on what might be an  
4 important point. I take it that Mr. Bouchard (phonetic)  
5 never authorized or directed you or Mr. Cherepak to  
6 block the bucket the way you did and remove all four  
7 cylinders?

8 A. No, he never.

9 Q. And neither did Mr. Munro?

10 A. No, he never.

11 MR. FINLAYSON: Those are my questions,  
12 Your Honour. Thank you.

13 THE COURT: Mr. DeRuddere is there  
14 anything in the manual if you had checked it. it would  
15 instruct you how to raise this bucket and properly block  
16 it? Is there anything in the manual about that?

17 THE WITNESS: The newer manuals, they tell  
18 you to remove the bucket and block the loader frame with  
19 two stands in the newer manual.

20 THE COURT: And when did that manual come  
21 out?

22 THE WITNESS: I think he said '80, April  
23 '80.

24 THE COURT: That is the manual in front of  
25 you?

1 THE WITNESS: Yeah. The one on my right.

2 THE COURT: Had you read that manual?

3 THE WITNESS: No. Just after this had  
4 happened I have read it.

5 THE COURT: It was there, but you had not  
6 read it. Is that what you mean?

7 THE WITNESS: No. We had the older manual  
8 which does not tell you to remove the bucket.

9 THE COURT: The newer manual does?

10 THE WITNESS: The newer one does.

11 THE COURT: And this occurred in April  
12 of -- March of '86?

13 THE WITNESS: Right.

14 THE COURT: Was that manual available at  
15 that time?

16 THE WITNESS: No.

17 THE COURT: It was not. And when you talk  
18 about removing the bucket do you mean lowering the  
19 bucket down to the floor and removing it. Is that what  
20 you are saying?

21 THE WITNESS: Right.

22 THE COURT: That's what the newer manual  
23 states?

24 THE WITNESS: That's right.

25 THE COURT: And it was Mr. Kryschuk that

1 asked for your help in moving this A-frame as they call  
2 it?

3 THE WITNESS: Right.

4 THE COURT: And did you <sup>see</sup> ~~say~~ the A-frame  
5 strike anything or any part of the bucket?

6 THE WITNESS: Yes. The cutting blade of  
7 the 966.

8 THE COURT: Pardon?

9 THE WITNESS: Of the cutting blade on the  
10 966 bucket.

11 THE COURT: Was struck by the A-frame?

12 THE WITNESS: A-frame, right.

13 THE COURT: All right. Thank you.

14  
15 RE-CROSS-EXAMINATION BY MR. FINLAYSON:

16 Q. I take it, Mr. DeRuddere, although  
17 you did not consult the manual that day, after this  
18 accident occurred you consulted the manuals that you  
19 had?

20 A. Right.

21 Q. At the premises?

22 A. Right.

23 Q. And you found that the manuals that  
24 you consulted that were on the premises at the time of  
25 the accident and you consulted after the accident did

1 not give the instructions or the recommendations that  
2 are contained in the newer manual?

3 A. Right.

4 Q. The 966C on which you had been working  
5 was not a new machine?

6 A. No.

7 Q. Are you able to confirm for me that in  
8 fact the machine was acquired in or about 1979 or that  
9 it was an older vintage machine?

10 A. Yes it was.

11 THE COURT: I am still not clear this  
12 manual. Mr. Conklin said it was published in 1980, but  
13 was not available in 1986.

14 Mr. Finlayson: I think what Mr. DeRuddere  
15 meant was that it was not available at the premises of  
16 Hugh Munro Construction. I will get into the  
17 explanation for that in due course.

18 MR. CONKLIN: Yes. That is what I  
19 understood him to say as well.

20 THE COURT: Thank you.

21 MR. CONKLIN: Mr. Kryschuk, please.

22  
23 RAYMOND WAYNE KRYSCHUK, being first duly  
24 sworn, testified as follows;

25 DIRECT EXAMINATION BY MR. CONKLIN:

1 Q. Mr. Kryschuk, I am informed that you  
2 were employed by Hugh Munro Construction Ltd. on March  
3 the 13th and 14th, 1986, is that correct?

4 A. Yes.

5 Q. How long had you been employed there?

6 A. Three weeks.

7 Q. What work were you to do for them?

8 A. Well, mechanical work.

9 Q. What qualifications did you have to do  
10 mechanical work?

11 A. I'm a journeyman heavy duty mechanic.

12 Q. And can you tell us what you recall  
13 about the work that you were doing on the 13th and 14th,  
14 of March 1986?

15 A. I was working on the eight crawler.

16 Q. Looking at sketch, Exhibit 2, that  
17 depicts the crawler?

18 A. Yes.

19 Q. Entitled Cat 1313 Track Crawler?

20 A. I guess so.

21 Q. That is what you were working on?  
22 Exhibit one, photograph number one on the extreme left  
23 hand side of the photograph, is that vehicle you were  
24 working on?

25 A. Yes.

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Q. And what work were you doing on that?

A. Well, we had to look into the steering  
clutches.

Q. Who told you to do that?

A. Mr. Bouchard. (phonetic)

Q. What was his position in relation to  
you at the maintenance shop?

A. He's my foreman.

Q. So did you say the steering clutches?

A. Yes.

Q. So did you work on that on the 13th of  
March 1986 or --

A. Yes, I started.

Q. Then were you working on that or  
another job on March the 14th?

A. Same job.

Q. Tell us what you recall happening on  
March the 14th?

A. Well, I wanted to remove the seat from  
the tractor and I asked the fellows next to me if I  
could use their hoist and there were some filters, you  
know, boxes of filters in the way so we moved them to a  
side. and then as we continued to move the hoist I heard  
a big crash.

Q. Did you happen to see how the crash

1 was caused?

2 A. No.

3 Q. And as a result of that, of course we  
4 have heard that Mr. Cherepak died as a result of  
5 injuries he received in that crash?

6 A. Yes.

7 Q. Did you see how Mr. -- how the fellows  
8 that you say were doing their job? Did you make any  
9 observations about what they were doing?

10 A. I noticed they were removing  
11 cylinders.

12 Q. They were doing that we have been told  
13 on the 966 loader, the Caterpillar Loader?

14 A. Yes.

15 Q. And that is depicted in photograph  
16 number one of Exhibit 1, at the center in the back of  
17 photograph, right?

18 A. Yes.

19 Q. So did you notice in particular the  
20 method that they were doing this work of removing the  
21 cylinders?

22 A. I noticed that the bucket was in the  
23 air.

24 Q. Was in the air?

25 A. Supported by a stand.

1 Q. Yes. And did you have any experience  
2 with that kind of work yourself in the past?

3 A. Years ago at Powell Equipment.

4 Q. You worked for Powell Equipment?

5 A. Years ago.

6 Q. When was that? Do you remember?

7 A. Oh, from 1971 to '74.

8 Q. And were you a journeyman mechanic, a  
9 heavy machine mechanic?

10 A. I completed my apprenticeship there.

11 Q. I see. Was the -- was any instruction  
12 given to the fellows who were working on March the 14th,  
13 on the wheel loader, on the bucket and on the cylinders  
14 by anybody as far as you know?

15 A. I don't know for sure.

16 Q. You don't know?

17 A. (Shakes head).

18 Q. Had you taken particular note of how  
19 the bucket was supported in the air?

20 A. Yes. it was questionable. It looked  
21 safe yet it didn't look safe.

22 Q. In what respect did it look safe and  
23 not look safe?

24 A. Well, I thought that these fellows  
25 knew what they were doing, but there was only one stand



1 there. That was questionable.

2 Q. That made it questionable from your  
3 point of view. What had you thought would have been  
4 less questionable?

5 A. Well, there were more stands  
6 particularly under the frame.

7 Q. The frame of the bucket itself?

8 A. The loader frame.

9 Q. Yes. Looking at Exhibit 3, page six  
10 so His Honour can see. Where would you have thought  
11 there should have been stands placed?

12 A. Well, about right here.

13 Q. So you are pointing to one of the arms  
14 if I can call it that of the --

15 A. Of the loader frame, yes.

16 Q. How many stands did you think would  
17 have been more suitable?

18 A. Two stands.

19 Q. One under each?

20 A. Yes.

21 Q. Now, can you tell me who if anyone  
22 assisted you in moving the A-frame hoist?

23 A. Bill.

24 Q. Bill DeRuddere?

25 A. DeRuddere.

1 Q. And you said some filters had to be  
2 moved? Where were they and why did they have to be  
3 moved?

4 A. To give us more clearance for the  
5 passage of the hoist.

6 Q. They were on the floor or stacked up  
7 somewhere or what?

8 A. They were on the floor.

9 Q. Perhaps looking at photograph number  
10 four, we see on the left hand side of that photograph,  
11 is that the area you are talking?

12 A. Yes.

13 Q. And on -- there appears to be a  
14 stacking chair by the wheels of this loader in that  
15 photograph, is that correct?

16 A. Hm-hmm.

17 Q. Where in relation to that were the  
18 filters?

19 A. Ahead of the A-frame.

20 Q. Beyond the chair is the A-frame you  
21 have and beyond that were the filters?

22 A. Hm-hmm.

23 Q. So you had to move those?

24 A. Yes.

25 Q. Did you do that?

1 A. Bill moved a few and I moved a few.

2 Q. How did it come to be that the A-frame  
3 caused any difficulty with the work on the loader?

4 A. Well, the fellows used it to remove  
5 the cylinders.

6 Q. I see.

7 A. To move them out.

8 Q. So they used the A-frame?

9 A. Yes.

10 Q. But in <sup>its</sup> ~~it's~~ movement for your  
11 purposes, did you see why it had any contact with the  
12 loader? Was there any -- I guess I should first ask  
13 you, did you see it contact the loader?

14 A. No.

15 Q. Did you see any difficulty or did you  
16 note anything concerning the movement of the A- frame  
17 that might occasion any difficulty to the work that Mr.  
18 Cherepak was doing on the loader?

19 A. No.

20 Q. You told the Court that you thought  
21 there should be two jacks stands underneath the frame of  
22 the loader?

23 A. (Nods head).

24 Q. Did you say that to anyone at the  
25 time?

1 A. No, not at the time.

2 Q. Thank you very much. This gentleman  
3 may have some questions.

4 CROSS-EXAMINATION BY MR. FINLAYSON:

5 Q. Mr. Kryschuk, you attained your  
6 journeyman heavy equipment status in 1974?

7 A. Yes.

8 Q. And you were at Powell Equipment at  
9 that time?

10 A. Yes.

11 Q. And in the previous three years you  
12 were at Powell Equipment and that's where you did your  
13 apprenticeship?

14 A. I almost completed it there. I got my  
15 journeyman's license in November '74.

16 Q. You worked for three years at Powell  
17 Equipment?

18 A. Yes.

19 Q. And while you were there you would  
20 have observed that when they worked on hydraulic  
21 cylinders they would usually at least first remove the  
22 bucket and then support each lift arm with a separate  
23 jack stand?

24 A. Yes.

25 Q. And when you came to Hugh Munro

1 Construction you had been certified as a heavy equipment  
2 journeyman mechanic for almost 12 years, right?

3 A. Yes.

4 Q. And you noticed that at Hugh Munro  
5 Construction they didn't block buckets or lift arm  
6 assemblies in the same fashion as at Powell, right?

7 A. Yes.

8 Q. You noticed that before March 13th,  
9 1986?

10 A. Yes.

11 Q. And it occurred to you, as I  
12 understand it, that perhaps that wasn't a safe method to  
13 block buckets or lift arm assemblies. Is that fair to  
14 say?

15 A. Yes.

16 Q. But you did not tell Mr. Bouchard  
17 (phonetic)?

18 A. No.

19 Q. And you did not tell Mr. Munro?

20 A. No.

21 Q. And on March 14th, when you were  
22 moving the A-frame hoist around the 966 to your crawler  
23 you would have seen and you indicated just a moment ago  
24 that you saw the bucket was blocked with a single jack  
25 stand?

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A. Yes.

Q. And you knew that that was unsafe?

A. Yes. it was questionable, but --

Q. You never indicated that to Mr.

Cherepak?

A. No.

Q. You knew that he was working in the  
face of the machine?

A. Yes.

Q. You never told Mr. DeRuddere?

A. No.

Q. You never told Mr. Munro?

A. No.

Q. Did you think that you owed any duty  
to your co-workers to protect their safety?

A. Yes.

Q. But you did not say anything to them?

A. No.

Q. You haven't been charged under the  
Work Place Safety and Health Act?

A. No.

Q. Those are my questions.

THE COURT: All right. Thank you.

MR. CONKLIN: I have know re-examination,

Your Honour.

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REPORTER'S CERTIFICATE

I, Carla Helman, a duly appointed Court Reporter in and for the Province of Manitoba, do hereby swear that the foregoing 46 pages are a true and accurate transcript of the proceedings as taken by me in Stenotype.

*C. Helman*  
OFFICIAL COURT REPORTER