

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 12 LA 178
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE McGUIRE and BILL)
McGUIRE and CAROLINE McGUIRE)
and BILL McGUIRE, Individually,)
)
Defendants.)

PLAINTIFF'S PRE-TRIAL SETTLEMENT MEMORANDUM

Statement of the Case

On June 28, 2011, the Plaintiff, Paul Dulberg, was assisting friend/Defendant David Gagnon, with cutting down an evergreen tree at the home of Gagnon's parents, 1016 W. Elder Avenue, in McHenry, and as Dulberg held down onto a limb, Gagnon swiped his right forearm with the chain saw causing a deep laceration, resulting in a nerve injury.

Dulberg testified that the accident occurred when the defendant walked toward him while cutting a branch he was holding. The limb was large and part of it was resting on the ground. The defendant walked toward Dulberg with the chainsaw pointing down at a 45 degree angle. The chain was not moving. Then Paul heard the chain saw RPM's ramp up. This alerted Dulberg and he dropped the branch. Paul released the limb before the chain saw came in contact with it. The defendant came up with the saw at a 45 degree pointing up and cut Dulberg. The Defendant never made contact with the branch. David had *one hand* on the arm and the other on the trigger of the chainsaw. His arm and his two fingers are painful all the way through to the elbow, including the pinky, ring finger and thumb. There is a fiery burning sensation, tingling. The cold also bothers his arm. Sometimes when he is resting his arm he has pain and tingling and burning in the arm. Grabbing things and moving his arm does cause pain. Dr. Sagerman did surgery in July, 2012 to remove the scar tissue. Paul is still receiving physical therapy for his left arm. His right arm is doing better. All of Paul's fingers are affected when he grasps things. He experiences burning pain in his right arm where the scar tissue was. He was given anti-inflammatories from his doctor. He stated he tries not to use them. On his right arm, he is unable to bend his pinky all the way in. Dr. Sagerman told him that nerve damage takes a long time to heal.

The wording in this document does not match the document Dulberg recalls he was mailed it in February of 2015 for the following reasons:

1. The original was only 2 pages, not 3.
2. Dulberg recalls that in the accident description, the only thing described correctly in original was who was operating the chainsaw, not that anything is correct in this version either but its changed.
3. In the original there was no mention of the chainsaw manual or the safety information.
4. Dulberg recalls that the description of the medical in the original consisted of a brief statement that went something like Dulberg was injured and takes some pretty strong medication for his injury.
5. Dulberg recalls the demand amount was only \$50,000.
6. Dulberg recalls that there were no exhibits or references to exhibits in the original. There are no exhibits attached here either even though there are references to exhibits.
7. The original was given by Dulberg to Saul Ferris and mailed by Ferris to Mast/Popovich who then returned something to Ferris who then returned it to Dulberg amongst several depositions and letters Saul Ferris had been given by Dulberg, Dulberg then gave it to Brad Balke along with all the documents Ferris had posessed, Dulberg then received it back amongst almost 4,000 documents in the case file after firing Balke and Dulberg then gave it to the new attorney Baudin.
8. Later in 17LA377 Popovich and Mast sent Dulberg a Request for Admission and tried to get Dulberg to admit that Dulberg received a letter from Saul Ferris that was clearly addressed to the address of Popovich and Mast.

Gagnon testified that Dulberg was holding the branch with his left arm and reaching to hold the branch with his right arm when Dulberg's arm was struck by the chainsaw. He admits Dulberg was reaching for the branch so that he could hold on to the lower end of the branch and keep it steady while Gagnon was cutting the limbs from the branch (suggesting Gagnon was operating the chain saw knowing Dulberg was 'repositioning' his arm - contrary to the instructions of the manual) Gagnon acknowledged in his deposition to giving a recorded statement to Plaintiff's counsel in which he described the accident as follows:

...we got to a branch that maybe we shouldn't have tried to cut, it was a little flimsy, so when I hit the crotch it flexed.."

See Xerox photos of chain saw, diagram of "tree," and Plaintiff's injury - attached as Group Exhibit "1."

The chain saw was owned by Gagnon's father, Bill McGuire. Gagnon had used the chainsaw the day before on his own, while trimming the trees. The chainsaw manual provides, in part, as follows:

Chainsaw Manual:

Basic Safety Precautions:

Read this manual carefully until you completely understand and can follow all safety rules, precautions, and operating instructions before attempting to use the unit.

Keep children, bystanders, and animals a minimum of 35 feet (10 meters) away from the work area. **Do not allow other people or animals to be near the chain saw when starting or operating the chain saw.** (Fig. 2)

Only loan your saw to expert users who are completely familiar with saw operation and correct use. Give other users the manual with operating instructions, which they have to read before using the saw.

Keep all parts of your body away from the saw chain when the engine is running.

Apply the chain brake prior to any repositioning of the operator in the cutting area.

Do not operate the chain saw with one hand! Serious injury to the operator, helpers, bystanders, or any combination of these persons may result from one-handed operation. A chain saw is intended for two-handed use.

Always begin cutting with the engine at full speed and the saw housing against the wood.

Medical

Dr. Karen Levin, at Associated Neurology, saw Dulberg on 7/28/11 (1 month after accident) and in her report (attached as Exhibit "2") states . . . that Dulberg had no prior history on the right arm, and that as a result of the accident Dulberg suffered a cut on the right forearm requiring stitching in the muscle and outer area. When the pain diminished, there was numbness and tingling noticed in the forearm and digits. She believed Dulberg was suffering from brach neuropathy to the sensory nerves. She referred him to a hand surgeon.

Dulberg saw Dr. Marcus Talerico (Mid America) for ongoing forearm pain. His visits were December 2, 2011 and January 6, 2012. Dr. Talerico did not feel there was any significant nerve involvement and referred Dulberg for therapy.

Dulberg next saw Dr. Scott Sagerman, who testified that he first saw Dulberg on 2/27/12 with a history of a large scar on the mid forearm with pain and symptoms including muscle pain and weakness in gripping and pulling things in his forearm are related to the accident. Dulberg suffered a deep laceration to his forearm and there was some injury to those muscles and nerves which may have been causing the pain in that area. He diagnosed Dulberg with a right forearm laceration with possible ulnar nerve issues and damage. The EMG/NCV was normal. He performed a surgery to the forearm on 7/9/12 to - in part - remove scarring (and for cubital tunnel release). (Sagerman records are attached as Exhibit "3")

Dulberg next saw Dr. Kathy Kujawa for post traumatic dystonia of the right hand, and she recommended Botox injections for spasms. She believed the involuntary spasms as well as the pain that Dulberg continued to suffer was due to the nerve damage and nerve issues directly to the chainsaw accident. She felt it would be permanent and Dulberg would need expensive medical treatment to have a decent quality of life.

Plaintiff's medical expenses are itemized in the attached Medical Expense Report in the amount of \$58,387.33 (Attached as Exhibit "4")

Settlement

Demand - \$135,000

Offer: none (Allstate Insurance Company)

COPY

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