



THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JACOB L. GUENTHER and  
JAKE L. GUENTHER LOGGING LTD.

PLAINTIFFS

AND:

DR. JOHN WILLMS, DR. JON BURG,  
and PRINCE GEORGE AND DISTRICT  
REGIONAL HOSPITAL SOCIETY, also  
known as PRINCE GEORGE REGIONAL  
HOSPITAL and GLEN PENWARDEN

DEFENDANTS

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE LANDER

D. Jenkins, Esq. and  
R. Byl, Esq.

Counsel for the Plaintiffs

M. Skorah, Esq.

Counsel for the Defendants, Dr.  
Jon Burg and Dr. John Willms

H. Hollinrake, Esq. and  
J. Dives, Esq.

Counsel for the Defendants,  
Prince George Regional Hospital  
and Glen Penwarden

DATES & PLACE OF HEARING:

May 7, 8, 9, 10, 11, 14 & 15, 1984  
June 29, 1984  
Prince George, B.C.

On June 29, 1984 I delivered Oral Reasons wherein  
I found liability on the part of the defendant Dr. Burg. The  
actions against Dr. Willms, the Prince George Regional Hospital and  
Mr. Penwarden were dismissed with costs to each defendant.

At the time the Reasons were given, I told counsel  
my filed Reasons would be more comprehensive.

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The plaintiff arrived in Prince George from his logging operation near McKenzie, B.C. on the 19th of September. He had been staying on site all week. The plaintiffs own three feller bunchers which are large, expensive tree cutting machines. The plaintiff did mechanical work on the machines on site, as well as driving one. The plaintiff's clothes and body were grimy because of his week's work.

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When the plaintiff arrived in Prince George he began drinking with business associates. Some hours later, alone in his pick-up truck he was in an accident in which he broke his left forearm and humerus. I find as a fact that the fracture of the humerus was a compound, comminuted one.

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The plaintiff was received into the Prince George Regional Hospital emergency ward where the defendant, Dr. Burg, undertook to treat him. Dr. Burg testified as to the procedure he adopted to deal with the fractures. I am only concerned with his treatment of the long bone or humerus. Dr. Burg irrigated the wound which was on the underside of the plaintiff's upper left arm with saline solution. He used a syringe to do this and a hemostat to open the wound so he could probe with his finger. He said that he took precautions -- gown and surgical mask -- in order to achieve sterile conditions. Dr. Burg said that the cut on the skin was not deep -- no bruising, no foreign material. Dr. Burg was evasive in his testimony, attempting I find, to avoid admitting



6 that the only diagnosis was, in fact, a compound fracture. Upon  
 7 cross-examination, when confronted with his testimony at discovery,  
 8 he ultimately agreed that the humerus fracture was compound. It  
 9 is significant that the hospital records, recorded by the nurse on  
 10 duty at the time of the plaintiff's admission, reveal "compound  
 11 #L humerus". I find that that means compound fracture of the  
 12 left humerus.

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 14 As a result of the evasive and self-serving manner  
 15 of Dr. Burg's testimony I find his credibility suspect.

16 The expert evidence called by the plaintiff shows  
 17 overwhelmingly that the only accepted procedure at the Prince  
 18 George Regional Hospital at that time was to have the patient  
 19 placed in an operating room as soon as possible, under the maximum  
 20 sterile conditions and debridement of the wound carried out.  
 21 Debridement "is to remove foreign material and contaminated or  
 22 devitalized tissue, usually by sharp dissection around a trauma  
 23 until surrounding healthy tissue is exposed."

24 The evidence of the medical experts also stated  
 25 that a compound, comminuted fracture is, by definition, contaminated.  
 26 That is, immediately that the fractured bone pierces the skin the  
 27 wound is infected.

28 As to Dr. Burg, he did not have hospital  
 29 privileges that allowed him to deal with long bone injuries. The  
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6 humerus is a long bone. His statement that he had dealt with many  
7 of this type of injury in mission hospitals in South Africa does not  
8 relieve him, I find, from acting in a professional manner required  
9 by the standards set within his profession in British Columbia.

10 I find as a fact that Dr. Burg knew that the  
11 plaintiff's injury required that an orthopedic surgeon or a general  
12 surgeon debride it in an operating room. Dr. Burg used the term  
13 debridement in direct examination, attempting to leave the impression  
14 that he had actually debrided the wound. However on cross-exam-  
15 ination he agreed that his was not, to use his own words, "a  
16 classic debridement". I find that it was not a debridement at all.  
17 Dr. Burg, I find as a fact, failed to conduct himself as a reasonably  
18 prudent doctor. He was required to use honest and intelligent  
19 exercise of judgment. His conduct was unskillful, taking upon  
20 himself the treatment of an injury that he knew he should not treat,  
21 particularly having in mind the limitations placed upon him by the  
22 hospital.

23 Dr. Burg failed to exercise a reasonable degree of  
24 skill and care in treating the plaintiff. A reasonable and prudent  
25 doctor having diagnosed the plaintiff would have immediately  
26 summonsed the necessary surgeon to deal with the fracture -- such  
27 surgeons were then available to be called in at the Prince George  
28 Regional Hospital.  
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The professional negligence of the defendant Dr. Burg caused the plaintiff severe, permanent damage to his left arm. On August 21, 1984 I filed Written Reasons as to quantum of damages in this regard.

As to Dr. Willms, I have concluded that the plaintiff has not shown, on the balance of probabilities, that he was negligent. He conducted himself, I find, as a reasonably prudent physician. Dr. Willms was the plaintiff's personal physician. It was several days before he attended the plaintiff, that being as a result of not receiving notice through the hospital's communication system. However, the important aspect of Dr. Willms' conduct of the case results from a meeting in a hospital corridor with Dr. Burg. Dr. Willms, by this time, had assumed care of the plaintiff.

Dr. Willms questioned Dr. Burg as to what procedures he had adopted in treating the plaintiff. Dr. Burg explained his approach and in his own words "I convinced Dr. Willms". He assured Dr. Willms that proper care had been rendered. I find that Dr. Willms, a physician of many years with varied medical experience, accepted a fellow physician's opinion. In the circumstances and at that time his acceptance of Dr. Burg's opinion Dr. Willms acted in a reasonable and prudent manner professionally.

Dr. Willms monitored the plaintiff's condition and

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when it deteriorated he referred the matter to Dr. Crous, a Prince George orthopedic surgeon who operated on the then badly infected arm and bone. The plaintiff had by this time acquired osteomyelitis, together with progressive necrosis of the tissue in the area of the break. At the time of the trial the osteomyelitis was not apparent. However, I find that based upon the medical evidence, the possibility of its recurrence exists. During this surgery much of the plaintiff's tricep muscles were cut away because of dead tissue, the result being a partially disabled arm. However, I find Dr. Willms acted reasonably at all times. The action against Dr. Willms is dismissed with costs against the plaintiff.

As to the case against the hospital and Mr. Penwarden, the plaintiff submits that their sole negligence was the breakdown of the system of notification from Dr. Burg to Dr. Willms. It is apparent that the nurse's-notes show that Dr. Willms was to be notified that his patient, the plaintiff, was hospitalized and he was to assume management of the case. This message was to be placed in a receptacle provided at a convenient spot for the doctors. Dr. Willms did not receive that message. The second breakdown occurred when Dr. Willms first sought specialist assistance when he knew that the plaintiff was not recovering. He asked that Dr. Ducharme, an orthopedic surgeon be notified but that attempt was not successful. There was no evidence as to why that attempt failed. It was then that Dr. Crous was consulted a short time thereafter and the remedial steps were taken upon the plaintiff's arm.



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but asked the Court to find there was negligence because a notice was not received on one occasion and perhaps on a second occasion when Dr. Ducharme was asked to attend.

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Counsel for the hospital submitted that whatever harm was done to the plaintiff occurred at the time of Dr. Burg's negligent treatment and the breakdown of the notice system had no connection with the damage suffered by the plaintiff. I accept that proposition. The action against the hospital and Mr. Penwarden is dismissed with costs to the defendants.

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The left anterior aspect of the plaintiff's arm is what I would describe as an offensive looking "valley" running from under the armpit to the elbow joint. During the course of the plaintiff's testimony, at the request of counsel, I examined the arm. It should be borne in mind the lurking prospect of osteomyelitis. The plaintiff also required skin grafts, the skin for that purpose being removed from his thigh. Fortunately, after two operations the grafts were successful. During the period of recovery the bones had to be pinned with five large pins which required surgery for insertion and removal.

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The plaintiff suffered from pain and discomfort during a lengthy convalescence. He alleges these were factors in his

5 marriage breaking up. He does not have complete use of his arm.  
6 He cannot grasp or clench anything with strength using his left  
7 hand. There has been a considerable loss to the plaintiff of  
8 the amenities of life. I set the general damages at \$40,000.

*Wesley J. ...*

13 Vancouver, B.C.

14 September 13, 1984

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