



IN 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. E. M. Jenkins, Esq. and
D. Byl, Esq.

counsel for the plaintiffs

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

counsel for Prince George Regional
Hospital and Glen Penwarden

M. M. Skorah, Esq.

counsel for Dr. Willms and
Dr. Burg

Dates of Hearing:

May 7, 8, 9, 10, 11, 14, 15,
and June 29, 1984.

On the 29th of June, 1984, Oral Reasons were delivered and the defendant Dr. John Burg was found to be solely responsible for the injuries caused to the plaintiff Jacob L. Guenther. The actions against Dr. John Willms, the hospital and Dr. Penwarden were dismissed. Those defendants were allowed their costs as against the plaintiffs. The quantum of damages was reserved.

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3 During the course of the trial I heard from two experts
4 on the issue of the plaintiffs' past loss of income. The plaintiff
5 called Dr. Arthur Guthrie, the defendant called Mark Gallon, C.A.
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7 After considering the experts' reports and their viva voce
8 evidence, together with the evidence of the business associates of
9 the plaintiff, I find as a fact that the plaintiff's business was one
10 that may be termed a "key-man operation". I reject Mr. Gallon's
11 assumption that Guenther was not the key to the operation of this
12 logging business. The evidence has conclusively shown that he was
13 the mainstay; the driving force that developed the business. His
14 mechanical and supervisory skills, together with his ability to
15 operate a feller-buncher machine combined to make him the focal point
16 of this whole operation.
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18 The plaintiff's left arm now prevents him from carrying
19 out mechanical work and from driving a feller-buncher. The result
20 of Dr. Burg's negligence has materially altered Guenther's operation.
21 For example: feller-bunchers are run by hydraulics and an operator
22 requires the use of both hands and arms to manipulate the levers to
23 control the machine. The plaintiff's left arm is useless for these
24 tasks. A further example of the plaintiff's value to the operation
25 was that he would make hydraulic hoses at the logging site. This
26 particular ability did away with the need of going to MacKenzie, B. C.
27 or Prince George, B. C. to Finning Tractor to obtain replacement hoses.
28 These are two examples of how this man was important to the operation.
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4 Mr. Gallon, in his report, proceeded on the assumption
5 that one of the reasons there was a decline in income to the company
6 after the injury to the plaintiff was that there was an economic
7 downturn in the forest industry. I find as a fact that this conclusion
8 by Mr. Gallon was erroneous relative to the plaintiffs' operation.
9 I find as a fact, based upon the evidence that I heard from associates
10 of the plaintiff Guenther and from Mr. Michael Bell, Manager of B. C.
11 Forest Products, Blackwater Division, that there was always work
12 available for the plaintiffs' feller-bunchers. Notwithstanding that
13 the plaintiffs' head contractor, Mr. Norman Kalyn's, quota had been
14 reduced during the economic downturn, work was available to the
15 plaintiffs to satisfy those quotas. The losses were as a result of the
16 plaintiff Guenther not being present to supervise the operation and
17 to do his work as an operator and mechanic.

18 Dr. Guthrie said he conducted his research and investiga-
19 tions of the plaintiffs' operations from time to time over a period
20 of 21 months prior to trial. I have concluded that the facts upon
21 which he based his opinions were canvassed during the evidence before
22 me and I am therefore able to accept the opinion of Dr. Guthrie as
23 to the past income loss to the plaintiffs. I set that loss at \$501,000.
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25 As to future wage loss, I find as a fact that while the
26 plaintiffs' operation is still carrying on Guenther will not be able
27 to work as a feller-buncher operator. He must be compensated. The
28 plaintiff testified that he wished to go into the motel business, a
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3 small one he suggested, perhaps in the Okanagan Valley. I do not
4 think this is unreasonable in all the circumstances. The actuary's
5 report has calculated the future lost earnings at \$280,000. Mr. Skorah
6 on behalf of the defendant Dr. Burg submitted that the plaintiff's
7 wish for a motel in the Okanagan be disregarded because the company
8 is being operated and appears to be viable. However, I have concluded
9 that it is unreasonable in all the circumstances for the plaintiff
10 Guenther to continue in such altered circumstances. The defendant
11 called no evidence as to future loss of income and therefore I am
12 accepting the actuarial report and I find as a fact that Guenther's
13 future loss of income is \$280,000.
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15 The plaintiffs applied for a "Bullock order" (Bullock v.
16 London General Omnibus Co., [1907] 1 K.B. 264). Rule 57(11), Supreme
17 Court Rules, provides for such an order and in the circumstances of
18 this case such an order is appropriate. The plaintiffs shall have
19 pre-judgment interest at the rates set by the Registrar of this
20 Honourable Court from time to time. The plaintiffs will have their
21 costs against the defendant Burg.
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25 Vancouver, B. C.
26 August 20, 1984.
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