

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

JESSE AHRENDT	)	
	)	
Plaintiff,	)	
	)	
v.	)	CV299-165
	)	
PROJECT ADVENTURE, INC.,	)	
	)	
Defendant.	)	

**BRIEF IN SUPPORT OF MOTION FOR DETERMINATION OF WHETHER THE  
SETTLEMENT AMOUNT CONSTITUTES FULL COMPENSATION TO JESSE  
AHRENDT**

**PURSUANT TO O.C.G.A. § 34-9-11.1**

This case was tried to a jury from October 16, 2000 through October 18, 2000. The jurors were unable to reach a unanimous verdict and the Court declared a mistrial on October 18, 2000. Following the trial, the parties negotiated a settlement in the amount of \$167,000.00.

At the time of his injury, Mr. Ahrendt was employed by the Georgia Episcopal Conference Center at Honeycreek Environmental Education Center in Waverly, Georgia. There is presently a workers compensation lien of \$63,013.94 paid by the Commercial Mutual Insurance Company. Commercial Mutual has asserted its lien and requested repayment from the settlement proceeds. For the reasons set forth below, Mr. Ahrendt requests that the Court find that he has not been made whole as required under O.C.G.A. § 34-9-11.1 before repayment of the subrogation lien is warranted.

Under Georgia law, a workers compensation carrier has the right to subrogation only if the injured party has received full and complete compensation for all economic and non-economic injury. O.C.G.A. § 34-9-11.1(b); North Brothers Co. v. Thomas, 236 Ga. App. 839, 513 SE 2d 251

(1999).

O.C.G.A. § 34-9-11.1 (b) provides:

In the event an employee has a right of action against such other person as contemplated in subsection (a) of this Code section and the employer's liability under this chapter has been fully or partially paid, then the employer or such employer's insurer shall have a subrogation lien, not to exceed the actual amount of compensation paid pursuant to this chapter, against such recovery. The employer or insurer may intervene in any action to protect and enforce such lien. However, the employer's or insurer's recovery under this Code section shall be limited to the recovery of the amount of disability benefits, death benefits, and medical expenses paid under this chapter and shall only be recoverable if the injured employee has been fully and completely compensated, taking into consideration both the benefits received under this chapter and the amount of the recovery in the third-party claim, for all economic and noneconomic losses incurred as a result of the injury.

The evidence in this case is clear that Mr. Ahrendt is not made whole by the negotiated settlement. Mr. Ahrendt was injured on August 28, 1997 on a zip line at Camp Honeycreek in Waverly, Georgia. The zip line was installed, constructed, and inspected by Defendant Project Adventure, Inc. Mr. Ahrendt struck two pine trees within five to six feet of the center of the zip line at a speed of approximately twenty-five miles per hour. He suffered broken bones in his left foot and a broken heel on the right foot. He underwent surgery in Jacksonville where three screws were placed in the left foot and nine screws along with a metal plate were placed in the right foot to repair his broken heel. Mr. Ahrendt was after such surgery transported to Boston where he was in the care of his parents for the following year. While in his parents' care, he was bedridden for approximately three months and then confined to a wheelchair for the following three months. He was unable to work during this year. He gradually walked again with the use of a walker and crutches. He underwent two additional surgeries in Boston. The additional two surgeries resulted in four to six weeks of the same regime - bed to wheelchair to walker to walking.

Dr. Katherine Kopach performed Mr. Ahrendt's first surgery in Jacksonville, Florida. She

testified at trial after evaluating Mr. Ahrendt's present condition three years after his surgery. According to Dr. Kopach, Mr. Ahrendt suffered permanent injuries in both feet. The condition of his feet will worsen over time. He cannot stand over one hour without substantial pain. He should never run again. He can no longer do field sports. He faces the prospect of further medical care and treatment as a result of traumatic arthritis as he ages. There is a probability of further surgery.

In addition to his poor medical prognosis, Mr. Ahrendt has substantial loss of capacity to labor. Mr. Ahrendt attended Ekerd College in Florida and majored in marine biology. His goal was to work outdoors. His father testified at trial that Jesse had planned his career carefully and had worked hard to achieve his goals. His employment with Honeycreek as a counselor was the type of work he wanted to do. He attended Ekerd College on a soccer scholarship. As a result of his injuries, he is unable to pursue the type of job he planned and can no longer enjoy the very activities which helped provide his education such as soccer and running.

The likelihood of future pain and medical treatment along with the loss of capacity to labor are more valuable than the compromised settlement. The settlement amount is far less than the value of the permanent loss of Mr. Ahrendt's full use of his feet.

The Plaintiff respectfully requests a finding from the Court that the \$167,000 compromised settlement does not wholly compensate Mr. Ahrendt for his economic and non-economic damages.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that I served a copy of the foregoing **BRIEF IN SUPPORT OF MOTION FOR DETERMINATION OF WHETHER THE SETTLEMENT AMOUNT CONSTITUTES FULL COMPENSATION TO JESSE AHRENDT PURSUANT TO O.C.G.A. § 34-9-11.1**, upon opposing counsel by depositing same in the United States mail with proper postage affixed thereto and addressed as follows:

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This \_\_\_\_\_ day of November, 2000.

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John C. Bell, Jr.  
Counsel for Plaintiff