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12-12-20
Shaw
Deputy Clerk

**In the United States District Court
for the Southern District of Georgia
Brunswick Division**

JESSE AHRENDT, : CIVIL ACTION
Plaintiff, :
v. :
PROJECT ADVENTURE, INC., :
Defendant. : NO. CV299-165

ORDER

Plaintiff, Jesse Ahrendt ("Ahrendt"), filed a Motion requesting that the Court find that he has not been fully compensated by a settlement in this case of \$167,000 for his alleged injuries. Commercial Mutual Insurance Company ("Commercial Mutual"), Intervener Plaintiff, filed a similar Motion. Both parties seek this determination for the purpose of determining Commercial Mutual rights under a workers' compensation lien pursuant to O.C.G.A. § 34-9-11.1. For the reasons set forth below, the Court finds that Ahrendt was not fully compensated by the settlement in this case and, accordingly, that Commercial Mutual has no

right to subrogation. Plaintiff's Motion is **GRANTED** and Intervener Plaintiff's Motion is **DENIED**.

BRIEF BACKGROUND

Ahrendt suffered severe permanent injuries to both of his feet as a result of an injury suffered while on a zip line. The case was tried to a jury from October 16, 2000, through October 18, 2000, and ended in a mistrial because the jury was unable to reach a unanimous verdict. Following the trial, the parties negotiated a settlement in the amount of \$167,000. Commercial Mutual has an outstanding workers' compensation lien of \$50,721.00. The lien is for medical bills, including physician, hospital, physical therapy, and other medical benefits paid by Commercial Mutual. (Harrell Aff. at ¶6.) The lien is exclusive of weekly wage benefits because they are not recoverable under the Workers' Compensation Act. Commercial Mutual has asserted its lien and requested repayment from the settlement proceeds.

ANALYSIS

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. See O.C.G.A. § 34-9-11.1(b)¹; North Brothers Co. v. Thomas, 236 Ga. App. 839, 513 S.E. 2d 251 (1999). Thus, in order to recover payment from Ahrendt, Commercial Mutual must establish that he was fully and completely compensated by the settlement. The issue of whether he was fully and completely compensated is a matter of statutory construction under the Georgia Workers' Compensation Act, and is not determined by general tort law principles. See Homebuilders Ass'n of Georgia v. Morris, 518 S.E.2d 194 (1999).

There are two categories of damages applicable to the present analysis. Special damages are the out-of-pocket damages that can be measured, calculated, and typically represented by expenses actually incurred. See O.C.G.A. § 51-12-2(b). General damages, on the other hand, include pain and suffering which may be recovered without proof of amount, the measure being

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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 enlightened conscience of fair and impartial jurors, and damages may not be speculative. See O.C.G.A. §§ 51-12-8, 9. The Court finds that Ahrendt suffered both special and general damages in the present case.


Specifically, the Court finds the following facts are supported by the evidence that was adduced at trial. First, Ahrendt's feet injuries are permanent, exceedingly painful, and will worsen over time. Additionally, he faces the prospect of further medical care and treatment as a result of traumatic arthritis as he ages. Commercial Mutual correctly notes that it is statutorily required to pay Ahrendt's future medical expenses arising out of the accident regardless of the outcome of this Motion. See O.C.G.A. §§ 34-9-200, 34-9-201, 34-9-203, and 34-9-205. The Court further finds that Ahrendt has a substantial loss of capacity to labor due to his inability to stand for long periods of time. Commercial Mutual's assertion that Ahrendt can make more money at a "desk job" ignores the emotional satisfaction that one gains from doing what one loves. Ahrendt's injuries prohibit him from doing what he enjoys, and what he educated himself to do. Additionally, there was substantial evidence that Ahrendt endured extreme pain and suffering. He spent approximately three months bedridden and then he was confined to a wheel chair for three additional months. Ahrendt cannot stand for more than one hour without substantial pain. He should never run again. He can no longer play field sports.

For these reasons, the Court finds that the value of the settlement is far less than the value of the permanent loss of Ahrendt's full use of his feet. In deciding this, the Court places great monetary value on both his pain and suffering, and the loss of his ability to labor in the field in which he trained. Contrary to Commercial Mutual's assertion that this Motion comes down to simple math, it is, rather, a complex panoply of factors which lead the Court to its conclusion.

CONCLUSION

Therefore, because Ahrendt was not fully compensated by the settlement, Commercial Mutual is not entitled to repayment on their workers' compensation lien. Ahrendt's Motion is **GRANTED** and Commercial Mutual's Motion is **DENIED**.

SO ORDERED, this 12th day of December, 2000.



JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA