

MEMORANDUM

TO: JUB
FROM: AAK
RE: XFD of Plaintiff
DATE: 2007

Date: March 2007
Location: Charest Reporting
DC: Joe Bloggs
Also present: John Smith
Court Reporter: Dick Tation

Impression: Client is likeable; I think DC liked him as well. Client could have done better with respect to the liability issue, but the case is still alive. DC may try to suggest that: he was drunk, he had weakness in his knee prior to the accident that may have been the cause of his fall, and that he was tired because it was past his normal bedtime and he had started work early that day. Aside from the liability issue, Client's injuries are pretty straightforward. There is not much of a care claim as Client stated that he has been able to manage his household duties and that physiotherapy was not that helpful for him. There is a loss of capacity claim and a good income loss claim.

TO DO:

1. Interview John Doe (the friend who helped him after he fell and with whom he was drinking that night);
2. Interview the manager of XYZ Hotel, (need to clarify whether Client made a visit to the Hotel the next day, whether the manager witnessed the event, and whether Client gave any reasons for his fall);
3. Interview the representative from Alberta re opportunities in Alberta
4. Functional capacity;
5. Economic report; and
6. Requests below.

Requests:

1. Address of employer;
2. Inform himself as to the name of the doctor and any records regarding his broken right toe (years ago – this was taken under advisement);
3. Contact information for John Doe;
4. Inform himself as to how he paid for his bar bill that night (visa, debit or cash);

5. Inform himself as to the last time he had his eyes checked or his prescription updated prior to the fall;
6. Any witnesses who may have witnessed the accident;
7. Inform himself as to who treated him and produce records and reports from M Hospital;
8. Name of physiotherapist, contact information and records;
9. Updated medical records;
10. Copy of the Client's subrogation agreement; and
11. Tax returns from 2004 to date.

The Fall

Prior to the fall the Client had been staying at the Hotel for the last 3 months.

On the day of the accident, Client had worked 14 hours. He went to a pub next to the Hotel at around 7:30 to 8:00 pm with his friend John Doe. He had either 1-2 pints of beer, or 1-2 bottles; he does not remember, although he does remember it being Molson Canadian. They split the bill. He was wearing his work clothes and his work boots, which had steel toed boots and steel plates.

At around 11:00 pm, Client went back to the Hotel. The elevators were broken that night and Client's room was on the 10th floor. Prior to going up to his room, Client decided to go to the washroom in the basement of the Hotel. He was not aware of a washroom on the main floor. The trip to the washroom may not have been the first time that day; it may have been the second or third time. Certainly Client had made numerous trips down those stairs before.

Client fell on the fifth step of the staircase. He does not know how he fell, he may have stubbed his toe on the carpet. It is unclear whether Client was holding on to the handrails when he started his descent, although he was pretty clear that he tried to grab the handrails. He does not recall any of the tumble. The next thing he remembers was lying on the bottom of the landing on his side.

Client's friend, John, heard a commotion and saw Client lying on the bottom of the landing. John went down and picked up Client and helped him to a seat. Client thinks that it was John who requested that an ambulance be called. He does not remember speaking to any of the Hotel staff.

Client knew that the stairway was tricky and awkward. When asked what he thought made the stairs tricky or awkward, he mentioned the steepness, the narrowness, and the lighting. Client mentioned that he had a few close calls on the stairs, although he does not remember the particular occasions. As a result of the nature of the stairs, Client usually traveled down the stair with one hand on the railing.

Pre-Existing Conditions

Client stated that he had plumbers' knees which occasionally caused him pain, but did not affect his ROM. He was not suffering from any pain or inflammation of the knees in the 6 months prior to the accident. Client also stated that his right elbow had been problematic but was not an impediment to his functioning.

Injuries

The ambulance took Client to Hospital where his knee was wrapped, he was given a splint and given painkillers. Client went to go see his family doctor, Dr. M, the next day.

When he saw Dr. M, x-rays were ordered. His surgery with Dr. B. occurred soon after. After the surgery, Client had physiotherapy as well as home exercises, but the improvement was not as much as expected. Client had a second surgery, which initially resulted in a lot of pain requiring a cortisone shot, but which eventually resulted in improvement in his range of motion. He can currently bend his knee halfway. He stated that it was not pain that prevented his bending any further, but rather that it just would not go any further. After his second operation with Dr. S., Client sought a second opinion from Dr. T. at General Hospital who advised against another surgery, but that he should aggressively pursue his ROM exercises.

In addition to his knee, Client stated that he did suffer from insomnia, fatigue, anxiety and depression, which are not as intense now as it used to be because he has accepted his limitations. He stated that he was advised by Dr. M that these feelings were part of the recovery process.

Client estimates that his left knee is 25% of what it used to be before the accident. Client experiences limitations at work with squatting, bending or working with heavier objects. He requires assistance from the apprentices. He is not able to ride his bike, snow ski, and play golf.

Although Client also had some injuries to his neck, back, and face, these were all minimal and resolved within a few weeks.

Wage Loss/Loss of Opportunity to Earn Income

Client currently works as a welder with ABC Co. He has a full time position. This was the same employer that Client was working for prior to the accident. He has worked with them for four years, excluding the 1.5 years that he was off work. He is in a supervisory position. His current salary is \$51.00/hour and his previous salary was \$44.00. He received the wage increase on his return to work and this is attributed to the

economy. His current benefits include extended health, RSP contributions and vacation pay.

At the time of the accident, Client was working about 10 hours/day, 5 days/week, meaning 50 hours/week. He worked 10 hours of overtime. His benefits prior to the accident were similar to the benefits he receives now, except he was not receiving contributions.

Prior to working for ABC Co, Client worked for B. Co. in Yellowknife as a crane operator. He was laid off because of a shortage of work. However, in the future, Client would like to work in Alberta, which he feels that he cannot do anymore because of his limitations. He actually had a conference call with a representative from Alberta who advised him that they were not able to accommodate his limitations.

Client does not think it is fair to calculate his income loss based on his salary at ABC Co as he has missed out on opportunities in Alberta.

Care

Immediately after the accident, it took Client about 1-2 months before he could do some of his household chores. His mother and sisters came to help him out whenever it would fit into his schedule. Three months after the accident, Client was doing all of the household chores, although he had difficulty with dishes and washing the tub.

XFD NOTES

DC: Joe Bloggs

- Affirmed
- Client Joe Client
- DOB: December 25, 1950
- Old Mill Road, lived there for about 20 years
 - Don't live with anyone
 - Not married – separated 15 years ago
 - No dependents
- Education:
 - Grad Grade 10
 - apprenticeship 4 years
 - Welder
- Right now working: welder
 - Employer: ABC Co Mechanical

Etc.....