

2002

Victor Price v. Utah Power and Light Company, a Utah corporation, and David Zserai : Brief of Appellant

Utah Supreme Court

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BRIEF

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DOCKET NO. 20568

IN THE SUPREME COURT
OF THE STATE OF UTAH

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VICTOR PRICE, :
Plaintiff-Respondent, :
vs. : Case No. 20568
UTAH POWER & LIGHT COMPANY, :
a Utah corporation, and :
DAVID ZSERAI, :
Defendants-Appellants. :

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BRIEF OF APPELLANTS

Appeal from Judgment and Orders of the
Seventh Judicial District Court of Emery County
Honorable Boyd Bunnell, Judge

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FILED

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the plaintiff, who called no doctor to testify, present adequate evidence to make a prima facie case of medical causation between an 8-10 second mule ride and the nerve entrapments in his neck and elbow, and did the trial court abuse its discretion in failing to grant a new trial on this issue?

2. Did the trial court commit prejudicial error in refusing to question jury panel members about possible prejudice against Utah Power from layoffs and unemployment in the coal mining industry and in refusing to grant a new trial on this issue, and did such errors violate Utah Power's constitutional right to due process in a civil jury trial?

DETERMINATIVE PROVISIONS

1. Rule 59(a) of the Utah Rules of Civil Procedure:

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit of any one of the jurors.

(3) Accident or surprise, which ordinary prudence could not have guarded against.

(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(7) Error in law.

2. Rule 47(a) of the Utah Rules of Civil Procedure:

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as is material and proper.

3. Utah Constitution, Article I, Section 7:

No person shall be deprived of life, liberty or property, without due process of law.

4. Utah Constitution, Article I, Section 10:

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

5. United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Nature of Case. Respondent Victor Price ("Price") sought and recovered from appellants Utah Power & Light Company and its employee David Zserai (collectively "Utah Power") damages for personal injuries allegedly received by Price while riding his mule Poncho.

A Utah Power Caterpillar loader had released air from its brake line, causing Poncho to run uncontrolled for eight to ten seconds with Price, then age 69, on his back.

Course of Proceedings. A jury trial was held 27-28 November 1984, followed by post-trial motions and this appeal. Price presented no expert medical testimony about the cause of his physical maladies, centered in the neck and right arm.

Disposition in Court Below. By a 6-2 margin, the jury returned a verdict against Utah Power in the amount of \$156,350 (R. 164-166). Judgment of \$140,715 with interest and costs was then entered by the court against Utah Power (R. 174-75), after a reduction of 10 percent for Price's own negligence (R. 165). Utah Power filed a motion for judgment notwithstanding the verdict, or, in the alternative, motion for new trial (R. 176-77), which was denied by the court (R. 240-44). Nonetheless, in reaching his decision on this motion, the judge stated that the question of causation had given him some problem because of the lack of direct expert testimony (R. 242).

Statement of Facts. Price claims to have been injured on 15 September 1981 (Tr. 45-55). His claimed injuries involve pain, numbness and atrophy of his right arm from nerve impingement at the neck (Tr. 58, 60, 62, 67, 68). For a clear understanding of the need for expert medical testimony on the cause of Price's medical problems, we begin with Price's pre-incident medical problems. For a time line of this history, see Addendum.

Price is a 73-year-old (Tr. 81) farmer-rancher from Castle Dale, Utah (Tr. 45). He has been so employed for about 45 years (Tr. 45). He admits to falling off a horse two to three times in his career (Tr. 82), at least once when he landed on his rear (Tr. 83).

From documentation, we know that some of Price's horse episodes led to hospitalization. For example, he was hospitalized in Carbon Hospital 17-20 March 1968 for broken ribs and a bruised leg because "[h]e was riding a horse, herding his cows, and he fell from the horse, when the horse stumbled and fell." (Exhibit D-24, pp. 1A, 2).¹

More significantly, Price was hospitalized in Price, Utah, for nine days, 6-15 September 1977, "when a horse bucked and ran right over him producing multiple injuries with a fracture of the right ulna and with a fracture of the left ulna and radius and

¹Exhibit D-24 was offered by Utah Power and objected to by Price for lack of relevancy and materiality. It was admitted (Tr. 179A-181P).

also laceration of the scalp and multiple injuries." (Exhibit D-23, pp. 1-2).² Price's wife reported to the emergency room personnel that Price had been kicked by a horse in the head (Id. p. 43). To the nurses, he complained of back pain (Id. pp. 22, 24), headaches (Id. pp. 23, 29), a stiff neck (Id. p. 26; Tr. 193-94), "much soreness in back and neck," (Tr. 190; Exhibit D-23, pp. 26, 29), and a "funny feeling" in the neck (Exhibit D-23, p. 29), among other things. During his stay, his lacerated frontal skull was sutured (Id. p. 23). A radiologist noted that for the spine "[t]he usual aging changes are shown. At the lumbo-sacral junction there is fairly advanced degenerative disc disease" (Id. p. 40).

When asked about this event on cross examination, his initial response was, "I don't know who could have dreamed up such a -- I'm sure I didn't say it." (Tr. 86) Price could not remember being in the hospital for nine days during 1977 for this horse accident (Tr. 87). On redirect, notwithstanding the hospital chart, he explained that a horse had bumped into a gate (Tr. 98), that he had had a cast on his left arm (Tr. 99), that he had had no stitches in his head (Tr. 99) and that he had stayed at the hospital "overnight or two nights, maybe." (Tr. 99).

²Other entries in this hospital chart suggest that the right ulna might not have been fractured.

Several months later, Price's condition brought him to see a Price, Utah, chiropractor, M. K. Thayne (Tr. 206). On 16 January 1978 (the date of the first office visit), Thayne examined Price, took x-rays, conducted movement and strength tests, and began a regimen of spinal manipulation (Tr. 207-14).

Specifically, Dr. Thayne found shoulder and neck pain and a 60-percent limitation in neck movement (Tr. 207, 209). Price told Thayne that these symptoms were caused by the horse accident of 6 September 1977 (Tr. 207). By test, Price had only 7-8 pounds of strength in his left hand and 30-35 pounds in the right, compared with a normal value of 60-100 pounds (Tr. 210). Thayne also conducted a compression test where he put pressure on and squeezed the vertebrae together. Tenderness at the neck vertebrae revealed irritated nerve roots between C4 and C7 (Tr. 214).

Based upon history, examination, and testing, Dr. Thayne diagnosed traumatic cervical thoracic sprain, severe, with brachial neurology³ bilaterally (Tr. 211). Dr. Thayne believed that Price's problems were in the spine of the neck and upper back, that the nerves running from the neck to the arms were inflamed and that Price "wasn't getting adequate nerve supply down to the muscles and the hand, or they would have been able to have a greater amount of strength." (Tr. 212-13).

³The court reporter typed "neurology" when the correct word was probably "neuropathy."

Dr. Thayne's chiropractic treatment of Price started 16 January 1978 and ended 8 May 1978 after 26 visits (Tr. 214). At trial, Price initially denied having been treated by any chiropractor other than a Dr. Sanders (Tr. 85).

Ronald B. Sanders is another chiropractic physician. He opened the Castle Chiropractic Center in Castle Dale in June of 1978 (Tr. 147). He first saw Price on 11 July 1978 (Tr. 154) when Price complained on his written health history of an aggravation of the severe 1977 horse accident (Tr. 159-60):

Neck, shoulder and head area - base of skull is painful - can't turn head well (Injured 6 of Sept 1977 -) Reinjured on July 7, 1978 while drive [illegible] hit a ditch reaggravating injury of Sept 1977. (Exhibit D-18, p. 1; Tr. 87-88)

He also related to Dr. Sanders that he had suffered from backaches and arthritis and that the September 1977 accident occurred when he was "fell on by a horse" (Exhibit D-18, p. 2). Price also complained of numbness in the chin area (Exhibit D-21).⁴

Reed Tuft, a general contractor from Sandy, Utah, provided some details on the July 1978 reinjury (Tr. 195). In the process of building sewage lagoons for Castle Dale, Tuft set up a rock crusher on Price's farm (Tr. 195). Because of excess irrigation water in the area, Tuft dug a drain ditch near the crusher (Tr. 196). Price had made a claim for medical expenses against Tuft,

⁴Exhibit D-21 was offered by Utah Power and objected to by Price for lack of relevancy. It was admitted (Tr. 172).

supported by a letter from Dr. Sanders, stating that he had hit the ditch in his pickup and hurt his neck (Tr. 196-98, 171; Exhibit D-21⁵). At trial, Price denied making such a claim (Tr. 88-89).

Dr. Sanders conducted a cervical motions study to quantify head and neck movements. His findings of substantial restrictions are summarized below.

<u>Movement</u>	<u>Amount Price Could Do</u>	<u>Normal</u>
Flexion (head down)	20°	60°
Extension (head back)	10°	50°
Head Turn		
Left	30°	80°
Right	30°	80°
Lateral Flexion (head tilt)		
Left	0°	40°
Right	5°	40°

(Tr. 158-59)

A few days later, Price brought Sanders the x-rays taken by Thayne (Tr. 89, 161). Based upon his review of Price's case, Dr. Sanders concluded that Price had traumatic (caused by accident) cervical (neck) torticollis (severe tightening of neck muscles which limits movement) (Tr. 162-63).

Sanders treated Price by manipulating the spine and administering electrical therapy to relax the muscles (Tr. 163).

⁵Exhibit D-21 was offered by Utah Power and objected to by Price for lack of relevancy. It was admitted (Tr. 172).

Price visited Sanders regularly through September 1978, and on 2 October 1978 Price reported that he had again injured his neck on 29 September 1978 (Tr. 89, 163-64). After some additional treatments in October and December of 1978, Dr. Sanders did not see Price until June 1979, when Price received seven treatments to the neck area (Tr. 164-65).

Dr. Sanders next saw Price on 26 September 1979, when Price reported that on 25 September 1979 he had fallen out of his pickup truck (Tr. 165-66). Sanders diagnosed traumatic thoracic pain associated with rib involvement (Tr. 166).

Between the end of 1979 and 1981, there was a hiatus in treatment by Dr. Sanders (Tr. 166-67). Sanders made it clear that Price's problems from the beginning of treatment in 1978 had a "nerve involvement" (Tr. 176).

From 7-25 January 1981, Price was hospitalized for prostate surgery (Exhibit D-25).⁶ Dr. Demman reported in the history section of the chart that Price had had a spinal injury (Exhibit D-25, p. 3), and Dr. Snihurwych noted that some of Price's urinary symptoms related back to "when a horse fell on him" (Exhibit D-25, p. 5).

The timing of Price's return to chiropractic care later in 1981 is significant. Nearly a month before the mule incident, on 20 August 1981, Price returned to Dr. Sanders, who adjusted

⁶Exhibit D-25 was offered by Utah Power and objected to by Price for lack of relevancy. It was admitted (Tr. 181-83).

Price's cervical (neck) spine and performed neck traction, which amounted to putting a towel underneath the skull and lifting up the skull to "kind of pull and stretch the neck" (Tr. 167). Price returned again on 27 August when the same treatment was rendered (Tr. 167-68).

On 3 September 1981 (12 days before the mule incident), Price returned for neck traction and manipulation. Also, for the first time, Sanders adjusted the left hip because of a complaint there (Tr. 168). Again, on 9 September (6 days before the mule incident), Price received neck traction and manipulation and a hip adjustment (Tr. 168).

The mule incident occurred on 15 September 1981.

All of this pre-incident medical history was revealed about a man who claimed to have had a strong neck and shoulders before the incident (Tr. 83), who said he had never had pain in the back of his neck (Tr. 83-84), who said he had never had a sudden movement causing his body pain (Tr. 84), and who said that he had never seen a chiropractor, other than Dr. Sanders (Tr. 85-86).

How the mule incident happened depends on which participant can be believed. The reason for Caterpillar driver Zserai being on the road at the point where the incident occurred was a major discrepancy. Zserai said that as he was heading for a gravel pit from the Hunter Power Plant, Price waved him up the road to move a horse trailer that blocked Price's gate. Zserai contended that he moved the horse trailer first (Tr. 124-33; Exhibit D-16).

Price argued that Zserai was lost and that there was no horse trailer (Tr. 53, 92-93). For purposes of this appeal, we will concentrate on those facts relevant to the issues on appeal on which there is no dispute. If there is a dispute, Price's version will be used.

The road where Zserai was driving the loader was a county road used by the public (Tr. 69). From time to time, equipment would use the road (Tr. 70). Price had a fenced pasture adjacent to this road with a gate at one corner of the pasture next to the road (Tr. 64, 52-53). On 15 September 1981, Price had gathered some cattle at that gate with the intention of taking them through the gate (Tr. 52-53). Price was on his mule Poncho when Zserai approached on the loader (Tr. 52-53). Price claims that when Zserai stopped the loader, he kept the loader engine revved up full (Tr. 53, 74). Price said Zserai asked him where the gravel pit was, but because of the very loud noise of the engine, Price could not communicate with Zserai (Tr. 53, 74). Consequently, Price brought Poncho closer and closer to the revved-up loader, until he was within four feet of the loader (Tr. 53-54, 74). He came so close that he could touch the fence between Poncho and the loader (Tr. 74). Poncho remained unperturbed, despite the extremely loud noise of the engine that made it impossible for Price and Zserai to communicate only four feet apart:

Q: And Poncho still at that point wasn't frightened or scared or showing any signs of being upset?

A: No. None at all.

Q: He was just as calm as he could be at that point?

A: He was, yes.

Q: And you were within four feet then of the caterpillar and you were still trying to yell to Mr. Zserai?

A: Yes.

Q: And you still don't think he could hear you?

A: I don't think he could hear me.

Q: It was that noisy?

A: Yes (Tr. 75).

Zserai was watching Price bring Poncho next to the loader, according to Price:

A: Well, I kept siding this mule right over to right along side this machine. All there was between us was a fence, a barbed wire fence and apparently he could see -- the operator could see that I couldn't hear him (Tr. 54).

Zserai noticed that that mule was calm:

Q: Before you released the air, when you set your emergency brake in talking to Mr. Price, did you notice whether or not this mule was acting in any way unusual: skittish?

A: No. It wasn't at all in the least bit skittish (Tr. 135).

Poncho had never been bothered by equipment (such as Caterpillars and tractors) that he had been around from time to time (Tr. 70-73).

Zserai then set his emergency brake to talk to Price (Tr. 133-34). Some air was released and a hissing noise was made (Tr. 54, 134). Although the noise was loud, it was not nearly as loud as a semi truck when it releases pressurized air (Tr. 135).

At the moment the air was released Poncho turned and ran out into the pasture (Tr. 54). The cattle did not flinch, bolt or run (Tr. 136-37).

Poncho ran only 8-10 seconds until Price was able to bring him under control (Tr. 75-76). Poncho did not buck, and Price was not getting bounced off the saddle (Tr. 76, 143). Price did not fall off Poncho, did not hit his elbow, and did not hit his head (Tr. 76-77). Price pulled Poncho around in a circle and brought him back close to where the loader was (Tr. 54, 136).

Despite Price's history of neck and arm nerve problems, Price presented no expert medical testimony connecting the mule incident with any of his subsequent problems. Dr. Sanders related that on 16 September 1981, the day after the mule incident, Price returned to him, complaining of pain in the neck and hip. Price told Sanders that a mule had bolted and jarred him (Tr. 168-69), but Sanders had no opinion as to the cause of the atrophy of the right hand muscle that he noticed in December (Tr. 175-76).

Price testified that when he saw Sanders, he complained of a sore hip and neck and numbness in the chin and hands (Tr. 56-57). He said Dr. Demman gave him a pain pill (Tr. 57). A neurologist then examined him and put him on therapy beginning mid-November (2 months after mule incident) and ending January 1982 (Tr. 57-59). Before this therapy, Price said he suffered from

weakness and seemed like dislocation in the hip and in my neck. And numbness in my hand and my chin and face (Tr. 60).

Dr. Gaufin performed surgery on him at Utah Valley Hospital on 6 February 1982, nearly five months after the mule incident (Tr. 59).

Letters between Dr. Gaufin, the surgeon, and Dr. Demman in Price, Utah (Exhibit 4 -- admitted by stipulation) discussed generally Price's good recovery from surgery and his positive prognosis. These letters also contained a report of the surgery and a copy of the hospital discharge summary.

At the hospital, a myelogram revealed a large extradural defect at C5-6 right (neck), a mild defect at C6-7, and "an osteophyte formation was present at other levels but lesser degree." (Exhibit 4, p. 7). X-rays showed degenerative joint disease at the right elbow (Exhibit 4, p. 7), with arthritic changes and deformity consistent with old trauma (Exhibit 4, p. 11). During the surgery that followed on 6 February 1982, Dr. Gaufin removed an anterior cervical disc, decompressed the nerve root in that area and fused together vertebrae C5 and C6. He

also did external neurolysis on the ulnar nerve at the right elbow (Exhibit 4, p. 7).

Dr. Gaufin's diagnosis was:

- (1) acute and chronic cervical radiculopathy C5-6, right;
- (2) ulnar neuropathy with entrapment right elbow; and
- (3) degenerative arthritis. (Exhibit 4, p. 8).

The only discussion of causation comes in Gaufin's letter of 22 February 1982 (Exhibit 4, p. 6) that ties the numbness in the right hand to an entrapment of the ulnar nerve at the elbow and ties the atrophy of the bicep and tricep muscles of the right arm to nerve root entrapment at C5-6 and 6-7. Nowhere in these records does Dr. Gaufin attempt to identify with reasonable medical certainty the cause of the entrapments of the nerves at the elbow or in the neck. In fact, his hospital records suggest chronic, degenerative causes. Price did not call Dr. Gaufin to testify about the cause of Price's problems.

Next, we turn to the conduct of the trial, specifically, voir dire of the jury. In this case, the voir dire was conducted by the judge, with additional questions proposed by counsel for Utah Power.

The jury panel started with 25 people, 14 of which were needed to give each party three peremptory challenges to reach an

8-person jury.⁷ After the judge had asked some questions, counsel for Utah Power suggested several, including one on bad dealings or experiences panel members may have had with Utah Power. The judge asked:

Have any of you had any experiences whatsoever that might make you want to not consider the side advocated by Utah Power and Light, or give it less weight or more weight because of some dealings you might have had, other than an open dispute? (Tr. 33) (emphasis added).⁸

Mr. Wilson responded that he had had some "bad run-ins" while on safety and grievance committees at Emery Mining Corporation ("EMC"), and even though Utah Power did not actually operate the mine directly, it was possible these run-ins would influence his look at the evidence. Mr. Wilson was excused (Tr. 33-34), leaving only 17 panel members.⁹

At this point the court stated:

We'll ask the Clerk then to call -- I hope we're not running out of jurors -- two more, number 17 and 18 (Tr. 34).

⁷As of the writing of this brief, the jury list showing that 25 panel members were paid for their appearance has not been made a part of the record. Counsel for Utah Power will attempt to have this list made a part of the record before hearing on this appeal.

⁸The Court had earlier asked about disputes, claims, or suits against Utah Power (Tr. 19, 21).

⁹At this point, eight of the initial 25 panel members had been excused (R. 167; Tr. 5-6, 17, 20-21, 32-34).

Both of these panel members had to be excused (Tr. 34-37). This left only 15 panel members, 14 of which had to be impartial.

Counsel for Utah Power requested an additional prejudice-probing question because of the obvious economic setback of the Emery County area:

I'm wondering -- I notice we do have some people that worked for Emery Mining Corporation and are now laid off. And knowing the connection -- the close connection between Emery Mining Corporation and Utah Power and Light, I'm wondering if that would have any adverse impact on their impartiality toward Mr. Zserai or Utah Power and Light (Tr. 42).

The court denied this request, responding:

Well, I think we've covered that, Mr. Westerby, when we asked them, of course, if they had any experience whatsoever that might make them look unfavorable toward Utah Power and Light. (Tr. 42) (emphasis added).

What counsel had noticed were statements about EMC, Utah Power, mining and layoffs showing the economic pressures borne by the community:

1. Mr. Hannert
(Huntington) Was a coal miner for EMC.
Laid off January 1984 (Tr. 10)
2. Mr. Wilson
(Huntington) Works as mechanic at Wilberg Mine
Just recently recalled
Wife not employed (Tr. 10-11)
Had been on safety and grievance
committees of EMC
Realizes Utah Power does not
operate mines
Had some bad run-ins on committees
Actions at EMC may influence him
in Utah Power case (Tr. 33)
3. Mr. Leamaster
(Huntington) Works for EMC
Laid off in March of 1984
Married with two kids (Tr. 12)

- | | |
|------------------------------------|---|
| | Brother has lawsuit against Utah Power
Brother was EMC miner
Brother was injured in Utah Power mine (Tr. 20-21) |
| 4. Mrs. Spigarelli
(Elmo) | Husband worked for EMC
Husband out of work from mine accident three years ago
Two children (Tr. 13) |
| 5. Mr. Lake
(Castle Dale) | Mechanic at Wilberg Mine
Laid off, then recalled
Five kids
Wife not employed (Tr. 13) |
| 6. Mrs. Jensen
(Cleveland) | Husband is coal miner for EMC
Housewife with three kids (Tr. 11) |
| 7. Mr. Justesen
(Orangeville) | Works at Wilberg Mine
Two kids
Wife not employed (Tr. 12) |
| 8. Mr. Adams
(Elmo) | Works at Plateau Mining
Married with three kids (Tr. 12) |
| 9. Mr. Staley
(Orangeville) | Works at Wilberg Mine as mechanic
Three kids
Wife does not work (Tr. 13) |
| 10. Mr. Allred
(Elmo) | Works at Wilberg Mine (Tr. 18) |
| 11. Mr. Gregersen
(Castle Dale) | Had worked for EMC
No information how he left job
(Tr. 34) |
| 12. Mr. Hayward
(Castle Dale) | Was employed by EMC
Now laid off
Married with six kids (Tr. 38) |

Counsel then exercised peremptory challenges without the information about how layoffs at EMC might be affecting the opinions about Utah Power of members of a community so heavily dependent on the mining industry (Tr. 43).

After the jury returned a 6-2 verdict for Price for \$140,715, Utah Power moved for judgment NOV or, in the alternative, new trial (R. 176-77). This post-trial motion was denied (R. 240-44).

SUMMARY OF ARGUMENTS

The trial court erred in failing to grant a new trial to Utah Power for a gross insufficiency in evidence on the medical causation between the 8-10 second mule ride and the nerve entrapments in the neck and right elbow. Medical expert testimony on this point was required because a lay jury could only speculate on the complicated causation issue that involved (a) several traumatic episodes before the mule incident that could have caused Price's neck and elbow problems, (b) many symptoms before the mule incident similar to those claimed after, (c) internal impingements of nerves by bones at joints in the neck and elbow, (d) an incident that does not obviously correspond to nerve involvement in the neck and elbow, and (e) serious symptoms of atrophy and resultant surgery occurring months after the incident.

The letters of Dr. Gaufin do not supply the needed expert causation testimony. They do not discuss causation explicitly, but instead imply chronic and degenerative etiology. The cross-examination testimony of defense witness Dr. Thayne (called to give testimony of preexisting problems) that a mule ride could possibly have reinjured Price's neck likewise does not supply the causation element because it does not represent the best judgment of Thayne to a reasonable certainty.

Moreover, the court erred in refusing to ask the jury on voir dire an additional question requested by Utah Power designed to probe possible prejudice against Utah Power from heavy layoffs at Emery Mining Corporation, the mine operator of Utah Power's coal mines. A majority of the jury panel stated that layoffs at Emery Mining had affected them or their families, that they worked in the mining industry, or that they lived in the mining community where such layoffs were prevalent. The court did not satisfy its duty to probe this potential prejudice by asking a question about dealings or experiences with Utah Power.

ARGUMENT

POINT 1

The Plaintiff, Who Called No Doctor to Testify,
Failed to Present Adequate Evidence to Make a Prima Facie
Case of Medical Causation between the 8-10 Second Mule Ride
and the Nerve Entrapments in his Neck and Elbow, and the
Trial Court Abused its Discretion in Refusing to Grant
a New Trial on this Issue

The plaintiff called only three witnesses -- Price and two of his riding companions, Frandsen and Behling (Tr. 2). No medical witnesses took the stand despite the less-than-obvious cause of Price's problems. Dr. Gaufin, who performed the surgery on Price's neck and elbow, was not called.

The tenuous link between an event and undesirable medical symptoms has chronically exasperated medical compensation administrators, including judges and juries in the personal injury tort system. A major warehouse fire can sometimes be linked to an accelerant in a corner room; but the complex human body does not easily allow for a tracing of clues to mildly traumatic events. Often, chronic and degenerative processes have been at work for decades, with symptoms, both detected and only suspected, appearing years before major disablement.

The courts have responded with a plea for expert guidance. Medical causation is one area in the legal system where the courts have not simply allowed as helpful the expert opinions of physicians; indeed, it is one of the few areas of law where such opinions are required to make a case.

That is not to say that every personal injury case requires a doctor's vouching. Some injuries are so easy to connect to an event that the average layperson can intelligently make the link.¹⁰ A factory press amputates an arm; a defective electrical device burns the skin¹¹; a vicious dog leaves a permanent scar on a child's face. These cases merit less rigorous scrutiny because they usually involve conditions easily and literally seen by the layperson under circumstances where no previous event or condition could possibly explain the results and where the consequences are chronologically immediate.

¹⁰See Orkin Exterminating Co. v. Davis, 620 S.W.2d 734 (Tex. Civ. App. 1981).

¹¹E.g., Orthopedic Clinic v. Hanson, 415 P.2d 991 (Okla. 1966).

In all other cases, most courts require expert help,¹² especially where injury to the spine is involved.¹³ Such guidance is especially necessary where the injuries involve internal mechanisms, where preexisting traumatic events and symptoms have been noted, where the event is not obviously connected to the parts of the body affected, and where the consequences are not realized until long after the event. Under these conditions there certainly can be recovery, as where a doctor testifies to a reasonable medical certainty that an event caused an aggravation of a preexisting condition. But the key in

¹² E.g., *Wilhelm v. State of Maryland Traffic Safety Commission*, 230 Md. 91, 186 A.2d 715 (Md. App. 1962) (emotional disturbances and abdominal and back pains from car accident); *Franklin v. Shelton*, 250 F.2d 92, 97-98 (10th Cir. 1957) (eye crossing and female disorders from car accident).

¹³ E.g., *Curtis v. General Motors Corp.*, 649 F.2d 808 (10th Cir. 1981) (disc injury from rollover); *Orkin Exterminating Co. v. Davis*, 620 S.W.2d 734 (Tex. Civ. App. 1981) (permanent injury to nerves of neck and back); *Albert v. Alter*, 252 Pa. Super. 203, 381 A.2d 459 (1977) (back pain and spinal fusion L4-L5-S from car-haywagon accident); *Ankeny v. Grunstead*, 551 P.2d 1027 (Mont. 1976) (damage to lumbar fusion from motorcycle accident); *Bitzan v. Parisi*, 14 Wash. App. 791, 545 P.2d 578 (1976) (future consequences of neck and upper back injuries from car accident); *Cleveland v. Wilcox*, 543 P.2d 1032 (Ore. 1975) (protruded disc L5-S from car accident); *Huss v. Vande Hey*, 29 Wis. 2d 34, 138 N.W.2d 192 (1965) (future pain and permanency of back and neck injuries from car accident); *Gillikin v. Burbage*, 263 N.C. 317, 139 S.E.2d 753 (1965) (ruptured disc L4-L5 from car-pedestrian accident).

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these cases is: Expertise is essential. Damages cannot be based on speculation.¹⁴

This element of expertise is not satisfied by the testimony of a treating physician who has made no study of his client's case and consequently has no reasoned opinion about the cause of the injury. Such doctors are primarily concerned with proper treatment, not etiology for compensation purposes. The fact that many causes are "possible" is nothing but unhelpful and confusing conjecture that should not even be admitted, let alone used to establish medical causation. A doctor should be given credence only when he is intelligently prepared to state with reasonable certainty that the injuries were caused or compounded by the event.

In this case, expert causation testimony should have been presented because (a) Price had experienced several traumatic episodes before the mule incident that could have caused his neck and elbow problems (e.g. falls from horses and pickup, landing hard on rear, kick to head by horse, broken limbs), (b) Price exhibited many symptoms before the mule incident similar to those he claimed after (e.g. sore neck, limited range of neck motion, numb chin, weakness in hands, nerve irritation in cervical spine C4-7, sore hip), (c) the impingement of the nerves by the neck vertebrae and at the elbow are processes not seen or readily

¹⁴Dunn v. McKay, Burton, McMurray & Thurman, 584 P.2d 894, 896 (Utah 1978); Bingham Coal & Lumber Co. v. Board of Education, 211 P. 981, 985 (Utah 1922).

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understood by the layman, (d) the 8-10 second mule ride does not obviously correspond to nerve involvement in the neck and elbow, and (e) the serious symptoms of atrophy in the hand and arm (and the resulting surgery) did not occur until months after the mule incident.

Although this Court has apparently not been asked to decide a case like this before, there is no reason why Utah should not follow the well-reasoned cases that distinguish between obvious causation and medically-explained causation.

None of the three possible sources of medical causation testimony in this case satisfies the requirements of medical causation. The first source is Exhibit 4, a group of letters and attachments (admitted by stipulation) from surgeon Gaufin to local Dr. Demman. Dr. Gaufin does not state in those letters that the neck and elbow problems were caused by the mule incident. He does not give a causation opinion at all. Contrarily, his materials suggest causes from degeneration and old trauma.

For example, a right-elbow x-ray report made by Dr. Bauermeister at the Castleview Hospital (Exhibit 4, p. 11) states:

Shows arthritic change and deformity consistent with old trauma. These are arthritic changes in the joints base (emphasis added).

Dr. Gaufin's discharge summary (Exhibit 4, p. 7-8) lists the chief complaints as weakness and atrophy of the right arm muscles

and pain in the neck. Price's hospital course is described (errors not changed):

The patient was admitted to the hospital. A myelogram was performed, there was a large extradural defect at C5-6 on the right, an osteophyte formation was present at other levels but lesser degree. He also had evidence of ulnar neuropathy at the elbow.

The patient was taken to the operating room February 6, 1982 and an anterior cervical discectomy with nerve root decompression and interbody fusion C5-6 was performed. Following this operation and exploration with external neurolysis the ulnar nerve on the right was performed. Postoperatively the patient had done well with numbness in the fourth and fifth fingers of his right hand improved to almost normal. The aching that he had in his elbow was no longer present. Patient's pain in his neck was significantly improved at the time of discharge from the hospital. The patient reported that he was feeling much better. . . .

Dr. Gaufin also reported (p. 7):

X-ray of the right elbow demonstrates some degenerative joint disease at the elbow, no fracture, complete myelogram demonstrated prominent extradural defect on the right side at C5-6, some mild defect at C6-7 and there is degenerative disc disease at L5-S1. . . . (emphasis added).

He concluded with a diagnosis (p. 8):

- 1) Acute and chronic radiculopathy C5-6, right.
- 2) Ulnar neuropathy with entrapment at right elbow.
- 3) Degenerative arthritis (emphasis added).

In a 22 February 1982 letter to Dr. Demman (p. 6), he ties the arm problems to trapped nerves:

A nerve conduction study demonstrated entrapment of the ulnar nerve at the elbow thus accounting for the profound numbness of the fourth and fifth digits and the atrophy of the first dorsal interosseous. The nerve root entrapment at C5-6 and 6-7 would account

for the atrophy of the bicep and tricep muscles on the right.

Dr. Gaufin does not advance beyond this statement of correlation. His statements do not supply the needed causation element.

The second possible source is a defense witness -- Dr. Sanders, a chiropractor who was called to provide Price's preexisting history. Sanders had not reviewed materials of Dr. Gaufin or Dr. Thayne (except x-rays) and had not been asked medical causation questions on direct examination. On cross examination, he was asked about the atrophy of the hand muscle noted in December 1981:

Q: Did you have any opinion as to the cause of that condition?

A: I did not. I was wanting to -- That's why I was referring him (Tr. 176).

Later he was asked:

Q: It's possible, is it not, Doctor, that a severe strain or twist can aggravate a preexisting weakness in the cervical spine?

A: Yes (Tr. 177) (emphasis added).

This does not amount to a causation opinion about Price. It is only a general, expert statement, applicable to many, that a weakened spine can be aggravated by a severe strain or twist. Even if it can be interpreted as a statement of causation applicable to Price, it cannot be considered a reasoned statement of connection, only a conjectural, speculative, possibility statement with dubious ties to the mule incident.

The final possible source is another defense witness -- Dr. Thayne, the chiropractor who treated Price only in 1978 and who likewise was called to provide preexisting history. He appeared on the final day of trial without having heard any of the earlier medical or factual testimony and without having reviewed any of the materials of Dr. Gaufin or Dr. Sanders. He rendered no causation opinion on direct; indeed, he had no foundation to render one.

However, on cross examination, Thayne was asked:

Q: I see. Doctor, having observed Mr. Price over this period of time [1978], do you have an opinion as to whether or not any subsequent trauma would aggravate the condition that you had observed?

A: Yes, I think it would.

Q: And more specifically, if Mr. Price were riding an animal who became frightened and bolted, and Mr. Price rode for six to eight seconds on that animal without falling off, pulling very hard to the left to bring the animal into a circle and pushing very hard on the horn of the saddle with his right hand in a twisting motion, would this cause this neck section -- or could it cause this neck section to be injured?

MR. WESTERBY: Object. That's calling for speculation, your Honor.

THE COURT: No. The objection is overruled. If he has an opinion on that, we'll let him give it.

THE WITNESS: Yes, it would.

Q: (By Mrs. Lema) And could it be so severe then that it would require surgery to repair that damage?

A: Yes. That's possible (Tr. 216-17) (emphasis added).

The fair import of this testimony is that Price's neck was so badly damaged in 1977 and during Thayne's treatment in 1978 that any subsequent trauma would likely aggravate his condition. Without a review of all the facts and based solely on a hypothetical fact situation, it was possible that a mule ride caused an injury that required surgery. From Thayne, this was nothing more than speculation and conjecture, not helpful to the jury.

Although this Court has indicated that there are no magic words needed to preface an expert's opinions such as "reasonable medical certainty," the language of the opinion as a whole must show that, in fact, it represents the expert's best judgment to a reasonable certainty. In State v. Jarrell,¹⁵ this Court stated:

The general rule regarding the certainty of an expert's opinion is that the expert may not give an opinion which represents a mere guess, speculation, or conjecture. See 2 Jones on Evidence, § 14:29 (6th ed. 1972). Expert medical opinion evidence based on a probability, possibility, or likelihood has been admitted, however, where the witnesses expressed statements in language which sufficiently represented their own best judgment to a reasonable certainty.¹⁶

Ordinarily, the opinion should at least be stated in terms of probability, if not absolute certainty. Dr. Thayne's testimony does not represent his best judgment to a reasonable certainty and should not have been admitted, let alone relied upon for medical causation.

¹⁵ 608 P.2d 218 (Utah 1980).

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¹⁶ 608 P.2d at 230 (emphasis added).
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Few cases can be found where a plaintiff proceeded to trial in a nonobvious medical case without the assistance of competent medical testimony. However, one case that is very similar to the case at bar is Orkin Exterminating Co. v. Davis,¹⁷ which involves causation between a car accident and injuries to the neck and back.

Davis testified that he was possibly knocked out from the crash, that he was dizzy after, and that he began hurting so badly that he could not get out of bed. He testified that all of his injuries were the result of the accident. Relatives and friends testified that Davis' mood, marriage and medical condition turned sour after the accident. Dr. Ruth Jackson testified that Davis had a permanent injury to the nerves of the neck and back, but she did not relate the injury to the accident. She added that the neck brace that Davis had worn after the accident had actually caused a narrowing of the inner vertebral canals, through which the nerve roots pass. Still, the jury found for Davis. On appeal, the court concluded that while there was some evidence of causation of some damage (dizzy and hurting), there was insufficient evidence of causation between the accident and the major injuries. The court held that the conditions of the nerves in the neck and back were such that a lay jury could not determine from common experience that they were caused with reasonable probability by the accident. Because

no expert testimony, based upon reasonable medical probability, connected the accident to the injuries found, the court reversed the judgment and remanded for a new trial.

In Price's case, Utah Power moved for a new trial on the ground of insufficient evidence of causation in fact between the mule incident and the damages (R. 176-77). The court abused its discretion by denying this motion. Utah Power respectfully requests a reversal and remand for a new trial.

POINT 2

The Court Committed Prejudicial Error and Violated Due Process in Refusing to Question Jury Panel Members about Possible Prejudice Against Utah Power from Layoffs and Unemployment in the Coal Mining Industry and in Refusing to Grant a New Trial on this Issue

Voir dire revealed that the nucleus of Emery County -- the communities nestled in the Huntington-Castle Dale area -- was heavily dependent upon coal mining and electric power generation. It is well known that Utah Power operates two very large coal-fired power plants in that area and owns three nearby coal mines (Wilberg, Deer Creek, and Des-Bee-Dove) that supply fuel for the plants. The statements of Mr. Wilson (Tr. 33) indicate that although Emery Mining Corporation ("EMC") operates the mines and hires the miners that work there, some people consciously connect in a negative way the actions of EMC with Utah Power. This is somewhat understandable, since the end result of the employment of the EMC miners is to provide electricity to Utah Power customers at the most economical price.

Of the 20 panel members interviewed, 12 of them stated that they (or their husbands) work or had worked in the mining industry, 11 of these for EMC (See generally Tr. 10-42). Of the 11 EMC-related panelists, six (more than half) stated that the EMC employment was or had been suspended by layoff or injury. In addition, Mr. Gregersen stated that he no longer worked for Emery Mining, but gave no information about how his employment ended (Tr. 34). Three of these 11 were presently laid off from Emery

Mining, including Mr. Leamaster with two children (Tr. 12) and Mr. Hayward with six children (Tr. 38). Mr. Lake, who had been laid off and then recalled, had five children and a wife who was not employed (Tr. 13). There is no reason to believe that this panel was not a representative cross-section of life in Emery County. Utah Power used two of its three peremptory challenges to remove laid-off Emery Mining coal miners, Mr. Hannert and Mr. Hayward (Tr. 10, 38; R. 124). On the jury as seated, three were EMC miners (Justeson, Allred and Staley) (Tr. 12, 13, 18), another worked for Plateau Mining (Adams) (Tr. 12) and two lived in the heart of EMC country (Burnside and Rasmussen) (Tr. 11, 21). Only two (Shorts and Ekker) lived outside of the EMC area, in Green River (Tr. 12, 37-38).

Was the judge wrong in denying Utah Power a full opportunity to probe conscious and unconscious prejudice against the "big Salt Lake City utility" that could be perceived as having a detrimental financial impact on the families, friends and neighbors of the panel members? We submit that he was.

This Court has been a strong exponent of procedures to seat impartial juries. In a long string of cases, the Court has held that a trial judge's error in failing to excuse a juror for cause amounts to prejudicial, reversible error where the complaining

party is required to eliminate the partial juror with a peremptory challenge.¹⁸

Not only are trial judges encouraged to excuse all that should be excused, but they are also required to ask enough questions of panel members to probe prejudices so that counsel will have enough significant information to challenge for cause and to intelligently exercise peremptory challenges. Rule 47(a) of the Utah Rules of Civil Procedure provides:

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as is material and proper.

The refusal to give additional questions of the defendant was an issue in the recent case of State v. Ball,¹⁹ where a conviction for drunk driving was vacated because the judge refused to ask four teetotaling jurors if their dry habits stemmed from a religious conviction or from other causes. There the Court instructed the bench and bar not to be naive about prejudice:

¹⁸State v. Hewitt, 689 P.2d 22 (Utah 1984); Jenkins v. Parrish, 627 P.2d 533 (Utah 1981); State v. Bailey, 605 P.2d 765 (Utah 1980); State v. Brooks, 563 P.2d 799 (Utah 1977); State v. Moore, 562 P.2d 629 (Utah 1977); Crawford v. Manning, 542 P.2d 1091 (Utah 1975).

¹⁹685 P.2d 1055 (Utah 1984).

The most characteristic feature of prejudice is its inability to recognize itself. It is unrealistic to expect that any but the most sensitive and thoughtful jurors (frequently those least likely to be biased) will have the personal insight, candor and openness to raise their hands in court and declare themselves biased. Voir dire is intended to provide a tool for counsel and the court to carefully and skillfully determine, by inquiry, whether biases and prejudices, latent as well as acknowledged, will interfere with a fair trial if a particular juror serves in it.

The ruling at issue here also reflects inadequate deference to the function of peremptory challenges in our system of jury trials. . . .

. . . .

Properly utilized, however, it may be seen that the peremptory challenge performs a valuable function in our jury system. Its efficacy is necessarily vitiated when a party is not permitted to gather enough information from prospective jurors in order to exercise his right intelligently. In State v. Taylor, Utah, 664 P.2d 439, 447 (1983), we emphasized that "voir dire examination has as its proper purposes both the detection of actual bias and the collection of data to permit informed exercise of peremptory challenge" (citations omitted). We view the question asked here by defense counsel as being reasonably calculated to discover any latent bias that may have existed among the four veniremen who stated that they did not drink; the information sought, even if it would not have supported a challenge for cause, would have allowed defense counsel to exercise his peremptory challenges more intelligently.²⁰

With his questioning, defense counsel may have concluded that a person who abstains from alcohol out of a religious conviction may be more likely to think ill of all who drink and hence less impartial than another on the panel. The failure of the court to

²⁰ 685 P.2d at 1058-60.

allow such inquiry was prejudicial error, because one of the teetotalers sat on the jury that convicted the defendant.

In other jurisdictions, the courts have similarly remanded for new trial when the trial court failed to ask requested questions intended to probe the unseen prejudices possibly lurking in the minds of the jurors.²¹

In the Price case, counsel for Utah Power made this request:

I'm wondering -- I notice we do have some people that worked for Emery Mining Corporation and are now laid off. And knowing the connection -- the close connection between Emery Mining Corporation and Utah Power and Light, I'm wondering if that would have any adverse impact on their impartiality toward Mr. Zserai or Utah Power and Light (Tr. 42).

The court denied this request (Tr. 42).

Among the universal motivating and opinionating factors are family ties, friendships, religious beliefs and employment. Any situation hitting home in one of these areas can be expected to elicit strong emotional responses. Heavy layoffs in an industry that is the lifeblood of the community cannot help but trigger strong emotional responses either against that industry or

²¹ Aldridge v. United States, 283 U.S. 308 (1931) (racial prejudice -- murder of white man by black); Darbin v. Nourse, 664 F.2d 1109 (9th Cir. 1981) (bias in favor of police officers -- \$1983 inmate suit for jail beatings); Fietzer v. Ford Motor Co., 622 F.2d 281 (7th Cir. 1980) (prejudice against Ford -- car burst into flames after rear-end crash); United States v. Bowles, 574 F.2d 970 (8th Cir. 1978) (racial prejudice -- black defendant); United States v. Robinson, 466 F.2d 780 (7th Cir. 1972) (racial prejudice -- black defendant); Kiernan v. Van Schaik, 347 F.2d 775 (3d Cir. 1965) (bias in favor of insurance companies -- fall on sidewalk entrance of gas station); Sellers v. United States, 271 F.2d 475 (D.C. Cir. 1959) (bias in favor of police officers -- undercover officer in drug case).

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against other forces perceived as bringing about the calamity. Those most affected are the unemployed workers, but a broad-based economic decline can also polarize family, friends, co-workers, neighbors, and merchants, turning sour an entire community.

The proposed question could be expected to cause those on the panel to question their feelings. How close am I to an unemployed EMC miner? Is it me, my husband, my brother, my cousin, some neighbors or a former work buddy? How is that person and the family holding up? Are these layoffs affecting me financially? Might I get laid off too? What is causing all of these layoffs at EMC? Do I blame EMC? Is EMC really separate from Utah Power? Are we just being used by the power company for its purposes? Is this why I have such negative thoughts about Utah Power? Can I really be fair to Utah Power, feeling as strongly as I do about these layoffs? This type of thought process might have prompted one or more jurors to question his or her internal impartiality by responding to the judge. It could have caused the judge to probe more deeply and to find the need to excuse. At the very least, it would have helped counsel more intelligently exercise an important peremptory challenge.

Was the court justified in refusing to ask this question on the basis that it had already been asked in substance before?

Well, I think we've covered that, Mr. Westerby, when we asked them, of course, if they had any experience whatsoever that might make them look unfavorable toward Utah Power and Light (Tr. 42) (emphasis added).

The court had asked earlier:

Let me ask you, ladies and gentlemen, whether any of you have made any claims or had any disputes against Utah Power and Light Company? Have any of you had any suits against them? With them being in business here, sometimes we have those disputes that do arise at times. I take it none of you or any member of your family have had any -- where you or they have made claims against you, or your family against them, or any kind of experience such as that? (Tr. 19-20) (emphasis added)

Later, he asked:

We talked about claims and so on that might influence you. Have any of you had any experiences whatsoever that might make you want to not consider the side advocated by Utah Power and Light, or give it less weight or more weight because of some dealings you might have had, other than an open dispute? Do any of you have those kind (sic) of feelings you care to express? (Tr. 33) (emphasis added)

This last question elicited a response from Mr. Wilson about experiences in the mines:

MR WILSON: I am not right directly through UP&L, but through Emery Mining. I have been on the safety committee and grievance committee of Emery Mining and --

THE COURT: Of course, Mr. Westerby, we also have to say -- and to you, Mr. Wilson, of course, that Utah Power and Light doesn't operate the mine directly but --

MR. WILSON: I realize that.

THE COURT: But do you think that's going to influence you in the way you look at the evidence in this case?

MR. WILSON: I have had some bad run-ins.

THE COURT: I know you have had some bad run-ins.

MR. WILSON: It's possible, to be honest with you.

THE COURT: It's entirely possible that it would influence you in the way you look at this case?

MR. WILSON: It's possible.

THE COURT: Well, in that case, I think, Mr. Wilson, we'll excuse you (Tr. 33-34) (emphasis added).

These questions asked only about dealings with Utah Power, such as claims, suits, disputes or similar types of experiences. They elicited only responses about lawsuits and run-ins. These questions are not tools to "carefully and skillfully determine" whether a juror has a latent prejudice against Utah Power from layoffs in the community. Most would not consider the layoff of a close friend by EMC as a dealing they had personally experienced with Utah Power.

The question requested should have been asked because it explored a very relevant source of potential prejudice that had not been explored before. The question should have been directed to all those panel members connected with mining or the mining community. Since six of the eight jurors fit this category, and since this jury returned a 6-2 verdict against Utah Power, the judge's error was prejudicial by the rationale of Ball. A fear of running short of jury panel members obviously should not have entered into the court's decision to permit or deny the

question.²² Although "some deference must be accorded the discretion of the trial court" on matters of voir dire because of his "somewhat advantaged position" in determining which persons would be fair and impartial jurors,²³ an abuse of discretion of this nature cannot be allowed to stand.

The error by the court was not simply a matter of unfair procedure, it was also a matter of constitutional concern. This Court has stated:

Trial by jury in civil cases is guaranteed under the Utah Constitution. Moreover, the requirements of due process dictate that the jury be impartial and unbiased. It is in furtherance of these rights that voir dire examination of prospective jurors before the beginning of trial is engaged in.²⁴

The court's refusal to ask the proposed question was a violation of the Constitution of the State of Utah, Article I, Sections 7 and 10 and the 14th Amendment of the United States Constitution.

²²A concern of "running short" may have prompted the court to limit voir dire to the extent that a new trial was required in *State v. Toney*, 301 S.E.2d 815 (W. Va. App. 1983). Limits on voir dire for the sake of judicial productivity cannot be justified. See *Anderson v. State*, 172 Ind. App. 131, 359 N.E.2d 594 (1977) (20-minute time limit on attorney voir dire improper).

²³*Jenkins v. Parrish*, 627 P.2d 533, 536 (Utah 1981).

²⁴*Anderton v. Montgomery*, 607 P.2d 828, 835 (Utah 1980).

CONCLUSION

It is imperative to a fair trial that the jury be impartial. The verdict in this case of over \$150,000 suggests that it was not. The deficient voir dire requires that the case be tried again, in its entirety (liability and damages). The failure of adequate medical testimony also mandates a fresh start.

Utah Power respectfully requests a new trial.

UTAH POWER & LIGHT COMPANY


David A. Westerby

Date: 3 September 1985

A D D E N D U M

Time Line

Victor Price

1968

17-20 March

Carbon Hospital. Fell from horse. Broken ribs, bruised leg

1977
6-15 Sep

Hospitalized. Horse bucked. Kicked in head. Ran over him. Fractured arm. Lacerated scalp. Pain and soreness in head, back, and neck. Fairly advanced degen. disc disease. 9 days in hospital.

1978

16 Jan

8 May

M.K. Thayne, D.C. First visit. Poor neck movement. Irritated nerve roots C4-C7. Weak hands from inadequate nerve supply. Diagnosed traumatic cervical thoracic sprain, severe, with brachial neuropathy bilaterally. Treatments started.

Last treatment by Dr. Thayne (26 total)

1978

7 July
11 July

29 Sep

Dec

Truck hits ditch. R.B. Sanders, D.C. First visit. Driving into ditch reinjures neck. Poor neck movement. Neck, shoulder, head, base of skull hurt. Numb chin. Traumatic cervical torticollis. Treatments start.

Third neck injury.

End of Sanders' treatment for awhile.

1979

June

7 neck treatments

1979

25 Sep

fell out of pickup.
Traumatic thoracic
pain. Sanders
starts treating
again for a few months

7-25 Jan

1981

Prostate
Surgery.
Spinal Injury
Recognized.

1981

20 Aug - 9 Sep 15 Sep

mid-Nov

Treatments by Sanders

20 Aug - neck adjustment and traction
27 Aug - same
3 Sep - same plus hip adjustment
9 Sep - same plus hip adjustment

MULE
INCIDENT
Saw Sanders
16 Sep

Therapy
begun

Jan

6 Feb

1982

Therapy
ended

Dr. Gaufin finds large extradural defect C5-6 and mild defect C6-7. X-rays show degenerative joint disease @ elbow with arthritic changes and deformity consistent with old trauma. At surgery, Gaufin removed anterior cervical disc, decompressed nerve root and fused C5-C6, and did external neurolysis on ulnar nerve at @ elbow. Diagnosis:

- 1) Acute and chronic cervical radiculopathy C5-6 @
- 2) Ulnar neuropathy with entrapment @ elbow
- 3) Degenerative arthritis

UTAH NEUROLOGICAL CLINIC

Professional Corporation
1999 N. COLUMBIA LANE
PROVO, UTAH 84601

Telephone (801) 226-2300

LYNN M. GAUFIN, M.D.
Diplomate
American Board of
Neurological Surgery

DOUGLAS S. KIRKPATRICK, M.D.
Diplomate
American Board of
Neurological Surgery

JOHN M. ANDREWS, M.D.
Diplomate
American Board of
Psychiatry & Neurology

February 22, 1982

Dr. A. R. Dennon
131 South Main
Helper, Utah 84526

Re: Victor Price

Dear Dr. Dennon:

I admitted Mr. Price to the hospital the first week of February, 1982 because of pain in his right neck, shoulder and arm, numbness of his hand, inability to grip objects, wasting of the muscles of the hand and upper arm.

A myelogram demonstrated prominent entrapment of the nerve roots at the C5-6 and 6-7 on the right. A nerve conduction study demonstrated entrapment of the ulnar nerve at the elbow thus accounting for the profound numbness of the fourth and fifth digits and the atrophy of the first dorsal interosseous. The nerve root entrapment at C5-6 and 6-7 would account for the atrophy of the bicep and tricep muscles on the right.

The patient was taken to the operating room and decompression of the nerve roots at the cervical area with interbody fusion at C5-6, 6-7 was performed and the ulnar nerve was decompressed at the elbow. Post operatively, the patient has done very well. He was discharged from the hospital on February 10, 1982.

I have asked him to continue to check with your office. I would like to see him in the office in one month. Thanks again for allowing me to share in the treatment of Mr. Price.

Sincerely yours,


LYNN M. GAUFIN, M.D.

LMG/dls

Encl.

PRICE, VICTOR

MR. CASH III

#125798

DATE OF ADMISSION: February 4, 1982

DATE OF DISCHARGE: February 10, 1982

HISTORY:

Mr. Price is a 69-year old gentleman who is a patient of Dr. Victor Price, Utah.

CHIEF COMPLAINT:

- 1) Weakness and atrophy and right arm muscles.
- 2) Pain in neck.

HOSPITAL COURSE:

The patient was admitted to the hospital. A myelogram was performed, there was a large, extradural defect at C5-6 on the right, an osteophyte formation was present at other levels but lesser degree. He also had evidence of ulnar neuropathy at the elbow.

The patient was taken to the operating room February 6, 1982 and an anterior cervical discectomy with nerve root decompression and interbody fusion C5-6 was performed. Following this operation and exploration with external neurolysis the ulnar nerve on the right was performed. Postoperatively the patient had done well with numbness in the fourth and fifth fingers of his right hand improved to almost normal. The aching that he had in his elbow was no longer present. Patient's pain in his neck was significantly improved at the time of discharge from the hospital. The patient reported that he was feeling much better. His strength in the biceps, triceps and grip on the right were graded as 4-5. There is atrophy of the first dorsal and osseus muscle on the right. Sensory examination reveals mild hypalgesia over the fourth and fifth fingers right hand and over the first of the right hand.

The sutures were removed on the day of discharge. From his neck, there was no cellulitis or infection present. Patient had a mild hoarseness of his voice.

LABORATORY DATA:

Hct. 45%, white count 6,300, normal, in normal. Postop. hct. 45%, WBC 6 normal. SMA 12 normal. Chest x-ray normal. X-ray of the right elbow demonstrated some degenerative joint disease at the elbow, no fracture. Complete myelogram demonstrated prominent extradural defect on the right side at C5-6, some mild defect at C6-7 and there is degenerative disc disease at L5-S1. The EKG was within normal limits. Pathology report came back fragments of intervertebral disc and osteophyte.

DR. GAUFIN

CTOR

DIAGNOSIS:

- 1) Acute and chronic cervical radiculopathy, C5-6, right.
- 2) Ulnar neuropathy with entrapment of right elbow.
- 3) Degenerative arthritis.
- 4) Arteriosclerotic cardiovascular disease with hypertension.

PLAN:

Discharge from the hospital.
Return to my office in two weeks for removal of sutures from right elbow.
Instructions were given regarding his activities, do's and don'ts. He was given a cervical frame and admonished not to flex his neck so as to reduce the chance of crushing the bone plug.

MEDICATIONS:

Multi-vitamin 1 tablet q d.
Darvocet N-100 1 tablet prn pain, disp 30.

LMG/rra

dict: 2--10-82

trans: 2-11-82

Lynn M. Gaufin, M.D.

PRICE, VICTOR
196549

DR. LYNN GARDIN

ADMITTED: Feb. 4, 1982

CHIEF COMPLAINT:

1. Weakness and atrophy of right arm muscles.
2. Pain in neck.

The patient was started on physical therapy on Oct. 3, 1981 and this gradually decreased the pain in his neck. The patient has been aware that he has had the insidious onset of numbness of the fourth and fifth digit of the right hand, shrinkage of the first dorsal interosseous muscle of the right hand, an inability to grip the object with his right hand and it is difficult for him to write now because of the weakness. The patient is also aware that he has some intrascapular pains, some stiffness of his neck, but it is much improved over this interval of Sept. 15, 1981 to mid October. There is also weakness of the triceps.

Recently the patient noted some swelling of his right thigh. Did not seem to be in the knee. He was not aware of any real acute pain.

PAST MEDICAL HISTORY:

ALLERGIES: None.

OPERATIONS: Transurethral prostatectomy.

HABITS: Does not smoke or drink.

ACCIDENTS: None.

MEDICATIONS: Clinoril for arthritis.

SOCIAL HISTORY:

The patient is married 40 years.

FAMILY HISTORY:

The mother died at 85. Father died at 97 of pneumonia. Sibs 6 brothers, 6 sister children 9.

PHYSICAL EXAMINATION:

VITAL SIGNS: BP: 170/100. P: 74, R: 16.

HEAD: Tympanic membranes and oral and nasal mucosa normal.

NECK: Carotids 2+. The thyroid not enlarged.

LUNGS: Clear to P & A.

HEART: Rhythm regular.

ABDOMEN: Negative

EXTREM: There is mild tenderness along the medial aspect of the right leg just proximal to the knee. There is no probable cord. There seems to be

swelling of the anterior tibial in the anterior region of the right leg but no edema present. Negative Homans' sign.

There is atrophy of the tricep muscle. Atrophy of the first dorsal interosseous muscle on the right.

NEUROLOGICAL EXAMINATION:

MENTAL STATUS: The patient is crisply awake, alert and oriented.

CRANIAL NERVES: 2 through 12 are intact.

MOTOR EXAM: Demonstrates strength to be 4-/5 of the tricep grip and there is a marked impairment of opposition of the thumb and index finger of the right hand graded as approximately 3-/5.

STATION AND GAIT: Normal.

COORDINATION: Finger to nose, heel to shin normal.

SENSORY: Demonstrates hypalgesia over the fifth and the great ulnar aspect of the fourth digit of the right hand. There is mild hypalgesia over index finger of the right hand.

SPECIAL OBSERVATION: There is marked restriction of range of motion by about 30° on all planes.

IMPRESSION:

1. Acute chronic cervical radiculopathy C5, right.
2. Ulnar neuropathy, right.
3. Rule out thrombophlebitis of right leg.
4. Degenerative arthritis.
5. Arteriosclerotic cardiovascular disease with hypertension.

PLAN:

Admit to the hospital for a myelogram, EMG of right arm.

LMG/jm
2-4-82 dict.
2-4-82 typed.

LYNN H. GARDIN, MD.

NAME PRICE, MILTON (H) / 743-2900
NO. 00 02 17 DATE 31001
AGE 67 DR Dorman

PRICE, UTAH 84501

Report of Roentgenological Examination

Ambulatory ☐ Cart ☐ Wheelchair ☐ Room # Out Hospital # _____

PART TO EXAMINED Right Elbow

REASON FOR EXAM Injured

CH

RADIOLOGY REPORT

VIEWS OF THE RIGHT ELBOW

Shows arthritic change and deformity consistent with old trauma.
There are arthritic changes in the joints base.
I don't see evidence of acute bony injury.
There is considerable soft tissue swelling posteriorly.

CASTLE CHIROPRACTIC CENTER
46 East Main
Castle Dale, Utah 84513
748-5432

Insurance Carrier: Medical of America Policy No.: _____
City: Eric Fading Claims Office Address: Salt Lake City

CONFIDENTIAL HEALTH HISTORY

patient: This information is considered confidential. We need this information because we care enough to want to know, our answers will help us determine if chiropractic can help you. If we do not sincerely believe your condition will respond actively, we will not accept your case. In order for us to understand your condition properly, please be as neat and as possible while completing this form. Thank you.

PERSONAL:

Name: Victor D. Dick Sex: M Marital Status: Single Date of Birth: 2/15/1912 Home Phone: 748-2443
(Name title, first name, and last name) M or F S, M, D, W Month Day Year Area Code Number
Address: 2118 1st North City: Castle Dale State: Ut Zip Code: 84513
(Include street type, such as St., Ave., etc.)
Preferred you Office? Self Your Occupation: Farmer
(If student, unemployed, retired, child, housewife, etc., please so indicate)
Business Phone: 529-1291 Business Name: Castle Dale Location: _____
Area Code Number
Spouse's Name: Cheryl Spouse's Soc. Sec. No. _____ Spouse's Employer: Castle Dale Location: _____

PHYSICAL REPORT:

visit for an annual physical? Yes No Height: Feet 5 Inches 4 Weight: 165
describe the principal health problems for which you came to this office Neck, shoulder and
head area - base of skull is painful - can't turn
head well. (Injured 6 of Sept 1977) Re-injured on July 7, 1978 while driving in
a ditch re-injured injury of Sept 1977.
other doctors seen for this: Dr. Demmon

Physical diagnosis (es) and type of treatment(s): _____

How many days of work lost? Yes No Dates: _____

Have you had similar accidents or injuries before? Yes _____ No Yes If yes, explain: _____

Names of any relatives that have or have had a similar problem? _____

Have you or any relative received chiropractic treatment previously? Yes _____ No _____ If yes, explain: _____

Have you been treated for any health condition by a physician in the last year? Yes _____ No Yes If yes, explain: _____

Last physical examination May 70 Previous Physician _____

Are you currently under medication? Yes _____ No Yes If so, what kind? _____

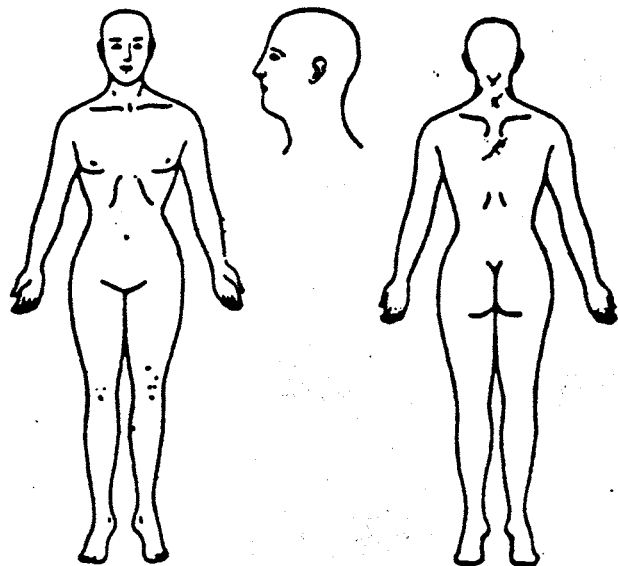
Have you been under medication in the past? Yes _____ No Yes If so, what kind? _____

Approximate dates of any surgery or unusual diseases you have had: _____

CASTLE CHIROPRACTIC CENTER - CONFIDENTIAL HEALTH HISTORY SHEETS

Have you been x-rayed before? Yes ☐ No ☐ What areas were x-rayed? Back & neck
 Are you pregnant? Yes ☐ No ☐ How Long? _____

Please mark your areas of pain on the figures below.



Have you ever suffered from:

- | | |
|--|--|
| <input type="checkbox"/> Headache | <input type="checkbox"/> Backache |
| <input type="checkbox"/> Dizziness | <input type="checkbox"/> Arthritis |
| <input checked="" type="checkbox"/> Asthma | <input type="checkbox"/> Diabetes |
| <input type="checkbox"/> Neuritis | <input type="checkbox"/> Heart Trouble |
| <input type="checkbox"/> Numbness | <input type="checkbox"/> Nervousness |
| <input type="checkbox"/> Digestive Disorders | |
| <input type="checkbox"/> Cancer | |
| <input type="checkbox"/> Anemia | |
| <input type="checkbox"/> Surgeries | |
| <input type="checkbox"/> Female Disorders | |

If your condition is due to an accident, not work related, please answer the following:

Date Sept 6 1977 Time 6:15 AM ☐ PM ☒ of accident. Police report made? ☐

Place - Location of accident: over fence

Do you have an attorney that has advised you in this case: Yes ☐ No ☒ If yes, list the name and address: _____

Please describe the accident: Fell over back of horse

If your condition is due to a work-related accident, please answer the following:

Have you notified your employer? Yes ☐ No ☐ If yes, who or what department? _____

Name of Supervisor: _____

Date Injured: _____ Time: _____ AM ☐ PM ☐ Date last worked: _____

Injured at: _____
 (Address, city, county, and state)

PAYMENT IS EXPECTED AT TIME OF VISIT!

Name of Person Responsible for Payment: _____

Are You Insured: ☒ Yes ☐ No Company: _____

I understand and agree that health and accident insurance policies are an arrangement between an insurance carrier and myself. Furthermore, I understand that the Castle Chiropractic Center will prepare any necessary reports and forms to assist me in making collection from the insurance company and that any amount authorized to be paid directly to the Castle Chiropractic Center will be credited to my account on receipt. However, I clearly understand and agree that all services rendered me are charged directly to me and that I am personally responsible for payment. I also understand that if I suspend or terminate my care and treatment, any fees for professional services rendered me will be immediately due and payable.

Driver's License 17347809 Social Security # 529-4810-9733

Patient's Signature: Walter R. [Signature] Date: 7/11/78

December 26, 1979

Tuft Construction Company
8490 South State Street
Sandy, Utah 84070

Dear Sirs:

Victor Price presented himself to my office on 7-11-78 complaining of severe pain in his neck and shoulder area. Mr. Price also complained of a numbness on his chin area since the accident he sustained on 7-7-78 on his farm.

On examination the following was found:

Neck rotation was severely limited and all motion was restricted due to spasticity of the neck musculatur.

Patient on active movement complained of pain in any direction of movement.

Treatment:

A conservative regime of soft tissue and spinal manipulation along with ECS therapy was administered.

Diagnosis:

Traumatic Cervical torticollis.

Dr. Ronald B. Sanders
Chiropractic Physician

RBS/do

December 26, 1979

TREATMENT & CHARGES FOR VICTOR PRICE

7-11-78	First Visit & Ortho Exam	\$37.00
7-12-78	Soft tissue & Spina Manipulation	12.00
	EGS Therapy	10.00
7-13-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
7-14-78	Soft Tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
7-16-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
7-21-78	Soft Tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
7-26-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
8-01-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
8-04-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
8-08-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
8-14-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
8-18-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
8-28-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
9-06-78	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	10.00
9-18-78*	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	8.00
10-2-78*	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	8.00
10-4-78*	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	8.00
10-11-78*	Soft tissue & Spinal Manipulation	12.00
	EGS Therapy	8.00

TOTAL AMOUNT DUE
TO PATIENT

\$1 403.00

* Price revision as of 9-15-78

Dr. Ronald B. Sanders
Chiropractic Physician

RBS/do

WASHINGTON PARK
PRICE, UTAH 84501
TELEPHONE (801) 637-1123

11:11
TERMINAL DIGIT NUMBER

ADMITTED	TIME	DATE DISCHARGED	TIME	ROOM	RATE	HOSPITAL NUMBER
6-77	11:25 P M	9-15-77	12:15 P M	ICU	\$160	77-2586
DB	ATTENDING PHYSICIAN Dr A R Demman		S.S. NO			
(LAST)	(FIRST)	(MIDDLE)	STREET		PHONE	
Price	Victor		Box 184		748-2443	
CITY/STATE			ZIP CODE			
Castle Dale, Utah			84513			
AGE	BIRTH DATE	MARITAL STATUS	RELIGION			
65	2-15-12					
EMP. ADDRESS			HOW LONG EMPLOYED			
CITY/STATE			PATIENT'S MOTHER'S NAME			
ADDRESS			NAME			
S.ADMISSION YES <input type="checkbox"/> NO <input type="checkbox"/> APPROX. DATE			NAME			
RESPONSIBLE (FULL NAME)			(RELATIONSHIP)		(ADDRESS) (CITY/STATE) (TELEPHONE NUMBER)	
Price, Victor			Self		Box 184 - Castle Dale, Utah 748-2443	

INSURANCE INFORMATION

NAME OF PERSON UNDER	GROUP NO.
	POLICY NO.
NAME OF PERSON UNDER	GROUP NO.
	POLICY NO.
SOCIAL SERVICE NO.	
ED <input type="checkbox"/> PRIVATE <input type="checkbox"/> SEMI-PRIVATE <input type="checkbox"/>	SIGNATURE: X
SIGNED: YES <input type="checkbox"/> NO <input type="checkbox"/>	DATE ACCIDENT
	TIME OF ACCIDENT

ADMISSION, PATIENT OR QUALIFIED PERSON MUST SIGN AUTHORIZATION FOR MEDICAL AND/OR SURGICAL TREATMENT ON REVERSE SIDE
FINAL DIAGNOSIS (TO BE COMPLETED WITHIN 24 HOURS AFTER ADMISSION)

AGNOSIS:	CODE NUMBER
Multiple lacerations @ 2x of Right Wrist + Radius (L)	
Multiple Contusions	929
Laceration of Scalp	873
2x of Wrist + Radius (L)	813
ACTIONS:	
None	
TRANSFUSIONS	
DN: INCLUDING MANIPULATION AND/OR REDUCTION (SPECIFY)	
Closed Reduction + Cast	833

Reviewed by



DATE INITIALS

9/16/77 O/A

DISCHARGE SUMMARY

E, VICTOR
65, MALE, WHITE

ADMISSION: 9/ 6/77
DISCHARGE: 9/15/77

This 65 year old male was admitted on 9/6/77 and released on 9/15/77 following an injury when a horse bucked and ran right over him producing multiple injuries with a fracture of the right ulna and with a fracture of the left ulna and radius and also laceration of the scalp and multiple injuries.

PHYSICAL EXAMINATION: Temp: 99 Pulse: 80 Resp: 21 B.P.: 140/80

GENERAL: A well nourished, slight obese male admitted to the hospital following an accident when the horse went over him.

HEAD: Normal in appearance. No excoriations or dermatosis is present.

EYES: Round and symmetrical. The eardrums are intact. He has a laceration of the scalp. Pupils are round and equal and react to light and accommodation. There is no nasal obstruction.

THROAT: Throat is normal in appearance.

CHEST: Equal expansion on both sides. Both sides symmetrical. He has marked pain due to breathing on the left side. Possible some fractured ribs.

ABDOMEN: No fluid, no rales, no consolidation.

CVASCULAR: Normal sinus rhythm. No murmurs, no thrills, no arrhythmias.

EXTREMITIES: No deformity.

WOUNDS: He has a great deal of swelling and deformity of the left wrist. He has multiple contusions and also laceration of the scalp.

LYMPHATICS: No enlargement of the axillary or cervical lymph glands.

NEUROLOGICAL: All physiological reflexes are present.

COURSE: Uninvented. Reduction of the fracture was done.

LABORATORY: Urine, within normal limits with the exception of 4,5, to 7 white blood cells per high powered field. The WBC was 17,500. The hemoglobin 14.8 grs., hematocrit was 46%. Stabs. 13, Segs. 68, Lymphs. 16, Monos. 2.

NOTES: Left wrist shows comminuted fracture of the distal radius with extension into the articular surface where there is a fracture of the ulnar styloid process at the base. Skull fracture, none present. Had a large laceration on the frontal area and a possible fracture of ribs on the left side. The reduction was done and views of the left wrist shows the fracture of the distal radius. The cast has been applied and shows a fracture relationship satisfactorily. Ulnar styloid fractures also noted. Cast was applied and after reduction under general anesthesia.

PROGNOSIS: The patient will see me again in the future and the diagnosis was a fracture of the left wrist, multiple contusions and laceration of the scalp.

JRD
DEMMAN, M.D.

sa
/77
/77

ADMISSION HOSP # 772486
Tad Rice
6-77 Time of Arrival 11:25 PM
Admitted: per E.R. Stretcher

Pulse: _____ Resp.: _____
Right: _____ Left: _____
Weight _____

No ☒ Yes ☐ Full ☐ Partial ☐
lo ☐ Yes ☒
enses: No ☒ Yes ☐
id: No ☐ Yes ☐
sthesia: _____

Admissions: No ☐ Yes ☒ Approx 1970
Lab Work Ordered: ☐ Time _____
Lab Work Complete: ☐ Time _____
X-Ray Ordered: ☐ Time _____
X-Ray Taken: ☐ Time _____
Yes ☐ No ☐
*ER + X-Ray
kept
from admission*

Complaint, as described by Patient:
horse backed and upriled
to me - sp back pain &
ST

and Symptoms: (Nurses Observation)
re-alert - coherent -
recall.

Issues, as given by Patient: ASTHMA
infectious approx 7-8 yrs
ago

Allergies, as described by Patient:
nicotine & Lincosin

ergies: _____

2-15-12

Home # 748-2443
Castle Oak, UT.

Current Medications: Churitus PRN

Medications taken in past 24 hours: None

Medications brought to the Hospital: None.

Disposition of Medications brought to Hospital _____

VALUABLES: _____ - DISPOSITION - _____

Food Restriction and/or Special Diet: None

Bowel or Bladder Problems: Prostrate -
Bladder Infection Chronic

Handicap and/or Special Needs: _____

ORIENTATION TO UNIT: AND ROOM:

Introduction of Self and Other Staff Members: ☒

Introduction to Room Mate: ☒

Visiting Hours and Hospital Regulations: ☐

Meal Time and Menu Selection: ☐

Smoking Policy: ☒

Electrical Appliance Policy: ☐

I.D. Band On: ☐

Bathroom and Emergency Call Light: ☒

Telephone: ☒

Intercom and Call Light: ☐

Bed Positioning: ☐

Overbed Table: ☐

Use of Side Rails: ☐

Comments: _____

B. Carver RPN.
Signature

Day of Disease

Day of Disease _____

Special Nurse

NURSES RECORD

PRICE, VICTOR
77-2486 DEMMAN
-15-12 MALE
MEDICARE

Day of Disease

2

HOUR	MEDICINE	NOURISHMENT	REMARKS	URINE	STOOL
10 ³⁰			normal (t. void) (sp. void) - desire discomfort		
11 ³⁰			Dr. Demman visited - checked pt		
12 ³⁰		Soft diet	taken well put self - remains draining no ill headache - state he hurts all over		
1 ⁰⁰			Sitting up involved - normal (t. void) on Osgood		
2 ⁰⁰			(voided approx 80cc of orange colored urine)		
2 ³⁰ pm			Now had a fairly good day - remains normal, remains draining, but a little sorely - has only voided 80cc today - on Osgood		
3 ³⁰			Resting		
4 ⁰⁰			States he "has back pain"		
4 ³⁰			Using Urinal @ intervals but 5 results		
4 ⁴⁵ p		Soft diet	taken well		
			Neuro ck done. Pupils equal & react to light Moved all extremities & exception of R arm.		
6 ⁰⁰			Has a firm grip & R hand Family here R arm & pillow. Lc bag put in		
7 ⁰⁰			Daughter says he is in pain.		
7 ¹⁰	Demerol 75 mg IM		given for pain	-	
7 ¹⁵			Voided / urinal 40cc abd is distended		

3

[illegible]

PRICE, VICTOR
77-2486 DENMAN
3-15-12 MALE
MEDICARE

NURSES RECORD

Day of Disease

4

HOOR	MEDICINE	NOURISHMENT	REMARKS	URINE	STOOL
3-6			Continues voiding on ant. pa. X. — 8 ⁰ TO 74 ¹ 100 cc		
6A			Awaken for AM care. — beginning to toler. re-positioning. Continues to be stuffed neck. Afraid to move back to side. (color improved) — skin warm & dry. — keep breathing encouraged. Sles fair. B. Carrello & PM.		
6:45 8:45			Fair breakfast. Continues to void on ant. urine. R. diaphoretic — c/o being warm, temp C.K. No specific complaint at this time. Color good on room air. Breath sounds fair in all lobes — marked diminished in rt. lower lobe. L. chest fair & dulled for pns & stiffness. Very difficult to get pt. to turn it deep breaths. c/o much easier in back it sub. 1/5 good.		
10 ⁵	Demoral 75 mg 2m		Spongy bath — last care. Turned in bed — much difficulty. Movement makes him sick he		

NURSES RECORD

Day of Disease

5

PRICE, VICTOR
77-2486 DEMMAN
2-15-12 MALE
MEDICARE

HOUR	MEDICINE	NOURISHMENT	REMARKS	URINE	STOOL
12 ⁰⁰			Dr. Demman here. Orders noted.		
		Soft Diet	Good appetite. moving slightly better in bed. see pack continuous on 7/1 wrist.		
1-3 ^{PM}			Continue to void am. voids @ a time. Nurse encouraged pt to stand on edge of bed to empty bladder with no results. Pt. states he becomes so sick when he stands. but put 190 cc all shift. Will attempt to cath. J. Morrison 4 ^{PM}		
	Disp. Foley Cath		Flay - Called per C. Hanes CRT 600 cc dark concentrated urine J. Morrison 4 ^{PM}		
3-4			napping & appears comfortable. V/S taken & recorded, position in bed changed.		
5 ^{PM}		Soft diet - soup + juice taken	Dr. Demman called because pt. is C of heat in I.C. & request being moved to floor. Dr. Demman orders pt.		

NURSES RECORD

7

PRICE, VICTOR
77-2486
2-15-12
MEDICARE

DEMMAH
MALE

Day of Disease _____

HOURLY	MEDICINE	NOURISHMENT	REMARKS	URINE	STOOL
1:00 PM			Transferred out of 250 cc. Demmah into 100 cc. 100 cc. at 1:00 p.m. to (2) arms. Encouraged to deep breathe at nurse's voice.		
7:30 PM			Apparently good intake. (M) 100 cc. 1/2 quantity feeling in neck.		
8:20			Sponge bath per nurse. 1/2 pain in ribs, neck, head when moved.		
10:20			Ice bag to left arm.		
11:00			Dr. Demman in. (M) 100 cc.		
11:30 AM	Demerol	75 mg Im -	given in RUQ FOR PAIN (Winder)		
1:30 PM			Rib winder on et. sling at bedside. Sit up on edge of bed. Tolerated fairly well. Neck appears very stiff.		
2:30			Resting in bed (M) 100 cc.		
2:45			400 cc. blood tinged urine expelled from Foley. Reported to charge nurse. (M) 100 cc.		
3:30 PM			Appears to be sleeping. W. Shingleton		

WASHINGTON PARK
PRICE, UTAH 84501

Request for:

Request for Roentgenological Examination

ambulatory ☐

Cart ☐

heelchair ☐

171124186
Hospital No. _____

E PRICE, VICTOR AGE 65 ROOM 1P 214 DATE TO BE TAKEN SEPT. 12, 1977

TO BE EXAMINED CERVICAL SPINE WITH OBLIQUES, THORACIC, AND LUMBAR SPINE

RY _____

TING DIAGNOSIS _____ DOCTOR DEMMAN

(NO. 70951 RADIOLOGY REPORT DATE SEPT. 13, 1977

CERVICAL, THORACIC, AND LUMBAR SPINE:

The usual aging changes are shown.

At the lumbo-sacral junction there is fairly advanced degenerative disc disease, with anterior displacement consistent with grade one spondylolisthesis. There is no definite evidence of acute fracture.

T-10 does not show possible hematoma presently.

There is change at the lower lung bases suggesting atelectasis or infiltrate.

th



RADIOLOGY REPORT

Dorman/ Owens

Price Victor
Last First Middle

(Minor) _____

POBOX 184

File Date _____ State Utah 84513

6 September 1977 Time 9:00 p.m.

(12) Sex Male Phone 748- 2443

Information: _____

Other Piece bill

Address _____

Group No. _____

1. ☒ Emergency Room

2. ☒ Laboratory CBC

3. ☒ X-Ray LA

4. ☒ Central Supply

Sm. suture kit
local

5. ☐ Pharmacy

6. ☐ Oxygen

7. ☐ Other

15.00
16.80
149.00
15.00
4.50

TOTAL

Billed _____ Paid Yes ☐

No ☐

Receipt No. _____ Date _____

ified (Relationship) Wife

Alice

ame

me

Patient brought to emergency by:
(check one)

☐ Ambulance

☒ Family

☐ City Police

☐ County Sheriff

☐ Nursing Home

☐ Self

☐ Other

NURSES NOTES:

Blood Pressure 90/50

Temperature 97

Pulse 68

Respiration _____

PHYSICIAN'S REPORT

INGS: Kicked by a horse in head 9-6-77 @ 8:10 p.m. sts. wife.

17.5 x (2) Skinf.

17.5

Scalp laceration - 1/2" laceration - multiple lacerations

INSTRUCTIONS: pt. declined pain relief.

pt. declined sutures

lumbosacral spine done OK set (< 1 yr ago)

(Envision) Admitted 12/1/77 for car Dr. Dorman

Condition: Stable

Hospital ☒ Home ☒ Office ☐ D.O.A. ☐ Expired ☐ Police ☐ Transfer ☐ Family Physician ☐

Attending Physician ☐

R.N.

E.R. Physician ☐

on-call

Signature

M.D.

FOR MEDICAL AND/OR SURGICAL TREATMENT: I hereby authorize any medical treatment, anesthetics or surgical procedures as the an or assistant he may designate, deems necessary on the above named patients, and no guarantee as to the results that may be obtained.

September 9 1977 Witness

C. Garage

Signature

Alice Price
Patient or Responsible Party

INSURANCE BENEFITS: I hereby authorize payment to CARBON HOSPITAL of the hospital benefits herein specified and otherwise not to exceed the hospital's regular charges for this period of hospitalization. I understand I am financially responsible to the hospital for red by this assignment.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

Machine-generated OCR, may contain errors.

Date 6 September

19 77 Signature A

Insured

IN THE SUPREME COURT
OF THE STATE OF UTAH

---oooOooo---


VICTOR PRICE, :
Plaintiff-Respondent, :
vs. : CERTIFICATE OF SERVICE
UTAH POWER & LIGHT COMPANY, : Case No. 20568
a Utah corporation, and :
DAVID ZSERAI, :
Defendants-Appellants. :

---oooOooo---

David A. Westerby, an attorney for Utah Power & Light Company, 1407 West North Temple, Salt Lake City, Utah 84116, states that he served the Brief of Appellants upon the following parties by placing four true and correct copies thereof in an envelope addressed to:

Marlynn B. Lema, Esq.
108 North 4th West
P.O. Box 1026
Price, Utah 84501
Telephone: (801) 637-2690
Attorney for Plaintiff-Respondent

and mailing the same, postage prepaid, on this 3rd day of September, 1985.


David A. Westerby