

Memorandum

To: Jared Stromer

From: JCW

RE: Collateral Estoppel and Agency Theory

FACTS:

Client is injured at the home of the neighbor when the neighbor's son was utilizing a chainsaw to remove limbs from a large tree branch and tree.

Client ultimately sues the neighbor/homeowner and the son for his injuries. There are three defendants, husband and wife homeowner who are older with grown children ("Homeowners") and the son ("Son") who is an adult male in his early to mid-forties at the time.

The Homeowners own the chain saw and provided it to Son for use.

The Son dictated the use of the chain saw in that he determined how the tree would be removed, which branches would be cut etc.

The Homeowners were outside for much of the day and expressed concerns about the tree not damaging their other property such as the garage, pool, or house. They are in and out of the house while the son performed the work.

Client without being asked helped pick up the branches and sticks that are being removed from the tree. Client was later asked to assist in holding a large tree branch while the Son removed smaller branches from it. The Son determined which branches to remove, in what order, and how it would be accomplished using the chain saw. The Client was injured while holding the branch.

PROCEDURAL HISTORY:

Client sued Homeowner and Son in state circuit court.

Homeowner settles case, through insurance, for \$5,000. Settlement and release executed.

Good Faith Finding made by the court.

Initial counsel for Client recommends settlement based upon theory that Homeowner did not control Son and Son was akin to an independent contractor.

Client files for BK.

BK trustee takes over the case as an asset of the BK.

BK trustee, with court's permission, enters into a binding mediation agreement with a high low of \$50,000/\$300,000.

Award at binding mediation to Client is \$660,000.

Client found to be contributory negligent at 15%

Net Award of \$561,000

Break down of damages:

Medical \$60K

Future Medical \$200K

Lost Wages \$250K

Pain and Suffering \$75K

Loss of normal Life \$75K

Client collects \$300k from Son's homeowners insurance (per high/low and insurance was for \$300K)

Client sues at attorney who settled the homeowners case for \$5K arguing he would have gotten more if Homeowner remained in case.

QUESTIONS:

1. Is Client collaterally estopped from arguing higher damages? (Basically, is he stuck with the award that was given at binding mediation?)
2. What is the Homeowners liability?