

ORTHOPAEDIC SURGEONS ASSOCIATES

1700 N. Oregon, Ste. 600, El Paso, Texas 79902
10525 Vista Del Sol, Suite 206, El Paso, Texas 79925
PHONE: (915) 533-1628 FAX#: (915) 533-1723

PROGRESS NOTE

PATIENT: RAY A. ODLE
EXAM DATE: 09/27/2004
ACCT #: 207862200

TWCC-INITIAL MEDICAL REPORT:

HISTORY OF PRESENT ILLNESS: This is a 53-year-old male who injured his right shoulder. He was working at the colosseum when one of the elephants that was there turned on him and actually knocked him down with his head and trunk and throwing him into a wall. The patient injured his right shoulder. He sustained a dislocation in the right shoulder. He was taken to the emergency room, and during the process of having x-rays done, his shoulder relocated.

The patient has had three previous dislocations of the shoulder. However, this has been completely different. He states that in the past when his shoulder was dislocated and relocated that his arm pretty much felt normal. However at this time, he has not been able to lift his arm or use his arm.

PAST MEDICAL HISTORY: Negative.

ALLERGIES: He has no allergies.

PHYSICAL EXAMINATION: Physical examination reveals tenderness throughout the proximal humerus and shoulder region. He has abduction of 20 degrees and forward flexion of 20 degrees. He has marked pain with any passive movement.

X-rays reveal some AC joint arthrosis, some inferior osteophyte formation along the acromion. His shoulder is located.

DIAGNOSES: DISLOCATED SHOULDER, POSSIBLE ROTATOR CUFF TEAR;

PLAN: EMG, MRI, Darvocet for pain; return to the office in one week.

ALVARO A. HERNANDEZ, M.D.

AAH/AAR/DEE/37921/cv
/np

cc Texas Mutual Insurance; Patient

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Alvaro Hernandez, M.D.
Thomas E. Alost, M.D.
Eduardo Hazarian, M.D.
Charles Zaltz, M.D.
Keith Randal Johnson, M.D.
Angelo Romagosa, M.D.
Physical Medicine & Rehabilitation

Róbert Endlich, Administrator

RE: RAY A. ODLE
EMP: EL PASO SPORTS COMM
D/A: 08-29-2004
SSN: 455-92-1307
ACCT #: 207862200
DATE: 02/24/2005

REFERRING PHYSICIAN: ALVARO A. HERNANDEZ, M.D.

EMG REPORT**ELECTRODIAGNOSTIC IMPRESSION:**

1. This was an abnormal study.
2. On comparing the study to the previous EMG, the needle examination of the right deltoid reveals less evidence of denervation and more reinnervation-type motor unit potentials. This is evidence of a further neurological recovery of the axillary nerve.

CLINICAL HISTORY: The patient is a 53-year-old white male with a history of severe injury to the right shoulder while on the job back in August 29, 2004. At that time, the patient was working for the El Paso Sports Commission and assisting in the circus. He states that he was moving elephants from one area to the other, and one of the elephants became agitated and turned thrusting her trunk and pinning him against a wood fence. He states that a fellow worker grabbed the hook and tugged to the elephants' leg and she released him.

He was subsequently diagnosed with a full-thickness tear of the rotator cuff and also surrounding synovitis and bursitis.

I had performed an EMG back on October 4, 2004, which revealed a severe injury to the right axillary nerve with evidence of denervation and few motor unit potentials firing.

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PROGRESS NOTE

PATIENT: RAY A. ODLE
EXAM DATE: 10/06/2004
ACCT #: 207862200

HISTORY OF PRESENT ILLNESS: The patient comes in today, and his MRI shows a full-thickness tear of the rotator cuff, AC joint osteoarthrosis with impingement, and also torn bicipital labral complex. His EMG was positive for an axillary nerve injury.

PHYSICAL EXAMINATION: Physical examination reveals that he is getting a little bit of motion now in his shoulder. However, he is only able to abduct about 40 degrees. He does have some decreased sensations over the deltoid.

DIAGNOSES:

1. Acute rotator cuff tear.
2. Axillary nerve injury.
3. Anterior shoulder dislocation.

TREATMENT/PLAN: At this time, the patient is going to need a reconstruction of the shoulder including rotator cuff repair. However, I would like to give him a little bit time for his nerve to recover, so that he will be able to rehab his shoulder. I have recommended some daily physical therapy treatments for the next couple of weeks to try to get him a little bit of range of motion and get his muscles working. Following that, he will need surgical reconstruction. He is not able to return to work at this time.

ALVARO A. HERNANDEZ, M.D.

AAH/AAR/SAB/42853/cs

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OPERATIVE SUMMARY

ACCT #: 207862200

NAME: RAY A ODLE

LOCATION: PASO DEL NORTE SURGICAL CENTER

DATE: 11-11-2004

DIAGNOSIS: RECURRENT ANTERIOR SHOULDER DISLOCATIONS AND MASSIVE ROTATOR CUFF TEAR RIGHT SHOULDER

PROCEDURE: ROTATOR CUFF REPAIR DECOMPRESSION RIGHT SHOULDER AND ANTERIOR SHOULDER RECONSTRUCTION CAPSULAR SHIFT TYPE RIGHT SHOULDER

SURGEON: DR. HERNANDEZ

ANESTHESIA: DR. OSCAR VEGA, GENERAL ANESTHESIA

NOTE: Ray Odle successfully underwent the above stated procedure. He recovered uneventfully and was discharged in satisfactory condition.

Procedure code: 23450, 23420.

ALVARO A HERNANDEZ, M.D.
AAH/np

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05/25/2005 16:07 FAX

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**AFFIDAVIT CONCERNING BILLING COSTS
OF MEDICAL SERVICES PURSUANT TO § 18.002
OF THE CIVIL PRACTICE AND REMEDIES CODE**

BEFORE ME, the undersigned, on this day personally appeared ROBERT ENDLICH, who, after being by me duly sworn, upon oath said:

"My name is ROBERT ENDLICH. I am of sound mind and capable of making this affidavit.

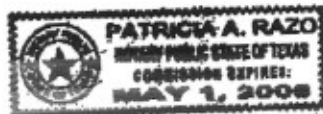
"I am a person in charge of billing for Orthopaedic Surgeons Associated. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the services that provided to Ray A. Odle. The attached records are incorporated herein by reference.

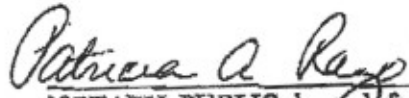
"The attached records are kept by me in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by an employee or representative of Orthopaedic Surgeons Associated who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the services were provided. The records are the original or an exact duplicate of the original.

"The services provided were reasonable and necessary and the amount charged for the services was reasonable at the time and place the service was provided. The total charge for the services was \$ 16598.00."


AFFIANT

SUBSCRIBED AND SWORN to, before me, on this the 15TH day of JUNE, 2005.




NOTARY PUBLIC in and for the
STATE of TEXAS

My Commission Expires:

5-01-2006

Defendant El Maida Temple AAONMS, (hereinafter referred to as "Defendant Temple") is a Texas Corporation licensed to do regular and systematic business in El Paso County, Texas. Said Defendant may be served with citation by and through its registered agent, Hal Schopach at 6331 Alabama, El Paso, Texas 79904.

The term "Defendants" as used herein shall mean "Defendant Circus and/or Defendant Temple."

The incident made the basis of this suit occurred in El Paso County, Texas.

Discovery in this case will be conducted at Level II.

II. CAUSE OF ACTION

The incident giving rise to this cause of action occurred on or about August 29th, 2004. On that day Plaintiff was working for the El Paso Sports Commission at the Don Haskins Center during a circus being run by Defendant Circus and Defendant Temple. Throughout the show, it was Plaintiff's duty to open and close the doors where the animals were to enter the arena. After the performance of an elephant, trained and managed by Defendant Circus and/or Defendant Temple, (herein after referred to as "Subject Elephant"), the Subject Elephant was to leave through a set of doors where Plaintiff was stationed. As part of the show, the Subject Elephant was to stop for pictures before exiting the arena. Due to the negligent methods Defendant Circus and Defendant Temple and/or their agents, servants, and/or employees use to train their elephants, the camera flashes caused startled the Subject Elephant, and caused the Subject Elephant to rampage. The Subject Elephant focused its wrath at Plaintiff and violently assaulted Plaintiff with its head and trunk.

Defendant Circus and Defendant Temple knew or should have known that the Subject Elephant, being a wild animal, could possibly go berserk during the performance. However, Defendant Circus and Defendant Temple failed to reduce and/or eliminate the risk to Plaintiff should the Subject Elephant rampage. Additionally, Defendants should have provided some sort of training or instructions to Plaintiff on how to minimize the risk of injury to himself if the Subject Elephant were to rampage, but failed to do so.

Elephants are wild animals, and no amount of training can truly tame them. Defendant Circus and Defendant Temple were at the time of the incident the owners, occupiers, and/or possessors of the premises where the circus was held. The Subject Elephant was owned, controlled, and/or possessed by Defendants at the time of the incident, therefore Defendants are strictly liable for the actions of the Subject Elephant.

III. POINTS OF NEGLIGENCE

At all times relevant hereto, Defendant Circus and Defendant Temple were negligent in ways including, but not limited to:

1. Failing to properly train its animals to minimize the risk to others;
2. Failing to warn Plaintiff of the possibility that the Subject Elephant could rampage, go berserk, and/or attack him;
3. Failing to take adequate measures ensure the Plaintiff's safety was not in jeopardy during the performance of the Subject Elephant;
4. Failing to regain control of the Subject Elephant before it attacked Plaintiff;
5. Failing to adequately train and/or instruct Plaintiff how to handle various dangerous situations presented by the presence of the Subject Elephant;

6. Other negligent acts and/or omissions to be determined throughout the course of discovery.

The above referenced negligent acts and/or omissions of Defendant Circus and Defendant Temple whether taken singularly or in concert constitute a direct and proximate cause of the injuries and damages sustained by Plaintiff, noted more fully below. Moreover, Defendants are strictly liable for the actions of the Subject Elephant.

IV. DAMAGES

As a direct and proximate result of the negligence of Defendants, Plaintiff has been caused to suffer injuries and damages including, but not limited to, the following:

1. Physical pain and suffering, past and future;
2. Reasonable and necessary medical care expenses, past and future;
3. Loss of earnings and/or loss of wage earning capacity;
4. Physical impairment and disfigurement, past and future;
5. Severe mental anguish experienced by being attacked by such a frightening animal.

Plaintiff seeks compensation in whatever amount the jury determines to be fair and reasonable, based on the evidence and within the jurisdictional limits of this Court.

V. JURY REQUEST

Plaintiff requests a trial by jury on all issues.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants GEORGE CARDEN CIRCUS INTERNATIONAL, INC. AND DEFENDANT EL MAIDA TEMPLE AAONMS be cited to appear and answer, and that on final trial Plaintiff has judgment against Defendants for all relief

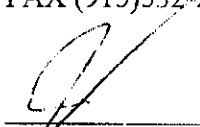
requested as follows:

1. Judgment against Defendants for actual damages in an amount that is within the jurisdictional limits of the Court;
2. Pre and post-judgement interests as described by law, until paid;
3. Costs of suit;
4. Such other and further relief, general and special, at law or equity, to which Plaintiff may justly be entitled.

Respectfully Submitted,

GAGE & KENNEDY, P.L.L.C.
6044 Gateway Blvd. East, Suite 715
El Paso, Texas 79905
(915) 544-5200
FAX (915) 532-2423

By:



JAMES B. KENNEDY, JR.
State Bar No : 00791014

CERTIFICATE OF SERVICE

I, James B. Kennedy, Jr. do hereby certify that a true and correct copy of Plaintiff's First Amended Petition was forwarded to Jeff Ray of Ray, Valdez, McChristian & Jeans, P.C , attorney for Defendant GEORGE CARDEN CIRCUS INTERNATIONAL, INC. on this 12 day of September, 2005 via

Certified Mail
 Regular Mail
 Hand Delivery
 Facsimile



JAMES B. KENNEDY, JR.