

The COMMUNICATOR



Federal News

VALUE ADDED

USDA Grant Application Deadline Announced

Page 5

FLAWED POLICY

GAO Confirms Horses Bear Brunt of Flawed Slaughter Policy

Page 7

State News

KUBOTA RECEIVED

Young Farmer Receives Kubota as Prize

Page 4

CHANGES AT UNH

Wraith to Serve as Interim COLSA Dean

Page 5

For the latest legislative news see the Friday Review. For your copy contact the NHFB office - 224-1934.

LAWSUIT TARGETS Landowner After Fall From Tree Stand

By Rob Johnson
NHFBF Executive Director



The tree stand that is at the center of this controversial lawsuit. Photos courtesy of Charlie Corliss

Late in the afternoon of November 17, 2009 Charlie Corliss was headed to the house from the barn at his home on Center Hill Road in Epsom. He could hear sirens in the distance and was surprised when an ambulance turned and came flying up his long driveway right to him. After briefly explaining that a hunter had fallen out of a tree stand near the back end of his field, the driver asked

TREE STAND LAWSUIT – page 8

ABOVE PHOTO

A Voyage Worth Taking

The dairy industry has faced its fair share of setbacks over the years. However, new export opportunities have resulted in optimism for local dairy producers.

In the above photo, a shipment of bred Holstein heifers are being herded into transport containers, at Eastport, ME known as CATs (comfortable animal transportation suites) for their overseas journey to Turkey.

Photo by Leslie Bowman

A VOYAGE WORTH TAKING – page 12



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Tree Stand Lawsuit

- continued from front page



Photo: Maksym Yemelyanov - Dreamstime.comdreamstime.com

How to get there. Corliss directed him around the barn and over a hill, asking the driver to straddle the ruts. It was nearly dark by the time Corliss finished what he was doing and walked to the far end of his 15 acre hay field. He saw someone being loaded into the ambulance and it soon left.

Cass Road runs just to the west of the Corliss property. Hunters and others commonly park there and access the back end of Corliss' and others property by way of a snowmobile trail, which intersects the road. Corliss had not seen any hunters or parked vehicles that day. He assumed that was how they got to the back of his field.

Corliss didn't think any more of the incident until May 11th of this year when a sheriff's deputy arrived at his home. Corliss was in his front yard working at the time. As he did not have his reading glasses with him, the sheriff read Corliss the summons he was delivering.

A William J. Jasmin from Manchester, NH was suing him for injuries sustained while hunting from a tree-stand on his property. Jasmin claims Corliss had verbally given him and a hunting partner, Randall C. Howe, also from Manchester, use of the property to hunt. Jasmin's claim went further by stating Corliss' permission was contingent upon the two "shooting as many coyotes as possible" and that they could use his "deer stand." According to the summons, Jasmin and Howe were joined by a Warren Kelly, address "unknown."

The suit consists of two counts. The first is a "General Negligence Claim" that Corliss failed to exercise reasonable care specifically by failing to make sure the tree stand was reasonably safe before encouraging its use. The second is "Negligence Misrepresentation" stating Corliss, by saying Jasmin could use the tree stand, represented that the tree stand was reasonably safe.

Corliss was stunned "I never gave getting sued a second thought," he said. He has never spoken to or met the men and was unaware of the "deer" or "tree" stand on his property. As for the stand belonging to him, Corliss said, "I've shot one deer in my lifetime but have not hunted in over 40 years." As for coyotes, "They keep the gophers out of my hay field. I don't have any problem with them."

A lifelong resident of Epsom, Corliss, 65, retired from the NH Department of Transportation in 2008 as a Patrol Foreman after over 38 years with the Department. The 61-acre farm, where he was raised, was purchased by his great-grandfather in 1908. His son Chuck and Chuck's family are the 5th and 6th generations of Corliss' to use the property. The Corliss' hay the field and harvest firewood from the back woodlot.

In a letter to Fish and Game Executive Director Glenn Normandeau, Corliss wrote in part:

After speaking with your office I'm aware of RSA 212:34 that was put in place to protect private landowners like myself from being sued by hunters using private property for their benefit. To defend myself in court against a suit that I have no fault in, I have been advised to hire a lawyer at my cost. As you can imagine, this cost will and could be very substantial if this suit continues. The first court appearance would be an opportune time for you to testify to the judge and Mr. Jasmin's attorney concerning the current laws protecting private property owners from suits such as this. I strongly request the NH Fish and Game Department be present to be a voice of reason for private landowners with un-posted land.

If the State of N.H. Fish and Game Department's laws cannot protect landowners from lawsuits and unjustified lawyer and court fees, I see no reason why my lands, which are enjoyed by hunters of various game, be allowed to remain open in the future. The potential for any private property owner to end up in court (and accrue a substantial financial burden) as you can see from my situation, is a genuine concern. I have not hunted in 40+ years but have never posted my property knowing others may wish to hunt and use the snowmobile trail on my property. If this suit is allowed to continue, I see no reason why I should not immediately post all my land not only for No Hunting but also for No All Terrain Vehicle Use (snowmobiles and 4-wheelers), as this would seem the only way to protect myself from future lawsuits.

The state of NH Fish & Game Department notes on their website "80% of NH forests are privately owned." The State of NH benefits financially from the use of this land for hunting and all terrain recreation etc. But will the State of NH defend those who provide the land?

Corliss and his son Chuck have also met with Normandeau and Senior Assistant Attorney General Peter Roth. They wanted to understand the law better and hoped to get a commitment from Fish and Game to appear in court to provide the judge background on the RSA (212:34) protecting landowners.

It was a disappointment and a bit nerve racking for them to find out that essentially, in the eyes of the state, they are on their own. The Corliss' came away

from the meeting with the sense that Normandeau wanted to help but had been directed by the Attorney General (AG) to not get involved. According to the Corliss', Roth said the AG's office did not have the time, nor could their workload support defending the RSA. When the Corliss' asked how they were supposed to protect themselves against such people, they understood Roth's response to be "post your land."

They also asked about the likelihood of the judge throwing out the case. Roth told them the philosophy of most judges today is to allow everyone their day in court, even if it appears to be a bogus claim. The wide disparity in the facts as stated by each party makes it even less likely it would be thrown out.

In a separate meeting I had with the Fish and Game Director concerning the case, Normandeau said, "We are extremely concerned with the potential consequences to open land and recreational opportunities," but said the Department can't act as a judge. "We will pay close attention to what happens in court, when the facts are understood through the court process we will be in a better position to chart a course of action."

Corliss' attorney has told him he will be lucky if the case is in court by next April or May. His insurance company has an attorney representing the company on the case. Though it will not be his choice, Corliss does not want the insurance company to settle. It all leaves him spending time and money and causing him and his family a great deal of worry. Yes, anyone can be sued for any reason. However, when a public good is being provided, Corliss believes there must be consequences for the suing party and their attorney when a claim is found phony. If not, he wonders why any landowner would continue to open themselves up to what he is going through.

Corliss' thoughts are being echoed by local landowners. The Yeaton family owns and operates Yeaton Dairy Farm in Epsom and owns 300 acres in town. The Yeatons are watching the case closely. "If this case goes through and Corliss losses, a lot of land is going to be closed to hunting and other recreational uses, including snowmobiling," said Stewart Yeaton.

Tentative dates for depositions have been set for July 28, 29, Aug. 1, 2. Farm Bureau will continue to closely follow the case.

Liability of Landowners

212:34 Duty of Care. –

I. An owner, lessee, or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter sports, snowmobiling, or OHRVs as defined in RSA 215-A, hiking, sightseeing, or removal of fuel wood, or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in paragraph III hereof.

II. An owner, lessee or occupant of premises who gives permission to another to hunt, fish, trap, camp, ride horseback, ride bicycles, hike, use snowmobiles as defined in RSA 215-C, use OHRVs as defined in RSA 215-A, sightsee upon, or remove fuel wood from, such premises, or use said premises for water sports, or winter sports does not thereby:

- (a) Extend any assurance that the premises are safe for such purpose, or
- (b) Constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed, or
- (c) Assume responsibility for or incur liability for an injury to person or property caused by any act of such person to whom permission has been granted except as provided in paragraph III hereof.

III. This section does not limit the liability which otherwise exists:

- (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or
- (b) For injury suffered in any case where permission to hunt, fish, trap, camp, ride horseback, ride bicycles, hike, use for water sports, winter sports, use of snowmobiles as defined in RSA 215-C, or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuel wood was granted for a consideration other than the consideration, if any, paid to said landowner by the state; or
- (c) The injury caused by acts of persons to whom permission to hunt, fish, trap, camp, ride horseback, ride bicycles, hike, use for water sports, winter sports, use of snowmobiles as defined in RSA 215-C, or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuel wood was granted, to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

IV. Except as provided in paragraph III, a person using the premises as provided in paragraph I or given permission as provided in paragraph II, shall not maintain an action against the owner, occupant, or lessee of the premises for any injury which resulted while on the premises.

Source. 1961, 201:1. 1969, 77:1-3. 1973, 560:4. 1977, 208:1. 1981, 146:5, VI, eff. Jan. 1, 1982; 538:7, 13, eff. June 30, 1981. 2003, 29:1, eff. May 2, 2003. 2005, 172:2, eff. Jan. 1, 2006; 210:11, eff. July 1, 2006. 2010, 131:1, eff. Jan. 1, 2011.