

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL T. WILBURN,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 95-2806
v.	:	
	:	
MARITRANS G.P., INC.,	:	
	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J.

JANUARY 3, 2000

On November 12, 1999, a jury awarded Plaintiff Michael T. Wilburn damages of \$400,000.00 for pain and suffering as a result of injuries he sustained when he was swept off the deck of the tug, the Enterprise, by a huge wave during a storm.¹ Now pending before this Court is Plaintiff's Motion to Amend Judgment. Plaintiff requests that prejudgment interest be awarded at the rate established by Pennsylvania Rule of Civil Procedure 238(a)(3) or, in the alternative, at the rate established by 28 U.S.C. § 1961. Plaintiff also requests that taxable costs be included in the judgment. For the following reasons, Plaintiff's Motion will be denied.

STANDARD OF REVIEW

"The purpose of a motion to alter or amend a judgment

¹ Wilburn filed this action against his employer, Maritrans, GP, Inc. ("Maritrans"), to recover damages for negligence pursuant to the Jones Act, 46 U.S.C. § 688, and for the unseaworthiness of the Enterprise under general maritime law.

under FED. R. CIV. P. 59(e) is to 'correct manifest errors of law or fact or to present newly discovered evidence.' Motions under Rule 59(e) should be granted sparingly because of the interests in finality and conservation of scarce judicial resources." Ruscavage v. Zuratt, 831 F. Supp. 417, 418 (E.D. Pa. 1993) (citation omitted).

"Under Rule 59(e), a party must rely on one of three grounds: 1) the availability of new evidence not previously available, 2) an intervening change in controlling law, or 3) the need to correct a clear error of law or to prevent manifest injustice." Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). "[A]ny litigant considering bringing a motion to reconsider based upon [the third] ground should evaluate whether what may seem to be a clear error of law is in fact simply a point of disagreement between the Court and the litigant.'" Dodge v. Susquehanna University, 796 F. Supp. 829, 830 (M.D. Pa. 1992) (quoting Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)).

DISCUSSION

In admiralty cases, prejudgment interest is awarded unless there are exceptional circumstances that would make such an award inequitable.² In re Bankers Trust Co., 658 F.2d 103,

² The purpose of awarding prejudgment interest "is to reimburse the claimant for the loss of use of its investment or its funds from the time of such loss until judgment is entered."

108 (3d Cir. 1981), cert. denied, 456 U.S. 961 (1982). The Third Circuit Court of Appeals has recognized the following three situations in which a court may refuse to grant a party prejudgment interest: (1) when a party has unreasonably delayed the prosecution of its claim, (2) when a party has made a bad faith estimate of its damages that precludes settlement, or (3) when a party has not sustained any actual damages. Id. If any of the above circumstances are present, the court has the discretion to deny prejudgment interest.³ Id.

Here, Maritrans argues that Plaintiff is not entitled to prejudgment interest because he has unreasonably delayed the prosecution of his claim by continually failing to comply with numerous discovery deadlines and court orders. See, e.g., Metal Processing, Inc. v. Humm, 56 F. Supp.2d 455, 471 (D.N.J. 1999). As demonstrated below, Maritrans' position is well-founded.

The record shows that this Court originally scheduled discovery to end in this case by October 16, 1995. Def.'s Resp. Ex. 1. After Plaintiff failed to respond to discovery requests made by Maritrans, this Court issued a second order, on September 18, 1995, extending the discovery deadline until January 16,

In re Bankers Trust Co., 658 F.2d 103, 108 (3d Cir. 1981).

³ "Discretion is limited to cases where exceptional circumstances exist because prejudgment interest in admiralty is compensatory, not punitive, in nature." Bankers Trust, 658 F.2d at 108.

1996. Def.'s Resp. Ex. 2. Even with this extension, Maritrans continued to have difficulty obtaining discovery from Plaintiff. Subsequently, a motion to compel discovery filed by Maritrans was granted by this Court on November 21, 1995, which caused Plaintiff to submit responses to the outstanding discovery requests. Def.'s Resp. Ex. 3. However, Plaintiff still had not responded to expert discovery requests. As a result, Maritrans filed a motion in limine, requesting that Plaintiff be precluded from offering, at the trial of this matter, any expert opinions or other expert evidence not provided by way of discovery. In response to Maritrans' motion, this Court, by order dated February 5, 1996, again extended discovery until May 1, 1996. Def.'s Resp. Ex. 4. Finally, the case was tried in July of 1996.

After a jury rendered a \$2,000,000.00 verdict in favor of Plaintiff, this Court, on December 6, 1996, granted Defendant's Motion for Judgment as a Matter of Law with respect to liability and damages under the Jones Act and under the general maritime law of unseaworthiness. In addition, this Court found that Maritrans was entitled to judgment as a matter of law on Plaintiff's claim of loss of future earnings capacity. Lastly, this Court granted Defendant's alternative motion for a new trial as to liability and damages. On March 10, 1998, the Third Circuit Court of Appeals reversed the judgment as a matter of law and affirmed this Court's order granting a new trial as to

liability and damages.⁴ Wilburn v. Maritrans GP, Inc., 139 F.3d 350 (3d Cir. 1998).

Following the Third Circuit ruling, Plaintiff took no steps toward advancing his case, even after this Court, on July 31, 1998, listed the matter for a November 16, 1998 trial. Def.'s Resp. Ex. 5. Several weeks before the November trial date, Plaintiff, without requesting leave to reopen discovery, submitted, for the first time, new expert reports.⁵ As a result, this Court was compelled to again postpone a trial date in order to allow Maritrans adequate opportunity to address Plaintiff's newly submitted discovery. The second trial eventually proceeded on November 8, 1999. According to Maritrans, "[b]ut for plaintiff's failure to timely prosecute the case following the Third Circuit's March, 1998 ruling, this matter would have been tried almost one year earlier." Def.'s Resp. at 3.

At the close of the second trial of this matter, Plaintiff submitted a proposed jury instruction regarding the award of prejudgment interest in this case. While Plaintiff argued that the issue of whether he should be awarded prejudgment interest was a jury matter, Plaintiff's initial proffer of case

⁴ Maritrans later conceded the issue of liability, leaving damages as the only issue to be litigated in a second trial.

⁵ Plaintiff submitted belated expert reports from new experts despite court orders precluding further discovery. Def.'s Resp. Exs. 6 and 7.

law failed to adequately support this proposition. Moreover, at the time the issue was presented, this Court's computer network system was inaccessible, handicapping the ability to further research the issue. Thus, this Court decided to withhold submitting the issue to the jury.

After this Court charged the jury on the applicable law, additional case citations provided to this Court by Plaintiff's counsel revealed that, in maritime cases, the grant or denial of prejudgment interest is an issue for the jury. See, e.g., Carey v. Bahama Cruise Lines, 864 F.2d 201, 208 n.6 (1st Cir. 1988); Petersen v. Chesapeake & Ohio Ry. Co., 784 F.2d 732, 740 (6th Cir. 1986). Rather than overburden the jury's deliberations at this point in time, the parties agreed to submit a revised verdict form to the jury panel which allowed the jury to divide any damages awarded to Plaintiff into past and future amounts, leaving a workable figure for this Court to, if necessary, award prejudgment interest.

On November 12, 1999, the jury awarded Plaintiff damages of \$250,000.00 for loss of past pain and suffering, and \$150,000.00 for loss of future pain and suffering, but gave no award for loss of past or future wages. Because prejudgment interest may not be awarded with respect to future damages, the amount of prejudgment interest in this case would be based on the \$250,000.00 for past pain and suffering. Couch v. Cro-Marine

Transport, Inc., 44 F.3d 319, 328 (5th Cir 1995) (recognizing that prejudgment interest may not be awarded with respect to future damages). However, as shown above, there are exceptional circumstances here in the form of unreasonable delays in bringing this case to trial which are directly attributable to Plaintiff. Indeed, Plaintiff's delay in filing suit as well as Plaintiff's conduct during the discovery process provide this Court with ample justification for denying Plaintiff prejudgment interest in this case. See Jones v. Spentonbush-Red Star Co., 155 F.3d 587, 593-94 (2d Cir. 1998).

Finally, with respect to Plaintiff's motion for costs, such a request must first be filed with the Clerk of Court. Buchanan v. Kropp, No. CIV. A. 91-3134, 1994 WL 34174, *5 (E.D. Pa. Feb. 8, 1994). Accordingly, this Court will deny Plaintiff's application for costs without prejudice to it being filed with the Clerk of Court.

Based on the above, this Court will deny Plaintiff's Motion to Amend Judgment. An order will follow.

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MARITRANS G.P., INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 3rd day of January, 2000, upon consideration of Plaintiff's Motion to Amend Judgment, and all responses thereto, it is hereby ORDERED that Plaintiff's Motion is DENIED. It is further ORDERED that Plaintiff may refile his application for costs, requested in the aforesaid motion, with the Clerk of Court.

BY THE COURT:

ROBERT F. KELLY,

J.