

served in Pennsylvania,³ has not responded to Masch's complaint or any orders of the court. Default was entered against the defendant,⁴ by order of March 7, 1997. A hearing to determine damages was held on June 24, 1997. The court's findings follow; judgment will be entered accordingly in favor of the plaintiff for \$325,050.07.

I. BACKGROUND

On March 27, 1996, Ms. Masch, a sixty-nine year old woman, was crossing an intersection, in Northeast Philadelphia. The traffic signal was green in her favor. As she crossed the street, Chouvalov, suddenly and without warning, drove through the traffic signal against him and struck Masch. Masch was rushed to Frankford Hospital for emergency medical care as a multiple trauma patient.

Ms. Masch suffered a fracture of the right mid-tibia, a severely comminuted unstable left knee injury, right clavicle, and right pubic rami fractures. Surgery was required to place a rod in her right leg. Following emergency stabilization of her

(...continued)
omissions giving rise to the claim occurred. . ."

³ Masch filed an affidavit of Scott Segal, Seagull Delivery Service, on March 13, 1997.

⁴ Fed. R. Civ. P. 55(a) states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules . . . the clerk shall enter the party's default."

right leg, she underwent repair surgery on her left knee. Post operatively she was treated with a fracture brace.⁵

On discharge from Frankford Hospital, April 12, 1996, Masch was transferred to Medbridge Nursing facility ("Medbridge"), in Huntingdon Valley, Pennsylvania for rehabilitation. At Medbridge, Masch received intense physical therapy on her legs and arms. Ms. Masch was unable to maneuver the lower part of her body and needed constant assistance to accomplish tasks. She was released from Medbridge on June 8, 1996. At the time of her release, Ms. Masch was unable to return to her home in Northeast, Philadelphia and went to Maryland so that she could be cared for by her daughter.⁶

II. ASSESSMENT OF DAMAGES

The Federal Rules of Civil Procedure allow the court clerk to enter default against a defendant who fails to plead or otherwise defend. 28 U.S.C.A Fed.Rules.Civ.P. 55(a), (b)(2). When a plaintiff's claim against the defendant is for a sum certain or for a sum which can by computation be made certain, default judgment is entered against the defendant for that sum. 28 U.S.C.A Fed.Rules.Civ.P.55(b)(1). If there is a default, "the factual allegations of the complaint, except those relating to damages, will be taken as true." Comdyne I, Inc., v. Corbin,

⁵ Information taken from plaintiff's exhibit 2, a letter from Dr. M. M. Meller M.D., Ph.D.

⁶ Facts in this section were taken from the complaint and testimony from the hearing on June 24, 1997.

Jr., 908 F.2d 1142, 1149 (3rd Cir. 1990); citing, 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure, § 2688 at 444 (2d ed. 1983); In re Crazy Eddie Securities Litigation, 948 F.Supp 1154 (E.D.NY 1996). If the claim is not made for a sum certain, the court, in its discretion, may conduct a hearing in connection with the application for judgment by default to determine the amount of damages or to establish truth of any averment by evidence. Fed.R.Civ.P. 55(b)(2); Durant v. Husband, 28 F.3d 12, 14 (3rd Cir. 1994). In the present action, an assessment of damages hearing was held on June 24, 1997.

"A federal court sitting in diversity looks to the state rules governing the measure of damages and the availability of special and punitive damages." Siegel v. Ford Motor Co., 1995 WL 649166 (E.D.Pa. 1995)(Shapiro J.), citing, Browning-Ferris Indus. v. Kelco Disposal Inc., 492 U.S. 257, 278 (1989). In this action, the assessment of damages is governed by Pennsylvania law. The court's determination of a damage award is based on considerations of 'equity, reason, and pragmatism.' Sweetzel, Inc., v. Hawk Hill Cookies, Inc., 1996 WL 355357 (E.D.Pa. 1996)(Shapiro J.). Proof in support of damage claims need not conform to a standard of mathematical exactness but must be reasonably sufficient if there is a fair basis for calculation. Fish v. Gosnell, 463 A.2d 1042 (Pa.Super.Ct. 1983).

A. Medical Expenses

Medical expenses are recoverable under Pennsylvania law. Davis v. U.S., 1995 WL 299014 (E.D.Pa. 1995)(Shapiro J.),

citing, Catalano v. Bujak, 642 A.2d 448, 451 (Pa. 1994). At the hearing, plaintiff submitted affidavits from her insurance company, signed by Joseph M. Benco, Supervisor, Medicare Secondary Payer, at IBC Government Services, Medbridge and Dr. M.M. Meller, M.D. Ph.D.. Plaintiff's total outstanding Medicare bills total \$51,050.07. The court accepts the plaintiff's evidence as credible proof and awards the plaintiff \$51,050.07 in medical expenses.

Plaintiff also offered the testimony of Dr. Meller, an orthopedic surgeon, who examined Ms. Masch subsequent to the accident at the request of her attorney. In his testimony and his affidavit, Dr. Meller opined that plaintiff sustained severe and potentially life threatening injuries from the accident on March 27, 1996. He expects that Ms. Masch will have permanent difficulties. He believes to a reasonable degree of medical certainty that she may require additional treatment including, but not limited to, therapy or surgery. Besides the testimony of Dr. Meller, there is no other evidence of expenses for future medical care.

The injuries suffered by the plaintiff were extensive and intense. Medical attention and rehabilitation, in the future, may well be necessary for maximum future recovery. For these reasons, the court awards the plaintiff \$25,000 for future medical expenses.

B. Pain And Suffering

Under Pennsylvania law it is also appropriate to award damages for pain and suffering. Catalano, 642 A.2d at 451; Fish v. Gosnell, 463 A.2d 1042 (Pa.Super.Ct. 1983). Damages for pain and suffering include mental as well as physical pain. Gosnell, 463 A.2d at 1051. Conscious suffering from physical injuries, as well as anxiety and embarrassment from disfigurement or activity limitations, are all component parts of damages for pain and suffering. Zagari v. Gralka, 399 A.2d 755 (Pa.Super.Ct. 1979). Plaintiff endured great physical pain from the accident on March 27, 1996. Both her legs and her shoulder were damaged. She spent two weeks in the trauma care unit of Frankford Hospital, where it was necessary to perform many medical procedures, including corrective surgery on several occasions. After leaving the hospital, plaintiff went to a nursing home for almost two months to receive physical therapy. The records from Medbridge indicate that plaintiff's rehabilitation was prolonged.

Plaintiff also testified that her physical injuries have caused her mental anguish. Fear of permanent injury has resulted in great anxiety about her future and need for medical care. Records for Medbridge show that plaintiff, while there, was not self sufficient in the area of personal hygiene. Even after her release from Medbridge, Ms. Masch was still not completely independent and had to stay with her daughter for nearly a year for care. Plaintiff testified that her past loss of independence and fear for the future causes her great anxiety and is her greatest pain. This has caused Ms. Masch humiliation

and embarrassment. Finding all this evidence credible, the court awards \$200,000 in damages for both physical and mental pain and suffering.

C. Loss of Enjoyment of Life

Finally, as a result of the accident, Ms. Masch's life has been greatly altered. As she testified at the hearing, before this accident, she was a self-sufficient person. She owned her own home for which she was responsible. She did her own cooking and shopping. Ms. Masch testified that she may never be able to return to her life as it was before the accident.

The court awards \$50,000 as an appropriate amount for plaintiff's loss of enjoyment of life.

The court will enter judgment in plaintiff's favor as follows:

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|------------------------------|--------------|
| 1. Past Medical Expenses | |
| \$51,050.07 | |
| 2. Future Medical Expenses | \$25,000 |
| 3. Pain and Suffering | \$200,000 |
| 4. Loss of Enjoyment of Life | \$50,000 |
| | ----- |
| Total: | \$325,050.07 |

