

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

STEPHEN FEDERICO : CIVIL ACTION  
V. : NO. 96-6231  
GULF & ORIENT STEAMSHIP LINE :

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Stephen Federico, a longshoreman, was employed by Penn Terminals in Eddystone, Pennsylvania. On July 4, 1996 he was working on the M/V Xiang Jiang, a vessel which had been chartered by defendant Gulf & Orient Steamship Line. He was injured as a result of a fall on the ship.

Plaintiff filed a complaint on September 12, 1996 alleging negligence by the defendant and seeking damages for his injuries. Plaintiff filed an amended complaint on August 28, 1997 to which no answer was filed by the defendant.

Trial was scheduled for August 27, 1998. Defendant did not appear.<sup>1</sup> The case was passed until September 3, 1998. Defendant again did not appear and default was entered. The trial proceeded to assess the damages suffered by the plaintiff as a result of the accident.

FINDINGS OF FACT

Plaintiff felt a snap and a pop in his right knee when he fell, just the same as he had experienced when he had an anterior cruciate ligament (“ACL”) tear in his left knee when he was in high school. Plaintiff went to the emergency room of the Crozer Chester Medical Center

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<sup>1</sup> All other claims and cross-claims against and by other defendants have been resolved.

immediately. His right knee was x-rayed and he was diagnosed as having a knee sprain.

On July 8, 1996 plaintiff went to Park Care Industrial Health which referred him to a specialist, Dr. Jeffrey Malumed, an orthopedic surgeon. Plaintiff visited Dr. Malumed on that same day. Dr. Malumed diagnosed a probable partial ACL tear, a possible complete ACL tear and a possible meniscal tear. He ordered an MRI examination.

Plaintiff returned to Dr. Malumed on July 11, 1996. The MRI showed a complete tear of the ACL as well as a torn medial meniscal cartilage. By this time plaintiff had also had multiple “giving away” episodes. He was scheduled for arthroscopic surgery involving an ACL reconstruction in mid-August.

On August 13, 1996, Dr. Malumed performed an ACL reconstruction, a partial right knee medial meniscectomy and a medial femoral condyle chondroplasty. Plaintiff returned to Dr. Malumed on August 15, 1996, September 5, 1996, September 19, 1996 and October 16, 1996. On the last visit he continued to complain about pain under his knee cap and now, pain in his shoulder, which occurred as a result of the initial fall or a later fall while he was on crutches.

Plaintiff was then seen by Dr. Lewis S. Sharps on October 10, 1996 and November 7, 1996. Dr. Sharps ordered a new MRI which showed a tear of the medial and lateral menisci and attrition and tearing of his ACL graft. He recommended additional arthroscopic surgery.

On November 13, 1996 plaintiff returned to Dr. Malumed complaining of pain and tenderness in his right knee and hypersensitivity to the point that bed sheets or pants touching his knee caused him considerable discomfort. Dr. Malumed diagnosed reflex sympathetic dystrophy (“RSD”) and recommended a paravertebral sympathetic block. He also ordered an MRI of the plaintiff’s shoulder which showed the possibility of a small partial thickness rotator cuff tear, but

Dr. Malumed concluded there was no need for an operation. Plaintiff returned to Dr. Malumed on November 25, 1996 and December 9, 1996 after he had two of the four epidural blocks and his RSD symptoms were almost completely dissipated.

On April 24, 1997 plaintiff was seen again by Dr. Sharps who conducted arthroscopic surgery on June 3, 1997. The arthroscopic surgery disclosed a medial meniscal tear and a partial meniscectomy was performed. A notchplasty was also performed to repair a significant impingement of the ACL graft. Plaintiff was seen post-operatively by Dr. Sharps on June 5, 1997, July 1, 1997, July 29, 1997, August 19, 1997, September 9, 1997, October 7, 1997 and October 21, 1997. He continued to complain of locking of his right knee and hypersensitivity.

On February 6, 1998, Dr. Sharps opined that plaintiff needed a long term outpatient rehabilitation program in a fitness center, but that no further surgical intervention on his knee should be conducted. Dr. Sharps also stated that plaintiff will require arthroscopic acromioplasty of his right shoulder at some point in the future. He concluded that plaintiff has a combined whole person impairment of four percent and a combined lower extremity impairment of ten percent (as of one year and seven months after the accident).

Plaintiff has had substantial right knee pain and swelling with multiple episodes of his knee "giving away." He has had his knee aspirated numerous times, used crutches, participated in physical therapy, undergone two operations, used pain pills, received lumbar sympathetic blocks, felt the locking of his right knee and weakness of his right leg and had limited work duty. Plaintiff complains that he still cannot bend or straighten his right leg all the way and still has some residual pain from the RSD. He can now walk for exercise but with some pain. He can no longer play golf, work-out, play basketball or run.

Plaintiff's total medical expenses thus far have been \$73,642.00. Anticipated future medical expenses for the operation to plaintiff's right shoulder involve a surgical fee of \$2,200.00, an outpatient surgical center and anesthesiologist fee of \$2,500.00 and physical therapy of \$1,440.00 for a total of \$6,140.00.

Plaintiff was disabled from July 4, 1996 through December 21, 1997. His average weekly wage was \$784.00. Multiplying this wage by the 73 weeks of disability yields a total of \$57,280.00. From this total past wage loss of \$57,280.00 I have deducted 20% as an allowance for income taxes yielding a net loss of \$45,824.00.

Plaintiff returned to light duty work at Penn Terminals for a time, but he eventually had to quit on June 4, 1998 because he was in too much pain and could no longer do his job as a longshoreman. He has not yet been able to find replacement employment. Plaintiff is having a difficult time finding new employment that he is able to do physically because of his existing knee and shoulder problems. I estimate that it will take him 24 weeks as a reasonable time period to obtain employment which will result in an additional loss of \$15,065.00.

Plaintiff's total special damages are, therefore, \$140,671.00.

Plaintiff was born on November 22, 1967 and is now 30 years of age.

I find that defendant's negligence was a substantial factor in bringing about plaintiff's harm, including all of the special and general damages.

I find that plaintiff has and will suffer general damages, including pain, suffering, inconvenience and loss of life's pleasures in the amount of \$400,000.00.

### CONCLUSIONS OF LAW

1. By default, I conclude that defendant was negligent and that defendant's negligence was a substantial factor in causing the accident of July 4, 1996.
2. Defendant's negligence was a substantial factor in bringing about plaintiff's harm.
3. The court having found that plaintiff has suffered special damages in the amount of \$140,671.00 and general damages in the amount of \$400,000.00, judgment will be entered in the amount of \$540,671.00.

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ORDER

AND NOW this        day of September, 1998, after a non-jury trial before the undersigned, IT IS HEREBY ORDERED that judgment is entered in favor of the plaintiff, Stephen Federico, and against the defendant, Gulf & Orient Steamship Line, in the amount of \$540,671.00.

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William H. Yohn, Jr., Judge