



NEW JERSEY JURY VERDICT REVIEW & ANALYSIS®

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SUMMARIES WITH TRIAL ANALYSIS

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*A monthly review of
New Jersey State and
Federal Civil Jury Verdicts
with professional analysis
and commentary.*

*The New Jersey cases
summarized in detail herein
are obtained from an on-
going monthly survey of the
State and Federal Courts in
the State of New Jersey.*

\$4,364,566 VERDICT – Jones Act and General Maritime Law – Defendant's employees disregard instructions from plaintiff chief officer to refrain from continuing to free-up line – "Chain stopper" breaks and a portion propels into plaintiff's non-dominant arm causing severe elbow injuries – Extensive permanent pain and loss of use 2

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\$4,364,566 VERDICT – JONES ACT AND GENERAL MARITIME LAW – DEFENDANT’S EMPLOYEES DISREGARD INSTRUCTIONS FROM PLAINTIFF CHIEF OFFICER TO REFRAIN FROM CONTINUING TO FREE-UP LINE – “CHAIN STOPPER” BREAKS AND A PORTION PROPELS INTO PLAINTIFF’S NON-DOMINANT ARM CAUSING SEVERE ELBOW INJURIES – EXTENSIVE PERMANENT PAIN AND LOSS OF USE – INABILITY TO CONTINUE CAREER

U.S. District (Newark)

This Jones Act and General Maritime Law case involved a plaintiff who was Chief Officer aboard a container ship that was docked at the Port of Salalah, Oman. The vessel had been at the port for about one day loading and discharging cargo containers during which the vessel was subject to some surging along the face of the dock because of swells from the Indian Ocean. The plaintiff maintained that the Boson and two able bodied seaman, who were under his supervision, disregarded his instructions to avoid attempting to free-up the line as he left for a brief period to provide warnings to workers on the dock and that the workers attempted to use a device known as a “chain stopper.” The plaintiff contended that as he returned, the chain stopper broke and he was struck in the arm by a propelling piece of metal, suffering a fracture to the non-dominant arm. The plaintiff contended that he will permanently experience extensive pain and suffering and will permanently be unable to continue the maritime career which he had loved his entire adult life.

The plaintiff contended that after cargo operations were completed, he and the three crew members he was supervising and whose job it was to let go mooring lines so the ship could leave the dock noticed that one of the forward spring lines became buried under other sections of the line on the vessel’s port bow tension winch, resulting in an inability to slack the line so that it could be removed from the bollard, or post to which the line was attached on the dock. The plaintiff maintained that when it became apparent that the line could not be unburied, he gave orders to the crew to stand-by while he went to the side of the vessel so he could call down to the line handlers and warn them to keep their hands free of the mooring lines to avoid injury. The plaintiff alleged that instead of standing by, the crew members attempted to free the buried mooring line by use of a shackle and chain known as a “chain stopper” in an attempt to free the line. The plaintiff contended that while the Boson operated the hydraulic winch, the chain stopper broke and a piece of metal from the

chain struck plaintiff in the left forearm causing significant fractures of the ulna and elbow as the plaintiff was returning to the area.

The defendant denied that the plaintiff had effectively communicated directions to refrain from attempting to free up the line as he went to the side of the boat to warn the workers on the dock. The defendant presented the videotaped testimony of the Boson who denied that such an order had been given. The plaintiff countered, through the presentation of one of the other two members of the crew with whom he was working, who testified that the plaintiff had given such directions and that the Boson disregarded them. The plaintiff further argued that he had no prior difficulties communicating orders to crewmen during the voyage.

The plaintiff’s maritime expert contended the defendant was negligent as a result of the actions of the Boson and crew members in failing to follow orders given by the Chief Mate to stand-by and that the Boson improperly operated the winch. The expert also said that the chain stopper should not have broken and therefore, constituted an unseaworthy condition.

The plaintiff maintained that a piece of metal from the chain struck him in the left forearm, causing significant fractures of the ulna and elbow. The plaintiff was removed from the vessel and received initial medical treatment in Oman before being repatriated to Portland, Maine where plaintiff resided. He was initially treated conservatively with a brace, but he was left with a non-union of the ulna requiring open reduction and internal fixation with plate and screws. Although plaintiff complained to the treating orthopedist about elbow pain, no diagnostic studies or treatment were rendered for the elbow. After removal of the hardware, the plaintiff came under the care of another orthopedist in Portland, Maine who diagnosed fractures of the elbow that the physician believed were caused at the time of the accident aboard the ship. Since about 16 months had elapsed, the physician determined that the best treatment was to perform a radial head excision and implant. This procedure was performed, but did not

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result in significant increase in range of motion or decrease in pain and plaintiff was ultimately referred to a specialist at Massachusetts General Hospital in Boston. The physician determined that the implant was not relieving the problems and removed the radial head implant. The plaintiff contended that subsequently, due to continued pain, a revision radial head resection surgery was performed at which further radial head excision was performed and an anconeus muscle flap was inserted between the ulna and the radius in an attempt to reduce pain. An ulna nerve decompression was done at the same time. The plaintiff contended that he will permanently suffer a loss of strength and range of motion in his non-dominant arm and all parties agreed that plaintiff is unable to return to work as a merchant seaman.

The plaintiff's proofs also reflected that because of the severe nature of the arthritis, which is subject to progressing, he would be a candidate for elbow replacement surgery. The plaintiff maintained, however, that medical science has not sufficiently progressed to render this surgery available in the foreseeable future and the plaintiff maintained that the jury should consider that the plaintiff's pain and limitations may well continue to heighten.

The plaintiff related that he had graduated from the Maine Maritime Academy and had worked in this field his entire adult life, ultimately earning a Captain's license. The plaintiff was serving as Chief Officer on this vessel and related that Captain assignments are very difficult to obtain. The plaintiff maintained that he greatly loved the work, which typically entailed working 70-80 days straight followed by 70-80 days during which he was off and contended that the inability to continue in the field which he so greatly loved should be considered on the loss of enjoyment of life component of the issue of pain and suffering.

The plaintiff has returned to college to become a teacher. The plaintiff's vocational expert testified that plaintiff would be limited to sedentary and light duty jobs. The plaintiff's past and future lost earnings to work life expectancy were projected as approximate \$1,500,000.

The defendant, through its vocational expert, contended plaintiff could find work in the Portland, Maine area in managerial capacities earning mitigation income that would render any future income claims negligible. The plaintiff countered that the defense expert's conclusions were theoretical in nature and that he could not point to such jobs that were available in the plaintiff's geographic location.

The plaintiff's vocational expert had based his projections on a work life expectancy of 64. The defendant contended that the jury should consider that the plaintiff's union had conducted a relatively recent study and found that the average retirement age is 60.

The jury found for the plaintiff on the Jones Act cause of action and also found that the ship was not unseaworthy under General Maritime Law. The jury, assessed 100% liability against the defendant and awarded, \$4,364,566 including, \$1,258,000 for past and future lost earnings, specifically determining that he would have worked until age 60, \$1,000,000 for past pain and suffering and \$2,000,000 for pain and suffering and the relatively small incidental expenses. The parties agreed on appropriate discounting, rendering an actual judgment of \$3,977,173. The defendant remains free to file post verdict motions.

REFERENCE

Plaintiff's maritime expert: Captain Martin Macisso from Scarborough, ME. **Plaintiff's orthopedic expert:** Salvatore Lenzo, M.D. from New York, NY. **Plaintiff's vocational expert:** David Stein, Ph.D. from Springfield, NJ.

Plaintiff's economist expert: Michael Soudry from Roseland, NJ. Plaintiff's demonstrative evidence prepared by The Evidence Store in Union, NJ.

Ramsdell vs. Maersk Line Limited. Civil action no. 05 CV 2129; Judge Dickinson R. Debevoise, 4-08.

Attorneys for plaintiff: John P. James & Bernard D. Friedman of Friedman, James & Buchsbaum LLP in New York, NY.

COMMENTARY:

The defendant had contended that the plaintiff bore a very significant degree of responsibility for the incident and presented the videotaped testimony of the Boson who maintained that the plaintiff had not clearly directed the workers to refrain from engaging in the attempt to free up the line until he returned. The jury assessed 100% liability against the defense and the plaintiff effectively countered this position by presenting one of the other able bodied seamen who testified that he heard the order, relayed it to the other two workers, and was ignored. Additionally, the plaintiff had indicated that

he had yet to formulate a plan on freeing up the line and may well have used the chain stop in question. In this regard, the plaintiff emphasized that he would have been able to take safety precautions and that argued that even if the part broke, it was doubtful that he would have been injured. It should be noted that the court charged the jury similarly to the instructions in FELA cases and charged them that the plaintiff could prevail if the defendant's negligence played any part, even the slightest, in producing the injury. Regarding damages, the plaintiff, who underwent a radial head excision and implant that did not relieve the pain and restriction and two subsequent surgeries involving the removal of the implant, the revision of the radial head resection, made effective use of demonstrative evidence in the form of display boards that were created from medical illustrations and X-rays which enabled jury to better appreciate the severe nature of the elbow compromise. Additionally, the plaintiff stressed that he had graduated from a maritime academy and spent his entire adult life working in a field that he greatly loved, arguing that his inability to continue this career impacted extensive on his ability to enjoy life.