

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LAWRENCE TEMPLE, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-348 JJF
 :
 THE UNITED STATES OF AMERICA, :
 :
 Defendant. :

Thomas J. Roman, Esquire, and Michael D. Bednash, Esquire,
KIMMEL, CARTER, ROMAN & PELTZ, Bear, Delaware.
Attorneys for Plaintiff.

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UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE,
Wilmington, Delaware.
Attorneys for Defendant.

MEMORANDUM OPINION

January 26, 2005
Wilmington, Delaware

Farnan, District Judge.

The Court by Order dated October 27, 2004 (D.I. 43) found in favor of Plaintiff on the liability issue in this matter. In the October 27 Order, the Court requested that the parties submit the Standard Form 95 filed by Plaintiff with the Postal Service so that the record would reflect the maximum amount of damages that could be awarded to Plaintiff. Plaintiff has filed the SF 95, and the parties agree that Plaintiff's claim was \$750,000. The parties also request that the Court allow the SF 95 to be made part of the record evidence in this case. The Court will grant the request and proceed to decide the damages issue with the understanding that any amount awarded cannot exceed \$750,000. This Memorandum Opinion shall constitute the Court's findings of fact and conclusion of law on damages.

I. DISCUSSION

A. Past Medical Bills

Plaintiff seeks payment of medical bills incurred as of the date of trial in the amount of \$37,861.96 (PX-3). Defendant does not dispute Plaintiff's claim for the requested amount.

B. Future Medical Expenses

Plaintiff contends that as a result of the injuries he sustained in the accident he will require knee replacement surgery. Plaintiff offered the testimony of Robert A. Steele, M.D. that this surgery will cost \$31,695.00. Plaintiff's

evidence of the cost of the surgery was not rebutted. However, Defendant contends that the Court should not award the total cost of the surgery against Defendant, because the need for the surgery is attributable to several pre-existing conditions unrelated to the accident.

The Court concludes that Plaintiff has proved by a preponderance of the evidence that the knee replacement surgery Plaintiff requires results from the accident. In reaching this conclusion, the Court has credited the testimony of the following doctors:

Robert A. Steele, M.D.

The Court finds that although Plaintiff may have required the surgery due to prior surgeries and arthritis, the accident clearly accelerated and made certain the need for the surgery. (Steele Depo., p. 14-15)

Joseph Bernstein, M.D.

Dr. Bernstein testified that he essentially agreed with the opinion of Dr. Steele concerning the need for knee replacement surgery. (Bernstein Depo., p. 10 and 11)

In the Court's view, the medical testimony presented by the parties is that the injuries Plaintiff suffered as a result of the accident aggravated Plaintiff's pre-existing conditions and caused severe new injuries. The Court is persuaded that Plaintiff is correct when he contends that prior to the accident knee replacement surgery was a possibility; however, as a result

of the injuries Plaintiff suffered in the accident, the surgery is a necessity. On this record, the Court finds apportionment of the costs of the surgery is not warranted, and therefore, Plaintiff will be awarded the costs established by Plaintiff's evidence.

C. Future Lost Wages

Plaintiff contends he is entitled to recover future lost wages in the amount of \$343,279.00. Defendant responds that Plaintiff has failed to prove that any future lost wages he seeks were proximately caused by Defendant's negligence.

In his post-trial papers, Plaintiff contends that:

[I]t was clear from the evidence at trial that the Plaintiff lost his job at Jacobs Svervrup [sic] precisely because of the debt incurred as a result of this accident. The debt caused Mr. Temple to lose his security clearance which in turn caused him to lose his job. Following the accident, Mr. Temple was fortunate to obtain a job earning approximately \$61,000 per year....

Simply put, but for the accident, Mr. Temple would still be working at a job paying over \$60,000 a year....

Of course, the Court as the fact finder, will have to determine whether the fact that Mr. Temple lost his job was a foreseeable consequence of the accident or was the result of an intervening cause.

(D.I. 46, p. 2)

Defendant opposes Plaintiff's claim for future lost wages relying on the traditional "but for" test for proximate cause as

explained in DuPhily v. Del. Electric Cooperative, Inc., 662 A.2d 821 (Del. 1995). Specifically, Defendant cites DuPhily for its statement of the proximate cause standard. In DuPhily, the court defined proximate cause as a cause "which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred." Id. at 829.

The Court concludes that Plaintiff has not proven by a preponderance of evidence that wages he may lose in the future will be proximately caused by the negligence of Defendant in causing the accident. There is no dispute that Plaintiff lost his post-accident employment due to the loss of his security clearance which was caused by financial problems related to Plaintiff's personal debt. The Court concludes Plaintiff's loss of his security clearance was not part of a natural and continuous sequence resulting from the accident. The court finds that the debt, which included but was not exclusively Plaintiff's medical bills for Plaintiff's accident injuries, was not a foreseeable consequence of Defendant's negligence.¹

In sum, the Court concludes that the loss of Plaintiff's

¹ The Court understands that if Plaintiff had not lost his security clearance, his employment would not have been terminated. However, the Court agrees with Defendant that Plaintiff has not established by a preponderance of the evidence that Defendant's negligence is a proximate cause of the loss of the security clearance.

employment due to the loss of Plaintiff's security clearance does not meet the "but for" standard for proximate cause, and, therefore, Plaintiff's claim for future lost wages will be denied.

D. Pain and Suffering

Plaintiff seeks compensation for past and future pain and suffering with regard to the injuries he incurred as a result of Defendant's negligence. Defendant agrees that Plaintiff is entitled to compensation for his pain and suffering.

In considering Plaintiff's claim for pain and suffering the Court finds that Plaintiff sustained serious injuries to his left leg as established by the medical testimony offered by Plaintiff and Defendant. Specifically, Plaintiff suffered a serious "open fracture" to his left leg and has undergone several operations to treat his injuries.

The Court further finds that Plaintiff will require knee replacement surgery and will undergo a rigorous period of rehabilitation.

Finally, the Court has also considered and weighed Plaintiff's testimony regarding the effect his injuries have had and will have on his daily life activities.

After considering all the evidence relevant to Plaintiff's pain and suffering claim, the Court concludes that \$225,000 is reasonable compensation for Plaintiff's pain and suffering.

II. CONCLUSION

The Court concludes that Plaintiff is entitled to a total award of damages in the amount of \$294,556.96. A Final Judgment order will be entered.

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 Defendant. :

FINAL JUDGMENT ORDER

At Wilmington this 26th day of January 2005, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1) Judgment is entered in favor of Plaintiff and against Defendant as to Plaintiff's claim pursuant to 28 U.S.C. § 1346(b).

2) Judgment is entered in favor of Plaintiff and against Defendant for Damages as follows:

a. Past medical bills in the amount of thirty-seven thousand eight hundred sixty-one dollars and ninety-six cents (\$37,861.96);

b. Future medical expenses in the amount of thirty-one thousand six hundred ninety-five dollars and no cents (\$31,695.00); and

c. Pain and suffering in the amount of two hundred twenty-five thousand dollars and no cents (\$225,000.00).

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendant and against Plaintiff on Plaintiff's claim for future lost wages.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Deborah L. Krett
(By) Deputy Clerk