



SHIP PILOT SUES PILOT ASSOCIATION FOR PERSONAL INJURY

The Court offsets award of past loss wages by amount of disability payments received by pilot.

In *Warwick G. Cahill v. Colin Clement, et al* 2007 AMC 2384 (N.D. Fla. 2007), Warwick G. Cahill, a Tampa Bay pilot, was injured when attempting to disembark from the tug *Teresa*. The *Teresa* was in the notch pushing a barge on an outbound trip from Tampa Bay. Cahill had been a Tampa Bay pilot since 1980.

As the *Teresa/Acadia* unit passed under the Sunshine Skyway Bridge, the pilot boat *Desoto* began its approach to disembark Cahill off the port quarter of the *Teresa*. The tug's bulwark in that area is painted yellow to indicate the pilot disembarkation area. There is a removable steel rod or stanchion mounted in the bulwark that acts as a handle for disembarking pilots. The pilot boat operator brought the vessel *Desoto* in at a forty-five degree angle. Unfortunately, plaintiff Cahill was standing up on the bulwark and held onto the steel rod with his right hand, despite the unorthodox approach of the *Desoto*. When he realized the *Desoto* was coming in at a forty-five degree angle, instead of parallel, and at too great a speed, he attempted to move out of the way but was too late. The *Desoto's* starboard bow rode up onto the bulwark of the *Teresa*, striking the steel rod the plaintiff was using as a hand hold. The rod struck him in the face and knocked him off the bulwark onto the deck. As a result, Cahill suffered a fracture of the left interior orbital rim, contusions to his face, a neck sprain, low back sprain, and broken and fractured teeth.

Cahill brought suit against the tug's owner, Penn ATB, Inc., the Tampa Pilots, LLC, as well as Colin Clement, the operator of the pilot boat. Cahill settled his claims with the tug owner prior to trial.

Due to the injuries, Cahill was unable to work from December 28, 2003 through March 10, 2004. The Court found that he sustained the following damages as a result of the incident:

Medical and dental expenses not covered by health insurance	\$11,222.19
Future dental expenses	\$12,500.00
Loss of earnings (minus disability payments received)	



ADMIRALTY AND
MARITIME MATTERS

NOVEMBER 2007

Setoff: \$55,412.16 - \$12,677.33)	\$42,734.83
Pain and suffering	<u>\$25,000.00</u>
Subtotal:	\$91,457.02

While the Court found that the operator of the *Desoto* was negligent in approaching at an excessive angle and speed, it also found that the plaintiff, pilot Cahill, was negligent. The Court reasoned he had worked as a pilot for more than twenty years and had disembarked and embarked from numerous vessels countless times. As an experienced pilot, he knew or should have known that the maneuver that brings a pilot boat alongside a ship “fraught with hidden dangers,” including hydrodynamic effects and suction which can cause the pilot boat to come in faster or slower than anticipated by the pilot boat operator. The Court found that the plaintiff’s decision to stand on the bulwark of the *Teresa* for approximately one minute while waiting for the *Desoto* to approach, rather than waiting on the deck, was unreasonable and negligent given the risks associated with the disembarkation maneuver. The Court found Cahill fifty percent responsible for the action and reduced his award by that percentage, yielding a total damage award of \$45,728.51.

With regard to lost earnings, the pilot association sought an offset, or reduction, of the lost earning award by the amount of disability benefits the pilot had received. Generally, the “collateral source rule” prohibits a tortfeasor from offsetting lost wages suffered by an injured plaintiff by compensation received from an independent source. However, the courts have made an exception for disability payments received in certain circumstances. Citing prior precedent, the Court found that the collateral source rule will not apply to situations where the disability pay was intended to indemnify the employer against future legal liability, as opposed to a fringe benefit or deferred compensation package for the employee. Simply put, if the disability payments are intended to be an offset against a future lost wage claim brought against the employer in the future, the collateral source may not apply.

The Court evaluated the following five factors to distinguish between fringe benefits, and benefits intended to respond to legal liability:

- (1) whether the employee makes any contribution to the funding of the disability payment;
- (2) whether the benefit plan arises as the result of a collective bargaining



agreement; (3) whether the plan and payments thereunder cover both work-related and non work-related injuries; (4) whether payments from the plan are contingent upon length of service of the employee; and (5) whether the plan contains any specific language contemplating a set-off of benefits received under the plan against a judgment received in a tort action.

Cahill v. Clement at 2390 (citing *Allen v. Exxon Shipping Co.*, 639 F. Supp. 1545, 1548 (D. Me. 1986)).

These factors are evaluated in a balancing test. In *Cahill*, the Court found the disability claim was not the result of a collective bargaining agreement, and therefore that factor weight in favor of a setoff. The disability plan covered both work-related and non work-related injuries and therefore that factor weighed against the setoff. The disability benefits were not contingent upon the amount of service of the pilot and therefore that factor weighed in favor of a setoff. Finally, the disability plan did not contain specific language regarding a setoff against future legal liability and that factor weighed against the setoff. Finding the balance of factors weighed in favor of a setoff, the Court concluded that the dominant purpose of the disability plan was to provide for the pilot association's indemnification against future legal liability and offset the plaintiff's award of loss earnings by the amount of disability payments received.¹

If you have any questions about this topic, please contact the following Legge Farrow partner:

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¹ The injured pilot did argue that while he may not have paid for the disability plan directly, the revenues he generated were used to fund the plan. The Court rejected this noting it is obvious that a corporate entity receives all its revenues through the work of individuals. That does not mean that when the corporation purchases an asset, it is purchased by that individual.



ADMIRALTY AND
MARITIME MATTERS

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