

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JAMES ROLLAND SWANSON,

Plaintiff,

No. 3:14-cv-00025-HZ

v.

JEB MORROW, an individual; KENNETH  
BUSHNELL, an individual; OZZIE  
GREGORIO, an individual; and the F/V  
HEIDI, a fishing vessel, home ported in  
Petersburg, Alaska, official number 227373,

FINDINGS OF FACT &  
CONCLUSIONS OF LAW

Defendants.

HERNANDEZ, District Judge:

Plaintiff James Swanson brought this action against several Defendants as a result of injuries he sustained while aboard the F/V HEIDI. Plaintiff settled his claims with Defendant Kenneth Bushnell who has been dismissed from the case. Orders of Default were entered against Defendants Jeb Morrow and Ozzie Gregorio. The Court conducted a *prima facie* hearing regarding damages on January 5, 2016 during which Plaintiff appeared by phone as did Dr. James Wood, Dr. Alan Whitney, Janet Vos and Sharon “Suzie” Thiebaud on behalf of Plaintiff. Plaintiff presented evidence in the form of testimony and exhibits. The Court, having considered

1 - FINDINGS OF FACT & CONCLUSIONS OF LAW

the evidence, pleadings and files herein, including this Court's Orders of Default against Defendants Morrow and Gregorio, makes the following Findings of Fact and Conclusions of Law<sup>1</sup> pursuant to Federal Rule of Civil Procedure 52(a)(1):

#### FINDINGS OF FACT

1. Plaintiff was employed by Defendants and engaged to perform the task of skipper of the F/V HEIDI in March, 2012.

2. Plaintiff undertook to perform his duties and, on the first trip of the season, while retrieving the fishing gear with the hydraulic system, the mast boom broke and fell onto plaintiff's shoulder fracturing it. Plaintiff was unable to return to work.

3. Defendants Morrow and Gregorio, and each of them, were negligent in failing to maintain the vessel, and specifically the boom and related appurtenances, which rendered the vessel unsafe and unseaworthy. Defendants' negligence, and the vessel's unseaworthiness, caused Plaintiff's injuries.

4. Defendants failed to pay maintenance and cure for Plaintiff, even though Plaintiff was injured during the course of attending to his duties. Plaintiff has not reached maximum cure to date, in significant part, because Plaintiff has been unable (until recently) to secure medical treatment due to lack of financial resources, and Defendants' failure to attend to meet their obligations.

5. As a result of Defendants' negligence and the unseaworthiness of the vessel, Plaintiff

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<sup>1</sup> Additionally, the Court previously ordered Defendant Gregorio to pay attorney's fees to Plaintiff as a discovery sanction. July 8, 2015 Order; ECF 84. Plaintiff submitted an Affidavit of Counsel in support of the amount of fees on July 20, 2015. ECF 87. Based on that Affidavit, I award Plaintiff \$5,480 in fees for 13.70 hours of work related to the discovery motion at issue, based on a rate of \$400 per hour.

has been damaged as follows:

Lost wages and diminished earning capacity:	\$175,000.00
Pain and suffering:	\$250,000.00
Total:	\$425,000.00

6. Defendants were obligated to provide Plaintiff maintenance and cure in the following amounts:

Maintenance:	\$73,000
Cure:	\$ 7,500
Total:	\$80,500

#### CONCLUSIONS OF LAW

Conclusion No. 1: Defendants Morrow and Gregorio are liable for Plaintiff's injuries in the amount of \$425,000.

Conclusion No. 2: Defendants Morrow and Gregorio are also liable to Plaintiff for maintenance and cure in the amount of \$80,500.

Conclusion No. 3: Plaintiff is entitled to a judgment against Defendants Morrow and Gregorio in the amount of \$505,500 plus interest from the date of judgment until paid at the rate of 0.46%.

Conclusion No. 4: The Court hereby dismisses the claim against the F/V HEIDI, having never acquired jurisdiction.

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CONCLUSION

The Court awards Plaintiff \$505,500 in total damages, maintenance, and cure. The F/V HEIDI is dismissed.

IT IS SO ORDERED.

DATED this 4 day of Feb., 2016.

  
MARCO A. HERNANDEZ  
United States District Judge