

Case Name: Morgan T. Palmer v. CSX Transportation, Inc.

Date Decided: December 30th, 2009

Originally Filed in: New York (State)

Decided by: New York 4th Department (State)

Court: Supreme Court, Appellate Division, Fourth Department, New York

Judge: Judge Smith, Judge Centra, Judge Fahey, Judge Carni, Judge Pine

Citation: 2009 WL 5126341 (N.Y.A.D. 4 Dept.)

Background:

Plaintiff, Morgan T. Palmer, commenced this action under the Federal Employers' Liability Act, FELA, against defendant CSX Transportation for injuries he sustained when his leg became entangled in a chain and he fell from a freight train operated by CSX. Following a jury trial, the jury found CSX 20% liable and awarded Palmer damages in the amount of \$207,000, but awarded no damages for future pain and suffering or future lost wages. The Supreme Court of New York denied Palmer's post-trial motion to set aside the verdict with respect to damages for future pain and suffering. Palmer appealed the NY Supreme Court's ruling.

Issue:

Was Palmer entitled to damages for future pain and suffering?

Overall Issues Discussed or Touched Upon in this Case:

- *Found Plaintiff Comparatively Negligent*
- *Insufficient Evidence of Damages*
- *Procedural Issues - State*

Held:

Palmer presented medical evidence that his ankle injury resulted in permanent partial disability that will continue to cause him pain and likely to develop into painful arthritis in the future. Moreover, Palmer testified that he is no longer able to participate in the recreational activities he enjoyed prior to the accident because of his injury. Based on that evidence, this Court concluded that an award of \$250,000 for Palmer's future pain and suffering is the minimum amount the jury could have awarded as a matter of law based on the evidence at trial. This Court modified the judgment and granted a new trial on future pain and suffering unless CSX stipulates to the increase.

Comments:

Even though a jury may not award certain damages, a plaintiff may appeal an award under FELA. The standard, employed by FELA, is that the verdict must be "so grossly and palpably inadequate as to shock the judicial conscience". If the plaintiff is able to meet this burden, then they will likely see an increase in damages.

Steve Gordon