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Not Reported in F.Supp., 1995 WL 411220, 1996 A.M.C. 735

## American Maritime Cases

**EDWARD STONE THE ESTATE OF EDWARD STONE**

v.

**MORMAC MARINE TRANSPORT, INC.**

United States District Court, District of Massachusetts,  
May 8, 1995

C.A. No. 93-12719

**DAMAGES - 124. Maintenance and Cure - PERSONAL INJURY - 131. Seaworthiness, Safe Place to Work, Negligence - 141. Maintenance, Cure and Wages - PRACTICE - 287. Summary Judgment**

Seaman who falsely denied having had current or prior back problems during pre-employment physical examination is not entitled to maintenance and cure since he had been treated at a chiropractic clinic for two years for neck and back pain prior to the examination. On evidence of symptoms consistent with pre-existing medical condition and no evidence of negligence or unseaworthiness, summary judgment granted shipowner.

Thomas J. Hunt and James W. Bagnell (Hunt & White)

*for Edward Stone*

David Farrell, Jr. (Connors & Farrell)

*for Mormac Marine Transport, Inc.*

Nancy Gertner, D.J.:

Plaintiff, the Estate of Edward Stone, brings this maritime personal injury case against Mormac Marine

Transport, Inc. (Mormac Marine), alleging negligence under [46 U.S.C. app. 688](#) (Jones Act), unseaworthiness under general maritime law, maintenance and cure damages. \*736

\* \* \* [FNal](#)

[FNal](#). Discussion of summary judgment standards omitted.-Eds.

The following facts are uncontested:

1. Between January 17, 1990 and March 25, 1992 (before the alleged accident on August 13, 1992), Mr. Stone was treated at Truex Chiropractic Center for neck and back pain.
2. On June 8, 1992, during a pre-employment physical examination with Dr. Siegel, Mr. Stone denied any current or prior back trouble. Mr. Stone does not fundamentally contest this statement. Rather he contends that Dr. Siegel's evaluation was cursory, and further that Mr. Stone did not sign the document; Dr. Siegel did. The document is a form, required by the collective bargaining agreement between Mormac and the National Maritime Union, of which Mr. Stone was a member. On its face it was appropriately signed by the physician examiner. In any event, Dr. Siegel's affidavit attests to the validity of the form. Dr. Siegel reports that Mr. Stone denied that he had any prior or current back trouble.
3. On June 11, 1992, Mr. Stone sailed as an "able seaman," on the defendant's ship, the *Mormacsky*, returning July 13, 1992, according to the affidavit of Eugene Albert, the master of the ship.
4. On July 13, 1992, Mr. Stone sailed again as an "able seaman" on the *Mormacsky*, according to Master Eugene Albert.
5. On July 13, 1992, while off the ship, Mr. Stone was treated at Truex Chiropractic Center with a "manipulation to the full spine" for neck and low back pain.
6. On August 13, 1992, Mr. Stone claimed that he was injured and flew home to the United States. Eugene

Albert had no recollection of Mr. Stone's having sustained an injury. There was no mention of any injury in the medical log or the deck log. No one saw the injury; no one so much as reports that Mr. Stone told them that he had been injured. It was only after Mr. Stone returned to the United States that he represented (to the treating chiropractor) that he had hurt himself moving barrels on the deck of the *Mormacsky*. In addition, Mr. Albert maintains that Mr. Stone's account of the accident is unlikely. There was a dolly available to the crew to be used for the purpose of moving barrels.

7. Moreover, while Mr. Stone said he suffered from back pain on August 13, 1992, immediately after the incident he was treated in Italy \*737

for high blood pressure, not back pain. Those records make no mention of an accident.

8. On August 24-27, 1992, Mr. Stone was admitted to Brockton Veterans Administration Hospital for a) alcohol detoxification and b) hypertension. Here again there is no mention in the Veterans Administration records of any accident on the S.S. *Mormacsky*, or any injuries flowing therefrom.

9. Mr. Stone never described the alleged accident to his wife.

10. Mr. Stone was paid maintenance for his high blood pressure from August 14, 1992, when it was diagnosed, to September 1, 1992.

11. Between August 31, 1992 and December 8, 1992, for the first time Mr. Stone was treated at New England Chiropractic, Sharon, Massachusetts for what he described as an on-board neck and back injury. While the records reflect that Mr. Stone indicated to Dr. Shaffel that he hurt himself while "moving heavy barrels of oil about the deck of the S.S. *Mormak Sky* (sic)," that representation must be considered in the light of the fact that the records also indicate that Mr. Stone failed to disclose his former treatment at the Truex Chiropractic Clinic for neck and back complaints.

12. Dr. Siegel opined that the symptoms for which Mr. Stone was treated at New England Chiropractic were generally "similar to and causally related" to Mr.

Stone's neck and back complaints as they were described in the Truex Chiropractic Center records predating the *Mormacsky* trip. No affidavit counters that conclusion.

13. Mr. Stone died in December 1992 after suffering a heart attack while driving his automobile.

#### Conclusions of Law

I conclude that the plaintiff has wholly failed to meet the standards for summary judgment. There is no evidence of negligence under the Jones Act or of unseaworthiness under general maritime law.

To the extent that Mr. Stone exhibited symptoms of a physical injury on August 13, 1992, there is no evidence that such symptoms derived from anything that had occurred on the vessel. There is considerable evidence that the symptoms he experienced were simply those of his pre-existing medical condition.

Accordingly, I grant summary judgment on the Jones Act and general maritime law claims to the defendant. \*738

With respect to the maintenance and cure claim, I also grant summary judgment to the defendant due to Mr. Stone's failure to disclose his prior back or neck complaints during pre-employment inquiries. See [\*Quiming v. International Pacific Enterprises, Ltd.\*, 773 F.Supp. 230 \(D. Hawaii 1990\)](#). The failure to disclose was hardly inadvertent. He was expressly asked if he had back problems; he never mentioned it. Cf. *Capone v. St. Victoria*, 1989 AMC 1782 (D. Mass. 1989).

Accordingly, Defendant's Motion for Summary Judgment is granted, and the action is hereby dismissed.

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D.Mass., 1995

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