



## Kiwia v. Oslo Bulk 9 M/V et al

2021 | Cited 0 times | E.D. Louisiana | May 24, 2021

1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

FAUSTINE KIWIA CIVIL ACTION

VERSUS NO. 20-96

M/V OSLO BULK 9 ET AL

**FINDINGS OF FACT AND CONCLUSIONS OF LAW** This action arises out of personal injuries sustained by Plaintiff, Faustine Kiwia, while working as a stevedore for Coastal Cargo Co., LLC aboard the M/V OSLO BULK 9 Plaintiff, Oslo Bulk Beta AS and Bulkship

This action went to trial on March 15 through 16, 2021. Having considered the evidence admitted at trial and the arguments of counsel, this Court makes the following findings of fact and conclusions of law. To the extent a finding of fact constitutes a conclusion of law, and vice versa, the Court adopts it as such.

**FINDINGS OF FACT** 1. Plaintiff Faustine Kiwia is 43 years old. He was born in Tanzania and

arrived in the United States in 2008. After arriving in the United States and before his employment with Coastal Cargo, Kiwia worked as a hotel clerk for one year and then as a cashier at several convenience stores. Kiwia was never terminated from any of his

2 previous positions and left each position for another with higher pay and greater security. 2. Kiwia was hired by Coastal Cargo, a stevedoring company, on

February 19, 2019 to work as a laborer. Kiwia had no prior experience as a stevedore but intended for this to be a permanent job position. He hoped to one day become a crane operator. 3. Coastal Cargo hired Kiwia the same day he applied. After he was

hired, Kiwia spent the rest of the day undergoing safety training in a classroom setting. Thereafter, Kiwia was to receive training.

4. At the time Kiwia was hired by Coastal Cargo, his rate of pay was



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\$11.50 per hour. 5. At the relevant time, the Oslo Bulk was in the Mississippi River at

the Port of New Orleans. The Oslo Bulk is an oceangoing cargo ship with large cargo holds in the center of the ship. There is a raised steel each of the cargo holds. At the top of each coaming, there is a railing or track upon which the mechanically operated cargo hatch covers roll open and closed on large steel wheels. Several witnesses described the hatch - two and folds up on each side of the cargo hatch. The deck of the Oslo

Bulk also contains a narrow walkway that lays between the coaming wall and outer railings. 6. On March 1, 2019, Kiwia arrived at the Coastal Cargo office at

6:30 a.m. and was assigned to work with the Coastal Cargo crew responsible for offloading cargo from the Oslo Bulk onto a barge. The

3 crew held a safety meeting at 10:00 a.m. and began working on the vessel and barge around 12:00 p.m. 7. On this day, Kiwia worked primarily on the barge onto which the

8. Around 2:45 p.m., it began to rain lightly, and the Coastal Cargo

crewmembers were instructed to return to the dock for a lunch break. 9. To access the dock from the barge, the crewmembers had to climb a

Jacobs ladder that hung off the side of the Oslo Bulk. The Jacobs ladder is tied to the top hand railing of the ship. After climbing up the ladder and over the railing, the crew then had to traverse the deck of the vessel to reach the dock. Kiwia was the third or fourth person from his crew to leave the barge for lunch. 10. After Kiwia reached the top of the Jacobs ladder, he placed his right

hand on top of the hatch coaming for balance as he jumped down to the walkway on the deck of the vessel. Kiwia had placed at least one foot on the deck of the vessel with the intent to turn towards the right and head towards the dock. However, in that same moment, a , and Kiwia turned his body towards the left to walk towards his crewmember. Kiwia kept his right hand on the hatch coaming for balance as the deck was wet. Before Kiwia could take a step to the left, the closing hatch cover rolled over his hand. The steel wheels of the hatch cover cut through fingers on his dominant right hand. Hughes, Jr., a fellow Coastal Cargo crewman, yelled out to the Oslo

4 stop the cargo hatch cover. Kiwia then ripped his hand from the machine. 11. At all relevant times, the hatch cover was within the sole control of

The panel to operate the hatch cover was on the opposite side of the cargo hold from where the Coastal Cargo crew first accessed the deck after climbing the Jacobs ladder. Kiwia was not visible to the Oslo Bulk crewmember operating the panel. 12. The Court found the testimony of Roy Hughes,



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Jr. highly credible.

Hughes has approximately twenty years of experience as a stevedore or longshoreman. Hughes worked for Coastal Cargo as a longshoreman and crane operator for three years. Hughes had no personal relationship with Kiwia prior to or following the accident and is no longer employed with Coastal Cargo. At the time of the accident, Hughes had met Kiwia only once or twice. At the time of trial, Hughes had not met with any attorneys in relation to this matter and was compelled to testify by subpoena. 13. On the day of the incident, Hughes was assigned to the same crew as

Kiwia and was working for Coastal Cargo as a flagman. Hughes was standing on the deck of the vessel, approximately ten feet away from . 14. There is some discrepancy between the testimonies of Hughes and

Kiwia as to tion at the time . Kiwia testified that, at that moment, he had at least one foot on the deck of the vessel and was responding to a call from his left. Hughes testified that, at that moment, Kiwia was in the process of jumping to the deck from the Jacobs ladder and his feet had not yet hit the deck. this moment over

5 that of Hughes, the Court finds the discrepancy in testimony immaterial. Both Kiwia and Hughes emphasized how quickly hand was crushed after he placed his hand on the railing. Considering

both testimonies, the Court finds that no more than seconds passed

railing to the time when his fingers were crushed. 15. Hughes testified that, because , it was

common practice for crewmembers to use the hatch coaming to steady themselves as they climbed over the railing from the Jacobs ladder. Hughes testified that he, as an experienced stevedore, would have also placed his hand on the hatch coaming to assist him in climbing from the ladder to the deck. 16. At it had begun to rain lightly.

It is a common practice for cargo vessels to cover the cargo when it begins to rain. Despite the rain, however, an experienced stevedore would have expected some 17. here had been no warning

18. Hughes testified that, in his twenty years of experience as a

stevedore, he has witnessed a hatch closing without warning only once or twice. 19. was imperceptibly quiet and moved very

slowly, such that those not paying attention to the hatch cover would not have noticed its closing without some warning. Hughes testified unexpected as men were still working in the cargo hold and were not



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6 given an opportunity to climb out of the hold before the closure. Indeed, Hughes testified that the unexpected closure crushed his own bag that was set atop the hatch coaming. 20. The Court found items in the vicinity of the closing hatch cover, and that the hatch

contributing. The Court did not find credible

cover alarms on vessels. 21. The Court did not find credible the testimony of Jeremy Galliano as

to the frequency of warnings prior to hatch cover closings. Galliano had limited experience working on vessels and primarily held managerial or administrative positions with Coastal Cargo. 22. The Court found Captain Keith Dean, an expert in marine safety

including stevedoring and cargo operations, to be credible as to the standard safety practices on cargo vessels such as the Oslo Bulk. Captain Dean testified that alarms or sirens indicating the closure of hatch covers on bulk cargo ships are uncommon but that most hatch covers make significant noise while closing. Captain Dean also testified that the Oslo Bulk crewmember operating the hatch cover should have ensured that the coamings were clear before initiating resting on the hatch coaming is an item that would have been moved

in such an inspection, as it could pose danger to the hatch cover machinery. 7 Captain Dean further testified that it is standard

with the stevedores foreman or supervisor to discuss the closing of the hatch before initiating closure. 23. testimony as to

standard safety practices on bulk cargo ships, the Court does not find

assumptions. First, Captain Dean assumed that a conversation took place between a Coastal Cargo foreman or supervisor and the Oslo Bulk crewmember simply because it is a conversation that, in his experience, should take place. Second, Captain Dean assumed that the Oslo Bulk crewmember performed an inspection of the hatch coaming by walking around it before closing the hatch cover because it is standard in the industry and the However, neither Captain Dean nor the Court was presented with any evidence that such a conversation or inspection took place, or of any disciplinary action taken or not taken by the Oslo Bulk following the incident. To the contrary, s are contradicted by credible testimony that the hatch cover crushed his bag atop the hatch coaming and that longshoremen were still working in the cargo hold at the time of the unexpected closure. 24. Considering the credible testimonies of Hughes and Captain Dean as

to the frequency of warnings on cargo ships signaling the closure of hatch covers, the Court finds that sirens or alarms are rare additions



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8 to vessels but that verbal warnings are consistently given to stevedores. An experienced stevedore would have expected a warning

25. Before closing the hatch cover, the exercise of reasonable care

mandated that the relevant Oslo Bulk crewmember warn the Coastal Cargo supervisor or foreman and survey the vicinity of the hatch coaming to ensure that no individuals or objects were in the path of the closing cover. Here, the Oslo Bulk crew failed to warn a Coastal Cargo representative and survey the area surrounding the hatch coaming before closing the hatch. This failure was a contributing constitutes a breach of the active control duty under *Scindia Stream Navigation Co. v. De Los Santos*, 451 U.S. 156 (1981). 26. Defendants are 50% 27.

placing his hand on the hatch coaming is an additional cause of injuries. Coastal Cargo employee, Darnell Davis, testified training. After ten days of work for Coastal Cargo, Kiwia had not yet been informed of the dangers associated with the closing hatch cover. Coastal Cargo employee Darnell Davis testified that more experienced longshoremen should have informed Kiwia, a trainee, of the danger posed by the hatch cover. Kiwia was clearly not taught about the hatch cover in his training as he was still unable to identify a hatch coaming at trial. Hughes also conceded that, although it was common practice for longshoremen railing for balance, it would be prudent policy for Coastal Cargo to train new hires as to the dangers of doing so. 28. Coastal Cargo

the job training. However, there is no evidence that anyone was assigned to train Kiwia or that anyone accepted responsibility for his training. 29. The Court finds Coastal Cargo 50% at fault. 30. Despite his inexperience, Kiwia would have responded appropriately

to a warning to keep away from the hatch coaming. 31. ledge on the dangers of the hatch coaming

cover, Kiwia acted reasonably in placing his hand on the hatch coaming to climb down from the ladder as he simply copied the more experienced longshoremen before him. To the extent that Kiwia allowed his hand to linger on the hatch coaming for an extra second while he gained his balance on the wet deck of the vessel, the Court finds that this action was not unreasonable. 32. Kiwia is not at fault for his injuries. 33. There is no evidence that a member of the Oslo Bulk crew witnessed

members of the Coastal Cargo crew placing their hands on the hatch coaming. The Court therefore does not find that the Oslo Bulk crew breached the *Scindia* duty to intervene. 34. Kiwia has suffered significant emotional and physical injuries as a

result of the accident. 35. The Court found credible the testimony of Dr. Charles Tuggle. Dr.

Tuggle testified as an expert in plastic and reconstructive surgery and ng physician and surgeon at University Medical Center. Dr. Tuggle first saw Kiwia in the



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10 emergency department of University Medical Center on the day he

injuries on his right index, middle

and middle fingers were completely amputated and he retained only a small portion of bone above the middle joint, or

severed index finger was brought with him to the hospital, Dr. Tuggle determined that it was not salvageable due to nature of his injuries. 36. Withi Center, Dr. Tuggle performed surgery on Kiwia to clean and close his

wounds. Kiwia was discharged from the hospital the following day and given medication to monitor his pain. Thereafter, Kiwia began physical therapy to preserve motion in his remaining digits. A few months after surgery, however, Kiwia began having pain in his index

that is hypersensitive to touch. Desensitization therapy was attempted to address the symptomatic neuroma, but it was unsuccessful. 37. On July 4, index finger

to address the symptomatic neuroma. The surgery included neuroma management with a nerve to nowhere repair using an allograft the grafting of a cadaver nerve to the existing nerve end and webspace deepening the rearranging of tissue to lengthen the existing stub. The surgery was moderately successful and diminished the nerve- related pain in

11 38. After he recovered from his second surgery, Kiwia was referred to the

amputee clinic and fitted for a prosthetic for his middle and index fingers. Dr. Tuggle explained that the body-powered, mechanical prosthetic allows Kiwia to grasp things such as coke bottles and door handles. Kiwia, however, testified that the prosthetic is of limited utility, as it is not very strong and does not allow him to hold more than two or three pounds. 39. Kiwia does not have a prosthetic for his ring finger, but Dr. Tuggle

recently provided him with another referral back to the amputee clinic to discuss the possibility of an additional prosthetic for the ring finger. 40. Dr. Tuggle testified that, in the future, Kiwia may benefit from

additional occupational therapy. Although there is the possibility for no additional surgery is necessary at this time. common amongst amputees. Dr. Tuggle testified, however, that Kiwia

did not complain to him of much pain in their last visit in February of 2021. 41. Kiwia testified that he still suffers significant pain in his right hand,



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particularly in his index finger. He rated his pain a 3 or 4 out of 10. 42. psychologist

and an expert in the field of clinical psychology with expertise in post-traumatic, credible as to her testimony about Dr. Howze treated Kiwia consistently in the year following the accident. 43. Dr. Howze described Kiwia difficulty discussing personal matters and tends to understate the

12 significance of his own physical and emotional pain. Dr. Howze opined that Kiwia was largely attributable to Tanzanian cultural norms that discourage vulnerability. 44. Dr. Howze testified that Kiwia suffered from many symptoms of

PTSD, including nightmares, avoidance, hyperarousal, anxiety, erectile dysfunction, and depression. Kiwia struggles to reconcile his future plans with the reality of his newly limited capabilities. His PTSD is triggered, in part, by the sounds of machinery. Kiwia scores very low in reading comprehension, leading Dr. Howze to suspect a learning disability. Plaintiff, she found that his prognosis was fair but limited by his learning abilities and his difficulty addressing the emotional impact of his injuries. 45. assessment. Although Kiwia was pleasantly optimistic about his

future, it is clear to the Court that Kiwia has experienced, and continues to experience, chronic physical and emotional pain as a result of his accident. Kiwia struggled to discuss the details of the accident and his life thereafter, but he did briefly comment that his injuries have negatively impacted his relationship with his wife and that he struggles with low libido. He also testified that he has trouble sleep depression and stress

46. The Court finds that Kiwia continues to suffer from PTSD and will

require further psychological treatment.

13 47. Writing and typing are difficult tasks for Kiwia given the loss of

fingers on his dominant hand. Kiwia was able to write a narrative of his accident as part of his treatment with Dr. Howze, but it took him multiple days to complete. 48. The parties stipulated to the use of reports in lieu of live testimony

for their vocational and economic experts. The Court was thus presented with only the reports for vocational experts Nancy Favaloro and Thomas Meunier and economists Dr. Kenneth G. Boudreaux and Dr. G. Randolph Rice. 49. Provided accidentis

unable to perform manual labor that requires heavy lifting or high dexterity. Kiwia is unable to perform jobs that require extensive writing or typing. Kiwia does not have an American high school degree or GED, and the evaluation expert, Thomas Meunier, coupled with s ESL test scores from Delgado Community College, indicate a low probability that Kiwia will be able to earn a GED or





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perform college-level work in the future. 50. The Court credits the opinion of Meunier that Kiwia can return to

work at a significantly reduced capacity performing light exertional work that does not require frequent fine manipulation of the hand. Examples of such a position include that of a hotel clerk, passenger driver, booth cashier, information clerk, or salesclerk. These positions range in hourly pay from \$10 to \$14 per hour. 51. The Court rejects the opinion of Defendants vocational expert, Nancy

Favaloro, to the extent that her opinion relies upon Plaintiff earning

14 the extent she opines that, given Plaintiff may hold a position ranging in hourly pay from \$10 to \$14 per hour. 52. Regarding -trial lost wages, the Court was presented with

the opinions of Dr. Kenneth J. Boudreaux and Dr. G. Randolph Rice. Dr. -trial salary using the hours actually worked by Kiwia, resulting in an annualized amount of \$29,058.38. Dr. Boudreaux -trial salary to be \$25,298.44 and based this calculation on a salary of \$11.24 per hour with 2.25 hours of overtime, 40 hours of straight time 50 weeks per year and two weeks of straight time pay with no overtime. After reviewing

nualized wage. Per Dr. -tax wage loss of \$54,010.00. 53. At the time of trial, Kiwia had still not returned to work. Although

Kiwia testified that his injury prevented him from returning to work as a hotel clerk, this Court was not presented with testimony or evidence suggesting that Kiwia was precluded from pursuing alternate forms of employment. Indeed, Dr. Tuggle testified that Kiwia could have begun performing light work in early 2020. The Court, however, was also presented with testimony as to Kiwia s chronic pain, need for a new prosthetic, PTSD, and emotional insecurity all symptoms that have gradually improved with time. Considering the relevant evidence, the Court finds that Kiwia could have begun working in some limited capacity in early 2020 and that his failure to do so warrants a reduction in his past wage loss by 15%.

15 Accordingly, Kiwia past wage loss award is reduced by 15% to \$45,908.50. 54. Both Meunier and Favaloro opined that Kiwia can continue to make

at least what he was making prior to the accident. Considering

earning ability is altered by his injuries. Accordingly, the Court does not find that a future wage loss award is warranted. 55.

work-life expectancy of 17.95 years. 56. Although the Court finds that Kiwia will likely require future medical





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treatment in the form of occupational and psychological therapy, the Court was not offered any evidence as to the cost of such hypothetical future treatment. Accordingly, the Court finds that no award of future medical expenses is warranted. 57.

was not paid by the Employer/Carrier under the LHWCA, is \$12,634. 58. Intervenor American Longshore compensations coverage to Coastal Cargo

which was in effect on March 1, 2019. Kiwia, as an employee of Coastal Cargo, was at all times covered by the LHWCA. 59. To date, American Longshore has paid indemnity and medical

benefits to or on behalf of Faustine Kiwia in the amount of \$108,365.65 pursuant to the LHWCA. This includes medical benefits totaling approximately \$68,330.51, and the remainder paid to Kiwia in his bi-weekly indemnity benefits.

16 CONCLUSIONS OF LAW 60. At the time of the accident, Kiwia was a longshoreman, and his claims

against Defendants fall under 33 U.S.C. § 905(b) of the LHWCA. 61. Under § 905(b), an injured worker may bring a claim against a vessel

owner for vessel negligence. 62. In *Scindia Stream Navigation Co. v. De Los Santos*, the Supreme

Court held that a vessel owner owes three duties to a longshoreman: (1) the duty to turn over a reasonably safe vessel, (2) the duty to

control, and (3) the duty to intervene to prevent use of an unsafe practice if the vessel owner is aware that it is being undertaken. 451 U.S. 156, 167 78 (1981). The *Scindia* Court also held that the vessel owner has the duty to exercise due care under the circumstances. *Id.* at 166 67. Of the three *Scindia* duties, only the duty to intervene and the active control duty have potential applicability to this matter as the relevant areas of the *Oslo Bulk* were not turned over to Coastal Cargo. 63. Under the duty to intervene, a vessel owner must intervene in the

co anticipates the contractor cannot or will not correct. *Id.* longshoreman must show that the shipowner: 1) had actual knowledge that the defect posed unreasonable risk of harm; and 2) actual knowledge that it could not rely on the stevedore to protect its employees. *Moore v. M/V ANGELA*, 353 F.3d 376, 391 (5th Cir. 2003) (citing *Greenwood v. Societe Francaise De*, 111 F.3d 1239, 1248 (5th Cir. 1997)). As there is no evidence that any member of the *Oslo 17* crewmembers frequently placed their hands on the track of the hatch coaming, the Court finds that Defendants did not breach the duty to intervene. 64. [A] vessel owner may be liable under active control duty if

it actively involves itself in cargo operations or fails to protect contractors from hazards in areas



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under the active control of the 03 (5th Cir. 2007) (emphasis in original). This duty includes the duty to avoid exposing longshoreman to harm from hazards they may encounter . . . from equipment[] under the active control of the vessel Id. (quoting Scindia, 451 U.S. at 167) (internal quotations omitted). although a vessel owner no longer retains the primary

responsibility for safety in a work area turned over to an independent contractor, no such cession results as relates to areas or equipment retains operational control. Id. at 403 04 (quoting Manuel v. Cameron Offshore Boats, Inc., 103 F.3d 31, 34

(5th Cir. 1997)). 65.

owner, [the Fifth Circuit] generally considers whether the area in

Id. (and cases cited therein). Turner v. Costa

Line Cargo Servs., Inc., 744 F.2d 505, 508 (5th Cir. 1984) (citing Helaire v. Mobil Oil Co., 709 F.2d 1031, 1036 (5th Cir. 1983)).

18 66. It is undisputed that the cargo hatch coaming and its cover were at

and not in an area turned over to Coastal Cargo.

67. The Court finds the Defendants breached the Scindia active control

duty failure to warn the Coastal Cargo crew that the hatch cover was to be closed. The Court also finds that the active control duty was breached by the Oslo Bulk y the vicinity of

the hatch coaming before closing the hatch cover. 68. Scindia active control duty was a primary

69. 70. ontention that the active control duty

is inapplicable because the vessel owner did not have control over the . As this Court has already held, the active control duty applies even in the absence of evidence of the v sole control of the hazardous area or equipment. See Landry v. G.C.

Constructors, 514 F. App x 432, 435 (5th Cir. 2013) ([E]ven where the vessel [owner] does not actively involve itself in the stevedoring operations, it may be liable if it fails to exercise due care to avoid exposing longshoremen to harm from hazards they may encounter in areas, or from equipment, under the active control of the vessel during (citations and quotation marks omitted)). See, e.g., Turner outside the area of normal and routine cargo operations to areas 19 location outside of h Theriot v. Bay Drilling Corp., 783 that the vessel owner was negligent where the longshoreman



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slipped

and fell in an area under the control of the vessel owner and the vessel owner retained the obligation to clean the deck); Davis v. Estis Well Serv., L.L.C failure to safely position the vessel constituted a breach of the active

control duty). 71. Under the LHWCA, Coastal Cargo had a statutory obligation to

provide the longshoremen in its employ, such as Plaintiff, with a reasonably safe place of employment and to furnish equipment reasonably necessary to protect the safety of those workers. See 33 U.S.C. § 941. The Court finds that Coastal Cargo breached this obligation when it failed to adequately train Plaintiff and warn him of the hazard posed by the cargo hatch cover. 72. Coastal Cargo is 50 73. Although Coastal Cargo is assessed fault for its training of Plaintiff,

reduced by any share of fault on the part of Coastal Cargo. Under

general maritime law, the rule of joint and several liability still applies, and Defendant only its liability, but also that of Coastal Cargo. Coats v. Penrod

Drilling Corp., 61 F.3d 1113 (5th Cir. 1995); Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256 (1979). As liability injuries and damages, they are responsible for the totality of damages

suffered by Kiwia.

20 74. Kiwia was an inexperienced longshoreman at the time of his injury,

and his testimony revealed that he was unfamiliar with the general operations of vessels. However, any lack of knowledge or unfamiliarity he had with the operations may be attributed to his employer for failing to advise of those general dangers.

DAMAGES 75. an injured LHWCA covered

employee may recover those items of damages which are recoverable under the general maritime law, including monetary recovery for past and future loss of earning capacity and wages, past and future medical expenses, and pain and suffering resulting from an injury Associated Terminals of St. Bernard, LLC v. Potential Shipping HK Co., 324 F. Supp. 3d 808, 823 (E.D. La. 2018). 76.

of work life resulting from the injury or death, calculat[e] the lost income stream, comput[e] the total damage, and discount[] that amount to its present value. [C]alculation of the lost income stream begins with the gross earnings of the injured party at the time of Mayne v. Omega Protein Inc. 2010).



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77.

what he is able to earn upon returning to work in his partially Masinter v. Tenneco Oil Co., 867 F.2d 892, 899 (5th

21 Cir. 1989), mandate recalled & modified on other grounds, 934 F.2d 67 (5th Cir. 1991). 78.

would increase due to personal merit, increased experience and other individual and earnings. Culver v. Slater Boat Co., 722 F.2d 114, 122 (5th Cir. 1983).

79. Both Meunier and Favaloro opined that Kiwia can continue to make

at least what he was making prior to the accident. Additionally,

his injuries. Accordingly, Kiwia is not entitled to a future wage loss award. 80. Barto v. Shore Const., L.L.C., 801 F.3d

465, 473 (5th Cir. 2015). General damages may also include an award for the permanent disfigurement caused to a plaintiff as a result of the injury. Rushing v. U.S., 1997 WL 800822 (E.D. La. 1997). 81. similar injuries sustained by the plaintiff in Robertson v. Superior

PMI, Inc., 600 F. Supp. 790 (W.D. La. 1985), , 791 F.2d 402 (5th Cir. 1986). The court in Robertson awarded the plaintiff \$400,000 in general damages where the plaintiff lost four fingers from his dominant hand in a workplace accident. Id. at 793 94. The award included past and future pain and suffering, permanent disability, disfigurement, mental anguish and embarrassment. Id. at 797. This

22 from Robertson and adjusts for inflation. 1 82. is . . Williams v.

Reading & Bates Drilling Co., 750 F.2d 487, 490 (5th Cir. 1985); , No. CIV. 06-1380, 2008 WL rule that an injured party must mitigate damages is applicable under the Jones (citing Williams, 750 F.2d at 490)). Here, the Court finds that Kiwia failed to mitigate his damages by failing to seek reasonable employment in the year preceding trial and that his past wage loss award should accordingly be reduced by 15%. See Associated Terminals of St. Bernard, LLC v. Potential Shipping HK Co., 324 F. Supp. 3d 808, 829 (E.D. La. 2018) (finding that it was reasonable for the longshoreman to not attempt to find other work prior to trial and declining to reduce his past lost wage award). 83. prove some degree of certainty that future medical

expenses would be incurred Howell v. Gould, Inc., 800 F.2d 482, 488 n. 3 (5th Cir. 1986) (citing Martinez v. U.S. Fidelity & Guaranty Co., 423 So.2d 1088, 1092 (La. 1982); Mathews v. Hanover Ins. Co., 428 So.2d 1273 (La. App. 3 Cir. 1983)). As Kiwia has not provided evidence as to the cost of his anticipated future medical expenses, the Court does not award Kiwia with such.



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1 The Court utilized the Consumer Price Index Inflation Calculator published by the United States Bureau of Labor Statistics. See CPI Inflation Calculator, U.S. BUREAU OF LABOR STATISTICS, [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited May 23, 2021). A \$400,000 award in January of 1985 is equivalent to a \$1,004,272.99 award in March of 2021. See id.

23 84. rule rather than the exception, and, in practice, is well-nigh

Reeled Tubing, Inc. v. M/V Chad G, 794 F.2d 1026, 1028 (5th Cir. 1986) rejudgment See id. (citations omitted). District courts have broad discretion in setting prejudgment

guideposts indicating a fair level of See Todd Shipyards Corp. v. Auto Transp., S.A., 763 F.2d 745, 753 (5th Cir. 1985) (citations omitted). Here, the Court awards prejudgment interest at a rate of 1% 85. Plaintiff is entitled to damages in the following amounts:

Past medical expenses: \$80,964.50 Past lost wages: \$45,908.50 General Damages: \$950,000.00 Total: \$1,076,873.00

CONCLUSION For the foregoing reasons, Plaintiff is entitled to judgment against Defendants on his claim in the amount of \$1,076,873.00.

New Orleans, Louisiana this 24th day of May, 2021.

\_\_\_\_\_  
JANE TRICHE MILAZZO UNITED STATES DISTRICT JUDGE

