UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-30056
Summary Calendar

NEIL A. DOPSON,

Plaintiff/Appellant,

VERSUS

WILRIG (USA) INC.,

Defendant/Appellee.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA-92-4091-F-4)

(October 25, 1994)

Before REYNALDO G. GARZA, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

The appellant, Neil A. Dopson, filed suit for Jones Act negligence and unseaworthiness under the general maritime law against his employer, Wilrig (U.S.A.) Inc., for injuries sustained

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

while acting as watch-stander. The jury returned a verdict finding no liability for unseaworthiness, but returned a judgment in favor of appellant for negligence and awarded him total damages of $250,000. In addition, the jury found appellant to be contributorily negligent and apportioned his fault at ninety (90) percent. The trial court entered judgment in favor of Dopson for $25,000. Moreover, the trial court denied Dopson's timely motion for a new trial, wherein he contended that (1) the trial court erred in not permitting him to produce evidence of unseaworthiness and by interrupting his presentation of such evidence on cross-examination; (2) the jury deviated from the instructions regarding contributory negligence; and (3) the jury's monetary award was grossly inadequate.

I. FACTS

Neil A. Dopson was a watch-stander[1] employed by Wilrig as a part of the crew of the TREASURE STAWINNER, a semisubmersible rig, in tow from the Gulf of Mexico near Grand Isle to Macai, Brazil. Wilrig hired Noble, Denton & Associates, Inc. ("Noble"), to provide recommendations for the preparation of the rig and safe towage. To safeguard the venture in all respects, Noble recommended a minimum riding crew of 14 men, including four roustabouts, plus a catering staff - a total of 19 men. Wilrig provided 20 men for the tow. Wilrig designated several crewmembers as roustabouts to do heavy

[1]The primary duty of a watch-stander is to ensure that the rig remains stable throughout the tow.

labor.[2] These men, however, were not "true" roustabouts. Although they had once been roustabouts, due to their work experience they were promoted to other positions, such as toolpusher and driller. Noble, however, provided a Certificate of Approval certifying compliance with all its recommendations and cleared their departure.

At the time of the voyage, Dopson had accumulated over thirteen (13) years of offshore oil field work experience. He began his career in the oil field industry as a roustabout. Over the years, Dopson was promoted to watch-stander, a position he had occupied for approximately five (5) years. During his career, he learned to make rounds and lower pump rooms, inspect bilges, clean bilges and accumulated safety training.

On April 28, 1992, Dopson was working in the lower port pump room when he discovered leakage. Upon examining the bilges, he allegedly discovered a large paint chip, approximately eight (8) inches long, clogging the sump, or drain. He then attempted to remove the paint chip since the pump room could not be properly drained if the sump was clogged. The sump, however, was covered by a one hundred (100) pound grating. Dopson's injury occurred while attempting to remove this grating.

In order to lift the grating, Dopson apparently placed the heels of his feet on a ledge with his back to a bulkhead, bent over

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[2]A "roustabout" is the term applicable to individuals who are hired to do heavy manual labor on rigs. Roustabouts are usually unskilled or semi-skilled laborers who, after accumulating sufficient experience, are elevated to higher positions.

at the waist, placed his right hand on a hand rail approximately three feet away and reached down to place his left-hand fingers through the grating. In attempting to pull the grating up by its edge (like a trap door), he fell forward (or slipped) and injured his back. Dopson testified that he lay paralyzed on the floor for two hours before he was finally able to crawl for help. He further testified that he completed the remainder of the tow with extreme pain. Upon returning to the United States and after several visits with two doctors, surgery was suggested. Such surgery was not approved by Wilrig's own doctor, Dr. Levy, until January of 1993. The surgery was performed on February 1, 1993, by Dr. Patton.

The appellant underwent a left L5-S1 microlumbar disectomy, an operation done under a microscope, which Dr. Patton testified was a less intrusive surgery and usually allowed for quicker recoveries. During this procedure, the left side of the herniated disk was removed. Dopson was having a normal recovery for the first two-and-a-half months following surgery, until he complained to Dr. Patton about back pains.[3] Dr. Patton was unable to find the source of this pain. After receiving a second opinion from Dr. Phillips, it was discovered that scar tissue had formed and was inflaming the nerves, a condition diagnosed as arachnoiditis. Due to this pain Dopson discontinued the physical therapy that Dr. Patton had recommended. Drs. Patton, Phillips and Levy testified that the appellant should return to work with restrictions from

[3]Appellee argued to the jury that Dopson's pain "mysteriously" developed after Dr. Patton advised Dopson to meet with a rehabilitation counselor so he could soon get back to work.

light to moderate manual labor.

II. Discussion

A. Whether the district court abused its discretion in limiting testimony it deemed repetitive and whether this precluded the jury from arriving at a proper verdict?

The appellant asserts that the district court should have granted its motion for a new trial because the district court erroneously prevented him from presenting evidence of the TREASURE STAWINNER's unseaworthiness. Specifically, appellant claims he was prevented from eliciting testimony and evidence to show that Wilrig did not hire crewmen who were currently classified as roustabouts, but rather, that Wilrig designated men with other classifications to serve as roustabouts in addition to their regular jobs on that voyage. This evidence was essential in supporting Dopson's theory of unseaworthiness, since Noble recommended that the crew include four roustabouts. Appellant intended to demonstrate that the spirit of this requirement had not been fulfilled by showing that a roustabout had specific characteristics and abilities which may not have been possessed by other seamen. Thus, Dopson claims there were no actual roustabouts on board to assist him with heavy, manual labor while he made his rounds. Consequently, the ship was unseaworthy. Because we find that the lower court's actions were proper and sufficient evidence was presented on the issue of unseaworthiness, we affirm the trial court.

1. trial court's intervention and comments

This Court reviews evidentiary rulings only for abuse of

discretion and will reverse a judgment on the basis of evidentiary rulings only where the challenged ruling affects a substantial right of a party. Seidman v. American Airlines, Inc., 923 F.2d 1134, 1138-39 (5th Cir. 1991) (internal citations omitted). A district judge is given "reasonable control over the mode and order of interrogating witnesses and presenting evidence . . . to avoid the needless consumption of time." FED. R. EVID. 611(a); Cranberg v. Consumers Union of U.S., Inc., 756 F.2d 382, 391 (5th Cir.), cert. denied, 474 U.S. 850 (1985). Moreover, as a common law judge, he has an overall responsibility to see that the trial is just and not subject to delay. Cranberg, 756 F.2d at 391. Thus, he may question witnesses, elicit facts, clarify evidence, and pace the trial. Id. However, the district court must maintain both objectivity and the appearance of neutrality when it intervenes to terminate the questioning of a witness. Miles v. Olin Corp., 922 F.2d 1221, 1228 (5th Cir. 1991); Dartez v. Fibreboard Corp., 765 F.2d 456, 471 (5th Cir.), cert. denied, 479 U.S. 822 (1985). Otherwise, the court may improperly influence and prejudice the jury against a party. See Dartez, 765 F.2d at 471. For these reasons, we review the record as a whole, not just isolated actions or comments by the trial judge, to determine whether the trial was fair and impartial. Miles, 922 F.2d at 128; Cranberg, 756 F.2d at 391.

The record is replete with testimony that the men designated

as roustabouts were not actual roustabouts.[4] Nonetheless, Dopson's counsel further questioned other witnesses on whether actual roustabouts were on board for the tow and the type of work they performed. The district court believed this testimony to be repetitive and time consuming. Therefore, when appellant's counsel proceeded to question another witness, Mr. Shinn, about the numbers of roustabouts aboard the rig, the court intervened and stated that

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[4]For example, here are excerpts of testimony taken from two witnesses. The following testimony was elicited from a Wilrig employee, Mr. Murphy, by appellant's counsel:

Q. There were not four roustabouts, there were no roustabouts, were there?
A. . . . they were just designated roustabouts.
Q. Right. There were no roustabouts?
A. No, they were not that. There were no roustabouts.
Q. Okay. And roustabouts are the ones who are usually appointed by you, the barge engineer or the tool pusher, to do the heavy lifting and the heavy work, is that correct?
A. That's correct.
Q. And, in fact, there were no roustabouts at all, were there?
A. There were no roustabouts.

Supp. R. vol. 1, at 156-57.

The following testimony was elicited from Mr. Istre, another employee of Wilrig, by appellant's counsel:

Q. Okay. Now the exhibits that have been placed in evidence show that Noble Denton, the insurance company, recommended four roustabouts to do roustabout work, apparently, on this tour of 54 days. Were there any roustabouts at all on this trip, this tow?
A. There was a, toolpusher and the driller that were designated as roustabouts.
Q. Were there four roustabouts on this tow?
A. No, sir, not --
Q. Okay. Is a roustabout the person who normally is supposed to do the heavy, hard work?
A. Right.
Q. Okay.
A. Right, yes, sir.
Q. And there were none on this tow?
A. No, sir.

Id. at 30-31.

evidence had already been heard that "four people on [the] tow [were] designated as roustabouts" by Wilrig and prodded counsel to move on.[5]

Appellant also argues that the judge's remarks were an improper comment on the facts in the presence of the jury. Yet, more importantly, he claims the jury concluded from the intervention and comment that the court favored the defendant's position and that the "designation" of roustabouts was sufficient for the vessel to be seaworthy. Thus, we must determine whether the remarks of the trial court, which were timely objected to, impaired a substantial right of the objecting party. Reese v. Mercury Marine Div. of Brunswick Corp., 793 F.2d 1416, 1423 (5th Cir. 1986); Newman v. A.E. Staley Mfg. Co., 648 F.2d 330, 335 (5th Cir. Unit B June 1981).

Upon reviewing the record in its entirety, we do not believe that the district court's remark or actions denied the appellant a fair trial. The record clearly demonstrates that the trial judge

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[5]Dopson objected to the court's interruption and comments outside of the presence of the jury. The court overruled the objection with the following response:

> But, let me explain, the fact has been -- it was very repetitive, I felt, and there had been testimony that the crew was adequate in the eyes of the insurer and . . . other persons to satisfy the insurance company's need for a name, perhaps even the toolpusher was designated as a roustabout. So I could see no need for the repetition and I didn't want the jury to get the misconception that just because you didn't hire a "roustabout" might be a factor. **It's up to them to decide**. You can argue the insurance company wanted to call at least four of them roustabouts, whether they were toolpushers, drillers or whatever. So I note your objection for the record and it would be overruled.

Supp. R. vol. 1, at 259-269.

desired to avoid repetitive and confusing testimony.[6] Furthermore, the record does not evidence any severe admonishments or reprimands against any party, which would lead the jury to believe that one party was favored. The trial court's sole reason for its comment and acts was to further its responsibility to "keep the trial moving." Reese, 793 F.2d at 1426. We cannot say that the sole comment complained of affected the substantial rights of the parties. Consequently, we hold that the district court acted within the bounds of acceptable conduct to maintain the proceedings at a reasonable pace and therefore, we find no abuse of discretion.

2. the unseaworthiness claim

Dopson next argues that the totality of the trial court's remark and actions precluded the jury from reaching a proper decision. Specifically, the appellant argues that the court's interruption prevented him from driving the point home to the jury that the difference between actual and designated roustabouts was tantamount to the issue of seaworthiness. For this reason, Dopson requests a new trial to present the jury with adequate evidence for their deliberations.

A plaintiff is entitled to a new trial on evidentiary grounds

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[6]The Court stated the following after Mr. Istre's testimony:
> Alright, ladies and gentlemen, you've heard a preliminary witness and it's always lengthy and [there is] some degree of repetition and I try to keep my mouth shut so that you can get a grab on the case. So that witness is slow. But from now on, the witnesses are going to go through this courtroom like a space ship in orbit. **No repetition**. **Boom, Boom, to the point**.

Supp. R. vol. 1, at 82.

whenever the jury verdict is against the great weight of evidence. Winter v. Brenner Tank, Inc., 926 F.2d 468, 470 (5th Cir. 1991) (citations omitted); Smith v. Tidewater Marine Towing, Inc., 927 F.2d 838, 843 (5th Cir. 1991). This Court reviews the denial of a motion for new trial under an abuse of discretion standard. Winter, 926 F.2d at 471. Thus, under this standard -

> When the trial judge has refused to disturb a jury verdict, all the factors that govern our review of his decision favor affirmance. Deference to the trial judge, who has had an opportunity to observe the witnesses and to consider the evidence in the context of a living trial rather than upon a cold record, operates in harmony with deference to the jury's determination of the weight of the evidence and the constitutional allocation to the jury of questions of fact.

Id. (quoting Shows v. Jamison Bedding, Inc., 671 F.2d 927, 931 (5th Cir. 1982)). We are not convinced that the jury verdict was against the great weight of evidence in the case before us.

A ship is unseaworthy unless it and all its appurtenances and crew are reasonably fit and safe for their intended purpose. Miles v. Melrose, 882 F.2d 976, 981 (5th Cir. 1989) (a "seaman who is not reasonably fit" may render a vessel unseaworthy); see Bommarito v. Penrod Drilling Corp., 929 F.2d 186, 189 (5th Cir. 1991). The shipowner has an absolute duty to provide the members of his crew with a seaworthy vessel, an obligation not dependent on fault. Miles, 882 F.2d at 981; Comeaux v. T.L. James & Co., Inc., 666 F.2d 294, 298-99 (5th Cir. Unit A 1982). To establish unseaworthiness, a plaintiff must prove that the crewmember is not "equal in disposition and seamanship to the ordinary men in the calling." Miles, 882 F.2d at 981 (quoting Claborn v. Star Fish & Oyster Co. Inc., 578 F.2d 983, 987 (5th Cir. 1978), cert. denied, 440 U.S. 936

(1979)).

The Miles Court stated that a seaman possessing a savage and vicious nature[7] would render a vessel unseaworthy. Id. at 982. The Comeaux Court found, as a matter of law, that the ship in question was unseaworthy due to an inadequate crew. Comeaux, 666 F.2d at 299. The Court stated that not only had the crew on board been insufficient in number, but that the crewmember assisting the plaintiff when the injury occurred was totally blind in one eye and wholly inexperienced. Id. ("Of course, to be inadequate or improperly manned is a classic case of an unseaworthy vessel," quoting June T., Inc. v. King, 290 F.2d 404, 407 (5th Cir. 1961)). In light of the evidence brought before the jury and reviewed by this Court, the finding of an unseaworthy vessel is unwarranted.

The testimony and evidence furnished by the appellee, Wilrig, was sufficient to invalidate any claims of unseaworthiness. The record reveals that the TREASURE STAWINNER had been built and certified according to the Rules and Regulations of the American Bureau of Shipping, United States Coast Guard, United Kingdom Department of Energy and the Norwegian Maritime Directorate. The ship had received industry awards for safety performance and had never had any citations issued against it by any regulatory agency.

The evidence also established that the compliment of crewmembers met and exceeded the amount recommended by Noble by one member. Moreover, the jury was painfully aware of the fact that

[7]In Miles, the seaman in question launched a vicious and unprovoked attack , fatally inflicting 62 knife wounds on another crewmember.

four roustabouts had been "designated" pursuant to Noble's recommendation, rather than hiring four "actual" roustabouts. Dopson has argued that the court prevented counsel from accentuating the differences, if any, between the roustabouts recommended and those utilized, but this argument is meritless. It is clear from the record that a distinction was clearly drawn regarding the roustabouts and its value was weighed accordingly by the jury in their deliberations. Furthermore, even appellee's own counsel described these differences to the jury.[8] Lastly, though there were no "true" roustabouts available to assist Dopson with the grating, testimony revealed that there was more than a sufficient number of able bodied men available to help appellant, if only he would have asked for assistance. Appellant did not present a single shred of proof evidencing that the crewmembers in question were not equal in disposition and seamanship to ordinary men in the calling. Therefore the jury verdict will stand.

B. Did the jury err in finding Dopson contributorily

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[8]Counsel for Wilrig elicited the following testimony from Mr. Murphy:

Q. Mr. Murphy, weren't there four people designated as roustabouts . . . on that tow?
A. Yes, sir.
Q. They were physically able to do roustabout work, weren't they?
A. They had been roustabouts in the past.
Q. That was part of their previous experience?
A. Right.
Q. But, as a matter of fact, these guys who were designated as roustabouts had advanced past that basic elementary level, isn't that true?
A. That's correct.

Supp. R. vol. 1, at 157.

negligent?

Appellant next complains that the jury failed to follow the court's instructions regarding the contributory negligence of a seaman. The court instructed the jury as follows:

> [Y]ou are cautioned that as Jones Act seaman, the plaintiff is required to exercise only slight care for his own safety. You cannot find the plaintiff negligent, so as to defeat or reduce the Jones Act liability of the defendant, if the plaintiff has exercised slight care for his safety.

Supp. R. vol. 1, at 427. Dopson alleges that the evidence at trial established that he had in fact exercised "slight care" under the circumstances. Moreover, appellant argues that even if he was partially at fault for his accident, the evidence does not support a finding that he was ninety percent at fault, particularly since he acted in an "emergency" situation to unclog the sump. In any case, his apportionment of fault should be much lower.[9]

On a motion for a new trial, the appropriate standard of review to test the sufficiency of the evidence in Jones Act claims, is whether there exists a "reasonable evidentiary basis" for the jury's verdict. Thezan v. Maritime Overseas Corp., 708 F.2d 175, 181 (5th Cir. 1983), cert. denied, 464 U.S. 1050 (1984); Gautreaux v. Ins. Co. of N. Am., 811 F.2d 908 (5th Cir. 1987). Where there is an "evidentiary basis for the jury's verdict, this Court's

[9]Dopson provides a few cases to support his contention that his apportionment of fault should be much less. See Gautreaux v. Ins. Co. of N. Am., 811 F.2d 908 (5th Cir. 1987) (seaman found 50% contributory negligent when he ignored the suggestion to use readily available wire cable to lift a heavy sling, and instead used a 3/4 inch manila rope); Trindle v. Sonat Marine, Inc., No. CIV.A.85-7085, 1990 WL 893 (E.D.Pa. Jan. 5, 1990) (seaman was found to be 5% contributory negligent when loosening and removing a fuel pipe cap as directed, resulting in a lower back injury).

function is exhausted, and [the plaintiff] is not free to relitigate the factual dispute." Thezan, 708 F.2d at 181 (quoting Manchack v. S/S OVERSEAS PROGRESS, 524 F.2d 918, 919 (5th Cir. 1975)). We are of the opinion that a reasonable basis exists for the jury's verdict and thus we will not interfere with the judgment.

A seaman's duty to protect himself is slight, but nonetheless it does exist. Id.; Johnson v. Offshore Express, Inc., 845 F.2d 1347, 1355 (5th Cir.), cert. denied, 488 U.S. 968 (1988). Contributory negligence is available to mitigate a vessel owner's liability when an injured seaman has been negligent in breaching a duty to act or refrain from acting. Thezan, 708 F.2d at 181. In general, a seaman has no duty to find the safest way to perform his work, but where it is shown that there existed a safe alternative available of which he knew or should have known, a seaman's course of action can be properly considered in determining whether he was negligent. Id.; Fontenot v. Teledyne Movible Offshore, Inc., 714 F.2d 17, 20 (5th Cir. 1983); see Johnson, 845 F.2d at 1355.

The evidence at trial showed that Dopson had removed the grating by himself on prior occasions without incurring any injury. Dopson also testified that he had seen the grating removed by other crewmembers either by themselves, or in pairs of two.[10] He had also received instruction as to the proper method of lifting heavy objects and had accumulated many years of safety training.

[10]Testimony conflicted as to the proper way of lifting the grating, thus one could conclude that there was no one way of lifting the grating which could be called the "right way."

Moreover, the evidence supported Wilrig's contention that safer and more convenient alternatives existed to remove the paint chip without removing the grating. Among these alternatives were stepping onto the subfloor and reaching beneath the grating to the sump to remove the chip by hand, using a wet-dry shop vacuum the appellant had available to him to suck the paint chip off the top of the sump, and calling for assistance. Although, there were no "actual" roustabouts on board, there was testimony from various crewmembers that they were available to provide assistance if appellant had asked for it. Yet, probably the most significant evidence working against Dopson, were pictures of the grating itself which suggested that Dopson had attempted to lift the grating while it was bolted down.[11] In light of this evidence, the jury could conclude that Dopson did not exercise "slight care" and that he was mostly to blame for his injury. This Court will not speculate as to the thought process of the jury members nor speculate as to what evidence they weighed most heavily. Their findings will remain untouched.

C. Did the jury err in calculating the damage award?

The appellant makes the final argument that the damages for lost future income and pain and suffering were inadequate. This Court will overturn a jury verdict for inadequacy only upon the strongest of showings. Thezan, 708 F.2d at 182-83. A jury has

[11]Conflicting testimony was given by both parties as to whether or not the grating was bolted at the time of the injury.

great discretion in determining and awarding damages in an action for personal injuries. Book v. Nordrill, Inc., 826 F.2d 1457, 1462 (5th Cir. 1987). "The denial of a motion for new trial on the issue of inadequate damages is a matter of discretion with the trial court and is not subject to review except for abuse of discretion." Id. (quoting Young v. City of New Orleans, 751 F.2d 794, 798 (5th Cir. 1985) (citations omitted)). Only in "extreme and exceptional" cases where the award is so gross as to be " `contrary to right reason' or a `clear abuse of discretion with respect to assessment of damages' will this Court overturn a jury's decision that has been approved by the trial judge." Id. (quoting Bailey v. Southern Pac. Transp. Co., 613 F.2d 1385, 1390 (5th Cir.), cert. denied, 449 U.S. 836 (1980)); see Johnson v. Offshore Express, Inc., 845 F.2d 1347, 1356 (5th Cir.), cert. denied, 488 U.S. 968 (1988). Because we find that the lower court did not abuse its discretion and that the evidence was sufficient to sustain the jury's findings, we deem the damage award adequate.

1. fringe benefits and lost meals

Dopson contends that the jury did not include the value of lost fringe benefits and meals in the damage award. However, even if they were included, they were inadequate pursuant to testimony elicited from his own economic expert. Thus, he requests this issue to be remanded for a recalculation of damages that would comport with the evidence on the record, or in the alternative, a new trial on the issue of damages.

An injured seaman bringing a claim for Jones Act negligence

can recover the value for past and future lost meals. Gautreaux v. Ins. Co. of N. Am., 811 F.2d 908, 914 (5th Cir. 1987). A seaman may also recover the value of fringe benefits as part of his compensation. See Williams v. Reading & Bates Drilling Co., 750 F.2d 487, 490 (5th Cir. 1985); Treadaway v. Societe Anonyme Louis-Dreyfus, 894 F.2d 161, 169 (5th Cir. 1990). Appellant's claim, that the jury did not include the value of fringe benefits and meals in its award, is without merit since the jury did not provide a breakdown of what it included in its award of $200,000 for future lost income.[12] Moreover, the jury is not obligated to follow an economic expert's calculations in determining an award, her figures are only a "suggested guideline for [the] jury." Hass v. Atlantic Richfield, 799 F.2d 1011, 1017 (5th Cir. 1986) (plaintiff argued the trial court abused its discretion in refusing to grant him a new trial because the damages were grossly inadequate in light of testimony of his economic expert). Moreover, the jury is free to consider evidence of higher discount rates, the appellant's ability to mitigate damages, and factors which may have prevented the appellant from obtaining employment in the future. Bartholomew v. CNG Producing Co., 832 F.2d 326, 331 (5th Cir. 1987).

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[12]The jury assigned damages as follows:

Pain and suffering, including physical pain and suffering, mental anxiety, disability and loss of life's pleasures	$ 22,000.00
Loss of past income	$ 28,000.00
Loss of future income	$200,000.00
Total	$250,000.00

The jury has great discretion, to weigh the credibility of witnesses and their testimony, in arriving at an appropriate award. Just as the jury can discard the value of meals, benefits and wages assigned by appellant's expert, it may instead accept the economic testimony given by the appellee. Or, the jury can base an award on a blend of each party's calculations. The jury weighed testimony that Dopson had delayed his own recovery by not attending physical therapy when it was first recommended and the fact that he discontinued his therapy, thereby precluding the mitigation of damages. Also, the jury considered the fact that Wilrig's Brazilian counterpart was taking control over the rig with its own crewmembers, leaving Dopson's near future employment uncertain. Evidence was also presented that Dopson could go back to work in a light to moderate manual labor occupation. Upon reviewing the record, we cannot say the damage award was inadequate. This Court will not upset the jury's solemn verdict.

2. pain and suffering

Lastly, Dopson also complains that the award for past and future pain is inadequate. He bases this argument on the fact that much larger awards have been given for far lesser injuries in this Circuit. However, we are only concerned with the award given by the jury in this case. The jury was properly instructed in awarding damages and the record discloses sufficient evidence from which they could reach a verdict. Thus, the jury acted within the bounds of its province in awarding $22,000 for past, present and

future pain and suffering.[13] That the appellant is not satisfied with the award is not determinative over this Court's review of the findings. This Court will not subject its opinion over the jury's.

III. CONCLUSION

The district court is affirmed on all matters raised on appeal.

AFFIRMED.

[13]The jury heard testimony from Mr. Allen, a Wilrig employee, that Dopson had complained of back pains prior to his injury. This testimony may have influenced the jury's decision. However, we will not speculate on the jury's deliberations.