IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEREK SINGLETON STONE,	:	CIVIL ACTION
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	:	
v.	:	
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AMQUIP CORPORATION, et al.	:	NO. 98-CV-4691

MEMORANDUM

Padova, J. **September , 2000**

Derek Singleton-Stone and his wife Melissa Singleton-Stone filed the instant action against Defendants Amquip Corporation, Great White Fleet, Ltd., and Liebherr-Werk Nenzing GmbH seeking recovery for personal injuries sustained while servicing a ship's crane. Before the Court is Defendant Liebherr-Werk Nenzing GMB's Motion for Summary Judgment. For the following reasons, the Court will deny the Motion.

I. Background

The following facts are essentially undisputed. During December 1997, Derek Singleton-Stone ("Singleton-Stone" or "Plaintiff") worked for Schiller Service Corporation ("SSC") as a crane technician. SSC is the official United States representative for Liebherr-Werk Nenzing GmbH ("Liebherr"). Liebherr is an Austrian corporation that designs, manufactures, and sells shipboard gantry cranes. As Liebherr's representative, SSC provides technical support and

service for Liebherr's cranes within the United States. Defendant Great White Fleet ("GWF") owned and managed the M/V Edyth L ("Ship"), a cargo ship used in a container cargo liner service between Wilmington, Delaware, and ports in the United States and Central America. Defendant Amquip Corporation ("Amquip") rents and sells truck and other types of cranes.

The Ship has two forty-ton overhead gantry container cranes, manufactured by Liebherr, that were used to load and unload cargo. An arm, referred to as the "trolley/jib assembly" lies at the top of each crane, approximately 50 feet above the main deck of the Ship. Inside the trolley/jib assembly are two winch drums that are approximately 6 feet long and weigh 3100 pounds. Rotation of the winch drums causes the crane to raise or lower containers. The winch drums are connected by a drive shaft, commonly called a cardan shaft, that is nearly eight feet long and weighs approximately 1200 pounds. The cardan shaft transmits torque between the drums.

On December 18, 1997, GWF requested SSC replace the Ship's aft winch drum located inside the No. 2 Liebherr crane ("Crane") to remedy a malfunctioning gear box. The repair involved fitting a functioning gear box to a new winch drum and exchanging it with the old winch drum. In anticipation of the drum exchange, the Ship's chief engineer ordered the Ship's crane technician, Igor Pejkovic[1] ("Pejkovic"), to prepare the old winch for removal by disconnecting the hydraulic hoses and motors from the winch and removing the wire ropes that normally are wrapped around the winch drum. Pejkovic did so on December 22, 1997.

On December 23, 1997, SSC sent Singleton-Stone and his supervisor, Ingo Schiller ("Schiller"), to perform the requested repair while the Ship was berthed in the Port of

[1]GWF employed Pejkovic to handle the routine maintenance of the cranes.

Wilmington, Delaware. SSC also leased an eighty-ton mobile truck crane ("Truck Crane") and a crane operator and assistant from Amquip for use in lifting the old winch drum from the vessel and installing a new drum. During the repair operations, cargo operations using the other Ship's crane continued, creating additional movement of the ship relative to the shore.

The first step in the process of replacing the winch drum requires disconnecting the cardan shaft from the old winch drum. The cardan shaft may be disconnected in several ways, including removing the bolts that connect the cardan shaft to the winch drum, or retracting the cardan shaft and sliding it off of the shaft of the winch drum. Singleton-Stone initially attempted to remove the connecting bolts, but was unsuccessful. Schiller and Singleton-Stone, therefore, began to attempt to retract the cardan shaft.

The cardan shaft lies several feet about the floor of the trolley platform. The shaft must be supported while it is being disconnected from the winch drums to prevent it from falling to the floor. To support the weight of the shaft and keep the shaft in alignment, Schiller and Singleton-Stone wrapped a sling around the shaft and attached it to the Truck Crane. Schiller kept in constant radio contact with the Truck Crane operator to regulate the force supplied to the shaft by the Truck Crane. Singleton-Stone then began to use a hydraulic ram jack to retract the cardan shaft. This method required him to stand in close proximity to the end of the cardan shaft. While Singleton-Stone was pumping the ram, the cardan shaft suddenly sprang loose and struck Singleton-Stone in the head causing severe physical injury.

II. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

III. Discussion

Singleton-Stone asserts Count Three of the Fourth Amended Complaint against Liebherr alleging negligence and strict product liability. Plaintiff theorizes that Liebherr is liable on both theories for its failure to warn about or provide instructions on the proper procedure for removal

of the cardan shafts on its cranes. Liebherr seeks summary judgment in its favor on Count Three on the ground that Schiller's use of a land-based crane to support the cardan shaft during retraction in the face of his knowledge of the danger of such crane use constitutes an intervening and superseding cause of Singleton-Stone's injury.

Absent a relevant statute, the general maritime law as developed by the judiciary applies to admiralty cases. East River Steamship Corp. v. Transamerica Delaval Inc., 476 U.S. 858, 864 (1986). Concepts of product liability based on both negligence and strict liability are cognizable in admiralty cases as outlined in federal common law, state law, and treatises such as the Restatement (Second) of Torts § 402A. Exxon Co. v. Sofec, Inc., 517 U.S. 830, 839 (1996); East River Steamship, 476 U.S. at 866; East River Steamship Corp. v. Delaval Turbine, Inc., 752 F.2d 903, 907 (3d Cir.), aff'd 476 U.S. 858 (1986). Thus, plaintiffs in a maritime products liability action enjoy essentially the same cause of action as they would in a non-admiralty case. Alaska Bulk Carriers, Inc. v. Goodall Rubber Co., Civ. A. No. 87-573-CMW, 1990 WL 82361, at *3 (D. Del. June 14, 1990).

Proximate cause is a necessary element in proving a tort case under either a strict liability or a negligence theory. Parks v. Alliedsignal, Inc., 113 F.3d 1327, 1331 (3d Cir. 1997); Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 492 (3d Cir. 1985). A proximate, or legal, cause is defined as a substantial contributing factor in bringing about the harm in question. Van Buskirk, 760 F.2d at 492-95. The doctrine is primarily concerned with the question of the extent of a defendant's legal responsibility for tortious action. Id. The superseding cause doctrine concentrates on one aspect of this issue of legal responsibility, namely what legal effect a third party's actions has after the original defendant has acted negligently or injected a defective

product into the stream of commerce. Id. at 495.

Courts may use the superseding cause doctrine in admiralty cases to determine whether a defendant's conduct was sufficiently related to the resulting harm to warrant imposing liability. Sofec, 517 U.S. at 839. The doctrine of superseding cause applies when a defendant's negligence substantially contributes to the plaintiff's injury in fact, "but the injury was actually brought about by a later cause of independent origin that was not foreseeable." Id. at 837 (quoting 1 T. Schoenbaum, Admiralty and Maritime Law § 5-3, at 165-66 (2d ed. 1994)). A third party's action may constitute a superseding cause and thus relieve the defendant of liability where it is in hindsight "so extraordinary as to not have been reasonably foreseeable." Parks, 113 F.3d at 1334;Van Buskirk , 760 F.2d at 495. The Restatement identifies several considerations to be used in determining whether an intervening force is a superseding cause of harm, including whether (1) its intervention brings about a harm different in kind from that which would otherwise have resulted from the actor's negligence; (2) its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation; (3) the intervening force is operating independently of any situation created by the actor's negligence or is a normal result of such a situation; (4) the operation of the intervening force is due to a third person's act or to his failure to act; (5) the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him; and (6) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion. Restatement (Second) of Torts § 442 (1965).

Liebherr contends that Schiller's decision to use the Truck Crane to support the cardan

shaft during retraction is an intervening force that satisfies the considerations outlined in section 442 of the Restatement for a superseding cause. First, Liebherr argues that Schiller's decision was extraordinary given his knowledge of the upward force the Truck Crane would exert on the cardan shaft, alternate methods of removing the shaft, and Plaintiff's close proximity to the end of the shaft.[2] Second, Liebherr claims that Schiller's decision operated independently or was not a normal result of any situation created by Liebherr's alleged negligence. Lastly, Liebherr asserts that the use of a shore-based crane to support the shaft caused a harm different in kind from that which would otherwise have resulted from its alleged negligent failure to warn and instruct.

Liebherr's argument raises an issue that this Court is not permitted to decide on summary judgment. The issue of whether an intervening force constitutes a superseding cause of an injury normally involves questions of fact that only the factfinder at trial may decide. See Sofec, 517 U.S. at 840-41 ("The issues of proximate causation and superseding cause involve application of law to fact, which is left to the factfinder."); Gavagan v. United States, 955 F.2d 1016, 1019 (5th Cir. 1992); Bradshaw v. Rawlings, 612 F.2d 135, 143 (3d Cir. 1979)(stating that the superseding cause doctrine presents fact questions that must be left to the factfinder at trial in the majority of cases); Alaska Bulk Carriers, 1990 WL 82361, at *4. A determination of whether Schiller's

[2]Schiller testified in a deposition to his knowledge of the following facts: (1) alternate methods of supporting the cardan shaft were possible, including using a chain fall or blocks under sections of the shaft; (2) the vessel moves relative to the shore due to a variety of factors; (3) attaching the Truck Crane to the shaft created variations of force exerted on the shaft dependent upon the relative movement of the vessel; (4) using an alternate method to support the shaft would eliminate relative movement between the Truck Crane and the shaft; (5) the load indicator on the Truck Crane was not an accurate indicator of the weight at the end of the hook; (6) if the Truck Crane exerted more force than was necessary to support the shaft, it would pull the shaft in an upward direction; and (7) if something that is fixed is pulled upwards and breaks free, the object will come straight up. (Liebherr Ex. E at 75-84).

decision constitutes a superseding cause in this case requires the finding of numerous facts, including whether Schiller's decision was negligent or extraordinary under the circumstances. Even though the underlying facts regarding Schiller's decision to use the Truck Crane to support the cardan shaft during retraction are largely undisputed, a factfinder, taking all reasonable inferences in Plaintiff's favor, could reasonably conclude that Schiller's decision to use a shore-based crane was not "so extraordinary as to not have been reasonably foreseeable." Parks, 113 F.3d at 1334. Plaintiff presents evidence that Liebherr did not address the maintenance of the bolts that connect the cardan shaft to the winch drum in any manuals, thus creating a situation where the bolts could deteriorate to a state where they are impossible to remove. Use of another method, like retraction, would then be inevitable. Plaintiff further submits evidence that the structure of the trolley/jib assembly hindered the ease of supporting the shaft from beneath or by a chain. The record, therefore, does not mandate the conclusion that use of a crane (or some other method that exerts force on the shaft) to keep the shaft from falling during retraction is extraordinary or unforeseeable, especially given the weight of the crane and Liebherr's failure to provide instruction on how to remove the shaft or warning against retracting it. From this evidence, a factfinder could also reasonably conclude that Schiller's decision to use a land-based crane did not operate independently, and in fact was a normal result, of Liebherr's alleged negligence.

Furthermore, Liebherr's argument presumes that the force applied by the shore-based crane was the sole cause of the shaft's upward spring. One could reasonably infer, however, that retraction of the cardan shaft in itself could also create this risk. It is not clear, therefore, that the use of the shore-based crane brought about a harm different in kind from that presented by

Liebherr's conduct.

For those reasons, the Court concludes that the record reasonably permits a difference of opinion as to whether Schiller's decision was sufficiently negligent, extraordinary, or unforeseeable pursuant to the considerations outlined in the Restatement to constitute a superseding cause of Singleton-Stone's injury. These determinations, therefore, are most appropriately made by the factfinder at trial. See Restatement (Second) of Torts §453 cmt. b (1965) (advising courts to leave the issue of the existence of a superseding cause to the trial factfinder where a reasonable difference of opinion as to whether the alleged intervening act was negligent or foreseeable is possible). Accordingly, the Court denies Liebherr's request for summary judgment. An appropriate Order follows.