

## Index to New Jersey Court of Errors and Appeals.

	PAGE
Opinion in New Jersey Supreme Court.....	72
Order of Reversal and Remittitur.....	76
Judgment on Reversal.....	77
Notice of Appeal.....	79
Grounds of Appeal.....	80
Notice of Argument.....	81

## Index to New Jersey Supreme Court.

Writ of Certiorari .....	1
Allocatur .....	2
Return to Writ of Certiorari.....	3
Employee's Claim Petition for Compensation .....	4
Respondent's Answer to Employee's Claim Petition for Compensation .....	9
Determination of Facts and Rule for Judgment .....	14
Notice of Appeal .....	18
Memorandum .....	19
Statement of Facts and Determination.....	23
Reasons for Reversal .....	28
Testimony .....	29
Certificates .....	71

## WITNESSES FOR PETITIONER.

	PAGE
Isadore Mandel,	
Direct .....	29
Cross .....	35
Re-direct .....	41
Dr. Max Kummel,	
Direct .....	42
Cross .....	46

## WITNESSES FOR RESPONDENT.

Allan Webb,	
Direct .....	49
Cross .....	52
Isadore Mandel,	
Direct .....	54
Cross .....	55
Ronald MacGregor,	
Direct .....	58
Cross .....	61
Dr. Abbot Beling,	
Direct .....	64
Cross .....	68

## EXAMINATION BY THE COURT.

Isadore Mandel .....	62
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### Writ of Certiorari.

NEW JERSEY, ss.: THE STATE OF NEW JERSEY to  
the Honorable Judges of the  
Court of Common Pleas, in  
(Seal) and for the County of Es-  
sex, and RUSSELL C. GATES, 10  
Clerk of said Court.—  
GREETINGS:

We being willing for certain reasons to be certi-  
fied of and concerning a certain order, proceed-  
ings, determination and judgment rendered on  
the 14th day of August, 1944, by the Hon. W.  
STANLEY NAUGHRIGHT, Judge of the Essex County  
Court of Common Pleas, in a certain proceeding  
wherein ISIDORE MANDEL was the petitioner, and 20  
FEDERAL SHIPBUILDING & DRY DOCK COMPANY was  
the respondent, under an Act of Legislature of  
the State of New Jersey commonly known as the  
Workmen's Compensation Act;

We command you, the said Court of Common  
Pleas in and for the County of Essex, and Rus-  
SELL C. GATES, Clerk of the said Court, that the  
said order, proceedings, determination and judg-  
ment, together with the transcript of the evidence  
and all proceedings for the making of the same, 30  
and all things touching and concerning the same  
as fully and as entirely as before you remained  
or are in your custody and control, you do certify  
and send together with this writ to our Justices  
of our Supreme Court of Judicature at Trenton,  
New Jersey, on the 30th day of September, 1944,  
that therein may be caused to be done what of  
right and according to law ought to be done.

40

*Writ of Certiorari.*

WITNESS, HON. THOMAS J. BROGAN, Chief Justice of our said Supreme Court at Trenton this 6th day of September, 1944.

JAMES J. GAVIN,  
Clerk.

10        LAURENCE SEMEL,  
Attorney for Prosecutor.

---

**Allocatur.**

This writ is allowed. Let it be sealed.

Dated August 28, 1944.

20                        FREDERIC R. COLIE,  
Justice, New Jersey Supreme Court.

30

40

### Return to Writ of Certiorari.

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX. } ss.:

I, W. STANLEY NAUGHRIGHT, Judge of the Court of Common Pleas in and for Essex County, New Jersey, and RUSSELL C. GATES, Clerk of the Court of Common Pleas, in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the judgment of the Court of Common Pleas and determination and award and proceedings made and given by the workmen's Compensation Bureau of New Jersey, Department of Labor, in the Compensation Proceedings of *Isadore Mandel, Petitioner, vs. Federal Shipbuilding & Dry Dock Company, Respondent*, together with all things touching and concerning the same as by the within writ to us directed and as commanded. 10 20

IN WITNESS WHEREOF, we have hereunto set our hands and official seal this 22nd day of September, A. D., One Thousand Nine Hundred and Forty-four.

(Seal) W. STANLEY NAUGHRIGHT,  
 Judge of the Court of Common Pleas,  
 Essex County, New Jersey. 30

RUSSELL C. GATES,  
 Clerk of the Court of Common Pleas,  
 Essex County, New Jersey.

**Employee's Claim Petition for Compensation.**

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU.

10

ISADORE MANDEL,  
(Badge No. 32673)  
Petitioner,

*vs.*

FEDERAL SHIPBUILDING & DRY  
DOCK COMPANY,  
Respondent.

Received at  
Trenton .....  
Claim Petition  
No.....  
Date of  
Accident,  
June 26th, 1943.

20

If known, state name of insurance company . . . .

Attorney for petitioner, LAURENCE SEMEL, 60  
Park Place, Newark, New Jersey.

To the Workmen's Compensation Bureau of New  
Jersey:

Petitioner alleging that he sustained an acci-  
dent arising out of and in the course of his em-  
ployment with the respondent, respectfully states:

30

1. What is your name? Isadore Mandel.
2. Where do you live? 1267 Grant Avenue,  
New York, N. Y.
3. Sex Male.
4. Age 56.
5. Marital Status Married.

40

6. By whom were you employed at the time of  
the accident? Federal Shipbuilding & Dry  
Dock Company, Port Newark, New Jersey.

*Employee's Claim Petition for Compensation.*

7. What was the business of your employer?  
Shipbuilding.
8. Did you give written notice to your employer at the time you were hired, or later, that Article 2 of the Workmen's Compensation Law of New Jersey should not apply to you? No. 10
9. Did you receive such notice from your employer? No.
10. Did your employer have knowledge of your injury? Yes.
11. If so, on what date? Saturday, June 26th, 1943.
12. Did you notify your employer of such injury? Yes. 20
13. If so, on what date? June 26th, 1943.
14. What was your regular occupation? Pipe fitter.
15. What kind of work were you doing at the time of accident? Pipe fitting.
16. When did the accident happen? June 26th, 1943, 9 A. M.
17. Where did the accident happen? On the deck of a ship. 30
18. What was the nature of the accident, and how did it happen? I picked up a large heavy blower and carried it from one spot to another. I immediately felt a pain in the groin and in the small of my back and had to stop working; reported to foreman who suggested that petitioner try to continue to work. The next day petitioner was sent to the first aid department and the following day he was ex- 40

*Employee's Claim Petition for Compensation.*

amed by the respondent's physician who sent him to the shipyard hospital where it was found that he had hernia and a sacro-iliac sprain.

- 10 19. On what date were you compelled to stop work because of the injury? Continued to work.
- 20 20. On what date were you well enough to work again? .....
21. If still disabled, on what date do you think you will be able to work? .....
22. Give nature of any injury from which you will recover Hernia and sacro-ilian sprain.
- 20 23. Has any permanent injury resulted? If there has been amputation or loss of usefulness of any member or impairment of any physical organ, explain fully See No. 22.
24. Were you wages fixed by piece-work? No.
25. If so, what was your average weekly wage? .....
26. If wages were fixed by the hour, state rate per hour \$1.14½ per hour.
- 30 27. Give number of hours in ordinary working day 8 hours.
28. Give number of days in an ordinary working week 5 days.
29. State the amount of weekly wages \$45.80.
30. Have you been paid compensation? No.
31. If so, how much?.... Compensation Rate....  
Temporary Disability .....
- 40 Permanent Disability .....

*Employee's Claim Petition for Compensation.*

32. Has your employer promised to pay you any compensation? No.
33. If so, how much? .....
34. Was medical aid required? Yes.
35. Did you receive any medical, surgical or hospital service? Yes. 10
36. Did you request your employer to furnish these services? Yes.
37. Were they furnished? Yes.
38. If so, between what dates? .....
39. If not, what sum did you expend for medical, surgical or hospital services? None.
40. Give name and address of physician and hospital ..... 20
41. What other facts are there which you believe important? .....
42. Have you made claim to your employer for compensation? Yes.

Your petitioner therefore prays that the Workmen's Compensation Bureau will determine the amount of compensation due your petitioner from said respondent, under Revised Statutes of New Jersey, 1937, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that our petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper. 30

And your petitioner will pray, etc.

ISADORE MANDEL,  
Isadore Mandel,  
(Petitioner)

40

*Employee's Claim Petition for Compensation.*

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.:

ISADORE MANDEL, of full age being duly sworn, according to law, on his oath deposes and says: That he is the petitioner named in the foregoing  
10 petition; and that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

ISADORE MANDEL,  
Isadore Mandel,  
(Petitioner)

Subscribed and sworn to before me, this 26th  
20 day of August, 1943, at Newark, New Jersey.

LAURENCE SEMEL,  
A Master in Chancery of New Jersey.  
(The affidavit may be sworn to before any person authorized to administer an oath.)

To the Respondent:

The foregoing claim petition has been presented  
30 by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act. Unless an answer in duplicate is filed within ten days after the service of this notice, with the Secretary of the Bureau, in the State House at Trenton, the petitioner will proceed with proof of claim according to law.

WORKMEN'S COMPENSATION BUREAU.

.....  
40 Secretary.

**Respondent's Answer to Employee's Claim  
Petition.**

NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU.

<p style="text-align: center;">ISADORE MANDEL, (Badge No. 32673) Petitioner,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">FEDERAL SHIPBUILDING &amp; DRY DOCK COMPANY, Respondent.</p>	}	<p style="text-align: right;">Received at Trenton . . . . .</p> <p style="text-align: right;">Claim Petition No. 74827.</p>
		10

Attorney for Respondent LINDABURY, DEPUE  
& FAULKS, 744 Broad St., Newark, N. J.

In answer to Claim Petition filed in this cause  
Respondent states:

1. Name of Respondent Federal Shipbuilding  
and Dry Dock Company, Lincoln Highway,  
Kearny, New Jersey.
2. Was the petitioner in your employ at the time  
of the alleged accident? Yes. 30
3. State your business Shipbuilding.
4. Did you receive written notice from the Peti-  
tioner at the time of hiring, or later, that  
Article 2 of the Workmen's Compensation  
Law of New Jersey was not to apply to him?  
No.
5. Did you give such written notice to him? No. 40

*Respondent's Answer to Employee's Claim  
Petition.*

6. Did you have knowledge of an injury occurring at the time alleged in the petition? No.
7. If so, on what date? X.
8. Did you receive notice of an injury occurring at the time alleged in the petition? No.
- 10 9. If so, on what date? X.
10. What was the Petitioner's regular occupation? Pipe fitter.
11. What kind of work was he doing at the time an accident is alleged to have occurred? The petitioner reported he was moving a blower.
12. Did the Petitioner sustain an accident arising out of the Petitioner's employment with the Respondent at the time alleged in the petition? See 36.
- 20 13. Did the Petitioner sustain an accident in the course of his employment with the respondent at the time alleged in the petition? See 36.
14. If the accident occurred on a date other than the one alleged in the petition, state the correct date See 36.
- 30 15. What was the nature of such accident, and how did it happen? The petitioner stated that on the morning of June 28, 1943, he was moving a blower when he felt a pain in his right groin. The petitioner had been operated on for a hernia on January 3, 1943.
16. On what date was the Petitioner compelled to stop work because of injury? The petition states that petitioner continued to work.

*Respondent's Answer to Employee's Claim  
Petition.*

17. On what date was the Petitioner well enough to work again? (See No. 16)
18. If still disabled, on what date do you estimate he will be able to work? (See No. 16)
19. Give your understanding of the nature of any injury from which he should recover X. 10
20. Give your understanding of any permanent injury which has resulted. If there has been amputation or loss of usefulness of any member or impairment of any physical organ, explain fully On July 3, 1943, the petitioner had a small right inguinal hernia.
21. Were the wages fixed by piece-work? No.
22. If so, what was the average weekly wage of the Petitioner? X. 20
23. If wages were fixed by the hour, state rate per hour \$1.09.
24. Give number of hours in an ordinary working day 8.
25. Give number of days in an ordinary working week 5.
26. State the amount of weekly wages \$43.60. 30
27. How much money have you paid the Petitioner as compensation (not including medical aid) since the accident? None.  
Temporary Disability None.  
Permanent Disability None.  
Compensation Rate \$20.00.
28. Have you promised to pay compensation? No.
29. If so, how much? X. 40
30. Was medical aid required? Yes.

*Respondent's Answer to Employee's Claim  
Petition.*

31. Were you requested to supply medical services Yes.
32. Did you furnish this service? Partly.
- 10 33. If so, between what dates? July 2, 1943 and July 20, 1943.
34. If not, give reasons for failure to do so Respondent maintains that the petitioner's hernia is not compensable.
35. Give name of physician and hospital rendering service at your direction Dr. John J. Brozdowski and Dr. Macnieski.
- 20 36. What other facts are there which you believe important? The respondent puts the petitioner to his proof that he met with an accident as alleged by him, that he sustained any permanent injury to his back as a result thereof and that his right inguinal hernia is compensable.
37. If you deny that compensation is payable in this case explain your reasons for this conclusion X.

30 FEDERAL SHIPBUILDING AND DRY DOCK  
COMPANY,  
(Respondent)

By J. H. LOVE, Agent.

*Respondent's Answer to Employee's Claim  
Petition.*

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON. } ss.:

J. H. LOVE of full age, being duly sworn according to law, on his oath deposes and says: That he is the agent of the respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief. 10

J. H. LOVE,  
Agent of Respondent.

Subscribed and sworn to before me, this twenty-seventh day of November, 1943, at Kearny, New Jersey. 20

WM. J. CORNELLA, JR.,  
Notary Public of New Jersey.  
My Commission Expires Dec. 22, 1947.

(Seal)

(This affidavit may be sworn to before any person authorized to administer an oath.) 30

**Determination of Facts and Rule for  
Judgment.**

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU.

10

ISADORE MANDEL,  
(Badge No. 32673)  
Petitioner,

*vs.*

FEDERAL SHIPBUILDING & DRY  
DOCK COMPANY,  
Respondent.

On  
Claim Petition  
No. 74827.

Determination  
of Facts and  
Rule for  
Judgment.

20

Appearances :

LAWRENCE SEMEL, Esq., attorney for petitioner.

LINDABURY, DEPUE & FAULKS, Esqs., by  
THOMAS MOLONEY, Esq., attorneys for respondent.

30 This matter was tried before me in Newark on  
February 21st and March 6, 1944.

The petition was filed to recover compensation for disability alleged to have been sustained by the petitioner as the result of an accident with which he claims he met on June 26, 1943. It is alleged that the petitioner now suffers from a hernia and a sprain of his back. It is stated in the petition that the petitioner continued to work after his injury and no claim is made therein in reference to expenses for medical treatment.

40

*Determination of Facts and Rule for Judgment.*

The respondent filed an answer in which it admitted that the petitioner was in its employ on June 26, 1943 at a wage of \$43.60 per week. The respondent put the petitioner to his proof that he met with an accident as alleged by him, that he sustained any permanent injury to his back as a result thereof, and that his right inguinal hernia is compensable. 10

The petitioner testified that at 9:00 A. M. on Saturday, June 26, 1943, he felt a rip in his right groin and in the small of his back while lifting a blower and thereafter had pains in those areas and could not lift his leg, that he reported at respondent's first aid station and thereafter completed his day's work.

He said that he felt no lump in his groin on June 26th and did not have the services of a physician on that or the following day, that on Monday, June 28, 1943, he again reported at respondent's first aid station. He testified that he lost no time as a result of his injury. 20

The petitioner testified further that on January 4, 1943 he had been operated upon for the repair of a hernia, that he started work for the respondent in September, 1943. He said that his hernia is now becoming larger, that it causes him pain, that he does not lift heavy objects, and that his condition requires that he wear a belt. 30

Dr. Max Kummel testified on behalf of the petitioner that he examined the petitioner on November 10, 1943 and on February 8, 1944, and that his examination revealed that the petitioner had a recurrence of a right inguinal hernia and a mild strain of the ligaments of his back. Dr. Kummel estimated that the petitioner's permanent disability in reference to the condition in his back was 7½% of total. 40

*Determination of Facts and Rule for Judgment.*

10 Allan Webb testified on behalf of the respondent that on July 2, 1943 he was a clerk in respondent's first station, that the petitioner reported to him on that day that he had hurt himself on a blower on June 28, 1943 and that the petitioner complained of pain in his right groin. Mr. Webb testified further that on July 20, 1943 the petitioner stated to him that his back had troubled him for two weeks as a result of lifting heavy objects, that he noted that the petitioner had a possible strain in the sacral area of his back and that he was wearing a back and abdominal belt. Mr. Webb said that adhesive strapping was applied.

20 Ronald MacGregor testified on the respondent's behalf that on July 2, 1943, he was a clerk in respondent's casualty department and that on that day the petitioner stated to him that he was moving a blower on June 28, 1943, and felt a pain in his right groin, that the petitioner did not notice any swelling or a lump, that the pain did not go away and he called at respondent's first aid station on July 2, 1943, was examined, and that was the first time he had seen a doctor since he felt the pain.

30 Dr. C. Abbottt Beling testified on behalf of the respondent that he examined the petitioner on December 2, 1943, that the petitioner had a recurrent right inguinal hernia and slight tenderness in the left gluteus muscle at the sacrum. For the latter, Dr. Beling estimated permanent disability at 2% of total.

40 I have carefully reviewed the pleadings and the evidence, and I do find that the petitioner met with an accident which arose out of and in the course of his employment by the respondent on June 26, 1943, of which the respondent had notice, that as

*Determination of Facts and Rule for Judgment.*

a result of that accident the petitioner sustained an injury to his back and also suffered the recurrence of a right inguinal hernia. The petitioner expressed his desire that respondent furnish him with an operation for the repair of his right inguinal hernia, and in view of the fact that the petitioner suffered a recurrence of his hernia, I find that the respondent is liable for any further medical treatment or the correction of the petitioner's hernia. I further direct that after the petitioner has undergone such treatment, he be re-examined. Thereafter, I shall award counsel fee and costs and award such compensation for temporary and permanent disability as may be warranted.

IT IS ORDERED, therefore, on this 3rd day of April, 1944, that judgment be entered in favor of the petitioner, Isadore Mandel, and against the respondent, Federal Shipbuilding and Dry Dock Company, in accordance with the foregoing determination.

JOHN A. WEGNER,  
Deputy Commissioner of Compensation.

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**Notice of Appeal.**

NEW JERSEY DEPARTMENT OF LABOR.  
WORKMEN'S COMPENSATION BUREAU.

10

ISADORE MANDEL,  
Petitioner,

*vs.*

FEDERAL SHIPBUILDING & DRY  
DOCK COMPANY,  
Respondent.

On  
Claim Petition  
No. 74827.

On Petition for  
Compensation.

Notice of  
Appeal.

20

*To Lawrence Semel, Esq., Attorney for Petitioner,  
Secretary of Workmen's Compensation Bu-  
reau, and County Clerk of the County of  
Essex:*

30

PLEASE TAKE NOTICE that the respondent, Federal Shipbuilding and Dry Dock Company, hereby appeals to the Court of Common Pleas of the County of Essex from the whole of the judgment entered in the above entitled cause by Honorable John C. Wegner, Deputy Commissioner of Compensation, on April 3, 1943, whereby and wherein

it was determined that the petitioner met with an accident which arose out of and in the course of his employment by the respondent, that as a result of that accident the petitioner sustained injury to his back and suffered the recurrence of a right inguinal hernia, and the petitioner having expressed his desire that respondent furnish him with an operation for the repair of said hernia, it was determined that the respondent is liable for any further medical treatment for the correction

of said hernia. It was also determined that com-

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*Memorandum.*

pensation for temporary and permanent disability will be awarded subsequent to such medical treatment and after re-examination of the petitioner, together with counsel fee and costs.

LINDABURY, DEPUE & FAULKS,  
Lindabury, Depue & Faulks,  
Attorneys for Respondent. 10

Dated: April 26, 1944.

**Memorandum.**

COURT OF COMMON PLEAS,  
ESSEX COUNTY. 20

<p>ISADORE MANDEL, Petitioner-Appellee, <i>vs.</i> FEDERAL SHIPBUILDING &amp; DRY DOCK COMPANY, Respondent-Appellant.</p>	}	<p>On Appeal from the Workmen's Compensation Bureau. Memorandum.</p>	30
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For the petitioner-appellee, LAURENCE SEMEL,  
Esq.

For the respondent-appellant, LINDABURY,  
DEPUE & FAULKS, by THOMAS MOLONEY,  
Esq.

NAUGHRIGHT, J.:

Respondent appeals from a judgment of the 40  
Workmen's Compensation Bureau.

*Memorandum.*

The petitioner was employed by the respondent as a pipefitter, and alleges he now suffers from a hernia and a sacro-iliac strain as the result of lifting a blower on June 26, 1943.

The Workmen's Compensation Act contains a specific provision relating to hernia: 34:15-12:

10

“Hernia. X. Inguinal hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is a real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first, the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia (days when the business is not in operation, such as Sundays, Saturdays or holidays shall be excluded from this twenty-four-hour period); fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia. \* \* \*”

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30

40

*Memorandum.*

The petitioner testified that on June 26, 1943 he lifted a blower "and as soon as I lift up the blower I felt something like a rip". He reported to his snapper, continued to work, and later reported to the respondent's first aid station. He further testified that he felt himself on Saturday and felt no lump; nothing, did not see a doctor on Saturday or Sunday, and continued working straight ahead. Petitioners' alleged injury does not come within the first provision of the hernia section of the statute quoted above. As to the second provision, it is apparent from his own testimony that the five requisite elements have not been complied with. It is the contention of petitioner, however, that he suffered a recurrence or aggravation of a pervious hernia and therefore does not come within the provisions of the hernia section of the statute, he having had a hernia operation January 4, 1943. On this point Dr. Max Kummel, called as a witness on behalf of the petitioner, testified as follows (page 28):

"Q. Well, Doctor, assuming this man had his hernia repaired in January, there would be no hernia between that time and the time of this strain in July, would there? A. That is correct.

Q. So if there is no hernia, there couldn't be an aggravation of a hernia, because there was no hernia? That is true also, isn't it? A. No, there is not an aggravation of a hernia."

The Court of Errors and Appeals in *Furferi vs. Pennsylvania R. R. Co.*, 117 N. J. L. 511, cited by both petitioner and respondent, at page 516 stated: "It is the settled rule in this state, in aid of interpretation, that the Compensation Act,

*Memorandum.*

grounded as it is in social and economic considerations, is to be liberally construed to effectuate the general legislative policy. \* \* \* The special provision relating to hernias is in the nature of an exception, and, by the same token, is to be strictly construed. A case not within its precise letter is to be excluded." Also on page 512 the Court said:

10 "And so, the accidental aggravation of an existing hernia is compensable if the proof brings it within that category."

In the instant case the petitioner's previous hernia had been repaired and the testimony of Dr. Kummel shows that there was no protrusion after the operation, there would be no hernia between that time and the time of this strain in July, and petitioner did not suffer an aggravation of a hernia. This distinguishes the instant case from

20 *Furferi vs. Pennsylvania R. R. Co. (supra)*. In that case there was an aggravation of an existing hernia.

After consideration of all the evidence, the briefs and argument of counsel, I find that petitioner did not suffer a compensable hernia.

The case is remanded to the Workmen's Compensation Bureau for consideration and determination of the other points involved.

30 A determination may be presented accordingly under Rule 9.

Dated: July 11, 1944.

W. STANLEY NAUGHRIGHT.  
Judge.

**Statement of Facts and Determination.**

ESSEX COUNTY COURT OF COMMON  
PLEAS.

<p style="text-align: center;">ISADORE MANDEL, Petitioner-Appellee,  <i>vs.</i>  FEDERAL SHIPBUILDING &amp; DRY DOCK COMPANY, Respondent-Appellant.</p>	}	<p>On Appeal Statement of Facts and Determination.</p>	10
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For the Petitioner-Appellee, LAURANCE  
SEMEL, ESQ.

20

For the Respondent-Appellant, LINDABURY,  
DEPUE & FAULKS, by THOMAS MOLONEY,  
ESQ.

The petitioner, Isadore Mandel, filed a formal petition in the Workmen's Compensation Bureau. He alleged therein that while working for the respondent on June 26, 1943, and after having carried a "heavy blower", he felt a pain in his groin and in the small of his back; and that the following day examination disclosed a hernia and sacroiliac sprain.

30

The respondent's answer put the petitioner to his proof that he met with the accident alleged, that he had sustained any permanent injury to his back as a result thereof, and that his right inguinal hernia was a compensable one.

The case was tried in Newark on February 8 and March 6, 1944 before a Deputy Commissioner of the Workmen's Compensation Bureau. The petitioner testified that on Saturday, June 26, 1943

40

*Statement of Facts and Determination.*

he felt something like a rip in his right groin and in the small of his back while lifting a blower, that he reported the incident at respondent's first aid station and then returned to work and worked all day. The same day he examined himself in the area of the groin after sustaining the strain, but  
10 felt nothing. He did not consult a doctor on Saturday, the day of the accident, nor on Sunday, the following day. The petitioner testified further that that the condition of his back prevents him from working without a back support and that the bulge in his groin is becoming larger and causes him pain. He said that in January, 1942 he had undergone an operation for the repair of a right inguinal hernia.

20 Dr. Max Kummel testified that he examined the petitioner on his own behalf on November 10, 1943 and on February 8, 1944. Dr. Kummel said that the petitioner had sustained the recurrence of a right inguinal hernia, which, however, was not an aggravation of a preexisting condition. He said also that the petitioner had sustained a sprain of the ligaments in the sacral area of his back. As a result of the injury to the petitioner's back, Dr. Kummel estimated that he had sustained permanent disability to the extent of 7½% of total.

30 Allan Webb testified that he was a first aid attendant at respondent's plant and that the petitioner reported to him on July 2, 1943 and complained of pain in his right groin as a result of hurting himself on a blower about five days before.

40 Ronold MacGregor testified that he is chief clerk in the Casualty Department at respondent's plant and that on July 2, 1943 the petitioner stated to him that he was moving a blower on June 28, 1943, which caused pain in the petitioner's right groin, which he still felt on July 2nd.

*Statement of Facts and Determination.*

Dr. C. Abbott Beling testified on behalf of the respondent that he examined the petitioner on December 2, 1943. In Dr. Beling's opinion, the petitioner had sustained a myositis in the gluteal muscles, which caused permanent disability referable to the petitioner's back, to the extent of 2% of total. Dr. Beling said that the petitioner also had a right indirect inguinal hernia. 10

The Deputy Commissioner concluded that the petitioner had met with an accident on June 26, 1943, which arose out of and in the course of his employment by the respondent, and as a result he sustained injury to his back and suffered the recurrence of a right inguinal hernia. The court held that the respondent was liable for further medical treatment for the correction of the petitioner's hernia and that compensation for temporary and permanent disability, together with counsel fee and costs, would be awarded subsequent to such medical treatment and after re-examination of the petitioner. 20

The respondent appealed from the judgment of the Workmen's Compensation Bureau, and after consideration of all the evidence, the briefs, and argument of counsel, I find that petitioner did not sustain an inguinal hernia which is compensable under the Workmen's Compensation Act of the State of New Jersey. 30

The Workmen's Compensation Act (R. S. 34: 15-12(x) ) provides that all cases of inguinal hernia, other than those resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury, unless conclusive proof is offered that the hernia was immediately caused by 40

*Statement of Facts and Determination.*

10 such sudden effort or severe strain that five requirements are met. As the petitioner testified that his injury resulted from a strain while lifting, this case does not come within the exception stated. The act makes only one exception in reference to proof of the five points. Therefore the inguinal hernia of a recurrent nature allegedly sustained by the petitioner is in the category of "all other cases" in which the five statutory requirements must appear for the recovery of compensation.

20 It is apparent from the petitioner's testimony that the requirements of the Workmen's Compensation Act relating to other types of inguinal hernia were not met. The first requirement is that the descent of the hernia immediately follow the cause. The petitioner, however, stated that on the day of the alleged accident he examined himself in the area of the groin, after his alleged strain, but felt nothing. As to the requirement that there be such prostration that the employee be compelled to cease work immediately, the petitioner repeated that he did not stop work. The petitioner said also that he did not see a doctor on the day he sustained the strain nor on the day following. The Act provides that the attendance of a licensed physician be required within 24 hours after the occurrence of the hernia.

30 I find further that the petitioner did not sustain an aggravation of a pre-existing hernia. Dr. Kummel, who testified on his behalf stated, "No, there is no aggravation of a hernia." Moreover, the testimony of Dr. Kummel indicates that there was no protrusion of a hernia after the petitioner's operation of January, 1943 until the sprain sustained by him in July of that year. This case is, therefore, distinguishable from *Furferi v.*

40

*Statement of Facts and Determination.*

*Pennsylvania Railroad Company*, (117 N. J. L. 508; 189 Atl. 126, E. & A.—1936). In that case the Court of Errors and Appeals stated at page 516: "It is the settled rule in this state, in aid of interpretation, that the Compensation Act, grounded as it is in social and economic consideration, is to be liberally construed to effectuate the general legislative policy. \* \* \* The special provision relating to hernia is in the nature of an exception, and, by the same token, is to be strictly construed. A case not within its precise letter is to be excluded." 10

IT IS ORDERED, therefore, on this 14th day of August, 1944, that this case be remanded to the Workmen's Compensation Bureau for consideration and determination of the other points involved. 20

W. STANLEY NAUGHRIGHT,  
Judge.

30

40

**Reasons.**

## NEW JERSEY SUPREME COURT.

10	ISADORE MANDEL, Petitioner-Prosecutor,  <i>vs.</i>  FEDERAL SHIPBUILDING & DRY DOCK COMPANY, Respondent-Defendant.	} Reasons.
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20 The following are the reasons upon which the prosecutor will rely for setting aside the judgment before this Honorable court by writ of certiorari:

1. The Essex County Court of Common Pleas erred in finding that the petitioner did not meet with an accident arising out of and in the course of his employment.

2. The Essex County Court of Common Pleas erred in finding that the petitioner did not suffer a compensable hernia.

30 3. The Essex County Court of Common Pleas erred in reversing the findings and conclusions of the Deputy Commissioner of Labor and in particular reversing the findings of fact and conclusions of law of the said Deputy Commissioner, and that his judgment in divers other respects is illegal, erroneous and oppressive to the prosecutor.

LAURENCE SEMEL,  
Of Counsel with the Prosecutor.

40 Service of a copy of the within reasons is hereby acknowledged this 9th day of September, 1944.

LINDABURY, DEPUE & FAULKS,  
Attorneys for Defendant.

### Testimony.

NEW JERSEY DEPARTMENT OF LABOR,  
 WORKMEN'S COMPENSATION BUREAU,  
 NEWARK, ESSEX COUNTY DISTRICT.

ISADORE MANDEL, Petitioner,  <i>vs.</i>  FEDERAL SHIPBUILDING & DRY DOCK COMPANY, Respondent.	}	10           Testimony.
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February 8, 1944. 20

Before HON. JOHN C. WEGNER, Deputy Compensation Commissioner.

Appearances:

LAWRENCE SEMEL, Esq., for the petitioner.

THOMAS MALONEY (LINDABURY, DEPUE & FAULKS, Esqs.) for the respondent.

30

ISADORE MANDEL, the petitioner, called as a witness on his own behalf, was sworn and testified as follows:

*Direct examination by Mr. Semel:*

Q. Mr. Mandel, you are the petitioner in this case. Where do you live? A. 1267 Grant Avenue, Bronx.

40

*Isadore Mandell, Petitioner—Direct.*

Q. Grand Avenue or Grant? A. "T".

Q. Grant Avenue, Bronx. Were you employed by the Federal Shipbuilding and Dry Dock Company on Saturday, June 26, 1943? A. Yes.

Q. Were you injured on that day in an accident? Did you hurt yourself that day? A. Yes.

10 Q. Will you tell the Court exactly what happened; what time of day this was? A. I went down to the oil tank to put some strainers in. It was very hot so I went up on deck and I got to lift up the blower, and as soon as I lift up the blower I felt something like a rip. So I told my snapper. He said, "Do you want to go? I will give you a ticket, go to the first aid." So I told him I will wait a little while. So then when I went down the steps I felt like I couldn't lift my leg  
20 up. So I kept working. I figured maybe it is nothing, maybe it is only a strain. So I went down to the first aid and he said it is nothing, you come back Wednesday, there is a big doctor comes and he will examine you. So I come back Wednesday and he said——

Mr. Maloney: Don't say what the doctor said.

The Witness: Then they sent me to the  
30 main hospital.

By Mr. Semel:

Q. They sent you to the main hospital? A. Yes.

Q. Where was that? A. Employment office.

Q. Employment office? A. Yes, and down in the employment office he said, "You come back Saturday two o'clock. There is a big doctor come."

40 So when I went there a big doctor examined me. He didn't tell me nothing, but the man who takes the compensation case, he gave me an address. I said, "What did the doctor say?"

*Isadore Mandell, Petitioner—Direct.*

He said, "You go to compensation, Jersey Avenue, Jersey City."

So I went there and he sent me to his doctor to be examined.

Q. Who sent you, the referee? A. Referee.

Q. Referee sent you to the state doctor to be examined? A. Referee in court. So after he got the papers he call me over and he calls the representative from the compensation. He said the man got hurt on the job, so the company said the company is not responsible for that. So the referee said, "You go home and get a lawyer." 10

Q. This was about nine o'clock in the morning? A. Yes.

Q. You were working where, inside the ship? A. Right down below, way down below in the oil tanks, right in the bottom. 20

Q. What was your job? A. I was a pipe-fitter.

Q. And it was very warm and you went and picked up a blower? A. Yes.

Q. What is that? A. That is what makes—gives air, cools off.

Q. As soon as you picked up this blower what happened to you? A. I felt like a rip in there (indicating).

Q. A rip, a tear? A. Yes, like something tear. 30

Q. Near the leg? A. Yes, I felt like something bust open.

Q. Did you feel anything else? A. Yes, and my back.

Q. Whereabouts in the back? A. Right in the spine, right here in the spine (indicating).

Q. In the small of the back? A. Yes.

Q. This was on a Saturday, is that correct? A. Yes.

Q. Did you go home that day? A. No. 40

*Isadore Mandell, Petitioner—Direct.*

Q. Did you stay there the whole day? A. I worked the whole day.

Q. Did you continue to work or stay on the job? A. I continued on the job, but the man from the compensation company says, "Take it easy." The man from the main office.

10 Q. You took it easy? A. You can't take it easy—when you work you can't take it easy. He told me take it easy for a week or two and I continued working straight ahead.

Q. Mr. Mandel, you were operated on sometime ago for a hernia? A. Yes, last year, January 4th.

Q. January 4, 1943? A. That is right.

Q. How long were you unable to work after this hernia? A. The doctor told me three to three and a half months I got to rest.

20 Q. How long were you out? A. I was out five and a half.

Q. When did you start to work for the Federal Shipbuilding? A. Labor Day. It was a holiday that Saturday.

Q. You mean in September, 194— A. It was on a Saturday I started to work.

Q. That was nine months after you had your operation; is that correct? A. No, about six or seven months.

30 Q. You were operated first in January? A. In January, yes.

Q. Of 1942? A. About five and a half to six months, then I started to work there.

Q. And then you took a job with the Federal? A. Yes.

Q. Did you get a physical examination when you went to work there? A. Yes, doctor said "You got a good heart."

40 Mr. Maloney: Never mind what the doctor said.

*Isadore Mandell, Petitioner—Direct.*

By Mr. Semel:

Q. Did they give you an examination? A. Yes.

Q. Did they examine you where you had the old hernia? A. Yes.

Q. Before you took the job with the Federal did you feel all right? A. I felt fine.

Q. Did you have any trouble with that hernia condition? A. No. 10

Q. Did you have any trouble with your back? A. No, I was always healthy.

Q. When you lifted this blower what happened to you, to your hernia condition? What happened around your leg there? Anything happen? A. It is getting bigger and bigger.

Q. It is getting bigger and bigger? A. Yes, I was to the doctor last week.

Q. Before you lifted this blower were you all right? A. I was in perfect condition. 20

Q. When you lifted this blower what happened to this business there? A. That pulled; it ripped.

Q. You felt a rip and then what happened? A. Then I couldn't walk no more. When I walked before like steps I couldn't lift the leg. It hurt me.

Q. And since that time has there been a bulge coming out there? A. Yes, bigger and bigger.

Q. And that bulge wasn't there before you lifted the blower? A. Yes. 30

Q. It is getting bigger and bigger—

Mr. Maloney: I object.

Mr. Semel: Withdraw the question.

By Mr. Semel:

Q. How do you feel now when you work? A. Some days it is a bad day; it bothers me; it hurts me.

40

*Isadore Mandell, Petitioner—Direct.*

Q. You haven't lost any time from your job, have you? A. I lost just time coming in here, about eight days.

Q. You didn't take off because you were sick?  
A. No.

10 Q. Have you been able to do the same kind of work as you did before? A. Yes, but my foreman doesn't let me lift heavy pipes: he gives me a hand.

Q. What about your back? A. My back?

Q. Yes. A. I must wear a belt. Without a belt I can't work.

Q. You must wear a belt? A. Yes.

Q. Are you wearing a belt now? A. Yes. I must wear it.

Q. You wear it every day? A. Every day.

20 Q. Have you tried to work without wearing a belt? A. One day I was late. I couldn't move, and every once in a while, a few months, it hurts me for a week or two. It hurts me.

Q. When you crouch down are you able to stand up straight? A. Without a belt, no.

Q. With a belt. A. With a belt, yes, but sometimes it hurts me even with a belt for a week or two until it works in again.

30 Q. You were originally operated by Doctor Frank Tannenbaum in New York? A. Yes

Q. On the original examination? A. Yes.

Q. Has he examined you since? A. He examined me two weeks ago.

Q. You were also examined by Doctor Kummel?  
A. Yes.

Q. And by a doctor in Jersey City, Doctor Meehan; is that correct? A. Yes, and in Jersey City court.

40 Q. Compensation doctor? A. Yes, he examined me.

Mr. Semel: That is all.

*Isadore Mandel, Petitioner—Cross.**Cross examination by Mr. Maloney:*

Q. When did you go in and tell them at the first aid station about this? A. Monday.

Q. This happened on what day? A. This happened Saturday.

Q. What date? A. I think it was the 28th or 26th something. 10

Mr. Semel: Of June.

By Mr. Semel:

Q. You aren't positive whether it is the 26th or 28th? A. I know it was on Saturday.

Q. You are sure it was on a Saturday? A. On Saturday.

The Court: Saturday is the 26th. 20

By Mr. Maloney:

Q. You might have gone in later that week? You aren't sure that it was Monday that you went in? A. I went in that Monday, but he told me to come on Wednesday.

Q. Whereabouts did you go on Monday? A. To first aid, some doctor.

Q. Where is that one? A. It is near the last row, number 301, the last, near the wet basin. 30

Mr. Semel: Near the what basin.

The Witness: Wet basin. Some young fellow examined me; he said, "You come back."

By Mr. Moloney:

Q. Did you look at yourself or feel yourself after this happened? A. What do you mean? 40

*Isadore Mandel, Petitioner—Cross.*

Q. Did you feel yourself here after that happened (indicating)? A. Yes, I felt here (indicating).

Q. You felt that. What did you feel? A. I feel nothing.

Q. You didn't feel anything? A. No.

10 Q. You didn't feel any lump? A. No, nothing.

Q. On Saturday that was you felt yourself? A. Yes.

Q. You didn't see any doctor Saturday? A. No.

Q. Or Sunday? A. No.

Q. Was there any pain there on Saturday when you felt that? A. Yes, I had a rip. It didn't hurt me now, but after I started to walk.

Q. It didn't hurt you then? A. Yes.

20 Q. It hurt? A. Yes, it hurt me.

Mr. Semel: He means when you first felt that rip.

The Witness: Yes, that hurt me.

By Mr. Moloney:

Q. Did the pain go away before— A. It didn't hurt me then, but when I started to go to walk steps it hurt me.

30 Q. It hurt you when you lifted this blower? A. Yes.

Q. And then it stopped hurting? A. Yes.

Q. How long after was it when you went up the steps and felt the pain again? A. Right away, a little while, I went down the tank again.

Q. How long, a little while? A. About ten or fifteen minutes.

Q. So it hurt and then it didn't hurt again, for fifteen minutes? A. For fifteen minutes.

40 Q. And then you kept right on working did you? A. Yes.

*Isadore Mandel, Petitioner—Cross.*

Q. Now, when you went in the first aid, you say the first aid station down near the wet basin, you told them about your hernia? A. Yes.

Q. The condition in your groin, but on that day you didn't tell them anything about the back, did you? A. No.

Q. How long after was it when you told them about the back? A. About three days after. 10

Q. About three days after? A. Yes. He plastered me up.

Q. It was about three weeks later, wasn't it? A. No, three days after I told him. He plastered me up.

Mr. Semel: Who plastered you up?

The Witness: The guy who examined me the first time. He plastered me up. 20

By Mr. Moloney:

Q. Doctor Brozdowski you saw on Tuesday? A. No, Wednesday.

Q. Wednesday? A. Wednesday and then Saturday I saw doctor in the big hospital in the main office.

Q. Isn't this the truth, Mr. Mandel: That you went in the first time on July 2, 1943? That is the first time you went in? A. July 2nd? I don't remember the day. 30

Q. July 2nd, that was on a Friday. A. Oh, no, that wasn't on Friday. I went in Monday and Wednesday and Saturday.

Q. But you say you went in before Friday, July 2nd; you said you went in before that time? A. Yes, the first time.

Q. And you say the first time you went in you didn't say anything about the back? A. No.

Q. Now, you also went in the next day, on July 3rd. The second time you went in you saw Doc- 40

*Isadore Mandel, Petitioner—Cross.*

tor Brozdowski. Do you remember him, big man with glasses? A. You mean in the first aid?

Q. No, I don't know where it was. A. No, big doctor, I saw him in the main hospital, and then the big doctor I saw in the first aid, too. He told me to come back.

10 Q. And you didn't tell him anything about the back either, did you? A. No, I told him a few days after.

Q. Did you tell him or somebody else? You told Mr. Webb, the first aid attendant? A. Yes.

Q. But you didn't tell Doctor Brozdowski when you saw him? A. No.

Q. You were in twice. Now, isn't it so that the next time you went in wasn't until July 20, 1943? That was almost three weeks later. Do you remember going in then and you saw the first aid man again when you told him about the back? A. When he plastered me up?

20 Q. Yes, when he plastered you up, the first aid man gave you strapping on the back. A. It wasn't in three weeks.

Q. It could have been; it was July 20th, that is the date stamped here (indicating). A. It couldn't be three weeks because I told them in four weeks. "Go ahead. What do you care? Go ahead and let him examine you."

30 Q. It was more than one week, wasn't it? A. It was only a few days after he examined me about the hernia. I felt pain, so I figured it would go away, so it was starting hurting and I couldn't move myself, so he asked me if I should get electric treatments, if I got a lamp at home.

Q. Now, the first day you went in you saw the first aid man? A. Yes.

40 Q. And then you were taken in the office and this man wrote all the stuff down while you were

*Isadore Mandel, Petitioner—Cross.*

there, didn't he (indicating)? A. Well, I didn't see him.

Q. But you were talking to him? A. Yes, a young fellow.

Q. A young fellow, that is the one. Did you see him write this down on the paper as you were talking? A. No, I didn't see him.

Q. But did you tell him anything about the back? A. No, a few days later. 10

Q. It was a few days later. When you finally did mention about your back, what did you say then? A. I told him it hurts me.

Q. You told him it hurts you? A. Yes, I told him. So he said he is going to strap me up. He pulled me in and strapped me up. It felt a little better, but a day or two days later I seen it get worse. 20

Q. You told him it had been hurting for about two weeks, didn't you? A. Yes.

Q. That is the first aid man that you saw? A. He strapped me up.

Q. That was the third time you went in to see somebody you saw the first aid man? A. Yes.

Q. And you told him that your back has been troubling you for two weeks? A. No, I didn't tell him two weeks; I told him my back hurt me.

Q. Did you tell him anything else? A. He asked me is it blower? "Since I lift the blower up I felt a little pain and I thought maybe it will go away, but it start to get worse," so he strapped me up. 30

Q. You are making the story up now, aren't you? A. What do you mean I am making the story up now? I told the man I lift the blower, I felt a little pain and I figured it would go away, and then it start to hurt me worse and I told him.

Q. Pain where? A. Pain right in the back here in the joint (indicating). 40

*Isadore Mandel, Petitioner—Cross.*

Q. You were in altogether three times; is that right? A. Yes.

Q. And that is the last time you went? A. Yes, well the man—the compensation man sent me over to the Jersey City court on Jersey Avenue.

Q. You were only down the plant three times?  
10 A. I didn't even know what happened to me.

Q. You were down in the plant about treatment three times? A. Yes.

Q. Now, when you saw this man and you told him about the back, you didn't say anything about lifting a blower to him, did you? A. Sure, he knows that.

Q. You did? A. Yes, because he told me it is only a slight strain.

20 Mr. Moloney: That is all right; don't say what he told you. No further questions.

Mr. Semel: That is all.

By Mr. Moloney:

Q. How is your back now? Is it all right? A. Two weeks ago it hurt me again.

Q. Up until two weeks ago when you hurt your back again, how was it up to then, all right? A. Every once in a while it bothered me for a week  
30 or two; it hurt me badly.

Q. Hurt you badly? A. Yes, until I got to work in, until it goes into shape again.

Q. How many times did that happen? A. Since three times.

Q. You had trouble three times and it lasted for how long each time? A. A month, a month and a half.

Q. You said a minute ago it only lasted a week.  
40 A. It lasts a week when it hurts me, and it goes away, the pain. That is what I mean.

*Isadore Mendel, Petitioner—Re-direct.*

Q. And then it doesn't bother you anymore?

A. It doesn't bother me anymore, but a belt I must wear. If I were to go without a belt and I bent down, I can't get up no more.

Q. They are the only complaints you have about the back? A. Yes.

Mr. Moloney: That is all.

10

*Re-direct examination by Mr. Semel:*

Q. What you just said about your back is when it hurts you it takes about a week to go away? A. Yes.

Q. That is with the belt; is that right? A. Yes.

Q. Can you work without the belt? A. Oh, no, I couldn't even bend down without the belt.

Q. Can you get around home without the belt? 20

A. It is bad to walk on the steps. It hurts my back if I walk.

Q. It hurt you when you walk up the steps without a belt? A. Yes, without a belt.

Q. And if you went down on the job without a belt, could you do anything? A. I couldn't bend.

Q. If you bend without the belt what happens to you? A. I can't straighten out myself.

Q. What did you mean when you just said it lasts about a week? A. If I bend and work, a week after on the job it goes away. 30

Q. If you are hurt when you are on the job it hurts you and it takes about a week and a half to go away? A. Yes, until it works in again.

Q. And that is with the belt? A. With the belt.

(Witness excused.)

40

*Dr. Max Kummel, for Petitioner—Direct.*

DR. MAX KUMMEL, called as a witness on behalf of the petitioner, was sworn and testified as follows:

*Direct examination by Mr. Semel:*

10 Q. Doctor, did you examine Isadore Mandel, the petitioner in this case? A. Yes, I examined him on two occasions. I examined him on November 10, 1943 and I re-examined him again this morning.

Q. Now, Doctor, what condition did you find? A. Well, I found he was wearing a low back support on both occasions. He has a right inguinal hernia in addition to an old right herniotomy scar. There is now a protrusion and impulse on  
20 coughing.

Mr. Moloney: There is or is not?

The Witness: There is.

He is tender over the lumbo-sacral region with a mild spasm of the sacro-spinalis muscles. There was a slight restriction of forward flexion but the return to the upright position was apparently painful, and extension or hyperextension is moderately restricted and elicits considerable pain.  
30 Otherwise there was slight restriction of the other motions.

In the prone position the signs were slightly positive and the same applies for the supine position. The motions were slightly restricted, but particularly straight leg raising and leg raising with the knee flexed elicited considerable pain, and also he was very cooperative and went through  
40 almost every motion I told him to.

*Dr. Max Kummel, for Petitioner—Direct.*

Considering my actual physical findings, I gave him 7½ per cent of total, although from his complaints I would even be inclined to give him a little more.

By Mr. Semel:

Q. Now, Doctor, you observed evidence of an old hernia, did you not? A. Yes, there is an old scar. 10

Q. You also observed a present recurrent hernia; is that so? A. Yes.

Q. Can you explain what type, what his condition is now with respect to that hernia? A. Well, he has a recurrence of the old hernia. It is not through the abdominal wall; it goes right through the ring and, therefore, it is a recurrence. 20

Q. What treatment is necessary to cure his present hernia? A. He will have to be operated again.

Q. He will have to be operated, and if he is operated will such operation effect a cure? A. I can't say one way or the other. If this one didn't heal, I don't know whether next one will heal. I have no way of telling.

Q. This is the only treatment he can receive at this time to bring back as nearly as possible his healthful condition; is that so? A. Yes. 30

Q. Now, Doctor, assuming that this petitioner was operated on for a hernia on January 4, 1943 and was discharged and was unable to work for five and a half months—

The Court: The Doctor heard the testimony of the petitioner. There is no objection, is there, to the Doctor assuming that?

Mr. Moloney: No objection. 40

*Dr. Max Kummel, for Petitioner—Direct.*

By Mr. Semel:

Q. Would you say from your examination that his present hernia is a new hernia or an aggravation of a then present diseased condition? A. No, it is an aggravation or a return of a previous condition.

10

Q. Will you answer my question in so far as the word "aggravation" of a then present diseased condition is concerned? A. It is an aggravation of a previous condition. After he was operated, apparently it was good, and now he has again developed a hernia.

The Court: It is a return?

The Witness: That is right. That is what I said, a recurrence of the hernia.

20

Mr. Semel: If your Honor will permit me I would like to have this question, as I see it, presented:

Assuming that after he was operated on January 4 he was unable to work for five months and then he was discharged, and assuming that he was employed by his present employer about the end of May, 1943, and at that time he was found physically able to work, would you say that this present condition is an aggravation of a then diseased condition, of a then present diseased condition, or is this an entirely new hernia?

30

The Witness: No, it is not an entirely new hernia; it is a recurrence of the previous hernia or, if you may say so, it is an aggravation of the condition that existed before it was repaired, but apparently it gave way again.

40

*Dr. Max Kummel, for Petitioner—Direct.*

Q. In medical terms it is considered that after a man is operated upon and discharged that he is fully cured or that a diseased condition continue?

Mr. Moloney: I object to the question.

The Court: Overrule the objection. I see what you are trying to get at. Your question is whether or not he covered the five points? 10

Mr. Semel: Exactly.

The Witness: Oh, there is no doubt that an operative hernia, while it takes care of the condition, is not the same as it was previously after an operation.

The Court: There is a weakness there?

The Witness: Yes.

The Court: A strain is apt to bring it out? 20

The Witness: No doubt.

The Court: Apparently the man did need the attention of a doctor immediately more so than he did originally.

The Witness: No doubt because you have a weaker abdominal wall there.

The Court: When the sprain occurred and the hernia recurred again, he would need a doctor more so than under ordinary circumstances? 30

The Witness: Yes. Not only that, but there is always more of a chance of strangulation in these cases.

By Mr. Semel:

Q. What is your opinion of the attitude of this petitioner with respect to his honesty?

Mr. Moloney: I object to that, your Honor. 40

*Dr. Max Kummel, for Petitioner—Cross.*

The Court: Sustain the objection. I don't believe there is any question raised as to whether the man is honest.

Mr. Moloney: There was nothing asked on cross examination which was attempted to test the credibility of this man.

10 The Court: He seems to be an honest individual to me, and I am the one who is going to determine whether or not he is.

*Cross examination by Mr. Moloney:*

Q. Doctor, what was the seven and a half of total for? A. For his back.

20 Q. What is your diagnosis for the back? A. My diagnosis is a persistent inflammation in the lumbosacral joint due to the sprain.

Q. In the joint or the muscles? A. No, it is in the joint because when he straightens out or is in hyperextension, when the two sides come together he seems to get these pains. Otherwise he never complains.

Q. It is a mild strain, is it? A. I would call it mild, yes.

30 Q. In your opinion, the bones aren't involved, are they? A. No, the joint structures are involved because the belt, when he has it tight or pretty tight, that seems to hold it and he has no complaints at all until he bends over.

Q. Do you know what exactly is wrong with the joint? A. Yes, there is a chronic inflammation there; it is a sprain of the ligaments.

Q. It is from the ligaments; there is nothing wrong with the bones themselves? A. No, not the bone itself.

40 Q. Then it is a mild strain of the ligaments?  
A. Yes, it is, the joint.

*Dr. Max Kummel, for Petitioner—Cross.*

Q. And that will improve, won't it, that condition? A. Well, if it has not improved till now. I don't think it will. If anything, I think it is getting a little worse.

Q. And the spasm that you noted was only a mild spasm? A. It is a mild spasm.

Q. He went through almost all the motions with little complaint? A. Yes, he goes through everything except when he hits any motion which brings the two surfaces of the joint together, then there is a sudden stop. 10

Q. Now, will you describe just what kind of a hernia it is the man has? A. It is an indirect inguinal hernia on the right side, and there is also a herniotomy scar in the same area.

Q. In other words, the protrusion enters the interal ring? A. External ring. 20

Q. Goes through the canal and then that protrudes through the outer ring? A. That is what I mean, goes through the external ring.

Q. Then it protrudes through both rings? A. No, the external ring; you can't feel the internal ring.

Q. Well, then, it has to go through the internal so you can feel it in the external? A. Yes.

Q. Do you know what kind of a hernia he was operated on for? A. Judging from the scar, it looks like an indirect hernia. 30

Q. So, then, this is a new hernia in the same place, isn't it? A. Yes. Well, I would say, to be exact, it is an old hernia in the same place.

Q. If this man had been operated on for this hernia there wouldn't have been a protrusion there after the operation, would there? A. Well, the operation may give way.

Q. After the operation is performed there is no protrusion? A. No, there wasn't. 40

*Dr. Max Kummel, for Petitioner—Cross.*

Q. It is true, is it not, that after such a repair is made that the structure there is stronger than it is normally? A. No, I think after an operation—I don't care what operation it is—it is never stronger than normal; always there is a weak point because scar tissue is not as elastic as normal tissue.

10 Q. You don't know whether there was scar tissue in this case? A. There has to be; you can't have an operation without scar tissue. It wouldn't heal if there is no scar.

Q. In any event, after this operation was performed there was no protrusion here? A. I presume there wasn't.

Q. And it takes a new effort or a strain to cause the next protrusion, doesn't it? A. Yes.

20 Q. And after the operation is performed the condition as to the inguinal region is not diseased? A. Well, it is not—well, it is impaired. It is not normal tissue because you have to cut across and try to overlap tissues which normally should be alongside. It is not normal.

Q. Well, Doctor, assuming this man had his hernia repaired in January, there would be no hernia between that time and the time of this strain in July, would there? A. That is correct.

30 Q. So if there is no hernia, there couldn't be an aggravation of a hernia, because there was no hernia? That is true also, isn't it? A. No, there is not an aggravation of a hernia.

Mr. Moloney: That is all. Thank you, Doctor.

Mr. Semel: That is all.

(Witness excused.)

40 Mr. Semel: If your Honor please, I would like to offer the report of Doctor Meehan,

*Allan Webb, for Respondent—Direct.*

which is practically the same as Doctor Kummel's.

The Court: Any objection?

Mr. Moloney: It isn't necessary.

Mr. Semel: He was examined by Doctor Meehan because I thought this case might be heard in Jersey City. Is it objected to? 10

Mr. Moloney: Yes.

(Discussion off the record.)

Mr. Moloney: Is that your case?

Mr. Semel: Yes.

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ALLAN WEBB, called as a witness on behalf of the respondent, being first duly sworn, testified as follows: 20

*Direct examination by Mr. Moloney:*

Q. Mr. Webb, you are down at the Federal Shipyards in Port Newark, are you not? A. That is right.

Q. How long have you been there? A. Almost fifteen months.

Q. What were you doing before that? A. United States military service, served overseas for three and a half years in medical units. 30

Q. And then when you came back you started down at the shipyard? A. That is right.

Q. What is your position down there? A. First aid attendant.

Mr. Moloney: Mr. Mendel, is this the man you saw the first day you went in?

The Petitioner: Yes.

Mr. Moloney: This is the man you saw? 40

*Allan Webb, for Respondent—Direct.*

The Court: Off the record a moment.

(Discussion off the record.)

By Mr. Moloney:

10 Q. Mr. Webb, do you recall seeing Mr. Mandel in July, 1943? A. I do.

Q. On that date did you see him? A. July 2nd.

Q. Did he complain to you about an injury? A. He did.

Q. What did he tell you? You may refer to the car (indicating). A. He complained of pain in the right groin men working.

20 Q. What else did he tell you? A. Patient stated he hurt himself on a blower. Patient also stated he was operated on for a hernia.

Mr. Semel: Excuse me, are you reading from a record? Is that your own handwriting?

The Witness: Yes, that is my own handwriting.

Mr. Semel: Made at the time?

The Witness: Yes, sir, made at the time.

Mr. Semel: All right.

30 The Witness: Operated for a hernia January 3, 1943, so the patient stated.

By Mr. Moloney:

Q. What were his complaints? A. Well, had pain in the right quadrant region, inguinal.

Q. Did he have complaints about any other part of his body? A. Not that I recall at that time.

Q. Did you note any on the card? A. Oh, yes, I have had him on several occasions.

40 Q. When did he tell you he was lifting this blower? A. Well, the date is about June 28 of

*Allan Webb, for Respondent—Direct.*

1943, which was approximately five days after his date of injury.

Mr. Semel: What was that, five days what?

The Witness: Approximately five days after the date of injury he reported to me. That would be from June 28 to July 2, 1943. 10

By Mr. Moloney:

Q. Now, that card that you have in your hand—you made those notes when? A. On July 2nd.

Q. Down here on the last line what are those two letters (indicating)? A. "A. W." my initials, which stand for Allan Webb.

Q. When did you see the petitioner again? A. On July 20th. 20

Q. What year? A. 1943.

Q. What did he say on that day? A. He was complaining about his back. I said that patient stated that his back has troubled him for two weeks by picking up heavy objects, which I questioned the patient, to find out what the heavy objects was, and there was no reply. That was a possible strain of the sacro-iliac.

Q. What was the petitioner wearing on that day? A. He was wearing an abdominal belt with a back support, which the back support comes in the back and comes across the abdomen. 30

Q. What did you do to him? Did you give him any treatment? A. Yes, I did.

Q. What did you do? A. I strapped him up with adhesive strapping and made an adhesive strapping around him to hold the muscles in and take more of a strain off the muscles which decreases the pain more or less. 40

*Allan Webb, for Respondent—Cross.*

Q. Did you see the petitioner after July 20, 1943? A. No, I didn't.

Mr. Moloney: You may cross examine.

*Cross examination by Mr. Semel:*

10 Q. Mr. Webb, is there any other first aid attendant there? A. Yes, there is.

Q. The records that you refer to, are they all the records of this man's treatments or only your records? A. These records are at hand any time to myself or any other attendant who needs to record anything on them.

Q. Is there anything recorded on here by anyone else besides yourself? A. No.

20 Mr. Moloney: May we have the cards marked in evidence? They have been cross examined.

The Court: Denied.

Mr. Semel: I have no objection.

*By Mr. Semel:*

Q. You say he told you that he had hurt his back two weeks before from lifting heavy objects? A. Yes.

30 Q. When you asked him what the heavy objects were, he didn't reply? A. No, sir.

Q. What did you do when he didn't reply? A. Just put down the statement as it stood.

Q. Isn't it unusual, didn't you find it unusual that he didn't reply? A. I asked several times.

Q. Did you press him for a reply? A. Yes.

Q. But he did state that it had come from lifting heavy objects? A. That is right.

Q. You examined him the first time on July 2nd? A. That is right.

40 Q. Is that correct? A. Correct.

*Allan Webb, for Respondent—Cross.*

Q. Do you know what day of the week that was?

A. Friday I believe.

Q. On a Friday. Now, were you on duty the Wednesday before, which would be June 30th? A. No, I was on leave.

Q. You were not there that day? A. No.

Q. Are there any other records of this man's injuries? A. Not that I know of. 10

Q. Is it possible there would be such record without you knowing about it? A. Possibility, but I doubt it.

Q. Isn't it a fact that sometimes the men report in and no record is taken of their injury? A. No.

Q. You were not there on Wednesday, were you? A. No.

Q. What about Monday, that would be the 28th of June? A. I was still on leave. 20

Q. You were still on leave? A. Yes.

Q. You were not there that day either; is that so? A. No.

Q. Do you know the names of the men who were on duty at that time on that shift? A. Mr. Fern.

Q. Fern? A. Yes.

Q. What is he, a physician? A. No.

Q. Who else? A. Mr. Dixon.

Q. Are they here today? A. They are not here, no. Mr. Dixon is in the military service. 30

Mr. Moloney: Petitioner said this is the man he saw the first time he went in.

Mr. Semel: That is not what he said, if your Honor please. He said this is the man he identified as the man he saw.

By Mr. Semel:

Q. Do you know a Mr. Ralph Finger, employed by the Federal Shipyard? A. No. 40

*Isadore Mandel, for Respondent—Direct.*

Q. When he first came in to you on the 2nd of July and he complained about the pain in the inguinal region, did you examine him? A. I did. I held him for a company physician.

Q. What is that? A. I held him for a physician that would be there around that time.

10 Q. So you examined him yourself and told him to wait to be examined the same day by a physician? A. That is right.

Q. Did you open his clothing when you examined him? A. That is right.

Q. Did you observe whether he was wearing a belt the first day he came in? A. No, not the first day.

Q. So he wasn't wearing a belt? A. He could have, yes.

20 Q. But you didn't see it? A. I didn't see it, no.

Mr. Semel: That is all.

(Witness excused.)

Mr. Moloney: Mr. Mandel, will you take the stand?

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30 ISADORE MANDEL, the petitioner, recalled as a witness on behalf of the respondent, testified further as follows:

*Direct examination by Mr. Moloney:*

Q. Mr. Mandel, the man you saw here, that just was on the stand, is he the man that you saw the first time you went into the first aid? A. Yes.

Q. He is? A. He examined me and he told me, "I don't know, it is only a strain like."

40 Mr. Moloney: That is all; thank you very much.

*Isadore Mandel, for Respondent—Cross.**Cross examination by Mr. Semel:*

Q. Do you remember what day of the week it was that you were hurt?

Mr. Moloney: He testified to that.

The Witness: I know it was a Saturday.

This I know, on a Saturday. 10

Mr. Semel: This is cross examination; the man is your witness. I think it is proper.

*By Mr. Semel:*

Q. You reported to Mr. Ralph Finger the same day you were hurt; is that correct? A. Yes.

Q. And you told him exactly what happened; is that correct? A. Yes.

Q. And you told him what hurt you? A. Yes, and he told me to go— 20

Q. And you mentioned the site where you had the rip and the back? A. Yes.

Q. And he told you to go to the first aid immediately? A. Yes.

Q. Why didn't you go? A. I said, "Maybe it is only a sprain, maybe it will go away within a few days."

Q. You didn't work Sunday, did you? A. No.

Q. And you came in on a Monday morning? A. Yes. 30

Q. Did you visit the first aid that day? A. Yes.

Q. The Monday when you came in two days after the accident, who sent you to the first aid that day? A. Finger.

Q. Ralph Finger, the foreman? A. Yes, he has got to sign his name.

Q. When you came in there on that day is this the man who was there (indicating)? A. This is the man, yes (indicating). 40

*Isadore Mandel, for Respondent—Cross.*

Q. Are you certain of that? A. Yes. I told him I lift a blower and he said it is nothing; it is only a little strain.

Q. And then what did he do? A. Then——

Q. Wait a minute now: Did he open your clothing the first day you were there that Monday?

10 A. Yes, I took off.

Q. And he examined you? A. Yes.

Q. Are you certain it was on a Monday? Is that correct? A. I think this; I am not sure. I think it was on a Monday.

Q. This is the man who examined you (indicating)? A. Yes, that's him (indicating).

Q. Did you wait for a company doctor that day?

A. No, he told me to come back.

20 Q. Did you see him write anything down while you were talking to him? A. This I didn't see.

Q. A blue card like that (indicating)? A. That I didn't see.

Q. And you went home and came back to work the next day, Tuesday? A. Yes.

Q. Did you go into the first aid office the next day? A. He told me to come back Wednesday, comes a doctor.

Q. You came back Wednesday? A. Yes, and then they sent me to the main hospital.

30 Q. You came back on a Wednesday. Who was there when you got there on that Wednesday? A. Another doctor.

Mr. Moloney: Pardon me, the cross examination should be limited to the direct testimony, only who is the first man he saw.

Mr. Semel: Well, that is exactly what my cross examination is, if your Honor please, a matter of trying to offset the fact that this man claims he saw him on a certain day and he only proves it by his records.

*Isadore Mandel, for Respondent—Cross.*

The Court: Overrule the objection.

By Mr. Semel:

Q. I will repeat that question: When you got there on a Wednesday you saw this gentleman again; is that correct (indicating)? A. Yes.

10

Q. And he told you what? A. He told me to come back again two o'clock, there is a big doctor there.

Q. Did you come back at two o'clock? A. Yes. I don't remember just—two o'clock.

Q. Did you come back the same day? A. I think so. I don't remember the same day; he told me the same day. Well, I don't remember.

Q. He told you? A. To come back to a big doctor.

20

Q. Did you see him writing anything down at the time? A. No, this I didn't see.

Q. So when is the next time you saw this gentleman (indicating), a day later or two days later? A. And then when the big doctor examined me he sent me to the hospital doctor. This gentleman (indicating) told me he takes care—he didn't tell me what, it is nothing to me; he didn't tell me what happened to me.

Q. After the big doctor examined you? A. He sent me to the main hospital.

30

Q. Do you remember the date? What happened on that Wednesday, the day that you came in the second time, was you met this man and he told you to wait for the big doctor; is that correct? A. Yes.

Q. And you came back and were examined by the big doctor? A. Yes.

Q. Where were you examined by the big doctor? A. Same place.

Q. At the first aid station? A. Yes.

40

*Ronald MacGregor, for Respondent—Direct.*

Q. Was it the same day? A. This I don't remember.

Q. And the big doctor told you to come to the main hospital? A. Big doctor didn't tell me nothing; he told me I should go Friday or Saturday to the main hospital.

10 Q. Where is the main hospital? A. In the employment office.

Q. In the employment office? A. And employment office told me to come back at two o'clock.

Mr. Semel: That is all.

Mr. Moloney: That is all, Mr. Mandel.

(Witness excused.)

20

RONOLD MACGREGOR, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

*Direct examination by Mr. Moloney:*

Q. Where are you employed, Mr. MacGregor?

A. Federal Shipbuilding and Dry Dock Company.

30 Q. How long have you been there? A. Two years.

Q. What is your position? A. Chief clerk in the casualty department.

Mr. Semel: Chief clerk where?

The Witness: Casualty department.

By Mr. Moloney:

Q. Did you see Mr. Mandel, the petitioner in this case, last July? A. I did.

40 Q. On what date? A. July 2nd.

*Ronald MacGregor, for Respondent—Direct.*

Q. What transpired between you and him on that day? A. He was referred to me by the first aid.

Mr. Semel: Are you reading from the record?

The Witness: I am not as yet. He was referred to me by the first aid because he had been examined by the doctor and the doctor had found that he had a hernia, and he was referred up to me to take a history to determine whether he was entitled to any help or not. 10

By Mr. Moloney:

Q. And then he came in and saw you and what happened? A. Well, my usual procedure— 20

Q. No. What happened then? A. I took a statement from him, the history of what happened.

Q. Did you read that statement to him? A. I did.

Q. In whose handwriting was the statement made. A. In my handwriting.

Q. When did you make it up? A. On July 2nd as he was there.

Q. As he was there.

Is that the statement you have there before you (indicating)? A. Yes, it is. 30

Q. What did he complain to you about on that day? A. He made no complaints to me whatsoever.

Q. What did he say his trouble was? A. At the time he didn't know what his trouble was.

Mr. Semel: I object to that, if your Honor please. That is not a response to the question. 40

*Ronald MacGregor, for Respondent—Direct.*

By Mr. Moloney:

Q. What did he tell you had happened on June 28, 1943?

Mr. Semel: Just a moment. I object to that on the ground it is leading again.

10 The Court: You had better make it two o'clock.

(A recess was had for lunch.)

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RONALD MACGREGOR, resumed the witness stand and testified further as follows:

By Mr. Moloney:

20 Q. Mr. MacGregor, you saw Mr. Mandel on what date? A. On July 2, 1943.

Q. What did he—

Mr. Semel: Excuse me. I asked Mr. MacGregor a question before as to whether he was referring to a memorandum and he said no. Now he is referring to it. I think he ought to say so; if he is not referring to it I think he ought to remove it from in front of him.

30 The Witness: I think at the time you asked that question I was answering another question. I wasn't referring to the memorandum at that time.

By Mr. Moloney:

Q. What is the sheet you have before you, Mr. MacGregor? A. This sheet I have here is a statement that I took from Mr. Mandel on the morning  
40 he came into my office.

*Ronald MacGregor, for Respondent—Cross.*

Q. In whose handwriting is it? A. It is in my own handwriting.

Q. When did you write it? A. I wrote it on the morning of July 2, 1943.

Q. When in respect to the time you were talking to Mr. Mandel; before, at the same time, or after? A. While I was talking to him. 10

Mr. Semel: All right.

By Mr. Moloney:

Q. What did he tell you on that day? A. He gave me a history that on the morning of June 28th he was working on ship hull No. 293. He was moving a blower from one part of the boat to the other when he felt a pain in his right groin.

Q. Now, did or did not Mr. Mandel complain of injury in any part other than his right groin? A. He complained to me of pain in no other part of his body but in his right groin. 20

Mr. Moloney: That is all. You may question the witness.

*Cross examination by Mr. Semel:*

Q. You are at the casualty office? A. That is right.

Q. Is that at the main employment office? A. That is right. 30

Q. Are all cases sent to you that are treated by the first aid station? A. No.

Q. In other words, a man may be treated at the first aid station and not sent to you; is that correct? A. Well, if I were to see every man that went to the first aid station, I wouldn't have enough time in a week to see what goes in it one day. 40

*Isadore Mandel, Examined by the Court.*

Q. So the answer to my question is yes? A. Yes, that is true.

Q. Do you know anything about the records kept at the first aid station? A. I do.

Q. Are they turned over to you? A. They are.

10 Q. If a man is sent to the first aid station and he isn't sent to you, are the records sent to you?  
A. They are sent to me at the end of each month.

Q. Do you make the rules for the first aid station? A. I assist in the supervision of them, yes.

Mr. Semel: That is all.

Mr. Moloney: Thank you, Mr. MacGregor.

(Witness excused.)

(Discussion off the record.)

20 The Court: I would like to ask the man one question, and I am not prejudicing this case when I ask this question. I want Mr. Moloney to know that, but I don't want to bring this man back again.

---

ISADORE MANDEL, recalled as a witness by the Court, testified further as follows:

30 The Court: In case I find the hernia compensable, do you want to have another operation?

The Witness: Oh, sure.

The Court: You would like to be operated upon again?

The Witness: I got to have it. It is getting bigger all the time and it hurts me, too, when I twist.

40 Mr. Semel: I was going to ask him that, too.

*Colloquy.*

By Mr. Semel:

Q. Would it make any difference to you which doctor operated on you? A. No.

Q. Whether it was the company doctor in Jersey City? A. Not in Jersey City. You see I ain't got no wife. My kids will be worrying about me. 10

Q. Well, assume——

The Witness: Any doctor.

Mr. Semel: —that the Commissioner decides for Mr. Mandel, would it be possible for him to be operated on in New York?

Mr. Moloney: Doctor Brozdowski usually does the operating and he does it in St. Francis Hospital.

The Court: You would not want this man's children traveling all the way from the Bronx. 20

Mr. Moloney: How old are the children?

The Court: I don't care how old they are, whether they are fifty or sixty. It is the same trip; they have the same feeling for their dad.

The Witness: You see, I am the mother and father to them; they are just like babies to me.

Mr. Moloney: We can arrange that. 30

The Court: I am not prejudicing. I just want to have it on the record.

Mr. Semel: In other words, if the Judge decides in your favor, you don't care as long as you have a good doctor?

The Witness: That is all.

The Court: I wouldn't want to bring the man back. It wouldn't be fair to bring this man back.

Mr. Semel: How old are your children? 40

*Dr. Abbot Beling for Respondent—Direct.*

The Witness: Eighteen and twenty-one. They are just like babies to me. I raised them up, and they got good positions.

Mr. Semel: They think New Jersey is a foreign country.

10 The Witness: My daughter got a responsible job. She works for the National Neckwear. She was statistician. In New York, I don't care, any place.

(Witness excused.)

(Hearing adjourned.)

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[HEARING CONTINUED.]

20

March 6, 1944.

Before: HONORABLE JOHN C. WEGNER, Deputy Compensation Commissioner.

Appearances as before.

30 DR. ABBOT BELING, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

*Direct examination by Mr. Moloney:*

Q. Dr. Beling, you are a licensed, practicing physician of the State of New Jersey? A. That's right.

Q. For how many years? A. For about eleven years.

40

Mr. Semel: I admit his qualifications.

*Dr. Abbot Beling for Respondent—Direct.*

By Mr. Moloney :

Q. And you are also a practicing surgeon? A. That's right.

Q. Doctor, did you examine Isadore Mandel, the petitioner in this case? A. Yes, on December 2, 1943.

Q. Will you tell us what you found? A. He had full range of motion in his back. He had tenderness in the left gluteus muscle, particularly at its attachment to the sacrum. There was full rotation and flexion of the thighs on the trunk, and full range of straight leg bending, and there was a right indirect inguinal hernia. There was a right inguinal hernioplasty scar, and the external ring was dilated. The hernia was easily reducible, and the opposite inguinal region was apparently normal. 10 20

Q. As to the petitioner's complaints referable to the back, had he sustained any permanent disability, in your opinion? A. Yes, I think about two per cent of total.

Q. That was for what specific condition? A. That was for the myositis in the gluteal muscles.

Mr. Semel: What was that muscle, Doctor?

The Witness: The gluteus. 30

M. Semel: How do you spell it?

The Witness: (Spelling) G-l-u-t-e-u-s.

By Mr. Moloney :

Q. Doctor, will you define what a hernia is in general? A. A hernia is a protrusion of something through something else. Referable to the intestinal and abdominal walls it is a protrusion of the intestinal contents or the sac or perenium 40

*Dr. Abbot Beling for Respondent—Direct.*

through the abdominal wall so that it can be seen outside.

Q. And this man had a right indirect inguinal hernia? A. That's right.

10 Q. Now, he had been operated upon—your examination indicated that he had been operated on some time before for the repair of a right indirect inguinal hernia? A. Yes.

Q. Now, after that repair would there be a protrusion? A. If the repair is successful there should be no hernia and there should be no external ring present. The canals should be closed up.

20 Q. So that if a protrusion occurred after that repair causing a left indirect inguinal hernia would or would it not be an aggravation of a pre-existing condition?

Mr. Semel: Just a minute, if the Court please, I object to that question. It is definitely leading. I think the doctor ought to be confined to his examination and tell the story in his own words.

The Court: Overrule the objection.

Mr. Moloney: (To the reporter) Will you please read the last question?

30 (The last question was read by the reporter.)

Mr. Semel: Just a minute. To keep the record straight, wasn't that a right?

The Witness: It was a right inguinal hernia.

Mr. Moloney: I mean the right.

The Witness: Well, I would call it a recurrence of his former condition. He has a recurrent hernia.

40

*Dr. Abbot Beling for Respondent—Direct.*

By Mr. Moloney:

Q. What do you mean by a recurrent hernia, Doctor? A. He has the hernia back again. He had a hernia originally, it was repaired, and now he has it again.

Q. But is it or is it not an aggravation of a pre-existing condition? A. That depends; if anything happened to aggravate it. 10

Q. Well, is it a recurrence of a hernia or an aggravation of a preexisting hernia? A. It is a—that would be difficult to say accurately unless I knew exactly what was done at the time of operation. We call them recurrent hernias because they come back. Whether it is due to the fact that something happened later or the sac wasn't tied off well or what happened, I don't know. 20

Q. Doctor, if this man underwent the operation for the repair of a hernia and the hernia was successful, thereafter there was no protrusion and no hernia, and later he experienced a strain in the abdominal region causing a new protrusion, then, Doctor, that new condition could be an aggravation of a preexisting hernia? 20

Mr. Semel: If the Court please, I desire to object to that because in the hypothetical question the words "new protrusion" should be struck out. I believe the facts in this case as brought out by the petitioner's examining physician as well as by this doctor on the stand was that this is not a new protrusion; it is a protrusion through the same spot, or area. 30

The Court: I sustain the objection.

By Mr. Moloney:

Q. Doctor, can you tell us the difference between a recurrence of a right inguinal hernia, a 40

*Dr. Abbot Beling, for Respondent—Cross.*

right indirect inguinal hernia and an aggravation of a right indirect inguinal hernia, if there is any difference? A. There may be some difference.

10 Q. What is that difference? A. If a hernia is completely cured and then breaks down, either by failure of the suture line or by failure of the muscles themselves, or by virtue of interference with the muscular action by trauma, that would be a recurrence; in other words, the hernia was there, it was eliminated and the hernia came back.

Q. Is that an aggravation? A. An aggravation which would be to a hernia which was not eliminated, which was already there and then it was aggravated.

Mr. Moloney: No further questions.

20 *Cross examination by Mr. Semel:*

Q. Doctor, when you examined this man he wore a belt, did he not? A. That's right.

Q. And you examined him with the belt? A. With and without the belt.

Q. Did you make a complete examination with the belt? A. With and without the belt.

Q. Did you make a complete examination with the belt, that is, as to his ability to use his back?

30 A. That was with the belt off.

Q. You made no examination with the belt on? A. Well, with a belt in place you can't elicit all the motions.

Q. Did you find that the belt was necessary? A. A truss was necessary, and from my observation of the belt it was my opinion that is why he wore it, to keep his hernia in place.

40 Q. Didn't you find that this particular type of belt was a back support? A. Well, after seeing it I wouldn't think it would support the back very much.

*Dr. Abbot Beling, for Respondent—Cross.*

Q. But the type of belt he wore was a belt which was necessary to support the back? A. I wouldn't say so.

Q. Did you have him crouch, Doctor? A. No, I had him—I usually put them on the table and go through the motions.

Q. Well, the artillery position is a crouching position, is it not? A. I don't know it by name, but if it is a crouching position, that is what it is. I don't know. 10

Q. Isn't that a medical term, artillery position? A. It sounds like a military term to me.

Q. Well, did you have him bend down, did you have him crouch at all in your examination? A. No, I did not.

Q. So you don't know whether he would have any trouble in straightening up from a crouching position, do you, Doctor? A. I do not. I placed him on his back and the motions he would use in crouching were all gone through on the examining table. 20

Q. And did you have him bend forward? A. I did. He had full range of motion.

Q. And in the standing position? A. Yes, backwards, and side and twisting.

Q. And he elicited no pain? A. He did so without complaint of pain. He had full motion. 30

Mr. Semel: That is all.

Mr. Moloney: Thank you, Doctor.

The respondent rests.

Mr. Semel: The petitioner rests.

The Court: I am holding that the petitioner has a recurring hernia, which is compensable, and he is entitled to compensation and an operation if he so desires. So will you arrange for that? 40

*Dr. Abbot Beling, for Respondent—Cross.*

Mr. Moloney: Yes, sir.

The Court: I am not going to make any award until after the operation. An operation might relieve the back disability, and there may not be any disability left.

10 Mr. Semel: While we are in Court can we have that question whether he should be operated on in New York disposed of. I don't know what the law is on that point, whether he has to be operated on in New Jersey.

The Court: They can arrange that. You have a New York doctor?

Mr. Moloney: I am not sure of that.

20 The Court: Suppose you take it up. I think it would be better if he had a man operate on him in New York.

Mr. Semel: Is it necessary for me to draw up any kind of a form?

The Court: Draw up an order to the effect that I held it compensable and ordered an operation by the respondent; at least arrange for an operation by the respondent, and I will adjourn the case for three months.

30 M. Semel: Then we will have to have another examination later?

The Court: Yes.

Mr. Semel: And by the petitioner's doctor also?

The Court: Yes. You can have a joint examination perhaps between the two doctors, and then you can determine what is the situation.

### **Certificate of Court Reporter.**

I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the testimony in the above entitled matter as taken stenographically by me at the time, place and date hereinbefore set forth.

ROBERT N. BIRCHMAN, 10  
Certified Shorthand Reporter.

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### **Certificate of Deputy Compensation Commissioner.**

I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the testimony in the above entitled matter as taken before me at the time, place and date hereinbefore set forth. 20

JOHN C. WEGNER,  
Deputy Compensation Commissioner.

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**Opinion in New Jersey Supreme Court.**

NEW JERSEY SUPREME COURT,

No. 246, OCT. TERM, 1944.

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ISADORE MANDEL,  
Petitioner-Prosecutor,

*vs.*

FEDERAL SHIPBUILDING & DRY  
DOCK COMPANY,  
Respondent-Defendant.

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Submitted Oct. Term, 1944; decided March 1,  
1945.

On Certiorari.

Before Brogan, Chief Justice, and Justices  
Donges & Perskie.

For the Petitioner-Prosecutor, LAURENCE  
SEMEL.

30

For the Respondent-Defendant, LINDABURY,  
DEPUE & FAULKS. WILLIAM L. DILL, JR.,  
THOMAS MALONEY, Of Counsel.

BROGAN, Chief Justice.

This is a compensation case. By the writ there  
is brought before us for review the judgment of  
the Essex County Court of Common Pleas which  
reversed the findings in the Bureau. The judg-  
ment of the Workmen's Compensation Bureau  
was for the petitioner-employee. It provided that  
the respondent-employer "furnish" the employee  
40 "with an operation for the repair of his right

*Opinion in New Jersey Supreme Court.*

inguinal hernia, the compensation, fees and costs to be determined after the petitioner had received such surgical treatment.”

The petitioner worked for his employer as a pipe fitter and on June 26, 1943, in the course of his work, suffered a hernial injury as a result of lifting a heavy blower. The proof submitted by the petitioner to support an award of compensation was advanced on the theory that he had suffered a compensable hernia of real traumatic character, sufficient to satisfy the statutory requirements in a case of this kind which are stated in R. S. 34:15-12, sub-div. X; or that he suffered an aggravation of a former hernia which he had had. In this case it appeared without dispute that the petitioner had had a hernia for which he had undergone a surgical operation on January 4, 1943; that he had entered the employ of the respondent some time in May, about a month before the accidental injury now complained of. The learned judge in the Pleas found that the petitioner did not suffer a compensable hernia and, further, that he “did not suffer an aggravation of a hernia.”

The prosecutor argues that the judgment of the Pleas was erroneous in that the proof was sufficient to satisfy the five prerequisites for proving a compensable case of real traumatic hernia. We are convinced that this is not so. We need not discuss the proofs in any great detail, but we find that there was no descent of the hernia immediately following the cause, which is the first requirement of our statute, *supra*. Nor was there such prostration that the employee was compelled to cease work immediately, which is the third statutory requirement. The proof leaves no room

*Opinion in New Jersey Supreme Court.*

for doubt in these particulars. It is unnecessary to discuss this argument further. There is no merit in the first point.

10 It is next said the court erred in not finding that there was an aggravation of the petitioner's "pre-existing diseased condition." This point we think is meritorious. The medical witness, Dr. Kummel, for the petitioner, testified that the petitioner suffered a "recurrence" of the old hernia and the implication is plain that he thought that the old condition of January, 1943, had not healed. He characterized the present condition as an "aggravation or a return of a previous condition." He further said that it was not a new  
20 hernia but "an aggravation of the condition that existed before it was repaired, but apparently it (the weakened area) gave way again." On cross-examination the witness adhered to his opinion concerning the condition of the petitioner and further clarified it by saying it was the result of "an old hernia in the same place." He further said that after the operation in January, 1943, the affected area was weaker—not "stronger than normal \* \* \* because scar tissue is not as elastic as normal tissue." The respondent argues that this witness finally said that in this case there  
30 was "no aggravation of a hernia." We do not so construe the answer of the witness. We think the answer was to an abstract question. To conclude otherwise would be to negative completely all of his testimony on this precise issue. The question asked was general in character and so, too, was the answer of this witness.

40 Dr. Abbot Beling, a medical witness for the respondent, testified that he first saw the petitioner on December 2, 1943. He conceded that there was

*Opinion in New Jersey Supreme Court.*

some slight permanent disability from back strain which entitled petitioner to a small award. With respect to the hernia, the witness stated that it was a recurrence of his former condition and, further, on direct examination, that it was difficult to say whether the condition was "a recurrence of a hernia or an aggravation of a pre-existing hernia." 10

The proof, in our judgment, preponderates in favor of the conclusion that the petitioner suffered an aggravation of the hernia condition from which he suffered six months prior to his present injury and that it was caused by accident arising out of and in the course of the employment; and we so find. The case is controlled by the rule stated in *Furferi vs. P. R. R.*, 117 N. J. L. 508. 20

The judgment of the Pleas is reversed and the judgment of the Bureau is reinstated. The petitioner is entitled to costs. 30

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**Order for Reversal and Remittitur.**

NEW JERSEY SUPREME COURT.

10	ISADORE MANDEL, Petitioner-Prosecutor,  <i>vs.</i>  FEDERAL SHIPBUILDING & DRY DOCK COMPANY, Respondent-Defendant.	}	Order for Reversal and Remittitur.
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20 This cause having been duly argued at the October Term, 1944, of this Court by LAURENCE SEMEL, counsel for petitioner-prosecutor, and LINDABURY, DEPUE & FAULKS, counsel for respondent-defendant, and the court having inspected the record and judgment of the Essex County Court of Common Pleas and considered the reasons assigned for setting said judgment aside and being of the opinion that the said judgment should be reversed and the judgment of the Workmen's Compensation Bureau affirmed; it is, thereupon, on this 8th day of March, 1945,

30 ORDERED, that the judgment of the Essex County Court of Common Pleas be reversed with costs and that the judgment of the Workmen's Compensation Bureau be affirmed and that the record be remitted to the Essex County Court of Common Pleas to be proceeded with in accordance with this judgment and the practice of this Court.

Rule actually entered on March 8, 1945.

On motion of

40 LAURENCE SEMEL,  
Of Counsel with Petitioner-Prosecutor.

*Judgment on Reversal.*

Service of a copy of the within Order for Reversal and Remittitur is hereby acknowledged this 17th day of March, 1945.

LINDABURY, DEPUE & FAULKS,  
Attorneys for Respondent-Defendant.

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**Judgment on Reversal.**

ESSEX COUNTY COURT OF COMMON  
PLEAS.

ISADORE MANDEL,  
Petitioner-Appellee,

*vs.*

FEDERAL SHIPBUILDING & DRY  
DOCK COMPANY,  
Respondent-Appellant.

On Appeal from  
Workmen's  
Compensation  
Bureau.  
Judgment on  
Reversal

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This matter being opened to the court by LAURENCE SEMEL, attorney for petitioner-appellee, and in the presence of THOMAS MALONEY, of the firm of LINDABURY, DEPUE & FAULKS, attorneys for respondent-appellant, and it appearing that the said petitioner-appellee procured a writ of certiorari to review the determination and judgment entered in the Essex County Court of Common Pleas, in favor of the said respondent-appellant, and against the said petitioner-appellee, and it appearing that the said writ of certiorari has been determined by the New Jersey Supreme Court and the proceedings thereon remitted to

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*Judgment on Reversal.*

10 this court for further proceedings according to the law and practice of this court, and it appearing, on reading the remittitur from the said New Jersey Supreme Court, that it was ordered by said court that the said judgment of this court shall be reversed and that the judgment of the Workmen's Compensation Bureau be affirmed, it is, on this 29th day of March, 1945, on motion of LAURENCE SEMEL, attorney for petitioner-appellee,

ORDERED, that the judgment of the said New Jersey Supreme Court be and the same is hereby made the judgment of this court, and it is further

20 ORDERED, that the respondent-appellant do pay to LAURENCE SEMEL, attorney for petitioner-appellee, a counsel fee of \$375.00 to be taxed against the respondent-appellant and become part of the taxed costs on the final judgment to be entered in pursuance of this order.

W. STANLEY NAUGHRIGHT, Judge.

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**Notice of Appeal.**

NEW JERSEY SUPREME COURT.

ISADORE MANDEL,  
Petitioner-Prosecutor,

*vs.*

FEDERAL SHIPBUILDING & DRY  
DOCK COMPANY,  
Respondent-Defendant.

Notice of Appeal.

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*To Laurence Semel, Esq., Attorney of Isadore  
Mandel, Petitioner-Prosecutor.*

PLEASE TAKE NOTICE that Federal Shipbuilding  
and Dry Dock Company, Respondent-Defendant,  
appeals from the whole of the Judgment entered  
in the above entitled cause in the New Jersey  
Supreme Court reversing a Judgment in the  
Essex County Court of Common Pleas to the  
Court of Errors and Appeals.

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STRYKER, TAMS & HORNER,  
Attorneys for Respondent-Defendant.

Dated: April 21, 1945.

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Service of a copy of the within Notice of Appeal  
is hereby acknowledged this 23rd day of April,  
1945.

LAURENCE SEMEL,  
Attorney of Petitioner-Respondent.

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### Grounds of Appeal.

#### NEW JERSEY COURT OF ERRORS AND APPEALS.

10	ISADORE MANDEL, Petitioner-Respondent,  <i>vs.</i>  FEDERAL SHIPBUILDING & DRY DOCK COMPANY, Respondent-Appellant.	}	Grounds of Appeal.
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*To Laurence Semel, Esq., Attorney for Petitioner-Appellee.*

20 The respondent-appellant, Federal Shipbuilding and Dry Dock Company, assigns the following as its ground of appeal in the above entitled cause:

That the Supreme Court erred in affirming the judgment of the Essex County Court of Common Pleas.

STRYKER, TAMS & HORNER,  
Attorneys for Respondent-Appellant.

30 Dated: April 21, 1945.

**Notice of Argument.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p style="text-align: center;">ISADORE MANDEL, Petitioner-Respondent,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">FEDERAL SHIPBUILDING &amp; DRY DOCK COMPANY, Respondent-Appellant.</p>	}	<p style="text-align: center;">Notice of Argument.</p>
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*To Laurence Semel, Esq., Attorney for Petitioner-Appellee.*

PLEASE TAKE NOTICE of the argument of the appeal in this cause before the Court of Errors and Appeals of New Jersey to be held at the State House Annex in the City of Trenton, New Jersey, on Tuesday, May 15, 1945, at 11:00 o'clock in the forenoon, or as soon thereafter as the Court can attend to the same. 20

STRYKER, TAMS & HORNER,  
Attorneys for Respondent-Appellant.

Dated: April 21, 1945.

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1945

NEW JERSEY COURT OF ERRORS AND APPEALS  
Notice of Argument

101	LORD MANTON, Respondent-Appellant
Notice of Argument	vs FEDERAL SUBMERSIBLE & DRY DOCK COMPANY, Respondent-Appellee

To be heard before the Court on the 20th day of May, 1945, at 11:00 o'clock in the forenoon or as soon thereafter as the Court can attend to the same.

Please take notice of the argument of the appellant in this cause before the Court of Errors and Appeals of New Jersey to be held at the State House Annex in the City of Trenton, New Jersey, on Thursday, May 13, 1945, at 11:00 o'clock in the forenoon or as soon thereafter as the Court can attend to the same.

Attorneys for Respondent-Appellant,  
Barker, Fain & Hansen

Dated: April 21, 1945.

102

## New Jersey Court of Errors and Appeals

ISADORE MANDEL,  
Petitioner-Respondent,

*vs.*

FEDERAL SHIPBUILDING AND DRY  
DOCK COMPANY,  
Respondent-Appellant.

On Appeal.

### BRIEF ON BEHALF OF RESPONDENT- APPELLANT.

#### Preliminary Statement.

This case is before the Court on appeal of the respondent-appellant, Federal Shipbuilding and Dry Dock Company, hereinafter referred to as the respondent, from a judgment against it and in favor of the petitioner-respondent, Isadore Mandel, hereinafter referred to as the petitioner, entered in the Workmen's Compensation Bureau, reversed on appeal by the Essex County Court of Common Pleas and reinstated by the New Jersey Supreme Court and awarding the petitioner benefits under the Workmen's Compensation Act for a right inguinal hernia.

#### Statement of Facts.

The petitioner, Isadore Mandel, filed this petition in the Workmen's Compensation Bureau, alleging that as a result of lifting a blower while working for the respondent on June 26, 1943, he

was caused to suffer a hernia and an injury to his back. For the injuries suffered, he sought compensation (Case, p. 4). Respondent filed an answer, admitting the employment of the petitioner, but denying the petitioner's other allegations (Case, p. 9).

The case was heard in the Workmen's Compensation Bureau before Honorable John C. Wegner, Deputy Commissioner of Compensation. There was no dispute that the petitioner had a right inguinal hernia at the time of the hearing. It appeared that he had had a right inguinal hernia surgically repaired some months before he commenced work for the respondent (Case, p. 32). The petitioner testified that on June 26, 1943, he lifted a blower and felt a pulling or a ripping (Case, p. 33). Whether that was in the right inguinal region or in the back did not appear. The petitioner did not recount any sudden effort or severe strain. He did not stop work (Case, p. 32). He did not notice any immediate descent (Case, p. 36), and he did not secure any medical attention, at least for a few days (Case, p. 35). The petitioner did have a right inguinal hernia on July 2, 1943, when, according to respondent's witnesses, he first complained of his groin as having been injured some five days before (Case, p. 59).

#### Statement of Facts

The petitioner, Leodore Mandel, filed his petition in the Workmen's Compensation Bureau alleging that as a result of lifting a blower while working for the respondent on June 26, 1943, he

## QUESTION TO BE ARGUED.

**The petitioner is not entitled to any benefits of the Workmen's Compensation Act without complying with the provisions of the section of that Act which deals specifically with the compensability of an inguinal hernia. R. S. 34:15-12 (X).**

### Argument.

The petitioner's hernia is an inguinal hernia (Case, p. 42).

The compensability under the Workmen's Compensation Act of an inguinal hernia is a matter to which the Legislature has given its very special attention in the enactment of a separate section of the Workmen's Compensation Act, dealing with such physical infirmities. R. S. 34:15-12 (X).

At the time of the petitioner's alleged injury that section provided:

"Hernia. x. Inguinal hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is a real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first, the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by

the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia (days when the business is not in operation, such as Sundays, Saturdays or holidays shall be excluded from this twenty-four hour period); fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after occurrence of the hernia. \* \* \*”

The Legislature clearly recognized that inguinal hernia is rarely a result of an accident. It provided, however, that such a hernia would be a compensable one if it occurred under two, and only two conditions: (1) if it resulted from the application of force directly to the abdominal wall or (2) if it resulted under such circumstances that by sudden effort or severe strain five conditions were met.

The petitioner did not qualify for compensation for his hernia by proof of the hernia having resulted by the application of any force directly to his abdominal wall. Neither did he qualify under the five point provision of the aforementioned section, for there was no evidence that the blower, which the petitioner claimed he lifted, was of weight or size sufficient to cause sudden effort or a severe strain in its lifting. Moreover, the case was barren of proof that the descent of the petitioner's hernia immediately followed the cause, that there was such prostration that the petitioner was compelled to stop work immediately or that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia.

The Deputy Commissioner did not express a specific opinion as to whether the petitioner had presented conclusive proof of compliance with the five points of the hernia section, although the

presentation of the petitioner's case was an attempt to comply with those points (Case, p. 69). But the Essex County Court of Common Pleas specifically determined that the five points were not met (Case, p. 19). The Supreme Court took a similar view (Case, p. 72). Under such circumstances it cannot be seriously argued at this time that the petitioner complied with the five points of the hernia section. For that reason this argument will not be directed to the failure of the petitioner to prove compliance with the five conditions but solely to the erroneous conclusion of the Supreme Court that the petitioner's hernia was a compensable one because the "petitioner suffered an aggravation of the hernia condition \* \* \* The case is controlled by the rule stated in *Furferi vs. P. R. R.*, 117 N. J. L. 508."

The petitioner had an inguinal hernia which was repaired prior to the time he was employed by the respondent. Before June 26, 1943 when the petitioner claimed he suffered a strain, he had no trouble whatsoever in the hernia area. He testified:

Q. Did they give you an examination? (when he was employed by the respondent company) A. Yes.

Q. Did they examine you where you had the old hernia? A. Yes.

Q. Before you took the job with the Federal did you feel all right? A. I felt fine.

Q. Did you have any trouble with that hernia condition? A. No (Case, p. 33, ll. 1-11).

Before June 26, 1943, the petitioner had no hernia. He claims that effort expended by him on that date, resulted in a hernia. For that hernia the petitioner sought compensation (Case, p. 6, l. 18) and the Workmen's Compensation Bureau awarded him compensation (Case, p. 69, l. 36). Those facts clearly distinguish the present case from *Furferi v. Pennsylvania Railroad*

*Company* (E. & A. 1937) 117 N. J. L. 508, on which the Supreme Court specifically relied.

In the *Furferi* case, the petitioner was awarded compensation for the death of the decedent caused by an "accidental aggravation of a conceded pre-existing inguinal hernia." There was no attempt in that case to recover compensation for a hernia. The hernia there was present when the accident occurred and the injury aggravated the hernia to cause strangulation and death for which compensation was sought. In the present case, there was nothing to aggravate. Accepting the petitioner's testimony *in toto*, it appears only that he expended effort and suffered an inguinal hernia which was not present before the effort was expended. For that hernia, he sought compensation. There was no aggravation of anything as in the *Furferi* case.

In support of its conclusion, the Supreme Court cited some testimony given by Dr. Max Kummel, the petitioner's witness, and apparently was persuaded by the fact that the witness used the word "aggravation" in his testimony. But it is important to note that even in his direct testimony, the doctor did not refer to an aggravation without being prompted and that the word was wrung from him with difficulty. When he did use the word, he unquestionably did so with the physician's assumed license to talk inexactly. Dr. Kummel first testified, "he has a right inguinal hernia in addition to an old herniotomy scar. There is now a protrusion and impulse on coughing" (Case, p. 42, ll. 17-20) and then in response to a question from petitioner's counsel:

Q. Can you explain what type, what his condition is now with respect to that hernia?

A. Well, he has a recurrence of the old hernia. It is not through the abdominal wall; it goes right through the ring and therefore, it is a recurrence (Case, p. 43, ll. 17-20).

“By Mr. Semel:

Q. Would you say from your examination that his present hernia is a new hernia or an aggravation of a then present diseased condition? A. No, it is an aggravation or a return of a previous condition.

Q. Will you answer my question in so far as the word ‘aggravation’ of a then present diseased condition is concerned? A. It is an aggravation of a previous condition. After he was operated, apparently it was good, and now he has again developed a hernia.

The Court: It is a return?

The Witness: That is right. That is what I said, a recurrence of the hernia.

Mr. Semel: If your Honor will permit me I would like to have this question, as I see it, presented: Assuming that after he was operated on January 4 he was unable to work for five months and then he was discharged, and assuming that he was employed by his present employer about the end of May, 1943, and at that time he was found physically able to work, would you say that this present condition is an aggravation of a then diseased condition, of a then present diseased condition, or is this an entirely new hernia?

The Witness: No, it is not an entirely new hernia; it is a recurrence of the previous hernia or, if you may say so, it is an aggravation of the condition that existed before it was repaired, but apparently it gave way again” (Case, p. 44).

On cross examination, Dr. Kummel was asked to be a little more exact and he testified:

“Q. In any event, after this operation was performed, there was no protrusion here? A. I presume there wasn’t.

Q. And it takes a new effort or a strain to cause the next protrusion, doesn’t it? A. Yes.

Q. And after the operation is performed the condition as to the inguinal region is not diseased? A. Well, it is not—well, it is

impaired. It is not normal tissue because you have to cut across and try to overlap tissues which normally should be alongside. It is not normal.

Q. Well, Doctor, assuming this man had his hernia repaired in January, there would be no hernia between that time and the time of this strain in July, would there? A. That is correct.

Q. So if there is no hernia, there couldn't be an aggravation of a hernia, because there was no hernia? That is true also, isn't it? A. No, there is not an aggravation of a hernia" (Case, p. 48, ll. 15-33).

It is perfectly obvious from the foregoing that the petitioner did not in fact suffer an aggravation of a hernia nor did he suffer any aggravation of what can be called a "hernia condition." Prior to his alleged injury, the petitioner had no hernia. Neither did he have a diseased condition. He had the normal repair of an inguinal hernia. After his alleged strain, he had a hernia and nothing more. Because he once before had had a hernia, the hernia for which he sought compensation was what the doctors call a recurrent hernia. But a recurrent hernia, is not an aggravation of a hernia.

The testimony of Dr. C. Abbott Beling clearly pointed out the distinction. He said:

"Q. What is that difference? A. If a hernia is completely cured and then breaks down, either by failure of the suture line or by failure of the muscles themselves, or by virtue of interference with the muscular action by trauma, that would be a recurrence; in other words, the hernia was there, it was eliminated and the hernia came back.

Q. Is that an aggravation? A. An aggravation which would be to a hernia which was not eliminated, which was already there and then it was aggravated" (Case, p. 68, ll. 4-18).

There is no doubt the petitioner had what is termed in medical parlance, "a recurrent hernia." There was no dispute about that. But the Deputy Commissioner's conclusion that the petitioner "has a recurring hernia," an admitted fact, was no basis at all for fastening liability on the respondent unless the Deputy Commissioner concluded that the petitioner proved he met the five conditions of the hernia section. The Court of Common Pleas, in holding that there was no liability, stated, "In the instant case the petitioner's previous hernia had been repaired and the testimony of Dr. Kummel shows that there was no protrusion after the operation, there would be no hernia between that time and the time of the strain in July, and the petitioner did not suffer an aggravation of a hernia. This distinguishes the instant case from *Furferi v. Pennsylvania R. R. Co.* (*supra*). In that case there was an aggravation of an existing hernia." (Case, p. 22, ll. 14-23.) The Court of Common Pleas therefore held that the proof required to recover compensation is no different because the hernia happened to be the second one on the same side, that is, a recurrent hernia.

But the Supreme Court failed to distinguish between aggravation of a hernia and a recurrent hernia; as is evident from the statement that "the case is controlled by the rule stated in *Furferi v. P. R. R.*" But that case is entirely different than the instant case as is abundantly clear from the statement of this Court in that decision. There the injury was the strangulation of the contents of the hernia sac. Compensation was sought, not for a hernia, but for the accidental strangulation of an existing hernia. There the employer did urge that the petitioner should be required to prove the existence of the five conditions of the statute. In rejecting that argument, this Court

said at page 513, "There was in point of fact no recurrence. There could not be, unless the hernia had been cured by a reconstructive operation termed the 'radical treatment' of that condition. Palliatives ease but do not cure. The object of the operative treatment is the extirpation of the hernia by the elimination of the hernial sac and the strengthening of the weakened abdominal wall." The Court specifically stated therefore that the employee in the *Furferi* case did not have a recurrent hernia and impliedly stated that had the employee sought to recover for a recurrent hernia, compliance with the five points would have been required.

The question presented for decision in this case is simply whether there must be compliance with R. S. 34:15-12 (X) to recover compensation for a recurrent inguinal hernia, that is, a second inguinal hernia on the same side. By the enactment of the hernia section, the Legislature recognized the medical fact that inguinal herniae usually are of slow development in a part of the body peculiarly susceptible to their development. The section applies to all inguinal herniae. It did not except recurrent or second herniae. As this Court said in *Furferi vs. Pennsylvania R. R. Co.* (*supra*) with respect to that legislation, at page 512:

"Thus is evinced a purpose to classify as compensable a hernia in its origin traumatic in the broad, general sense, and to exclude the hernia which is the culmination of a congenital or after-acquired physical weakness, classable as a disease, by setting up a standard of proof of hernia of the former class. It is fundamental in the statute that an inguinal hernia resulting from an accident is compensable, even though the employe has the weakness of body structure predisposing to that condition. But, in the absence of the elements of proof laid down in the statute, the hernia is considered the emanation of

disease solely; it is in no sense classed as a non-compensable traumatic or accidental hernia. In the case of a hernia that does not meet the statutory standard of proof, the classification is non-traumatic—a disease unassociated with accident—and it is therefore non-compensable. The limitation of this provision to herniae of the inguinal type, effected by the amendment of 1931, is also significant of this design.”

The express wording of the statute, “Inguinal hernia \* \* \*. Where there is a real traumatic hernia resulting from the application of force directly to the abdominal wall, \* \* \* compensation will be allowed. All other cases will be considered as \* \* \* not compensable \* \* \* unless \* \* \*” includes the petitioner’s hernia. There is no provision of the Workmen’s Compensation Act which relieves the petitioner of the necessity of complying with that statute R. S. 34:15-12 (X). No case has been cited to relieve him of that necessity.

### Conclusion.

The petitioner failed to prove that the occurrence of his inguinal hernia was surrounded with the five conditions prescribed by the statute *sine qua non* to his recovery of compensation. The judgment of the Supreme Court should be reversed.

Respectfully submitted,

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Appellant.

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of Counsel.

disease solely; it is in no sense classed as a non-compensable traumatic or accidental hernia. In the case of a hernia that does not meet the statutory standard of proof, the classification is non-traumatic—a disease unassociated with accident—and it is therefore non-compensable. The limitation of this provision to hernia of the inguinal type, effected by the amendment of 1931, is also significant of this design.

The express wording of the statute, "Inguinal hernia," where there is a real traumatic hernia resulting from the application of force directly to the abdominal wall, \* \* \* compensation will be allowed. All other cases will be considered as \* \* \* not compensable \* \* \* unless \* \* \* includes the petitioner's hernia. There is no provision of the Workmen's Compensation Act which relieves the petitioner of the necessity of complying with that statute R. S. 34:12-13 (Z). No case has been cited to relieve him of that necessity.

**Conclusion.**

The petitioner failed to prove that the occurrence of his inguinal hernia was surrounded with the five conditions prescribed by the statute and due to his recovery of compensation. The judgment of the Supreme Court should be reversed.

Respectfully submitted,

STARKER, TAMS & HOSKIN  
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Appellant

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THOMAS MCGOWAN  
of Counsel.

New Jersey Court of Errors and Appeals

ISIDORE MANDEL,  
Petitioner-Respondent,

*vs.*

FEDERAL SHIPBUILDING AND  
DRY DOCK COMPANY,  
Respondent-Appellant.

On Appeal  
from the  
New Jersey  
Supreme Court.

Sat Below:  
Brogan, C.J.,  
Donges and  
Perskie, JJ.

**BRIEF ON BEHALF OF  
PETITIONER-RESPONDENT.**

This case is before the court on appeal of the respondent-appellant, FEDERAL SHIPBUILDING AND DRY DOCK COMPANY, from a judgment against it, which judgment was originally entered against the FEDERAL SHIPBUILDING AND DRY DOCK COMPANY in the Workmen's Compensation Bureau, reversed on appeal by the Essex County Court of Common Pleas, and reinstated by the New Jersey Supreme Court under a writ of certiorari.

**Facts.**

On or about the 26th day of June, 1943, while the petitioner-prosecutor was working inside of a ship which was in the course of construction, it became very hot within the ship and petitioner-prosecutor went up on to the deck in order to obtain a blower to cool the air in the compartment where he was working. When he lifted the blower he felt something like a rip in his right inguinal region which he thereafter learned was a hernia. Upon refusal by the employer to pay him com-

compensation for such injury, petitioner-prosecutor filed his petition for such compensation in the Workmen's Compensation Bureau of the New Jersey Department of Labor.

At the hearing it developed that petitioner-prosecutor had been operated on for a hernia in January of the same year and that he had begun to work for the respondent in the latter part of May which was about thirty days before this accident occurred, and that this hernia was a recurrence of the former hernia.

After hearing the testimony, the Deputy Commissioner decided that the petitioner-prosecutor had suffered a recurrence of a hernia and that the same was compensable, and entered a judgment in favor of the petitioner-prosecutor.

An appeal was taken to the Essex County Court of Common Pleas, which court was of the opinion that the petitioner-prosecutor did not suffer a compensable hernia and reversed the judgment of the Workmen's Compensation Bureau of the New Jersey Department of Labor.

A writ of certiorari was issued by the New Jersey Supreme Court which reversed the judgment of the Essex County Court of Common Pleas and ordered the judgment of the Workmen's Compensation Bureau reinstated.

## ARGUMENT.

**The judgment of the New Jersey Supreme Court, reversing the judgment of the Essex County Court of Common Pleas, should be affirmed.**

It is the petitioner-respondent's contention and the New Jersey Supreme Court's opinion that the

petitioner-respondent's claim is based upon a traumatic injury caused by the lifting of a heavy object and that such injury was not a *new injury* to a *healthy part* of petitioner-respondent's body but was in fact the aggravation of a pre-existing diseased condition. Such an accident need not come within the rule set forth in R. S. 34:15-12, sub-heading x, but rather is governed by the general rules of workmen's compensation law which allow compensation for an injury to an employee arising out of and in the course of his employment.

The facts in this case with respect to that phase of the suit are not seriously disputed. The manner in which the accident occurred appears to be quite clearly established by the testimony and the question to be decided under this point is whether there was an accident which caused an injury to or an aggravation of a pre-existing diseased condition.

Attention is called to the testimony of Dr. Kummel, where on page 43 of state of case he says:

“Q. Now, Doctor, you observed evidence of an old hernia, did you not? A. Yes, there is an old scar.

Q. You also observed a present recurrent hernia; is that so? A. Yes.

Q. Can you explain what type, what his condition is now with respect to that hernia? A. Well, he has a recurrence of the old hernia. It is not through the abdominal wall; it goes right through the ring and, therefore, it is a recurrence.

Q. What treatment is necessary to cure his present hernia? A. He will have to be operated again.

Q. He will have to be operated, and if he is operated will such operation effect a cure? A. I can't say one way or the other. If this one didn't heal, I don't know whether the next one will heal.”

and on page 44:

“Q. Would you say from your examination that his present hernia is a new hernia or an aggravation of a then present diseased condition? A. No, it is an aggravation or a return of a previous condition.

Q. Will you answer my question insofar as the word ‘aggravation’ of a then present diseased condition is concerned. A. It is an aggravation of a previous condition. After he was operated, apparently it was good, and now he has again developed a hernia.”

and again on page 44:

“Q. Assuming that after he was operated on January 4th he was unable to work for five months and then he was discharged, and assuming that he was employed by his present employer about the end of May, 1943, and at that time he was found physically able to work, would you say that this present condition is an aggravation of a then diseased condition, of a then present diseased condition, or is this an entirely new hernia? A. No, it is not an entirely new hernia; it is a recurrence of the previous hernia, or, if you may say so, it is an aggravation of the condition that existed before it was repaired, but apparently it gave way again.”

Petitioner-respondent’s contention is borne out by the testimony of the respondent’s own physician, Dr. C. Abbott Beling, whose testimony (S. of C., p. 66) is as follows:

“Q. And this man had a right indirect inguinal hernia? A. That’s right.

Q. Now, he had been operated upon—your examination indicated that he had been operated on some time before for the repair of a right indirect inguinal hernia? A. Yes.

Q. Now, after that repair would there be a protrusion? A. If the repair is successful there should be no hernia and there should be

no external ring present. The canals should be closed up.

Q. So that if a protrusion occurred after that repair causing a left indirect inguinal hernia would or would it not be an aggravation of a pre-existing condition? A. Well, I would call it a recurrence of his former condition. He has a recurrent hernia.

Q. What do you mean by a recurrent hernia, Doctor. A. He has the hernia back again. He had a hernia originally, it was repaired, and now he has it again.

Q. But is it or is it not an aggravation of a pre-existing condition? A. That depends; if anything happened to aggravate it.

Q. Well, is it a recurrence of a hernia or an aggravation of a pre-existing hernia? A. It is a—that would be difficult to say accurately unless I knew exactly what was done at the time of operation. We call them recurrent hernias because they come back. Whether it is due to the fact that something happened later or the sac wasn't tied off well or what happened, I don't know."

The only case in New Jersey which appears to be in point with this phase of the case at bar is that of *Furfari vs. Pennsylvania Railroad*, 117 N. J. L. 508, 189 Atl. 126, which was decided by the Court of Errors and Appeals in 1937 and does not appear to have been overruled or modified in any way. In that case, the decedent had suffered from a right inguinal hernia for years and on August 15th, 1933, while engaged with fellow workers in lifting railroad ties, sustained a strain to that hernia which resulted in the strangulation of the condition of an existing hernial sac. The Supreme Court ruled as a matter of law that for failure of proof of the elements of accidental hernia prescribed by the statute, the accident was non-compensable. The Court of Errors and Appeals overruled the Supreme Court, stating that the reason of the Supreme Court does not take into account

the essential difference between the occurrence of a hernia and the traumatic aggravation of that bodily infirmity.

I quote from the opinion of the court:

“But this reasoning does not take into account the essential difference between the occurrence of a hernia, no matter how it originated, and the traumatic aggravation of that bodily infirmity. It rejects, as inapplicable by reason of the last cited statute, the well-established principle that disability and death, directly attributable to the aggravation of pre-existing disease by accident arising out of and in the course of the workmen’s employment, are compensable.”

### Conclusion.

**Petitioner-respondent respectfully urges that the judgment of the New Jersey Supreme Court be affirmed.**

LAURENCE SEMEL,  
Attorney for and of Counsel with  
Petitioner-Respondent.



