



**ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of said District Court be and it hereby is **AFFIRMED** in part and **VACATED AND REMANDED** in part.

Moran Towing Corporation appeals from February 10, 2014 amended order and judgment entered after a bench trial before the United States District Court for the Southern District of New York (Sweet, *J.*) awarding Avril A. Young (“Young”) \$1,994,813 for claims arising out of the death of her husband, Ricardo Young. We assume the parties’ familiarity with the underlying facts, procedural history, and specification of issues for review.

Moran first argues that the district court abused its discretion in awarding prejudgment interest at New York’s statutory rate of 9 percent. “To make an injured party whole, prejudgment interest should be awarded in admiralty cases absent exceptional circumstances. *Jones v. Spentonbush–Red Star Co.*, 155 F.3d 587, 593 (2d Cir. 1998). The district court found no exceptional circumstances existed, and, as federal law is silent on the appropriate rate of prejudgment interest in maritime cases, looked to New York’s statutory rate as New York was the forum state. *In re Moran Towing*, 984 F. Supp. 2d 150, 188 (S.D.N.Y. 2013). District courts exercise “broad discretion” in setting the appropriate rate for prejudgment interest in a maritime case, *Mentor Ins. Co. v. Brannkasse*, 996 F.2d 506, 520 (2d Cir. 1993), and we find no abuse of discretion when the district court chooses to adopt the forum state’s statutory rate. *See, e.g., Alfano v. CIGNA Life Ins. Co. of New York*, No. 07-cv-9661 (GEL), 2009 WL 890626, at \*7 (S.D.N.Y. Apr. 2, 2009) (noting that “while there is no applicable federal statute establishing a prejudgment interest rate, New York has adopted a statutory prejudgment interest rate of 9%, N.Y. CPLR § 5004, thus making an objective legislative judgment that 9% is an appropriate rate” in awarding prejudgment interest in a Employee Retirement Income Security Act case).

Nor do we find an abuse of discretion in the district court’s decision not to admit the collective bargaining agreements (“CBAs”) which were not produced to Young prior to trial. Under Rule 26, parties are required to produce “all documents” in their possession that each “may use to support its claims or defenses,” which includes the computation of damages. Fed. R. Civ. P. 26(a)(1)(A)(ii) and (iii). Indeed, Rule 26 specifically states that in its “computation of each category of damages claimed by the disclosing party” the party “must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based.” *Id.* Rule 26 also imposes an ongoing duty to supplement said disclosures. Fed. R. Civ. P. 26(e). Thus, Moran plainly had a duty to disclose the CBAs in question, regardless of whether Young should have been on notice that Moran would rely on CBAs that had not been disclosed.

However, we agree with Moran that the district court erred in not deducting income taxes from that part of the award for lost future earnings. The district court held that “[l]ost future earnings in New York are not reduced by taxes,” and thus declined to deduct income taxes from the award. *In re Moran Towing*, 984 F. Supp. 2d at 185 (relying on *Estevez v. United States*, 74 F. Supp. 2d 305, 307 (S.D.N.Y. 1999) for the proposition that where New York State damages law was applied to action brought under federal statute lost future earnings are not reduced by taxes). This is a claim arising under maritime law, not New York state law, and thus federal law applies to the issue. *Fanetti v. Hellenic Lines Ltd.*, 678 F.2d 424, 431 (2d Cir. 1982). In *Fanetti* our court found that where there is a federal claim giving rise to an award for lost future

earnings, the award must be reduced by the amount of future taxes. *Id.* We thus vacate that portion of the award made to compensate petitioner for lost future earnings and remand for the district court to recalculate that award accounting for the income taxes decedent would have paid had he survived.

We have considered the remainder of Moran's arguments and find them to be without merit. Accordingly, the order of the district court hereby is AFFIRMED in part and VACATED and REMANDED in part. Each side to bear its own costs.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

  
Catherine O'Hagan Wolfe

**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**ROBERT A. KATZMANN**  
CHIEF JUDGE

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

Date: March 12, 2015  
Docket #: 14-482cv  
Short Title: Moran Towing Corporation

DC Docket #: 10-cv-4844  
DC Court: SDNY (NEW YORK CITY)  
DC Judge: Sweet

**BILL OF COSTS INSTRUCTIONS**

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- \* be filed within 14 days after the entry of judgment;
- \* be verified;
- \* be served on all adversaries;
- \* not include charges for postage, delivery, service, overtime and the filers edits;
- \* identify the number of copies which comprise the printer's unit;
- \* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- \* state only the number of necessary copies inserted in enclosed form;
- \* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- \* be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit  
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**VERIFIED ITEMIZED BILL OF COSTS**

Counsel for

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respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

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and in favor of

\_\_\_\_\_

for insertion in the mandate.

Docketing Fee \_\_\_\_\_

Costs of printing appendix (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

Costs of printing brief (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

Costs of printing reply brief (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

**(VERIFICATION HERE)**

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Signature