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MARITIME

DEFENSE VERDICT



Carl D. Buchholz, III

After a four day jury trial in New Jersey federal court involving a lawsuit filed by longshoreman Raymond Evans and his wife against the owners of the LOMBOK STRAIT for injuries Evans allegedly sustained while loading containers aboard the LOMBOK STRAIT, Carl D. Buchholz, III obtained a defense verdict in favor of the shipowner. Evans' lawsuit was filed pursuant to the 1972 Amendments to the Longshore and Harbor Workers' Compensation Act (LHWCA) which permits a longshoreman to sue a shipowner for injuries caused by a shipowner's negligence.

Evans was injured on the pier while hooking up a container that the longshoremen were going to load onto the LOMBOK STRAIT. During this operation, Evans' hand got caught between the container and chassis on which it was resting, resulting in a serious injury to his right hand and a portion of his ring finger had to be amputated. Evans claimed that the accident was caused by a defective piece of ship's equipment that he was attempting to insert into the bottom of the container before it was loaded aboard the ship. Carl defended the case on the basis that the accident was solely caused by the plaintiff's own negligence in failing to keep his hand clear of a known "pinch point," i.e., the container and chassis.

There were several interesting developments during trial. Initially, Evans' wife was also a plaintiff in the lawsuit and she claimed loss of consortium. However, in preparing for

trial, Carl reviewed Raymond Evans' tax returns and discovered that he was filing as a "single" taxpayer with no dependants. Further investigation disclosed that although Evans and his wife were legally married, they were "estranged" at the time of the accident. When confronted with this evidence at trial, Evans' counsel quickly withdrew the claim for Evans' wife.

Secondly, Evans asserted a claim for future loss of earnings based on his contention that he could no longer perform the physical work of a longshoreman because of his hand injury and amputated finger, and that he would suffer a yearly loss of earnings of approximately \$10,000 working in a less physically strenuous type of occupation. Evans did not have a vocational or economic expert to support this claim. Rather, he argued that the trial judge should simply use the work life expectancy tables and instruct the jury on calculating future loss of earnings. Carl contended that Evans needed a vocational expert to provide the jury with some evidence regarding the current economic conditions for longshoremen working on the Philadelphia waterfront as well as testimony from an economic expert on how to calculate future loss of earnings. The trial court agreed with the shipowner's position and precluded Evans from pursuing his future loss of earnings claim.

The jury took about an hour to render a unanimous verdict which determined that the shipowner had not breached any duty owed to plaintiff. Hopefully, this result will help discourage plaintiffs' attorneys from filing future frivolous lawsuits against shipowners simply to obtain a "cost of defense" settlement. Evans v. Seatrade Groningen, (U.S.D.C.,N.J.)

SUMMARY JUDGMENT GRANTED

Carl also recently obtained summary judgment in favor of the defendant shipowner in a lawsuit brought by longshoreman Michael Foley. This decision should prove very helpful in defending future LHWCA cases.

Foley suffered very serious injuries while discharging steel from the No. 2 hatch of the WADI ALARISH. At the time of the accident, it was getting dark in the hatch and Foley allegedly "misstepped" and fell off the stow because the visibility in the hatch was poor. There was an admitted "custom and practice" for the ship's crew to provide lights for the hatches when requested to do so. The ship's crew admittedly was requested to provide

lighting well before Foley's accident, but failed to do so prior to the accident.

Despite the "custom and practice" of the vessel to provide lights and the ship's failure to provide the requested lighting prior to the plaintiff's accident, the trial court found that there was neither a breach of the ship's turnover duty or duty to warn. The trial court noted that there was no breach of the shipowner's turnover duty because the lighting in the hatch from natural daylight was adequate at the time the stevedore began its work. Furthermore, there was no breach of the corollary "duty to warn" because the stevedore knew from experience that the lights would be needed in the hatch when it began getting dark.

Perhaps most significantly, the trial court very narrowly applied the Court of Appeals for the Third Circuit's two-pronged exception to the general rule that a shipowner is not liable for obvious hazards when the ship is turned over to the stevedore unless (1) avoiding the hazard would be impractical for the longshoremen, or (2) the ship should have known that the longshoremen would confront the hazard. The trial court found that although the shipowner had constructive knowledge that the longshoremen would confront diminishing lighting both because of their general knowledge of sunset times and the stevedore's request for lights, the "practical measures" duty has nothing to do with the shipowner's knowledge, but "whether, under all the circumstances, safe alternatives were impractical." The trial court found that the stevedore routinely halted cargo operations when it encountered a hazard that made work unsafe, but it did not do so in this case. Furthermore, the stevedore had its own lighting available at the terminal which it chose not to use. Thus, the trial court found the shipowner was entitled to summary judgment. Foley v. National Navigation Company, (U.S.D.C., E.D.P.A.)

LAWSUIT DISMISSED

In Winograd v. Costa Cruise Lines (Superior Court of New Jersey), Carl and maritime associate Kevin McGee, obtained dismissal of a lawsuit filed by a passenger against Costa Cruise Lines for injuries she allegedly sustained when she was assaulted while ashore in the Dominican Republic. The lawsuit was filed after the one year statute of limitations contained in the cruise ticket expired. Plaintiff contended she was not bound by the one year statute of limitations in the ticket because she did not buy the ticket (it was allegedly a gift). She contended that she received the ticket just moments before boarding the vessel and she did not have an opportunity to review the terms of the ticket. A New Jersey state court judge, however, held that possession of the ticket by plaintiff's

companion was sufficient to charge plaintiff with notice of its provisions, including the statute of limitations and the lawsuit was dismissed. This decision should be useful in defending future passenger claims filed after the standard one year statute of limitations has expired, particularly where the plaintiff-passenger denies receiving or seeing the cruise ticket contract until moments before boarding.

Carl D. Buchholz, III, a partner in Rawle & Henderson's Philadelphia office, is an active trial and appellate attorney. He is the Chair of the Appellate Section. His state appellate practice includes several arguments before the Pennsylvania Supreme Court as well as numerous arguments before the Pennsylvania Commonwealth Court and Pennsylvania Superior Court. His federal appellate practice includes an appearance before the United States Supreme Court, where he successfully limited longshoremen's claims against shipowners as well as numerous arguments before the U.S. Court of Appeals for the Third Circuit.

In addition, Mr. Buchholz is the Chair of Rawle & Henderson's Maritime Section; he has practiced maritime law since 1970. Carl has defended shipowners and terminal operators in a variety of matters, including personal injury and cargo damage claims, hull and pier damage, and Immigration and Coast Guard proceedings. He also regularly represents and advises banks on issues related to restraints of wire transfers and funds pursuant to writs of maritime attachment.

In 2006, the Pennsylvania Supreme Court appointed Mr. Buchholz to the Disciplinary Board of the Supreme Court of Pennsylvania. In September 2009, the Pennsylvania Supreme Court designated Mr. Buchholz to serve as Vice Chair on the Disciplinary Board. Mr. Buchholz recently completed a six year term as Chair and Board Member of the Pennsylvania Lawyers Fund for Client Security Board.

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