

FEDERAL

SOUTHERN DISTRICT

WORKER/WORKPLACE NEGLIGENCE

Negligent Maintenance — Admiralty/Maritime — Jones Act

Dock's hoist not well maintained,
deckhand claimed

VERDICT

\$3,200,000

CASE Gregory Mulholland v. The City of New York, No. 09 CV 6329
COURT U.S. District Court, Southern District
JUDGE Alvin K. Hellerstein
DATE 4/22/2013

PLAINTIFF

ATTORNEY(S) Bernard D. Friedman, Friedman, James & Buchsbaum LLP, New York, NY

DEFENSE

ATTORNEY(S) Thomas M. Hoey, Jr., Assistant Corporation Counsel, Michael A. Cardozo, Corporation Counsel, New York, NY

FACTS & ALLEGATIONS On July 2, 2009, plaintiff Gregory Mulholland, 49, a deckhand, was performing his regular work duties at a dock on Hart Island, which is located on New York's side of the Long Island Sound. Mulholland's transportation to and from the island was provided by a vessel hired by the city of New York, the Rosemary Miller.

Mulholland's responsibilities involved the raising and lowering of a ramp that facilitated the loading and unloading of boats. The ramp was controlled by a pair of chain hoists. Mulholland claimed that one hoist jammed during a lowering of the ramp. He claimed that he sustained injuries of his back and neck.

Mulholland sued his employer, the city of New York. He alleged that the city was negligent in its maintenance of the hoist, that the city's negligence created a defective condition that caused his accident and that liability attached via the Jones Act, 46 U.S.C. § 30104.

Mulholland claimed that the hoist was improperly aligned and that it had repeatedly jammed during the 12 months that preceded the accident. His maritime expert opined that the hoist's failure was a result of improper maintenance, but defense counsel contended that the device was reasonably safe.

Defense counsel also contended that Mulholland was not entitled to the protection of the Jones Act. He noted that Mulholland had previously been a seaman on a city-owned vessel, the Michael J. Cosgrove, but that Mulholland was reassigned to the docks at Hart Island and another island when the Michael J. Cosgrove was retired. He contended that Mulholland merely rode the Rosemary Miller to and from his work assignments and was not engaged in the navigation or missions of the vessel. However, Mulholland's counsel argued that Mulholland was sufficiently connected to the vehicle's navigation and missions.

INJURIES/DAMAGES *decompression surgery; fusion, cervical; fusion, lumbar; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L4-5; herniated disc at L5-S1; laminectomy*

After several days had passed, Mulholland presented to his primary doctor. He was referred to a neurologist.

Mulholland ultimately claimed that he sustained herniations of his C5-6, C6-7, L4-5 and L5-S1 intervertebral discs. Mulholland's expert neurologist and expert orthopedic surgeon opined that the injuries were products of the accident.

Mulholland initially underwent conservative treatment, but he claimed that the treatment did not resolve his pain. He ultimately underwent a pair of decompressive surgeries that included laminectomies, which involved the excision of portions of vertebrae, and fusion of a portion of his spine. His spine's C5-6, C6-7, L4-5 and L5-S1 levels are fused.

Mulholland claimed that he suffers permanent residual pain and limitations that prevent his resumption of work. Mulholland's vocational-rehabilitation expert opined that Mulholland cannot procure any type of gainful employment. Mulholland's expert neurologist agreed that Mulholland cannot work.

Mulholland sought recovery of past medical expenses, a total of about \$700,000 for past and future lost earnings, and damages for past and future pain and suffering.

The defense's expert biomechanical engineer opined that the jamming of a chain hoist could not produce the forces necessary to cause the injuries that Mulholland claimed to

have sustained. The defense's expert orthopedist opined that Mulholland's injuries were degenerative conditions that were not related to the accident.

RESULT The jury found that Mulholland established that he was a member of the Rosemary Miller's crew. Thus, it determined that he was protected by the Jones Act. It found that his damages totaled \$3.2 million.

TRIAL DETAILS Trial Length: 7 days
Trial Deliberations: 90 minutes
Jury Composition: 2 male, 6 female

**PLAINTIFF
EXPERT(S)**

Dr. Kenneth W. Fisher, maritime,
Florham Park, NJ
Ranga C. Krishna, M.D., neurology,
Brooklyn, NY
Sebastian Lattuga, M.D., orthopedic
surgery, Rockville Centre, NY
Michael Soudry, MS, economics,
New York, NY
David B. Stein, Ph.D., vocational
assessment, Springfield, NJ

**DEFENSE
EXPERT(S)**

Richard Dein, maritime/water safety,
Annapolis, MD (did not testify; precluded)
Joseph Pessalano, vocational rehabilitation,
Garden City, NY (did not testify)
Ali M. Sadegh, Ph.D., biomechanical,
New York, NY
Herbert S. Sherry, M.D., orthopedics,
New York, NY

POST-TRIAL Defense counsel has moved to set aside the verdict and the damages awards.

EDITOR'S NOTE This report is based on court documents, information that was provided by plaintiff's counsel and information that was provided by defense counsel.

—Jason Pafundi

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