



JUGE NAPOLITANO

GUILBEAU RULI FRIEMAN APLC

James Hough v. Vimas Painting Company

After being exposed to pigeon droppings as a vacuumer/cleaner for Vimas Painting Company James Hough (claimant) contracted histoplasmosis—a fungal infection caused by fecal exposure—in his lungs while working underneath the JFK Bridge on the Ohio River between Indiana and Kentucky. Although the claimant was primarily a bridge worker, the vacuums were situated on a floating barge beneath the bridge, and he contended he had LHWCA jurisdiction based on, at most, 3 days of work he did on or around a barge at the request of his supervisor, with whom he was also rooming near the job site.

Additionally, the claimant's treating physician insisted on follow-up CT scans in response to granuloma present in Hough's lungs. The defense medical expert stated that granuloma was akin to scarring and indicated his contraction of histoplasmosis—an issue not disputed—but had healed several months thereafter with no medical consequences following MMI.

The claimant testified that his significant exposure to pigeon droppings occurred on the barge across the three days of temporary work rather than his many hours spent in the containment area vacuuming while wearing his protection mask. The conditions the claimant described on the barge were vigorously disputed by his supervisor and co-worker, who testified he had no concern about exposure to pigeon droppings and did not wear a mask or other protective equipment.

Records obtained from the hospital of the claimant's first treatment painted a wholly different picture, stating the claimant told the doctors upon first admission that he was a vacuumer on a bridge project and at times had to walk through up to 2' of pigeon droppings with lots of debris in the air floating around him.

As bridge workers are not generally considered maritime workers, the (employer-oriented) ALJ denied benefits, finding a lack of jurisdiction under the LHWCA. Additionally, the medical evidence suggested the claimant contracted his illness while working on the bridge in the containment area rather than the barge and even if claimant had contracted histoplasmosis during his three brief days of work on the barge, the illness was still not covered by the LHWCA according to the ALJ because his presence on the barge was mere happenstance and not part of the regular work for which he was employed.