



JUGE NAPOLITANO

GUILBEAU RULI FRIEMAN APLC

### **Ray Haydel v. Gramercy Alumna and Liberty Mutual Insurance Company**

Ray Haydel's challenging claim under the LHWCA was based upon an incident involving a verbal altercation with his supervisor, which Haydel contended became physical when the supervisor, a much larger man, lifted him off the ground, shook him and threw him to the loading dock area resulting in injuries to his neck and shoulder.

The claimant ended up having both neck and shoulder surgery. Haydel was a gantry crane operator and unquestionably covered by the LHWCA. The supervisor vigorously and consistently denied claimant's contentions about the incident. The supervisor agreed that there was a verbal altercation prompted by Haydel's cursing and antics when asked by the supervisor to move a gantry crane to allow a man in the hold of a vessel being unloaded to be able to see what he was doing while working at night.

According to the supervisor, after being pushed four times by Haydel in an effort to provoke him, he defended himself by stiff-arming Haydel in the chest prompting Haydel to walk away. Fortunately, some of these events were witnessed by a foreign seaman who happened to observe the two on the muddy dock together at 2:00 a.m. the same morning of the incident.

The defense asserted a rarely successful defense under Section 903(c) of the LHWCA which provides that **"No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another"**. Specifically, the defense argued that the claimant's actions imputed an intent to harm the supervisor, although the supervisor was not physically harmed in the incident. Four of Haydel's union co-workers testified but their testimony was internally inconsistent and somewhat equivocal. The defense also called the investigating officer with the local police force who testified that she did not believe Haydel because of his inconsistent behavior during her interviews with him.

The ALJ noted that claimant's co-workers all testified that he was not covered in mud as he would have had to be had he been thrown in the wet bauxite site ore on the dock at the time the incident allegedly occurred. The ALJ also gave the most credit to the testimony of the uninterested foreign seaman witness that it was the "little guy who pushed the big guy several times and then walked off." He also testified that he saw no one on the ground at the time of the incident or thereafter.

The ALJ denied benefits finding that claimant physically confronted his supervisor and repeatedly pushed him in an attempt to get the supervisor to strike him back. That demonstrated a willful

intention to injure himself or another and thus barred his claim. (This decision was upheld on appeal by the Benefits Review Board.)