

**XXXXXX vs. COASTAL TUG & BARGE, INC; 2000 FL Jury
Verdicts Rptr. LEXIS 6537**

Docket No. 97-5938 CA 32; FJVR Reference No. 00:3-30

December 10, 1999

Published: March 2000

Topic: Maritime Accident - Vessel

Result: \$ 425,000 for Plaintiff (verdict)

(\$ 10,000 - maintenance; \$ 65,000 - cure; \$ 350,000 - damages and pain and suffering).

Award: \$ 425000

Injury: NATURE OF INJURY: Herniated lumbar disc requiring fusion.

State: Florida

County: Dade

Court: DADE COUNTY

Judge: Fredricka Smith

Plaintiff Profile

Age: 25

Sex: Male

Occupation: Deck Hand

Plaintiff Counsel

David Gorewitz, Melbourne

Defendant Counsel

David J. Horr of Horr, Linfors, Skipp & Novak, P.A., Miami

Case Summary

CAUSE OF INJURY: On February 27, 1997, Plaintiff was working aboard the vessel M/V Coastal Dade, which was owned and operated by Defendant. Plaintiff alleged that, as he was pulling on a mooring line, he felt a pain in his back. Plaintiff did not tell anyone about the injury, but visited his personal physician. Upon returning to work the next day, Plaintiff informed his supervisor that he was on medication prescribed by his doctor. Plaintiff was instructed to go home. Defendant claimed that Plaintiff was not injured at work because he did not report the injury. Plaintiff contended that he told the Captain the next evening that his back was hurting. The Captain denied this allegation. Plaintiff returned to work two weeks later. Defendant claimed that three witnesses asked Plaintiff if he was injured at work, and he responded "No" to all three.

Plaintiff Expert(s)

Marcelle Kinney, Ph.D., Economist, Melbourne (video depo)

Richard Hynes, M.D., Orthopedic Surgery, Melbourne (video depo)

Frank Alvarez, M.D., Neurology, Daytona Beach

John Russell, Vocational Rehabilitation, Melbourne

David Cole, Maritime Issues, New Orleans, LA

Defendant Expert(s)

Christopher Brown, M.D., Orthopedic Surgery, W. Palm Beach

Paul M. Keller, M.D., Orthopedic Surgery, Melbourne

Mark A. Beckner, M.D., Orthopedic Surgery, Orlando

Dina Murphy, R.P.T., Physical Therapy, Melbourne

Editor's Note

The jury found that: (1) Plaintiff was injured while in the service of the tugboat Coastal Dade; (2) there was no negligence on the part of Defendant which was a legal cause of injury to Plaintiff; (3) the Tugboat Coastal Dade was seaworthy; (4) the unreasonable failure to pay maintenance and cure aggravated Plaintiff's physical injury; and (5) Defendant did not act arbitrarily or with callous disregard in failing to pay maintenance and cure. Defendant offered \$ 10,000; Plaintiff asked for \$ 300,000.

DEFENDANT'S ATTORNEY'S COMMENTS: The jury returned defense verdicts on the Jones Act and unseaworthiness claims. Plaintiff testified at trial to a specific accident at a specific time. This was negated by circumstantial evidence. On the maintenance and cure claim there was significant discrepancy between Plaintiff's testimony and that of Defendant's witnesses. While the jury apparently resolved these in Plaintiff's favor, there is concern the jury misapprehended the instructions on the law and awarded an excessive amount to Plaintiff. Plaintiff's post trial motions have already been denied. Defendant's Motion for Remittitur, Motion for New Trial and Motion for Judgment in Accordance with Motion for Directed Verdict are still pending. In fact, Plaintiff's counsel was recently directed by the Court to submit a memorandum of law in response to Defendant's post trial motions. A hearing by special appointment on the post-trial motions is scheduled in April.

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