

## Team proves Maersk partially to blame for victim's heart disease

**Case:** William C. Skye v. Maersk Lines

**Case no:** 11cv21589

**Description:** Maritime negligence

**Filing date:** May 5, 2011

**Trial dates:** May 7-16, 2012

**Jury decision:** \$590,000

**Judge:** U.S. District Judge Cecilia Altonaga

**Plaintiff attorneys:** Jason Margulies and Michael Winkleman, Lipcon, Margulies, Alsina & Winkleman, Miami

**Defense attorneys:** David Horr and Stephanie Wylie, Horr, Novack & Skipp, Miami

**Details:** William Skye, 57, worked for Maersk Lines Ltd. for eight years as chief mate aboard cargo ships owned by the Copenhagen-based shipping company. He retired after his cardiologist said he had left ventricular hypertrophy — an enlarged heart. Skye's lawsuit claimed the condition was caused by being overworked by Maersk. Skye worked 70 days on and 70 days off, and during his time as second in command on the Sealand Pride he worked nearly 16-hour days, getting less than six hours a sleep a night for four years. There was no way he could perform his assigned duties in an eight-hour shift, according to his lawsuit.

**Plaintiff case:** Skye sued under the Jones Act, which protects seaman's rights even when working on foreign-flagged ships. The law allows injured sailors to make claims and collect from their employers for the negligence of the ship owner.

Skye claimed his working conditions violated the standards of training and watch keeping under U.S. laws regulating shipping. Skye had to perform two four-hour watches and then complete 28 additional job duties.

He started feeling excessive fatigue and chest pain in 2008 and went to a cardiologist.

"He was overworked to the point that it caused left ventricular hypertrophy," Margulies said. "His heart worked so hard it thickened."

Winkleman said documents showed Maersk knowingly overworked the first mate position, budgeting so much overtime that it came out to 15-hour shifts. The heart condition forced Skye into early retirement.

Plaintiffs argued Maersk also did not want to pay for a software program that would have decreased the data entry portion of Skye's job dramatically.

**Defense case:** Skye was responsible for completing the ship's schedule and was in charge of his working hours, Horr and Wylie told the jury. A former ship captain testifying as an expert told the jury that Skye failed to delegate his duties properly. Maersk denied its ships were undermanned and argued Skye's heart condition did not preclude him from working as chief mate or force him into early retirement. Defense attorneys also said Maersk did not violate work/rest hour regu-



J. ALBERT DIAZ

Attorneys Jason Margulies and Michael Winkleman persuaded a Miami federal jury to award a former chief mate \$590,000.

lations, saying its system was in compliance.

"If he was over, then he was over because he wanted to be," Horr said. The defense argued Skye had a motive to work overtime because it could be converted to accrued vacation and applied to earlier retirement.

This case "certainly was not garden variety. It presented to us some very unique legal issues," Horr said.

**Verdict:** After seven days of trial, the jury came back after two days of deliberation with a \$2.36 million verdict but assessed 75 percent comparative negligence to Skye, reducing the award to \$590,000. The jury found Skye would have worked another 10 years if his condition was not exacerbated by the workload. However, it did not find that Maersk violated work/rest regulations.

**Quote:** "This is an important case because it paves the way for similar situated crew members who are injured by working too many hours and too many duties," Margulies said. "We don't know of any other cases where chief mates who have been overworked have sued."

**Post-trial:** Plaintiffs plan to file a motion asking Altonaga to set aside the comparative negligence and award the full verdict to Skye, arguing — among other things — the jury was not instructed that seamen must follow company orders even if they make out the schedule themselves.

"If the jury heard that, they wouldn't have come up with comparative negligence," Margulies said.

— John Pacenti

## MOTOR VEHICLE

### BROWARD CIRCUIT COURT

#### Driver not liable for accident with bicyclist

A minivan driver was found not liable when his vehicle collided with a bicyclist.

Edison Sierra, then 51, was riding his bike on a sidewalk in Hollywood when he was hit by a van emerging from an alley. Sierra claimed cervical injuries. He claimed the minivan failed to yield the right of way and struck him, catapulting him into the air and causing him to land on the road.

Defense counsel claimed Sierra should not have been riding on a sidewalk where bike lanes are available, and he abruptly darted in front of the minivan. Counsel also claimed Sierra was not adhering to the Hollywood city ordinance regarding bicycle use on sidewalks in a business district.

**Case:** Sierra v. August

**Case No.:** CACE09-029567

**Plaintiff attorney:** Gregory A.D. McFarlane, McFarlane Nixon-Calamari, Plantation

**Defense attorney:** Patrick Shawn Spellacy, Kirwan & Spellacy, Fort Lauderdale

### PINELLAS CIRCUIT COURT

#### Estate of bike rider killed in crash recovers \$1.2M

The estate of a motorized bicycle rider who was killed in a collision with a police patrol car recovered more than \$1.2 million.

Richard Lemke, 62, was riding on U.S. Highway 19 near 80th Avenue when he was struck and killed by a Pinellas Park officer. Plaintiff's counsel argued it was a clear afternoon with no obstructions. Counsel argued the officer was checking his voicemail on his cell phone about two minutes earlier. Counsel claimed the officer had four screens open on his computer at the time of the collision.

Defense counsel contended Lemke entered the intersection suddenly and without looking. The jury found Lemke 40 percent negligent and the city 60 percent negligent, reducing a \$2.01 million award accordingly.

**Case:** Estate of Lemke v. City of Pinellas Park

**Case No.:** 07-9989-CI-8

**Plaintiff attorneys:** J. Troy Andrews and John W. Andrews, Andrews Law Group, Tampa

**Defense attorney:** James L. Yacavone III, Frazer, Hubbard, Brandt, Trask & Yacavone, Dunedin

## ANIMALS

### BREVARD CIRCUIT COURT

#### Woman with leg mauled by dog gets \$1.1 million

A woman who nearly lost her left leg after a severe dog bite was awarded more than \$1.1 million.

Marie Tatman, then 70, was attending a dog show at Wickham Park in Melbourne when a 100-pound Akita owned by Sally Jaffe bit her left leg. The dog dragged Tatman, and it took several men to pull the dog off her. Tatman's left tibia and fibula were crushed in the bite, and she has severe scarring. A portion of her tibia was ripped from her leg and was found on the ground. She underwent five surgeries on her leg, including the implantation of a rod. Plaintiffs counsel claimed the dog had previously bitten five other people in three states. Tatman's husband, Charles, was awarded \$132,000 for loss of services and comfort.

**Case:** Tatman v. Jaffe

**Case No.:** 05-2007-CA-12289

**Plaintiff attorneys:** Allison C. McMillen and Scott R. McMillen, McMillen Law Firm, Orlando

**Defense attorney:** Joseph L. Amos Jr., Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, Orlando