

MA Federal Court Assesses Punitive Damages and Attorneys' Fees Against Vessel Owner

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On May 12, 2010, the United States District Court for the District of Massachusetts assessed punitive damages and attorneys' fees against a vessel owner as a result of the owner's "callous, willful, or recalcitrant" failure to pay cure to a plaintiff seaman. *Mulligan v. Maritrans Operating Co.*, Civil Action No. 06-10492-LTS (D. Mass., May 12, 2010) was the first such decision from a district court in the First Circuit (based in Boston) since the U.S. Supreme Court decided *Atlantic Sounding Co. v. Townsend*, 129 S. Ct. 2561 (2009) last year. In *Atlantic Sounding*, the Supreme Court confirmed that such punitive damage awards are permissible under the general maritime law in appropriate circumstances, as several U.S. Circuit Courts of Appeal, including the First Circuit, had previously held. Though such cases turn on their own facts, *Mulligan* offers some guidance as to circumstances that may trigger an award of punitive damages and attorneys' fees, knowledge of which is useful to avoid such an award.

Mulligan alleged that he had injured both his shoulders while fighting a shipboard fire. He testified that he reported injury to both shoulders to the master. Emergency room records from the day after Mulligan's incident indicated he had reported injury to both shoulders at the hospital. Mulligan had surgery to his right shoulder within four months of his incident, paid for by the owner. Though initially he had no complaints as to his left shoulder, about nine months after the incident he began to experience left shoulder pain. The defendant owner, however, questioned whether Mulligan had injured his left shoulder in the service of the ship.

A subsequent MRI of Mulligan's left shoulder, and the defendant's own later independent medical examination of Mulligan, both confirmed an injury to his left shoulder. Surgery to Mulligan's left shoulder was ultimately recommended, which the defendant indicated it could only consider paying for after obtaining the depositions of two additional witnesses. After those witnesses were deposed, and their testimony did not contradict the plaintiff's testimony (presumably to the effect that he had injured both shoulders in the service of the ship), Mulligan's counsel wrote to the defendant's counsel

repeatedly over the course of a six-month period requesting the defendant's approval for the left shoulder surgery, but received no reply.

The court found that, given the fact that Mulligan had not initially complained of left shoulder pain, the defendant had not acted in a callous, willful or recalcitrant manner in seeking further information concerning the left shoulder, including the MRI, the independent medical examination and the testimony of the additional witnesses. The court found, however, that because the defendant's counsel offered no explanation for its six-month delay in responding to Mulligan's counsel, Mulligan was entitled to punitive damages and attorneys' fees for the six-month period from when the defendant's counsel ceased to offer reasons for its concern regarding the left shoulder until the date the defendant approved the surgery. The court wrote that "in the context of the facts of this case, and given the defendant's unexplained refusal to pay for the [left shoulder] surgery and failure to respond to [the plaintiff's] counsel's requests from May to November of 2007" an award of punitive damages and attorney's fees was appropriate.

[Click here for copy of *Mulligan v. Maritrans Operating Co.*, decision.](#)