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ATTORNEYS AT LAW

FWY NETS \$2 MILLION IN JONES ACT SETTLEMENT FOR FISHERMAN WHO INJURED HIS KNEE

FWY attorney Mike Flynn recently negotiated a settlement of \$2 million on behalf of a 59-year-old commercial fisherman who suffered an injured knee while working aboard the defendant fishing vessel. The settlement was achieved at the end of a day-long mediation on November 8, 2018. FWY's client, who hails from New Bedford, MA, alleged that he was injured during a fishing trip, first while attempting to grease a block at the top of a boom mast, and then again later during the trip after he was caused to fall over a basket of scallops that a fellow crew member had placed behind him. The first incident occurred while the vessel was undergoing routine maintenance while it was moored at the dock in New Bedford. The second incident happened several days later while the client was "cutting" scallops in the vessel's "cutting" box.



When the vessel owner's insurer refused to negotiate fairly, FWY filed suit in the United States District Court in Boston, alleging negligence in violation of the Jones Act, unseaworthiness and general maritime claims. The case was intensely litigated, over the course of several years. A number of depositions were taken, several motions were argued before the court and both sides retained a number of experts. During their depositions, FWY was able to get the vessel's shore master and captain to admit that a number of OSHA and Coast Guard regulations were violated, and also that working conditions on the vessel were negligent and/or unsafe. Of particular note, the boom involved in the first incident was not equipped with either safety railings or cages commonly found on other similar vessels in the New Bedford fleet, and the client was not provided with a safety harness or any other suitable fall protection. Also, FWY's client was forced to continue to work after the first incident, in violation of the vessel's own internal policies, and even though the first mate admitted that it was unsafe for the client to work in his injured state. The captain also failed to report the injury as required by federal regulations and internal policies, and later allegedly tried to coerce the client into reporting that the accident occurred someplace else.



The client's injuries included a torn meniscus, which required surgical fixation, and consequent damage to the peroneal nerves, which also required two corrective surgeries. None of the surgeries fixed the client's problems, and he claimed through both his treating surgeon and an independently retained orthopedic expert that the injuries could not be fixed and left him permanently disabled. The defendants' retained medical experts who opined that the client's injuries were minor and non-debilitating, and that they preexisted the accidents aboard the defendant vessel.

The defendants and their insurers failed to make a timely offer in the case. As a result, Mr. Flynn sent each of the insurers a demand, pursuant to the provision of the Massachusetts' Consumer Protection Act (M.G.L. ch. 93A), alleging that the insurers had failed to make a reasonable offer in violation of the Massachusetts Unfair Insurance Practices Act (M.G.L. Ch. 176D), even though liability had - through the deposition testimony - become reasonably clear. Shortly after responding to these demands, and after the defense attorney took the deposition of the client's medical expert, the insurers agreed to go to mediation, and eventually settled the case.

FLYNN|WIRKUS|YOUNG, P.C. is a sophisticated firm of trial attorneys, rated AV® Preeminent™ by Martindale-Hubbell. We are a medium-sized firm dedicated to the practice of civil litigation in New England, the Northeast and across the U.S. At FWY, we put our passion to work to ensure your excellence. We develop a creative approach to suit each of our clients' individual needs. To us, conventional wisdom is never good enough.

More information pertaining to additional specific results will be provided upon request. Prior results do not guarantee a similar outcome.



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