

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>NATHANIEL WILLIAMS,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
	:	
	:	
<b>PRECIOUS CLIFFS, LTD. and</b>	:	
<b>M/V BUSSARA NAREE,</b>	:	
<b>Defendants</b>	:	<b>NO. 04-cv-0746</b>

**MEMORANDUM AND ORDER**

PRATTER, J.

NOVEMBER 27, 2006

Nathaniel Williams has sued the merchant vessel M/V Bussara Naree and its owner, Precious Cliffs, Ltd., (collectively, “the vessel”) pursuant to the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. § 905(b), for injuries he allegedly sustained when he fell from a platform into the ship’s cargo hold. Following extensive discovery activities, the vessel filed a motion for summary judgment, which Mr. Williams opposed. The Court denied the vessel’s Motion, by Memorandum and Order of July 21, 2006. The vessel has filed a motion for reconsideration of the Court’s denial of the summary judgment motion. For the reasons explained below, the Court denies the Motion for Reconsideration.

**FACTUAL BACKGROUND**

On February 21, 2002, the M/V Bussara Naree docked in the Port of Philadelphia at a pier and terminal operated by Delaware River Stevedores (“DRS”), an independent stevedoring contractor. The vessel was carrying a load of urea, a white, sand-like substance, which was to be discharged from the ship by DRS. Discharge operations occurred from 5:00 p.m. until 9:00 p.m.

that day. The accident occurred the following day, February 22, 2002, when Mr. Williams, a longshoreman employed by DRS, came to the ship to assist in unloading the cargo.

At approximately 8:00 a.m. on February 22, 2006, DRS employee Leopold Dennis was the first longshoreman to enter Hold #1 to discharge the cargo. Mr. Dennis took photographs of the cargo, as well as of a broken railing attached to a platform at the base of a ladder leading down into the hold. Later that day, at approximately 12:50 p.m., Mr. Williams reported to work for DRS to assist in discharging the cargo from the vessel. Mr. Williams safely descended the ladder into Hatch #1 until he arrived at the landing platform that Mr. Dennis had previously observed as having a broken railing. Mr. Williams then evidently reached back to grab the railing, at which point the railing broke off and fell to the deck below, allegedly causing him to fall to the deck as well. Mr. Williams alleges that he has suffered severe and permanent injuries as a result of his fall, leaving him totally disabled from any employment.

## **LEGAL STANDARDS**

The Court's prior Memorandum set forth the applicable legal standards at length. They are repeated briefly here as a predicate to considering the motion for reconsideration.

### **A. Summary Judgment Standard**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of

the case under governing law. Id. Under Rule 56, the Court must view the evidence presented in the summary judgment motion in the light most favorable to the non-moving party. Anderson, 477 U.S. at 255.

**B. Longshore and Harbor Workers' Compensation Act**

Mr. Williams bears the burden of establishing that the vessel and its owner breached a duty of care pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 905(b), which provides for a cause of action for negligence against a shipowner. The Supreme Court has outlined the three duties that a vessel owner owes to stevedores and longshoremen who board a vessel to perform cargo loading or unloading operations: (1) the turnover duty, (2) the active control duty, and (3) the duty to intervene. Howlett v. Birkdale Shipping Co., 512 U.S. 92, 98 (1994); Scindia Steam Navigation v. De Los Lantos, 451 U.S. 156, 166-78 (1981). The only duty implicated in this case is the turnover duty.

The “‘turnover duty,’ relates to the condition of the ship upon the commencement of the stevedoring operations.” Howlett, 512 U.S. at 98. Pursuant to the “turnover duty,” the vessel must turn over the ship to the stevedore in such a condition that an expert stevedore acting with reasonable care can conduct cargo operations safely. Kirsch, 971 F.2d at 1029. Pursuant to its turnover duty, the vessel has a duty to turn the ship over to the longshoremen in a safe condition for unloading. Howlett, 512 U.S. at 98. This turnover duty requires that a vessel must:

exercise ordinary care under the circumstances to turn over the ship and its equipment and appliances in such condition that an expert and experienced stevedoring contractor, mindful of the dangers he should reasonably expect to encounter, arising from the hazards of the ship's service or otherwise, will be able by the exercise of ordinary care to carry on cargo operations with reasonable safety to persons and property.

Id. (quoting Federal Marine Terminals, Inc. v. Burnside Shipping Co., 394 U.S. 404, 416-417 n.18 (1969) (internal quotations omitted)). As part of its exercise of ordinary care in relation to this turnover duty, the vessel must “inspect the ship for hazards before turning the ship over to the stevedore, because inspection is integral to providing the stevedore with a reasonably safe workplace . . . .” Kirsch, 971 F.2d at 1029. To determine whether a vessel has satisfied its duty to inspect the ship for hazards before turning the ship over to the stevedore, “the court must determine whether there was a hazard or dangerous condition that the vessel owner had a duty to address in inspecting the vessel.” Prinski v. Blue Star Line Marine Ltd., 341 F. Supp. 2d 511, 517 (E.D. Pa. 2004).

### **C. Motion for Reconsideration**

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration “addresses only factual and legal matters that the court may have overlooked. . . . It is improper on a motion for reconsideration to ask the court to rethink what it had already thought through – rightly or wrongly.” Glenolden Energy Co. v. Borough of Glenolden, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (internal citations and quotation marks omitted).

## **DISCUSSION**

To establish a claim for damages under the turnover duty, Mr. Williams must show that (1) his injuries were caused by a defect in the vessel or its equipment; (2) the vessel knew about the defect or should have known about the defect in the exercise of reasonable care; (3) the hazard was likely to be encountered by the stevedore in the course of its operations; and (4) the

hazard was not known to the stevedore and was one that would not be obvious to or anticipated by a reasonably competent stevedore. Howlett, 512 U.S. at 98-99.

The vessel's current Motion for Reconsideration focuses on the second element of the turnover duty, namely, whether the vessel owner should have discovered the defect before the ship was turned over to the stevedore. The parties dispute whether the hazard was one that the ship knew about or, in the exercise of reasonable care, should have known about. The vessel argues that it had no reason to know of the broken ladder because the cargo holds and ladders were inspected prior to the loading of the urea in South America, and once the cargo was loaded, the ladders and railings were covered with urea, thus obscuring discovery of the broken component. Mr. Williams contends that the ship should have known about the broken railing because the pictures Mr. Dennis took before he descended into the hold clearly show the broken railing, and the ship's Captain Ramesh testified at his deposition that the ship's crew should have inspected the ladder and discovered the broken railing. Upon initially evaluating the parties' positions on summary judgment, the Court determined that summary judgment was inappropriate on this issue because a trier of fact could reasonably find that the vessel unreasonably failed to discover the broken railing, and that because the vessel failed to discover the hazard and take remedial measures, it turned the ship over to the stevedore in a dangerous condition.

In the Motion for Reconsideration, the vessel asserts that the Court erred in its analysis of Leopold Dennis's photographs. Specifically, the vessel contends that the photos support, rather than contradict, testimony by Captain Ramesh that at the time Mr. Dennis began discharging cargo from Hold #1, the cargo completely covered the broken railing, making inspection and discovery by the vessel impossible. This argument depends on two assertions, one legal and one

factual.

First, the vessel argues that the Court misconstrued the turnover duty as a continuing duty that remains after the ship has been turned over to the stevedore and discharge operations have begun. Since the turnover duty relates to the condition of the vessel at the *commencement* of stevedore operations, Howlett, 512 U.S. at 98, the turnover duty existed on February 21, 2006 at the time the ship first docked in Philadelphia but that duty was extinguished once discharge operations began at 5:00 p.m. that day. The Court's July 21, 2006 decision, however, was not based on a conclusion that the vessel owed a continuing duty of care. The Court's decision was based on the lack of definitive evidence to establish the vessel's factual argument that the broken railing was concealed by cargo *at the commencement of stevedore operations* on February 21, 2006.

Second, the vessel emphasizes that although Mr. Dennis's 8:00 a.m. photograph (Def. Mot. Ex. C-1) was taken after four hours of discharge operations, it still shows a significant amount of cargo in Hold #1. This demonstrates, argues the vessel, that at the time the turnover duty existed, prior to the commencement of discharge operations, the cargo necessarily *must* have covered the broken railing and concealed the hazard. The vessel's argument relies on the assumption that if there is still a significant amount of cargo after four hours of discharge there must have been even more – specifically, enough to cover the railing – before discharge commenced.

Logically, it is true that there is no question that there was less cargo in Hold #1 after four hours of discharge than had been there before. It is also true that a photograph showing a broken railing at 8:00 a.m. does not necessarily suggest that the railing was broken 15 hours earlier, or,

even if it was broken, that it was visible. This logic, however, says nothing about the actual amount of cargo before discharge began, or whether that amount (whatever it was) was sufficient to completely cover the railing in question. Without evidence that the cargo actually covered the railing at the time the ship was turned over to the stevedore, the Court cannot conclude that there is no genuine issue of fact as to whether the hazard could have been discovered.<sup>1</sup>

Moreover, after the departure of the vessel from Venezuela and before its arrival in Philadelphia, the ship discharged cargo from Hold #1 in North Carolina. Viewed necessarily in a light most favorable to Mr. Williams, this circumstance further undermines the logic of the vessel's argument and supports the conclusion that a reasonable trier of fact could find that the railing was visible prior to the commencement of the unloading operations in Philadelphia.

The Court determined that the photographic and testimonial deposition evidence from Mr. Dennis tends to show that the hazardous broken railing was visible and discoverable during an inspection prior to the commencement of the unloading operations. This determination was not in error, as the vessel contends, because the evidence indicates a broken, visible railing,<sup>2</sup> and the vessel has not presented any evidence to show that this was not the case approximately 15 hours earlier, at 5:00 p.m. on February 21, 2002, before discharge operations began.<sup>3</sup> Without

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<sup>1</sup> Captain Ramesh testified that he does not know how much urea was discharged from Hold #1 in North Carolina. (Def. Mot. Ex. A, at pp. 140-41.) He estimates that Hold #1 "should have been over half" full when it arrived in Philadelphia. (Id.)

<sup>2</sup> The vessel argues that the 8:00 a.m. photograph (Def. Mot. Ex. C-1) shows that the railing was completely covered. However, covered or not, Mr. Dennis testified that the broken railing was visible to him at the time he started work. (See Def. Mot. Ex. C, at p. 27.)

<sup>3</sup> The vessel presents only the testimony of Captain Ramesh that the railing likely *would* have been covered with cargo at the time of turnover.

undisputed evidence that the railing was *not* visible at the time of turnover, the photographic and deposition evidence concerning the condition of the railing on February 22, 2002 is sufficient to raise a genuine issue of fact as to whether the railing was broken and/or visible at time of turnover on February 21, 2002.

## **CONCLUSION**

For the reasons set forth above, there were no manifest errors of law or fact in the Court's Memorandum and Order of July 21, 2006, and the vessel has not presented any newly discovered evidence to cause the Court to reconsider the denial of the summary judgment motion.

Accordingly, the vessel's Motion for Reconsideration will be denied.

An appropriate Order consistent with this Memorandum follows.

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<b>Plaintiff,</b>	:	
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<b>PRECIOUS CLIFFS, LTD. and</b>	:	
<b>M/V BUSSARA NAREE,</b>	:	
<b>Defendants</b>	:	<b>NO. 04-cv-0746</b>

**ORDER**

AND NOW, this 22<sup>nd</sup> day of November, 2006, upon consideration of Defendants' Motion for Reconsideration (Docket No. 64), Plaintiff's Response thereto (Docket No. 65), and Defendants' Reply (Docket No. 66), it is hereby ORDERED that Defendants' Motion is DENIED.

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
United States District Judge