



The Voice

And The Defense Wins

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DRI members [Jeanne Loftis](#) (Portland) and [Norm Ronneberg](#) (San Francisco) of **Bullivant Houser Bailey PC** received a rare defense verdict in a federal administrative law court, where the plaintiff sought recovery under the plaintiff-friendly Longshore and Harborworkers' Compensation Act (LHWCA). Plaintiff's damages arose from the mesothelioma-related death of her late husband, a 72-year-old electrician, who was allegedly exposed to asbestos while working in a naval shipyard. If liability was established, the plaintiff claimed damages in excess of \$1 million.

In LHWCA litigation, statutory presumptions in favor of the plaintiff ordinarily entitles the plaintiff to generous monetary awards, as well as an unusually light burden of proof as to causation. The LHWCA is given a "very broad and liberal interpretation" in favor of the plaintiff by the courts; "every doubt is resolved on plaintiff's behalf." The plaintiff need only provide "some evidence" of injury and its causative relationship to his employment. Not surprisingly, the overwhelming majority of LHWCA cases never go to trial. They are settled prior to trial on terms favorable to the plaintiff.

In *Richard L. Jensen v. Oregon Electric Group* (U.S. Department of Labor matter 2010LHC01801), however, Loftis and Ronneberg took the case to trial before an administrative law judge, and the court granted a 100 percent verdict for the defense. Notwithstanding the evidentiary presumptions in favor of the claimant, the court specifically found that cross-examination had shown that the claimant could not prove either coverage under the Act or that the decedent's death was work-related. The court specifically held that the presumptions in favor of the plaintiff were not triggered unless and until the plaintiff had first proven a prima facie case of liability. The plaintiff's conclusory allegations that the decedent was injured while doing electrical work on shipyard cranes was not sufficient to establish a prima facie case because the plaintiff had only her own un-corroborated hearsay testimony as to where the alleged exposure took place; and not all workers in a shipyard are covered by the LHWCA, only workers whose labor contributes to vessel construction, repair or cargo operations.

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