

From: Tom Dover

Sent: Thu Mar 13 14:49:07 2008

Gallagher Sharp Newsflash: Federal Preemption of Maritime Employer Intentional Tort

Today, March 13, 2008, the Supreme Court of Ohio held in *Talik v. Fed. Marine Terminals, Inc.*, Slip Opinion No. 2008-Ohio-937, that the federal workers' compensation act for longshoreman preempts an employee's common law "substantial certainty" intentional tort claim.

In *Talik v. Fed. Marine Terminals, Inc.*, Slip Opinion No. 2008-Ohio-937, a longshoreman injured while working on land adjacent to navigable waters may seek compensation in either the federal court under the Longshore and Harbor Workers' Compensation Act, Section 901 et seq., Title 33, U.S.Code ("LHWCA"), or in the state court under the state workers' compensation laws. Under Ohio law, an employee is allowed to pursue a common-law claim for an intentional tort against an employer even though the employee has received workers' compensation benefits for the same injury.

Ohio is one of only eight states which has adopted a "substantial certainty" standard for employer intentional torts in contrast to the "specific intent" standard employed by other states. The Court in *Talik* determined that applying Ohio's standard for employer intentional torts would be inconsistent with the central purpose underlying the LHWCA to create "a uniform compensation system." Id. at ¶35. "We would create an inequitable situation if we permitted land-based maritime workers to maintain claims for 'substantial certainty' intentional torts while the same maritime workers injured in another jurisdiction or upon the navigable waters would be limited to 'specific intent' claims for intentional tort." Id. Therefore, the Court held that the Longshore and Harbor Workers' Compensation Act, Section 901 et seq., Title 33, U.S.Code, preempts a claim under Ohio law alleging that the claimant's employer caused an injury through an intentional act committed with the belief that injury was "substantially certain" to occur.

The full opinion is available at:

<http://www.supremecourtofohio.gov/rod/docs/pdf/0/2008/2008-Ohio-937.pdf>

If you have any questions please contact:

Tom Dover

Transportation Group Practice Manager

Colleen Mountcastle

GALLAGHER SHARP

Bulkley Building - Sixth Floor

1501 Euclid Avenue

Cleveland, Ohio 44115-2108

Telephone: (216) 241-5310

Fax: (216) 241-1608

tdover@gallaghersharp.com

cmountcastle@gallaghersharp.com

www.gallaghersharp.com