

Signal Case Turned Down

By Jason P. Minkin and Jonathan A. Cipriani

The latest case note sent to us by Jason Minkin of BatesCarey LLP in Chicago reports on the unavailing efforts of the Signal Mutual to recover damages from doctors:-

Admiralty law confers an implied warranty of workmanlike performance on parties who enter into "maritime contracts." The U.S. District Court for the Northern District of California recently examined the scope of this implied warranty, observing that it does not apply unless the contract in question has the "primary purpose" of "affecting or protecting maritime commerce." *Signal Mutual Indemnity Association, Ltd. v. Dignity Health*, 2017 WL 4176438 (N.D. Cal. Sept. 21, 2017).

A group self-insurer, Signal Mutual Indemnity Association, Ltd. ("Signal"), asserted a breach of contract claim against Dignity Health, a hospital. Signal asserted that a surgeon at the hospital had an implied warranty of workmanlike performance while operating on a sidepick operator who was employed by one of Signal's member companies at the Port of Oakland. The employee suffered injury while working at the port, and ultimately died from surgery complications. Signal claimed that it was obligated under the Longshore and Harbor Workers' Compensation Act ("LHWCA") to pay death benefits to the employee's heirs. Accordingly, Signal sued the hospital and two of its doctors for breach of contract, among other claims, arguing that the defendants breached the implied warranty of workmanlike performance as result of the complications from the surgery. The defendants moved to dismiss, claiming they had no contract with Signal, and that even if they did, it would not contain an implied warranty of workmanlike performance under admiralty law.

Signal argued in response that an onshore medical operation performed on an off-duty longshore worker could give rise to an implied warranty of workmanlike performance under admiralty law because the worker was a "maritime worker" whose work entailed "maritime commerce," and who was working at a maritime location adjacent to a navigable waters (i.e., a port). Signal further argued that the defendants breached that warranty through their allegedly negligent medical care, substantially contributing to the decedent's death and thereby giving rise to a duty to indemnify Signal for the death benefit payments it made. Signal asserted this claim under a theory of implied contractual indemnity, as well as under the U.S. Supreme Court's decision in *Federal Marine Terminals v. Burnside Shopping*, 394 U.S. 404 (1969), which authorized indemnity claims by employers or insurers against third parties.

The court sided with the defendants, concluding that Signal's breach of contract claim failed on two grounds. First, the court found that, under California law, there was no express contract between Signal and the defendants regarding the deceased employee's medical treatment. The court rejected Signal's argument that an authorization for the medical procedure given by its claims adjuster evidenced a contract, observing that this is a common form of pre-service utilization review, not consideration for services that would demonstrate the existence of a contract. The court similarly concluded that Signal's payments to the defendants did not establish an express contract, because Signal was required by law to pay for the employee's work-related injuries in any event.

Second, the court concluded that even if there were a contract, Signal's allegations could not prove that the contract was a "maritime contract," such that it would carry an implied warranty of workmanlike performance under admiralty law.

Citing controlling precedent from the U.S. Ninth Circuit Court of Appeals, the court observed that, to be a "maritime contract," the contract must have the "primary purpose of protecting or affecting maritime commerce." The court concluded that the alleged contract with Signal did not in fact have such a purpose. The court treated as analogous cases where courts found no "maritime contract" arose from medical services provided on land to seamen who had previously been injured at sea or from a stevedore company's contract for insurance against liability for injuries to stevedores under the LHWCA. Since the surgery was performed on an off-duty longshoreman at an onshore hospital, the court reasoned that the impact on maritime commerce would have been no greater than if the employee had been injured in a car accident. Thus, the alleged contract between Signal and a private onshore medical provider was not a maritime contract.

Signal Mutual underscores the limits of the implied warranty of workmanlike performance under admiralty law. While this doctrine provides certain unique benefits and obligations to parties who enter into "maritime contracts," there must be a sufficient nexus to maritime commerce. In the view of this court, a land-based medical procedure on an off-duty longshoreman does not qualify, even if the longshoreman's injuries were sustained while working at a port.