

**Cynthia B. Brown v. Stephen B. Colvin, M.D. Supreme Court of  
New York, Appellate Division, First Department 291 A.D.2d 306  
(Decided February 21, 2002)**

Monica Brescia

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### SUMMARY JUDGMENT AND QUESTIONS OF NEGLIGENCE AND UNSEAWORTHINESS

**The New York Supreme Court erred in granting summary judgment where there were questions of fact as to whether defendants were negligent in failing to procure insurance and whether they were liable for unseaworthiness under general maritime law or for negligence under the Jones Act.**

Cynthia B. Brown v. Stephen B. Colvin, M.D.  
Supreme Court of New York, Appellate Division, First Department  
291 A.D.2d 306  
(Decided February 21, 2002)

In 1996, decedent Rodney W. Brown died of a heart attack at the age of 38, while employed as a captain of a fishing boat engaged in a fishing expedition in Brazil. Defendant L&H Fisheries Corp. ("L&H") owned the boat. The company, in turn, was wholly owned by defendant Stephen B. Colvin ("Colvin"). Plaintiff, decedent's widow, sued Colvin and L&H for failing to procure life insurance for the decedent and for injuries caused by the vessel's unseaworthiness under the general maritime law and for negligence under the Jones Act. Plaintiff also sued R.J. Maloney Agency ("Maloney") and Block A&H Agency ("A&H") for negligently failing to procure the requested insurance and for negligently misrepresenting to the plaintiff that the insurance had been procured, thus inducing the decedent to leave for the voyage without making further efforts to obtain insurance. The Supreme Court, New York County, granted the summary judgment motions of all the defendants, dismissing the cause of action against them. The plaintiff appealed.

On appeal the Appellate Division, First Department found that the plaintiff had offered sufficient evidence to create questions of law. Plaintiff had offered evidence that Colvin promised to obtain a \$1,000,000 life insurance policy for her husband before he departed on the expedition, but failed to do so. She also offered evidence to show that

the decedent's heart attack was caused by the physical strain exerted in his attempt to overcome the boat's unseaworthiness. Plaintiff had also claimed that Maloney and A&H negligently failed to obtain the requested insurance and negligently made misrepresentations to the decedent that the insurance had been procured. Plaintiff further argued that Maloney and A&H negligently induced the decedent to remain in Brazil without insurance after mistakenly notifying the decedent that his valid application was pending with a second company because it had originally been denied.

The Appellate Division reversed the summary judgment orders dismissing the causes of action against Colvin, L&H, and Maloney and reinstated the actions against each. The summary judgment motion dismissing the complaint against A&H was affirmed on the law, without costs.

The Appellate Division concluded that there was sufficient evidence to create questions of fact as to whether (1) R.J. Maloney Agency negligently failed to procure life insurance and/or whether the decedent relied upon the false advice that the insurance was in effect; (2) whether Colvin is liable for the failure to procure life insurance; and (3) whether Colvin and L&H may be liable under maritime law, on the basis that the vessel was unseaworthy, or based upon negligence under the Jones Act. As to the claim against A&H the plaintiff failed to show that the defendant was the decedent's broker or had agreed to provide insurance.

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#### **HEARING LOSS UNDER THE "LAST EMPLOYER" DOCTRINE**

**An employer who is liable under the doctrine cannot escape liability because a second employer can also be held liable for a later, separate injury**

Stevedoring Services of America v. Director, Office of Workers' Compensation  
Programs  
297 F.3d 797 (9th Cir. 2002)  
(Decided June 16, 1999)

Stevedoring Services of America ("SSA") and Eagle Pacific Insurance Co. ("Eagle") petitioned the United States Court of Appeals for the Ninth Circuit for a review of a decision of the United States Department of Labor Benefits Review Board ("Board") to award permanent partial disability benefits under the Longshore and Harbor Workers' Compensation Act ("LHWCA") to James Benjamin ("Benjamin") for a 34 percent hearing loss sustained during his employment.

Benjamin had worked as a longshoreman from 1969 to 1992. Like other workers in the industry, Benjamin did not have a single long-term employer but was assigned through a union hall. On February 4, 1991, while under the employment of Container Stevedoring Company, ("Container") Benjamin underwent an audiogram that showed a 28.5 percent binaural hearing loss. Based on this test, Benjamin filed a claim for benefits under LHWCA; however that claim was never independently adjudicated. Benjamin continued to work, despite the hearing loss, until April 3, 1992 and on his last day of