NOTICE OF CLAIM REQUIREMENT FOR LABOR LAW ACTION AGAINST CITY NOT PREEMPTED BY LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT.

The Second Department determined plaintiff was required to file a notice of claim in his Labor Law action against the city. The notice of claim requirement was not preempted by the Longshoreman's and Harbor Workers' Compensation Act (LHWCA). Plaintiff was injured while doing overhaul work in a the Brooklyn Navy Yard:

> The LHWCA provides nonseaman maritime workers with the right to bring no-fault workers' compensation claims against their employer, pursuant to 33 USC § 904(b), and negligence claims against the vessel, pursuant to 33 USC § 905(b). As to those two categories of defendants, 33 USC § 905(a) and (b) expressly preempt all other claims, but 33 USC § 933(a) expressly preserves all claims against third parties … . "Importantly, § 933 recognizes that a covered employee may have tort remedies against third parties under federal or state law. Section 933 preserves and codifies a maritime worker's common law right to pursue a negligence claim against a third party that is not the employer or a coworker; it does not create a cause of action nor establish a third party's liability for negligence" … . Fernandez v City of New York, 2017 NY Slip Op 02022, 2nd Dept 3-22-17

LABOR LAW-CONSTRUCTION LAW (NOTICE OF CLAIM REQUIREMENT FOR LABOR LAW ACTION AGAINST CITY NOT PREEMPTED BY LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT)/MUNICIPAL LAW (NOTICE OF CLAIM REQUIREMENT FOR LABOR LAW ACTION AGAINST CITY NOT PREEMPTED BY LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT)/NOTICE OF CLAIM (MUNCIPAL LAW, NOTICE OF CLAIM REQUIREMENT FOR LABOR LAW ACTION AGAINST CITY NOT PREEMPTED BY LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT)/LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT (NOTICE OF CLAIM REQUIREMENT FOR LABOR LAW ACTION AGAINST CITY NOT PREEMPTED BY LONGSHOREMAN'S AND HARBOR WORKERS' COMPENSATION ACT)

PLAINTIFF'S ACTION AGAINST ALTER EGO OF HIS EMPLOYER BARRED BY FEDERAL LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.

Plaintiff was injured while working on a vessel owned by a defendant when an employee of the New York Container Terminal, LLC (NYCT) lowered a container on him. NYCT's motion for summary judgment should have been granted. NYCT provided insurance coverage for payment of Federal Longshore and Harbor Workers' Compensation Act (LHWHA) benefits to plaintiff. And NYCT demonstrated it was the alter ego of plaintiff's employer:

> The evidence demonstrated that any action against NYCT in relation to the plaintiff's accident was barred by the Federal Longshore and Harbor Workers' Compensation Act (hereinafter the LHWCA) because NYCT provided insurance coverage for the payment of LHWCA benefits to the plaintiff … . Moreover, NYCT provided sufficient evidence that it was the alter ego of the plaintiff's employer … . In opposition, the plaintiff failed to raise a triable issue of fact.
>
> "[O]nce an employer fulfills its obligations under the [LHWCA] by paying out benefits to the injured LHWCA employee, further tort-based contribution from the employer is foreclosed" … . Therefore, [plaintiff's employer] cannot maintain contribution or contractual indemnification claims against NYCT … and [plaintiff's employer's] proposed cross claims against NYCT would be palpably insufficient or patently devoid of merit … . Morales v Hapag-Lloyd AG. (America), 2015 NY Slip Op 09079, 2nd Dept 12-9-15

MONTHLY COMPILATION INDEX ENTRIES FOR THIS CASE:

WORKER'S COMPENSATION (FEDERAL LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT)/FEDERAL LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Interplay Between New York Labor Law and Federal Longshore Workers' Compensation Act Discussed

Plaintiff was injured when he fell on a "float stage" which was used to transport workers and materials on navigable waters. The First Department discussed the interplay between the Labor Law (elevation-related fall) and the Longshore Workers' Compensation Act:

> Since the accident in which plaintiff Joseph Pipia (hereinafter plaintiff) was injured occurred in navigable waters, and plaintiff, an employee who was covered by the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 USC § 901 et seq.), has been receiving benefits thereunder, federal maritime law is applicable to this case … . Plaintiff may not sue his employer, JES, since the LHWCA "precludes recovery of damages against [the injured worker's] employer" …. . …
>
> Plaintiff is also barred from asserting any claims other than Labor Law § 200 and common-law negligence claims against Trevcon, the vessel owner (see 33 USC § 933…). Contrary to plaintiff's contention, the float stage involved in his accident constituted a "vessel" for purposes of the LHWCA … . While it consisted of wooden planks bolted together, had limited weight capacity and could only be moved

short distances from the pier, it was regularly used to carry workers and materials around the water. Although it generally was tied to land structures with a line, it sometimes was untied to allow a worker to move to a different location to pick up materials from the pier. … "[A] reasonable observer, looking to the [float stage]'s physical characteristics and activities, would . . . consider it to be designed to [a] practical degree for carrying people or things on water"… . Pipia v Turner Constr Co, 2014 NY Slip Op 00612, 1st Dept 2-4-14