

DAILY BUSINESS REVIEW'S MOST EFFECTIVE LAWYERS 2010

South Florida attorneys
who scored significant
victories for their clients

Ship's spa operator responsible for worker's injuries under Jones Act

David Brill
Brill Rinaldi Garcia
Julio Ayala
Crewmember & Maritime
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British fitness instructor Danny Simpson had reached confidential punitive damage settlements with Norwegian Cruise Line and onboard spa operator Steiner Leisure before a jury awarded him nearly \$9.5 million in compensatory damages for injuries from a 2006 fall.

Simpson's attorneys, Julio Ayala of the Crewmember & Maritime Advocacy Center in Fort Lauderdale and David Brill of Brill Rinaldi Garcia, sued Steiner, Simpson's employer, under the Jones Act of 1920. The act is a federal law that allows seamen to bring actions against their employers based on negligence or the unseaworthiness of the vessels they work aboard.

"The Jones Act mandates that an employer provide a safe place to work," said Brill, who was with the Coral Gables firm Downs Brill Whitehead until summer. "That duty to provide such an environ-

ment is a nondelegable duty."

Simpson claimed he suffered serious injuries after slipping and falling aboard the Norwegian Crown in 2006. He claimed an NCL cleaner failed to properly dry the floor after being called to clean up after a passenger using a treadmill vomited. The cleaner told Simpson twice that the cleanup work had been completed.

Simpson suffered spinal and nerve damage as well as bowel and urological symptoms including incontinence and erectile dysfunction.

"We explained to the jury that Steiner had ultimate control over that environment even though NCL employed the cleaning person," Brill said. "You can't delegate away the liability of doing that job. In this case, even though the NCL cleaner did a bad job drying the floor, Steiner was on the hook automatically."

Ayala said Steiner argued the concessionaire wasn't responsible for maintaining and cleaning the spa area, but the spa worker's attorneys successfully argued vicarious liability. "They tried to delegate that responsibility to the vessel owner," Ayala said. "We had to hammer the point home over and over to the court and jury



David Brill

that it was Steiner's duty as a Jones Act employer to ensure that the workplace was in a reasonably safe condition. Our biggest hurdle was in making sure that responsibility stayed with Steiner because that's what the law required them to do."

Another big challenge was Simpson had experienced urological problems and erectile dysfunction issues before the fall. He has undergone two penile implants since his fall and has to self-catheterize.

"We had to show the jury that what he had prior was something that could be treated with Cialis or Viagra," Ayala said. "After the accident, he was completely dysfunctional."

Key to this argument was that Simpson had met his wife-to-be in the weeks leading up to the fall and she was pregnant. Her testimony about the timing of her pregnancy ended up eliciting one of the most compelling moments of the trial, Brill said.

"In closing arguments, the defense's rebuttal brought into question whether the child was actually Simpson's," he said. "The jury was aghast. We think that issue had to have been the final straw."

Most striking to the attorneys was the jury deliberated for only 42 minutes after a two-week trial last December in Miami-Dade Circuit Court, Ayala said.



Julio Ayala

The jury determined Steiner was fully responsible for Simpson's injuries, rejecting the argument that the injuries were from a pre-existing condition or any injuries that may have occurred after the fall, Brill said.

"We made it clear that Steiner couldn't blame NCL for the accident," Ayala said.

The attorneys said they're satisfied with the result, which ensures Simpson, a father of six who has returned to the United Kingdom, will have his medical needs met for the foreseeable future. Spinal fusion surgery was planned.

"Here's a 42-year old man looking at a future of extraordinary pain and suffering," Brill said.

He noted he and Ayala received support from Brill's associate, Joseph Rinaldi Jr., on the case. Rinaldi is now a partner.

"It was remarkable that a jury saw through the defense tactics to give him at least justice in the form of compensation," Brill said.

After the trial, Steiner filed motions for a new trial, remittur to reduce the award and a directed verdict. The parties later agreed to mediation and reached a confidential settlement in March.

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