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**Levin & Perconti Wins \$4,500,000 Jones Act Settlement for Twenty-Four Year Old Man Who Lost His Leg While Working as a barge deckhand on the Chicago River—
Are River Workers Safe?**

CHICAGO—John Perconti of the Chicago Law Firm Levin & Perconti and David K. Kremin of David K. Kremin & Associates (Chicago) settled a case for \$4.5 million through mediation before the Honorable Donald P. O’Connell on behalf of James Talbot against Material Service Corporation (Lyons, Illinois) for their failure to provide a safe workplace. As a result, James’ right leg was crushed between two barges and his right leg had to be amputated above the knee in order to save his life.

When twenty-four-year old James Talbot learned that there was a job opening at Material Service Corporation (MSC), he was excited about the prospect of earning his living on a commercial vessel on the river. James’ new job with MSC involved him working on towboats and barges on the Chicago River System to deliver aggregates (stone, sand, and gravel) for use in commercial and residential building construction. James knew that this would be hard work but was anxious to be trained in his new vocation.

On the day of the accident, September 18, 2004 at 1:00 a.m., James was still an inexperienced deck hand in training. He was assigned to work on board a towboat called ‘Alfred Hagerty’ which was attached to the bow of an empty barge at the Ozinga facility on the South branch of the Chicago River. James was assigned to couple an empty barge (the 9301) which was already in tow, with an empty barge (the 9903) at a

facility known as Prairie Material 32 in the River North area.

To do this, James was standing at the stern end of barge 9301 and waiting for the pilot to touch up to barge 9903. The mate on duty was James' direct supervisor and was standing next to him. The idea was for James and his supervisor to create a longer tow by attaching one barge to a second barge.

James' supervisor was at the head of barge 9301 and was to give guidance information to the pilot controlling the towboat as he steered the towboat toward barge 9903. James and his supervisor were instructed to secure the coupling wires. James was to step across from the already faced up barge to the also empty 9903 barge in order to receive the coupling gear which his supervisor would pass to him.

As James Talbot waited for the two barges to touch-up before stepping from one barge to the other, the force along with some slack in the moored lines of barge 9903 caused one barge to separate from the other. When James attempted to step from the barge 9301 to barge 9903, his left foot slid out from under him. He attempted to put his right foot on the flat surface of the 9903 but he was only able to reach the edge of the 9903. His right foot slipped off the edge and his leg fell in the gap between the two barges. The barge came together and James' right leg was crushed between the two barges.

John Perconti commented on what caused the accident, "James had not been trained properly in transferring between barges. He was trained to step from one barge to the other after the barges initially touched up but before the barges came to a complete rest. He had watched his supervisors do this on several occasions. The lighting conditions were grossly inadequate and there was loose gravel all over the

barges creating a slipping hazard. Additionally, the edges of the vessels should have been painted in contrasting colors which would have helped James discern the edges of the barges. All of these unsafe conditions contributed to the incident.”

Perconti went on to say, “As the barges rocked against each other, James’ supervisor could hear James’ bones cracking as they were being crushed by the barges.”

“James’ supervisor used his radio to call the pilot to reverse the vessel up so that he could extricate James’ leg from between the two barges. Finally the tow boat was reversed creating a gap which allowed the mate to remove James’ leg.”

“An ambulance was called. While James waited at least 30 minutes for the ambulance to arrive, he suffered excruciating pain. Finally, James was transported to the emergency room at Northwestern Memorial Hospital. There, emergency surgery was performed to try to set the bones and repair the muscle and vascular damage in James’ right leg. James remained in the hospital for the next two months where multiple surgeries were performed.”

While in the hospital when it became obvious that amputation was probable, James implored doctors to seek another option. For the next few days, until September 27, 2004, doctors continued to check the extremity but concluded that amputation was the only option. Each time James’ leg was examined, the removal of the dressing caused unbearable pain. James also experienced serious side effects from the medication ordered by his doctors to lessen his constant and agonizing pain.

Doctors initially amputated James’ right leg through the knee. Soon afterward they were forced to amputate from above the knee due to inadequate blood flow to the

area. James has required follow-up surgeries and extensive rehabilitation therapy since the incident.

John Perconti said, "Because of the nature of their duties, marine workers face significant dangers making it paramount that their employers take every precaution to protect them. This avoidable tragedy occurred because MSC failed in their duty to provide James with a reasonably safe place to work. MSC became a member of the American Waterways Operators (AWO) since 2003. As such, MSC was required to follow general maritime laws and AWO's best practices regarding marine operations, maintenance of marine operations, safety and health of marine operations, and environmental conditions of marine operations promulgated by AWO. This included adequately training the workers, providing adequate lighting, keeping the barges free of debris and painting the edges of the barges with contrasting paint. If MSC would have kept its promise to follow these best practices, this accident would not have happened. MSC's failure to provide a safe work environment constituted negligence and rendered their towboat and barges "unseaworthy" according to general maritime laws.

John Perconti explained the rights of marine workers under the Jones Act, "The rights of marine workers injured in the course of their employment are governed by laws specific to the maritime industry like the Jones Act. The Jones Act is similar to Illinois workers' compensation laws in that it provides injured seaman, like James Talbot, with payment of lost wages and medical expenses often referred to as "maintenance and cure". Unlike workers compensation, the Jones Act allows the seaman to sue his employer directly in a court of law and recover additional damages in the form of pain and suffering, disability and disfigurement."

Perconti added. “We lose sight of the fact that the Illinois and Chicago River System flow through our backyards and are utilized everyday by towboats and barges transporting construction material to users up and down the river. The rivers are a dangerous place to work and we hope this settlement sends a message to all companies to adequately train its crews and maintain their vessels to prevent a similar tragedy from occurring.”

John Perconti concluded, “Prior to the accident, James was an active and athletic young man who spent his leisure time playing baseball, basketball and golf. As one would imagine, this injury has permanently altered his life. This monetary award will allow James to make necessary home modifications for his disability, pay for his ongoing medical expenses in the form of prosthetic replacements and reimburse him for his ongoing wage loss.”