

CV DAE  
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**ORIGINAL**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JAY LAWRENCE FRIEDHEIM 4516  
JOHN C. GIBSON 6718  
Admiralty Advocates®  
820 Mililani Street, Suite 503  
Honolulu, Hawaii 96813  
Telephone No. (808) 545-5454  
Facsimile No: (808) 528-1818  
Email: JLF@pixi.com  
Attorneys for Plaintiff

JAN 01 2012  
at 12 o'clock and 20 min. A M.  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DANNIE JOE EILAND,  
  
Plaintiff,  
  
vs.

) CIVIL NO. CV12 00001 DAE  
) (In Admiralty) BMK

SMITH MARITIME LLC; K-SEA HAWAII  
INC. D.B.A. K-SEA TRANSPORTATION  
HAWAII; JOHN DOES 1-20; MARY DOES  
1-20; DOE CORPORATIONS 1-20; DOE  
PARTNERSHIPS 1-20; DOE ASSOCIATES  
1-20; DOE GOVERNMENTAL AGENCIES  
1-20; and OTHER ENTITIES 1-20, in  
personam; and M/V NIOLO, O.N. 653612,  
and her engines, equipment, tackle, stores,  
furnishings, cargo and freight, In Rem,  
  
Defendants.

) COMPLAINT; DEMAND FOR  
) JURY TRIAL; EXHIBIT A;  
) SUMMONS

COMPLAINT

This action is brought under the special rule allowing seaman to sue without security and prepayment of fees codified at 28 U.S.C. §1916. Plaintiff herein is

without adequate funds to post security and/or bond.

1. This is a case involving a maritime tort and sets forth a claim pursuant to Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff brings this action under 28 U.S.C. §1331 (Law) and §1333 (Admiralty); under the Jones Act, 46 U.S.C. §30104 *et seq.* (2006), allowing a jury trial; and under United States Supreme Court case law granting rights regarding Maintenance, Cure, Found, and the obtaining of Punitive Damages and Attorney Fees for the wrongful denial thereof to an injured seaman.

3. DANNIE JOE EILAND (hereinafter referred to as “Plaintiff”) was, at all relevant times herein, a resident of the State of Hawaii.

4. At all times herein Plaintiff was a seaman employed as Chief Engineer to work aboard M/V NIOLO, O.N. 653612, and other vessels owned and/or operated by his employer.

5. At all times herein Defendant SMITH MARITIME LLC (hereinafter “SMITH”) was and is a foreign limited liability company doing business in the State of Hawaii, registered with Hawaii State DCCA, and engaged in interstate commerce.

6. At all times herein Defendant SMITH was and is registered with the United States Coast Guard as the owner of M/V NIOLO, O.N. 653612.

7. At all times herein Defendant K-SEA HAWAII INC., dba K-SEA TRANSPORTATION HAWAII (hereinafter “K-SEA”), was and is a foreign profit corporation doing business in the State of Hawaii, registered with the Hawaii State DCCA, and engaged in interstate commerce.

8. At all times herein, Defendant K-SEA was and is the owner and/or operator, charter or sub charter, lessee, lessor and/or owner Pro Hoc Vice of motor tugs, including M/V NIOLO, O.N. 653612, and other vessels upon which Plaintiff

worked during his employment.

9. At all times herein, either Defendant SMITH or Defendant K-SEA was and is Plaintiff's employer in his work as Chief Engineer aboard the Defendants' vessels, including M/V NIOLO, O.N. 653612.

10. At all times herein In Rem Defendant, M/V NIOLO, O.N. 653612 (hereinafter the "vessel") was a motor tug in navigation in the navigable waters of the United States. Plaintiff libels the vessel and her engines, equipment, tackle, stores, furnishings, and appurtenances, In Rem. Upon information and belief the vessel is either currently within this District, or will be returned to service in Hawaiian waters. Plaintiff may seek to arrest the vessel during the pendency of these proceedings to perfect the In Rem jurisdiction of this court and secure Plaintiff's claims.

11. Defendants John Does 1-20, Jane Does 1-20, Doe Partnerships 1-20, Doe Corporations 1-20, Doe Associates 1-20, Doe Governmental Agencies 1-20, and Other Entities 1-20 are sued herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiff except that they are connected in some manner with the named defendants and/or were their agents, servants, employees, employers, representatives, co-venturer, associates, vendors, suppliers, manufacturers, sub-contractors or contractors and/or owners, lessees, assignees, licensee, designers, and architects of the named defendants and/or were in some manner presently unknown to Plaintiff engaged in the activities alleged herein and/or were in some manner responsible for the injuries or damages to Plaintiff and/or manufactured and/or designed and/or places on the market a product which was defective, which defect was a proximate cause of injuries or damages to Plaintiff and/or inspected and/or maintained and/or controlled some object or product or premises in a negligent manner, which negligence was proximate cause of injuries or damages to Plaintiff and/or

conducted some activity in negligent or dangerous manner, which negligent or dangerous conduct was a proximate cause of injuries or damages to Plaintiff and/or were in some manner related to the named defendants and that their true names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or his attorneys. When the true names and capacities are ascertained, Plaintiff asks leave to amend this Complaint to state the true names.

### BACKGROUND FACTS

12. On or about September 6, 2011, Plaintiff was working as a seaman on board the vessel when he suffered a personal injury that has resulted in medical treatment and loss of time from work, and may have left him with a permanent disability which may end his career as a seaman.

13. Plaintiff was injured when he slipped on the Pin Table on the vessel's stern and fell and suffered a compression fracture to his thoracic spine and other injuries.

14. Prior to Plaintiff's accident, he had found oil on the vessel's deck and was in the process of making sure that the oil did not leak overboard and cause a Coast Guard oil pollution incident.

15. It is Plaintiff's understanding that a co-worker, a cadet trainee, had poured cooking oil into galley trash bags and placed the bags on the vessel's aft deck for removal to the pier.

16. It is Plaintiff's understanding that oil leaked from the galley trash bags onto the vessel's aft deck .

17. Before Plaintiff's injury his co-workers were going on and off the vessel

via the Pin Table.

18. After Plaintiff's accident he came to believe that his co-workers had tracked oil onto the Pin Table as they performed the vessel's work, which included tying up the vessel to the pier.

19. After Plaintiff fell, he learned that the Pin Table was slick with oil at the time he slipped.

20. The vessel did not have a gangway or any other way to get on and off the vessel at the pier, thus requiring the seamen to use the Pin Table as the only means of getting on and off the vessel.

21. Plaintiff went onto the Pin Table to look and see if oil was leaking overboard when he slipped on the oil on the Pin Table and fell.

22. Plaintiff received medical treatment for his injuries and was found to be not fit for duty.

23. While Plaintiff was recovering from his injuries, the Defendants threatened to cut off payments of the money, which the Defendants were providing to Plaintiff, if he did not sign a binding arbitration agreement that Defendants repeatedly gave to him and his wife and insisted that he sign.

24. The binding arbitration agreement, which would permanently deprive Plaintiff of his right to pursue all seaman's remedies under applicable Federal and State statutes and maritime common law, included a clause that would have cut off Plaintiff's wages and other payments by a certain arbitrary date whether he had reached maximum medical improvement or not.

25. Defendant K-Sea's representative threatened Plaintiff and his wife, who was pregnant at the time, with cutting off Plaintiff's benefits if the Plaintiff did not sign the Defendants' arbitration agreement.

26. Under these circumstances, this arbitration agreement, and the way Plaintiff's employer presented it to Plaintiff and his wife, was a willful, wanton, cruel, unconscionable, and bad faith way to get a contractual agreement limiting Plaintiff's rights by means of duress.

27. At the time of his injury, Plaintiff's greatest concern was, and still is, his ability to support his four children and pregnant wife during his disability from his injuries.

28. Plaintiff did not want to be forced to sign an arbitration agreement that takes away his rights as a seaman and employee. His employer is threatening to stop or limit the money they are paying him if Plaintiff does not sign the arbitration agreement that takes away Plaintiff's right to sue his employer, the vessel owners, and the vessel.

29. It was for this reason, and to protect his right to Maintenance and Cure, as well as his other rights, that Plaintiff was forced to hire an attorney to pursue his case.

30. As a consequence of the Defendants' negligent and intentional acts, Plaintiff has sustained a severe, painful and disabling injury, and continues to have disability, mental anguish and humiliation, pain and suffering, lost wages and reduced earning capacity, diminished ability to enjoy life, and has incurred and will incur costs for medical care and treatment. The exact amount of Plaintiff's damages will be shown at trial.

#### COUNT I - (JONES ACT NEGLIGENCE)

31. Defendant SMITH or Defendant K-SEA, Plaintiff's employer, owed the duty to use reasonable care to avoid causing the Plaintiff injury including the duty to provide Plaintiff with a safe place in which to perform the work he was hired to do on the vessel.

32. Plaintiff's employer had a duty to maintain the ship and its decks, walkways, stairways and equipment in such condition that the Plaintiff could carry out his seaman duties and activities onboard the vessel with reasonable safety.

33. The Defendants breached those duties by failing to provide Plaintiff with a safe place in which to work.

34. The personal injury suffered by Plaintiff was the direct and proximate result of negligent omissions and commissions by the Plaintiff's employer in the management, care and operation of the vessel and in the training of the crew.

35. As result of the Defendants' negligence, Plaintiff has sustained the damages broadly outlined in this pleading.

#### COUNT II - (UNSEAWORTHINESS)

36. The Defendant who owned the vessel, and the vessel In Rem, owed the non-delegable duty to provide Plaintiff with a seaworthy vessel and appurtenances and crew.

37. These Defendants breached their duty by, among other reasons, failing to provide a seaworthy deck, a safe means of getting on and off the vessel, and a sufficient and properly trained crew.

38. At the time Plaintiff slipped on the Pin Table, it was not in a fit, functional and seaworthy condition to be used as a means of going on and off the vessel.

39. As a result, the injuries suffered by Plaintiff were directly and proximately caused by the unseaworthiness of the vessel and appurtenances and crew, and thereby rendered these Defendants liable to Plaintiff for the damages broadly outlined in this pleading.

COUNT III - (MAINTENANCE, CURE , FOUND & WAGES)

40. The Defendants have been and will remain obligated to provide Maintenance and Cure to Plaintiff during the period of his disability until he has reached the point of maximum medical improvement.

41. Plaintiff lived on board the Defendants' vessels for months at a time while he was working, where he was provided a place to sleep and all his meals without cost, thus entitling Plaintiff to the traditional seaman's remedy of Found.

42. Plaintiff signed employment contracts with the Defendants requiring him to work for several months at a time on the Defendants' vessels. The Defendants are therefore obligated to pay the Plaintiff's full wages until the end of his contract.

COUNT IV - (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

43. The Defendants intended to cause Plaintiff severe emotional distress when they threatened to cut off the money they were giving him if he would not agree to sign the Defendants's binding arbitration agreement.

44. The Defendants threatened both him and his wife so that he would be afraid of not being able to support his family, and would thus feel compelled to sign the arbitration agreement out of duress.

45. These actions by the Defendants' were intended to cause the Plaintiff emotional distress over his financial condition and his ability to support his family. This constitutes a kind of duress, which is unconscionable in the context of a seaman-employer relationship after an injury has occurred and the seaman is disabled.

46. Plaintiff in fact suffered severe emotional distress as a result of



the Defendants' intentional actions.

47. Plaintiff is thus entitled to recover damages for Defendants' intentional infliction of emotional distress.

#### COUNT V - (NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS)

48. The Defendants had a duty not to negligently cause Plaintiff to suffer severe emotional distress.

49. The Defendants breached this duty by their above mentioned conduct regarding the arbitration agreement, and as a result Plaintiff suffered severe emotional distress that is separate from any emotional distress suffered by Plaintiff stemming from the injuries he suffered from his fall on the vessel and his subsequent Jones Act negligence injury claim.

50. Plaintiff is thus entitled to recover damages for the Defendants' negligent infliction of emotional distress regarding the arbitration agreement as a separate and distinct cause of action.

#### COUNT VI - (PUNITIVE DAMAGES)

51. The Defendants threatened to cut off the monetary support they were providing Plaintiff and his family, while he was disabled, unless he signed a binding arbitration agreement which would have cut off the monetary support they were providing Plaintiff, as well as his Maintenance payments, by a certain arbitrary date, whether or not he had achieved maximum medical improvement.

52. The arbitration agreement would also have deprived Plaintiff of his future

right to pursue full compensation for his injury and disability under applicable Federal and State laws.

53. The Defendants' actions were wanton, cruel, unconscionable and in bad faith in the context of a seaman's claims for serious physical injury while he is still disabled and does not know the affect his injuries and disability will have on his future ability to carry on his maritime profession at a comparable level of pay .

54. As a result of the Defendants wanton, cruel, unconscionable and bad faith conduct, Plaintiff is entitled to recover punitive damages.

#### COUNT V - (ATTORNEY FEES)

55. Due to the Defendants' attempt to coerce Plaintiff into signing a wrongful, binding arbitration agreement, Plaintiff found it necessary to hire an attorney to help him understand and protect his rights as a seaman pursuing his claims for maritime injuries, including his right to Maintenance and Cure. He is thus entitled to recover Attorney Fees.

56. Attached hereto and labeled as "Exhibit A" is a true and correct copy of the arbitration agreement and cover letter which was presented to Plaintiff and his wife and is referred to in this Complaint. This arbitration agreement has been reduced in size to fit the format of this Complaint.

57. The cover letter contains language which was carefully drafted to fraudulently trick Plaintiff into signing the arbitration agreement.

58. The cover letter assures Plaintiff that if he signs the agreement he will continue to receive his payments until he is fit for duty or reaches maximum medical improvement.

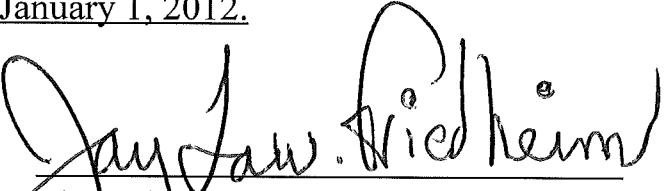
59. The arbitration agreement says, hidden in its third paragraph, that Plaintiff will be cut off as of March 15, 2012 (the “Ides of March”) whether or not he has reached maximum medical improvement.

60. Had Plaintiff signed this agreement, it would have been obtained by the use of fraud and duress.

WHEREFORE, Plaintiff prays:

- A. That judgment be entered against the Defendants, for:
1. general damages and special damages, both pecuniary and non-pecuniary, in amounts to be shown at trial;
  2. costs of suit herein;
  3. prejudgment and post judgment interest;
  4. punitive damages;
  5. attorney fees; and
  6. such other relief as is just and equitable in the premises.

DATED: Honolulu, Hawaii, January 1, 2012.

  
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JAY LAWRENCE FRIEDHEIM  
JOHN C. GIBSON  
Attorneys for Plaintiff