

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JOHN MITCHELL,)	
)	
Plaintiff)	
)	
vs.)	CAUSE NO. 2:09-CV-25 RM
)	
ISPAT INLAND STEEL d/b/a ISPAT)	
INLAND INC., INLAND STEEL, n/k/a)	
INLAND INC., MITTAL STEEL, n/k/a)	
ARCELORMITTAL USA INC.,)	
INDIANA HARBOR, n/k/a)	
ARCELORMITTAL INDIANA)	
HARBOR LLC, CENTRAL MARINE)	
LOGISTICS, d/b/a CENTRAL MARINE)	
LOGISTICS, INC., TOM MARTINEAU)	
and MATT BASSET,)	
)	
Defendants)	

OPINION AND ORDER

On February 9, 2009, Plaintiff John Mitchell filed this action against several defendants pursuant to the Jones Act, 46 U.S.C. § 31014. Mr. Mitchell claims he was hurt on the job on or about September 5, 2003. On July 17, 2009, six of the seven defendants filed a motion to dismiss. Mr. Mitchell hasn't responded to this motion.

Mr. Mitchell previously filed an identical claim in Illinois state court on September 1, 2006. The state court dismissed Mr. Mitchell's suit for want of prosecution on February 15, 2008, nearly one year before the filing of this action.

The limitation period for suits under the Jones Act is three years. 46 U.S.C. § 30106. The defendants dispute the date of Mr. Mitchell's injury and whether his

state court suit was timely filed. It is of no consequence because, assuming Mr. Mitchell's injury occurred on the date he claims, his federal suit wasn't timely filed. The statute of limitations was tolled while the state suit was pending. When the state suit was dismissed, Mr. Mitchell had the period of time allowed to file an appeal in state court plus the balance of the three year statute of limitations (i.e., four days) in which he could timely file his suit in federal court. See Burnett v. New York Cent. R.R. Co., 380 U.S. 424, 435 (1965). Mr. Mitchell had 30 days to appeal the state court judgment. See, e.g., ILL. S. CT. RULE 303, IND. APP. RULE 9, FED. R. APP. P. 4(a). Therefore, he had up to 34 days after entry of the state court judgment to file his claim in federal court.

Mr. Mitchell filed this claim nearly a year after entry of the state court judgment. Therefore, Mr. Mitchell's claim is not timely filed and is DISMISSED in its entirety with prejudice.

SO ORDERED.

ENTERED: October 6, 2009

/s/ Robert L. Miller, Jr.
Robert L. Miller, Jr., Chief Judge
United States District Court