

DEFENDANTS

3. Helix Energy Solutions Group, Inc. is thought to be a foreign corporation, organized and existing by virtue of the laws of the State of Minnesota, having its principal place of business in Houston, Texas, but it is licensed to do and doing business in this State, and it may be cited to appear and answer herein by serving its registered agent for service of process; namely, C T Corporation System, 5615 Corporate Blvd., Ste. 400B, Baton Rouge, Louisiana.

4. Cal Dive HR Services, LLC is thought to be a limited liability company, organized and existing by virtue of the laws of the State of Delaware, having its principal place of business in Houston, Texas, but it is licensed to do and doing business in this State, and it may be cited to appear and answer herein by serving its registered agent for service of process; namely, C T Corporation System, 5615 Corporate Blvd., Ste. 400B, Baton Rouge, Louisiana.

5. Cal Dive International, Inc. is thought to be a foreign corporation, organized and existing by virtue of the laws of the State of Delaware, having its principal place of business in Houston, Texas, but it is licensed to do and doing business in this State, and it may be cited to appear and answer herein by serving its registered agent for service of process; namely, C T Corporation System, 5615 Corporate Blvd., Ste. 400B, Baton Rouge, Louisiana.

6. Cal Dive Offshore Contractors, Inc. is thought to be a foreign corporation, organized and existing by virtue of the laws of the State of Delaware, having its principal place of business in Houston, Texas, but it is licensed to do and doing business in this State, and it may be cited to appear and answer herein by serving its registered agent for service of process; namely, C T Corporation System, 5615 Corporate Blvd., Ste. 400B, Baton Rouge, Louisiana.

SEAMAN STATUS

7. That, at all times relevant herein, Defendants owned, operated, managed and controlled the *MR. FRED*. The *MR. FRED* is a 4 point dynamically positioned dive support vessel, 168.0 feet in length, 38.0 feet in beam, and 13.0 feet in depth.



Mr. Fred

Exhibit "A"

8. That, at all times hereinafter mentioned, the *MR. FRED* was engaged to perform underwater construction work in the Gulf of Mexico, off the Louisiana coast.

9. That, at all times hereinafter mentioned, Bailey was assigned by these Defendants to work, as a tender/diver, aboard the *MR. FRED*, on more or less a permanent basis. Bailey earned \$72,292.00 in the year 2007, while working for these Defendants.

10. That, at all times hereinafter mentioned, Bailey's work, as a tender/diver, contributed to the mission and purpose of the *MR. FRED*.

ACCIDENT AND INJURY

11. That, Bailey re-alleges and re-avers Paragraphs 1 thru 10 above, as set forth hereinafter *in extenso*.

12. That, Bailey while employed by these Defendants as a diver/tender on, with, and aboard the *MR. FRED* was caused to suffer an accident and injuries - - a 50 % collapse of his right lung - - which first became apparent and known to him on November 19, 2008, when was examined by a physician at Lafayette Walk-In Clinic; in particular, on or about November 14, 2008, as a clean diver Bailey made a dive to 108 feet for a total bottom time of 52 minutes; Bailey experienced no problem on his descent; the work on the bottom involved squaring up a flange with an impact wrench; at the conclusion of the dive, Bailey began his ascent by topside personnel hoisting him up the umbilical; Bailey had a water stop for about 2 minutes at 30 feet; however, Bailey arrived on the surface 12 seconds early; thereafter, Bailey stayed by the bottom of the ladder to dissipate that extra time; Bailey then climbed the ladder, without struggle and came aboard the *MR. FRED*; once on

deck, he got undressed and got into a shower to rinse off - - prior to entering the chamber for the surface phase of decompression; while in the shower, he experienced mild pain in the substernal area of the chest; while getting into the chamber, Bailey felt some mild pain in the right upper back in the area of the right scapular; Bailey did not experience any shortness of breath; Bailey entered the chamber without violating the surface interval time; Bailey completed the SurD02; Bailey went about his business thinking that he had simply strained a muscle in his chest; by the end of the work shift, he thought it appropriate to notify the dive superintendent and the shift supervisor of the discomfort he had experienced; the dive superintendent and shift supervisor told Bailey that the discomfort he described to them was likely the result of "sore muscles" from using the hydraulic impact wrench during his dive; the dive supervisor sent the DMT to recheck Bailey at about 4:00 a.m. on November 15, 2008; Bailey was assured that his neurological examination was normal and that his breath sounds were clear; Bailey was told again that he simply suffered from a muscle strain; Bailey went to bed and slept, without interruption, until 10:45 a.m. the next morning; when he awoke, Bailey's chest pain seemed to be resolved; he remained on board the vessel for a few more days; the pain totally dissipated; Bailey left the *MR. FRED* and returned home on November 19, 2008; Bailey presented to the Lafayette Walk-in-Clinic for, what he believed to be a muscle strain and was advised, for the first time, that he had suffered a

collapse of the right lung; Bailey was referred to a pulmonologist; on November 20, 2008; the pulmonologist confirmed the diagnosis made the day before, and inserted a chest tube to evacuate the air and inflate his right lung; the chest tube remained until November 24, 2008 when it was removed and the inflated status of the right lung maintained; all throughout, Bailey was told by the company hyperbaric medicine specialist that since he had no history of barotrauma or injury to the chest wall, the etiology of his pneumothorax was thought to be spontaneous - - not work related; Bailey has discovered since, that the cause of his pneumothorax was more likely than not, related to improper decompression on ascent.

13. That, the said accident, injuries and damage suffered by Bailey were caused solely by reason of the negligence of these Defendants, as well as the unseaworthiness of the *MR. FRED*, without any negligence on Bailey's part causing or contributing thereto.

14. That, the negligence of these Defendants, as well as the unseaworthiness of the *MR. FRED*, consisted of the following non-exclusive acts and omissions, as follows:

- in failing to warn and/or failing to adequately warn Bailey concerning conditions in the workplace which caused it to be unfit, unsafe and unsuitable;
- in failing to instruct and/or failing to adequately instruct Bailey concerning his ascent, from bottom;
- in failing to provide Bailey with a sufficient compliment of co-employees; that is, sufficient in number and in training, to perform the work then and there in progress;
- in failing to take precautions to prevent, or for that matter, in failing to take any precautions

concerning the unfit, unsafe and unsuitable workplace conditions designed specifically to prevent an accident, injuries and damage as suffered by Bailey;

- in failing to properly regulate Bailey's ascent on the completion of his dive on November 14, 2008;
- in failing to adopt practices, policies and procedures designed specifically to prevent an accident, injuries and damage as suffered by Bailey;
- in failing to provide Bailey with adequate, sufficient and safe tools, machinery and equipment;
- in failing to provide Bailey with a safe place in which to work;
- in failing to provide him with prompt and proper medical care and attention;
- in that the dive superintendent, dive supervisor and the DMT led Bailey to believe that he had suffered a minor and inconsequential muscle strain/muscle sprain;
- in violating USCG Regulations, in general and, in particular, Title 46 CFR §42.15-75, among others, and
- in violating OSHA Standards, in general and, in particular, Title 29 CFR §§1910, 1915, 1918, and 1926.

15. In addition, these Defendants were negligent "per se," because it violated certain standards promulgated by the Occupational Safety and Health Administration, commonly referred to as OSHA Standards, and its failure in this respect, played, a part, in either causing or contributing to the injuries suffered by Bailey. *Kernan v. American Dredging Co.*, 355 U.S. 426, 78 S. Ct. 394; 2 L.Ed. 2d 382 (1957); *Choa v. Mallard Bay Drilling, Inc.*, 534 U.S. 2351, 122 S. Ct. 738, 151 L.Ed. 2d 659 (2002) *Roy Crook &*

Sons, Inc. v. Allen, 778 F. 2d 1037 (5th Cir. 1985); *Smith v. Transworld Drilling Co.*, 772 F. 2d 157,162 (5th Cir. 1985). Furthermore, a violation of any applicable OSHA Regulation results in a rebuttable presumption that the violation in question caused Bailey's accident. *Reyes v. Vantage S.S. Co.*, 609 F. 2d 140, 144-45 (5th Cir. 1980) (citing the *PENNSYLVANIA* 86 U.S. (19 Wall.) 125,136 (1873)). Moreover, these Defendants' violation of OSHA Standards precludes the assessment of comparative negligence, if any. 45 U.S.C. § 53; *Kernan v. American Dredging, Co.*, 355 U.S. 426, 78 S. Ct. 394, 2 L.Ed. 2d 382 (1957); *Fuszek v. Royal King Fisheries, Inc.*, 98 F. 3d 514 (9th Cir. 1996); *Roy Crook & Sons, Inc. v. Allen*, 778 F. 2d 1037 (5th Cir. 1985).

16. In addition, or in the alternative, in the event that the MR. FRED was, at the time of Bailey's accident and injuries, a vessel inspected by the United States Coast Guard, Bailey asserts that these Defendants were negligent "per se," because it/they violated certain regulations promulgated by the United States Coast Guard, and that its/their failure in this respect, played, a part, in either causing or contributing to the injuries and damage suffered by Bailey. *Kernan v. American Dredging Co.*, 355 U.S. 426, 78 S. Ct. 394; 2 L.Ed. 2d 382 (1957); *Roy Crook & Sons, Inc. v. Allen*, 778 F. 2d 1037 (5th Cir. 1985); *Smith v. Transworld Drilling Co.*, 772 F. 2d 157,162 (5th Cir. 1985). Furthermore, a violation of any applicable United States Coast Guard Regulation results in a rebuttable presumption that the violation in question caused

Bailey's accident. *Reyes v. Vantage S.S. Co.*, 609 F. 2d 140, 144-45 (5th Cir. 1980) (citing the *PENNSYLVANIA* 86 U.S. (19 Wall.) 125,136 (1873)). Moreover, these Defendants' violation of United States Coast Guard Regulations precludes the assessment of comparative negligence, if any. 45 U.S.C. § 53; *Kernan v. American Dredging, Co.*, 355 U.S. 426, 78 S. Ct. 394, 2 L.Ed. 2d 382 (1957); *Fuszek v. Royal King Fisheries, Inc.*, 98 F. 3d 514 (9th Cir. 1996); *Roy Crook & Sons, Inc. v. Allen*, 778 F. 2d 1037 (5th Cir. 1985).

17. That, by reason of the negligence of these Defendants, as well as the unseaworthiness of the *MR. FRED*, Bailey sustained great bodily injuries; he became and still remains sick and disabled; that, among other things, Bailey was caused to suffer a pneumothorax; that he has been caused to suffer a severe, painful and lasting injury with resultant constant pain and distress; that he has been incapacitated from his work and so prevented from pursuing his ordinary occupation and still and will continue to be incapacitated for some time to come; that his ability to perform work has been, and will be, as a result of said injuries greatly lessened, diminished and affected; that his ability to engage in recreational activities has been lessened, diminished and affected as a result of said injuries; that Bailey is informed and believes that the injuries which he suffered as a result of the negligence of these Defendants, as well as by the unseaworthiness of the *MR. FRED* are permanent and create a condition which seriously and permanently affects his general health and will cause disability and seriously interfere with his enjoyment of life; that he has

required and will require in the future medical treatment as a result of said injuries and may require operative treatment; that Bailey is informed and believes that he has been otherwise permanently injured and that he has become and remains seriously and permanently disabled.

18. That, as a consequence of the foregoing, Bailey has suffered, is suffering and will continue to suffer damages including, without limitation, past and future physical and mental pain and suffering, past disability and permanent future disability, loss of wages, loss of earning capacity, loss of fringe benefits, loss of enjoyment of life and past and future medical expenses.

MAINTENANCE AND CURE

19. That, Bailey re-alleges and re-avers Paragraphs 1 thru 18 above, as set forth hereinafter *in extenso*.

20. That, Bailey, by virtue of the injuries incurred while in the service of the MR. FRED, alleges that he is entitled to maintenance and cure until he reaches maximum medical cure.

DAMAGES

21. That, Bailey re-alleges and re-avers Paragraphs 1 thru 20 above, as set forth hereinafter *in extenso*.

22. In consequence, Bailey is entitled to damages under the Jones Act, as well as under the general maritime law in the amount of FOUR MILLION (\$4,000,000.00) DOLLARS as nearly as can be

estimated.

WHEREFORE, Bailey prays that these Defendants be served with a copy of this, his, Seaman's Complaint for Damages and that they be duly cited to appear and answer herein; that after the lapse of all legal delays and due proceedings had, that there be judgment herein, in favor of Bailey and against these Defendants in the full and true sum of FOUR MILLION (\$4,000,000.00) DOLLARS, as nearly as the same can now be estimated, together with legal interest on all amounts due, as well as for all costs of these proceedings and for trial by jury.

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