

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

DANIEL DAILEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION 2:12-cv-271-CWH
	)	
	)	Action by Seaman
HEAD EAST II SEAFOOD, INC.,	)	Fees Waived Under
	)	28 U.S.C. § 1916
Defendant.	)	
<hr/>		(Jury Trial Demanded)

PLAINTIFF'S ORIGINAL VERIFIED COMPLAINT

COMES NOW Daniel Dailey, Plaintiff in the above captioned action, and, complaining of the Defendant, shows this Honorable Court as follows:

Jurisdiction

- 1) This is a case of personal injury to a seaman within the course of his employment with Defendant and while assigned to the commercial fishing vessel KIMBERLY L, which was operating on the high seas and navigable waters of the United States.
- 2) This action is within the admiralty jurisdiction of the United States District Courts; Plaintiff invokes the jurisdiction of this Honorable Court pursuant to 28 U.S.C. § 1333(1).
- 3) This case is governed by the Jones Act, 46 U.S.C. § 30104, the General Maritime Law of the United States, and laws supplemental thereto and amendatory thereof.

- 4) Plaintiff is a citizen and resident of the state of Florida.
- 5) On information and belief, Defendant Head East II Seafood, Inc. was and is a business corporation formed under and existing by virtue of the laws of the State of Georgia and doing business within the state of South Carolina and within the jurisdiction of this Honorable Court.
- 6) On information and belief at all times material, Defendant was owner of the KIMBERLY L and employer of Plaintiff.

2012 Injury

- 7) On January 9, 2012 at the time of Plaintiff's 2012 injury aboard the KIMBERLY L, the vessel was in Georgetown, South Carolina.

FOR A FIRST CAUSE OF ACTION

(Jones Act)

- 8) Plaintiff restates the above allegations as if set forth herein verbatim.
- 9) At all times material hereto, the KIMBERLY L was and is a vessel in navigation, and was operating on the high seas offshore of Georgetown, South Carolina.
- 10) Defendant employed Plaintiff as "first hook" off and on for approximately twelve years on various vessels, most recently on the KIMBERLY L.

- 11) Sufficient manning of the KIMBERLY L requires a captain and two deckhands or "hooks."
- 12) At all times material, Fred Kruse served as captain of KIMBERLY L.
- 13) On information and belief, in late 2011, Defendant hired Craig Henley as second hook aboard KIMBERLY L.
- 14) On information and belief, in late 2011, Defendant knew or should have known that Craig Henley was unfit to serve as second hook aboard KIMBERLY L by reason of his possession, use, and addiction to unlawful drugs, and by reason of his violent temper.
- 15) On the morning of January 9, 2012, Craig Henley smoked crack cocaine.
- 16) Shortly after smoking crack cocaine, Craig Henley argued with Plaintiff.
- 17) Shortly after arguing with Plaintiff, Craig Henley ran up behind Plaintiff, pushed Plaintiff from behind, and intentionally broke Plaintiff's right leg.
- 18) Defendant failed to provide Plaintiff with a reasonably safe place to work by committing one or more of the following acts of negligence which directly and proximately caused Plaintiff's said personal injuries:
  - a) Defendant failed to perform a proper pre-employment background check of Craig Henley;

- b) Defendant failed to provide a qualified second hook on the KIMBERLY L;
  - c) Defendant failed to prevent Craig Henley from causing personal injury on KIMBERLY L after smoking crack cocaine;
  - d) Defendant failed to provide a sober second hook for KIMBERLY L;
  - e) Defendant failed to discharge Craig Henley for cause;
  - f) Defendant failed to protect Plaintiff from violence by Craig Henley;
  - g) Defendant failed to provide a safe workplace to Plaintiff;
  - h) Defendant failed to exercise due care under the circumstances for Plaintiff's safety; and
  - i) Such other acts and omissions or breaches of duty which will be proven at trial.
- 19) As a direct and proximate result of Defendant's said negligence, Plaintiff sustained and will in the future sustain the following damages:
- a) Right leg pain;
  - b) Continuing leg pain, loss of strength, and loss of range of motion;
  - c) Emotional pain;
  - d) Restrictions on his ability to work;

- e) Restrictions on his ability to earn a living as a seaman or otherwise;
- f) Loss of income;
- g) Loss of wage earning capacity;
- h) Loss of status;
- i) Loss of self esteem;
- j) Medical expenses and expenses for future medical treatment; and
- k) Physical pain and suffering and mental anguish.

FOR A SECOND CAUSE OF ACTION  
(Unseaworthiness)

- 20) Plaintiff restates the above allegations as if set forth herein verbatim.
- 21) At all time material, the KIMBERLY L was owned and operated by Defendant.
- 22) Alternatively, Plaintiff's said personal injuries were the direct and proximate result of the unseaworthiness of the Vessel in the following respects:
  - a) The second hook Craig Henley was inadequate, addicted, and unstable as a crew member, making the vessel unseaworthy;
  - b) The second hook Craig Henley was dangerous, violent, and unpredictable, making the vessel unseaworthy;

c) The vessel lacked a proper minimum crew, of one captain and two sober hooks, making the vessel unseaworthy;

d) The vessel's crew included a violent crack head Craig Henley, making the vessel unseaworthy;

e) There was inadequate supervision of the crew by the captain, making the vessel unseaworthy;

f) The vessel lacked a no tolerance drug policy, making the vessel unseaworthy;

g) Other unseaworthy conditions which will be proven upon the trial of this action;

23) As a direct and proximate result of the said unseaworthiness of the Vessel, Plaintiff has suffered and will in the future suffer the damages previously set forth herein.

FOR A THIRD CAUSE OF ACTION  
(Maintenance and Cure)

24) Plaintiff restates the above allegations as if set forth herein verbatim.

25) Plaintiff is entitled to maintenance and cure because of his service to and injury upon the Vessel.

26) Plaintiff requests payment of all costs of cure from the time of his disability on or about January 9, 2012

until the time that he reaches maximum medical improvement;

27) Plaintiff further requests wages and maintenance in an amount which is just and proper under the circumstances from January 9, 2012, when he was advised by his doctor not to work as a seaman until his leg heals in approximately 6 months and Plaintiff reaches maximum medical improvement.

28) Defendant has actual knowledge that Plaintiff was injured on or about January 9, 2012 while subject to the call of duty, that Plaintiff's injuries are ongoing, that Plaintiff is unable to work as a seaman at the present time, that Plaintiff needs medical treatment, and that Plaintiff has not reached maximum medical improvement.

29) Despite said knowledge, and in callous disregard for Plaintiff's rights, Defendant has failed and refused to provide needed medical treatment for Plaintiff's injuries, Defendant has failed and refused to accept financial responsibility for said medical treatment, and Defendant has failed and refused to pay any of Plaintiff's maintenance and cure expenses.

30) In so failing to provide cure, and in so failing to accept the financial responsibility for cure, Defendant has acted in bad faith and with wanton, willful, reckless

and callous disregard of the rights of Plaintiff, amounting to gross negligence.

31) Because Defendant has acted in bad faith and with wanton, willful, reckless, and callous disregard of the rights of Plaintiff, Plaintiff is entitled to an award of punitive damages and costs of this action.

2009 Injury

32) On or about mid-September, 2009 at the time of Plaintiff's 2009 injury aboard the KIMBERLY L, the vessel was on the high seas off of Darien, Georgia.

FOR A FOURTH CAUSE OF ACTION  
(Jones Act)

33) Plaintiff restates the above allegations as if set forth herein verbatim.

34) At all times material hereto, the KIMBERLY L was and is a vessel in navigation, and was operating on the high seas offshore of Darien, Georgia.

35) Defendant employed Plaintiff as "first hook" off and on for approximately twelve years on various vessels, most recently on the KIMBERLY L.

36) In 2008 and 2009, multiple crew members of KIMBERLY L were infected with MRSA aboard KIMBERLY L and required hospitalization.



- 37) In September, 2009, Plaintiff was performing his normal duties as hook offshore of Darien, Georgia, when he was finned by a fish and infected with MRSA.
- 38) Shortly after being finned by a fish and becoming infected with MRSA, Plaintiff became ill and required hospitalization.
- 39) Plaintiff was forced to drive from Darien, Georgia to Jacksonville, Florida for hospitalization and medical treatment.
- 40) In 2009, Defendant failed to provide Plaintiff with a reasonably safe place to work by committing one or more of the following acts of negligence which directly and proximately caused Plaintiff's said personal injuries:
- a) Defendant failed to provide proper safety outerwear;
  - b) Defendant failed to prevent the spread of MRSA aboard the KIMBERLY L;
  - c) Defendant failed to prevent infection of crewmembers with MRSA on KIMBERLY L;
  - d) Defendant failed to institute proper sanitation aboard KIMBERLY L after the first crewmember was infected with MRSA;
  - e) Defendant failed to eliminate MRSA on KIMBERLY L;
  - f) Defendant failed to protect Plaintiff from infection by MRSA;

- g) Defendant failed to provide a safe workplace to Plaintiff;
  - h) Defendant failed to exercise due care under the circumstances for Plaintiff's safety; and
  - i) Such other acts and omissions or breaches of duty which will be proven at trial.
- 41) As a direct and proximate result of Defendant's said negligence, Plaintiff sustained and will in the future sustain the following damages:
- a) Right knee and leg pain;
  - b) Continuing right knee and leg pain, loss of strength, and loss of range of motion;
  - c) Emotional pain;
  - d) Restrictions on his ability to work;
  - e) Restrictions on his ability to earn a living as a seaman or otherwise;
  - f) Loss of income;
  - g) Loss of wage earning capacity;
  - h) Loss of status;
  - i) Loss of self esteem;
  - j) Medical expenses and expenses for future medical treatment; and
  - k) Physical pain and suffering and mental anguish.

FOR A FIFTH CAUSE OF ACTION

(Unseaworthiness)

42) Plaintiff restates the above allegations as if set forth herein verbatim.

43) At all time material, the KIMBERLY L was owned and operated by Defendant.

44) Alternatively, Plaintiff's said 2009 personal injuries were the direct and proximate result of the unseaworthiness of the Vessel in the following respects:

- a) The vessel and her appurtenances were home to MRSA, making the vessel unseaworthy;
- b) The vessel was not supplied with proper protective clothing and gear to protect crewmembers' skin, making the vessel unseaworthy;
- c) The vessel was not supplied with proper chemicals and cleaning supplies to eliminate MRSA from the vessel, making the vessel unseaworthy;
- d) The vessel lacked a proper management plan to avoid infection of the crew by MRSA, making the vessel unseaworthy;
- e) There was inadequate supervision of the crew by the captain, making the vessel unseaworthy;
- f) The vessel lacked a no tolerance MRSA policy, making the vessel unseaworthy;

g) Other unseaworthy conditions which will be proven upon the trial of this action;

45) As a direct and proximate result of the said unseaworthiness of the Vessel, Plaintiff has suffered and will in the future suffer the damages previously set forth herein.

FOR A SIXTH CAUSE OF ACTION  
(Maintenance and Cure)

46) Plaintiff restates the above allegations as if set forth herein verbatim.

47) Plaintiff is entitled to maintenance and cure because of his service to and injury upon the Vessel.

48) Plaintiff requests payment of all costs of cure from the time of his disability on or about September, 2009 until the time that he reaches maximum medical improvement;

49) Plaintiff further requests wages and maintenance in an amount which is just and proper under the circumstances from September, 2009, when he was advised by his doctor not to work as a seaman until his knee healed and Plaintiff reached maximum medical improvement.

50) Defendant had actual knowledge that Plaintiff was injured on or about September, 2009 while subject to the call of duty, that Plaintiff's injuries were ongoing,

that Plaintiff was unable to work as a seaman, that Plaintiff needed medical treatment, and that Plaintiff had not reached maximum medical improvement.

51) Despite said knowledge, and in callous disregard for Plaintiff's rights, Defendant failed and refused to provide needed medical treatment for Plaintiff's injuries, Defendant failed and refused to accept financial responsibility for said medical treatment, and Defendant failed and refused to pay any of Plaintiff's maintenance and cure expenses.

52) In so failing to provide cure, and in so failing to accept the financial responsibility for cure, Defendant acted in bad faith and with wanton, willful, reckless and callous disregard of the rights of Plaintiff, amounting to gross negligence.

53) Because Defendant acted in bad faith and with wanton, willful, reckless, and callous disregard of the rights of Plaintiff, Plaintiff is entitled to an award of punitive damages and costs of this action.

PLAINTIFF'S PRAYER

WHEREFORE, by reason of the foregoing, Plaintiff prays that summons issue citing Defendant to appear and answer the aforesaid matters, that process issue in due form of law according to the practice of this Court, that trial by jury be had as to all factual matters herein, that judgment be rendered for Plaintiff against Defendant, that the property of Defendant, a foreign corporation, be attached under the provisions of Rule 64 of the Federal Rules of Civil Procedure and S.C. Code Ann §§ 15-19-10, et seq., to provide security for judgment in this action, that Plaintiff be compensated and awarded compensatory, special, general, and punitive damages, maintenance and cure, pre-judgment interest, and costs of this action, and that this Court grant any such other amount or other relief as may be proved herein or that justice may require.

RESPECTFULLY SUBMITTED:

JOHN HUGHES COOPER, P.C.

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January 27, 2012  
Sullivan's Island, South Carolina