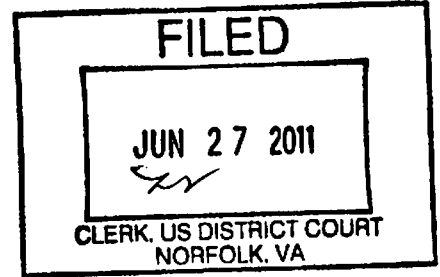


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



YVONNE D. LINYEAR,

and

SAMUEL LINYEAR, JR.,

Plaintiffs,

v.

PLAINTIFFS DEMAND
TRIAL BY JURY

Civil Action No. 2:11cv353

CMA CGM, S.A.,

CMA SHIPS UK, LIMITED,

and

TECHNOMAR SHIPPING, INC.,

Defendants.

COMPLAINT

The plaintiffs Yvonne D. Linyear and Samuel Linyear, Jr., by counsel, allege for their Complaint against the defendants CMA CGM, S.A., CMA Ships UK, Limited, and Technomar Shipping, Inc., upon information and belief, as follows:

JURISDICTION AND VENUE

1. This is a civil action brought by plaintiffs Yvonne D. Linyear and Samuel Linyear, Jr., in personam against the defendants CMA CGM, S.A., CMA Ships UK, Limited, and Technomar Shipping, Inc., for personal injuries and damages resulting therefrom to pursuant to the provisions of the Longshore and Harbor Workers Compensation Act, 33 U.S.C. Section 901 et seq., and the General Maritime Law, and is within the jurisdiction of this Court, pursuant to the "saving to suitors" provision of 28

U.S.C. Section 1333(1) and pursuant to 28 U.S.C. Section 1332(a), there being diversity of citizenship between the plaintiffs and all defendants named herein and the amounts in controversy exceeding the sum or value of \$75,000.00, exclusive of interest and costs.

2. Venue lies in this Court pursuant to 28 U.S.C. Section 1391(a), because the plaintiffs' causes of action arose in the City of Portsmouth, Virginia.

COUNT I-NEGLIGENCE CLAIM OF YVONNE D. LINYEAR

3. The plaintiffs Yvonne D. Linyear and Samuel Linyear, Jr., are citizens of the Commonwealth of Virginia.

4. The defendants CMA CGM, S.A., CMA Ships UK, Limited, and Technomar Shipping, Inc., are foreign entities with citizenship and principal places of businesses outside the Commonwealth of Virginia.

5. The defendant CMA CGM, S.A., is a corporation formed pursuant to the laws of France, and its headquarters are located in Marseilles, France.

6. The defendant CMA Ships UK, Limited, is a corporation formed pursuant to the laws of the United Kingdom, and its headquarters are located in London, England.

7. The defendant Technomar Shipping, Inc., is a foreign corporation whose headquarters are located in Athens, Greece.

8. On or about October 17, 2010, the cargo vessel M/V CMA CGM DOLPHIN was moored at APM Terminals in the City of Portsmouth, Virginia, on the navigable waters of the United States.

9. At the aforesaid time and place, the plaintiff Yvonne D. Linyear was employed by a stevedore, CP&O, LLC, to perform work as a longshoreman upon the M/V CMA CGM DOLPHIN.

10. The M/V CMA CGM DOLPHIN is a freight vessel designed to carry containers of cargo on the high seas.

11. The M/V CMA CGM DOLPHIN is approximately 964 feet in length and its gross tonnage is approximately 54,300 tons.

12. The M/V CMA CGM DOLPHIN was, at all times pertinent herein, used and employed for commercial container cargo transportation operations on the high seas and navigable waters of the United States.

13. The M/V CMA CGM DOLPHIN and was regularly used by one or more defendants named herein to conduct substantial business activity in the Port of Hampton Roads, Virginia.

14. At all times pertinent herein, the defendant CMA CGM, S.A., and/or defendant CMA Ships UK, Limited, and/or defendant Technomar Shipping, Inc., was/were the owner(s), owner(s) *pro hac vice*, agent(s), manager(s), operator(s), controller(s), maintainer(s), charter(s) and/or bareboat charter(s) of the and/or the defendants are the successors in interest to the owner(s), owner(s) *pro hac vice*, agent(s), operator(s), controller(s), maintainer(s), charter(s) and/or bareboat charter(s) of the vessel M/V CMA CGM DOLPHIN.

15. At the aforesaid time and place the plaintiff Yvonne D. Linyear was working as a ship's foreman, engaged in the loading and unloading of cargo from the vessel.

16. At the aforesaid time and place, after stevedoring operations on the vessel had commenced, the plaintiff Yvonne D. Linyear was walking on a catwalk or walkway believed to be just aft of a hatch located at or near Bay No. 37(38) on the vessel.

17. At the aforesaid time and place, the catwalk or walkway which the plaintiff Yvonne D. Linyear was using had sections of metal grating serving as the walking surface.

18. At the aforesaid time and place, as the plaintiff Yvonne D. Linyear was walking on a metal grating on the catwalk or walkway, a metal grating which was not properly secured moved out of position, and she fell partway into the resulting hole in the walkway, resulting in severe bodily injuries to her.

19. The defective and dangerous condition of the metal grating which caused the plaintiff's injuries was created by and/or was discoverable by reasonable, careful inspection by the defendants and/or their agents, servants and employees before the incident involving the plaintiff occurred.

20. Upon information and belief, before the plaintiff Yvonne D. Linyear was injured on the M/V CMA CGM DOLPHIN, the defendants and the stevedore entered into an express contractual arrangement whereby the defendants voluntarily undertook to maintain the vessel in a safe and seaworthy condition at the commencement of and throughout the stevedoring operations.

21. At all times pertinent herein, the plaintiff Yvonne D. Linyear was a member of the class of intended third party beneficiaries of that contract.

22. In fact, the defendants and/or their agents, servants, and employees, negligently owned, managed, operated, and maintained the vessel, causing the vessel to be unsafe and unreasonably dangerous for stevedoring operations.

23. Notwithstanding the aforementioned negligence, defendant CMA CGM, S.A., and/or defendant CMA Ships UK, Limited and/or defendant Technomar Shipping,

Inc., and/or their agents, servants and employees was/were negligent in the following particulars:

- (a) breach of a voluntarily assumed duty to the plaintiff to maintain the vessel in a safe and seaworthy condition at the commencement of and throughout stevedoring operations; and/or
- (b) failure to provide the plaintiff Yvonne D. Linyear with a safe place to work; and/or
- (c) failure to turn the vessel, including the ship's walkway or catwalk, over to the stevedore in a reasonably safe condition for work by longshoremen; and/or
- (d) failure to maintain the vessel, including the ship's walkway or catwalk, in a safe and sound condition; and/or
- (e) failure to properly inspect the ship's walkway or catwalk; and/or
- (f) failure to comply with the customs and practices applicable to owners, owners pro hac vice, operators, managers, agents, bareboat charters, and charters of vessels; and/or
- (g) violation of the International Safety Management Code; and/or
- (h) failure to warn the plaintiff of the dangerously defective walkway or catwalk; and/or
- (i) in other particulars to be shown at the trial of this case.

24. As a direct and proximate result of the negligence of one or more defendants herein, the plaintiff Yvonne D. Linyear was physically injured; has undergone and continues to undergo physical pain, mental anguish, and inconvenience; has been disabled from performing her calling and other activities; has lost income from her employment as a longshoreman and will continue to lose income in the future; has lost the capacity to earn income that she was able to earn before she was injured; and has incurred and will continue to incur substantial medical expenses for the care and

treatment of her injuries.

WHEREFORE the plaintiff Yvonne D. Linyear demands judgment in her favor against each of the defendants named herein, jointly and severally, in the sum of \$5,000,000.00 (FIVE MILLION DOLLARS) and prejudgment interest, post judgment interest and legal costs incurred.

COUNT II-LOSS OF CONSORTIUM CLAIM OF SAMUEL LINYEAR, JR.

24. All preceding paragraphs are fully incorporated herein.

25. At all pertinent times hereto, the plaintiff Samuel Linyear, Jr., was and remains lawfully married to, and he has lived with and continues to live with, the plaintiff Yvonne D. Linyear.

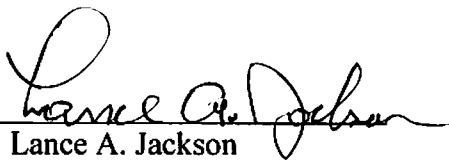
26. At all pertinent times hereto, the plaintiffs have had a marital relationship which included all the elements of consortium.

27. As a direct and proximate result of the defendants' negligence and the resulting injuries to his wife Yvonne D. Linyear, the plaintiff Samuel Linyear, Jr., has suffered and continues to suffer the loss of comfort, companionship, society, affection, and services of his wife.

WHEREFORE the plaintiff Samuel Linyear, Jr., by counsel demands judgment in his favor against each of the defendants named herein in the amount of \$350,000.00 (THREE HUNDRED FIFTY THOUSAND DOLLARS), plus prejudgment interest, post judgment interest, and legal costs incurred.

THE PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

YVONNE D. LINYEAR
and SAMUEL LINYEAR, JR.

By: 

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