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## James Napier v. F/V Deesie, Inc. United States Court of Appeal for the 1st Circuit 454 F.3d 61 (Decided July 11, 2006)

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which provides that federal district courts shall have jurisdiction over any civil case of admiralty jurisdiction. Furthermore, the Supreme Court has stated that the “fundamental issue giving rise to maritime jurisdiction is the protection of maritime commerce.” Exxon Corp. v. Cent. Gulf Lines, 500 U.S. 603, 608 (1991). The Court further explained that the PRPA’s reliance on cases supporting the dead ship doctrine was misplaced because unlike the issue at hand, the cases cited did not involve ships obstructing navigable waters. Because the La Isla Nena was an obstruction to navigable waters, it falls within admiralty jurisdiction.

Turning to the question of whether the district court erred in holding that the PRPA’s action was time-barred by the laches doctrine, the Court of Appeals held that it did not. There was no factual dispute regarding PRPA’s eleven year delay in filing its claim. The PRPA instead argued that laches did not apply because the contract was for professional services and thus subject to a fifteen-year statute of limitations. 31 P.R. Laws Ann. §5294. The Court of Appeals held that, even if the fifteen-year statute of limitations applied, it would still not save the action from being barred by the laches doctrine.

The laches doctrine is premised on the maxim of equity aids the vigilant not those who slumber on their rights. In essence, an action will be barred by laches if there was an excessive and unreasonable delay which economically prejudiced the Defendants. The Court of Appeals concluded that, there was no valid explanation given for the eleven year delay and that the Defendants would be “unquestionably prejudiced” by the cost of a second re-float of La Isla Nena. Accordingly, the district court’s bar of the PRPA’s action pursuant to the laches doctrine was affirmed.

**Alan Schindler**  
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### **GENUINE ISSUE OF MATERIAL FACT PRECLUDES SUMMARY JUDGMENT UNDER JONES ACT AND UNSEAWORTHINESS CLAIMS**

**The Court of Appeals for the First Circuit reversed and remanded the magistrate judge’s ruling that the plaintiff, Napier, had not presented sufficient evidence to defeat defendant’s motion for summary judgment on the Jones Act and unseaworthiness claims.**

James Napier v. F/V Deesie, Inc.  
United States Court of Appeal for the 1<sup>st</sup> Circuit  
454 F.3d 61  
(Decided July 11, 2006)

James Napier (“Napier”), plaintiff-appellant, was employed as a crewman aboard a fishing vessel owned by F/V Deesie, Inc. (“Deesie”), defendant-appellee. On or about April 13<sup>th</sup>, 2001 the crew was fishing 1,500 miles south to southeast of Puerto Rico. Napier was attaching baited hooks to a fishing line when a rusty, six-inch hook impaled his lower left abdomen. After

bandaging the wound, Napier found aspirin and Motrin in the ship's first aid kit and took the medicine to relieve the pain.

Eight days later, on April 21<sup>st</sup>, 2001, Napier began to experience pain and shortness of breath. Napier was sent to a doctor in San Juan and was diagnosed with an infection. Two days later, Napier developed severe stomach pains and began to vomit blood. He was admitted to the hospital with gastrointestinal bleeding. The attending physician discovered that Napier had suffered a perforated duodenal ulcer. Napier required two surgeries and a one month stay in the hospital. The physician noted on Napier's medical record that Napier had taken cocaine and heroin the day before being admitted.

On December 27<sup>th</sup>, 2002, Napier filed suit against Deesie in United States District Court for the District of Massachusetts. Napier sought damages on three counts: one count pursuant to the Jones Act, one count for unseaworthiness, and one count for maintenance and cure. Each party to the suit filed affidavits from medical experts to establish whether the fishhook was the cause of Napier's ulcer.

Napier's medical expert, Dr. Roberto Feliz ("Dr. Feliz"), did not believe that the hook by itself lead to the duodenal perforation because the hook was not long enough to reach that area of the abdomen. Dr. Feliz, however, explained several other medically accepted causes that could lead to ulcers. Dr. Feliz in particular focused on anti-inflammatory drugs ("NSAIDS"). The doctor stated that NSAIDS, such as aspirin and Motrin, could cause ulcers by disrupting the normal mucosal defense and repair system, allowing the mucosa to be more susceptible to attack. Dr. Feliz stated that it "appeared" that Napier had been treated with aspirin and Motrin. Dr. Feliz also rebutted the defendant's medical expert, Dr. Michael D. Apstein, who asserted that cocaine use could cause an ulcer within one day of consumption.

On March 3<sup>rd</sup>, 2005, Magistrate Judge Robert B. Collings granted Deesie's motion for summary judgment in regards to Napier's claims under the Jones Act and unseaworthiness. The magistrate judge held that Napier did not provide sufficient evidence on the issue of causation to avoid summary judgment on these two claims.

On appeal, Napier challenges two orders: 1) the initial summary judgment order, and 2) the denial of Deesie's motion for reconsideration. This court determined that the magistrate judge improperly awarded summary judgment to Deesie. Summary judgment is only appropriate when one party fails to raise a general issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-52 (1986). When a genuine factual issue exists, a reasonable jury could resolve the issue in favor of the non-moving party. *Fajardo Shopping Ctr., S.E. v. Sun Alliance Ins. Co. of P. R.*, 167 F.3d 1, 7 (1st Cir.1999). Deesie, the moving party, had a burden to prove an absence of material to support Napier's case in order to receive Summary Judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). This court determined that there were a number of issues of fact left unresolved. Therefore, awarding summary judgment to Deesie was in error.

In regards to the motion for reconsideration, the Court of Appeals determined that the magistrate judge erred in finding that Napier's medical expert did not show that aspirin alone could cause an ulcer. The magistrate judge felt such showing was necessary for Napier to survive a motion for summary judgment.

The Court of Appeals next turned to the issue of whether summary judgment should have been granted to Deesie based on Napier's claim under the Jones Act. The Jones Act provides seamen with a cause of action against employers when "an employer's failure to exercise reasonable care causes a subsequent injury even where the employer's negligence did not render the ship unseaworthy." *Ferrara v. A. & V. Fishing, Inc.*, 99 F.3d 449, 453 (1st Cir.1996); citing

*Toucet v. Maritime Overseas Corp.*, 991 F.2d 5, 10 (1st Cir.1993). Napier need only demonstrate that the vessel's "negligence played any part, even the slightest, in producing the injuries for which the plaintiff seeks damages." *Connolly v. Farrell Lines, Inc.*, 268 F.2d 653, 655 (1st Cir.1959); citing *Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500, 506 (1957). The magistrate judge granted Deesie's summary judgment based on the fact that Napier offered no evidence to show a causal relationship between the fishhook accident and his ulcer. Taking all factual inferences in favor of Napier, however, for purposes of summary judgment, this court holds that Napier has shown that aspirin was available on board the vessel and that he took aspirin to treat the pain from the fishhook accident. Furthermore, the expert testimony provided by Napier indicates that aspirin alone can cause ulcers. Therefore, for purposes of avoiding summary judgment, Napier has carried his burden to establish the hooking incident as the cause of his ulcer.

This court also disagreed with the magistrate judge's opinion that the crew and the ship were not negligent because no one knew of Napier's medical history. As this court correctly pointed out, giving of the aspirin wasn't the negligent act. Napier claimed the negligent act was the hooking incident. This court felt that proof of the aspirin was sufficient evidence to show a possible causal link between the hooking incident and the final injuries. The court felt it was strong enough to defeat Deesie's motion for summary judgment.

Finally, The Court addressed whether the magistrate judge properly awarded defendant's motion for summary judgment based on Napier's claim of unseaworthiness. The doctrine of unseaworthiness places an absolute duty upon shipowners to furnish a "seaworthy" ship and compensate seamen for injuries caused by any defect in a vessel or its appurtenant appliances or equipment. *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 548-49 (1960); *Hubbard v. Faros Fisheries, Inc.*, 626 F.2d 196, 199 (1st Cir.1980). A shipowner is not bound to provide an accident-free ship, but rather the duty is "to furnish a vessel and appurtenances reasonably fit for their intended use." *Mitchell* at 550. That duty extends to all situations aboard the ship, whether transient or permanent, developing before the ship leaves its home port or at sea. *Id.* at 549-50. The unseaworthiness imposes strict liability on the shipowner.

The magistrate judge granted summary judgment on this claim because Napier presented no evidence to show a causal relationship between the unseaworthiness of the vessel and his ulcer. As stated earlier, the Court of Appeals disagreed and felt Napier did show the requisite relationship between the ship's supply of the Motrin and his injuries. This was sufficient to defeat a grant of summary judgment to Deesie.

Deesie, however, argues that it cannot be held liable because the aspirin treatment constitutes an intervening cause as a matter of law. Deesie argued that Napier's ulcer was not a foreseeable result of providing aspirin on board the ship and that Napier's decision to take aspirin despite his history of ulcers was an independent cause of the harm. The Court of Appeals agreed with Deesie's contention and felt it was an issue to be decided by the jury whether the ingestion of the aspirin and Motrin was a intervening cause or not.

For the foregoing reasons above The Court of Appeals reversed the grant of summary judgment on the Jones Act and unseaworthiness claims and remanded the case for trial.

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