

The Ninth Circuit Holds That 16-Hour Work Day Requirement May Satisfy a Negligence or Unseaworthiness Claim

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On November 25, 2009, the Ninth Circuit Court of Appeals issued its unpublished decision in *Ili v. American Seafoods Co., LLC*. The Court held that there are genuine issues of material facts as to whether requiring a seaman to work a 16-hour shift is negligent or creates an unseaworthy condition.

In *Ili*, the seaman was required to work 16-hour shifts, seven days a week, for a period of several months. As part of his duties, Ili would lift and flip 70-pound trays of frozen fish. At the end of one 16-hour shift, Ili fell when the ship rolled, and he sustained the injuries that are at issue in this case. Ili had previously complained to his employer that he was exhausted and fatigued from the 16-hour shifts. Ili brought suit against his employer for negligence under the Jones Act and unseaworthiness under maritime common law. American Seafoods filed a motion for summary judgment, seeking dismissal of these claims, which was granted by the district court.

In reversing the district court's order, the Ninth Circuit held that the seaman had presented sufficient evidence on the Jones Act claim to survive summary judgment. The Jones Act claim has four elements: (1) the employer's duty to provide a safe work environment to its seaman employee; (2) breach of that duty; (3) the employer's awareness of the unsafe condition; and (4) a causal link, however slight, between the breach and the seaman's injury. The parties disputed whether the 16-hour shift created an unsafe work environment and whether the long shift was a cause, however slight, of Ili's injury. Ili offered the deposition testimony of Alan Davis, an American Seafood's employee. Mr. Davis testified that other boats used 12-hour and 14-hour shifts to improve working and safety conditions. Based on this testimony alone, according to the Ninth Circuit, a reasonable jury could conclude that the 16-hour shift was a breach of the employer's duty to provide a safe work environment. Moving to causation, the Court determined that a genuine issue of material fact remained on the issue of causation because Ili had presented evidence that his injury occurred in the final hour of his shift, he had complained about the length of the shift on prior occasions, and his job involved strenuous labor.

With respect to the unseaworthiness claim, the Ninth Circuit held that Ili again had presented sufficient evidence to survive summary judgment. Citing its decision in *American President Lines, Ltd. v. Welch*, 377 F.2d 501, 504 (9th Cir. 1967), the Court noted that the lack of an adequate crew is a basis for unseaworthiness. Here, American Seafood's requirement that its

crew work "16 hour days, every day, for months on end can indicate that a ship is not adequately manned with crew to perform its duties in a seaworthy manner." The Ninth Circuit concluded that this issue must be decided by the trier of fact.

Although this is an unpublished decision, the *Ili* case indicates that the Ninth Circuit may be willing to allow more negligence and unseaworthiness claims to go before a jury, even without direct evidence of causation, when the suspected "cause" of the injury is based on working conditions, such as shift lengths.

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