

22-CV-1162

CAUSE NO: _____

NICHOLAS A. LESTER,
Plaintiff

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IN THE DISTRICT COURT OF

VS.

GALVESTON COUNTY, TEXAS

KATIE’S SEAFOOD, LLC and
THE F/V PISCES LLC,
Defendants

Galveston County - 56th District Court

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, NICHOLAS A. LESTER, hereinafter referred to as ‘Plaintiff’, complaining of KATIE’S SEAFOOD, LLC (“SEAMAR”) and THE F/V PISCES LLC (“PSV”), hereinafter referred to as ‘Defendants’, and would respectfully show as follows:

I.
DISCOVERY CLASS

1. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.3, Plaintiff requests that discovery be conducted under level 2.

II.
JURISDICTION

2. This is an action within the maritime jurisdiction of this Court. This claim is maintained under the Jones Act, 46 U.S.C. § 30104, and General Maritime Law of the United States.

3. Plaintiff has been damaged in a sum in excess of the minimum jurisdictional limits of this Honorable Court.

III.
PARTIES

4. Plaintiff, NICHOLAS A. LESTER, a natural person of majority age, is a resident of Galveston County, Texas. Plaintiff is an American seaman protected by the Jones Act, 46 U.S.C. §

30104.

5. Defendant, KATIE'S SEAFOOD, LLC, is a domestic limited liability company doing business in the State of Texas. This Defendant may be served with due process by serving its designated agent for service of process in the State of Texas. This Defendant's registered agent is Keith E. Guindon, 1902 Wharf Road, Galveston, Texas 77550.

6. Defendant, THE F/V PISCES LLC, is a domestic limited liability company doing business in the State of Texas. This Defendant may be served with due process by serving its designated agent for service of process in the State of Texas. This Defendant's registered agent is Keith E. Guindon, 1902 Wharf Road, Galveston, Texas 77550.

IV.
VENUE

7. Venue is proper in Galveston County, Texas because all or a substantial part of the events or omissions giving rise to the underlying claim occurred at or near Galveston County, Texas.

8. Alternatively, venue is also proper in Galveston County, Texas because Defendants are domiciled in Galveston County, Texas.

V.
FACTS

9. Plaintiff, NICHOLAS A. LESTER, would show that this lawsuit has become necessary as a result of occupational injuries he sustained on or about April 14, 2021. On or about April 14, 2021, employees and/or agents of Defendant, KATIE'S SEAFOOD, LLC, and/or Defendant, THE F/V PISCES LLC, negligently caused Plaintiff to sustain injuries in the course and scope of his employment as a fisherman and crewmember aboard the BOTTOM LINE.

10. On or about April 14, 2021, Plaintiff, NICHOLAS A. LESTER, was employed by Defendants, KATIE'S SEAFOOD, LLC and/or THE F/V PISCES LLC., as a member of the crew

of the BOTTOM LINE, a commercial fishing vessel.

11. At all relevant times, the BOTTOM LINE was owned, operated, and/or managed by Defendant, KATIE'S SEAFOOD, LLC, and/or Defendant, THE F/V PISCES LLC.

12. At all relevant times, the BOTTOM LINE was a vessel operating in navigable waters of the Gulf of Mexico near Galveston, Texas, and Plaintiff was contributing to, and aiding such vessel to accomplish its mission.

13. At the time of the occurrence on or about April 14, 2021, Plaintiff, NICHOLAS A. LESTER, was chopping eels in preparation for baiting hooks while the vessel was enroute to better fishing grounds. With the vessel underway, Plaintiff was pinning down an eel and cut his left hand with the machete that he had been using to chop bait. Plaintiff quickly bleeding profusely from the open wound. Plaintiff immediately sought assistance from the vessel's crew, but no assistance was available as the crewmembers were in the middle of changing gear. Plaintiff wrapped his hand in a towel and applied pressure as best he could on his own. After approximately a half hour of excruciating pain and dizzying loss of blood, the vessel's Captain began to provide minimal and inadequate first aide to the Plaintiff. The vessel's Captain treated the Plaintiff's open wound with iodine and "Gorilla Glue" before wrapping it with gauze and electrical tape.

14. In the days that followed, Defendants failed to provide prompt and adequate medical attention to Plaintiff, NICHOLAS A. LESTER, and failed to bring Plaintiff to shore for medical attention. Plaintiff was forced to endure weeks of untreated pain and risk of infection before he was discharged from the vessel. Defendants' failure to provide prompt and adequate medical attention resulted in a worsening of Plaintiff's condition.

15. On or around May 2, 2018, the F/V Bottom Line finally returned to shore in Galveston, Texas. Despite the severity of his open wound, Defendants failed to arrange for Plaintiff,

NICHOLAS A. LESTER, to receive medical attention. Instead, Defendants left Plaintiff stranded at the dock to find his own transportation and medical treatment.

16. As a result of the occurrence, Plaintiff sustained severe and debilitating injuries to his left hand, among other parts of his body.

17. To the extent that Plaintiff had any pre-existing injuries or medical condition(s) at the time of the occurrence in question, the same was not disabling, and he would respectfully show that such pre-existing condition, if any, was aggravated by the incident made the basis of this suit to such an extent that it became disabling, bringing about the necessity of medical treatment.

VI.
FIRST CAUSE OF ACTION FOR NEGLIGENCE

18. Plaintiff re-avers and re-alleges each and every allegation of fact and law contained herein as if re-pled in their entirety.

19. Plaintiff brings this cause of action against Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, pursuant to the Jones Act, 46 USC §30104, et seq.

20. On or about April 14, 2021, Defendants, KATIE'S SEAFOOD, LLC and/or THE F/V PISCES LLC, employed Plaintiff as a crewmember aboard the BOTTOM LINE. At all relevant times, it was feasible for said Defendants to provide to Plaintiff, NICHOLAS A. LESTER, and said Defendants owed to Plaintiff, duties of care to provide, inter alia, a safe place to work. Plaintiff further contends that on the occasion in question, Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, acting through their respective officers, agents, servants and/or employees, were careless and negligent in breach of the duty owed to their employee, Plaintiff, NICHOLAS A. LESTER.

21. Defendants, KATIE'S SEAFOOD, LLC and/or THE F/V PISCES LLC, were careless and negligent in the following respects:

- a. In failing to provide a safe work environment;
- b. In failing to properly train and supervise the crew;
- c. In failing to properly supervise and oversee the tasks at hand;
- d. In failing to provide prompt and adequate medical attention to Plaintiff;
- e. In failing to bring Plaintiff to shore for medical attention;
- f. In failing to properly inspect and maintain the vessel, its equipment and gear, in safe, working condition;
- g. In operating the vessel in an unsafe and improper manner;
- h. In failing to assist Plaintiff; and,
- i. Other acts of negligence as proven at time of trial.

22. On or about April 14, 2021, and as a direct and proximate result of the negligent acts and omissions of Defendants, KATIE’S SEAFOOD, LLC and/or THE F/V PISCES LLC, Plaintiff developed severe and debilitating injuries to his left hand, among other parts of his body. Said occurrence and injuries occurred as a result of the negligence of Defendants, KATIE’S SEAFOOD, LLC and/or THE F/V PISCES LLC, their respective agents, servants, and/or employees, acting in the course and scope of their employment or agency.

VII.

SECOND CAUSE OF ACTION FOR VESSEL UNSEAWORTHINESS

23. Plaintiff re-avers and re-alleges each and every allegation of fact and law contained herein as if re-pled in their entirety.

24. Plaintiff brings this cause of action against Defendants, KATIE’S SEAFOOD, LLC and THE F/V PISCES LLC, as set forth herein pursuant to the General Maritime Law of the United States of America.

25. On or about April 14, 2021, the BOTTOM LINE was owned, operated, controlled, and/or manned by Defendants, KATIE’S SEAFOOD, LLC and/or THE F/V PISCES LLC.

26. At all relevant times, Defendants, KATIE’S SEAFOOD, LLC and/or THE F/V PISCES LLC, owed a duty to furnish a vessel that was seaworthy in all respects with reasonably safe equipment and gear.

27. On or about April 14, 2021, dangerous and unseaworthy conditions existed aboard the BOTTOM LINE, and Plaintiff, NICHOLAS A. LESTER, thus, was caused to sustain severe injuries.

28. Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, failed to take reasonable and necessary steps to ensure the safety of the vessel's crew. On or about April 14, 2021, the BOTTOM LINE was unseaworthy in the following particulars:

- a. The vessel had an incompetent Captain and crew;
- b. The vessel lacked safe policies and procedures for cutting bait while underway;
- c. The vessel lacked safe policies and procedures for treating injuries aboard;
- d. The vessel lacked safe policies and procedures for providing medical attention to crewmembers; and,
- e. Other unseaworthy conditions as proven at time of trial.

29. Said breaches of duty proximately contributed, in whole or in part, to cause Plaintiff to suffer the hereinafter complained of injuries for which Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, are jointly and severally liable to the Plaintiff in damages.

VIII.
THIRD CAUSE OF ACTION FOR MAINTENANCE AND CURE

30. Plaintiff re-avers and re-alleges each and every allegation of fact and law contained herein as if re-pled in their entirety.

31. Plaintiff brings this cause of action against Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, pursuant to the General Maritime Law of the United States of America.

32. As an employee and seaman of Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, Plaintiff, NICHOLAS A. LESTER, is entitled under the General Maritime Law to the payment of maintenance and cure until his reaching of maximum medical cure. As of the drafting of this Petition, Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, have failed to pay adequate maintenance and cure after being so advised of the needs of Plaintiff.

33. Following the laceration of Plaintiff's left hand on or about April 14, 2021, Defendants failed to provide prompt and adequate medical attention to Plaintiff. Plaintiff was left to work aboard the vessel for over two weeks before being brought back to shore.

34. In the months that followed, Plaintiff had to arrange for his own medical treatment, and he incurred approximately \$79,565.70 in medical expenses related to his treatment. To date, approximately \$24,913 in medical expenses remain outstanding, despite Defendants' obligation to tender cure.

35. On or about April 14, 2021, and on other dates thereafter, and ever since, Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, have wrongfully failed and/or refused to provide maintenance and cure to Plaintiff in breach of duties said Defendants owe to Plaintiff. Plaintiff further alleges that it was, and still is, the duty of Defendants, KATIE'S SEAFOOD, LLC and/or THE F/V PISCES LLC, as his employer to furnish him with maintenance and cure and loss of wages. Plaintiff further alleges that Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, have unreasonably, arbitrarily, willfully and capriciously refused to promptly pay full maintenance and cure benefits to him, and such sums were due and owing. As a result of Defendants' unreasonable failure to provide maintenance and cure, Plaintiff is entitled to recovery for damages and expenses incurred, including, but not limited to, damages for prolongation or aggravation of injuries, pain and suffering, and additional expenses.

36. Plaintiff states that in addition to such maintenance and cure benefits as he is entitled, he has found it necessary to engage attorneys to represent him in the maintenance and cure action that he is entitled to and brings a suit for the reasonable attorney's fees incurred in the collection of the maintenance and cure benefits due to him. Therefore, for the aforementioned reasons, Plaintiff states that he is entitled to maintenance and cure benefits, compensatory damages and attorney's

fees, in a sum in excess of the minimum jurisdictional limits of this Court or for other and further sums as the Court and/or Jury may find reasonable at the time of trial of this cause.

37. By reason of the foregoing premises and as a legal result thereof, Plaintiff has in the past and/or will in the future be caused to suffer the following described injuries and/or losses, for which Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, are liable to Plaintiff:

- a. Maintenance and Cure benefits accrued to date of trial and for a reasonable time in the future, as may be found necessary;
- b. Physical and emotional injury, pain and suffering;
- c. Prolongation and or aggravation of injuries;
- d. Indebtedness for health care expenses;
- e. Indebtedness for daily living expenses;
- f. Punitive damages for the failure to honor maintenance and cure obligations;
- g. Prejudgment interest; and,
- h. Plaintiff's reasonable attorneys' fees.

All said injuries and damages in an extent, not now precisely known in excess of \$250,000.00.

IX. **DAMAGES**

30. As a direct and proximate result of the occurrence alleged, Plaintiff sustained severe and painful injuries to his body and mind, and shock and injury to his nervous system and person, all of which injuries have caused and continue to cause great physical and emotional pain and suffering. In connection therewith, Plaintiff would show that he has sustained severe pain, physical impairment, discomfort, mental anguish, and distress to date. Plaintiff is informed and believes and alleges that, in all reasonable probability, some or all of said injuries will result in permanent damage, disability, and pain and suffering, causing general damages in an amount to be determined at trial. Moreover, Plaintiff has suffered a loss of earnings in the past, as well as a loss of future earning capacity. Furthermore, he has incurred and will incur pharmaceutical and medical expenses in connection with said injuries. By reason of the foregoing, Plaintiff would show that he has been damaged in a sum, to be determined at trial, far in excess of the minimum jurisdictional limits of

this Honorable Court, for which amount he comes now and sues.

31. By reason of the foregoing premises and as a legal result thereof, Plaintiff has in the past and/or will in the future be caused to suffer the following described injuries and/or losses, for which Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, are jointly and severally liable to Plaintiff:

- a. Reasonable and necessary medical expenses in the past and in the future;
- b. Physical pain and suffering in the past and in the future;
- c. Mental anguish in the past and in the future;
- d. Loss of earning capacity in the past and in the future;
- e. Physical disfigurement in the past and in the future;
- f. Physical impairment in the past and in the future;
- g. All damages referred to elsewhere in this Complaint;
- h. All damages allowed under law; and,
- i. Any other relief to which Plaintiff is entitled under law or equity.

All said injuries and damages in an extent, not now precisely known, in excess of \$1,500,000.00.

X.

USE OF ITEMS PRODUCED IN DISCOVERY

32. Plaintiff hereby gives notice of his intent to utilize items produced in discovery in the trial of this matter, and the authenticity of such items shall be deemed self-proven per TEXAS RULES OF CIVIL PROCEDURE 193.7.

XI.

JURY DEMAND

33. Plaintiff demands a trial by jury and tenders the appropriate fee.

XII.

PRAYER

34. WHEREFORE, PREMISES CONSIDERED, Plaintiff, NICHOLAS A. LESTER, prays that Defendants, KATIE'S SEAFOOD, LLC and THE F/V PISCES LLC, be cited to appear and answer herein in a form and manner prescribed by law, and after jury trial of the merits of this cause, Plaintiff have judgment against Defendants, jointly and severally, in a total sum in excess of the

minimum jurisdictional limits of this Court, plus pre-judgment and post-judgment interest at the maximum legal rates, all costs of Court, and all such other and further relief, be it general or special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

SCHECHTER, SHAFFER, & HARRIS, L.L.P.

/s/Matthew D. Shaffer

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ATTORNEYS FOR PLAINTIFF

PLAINTIFF DEMANDS A TRIAL BY JURY

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Shona Clark on behalf of Matthew Shaffer
Bar No. 18085600
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Envelope ID: 65848051
Status as of 6/28/2022 2:22 PM CST

Case Contacts

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