

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30547
Summary Calendar

LEON GAINES,

Plaintiff-Appellant,

versus

INTERNATIONAL MARINE
CARRIERS, INC., as operator
of USNS S/L ANTARCTIC, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CA-93-866 c/w 93-2985, 93-3033 & 94-295-I)

(April 27, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Leon Gaines, the pro se plaintiff-appellant, was a member of the Seafarers International Union (the "Union") representing unlicensed seamen aboard American-flag vessels. To obtain employment aboard a vessel under contract with the Union, the seaman must, among other requirements, be certified fit-for-duty

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

and submit to a benzene evaluation when required by federal regulations. The benzene evaluations monitored occupational exposure to benzene vapors and determined whether the seaman had a medical condition that would place him at a greater than normal risk of health problems if exposed to these vapors. The Seafarers Welfare Plan (the "Welfare Plan"), an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), is responsible for performing fit-for-duty examinations and benzene evaluations.

Gaines was a crew member on the USNS BELLATRIX from August 11, 1990 until January 15, 1991. Although Gaines left employment on the boat without reporting any injury or illness, he later contended that the water on the USNS BELLATRIX during his service was contaminated with petroleum, that he knew the water was contaminated, and that he felt the effects of the contamination on his body and mind during his service on the boat and continued to smell oil coming from his body after leaving the boat. In June 1992, the Welfare Plan again routinely certified Gaines fit for sea duty. On August 9, Gaines began working on the USNS ANTARCTIC. One month later, Gaines complained of a lack of energy, but after submitting to blood tests was again marked fit for duty. Gaines worked with no further complaints until he was paid off the USNS ANTARCTIC on October 3, 1992. Thereafter, in December 1992, the results of Gaines's benzene evaluation indicated Gaines had an abnormal blood count. The results of an in-depth hematologic

evaluation showed, however, that Gaines did not suffer from a benzene-related blood abnormality. Accordingly, on April 15, 1993, Dr. Robert Noveck, one of the Welfare Plan's contracted medical doctors, issued Gaines a benzene clearance and concluded that Gaines most likely suffered from a rare form of anemia. Similarly, Gaines's personal physician determined that Gaines had a mild anemia and suggested that Gaines take vitamins, but recommended no further treatment, nor did he find Gaines unfit for sea duty.

From March 26 until October 4, 1993, Gaines filed three separate suits in the United States District Court for the Eastern District of Louisiana against various defendants, including International Marine Carriers, Inc. and the United States. Gaines alleged that the defendants were negligent in providing benzene contaminated drinking water during his service on the USNS ANTARCTIC. On December 23, the district court consolidated these cases and dismissed all defendants except the United States. Thereafter, Gaines filed an amended complaint adding the Welfare Plan as a defendant to the consolidated case and alleging fraud and negligence in the Welfare Plan's performance of the benzene exposure tests and wrongful denial of maintenance and cure.

On January 26, 1994, Gaines again filed suit in the district court against the United States for injuries he contends he sustained while aboard the USNS BELLATRIX because of the alleged petroleum contaminated drinking water. This case additionally was consolidated with his earlier suits. On September 21, the district

court entered two orders granting summary judgment in favor of the only two defendants in the consolidated action--the United States and the Welfare Plan--on all issues raised by Gaines. As to the claim arising from his service on the USNS BELLATRIX, the court held that Gaines admittedly knew of his alleged injuries when he quit working on the boat on January 15, 1991, but nevertheless filed suit more than three years later. Thus, the court concluded that his claim arising from service on the USNS BELLATRIX was barred by the two-year statute of limitations applicable under 46 U.S.C. App. § 745. The court rejected Gaines's argument that the statute of limitations should not begin to run until he knew of the seriousness of his injuries. See Albertson v. T.J. Stevenson & Co., Inc., 749 F.2d 223, 229 (5th Cir. 1984) (finding cause of action accrues on time of event when some discernable injury exists, regardless that injury later discovered to be more serious). As to the claims arising from his service on the USNS ANTARCTIC, the court held that Gaines failed to demonstrate a genuine issue of material fact of whether he developed benzene poisoning during his time on the USNS ANTARCTIC or whether the Welfare Plan improperly conducted the benzene exposure evaluation. On the day following the grant of summary judgment in favor of the defendants and effectively dismissing Gaines's complaint, the district court, pro forma, denied Gaines's motion for summary judgment and motion for judgment as a matter of law. Gaines filed notices of appeal from the district court's judgments granting

summary judgment in favor of the defendants, and denying his motions for summary judgment and judgment as a matter of law. Thereafter, the district court entered final judgment dismissing Gaines's complaints. On October 11, the district court denied Gaines's postjudgment motions.

Our study of the briefs and our review of relevant parts of the record compels us to agree with the district court that the statute of limitations has run on Gaines's claim arising from his service on the USNS BELLATRIX because he filed suit more than three years after learning of his alleged injuries. With respect to the claims related to his service on the USNS ANTARCTIC, we agree with the district court that Gaines has failed to present any evidence creating a genuine issue of material fact for trial that he was ever exposed to benzene or suffered an illness caused by exposure to benzene. In fact, the medical evidence contained in the record, including statements from evaluating physicians and the results of the benzene exposure testing, establishes that Gaines's abnormal blood count resulted from his mild anemia, not from exposure to benzene. Gaines presented nothing to dispute this evidence. Accordingly, we affirm the district court's dismissal of Gaines's claim against the United States. We additionally agree with the district court that Gaines presented no evidence, except his conclusory and unsupported allegations, that the Welfare Plan improperly administered the benzene exposure evaluations. Finally, we find that Gaines has no claim against the Welfare Plan for the

payment of maintenance and cure because this obligation is created between a seaman and his employer, not between a seaman and his employee benefit plan provider. Aguilar v. Standard Oil Co., 318 U.S. 724, 730 (1943). For these reasons, the judgment of the district court granting summary judgment in favor of the defendants and dismissing all complaints in Gaines's consolidated action is

A F F I R M E D.¹

¹Gaines raised two additional arguments in his pro se appeal. Gaines argues that because "International Marine Carriers, Inc." was mistakenly referred to as "International Marine Operators, Inc." occasionally in the caption of pleadings and orders, the district court erred in granting summary judgment. This argument, of course, is frivolous in the extreme in view of the fact that International Marine Carriers, Inc. is not a party to this appeal and Gaines shows absolutely no harm resulting from this inadvertent error. Finally, Gaines argues that the district court erred in granting summary judgment before ruling on his motion for jury trial. Similarly, this argument is frivolous since summary judgment itself obviated the need to rule on any such motion.