

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES HOLDER,)
)
Plaintiff,)
)
v.)
)
FRASER SHIPYARDS, INC.,)
NORTHERN ENGINEERING COMPANY,)
LLC, and THE INTERLAKE STEAMSHIP)
COMPANY)
)
Defendants.)

Case No. 16 CV 343

JURY DEMAND

COMPLAINT

In support of this complaint the Plaintiff, James Holder, states the following:

SUBJECT MATTER JURISDICTION

1. This lawsuit arises out of lead poisoning and other injuries and damages suffered by James Holder in the winter of 2016, as a result of hazardous work conditions he was exposed to including toxic lead and other occupational disease hazards during work he performed aboard the vessel HERBERT C. JACKSON, as it was dry-docked and undergoing refurbishment at Fraser Shipyards, in Superior, Wisconsin.

2. The plaintiff is a citizen of Virginia.

3. Defendant Fraser Shipyards, Inc. is incorporated in Wisconsin, with its principal place of business in Wisconsin, making it a citizen of Wisconsin pursuant to 28 U.S.C. § 1332(c)(1).

4. Defendant Northern Engineering Company, LLC is incorporated in Wisconsin, with its principal place of business in Wisconsin, making it a citizen of Wisconsin pursuant to 28 U.S.C. § 1332(c)(1).

5. Defendant The Interlake Steamship Company is incorporated in Delaware, with its principal place of business in Ohio, making it a citizen of Delaware and Ohio pursuant to 28 U.S.C. § 1332(c)(1).

6. The amount in controversy greatly exceeds \$75,000, the minimum diversity jurisdiction amount in controversy specified by 28 U.S.C. § 1332, exclusive of interest and costs.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332.

IN PERSONAM JURISDICTION

8. Defendant Fraser Shipyards, Inc. is a Wisconsin corporation engaged in substantial activities within Wisconsin, that committed tortious acts and/or omissions in Wisconsin, and entered into promises to perform services in Wisconsin. Therefore, this court has personal jurisdiction over this defendant pursuant to Wisc. Stat. 801.05, subparagraphs (1)(c), (1)(d), (3), and (5).

9. Defendant Northern Engineering Company, LLC, is a Wisconsin corporation, engaged in substantial activities within Wisconsin, that committed tortious acts and/or omissions in Wisconsin, and entered into promises to perform services in Wisconsin. Therefore, this court has personal jurisdiction over this defendant pursuant to Wisc. Stat. 801.05, subparagraphs (1)(c), (1)(d), (3), and (5).

10. Defendant The Interlake Steamship Company is a Delaware corporation engaged in substantial activities within Wisconsin, that committed tortious acts and/or omissions in Wisconsin and entered into promises to perform services in Wisconsin. Therefore, this court has personal jurisdiction over this defendant pursuant to Wisc. Stat. 801.05, subparagraphs (1)(d), (3), and (5).

VENUE

11. The Plaintiff suffered great harm in this district when he was exposed to significant and critical levels of lead and other toxins and a substantial part of the events or omissions giving rise to the claims set forth in this complaint occurred in this district. Therefore, this Court has venue pursuant to 28 U.S.C. §1391(b)(2).

CLAIMS FOR RELIEF

12. The HERBERT C. JACKSON is a 690' Great Lakes bulk carrier ship, originally constructed and built by the Great Lakes Engineering Works in 1959, to the order of Defendant The Interlake Steamship Company. As originally constructed, the HERBERT C. JACKSON was equipped with General Electric cross-compound steam turbine engines and many of the ship's surfaces were coated in lead-based paint, a fact The Interlake Steamship Company knew from the start.

13. The Interlake Steamship Company operates numerous bulk carrier commercial vessels on the Great Lakes. With some of their ships in their fifth decade of service, in 2006 Defendant The Interlake Steamship Company began to steadily update its fleet, as part of a 10-year modernization effort. Part of that

effort included the conversion of its steamship fleet to automated diesel propulsion systems, including the anticipated conversion of the HERBERT C. JACKSON.

14. When work began on the conversion of the HERBERT C. JACKSON it was The Interlake Steamship Company's fourth steam-to-diesel conversion since the 2006 modernization commenced.

15. In 2015, The Interlake Steamship Company entered into contracts and/or agreements with Fraser Shipyards, Inc. and Northern Engineering Company, LLC, relating to the engine conversion and refurbishment of the HERBERT C. JACKSON in dry dock at Fraser Shipyards, Inc. in Superior, Wisconsin. The work was to include the installation of diesel engines, a new gearbox and propeller system, exhaust gas economizers, and an auxiliary boiler, as well as new structural steel components.

16. On information and belief, Defendants Fraser Shipyards, Inc. and Northern Engineering Company, LLC entered into subcontracts and/or agreements with the plaintiff's employer, Tradesmen International, to perform certain skilled work during the conversion and refurbishment work on the HERBERT C. JACKSON.

17. Plaintiff James Holder, along with dozens of other workers, began working aboard the HERBERT C. JACKSON at Fraser Shipyards, Inc. on or about January 8, 2016.

18. The plaintiff was, at all relevant times, a welder ship fitter fabricator employed by Tradesman International, whose job duties on the HERBERT C.

JACKSON included cutting out old steel with a torch which involved burning through paint in order to cut out old steel and replace it with newly fit steel.

19. The plaintiff performed his work, *inter alia*, in the ballast tanks and the dry dock.

20. The work utilized abrasive blasting tools and welding torches to blast, cut, chip, heat, and weld painted surfaces aboard the HERBERT C. JACKSON.

21. During the work, the defendants and each of them, were responsible for safety and safe working conditions.

22. Unbeknownst to James Holder, but which each defendant either knew or should have known, was that the surfaces of the ship on which work was being performed were covered in lead paint that when blasted, cut, chipped, heated and/or welded, produced toxic fumes and airborne particulates.

23. For several weeks, James Holder and others working on the HERBERT C. JACKSON were immersed in and within close proximity to fumes and airborne particulates, including but not limited to fumes and airborne particulates containing lead. The defendants knew or should have known these workers were being exposed to the hazards of occupational diseases, including, but not limited to, lead poisoning, in violation of federal, state, local and industry safety rules, regulations, guidelines and procedures.

24. As work progressed, complaints amongst the workers were made to the defendants and their agents with respect to the working conditions, and specifically

concerning unusual health ailments that had begun to afflict workers on the HERBERT C. JACKSON.

25. Instead of informing the workers of the presence of toxins or taking steps to guard against exposure to the toxins that the defendants knew or should have known were present, the defendants and their agents ignored these complaints, failed to investigate the widespread sickness, and instead falsely assured the workers, including the plaintiff, there was nothing to be concerned about.

26. As these unusual health ailments progressed, the Occupational Health and Safety Administration (OSHA) began an investigation which remains ongoing and is being managed out of the Madison office, and on or about March 29, 2016, OSHA halted work aboard the HERBERT C. JACKSON due to unsafe working conditions.

27. It was at this time that James Holder and many other workers on the ship were first informed they had been exposed to dangerous levels of toxins, including lead, during their work on the HERBERT C. JACKSON.

28. James Holder was subsequently diagnosed with lead poisoning as a result of his exposure to lead aboard the HERBERT C. JACKSON.

29. A blood test on April 1, 2016, revealed the plaintiff was suffering from a blood-lead level (BLL) of 36.5 $\mu\text{g}/\text{dl.}$, which was considered “critical.”

30. The United States Centers for Disease Control and Prevention (CDC) recognizes a BLL of even 5 µg/dl as “elevated,” with harm known to occur at exposures at such levels and even lower.

31. If the plaintiff had his BLL measured earlier and closer to the time of his last exposure to the hazards of lead poisoning, he would have had an even higher level of lead than the measured “critical” value of 36.5 µg/dl found on April 1, 2016.

32. Lead poisoning is known to have profound impacts on the health of human beings, affecting every one of the body’s organ systems, especially the central nervous system, but also the kidneys, cardiovascular system, bones, digestive system and reproductive system. Symptoms of lead poisoning include, *inter alia*, headaches, abdominal pain, memory loss, mental processing speed, kidney failure, male reproductive problems, weakness, pain, insomnia, delirium, cognitive deficits, tremors, hallucinations, and convulsions. As a result of lead poisoning, the plaintiff has suffered and will in the future suffer from many of the aforementioned symptoms.

33. A joint investigation initiated by the Minnesota Department of Health and the Wisconsin Department of Health Services into the exposure aboard the HERBERT C. JACKSON led to the issuance of a public health advisory on April 1, 2016, including the warning that:

“[L]ead dust can be carried on work clothes, shoes, skin and hair, and because lead dust can contaminate their vehicles, workers’ family members may also be exposed to lead. ‘Take-home’ lead can have adverse effects on children’s and adults’ health. Children under age 6

and pregnant women or developing fetuses can experience particularly dangerous health effects from lead exposure. Adverse effects can include learning, behavior and health problems in young children; miscarriages, premature births and stillbirths in pregnant women; and impacted brain and nervous system development in developing fetuses. In men, elevated blood levels can cause impotence, reduced sex drive and infertility.”

34. On information and belief, the defendants and each of them, either actually knew of, or consciously and intentionally disregarded, the risk that workers refitting and refurbishing the nearly 60 year-old HERBERT C. JACKSON would encounter lead and other toxins during their work.

35. The Interlake Steamship Company knew or should have known of the presence of lead paint and high likelihood for exposure to toxins aboard its ship the HERBERT C. JACKSON.

36. Likewise, Northern Engineering Company, LLC and Fraser Shipyards, Inc. knew or should have known of the presence of lead paint and high likelihood for exposure to toxins aboard the HERBERT C. JACKSON at Fraser Shipyards, Inc.

37. Having been in existence since 1890 and holding itself out as a trusted and experienced vessel repair outfit for more than 100 years, Fraser Shipyards, Inc. should have been aware of the dangers inherent in the refurbishment of ships, including the dangers of exposure to toxins such as lead on the HERBERT C. JACKSON.

38. On at least one other occasion, Fraser Shipyards, Inc. has been cited for safety violations when it failed to protect workers performing ship refurbishment operations. In 1993, Fraser Shipyards, Inc. was cited with more

than five-dozen safety violations when it failed to protect workers at its yard from exposure to toxic levels of lead. Of those five-dozen safety violations previously issued to Fraser Shipyards, 44 were classified as “serious” violations, meaning OSHA had determined the violations to be ones in which there was a “substantial probability that death or serious physical harm could result from a hazardous condition and the employer knew or should have known of the hazard.”

39. Despite these known risks and previous citations for near-identical conduct in the past, Fraser Shipyards, Inc., as well as the other defendants, failed to keep safe those workers aboard the HERBERT C. JACKSON, including James Holder.

40. At all relevant times the plaintiff, as an employee of Tradesmen International, was a “frequenter” of the work premises “constructed, repaired and/or maintained” by the defendants, and each of them, within the meaning of these terms as used in the Safe Place Statute, Wis. Stat. § 101.11, which in relevant part states:

- (1) Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of

employment or public building as to render the same safe.

(2) (a) No employer shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards, or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employees and frequenters; and no employer or owner, or other person shall hereafter construct or occupy or maintain any place of employment, or public building, that is not safe, nor prepare plans which shall fail to provide for making the same safe.

41. The defendants, and each of them, violated the Safe Place Statute in numerous ways as set forth in the preceding paragraphs.

42. Violations of the Safe Place Statute by one or more or all of the defendants were substantial factors producing the plaintiff's lead poisoning and other injuries and damages, thereby causing him to suffer past and future medical and health care expenses, loss of earning capacity, pain, suffering, disability, disfigurement and severe emotional distress.

43. In addition, or in the alternative, at all relevant times the defendants, and each of them, owed common law duties of care to the plaintiff yet, notwithstanding these duties, the defendants, and each of them, committed the one or more or all of the following negligent acts or omissions, and others, in that they:

- a. Performed work aboard the HERBERT C. JACKSON in a manner that created toxic lead fumes and/or air particulates;

- b. Created unsafe work conditions, including work conditions that contained lead and other toxic fumes and/or air particulates;
- c. Chose not to provide proper ventilation, respirators and other safety equipment and measures to the Plaintiff and similarly situated workers aboard the HERBERT C. JACKSON;
- d. Chose not to warn the plaintiff of the health hazards of toxic lead fumes and/or air particulates;
- e. Chose not to investigate or test the health effects of lead prior to initiating work aboard the HERBERT C. JACKSON; and/or
- f. Chose not to investigate or test the health effects of lead after workers' health ailments became apparent aboard the HERBERT C. JACKSON;

44. These negligent acts or omissions were substantial factors in causing the plaintiff's lead poisoning and other injuries and damages, causing past and future medical and health care expenses, loss of earning capacity, pain, suffering, disability, disfigurement and severe emotional distress.

45. The aforementioned violations of the Safe Place Statute and the aforementioned negligent acts or omissions were committed with an intentional disregard of the rights of the Plaintiff and similarly situated workers aboard the HERBERT C. JACKSON, rendering an award of punitive damages appropriate pursuant to Wis. Stat. § 895.043.

For all of these reasons, the Plaintiff respectfully seeks the following:

- (a) A trial by jury;
- (b) Judgment in favor of the Plaintiff and against the Defendants, and each of them, for the full amount of the Plaintiff's compensatory damages;

- (c) Judgment in favor of the Plaintiff and against the
against the Defendants, and each of them, for the
maximum amount of punitive damages allowed by
law;
- (d) An award of all taxable costs and, if allowed by law,
attorneys' fees; and
- (e) Such other and further relief as the Court deems
appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY

JAMES HOLDER,

By: /s/ David E. Rapoport
One of his attorneys

Attorneys for Plaintiff

David E. Rapoport, Wis. Bar No. 1025213
Matthew S. Sims, Pro Hac Vice Admission Anticipated
Lindsey A. Seeskin, Pro Hac Vice Admission Anticipated
Melanie J. VanOverloop, Pro Hac Vice Admission Anticipated
RAPOPORT LAW OFFICES, P.C.
20 North Clark Street, Suite 3500
Chicago, Illinois 60602
(312)327-9880
(312)327-9881 (fax)
drapoport@rapoportlaw.com
msims@rapoportlaw.com
lseeskin@rapoportlaw.com
mvanoverloop@rapoportlaw.com

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.