

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY
KEY WEST DIVISION
CASE NO.

ROBERT E. DUEITT, JR.
Plaintiff,
vs.

UNITED STATES OF AMERICA and
UNITED STATES COAST GUARD
Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff sues Defendants and alleges:

SUBJECT MATTER JURISDICTION

1. This is a case of admiralty and maritime jurisdiction. The acts complained of herein occurred upon navigable waters and involve activity which bears a significant relationship to maritime activity.
2. This action arises under and is brought pursuant to the Suits in Admiralty Act, 46 U.S.C. §§ 741-752 et. seq., (“SSA”) (now codified at 46 U.S.C. §§ 30901-30913). This Court has jurisdiction over this case under the SSA, as the claims involve the negligent operation of a United States Coast Guard vessel, which caused injury to the Plaintiff (a private person) upon navigable waters.
3. This action further arises under the Public Vessels Act, 46 U.S.C. §§ 3101-3113 (“PVA”). This Court has jurisdiction under the PVA, because the claims involve the negligence of a public vessel of the United States Coast Guard and its crew in conducting towage and/or rescue operations.

4. The Suits in Admiralty Act and the subsequently adopted Public Vessels Act are complementary jurisdictional statutes providing for admiralty suits against the United States.” *Aliotti v. United States*, 221 F.2d 598, 602 (9th Cir. 1974). “[B]y virtue of their interrelated status, the SIAA and the PVA together provide original and exclusive admiralty jurisdiction in the United States district courts.” *Guidry v. Durkin*, 834 F.2d 1465, 1472 (9th Cir. 1987).

5. In the event that the Suits in Admiralty Act and/or Public Vessels Act are inapplicable to the instant claims, the Plaintiff brings this action under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671-2680.

PARTIES, VENUE AND CONDITIONS PRECEDENT

6. The Plaintiff Robert E. Dueitt, Jr. is a citizen and resident of the United States of America and the County of Monroe, State of Florida.

7. The Defendant United States of America is a sovereign and at all times material hereto, has acted through its agency, the United States Coast Guard.

8. The acts complained of herein occurred on November 23, 2014.

9. Venue is proper in the Key West Division, United States District Court Southern District of Florida. The Plaintiff is a resident of Key West, Florida. Under 46 U.S.C. §30906 (a) “a civil action under the Suits in Admiralty Act can be filed in the district court of the United States in which (1) any plaintiff resides.”

10. All conditions precedent to maintaining this action have been performed, have occurred prior to the filing of this action, or have been waived. To the extent that the FTCA is deemed applicable to this action, the Plaintiff timely presented separate administrative claims to the United States Coast Guard.

11. Prior to the filing of this suit, the Plaintiff filed an administrative claim with the United States Coast Guard. The Notice of Claim and Standard Form 95 are dated January 18, 2015. The Coast Guard acknowledged receipt of the Claim on February 23, 2015. USCG File Number: 15-LC-0131.

12. As of this date, the Coast Guard has not adjudicated the claim. Accordingly, the Plaintiff files suit against the United States, and its agency the United States Coast Guard. A true and correct copy of Plaintiff's January 18, 2015 Claim Notice and Standard Form 95 are attached to this Complaint and marked as Exhibit "A." A true and correct copy of the United States Coast Guard acknowledgment of receipt, dated February 23, 2015 is attached to this Complaint and marked as Exhibit "B."

FACTUAL ALLEGATIONS

13. On November 23, 2014, the Plaintiff was working onboard the vessel *Kinsail*, as a member of the vessel's crew.

14. At approximately 10.30 pm to 11.00pm, the *Kinsail* was travelling southbound on the intercoastal waterway, near Tyrrell County, North Carolina.

15. Near the 8A buoy of the intercoastal waterway, the vessel ran aground on underwater shoal.

16. Initially, Plaintiff contacted 'Sea Tow,' a private company, for assistance. Due to high winds, 'Sea Tow' declined to come and free the vessel.

17. Accordingly, the Plaintiff contacted the United States Coast Guard to request assistance and to free the vessel.

18. The United States Coast Guard, based in Elizabeth City, North Carolina, launched a rescue mission, dispatching a United States Coast Guard vessel and Coast Guard personnel to the area in which the *Kinsail* had ran aground.

19. Upon arrival, the United States Coast Guard personnel adjusted their spotlight and fixated it on the Plaintiff's face, temporarily blinding him.

20. United States Coast Guard personnel made three attempts to throw a heavy line, with a weighted ball to the *Kinsail*. On the third attempt, as the spotlight was on the Plaintiff's line of sight, United States Coast Guard personnel negligently threw the rescue line striking the Plaintiff in the face, breaking his eye socket and nose.

21. The United States Coast Guard then boarded the vessel, anchored it and took the Plaintiff, and the vessel's other crewmember off the vessel.

22. The Plaintiff was transported to Dare County, North Carolina to receive medical treatment for his injuries.

23. As a result of the negligence of Coast Guard personnel, the Claimant suffered orbital fractures to the left eye socket, and multiple fractures to the nose. The Plaintiff had to undergo surgery consisting in the insertion of a metal plate into his face. The surgery also attempted to correct deformities in the face, resulting from the incident.

24. Currently, the Claimant suffers from facial paralysis, decreased vision, light sensitivity, and swollen sinuses. The Claimant is also unable to fully close his eyelids.

**COUNT I - NEGLIGENCE AGAINST THE UNITED STATES
UNDER THE SUITS IN ADMIRALTY ACT, §§ 30901-30913**

Plaintiff re-alleges, adopts, and incorporates by reference the allegations in paragraphs one (1) twenty-one (24) as though alleged originally herein.

25. This cause of action is brought under the Suits in Admiralty Act §§ 30901-30913 (“SAA”). Under the SAA, the United States of America waived sovereign immunity for admiralty claims *in personam* against the United States arising out of incidents involving United States’ merchant vessels. In particular, the claims involve the negligent operation of a United States Coast Guard vessel, which caused injury to the Plaintiff (a private person) upon navigable waters.

26. At all times material, the United States Coast Guard personnel involved in the incident described above, including the United States Coast Guard officers, agents, and employees at Elizabeth City, North Carolina, and the employees involved in the rescue and/or towage operations on November 23, 2014 of the vessel *Kinsail*, were acting within the course and scope of their employment and agency.

27. As a matter of law, once the Coast Guard undertakes a rescue operation, it must act with reasonable care. *Sagan v. U.S.*, 342 F. 3d 493 (6th Cir. 2003). At all times material, the United States Coast Guard owed the Plaintiff a duty of reasonable care and seamanship under the circumstances.

28. At all times material, the United States Coast Guard failed to exercise reasonable care in carrying out its rescue of the Plaintiff, the vessel *Kinsail*, and the rest of the vessel’s crew. In doing so, the United States Coast Guard’s failure to exercise reasonable care proximately caused the Plaintiff’s injuries.

29. The United States Coast Guard’s failure to exercise reasonable care increased the Plaintiff’s risk of physical harm, and in fact, proximately caused Plaintiff’s injuries.

30. The United States Coast Guard breached its duty of reasonable care owed to the Plaintiff and put him in a more dangerous position than if it had done nothing in one or

more of the following aspects: (a) improperly adjusting the Coast Guard vessel's spotlight and fixating it on the Plaintiff's face, temporarily blinding him; and/or (b) throwing a heavy line, with a weighted ball at the Plaintiff while temporarily blinding him with a spotlight; and/or (c) throwing a heavy line and weighted ball to the *Kinsail* without taking any precautions to avoid hitting and injuring passengers and crew members on board the *Kinsail*; and/or (d) throwing a heavy line and weighted ball at the Plaintiff's face and/or (e) having inexperienced and/or or poorly trained officer(s) participate in a rescue operation and/or (f) failing to provide adequate and proper training to United States Coast Guard personnel; and/or (g) throwing a heavy line and weighted ball at the Plaintiff with rough seas and inclement weather; and/or (f) failure to provide adequate instruction, and supervision to *Kinsail* crew members and Plaintiff; and/or (g) failure to provide adequate instruction, and supervision to United States Coast guard personnel; and/or (h) failure to provide Plaintiff with adequate safety equipment to prevent injuries; and/or (i) failure to use alternative methods to undertake a rescue to avoid injuring passengers and crew members on board the *Kinsail*; and/or (j) failure to utilize adequate equipment to conduct rescue operations; and/or (k) failure to have an adequate crew; and/or (l) failure to investigate hazards to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard, or warn Plaintiff of the danger from the hazard; and/or (m) failing to follow United States Coast Guard policies and procedures to ensure safe and proper rescue at sea.

31. Defendant knew of the foregoing conditions causing Plaintiff's accident and did not correct them, or the conditions existed for a sufficient length of time so that

Defendant in the exercise of reasonable care should have learned of them and corrected them.

32. As a result of the negligence of Defendant, the Plaintiff was injured about Plaintiff's body and extremities, including orbital fractures to the left eye socket, and multiple fractures to the nose. The Plaintiff had to undergo surgery consisting in the insertion of a metal plate into his face. The surgery also attempted to correct deformities in the face. Currently, the Claimant suffers from facial paralysis, decreased vision, light sensitivity, and swollen sinuses. The Claimant is also unable to fully close his eyelids. Additionally, the Plaintiff suffered physical pain and suffering, mental anguish, reasonable fear of developing future physical and medical problems, loss of enjoyment of life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of Plaintiff's injuries, suffered physical handicap, lost wages, income lost in the past, and his working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

COUNT II - NEGLIGENCE AGAINST THE UNITED STATES
UNDER THE PUBLIC VESSELS ACT, §§ 3101-3113

Plaintiff re-alleges, adopts, and incorporates by reference the allegations in paragraphs one (1) twenty-one (24) as though alleged originally herein.

33. This action further arises under the Public Vessels Act, §§ 3101-3113 (“PVA”). This Court has jurisdiction under the PVA, because the claims involves negligence of a public vessel of the United States Coast Guard and its crew in conducting towage and/or rescue operations.

34. The PVA was enacted after the Suits in Admiralty Act. The PVA allows an action to be brought against the United States for damages caused by public vessels. Under 46 U.S.C. § 31102 (a)(1) the United States has waived sovereign immunity, allowing *in personam* civil actions in admiralty against the United States for damages caused by a public vessel of the United States. The PVA has been expanded to include damages caused by the negligence of the crew of a public vessel. *Canadian Aviator v. United States*, 324 U.S. 215 (1945). Accordingly, the United States is liable under the PVA for negligence of a public vessel and its crew in conducting rescue and towage operations resulting in injury and harm.

35. In this case, the United States Coast Guard vessel that participated in the rescue of the *Kinsail*, is a public vessel of the United States. Moreover, during the rescue and towage operations of the *Kinsail*, the United States Coast Guard crew negligently fixated a spotlight on the Plaintiff’s face temporarily blinding him, and proceeded to negligently throw a line with a heavy weighted ball, striking the Plaintiff in the face and causing severe and permanent injuries. The PVA applies.

36. At all times material, the United States Coast Guard personnel involved in the incident described above, including the United States Coast Guard officers, agents, and employees at Elizabeth City, North Carolina, and the employees involved in the rescue

and/or towage operations on November 23, 2014 of the vessel *Kinsail*, were acting within the course and scope of their employment and agency.

37. As a matter of law, once the Coast Guard undertakes a rescue operation, it must act with reasonable care. *Sagan v. U.S.*, 342 F. 3d 493 (6th Cir. 2003). At all times material, the United States Coast Guard owed the Plaintiff a duty of reasonable care and seamanship under the circumstances.

38. At all times material, the United States Coast Guard failed to exercise reasonable care in carrying out its voluntary rescue of the Plaintiff, the vessel *Kinsail*, and the rest of the vessel's crew. In doing so, the United States Coast Guard's failure to exercise reasonable care proximately caused the Plaintiff's injuries.

39. The United States Coast Guard's failure to exercise reasonable care increased the Plaintiff's risk of physical harm, and in fact, proximately caused Plaintiff's injuries.

40. The United States Coast Guard breached its duty of reasonable care owed to the Plaintiff and put him in a more dangerous position than if it had done nothing in one or more of the following aspects: (a) improperly adjusting the Coast Guard vessel's spotlight and fixating it on the Plaintiff's face, temporarily blinding him; and/or (b) throwing a heavy line, with a weighted ball at the Plaintiff while temporarily blinding him with a spotlight; and/or (c) throwing a heavy line and weighted ball to the *Kinsail* without taking any precautions to avoid hitting and injuring passengers and crew members on board the *Kinsail*; and/or (d) throwing a heavy line and weighted ball at the Plaintiff's face and/or (e) having inexperienced and/or or poorly trained officer(s) participate in a rescue operation and/or (f) failing to provide adequate and proper training to United States Coast Guard personnel; and/or (g) throwing a heavy line and weighted

ball at the Plaintiff with rough seas and inclement weather; and/or (f) failure to provide adequate instruction, and supervision to *Kinsail* crew members and Plaintiff; and/or (g) failure to provide adequate instruction, and supervision to United States Coast guard personnel; and/or (h) failure to provide Plaintiff with adequate safety equipment to prevent injuries; and/or (i) failure to use alternative methods to undertake a rescue to avoid injuring passengers and crew members on board the *Kinsail*; and/or (j) failure to utilize adequate equipment to conduct rescue operations; and/or (k) failure to have an adequate crew; and/or (l) failure to investigate hazards to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard, or warn Plaintiff of the danger from the hazard; and/or (m) failing to follow United States Coast Guard policies and procedures to ensure safe and proper rescue at sea.

41. Defendant knew of the foregoing conditions causing Plaintiff's accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendant in the exercise of reasonable care should have learned of them and corrected them.

42. As a result of the negligence of Defendant, the Plaintiff was injured about Plaintiff's body and extremities, including orbital fractures to the left eye socket, and multiple fractures to the nose. The Plaintiff had to undergo surgery consisting in the insertion of a metal plate into his face. The surgery also attempted to correct deformities in the face. Currently, the Claimant suffers from facial paralysis, decreased vision, light sensitivity, and swollen sinuses. The Claimant is also unable to fully close his eyelids. Additionally, the Plaintiff suffered physical pain and suffering, mental anguish, reasonable fear of developing future physical and medical problems, loss of enjoyment of

life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of Plaintiff's injuries, suffered physical handicap, lost wages, income lost in the past, and his working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

**COUNT III - NEGLIGENCE AGAINST THE UNITED STATES UNDER
THE FEDERAL TORTS CLAIM ACT, 28 U.S.C. §§ 2671-2680**

Plaintiff re-alleges, adopts, and incorporates by reference the allegations in paragraphs one (1) twenty-one (24) as though alleged originally herein.

43. This count is pled only to the extent that the Suits in Admiralty Act and the Public Vessels Act are inapplicable. The Plaintiff, alternatively, pleads this action under the Federal Torts Claim Act, 28 U.S.C. §§ 2671-2680.

44. At all times material, the United States Coast Guard personnel involved in the incident described above, including the United States Coast Guard officers, agents, and employees at Elizabeth City, North Carolina, and the employees involved in the rescue and/or towage operations on November 23, 2014 of the vessel *Kinsail*, were acting within the course and scope of their employment and agency.

45. As a matter of law, once the Coast Guard undertakes a rescue operation, it must act with reasonable care. *Sagan v. U.S.*, 342 F. 3d 493 (6th Cir. 2003). At all times

material, the United States Coast Guard owed the Plaintiff a duty of reasonable care and seamanship under the circumstances.

46. At all times material, the United States Coast Guard failed to exercise reasonable care in carrying out its voluntary rescue of the Plaintiff, the vessel *Kinsail*, and the rest of the vessel's crew. In doing so, the United States Coast Guard's failure to exercise reasonable care proximately caused the Plaintiff's injuries.

47. The United States Coast Guard's failure to exercise reasonable care increased the Plaintiff's risk of physical harm, and in fact, proximately caused Plaintiff's injuries.

48. The United States Coast Guard breached its duty of reasonable care owed to the Plaintiff and putting him in a more dangerous position than if it had done nothing in one or more of the following aspects: (a) improperly adjusting the Coast Guard vessel's spotlight and fixating it on the Plaintiff's face, temporarily blinding him; and/or (b) throwing a heavy line, with a weighted ball at the Plaintiff while temporarily blinding him with a spotlight; and/or (c) throwing a heavy line and weighted ball to the *Kinsail* without taking any precautions to avoid hitting and injuring passengers and crew members on board the *Kinsail*; and/or (d) throwing a heavy line and weighted ball at the Plaintiff's face and/or (e) having inexperienced and/or or poorly trained officer(s) participate in a rescue operation and/or (f) failing to provide adequate and proper training to United States Coast Guard personnel; and/or (g) throwing a heavy line and weighted ball at the Plaintiff with rough seas and inclement weather; and/or (f) failure to provide adequate instruction, and supervision to *Kinsail* crew members and Plaintiff; and/or (g) failure to provide adequate instruction, and supervision to United States Coast guard personnel; and/or (h) failure to provide Plaintiff with adequate safety equipment to

prevent injuries; and/or (i) failure to use alternative methods to undertake a rescue to avoid injuring passengers and crew members on board the *Kinsail*; and/or (j) failure to utilize adequate equipment to conduct rescue operations; and/or (k) failure to have an adequate crew; and/or (l) failure to investigate hazards to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard, or warn Plaintiff of the danger from the hazard; and/or (m) failing to follow United States Coast Guard policies and procedures to ensure safe and proper rescue at sea.

49. Defendant knew of the foregoing conditions causing Plaintiff's accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendant in the exercise of reasonable care should have learned of them and corrected them.

50. As a result of the negligence of Defendant, the Plaintiff was injured about Plaintiff's body and extremities, including orbital fractures to the left eye socket, and multiple fractures to the nose. The Plaintiff had to undergo surgery consisting in the insertion of a metal plate into his face. The surgery also attempted to correct deformities in the face. Currently, the Claimant suffers from facial paralysis, decreased vision, light sensitivity, and swollen sinuses. The Claimant is also unable to fully close his eyelids. Additionally, the Plaintiff suffered physical pain and suffering, mental anguish, reasonable fear of developing future physical and medical problems, loss of enjoyment of life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of Plaintiff's injuries, suffered physical handicap, lost wages, income lost in

the past, and his working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

RESPECTFULLY SUBMITTED,

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