

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**JOHNNY KIRKLAND**

**PLAINTIFF**

**v.**

**CIVIL NO. 1:17-cv135-HSO-JCG**

**HUNTINGTON INGALLS INCORPORATED**

**DEFENDANT**

**FINAL JUDGMENT OF DISMISSAL**

The Court, after a full review and consideration of the record in this case and relevant legal authority, finds that in accord with its Memorandum Opinion and Order entered herewith,

**IT IS, THEREFORE, ORDERED AND ADJUDGED**, that this Civil Action is **DISMISSED**.

**SO ORDERED AND ADJUDGED** this the 11<sup>th</sup> day of September, 2018.

*s/ Halil Suleyman Ozerden*

**HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**No. 18-60710  
Summary Calendar**

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 18, 2019

Lyle W. Cayce  
Clerk

**JOHNNY KIRKLAND,**

**Plaintiff - Appellant**

v.

**HUNTINGTON INGALLS, INCORPORATED,**

**Defendant - Appellee**

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**Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 1:17-CV-135**

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Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

**PER CURIAM:\***

Appellant Johnny Kirkland, proceeding pro se, filed suit seeking recovery for various injuries related to his employment by appellee Huntington Ingalls, Inc. ("Ingalls"), in the 1970s. The district court determined that Kirkland's claims were preempted by the Longshore and Harbor Workers' Compensation Act ("LHWCA"), see 33 U.S.C. §§ 901-950, or otherwise barred by the applicable statutes of limitations. The LHWCA "provides nonseaman

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

maritime workers . . . with no-fault workers' compensation claims (against their employer, § 904(b)) and negligence claims (against the vessel, § 905(b)) for injury and death." *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 818 (2001). Relevant here, the LHWCA "expressly pre-empts all other claims" the employee may have against his employer. *Id.* (citing § 905(a)).

Kirkland first alleges that Ingalls exposed him to asbestos as well as other hazardous workplace conditions. These allegations conditions relate exclusively to Kirkland's work for Ingalls in the field of ship construction and repair. Therefore, they are governed by the LHWCA, and Kirkland may not sue Ingalls for injuries sustained on the job. Kirkland does not dispute that Ingalls is covered by the LHWCA; instead, he argues that his specific claims fall outside the scope of that statute under the dual capacity doctrine. Under that doctrine, a plaintiff may sue an employer otherwise covered by the LHWCA for negligence in its capacity as a vessel owner as if it were a third party. *Levene v. Pintail Enters., Inc.*, 943 F.2d 528, 531 (5th Cir. 1991). But Kirkland does not allege that he was injured by the negligence of one of Ingalls' vessels. Accordingly, the dual capacity doctrine does not apply and these claims are preempted.

Kirkland next claims that Ingalls violated Mississippi's child labor statute by hiring him at the age of 13. See Miss. Code Ann. § 71-1-17 ("No boy or girl under the age of fourteen years shall be employed or permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment within this state."). We need not consider how this relates to LHWCA's preemptive scope, because the claim is barred by Mississippi's statute of limitations. Kirkland alleges that he began working for Ingalls in 1971 and left in 1978. Mississippi has a three-year statute of limitations for any action which, like this one, lacks a prescribed statutory period. Miss. Code Ann. § 15-1-49(1). Whatever the precise date of accrual, the statutory period for

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Kirkland's claim expired long before 2017, when Kirkland filed this lawsuit.  
Kirkland's child-labor claim is therefore barred.

The judgment of the district court is therefore **AFFIRMED**.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 18-60710

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JOHNNY KIRKLAND,

Plaintiff - Appellant

v.

HUNTINGTON INGALLS, INCORPORATED,

Defendant - Appellee

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Appeal from the United States District Court  
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**ON PETITION FOR REHEARING**

Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:

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IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT:

*Cassius S. King*  
UNITED STATES CIRCUIT JUDGE

**United States Court of Appeals**

**FIFTH CIRCUIT  
OFFICE OF THE CLERK**

**LYLE W. CAYCE  
CLERK**

**TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130**

April 23, 2019

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 18-60710     Johnny Kirkland v. Huntington Ingalls, Inc.  
USDC No. 1:17-CV-135

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Dantrell L. Johnson, Deputy Clerk  
504-310-7689

Mrs. Traci Marie Castille  
~~Mr. Johnny Kirkland~~  
Mr. Richard Patrick Salloum