

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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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**.

***United States Court of Appeals***  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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March 18, 2019

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

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

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Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

*Deborah M. Graham*

By: \_\_\_\_\_  
Debbie T. Graham, Deputy Clerk

Enclosure(s)

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