

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>JAMES P. MCGEOGHEGAN,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 96-59-B</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
<b>ET AL.</b>	)	
	)	
<b>Defendants</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>1</sup>**

This matter arises out of an incident in which burn injuries were sustained by James McGeoghegan, a second assistant engineer aboard the CAPE MOHICAN, following a "flareback" that occurred while he attempted to re-ignite the starboard boiler aboard the ship on September 14, 1994. McGeoghegan contends that his injuries resulted from the unseaworthiness of the CAPE MOHICAN and/or the negligence of her crew. This Court has jurisdiction over the plaintiff's claims pursuant to the Suits in Admiralty Act, 46 U.S.C. §§ 741-752 (1975 & Supp. 1996), as incorporated in the Clarification Act, 50 U.S.C. App. § 1291 (1990).

The Court conducted a trial on the matter on February 3, 1997. Live testimony was given by the plaintiff and by a defense witness, Martin Schramm, the chief engineer aboard the CAPE MOHICAN on the date of the incident. In addition, the Court has before it portions of deposition testimony by various witnesses as well as exhibits that were admitted in evidence at the trial. The parties have filed post-trial briefs and proposed findings of fact, as well. After considering the

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c) (1993), the parties have consented to proceed before the United States Magistrate Judge.

testimony, as well as the exhibits admitted in evidence, the Court hereby makes the following findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

### *I. Findings of Fact*

The plaintiff, James P. McGeoghegan, a resident of Corinna, Maine, joined the crew of the CAPE MOHICAN on September 14, 1994, as the second assistant engineer to assist in the ship's preparation for a voyage to Haiti. While standing watch in the engine room on the 4 p.m. to 12 p.m. shift on the date of September 16, 1994, McGeoghegan sustained burns to his face, neck, arms, and hands following a "flareback" that resulted when he attempted to re-ignite the starboard boiler which had gone out due to low air pressure. Because the ship was still in port in Virginia, the boiler was operating under low fire conditions in an automated setting. As second assistant engineer, McGeoghegan was the officer in charge of the engine room at the time, having relieved of duty his superior, Greg Stuart, the first assistant engineer. Present in the engine room at the time of the incident were David Van Natter, an oiler, and Michael Jones and Kenneth Saiya, employees of a business named Standard Calibrations. The latter two were on board that day to work on adjustments to the automated low fire controls to the starboard boiler.

Although he testified that he had re-ignited such boilers "hundreds of times," the evidence reveals that McGeoghegan's own negligence was the sole cause of the flareback and his injuries that resulted that day. The starboard boiler went out shortly after McGeoghegan began his watch that afternoon. As the senior officer in charge of the engine room at the time, McGeoghegan was responsible for supervising others in the room and for ensuring that the boiler properly was re-ignited. McGeoghegan first opened the forced draft fan dampers in order to purge the boiler, a process whereby any remaining gases are blown out of the boiler prior to an attempt at re-igniting

it. There are two methods of verifying whether sufficient air is traveling to the boiler during a purge: one may look at the windbox located above the console to the boiler, or one can open a peephole located on the boiler to feel if air is rushing out. McGeoghegan did neither of these things before attempting to re-ignite the boiler. Instead, he testified that he waited for a green light to come on that would indicate when the purge was complete. The photographs of the boiler admitted in evidence at the trial disclose, however, that no such light exists on the boiler at issue. The boiler does, however, have two peepholes whose covers may be swung open and shut. The covers should be closed when the boiler is being re-lit by means of electronic ignition; they should, however, be kept open when the boiler is being re-lit by means of a manual torch.

A recirculation valve is located on a line that supplies fuel to the boiler. This "recirc" valve reduces fuel pressure to the boiler by allowing fuel to bypass the "header" that distributes fuel to all burners of the boiler and instead circulate back into the fuel line. A fuel pressure gauge located near the recirc valve may be consulted to confirm the fuel pressure to the boiler during the re-igniting process. Although the normal fuel pressure to the boiler is 300 pounds per square inch (p.s.i.), the pressure should be lowered to approximately 100-125 p.s.i. during the re-lighting procedure. Excessive fuel pressure may cause a flareback. So, too, may an improper purge of the boiler. McGeoghegan failed to open the recirc valve so as to lower the fuel pressure to a proper level prior to re-igniting the boiler. As a result, the fuel pressure remained at 300 p.s.i. during the plaintiff's attempt at re-lighting the boiler. In this case, there is no evidence that the fuel pressure gauge or forced draft fan dampers were not functioning properly on the date of the accident.

Just prior to his attempt at re-igniting the boiler, McGeoghegan witnessed Van Natter with a lit torch in hand. Having decided to re-ignite the boiler by the use of electronic ignition,

McGeoghegan ordered Van Natter to extinguish the torch. Van Natter complied. McGeoghegan next started the electronic ignition to the boiler, which supplied a high voltage spark to the boiler. He then opened a manual fuel valve which in turn allowed the flow of fuel to the boiler. When the fuel met the high voltage spark, the boiler was re-ignited. The excessive fuel present in the boiler created an explosion, however, and a flareback occurred when fire escaped the boiler through a peephole that had been left open. Had the peephole been closed, as is proper procedure, the injury to the plaintiff would not have occurred. Although it was his responsibility to verify that the peephole had been closed prior to any attempt at re-igniting the boiler, McGeoghegan failed to do so. His claims that Van Natter blocked his view of the peephole or failed to obey an order to move are unpersuasive; regardless of the veracity of these claims, it certainly was within McGeoghegan's authority, as engineer-in-charge, if not his duty, to ensure that Van Natter moved out of the way.

Sadly, McGeoghegan was burned on his face, neck, arms, and hands as a result of the flareback. Contrary to proper procedure, McGeoghegan was not wearing any safety equipment such as a face shield or apron at the time of the accident. He immediately ran to a nearby sink to soothe his burns in water. Those in the room at the time, Van Natter and the employees of Standard Calibrations, Kenneth Saiya and Michael Jones, later testified to noticing that the boiler remained lit after the flareback occurred. A boiler will remain lit following a flareback if the flareback resulted from excessive fuel pressure. McGeoghegan requested that Van Natter summon to the area Greg Stuart, the first assistant engineer. When Stuart arrived in the engine room, all appeared normal. After McGeoghegan left the ship and was taken to a nearby hospital, Stuart investigated the incident. He interviewed Van Natter, who stated that McGeoghegan had failed to open the recirc valve prior to attempting to re-ignite the boiler. Van Natter stated that the fuel pressure was 300 p.s.i. at the time

McGeoghegan re-lit the boiler. This level is two times greater than the recommended fuel pressure for igniting a boiler. In a statement made and submitted to the Coast Guard on the date of the incident, Van Natter recounted that the flareback occurred due to McGeoghegan's failure to close the peephole and reduce the fuel pressure in the boiler. Although Van Natter made inconsistent statements at a later time regarding the method used in re-lighting the boiler and whether McGeoghegan actually opened the recirc valve prior to re-igniting the boiler, the Court finds that his initial statements made to authorities are more reliable and credible. An examination by Stuart of the draft fan dampers and gauges used in the re-lighting process revealed that all were working properly and that no repairs were necessary. Contrary to McGeoghegan's contention, the Court finds that Jones and Saiya, the employees of Standard Calibrations, were not working on the forced draft fan dampers at the time of the accident and, thus, were not in any way responsible for the accident.

McGeoghegan was treated for his burns for the next ten days at a nearby hospital in Norfolk, Virginia. He subsequently sought treatment by a doctor home in Maine. He was out of work for two months, and he was paid for the period during which he was aboard the CAPE MOHICAN. He received maintenance until he was declared on November 16, 1994, fit for duty again by his doctor. McGeoghegan does not claim any out-of-pocket medical expenses, nor does he require further treatment.

## ***II. Conclusions of Law***

### ***A. Liability***

#### ***1. Unseaworthiness***

In order to prove his claim that the forced draft fan damper for the starboard boiler was malfunctioning and that this malfunction resulted in an inadequate purge and flareback, McGeoghegan must prove that the unseaworthy condition of the dampers was the proximate or direct and substantial cause of his injuries. *Brophy v. Lavigne*, 801 F.2d 521, 524 (1st Cir. 1986) (citations omitted). As noted above, contrary to McGeoghegan's contention, the Court finds that Standard Calibrations' employees were not working on the draft fan dampers that day but, rather, worked on the automated low fire setting for the starboard boiler. And, even if the employees had been working on the dampers or were responsible for the boiler's fire being put out, McGeoghegan alone was responsible for controlling the amount of air and fuel to the boiler at the time of its being re-ignited. A Coast Guard inspection of the premises conducted the day of the accident revealed that there was no mechanical deficiency in the fan dampers or in any of the equipment associated with the boiler itself. Accordingly, McGeoghegan has failed to prove the unseaworthy condition of the forced draft fan dampers, or that such unseaworthiness was the cause of the flareback.

## 2. *Negligence*

The Court also concludes that there was no negligence on the part of the defendants to warrant damages in favor of McGeoghegan. Under the Jones Act, a seaman may maintain an action in negligence "where an employer's failure to exercise reasonable care causes a subsequent injury even where the employer's negligence did not render the ship unseaworthy." *Ferrara v. A. & V. Fishing, Inc.*, 99 F.3d 449, 453 (1st Cir. 1996) (citing *Toucet v. Maritime Overseas Corp.*, 991 F.2d 5, 10 (1st Cir. 1993)). Even though negligence under the Jones Act is more easily proven than under traditional common law standards, a plaintiff still must prove some causation. This McGeoghegan has failed to do. The Court is unpersuaded by the plaintiff's contention that the oiler Van Natter was

somehow negligent for having opened the peephole to the boiler. Not only is this contention speculative at best, even if it were true, McGeoghegan still would be required to account for why he, as the engineer-in-charge, failed to ensure that the peephole was closed before attempting to re-ignite the boiler.

The Court instead concludes that the negligence on the part of McGeoghegan was total and complete, that such negligence was the sole cause of the injuries to him and thus precludes any recovery in this action. *Valm v. Hercules Fish Prod., Inc.*, 701 F.2d 235, 236 (1st Cir. 1983); 2 M. Norris, *The Law of Maritime Personal Injuries* § 313, at 46 (3d ed. 1975). McGeoghegan either knew or should have known of safer alternatives for re-igniting the boiler. He had a duty to supervise Van Natter, ensure that the proper amount of fuel pressure existed, and close the peephole to the boiler prior to attempting to re-ignite it. Moreover, had the plaintiff worn the protective clothing that was available and customary for the situation, his unfortunate injuries could have been reduced or even averted.

### ***B. Maintenance and Cure***

At the trial, the plaintiff withdrew his claim under Count III of the complaint for cure and maintenance. Accordingly, the issue no longer is before the Court.

### ***III. Conclusion***

The Court finds that McGeoghegan's injuries resulted from his own negligence, and not the unseaworthiness of the CAPE MOHICAN or the negligence of any of her crew. Accordingly, it is hereby ORDERED that a judgment shall be entered for the defendants. The claim for maintenance

and cure having been withdrawn by the plaintiff, and his claims for other damages either having been withdrawn or being without merit, the Court concludes that the plaintiff is entitled to recover no damages.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated at Bangor, Maine on March 18, 1997.