

Not Reported in F.Supp.2d, 1999 WL 820454 (E.D.Pa.)
(Cite as: **1999 WL 820454 (E.D.Pa.)**)

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United States District Court, E.D. Pennsylvania.
Ali MAWARI, et al.

v.

INTEROCEAN UGLAND MANAGEMENT CORP.

No. Civ.A. 98-4779.
Oct. 1, 1999.

[Walter Z. Steinman](#), [Walter Z. Steinman](#), Counsellor at Law, Wyncotte, PA, [Dennis M. O'Bryan](#), O'Bryan Baun Cohen, Birmingham, MI, [Christopher D. Kuebler](#), Birmingham, MI, for Ali Mawari, Personal Representative of Faisal Mawari, Plaintiff.

[Andrew H. Quinn](#), Mattioni, Mattioni & Mattioni, Ltd., Phila, PA, [Paul A. Kettunen](#), Mattioni, Ltd, Phila, PA, for Interocean Uglan Management Corporation, Defendant.

MEMORANDUM

[BARTLE](#), J.

*1 This is an action under the Jones Act, 46 U.S.C. § 688, alleging negligence and under general admiralty and maritime law for unseaworthiness, maintenance, cure, and wages. Before the court is defendant's motion for summary judgment. See [Fed.R.Civ.P. 56](#).

The facts are not in dispute. Plaintiff's decedent, Faisal Mawari, was a seaman employed by defendant. On or about June 25, 1997, Mr. Mawari was serving as a member of the engine room crew on the vessel S.S. Northern Lights which was travelling in good weather and calm seas from Anchorage, Alaska to Tacoma, Washington. He was last seen in the afternoon or early evening of June 25, 1997, when he left the lower en-

gine room. He was never seen again. When his absence was noted, a general search of the ship occurred. The United States Coast Guard was also notified. It conducted an air search and rescue mission. No trace of Mr. Mawari was found. His disappearance remains a mystery.

The plaintiff argues that he undoubtedly went overboard due to defects in certain of the ship's safety chains or guardrails. Even assuming these defects existed, the plaintiff's argument is pure speculation. There is no evidence that Mr. Mawari's job took him near the area in question or that he was ever in that area of the ship. While we recognize that under the Jones Act the burden on plaintiff is "very light," he has not offered any proof whatsoever of a nexus between Mr. Mawari's disappearance and any negligence or unseaworthy act by the defendant. *In re Cooper/T. Smith*, 929 F.2d 1073, 1076 (5th Cir.) (internal quotation marks and citation omitted), cert. denied, 502 U.S. 865 (1991); see also *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547, 548-50 (5th Cir.1987).

Recognizing his problems of proof, plaintiff relies on a presumption known as The Pennsylvania Rule, derived from an old Supreme Court decision in *The Pennsylvania*, 86 U.S. (19 Wall.) 125 (1873). The rule as stated by the Supreme Court is:

But when, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Such a rule is necessary to enforce obedience to the mandate of the statute....

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The Pennsylvania, 86 U.S. (19 Wall.) at 136.

The Court of Appeals for the Third Circuit, however, has held that the presumption does not apply in a Jones Act case. The presumption comes into play only when “determining fault of vessels involved in disasters.” *Pierro v. Carnegie-Illinois Steel Corp.*, 186 F.2d 75, 78 (3d Cir.1950); see also *Wilkins v. American Export Isbrandtsen Lines, Inc.*, 446 F.2d 480, 485–86 (2d Cir.1971), cert. denied, 404 U.S. 1018 (1972). No Third Circuit case has been cited to us, and we have found none, applying The Pennsylvania Rule in cases involving the injury, death, or disappearance of a seaman where no collision has occurred. We will not expand the rule to apply here.

*2 We will grant the defendant's motion for summary judgment.

ORDER

AND NOW, this 1st day of October, 1999, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant for summary judgment is GRANTED.

Judgment is entered in favor of defendant Inter-ocean Uglan Management Corporation and against the plaintiff Ali Mawari, Personal Representative of Faisal Mawari.

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Mawari v. Interocean Uglan Management Corp.

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