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Successful Defense of MRSA Claims

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Daniel D. Pipitone, Partner, Chairman – Admiralty Section, Chamberlain Hrdlicka, L.L.P., weighs in on litigation matters involving crewmembers contracting staph infections and, particularly, MRSA (Methicillin Resistant Staphylococcus Aureus) while in service of vessels, including offshore drilling rigs, as a consequence of negligence of their employers and the unseaworthiness of the vessel upon which they serve.

Litigation matters involving crewmembers contracting staph infections and, particularly, MRSA (Methicillin Resistant Staphylococcus Aureus) have recently been initiated and are increasing in number. Essentially, crewmembers are alleging that they have contracted MRSA and other forms of staph infections while in service of vessels, including offshore drilling rigs, as a consequence of negligence of their employers and the unseaworthiness of the vessel upon which they serve. Causes of action are asserted pursuant to the provisions of the Jones Act, as well as General Maritime Laws as they particularly pertain to the concepts of unseaworthiness and maintenance and cure. Because MRSA involves rather serious symptoms and may result in physical impairment, disability, and even death, litigation matters involving such allegations and causes of action must be taken seriously and, therefore, should be defended vigorously and proactively.

While staph infections are a matter of general understanding and the treatment thereof relatively simple and successful, MRSA has proven to require a more substantial treatment plan which has not always proven sufficiently successful so as to obviate residual effects, particularly when immediate treatment is delayed.

The medical community has generally divided MRSA into two categories: hospital-acquired MRSA and community acquired MRSA. The greatest number of incidents are community-acquired, and occur in those involved in labor activities who work and live in close proximity to one another, and who sustain minor cuts and abrasions or other forms of skin opening through which the infection might be transmitted. The labor activities involved in maritime enterprises most assuredly allow for the rather commonplace and minor injuries contemplated, and the working and living arrangements are such allowing for the transmission of MRSA and other forms of staph infection from one crewmember to another. Approximately forty percent (40%) of the population are carriers of MRSA, a rather alarmingly high apportionment. Only the elimination of human contact and perhaps some forms of indirect contact shall avoid transmission. Immunity systems, if maintained, may successfully battle the onset of symptoms in the event of a transmission.

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In recent litigation in which I was recently involved in, a crewmember initiated suit against an offshore drilling rig owner and alleged that he had contracted MRSA as a consequence of his rig service. The crewmember alleged three episodes when he had become symptomatic and, additionally, alleged that his wife and six children contracted MRSA as a consequence of their subsequent exposure to him. The crewmember suffered a physical impairment to his hand as a result of the MRSA episodes and one of the six children, a toddler, incurred in excess of \$300,000 in medical expenses for treatment which nonetheless allowed for some residual impairment. The crewmember based his allegations upon the fact that the offshore drilling rig had several incidents involving MRSA reported prior to his first incident. The crewmember additionally alleged that an inadequate laundering system and the failure to otherwise properly maintain the galley and crew quarters allowed for the transmission of MRSA to him. Finally, the crewmember alleged that his exposure to drilling mud reduced the efficiency of his immune system which thereby limited, if not obviated, his ability to combat MRSA without the receipt of medical care.

In order to properly prepare and present a defense, it was essential to retain a consultant/expert knowledgeable as regards infectious diseases and, particularly, MRSA. Notably, there exist only several consultants/experts nationwide who possess qualifications warranting consideration, although most family, general, and internal medicine physicians likely consider themselves to be sufficiently versed. The knowledge imparted by such an expert allowed for an investigation to occur which was specifically designed to question the existence of or rebut entirely the causation element. Indeed, MRSA is extraordinarily widespread and the sources of or means for transmission are numerous.

As regards the crewmembers involved in the litigation, interviews with other crewmembers indicated that his habits concerning hygiene were substandard. Several crewmembers provided deposition testimony with some rather graphic and even comical stories related as examples. This knowledge suggested a need for the conduct of a surveillance of the crewmember's home which resulted in the availability of photos depicting a substandard condition. Interviews with local residents additionally occurred which resulted in an indirect referral to school administration officials and Child Protective Services representatives, which lead to the availability of evidence to the effect that the crewmember's wife and six children suffered from the substandard conditions as well. Particularly, the children were reported to have had incidents when lice and ringworm were detected, as well as incidents when open sores and wounds were noted. The Child Protective Services representatives were notified and became involved in one instance and records and deposition testimony were secured in this regard. Medical facilities in the area of the crewmember's home were also canvassed concerning treatment for various maladies. More importantly, several incidents involving other forms of staph infections and even one involving MRSE (Methicillin Resistant Staphylococcus Epidermis), all of which preceded the crewmember's first MRSE episode, were obtained.

The crewmember's efforts to establish the causation element were severely hampered by the accumulation of evidence suggesting that he and his family were the source of MRSA. In addition, the causation element involving the crewmember's wife and six children was even impacted to a greater extent, a matter of significance given the damages likely to be awarded particularly to the youngest of the six children. Obvious, too, was the fact that the self-imposed poor hygiene and substandard living conditions of the crewmember and his family made them less desirable to any jury to be impaneled, thereby reducing any level of sympathy. In a somewhat different vein, the evidence accumulated allowed for a recognition of the fact that the crewmember may have been the source for the presence of MRSA on the rig in the first instance, a concept more easily suggested and pursued given the percentage of the population carrying MRSA.

In addition to focusing investigation and discovery efforts upon the crewmember and his family, efforts were pursued to exonerate the crewmember's employer and the owner of the offshore drilling rig. Notwithstanding the fact that subsequent remedial measures had

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occurred after the crewmember's report of his third MRSA incident, deposition testimony and photographic evidence concerning the cleanliness of the offshore drilling rig was obtained. In addition, photographs of the galley and crew quarters depicting the areas in their most favorable manner were procured.

Prior to the commencement of trial, a Motion for Summary Judgment was prepared, the focus of which was directed to the causation element and involved a challenge to the experts retained by the crewmember and his family. The challenges to such experts pertained to their qualifications generally and, more pointedly, their ability to determine a particular source of MRSA. An additional challenge concerning the scientific basis for any perception that the chemicals contained in drilling mud in some manner reduced the immunity system was also presented. Of course, the opinions of experts retained on behalf of the crewmember's employer and owner of the offshore drilling rig were presented, as was the deposition testimony and documents earlier referenced. The Federal District Court ultimately granted the Motion for Summary Judgment and dismissed the claims of the crewmember and his family. The District Court additionally denied a Motion of Reconsideration. While the matter is currently on appeal to the Fifth Circuit, I am hopeful and optimistic that the well-reasoned opinions of the Federal District Court shall be maintained. (Christopher Beck, et al v. Pride Int'l., et al, in the United States District Court for the Southern District of Texas, Galveston Division, District Judge Nancy B. Atlas, CA No. G-07-270.)

•About the Author:

Daniel D. Pipitone began his practice of private law in Corpus Christi and South Texas and, later, in Houston. Over the course of the past 28 years, he has tried many cases to a jury as well as to a court throughout Texas, and in Georgia, Louisiana and Mississippi. Mr. Pipitone's sole focus is upon the litigation and trial of various matters involving laws governing admiralty/maritime, commercial, equine and product liability disputes. He has presented cases to the U.S. Supreme Court, the Texas Supreme Court, and the U.S. Court of Appeals. On the WEB: www.chamberlainlaw.com

