

OCT 09 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES BRYANT; et al.,

Plaintiffs - Appellants,

v.

AMERICAN SEAFOODS COMPANY, a
Delaware corporation doing business in
the State of Washington; et al.,

Defendants - Appellees.

No. 08-35960

D.C. No. 2:07-cv-00740-RSM

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Argued and Submitted October 6, 2009
Seattle, Washington

Before: D.W. NELSON, SILVERMAN and IKUTA, Circuit Judges.

The seamen concede that they did not incur liability or receive balance bills for additional medical expenses until after they informed their medical providers that they were not subject to state workers' compensation limitations. Because the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

seamen did not receive balance bills from their medical providers until after they filed their third amended complaint, the seamen had suffered no injury-in-fact at the time the third amended complaint was filed and therefore lacked standing to bring their complaint.¹ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (plurality opinion); *Didrickson v. United States Dep't of Interior*, 982 F.2d 1332, 1339 (9th Cir. 1992).

Nor do the seamen establish a “genuine threat” of future injury. See *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc). The seamen offer conclusory allegations regarding their risk of future liability, but adduce no evidence that any medical provider was dissatisfied with an employer’s initial payment before the seamen filed the third amended complaint. Likewise, the seamen adduce no evidence that the employers will not pay the additional medical bills. Without any “specific facts,” these “some day” threats are insufficient to confer standing. See *Lujan*, 504 U.S. at 563–64. The seamen’s predictions of contingent liability are similarly speculative, as the seamen fail to adduce evidence establishing concrete, immediate harm caused by any contingent

¹ It follows that the two seamen who did not receive balance bills, and the seaman who received a balance bill with a zero balance, likewise failed to show injury-in-fact and thus lacked standing.

liability. *Cf. Clinton v. City of New York*, 524 U.S. 417, 431 (1998); *Bancard Servs., Inc. v. E*Trade Access, Inc.*, 292 F. Supp. 2d 1235, 1240–41 (D. Or. 2003).

AFFIRMED.