



SEAFARER PROTECTIONS

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MARITIME LAW INTRODUCTION

- Maritime law and mariner protections are hundreds of years old
- Originally, going to sea was for those who were believed to be friendless, uneducated, and in need of the courts' protections
- Mariners' rights today are industrial protections established by Federal law
- Laws which govern those on a tall-ship also govern merchant mariners

MARITIME LAW PROTECTIONS FOR SEAMEN

- General Maritime Law Provides:
 - Right to maintenance and cure
 - Right to a seaworthy vessel
- Jones Act:
 - Right to sue employer for negligence causing personal injury or death

SEAMAN STATUS TEST

- In *Chandris, Inc. v. Latsis*, U.S. Supreme Court provides the elements of establishing a "Jones Act seaman."
 - 30% of work time on vessel or fleet of vessels
 - Vessel(s) must be "in navigation"
 - Must aid in the mission of the vessel, but need not be deck or engineering department
- An employee "cannot walk in and out of seaman status"

NOT SEAMAN

- Passengers
- Students
- Longshore workers/harbor workers
- Independent contractors in port
- Supernumeraries

SPECIAL RULES FOR “SAILING SCHOOL” VESSELS*

- Sailing School Vessel Act of 1982 (46 USC 50504) provides “sailing school students” and “sailing school instructors” -
 - Are not “seaman”
 - Are not entitled to “maintenance and cure”
 - Are not owed the “warranty of seaworthiness”
 - Are not entitled to minimum habitability standards guaranteed to other sailors
- “Sailing School Instructor” does not include the vessel “operators or crewmembers”

* 62 documented “school ships” in the US as of September 2019.

NO FAULT REMEDIES TO INJURED SEAFARERS

- *Injury sustained or illness manifested while seaman subject to the call of the vessel:*
- Maintenance
 - Nominal living stipend to replace accommodations on vessel
 - Often agreed in a collective bargaining agreement (ex: \$22/day)

NO FAULT REMEDIES TO INJURED SEAFARERS

- *Injury sustained or illness manifested while seaman subject to the call of the vessel:*
- Cure:
 - Medical expenses to “maximum cure”
 - Reimbursement for travel
 - Supplies and durable medical equipment

NO FAULT REMEDIES TO INJURED SEAFARERS

- Punitive damages for “willful and wanton failure to provide” maintenance and cure
- Duty to investigate
- “Maximum Cure”
 - Reasonable medical procedures will no longer improve condition
 - Not simply palliative care
 - Can be serial claims

FAULT BASED DAMAGES: NEGLIGENCE

- The Jones Act allows injured sailors to sue their employers for the negligence of:
 - the ship owner,
 - the captain, or
 - fellow members of the crew
- Standard of care is “reasonable under the circumstances,” not safest possible
- Injured can be found responsible for contributory negligence

UNSEAWORTHINESS

- Unseaworthiness cause of action (from General Maritime Law) applies when the vessel or crew is “not fit for intended purposes”
 - There must be causal connection to injury
 - Condition need not be in the knowledge or responsibility of owner
 - But, owner need not provide injury-free ship
- Almost always brought in conjunction with negligence claim

DAMAGES AVAILABLE TO INJURED SEAFARERS

- Compensatory damages for injuries due to negligence or unseaworthiness:
 - Medical expenses, past and future
 - Pain and suffering, past and future
 - Lost earnings, past and future
- Punitive damages for willful and wanton failure to provide maintenance and cure (3x compensatory damages)

IMMEDIATELY AFTER AN INJURY OR ILLNESS

ASK:

- Is the injured employee a seaman?
- Was he or she injured while subject to the call of the vessel?
 - If yes to both, maintenance and cure are due.
- Document: obtain statement from injured employee, take witness statements, master should prepare injury report.

THANK YOU!

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