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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