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Workmen's Compensation at Sea

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WORKMEN'S COMPENSATION AT SEA*

At the present time there are three possible remedies available to seamen who are injured in the course of their employment.[1] In order to maintain any of these actions, the injured party must of course qualify as a seaman. The traditional tests used to determine whether a maritime worker is a seaman are as follows: 1) the vessel must be in navigation, 2) the worker must have a more or less permanent connection with the vessel, and 3) the worker must be aboard the vessel primarily to aid in navigation.[2] These standards have been somewhat modified by Offshore Company v. Robinson.[3] In that case, the court stated that there is an

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* See Headnotes

1. Only injuries at sea will be covered by this paper. State workmen's compensation acts have been excluded because normally under such acts injuries must occur within the territory of the state and generally on land. Nor will this paper be concerned with the Longshoremen's and Harbor Workers' Act. The Longshoremen's Act expressly provides that the injury must be received upon the navigable waters, including any drydock, of the United States and also provides that the Act does not apply to those injuries where state workmen's compensation can be validly applied. 33 U.S.C. §§901-05 (1964). But with the Calbeck case in 1962, the Supreme Court held that in the gray area called the "maritime but local" or "twilight zone" (navigable waters within the state), jurisidiction may overlap so that the employee has the right to elect the remedy he desires, choosing between the applicable state workmen's compensation and the federal Longshoremen's Act. Calbeck v. Travelers Ins. Co., 370 U.S. 114 (1962). Finally, in 1953 Congress extended coverage of the Longshoremen's Act to include the outer continental shelf. 33 U.S.C. § 903 (1964); Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-43 (1964). It applies to injuries to maritime workers received seawards from the historical boundaries of the adjacent states, which means it applies only to injuries sustained more than three geographical miles offshore. Generally, actions brought under these acts will be seeking recovery for injuries occurring within the territorial limits of the United States.

2. Kolius & Vickery, Maritime Employee's Remedies Against Employers, 23 ARK. L. REV. 192, 198 (1969-70).

3. Offshore Company v. Robinson, 266 F.2d 769 (5th Cir. 1959).

evidentiary basis for holding a person to be a seaman if: 1) there is evidence that the worker was assigned permanently to a vessel, or performed a substantial part of his work aboard a vessel, and 2) his duties contributed to the function of the vessel or to the accomplishment of its mission. Therefore, it seems that it does not matter whether the vessel is actually in navigation or if the maritime worker is aboard primarily in aid of navigation so long as he performs a substantial part of his work on the vessel. Futhermore, the definition of "vessel" has been extended to cover almost any floating object that is capable of being moved from one place to another.[4]

The first and by far the oldest remedy is maintenance and cure. A seaman who suffers injury or illness "in the service of his ship" is entitled to maintenance and cure at the expense of the owner. This recovery includes unearned wages for the duration of the voyage (according to some authorities, for the duration of the seaman's contract of employment), medical expenses actually incurred or likely to be incurred in the treatment of the seaman, and living allowance until maximum recovery has been achieved.[5] The injury does not have to be causally related to the seaman's shipboard duties. It is generally held to be sufficient that the seaman suffered the injury or illness during his employment period, without his deliberate misconduct.[6] Neither is the right dependent on any fault or negligence of the shipowner.[7]

Historically, the courts have espoused a very liberal attitude in their interpretations of such seamen's compensation actions and continue to do so. This liberal judicial policy is exemplified by the holding in Calman Steamship Corp. v. Taylor.[8] Courts have referred to seamen over the years as

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4. Kolius & Vickery, 23 ARK. L. REV. 192,200 (1969-70).
5. GILMORE & BLACK, THE LAW OF ADMIRALTY, 262-71 (1957) (hereinafter cited as GILMORE & BLACK).
6. Id., at 257.
7. The Osceola, 189 U.S. 158, 168-70 (1903).
8. Calman Steamship Corp. v. Taylor, 303 U.S. 525, 528 (1938).

ward of admiralty; as such they must be protected. Consequently, the requirement "in the service of the ship" has been interpreted to include leaving the ship for shore leave (fell into a ditch near the dock) and returning to the ship (struck by motor vehicle on roadway leading to ship),[9] injury of seaman while on leave[10] and injury while at a location where entertainment was sought.[11] This right of seamen to maintenance and cure is virtually automatic and is forfeited only by conduct "whose wrongful quality all recognize--insubordination, disobedience to orders, and gross misconduct."[12] The action may be brought in admiralty in federal or state courts or in common law in federal courts, where the $10,000 jurisdictional requirement and diversity of citizenship must exist.[13]

The shipowner's warranty of seaworthiness of the vessel is a remedy separate from, and not limited by, recovery under maintenance and cure. This concept is non-statutory and was only recently developed by American courts in the Osceola case.[14] Essentially, this doctrine is based on the liability-creating promise by the shipowner to the seaman that the ship and its gear are reasonably fit for the voyage in question and that the personnel aboard ship are equal in seamanship and disposition to ordinary seafaring men.[15] It is a concept of liability without fault insofar as negligence plays no part in the doctrine. It is unlimited by conditions contained in the seaman's contract of employment and unlimited by the traditional concepts of negligence, such as contributory negligence, fault, and proximate cause.[16] However, contributory negligence on the part of the seaman will work to mitigate damages.[17]

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9. Aguilar v. Standard Oil Co., 318 U.S. 724 (1943).

10. Koistinen v. American Export Lines, 194 Misc. 942, 83 N.Y.S.2d 297 (1948).

11. Warren v. United States, 340 U.S. 523 (1951).

12. Farrell v. United States, 336 U.S. 511, 516 (1949).

13. BENEDICT, ADMIRALTY § 612, at 201 (6th ed. 1940); NORRIS THE LAW OF SEAMEN, § 555 (1970).

14. The Osceola, 189 U.S. 158 (1903).

15. Keen v. Overseas Tankship Corp., 194 F.2d 515 (1952).

16. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).

17. Baer, At Sea with the U. S. Supreme Court, 38 N.C.L. REV. 307, 316 (1960); Kolius & Vickery, 23 ARK. L. REV. 192, 209 (69-70).

One of the most important pronouncements developing these standards was the Mahnich case,[18] which held that the seaworthiness doctrine would henceforth include "operating negligence," with the result that the seaman would no longer lose his remedy against the owner even though negligence was shown to be the proximate cause of the injury. In that case, theship's officer had provided defective rope to the seaman. Additional examples of cases extending the doctrine's coverage include Peterson (injury caused by block brought aboard by stevedore),[19] Boudoin (vessel held to be unseaworthy because injury caused by aggressive, violent and dangerous crewmember),[20] Gutierrez (warranty extended to include defective cargo containers),[21] and June T (vessel held to be unseaworthy because the size of the crew was insufficient for proper operation.)[22] One exception to the warranty is "transitory unseaworthiness," as introduced in Cookingham (seaman slipped on Jell-O spilled on ship's stairway; held to be foreign substance and not part of ship's gear).[23] Procedurally, such causes of action generally are in admiralty and can only be heard in federal court by a judge without jury unless jointly pleaded with a Jones Act cause of action.

Until 1920, the seaman had no remedy against a shipowner for negligence. With the passage of the Jones Act, the injured seaman was provided with a remedy in a civil action at law with a jury trial, based on the negligence of the employer, or of someone for whom he was responsible.[24] In effect, the Jones Act gives seamen the same rights that injured railroad employees have under the Federal Employers' Liability Act.[25] First of all, the injured seaman must make an election to maintain a Jones Act suit or an action for unseaworthiness in addition to his claim for maintenance and cure, but, according to most authorities he is not

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18. Mahnich v. Southern Steamship Co., 321 U.S. 96 (1944).
19. Peterson v. Alaska Steamship Co., 205 F.2d 478 (9th Cir. 1953), aff'd per curiam 347 U.S. 396 (1954).
20. Boudoin v. Lykes Bros. Steamship Co., 348 U.S. 336 (1955).
21. Gutierrez v. Waterman Steamship Corp., 373 U.S. 206 (1963).
22. June T, Inc. v. King 290 F.2d 404 (5th Cir. 1961).
23. Cookingham v. United States, 184 F.2d 213 (1950).
24. 46 U.S.C. § 688 (1964).
25. F.E.L.A., 45 U.S.C. §§ 51-60 (1964).

entitled to have cumulative damage recoveries under both the Jones Act and the warranty of seaworthiness.[26] The Peterson case[27] holds that these two remedies are alternative. However, the later McAllister case[28] holds that the words "at his election" mean "in addition to" and result in merely adding another remedy to those the seaman had before the Jones Act.[29] Gilmore says that the seaman may plead both claims in the same action and the jury may consider both claims. But if he wants to plead both Jones Act and seaworthiness doctrine causes of action, he must do so in a single proceeding.[30] Any favorable jury verdict will be upheld on appeal if supportable under either claim.[31] Plaintiff must elect whether to sue "in admiralty" without a jury, or "in law" in a state or federal court with or without a jury. Under a joint action, the jury may consider the unseaworthiness issue.

The two conditions precedent to a seamen's compensation action--in the course of employment and injury--are rather easily shown. "In the course of employment" is given a broad interpretation by the courts similar to that of "in service of his ship" under maintenance and cure. Leaving the ship after being discharged has been held to fall within the course of employment.[32] Injury is shown just as in any other action.

Under the Jones Act, the concept of negligence has approached that of strict liability.[33] The plaintiff must establish only the traditional elements of a negligence action--duty, breach of duty, causation, and damage. The shipowner's duty is easily demonstrated since his duty is

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26. GILMORE & BLACK, at 288.
27. Pacific Steamship Co., v. Peterson, 278 U.S. 130 (1928).
28. McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958).
29. Norris, sec. 678 (1970).
30. Note 31 supra, McAllister; 38 N.C.L. Rev. 307, 319 (1960).
31. GILMORE & BLACK, at 289.
32. Braen v. Pfeifer Oil Transportation Co., 361 U.S. 129, 132 (1957).
33. Smith, A Case for a Seagoing Workmen's Compensation Act, 3 VAND. INT'L. 99, 109 (1970).

statutory and automatically applies to seamen working in the course of their employment. It has been repeatedly made clear that seamen are wards of admiralty, and that the owner's duty is a duty of "fostering protection."[34] Breach is also liberally interpreted. Frequently, it is defined by courts as the "negligent" failure to provide a safe place to work or a seaworthy ship. Even the slightest negligence of the part of the employer has been held sufficient.[35] Included within the breach are all negligent acts (both misfeasance and nonfeasance) by masters, officers or fellow crewmen.[36] Into the causation element, a concept like res ipsa loquitur has been introduced. In the Johnson case[37] it was described as a rule granting seamen a "permissible inference from unexplained events." In addition, the requirement of negligence may be satisfied if it is shown that the seaman's injuries were casually related to the violation of a navigation statute.[38] Damages are shown as in any negligence suit and may include compensation for pain and suffering, wages lost, medical expenses and care and impairment of future earning capacity.[39] As is true with the warranty of seaworthiness, contributory negligence of the employee only mitigates damages proportionately.[40] As evidenced by one recent Jones Act case,[41] there seems to be a trend developing to allow punitive damages for wilful and wanton misconduct toward the crew which the owner has ratified.

It is questionable whether the present system is satisfactory to all parties concerned. At least one writer thinks not and has made the following criticisms of the

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34. Cortes v. Baltimore Insular Lines, Inc., 287 U.S. 367 (1932).
35. Ferguson v. Moore-McCormack Lines, Inc., 352 U.S. 521 (1956).
36. GILMORE & BLACK, at 312.
37. Johnson v. United States, 333 U.S. 46 (1948).
38. Kerman v. American Dredging Co., 355 U.S. 426 (1957); 38 N.C.L. REV. 307, 322 (1960).
39. NORRIS, § 697, at 417 (1970).
40. Amman v. American Export Lines, Inc., 326 F.2d 955 (2d Cir. 1964).
41. Petition of Den Norske Amerikalinge A/S, 276 Fed. Supp. 163 (1967).

present system in support of a single comprehensive workmen's compensation act for seamen: seamen are unsatisfactorily protected because under existing remedies the shipowner may be able to limit his liability;[42] seamen are under pressure not to file claims or to testify in behalf of fellow employees and, as a result, ill will and poor employment relations are encouraged; and expensive, time-consuming and complex litigation is usually necessary to recover.[43] On the other hand, the shipowner, when unable to limit his liability, is subject to extremely high tort damages under both the Jones Act and the warranty of seaworthiness. Recoveries are unpredictable. The various courts differ considerably in their interpretations and holdings. These criticisms present a strong argument for legislative change and suggest that an adoption of a seaman's workmen's compensation act should certainly be considered.

42. 46 U.S.C. §§ 181-95 (1964).
43. Smith, 3 VAND. INT'L. 99 (1970).