

***You Can Take the Man Out of the Sea, But Not the Seaman Status
Out of the Crewmember***

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A “seaman” is one who is employed for a substantial period of time to work on a particular vessel (or group of vessels) in duties essential to that vessel’s function while on navigable waters.

Sound simple enough? Well, sometimes this compact laundry list of qualifications can prove rather enigmatic. Just ask lawyers representing vessel owners and injured crewmembers in personal-injury disputes.

You see, if an injured crewmember qualifies as a “seaman,” he/she gets some seriously advantageous legal presumptions with regard to his/her employer’s liability. These make seaman status something worth fighting about in court.

The Jones Act, 36 USC App. § 688, along with certain judge-made law, sets the stage for almost automatic liability on the part of vessel owners when injured Jones Act seamen sue them. The venerable “ward of the admiralty” and “featherweight threshold of liability” principles are the bane of a maritime defense lawyer’s existence; the former rendering plaintiff seamen the judge’s *de facto* orphaned nephew, and the latter holding the vessel owner liable, well, for just about anything that goes wrong, up to letting a feather fall in the wrong place.

Regardless of fault, vessel owners are the legally-mandated, comprehensive health and disability insurers of the seamen in their employ. If a seaman gets hurt, his/her employer picks up the tab for all medical costs plus a daily living allowance until the seaman is back in the saddle. Even if the seaman is hurt while enjoying shore leave a hundred miles from his boat and hurts himself snow skiing.

Advocates of injured seamen would argue this is fair and indeed necessary. Employers who require life-threatening labor should not be allowed to take undue advantage of wavering economies and a culture of Americans whose heritage is in the fishing and shipping industries. Rather, the fruits of such skilled labor should come with a certain price beyond mere remuneration, which includes an incentive to make boats safe.

Vessel owners would reply that circumstances of by-gone decades, in which injured seamen easily could find themselves stranded in faraway ports without means of subsistence, have changed. Today, only in the rarest instance might a mariner be left with less recourse than others injured in the work place. Moreover, there are numerous dangerous occupations which are neither as lucrative as, nor enjoy the extensive benefits

of, the fishing and marine transportation industries. Why should seafarers get special treatment?

But for that special treatment, the plaintiff first has to get to the Jones Act. To do so, he/she has to be a seaman.

Seaman status recently was the subject of a decision demonstrating how tricky the issue can be. And how creative lawyers representing crewmembers can successfully get.

The Ninth Circuit Court of Appeals disagreed with the District of Hawaii's conclusion that a construction worker –injured while on a work barge taking him to a work site – was not a seaman.

Why?

The injured worker also was responsible for keeping an eye on his construction equipment while the barge was en route. That was enough, concluded the Court of Appeals, to make his alleged seaman status a factual question for the jury, and not one the District of Hawaii should have decided as a matter of law.

The barge's function was to move the construction equipment. The equipment had to be secured while on the way. Therefore, the worker, at least arguably, was contributing to the barge's function while it was moving. Furthermore, his accident happened while he was carrying out an order from the barge's master.

Usually, status is quite clear. But often the question is left to the jury, because seaman status, by and large, involves questions of fact. More often, however, disputes settle before they get to trial, leaving the question unanswered.

Ref: Delange v. Dutra Construction Co., et al, 183 F.3d 916 (9th Cir. 1999).