DAVEY JONES
SEAMEN'S REMEDIES FOR RAILROAD LAWYERS

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The following is intended to be a brief summary of the remedies available for the injury or death of a seaman in the course of his employment, for comparison with Jamie Holland's presentation on the Remedies Available to Railroad Workers.

Seaman's Status

To have a seaman's remedy, the employee must be a master or member of the crew of a vessel in navigation. The term "vessel" includes "every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C.§3; *Stewart v. Dutra Const. Co.* A vessel is in navigation when it is preparing for or being used to perform its essential function. A marine worker is a seaman if he (1) has a more or less permanent connection with a vessel in navigation, or does a substantial portion of his work aboard a vessel; and (2) where his work contributes to the function of the vessel, the accomplishment of its overall mission, or to its operational welfare. [1]*McDermott International, Inc., v. Wilander*; [2]*Chandris, Inc., v. Latsis*; [3]*Offshore Co., v. Robinson*.

This definition of a "seaman", entitled to the unique remedies for job injury, is the creature of maritime common law, frequently referred to as the General Maritime Law. It is parallel of the statutory definition for railroad employees covered by the FELA, 45 U.S.C. §§51-60, contained in section 51. The FELA applies to common carriers by railroad while engaged in interstate or foreign commerce. The remedies provided in the statute extend to any railroad employee, any part of whose duties are in the furtherance of interstate or foreign commerce, or who in any way directly affect such commerce.

The remedies afforded to seaman for illness and injury related to their employment are quite different from those available to most other workers, including railroad employees, although they do share the same negligence remedy and have other analogous statutory or common law rights. Like railroad employees covered by the FELA, seamen are not covered by

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[1]498 U.S. 337 (1991)

[2]515 U.S. 347 (1995)

[3]266 F. 2d 769 (5th Cir. 1959)

any worker's compensation statute, state or federal, nor or they encumbered by the limited remedy against their employer which such statutes would provide. The seaman's remedies against his employer for illness or injury include maintenance and cure under general maritime common law, a statutory cause of action for damages resulting from negligence under the [4]Jones Act, along with a concurrent common law cause of action or injury or death resulting from the unseaworthiness of the vessel.

Maintenance and Cure

This is the most basic remedy of a seaman for illness or injury. This obligation is imposed on the employer for any illness or injury occurring while the seaman is in the service of the vessel, whether aboard the vessel or on shore leave. [5]*Warren v. United States*. All that is required for the employer to be liable for maintenance and cure is that the disabling condition manifests itself during the course of the seaman's employment in the service of the vessel. No work relationship or causation is required. See, generally, Force and Norris, *the Law of Seamen* (5th Ed.*)* §§ 26:1 -26:8

Maintenance is a subsistence allowance owed to the seaman when he becomes sick or is injured in the course of his employment. The purpose of maintenance is to provide the seaman, during his disability, with the food and lodging he would have received aboard the vessel if working. [6]*Caulfield v. AC & D Marine, Inc.* Maintenance does not constitute wages in another form and is not subject to reduction by any wages earned by the seaman during the time he is unable to work aboard the vessel. [7]*Vaughan v. Atkinson*. Where not fixed by union collective bargaining agreement (and the circuits are split on whether such agreement is binding on a seaman) the daily rate of maintenance is subject to proof as to the reasonable cost of food and lodging for one person, per day. Maintenance is payable during the period the seaman is unable to return to work aboard vessels, or until he reaches maximum medical improvement, which ever first occurs. *Caulfield v. AC & D Marine*, *Inc., supra; Vaughan v. Atkinson, supra.*

Cure is the employer's obligation to provide medical treatment to the seaman, and runs concurrent with the maintenance obligation. The term "cure" is defined as the reasonable medical expenses necessary for treatment of an injury or illness until the seaman is fit for duty or until maximum cure is reached. The injured seaman has the right to treatment by physicians of his own choice. The employer is obligated to pay the cost of that medical treatment, unless the employer meets its burden of proving that the physicians chosen by the seaman provided unnecessary treatment, or that their fees were higher than those the employer's physicians would have charged for the same services. *Caulfield v. AC & D Marine*, *Inc., supra.* The Second

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[4]46 U.S.C. §30104

[5]340 U.S. 523 (1951)

[6]633 F. 2d 1129 (5th Cir. 1981)

[7]369 U.S. 527 (1962)

Circuit has held that a vessel owner has no right of review over a seaman's choice of a physician. [8]*Rodriquez Alvavez v. Bahama Cruise Line, Inc.* The vessel owner also has a duty to guarantee to payment for recommended medical treatment, before that treatment is administered. [9]*Kezik v. Alaska Sea*; [10]*Sullivan v. Tropical Tuna, Inc.*

When the disabling illness or injury prevents the seaman from completing the voyage or fixed term for which he was employed aboard the vessel, the employer is also obligated to pay unearned wages (base pay but not over time) for the balance of the voyage or the term for which the seaman had signed articles, or until he is fit for duty, which ever occurs first. [11]*Vickers v. Tumey*; [12]*Rofer v. Head & Head, Inc.*

In addition, where the seaman's employer refuses to pay maintenance and cure without a sound basis for such refusal, the seaman is also entitled to recovery damages for such refusal, plus a reasonable attorney's fee. *Vaughan v. Atkinson, supra*. The damages recoverable, in addition to maintenance, include compensatory damages for financial losses resulting from non-payment. [13]*Gaspard v. Taylor Diving & Savage Co., Inc.*

It is now clear that the injured seaman is entitled to seek punitive damages under general maritime law, for his employers willful and wanton disregard of its maintenance and cure obligation. See [14]*Atlantic Sounding Co., Inc., v. Townsend*, affirming the Eleventh Circuit decision in that case and abrogating the Fifth Circuit decision in [15]*Guevara v. Maritime Overseas Corp.*, which had held that punitive damages were not available.

Jones Act Remedy for Negligence

An injured seaman has a cause of action against his employer based upon negligence, for compensatory damages, under the [16]Jones Act. This is a very simple statute which incorporates a very large body of law as follows:

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[8]898 F.2d 312 (2d Cir. 1990)

[9]2004 A.M.C. 2376 (W.D. Wash. 2004)

[10]963 F. Supp. 42 (D. Mass. 1997)

[11]290 F. 2d 426 (5th Cir. 1961)

[12]226 F. 2d 927 (5th Cir. 1955)

[13]649 F. 2d 372 (5th Cir. 1981)

[14] ___ U.S.___, 129 S. Ct. 2561 (2009)

[15]59 F. 3d 1496 (5th Cir. 1995)

[16]46 U.S.C. §30104 (formerly 46 U.S.C. §688)

> "A seaman injured in the course of employment, or if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section."

Thus, by the adoption in full of the [17]Federal Employer's Liability Act, any negligence on the part of the employer are on the part of the seaman's fellow employees which plays any part, however slight, in producing the seaman's injury, is sufficient to fix liability on the employer. [18]*Ferguson v. Moore-McCormack Lines, Inc.;* [19]*Davis v. Hill Engineering, Inc.* The only two requirements which must be satisfied in order maintain a Jones Act suit against the seaman's employer are that there must have been some negligence action on the part the employer or the seaman's fellow employees, and that this act must have contributed in some manner to the seaman's injury.

The Jones Act decisions obviously follow the FELA decisions on this question, including [20]*Rogers v. Missouri Pacific Railroad Company*. In that leading case on this issue, the court stated:

> *"Under this statute the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought.* . . . The statute expressly imposes liability upon the employer to pay damages for injury or death due 'in whole are in part' to its negligence."[21]

In [22]*Ferguson v. Moore-McCormack Lines, Inc.*, the Court applied the same standard to a Jones Act case, repeating the above quote from *Rogers*.

As remedial and welfare legislation, the Supreme Court has repeatedly held that the Jones Act is to be liberally construed in order to accomplish its beneficent purposes. [23]*Cosmopolitan*

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[17]45 U.S.C.§§51-60

[18]352 U.S. 521 (1957)

[19]549 F. 2d 314 (5th Cir. 1977)

[20]352 U.S. 500 (1957)

[21][Id. at 507 emphasis added.]

[22]352 U.S. 521, 523 (1957)

[23]337 U.S. 783 (1949)

Shipping Co. v. McAllister; [24]*Cortes v. Baltimore Insular Lines*. As the court said in [25]*The Arizona v. Anelich*:

> "The legislation was remedial, for the benefit and protection of seamen who are particular the wards of admiralty. Its purpose was to enlarge that protection, not to narrow it. Its provision, like others of the Merchant Marine Act, of which it is a part, are to be liberally construed to attain that in, and are to be interpreted in harmony with the established doctrine of maritime law of which it is an integral part."

In spite of this repeated instruction to liberally construe the statute in favor of the injured seaman, the federal courts of appeal have drifted from holdings that even slight negligence on the part of the employer will support liability, [26]*Boeing Co. v. Shipman*, [27]*Davis v. Hill Engineering, Inc*., overruled on other grounds, 688 F.2d 280 (5th Cir.1982), to a position that the term "even in the slightest" from *Rogers* applied only to the question of causation.

In [28]*Gautreaux v. Scurlock Marine, Inc.*, the court held that the "reasonable man" test applied to the determination of negligence of the employer, as well as the comparative negligence of the injured employee. Even worse, the court held that the "slightest" causation standard also applied to the conduct of the injured seaman. Not all courts have agreed. Compare [29]*Williams v. Long Island RR Co.,* where the court refused to follow *Gautreaux*, holding that the Second Circuit has explicitly stated that it construes the statute, in light of its broad remedial nature, as creating a relaxed standard for negligence as well as causation.

Most recently, lawyers representing seamen and railroad employees were equally concerned about the wording chosen by Justice Souter in his concurring opinion in [30]*Norfolk Southern Railway Co. v. Sorrell*. Vessel owners and railroads have argued that Justice Souter's statements indicated an abandonment of *Rogers* and substituting a common-law proximate cause standard. We were equally happy to see the recent decision in [31]*McBride v. CSX Transportation*, Inc., an insightful decision by the Seventh Circuit which traces the history of the FELA and the

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[24]287 U.S. 367 (1932)

[25]298 U.S. 110 (1936)

[26]411 F.2d 365 (5th Cir.1969)

[27]549 F.2d 314 (5th Cir.1977)

[28]107 F.3d 331 (5th Cir. 1997)

[29]196 F.3d 402 (2nd Cir. 1999)

[30]549 U.S. 158 (2007)

[31]___F.3d ___, 2010 WL 909071 (7th Cir., March 16, 2010)

numerous decisions interpreting *Rogers* to conclude that the proper standard under the FELA, and the Jones Act as well, remains slight causation.

In terms of their negligence remedies, seamen and railroad workers travel in parallel universes, where their causes of action are governed by the same statute and their statutory remedies are significantly influenced by the same case decisions. The conditions under which they are employed are substantially different, and the gear, equipment and devices involved in their employment are significantly different, as is the terminology describing their work activities. Nonetheless, decisions in seamen's cases can substantially affect the rights of railroad employees, and the decisions in FELA cases can substantially affect the rights of seamen. Because seamen have common law remedies which combine with their statutory negligence remedy under the Jones Act, there are differences between the two.

Unseaworthiness

The seaman's cause of action for negligence frequently exists simultaneously with a cause of action for unseaworthiness under the General Maritime Law. The statutory remedy and the common law remedy are all but alternative grounds of recovery for a single cause of action for injuries to or the death of a seaman. [32]*McAllister v. Magnolia Petroleum Co.*; [33]*Texas Menhaden Co., v. Palermo*; [34]*Ceja v. Mike Hooks, Inc.*

Under the General Maritime Law, a vessel owner is under an absolute, nondelegable duty to furnish the seaman with a safe and seaworthy vessel, as well as the appliances, appurtenances, equipment and compartments thereof, which are fit for the use for which they are intended. This includes the absolute and continuing duty to furnish the seaman with a safe place in which to perform his work. [35]*Mahnich v. Southern S.S. Co.*; *McAllister v. Magnolia Petroleum Co., Supra;* [36]*Pope & Talbot v. Hawn*.

This unseaworthiness remedy was once afforded to longshoreman and other harbor workers, while doing work traditionally performed by seamen. [37]*Seas Shipping Co., v. Sieracki*. However, while that decision remains good law as to seamen, this remedy was taken away from

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[32]357 U.S. 221 (1958)

[33]329 F. 2d 579 (5th Cir. 1964)

[34]690 F. 2d 1191 (5th Cir. 1982)

[35]321 U.S. 96 (1944)

[36] 346 U.S. 406 (1953)

[37]328 U.S. 85 (1946)

persons covered by the [38]Longshore and Harbor Workers' Compensation Act, by an amendment adopted in 1972.

The unseaworthiness remedy does not require an accident-free vessel. However, negligence, as a standard of care, has no real connection with unseaworthiness. The duty of the ship owner to maintain a seaworthy vessel is an absolute and non-delegable, and exists regardless of the ship owner's fault. The duty to provide a seaworthy vessel is completely independent of the duty under the Jones Act to exercise reasonable care; therefore, a showing of negligence is not required. See [39]*Phillips v. Western Co. of North America*.

Various cases have described this remedy: "[L]iability based upon unseaworthiness is wholly distinct from liability based upon negligence." [40]*Usner v. Luckenbach Overseas Corp.* "Although the shipowner has an absolute duty to provide a seaworthy vessel, the vessel need not be 'accident free.' " [41]*Simeon v. T. Smith & Son, Inc*. "For a vessel to be found unseaworthy, the injured seaman must prove that the owner has failed to provide a vessel, including her equipment and crew, which is reasonably fit and safe for the purposes for which it is to be used."[42] *Jackson v. OMI Corp*. "[A]n unsafe method of work may also render a vessel unseaworthy." [43]*Phillips v. Western Co. of North America*.

A failure of the duty to supply a vessel reasonably safe in hull, gear, appliances, appurtenances and man-power, and to keep it in that order, results in liability without fault. As the Supreme Court stated in *Seas Shipping Co., v. Sieracki*, *supra*:

> "It is essentially a species of liability without fault, analogist to other well known instances in our law. Derived from and shaped to meet the hazards which performing the services imposes, the liability is neither limited by concepts of negligence nor is it contractual in nature. It is a form of absolute duty owing to all within the range of its humanitarian policy."

In *Mitchell v. Trawler Racer*, 362 U.S. 539 (1960), the Supreme Court expressly held that neither notice nor knowledge have any place in the doctrine of seaworthiness. The ship owner is liable for injury caused by an unseaworthy condition, even though the condition is transitory and even though the vessel owner has no knowledge of that condition. As to the vessel and its

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[38]33 U.S.C. §901, et seq.

[39]953 F.2d 923, 928 (5th Cir.1992)

[40]400 U.S. 494 (1971)

[41]852 F.2d 1421, 1432-33 (5th Cir.1988)

[42]245 F.3d 525, 527 (5th Cir.2001)

[43]953 F.2d 923, 928 (5th Cir.1992)

equipment, the owner's duty does not end with supplying them in good condition; he must keep them in order. *Crumady v. Joachim Fisser*, 358 U.S. 423 (1959).

In a personal injury case, the term seaworthy contemplates that a vessel's hull, gear, appliances, equipment and its men will be fit for their intended purposes. *Marshal v. Ove Skou Rederi A/S*, 378 F. 2d 193 (5th Cir.1967). The defective condition causing injury to the seaman need not be of the type to render the entire vessel unfit for its purpose. A defective condition of the vessel, its gear or any its equipment, causing injury to the seaman, renders the vessel unseaworthy as to the injured party. *Guidry v. Texaco, Inc.*, 430 F. 2d 781 (5th Cir.1970).

The failure of a single piece of the vessel's gear, while it is being used in a normal and foreseeable manner, can render the vessel unseaworthy as to the injured seaman. *Johnson v. Bryant* 671 F. 2d 1276 (11th Cir.1982). The vessel is also rendered unseaworthy if the crew available to do the work being performed is inadequate. *Waldron v. Moore McCormack Lines, Inc.*, 386 U.S. 727 (1967). Likewise, the presents of an unfit crewman who is "not equal in disposition to the men of this calling, renders the vessel unseaworthy." *Clevinger v. Star Fish & Oyster Co.*, 325 F. 2d 397 (5th Cir. 1963); an assault with a deadly weapon by a fellow crewman renders the vessel unseaworthy as a matter of law. *Claiborn v. Star Fish & Oyster Co.*, 578 F. 2d 983 (5th Cir.1978).

Causation

In terms of causation, there are differences in the standards of proof of causation for negligence under the Jones Act, as opposed to unseaworthiness. Jones Act negligence imposes liability if the employer's negligence played any part, even the slightest, in producing the injury. The standard of causation for unseaworthiness is somewhat more demanding, requiring proof that the condition be one of the proximate contributing causes of the injury. The U.S. Fifth Circuit Pattern Jury Instruction describes the differences as follows:

> "Not every injury that follows an accident necessarily results from it. The accident must be the cause of the injury. In determining causation, different rules applied to the Jones Act claim and to the unseaworthiness claim.
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> Under the Jones Act, for both the employer's negligence and the plaintiff's contributory negligence, an injury or damage is considered caused by the act, or failure to act, if the act or omission played any part, no matter how small, in bringing about or actually causing the injury or damage.
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> In an unseaworthiness claim, the plaintiff must show, not merely that the unseaworthy condition was a cause of the injury but that such condition was a proximate cause of it. This means that the plaintiff must show that the act or omission played a substantial part [was a substantial factor] in bringing about or actually causing his injury, and that the injury was either a direct result or a reasonably probable consequence of the act or omission."

See *Johnson v. Offshore Exp., Inc.*, 845 F. 2d 1349 (5th Cir. 1988).

Other than this difference as to the burden of proof as to causation, the General Maritime Law cause of action for unseaworthiness can be considered the rough equivalent of the statutory protection provided to railroad workers under the Locomotive Inspection Act, 49 U.S.C. §§20701, et seq., and the Safety Appliance Act, 49 U.S.C.§§20301, et seq.

Violation of Safety Regulations

Railroad employees have the protection of the strict liability remedy afforded for violations of the Locomotive Inspection Act and the Safety Appliance Act. Seamen have very similar remedies for injury or death resulting from the violation of various safety regulations applying to their employers and the vessels on which they worked. Those regulations include, but are not limited to, the International Navigation Rules, 33 U.S.C.§§1601-1608, 33 C.F.R., 80, et seq.; the U.S. Coast Guard Inland Navigation Rules, 33 U.S.C.§§201-238, and 2071-2073, 33 C.F.R. 84, et seq., and the U.S. Coast Guard Safety Regulations, 46 C.F.R. §§2.01 through 199.64. Those safety regulations cover everything from inspection of vessels, approval of safety equipment, deck surfaces, handrail and stairway requirements to life saving systems.

It is well established under General Maritime Law that the violation of any safety statute or regulation which causes injury or death constitute negligence *per se. Kernan v. American Dredging Co.,* 355 U.S. 426 (1958). As that case demonstrated, it does not matter whether the prevention of the loss occurring was the purpose of the regulation. The court awarded Jones Act damages and expressly held that the type of Coast Guard regulation violated was irrelevant as long as the violation played any part in causing the injury. See also *Neal v. Saga Shipping Co.,* 407 F. 2d 481 (5th Cir. 1969). The violation of a safety statute or regulation which creates a unsafe condition aboard the vessel renders the vessel unseaworthy as a matter of law. *Reyes v. Vantage Steamship Co., Inc.,* 609 F. 2d 140 (5th Cir.1980)

One significant difference in favor of seamen is that the breach of a safety regulation or statute will invoke the "Pennsylvania Rule" creating a presumption of the causation even where it can be proved directly. This rule comes from the U.S. Supreme Court decision in *The Pennsylvania,* 86 U.S. 125 (1873), where the court held in a collision case, that where one party violates a statute or regulation intended to prevent collision, the burden of proof shifts to the offending party to establish that the violation of the regulation or statute "could not have been" a cause of the accident.

The courts have since expanded the *Pennsylvania Rule* to cover all types of safety statutes and regulations and all types of marine casualties. In *Reyes v. Vantage Steamship Co., Inc., supra,* the Fifth Circuit applied the *Pennsylvania Rule* to a Jones Act case involving a death by drowning, where the vessel lacked a line throwing device required by Coast Guard Safety Regulations, which might have been used to shoot a line out to the seaman in the water, even though that was not the purpose of the required device. See also *In Re: Seaboard Shipping Co*., 449 F. 2d 132 (2nd Cir.1971), another case involving the drowning of a seaman; and *Smith v. Mitlof,* 130 F. Supp. 2d 578 (S.D.N.Y. 2001), a passenger case.

In *Continental Grain Co., v. Puerto Rico Marine Shipping Authority,* 972 F. 2d 426(1st

Cir.1992), the court explained that once a plaintiff establishes that the defendant violated applicable safety regulation, the burden then rests upon the defendant "of showing not merely her fault might not have been one of the causes, or that it probably was not, but that it could not have been" one of the causes.[Id at 436] See also, *Pennzoil Producing Co., v. Offshore Exp., Inc.,* 493 F. 2d 1465 (5th Cir.1991).

Damages Recoverable

Seamen and railroad employees share the same body of law on the damages recoverable for injury or death. The damages recoverable by an injured seaman include compensation for loss wages, pain and suffering, mental anguish, past medical expenses not paid as part of cure, future medical expenses, and loss of future earning capacity. Damages are also recoverable for loss of those activities which contribute to enjoyment of life. See, generally, Force and Norris, *The Law of Seamen* (5th Ed.), §30:53 through 30:62.

Damages for loss of society in consortium damages are not recoverable under the Jones Act because early on it was decided that such damages could not be recovered under the F.E.L.A. and the Jones Act cases followed suit. See *Nygard v. Peter Pan Seafoods, Inc.,* 701 F. 2d 77 (9th Cir.1983). In *Miles v. Apex Marine Corp.,* 498 U.S. 19 (1990), the Supreme Court held that since loss of society damages were not provided by the statutory remedy of the Jones Act, such damages could not be awarded under the General Maritime Law cause of action for unseaworthiness.

In the computation of future wage losses, seamen and railroad employees are also bound by the same rules. Wage losses must be calculated net of income tax liability (but not Social Security taxes); adjustments for the growth of earnings in the future may be made; and the result is then to be discounted to present value by the after-tax earning rates of the safest available investments. *Jones & Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523(1983); *Monessen Southwestern Ry. Co. v. Morgan,* 486 U.S. 330(1988).

Those cases imply that these calculation can be based on market rates (including the affects of inflation), or based on real rates of interest and wage increases (factoring out the affects of inflation). However, the Fifth Circuit, and presumably the Eleventh Circuit rule is that inflation should be factored out of any future wage increases and the interest rates used to discount the present value. *Culver v. Slater Boat Co.,* (on rehearing), 722 F. 2d 114 (5th Cir.1983).

Unfortunately, in wrongful death actions, the families of seamen and railway employees are limited in damages to their loss of pecuniary benefits. The archaic interpretation of the F.E.L.A. wrongful death provisions in *Michigan Central R. Co., v. Vreeland,* 227 U.S. 59 (1913) applies equally to wrongful death claims under the Jones Act. In *Miles v. Apex Marine, supra,* the Supreme Court precluded the recovery of loss of society damages by the family of the deceased seaman on a claim based on unseaworthiness under the General Maritime Law because such damages are not allowed under the Jones Act.

The estates of deceased seamen, however, do have a claim available for damages for pre-death pain and suffering, by virtue of the survival provisions of the F.E.L.A. See *Reyes v. Vantage Steamship Co., Inc.,* 609 F. 2d 140 (5th Cir.1980)

Defenses Available

With one significant exception, the defenses available to the employer are significantly the same under the Jones Act and the F.E.L.A. Assumption of risk is not available as a defense under either statute. Any contributory negligence on the part of the seamen would act only to reduce his damages under the law of comparative negligence. Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939); *Empire Seafoods, Inc. v. Anderson*, 398 F. 2d 204 (5th Cir.1968).

For many years, the circuits generally held that, in contrast of the broad duty imposed on the employers/vessel owner to supply a safe work place, the seaman's duty to protect himself was slight. *Brooks v. Great Lakes Dredge & Dock Co.*, 754 F. 2d 536 (5th Cir.1984), and 754 F. 2d 539 (5th Cir.1985). It was generally stated that the seaman's duty is to do the work assigned, not to find the safest method of work. *Ceja v. Mike Hooks, Inc.*, 690 F. 2d 1191 (5th Cir.1982). However, the courts have grown more conservative in recent years and in *Gautreaux v. Scurlock Marine, Inc.*, 107 F. 3d 331 (5th Cir.1999), the Fifth Circuit effectively reversed itself on this point, holding that seamen are bound to the standard of ordinary prudence in the exercise of care for their own safety, and that Jones Act employers are not held to a higher standard of care than that required under ordinary negligence.

The one significant exception to the defenses available is the Limitation of Liability Act, 46 U.S.C.§§30501, et seq., which permits a vessel owner, under limited circumstances, to limit its liability for injury or death (or other losses) to the value of the vessel after the loss. The limitation act applies to Jones Act claims for injury and death. *In Re: East River Towing Co.,* 266 U.S. 355 (1924), the Supreme Court held that a claim under the Jones Act was subject to the limitation act. See also *Ex Parte Green*, 286 U.S. 437 (1937), and *Pickle v. Char Lee Seafood, Inc.*, 174 F. 3d 444 (4th Cir.1999).

The statute, and its effect on injury and death claims, could be the subject of an entire book. Fortunately, the statute places a fairly heavy burden of proving a negative upon the vessel owner, allowing limitation of liability only where the vessel owner can prove that the injury, damage or loss occurred without the privity or knowledge of the owner. Therefore, vessel owners obtain limitation in relatively few cases. Although not a Jones Act case, the decision in complaint of *Hercules Carriers, Inc.,* 566 F. Supp. 962 (M.D. Fla. 1983), affirmed as *Hercules Carriers, Inc., v. Claimant state of Florida*, 768 F. 2d 1558 (11th Cir.1985) illustrates many of the faults which can be attributed to the privity or knowledge of the owner.

Conclusion

To paraphrase Jamie Holland's disclaimer, the purpose of this paper is to present a brief overview of common issues which arise in cases brought under the Jones Act and General Maritime Law. While primarily for the purpose of drawing Federal Employers Liability Act

comparisons, this paper is not intended to be an exhaustive compendium of remedies and defenses applying to seaman injury and death cases. Ten pages or more could readily be spent providing in depth coverage of any single issue raised by a single paragraph of the present paper.