

MARITIME PERSONAL INJURIES

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I. THE MOBILE RIVER EXPLOSION - APRIL 24, 2013

On the calm evening of April 24, 2013, employees of Company A were conducting tank cleaning operations on two 400 foot long tank barges owned by Company B. The barges previously held liquid natural gasoline, a first distillate of crude oil. The barges were filled with vapors and gas freeing was conducted by placing mechanical blowers over open cargo hatches to force the flammable vapors into the atmosphere. Soon after the blowers were started, a hose broke and the fans were turned off. The vapors fell and accumulated around the barges and on the water's surface. Company C had pushed the barges from Louisiana and was made up to the barges on the river side. Just when the blowers had been shut off a push boat owned by Company D came alongside the barges unannounced, into the area where the vapors had accumulated. Flammable vapors were drawn into the engines of Pushboat D, causing a series of explosions.



Longshoreman Smith was employed by Company A which contracted with Barge Company B to gas free the barges. Smith was hit by a fireball while on the deck of one of the barges, he jumped into the water to extinguish the flames but was badly burned. Deckhand Jones works for Company D, he is hit by the fireball near the engine room of Vessel D. Finally, radio repairman Taylor had been hired to repair the radios of Pushboat D, he is hit by flames on the shore soon after disembarking from D.

The relative positions of the three vessels is shown below:



What are the remedies available to the three injured men against the various parties? What law will apply?

II. VT HALTER CRANE ACCIDENT - JUNE 25, 2014

Longshoreman Williams works for a shipyard next to a body of water. Williams is operating a crane with a 300 foot boom that is lifting a 250 ton bow module of a ship, along with another crane. One crane moves faster than the other, causing Williams' crane to tip forward. Massive 18,000 pound counterweights on the rear of Williams' crane are unsecured and they slide forward, striking the cab. Williams is ejected from the cab and is catastrophically injured. What are the remedies available to Williams against the various parties, including the crane manufacturer? What law will apply?





III. Injuries to a Stevedore

A. Claim of a Stevedore Against a Third Party - 933(a)

The Longshore and Harbor Worker Compensation Act is a federal worker's compensation statute which awards benefits to persons injured while helping to build large ships on or near federal navigable waters. See Stewart v. Dutra Constr. Co., 543 U.S. 481, 125 S.Ct. 1118, 1123, 160 L.Ed.2d 932 (2005) (LHWCA "provides scheduled compensation to land-based maritime workers"); Norfolk Shipbuilding & Drydock Corp. v. Garris, 532 U.S. 811, 818, 121 S.Ct. 1927, 150 L.Ed.2d 34 (2001) (LHWCA "provides nonseaman maritime workers ... with no-fault workers' compensation claims"); 33 U.S.C. § 903 ("compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing dismantling, or building a vessel).").

LHWCA provides that a person who receives LHWCA benefits cannot sue his employer for damages related to his on-the-job injury. See 33 U.S.C. § 905(a)

("[t]he liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee"); *id.* at 933(i) ("[t]he right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured ... by the negligence or wrong of any other person or persons in the same employ: Provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer."). As with most worker's compensation statutes, the guarantee of benefits from the employer under LHWCA replaces the possibility of receiving from the employer damages under state law.

Although an injured employee who receives LHWCA benefits cannot sue his employer for damages related to his injury, LHWCA further provides that the employee can still sue a third party that contributed to his injury. 33 U.S.C. § 933 (titled "Compensation for injuries where third persons are liable").

If the third party is a maritime entity or "vessel," as that term is defined by LHWCA, then LHWCA provides that the employee may bring a third party cause of action against the vessel based on negligence. In such a case, "the employer shall not be liable to the vessel for such damages directly or indirectly", 33 U.S.C. 905(b). The general maritime law will apply to this claim. If, on the other hand, the third party defendant is a "non-maritime" entity, state substantive law governs the claims. *Ruth v. A.O. Smith Corp.*, 416 F.Supp. 2d 584 (N.D. Ohio 2006).

B. Injuries to a Stevedore Caused by the Vessel

In 33 USC § 905(b), Congress explicitly reserved to injured longshoremen the common law right to sue under the general maritime law for the negligence of the vessel.

Section 905(b) provides as follows:

In the event of injury to a person covered under this Act caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third-party in accordance with the provisions of Section 933 of this Act [33 USC § 933], and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring

services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this Act.

In Scindia Steam Nav. Co. Lt. v. De Los Santos, 101 S. Ct. 1614 (1981), the United States Supreme Court delineated how courts define "negligence of the vessel," and explicitly noted that "...contract provision, positive law, or custom..." are relevant to the inquiries. The Scindia court also noted three general duties owed by the vessel to the stevedore.

The first, which courts have come to call the "turnover duty," relates to the condition of the ship upon the commencement of stevedoring operations. The second duty, applicable once stevedoring operations have begun, provides that a ship owner must exercise reasonable care to prevent injuries to longshoremen in areas that remain under the "active control of the vessel." The third duty, called the "duty to intervene," concerns the vessel's obligations with regard to cargo operations under the principal control of the independent stevedore.

As the Section 905(b) standard of care is generated partly from general maritime law, the damages acquirable under Section 905(b) include such damages that are normally recoverable under general maritime law. The stevedore's recovery is not diminished by the concurrent negligence of the employer, although the stevedore's own comparative negligence will diminish the recovery. Edmonds v. Compagnie Generale Transatlantique, 99 S.Ct. 2753 (1979). These damages include: medical and rehabilitation expenses, loss in wage earning capacity, loss of family and personal services, pain and suffering, psychological and emotional injuries, loss of enjoyment of life, permanent disability and disfigurement, loss of society to dependents, and prejudgment interest. Wrongful death claims may also be brought by a longshoreman's beneficiaries against a vessel under Section 905(b). Punitive damages are allowed if appropriate.

IV. Seaman's Remedies

A seaman who suffers injury or death in the service of a ship has three important remedies against his employer: (1) maintenance and cure; (2) a cause of action for unseaworthiness of the vessel; and (3) a cause of action for unseaworthiness under the Jones Act, 46 U.S.C. § 688. All three remedies are unique to seamen, no other worker in our society can invoke such powerful relief in the event of an industrial accident.

In Chandris, Inc. v. Latsis, 115 S.Ct. 2172 (1995) the Court set out a specific and succinct test of seamen status:

First, as we emphasized in Wilander, "an employee's duties must contribute to the function of a vessel or to the accomplishment of its mission. Second, ... a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and nature.

115 S.Ct. at 1190.

A. The Jones Act

Congress enacted the Jones Act in 1920. In relevant part, the Jones Act provides:

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply...

46 U.S.C 688

The term vessel has been construed broadly to include every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C. § 3. There are three common attributes of non-vessels; including: 1) the structure is primarily a platform, 2) the structure is moored or secured, and 3) any transportation function is merely incidental to the platform's primary purpose. Daniel v. Ergon, Inc., 892 F. 2d 403, 407 (5th Cir. 1990).

The standard of care in a Jones Act case is "negligence," which is properly defined as follows:

Negligence is the failure to exercise the degree of care which an ordinary prudent person would use under the circumstances in discharging the duty that he owes to those who work on a vessel. The ship owner has a continuing duty to provide a reasonably safe place to work and to use ordinary care to maintain the vessel in a reasonably safe condition.

Clements v. Chotin Transp., Inc., 496 F. Supp. 163, 165 (M.D. 2a. 1980).

This standard of care reflects the basic duty of the ship owner/employer: the duty to provide the seamen with a safe place to work. This duty requires reasonable care under the circumstances. Ober v. Penrod Drilling, 694 F. 2d. 68 (5th Cir. 1982).

The standard of causation in a Jones Act case is unique. The plaintiff may recover if, under the facts, the negligence of the defendant played any part, even the slightest, in producing the injury or death for which damages are sought. Thus, the burden on the plaintiff to prove causation is "very slight," or "feather weight." As a practical matter, this means that a "jury is entitled to make permissible inferences from unexplained events." Martin v. John W. Stone Oil Distr., 819 F. 2d 547, 549 (5th Cir. 1987).

B. Unseaworthiness

In order to state a cause of action for unseaworthiness a plaintiff must allege his injury was caused by a defective condition of the ship, its equipment or appurtenances. Negligence is not a factor and the unseaworthiness remedy is often referred to as strict liability. The warranty extends to the hull of a ship, the ship's cargo handling machinery, hand tools aboard the ship, ropes and tackle, and all kinds of equipment either belonging to the ship or brought aboard by stevedores. It also includes the ship's stores – provisions of food, water, furniture, apparel – on board for the crew's consumption or use, as well as the material in which ships' stores are wrapped. Cargo itself is not within the warranty, but the method of cargo storage and the cargo containers and packaging are covered. Members of the crew of a vessel are also warranted as seaworthy, and there may be liability for crew assaults, brutality, negligent orders, or for utilizing an understaffed or ill-trained crew. A ship may also be unseaworthy if it lacks certain types of equipment or if it conducts operations in overly rough seas. The

issue of whether a vessel is unseaworthy is a question of fact to be decided on a case-by-case basis. Causation requires proximate cause.

C. Maintenance and Cure

The maintenance and cure obligation is ancient. Maintenance is the right of a seaman to food and lodging if he falls ill or becomes injured while in the service of the ship. Cure is the right to necessary medical services. Both extend to the point of maximum recovery.

V. The Limitation of Liability Act – 46 USC § 181, et seq.

The Limitation Act creates a procedure whereby the ship owner's liability for certain claims may be limited to the value of the interest of such owner in such vessel. 46 USC §183. Courts apply a two-step analysis to determine whether a vessel owner is entitled to limit its liability. First, the court determines the act of negligence which caused the casualty. Second, the court determines whether the ship owner had knowledge or privity of these acts. The burden of showing the initial acts of negligence rests with the claimant. Hercules Carriers, Inc. v. Fla. Dept. of Transp. 768 F.2d 1558, 1563-64 (11th Cir. 1985). Once the negligent act is established, the burden is on the ship owner to show his lack of privity or knowledge. Corvett v. Phipps, 317 U.S. 406 (1943). The court hearing a limitation petition for exoneration or limitation will determine whether exoneration will be granted, the value of the various claims and if limitation is granted, how the fund will be distributed.

VI. Conclusion

This is a complex area of the law where the right of recovery and the amount will depend on the applicable law. There are multiple intertwining legal principles with often conflicting fault and damages principles. Be certain of the underlying law that is applicable.