



# SEA TRIALS

by James E. Mercante, Esq.



## ADMIRALTY LAW: What's A "Seaman"?

Admiralty terms are unique. And, while a doctor's writing may be difficult to understand, admiralty's language can be just as tricky to navigate. Here we are in the 21<sup>st</sup> century, and the U.S. Supreme Court recently re-visited the definition of *vessel* in relation to a maritime dispute. Just last month, a reader of the "Sea Trials" column (a licensed captain) sent me an email asking what the term *seaman* means in maritime law.

Believe it or not, the issue of seaman status is frequently litigated. This is because, under maritime law, the types of remedies available and elements of damages recoverable may depend upon whether one is or is not a "seaman." Plaintiffs with bodily injuries like to be cloaked with "seaman" status for expanded remedies against the vessel owner/employer.

A seaman, according to a dictionary definition, is a *person skilled in seamanship or a person whose trade or occupation is assisting in the handling, sailing, and navigating of a ship during a voyage, especially one below the rank of officer*. However, it is not so simple in admiralty parlance. Maritime law relating to liability for death or injury to seamen has evolved from ancient maritime codes. Coupled with U.S. legislation and case law, unique tests of eligibility for seaman status have developed.

### Jones Act Seamen

In admiralty, the "Jones Act" (46 United States Code § 30104) provides a cause of action in negligence

for any seaman injured or killed in the course of his employment. The cause of action is against the seaman's employer and the remedies include *maintenance* (daily food and lodging expense), *cure* (medical expenses), *unearned wages*, and damages resulting from the unseaworthiness of the vessel. Only a Jones Act seaman and/or member of the vessel's crew is entitled to sue for damages under a warranty of seaworthiness - not a guest or a passenger.

Although the term seaman is not defined in the Jones Act statute, a definition has developed over decades of disputes in the courts. Even the United States Supreme Court has often weighed-in on the issue. Seaman status is not dependant upon the activities of the employee at the moment of an accident. Rather, the total circumstances of an individual's employment must be evaluated, including the duration of the worker's connection to a vessel and the nature of the worker's activities. Another inquiry is whether or not the worker is a member of the vessel's crew.

### Seaman Status Test

To assist lower courts in determining seaman status, the U.S. Supreme Court as recent as 1995 (*Chandris, Inc. v. Latsis*) developed a two part test:

1. The worker's duty must contribute to the functioning of the vessel or the accomplishment of its mission; and
2. A seaman must have a connection to a vessel in

navigation (or to an identifiable group of vessels) that is substantial in terms of both its duration and nature.

A good legal definition is contained in the *Marine Affairs Dictionary: Terms, Concepts, Laws, Court Cases and International Conventions and Agreements*, written by Research Professor Niels West of the University of Rhode Island's Department of Marine Affairs:

"Able-bodied seaman (AB): In legal terms, a 'seaman' contributes to the mission of a vessel toward which s/he has an employment relationship."

If a worker becomes ill or injured while performing work aboard a vessel but cannot satisfy the Supreme Court's two-pronged test, he or she will not be deemed a Jones Act seaman and in the alternative, will only be entitled to general maritime law "tort" or other remedies. A tort remedy under the general maritime law is not as liberal as seaman's remedies. For example, for an injury to a Jones Act seaman, a vessel owner/employer is liable even without fault (called "strict liability") for *maintenance, cure and unearned wages*.

### Examples

So, to bring the issue closer to home, is anyone around here a Jones Act seaman? A passenger or guest aboard your vessel is not, because there is neither an employment relationship nor a substantial connection to your vessel. Your guest may be a tanker captain but will

*continued on page 39*

### *continued from page 29*

not even be a seaman on your boat! Is the captain of a vessel a Jones Act seaman? Yes, if the master's employment aboard a vessel or group of vessels (in a fleet) is substantial in terms of duration and nature. Indeed, you can be a "captain" and a "seaman" at the same time. Thus, the captain, mate and deckhands of a commercial fishing vessel could qualify as Jones Act seamen *vis-à-vis* his or her employer.

What about the captain hired to deliver a vessel from one place to another (the delivery captain)? Although the delivery captain is paid for the service and thus "employed" by the vessel owner or even a dealer, he or she unlikely would qualify under the second prong of the Jones Act seaman status test.

A ship's pilot, a professional seafarer, performs traditional duties in navigating vessels but may not qualify as a Jones Act seaman. Courts have ruled inconsistently on this issue. While the pilot's duty certainly contributes to the functioning of the vessel piloted or the accomplishment of its mission (first prong), the pilot goes from ship to ship, navigat-

ing for a defined route and then disembarks, thus may not satisfy the substantial connection test (second prong). There is also the issue as to whether or not a pilot is "employed" by the vessel owner because the Jones Act remedy is only against the seaman's employer.

Other workers assigned aboard vessels to perform their duties can qualify as Jones Act seamen, such as bay constables, marine police, towing captains, charter captains and crew, officers and crew of head boats, casino vessels, etc.

### Conclusion

You may be a "Jones Act seaman" and never know it. However, you may never want to be in a position to invoke that protected status - because that would mean you were injured...or worse.

JAMES E. MERCANTE, admiralty partner with Rubin, Fiorella & Friedman LLP, and Commissioner on the Board of Commissioners of Pilots of the State of New York. E-mail address: jmercante@rubinfiorella.com. The information in this article must not be construed as legal advice and laws may vary from jurisdiction to jurisdiction.