



Mercante's Sea Trials



Are You a "Seaman"?

In admiralty law, whether or not someone is a member of your "crew" has important legal significance and can impact everything from vessel owner liability for personal injury to proper marine insurance coverage.

Recreational and race sailors often invite guests to assist as crew, the same with recreational fishermen. However, if an injury occurs, that person's status aboard your vessel is hugely important. In a recent case, the owner of a sail boat was sued in federal court under U.S. admiralty law after one of his racing crew members was struck and injured by the boom during a jibe. Heather Knight v. Christopher Longaker, 2007 WL 1864870 (2007).

Heather ("plaintiff") was injured during the course of a jibe maneuver which involves the shifting of sails. The starboard side of the vessel touched down into the water and the boom and chute swung around striking plaintiff from behind. Plaintiff was knocked off her feet and came down head first on a metal winch. Christopher (defendant/vessel owner) was at the helm despite having been injured himself earlier in the race in heavy wind conditions.

Special Treatment for Seamen

For centuries, crew members of vessels have been treated liberally by courts to the point where true seamen have become somewhat of a protected class known as "wards" of the admiralty court. This is because seamen historically were called upon to endure long stretches of time away from home while at sea, were particularly vulnerable to the perils of the sea, and were subject to orders and discipline of often cranky old sea captains. While this scenario may not apply to a weekend sailor or a fishing crew on a trip to the Canyon, shrewd admiralty attorneys can and do craft legal arguments in an effort to stretch the fabric of maritime law applicable to traditional seamen beyond the original intent. The special legal treatment afforded to a seaman is enticing to a maritime lawyer because it can result in lucrative monetary awards handed down by a federal judge or jury.

Seaman's Rights and Remedies

A seaman even has different remedies and causes of action that he or she may pursue against a vessel owner. Unlike a guest or passenger whose only cause of action for an on board injury typically is in tort for general maritime "negligence" against the vessel owner, the "seaman" has a "statutory" remedy against his or her "employer" for negligence under the *Jones Act*, a cause of action for *unseaworthiness* of the vessel, and another for *maintenance and cure* under general maritime law. Maintenance and cure

covers such things as food, lodging and medical expenses. For this reason, if you think you may be employing a "seaman" aboard your vessel for sail races or fishing excursions, it's imperative that the vessel owner consider the potential legal ramifications and discuss with your insurance agent the appropriate marine insurance coverage for this special class of mariner.

BOOM!

After the plaintiff was hit by the boom, the unwary boat owner found himself at the helm of a federal lawsuit - - he was sued by his racing guest for Jones Act negligence, unseaworthiness of his vessel and maintenance and cure. Naturally, this all came as a big surprise and a rude awakening to the vessel owner who had only invited plaintiff to lend a hand during races whenever she had the spare time and did not compensate her; the only reward was "bragging rights" if they won a race.

The United States District Courts and even the United States Supreme Court has addressed the issue of who qualifies as a "seaman" hundreds of times. Unbelievably, it is still a hotly contested issue in admiralty law today, long since "ships were made of wood and men were made of iron." It is the courts, not the legislature, that has defined the term *seaman* in legal parlance. In 1991, the United States Supreme Court articulated a requirement that the person have an *employment-related connection to a vessel in navigation*. Then, in 1995, the Supreme Court expanded on that test, laying out two essential elements to the "employment-related connection to a vessel in navigation" requirement.

First, the employee's duties must contribute to the function of the vessel or to the accomplishment of its mission. This is a broad requirement and it has been applied to all types of maritime employees who work at sea in the service of a ship. For example, even a hairdresser aboard a cruise ship has been found to contribute to the accomplishment of a cruise line's mission. *Second*, a person must have a *connection to a vessel in navigation that is substantial in terms of both its 'duration' and its 'nature'*. The purpose of this substantial connection test is to separate out those who only have a transitory or sporadic connection to a vessel. Thus, someone who spends only a small fraction of his or her working time aboard a vessel is generally not considered a member of the vessel's crew regardless of his or her duties. One federal court took a stab at a rule of thumb (later adopted by the U.S. Supreme Court) and suggested that a worker who spends less than 30% of his or her time in the service of a vessel in navigation should not qualify as a seaman.

The federal court in the sail racing injury referred to above determined that plaintiff did not qualify for seaman status. While plaintiff met the first element of the test, i.e., that she contributed to the function of the vessel or to the accomplishment of its mission by trimming lines for the sails and keeping with the ultimate goal of getting the most out of the available wind, it was the second element that tripped her up. This element required that she demonstrate a substantial connection to a vessel in both "duration" and "nature." It was shown that plaintiff had a full-time job on land as a language professor and that her connection to the sailing yacht was not substantial because she assisted as crew only one or two weekends a month. Her connection to the vessel was deemed to be inadequate under the 30% rule of thumb in that she spent less than 30% of her time in the service of a vessel in navigation. The court did not accept plaintiff's argument that her connection to the vessel was substantial because she was a "key, steady official crew member, and virtually all of her sailing was aboard the vessel." Instead, the court determined that plaintiff was a recreational boater whose connection to the yacht was unrelated to her employment ashore and that the boat entered several races that plaintiff missed such that her connection to the vessel was less than significant.

Because plaintiff sailed only on weekends and by her own testimony had missed "bunches of races," she could not satisfy the substantial connection in terms of "duration" test. Accordingly, given the plaintiff's full-time employment on land and purely recreational participation on the boat, as well as the infrequency of her sailing, the court ruled that plaintiff's connection to the vessel was not substantial either in *nature* or in *duration* and, therefore, she was not a "seaman" under maritime law. As a result, the court granted summary judgment in favor of the vessel owner dismissing plaintiff's claims for negligence under the Jones Act, unseaworthiness of the vessel and maintenance and cure under general maritime law.

Conclusion

As this case demonstrates, it is important to know who you are under admiralty law and that is not always who you think (or say) you are!

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