

**LEGAL RIGHTS
OF
THE MARITIME WORKER**

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LEGAL RIGHTS OF A MARITIME WORKER

Why publish a book exploring the legal rights of a maritime or offshore worker? There are many reasons. First of all, much is at stake when tragedies occur offshore. The maritime industry is very big business. Not only is it "big business" for the maritime concerns who invest much in the way of capital, but it is also "big business" for the maritime worker who has invested much in the way of blood, sweat and tears in his or her pursuit of their chosen career offshore.

Thus, when one's career is put in jeopardy as the result of a tragedy, much in time, personal fortunes and careers can be lost. Navigating the admiralty courts for the maritime worker can be as precarious as piloting a vessel through a fog shrouded channel at dawn. Ignorance of the law, in short, can be fatal to one's future. This booklet attempts to provide the maritime worker with a general appreciation of one's legal rights under maritime law.

Secondly, while maritime employers and their insurers are staffed with attorneys who are "on call" to provide advice and counsel at a moment's notice, the maritime worker, roustabout or rigger cannot afford such a luxury. In dealing with their employer, a claims representative or insurance company the maritime worker is always at a distinct disadvantage. On the disadvantaged side in negotiations with such professionals the worker may relinquish important legal rights or forego significant compensation. This outline of the maritime law attempts to "level the playing field," so to speak, in the blue collar worker's day-to-day relationship with his employer and his employer's insurance company.

Within the maritime industry, there are many myths concerning the legal rights of a worker. For example, many believe an injured mariner has only one year from the date of an accident to file a lawsuit. The statute of limitation is three years. Some may believe, or are told, that a maritime worker must use the company's doctor following an on-the-job injury. In truth, an injured mariner

has significant control over the selection of his or her treating physician. The injured worker also has significant input over the location of treatment, hospitalization or rehabilitation.

Insurance adjusters or in house safety officers often tell an injured worker that there is a set amount of compensation benefits payable to an injured worker. Such is not the law! As will be discussed in this booklet, "maintenance" payments (maritime workers' comp) are determined by the mariner's monthly living expenses, not a "prevailing or customary" rate offered by the claims department or insurance company representative.

Finally, this publication is a primary tool to introduce the maritime community to the law Firm of Delise, Amedee & Hall. Our firm has represented the interests of maritime workers throughout the world for over 25 years. We take a unique approach in our representation of maritime workers. We do not advocate litigation. Litigation should be the last resort in resolving a claim between a worker and his or her employer. We hope that the information found within this publication will aid the maritime worker in attempting to resolve their legal differences with their employer.

However, when lines in the sand are drawn and there is a need to hire legal counsel, we would like to be considered the maritime worker's first choice in their selection of legal representation.

Sincerely,

BOBBY J. DELISE

About Delise, Amedee & Hall

Delise, Amedee & Hall is a New Orleans based admiralty law firm whose primary area of practice is the representation of maritime and oilfield workers in all aspects of

maritime or admiralty law. Over the last 25 years the firm has represented blue water merchant seamen, commercial divers, oilfield craftsmen and inland mariners plying their trades in the maritime, from the Gulf of Mexico to the North Sea, from the Pacific Rim to the inland waterways and lakes of the United States.

Delise, Amedee & Hall handles claims for personal injury and death under the Jones Act, Longshore and Harbor Workers' Compensation Act, the Death on the High Seas, state law and the traditional General Maritime Law.

The attorneys of Delise, Amedee & Hall also represent the licensed maritime worker or applicant in licensing certification and administrative matters before the United States Coast Guard and other government administrative agencies. And finally, Delise, Amedee & Hall represents the American mariner in personal legal matters such as estate planning, will drafting, criminal representation and domestic disputes.

The attorneys of Delise, Amedee & Hall will travel anywhere worldwide to serve the interests of their clientele.

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Chapter I

Personal Injury and Wrongful Death Claims

A. Sources of Maritime Law

The first question to be answered in surveying one's legal rights – under what law am I covered? – points the maritime worker to the specific set of laws which define a maritime worker's rights and remedies under admiralty law.

Certain legal rights are granted under laws written by Congress. Other remedies for the maritime worker may be found in the accumulated admiralty court decisions of the United States sitting as admiralty courts or from decisions of the admiralty courts of traditional maritime nations (primarily the United Kingdom). More commonly known as the General Maritime Law, these decisions provide significant and longstanding rights and remedies for the modern mariner.

In the admiralty law the most significant written laws for personal injury law include the Jones Act, the Longshore and Harbor Workers' Compensation Act and the Outer Continental Shelf Lands Act. Each act provides specific rights and remedies for maritime workers; specific coverage is based on the nature and location of the maritime worker's labor.

Remedies for maintenance and cure, as well as claims against vessel owners for damages sustained as the result of an unseaworthy vessel, were established as the result of years of support for mariners from the Admiralty courts worldwide. These protections for the maritime workers are longstanding and are universally recognized in most modern maritime nations.

B. The Jones Act

Perhaps the most widely recognized legislation in the area of maritime personal injury is the *Merchant Marine Act of 1920*, more commonly known as The Jones Act. The Jones Act provides that the employer of the mariner is legally responsible for any damages sustained by an injured worker as a result of the *negligence* of the employer, a co-employee, or an agent of the employer. In brief, if a Jones Act employer, co-employee, or agent acts unreasonably (negligently) in its maritime activity and such action brings about harm to its employee, the maritime employer must compensate the worker for all damages he sustained.

History and Purpose of the Jones Act

The Jones Act, enacted by the United States Congress and found at 46 United States Code § 688, reads as follows:

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 the case of death of any seaman as a result of any such personal injury, the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury...

The Jones Act provides that a negligent maritime employer is responsible to compensate an injured worker for all damages sustained – dollar for dollar. The purpose of the act was to promote the maritime industries by encouraging young workers to leave the comforts of land-based employment to work offshore where they certainly face day-to-day challenges of lonely isolated work places in a hostile environment where high risk labor oftentimes results in loss of life and personal tragedy.

The liberal and generous benefits of the Jones Act provides encouragement and comfort to those workers plying their trades offshore, The comfort comes from knowing that they will be cared for should they sustain harm offshore.

Benefits under the Jones Act - Monetary damages

Under the Jones Act the injured seaman is entitled to be compensated for the following "damages" if his employer is at fault:

- a. **Physical pain and suffering**, both past and future;
- b. **Mental pain and anguish**, includes humiliation, shame and embarrassment, worry and concern, and feelings of economic insecurity caused by disability;
- c. **Physical disability**, impairment of bodily functions, inconvenience, and the effect of seaman's injuries upon the normal pursuits and pleasures of life;
- d. **Income lost** in the past;
- e. **Impairment of earning capacity** or ability in the future, including impairment of normal progress in the seaman's earnings;
- f. **Medical expenses**, including any reasonable and necessary expenses to the seaman for attention and care by physicians, surgeons, nurses or attendants, surgical, hospital and other services and care and supplies to have been incurred in the past or are reasonably certain to be required in future treatment of seaman's alleged injuries, their complications and residuals, if any;
- g. **Found**, i.e., the reasonable value of food and lodging which the seaman would have been afforded while working had he not become disabled;
- h. The reasonable value of any additional "**fringe benefits.**"

Only Seamen are Covered Under the Jones Act

Most maritime workers who ply their specialized maritime skills trades aboard marine vessels in navigation are termed *seamen*. A formal definition of "seaman", though, is important. The Courts have defined a "seaman" as follows:

“a worker who is permanently assigned to a vessel in navigation and contributes to the function or mission of that vessel with their unique maritime skills.”

Maritime workers who consistently face the “perils of the sea” on a day-to-day basis as they ply their specialized maritime trades aboard vessels which navigate the rivers, lakes and oceans are afforded the protection of The Jones Act. Workers with historically maritime trades, as well as those who engage in what could be considered non-maritime skills, are protected under the Jones Act as long as the labor was performed aboard vessel.

Trades Recognized as Maritime under the Jones Act

The admiralty courts also define *seamen* as “all those onboard whose labor contributes to the accomplishment of the main objective in which the vessel is engaged.” Various trades and disciplines are required to keep afloat the modern maritime industry. Thus, there are many different types of workers who are “seaman” under the law.

Obviously, able-bodied seaman (ABS) working on a crew boat or a second mate on a merchant vessel is viewed as a seaman. Commercial fishermen and food processors on commercial fishing vessels or floating processing plants are seamen.

Additionally, it is important to note that other “nontraditional” workers also qualify. For instance, hairdressers or bartenders on cruise ships or chefs on floating casinos are viewed as seaman. Welders or wire line operators on jack-up vessels are covered. Found aboard charter sport dive vessels, dive instructors, dive masters and dive guides are protected by the Jones Act.

Termed “brown water seaman,” oil field workers such as roustabouts on oil rigs or welders on pipe laying vessels also qualify as seaman. Crewmembers on ocean racing yachts and, historically, commercial divers (even those diving from oil platforms) aboard “non traditional vessels” have been afforded a special classification of seamen.

In today's ever changing age of technology, computer software technicians and internet specialists would be viewed as seamen under the law.

In light of the varied trades and disciplines aboard countless types of today's platforms in the maritime industry, it is impossible to provide an all-inclusive list as to who are today's seamen. The admiralty law has consistently adjusted to the changing trades of maritime workers and will do so in the future. In short, if the maritime worker labors on behalf of a vessel, said mariner would fulfill the first requirement of seaman status. Which work platforms qualify as “vessels” is a question reserved for the Admiralty Courts.

Work Platforms as Maritime Vessels under the Jones Act

In today's admiralty there exists a wide variety of work platforms. Most work platforms plying the maritime are viewed by the admiralty courts as “vessels.” Special purpose vessels, such as lay barges or drilling structures which are capable of movement are all “vessels” under admiralty law as long as the watercraft is used, or *capable* of being used, as a means of transportation on water, though it is important to note that the watercraft “need not be in motion to qualify as a vessel”. It is important to understand how the courts analyze this legal inquiry.

Historically, the maritime courts have developed a list of objective features which suggests that a structure's is capable of transportation across the navigable waterway; these vessel characteristics includes such features as:

1. Navigational aids;
2. Raked bow;
3. Lifeboats or other life saving equipment;
4. Bilge pumps;
5. Crew's quarters; and
6. Registration of the work platform as a vessel with the United States Coast Guard.

If a watercraft is capable of or has a means of transportation over the water said structure is a "vessel" for Jones Act purposes.

Attachment with a Vessel in Navigation

The second requirement for a worker to be termed a "seaman" – attachment to a vessel in navigation - requires that the worker establish a significant relationship to a vessel. The required relationship or attachment must be substantial, both in nature and duration.

In imposing this requirement, the law seeks to differentiate between "land based" workers, who only periodically work offshore, and those maritime workers who make their living offshore as a matter of course aboard vessels. Only workers who consistently face the perils of the sea on a day-to-day basis are afforded the protection of the Jones Act. The requirement to be "more or less permanently connected to a vessel" is a very controversial issue for which the admiralty courts have long struggled.

If a maritime worker is consistently employed by an employer aboard vessels under the employer's ownership or control on a day-to-day basis, the connection requirement would be easily fulfilled. If, however, a maritime worker works aboard different vessels for different companies periodically and on an inconsistent basis the

courts may not afford that worker seaman status. Or, if the maritime worker performs what is customarily viewed as land based employment, such as work as a welder, crane operator or office clerk, such a maritime worker would not be viewed as a seaman if he or she did not consistently work aboard an identifiable group of vessels under the common ownership or control of their employer.

Admiralty courts have sought to limit seaman status of maritime workers if the employment aboard vessels is sporadic or transitory and the relationship to a vessel is not substantial. Generally speaking, the courts have seemed to identify as an appropriate rule of thumb 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 under the Jones Act. And while this 30% figure is only a guideline, it is viewed by the court as being instructive.

Determining whether a maritime worker does in fact fulfill the requirements of being permanently attached to vessel can be difficult and confusing. Each case will be determined on a case-by-case basis. Certainly, if a maritime worker consistently works and lives aboard vessels and performs most of his or her services aboard a vessel the likelihood of that maritime worker being termed a seaman is greater than a worker who only briefly or sporadically finds themselves aboard vessels they do not in fact “live a life offshore.”

Seaman Injured Onshore or in Transit to or from a Vessel

A common question posed by a maritime worker is “Am I covered under the Jones Act if my injury occurred while onshore?” Another important question is “Am I covered under the Jones Act if my injury occurred while in transit to or from my job

offshore? “ The answer to both questions is a resounding “ yes”!

Offshore work typically occurs considerable distance from shore requiring that personnel be transported to and from the work site by crew boat or helicopter. With this transportation requirement, often over rough seas and through adverse weather, comes numerous accidents each year causing injury and death. Typically a maritime worker is injured as a result of the "pounding" he suffers on a crew boat in rough seas. Workers are also often injured when boarding or disembarking from vessels or while moving about on the vessel. Less frequent, but much more deadly, are the rare occurrences when a helicopter is lost or crashes, killing or injuring all on board. Finally, maritime workers are occasionally injured in automobile accidents occurring while in route to port.

Whether he is transported by land, air or sea, the maritime employee injured while in transit to or from a work site has a remedy in Admiralty law.

The admiralty courts have consistently found that if a seaman is injured during transit to or from a vessel provisions of the Jones Act apply. Of similar significance admiralty courts recognize Jones Act protections for seamen whose injury occurs onshore as long as the services rendered were in service of the vessel. Maritime workers have also been afforded coverage under the Jones Act while laboring in the office or in the “yard” in preparation for a vessel’s voyage as long as the worker was historically attached to the vessel previously and was providing services to that vessel when injured.

Maritime Negligence Under the Jones Act

The Jones Act requires that the employer act reasonably in its maritime activity and its relationship with its employees. The employer is required to provide its employees a reasonably safe place to work and security in hostile environments and locales. During a voyage the employer is also mandated to afford appropriate medical care and comfort to its crew.

A maritime worker is not, however, entitled to compensation for damages as a matter of right when an injury or death befalls the seaman in service to a vessel. In order to recover damages the seaman must prove that the employer, co-employee or agent of the employer was legally at fault. Under the provisions of the Jones Act an employer is “at fault” if it acted in a *negligent* manner.

A maritime contractor is *negligent* when it acts in a manner a reasonably prudent maritime contractor *would not* act. A maritime contractor is negligent when it failed to act in a manner a reasonably prudent contractor *would* act. The actions and inactions of a maritime contractor will be judged and viewed by the standard, rules, traditions and customs which govern the modern maritime industry.

Obvious standards such as those established by OSHA, the United States Coast Guard and other recognized safety authorities are methods to gauge or review the appropriateness of a company’s actions and procedures.

Examples of negligent conduct involve the failure of a maritime contractor to provide:

1. Warnings of a known or non-obvious hazard;
2. Proper medical care and treatment;
3. A competently trained and professional master and crew;

4. Maintained and serviced equipment, gear, appurtenances aboard a vessel;
5. Measures to void and/or lessen dangers associated with foul weather or heavy seas;
6. Prompt and appropriate assistance to a seaman in peril;
7. Security for seaman abroad or in transit to and from a vessel in hostile or dangerous ports;
8. Warnings and procedures in the handling of toxic or hazardous materials.

The above are only examples of negligence. Any improper or Unreasonable conduct may be defined as negligence.

Causation Under the Jones Act

Not all negligent conduct creates legal responsibility under the Jones Act. In order to recover for damages after establishing negligence, a maritime worker must next prove that the *negligence* was the direct (proximate) *cause* of the injury. It matters not that the company was simply running a shoddy ship or engaging in unsafe practices; in proving the employer was legally “at fault” it must be shown that the improper conduct was the *cause of the accident*. An example may be of assistance in describing this doctrine.

Assume that a company ignores the maintenance of a crane found on one of its vessels and the crane suffers significant hydraulic fluid loss. The failure of the company to repair and maintain the crane is “negligence.” If a worker injures himself working with the crane because he doesn’t pay attention to a moving load and the leaking of hydraulic fluid has absolutely nothing to do with the incident, the company will not be at fault. The improper conduct (negligence) must have caused the accident.

The Legal Defense of Comparative Negligence

As mentioned above, maritime employers have a legal obligation to act in a reasonable manner in their operations offshore. A mariner has a similar obligation to act reasonably. If the mariner fails in his duty he may be denied recovery or his recovery may be reduced to the extent of his action.

The legal defense to a claim of negligence under the Jones Act arises when the company demonstrates that the incident and subsequent injuries were totally or in part caused by the negligence of the maritime worker. If the worker acts unreasonably and such conduct contributes to his or her own injury such conduct is defined as *comparative negligence*.

In such a case, an award for damages will be reduced by the percentage of the worker's negligent conduct. For example, if the maritime worker is 25% responsible for the accident and injuries, and the company is found responsible for 75%, the award for damages will be reduced by 25%.

By way of example, assume that a seaman is damaged to the extent of \$100,000. If the seaman is found 25% at fault and his employer is 75% at fault the extent of the seaman's recovery is \$75,000.

Jones Act – Statute of Limitations – When must a lawsuit be filed?

A suit for recovery of damages for personal injury or death under the Jones Act must commence within three (3) years from the date of the incident in question. If a lawsuit is filed later than three (3) years, the lawsuit would be dismissed.

Where should the lawsuit be filed?

A claim under the Jones Act may be filed in state or federal court. The lawsuit

may be filed where the incident occurred, the principal place of business of the employer or any location the employer does business.

The choice of where the claim is filed is a very significant decision and based on a number of unique questions such as “How long would one wait for a trial date?”, “What will the jury pool be like?”, “Can we expect to get a liberal or conservative judge?” These questions are best answered by an expert in such matters.

C. Claims Against Vessel Owners under the General Maritime Law

In addition to the Jones Act, seamen are protected by the *General Maritime Law*. The General Maritime Law is the historical accumulation of court decisions rendered by the admiralty courts throughout the years. It is Court made law as opposed to law made by Congress.

Under the General Maritime Law, every ship owner or operator owes to every member of the crew employed aboard a vessel the duty of providing a vessel in a *seaworthy condition*. To be a member of the crew it must only be shown that the maritime worker “assists in the function or mission of the vessel.”

If the vessel is found *unseaworthy*, any injury or accident which was sustained as a result of that unseaworthy condition imposes liability on the vessel owner or operator. That is, the vessel owner is responsible to pay the crewmember’s damages. The responsibility exists at any time, even though the owner or operator may have exercised due care under the circumstances, or may have had no knowledge or notice of the unseaworthy condition.

The obligation of the vessel owner to provide a seaworthy vessel is absolute and non-delegable; that is, the vessel owner cannot point the finger at a third party if an

unseaworthy condition was present on the vessel.

As with a Jones Act lawsuit, a suit for recovery damages for personal injury or death under the General Maritime Law must commence within three (3) years that the cause occurred

Unseaworthiness defined

In order to prove an *unseaworthy* condition, the injured maritime worker simply has to establish that the vessel was *not reasonably fit for its intended purpose*.

Liability for an unseaworthy condition does not depend upon negligence, fault or blame. This is different than a negligent act in that, as mentioned earlier, the ship owner need not have knowledge or notice of the unseaworthy condition. Any condition which renders a vessel “unfit for its intended purpose” results in an “unseaworthy vessel.” Below is a list of typical conditions which have rendered vessels unseaworthy:

1. Coast Guard violations appropriate to safety, manning and operations;
2. Operational negligence, that is negligence which renders a vessel unseaworthy because of unsafe practices;
3. Improper method of operation of vessel, her crew, equipment and appurtenances;
4. Insufficient crew to fulfill mission;
5. Carrying cargo which is inappropriate to the vessel capacity;
6. A designate work schedule which is inappropriate or which overtakes the crew’s capability or efficiency;
7. Defective hull, equipment or appliances;
8. Proper use of vessel;

9. Slippery decks, unsafe stairs, obstructions on deck and/or defective tools;
10. Insufficient provisions or supplies for mission;
11. Negligent orders; and
12. Operating the vessel beyond specifications.

Benefits under the General Maritime Law - Monetary damages

Under the General Maritime law the injured crew member is entitled to be compensated for the following "damages" if his vessel owner provides an unseaworthy vessel and the unseaworthy condition causes the seamen "damages":

- a. **Physical pain and suffering**, both past and future;
- b. **Mental pain and anguish**, includes humiliation, shame and embarrassment, worry and concern, and feelings of economic insecurity caused by disability;
- c. **Physical disability**, impairment of bodily functions, inconvenience, and the effect of crewmember's injuries upon the normal pursuits and pleasures of life;
- d. **Income lost** in the past;
- e. **Impairment of earning capacity** or ability in the future, including impairment of normal progress in the crew member's earnings;
- f. **Medical expenses**, including any reasonable and necessary expenses to the crew member for attention and care by physicians, surgeons, nurses or attendants, surgical, hospital and other services and care and supplies to have been incurred in the past or are reasonably certain to be required in future treatment of crew

member's injuries, their complications and residuals, if any;

g. Found, i.e., the reasonable value of food and lodging which the crew member would have been afforded while working had he not become disabled;

h. The reasonable value of any additional "fringe benefits."

Defenses to Claim of Unseaworthiness:

A vessel owner may defend the claims against it by asserting that the damages were the result of the seaman's fault, or that the damages complained of were the result of something other than an unseaworthy condition. A vessel owner may also argue that the vessel was not seaworthy or that the seaman failed to report the unsafe condition when he or she knew, or should have known, the condition posed a hazard.

The admiralty courts are reluctant to excuse a vessel owner when a seaman is faced with an unsafe condition and accepts to continue employment knowing of that condition. Historically, the courts sitting in admiralty recognize that working men and women are often times at the mercy of their employers in the harsh environment of the maritime. The Courts recognize that some maritime contractors refuse to yield to safety and require their workers to labor in unsafe dangerous conditions and with that recognition the Courts are hesitant to excuse much improper and unjustifiable conduct.

D. The Right to Maintenance and Cure:

In addition to a claim for damages, a maritime worker is entitled to the right to the maritime equivalent of worker's compensation more commonly known as the right to "maintenance and cure" is perhaps the most sacred legal right under Admiralty Law. A vessel owner must pay the seaman living and medical expenses to "weather the storm"

of an on-the-job injury.

Maintenance is defined as “financial resources by which the injured seaman can weather the financial storm surrounding an occupational injury offshore.” It also includes the expenses necessary to repatriate the seaman to his or her home. Maintenance includes the amount of money per day sufficient to defray the cost of food, lodging and utility expenses during his period of convalescence.

Additionally, the maritime worker is entitled to the payment of “cure”. The right to cure entitles the seaman to be provided proper medical care and treatment. If the medical health care provider retained by the company is not acceptable to the worker, the seaman may select an appropriate doctor of his or her choosing. The employer must further provide for the seaman’s transportation to and from the seaman’s home to the doctor or treatment facility while recuperating. This is gauged on a dollar per mile basis.

Duration of Maintenance and Cure Benefits

The right to maintenance and cure exists as long as the maritime worker medically requires medical care and treatment, and as long as he or she has not reached a point which is known as *maximum medical improvement*.

Maximum medical improvement is defined as the end of the convalescence of the injured seaman. At that point in time wherein the worker expects no further improvement medically, the worker has reached maximum cure and no other benefits are due. Until the worker reaches that point, he or she is entitled to an allowance for subsistence and medical payments.

Consequences of the Company's Failure to Pay Maintenance and Cure

If the employer fails to provide maintenance and cure, and such failure or withholding is done arbitrarily, capriciously or in a callous disregard of the claim, the injured seaman is entitled to the payment of attorney's fees incurred for the prosecution of legal proceedings to have a court of law order the company to make such payments. Additionally, the employer is responsible for any damages associated with such action.

How much should a seaman receive in benefits for Maintenance?

The question often asked is "How much is the maritime worker entitled to for maintenance?" Under the law the maritime employer must pay for the worker's reasonable living expenses during the seaman's period of convalescence, living expenses to include rent, home mortgage and utilities.

The amount of maintenance the maritime worker is due, should there be a dispute with the company, shall be determined by the Court based on the evidence presented. If, however, there is an agreement by a collective bargaining agreement with one's union, the prevailing amount according to that contract will be ordered.

What is of paramount importance for the maritime is that there is not one set amount which the employer is obliged to pay. And, while Courts have ruled that the amount may range from anywhere between \$8 and \$35 per day, the amount due the maritime worker is solely determined by that individual worker's average monthly expenses incurred. The amount due an employee is not based upon some arbitrary dollar figure chosen by the company, its insurer or claims representative.

The worker is, however, only entitled to 'hard costs' for living expenses. For example, the maritime worker is not entitled reimbursement of expenses for room or board if the maritime

worker is residing at the home of their parent or relative, rent free. If the worker pays rent to a relative for living expenses reimbursement is allowed.

Medical Expenses, Choice of Physician and Location of Treatment

No greater legal right exists for the maritime worker than the right to of reasonable medical treatment when an injury occurs in the service of a vessel. The right to be afforded medical treatment is a sacred right and the Courts look very unkindly toward a maritime employer who fails to provide said medical treatment or who fails to immediately evacuate an injured maritime worker for medical treatment from a vessel to shore where said treatment is required.

The maritime worker has significant input in the choice of his/her medical provider. The worker also has the right to a second opinion. Additionally, the seaman has the right to be treated at a facility close to his/her residence.

For example, a worker residing in Houma, Hattiesburg, Lafayette, or Baton Rouge is not required to accept medical treatment in New Orleans. Additionally, out-of-state employees are not required to commute to their employer's state if treatment is available in their home town.

Lastly, if the worker must travel significant distance to a medical provider or medical facility, or must stay at a hotel while receives treatment, The worker is entitled to be reimbursed all reasonable travel and lodging expenses.

What should be remembered is that these rights are the most important rights afforded the maritime worker and the Courts will strongly enforce those rights if prosecuted.

Claims for Unearned Wages:

Any maritime worker who for whatever reason falls ill or becomes injured while in the service of the vessel is also entitled to any unearned wages for which he or she would have been entitled through the end of the vessel's voyage. It is the general rule under maritime law that unearned wages are due to the end of the mutually agreed end of employment or until the seaman becomes fit for duty.

Defenses to claim for Maintenance and Cure

If a worker becomes injured in the service of the vessel the vessel owner owes maintenance and cure unless the worker was injured due to his willful misconduct.

Willful misconduct includes willful disobeying a lawful order, inebriation (drunkedness), drug abuse and aggressive behavior or fighting. Maintenance and cure has also been denied for contraction of venereal disease and AIDS/HIV infection.

An employer may also deny maintenance and cure to seamen who lied on a annual pre employment physical or an application for employment about a health condition or previous injury or accident.

E. Wrongful Death of a Maritime Worker

In the event of the death of a maritime worker, the worker's family may be afforded protection under one of a number of acts or statutes, depending upon his "status" as well as the location of the death-causing incident.

The Jones Act provides a remedy for seamen who are fatally injured during the course of their employment. This remedy is available only to the personal representative of a seaman and the action can be brought only against the seaman's employer. Because the Jones Act is the exclusive remedy available to the family of a seaman killed by his employer's negligence, state statutes regarding wrongful death

cannot be utilized. If, however, the seaman's death is caused by the negligence of someone, in whole or in part, other than the employer, the maritime worker's representative can bring an action under the General Maritime Law which, in most cases, is similar to state wrongful death statutes.

Additionally, seamen killed as a result of the unseaworthiness of a vessel owned by his employer or a third party, have an action under the General Maritime Law. Finally, a seaman (or anyone else) killed outside the territorial waters (beyond three nautical miles) has an action under the Death on the High Seas Act, which can be found at 46 United States Code, Section 72.

The family of a seaman killed as a result of negligence or the unseaworthiness of a vessel is entitled to recover funeral expenses, loss of financial support, value of lost services, loss of probable inheritance for children and loss of nurture, care, guidance, support and training. Additionally, the seaman's estate can recover for pre-death conscious pain and suffering.

If the incident occurred aboard a fixed platform, either in state territorial waters or on the Federal Outer Continental Shelf waters, the law of the adjacent state would apply. Therefore, if a maritime worker were killed off the coast of Louisiana while aboard a fixed platform, the wrongful death laws of Louisiana would apply. On the other hand, should the incident occur on Federal waters, beyond three miles of the shoreline, the Death on the High Seas Act (DOSHA) would apply.

If the accident occurs within state territorial waters, either state law or a remedy created by the General Maritime Law would apply.

Suffice it to say, wrongful death in a maritime setting is perhaps the most

complex, contradictory, and overlapping area of admiralty litigation. Depending on the act sued under, certain remedies will or will not be available. For example, under the Jones Act, a wife's claim for "loss of society" is not available. Conversely, if the death occurs as a result of an incident occurring on a fixed platform in Louisiana waters or in federal waters off the Coast of Louisiana, the State of Louisiana's wrongful death statute would provide the "loss of society" remedy. Because of the complexities associated with wrongful death litigation in a maritime setting, it is strongly advised that the family of a deceased maritime worker contact legal counsel experienced in admiralty litigation.

F. Remedies for Maritime Workers who are not Seamen

Maritime workers who are not so closely attached to vessels are still treated favorably by the law when they sustain damages as a result of occupational incidents. Unlike seamen, however, their claims against their employers are primarily restricted to compensation in the form of weekly allowances to defer living expenses while they recuperate. Scheduled benefits are available should the injuries result in permanent disability or death.

While the worker does not receive damages for loss of earnings or pain and suffering the trade-off is that the worker need not prove that his or her employer was at fault in causing the injury. Much like maintenance and cure benefits, the right to compensation is strongly protected by the courts.

It is also significant to note that an injured maritime worker may have a claim for damages against a third-party – a non-employer – upon a showing that the injuries sustained are as a result of an entity other than one's direct employer. These actions,

known as “third party claims, will result in a claim for damages against the responsible party.

Longshore and Harbor Worker's Compensation Act

In 1927 the United State Congress passed the Longshore and Harbor Worker's Compensation Act. Found at 33 United States Codes 901-950, the Longshore Act provides that maritime workers who are primarily “engaged in the longshoring operations, and any harbor worker including ship repairman, ship builder and ship builder” are provided legal protections for on-the-job injuries resulting in permanent or temporary disability, or death. Generally speaking, a worker whose job is to load, unload, service, repair or build a vessel found on or near the navigable waters of the United States, or open seas is provided compensation benefits under this Act for disability or death while completing such duties.

Originally enacted to protect only harbor workers or longshoremen, the protections of the Act have been extended to protect maritime workers who work on or near vessels in the maritime setting, or near the navigable waters of the United States, yet who do not fulfill the requirement necessary to be defined as “a master or member of a crew of any vessel.” Thus, under the admiralty law a maritime worker employed within this environment will be defined a “longshoreman”.

Benefits under the Longshore Act – Disability and Medical Expenses

The benefits under this act are limited to compensation established by the law and set as a percentage of the worker’s average weekly wage. Compensation due the worker is set at 66 2/3% of the worker’s previous average weekly wage, to a maximum of \$1,047 and a minimum of \$261.79 per week.

The compensation due the longshoreman is for the total period of disability. The disability is permanent compensation is paid for a set number of weeks, the exact time period based on the nature of the illness and whether the permanent disability is total or partial. The United States Department of Labor, Employment Standards Administration, Division of Longshore and Harbor Workers' Compensation, publishes the schedule of benefits and may be found on the Department of Labor website (www.dol.gov).

In addition to the compensation benefits the Longshore Act also provides that the worker is entitled to all costs for medical care and treatment as well as travel expenses to and from such treatment. Additionally, the worker is entitled to select the doctor of his or her choosing as long as the appropriate procedures are followed.

Benefits under the Longshore Act – Death Benefits

The Longshore and Harbor Workers' Compensation Act, Section 909, sets forth the beneficiaries and schedule of benefits recoverable under the Longshore Act when a maritime worker's injuries result in death. The Longshore Act awards compensation to the spouse and children of the decedent, or, if no spouse or children, brothers and/or sisters if they are "dependents." Generally, Longshore Act death benefits provide for payments to the spouse of 50% of the average wage of the decedent, so long as the spouse does not remarry. Compensation due amounts to children 66 and 2/3 percent of the decedent's average, weekly salary. Unless the child is disabled, or qualifies as a student, he or she will lose benefits at age 18.

Filing a Claim under the Longshore Act

In order to file a claim against ones employer the longshoreman must file the

claim within one year of the incident through the United States Department of Labor. Notice of the claim should be made to the employer within 30 days of the incident.

Should the employer dispute the claim an administrator with the Department of Labor will hear the case. Provisions for attorney's fees are part of the Act; an assessment of attorneys fees will be determined by the administrator

Longshoreman's Claims against a Vessel Owner – Claim under 905(b)

In addition to weekly compensation a longshoreman may recover damages -dollar for dollar loss, not simply weekly benefits-against a vessel owner under the Longshore Act. This claim, known as a claim under 905(b), provides that a vessel owner is responsible for a longshoreman's damages if the vessel owner's negligence caused the worker's damages.

A claim under 905(b) must be filed as an original lawsuit in federal court and will be heard by a judge sitting in judgment. All damages such as pain and suffering, loss of past earning and future loss of earning capacity, as well of past and future medical care, treatment and rehabilitation are due the longshoreman upon proof of the loss and proof of negligence.

Outer Continental Shelf Lands Act (OCSLA)

Yet another area of protection under Federal Law involves the provisions found in the Outer Continental Shelf Lands Act. This Act provides protection for maritime workers, other than Jones Act seamen or longshoremen, injured while working aboard a permanent platform or structure on the Outer Continental Shelf. The importance of this law to the maritime worker comes into play when the worker is injured while working

directly on a platform.

Benefits under OCSLA

The Act provides that the injured worker shall receive benefits identical to those found under the LHWCA, i.e., two-thirds of his average weekly wage for the period of his disability, up to a statutory maximum of approximately \$1047 and a minimum of \$261. 79 additionally, the worker is entitled to the payment of all medical expenses associated with the injury.

Third party actions for Workers Covered under OCSLA

If the worker sustains an injury, disability or death as a result of a defective condition of the platform or from negligent conduct of the platform owner, and the maritime worker was working for someone other than the owner of the platform, a claim for damages is available. For instance, if the worker is employed for a service company, the worker may have a right to sue and recover from the owner of that platform. This is known as a “third party action” under the Outer Continental Shelf Lands Act.

In that case, the damages due would include all of the damages loss, such as pain and suffering, loss of past earning and future loss of earning capacity, as well of past and future medical care, treatment and rehabilitation are due the platform worker upon proof of the loss.

Chapter II

Wrongful Termination Under Admiralty Law

A. On the Job Safety and Wrongful Termination

It has often been said that life is nothing but a series of choices. “Should I marry this person?”, “Will my future be brighter by staying in school?” “Have I saved enough

money to afford to buy this house?”

Maritime workers are similarly faced with choices when dealing with on-the-job safety. “Should I allow this vessel to leave port without the required number of licensed workers under U.S. Coast Guard requirements for this vessel? Should I continue supervising a job when I know it has been planned recklessly by the office in a manner which exposes my workers under me to unsafe working conditions?”

Along with making these choices comes fear and apprehension for standing up for on the job safety... “If I report illegal conduct to the United States Coast Guard, will my company be within its legal rights to fire or discipline me?” “Can I legally refuse to perform an action which I know to be against the law and good sense yet still keep my job?”

The General Rule

Generally speaking, a maritime employer (absent a contractual relationship to the contrary or any action violative of civil rights laws) may discharge a maritime worker “at will.” That is, a maritime worker may be discharged under the law for “good cause” or “no cause,” or even for a cause which may be viewed as “morally reprehensible.” In plain terms, for the most part, a maritime worker may also walk off the job without notice or reason, leaving the employer short handed and without legal recourse.

There are, however, very important exceptions to the general proposition that an employer is free to fire or discipline an employee at its pleasure.

The Whistle Blower Statute

Under Federal Law, a maritime worker is protected from retaliatory actions – either discharge or demotion – by an employer in a response to the worker’s reporting, or imminent reporting, to the United States Coast Guard what the worker believes is a violation of a U.S. Coast Guard regulation or any other statutory or regulatory violation (local, state or federal) regulating the maritime industry. The purpose of the law, commonly known as “Whistle Blower Law” is “to promote compliance with maritime statutes and regulations by encouraging seaman...to make reports to the Coast Guard without fear of termination or other reprisals.”

Found at 46 U.S.C. §2114, the statute reads:

Protection of a seaman against discrimination:

- a) an owner, charterer, managing operator, agent, master or individual in charge of a vessel, may not discharge or in any manner discriminate against the seaman because the seaman, in good faith, has reported or is about to report to the Coast Guard that the seaman believes that a violation of this Subtitle, or a regulation issued under this Subtitle has occurred.

Companies which ignore the protection of this statute and fire or demote a worker for such action may be held liable for severe and costly penalties. The statute further provides:

- b) the Federal District court may order an appropriate relief including –
 - (1) the restraining orders of this section; and
 - (2) reinstatement to the seaman's former position with back pay.

Within the maritime industry, this federal statute provides American maritime workers with significant protection and legal rights for the reporting of violations to the United States Coast.

“Blacklisting” of Maritime Workers

A common, but troubling, practice of “blacklisting” of workers exists within the maritime industry. Under this practice company managers or personnel department heads share information with other contractors within the industry “warning” of workers who have previously filed personal injury claims or have shown a tendency to be “troublemakers” when it comes to safety.

Companies may also, by custom, fire or discipline workers for filing personal injury claims.

The “blacklisting” of employees may expose the maritime contractors to damages for tortious interference of contractual rights of a maritime worker. Under this legal doctrine a maritime worker may have the right to file suit against an employer who is engaged in retaliatory conduct to penalize an employer for protecting his rights under law.

Chapter III.

Special Legal Issues

A. Doctors and proper medical care

The most important right of the maritime worker is the right to obtain proper medical care and treatment. By law, no matter whose fault the accident occurred, a maritime worker is entitled to have the proper medical care by physicians of his choice, should the doctors provided by the company not be of his liking. By law, the expenses of such treatment are the responsibility of the maritime worker's employer. As mentioned earlier, in addition to the expenses of the physician's services or medical facility expenses, the company must reimburse the injured maritime worker for the cost of transportation and lodging to and from the physician or medical facility.

It is the duty of the company to investigate a claim for maintenance and cure in good faith and with reasonable diligence, and then to pay for said maintenance and cure to the seaman if the results of the investigation justify such payments. If, however, the company withholds payment arbitrarily or capriciously, or in callous disregard of the claim, then it shall be responsible for paying damages and attorney's fees for the pursuing of such claim in court.

As a practical matter, in order to maximize the dollar figure on any settlement of your claim, documentation of the injuries is of extreme importance. Without proper documentation, proof of such claims at a later time will be difficult, if not impossible. Only the proper proof or evidence of such disabilities will be recognized in mediation, settlement conferences, or in court. Proper documentation can only be achieved with proper preparation.

From the outset of the injury, it is strongly advised that the injured maritime

worker maintain a daily log or diary, including in such log one daily symptoms, improvements, disabilities, and mental impressions. These entries are important in preparing oneself for future doctor appointments and for summarizing the substance of the claim for the insurance adjuster or company attorney.

Additionally, and perhaps more importantly, these entries are important in communicating to your treating physician all the symptoms which you may suffer. Seemingly unimportant symptoms may strike a chord in the doctor's mind to a very important underlying serious problem. Include in the medical log all findings of tests performed as well as dates and reviews of doctor's appointments with all treating and consulting physicians.

You have a legal right to obtain test results and medical reports from any treating or consulting physician. It is very important to secure the possession of these documents.

Physician office visits and testing

Prior to your visiting a doctor, it is highly recommended that you review your medical log to refresh your memory as to the symptoms suffered and improvement experienced prior to the visit. On the evening prior to your doctor visit, discuss with your wife, girlfriend, family members or associates their observations of problems, both physical and mental, which have surfaced since the accident.

It is important to review and practice your discussion with the doctor before walking in the examining room. Your recollection of the visit and of the exam may be completely different than that which was dictated into the physician's report to the company and its insurance company. In his defense, the physician would have seen

hundreds of patients when his recollection of the visit comes into play. Someone reviewing your claim, in all probability, will never personally contact the physician relative to the problem. Strict reliance is on the physician's medical report and his observations included therein. It is up to you to properly communicate your problems so leave no stone unturned!

Should you not be happy with the medical care and treatment afforded you by the company physician, you are entitled under the law to have a second opinion. Included in that right is the right to be transported to any facility within the reasonable proximity of your home for further care and treatment. Obtaining treatment at medical facilities of your choice is within your rights under the law.

C. Witnesses and statements

Documentation of your medical condition is of extreme significance, so is documentation and proof of how the accident occurred. It is through the eyes and ears of your fellow workers that the proof of your case is found. As will be discussed later, the insurance company investigators and adjusters have enormous resources to investigate the claim.

It is of extreme importance that as soon as humanly possible, a list of names, addresses and phone numbers be secured of all personnel aboard the vessel for future reference.

Statements of the witnesses shortly after the accident serve two extremely important functions. First of all, it captures the moment of what, why and how an accident occurred. The memory of what happened is of greater detail and clarity one

day after the accident than it is when you, or your attorney, seek to secure a statement several weeks, months or years later. By that time, it may be too late. Secondly, a written or recorded statement is impossible to change at a later date. A fellow worker may remember in vivid detail the error or mistake made by the culpable individual or company. Six months later, however, on the verge of a promotion or dream assignment, subtle pressures may be placed on him to alter his memory. If a statement had been secured at an earlier time, the subtle pressures would be of no consequence. For the company, it would be too late.

D. Giving a statement

Many a claim or lawsuit is compromised by the maritime worker's rendering a statement to a "concerned" adjuster or insurance company investigator. The adjuster or insurance company representative may explain to him that the statement of how the accident occurred, written or recorded, is necessary for the "processing of your claim" and that without such the settlement or maintenance checks would not be forthcoming.

The issues of who caused the accident or why the accident occurred are not required for obtaining maintenance and cure benefits. The statement is taken for one purpose and one purpose alone - to acquire any information which may later be used against you. The only requirement of you to necessary obtain medical payment is to assist in filling out an accident report for the company and to provide support that the injury occurred during the service on the vessel.

It is highly advised to never allow anyone, with the exception of your treating physician, secure your written or recorded statement. When discussing your claim with any investigator or adjuster over the phone, preface your discussion with a warning not

to be recorded.

E. Photographs

Another method of documentation is probably the most important and least known. That involves photographs. Carrying a small camera with you in your gear is a minor inconvenience, which at a later date, may prove your smartest idea. In the legal forum a picture is surely worth a thousand words. Nothing better conveys the message or the proof of a wrongful act than the photograph.

Such photography is to be regulated and not done so as to infringe on company secrets. Use discretion. There is no law whatsoever prohibiting your documenting with photography an unsafe condition or practice. Your film and camera are your personal property. As with your personal and medical logs, secure the film or photographs in a safe place.

F. The insurance company and insurance adjusters

From the outset of a maritime accident, the administration of the claim and any payments of medical bills may be taken out of the hands of the company and placed in the hands of the insurance company. At the forefront of this system is the insurance company adjuster. His job is to "adjust" the claim. The insurance company, usually located in another state or abroad, must have someone employed locally who can learn about the incident and then inform them whether the claim has merit and if so, how much the insurance company should pay to resolve the claim. To do so the adjuster must secure witnesses' statements, medical reports and medical expenses.

A second role of an adjuster may be to negotiate with the injured worker a monetary settlement. At that point the adjuster is working on behalf of the insurance company; it is his goal to secure a settlement at the lowest possible dollar figure. As

such, he is not advocating on behalf of the injured worker; any representation to the contrary is untrue. If the adjuster is attempting to negotiate a settlement, his requesting a long, detailed statement is very risky business for the maritime worker.

The relationship of the maritime worker with his or her company may be of no consequence once the insurance company begins to "process the claim". This occurs shortly after the accident. It is the insurance company which must ultimately shoulder the financial burden, and it is the insurance company which calls all of the shots.

Promises to "make good on the accident" or "to take care of our valued employee" may lack legal support unless they are preserved through a valid written contract. If a maritime worker is promised anything, that is a job, pension benefits, etc., such an agreement should be preserved in writing. As will be discussed later, settlements have great weight when in writing. Very few oral agreements have a binding effect. After a settlement, the insurance company will require you to preserve your promise not to sue in writing; why shouldn't you be afforded the same privilege?

Adjusters are well-trained professionals who handle claims on a day-to-day basis. They are seasoned veterans who know their job very well. We have never met an adjuster who was not a "nice guy." To reduce the value of a maritime worker's claim they will call you, talk with you and your family members, employ private investigators, or do whatever possible to gather information which may be damaging to your claim. They may coerce you by delaying maintenance payments sorely needed by you to provide for you and your family needs. If you feel uneasy discussing your claim with an adjuster, it is probably for a good reason. In dealing with insurance companies, you are not dealing on equal ground.

The writer of this booklet has been criticized on more than one opportunity about the foregoing remarks about adjusters; most of the criticism has been levied by maritime employers or by the adjusters themselves. It must be noted that the adjusters are just doing their jobs. If, however, they are being used to negotiate a settlement, be fully aware that their job is to have the insurance company write the smallest check acceptable to you for you to settle your claim. Their job is to limit the awards or settlements of the maritime worker. They are working for the insurance company who must ultimately foot the bill. They are working for your employer and its insurance company; they certainly are not working for you!

G. Investigators

During the stressful, unnerving period following an accident, the concerns of the injured maritime worker involve the question of survival - "how am I going to make it for me and my family?" During this same time period, the insurance company has already opened a file, assigned adjusters and set the stage for an anticipated settlement or drawn out litigation.

While the maritime worker is concerning himself with survival, the insurance company is only concerned with "adjusting" the case. It is during this initial unnerving period, immediately after the accident, that the role of the investigator comes into play. The insurance company will hire an investigator to follow, to film, or to otherwise document that the work has reached a point of full recovery or that the injury is not truly serious or appropriate for a high settlement.

Our firm has represented maritime workers whose privacy was disturbed for weeks by investigators in search of that damaging evidence. Our firm has represented

maritime workers who have had private investigators perched in their trees on their private property in the hope of catching the worker in an awkward position. Horror stories abound.

Once a claim is made, the injured maritime worker lives a life in a fishbowl. There is nothing illegal about having an investigator hired, and it must be remembered that as the police clearly warn, anything that you say or do will be used against you at a later date.

H. Frivolous claims or lawsuits

The hiring of investigators and adjusters is a product of a litigious society. News stories abound informing us of fortune seekers who feel that the legal system is no different than the lottery. If you are lucky, you may become a millionaire. Unscrupulous attorneys help facilitate this atmosphere. The legal system is designed to provide those with legitimate disputes to come to court to resolve their claims; the legal system is not designed for "get rich quick" schemes.

The filing of frivolous lawsuits is not only unethical, but is also illegal. Federal and state law enforcement branches have been established to investigate, seek out and prosecute those who file frivolous lawsuits. Additionally, judges and the local state bar associations are rightfully pursuing attorneys who file frivolous lawsuits.

I. Settlement

A settlement is just that. **It settles a claim once and for all.** Upon accepting the negotiated settlement funds, you will be told over and over again that the acceptance of the settlement funds and the signing of one's name on settlement papers forever

releases the maritime worker's company and the insurance company from any future responsibility. The consequences of your actions, no matter how desperate your financial position may be, must be thoroughly considered by you and your family. You are, in effect, signing away all of your legal rights under the law in return for the funds offered.

Thankfully, not all injuries are so severe as to disqualify the maritime worker from continuing his career in the maritime community. Often times, this lack of seriousness of an injury suggests that the worker consider a settlement of the claim without the necessity of hiring an attorney or filing a lawsuit. Additionally, some claims have no legal basis or foundation, either the company was not at fault or the maritime worker was not in fact injured at all. Those claims should not be filed. Frivolous lawsuits only cause damage to those individuals with valid legal claims.

In any case, however, it is urged that discussing such a settlement with competent legal counsel is mandatory. That is not to say to go out to hire an attorney. Our firm has, on many occasions, given counsel and aid to a worker to settle a claim, without the necessity of filing suit.

J. Settling one's own claim

If it is your intention to try your own hand in the settlement process, here are a few suggestions. First of all, obtain all medical reports and results of testing. Do not trust the insurance company's explanation as to the impressions or opinions of the treating physicians. Discuss personally with your doctors the fact that you are attempting to settle your claim, and inquire as to what, *if* any, residual damage is expected to occur in the future as a result of the accident. Without having this

knowledge you will most assuredly be compromising your future.

Secondly, ask the adjuster to provide you with any and all information he may have on the accident. Ask him to send you all of the medical reports or medical test results in his possession. Request that he send you copies of all witnesses' statements, accident reports, photographs or any other important information or documentation of how or why the accident occurred that is in his possession. You can believe that he has this information; securing it is his job. These requests will be a test of his "good faith," the "good faith" that he has so often mentioned over the length of your relationship.

Thirdly, let the adjuster do most of the negotiating. Do not allow him to chisel away the figure you may have asked for. Let him try to justify his figures to you. Do not be swayed by the technique where by he tells you that he must "pass it on to his superiors." He knows what the claim is worth. The "passing it on" is for the purpose of delay. The claim will be settled later in time for less money, because at that point the maritime worker will need the money more and will be, of course, more desperate to take whatever the offer. Time is money and no one is more aware of that than the insurance company. The insurance company, without being faced with a pending trial date, holds all the money and, hence, all the cards.

As mentioned before, the maritime worker is not on equal ground with the insurance company or its adjusters in attempting to settle his own claim. Lastly, the insurance company may offer what is commonly called a "structured settlement." A structured settlement allows the insurance company to pay the claim over time instead of in one lump sum payment. This *may* be a good idea for those who would squander their settlement away. Before accepting such an arrangement, discuss the proposal

with a certified public accountant (CPA), professional investor ,or legal counsel. The important thing to note is that you can do the same thing with a lump sum settlement by purchasing an annuity through an investment company. All that is important is how much the settlement in today's dollars is worth and whether you will be retaining the principal for when the investments mature.

K. Breaking a Seaman's Settlement or Release

A settlement assures the maritime worker that the sums agreed upon are paid and assures the insurance company that settling party will not file suit in the future.

Before receiving the settlement check it will probably be necessary for the claimant to attend a settlement conference in the offices of the insurance company attorney. At the settlement conference the insurance company representative will read over, and explain, the legal documents and the legal consequence of executing the agreement. The discussions may take place in the presence of a court reporter who may transcribe the proceedings at the meeting.

The attorney will tell the claimant that by signing the documents he will:

FOREVER DISCHARGE AN PAST OR FUTURE RIGHTS TO SUE THE COMPANY OR ITS INSURANCE COMPANY IN CONNECTION WITH THE ACCIDENT.

Only after listening to the attorney, and reading and signing the papers will the insurance company representative give the claimant the settlement check. For an injured maritime worker, this may be a traumatic event as he will forever waive his legal rights upon signature and acceptance of the settlement funds. It will be at that point

that a maritime worker fully appreciates the unequalness of the negotiations.

The law has acknowledged the unfair bargaining position of the maritime worker. Under certain circumstances a settlement or release may be broken. Under the law, a settlement and release may be overturned where:

1. The settlement was obtained through coercion or improper prompting by the company;
2. Where the physician was mistaken in his diagnosis (though not prognosis) of the injuries sustained;
3. When a seaman did not fully understand his rights entering into the agreement; or;
4. That the adequacy of the consideration, that is the funding, was improper in light of the circumstances.

To break a release the maritime worker must institute legal proceedings. During the lawsuit the company has the responsibility to prove that the settlement was done in a fair and equitable manner. In short, in order for a settlement to be binding, it must be shown that there was no advantage taken of the seaman.

In any case, the settlement of a claim is a very serious matter. It is inadvisable to settle one's claim without proper legal counsel. Keep in mind that your future and that of your family may be determined by the outcome of a settlement.

L. Hiring legal counsel

Hiring legal counsel is often as traumatic as talking with an adjuster or an insurance company representative. It should not be, so as long as one keeps in mind that hiring an attorney is just that - *one hires an attorney much like hiring an employee*. The attorney works for the client, not vice versa.

In hiring proper legal counsel be sure that the attorney is well qualified in the field of

maritime law. Do not hire an attorney who gains knowledge and experience of admiralty law during the pendency of the lawsuit at the worker's expense. Ask the attorney poignant maritime related questions. In hiring an attorney one must have the same faith or trust as that of a fellow employee on the job. Much of one's future will be in the hands of the attorney. In hiring an attorney investigate his qualifications from those who know best, the attorney's past clients. Ask for a list of the previous maritime clients he has represented in the past and contact them. They know him, his expertise and experience best.

In hiring an attorney be sure to discuss the apportionment of attorney's fees and responsibility for payment of the attorney's out-of-pocket costs. Go over the contract with him and request a copy. Once again, ask his past clients whether the attorney was fair and honest with him regarding fees and costs.

Issues such as termination of an attorney's services or particulars of actions of an attorney may best be addressed to the Louisiana State Bar Association at 601 St. Charles Avenue, New Orleans, Louisiana (Phone (504) 566-1600) or the Bar Association in your locale.

CONCLUSION