

## **RIGHTS OF INJURED CREW MEMBERS**

A crew member injured in the service of a vessel is protected by rights established by court decisions, federal law, and the employment contract.

### **Maintenance and Cure**

An injured crew member is entitled to “maintenance and cure” for illness or injury suffered in the service of the vessel. Although the terms maintenance and cure are used together, they represent separate but related benefits. Traditionally, maintenance is a living allowance, or the money paid to the crew member for food and lodging during time off work for the treatment of the illness or injury. Until recently, courts generally awarded maintenance of between \$6.00 and \$8.00 per day. This amount is obviously inadequate to sustain a person and the amount of maintenance payment is now often set by the employment contract. In the Pacific Northwest these contractual provisions for maintenance cover quite a range: \$27 per day in one contract; four hours straight-time pay in another. One local contract combines maintenance and cure at \$48 per day. Where there is no agreed rate, the court will fix the amount of maintenance at trial.

Cure is a crew member’s right to hospital, doctor, nursing, and other medical treatment for injuries and illnesses suffered in the service of the vessel. The question of whether the injury or illness was incurred in the ship’s service has been answered by the courts liberally in favor of crew members and has included sickness and injury contracted on land. In one famous case, a seaman, while ashore on leave from a vessel at Naples, drank some wine and fell from a balcony adjacent to a dance hall. The United States Supreme Court ruled that he receive maintenance from his employer. The Court noted that the evidence concerning the amount of wine consumed

did not support a finding of intoxication. It quoted from another of its decisions: “Men cannot live for long cooped up aboard ship, without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ships is necessary if the work is to go on, more so that it may move smoothly.”

Another benefit often included within maintenance and cure is that of lost wages until the end of the voyage. Recently, however, this has become less common, as lost wages are now frequently recovered as part of the personal injury claim brought under the Jones Act and for breach of the warranty of seaworthiness.

Entitlement to maintenance and cure is not based upon the employer’s or ship owner’s fault. It stems rather from the status of the injured person as a crew member and that the illness or injury was suffered in the service of the vessel (as that has been broadly defined by court decisions). The right to cure continues until the crew member has reached maximum improvement; the right to maintenance generally lasts for that duration as well, if the crew member remains unable to work.

### **The Jones Act and the Warranty of Seaworthiness**

Congress passed the Jones Act in 1920. It authorizes a seaman to seek damages from his employer for personal injuries resulting from the negligence of the employer or a fellow employee. The Jones Act incorporates the provisions of the Federal Employers Liability Act, which protects railroad workers. Under the Jones Act, an employer whose negligence plays any part in causing injury to the crew member is liable for the damages that result. Those damages include past and future medical bills, lost wages, reduction of the crew member’s earning capacity or ability to earn a living in the broad range of occupations into the future, and physical and mental pain and suffering.

In addition to the duty owed by employers to crew members to exercise due care, every vessel owner or operator owes a duty to keep and maintain the vessel and equipment operating in a seaworthy condition or state at all times. To be in a “seaworthy condition,” a vessel and its gear must be in a condition reasonably fit for their intended use. While liability under the Jones Act is based upon negligence or fault on the part of the employer, liability for an unseaworthy condition is absolute: it does not depend upon negligence, fault, or blame. Even if the ship owner or operator exercised the highest degree of care, he or she is still liable for an unseaworthy condition which contributes to an injury even if unaware of the condition, or even if the unseaworthy condition is only temporary.

If an employer’s negligence or a vessel’s unseaworthy condition contributed to an injury, the crew member’s claim cannot be defeated by the fact that he or she may also have been negligent. The amount of the recovery is, however, reduced in proportion to the crew member’s own negligence. Neither can the crew member’s claim be defeated because he or she assumed the risks of employment, no matter how hazardous.

### **Comment**

In our experience, crew members injured on board vessels or in the service of vessels often are not aware that the harm was caused by the negligence of the employer, or a fellow employee, or by an unseaworthy condition. Injuries frequently result from doing something “the way it has always been done” or from a long-standing condition of the vessel, such as a bent ladder or poorly maintained winch. The crew member nonetheless has a valid personal injury claim against the employer and vessel owner. Anyone who suffers more than a minor injury or illness while employed in the service of a vessel should be represented by an attorney experienced in maritime cases.

When a crew member suffers a serious injury on board a vessel, employers or their insurance companies routinely call upon their attorneys—experience in handling maritime cases—to investigate the cause of the injury, gather evidence, and begin preparing to defeat or defend the claim. The injured party is at a disadvantage if he or she does not have representation at an early stage and statements are given without competent legal advice. In addition, there are time limits within which an action must be brought in court or the right to do so is forever lost. For all of these reasons, it is essential that injured crew members be represented by competent counsel to safeguard their rights.