

7.1 Seaman Status

The plaintiff [name] seeks recovery against the defendant [name] under the Jones Act for negligence. [[He] [She] [other pronoun] also seeks recovery under [general maritime law for unseaworthiness] [and] [maintenance and cure].] Only a “seaman” can bring these claims. The parties dispute whether or not the plaintiff [name] was employed as a seaman.

The plaintiff [name] must prove that [he] [she] [other pronoun] was a “seaman” to recover. To prove seaman status, the plaintiff [name] must prove the following elements by a preponderance of the evidence:

First, the plaintiff [name] contributed to the mission or operation of [a vessel] [an identifiable group of vessels] in navigation, whether underway or at anchor; and

Second, the plaintiff [name] had an employment-related connection to [the vessel] [an identifiable group of vessels] that was substantial in terms of both duration and nature.

The phrase “vessel in navigation” is not limited to traditional ships or boats but includes every type of watercraft or artificial contrivance used, or practically capable of being used, as a means of transportation on water.

The phrase “substantial in duration” means that the plaintiff [name]’s connection to [the vessel] [an identifiable group of vessels] must be more than merely sporadic, temporary, or incidental.

The phrase “substantial in nature” means that it must regularly expose [him] [her] [other pronoun] to the special hazards and disadvantages that are characteristic of a seaman’s work.

Comment

To recover for negligence under the Jones Act, under the doctrine of unseaworthiness, or under a claim for maintenance and cure, the plaintiff must be a “seaman” and must satisfy a two-element test. *See Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 554 (1997); *Chandris, Inc. v. Latsis*, 515 U.S. 347, 355 (1995); *Gizoni v. Sw. Marine Inc.*, 56 F.3d 1138, 1141 (9th Cir. 1995). The seaman inquiry is a mixed question of law and fact, and when necessary, should be submitted to the jury. *Delange v. Dutra Constr. Co.*, 183 F.3d 916, 919 (9th Cir. 1999). The Jones Act does not define the term “seaman,” and the issue of who is or is not covered by the statute has been repeatedly considered by the Supreme Court since 1991. *See Sw. Marine Inc. v. Gizoni*, 502 U.S. 81 (1991); *McDermott Int’l v. Wilander*, 498 U.S. 337 (1991). *See also Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005); *Papai*, 520 U.S. 548; *Chandris*, 515 U.S. 347. In defining the prerequisites for Jones Act coverage, the Supreme Court has found it preferable to focus upon the essence of what it means to be a seaman and to reject detailed tests that tend to become ends in and of themselves. “The Jones Act remedy is

reserved for sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which they who go down to sea in ships are subjected.”

Chandris, 515 U.S. at 369-70. In *Chandris*, the Court said the essential test for seaman status “comprises two basic elements: The worker’s duties must contribute to the function of the vessel or to the accomplishment of its mission, and the worker must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in terms of both its duration and its nature.” *Id.* at 376.

The Supreme Court has cautioned against using a “snapshot” test and admonishes that a plaintiff’s seaman status must be determined in the context of his or her “overall employment” with the defendant employer. *Id.* at 366-67. In the Court’s view, the total circumstances of an individual’s employment must be weighed to determine whether he or she had a sufficient relation to the navigation of vessels and the perils attendant thereon. The duration of a worker’s connection to a vessel and the nature of the worker’s activities, taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel’s crew or simply a land-based employee who happens to be working on the vessel at a given time. *Id.* at 369-70. The Court has also identified an appropriate rule of thumb for applying the temporal or durational requirement in the ordinary case: “A worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act.” *Id.* at 371.

A plaintiff may be entitled to an instruction on the fleet seaman doctrine if it has some foundation in the evidence. *Gizoni*, 56 F.3d at 1141 (“Under the fleet doctrine, one can acquire ‘seaman status’ through permanent assignment to a group of vessels under common ownership or control.”).

The Longshore and Harbor Workers’ Compensation Act (LHWCA) excludes from its coverage “a master or member of a crew of any vessel.” 33 U.S.C. § 902(3)(G). Masters and crew members are entitled to sue under the Jones Act and the doctrine of unseaworthiness. A person who is not a seaman is limited to the remedies of the LHWCA.

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