A primer on admiralty and maritime actions and the federal courts

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Seamen's Claims

A seaman is typically a member of a crew of a commercial vessel, or a commonly-owned fleet of vessels, in navigation, who contributes to the function of the vessel or the accomplishment of its mission. When injured, the seaman typically brings three claims: (i) a federal statutory negligence claim against his employer under the Jones Act, (ii) a general maritime law ("GML"), or federal common law, unseaworthiness claim against the owner or operator of the vessel, and (iii) a GML maintenance and cure claim against his employer.

The first two claims require the seaman to prove fault or liability; the third is no-fault. A featherweight causation standard applies to a Jones Act negligence claim. The seaman prevails if the negligence of the employer played a part, "no matter how small," in causing the injury. An unseaworthy vessel is one which is not reasonably fit for its intended purpose (*e.g.,* defective equipment or condition, undermanned or improperly trained crew). This is a strict liability claim; proof of negligence is not required. A traditional substantial factor proximate cause standard applies to the unseaworthiness claim. Maintenance is a sum to compensate the seaman for his or her reasonable food and lodging expenses until reaching maximum medical improvement (MMI). Cure encompasses medical, pharmaceutical, and associated health care, and medical transportation expenses, also payable until MMI has been achieved. If the seaman's employer willfully denies or terminates maintenance and cure, it becomes liable for actual and punitive damages and attorney's fees. Seamen have long been considered wards of the court, because of their typically modest means and a history of being taken advantage of by unscrupulous marine employers.

These three seaman's injury-related claims may be brought in state or federal court, the seaman is entitled to a jury trial in either, and, if brought in state court, the case is non-removable. A seaman may also bring these claims in federal court under the court's admiralty jurisdiction, versus "at law," and so designate the claims as admiralty claims under Fed.R.Civ.P. 9(h), and thereby proceed non-jury.

Marine Insurance, Maritime Commercial and Property Damage Claims

Marine insurers typically bring declaratory judgment actions in federal court "in admiralty," meaning non-jury. They may ask the court to deny coverage based upon a policy exclusion, or void a policy from inception due an insured's misrepresentations in the application or claim process, which may constitute a violation of the GML duty of *uberrimae fidei,* or utmost good faith, which requires the insured to affirmatively disclose to the insurer, without request, all conditions which may materially affect the risk undertaken.

Parties may also bring maritime commercial and property damage claims in federal court, typically in admiralty on the basis of a maritime tort or maritime contract. When such claims are brought "at law" in state court, they are, under the Saving to Suitors Clause of 28 U.S.C. §1333(1), non-removable, absent a separate and independent basis for federal jurisdiction, such as diversity under 28 U.S.C. §1332.

The Vessel Owners' Limitation of Liability Act

When a vessel, which can range in size and value from a Ski-Doo® to a towboat, is involved in a maritime casualty, under an anachronistic federal statute passed in 1851 to encourage American shipbuilding, and before marine insurance was commonplace, its owner has the right under the Vessel Owners' Limitation of Liability Act to file a complaint in federal court under its non-jury admiralty jurisdiction. In a "Limitation Action," the vessel owner asks the court to limit its liability to the post-casualty value of the vessel and pending freight (sums due the vessel for the voyage in question).

The vessel owner's liability becomes uncapped, however, if it or its senior management personnel had "privity or knowledge," *i.e.,* they knew or should have known of the acts, omissions, events, or conditions which caused the casualty. When the vessel is a total loss, the limitation fund may be zero, or, as in the case of the Titanic, composed only of the value of its lifeboats. As in a bankruptcy filing, a Limitation Act filing acts as a concursus, and the vessel owner is entitled to a stay of all other state and federal actions against it, and all claimants against the vessel owner arising from the casualty must file an answer to the owner's complaint and a claim in the federal Limitation Action.

In certain situations, such as when there is a single claimant against the vessel owner, such as a seaman with personal injury claims, the seaman is entitled to file or resume his or her suit in state court against the vessel, provided he or she files stipulations protective of the federal court's exclusive right under the Limitation Act to later determine (i) the privity and knowledge issue and (ii) the value of the limitation fund.

Rule B Attachments and Rule C Arrests

Under Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, if a defendant is not found within the federal district, a creditor may file a verified complaint in federal court against the debtor's vessel to attach and garnish it to both obtain jurisdiction and satisfy or secure a judgment. Under Supplemental Rule C, a claimant or other creditor with a maritime lien against a vessel, may file a verified complaint against the vessel and have the U.S. Marshal arrest it. Rule B and C actions may only be brought in federal court.

Strategy Considerations of Filing in State Versus Federal Court

Counsel for a Jones Act seaman may prefer to file suit in federal court to draw a jurist who may be more familiar with admiralty and maritime actions. In federal court, they will be able to depose opposing experts and easily issue and serve nationwide Fed.R.Civ.P. 45 document and witness subpoenas. Whereas in state court, such as in the Allegheny County Court of Common Pleas, while the court *may* be less familiar with admiralty actions, counsel is unlikely to be under the time constraints of a scheduling order, which may be preferable if, for example, the client has an injury or medical condition which is still evolving. The Pittsburgh Division of the U.S. District Court for the Western District of Pennsylvania draws jurors from 13 counties, most of which are considered politically conservative in contrast to the typical Pittsburgh-weighted venire in Allegheny County. ■

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