

SEAFARER SUBJECT GUIDE

PERSONAL INJURIES AND DEATHS IN THE USA

This Guide explains national law when seafarers are injured or killed in a port in the USA or on a USA flagged ship. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is injured or killed, then the seafarer or his relatives are strongly advised to consult a lawyer qualified to practise in the USA.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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- 1. If a seafarer is injured or killed in a work related incident, does USA law allow a claim for compensation to be brought?**
 - 1.1 Under the law of the United States of America, it is possible to bring a claim for damages for work-related incidents.
 - 2. What is the basis for recovery of compensation for personal injury or death claims?**
 - 2.1 The basis for liability for recovery for personal injury or for death compensation is the Jones Act, which provides for recovery on the basis of negligence, or the General Maritime Law, which provides for recovery for unseaworthiness (of a vessel) and negligence. Additionally, the General Maritime Law provides for recovery for maintenance and cure, which does not require a showing of either unseaworthiness or negligence.
 - 3. Are USA laws for compensation for personal injury or death of a seafarer applicable only to Americans, or are the laws applicable to foreigners also?**
 - 3.1 The United States provides for relief to foreigners, as well as to United States citizens, subject to jurisdictional challenges and dismissal/transfer motions based on *forum non conveniens*, forum selection clauses or arbitration clauses.
 - 4. Is USA law the same throughout the country, or does it change from state to state or from province to province or for any other political or geographical area?**
 - 4.1 The substantive law governing personal injury and/or death of seamen is the same from state-to-state in the United States; however, the rules of procedure do change from the federal court system to the state court system. Each of the individual states of the United States has adopted local rules. Federal courts share the same rules of

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federal procedure; however, each has adopted local rules and some federal judges have adopted special rules for matters heard before their court.

5. Is USA law the same for all types of seafarers, such as blue water seafarers engaged in international trade, seafarers employed in coastal waters, or fishers?

5.1 The applicable United States law is the same for all seafarers' work-related injuries and death.

6. Which court would have jurisdiction over a claim for compensation by a seafarer who was injured or killed: (1) on a USA vessel, or (2) on a foreign flagged vessel in a local port of the USA or in the territorial seas of the USA?

6.1 A case can be brought in either a state court or in a federal court. A state court is available without jurisdiction pursuant to 28 U.S.C. §1333, which allows the seafarer to bring suit in a state court. However, some actions must be brought in federal court; namely, an action to enforce a maritime lien. The court's jurisdiction must be based upon service on the defendant's agent for service of process and, if there is no agent for service of process, the vessel owner must have certain 'minimum' contacts with the forum so as not to offend 'traditional notions of fair play.' Otherwise, jurisdiction must be obtained by attachment or arrest of the vessel.

7. Would the USA court uphold a jurisdiction and/or law clause in the employment contract of a seafarer who had been injured or killed in a work related accident?

7.1 If the matter is filed in a federal court, the jurisdictional clause (forum selection clause) would be upheld. If the matter is filed in a state court, state law would apply and depending on the place of filing, the matter could be dismissed. However, some states court jurisdictions, like Louisiana, consider a forum selection clause in an employment contract to be against public policy and therefore unenforceable.

7.2 With respect to a choice of law clause, these are generally not enforced. United States law looks to the underlying transaction and those involved in the case to determine the law applicable to the case. Courts chose the applicable law after reviewing the following factors: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured party; (4) the allegiance of the defendant shipowner; (5) the place of contract; (6) the inaccessibility of the foreign forum; (7) the law of the forum; and the shipowner's base of operation.

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7.3 If the jurisdiction and/law clause in the important contract is an arbitration clause, it would be enforced.

8. What is the time limit for bringing a claim after the occurrence of an incident?

8.1 A seafarer can bring suit against his employer for personal injuries or his representative can bring suit as his representative in case of death within three years of the event causing the injury or death.

9. Is a seafarer's claim for compensation for injury or death a maritime claim that can be secured by arrest of a ship? If so: (1) which ship can be arrested; and (2) in what circumstances can the ship be arrested?

9.1 A ship can be arrested in federal court by the United States Marshal's office. The ship upon which the event occurred may be arrested as well as a sister ship (with the same Registered Owner) in order to obtain jurisdiction and/or security. The specific rules regarding how to perfect an arrest in a federal court can be found in the federal rules of civil procedure.

9.21 A ship can be attached in state courts by the appropriate authorities, which differ in each state, in order to obtain jurisdiction and/or security (in some state jurisdictions). It is important to note some states do not allow for pre-judgment attachments of a ship to obtain security; or, if allowed, some states require rather large bonds to be posted prior to the attachment. However, the state of Louisiana located on the United States Gulf of Mexico and home of the Mississippi River, the largest shipping port in the United States allows a seagoing vessel to be attached/seized in state court by a seafarer by posting a security bond of \$250.00.

10. What types of damages are recoverable?

10.1 For wrongful death, only pecuniary damages can be recovered, which include:

- (1) the pre-death pain and suffering the seafarer experienced from the time of injury until the moment of death, and
- (2) for dependent relatives, past and future wages of the deceased seafarer which would have been recovered but for the incident causing the death.

10.2. For personal injury, compensatory damages, including pecuniary and non-pecuniary damages are recoverable.

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11. What are the principles for calculating compensation for a claim by a seafarer or his next of kin for: (1) a work related injury; and (2) a work related death?

- 11.1 For a work related injury, damages are based on the actual costs of past and future medical treatment, past and future lost wages including loss of earning capacity, past and future physical and emotional pain and suffering and loss of found (lost benefit of sea based employment benefits of housing and food allowance).
- 11.2 For a work related death, as against the employer, the decedent's beneficiaries are entitled to the pain and suffering the decedent suffered from the moment of injury through the moment of death and the amount they would have received from the continued life of the deceased. Losses can include the loss of nurture, guidance and training to children, loss of support, funeral expenses, loss of services and loss of inheritance.

12. What damages might be awarded in the following circumstances:

30 year old seafarer, injured aboard a vessel, who is now totally disabled. Medical expenses of US\$15,000 per year for the remainder of his life?

- 12.1 US\$6,740,000.00 (see i + ii + iii below). Assuming the incident caused a back injury rendering the seafarer partially paralyzed and wheelchair bound who, when injured was earning US\$24,000.00 per year as an annual salary, then the damages are as follows:
- (i) \$840,000.00 future wage loss; and
 - (ii) \$900,000.00 future medical expenses; and
 - (iii) \$5,000,000.00 past and future physical and emotional pain and suffering.

30 year old seafarer, who dies as a result of an accident on board a vessel, who is survived by a 29 year old wife and 2 children, ages 2 years and 4 years old?

- 12.2 US\$680,000.00, assuming the seafarer died instantly. (US\$650,000.00 in lost support and assuming US\$25,000.00 per child for loss of nurture guidance and training). Note that no money is allowed for pain and suffering, loss of society or loss of consortium to the family or spouse.
- 12.3 US\$1,680,000.00, assuming the seafarer was injured in a fire and eventually succumbed to his burn injuries (same reply as above except for the addition of US\$1,000,000.00 attributable to pain and suffering of the seafarer from moment of injury through moment of death).

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13. How efficient are the local courts and what would be an average estimated time for hearing and ruling on a seafarer's claim for compensation for injury or death?

13.1 In the United States, over 90% of all injury and death cases are resolved through settlement by direct negotiation between the parties or voluntary mediation with a neutral party. If the case is filed in federal court, the matter will usually be brought to trial within 10 months of the filing of the claim with appeals generally running six to eight months following the trial verdict. Courts of the various states differ dramatically. In the state of Louisiana for example, a trial can be obtained within a year of filing suit with appeals finalizing 12- 15 months following trial.

14. On what basis will a lawyer generally charge a seafarer for handling a claim for compensation?

14.1 Lawyers representing seafarers injured or killed work on a contingency fee basis (no cure – no fee) as a percentage of monies recovered. The percentage normally varies between 33 1/3% to 40% of the amount recovered. Lawyers are allowed to advance the costs of litigation, and in some particular instances, lawyers can assist injured seafarers and families of deceased seafarers by advancing monies for necessary living expenses through trial, appeal and collection of the judgment or settlement.