

SEAFARER SUBJECT GUIDE

USING LAWYERS IN THE UNITED STATES OF AMERICA

This Guide deals in general terms with using lawyers in the USA. It aims to help a seafarer understand the legal profession in the USA, and how to select, engage and if need be, change his lawyer. This Guide does not however constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practice in the USA.

1. What is the structure of the legal profession?

- 1.1 The legal profession consists of attorneys licensed to practice law in state or federal courts throughout the USA. Attorneys work as either sole practitioners or as part of a law firm. Only attorneys-at-law licensed by their state are authorized to practice law. The USA only recognizes licensed attorneys and does not utilize nor recognize solicitors, barristers or advocates.
- 1.2 Attorneys are retained by a seafarer on either an hourly fee basis or on a contingent fee basis. In the field of personal injury or wage litigation involving seafarers, nearly always the attorney is retained on a contingent basis. This means that the attorney will only be paid if he obtains a recovery or settlement for his client. The attorney will also advance the costs necessary for the litigation, including depositions, travel costs and similar expenses. In some jurisdictions, this is referred to as 'no cure, no pay'. A typical legal contingent fee is one third or 40 per cent of the amount recovered.
- 1.3 Attorneys can advise on any legal matter, including criminal and civil matters. Attorneys can appear before courts in those states in which they are licensed to practice law, or in federal courts in which they are admitted to practice. Attorneys are authorized to appear and act on behalf of seafarers in any area of the law, civil or criminal.

2. How is the legal profession regulated?

- 2.1 The legal profession is regulated by state bar associations of that state in which an attorney has obtained a license to practice. All attorneys must be licensed by a

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particular state which authorizes that attorney to appear within the courts of that state.

- 2.2 Each state within the USA has a strict Code of Professional Conduct which, if not complied with by an attorney, may result in disciplinary inquiry and possible disciplinary action against that attorney. Additionally, attorneys licensed to practice within a state may petition and be admitted to practice before the federal court located in each state.

3. How can a seafarer find a lawyer?

- 3.1 Maritime law is a very specialized field in the USA. As such, seafarers with problems or injuries arising out of their employment on board a vessel or against an employer for wages should consider retaining a lawyer with experience practising maritime law.

- 3.2 A seafarer's trade union might be able to recommend a suitable lawyer or, in some cases, the seafarer's trade union may appoint an attorney to act on behalf of the seafarer. A list and contact information for International Transport Workers Federation Inspectors may be found at the ITF website www.itfglobal.org/about/us/inspectors. Additionally, there are numerous maritime ministries or port chaplains who can make recommendations of attorneys experienced in maritime law. A list of maritime ministries and port chaplains may be found at the website of the North American Ministerial Association www.namma.org (link in English) 'Links to Friends of Seafarers'.

- 3.3 Lawyers are allowed to advertise in the USA and do so extensively through the use of, among other venues, television and the internet. An effective method to locate an experienced attorney in a specific geographic area is to use a search engine with a phrase such as 'maritime personal injury' attorney. Also, some state bar associations will refer calls to attorneys but there is no uniform and nationwide system.

4. On what terms can a seafarer engage a lawyer?

- 4.1 A seafarer may engage an attorney on a set hourly fee basis or on a contingency basis. Nearly all seafarers retain attorneys on a contingent fee basis, meaning that the attorney advances the costs of the litigation and is paid a percentage of any recovery made on behalf of the seafarer. An attorney client contract or a formal

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letter of engagement is executed between the seafarer and the attorney, setting forth the terms and conditions which regulate the relationship.

- 4.2 The attorney client contract or letter of engagement normally includes the following important factors: (a) details of the agreed scope of work to be undertaken and the procedures for keeping the seafarer informed on progress; (b) the name(s) and status (for example, a partner in the firm or an associate) of the attorney(s) assigned to the case; (c) quality assurance and the procedures for handling any complaints should the seafarer be dissatisfied with the standard of service provided; (d) the basis on which the seafarer will be charged for work to be undertaken; (e) details of any advance payment required from the seafarer, arrangements for rendering bills and terms of payment; and (f) the firm's responsibility and professional liability to the seafarer.

5. How will a seafarer be charged fees by his lawyer?

- 5.1 Attorneys nearly always charge contingent fees in injury, death and wage litigation for seafarers. A normal contingent fee is between 33% to 40% of the amount recovered, plus reimbursement of the costs expended by an attorney in pursuing the litigation. The attorney advances the costs of travel, deposition, filing suit and other similar items related to pursuing a claim for a seafarer.
- 5.2 While an attorney may be retained on an hourly basis, most seafarers simply do not have the funds to pay an attorney when the seafarer is out of work due to injury or because the seafarer has not been paid wages due him.
- 5.3 Nearly all state bar associations recommend that the attorney-client contracts be in writing and that the contracts set forth the details pertaining to the fee.

6. Can a seafarer get legal aid in a criminal case?

- 6.1 Every seafarer has the right to free, independent legal advice (legal aid), regardless of his financial standing and nationality, if he is detained, questioned or arrested by the police in connection with a suspected offence.
- 6.2 If a seafarer, who cannot afford legal representation is subsequently charged with a criminal offense, he may qualify for legal aid in relation to the costs of his defence in the criminal trial.

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6.3 As a practical matter, legal aid is not readily available to seafarers. While there are legal aid societies, their practice does not normally include specialized areas such as maritime law. If a seafarer has a criminal problem, he should contact the local ITF representative or port chaplain for help.

7. Can a seafarer get legal aid in a civil case?

7.1 Legal aid in civil matters is available to low income individuals. These services are offered through legal aid societies working in each state. Generally, there is no citizenship requirement; however, the legal aid societies normally do not have staff members familiar with admiralty and maritime law issues which affect seafarers.

7.2 Information about legal aid societies in each state can be found using such search terms as 'legal aid' in the state of, for instance, New York.

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8. Can a seafarer get any other free legal advice?

8.1 Most state and federal courts allow litigants to appear in proper person and to bring a defense in proceedings in forma pauperis, which means, in effect, without the payment of fees. However, such actions are limited to individuals without sufficient means to pay court costs and it is very unlikely that a seafarer would be able to bring an action in proper person without the assistance of an attorney because of the complexity usually involved in admiralty and maritime cases.

8.2 Attorneys work on a contingency fee basis for personal injury, death and wage cases. A seafarer with a meritorious claim would have no difficulty in obtaining adequate representation.

9. Can a seafarer sue his lawyer?

9.1 A seafarer may sue his attorney where the attorney has displayed gross ineptitude and/or gross negligence in, for instance, failing to pursue the proceedings on behalf of the seafarer in a timely manner or within the prescribed court deadlines. Generally, the court would be reluctant to penalize a seafarer on account of the

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conduct of the seafarer's attorney or lawyer, provided the seafarer is not responsible for the delay of the attorney.

- 9.2 However, even if the delay is due entirely to the neglect of the seafarer's attorney, there is a limit beyond which a seafarer cannot escape the results of his attorney's lack of diligence. So the seafarer is not entitled to hand over the matter to his attorney and then wash his hands of it. It must have become obvious to the seafarer, as a layman, that there is a protracted delay and he cannot sit passively by, without directing any reminder or inquiry to his attorney and then expect to be exonerated of all blame.

10. How can a seafarer complain about his lawyer?

- 10.1 A seafarer may complain about his attorney by writing the judge of the court in which the seafarer's proceeding is pending as to any alleged improper conduct by the attorney. All courts both state and federal exercise supervisory powers over the attorneys appearing before the courts.
- 10.2 The seafarer may also seek recourse through the Office of Disciplinary Counsel of the state in which the attorney is licensed. The Office of Disciplinary Counsel is obligated to conduct an investigation and, if the complaint is well-founded, it can result in disciplinary action against the attorney ranging from a letter of reprimand, to suspension, and to expulsion from the practice of law.

11. How can a seafarer change his lawyer?

- 11.1 A seafarer may terminate the services of his attorney at any time and appoint a new attorney. The seafarer's previous attorney is obligated to follow the instructions of the seafarer and forward the entire file to the new attorney and may not retain the file simply because fees or costs are still due.
- 11.2 Seafarers should bear in mind that changing an attorney can involve delays and additional expenses, especially if the seafarer's case is at an advanced stage, as the new attorney will need to read the documents and become familiar with the seafarer's case.

12. Is a foreign seafarer treated differently?

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- 12.1 Foreign seafarers who pursue claims or who face criminal prosecution in the courts are not treated differently to American nationals.
- 12.2 However, in some civil cases, the courts may transfer the foreign seafarer's claim to a foreign court under the doctrine of forum non conveniens (where the foreign court is more convenient) or by virtue of a forum selection clause in the seafarer's contract of employment, or in terms of an arbitration clause.

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