



Settling With An Unrepresented Seaman Making The Settlement Stick



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Unfortunately, personal injury claims brought by seamen against vessel owners are part of everyday life in running a boat company. As such, vessel owners have become very sophisticated in the management of these claims. As the cost of litigating these matters is very high, often, the claim's handler will attempt to settle a seaman's personal injury claim prior to his retention of counsel and filing suit. In most cases, this is a win-win for both the employee and the company. The company is able to settle the claim with its employee quickly without engaging counsel or incurring the costs associated with litigation. The employee wins because he is able to keep 100 percent of the settlement without having an attorney take 30 to 40 percent. Additionally, the employee does not have to wait a long time, possibly several years, before seeing any of this recovery.

As companies have become more sophisticated in adjusting and managing these claims and reaching settlements with these unrepresented seamen, plaintiffs' attorneys have also become more sophisticated and, from our experience, have started to file suits against vessel owners attempting to invalidate these mutually agreed upon settlements. Although there is no way to guarantee that your settlement with an unrepresented seaman will be considered valid and enforceable by a court, following several simple steps and procedures will make the likelihood of the enforcement of the settlement agreement much more likely.

Injuries that occur to vessel-based employees are governed by the Jones Act and the General Maritime Law. As such, federal law governs the validity of settlement agreements. The general rule in federal courts is that a settlement agreement once entered into cannot be repudiated

by either party and will be enforced by the court. The Supreme Court has ruled that when parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle.

However, the courts have carved out an exception to this general rule for maritime workers that are designated as seamen. In fact, the courts have ruled that seamen are "wards of the court" and that the court has a duty to scrutinize an agreement when a seaman purports to release his rights to compensation for personal injuries. Under this duty, a settlement agreement is enforceable if the seaman relinquishes his rights with "an informed understanding of his rights with a full appreciation of the consequences" of executing the release and settling his claim.

Under the rule that applies to seamen, a vessel owner should make sure that the unrepresented seaman has a full understanding of the rights that he may have as a seaman under admiralty law and that he has a full understanding as to the consequences of the agreement that he is entering into. As the scope of a seaman's understanding will be the primary issue in determining whether a settlement is valid, we recommend exchanging settlement documents and funds in the presence of a court reporter who transcribes the entire proceeding. As such, the record will clearly indicate that the seaman was informed of his rights and the scope of the settlement in a manner in which he clearly understood the consequences of the agreement. Thus, if a seaman chooses to attempt to invalidate the settlement, the vessel owner can provide sworn testimony showing that the vessel owner's attorney informed the seaman of his rights, provided him with an opportunity to seek counsel, had the seaman explain that he understood what he was agreeing to and that he had an opportunity to ask questions if he so desired.

From our experience, we recommend that the seaman execute both a standard release document as well as a second document that outlines all of the rights of the seaman. Both of these documents can be reviewed and ex-

cuted during a release conference and attached as an exhibit to the transcript of the proceeding.

This "Rights of Seamen Notice" should fully explain that the seaman has a right to maintenance and cure, a claim for the unseaworthiness of the vessel and negligence claims based upon the Jones Act. It is important that a seaman understand certain issues about each of these potential claims. A review of the pertinent issues related to each of these claims is explained below.

A seaman has a right to recover for maintenance and cure as a result of injuries or sickness occurring while he is in the service of the vessel. This right does not depend upon proving that the vessel owner was negligent or the vessel was unseaworthy. As such, the unrepresented seaman should receive a detailed explanation regarding his right to collect maintenance and cure and what benefits are included within the scope of the duty. This explanation must include that the maintenance and cure obligation covers any sickness or injury that occurs while the seaman is in service of the vessel and does not have to be directly related to the employment relationship. Furthermore, you should inform the seaman that he is entitled to maintenance and cure until he reaches maximum medical improvement from his illness or injury. The seaman must be told that the cure obligation includes providing any nursing, medicines, doctors and hospitalization related to the illness and that the maintenance obligation includes providing a per diem to compensate him for his room and board that he received while aboard the vessel.

The second element of a "Rights of Seamen" review should include an explanation that the seaman may be entitled to recover against the vessel owner under a theory of seaworthiness. Under maritime law, a seaman is entitled to recover for unseaworthiness of the vessel, its appliances, masters and members of the crew. He should be informed that under a claim for unseaworthiness, he could recover for pain and suffering, injury, impairment of earning capacity, medical bills that he has incurred and all reasonable losses that arose as a result of his injury that are a direct result of the unseaworthiness. He should also be informed that a claim brought for the unseaworthiness of the vessel is separate and distinct from his claims for maintenance and cure and any claims based upon vessel negligence.

Lastly, an unrepresented seaman should be notified of his rights under the Jones Act. In order to recover under the Jones Act, the seaman should be put on notice that he

must prove negligence of the ship owner, or his agents, servants or employees. He should also be informed that contributory negligence on his part does not bar recovery under the Jones Act and that his fault only goes towards the reduction of the damages that he may be entitled to. He should also be informed that under the Jones Act a seaman can recover for pain and suffering, injuries, impairment of earning capacity, medical bills, hospital bills and nursing which he has incurred himself, and all reasonable damages and losses which occurred as a result of the injury or sickness.

During the conference, it is important to read through the release and the rights of seamen document paragraph by paragraph explaining, in simple English, the meaning of each paragraph, and getting the seaman to affirmatively state that he understands the paragraph and has no questions about it. After you have reviewed each document, you can have the seaman execute the document and place it into the recorded transcript.

It is also important to fully inform the seaman that he has the right to retain counsel and, get him to specifically state on the record that he knows that he is entitled to counsel and has chosen not to hire a lawyer. It is also important to inform the seaman that he has a duty to investigate the amount of the settlement and that he could recover more through the process of litigation. It is also good to remind him that his medical condition could get worse and that, after settlement, the company is no longer responsible for any of his medical care.

By going through the process of outlining and explaining all potential rights, and getting him to affirmatively state that he understands those rights and is willing to waive them in an effort to compromise the claim, a vessel owner is in a much better position if the seaman decides to retain counsel and try to break the settlement. Putting this information on the record will fully establish that the seaman had "an informed understanding of his rights and a full appreciation of the consequences" in executing the release. It will also show that the company was acting reasonably and fairly in dealing with the seaman and that there was no attempt to trick, manipulate or take advantage of an uninformed seaman.

Although the additional costs associated with conducting a final settlement conference increases the costs of claims management, this increased cost can save vessel owners significant amount of time, money and headache by creating a settlement agreement that is enforceable and will deter a seaman from instituting future litigation.