

COMPARISON OF REMEDIES FOR MARITIME PERSONAL INJURIES

Persons Entitled	Parties Liable	Basis of Liability	Damages Allowed	Defenses
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GENERAL MARITIME LAW NEGLIGENCE

Passengers, invitees (including longshore workers except against employer)	Any negligent party, including vessels <i>in rem</i> for negligence of employees	Negligence	<i>Special:</i> past & future medicals (can include qualified medical monitoring expenses) past & future loss of earnings (or earning capacity) services hired <i>General:</i> pain & suffering (sometimes "fear of disease") disfigurement loss of enjoyment of life emotional distress (requires either (1) physical impact, (2) zone of danger, or (3) related bystander) <i>Additional:</i> loss of consortium (maybe not if on high seas), punitive damages, interest	Comparative negligence Contractual choice of forum and 12 month time bar generally enforced
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GENERAL MARITIME LAW, NEGLIGENCE & PRODUCTS LIABILITY

Any person	Vessel <i>in rem</i> , any person but employer or fellow seaman of an injured seaman	Negligence, or manufacture or sale of unreasonably dangerous product	Same as above, some recent cases allow punitive damages and loss of consortium for injury to a seaman against non-employer but most do not	Comparative negligence
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GENERAL MARITIME LAW, UNSEAWORTHINESS

Seamen. Possibly "seamen pro hac vice" performing traditional duties of seamen but not subject to LHWCA	Vessel <i>in rem</i> , vessel owner/operator	Unseaworthy condition (unreasonably unsafe) (liability is strict, irrespective of notice or opportunity to correct defect)	Same as above, recent cases do not allow punitive damages or loss of consortium in unseaworthiness claims.	Comparative negligence Primary duty of officer (sole cause of injury). 3 year time bar
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JONES ACT (46 USC § 30104) (NEGLIGENCE OF EMPLOYER OF SEAMEN)

Seamen only, when in course of their employment. Employer/employee relationship essential	Employer only (no <i>in rem</i> liability of vessel)	Negligence (including negligent failure to provide reasonably safe place to work), violation of safety statute (slightest contributing cause)	Special & general damages per above, but no: punitive damages, loss of consortium or other nonpecuniary damages prejudgment interest when claim is tried at law	Comparative, no comparative fault if violation of safety statute ("negligence per se". 3 year time bar
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MAINTENANCE, CURE & UNEARNED WAGES

Seamen only. While "in service to their vessel" - may include when ashore for recreation or sometimes commuting to vessel.	Vessel <i>in rem</i> , vessel operator	Disability arising while in service of vessel (while answerable to the call of duty) (no "fault" required for liability)	"Cure" (reasonable medical expenses to "maximum cure") Maintenance to "maximum cure" (precedents are split on whether rates can be set by collective bargaining agreements) Unearned wages to end of voyage or employment contract or pay period if short voyages & no articles or contract Attorney fees for willful and recalcitrant refusal to pay when clearly due. Punitive damages for wanton and willful disregard of the maintenance & cure obligation	No comparative negligence Intentional misrepresentation of medical condition at hiring (requires causation) Willful rejection of recommended treatment Disobedience of order Willful misconduct: (a) venereal disease (b) gross inebriation (c) fighting when aggressor
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General Notes:

1. "Negligence" includes acts and omissions of employees of defendants when acting within the scope of their employment.
2. Definition of "seaman": a person whose employment on a vessel or identifiable fleet of vessels under common ownership (a) is substantial in terms of duration and nature (b) the vessel is in navigation, (c) the persons's duties contribute to function of vessel in navigation or commerce, or the "work of the vessel". Rule of thumb for "amphibious workers": they must spend substantial portion of their employment (30%? rule of thumb) aboard the vessel or fleet under common ownership or control.
3. Limitations of actions: three years, except in case of passengers may be limited by terms of contract of carriage (not less than 1 year), and actions for maintenance and cure may be limited by doctrine of laches.
4. An affirmative duty is imposed on a vessel operator to investigate, determine doubts in favor of seaman, and timely pay maintenance, cure & unearned wages. Possible awards of punitive damages and attorney fees if there is a willful and recalcitrant refusal to timely make payments, punitive damages if failure is willful and wanton.
5. Seamen's releases: the defendant has the burden of proving that the release was executed by a seaman freely with full understanding of his rights and with a full appreciation of the consequences of the release.
6. All columns but "damages allowed" apply to death actions. "Persons entitled" become the personal representative of an "entitled" decedent's estate.