WAR HAZARDS COMPENSATION ACT CLAIMS

The War Hazards Compensation Act covers individuals, who are not currently an active member of the Armed Forces, who qualify under the following guidelines:

- Injured while working in a environment that “proximately result from a war risk hazard,” occurring off of United States soil
- Detained by hostile forces
- Missing as a result of a belligerent action
- Marooned due to the failure of the United States or their contractors to repatriate

The compensation offered by the War Hazards Compensation Act offers a maximum payment for overseas workers of $1,030.78 per week. The yearly compensation under the War Hazards Compensation Act range between $1 to $2 million per year. If you have any doubt or questions about yours or your loved ones eligibility of coverage under this Act you should contact your attorney for guidance and legal support.

After a reimbursement claim has been filed by an individual, the employer or insurer has to prove they have paid the benefits due to the employee or their dependents as covered in the Self Insured or Insuring Agent agreement. The employee or their dependents do not have to file any secondary claims; as Claim CA-287 is specifically for Self Insured or Insuring Agents to request reimbursement for the compensation and benefits they have already paid out. The initial goal of the War Hazards Compensation Act was to take the financial burden off of the contractors and their insuring agents in the event of a war hazard misfortune and, in effect, place that financial responsibility on the United States government.

The form, CA-287, can be found online at http://www.dol.gov/esa/owcp/regs/compliance/ca-278.pdf.
OCCUPATIONAL DISEASES

Contracting occupational diseases are very real concerns for Longshore men and women.

An occupational disease, as defined by the US Department of Labor, is an illness or condition which develops over a period of time in response to repeated exposure to harmful or injurious stimuli. There are many common occurrences of occupational diseases associated with the Longshore working environment such as exposure to Asbestos, Benzene, Silicosis, Welding Rod fumes and other disabilities.

In order to determine the eligibility of an occupational disease claim, the following information is necessary:

1. Time and date of injury
2. Date the injury manifested to a disease
3. Date of last exposure to hazardous material of environment
4. Date of disability and/or death
5. Date and cause of retirement
6. Claimant’s wages for the 52 weeks preceding retirement
7. Claimant’s social security number

Other information can be requested for further review:

1. Detailed medical history of the disease from the beginning of medical treatment for related symptoms
2. The way and length of time the claimant was exposed
3. Any witness’ statements concerning exposure
4. Date and circumstances the injured became aware of any correlation between exposure and contracting the disease.
5. The last known date of exposure.
6. All contact information for any medical professional who has treated and/or diagnosed the conditions of the occupational disease.
The LHWCA protects the wages and benefits you can receive.

Whether the occupational disease related impairment began while actively working in the Longshore capacity or as a retired Longshore worker, the LHWCA protects the wages and benefits you can receive. If the occupational disease causes death to a Longshore worker their widow is also eligible for certain benefits.

If a Longshore worker contracts an occupational disease and is forced to retire or limit their ability to complete their job responsibilities because of the debilitating conditions in which the disease causes him/her, their benefits will be comparable to their average weekly wage preceding the disease’s onset. If the occupational disease is recognized within one year of retirement, the benefits available are comparable to his/her wages at retirement; if the claimant has been retired for more than one year they are eligible for benefits of 66 2/3% of their pay multiplied by the degree of the disability caused.

These benefits are not subject to yearly increases but a request can be made to increase the benefits because of a worsening condition. A widow is eligible for 50% of the National Average Weekly Wage at time of death, but the benefits paid cannot exceed the descendant’s retirement wages.
BOATING WHILE INTOXICATED

According the [www.uscgboating.org](http://www.uscgboating.org), there were approximately 5.3 fatal boating accidents directly related to alcohol consumption per 100,000 boats in 2004.

Though that number seems small and the rate of fatalities has been on a constant decline since the study first began in 1970, we have to remember that each accident is one too many and the number mentioned above are not completely reliable. When thinking about the many boating while intoxicated accidents that occur each day in the United States, you have to include the fatalities, accidents and injuries that require police or authoritative involvement, medical treatment and all of the accidents that are never reported or never classified as an intoxicated boating accident.

In the event of an accident caused by an intoxicated boat captain, whether on a recreational boat or a working vessel, the boat owner, employer and captain can be held personally responsible for any injuries and damages suffered. Employers and vessel owners have a specifically defined responsibility to test for the use of drugs and alcohol before allowing a person on the vessel for any reason. According the Omnibus Transportation Employee Testing Act of 1991, all employers are required to perform drug and alcohol testing of safety sensitive transportation employees such as aviation, trucking, railroads, mass transit, pipelines, maritime and other transportation employees.
Employers can screen their employees at specifically pre-determined times during their employment and other times if accidents occur on the job.

Pre-employment is a time when the employer can use their own discretion. If an employer chooses not to perform a drug or alcohol test before you are hired, you cannot perform any safety sensitive job functions. If your employer has cause for suspicion and requests that you submit a drug/alcohol test, you are required to do so. The suspicions must be founded by one or more supervisors concerning your appearance, behavior, speech and smell that are sometimes related to drug or alcohol use.

Employers can also perform random drug and alcohol tests.

These random tests must be a truly random selection process. No one supervisor or authority figure can personally select any employee for testing; the company must have a random selection process already in place. Once you have been selected you will be notified and you must stop performing any safety sensitive jobs and immediately report to the test site. If you do not arrive for the test or interfere in the test in any way, this will be considered your refusal for the drug or alcohol test.

If you are involved in an accident that meets the criteria set forth by the DOT Agency, a post accident test will be required. This is not a voluntary test, meaning you must be available for the test and you must cooperate during the entire process. If you ever violate the drug or alcohol rules, you will be required to submit a drug and alcohol test before returning to any position that entails safety sensitive job functions.

After such an incident occurs, you will also be subject to unannounced follow up testing; you will be tested at least six times in the first twelve months following your return to work. The amount of follow up testing will be determined by a Substance Abuse Professional and may continue for up to five years and your employer is responsible for ensuring the follow up tests are conducted.
DEFENSE BASE ACT (OF 1941)

The Defense Base Act is an extension of the Longshore and Harbor Workers’ Compensation Act (LHWCA) and was created to pay disability compensation and medical benefits to employees and death benefits to eligible survivors of employees of U.S. government contractors who perform work overseas. The DBA incorporates the majority of the provisions set forth within the LHWCA.

In 1941 the United States created the Defense Base Act to protect those civilian employees working under contract or on military bases with the US government for either the purpose of public works or national defense. The ultimate goal of the act was to take the financial burden off of the contracted companies and place it with the US government; the financial burden entails any benefits or compensation paid to the employee or their survivors in the event that the employee either suffers an injury that disables their ability to perform their job function or if an injury causes their death.

The DBA covers both US and foreign nationals, so long as they are employed by and injured while working for a company that the US government has contracted to perform public works (defined as, to include fixed and moveable projects and service projects) or military base work off of US soil. Once an injury has occurred, the insuring agent or self insured company will begin paying benefits/compensation to the employee. The company or insuring agent will then file a claim under the DBA for reimbursement of the monies paid out.

In 1941 the act passed to protect workers on lend-lease military bases and later in 1942 the War Hazards Act passed and the DBA was amended to cover employees outside the US. This amendment covers payment for injuries due to war risk, reimbursement to insurance carriers, and benefits for captured contractor employees. In 1958 both welfare and morale organizations were also included in the companies and employees covered by the DBA. The same year, a further clarification was given to the act stating that service contracts also include contracts that do not directly provide for construction, alteration, removal or repair.
There is a very wide range of contracts, companies and employees who are covered by the DBA under current day conditions.

All employees working for a company, who has a contract with the US, regardless of their country of origin, are covered regardless of their length of employment and including company officers. Contracts covered by the act include, but are not limited to, any defense base acquired from any foreign government; foreign lands occupied by the US for military purposes, public works in any territory or possession, and welfare or morale services given outside of the US for troops, such as the United Service Organizations (USO).

The DBA provides medical and disability benefits to employees injured during their employment and death benefits to any eligible survivors of employees killed during their employment. The compensation rate for total disability is two-thirds of the employee’s average weekly wage; there is a current maximum rate per week ceiling to this compensation.

**Partially disabled employees are eligible for compensation of partial loss of ability to complete their job functions.**

Both permanent and death compensations are payable for the life of the employee and are subject to a cost of living increase. However, the LHWCA minimum benefit rates do not apply to DBA claims. If death benefits are awarded, they are paid in the amount of either one half to a surviving widow or single child or two-thirds of the average weekly wage to two or more surviving dependent family members. These rates are subject to the current maximum rate per week though. Like the LHWCA, the DBA will make reasonable payment for funeral expenses not exceeding $3000.00. Post Traumatic Stress Disorder (PTSD) is becoming more and more common among the civilian workers stationed overseas during war time activities. Upon returning home, these civilians may have a hard time returning to their normal lives, working, eating, sleeping or socializing. The DBA does recognize and cover PTSD through medical treatment and weekly payments.

DBA insurance coverage cannot be waived due to cost, origin of workers or if there is no local workers compensation act. The DBA does not include the Longshore Act minimum compensation rate and it applies to injuries during length of employment, not just while working. Although the DBA has evolved over several decades to meet the needs of ever growing demand for contracted workers overseas, there are still a few areas that have not been set in stone. A few of these gray areas include, but are not limited to, independent contractors, supply contracts and religious workers.
Many times contractors from outside of the US are hired for their services; these companies have to follow the same protocol as US based companies.

The DBA benefits also apply to any employees working for a company that has a written contract with the US government. Any employers wishing to work through a contract with the US on any such projects must secure an insurance policy to cover US citizens and residents, host country local hires and employees hired from another country to perform work in the host country.

Claims are made through the very simple process. First, as an employee who has been injured you must notify your employer within 30 days. In addition, if you suffer from hearing loss or other occupational diseases you may be granted additional time to notify your employer; however if at all possible give any notification of an injury as soon as possible. If, once an injury has occurred, you are disabled or unable to perform your job functions for more than 3 days you should contact your employer or its insuring agent for compensation for lost wages. This compensation is payable 14 days after your first notification to your employer or insuring agent of the injury.

As an employer, you should contact either your insuring agent or claims administrator as soon as you have been notified of an injury or occupational disease occurrence. Any medical treatment needed should be authorized immediately. The employer is also responsible for filing the form LS-202 (Employer’s First Report of Injury) with the OWCP district office with jurisdiction within 10 days. This form can also be filed electronically for immediate submission.

In the event that the employer, employee and/or insuring agent cannot resolve any disputes amongst themselves, a formal hearing can be requested. Any decisions or verdicts made by the administrative law judge may be taken to the Benefits Review Board for an appeal and if at that point there is still no amicable resolution in sight the claim can be brought to the US District Court or the US Court of Appeals.

If you are filing a claim under the DBA you will file it with the office within the United States that covers the particular part of the world you are working in.
The jurisdictions are as follows:

**Region I — Boston**  
(Defense Base Act jurisdiction - East of the 75th degree west longitude, Newfoundland, and Greenland.)

Boston Longshore District Office  
David B. Groeneveld, District Director  
U.S. Department of Labor  
ESA/OWCP/DLHWC  
JFK Federal Building, Room E-260  
Boston, MA 02203  
Phone: (617) 624-6750

**Region II — New York**  
(Defense Base Act jurisdiction - Mexico, Central and South America (including coastal islands); areas east of the continents of North and South America to the 60th degree east longitude (including Iran, Iraq, Afghanistan) and any other areas or locations not covered under any other district office.)

New York Longshore District Office  
Richard V. Robilotti, District Director  
U.S. Department of Labor  
ESA/OWCP/DLHWC  
201 Varick Street, Room 750  
Post Office Box 249  
New York, NY 10014-0249  
Phone: (646) 264-3010

**Region VI — Dallas**  
Houston Longshore District Office  
(Defense Base Act jurisdiction - Canada, west of the 75th degree and east of the 110th degree west longitude.)

Brad Soshea, District Director  
U.S. Department of Labor  
ESA/OWCP/DLHWC  
8866 Gulf Freeway  
Suite 140  
Houston, TX 77017  
Phone: (713) 943-1605
Region IX — San Francisco
Honolulu Longshore District Office (Defense Base Act cases jurisdiction - all areas west of the continents of North and South America {excluding coastal islands} to 60 degrees east longitude {excluding Iran, Iraq and Afghanistan}).

R. Todd Bruininks, District Director
U.S. Department of Labor
ESA/OWCP/DLHWC
300 Ala Moana Blvd., Room 5-135
Post Office Box 50209
Honolulu, HI 96850
Phone: (808) 541-1983

Region X — Seattle
Seattle Longshore District Office (Defense Base Act jurisdiction Canada, west of the 110th degree west longitude, and all areas in the Pacific Ocean north of the 45th degree north latitude.)

Seattle Longshore District Office
Karen Staats, District Director
U.S. Department of Labor
ESA/OWCP/DLHWC
1111 Third Avenue, Suite 620
Seattle, WA 98101-3212
Phone: (206) 398-8255

*Claims based on Vietnam era Agent Orange exposure should be filed in the Honolulu District Office, U.S. Department of Labor, ESA/OWCP/DLHWC, 300 Ala Moana Blvd., Room 5-135, Post Office Box 50209, Honolulu, HI 96850, telephone (808) 541-1983, fax (808) 541-1758.
DIRECT CLAIMS AGAINST VESSEL OWNERS

In certain Longshore circumstances, situations may arise when an injured employee or person may be able to file a claim directly against the vessel owner and/or employer.

There are three circumstances in which a claim against a vessel owner can be brought:

1. The “Turnover” Duty
2. The “Active Involvement” Duty
3. The Duty to “Intervene.”

The Turnover Duty requires ordinary care to be taken when turning a ship’s working responsibilities and all that entails. There should be an amount of care taken that even an expert and experienced stevedoring contractors who are mindful of the possible dangers that may occur from hazardous care of the ship’s service would be able to recognize with ordinary inspection and be able to carry on with cargo operations with a reasonable amount of safety to any persons and property. This duty also includes the responsibility to warn stevedores of any known or possible hazardous situations on the ship or it’s equipment.

The Active Involvement Duty is taken into consideration when the vessel and/or its owner or employer is actively involved in any cargo operations on board the vessel and a negligent injury occurs a Longshore man. The same duty applies to the failure to exercise the expected care to avoid exposing all Longshore men working the vessel from any hazardous environments.

The Duty to Intervene is considered when there is any known certain or possible risk of injury where the vessel owner or vessel employer has a prior opportunity to intervene and prevent the injury.

Such cases are called Third Party. Third Party claims by prove to be a substantial complement to any benefits paid to the employee under the LHWCA. The LHWCA pays a standardized scale of benefits across the board, but Third Party claims could amount to a cash settlement in a varying degree of sums. Such claims should be handled by an attorney who is familiar with such Third Party claims and the course of legal action a person can take against the owner of the vessel.
DEPARTMENT OF LABOR RESOURCES ON LONGSHORE CLAIMS

ESA Key Personnel and Phone Numbers
Victoria Lipnic, Assistant Secretary
(202) 693-0200

Dixon Mark Wilson, Deputy Assistant Secretary
(202) 693-0200

John R. Correll, Deputy Assistant Secretary for Operations
(202) 693-0200

Equal Employment Opportunity Unit
Pamela Gibbs, Director
(202) 693-0024

Division of Legislative & Regulatory Analysis
Priscilla Johnson, Director
(202) 693-0022

Submitting an Information Quality Correction Request
Data Quality Group
U.S. Department of Labor
Employment Standards Administration
200 Constitution Avenue, NW
Room C-3201
Washington, DC 20210
E-mail: Esa-Infoqty@dol.gov

Wage and Hour Division
Alex Passantino, Acting Administrator
(202) 693-0051

Office of Federal Contract Compliance Programs
Charles James, Sr., Deputy Assistant Secretary
(202) 693-0101

Office of Workers’ Compensation Programs
Shelby Hallmark, Deputy Assistant Secretary
(202) 693-0031

Office of Labor-Management Standards
Don Todd, Deputy Assistant Secretary
(202) 693-0122

Office of Management, Administration & Planning
Anne Baird-Bridges, Director
(202) 693-0001

For further information and resource material you can go online to http://www.dol.gov. Here you will find the Longshore (DLHWC) Procedure Manual. This page contains links to each chapter of the manual for anyone to view. You can also check out any industry notices by going to http://www.dol.gov. This page will be updated as needed to include the notices dating back to 1994.
COMMERCIAL FISHING BOAT INJURIES

Commercial fishing can be a very dangerous job, thankfully Commercial Fisherman are considered seamen under the Jones Act. Any injuries a commercial fisherman suffers while working on the fishing vessel are covered by this act. The Jones Act is a federal act that clearly defines the physical and financial responsibilities the owner and/or employer must maintain for the protection of their crew.

As a seaman working on a commercial fishing boat you are entitled to both maintenance and cure if injured. Maintenance is simply a daily rate to cover any living benefits you may have while working on the vessel and cure is the obligation of the ship owner/employer to pay for any medical treatment your injury may require. Because of the varying degrees of living benefits seamen receive while working, maintenance rates will be different for each claim. A seaman working on a commercial fishing vessel is entitled to receive both maintenance and cure regardless of the cause of your injury. However, if your own misconduct or any act of indiscretion caused your accident you may lose any benefits. Moreover if you did not include a medical condition on your job application and that omission influenced the employer’s final decision to hire you, you could lose any entitlement to benefits.

If you file a maritime claim concerning an injury that occurred while working on a commercial fishing vessel and your employer refuses to pay maintenance and cure, you can then file suit against them to cover any legal fees you may incur to receive the compensation you are due. Claims that are filed against employers under the Jones Act are heard in either state or federal court; the state in which the claim is filed in will make the difference. Moreover, depending on the jurisdiction where the injury occurred, you may or may not be eligible for a trial by jury.
As an employer of a commercial fishing vessel, there are many areas of negligence that could easily result in an injury to a crew member.

Such negligence include, but are not limited to, defective gear, mechanical problems, incompetent crew, inadequate crew size for vessel’s intended purpose, failure to provide a safe working environment, failure to follow safety regulations, working in severely adverse weather, failure to provide prompt and necessary medical treatment and failure to maintain a properly trained crew.

If you are injured as a seaman on a commercial fishing vessel, you should immediately notify your employer of your injury. Your employer should authorize you to seek medical treatment from a medical professional of your choice as soon as you are able to do so. Because the Jones Act is a very complicated process of information, you should strongly consider visiting with a reputable maritime attorney. They will be able to ensure your not only receive compensation for your injury and lost wages, but also any future and foreseeable medical expenses and/or lost wages.
CRUISE SHIP CREW MEMBER ACCIDENTS

As a crew member on a cruise ship you have the legal coverage provided to you by the Jones Act. In the event that you are injured, involved in an accident or have lost a loved one due to wrongful death you should be well aware of what protections and compensations the Jones Act provides to member of the crew of a ship or vessel.

According the Jones Act, you are eligible to receive compensation for past, current and future lost wages, loss of capacity to enjoy life, mental anguish, loss of capacity to enjoy life, loss of ability to care for yourself and to perform household services, food and lodging while recuperating, medical care until you reach maximal cure, and other damages that are covered under the United State Maritime laws.

As a member of a cruise ship you are physically put into possible disastrous situations each and every day. Some of the many accidents that could occur are slip and falls, spinal cord injuries, head trauma, broken bones, contraction of contagious diseases, food poisoning and water contamination, sexual and/or physical assault by another crew member or passenger, and wrongful death. If your claim substantiates it, you could also file a third party claim against your employer, the cruise ship company, for negligent acts. Negligent acts include, but are not limited to, sending a vessel out to a voyage with a compromised hull, defective equipment, untrained crew members, lack of medical supplies or care, contaminated water or food, and accidents or injuries caused by adverse weather such as a hurricane.

As with all legal filings, there is a statute of limitations. In most cases, according to the Jones Act, the claim must be filed within one year of date of injury. You should also be aware that once you get back to port your employer should authorize for you to seek medical treatment from a medical professional of your choice. If your injury is severe, your employer should make whatever attempts necessary to have you taken to the closest medical facility immediately, whether that be by air or a faster boat.

If you have been injured or have lost a loved one as a crew member on a cruise ship, you should contact a qualified and experience maritime attorney to assist you in the handling of your claim. Many times employers will dispute the claims that are brought against them because they are well aware of how costly the final compensation could be.
CRUISE SHIP PASSENGER INJURIES

Every year more than four million passengers travel across international waters via a cruise ship. Over 50% of those ships depart from the many ports the United States has to offer. Cruise ships are typically safe environments to spend your time, however like everything else in life there are inherent risks. As a passenger on a cruise ship you believe that the money you are paying for your voyage, in part, should cover safety precautions taken by the cruise line to ensure your safe return home or to your final destination.

A very large number of the cruise ships we travel on cruise under foreign flags. In order to determine if US maritime laws apply to these ships and any accidents that may occur to it’s passengers the courts will consider various factors such as if there was a contract entered in the US, did the voyage begin in the US, and if a US citizen is involved in an accident. If any of these three factors are true then American maritime law typically applies and takes precedent over foreign maritime laws.

One major point to be aware of as a cruise ship passenger is that most cruise ship voyage tickets are actually a binding contract between the cruise line and the passenger who uses that ticket. If the terms of the contract are rather difficult to understand or if the passenger was not made aware that the contract existed, the judge who hears the case may deem that adequate notice of contract was not given and therefore the contract could be null and void.
However, if the contract is easily seen and especially if a passenger’s signature is required on the ticket the contract will stand and at that point it becomes the passenger’s responsibility to adhere to all guidelines provided within the contract.

Some such guidelines include, but are not limited to, in what country a lawsuit may be filed against the cruise line and the statute of limitations for filing a claim.

If a cruise ship passenger suffers an injury they may be able to file suit for damages, medical treatment, lost wages, pain and suffering among others. If a person dies while at sea and the ship is more than 12 nautical miles from the US coast their claim would be filed under the Death on the High Seas Act.

There are several other circumstances that would deem a suit be filed, such as cruise ship groundings, hurricane related accidents, slip and fall accidents, drowning, physical or sexual assault by either cruise ship employees or passengers, food poisoning, contraction of a contagious disease, medical negligence and a series of other mishaps that may cause injury while on a cruise ship.
DEATH ON HIGH SEAS

The US Congress passed what is known as the Federal Death on the High Seas Act (DOHSA) in 1920. The intent of this act is to provide compensation for any dependants when the death of a seaman is “caused by a wrongful act, neglect, or default occurring on the high seas beyond a marine league (3 nautical miles) from the shore of any state or the territories or dependencies of the United States.” Spouses, children or any other dependent relative are eligible to receive death benefits. The DOHSA provides compensation for funeral/burial expenses, medical expenses incurred prior to death, loss of financial support, nurture and guidance, loss of care and loss of household services.

Negligence, unseaworthiness, intentional misconduct and product liability are all considered legal liability under the DOHSA. If you have lost someone who should be covered under the DOHSA, take note that the legal proceedings and information required in these cases need to begin almost immediately. In order for a claim to have all of the supporting evidence it will need to stand up in court, the accident investigation can not begin too early.

The DOHSA also covers any commercial airliner that crashes more than 12 nautical miles from the shores of the United States. Through the years there have been many cases brought to court for aviation crashes and almost each time, an amendment is made to the DOHSA to better clarify the guidelines in which you can file suit. The DOHSA has been amended so that any aviation accident that occurs over international and foreign water will be covered under the act. The DOHSA has also provided many damages that can be sought in aviation related cases, very similar to water vessel accidents that result in the loss of human life.

If you have lost a loved one to a death on the high seas, you should contact an experience maritime law attorney. There are many complex issues that can evolve in these cases which will require the diligent knowledge of an expert to decipher.
MARITIME ACCIDENTS AND INJURIES

While on the water, people find themselves in many different situations that could end in either an accident or injury. When considering the many accidents or injuries that could occur you also have to consider the numerous vessels that take to the sea as modes of transportation and the people who are involved that work on or who are actively involved in the movement of those vessels.

Typically, when you think of accidents/injuries that occur on vessels on the ocean we first think of personal boating accidents. Boating accidents are simply more relevant to the majority of the population’s daily lives, as they are also easier for most of us to relate to because we can pictures ourselves on a personal boat more often than any other type of vessel. We all know that a high percentage of citizens who live near the ocean have personal boats and watercraft vessels. Boat owners in a certain area typically converge to the same areas, whether they are fishing or anchoring with fellow boaters to enjoy the afternoon. This places those people at a higher risk of injury because the more people directly involved with the boats the more chances of mistakes to be made.

The fact is that most accidents that happen at sea happen on other types of sea vessels such as offshore oil rigs, cruise ships, tankers, barges, tug boats and research vessels. The people who are a part of the crew on these vessels are more directly involved with the working of or the machinery required in the running of these vessels. Cruise ships hold a more prevalent regard to injuries for most of us because you rarely hear of employees getting injured but we hear of the guests on board being injured or lost at sea. This conjures up many different emotions for us because we know the guests on board are on vacation and the last thing we would want to encounter on our vacation is any type of injury or accident to ourselves or a family member. While we may not hear very much about the injuries and accidents suffered on oil rigs, tankers, barges and tug boats, the sheer magnitude of those injuries is staggering. These injuries are often times much more serious because of the heavy equipment involved in the daily working of these vessels and the proximity in which the crew works to the machinery.

When at sea, no matter the vessel type, we should always remember that our safety starts with our decisions; although there are always going to be accidents and injuries that cannot be avoided. The range of accidents and injuries suffered can be anything from a minor bruise to broken bones to death and any number of injuries in between. If you find yourself injured make sure you receive the medical attention necessary to treat your injury.
OFFSHORE AND OIL RIG ACCIDENTS

At any given time, there are approximately 2000 working offshore oil rigs, each with a high capacity of workers onboard. If you factor in the large amount of heavy equipment on the rigs, the long hours the workers work, the adverse weather conditions and the simple daily functions of working on such a rig, you find a very large probability for some very devastating accidents and injuries to occur. Many times the accidents and injuries that occur are due to negligence on the employer’s part or of a co-worker. No matter the cause of the accident, the injured worker may find it very hard to get the medical treatment or compensation he/she deserves.

If you are injured while working on an offshore oil or gas rig, you might have a claim to be filed under the Jones Act. The act provides for compensation to an injured employee for lost past, present and future compensation, pain and suffering, disfigurement, future medical expenses and many other damages. The act also allows the injured employee to take a third party suit against the vessel owner or employer for negligence. If you were injured because of missing equipment, a compromised vessel or poorly trained crew members you may also have a clear case of negligence against the vessel owner and/or employer.

If you are injured while working on an offshore oil or gas rig, you should notify your employer immediately. If possible and necessary you should be transported back to shore to seek medical treatment from a medical professional of your choice. If you are unable to be transported or if your injury is not severe enough to mandate you being transferred back to shore, the vessel should be well equipped with medical supplies to treat your injury.

Some of the most common injuries that happen on board offshore oil and gas rigs are brain injuries, chemical/fire/steam burns, broken bones, hearing and/or vision loss, amputations and wrongful death.

Because of the complexity of the Jones Act and the provisions it provides for injured workers, it is highly recommended that any injured worker contact a qualified and experienced maritime attorney to assist them in handling their claim from beginning to end. Many times this is the only way injured workers see the total monetary value of their claim. Employers and insurance agents know that these claims can be very expensive so they will try to dispute the claim or negligence, making it very difficult for a person not qualified in maritime law.
SHIP SAFETY AND SEAWORTHINESS

Many times the terms “seaworthiness” and “ship safety” are used interchangeably. However, the differences between the two terms are quite drastic and when judging your personal safety you should know the difference.

Seaworthiness simply refers to the ship’s mechanical and crew responsibility. A seaworthy ship should be able to handle and safely endure the perils faced at sea. Every ship has a purpose and destination when leaving port; just the same every ship should be able to safely reach its destination and fulfill its purpose. A ship that is not seaworthy has a defect that a prudent owner should repair before releasing the ship for its voyage.

Such defects include, but are not limited to: engine difficulties, mechanical issues, and hull integrity. If an owner or employer of a vessel knows of any defects that could deem the vessel to not be seaworthy, every effort should be made to repair the problem or the ship should not be allowed to leave port for any reason.

Ship safety is a completely different concept, in that it refers to the human uses aboard.

Some of the many reasons why a ship can be deemed unsafe are lack of medical supplies, tainted food, inadequate drinking water and germs/bacteria/viruses aboard the ship. The safety of a ship is a direct correlation of the humans aboard and their health risks during the voyage.

Most commonly we hear of ship safety issues aboard cruise ships. Several times in the past few years it has been made known that many passengers aboard cruise ships are made sick due to food poisoning, tainted water, viruses and other illnesses contracted while at sea.
Ship safety, much like the seaworthiness of a vessel, is a problem that many times can be taken care of before a problem arises. Before a ship leaves port an inventory should be taken of the medical supplies on board and there should be enough medical supplies to treat the number of passengers who will be making the voyage with the ship. All of the water supply should be tested for any bacteria and an accurate measurement should be taken to ensure there will be more than enough potable drinking water for the passengers.

As a passenger or crew member it is your right to know that all safety precautions have been made to ensure your health and safety from port to port. As a vessel owner or employer, it is your responsibility to make every effort to deem your vessel seaworthy and a safe ship.
SHIPYARD, DOCK & PIER ACCIDENTS

The LHWCA not only covers those employees who work on a vessel as seaman, but it also covers marine employees who are injured while working on docks, piers and in ship yards. These areas are considered navigable waters, by definition. Traditional maritime employment includes, but is not limited to, shipbuilding, ship breaking, bunkering, cargo loading, dock building, and inland commercial diving.

Employees who typically qualify for coverage under the LHWCA are shipyard welders, mechanics, stevedores, or harbor pilots. Some employees, such as commercial divers, may not be covered under the Jones Act but may be covered under the LHWCA. Many times when concerning diving injuries, there are factors such as the relationship to a vessel and the amount of time spent offshore before you can determine which act provides coverage for that particular employee.

If an employee gets injured while intoxicated or purposefully trying to injure themselves or another employee, they are automatically disqualified from all coverage of the LHWCA. In the case of a commercial diver, it would have to be determined if he/she would be considered to best fit the definition of a seaman under the LHWCA or Jones Act.

With that in mind though, there would still possibly be cause for a third party suit. Situations such as failure to have correct equipment to shut off high pressure water outlets, engaging the propeller or manufacturing defective materials would all be considered just cause for a third party suit. Other third party suits could arise and be brought against the vessel owner/employer as well.

Whether you are injured or have lost a loved one in a ship yard, dock or pier accident you should contact a qualified and experienced maritime attorney.

There are many instances when the employer, owner or insurance company may try to persuade the inured party to seek medical advice or treatment from their company doctor or they may dispute a claim once you have filed it. Often injured parties do not have sufficient evidence or documentation to win a dispute on their own, but with the help of an maritime attorney all of the available evidence and documentation will be in place to better defend your claim.
THE JONES ACT – 46 US 688

The Jones Act was originally sponsored by Senator Wesley Jones in 1920 and is officially titled the Merchant Marine Act. The writers had two separate goals in mind when writing the Jones Act. First, the act heavily promotes that at least 75% of the crew are American citizens and that the parts, labor, construction and repair of the ship are provided by American companies and employees. This would help ensure that the vessels could serve the United States during peace and war time.

The second very important part of the Jones Act provides protection to the crewmembers, defined as any person working on the vessel from the Captain’s position all the way down to the steward, against any negligence on the part of the vessel owner, employer or fellow employees that causes injury to other persons. As a crewman on a ship or vessel, if you are injured you are entitled to file a claim against your employer for any injuries caused by negligent acts on part of the vessel’s owner or employers by way of the federally commissioned law called the Jones Act. If you were injured while performing a seaman’s duties, you could be eligible for cure, payment of medical bills, and maintenance, a small daily allowance paid to you while you are injured. Under the Jones Act, you may be able to secure compensation for past and future earnings loss, pain and suffering, mental anguish, disfigurement, loss of capacity to enjoy life, loss of ability to perform household services, loss of ability to take proper care of yourself, and many other damages that could occur due to your injuries.

The Jones Act is considered a federal cause of action, meaning that the US Congress intends for all seaman’s injuries in the United States to be held to the same standard of liability. The Jones Act applies to many job functions, such as inland river workers, offshore workers on a jack up rig, drill ship, tug/tow boat, barge, tanker, cargo ship, fishing vessel, floating crane, drill ship, dredge, crew boat, semi submersible ship or rig, motorized platform, diving vessel, cruise ship, research vessel, contraction barge, lay

Contact an experienced Maritime Attorney

Please contact us for a free no-obligation consultation. The more information that you can provide, the more helpful it will be. You are under no obligation to continue. Any information you provide will be held in the strictest of confidence.

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barge, chemical vessel, recreational boat and other floating or moveable structures, so long as you are an employee who is a member of the vessel’s crew.

The Jones Act protects seaman but it does not offer the same protection that worker’s compensation does.

The Jones Act, unlike Worker’s Compensation, does not require compensation to be paid regardless of who is at fault for the injury. However, if a well qualified Maritime Attorney is involved in your case then you can actually be compensated far more through the Jones Act than what you would with Workers Compensation. For the Jones Act to offer protection to a seaman, the worker must provide proof that negligence or fault by way of the vessel owner, a defect in the vessel or equipment, operator, officers or fellow employees.

The Jones Act provides a course of action that can be taken against the employer for injuries caused by negligent acts during the course of employment on a ship or vessel. The employer must do something that is unreasonable or fail to perform reasonable actions that could prevent accidents or injuries to the seaman aboard the vessel. If a claim filed under the Jones Act is a proven act of negligence, then there could also be further claims against the vessel owner/employer that would deem the ship as not seaworthy. The Jones Act also provides death benefits to dependants of the deceased crew member. In the event that a third party is involved and/or responsible for the accident then the injured employee can file a third party claim against that person as well for damages.

There are time constraints in which you have to follow in order for your claim to be eligible for filling under the Jones Act. Depending on where the accident actually occurred you may have anywhere from one to three years from the date of the accident to file your claim. After you have suffered an injury you should seek the medical advice of your own doctor or medical professional. Many times the employers will try to sway employees to seek advice from the employer’s chosen medical professionals or insurance agents.

It is always best to seek your own advice and help when injuries occur to help ensure you will be eligible for any compensation that may apply to your claim and that you receive the medical attention your injury may require.
TUG BOAT AND BARGE ACCIDENTS

Because tug boats are often times used to push or pull barges, they tend to be grouped together when speaking in terms of the injuries that can occur while working on one or the other. Also, because both vessels are very large and often carrying large loads or equipment, the injuries and accidents that happen to crew members are devastating to their livelihood. The Jones Act covers employees who work on such vessels and provides benefits in the event of an accident, injury or death.

The Jones Act provides maintenance and cure to injured workers while they are receiving medical treatment as well as compensation after the injury is treated if there are any lasting negative effects on your ability to perform your previous job functions. Some of the most common negligences include, but are not limited to, chemical exposure, slippery surfaces, poor lighting, dangerous weather conditions, collisions with other vessels and worn out stairs. The Jones Act also provides the ability for the injured worker to file suit if a vessel is not seaworthy if it does not provide a safe working environment for all crew members.

If you are injured while working on a tug boat or barge you should notify your employer immediately. Your employer should authorize for you to seek medical treatment from a medical professional of your choice. Many times employers will refer you to see the company doctor but this is highly discouraged in the event that your employer chooses to dispute your claim.

Some employers will also request that you complete your current shift before leaving work to seek medical treatment, again this is highly discouraged because not only could your injury worsen with time and the stress of working but your employer could potentially use this time gap against you in a claim dispute.

Begin Immediately

Because there are many time constraints involved in filing a claim under the Jones Act, you should begin compiling your facts, paperwork, witness reports and medical reports immediately. It is highly recommended that you contact a qualified maritime attorney to assist you in the handling, filing and trying of your case. Employers and insurance companies know that the compensation they could pay you could be very expensive for them and most of the time they will dispute your claim and/or try to disprove negligence on their part for your injury.
WHAT IS A SEAMAN?

It is often times disputed when a claim is filed under the Jones Act for a seaman. The dispute normally arises due to discrepancies between whether or not the employee was actually performing seaman duties at the time of the injury. There are some basic guidelines that can be used to make a general assumption about a seaman's status. Commonly, if there is any gray area the employee will see one side and the employer will see the other side of the controversy. If there is ever a doubt about your seaman status or if your employee was legally considered a seaman at the time of injury, you should consult your Maritime Attorney for further clarification.

The employee who has been injured must hold and maintain job responsibilities that contribute to the function of the vessel or to accomplish the mission of the vessel. Basically, if your primary job responsibility is to man the dredging machine used to dredge a channel under a causeway in the intercoastal waterway then your job function would be considered necessary in accomplishing the mission of the vessel. However, if your primary job responsibility simply places you on the vessel while working on a piece of machinery and you are not actively involved in the navigation or mission of the vessel you are probably not considered a seaman.

To be classified as a seaman you must actually be a part of the crew that is responsible for the navigation through waters. Many times employees who are simply in charge of loading or unloading a vessel while at port call themselves seaman, when in actuality they are not seaman but would be considered a land based employee. When a Jones Act claim is brought to court, the Judge or Jury should consider several factors before determining the actual classification of the injured employee's seaman status. Keep in mind that just because a land based employee gets injured while working on a vessel does not qualify him for seaman’s status and, conversely, just because a seaman’s work responsibilities require him to work off of the vessel on land when he is injured does not mean he has lost his seaman’s status. A Maritime Attorney can help you look at all of the details involved in the case to make a better determination of whether or not seaman’s status was clear or if the injured employee held a more land based position. In essence, the entire set of circumstances has to be taken into consideration before an appropriate decision can be made.
GLOSSARY

Act -
The Longshore and Harbor Workers’ Compensation Act, as amended and extended by the DCCA, DBA, OCSLA, and NFIA.

Appeal -
The process of seeking review by the Benefits Review Board of a decision and order issued by an Administrative Law Judge or, under certain circumstances, of a compensation order issued by a District Director. Also used to refer to the process of seeking review of a final order of the Benefits Review Board in the U.S. Court of Appeals for the circuit in which the injury occurred. In DBA cases where the injury did not occur within any “circuit,” the appellate jurisdiction is in the circuit that includes the OWCP district where the claim was filed.

Barge -
a roomy, usually flat bottomed boat, used primarily for transporting goods on waterways.

Cargo -
the goods or merchandise conveyed in a ship, airplane, or vehicle.

Civilian Employees -
employees who are hired by a company who is contracted by the United States government to complete work for military purposes.

Chronic Ailment -
a bodily disorder or chronic disease marked by long durations or frequent recurrence.

Claims Examiner -
An employee of the OWCP who is trained to evaluate claims under the particular act in which the claim is filed.

Commercial Diver -
a diver who is engaged in underwater work for hire.

Crew -
the whole or part of a company belonging to a ship, sometimes including the officers and master.

Cruise Ship -
a passenger ship used commercially for the pleasure of cruises.

Disability -
The term is defined in section 2(10) of the LHWCA. Any impairment that causes a person to no longer be able to function under normal circumstances, including employment, enjoyment of life and sometimes financially.

Dredging -
to deepen (as a waterway) with a dredging machine

Dispute -
An issue which is contested by one or more parties, or a question of entitlement based on evidence or opinion.
Eligibility/Entitlement -
As used throughout the LHWCA PM, it directly refers to any benefits or compensation that may be awarded to a claimant or their dependants in terms of what provisions are allotted by the particular act for a particular situation.

Filing -
The submission of documentation requesting compensation under an act.

Fisheries -
the occupation, industry or season of taking fish or other sea animals.

High Seas -
the open part of a sea or ocean especially outside territorial waters.

Impairment -
The loss of use of any body part or its function; impairment does not always equate to a disability but often the two terms can be one in the same.

Longshoreman-
a person who loads and unloads ships at a seaport

Loss of Wage-Earning Capacity -
A computation of economic loss that takes into consideration the claimant’s age, degree of disability, education, work history, training, and the availability of work in the area in which the claimant lives; payment of compensation based on such computation may continue for the life of the claimant if the loss will be permanent, however if the loss is temporary the payments will end accordingly to the injuries recuperation time or will be ended after 5 years.

Maritime -
of or relating to navigation or commerce on the sea

Maritime Law -
laws put in place by states or federal government entities to protect those persons who work and travel by means of waterways.

Occupational Disease -
a disease which is incurred by an employee due to exposure to certain chemicals and/or loud noises they are subjected to due to their direct employment.

Perils -
exposure to the risk of being injured, destroyed, or lost.

Permanent -
a medical term that describes an injury or impairment that is not expected to heal within a normal time period, regardless of medical treatment or intervention.

Permanent Partial Disability -
A job-related physical or mental disability that is expected to be permanent, however with the disability the employee is expected to be able to return to a working capacity and able to earn wages.

Permanent Total Disability -
A job-related physical or mental disability that is permanent and leaves the employee unable to earn the wages he/she did before the injury occurred.
Pier -
a structure (as a breakwater) extending into navigable water for use as a landing place or promenade or to protect or form a harbor.

Pleasure Boat -
a motorboat used for recreational activities, such as sport fishing or touring.

Public Works -
works such as schools, roadways and infrastructures constructed for public use, especially when financed and owned by the government.

Schedule Award -
A compensation system devised to award compensation amount based on the body part that is disabled and enables the all injured claimants to be paid consistently based on their injuries.

Seaman/Sailor -
a mariner or sailor, one who mans a ship, to be individually defined by an act

Seaworthy -
fit or safe for a sea voyage

Ship Breaker -
a person who dismantles ships

Ship Builder -
a person who builds or has part in the constructing ships

Ship Repairer -
a person who repairs ships

Shipyard -
a yard, place or enclosure where ships are built or repaired.

State Workers Compensation -
compensation benefits provided to employees who are either laid off or fired, if eligible by the provided guidelines mandated by each state

Stevedore -
one who works at or is responsible for loading and unloading ships in port

Tanker -
a cargo ship fitted with tanks for carrying liquid in bulk, usually used on waterways.

Temporary Disability -
Refers to an injury which leaves the injured party unable to perform his/her work but is expected to heal within a normal time period and with correct treatment so the injured employee may return to full capacity.

Temporary Partial Disability -
Refers to an injury which leaves the injured party unable to perform their full job responsibility but still able to perform some duties of their job; employee is expected to return to normal capacity within a normal time period and with correct medical treatment.

Temporary Total Disability -
Refers to an injury which leaves the employee unable to perform any job functions but the injury is expected to heal within a normal time period and the employee will then be able to return to perform all of the job responsibilities they had before the injury occurred.
Third Party -
A party or individual who is neither the claimant nor the employer, who causes the injury or disability to the employee, entitling the employee or his or her survivors to pursue a suit, claim or action to recover damages.

Third Party Suit -
A derivative lawsuit brought by a defendant in an original lawsuit, claiming that another new party being brought in is responsible for or should share in the plaintiff’s damages against the defendant.

Tug Boat -
a strongly built boat used for towing or pushing other vessels through the water.

Sexual Assault -
Illegal sexual contact that usually involves force upon a person without consent or is inflicted upon a person who is incapable of giving consent.

Unseaworthy -
unfit or unsafe for a sea voyage

Vessel -
a watercraft bigger than a rowboat.

Voyage -
a course or period of traveling by other means than land routes.

War Hazard -
any risks involved in working in a war zone.