

Maritime Injury Cases

The following are the questions most frequently asked by our clients about Maritime injury cases. Obviously, the questions and answers are very general and may or may not pertain to your case. If you require further information regarding any of these topics, we'll be happy to discuss them with you in greater detail.

If I've been hired to work on a vessel, do I have any right to be compensated if I suffer an injury or illness?

Yes, but your rights depend upon what you were hired to do, and whether there was any negligence or unseaworthiness involved. To qualify as a crew member, it is not necessary to be directly involved in a vessel's movement from place-to-place, so long as your work contributes to the accomplishment of the vessel's overall mission. For example, processors on factory trawlers or on fish processing ships and food service workers on passenger vessels are crew members. Even marine construction workers on special crafts such as dredges may qualify.

If I am a crew member and there is no negligence or unseaworthiness involved, what are my rights?

Basically, you are entitled to maintenance (a daily allowance to help support you), cure (your medical expenses), and wages (a continuation of your pay, at least for a brief interval, and perhaps longer, depending on the terms of your employment agreement).

Under what circumstances must the above benefits be paid?

Basically, whenever a crew member becomes injured or ill while still in the service of the vessel. The injury or illness need not be caused by the crew member's work. Even a crew member who suffers an injury or illness while on authorized shore leave may be entitled to these benefits, so long as he or she is "on call" and bound to resume the performance of duties upon command.

If there is negligence or unseaworthiness, are there additional benefits?

Yes. Under Maritime law, if a crew member's injury or illness has been caused even due to the slightest degree by unseaworthiness, the individual may recover actual damages. In addition to the basic benefits outlined above. Under Maritime law, unseaworthiness does not refer to vessels which are just about to sink, but is rather a very broad term, including any defect or deficiency in a vessel, equipment, supervision or personnel. Under these circumstances, a crew member may collect damages as outlined below.

In a situation where there is negligence or unseaworthiness, am I entitled to collect the basic benefits while my underlying claim for damages is being processed?

Yes, and your benefits cannot be withheld because you are exploring or proceeding with an additional claim for damages. If, however, you do recover damages through a negligence suit, and your employer has already paid some benefits for medical expenses and unearned wages, you cannot collect twice for the same medical bills and income loss.

Under basic Maritime law, what are my rights with regard to maintenance, cure and wages?

Very basically, they are these:

- Maintenance is essentially a cost of living allowance. Maintenance rates are based upon custom, court decisions, proof of the cost of food and lodging ashore comparable to that provided by a crew member's vessel, or contract between the crew member and the vessel. These rates are not set by regulation or legislation. Current typical rates range between \$15 and \$25 per day.
- Cure consists of the reasonable costs of health care to cure and relieve the consequences of an injury or illness. Crew members ordinarily can choose their own health care providers.
- Wages are payable only to the end of the current pay period during which a crew member becomes injured or ill unless he or she is hired for an agreed interval, such as a fishing season or a particular voyage. In that case, the ship owner must continue to pay the crew member full wages – in addition to maintenance and cure – to the end of the agreed interval of employment, unless the crew member recovers and becomes fit for duty sooner.

How long am I entitled to receive these benefits?

As noted above, wage benefits last only until the end of a current pay period or the end of an agreed contractual interval. Maintenance and cure benefits are payable only until the crew member reaches maximum medical improvement. This is the point at which no further improvement in the medical condition can reasonably be expected. In other words, the individual will get no better with further treatment, nor deteriorate in the absence of treatment. After that, a vessel owner or employer has no further responsibility for maintenance, even if a crew member still cannot return to work. The owner or employer has no responsibility for further medical care, even if continuing care is necessary, unless the crew member can prove that the injury was the result of unseaworthiness or negligence.

If my injuries are a result of negligence or unseaworthiness, what additional benefits may I be entitled to?

If you can prove that your injury was caused by negligence – or by unseaworthiness, if you are a crew member – you can be compensated for your actual out-of-pocket expenses already suffered, as well as those you can show you will suffer in the future. These include past and future medical expenses, past and future income loss, and loss of earning capacity. Importantly, you would also be entitled to recover general damages to compensate you for the pain and suffering from your injuries, your loss of enjoyment of life, and your past and future inconvenience.

Must I sue to obtain the benefits of maintenance, cure, and wages, or to obtain additional damages based on negligence or unseaworthiness?

Ideally, it should not be necessary to file suit to obtain the basic wage, maintenance, and cure benefits. Regrettably, however, delay and avoidance on the part of vessel owners are quite common. Thus, suit is sometimes required. Realistically, to obtain compensation on the basis of negligence or unseaworthiness, it is almost always necessary to make formal claim against the insurer and to be at least prepared to file suit if that claim is not addressed.

If a suit is brought, when or where will it go to trial, and how long will it take before I am compensated for my injuries?

Maritime suits may be brought in State or Federal courts, depending upon the circumstances. Suit may be brought in various jurisdictions, based on place of employment, place of injury, vessel owner's residence or present location of the vessel. The choice made in your case would be on the basis of what is most advantageous to you. As to how long it will take to resolve your case, the basic guideline is the sooner begun,

the sooner resolved. Most vessel owners or insurers will not rush to compensate injuries, and will settle the case only when liability has been established and the damages demonstrated. Likewise, court calendars are congested, so the sooner an action is filed, the sooner the parties will reach a decision.

Is there any governmental agency that will assist me with my claim?

There is no agency to help crew members or any other persons injured by vessel negligence. An individual employed by a contractor hired to do some incidental work for a vessel may be able to make a claim under the Longshoreman-Harborworkers Act (and we handle such claims), but such a claim cannot be made against a vessel owner/employer unless there is a specific incidence of negligence. Frequently, however, individuals who are working in the waters off Alaska may be covered under the Alaska Workers' Compensation Act. Such coverage does not necessarily preclude a claim of negligence or unseaworthiness for injuries sustained in the course of employment.

If I am an injured crew member and have not reached maximum medical improvement, what impact does it have on my employer's obligations if I attempt to return to work?

If you were forced back to work because your employer has failed to pay appropriate benefits, despite knowledge of your injury and continuing disability, the employer remains fully responsible for all benefits. In addition the employer may be required to pay your attorneys fees and additional damages to punish the employer for such conduct. On the other hand, if the employer is meeting its obligations, but you return to work for financial or other personal reasons, even aboard another vessel, your cure benefits shall continue, but your earnings would likely be credited against the employer's unearned wage obligations. If you return to sea, your maintenance would likely cease.

What if I can't return to the type of work I was doing when I was injured, or if I cannot ever work again at all?

Since a crew member can collect unearned wages only to the end of the agreed interval of employment, and since maintenance and cure may be collected only until maximum medical improvement is reached, such significant losses in wage earning capacity are compensable only when a claim can be asserted on the basis of negligence or unseaworthiness. In such a case, these vocational and economic consequences, including loss of income and retraining expenses, form an important part of damages.

How is it determined whether I am entitled to recover damages, and if I am so entitled, how is the amount set?

To determine whether a claim can be brought on the basis of negligence or unseaworthiness, a fairly extensive investigation is usually required. This ordinarily involves: obtaining various vessel documents and any statements or reports you may have made, interviewing witnesses, inspecting and photographing the vessel and any equipment involved, obtaining advice from experts in various fields and researching what laws may affect your claim. Additionally, complete medical records concerning your injuries and income information which would demonstrate economic loss must be obtained. When we have sufficient information to evaluate both the liability and damages, we make a comprehensive analysis and share it with you. To help calculate the amount of damages, we subscribe to numerous publications which report jury verdicts and settlement amounts so that we have the benefit of the latest results. We are also members of a number of organizations in which attorneys informally share information about insurers and case value. We will carefully involve you in the process of establishing the value of the case, to be certain that no element of damage is overlooked. Ordinarily, a very comprehensive letter is prepared to be sent to the responsible party or insurer and an attempt is made to resolve the claim on the basis of negotiation. If the response is not adequate, however, we will then prepare the matter for trial. Under some circumstances mediation may be attempted before trial. In all events, should we proceed to trial, a judge or jury would decide what elements of damage you should recover and the amount for each. At trial, our side has the burden of proving by appropriate evidence the amount of damages you are entitled to receive. It has often been said that a good settlement is better than a good lawsuit any day. There is much wisdom in that statement, and we attempt to settle whenever a fair result can be obtained. Such settlements, however, depend upon a prompt investigation of the claim and ample opportunity to establish damages.

What happens if I was partly responsible for my injuries?

If you were a crew member in the service of a vessel and you were injured, fault has no effect on your rights to receive the benefits of maintenance, cure and unearned wages. It makes no difference whether your injury resulted entirely from your own fault, someone else's fault, or nobody's fault. The same is true if you have a claim which would be covered under the Longshore-Harborworkers Act. However, if you can prove that you were also entitled to recover damages because your injuries were caused by vessel negligence or you were a crew member injured by unseaworthiness, then your recoverable damages would be reduced to the extent that your own fault contributed to your injury. For example, if the evidence showed that the vessel fault for negligence or unseaworthiness contributed 75% to cause your injuries – meaning you were 25% at fault – you would be entitled to collect 75% of your damages.

What is an expert and why must experts be involved in my case?

The law describes an expert as someone with "special training, education and experience in a particular science, profession or calling." Their opinions, reports, and testimony are necessary to provide information outside the expertise of a lay person. Obvious examples are doctors, who provide expert opinions about the nature and extent of injuries. Other experts frequently used in maritime claims include marine surveyors, naval architects, engineers, and experienced seamen, as well as vocational specialists, economists, and accident reconstruction specialists. It is frequently very important to consult such experts early in the assessment of the case, and we have access to a large number of highly respected specialists in a variety of fields.

What can I do to help my own case?

Many people unwittingly damage their own cases by their actions or inactions. We strongly urge you to bear in mind the following suggestions during the course of your case:

- Don't discuss your case with anyone other than your attorneys, your physicians and your immediate family. Statements are frequently distorted or taken out of context.
- Sign nothing dealing with your claim until you receive the approval of your attorney.
- Keep careful track of any out-of-pocket expenses you incur, such as bills for medication, transportation to and from health care facilities or household help. It will be difficult to obtain repayment for these expenses unless they are carefully documented in the first place, and such documentation includes obtaining and keeping records of receipts.
- Keep a record of how your problems are affecting you. This doesn't need to be a formal diary, but could simply involve notations on a calendar or date book. The idea is to be able to reconstruct many months or some years distant what problems actually affected your day-to-day life as a result of the injury. Any such record will, however, be subject to inspection by the defense, so it should not include confidential or unrelated materials.
- If a suit is necessary, you can be advised whether mediation, arbitration or some other method of settling prior to trial is appropriate.
- You can concentrate on recovering from the effects of the accident and leave the stress of the legal aspects to your attorneys.

How can hiring an attorney help me?

Maritime law is complex. It has developed over the course of many centuries. It includes many unusual features affecting the rights and obligations of those involved in maritime activities. It also incorporates complex procedures by which those rights and obligations are enforced. Maritime occupations tend to be

dangerous, and injuries are apt to be serious. With far reaching and costly consequences to the injury victim, substantial sums tend to be at stake.

Most people are unfamiliar with this body of law. Vessel owners, and in particular their insurers and legal representatives, have a far greater knowledge of these laws and procedures than you do. Methods of resolution include settlement, mediation, arbitration or trial. A capable maritime lawyer on your side can eliminate the advantage vessel owners and their insurers have in dealing with your claim. Your lawyer can see that the law is correctly and fairly applied to your case and that all elements of your damages are acknowledged and compensated.

In our experience, the sooner an attorney begins advising and representing you, the higher the likelihood you will receive fair compensation for your injuries. [Contact us](#) now to discuss the details of your case.