

SEAFARERS' ADVOCACY: KEY CHALLENGES

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OUTLINE

- I. Knowledge of Legal Rights
 - A. U.S. Maritime Law for Seafarers
 - 1. Maintenance and Cure- no fault
 - 2. Fault Based Claims
 - 3. Contract Based Claims
 - 4. Wrongful Termination
 - B. Longshore Harbor Workers/ 905(b) Claim
- II. Arbitration
 - A. Employment Agreements/CBAs
 - B. Unfair Process
 - C. Foreign Law/Foreign Location
- III. Misc. Seafarer Issues
 - A. Must Understand Contracts and Forms
 - B. Report Incidents and Injuries
 - C. Time to Bring Legal Action



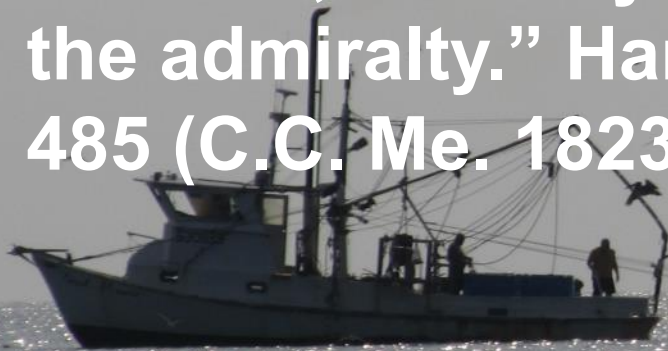
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SEAFARERS ARE WARDS OF THE COURT

Early in our nation's history, Justice Story declared: "Every court should watch with jealousy an encroachment upon the rights of a seaman, because they are unprotected and need counsel; . . . They are emphatically the wards of the admiralty." *Harden v. Gordon*, 11 F. Cas. 480, 485 (C.C. Me. 1823).



**Seafaring continues to be “a high risk occupation, with a high rate of death and injury compared to most land-based occupations.” Int’l
8 Comm’n on Shipping, Inquiry Into Ship
Safety: Ships, Slaves and Competition
255 & Tbl. A9.12 (2000) (“ICONS”).**



Application of US law for Seafarers working for U.S. based companies or on U.S. based ships



I. Maritime Law- Seafarers

A. Maintenance and Cure

- Money for food/lodge ashore
- Medical care
- No fault benefit
- Duration- maximum cure / maximum medical improvement
- Defenses



I. Maritime Law- Seafarers

B. Fault Based Claims

- Jones Act Negligence
- Unseaworthiness
- Failure to Treat
- Willful Refusal to Provide M & C



I. Maritime Law- Seafarers

C. Contracts/Agreements

- Disability Provision in CBA
- Death Benefit
- Retirement



I. Maritime Law- Seafarers

D. Wrongful Termination Claims

- At Will Employment
- UNLESS:
 - Discrimination
 - Seeking to Enforce Legal Rights
 - Violation of Public Policy
 - Whistleblower



I. Maritime Law- Workers
B. Longshore Harbor Workers/ 905(b) Claim



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II. Arbitration

- Employment Agreements
- Collective Bargaining Agreements




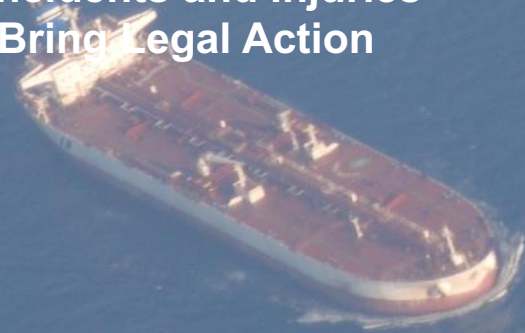
II. Arbitration

- **Unfair Process**
 - **Limited Discovery with Same Burden of Proof**
 - **Do not have Judicial safeguards**
 - **No court rules for fair process**
 - **Takes an unreasonable length of time**
 - **Limited appellate review**
 - **Confidentiality**
 - **Arbitrators tend to favor industry (the repeat customers)**
 - **Attempt to mandate application of foreign law and location**



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II. Misc. Issues

- Seafarers must read and understand documents that they sign and complete
 - Pre-employment Physical Forms
 - Written Statements



II. Misc. Issues

- Seafarers must report incidents and injuries



II. Misc. Issues

- Seafarers must timely pursue legal action in the proper forum



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Thanks for attending.

