



Marilyn Raia
San Francisco,
Shareholder

Direct Dial: 415.352.2721
Fax: 415.352.2701
Email Attorney

A Seaman's Release of Claims: Is It Enforceable?

By Marilyn Raia

The signing of a release is an integral part of the settlement of a claim for personal injuries. In exchange for the settlement funds, the injured party releases the responsible party from any further liability arising out of the injuries. This column explains the scrutiny given to a seaman's release of claims.

Protected Status of Seamen

Seamen have long been considered "wards of the admiralty court" in need of special protection. In 1823, a federal court in Maine characterized seamen as having "little of the foresight and caution belonging to persons trained in other pursuits of life". It noted they are "thoughtless and require indulgence", "credulous and complying", and "easily overreached."

While seamen are considered legally competent to enter into settlement contracts with vessel owners, some courts consider the seaman's release to be more like an agreement between a fiduciary and a beneficiary rather than an ordinary contract between two parties. The courts believe seamen are in need of protection with respect to settlement contracts because they do not have equal bargaining strength. In 1839, another federal court in Maine considered vessel owner merchants to be "shrewd, careful, familiar with business forms, watchful and far-sighted in providing for their own interests." On the other hand, it considered seamen to be "ignorant, improvident and necessitous" and unable to "defend their rights against superior knowledge, sagacity and wealth of their employers."

Factors Considered

A seaman's right to compensation for personal injuries is determined under federal law. The enforceability of a seaman's release in settlement of a personal injury claim is also governed by federal law. The vessel owner seeking to enforce a release signed by a seaman has the burden of proof. To fulfill its burden, the vessel owner must "affirmatively show that no advantage has been taken."

In determining the enforceability of a seaman's release, the courts consider the totality of the circumstances under which the release was signed. They focus on four factors:

1. was the compensation adequate for the injuries sustained and the risk of litigating;
2. was the seaman adequately advised of the extent of the injuries and his/her prognosis;
3. was the seaman fully advised of his/her legal rights; and
4. was there overreaching.

Release Not Enforced

Resner v. Arctic Orion Fisheries 83 F.3d 271 (9th Cir. 1996) provides an example of circumstances under which a seaman's release was held unenforceable. Resner was employed by Arctic Orion as a fish processing foreman aboard a commercial fishing vessel. He suffered the loss of parts of four fingers when clearing debris from a fish-heading machine. He had ignored warnings from Arctic Orion to keep his hands away from the blade.

Arctic Orion paid for Resner's medical treatment and rehabilitation. It also assigned a claims

manager to handle the claim. The claims manager met with Resner and learned he was having some personal financial difficulties and wanted to return to work as soon as possible. The claims manager told him he could not return to work until he released Arctic Orion from liability for his injuries.

Resner believed he was solely responsible for his injuries. He suggested Arctic Orion pay him \$16,200 which was enough to cover some of his outstanding debts. Arctic Orion agreed. In exchange for a release, it paid Resner \$16,200, promised him at-will employment (he could be terminated at any time for any reason), and sent him back to sea.

Once Resner returned to work, he realized he could not perform his duties. He then sued Arctic Orion for negligence and unseaworthiness. Arctic Orion argued the release was a bar to Resner's suit. After a trial, the district court held the release was not enforceable because Resner had not "freely and advisedly given up his claims against Arctic Orion." An expert found Resner was "trusting, unsophisticated and easily influenced." After invalidating the release, the judge found Arctic Orion to have been negligent in failing to provide wrist restraints, which would have prevented the injury, and in failing to train the crew in the use of the fish-heading machine. The judge also found Resner to have been 50 percent at fault in the cause of his injuries. Arctic Orion appealed on the ground the release was valid.

The appellate court agreed with the district court's judgment and held Arctic Orion had not met its burden of showing it had not taken advantage of Resner. It found the amount of the settlement was "plainly inadequate" for the type of injury sustained. Although Resner had suggested the amount of the settlement, the court found he had not based the suggestion on an informed evaluation of his damages but rather on the amount of his outstanding debts. It also found Arctic Orion had not evaluated Resner's claim but merely accepted what Resner suggested based on Resner's statements that he had been at fault. The court recognized Arctic Orion knew Resner was unaware that his injury could have been prevented by the use of wrist restraints. Therefore, Arctic Orion knew Resner was wrong when stating his action was the sole cause of his injury.

Arctic Orion had given Resner a written explanation of his rights as a seaman to recover for negligence and unseaworthiness. However, there was evidence Resner did not read or understand the explanation. The court stated Arctic Orion did not have a legal obligation to explain the merits of the claim to Resner or refer him to a lawyer but reasoned Resner might not have signed the release had he known more about his rights and the legal effect of Arctic Orion's failure to provide wrist restraints. The appellate court found Arctic Orion took advantage of Resner's desire to return to work by implying he had to release his claims before being allowed to return to work.

Release Enforced

Sea-Land Service, Inc. v. Sellan, 64 Fed. Supp.2d 1255 (S.D. Fl. 1999) provides an example of circumstances under which a seaman's release was held enforceable. Sellan was the chief steward on Sea-Land's vessel. On November 6, 1993, he hurt his back when moving a heavy box of meat. Sea-Land paid for Sellan's medical expenses, which included surgery.

On May 12, 1995, the neurosurgeon who had operated on Sellan's back told Sea-Land that Sellan was permanently not fit for duty and had a permanent disability rating of 56 percent. Based on that assessment, Sea-Land and Sellan negotiated a settlement of Sellan's claim.

Sellan was not represented by counsel during those negotiations. A document called "Release and Settlement Agreement Not to Sail" was prepared. It provided for a payment of \$364,500 to Sellan in exchange for a release of his claims against Sea-Land and his agreement to never sail or work for Sea-Land. The document stated Sellan assumed the risk of any error in the evaluation by the neurosurgeon regarding his ability to work, and acknowledged his doctors recommended that he not engage in work as a merchant seaman in the future. Finally, the document stated if, in the future, Sellan worked aboard a vessel owned or operated by Sea-Land, Sea-Land would not be liable for any injuries he might suffer. The document was signed by Sellan's wife, a family friend, and a notary but not by Sellan. Sea-Land paid \$364,500 to Sellan.

On April 14, 1997, Sellan was able to obtain fit-for-duty status after an examination by a union doctor. Sellan did not tell that doctor what the neurosurgeon had previously told him about his permanent disability from the November 6, 1993 back injury. Sellan then went to the union hall and was able to secure employment on a Sea-Land vessel because Sea-Land was unable to perform background checks due to a dispute with the contractor performing the background checks.

On October 31, 1997, Sellan suffered a back injury similar to his November 6, 1993 injury. Sea-Land filed a lawsuit against Sellan seeking enforcement of the settlement agreement to preclude any liability to Sellan arising out of the second injury. After a trial, the district judge held the settlement agreement arising out of the November 1993 injury was enforceable and barred Sellan from seeking a recovery for his second injury.

The court recognized the public policy favoring enforcement of pre-trial settlements. However, it cautioned the law is "solicitous of seamen". It noted Sellan did not have a lawyer representing him in the settlement negotiations but stated that fact alone was not a ground to invalidate the settlement if he was fully informed about the extent of his injuries and the terms of the settlement agreement.

The court rejected all of Sellan's arguments for nullifying the settlement agreement. His failure to sign the written agreement because he allegedly did not agree with it, did not render it unenforceable. The court held when a party accepts the benefits of a settlement, i.e. cashes the settlement check, knowing the facts leading to the settlement, he cannot later disavow the settlement. The court also noted the settlement agreement was based on the allegation Sellan suffered a permanent total disability in 1993. Therefore, it reasoned, he could not be further disabled in 1997. Finally, the court found the "not to sail" condition of the agreement was a bargained-for essential part of the settlement negotiation process and did not violate the law. It held when settling a claim for an alleged permanent total disability, the vessel owner is entitled to refuse future employment to the injured seaman.

A seaman's release of claims for personal injuries may or may not be enforceable depending on the circumstances. The vessel owner seeking to enforce the release must prove the seaman was fully informed of his rights before signing the release and not taken advantage of.