BULLIVANTHOUSER

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Need Help With That?

By Marilyn Raia

A seaman's work is physically demanding. He must lift lines, equipment, stores, and other heavy objects while on the vessel. When a seaman lifts something that is heavy and he suffers an injury, is the employer liable? Maybe but maybe not.

The Seaman's Theories of Liability

When a seaman is injured aboard a vessel in navigation while lifting something heavy, there are two main theories of liability against the seaman's employer: negligence under the Jones Act and unseaworthiness of the vessel. To recover under the Jones Act on a negligence theory, the seaman must prove the employer did not exercise reasonable care for the seaman's safety or did not provide a safe work environment. Some courts have characterized the seaman's burden of proof under the Jones Act as "featherweight". That means the injured seaman can recover for the injury if the employer's negligence played even the slightest part in causing the injury.

To recover for unseaworthiness of the vessel, the seaman must prove the vessel was not reasonably fit for its intended purpose. The unfitness might be, among other things, inoperative machinery, inadequate or incompetent crew, or improper shipboard procedures. The vessel owner does not have to eliminate all possibility of an injury for the vessel to be seaworthy and the occurrence of an injury on a vessel does not mean the vessel was unseaworthy. A vessel is unseaworthy only if it presents an unreasonable risk of an injury to a crewmember.

A seaman's routine job duties involve heavy lifting from time to time. The need for a seaman to lift something heavy in the course of employment does not mean the seaman's employer is negligent. Nor does it mean the vessel on which the seaman must lift a heavy object is unseaworthy.

A seaman has a duty to exercise reasonable care for his own safety. A part of that duty includes asking for assistance if needed. If the seaman was negligent and that negligence was a proximate cause of an injury, the recoverable damages will be reduced by the percentage of fault attributed to the seaman.

Liability Found

A vessel owner employer can be held liable when a seaman injures himself lifting a heavy object if adequate help is not provided when needed. Bonmarito v. Penrod Drilling Corp., 929 F.2d 186 (5th Cir. 1991) illustrates the point.

Bonmarito was a watchstander aboard a semi-submersible drilling rig, ***Penrod 78***, owned by his employer Penrod Drilling. His duties included monitoring compliance with safety regulations. One day, he found several empty oxygen cylinders left in the lower hold by other employees. Because they posed a fire hazard, he informed his supervisor. The supervisor ordered Bonmarito to move them and sent a laborer, Jones, to help him.

Bonmarito and Jones moved one cylinder weighing 144 lbs. to the "drill tool room" without incident. To get there, they had to lift the cylinder over the lip of a watertight doorway. As they were moving the second cylinder, which weighed 180 lbs., through the doorway, a disproportionate share of the weight was shifted to Bonmarito causing a back injury. Bonmarito alleged Jones did not properly lift the cylinder over the lip, which caused the weight shift.

Bonmarito sued Penrod alleging it was negligent when having Jones help him carry the cylinders because Jones had not fully recovered from a serious ankle injury and had a heart ailment, both of which affected his ability to carry the heavy cylinder. Bonmarito also alleged the ***Penrod 78*** was unseaworthy because of Jones's inability to perform heavy labor. Jones denied his unfitness.

The jury awarded Bonmarito $355,000 in damages based on negligence and unseaworthiness. Penrod appealed. The Fifth Circuit agreed with the judgment. It concluded Bonmarito had met his burden of proving Penrod's negligence in having Jones, who was not totally fit, help him move the cylinder. The Fifth Circuit also held the evidence of Jones's unfitness supported the finding of unseaworthiness of the ***Penrod 78***.

Liability Not Found

Contrary to common belief, a vessel owner employer is not always found liable to a crewmember who is injured when lifting something heavy aboard the vessel. In Rutherford v. Lake Michigan Contractors, Inc. 132 F.Supp.2d 592 (W.D. Mich. 2000), Rutherford was a deckhand working aboard a tug owned and operated by his employer Lake Michigan Contractors. His employer was a dredging company. Three vessels were customarily used in the dredging operation: a dredge, a barge, and a tug. The tug was used to tow the barge when filled with dredge spoils to a dumping ground. Rutherford hurt his back when he was handing a heavy loop at the end of a steel cable from the tug to a deckhand working on the barge. The loop was to be placed around a cleat on the barge to connect the tug and the barge. The loop weighed 120-150 lbs.

Rutherford sued his employer alleging it was negligent in requiring him to lift 120 lbs. of cable by himself. He also alleged the tug was unseaworthy because it lacked sufficient crew members and because the cable he was lifting was made from steel and heavier than the Kevlar lines used aboard his employer's other vessels. The employer moved for summary judgment on the negligence claim. The district court granted the motion. It found Rutherford did not present any evidence to establish his injury would not have occurred if his employer had used a lighter cable. It further held Rutherford did not show he asked for help or that the task he was performing could not have been performed safely by one crewmember. The district court also granted summary judgment on the seaworthiness claim reasoning there was no evidence on which a jury could find the tug was unseaworthy merely because the vessel owner chose to use a steel cable rather than a synthetic cable. The district court's summary judgment was upheld on appeal.

Comparative Fault Found

Sometimes a significant percentage of comparative fault will be allocated to a seaman even if his employer was negligent. Boudreaux v. United States, 280 F.3d 461 (5th Cir. 2002) is a good example.

Boudreaux worked as a seaman aboard the ***S.S. American Osprey***, a public vessel operated by Bay Ship Management. Several years before the subject incident, he injured his back while working aboard another vessel. That injury resulted in Boudreaux having two surgeries. After the surgeries, he could lift heavy objects only in a certain way using his legs and shoulders and not his back.

On the day of the injury on the S.S. American Osprey, the chief mate ordered Boudreaux and

another crewmember, Dunklin, to perform two tasks involving pump repair and maintenance. The chief mate also ordered them to do the tasks "with all deliberate speed." One task involved replacing a valve. To accomplish this task, Boudreaux and Dunklin first removed a section of deck plating. They disconnected the old valve and carried it across the opening in the deck where the plating had been removed. They then picked up a new valve which weighed about 300 lbs. to bring it to where the old valve had been removed. When they carried it across the opening in the deck, each had to place one foot on solid plating next to the opening and one foot on piping below the level of the deck where the plating had been removed.

When crossing the opening, one of the two men (whom the court did not identify) slipped, which caused the whole weight of the new valve to shift to Boudreaux straining his right knee and cervical spine. Boudreaux had arthroscopic surgery on his knee but surgery was deemed inappropriate for his neck injury resulting in him having to endure neck pain for the rest of his life.

Boudreaux sued the United States and Bay Ship Management for his injury alleging negligence and unseaworthiness. After a court trial, the district judge found the government was negligent. However, the district judge also found Boudreaux and Dunklin were equally at fault because of the unsafe way they performed the task. The court reasoned they should have replaced the deck plating before carrying the new valve back to where they were working. The district judge allocated an extra 20 percent of fault to Boudreaux because he undertook to lift the heavy valve knowing he had a prior back injury. Because 70 percent fault was allocated to Boudreaux, his damages were reduced from $299,705.85 to $89,911.76. The district judge also found the ***S.S. American Osprey*** was not unseaworthy.

Boudreaux appealed. He argued 50 percent comparative fault should not have been allocated to him because it was Dunklin who slipped. The Fifth Circuit upheld the allocation of 50 percent fault to Boudreaux reasoning there was no evidence that the joint decision to cross over the opening in the deck with the heavy valve in an unsafe way was based on the chief mate's instruction to do the work with all deliberate speed. However, the Fifth Circuit reversed the allocation of an extra 20 percent of fault to Boudreaux because there was no evidence his decision to lift the heavy valve, despite his weakened back condition, played a role in the injury.

Seamen are often required to lift heavy things while working aboard a vessel. When an injury results, sometimes but certainly not always, the employer may be held liable on negligence and/or unseaworthiness theories. Any award in favor of the injured seaman will, however, be reduced by the percentage fault attributed to the seaman.