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A 21st Century Primer on Seaman's Status

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In one of the most-quoted lines in American history, Thomas Jefferson wrote in the Declaration of Independence: "[w]e hold these truths to be self-evident, that all Men are created equal …". Thomas Jefferson apparently never met a seaman. If a court classifies a maritime worker as a seaman, the worker receives a host of remedies and protections unavailable under the law to other, sometimes similarly situated maritime laborers. Indeed, as recent cases[3] demonstrate, the determination of who is and is not a seaman can turn on minute facts, when the overall body of evidence shows little practical difference between one worker classified as a seaman and another who is simply a land-based maritime laborer.

Initially, we note this is a discussion and debate occurring either in motion practice or with Jury Interrogatories usually at the margins of the seaman spectrum. This is so because the question of seaman's status is a mixed question of law and fact, and it is an issue that many courts, including the Supreme Court, suggest should usually go to the fact finder's ultimate determination of a case.[4] Also, as a practical matter, the vast majority of seaman's claims contain little dispute that the worker is a seaman. However, at least within the Fifth Circuit,[5] some situations exist at the margins that, with proper discovery, could be ripe for resolution via motion practice.

The purpose of this paper is two-fold: to trace the evolution of who the General Maritime Law of the United States today generally considers to be seamen, and to discuss potential future areas where the current seaman's status test may experience difficulties in application.

WHY SEAMEN RECEIVE SPECIAL PROTECTION

Even the greenest maritime proctor knows a seaman receives special judicial protections. To understand why that is under the General Maritime Law of the United States, one must travel back to an era where Supreme Court Justices "rode the circuit," meaning they traveled from town to town, serving as circuit court judges, conversing with lawyers and citizens, and not spending nine months a year (as they do now) in Washington, D.C.[6] Circuit riding completely ended in 1911.[7]

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[3] *See Naquin v. Elevating Boats, LLC*, 744 F.3d 927, 2014 A.M.C. 913 (5th Cir. 2014).
[4] *See Harbor Tug and Barge Co. v. Papai*, 520 U.S. 548, 554, 1997 A.M.C. 1817 (1997); *Becker v. Tidewater, Inc.* 335 F.3d 376, 386, 2003 A.M.C. 1653 (5th Cir. 2003).
[5] Which, due to the geographic location of this conference as well as both practitioners, is the primary focus of this paper.
[6] David R. Stras, *Why Supreme Court Justices Should Ride the Circuit Again*, 91 MINN. L. REV. 1710, 1711-12 (2001).
[7] *Id.* at 1712.

Justice Joseph Story, in the ovular case of *Harden v. Gordon*, famously wrote in 1820 (while riding the circuit) that seamen:

> … are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision not be made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. Their common earnings in many instances are wholly inadequate to provide for the expenses of sickness; and if liable to be so applied, the great motives for good behavior might be ordinarily taken away by pledging their future as well as past wages for the redemption of the debt. In many voyages, particularly those to the West Indies, the whole wages are often insufficient to meet the expenses occasioned by the perilous diseases of those insalubrious climates. On the other hand, if these expenses are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen. The master will watch over their health with vigilance and fidelity. He will take the best methods, as well to prevent diseases, as to ensure a speedy recovery from them. He will never be tempted to abandon the sick to their forlorn fate; but his duty, combining with the interest of his owner, will lead him to succor their distress, and shed a cheering kindness over the anxious hours of suffering and despondency. [8]

Harden v. Gordon dealt with a traditional seaman's remedy, that of maintenance and cure. However, Justice Story relied upon ancient maritime codes, such as the Laws of Wisby and the Laws of Oleron, to justify his decision that (1) a seaman's claim falls under maritime law and (2) seaman should be afforded special protection from the courts (the famed "wards of admiralty" classification) due to the unique and perilous nature of their employment. Ultimately, Justice Story found the worker was a seaman, the court had jurisdiction under United States maritime law to hear his claim, and that the seaman should receive maintenance and cure.[9]

Some sixty years later, Judge Alfred Conkling Coxe, Sr.[10] authored *The James H. Shrigley*, wherein he described seamen as "wards of the court" due to their "proverbial improvidence and recklessness" as well as their nature as a "thoughtless, imprudent, rash, and impulsive class, ignorant of their rights and easily imposed upon by sharp and discerning men."[11] In finding a seafarer was owed wages on an oral contract, Judge Coxe[12] held "it is the aim of the

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[8] 11 F.Cas. 480, 483, 2 Mason 541 (No 6,047), 2000 A.M.C. 893 (CC Maine 1823).
[9] *Id*.
[10] President Arthur nominated Judge Coxe to the district bench in 1882. Later elevated by President Theodore Roosevelt to the Second Circuit in 1902, he retired in 1917. President Hoover nominated Judge Coxe's son, Arthur Conkling Coxe, Jr., to the Southern District of New York in 1929, where he served as a district court judge until his death in 1957. *See* http://www.fjc.gov/public/home.nsf/hisj.
[11] *Lawson v. The James H. Shrigley*, 50 F. 287, 287-88 (N.D.N.Y. 1892).
[12] Interestingly, Louis Coxe, a grandson of Judge Coxe the elder, became famous for adapting *Billy Budd* by Herman Melville into an award-winning Broadway play in 1951. *See* Marvine Howe, *Louis O. Coxe, 75: His Poems Reflected New England Roots*, N.Y. TIMES, May 28, 1993.

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