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PERPLEXING PILOTS: WHY CAN'T COURTS FIGURE OUT THE PILOT-STATUS QUESTION?

Reid Coleman

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Introduction

Courts have missed the forest for the trees: they have become so myopically focused on the seaman-status *test*, as opposed to the actual legal inquiry that the test approximates, that they cannot even agree with the simple, seemingly unobjectionable proposition that *pilots* are seamen. Pilots are essential to maritime trade. They have faithfully guided vessels through the perilous shoals, eddies, and currents of our harbors for hundreds of years. Without a pilot's specialized knowledge and skill, our ports and harbors would be constantly imperiled—imagine if the Exxon Valdez had run aground in New York; the East Coast's busiest port. Pilots, who know every rock, reef, shoal, and pipeline in their waters, among other potential obstructions, play a key role in avoiding disastrous navigational errors and the resulting catastrophic economic consequences. Indeed, in recognition of their vital role in maritime commerce, most jurisdictions make pilotage compulsory on incoming oceangoing vessels. And yet, courts have repeatedly held that pilots are not seamen and are therefore not entitled to the generous protections the law affords seamen.

Those courts are wrong. To set the stage for my reexamination of the pilot-status question, I give a brief overview of our seaman-status jurisprudence. That foundation is necessary to understanding both why the pilot-status question is important and where the courts have gone wrong. Then, I examine prior cases addressing the pilot-status question: Courts are all over the board. In analyzing those opinions, I find several troubling doctrinal misconceptions, which I then proceed to resolve. After setting the doctrine straight, I reanalyze the pilot-status question as a matter of first impression, unburdened by the errors of prior courts. Unsurprisingly, I find that pilots are seamen. But seaman status is just a necessary requirement for accessing the generous seamen's remedies. To access some remedies, a seaman must also show the existence of an employee-employer relationship. That requirement, not a pilot's status, bars them from recovering under the usual seaman's tort statute, the Jones Act. As seamen, however, they are entitled to other general-maritime-law

remedies; most notably, the unseaworthiness remedy. And, in most cases, that is enough for a pilot to recover fully.

I. A brief overview of the status question.

In admiralty tort law, status is everything. The law, roughly speaking, divides maritime workers into two camps: seamen and non-seamen. In any individual case, which camp a worker falls into can make the difference between a multimillion-dollar recovery and paltry workers' compensation recovery.

Seamen are the envy of tort claimants everywhere. Indeed, the leading admiralty law text aptly describes seamen as "the most generously-treated personal injury victims in American law."[1] Against an employer, the seaman has a powerful remedial trifecta. First, the seaman receives maintenance and cure, a no-fault remedy that guarantees medical expenses and some minimum level of subsistence.[2] Second, the seaman has a Jones Act negligence claim.[3] All that the seaman needs to show to prove causation, a notorious stumbling block for other tort plaintiffs, is that the employer's "negligence played any part, even the slightest, in producing the injury."[4] So, the Jones Act negligence claim is quite plaintiff friendly, to say the least. Finally, the seaman has a no-fault remedy for injuries caused by a vessel's unseaworthiness.[5] A vessel is unseaworthy when it is "not reasonably suited for her intended service" because of deficiencies in her appurtenances, personnel, or equipment, among other reasons.[6] Against other tortfeasors, the seaman has fewer options. Ordinarily, the seaman can bring a general-maritime-law negligence claim

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[1] DAVID W. ROBERTSON, STEVEN F. FRIEDELL & MICHAEL F. STURLEY, ADMIRALTY AND MARITIME LAW IN THE UNITED STATES 188 (3d ed. 2015).

[2] *See, e.g.*, The Osceola, 198 U.S. 158 (1903).

[3] 46 U.S.C. § 30104.

[4] Rogers v. Missouri Pac. R.R. Co., 352 U.S. 500 (1957).

[5] *See generally* Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960).

[6] Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 550 (1960).

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