Mariner Personal Injury Claim Study

Section 33 of the Merchant Marine Act of 1920 (46 App. 688) sets out the legal remedy available to merchant seamen and their estates in the event a seaman is injured or killed in the course of his employment. Specifically, in the event a seaman is injured or killed, the existing law allows the seaman or his personal representative to sue for damages in court.

The undersigned American maritime labor organizations have strongly supported the availability of this remedy to America's seagoing workforce. Americans working aboard vessels are on the job 24 hours per day, seven days per week. Ensuring that mariners have a safe workplace environment to do their jobs is an obligation America's maritime unions take very seriously, and the failure to provide such a workplace environment should have serious repercussions.

It has been suggested that this legal course of action has a direct relationship on the cost of insurance paid by U.S.-flag vessel operators and that it adds significantly to the cost differential between U.S. and foreign flag vessel operations. Notwithstanding the fact there is no available evidence to quantify the effect this remedy has on the viability of U.S.-flag vessel operations, we fear that the current system for compensating U.S. citizen mariners for job-related personal injuries is under consideration to be changed or eliminated.

Rather than trying to address the current state of the U.S.-flag merchant marine by focusing on a longstanding protection for American merchant mariners, we would instead urge the Maritime Administration and the Administration to work with us to develop and implement a new, realistic maritime policy that addresses all factors affecting U.S.-flag vessel operations. Eliminating the current remedy outside the context of a new national maritime policy will do little more than penalize American mariners and give government officials the opportunity to pretend that something meaningful has been accomplished for the U.S.-flag fleet.

The time is long overdue for our government to take the steps necessary to encourage U.S.-flag rather than foreign flag vessel operations, and to increase the employment of American rather than foreign mariners. As our new President has stated, "We will follow two simple rules: buy American and hire American." As he further stated, "The time for empty talk is over. Now arrives the hour of action." We strongly urge that our government apply the President's new America First policy to our maritime industry so that we can increase the number of U.S.-flag ships, increase the number of American mariner jobs, and increase the amount of cargo carried by the U.S.-flag fleet.

There should be no question in any quarter but that the U.S.-flag merchant marine contributes immeasurably to the economic, military and homeland security of the United States. There should also be no question but that unless the current downward trend in the number of vessels operating under the U.S.-flag is halted and reversed, our industry will no longer be able to provide the sealift capability and American mariners needed by the Department of Defense to protect America's interests and American troops around the world. Without immediate and positive action, we as a nation will be

turning over the security of the United States and the safety and supply of American troops deployed overseas to foreign flag vessel operations and their foreign crews.

As General Paul Selva, Commander, United States Transportation Command, told the Senate Committee on Armed Services in March 2015, "The reduction in government impelled cargoes due to the drawdown in Afghanistan and reductions in food aid . . . are driving vessel owners to reflag to non-U.S.-flag out of economic necessity . . .With the recent vessel reductions, ***the mariner base is at the point where future reductions in U.S.-flag capacity puts our ability to fully activate, deploy and sustain forces at increased risk***."

Consequently, we strongly encourage the Maritime Administration to immediately expand its focus beyond the consideration of Section 33 of the Merchant Marine Act of 1920 and to take the following steps that are critically important to the survival and growth of the U.S.-flag merchant marine. For example:

- The Maritime Administration should actively support within the Department of Transportation and submit to the House and Senate Committees on Appropriations an anomaly request to ensure that the Maritime Security Program receives its full authorized $299.997 million in Fiscal Year 2017. Without an anomaly, it is more than likely that MSP will be funded at the FY'16 level of $210 million;

- The Maritime Administration should actively work within the Department of Transportation and the Administration to ensure that the Administration's Budget for Fiscal Year 2018 includes funding for the Maritime Security Program at its authorized level of $300 million;

- The Maritime Administration should work within the Department of Transportation to encourage the President to issue an Executive Order that calls upon all Federal agencies and departments to fully comply with existing U.S.-flag cargo preference shipping requirements. As the Maritime Administration is well aware, too often in the past Federal shipper agencies and departments have failed to comply with U.S.-flag shipping requirements, denying American vessels their rightful share of these cargoes, denying American maritime workers important job opportunities aboard these vessels, and instead spending American taxpayer dollars exclusively on foreign flag shipping services;

- The Maritime Administration should immediately begin to more fully exercise its authority to determine which Federal programs are in fact subject to the U.S.-flag cargo preference shipping requirements and to closely monitor such programs to ensure full compliance as required by law. Any question as to the applicability of the U.S.-flag shipping requirements moving under a Federal program or financed in any way with Federal funds should be decided by the Maritime Administration. The cargo preference laws are broadly written and should be broadly applied to Federally financed programs;

- The Maritime Administration should work within the Department of Transportation and the Administration to encourage Congress to give the Administration whatever additional authority it needs to negotiate meaningful bilateral cargo sharing agreements with America's trading partners in order to provide U.S.-flag vessels with a greater share of America's foreign trade. The negotiation of bilateral cargo sharing agreements is an important way for our government to address and respond to the myriad of economic, tax and subsidy programs made available to foreign flag vessels and which impede the ability of U.S.-flag vessels to compete. These foreign maritime support programs, coupled

with the proliferation of state owned and controlled fleets, has resulted in a decline in the number of U.S.-flag vessels and a dangerously low percentage of U.S. trade carried on U.S.-flag ships. This, in turn, imperils the economic independence and security of the United States;

- The Maritime Administration should undertake an immediate and thorough review to determine the steps that must be taken to encourage the employment of Americans on vessels transporting oil, liquefied natural gas, and other strategic commodities and energy resources to and from the United states, and to result in the operation of such vessels under the United States-flag;

- The Maritime Administration should vigorously promote the use of domestic waterborne transportation and, more specifically, the development of a marine highway system, as components of a national transportation policy. It is especially important as the Administration proceeds with its plans to rebuild the nation's infrastructure to recognize that our coastal waterways are readily available to assume a greater role in the more efficient and economical movement of cargo within the United States.

- The Maritime Administration should support changing the harbor maintenance tax (HMT) so it no longer discourages U.S.-flag vessel operations. Today, cargo entering the United States is subject to the HMT. If that same cargo is then transported by rail or truck to another domestic destination, it is not taxed again under the HMT upon its arrival. If, however, that same cargo is transported by a U.S.-flag vessel, it is taxed again upon its arrival at its second and subsequent ports under the HMT. This discriminatory double taxation of waterborne cargo creates a significant economic disincentive for shippers to use vessels to move their cargo from one U.S. destination to another. We ask the Maritime Administration to work within the Department of Transportation and the Administration to encourage Congress to end the double taxation of domestic waterborne cargo under the Harbor Maintenance Tax.

We understand and appreciate that the Maritime Administration does not have the unilateral authority to put in place many of these policy positions. However, we further believe that clear and forceful leadership by the Maritime Administration within the Department of Transportation and the Administration will be necessary to begin to achieve the maritime policy initiatives that will help revitalize the U.S.-flag merchant marine and generate significant new employment opportunities for American maritime workers.

We stand ready to discuss this issue and to work with Maritime Administration leadership, Secretary Chao and the Administration to make the U.S.-flag merchant marine great again.

In solidarity,

Paul Doell	Don Marcus	H. Marshall Ainley	Anthony Poplawski	Michael Sacco	Gunnar Lundeberg
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