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| **Maritime Personnel** |
| **Source:** MLA **Date:** October 19, 2001 **Committee:** [MARINE TORTS AND CASUALTIES](http://www.mlaus.org/committee-profile.ihtml?id=210)   **FORMAL REPORT OF THE COMMITTEE ON**  **MARITIME PERSONNEL**    I would like to thank Paul Edelman, Esq. very much for kindly chairing the Committee Meeting for me and also for preparing these excellent minutes. Paul is a real credit to our Association.  The Committee met on Thursday, October 18, 2001, in Coronado at the Fall Meeting of the Association. Twenty members and guests participated in a lively meeting on proposed changes in legislation and important cases and developments affecting maritime personal injury practitioners.  In the Supplement to the July 23, 2001 agenda, supplied by John Schaffer, the following items were discussed:   1. **Tort Reform: Products Legislation**   Products liability legislation is being drafted in Congress with Republican sponsorship. Proposed legislation will probably cap punitive damages at $250,000 for small businesses with (25) or fewer employees. Sellers and wholesalers may receive a similar cap and small businesses would be exempt from joint and several liability for non-economic damages. This may not pass the Democratic controlled Senate, but if it does, the President will sign it.   1. Victim Compensation Fund   **Congress established a fund for the compensation of victims of the 11th of September disasters. The airlines' liability will be limited to its liability coverage. Any lawsuits are to be filed in the Southern District of New York. Regulations are to be issued within (90) days and claims are to be made within (2) years after claim forms are available. A Special Master, appointed by the U.S. Attorney General, will make a final, non-appealable determination. Liability will not be an issue. Pecuniary and non-economic losses are recoverable. "Collateral sources", yet to be determined, will diminish awards. An election must be made between filing a claim and suing airlines, building owners and lessees, Al Qa'eda, the Port Authorities, any foreign country linked to the terrorists and any others potentially liable.**   1. **Punitive Damages**    1. A $3 billion jury verdict against Philip Morris in a smoker's lawsuit was reduced to $100 million, or a retrial. Evidence of criminal convictions was not allowed, held to be prejudicial.    2. A study indicates that judges rule for punitive damages as often as juries do and generally in about the same proportions.    3. A jury gave $1.06 billion in damages against Exxon Mobil for radioactive contamination of thirty-three acres of land owned by a former Louisiana judge. There will be an appeal. 2. ***Lewis v. Lewis & Clarke***   **After remand from the Supreme Court, the 8th Circuit affirmed the order of a district court dissolving an injunction against a state court proceeding irrespective of a limitation proceeding with a single claimant, who stipulated to recover less than the limitation fund.**  **Michael Marks Cohen, Esq. raised the question of whether a shipowner's declaratory judgment could nullify the state court trial. An argument could be made that, in many cases, declaratory judgments, seeking to deprive an injured party of a jury trial, have more often than not been dismissed.**   1. ***Espinal v. Royal Caribbean Cruises*, \_\_\_ F. 3d \_\_\_ (11th Cir. June 8, 2001)**   **The sick pay provisions of a collective bargaining agreement may take precedence over the maintenance and cure obligation. The agreement here provided for payment of a minimum monthly wage until cure. The agreement was enforced, although M&C would be higher and the average monthly wage (presumably including overtime) would also be higher.**   1. **The IMO/ILO *Ad Hoc* Expert Working Group On Liability and Compensation For Death, Personal Injury and Abandonment Of Seafarers**   **John Schaffer provided a memo on this subject. The consensus was that U.S. seamen have adequate protections compared to many other seafarers in the rights to a Jones Act negligence claim, an unseaworthiness claim, maintenance and cure, unearned wage claims and statutory wage claims, including penalties. When stranded abroad, U.S. seamen may receive help from U.S. consulates.**  **The major problem is foreign seamen stranded in foreign ports far from home, with wages owed for months and inadequate food monies. This does not happen too often and, when it happens in U.S. ports, there are charities to help and generosity from local U.S. citizens.**  **Michael Marks Cohen favors a super priority, also favored by Douglas Stevenson, Esq., of the Seamen's Church Institute. A creditor with a low priority, who pays for repatriation expenses and perhaps two months back wages, could receive the highest priority for this and his own claim, coming ahead of a mortgagee. This would motivate a mortgagee and others. Also proposed is insurance with a COFR, as in OPA '90. If the insurance idea is supported by an international convention, a whole bureaucracy might be needed, although for coverage for ships in U.S. waters and passing of regulations, we already have a COFR bureaucracy (the Federal Maritime Commission).**   1. **Revision of Title 46 of the U.S. Code**   **Correspondence was received on various aspects of the proposed revision of the Code. Provisions affecting the Death On the High Seas Act, the Jones Act, the Limitation Of Liability Act and the Admiralty Extension Act made no substantive changes. For § 30304, the old § 688 of the Jones Act, concern was expressed that section (b), with a title of "venue", may be interpreted in a way which limits venue from the broader venue now allowed.**  **There was some concern over some of the drafting referring to training at the Merchant Marine academies, some fines and penalties and other items.**   1. ***Bradshaw v. Unity Marine Corp.***   **Appended was an opinion by Judge Kent, of Galveston, gently chiding both counsel for missing the point of the issue in the case *sub judice*, and failing to shed any light beyond the smoke they created. Judge Kent did his own research to cover the obligations of a shipowner where a crew member is injured off the ship on a dock. Coincidentally, this is an issue about which some other lawyers are presently confronted and the answer is on page 6 of Judge Kent's decision.**  **In addition to the items on Chairman Schaffer's list, the following cases were discussed:**   1. **Jones Act**    1. **A maritime employer is not liable in admiralty for off-the-job injuries of an employee.*Greenwell v. Aztar Indiana Gaming Corp.*, 7thCir. 10/4/01.**    2. **For Jones Act coverage, crew members must be on a vessel, or fleet of vessels, 30 percent or more of his employment time. *Roberts v. Cardinal Services, Inc.*, 5th Cir. 10/2/01.**    3. **There is no recovery for asbestos monitoring claims where there is exposure, but no symptoms. 9th Cir. 9/14/01, 2001 WL 1028293.**    4. **Release case: coercion is a good defense. *Orsini v. O/S Seabrooke O.N.*, 247 F. 3d 953 (9th Cir. 2001).** 2. **Wage Penalties**   **Statute does not apply to the master. Where there is a bareboat charter, the owner may be liable *in rem*. A claim must be verified. A good discussion of the statute. *Madeja v. Olympic Packer*, 155 F. Supp. 2d 1183 (Hi. 2001).**   1. **Limitation Actions**   **By filing a limitation action, personal jurisdiction is waived. *Karim v. Finch Shipping Co.*, 5th Cir. 9/5/01.**   1. **Offshore Continental Shelf Lands Act**   **Although plaintiff was a helicopter pilot to an offshore oil rig, if the accident is on land, OCSLA does not apply.*Pickett v. Petroleum Helicopters*, 5th Cir. 9/28/01.**   1. **Longshore and Harbor Workers' Compensation Act**   **A shipyard employer may offset the amount of each periodic payment given to claimant where there is a third party recovery. The offset is against the employer's liability. The tort recovery was against the manufacturers and suppliers of asbestos. *Gilliland v. E.J. Bartells Co.*, 9thCir. 10/16/01.**   1. **The *Mallard Bay* Case**   **Concerning the interaction of Coast Guard and OSHA regulations, was to be argued in the U.S. Supreme Court on the 31st of October.**  **\* \* \***  **We are always looking for additional and interesting projects, relevant decisions, and are also continuously seeking potential new members.**    **Respectfully submitted,**    **John P. Schaffer, Chair** |