MANUAL OF
MODEL CIVIL
JURY INSTRUCTIONS

FOR THE
DISTRICT COURTS
OF THE EIGHTH CIRCUIT

2025

Reflecting changes made through July 30, 2025.

17. ADMIRALTY AND MARITIME

17.00 OVERVIEW

The territorial bounds of the district courts of the Eighth Circuit include large portions of the Missouri and Mississippi Rivers, the longest inland river system in the United States. On this river system moves most of the inland waterborne commerce in America. The jurisprudence of the Eighth Circuit has generated opinions on many admiralty and maritime disputes and issues. To facilitate the submission of such issues to juries in federal judicial actions, the jury instructions that follow this introduction are submitted.

Admiralty and maritime jury trials occur in actions brought by employees against employers and by invitees against the owners and operators of business premises. There are issues unique and issues common to each type of claim. The rules of decision for such cases may be found in the rich maritime common law precedents of the federal courts and in Congressional legislation.

General Maritime Law

The admiralty and maritime common law of the courts of the United States provides rules of decision for claims brought by non-employee invitees on vessels on navigable waters. *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 814-16 (2001); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959); *The Max Morris v. Curry*, 137 U.S. 1, 14 (1890). Such claimants may bring a claim for negligence, subject to a reduction of damages (not a complete defense) for comparative negligence or fault. *Kermarec*, 358 U.S. at 629-30.

> We hold that the owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case.

Id. at 632. However, admiralty law does not provide a non-employee member a claim for unseaworthiness of the subject vessel. *Id.* at 629; *Smith v. Harbor Towing & Fleeting, Inc.*, 910 F.2d 312 (5th Cir. 1990).

The Supreme Court stated:

> It is settled that the general maritime law imposes duties to avoid unseaworthiness and negligence that non-fatal injuries caused by the breach of either duty are compensable and that death caused by breach of the duty of seaworthiness is also compensable.

Garris, 532 U.S. at 813 (citations omitted). The Supreme Court recognized for the first time in *Garris* a wrongful death claim under general maritime law based upon negligence. *Id.*

More generally, the Supreme Court has held, "when a statute resolves a particular issue, we have held that the general maritime law must comply with that resolution." *Id.* at 817.

Further, "even as to seamen, we have held that general maritime law may provide wrongful-death actions predicated on duties beyond those that the Jones Act imposes." *Id.* at 818.

Suits by Employees

Employee claimants are immediately faced with determining whether to bring suit for compensatory damages under general maritime law, the Jones Act, or to seek workers' compensation under the Longshore and Harbor Workers' Compensation Act (LHWCA) or the applicable state's workers' compensation laws. *Johnson v. Cont'l Grain Co.*, 58 F.3d 1232, 1235 (8th Cir. 1995) (a Jones Act seaman "is excluded from coverage under the LHWCA and vice versa"). A worker covered by the LHWCA may not recover on a theory of unseaworthiness of the vessel. *Id.*; *see also Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 488 (2005) ("Thus the Jones Act and the LHWCA are complementary regimes that work in tandem: The Jones Act provides tort remedies to *sea*-based maritime workers, while the LHWCA provides workers' compensation to *land*-based maritime employees.").

The Jones Act

The Jones Act provides**:**

> A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

46 U.S.C. § 30104 (Jan. 28, 2008).

The Jones Act allows only to a seaman a negligence action for either personal injury or wrongful death against the seaman's employer. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354 (1995); *Britton v. U.S.S. Great Lakes Fleet, Inc.*, 302 F.3d 812, 816 (8th Cir. 2002) (quoting *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441 (2001)); *Shows v. Harber*, 575 F.2d 1253, 1254 (8th Cir. 1978).

The reference in the Jones Act to laws regulating recovery by railway employees incorporates the Federal Employers' Liability Act, 45 U.S.C. § 51, *et seq.* (FELA), and doctrines of negligence and comparative negligence and abolishes the defense of assumption of the risk.

Scindia Steam Navigation Co. v. DeLos Santos, 451 U.S. 156, 166 n.13 (1981); *Ballard v. River Fleets, Inc.*, 149 F.3d 829, 831 n.3 (8th Cir. 1998); *Miller v. Patton-Tully Transp. Co.*, 851 F.2d 202, 205 (8th Cir. 1988).

The broad scope of Jones Act liability has been described thus:

> Under this statute the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought. It does not matter that, from the

> evidence, the jury may also with reason, on grounds of probability, attribute the result to other causes, including the employee's contributory negligence. Judicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death. Judges are to fix their sights primarily to make that appraisal and, if that test is met, are bound to find that a case for the jury is made out whether or not the evidence allows the jury a choice of other probabilities. The statute expressly imposes liability upon the employer to pay damages for injury or death due "in whole or in part" to its negligence.

Clark v. Cent. States Dredging Co., 430 F.2d 63, 66 (8th Cir. 1970) (quoting *Rogers v. Mo. Pac. R.R.*, 352 U.S. 500, 506-07 (1957)); *see also Alholm v. Am. Steamship Co.*, 144 F.3d 1172, 1178 (8th Cir. 1998).

The Jones Act is to be liberally construed "to accomplish its beneficent purposes." *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 790 (1949).

The Fifth Circuit in *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 339 (5th Cir. 1997) (en banc), repudiated its earlier cases to the contrary, and held that under the Jones Act, an employer has the duty to act with ordinary prudence to provide its employees a safe work environment, that is, to act as would a reasonable employer in like circumstances. The court also held that a seaman is obligated under the Jones Act to act with ordinary prudence under similar circumstances to protect himself from the negligence of his employer. *Id. See 5th Cir. Civ. Jury Instr.* 4.7 (West 2009).

The issues of actionable negligence and causation under FELA received attention when the Supreme Court decided *CSX Transportation, Inc. v. McBride***,** 131 S.Ct. 2630 (2011). The question presented to the Court was whether the Federal Employers' Liability Act requires proof of proximate causation. *Id.* at 2634. This is important to Jones Act cases because the Jones Act incorporates the standards of FELA in seamen's personal injury suits. 46 U.S.C. § 30104. The FELA statutory standard uses the language:

> for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its . . . equipment.

45 U.S.C. § 51.

In *CSX Transportation, Inc.*, the Supreme Court maintained its earlier ruling in *Rogers v. Missouri Pacific R. Co.,* 352 U.S. 500 (1957). Justice Ginsburg, writing for the Court in *CSX*, summarized the Court's holding:

> [W]e conclude that [FELA] does not incorporate "proximate cause" standards developed in nonstatutory common-law tort actions. The charge proper in FELA cases, we hold, simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played any part in bringing about the injury.

Id. at 2634. Also of note in the *CSX* opinion are the statements that it is unnecessary to use the label "proximate cause" when instructing the jury, *id*. at 2641, and that the following language is also appropriate when instructing the jury on causation in a FELA case:

> Juries in such cases are properly instructed that a defendant railroad "caused or contributed to" a railroad worker's injury "if [the railroad's] negligence played a part--no matter how small--in bringing about the injury."

Id. at 2644.

Unseaworthiness

The Eighth Circuit described the claim of unseaworthiness:

> "Unseaworthiness is a claim under general maritime law based on the vessel owner's duty to ensure that the vessel is reasonably fit to be at sea." It is a cause of action distinct from Jones Act negligence, which can be found without a corresponding finding of unseaworthiness.
>
> The warranty of seaworthiness . . . requires that the ship, including the hull, decks, and machinery, "be reasonably fit for the purpose for which they are used." Examples of conditions that can render a vessel unseaworthy include defective gear, appurtenances in disrepair, insufficient manpower, unfit crew, and improper methods of loading or stowing cargo. The burden of proof in demonstrating unseaworthiness rests on the plaintiff, who must show by a preponderance of the evidence that the unseaworthiness was a proximate cause of the injury. Under these circumstances, proximate cause means: "first, that the unseaworthiness . . . played a substantial part in bringing about or actually causing the injury; and two, that the injury was either a direct result of a reasonable probable consequence of the unseaworthiness."

Britton v. U.S.S. Great Lakes Fleet, Inc., 302 F.3d 812, 818 (8th Cir. 2002) (citations omitted).

Seaman

To recover from his or her employer under either the Jones Act or general maritime law, a plaintiff must be a seaman. *McDermott Int'l., Inc. v. Wilander*, 498 U.S. 337, 341-42 (1991). The Jones Act does not define "seaman." *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487 (2005). Whether a worker is a seaman "is usually a fact-intensive inquiry properly left to the jury to resolve." *Johnson v. Cont'l Grain Co.*, 58 F.3d 1232, 1235 (8th Cir. 1995). In determining who are and who are not Jones Act seamen, Supreme Court opinions and those of federal courts of appeals have distinguished between maritime workers whose employment is land-based and those whose employment is vessel-based. A "seaman" is an employee whose "duties must contribute to the function of the vessel or to the accomplishment of its mission, and the worker must have a connection to a vessel . . . (or an identifiable group of vessels) that is substantial in terms of both its duration and nature." *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368; *see also Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 554 (1997). Stated another way,

> A finder of fact can conclude that a workman was a member of a crew of a vessel if:

(1) the injured workman performed at least a substantial part of his work on the vessel or was assigned permanently to the vessel; and

(2) the capacity in which the workman was employed and the duties that he performed contributed to the function of the vessel or to accomplishment of its mission.

Miller v. Patton-Tully Transp. Co., 851 F.2d 202, 204 (8th Cir. 1988) (quoting *Slatton v. Martin K. Eby Constr. Co.*, 506 F.2d 505, 510 (8th Cir. 1974)); *see also Johnson*, 58 F.3d at 1235-36.

A Jones Act "seaman" need not be assigned to a specific vessel; he or she retains "seaman" status if assigned to a group of Jones Act vessels under common ownership or control. *Harbor Tug & Barge Co.*, 520 U.S. at 556. Such a fleet of vessels "must take their direction from one identifiable central authority." *Johnson*, 58 F.3d at 1236 (quoting *Reeves v. Mobile Dredging & Pumping Co.*, 26 F.3d 1247, 1258 (2d Cir. 1994)).

In determining whether an employee is a "seaman," a court must look not only to the nature of the activity in which the claimant was injured, but also in the overall nature of the employee's work, whether he or she performs a substantial amount of work on board a "vessel," with regularity and continuity. In *Chandris*, the Supreme Court established a guideline from which courts can vary depending upon the circumstances of the case: "A worker who spends less than about 30 percent of his time in the service of a vessel . . . should not qualify as a seaman under the Jones Act." 515 U.S. at 371.

There is no such guideline, however, for "determining whether an injured worker is substantially connected to a vessel." *Lara v. Harvey's Iowa Mgmt. Co.*, 109 F. Supp.2d 1031, 1034 (S.D. Iowa 2000). An injured worker might be a Jones Act seaman without having worked on board the vessel when it was in transit. *Id.* at 1036. Further, an employer's consideration of an injured worker as a Jones Act "seaman" by the payment of maritime "cure" may be relevant in determining seaman status. *Id.* "[T]he determinative factor is the employee's connection to a vessel, not the employee's particular job." *Johnson*, 58 F.3d at 1236.

Vessel

An employee-claimant can be a "seaman" under the Jones Act only if he or she is assigned to a vessel. The definition of "vessel" for admiralty and maritime law purposes is contained in 1 U.S.C. § 3:

The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

1 U.S.C. § 3.

The Supreme Court applied a reasonableness standard to this definition in *Lozman v. City of Riviera Beach, Fla*., 133 S.Ct. 735, 2013 WL 149633 (Jan. 15, 2013) (ruling that petitioner's non-self-propelled floating home was not a "vessel"):

> [I]n our view a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.

133 S.Ct. At 741. In stating this, the court did not part company with its earlier construction of the statutory definition that requires that the subject structure be practicably capable of water transportation. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 496 (2005) ("The question remains in all cases whether the watercraft's use 'as a means of transportation on water' is a practical possibility or merely a theoretical one."). "Simply put, a watercraft is not 'capable of being used' for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement." *Id.* at 494.

In construing "vessel," the court in *Stewart* rejected the relevance of the "in motion" requirement, suggested by *Digiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119 (1st Cir. 1992) (en banc), in determining whether a watercraft qualifies as a vessel. *Stewart*, 543 U.S. at 495. Cases applying such a requirement must now be viewed with great care. *E.g.*, *Tonnesen v. Yonkers Contracting Co.*, 82 F.3d 30, 36 (2d Cir. 1996); *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995); *Digiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119, 1123 (1st Cir. 1992) (en banc); *Ellender v. Kiva Constr. Eng'g, Inc.*, 909 F.2d 803, 806 (5th Cir. 1990); *Hurst v. Pilings & Structures, Inc.*, 896 F.2d 504, 506 (11th Cir. 1990).

Longshore and Harbor Workers' Compensation Act (LHWCA)

The Supreme Court has described the facets of the LHWCA generally:

> [T]he Longshore and Harbor Workers' Compensation Act (LHWCA) . . . , 33 U.S.C. § 901 et seq., provides nonseaman maritime workers . . . with no-fault workers' compensation claims (against their employer, § 904(b)) and negligence claims (against the vessel, § 905(b)) for injury and death. As to those two defendants, the LHWCA expressly pre-empts all other claims, §§ 905(a), (b) . . . , but it expressly preserves all claims against third parties [(those who neither employed the claimant nor owned the vessel involved in the incident)], §§ 933(a), (i).

Norfolk Shipbuilding & Drydock Corp. v. Garris, 532 U.S. 811, 818 (2001).

§ 905(b) of LHWCA

Injured maritime workers who are not Jones Act seamen may be able to recover under the LHWCA. Section 905(b) allows a longshore worker to seek compensation for injuries caused by the negligence, but not the unseaworthiness, of a vessel:[1]

> In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person . . . may bring an action against such vessel as a third party in accordance with the provisions of § 933 of this title, and the employer shall not be liable

[1] The definition of "vessel" under the LHWCA should be considered the same as that under the Jones Act. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 491 (2005) ("at the time Congress enacted the Jones Act and the LHWCA in the 1920's, it was settled that § 3 defined the term 'vessel' for purposes of those statutes.").

> to the vessel for such damages directly or indirectly . . . . The liability of the vessel under the subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

33 U.S.C. § 905(b).

Section 905(b) does not define the bounds of actionable negligence. *Reed v. ULS Corp.*, 178 F.3d 988, 990-91 (8th Cir. 1999). The Eighth Circuit has recognized that the owner of a vessel owes longshoremen three duties:

> The first, which courts have come to call the "turnover duty," related to the condition of the vessel upon the commencement of stevedoring operations . . . . The second duty, applicable once stevedoring operations have begun, provides that a vessel owner must exercise reasonable care to prevent injuries to longshoremen in areas that remain under the "active control of the vessel." . . . The third duty, called the "duty to intervene," concerns the vessel's obligations with regard to cargo operations in areas under the principal control of the independent stevedore.

Id. at 991 (citing *Howlett v. Birkdale Shipping Co.*, 512 U.S. 92, 98 (1994) and *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156, 167 (1981)).

However, under the statute such a claim is denied to a longshore worker who was engaged in repair work. *Johnson*, 58 F.3d at 1237. Section 905(b) also provides in part:

> If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer.

33 U.S.C. § 905(b).

§ 933 of LHWCA

Under § 933 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 933, a worker or the representative of his or her estate may seek damages for personal injuries against a non-employer, non-vessel-owner, third party. Also, under § 933 an employer has the right to recoup amounts paid under the LHWCA to the employee or the representative of the employee's estate in such a judicial action. *See* 33 U.S.C. § 933.

Wrongful Death

A general maritime cause of action for wrongful death due to unseaworthiness was recognized in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970). *See Spiller v. Thomas M. Lowe, Jr.*, 466 F.2d 903, 905 (8th Cir. 1972). The United States Supreme Court has

recognized a claim under the general maritime law for the wrongful death of a non-seaman due to negligence. *See Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811 (2001).

Punitive Damages

Punitive damages are not recoverable by seamen[2] in personal injury claims under the Jones Act or under general maritime law. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 31 (1990) (a seaman's recovery under the Jones Act or general maritime law is limited to pecuniary losses); *Alholm v. Am. Steamship Co.*, 144 F.3d 1172, 1180-81 (8th Cir. 2002); *Horsley v. Mobile Oil Corp.*, 15 F.3d 200, 203 (1st Cir. 1994) (applying *Miles* to hold that punitive damages are not recoverable under general maritime law); *Miller v. Am. Present Lines, Ltd.*, 989 F.2d 1450, 1457 (6th Cir. 1993) (applying *Miles* to hold that punitive damages are not recoverable under the Jones Act).

Maintenance and Cure

General maritime law requires a shipowner to pay an injured seaman maintenance and cure irrespective of any finding of any liability under the Jones Act or general maritime law; this duty arises merely under the employment contract. *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938); *Britton v. U.S.S. Great Lakes Fleet, Inc.*, 302 F.3d 812, 815 (8th Cir. 2002); *Wactor v. Spartan Transp. Corp.*, 27 F.3d 347, 351-52 (8th Cir. 1994); *Stanislawski v. Upper River Servs., Inc.*, 6 F.3d 537, 540 (8th Cir. 1993).

A seaman's entitlement to maintenance and cure is independent of entitlement to damages for negligence under the Jones Act. *Britton*, 302 F.3d at 816. The recovery of compensatory damages, however, cannot duplicate moneys already recovered as maintenance and cure. *Stanislawski*, 6 F.3d at 540. Maintenance is an amount sufficient to provide the sick or injured seaman with food and lodging comparable to that he or she would have received on his or her vessel. *Gardiner v. Sea-Land Serv., Inc.*, 786 F.2d 943, 946 (9th Cir. 1986). Cure is reasonable medical treatment and services needed during the seaman's recovery. *Calmar S.S. Corp. v. Taylor*, 303 U.S. at 528.

Maintenance and cure might not be available, if the seaman was required to provide preemployment medical information and failed to do so or concealed material facts regarding the part of the plaintiff's body allegedly injured. *Britton*, 302 F.3d at 816; *Wactor*, 27 F.3d at 352. Before maintenance and cure is denied, "the employer must show that the nondisclosed medical information was material to its decision to hire." *Britton*, 302 F.3d at 816. Maintenance and cure also may be denied if the seaman personally did not incur actual expenses for food and lodging. *Hall v. Noble Drilling (U.S.) Inc.*, 242 F.3d 582, 588 (5th Cir. 2001).

Mitigation of Damages

An injured seaman or other maritime worker must mitigate his or her damages by obtaining reasonable medical treatment. *See Hagerty v. L & L Marine Serv., Inc.*, 788 F.2d 315,

[2] Some cases have allowed the recovery of punitive damages to non-seamen in maritime cases. *In re Horizon Cruises Litigation*, 2000 WL 685365, *5-9 (S.D.N.Y. 2000) (acknowledges split among courts); *contra In re Diamond B Marine Services, Inc.*, 2000 WL 222847, *3 (E.D. La.)

319 (5th Cir. 1986); *Young v. Am. Export Isbrandtsen Lines, Inc.*, 291 F. Supp. 447, 450 (S.D. N.Y. 1968).

Comparative Fault and the Settling Defendant(s)

The Fifth Circuit in *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 339 (5th Cir. 1997) (en banc), repudiated its earlier cases to the contrary, and held that under the Jones Act an employer has the duty to act with ordinary prudence to provide its employees a safe work environment, that is, to act as would a reasonable employer in like circumstances. The court also held that a seaman is obligated under the Jones Act to act with ordinary prudence under similar circumstances to protect himself from the negligence of his employer. *Id.* at 339. *See 5th Cir. Civ. Jury Instr.* 4.7 (West 2009).

In an admiralty action, when a plaintiff settles with one of several joint tortfeasors, a nonsettling tortfeasor is responsible to the injured party for the nonsettling tortfeasor's proportionate share of the fault or responsibility in causing the injury. *McDermott, Inc. v. AmClyde & River Don Castings, Ltd.*, 511 U.S. 202, 208-09 (1994). *See infra* Special Interrogatories, § 17.90.

CHAPTER 17 INSTRUCTIONS AND VERDICT FORM

17.01 EXPLANATORY: NEGLIGENCE CLAIM UNDER THE JONES ACT

The law provides a remedy to any seaman who suffers personal injury in the course of [(his) (her)] employment due to the negligence of [(his) (her)] employer. The plaintiff has brought a personal injury claim in this action under the Jones Act.

The Jones Act, however, does not make the employer the accident insurer of the seaman. Negligence on the part of the employer is necessary to recover under the Act.

Committee Comments

The Fifth Circuit in *Gautreaux v. Scurlock Marine, Inc*., 107 F.3d 331, 339 (5th Cir. 1997) (en banc), repudiated its earlier cases to the contrary, and held that under the Jones Act an employer has the duty to act with ordinary prudence to provide its employees a safe work environment, that is, to act as would a reasonable employer in like circumstances. The court also held that a seaman is obligated under the Jones Act to act with ordinary prudence under similar circumstances to protect himself from the negligence of his employer. *Id.* at 339. *See 5th Cir. Civ. Jury Instr*. 4.7 (West 2009).

17.02 EXPLANATORY: JONES ACT—CAUSATION

If you find from the evidence in the case that the defendant was negligent, then you must decide whether that negligence played any part in causing any injury or damages suffered by the plaintiff. Negligence may cause damage or injury, even if it operates in combination with the act of another or some natural cause, as long as the negligence played any part in causing the damage or injury.

[This standard is different from the causation required for a claim of unseaworthiness of a vessel. An unseaworthy condition of a vessel caused damage or injury if that unseaworthy condition played a substantial part in bringing about the injury or damage, the injury or damage was either a direct result of or a reasonably probable consequence of the condition, and except for the unseaworthy condition of the vessel the injury or damage would not have occurred. Unseaworthiness may be a cause of damage or injury, even though it operates in combination with the act of another or some natural cause, as long as the unseaworthiness contributes substantially to producing the damage or injury.][1]

Notes on Use

1. Use the bracketed paragraph, if a claim for unseaworthiness is submitted to the jury along with a Jones Act claim.

Committee Comments

See supra Chapter 15 OVERVIEW and Model Instruction 15.40 n.9 (causation under FELA); *9th Cir. Civ. Jury Instr.* 7.4 and 7.7 (West 2007); *11th Cir. Civ. Jury Instr.* 6.1 (West 2005). *See also Alholm v. Am. Steamship Co.*, 144 F.3d 1172, 1180-81 (8th Cir. 1998).

The issues of actionable negligence and causation under FELA received attention when the Supreme Court decided *CSX Transportation, Inc. v. McBride*, 131 S.Ct. 2630 (2011). The question presented to the Court was whether the Federal Employers' Liability Act requires proof of proximate causation. *Id.* at 2634. This is important to Jones Act cases because the Jones Act incorporates FELA standards in seamen's personal injury suits. 46 U.S.C. § 30104. The FELA statutory standard uses the language:

> for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its . . . equipment.

45 U.S.C. § 51.

In *CSX,* the Supreme Court maintained its earlier ruling in *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500 (1957). Justice Ginsburg, writing for the Court in *CSX*, summarized the Court's holding:

> [W]e conclude that [FELA] does not incorporate "proximate cause" standards developed in nonstatutory common-law tort actions. The charge proper in FELA cases, we hold, simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played any part in bringing about the injury.

Id. at 2634. Also of note in the *CSX* opinion are the statements that it is unnecessary to use the label "proximate cause" when instructing the jury, *id.* at 2641, and that the following language is also appropriate when instructing the jury on causation in a FELA case:

> Juries in such cases are properly instructed that a defendant railroad "caused or contributed to" a railroad worker's injury "if [the railroad's] negligence played a part--no matter how small--in bringing about the injury.

Id. at 2644.

17.03 EXPLANATORY: UNSEAWORTHINESS CLAIM AGAINST EMPLOYER

Under maritime law, every shipowner or operator owes to every seaman employed aboard the vessel the non-delegable duty to keep and maintain the vessel, and all decks and passageways, appliances, gear, tools, and equipment of the vessel, in a seaworthy condition at all times.

To be in a "seaworthy condition" means to be in a condition reasonably suitable and fit to be used for the purpose or the use for which the vessel was provided or intended. An unseaworthy condition may result from the lack of an adequate crew, the lack of adequate manpower to perform a particular task on the vessel, or the improper use of otherwise seaworthy equipment.

Liability for an unseaworthy condition does not in any way depend upon negligence or fault or blame. That is to say, the shipowner-operator is liable for all injuries and damages substantially caused by an unseaworthy condition existing at any time, even though the owner or operator may have exercised due care under the circumstances, and may have had no notice or knowledge of the unseaworthy condition that substantially caused the injury or damage.

However, a shipowner is not required to furnish an accident-free vessel. A vessel is not required to have the best equipment or the finest crew, but only equipment that is reasonably fit for its intended purpose and a crew that is reasonably adequate and competent.

Committee Comments

See Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 550 (1960); *5th Cir. Civ. Jury Instr.* 4.5 (West 2009); *9th Cir. Civ. Jury Instr.* 7.6 (West 2007).

17.04 EXPLANATORY: UNSEAWORTHINESS CLAIM—CAUSATION

An unseaworthy condition of a vessel caused damage or injury, if:

(a) it played a substantial part in bringing about the injury or damage,

(b) the injury or damage was either a direct result of or a reasonably probable consequence of the condition, and

(c) the injury or damage would not have occurred except for the unseaworthy condition of the vessel.

Unseaworthiness may be a cause of damage or injury, even though it operates in combination with the act of another or some natural cause, as long as the unseaworthiness contributes substantially to producing the damage or injury.

[This standard is different from the causation required for a claim under the Jones Act. Under a Jones Act claim, if you find that the defendant was negligent, then you must decide whether this negligence played any part in causing the injury or damages suffered by the plaintiff.][1]

Notes on Use

1. Use the bracketed paragraph, if a claim under the Jones Act is submitted to the jury along with an unseaworthiness claim.

Committee Comments

See supra Chapter 15 OVERVIEW and Model Instruction 15.40 n.9 (causation under FELA); *9th Cir. Civ. Jury Instr.* 7.4 and 7.7 (West 2007); *11th Cir. Civ. Jury Instr.* 6.1 (West 2005). *See also Britton v. U.S.S. Great Lakes Fleet,* Inc., 302 F.3d 812, 818 (8th Cir. 2002); *Alholm v. Am. Steamship Co.*, 144 F.3d 1172, 1180-81 (8th Cir. 1998).

The issues of actionable negligence and causation under FELA received attention when the Supreme Court decided *CSX Transportation, Inc. v. McBride*, 131 S.Ct. 2630 (2011). The question presented to the Court was whether the Federal Employers' Liability Act requires proof of proximate causation. *Id.* at 2634. This is important to Jones Act cases because the Jones Act incorporates the standards of FELA in seamen's personal injury suits. 46 U.S.C. § 30104. The FELA statutory standard uses the language:

> for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its . . . equipment.

45 U.S.C. § 51.

In *CSX ,* the Supreme Court maintained its earlier ruling in *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500 (1957). Justice Ginsburg, writing for the Court in *CSX*, summarized the Court's holding:

> [W]e conclude that [FELA] does not incorporate "proximate cause" standards developed in nonstatutory common-law tort actions. The charge proper in FELA cases, we hold, simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played any part in bringing about the injury.

Id. at 2634. Also of note in the *CSX* opinion are the statements that it is unnecessary to use the label "proximate cause" when instructing the jury, *id*. at 2641, and that the following language is also appropriate when instructing the jury on causation in a case:

> Juries in such cases are properly instructed that a defendant railroad "caused or contributed to" a railroad worker's injury "if [the railroad's] negligence played a part--no matter how small--in bringing about the injury.

Id. at 2644.

17.05 EXPLANATORY: LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT § 905(b)—TURN-OVER CLAIM—NEGLIGENCE STANDARD

[Name of defendant][1] does not owe the plaintiff the duty to provide a seaworthy vessel; [name of the defendant] is liable only if [(he) (she) (it)] was negligent and that negligence was the proximate cause of the [name of plaintiff's] injury.

Negligence is the failure to exercise reasonable care under the circumstances. A vessel operator such as defendant [name of the defendant] must exercise reasonable care before the plaintiff's employer began the defendant's operations on the vessel. This means that defendant [name of the defendant] must use reasonable care to have the vessel and its equipment in such condition that an expert and experienced [here, insert the type of maritime employment in which the plaintiff's employer was engaged on the vessel] would be able, by the exercise of reasonable care, to carry on its [his] [her] work on the vessel with reasonable safety to persons and property.

[Name of the defendant] must warn the plaintiff's employer of a hazard on the vessel, or a hazard with respect to the vessel's equipment, if**:**

(1) [name of the defendant] knew about the hazard, or should have discovered it in the exercise of reasonable care, and

(2) the hazard was one that was likely to be encountered by the plaintiff's employer in the course of its operations in connection with the defendant's vessel, and

(3) the hazard was one that the plaintiff's employer did not know about, and that would not be obvious to or anticipated by a reasonably competent [here, insert the type of maritime employment in which the plaintiff's employer was engaged on the vessel] in the performance of its [his] [her] work.

[Even if the hazard was one about which the plaintiff's employer (stevedore) knew, or which would be obvious or anticipated by a reasonably competent [here, insert

the type of maritime employment in which the plaintiff's employer was engaged on the vessel], defendant [name of the defendant] must exercise reasonable care to avoid the harm to the plaintiff if the hazard was one that the defendant knew or should have known the plaintiff's employer (stevedore) would not or could not correct and the plaintiff could not or would not avoid.][2]

Notes on Use

1. If there are two or more defendants in the lawsuit, include this phrase and identify the defendant against whom the claim covered by this elements instruction is made.

2. The Committee believes that the factual circumstances would be infrequent that would warrant this instruction.

Committee Comments

This instruction pertains to a claim that the defendant breached its "turn-over" duty. *See Reed v. ULS Corp.*, 178 F.3d 988, 990-91 (8th Cir. 1999). It should only be used where the vessel owner is not the plaintiff's employer (stevedore). Where the vessel owner is also the plaintiff's employer (stevedore), an instruction should be given consistent with *Morehead v. Atkinson-Kiewit*, J/V, 97 F.3d 603, 609, 613 (1st Cir. 1996) (en banc).

The standard of care that a vessel operator owes to the plaintiff after the plaintiff's employer began the operations on the vessel is not the subject of this instruction. Such is different from the standard of care owed before the operations began.

See Scindia Steam Navigation Co. v. De Los Santos, 451 U.S. 156, 170-72 (1981)**;** *Reed v. ULS Corp.*, 178 F.3d 988, 991 (8th Cir. 1999).

17.06 EXPLANATORY: MAINTENANCE AND CURE—SUPPLEMENTAL

A seaman is entitled to recover maintenance and cure, if [(he) (she)] becomes injured or ill, without willful misbehavior on [(his) (her)] part, while in the service of [(his) (her)] employer's vessel. A seaman is entitled to maintenance and cure even though [(he) (she)] was not injured as a result of any negligence on the part of [(his) (her)] employer or as a result of the unseaworthiness of the employer's vessel. Moreover, the seaman's injury or illness need not be work-related. It need only occur while the seaman was in the service of [(his) (her)] employer's vessel. Furthermore, an award for maintenance and cure must not be reduced because of any negligence on the part of the plaintiff.

A seaman is entitled to receive maintenance and cure from the date [(he) (she)] leaves the vessel until [(he) (she)] reaches "maximum medical cure." The term "maximum medical cure" means the point at which no further improvement in the seaman's medical condition is reasonably expected. Thus, if it appears that a seaman's condition is incurable, or that treatment will only relieve pain or provide comfort but will not improve the seaman's physical condition, [(he) (she)] has reached maximum medical cure.

If you find that the plaintiff is entitled to an award of damages under [either] the Jones Act [or on an unseaworthiness claim] and if you award [(him) (her)] lost wages or medical expenses, then you may not also award the plaintiff maintenance and cure for the same period of time, because the plaintiff may not recover twice for the same lost wages or medical expenses.

Committee Comments

A seaman's claim for maintenance and cure is separate and distinct from a claim under the Jones Act or for the unseaworthiness of a vessel. *Aguilar v. Standard Oil Co. of N.J.*, 318 U.S. 724, 736-37 (1943); *Britton v. U.S.S. Great Lakes Fleet, Inc.*, 302 F.3d 812, 816-18 (8th Cir. 2002).

17.20 DEFINITION: JONES ACT—"COURSE OF EMPLOYMENT"

Under the Jones Act a seaman is injured in the course of [(his) (her)] employment when, at the time of injury, [(he) (she)] was doing the work of [(his) (her)] employer, that is, [(he) (she)] was working in the service of the vessel as a member of her crew.

Committee Comments

See 11th Cir. Civ. Jury Instr. 6.1 (West 2005).

17.21 DEFINITION: JONES ACT—"NEGLIGENCE"

The terms "negligent" and "negligence," as used in these instructions, mean the failure to use that degree of care that a reasonably careful person would use under the same or similar circumstances. Negligence may consist either in doing something that a reasonably careful person would not do under the same or similar circumstances, or in failing to do something that a reasonably careful person would do under the same or similar circumstances.

Committee Comments

See supra Model Instruction 15.20; *9th Cir. Civ. Jury Instr.* 7.3 (West 2007).

The Fifth Circuit in *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 339 (5th Cir. 1997) (en banc), repudiated its earlier cases to the contrary, and held that under the Jones Act an employer has the duty to act with ordinary prudence to provide its employees a safe work environment, that is, to act as would a reasonable employer in like circumstances. The court also held that a seaman is obligated under the Jones Act to act with ordinary prudence under similar circumstances to protect himself from the negligence of his employer. *Id.* at 339. *See 5th Cir. Civ. Jury Instr.* 4.4 (West 2009).

17.22 DEFINITION: "SEAMAN"

A "seaman" is a [(sea) or (river) or (lake)][1]-based maritime employee whose work regularly exposes [(him) (her)] to the special hazards and disadvantages to which they who go down to the [(sea) or (rivers) or (lakes)][2] in ships are subjected. The term "seaman" does not include a land-based worker who has only a temporary connection to a vessel, and therefore whose employment does not regularly expose [(him) (her)] to the perils of the [(sea) or (river) or (lake)].[3] Rather, a "seaman" is a member of a crew of a vessel.

You must find that the plaintiff was a "seaman," if it has been proved[4] that at the time of the incident for which the plaintiff is claiming [(he) (she)] was injured:

First, the plaintiff had an employment-related connection to a vessel [or to an identifiable group of such vessels][5] that was substantial in terms of both its duration (in that it occupied at least 30 percent of the plaintiff's work time) and nature; and

Second, the plaintiff's work duties contributed to [(the function of the vessel) or (the function of an identifiable group of vessels)[6] or (the accomplishment of (its) or (their))][7] mission)].

Notes on Use

1. Although the case law refers to "sea" to include all types of navigable water, to avoid jury confusion the term best describing the navigable water at issue in the case should be used in this instruction.

2. *See* footnote 1 above.

3. *See* footnote 1 above.

4. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

5. Include the "identifiable group" language of the definition only if the evidence supports such an instruction.

6. *See* footnote 5 above.

7. The word “their” should be used, if the jury is instructed on an identifiable group of vessels. *See* footnote 5 above.

Committee Comments

See supra Chapter 17 OVERVIEW, Seaman; *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 554 (1997); *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368-72 (1995); *Roth v. U.S.S. Great Lakes Fleet, Inc.*, 25 F.3d 707, 708-09 (8th Cir. 1994); *Miller v. Patton-Tully Transp. Co., Inc.*, 851 F.2d 202, 204 (8th Cir. 1988); *Slatton v. Martin K. Eby Constr. Co.*, 506 F.2d 505, 510 (8th Cir. 1974); *Offshore Co. v. Robison*, 266 F.2d 769, 775 (5th Cir. 1959). *See also Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487 (2005).

17.23 DEFINITION: JONES ACT—"VESSEL"

For claims under the Jones Act, the term "vessel" means any structure that a reasonable person would believe is designed to a practical degree for carrying people or things over water.

Committee Comments

See 1 U.S.C. § 3; Chapter 17 OVERVIEW, Vessel. The definition of "vessel" for claims under the Jones Act and for claims under the Longshore and Harbor Workers' Compensation Act relates to whether the plaintiff is a seaman and to whether one or the other of these statutes applies. Seaman status depends upon the nature of the work performed by the plaintiff at the time of the alleged incident. In this respect, the scope of the term "vessel" under the Longshore and Harbor Workers' Compensation Act is the same as that under the Jones Act. *See Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 489 (2005). *Cf., Lozman v. City of Riviera Beach, Fla.,* 133 S.Ct. 735, 741 (2013).

Updated May 7, 2013

17.24 DEFINITION: "MARITIME EMPLOYMENT"

A person is engaged in maritime employment if at the time of [(his) (her)] injury, the person is either

(1) injured while engaged in an essential part of the loading or unloading process of a vessel[1]; or

(2) on actual navigable waters in the course of that person's employment on those waters; or

(3) working as a harbor worker, including a ship repairman, shipbuilder, or shipbreaker.

Notes on Use

1. When supported by the evidence, the court may be required to instruct the jury that certain workers who meet the general definition of "employee" under the Longshore and Harbor Workers' Compensation Act have been explicitly excluded from coverage by 33 U.S.C. § 902(3)(A)-(H). Section 902(3) and 33 U.S.C. § 902(4) provide:

> (3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include–
>
> (A) individuals employed exclusively to perform office, clerical, secretarial, security, or data processing work;
>
> (B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
>
> (C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);
>
> (D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this chapter;
>
> (E) aquaculture workers;

(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

(G) a master or member of a crew of any vessel; or

(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

33 U.S.C. §§ 902(3), 902(4).

Committee Comments

This instruction must be given if the issue of maritime employment is submitted to the jury in Paragraph *First* of the LHWCA Turn-over Claim Instruction, Model Instruction 17.42.

See 5th Cir. Civ. Jury Instr. 4.13 (West 2009).

17.25 DEFINITION: LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT "COVERED PLACE OF INJURY"

A person is injured at a place within the coverage of the Longshore and Harbor Workers' Compensation Act if the injury occurred**:**

(a) on navigable waters, or

(b) in an area adjoining navigable waters, or

(c) in an area that is close to but not necessarily touching an area adjoining navigable waters and that is customarily used by an employer in the loading, unloading, building, or repairing of a vessel.

Committee Comments

This instruction must be given if the issue of the place of injury is submitted to the jury in Paragraph *First* of the LHWCA Turn-over Claim Instruction, Model Instruction 17.42.

See 33 U.S.C. § 903(a); *5th Cir. Civ. Jury Instr.* 4.13 (West 2009). An additional instruction may be needed, if there is an issue over whether the plaintiff is excluded from coverage under 33 U.S.C. § 902(3). *See Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 280-81 (1977).

17.26 DEFINITION: "NAVIGABLE WATERS"

The term "navigable waters" as used in these instructions means a body of water that in its ordinary condition [is] [at the time of plaintiff's injury was] capable of serving as a highway for commerce over which trade and travel are, or may be, conducted in the customary modes of trade and travel on water.

Committee Comments

See The Daniel Ball, 77 U.S. 557, 563 (1870); *Three Buoys Houseboat Vacations, U.S.A. Ltd. v. Morts*, 921 F.2d 775, 778-79 (8th Cir. 1990); *Livingston v. United States*, 627 F.2d 165, 168-69 (8th Cir. 1980).

This instruction must be given if the issue of whether the place of injury was on navigable waters is submitted to the jury in Paragraph *First* of the LHWCA Turn-over Claim Instruction, Model Instruction 17.42.

17.27 DEFINITION: "MAINTENANCE" AND "CURE"

As used in these instructions, the term "maintenance" means the cost of food and lodging that the plaintiff has actually incurred that is reasonable for a person in [(his) (her)] community or is reasonably necessary for survival, whichever is less, and the reasonable cost of any necessary transportation to and from a medical facility.

As used in these instructions, the term "cure" means the cost of reasonable and necessary medical attention, including the services of physicians and nurses as well the cost of hospitalization, medicines and medical equipment.

Committee Comments

See supra Chapter 15 OVERVIEW, Maintenance and Cure; *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938); *Hall v. Noble Drilling (U.S.) Inc.*, 242 F.3d 582, 588 (5th Cir. 2001); *Wactor v. Spartan Transp. Corp.*, 27 F.3d 347, 351-52 (8th Cir. 1994) (definitions of "maintenance" and "cure"; failure of seaman to disclose medical information before employment may be a defense to maintenance and cure); *Stanislawski v. Upper River Servs., Inc.*, 6 F.3d 537, 540 (8th Cir. 1993); *Gardiner v. Sea-Land Serv., Inc.*, 786 F.2d 943, 946 (9th Cir. 1986).

17.40 ELEMENTS OF CLAIM: NEGLIGENCE CLAIM UNDER THE JONES ACT

Your verdict must be for plaintiff [insert name] and against defendant [insert name] on the plaintiff's Jones Act claim if all the following elements have been proved [1]:

First, the plaintiff was employed by the defendant as a seaman on a vessel [2]; and

Second, during the course of the plaintiff's employment as a seaman, the defendant [here describe the submitted act or omission]; and

Third, the defendant in any one or more of the respects submitted in paragraph Second was negligent; and

Fourth, such negligence played any part in causing injury to the plaintiff.

Notes on Use

1. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

2. *See supra* Model Instructions 17.22 and 17.23 (defining "seaman" and "vessel").

Committee Comments

See Shows v. Harber, 575 F.2d 1253, 1254 (8th Cir. 1978); *Petty v. Dakota Barge Serv.*, 730 F. Supp. 983, 985 (D. Minn. 1989).

The Fifth Circuit in *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 339 (5th Cir. 1997) (en banc), repudiated its earlier cases to the contrary, and held that under the Jones Act an employer has the duty to act with ordinary prudence to provide its employees a safe work environment, that is, to act as would a reasonable employer in like circumstances. The court also held that a seaman is obligated under the Jones Act to act with ordinary prudence under similar circumstances to protect himself from the negligence of his employer. *Id.* at 339. *See 5th Cir. Civ. Jury Instr.* 4.7 (West 2009).

The issues of actionable negligence and causation under FELA received attention when the Supreme Court decided *CSX Transportation, Inc. v. McBride*, 131 S.Ct. 2630 (2011). The question presented to the Court was whether the Federal Employers' Liability Act requires proof of proximate causation. *Id.* at 2634. This is important to Jones Act cases because the Jones Act incorporates FELA standards in seamen's personal injury suits. 46 U.S.C. § 30104. The FELA statutory standard uses the language:

> for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its . . . equipment.

45 U.S.C. § 51.

In *CSX,* the Supreme Court maintained its earlier ruling in *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500 (1957). Justice Ginsburg, writing for the Court in *CSX*, summarized the Court's holding:

> [W]e conclude that [FELA] does not incorporate "proximate cause" standards developed in nonstatutory common-law tort actions. The charge proper in FELA cases, we hold, simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played any part in bringing about the injury.

Id. at 2634. Also of note in the *CSX* opinion are the statements that it is unnecessary to use the label "proximate cause" when instructing the jury, *id.* at 2641, and that the following language is also appropriate when instructing the jury on causation in a FELA case:

> Juries in such cases are properly instructed that a defendant railroad "caused or contributed to" a railroad worker's injury "if [the railroad's] negligence played a part--no matter how small--in bringing about the injury.

Id. at 2644.

17.41 ELEMENTS OF CLAIM: UNSEAWORTHINESS CLAIM AGAINST EMPLOYER

Your verdict must for plaintiff [insert name] and against defendant [insert name] on the plaintiff's claim of unseaworthiness, if all the following elements have been proved [1]:

First, the plaintiff was employed by the defendant as a seaman on a vessel [2] at the time [(he) (she)] suffered injury; and

Second, the vessel on which the plaintiff was injured was [(owned) (operated)] by [(his) (her)] employer; and

Third, the defendant's vessel was [_____]; [3] and

Fourth, the defendant's vessel was thereby rendered unseaworthy; and

Fifth, the unseaworthy condition of the vessel was a substantial factor in causing the injury or damage to the plaintiff.

Notes on Use

1. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

2. *See supra* Model Jury Instructions 17.22 and 17.23 (defining "seaman" and "vessel").

3. Here state the submitted condition of the vessel.

Committee Comments

See supra Chapter 17 OVERVIEW; *5th Cir. Civ. Jury Instr.* 4.5 (West 2009); *9th Cir. Civ. Jury Instr.* 7.5 (West 2007); *11th Cir. Civ. Jury Instr.* 6.1 (West 2005).

17.42 ELEMENTS OF CLAIM: LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT § 905(b)—TURN-OVER CLAIM—ELEMENTS OF CLAIM

Your verdict must be for plaintiff [insert name] and against defendant [insert name] on the plaintiff's claim [generally describe claim] if all of the following elements have been proved [1] :

First, the plaintiff was engaged in maritime employment and was injured at [(a place within the coverage of the Longshore and Harbor Worker's Compensation Act) [2]] [3]; and

Second, [4] defendant (name of the defendant) had the defendant's vessel and equipment in such condition that an expert and experienced maritime worker would not be able, by the exercise of reasonable care, to carry on [(his) (her)] work on the vessel with reasonable safety [in that (describe the conditions and inadequacies at issue)]; and

Third, defendant [(name of the defendant)] in any one or more of the ways described in Paragraph (Second) [5] was negligent [6]; and [7]

Fourth, such negligence was the cause of [(injury to the plaintiff) or (the death of (name of decedent))].

If any of the above elements has not been proved, then your verdict must be for defendant [(name of the defendant)]. [87]

Notes on Use

1. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

2. Identify the location of the injury supported by the evidence.

3. This paragraph must be used in those cases where the plaintiff's status as a worker covered by § 905(b) of the Longshore and Harbor Worker's Compensation Act, 33 U.S.C. § 905(b), is at issue. The plaintiff's status as a worker covered by § 905(b) has two components--maritime employment and place of injury. *See supra* Chapter 17 OVERVIEW, § 905(b) of LHWCA. The jury must be instructed with respect to each component of the plaintiff's status

that is at issue. If the maritime employment segment is included in this instruction, an explanatory instruction on maritime employment must also be given. *See supra* Model Instruction 17.24. Similarly, if the place of injury segment is included in this instruction, an explanatory instruction on place of injury must also be given. *See supra* Model Instruction 17.25.

4. If the instruction with respect to the plaintiff's status as a worker covered by § 905(b) is omitted, the paragraph numbers should accordingly be modified and this should read "*First*."

5. Use the appropriate paragraph number corresponding to the paragraph number describing the claimed deficiencies to the defendants' vessel or equipment.

6. The terms "negligent" and "negligence" must be defined. *See supra* Model Instruction 17.21.

7. If only one phrase describing the defendant's breach of duty is submitted in Paragraph Second, then Paragraph Third should read as follows:

Third, defendant [(name of the defendant)] was thereby negligent, and

8. This paragraph should not be used if the jury is given a specific instruction on the defendant's theory of the case.

17.43 ELEMENTS OF CLAIM: GENERAL MARITIME LAW—NONEMPLOYEE-INVITEE'S NEGLIGENCE CLAIM—ELEMENTS

Your verdict must be for plaintiff [insert name] and against defendant [insert name] on plaintiff's claim [generally describe claim] if all the following elements have been proved [1]:

First, the plaintiff was lawfully aboard the vessel; and

Second, while the plaintiff was lawfully aboard the vessel, the defendant [here describe the act or omission]; and

Third, the defendant [in any one or more of the respects submitted in paragraph Second was negligent] [2] [was thereby negligent]; and

Fourth, this negligence of defendant caused plaintiff injury.

Notes on Use

1. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

2. Define "negligence" under the ordinary reasonable care standard. *See supra* Model Instructions 15.20, 15.21, and 15.22 without the bracketed language. *See also Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959).

Committee Comments

See Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959).

17.44 ELEMENTS OF CLAIM: GENERAL MARITIME LAW—NONEMPLOYEE-INVITEE'S CLAIM—CONTRIBUTORY NEGLIGENCE (COMPARATIVE FAULT)

If you find in favor of plaintiff [insert name] and against defendant [insert name] under Instruction No. ____ (here insert the number of the plaintiff's elements instruction or verdict director), you must consider whether [(name of plaintiff) or (name of decedent)] was also negligent. Under this Instruction, on the [name of plaintiff's] [here identify the claim to which this instruction applies] claim, whether or not the defendant was partly at fault, you must assess to the [(name of plaintiff) or (name of decedent)] a percentage of the total negligence, if all the following elements have been proved[1]:

First, [(name of plaintiff) or (name of decedent)] (describe the negligent conduct); and

Second, [(name of plaintiff) or (name of decedent)] was thereby negligent[1]; and

Third, that negligence of [(the plaintiff) or (name of decedent)] played a part in [(his) (her)] own injury or damage.

The total of the negligence of [(name of plaintiff) or (name of decedent)] and of the negligence of the defendant for causing [(plaintiff's) or (decedent's) injury must equal 100 percent.

Notes on Use

1. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

2. Define "negligence" under the ordinary reasonable care standard. *See supra* Model Instructions 15.20, 15.21, and 15.22 without the bracketed language. *See also Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959).

Committee Comments

See Ballard v. River Fleets, Inc., 149 F.3d 829, 831 (8th Cir. 1998).

17.60 ELEMENTS OF DEFENSE: JONES ACT—CONTRIBUTORY NEGLIGENCE (COMPARATIVE FAULT)

A seaman has a duty to use the care that a reasonably careful seaman would use under the same or similar circumstances.

If you find in favor of plaintiff [insert name] and against defendant [insert name] under Instruction No. ____ (here insert the number of the plaintiff's elements instruction or verdict director), you must consider whether [(name of plaintiff) or (name of plaintiff's decedent)] was also negligent. Under this instruction, on the plaintiff's (here identify the claim to which this instruction applies) claim, you must assess to [name of plaintiff] a percentage of the total negligence, if all the following elements have been proved[1]:

First,[(name of plaintiff) or (name of plaintiff's decedent)] (describe the negligent conduct); and

Second,[(name of plaintiff) or (name of decedent)] was thereby negligent; and

Third, this negligence of [(name of plaintiff) or (name of plaintiff's decedent)] played a part in causing [(his) (her)] own injury or damage.

The total percentages of the negligence of [(name of plaintiff) or (name of plaintiff's decedent)] and of the defendant for causing [(the plaintiff's) or (decedent's)] injury must equal 100 percent.

Notes on Use

1. Model Instruction 3.04 (Burden of Proof) tells the jury that something is proved only if the jury finds it is more likely true than not true. The phrase "greater weight of the evidence" is not necessary here. It can be included in Instruction 3.04 if desired by the court.

Committee Comments

See supra Model Instruction 15.63 (regarding FELA claims); *9th Cir. Civ. Jury Instr.* 7.9 (West 2007). *See also Ballard v. River Fleets, Inc.*, 149 F.3d 829, 831-32 (8th Cir. 1998); *Alholm v. Am. Steamship Co.*, 144 F.3d 1172, 1179 (8th Cir. 1998).

The Fifth Circuit in *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 339 (5th Cir. 1997) (en banc), repudiated its earlier cases to the contrary, and held that under the Jones Act an

employer has the duty to act with ordinary prudence to provide its employees a safe work environment, that is, to act as would a reasonable employer in like circumstances. The court also held that a seaman is obligated under the Jones Act to act with ordinary prudence under similar circumstances to protect himself from the negligence of his employer. *Id.* at 339. *See 5th Cir. Civ. Jury Instr.* 4.6 (West 2009).

The issues of actionable negligence and causation under FELA received attention when the Supreme Court decided *CSX Transportation, Inc. v. McBride*, 131 S.Ct. 2630 (2011). The question presented to the Court was whether the Federal Employers' Liability Act requires proof of proximate causation. *Id.* at 2634. This is important to Jones Act cases because the Jones Act incorporates the standards of FELA in seamen's personal injury suits. 46 U.S.C. § 30104. The FELA statutory standard uses the language:

> for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its . . . equipment.

45 U.S.C. § 51.

In *CSX*, the Supreme Court maintained its earlier ruling in *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500 (1957). Justice Ginsburg, writing for the Court in *CSX*, summarized the Court's holding:

> [W]e conclude that [FELA] does not incorporate "proximate cause" standards developed in nonstatutory common-law tort actions. The charge proper in FELA cases, we hold, simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played any part in bringing about the injury.

Id. at 2634. Also of note in the *CSX* opinion are the statements that it is unnecessary to use the label "proximate cause" when instructing the jury, *id.* at 2641, and that the following language is also appropriate when instructing on causation in a FELA case:

> Juries in such cases are properly instructed that a defendant railroad "caused or contributed to" a railroad worker's injury "if [the railroad's] negligence played a part--no matter how small--in bringing about the injury.

Id. at 2644.

17.70 DAMAGES: COMPENSATORY (GENERAL)

If you find the issues in favor of the [name of plaintiff], you must award an amount that will fairly and justly compensate [(him) or (her)] for any damages you believe [(he) (she)] sustained [and is reasonably certain to sustain in the future] as a direct result of the occurrence mentioned in the evidence.

You should consider the following elements of damages:

(a) physical pain and suffering;

(b) mental anguish;

(c) income loss in the past;

(d) impairment of earning capacity or ability in the future; and

(e) the reasonable value, not exceeding the actual cost to the plaintiff, of medical care that you find will be reasonably certain to be required in the future as a proximate result of the injury in question.

Damages cannot be based on speculation.

17.71 DAMAGES: DEATH OF EMPLOYEE

If you find in favor of the [name of plaintiff], then you must determine the entire amount that will fairly and justly compensate [him or her] for any damages you believe [(he) (she)] sustained [and is reasonably certain to sustain in the future] as a result of the incident mentioned in the evidence. If liability is determined, you will then assess the percentages of fault (from zero to 100 percent) for which each party is responsible that caused the [name of plaintiff's] damages determined. Do not reduce or increase any amount of damages you find by any percentage of fault that you find.

You should consider the following elements of damages: lost financial support plaintiff would have received from decedent; the reasonable value of services provided by the decedent; and pain and suffering experienced by the decedent prior to death.

Damages cannot be based on speculation.

Committee Comments

See Miles v. Apex Marine Corp., 498 U.S. 19 (1990) in which the Supreme Court held that only pecuniary damages may be recovered in a wrongful death lawsuit arising under the Jones Act, based on the statutory damage limitations of the FELA, which the Jones Act incorporates. Damages available for the survival portion of the Jones Act are limited to losses suffered during the decedent's lifetime, *i.e.*, conscious pain and suffering. *See also* Notes on Use for Instruction 15.71 regarding damages in a wrongful death action under the FELA.

17.72 DAMAGES: PUNITIVE

If you find in favor of (name of plaintiff) and against (name of defendant) under Instruction(s) ____, and if you further find that (name of defendant) acted willfully and wantonly with reckless or callous disregard for the rights of others, or acted with gross negligence or actual malice or criminal indifference, then you may, but are not required to, award the plaintiff an additional amount of money as punitive damages for the purpose of punishing the defendant for engaging in misconduct and [deterring] [discouraging] the defendant and others from engaging in similar misconduct in the future. You should presume that a plaintiff has been made whole for [its, his, her] injuries by the damages awarded under Instruction ____.[1]

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the defendant's conduct was.[2] In this regard, you may consider [whether the harm suffered by the plaintiff was physical or economic or both; whether there was violence, deceit, intentional malice, reckless disregard for human health or safety; whether the defendant's conduct that harmed the plaintiff also posed a risk of harm to others; whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the plaintiff].[3]

2. How much harm the defendant's wrongful conduct caused the plaintiff [and could cause the plaintiff in the future].[4] [You may not consider harm to others in deciding the amount of punitive damages to award.][5]

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for [its, his, her,] wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future.

4. [The amount of fines and civil penalties applicable to similar conduct]. [6]

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the plaintiff and should not be greater than the amount of compensatory damages you award.[7]

[You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.][8]

Notes on Use

1. Fill in the number or title of the compensatory damages instruction here.

2. The word "reprehensible" is used in the same sense as it is used in common parlance. The Supreme Court, in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003), stated: "It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." In *Philip Morris USA v. Williams*, 549 U.S. 346, 355, 127 S. Ct. 1057, 1064-65 (2007), the Supreme Court held that, while harm to persons other than the plaintiff may be considered in determining reprehensibility, a jury may not punish for the harm caused to persons other than the plaintiff. The Court stated that procedures were necessary to assure "that juries are not asking the wrong question, *i.e.*, seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers." *Id*. at 355.

3. Any item not supported by the evidence, of course, should be excluded.

4. This sentence may be used if there is evidence of future harm to the plaintiff.

5. A paragraph instructing the jury that any punitive damages award should not include an amount for harm suffered by persons who are not parties to the case may be necessary if evidence concerning harm suffered by nonparties has been introduced. *See Philip Morris USA v. Williams*, 549 U.S. at 355; *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422-24 (2003); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 797-98 (8th Cir. 2004).

6. Insert this phrase only if evidence has been introduced, or the court has taken judicial notice, of fines and penalties for similar conduct. *See BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996), noting "civil penalties authorized in comparable cases" as a guidepost to be considered. *See also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 428 (2003).

7. The Supreme Court, in *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 514 (2008), held that, in an admiralty case, punitive damages cannot exceed compensatory damages.

8. The bracketed language is available for use if punitive damages claims are submitted against more than one defendant.

Committee Comments

See 5th Cir. Civ. Jury Instr. 4.10 (2009); *Gamma Plastics, Inc. v. American Plastics Lines, Ltd*, 32 F.3d 1244, 1254 (8th Cir. 1994). This instruction may be used in any case of property damage that would otherwise qualify under 28 U.S.C. § 1333, but is before the court on diversity jurisdiction, either as an original action or as a result of being removed, and a jury demand has been made.

This instruction is included because of the Supreme Court opinion in a massive pollution case approving punitive damages under the general maritime law, but only in an amount not to exceed compensatory damages. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 513 (2008). The *Exxon* case does not, however, necessarily resolve the issue of whether general maritime law permits recovery of punitive damages by non-seamen who suffer personal injury or death.

There is presently a split of authority on the issue. *In re Horizon Cruises Litigation*, 2000 WL 685365, *5-9 (S.D.N.Y. 2000) (acknowledges split among courts); *contra In re Diamond B Marine Services, Inc.*, 2000 WL 222847, *3 (E.D. La. 2000); *O'Hara v. Celebrity Cruises*, 979 F. Supp. 254, 256 (S.D.N.Y. 1997). The *Gamma Plastics* case involved damage to cargo only and its discussion of punitive damages is dicta. Nevertheless, the discussion of the issue in *Gamma* is an indication that the Eighth Circuit would permit recovery of punitive damages in non-seaman wrongful-death cases because the opinion it cites, *Churchill v. F/U FJORD*, 892 F.2d 763 (9th Cir. 1988), is such a case. *Gamma*, 32 F.3d at 1254.

Punitive damages are available under general maritime law for a willful failure to pay an injured seaman maintenance and cure. *See Atl. Sounding Co., Inc. v. Townsend*, 557 U.S. 404, 414-15 (2009).

This instruction is not to be used in seaman cases under the Jones Act or in unseaworthiness suits under general maritime law. *See The Dutra Group v. Batterton*, 139 S.Ct. 2275, 2278 (2019) (holding "that punitive damages remain unavailable in unseaworthiness actions"). *Cf. Atl. Sounding Co., Inc. v. Townsend,* 557 U.S. 404, 418-20 (2009)*; Miles v. Apex Marine Corp.,* 498 U.S. 19, 28, 32 (1990).

17.73 DAMAGES: PRESENT VALUE OF FUTURE DAMAGES

If you find that the plaintiff will sustain [specify damages subject to present value reduction, such as, "lost future earnings" or "future medical expenses"], then you must reduce those future damages to their present value.

The present value of future damages is the amount of money that will fully compensate the plaintiff for future damages, assuming that amount is invested now and will earn a reasonably risk-free rate of interest for the time that will pass until the future damages occur.

You must not reduce to present value any non-economic damages you find that plaintiff is reasonably certain to sustain in the future, such as for pain and suffering, or mental anguish.[1]

Notes on Use

1. *Crane v. Crest Tankers, Inc.* 47 F.3d 292, 295 n.5 (8th Cir. 1995).

Committee Comments

The methods of proving the amount of future damages and of reducing that amount to present value can vary with the facts of each case and with the expert opinions and calculations received into evidence in each case. *E.g.,* CHARLES F. BEALL, FLORIDA CIVIL PRACTICE DAMAGES Ch. 3 (The Florida Bar 2005); William F. Landsea and David Roberts, *Inflation and the Present Value of Future Economic Damages*, 37 U. MIAMI L. REV. 93 (1982).

The Eighth Circuit has commented:

> There are numerous ways of presenting a case involving future damages. Typically the district court will . . . take judicial notice of the plaintiff's life expectancy. If the case involves an issue of future lost wages, generally an expert witness is employed who, once qualified, opines on various issues including work life expectancy, future damages, and methods of discounting the same to present value.

Crane v. Crest Tankers, Inc., 47 F.3d 292, 295 (8th Cir. 1995). *See also id.* at 295 n.4 ("It has long been held that life expectancy tables are admissible in damage actions for the 'consideration of the probabilities of damage over a period of years") (quoting *Cont'l Cas. Co. v. Jackson*, 400 F.2d 285, 293 (8th Cir. 1968)*; Jones & Laughlin Steel Corp. v. Pheifer*, 462 U.S. 523, 545-46 (1983).

The Committee believes it is sufficient for the trial judge to instruct the jury about its basic duties of determining the amount of future damages and of reducing to present value, without selecting and instructing the jury on a specific methodology.

17.74 DAMAGES: DUTY TO MINIMIZE DAMAGES

It is the duty of any person who has been injured to use reasonable diligence and reasonable means, under the circumstances, to prevent the aggravation of [(his) (her)] injury; to act in a way that brings about a recovery from the injury; and to take advantage of any reasonable opportunity [(he) (she)] may have to reduce or minimize loss or damage. [(He) (She)] is required to obtain reasonable medical care and follow [(his) (her)] doctor's reasonable advice and to seek out or take advantage of a business or employment opportunity that was reasonably available to [(him) (her)] under all the circumstances shown by the evidence. You should reduce the amount of the plaintiff's damages by the amount [(he) (she)] could have avoided by obtaining and following reasonable medical care and advice or the amount that the plaintiff could have reasonably realized if [(he) (she)] had taken advantage of such business or employment opportunity, but did not do so.

Committee Comments

See American Mill. Co. v. Trustee of Distribution Trust, 623 F.3d 570, 575 (8th Cir. 2010) ("A party in admiralty can have a legal duty to mitigate damages"); *Rapisardi v. United Fruit Co.*, 441 F.2d 1308, 1312 (2d Cir. 1971); *Saleeby v. Kingsway Tankers, Inc.*, 531 F. Supp. 879, 891 (S.D.N.Y. 1981).

17.75 DAMAGES: COMPENSATORY DAMAGES NOT TAXABLE

In the event that you award the (name of plaintiff) money damages, you are instructed that the award is not subject to any federal or state income taxes. Therefore, you may not consider taxes in considering any award of damages.

Committee Comments

See Norfolk & Western Ry. Co. v. Liepelt, 444 U.S. 490, 498 (1980) (instruction is mandatory); *Fanetti v. Hellenic Lines, Ltd.*, 678 F.2d 424, 431 (2nd Cir. 1982); *cf. Flanigan v. Burlington N., Inc.*, 632 F.2d 880, 889 (8th Cir. 1980) (without evidence of an excessive verdict, the failure to give instruction was not prejudicial).

17.90 SPECIAL VERDICT FORM: INTERROGATORIES

I.
NEGLIGENCE CLAIM

1. Was (name of the plaintiff or decedent) a seaman at the time of the incident shown in the evidence?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 1 is "Yes," proceed to Interrogatory No. 2. If the answer to No. 1 is "No," do not answer any more interrogatories on this form. The Foreperson must sign this form and return it into court.]

2. Was (name of the plaintiff or decedent) injured in the course of [(his) (her)] employment as a seaman?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 2 is "Yes," proceed to Interrogatory No. 3. If the answer to No. 2 is "No," do not answer any more interrogatories on this form. The Foreperson must sign this form and return it into court.]

3. Did the defendant [here describe the act or omission submitted by the plaintiff]?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 3 is "Yes," proceed to Interrogatory No. 4. If the answer to No. 3 is "No," do not answer No. 4, but proceed to No. 7.]

4. Was the act or omission of the defendant [here describe the act or omission submitted by the plaintiff] [found with respect to the answer to No. 3] negligent?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 4 is "Yes" proceed to Interrogatory No. 5. If the answer to No. 4 is "No," do not answer No. 5, but proceed to No. 7.]

5. Did (name of defendant's) negligence [here describe the act or omission submitted by the plaintiff] [found with respect to the answer to No. 3] cause injury to (name of plaintiff)?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 5 is "Yes," proceed to Interrogatory No. 6. If the answer to No. 5 is "No," do not answer No. 6, but proceed to No. 7.]

6. State the total amount of damages that the plaintiff has suffered [and is reasonably certain to suffer in the future] as a result of the incident established in the evidence.

Answer: _____ Dollars ($_____).

II.
UNSEAWORTHINESS CLAIM

7. At the time and place established in the evidence, was the vessel (here name the subject vessel) in an unseaworthy condition in that it (here state condition of vessel submitted by the plaintiff)?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 7 is "Yes" proceed to Interrogatory No. 8. If the answer to No. 7 is "No," proceed to No. 10.]

8. Was the unseaworthy condition of the [here name the subject vessel], with respect to No. 7, a substantial factor in causing any injury or damage sustained by the plaintiff?

Answer: _____ (Yes or No)

[If the answer to Interrogatory No. 8 is "Yes," proceed to Interrogatory No. 9. If the answer to No. 8 is "No," do not answer No. 9, but proceed to No. 10.]

9. State the total amount of damages that (name of plaintiff) has suffered [and is reasonably certain to suffer in the future] as a result of the incident established in the evidence.

Answer: _____ Dollars ($_____).

III.
COMPARATIVE NEGLIGENCE DEFENSE
(Plaintiff)

10(a) Do you find that (name of plaintiff] [describe act or omission]?

Answer: _____ (Yes or No)

[Note: If the answer to Interrogatory No. 10 (a) is "Yes," answer No. 10(b). If the answer to No. 10(a) is "No," do not answer No. 10(b), but proceed to answer No. 11(a).]

10(b) Do you find that the act or omission of (name of plaintiff) [describe act or omission] was negligent?

Answer: _____ (Yes or No)

[Note: If the answer to Interrogatory No. 10(b) is "Yes," answer No. 10(c). If the answer to No. 10(b) is "No," do not answer No. 10(c), but proceed to answer No. 11(a).]

10(c) Do you find that the negligence of (name of plaintiff), found in the answer to No. 10(a) caused, in whole or in part, his own damage or injury?

Answer: _____ (Yes or No)

COMPARATIVE NEGLIGENCE DEFENSE
(Settling Defendant)

11(a) Do you find that (name of settling defendant) [describe act or omission]?

Answer: _____ (Yes or No)

[Note: If the answer to Interrogatory No. 11(a) is "Yes," answer No. 11(b). If the answer to No. 11(a) is "No," do not answer No. 11(b), but proceed to answer No. 12.]

11(b) Do you find that [name of settling defendant] was negligent in [describe act or omission]?

Answer: _____ (Yes or No)

[Note: If the answer to Interrogatory No. 11(b) is "Yes," answer No. 11(c). If the answer to No. 11(b) is "No," do not answer No. 11(c), but proceed to answer No. 12.]

11(c). Do you find that the negligence of (name settling defendant), found in the answer to No. 11(b) caused, in whole or in part, damage or injury to (name of plaintiff)?

Answer: _____ (Yes or No)

12. State the percentage(s) of the relative fault, if any, for the plaintiff's damages to the following:

(a) (name of the defendant) _____%

(b) (name of the plaintiff) _____%

(c) (name of the settling defendant) _____%.

[TOTAL MUST EQUAL 100%] 100 %

____
(FOREPERSON)

____
(DATE)