**8.1 Jones Act – Negligence and Unseaworthiness – General**

**Instruction (Comparative Negligence Defense)**

[Name of plaintiff] has brought a claim under a federal statute known as the Jones Act. The Jones Act provides a remedy to a seaman who, while employed as a crewmember of a vessel in navigation, suffers personal injuries because of the negligence of the seaman’s employer, or the employer’s officers, agents, or other employees.

Specifically, [name of plaintiff] claims that [name of defendant] [describe the specific act(s) or omission(s) asserted as the defendant’s negligence].

To succeed on a claim under the Jones Act, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: you must find that at the time of the alleged injury, [name of plaintiff] was acting in the course of employment as a crewmember of a vessel in navigation.

Second, you must find that [name of defendant] was negligent.

And third, you must find that the negligence was a legal cause of the injury or damage [name of plaintiff] sustained.

[In the verdict form that I’ll explain in a moment, you’ll be asked to answer questions about these factual issues.]

[The parties have agreed that, at the time of the alleged injury, [name of plaintiff] was acting in the course of employment as a crewmember of a vessel in navigation so you should accept that as a proven fact.]

[A seaman is injured “in the course of employment” when, at the time of the injury, the seaman was doing the employer’s work – working in the vessel’s service as a crewmember.]

[For [name of plaintiff] to prove that [he/she] was a crewmember of a vessel, [he/she] must have a connection to a vessel in navigation (or to an identifiable group of vessels in navigation). The duration and nature of the crewmember’s connection must be so substantial that [his/her] employment regularly exposed [him/her] to the sea’s perils. [Name of plaintiff] must also prove that the capacity in which [he/she] was employed, or the duties [he/she] performed, contributed to the vessel’s regular operation or to accomplishing its mission.]

[The primary meaning of the term “vessel” is any watercraft or other structure used, or capable of being used, as a means of transportation on water. A structure that’s buoyant and capable of being floated from one location to another may be a vessel even though it may have remained in one place for a long time, and even though there are no plans to move it in the foreseeable future. Mere flotation alone isn’t sufficient to make a structure a vessel.]

[The term “vessel” can also include various special-purpose crafts (such as barges and dredges) that don’t operate as vehicles for transportation. These crafts may serve as floating bases that may even be submerged so that they rest on the bottom and are used for stationary operations, such as drilling or dredging. In considering whether a special-purpose craft is a vessel, the defining factors are the purposes for which the craft was constructed and the business in which it is engaged – whether the craft was designed for and used in navigation and commerce. But a craft not designed for navigation and commerce can still be classified as a vessel if it had actually been engaged in navigation or commerce at the time of the accident.]

“In navigation” means that the vessel is voyaging, is at anchor, berthed, or at dockside ready for a voyage. [A vessel under repair in dry dock is “in navigation” if it spends a relatively short period of time there and the repairs aren’t so extensive that they transform the vessel through a major overhaul or renovation. Repairs that change the vessel’s status, significantly break from the usual pattern of repair, or involve extensive work on the vessel take it out of navigation until it is ready to voyage again.]

[In considering whether a special-purpose craft is a vessel, the manner in which a party or parties may have referred to or denominated the craft in contracts or other documents doesn’t necessarily determine its status as a vessel, but is simply a factor for you to consider along with all the other evidence.]

“Negligence means the failure to use reasonable care. Reasonable care is the degree of care that a reasonably careful person would use under similar circumstances. Negligence can mean doing something that a reasonably careful person wouldn’t do under like circumstances, or failing to do something that a reasonably careful person would do under like circumstances.

Negligence is a “legal cause” of injury or damage if it played any part, no matter how small, in bringing about or actually causing the injury or damage. So if you should find from the evidence that any of [name of defendant]’s negligence contributed in any way toward any injury or damage [name of plaintiff] suffered, you can find that [name of defendant]’s act or omission legally caused the injury or damage. Negligence can be a legal cause of injury or damage even if it operates in combination with the act of another person, some natural cause, or some other cause that occurs at the same time as the negligence as long as the negligence played a part in causing the injury or damage.

If a preponderance of the evidence doesn’t support [name of plaintiff]’s Jones Act claim for negligence, then your verdict should be for [name of defendant]. But if a preponderance of the evidence supports [name of plaintiff]’s claim, you must next consider [name of defendant]’s defense.

[Name of defendant] claims that [name of plaintiff] was also negligent and that [name of plaintiff]’s negligence was a legal cause of [his/her] own injury or damage. This is a defensive claim, which requires [name of defendant] to prove these two facts by a preponderance of the evidence”

First, you must find that [name of plaintiff] was also negligent.

And second, you must find that the negligence was a legal cause of [name of plaintiff]’s own injury or damage.

[In the verdict form that I’ll explain in a moment, you’ll be asked to answer questions about these factual issues.]

The law requires you to compare any negligence you find on the part of both parties because, in this case, [name of defendant] claims that [name of plaintiff]’s negligence contributed to [name of plaintiff]’s injuries. If you find in [name of defendant]’s favor on this defense, by finding that [name of plaintiff] was also negligent, that won’t prevent [name of plaintiff] from recovering. But it will reduce [name of plaintiff]’s recovery amount by the degree of [his/her] negligence. This is a legal concept called “contributory negligence.”

For example, if you find that [name of plaintiff] was 50% responsible for [his/her] own injury, then you must reduce [his/her] recovery amount by that percentage. By using the number 50% as an example, I don’t mean to suggest that [name of plaintiff] was negligent, or if [he/she] was negligent, to what degree. That’s a decision entrusted to you and it’s up to you to determine the percentage, if any, of [name of plaintiff]’s negligence.

[Name of plaintiff]’s second claim is for unseaworthiness. Specifically, [he/she] claims that the vessel was unseaworthy because [describe the specific conditions asserted as the basis for the claim].

To succeed on a claim of unseaworthiness, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First, you must find that the vessel was unseaworthy.

And second, you must find that the unseaworthy condition was a legal cause of [name of plaintiff]’s injury or damage.

[In the verdict form that I’ll explain in a moment, you’ll be asked to answer questions about all these factual issues.]

A claim of “unseaworthiness” is a claim that the vessel owner didn’t perform a legal duty owed to crewmembers to provide a vessel reasonably fit for its intended purpose. The duty to provide a seaworthy ship covers the vessel itself, and all of its parts, equipment, and gear. It also includes the responsibility of assigning an adequate crew.

An owner’s duty to provide a seaworthy ship is absolute. The owner can’t delegate that duty to anyone else. If the owner doesn’t provide a seaworthy vessel, no amount of due care or prudence will excuse that fault, regardless of whether the owner knew, or could have known, of the deficiency.

So if you find that the vessel was unsafe or unfit in any manner and that the condition was a legal cause of [name of plaintiff]’s damage, then you can find that the vessel was unseaworthy and that the owner is liable, regardless of whether the owner was negligent.

But the vessel’s owner doesn’t have to furnish an accident-free ship. A vessel isn’t required to have the best appliances and equipment, or the finest crew. Rather, it needs the gear that’s reasonably proper and suitable for its intended use and a crew that is reasonably competent and adequate.

An unseaworthy condition is a “legal cause” of injury or damage only if the unseaworthy condition directly – and in a natural and continuous sequence – produces or contributes substantially to producing the injury or damage. Ask yourself: Would [name of plaintiff]’s damage have occurred without the unseaworthy condition?

Unseaworthiness may be a legal cause of injury or damage even if it operates in combination with another person’s act, some natural cause, or some other cause if the other cause occurs at the same time as the unseaworthiness as long as the unseaworthiness contributes substantially to producing the claimed injury or damage.

[Name of defendant] denies that the vessel was unseaworthy at the time of the incident and, alternatively, claims that if the vessel was unseaworthy, then the unseaworthiness didn’t cause any injury or damage to [name of plaintiff].

[Name of defendant] further alleges that [name of plaintiff]’s negligence was a contributing cause of [name of plaintiff]’s injury or damage. Since I’ve already explained the meaning and effect of a finding that [name of plaintiff] was contributorily negligent, I won’t do so again – except to remind you that [name of defendant] must prove this defense by a preponderance of the evidence.

You should also remember that [name of plaintiff] has asserted two separate claims. The first is for negligence under the Jones Act. And the second is for unseaworthiness. [Name of plaintiff] may be entitled to recover damages if [he/she] can establish either of those claims.

So if the evidence proves that negligence or unseaworthiness was a legal cause of [name of plaintiff]’s injury or damage, you must then consider the issue of [name of plaintiff]’s damages.

You should assess the monetary amount that a preponderance of the evidence justifies as full and reasonable compensation for all of [name of plaintiff]’s damages – no more, no less. You must not impose or increase these compensatory damages to punish or penalize [name of defendant]. And you must not base these compensatory damages on speculation or guesswork because [name of plaintiff] can recover only [his/her] actual damages.

But the law doesn’t restrict compensatory damages only to actual loss of time or money. Compensatory damages cover both the mental and physical aspects of injury – tangible and intangible. It’s not value you’re trying to determine, but an amount that fairly compensates [name of plaintiff] for emotional pain and mental anguish. No evidence of these things has been, or need be, introduced. And there’s no exact standard to apply, but any such award should be fair and just in light of the evidence.

If you find that damages have been proved by a preponderance of the evidence, you should consider only the following elements of damage:

• net lost wages and benefits to the date of trial;

• net lost wages and benefits in the future [reduced to present value];

• medical and hospital expenses incurred in the past [and likely to be incurred in the future]; and

• physical and emotional pain and anguish.

[Anyone who claims damages because of an alleged wrongful act by another has a duty to “mitigate” those damages – to take advantage of any reasonable opportunity under the circumstances to reduce losses or damages.

So if you find, by a preponderance of the evidence, that [name of plaintiff] failed to seek out, or take advantage of, a business or employment opportunity reasonably available to [him/her] under all the circumstances the evidence shows, you should reduce any damage award by the amount [name of plaintiff] could reasonably have received if [he/she] had taken advantage of such an opportunity.]

[[Name of plaintiff] also claims that [name of defendant] acted willfully, intentionally, or with callous and reckless indifference to [name of plaintiff]’s rights, which entitles [him/her] to an award of punitive damages in addition to compensatory damages.

If you find for [name of plaintiff], and if you further find that [name of defendant] acted with malice, willfulness, or callous and reckless indifference to [name of plaintiff]’s rights, the law allows you, in your discretion, to assess punitive damages against [name of defendant] as punishment and as a deterrent to others.

If you decide to assess punitive damages against [name of defendant], you may consider [name of defendant]’s financial resources to determine the amount [and you may assess punitive damages against one or more defendants – and not others – or against two or more defendants in different amounts].]

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

 That [name of defendant] was negligent in the manner [name of plaintiff] claimed, and that the negligence was a legal cause of damage to [name of plaintiff]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That the vessel was unseaworthy in the manner [name of plaintiff] claimed, and that the unseaworthiness was a legal cause of damage to [name of plaintiff]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.]

 That [name of plaintiff] was also negligent in the manner [name of defendant] claimed, and that [name of plaintiff]’s negligence was a legal cause of [name of plaintiff]’s own damage?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 If you answered “Yes” to Question No. 3, what proportion or percentage of [name of plaintiff]’s damage do you find from a preponderance of the evidence to have been legally caused by the negligence of the respective parties?

Answer in terms of percentages:

[name of defendant] \_\_\_\_\_\_\_\_\_\_\_\_\_ %

[name of plaintiff] \_\_\_\_\_\_\_\_\_\_\_\_\_ %

Note: The total of the percentages in your answer should equal 100%.

 If you answered “Yes” to Question No. 1 or Question No. 2, what sum of money do you find to be the total amount of [name of plaintiff]’s damages (without applying any percentages you may have given in answer to Question No. 4)?

 Net lost wages and benefits to the date of the trial:

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Net lost wages and benefits in the future [reduced to present value]:

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Medical and hospital expenses, incurred in the past [and likely to be incurred in the future]:

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Physical and emotional pain and mental anguish:

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ Punitive damages, if any (as the Court’s instructions explain):

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_