

WORKMEN'S COMPENSATION FOR SEAMEN*

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Seamen constitute one of this country's major industrial groups not covered by any kind of workmen's compensation law. This is contrary to the situation in nearly all other maritime nations. What is particularly interesting is that United States merchant seamen do not want any such legislation at present.

Seafaring is a hazardous occupation. Estimates for the last prewar year, 1938, indicate that out of a total estimated work force of about 132,000 seamen employed on American-flag merchant vessels, about 14,500 were the victims of accidental injuries and diseases arising during the course of employment on a vessel.

These accidents and diseases cost ship-owners about $4\frac{1}{2}$ million dollars, exclusive of claim-handling expense. As seamen are provided free medical treatment and hospitalization in U. S. Marine Hospitals, this single year's injuries and diseases cost the Federal Government about \$700,000. Injured seamen, or their dependents in case of death, are estimated to have received about \$3,600,000 after due allowance for attorney fees and court costs.



The estimates for 1938 indicate that about 300 seamen were killed, 400 suffered some degree of permanent disability, and 13,800 suffered temporary disabilities. Accidental injury caused approximately two-thirds of these cases and disease the remainder. It is important to realize in this connection that the present rights of seamen embrace the right to compensation for disease to a much greater extent than is customary under even the most liberal type of workmen's compensation act in this country. Generally the types of diseases which are compensable under such laws must arise specifically out of work hazards. Even under a very liberal law and administration, these industrial diseases rarely exceed 5 percent of the total injury count. As against this, fully one-third of all work disabilities to seamen during 1938 were diseases.

The reason for this difference lies largely in the conditions under which seamen work and live. A seaman generally is employed for the duration of a voyage.

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Editor's Note: Fishermen in many cases have been considered as "seamen" by courts as well as by administrative agencies. Fishermen are not considered as seamen:

1. If they are working on waters that are not navigable.
2. If they are not at the same time members of the crew of the vessel.
3. If they perform work on a vessel under 18 net tons.

Generally the interpretation of the maritime laws as to their extension to fishermen has tended to be broad and liberal.

He "signs on" under the terms of "shipping articles" which constitute a contract of employment between the seaman and the master of the vessel; and he "signs off" when the voyage is terminated and he has received his pay. From the moment he reports for duty and until the voyage ends, the seaman is "in the service of the vessel." On board ship, he lives in the quarters assigned to him; he eats the food served to him; he is on duty 8 hours per day--4 hours "on watch" at a time, with 8 hours "off watch." He cannot leave the vessel at any port without the master's permission. In other words, while in the service of the vessel he has no control over his environment, over his food and living conditions, and he is obviously exposed to the hazards of the elements as well as the climatic conditions of the various parts of the world to which the voyage takes him. Furthermore, the seaman has no choice but to obey the master of a ship, no matter how hazardous the mission to which he is assigned.

While living conditions are good on modern ships, many of the older ships offer only the barest of comforts. Frequently no medical attention is available, and injured or ill seamen are usually treated by one of the officers and put ashore at the nearest port if conditions require it.

In the light of these conditions, it is clear why the rights of seamen cover a wide variety of diseases not normally regarded as having any logical connection with employment. These conditions also provide the explanation why any kind of workmen's compensation act for seamen should make no distinction between work injuries and diseases which arise during the course of employment.

THE "ANCIENT RIGHTS" OF SEAMEN: There are several other important differences between seamen and other industrial workers. One of these is the right--dating back to ancient maritime law--to wages to the end of the voyage, even though a disability occurs before then. Another is title to a "maintenance and cure" allowance until the disability is removed, or until it becomes clear that no further medical attention will contribute toward lessening the degree of the permanent impairment.

THE SEAMEN AND WORKMEN'S COMPENSATION: A Senate Committee, which had before it a workmen's compensation bill (H. R. 6881) proposed by shipowners, therefore found itself confronted in 1940 with a situation in which the employers fought for a workmen's compensation act, while the employees vigorously opposed it. The Senate Committee sought more light on the subject and requested a number of Federal agencies to set up a joint committee to investigate the whole problem and to report its findings. This Committee, hereafter referred to as the Interdepartmental Committee, consisted of representatives from the Department of Commerce, the Department of Labor, the United States Maritime Commission, the United States Employees' Compensation Commission, and the Maritime Labor Board.

PRESENT SETTLEMENT METHODS: When a seaman is injured or becomes ill while in the service of the vessel, his superior makes a report to the master of the vessel, who makes the required entry in the ship's log, reports to the owner, and in some cases to the United States Coast Guard. The seaman is brought back to his original port of sailing or to some other agreed-upon port. There he gets in touch with the claims official of the shipowner. Arrangements are made for such wage and maintenance payments as may be due the seaman and the negotiation for the claim settlement begins.

As a general rule, the seaman conducts his own negotiations. When he does, the available evidence indicates that a settlement usually is reached quickly.

The settlement covers four items:

1. Wages to the end of the voyage.
2. A maintenance allowance for the out-patient and convalescence period.
3. Cost of such other items as medicines, medical appliances, hospitalization not furnished by the United States Marine Hospitals, artificial limbs, etc.
4. Indemnity if the liability of the shipowner can be established--covering compensation for pain and suffering, loss of future earning power because of permanent impairment, and sometimes loss of wages until other jobs become available.

The employment of attorneys tended to delay settlement. One reason for this was that the seamen used attorneys when they had difficulty in establishing the negligence of the shipowners, or their agents, or the unseaworthiness of the vessel. In death cases, shipowners frequently insisted that the claimants establish legal proof of dependency, thus compelling the dependents to obtain such rulings from the courts. The reason for this procedure, obviously, was to protect the shipowners against having to make payments to more than one claimant.

Permanent disability cases usually involved longer lags between the date of injury and the date of settlement. The main reason for this was the desirability of waiting until the wound had healed and the degree of residual impairment could be ascertained.

COMPARISON OF RECOVERIES--UNDER THE PRESENT SETTLEMENT METHOD: Of 5,487 cases reported to the Interdepartmental Committee for which disability developed during 1938, the average amount recovered per case was \$283. Less than 2 percent received \$2,500 or more, and less than 1 percent received \$5,000 or more. Injury cases averaged \$333, compared with \$169 for disease cases. None of the disease cases was settled for as much as \$5,000.

Practically all of the 5,487 cases resulted in recoveries to the seamen or their dependents. Only 29 were still pending in the spring of 1941, when the survey was concluded, and 104 had been closed without payment. Among the latter, however, no claims had been made in 76 cases, and in only 28 had the shipowners refused to make any settlement.

After deducting attorney fees and other litigation expenses, the distribution of the total number of cases in which recoveries were made and the average amount per case, by extent of disability, was as shown in Table 1.

Table 1 - Average Net Recovery in 5,354 Disability Cases

Extent of disability	All cases		Injury cases		Disease cases	
	Number	Amount	Number	Amount	Number	Amount
All cases	5,354	\$ 268	3,631	\$ 319	1,723	\$ 159
Death	112	1,761	57	3,161	55	310
Permanent total	18	3,646	8	5,312	10	2,213
Permanent partial	188	1,898	176	1,968	12	879
Temporary total	5,036	162	3,390	174	1,646	136

The table presents two significant features: (1) That cases of disease were settled at lower average amounts than were injuries, in every category of disability; (2) that death cases were settled for relatively small amounts. The latter point may be explained by the fact that seamen frequently have few close of kin dependent upon them. Furthermore, these dependents had the burden of establishing the neg-

ligence of the shipowner or the unseaworthiness of the vessel. Frequently, too, they were not in a position to press their claims. Consequently only about half the fatalities involved indemnity payments.

One of the facts to emerge from the Interdepartmental Committee study was that it seemingly paid the seaman to employ attorneys. The seaman who negotiated his settlement directly averaged a settlement amount of \$197. Those who used attorneys netted an average amount of \$617; \$532 if no court action was involved, and \$1,234 if the case was litigated. While the attorney cases frequently involved the more severe injuries, the chief claims agent of one of the companies explained that he automatically raised his settlement offer when an attorney called, so as to head off litigation. Thus, the seaman who refused to accept a settlement of \$100 was offered \$250 if he had his attorney phone the agent. Even after the attorney deducted one-third of the settlement as his fee, the seaman was still better off than if he had not employed an attorney.

UNDER WORKMEN'S COMPENSATION: The Interdepartmental Committee posed three questions relative to compensation for injuries to seamen:

- (1) Whether the principle of workmen's compensation was more desirable than a system of liability based upon negligence;
- (2) Whether it was possible to devise a workmen's compensation system that would preserve for injured seamen their ancient rights of wages to the end of the voyage and of maintenance and cure; and
- (3) Whether such a system would be "desirable and advantageous from the standpoint of the seamen, the industry, and the public."

The committee answered the first two questions with an unqualified "yes." The answer to the third question, while affirmative, was qualified. The committee had at hand the findings of its statistical subcommittee which showed clearly that the seamen would lose decidedly if the provisions of the Longshoremen's and Harbor Workers' Compensation Act, which was under consideration by the Senate Committee, were extended to them, and that they were better off under their present employer liability system. To overcome this difficulty, the subcommittee suggested certain modifications of the usual type of workmen's compensation act structure:

- (1) That the compensation act become operative only at the end of the voyage, so as to preserve to the seamen the right of wages to the end of the voyage;
- (2) That the benefit payments during the period of temporary disability be not less than the allowance for maintenance and cure; and
- (3) That the wage base for computation of the benefit rate be predicated on full employment for 12 months of the year, even though seamen averaged only about $\frac{81}{100}$.

It was also suggested that there be no waiting period for benefits and that there be no limitation on total compensation payable for disability and death.

Unfortunately, the time available to the Interdepartmental Committee was insufficient to permit evaluation of the reported cases under the system it recommended. That task was undertaken subsequently, although it suffered considerable delay because of the urgency of war activities. But now that World War II is over, it seems pertinent to focus attention on this problem again.

As these findings have an important bearing on the problem, brief mention of the steps used in the evaluation process are appropriate. The benefit rate was computed at 66-2/3 percent of the full-time annual wage together with the value of subsistence, lodging, overtime, and bonuses. The benefit rate therefore was based on earnings during the period of employment directly preceding the disability. To this amount was added the monthly value of subsistence and lodging established for purposes of the Social Security Act: \$48 for licensed officers and supervisory personnel, and \$36 for all other members of the crew.

The benefit-rate formula recommended by the Interdepartmental Committee was used--no limitations on total benefits payable for death or disability, and the benefit payments during the out-patient and convalescence period at least equal to the current payments for maintenance. The same method was used to compute benefits during the hospitalization period, for which nothing is payable under the present employer liability system.

Payments for death and permanent impairments were predicated on the same benefit base. For permanent total disabilities the benefit period was computed at the full life expectancy of the disabled seaman. For permanent partial disabilities, the schedule of specified weeks provided in the Longshoremen's and Harbor Workers' Act was used. Similarly, benefits payable to dependents of fatally injured seamen were calculated on the basis set forth in this act, except that for benefits the minimum used was \$14 per week, and the maximum \$28, rather than the smaller amounts specified in the act. No correction was made for the remarriage of widows.

How adequate are the minimum standards proposed by the Interdepartmental Committee in comparison with amounts paid under the present system? Although present-day earnings of seamen are different from what they were in 1938, the prewar year studied by the Committee, a comparison of actual payments for disabilities in that year with the amounts payable under the modified compensation system provides a fair comparison of the relative pecuniary advantages and disadvantages of the two systems.

The comparison, shown in Table 2, covers 5,812 cases for which data were adequate for comparison.

Table 2 - Comparison of Probable Awards with Actual Net Recoveries, by Extent of Disability (Cases Reported Closed, 1938)

Type and extent of disability	Number of cases	Probable award	Net recovery	Difference ^{1/}		
				Amount	Average	Percent of net recovery
All cases	5,812	\$2,197,805	\$1,637,281	\$560,524	\$96.45	34.2
Injury	3,957	1,426,362	1,326,067	100,295	25.35	7.6
Disease	1,855	771,443	311,214	460,229	248.10	147.8
Fatal	139	735,744	216,987	518,757	3,732.06	239.1
Injury	71	454,667	199,121	255,546	3,599.24	127.8
Disease	68	281,077	17,866	263,211	3,870.75	1473.0
Permanent total	21	225,053	73,792	151,261	7,202.90	205.0
Injury	9	69,736	46,552	23,184	2,576.00	49.8
Disease	12	155,317	27,240	128,077	10,673.08	470.2
Permanent partial	224	426,682	437,437	-10,755	- 48.01	- 2.5
Injury	208	377,257	423,865	-46,608	- 224.07	-11.0
Disease	16	49,425	13,572	35,853	2,240.80	264.2
Temporary total	5,428	810,326	909,065	- 98,739	- 18.19	-10.9
Injury	3,669	524,702	656,529	-131,827	- 35.93	-20.1
Disease	1,759	285,624	282,536	33,088	18.81	13.1

^{1/} Unless indicated by (-) minus signs, the differences indicate gains over the net recoveries.

The "net recovery" figures are net amounts received by seamen after the deduction of attorney and court costs where these were incurred. It was assumed that there would be no such costs under the compensation act. The total amount actually paid by shipowners was \$1,977,195. The total net amount retained by seamen was \$1,637,281. It will be noted that in terms of total payments by shipowners, the total amount payable under the proposed act would be \$2,197,805--about 10 percent more than the amount actually paid out by the shipowners.

Table 2 reveals clearly that cases involving fatalities and permanent total disabilities would fare much better under the compensation act. On the average, each fatality and permanent total disability would be paid more than twice the amount actually paid. These two types of cases, although constituting only 160 out of 5,812, or less than 3 percent, accounted for nearly \$961,000, or about 44 percent of the total.

The permanent partial impairment cases would not fare quite as well under the proposed compensation system. On the average, benefit payments would fall 2.5 percent below present net recoveries. The difference was much sharper for temporary total disability cases. Here compensation benefits would fall 10.9 percent short of the total amount paid under the present system. Although the total sum payable for this type of disability was less than that for fatalities and permanent total disabilities, the number of persons involved was 5,428, or 93 percent of the total. Thus, on the average, death and permanent total disabilities would gain, and permanent partial and temporary total disabilities would lose under the proposed compensation system.

Although this comparison deals with total amounts and with averages, the study did permit a more detailed analysis of the distribution of seamen who would lose or gain under the proposed system. The latter comparison is shown in Table 3.

Table 3 - Cases Gaining Versus Cases Losing Under a Proposed Workmen's Compensation Law, by Extent of Disability (Cases Reported Closed, 1938)

Extent of disability	All cases	Cases in which workmen's compensation as compared with employers' liability would have resulted in--					
		Gain		Loss		Neither gain nor loss	
		Number	Percent	Number	Percent	Number	Percent
All cases	5,812	2,680	46.1	2,868	49.3	264	4.6
Injury	3,957	1,653	41.8	2,161	54.6	143	3.6
Disease	1,855	1,027	55.4	707	38.1	121	6.5
Fatal	139	129	92.8	10	7.2	0	0
Injury	71	61	85.9	10	13.1	0	0
Disease	68	68	100.0	0	0	0	0
Permanent total	21	21	100.0	0	0	0	0
Injury	9	9	100.0	0	0	0	0
Disease	12	12	100.0	0	0	0	0
Permanent partial	224	131	58.5	92	41.1	1	.4
Injury	208	115	55.3	92	44.0	1	.5
Disease	16	16	100.0	0	0	0	0
Temporary total	5,428	2,399	44.2	2,766	51.0	263	4.8
Injury	3,669	1,468	40.0	2,059	56.1	142	3.9
Disease	1,759	931	52.9	707	40.2	121	6.9

About 46 percent of disabled seamen would have been better off under the proposed compensation system. About 49 percent would have been worse off, and about 5 percent would not have been affected either way. Nearly 86 percent of

the death cases, and every permanent total disability case, would have gained under the present system; but 41 percent of the permanently partially disabled seamen would have been worse off, as would 51 percent of all those temporarily disabled.

From a purely financial consideration, therefore, about half of the seamen would be paid less under the suggested compensation system. Most of these seamen, however, were those who suffered temporary disabilities. On the other hand, the death and permanent total disability cases appear to have been greatly under-compensated under the present system. They would have received enough more in compensation to lift the total amount payable to disabled seamen under the proposed system about 10 percent above that actually paid by the shipowners.

Thus, disabled seamen as a group would have received more, but about half would have received less under workmen's compensation.

The explanation for this lies in the fact that the proposed compensation system cannot make up the amounts paid as indemnity to temporarily disabled seamen. As already pointed out, the proposed system matches the present system for wages to the end of the voyage and payments for maintenance and cure. It adds payments for the hospitalization period, which is not compensated under the existing system. But this amount fails to match the average amount paid as indemnity for suffering and pain, and for which no allowance is made under workmen's compensation, which is predicated on a partial offset for wage loss.

There are, however, intangible benefits under a workmen's compensation system, as the Interdepartmental Committee pointed out. First, it provides a definite and quick way of ascertaining the amount due a disabled seaman. It provides a definite and certain benefit scale in contradistinction to recoveries determined by the uncertainty of damage suits or negotiated settlements. Further, workmen's compensation eliminates the controversial elements of negligence and assumption of risk and reduces the contest between seamen and shipowner to a minimum. It avoids costly and cumbersome court procedures and much of the bitterness usually engendered in these suits. It provides regular periodic compensation payments in lieu of a single lump-sum settlement payment, "thus protecting the recipients from improvidence."

CONCLUSIONS: The probable results of the application of the type of liberal workmen's compensation act proposed by the Interdepartmental Committee may be summarized as follows:

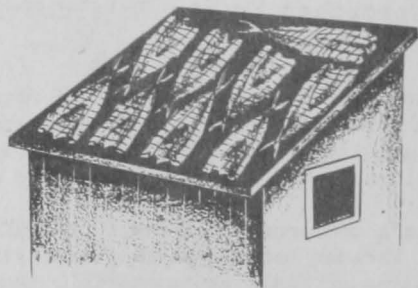
1. The total amount which seamen, as a group, would receive for disabling injuries and diseases probably would be in excess of what they receive under the present limited employer liability system. A workmen's compensation system modeled along the proposed lines would cost the shipowners about 10 percent more.
2. As is true of workmen's compensation systems generally, litigation would be curtailed greatly. Because benefit payments are stipulated in considerable detail and the question of fault is immaterial, there would be less tendency on the part of shipowners to evade liability and on the part of seamen to get as much as they could. It is likely, too, that industrial relations would be improved.
3. Shipowners might be encouraged to engage in accident prevention to a greater extent than they now do if the law contained penalty provisions--such as a fixed percent of additional compensation if a prescribed safety rule had been violated by the shipowner or his agent. Such a provision is contained, for example, in the Workmen's Compensation Act of Wisconsin.

4. The proposed act would compensate cases of death and permanent total disability far more adequately than is now the case. On the other hand, the majority of temporarily disabled seamen would receive less.
5. About half of all disabled seamen would receive less under the proposed compensation system than they do now, because this system does not offset the present "indemnity" payment for pain and suffering. The basic philosophy of workmen's compensation is to offset in part--usually two-thirds up to a prescribed maximum--the wage loss of the disabled worker.
6. The adoption of the proposed compensation system would increase the average payment to dependents of fatally injured or diseased and to severely disabled seamen at the expense of the less severely disabled.



DRY-SALTING MULLET, RED DRUM, AND KING MACKEREL

Mullet, mullet roe, red drum (channel bass), and kingfish (king mackerel) are about the only fish dry-salted commercially in the South Atlantic and Gulf of Mexico areas. Of these, mullet is most important. The latest available data show a production of 1,749,500 pounds of salted mullet in 1940. The largest share of this was prepared on the west coast of Florida, the second largest amount in North Carolina, and the smallest in South Carolina and Alabama.



Fishery Leaflet 136, which may be obtained, free of charge, from the Fish and Wildlife Service, Chicago 54, Illinois, describes the preparation and methods of arranging these species for dry-salting. Directions are also given for dry-salting mullet roe, of which about 80,000 to 150,000 pounds are prepared commercially each year in the United States.