

32 MARITIME LAW

Alaska state courts apply general maritime law in cases that fall within admiralty or maritime jurisdiction. However, Alaska law may be applied unless it "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations."¹

Awarding costs and attorney's fees in accordance with Alaska Civil Rule 82 does not interfere with the uniformity of general maritime law and is permissible.² However, Rule 82 attorney's fees are not available to admiralty litigants in federal court.³

Punitive damages are no longer available for willful failure to pay maintenance and cure.⁴ However, punitive damages are available as a remedy for general maritime torts when an appropriate showing is made. Thus, a corporation can be held vicariously liable for punitive damages.⁵

Crew contracts must be in writing. If the contract is not in writing, a lay share fisherman is entitled to the rate agreed upon before the voyage or the highest rate of wages at the port where he was engaged.⁶

Any contract provision limiting a seaman's right to maritime remedies is void.⁷ As the Alaska Supreme Court explained, "a strong presumption of validity attaches to forum selection clauses under general maritime law."⁸ But when a seaman files an *in personam* admiralty claim under the saving-to-suitors clause and the Jones Act,⁹ the seaman may elect to sue in a 'common law' state court through an ordinary civil action. Thus, because the rights conferred by the Jones Act are different from those conferred by general maritime law, a contract provision limiting a seaman's right to maritime

¹ *Hughes v. Foster Wheeler Co.*, 932 P.2d 784, 787 (Alaska 1997) (quoting *American Dredging Co. v. Miller*, 510 U.S. 443, 447 (1994); see also *Krossa v. All Alaskan Seafoods, Inc.*, 37 P.3d 411, 415-416 (Alaska 2001).

² *Id.* at 787-92; see also *Williams v. Eckert*, 643 P.2d 991 (Alaska 1982).

³ *Kalmbach, v. Insurance Co. of the State of Pennsylvania*, 422 F. Supp. 44 (D. Ark. 1976).

⁴ *Stone v. Int'l. Marine Carriers*, 918 P.2d 551, 556 (Alaska 1996) (citing *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1513 (5th Cir. 1995); and *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495, 1505 (9th Cir. 1995).

⁵ *In re the EXXON VALDEZ*, 270 F.3d 1215, 1235 (9th Cir. 2001).

⁶ *Bjornsson v. U.S. Dominator*, 863 P.2d 235, 238-40 (Alaska 1993).

⁷ *Brown v. State*, 816 P.2d 1368 (Alaska 1991) (bargained-for provision in union contract limiting employees of the Alaska Marine Highway to workers' compensation remedies was invalid).

⁸ *Nunez v. American Seafoods*, 52 P.3d 720, 721-722 (Alaska 2002).

⁹ 46 U.S.C. App. §688.

remedies is void when the suit is brought under the Jones Act, but can be upheld when an action is brought under the general maritime law.¹⁰

Intoxication may defeat a claim for maintenance and cure if the jury determines that alcohol was the sole proximate cause of the injury.¹¹ However, receiving benefits under the Alaska Workers' Compensation Act does not bar a claim for maritime remedies.¹² Floating processors that do not operate fishing gear are subject to the Workers' Compensation Act.¹³

The Alaska Supreme Court has held that it is federal law, not state law, that governs the issue of tolling of limitations periods for Jones Act negligence claims under the three-year limitation period found in the Federal Employers' Liability Act ("FELA"),¹⁴ unseaworthiness claims under the Uniform Statute of Limitations for Maritime Torts, and maintenance and cure claims.¹⁵

¹⁰ *Id.*

¹¹ *Loof v. Sanders*, 686 P.2d 1205, 1210 n. 11 (Alaska 1984).

¹² *State v. Brown*, 794 P.2d 108 (Alaska 1990).

¹³ See AS 23.30.230(6) and AS 16.05.940(4).

¹⁴ 45 U.S.C. §§51-60.

¹⁵ *Abbott v. State*, 979 P.2d 994 (Alaska 1999).

Appendices:

AS 16.05.940

AS 23.30.230

Sec. 16.05.940. Definitions. In AS 16.05 — AS 16.40

- (1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;
- (2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses
 - (A) for other fish or game or their parts; or
 - (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;
- (3) "a board" means either the Board of Fisheries or the Board of Game;
- (4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph "operate fishing gear" means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;
- (5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;
- (6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;
- (7) "customary and traditional" means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of the fish or game;
- (8) "customary trade" means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers;
- (9) "department" means the Department of Fish and Game unless specifically provided otherwise;
- (10) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;
- (11) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;

(12) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(13) "fish derby" means a contest in which prizes are awarded for catching fish;

(14) "fishery" means a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource; in this paragraph

(A) "gear" means the specific apparatus used in the harvest of a fishery resource; and

(B) "type of gear" means an identifiable classification of gear and may include

(i) classifications for which separate regulations are adopted by the Board of Fisheries or for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and

(ii) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear or sport gear and guided sport gear;

(15) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, "fish" does not include shellfish, as defined in AS 16.40.199;

(16) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit;

(17) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(18) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 — AS 16.40;

(19) "game population" means a group of game animals of a single species or subgroup manageable as a unit;

(20) "hunting" means the taking of game under AS 16.05 — AS 16.40 and the regulations adopted under those chapters;

(21) "nonresident" means a person who is not a resident of the state;

(22) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(23) "operator" means the individual by law made responsible for the operation of the vessel;

(24) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(25) "person with physical disabilities" means a person who presents to the department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;

(26) "resident" means

(A) a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(B) a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;

(C) a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made;

(D) a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or

(E) an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(27) "rural area" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area;

(28) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(29) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(30) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(31) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(32) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

(33) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(34) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(35) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(36) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft. (§ 2 art I ch 95 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; § 9 art III ch 94 SLA 1959; am § 23 ch 131 SLA 1960; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984; am §§ 9 — 11 ch 52 SLA 1986; am § 5 ch 76 SLA 1986; am § 1 ch 114 SLA 1988; am § 9 ch 145 SLA 1988; am § 3 ch 6 SLA 1989; am § 15 ch 211 SLA 1990; am § 18 ch 30 SLA 1992; am § 2 ch 49 SLA 1992; am § 3 ch 90 SLA 1992; am § 4 ch 1 SSSLA 1992; am § 4 ch 9 SLA 1994; am § 3 ch 38 SLA 1997)

Sec. 23.30.230. Persons not covered. (a) The following persons are not covered by this chapter:

- (1) a part-time baby-sitter;
- (2) a cleaning person;
- (3) harvest help and similar part-time or transient help;
- (4) a person employed as a sports official on a contractual basis and who officiates only at sports events in which the players are not compensated; in this paragraph, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event;
- (5) a person employed as an entertainer on a contractual basis;
- (6) a commercial fisherman, as defined in AS 16.05.940;
- (7) an individual who drives a taxicab whose compensation and written contractual arrangement is as described in AS 23.10.055(13), unless the hours worked by the individual or the areas in which the individual may work are restricted except to comply with local ordinances;
- (8) a participant in the Alaska temporary assistance program (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than subsidized or unsubsidized work or on-the-job training; and
- (9) a person employed as a player or coach by a professional hockey team if the person is covered under a health care insurance plan provided by the professional hockey team, the coverage is applicable to both work related and nonwork related injuries, and the coverage provides medical and related benefits as required under this chapter, except that coverage may not be limited to two years from the date of injury as described under AS 23.30.095(a); in this paragraph, "health care insurance" has the meaning given in AS 21.12.050.

(b) The exclusion of certain persons under (a) of this section may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter.

(c) In this section,

(1) "on-the-job training" means training provided by an employer under a formal agreement with a department of the state, or an agent of a department, for which wages are paid by the employer to a participant in the Alaska temporary assistance program (AS 47.27) while the participant receives job training;

(2) "subsidized work" means employment, by an employer, of an Alaska temporary assistance program participant in a work placement for which the participant receives wages from the employer, subsidized by, and subject to an agreement between the employer and, a department of the state or an agent of a department; "subsidized work" does not include community work service, job sampling placements, or preplacement activities such as job readiness assessments, job searches, education, or vocational training;

(3) "unsubsidized work" means employment, by an employer, secured by an Alaska temporary assistance program participant, with or without the assistance of a department of the state or an agent of a department, for which the participant receives wages from the employer; "unsubsidized work" does not include self-employment. (§ 33(3) ch 193 SLA 1959; am § 1 ch 47 SLA 1986; am § 1 ch 77 SLA 1986; am § 4 ch 13 SLA 1993; am § 1 ch 72 SLA 1994; am §§ 3, 4 ch 45 SLA 1997; am § 1 ch 69 SLA 1998)