



Maritime Employers Liability and Subcontractors

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So What Is MEL?



MEL Is a Kitchen Sink of Coverages

General Maritime Law

Maintenance & cure

Unseaworthiness

Transportation

Wages

Death On the High Seas Act (DOHSA) ‡

Wrongful Death

Jones Act *

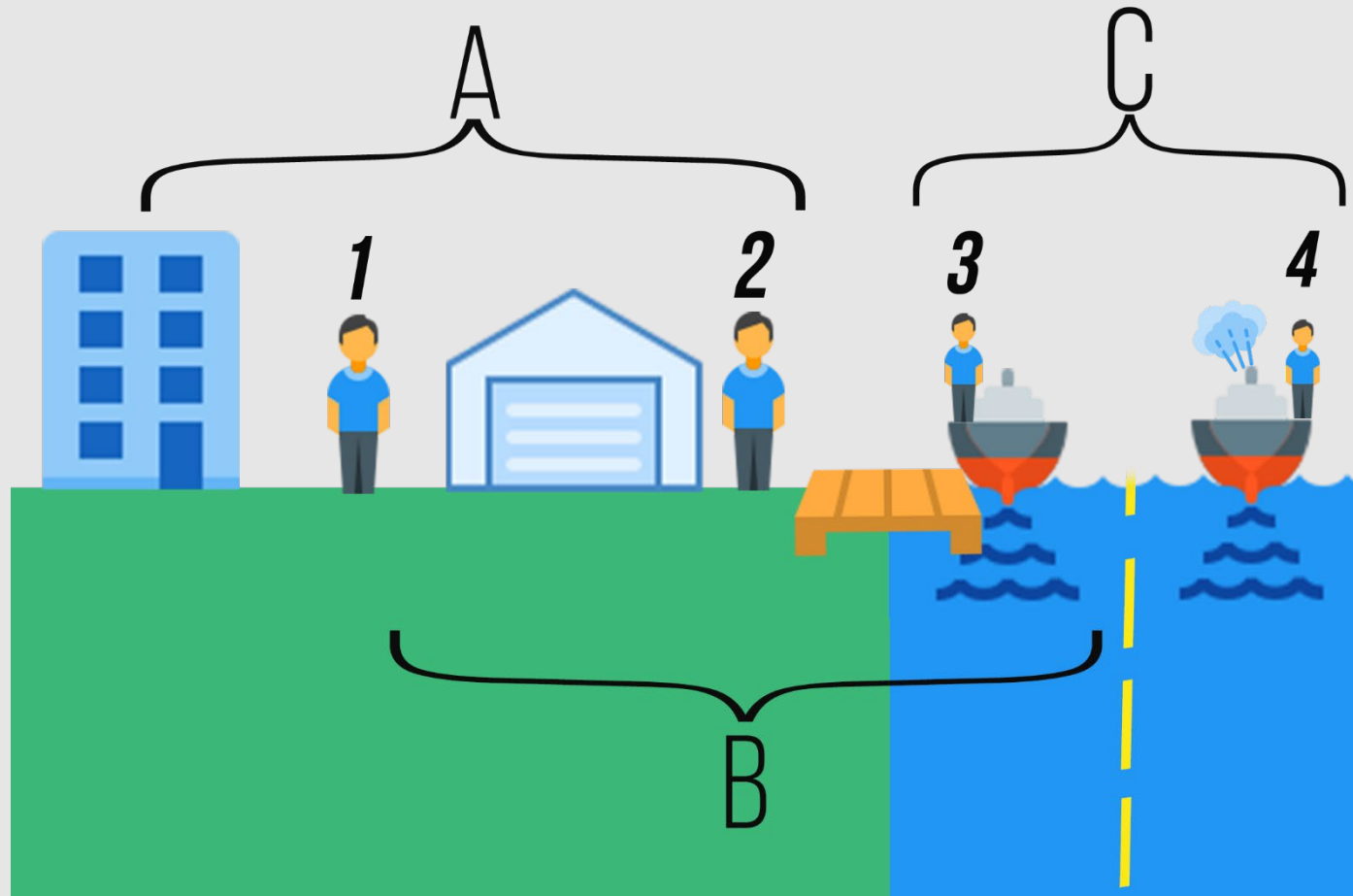


* We'll come back to these in a bit

‡ can be added by endorsement



What Do They Cover?



This Created the 5 Tests Currently

1. Connection to a Vessel In Navigation*
2. Course of Employment
3. Contribute to the function of the vessel
4. Substantive Connection the Vessel
5. Vessel or Part of an Identifiable fleet



* The Jones Act Situs test



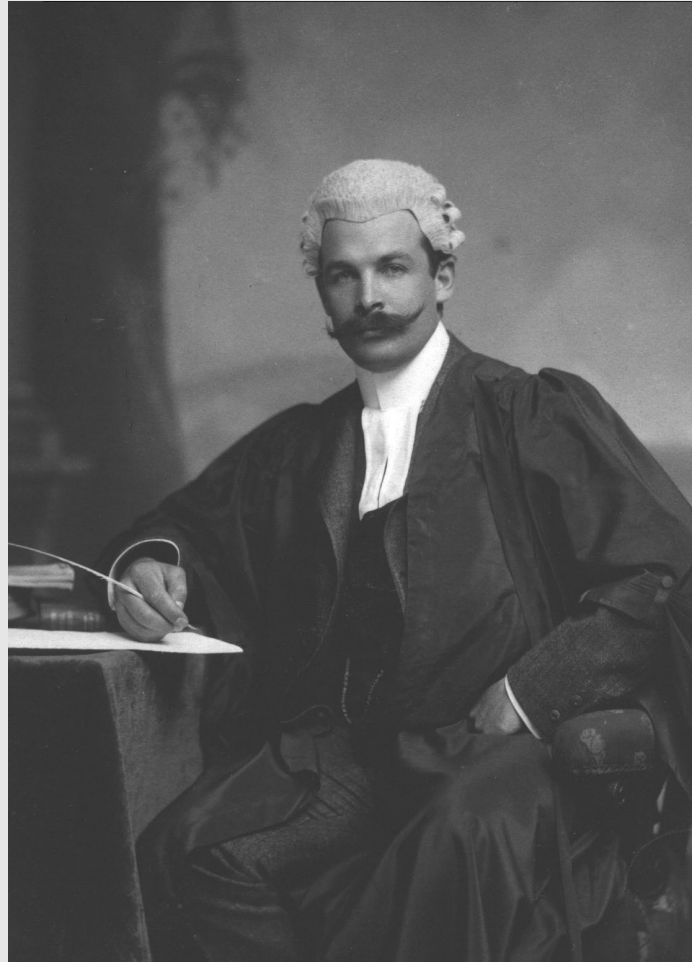
What does the Jones Act Say?

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.

([Pub. L. 109-304, § 6\(c\)](#), Oct. 6, 2006, [120 Stat. 1510](#); [Pub. L. 110-181, div. C, title XXXV, § 3521\(a\)](#), Jan. 28, 2008, [122 Stat. 596](#).)



Warning: I did not go to law school



New Prime Inc. v. Oliveira

Oliveira worked for Prime as an independent contractor (with an LLC).

Arguments about whether “contracts of employment [of seamen]...” applies to independent contractors. This is from the Federal Arbitration Act (1925) §1

Independent Contractors were in employment.

From the opinion :

“At that time, a ‘contract of employment’ usually meant nothing more than an agreement to perform work. As a result, most people then would have understood §1 to exclude not only agreements between employers and employees but also agreements that require independent contractors to perform work.”

New Prime Inc. v. Oliveira. (n.d.). Oyez. from <https://www.oyez.org/cases/2018/17-340>



Putting these together

1. Connection to a Vessel In Navigation*
2. Course of Employment
3. Contribute to the function
4. Substantive Connection to the Vessel
Identify

Independent Contractors were in employment.

Independent Contractors can be your Jones Act responsibility.



How do we cover it?



Option 1: Subcontracting Company(s)

Have subcontractor buy independent policy.

Make sure to have :

Additional Insured
Alternate Employer
endorsements.

Check Certificates

oo Limit
Effective Dates
Navigation limits

Can be expensive



Option 2: Subcontracting Company(s)

Endorse Subcontractor Corporations
as Additional Insureds

Pros:

You control the coverage

Cons:

Convince your underwriter

Less control over them

Goes on your loss history

Gotcha:

Make sure to limit coverage
to your client's exposure
only.



Option 3: Individual Subcontractors

Include them in your policy

Pros:

You control the coverage

Cons:

Convince your Underwriter
Goes on your loss history



Option 4: Subcontracting Company / Individuals

Buy independent policy for subcontractors working for your insured.

Pros:

- You control it.
- Can Be mix of companies and individuals

Cons:

Convince your underwriter

- Less control over them
- Probably the most expensive up-front



Summary

- Subcontractors are probably your responsibility to cover when it comes to Admiralty exposures.
- There are several different ways to cover them depending on what the insured's goals are.

