

A. CREW MEMBERS' CLAIMS

A.1. International Jurisdiction

1. If the owner/employer is domiciled in an EU Member State¹ it can be used by the seafarer²:

(i) Before the courts of the Member State in which the owner is domiciled; or

(ii) before the courts of the country of registration of the vessel (unless the vessel flies a flag of convenience, i.e. in case the vessel is registered in a country which is not related at all to the owners); or

(iii) before the courts of the Member State where the business (owner and/or manager and/or manning agent) who hired the seaman is or was situated.

2. If the owner / employer is not domiciled in an EU Member State the seaman can sue him:

(i) before the courts of the country of the vessel's registration (unless she flies a flag of convenience),
or

(ii) before the courts of the country in which the seafarer was hired.

3. The jurisdiction clauses contained in the seafarers' contracts of employment which refer disputes to foreign courts are valid **only if** they allow the seafarer to sue the owner before other courts in addition to the courts mentioned above, i.e. they are valid only to the extent they do not prohibit the seafarer from filing writs before the above courts. In addition, the jurisdiction agreements which are concluded **after** the labour accident or illness (on which the seafarer's claim is based) and which refer the dispute to the courts of any country are also valid.

4. Any arbitration clauses included in the seafarers' contracts of employment are invalid.

A2. Applicable law

1. The seafarers' claims arising from their labour accidents are governed by the law applicable to their contract of employment. Such contracts usually contain a choice of foreign law clause. According to Article 8 of Regulation 593/2008 (Rome I), the seafarers' contracts are governed by the law chosen by the parties. Such a choice of law may not, however, have the result of depriving the seafarer of the protection afforded to him by the mandatory provisions of: (a) the law of the place

¹ The owner is domiciled at the place where it has its statutory seat, its central administration or its principal place of business.

² Article 21 of Regulation (EU) No. 1215/2012.

where he provides his work (i.e. the vessel's flag state - unless in case of a flag of convenience), (b) the law of the country where the place of business through which the seafarer was engaged is situated or (c) the law of the country with which the contract of seafarer is more closely connected.

2. Regarding vessels of Greek interests managed by Law 89/67 companies established in Greece, the Greek courts invariably apply Greek law because they consider that the seafarers' contracts of employment are more closely connected with Greece. Consequently, the choice of foreign law clauses are, generally, not taken into account.

3. Conclusion: Where a (Greek or foreign) seafarer serving on board a vessel (flying a Greek or a foreign flag) is filing a writ against an owning or a management company before the Greek courts, these courts generally accept to hear these writs and to apply Greek law despite the fact that the seafarers' employment contracts may contain clauses of choice of foreign law and jurisdiction clauses in favour of the courts of other countries.

4. The seafarer's writ must be exercised against his employer, which is normally the owning company and **not** the vessel's management company, even if the latter has signed the seafarer's contract of employment as agent of the owning company. The management company is not responsible for the claims of the seafarer. However, if the owning company is a foreign company and the contract of employment is signed in Greece by the management company or a manning agency company as owners' agent then the owners and the management or manning agency company are jointly and severally liable towards the seafarer. The legal representative of the management or manning agency company is also jointly and severally liable for the seafarer's claims.

5. Irrespective of the foreign law which has been chosen to apply to the seafarer's contract of employment, the Greek Courts shall apply the Greek Collective Bargaining Agreements (CBAs) which usually provide for higher salaries for seafarers than those provided for in the individual contracts of employment. The salaries of such CBAs shall be taken into account for the calculation of compensation for the seafarers' labour accident.

6. **N.B.** The CBAs are valid for one year and are subject to renewals every year. Since 2012 no CBA has been signed for seafarers serving on board ocean going vessels and, consequently, the salaries agreed in the seafarers' contracts of employment serving on board these vessels cannot be challenged. On the contrary, there are CBAs in force regarding seafarers serving on board passenger and tourist vessels as well as lifeguard vessels and tugs, with the result that seafarers serving on board these vessels often seek compensation for labour accidents on the basis of the salaries provided for in the CBAs.

A.3. Crew Claims in case of labour accident: 2 Options for the crew members:

(A) Law 551/1915: strict liability & limited compensation; or

(B) Owner's tort (article 914 of the Greek Civil Code): subjective liability (wilful misconduct or negligence) & unlimited compensation

A.3.1 Compensation based on Law 551/1915

1. Meaning of labour accident: Accident resulting from a violent incident during or on the occasion of the work which causes a cease of work of more than 4 days, provided that the seafarer did not intentionally caused the accident. A violent incident is considered to be the incident which is the result of an extraordinary and sudden external cause, which is irrelevant with the composition of the victim's organism and its gradual and progressive attenuation and deterioration due to the nature and kind of the work and which is also irrelevant with the unfavorable working conditions of the connected person. However, such incident should be linked to the work in view of its appearance during the performance of the work or on the occasion of the work provided that the external cause is the appropriate cause of the accident.

2. The occurrence or aggravation of a disease is not a labour accident unless it is due to absolutely exceptional, abnormal or irregular conditions in the performance of the work. The conditions, which, albeit unfavorable, are common in the seafarer's work (such as 4 hours overtime or usual adverse weather conditions) cannot give rise to a labour accident. On the contrary, the unusual and contrary to work regulations overtime work and exhaustive work which caused or aggravated an illness qualifies as a violent incident and a labour accident. If the illness occurred in the work under normal conditions or if the illness pre-existed and exacerbated or relapsed under normal conditions without the owner being aware of its existence there is no labour accident. However, if the owner knows the illness of the seaman and does not put him off service but continues to occupy him with the result of a further deterioration of his state of health then there is a violent incident and a labour accident. If the illness constitutes a labour accident, the seafarer is also entitled to compensation under Law 551/1915 and up to 4 sickness salaries (Article 66 of Greek Code of Private Maritime Law).

3. Owner's liability for compensation for a labour accident is strict , irrespective of fault.

4. Extent of compensation based on Law 551/1915:

<u>Disability to work</u>	<u>Compensation</u>
Total & permanent disability (over 2 years)	Wages of 6 years and if the total wages exceed € 2,934.70 then the compensation is € 2.934,70 + 1/4 of the excess.
Partial & permanent disability (over 2 years)	Six times the reduction of the annual income and if this amount exceeds € 2,934.70 then the compensation is € 2.934,70 + 1/4 of the excess.
Total & temporary disability (up to 2 years)	Half of wages.
Partial & temporary disability (up to 2 years)	Half of the wage reduction.
Death	Wages of 5 years and if the total of these wages exceeds the amount of € 2,934.70 then the compensation amounts to € 2.934,70 + 1/4 of the excess.

5. Examples:

(A) In the event of the death of a seafarer with a salary of € 2,000 the compensation is calculated as follows: € 2,000 x 12 months x 5 years = € 120,000 and exceeding € 2,934.70 against (120,000 - 2,934,70 =) € 117,065.30 Compensation is € 2.934,70 + ¼ of overrun (€ 117.065,30) = € 2.934,70 + € 29.266,33 = € 32.201,03.

(B) In the event of a total disability of the seafarer to work for 15 months (temporary disability) with a salary of € 2,000 the compensation is calculated as follows: € 2,000 x 15 months x ½ = € 15,000.

(C) In the event of a total & permanent disability for work with a salary of € 3,000 the compensation is calculated as follows: € 3,000 x 6 (years) x 12 (months) = € 216,000 - € 2,934,70 = € 213,065.30 x¼ = € 53.266,36 + 2.934,70 = € 56.201.02.

6. In addition, the seaman shall be entitled to medical and pharmaceutical costs and hospital treatment costs up to two years as of the date of the accident. In the event of the death of the seaman, funeral expenses are also due.

7. In addition, the seafarer is entitled to compensation for moral damage, arguing that he has suffered from an accident which adversely affects his family, social and economic life. In the event of the death of the seafarer, this compensation may be awarded to the victim's family as an emotional distress. The case law has adopted a wide meaning of the family and includes: parents, children, brothers, wife, adoptive parents and children, the most distant descendants (grandchildren), grandparents, the father-in-law, the mother-in-law, the bridegroom, the bride etc. There is a difference of opinion with regard to whether the concept of the family also includes persons living

together with the deceased seafarer without being married. However, if a cohabitation agreement has been concluded, it is argued that the conditions of the family are fulfilled.

8. The adjudication of compensation for moral damages or emotional distress requires tort of the owner and/or his servants or agents (master, crew members, ship agents, etc.). As to the cause of the accident (light negligence is sufficient). The Court has discretion as regards the calculation of moral damages or emotional distress. The age of the seafarer, the kind of accident, the owner's degree of negligence, the duration of the disability for work, the degree of the seafarer's disability, any contributory negligence of the seafarer, etc., the issue whether the owner has exercised due diligence as regards the medical treatment and hospitalisation of the seafarer, etc. are taken into account by the Court for the calculation of moral damages.

9. In the event of the death of the seafarer his heirs shall be entitled to such compensation. E.g. If the deceased seafarer had a spouse and children under the age of 21 years, the spouse receives 2/5 of the compensation and the children share 3/5 of the compensation. If the deceased seaman had a spouse and parents (without children) then the spouse receives half the compensation and the other half is shared by the parents of the deceased seafarer.

10. The disability of the seafarers is based on medical reports. If the litigants submit to the Court contradictory medical reports, the Court may instruct a court expert to give advice on the disability of the seafarer either after examining the seafarer or after examining the various medical documents produced by the litigants.

11. If the accident was caused because the seafarer unjustifiably violated safety rules, the court has discretion to reduce the seafarer's compensation by 50%.

A.3.2 Compensation based on the Greek Civil Code

12. If the seafarer's accident has been caused by the owners' wilful misconduct or as a result of breach of the security rules by the owners, the seafarer has the option to seek compensation under the provisions of the Greek Civil Code (GCC) for tort (Article 914 et seq.). In the latter case, the seafarer shall be entitled to demand:

(A) in the event of permanent disability for work, the seafarer may demand all the wages he would have earned until retirement at the age of 65, as well as all costs incurred as a result of the accident (such as medical, pharmaceutical expenses, Wheelchair, physiotherapy expenses, etc.). In addition, the seafarer may seek compensation for moral damage as well as special additional allowances in the event of a seafarer's disability or deformity, and provided that such disability or distortion affects his

or her future, that is to say the professional and economic progress of him/her (Article 931 of GCC). Such compensation under Article 931 GCC is rarely awarded. For example, in the case of total permanent disability for work a 45-year-seafarer with a salary of €3,000, will be entitled under GCC to compensation for lost salaries (up to the age of 65) x € 3,000 per month x 20 years x 12 months = € 720,000, whereas his compensation under Law 551/1915 would be € 56.201.02 (as above).

(B) In case of total temporary disability up to 2 years, the seafarer may claim as compensation all salaries of 2 years as well as his medical and pharmaceutical expenses and all costs incurred by temporary disability but also moral damage.

Compensation in cases (a) and (b) above for the future is paid in monthly installments, unless there is a significant reason for a one-off payment.

(C) In the event of the death of the seafarer his heirs shall be entitled to financial compensation for mental distress as well as the medical and pharmaceutical expenses and sicknesses until the death of the seaman and funeral expenses. Also, if some heirs had a maintenance allowance claim against the deceased seaman, such as children under the age of 18 they will have corresponding maintenance allowance claims against the owners until the age of 18 (unless they are enrolled in a university or are mentally or physically incapacitated in which case they are entitled to a maintenance allowance even after their 18th year) or until the date the seafarer would be retired (whichever is the earlier).

13. Most of the writs which are based on labour accidents refer to a breach of safety rules as a cause of the accident and claim compensation under the provision of the GCC for tort because the compensation is higher than the compensation which is based on Law 551/1915. However, the Greek courts do not accept very easily that security rules have been violated.

14. The settlement between the seafarer and the owners regarding compensation arising out of a labour accident should be signed before the Magistrate's Court and should be very wide in respect of the persons/entities it exempts from liability (owners, managers, insurers, master and crew members, agents, Directors and legal representative of the owners and of the manager, vessel's classification society) .

15. Time bar of claims based on Law 551/1914 → 3 years as of the accident. If the seafarer's claim is based on tort / delict (Article 914 of the GCC) time bar → 5 years after the victim became aware of the damage and in any event 20 years after the accident. If there is a criminal offense, the time bar is further extended (if there is a felony punished by life imprisonment - 20-year limitation if there is a felony with a lower penalty - 15-year limitation).

16. The owners may limit their liability in accordance with the terms of the 1976 International Convention of London.

A.4. Crew members' claims in case of illness

1. If the seafarer became sick or suffered an accident during his service on board a vessel, he is entitled to his salary and is hospitalized at the expense of the owners without any time limit. If the seafarer's contract of employment is terminated due to his sickness or accident, the seafarer is entitled to hospitalization, sickness and wages up to 4 months (Article 66 of the Greek Private Maritime Law Code). It is not necessary for the disease to be caused by the work. However, this protection is not provided if the illness does not affect the seafarer's ability to work.

2. If the illness existed prior to the commencement of the seafarer's contract of employment and it was not treated, there is no protection. If the illness existed prior to the commencement of the seafarer's contract of employment and, although it had been treated, it appeared again or in case it was existing for years and it exacerbated (it reappeared in tension) the protection is reduced: medical and hospital care and wages up to 2 months.

3. The owners shall not be liable to the payment of sick pay if the seafarer deliberately did not reveal a disease which pre-existed and exacerbated during the course of his service on board the vessel. However, the owners shall be liable to pay sick pay if the seafarer did not reveal his illness because he reasonably thought that he would be able to carry out his duties, especially if he had been examined by a doctor of the owners prior to embarkation.

4. If the illness occurred after the termination of the contract of employment, no protection shall be given to the seafarer unless he proves that the disease is due to a cause that occurred during his service on board.

5. There is an one year time bar as from the end of the year during which the accident or illness occurred. However, if the illness qualifies as an accident at work, then the limitation of paragraph A4.15 above applies.

A.5. Actions in case of a maritime accident

- Immediately carry out an investigation regarding the reasons of the accident.
- Obtain witness statements from crew members about the conditions of the accident.

-Obtain photos from the conditions of the accident, prepare charts to show how the accident occurred, obtain copies of the ship's logbook, and the ship's books that record the delivery of any medicine to seafarers as well as the daily hours of work and rest of seafarers.

- the sick or injured seafarer should be immediately put off duty.

-Immediate provision of appropriate pharmaceutical, medical and nursing assistance to the seafarer (e.g. immediate communication of the master with ship's agents for the seafarer's transfer to a doctor or communication with the Red Cross to provide instructions for immediate handling of a disease, sending the seafarer to a doctor in order to evaluate his situation as soon as possible).

- Receiving medical certificates stating the impact of the accident on the health of the seaman / degree of disability.

- If an accident at work is well established, a quick compromise with the seafarer should be executed before he can take the case to a lawyer.

B. PASSENGERS' CLAIMS

1. Greece has ratified the Athens Convention of 1974 and its protocols of 1976 and 2002. The above Convention applies to international carriages³ as long as the ship is flying the flag of a Member State to the Convention or it is registered in a Member State of the Convention or the contract of carriage has been concluded in a Member State of the Convention or the place of departure or destination is in a Member State of the Convention.

2. Athens Convention regulates the liability of the carrier for damage resulting from the death of or personal injury to a passenger as well as for damage to or loss of luggage (vehicles are considered as luggage). The carrier is considered to be both the contractual carrier (the one mentioned in the tickets as carrier) as well as the actual carrier (in case it is different from the contractual carrier). The liability of the carrier is distinguished as follows:

(I) In the event of death or personal injury of the passenger caused by a shipping incident⁴, the carrier shall have **strict liability** (even if the death or personal injury is not due to his fault or negligence) up to 250,000 Special Drawing Rights (SDR) unless it proves that the incident: (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional,

³ The carriages are international when the places of departure and destination are situated in different countries or in the same country provided that there is an interim port of call in another country.

⁴ "Shipping incident" means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.

inevitable and irresistible character, or (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.

For damage above the amount of SDR 250,000 the carrier shall be further liable unless it proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

(ii) in the event of death or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable only if the plaintiff proves that the incident which caused the loss was due to the fault or neglect of the carrier.

(iii) In the event of loss of or damage to cabin luggage, the carrier shall be liable only if the plaintiff proves that the loss or damage was caused by the carrier's fault or negligence unless the loss or damage was caused by a shipping incident in which case the carrier's fault or negligence will be presumed and the carrier will have the burden to prove that he has not committed fault or negligence in order to be relieved of its liability.

(iv) In the event of loss of or damage to luggage (and vehicles) other than cabin luggage, the carrier shall be liable unless it proves that the loss or damage is not due to his fault or negligence.

3. If the passenger caused or contributed to his death or bodily injury or loss of or damage to his luggage, the court may relieve the carrier in whole or in part of his liability.

4. The carrier is required to insure his liability for death or personal injury to passengers up to the amount of SDR 250,000 per passenger. Any claim for compensation covered by the insurance can be brought directly against the insurer.

5. Limitation of carrier's liability:

(i) For death or personal injury of a passenger: SDR 400,000 per passenger and per case.

(ii) For loss or damage of passenger's cabin luggage: 2,250 SDR per passenger and per carriage.

(iii) For loss of or damage to vehicles and all baggage carried within or on the vehicle: SDR 12,700 per vehicle and per carriage.

(iv) For loss of or damage to luggage (excluding cabin luggage and baggage carried in or on-board): SDR 3,375 per passenger and per shipment

6. The carrier and the passenger may agree that carrier's liability will be subject to a reduction of up to 330 SDR in case of damage to a vehicle and up to 149 SDR in case of loss of or damage to luggage.

7. Interest and costs are not included in the limits of liability.

8. Loss of right to limit liability. The above limits of liability of the carrier do not apply if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

9. There is a two-year time bar for the issuing of writ against the carrier. Such time bar is calculated as follows:

(A) In the case of personal injury, from the date of disembarkation of the passenger.

(B) In the case of a passenger's death during carriage from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, the time bar shall be calculated from the date of death provided that this period does not exceed 3 years from the date of disembarkation.

(C) In case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

10. A writ may be filed, at the option of the claimant, before one of the following courts if they are situated in a Contracting State of the Athens Convention:

(A) In the court of the State of permanent residence or principal place of business of the defendant, or

(B) In the court of the State of departure or that of the destination according to the contract of carriage, or

(C) In the court of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State.

(D) in the court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

11. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

12. Any agreement before the death of or personal injury of a passenger or the loss or damage of his luggage which excludes or limits the liability of the carrier or alters the burden of proof or is intended to restrict the claimant to issue his writ before one of the above courts is invalid.

13. In Greece and in all EU countries Regulation 392/2009 on the liability of carriers of passengers by sea in the event of accidents applies. Main features of this Regulation are the following:

(A) It extends the application of the Athens Convention and of the 2002 Protocol to internal maritime carriages within a single Member State by passenger ships engaged on domestic voyages unless such ships are never removed more than 5 miles from the shoreline. Thus, for example, passenger ships connecting Piraeus with the Cyclades, Crete, Dodecanese and the islands of the North and East Aegean are now governed by the Athens Convention and the 2002 Protocol.

(B) It provides that in the event of loss of or damage to mobility equipment or other special equipment of a passenger with reduced mobility he is compensated for the loss of cabin luggage.

(C) It provides that where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days of the identification of the person entitled to damages. In the event of the death, the payment shall not be less than EUR 21 000.

(D) It provides carrier's obligation to furnish passengers with adequate and comprehensible information on their rights under the Regulation.