

Pirates Pose Risk to Employers

by BRIAN BECKCOM

Pirate-infested waters in the Gulf of Guinea pose the largest ongoing threat to U.S. mariners in the world. Several factors have contributed to a sharp uptick in pirate activity in the region in the past 18 months. Local political and economic instability, as well as widespread corruption, foster the gangs behind Gulf of Guinea piracy. Corruption and instability are interdependent with piracy; West African piracy does not function in a vacuum.



protectionist laws in the Gulf of Guinea may make it more difficult to prevent employers from enacting effective counter-piracy measures there.

What works off the Horn of Africa is having either naval escorts or armed private security contractors aboard ships traveling through pirate-infested waters. Ships also should avoid certain routes or stay far enough offshore so that the light, fast boats preferred by pirates cannot reach the vessels. Almost five years ago, I represented approximately half the crew of the *Maersk Alabama*, of “Captain Phillips” movie fame, and one of our claims in the lawsuit was that ships transiting near the Somali Coast should have armed guards.

But the Gulf of Guinea countries may not allow weapons aboard vessels while in territorial waters (unless local security personnel carry the weapons). Those countries also may not allow foreign security contractors to operate in their territorial waters, where pirate



from the new territory to embark, which can cause logistical problems. The expense, tedium and ineffectiveness of this approach means companies often forgo the trouble and choose to run the risk of attack. Hobbling effective security personnel has resulted in essentially allowing well-organized and well-funded gangs unfettered access to the vessels in the Gulf of Guinea.

The United States has released the Counter Piracy and Maritime Security Plan, designed to reduce the risk of attack to U.S. vessels operating around the world. The plan leaves vessel safety in the hands of employers and vessel owners.

The Jones Act requires U.S. vessel owners and operators to provide their employees with a safe work environment. If Jones Act mariners operate vulnerable vessels in pirate-infested waters without adequate protective measures in place, and pirates seize the vessel or her crew, the Jones Act empowers the crew to hold their employers negligent and a judge or jury to consider the vessel unseaworthy.

Piracy was once a larger issue off the coast of East Africa. The global community has developed best practices and other effective systems that have driven down the number of East African Somali pirate attacks to almost zero. The global counter-piracy measures allows Jones Act employers to safeguard their employees and protect them from harm. However, regional

attacks often occur. But local security contractors may be untrained, poorly equipped and more susceptible to corruption or bribery than better-trained security operators.

If the vessel crosses borders, security personnel must disembark at the border and allow security personnel

strengthen the Jones Act. The plan states, “The United States Government will continue to engage the shipping industry to provide input, follow best management practices, and require U.S. flagged vessels to implement

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effective measures to protect against pirates and armed robbers operating at sea.”

The key word here is “require.” The Jones Act mandates that employers do everything in their power to protect their employees from harm. Essentially, the situation is as follows: Thousands of U.S. Jones Act mariners work in the Gulf of Guinea, where pirates have ample opportunity to hijack vessels, kidnap crews, and steal oil and cargo. The untenable issue is that Gulf of Guinea governments have so far refused to allow foreign security personnel on vessels in territorial

waters and refused to allow foreign navies or international naval coalitions to come to the aid of vessels in territorial waters.

Measures to Take

All in all, Jones Act employers must navigate a complex and precarious situation in their efforts to protect their employees from harm. But it’s not impossible.

Effective counter-piracy measures include training crews creating a citadel on ships to protect crews from hijackers using armed escorts and/or privately contracted, armed, security personnel and keeping the vessels’ routes hidden from prying eyes by using secure com-

munication methods.

Such measures also are less expensive than million dollar ransoms or the loss of millions of dollars of crude oil to the black market. Employers must use these measures to ensure that their crews are protected. Otherwise, they risk liability under U.S. law, including the Jones Act.

Requiring U.S.-flagged vessels to implement effective counter-piracy measures in the Gulf of Guinea means holding employers to the standards of negligence in the Jones Act piracy cases.

A Jones Act employer is negligent when pirates attack employees or hold them hostage against their will for sev-

eral reasons:

- The employer fails to take reasonable precautions to guard against potential criminal acts against the employees.
- The employer fails to provide training and resources when sending vessels and crews into pirate-infested waters.
- The employer fails to provide adequately safe working environments when vessels travel in pirate-infested waters.

Under the Jones Act, a jury or judge may compensate employees who have suffered at the hands of pirates if the employer was negligent in these areas. Also, a jury or judge can declare a vessel unseaworthy if the employer does not adequately protect the Jones Act workers from pirate attacks.

“Seaworthiness” generally means the employer must suitably prepare vessels for their intended missions. Therefore, if an unprotected vessel is traveling in pirate-infested waters, the vessel is unseaworthy, and a mariner can claim unseaworthiness as a remedy under the Jones Act.

Thousands of U.S. Jones Act mariners work in the Gulf of Guinea, where pirates have ample opportunity to hijack vessels, kidnap crews, and steal oil and cargo.

Under the Jones Act, unseaworthiness means strict liability. If a Jones Act worker has suffered at the hands of pirates due to inadequate or non-existent security measures, he or she likely will receive compensation under the Jones Act for the above reasons.

While identifying the means by which a mariner may sue his or her employer under the Jones Act in the event of a pirate attack is simple, solving the problem of maritime piracy will require a multinational, multilateral solution. 



Brian Beckcom is a founding partner in Vujasinovic & Beckcom. He was the lead lawyer for half the crew of the *Maersk Alabama*, the

ship made famous in the movie “Captain Phillips.” He handles significant personal injury and wrongful death cases nationwide, including maritime cases for captains and crew members.

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