# 7.2 Jones Act Negligence Claim—Elements and Burden of Proof (46 U.S.C. § 30104)

On the plaintiff’s Jones Act negligence claim, the plaintiff has the burden of proving the following elements by a preponderance of the evidence:

 First, the plaintiff was a seaman;

 Second, the defendant was negligent; and

 Third, the defendant’s negligence was a cause of the injury or damage to the plaintiff.

If you find the plaintiff has proved the elements on which [he] [she] has the burden of proof, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any of these elements, your verdict should be for the defendant.

**Comment**

For a discussion of the elements of a Jones Act negligence claim, *see In re Hechinger*, 890 F.2d 202, 208 (9th Cir. 1989) (“To recover under a Jones Act claim, a plaintiff has the burden of establishing by a preponderance of the evidence, negligence on the part of his employer . . . [and] that the act of negligence was a cause, however slight, of his injuries.” (quotations and citation omitted)). *See also Mohn v. Marla Marie, Inc.*, 625 F.2d 900, 901-02 (9th Cir. 1980) (distinguishing between Jones Act negligence claim and unseaworthiness claim). The Jones Act extends to a seaman the statutory rights accorded railway employees under the Federal Employers’ Liability Act (FELA), 45 U.S.C. § 51, *et seq*., and courts may look to cases decided under FELA in construing the Jones Act. *Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 770 (9th Cir. 1981). For FELA instructions, *see* Chapter 6 (“Federal Employers’ Liability Act”).

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