

Marine & Energy News Alert



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U.S. Fifth Circuit Holds That Seamen Cannot Recover Punitive Damages for Vessel Unseaworthiness Under the Jones Act or General Maritime Law

On September 25, 2014, the United States Court of Appeals for the Fifth Circuit sitting *en banc* held that Jones Act seamen cannot recover punitive damages for their vessel owner/employer's willful and wanton breach of its general maritime law duty to provide a seaworthy vessel.

The case came to the Fifth Circuit on rehearing application from an October 2013 decision by Judges Stewart, Barksdale and Higginson allowing seamen to recover punitive damages for their vessel owner/employer's willful and wanton breach of its general maritime law duty to provide a seaworthy vessel.

At the District Court, plaintiffs/rig crewmembers filed suit against their employer stating causes of action for general maritime law unseaworthiness and negligence under the Jones Act. The rig crewmembers sought compensatory as well as "punitive and/or exemplary" damages arising out of an incident that occurred when a derrick pipe shifted on a drilling rig causing the rig to topple over. The rig owner/employer moved to dismiss the claims for punitive damages by arguing that punitive damages were not an available remedy for unseaworthiness or Jones Act negligence. The Magistrate Judge agreed and dismissed all claims for punitive damages.

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federal case law mandates that federal courts, in exercising their maritime lawmaking authority, cannot authorize a more expansive remedy for a general maritime cause of action such as unseaworthiness than exists for a parallel statutory maritime cause of action (Jones Act), if, at the time the statutory cause of action or remedy was enacted, the parallel cause of action or remedy did not exist under general maritime law. In other words, the rig crewmembers contended that punitive damages remain available as a remedy for the general maritime law cause of action for unseaworthiness because, like maintenance and cure, unseaworthiness was established as a cause of action before Congress passed the Jones Act. A panel of the Fifth Circuit relied on the rule established by the Supreme Court in *Atlantic Sounding Co. Inc. v. Townsend*, 557 U.S. 404, 424 (2009), (which restored the availability of punitive damages for maintenance and cure claims under general maritime law): if a general maritime law cause of action (unseaworthiness) and remedy (punitive damages) were established before the passage of the Jones Act, and the Jones Act did not address that cause of action or remedy, then that remedy remains available under that cause of action unless and until Congress intercedes. The Court concluded that punitive damages remain available to seamen as a remedy for the general maritime law claims of unseaworthiness.

The *en banc* Fifth Circuit majority in a very straightforward decision written by Judge Davis held that the previous U.S. Supreme Court jurisprudence, namely, *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990) was squarely on point and specifically limited the types of remedies that are recoverable to only pecuniary damages under the Jones Act and precluded non-pecuniary damages such as punitive damages; thus, to promote uniformity in the general maritime law, punitive damages should also not be recoverable in unseaworthiness cases. The majority also distinguished *Townsend* because, among other things, the Supreme Court expressly held in it that *Miles* “remains sound.” Finally, the majority rejected the plaintiffs’ contention that punitive damages should not be characterized as pecuniary losses: they “have no legal authority whatever to support this argument.”

In addition, Judge Clement, in which Judges Jolly, Jones, Smith, and Owen joined, authored a very detailed concurring opinion that attacked the concept that prior Supreme Court jurisprudence required punitive damages in unseaworthiness cases. Judge Clement also noted that *Townsend* was a “poor guide” for determining unseaworthiness cases

remedies. Finally, Judge Clement also critiqued plaintiffs' counsel Prof. David W. Robertson with the University of Texas School of Law, who was also retained by the Plaintiff's Steering Committee in the ongoing BP Macondo Oil Spill litigation and who has written extensively for the promotion of punitive damages in that litigation and in general, on the basis that his prior academic writings and his statements at oral argument were inconsistent.

A separate concurring opinion was written by Judge Haynes, in which Judge Elrod joined, that agreed with the majority's decision as to deceased seaman but provided separate reasoning as to why the surviving plaintiff seamen could not recover punitive damages.

Not surprisingly, the primary dissent was written by Judge Higginson, who is relatively new to the bench and who wrote the original panel opinion, and was joined by Judges Stewart, Barksdale, Dennis, Prado, and Graves. In short, Judge Higginson's point of view was that "[b]ecause the Supreme Court has said that [seamen] can [recover punitive damages], and Congress has not said [seamen] can't [recover punitive damages]," punitive damages should be recoverable.

Judge Graves wrote a second dissenting opinion, in which Judge Dennis joined, that criticized the majority's purported extension of the *Miles* pecuniary damages limitation to injured seamen.

This decision is extremely significant to vessel/drilling rig operators in the marine, offshore, and energy industries because it limits vessel owners'/employers' exposure where the unseaworthy condition allegedly results from vessel owners' willful and wanton conduct. In addition, because punitive damages are typically excluded from insurance coverage, it helps to eliminate a significant litigation risk to the viability of marine and energy companies. In sum, the decision is a significant blow to the plaintiffs' bar who have been working aggressively to expand punitive damages as set forth in the Supreme Court's decision in *Townsend* beyond a seaman's employer's exposure for willfully and arbitrarily denying maintenance and cure.

It is anticipated that plaintiff's counsel will seek a writ of certiorari of this decision to the U.S. Supreme Court, which only grants such writs in a very small number of cases.

No. 12-30714 *En Banc*.

[Click to view a copy of the Court's decision.](#)

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