



### **Washington Supreme Court Holds That Punitive Damages May Be Awarded to a Seaman Under a General Maritime Law Unseaworthiness Claim**

**3/16/2017**

On March 9, the Washington State Supreme Court issued an opinion confirming the types of damages available to a plaintiff under a general maritime unseaworthiness claim, specifically determining that punitive damages are available under these types of claims. *Tabingo v. American Triumph, LLC, et al.*, 92913-1, 2017 WL 959551 (Wash. Mar. 9, 2017).

The decision stems from a personal injury matter. Plaintiff Allen Tabingo was a deckhand trainee working aboard a fishing trawler owned and operated by American Seafoods. The trawler was designed to catch and haul fish onto its deck with a large net. Once the fish were on deck, one deckhand was supposed to open a hydraulic-controlled steel hatch while the other deckhand shoveled fish into the hatch for processing. Most of the fish could be funneled into the hatch with a shovel. However, the particular design of the trawler required a deckhand to get down on his or her knees to shove the final fish through the hatch.

Immediately prior to the incident, Tabingo was on his hands and knees gathering the final fish into the hatch when the other deckhand closed the hatch. As soon as the other deckhand started to close the hatch, he realized that Tabingo's hands were too close to the hatch. The other deckhand attempted to stop the hatch from closing, but the hatch's control handle was broken. The hatch closed on Tabingo's hand. As a result, Tabingo had to have two of his fingers amputated.

Tabingo sued American Seafoods for negligence under the Jones Act and for several other general maritime claims including unseaworthiness. Tabingo alleged that American Seafoods knew about the broken handle for two years but failed to fix it. He sought punitive damages with respect to his unseaworthiness and other general maritime law claims.

The issue of whether a plaintiff may seek punitive damages under an unseaworthiness claim was a matter of first impression for the Court. At the trial court level, American Seafoods argued that the punitive damages claim should be dismissed pursuant to a recent Fifth Circuit decision, *McBride v. Estis Well Service, LLC*. In *McBride*, the plaintiffs brought both unseaworthiness claims and Jones Act negligence claims. Plaintiffs sought both compensatory and punitive damages. The Fifth Circuit held that punitive damages were not available because the Jones Act limits recovery of punitive damages for actions brought under it, and the same result must occur when a Jones Act claim and general maritime law unseaworthiness claim are joined in the same action. *McBride v. Estis Well Service, LLC*, 768 F.3d 382 at 388-89 (5th Cir. 2014) (plurality opinion). The trial court agreed and held that the measure of damages available under a Jones Act negligence claim and the doctrine of unseaworthiness were identical. Therefore, the Jones Act circumscribed the damages available to a plaintiff and that recovery for nonpecuniary punitive damages is not available.

Historically, seamen only had two methods of recovery for personal injury suffered at sea: maintenance and cure, and unseaworthiness. See *Chadris, Inc. v. Latsis*, 515 U.S. 347, 354, 115 S. Ct. 2172, 132 L. Ed. 2d 314 (1995). At common law, there was no direct claim for negligence by a seaman against his or her employer. Maintenance and cure is a shipowner's responsibility to care for sick or injured sailors and to pay the sailors his or her wages as long as the voyage is continued. *The Osceola*, 189 U.S. 158, 169, 23 S. Ct. 483, 47 L. Ed. 2d (1903). Under the maintenance and cure doctrine, the shipowner is responsible for food, lodging and medical treatment. *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 413, 129 S. Ct. 2561, 174 L. Ed. 2d (2009). Pursuant to the unseaworthiness doctrine, a shipowner owes the crew of the ship a duty to provide a vessel fit to take to sea. *The Rolph*, 299 F. 52 (9th Cir. 1924). Both doctrines were well entrenched in the common law prior to the enactment of the Jones Act in 1924. With the passing of the Jones Act, Congress created a cause of action for employer negligence in navigable waters thereby providing for recovery for negligence claims against an employer who was the owner of a seafaring vessel. See 46 U.S.C. § 30104. However, a negligence claim under the Jones Act is separate and distinct from a claim for unseaworthiness and a seaman can bring both claims and recover under both theories in the same action. *McAllister v. Magnolia Petrol. Co.*, 357 U.S. 221, 78 S. Ct. 1201, 2 L. Ed. 2d 1272 (1958).

In holding that punitive damages are recoverable under a claim of unseaworthiness, the Washington Supreme Court relied on three main arguments. First, the Court noted that in *Townsend*, the U.S. Supreme Court held that there was nothing in maritime law that prohibited the application of punitive damages in the maintenance and cure context. *Townsend*, 557 U.S. at 412. The Court determined that punitive damages are available in general maritime actions because (1) "punitive damages have long been available at common law," (2) "the common law tradition of punitive damages extends to maritime claims," and (3) "there is no evidence that claims for maintenance and cure were excluded from this general admiralty rule." *Id.* at 414-15. Thus, under *Townsend*, because the Jones Act was not an explicit federal prohibition, punitive damages were available under the general maritime maintenance and cure claim. The

Washington Supreme Court, applying the same three factors from the *Townsend* case, found that there was no evidence that the doctrine of unseaworthiness should be excluded from this general maritime rule allowing for punitive damages.

Further, the Washington State Supreme Court stated that the U.S. Supreme Court decision in *Miles v. Apex Marine Corp.* was inapplicable to *Tabingo*. In *Miles*, the mother of a dead seaman brought an unseaworthiness claim stemming from wrongful death and sought punitive damages. The U.S. Supreme Court held that the Jones Act specifically addressed wrongful death recovery and explicitly limited it to pecuniary losses. The *Miles* Court reasoned the damages for maritime wrongful death were thereby limited as well, holding that punitive damages, as nonpecuniary damages, were not available. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 31, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990). The Washington State Supreme Court determined that *Miles* had no impact on the *Tabingo* matter because the *Miles* holding was limited solely to wrongful death claims.

Finally, the Court also stated that allowing punitive damages in general maritime claims, including claims for unseaworthiness, helps effectuate the goal of providing seamen with the special protection, as “wards of admiralty,” provided under the common law.

In sum, the Washington State Supreme Court held that because both an unseaworthiness claim and punitive damages were available at common law, and because Congress, through the Jones Act, indicated no intent to limit recovery of punitive damages in these types of claims, punitive damages are recoverable under a general maritime unseaworthiness claim irrespective of whether it is joined with a Jones Act negligence claim.

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