

Rough Waters Ahead: The Evolution of Punitive Damages Under Maritime Law

by Kelly Scalise



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Recovery of punitive damages is one of those rare aspects of maritime law that excites both academics and practitioners alike. Academics often delve into the historical origins,¹ while practitioners eagerly await, analyze, and apply new decisions in an effort to obtain favorable results for their clients. Quite often, these cases cause the historical and modern to intersect. A good example is *McBride v. Estis Well Serv. LLC*, a recent decision of the Fifth Circuit.² In *McBride*, the plaintiffs sought punitive damages from an employer, alleging unseaworthiness under general maritime law and negligence under the Jones Act.³ The district court originally dismissed the plaintiffs' punitive damages claims, but that decision was reversed by a panel of the Fifth Circuit with instructions on remand. However, the Fifth Circuit later vacated its original opinion and held *en banc* that punitive damages were barred under both the Jones Act and unseaworthiness causes of actions for injury and death of seamen. The *McBride* opinion gave the court occasion to consider the storied historical roots of the maritime punitive damages claim as well as intervening statutory and judicial limits on the damages recoverable by seamen.

A brief historical foray is necessary to understand the current state of the law. Although a full review of the issue could delve as far back as the 1800s,⁴ for our purposes, it is most useful to begin in 1990 with *Miles v. Apex Marine Corp.*⁵ The Supreme Court held in *Miles* that a Jones Act seaman is prohibited from claiming nonpecuniary damages for wrongful death under the general maritime law.⁶ Importantly, *Miles* established what has come to be known as the "uniformity principle" (i.e., there should be uniformity of damages remedies in any action stemming from the death or injury of a seaman).⁷ Several statutes, chief among which is the Jones Act, govern the causes of action available to an injured seaman. After *Miles*, if a category of damages is not available under a statutory maritime cause of action, it is not available for that type of claim under the general maritime law, the default body of federal common law governing maritime claims where no statute is on point. The Court stated, "It would be inconsistent with our place in the

constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence."⁸

Courts applied *Miles* broadly⁹ until the tide shifted in *Exxon Shipping Co. v. Baker*¹⁰ and *Atlantic Sounding Co. Inc. v. Townsend*.¹¹ *Baker* arose out of the *Exxon Valdez* litigation. In that case, the Supreme Court held that punitive damages are available under general maritime law, but did so in the context of pre-emption by the Clean Water Act.¹² *Townsend* then pointedly held that punitive damages are available under the general maritime law against an employer/ship owner who willfully failed to provide maintenance and cure.¹³ The Court reasoned that pre-existing, common law remedies are not eliminated by statutes that do not address them.¹⁴ Accepted remedies under the general maritime law, which are unaltered by statute, should therefore remain available.¹⁵ Congress was aware of those remedies and envisioned their continued availability when enacting the Jones Act.¹⁶ The Court distinguished *Miles* because no wrongful death cause of action for the dependents of seamen existed at the time of the passage of the Jones Act.¹⁷ The wrongful death claim invoked by the plaintiffs in *Miles* was created by Congress through the Jones Act. The act's silence on recovery of punitive damages, therefore, meant that Congress did not intend to permit recovery of that category of damages in the seaman's wrongful death claim. Punitive damages for failure to provide maintenance and cure, on the other hand, pre-existed the Jones Act and were not altered by that legislation.¹⁸ Accordingly, the *Townsend* court reasoned that punitive damages for failure to provide maintenance and cure survived passage of the Jones Act and remained available as a remedy.

Against the backdrop of those decisions, the Fifth Circuit in *McBride* squarely addressed the issue of punitive damages under the Jones Act and the unseaworthiness cause of action for injury and death of seamen. The court hearkened back to *Miles*, holding that the Jones Act limits a seaman's recovery to pecuniary damages for liability under the Jones Act or unsea-

worthiness.¹⁹ The court looked to the Federal Employers' Liability Act (FELA),²⁰ which provides remedies for railroad workers, and to *Mich. Cent. R.R. Co. v. Vreeland*,²¹ which limited FELA recovery to pecuniary damages, to conclude that Jones Act recovery is similarly limited to pecuniary damages.²² Punitive damages are a species of *nonpecuniary* damages and are therefore unavailable under FELA and *Vreeland*. In addressing the general maritime law, *Miles* compelled the same result—no punitive damages.²³ The Fifth Circuit still had to address *Townsend*, which had permitted recovery of punitive damages. The court limited *Townsend* to the maintenance and cure context, a “traditional understanding” that was “not a matter to which ‘Congress has spoken directly.’”²⁴ Outside of maintenance and cure, punitive damages are not recoverable in most maritime claims.

Despite the Fifth Circuit's conclusion in *McBride*, the issue of punitive damages in the maritime context is, by no means, resolved and courts continue to grapple with it. For instance, the Ninth and Eleventh Circuits²⁵ still allow punitive damages in unseaworthiness actions, contrary to *McBride*. However, the viability of those decisions may be in question.²⁶ The Southern District of Florida recently held in *Williams v. Carnival Corp.* that a loss of consortium claim, another type of nonpecuniary damages like punitive damages, is not available for a cruise ship passenger.²⁷ To hold otherwise would have put cruise ship passengers in a better position than family members of injured seamen and would be contrary to the *Miles* uniformity principle.²⁸ The Fifth Circuit in *Scarborough v. Clemco Indus.* held that a Jones Act seaman cannot recover nonpecuniary damages from a nonemployer third party.²⁹ In *Collins v. ABC Marine Towing LLC*, however, a section of the Eastern District of Louisiana held that punitive damages are available against third parties under general maritime law, citing both *Townsend* and *Baker*.³⁰ Another section of that court, however, reached the opposite conclusion.³¹ Finally, in *In re Marquette Transp. Co. Gulf-Inland LLC*, the Eastern District of Louisiana held that a deceased fisherman is not a “seafarer” under *Yamaha Motor Corp. U.S.A. v. Calhoun*³² and could thus recover nonpecuniary damages under state law (although the court had already dismissed the claim for punitive damages), showing the complications of choice of law.³³ All of these decisions demonstrate that the historical origins of punitive damages and the continued evolution of the general maritime law impact the practical decision-making of both courts and practitioners. ☉

Endnotes

¹See, e.g., David Robertson, *Punitive Damages in American Maritime Law*, 28 J. MAR. L. & COM. 73 (Jan. 1997); Laura Beck, *Punitive Damages Stow Away in the Fifth Circuit: McBride v. Estis Well Service, L.L.C.*, 38 TUL. MAR. L.J. 649 (Summer 2014).

²*McBride v. Estis Well Serv. LLC*, 768 F.3d 382 (5th Cir. 2014), cert. denied 135 S. Ct. 2310 (2015); see also *id.* at 391-404 (Judge Edith Brown Clement's detailed concurrence, a historical and often humorous analysis).

³*Id.* at 384. The general maritime law is one of the rare areas of federal common law in which the rules develop on the basis of federal court rulings, rather than by statutory directive. It is for this reason that issues like recovery of punitive damages can remain unsettled between the federal circuits, and even intradistrict, for relatively extended periods of time.

⁴See Robertson, *supra* n.1.

⁵*Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990).

⁶*Id.* at 33.

⁷*Id.* (“Today we restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.”).

⁸*Id.*

⁹See, e.g., *Miller v. Am. President Lines Ltd.*, 989 F.2d 1450 (6th Cir. 1993); *Horsley v. Mobil Oil Co.*, 15 F.3d 200 (1st Cir. 1994).

¹⁰*Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).

¹¹*Atlantic Sounding Co. Inc. v. Townsend*, 557 U.S. 404 (2009).

¹²*Baker*, 554 U.S. at 488-89.

¹³*Townsend*, 557 U.S. at 424. Maintenance and cure is a historical remedy available to injured seamen that requires the seaman's employer to pay daily living expenses and medical costs of the injured seaman. The remedy is based on the historical view that seamen are exposed to particular hazards of the sea and are peculiarly at the mercy of their masters during their time at sea so as to receive “special solicitude” under the law.

¹⁴*Id.* at 415-16.

¹⁵*Id.* at 416.

¹⁶*Id.*

¹⁷*Id.* at 418-22.

¹⁸*Id.*

¹⁹*McBride*, 768 F.3d at 386-89.

²⁰45 U.S.C. §§ 51-59.

²¹*Mich. Cent. R.R. Co. v. Vreeland*, 227 U.S. 59 (1913).

²²*McBride*, 768 F.3d at 390.

²³*Id.* at 389-90.

²⁴*Id.*

²⁵*Evich v. Morris*, 819 F.2d 256 (9th Cir. 1987); *Self v. Great Lakes Dredge & Dock Co.*, 832 F.2d 1540 (11th Cir. 1987).

²⁶See, e.g., *Davis v. Bender Shipbuilding & Repair Co. Inc.*, 27 F.3d 426, 427 (9th Cir. 1994) (noting *Evich* has been partially overruled by *Miles*).

²⁷*Williams v. Carnival Corp.*, No. 15-22763, 2016 WL 245312 (S.D. Fla. Jan. 21, 2016).

²⁸*Id.* at *3.

²⁹*Scarborough v. Clemco Indus.*, 391 F.3d 660, 668 (5th Cir. 2004).

³⁰*Collins v. ABC Marine Towing LLC*, 123 F. Supp. 2d (E.D. La. 2015).

³¹See *Lewis v. Noble Drilling Servs. Inc.*, No. 15-1018, 2016 WL 3902597 (E.D. La. July 19, 2016); *Lee v. Offshore Logistical & Transp.*, No. 15-2528, 2015 WL 7459734 (E.D. La. Nov. 24, 2015).

³²*Yamaha Motor Corp. U.S.A. v. Calhoun*, 516 U.S. 199 (1996).

³³*In re Marquette Transp. Co. Gulf-Inland LLC*, No. 13-5114, 2016 WL 165109 (E.D. La. Apr. 26, 2016).