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MARITIME DEATH REMEDIES REVISITED

**ATLA SPRING SEMINAR
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TABLE OF CONTENTS

	Page
MARITIME DEATH REMEDIES REVISITED	-3-
I..... JONES ACT SEAMEN	-4-
II NON-SEAMEN SEAFARERS	-7-
III.....NON-SEAFARERS	-10-
IVPUNITIVE DAMAGES	-15-
V..... THE LATEST TWIST	-16-
VI.....OBSERVATIONS	-18-

MARITIME DEATH REMEDIES REVISITED

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

...

Cognizant of the constitutional relationship between the courts and Congress, we today act in accordance with the uniform plan of maritime tort law Congress created in DOHSA and the Jones Act. We hold that there is a general maritime cause of action for the wrongful death of a seaman, but that damages recoverable in such an action do not include loss of society. We also hold that a general maritime survival action cannot include recovery for decedent's lost future earnings."

This language is taken from Miles v. Apex Marine Corp.¹ It reveals the heart of the Court's decision-creation of uniform rules for death damages recoverable under the Jones Act, DOHSA and the general maritime law. Since Miles, seamen's recovery for wrongful death under the general maritime law is limited to actual pecuniary loss. Non-pecuniary damages in the form of loss of consortium and spousal services were eliminated. Presumably, punitive damages are also prohibited, although the Supreme Court did not specifically so hold.

Although the Court may have achieved uniformity in the remedies available to seamen against their employers in wrongful death cases, there are greater inconsistencies today in maritime death remedies under U.S. maritime law than ever before. If admiralty practitioners are not confused, then they should be. While death remedies for seamen against their employers are substantially uniform regardless of the location of the injury (i.e. state or federal waters), the same cannot be said for seamen third party death claims, longshoremen and non-seafarer death

¹ 498 U.S. 19, 111 S.Ct. 317 (1990).

claims.² Further, recent changes to the Death on the High Seas Act³ have created inconsistent remedies within the statute itself.

Against this background, the following is a review of wrongful death remedies currently available in the maritime setting. The lack of uniformity is self evident.

I JONES ACT SEAMEN

Beneficiaries of Jones Act seamen killed in the service of the vessel are limited to pecuniary losses regardless of the casualty location. Under the Jones Act, beneficiaries include the surviving widow or husband and children of the seaman, and, if none, then the next of kin who are dependant upon the seaman for support.⁴ Because DOHSA does not list beneficiaries as does the Jones Act through its reference to FELA, more peripheral relatives who are actually dependent upon the victim may also claim damages.⁵ Non-pecuniary damages are unavailable to seamen beneficiaries under the Jones Act and DOHSA because these controlling statutes do not provide for non-pecuniary recovery.⁶

² See footnotes 15, 16, 17, 18 and 28 herein.

³ 46 U.S.C. §761, et seq., commonly known as DOHSA.

⁴Compare 46 U.S.C. §688 and, By Incorporation, 45 U.S.C. §51 with 46 U.S.C §761.

⁵Id.; Safir v. Compagnie Generale Transatlantique, 241 F. Supp. 501 (S.D.N.Y. 1965).

⁶ Miles, 111 S.Ct. at 325.

Conscious pain and suffering of the deceased seaman before death is recoverable under the survival provisions of the Jones Act.⁷ DOHSA does not have a survival provision like the Jones Act; it precludes the application of any general maritime law survival action that permits the recovery or damages for pre-death pain and suffering.⁸ Thus, the wrongful death action based upon negligence against the deceased seaman's employer under the Jones Act can include a pre-death pain and suffering claim, while the general maritime law unseaworthiness action against the owner of the vessel (including the seaman's employer) brought under DOHSA in the same lawsuit cannot.

No particular period of consciousness is necessary for a pre-death pain and suffering award.⁹ Consciousness may be presumed in certain fact circumstances.¹⁰ Recovery will not be allowed where there is no proof of either post-trauma consciousness or instantaneous death

⁷45 U.S.C. §59; Centeno v. Gulf Fleet Crews, Inc., 798 F. 2d 138 (5th Cir. 1987).

⁸ Mobil Oil Co. v. Higgenbotham, 436 U.S. 618, 56 L.Ed. 2d 581 (1978).

⁹See Hinson v. S.S. Paros, 461 F. Supp. 219 (S.D. Tx. 1978), allowing recovery for suffering for only the "fleetest seconds." But see: Ghotra v. Bandila Shipping, Inc., 1997 A.M.C. 1936 (9th Cir. 1997), requiring consciousness for an "appreciable length of time" to allow recovery.

¹⁰ See Cook v. Ross Island Sand and Gravel Co., 626 F.2d 746 (9th Cir. 1980).

occurs.¹¹

Like seamen killed on the high seas, beneficiaries of seamen killed in state waters are also limited to pecuniary damages.¹² A general maritime law cause of action for the wrongful death of a seaman in state waters was formally recognized in Miles (supra), as the logical extension of the wrongful death action created in Moragne v. States Marine Lines, Inc.¹³ Damages recoverable in this cause of action are limited to pecuniary loss. Recovery for lost future earnings is also prohibited because the Jones Act's survival provision limits recovery to losses during the decedent's lifetime.¹⁴

Although Miles established remedies for seamen killed in state waters against a Jones Act employer, it did not specifically address wrongful death remedies available against non-employer third parties. Such lawsuits are necessarily based on the general maritime law and can involve claims of unseaworthiness, negligence and/or products liability. These claims have nothing to do with the Jones Act; thus, the limitation on damages under the Jones Act carried over to the general maritime law unseaworthiness remedy in Miles is arguably irrelevant to claims against non-employer third parties.

¹¹ Neal v. Barisich, Inc., 707 F. Supp. 863 (E.D.La. 1989).

¹² Miles, 111 S.Ct. 317,325.

¹³ 111 S.Ct. at 320-324, citing Moragne, 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed. 2d 339 (1970).

¹⁴ Id.

The federal courts have struggled with this issue after Miles. There is no uniformity in the remedies available in these claims. Some courts have allowed the beneficiaries of seamen killed in state waters, where DOHSA does not apply, to recover non pecuniary damages.¹⁵ Other courts have extended Miles to prohibit non-pecuniary damages in seamen territorial water death claims against non-employer third parties.¹⁶ The U.S. Fifth Circuit recently held that the Miles prohibition extends to non-employer third party deaths.¹⁷ This resolved a conflict among the lower courts in this U.S. Fifth Circuit and is consistent with the U.S. Ninth Circuit's position on this issue.

To date, the U.S. Supreme Court has not granted certiorari to resolve the issue of how far Miles should go in governing seaman third party tort claims. Given the conflicting positions of

¹⁵Sugden v. Puget Sound Tug & Barge Co., 796 F. Supp. 455 (W.D.Wash. 1992); In Re Petition of Cleveland Tankers, Inc., 843 F. Supp. 1157 (E.D.Mich. 1994);

¹⁶See Trident Marine, Inc. v. M.V. ATTICOS, 876 F. Supp. 832 (E.D.La. 1994); Davis v. Bender Shipbuilding and Repair, 27 F.3d 426 (9th Cir. 1994); Ludahl v. Seaview Boat Yard, 1995 A.M.C. 440 (W.D. Wash. 1994);

Goose Creek Trawlers, Inc. - Limitation Proceedings, 1997 A.M.C. 1546 (E.D.N.C. 1997).

¹⁷Scarborough v. Clemco Industries, Inc., 392 F.3d 660 (5th Cir. 2004), cert. denied 125 S.Ct. 1932 (2005).

the lower courts and the frequency of these claims, one would think that the High Court would decide this issue. However, the Court denied certiorari in Scarborough, indicating that the inconsistent status quo will remain.

II NON-SEAMEN SEAFARERS

The U. S. Supreme Court has defined “non-seafarers” as “persons who are neither seamen covered by the Jones Act, nor longshore workers covered by the Longshoremen and Harbor Workers’ Compensation Act.”¹⁸

Like seamen, longshoremen are seafarers. Yet, the wrongful death remedies available to this class of maritime workers, whose remedies are also governed by a federal statute,¹⁹ differ in many respects from their seamen brethren.

The U.S. Supreme Court decision that established a right of recovery for wrongful death under the general maritime law²⁰ involved a death of a longshoreman at a state water dock. The decision was rendered to correct the fact that DOHSA allowed a remedy for death resulting from unseaworthiness on the high seas, but the general maritime law did not provide recovery for a death in territorial waters where DOHSA did not apply.²¹ Moragne did not address the issues of who would be the beneficiaries entitled to recovery and the measure of damages to be permitted

¹⁸ Yamaha Motor Corp. v. Calhoun, 116 S.Ct. 619, 623, fn.2 (1996).

¹⁹ 33 U.S.C. §901 et seq.

²⁰ See Moragne (supra).

²¹ Moragne, 398 U.S. at 393, 401-402.

under the new general maritime law wrongful death cause of action.²²

Unlike Jones Act seamen, longshoremen generally cannot sue their employers in tort.²³ The lone exceptions are contained in §905, which allows an action at law or in admiralty against an employer that does not secure compensation under the Act, and against a vessel as a third party in the event of injury to a longshoreman caused by vessel negligence, even if the vessel owner is also the claimant's employer who is otherwise liable to the longshoreman for compensation under the Longshore Act.²⁴

If the longshoreman is killed on the high seas, then DOHSA provides the exclusive remedies whether the claim is brought under §905(b) or §933, which authorizes claims against non-employer third party tortfeasors under the Longshore Act.²⁵ Neither the Moragne general maritime law wrongful death action nor state law can supplant or supplement DOHSA. Stated differently, where the statutory remedy and the common law remedy conflict, the statute controls and preempts application of the non-statutory remedy.²⁶ The beneficiaries of longshoremen

²² Miles, 111 S.Ct. at 324.

²³ 33 U.S.C. §905(a).

²⁴33 U.S.C. §905(a); §905(b); §909; Smith v. M/V CAPTAIN FRED,
546 F.2d 119 (5th Cir. 1977).

²⁵ 33 U.S.C. §933(a).

²⁶ Mobil Oil Corp. v. Higgenbotham, 436 U.S. 618, 56 L. Ed.2d 581 (1978);
Dooley v. Korean Airlines Co., Ltd., 118 S.Ct. 1890 (1998); Jacobs v.

killed on the high seas are, like their seamen counterparts, confined to pecuniary damages. However, unlike seamen deaths governed by the Jones Act, longshoremen do not have the right to recover pre-terminal pain and suffering because this, too, is a general maritime law claim preempted by DOHSA.²⁷

However, the beneficiaries of longshoremen killed in territorial waters can recover non-pecuniary damages. Unlike DOHSA and the Jones Act, the Longshore Act does not explicitly limit recoverable damages to pecuniary damages. In fact, the Longshore Act is silent on the measure of damages under §905 and §933.²⁸ The U.S. Supreme Court established the right to non pecuniary damages in this limited fact situation in 1974.²⁹ Prior to Gaudet, District Courts that determined the measure of damages under the Moragne general maritime law wrongful death cause of action allowed elements of pecuniary loss (loss of support, funeral expenses, conscious pain and suffering and non-sexual services of the deceased).³⁰ Non-pecuniary loss of love and affection was rejected by most federal district and appellate courts.³¹

Northern King Shipping Co., Ltd., 180 F. 3d 713 (5th Cir. 1999).

²⁷ Id.

²⁸ 33 U.S.C. §§905 and 933.

²⁹ Sealand Services, Inc. v. Gaudet, 414 U.S. 573, 94 S.Ct. 806, 39 L. Ed..2d 9 (1974).

³⁰ 94 S.Ct. at 814-815.

³¹ Id.

The U.S. Supreme Court charted a different course. It decided to grant non pecuniary damages to the widow of a longshoreman killed in state waters. Specifically, the court allowed recovery of “loss of society,” defined as the monetary value of services that the decedent provided and would have continued to provide but for his wrongful death. The services include nurture, training, education and guidance that a child would have received from his now deceased parent and the services the decedent performed at home or for his spouse. This includes love, affection, care, companionship, comfort and protection.³²

III NON-SEAFARERS

The U.S. Supreme Court’s Calhoun³³ decision is seminal in the development of American wrongful death remedies. Calhoun involved claims by the parents of a 12 year old girl who was killed in Puerto Rican territorial waters when her jet ski collided with an anchored vessel. The parents’ complaint asserted claims of negligence, strict liability and breach of implied warranties and sought damages for future lost earnings, loss of society, loss of support and services, funeral expenses, and punitive damages, all based upon Pennsylvania’s wrongful death and survival statutes. Jurisdiction was predicated on diversity and admiralty.

Yamaha moved for summary judgment, contending that the Moragne general maritime law wrongful death action provided the exclusive basis for recovery and displaced all state law remedies. Yamaha further argued that Moragne allowed only recovery of funeral expenses. The

³²94 S.Ct. at 815. See: McKenzie v. C & G Boat Works, Inc., et al, 322 F.

Supp. 2d 1330 (S.D. Ala. 2004) for analysis of Gaudet damages.

³³ See fn. 17 (supra).

case ultimately made its way to the U.S. Supreme Court, which defined the issue for decision as follows:

Does the federal maritime claim for wrongful death recognized in Moragne supply the exclusive remedy in cases involving the deaths of non-seafarers in territorial waters?³⁴

After concluding that the plaintiffs' claims constituted a maritime tort governed by substantive admiralty law principles, the court undertook a lengthy analysis of Moragne in recognition of the decision as a potential obstacle to the application of state law. It decided that the Moragne general maritime death remedy is not restricted to seafarers killed in state waters. The court held that the cause of action to redress state water maritime torts causing death is provided by the general maritime law regardless of the status of the decedent. After Calhoun, all general maritime law claims arising out of state water deaths are considered Moragne actions.

This conclusion left open the question of what law applies to the measure of damages. Citing Grubart v. Great Lakes Dredge and Dock Co.,³⁵ the court recognized that admiralty jurisdiction did not automatically displace state law.³⁶ After acknowledging that the Jones Act and DOHSA did not apply to non-seafarer state water deaths (i.e. there is no applicable federal statute), the court acknowledged that Moragne did not affect previous high court decisions that

³⁴ Calhoun, 116 S.Ct. at 623.

³⁵ 115 S.Ct. 1043 (1995).

³⁶ Calhoun, 116 S.Ct. at 623.

authorized use of state wrongful death statutes to redress claims asserted for non-seafarers.³⁷ Because utilization of state wrongful death statutes would not do unacceptable violence to established admiralty principles despite the varied remedies available under different state laws and the fact that state law death awards are more generous than those allowed in maritime wrongful death cases, the court upheld the traditional application of state law remedies to non-seafarer wrongful death cases. The court stated that “state remedies remain applicable in such cases and have not been displaced by the federal maritime wrongful death action recognized in Moragne v. States Marine Lines, Inc. (Cite omitted).³⁸

One issue remained—which law supplied the standard of liability.³⁹ On remand, the U.S. Third Circuit held that the importance of uniformity in maritime law mandated that “federal maritime standards govern the adjudication of a defendant’s ...putative liability in an admiralty action brought pursuant to a state wrongful death/survival statute.”⁴⁰ The Appeal Court necessarily concluded that the need for uniformity on the issue of liability is greater than uniformity in the measure of damages.

The Third Circuit then determined which state’s law governed the plaintiffs’ damages claims. In an interesting twist, the court decided as a threshold question that federal choice of law

³⁷ See, Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917) and its progeny.

³⁸ Calhoun, 116 S.Ct. at 621-22.

³⁹ See 116. S.Ct. at 629 fn.14.

⁴⁰ Calhoun v. Yamaha Motor Corp., 216 F.3d 338, 351 (3rd Cir. 2000).

rules governed this issue. Because maritime jurisdiction attached, the Lauritzen⁴¹ choice of law factors must be applied. The court conducted a Lauritzen analysis and decided that Pennsylvania law applied to the compensatory damage claim and Puerto Rican law applied to the punitive damage claim. This, because the decedent's domiciliary state had a greater interest in making the plaintiff whole while the state where the casualty occurred had a stronger interest in punishing the wrongdoer.⁴² Puerto Rican law does not allow punitive damages, so this claim was dismissed.

The end result is that a non seafarer killed in the territorial waters of a foreign state will have his or her liability claim governed by the federal general maritime law, compensatory damages claims governed by the victim's home state and punitive damages governed by the place of the wrongful act.

The U. S. Eleventh Circuit Court of Appeals has its own peculiar notions of non-seafarer rights and remedies under the general maritime law. In September of 1993, the commercial towing vessel M/V MOVILLA struck a railroad bridge after an errant navigational turn in heavy fog. Shortly thereafter, an Amtrak passenger train derailed while attempting to traverse the track. 47 train passengers died, many others suffered personal injury, and the train and bridge were damaged.

The trial court correctly held that the incident fell within the federal court's admiralty

⁴¹ Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921, 97 L. Ed. 1254 (1953).

⁴² Calhoun, 216 F.3d at 347-48.

jurisdiction. It then looked to Calhoun to hold that the Alabama Wrongful Death Statute⁴³ provided the measure of damages available to the wrongful death plaintiffs. Under the Alabama Wrongful Death Statute, the plaintiffs were entitled to recover punitive damages upon a showing of ordinary negligence.

On interlocutory review, the U.S. Eleventh Circuit reversed.⁴⁴ Citing the conflict between recovery of punitive damages under the Alabama Wrongful Death Statute upon a showing of mere negligence, versus the general maritime law requirement of willful and wanton misconduct, the court held that the general maritime law⁴⁵ provided the remedies. The court went a step further. It held that the wrongful death plaintiffs could recover punitive damages under the general maritime law based upon a showing of intentional or wanton and reckless conduct on the part of the defendants amounting to a conscious disregard for the rights of others.⁴⁶

With respect to the appeal court, this holding is inconsistent with Calhoun and has disastrous consequences for future state water deaths in Alabama. Recall that the Calhoun

⁴³ Ala. Code Sec. 6-5-410 (1993).

⁴⁴ In re Amtrak “Sunset Limited” Train Crash in Bayou Canot, AL, on September 22, 1993, 121 F.3d 1421 (11th Cir. 1997).

⁴⁵ Moragne (infer)

⁴⁶ 121 F.3d at 1428, citing CEH, Inc. v. F/V SEAFARER, 70 F.3d 694, 699 (1st Cir. 1995).

plaintiff sued under Pennsylvania's Wrongful Death and Survival Statutes, which allow recovery for loss of society, loss of support and services, funeral expenses and punitive damages. The U.S. Supreme Court recognized that application of state wrongful death statutes would result in varied remedies. The court harkened back to its historic use of state statutes to redress claims for non-seafarer deaths in state waters and reaffirmed this principle. There are many state death statutes that are as or more inconsistent with the general maritime law than the Alabama Wrongful Death Statute. If the remaining circuits followed the U.S. Eleventh Circuit's reasoning, the Calhoun opinion would be rendered meaningless.

An example of the problem created by Amtrak is Tucker v. Fearn.⁴⁷ This case involved a state water collision between a motorized vessel and a sailboat. Clearly it falls squarely within the Calhoun analysis. However, in light of the precedent set by Amtrak, plaintiffs were forced to seek recovery on behalf of a non-dependent survivor (father) of a non-seaman minor under the general maritime law, the very result that Calhoun rejected as too restrictive. Because the plaintiff was a non-dependent survivor, unable to recover under the general maritime law, and the Alabama Wrongful Death Statute did not apply, the plaintiff, the decedent's father, was afforded no non-pecuniary recovery for the wrongful death of his son.

Presumably, if the same accident had occurred in Pennsylvania, the Pennsylvania Wrongful Death and Survival Statutes would allow recovery. Louisiana law would certainly afford such recovery.⁴⁸ This father was denied recovery simply based upon the location of his

⁴⁷ 333 F. 3d 1216 (11 th Cir. 2003).

⁴⁸La. Civ. Code Art. 2315.

son's marine death.

So much for uniformity.

IV PUNITIVE DAMAGES

It should be noted that the U.S. Supreme Court has never held that punitive damages are unavailable under the Jones Act or the general maritime law. Miles dealt solely with non-pecuniary loss of society and future lost earnings damages. The court never discussed or eluded to punitive damages in the decision.

Yet, Miles provided the impetus for a number of courts to deny seamen the right to recover general maritime law punitive damages.⁴⁹ Similarly, punitive damages are generally regarded as unavailable under the Jones Act.⁵⁰ Most Judges in the Eastern District of Louisiana have denied punitive damages to seamen.⁵¹

Beneficiaries of anyone killed on the high seas, be they seafarer or non-seafarer, cannot

⁴⁹Horsley v. Mobil Oil Corp., 15 F.3d 200 (1st Cir. 1995); Miller v. American President Lines, 989 F. 2d 1459 (6th Cir. 1993); Guevara v. Maritime Overseas Corp., 59 F.3d 1496 (5th Cir. 1995).

⁵⁰ Bergen v. F/V ST. PATRICK, 816 F.2d 1345 (9th Cir. 1987); Dyer v. Mary Shipping Co., 650 F.2d 622, 626 (5th Cir. 1981).

⁵¹ Anderson v. Texaco, 797 F. Supp. 531, 536 (E.D. La. 1992); In Re: Waterman S.S. Corp., 780 F. Supp. 1093, 1095 (E. D. La. 1992).

claim punitive damages.⁵² A court in the Southern District of Texas attempted to circumvent this prohibition in a particularly egregious fact situation by applying the Texas Wrongful Death statute to a seaman who died in Texas as a result of grossly negligent conduct in causing and exacerbating injuries aboard a vessel on the high seas. The district court held that the Louisiana company hired to manage the vessel could be sued under the Texas death statute due to the location of this entity's wanton conduct and the place of the seaman's death, both in Texas. Under the statute, the seaman's beneficiaries were awarded punitive damages.⁵³ The U.S. Fifth Circuit reversed and held that DOHSA applied and punitive damages were therefore unavailable. The proper focus in this fact situation is on "the decedent's location at the time of injury, rather than the tortfeasor's location."⁵⁴

Non-seamen are fairing better in this area of remedies, Alabama notwithstanding. The Third Circuit decision in Calhoun allowed punitive damages under state law death remedies. The sole reason that punitive damages were not considered was that Puerto Rican law prohibits such damages in wrongful death cases. However, lower courts have allowed punitive damages for longshoremen⁵⁵ and non-seafarers⁵⁶ injured in state waters as a result of wanton misconduct.

⁵² 46 U.S.C. §761, et seq.; Miles (supra).

⁵³ Motts v. M/V GREEN WAVE, 50 F. Supp. 2d 634 (S.D. Tx. 1999).

⁵⁴ Motts v. M/V GREEN WAVE, 210 F. 3d 565, 572 (5th Cir. 2000).

⁵⁵ Gravatt v. City of New York, 78 F. Supp.2d 438 (S.D. N.Y. 1999);

Rutherford v. Mallard Bay Drilling, L.L.C., 2000 WL 805230

Although none of these matters involve wrongful deaths, the same rationale allowing punitive damages in state water personal injury cases applies in wrongful death claims. Neither situation is governed by a federal statute, and, as stated herein, both the general maritime law and various state laws allow for non-pecuniary recovery.

V THE LATEST TWIST

On April 5, 2000, President Clinton signed into law Public Law 106-181. The language that passed was contained in §404 of House Resolution 1000. Known as the Commercial Aviation Exception, the new Act amends §761(b) to move DOHSA jurisdiction out from its former three mile limit to twelve nautical miles in the case of commercial aviation accidents. Thus, any plane crash twelve nautical miles or closer to the shore of any state, the District of Columbia, or the territories or dependencies of the United States is no longer covered by DOHSA. The statute provides that “the rules applicable under state, federal and other appropriate law shall apply” in this circumstance.

Additionally, §762(b) expands compensation in commercial aviation accidents covered by DOHSA (i.e. those occurring on the high seas beyond the new twelve nautical mile jurisdictional limit) to include “additional compensation for non-pecuniary damages for wrongful death of a decedent.” Non-pecuniary damages are defined as “loss of care, comfort and companionship.” Punitive damages are specifically prohibited.

(E.D. La. 2000).

⁵⁶ In Re Horizon Cruises Litigation, 101 F. Supp. 2d 204 (S.D.N.Y. 2000), which contains an excellent overview of the historical availability of punitive damages in non-seafarer maritime personal injury cases.

The commercial aviation exception was made retroactive to apply to any death occurring after July 16, 1996, the date of the TWA 800 incident.

There will be extensive litigation as to what law applies between three and twelve miles in aviation disasters. Plaintiffs will likely argue that either the Moragne/Gaudet elements of damages, adjoining state law or some hybrid apply, whichever is more beneficial. Given that such a casualty is analogous to non-seafarer deaths in state waters, Calhoun may guide the lower courts.

In Brown, et al v. Eurocopter, S.A., et al,⁵⁷ the first case which applied the Commercial Aviation Exception to DOSHA, the surviving widow and daughter of a helicopter pilot killed when his helicopter crashed into a fixed oil platform in the Gulf of Mexico moved the court for an order stating that DOHSA as amended applied to all pending claims in the case. The defendants contended that the amended DOHSA statute was inapplicable because did not intend for the phrase “commercial aviation accident” to apply to disasters such as a fatal helicopter crash. The court undertook a statutory construction/plain meaning analysis, reviewed federal aviation regulations pertaining to air commerce and reviewed the legislative history behind the DOHSA amendment and rejected defendants’ more restrictive definition of commercial aviation. It held that a helicopter crash falls within the amended DOHSA statute. The plaintiffs were therefore entitled to recover non-pecuniary damages.

VI OBSERVATIONS

The quest for uniformity in the maritime law has created the following result:

- A. Seafarers killed on the high seas—pecuniary losses only;

⁵⁷ 111 F. Supp. 2d 859 (S.D. Tex. 2000).

- B. Non-seafarers killed on the high seas—pecuniary losses only except in commercial aviation accidents, where non-pecuniary damages in the form of loss of care, comfort and companionship are allowed;
- C. Seamen killed in state waters—pecuniary losses only;
- D. Longshoremen killed in state waters—Gaudet damages which include non-pecuniary losses; and
- E. Non-seafarers killed in state waters—state law elements of damage, except in Alabama.

Further, DOHSA jurisdiction is more restricted in commercial aviation disasters falling within admiralty jurisdiction than in boat disasters.

The upshot of the quest for uniformity is that Jones Act seamen, those persons for whom the maritime law should grant the greatest protection, are now the least favored class of individuals under U.S. maritime wrongful death law. Beneficiaries of the captain of a plane whose job may fortuitously take him over navigable waters has greater remedies than the captain of a vessel who faces the perils of the sea regularly. Beneficiaries of a jet-ski operator killed in a state permitting punitive damages has greater rights than a tugboat or supply boat captain killed in the same territorial waters. Clearly, non-seafarers are the new wards of the admiralty court.