JONES WALKER

# Admiralty & Maritime Client Alert

## The Fifth Circuit Rules That Seaman Can Recover Punitive Damages for Breach of the Warranty of Seaworthiness

On October 2, 2013, the United States Fifth Circuit Court of Appeals ruled that a Jones Act seaman can recover punitive damages for a vessel owner's willful and wanton breach of the warranty of seaworthiness. *McBride v. Estis Well Serv., L.L.C.*, Case No. 12-30714, 2013 WL 5474616 (5th Cir. 10/2/13). This decision not only marks a significant departure from prior Fifth Circuit jurisprudence, it substantially increases the potential liabilities of vessel owners, as well as underwriters and may change the manner in which seaman's personal injury cases are litigated.

Generally, a Jones Act seaman has three axiomatic causes of action. First, under the Jones Act, a seaman may recover against his employer for his employer's negligence in causing personal injuries to the seaman. Second, under the general maritime law, a seaman may recover against a vessel owner of any vessel to which he is assigned for any injuries caused by an unseaworthy condition of the vessel, regardless of whether the vessel owner was negligent or at fault. Third, under the general maritime law, a seaman can recover maintenance (food and lodging costs) and cure (medical expenses) against his employer.

Prior to June 2009, it was largely believed that a Jones Act seaman's remedies under any cause of action were limited to pecuniary damages. This belief was based on the United States Supreme Court's decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990). In the strictest sense, the *Miles* court held that the representative of a seaman killed in territorial waters could not recover loss of society, a form of non-pecuniary damage to the estate of the seaman, under the general maritime law. This decision was predicated on what became known as the "*Miles* uniformity principle." The *Miles* uniformity principle seemed to indicate that, because non-pecuniary damages were not allowed under the Jones Act or under the Death on the High Seas Act, two Congressional enactments, the courts could not supplement the remedies available to a seaman by allowing a seaman to recover non-pecuniary damages under the general maritime law. Because punitive damages were believed to be non-pecuniary damages, lower courts, including the Fifth Circuit, ruled that a seaman could not recover punitive damages. *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995). Prior to that time, seaman were generally allowed to recover punitive damages in an unseaworthiness cause of action. *In re Merry Shipping*, 650 F.2d 622 (5th Cir. 1981).

In June 2009, the United States Supreme Court in *Atlantic Sounding Co.* v. *Townsend*, 557 U.S. 404 (2009) ruled that a seaman is entitled to recover punitive damages from his employer for a willful and wanton breach of the employer's obligation to provide maintenance and cure. This ruling was a departure from and called for a narrowing of the lower courts' application of the *Miles* uniformity principle. Specifically, the Supreme Court reasoned that, because both the cause of action for an employer's failure to provide maintenance and cure and the remedy of punitive damages preexisted the inception of the Jones Act in 1920, adherence to both the traditional cause of action for maintenance and

cure and the remedy of punitive damages did not offend the Jones Act and therefore did not violate the *Miles* uniformity principle.

Subsequent to the *Townsend* decision, many speculated that the same conclusion could be reached with the cause of action for breach of the warranty of seaworthiness, colloquially (and perhaps improperly) known as unseaworthiness. While speculation continued, several district courts wrestled with this issue. Of particular importance, in May 2012, Magistrate Judge Patrick Hanna of the United States District Court for the Western District of Louisiana in *McBride v. Estis Well Serv.*, LLC, 872 F.Supp.2d 511 (W.D. La. 2013) considered this very issue. In *McBride*, three seaman[1] employed by Estis Well Services were allegedly injured as a result of an accident aboard Estis Rig 23, a barge supporting a truck-mounted drilling rig operating in Bayou Sorrell, a navigable waterway in Iberville Parish, Louisiana. As crew members were attempting to straighten a monkey board—the catwalk extending from the derrick—which had twisted the previous night, the derrick pipe shifted, causing the rig and truck to topple over allegedly causing the three seamen's injuries. The seamen sought punitive damages as a result of their injuries. Estis filed a motion to dismiss the seamen's claims for punitive damages. Ultimately, Magistrate Judge Hanna granted the motion to dismiss by Estis and ruled that "nothing in *Townsend* makes punitive damages available to [seaman] or abrogates the jurisprudential authority that punitive damages are not available to [seaman]."

Recognizing that the issues presented were "the subject of national debate with no clear consensus," the United States Fifth Circuit allowed the seamen to proceed with an interlocutory appeal of the decision before trial on the merits. *McBride v. Estis Well Serv., L.L.C.*, Case No. 12-30714 (5th Cir. 10/2/13). In holding that punitive damages were available under the unseaworthiness cause of action, the Fifth Circuit noted that "[t]o give effect to that principle, *Townsend* established a straightforward rule going forward: if a general maritime law cause of action and remedy 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 went on to note that Estis did not dispute that the unseaworthiness cause of action and the punitive damages remedy were both established before the passage of the Jones Act nor that the Jones Act did not address unseaworthiness or its remedies. As such, the Court's conclusion seemed rather inescapable.

As aforementioned, the Court's decision was predicated on its belief that the cause of action for unseaworthiness preexisted the Jones Act and that the Jones Act did not address unseaworthiness or its remedies. The question remains whether this belief by the Fifth Circuit was correct. Certainly, it cannot be contested that generally the cause of action for unseaworthiness in some form existed long before the inception of the Jones Act. *The Osceola*, 189 U.S. 158 (1903). However, prior to 1944, the unseaworthiness cause of action was a cause of action in negligence. *See Miles*, 498 U.S. at 25-26. The unseaworthiness cause of action as it exists today as a form of strict liability truly did not exist until the Supreme Court's decisions in *Mahnich v. Southern S. S. Co.*, 321 U.S. 96 (1944) and *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946). Between the enactment of the Jones Act in 1920 and the 1944 *Mahnich* decision, "unseaworthiness was an obscure and relatively little used remedy largely because a shipowner's duty at that time was only to use due diligence to provide a seaworthy ship." *Miles*, 498 U.S. at 25.

The aforementioned history of the cause of action of unseaworthiness raises two issues not considered by the Fifth Circuit. First, because the doctrine of unseaworthiness was a cause of action in negligence and Congress appears to have intended the Jones Act to occupy the field of negligence causes of actions for seamen, then can the Fifth Circuit really say that the Jones Act did not address the cause of action for unseaworthiness? Second, because the doctrine of unseaworthiness did not exist as it presently does until 1944, can the Fifth Circuit really say that the doctrine of unseaworthiness in its present form existed prior to the enactment of the Jones Act? A negative response to either of these questions would seem to mandate a reversal of the *McBride* decision.

[1] A fourth seaman was fatally injured.

Obviously, it is difficult to predict the ultimate resolution of this issue. If requested by the parties, the Fifth Circuit panel may reconsider the issue or the full Fifth Circuit may decide to consider this issue *en banc*. Possibly, the Supreme Court may grant writs to consider the issue. As always, Jones Walker will keep you apprised of this matter as it develops.

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*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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