



THE CASE: *MCBRIDE V. ESTIS WELL SERVICE, LLC*, 2014 WL 4783683, SEPT. 25, 2014 (5TH CIRCUIT)

On September 25, 2014, the full U.S. Fifth Circuit Court of Appeals, on an en banc rehearing, issued an opinion that punitive damages are not available to seamen under the Jones Act or under general maritime law; that recovery is limited to pecuniary losses.

Background: The Drill Barge Accident

Estis Well Service owned and operated Estis Rig 23, a barge that supported a truck-mounted drilling rig operation in Bayou Sorrell, Louisiana. On March 9, 2011, the truck and rig toppled and capsized, killing Estis crew member Skye Sonnier, and injuring three others.

The personal representative of Mr. Sonnier and the injured crew members filed suit against Estis, alleging negligence under the Jones Act and unseaworthiness under general maritime law, seeking both compensatory and punitive damages under both.

Estis filed a motion to dismiss the punitive damages claim, and the district court granted the motion and certified it for immediate appeal.

A three-member panel of the Fifth Circuit Court of Appeals concluded that the Supreme Court's holding in *Atlantic Sounding Co. Inc. v. Townsend*, 557 U.S. 404 (2009) should be read broadly, such that punitive damages would be available to the injured seamen and their survivors.

When the Fifth Circuit later granted an en banc ("by the full court") rehearing, it reversed the three-member panel's decision, and reinstated the district court's dismissal of punitive damage claims. The Plaintiffs now have the option of appealing to the Supreme Court.

Fifth Circuit Rehearing

In the en banc rehearing of the case, the decision of the Fifth Circuit Court of Appeals to dismiss the punitive damage claims was not unanimous. It was made by majority vote.

Justice Davis based the majority opinion on the Jones Act and the Supreme Court's decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990). In *Miles*, the court denied recovery for damages of loss of society because the Jones Act and the general maritime law of unseaworthiness limited recovery to pecuniary loss.

Justice Davis distinguished *Townsend* by noting that it involved maintenance and cure, not unseaworthiness. Finally, Justice Davis applied the *Miles* holding to the personal injury claims of the surviving seamen, rationalizing that “no one has suggested why [*Miles*] would not apply to an injury case.” However, several justices questioned whether *Miles* should preclude punitive damages for surviving seamen's injury claims.

In dissent, Justice Higginson focused on *Townsend*'s principle that if a maritime cause of action and remedy were established before the Jones Act, and the Jones Act did not specifically address that cause of action or remedy, then that remedy would remain available. Justice Higginson broadly argued that “maintenance and cure” could be replaced with “unseaworthiness,” thus allowing the court to award punitive damages.

Our Takeaway

The McBride opinion provides an historical discussion of the availability of punitive damages in Jones Act and unseaworthiness causes of action. Should other circuit courts conclude differently, this issue will need to be clarified by the Supreme Court.

Gray Reed's Admiralty Practice

Gray Reed's admiralty lawyers are recognized experts in complex domestic and international port, marine and offshore energy matters. The diverse experience of our admiralty section includes representation of a wide variety of vessel owners, offshore rig and platform owners, port operations companies, shipyards, marine service companies, product manufacturers, offshore energy companies, Protection & Indemnity associations and marine and other insurers. Our admiralty lawyers handle litigation and appellate matters for clients in both state and federal courts, including matters arising from vessel collisions, limitation of liability actions, vessel seizures, down hole oil and gas losses, offshore pipeline issues, blue and brown water transportation disputes, cargo damage, marine construction issues, personal injury and wrongful death claims, dock and bridge claims, salvage, maritime products liability, and maritime contracts, including liens, charter disputes, indemnity and insurance issues. Additionally, we provide counsel in transactional matters including the drafting of rig and vessel charter agreements and marine contracts and we handle responses to U.S. Coast Guard marine casualty investigations and regulatory citations.

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