

## Louisiana Law Review

---

Volume 43 | Number 3

January 1983

---

# Punitive Damages in Maritime Personal Injuries: Dyer v. Merry Shipping Co.

Charles Clifton St. Dizier

---

### Repository Citation

Charles Clifton St. Dizier, *Punitive Damages in Maritime Personal Injuries: Dyer v. Merry Shipping Co.*, 43 La. L. Rev. (1983)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol43/iss3/8>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

PUNITIVE DAMAGES IN MARITIME PERSONAL INJURIES:

*Dyer v. Merry Shipping Co.*

Charles Walter Dyer, a seaman on the tug "Royal Lady," drowned when the vessel sank off the coast of South Carolina. His personal representative brought suit against the shipowner, Merry Shipping, Inc., in federal district court under both general maritime law and the Jones Act.<sup>1</sup> Plaintiff included in her petition a claim for punitive damages, alleging that Merry Shipping had failed to make proper stability tests after substantially modifying the weight distribution of the vessel.<sup>2</sup> The district court upheld defendant's motion for dismissal of this claim, declaring that, as a matter of law, punitive damages were not recoverable under either the Jones Act or general maritime law. On appeal, the Fifth Circuit Court of Appeals reversed and remanded and *held* that punitive damages may be recovered under general maritime law. The court, however, expressly declined to decide whether such damages were recoverable under the Jones Act. *Dyer v. Merry Shipping, Inc.*, 650 F.2d 622 (5th Cir. 1981).

Punitive damages, a controversial feature of American tort law,<sup>3</sup> are the single exception to the general rule that civil damages are designed primarily to compensate the injured party for actual losses.<sup>4</sup> A punitive damage award results in a windfall because, theoretically, the plaintiff has been made whole by compensatory damages. Courts, in making such awards, engage in "social engineering" because they seek to punish and deter certain types of conduct. Critics maintain that neither policy justifies an award of punitive damages. Many writers claim that punishment is not the proper function of civil courts because these courts lack the safeguards inherent in criminal pro-

---

Copyright 1983, by LOUISIANA LAW REVIEW.

1. 46 U.S.C. § 688 (1976).

2. The plaintiff alleged that insufficient onboard equipment and stability problems of which the defendant shipowner was aware warranted an award of punitive damages. Specifically, the district court found that the 38,000 pound engine of the Royal Lady had been replaced by one weighing only 15,000 pounds. Merry Shipping was advised by a naval architect that stability would be marginal and that stability tests should be performed. Despite that advice, only cursory tests were performed and lengths of anchor chain were placed under the engine to provide ballast. These tests and decisions were made by officers of the company who were unqualified in naval architecture.

3. See generally K. REDDEN, PUNITIVE DAMAGES §§ 2.3 & 7.4 (1980) (a particularly valuable work on all aspects of punitive damages); W. PROSSER, LAW OF TORTS 9 (4th ed. 1971); C. McCORMICK, HANDBOOK ON THE LAW OF DAMAGES 275 (1935).

4. K. REDDEN, *supra* note 3, § 2.1; W. PROSSER, *supra* note 3, at 9.

ceedings, which are designed to punish offenders.<sup>5</sup> Detractors also question the deterrent effect of punitive damages, stressing that compensatory damages alone are sufficient to achieve that result.<sup>6</sup>

The issue of punitive damages has been litigated so seldomly in federal admiralty courts that no definitive statement may be made regarding the status of this remedy. The judicial pronouncements on punitive damages must be gleaned from a few scattered cases, most of which arose in the last decade. To the extent that any patterns have emerged from the existing case law, it appears that the courts have employed punitive damages as a means of enforcing certain standards of conduct in areas affected with a strong public policy. Prior to *Merry Shipping*, all modern awards of such damages to seamen had been levied only against defendants who intentionally interfered, either directly or indirectly, with the free exercise of the legal rights and remedies available to seamen.

The first modern award of punitive damages was in the 1973 case of *Robinson v. Pocahontas*.<sup>7</sup> In that case, a seaman who suffered back injuries was refused maintenance and cure<sup>8</sup> and, in fact, was fired for suspected malingering and venereal disease. Although the back injuries became aggravated and the charges of malingering were never proven, the company never fully honored its obligation. The First Circuit awarded punitive damages, relying on the dissenting opinion in *Vaughn v. Atkinson*,<sup>9</sup> a 1962 case in which the Supreme Court had awarded attorney fees for the "willful and persistent"<sup>10</sup> refusal to provide maintenance and cure.

The public policy underlying the *Robinson* decision derives from the virtually absolute nature of the seaman's right to maintenance

---

5. C. McCORMICK, *supra* note 3, at 276; Note, *Punitive Damages May be Awarded in An Action Arising Under the Federal Employers' Liability Act*, 71 COLUM. L. REV. 1113 (1971); Note, *The Imposition of Punishment by Civil Courts: A Reappraisal of Punitive Damages*, 41 N.Y.U. L. REV. 1158 (1966).

6. See Note, *Punitive Damages May be Awarded in An Action Arising Under the Federal Employers' Liability Act*, 71 COLUM. L. REV. 1113, 1118 (1971).

7. 477 F.2d 1048 (1st Cir. 1973).

8. Although maintenance and cure is sometimes compared to workers' compensation, the maritime remedy is more extensive and pervasive than its land-based counterpart. The remedy extends to all injuries and illnesses encountered while in the "service of the ship." The injury need not be suffered in the course of employment. The action is defeated only by the seaman's own gross or willful misconduct. Furthermore, while workers' compensation is awarded in lieu of negligence recovery, maintenance and cure does not negate any other action of the seaman against his employer. See G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 281 (1975); A. SANN, S. BELLMAN, N. GOLDEN & B. CHASE, *1B BENEDICT ON ADMIRALTY* §§ 41-45 (1981).

9. 369 U.S. 527 (1962).

10. *Id.* at 531.

and cure, which is "imposed by the law itself as one annexed to employment."<sup>11</sup> Since the remedy provides for the immediate needs of the seaman during his disability, delays in its administration tend to frustrate its very aims. Therefore, imposition of punitive damages for the blatant and intentional withholding of such payments is a reasonable means of enforcing the seaman's rights.

Recently, in *Pino v. Protection Maritime Insurance Co.*,<sup>12</sup> a federal district court assessed punitive damages against an insurance company which had been "blackballing" seamen who instituted claims against their employers.<sup>13</sup> The court referred to the *Robinson* and *Vaughan* decisions as examples of wanton and intentional interferences with the seaman's legal rights and ruled that punitive damages also should be available "when *other legal rights*, such as the right to retain employment, have been wilfully and tortiously interfered with."<sup>14</sup> In contrast, the Fifth Circuit, in *Smith v. Atlas Off-Shore Boat Service, Inc.*,<sup>15</sup> held that the retaliatory discharge of a seaman by his employer did not warrant the imposition of punitive damages. The *Smith* case, which rejected a claim of punitive damages for an intentional tort, seemingly conflicts with the holding of *Merry Shipping*. However, the cases are not inconsistent—they actually provide a valuable illustration of the crucial balancing of the public policies which underlie punitive damage awards. In *Pino*, punitive damages were held to be appropriate in view of the quasi-public nature of the insurance business. In *Smith*, the Fifth Circuit recognized that retaliatory discharge constituted an intentional tort, but held that punitive damages were not appropriate in light of the countervailing public policy of protecting the employer's traditional right to hire and fire his employees at will. In this regard, the court said:

In striking the balance between the employer's right to have a free hand in the running of his business and the seaman's interest in the unencumbered exercise of his legal rights, we conclude that, while the balance weighs in the seaman's favor on the question of the recognition of the claim for retaliatory discharge, the scales tilt against the imposition of punitive damages.<sup>16</sup>

---

11. *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 371 (1932).

12. 490 F. Supp. 277 (D. Mass. 1980).

13. The insurance company charged higher premiums to employers who employed certain seamen designated as "added premium" seamen. These seamen had previously failed to settle insurance claims, retained legal counsel, and filed personal injury actions. *Id.* at 281.

14. *Id.* at 281 (emphasis added).

15. 653 F.2d 1057 (5th Cir. 1981). See also Note, *Retaliatory Discharge of Seamen: Smith v. Atlas Off-Shore Boat Service, Inc.*, 43 LA. L. REV. 221 (1982).

16. 653 F.2d at 1064.

While precedent exists for the award of punitive damages in a maintenance and cure case, no federal court prior to *Merry Shipping* had awarded punitive damages in an unseaworthiness or Jones Act case. However, no court had denied them as a matter of law and only a few opinions had accorded the issue any discussion at all.

In *In re Marine Sulphur Queen*,<sup>17</sup> the shipowner had made substantial structural modifications<sup>18</sup> on a vessel which subsequently was lost in a moderate storm. The Second Circuit denied the plaintiff's claim for punitive damages, stating, "A condition precedent to awarding them [punitive damages] is a showing by the plaintiff that the defendant was guilty of gross negligence, or actual malice or criminal indifference which is the equivalent of reckless and wanton misconduct."<sup>19</sup>

In *United States Steel Corp. v. Fuhrman*,<sup>20</sup> the issue before the Sixth Circuit was whether a corporate defendant should have been liable for punitive damages in a suit against it based on its employee's acts. In that case, a Great Lakes ore-carrying vessel was lost due to the outrageous actions of the ship's master.<sup>21</sup> In a Jones Act suit against the corporate owner of the vessel, the Sixth Circuit denied punitive damages, holding that a corporation could not be held liable for punitive damages for the actions of its employees unless it had either authorized or ratified the conduct.<sup>22</sup>

*In re Marine Sulphur Queen* and *United States Steel Corp. v. Fuhrman*, which indicate two possible requirements for an award of punitive damages, are the only federal court decisions which provide any guidance in the area of punitive damages in Jones Act or unseaworthiness cases.<sup>23</sup> Since neither court actually awarded punitive

---

17. 460 F.2d 89 (2d Cir. 1972).

18. The modifications included the removal of substantial portions of the keel and centerline girder in order to accommodate large tanks for the carriage of molten sulphur. *Id.* at 95.

19. *Id.* at 105. Although the modifications were innovative and were described as "a calculated risk" by one expert, the designs were approved by the American Bureau of Ships and the Coast Guard. *Id.* at 97-98.

20. 407 F.2d 1143 (6th Cir. 1969), *cert. denied*, 398 U.S. 958 (1970).

21. *Id.* at 1145. For a detailed and fascinating account of the events surrounding the collision, see *In re Den Norske Amerikalinge A/S*, 276 F. Supp. 163 (N.D. Ohio 1967), *rev'd sub nom.* *United States Steel Corp. v. Fuhrman*, 407 F.2d 1143 (6th Cir. 1969), *cert. denied*, 398 U.S. 958 (1970).

22. 407 F.2d at 1148. See text at notes 42-44, *infra*.

23. The following cases involved claims for punitive damages. However, the decisions accorded the issue scant discussion and provide little or no guidance in this area. *Phillip v. United States Lines Co.*, 355 F.2d 25 (3d Cir. 1966); *Kwak Hyung Rok v. Continental Seafoods, Inc.*, 462 F. Supp. 894 (S.D. Ala. 1978), *aff'd*, 614 F.2d 292 (5th Cir. 1980) (mem.); *Renner v. Rockwell Int'l Corp.*, 403 F. Supp. 849 (C.D. Cal. 1975), *vacated and remanded on other grounds*, 587 F.2d 1030 (9th Cir. 1978); *Mpiliris v. Hellenic Lines, Ltd.*, 323 F. Supp. 865 (S.D. Tex. 1969), *aff'd*, 440 F.2d 1163 (5th Cir. 1971) (mem.).

damages, their statements are merely dicta.<sup>24</sup>

Although the holding in the instant case is unprecedented, the Fifth Circuit found support for its decision in the history of awards of punitive damages for certain maintenance and cure and intentional tort claims.<sup>25</sup> The court articulated for the first time the public policy which dictates an award of punitive damages in a general maritime suit for unseaworthiness:

Punitive damages should be available when a shipowner has willfully violated the duty to furnish and maintain a seaworthy vessel. The shipowner's duty stems from the recognition of "the hazards of marine service which unseaworthiness places on the men who perform it . . . and their helplessness to ward off such perils." Punitive damages would serve to deter and punish owners whose reckless acts increase these hazards.<sup>26</sup>

The decision in *Merry Shipping*, which sanctions punitive damages in unseaworthiness cases in the Fifth Circuit, can be judged best by how well it serves its own stated aims. The safety of vessels traditionally has been a matter of paramount importance to the law of admiralty. Therefore, it is important that a concept of punitive damages evolves which effectively furthers this goal. However, the parameters of such a concept should not place undue burdens on the shipping industry. Unfortunately, the limited jurisprudence on the subject leaves several ambiguities and unanswered questions. First, the standards of conduct by which such an award could be measured are not clear. Second, no court has decided whether the shipowner should be able to insure against the risk of punitive damages. Third, the extent of an employer's vicarious liability for punitive damages for the acts of its employees is unclear. Finally, the question of availability of punitive damages under the Jones Act is still open.

Clear standards by which to judge the conduct of the defendant are central to a fair and effective doctrine of punitive damages. Unfortunately, no concrete guidelines exist in this area. This lack of standards is not peculiar to admiralty. It characterizes the entire field of tort law. Despite the long history of the remedy and the complaints of learned writers in the field,<sup>27</sup> juries still receive punitive damages

---

24. The only award of punitive damages based on a Jones Act claim prior to the Fifth Circuit's discussion in the instant case was granted by a California state court. *Baptiste v. Superior Court for the County of Los Angeles*, 106 Cal. App. 3d 87, 164 Cal. Rptr. 789 (1980).

25. 650 F.2d at 624-25.

26. 650 F.2d at 625-26.

27. In 1931, Professor Clarence Morris stated: "[T]he punitive damage device as now used provides for almost unlimited individualization of treatment of defendants. . . . Such individualization is almost undirected; and is dependent on the hunches, in-

cases with no instruction other than the standard admonition that the defendant's conduct must be found to have been "willful, wanton, or reckless."<sup>28</sup>

Subjectivity may well be unavoidable or even desirable, since punitive damage awards are based on the state of mind of the defendant, the determination of which does not yield to precise rules. However, the harsh and quasi criminal nature of the remedy suggests that unbridled jury discretion is unacceptable. Without impinging on the province of the jury to make findings of fact, several threshold observations by the court could aid in the jury's deliberations. First, care should be taken to identify the requisite mental element. Although the terms *willful*, *wanton*, or *reckless* connote a positive mental state, no *actual* intent need be found. This state of mind is better described as a total disregard for the interests or safety of others—an indifference under the circumstances that would be shocking to the ordinary man.<sup>29</sup> But indifference should never be predicated on the defendant's constructive knowledge. That is, there should be no punitive damages awards when liability is vicarious unless the defendant had actual knowledge of the harm-causing risks.<sup>30</sup>

Another reasonable threshold observation by the court would be that the facts presented must negate any explanation of the defendant's behavior other than recklessness or indifference. The defendant's indifference should be total, and any positive finding of other motivations or actions indicative of concern should preclude a punitive damage award. The facts of *Baptiste v. Superior Court of Los Angeles*<sup>31</sup>

tuition, and 'common sense' of juries. There is no scheme of individualization, no system for measuring punishment." C. Morris, *Punitive Damages in Tort Cases*, 44 HARV. L. REV. 1171, 1189 (1931). Fifty years later, Professor Kenneth Redden wrote: "Perhaps the strongest criticism of punitive damages is the total lack of clear guidelines to predict the award. Predictability exists in the criminal law because both the unacceptable conduct and the extent of punishment are defined by statute. Not so in a civil case." REDDEN, *supra* note 3, at 726.

28. See W. PROSSER, *supra* note 3, at 184-86.

29. This mental state is similar to that which is typically necessary for criminal negligence. See LA. R.S. 14:12, comment (1950). The writer submits that reference to criminal law is appropriate in the area of punitive damages because standards of conduct in criminal matters must be framed within the perimeters of constitutional safeguards.

30. The Model Penal Code treatment of the terms *negligently* and *recklessly* is instructive in this regard. In the Model Penal Code, a person is said to act recklessly when he "consciously disregards a substantial and unjustifiable risk." However, a person acts negligently when he "should be aware of a substantial and unjustifiable risk" and his "failure to perceive it [the substantial and unjustifiable risk] involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." MODEL PENAL CODE § 2.02 (1962).

31. 106 Cal. App. 3d 87, 164 Cal. Rptr. 789 (1980).

illustrate this principle. In *Baptiste*, the defendant company was aware of the possibility of hearing damage due to high engine room noise levels. However, because of the advanced age of the ships, the company decided that the repairs necessary to alleviate the problem were economically unfeasible. As an alternative, the company undertook a program to provide ear protection for engine room workers and enforced this program's use.<sup>32</sup> The California appellate court held that this "calculated decision to practice economy" provided a valid cause of action for punitive damages.<sup>33</sup> The writer submits that the positive evidence of an ear protection program should have precluded the jury from even receiving the issue.

The jury also should receive instructions relative to any unique features of the maritime environment which may bear on their decision. For instance, in *Fuhrman*, the corporate defendant had actual knowledge of the seemingly reckless response of the ship's master to an emergency situation.<sup>34</sup> The district court had assessed punitive damages for corporate management's failure to countermand the master's orders.<sup>35</sup> In reversing that award, the Sixth Circuit considered the traditional necessity for absolute control by the master at sea.<sup>36</sup>

Another important question which the courts have not addressed is whether the shipowner may insure against the risk of punitive damages. The courts are split on this issue in nonadmiralty litigation. However, in *Northwestern National Casualty Co. v. McNulty*,<sup>37</sup> the Fifth Circuit rendered a landmark opinion which may indicate its position in future admiralty litigation. The case arose out of a car accident and was decided under the law of Florida,<sup>38</sup> which recognized punishment and deterrence as the prime justifications for awarding punitive damages.<sup>39</sup> The court held that if the actual wrongdoer was able to shift the burden of punitive damages, both functions would be frustrated.<sup>40</sup> The Fifth Circuit also noted that the ultimate burden would rest on all premium payers, through increased insurance rates.<sup>41</sup> The latter point seems particularly relevant to admiralty, where en-

---

32. 106 Cal. App. 3d at 92, 164 Cal. Rptr. at 791.

33. 106 Cal. App. 3d at 104, 164 Cal. Rptr. at 789.

34. *United States Steel Corp. v. Fuhrman*, 407 F.2d 1143 (6th Cir. 1969), *cert. denied*, 398 U.S. 958 (1970).

35. The fleet headquarters maintained radio contact with the stricken ship throughout the emergency. The managers of the fleet were fully apprised of the conditions and the decisions of the master. 407 F.2d at 1144.

36. *Id.* at 1147.

37. 307 F.2d 432 (5th Cir. 1962).

38. *Id.* at 434-35.

39. *Id.* at 435.

40. *Id.* at 440.

41. *Id.* at 440-41.



couragement of shipping is an influential factor in policy making. If insurance against liability for punitive damages was available, no wise shipowner would proceed without the coverage and the resulting increase in insurance rates would operate as advance punishment for all shipowners. Thus, the shipping industry as a whole would bear the losses occasioned by the reckless and willful tortfeasors, while the actual tortfeasors would mitigate the losses occasioned by their own conduct.

Another unresolved question concerns the related problems of respondeat superior and corporate liability for the acts of employees. Although the majority view in this country holds the employer vicariously liable for punitive damages, a substantial minority requires a finding that the conduct was actually authorized or ratified by corporate management.<sup>42</sup> *Fuhrman*, the only federal admiralty case on point, followed the minority view.<sup>43</sup> *Fuhrman* was decided correctly and should be followed by other federal courts sitting in admiralty. While substantial justification exists for holding the employer liable for actual damages, vicarious liability for punitive damages simply does not serve any punitive or deterrent purposes. The majority view, which is thought to encourage more selective hiring practices, ignores the fact that violent or reckless behavior is impossible to predict with any degree of certainty. Therefore, holding the employer liable in the absence of his participation in or ratification of the conduct punishes the wrong person.<sup>44</sup> The *Fuhrman* holding provides a more precise means of deterring and punishing conduct without placing undue burdens on the shipping industry.

The fourth unresolved question is whether punitive damages are available under the Jones Act. Although the *Merry Shipping* court noted that uniformity of treatment in Jones Act and unseaworthiness cases is not necessary,<sup>45</sup> such uniformity certainly would be desirable,

---

42. K. REDDEN, *supra* note 3, §§ 4.5 & 7.7.

43. See K. REDDEN, *supra* note 3, § 7.7.

44. See Note, *supra* note 6.

45. 650 F.2d at 626. The court dealt with the apparent inconsistency of allowing punitive damages in unseaworthiness cases, in which liability is not predicated on fault, by reasoning that the statutory constraints which may limit recovery under the Jones Act do not apply to the common law unseaworthiness remedy. Furthermore, while nonpecuniary losses may not be recovered under the Jones Act, such losses are recoverable under common law actions. Finally, punitive damages are only awarded in cases of willful and wanton misconduct, which is "a much higher standard of culpability than that required for Jones Act liability." *Id.* Since this aggravated degree of culpability determines the appropriateness of punitive damages, the nature of the underlying claim is not an important consideration.

The issue of joinder was raised by the defendant in the instant case. He argued that even if punitive damages were allowable in unseaworthiness cases, they should

especially since the two causes of action are often joined in the same litigation.

The court, while declining to decide the issue, did acknowledge two possible impediments to the recovery of punitive damages in Jones Act cases. First, its own decision in *Ivy v. Security Barge Lines, Inc.*<sup>46</sup> recognized the traditional pecuniary loss limitation of recovery under the Jones Act. Second, decisions under the Federal Employer's Liability Act (F.E.L.A.)<sup>47</sup> expressly bar recovery of punitive damages. The *Ivy* restriction (*i.e.*, recovery under the Jones Act is limited to pecuniary loss), if extended to punitive damages, would certainly preclude any such recoveries. However, the writer submits that punitive damages should be viewed independently of the pecuniary—nonpecuniary distinction, since in punitive damages cases the losses or damages to the plaintiff are not at issue. The inquiry should be whether F.E.L.A. precedents, which were controlling in *Ivy*, should apply to punitive damages.

The United States Supreme Court has held unequivocally that punitive damages are not recoverable under the F.E.L.A.<sup>48</sup> Although the Jones Act adopts the provisions of the F.E.L.A., courts apply F.E.L.A. precedents only when they conform to the special interests and policies of admiralty law.<sup>49</sup> Therefore, the issue of punitive

---

not be awarded when the unseaworthiness and Jones Act claims were joined. The court held that joinder of the actions did not affect the remedies, citing several recent decisions in which the Fifth Circuit awarded nonpecuniary damages although the unseaworthiness claim had been joined with a Jones Act claim. *See Cruz v. Hendy Int'l Co.*, 638 F.2d 719 (5th Cir. 1981); *Smith v. Ithaca Corp.*, 612 F.2d 215 (5th Cir. 1980); *Hlodan v. Ohio Barge Line, Inc.*, 611 F.2d 71 (5th Cir. 1980); *Landry v. Two R. Drilling Co.*, 511 F.2d 138 (5th Cir. 1975). Undoubtedly, joinder of claims poses problems for the fact finder, particularly lay juries, who must distinguish carefully the causes of action and award damages accordingly. Uniformity of recoveries would help alleviate these problems.

46. 606 F.2d 524 (5th Cir. 1979).

47. 45 U.S.C. § 51-59 (1976).

48. *See Gulf, Colo. & Sante Fe Ry. Co. v. McGinnis*, 228 U.S. 173 (1913); *Michigan Cent. R.R. Co. v. Vreeland*, 227 U.S. 59 (1913); *American R.R. Co. of Porto Rico v. Didricksen*, 227 U.S. 145 (1913); *see also Kozar v. Chesapeake & Ohio Ry. Co.*, 449 F.2d 1238 (6th Cir. 1971).

49. In *Cox v. Roth*, 348 U.S. 207 (1955), the Supreme Court recognized that in certain instances a strict application of F.E.L.A. precedents to Jones Act cases could be counterproductive and tend to frustrate the aims of the Act. Thus, in *Cox*, the mere absence of a reference in the F.E.L.A. to suits against the personal representative of the tortfeasor did not bar such a suit in admiralty. In *The Arizona v. Anelich*, 298 U.S. 110 (1936), the defendant argued for the application of the then extant rule that assumption of risk was a defense in cases under the F.E.L.A., as long as the defendant had not violated a safety statute. The Supreme Court held that regardless of the provision of the F.E.L.A., this defense was not available in a Jones Act suit. (A 1939 amendment abolished assumption of risk as a defense in all F.E.L.A. cases.)

damages under the Jones Act may be decided without reference to F.E.L.A. precedents. The controlling issue is public policy, and the balancing process employed by the Fifth Circuit in *Smith* and *Merry Shipping* is an appropriate means of analyzing the problem.

As previously noted, federal admiralty courts have employed punitive damages as a means of enforcing specific standards of conduct. The absolute duty of the shipowner to maintain a safe workplace for the seaman is a well established concept of admiralty law, and *Merry Shipping* holds that punitive damages are justified as a deterrent to reckless disregard of that duty.<sup>50</sup> Arguably, the Jones Act itself reflects no compelling public policy directed at specific conduct. It was passed only to eliminate the situation whereby a seaman had no remedy for the negligence of his fellow servant.<sup>51</sup> However, when Congress acted, it did not grant merely a common law remedy. Instead, Congress gave seamen access to the liberal terms and recoveries of the F.E.L.A. It is submitted that, in so doing, Congress recognized the unique status of seamen and the perils under which they work. The United States Supreme Court recognized as much when it held that the Jones Act was to be "liberally construed to carry out its full purpose, which was to enlarge admiralty's protections to its wards."<sup>52</sup>

In view of this unique status, it should not matter whether the dangers of maritime employment are enhanced by "operational negligence" or unseaworthy conditions. It is the same state of mind which is being punished—a state of mind that the Fifth Circuit found dangerous and unacceptable in the maritime environment.

A possible argument against extension of punitive damages to the Jones Act is that although the Act applies to the maritime environment, its protections follow seamen to many land-based activities where their situation seems more analogous to that of railroad workers, who were the F.E.L.A.'s initial concern. However, even on land, seamen find themselves in unique and disadvantageous circumstances. The articles of employment which bind them to their employers severely limit their freedom to disobey unsafe orders and to avoid hazardous situations which may be imposed on them by their masters.<sup>53</sup> It is this unique employment relationship which places maritime employers *in loco parentis* to seamen.<sup>54</sup>

---

50. See text at note 26, *supra*.

51. G. GILMORE & C. BLACK, *supra* note 8, at 325.

52. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248 (1942).

53. The requirements of the seaman's articles of employment are set forth in 46 U.S.C. §§ 563-568 (1976). The required form is found in 46 U.S.C. § 713 (1976).

54. *In re Den Norske Amerikalinge A/S*, 276 F. Supp. 163 (N.D. Ohio 1967), *rev'd sub nom.* *United States Steel Corp. v. Fuhrman*, 407 F.2d 1143 (6th Cir. 1969), *cert. denied*, 398 U.S. 958 (1970).

The traditional status of seamen as wards of admiralty has been of tremendous importance in the development of admiralty law in general and of punitive damages in particular. The same concern which dictated the *Merry Shipping* decision should compel the application of punitive damages to the Jones Act.

*Charles Clifton St. Dizier*

