ADMIRALTY—DAMAGES—PUNITIVE DAMAGES NOT AVAILABLE UNDER THE JONES ACT—*Kopczynski v. The Jacqueline*, 742 F.2d 555 (9th Cir. 1984).

Since its enactment in 1920, the Jones Act[1] has governed cases of maritime personal injury. The statute provides remedies to seamen injured or killed in the course of their employment,[2]

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[1] "Jones Act" is the term commonly used to refer to § 33 of the Merchant Marine Act of 1920, 46 U.S.C. §§ 861-889 (1982). *See* G. GILMORE & C. BLACK, JR., THE LAW OF ADMIRALTY 327 (2d ed. 1975). The Jones Act states in part:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

46 U.S.C. § 688(a) (1982) (original version at Merchant Marine Act, ch. 250, § 33, 41 Stat. 988, 1007 (1920)). The Act was named after its sponsor, Washington Senator Wesley L. Jones. 2 M. NORRIS, THE LAW OF SEAMEN § 30:3, at 328 n. 22 (4th ed. 1985).

Congress passed a considerable amount of legislation respecting the United States Merchant Marine in the years immediately following World War I. In addition to the Merchant Marine Act, the following statutes were passed: the Suits in Admiralty Act, ch. 95, 41 Stat. 525 (1920) (codified as amended at 46 U.S.C. §§ 741-752 (1982)) (governing arrest and seizure of vessels); the Death on the High Seas Act, ch. 111, 41 Stat. 537 (1920) (codified as amended at 46 U.S.C. §§ 761-768 (1982)) (governing death of any person outside United States waters); and the Ship Mortgage Act, ch. 250, § 30, 41 Stat. 1000 (1920) (codified as amended at 46 U.S.C. §§ 911-984 (1982)) (governing sale, conveyance, and mortgage of United States vessels).

[2] *See* 46 U.S.C. § 688(a) (1982). The Fifth Circuit has developed a three-pronged test to determine whether an individual asserting seaman status under the Jones Act is a proper claimant. *See* Offshore Co. v. Robison, 266 F.2d 769, 775 (5th Cir. 1959). First, the seaman must allege that he was employed upon a vessel in navigation; second, the employee must have "a more or less permanent connection with the vessel"; and third, the employee must "be aboard primarily to aid in navigation." *Id.*; *see also* Wilkes v. Mississippi River Sand & Gravel Co., 202 F.2d 383, 388 (6th Cir. 1953) (applying same test); 1B A. SANN, S. BELLMAN, B. CHASE, M. CHYNSKY & R. MENSEL, BENEDICT ON ADMIRALTY § 11a, at 2-5 (7th ed. 1984) (setting forth identical test) [hereinafter cited as 1B BENEDICT]. This test has been adopted by virtually every court that has been presented with the question of whether an individual is a Jones Act seaman. *See id.* Thus, the determination whether an individual is a seaman is a question of fact. *See* 2 M. NORRIS, *supra* note 1, § 30:8, at 352.

but does not specifically define what damages may be recovered.[3] While the Jones Act incorporates by reference the Federal Employers' Liability Act (FELA),[4] that statute is also silent with respect to the type of damages that may be recovered.[5] Thus, although injured seamen may recover compensatory or actual damages under the Jones Act,[6] the right of injured seamen to recover punitive damages under the Act remains uncertain.[7]

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[3] *See* 46 U.S.C. § 688(a) (1982). For an exhaustive study of the rights of seamen and maritime workers to recover for death and personal injury, see G. GILMORE & C. BLACK, JR., *supra* note 1, at 272-484.

[4] *See* 46 U.S.C. § 688(a) (1982); *see also* Cox v. Roth, 348 U.S. 207, 208 (1955) (Jones Act extends FELA rights to seamen).

[5] *See* Federal Employers' Liability Act, 45 U.S.C. §§ 51-60 (1982). The FELA grants a cause of action to any railroad employee who is injured while employed by a common carrier in interstate or foreign commerce. *Id.* § 51. The statute provides that contributory negligence will operate to reduce recoverable damages; however, contributory negligence will not be considered in cases in which the employer has violated any safety statute. *Id.* § 53. The FELA further stipulates that an employee will not be held to have assumed the risks of employment where an injury or death results from the negligence of any officer, agent, or employee of the carrier. *Id.* § 54. The FELA's statute of limitations expires three years after the date the cause of action arises. *Id.* § 56. In addition, a cause of action under the FELA will accrue to a deceased employee's personal representative. *Id.* § 59.

Judicial decisions involving the recovery of punitive damages under the FELA are not in total harmony. *Compare* Gulf, Colo. & S. F. Ry. v. McGinnis, 228 U.S. 173 (1913) (only individuals who actually sustain some pecuniary loss may recover under FELA) *and* Michigan Cent. R.R. v. Vreeland, 227 U.S. 59 (1913) (damages limited to loss of pecuniary benefits) *and* Kozar v. Chesapeake & O. Ry., 449 F.2d 1238 (6th Cir. 1971) (punitive damages not recoverable) *with* Ennis v. Yazoo & M.V.R. Co., 118 Miss. 509, 79 So. 73 (1918) (punitive damages may be allowed where railroad shop employee was electrocuted and circumstances indicated dangerous condition had been reported).

[6] *See* 1B BENEDICT, *supra* note 2, § 32, at 3-276 to -77. Admiralty law also implies a contractual obligation by shipowners to provide injured seamen with "maintenance and cure." *See* 2 M. NORRIS, *supra* note 1, §§ 26:1-:2. The United States Supreme Court has noted that "[m]aintenance and cure is designed to provide a seaman with food and lodging when he becomes sick or injured in the ship's service; and it extends during the period when he is incapacitated to do a seaman's work and continues until he reaches maximum medical recovery." Vaughan v. Atkinson, 369 U.S. 527, 531 (1962). The ancient duty of a shipowner to provide maintenance and cure was designed to alleviate the hardship of putting an injured seaman ashore in a foreign country without financial resources. *Id.* at 535 (Stewart, J., dissenting). *See generally* 2 M. NORRIS, *supra* note 1, §§ 26:1 -:74. In addition, a seaman may recover lost wages in the amount of the salary he would have earned had he completed either the particular voyage or the contractual terms of his employment. *See* 1B BENEDICT, *supra* note 2, § 52, at 4-83; 2 M. NORRIS, *supra* note 1, § 26:7.

[7] *Compare* 1B BENEDICT, *supra* note 2, § 32, at 3-278 ("the law does not authorize punitive damages") *with* 2 M. NORRIS, *supra* note 1, § 30:41, at 517 ("the trend in admiralty cases is toward the granting of punitive damages where the 'defendant's actions were so wanton and reckless as to evince a conscious disregard of the rights of others' "). The courts have failed to resolve conclusively whether the

In *Kopczynski v. The Jacqueline*,[8] the United States Court of Appeals for the Ninth Circuit perpetuated this uncertainty by overturning a district court award of $325,000 in punitive damages and holding that the Jones Act limits recoverable damages to pecuniary losses.[9] Reasoning that punitive damages are nonpecuniary, the court refused to award them in connection with a Jones Act claim.[10] The Ninth Circuit has thus strictly limited the amount that may be recovered under the Jones Act, contravening the intent of Congress to provide liberal recovery for injured maritime workers.[11]

The incident that gave rise to the *Kopczynski* case occurred on August 25, 1981.[12] The plaintiff, Gary Kopczynski, was participating in the refueling of the *Jacqueline*.[13] This process included emptying a number of fifty-five-gallon drums of fuel and hydraulic oil into the ship's tanks.[14] The empty drums were then manually removed from the deck of the ship to the dock.[15] Kopczynski was standing on the ship's safety rail for the purpose of either

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Jones Act permits recovery of only pecuniary damages or whether punitive damages are also recoverable. *See, e.g.*, Ivy v. Security Barge Lines, 606 F.2d 524 (5th Cir. 1979) (majority holding Jones Act does not permit damages for loss of society in wrongful death action; minority approving both pecuniary and nonpecuniary damages); Baptiste v. Superior Court, 106 Cal. App. 3d 87, 164 Cal. Rptr. 789 (1980) (majority permitting plaintiff's punitive damage claim to go to jury; minority limiting award to compensatory losses).

8 742 F.2d 555 (9th Cir. 1984).

9 *Id.* at 560-61.

10 *Id.* at 561.

11 *See, e.g.*, Kernan v. American Dredging Co., 355 U.S. 426, 432 (1958) (intent of Congress was to afford liberal recovery to injured seamen and railroad workers and to expand remedy to meet changing concepts and conditions); Cortes v. Baltimore Insular Line, 287 U.S. 367, 375 (1932) (Jones Act should be liberally construed in order to advance its objective of protecting seamen and their dependents).

12 *Kopczynski*, 742 F.2d at 557.

13 *Id.*

14 Appellant's Opening Brief at 3, Kopczynski v. The Jacqueline, 742 F.2d 555 (9th Cir. 1984) [hereinafter cited as Appellant's Opening Brief]. The vessel was moored to the Shell Oil Company's fuel dock in the San Diego harbor. *Id.* The ship's owner, Seaward Marine Services, employed Kopczynski as a diver/tender. *Id.* at 2. His duties included cleaning the vessel, underwater photography of ships' hulls, maintenance, monitoring of on-board machinery, and occasional navigation and piloting. *Id.* at 2-3.

15 *Id.* at 3. The crew was performing the removal operation on the vessel's aft-work deck, which was six to eight feet below the dock because of the low tide. *Id.* at 4. The deck had become slippery as a result of oil spilled from several hydraulic machines located on the ship. *Id.* at 5. Seaward Marine Services designed, owned, and operated these machines in connection with its hull-cleaning operations. *Id.* Kopczynski claimed that the oil buildup had caused every crew member to slip or fall on several prior occasions. *Id.*

unloading a drum or climbing up on the dock when he slipped and fell, injuring his back.[16]

This method of using the ship's safety rail to pass empty drums manually from the vessel's aft deck to the dock was customary practice.[17] Although the forward deck of the *Jacqueline* was higher off the water than the aft deck and thus closer to dock level,[18] the crew unloaded drums from the aft deck because the passageway between the fore and aft decks was too narrow to permit the carrying of empty drums to the forward deck.[19] In addition, there were no gangways,[20] straight ladders, or Jacob's ladders[21] on either deck to provide any other access to the dock.[22] As a result, the crew customarily used the safety railing to gain access to the dock.[23]

During the ten months after his accident, Kopczynski received more than $17,000 in longshoreman's benefits.[24] When it was later determined that he was a seaman and not a harbor worker, his benefits under the Longshoremen's and Harbor Workers' Compensation Act[25] were discontinued.[26] As a result, Kopczynski filed an admiralty action in February of 1982 against the shipowner, Seaward Marine Services, Inc. (Seaward).[27] Kopczynski alleged negligence and unseaworthiness.[28] He sought re-

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16 *Kopczynski*, 742 F.2d at 557.

17 *Id.*

18 Appellant's Opening Brief, *supra* note 14, at 4.

19 *Id.* at 4-5.

20 A gangway (or gangplank) is an opening for the loading and unloading of passengers or cargo on a ship. WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE 574 (2d ed. 1980).

21 A Jacob's ladder is a rope or wire ladder that is commonly used on ships. *Id.* at 752.

22 Appellant's Opening Brief, *supra* note 14, at 5.

23 *Kopczynski*, 742 F.2d at 557.

24 *Id.*

25 33 U.S.C. §§ 901-950 (1982).

26 Appellant's Opening Brief, *supra* note 14, at 26. In May of 1982, the defendants received notice from a United States Department of Labor claims examiner that Kopczynski was a seaman and not a longshoreman. *Id.* The Longshoremen's and Harbor Workers' Compensation Act specifically exempts the master or a member of a ship's crew from coverage. *See* 33 U.S.C. § 903(a)(1) (1982).

27 *Kopczynski*, 742 F.2d at 557.

28 *Id.* Courts have continually expanded the definition of an unseaworthy vessel. *See generally* 1B BENEDICT, *supra* note 2, §§ 23-24 (collecting and analyzing cases). In general, however, a vessel is unseaworthy if it is unable to withstand an ordinary sea voyage. *See* Fireman's Fund Ins. Co. v. Compania de Navegacion, Interior, S.A., 19 F.2d 493, 495 (5th Cir. 1927). If unseaworthiness is the proximate cause of the plaintiff's injury, the defendant shipowner is liable. *See* Provenza v. American Ex-

covery of compensatory damages, maintenance and cure,[29] and punitive damages.[30] In July, the jury, in response to special interrogatories, found Seaward negligent, but rejected Kopczynski's claim that the *Jacqueline* was unseaworthy.[31] Kopczynski was awarded $450,000 in compensatory damages,[32] $55,301 for maintenance and cure, and $325,000 in punitive damages.[33] The jury based its punitive damage award upon a finding that the defendant "had acted wantonly and maliciously."[34]

Seaward appealed to the Ninth Circuit, arguing that the Jones Act precludes recovery for punitive damages.[35] Kopczynski cross-appealed the issues of his comparative negligence, the vessel's unseaworthiness, and the amount of his maintenance and

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port Lines, 324 F.2d 660, 662-63 (4th Cir. 1963). Therefore, the obligation of a shipowner to furnish a seaworthy ship is absolute. *Id.*

Since the Supreme Court's decision in Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944), the seaworthiness concept has provided seamen with a theory of recovery separate from negligence principles. *See* 1B BENEDICT, *supra* note 2, § 23, at 3-17 to -19. In the flood of maritime personal injury cases since the 1950's, unseaworthiness has been the catalyst for recovery. G. GILMORE & C. BLACK, JR., *supra* note 1, at 279. In contrast to negligence, which requires the plaintiff to prove the shipowner's knowledge of a dangerous condition, a vessel's unseaworthiness is established without regard to fault. 1B BENEDICT, *supra* note 2, § 21, at 3-3. Thus, if the seaman can prove that the vessel was unseaworthy, proof of negligence is unnecessary. *Id.*

If the vessel is determined to be unseaworthy, damages under either the unseaworthiness doctrine or the Jones Act and maintenance and cure are recoverable. *See* G. GILMORE & C. BLACK, JR., *supra* note 1, at 383. These actions are termed the "Siamese twins" because it is sometimes unclear whether a particular action is properly in one category or the other. *See id.* The distinction between unseaworthiness and negligence, however, remains significant. If a vessel is determined to be seaworthy, but the shipowner is found negligent, the finding of seaworthiness can usually be attacked on grounds of inconsistency. 1B BENEDICT, *supra* note 2, § 23, at 3-57 to -58; *see, e.g., infra* note 117 (plaintiff in *Kopczynski* attacked finding of seaworthiness after jury decided that shipowner was negligent).

29 *See supra* note 6.

30 *See Kopczynski*, 742 F.2d at 557.

31 *Id.* On appeal, Kopczynski argued that the district court should have directed a verdict on the issue of unseaworthiness. *See* Appellant's Opening Brief, *supra* note 14, at 24-25. Kopczynski also contended that the jury instructions were inadequate and that the court improperly excluded evidence on this issue. *Id.* at 18-24; *see infra* note 117 (discussing the Ninth Circuit's disposition of these claims).

32 *Kopczynski*, 742 F.2d at 557. The jury originally awarded $692,308 in compensatory damages. Appellant's Opening Brief, *supra* note 14, at 1. This amount was reduced by 35% to $450,000 because of Kopczynski's contributory negligence. *Id.* at 2.

33 *Kopczynski*, 742 F.2d at 557.

34 *Id.*

35 *Id. See* Answering Brief as Appellee and Opening Brief as Cross-Appellant at 26-43, Kopczynski v. The Jacqueline, 742 F.2d 555 (9th Cir. 1984).

cure award.[36] A three-judge panel affirmed the district court's findings as to negligence, maintenance and cure, and unseaworthiness, but reversed on the issue of punitive damages.[37] Reasoning that the Jones Act limits damage awards to pecuniary losses, the Ninth Circuit concluded that punitive damages are not recoverable under the Act.[38]

For hundreds of years, the ancient maritime codes provided for redress to sailors injured while in the service of the ship.[39] The Rules of Oleron,[40] for example, stated that a mariner who was wounded or hurt as a result of a master's order "shall be cured and provided for at the costs and charges of the said ship."[41] The shipowner's traditional duty to pay maintenance and cure and lost wages to an injured sailor evolved from these ancient codes.[42] In this country, one of the earliest Supreme Court decisions to address the issue of a seaman's right to recover damages for personal injury was *The Osceola*.[43] In that case, a seaman was injured when a derrick supporting the forward port gangway fell on him.[44] The master had ordered the gangway raised although the vessel was still three miles from port and facing strong winds.[45] Writing for the Court, Justice Brown acknowl-

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36 *Kopczynski*, 742 F.2d at 557. Kopczynski maintained that his compensatory damage award should not have been decreased by his contributory negligence, that as a matter of law the *Jacqueline* should have been found unseaworthy, and that he should have been awarded attorneys' fees as part of his maintenance and cure. *Id.*

37 *Id.*

38 *Id.* at 560-61.

39 *See generally* 1B BENEDICT, *supra* note 2, § 41, at 4-2 to -4.

40 The Rules (Laws) of Oleron, a twelfth century code of maritime laws, were promulgated at the island of Oleron by Eleanor of Guienne. BLACK'S LAW DICTIONARY 979 (5th ed. 1979). The Rules were later adopted in England. *Id.*; *see also* 2 M. NORRIS, *supra* note 1, § 26:3, at 5 n.6 (setting forth history of Rules).

41 1B BENEDICT, *supra* note 2, § 41, at 4-2.

42 *See supra* note 6 (definitions of maintenance and cure and lost wages).

43 189 U.S. 158 (1903). While earlier cases permitted awards of punitive damages in admiralty, these decisions did not involve claims for physical injuries. The earliest case cited as approving an award of punitive damages in admiralty is The Amiable Nancy, 16 U.S. (3 Wheat.) 546 (1818). That case involved the robbery and plunder of a Haitian schooner by the *Scourge*, an American privateer. *Id.* at 546-47. In an opinion written by Justice Story, the Supreme Court held that if the action had been brought against the actual wrongdoers instead of the *Scourge's* owners, exemplary damages could have been assessed to punish the lawless misconduct. *Id.* at 558. Later, in Gallagher v. The Yankee, 9 F. Cas. 1091 (N.D. Cal.) (No. 5196), *aff'd*, 30 F. Cas. 781 (C.C.N.D. Cal. 1859) (No. 18,124), a district court awarded exemplary damages to an individual who had been abducted and transported to the Hawaiian Islands. *Id.* at 1091, 1093. The court concluded that such a flagrant violation of personal liberties justified the award. *Id.* at 1093.

44 *The Osceola*, 189 U.S. at 159.

45 *Id.*

edged that a vessel owner was liable to an injured seaman for maintenance and cure and lost wages resulting from a mishap caused by an unseaworthy condition of the ship.[46] He concluded, however, that a seaman was not entitled to damages for injuries resulting from negligence or accident.[47] The Court reasoned that the wind, rather than the ship, had caused the damage to the injured seaman.[48]

In response to the *Osceola* decision,[49] Congress passed the Jones Act[50] in 1920, which provided an injured seaman with both the right to maintain an action[51] at law for damages and the right to a jury trial.[52] The drafters of the statute, however, defined neither the scope of an injured seaman's cause of action nor the types of damages that may be recovered under the Act.[53] Resolution of these issues was left to the courts.[54]

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46 *Id.* at 175. In reaching its ultimate conclusion, the Court recognized the following propositions of admiralty law:

> 1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.
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> 2. That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship. . . .
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> 3. That all the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.
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> 4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident.

Id. (citation omitted).

47 *Id.*

48 *Id.* at 177.

49 *See* G. GILMORE & C. BLACK, JR., *supra* note 1, at 277.

50 *See supra* note 1 (setting forth text of Jones Act).

51 The injured seaman may elect either a civil action or a suit in admiralty. *See* 1B BENEDICT, *supra* note 2, § 2, at 1-12. If he chooses to sue in admiralty, however, he forfeits his right to a jury trial. *Id.*

52 *See supra* note 1 (setting forth text of Jones Act).

53 *See id.*

54 *See, e.g.*, Cox v. Roth, 348 U.S. 207 (1955) (Jones Act cause of action survives death of tortfeasor); Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939) (assumption of risk does not bar recovery under Jones Act, but operates to reduce recoverable damages); Plamals v. The Pinar Del Rio, 277 U.S. 151 (1928) (injured seaman cannot proceed in rem against vessel); Panama R.R. v. Johnson, 264 U.S. 375 (1924) (Jones Act held constitutional).

In 1962, the Supreme Court in *Vaughan v. Atkinson*[55] first provided for recovery of damages outside of the traditional payments for maintenance and cure and lost wages. In that case, a seaman contracted tuberculosis while in the service of the defendant's vessel.[56] For two years, the shipowner failed to investigate the seaman's claim for maintenance and cure.[57] Having received no compensation from the shipowner during the two-year period in which he was unfit to work as a seaman, the plaintiff filed suit, seeking maintenance and cure as well as damages resulting from the failure to pay maintenance and cure.[58] The district court awarded the plaintiff maintenance and cure, but rejected his claim for attorneys' fees incurred as a result of the defendant's refusal to make the required payments.[59] The Fourth Circuit affirmed the district court's decision.[60]

Reversing both lower courts, the Supreme Court awarded the seaman attorneys' fees as the measure of his consequential damages for the defendant's failure to pay maintenance and cure.[61] In justifying this award, the Court found that the defendant's conduct in failing to provide maintenance and cure for nearly two years was "willful and persistent."[62] In a dissenting opinion, Justice Stewart agreed with the majority's conclusion that a seaman may be entitled to damages for failure to pay maintenance and cure.[63] He emphasized, however, that if the failure to pay maintenance and cure were intentional and wanton, then the seaman should be entitled to exemplary damages in accord-

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55 369 U.S. 527 (1962).

56 *Id.* at 528.

57 *Id.* at 528-29.

58 *Id.* at 529.

59 *Id.* The district court found that the plaintiff had failed to establish that he had suffered any damages as a result of the defendant's failure to pay maintenance and cure. *Id.* The court recognized, however, that such damages would be available "when the failure to furnish maintenance and cure caused or aggravated the illness or other physical or mental suffering." *Id.*

60 Vaughan v. Atkinson, 291 F.2d 813, 815 (4th Cir. 1961), *rev'd*, 369 U.S. 527 (1962). Reasoning that the plaintiff's claim was essentially a breach of contract, which did not give rise to the type of consequential damages claimed, the court of appeals affirmed the district court. *Id.* at 815.

61 *Vaughan*, 369 U.S. at 531 & n.3.

62 *Id.* at 531. Although the majority awarded the plaintiff damages, it was unclear whether the award was wholly compensatory or whether a separate award for punitive damages was granted. *See* G. GILMORE & C. BLACK, JR., *supra* note 1, at 313.

63 *Vaughan*, 369 U.S. at 539-40 (Stewart, J., dissenting). Nonetheless, he rejected the majority's determination that a failure to pay maintenance and cure resulted in an automatic right to counsel fees. *Id.*

ance with traditional damage concepts.[64]

The *Vaughan* decision generated a great deal of conflict in the lower courts.[65] For example, in *Robinson v. Pocahontas, Inc.*,[66] the First Circuit affirmed the plaintiff's maintenance and cure award of $21,366.06, which included $10,000 in punitive damages.[67] In that case, the plaintiff injured his back when he fell on the defendant's fishing vessel.[68] The defendant subsequently refused to send Robinson his maintenance payments regularly.[69] Stressing Justice Stewart's *Vaughan* dissent, the court found that the defendant's callous conduct justified the submission of the punitive damage charge to the jury.[70]

The Second Circuit, in contrast, has interpreted *Vaughan* as authorizing only attorneys' fees as punitive damages.[71] Following the *Vaughan* majority, the court in *Kraljic v. Berman Enterprises*[72] affirmed a $300 award for attorneys' fees, but reversed the $3000 punitive damage judgment.[73] Arguing that a seaman is prohibited from enjoying a redundant damage award,[74] the *Kraljic* court read *Vaughan* as permitting only counsel fees as punitive damages when the failure to provide maintenance and cure is willful.[75]

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64 *Id.* at 540 (Stewart, J., dissenting). Justice Stewart stated that the amount of punitive damages awarded should be determined by the trier of fact and should be calculated by considering all of the circumstances surrounding the defendant's failure to pay maintenance and cure. *Id.* He would have remanded the case to the district court for an examination of the events that prompted the defendant's failure to make the required payments. *Id.*

65 *See* 2 M. NORRIS, *supra* note 1, § 26:41, at 110-17.

66 477 F.2d 1048 (1st Cir. 1973).

67 *Id.* at 1049, 1053.

68 *Id.* at 1049.

69 *Id.* at 1050. The shipowner initially charged that Robinson had venereal disease and was fired for cause. *Id.* When this allegation was disproved, the defendant persisted in failing to make regular maintenance payments despite the fact that Robinson notified him that his mortgage was about to be foreclosed. *Id.* Ultimately, Robinson lost his home, and when he refused to accept what he believed was an inadequate settlement, all payments were terminated. *Id.* Robinson subsequently brought suit against the defendant. *Id.* at 1049.

70 *Id.* at 1051-52.

71 *See* Kraljic v. Berman Enters., 575 F.2d 412, 415-16 (2d Cir. 1978); 2 M. NORRIS, *supra* note 1, § 26:41, at 112-13.

72 575 F.2d 412 (2d Cir. 1978).

73 *Id.* at 416.

74 *Id.* at 414. The court defined the issue as whether an award of punitive damages in a suit for maintenance and cure should be limited to attorneys' fees alone or whether the amount should be left to the jury's discretion. *Id.* The court reasoned that an award based on both damage theories was without precedent. *Id.*

75 *Id.* at 414-16. Although the *Kraljic* court recognized that the *Robinson* opinion awarded punitive damages without limiting them to counsel fees, the *Kraljic* court refused to follow *Robinson* because that decision relied on Justice Stewart's *Vaughan*

Most recently, in *Holmes v. J. Ray McDermott & Co.*,[76] the Fifth Circuit Court of Appeals held that a shipowner's arbitrary refusal to pay maintenance and cure justifies an award of attorneys' fees as well as general damages under the Jones Act.[77] In addition, the court held that punitive damages for failure to pay maintenance and cure are recoverable under the general maritime law.[78] In *Holmes*, the plaintiff was injured while working on the defendant's barge.[79] The defendant initially terminated the plaintiff's maintenance and cure payments after several doctors determined that Holmes had suffered no injury.[80] When Holmes was later diagnosed as having a herniated lumbar disc, the defendant refused to reinstate the plaintiff's maintenance and cure payments.[81] The jury found that McDermott's failure to reinstate the maintenance and cure payments was willful and arbitrary and therefore awarded the plaintiff $11,550 as punitive damages.[82]

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dissent rather than on the majority opinion. *Id.* at 415. The *Kraljic* court further reasoned that the *Vaughan* majority had limited the plaintiff's punitive damage recovery to counsel fees. *Id.* at 416. The court noted that to allow a seaman to recover separate awards of counsel fees and exemplary damages would constitute a double recovery. *Id.* at 414.

76 734 F.2d 1110 (5th Cir. 1984).

77 *Id.* at 1120-21.

78 *Id.* at 1118. For support, the *Holmes* court cited *In re* Merry Shipping, Inc., 650 F.2d 622 (5th Cir. 1981). *Holmes*, 734 F.2d at 1118. In *Merry Shipping*, the wife of a seaman who had drowned sought damages under the general maritime law and the Jones Act for her husband's pain and suffering and for her pecuniary and nonpecuniary losses. *Merry Shipping*, 650 F.2d at 623. The plaintiff also pleaded for punitive damages. *Id.* The court recognized the distinction that had developed regarding damages recoverable under the general maritime law and the Jones Act. *Id.* at 624. Under both theories of recovery, the court noted, the survivors may recover for their own losses and for the deceased seaman's pain and suffering and personal losses. *Id.* Under the Jones Act, however, the court acknowledged that only pecuniary losses were recoverable by the seaman's survivors. *Id.*

Applying this distinction, the *Merry Shipping* court held that if punitive damages are not recoverable under the Jones Act, they must be recoverable under the general maritime law upon proof of a shipowner's willful and wanton misconduct in creating or maintaining an unseaworthy vessel. *Id.* at 625; *see supra* note 28 (discussing the concept of unseaworthiness). The court found three justifications for its ruling. First, the general maritime law is fashioned by judicial decision making and is not constrained by statute. *Merry Shipping*, 650 F.2d at 626. Second, the general maritime law permits recovery of nonpecuniary losses. *Id.* Third, proof of willful and wanton misconduct is required to justify a punitive damage award. *Id.* Finally, the court rejected the defendant's argument that a punitive damage award under the general maritime law was barred because the suit was brought together with a Jones Act claim. *Id.* at 626-27.

79 *Holmes*, 734 F.2d at 1112.

80 *Id.*

81 *Id.*

82 *Id.* at 1113.

The Fifth Circuit affirmed this award.[83]

While these cases established that damages are available under the Jones Act for a shipowner's refusal to pay maintenance and cure, they did not determine whether punitive damages are generally available under the Jones Act in negligence actions. In *United States Steel Corp. v. Fuhrman*,[84] however, the Sixth Circuit considered the issue of whether a plaintiff was entitled to punitive damages for a shipowner's negligent approval of its captain's actions.[85] In that case, the master of the *Cedarville* ordered the ship beached rather than abandoned after a collision.[86] During the attempted beaching, the vessel capsized and ten crewmen drowned.[87] The district court held that punitive damages were recoverable under the Jones Act in instances in which an injury was the proximate result of a shipowner's approval of a captain's foolhardy conduct.[88] The court of appeals reversed, finding that the shipowner had not authorized or ratified the captain's actions.[89] The *Fuhrman* court noted, however, that punitive damages may be recoverable "if the acts complained of were those of an unfit master and the owner was reckless in employing him."[90]

In an analogous case involving a railroad worker, the Sixth Circuit again found it necessary to reverse a punitive damage award granted by the district court.[91] In *Kozar v. Chesapeake & Ohio Railway*,[92] the decedent railroad employee was crushed to death by a refrigerator car when the brake system of the crane that was suspending the car malfunctioned.[93] In a comprehensive opinion, the district court concluded that the legislative history of the FELA [94] permitted the plaintiff to recover punitive damages upon a showing that the defendant "acted wilfully [sic],

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83 *See id.* at 1119. The court approved the punitive damage award, recognizing that it served as both a deterrent and a punishment. *Id.* at 1118.

84 407 F.2d 1143 (6th Cir. 1969), *cert. denied*, 398 U.S. 958 (1970).

85 *Id.* at 1144, 1148.

86 *Id.* at 1145.

87 *Id.*

88 *In re* Den Norske Amerikalinje A/S, 276 F. Supp. 163, 198-99 (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).

89 *See Fuhrman*, 407 F.2d at 1148.

90 *Id.* The court also accepted the rationale that punitive damages are recoverable when an owner authorizes or ratifies a master's acts prior to or immediately after an accident. *See id.*

91 *See* Kozar v. Chesapeake & O. Ry., 449 F.2d 1238, 1243 (6th Cir. 1971).

92 449 F.2d 1238 (6th Cir. 1971).

93 Kozar v. Chesapeake & O. Ry., 320 F. Supp. 335, 342-43 (W.D. Mich. 1970), *vacated in part*, 449 F.2d 1238 (6th Cir. 1971).

94 *See supra* note 5 (outlining provisions of FELA).

wantonly, or with reckless disregard for the safety of John Kozar."[95] On appeal, the Sixth Circuit vacated the punitive damage award.[96] The court agreed that the legislative history of the FELA indicated that Congress did not intend to restrict the remedies available to railroad workers who were injured or killed, but concluded that Congress did not intend "damages" to be synonymous with "remedy."[97] Furthermore, the court noted that the absence of any reported punitive damage awards since the FELA's 1908 enactment indicated that punitive damages should not be allowed under the Act.[98]

There is a clear split of authority, however, respecting the issue of whether the provisions of the FELA are applicable to Jones Act cases.[99] For example, in *Baptiste v. Superior Court*,[100] a seaman sued his employer under the Jones Act and the general maritime law.[101] The plaintiff charged that the defendant had specific knowledge of dangerously high noise levels in the ship's engine rooms, which caused the plaintiff to suffer a loss of hearing.[102] Subsequently, the plaintiff amended his complaint to include a punitive damage claim because of the defendant's egregious disregard for his safety.[103] The trial court granted the defendant's application to strike the punitive damage claim, and the plaintiff appealed.[104]

The appellate court unequivocally held that the plaintiff could present his punitive damage claim to the jury.[105] The court

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95 Kozar v. Chesapeake & O. Ry., 320 F. Supp. 335, 357 (W.D. Mich. 1970), *vacated in part*, 449 F.2d 1238 (6th Cir. 1971). The court observed that the Senate Report to the 1910 FELA amendments indicated that Congress did not intend to limit the pre-existing rights and remedies to which railroad employees were then entitled. *Id.* at 350. In addition, the district court failed to perceive why Congress would have intended the FELA to eliminate the common law remedy of punitive damages when the express purpose of the Act was to impose "stringent liabilities upon the railroads for injuries to their employees." *Id.* at 355.

96 *Kozar*, 449 F.2d at 1243.

97 *Id.* at 1240.

98 *Id.* at 1243.

99 *Compare* Note, *Punitive Damages in Maritime Personal Injuries*: Dyer v. Merry Shipping Co., 43 LA. L. REV. 823, 831-32 (1983) (courts apply FELA to Jones Act cases only when it serves policies of maritime law) *with* Dahlquist, *Punitive Damages Under the Jones Act*, 6 MAR. LAW. 1, 31 (1981) (Supreme Court's interpretations of FELA preclude punitive damages under Jones Act).

100 106 Cal. App. 3d 87, 164 Cal. Rptr. 789 (1980).

101 *Id.* at 91, 164 Cal. Rptr. at 790.

102 *Id.* at 92, 164 Cal. Rptr. at 791.

103 *Id.* at 92-93, 164 Cal. Rptr. at 791.

104 *Id.* at 93, 164 Cal. Rptr. at 791-92.

105 *Id.* at 104, 164 Cal. Rptr. at 798.

noted that punitive damages are an integral part of Federal common law as well as admiralty law.[106] The court could find no Supreme Court case precluding a punitive damage award under Federal common law.[107] In addition, the *Baptiste* court observed that although many courts accepted punitive damage awards in principle, they denied the award on the narrow basis of the particular facts presented.[108] The court in *Baptiste* acknowledged the *Kozar* decision, but concluded that case law construing the FELA was neither persuasive nor controlling authority in Jones Act litigation.[109]

The Ninth Circuit reached a contrary result three years later, however, in *Nygaard v. Peter Pan Seafoods, Inc.*[110] That case involved the drowning of a seaman in the Bering Sea.[111] The court ruled that damages under the Jones Act were expressly governed by cases construing the FELA.[112] Thus, because those cases [113] limited damages to nonpecuniary losses, the Ninth Circuit found that loss of society, a nonpecuniary loss, was not compensable under the Jones Act.[114] The *Nygaard* court, however, expressed no opinion on the issue of whether punitive damages could be recovered under the Jones Act.[115]

The *Kopczynski* case squarely presented this issue to the

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106 *Id.* at 96-97, 164 Cal. Rptr. at 793-94.

107 *Id.* at 96, 164 Cal. Rptr. at 793.

108 *See id.* at 102, 164 Cal. Rptr. at 796.

109 *Id.* at 102-03, 164 Cal. Rptr. at 797.

110 701 F.2d 77 (9th Cir. 1983).

111 *Id.* at 78. The plaintiff, the deceased seaman's administratrix, instituted suit under the Death on the High Seas Act (DOHSA), the Jones Act, and the general maritime law. *Id.* The district court found the decedent's employer liable, but limited the damage recovery to the decedent's pain and suffering and his son's loss of monetary support. *Id.* at 79. On appeal, the plaintiff claimed that the orphaned son's loss of society and loss of nurture were compensable and that the denial of loss of inheritance damages was improper. *Id.*

112 *Id.* The *Nygaard* court made no reference to the *Baptiste* case. *See id.* at 78-81; *see also supra* notes 100-109 and accompanying text (discussing *Baptiste*).

113 *See supra* note 5 (discussing nonpecuniary damages under FELA).

114 *Nygaard*, 701 F.2d at 79. Although the *Nygaard* court found that loss of society was a nonpecuniary loss and therefore could not be recovered under the Jones Act or the DOHSA, it held that loss of nurture was compensable under the DOHSA. *Id.* at 81. Thus, the court remanded the case to the district court for a consideration of whether the decedent's son was entitled to damages for loss of nurture. *Id.*

115 *See id.* at 79-80. Although the issue of punitive damages was not addressed in the *Nygaard* decision, the *Kopczynski* court relied on *Nygaard* to support its conclusion that only pecuniary losses are recoverable under the Jones Act. *Kopczynski*, 742 F.2d at 560-61. For a criticism of the decision in *Nygaard*, see Tallentire v. Offshore Logistics, Inc., 754 F.2d 1274, 1283 (5th Cir. 1985).

Ninth Circuit.[116] After disposing of several subsidiary issues,[117] the court began its analysis of the punitive damages question by noting that the issue was a novel one in its circuit.[118] Relying on prior law, the court reasoned that the Jones Act incorporates the FELA[119] and that case law interpreting the FELA supports only compensatory awards.[120] Accordingly, the *Kopczynski* court held

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116 *See Kopczynski*, 742 F.2d at 560.

117 *See id.* at 557-60. Kopczynski appealed the reduction of his compensatory award by the amount of his contributory negligence, arguing that Seaward had violated several safety regulations. *Id.* at 557-58. Because the Ninth Circuit determined that the safety statutes alleged to have been violated did not apply to Kopczynski, the court refused to decide whether § 53 of the FELA, incorporated by reference into the Jones Act, would obviate consideration of a seaman's contributory negligence when a safety regulation had been violated. *Id.* at 558.

Section 53 of the FELA specifically provides that if an employer contributes to an injury or causes death by violating a safety statute, the plaintiff's contributory negligence will not reduce the amount of recovery. *See supra* note 5; *see also* Kernan v. American Dredging Co., 355 U.S. 426 (1958) (employer liable for death of seaman resulting from violation of regulation requiring kerosene lamps on scows to be kept at least eight feet above water). The *Kopczynski* court, however, affirmed the district court's conclusion that the safety regulations at issue applied only to longshoremen and harbor workers. *Kopczynski*, 742 F.2d at 558. Finding that Kopczynski was a seaman, the court decided that these regulations did not apply to him. *Id.* at 559. Therefore, Kopczynski's contributory negligence could operate to reduce the amount of his damages. *Id.* at 558-59.

Kopczynski also appealed the jury's finding that the *Jacqueline* was seaworthy. *Id.* at 559-60. The plaintiff argued that the trial court erred in refusing to charge the jury regarding the violation of safety statutes and regulations. Appellant's Opening Brief, *supra* note 14, at 22. He maintained that a proper instruction would have caused the jury to find the *Jacqueline* unseaworthy. *Id.* The circuit court rejected this claim, stating that the trial judge had acted properly in excluding the inapplicable regulations from the jury's consideration. *See Kopczynski*, 742 F.2d at 560.

Finally, Kopczynski contested the amount of his maintenance and cure award. *Id.* at 559. He claimed that counsel fees should have been included in the award. *Id.* The Ninth Circuit approved the line of cases construing the Supreme Court's *Vaughan* decision as allowing counsel fees only in the face of a shipowner's arbitrary, recalcitrant, or unreasonable failure to provide maintenance and cure. *Id.* In its answer to a special interrogatory, the jury had found that Seaward was not willful or arbitrary in failing to pay Kopczynski's maintenance and cure. *Id.* In view of Kopczynski's questionable status (longshoreman or seaman), the court maintained that the jury's conclusion was not unreasonable. *Id.* Therefore, Kopczynski was not entitled to attorneys' fees. *Id.*

118 *Id.* at 560. The court addressed only the issue of punitive damages in a Jones Act negligence case. *See id.* Because the jury found the *Jacqueline* seaworthy, the Ninth Circuit refused to decide whether a finding of unseaworthiness would support a punitive damage award. *Id.*; *see also supra* note 28 (noting distinction between negligence theory and unseaworthiness doctrine).

119 *Id.*

120 *Id.* In support of its argument, the court cited both Gulf, Colo. & S.F. Ry. v. McGinnis, 228 U.S. 173 (1913) and Michigan Cent. R.R. v. Vreeland, 227 U.S. 59 (1913). In neither of these cases was the issue of punitive damages specifically addressed. *See supra* note 5. Both decisions emphasized that recovery by a decedent's

that damages under the Jones Act should be limited to recovery of pecuniary losses.[121] The court then summarily concluded that punitive damages could not be granted in a Jones Act negligence suit because they are nonpecuniary in nature.[122] Finally, the court suggested that any reconsideration of its holding be left to Congress.[123]

The court in *Kopczynski* found support for its holding in an article written by Robert Dahlquist.[124] The article concludes that punitive damages should not be recoverable in a Jones Act case.[125] The author argues that a presumption exists that the Jones Act precludes recovery for punitive damages because the Act does not contain an express statement authorizing such an award.[126] Further, Dahlquist adopts the reasoning that FELA cases "must be controlling on the Jones Act."[127] Dahlquist notes that the FELA cases were decided before Congress passed the Jones Act and that Congress is presumed to have known that these cases limited recovery to compensatory damages.[128] Consequently, Dahlquist argues that by incorporating the FELA into the Jones Act, Congress prohibited a seaman from recovering punitive damages for employment-related injuries.[129]

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beneficiary for grief, sorrow, or loss of society is precluded. *See McGinnis*, 228 U.S. at 175-76; *Vreeland*, 227 U.S. at 72-74. More recent Supreme Court decisions have altered this position. *See* Sea-Land Servs., Inc. v. Gaudet, 414 U.S. 573 (1974) (longshoreman's representative entitled to recover damages for loss of support and services, funeral expenses, and loss of society). *But see* Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 623 (1978) (Death on the High Seas Act limits survivor's recovery to pecuniary losses); DoCarmo v. F.V. Pilgrim I. Corp., 612 F.2d 11 (1st Cir. 1979) (survivor's recovery for wrongful death under Jones Act limited to pecuniary losses).

121 *Kopczynski*, 742 F.2d at 560-61.

122 *Id.* at 561.

123 *Id.*

124 *See id.* (citing Dahlquist, *supra* note 99). The court deemed the Dahlquist article "persuasive." *Kopczynski*, 742 F.2d at 561.

125 Dahlquist, *supra* note 99, at 36.

126 *Id.* at 27-28.

127 *Id.* at 36.

128 *Id.* at 28.

129 *Id.* Dahlquist also asserts that the Jones Act is clearly analogous to state wrongful death statutes. *Id.* at 33-34. Further, he writes that because punitive damages are generally denied under those statutes, they similarly should be disallowed under the Jones Act. *Id.* at 35. This conclusion conveniently ignores wrongful death statutes in several states that expressly or impliedly permit punitive damage awards. *See, e.g.*, ALA. CODE § 6-5-410 (1975); KY. REV. STAT. § 411.130 (Cum. Supp. 1984); MASS. GEN. LAWS ANN. ch. 229, § 2 (West 1985); MISS. CODE ANN. § 11-7-13 (Cum. Supp. 1985); S.C. CODE ANN. § 15-51-40 (Law. Co-op. 1976); VA. CODE § 8.01-52 (1984). *See generally* Note, *Punitive Damages in Admiralty*, 18 HASTINGS L.J. 995, 1004-05 (1967). Furthermore, reliance on state wrongful death statutes for a complete

Dahlquist's (and by implication the *Kopczynski* court's) argument that the Jones Act does not permit recovery of punitive damages absent an express statement is unconvincing. An equally strong argument may be presented that punitive damages are recoverable under the Jones Act unless the language of the statute clearly prohibits such an award.[130] The conclusion that punitive damages are not recoverable under the Jones Act because decisions involving the FELA do not provide for their recovery is also untenable. Neither of the two decisions relied on to support this proposition addressed the issue of punitive damages.[131] In neither case did the plaintiff plead punitive damages.[132] Rather, both cases determined only the type of compensatory damages to which the particular plaintiff properly was entitled.[133]

Furthermore, Dahlquist impliedly asserts that punitive damages should be denied in Jones Act cases because seamen are currently provided with an ample measure of diverse and duplicate reparations.[134] This argument is disingenuous at best because it fails to recognize the purpose of a punitive damage award. Admittedly, an exemplary award is noncompensatory. It does not relate to any out-of-pocket loss, nor does it pretend to equal lost earnings, loss of society, or the like. It does, however, serve to punish the defendant and to deter similar conduct.[135] Punitive damages are generally recoverable in tort actions in which the defendant has been found to have disregarded the plaintiff's rights willfully, wantonly, recklessly, maliciously, or

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prohibition of punitive damages under the Jones Act disregards the fact that the Jones Act is not solely a wrongful death statute; it also provides a cause of action for personal injury. *See supra* notes 1-3 and accompanying text.

130 Unlike the Jones Act, the Death on the High Seas Act (DOHSA), for example, specifies that recovery under the Act "shall be a fair and just compensation for the *pecuniary* loss sustained by the persons for whose benefit the suit is brought." 46 U.S.C. § 762 (1982) (emphasis added). Both the DOHSA and the Jones Act were enacted in the same year. *See supra* note 1. Therefore, Congress, by choosing not to adopt language limiting Jones Act damages to pecuniary losses, clearly could have intended the Jones Act to allow a wider variety of awards. *Cf.* Dahlquist, *supra* note 99, at 23-25 (recognizing that the language chosen by Congress permits multiple interpretations),

131 *See* Gulf, Colo. & S.F. Ry. v. McGinnis, 228 U.S. 173 (1913); Michigan Cent. R.R. v. Vreeland, 227 U.S. 59 (1913).

132 *See* Gulf, Colo. & S.F. Ry. v. McGinnis, 228 U.S. 173, 173-74 (1913); Michigan Cent. R.R. v. Vreeland, 227 U.S. 59, 65 (1913).

133 *See supra* notes 5 & 120.

134 Dahlquist, *supra* note 99, at 13.

135 D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES 204 (1973).

grossly.[136] In cases in which a shipowner's actions are in flagrant violation of a seaman's rights, it is inequitable to foreclose recovery of a punitive damage award when the circumstances warrant deterrence. In addition, one court has suggested that punitive damage awards be placed into a fund to support the general class of seamen rather than to enrich individual plaintiffs.[137] Such a policy would serve both the punitive and deterrent purposes of exemplary damages without providing an individual plaintiff with a windfall recovery.

Finally, recognition of a right to punitive damages in Jones Act negligence cases will eliminate much of the confusion surrounding this important issue in maritime personal injury litigation. Several courts have determined that an injured seaman may recover punitive damages when the trier of fact finds that the vessel was unseaworthy.[138] Indeed, the *Kopczynski* court, while precluding recovery of punitive damages in a negligence action, expressly left open the possibility of exemplary damages in a case of unseaworthiness.[139] Thus, a future Ninth Circuit plaintiff can seek punitive damages if he establishes unseaworthiness, but not if he only proves negligence.

This distinction between negligence actions and unseaworthiness is unwarranted. A finding of seaworthiness means only that the vessel is fit for an ordinary sea voyage.[140] As the *Kopczynski* facts demonstrate, a seaworthy ship can be just as dangerous as an unseaworthy craft.[141] Therefore, the focus should be on the nature of the shipowner's disregard for his employee's safety rather than on the seaman's theory of liability. Such an emphasis on the owner's acts and omissions will encourage uniform application of traditional exemplary damage principles to all cases of maritime personal injury. At the same time, the threat of a punitive award will compel shipowners to keep their vessels in top condition.

In conclusion, the subject of recovery of punitive damages under the Jones Act is an area that cries out for immediate review. Legislative attention should be directed to the many inconsistencies and inequities that have arisen because of the

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136 *See id.* at 204-05.

137 *See Baptiste*, 106 Cal. App. 3d at 95, 164 Cal. Rptr. at 793.

138 *See In re* Merry Shipping, Inc., 650 F.2d 622, 624-25 (5th Cir. 1981); Baptiste v. Superior Court, 106 Cal. App. 3d 87, 103, 164 Cal. Rptr. 789, 798 (1980).

139 *See Kopczynski*, 742 F.2d at 560; *see also supra* note 118.

140 *See supra* note 28 (setting forth definition of unseaworthiness).

141 *See supra* notes 12-23 and accompanying text (outlining facts of *Kopczynski*).

imprecise language of the Jones Act. A resolution is urgently needed to calm the churning waters involving punitive damages in order to prevent future litigants and courts from foundering in a sea of uncertainty.

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