

July 1983

Wrongful Death in Admiralty: It Might be Non-Uniform, But at Least It's Not Fair

Timothy A. Andreu

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Timothy A. Andreu, *Wrongful Death in Admiralty: It Might be Non-Uniform, But at Least It's Not Fair*, 35 Fla. L. Rev. 534 (1983).

Available at: <https://scholarship.law.ufl.edu/flr/vol35/iss3/8>

This Case Comment is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

WRONGFUL DEATH IN ADMIRALTY:
IT MIGHT BE NON-UNIFORM, BUT
AT LEAST IT'S NOT FAIR

Bodden v. American Offshore, Inc.

681 F.2d 319 (5th Cir. 1982)

Appellee's seaman husband settled¹ his personal injury claim arising from an engine room explosion while appellant's vessel was on the high seas.² Over two years later he committed suicide.³ Claiming that the shipboard injuries resulted from the vessel's unseaworthiness⁴ and caused her husband's death, appellee brought a wrongful death action against appellant. On appeal the Fifth Circuit affirmed the district court judgment for appellee⁵ and HELD, the Death on the High Seas Act (DOHSA)⁶ does not preclude recovery of wrongful death damages despite decedent's prior settlement of his personal injury claim.⁷

The evolution of maritime law remedies for personal injury and wrongful death claims has been erratic and uncertain.⁸ Uniformity has been a historic goal of admiralty laws,⁹ however, inconsistencies have developed from the differing remedies available under federal statutes¹⁰ and general maritime law.¹¹ Whether a prior recovery for personal injuries bars a subsequent wrongful death action is determined by the following factors: location of the injury (coastal waters or high seas), cause of the injury (negligence or unseaworthiness), and status of the injured (seaman or nonseaman).

The remedies available to nonseamen's dependents are determined solely by the location of the injury-causing incident. General maritime law governs nonseamen dependents' remedies for death caused by an accident in coastal

1. 681 F.2d 319, 320 (5th Cir. 1982). Silbert Bodden executed a release of all his claims in exchange for \$17,500. The release states: "I fully understand that this is a complete and final release and that no more money is ever to be paid to me because of the injuries and illnesses mentioned above." *Id.* at 320 n.1 (emphasis in original).

2. *Id.* at 320. Bodden sustained permanent brain damage from the engine room explosion while serving as chief engineer on the MV *Polar 901*. *Id.*

3. *Id.* Prior to his suicide Bodden suffered severe headaches which often left him bed-ridden. *Id.*

4. *See id.* at 321.

5. *Id.* at 320. The jury found no negligence, but did find the vessel's unseaworthiness to be the legal cause of death. *Id.* at 321.

6. 46 U.S.C. §§ 761-68 (1976).

7. 681 F.2d at 332.

8. *See* Maraist, *Maritime Wrongful Death—Higginbotham Reverses the Trend and Creates New Questions*, 39 LA. L. REV. 81, 83-85 (1978).

9. *See* *The Lottawanna*, 88 U.S. 558, 575 (1875) (admiralty law should be "a system of law co-extensive with, and operating uniformly in the whole country"). *See also* *Moragne v. State Marine Line, Inc.*, 398 U.S. 375, 401 (1970).

10. *See* 46 U.S.C. §§ 761-68 (1976) (applies to deaths occurring on the high seas); *The Jones Act, id.* § 688 (provides remedies for seamen injured or killed by their employers' negligence).

11. *See* *Moragne v. State Marine Line, Inc.*, 398 U.S. 375, 408-09 (1970) (recognizing a cause of action under general maritime law for deaths occurring in territorial waters).

waters.¹² If a nonseaman suffers a mortal injury more than three nautical miles from shore,¹³ his dependents' right to recovery is governed instead by DOHSA.¹⁴ Under both general maritime law¹⁵ and DOHSA,¹⁶ nonseamen's dependents may ground their wrongful death action on negligence or unseaworthiness.

For seamen's dependents both location of the incident and cause of the injury determine the available remedies. If a vessel's unseaworthiness causes a seaman's injuries and death, his dependents' remedies are identical to those of nonseamen's dependents. Namely, general maritime law controls when death-causing injuries occur in coastal waters¹⁷ while DOHSA governs when the death results from injuries on the high seas.¹⁸ However, when employer negligence causes a seaman's injuries or death, the Jones Act¹⁹ controls whether the injuries occur on the high seas²⁰ or in coastal waters.²¹ Enacted to effectuate admiralty law's special concern for seamen and their dependents,²² the Jones Act provides the exclusive remedy for seamen and their dependents in negligence actions.²³

In *Mellon v. Goodyear*,²⁴ a non-admiralty case, the United States Supreme Court interpreted the Federal Employers Liability Act (FELA)²⁵ remedies

12. See, *id.* (*Moragne* overruled *The Harrisburg*, 119 U.S. 199 (1886), holding that a remedy for wrongful death does exist under general maritime law).

13. A nautical mile equals 6,080 feet. BLACK'S LAW DICTIONARY 895 (rev. 5th ed. 1979). Three nautical miles equal a marine league. *Id.* at 892.

14. 46 U.S.C. § 761 (1976). Congress enacted DOHSA to provide a right of action for death on the high seas beyond a marine league from any American shoreline. *Id.* Additionally, DOHSA was intended to establish uniformity in remedies available for injuries and deaths resulting from accidents on the high seas. 59 CONG. REC. 4482 (1920).

15. See *Moragne v. State Marine Line, Inc.*, 398 U.S. 375, 399-403 (1970). Until *Moragne*, general maritime law provided no remedy for wrongful death. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 6-20, at 327 (2d ed. 1975).

16. 46 U.S.C. § 761 (1976) (providing a wrongful death action based on negligence). See also *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958) (interpreting DOHSA to allow claim based on unseaworthiness).

17. See, *e.g.*, *Hlodan v. Ohio Barge Line, Inc.*, 611 F.2d 71, 75 (5th Cir. 1980) (wrongful death claim may be based on general maritime law when the incident does not occur on the high seas and when damages result from unseaworthiness).

18. *E.g.*, *Doyle v. Albatross Tanker Corp.*, 260 F. Supp. 303 (S.D.N.Y. 1965) (wrongful death actions based on unseaworthiness are within DOHSA), *aff'd*, 367 F.2d 462 (2d Cir. 1966).

19. 46 U.S.C. § 688 (1976).

20. *E.g.*, *Ivy v. Security Barge Lines, Inc.*, 606 F.2d 524, 525 (5th Cir. 1979); *Antypas v. Cia Martina San Basilio*, 541 F.2d 307 (2d Cir. 1976), *cert. denied*, 429 U.S. 1098 (1977).

21. *E.g.*, *Moragne v. State Marine Line, Inc.*, 398 U.S. 375, 397 (1970).

22. See *Cox v. Roth*, 348 U.S. 207, 209 (1955) (purpose of the Jones Act was to protect seaman). The Jones Act was also intended to achieve uniformity by giving seamen a federal right to recover for employer negligence regardless of the location of the injury. *Moragne v. State Marine Line, Inc.*, 398 U.S. 375, 401 (1970).

23. *Hopson v. Texaco, Inc.*, 383 U.S. 262 (1966) (even if injury occurs on land, the Jones Act is exclusive remedy); *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964) (for seamen's injury claim based on negligence the Jones Act is exclusive remedy); *Lindgren v. United States*, 281 U.S. 38 (1930) (Jones Act provides exclusive remedy for seamen's injury due to his employer's negligence).

24. 277 U.S. 335 (1928).

25. 45 U.S.C. §§ 51-59 (1976).

which the Jones Act incorporates as its remedies.²⁶ In *Mellon* a railroad employee, prior to his death, settled a personal injury claim with his employer.²⁷ In a subsequent wrongful death action by employee's widow, the Supreme Court held FELA only allowed recovery for either personal injuries or wrongful death.²⁸ Because the employee had previously settled his personal injury claim, there could be no recovery for wrongful death.²⁹ Admiralty courts have followed the *Mellon* holding³⁰ since the Jones Act adopts FELA's remedies.³¹ Thus, a seaman's recovery for personal injuries resulting from employer negligence bars any subsequent wrongful death action.

The Jones Act approach of mutually exclusive remedies is not applied under general maritime law. In *Sea Land Services, Inc. v. Gaudet*,³² a longshoreman was injured in coastal waters.³³ After settling his personal injury claim based on unseaworthiness,³⁴ the longshoreman died from the injuries.³⁵ The Supreme Court applied general maritime law and held decedent's prior recovery did not bar his widow's wrongful death action.³⁶ Emphasizing admiralty's special solicitude for seamen's dependents,³⁷ the Court concluded that under

26. 46 U.S.C. § 688 (1976). See G. GILMORE & C. BLACK, *supra* note 15, § 6-26, at 351.

27. 277 U.S. at 336.

28. *Id.* The pertinent language in FELA provides:

Every common carrier by railroad while engaging in commerce . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow[er] . . .

45 U.S.C. § 51 (1976) (emphasis added).

29. 277 U.S. at 336.

30. See, e.g., *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958).

31. The Jones Act states that a seaman suffering personal injury may bring an action for damages, and the federal statutory remedies for railway employees' personal injuries shall apply. The Act also makes the federal remedies applicable to wrongful death suits brought by a seaman's personal representative. 46 U.S.C. § 688 (1976). See also *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958) (Jones Act created a federal right of action for seamen's wrongful deaths based on FELA).

32. 414 U.S. 573 (1972).

33. *Id.* at 574.

34. *Id.* at 575. Gaudet recovered \$140,000 for his permanent disability, pain and suffering, and loss of earnings in an action based on unseaworthiness. *Id.*

35. *Id.* at 574.

36. *Id.* at 575. Gaudet's widow recovered nonpecuniary damages under a general maritime remedy. DOHSA and the Jones Act limit recovery to pecuniary damages. *Id.* at 573. For a criticism of *Gaudet's* lack of deference to federal statutes, see G. GILMORE & C. BLACK, *supra* note 15, § 6-33, at 369 (*Gaudet* reduced FELA and DOHSA to the equivalent of non-statutory restatements).

37. 414 U.S. at 577 (citing *Moragne v. State Marine Line, Inc.*, 398 U.S. at 401). The Court rejected the argument that its decision would result in double recovery of damages to decedent and his dependents. It stated any potential for double liability could be eliminated by applying collateral estoppel to preclude decedent's dependents from attempting to relitigate the issue of support due from decedent's future wages. *Id.* at 591-95. The issue of double liability is beyond the scope of this comment. For a discussion of this subject, see generally Fleming, *The Lost Years: A Problem in Computation and Distribution of Damages*, 50 CALIF. L. REV. 598 (1962).

general maritime law wrongful death actions exist independently of personal injury actions.³⁸

Though the *Gaudet* decedent was injured in coastal waters,³⁹ the Court did not explicitly state whether the incident's location affected its holding. This ambiguity resulted in inconsistent lower court holdings on whether to apply DOHSA or general maritime law to deaths caused by high seas injuries.⁴⁰ In *Mobil Oil v. Higginbotham*,⁴¹ the Supreme Court resolved the confusion by determining that DOHSA wrongful death provisions, with one exception, provide the exclusive remedy for deaths traceable to injuries sustained on the high seas.⁴² The exception to the pervasive DOHSA remedy arises when a seaman suffers injuries because of his employer's negligence. In those cases the mutually exclusive Jones Act remedies control.⁴³ In determining remedies for high seas wrongful deaths, the majority emphasized that courts must look to DOHSA⁴⁴ and cannot depart from its explicit terms.⁴⁵

In the instant case appellee's seaman husband died from high seas injuries caused by an unseaworthy vessel.⁴⁶ Heeding *Higginbotham's* pronouncement, the instant court examined DOHSA to determine whether decedent's personal injury claim settlement prior to death precluded appellee's wrongful death action. The court recognized the statute does not explicitly provide recovery for both personal injuries and wrongful death,⁴⁷ but concluded Congress had

38. 414 U.S. at 578. The Court declared that the injury claim and the wrongful death claim were two distinct causes of action. Since the wrongful death claim did not accrue until *Gaudet's* death, nothing he did could extinguish the claim. *Id.*

39. *Id.* at 574.

40. Compare *Soloman v. Warren*, 540 F.2d 777 (5th Cir. 1976) (DOHSA allows only pecuniary damages) and *Barbe v. Drummond*, 507 F.2d 794 (1st Cir. 1974) (DOHSA controls measure of damages on the high seas) with *Law v. Sea Drilling*, 510 F.2d 242 (federal maritime cause of action recognized in *Gaudet* supersedes DOHSA for death on any navigable waters—and can be enforced in any court), *aff'd on rehearing*, 523 F.2d 793 (5th Cir. 1975) and *Lowe v. Trans World Airlines, Inc.*, 396 F. Supp. 9 (S.D.N.Y. 1975) (DOHSA does not apply to aircraft disaster on the high seas).

41. 436 U.S. 618 (1978).

42. *Id.* at 625. The issue in *Higginbotham* was whether nonpecuniary damages were recoverable for deaths occurring on the high seas under DOHSA. *Id.* at 619. The case did not raise the issue of whether a wrongful death action is barred by the settlement of or recovery on a personal injury claim.

43. *Id.* at 621 n.11.

44. *Accord* *Public Adm'r v. Angela Compania Naviera, S.A.*, 592 F.2d 58 (2d Cir. 1979) (if DOHSA applies, general maritime remedies are superseded by DOHSA remedies); *Renner v. Rockwell Int'l Corp.*, 587 F.2d 1030 (9th Cir. 1978) (when DOHSA applies no general maritime remedy exists). *But see* *First & Merchants Nat'l Bank v. Adams*, 1979 A.M.C. 2860 (E.D. Va. 1979) (general maritime remedy may be applied as an alternative even when DOHSA applies).

45. 436 U.S. at 625. The Court acknowledged that DOHSA does not address every issue of wrongful death, but stated when DOHSA does speak directly to a question courts are not free to supplement the statute to the extent it becomes meaningless. *Id.*

46. 681 F.2d 319, 320 (5th Cir. 1982).

47. *Id.* at 331. The court referred to 46 U.S.C. § 765 (1976), which provides:

If a person die [sic] as the result of such wrongful act, neglect, or default as is mentioned in section 761 of this title during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect,

not intended to address the issue of two causes of action when it enacted DOHSA.⁴⁸ Since DOHSA does not specifically bar a widow's wrongful death action,⁴⁹ the court reasoned that *Higginbotham's* mandate prohibiting departure from DOHSA's explicit terms was inapposite.⁵⁰

After determining DOHSA was silent as to the appropriate remedy, the instant court examined general maritime law remedies. Analogizing the instant facts to those of *Gaudet*,⁵¹ the court reasoned that the widow could maintain her wrongful death action despite decedent's personal injury settlement because the wrongful death action did not accrue until decedent's death.⁵² The court concluded that supplementing DOHSA with general maritime law remedies would uphold admiralty law's special concern for seamen and their dependents.⁵³

The instant court's narrow reading of *Higginbotham* allowed it to expand the *Gaudet* general maritime remedy to wrongful death actions under DOHSA.⁵⁴ Although the court recognized its decision created inconsistency between DOHSA and the Jones Act,⁵⁵ it concluded the language of the statutes did not mandate uniting their remedies.⁵⁶ Rather, the court reasoned that establishing a consistent rule for all wrongful death actions based on unseaworthiness was the more humane alternative.⁵⁷ With the instant decision, nonseamen's dependents have a separate wrongful death action when the nonseaman's injuries occur on the high seas. This remedy also extends to seamen's dependents provided their cause of action comes under DOHSA. No longer will a decedent's prior personal injury settlement bar his dependent's wrongful death action under DOHSA.⁵⁸

or default, the personal representative of the decedent may be substituted as a party and the suit may proceed

48. 681 F.2d at 331. The court concluded § 765 was enacted to negate the common law rule that a suit for personal injuries could not survive the injured person's death. *Id.* at 331-32. *But see* *Sea Land Servs., Inc. v. Gaudet*, 414 U.S. 573, 600-01 (1972) (Powell, J., dissenting) (Congress must have intended this provision to allow only a personal injury action or a wrongful death action).

49. *Cf.* *Sea Land Servs., Inc. v. Gaudet*, 414 U.S. 573, 583 n.10 (1972) ("[DOHSA] . . . has not been interpreted, as the FELA has been, to bar wrongful-death recovery in cases where the decedent has already recovered during his lifetime for his personal injuries."). The instant court noted the "mystery of footnote 10" since no authority was given to support the proposition. 681 F.2d at 323.

50. 681 F.2d at 332.

51. *Id.* at 331.

52. *Id.*

53. *Id.* at 332. The court justified its holding by advertent to the humanitarian principles expressed in the *Gaudet* opinion and the legislative history of DOHSA. *Id.* Moreover, the court maintained that by allowing the wrongful death action it was not supplementing the DOHSA remedies to such an extent that the Act was rendered meaningless. *Id.* (citing *Mobile Oil v. Higginbotham*, 436 U.S. 618, 625 (1978)).

54. *Id.* at 333.

55. *Id.* at 333. *See supra* notes 27-31 and accompanying text for the effect of *Mellon* and its progeny on wrongful death actions after settlement under the Jones Act.

56. 681 F.2d at 322-33.

57. *Id.* at 333.

58. The instant case was decided by the Fifth Circuit and thus is not binding on other

By aligning the remedies available under general maritime law and DOHSA the instant case instills a measure of uniformity to wrongful death actions in admiralty. In the future, the fortuity of an injury-causing incident's location will not determine whether a separate wrongful death action exists for the decedent's dependents.⁵⁹ The instant court, however, could not resolve two remaining incongruities in remedies available to seamen's dependents. First, the *Gaudet* remedy is available when a seaman's death results from unseaworthiness,⁶⁰ yet denied when the death results from employer negligence.⁶¹ Second, although Jones Act seamen's dependents are denied the *Gaudet* remedy, non-seamen's dependents with wrongful death actions based on negligence may receive that remedy.⁶²

The first incongruity results from the difference in remedies available under the Jones Act as compared to general maritime law and DOHSA; therefore, whether the seamen dependent's action is based on negligence or unseaworthiness is critically important. The Jones Act dictates the exclusive remedy for seamen's dependents when death results from negligence, regardless of the incident's location.⁶³ Under the Jones Act, no separate wrongful death action can be maintained subsequent to a recovery of damages for personal injuries.⁶⁴ If a seaman's death results from unseaworthiness, however, his dependents are allowed a separate wrongful death action whether the injury was sustained in coastal waters or on the high seas. For seamen's deaths resulting from unseaworthiness in coastal waters, *Gaudet* allows a separate wrongful death action under general maritime law.⁶⁵ If the seamen's deaths result from unseaworthiness on the high seas, the instant case provides the same remedy by incorporating the *Gaudet* remedy into DOHSA.⁶⁶

The second incongruity bars seamen's dependents from receiving a remedy afforded nonseamen's dependents for wrongful deaths caused by negligence.⁶⁷

circuits. However, since DOHSA does not explicitly disallow the cause of action, the principle of admiralty law that courts should provide a remedy when not expressly so prohibited by established rules may well lead other circuit courts to adopt the instant remedy. *See The Sea Gull*, 21 F. Cas. 909 (C.C. Md. 1865) (No. 12,578).

59. *See* 681 F.2d at 333.

60. 414 U.S. 573, 575 (1972).

61. *See supra* notes 27-31 and accompanying text.

62. *Compare supra* notes 15-16 and accompanying text *with supra* notes 21-22 and accompanying text.

63. *See supra* note 23 and accompanying text.

64. Because the Jones Act incorporates FELA's remedial provisions, the interpretation of FELA in *Mellon* and its progeny eliminates the instant action for seamen's dependents whose cause of action is based on negligence. *Id. See, e.g., Flynn v. New York, New Haven & Hartford R.R. Co.*, 283 U.S. 53 (1931) (FELA action for personal injuries bars subsequent wrongful death claim); *Walrod v. Southern Pac. Co.*, 447 F.2d 930 (9th Cir. 1971) (injured employee's judgment against company eliminated any wrongful death action for his three minor children); *Gilmore v. Southern R.R. Co.*, 229 F. Supp. 198 (E.D. La. 1964) (settlement of FELA claim by railroad employee barred subsequent wrongful death action).

65. *See supra* notes 36-38 and accompanying text.

66. *See supra* notes 51-54 and accompanying text.

67. *See G. GILMORE & C. BLACK, supra* note 15, § 6-20, at 327-28. Understandably, the unseaworthiness doctrine has become the principal means of recovery by seamen or their dependents for injury or death, overshadowing the negligence action made available by the

As previously stated, dependents of Jones Act seamen are denied a *Gaudet* remedy in negligence actions. Because the Jones Act does not apply to non-seamen, general maritime law or DOHSA governs their dependents' wrongful death claims based on negligence.⁶⁸ For nonseamen's deaths resulting from negligence in coastal waters, the general maritime *Gaudet* remedy provides a separate wrongful death action despite prior recovery for personal injuries.⁶⁹ If a nonseaman's death results from negligence on the high seas, the instant case allows his dependents a *Gaudet* remedy under DOHSA.⁷⁰

These remaining incongruities undermine admiralty law's special concern for seamen and their dependents and prohibit uniformity in wrongful death remedies.⁷¹ Ironically, the Jones Act, through which Congress intended to compensate seamen's dependents for their loss, prevents them from receiving a remedy available to nonseamen's dependents.⁷² To achieve uniformity and fairness, Congress should amend the Jones Act to permit recovery of both personal injury and wrongful death damages. Giving seamen's dependents the same remedy regardless of whether the action is based on negligence or unseaworthiness will create uniformity,⁷³ and offering the same remedies to dependents of both seamen and nonseamen will promote fairness.

TIMOTHY A. ANDREU

Jones Act. *Id.* However, cases continue to arise in which unseaworthiness cannot be established and seamen or their dependents must bring their action under the Jones Act.

68. See *supra* notes 15-16 and accompanying text.

69. See *supra* notes 34-38 and accompanying text.

70. See *supra* notes 49-53 and accompanying text.

71. See *supra* note 9 and accompanying text. For a historical look at admiralty's concerns with uniformity, see Swain, *Requiem for Moragne: The New Uniformity*, 25 LOY. L. REV. 1 (1979).

72. See G. GILMORE & C. BLACK, *supra* note 15, § 6-33, at 370 (recovery is greater under general maritime law). For a table illustrating the evolution of the measure of damages since *Moragne*, see Comment, *Developments in Maritime Wrongful Death Actions*, 26 LOY. L. REV. 321, 330-31 (1980).

73. The Jones Act and DOHSA differ materially with respect to persons and geographic areas covered, availability of survival actions, schedule of beneficiaries, standard of the case, period of limitation, and forum in which suit may be brought. See Note, *Admiralty—Recovery for Wrongful Death on the High Seas Limited to Survivors' Pecuniary Loss*, 53 TUL. L. REV. 254 (1978). See also G. GILMORE & C. BLACK, *supra* note 15, § 6-29, at 359 (although DOHSA and the Jones Act were enacted almost simultaneously, they were hopelessly inconsistent with each other). By eliminating the Jones Act's wrongful death provision the inconsistency regarding the availability of survival actions would no longer exist and the impact of the other inconsistencies would be lessened.