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FOSTERING UNIFORM SUBSTANTIVE LAW AND RECOVERY—THE DEMISE OF PUNITIVE DAMAGES IN ADMIRALTY AND MARITIME PERSONAL INJURY AND DEATH CLAIMS.

Thomas M. DiBiagio†

I. INTRODUCTION

Punitive damages are awarded by juries to express outrage or to punish a defendant for flagrant misconduct.¹ The current movement for statutory tort reform is based, in part, on the belief that the civil justice mill is out of control, as evidenced by excessive punitive damage awards.² Nevertheless, whether limiting punitive damage awards will temper the nonsense and avarice surrounding civil litigation is doubtful.³

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1. RESTATEMENT (SECOND) OF TORTS § 908 (1977); see, e.g., *Smith v. Wade*, 461 U.S. 30, 54 (1983).
2. See Neil A. Lewis, *Senate, 61-37 Approves Narrow Punitive Damages Curbs*, N.Y. TIMES, May 11, 1995, at B10 (describing national legislation limiting punitive damages awards in product liability claims to two times compensatory damages or \$250,000, whichever is greater, and also giving trial judge authority to increase award above limit and rejecting earlier version which limited punitive damage award in all civil cases); see also Richard Schmitt, *While Congress Debates, States Limit Civil Lawsuits*, WALL ST. J., June 16, 1995, at B1 (discussing legislation in thirty states that seeks to limit punitive damages); Iver Peterson, *Agreement Paves the Way for Liability Law Changes*, N.Y. TIMES, May 16, 1995, at B5 (discussing proposal to change New Jersey state law to limit punitive damages to \$350,000 or five times the compensation awarded for medical bills and loss of income, whichever is greater).
3. Tort law is concerned with securing justice by providing victims access to, and a reasonable remedy from, the civil justice system. The debate about whether punitive damages are an appropriate means of fair compensation is proper. Unfortunately, reforming the remedy is only one part of the solution. Access to the civil justice system has been extended and applied in ways that go well beyond the intended boundaries. Until such time that a paradigm shift occurs to restrict the unlimited access to the civil justice system, tort law will continue to be used by lawyers as a means to generate industry profit. See, e.g., Gina Kolata, *A Case of Justice, or a Total Travesty? Researchers Say Bad Science Won the Day in Breast Implant Battle*, N.Y. TIMES, June 13, 1995, at D1 (describing that, after years of litigation that led to breast implant maker Dow Corning Corporation's petition for bankruptcy protection, there is no scientific evidence that implants cause serious disease); Barry Meier, *Fistfuls of Coupons, Millions for Class-Action Lawyers, Script for Plaintiffs*, N.Y. TIMES, May 26, 1995, at D1 (describing recent trend in class action suits to construct settlements that give consumers worthless coupons but that give lawyers millions of dollars in fees).

Precluding the recovery of punitive damages in admiralty and maritime personal injury and death claims has moved well beyond a fashion statement. Maritime law, unlike the common law of tort, has not demonstrated a long-standing fidelity to punitive damage awards. In fact, the two federal maritime statutes applicable to maritime tort recovery in death claims preclude any award of punitive damages.⁴ In contrast to statutorily-governed recoveries, however, punitive damages usually have been recoverable in maritime personal injury and death claims brought under general, or common law, maritime law.

Recently, however, in *Miles v. Apex Marine Corp.*,⁵ the Supreme Court laid a foundation for the elimination of punitive damages in general maritime law actions. In *Miles*, the Court held that in an action for the wrongful death of a seaman, brought under general maritime law, recovery should be limited to pecuniary damages.⁶ According to the Court, such a holding was necessary in order to foster uniformity in substantive law and recovery in general and statutory admiralty and maritime death actions.⁷

Since *Miles*, lower courts have handed down decisions that have thoroughly argued both sides of the question of the continued recoverability of punitive damages under general maritime law. Cases decided in the First, Second, Fifth, Sixth, Ninth and Eleventh

4. The two federal legislative remedies are the Jones Act and the Death on the High Seas Act [hereinafter DOHSA]. The Jones Act provides a negligence cause of action to seamen injured or killed in the course of their employment. 46 U.S.C. § 688 (1988). DOHSA provides for both a negligence and an unseaworthiness cause of action for the death of any person killed on the high seas (defined as three miles from shore). *Id.* § 761.

5. 498 U.S. 19 (1990).

6. *Id.* at 32-34.

7. *Id.* at 33. Pecuniary damages are material or actual losses that are susceptible to valuation. Pecuniary damages generally consist of funeral expenses, related medical expenses, pain and suffering inflicted upon the plaintiff (in death cases pain and suffering inflicted upon the decedent prior to death) and loss of financial support or services from a dependent beneficiary. Non-pecuniary damages are more speculative and consist of loss of society, loss of consortium, loss of companionship, loss of love and affection, loss of comfort, grief and mental anguish, loss of future income or economic loss and punitive damages. See *Calhoun v. Yamaha Motor Corp.*, 40 F.3d 622, 637 (3d Cir. 1994), *cert. granted*, 115 S. Ct. 1998 (1995); *Newhouse v. U.S.*, 844 F. Supp. 1389, 1393 n.2 (D. Nev. 1994); *In re Waterman S.S. Corp.*, 708 F. Supp. 1093, 1095 (E.D. La. 1992); *Howard v. Crystal Cruises*, 1992 AMC 1645, 1650 n.2 (E.D. Cal. 1992); see also *Schumacher v. Cooper*, 850 F. Supp. 438, 453 (D.S.C. 1994) (consortium damages include loss of love and affection, companionship and society, comfort, aid, advice and solace, rendering of material services and any other elements that normally arise in a close, intimate and harmonious marriage relationship); *Anderson v. Texaco*, 797 F. Supp. 531, 534 (E.D. La. 1992) (punitive damages are non-pecuniary).

Circuits have held that *Miles* precludes the recovery of punitive damages in all maritime personal injury and wrongful death actions brought under general maritime law.⁸ In contrast, other cases decided in the Sixth, Seventh, Ninth and Eleventh Circuits, although the courts recognized that punitive damages were precluded under federal maritime statutes, have rejected the notion that *Miles* precludes the recovery of punitive damages in unseaworthiness or negligence-based claims under general maritime law.⁹ These courts have limited *Miles* to its facts and have carved out exceptions.

The courts that decided not to extend *Miles*'s preclusion of punitive damages did so in three instances: first, in wrongful death or survival claims brought under general maritime law arising from the death of a non-seaman in state territorial waters; second, in survival claims brought under general maritime law arising from the death of a non-seaman on the high seas; and, third, in all personal injury actions brought under general maritime law.

The decisions of these courts, however, are misguided. *Miles* does preclude the recovery of punitive damages in maritime personal injury and death claims.¹⁰ This preclusion should be extended beyond the limited facts of *Miles* because of the disarmingly simple need to foster uniform substantive law and to eliminate inconsistent recovery schemes. *Miles* eliminated the availability of punitive damages in actions arising out of a seaman's fatal injury. If punitive damages are no longer available in claims resulting from *fatal* injuries to seamen, it follows that these damages should also be barred in personal injury claims arising from *non-fatal* injuries to seamen. Furthermore, if punitive damages are no longer available in claims arising from the death or injury of a *seaman*, the traditional ward of maritime law, it would be incongruous to permit the recovery of punitive damages in actions arising from the injury or death of a *non-seaman*.

Maritime law has not been firmly committed to awarding punitive damages, but it has demonstrated a fidelity to the ideals of uniformity and predictability in its substantive law. *Miles*'s holding was based on the desire to foster an ordered system of

8. *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995); *Glynn v. Roy Al Boat Mgmt. Corp.*, 57 F.3d 1495 (9th Cir. 1995); *Wahlstrom v. Kawasaki Heavy Indus.*, 4 F.3d 1084 (2d Cir. 1994); *Miller v. American President Lines*, 989 F.2d 1450 (6th Cir. 1993); *Frantz v. Brunswick Corp.*, 866 F. Supp. 527 (S.D. Ala. 1994); *Horsley v. Mobil Oil Corp.*, 825 F. Supp. 424 (D.N.H. 1993), *aff'd*, 15 F.3d 200 (1st Cir. 1994).

9. *In re American Dredging Co.*, 873 F. Supp. 1539 (S.D. Fla. 1994); *Emery v. Rock Island Boatworks, Inc.*, 847 F. Supp. 114 (C.D. Ill. 1994); *In re Cleveland Tankers*, 843 F. Supp. 1157 (E.D. Mich. 1994).

10. *Miles*, 498 U.S. at 31.

recovery in admiralty and maritime personal injury and death actions.¹¹ *Miles* did not specifically address the question of whether punitive damages would continue to be available in general maritime law personal injury and death actions, but *Miles*'s rationale mandates the preclusion of punitive damage awards in all maritime personal injury and death cases irrespective of the maritime status of the plaintiff or of the situs of the injury. Until such time as the Supreme Court resolves the question, however, continuous, inconsistent recovery schemes among the circuits will continue.

II. *MILES V. APEX MARINE CORPORATION*

A plaintiff who seeks to bring an action under general maritime law arising from a death has standing to do so under two causes of action.¹² A "survival action" is an action to recover damages that the decedent could have recovered but for his death.¹³ The other cause of action, a "wrongful death action," permits the decedent's dependents to bring an action to recover damages for the injury that they have suffered as a result of the decedent's death.¹⁴ A wrongful death right of action belongs to the decedent's dependents and is independent of any right of recovery the decedent may have had for his injury.¹⁵

In *Miles v. Apex Marine Corp.*,¹⁶ a seaman was murdered by a fellow crewman while onboard a vessel in state territorial waters.¹⁷ The decedent's mother brought two separate wrongful death actions. The first action was a negligence-based action under the Jones Act against her son's employer, and the second action was an unseaworthiness-based action under general maritime law against both the charterer and the operators.¹⁸ Under these wrongful death

11. *See id.* at 36 ("We will not create, under our admiralty powers, a remedy . . . that goes well beyond the limits of Congress' ordered system of recovery for seamen's injury and death.").

12. The traditional rule was that there was no right of survival under general maritime law. Recently, however, the lower courts have declined to follow this rule and have recognized a survival right of action under general maritime law. *See, e.g.,* *Davis v. Bender Shipbuilding and Repair Co.*, 27 F.3d 426, 429 (9th Cir. 1994).

13. *Wahlstrom v. Kawasaki Heavy Indus.*, 4 F.3d 1084, 1093 (2d Cir. 1994).

14. *Id.* at 1094; *Shield v. Bayliner Marine Corp.*, 822 F. Supp. 81, 83 (D. Conn. 1993).

15. *See Shield*, 822 F. Supp. at 83 ("Generally, a wrongful death action seeks to recover damages to beneficiaries resulting from the decedent's death. In contrast, a survival action is designed to recover damages the decedent could have recovered but for his death.").

16. 498 U.S. 19 (1990).

17. *Id.* at 21.

18. *Id.*

actions, the decedent's mother sought to recover punitive and other non-pecuniary damages.¹⁹ The decedent's estate brought similar survivor actions and sought to recover compensation both for the pain and suffering of the decedent prior to his death and for lost future income.²⁰

The jury in *Miles* found that the employer was negligent but that the ship was seaworthy. As a result, the jury awarded damages for: (1) loss of support and services pursuant to the negligence-based action under the Jones Act and (2) pain and suffering pursuant to the survival action under general maritime law.²¹ The jury refused to award damages for loss of society under the negligence-based action because it found that the mother had not been financially dependent on the decedent.²²

The Fifth Circuit reversed the lower court's finding of seaworthiness and remanded the case with instructions to review the damage award.²³ However, the appellate court determined that there could be no recovery under general maritime law for non-pecuniary damages.²⁴ The court also agreed that a non-dependent parent could not recover for loss of society in a general maritime wrongful death action.²⁵

The Supreme Court affirmed the Fifth Circuit's holding, agreeing that the recovery available in a general maritime law wrongful death action was limited to pecuniary damages. In its decision, the Court resolved two issues. The Court decided that non-pecuniary damages were not available in either wrongful death actions under the Jones Act or in wrongful death actions under general maritime law arising out of a seaman's death occurring in state territorial waters.

The Supreme Court, by relying on the express limitation contained in DOHSA,²⁶ found that recovery under the Jones Act was limited to pecuniary damages.²⁷ The Court then determined that

19. *Id.*

20. *Id.* The district court struck down the claim for punitive damages. *Id.*

21. *Id.*

22. *Id.*

23. *Miles v. Melrose*, 882 F.2d 976, 982-83 (5th Cir. 1989).

24. *Id.* at 985-89.

25. *Id.* The Fifth Circuit also affirmed the district court's dismissal of the plaintiff's punitive damage claims on the ground that the evidence was insufficient for the jury to find wanton and willful conduct. *Id.* at 989.

26. 46 U.S.C. § 761.

27. *Miles*, 498 U.S. at 31-32. The Court explained:

[A]n admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also

wrongful death damages under general maritime law were available to seamen killed in state territorial waters.²⁸ Because the Jones Act limited the remedies available to injured or dead seamen to pecuniary damages, however, the Court concluded that such a general maritime cause of action could not afford the seamen any greater rights of recovery. The Court reasoned that it would be inappropriate to provide more expansive remedies in a general maritime law claim than those remedies that Congress had allowed under the Jones Act.²⁹ The Court stated:

It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence. We must conclude that there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman.³⁰

Thus, the plaintiff's claim for loss of support or services was compensable but only to the extent that the family anticipated future pecuniary benefits from the support or services to be rendered to the surviving family by the deceased.³¹

III. THE RECOVERY OF PUNITIVE DAMAGES IN MARITIME PERSONAL INJURY AND DEATH CLAIMS

A. *Deaths in State Territorial Waters*

1. Causes of Action

Actions arising from an individual's death in state territorial waters that fall within the admiralty and maritime jurisdiction are

keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and admiralty courts must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Id. at 27.

28. *Miles*, 498 U.S. at 29-30.

29. *Id.* at 33-34.

30. *Id.* at 32-33.

31. *Id.* The Court was also presented with the issue of whether there was a survival right of action under general maritime law. Despite the traditional rule that there was no survival action in admiralty and maritime law, the Court recognized the existence of a survivor right of action under the Jones Act. The Court noted that several lower courts had also recognized a survival right of action under general maritime law. Nonetheless, the Court held that lost future income was not recoverable under the Jones Act and, thus, was not recoverable under any general maritime law survivor right of action. As a result, the Court declined to decide whether there was a survivor right of action under general maritime law. *Id.* at 34.

divided according to the status of the plaintiff.³² For example, there are two possible maritime causes of action when a “non-seaman” is killed in state territorial waters. The first cause of action is a negligence claim under general maritime law. The second cause of action is an unseaworthiness claim, also under general maritime law.³³ These two causes of action may be raised by either the decedent’s dependent, in a wrongful death action, or by his estate, in a survivor action.

On the other hand, there are three possible causes of action under maritime law when a “seaman” is killed in state territorial waters. The first cause of action is a negligence action against his employer under the Jones Act.³⁴ The second cause of action is an

32. Throughout this discussion, the term “passenger” will also be used to refer to the general class of non-seamen plaintiffs.

33. An unseaworthiness action is brought under general maritime law and arises out of an alleged defective condition of the vessel. Seaworthiness is “a warranty premised on the theory that a vessel owner warrants . . . a seaworthy vessel and crew.” *Smallwood v. American Trading & Transp. Co.*, 839 F. Supp. 1377, 1379 (N.D. Cal. 1993). Owners and operators of vessels can be held strictly liable for breaching this warranty. *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944); *Smallwood*, 837 F. Supp. at 1379 (“Unseaworthiness . . . is a form of strict liability imposed upon the vessel owner for failure to supply a seaworthy vessel and crew.”). Specifically, owners and operators of vessels are liable under an unseaworthiness action if they breach the absolute duty they owe to maintain the ship and appurtenances in a reasonably fit condition for their intended use. *Donaghey v. Ocean Drilling & Exploration Co.*, 1992 AMC 528, 531 (E.D. La. 1991) (citing *Smith v. Ithica Corp.*, 612 F.2d 215, 219 (5th Cir. 1980), to support claim that “[a] seaman may recover for unseaworthiness upon proof that the shipowner has failed to furnish a vessel and equipment reasonably fit for their intended use”); *Mistich v. Pipelines, Inc.*, 609 So. 2d 921, 931 (La. Ct. App. 1992) (citing *Vargas v. McNamara*, 608 F.2d 15 (1st Cir. 1979), to support claim that unseaworthiness may arise from the employment of unsafe method of work such as the shipowner’s failure to provide adequate equipment for the performance of assigned task or necessary safety equipment); *see also id.* (citing *Johnson v. Offshore Express, Inc.*, 845 F.2d 1347 (5th Cir. 1988), *overruled by* *Bridgett v. Odeco, Inc.*, 646 So. 2d 1249, 1251-54 (La. Ct. App. 1994)).

A claim of unseaworthiness was raised by the plaintiff in *In re Mardoc Asbestos Case Clusters 1, 2, 5 and 6*, 768 F. Supp. 595, 598-600 (E.D. Mich. 1991). In this case, the district court rejected the plaintiff’s contention that punitive damages could be awarded in an unseaworthiness claim under general maritime law. The court determined that the duty of the shipowner to maintain a seaworthy vessel was absolute and that it existed regardless of the shipowner’s fault. Moreover, the court reasoned that, because a shipowner was strictly liable for injuries caused by unseaworthy conditions, his state of mind in allowing such conditions to exist was irrelevant. As a result, because punitive damages could be awarded only when a defendant’s state of mind could be shown, the court concluded that punitive damages could not be awarded in an action for unseaworthiness. *Id.*

34. The Jones Act creates a right of action for injury and death to seamen caused

unseaworthiness claim against either the decedent's employer or any third party under general maritime law.³⁵ The final cause of action is a negligence action against a third party under general maritime law.³⁶ These three causes of action may be asserted by either the seaman's dependent, in a wrongful death action, or by his estate, in a survivor action.

2. Cases Precluding the Recovery of Punitive Damages

Both the Jones Act and the Supreme Court's decision in *Miles v. Apex Marine Corp.* prohibit the recovery of punitive damages in

by the negligence of their employers. 46 U.S.C. § 688. Any claim under the Jones Act must be brought by a seaman and must arise out of an injury occurring within the scope of his employment. *Id.* Negligence is the only basis for liability, and the only proper defendant is the seaman's employer. *Id.* The Jones Act is also not limited by a geographical or situs requirement and, thus, provides a seaman with recovery whether he is killed or injured in state waters or on the high seas. *Id.*; see *Reeves v. Mobile Dredging & Pumping Co.*, 26 F.3d 1247, 1250 (3d Cir. 1994) (stating that the Jones Act provides a cause of action for negligence against an employer for any seaman injured in the course of his employment). Establishing that the injured party is a seaman is the threshold issue in any Jones Act claim. To establish that the injured party is a Jones Act seaman he must demonstrate that at the time of the injury or death: (1) he maintained a connection to a vessel in navigation that is substantial in both its duration and its nature, (2) the vessel was in navigation, and (3) his employment contributed to the function of the vessel or accomplishment of its mission. *Chandris, Inc. v. Latsis*, 115 S. Ct. 2173, 2190-91 (1995); *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991); *Mitola v. Johns Hopkins Univ. Applied Physics Lab.*, 839 F. Supp. 351, 355 (D. Md. 1993) (explaining that to qualify as a seaman under the Jones Act, an individual is not required to have aided in navigation duties but must have contributed to the function of the vessel or accomplishment of its mission).

"A Jones Act plaintiff enjoys two significant advantages over the plaintiff in a common-law negligence case. First, the standard of care owed to a seaman is higher than the common-law standard." *Brown v. State*, 816 P.2d 1368, 1372 (Ala. 1991). "Second, the Jones Act plaintiff's burden on the issue of causation has been described as 'featherweight.'" *Id.* at 1372-73. "That burden is satisfied if the plaintiff establishes 'that employe[r]'s negligence played any part, even the slightest, in producing the injury or death for which damages are sought.'" *Id.* "[U]nder the Jones Act, a vessel owner will be deemed negligent if he fails to exercise reasonable care to maintain a reasonably safe work environment." *Ceja v. Mike Hooks, Inc.*, 690 F.2d 1191, 1193 (5th Cir. 1982). "[T]he slightest negligence is sufficient to sustain a finding of liability [under the Jones Act]." *Ward v. American Haw. Cruises*, 719 F. Supp. 915, 922 (D. Haw. 1988).

35. *Miles*, 498 U.S. at 32-33; see, e.g., *Rollins v. Peterson Builders*, 761 F. Supp. 943 (D.R.I. 1991).

36. The Third Circuit recently chronicled the development of the causes of action arising from a death in admiralty and maritime law and held that federal admiralty law does not preempt the application of state survival statutes for the death of recreational boaters (non-seamen) within territorial waters. See *Calhoun*, 40 F.3d at 630-37.

wrongful death or survival actions against the employer of a seaman killed in state territorial waters.³⁷ The Sixth Circuit has extended *Miles* to preclude the recovery of punitive damages in general maritime law claims arising from the death of a seaman in state territorial waters as well. In *Miller v. American President Lines, Ltd.*,³⁸ the Sixth Circuit held that punitive damages were not available in a seaman's unseaworthiness-based wrongful death action under general maritime law.³⁹ In *Miller*, two claims were asserted against several vessel owners based on the decedent's exposure to asbestos and other toxic chemicals.⁴⁰ The decedent's dependents asserted a negligence-based wrongful death action under the Jones Act and an unseaworthiness-based wrongful death action under general maritime law.⁴¹ The plaintiffs sought to recover punitive damages pursuant to the unseaworthiness claim.⁴² Relying on *Miles*, the defendants argued that punitive damages were not available under general maritime law. The district court rejected this contention and refused to extend *Miles* beyond its facts.⁴³ The jury awarded punitive damages and the defendants appealed.

On appeal, the Sixth Circuit reversed the lower court's decision. Unlike the district court, the Sixth Circuit concluded that *Miles* was controlling.⁴⁴ The court first noted that *Miles* precluded any award of punitive damages under the Jones Act.⁴⁵ The court then found that the goal of *Miles* was to articulate a uniform rule regarding the availability of non-pecuniary damages in all death claims brought by seamen, regardless of whether the action was brought under the Jones Act or under general maritime law.⁴⁶ The circuit court, thus, held that because punitive damages were not available under the Jones Act, punitive damages must be similarly unavailable in a general maritime law unseaworthiness action for the wrongful death of a seaman.⁴⁷

The court was concerned about the inconsistency that would result from allowing the recovery of punitive damages in general maritime law actions but not in Jones Act actions and concluded that such inconsistency was unacceptable and contrary to the goals

37. See *Smallwood*, 839 F. Supp. at 1380 (Jones Act and DOHSA limit recovery to pecuniary loss).

38. 989 F.2d 1450 (6th Cir.), cert. denied, 114 S. Ct. 304 (1993).

39. *Id.* at 1454.

40. *Id.* at 1453.

41. *Id.* at 1454.

42. *Id.*

43. *Id.* at 1455.

44. *Id.*

45. *Id.*

46. *Id.* at 1457.

47. *Id.*

of establishing a uniform compensation scheme.⁴⁸ The court explained:

The question before us is whether the unavailability of punitive damages under the Jones Act precludes recovery of punitive damages under a general maritime law unseaworthiness claim for the wrongful death of a seaman. Our analysis of this question must be guided by the reasoning of the Supreme Court in *Miles*.⁴⁹

Under *Miles*, then, the goal of this court is to articulate a uniform rule regarding the availability of punitive damages in all actions for the wrongful death of a seaman.⁵⁰

Allowing punitive damages would create two major inconsistencies in federal maritime wrongful death law. First, punitive damages would be available for some deaths occurring in territorial waters but not for deaths occurring on the high seas. Second, punitive damages would be available for seamen's deaths occurring in territorial waters due to unseaworthiness but not for those due to negligence. . . . [N]o court should reintroduce inconsistencies into federal maritime wrongful death law without strong policy reasons.⁵¹

The Second Circuit has also extended *Miles* to preclude the recovery of punitive damages in general maritime law claims arising from the death of a passenger in state territorial waters. In *Wahlstrom v. Kawasaki Heavy Industries, Ltd.*,⁵² the decedent was killed when his jet ski collided with a power boat on the Thames River in Connecticut.⁵³ His survivors brought negligence-based wrongful death and survivor actions under general maritime law.⁵⁴ Because the decedent was not a seaman and because the injury occurred on state territorial waters, neither the Jones Act nor DOHSA were controlling. The court applied *Miles*'s holding and denied the recovery of loss of society damages by the non-dependent parents.⁵⁵ The court held that under the plaintiffs' general maritime law wrongful death action, the plaintiffs were limited to recovering the amounts that they had paid

48. *Id.* at 1458.

49. *Id.* at 1455.

50. *Id.* at 1457.

51. *Id.* at 1457-58 (footnotes omitted).

52. 4 F.3d 1084 (2d Cir. 1993).

53. *Id.* at 1093.

54. *Id.*

55. *Id.* at 1092-93.

for any funeral expenses and for related medical expenses.⁵⁶ The plaintiffs were also precluded from recovering any damages for mental anguish.⁵⁷ The court allowed recovery, however, for loss of support and services to the extent that the plaintiffs anticipated future pecuniary benefits from support or services to be rendered to them by their deceased son.⁵⁸ As for the plaintiffs' survivor action, the court ruled that recovery could be had for the pain and suffering inflicted upon the decedent prior to his death.⁵⁹ Recovery for loss of future earnings and loss of enjoyment of life was not allowed.⁶⁰

The Second Circuit next addressed the question of the availability of punitive damages and held that the prohibition of the recovery of non-pecuniary damages under the plaintiffs' general maritime law wrongful death and survivor rights also barred the recovery of punitive damages.⁶¹ The court explained:

We are in general agreement with the view that plaintiffs who are not allowed by general maritime law to seek non-pecuniary damages for loss of society should also be barred from seeking non[-]pecuniary punitive damages. In addition, a number of district courts have invoked the Supreme Court's ruling in *Miles* as a basis to disallow punitive damages for claims under the general maritime law in order to further uniformity between that law and the analogous federal statutes, DOHSA and the Jones Act. Most of these cases involved claims by seamen, and there are a few district court rulings to the contrary. Overall, however, this post-*Miles* authority lends additional support to our conclusion that the [plaintiffs] should not be allowed to pursue punitive damages under the general maritime law.⁶²

The Supreme Court of Alabama applied similar reasoning in *Choat v. Kawasaki Motors*.⁶³ In *Choat*, the decedent was hit by a jet ski and was killed while relaxing on an inflatable float on the Tennessee River.⁶⁴ The decedent's mother filed a negligence-based

56. *Id.* at 1093.

57. *Wahlstrom*, 4 F.3d at 1093 (holding grief and mental anguish non-compensable under federal maritime law).

58. *Id.*; see also *Zicherman v. Korean Air Lines Co.*, 43 F.3d 18, 22 (2d Cir. 1994) ("Under federal maritime law the rule is well-established that only dependents may recover damages for loss of decedent's society.').

59. *Wahlstrom*, 4 F.3d at 1093.

60. *Id.* at 1093-94.

61. *Id.* at 1093.

62. *Id.* at 1094 (citations omitted).

63. 1994 AMC 2626 (Ala. 1994).

64. *Id.* at 2627.

wrongful death action seeking punitive damages.⁶⁵ The trial court concluded that general maritime law applied and dismissed the plaintiff's punitive damage claim.⁶⁶ Although the court recognized that *Miles* did not directly address the question of the availability of punitive damages, the court found that the rule established in *Miles* precluded the recovery of all non-pecuniary damages, including punitive damages.⁶⁷ The court reasoned that to allow punitive damages under general maritime law when they were not recoverable under the primary maritime statutes would be contrary to the decision in *Miles*.⁶⁸ The court also noted that the Supreme Court, in *Miles*, cautioned against recognizing general maritime law remedies that were more expansive than those available under the extensive maritime statutory scheme.⁶⁹

65. *Id.*

66. *Id.*

67. *Id.* at 2640.

68. *Choat*, 1994 AMC at 2640.

69. *Id.* at 2640-42. In *Walker v. Braus*, 861 F. Supp. 527 (E.D. La. 1994), the operator of a fishing boat died when his boat collided with another vessel on the Turtle Bayou in Louisiana state territorial waters. *Id.* at 529. His wife and child brought a survival action seeking to recover non-pecuniary damages. *Id.* Relying on *Miles*, the court rejected the plaintiffs' damage claim and held that non-pecuniary damages were not recoverable. *Id.* at 533. The court explained:

The Supreme Court's decision in *Miles* is important in two respects.

First, the Supreme Court has indicated that the policy of providing uniformity in the type of damages recoverable in a maritime wrongful death action, whether brought pursuant to statute or the common law, is an important ingredient in determining whether certain types of damages—such as loss of society—are recoverable. Second, *Miles* represents a doctrinal shift away from a broad reading of "special solicitude" and toward a more narrow one. Rather than provide "special solicitude" . . . the Supreme Court has indicated in *Miles* that uniformity in maritime law requires that those who sue under general maritime law receive no more "solicitude" than those who sue under the DOHSA or the Jones Act.

Id. (citations omitted).

In *Shield v. Bayliner Marine Corp.*, 822 F. Supp. 81 (D. Conn. 1993), a passenger was killed in a boating accident on the Potomac River. *Id.* at 82. His estate filed a survival action under general maritime law against the defendant. *Id.* The district court held that funeral expenses and pre-death pain and suffering were compensable. *Id.* at 83. Lost future earnings and loss of enjoyment of life were found not to be recoverable. *Id.* at 83-84. The plaintiff noted that such damages were recoverable by a seaman and attempted to persuade the court to draw a distinction between seamen and passengers. The court, however, rejected the plaintiff's plea. *Id.*

In *Rollins v. Peterson Builders, Inc.*, 761 F. Supp. 943 (D.R.I. 1991), a seaman was electrocuted and killed while working on board a research vessel. *Id.* at 944. Her parents subsequently asserted a wrongful death action for negligence under the Jones Act and for unseaworthiness under general maritime law seeking to recover punitive damages. *Id.* The defendants moved to strike

3. Cases Permitting the Recovery of Punitive Damages

Not all courts, however, have precluded the recovery of punitive damages in general maritime cases. In *Cleveland Tankers, Inc. v.*

the punitive damage claim based on the Supreme Court's decision in *Miles* and argued the following two points: (1) that punitive damages were non-pecuniary in nature, and were, therefore, not available under the Jones Act and (2) that because these damages were not available under the Jones Act, "then, in keeping with the desire to create uniformity in maritime law, punitive damages should not [have been] available under general maritime law." *Id.* at 945. The district court held that punitive damages were not available under the Jones Act because recovery under the Jones Act was limited to pecuniary damages. *Id.* at 948. The court also held that the plaintiffs were precluded from recovering punitive damages under their general maritime law claim. *Id.* The court declined to permit the recovery of punitive damages in claims arising from a death in state territorial waters so as not to create an inconsistency with the preclusion set forth in DOHSA. *Id.* at 949. The court explained:

If this Court were to allow punitive damages for wrongful death pursuant to general maritime law, we would be *creating* an inconsistency. DOHSA clearly does not allow punitive damages for wrongful death on either a theory of negligence of [sic] unseaworthiness. A DOHSA plaintiff, one whose decedent died "on the high seas" is precluded from a remedy under general maritime law. A Jones Act seaman, however, is not precluded from such a general maritime recovery because unlike DOHSA, the Jones Act only provides remedies for negligence, not unseaworthiness. If Jones Act seamen could get recovery for wrongful death within coastal waters that included punitive damages, they would be allowed a remedy that is unavailable to others who die "on the high seas." Such an anomaly would fly in the face of the *Apex* Court's admonition that remedies may only be supplemented where the application will be uniform.

Id. at 949-50 (citations omitted) (internal quotations omitted).

The court also held that the preclusion in *Miles* applied both to the plaintiffs' wrongful death and to their survival claims. The court explained:

Because punitive damages are not *losses*, they are not recoverable under the Jones Act nor are they recoverable under general maritime law pursuant to the allowed survival action. In the instant case, this means that although the plaintiffs have survival claims sounding in negligence and unseaworthiness, their claim for punitive damages under these theories is not viable. Punitive damages, like the lost future earnings disallowed in *Apex*, are not *losses* suffered during the decedent's lifetime.

Id. at 950 (internal quotations omitted); *see also* *Smith v. Trinidad Corp.*, 992 F.2d 996, 996 (9th Cir. 1993) (per curiam) (holding loss of society and loss of consortium unavailable under either Jones Act or general maritime law); *Trident Marine, Inc., v. M/V Atticos*, 876 F. Supp. 832, 837 (E.D. La. 1994) (barring the recovery of non-pecuniary damages from third-party defendant in general maritime claim arising from the death of a seaman in state territorial waters); *Carnival Cruise Lines v. Red Fox Indus.*, 813 F. Supp. 1185, 1187 (E.D. La. 1993) (holding loss of society damages precluded in suit under general maritime law by heirs of seaman against non-employer); *Cantore v. Blue Lagoon Water Sports, Inc.*, 799 F. Supp. 1151, 1153-54 (S.D. Fla. 1992) (holding that

American S.S. Co.,⁷⁰ the United States District Court for the Eastern District of Michigan held that a Jones Act seaman could recover non-pecuniary damages in a negligence-based wrongful death action under general maritime law against a defendant who was not his employer.⁷¹ In *Cleveland Tankers*, the defendants argued for the extension, beyond DOHSA claims, of the limitation on damages established in *Miles* claiming that the limit on punitive damages should also apply to general maritime claims against third party defendants.⁷² The defendants reasoned that to hold otherwise would be to restore the “very inconsistencies sought to be eliminated in *Miles* and *Miller*.”⁷³ The federal district court rejected this contention and concluded that the defendants’ argument called for “too broad” of an extension of *Miles*.⁷⁴ The court explained that *Miles* was limited to claims by a Jones Act seaman against his employer.⁷⁵ This reading of *Miles* was necessary, in the court’s view, to maintain consistency in recovery of damages for claims brought under the Jones Act.⁷⁶ Apparently, the court’s concern for uniformity did not extend beyond claims brought under DOHSA and the Jones Act and, thus, did not preclude recovery of punitive damages in cases involving general maritime law claims.⁷⁷

preclusion in *Miles* applies to general maritime law death action involving a non-seaman killed in state territorial waters); *Bridgett v. Odeco, Inc.*, 646 So. 2d 1254 (La. Ct. App. 1994) (holding punitive damages not available under general maritime law), *overruling* *Mistich v. Pipelines, Inc.*, 609 So. 2d 921, 931 (La. Ct. App. 1992).

70. 843 F. Supp. 1157 (E.D. Mich. 1994).

71. *Id.*

72. *Id.* at 1158.

73. *Id.*

74. *Id.*

75. *Id.* at 1158-59.

76. *Id.* at 1160.

77. *Id.* The Third Circuit held that the estate of a non-seaman killed in state territorial waters could recover punitive damages under state law. *Calhoun v. Yamaha Motor Corp.*, 40 F.3d 622 (3d Cir. 1994), *cert. granted*, 115 S. Ct. 1998 (1995). In *Calhoun*, the plaintiff was killed in a boating accident in the waters off Puerto Rico. *Id.* at 624. The estate sued under Pennsylvania’s wrongful death and survival statutes and sought to recover punitive damages. *Id.* The district court held that federal maritime law displaced state remedies, and that, therefore, punitive damages were not available. *Id.* The Third Circuit reversed, holding: “maritime law does not preempt state wrongful death and survival acts in actions based on the death of a nonseaman in territorial waters.” *Id.* at 644. The court reasoned that: (1) Congress had not indicated that federal law should occupy the field of actions where a recreational boater was killed in state territorial waters and (2) there was no conflict between federal and state law. *Id.* at 637, 640-44. The court rejected the defendant’s argument that principles of uniformity compelled a finding that federal maritime law displaced state law, holding that the argument failed to appreciate the

In *Powers v. Bayliner Marine Corp.*,⁷⁸ four passengers were killed when their sailboat capsized on Lake Michigan.⁷⁹ Their beneficiaries asserted wrongful death actions under general maritime law against the manufacturer of the sailboat.⁸⁰ The plaintiffs sought to recover damages for loss of society and punitive damages.⁸¹ The defendant, relying on *Miles*, argued that the plaintiffs were precluded from recovering non-pecuniary damages, such as loss of society and punitive damages, under general maritime law.⁸² The district court rejected the defendant's reading of *Miles* as being "much broader than its holding."⁸³

The district court held that *Miles*'s prohibition against the recovery of punitive damages was limited to claims asserted on behalf of a Jones Act seaman against his employer.⁸⁴ The court acknowledged that other courts had held to the contrary,⁸⁵ but explained that "th[ose] rulings represent[ed] anticipatory extensions of *Miles*."⁸⁶ Instead, the district court chose to "follow[] the course charted by a growing list of authorities that ha[d] read *Miles* more narrowly"⁸⁷ After finding that *Miles* applied only where a statute specifically precluded recovery, the court addressed the question of punitive damages.⁸⁸

The defendant argued that punitive damages were precisely the kind of non-pecuniary damages precluded by the "uniformity dragnet" articulated in *Miles*.⁸⁹ The court again acknowledged that punitive damages were non-pecuniary and that other courts had relied on the holding in *Miles* to preclude the recovery of punitive damages in general maritime claims.⁹⁰ Nevertheless, the court rejected this overly broad reading of *Miles*.⁹¹ The court concluded that a more

relevancy boundaries of uniformity. *Id.* at 643. Instead, the court viewed the uniformity argument as weak "rhetoric" that permeated the case law. *See id.* at 636 ("[A]lthough the cases often mention uniformity as a guiding principle, the Court's actions belie its importance."). The court openly stated: "[T]he thrust of these cases [finding uniformity a tethering principle] suggests that the concept of uniformity has a good deal less weight than has been thought."
Id.

78. 855 F. Supp. 199 (W.D. Mich. 1994).

79. *Id.* at 200.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 201 ("Bayliner paints with a brush too broad.").

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 202.

89. *Id.*

90. *Id.*

91. *Id.* at 202-03.

narrow reading of *Miles* was appropriate, explaining: “[A] careful reading of the case law reveals that punitive damages have been disallowed under general maritime law, consistent with *Miles*, only when allowing them would contravene not just a general policy favoring uniformity, but an established definite statutory scheme.”⁹² None of the maritime statutes extended to the plaintiffs’ general maritime claims. The district court, therefore, held that *Miles* had no preclusive effect.⁹³ The court reasoned:

Plaintiffs’ claims do not assert the interests of a seaman or a longshoreman. Their claims arise under general maritime law and are of a nature having no counterpart under any maritime statute. They are based on products liability theories and come within the bounds of admiralty jurisdiction. . . . Their claims for punitive damages do not run afoul of *Miles*’[s] uniform rule regarding the claims of seamen or the general congressional policy recognized in *Miller*. Under these circumstances, if punitive damages were formerly recoverable under general maritime law, then *Miles* and *Miller* stand as no impediment to their continuing availability, given appropriate facts.⁹⁴

In *Newhouse v. United States*,⁹⁵ the United States District Court for the District of Nevada precluded the recovery of punitive damages in maritime wrongful death claims but refused to extend the limitation in *Miles* to survival claims.⁹⁶ The claims in *Newhouse* arose from a collision between a privately-owned motor boat and a United States

92. *Id.* at 202.

93. *Id.* at 202-03.

94. *Id.* at 203; see also *Sutton v. Earles*, 26 F.3d 903, 920 (9th Cir. 1994) (holding that survival claims for non-pecuniary damages may be pursued in a case involving the death of a non-seaman in state territorial waters); *Complaint of American Dredging Co.*, 873 F. Supp. 1539, 1549 (S.D. Fla. 1994) (holding that the estate of a non-seaman killed in state territorial waters could recover non-pecuniary damages); *In re Morehead Marine*, 844 F. Supp. 1193 (S.D. Ohio 1994) (holding that the estate of a passenger killed in state territorial waters could recover punitive damages in a wrongful death action under general maritime law); *Petition of Cleveland Tankers, Inc.*, 843 F. Supp. 1157, 1159 (E.D. Mich. 1994) (holding that *Miles* did not foreclose a claim for non-pecuniary damages against a non-employer by a Jones Act seaman’s family member in a wrongful death action under general maritime law); *Mussa v. Cleveland Tankers*, 802 F. Supp. 84, 86-87 (E.D. Mich. 1992) (limiting *Miles* to its facts); *Sugden v. Puget Sound Tug & Barge Co.*, 796 F. Supp. 455, 457 (W.D. Wash. 1992) (permitting recovery of non-pecuniary damages in claim by family of a Jones Act seaman against a non-employer).

95. 844 F. Supp. 1389 (D. Nev. 1994).

96. *Id.* at 1394.

Park Service motor boat on Lake Mead in Nevada.⁹⁷ Two passengers on the privately-owned boat were killed as a result of the collision.⁹⁸ Their parents brought a negligence-based survivor action and a wrongful death action under general maritime law against the United States Park Service.⁹⁹ The United States Park Service, advocating an expansive reading of *Miles* that would limit recovery in all general maritime death claims to pecuniary losses, argued that the plaintiffs' actions should be dismissed because the plaintiffs could not demonstrate that they suffered any pecuniary loss.¹⁰⁰

The plaintiffs, on the other hand, argued that: (1) the preclusion in *Miles* was inapplicable to claims arising out of the deaths of non-seamen and (2) even if the limitation in *Miles* did extend to non-seamen, the preclusion did not apply to survivor claims.¹⁰¹ Thus, the plaintiffs attempted to preserve their survival action on the grounds that *Miles* was limited to wrongful death actions and that punitive and pecuniary damages were recoverable in survival actions.¹⁰²

The district court rejected both arguments and held that the preclusion in *Miles* applied to non-seamen and wrongful death actions, but not to survivor claims.¹⁰³ The court concluded:

. . . *Miles* should be construed neither as expansively nor narrowly as the parties contend.

In light of the sweeping language used by the Supreme Court in *Miles*, there is no indication that the Supreme Court intended that its decision should be limited to those actions involving seamen. Indeed, such a holding would lead to the anomalous result that seamen—those who are entitled the greatest protection under maritime law—would be afforded a lesser degree of protection than non-seamen.

Furthermore, there is no indication that the Supreme Court intended that survival damages should be limited to those that are pecuniary in nature. Nothing in *Miles* indicates that the Ninth Circuit's holding . . . regarding the recovery of pre-death pain and suffering, punitive damages or pre-

97. *Id.* at 1391.

98. *Id.*

99. *Id.* at 1391-92.

100. *Id.* at 1393.

101. *Id.*

102. *Id.* In a survival action, the decedent's successors are allowed to pursue a claim for personal injury that the decedent would have been able to pursue if he had lived. *Id.* at n.3. (citing *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990)). In a wrongful death action, the decedent's family seeks recovery for the harm that they suffered as a result of the decedent's death. *Id.*

103. *Id.* at 1393-94.

judgment interest in a general maritime survival action is still not good law.¹⁰⁴

B. Deaths on the High Seas

1. Causes of Action

The causes of action available for a claim arising out of a death on the high seas are best understood when broken down into wrongful death actions and survival actions. There are essentially three wrongful death causes of action that can be brought as a result of the death of either a seaman or a non-seaman on the high seas: (1) a negligence-based action under DOHSA,¹⁰⁵ (2) an unseaworthiness-based action under DOHSA,¹⁰⁶ and (3) a negligence action under the Jones Act asserted by a seaman's estate against his employer.¹⁰⁷ Because DOHSA does not provide for a survival action, any negligence-based or unseaworthiness-based survival actions must be asserted under general maritime law.¹⁰⁸ Additionally, a seaman's survivors may assert a negligence-based survival action against the seaman's employer under the Jones Act.¹⁰⁹ Plaintiffs may not recover punitive damages under any of the three wrongful death actions or under the Jones Act survival action.¹¹⁰ There is a conflict among the circuits as to whether punitive damages are available in the general maritime law survival actions.

2. Preclusion of Recovery of Punitive Damages

Both DOHSA and the Jones Act preclude the recovery of punitive damages in any claim for a wrongful death on the high seas.¹¹¹ The Jones Act also precludes the recovery of punitive damages in any survival action arising from a death on the high seas.¹¹² Under

104. *Id.*

105. 46 U.S.C. § 761 (Supp. 1988). DOHSA provides for a wrongful death action based on the theories of unseaworthiness and negligence for anyone killed on the high seas. *See generally* Strehle v. United States, 860 F. Supp. 136, 138 (S.D.N.Y. 1994).

106. *Newhouse*, 844 F. Supp. at 1393-94.

107. 46 U.S.C. § 688 (1988).

108. *See generally* Howard v. Crystal Cruises, 1992 AMC 1645 (E.D. Cal. 1992) (holding that DOHSA does not bar survival claim under general maritime law).

109. In sum, the Jones Act contains both a wrongful death provision and a survival provision. DOHSA contains a wrongful death provision but does not contain a survival provision. General maritime law provides both a wrongful death and a survival right of action. *See generally* Calhoun, 40 F.3d at 637.

110. *See Smallwood*, 839 F. Supp. 1377, 1383-84 (N.D. Cal. 1993).

111. 46 U.S.C. § 688 (Jones Act); *id.* § 761 (DOHSA).

112. *Id.* § 688.

Miles, non-pecuniary damages are not recoverable in any wrongful death or survival action under general maritime law.¹¹³ Accordingly, a survival action under general maritime law arising out of a passenger's death on the high seas would be the only case where it might be possible to recover punitive damages.¹¹⁴ Courts have, however, uniformly extended *Miles* beyond seamen's claims and have held that punitive damages are precluded in general maritime law survival claims arising from deaths on the high seas.¹¹⁵

C. Non-Fatal Injuries in State Territorial Waters and on The High Seas

1. Causes of Action

A seaman injured either on the high seas or within state territorial waters has four potential claims: (1) a negligence claim under the Jones Act against his employer,¹¹⁶ (2) an unseaworthiness claim under general maritime law against any defendant, including his employer,¹¹⁷ (3) a claim for maintenance and cure under general maritime law against his employer,¹¹⁸ and (4) a general maritime law negligence

113. *Miles*, 498 U.S. at 328.

114. The Jones Act and DOHSA limit any recovery to pecuniary damages. See *In re Watermen S.S. Corp.*, 780 F. Supp. 1093, 1096 (E.D. La. 1992) (noting that the focus of *Miles* is on the status of the decedent as a seaman). Where DOHSA applies, its pecuniary remedies cannot be supplemented by punitive damages under general maritime law. 46 U.S.C. § 762; *Miles*, 498 U.S. at 32. Although the Jones Act does not have an express provision limiting recoverable losses to pecuniary ones, after *Miles* it is unquestionable that seamen, whether asserting a claim pursuant to the Jones Act or to general maritime law, are limited to recovering pecuniary damages. *In re Watermen S.S. Corp.*, 780 F. Supp. at 1094-95. Accordingly, survival rights must be pursued under general maritime law. But, in the interest of uniformity, some courts, relying on *Miles*, have held that punitive damages are not available under general maritime law. See, e.g., *id.* at 1096 (holding that punitive damages are not recoverable under general maritime law claims arising from deaths on the high seas).

115. See *Davis v. Bender Shipbldg. and Repair Co.*, 27 F.3d 426, 430 (9th Cir. 1994) (foreclosing recovery of pecuniary damages); *Ellison v. Messerschmitt-Bolkow-Blohm*, 807 F. Supp. 39, 41 (E.D. Tex. 1992) (holding neither punitive nor exemplary damages to be recoverable under general maritime law); *In re Aleutian Enter.*, 777 F. Supp. 793 (W.D. Wash. 1991) (holding punitive damages not recoverable under DOHSA, the Jones Act or general maritime law in actions arising from death or injury on high seas).

116. *Jackson v. Unisea, Inc.*, 824 F. Supp. 895, 896 (D. Alaska 1992).

117. *Id.*

118. "Maintenance and cure is [sic] designed to provide a seaman with food and lodging when he becomes sick or injured in the ship's service." *Brown*, 816 P.2d at 1371 (quoting *Vaughn v. Atkinson*, 369 U.S. 527, 531 (1962)); see also *Davis v. Odeco Inc.*, 18 F.3d 1237, 1245-46 (5th Cir. 1994) (describing "maintenance and cure" as a seaman's right, under general maritime law, "to receive

claim against any third party, except for his employer.¹¹⁹ A non-seaman, such as a repairman or passenger, who is injured in state territorial waters or on the high seas may assert a general maritime law negligence claim.¹²⁰

Unlike death cases, there are no situs distinctions drawn by any statute or precedent that discriminate among the causes of action available in maritime personal injury cases. The absence of a situs distinction, however, has not left the maritime personal injury area without its anomalies. There is a status distinction drawn between a seaman's unseaworthiness claims and a non-seaman's unseaworthiness claims. Although both seamen and non-seamen are entitled to bring an unseaworthiness claim for wrongful death under DOHSA and under general maritime law, non-seamen have no unseaworthiness cause of action in a claim arising from a non-fatal injury.¹²¹

2. Cases Precluding the Recovery of Punitive Damages

The First, Fifth, Sixth, Seventh, Ninth and Eleventh Circuits have extended *Miles* to bar the recovery of punitive damages in general maritime law claims arising from an injury on the high seas or in state territorial waters.¹²² In *Frantz v. Brunswick Corp.*,¹²³ the owner of a motor boat was injured in a boating accident on the

food and lodging (maintenance) and necessary medical services (cure) if he falls ill while in the service of [the ship]"); *Mitola*, 839 F. Supp. at 359 (citing *Morales v. Garijak, Inc.*, 829 F.2d 1355, 1359 (5th Cir. 1987) (explaining that maintenance and cure ends when a seaman reaches the point of maximum possible cure—the point at which further treatment will probably not improve his condition)). “[I]t extends during the period when he is incapacitated to do a seaman’s work and continues until he reaches maximum medical recovery.” *Brown*, 816 P.2d at 1371 (quoting *Vaughn v. Atkinson*, 369 U.S. 527, 531 (1962)). The shipowner is not responsible for any injury or illness that was caused by the seaman’s gross and willful misconduct or that existed at the time the seaman signed on and that was knowingly concealed. *Id.* (citation omitted). “When considered in conjunction with the sailor’s right to recover for negligence and unseaworthiness . . . , [the seaman] is . . . the beneficiary of a system of accident and health insurance at the shipowner’s expense more comprehensive than anything yet achieved by shorebound workers.” *Id.* (citation and footnote omitted).

119. See, e.g., *In re Cleveland Tankers, Inc.*, 843 F. Supp. 1157 (E.D. Mich. 1994).

120. A vessel owner owes a duty of reasonable care to its passengers. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959); *Morton v. De Oliviera*, 984 F.2d 289, 292 (9th Cir. 1993) (holding shipowner absolutely liable for its crew members’ assault upon passengers); *DeRoche v. Commodore Cruise Line Ltd.*, 31 Cal. Rptr. 2d 278 (Cal. Ct. App. 1994).

121. In non-fatal injury cases, the doctrine of unseaworthiness is available only to seamen and does not extend to passengers. *Howard v. Crystal Cruises, Inc.*, 1992 AMC 1645, 1653 (E.D. Cal. 1992).

122. See, e.g., *infra* notes 123-47 and accompanying text.

123. 866 F. Supp. 527 (S.D. Ala. 1994).

Alabama River.¹²⁴ He asserted several negligence and products liability claims, under general maritime law and state law, against several defendants involved in the boat's manufacture and sale, and sought to recover punitive damages.¹²⁵ The defendants argued that *Miles* prohibited the recovery of punitive damages under general maritime law.¹²⁶ The plaintiff argued that *Miles* did not bar the recovery of non-pecuniary damages under general maritime law.¹²⁷ The United States District Court for the Southern District of Alabama rejected the plaintiff's assertion and held that punitive damages were not available under general maritime law.¹²⁸ The court agreed with the defendant and extended *Miles*'s holding to claims arising out of a passenger's non-fatal injury.¹²⁹ The court acknowledged that there was no statutory prohibition against punitive damages because the case *sub judice* involved non-fatal injuries to a non-seaman.¹³⁰ Nevertheless, the court found that *Miles* had eliminated the availability of punitive damages in general maritime law claims.¹³¹

In *Chan v. Society Expeditions, Inc.*,¹³² the plaintiffs, who were injured in a boating accident on the high seas, asserted negligence and unseaworthiness claims under general maritime law and sought to recover non-pecuniary damages.¹³³ The United States District Court for the Western District of Washington dismissed both claims because the plaintiffs were passengers, not seamen.¹³⁴ On appeal, the plaintiffs attempted to persuade the United States Court of Appeals for the Ninth Circuit to distinguish between fatal and non-fatal injury cases and to permit the recovery of non-pecuniary damages.¹³⁵ Following the "interest of consistency" analysis articulated in *Miles*, the Ninth Circuit rejected the plaintiffs' contention.¹³⁶ The court remarked: "To so hold would effectively reward a [defendant] for killing, rather than merely injuring his victim."¹³⁷

In *Horsley v. Mobil Oil Corp.*,¹³⁸ the plaintiff, a seaman, sustained back injuries in the course of his employment aboard a vessel

124. *Id.* at 529.

125. *Id.* at 529-30.

126. *Id.* at 532.

127. *Id.*

128. *Id.* at 531-32.

129. *Id.*

130. *Id.*

131. *Id.* (citations omitted).

132. 39 F.3d 1398 (9th Cir. 1994).

133. *Id.* at 2649 (loss of consortium, loss of society and emotional distress).

134. *Id.* at 1401.

135. *Id.* at 1408.

136. *Id.*

137. *Id.*

138. 825 F. Supp. 424 (D. Mass. 1993), *aff'd*, 15 F.3d 200 (1st Cir. 1994).

operating in state territorial waters.¹³⁹ As a result of the accident the plaintiff asserted the following claims: (1) negligence and breach of contract under the Jones Act and (2) unseaworthiness and maintenance and cure under general maritime law.¹⁴⁰ The plaintiff sought to recover punitive damages in conjunction with the negligence and unseaworthiness claims.¹⁴¹ The plaintiff argued that the *Miles* analysis was inapplicable to personal injury actions.¹⁴² He further contended that *Miles* should not be extended to bar non-pecuniary damages in Jones Act injury claims.¹⁴³ The United States District Court for the District of Massachusetts rejected these contentions and dismissed the plaintiff's punitive damage claim.¹⁴⁴ The trial court explained:

The [plaintiffs] misunderstand and grossly underestimate the impact of the *Miles* holding. First, the *Miles* Court distinctly held, based upon its review of the legislative history of the Jones Act, that the Jones Act itself bars recovery of non[-]pecuniary damages for the wrongful death of a Jones Act seaman. . . . Second . . . *Miles* expressly "removed the judicial underpinnings of [the pre-*Miles* cases that permitted the recovery of non-pecuniary damages in Jones Act injury cases]." Thus, pre-*Miles* cases . . . which . . . allow[ed] recovery of non[-]pecuniary damages in Jones Act injury actions, were impliedly if not expressly overruled by *Miles*. Finally, the Court notes that maritime uniformity is better advanced by unifying damage schemes under the Jones Act as a whole, for both the injury and death of Jones Act seamen

In fact, although no court in the First Circuit has addressed a non[-]pecuniary damage claim in a Jones Act injury case subsequent to *Miles*, every court which has considered the issue has held that *Miles* precludes loss of consortium and punitive damages claims in injury actions by Jones Act seamen.¹⁴⁵

On appeal, the United States Court of Appeals for the First Circuit agreed with the district court and held that the plaintiffs were precluded from recovering punitive damages.¹⁴⁶ The court held that *Miles* "mandated" the exclusion of punitive damages in injury claims

139. *Id.* at 425.

140. *Id.*

141. *Id.*

142. *Id.* at 425-26.

143. *Id.*

144. *Id.* at 426.

145. *Id.* (citations omitted).

146. 15 F.3d at 200, 203 (1st Cir. 1994).

under the Jones Act and in unseaworthiness actions under general maritime law.¹⁴⁷

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147. *Id.* In *Murray v. Anthony J. Bertucci Constr. Co.*, 958 F.2d 127 (5th Cir. 1992), the plaintiff, a seaman injured in Louisiana state territorial waters, brought suit against his employer. *Id.* at 128. He asserted a negligence claim under the Jones Act and an unseaworthiness claim under general maritime law seeking non-pecuniary damages. *Id.* The court held that *Miles* precluded such recovery in a seaman's personal injury claim. *Id.* at 131.

In *Bayes v. OPI Int'l*, 1994 AMC 286 (S.D. Tex. 1992), the plaintiff was injured while working on board a vessel. *Id.* He filed a negligence claim under the Jones Act and general maritime law seeking punitive damages. *Id.* The district court dismissed the punitive damage claim and reasoned that it was compelled to do so because the Fifth Circuit extended *Miles* to personal injury claims involving Jones Act seamen. *Id.* at 287-88 (citations omitted). The court noted that, in *Miles*, the Supreme Court "sought to promote recovery for non-pecuniary damages under the general maritime law because such recovery was not permitted under the Jones Act." *Id.* (citations omitted). Thus, because punitive damages were non-pecuniary, the court held that the plaintiff's claim for punitive damages under the general maritime law had to be dismissed. *Id.* (citations omitted).

In *Anderson v. Texaco, Inc.*, 797 F. Supp. 531 (E.D. La. 1992), the court, underscoring the applicability of *Miles*, held that a Jones Act seaman could not recover punitive damages for an injury regardless of whether the claim was for negligence or unseaworthiness. *Id.* at 535. The plaintiff argued that *Miles* "did not target punitive damages and should not be extended to bar such awards," while the defendant argued that *Miles* had "limited the remedies available under the general maritime law theories to those the Jones Act allows." *Id.* The court concluded:

To say that *Miles* should be strictly limited to its facts is to ignore the doctrinal underpinnings of the decision. *Miles* compels the conclusion that a plaintiff who is statutorily barred from receiving a punitive award cannot recover punitive damages by couching his claim in the judge-made general maritime law of negligence and unseaworthiness. . . . Thus, although courts "may supplement" a seaman's remedies when Congress has left gaps which need to be filled, courts cannot use their power under the general maritime law to create remedies that exceed those granted (or limited) by statute. Uniformity and respect for legislative dictates animate *Miles*.

Id. (citations omitted); see also *Bell v. Zapata Haynie Corp.*, 855 F. Supp. 152 (W.D. La. 1994) (holding punitive damages not recoverable in seaman's general maritime law claim); *Brown v. Lady Alice*, 1995 AMC 73 (D. Haw. 1994) (precluding recovery of punitive damages in personal injury claim by seaman); *White v. American River Transp. Co.*, 853 F. Supp. 300, 301 (S.D. Ill. 1993) (holding that punitive damages are available for willful and wanton failure to provide maintenance and cure); *Earhart v. Chevron, Inc.*, 852 F. Supp. 515 (E.D. La. 1993) (holding that injured plaintiff has no general maritime law claim for punitive damages); *Anderson v. Texaco, Inc.*, 797 F. Supp. 531, 533-35 (E.D. La. 1992) (holding that seamen injured as a result of gas explosion are precluded from recovering punitive damages under the Jones Act and general maritime law); *In re Cleveland Tankers, Inc.*, 791 F. Supp. 679, 682 (E.D. Mich. 1992) (barring recovery of punitive damages in seaman's general maritime law unseaworthiness claim); *Bayes v. OPI Int'l*, 1994 AMC

The courts have had a more difficult time reaching a consensus as to whether punitive damages are available in maintenance and cure cases. The United States Court of Appeals for the Fifth Circuit has held that although punitive damages are precluded in maritime death and personal injury cases, such damages are recoverable in maintenance and cure claims.¹⁴⁸ In *Guevara v. Maritime Overseas Corp.*,¹⁴⁹ a seaman who was injured in state territorial waters brought suit against his employer.¹⁵⁰ The plaintiff sought to recover punitive damages from his employer for failure to pay maintenance and cure on a timely basis.¹⁵¹ At trial, the jury awarded punitive damages.¹⁵² The employer appealed.¹⁵³

On appeal, the employer argued that *Miles* precluded recovery of punitive damages for failure to pay maintenance and cure.¹⁵⁴ The Fifth Circuit rejected this contention and upheld the district court's award. The circuit court conceded that the "logic if not the holding of *Miles*" supported the employer's argument.¹⁵⁵ The court also acknowledged that the weight of authority had held that punitive damages were unavailable under general maritime law.¹⁵⁶ Distinguishing these cases on the ground that they were not based on actions for maintenance and cure,¹⁵⁷ the court held that *Miles* did not preclude recovery of punitive damages in maintenance and cure claims.¹⁵⁸

The United States Court of Appeals for the Ninth Circuit, in *Glynn v. Roy Al Boat Management Corp.*,¹⁵⁹ held that punitive damages were not available in actions for maintenance and cure.¹⁶⁰ The court recognized the Fifth Circuit's holding in *Guevara* but found *Miller* and *Horsley* to be more persuasive. The court held,

286, 288 (S.D. Tex. 1992) (precluding general maritime law claim for punitive damages); *Donaghey v. Ocean Drilling & Exploration Co.*, 1992 AMC 528, 531 (E.D. La. 1991) (holding that the Jones Act and general maritime law do not permit a seaman to recover punitive damages), *rev'd on other grounds*, 974 F.2d 646 (1992).

148. *Guevara v. Maritime Overseas Corp.*, 34 F.3d 1279 (5th Cir. 1994).

149. 34 F.3d 1279 (5th Cir. 1994).

150. *Id.*

151. *Id.* at 1281.

152. *Id.*

153. *Id.*

154. *Id.* at 1283.

155. *Id.* at 1283-84.

156. *Id.* at 1284.

157. *Id.*

158. *Id.* The court found only one case that held that *Miles* barred recovery of punitive damages in maintenance and cure cases. *Id.* (citing *Gray v. Texaco, Inc.*, 610 So. 2d 1090 (La. Ct. App), *cert. denied*, 616 So. 2d 686 (La. 1993)).

159. 57 F.3d 1495 (9th Cir. 1995).

160. *Id.* at 1505.

among other things, that precluding punitive damages was consistent with the holding in *Miles*.¹⁶¹

After *Glynn* was decided by the Ninth Circuit, the Fifth Circuit revisited its opinion in *Guevara*.¹⁶² In an en banc decision, the Fifth Circuit reversed its prior ruling and held that the uniformity principle articulated in *Miles* precluded the award of punitive damages in maintenance and cure actions.¹⁶³ The court explained that punitive damages were precluded because there was a “statutory/general maritime law overlap,” and in such cases, the guiding principle had to be uniformity.¹⁶⁴ The court reasoned:

The analytical framework of *Miles* governs our approach to deciding damages issues in general maritime actions. . . . The general maritime law will not expand the available damages when Congress has spoken to the relief it deems appropriate or inappropriate. . . .

The Jones Act prohibits non-pecuniary recovery Although the *Miles* Court did not mention punitive damages, they are also rightfully classified as non-pecuniary.

Taking the analysis one step further, it should be clear that actions under the general maritime law for *personal injury* are also subject to the *Miles* uniformity principle, as non-fatal actions for personal injury to a seamen are covered by statute—i.e., the Jones Act. Thus, many courts have extended *Miles*’s logic to prohibit the recovery of certain damages in personal injury factual settings that are covered by statute, even when these personal injury claims are brought under the general maritime law. . . .

Because the tort-like maintenance and cure action involves a personal injury. . .it overlaps with the personal injury coverage of the Jones Act. . . . [O]nce there is a statutory/general maritime law overlap in the factual circumstances that are covered, the *Miles* damages uniformity principle is invoked, and punitive damages would be precluded under the general maritime action for maintenance and cure.

Based on this rationale, it should be clear that proving even a willful denial of maintenance and cure cannot justify an award of punitive damages after *Miles*. . . Under the *Miles* uniformity principle, therefore, the same cause of action under the general maritime law for the failure to pay

161. *Id.*

162. 59 F.3d 1496 (5th Cir. 1995).

163. *Id.* at 1512-13.

164. *Id.* at 1512.

maintenance and cure cannot provide a punitive recovery, even if willfulness is demonstrated.¹⁶⁵

3. Cases Permitting the Recovery of Punitive Damages

The Second, Fourth, Fifth, Sixth and Seventh Circuits have all declined to extend the *Miles* holding beyond the limited facts of that case.¹⁶⁶ Accordingly, these Courts of Appeal have confined the preclusion of punitive damages to claims by seamen against their Jones Act employers. As a result of this narrow interpretation of *Miles*, these courts have allowed the recovery of punitive damages in general maritime law claims arising from an injury on the high seas or in state territorial waters.¹⁶⁷

For example, in *Emery v. Rock Island Boatworks*,¹⁶⁸ a pleasure boat passenger was injured when she fell through an open man-hole located in a walkway.¹⁶⁹ The passenger's husband filed a negligence action under general maritime law seeking to recover non-pecuniary damages for loss of society and consortium.¹⁷⁰ The United States District Court for the District of Illinois explained that *Miles* was intended to impose a uniform recovery scheme only in cases involving DOHSA and the Jones Act. Because neither of these statutes were at issue in *Emery*, the concern for uniform recovery did not exist.¹⁷¹

165. *Id.* at 1506-13 (footnotes and citations omitted). In deciding the question, the court reasoned that concern for uniformity of law outweighed the benefits of the recovery of punitive damages in this class of cases. *Id.* at 1513. The court reasoned: "[T]here is an established and continuing tradition of federal common lawmaking in admiralty, that law is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field [The Supreme Court] counsels us to err on the side of 'harmonization' with the legislative schemes, and that nudge towards harmony weighs in favor of prohibiting punitive damages in maintenance and cure cases. . . ." *Id.* (internal quotations omitted).

166. See *Schumacher v. Cooper*, 850 F. Supp. 438, 453-54 (D.S.C. 1994); *Emery v. Rock Island Boatworks, Inc.*, 847 F. Supp. 114, 117 (C.D. Ill. 1994); *In re Korean Air Lines Disaster of Sept. 1, 1983*, 807 F. Supp. 1073, 1084 (S.D.N.Y. 1992); *Mussa v. Cleveland Tankers*, 802 F. Supp. 84, 86 (E.D. Mich. 1992); *Duplantis v. Texaco, Inc.*, 771 F. Supp. 787, 788 (E.D. La. 1991).

167. *E.g.*, *Emery v. Rock Island Boat Works*, 847 F. Supp. 114 (C.D. Ill. 1994).

168. 847 F. Supp. 114 (C.D. Ill. 1994).

169. *Id.* at 115.

170. *Id.*

171. *Id.* at 118; see also *Mussa*, 802 F. Supp. at 87-88, in which the district court permitted a seaman to assert a general maritime law claim seeking punitive damages against a third party. *Id.* The defendant argued that *Miles* precluded the recovery of punitive damages in all actions involving a Jones Act seaman because of the need for uniform rules in maritime personal injury cases. *Id.* at 85. The district court rejected this argument and held that the defendant was seeking to apply *Miles* "in too broad a fashion." *Id.* The court found

Therefore, the district court held that non-pecuniary damages were available in actions under general maritime law.¹⁷²

IV. AN ORDERED RECOVERY SCHEME

The *Miles* decision was intended to eliminate inconsistent results. It should follow that in the interest of fostering uniform substantive law, punitive damages would be precluded in all maritime claims. Based upon the manner in which the law is currently being applied, however, any notion that *Miles* furthers uniformity is purely fiction.

The lower courts have based their decisions to allow the recovery of punitive damages on the following distinctions: (1) the legal theory of the claim, for example, claims brought under statutory as opposed to general maritime theories, (2) the status of the plaintiff or the decedent, for example, claims brought by a seaman as opposed to a passenger, (3) the status of the party against whom the claim is brought, for example, claims against the seaman's employer under the Jones Act as opposed to a third party under general maritime law, (4) the situs of the injury, for example, claims brought as a result of a death or injury occurring in territorial waters as opposed to on the high seas, and (5) the rights asserted, for example, claims asserting survivor rights as opposed to wrongful death rights. The courts that have refused to allow the recovery of punitive damages have done so because they refuse to make such clumsy distinctions. The result, of course, is inconsistent substantive law and recovery in admiralty and maritime personal injury and death cases. This is precisely what the Supreme Court counseled against in *Miles*.¹⁷³

Advocates for the elimination of punitive damage awards argue that the Supreme Court's ruling in *Miles* precludes recovery of punitive damages in causes of action created by the judiciary as well as by statute. *Miles* unquestionably eliminates the availability of punitive damages in actions arising out of the death of a seaman. It would then follow, if the legal system has an interest in fostering

that the preclusion in *Miles* was limited to conforming general maritime law claims with statutory actions asserted against the Jones Act employer. *Id.* at 85-86; see also *Schumacher*, 850 F. Supp. at 455 (allowing dependents of non-seaman to recover non-pecuniary damages in personal injury negligence action); *Duplantis*, 771 F. Supp. at 788 (allowing injured seaman to recover punitive damages under general maritime law).

172. *Emery*, 847 F. Supp. at 118.

173. The conflict among the circuits may be the result of a change in the maritime recovery scheme that Congress could not have anticipated. At the time Congress passed the Jones Act and DOHSA, in 1920, wrongful death rights for claims arising from deaths in state territorial waters were governed by state statutes. *Miles*, 498 U.S. at 31. These state statutes limited the recovery to pecuniary losses. *Id.* at 32.

uniform substantive law and an ordered system of recovery, that punitive damages should also be barred in personal injury claims arising from non-fatal injuries to seamen. Furthermore, because recovery of punitive damages would not be available in claims arising from the death or injury of seamen, it would be incongruous to permit the recovery of punitive damages in actions arising from the death or injury of non-seamen. Because Congress limited the scope of recovery for tort claims under DOHSA and the Jones Act, principles of uniformity require that recovery under the judicially created maritime law injury and death actions be no greater than recovery under maritime statutes.

Those who advocate limiting *Miles* to its facts and confining the preclusion of punitive damages to claims arising out of the death of a seaman argue against the arbitrary nature of maintaining uniformity at all costs—each case should be assessed for its own merit.¹⁷⁴ This approach, however, merely offers micro-interpretations of the meaning of the *Miles* decision on a case by case basis. Caution should be taken in limiting *Miles* to its facts. Those cases that have done so are not based on superior reasoning that compels a restrictive reading of the apparent intentions and implications of *Miles*.¹⁷⁵ The lower courts have simply read *Miles* in a narrow manner so as not to substantially preempt their interpretive discretion.

Uniformity remains a mantra in admiralty and maritime law.¹⁷⁶ The traditional notion of “uniformity” is a venerable principle that

174. In *Davis*, 27 F.3d at 430, the Ninth Circuit succinctly rejected this argument:

The plaintiffs attempt to distinguish this case from *Miles* by stressing that the defendant in this case is the shipbuilder, not a Jones Act defendant. Yet there is nothing in *Miles*' [sic] reasoning to suggest that the decision turned upon the identity of the defendant. Indeed, not all the defendants in *Miles* were Jones Act employers. Moreover, the principle underlying the Supreme Court's decision in both *Miles* and *Moragne* is that general maritime law is intended to supplement the statutory remedies created by Congress not to enhance or replace them.

Id. at 430 (citations omitted) (internal quotations omitted).

175. The Supreme Court's decision in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974), is often relied upon by courts to dismiss the assertion that maritime law should strive to foster a uniform substantive law and an ordered system of recovery. In *Gaudet*, the Court held that non-pecuniary damages for loss of society were recoverable in a general maritime wrongful death action. *Id.* at 587-88. In so doing, some argue that the Court recognized that it was permitting recovery for damages that were not compensable under DOHSA and the Jones Act. *Id.* at 588 n.22; see *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 622 (1978). *But see* *Smallwood v. American Trading*, 839 F. Supp. 1377, 1385 (N.D. Cal. 1993) (holding *Gaudet* damages unavailable for survivors of longshore workers injured or killed in territorial waters).

176. See, e.g., *DeSole v. United States*, 947 F.2d 1169 (4th Cir. 1991) (“The tenets

stems from the primary interest of admiralty and maritime law to protect maritime commerce through uniform rules of decision.¹⁷⁷ The traditional principle of uniformity was meant to eliminate the disparities that would be caused by interjecting state law into maritime law.¹⁷⁸

But a more modern concept has been grafted onto this traditional notion of uniformity. The modern principle of uniformity, also directed at fostering a uniform application of substantive law, was first recognized by the Supreme Court in *Moragne v. States Marine Lines*¹⁷⁹ and was later refined by *Miles*. This modern principle of uniformity supports the preclusion of punitive damages under general maritime law and should now be utilized to restrict remedies available under general maritime law in order to fashion an ordered system of recovery that is *in pari materia* with the federal maritime statutes.

The Supreme Court's decision in *Moragne* exemplifies the fundamental principle that should guide any resolution of punitive damages questions. In *Moragne*, the Supreme Court expanded general maritime law in two ways so that it would conform to the recovery scheme provided by federal maritime statutes for deaths on the high seas.¹⁸⁰ First, the Court recognized an unseaworthiness cause of action under general maritime law.¹⁸¹ The court held that an unseaworthiness action could be asserted in connection with claims arising from either fatal or non-fatal injuries. Second, the Court recognized wrongful

of admiralty law, which are expressly designed to promote uniformity, do not permit assumption of risk in cases of personal injury whether in commercial or recreational situations." *Id.* at 1174. Admiralty and maritime law, unlike literature, do not embrace the virtues of uncertainty and unpredictability. See Ronald Smothers, *The Nobel Laureates on Life*, N.Y. TIMES, Apr. 26, 1995, at C11 (eight nobel laureates in literature extol the virtues of uncertainty and unpredictability in literature).

177. See *Grubart v. Great Lakes Dredge & Dock Co.*, 115 S. Ct. 1043, 1054 n.6 (1995); see also *Great Lakes Dredge & Dock Co. v. City of Chicago*, 3 F.3d 225 (1993).

178. In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), the Supreme Court stated: "That we have a maritime law of our own, operative throughout the United States cannot be doubted." *Id.* at 215. The Constitution refers to a system of maritime law operating uniformly.

It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states.

Id. Cases to the contrary interfere with the "proper harmony and uniformity" of maritime law. *Id.* at 216.

179. 398 U.S. 375 (1970).

180. *Id.* at 399-400.

181. *Id.* at 380-402.

death rights under general maritime law.¹⁸² The Court looked to the legislative judgments behind the Jones Act and DOHSA and found strong presumptions in favor of both a general maritime unseaworthiness action and wrongful death rights in claims arising from incidents occurring in state territorial waters.¹⁸³ The result was not only consistent with the general policies of the Jones Act and DOHSA to favor wrongful death recovery, it also effectuated "constitutionally based principles that federal admiralty law should be a uniform system of law."¹⁸⁴ Although *Moragne* held that general maritime causes of action should conform to the federal statutes, the case did not specifically set forth the scope of damages recoverable under general maritime law.

Miles, in which the Court created conformity between the Jones Act and general maritime law recovery schemes,¹⁸⁵ represented a decisive endorsement of the importance of achieving uniformity in maritime law. The Supreme Court's language was not carelessly chosen. The Supreme Court had begun to move towards fostering uniform substantive law and recovery in maritime tort actions and away from a scheme that fortuitously singled out for special compensation any victim of wrongful conduct. The *ratio decidendi* of *Miles* was to instill order into the recovery scheme by establishing a policy of uniformity of damages under the Jones Act, DOHSA and general maritime law claims. The rationale in *Miles* was stated in terms broad enough to encompass claims brought under general maritime law. Thus, uniformity sought by the Court in *Miles* is best achieved by a rule that denies the recovery of punitive damages in all maritime law injury and death claims.¹⁸⁶

V. CONCLUSION

The lineal descendants of *Miles* serve only to reinforce the deep conflict among the circuits. As the fissures regarding the preclusive effect of *Miles* on the maritime law recovery scheme become more

182. *Id.*

183. *Id.* at 392.

184. *Id.*

185. *Miles*, 498 U.S. at 30.

186. It may be argued that, despite *Moragne* and *Miles*, the principle of uniformity is insufficient to deny a plaintiff the recovery of punitive damages under general maritime law. Relying on the well-intended desire to punish wanton and willful conduct, this argument continues by asserting that these damages have a place in tort law. These assertions require statements of the philosophy of tort law. Whether criminal negligence should be addressed civilly or criminally is well beyond the analysis here. In maritime law, the question is answered in terms consistent with Congress's statement and judgment in DOHSA and the Jones Act.

pronounced, the Supreme Court will surely be called upon to create uniform substantive law.¹⁸⁷ When it is, the Court will have two, narrow choices. The Court could either cleave to *Miles* and achieve its goal of uniformity by precluding the recovery of punitive damages in all maritime cases, or the Court could abandon its goal of uniformity and limit *Miles* to its facts, thereby jettisoning it as an exercise in legal fiction. Either way, it is time for the Court to state with sufficient clarity whether punitive damages are recoverable under general maritime law.

187. Since *Miles*, the Supreme Court has denied certiorari in three cases presenting the question of whether punitive damages are available under general maritime law: *Miller v. American President Lines Ltd.*, 989 F.2d 1450, 1454 (6th Cir.), *cert. denied*, 114 S. Ct. 304 (1993), *Wahlstrom v. Kawasaki Heavy Indus.*, 4 F.3d 1084, 1094 (2d Cir. 1993), and *Mistich v. Pipelines, Inc.*, 609 So. 2d 921, 934-38 (La. Ct. App. 1992).