

CLIENT ADVISORY

Maritime Employers Can Face Punitive Damages Under General Maritime Law

In a [July 2011 client advisory](#), we discussed the changing landscape of punitive damages for maritime employers. Punitive damages have, in the past, been generally available under general maritime law but rarely implemented since the 1990 Supreme Court decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990)¹. Developments arising out of the litigation from the BP/Transocean disaster leave maritime employers with an increased exposure to punitive damages under other maritime causes of action.

On August 26th, 2011, the Federal judge managing the litigation on the Deepwater Horizon blowout and subsequent oil spill disaster ruled that punitive damages are payable under general maritime law.

The judge stated: “These Plaintiffs assert plausible claims for punitive damages against Responsible and non-Responsible parties”². This ruling was made regarding the economic and environmental claims and may possibly be applied to crew injury and death claims in future litigation.

On October 21, 2011, BP was denied their appeal against the punitive damages ruling made on August 26, 2011. The plaintiff’s attorney arguing against the BP appeal stated to the Federal judge in charge: “Everything we know from the Supreme Court is that there will be punitive damages no matter what.”³

The BP/Transocean disaster has brought much attention to compensation for injured or killed employees working in the maritime environment. There have been a number of bills submitted to Congress requesting that punitive damages also be payable under the Jones Act. While at least one of these bills has been passed in the House, none have made it through the Senate or have been passed into law as of the time of this advisory. The BP trial starts in late February 2012 and it is possible new rulings regarding punitive damages and the Jones Act will be made.

Punitive damages are a more serious threat to maritime employers than land-based employers because:

- 1 Maritime Employer Liability (MEL) claims are tort based and employees can sue their employers under maritime law.
- 2 There are no caps or limits on MEL claims and attorney fees do not have to be approved.
- 3 Seamen’s claims are generally treated more liberally and typically receive greater benefits than land-based compensation systems.
- 4 The interpretation of maritime law can vary from court to court, creating uncertainty.

These factors mean that MEL claims can be unpredictable. Evidence of the volatility of punitive damages under maritime law was the \$25,000,000 verdict in *Doe vs. Maersk Line Ltd* in December of 2010 which was one of the top 100 verdicts made in 2010 in the USA. This is a case that came down to the captain’s word versus the seaman’s word that the captain denied medical attention to the seaman for an injury arising out of very peculiar circumstances that occurred on shore-leave and while the seaman was reportedly intoxicated.

MEL claims typically start with a claim for Maintenance & Cure and then are coupled with actions of Un-seaworthiness (general maritime law) and Negligence (Jones Act). These combined legal actions involving Maintenance & Cure, Un-seaworthiness and Jones Act negligence are known as the Seaman’s Trinity. Maritime employers can control punitive damages under Maintenance & Cure by making sure their claims are properly managed and

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payments made to injured employees are made promptly. If punitive damages for injuries become eligible under the doctrine of Unseaworthiness and Jones Act negligence, maritime employers will have less control over punitive damage judgments made against them.

MEL and P&I policies typically exclude punitive damages. In the past, this was not an issue because punitive damages were generally not allowable since *Miles v. Apex*. With the recent changes in maritime law, and possible future changes in maritime law, maritime employers are facing the emerging risk of punitive damages which have been shown to lead to high, unexpected verdicts.

AmWINS is pleased to announce our new MEL product which does not exclude punitive damages. Please send submissions to: Pascal Ray, 713.481.1695, pascal.ray@amwins.com.

¹ *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990)

² Page 27, MDL No. 2179 US District Court

³ Courthouse News Service, Monday, October 24th, 2011 "Judge denies BP appeal that might have killed thousands of claims"-
<http://www.courthousenews.com/2011/10/24/40864.htm>

This article was prepared by Pascal Ray and the AmWINS Energy Practice.