

40423 3 2 1 Bill writes from Richmond Hill, Georgia, "Dear Sir, I have heard that the Supreme Court has limited punitive damages in maritime personal injury cases. Under what circumstances are punitive damages available in admiralty cases?"

Good question, Bill. It is clear that punitive damages are not recoverable in personal injury or wrongful death cases within the admiralty jurisdiction, whether based upon the general maritime law of negligence, unseaworthiness, DOHSA, the Jones Act, or negligence under §905(b) of LHWCA. Although the reasoning of the Supreme Court in Miles v. Apex would not logically limit the availability of punitive damages in general maritime law survival actions, most courts to consider the issue after Miles have found otherwise.

What is the reasoning behind punitive damages in maritime law? Why do we even have punitive damages?

More good questions, Bill. The reason for punitive damages is to deter bad conduct. If there is clear evidence that defendant's bad conduct was intentional or reckless, then the jury may consider punitive damages to punish the defendant for its bad conduct and to deter the defendant and others similarly situated from such bad conduct in the future.

Can't punitive damages unfairly penalize big companies?

Punitive damages improperly awarded may be unfair to defendants big or small. However, the unavailability of punitive damages in the face of bad conduct may be unfair to society.

Consider the BERGE CHARLOTTE disaster. The shipper of coal misrepresented that the coal was IMO Code type A, free from methane gas emission and spontaneous heating. In fact it was type B,

liable to emit methane in quantities sufficient to create a hazard. The master of the *BERGE CHARLOTTE*, her Chief Officer, the Bosun, a fitter, and an AB were working in the vicinity of the number 3 hatch, when methane gas from the coal exploded and blew the two hatch covers off and did substantial damage. Three men were killed and the other two are missing and presumed dead. Although the shipper's conduct in misrepresenting the type coal was clearly bad behavior, punitive damages are not allowed in the wrongful death suits, although they are allowed in the shipowner's suit for property damage. This seems unfair and frustrates society's interest in deterrence and retribution.

More next week on The Admiralty Docket. Until then remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing.

responsibility of the owners to grant the crew shore leave?

A camel is nothing more than an invincible carnivore designed by a committee.

Walking alone is a sure way to enjoy good conversation.

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