



Punitive damages recoverable in the US by seamen in cases involving employer's recklessness

A recent ruling in the Washington State Supreme Court finds that punitive damages are recoverable by a seaman in an unseaworthiness claim when the defendant employer is found to have been “reckless”.

Published 20 April 2017

Written by Patrick Michael Leahy, Jack Scalia

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information at the time of publication, no warranty or representation is made regarding its completeness or timeliness. The content in this article does not constitute professional advice, and any reliance on such information is strictly at your own risk. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.

In March of 2017 in the case of [Tabingo v. American Triumph LLC](#), the Washington State Supreme Court ruled that punitive damages are recoverable by seamen in unseaworthiness claims when the defendant employer is “**reckless**”. Tabingo was working as a deckhand on a fishing trawler when he had several fingers partially amputated by a hydraulic hatch cover. He claimed that a broken control handle caused the incident and the vessel’s interests knew of the faulty handle for two years, but did not repair it.

The decision

In reaching its decision, the Washington Supreme Court declined to follow the [Fifth Circuit](#) Court of Appeals, one of the key Federal Courts to consider maritime claims. Furthermore, it distinguished the United States Supreme Court case of [Miles v. Apex Marine Corp.](#) (1990), *determining that the U.S. Supreme Court’s denial of punitive damages in Miles was limited to wrongful death cases. The Washington State Supreme Court reasoned that*

1. punitive damages are available for failure to pay maintenance and cure for a general maritime claim like unseaworthiness;
2. Congress had not prohibited seamen from recovering punitive damages; and
3. allowing seamen to recover punitive damages in these circumstances would support the long-standing notion that seamen are a special class of workers deserving particular protections.

Punitive damages are intended to punish a defendant for extraordinarily bad conduct. Because punitive damages are intended to punish the defendant, the amount of damages awarded is not tied to compensation and instead correlates to an amount that will punish the employer. Consequently, punitive damages can greatly exceed compensatory damages.

Prior to this ruling, the Supreme Court of the United States allowed punitive damages where a seaman’s employer was found to have *willfully* (wantonly) disregarded its obligation to pay maintenance and cure. ([Atlantic Sounding Co. v. Townsend](#) – 2009). The difference between *reckless* conduct and *willful* conduct is substantial. Reckless conduct shows little or no concern about the possible consequences of an action. Willful conduct is deliberate or intentional. So, the *Tabingo* ruling allows punishment for significantly less severe conduct than previously permitted.

Effect on seaman’s injury cases in the United States

The *Tabingo* ruling is a binding precedent only in state courts in Washington. However, claimants will no doubt refer to the case as persuasive authority in federal and state courts throughout the country. This is likely to be especially true in the various courts of the [Ninth Circuit](#). Other jurisdictions have contrary law. Notably, the federal [Fifth Circuit](#) has ruled that *punitive damages are not recoverable under the Jones Act or the general maritime law.* ([McBride v. Estis Well Service LLC](#) - 2014).

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information, the publisher, Gard AS, its shareholders, correspondents, or other contributors, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.

Until the United States Supreme Court rules on the issue, the impact of the case is uncertain. It is reasonable to expect settlement discussions in some jurisdictions to be more difficult with seaman asserting “reckless” conduct by the vessel interests in support of a punitive damages claim. The difference between reckless and negligent conduct is uncertain at best and impossible to determine at worst. Cover for [P&I liabilities is excluded when the injury is caused by the member’s “wilful misconduct”](#). This means that in some instances punitive damages are not covered but each case is determined on its own facts. There is certainly scope for cover where the acts or omissions of the member amount to no more than ordinary negligence.

Questions or comments concerning this Gard Insight article can be e-mailed to the [Gard Editorial Team](#). We are always happy to consider topics suggested by our readers. If you have any suggestion for future articles, please contact us.

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information at the time of publication, no warranty or representation is made regarding its completeness or timeliness. The content in this article does not constitute professional advice, and any reliance on such information is strictly at your own risk. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.