



From The Bench

legal news of interest

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Louisiana Third Circuit Split on Loss of Consortium Damages on the Outer Continental Shelf

by Christopher L. Zaunbrecher

Last month, in *Shields v. Baker Hughes, Inc.*,¹ the Louisiana Third Circuit declined to follow federal precedent and a previous decision by another panel of the same court, in holding that the spouse of a maritime worker injured on a movable rig outside Louisiana territorial waters may recover damages for loss of consortium under state law.

Shields, a Halliburton employee, was injured while working on the *Noble Jim Thompson*, a MODU (movable offshore drilling unit) located on the outer continental shelf off the coast of Louisiana. Shields and employees of the Baker Group were connecting a Halliburton packer to a tool to be placed in the hole. As a Baker e-line operator was moving the sump packer, Shields lost his balance, fell backward, and straddled an I-beam affixed to the rig floor, resulting in personal injury. The worker and his spouse sued Baker under the general maritime law in the 16th Judicial District Court in St. Martin Parish for damages including his wife's alleged loss of consortium.

Baker moved for summary judgment, contending such recovery was prohibited by a decade of federal and state jurisprudence following *Miles v. Apex Marine Corporation*,² in which the U.S. Supreme Court held there was no right of action for loss of society damages under the general maritime action or the Jones Act in a seaman's wrongful death action.³

The district court denied Baker's motion to dismiss the consortium claim. Baker filed an application for supervisory writ of review with the Third Circuit. The appeal court initially granted review under supervisory jurisdiction, then affirmed the district court's denial of summary judgment. The issue was whether the wife of a non-seaman worker injured in federal waters is permitted to recover non-pecuniary damages for loss of consortium under the general maritime law against a defendant who was neither the injured worker's employer, nor the vessel owner.

In *Miles*, the Supreme Court previously held the Jones Act incorporated the provisions of FELA, which only provides for pecuniary damages. Thus the Supreme Court held in *Miles* there is no recovery for loss of consortium in a wrongful death action, whether based on the Jones Act or the doctrine of unseaworthiness.⁴

In *Shields*, the Louisiana Third Circuit found the reach of *Miles* was limited by the fact the case arose under the Death on the High Seas Act (DOHSA), which specifically prohibited non-pecuniary damages.

The court cited *Warren v. Sabine Towing & Transportation Co.*⁵ in which it declined to follow *Miles* in a claim by a seaman's widow against a third party product manufacturer who was not the decedent's employer. *Warren* held that *Miles* did not apply to a "garden-variety" general maritime cause of action for failure to warn, and did not address the remedies available against a defendant who was neither the victim's employer, nor the vessel owner. Because *Warren* occurred in Louisiana territorial waters, the appeal court applied state law wrongful death remedies, including non-pecuniary damages, under the *Yamaha* doctrine.⁶

Unlike *Warren*, Shields' cause of action arose on federal waters. Undeterred, the Third Circuit found no problem with extending Louisiana law to a maritime tort occurring on a vessel outside Louisiana, despite its previous holding to the contrary in *Bertrand v. Air Logistics, Inc.*⁷ Citing *Green v. Industrial Helicopters, Inc.*,⁸ the court said in *Shields* that Louisiana may afford a remedy not traditionally found in the maritime law, provided the remedy neither conflicts with substantive maritime law nor impermissibly interferes with the requirement of uniformity.⁹

Baker pointed out that the decision conflicted with *Bertrand*, in which the Third Circuit followed "the general federal rule" that loss of consortium damages were not recoverable for injuries that occur *outside of territorial waters*, regardless of whether the injured party was a seaman or longshoreman. The panel's response: "We respectfully disagree with and decline to follow our prior decision in *Bertrand*."

Judge Decuir said in dissent that *Bertrand* was correctly decided, and that the narrow *Warren* exception had been rejected by the First and Fourth Louisiana Circuits, and the U.S. Eastern District of Louisiana, which said *Warren* reflected a fundamental misunderstanding of *Miles*.¹⁰

This conflict, along with the disagreement between *Shields* and another panel of the Third Circuit in *Bertrand*, call for a resolution by the Louisiana Supreme Court.

¹2004 WL 206189, (La. App. 3 Cir. 2/4/04).

²498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 275 (1990).

³*Id.* at 33, 111 S.Ct. at 326.

⁴*Id.* at 32, 111 S.Ct. at 325.

⁵01-0573 (La. App. 3 Cir. 10/30/02), 831 So.2d 517, writ denied, 2002-2926, 2002-2927, (La. 2/14/03), 836 So.2d 116, 117.

⁶*Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996).

⁷01-1655(La. App. 3 Cir. 6/19/02), 820 So.2d 1228.

⁸593 So.2d 634, 638 (La.1992), cert. denied, 506 U.S. 819, 113 S.Ct. 65, 121 L.Ed.2d 32 (1992).

⁹*Id.* at 639.

¹⁰*Dixon v. Cliffs Drilling Company*, 633 So.2d 277 (La. App. 1 Cir. 1993), *Trahan v. Texaco, Inc.*, 625 So.2d 295 (La. App. 4 Cir. 1993); *Scarborough v. CLEMCO Industries*, 264 F.Supp. 2d 437 (E.D.La. 2003).

National Average Weekly Wage, Maximum and Minimum Compensation Under the Longshore Compensation Act

The LHWCA, §6(b), provides that maximum compensation for disability or death shall not exceed 200% of the National Average Weekly Wage, and shall not be less than 50% of the National Average Weekly Wage. For the period October 1, 2003 to September 30, 2004, the National Average Weekly Wage was \$515.39. The maximum compensation rate for that period is \$1,030.78, and the minimum is \$257.70.

Briney & Foret

Patrick J. Briney	Gary J. Delahoussaye
Charles J. Foret	Richard R. Montgomery
Katherine M. Loos	Matthew D. McConnell
Michael P. Corry	Stacy D. Saltzman
Kevin S. Frederick	Alicia M. Jacob
Shannon J. Gremillion	Christopher L. Zaunbrecher*

*Of Counsel

For additional information on the contents of this newsletter or if you would like to be on our mailing list, please contact Emily DeSalvo at (337) 237-4070 or desalvo@brineyforet.com. Previous newsletters are also available on-line at www.brineyforet.com

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BRINEY & FORET
Attorneys at Law

413 Travis Street
Post Office Drawer 51367
Lafayette, Louisiana 70505