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Maritime Wrongful Death: A Primer Symposium Papers

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MARITIME WRONGFUL DEATH: A PRIMER

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Maritime wrongful death law is made up of three distinct areas. The first area is covered by the Jones Act,[1] which creates a wrongful death action against a seaman's employer when he is injured or killed through the negligence of his employer.[2] The Jones Act, discussed below, applies only to vessels of private ownership or operation.[3] In addition to pecuniary damages, pain and suffering damages are compensable under the Jones Act.[4]

The second area of maritime wrongful death law is covered by the Death on the High Seas Act (DOHSA), which was recently codified into positive law.[5] DOHSA applies to accidents causing death which occur more than three nautical miles from United States' shores; however, it does not apply to the Great Lakes or waters within the territorial waters of a state.[6] This provision applies to the site of an accident on the high seas, not where injury actually occurs or where the wrongful act causing the accident may have originated.[7] Unlike the Jones Act, which applies only to a seaman's employer, DOHSA applies to any party whose wrongful act, neglect, or default causes the decedent's death on the high seas.[8] By contract, only pecuniary damages are recoverable under DOHSA.

In addition to Jones Act and DOHSA claims, there also exists the area of general maritime law wrongful death action.[9] General maritime law is judicially-created law intended to fill gaps in admiralty not addressed by legislation. Thus, general maritime law can apply when a maritime wrongful death occurs within United States' territorial

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1 46 U.S.C. § 30104 (2006).

2 *In re* Offshore Transport Servs., L.L.C. 409 F. Supp. 2d 753, 755 (E.D. La. 2005).

3 Schwecke v. United States, 96 F. Supp. 225, 228 (D.C. Cal. 1951).

4 *See* Schwecke, 96 F. Supp. 225.

5 Death on the High Seas Act, 46 U.S.C. §§ 30301-30308 (2006).

6 46 U.S.C. §§ 30302, 30308 (2006).

7 Bergin v. F/V St. Patrick, 816 F.2d 1345, 1348 (9th Cir. 1987).

8 *In re* Offshore Transport Servs., 409 F. Supp. 2d at 755-56.

9 Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).

waters.[10] However, when DOHSA applies, courts may not supplement its remedies with general maritime law remedies;[11] similarly, a Jones Act seaman's remedies are limited to those available under the Jones Act, even in an action brought under general maritime law.[12] In a case where the decedent was neither a Jones Act seaman nor killed on the high seas, damages may include loss of support, services, society and funeral expenses,[13] pain and suffering, and medical expenses.[14] Finally, punitive damages are available under general maritime law.[15]

I. MARITIME LAW'S APPLICATION

The analysis necessary to determine whether state or admiralty law governs a wrongful death claim parallels the analysis necessary to determine whether a claim falls within the maritime jurisdiction of the federal courts.[16] Admiralty jurisdiction will be invoked only where the incident at issue satisfies conditions both of location and connection with a maritime activity.[17]

A court applying the location test must determine whether the tort occurred on navigable waters or whether injury suffered on land was caused by a vessel on navigable waters.[18] In cases alleging asbestos exposure, for example, claims are within admiralty jurisdiction if the plaintiff has been exposed to asbestos on navigable waters regardless of whether he has also suffered exposures on land.[19] Frequently, such situations arise when the alleged exposure occurred on a naval vessel in navigable waters.[20]

Determining whether there is a sufficient connection between the wrong committed and maritime activity involves applying a two-prong test. First, a court must look to the general features of the incident involved and determine whether the incident had the potential to

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[10] *Id.*

[11] Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (1978).

[12] Miles v. Apex Marine, Corp., 498 U.S. 19 (1990).

[13] Sea-Land Servs. v. Gaudet, 414 U.S. 573 (1974).

[14] Torrejon v. Mobil Oil Co., 876 So. 2d 877 (La. App. 2004).

[15] *In re* Horizon Cruises Litig., 101 F. Supp. 2d 204 (S.D.N.Y. 2000).

[16] Harville v. Johns-Manville Prods., 731 F.2d 775, 779 (11th Cir. 1984); *see also In re* Chicago Flood Litig., 719 N.E.2d 117 at 1124.

[17] *Id.*

[18] *Id.*

[19] *Harville*, 731 F.2d at 782.

[20] *See* Lambert v. Babcock & Wilcox Co., 70 F. Supp. 2d 877, 883 (S.D. Ind. 1999).

disrupt maritime commerce. Then the court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.[21] Notably, even a remote possibility of impact on maritime commerce is enough to support admiralty jurisdiction.[22] "Although ... [admiralty] cases do not say that every tort involving a vessel on navigable waters falls within the scope of admiralty jurisdiction no matter what, they do show that ordinarily that will be so."[23] Moreover, courts have "consistently held that ship repair is a maritime activity."[24]

II. THE JONES ACT

In 1920, the United States Congress passed the Jones Act, which provides a seaman with the right to recover damages against his employer for negligence resulting in his injury or death.[25] As the Jones Act applies only to seaman, not all individuals injured or killed aboard vessels are entitled to recovery under the Act. However, the Jones Act does not clearly define "seamen," and courts have, therefore, been forced to interpret the scope of Jones Act coverage.

Seaman status is a mixed question of law, taking into account, for example, the nature of the vessel to which the individual is assigned.[26] An employee who, for example, eats all meals upon a vessel and sleeps upon a vessel that remains secured to a shipyard's dock for the entirety of his employment may be a seaman but the employee is more likely an "at will" day laborer who happens to work aboard the vessel but who never sails with the vessel.[27]

Prior to 1991, the United States Supreme Court had not affirmatively stated what constituted a seaman under the Jones Act. Rather, the Fifth Circuit standard had been adopted by most courts

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[21] *In re* Chicago Flood Litig., 729 N.E. 2d 1127.

[22] Great Lakes Dredge & Dock Co. v. City of Chicago, 3 F.3d 225, 228 (7th Cir. 1993).

[23] Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 543 (1995).

[24] Garlock Sealing Technologies v. Little, 620 S.E.2d 773, 776 (Va. 2005) (holding submarine builder/repair worker's asbestos claim was governed by maritime law).

[25] Act of June 5, 1920, ch. 250; 41 Stat. 988 (codified as amended at 46 U.S.C. app. § 688 (recodified at 46 U.S.C. § 30104 (2006)).

[26] McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 341-57 (1991).

[27] *See* Lara v. Arctic King, Ltd., 178 F. Supp. 2d 1178, 1179-81 (W.D. Wash. 2001).

reviewing the issue. Under the Fifth Circuit test, an injured worker is a seaman for purposes of Jones Act protection if he has been more or less permanently assigned to a vessel in navigation and has a job that contributed to the function or mission of the vessel.[28] When the Jones Act was enacted, prior jurisprudence suggested that qualification as a seaman extended to those individuals who furthered the purposes of the voyage.[29] The enactment of the Longshore and Harbors Workers' Compensation Act ("LHWCA") changed this concept.

III. THE LHWCA

The LHWCA excludes "a master or members of a crew of any vessel" from its coverage.[30] Courts have accordingly held that the LHWCA and the Jones Act are mutually exclusive.[31] Because the two Acts operate independently, those provided coverage under the LHWCA are necessarily excluded from recovery under the Jones Act. As the Supreme Court stated in *McDermott International, Inc. v. Wilander,* "[M]aster or member of a crew is a refinement of the term 'seaman' in the Jones Act; it excludes from LHWCA coverage those properly covered under the Jones Act."[32]

Although the division between coverage under the Jones Act and the LHWCA seems straightforward, the Jones Act seaman requirement still remained a point of contention for courts. In *South Chicago Coal & Dock Co. v. Bassett,* the United States Supreme Court sought to

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[28] *See* Offshore Co. v. Robinson, 266 F.2d 769, 776-81 (5th Cir. 1959); *see also* Johnson v. John F. Beasley Constr. Co., 742 F.2d 1054, 1060 (7th Cir. 1984) (holding that because plaintiff's duties were unrelated to the transport function of the vessel, plaintiff was not a seaman under the Jones Act).

[29] *See* Int'l Stevedoring Co. v. Haverty, 272 U.S. 50, 52 (1926) ("Words are flexible.... We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship.").

[30] 33 U.S.C. § 902(3)(G)(2006).

[31] *See* Irving J. Warshauer & Stevan C. Dittman, *The Uniqueness of Maritime Personal Injury and Death Law*, 79 TUL. L. REV. 1163, 1175 (2005); *see also* Swanson v. Marra Bros., Inc., 328 U.S. 1, 4-8 (1946) (holding that the Jones Act and LHWCA are mutually exclusive); McDermott, Inc. v. Bourdreaux, 679 F.2d 452, 455-59 (5th Cir. 1982) (recognizing that the test for seaman status under the LHWCA and the Jones Act are mutually exclusive); Bodden v. Coordinated Caribbean Transp., Inc., 369 F.2d 273, 274 (5th Cir. 1966) (finding that the LHWCA and the Jones Act are mutually exclusive for purposes of defining "seaman").

[32] McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 347 (1991).

classify the type of worker that the LHWCA was meant to cover.[33] The Court stated that the purpose of the LHWCA was to provide coverage for "persons serving on vessels, to be sure, but their service was that of laborers, of the sort performed by longshoremen and harbor workers and thus distinguished from those employees on the vessel who are naturally and primarily on board to aid in her navigation."[34] In so holding, the Court has provided a portal for some courts to adopt the "aid in navigation" requirement when assessing status as a seaman under the Jones Act.

In 1946, the Court again addressed the interplay between the Jones Act and the LHWCA, stating:

> We must take it that the effect of these provisions of the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery . . . only such rights to compensation as are given by the Longshoremen's Act. [35]

In *Wilander*, the Supreme Court again sought to clarify the definition of a seaman.[36] There, the Court held that:

> we believe the requirement that an employee's duties must 'contribut[e] to the function of the vessel or to the accomplishment of its mission captures well an important requirement of seaman status. It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work.[37]

The Court declined to define the "employment related connection to the vessel in navigation" requirement, however.

In *Chandris, Inc. v. Latsis*, the Supreme Court stated that in order to meet the requirement that a seaman have a connection to a vessel in navigation or an identifiable group of vessels, that connection must be "substantial in both duration and nature."[38] Concerning the temporal element as stated in *Chandris*, the Supreme Court stated that the

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[33] 309 U.S. 251, 253 (1940).
[34] *Id.* at 260.
[35] Swanson v. Marra Bros., Inc., 328 U.S. 1, 7 (1946).
[36] 498 U.S. 337, 353-57 (1991).
[37] *Id.* at 355.
[38] Chandris, Inc. v. Latsis, 515 U.S. 347, 370 (1995).

substantiality of duration will be "determined by reference to the period covered by the Jones Act plaintiff's maritime employment."[39]

The second element from *Chandris*, that the connection to the vessel in navigation be substantial in its nature, focuses upon the employee's duties.[40] The Court stated, "[W]hen a maritime worker's basic assignment changes, his seaman's status may change as well."[41] Thus, an injured victim's status as a seaman is not constant. Two years after *Chandris*, the Court decided *Harbor Tug & Barge Co. v. Papai*.[42] In *Papai*, an injured worker hired to paint the housing structure of a tug brought a claim for injuries under the Jones Act.[43] During the course of this employment, he fell from a ladder, sustaining injuries. His employer, Harbor Tug and Barge Co., was the operator of the tug. Papai reported to the port captain at his dockside office; his employment was for only one day and he was not employed to sail with the vessel after he completed his duties.[44] However, Papai had been hired by the same employer a dozen times in the preceding months prior to his injury.[45]

In *Papai*, the Court addressed the "substantial connection" prong of seaman status.[46] For Papai's work out of a union hall to work on tugboats owned by three unrelated employers, the Court determined that his assignment was "transitory or sporadic."[47] The Court also suggested that seaman status should be afforded only to those workers who face regular exposure to the perils of the sea.[48] Thus, in *Papai*, although the worker spent more than 70% of his time on vessels that actually went to sea on short voyages, he was engaged only on a day-to-day basis and hired to complete non-seagoing maintenance on those vessels. The Court accordingly held that he lacked a substantial connection to the vessels.[49]

Viewing the Supreme Court's decisions as a whole, it is not necessary for a maritime worker to be engaged in a vessel's navigational function to possess status as a seaman for purposes of asserting a claim pursuant to the Jones Act. The worker must be more

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[39] *Id.* at 371.
[40] *Id.* at 371-72.
[41] *Id.*
[42] Harbor Tug & Barge Co. v. Papai, 520 U.S. 548, 560 (1997).
[43] *Id.* at 551-52.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*

or less permanently assigned to a vessel or perform a substantial part of his work on the vessel or an identifiable fleet of vessels under common ownership or control. The vessel must be in navigation and the worker's duties must contribute to the function of the vessel or to its mission.

IV. DAMAGES RECOVERABLE UNDER MARITIME WRONGFUL DEATH AND SURVIVAL STATUTES

When a non-seafarer is killed in state territorial waters, the state's wrongful death and survival statutes are triggered and provide the measure of damages compensable.[50] Additionally, all seafarers who die within state territorial waters, except for vessel crewmembers, are entitled to loss of society damages.[51] With the exception of the recovery of damages for pre-death pain and suffering under the Jones Act, discussed below, or the general maritime law, recovery is limited to pecuniary loss under either DOHSA or the Jones Act. In *Michigan Central Railroad Co. v. Vreeland*, the Supreme Court characterized pecuniary loss as one which can be measured by some standard.[52] Pecuniary loss can include loss of support, loss of services of the deceased, loss of nurture, guidance, care and instruction, loss of funeral expenses, and loss of inheritance.

V. RECOVERING FOR LOSS OF SUPPORT

The Death on the High Seas Act provides recovery for the value of the financial contributions that a decedent would have made to his or her dependents had he or she survived the injury.[53] Recovery for loss of support necessitates a showing of dependence or expectation of support.[54] In some cases, loss of support has extended to coverage of a child's college education.[55] Any award of damages for pecuniary loss into the future must be reduced to present value through the use of a discount rate.[56] Courts must also reduce lost support awards by the amount of money that the decedent would have consumed personally.

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[50] Yamaha Motor Corp. v. Calhoun, 516 U.S. 199 (1996).

[51] Sea-Land Servs, Inc. v. Gaudet, 414 U.S. 573 (1974); *see also* Joseph E. Edwards, *Measure and Elements of Damages in Action for Wrongful Death Under General Maritime Law*, 18 A.L.R. FED. 184 (2007).

[52] Mich. Cent. R.R. Co. v. Vreeland 227 U.S. 59 (1939).

[53] *Sea-Land*, 414 U.S. at 573.

[54] Bergen v. F/V St. Patrick, 816 F.2d 1345 (9th Cir. 1987).

[55] *See In re* Matter of Adventure Bound Sports Inc., 858 F. Supp. 1192 (S.D. Ga. 1994); Solomon v. Warren, 540 F.2d 777 (5th Cir. 1976).

[56] *In re* Matter of Adventure Bound Sports, 858 F. Supp. 1192.

VI. RECOVERING FOR LOSS OF SERVICES OF THE DECEASED

Loss of general household services, including housework, maintenance, and other assistance around the home constitute compensable pecuniary losses under DOHSA.[57] To recover for this pecuniary loss, a claimant must present testimony assigning a value to the services performed by the decedent.[58] Such damages require proof that such services were expected and likely to be provided but for the wrongful death.[59]

VII. RECOVERING FOR LOSS OF NURTURE, GUIDANCE AND INSTRUCTION

Children of the decedent may be able to recover for the loss of nurture, loss of instruction, and loss of physical, intellectual, and moral training that they would have received from the decedent but for the deceased parent's death. Under DOHSA, such losses are compensable.[60]

The Ninth Circuit has specifically recognized loss of nurture to children as being a recoverable damage.[61] Relying on *Solomon*, the Court stated: "[w]ithout serious dispute, children may suffer a pecuniary deprivation, apart from the loss of support and financial contribution, from the death of their parents in the loss of parental guidance and training, commonly identified as the loss of nurture."[62] Although this item of damage cannot be computed with any degree of mathematical certainty, the courts in applying the structured pecuniary loss test of DOHSA have held that the loss to children of the nurture, instruction, and physical, intellectual, and moral training that they would have received from their parents, but for the parent's wrongful death, may constitute a pecuniary loss and, as such may be a recoverable element of damages under DOHSA.[63]

The test outlined by the *Solomon* court requires claimants to present evidence that they would have received or did receive in the

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[57] *Sea-Land*, 414 U.S. 573; Tallentire v. Offshore Logistics, Inc., 754 F.2d 1274, 1287 (5th Cir. 1985), *rev'd on other grounds*, 477 U.S. 207 (1986).

[58] Ivy v. Sec. Barge Lines, 585 F.2d 732, 740 (5th Cir. 1978); Martinez v. P.R. Marine Mgmt., Inc., 755 F. Supp. 1001, 1008 (S.D. Ala. 1990).

[59] *Bergen*, 816 F. 2d at 2031.

[60] *Solomon*, 540 F.2d at 788.

[61] Nygard v. Peter Pan Seafoods, Inc., 701 F.2d 77 (9th Cir. 1983).

[62] *Id.*

[63] *Solomon*, 540 F.2d at 787.

past care, nurture, and guidance from their parent prior to his or her death. In declining to award damages for care, nurture, and guidance to children past the age of majority, the *Solomon* court explicitly noted that damages of this type were important for minors in their formative years. Whether the child lived with the decedent is also a factor that courts consider when assessing these damages.[64]

VIII. RECOVERING FOR A DECEDENT'S PRE-DEATH PAIN AND SUFFERING

In *Great Northern Railway Co. v. Capital Trust Co.*, the United States Supreme Court set forth a minimum threshold for the recovery of pre-death pain and suffering damages.[65] Specifically, for the estate of a decedent to recover pre-death pain and suffering damages, the decedent must have been conscious for some period of time after sustaining his or her injuries but prior to death.[66] As the Supreme Court has held, it is clear that injuries suffered contemporaneously with death or with very short periods of time separating injury and death do not give rise to separate pain and suffering damages.[67] Thus, some appreciable amount of time must pass between injury and death for the decedent's estate to be able to seek pre-death pain and suffering damages under general maritime law.

Interpreting this requirement, the Ninth Circuit has held that prior to recovery for a decedent's pre-death pain and suffering, a decedent's estate must demonstrate that the decedent was conscious for at least some period of time after suffering the injuries which resulted in his or her death.[68] Where a decedent's death is attributable to drowning, courts frequently require evidence of a struggle or other evidence of consciousness before awarding damages for pain and suffering prior to

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[64] Barrett v. United States, 660 F. Supp. 1291, 1321 (S.D.N.Y. 1987) (The award for loss of parental nurture and guidance to a noncustodial child must be limited, because she was in her mother's custody at the time of her father's death); *see also In re* Matter of Adventure Bound Sports, Inc., 858 F. Supp. 1192, 1204 (S.D. Ga. 1994) (awarding $7,500 per year until age 18 for lost nurture and guidance, reduced to present value).

[65] Great N. Ry. Co. v. Capital Trust Co., 242 U.S. 144 (1916).

[66] *Id.*

[67] *Id.* at 147.

[68] F/V CAROLYN JEAN, Inc. v. Schmitt, 73 F.3d 884, 885 (9th Cir. 1995). *See also* Ghotra v. Bandila Shipping, Inc., 113 F.3d 1050 (9th Cir. 1997) (holding that ten seconds of consciousness did not meet the appreciable period of time threshold established by the United States Supreme Court for pre-death pain and suffering damages to be recoverable).

death.[69] Moreover, the fact that an autopsy determines that the cause of death was drowning is not conclusive of consciousness sufficient to award pain and suffering damages.[70] In other words, the Fifth Circuit requires an appreciable measure of consciousness on the part of the decedent such that the decedent is manifesting an intention to save his own life prior to death for pain and suffering damages to be awarded.[71]

Where pre-death consciousness can be proven, courts have upheld substantial pre-death pain and suffering awards. For example, in *Public Administrator v. United States Lines, Inc.*, a New York appellate court affirmed an award of over $1.9 million in pre-death pain and suffering damages where there was evidence that the decedent seaman was conscious when he went overboard and that he could have survived up to three hours in the water.[72] Similarly, the Sixth Circuit has upheld DOHSA pre-death pain and suffering awards in excess of $1 million where there was a maximum of twelve minutes of consciousness for the decedent after sustaining injury but prior to death.[73]

IX. JOINT AND SEVERAL LIABILITY APPLIES

In addition to the types of damages which are generally available under principles of maritime law, the question of each defendant's share of liability is also important for an injured plaintiff's recovery. "Liability in maritime actions under U.S. law is joint and several and, as such, each individual tortfeasor is liable in full for damages sustained by the plaintiff."[74]

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[69] *See* James P. Jacobson, "*Maritime Wrongful Death: Causes of Action and Damages*," 1 Ann. 2007 AAJ-CLE 55 (2007) (citing Grantham v. Quinn Menhaden Fisheries, Inc., 344 F.2d 590 (4th Cir. 1965)); Davis v. Parkhill-Goodloe Co., 302 F.2d 489, 495 (5th Cir. 1962); Gardner v. Nat'l Bulk Carriers, Inc., 221 F. Supp. 243, 246 (E.D. Va. 1963) (*aff'd* 333 F.2d 676 (4th Cir. 1964).

[70] *Davis*, 302 F.2d at 495.

[71] *Id.*

[72] Pub. Adm' v. U.S. Lines, Inc., 603 N.Y.S.2d 20 (N.Y. App. Div. 1993).

[73] Bickel v. Korean Air Lines Co. Ltd., 96 F.3d 151 (6th Cir. 1996).

[74] Man Ferrostaal, Inc. v. M/V Vertigo, 447 F. Supp. 2d 316, 321 (S.D.N.Y. 2006); *see also* Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256 (1979); McDermott, Inc. v. AmClyde and River Don Castings Ltd., 511 U.S. 202 (1994) ("[o]ne can read that opinion [*Edmonds*] as merely reaffirming the well established principle of joint and several liability.").

X. PROPORTIONATE SHARE LIABILITY SHOULD BE LIMITED TO SETTLING DEFENDANTS

In *McDermott, Inc. v. AmClyde and River Don Casting*,[75] the United States Supreme Court adopted the "proportionate share" approach to liability for matters governed by maritime law. Under this approach, "the money paid [by a settling defendant] extinguishes any claim that the injured party has against the released tortfeasor and also diminishes the claim that the injured party has against the other tortfeasors by the amount of the equitable share of the obligation of the released tortfeasor."[76] The Court further noted,

> [t]here is no tension between joint and several liability and a proportionate share approach to settlements. Joint and several liability applies when there has been a judgment against multiple defendants. It can result in one defendant paying more than its apportioned share of liability when the plaintiff's recovery from other defendants is limited by factors beyond the plaintiff's control, such as a defendant's insolvency. When the limitations on a plaintiff's recovery arise from outside forces, joint and several liability makes the other defendants, rather than an innocent plaintiff, responsible for the shortfall.[77]

In practice this means that the jury must be asked to determine the percentage of fault attributable to the parties and defendants who have settled. The defendants who remain at the time of verdict shall have the right to have their liability reduced by the percentage of fault attributed to the plaintiff and settling-defendants.

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[75] *McDermott*, 511 U.S. 202.
[76] *Id.* at 209.
[77] *Id.* at 220-21.

XI. MARITIME LAW'S PREEMPTION OF STATE LAW

State laws which conflict with maritime law are preempted.[78] State law may supplement maritime law when maritime law is silent or where a local matter is at issue, but state law may not be applied where it would conflict with federal maritime law.[79] Even if a case is tried in state court, a federal maritime rule of decision applicable to the controversy would still displace a conflicting state rule.[80] Federal maritime law is a sweeping preemption of *any* state law which would limit those remedies available under maritime law.[81] In essence, state law can *expand* the remedies available, but the state cannot act to limit those remedies.[82]

Maritime tort actions are governed by the Uniform Statute of Limitations for Maritime Torts, which provides a three year limitations period from the date "the cause of action arose."[83] A cause of action accrues, for purposes of general maritime law, when a plaintiff knew or should have known of his injury and its cause.[84] On the other hand, the IPLA's statute of repose contains a ten-year limitations period, I.C. 33-1-1.5-5, but is not subject to such a discovery rule. As such, when a state statute of repose is inconsistent with the federal maritime law, the state statute is inapplicable.[85]

XII. CONCLUSION

Federal maritime wrongful death law preempts any state's laws in conflict, however, state law may supplement the Federal law where the Federal law is silent. The choice of which federal body of law or which federal statute is applicable in any given maritime injury or death case is fact driven, and most frequently the outcome is determined by

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[78] *In re* Chicago Flood Litig., 308 Ill. App. 3d 330.

[79] Calhoun v. Yamaha Motor Corp., 40 F.3d 622, 627 (3d Cir. 1994).

[80] *Id.* at n.5. This principle is sometimes referred to as the reverse-*Erie* doctrine. *Calhoun*, 40 F.3d at 622, n.5.

[81] Yamaha Motor Corp. U.S.A. v. Calhoun, 516 U.S. 199 (1996); *see also* Horak v. Argosy Gaming Co., 648 N.W.2d 137 (Iowa 2002).

[82] *Horak*, 648 N.W. 2d 137.

[83] 46 U.S.C.A. § 30106 (2006).

[84] White v. Mercury Marine, Div. of Brunswick, Inc., 129 F.3d 1428 (11th Cir. 1997).

[85] *See Lambert*, 70 F. Supp. at 887; *see also* White v. Mercury Marine Div. of Brunswick, Inc., 129 F.3d 1428, 1431 (11th Cir. 1997) (finding a Florida statute of limitations inconsistent with federal maritime statutes of limitations).

the injured party's employment status and the purpose for that employment. The one universal fact is that, for as long as men sail to sea in ships, there will be injuries and deaths.