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S.M. Pires v. Frota Oceania Brasileira, 659 N.Y.S.2d 25 (A.D. 1 Dept. 1997) (Decided June 24, 1997)

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Bronx County, and defendants appealed. On appeal the Appellate Division unanimously reversed on the grounds that punitive damages are not available under general maritime law despite plaintiffs being mere passengers and not seamen or seafarers.

Plaintiffs argued that their status as passengers exempted them from the bar on recovery of punitive damages under maritime law. However, the court stated that even though the U.S. Supreme Court in *Miles v. Apex Maritime Corp.*, 498 U.S. 19, 111 S.Ct. 317 (1990), only prohibited such recovery in the case of the wrongful death of a seaman, both *Public Administrator v. Frota Oceanica Brasileira*, 222 A.D.2d 32, 635 N.Y.S.2d 606 (A.D. 1 Dept. 1995) and *Wahlstrom v. Kawasaki Heavy Industries Ltd.*, 4 F.3d 1084 (2nd Cir. 1993) upheld the principle that punitive damages are *never* available under general maritime law.

In addition, the Appellate Division cited *Cochran v. A/H Battery Assoc.*, 909 F.Supp. 911, 922 (S.D.N.Y. 1995) where the Supreme Court's decision in *Miles* was interpreted to mean that when Congress has passed legislation in a particular area of maritime law courts must conform with such legislation in fashioning remedies. Therefore, to permit a "punitive damage claim would be to expand maritime jurisprudence beyond Congress' intention." Further, the court noted that in *Preston v. Frantz*, 11 F.3d 357 (2nd Cir. 1993), the Second Circuit said that even if *Miles* did not apply to non-seaman, its decision in *Wahlstrom* acknowledged a "special regard accorded by admiralty to seaman." The Second Circuit, therefore, recognized that an unacceptable anomaly would be created if non-seaman could recover punitive damages under admiralty when seaman were barred from the same recovery by *Miles*.

Relying on the above, the court held that punitive damages are not available under general maritime law, regardless of whether the plaintiff is a non-seaman/non-seafarer, and reversed.

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II. Punitive damages not available in maintenance and cure cases.

S.M. Pires v. Frota Oceania Brasileira, 659 N.Y.S.2d 25 (A.D. 1 Dept. 1997)
(Decided June 24, 1997)

The Supreme Court, New York County, entered judgment on a jury verdict awarding plaintiff with \$4 million consequential, \$16 million punitive and \$1 million loss of consortium damages, plus interest and costs. Defendant appealed and the Appellate Division affirmed but modified the award to dismiss claims for punitive and loss of consortium damages and to dispense with the awarding of costs. The court also remanded the case to the supreme court for it to consider awarding attorney's fees to plaintiffs in light of the dismissal of punitive damages.

The court stated that the strong concern for uniformity in maritime law which was expressed in *Miles v. Apex Mar. Corp.*, 498 U.S. 19, 111 S.Ct. 317 (1990), bars a plaintiff in a maintenance and cure case from being awarded punitive or loss of consortium damages. Further, the court noted that in *Public Administrator v. Frota Oceanica Brasileira*, 222 A.D.2d 332, 635 N.Y.S.2d 606 (A.D. 1 Dept. 1995) it was held that damages for nonpecuniary loss, including

punitive damages, are not available under general maritime law. The court then dismissed the balance of defendant-appellant's arguments as being without merit.

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JONES ACT NEGLIGENCE, UNSEAWORTHINESS AND PRIMARY DUTY RULE

Injured seaman claiming Jones Act negligence and unseaworthiness defeated summary judgment motions by presenting evidence showing that his fall into an open hatch may have been caused by unreasonably cramped and slippery working conditions. Primary Duty rule does not bar seaman's claims when the dangerous condition was not created by the seaman nor it could be controlled or eliminated by him.

Ribitzki v. Canmar Reading & Bates, Ltd. Partnership 111 F.3rd 658 (9th Cir. 1997)
(Decided April 14, 1997)

Seaman Anton Ribitzki ("Ribitzki") was sent by his employer, Piquiniq Service Company ("Piquiniq"), to work aboard the oil drilling ship CANMAR SSDC ("Canmar"). His job was to clean the ship's shale pit by hosing away mud and shale after the Canmar finished hole drilling operations. Ribitzki injured himself while walking toward an open hatch as he uncoiled the hose he used for his cleaning duties. A kink developed in the hose which caused plaintiff to avert his focus away from the open hatch. He then either slipped or stepped into the open hatch. There were no witnesses to the accident. Ribitzki suffered serious knee injuries as a result of the mishap for which he filed a Jones Act negligence claim against his employer, Piquiniq, and an unseaworthiness claim against the vessel and her owners.

The central thrust of plaintiff's claim is that the pitroom where he fell was unreasonably cramped and slippery for the tasks he was assigned to perform. The pit room measured four-feet by sixteen-feet in length; the hatch measured two-feet by two-feet, thus leaving two feet of deck space between the open hatch and pit room bulkhead. In depositions, Ribitzki testified that there was mud near the hatch area that may have caused him to slip. However, he was not certain whether he slipped or just stepped into the open hatch. Defendants aver that there was no mud in the pit room on the day plaintiff fell. They further allege that plaintiff was well aware of the conditions in the pit room and did not exercise proper care in that he should have laid the hose on the ground and walked to the area where the kink developed.

Under these facts, the district court granted summary judgment against plaintiff on both actions. On appeal, the Ninth Circuit reversed.

I. Jones Act Negligence In its de novo review of the facts, the Ninth Circuit found that the evidence, viewed in the light most favorable plaintiff, satisfied all the elements of a Jones Act claim, namely, duty, breach, notice and causation.