



The Fifth Circuit Snips Away At *Gaudet*

*Holds that a non-dependent parent of deceased longshoremen
may not recover for loss of society*

American River Transp. Co. v. U.S. Maritime Serv. Inc., No. 05-30878, 2007 WL 1760579 (5th Cir. June 19, 2007)

Jacques Allemands and Darnell Lane were work-release prison inmates performing clean up work on the ARTCO barge ART 529 on the Mississippi river. While performing their work duties, Lane was struck in the head by a high pressure hose and knocked unconscious and fell into the Mississippi river and Allemands jumped in to save him. Allemands struggled to keep his head above water, but ultimately succumbed when two ARTCO barges collided, preventing further rescue attempts. Prior to his death, Allemands had been incarcerated for five years, and had provided no support to his parents.

ARTCO commenced a Limitation of Liability proceeding, and Allemands' parents appeared as survivors on behalf of his estate, and for themselves claiming loss of society for the wrongful death of their son, who was statutorily covered by the Longshore Act. The district court granted ARTCO's motion for summary judgment on the grounds that non-dependent parents may not recover damages for loss of society in a maritime wrongful death cause of action commenting that the current state of law pertaining to remedies available to longshoremen's survivors is "not clear" and "should be appealed." The parents appealed.

The Fifth Circuit began its treatment of the case by untangling the confusing history of maritime wrongful death actions, and by explaining the holdings of the principal cases that had created the confusion. The confusion arises from the fact that dependents of longshoremen were permitted recover loss of society damages in wrongful death cases occurring in territorial waters under *Sea-Land Serv. Inc. v. Gaudet*. However, dependents of a Jones Act seaman killed in territorial waters may not recover loss of society damages under *Miles v. Apex Marine*. Finally, survivors of maritime workers, either Jones Act or Longshore, killed on the high seas are delimited by the remedies in the Death on the High Seas Act, which does not include loss of society. Here, Allemands' death occurred in the territorial waters, and under prior Supreme Court precedent, his survivors argued they were entitled



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to recover loss of society damages. The court also noted the Supreme Court's trend over the last two decades has been to restrict plaintiff's rights in maritime actions.

Allemands' survivors urged the Fifth Circuit not to draw a distinction between dependent and non-dependent survivors, and advocated a position adopted by the Ninth Circuit in this regard. The Fifth Circuit rejected this argument and instead sided with the Second, Sixth, and Eleventh Circuits who had previously decided similar cases. In light of the U.S. Supreme Court's denial of such recovery to beneficiaries of seamen, the Fifth Circuit affirmed. It noted that allowing recovery would have "(1) impeded uniformity by going against the substantial majority of the federal court decisions on this issue, and (2) create[d] an anomaly by 'expand[ing] the class of beneficiaries of non-seaman who may recovery for loss of society."

Though the Fifth Circuit did not tackle the thornier issue of whether loss of society as a category of damages were available at all, the decision further erodes the availability of non-pecuniary damages for the survivors of longshoremen killed in territorial waters. With the noted split in Circuit precedent, this case appears ripe for appeal to the Supreme Court and could ultimately pave the way for the Court to eliminate non-pecuniary damages altogether in maritime wrongful death claims, regardless of the plaintiff's status.

While the Fifth Circuit specifically limited the issue on appeal to whether non-dependent survivors of a longshoremen can recover loss of society, the discussion and tenor of the opinion indicate the court would extend the prohibition against such damages to the non-dependent survivors of non-seamen killed in state waters.

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