



Fifth Circuit Holds Jones Act Seaman Not Entitled to Recover Non-Pecuniary Damages from Non-Employer Third Parties

William A. Scarborough died of respiratory failure secondary to silicosis in March 2002. From 1959 to 1967 Scarborough worked aboard various sandblasting vessels in the Gulf of Mexico sandblasting offshore rigs and platforms. As part of his work, he wore hoods made by Clemco. In 1977, Scarborough sued his employer, the current defendants, and various insurers alleging that their negligence had caused his silicosis. Following a jury trial, Scarborough was awarded \$650,000.00. The jury also found that Scarborough was a Jones Act seaman and that the negligence of his employer and the manufacturers of the “vessel equipment” caused his disability by providing equipment that rendered the vessel unseaworthy. *Scarborough v. N. Assurance Co., et al.*, No. 77-2523 (Ed. La. 1977) (Heebe J.).

Following Scarborough’s death, his spouse and adult children filed a state law wrongful death, survival and general Louisiana tort law action against Clemco and other manufacturers/distributors of sandblasting safety equipment. Following a settlement of pecuniary damages claims, the district court dismissed the plaintiffs’ claims for nonpecuniary damages. Before the court were two issues: whether the plaintiffs’ claims were subject to federal admiralty jurisdiction and whether a Jones Act seaman can recover nonpecuniary damages against a non-employer third party in a maritime wrongful death action.

In regard to the first issue, the Fifth Circuit applied the two part test set out in *Grubart v. Great Lakes Dock & Dredge Co.*, 513 U.S. 527, 534 (1995) requiring a tort occurring on navigable water or an injury caused by a vessel in navigable water. The court concluded that since Scarborough was exposed to deleterious materials causing his silicosis while “on navigable water,” the first part of the “locality test” was met. The second part of the test is the “connection test” which requires that the activity at issue have the potential to disrupt marine commerce and that the activity bear a substantial relationship to a particular maritime activity. *Id.* The court concluded that both parts of this test were met since Scarborough was a Jones Act seaman, the sandblasting activity from a vessel in navigation had the potential to disrupt maritime commerce and the plaintiff’s employer (one of the tortfeasors) was engaged in a traditional maritime activity.

Having concluded that federal admiralty jurisdiction was present, the appeals court looked at whether the uniformity principles espoused in *Miles v. Apex Marine Corp.*, 498 U.S. 19, (1990), and the Fifth Circuit’s own decision in *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995) were applicable to the present matter. The court held that “it would be improper for this court to allow the surviving spouse and heirs of a Jones Act seaman to recover nonpecuniary damages in this case when Congress has disallowed the recovery of identical damages in a Jones Act suit . . . The court finds that neither one who has invoked his Jones Act seaman status nor his survivors may recover non pecuniary damages from non-employer third parties.”