Banks v. 3M Co.

United States District Court for the Central District of California

February 13, 2024, Decided; February 13, 2024, Filed

2:22-cv-06892-JLS-E

Reporter
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Josephine Banks, et al. v. 3M Company, et al.

Core Terms

Jones Act, damages, punitive damages, maritime law, cause of action, loss of society, claim for damages, limitations, maritime, maintenance and cure, non-pecuniary, common-law, loss of future earnings, product liability, district court, ***asbestos***, cases, pain and suffering, remedies, survival, wrongful death action, statutory scheme, reasons

Counsel: **[*1]** Attorneys for Plaintiffs: Not Present.

Attorneys for Defendant: Not Present.

Judges: Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE.

Opinion by: JOSEPHINE L. STATON

Opinion

CIVIL MINUTES — GENERAL

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART DEFENDANT'S MOTION FOR DISMISSAL OF NONPECUNIARY DAMAGE CLAIMS (Doc. 166)

Before the Court is a Motion for Application of General Maritime Law and Dismissal of Non-Pecuniary Damage Claims filed by Defendant Air & Liquid Systems Corp. (Mot., Doc. 166; Mem., Doc. 166-1.) Plaintiffs opposed and Defendant responded. (Opp., Doc. 169; Reply, Doc. 183.) The Court took this matter under submission, and, for the following reasons, Defendant's Motion is GRANTED IN PART.

I. BACKGROUND

Plaintiffs Josephine Banks, Jamie Banks, Nuevoe Strain, Crisela Banks, Leeann Mollenido, and William J. Banks initiated this action in Los Angeles County Superior Court on August 11, 2022. (*See* Compl., Doc. 1-1.) Plaintiffs bring a survival cause of action on behalf of decedent William Henry Banks against 26 named Defendants allegedly responsible for exposing William Banks to ***asbestos*** and causing his death from malignant epithelial mesothelioma; Plaintiffs also pursue a wrongful death cause of **[*2]** action, seeking recovery for the damages they have suffered because of William Banks's death. (First Amended Complaint ("FAC") ¶¶ 1, 3, 7, Doc. 126.) Defendants timely removed the action to federal court. (*See* Notice of Removal ¶ 8, Doc. 1.)

Plaintiffs allege that William Banks was exposed to ***asbestos*** while working for the U.S. Navy as a machinist mate aboard several different Navy vessels, from 1961-1984. (FAC ¶ 13.) Plaintiffs bring claims for negligence and products liability, alleging that Defendants manufactured and distributed ***asbestos*** and ***asbestos***-containing products. (*Id.* ¶¶ 15, 38.) In their prayer for damages, Plaintiffs seek: "general damages"; "burial expenses"; "medical and related expenses"; "exemplary or punitive damages"; prejudgment interest; and costs. (*Id.* at 15.) Plaintiffs also allege that they have "sustained pecuniary loss resulting from the loss of love, comfort, society, attention, services and support of [William Banks]." (*Id.* ¶ 25.)

Defendant Air & Liquid Systems Corp., successor by merger to other named Defendants Buffalo Pumps, Inc., Warren Pumps, LLC, and Velan Valve Corp., filed the present motion, requesting that the Court apply general maritime law because **[*3]** William Banks's ***asbestos*** exposure occurred aboard ships. (Mem. at 1.) Plaintiffs conceded that federal maritime law applies to this action. (*See* Opp. at 5.) Defendant next argues that,

based on the application of maritime law, certain of Plaintiffs' damages claims must be dismissed because those damages are not available under maritime law.

II. ANALYSIS

The Court must decide the purely legal question of whether the application of maritime law forecloses a subset of Plaintiffs' damages claims. Defendant moves for the dismissal of Plaintiffs' claims for: "general damages," also known as damages for pain and suffering; loss of society; loss of future earnings; and punitive damages. (Mem. at 12.) The Court begins by discussing the case law that governs damages claims under federal maritime law, and then evaluates each of Plaintiffs' damages claims in turn.

A. Legal Standard for Damages Available Under Maritime Law

Maritime law is governed by an "amalgam" of federal and state statutes, as well as "traditional common-law rules, modifications of those rules, and newly created rules." *The Dutra Grp. v. Batterton, 139 S. Ct. 2275, 2278 (2019)* (quoting *E. River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858, 864-65 (1986)*). The Supreme Court has instructed that courts "'should look primarily to [] legislative enactments **[*4]** for policy guidance'" and depart from those policies "in discrete instances based on longestablished history," while keeping in mind the desire for "'uniformity in the exercise of admiralty jurisdiction.'" *Id.* (quoting *Miles v. Apex Marine Corp., 498 U.S. 19, 26, 27 (1990)*). From those considerations, lower courts have distilled three factors that govern whether damages are available under maritime law: "(1) [whether] the damages 'have traditionally been awarded'; (2) [whether] 'conformity with parallel statutory schemes would require such damages'; or (3) [whether] 'policy grounds' compel the damages." *Mullinex v. John Crane Inc.*, 2021 WL 8129699, at *1 (E.D. Va. Oct. 5, 2021) (quoting *Batterton, 139 S. Ct. at 2283*).

B. Clarifying the Application of This Legal Standard to Plaintiffs' Case

Plaintiffs do not dispute that these are now the relevant factors, pursuant to *The Dutra Group v. Batterton*. Instead, Plaintiffs argue that the Court can either distinguish or set aside many of the Supreme Court's recent admiralty decisions because this is a products liability and negligence action brought against third-party defendants instead of William Banks's employer. These arguments fail.

First, Plaintiffs insist that the limitations on damages that have been imposed are only for actions brought under the *Jones Act, 45 U.S.C. § 5*, and the *Death on the High Seas Act ("DOHSA"), 46 U.S.C. § 30302*. (Opp. at 6-9.) Plaintiffs urge **[*5]** that, because Plaintiffs' claims are not "tethered to claims governed by the Jones Act or DOHSA," the Court should simply to look to maritime common law remedies, which have included non-pecuniary and punitive damages. (*Id.* at 8.)

But this elides much of the nuance in the Supreme Court's analysis. An individual who qualifies as a seaman under the Jones Act is given a choice; he may "'elect' to bring a Jones Act claim" or decide to pursue a "separate common-law cause of action." *Atlantic Sounding Co. v. Townsend, 557 U.S. 404, 415-16 (2009)*.[1] But the election of a common-law cause of action does not necessarily permit this Court to disregard the limitations of the Jones Act. In *Miles v. Apex Marine Corporation*, the Supreme Court explained that the Jones Act is still a relevant comparison point in a general maritime common-law action brought on behalf of a Jones Act seaman because "[i]t would be inconsistent with [the Supreme Court's] place in the constitutional scheme were [it] to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence." *498 U.S. at 32-33*. Therefore, even though the plaintiff in *Miles* brought an action for unseaworthiness—a common-law **[*6]** maritime cause of action—the Supreme Court did not allow her to sidestep the damages limitations of the Jones Act and recover all commonlaw remedies because the suit was still brought on behalf of a Jones Act seaman. *Id. at 33*. Because William Banks qualifies as a Jones Act seaman, the damages limitations of the Jones Act are relevant.

Second, Plaintiffs argue that they are suing third-party defendants and not William Banks's employer, which allows this Court to disregard the remedial limitations of the Jones Act. (Opp. at 1, 21.) Plaintiffs attach a recent decision by another district court in the Central District

[1] Here, Plaintiffs do not dispute that the decedent, William Banks, meets the definition of "seaman" under the Jones Act and could have brought claims under that Act. (Opp. at 4.)

of California that concluded the Jones Act did not "appl[y]" to ***asbestos***-exposure claims made against defendants who were not the decedent's employer. *See Ollerton v. Nat'l Steel & Shipbuilding Co., 2023 WL 9004985, at *5 (C.D. Cal. Nov. 27, 2023)*. But *Ollerton* does not address, in any way, the availability of damages; rather, *Ollerton* considered whether plaintiffs, who were siblings of the decedent, lacked standing to bring wrongful death claims because the Jones Act limits standing to surviving spouses and children and the district court decided that the statutory standing restrictions did not apply. *Id. at *3-4*. Statutory standing is a different question, **[*7]** guided by different principles, and sheds little light on how the Court should approach remedies.

Plaintiffs also cite *Mussa v. Cleveland Tankers*, in which a district court in the Eastern District of Michigan permitted the plaintiff to pursue a claim for punitive damages because the plaintiff was suing a third-party rather than the maritime employer or vessel owner. *See 802 F. Supp. 84, 86-87 (E.D. Mich. 1992)*. But *Mussa*'s reasoning relied on an Eastern District of Louisiana district court case, *Rebstock v. Sonat Offshore Drilling, 764 F. Supp. 75 (E.D. La. 1991)* that has since been overturned by the Fifth Circuit. *See Scarborough v. Clemco Indus., 391 F.3d 660, 666-68 (5th Cir. 2004)* (extending *Miles*'s reasoning to actions brought by Jones Act seamen against third-party non-employers). More importantly, this argument is foreclosed by Ninth Circuit precedent; *Davis v. Bender Shipbuilding & Repair Company* explains that "there is nothing in *Miles*['s] reasoning to suggest that the decision turned upon the identity of the defendant. Indeed, not all of the defendants in *Miles* were Jones Act employers. ... The identity of the defendant is irrelevant." *27 F.3d 426, 430 (9th Cir. 1994)*. Therefore, nothing about the named Defendants alters this Court's analysis.

Third, Plaintiffs appear to argue that *Miles* was implicitly overruled by the Supreme Court's decision in *Atlantic Sounding Company v. Townsend*. In *Atlantic Sounding*, the Supreme **[*8]** Court determined that punitive damages are available for the common-law maritime cause of action called maintenance and cure. *557 U.S. at 424*. The Court reasoned that the Jones Act does not create "an exclusive remedy" if there is historical evidence that another pre-existing common law remedy is available, and the traditional understanding of those remedies has not been displaced by Congress. *Id. at 416, 420-21*. Because "the general maritime cause of action (maintenance and cure) and the remedy (punitive damages) were well established before the passage of the Jones Act," and because "the Jones Act does not address maintenance and cure or its remedy," *Atlantic Sounding* reasoned that the Jones Act did not displace any traditional understandings about maintenance and cure and its remedies. *Id. at 420*.

This reasoning does not displace *Miles* nor the Ninth Circuit's decision in *Davis*, even though *Atlantic Sounding* does feature some language regarding general presumptions in favor of a remedy's availability. *See, e.g.*, *id. at 424* ("The laudable quest for uniformity in admiralty does not require the narrowing of available damages to the lowest common denominator approved by Congress for distinct causes of action.") And even if *Atlantic Sounding* lends support to an argument for more extensive remedial **[*9]** availability under maritime law, the Supreme Court refined that holding in *Batterton* and cautioned against an overly broad reading. *Batterton* explains that conformity with federal statutes is relevant *unless* clear historical evidence establishes that a certain remedy was traditionally available under a common-law cause of action. *588 U.S. at 2284*.

Applying these considerations to the present matter, it is clear that the Jones Act has a central role to play in the Court's analysis. Plaintiffs are suing on behalf of a Jones Act seaman. And they are pursuing a claim for negligence, which, unlike maintenance and cure, is a claim directly addressed by the Jones Act. *See Atlantic Sounding, 557 U.S. at 415* ("The Jones Act thus created a statutory cause of action for negligence."). As a result, the Court concludes that, as to Plaintiffs' negligence claims, the Jones Act remedial limitations must apply. As to Plaintiffs' claims for products liability, general maritime law allows Plaintiffs to recover: damages that were traditionally awarded under general maritime law in products liability actions; damages that are allowed by the Jones Act; and damages that are compelled by policy concerns. Having established this approach to the Supreme Court's relevant maritime **[*10]** law jurisprudence, the Court evaluates whether Plaintiffs are entitled to their damages claims for pain and suffering, loss of society, loss of future earnings, and punitive damages.

C. Pain and Suffering

Here, Plaintiffs first seek damages for the pain and suffering that William Banks suffered prior to his death. *See Cal. Civ. Proc. Code § 377.34(b)*; (*see also* Opp. at 10.) Defendants argue that all Plaintiffs' claims for non-pecuniary damages must be dismissed. (Mem. at 11.)

Though the Jones Act does create a pecuniary damages limitation in wrongful death actions, some non-pecuniary damages are available in a survival action. Here, it is apparent that the Jones Act permits damages for the decedent's pain and suffering. The Jones Act provides that, in an action brought by "the personal representative of the seaman," the "[l]aws of the United States regulating recovery for personal injury to, or death of, a railway employee apply." 46 U.S.C. § 30104(a). And as Plaintiffs point out (*see* Opp. at 11), the Supreme Court decided in *St. Louis, Iron Mountain, Southern Railway Co. v. Craft* that the survival action for a railway employee "cover[s] his loss and suffering while he lived." 237 U.S. 648, 658 (1915). Therefore, because the Jones Act permits recovery for pain **[*11]** and suffering in a survival action, conformity with the federal statutory scheme demands that such damages be available here as well. Defendant's Motion is DENIED as to the claim for damages for pain and suffering.

D. Loss of Society and Loss of Future Earnings

Next, Plaintiffs seek damages for "loss of love, comfort, society, attention, services and support," which Defendant reasonably construes as a claim for damages for loss of society (a form of damages in wrongful death actions) and loss of future earnings (a form of damages in survival actions). (*See* FAC ¶ 25; Mem. at 7.) Because the Jones Act bars recovery for loss of society and loss of future wages, conformity with the federal statutory scheme counsels against the availability of such damages here. *See* Miles, 498 U.S. at 33; Batterton, 139 S. Ct. at 2284-85. Indeed, loss of society and loss of future earnings are the precise forms of damages that the Miles Court decided were unavailable in an action for the wrongful death of a Jones Act seaman. *See* Miles, 498 U.S. at 32-33, 35-36; *see also* Smith v. Trinidad Corp., 992 F.2d 996, 996 (9th Cir. 1993) ("[T]he Supreme Court's holding in Miles has changed the law, and [] wives of injured mariners may no longer sue the ship for damages for their nonpecuniary losses, if any, caused by the injuries to the spouse."). Because the Jones **[*12]** Act does not permit these damages, Plaintiffs can recover them only if they were traditionally available in a products liability action brought under general maritime law or if policy reasons compel their availability.[2]

To show that they are entitled to damages for loss of society, Plaintiffs point to the Supreme Court's decisions in Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573 (1974) and American Export Lines, Inc. v. Alvez, 446 U.S. 274 (1980). (*See* Opp. at 12.) Both cases awarded damages for loss of society to longshoremen who were injured in territorial waters, holdings that were expressly limited to their facts by *Miles*. *See* Miles, 498 U.S. at 31-32 ("The holding of Gaudet applies only in territorial waters, and it applies only to longshoremen. Gaudet did not consider the preclusive effect of the Jones Act for deaths of true seamen."). Furthermore, neither case dealt with products liability. *See* Gaudet, 414 U.S. at 574 (an action for unseaworthiness); Alvez, 446 U.S. at 276 (an action for unseaworthiness and negligence).

Because Plaintiffs have not shown that there is a historical tradition of awarding damages for loss of society, the Jones Act's remedial limitations apply. That outcome is buoyed by the other courts that have considered this question in products liability actions involving ***asbestos*** exposure on ships and decided that loss of society is not recoverable. **[*13]** *See, e.g.*, Spurlin v. Air & Liquid Sys. Corp., 537 F. Supp. 3d 1162, 1179 (S.D. Cal. 2021) (holding that Miles bars recovery for non-pecuniary losses in a wrongful death action for ***asbestos*** exposure); Elorreaga v. Rockwell Automation, Inc., 2022 WL 2528600, at *5 (N.D. Cal. July 7, 2022) (holding that Ninth Circuit law and Miles prevent an award for loss of society in a wrongful death action for ***asbestos*** exposure).

As to loss of future earnings, Plaintiffs make no arguments about the historical availability of such damages and instead argue only that the limitations of the Jones Act and Miles do not apply. (*See* Opp. at 13-15.) For the reasons already discussed, that argument is unpersuasive. The Motion is GRANTED as to damages for loss of society and loss of future earnings.

E. Punitive Damages

Finally, Plaintiffs seek "exemplary or punitive damages." (FAC at 15.) Batterton explained that punitive damages are not allowed under the Jones Act; once again, this remedy is available only if there is a historical tradition of awarding punitive damages or policy arguments compel such an award in a products liability action. 139

[2] Though it may seem odd to place the burden of proving this historical tradition on Plaintiffs as the non-moving party, the Supreme Court framed the test as one that requires affirmative proof that certain damages "were traditionally available" and expected plaintiff to provide that evidence. *See* Batterton, 139 S. Ct. at 2283.

S. Ct. at 2284-85. But Plaintiffs' arguments rely on outdated case law and do not wrestle directly with the standard established in Batterton and, therefore, fall short.

Plaintiffs quote from Atlantic Sounding's broad language in support of punitive damages. (Opp. at 17-18.) But Plaintiffs ignore that **[*14]** this language was expressly limited to the facts presented by a cause of action for maintenance and cure. *See* Batterton, 139 S. Ct. at 2283. For example, the Supreme Court observed that there are unique policy concerns in an action for maintenance and cure "where the vessel owner and master have 'just about every economic incentive to dump an injured seaman in a port and abandon him to his fate,'" which distinguishes maintenance and cure from other kinds of maritime torts where the "interests of the owner and mariner are more closely aligned." Id. at 2286 (quoting *McBride v. Estis Well Serv., LLC, 768 F.3d 382, 394 n.12 (5th Cir. 2014)* (*en banc*) (Clement, J., concurring)). Plaintiffs do not argue that similarly unique policy concerns should guide the Court here.

Instead, Plaintiffs cite several inapposite and unpersuasive cases. (*See* Opp. at 16, 20-21.) The Court has reviewed those cases and none stand for the proposition that there was a longstanding general maritime cause of action for products liability with a similarly longstanding practice of awarding punitive damages that is so well-established it remains unaltered by Congress's efforts to limit the remedies available under maritime law. Plaintiffs do identify some cases where district courts have permitted punitive damages claims in ***asbestos***-exposure **[*15]** cases brought under general maritime law. *See, e.g.*, Dennis v. Air & Liquid Sys. Corp., 2021 WL 3555720, at *28-29 (C.D. Cal. Mar. 24, 2021) (extending "a recognized state law remedy ... to federal maritime law claims" because the injuries occurred in international and territorial waters and finding the "takeaway from Atlantic Sounding" to be that punitive damages are available under general maritime law "if the Jones Act is not implicated" (internal quotations and alterations omitted)).

But, particularly since Batterton, district courts largely have made the opposite determination. *See* Elorreaga, 2022 WL 2528600 at *5 (dismissing claims for punitive damages because "Plaintiffs [] offered no evidence that punitive damages were historically available for their specific claims, or that there is any other reason why the Court should find them available under general maritime law under these circumstances"); Spurlin, 537 F. Supp. at 1181 ("There being no evidence that punitive damages were traditionally awarded in maritime negligence cases, coupled with the observation that a parallel statutory scheme does not allow for recovery of non-pecuniary losses, the Court finds that Plaintiffs' claims for punitive damages ... are unavailable."); *Mullinex*, 2021 WL 8129699 at *2-4 (same).

Here, the Court agrees with the district courts that have held punitive damages are not available. Plaintiffs have **[*16]** not shown that punitive damages were traditionally available in general maritime causes of action like this one and they have not argued that there are policy reasons to disregard the limitations of the Jones Act. As a result, the need for uniformity with the federal statutory schemes is the prevailing factor, and the Motion is GRANTED as to punitive damages.

III. CONCLUSION

For the above reasons, the Court GRANTS IN PART Defendant's Motion. The claims for damages for loss of society, damages for loss of future earnings, and punitive damages are DISMISSED from the action.

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