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The Impact of Moragne v. States Marine Lines, Inc., on General Maritime Law

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NOTES AND COMMENTS

The Impact of *Moragne v. States Marine Lines, Inc.*, on General Maritime Law

The Supreme Court in *Moragne v. States Marine Lines, Inc.*[1] finally decided one of the last remaining trouble spots to a uniform system of maritime law—the question of recovery for a wrongful death claim in state territorial waters. The Supreme Court overruled the previously held controlling case of *The Harrisburg*[2] which refused to allow recovery under general maritime law for wrongful death on navigable waters.

The Harrisburg was decided in 1886 and its decision was binding until the new theory of recovery was espoused by the court finally in *Moragne*. *The Harrisburg* had firmly entrenched in maritime law the common law doctrine that "no civil action lies for an injury which results in . . . death."[3] Thus in deciding this case, the Court just implemented the general common law into the law of the sea. Temporarily the problem was solved by refusing to allow recovery for wrongful death in admiralty.

Moragne, a basically simple fact situation case, finally laid to rest the injustice and inequity of *The Harrisburg* and of several other cases which I will discuss later. In *Moragne*, plaintiff's decedent, a longshoreman, was performing his usual duties aboard respondent's (States Marine Lines, Inc.) ship and was killed when a beam became disengaged and struck him in the head. The accident and subsequent death occurred because of a faulty locking device on the beam while the ship was within the navigable waters of the State of Florida. Decedent's wife initially filed suit against respondent in Florida state court and based her claim on the negligence and unseaworthiness of the ship. Because of the diversity of citizenship, the respondent removed the case to the federal district court of Florida, where the unseaworthiness claim was dismissed. Petitioner then sought an interlocutory decree from the Fifth Circuit Court of Appeals as to the validity of the dismissal of the unseaworthiness claim. The Circuit Court of Appeals upheld the district court's decision based on the advice given to it by the Florida Supreme Court which held that the Florida Wrongful

[1] 398 U.S. 375 (1970).
[2] 119 U.S. 199 (1886).
[3] Insurance Co. v. Brame, 95 U.S. 754 (1878). This case was decided at a time when federal courts under Swift v. Tyson, 16 Pet. 1, 10 L.Ed. 865 (1842) expounded a general federal common law.

Death Statute[4] did not incorporate substantive admiralty principles and that a claim for unseaworthiness would not lie under this statute.[5] From here a writ of certiorari was presented to the Supreme Court which finally reversed the earlier decisions of the lower courts and allowed petitioner to recover for wrongful death under general maritime law. Thus the Supreme Court overruled *The Tungus v. Skovgaard*[6] and *The Harrisburg*,[7] to the extent that these decisions did not allow for a remedy for wrongful death in general maritime law, unless a statute provided such a remedy.

In reaching this new decision the Supreme Court went into the history behind the facts and law leading up to *Moragne*. Prior to *The Harrisburg* there had been no uniform approach to the problem of wrongful death remedies, but once this case was decided, the court held that the common law doctrine of no recovery would be incorporated in toto into maritime law. Thus, no remedy was allowed for wrongful death in general maritime law unless there was some statute, either state or federal, which granted such a remedy.

With this one exception available to the no recovery remedy, many states enacted statutes creating a right of a claim for wrongful death.[8] The Supreme Court became cognizant of these state remedies and aware of the states' eagerness to avoid the hard rule laid down by *The Harrisburg*. Consequently, the various state death statutes became "supplemental" to the general maritime law. Thus, the Supreme Court allowed recovery for a death on the high seas in *The Hamilton*[9] and for death in territorial waters in *Western Fuel Co. v. Garcia*.[10]

Prior to most of these state wrongful death statutes there had been no federal statutes covering wrongful death on navigable waters. So the courts had to rely on the separate and distinct state laws to cover the area. The federal courts in their eagerness to give some relief to an injured party advanced several theories in behalf of their acceptance of the non-uniform state laws as supplemental to admiralty law. There were three frequently advanced reasons for acceptance of these state statutes: (1) that the use of these distinct statutes would not produce "any lamentable lack of uni-

[4] Fla. Stat. Ann. #768.01 (1964).
[5] Florida has a procedural statute which allows the state Supreme Court to give advice on questions of state law when requested to do so by federal appellate courts. Fla. Stat. Ann. #25.031 (1961).
[6] 358 U.S. 588 (1959).
[7] 119 U.S. 199 (1886).
[8] Every state now has a wrongful-death statute.
[9] 207 U.S. 398 (1907).
[10] 257 U.S. 233 (1921).

formity,"[11] (2) that each injury would be "local in character,"[12] and (3) that by using the various statutes, a void in the general maritime law would be filled.[13] A fourth possible reason for use of the state statutes was advanced by Mr. Justice Harlan in *Hess v. United States*,[14] but little acceptance of this reason was realized because of the short life it had until *Moragne*. Supposedly these various reasons were to justify the state statutes' supplemental use in general maritime law but because of the various state interpretation of just what their death statutes would entail, coverage became sporadic. Thus a need for a federal law became apparent.

The first federal statute covering the question of wrongful death in admiralty was enacted in 1920, when The Death on the High Seas Act[15] was passed. This Act allowed a federal remedy for a wrongful death occurring more than a maritime league from shore. In the same year, Congress passed The Jones Act[16] which gave seamen injured or killed upon any navigable water, by negligence attributable to his employer, a cause of action in admiralty. However, these statutes still left the question of a remedy for a non-seaman killed in state territorial waters. Thus the non-uniform state death acts still had to be applied to cover this situation and their use generated even further confusion and litigation. A void still existed where no federal statutory or judicial remedy was available.

Prior to these statutes the Supreme Court had decided a case which seemingly fell into this area of confusion—*Southern Pacific Co. v. Jensen*.[17] Here the court recognized the exclusive jurisdiction of the general maritime law in personal injury cases, but the majority expressly reserved the right to use state law in wrongful death cases. The Court asserted that allowing state death statutes to "supplement" or "modify" the general maritime law was permissible.[18] Thus, *Jensen* held that the uniformity of general maritime law was not to be disrupted.

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[11] *The Hamilton*, 207 U.S. 398, 406 (1907).

[12] Western Fuel Co. v. Garcia, 257 U.S. 233, 242 (1921).

[13] The Tungus v. Skovgaard, 358 U.S. 588, 592 (1959).

[14] 361 U.S. 314, 330 (1960). Mr. Justice Harlan stated that "in permitting use of (state) wrongful-death statutes admiralty is endeavoring to accommodate itself to state policies represented by such statutes."

[15] 41 Stat. 537 (1920), 46 U.S.C. ##761-768 (1970). The act specifically excluded tortious death within state territorial waters from coverage. It also excluded several other areas from coverage but these are unimportant for discussion here.

[16] 41 Stat. 1007 (1920), 46 U.S.C. #688 (1970). This statute gives the personal representative of the deceased seamen the right to maintain a wrongful-death and survival action and extends coverage to the navigable waters of foreign countries also.

[17] 244 U.S. 205 (1917).

[18] *Id.* at 216. A further in depth discussion of *Jensen* and the theories espoused in it can be found at 72 Harvard Law Review 1363, 1364 (1959).

However, *Jensen* seemed to cause more problems than it solved. The question of the proper administration of state law within general maritime laws obscured much of the rationale of *Jensen.* Much debate arose over whether *Jensen* required the full effect of the state used death statute with all its limitations or rights or whether *Jensen* merely allowed the use of the remedy afforded by the state wrongful death statute.

In 1959, the Court had the opportunity to finally decide which theory from *Jensen* would be the accepted one in admiralty. *The Tungus v. Skovgaard,*[19] the court divided, affirmed the application and use of state death statutes but proceeded on the first theory raised in *Jensen.* The Court held here that if admiralty adopted a state statute as a rule of recovery, it must take the statute and remedy granted subject to all the limitations "which have been made a part of its existence."[20] The dissent in a strong opinion agreed with using the state granted remedy but not with any of the limitations imposed by the majority. They further said that the state statute should merely be a vehicle for applying federal substantive law.[21] But at least now with *The Tungus* some definitive approach to the problem was advanced and judicially ruled on.

This problem solving case lasted one year until the court went back to the confusion engendered by *Jensen* when it decided *Hess v. United States.*[22] The Court here veered slightly from its stand in *The Tungus* and in doing so caused confusion anew. The Court in *Hess* adhered generally to *The Tungus* majority, but wavered in its stance and in doing so caused much confusion, by saying that certain provisions of a state death statute might be "so offensive to traditional principles of maritime law" that admiralty should not and would not enforce them.[23] And to further compound the confusion raised by *Hess,* several lower courts began to interpret state wrongful death statutes as encompassing unseaworthiness, a traditional maritime and thus federal concept.[24] Consequently, this problem supposedly settled in *The Tungus* was merely a temporary stopgap to the confusion raised by *Hess.* And this stopgap ruling

[19] 358 U.S. 588 (1959).

[20] *Id.* at 592.

[21] *Id.* at 601-602. There was probably a fear of lack of uniformity in accepting the state statute remedy limitations and all.

[22] 361 U.S. 314 (1960).

[23] *Id.* at 320. However, to further add to the confusing problem, the Court on the very same day went back to the rationale of *The Tungus* in deciding Goette v. Union Carbide Corp., 361 U.S. 340 (1960).

[24] Grigsby v. Coastal Marine Service of Texas, Inc., 235 F. Supp. 97 (W.D. La. 1964), affirmed in part, 412 F.2d 1011 (5th Cir. 1969); Vassallo v. Nederl-Amerik Stoornv Maato Holland, 344 S.W.2d 421 (Texas 1961).

was not finally solved until the court granted certiorari to *Moragne v. States Marine Lines, Inc.*[25]

Here in *Moragne* the Court had the task of trying to resolve the conflicts-of-law problems[26] raised by the lower courts' rulings on state death statutes. Intolerable injustices and inconsistencies had also occurred post *The Tungus* because of the fortuity of where the decedent had been killed.[27] These pre-*Moragne* cases thus made it advantageous to go forum shopping to get the best recovery.[28] In *Moragne* the Court thus had the choice of either following the dissent in *The Tungus*, or of following a completely new tact by pronouncing new law. And the latter was what happened.

In a revolutionary decision the Court held that there was general maritime law for wrongful death. But, even in this decision, the Court held back from a total commitment to the new federal maritime law. Neither did the Court denounce the persistent borrowing of state law to decide problems in this area, nor did the Court decide how the newly created federal right was to be administered, leaving it rather to "further sifting through the lower courts."[29] And to further complicate the decision the Court also held that an analogy to state law may be drawn since "The numerous state wrongful-death acts have been implemented with success for decades."[30]

Now the problem seems to be not so much whether recovery will be granted for a wrongful death in state territorial waters but how will the new judicially espoused law be administered. There seem to be three possible solutions to this problem: (1) whether the court should continue to use the full scope of state created rights, i.e., schedule of beneficiaries, survival of claims for deceased's pain and suffering, a limit on recovery, etc.; or (2) whether the court should be guided by similar federal legislation like The Jones Act and especially The Death on the High Seas Act;[31] or (3) whether the court should follow the more difficult, yet

[25] 398 U.S. 375 (1970).

[26] Scott v. Eastern Air Lines, Inc., 399 F.2d 14 (3d Cir. 1968) and Harris v. United Air Lines Inc., 275 F. Supp. 431 (S.D. Iowa 1967), where the question of which conflict of laws rule, i.e., the law of the state with the dominant interest in the parties, should be applied. In *Scott* the "local" conflict of laws rule was applied and in *Harris* the "situs" rule was used.

[27] Some states refused to consider a claim for unseaworthiness under their wrongful-death statutes while other states had limits on recovery under their death statutes. (Missouri, Illinois, and Massachusetts)

[28] Scott v. Eastern Air Lines, Inc., 399 F.2d 14 (3d Cir. 1968).

[29] Moragne v. States Marine Lines, Inc., 398 U.S. 375, 408 (1970).

[30] *Id.* at 408.

[31] The court recognized the remedy provided by The Death on the High Seas Act but refused to adopt it as the proper measure of recovery. *Smith v. Olsen and Ugelstad*, 324 F. Supp. 978 (E.D. Mich. 1971).

seemingly required, course of discerning from all relevant sources, both state and federal, a whole new body of federal maritime law that would explain the question, "what is the proper measure of recovery?"[32]

In *Dennis v. Central Gulf Steamship Corporation*,[33] the court first came to grasp with these questions raised by the new *Moragne* maritime law. Judge Rubin rejected solution number one, concluding that "The newly recognized federal right has abandoned *The Tungus* as derelict."[34] The court did not even attempt to utilize solution number two as the answer to recovery. It seems that the court applied the federal statutes,[35] as well as relevant state law as the proper general maritime law to be utilized. Judge Rubin also detects in *Moragne* a departure from *The Tungus* by its repeated reference to *The Tungus* as borrowing of a state 'remedy,' rather than the enforcement of a state 'right.' The court also with great insight went to the heart of the problem by declaring that:

> . . . to take the view that *Moragne* added a federal right while leaving the state remedy intact would provide some suitors with a choice of remedies, but the confusion created by the existence of federal and state remedies with differing rights, differing defenses, and differing limitation periods, and potentially different beneficiaries would not be abated . . . .[36]

Thus the court was granting the right to a remedy under the new maritime law, but still questioned the possible use of state law to provide a choice of remedies. Judge Rubin states that "unless a single national rule of damages is evolved, potential inequities, coupled with problems of fine distinctions will persist."[37] The court then granted recovery for loss of support, funeral expenses, loss of services, and decedent's damage but denied recovery for survivor's grief only because of lack of proof. The

[32] This solution is the probable answer and is implied in *Moragne* by the Court:
> . . . In most respects the law applied in personal-injury cases will answer all questions that arise in death cases. 398 U.S. at 406; and,
> . . . If still other subsidiary issues should require resolution, such as particular questions of the measure of damages, the courts will not be without persuasive analogy for guidance. Both the Death on The High Seas Act and the numerous state wrongful-death acts have been implemented with success for decades. 398 U.S. at 408.

These two statements certainly hint that the courts should fashion their own body of federal maritime law for wrongful-death from analogous sources.

[33] 323 F. Supp. 943 (E.D. La. 1971).

[34] *Id.* at 947.

[35] The Jones Act, 46 U.S.C. #688 (1970) and The Death on the High Seas Act, 46 U.S.C. ##761-768 (1970).

[36] Dennis v. Central Gulf Steamship Corporation, 323 F. Supp. 943, 948 (E.D. La. 1971).

[37] *Id.* at 948.

District Court, however, did not show whether this remedy was available under the general maritime law or was taken from the available state law.

The *Dennis* case is the first case to go into the recovery that will be granted by the new *Moragne* federal maritime law for wrongful death. This is the first case to determine a measure of recovery completely under the new maritime law without having to rely on the question of whether a right will be granted by state law. But this case raises many more questions than it answers. Now the right to recover is granted by the general maritime law but the question of the measure of recovery is still, it seems, dependent on the various state laws in all their various interpretations. This is the question *Moragne* left unsolved. By which standard do you measure the amount of recovery—the various non-uniform state laws or the federal laws on recovery?

Recently Senator Warren Magnuson attempted to amend The Death on the High Seas Act by extending its coverage to not only include navigable waters more than a maritime league from shore, but also to include state territorial waters.[38] His bill was not enacted into law so this void on the correct measure of recovery is still there. The simplest solution would be to have Congress enact a new statute covering this area of questioning or at least (though not the best solution, in my opinion), extend The Death on the High Seas Act to cover state territorial waters. Until Congress acts on this new problem, the courts should continue to follow the lead of *Moragne* and grant recovery. After recovery is granted, caution should be observed so that the open-ended decision of *Moragne* does not once again lead to the confusion wrought by *The Tungus* and *Hess* on the question of a measure of recovery. If caution is not observed, further confusion and another intolerable lack of uniformity in the maritime law will be created and we will once again have a problem similar to pre-*Moragne* days.

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Mandatory Death: *State v. Waddell*

The North Carolina Supreme Court recently handed down a decision reversing a judgment insofar as it imposed the death sentence upon a defendant, James E. Waddell, convicted of rape.[1] However, this decision in

[38] S. 3143, 91st Cong., 1st Sess. (1969).

[1] State v. Waddell — N.C. —, — S.E.2d — (1973). This decision was filed January 18, 1973, and at the time this paper was written the decision had not been reported in advance sheet form.