

YAMAHA V. CALHOUN: THE SUPREME COURT ALLOWS STATE REMEDIES IN CERTAIN WRONGFUL DEATH CASES IN ADMIRALTY

Nicolas R. Foster*

I. INTRODUCTION AND FACTUAL BACKGROUND

The evolution of the admiralty wrongful death doctrine and its associated recovery scheme can be described as complicated at best and tortured at worst. The Supreme Court has rarely spoken to the issue, leaving to lower federal courts the arduous task of deciphering and applying the few cryptic and at times contradictory cases handed down by the Court. Although scholars and jurists believed the rule to be settled that state law had no place in admiralty wrongful death suits, the Court has surprised both by reversing itself and setting forth a new rule.

The last in a trilogy of Supreme Court Cases, *Yamaha Motor Corporation, U.S.A. v. Calhoun*¹ has apparently brought to a close the debate concerning the availability of state remedies for wrongful death claims arising under maritime law. Beginning with the case of *The Harrisburg*² and continuing with *Moragne v. State Marine Lines*³ nearly a century later, the Supreme Court has been plagued by the question of what remedial scheme to apply to those seeking redress in admiralty for a wrongful death. Seeking to achieve clarity and equity, the Supreme Court has finally, it seems, set forth a definitive rule concerning recovery for wrongful deaths occurring in state territorial waters.⁴

* M.A., J.D. 1997. The author wishes to thank Professor Thomas J. Schoenbaum and Lori Foster.

¹ *Yamaha Motor Corporation, U.S.A. v. Calhoun*, 116 S. Ct. 619, 133 L.Ed.2d 578, 1996 A.M.C. 305, 1996 U.S. LEXIS 463 (Jan. 9, 1996).

² *The Harrisburg*, 119 U.S. 199 (1886).

³ *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).

⁴ Territorial waters are defined as "all inland waters, all waters between [the] line of mean high tide and [the] line of ordinary low water, and all waters seaward to a line three geographical miles distant from the coast line." BLACK'S LAW DICTIONARY 1473 (6th ed. 1990).

In *The Harrisburg*, the Supreme Court held that general maritime law, the judge-made federal common law prevalent in admiralty, did not afford a cause of action for wrongful death because such actions are statutory in nature and cannot be created by the judiciary in an ad-hoc fashion.⁵ In reaching this decision, the Court noted that United States and English common law did not allow recovery for "an injury which results in death."⁶

In the aftermath of *The Harrisburg*, federal courts began granting recovery under state wrongful death statutes instead of under a federal maritime common law.⁷ Indeed, the Court subsequently held that recognizing wrongful death and survival causes of action under state remedial schemes was consistent with substantive maritime policies.⁸

Congress also passed legislation creating additional bases for wrongful death actions. Passed in 1920, the Jones Act provides a wrongful death cause of action for survivors of seamen killed during their employment,⁹ while the Death on the High Seas Act (DOHSA), also passed in 1920, provides for a federal cause of action for wrongful death occurring more than three nautical miles¹⁰ from the shore of any state or territory.¹¹

Certain subsequent cases and statutory enactments, however, complicated the matter. The doctrine of unseaworthiness, previously recognized as a means for a seaman to recover for injuries sustained as a result of the negligence of the shipowner, was expanded. In *Mahnich v. Southern S.S. Co.*, the Court transformed the federal maritime common law cause of action into a sort of strict liability under which the shipowner was liable for injury resulting from a failure to supply a safe ship, regardless of fault or crew negligence.¹² The absolute duty of seaworthiness was extended to longshore

⁵ *The Harrisburg* 119 U.S. at 213, 214.

⁶ *Id.* at 204.

⁷ See *The City of Norwalk*, 55 F. 98 (S.D.N.Y. 1893); *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1921) (widow of maritime worker killed in California's territorial waters can recover under that state's wrongful death statute).

⁸ See *Western Fuel Co. v. Garcia*, 257 U.S. at 242; *Just v. Chambers*, 312 U.S. 383 (1941) (recognizing state survival statutes in cases arising out of accidents in territorial waters).

⁹ *Jones Act*, 46 U.S.C.A. § 688 (West 1995). *Recovery for Injury to or Death of Seamen* (Jones Act), 46 USC § 688 (West 1994).

¹⁰ The nautical mile contains 6,080 feet, as opposed to the ordinary or statute mile, which contains 5,280 feet. BLACK'S LAW DICTIONARY 992 (6th ed. 1990).

¹¹ *Death on High Seas By Wrongful Act* (DOHSA), 46 U.S.C.A. § 767 (1995).

¹² *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944).

workers in *Seas Shipping Co. v. Sieracki*, creating a large class of litigants known as "Sieracki seamen."¹³

The recognition of this strict duty to provide a seaworthy vessel created anomalies in recoveries for wrongful death, as unseaworthiness causes of action were based on strict liability while state wrongful death statutes were negligence based. The Court was faced with this disparity in the landmark *Moragne* decision.

In *Moragne*, the Court attempted to remedy the uncertainty over the role state law played in remedying deaths in territorial waters and anomalies which had arisen since the Court's decision in *The Harrisburg*.¹⁴ The Court identified three anomalies. First, if the violation of federal law were based on unseaworthiness, an injury would give rise to a cause of action under federal maritime law, while recovery for wrongful death would be governed by state statutes, which often did not have seaworthiness as a basis of liability.¹⁵ Such was the case in *Moragne*, where the widow of a longshore worker killed in Florida's territorial waters saw her suit dismissed by the District Court because Florida's wrongful death statute did not encompass unseaworthiness as a basis of liability.¹⁶ If, however, her husband had only been injured by an unseaworthy condition, his recovery under the LHWCA would be premised on strict liability for unseaworthiness. Therefore, the worker would have had a remedy had he survived, but, because he did not, his widow was left without a cause of action.

Second, if death occurred outside the three nautical mile limit imposed by DOHSA, unseaworthiness was available as a basis of liability. If death occurred within the three mile limit, state law governed, and the survivors might not be able to premise a cause of action on unseaworthiness.¹⁷ Finally, at the time *Moragne* was decided, survivors of seamen were denied a cause of action for wrongful death premised on unseaworthiness if the seaman died in territorial waters because the Jones Act provides only a negligence-based claim. Longshore workers, however, were permitted such a recovery before the 1972 amendments to the LHWCA which eliminated

¹³ *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946). 1972 amendments to the Longshore and Harbor Worker's Compensation Act (LHWCA) limited recovery to negligence based claims. See generally Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. (1994).

¹⁴ *Moragne*, 398 U.S. at 395.

¹⁵ *Id.*

¹⁶ *Id.* at 376-377.

¹⁷ *Id.* at 395.

longshore workers' cause of action for seaworthiness and replaced it with a negligence standard (thereby eliminating the Sieracki worker), despite the fact that seaworthiness had been extended to the longshore worker only because the nature of his work often closely resembled that of a seaman.

The Court in *Moragne* therefore created a cause of action for wrongful death to ensure that seamen and their survivors would be treated alike.¹⁸ It overruled *The Harrisburg* and held that "an action does lie under maritime law for death caused by violation of maritime duties."¹⁹ Although the issue appeared settled, *Yamaha* brought forth a question that remained unanswered after *Moragne*: did the "*Moragne* cause of action" displace state remedies previously available to supplement general maritime law?

Twelve year old Natalie Calhoun was killed in a jet ski accident while she and her family were vacationing in Puerto Rico. While riding a "WaveJammer" jet ski, Natalie slammed into a vessel anchored in the waters near the hotel and was killed. The Calhouns brought suit against Yamaha, the manufacturer of the jet ski, in the United States District Court for the Eastern District of Pennsylvania.²⁰ Jurisdiction was grounded on diversity of citizenship and admiralty and the Calhouns sought recovery under Pennsylvania's wrongful death and survival law.²¹

The Calhouns premised their claim on negligence, strict liability, and breach of implied warranty, and sought damages for loss of support and services, lost future earnings, loss of society, funeral expenses and punitive damages.²² Yamaha argued in a motion for partial summary judgment that the federal maritime wrongful death action recognized in *Moragne* was the sole basis for recovery, and as such, the Calhouns could only recover funeral expenses.²³

The District Court granted Yamaha's motion for partial summary judgment, and found that the maritime death action created in *Moragne* did displace state remedies but that loss of society and loss of support and services were compensable under that death action.²⁴ Both parties made requests to the District Court to present certain questions to the Third Circuit

¹⁸ *Yamaha*, 1996 U.S. LEXIS 463, at 28.

¹⁹ *Moragne*, 398 U.S. at 409.

²⁰ *Yamaha*, 1996 U.S. LEXIS 463, at 7.

²¹ *Id.*

²² *Id.* at 7, 8.

²³ *Id.* at 8.

²⁴ *Id.* at 8, 9.

pursuant to an immediate interlocutory appeal.²⁵ A panel of the Third Circuit did not reach the questions it was presented but addressed the anterior issue of which remedial scheme applied. It ruled that state law remedies would apply in this case:

We have concluded that whether loss of society, loss of support and services, future earning, or punitive damages are available for the death of non-seamen in territorial waters is a question to be decided in accordance with state law.²⁶

The court remanded the case to the trial court to decide whether Puerto Rican or Pennsylvania law applied. Subsequent to the decision, the Calhoun's attorney accurately forecasted the intervention of the Supreme Court to harmonize the split in the circuits after the ruling, citing a Fourth Circuit case which had foreclosed state remedies under almost identical facts.²⁷

The Supreme Court granted certiorari to address the following question: "[d]oes the federal maritime claim for wrongful death recognized in *Moragne* supply the exclusive remedy in cases involving the death of nonseafarers²⁸ in territorial waters?"²⁹

In an opinion written by Justice Ginsburg, a unanimous Court held that the principles expressed in *Moragne*, that of the extension of relief rather than the contraction of remedies, would best be served if the application of state statutes to deaths within territorial waters were preserved.³⁰ The Court recounted the jurisprudential history of the wrongful death issue, discussing *The Harrisburg* and *Moragne* cases and the impetus behind those deci-

²⁵ *Id.* at 9.

²⁶ *Calhoun v. Yamaha Motor Corp. USA*, 40 F.3d 622 at 644 (3d Cir. 1994).

²⁷ Brian Harris, *State Law Applies in Jet Ski Suit; Maritime Law Not an Issue*, LEGAL INTELLIGENCER, Nov. 8 1994, at 1. The Calhoun's attorney was referring to *Wahlstrom v. Kawasaki Heavy Indus., Ltd.*, 4 F.3d 1084 (2d Cir. 1993), in which the family of a young man killed when his jet ski collided with a vessel was denied relief based on the supremacy of federal maritime law over state wrongful death statutes.

²⁸ The term "nonseafarers" was taken by the Court to mean persons not covered by the Jones Act or by the Longshore and Harbor Workers' Compensation Act. *Yamaha*, 1996 U.S. LEXIS 463, at 13. I have used the term in this same context throughout this article.

²⁹ *Id.* at 12, 13.

³⁰ *Id.* at 28.

sions.³¹ The Court reiterated its belief that *The Harrisburg* was wrongly decided and that its creation, in *Moragne*, of a federal maritime cause of action for wrongful death providing for access by seafarers to the unseaworthiness doctrine, was based on a desire to expand the remedies available to survivors of those killed in territorial waters.³² Although Congress has prescribed a well-defined regime for recovery by survivors of seafarers (i.e., the Jones Act and LHWCA), it has not prescribed remedies for the wrongful deaths of nonseafarers in territorial waters.³³ Congress even explicitly provided that the DOHSA does not displace state law in territorial waters.³⁴ The Court therefore reasoned that legislative intent would be more closely served by preserving the application of state statutes to deaths within territorial waters where the victims are not persons covered by legislation providing a uniformly applied and comprehensive tort recovery regime.³⁵ The Court concluded that the damages available for Natalie Calhoun's jet ski death were governed by state law.³⁶

II. LEGAL BACKGROUND

At early common law, no recovery could be had for wrongful death as the common law held that death extinguished a cause of action.³⁷ In the ancient Sea Codes dating back to the Eighth Century, for example, the survivors of a deceased seaman could only recover the payment of wages and the return of the seaman's effects.³⁸ The nineteenth century, however, saw a gradual diverging of admiralty and common-law, the result being the cognizance of an admiralty cause of action for the survivor of the decedent.³⁹ Locality became a determinative factor in the outcome of these tort cases.⁴⁰ In the *E.B. Ward, Jr.*,⁴¹ for example, survival damages were rejected by the District

³¹ *Id.* at 14, 19.

³² *Id.* at 28.

³³ *Id.* at 31.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 32.

³⁷ George W. Healy, III, *Remedies for Maritime Personal Injury and Wrongful Death in American Law: Sources and Development*, 68 TUL. L. REV. 311, 355 (1994).

³⁸ *Id.* at 355 n.313.

³⁹ See, *The Sea Gull*, 21 F. Cas 909 (C.C.D. Md. 1865) (No. 12,578).

⁴⁰ Healy, *supra* note 37, at 356.

⁴¹ *The E.B. Ward, Jr.*, 16 F. 255 (C.C.E.D. La. 1883).

Court of Louisiana because the death occurred on the high seas, as opposed to *The Sea Gull*, where death occurred in state territorial waters.⁴²

Shortly after that pivotal case, the Supreme Court decided *The Harrisburg*, which held that, in the absence of a statute giving the right, "no such action [to recover damages for the death of a human being on the high seas, or waters navigable from the sea, caused by negligence,] will lie in the courts of the United States under the general maritime law."⁴³ While shutting the doors to a recovery based on the general maritime law, the Court did not bar the application of state law tort remedies. In order to mitigate the harshness of the Court's decision, lower federal courts began to apply state wrongful death statutes to deaths occurring on the high seas in cases where defendants were from the same state and the state statute explicitly applied to deaths on the high seas.⁴⁴ Apparently striving to obtain uniformity in the rules regarding wrongful death claims on the high seas, Congress took steps to codify wrongful death remedies in 1920.

The Death on the High Seas Act (DOHSA), enacted in 1920, provides a cause of action for the death of any person "caused by wrongful act, neglect or default occurring on the high seas beyond a marine league from the shore of any State . . . or the Territories or dependencies of the United States. . . ."⁴⁵ Under this act, the "personal representative" of the decedent (spouse, administrator, or executor of the estate) may bring suit for the beneficiaries (decedent's wife, husband, parent, child, or dependent relative).⁴⁶

There are several bases upon which a DOHSA suit may lie; these include negligence, unseaworthiness (in the case of a seaman only), intentional conduct, and strict or products liability.⁴⁷ DOHSA preempts state wrongful death remedies and general maritime law remedies.⁴⁸ Thus, DOHSA provides the exclusive remedy for unseaworthiness when a seaman is killed beyond three nautical miles.⁴⁹ DOHSA does not, however, preempt the use of state survival statutes to supplement the remedies for passengers and other

⁴² *The Sea Gull*, 21 F. Cas. 909, 910 (CC Md. 1865) (No. 12,578).

⁴³ *The Harrisburg*, 119 U.S. at 213.

⁴⁴ *See Old Dominion Steamship Co. v. Gilmore*, (The Hamilton) 207 U.S. 398 (1907).

⁴⁵ *Death on High Seas by Wrongful Act*, 46 U.S.C.A. § 761 (1994).

⁴⁶ THOMAS SCHOENBAUM, *ADMIRALTY AND MARITIME LAW*, 237 (1st ed. 1987).

⁴⁷ *Id.*

⁴⁸ Steven C. Dittman, *Admiralty: Conflict of Law on the High Seas—The States and the Death on the High Seas Act*, 59 TUL. L. REV. 1487, 1499 (1985).

⁴⁹ *Id.*

non-seafarers killed on the high seas.⁵⁰ Such statutes may provide recovery for losses to the estate of the decedent, including the loss of the decedent's future earnings.⁵¹

Recovery under DOHSA is limited to pecuniary damages, which may include loss of support, loss of the services of the deceased, loss of nurture, guidance, care, and instruction, loss of inheritance, and funeral expenses paid by the dependants.⁵² Other "non-pecuniary" damages, such as loss of consortium and mental anguish of dependents, is not compensable.⁵³ The Supreme Court has not yet addressed the question of whether state survival statutes can supplement DOHSA damages, as DOHSA does not include a survival statute. While DOHSA provided a remedy in times when there was no general maritime cause of action for wrongful death, the remedy was only applicable to deaths caused by negligence occurring outside a state's territorial waters, and therefore left open many holes in the remedial scheme.⁵⁴

Also enacted in 1920, the Jones Act extended to seamen the protections of the Federal Employers' Liability Act,⁵⁵ which provides a remedy for wrongful death and a survival action.⁵⁶ Prior to enactment of the Jones Act, seamen had no remedy against a shipowner for injuries caused by the negligence of the ship's officers or crew.⁵⁷ The personal representative of the deceased is the appropriate person to bring suit for wrongful death under the Jones Act, and liability is negligence-based.⁵⁸

As with DOHSA claims, damages are limited to pecuniary loss under the Jones Act.⁵⁹ Unlike DOHSA, the Jones Act contains a survival provision under which plaintiffs can recover for conscious pain and suffering of the decedent before death.⁶⁰ Furthermore, because the Jones Act and DOHSA are distinct claims, a seaman's surviving spouse can sue under DOHSA for

⁵⁰ Joseph D. Jamail, *Article: The Damages Award in a Maritime Personal Injury Case*, 45 LA. L. REV. 837, 845 (1985).

⁵¹ *Id.* at 847.

⁵² Schoenbaum, *supra* note 46, at 239.

⁵³ *Id.*

⁵⁴ Jamail, *supra* note 50, at 845.

⁵⁵ 45 U.S.C. §§ 51-60 (1994).

⁵⁶ Schoenbaum, *supra* note 46, at 243.

⁵⁷ Jamail, *supra* note 50, at 837.

⁵⁸ Schoenbaum, *supra* note 46, at 243.

⁵⁹ *Id.*

⁶⁰ Jamail, *supra* note 50, at 846.

wrongful death based on the vessel's unseaworthiness even if the seaman had settled his personal injury claim against the vessel before his death resulting from those same injuries.⁶¹

In 1927, the Longshore and Harbor Workers' Compensation Act (LHWCA) was enacted, providing compensation for the death or disability of any person engaged in "maritime employment" if the disability or death resulted from an injury incurred upon the navigable waters of the United States.⁶² Under LHWCA, the employer must pay death benefits according to the statutory scheme: reasonable funeral expenses (not exceeding \$3000), and spouse and dependent benefits.⁶³ LHWCA also provides for a cause of action for negligence against a "vessel" that includes a remedy for wrongful death.⁶⁴ The §905(b) cause of action against the vessel owner is for negligence in maritime tort. The term "vessel" under LHWCA includes "said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member."⁶⁵

A plaintiff may also be able to proceed under the general maritime law if such a claim is not preempted. In *Moragne*, the Court created a wrongful death action for negligence and unseaworthiness under the general maritime law, overruling *The Harrisburg*, in which it had held that there was no cause of action under the general maritime law for wrongful death.⁶⁶ Subsequent courts have established that the proper party with standing to sue in such an action is the decedent's personal representative.⁶⁷

The cause of action in *Moragne* was created because the decedent, a longshore worker killed in territorial waters, could not recover against the vessel based on a seaworthiness claim. The Court was seeking once again to produce uniformity of results in maritime wrongful death actions and to eliminate the three anomalies previously mentioned.⁶⁸

⁶¹ *Id.*

⁶² Schoenbaum, *supra* note 46, at 244.

⁶³ *Id.* at 244-45.

⁶⁴ *Id.* at 245.

⁶⁵ *Id.* at 218.

⁶⁶ *Moragne*, 398 U.S. at 409.

⁶⁷ *See Ivy v. Security Barge Lines, Inc.*, 585 F.2d 732 (5th Cir. 1978).

⁶⁸ *Moragne*, 398 U.S. at 406-408.

Under *Moragne* and subsequently decided cases, damages in a general maritime law claim were held to include damages typically recoverable under DOHSA.⁶⁹ In addition, however, damages may include loss of society, which encompasses loss of "love, affection, care, attention, companionship, comfort, and protection," and damages for the decedent's pain and suffering before death.⁷⁰ Therefore, recovery for loss of society is the main distinguishing characteristic between recovery under general maritime law and recovery under the other statutory schemes, as the Jones Act and DOHSA do not provide for the recovery of non-pecuniary damages.⁷¹ Another difference is the possibility of recovery of punitive damages under general maritime law.⁷²

In *Mobil Oil Corp. v. Higginbotham*, the Supreme Court held that DOHSA preempts any general maritime law claims for wrongful death where death occurs beyond a marine league.⁷³ As a result of this decision, the *Moragne* cause of action was relegated to navigable waters and territorial waters within the area of state jurisdiction.⁷⁴ In addition, the 1972 amendments to the LHWCA, which eliminated a longshoreman's remedy for unseaworthiness based on strict liability as established in *Sieracki*, provided for a statutory cause of action for suits against a vessel based on negligence.⁷⁵

In the wake of *Moragne*, the general maritime remedy for wrongful death appeared open to representatives of seamen accidentally killed within three nautical miles who sue for unseaworthiness, and persons, including passengers and visitors aboard ships and aircraft, killed within three miles in admiralty jurisdiction, who sue for negligence.⁷⁶ Furthermore, the general maritime law of wrongful death was said to be exclusive where it applied.⁷⁷

⁶⁹ See *Complaint of Cambria S.S. Co.*, 505 F.2d 517 (6th Cir. 1974); *Thompson v. Offshore Co.*, 440 F. Supp. 752 (S.D. Tex. 1977).

⁷⁰ Schoenbaum, *supra* note 46, at 241.

⁷¹ *Id.* But see *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990) (damages recoverable in a general maritime cause of action for the wrongful death of a seaman do not include loss of society).

⁷² Schoenbaum, *supra* note 46, at 241.

⁷³ *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978).

⁷⁴ Schoenbaum, *supra* note 46, at 242.

⁷⁵ Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 (1995).

⁷⁶ Schoenbaum, *supra* note 46, at 242.

⁷⁷ See *Nelson v. United States*, 639 F.2d 469 (9th Cir. 1980) (*Moragne* remedy precludes recognition in admiralty of state wrongful death statutes).

Several cases subsequently displaced state wrongful death statutes in favor of the general maritime law remedy in cases of wrongful death of nonseafarers.⁷⁸ This trend was to be reversed by *Yamaha*.

III. ANALYSIS

In *Yamaha* the Court held that “[i]n maritime wrongful death cases in which no federal statute specifies the appropriate relief and the decedent was not a seaman, longshore worker, or person otherwise engaged in a maritime trade, state remedies remain applicable and have not been displaced by the wrongful death action recognized in *Moragne*.”⁷⁹ The Court explicitly rejected the argument that the *Moragne* general maritime remedy for wrongful death applied in all cases of deaths occurring in state territorial waters.⁸⁰

The Court’s decision makes sense for several reasons. First of all, there is no federal common law or statutory rule which explicitly prohibits the application of state common law remedies to cases of wrongful death of nonseafarers not covered by the other statutory schemes.⁸¹ As previously discussed, the Jones Act applies only to seamen, the LHWCA applies only to “maritime workers” and the DOHSA, while applying to nonseafarers, only applies on the high seas and not to deaths occurring in territorial waters. Furthermore, no Supreme Court cases have explicitly held that *Moragne* should displace all state law wrongful death remedies.⁸² Such a result would ignore the fecund case law awarding state law remedies after *Harrisburg*. The Supreme Court recognized in *Yamaha* that wrongful death statutes proved “an adequate supplement to federal maritime law.”⁸³

With respect to wrongful death actions, the case has often been made that *Moragne* and the frequently recurring theme of harmonization and uniformity

⁷⁸ See *Wahlstrom v. Kawasaki Heavy Indus.*, 4 F.3d 1084 (2d Cir. 1993); *Neal v. Barisich*, 707 F. Supp. 862 (E.D. La 1989); *Thurmond v. Delta Well Surveyors*, 836 F.2d 952 (5th Cir. 1988); *Nelson v. United States*, 639 F.2d 469 (9th Cir. 1980), *In re S/S Helena*, 529 F.2d 744 (5th Cir. 1976); *Shield v. Bayliner Marine Corp.*, 822 F. Supp. 81 (D. Conn. 1993).

⁷⁹ *Yamaha*, 1996 LEXIS 463, at 19.

⁸⁰ *Id.* at 625.

⁸¹ *Calhoun v. Yamaha Motor Corp.*, 40 F.3d 622, U.S.L.W. Daily (Nov. 11, 1994) (No. 93-1736).

⁸² *New Jersey Law Journal* (American Lawyer Newspapers Group, Inc.), Nov. 21, 1994, at 63.

⁸³ *Yamaha*, 1996 US LEXIS 463, at 17.

of maritime law call for a displacement of state law in favor of a federal wrongful death remedy that applies evenly to all deaths in territorial waters not covered by statute. Such arguments often turn on the theory that, because DOHSA and the Jones Act preempt state wrongful death statutes, *Moragne* should do the same.⁸⁴

Moragne is not, however, a statutory scheme with clearly defined procedures and remedies. The Court in *Moragne* refrained from addressing subsidiary issues relating to the new cause of action, relegating the final resolution of such questions to the lower courts in future litigation.⁸⁵ As the Court recognized in *Yamaha*, there is no cause for enlargement of the damages statutorily protected where Congress has prescribed a comprehensive tort system.⁸⁶ No such system is available for victims such as Natalie Calhoun.

Although cases have attempted to define the extent and contours of the remedy, such *ad hoc* definition of the remedy's parameters seems only to have countered the original purpose espoused in *Moragne*. It only seems reasonable that gaps left by the *Moragne* decision be filled by state remedial schemes, as had been the case after *The Harrisburg*. There is no federal substantive policy with which state wrongful death or survival statutes conflict in this case.⁸⁷ In the absence of clear conflict, the traditional admiralty choice of law test dictates that state law rules of decision apply.⁸⁸ The courts should be permitted to draw on state law to fill a void the legislature has yet to fill.

Again, case law prior to *Moragne* allowed for the application of state wrongful death actions, and *Moragne* did not explicitly reject this practice. The purpose of the *Moragne* remedy was motivated by a "humane and liberal" desire to assure that survivors of seamen killed in state territorial waters should not be barred a remedy simply because the tort system of the particular state in which a seaman died did not incorporate special maritime doctrines.⁸⁹ The Court was attempting only to compensate for the increase in unseaworthiness claims based on strict liability and negligence-based state wrongful death statutes.⁹⁰

⁸⁴ See *supra* note 81.

⁸⁵ *Moragne*, 398 U.S. at 408.

⁸⁶ *Yamaha*, 1996 U.S. LEXIS 463, at 31.

⁸⁷ See *supra* note 82.

⁸⁸ *Id.*

⁸⁹ *Yamaha*, 1996 U.S. LEXIS 463, at 28.

⁹⁰ *Id.* at 18.

Such an overarching goal does not justify or explain any desire to preclude nonseafarers who do not have access to a statutory scheme from taking advantage of a state statute. In fashioning its remedy in *Moragne*, it is doubtful that the Court intended to protect seamen at the expense of nonseafarers whose remedies would be dismal compared to damages recoverable had their death occurred on land. The death of a recreational boater is not so uniquely maritime in character that the courts should be prevented from applying traditional common law tort recovery. Such an application of federal substantive admiralty law would be both illogical and inequitable.

One must not, however, discount the process advocated in *Moragne* of achieving uniformity of maritime law by looking to statutes for guidance in developing remedies. The result of *Yamaha*, one could argue, may be that fifty different bodies of state law are now competing with federal maritime law.

Such a principle does not, when taken to its logical conclusion, justify a displacement of state law remedies. In *Offshore Logistics Inc. v. Tallentire*,⁹¹ the Supreme Court held that DOHSA, the only federal statute applicable to non-seamen, displaced the state wrongful death statute for deaths on the high seas.⁹² The Court explained, however, that DOHSA was intended to *preserve* state wrongful death remedies for survivors of people killed in territorial waters. The Court has never held that state remedies should not be preserved when dealing with state territorial waters. Furthermore, nothing in DOHSA explicitly precludes the application of state remedies in territorial waters.

If *Moragne* were to have incorporated DOHSA provisions into its newly-created causes of action, thereby displacing state law remedies, it would have given effect to DOHSA in an area in which it was not intended to apply, thereby transforming the statute without Congressional action.

It has long been held that state law need not always be displaced by substantive admiralty law.⁹³ Because of a lack of conflict between admiralty law and state law, and because of the post *Harrisburg* practice of allowing state wrongful death remedies, *Moragne* should not be said to displace state wrongful death remedies for deaths of non-seamen in territorial waters. Furthermore, because neither Congress nor the Court has explicitly precluded

⁹¹ *Offshore Logistics Inc. v. Tallentire*, 477 U.S. 207 (1986).

⁹² *Id.*

⁹³ *Grubart v. Great Lakes Dredge & Dock Co.*, 115 S. Ct. 1043 (1995).

the operation of state wrongful death statutes in these cases, *Yamaha* appears a well-reasoned answer to the lingering question relating to the application of the cause of action it created nearly three decades ago. It should be added that, despite its significant impact, *Yamaha* is relatively limited in scope, applying only to the deaths of non-seafarers in territorial waters. The intrusion on general maritime law would thus appear to be slight.

Yamaha can also be seen as part of a general trend in which state law has been allowed in admiralty. Most notably, the Supreme Court recently held that in admiralty cases filed in state court under the Jones Act and the "saving to suitors clause,"⁹⁴ federal law does not pre-empt state law regarding the doctrine of forum non conveniens.⁹⁵ Similarly, in *Linton v. Great Lakes Dredge & Dock Co.*, the Fifth Circuit held that "a non-jury trial in state court is not, in and of itself, offensive to the general maritime law . . . a maritime non-jury action is not necessarily outside the 'saving to suitors' clause and within the exclusive admiralty jurisdiction of the federal courts."⁹⁶ These cases are examples of what appears to be a growing judicial tolerance of state law in the admiralty context.

The Supreme Court has thus finally answered a question that has plagued admiralty law for nearly two decades. In reversing the long-standing trend of displacing state tort law remedies in favor of the "federal maritime cause of action" espoused in *Moragne*, the Court has not only reinforced the principle of expansion of remedies as espoused in that case, but it has set forth a rule upon which potential plaintiffs can rely when bringing suit for wrongful death occurring in territorial waters. The Court's decision takes little away from the "uniformity principle" long valued in admiralty law but has provided the families of those killed in territorial waters with a remedy more in conformity with modern times.

⁹⁴ "Section 1333(1) of Title 28 of the USC . . . gives federal district courts 'original jurisdiction, exclusive of the courts of the States,' of admiralty and maritime cases, 'saving to suitors in all cases all other remedies to which they are otherwise entitled.' Despite the apparent grant of exclusive federal jurisdiction, the 'savings clause' is interpreted to reserve to suitors the right of a common law remedy 'in all cases where the common law is competent to give it.'" Schoenbaum, *supra* note 46, at 116.

⁹⁵ *American Dredging Co. v. Miller*, 114 S. Ct. 981 (1994).

⁹⁶ *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1487 (5th Cir. 1992).