

**President Tom Galligan's Oral Testimony
at U.S. House Judiciary Committee Hearing
May 27, 2010**

REP. CONYERS: Tom Galligan is the president of Colby-Sawyer College. From 1986 to 1998, he taught at the Paul Hebert Law Center at Louisiana State University. He was previously dean and professor of law at the University of Tennessee College of Law, has published numerous books, articles on torts and admiralty.

CONYERS: His scholarship has been cited in the restatement of torts and by numerous legal scholars. He's been cited in the United States Supreme Court cases and other federal and state appellate trial courts.

GALLIGAN: Thank you. Chairman Conyers, Ranking Member Smith and members of the committee, thank you for inviting me to appear before you today.

My name is Tom Galligan and I am the president of Colby-Sawyer College in New London, New Hampshire.

The oil spill in the Gulf of Mexico and the ensuing disastrous consequences have forced our nation to consider its damage recovery regimes for injuries and deaths arising from maritime and environmental catastrophes.

Doing so reveals inequities and inconsistencies that you in Congress have the chance and ability to repair by amending the relevant statutes.

I would like to begin with a discussion of wrongful death recovery under the Jones Act, which is applicable to the negligence-based wrongful death actions by the survivors of a seaman, and the Death on the High Seas Act, which defines the rights to recover for wrongful death in all other cases arising from incidents occurring on the high seas.

As interpreted, neither of those statutes allows recovery for loss of society damages to the survivors of those killed in maritime disasters.

Now, what are loss of society damages? They are compensation for the loss of care, comfort and companionship caused by the death of a loved one. The majority of American jurisdictions today do recognize some right to recover for loss of society damages in wrongful death cases, but the Jones Act and DOSA do not.

Now, one might arguably understand the availability of loss of society damages in 1920 when the Jones Act and DOSA were passed. It was a different world.

But to deny recovery of loss of society damages to a loved one in a wrongful death case in 2010 is out of the legal mainstream, and it is a throwback to a past era. A spouse, child or parent who loses a loved one suffers a very real loss -- a loss of care, comfort and companionship, and the law should recognize that loss.

Congress can appropriately make the law consistent with current moral, social and familial realities by amending the relevant statutes to provide recovery for loss of care, comfort and companionship in maritime wrongful death cases.

Now, interestingly, there is one exception to the rule barring recovery of loss of society damages under DOSA, and that exception points up current inconsistencies in the law.

In 2000, after the Korean Airline and TWA disasters, you amended DOSA to provide recovery of loss of society to the survivors of those killed in high seas commercial aviation disasters. Thus, in commercial aviation disasters, DOSA is consistent with modern law and values.

But for anyone else killed on the high seas -- someone killed on a cruise ship, someone killed on a semisubmersible floating rig or someone killed on a helicopter -- the survivors may not recover loss of society damages.

The proposed amendment would provide all survivors of those killed in maritime disasters with the recovery now available in commercial aviation wrongful death cases.

And I'd like to pause here and say one thing about OPA 90. OPA 90 does not cover and does not provide recovery in personal injury and wrongful death cases. Those are outside the scope of OPA 90.

I would like to shift from wrongful death to survival actions and note that the Supreme Court in a high seas death case has held that pre-death pain and suffering is not recoverable in a maritime survival action when the death arises on the high seas.

Thus, in any case covered by that rule, no matter how much the decedent may have suffered before his or her death, those damages are not recoverable. They should be available.

Another subject of significant import arising out of this disaster is the potential recoverability of punitive damages in various types of maritime cases.

The United States Supreme Court has twice in the last two years held that punitive damages are recoverable under general maritime law, but it has limited that recovery in admiralty to a one-to-one ratio of punitive damages to compensatory damages.

Today, America might well consider if that one-to-one ratio cap frustrates the deterrent aspects of punitive damages in certain maritime cases.

It is less clear if punitive damages are available in Jones Act and DOSA cases. Until the most recent Supreme Court case on the subject, I would have said no. Now, I am less sure.

A final critical point in this analysis is the effect and applicability of the Limitation of Liability Act to these events. Originally passed in 1851 to encourage investment in maritime shipping and commerce, the act allows a vessel owner and some others to limit liability to the post-voyage value of the vessel plus pending freight if the liability is incurred without the privity or knowledge of the owner.

One may justifiably wonder whether an act passed at a time before the modern development of the corporate form and before the evolution of modern bankruptcy law is still salient in personal injury and wrongful death cases.

However, limitations still exists, and in this case, presents this committee with an opportunity to consider and discuss its amendment to assure personal injury and wrongful death victims more just compensation.

Thank you very much, and I'd be happy to answer any questions.