IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 19-23487-CIV-MARTINEZ/OTAZO-REYES

KYLE GINLEY,

Plaintiff,

vs.

DUTRA DREDGING COMPANY, *et al.*,

Defendants.

ORDER GRANTING MOTION TO DISMISS

Before the Court is Defendants Dann Ocean Towing, Inc. and Neptune Towing Company's motion to dismiss Plaintiff Kyle Ginley's claim for punitive damages under maritime law. [ECF No. 21]. After carefully considering the motion, the response [ECF No. 24], the reply [ECF No. 25], and the amended complaint [ECF No. 17], the Court **grants** the motion to dismiss.

The following facts come from the amended complaint. At the pleading stage, the Court must accept those facts as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Ginley suffered severe and debilitating injuries to his foot while working as a deckhand on the Dredge Paula Lee, a dredging ship working on a dredging project near Port Canaveral, Florida. The Dredge was part of a flotilla of two tugboats—the Tug Trojan and the Tug Colonel—and another ship called the Scow 6.

On the day of the incident, the Colonel was towing the Scow from a dredged material disposal site. The master of the Colonel noticed that the "hipping straps" on the Scow were "fouled." The master contacted the Dredge and asked for a crewmember to board the Scow via the Trojan to fix the lines. This would be done as the ships were moving. The un-fouling could have

been done safely when the ships were stopped but stopping would have cost Defendants time and money.

Following his superior's request, Ginley disembarked the Dredge and boarded the Trojan. His first attempt to then board the Scow from the Trojan was unsuccessful for various reasons, which lead the Colonel to slow its speed. But the decreased speed caused the tow wire to drag along the ocean floor.

When the master of the Colonel noticed the dragging, he called the master of the Trojan to ask if he could increase the Colonel's speed to take out the slack. The master of the Colonel received an unintelligible response, but he sped up the Colonel, anyway. Ginley was climbing the Scow's pigeonhole ladder at the time. The acceleration and increased wire tension caused the Scow to swing and shift towards the Trojan.

One of the Trojan's push knees smashed Ginley's left foot against the hull of the Scow.

Ginley sued his employers[1] and Dann and Neptune, both of whom own or operate the Colonel. Ginley raises one count against Dann (count seven) and one count against Neptune (count eight) for "Negligence, Gross Negligence, and Recklessness" under "General Maritime Law." [ECF No. 17 at ¶¶ 86–99]. Ginley's prayer for relief requests, among other remedies, punitive damages of more than $6 million. *Id.* at ¶¶ 92, 99.

Dann and Neptune argue that Ginley cannot assert a claim for punitive damages under maritime law absent exceptional circumstances and intentional wrongdoing. Ginley, on the other hand, argues that the law on punitive damages has changed to allow him such damages by alleging general wanton, willful, or outrageous conduct, such as gross negligence and recklessness. Court in this district are split on who is right.

[1] His employers, Dutra Dredging Company and The Dutra Group, are not parties to this motion.

In 1997, the Eleventh Circuit held that punitive damages were not available in personal injury actions brought under general maritime law "except in exceptional circumstances such as willful failure to furnish maintenance and cure to a seaman, intentional denial of a vessel owner to furnish a seaworthy vessel to a seaman and in those very rare situations of intentional wrongdoing." *In re Amtrak Sunset Ltd. Train Crash in Bayou Canot, Ala. on Sept. 22, 1993*, 121 F.3d 1421, 1429 (11th Cir. 1997). But in 2009, the United States Supreme Court held that a seaman could, under general maritime law, get punitive damages for his employer's willful and wanton disregard of its maintenance and cure obligation. *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 424 (2009). Although the plaintiff's claim in that case was for failure to pay maintenance and cure, the Court's rationale was broad: (1) that "punitive damages have long been available at common law," (2) that "the common-law tradition of punitive damages extends to maritime claims," and (3) that "nothing in the Jones Act altered this understanding." *Id.* at 414, 424.

A rift has since developed in this district as to whether *Atlantic Sounding* abrogates *Amtrak*. Some courts hold that *Amtrak* remains sound, and so a plaintiff must demonstrate exceptional circumstances and intentional misconduct to recover punitive damages in admiralty.[2] While others hold that a plaintiff may obtain punitive damages by showing general wanton, willful, or outrageous conduct—which may involve grossly negligent or reckless conduct.[3]

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[2] *Medeiros v. NCL (Bahamas) LTD.*, No. 19-CV-20957, 2020 WL 1308728, at *8 (S.D. Fla. Mar. 5, 2020) (Louis, J.), *report and recommendation adopted*, 2020 WL 1307044 (S.D. Fla. Mar. 19, 2020) (Moreno, J.); *Noon v. Carnival Corp.*, No. 18-23181-CIV, 2019 WL 8370846, at *12 (S.D. Fla. Nov. 6, 2019) (Torres, J.), *report and recommendation adopted*, 2020 WL 1691995 (S.D. Fla. Jan. 17, 2020) (Williams, J.); *Simmons v. Royal Caribbean Cruises, Ltd.*, 423 F. Supp. 3d 1350, 1353 (S.D. Fla. 2019) (Ungaro, J.); *Doe v. Celebrity Cruises, Inc.*, 389 F. Supp. 3d 1109, 1115 (S.D. Fla. 2019) (Williams, J.); *Bodner v. Royal Caribbean Cruises, Ltd.*, No. 17-20260-CIV, 2018 WL 4047119, at *5 (S.D. Fla. May 8, 2018) (Lenard, J.); *Crusan v. Carnival Corp.*, No. 13-CV-20592, 2015 WL 13743473, at *7 (S.D. Fla. Feb. 24, 2015) (Williams, J.); *Bonnell v. Carnival Corp.*, No. 13-CV-22265, 2014 WL 12580433, at *3 (S.D. Fla. Oct. 23, 2014) (Williams, J.); *Gener v. Celebrity Cruises, Inc.*, No. 10-24589-CIV, 2011 WL 13223518, at *2 (S.D. Fla. Feb. 10, 2011) (Ungaro, J.).

[3] *Wilson v. NCL Bahamas Ltd.*, No. 18-25203-CIV, 2019 WL 2106470, at *5 (S.D. Fla. May 14, 2019) (Goodman, J.); *Jackson-Davis v. Carnival Corp.*, No. 17-24089-CIV, 2018 WL 1468665, at *5 (S.D. Fla. Mar. 23, 2018) (Scola, J.); *Brown v. Oceania Cruises, Inc.*, No. 17-22645-CIV, 2017 WL 10379580, at *8 (S.D. Fla. Nov. 20, 2017)

Amid the dispute, the Eleventh Circuit touched on the issue twice, but only in the context of loss of consortium claims and in unpublished and thus nonbinding opinions. *Eslinger v. Celebrity Cruises, Inc.*, 772 F. App'x 872, 872 (11th Cir. 2019); *Petersen v. NCL (Bahamas) Ltd.*, 748 F. App'x 246, 251 (11th Cir. 2018). And sandwiched between those two decisions is another Supreme Court case that limited the availability of punitive damages for certain maritime claims. *The Dutra Grp. v. Batterton*, 139 S. Ct. 2275, 2283–84 (2019).

First, in *Petersen*, an Eleventh Circuit panel rejected the plaintiffs' argument that the appellate court "should reexamine *In re Amtrak* in light of the Supreme Court's more recent holding in *Atlantic Sounding*. . . ." 748 F. App'x at 251. The panel held that "[n]othing in [the *Atlantic Sounding*] opinion undermines our holding in *In re Amtrak*." *Id.* at 251. The Court then affirmed the summary judgment granted in favor of the defendant cruise company on the loss of consortium claim because "there are no exceptional circumstances in this case and no allegations of intentional conduct." *Id.*

The next year, in *Batterton*, the Supreme Court distinguished *Atlantic Sounding* when it held that a mariner could not recover punitive damages on a claim that he was injured as result of the unseaworthy condition of a vessel. 139 S. Ct. at 2283–84. The Court explained that "[i]n *Atlantic Sounding*, we allowed recovery of punitive damages, but we justified our departure from the statutory remedial scheme based on the established history of awarding punitive damages for certain maritime torts, including maintenance and cure." *Id.* at 2283. By contrast, the Court continued, "[f]or claims of unseaworthiness, the overwhelming historical evidence suggests that

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(Altonaga, J.); *Fleischer v. Carnival Corp.*, No. 15-24531-CIV, 2016 WL 1156750, at *1 (S.D. Fla. Mar. 17, 2016) (Moore, J.); *Vairma v. Carnival Corp.*, No. 15-20724-CIV, 2015 WL 12911465, at *2 (S.D. Fla. May 27, 2015) (Seitz, J.); *R/V Beacon, LLC v. Underwater Archeology & Expl. Corp.*, No. 14-CIV-22131, 2014 WL 4930645, at *7 (S.D. Fla. Oct. 1, 2014) (Bloom, J.); *J.G. v. Carnival Corp.*, No. 12-21089-CIV, 2013 WL 795145, at *6 (S.D. Fla. Mar. 4, 2013) (Rosenbaum, J.); *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23323-CIV, 2012 WL 920675, at *4 (S.D. Fla. Mar. 19, 2012) (Goodman, J.); *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, at *7 (S.D. Fla. Aug. 23, 2011) (Altonaga, J.).

punitive damages are not available." *Id.*

Lastly, in *Eslinger*, another Eleventh Circuit panel affirmed the dismissal of a loss of consortium claim where the plaintiff argued that "the district court erred in relying on our circuit precedent because it has been called into question by the Supreme Court's decision in *Atlantic Sounding*. . . ." 772 F. App'x at 872. The appellate court disagreed, holding that "nothing in the *Atlantic Sounding* decision undermines our prior holdings." *Id.* at 873.

At bottom, "the case law pertinent to resolving Defendant's Motion [to Dismiss] is in a state of flux." *Heald v. Carnival Corp.*, No. 18-22300-CIV, 2019 WL 1318190, at *4 (S.D. Fla. Jan. 16, 2019). Both the pro-*Amtrak* cases and the pro-*Atlantic Sounding* cases raise good points. But in the end, the Court finds that the prior precedent rule controls.

The prior precedent rule binds courts to "follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court." *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) (internal quotations omitted). For the Supreme Court to overrule a binding Eleventh Circuit decision, the Supreme Court opinion "must have actually overruled or conflicted" with the Eleventh Circuit decision. *Id.* at 1237. And "[t]here is a difference between the holding in a case and the reasoning that supports that holding." *Id.* So "[e]ven if the reasoning of an intervening high court decision is at odds with a prior appellate court decision, that does not provide the appellate court with a basis for departing from its prior decision." *Id.*

Atlantic Sounding did not actually overrule *Amtrak*, and because *Atlantic Sounding* concerned a narrow maritime claim—willful and wanton disregard of maintenance and cure obligation by an employer—it may be reconciled with *Amtrak*. Although *Atlantic Sounding's* broad reasoning "is at odds" with *Amtrak*, that is not reason enough to ignore *Amtrak*. *See Vega-Castillo*, 540 F.3d at 1237. Moreover, *Batterton* signaled a view that *Atlantic Sounding's* rationale should

be confined to its narrow facts. And lastly, two Eleventh Circuit panels have refused to revisit *Amtrak*, both before and after *Batterton*. *See Eslinger*, 772 F. App'x at 872; *Petersen*, 748 F. App'x at 251. In short, Ginley's complaint must meet the *Amtrak* standard to claim punitive damages.

His complaint does not. Ginley alleges that Dann and Neptune acted "negligent, grossly negligent and reckless and acted with willful and wanton disregard to" his safety. [ECF No. 17 at ¶¶ 88, 95]. That falls short of the *Amtrak* standard, which requires those "rare situations of intentional wrongdoing" for punitive damages. *Amtrak*, 121 F.3d at 1429. Accordingly, it is:

ORDERED AND ADJUDGED as follows:

1. Plaintiff's claim for punitive damages is **DISMISSED WITHOUT PREJUDICE**.

2. If Plaintiff can, in good faith, allege a basis under *Amtrak* to claim punitive damages, then it may amend its claim by July 6, 2020.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of June, 2020.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Otazo-Reyes
All Counsel of Record