

Now is the Time to Change the Law

The law ought to be fair, consistent, and up to date. It ought to make people whole for their losses and compensate them for the real damage they suffer. Now, in wrongful death cases on the high seas, it does none of those things but the U.S. Senate currently has a chance to fix this defect and it is time to do so.

11 men died in the initial explosion on the Deepwater Horizon. Their survivors have appeared before several Congressional committees and explained why the law today is unfair. It is unjust because neither the Jones Act nor the Death on the High Seas Act (DOHSA) - the maritime statutes that define survivors' rights in the Deepwater Horizon tragedy-provide "loss of society" damages to compensate for the lost comfort, care and companionship of their deceased loved ones. The majority of American jurisdictions today do recognize these rights in wrongful death cases, but not under these maritime laws, both passed in 1920 but not the Jones Act and not DOHSA.

All of the survivors-two wives, a father, and a brother--eloquently described the terrible emotional loss they have suffered and the devastating effects of the deaths of their loved ones on the children of the deceased workers. Yet today, none of those very real emotional damages are recoverable under the applicable law. All that is recoverable is purely economic damage, such as loss of support, loss of services, and funeral expenses. But, the law treats the relationship itself—the essence of the connection between people—as worthless. In terms of the love and care lost, the lost life is treated as if it has no value. That fact is morally offensive and logically incoherent. Loss of society damages are, as noted, available in most tort cases on land and are available for the survivors of those killed in high season commercial aviation disasters. The law should be the same for all and it is time to make it so.

President Obama has met with some of the survivors and pledged his support, and Congress has held hearings to discern whether current laws adequately protect the victims of this catastrophe. On July 1, the House passed a bill, Rep. Conyers' H.R. 5503, that would allow the survivors of someone killed on the high seas to recover loss of society damages. Now, the Senate can and should do the same thing. Legislation is already pending in the Senate that would implement the necessary change, Senator Patrick Leahy's S. 3463. It is time to pass that law.

I have been honored to have appeared with the survivors before the U.S. House and Senate Judicial Committees and the U.S. Senate Committee on Commerce, Science, and Transportation. No one at those hearings spoke against the changes described above. Now, I have heard that there are companies who claim that allowing recovery of loss of society damages might increase the cost of doing business for some. If this change in the law would now force maritime actors to have to consider the real emotional costs of deaths they cause, so be it. Perhaps if they were forced to do so, the world would be a safer place and none of this would ever have happened.

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June 8 before the U.S. Senate Judicial Committee, and on June 30, 2010 before the U.S. Senate Committee on Commerce, Science, and Transportation, on the potential legal issues of the Gulf of Mexico drilling rig accident.