Admiralty and Federalism in the Wake of Yamaha Motor Corp., USA v. Calhoun: Is Yamaha a Cry by the Judiciary for Legislative Action in State Territorial Waters?

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ADMIRALTY AND FEDERALISM IN THE WAKE OF YAMAHA MOTOR CORP., USA V. CALHOUN: IS YAMAHA A CRY BY THE JUDICIARY FOR LEGISLATIVE ACTION IN STATE TERRITORIAL WATERS?

On July 6, 1989, tragedy and sorrow beset the waters near Humanco, Puerto Rico. Natalie Calhoun and her family were vacationing in Puerto Rico with family friends at the Palmas Del Mar Resort. On that ill-fated afternoon, twelve-year-old Natalie Calhoun rented a Yamaha "WaveJammer" and set out on a ride over the ocean waters. Tragically, the ride did not go as planned and was cut short when Natalie's WaveJammer slammed into the side of an anchored vessel in the waters off of a hotel frontage. The crash resulted in Natalie's death. Weeks later, Natalie's parents, Lucien and Robin Calhoun, brought a suit against Yamaha in the Eastern District of Pennsylvania, and prayed for relief consistent with the Pennsylvania wrongful death and survival statutes.

In response to the Calhouns' claim, Yamaha moved for a partial summary judgment arguing that the Supreme Court, in

1. See Yamaha Motor Corp., USA v. Calhoun, 516 U.S. 199, 202 (1996), modified, 40 F. Supp. 2d 288 (E.D. Pa. 1999). This Note analyzes the Supreme Court's decision in Yamaha, particularly with reference to the decision's impact on uniformity in maritime law. While this Note was in publication, the case was remanded to the District Court of the Eastern District of Pennsylvania for consideration of the issue of whether state law or federal law should govern the substantive rights of the parties. In an opinion by Judge Pollak, 40 F. Supp. 2d 288 (E.D. Pa. 1999), the district court held that state law should govern the rights of parties in wrongful death actions relating to nonseamen killed in state territorial waters. See id. at 295. The consequence of this decision is a diminished role for uniformity in maritime law because the decision will create numerous standards of liability as a result of the variations in state wrongful death statutes. This Note takes the position that the district court erred in opening the floodgates to further inroads on the place of uniformity in maritime law.


4. See id.

5. See id.

Moragne v. States Marine Lines, Inc.,\textsuperscript{7} created a general maritime law wrongful death remedy that excluded the application of all state remedies for wrongful deaths of nonseamen occurring within territorial waters.\textsuperscript{8} The Supreme Court rejected Yamaha's reasoning and held that the state law remedies were available to the Calhouns.\textsuperscript{9} This decision touched off a rigorous debate and turned one family's tragedy into a maze of conflicting doctrines and interests.

Since the decision, courts have grappled with Yamaha in an attempt to balance the federal desire for uniformity in admiralty\textsuperscript{10} with the proliferation of applicable state law remedies.\textsuperscript{11} This debate over federalism, though exacerbated in Yamaha, is by no means new to maritime law.\textsuperscript{12} The discrepancy between the supremacy of federal law and the protection of local interests is rooted deeply in maritime law.\textsuperscript{13} The debate has been acute,

\begin{itemize}
  \item \textsuperscript{7} 398 U.S. 375 (1970).
  \item \textsuperscript{8} See Yamaha, 516 U.S. at 209-10.
  \item \textsuperscript{9} See id. at 209-16.
  \item \textsuperscript{10} The terms "admiralty" and "maritime" are equivalent terms and will be used interchangeably throughout this Note. See BLACK'S LAW DICTIONARY 47 (6th ed. 1990).
  \item \textsuperscript{11} See, e.g., In re Amtrak, 121 F.3d 1421, 1424-28 (11th Cir. 1997) (discussing the analysis in Yamaha and the traditional notions of uniformity in maritime law in reaching the conclusion that federal law governed the liability standards whereas state law provided only a remedial measure); American Dredging Co. v. Lambert, 81 F.3d 127, 130-31 (11th Cir. 1996) (citing Yamaha for the conclusion that nonpecuniary damages could be recovered pursuant to Florida state law); Calhoun v. Yamaha Motor Corp., USA, 40 F. Supp. 2d 288, 293-94 (E.D. Pa. 1999) (recognizing a desire to "harmonize" various aspects of maritime law); Choat v. Kawasaki Motors Corp., 675 So. 2d 879, 884-86 (Ala. 1996) (applying Yamaha to hold that a nondependent could recover for loss of society and punitive damages under state law); Brateli v. United States, 1996 AMC 1980, 1982-85 (D. Alaska) (construing Yamaha to allow federal law to apply where more liberal than state law and awarding nonpecuniary damages for nondependent beneficiaries in wrongful death cases); Florida Power & Light Co. v. Polackwich, 677 So. 2d 880, 882 (Fla. Dist. Ct. App. 1996) (ruling that under Yamaha state remedies governed federal maritime wrongful death actions involving nonseamen in territorial waters).
  \item \textsuperscript{12} Compare Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409-10 (1958) (holding that general maritime law governed to the exclusion of state law in personal injury actions occurring within state territorial waters), with The Tungus v. Skovgaard, 358 U.S. 588, 592-94 (1958) (holding that the wrongful death statute of the state of New Jersey governed both the standard of care and the remedies available in wrongful death actions occurring within state territorial waters).
  \item \textsuperscript{13} See, e.g., Friedell, supra note 2, at 825 (discussing the traditional conflict be-
particularly in the context of maritime wrongful death cases. Over the years, the courts have acknowledged that states have interests with respect to tortious actions culminating in death within their territorial waters. These interests include (1) the establishment of general rights and duties of persons and property within state boundaries, (2) the police power to prevent pauperism and dependency on the state by survivors, and (3) the control over "certain local regulations of a maritime nature." These state interests are counterbalanced by federal interests, such as (1) the protection of commerce, (2) the maintenance of uniformity, and (3) the supremacy of federal legislation.

Though all of these interests are important judicial considerations, the potential erosion of uniformity in admiralty draws the most attention in the aftermath of *Yamaha*. Uniformity has always been a hallmark of maritime law; however, *Yamaha*
has led a number of commentators and at least one court to undermine the necessity of uniformity as a guiding principle. Questioning the principle of a uniform maritime law is problematic for it implicates the following possibilities: a state statute of limitations supplanting the federal statute of limitations, a state right to a jury trial being enforced in federal court, and state theories of negligence applying in federal actions. Therefore, it


23. See Calhoun v. Yamaha Motor Corp., USA, 40 F. Supp. 2d 288, 295 (holding that state law governs the rights of nonseamen killed in territorial waters). The ramifications of this holding is that there now may be as many as fifty different standards of liability, i.e., one per state, thus effectively destroying the place of uniformity in this area of maritime law. This Note stands in stark opposition to this conclusion. The following analysis suggests that not only does Yamaha leave uniformity in place, it actually expands uniformity's role as a factor in the balancing of state and federal interests to determine which remedial law applies in state territorial waters.

24. For a more comprehensive listing of the possible conflicts that the full-scale application of state law in the maritime context would create, see Walter Johnson, Diving into the Wreck: An Exploration of Yamaha Motor Corp. v. Calhoun, 9 U.S.F. MAR. L.J. 141, 158-62 (1996); cf. Calhoun, 40 F. Supp. 2d at 294 ("Mr. Johnson builds his case for this doctrinal resurrection [of The Tungus] on the Supreme Court's Yamaha opinion but the evidence . . . is somewhat ambiguous. More compelling evidence is to be found in the Court of Appeals' Yamaha opinion.") (footnote omitted). Although properly rebutting the tenuous arguments posited by Mr. Johnson, see Calhoun, 40 F. Supp. 2d at 294 n.7; infra notes 107-61, the recent opinion of Judge Pollak incredulously fails to give any consideration to the ramifications of applying state law to wrongful death actions of nonseamen in territorial waters. Compare Calhoun, 40 F. Supp. 2d at 293-95 (failing to mention how the application of a state substantive liability standard will impact other aspects of maritime law), with Johnson, supra, at 158-62 (listing numerous areas of maritime law that are confused by a wholesale application of state law in the maritime wrongful death context).
is necessary to wrestle with the plausible intentions of the Court's opinion and what they mean for the future of admiralty law.

The following pages survey the expansion of wrongful death remedies in admiralty jurisprudence, including the effect of the augmentation of state remedies on the principles of uniformity and federalism. The first section of this Note discusses the history of wrongful death and briefly describes some of the unique features of admiralty jurisprudence. The focus then shifts to the decision in *Yamaha* and its implications for the future of admiralty law. The second section examines the *Yamaha* decision, with the analysis centering on the seemingly expansive role of state law by focusing on whether the treatment of federalism issues in *Yamaha* resuscitates the holding in *The Tungus v. Skovgaard*. This question is resolved in the negative through two alternative theories. First, the analysis illustrates that *The Tungus* never approved of the expansive role for state law that was and is so often erroneously attributed to its holding. Alternatively, this Note argues that the Court in *Yamaha* did not espouse the use of state law for anything more than a supplemental remedial measure in wrongful death actions.

The third section discusses the difficulties encountered, particularly by the trial judge, when state law plays too great a role in

25. See infra notes 37-97 and accompanying text.
26. See infra notes 98-106 and accompanying text.
27. 358 U.S. 588 (1958). *The Tungus* is discussed in detail below, see infra text accompanying notes 107-32; however, a brief word may be helpful at this point. *The Tungus* suggested the primacy of state law as the basis of a standard of liability in admiralty wrongful death cases. See Johnson, supra note 24, at 152-57. The case arose from the death of Carl Skovgaard, a maintenance foreman who was assisting efforts to repair a faulty oil pump used to pump hot coconut oil from the ship to onshore tanks. See *The Tungus*, 358 U.S. at 589. While attempting to walk through a part of the vessel where oil had yet to be removed, Skovgaard slipped and fell to his death in a vat of hot oil. See id. The Court, in determining that state law governed in toto, see id. at 592, proclaimed that "it would be an anomaly to hold that a State may create a right of action for death, but that it may not determine the circumstances under which that right exists," id. at 594. This language appears to suggest that the Court favored the use of state law not just for its remedial value, but also as the measure of when liability would and would not attach. See infra text accompanying notes 107-11.
28. See infra notes 113-17 and accompanying text.
29. See infra notes 120-31 and accompanying text.
maritime wrongful death actions. This section features a case study of the statutes of limitation in maritime actions. This case study exemplifies one of the numerous abnormalities created when state law is applied as anything more than a supplement to federal law in the area of remedies. Contrary to the assertions of some commentators, the fourth section of this Note concludes that Yamaha was a delicately reasoned decision that attempted to maintain uniformity in the standard of liability while properly balancing competing interests pertaining to applicable remedies. Ultimately, Yamaha represents an appeal to Congress to develop a comprehensive statute applicable to nonseamen in territorial waters that is similar to the statutes governing seamen and the high seas beyond the boundaries of United States territorial waters. This law should be similar to and consistent with the Death on the High Seas Act (DOHSA) and the Jones Act; should preempt state remedies only when a federal remedy is in marked contrast to it; and should reaffirm the dominance of federal statutory authority in the maritime context.

THE HISTORY OF WRONGFUL DEATH AT SEA

A thorough exploration of the law with respect to wrongful death actions is necessary in order to understand the impact of Yamaha on the state of admiralty law in territorial waters.

30. See infra notes 133-74 and accompanying text. The reader will quickly recognize that the discussion contained in this section refers to case law that is common to any student of civil procedure. This simplicity is intended as a means of highlighting that even the most deeply rooted and easily identifiable principles of American jurisprudence are confused by a misinterpretation of the role of state law in the maritime wrongful death context.

31. The case study is emblematic of only a single anomaly created by a misreading of Yamaha and is by no means to be taken as exhaustive.

32. See supra note 22.


34. See id. at app. §§ 761-767 (granting a wrongful death remedy for the personal representative of the decedent when death occurs more than one marine league from the coast).

35. Id.

36. Id. at app. § 688.
Admittedly, trying to pin down any conclusions with respect to the dangling questions in admiralty is an inexact science at best. Nevertheless, an investigation into the Yamaha Court's intent is critical given the far-reaching effects of the decision on lawyers, judges, commercial ship owners, and state legislators.

Introduction to Maritime Law

To understand the history of maritime wrongful death actions, a brief survey of maritime law is necessary. Since the founding of the United States, maritime legal actions have been the province of the federal courts. Although the Framers did not express any particular rationale behind the decision to create a federal admiralty jurisdiction, evidence exists that they granted dominion to the federal judiciary to insure the protection of maritime commerce for the young nation. The separation of admiralty jurisdiction from the common law resulted in a number of distinctive maritime rules, including trials by a judge with no recourse to a jury, actions based on a maritime lien in rem, and liability apportioned on the basis of comparative fault as opposed to contributory fault.

37. Even the Court has expressed its confusion with respect to this area of law, noting that "[o]ur precedent does not precisely delineate . . . it would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernable in our admiralty jurisprudence . . . ." Yamaha Motor Corp., USA v. Calhoun, 516 U.S. 199, 210 n.8 (quoting American Dredging Co. v. Miller, 510 U.S. 443, 452 (1994)), modified, 40 F. Supp. 2d 288 (E.D. Pa. 1999).
39. See Friedell, supra note 2, at 828 ("The idea was born that the purpose for admiralty jurisdiction was to have a court with expertise in commercial shipping in order to further the federal interests in the regulation of an industry vital to national interest."); Krueger, supra note 23, at 150 n.7 (noting that in Farand's transcripts of the Convention there was little reasoning for the grant of admiralty jurisdiction).
40. See 1 Friedell, supra note 18, § 105.
42. See id. at 36.
43. See Thomas J. Schoenbaum, Admiralty and Maritime Law § 3-4, at 110-11 (2d ed. 1994). The list of distinctive maritime features is too long to enumerate in this Note. It suffices to state, however, that the distinctiveness of maritime law creates a variety of opportunities for forum shopping and other legal strategizing. A comprehensive discussion of this aspect of the maritime legal landscape is beyond
In addition to these distinctive rules, maritime law also bears a unique standard of liability; not only does it provide for liability based on negligence, it also allows for a remedy based on the owner's failure to provide a seaworthy vessel. This cause of action centers on the duty of a vessel owner or operator to exercise due diligence to ensure that his vessel is seaworthy. Over time the general maritime law recognized that the duty to provide a seaworthy vessel is nondelegable. Furthermore, it is well-recognized that the duty is absolute and that liability can be assessed independent of negligence. In practice, in order to "state a cause of action for unseaworthiness a plaintiff must allege his injury was caused by a defective condition of the ship, its equipment or appurtenances." The test for unseaworthiness is "whether the vessel, equipment or appurtenances were reasonably fit for their intended use." Once this evidence is established, the plaintiff has made out a prima facie case and will prevail in the absence of evidence showing that the appliances and machinery were reasonably fit for their intended usage.

The application of the doctrine of unseaworthiness to the maritime law of wrongful death actions is discussed at length below.

Pre-Yamaha Cases

The early cases involving maritime wrongful death actions excluded the application of state statutes; however, the outcomes of wrongful death cases began to change as states began to
adopt their own wrongful death acts. In *The Harrisburg*, the Court faced the difficult questions of whether federal law allowed an action for wrongful death in the absence of any statutory authority, and if not, whether the law allowed an action under the law of the state. The case involved a claim of wrongful death brought by the widow of Silas Rickards, who died when his vessel, the Harrisburg, collided with a schooner, the Marietta Tilton, in Massachusetts's navigable waters. The district court ruled in favor of Rickards's widow, holding that the general maritime law governed negligence actions in navigable waters and that the state statute of limitations did not bar such actions because the actions were federal. The Supreme Court reversed the district court and held that no general federal maritime action existed and that only statutorily codified maritime wrongful death actions would succeed. The Court, however, declined to address the question of whether the state wrongful death statute applied and, instead, found that the state statute of limitations barred the potential claim. Thus, *The Harrisburg* concluded with the harsh result that wrongful death actions could not be brought under the general maritime law, but with uncertainty as to whether state statutory laws could provide a remedy.

In the period following *The Harrisburg*, general maritime law and statutory provisions attempted to alleviate the intractable result of the earlier decision. In *Western Fuel Co. v. Garcia*, the Court allowed wrongful death actions to be brought under appli-

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53. See id. at 532-34; see also Old Dominion Steamship Co. v. Gilmore, 207 U.S. 398, 406-07 (1907) (holding that a Delaware statute granted a remedy for tortious conduct occurring on the high seas).
54. 119 U.S. 199 (1886).
55. See id. at 204.
56. See id. at 199.
57. See id. at 201-02.
58. See id. at 213-14.
59. See id. at 214.
60. 257 U.S. 233 (1921). *Garcia* involved a claim for wrongful death by the widow of Manuel Souza, a California citizen, who was killed due to negligent hoisting of coal onto a vessel anchored in the San Francisco Bay. See id. at 238-39. Although the court recognized that an action could be maintained under state wrongful death statutes, the California statute of limitations barred the action. See id. at 242-43.
cable state statutes. Likewise, on the statutory front, Congress in 1920, passed DOHSA, which granted a right of action "[w]henever the death of a person [is] caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore." That same year Congress provided, through the passage of the Jones Act, a federal maritime wrongful death remedy for seamen regardless of where the injury took place. In summary, after 1921, all seamen had a remedy under the Jones Act regardless of the location of the injury, all persons had a remedy under DOHSA if injured on the high seas, and all persons whose state laws provided a remedy could assert a remedy in territorial waters under *Garcia*.

This system worked effectively until the Supreme Court transformed unseaworthiness into a strict liability doctrine. Once the doctrine of unseaworthiness could not be countered with a defense of due diligence, unseaworthiness became a claim of strict liability and not a claim based on negligence. Against this historical context, the Court fashioned a remedy in the general maritime law for wrongful death actions in *Moragne v. States Marine Lines, Inc.*

Moragne involved unseaworthiness and negligence actions brought under Florida's wrongful death and survival statutes by the widow of a longshore worker killed in the territorial waters of Florida. The Florida statute, however, did not include a provision for recovery based on unseaworthiness. After a dismissal of this portion of the claim in the district court and an

61. See id. at 242.
64. See supra note 34 and accompanying text.
67. See supra notes 47-48 and accompanying text.
69. See id. at 376.
70. See id. at 376-77.
affirmation in the court of appeals, the Supreme Court granted
certiorari to consider which remedies were available under fed-
eral maritime law.\textsuperscript{71}

In deciding Moragne, the Court noted three anomalies created
by the strict liability remedy afforded through unseaworthi-
ness.\textsuperscript{72} First, the Moragne decision recognized a disparity in the
availability to bring an unseaworthiness action based on the na-
ture of the underlying cause of action. The Court noted that
strict liability unseaworthiness was available in personal injury
actions,\textsuperscript{73} but that some states, such as Florida, had not included
unseaworthiness in their wrongful death statutes.\textsuperscript{74} As a result,
the availability of an unseaworthiness claim wavered based on
the gravity of the injury such that “identical conduct violating
federal law (here the furnishing of an unseaworthy vessel) pro-
duces liability if the victim is merely injured, but frequently not
if he is killed.”\textsuperscript{75} The Court’s opinion thus sought to harmonize
the causes of action available in personal injury actions with
those available in wrongful death actions.\textsuperscript{76} Second, the Court
emphasized the anomalous results produced by the territorial
restrictions inherent in DOHSA.\textsuperscript{77} Under DOHSA, the unseawor-
thiness of a vessel that resulted in the death of a nonseamen
produced a valid wrongful death claim\textsuperscript{78} provided the event
causing the fatality occurred beyond a three mile distance from
the shore.\textsuperscript{79} If the event causing death occurred within three
miles of the shore, however, DOHSA would not apply, and thus
there would be no liability for unseaworthiness, unless the state
statute governing the locality provided unseaworthiness as a
basis of liability.\textsuperscript{80} In response to this issue, the Court’s decision
sought to synthesize the causes of action available in territorial
and nonterritorial waters.\textsuperscript{81} Third, the Court noted a discrepancy

\begin{itemize}
  \item \textsuperscript{71} See id. at 377.
  \item \textsuperscript{72} See id. at 395-96.
  \item \textsuperscript{73} See id. at 395.
  \item \textsuperscript{74} See id. at 376.
  \item \textsuperscript{75} Id. at 395.
  \item \textsuperscript{76} See id.
  \item \textsuperscript{77} See infra notes 78-80 and accompanying text.
  \item \textsuperscript{78} See Kernan v. American Dredging Co., 355 U.S. 426, 430 n.4 (1958).
  \item \textsuperscript{79} See supra note 62 and accompanying text.
  \item \textsuperscript{80} See Moragne, 398 U.S. at 395.
  \item \textsuperscript{81} “Territorial” is used to refer to the area of water within three miles of the
\end{itemize}
in the availability of an unseaworthiness claim based on the victim's occupation. Because state law governed claims by or relating to longshore workers, these workers were able to bring an unseaworthiness claim provided the laws of the state allowed unseaworthiness claims. On the other hand, those deemed to be seamen under the provisions of the Jones Act were excluded from pursuing unseaworthiness claims.

Armed with the recognition of these inconsistencies in unseaworthiness actions, the Court constructed a general maritime law remedy of unseaworthiness that supplemented all other remedies and applied to all persons regardless of their status or where the injury took place. In so doing, the Court overruled the holding in The Harrisburg that no remedy for wrongful death existed in the general maritime law. Moragne rejected the defendants' argument that DOHSA manifested a congressional intent to leave the remedies available for wrongful death solely within the purview of state laws. Moragne, therefore, effectively filled the gap left by the statutes and the courts' inconsistent applications of the doctrine of unseaworthiness.

With the overruling of The Harrisburg and the creation of a federal maritime wrongful death action, it appeared that federal law was the paramount authority in all maritime wrongful death actions. This assessment rested on the premise that the

shore; "nonterritorial" refers to the area beyond three miles of the shore.
82. See Moragne, 398 U.S. at 395.
83. For an excellent discussion of who is defined as a seaman, see Chandris, Inc. v. Latsis, 515 U.S. 347 (1995); Schoenbaum, supra note 43, § 4-9, at 198-218.
84. See Moragne, 398 U.S. at 395 (recognizing that the Jones Act does not provide a remedy for unseaworthiness, but does so for negligence). Thus, by its silence, the Jones Act was seen to have precluded the unseaworthiness cause of action. See generally Gillespie v. United States Steel Corp., 379 U.S. 148 (1964) (reaffirming that a negligence action under the Jones Act is the exclusive action for wrongful death).
85. See Moragne, 398 U.S. at 407-09 (discussing the overruling of The Harrisburg, which allowed for the provision of a remedy in the general maritime law).
86. See id. at 409.
87. See id. at 397-98. States Marine Lines argued that because DOHSA did not extend its scope to within a marine league of the shore, and expressly reserved this area for state law to govern, it manifested Congress's desire that only state law would govern in territorial waters. See id. at 397-98. In response, the Court noted that there was no need to fashion a remedy under DOHSA for territorial waters because such remedies would be available already under state laws. See id. at 398.
88. See, e.g., Wahlstrom v. Kawasaki Heavy Indus., Ltd., 4 F.3d 1084, 1087-88 (2d
Jones Act would continue to provide the remedy for all seamen, both inside and outside of territorial waters. Likewise, DOHSA would provide the same sort of remedy for nonseamen on the high seas, and Moragne would allow the general maritime law to fashion the remedy for nonseamen within territorial waters. Coupled with this understanding was the concept that "the Supreme Court's creation in Moragne of a federal wrongful death action under general maritime law precludes the use of state wrongful death statutes in maritime claims."
The Supreme Court's 1974 decision in *Sea-Land Services, Inc. v. Gaudet* confirmed the sweeping view of *Moragne*. *Gaudet* involved a claim by the widow of a longshoreman, fatally injured on the job, for loss of support, loss of society and services, and funeral expenses. The Court allowed the relief prayed for under the general maritime law remedy established in *Moragne*, thus effectively determining that *Moragne* was more than a mere gap-filling measure. *Gaudet*'s expansion further solidified the notion that the general maritime law remedy fashioned in *Moragne* held sway in territorial waters, even to the exclusion of any state statutory remedies.

A number of judicial decisions have since limited to territorial waters the general maritime law remedy created in *Moragne* and expanded in *Gaudet*. The Court arrived at these limits through its decision in *Mobil Oil Corp. v. Higginbotham*. *Higginbotham* involved an action for nonpecuniary damages by survivors of a Mobil employee who died in a work-related helicopter crash. The Court held that because the exclusive remedies provided for in DOHSA governed, DOHSA displaced any other general maritime law remedies. Thus, after *Higginbotham*, the presence of a statutory remedial regime precluded the far-reaching remedies called for under the general maritime law action in *Moragne*. Ultimately, this meant that the expansive remedial aspects of *Gaudet* were applicable only in actions involving the wrongful death of nonseamen in territorial waters because the Jones Act or DOHSA governed all other

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*Moragne*, 398 U.S. at 376. If the footnote in *Yamaha* is correct in finding that the 1972 amendments to LHWCA overruled the extension of unseaworthiness to longshore workers, then by implication, the amendments would also overrule *Moragne*. *Yamaha* does not express such a view, but instead relies heavily on *Moragne* to reach its conclusion. Therefore, it does not appear plausible that the Supreme Court in *Yamaha* read *Moragne* to grant anything less than a remedy for both negligence and unseaworthiness.

93. See id. at 573.
94. See id. at 584 (holding that "under the maritime wrongful-death remedy, the decedent's dependents may recover damages for their loss of support, services, and society, as well as funeral expenses" (emphasis added)).
96. See id. at 619.
97. See id. at 620-26.
actions. It was from the midst of this historical framework that the Court in *Yamaha* rendered its decision.

**Yamaha Analysis**

After the death of their daughter off the coast of Puerto Rico, Natalie Calhoun’s parents brought an action in the Eastern District of Pennsylvania against Yamaha alleging negligence, strict liability, and breach of implied warranties. The Calhouns sought various remedies consonant with the Pennsylvania state wrongful death and survival statutes, including lost future earnings, loss of society, loss of support and services, and funeral expenses. In response, Yamaha moved for partial summary judgment contending that *Moragne* excluded all remedies except for the payment of funeral expenses under the general maritime law. The district court agreed with Yamaha that the general maritime law governed, and that *Moragne* displaced Pennsylvania laws. As a result, the court granted summary judgment with respect to lost future earnings, but found that loss of society, loss of support and services, and funeral expenses were available to the Calhouns under maritime law.

Following the district court’s decision, both parties appealed to the Third Circuit, which held that state law governed the question of which law applied to remedies, but expressly refused to address the question of which liability standard governed.

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99. See id.; supra note 6 and accompanying text.
100. See id. at 203; supra note 7 and accompanying text.
102. See id. at 644 ("We have concluded that whether loss of society, loss of support and services, future earnings, or punitive damages are available for the death of a non-seamen in territorial waters is a question to be decided in accordance with state law.").
103. See id. ("We do not, however, reach the question of which state’s law—Pennsylvania’s or Puerto Rico’s—applies."). The conclusion is a step back from the earlier language of the opinion in which the court intimated that state law governed not only the remedial measures available, but also the liability standards to be applied. The court stated that "we hold that the appropriate rule of decision in this area should be supplied by state law" and that "[i]n the absence of a clear conflict, state law rules of decision should apply." Id. at 625 (emphasis added).
Yamaha appealed this decision to the United States Supreme Court, which affirmed the Third Circuit's decision and held that "the damages available for the jet ski death of Natalie Calhoun are properly governed by state law." 105 Like its predecessor in decision, the Court indicated in a footnote its desire to limit the holding to the remedies available to the exclusion of the standards of liability. 106 Thus, the vexing question of which law governed liability in actions concerning the death of nonseamen in territorial waters seemed to remain wholly unresolved by the Court.

In the thick of this confusion a number of scholars have suggested that the decision in Yamaha resurrected the Court's holding in The Tungus. 107 The Tungus involved a wrongful death action brought by the widow of a maintenance foreman who fell to his death in an eight-foot-deep pool of coconut oil while assisting in repair work on a broken pump. 108 The Court, in a 5-4 decision, held that New Jersey law should govern the action. 109 The majority found that "[t]he liability and the remedy are created by the same statutes, and the limitations of the remedy are, therefore, to be treated as limitations of the right." 110 Thus,

105. Yamaha, 516 U.S. at 216 (emphasis added).
106. See id. at 216 n.14. The Court noted that the liability standard created a perplexing anomaly by recognizing that personal injury cases historically have been decided under federal law liability standards while state liability standards have governed wrongful death actions. See id.; see also Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970) (recognizing that the same wrongful action, providing an unseaworthy vessel, always resulted in liability if the victim was injured but not necessarily if the victim died).
107. Many scholars examining the decision in Yamaha have suggested that the Court's reassertion of state law in the context of territorial waters opens up the prior decision in The Tungus, which was believed to have been extinguished when The Harrisburg was overruled. See, e.g., Johnson, supra note 24, at 157 ("Moragne did expressly overturn The Harrisburg, which seemed to most courts to render The Tungus irrelevant. With Calhoun we see that The Tungus is not irrelevant at all, and we must now consider how The Tungus, along with Calhoun, will affect the law of maritime wrongful death and survival."). But see supra note 24 (describing the ambiguity inherent in Johnson's arguments).
109. See id. at 594.
110. Id. at 592 (quoting The Harrisburg, 119 U.S. 199, 214 (1886)). But see The Tungus, 358 U.S. at 601 (Brennan, J., dissenting) (arguing that federal law should control, with the state remedy to serve in the federal court as a supplement).
the holding of *The Tungus* provides that when even a portion of state law is used to reconcile an issue in the maritime context, "[i]t is incumbent upon a court enforcing that policy to enforce it all; it may not pick or choose." The decision in *Yamaha* leads to the question, as Walter Johnson has identified, of whether *Yamaha* actually reinvigorates *The Tungus*'s use of state law in toto.

Before examining how *Yamaha* affects the vitality of the holding in *The Tungus*, it is important to examine precisely what the Justices in *The Tungus* actually sought to achieve. On its face, *The Tungus* appears to suggest that when any portion of state law is applicable, the whole of state law is also applicable. The wholesale application of state substantive law, to include the standard of care, drew a vigorous dissent by the other four members of the Court. The dissatisfaction expressed by the dissent grew stronger in the case of *Goett v. Union Carbide Corp.* in which Justice Whittaker, a member of the majority in *The Tungus*, stated:

> The Court's opinion says that *The Tungus v. Skovgaard* . . . "decided that it was a question of state law as to what is the proper substantive law to be applied to maritime torts within the territorial jurisdiction of the States in wrongful death cases [and that] under this holding, in a maritime tort death case, the State might apply the substantive law generally applicable to wrongful death cases within its territory, or it might choose to incorporate the general maritime law's concepts of unseaworthiness or negligence." I do not understand the *Tungus* case to so hold, and if such a holding was intended by its author or by any of the Justices who joined it, it does not say so.

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111. *The Tungus*, 358 U.S. at 593. The Court's language in this case was an unequivocal assertion that in the wrongful death context, state law must apply in toto. *But cf.* Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953) (recognizing that in the personal injury context state law may only supplement federal law). The Court in *Hawn* rejected a contributory negligence defense based on state law as inconsistent with federal personal injury law. See id. at 409-10.

112. See supra note 107 and accompanying text.

113. See supra notes 110-12 and accompanying text.

114. See supra notes 110-12 and accompanying text.


116. *Id.* at 345-46 (emphasis added).
Justice Whittaker went on to articulate a new understanding of what The Tungus meant by arguing that "[i]t seems to me that the substantive legal rights and liabilities involved, are to be measured by the standards of the general maritime law . . . as Remedially supplemented by the [state] statute."\(^{117}\) Therefore, it is not altogether certain—and it is probably unlikely—that The Tungus stands for the proposition that state law must govern in toto when it applies. Nevertheless, for the purpose of argument, this discussion assumes the validity of the more liberal reading of The Tungus.

The Conventional Understanding of The Tungus and Its Impotency Under the Yamaha Framework

The wholesale application of state law in The Tungus was rooted in the Court's rejection of any form of a general common law with respect to maritime wrongful death in The Harrisburg and its progeny.\(^{118}\) The absence of a common law cause of action solidified the role of state wrongful death statutes such as the one at issue in The Tungus.\(^{119}\) This view changed, however, when Moragne provided a general federal common law wrongful death action, obviating the need for a statutory claim based on state law.\(^{120}\) With Moragne's overruling of The Harrisburg, the strength of The Tungus appeared to be undercut.\(^{121}\)

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117. Id. at 346. Justice Whittaker, however, found himself in the minority in Goett because the Brennan wing, who had dissented in The Tungus, concurred in Goett solely under the compulsion of the precedent of The Tungus. See id. at 343.
118. The holding of The Harrisburg, which concluded that no action for wrongful death was available under federal law, led many federal courts to allow claims brought under state wrongful death statutes. See, e.g., Western Fuel Co. v. Garcia, 257 U.S. 233, 242-44 (1921) (noting that a claim brought under the California statute would be allowed in federal court if it met the California statute of limitations which it did not). Because there was no corresponding right of action for these cases in federal law, see The Harrisburg, 119 U.S. 199, 213-14 (1886), there was no corresponding issue of whether allowing state statutes to apply undercut the principle of uniformity by conflicting with federal law, for there simply was no federal law. Not until the Court's decision in Moragne was there any kind of federal law or decision applicable to wrongful death actions involving nonseamen in territorial waters.
119. See supra notes 60-64 and accompanying text.
121. See Friedell, supra note 2, at 836 ("If The Tungus 'rests' on The Harrisburg, and is its corollary, then with the overruling of The Harrisburg, the latter case is left hanging..."
A deeper look into a number of factors found in Yamaha suggests that The Tungus remains relegated to the lack of vitality that Moragne cast upon it.\textsuperscript{122} One rationale posited to support the continued potency of The Tungus is the fact that Moragne itself did not expressly overrule The Tungus.\textsuperscript{123} However, the Yamaha Court asserted in a footnote that the only reason The Tungus survived being overruled in Moragne was the Court's hope in Moragne to provide an unseaworthiness remedy for all seafarers, which a simple overruling of The Tungus would not furnish.\textsuperscript{124} Because the Court in Moragne was able to reach its end without having to overrule The Tungus, the decision exemplified proper judicial restraint.\textsuperscript{125}

\textsuperscript{122} This is not to suggest that The Tungus is devoid of all precedential value. See Calhoun v. Yamaha Motor Corp., USA, 40 F.3d 622, 641 n.39 (3d Cir. 1994), aff'd, 516 U.S. 199 (1996). The Third Circuit's opinion in Calhoun recognized that Moragne only overruled The Harrisburg, but left The Tungus intact, see id., thus opening the door for the court to conclude that The Tungus retains vitality. This opinion, however, fails to delineate the breadth of this vitality that appears, from the evidence, to be constrained to the question of what law governs the remedies available to wrongful deaths of nonseamen in territorial waters. Compare Yamaha Motor Corp., USA v. Calhoun, 516 U.S. 199, 210 n.8 (avoiding a determination as to the continued vitality of The Tungus's application of state law in its entirety), and supra notes 113-17 (arguing that the majority of The Tungus Court never really intended the broad role for state law that is so often attributed to the holding in The Tungus), with Calhoun v. Yamaha Motor Corp., USA, 40 F. Supp. 2d 288, 293-95 (E.D. Pa. 1999) (holding that the Supreme Court's holding in Yamaha resurrected the in toto application of state law originally recognized in The Tungus).

\textsuperscript{123} See Moragne, 398 U.S. at 375.

\textsuperscript{124} The Court might have simply overruled The Tungus . . . . But training Moragne solely on The Tungus would have left untouched the survivors of seamen, who remain blocked by the Jones Act from pursuing state wrongful death claims . . . . Thus, nothing short of a federal maritime right of action for wrongful-death could have achieved uniform access by seafarers to the unseaworthiness doctrine, the Court's driving concern in Moragne.

\textsuperscript{125} Of course, basic principles of stare decisis prohibit courts from casually overruling their decisions. In addition, the Court may have foreseen the need to keep intact the holding of The Tungus in determining what remedies are available to successful plaintiffs in wrongful death claims involving nonseamen killed in territorial waters. See supra text accompanying note 123; infra note 129 and accompanying text.
Other aspects of the Court’s rationale in *Yamaha* are more dispositive of the fact that *The Tungus* is to remain in the weakened state rendered by *Moragne*. First, the decision avoided any consideration of what standard of liability should apply.\(^{126}\) It is particularly informative that the Court, while affirming the Third Circuit’s decision, refused to adopt the appeals court’s language suggesting that state law should govern the standard of liability.\(^{127}\) Likewise, the decision in *Yamaha* in no way attempted to overrule *Moragne*’s expansion of remedies.\(^{128}\) Therefore, if one accepts the argument that *Moragne* undercut *The Tungus*, the *Yamaha* decision cannot be said to weaken *Moragne*’s effect. Additionally, *Yamaha* interpreted *Moragne* as limiting the general maritime law remedy to rights of action in unseaworthiness that are not provided by statutory or general maritime law.\(^{129}\) In a similar fashion, *The Tungus* allowed state statutory law to apply because there was no federal statutory or general maritime law right of action for unseaworthiness under *The Harrisburg*.\(^{130}\) Thus, the Court in *Yamaha* recognized that the *Moragne* decision finally addressed the very problem that *The Tungus* inadequately sought to remedy.\(^{131}\) *Yamaha*’s inter-

\(^{126}\) See *supra* note 104 and accompanying text. The Court, in footnote 14 of its decision, ensures that the holding is not to extend beyond the scope of remedies. See *Yamaha*, 516 U.S. at 216 n.14.

\(^{127}\) Compare *Yamaha*, 516 U.S. at 210 n.8 (“We . . . confine our inquiry to the modest question whether it was Moragne’s design to terminate recourse to state remedies when nonseafarers meet death in territorial waters.”), with *Calhoun v. Yamaha Motor Corp.*, USA, 40 F.3d 622, 625 (1994) (“[T]he appropriate rule of decision in this area should be supplied by state law.”).

\(^{128}\) See *Yamaha*, 516 U.S. at 213.

\(^{129}\) See *id.* at 214 (quoting from the Third Circuit’s decision in *Calhoun*, which stated that the “humane and liberal” purpose sought by the *Moragne* decision was driven by the view that the survivors of seamen killed in territorial waters should not be barred from bringing certain claims simply because there was no state or federal statutory remedy).


\(^{131}\) See *supra* note 124 and accompanying text. By recognizing the possibility that *Moragne* simply could have overruled *The Tungus*, the Court essentially framed *Moragne* to bring finality to the same problems addressed in *The Tungus* and *Moragne*. Cf. *Calhoun v. Yamaha Motor Corp.*, USA, 40 F. Supp. 2d 288, 295 & n.7 (E.D. Pa. 1999) (rejecting Johnson’s arguments in favor of a reinvigorated role for *The Tungus*, but arguing that *The Tungus* retains vitality using the reasoning of the Third Circuit in its initial consideration of *Calhoun*). In analyzing the question of
pretation of Moragne and The Tungus lent credence to the understanding that Moragne undercut the foundation on which The Tungus rests. Accordingly, the opinion in Yamaha provides no conclusive evidence to support the conjecture that Yamaha resurrected The Tungus.

A Case Study in the Incongruity that Application of The Tungus Would Now Produce: The Statute of Limitations

Background

Examining the law relating to the statute of limitations reveals a further indication of the incongruity produced by interpreting Yamaha to apply state law in toto. According to the holding of The Tungus, a federal court applying state law must apply all of the accompanying limitations of state law. This application of state law thus includes the use of the state statute of limitations. The situation, however, is complicated further because a federal maritime statute of limitations now governs all actions invoking admiralty jurisdiction.

Initially the doctrine of laches governed the statute of limitations in admiralty. Under this doctrine, federal courts used state statutes of limitations as a supplement to the use of state wrongful death actions. This understanding governed until the

which substantive liability standard—state or federal—should apply, the district court pointed out that both the Third Circuit and the Supreme Court deferred on this question. See Calhoun, 40 F. Supp. 2d at 290-91; see also Yamaha, 516 U.S. at 216 n.14 ("The Court of Appeals also left open, as do we, the source—federal or state—of the standards governing liability, as distinguished from the rules on remedies."). The district court then inexplicably cited the Third Circuit's opinion as authority for the proposition that state law should control the substantive liability standard. See Calhoun, 40 F. Supp. 2d at 295 (citing Calhoun, 40 F.3d at 641 n.39).

132. See Friedell, supra note 2, at 834-36.
133. See The Tungus, 358 U.S. at 592-93.
135. See 46 U.S.C. app. § 763a (1994) ("Unless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued.").
136. See SCHOENBAUM, supra note 43, § 3-22, at 178.
137. See, e.g., Western Fuel, 257 U.S. at 233, 243; The Harrisburg, 119 U.S. 199, 214 (1886).
adoption of the federal statute of limitations in 1980, which applied to all suits "arising out of a maritime tort."  

A brief description of admiralty jurisdiction is necessary to understand in which cases the federal statute of limitations applies. Admiralty jurisdiction is the exclusive province of the federal district courts; however, the very provision that gives this jurisdiction to the federal courts reserves some suits to the state courts by the "savings to suitors" clause. Amidst this somewhat confusing provision, the courts have developed a two-part test for the application of maritime jurisdiction. The first part, known as the "locality" or "situs" test, asks whether the action took effect in or on navigable waters. The second part, known as the "nexus" test, requires that the action bear a significant relation to traditional maritime activities. Traditionally, courts have been very lenient in allowing parties to qualify for maritime jurisdiction under the two-part test.

**The Pre-Yamaha Understanding**

An examination of the pre-Yamaha understanding of the statute of limitations begins with the leading case of Butler v. American Trawler Co. Butler sued the company as a result of an injured finger she sustained while trying to board the Sea Lion VII, a docked fishing boat owned by American. American argued for summary judgment on the ground that Butler had not filed her claim within the applicable federal statute. Butler replied that she had not brought her claim to federal court on the basis of admiralty jurisdiction, but instead that her claim involved state law and reached federal court only on the basis of  

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140. See id. § 1333(1).
143. See, e.g., Richardson, 457 U.S. at 674-75 (rejecting petitioner's argument that a substantial relationship with commercial maritime activity was essential to invoke federal maritime jurisdiction).
145. See id. at 30.
146. See id. at 30-31.
diversity of citizenship jurisdiction. Thus, she argued the more generous six year Maine statute of limitations should apply. The court, however, found that the plaintiff's claim fell within the maritime jurisdiction and that in all claims "sounding in maritime tort law, federal admiralty law controls when substantive provisions of federal admiralty and state law conflict." Having determined that the claim fell within the ambit of maritime jurisdiction, the court turned to the issue of whether a statute of limitations constituted substantive law for choice of law purposes. The court resolved this question in the affirmative by drawing on the decision in Guaranty Trust Co. v. York for the proposition that because a statute of limitations bears a strong potential impact on the final outcome of a cause of action it constitutes substantive law. Therefore, applying the "reverse-Erie" doctrine, the court concluded that because the statute of limitations was substantive, the federal statute of limitations, as codified in 46 U.S.C. § 763a, governed to the exclusion of the state statute and thus, Butler's claim was time-barred.

147. See id. at 31.
148. See id.
149. Id. at 32. Courts and scholars alike have referred to this principle as the "reverse-Erie" doctrine. See Offshore Logistics v. Tallentire, 477 U.S. 207, 223 (1986) (arguing that in admiralty, choice of law questions are decided in precisely the opposite manner as that prescribed by the decision in Erie); Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). Unlike Erie, which prescribed the use of state substantive law in federal courts whenever state and federal law conflicted, see Erie, 304 U.S. at 78, the reverse-Erie doctrine required state or federal courts dealing with admiralty issues to apply federal law whenever the state and federal laws came into conflict with one another. See Tallentire, 477 U.S. at 223.
150. See Butler, 707 F. Supp. at 33.
152. See Butler, 707 F. Supp. at 34. The court in Butler analogized the Supreme Court's use of the "outcome determinative" test in York, see York, 326 U.S. at 109, to the situation before it to conclude that in admiralty, as well as in other contexts, a statute of limitations is a substantive law rule, see Butler, 707 F. Supp. at 34. The court also relied on the later civil procedure decisions of the Supreme Court in Byrd v. Blue Ridge Rural Electric Cooperative, Inc., 356 U.S. 525 (1958), and Hanna v. Plumer, 380 U.S. 460 (1965), to support its decision. See infra notes 162-73 and accompanying text.
153. See supra note 149 and accompanying text.
154. See Butler, 707 F. Supp. at 35.
In addition to Butler, other pre-Yamaha decisions expressed the principle that when maritime jurisdiction is available, despite how the plaintiff casts the claim, the federal statute of limitations governs.\(^\text{155}\) Likewise, these cases reflect traditional concerns of uniformity in admiralty law.\(^\text{156}\) As a result, prior to Yamaha, the courts applied the federal statute of limitations in any case in which maritime jurisdiction was available due to uniformity concerns.

If, as the argument goes, Yamaha is read to eliminate the principle of uniformity in admiralty by resurrecting The Tungus to allow a wholesale application of state law, then the application of state statutes of limitation should also become more widespread after Yamaha. The Court indicated a preference for the supremacy of federal statutory law,\(^\text{157}\) but made no direct mention of which statute of limitations should apply.

An examination of the post-Yamaha cases interpreting the choice of which statute of limitations to use reveals no substantial change in the policy favoring the federal statute. In White v. Mercury Marine,\(^\text{158}\) the Eleventh Circuit read Yamaha to hold that state law was only applicable in "the absence of congressional action in the area."\(^\text{159}\) Following this understanding of Yamaha,

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\(^{156}\) For example, in Anderson v. Varco International, Inc., 905 S.W.2d 26 (Tex. App. 1995), the court noted:

Supplementing federal admiralty law with the Texas two-year statute of limitations is inconsistent with traditional admiralty law. A two-year statute of limitations affects the harmony and uniformity of maritime law, thus altering the substantive maritime law. . . . The federal three-year statute of limitations preempts the Texas two-year statute of limitations in maritime tort actions to preserve the uniformity sought by 46 U.S.C. App. § 763a.

Id. at 29 (emphasis added).

\(^{157}\) See Yamaha Motor Corp. USA v. Calhoun, 516 U.S. 199, 215-16 (1996) (noting that when Congress has acted to apply a statute uniformly, the Court will not add to or otherwise change the statutory construction of the Congress), modified, 40 F. Supp. 2d 288 (E.D. Pa. 1999).

\(^{158}\) 129 F.3d 1428 (11th Cir. 1997).

\(^{159}\) Id. at 1431; see also Alderman v. Pacific N. Victor, Inc., 95 F.3d 1061, 1065-66 (11th Cir. 1996) (holding that an action that comes under the jurisdiction of admiralty is bound to apply the federal substantive law, which includes the statute of limitations); Ford v. Atkinson Dredging Co., 474 S.E.2d. 652, 653-54 (Ga. Ct. App. 1996)
the court held that it "cannot use Florida law to supplement the general maritime statute of limitations in this or any other case."\textsuperscript{160} The unmistakable language of \textit{White} highlights the principal anomaly of reading \textit{Yamaha} to prescribe a wholesale application of state law; in order to do so, courts must preempt federal statutory law, a course that even \textit{Yamaha} refused to countenance.\textsuperscript{161}

\textbf{A Simplistic Understanding of Why \textit{Yamaha} Cannot Be Said to Invigorate State Law In Toto}

Perhaps the clearest guide as to how to interpret \textit{Yamaha} can be found by returning to the analysis of the court in \textit{Butler}. Throughout the course of its decision, the \textit{Butler} court made reference to the choice of law decisions found in \textit{York}, \textit{Byrd}, and \textit{Hanna}.\textsuperscript{162} The \textit{Butler} decision, along with the corresponding "reverse-Erie" doctrine,\textsuperscript{163} illustrates the permissibility of drawing analogies in the admiralty context to civil procedure deci-

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{160} \textit{White}, 129 F.3d at 1432 (emphasis added).
\item \textsuperscript{161} \textit{See supra} note 157 and accompanying text.
\item \textsuperscript{163} \textit{See supra} notes 149-53 and accompanying text.
\end{enumerate}
\end{footnotesize}
sions. With this framework in mind, any analysis of the *Yamaha* decision would be remiss to ignore the seminal decisions in *York*, *Byrd*, and *Hanna*.

The *York* decision turned on whether the statute of limitations is a substantive or a procedural rule. In determining that the statute of limitations amounted to a substantive determination, the Court applied the “outcome determinative” test, which provides that the disputed issue is considered substantive if its “application would vitally affect the . . . cause of action.” Applying the “outcome-determinative” test to the facts of *Yamaha* demonstrates that *Yamaha* extends the application of state law as a supplement to remedies, and not as a standard of liability. If *Yamaha* were understood as extending state law to provide the basis of liability, the outcome of two identical cases could vary based on which state’s laws applied. Nevertheless, simply extending state law to provide a supplementary remedial option has no effect upon the outcome of the case itself, but only upon the accompanying consequences of that outcome. Therefore, the application of the *York* “outcome-determinative” test supports the proposition that *Yamaha*’s extension of state law be limited to remedies alone.

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164. See Butler, 707 F. Supp. at 34. The distinction was vitally important to the determination of which law applied in *York* because of the earlier Supreme Court decision in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), which held that substantive state law and federal procedural laws govern in conflict of law actions in federal courts. See id. at 78. It is important to note that in the admiralty context this choice of law distinction reaches precisely the opposite result with federal substantive law governing to the exclusion of state substantive law under the “reverse-Erie” doctrine of maritime law. See supra note 149 and accompanying text. The argument then follows that *York* is to *Erie* what *Butler* is to *Tallentire*. For just as *York* used the “outcome determinative” test to distinguish between a procedural and a substantive rule as a precursor to the application of the *Erie* doctrine, see Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945), so too, *Butler* uses the *York* outcome determinative test as a precursor to the application of the “reverse-Erie” doctrine, see Butler, 707 F. Supp. at 34.

165. See *York*, 326 U.S. at 109.

166. Butler, 707 F. Supp. at 34.

167. Furthermore, this result is undesirable given the underlying premises of *Moragne*. One of the catalysts for the Court’s action in *Moragne* was the fact that a liability claim was available in one territorial area that was not available outside that territorial area. See *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 395 (1970).
In addition to relying on York, the Butler court examined the analysis in Byrd.\textsuperscript{168} Specifically, the Byrd decision supplemented the "outcome-determinative" test with a test that balanced the competing state and federal interests in having their own provision apply.\textsuperscript{169} Applying this balancing test to the facts of Yamaha, it is evident that the federal interest in uniformity outweighs the state's interest in applying its law in toto. The state has a compelling interest in protecting the rights of its citizens, particularly within their own territorial waters. This interest, however, must be balanced against the federal interest in providing a measure of predictability for commercial interests through a uniform federal law.\textsuperscript{170} More importantly, efficiency is served by having a less complicated standard of liability to apply. If state law were to apply in toto, conceivably judges could be forced to apply fifty different state laws.\textsuperscript{171} In this regard, application of the Byrd test would favor the expansion of state law only to the extent needed to provide supplemental remedies.

The final case invoked in Butler was Hanna,\textsuperscript{172} in which the Court held that choice of law "cannot be read without reference to the dual aims of the Erie rule: the discouragement of forum shopping and the avoidance of inequitable administration of the laws."\textsuperscript{173} There is no doubt that, if state law were to apply in toto under the Yamaha holding, some state laws would be more generous than others. There is also no doubt that forum shopping will result when conflicting state law standards are available.\textsuperscript{174} If state law is limited only to remedies, however, these

\textsuperscript{168} See Butler, 707 F. Supp. at 34-35.
\textsuperscript{170} Weighing heavily on the side of the federal interest is the evidence that the protection of commercial interests was the principal reason for the constitutional grant of admiralty jurisdiction to the federal courts. See supra notes 18, 40 and accompanying text; infra note 193 and accompanying text.
\textsuperscript{171} On the other hand, applying state law only as a supplement to remedies strikes a compromise between the state interests and the federal interests. By allowing state residents to apply their home state's remedial laws, the home state would retain some measure of protection over their own citizens. At the same time, this understanding of Yamaha would allow for one standard of liability, the federal standard, to govern the seas.
\textsuperscript{172} See Butler, 707 F. Supp. at 35.
\textsuperscript{173} Hanna v. Plumer, 380 U.S. 460, 468 (1965).
\textsuperscript{174} This argument is particularly damaging to the opinion of the district court on
dangers are reduced considerably because the claimant would have to prove the general uniform standard of liability before reaping the benefits of the more generous state law. Likewise, extending state law in toto would result in an inequitable administration of laws because some state laws would be more stringent than others. In this situation, two claimants who are injured under the same circumstances could have different results based on where they reside. The Court rejected such a result in Hanna, thus providing further support for the limited application of state law under Yamaha.

**DECONSTRUCTING YAMAHA**

It is tenuous at best to argue that the opinion in Yamaha revived The Tungus and asserted a new role for state law in the admiralty context. The remaining question then is if Yamaha is not meant to allow the wholesale application of state law, for what is Yamaha calling? A host of recent decisions by lower courts have produced numerous interpretations of Yamaha. From these decisions, several generalities can be gleaned regarding the impact Yamaha is likely to have on admiralty jurisprudence. One important result is the expansion of remedies available in maritime tort actions. Another noteworthy effect of Yamaha, according to these cases, is the reaffirmance of the

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175. See supra notes 122-32 and accompanying text. It is of paramount importance to note that even at the time the decision in The Tungus was rendered, it was thinly assented to with three other Justices joining in Justice Brennan's vigorous dissent. See The Tungus v. Skovgaard, 358 U.S. 588, 597-612 (1959) (Brennan, J., dissenting); see also supra notes 113-17 and accompanying text (noting criticisms of the view that "The Tungus stands for the proposition that state law must govern in toto when it applies").

176. See American Dredging Co. v. Lambert, 81 F.3d 127 (11th Cir. 1996) (holding that when an accident occurs in territorial waters and does not involve seamen or longshore workers, maritime law does not displace state wrongful death and survival statutes that allow for the recovery of nonpecuniary damages); Brateli v. United States, 1996 AMC 1986, 1984-85 (D. Alaska) (holding that although Yamaha makes available state remedies in maritime, it cannot be read to restrict the recovery to state law where the federal remedies are more generous).
preeminence of federal statutory law when in conflict with state laws. 177

Foremost among the indicators of Yamaha's significance, however, is the decision of the Eleventh Circuit in In re Amtrak. 178 In Amtrak, the court placed two severe limitations on the holding in Yamaha. First, Amtrak found that Yamaha was inapplicable in the personal injury context because the law of admiralty had for years provided a remedy for personal injuries. 179 Second, the court read Yamaha extremely narrowly and suggested that Yamaha applies only when the state remedial measures do not conflict with federal maritime law or substantive admiralty law. 180 Furthermore, the court noted that "it is equally certain that the Yamaha Court, while aware that its decision would create, to some extent, unavoidable conflict between state law and federal maritime law, did not intend to sacrifice wholly long-standing admiralty principles at the altar of states' rights." 181 Applying this language to the questions at hand, the post-Yamaha case law appears to confirm the conclusion that Yamaha is not to be read to advance the wholesale application of state law in maritime decisions.

At this point, the skeptic may suggest that if the Court had truly intended state law to apply only with respect to remedies, it would have stated as much. 182 Instead, the Court clearly stopped short. 183 This is the view taken by those who believe that the decision in Yamaha spelled the end of uniformity in

177. See, e.g., American Dredging, 81 F.3d at 130 (holding that Yamaha made clear that federal law preempts state law when the claimant is a seaman or longshoreman); Bratelli, 1996 AMC at 1984 (holding that a federal statute that specifies the appropriate relief in maritime wrongful death cases would preempt state law); Choat v. Kawasaki Motors Corp., 675 So. 2d 879, 885-86 (Ala. 1996) (holding that federal law would preempt state law if the claimant were a seaman).

178. 121 F.3d 1421 (11th Cir. 1997).

179. See id. at 1428-29.

180. See id. at 1426.

181. Id. at 1424. The court based its view on the conclusion that the Court in Yamaha limited its own holding to a strictly remedial measure. See id.

182. The same argument, of course, is applicable to the view that state law applies in toto.

admiralty law. In fact, the decision in *Yamaha* takes great pains to reconcile its holding with the principles set forth in *Jensen* and *Moragne*, both of which support uniformity. The Court simply refused to reaffirm the traditional understanding of *Moragne*. This constraint arose from the Court's reading of section 7 of DOHSA, which "stops DOHSA from displacing state law in territorial waters." Accordingly, if the Court upheld the traditional view of *Moragne*, it would have created a nonuniform situation in which state law would be displaced in navigable waters, but not in nonnavigable waters.

In this respect, the Court stood in the most unwelcome position of facing a situation in which upholding the traditional view of *Moragne* would undermine the very vitality of *Moragne*. Assuming its reading of *Moragne* is correct, the Court was correct in attempting to reconcile the different federal maritime regimes rather than providing a final decision on the ultimate role of state law. In so doing, the Court preserved uniformity between territorial and nonterritorial waters and left the question of the applicability of state law in territorial waters to the legislative branch.

**THE AFTERMATH OF YAMAHA**

The *Yamaha* holding is best understood by a consideration of the relevant balancing factors that influenced the Court's decision. The best understanding of the current state of the law is that the determination of which law applies to wrongful death actions in state territorial waters requires a balancing of state and federal interests. This is the best understanding

184. See supra note 22 and accompanying text.
185. See *Yamaha*, 516 U.S. at 211-14.
186. Id. at 216.
187. This was one of the three incongruities that the court sought to rectify in *Moragne*. See *Moragne* v. States Marine Lines, Inc., 398 U.S. 375, 395-96 (1970).
188. Viewing federalism with an eye toward balancing is consistent with the approach accepted by many before *Yamaha*, see, e.g., DAVID W. ROBERTSON, ADMIRALTY AND FEDERALISM 236 (1970), as well as the approach accepted by courts after *Yamaha*, see, e.g., *In re Amtrak*, 121 F.3d 1421, 1425-26 (11th Cir. 1997) (recognizing the need to balance Alabama's interests against the federal interest to determine which law applies).
189. See *Amtrak*, 121 F.3d at 1425.
because it explains the anomalous result reached by the Court in *Yamaha* and the subsequent rejection of that ultimate conclusion by the Eleventh Circuit in *Amtrak*. The distinction between these cases is that a products liability case involving a twelve-year-old does not have the same potential effect on commerce as a train derailment caused by a vessel colliding with a bridge. Consequently, the juxtaposition of these two decisions indicates that *Yamaha* should be read to accommodate judicial balancing.

At this point, one must ask whether judicial balancing is conducive to the goals of admiralty law. The protection of commerce and the necessity of uniformity in this protection is at the heart of admiralty. The primacy of a balancing test renders judicial determinations susceptible to varying factual patterns, and breeds uncertainty in the law. These effects certainly could not represent the intention of the Court in deciding *Yamaha*. A better view sees *Yamaha* as reflecting a clear judicial reluctance to settle the question of which law governs, while acknowledging deference to congressional authority. These twin aspects of the *Yamaha* opinion resound the Court's subtle call for legislative action. The language of *Yamaha* itself reveals a slight disappointment in current maritime statutes. Thus, *Yamaha* represents a judicial cry for the legislature to step in and foreclose the possibility of further inconsistent results.

As a practical matter, *Yamaha* provides some measure of guidance as to what a new statute should look like. First, the statute should expand, rather than contract, the remedies cur-

190. Compare *Yamaha*, 516 U.S. at 216 (holding that a wrongful death action of a nonseaman in territorial waters is governed by state statute), with *Amtrak*, 121 F.3d at 1426 (holding that Alabama's interest in applying its wrongful death statute did not overcome the federal interest in having the general maritime law govern the action).


192. See *Amtrak*, 121 F.3d at 1422-23.

193. See supra notes 18-19 and accompanying text.

194. See *Yamaha*, 516 U.S. at 210 n.8.

195. See supra note 154 and accompanying text.

196. See *Yamaha*, 516 U.S. at 216 ("Taking into account what Congress sought to achieve, we preserve the application of state statutes to deaths within territorial waters." (emphasis added)).
rently available in wrongful death. Second, any statute governing territorial waters should be compatible with DOHSA and the Jones Act. As is the case with both the Jones Act and DOHSA, any act created to govern territorial waters should govern to the exclusion of state laws. In order to be consistent with Yamaha, however, the new statute should allow state remedies to apply as a supplement to any statutory remedies. Of course, allowing recovery under state remedies could provide one claimant a more generous remedy than a similarly situated claimant. Nevertheless, this result is far more desirable than having numerous standards of liability for wrongful death claims.

CONCLUSION

Those who suggest that the Yamaha decision eliminates uniformity and replaces it with the use of state law in toto misunderstand the underlying rationale of the case. To read Yamaha in this manner runs counter to the general maritime law understanding of the statute of limitations as well as the bedrock principles laid out in York, Byrd, and Hanna. Instead, what Yamaha reveals is a need for Congress to balance the competing federal and state interests in territorial waters. Yamaha reveals a need to solidify uniformity by forcing the development of a federal statutory remedy, rather than an intent to sound the death knell of uniformity.

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197. See id. at 213.
198. This uniformity is necessary to square with the concerns expressed in both Moragne and Yamaha. See supra note 185 and accompanying text.
199. See Yamaha, 516 U.S. at 215-16 (favoring an expansive view of applicable remedies in territorial waters based on the strong state interests that are present). In Jones Act or DOHSA claims, however, the state interests that are present must yield to the supremacy of the federal statutes on point. See supra note 195 and accompanying text.