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IN THIS ISSUE

Michael A. Golemi, Don Haycraft, and Jody M. Schisel-Meslin summarize the recent United States Supreme Court decision in Dutra Group v. Batterton which settled a long-running circuit split between two of the most active maritime circuits in the country on the issue of punitive damages for injured Jones Act seamen.

Settling the Split: The Supreme Court Clarifies Unavailability of Punitive Damages for Seamen in *Dutra Group v. Batterton*

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On June 24, 2019, the United States Supreme Court issued its decision in the landmark case *Dutra Group v. Batteredton*, a long-awaited opinion addressing a circuit split of whether a Jones Act seaman could recover punitive damages on a claim for unseaworthiness under general maritime law.¹ Despite a long history of awarding punitive damages in maritime claims,² punitive damages have not been available to seamen claiming personal injury or death under either the Jones Act or unseaworthiness following the Supreme Court's decision in *Miles v. Apex Marine Corp.* in 1990.³ Since that time, however, a circuit split developed, making the issue ripe for resolution from the Supreme Court.

Historically, seamen have been precluded from recovering punitive damages under the Jones Act and general maritime law. In *Miles v. Apex Marine Corp.*, the United States Supreme Court unanimously held that a Jones Act seaman could not recover nonpecuniary damages in a wrongful death action.⁴ The Court noted that Congress directly addressed the question of recoverable damages on the high seas through legislation and did not provide for nonpecuniary damages when it passed the Jones Act. Holding course with maritime law's principle of uniformity, the Court limited recovery under both the Jones Act and general maritime law to pecuniary

damages, stating that "[t]oday we restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under [the Death on the High Seas Act], the Jones Act, or general maritime law."⁵

However, the Supreme Court carved out an exception to that uniform rule in *Atlantic Sounding Co., Inc. v. Townsend*, where it held, in a 5-4 decision, that punitive damages were available for the arbitrary and capricious denial of maintenance and cure.⁶ The Court's reasoning for this deviation relied on three principles. First, the Court noted that punitive damages had long been available for willful, wanton, and outrageous conduct. Second, the tradition of punitive damages under common law extended to claims arising under federal maritime law. And third, nothing in maritime law undermined that general rule's applicability in the maintenance and cure context. The Court addressed maritime law's principle of uniformity by concluding that "[t]he laudable quest for uniformity in admiralty does not require the narrowing of available damages to the lowest common denominator approved by Congress for distinct causes of action."⁷

Miles and *Townsend* left lower courts grappling with how to reconcile these two decisions and ultimately led to a circuit split

¹ *Dutra Group v. Batteredton*, 193 S.Ct. 2275 (2019).

² See Thomas J. Schoenbaum, *Admiralty & Maritime Law* 186 (5th ed. 2012) (discussing generally punitive damages under maritime law).

³ *Miles v. Apex Marine Corp.*, 498 U.S. 19, 36 (1990).

⁴ *Id.*

⁵ *Id.* at 33.

⁶ 557 U.S. 404 (2009).

⁷ *Id.* at 424.

in two of the most active admiralty circuits in the United States.

The Fifth Circuit's position was that the Supreme Court's decision in *Miles* controlled the issue of nonpecuniary damages under the Jones Act and general maritime law. In *McBride v. Estis Well Service, L.L.C.*, the Fifth Circuit, sitting *en banc*, held that punitive damages for personal injury and wrongful death claims were barred under both the Jones Act and general maritime law.⁸ In that decision, the Fifth Circuit limited *Townsend* to a maintenance and cure context and held that under general maritime law, unseaworthiness claims were limited to pecuniary damages.⁹ The Fifth Circuit likewise extended this holding to preclude seamen from recovering nonpecuniary damages from third party non-employer tortfeasors.¹⁰

Alternatively, even before the Supreme Court's decision in *Townsend*, the Ninth Circuit had held that punitive damages may be available under general maritime law for unseaworthiness claims. In *Evich v. Morris*, the Ninth Circuit distinguished unseaworthiness and failure to pay maintenance and cure from Jones Act claims and allowed the recovery of punitive damages.¹¹ The Ninth Circuit followed this rationale in *Batterton v. Dutra Group*.¹² In *Batterton*, a Jones Act seaman sought

punitive damages for injuries he claimed resulted from the vessel's unseaworthiness.¹³ The plaintiff, a Jones Act seaman employed by Dutra Group, was injured on the defendant's dredge vessel on the West Coast when a hatch blew open and crushed his hand. The district court denied the defendant's motion to strike the punitive damages claim; the Ninth Circuit affirmed. The Ninth Circuit reasoned that *Townsend* implicitly held that the Supreme Court's decision in *Miles* was limited to claims of loss of society and lost future earnings but did not limit the availability of remedies for actions under the general maritime law such as unseaworthiness claims.¹⁴ As such, the Ninth Circuit awarded the plaintiff punitive damages for his unseaworthiness claims.¹⁵ This variance from the Fifth Circuit created an opportunity for the Supreme Court to offer guidance and long-awaited clarification on the issue.

In seeking *certiorari*, the Dutra Group argued that Supreme Court precedent precluding the recovery of punitive damages under the Jones Act and general maritime law controlled the issue and that any limit that Congress had placed on damages in a negligence action under the Jones Act "forecloses more expansive remedies in a general maritime law action founded on strict liability."¹⁶

⁸ 768 F.3d 382 (5th Cir. 2014).

⁹ *Id.*

¹⁰ See *Scarborough v. Clemco Indus.*, 391 F.3d 660 (5th Cir. 2004).

¹¹ 819 F.2d 256 (9th Cir. 1987).

¹² 880 F.3d 1089, 1091 (9th Cir. 2018).

¹³ *Id.*

¹⁴ *Id.* at 1091-92.

¹⁵ *Id.*

¹⁶ See *Miles v. Apex Marine Corp.*, 498 U.S. 19, 36 (1990).

Justice Alito wrote the Court's majority opinion, joined by Chief Justice Roberts and Justices Thomas, Kagan, Gorsuch, and Kavanaugh. Justice Ginsburg dissented, joined by Justices Breyer and Sotomayor.

Justice Alito's opinion focuses on an historical approach that finds an absence of punitive damage awards in unseaworthiness cases. Accordingly, the opinion notes that once the Jones Act was passed by Congress in 1920, legislative remedial schemes for seamen should be the watchword for courts sitting in admiralty. Justice Alito clarifies that the Jones Act negligence action allows only compensatory damages and warns that its twin, general maritime law's unseaworthiness cause of action, should not overstep legislative limitations. Thus, the uniformity principle expressed in *Miles* prevails with its admonition that courts should not exceed legislative limits. The opinion distinguishes *Townsend* by noting that in contrast to unseaworthiness claims, there is an historical record of punitive damages being awarded in the maintenance and cure context. Finally, Justice Alito notes that policy considerations disfavor allowing punitive damages for unseaworthiness claims because many competitor shipping nations do not allow punitive damages. Justice Alito warns that affirmance of the Ninth Circuit view would harm American shipping interests.

In dissent, Justice Ginsburg opines that *Townsend* should control because there is a long history of punitive damages being awarded as part of the general maritime law,

albeit a paucity in the specific context of unseaworthiness. While the Jones Act provided a new negligence cause of action, Congress did not curtail preexisting remedies, including punitive damages. Justice Ginsburg states that statutory and historical analysis contains "not a hint" that the Jones Act limited seamen's remedies already in place. In her policy analysis, she counters that the availability of punitive damages in maintenance and cure actions has not created a "tidal wave" of such actions; instead, she writes, punitive damages for wanton and willful creation of an unseaworthy condition in a vessel will deter such conduct.

The Court's decision provides long-awaited clarification on this murky issue. The varying law between jurisdictions forced shipping companies to consider the geographic regions in which they operated and created uncertainty and unpredictability for litigators. This decision restores maritime law's hallmark of uniformity across courts sitting in admiralty in the United States.

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