Batted Down! *Supreme Court Relies on History, Uniformity and Policy in Rejecting Punitive Damages for Unseaworthiness*

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The Supreme Court has finally spoken. A seaman cannot recover punitive damages for an unseaworthiness claim. On June 24th, 2019, the Court rendered its long-awaited decision the *Dutra Group v. Batterton* and provided a third installment in what has been a three-decade long struggle to determine the proper remedies for the various statutory and general maritime law claims afforded to seaman. This 6-3 decision forced the Court to reconcile its previous decisions in *Miles v. Apex Marine* and *Atlantic Sounding v. Townsend*. In 1990, in *Miles* the Court established a prohibition against "non-pecuniary" damages for the wrongful death of a seaman, whether under the Jones Act, Death on the High Seas Act or the general maritime law.[1] However, in 2009, in *Townsend*, the Court established a right to punitive damages for the wanton and willful disregard of an employer's obligation to provide maintenance and cure.[2] In reaching the *Batterton* decision, the Court considered: (1) whether punitive damages have been traditionally awarded for unseaworthiness; (2) whether conformity with parallel statutory schemes requires such damages; and (3) whether policy compels the availability of punitive damages for unseaworthiness.

The unseaworthiness claim originated in the 18th Century and provided seaman the right to collect wages even if they refused to board a ship after discovering a dangerous condition. However, by the latter part of the 19th and early 20th centuries, courts began to open the door for the recovery of personal injuries. In 1920, Congress further expanded seaman's remedies by enacting the Merchant Marine Act (more commonly known as the Jones Act), which provided injured seaman with statutory personal injury claims and the right to a jury. By late 1940's the Supreme Court with its decisions in *Mannich v. Southern S.S. Co.*,[3] and *Seas Shipping Co. v. Sieracki*,[4] had transformed the evolving standard for unseaworthiness from due-diligence to strict liability culminating with the current premise of an absolute duty completely independent of the duty of reasonable care under the Jones Act.

Batterton worked as a deckhand on a Dutra Group vessel. A hatch cover blew open, crushed his left hand and left him permanently disabled. He filed suit in United States District Court for the Central District of California, and sought punitive damages for the vessel's alleged unseaworthiness. Dutra countered that punitive damages are unavailable for unseaworthiness claims and moved the district court to strike that claim. The court denied the request, and Dutra immediately filed interlocutory appeal to the United States Court of Appeals for the Ninth Circuit. The

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appellate court, relying on its pre-*Miles* decision in *Evich v. Morris*, which upheld a seaman's right to punitive damages for unseaworthiness[5], and the Supreme Court's more recent *Townsend* decision affirmed the denial, which opened the door for review by the high court.

Batterton relied primarily on two cases in his attempt to establish a right to punitive damages for unseaworthiness. The Court easily distinguished both cases. One case involved a crewmember physically injuring other crewmembers. The issue was whether staffing of the vessel with such a crewmember rendered the vessel unseaworthy. In analyzing damages, both the district and appellate court focused on compensatory damages, for there was no mention of punitive or exemplary damages.[6] Furthermore, the other case involved an injury to a British seaman, serving on a British ship subject to English law. The court awarded the plaintiff compensatory damages with the only consideration of punitive damages coming a result of the master's failure to provide maintenance and cure.[7] After finding both cases unpersuasive, the Court noted that the absence of punitive damages in traditional maritime cases is practically dispositive, and Batterton cited no decisions from the determinative years of personal injury unseaworthiness claims in which punitive damages were awarded. Therefore, the Court found that based on history there was no right to punitive damages.

Similarly, the Court next turned its attention to whether the creation of such a remedy was required to maintain uniformity with acts of Congress, specifically the establishment of statutory Jones Act claims. The Jones Act adopts remedial provisions of FELA, which impose only pecuniary damages for injuries to railroad workers. Throughout the life of FELA, federal courts have unanimously rejected the right to punitive damages under the statute. Moreover, the Court described the Jones Act, like FELA as a remedy for compensatory damages but has more recently viewed the statute as one limiting damages to pecuniary loss. Moreover, the Federal Courts of Appeals have uniformly held that punitive damages were unavailable under the Jones Act. The Court ultimately reasoned that this uniform consensus precludes the availability of punitive damages because establishing such a right would run contrary to the federal courts' promotion of uniformity for all actions for the same injury whether under the Jones Act or the general maritime law.

The Court then addressed Batterton's final argument - that sound policy and regulation justify the availability of punitive damages for unseaworthiness. In rejecting this argument, the Court articulated that its overriding objective in contemporary maritime law is to pursue Congress's policy, and because strict liability unseaworthiness is a post Jones Act Supreme Court creation, it should leave the creation of novel remedies to Congress. The Court distinguished claims for

unseaworthiness and maintenance and cure, explaining that maintenance and cure address situations where owners may not otherwise be economically incentivized to care for a crewmember. However, owners have an absolute incentive to produce a seaworthy vessel. Otherwise, an owner could lose the ship, the benefit of insurance or even face criminal penalties. Furthermore, creating a punitive damages remedy could create non-sensical disparities in the law. For example, a mariner could seek such damages for unseaworthiness, but his estate would lose that claim under the Jones Act if he were to later die. Even stranger, an owner could be liable for punitive damages, while the master in control would have more limited liability under the Jones Act. In weighing the special solitude doctrine against this analysis, the Court noted that the doctrine has its roots in the 19th Century, has never been an absolute mandate for the favoritism of seaman and that the challenges faced by modern-day seaman are not as great as those faced by generations past.

The Court's opinion, authored by Justice Alito who dissented in *Townsend* sheds some light as to the likely future direction of the Court in fashioning seaman's remedies and its adherence to the perceived signals from Congress that this area is primarily one for lawmakers. Clearly, the majority felt that the Court had reached its limits in expanding seaman's remedies in developing the modern-day strict liability cause of action for unseaworthiness and punitive damages for the wanton and willful denial of maintenance and cure benefits. Moreover, Justice Kagan's point during oral argument about a "flashing yellow light" was symbolic of her concern about the Court meddling in areas that have traditionally been Congressional turf. She joined the majority breaking from the ranks of the more liberal and moderate judges with whom she often sides. This concern is one that is undoubtedly shared by her conservative colleagues. With the current makeup of the Court and the possibility that the current President may get another appointee, that view could be further perpetuated in the coming years if and when the Court has to address another novel issue regarding seaman's statutory or general maritime law remedies. One issue that appears undecided is what remedies are available for seaman against third parties?

Similarly, just as significant was the majority's tempering of the concept of seaman being "wards of the court" and the special solitude provided as a result. The majority made clear that it in its view, seaman do not face the same level of challenges and risks that they faced in the 19th Century, and that lesser degree of risk should be considered in deciding these kinds of cases. What makes this conclusion so interesting is the fact that just over three months ago, in *Air & Liquid Systems Corp., v. Devries*, the Court in another 6-3 decision, held that in a maritime tort context, under certain circumstances product manufacturers had a duty to warn of potential dangers when their products require the incorporation of a potentially dangerous

part or product. The majority reasoned that this duty was especially appropriate in the context of maritime law given the historical recognition of the "special solitude for the welfare" of sailors. This contradiction is hard to explain, but one possibility could be that the Court is more concerned about exercising special solitude in potential mass tort cases with known dangerous products that create significant risks.

Another interesting aspect of the decision is the apparent ongoing confusion between pecuniary and compensatory damages, for the Court's opinion describes FELA as a statute imposing liability for pecuniary damages, while also describing the Jones Act as creating an action for compensatory damages. Complicating the issue even further, some courts have interpreted *Miles* as prohibiting the recovery of non-pecuniary damages for living seaman.[8] However, that interpretation appears erroneous given the current state of the law, for seaman regularly recover non-pecuniary damages for pain and suffering under the Jones Act. A more precise characterization of the law may be that Jones Act plaintiffs are limited to compensatory damages while maritime death claimants are limited to pecuniary damages.

In the words of Bob Dylan "the times they are a changin" (or at least they appear to be). The Supreme Court has put a halt to the expansion of seaman's remedies for unseaworthiness that spans three centuries. Given the current makeup of the Court, its potential future makeup and the *Batterton* majority's view of the special solitude usually afforded to seaman, the halt could be here to stay for some time at least in cases of individual claimants. Undoubtedly, the Court will be called upon to decide future cases concerning potential novel remedies of seaman. Thirty years from now, will we look back and view *Batterton* as a bump in the road or road closure in terms of seaman's remedies? Stay tuned, as only time will tell.

Endnotes

1 498 U.S. 19 (1990).
2 557 U.S. 404 (2009).
3 321 U.S. 96 (1944).
4 328 U.S. 85 (1946).
5 819 F.2d 256 (9th Cir. 1987).
6 *The Rolph*, 293 F. 269, 271 (ND Cal. 1923).
7 *The Noddleburn*, 28 F. 855, 857-858 (Ore. 1886).
8 *Kelly v. Panama Canal Comm'n* 26 F.3d 597, 601 (5th Cir. 1994).