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SCOTUS SIDES WITH FIFTH CIRCUIT IN RESOLVING CIRCUIT SPLIT ON THE AVAILABILITY OF PUNITIVE DAMAGES FOR CLAIMS OF UNSEAWORTHINESS

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Can a plaintiff recover punitive damages on a claim for unseaworthiness? The Supreme Court answered that divisive question today finding that a seaman cannot recover punitive damages for a claim of unseaworthiness. Although the answer to the question is now clear, reviewing the circuitous path that this issue has taken is important to understanding the full effect of the answer.

I. HOW *BATTERTON* MADE IT TO THE SUPREME COURT OF THE UNITED STATES.

A full panel of the judges in the Fifth Circuit answered this question in 2014 ruling that a seaman's recovery for an unseaworthiness claim is limited to pecuniary losses, which in their opinion did not include punitive damages. *McBride v. Estis Well Services, LLC*, 768 F.3d 382 (5th Cir. 2014). In 2018, the Ninth Circuit disagreed holding that a seaman could recover punitive damages for a claim of unseaworthiness. *Batterton v. Dutra Group*, 880 F.3d 1089 (9th Cir. 2018). These clearly divergent opinions set the stage for the long awaited circuit split that enticed the Supreme Court to grant a *writ of certiorari* in order to resolve this issue with finality.

II. THE RELEVANT JURISPRUDENTIAL HISTORY OF PUNITIVE DAMAGES IN MARITIME LAW.

The decisions in both *McBride* and *Batterton* were largely based upon the interpretation of two Supreme Court decisions relative to a seaman's recovery of punitive damages - *Miles v. Apex Marine Corp.* and *Atlantic Sounding v. Townsend*. In 1990, the *Miles v. Apex Marine Corp.* decision held that punitive damages were not available to a deceased seaman's family for claims of unseaworthiness. 111 S.Ct. 317 (1990). That unanimous opinion looked at the statutory scheme created by Congress in the "Death on the High Seas Act" ("DOHSA"). Although DOHSA's application was limited to deaths on the "high seas" and not deaths in the inland waters as the situation in the *Miles* case, the Court determined that there is a desire to keep the maritime law "uniform." Thus, the Court held that the family of a deceased seaman can only recover pecuniary damages. The case did not discuss the availability of "punitive" damages, but many courts have interpreted the pecuniary damages limitation as foreclosing the availability of punitive damages. Importantly, the Court opined that the determination of whether a deceased seaman should recover punitive damages should not be determined by whether his death occurred on the high seas or some other navigable waterway. Instead, the Court stressed that seaman's rights and remedies should be uniform.

In 2009, the issue of whether a seaman is entitled to punitive damages for his Jones Act employer's arbitrary and capricious failure to pay maintenance and cure reached the high Court. *Atlantic Sounding v. Townsend*, 129 S.Ct. 2561 (2009). The unanimous opinion of the Court held that punitive damages were a recoverable item of damages for the arbitrary and capricious failure to pay maintenance and cure. The Court based this decision in main part on the fact that this class of remedy has been available for centuries under the common law. Further, because the Court found no statutory intent by Congress to limit these damages in either the Jones Act or other statutory scheme, the Court concluded that punitive damages remained a viable claim under the Admiralty law and that the *Miles* decision was not controlling of this issue.

III. WHY THE SPLIT BETWEEN THE FIFTH AND NINTH CIRCUIT?

Before the issue of punitive damages arose in the Ninth Circuit case of *Batterton*, the Fifth Circuit addressed the question in *McBride.* In analyzing the availability of punitive damages, the Fifth Circuit analyzed the two decisions and held that *Townsend* was limited to claims for the willful, arbitrary, and capricious failure to pay maintenance and cure. In the opinion of that court, the issue of punitive damages for an unseaworthiness claim was controlled by the Court's decision in *Miles*, rendering those damages unavailable under the premise that uniformity is desired because punitive damages were not available under the Jones Act. Thus, the *McBride* court found the uniformity principle of *Miles* to require the damages for Jones Act negligence to be uniform with damages for unseaworthiness. In stark contrast, when the Ninth Circuit addressed the issue in *Batterton*, they interpreted the two decisions finding that *Miles* was limited to deaths of seaman and that the decision did not encompass "punitive" damages because *Miles* only precluded recovery of "non-pecuniary" damages, which that court distinguished from "punitive" damages. The Ninth Circuit interpreted the holding in *Townsend* broadly to state that punitive damages are available for all general maritime law claims, including unseaworthiness claims, expanding the *Townsend* decision beyond being solely related to claims of maintenance and cure.

It is interesting see how these two United States appellate courts can interpret the same two Supreme Court decisions in two entirely different fashions. This highlights the uncertainty that we are all faced in analyzing the law and providing future predictions on how a judge or jury may find on any particular issue. However, the Supreme Court decided to provide us with a clear answer to resolve the dispute between the interpretations afforded in *McBride* and *Batterton*.

IV. THE SUPREME COURT PRECLUDES PUNITIVE DAMAGES – SIDING WITH THE FIFTH CIRCUIT.

Like the Fifth and Ninth Circuit, the Supreme Court held that the determination of the availability of punitive damages for unseaworthiness claims was governed by its previous decisions in both *Miles* and *Townsend*. The Supreme Court rationalized its decision by looking to the long history of recoverable damages for unseaworthiness claims. The Court recognized

that it should not fashion common maritime law remedies that are not in accord with the intent of Congress unless those remedies were part of the historical recovery allowed by the common maritime law. Unlike claims for failure to pay maintenance and cure as addressed in *Townsend*, the Court found not one decision that allowed punitive damages for unseaworthiness claims prior to the enactment of the Jones Act. Thus, the Court determined that the jurisprudence indicates that punitive damages were not historically available for unseaworthiness. According to the six justices comprising the majority in this case, the Court should not create a novel remedy that was not historically available unless required to maintain uniformity with Congress' clearly expressed intent. As neither the Jones Act nor any other statutory scheme expressed a desire to allow for punitive damages for unseaworthiness, the majority of the Court decided that it would not broaden the historically available remedies. **Thus, the answer is now clear those seamen are not entitled to recover punitive damages for an unseaworthiness claim.**

V. HOW WILL SCOTUS DECISION IN *BATTERTON* IMPACT THE MARITIME INDUSTRY?

It will be interesting to see if the *Batterton* decision will have a larger effect on maritime law than in solely eliminating punitive damages for unseaworthiness claims. The Court clearly commands the lower courts to seek to promote the uniformity principal by creating a "uniform rule applicable to all actions" for the same injury, whether under the Jones Act or the general maritime law. Thus, the Court demands that the uniformity principle be given a priority when determining the rights of seaman that have suffered a personal injury. Whether this command has a further effect on the rights and remedies of seaman will be interesting to see.

As further fodder to consider after reading the Court's decision, one argument that the plaintiff urged was that seaman are wards of the courts and should be provided with "special solicitude." While this is a widely known recitation of the law that has been used by seaman for centuries, the Supreme Court seemingly belittles the principle because the hardships that seaman face today are not the same as those of the past. The Court notes that seaman are no longer isolated on the vessel or solely dependent upon the master, as was the case in former eras. Without making any express statement to this effect, the Court's dicta on this point could be used to argue that technological advancements have diminished the need for the "wards of the court" principle. This has long been a gripe of those aligned with maritime defendants and will likely be used to water down perceived inequities based upon the principle that seamen need special treatment by the Court. Whether this dicta garners any further jurisprudential support will be worth watching.

In closing, the Supreme Court's *Batterton* decision is an important and positive ruling for Jones Act employers, vessel owners, and their insurers. The opposite decision could have led to further uncertainty in areas of insurance coverage for punitive damages and the steps that a vessel owner should take to limit its exposure to punitive damages. This decision allows the maritime industry to forego these complex, time consuming, and costly issues as punitive damages are decidedly unavailable to seamen making unseaworthiness claims.