2019

US Supreme Court Bars Punitive Damages in Unseaworthiness Claims

Craig H. Allen
University of Washington School of Law

Custom Citation

Craig H. Allen, *US Supreme Court Bars Punitive Damages in Unseaworthiness Claims*, Pac. Mar., Aug. 2019, at 40-41.

US Supreme Court Bars Punitive Damages in Unseaworthiness Claims

By Craig H. Allen

While a German pharmaceutical company reacted with bewilderment to California jury verdicts awarding billions in punitive damages to plaintiffs for exposure to *Roundup*, an herbicide the US Environmental Protection Agency confirmed is not a carcinogen and presents "no risks to public health," maritime employers closely watched *Batterton v. The Dutra Group*, a case before the US Supreme Court reviewing the California-based Ninth Circuit Court of Appeals decision extending punitive damages to a maritime worker allegedly injured by an unseaworthy condition on his employer's dredge.

The Ninth Circuit decision stood in sharp contrast to *McBride v. Estis Well Service,* a decision by the New Orleans-based Fifth Circuit Court of Appeals four years earlier.

The two circuit courts disagreed over the effect of two earlier US Supreme Court cases: the unanimous 1990 decision in *Miles v. Apex Marine Corporation*, which limited a fatally injured seaman's recovery under the judge-made general maritime law to compensatory damages, and its 2009 decision in *Atlantic Sounding Co. v. Townsend*, which recognized in a 5:4 opinion that an injured seaman may recover punitive damages under general maritime law from an employer who willfully denies the seaman maintenance and cure benefits.

Seattle attorney Barbara Holland of Garvey Schubert Barer wrote an amicus brief on behalf of the American Waterways Operators explaining why the Court's decision in *Miles* was the more compelling precedent. On June 24, 2019, six of the Supreme Court's nine justices agreed. As a result, the Court has made it clear that an injured seaman may recover only compensatory damages for injuries caused by employer negligence under the Jones Act or for injuries caused by an unseaworthy condition on the vessel.

The US Supreme Court's decision nullifies the Washington Supreme Court's contrary decision in *Tabingo v. American Triumph LLC*, 391 P.3d 434 (2017), which had upheld punitive damages in an unseaworthiness claim.

The plaintiff in the case, Christopher Batterton, was pumping pressurized air into an enclosed compartment on his employer's dredge when a metal hatch blew open, crushing his hand. In addition to seeking relief under the Jones Act (46 U.S.C. § 30104), Batterton filed a separate claim to recover punitive damages for vessel unseaworthiness, alleging Dutra was guilty of "willful and wanton" misconduct because the hatch was missing a safety feature. Dutra moved to dismiss the punitive damage claim, but the district court denied the motion. The Ninth Circuit affirmed the district court decision and the Supreme Court granted Dutra's petition for a writ of certiorari. The Court heard oral argument on March 25, 2019, on the question "Whether punitive damages may be awarded to a Jones Act seaman in a personal injury suit alleging a breach of the general maritime duty to provide a seaworthy vessel."

To appreciate the reach of the Court's decision on punitive damages for unseaworthiness claims, it is important to understand the federal courts' steady expansion of the class of workers who now qualify as "seamen," the class of floating vehicles and structures that now qualify as "vessels," and the strict liability standard for determining whether a vessel is unseaworthy.

It is generally well-known that a shore-side worker who is injured on the job is entitled to compensation for medical care and lost earnings under state or federal workers' compensation statutes without any requirement to prove the injury was caused by employer negligence. Workers' compensation statutes were designed in part to abolish the "unholy trinity" of defenses raised by employers (contributory negligence by the injured worker, negligence by a "fellow servant" of the worker, and assumption of the risk of injury by the injured worker). By contrast an injured seaman can sue in court under any or all of three possible theories: a statutory claim under the Jones Act alleging the injury was caused by employer negligence and the two judge-made general maritime law claims for maintenance and cure and unseaworthiness. The injured seaman's "trilogy" of claims are not mutually exclusive. In fact, injured seamen typically sue under all three theories.

To appreciate the reach of the Court's decision on punitive damages for unseaworthiness claims, it is important to understand the federal courts' steady expansion of the class of workers who now qualify as "seamen," the class of floating vehicles and structures that now qualify as "vessels," and the strict liability standard for determining whether a vessel is unseaworthy. Thus, a blackjack dealer working the dinner shift on a floating casino indefinitely moored to a dock on an inland river might sue for unseaworthiness if the dealer's stool leg breaks, causing the dealer to fall to the floor and

Craig H. Allen is the Judson Falknor Professor of Law at the University of Washington, where he specializes in maritime law.

injure her back.

It is also noteworthy in assessing the Court's decision that Mr. Batterton did not limit his argument for punitive damages to the general maritime law claim for vessel unseaworthiness. In his brief to the Court, he devoted one-fifth of the brief to an argument that the Jones Act does not preclude an award of punitive damages. A brief supporting that argument was submitted by attorneys for two other seamen with lawsuits pending in state courts. The arguments find some support in the Supreme Court's decision in *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 490-493 (2008), in which the Court explained that punitive damages are "separate and distinct from compensatory damages" and "are aimed not at compensation but principally at retribution and deterring harmful conduct." Thus, the argument goes, the statutory Jones Act compensation remedy does not preclude a parallel non-compensatory action to punish and deter.

Most maritime nations, including Australia, Canada, China, India, Japan, South Korea, and the U.K., are parties to the 2006 Maritime Labour Convention (MLC), Title 4 of which ("health protection, medical care, welfare and social security protection") requires maritime employers to provide certain benefits to seafarers who fall ill or are injured in connection with their employment. The US has so far declined to ratify the MLC. Three years ago, the US Maritime Administration was researching the feasibility of personal injury compensation legislation for injured seamen similar to that provided to shore-based maritime workers by the Longshore and Harbor Workers' Compensation Act, a US Department of Labor-administered workers' compensation scheme. To my knowledge, however, the necessary research was never completed and is no longer being pursued. Perhaps the Supreme Court's most recent struggles in attempting to make sense of the hodge-podge of statutory and judge-made remedies available to injured seamen will prove to be the catalyst for congress to get serious about comprehensive change. PMM