

Supreme Court Rules Punitive Damages Available in Maintenance and Care Cases

Breaking Developments In London Market Law 06/25/09

In *Atlantic Sounding vs. Townsend* (2009 U.S. Lexis 4732), a sharply divided Supreme Court of the United States ruled in a 5-4 decision on June 25, 2009, that an injured seaman may recover punitive damages for his employer's willful failure to pay maintenance and cure. Since *Miles vs. Apex Marine Corp.*, 498 U.S.19 (1990), U.S. Courts of Appeal had split on this question. The 1st, 5th and 11th Circuits had awarded punitive damages as a remedy for failure to pay maintenance and cure. The 2nd, 3rd and 9th Circuits routinely awarded pecuniary damages for the failure to pay maintenance and cure.

The respondent, Edgar L. Townsend, was a crew member assigned to work as a deckhand on the vessel TUG THOMAS owned by Atlantic Sounding Co, Inc. ("Atlantic"). The respondent suffered an injury to his arm and shoulder when he fell on the deck aboard petitioner's tugboat. Petitioner refused to pay maintenance and cure, and filed a declaratory action seeking adjudication that it was not obligated to pay maintenance and cure for Townsend's injury. Townsend, alleging that Atlantic had arbitrarily and willfully failed to pay maintenance and cure, filed his own suit under the Jones' Act for negligence and the general maritime law for unseaworthiness of the vessel and maintenance and cure. The Townsend complaint also sought recovery of punitive damages for Atlantic's recalcitrant refusal to pay maintenance and cure. The two cases were consolidated. Subsequently, the District Court denied Atlantic's motion to strike to dismiss plaintiff's punitive damage claims but certified that question as an interlocutory appeal to the 11th Circuit. The 11th Circuit in turn held the punitive damages may be awarded for withholding maintenance and care and the Supreme Court accepted certiorari.

Justice Thomas, writing for the majority, first traced the history of punitive damages under the common law and then its availability under the U.S. federal maritime law, and then concluded that nothing in *Miles vs. Apex* or the Jones Act eliminated the availability of punitive damages in a general maritime action. In so ruling, the Supreme Court expressly noted that it was not deciding whether the size of the punitive damage award in a maintenance and care case necessitated the EXXON VALDEZ 1:1 punitive to compensation ratio.

Analysis

Given the Townsend decision, vessel interests would be well served to review their risk management protocols paying maintenance, cure and unearned wages. Although in our

experience, the majority of maintenance and cure claims are handled routinely and are not litigated, there are from time to time exceptional cases which will now present with the potential for a punitive damage exposure. Vessel interests should also take the opportunity to review their policy to determine whether coverages exist for payment of punitive/exemplary damages for failure to pay maintenance and care.

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