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Supreme Court to Resolve Circuit Split; Will Decide Whether Jones Act Seamen May Seek Punitive Damages in Connection With Unseaworthiness Claims

Transportation Legal Update

Vessel owners, insurers and those that do business on navigable waters take heed. On December 7, the Supreme Court of the United States (SCOTUS) granted certiorari in *Dutra Group v. Batteredton*, Dkt. No. 18-266. By granting certiorari, SCOTUS will resolve a circuit split between the Fifth and Ninth Circuit Courts of Appeals — the two circuits that hear the most maritime injury cases — and will clarify federal common law by answering the question of whether punitive damages may be awarded in a personal injury lawsuit alleging unseaworthiness. The answer has the potential to impact maritime industries nationwide.

Location Matters — For Now

The allegations of the underlying dispute are straightforward. Plaintiff Batterton was a deckhand on a vessel owned and operated by the defendant. Batterton alleged that a pressurized hatch cover blew open while he was working on the vessel, injuring him and causing permanent disabilities. Batterton then filed suit, claiming that the vessel lacked an appropriate exhaust mechanism that would have prevented the blast, rendering it unseaworthy under general maritime law.

The defendant moved to strike the portion of the plaintiff's complaint that sought punitive damages for unseaworthiness, which the district court denied. The defendant then sought and was granted permission for interlocutory appeal due to the non-uniform decisions among both the district courts within the Ninth Circuit and among the federal appellate courts. See *Batterton v. Dutra Group*, 880 F.3d 1089, 1090 (9th Cir. 2018) (citing differing results among the courts).

On appeal, the defendant urged the Ninth Circuit to follow the reasoning of the Fifth Circuit's 2014 decision in *McBride v. Estis Well Service*, 768 F.3d 382 (5th Cir. 2014) (en banc), which held that punitive damages are not recoverable where liability is predicted on either the Jones Act or general maritime unseaworthiness. The Ninth Circuit examined *McBride* and found it to be "scholarly and carefully reasoned," but ultimately disagreed and affirmed the district court's ruling, finding that punitive damages are recoverable by seamen for their injuries in general maritime unseaworthiness actions. *Batterton*, 880 F.3d at 1096.

The upshot of the Ninth Circuit's decision is this: a seaman in the Ninth Circuit (like Batterton) is entitled to pursue punitive damages in connection with an unseaworthiness claim, while a seaman suffering an identical injury under identical circumstances in the Fifth Circuit cannot.

What's Next?

No date has been set for argument in *Batterton*, but once decided, it should provide clarity to those whose businesses involve maritime activities.

From a practical aspect, the supposedly uniform federal maritime law is anything but at the present, leaving vessel owner/operators to face uncertain liabilities and putting those in the Ninth Circuit at a financial

and competitive disadvantage that may have residual impacts.

From a legal standpoint, *Batterton* will provide SCOTUS with the opportunity to provide clear answers to questions including what distinction, if any, there is between a maritime personal injury and wrongful death claim; whether a claim for unseaworthiness permits a remedy that the Jones Act prohibits; and whether the last three-plus decades of jurisprudence that has been sometimes perceived as rolling back a seaman's rights to punitive damages is the law of the land (and sea).

Batterton should be watched closely, as the guidance provided by SCOTUS will potentially have far-reaching impacts from coast to coast. Check back for future updates from Lane Powell.