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David W. Robertson's Last Case: *Batterton v. Dutra Group*

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As everyone attending this conference probably knows by now, the Supreme Court held in *Dutra Group v. Batterton*[1] that punitive damages are categorically unavailable in a general-maritime-law action for unseaworthiness. That apparently means that if a shipowner makes a deliberate, callous decision to send a doomed — but over-insured — rust-bucket to sea because the anticipated insurance proceeds will exceed the compensatory damages payable to crewmembers or families of crewmembers who are injured or killed in the inevitable sinking, the shipowner will face no exposure to any liability for punitive damages. That harsh result is in sharp contrast with *Atlantic Sounding Co. v. Townsend*,[2] which held that a shipowner is liable for punitive damages based on its willful failure to pay maintenance and cure, and *Exxon Shipping Co. v. Baker*,[3] which held that maritime tortfeasors[4] are liable for punitive damages based on their recklessly damaging plaintiffs' property and otherwise causing economic loss. In the process of explaining the reasoning behind that conclusion, Justice Alito (writing for the 6-3 majority) departed from the approach that the Court had taken in *Townsend* (a case in which Justice Alito dissented). Remarkably, Justice Thomas — the author of the majority opinion in *Townsend* — joined Justice Alito's opinion without comment. Indeed, Justice Thomas's was most likely the decisive vote to reverse the Ninth Circuit.

I. The Facts and Procedural History

Christopher Batterton was employed by Dutra as a deckhand aboard Dutra's vessel, the *SCOW 3*, in waters off the California coast. In August 2014, a hatch cover on the vessel blew open as a result of pressurized air that had been allowed to build up in the compartment covered by the hatch. The hatch crushed his left hand, leaving him permanently disabled and in need of ongoing medical care. He alleged — and in the procedural posture of the case, the Court was required to accept as true — that the pressure built up because Dutra directed the crew to close the air vents that could have relieved the pressure if kept open.

Mr. Batterton chose to bring suit against Dutra in federal district court (rather than state court[5]), alleging negligence under the Jones Act,[6] breach of the duty to provide maintenance and cure, and breach of the duty to provide a seaworthy vessel. On the unseaworthiness count, he

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[1] 139 S. Ct. 2275 (2019).

[2] 557 U.S. 404 (2009).

[3] 554 U.S. 471 (2008).

[4] The defendants in *Baker* were a shipowner and the owner of the crude oil cargo on that ship.

[5] If Mr. Batterton had filed suit in state court, the U.S. Supreme Court would not have had jurisdiction to review the case until after final judgment. *See* 28 U.S.C. § 1257. Because he did not have a strong case on the facts for punitive damages, it is unlikely that any punitive damages would actually have been awarded, and thus it is unlikely that the U.S. Supreme Court would ever have had an opportunity to review the punitive damages issue.

[6] 46 U.S.C. § 30104.

alleged that Dutra "willfully, wantonly and callously breached the [] warranty of seaworthiness" and requested punitive damages. He did not seek punitive damages on the Jones Act count.[7]

Dutra moved to strike or dismiss Mr. Batterton's request for punitive damages. Relying on *Miles v. Apex Marine Corp.*,[8] it argued that recovery under the Jones Act is limited to "pecuniary damages"; that punitive damages should be considered "non-pecuniary damages" and are therefore unavailable under the Jones Act; and that the asserted unavailability of punitive damages under the Jones Act should preclude recovery of punitive damages in an unseaworthiness action.

The district court denied the motion, relying on Ninth Circuit precedent holding that "punitive damages are available in unseaworthiness claims under general maritime law."[9] The district court then certified the issue for immediate appeal under 28 U.S.C. § 1292(b), and the Ninth Circuit accepted the appeal. At this point, David Robertson got involved in the case. He drafted the appellee's brief and argued the case on behalf of Mr. Batterton before a panel of the Ninth Circuit.[10]

The Ninth Circuit, accepting Prof. Robertson's arguments, affirmed the district court's decision. It explained that it was bound by its prior decision in *Evich*, which "squarely held that punitive damages are available under general maritime law for claims of unseaworthiness." The court rejected Dutra's argument that *Miles* overruled *Evich*. The court reasoned that limitations on recoveries by family members for wrongful death, which the *Miles* Court addressed, have no application to general-maritime-law claims by living seamen for injuries to themselves, such as Mr. Batterton's claim. In addition, the court questioned the premise that rejecting recovery of non-pecuniary damages should necessarily preclude punitive damages. "[I]t is not apparent," the court stated, "why barring damages for loss of society" — a form of compensatory damages — "should also bar punitive damages." "That a widow may not recover damages for loss of the companionship and society of her husband has nothing to do with whether a ship or its owners and operators deserve punishment for callously disregarding the safety of seamen." The Ninth Circuit also held that, under *Townsend*, it would reach the same conclusion that *Evich* did, even if *Evich* were not binding. The court of appeals cited the *Townsend* Court's recognition that, "[h]istorically, punitive damages have been available and awarded in general maritime actions" and that "nothing in *Miles* or the Jones Act eliminates that availability." Because "[u]nseaworthiness is a general maritime action long predating the Jones Act," the court saw "no persuasive reason to distinguish maintenance and cure actions" addressed in *Townsend* "from unseaworthiness actions with respect to the damages awardable." In light of *Townsend*, the Ninth Circuit perceived no inconsistency between permitting punitive damages for unseaworthiness claims and denying them for Jones Act claims.

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[7] The Ninth Circuit had previously held that punitive damages are unavailable under the Jones Act. *See Kopczynski v. The Jacqueline*, 742 F.2d 555, 560-561 (9th Cir. 1984).

[8] 498 U.S. 19 (1990).

[9] *See Evich v. Morris*, 819 F.2d 256 (9th Cir. 1987).

[10] *See* John R. Hillsman, *The Last Tango in Pasadena*, 43 TUL. MAR. L.J. xi, xii-xvi (2019).

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