



PETITION FOR CERTIORARI FILED TO U.S. SUPREME COURT TO DECIDE THE ISSUE OF WHETHER JONES ACT SEAMEN MAY RECOVER PUNITIVE DAMAGES ON CLAIMS FOR VESSEL UNSEAWORTHINESS

Ever since the U.S. Supreme Court's 1990 *Miles v. Apex Marine Corp.* decision, lower courts in the United States have considered various issues surrounding the availability of punitive damages in personal injury suits involving seamen.

Currently, federal district courts generally prohibit punitive damage claims in seamen actions. A Petition for Certiorari to the Supreme Court of the United States has been filed following a Supreme Court of Washington opinion that held that a seaman could recover punitive damages on a claim of vessel unseaworthiness. *Tabingo v. Am. Triumph LLC*, 188 Wn. 2d 41, 54 (2017). The Supreme Court of Washington's

opinion is directly contrary to the Fifth Circuit's en banc decision in *McBride v. Estis Well Service, LLC*, 768 F.3d 382 (5th Cir. 2014) (en banc), cert. denied, 135 S. Ct. 2310 (May 18, 2015) which held that punitive damages are unavailable as a matter of law for a seaman's unseaworthiness claim due to a close reading of *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990). It is also contrary to standing precedents from the First, Second, and Sixth Circuits as well as the Texas Supreme Court, all of which have ruled that the Supreme Court's ruling in *Miles* renders punitive damages unavailable in a seaman's claim for vessel unseaworthiness. The Petition for Certiorari garnered the support of the Maritime Law Association of the United States, Coastal Marine Fund, and At-sea Processors Association, Pacific Seafood Processors Association, Groundfish Forum, United Catcher Boats, Freezer Longline Coalition, National Fisheries Institute, Alaska Bering Sea Crabbers as amici curiae.

The various amici curiae supporting the grant of certiorari warn that allowing the decision of the Supreme Court of Washington to stand would inject significant uncertainty into this important doctrine of maritime law. The question of whether punitive damages are available in unseaworthiness actions "is an exceptionally important one, with national and indeed global implications" that "could have harmful ripple effects for consumers, the maritime industry, and national

security." The current conflict between the U.S. Supreme Court and the high court of Washington State creates substantial uncertainty for vessel owners and their underwriters when managing the potential risks involved with crew injuries. The vessel owner would be subject to "shifting standards of potential liability" based simply upon in which court a seaman chooses to file his suit. Further, the current split in opinion flies directly in the face of the uniformity principles adhered to by the federal courts when fashioning the maritime law - a foundational principle provided for in the Constitution of the United States.

The Petition for Certiorari is scheduled for distribution to conference on January 5, 2018, with a decision to hear or not hear the case on the Supreme Court's next term expected shortly thereafter. If the Supreme Court takes up this case, it will resolve one of the longstanding questions about remedies available to seamen in Jones Act personal injury litigation. If Certiorari is granted, this will certainly be one of the most significant maritime personal injury cases decided by the Court since its decision in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009), which held that a seaman could recover punitive damages for claims brought for the wanton and capricious denial of maintenance and cure. HFW will continue to monitor the case's progress and provide updates to our clients and friends of the firm.

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