

IADC Amicus Brief in *Dutra*-

In the recent case of *The Dutra Group v. Batterton* case, 880 F.3rd 1089, the Ninth Circuit ruled that punitive damages are available to a seaman in a personal injury suit based on an alleged breach of the general maritime duty to provide a seaworthy vessel. Because this decision was in direct conflict with a decision of the Fifth Circuit in *McBride v. Estis Well Serv., LLC*, which held that punitive damages are not available in unseaworthiness cases, the Supreme Court granted a writ to review *Dutra*.

The disagreement between the Fifth and Ninth Circuits may require a reconciliation of the decisions of the Supreme Court in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009).

In *Miles*, the Court unanimously held that damages for loss of society and lost future income may not be awarded in an unseaworthiness action under general maritime law. The Supreme Court's reasoning was that Congress did not authorize either form of damages in negligence actions under the Jones Act, 46 U.S.C. § 30104, which provides remedies for seamen injured or killed in the course of their employment as a result of the employer's negligence. The *Miles* Court explained that respect for Congress's preeminent role in maritime law required that the scope of recovery should be no more expansive than under the remedies Congress had authorized for negligence in the Jones Act.

However, in *Townsend*, a closely divided Court held that punitive damages may be awarded in claims based on the separate general maritime doctrine of maintenance and cure. The *Townsend* Court held that *Miles* did not control the scope of remedies for maintenance and cure, which (unlike unseaworthiness) was "well established" as a claim before the Jones Act was enacted, and which has "different origins" from and is "independent" of unseaworthiness. The *Townsend* Court also commented on the "common-law tradition of punitive damages" in the maritime context before the Jones Act was enacted, and it found "no evidence that claims for maintenance and cure were excluded from this general admiralty rule."

In *Dutra*, the Ninth Circuit concluded that *Townsend* rather than *Miles* governs punitive damages in unseaworthiness claims. *Miles*, according to the court, precludes only nonpecuniary damages in unseaworthiness actions. The *Townsend* court reasoned that punitive damages are neither pecuniary nor nonpecuniary, and so *Miles* does not speak to the availability of punitive damages.

Contrary to *Dutra*, the Fifth Circuit in *McBride* concluded that punitive damages in unseaworthiness claims are precluded by the reasoning of *Miles*, which limited damages in unseaworthiness claims to those available for negligence under the Jones Act (which does not authorize punitive damages), and that *Townsend*, which concerns the distinct claim for maintenance and cure, is irrelevant to unseaworthiness actions.

The amicus filed by Atlantic supports the McBride analysis by focusing on the fact that because Congress has exercised its superior authority over seamen's tort claims with respect to the available damages in the seamen's tort liability cause of action the courts have no role to supplement the settled remedies of damages established by Congress. Atlantic's amicus states that the Supreme Court does not even need to address whether Miles should be applied narrowly or broadly, but only whether the Court should supplement the damages provided by Congress with an element of recovery not granted by the Jones Act and "disturb the settled plan of rights and remedies established by the Jones Act" in which Congress "covered the entire field of liability for injuries to seamen."

The Amicus of the IADC supports the above reasoning of Atlantic, and supplements this argument by asserting that Congress has *not* ignored the need for deterrence and punishment of unsafe actors in the offshore oilfield, but has in fact created numerous federal agencies, statutes, and rules regulating the operations of IADC members, including BSEE, Coast Guard, etc. In addition to the fact that allowing punitive damages would result in the courts entering space already occupied by Congress, allowing punitive damages as contemplated would adversely affect IADC members by having a detrimental impact on uniformity in worker claims, settlement and trial of such claims, contractual obligations and insurance coverage in the offshore oilfield, as well as negatively impacting the economy and consumers in general.

You may access the text of the IADC amicus decision on the IADC website.