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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

High Court's Seaman Injury Decision A Boon For Shipowners

By **Y. Peter Kang**

Law360 (June 25, 2019, 10:06 PM EDT) -- The U.S. Supreme Court's recent ruling that an injured merchant seaman can't seek punitive damages based on the common-law maritime claim of unseaworthiness is a big win for shipowners, attorneys said, as it removes the uncertainty of punitive damages that many plaintiffs used as a bargaining chip during settlement negotiations.

By a 6-3 vote, the high court on Monday rejected Christopher Batterton's claim for punitive damages from the Dutra Group over an injury he suffered while working as a deckhand on one of its boats. According to Batterton's claim, the ship lacked an exhaust mechanism, causing a dangerous buildup of air pressure in a compartment that led to his hand being crushed by a blown hatch cover.

The seaman's suit was filed under the Jones Act — a federal law that regulates United States maritime commerce — and sought to recover punitive damages based on Dutra's alleged breach of the general maritime duty to provide a seaworthy vessel.

At issue was whether a seaman suing under the Jones Act can seek punitive damages from a shipowner for unseaworthiness, in light of the high court's 2009 ruling in Atlantic Sounding Co. v. Townsend, which allowed punitive damages based on the maritime doctrine of "maintenance and cure," or the duty of a shipowner to provide food, lodging and medical services.

Writing for the majority, Justice Samuel Alito said on Monday that "the overwhelming historical evidence suggests that punitive damages are not available" for claims such as Batterton’s.

"It would exceed our current role to introduce novel remedies contradictory to those Congress has provided in similar areas," Justice Alito said, noting that over the past century lawmakers have taken over the governance of maritime law.

The decision is considered a big victory for shipowners and their insurers, since claims for punitive damages have often been used as negotiating leverage by plaintiffs lawyers in maritime injury litigation, according to Forrest Booth, a San Francisco-based Hinshaw & Culbertson LLP partner who specializes in maritime law and insurance.

Booth said plaintiffs attorneys would essentially threaten to bankrupt small-business shipowners with a punitive damages claim, for which they can't get insurance coverage in about half of U.S. states, including California.

“It was a huge bargaining chip that the plaintiffs have used very effectively, and in dozens of cases that we have handled,” he told Law360. “They would basically hold it as a club over an insured party; it was used as leverage in many cases. So this case takes that away.”

The high court’s decision ends a decade of uncertainty that began with Townsend, and also resolved a conflict among the circuit courts, according to Grady Hurley, chair of the maritime litigation group for Jones Walker LLP in New Orleans.

Hurley said the uncertainty over whether punitive damages could be claimed based on unseaworthiness has affected the way maritime attorneys approached settlement negotiations and “really created a dilemma,” particularly for counsel under the jurisdiction of the Ninth Circuit.

The Ninth Circuit in January 2018 greenlighted Batterton’s punitive damages claim despite the Fifth Circuit’s 2014 decision in McBride v. Estis Well Service LLC, which held that punitive damages are not recoverable for unseaworthiness claims.

“[The uncertainty] probably affected defense strategy and certainly affected both the evaluating and settling of cases,” he said. “Whether you are a defense counsel or a trial lawyer, it’s a win for maritime practitioners in the sense that it brings uniformity and certainty. Everyone wants certainty in trying cases.”

Now that the Supreme Court has decided the issue, Hurley said maritime attorneys on both sides “know the playing field,” and the ruling will help plaintiffs attorneys advise their clients of the reasonable value of their cases.

“Punitive damages have always been an X-factor that are hard to calculate” given their discretionary nature, he said.

However, the American Association for Justice, the plaintiffs attorneys lobbying group that lodged an amicus brief in support of Batterton, said Monday that the Supreme Court’s decision was “unjust” for maritime workers.

“Today the Supreme Court denied judicial remedies that have been historically available to seamen injured while working at sea,” the group’s president, Elise Sanguinetti, said in a statement. “At the same time, the court protected owners who brazenly ignore dangerous conditions on their vessels.”

But Evan Tager, an appellate specialist for Mayer Brown LLP, took umbrage at that assertion.

“[Plaintiffs attorneys] aren't in it for making maritime law even-handed for the administration of justice; they want to maximize their revenues," he said. "So I don't put much stock into it.”

Tager said Justice Alito properly addressed the AAJ’s policy argument in the opinion by stating that shipowners are financially motivated to have seaworthy vessels in order to not lose their ships or cargo.

“There’s already a large incentive for shipowners to have their ships not sink. … They’ve got enough at stake that they don’t need an additional gun to their head to keep good conditions on seaworthy vessels,” Tager said.

--Additional reporting by Jimmy Hoover. Editing by Kelly Duncan and Aaron Pelc.