



**Significant Decision: *Atlantic Sounding v. Townsend***  
**Supreme Court Rules in Favor of Punitive Damages in Maintenance and Cure Cases**

In a narrow, 5-4 decision, the United States Supreme Court held that punitive damages are available in maintenance and cure claims when an injured seaman's employer willfully and wantonly disregards the obligation to provide maintenance and cure, overruling the Fifth Circuit's *Guevara* decision.

The case, *Atlantic Sounding Co. v. Townsend*, No. 08-214 (June 25, 2009), arises from a declaratory judgment action brought by the employer (Atlantic Sounding), who sought a ruling that it did not owe maintenance and cure for the employees' (Edgar Townsend) injury. The claim arose from Townsend injuring his arm and shoulder aboard an Atlantic Sounding tug. After Atlantic Sounding filed for declaratory judgment, Townsend filed his own claim for Jones Act negligence, unseaworthiness, arbitrary and willful failure to pay maintenance and cure, and wrongful termination.

Townsend sought punitive damages for the willful denial of maintenance and cure. In the underlying decisions, Atlantic Sounding argued that Townsend was not entitled to punitive damages as a matter of law. The Middle District of Florida and the Eleventh Circuit Court of Appeals both held that punitive damages were available in an action for maintenance and cure.

In the Supreme Court's opinion, Justice Clarence Thomas began with the proposition that "Punitive damages have long been an available remedy at common law for wanton, willful, or outrageous conduct." Justice Thomas found support for his upholding the availability of punitive damages in maintenance and cure claims from *The Amiable Nancy*, an 1893 Supreme Court case that, while finding punitive damages inapplicable to the facts before the Court, indicated punitive damages might be an available remedy in maritime cases. Justice Thomas found further support for awarding punitive damages in a bevy of pre-Jones Act, 19<sup>th</sup> century cases.

The Court ruled that punitive damages were available at common law, punitive damages were traditionally available in maintenance and cure claims, and that Congress has not enacted legislation that excludes punitive damages for maintenance and cure claims. Specifically, the Court found that



the Jones Act, and subsequent decisions interpreting the Jones Act, did not bar injured seaman from electing to bring a maintenance and cure action to seek punitive damages.

The *Townsend* decision upholds a plaintiff's ability to recover punitive damages – hinged upon a finding that maintenance and cure was withheld willfully and wantonly – in both the tort-based maintenance and cure claims (physical injury caused by the vessel) and contract-based maintenance and cure claims (injury or illness aboard the vessel without a showing of fault). As such, the *Townsend* decision allows punitive damages even when a Jones Act claim is brought, if the plaintiff can prove a willful and wanton withholding of maintenance and cure.

Justice Thomas's majority opinion does not address several key issues raised by the four dissenting justices. The Court leaves unanswered the question of whether last year's holding in *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008), caps punitive damages in maintenance and cure cases (*Baker* limited punitive damages to a one-to-one ratio with compensatory damages in an oil spill claim). In footnote 12 of the opinion, the Court also specifically declines to address whether punitive damages are available under the Jones Act, even though the Jones Act incorporates the FELA, which bars exemplary damages, by reference. This second topic is addressed at length by Justice Samuel Alito in his dissent. Justice Alito argues that the damage provisions of the FELA were incorporated into the Jones Act and bar the award of punitive damages in Jones Act claims. Given the factual background of *Townsend* and the strong dissent of Justice Alito, it appears the Court may have given plaintiffs the opportunity to argue that punitive damages may even be allowed in pure Jones Act cases and undermines the vitality of the *Miles v. Apex Marine* decision's prohibition against punitives in non-wrongful death cases.

The *Townsend* decision will likely make the determination to pay maintenance and cure in fringe cases of greater importance to marine employers. Although *Townsend* broadens the range of damages available to a seaman, it does not take away an employer's usual maintenance and cure defenses – the *McCorpen* defense (employee willfully conceals a pre-existing injury), and willful misconduct by the seaman as the cause of the injury.

*Townsend* will likely have far reaching implications in the ability of maritime employers to place a quantum of damages on occupational disease cases and the ability to quickly settle marginal claims



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in adverse jurisdictions. In many instances involving toxic exposures, there may be multiple defendants who collectively refuse to pay maintenance and cure on the basis that the illness did not manifest while in their employment. These arguments will need to be expertly developed and delivered to the jury, who will be the ultimate decision maker on whether punitive damages are warranted.

When coupled with the recent *Exxon Shipping v. Baker* decision, *Townsend* signals that punitive damages may be available in more general maritime personal injury claims than previously recognized, potentially including passenger and longshore claims. Most importantly, *Townsend* underscores that marine employers and their claims handlers must be aware of the legal consequences of denying maintenance and cure and how such decisions can shape the complexion of litigation.

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