The 2019 U.S. Supreme Court Speaks in Maritime Cases

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- *Dutra Group v. Batterton*
- 139 S. Ct. 2275
- June 24, 2019

Punitive damages are not available in a maritime suit for unseaworthiness.

They are non-pecuniary: you cannot touch or feel them. Only compensatory (money) damages are recoverable.

- Injured seamen in the U.S. can sue their employer and the ship in which they served, for:

- 1. Negligence under the Jones Act

- 2. Unseaworthiness

- 3. Maintenance and cure

- 4. Unearned wages, to the end of the voyage

Jones Act (Merchant Marine Act of 1920)

- 1. Created a seaman's cause of action
- 2. Gave right to trial by jury
- 3. No substantive statutory wording; simply made available to seamen the remedies available to railroad workers under the Federal Employers' Liability Act (FELA)

- Problems for plaintiffs' attorneys:
  - A. Claimant must prove negligence; and
  - B. No punitive damages are awarded under the Jones Act/FELA

- In the 1950s, plaintiffs shifted their focus from the Jones Act to “unseaworthiness”
- A creation of U.S. courts; non-statutory
- Strict Liability; absolute and independent duty to provide a seaworthy ship (but not for an isolated act of negligence)
- Unseaworthiness and the Jones Act are alternative grounds for a single cause of action
  - Unseaworthiness gives strict liability,
  - Jones Act gives a jury trial.


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- A legal construct by U.S. courts.
- Any violation of a statute or regulation is argued to constitute an unseaworthy condition of a vessel.
- An ice cream scoop has been held to be "unseaworthy"!

- Not content with “mere” strict liability, plaintiffs began to seek punitive damages for an owner’s supplying a legally unseaworthy vessel.

- Punitive damages **are** available for wrongful denial of maintenance and cure, under *Atlantic Sounding v. Townsend* (2009)

- In *Batterton*, the Supreme Court
  - Examined the history of the Jones Act, unseaworthiness, and maintenance and cure (M & C);
  - Noted that the Jones Act, unseaworthiness and M & C have very different historical roots;
  - Restated that uniformity is required in maritime law;
  - Held that under the U.S. Constitution, the courts are bound to adhere to rules enacted by the legislative branch (Congress);
  - Observed that Congress has now legislated in the area of maritime workers' rights on several occasions:

- The Jones Act/FELA;
- The Death on the High Seas Act (DOHSA);
- The Longshore & Harbor Workers' Compensation Act; and
- Numerous vessel safety statutes and regulations

- Punitive damages are non-pecuniary; punishment
- *Miles v. Apex Marine* had held in 1990 that only pecuniary damages are recoverable in a Jones Act death case
- Therefore loss of consortium/loss of society claims (non-pecuniary) are not available in a Jones Act case under *Miles*
- Uniformity is required between maritime statutes and maritime common law, so punitive damages are not recoverable under unseaworthiness either
- Congress has spoken: "We sail in occupied waters" (*Miles*)
- Notable deference to the legislative branch

Batterton:

- Rejected the plaintiffs' bar's favorite assertion from an 1836 case that seamen need special solicitude from the courts:

  > "It better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy."

- *Batterton* dismissed that as "19th century" and a "paternalistic approach".

- *Batterton* rejected the argument that *Atlantic Sounding* overruled or severely cut back on *Miles*; plaintiffs have called *Atl. Sound.* the "Death of *Miles*") because it allowed punitive damages for wrongful denial of maintenance and cure (M & C).

- On the contrary: *Batterton* noted that *Atl. Sound.* stated firmly that "The reasoning of *Miles* remains sound"; only pecuniary damages are recoverable (except for denial of M & C).

- Supreme Court deferred to Congress re developing novel claims and remedies (if needed).
- Also noted that civil law countries do not allow non-compensatory damages.
- So allowing punitive damages for unseaworthiness would place U.S. shippers at a competitive disadvantage.
- It would frustrate admiralty's obligation to protect U.S. maritime commerce.

- If unseaworthiness = strict liability anyway, why is Batterton important?
- Answer: Insurance!

- By seeking punitive damages in a seaman's unseaworthiness case, plaintiff's attorney drives a wedge between the insured and his Underwriters.
- Why: because the insured likely has no insurance coverage for punitive damages.

~20 states in the U.S. prohibit coverage for them, including some of the major U.S. maritime jurisdictions (California, Florida, Texas [maybe!])

- Plaintiff's attorney makes a policy-limits demand.
- If it is denied, plaintiff claims the insurer is in bad faith for failing to settle within policy limits (regardless of whether the demand was reasonable), and therefore the insurer now has unlimited exposure.
- Plaintiff's counsel points to the claim for punitive damages and notes that it is/may be uninsured. It is argued the Underwriter (to protect its own assets) is exposing its insured to liabilities which are not covered: "We will take your boat, we will take your company, we will bankrupt you…" etc.
- Can be a powerful argument with an unsophisticated insured.
- Forces the insured to get his own counsel, increasing his costs.

- Insured may demand that Underwriters pay for Cumis counsel due to an alleged conflict of interest over covered/non-covered claims. (And increases costs either way.)
- Has caused insurers to pay more than claims are really worth due to such threats to their insureds.
- Has caused cases to go to trial with plaintiffs' attorneys who were willing to "roll the dice" to see if they can win big.
- Plaintiffs now being unable to claim punitive damages under either unseaworthiness or Jones Act theories will save insurers many millions of dollars in settlements in seamen's claims.

- Seamen's spouses' and children's claims;
  - Loss of consortium
  - Loss of society (comfort, love, nurture, support and training)

All are non-pecuniary;

Should now be banned, based on *Batterton* after *Miles,* under any theory.

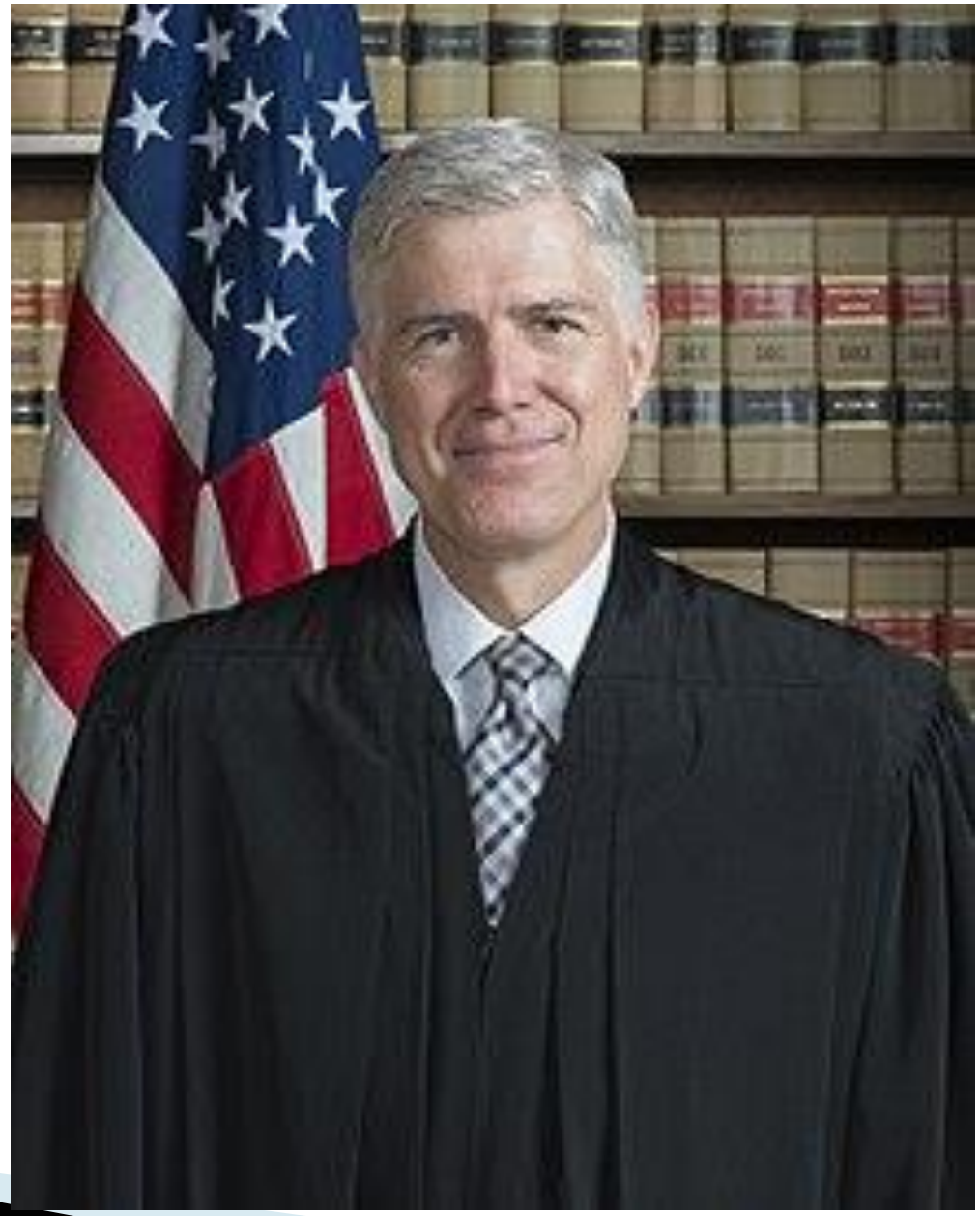
Second case:

- *Air & Liquid Sys. Corp. v. DeVries*
- U.S. Supreme Court
- March 19, 2019
- Products liability
- Scope of a manufacturer's duty to warn

- Manufacturers produced equipment for three U.S. Navy ships.
- “Bare metal”, contained no asbestos.
- But, it required asbestos insulation to function, which manufacturers knew.
- U.S. Navy sailors claimed the manufacturers negligently failed to warn them of the dangers of asbestos in the final, "integrated" products.

- Held: Duty to warn if a mfr. of maritime products:
  - 1. knows its products require additional parts;
  - 2. knows the integrated product will be dangerous;
  - 3. has no reason to believe users will recognize the danger.

  - Courts' special solicitude for seafarers requires a warning in these cases.
  - Note: this is the same 1836 rationale that *Batterton* would essentially reject three months later!



J. Gorsuch's Dissent:

1. Should not hold a company liable for failure to warn about someone else's products.

2. Majority opinion was result-driven:

    A. Most of the asbestos manufacturers are bankrupt.
    B. Members of the military cannot sue the government.
    C. The "bare metal" defendants are the only solvent parties left.

- Dissent: “Tort law is supposed to be about aligning liability with responsibility, not mandating a social insurance policy in which everyone must pay for everyone else's mistakes.”

- But sadly, that was the dissent and not the majority opinion.

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