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Gallagher Sharp Maritime Newsflash: *Dutra Group* One Week Later – The Impact on the Defense of a Seaman's Personal Injury Action

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Last week's decision in *Dutra Group v. Batterton* was among the most closely watched and highly anticipated admiralty opinions to come from the U.S. Supreme Court in at least a decade. To be sure, the Court's holding – that an injured mariner may not recover punitive damages as a component of an unseaworthiness claim – is of great interest and impact for participants in the maritime trades and the admiralty bar alike. But a closer analysis of the Court's majority opinion reveals two important points that the main holding seems to have overshadowed – issues that are likely to have a significant impact on the defense of a seaman's personal injury action.

The Headline: No Punitive Damages for Unseaworthiness

In *Dutra Group*, an injured mariner (Batterton) filed suit against a shipowner (the Dutra Group) alleging a variety of claims, including negligence under the Jones Act, unseaworthiness, maintenance and cure, and unearned wages. Batterton worked as a deckhand aboard a vessel owned and operated by the Dutra Group, a dredging and marine construction company. Batterton claimed that he was working aboard a Dutra Group vessel when fellow crewmembers pumped pressurized air into a below-deck compartment, which over-pressurization caused a hatch cover to blow open, pinning Batterton's hand between the hatch cover and bulkhead. Batterton was injured as a result of the accident.

Dutra Group moved to strike or dismiss Batterton's claim for punitive damages as part of his unseaworthiness claim. The federal district court denied the motion. On interlocutory appeal, the U.S. Ninth Circuit Court of Appeals affirmed the district court and allowed the punitive damages claim to proceed, based on established precedent in the Ninth Circuit. This decision continued to put the Ninth Circuit at odds with other federal appellate circuits, most notably the Fifth and First Circuits, which did not allow the recovery of punitive damages. Dutra Group appealed to the Supreme Court, which accepted the case to resolve the division.

The Supreme Court reversed the Ninth Circuit and held that an injured mariner may not recover punitive damages as a component of unseaworthiness claims. The Supreme Court looked to its previous cases holding that legislative enactments (namely, the Jones Act) provides the appropriate policy guidance for determining the types of relief available for certain maritime torts. However, the Court previously recognized that each claim must be viewed in its proper historical context and that remedies for negligence, unseaworthiness, and maintenance and cure have different origins and may require different principles and procedures.

The Court found that the overwhelming historical evidence suggested that punitive damages were not available for claims of unseaworthiness. The Court looked to statutory enactments to

determine whether punitive damages would be required to maintain uniformity with Congress's clearly expressed policies, mostly expressed through the Jones Act. But like the FELA, the Jones Act does not provide for recovery of punitive damages. The Court also found that allowing punitive damages for the unseaworthiness claim would create a bizarre disparity in the law because allowing punitive damages would allow a living mariner to recover punitive damages, while denying that recovery to the estate of a seaman who died. Unseaworthiness claims run against the owner of the vessel and to allow punitive damages against the shipowner but not against the operator of the vessel would make the damages available against the owner greater than the operator, despite the operator being in the best position to remedy any issues. Lastly, the Court noted that punitive damages are not available in numerous other countries and to allow their recovery would place American shippers at a significant competitive disadvantage.

Batterton also argued that punitive damages should be awarded based on policy grounds or as a regulatory measure but the Court stated that "because unseaworthiness in its current strict-liability form is our own invention and came after passage of the Jones Act, it would exceed our current role to introduce novel remedies contradictory to those Congress has provided in similar areas." The Court was hesitant to "impose more expansive liabilities on a claim governed by strict liability than Congress has imposed for comparable claims based in negligence."

With this decision, the availability of punitive damages in a seaman's personal injury actions is limited to those circumstances in which the seaman's employer willfully, arbitrarily, or capriciously fails to pay maintenance and cure benefits to the seaman. Punitive damages, however, are not available as a component of a Jones Act negligence claim, or, now, as a component of an unseaworthiness claim.

Challenges to the Unseaworthiness Doctrine as a Remedy for a Seaman's Personal injury

As mentioned, the main holding of *Dutra Group* overshadows two other very significant issues that are likely to have important effects on the defense of a seaman's personal injury action. Justice Alito begins the majority opinion's legal analysis with a lengthy discussion concerning the history of the unseaworthiness doctrine and its development as a concept in the general maritime law. The majority opinion, however, appears to offer more than simple historical context. As Justice Alito wrote, "we must consider both the heritage of the cause of action in the common law and its place in the modern statutory framework." Justice Alito then spends approximately one-third of the majority opinion itself in an apparent attack on the use of the unseaworthiness doctrine as a remedy for a seaman's personal injury.

The *Dutra Group* majority explained how a seaman's right to recover damages for personal injury on a claim of unseaworthiness began in the 19th century. This was a time when mariners "led miserable lives," and "were viewed as emphatically the wards of the admiralty." Courts were responsible for providing judicial protection to mariners from shrewd masters and vessel owners. As part of this protection, 18th and 19th century courts invoked the concept of unseaworthiness. As the majority opinion recognized, however, the initial foundation for the doctrine itself was "unrelated to personal injury." Instead, an unseaworthiness claim was a

method by which mariners could collect wages after refusing to board an unsafe vessel. An unseaworthiness claim could also serve as a defense to criminal charges against seamen who refused to obey orders that created a dangerous condition. Insurers of vessels could also rely on an unseaworthy condition to deny cover for loss of the vessel or its cargo.

The *Dutra Group* majority recognized that unseaworthiness became a personal injury remedy only through a protracted evolution of court decisions in the late 19th and early 20th centuries. The majority, however, felt that this evolution was, in part at least, based on a misreading of ancient maritime decisions. The Court also took issue with the assumption that the unseaworthiness doctrine was a viable personal injury remedy. As the *Dutra Group* majority wrote, "[u]nseaworthiness remained a suspect basis for personal injury claims until 1903, when, in dicta, this Court concluded that the vessel and her owner are liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship." The majority also recognized, however, that this concept was to be strictly limited. In fact, the majority noted that unseaworthiness claims in personal injury actions were "an obscure and relatively little used remedy."

It was not until the 1940's that a direct pronouncement from the Supreme Court apparently cemented the historical anomaly of unseaworthiness as a personal injury remedy into the general maritime law. The Supreme Court then recognized the claim and its underlying obligations as a strict liability, creating "a species of liability without fault." For decades, the Court recognized, the unseaworthiness strict liability claim overtook the Jones Act negligence claim as the essential basis of liability, preserving Jones Act claims merely as a device to obtain a trial by jury. The Supreme Court tried to arrest the decline of Jones Act claims by holding that Jones Act negligence may exist without rendering a vessel unseaworthy. That, however, did not reverse the decline of Jones Act claims in favor of unseaworthiness claims. The Court went on to assess how, over time, the Jones Act negligence claim and unseaworthiness claim have become duplicates of one another, although courts do not permit the recovery of duplicative damages for a singular injury or loss.

The question of whether the unseaworthiness doctrine creates a viable remedy for a seaman's personal injury was not before the Court in *Dutra Group*. It was not briefed, nor was it argued to the Court. However, Justice Alito's historical analysis – referencing the concept of unseaworthiness as a personal injury remedy as "suspect" and "dicta" – seems to be an open invitation to present this exact, and unanswered, question to the Court. Lending further credence to this notion is that six justices signed on to the *Dutra Group* majority opinion. Had any one or more of them felt uneasy about questioning the foundation for unseaworthiness as a personal injury remedy, they could have just as easily resolved the matter by concurring in judgment only, or by conditioning their acceptance of the majority opinion and excepting the historical analysis and treatment of unseaworthiness claims. These justices did not do so, endorsing the majority opinion in its entirety as written.

If the Supreme Court, as presently constituted, is inviting a potential challenge to the historical underpinnings of unseaworthiness claims, this will have a major impact on the defense of

seaman's personal injury actions. Vessel owners and their counsel should consider filing motions to dismiss or motions for summary judgment seeking dismissal of unseaworthiness claims and advancing the same analysis that Justice Alito provides as a framework for attacking the historical foundation of the claim. It may take advancing the argument in dozens of cases over the course of many years or longer, but eventually a sufficient body of opinions is likely to develop to provide the critical mass necessary to present the issue to the Supreme Court.

Treatment of Seaman as Wards of the Admiralty Courts

The general maritime law has long recognized and treated seamen as wards of the admiralty courts. Batterton himself argued that the "special solicitude for the welfare of seamen" supported the possible recovery of punitive damages in unseaworthiness actions. The *Dutra Group* majority did not spare the longstanding doctrine. Justice Alito wrote, and garnered the endorsement of five other justices, that the "doctrine has its roots in the paternalistic approach taken toward mariners by 19th century courts." As the majority recognized, the doctrine developed in light of strict common law limitations on a seaman's recovery that existed until the enactment of the Jones Act, as well as the operational hardships, isolation, and dependence upon the master or vessel owner that a mariner faced "from the age of sail." A majority of the Supreme Court found that the circumstances that gave rise to the treatment of seamen as wards of the admiralty courts no longer exists. As Justice Alito wrote, "the special solicitude to sailors has only a small role to play in contemporary maritime law."

This pronouncement will play a major role in shaping the defense of seamen's personal injury actions. It is common in such matters that a seaman's lawyer, or in many instances the court itself, seeks and finds refuge in this antiquated legal doctrine. It seems as though reliance on the incantation that all doubts be resolved in favor of seamen in light of the deference afforded to them as wards of the admiralty courts or on account of the special solicitude owed to them has become the rule rather than the exception in fashioning legal arguments. Justice Alito and the five other justices of the *Dutra Group* majority, however, now appear to claw back some of the ground ceded in this respect. As such, vessel owners and their counsel defending seaman's personal injury action must be prepared to invoke Justice Alito and the *Dutra Group* opinion to refute any reliance upon what a majority of the Supreme Court, as presently constituted, deems an outdated legal doctrine that has persisted long past its prime.

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