

No. 17-449

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IN THE SUPREME COURT OF THE UNITED  
STATES

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AMERICAN TRIUMPH LLC AND AMERICAN  
SEAFOODS COMPANY LLC,

*Petitioners,*

v.

ALLAN A. TABINGO,

*Respondent.*

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On Petition for Writ of Certiorari to  
the Supreme Court of Washington

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**AMICUS CURIAE BRIEF OF  
MARITIME LAW ASSOCIATION  
IN SUPPORT OF PETITIONERS**

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## **I. INTEREST OF AMICUS**<sup>1</sup>

The Maritime Law Association of the United States (MLA) is a nationwide bar association founded in 1899 and incorporated in 1993. It has a membership of about 2,815 attorneys, federal judges, law professors, and others interested in maritime law. It is affiliated with the American Bar Association and is represented in the Association's House of Delegates.

The MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests – ship-owners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, stevedoring companies, passengers, marine insurance underwriters and brokers, and other maritime plaintiffs and defendants.

The objectives of the MLA, as stated in its Articles of Incorporation, are to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its

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<sup>1</sup> Pursuant to this Court's Rule 37.6, no counsel for any party authored this Brief in whole or in part, and no person or entity other than amicus curiae made a monetary contribution to the preparation or submission of this Brief. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of the amicus curiae's intention to file this Brief and have consented to this filing.

administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices of different nations.

To further these objectives, the MLA has sponsored a wide-range of legislation dealing with maritime matters and has cooperated with congressional committees in formulating other maritime legislation.<sup>2</sup> Similarly, the MLA has assisted with international maritime projects undertaken by the United Nations, the International Maritime Organization, and the Comité Maritime International.

Consistent with its mission to promote uniformity in the interpretation of maritime law, the MLA has appeared as *amicus curiae* in cases that raise substantial questions affecting uniformity.<sup>3</sup> The MLA believes that this case

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<sup>2</sup> *E.g.*, Carriage of Goods by Sea Act, 46 U.S.C. § 30701 note; Death on the High Seas Act, 46 U.S.C. §§ 30301-30308; Federal Arbitration Act, 9 U.S.C. §§ 1-16; Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-1611; Jones Act, 33 U.S.C. § 30104; Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251-1367; Convention of the International Regulations to Prevent Collisions at Sea, 28 U.S.T. 3459, *as amended*, T.I.A.S. 10672; United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

<sup>3</sup> *E.g.*, *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002); *United States v. Locke*, 529 U.S. 89 (2000); *Am. Dredging Co. v. Miller*, 510 U.S. 443 (1994); *Sisson v. Ruby*, 497 U.S. 358



presents substantial questions about the availability and extent of punitive damages under maritime law, and this Court should grant certiorari to ensure uniformity in resolving those questions.

## **II. SUMMARY OF ARGUMENT**

The Washington Supreme Court's ruling, that a vessel owner may be subject to punitive damages in a personal injury suit alleging a breach of the general maritime duty to provide a seaworthy vessel, directly conflicts with rulings of other courts across the nation. This conflict creates substantial uncertainty for maritime actors, and those who advise them, about the risks and potential monetary exposure presented by litigation. The MLA stands for the proposition that maritime law should be uniform throughout each state of the United States. Our Constitution provides the foundation for this uniformity by extending the judicial power of the United States to all cases of maritime jurisdiction.

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(1990); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atl. Richfield Co.*, 435 U.S. 151 (1978).

### III. ARGUMENT

#### A. Conflict Over the Availability of Punitive Damages Under General Maritime Law Destroys Uniformity.

The Washington Supreme Court's decision in this case creates a split between the federal and Washington State courts as to whether a vessel owner may be subject to punitive damages in a general maritime unseaworthiness claim involving an injured seaman. The question is an important and recurring one, and there is now uncertainty as a result of conflicting interpretations of this Court's decisions in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009). Finding relevance in *Townsend* and the availability of punitive damages for maintenance and cure (another general maritime claim), the Washington Supreme Court held that punitive damages are available in a general maritime unseaworthiness claim. *Tabingo v. Am. Triumph LLC*, 188 Wn. 2d 41, 54 (2017).

The Washington ruling directly conflicts with rulings out of the First, Second, Fifth, and Sixth Circuits, and the Texas Supreme Court, which have relied on *Miles* and declared punitive damages are *not* available in an unseaworthiness claim. *Horsley v. Mobil Oil Corp.*, 15 F.3d 200, 203 (1st Cir. 1994) (holding that "*Miles* mandates the conclusion that punitive damages are not available in an unseaworthiness action under general maritime law"); *Wahlstrom v. Kawasaki Heavy*

*Indus.*, 4 F.3d 1084, 1094 (2nd Cir. 1993) (the “post-*Miles* authority lends additional support” to the Court’s conclusion that punitive damages are now allowed under the general maritime law.); *McBride v. Estis Well Serv., LLC.*, 768 F.3d 382, 391 (5th Cir. 2014) (holding that punitive damages are not recoverable in a wrongful death case under general maritime law); *Miller v. Am. President Lines, Ltd.*, 989 F.2d 1450, 1455, 1457–1459 (6th Cir. 1993) (relying on *Miles*, the court held that punitive damages are not available in a general maritime law unseaworthiness action for the wrongful death of a seaman); *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296–297 (Tex. 1993) (holding that punitive damages are not available in an unseaworthiness claim involving nonfatal injuries).

This legal disparity imposes shifting standards of potential liability on a vessel owner depending on the location of litigation. For example, a vessel calling in Washington may be subject to punitive damages, while the same vessel in the same circumstances calling in Texas would not. This lack of uniformity will impact a vessel owner’s ability to develop and implement consistent internal policies regarding the maintenance and construction of its vessels, which will undoubtedly result in inefficiency and needless expense. Furthermore, the uncertainty will encourage forum shopping and needlessly prolong litigation as parties will be encouraged to “roll the dice” on a verdict and subsequent appeal. The uncertainties created by the conflict in the courts will also make it more difficult for maritime lawyers to effectively and accurately advise their clients about policies to

adopt and liabilities they might be subject to in the event of litigation. The MLA believes the Court should grant certiorari to resolve this conflict and avoid the undesirable consequences that will undoubtedly flow from it.

**B. The Court is Responsible for Proscribing Rules for the Assessment of Punitive Damages.**

The issues raised in this case implicate more broadly the Court's recent constitutional punitive damages jurisprudence, and its application to general maritime law.

Over the past several years, this Court has established jurisprudence over the constitutional due process limits on punitive-damages awards. This evolution has its roots with *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991), and includes other notable cases such as *BMW of North America v. Gore*, 517 U.S. 559 (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Philip Morris USA v. Williams*, 549 U.S. 346 (2007). Through this line of cases, the Court developed and refined a substantial legal framework for determining when an award of punitive damages transgresses the constitutional limits of due process.

In that regard, this Court is careful to emphasize that its role is highly circumscribed when reviewing the constitutionality of state-law judgments. *See, e.g., Haslip*, 499 U.S. at 42 (Kennedy, J, concurring in the judgment). Indeed,

it is for the state courts to implement and interpret common-law or state-statutory guidelines for the assessment and limitation of punitive damages. This Court only defines the outermost constitutional bounds of permissible awards.

The Court's authority and responsibility in the maritime context, however, is far greater. Indeed, it must prescribe rules for the assessment of punitive damages, including the development of constitutional and also common-law guidelines for the review of punitive-damages awards. *See, e.g., Exxon Shipping Co. v. Baker*, 554 U.S. 471 (1998); *Cal. v. Deep Sea Research*, 523 U.S. 491, 501 (1998) ("The federal courts have had a unique role in admiralty cases since the birth of this Nation, because 'maritime commerce was . . . the jugular vein of the Thirteen States.'). In this case, the Washington State Supreme Court was not tasked with reviewing a punitive damages award as no award has been entered. Thus, by granting certiorari, the Court would not only have the opportunity to correct the split between the lower courts but also outline guidelines, if ultimately necessary, for the courts to apply when addressing punitive damages claims in the context of maritime law.

#### **IV. CONCLUSION**

The above raised concerns make it appropriate for the Court to grant certiorari in this case and resolve the conflict in the courts across the nation as to the availability of punitive damages for an unseaworthiness claim under general maritime

law. The MLA respectfully requests that the Court grant certiorari.

Respectfully submitted,

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