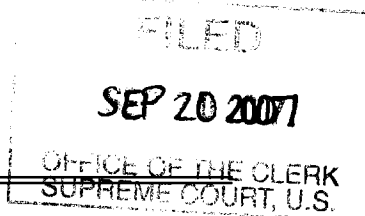


No. 07-219



In The
Supreme Court of the United States

EXXON SHIPPING COMPANY, *et al.*,

Petitioners,

v.

GRANT BAKER, *et al.*,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF THE INTERNATIONAL
ASSOCIATION OF DRILLING CONTRACTORS
AS *AMICUS CURIAE* IN SUPPORT OF THE
PETITION FOR A WRIT OF CERTIORARI**

BRADLEY A. JACKSON
Counsel of Record
JESSICA L. CRUTCHER
ROYSTON, RAYZOR, VICKERY &
WILLIAMS, L.L.P.
1001 McKinney, Suite 1100
Houston, Texas 77002-6418
Telephone: (713) 224-8380
Facsimile: (713) 225-9945
Attorneys for Amicus Curiae

Blank Page



TABLE OF CONTENTS

| | Page |
|---|------|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF THE <i>AMICUS CURIAE</i> | 1 |
| STATEMENT | 3 |
| INTRODUCTION AND SUMMARY OF ARGUMENT | 4 |
| ARGUMENT..... | 6 |
| I. The Maritime Law Essential Character- istic Requirement of Uniformity Makes this Court's Addressing Conflicts Impera- tive..... | 6 |
| II. This Court's Role in Declaring and Shap- ing Federal Maritime Law Requires Es- tablishment Of Standards for Punitive Damages | 5 |
| CONCLUSION | 10 |

TABLE OF AUTHORITIES

| | Page |
|---|------|
| CASES | |
| <i>BMW of North America, Inc. v. Gore</i> , 517 U.S. 559 (1996) | 5 |
| <i>E. River S.S. Corp. v. Transamerica Delavel</i> , 476 U.S. 858 (1986) | 5, 8 |
| <i>Guevara v. Maritime Overseas Corp.</i> , 59 F.3d 1496 (1995) (<i>en banc</i>)..... | 8 |
| <i>Honda Motor Co. v. Oberg</i> , 512 U.S. 415 (1994) | 9 |
| <i>In re P&E Boat Rentals</i> , 872 F.2d 642 (1989) | 7 |
| <i>Norfolk Southern Ry. Co. v. James N. Kirby, Pty Ltd.</i> , 543 U.S. 14 (2004)..... | 6 |
| <i>Philip Morris USA v. Williams</i> , 127 S. Ct. 1057 (2007) | 4 |
| <i>State Farm Mut. Auto Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003) | 5 |

INTEREST OF THE *AMICUS CURIAE*¹

Since 1940, the International Association of Drilling Contractors (IADC) has exclusively represented the worldwide oil and gas drilling industry. Its mission is to promote commitment to safety, preservation of the environment, and advances in drilling technology.

From its Houston headquarters, the IADC strives to secure responsible standards, practices, and regulations that provide for safe, efficient, and environmentally sound drilling operations worldwide. The Association educates its members through programs and publications and develops industry training standards. The IADC has offices in Washington, D.C., the United Kingdom, the Netherlands, and the Middle East, and has chapters in the United Kingdom, Venezuela, Brazil, Australia, South Central Asia, Southeast Asia, the Middle East, North Africa, and throughout the United States.

The IADC is an independent trade association that has more than 500 member companies, most of whom are drilling contractors. IADC membership

¹ Pursuant to Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part. No person or entity, other than *amicus* or its members, made any monetary contribution to the preparation or submission of this brief. Petitioners have filed a letter with the Clerk of Court giving blanket consent to the filing of all *amicus curiae* briefs in this case. A letter of consent from respondents has been filed in the Court with this brief.

includes contract drilling and well-servicing firms, oil and gas producers, and manufacturers and suppliers of oilfield equipment and services. The IADC's contract drilling members own most of the world's land and offshore drilling units and drill the vast majority of the world's oil, natural gas, and geothermal wells. A full list of the IADC's members can be found on its website at <http://www.iadc.org>.

The IADC holds "Accredited Observer" status at the International Maritime Organization and the International Seabed Federation, both agencies of the United Nations. The IADC also drafts and publishes model drilling contract forms for use in the oil and gas industry.

The IADC files this *amicus* brief in support of the Petition for a Writ of Certiorari. This Court's opinion on the significant federal maritime law issues of vicarious liability for punitive damages, judge-made remedies expanding Congressionally specified statutory penalties, and the legal standards to be used to determine punitive damages, will directly affect the offshore drilling contractor members of the Association. *Amicus curiae* believes that this Court may benefit from the perspective of the Association, many of whose members operate under the statutory and judge-made admiralty and maritime law of the United States.

Members of the IADC have direct exposure for the risks incurred by the imposition of punitive damages. *Amicus* thus has a vital interest in the

proper interpretation of the legal standards and limits under which punitive damages may be imposed, if in fact, they may be, under the statutory and judge-made maritime law of the United States.

◆

STATEMENT

This case arises from the 1989 grounding of the *EXXON VALDEZ* and resulting oil spill. In this maritime tort action an Alaska federal court jury awarded punitive damages of \$5 billion against Exxon.

The trial court instructed the jury that it was required, as a matter of law, to impute the conduct of the master of the *EXXON VALDEZ* to the ship owner. *See* Pet. App. 301a-302a.

Over the course of three appeals, the punitive damage award was ultimately adjusted by the Ninth Circuit Court of Appeals to a figure of \$2.5 billion.

The questions presented here are: 1) whether a shipowner may be vicariously liable for punitive damages, as held by the Ninth Circuit, which is contrary to more than 200 years of federal maritime law and in conflict with decisions of four other circuit courts of appeals; 2) whether a judge-made remedy of punitive damages is available, as held by the Ninth Circuit, when Congress has spoken through a federal statute outlining the available remedies pursuant to that statute, and the Ninth Circuit's holding is in conflict with decisions of this Court and those of four

other circuit courts of appeals; and 3) whether substantive federal maritime law allows such a large punitive damages award under the circumstances involved in this case.

◆

INTRODUCTION AND SUMMARY OF ARGUMENT

The issues of vicarious liability for punitive damages, the availability of judge-made maritime law remedies expanding existing statutory penalties, and the permissible size of punitive damages under substantive federal maritime law are all of vital concern to every interest in the maritime community. Offshore drilling contractor members of the IADC, like other maritime interests, operate in more than one area of the nation. Being subject to such wide variation in federal maritime legal standards depending on the location of the dispute creates great uncertainty and has the potential to cause great harm to the continued development of the offshore drilling industry. At a minimum, the industry should have the benefit of uniform laws.

Until now, this Court has addressed issues regarding punitive damages in the context of state law, and has therefore been able to provide guidance only on the Constitutional limits imposed by the Fourteenth Amendment's due process clause. *See, e.g., Philip Morris USA v. Williams*, 127 S. Ct. 1057, 1060 (2007) (analyzing due process limits of state law

punitive damages award); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 412 (2003) (same); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 562 (1996) (same).

In this case, the issues are matters of federal maritime law, which means that this Court has the ultimate responsibility for formulating the governing rules by applying prior precedents, applying sound public policy, and formulating new maritime law to the extent necessary, just as state supreme courts have the ultimate responsibility for formulating the state common law that governs most punitive damages claims. See *E. River S.S. Corp. v. Transamerica Delavel*, 476 U.S. 858, 864-65 (1986).

This case also affords this Court an opportunity to provide the maritime community with guidance regarding due process of law limits on punitive damages under the Fifth Amendment to the United States Constitution. Respondents' Conditional Cross-Petition (No. 07-276) recognizes the need for guidance on the due process question.

This Court should grant certiorari to provide the maritime industry with uniform standards under maritime law and to provide guidance regarding punitive damages without being constrained to interpret only the outer limits of due process.



ARGUMENT**I. The Maritime Law Essential Characteristic Requirement of Uniformity Makes this Court's Addressing Conflicts Imperative.**

Our courts have long recognized that the federal system requires uniformity of substantive law in maritime matters. Each court applies its own procedural rules to cases before it, but looks to the rules of the “general maritime law” or to applicable federal statutes for the substantive law. This Court quite recently spoke of the value of uniformity in *Norfolk Southern Ry. Co. v. James N. Kirby, Pty Ltd., et al.*, 543 U.S. 14, 28 (2004). In this “maritime case about a train wreck,” this Court declared:

We have explained that Article III's grant of admiralty jurisdiction “‘must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.’” *American Dredging Co. v. Miller*, 510 U.S. 443, 451 (1994) (quoting *The Lot-tawanna*, 21 Wall. 558, 575 (1875)). See also *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 210 (1996) (“[I]n several contexts, we have recognized that vindication of

maritime policies demanded uniform adherence to a federal rule of decision” (citing *Kosick [v. United Fruit Co.]*, 365 U.S. 731, 742 (1961)); *Pope & Talbot [Inc. v. Hawn]*, 346 U.S. [406], 409 [(1953)]; *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248-249 (1942)); *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 373 (1959).

The absence of uniformity created by the Ninth Circuit’s opinion in this case must be addressed and resolved. The Ninth Circuit’s opinion is in conflict with other circuit courts with respect to the issue of vicarious liability for punitive damages. *See, e.g., In re P&E Boat Rentals*, 872 F.2d 642, 651-52 (5th Cir. 1989) (*en banc*). For example, offshore drilling contractors operate both within the geographical area of the Ninth Circuit and in the Gulf of Mexico, within the geographical area of the Fifth Circuit. They can become embroiled in litigation in both circuits, where they will face the application of conflicting sets of rules regarding punitive damages.

In fact, under admiralty law’s generous venue rules, drilling contractors are subject to suit in either circuit regardless of where the incident made the basis of the lawsuit occurred. The conflict allows forum shopping for favorable law on the application of punitive damages.

In the same manner, the Ninth Circuit’s opinion in this case on the issue of whether a judge-made remedy of punitive damages may be allowed to expand clear statutory penalties is in conflict with the

Fifth Circuit's view. *See, e.g., Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1512-13 (5th Cir. 1995) (*en banc*).

Drilling contractors operate within the geographical area of various circuit courts of appeals and a uniform rule is required to govern the contractors' expectations with respect to operating in one geographical area or another.

II. This Court's Role in Declaring and Shaping Federal Maritime Law Requires Establishment of Standards for Punitive Damages.

Punitive damages are a major issue on which this Court should provide guidance. In this case, the punitive damage issues are admittedly governed by federal maritime law. The cause of action which resulted in the jury award of punitive damages was a maritime tort action.

Federal maritime law may be statutory, but when no federal statute controls, judges hearing maritime cases declare and shape federal maritime law. *See, e.g., E. River S.S. Corp. v. Transamerica Delavel*, 476 U.S. 858, 864-65 (1986). This Court is the ultimate source of our non-statutory federal maritime law and this Court's role in maritime cases is, thus, comparable to a common law court because it has ultimate authority to formulate the applicable law in the maritime field, just as state courts have authority to formulate state common law. *See id.*

This Court must establish substantive maritime law limits and standards for punitive damages independently of considerations of due process. Why is this so? Why is something other than the limits of due process required? The answer is simple – for the same reasons articulated by this Court in *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994). There must be a system of review of jury awards of punitive damages. Review must be allowed by the trial court and by appellate courts. This is just as true in respect of federal maritime law as it is with regard to state law punitive damages.

In *Honda*, an amendment to the Oregon Constitution prohibited judicial review of the amount of punitive damages awarded by a jury unless the court could affirmatively state no evidence supported the verdict. 512 U.S. at 426-27. Petitioner, who had been assessed punitive damages in a negligence action, argued this prohibition denied him due process. *Id.* at 420-29.

This Court recognized that jury-awarded punitive damages pose an acute danger of arbitrary deprivation of property, particularly in cases involving wealthy corporate defendants. *Id.* at 431-32. This Court held that Oregon's denial of judicial review of the size of punitive damage awards violated the Due Process Clause because Oregon removed its safeguards without providing any substitute procedure, and without any indication that the danger of arbitrary awards had in any way subsided over time. *Id.* at 431-35.

This Court has unfettered freedom to tell United States maritime interests what the standards and limits are with respect to awarding punitive damages in federal maritime law cases. This will bring uniformity, predictability, and clarity to the issue of awarding punitive damages in federal maritime law cases.

◆

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

BRADLEY A. JACKSON

Counsel of Record

JESSICA L. CRUTCHER

ROYSTON, RAYZOR, VICKERY &

WILLIAMS, L.L.P.

1001 McKinney, Suite 1100

Houston, Texas 77002-6418

Telephone: (713) 224-8380

Facsimile: (713) 225-9945

Attorneys for Amicus Curiae
