No. 17-346

In The
Supreme Court of the United States

SAUL C. TOUCHET,

Petitioner,

v.

ESTIS WELL SERVICE, L.L.C., et al.,

Respondents.

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

MOTION AND BRIEF OF SEAFARERS' RIGHTS INTERNATIONAL AS *AMICUS CURIAE* SUPPORTING PETITIONER

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October 10, 2017

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MOTION OF SEAFARERS' RIGHTS INTERNATIONAL FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to this Court's Rule 37.3(b), Seafarers' Rights International (SRI) respectfully requests leave to file this brief *amicus curiae* in support of the petitioner. Counsel of record for the parties received timely notice of *amicus curiae*'s intent to file this brief as required by this Court's Rule 37.2(a). Written consent to the filing of this brief has been granted by counsel for petitioner, Saul C. Touchet, and counsel for respondent, Virgie Ann Romero McBride. Counsel for respondent, Estis Well Service, L.L.C., has declined consent, necessitating the filing of this motion.

Amicus Curiae Seafarers' Rights International is an independent center dedicated to promoting, implementing, enforcing, and advancing the rights of the 1.5 million seafarers worldwide through research, education, and training in issues concerning seafarers and the law. Seafarers, as mobile workers, are highly vulnerable to abuse, exploitation, ill treatment, and injustice, and yet the laws that govern this highly deregulated industry are varied and potentially conflicting. SRI is the established resource that seeks to help individuals and organizations navigate this legal landscape. The main stakeholders of SRI are those with an interest in the protection and advancement of seafearers' rights, including seafarers themselves, commercial enterprises, welfare organizations, governments, non-governmental organizations, legal

practitioners, bodies of the United Nations, unions, academics, and students.

SRI is concerned with the confusion regarding the availability of punitive damages under the Jones Act, because the trend in favor of disallowing punitive damages limits the remedies available to seafarers. The Jones Act is a key part of the mosaic of laws affecting seafarers because it was designed to offer them additional legal protections in light of their vulnerable situation. SRI takes the position that punitive damages are available for negligence claims under the Jones Act when seamen are able to satisfy the rigorous burden of proof required for such damages.

For these reasons, *amicus curiae* respectfully requests that the Court grant leave to file this brief in support of petitioner.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*[1]

As set forth in the accompanying motion for leave to file this brief, SRI, an independent center dedicated to advancing the rights of seafarers worldwide, submits this brief in support of the petition for a writ of certiorari in this case because disallowing punitive damages under the Jones Act will harm the seafarers whose interests SRI seeks to advance.

SUMMARY OF THE ARGUMENT

This Court should grant certiorari to determine the availability of punitive damages both for general maritime law unseaworthiness claims and for Jones Act negligence claims.[2] Persistent disagreement over the availability of punitive damages creates uncertainty for all parties and fails to give employers an important incentive to keep seamen, the "wards of admiralty," safe.

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[1] Pursuant to Rule 37.2(a), counsel for *amicus* provided notice to all parties of *amicus*'s intention to file this brief at least ten days before its due date. Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] The Court may dispose of the case by deciding only that punitive damages are available for unseaworthiness claims. However, SRI believes that this Court's guidance regarding the Jones Act is also important.

While neither the Jones Act nor the Federal Employers Liability Act (FELA) (which the Jones Act incorporates) speaks explicitly to the issue of punitive damages, the history of the common law and the structure and purpose of those remedial statutes establish that punitive damages should be available for Jones Act negligence claims. This Court should answer the question left open in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 424 n.12 (2009), and hold that punitive damages are available under the Jones Act to seamen who are able to satisfy the rigorous burden of proof required for such damages.

ARGUMENT

I. THIS COURT'S GUIDANCE IS NEEDED ON THE AVAILABILITY OF PUNITIVE DAMAGES FOR JONES ACT CLAIMS.

This Court has never addressed whether the Jones Act allows punitive damages. *See Townsend*, 557 U.S. at 424 n.12. At least one circuit has expressly reserved the question, *Phillip v. U.S. Lines Co.*, 355 F.2d 25, 25 (3d Cir. 1966) (per curiam) (punitive damages might be recoverable "in a proper case"), and no precedent from this Court supports categorically denying punitive damages. *See infra*. pp. 12-14. Nonetheless, several circuits have held that the Jones Act categorically denies punitive damages. *See, e.g.*, *McBride v. Estis Well Serv., L.L.C.*, 768 F.3d 382, 384, & 388 n.32 (5th Cir. 2014) (en banc); *Miller v. Am. President Lines, Ltd.*, 989 F.2d

1450, 1457 (6th Cir. 1993); *Kopczynski v. The Jacqueline*, 742 F.2d 555, 560 (9th Cir. 1984).

Many of those lower courts have attempted to address the question by relying directly or indirectly on each other's cases and three inapposite FELA cases from this Court.[3] That circular reliance has only perpetuated confusion among the courts by failing to create reliable precedent. Thus, guidance from this Court is needed to ensure even application of an important federal statute that safeguards adequate protections for seamen. The petition for certiorari in this case gives the Court the opportunity to answer not only whether punitive damages are available for unseaworthiness claims, but also whether punitive damages are available for Jones Act negligence claims.

It is particularly important that this Court eliminate confusion regarding punitive damages under the Jones Act to provide certainty for seamen.[4] As of 2015, more than 1.5 million men and women were employed on the open seas.[5] Each of these individuals has a

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[3] Those three cases are *Michigan Century Railroad Co. v. Vreeland*, 227 U.S. 59 (1913), *American Railroad Co. of Porto Rico v. Didricksen*, 227 U.S. 145 (1913), and *Gulf, Colorado & Santa Fe Railway v. McGinnis*, 228 U.S. 173 (1913). Those cases are discussed at pp. 12-14.

[4] Seamen are those "doing the ship's work." *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991).

[5] BIMCO & INT'L CHAMBER OF SHIPPING, MANPOWER REPORT (2015). This report tracks the labor pool of seafarers worldwide and has seen a steady increase over the past ten years. *See id*.

nearly ten-percent chance of being injured on a tour of duty.[6] Because of the "hazardous and unpredictable" ventures they undertake for the benefit of the national economy and defense, seamen, for centuries, have been granted "special solicitude" as the wards of admiralty. *See Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 387 (1970). As Justice Story explained when holding in 1823 that curing a sick seaman is a charge on the ship: "[It] is the great public policy of preserving this important class of citizens for the commercial service and maritime defence of the nation . . . . Even the merchant himself derives an ultimate benefit from what may seem at first an onerous charge." *Harden v. Gordon*, 11 F. Cas. 480, 483 (C.C.D. Me. 1823) (No. 6,047).

Seamen "'are emphatically the wards of the admiralty' because they 'are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour.'" *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354-55 (1995) (quoting *Harden*, 11 F. Cas. at 483, 485). Congress enacted the Jones Act in 1920 to create "heightened legal protections (unavailable to other maritime workers) that seamen receive because of their exposure to the 'perils of the sea.'" *Id*. at 354 (citation omitted).

The trend among circuit courts in favor of categorically disallowing punitive damages under the Jones Act—even in instances when a seaman can prove truly callous and egregious misconduct—endangers the

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[6] *Inside the Issues*, ITF SEAFARERS, http://www.itfseafarers.org/ITI-safety.cfm (last visited Sept. 20, 2017).

centuries-old interest of protecting those serving the national-defense and commercial interests on the high seas. The perversity of such a categorical rule is especially evident when punitive damages may be available to a layman injured on the water simply because he falls outside the Jones Act umbrella. *See, e.g.*, *Powers v. Bayliner Marine Corp.*, 855 F. Supp. 199, 202 (W.D. Mich. 1994) (allowing for the recovery of punitive damages when four passengers died in a sailboat accident because recovery would not contravene "an established definite statutory scheme"). Instead of receiving "heightened legal protections," *Chandris*, 515 U.S. at 354, Jones Act seamen have had their status used against them. If punitive damages are unavailable under the Jones Act, "seamen will be the only maritime personal injury plaintiffs who confront a categorical exclusion from seeking punitive damages . . . [a]nd it is a strange way to treat the wards of admiralty." DAVID W. ROBERTSON, STEVEN F. FRIEDELL & MICHAEL F. STURLEY, ADMIRALTY & MARITIME LAW IN THE UNITED STATES 273-74 (3rd ed. 2015).

Punitive damages are an important tool for "deterring harmful conduct," *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 492 (2008), and foreclosing seamen from relying on this deterrent is inconsistent with the Jones Act's expansive interest in protecting seamen through judicially enforced rights and remedies. SRI does not contend that every seaman should recover punitive damages in every unseaworthiness or negligence case. SRI urges only that seamen, like the petitioner, have the opportunity to show that a defendant's egregious

misconduct justifies a punitive-damages award in an appropriate case. Guidance is needed to bring federal courts' interpretations of punitive damages under the Jones Act in line with the purpose of the Act.

II. THE JONES ACT ALLOWS PUNITIVE DAMAGES FOR NEGLIGENCE CLAIMS.

A. The Jones Act Incorporates The Rights And Remedies Available Under FELA, And FELA Permits Punitive Damages.

When Congress enacted the Jones Act in 1920, it gave seamen the right to "maintain an action for damages at law" and provided that "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply" in any such action. Merchant Marine Act, ch. 250, § 33, 41 Stat. 988, 1007 (1920) (codified as amended at 46 U.S.C. § 30104). This reference incorporated into the Jones Act the rules of FELA and its amendments, now codified at 45 U.S.C. §§ 51-60. *Pan. R.R. v. Johnson*, 264 U.S. 375, 391-92 (1924). A proper analysis of the availability of punitive damages under the Jones Act must therefore begin with FELA. And a proper analysis of FELA, in turn, confirms the availability of punitive damages under both statutes.

Rather than creating a new form of negligence claim, FELA codified the common-law negligence claims available to railroad workers to further its remedial purpose. *See Urie v. Thompson*, 337 U.S. 163, 174, 181-82 (1949). In doing so, it removed defenses

employers previously had asserted to defeat those common-law negligence claims, but only to this extent was it a departure from the common law. *See Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 544 (1994) (citing *Sinkler v. Mo. Pac. R.R.*, 356 U.S. 326, 329 (1958)). Though employees could regularly bring negligence actions at the turn of the twentieth century, railroads nevertheless often escaped liability because three harsh common-law rules—the fellow-servant rule, the assumption-of-the-risk rule, and the contributory-negligence rule—denied recovery in many typical situations. *See, e.g.*, *N. Pac. Ry. v. Dixon*, 194 U.S. 338, 346-47 (1904) (denying recovery under the fellow-servant rule); *New England R.R. v. Conroy*, 175 U.S. 323, 340 (1899) (same); *S. Pac. Co. v. Seley*, 152 U.S. 145, 154-56 (1894) (reversing judgment for worker based on the assumption-of-the-risk and contributory-negligence rules, as alternate holdings). FELA was enacted to allow employees to recover in negligence actions against their employers without the obstacle of those rules. *See Monessen Sw. Ry. v. Morgan*, 486 U.S. 330, 337 (1988); *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 432 (1958). Section 1 of FELA, 45 U.S.C. § 51, eliminated the fellow-servant rule, which allowed employers to escape liability "for injuries sustained by one employee through the negligence of a coemployee." S. Rep. No. 60-460, at 1 (1908). Section 4, 45 U.S.C. § 54, eliminated the assumption-of-the-risk rule, which allowed employers to avoid liability if the employee knew

of the unsafe work conditions.[7] And Section 3, 45 U.S.C. § 53, modified the contributory-negligence rule—under which a plaintiff's negligence was a complete bar to recovery—and instead provided that "damages shall be diminished . . . in proportion to the amount of negligence attributable to [the] employee." *See, e.g.*, S. Rep. No. 60-460, at 2 ("It is the purpose of this measure to modify the law of contributory negligence.").

Although FELA codified railway workers' right to recover for negligence, it was not intended to change the parameters of a common-law negligence claim as it existed prior to FELA's enactment. Thus, "[a]bsent express language to the contrary, the elements of a FELA claim are determined by reference to the common law." *Norfolk S. Co. v. Sorrell*, 549 U.S. 158, 165-66 (2007) (citing *Urie*, 337 U.S. at 182). In particular, in enacting FELA to give *greater* rights and remedies to injured railway workers who sued their employers for negligence, Congress did not intend to deprive injured workers of any of the rights or remedies they had enjoyed under the common-law regimes that existed prior to FELA. The Senate Judiciary Committee explained this point emphatically in the course of describing the proposed 1910 amendments to FELA:

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[7] FELA originally eliminated the assumption-of-the-risk defense only when "the violation . . . of any statute enacted for the safety of employees contributed to the injury or death of such employee." Act of Apr. 22, 1908, ch. 149, § 3, 35 Stat. 65, 66. In 1939, however, Congress completely eliminated the defense. Act of Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404, 1404.

> [T]he purpose of Congress in the passage of this act was to extend further protection to employees. This was its manifest purpose, as is apparent from a consideration of the circumstances of its enactment. It is manifest from a consideration of the reports, both of the Senate and House committees, when the measure was pending before those bodies, that the purpose of the statute was to extend and enlarge the remedy provided by [the common] law to [railway] employees . . . . *No purpose or intent on the part of Congress can be found to limit or to take away from such an employee any right theretofore existing by which such employees were entitled to a more extended remedy than that conferred upon them by the act.*

S. Rep. No. 61-432 (1910), *reprinted in* 45 Cong. Rec. 4040, 4044 (1910) (emphasis added). Therefore, those rights of action and remedies for negligence that existed prior to FELA are included in FELA.

Both negligence actions against employers and punitive damages were well-established in the common law when FELA was enacted. In the years immediately prior to FELA's passage, this Court routinely recognized that injured railway workers could bring common-law negligence actions against employers. *See, e.g.*, *Santa Fe Pac. R.R. v. Holmes*, 202 U.S. 438 (1906) (engineer injured in head-on collision recovered for employer's negligence in sending approaching trains on same track); *Tex. & Pac. Ry. v. Swearingen*, 196 U.S. 51 (1904) (switchman recovered for employer's

negligence in placing scale box too close to track); *Choctaw, Okla. & Gulf R.R. v. Holloway*, 191 U.S. 334 (1903) (fireman recovered for employer's failure to equip engine with brakes). Although the railway employees in *Holmes*, *Swearingen*, and *Holloway* did not seek punitive damages, other pre-FELA cases decided by this Court established that punitive damages were available at common law generally,[8] were available in common-law negligence actions,[9] were available against railroads,[10] and were even awarded against railroads.[11]

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[8] *See, e.g.*, *Barry v. Edmunds*, 116 U.S. 550, 562 (1886) ("[A]ccording to the settled law of this court, [a plaintiff] might show himself, by proof of the circumstances, to be entitled to exemplary damages calculated to vindicate his rights and protect it against future similar invasions."); *Day v. Woodworth*, 54 U.S. (13 How.) 363, 371 (1852) (noting it is well established that "a jury may inflict what are called exemplary, punitive, or vindictive damages").

[9] *See, e.g.*, *Milwaukee & St. Paul Ry. v. Arms*, 91 U.S. 489, 492 (1875) (It is "well settled . . . that exemplary damages may in certain cases be assessed.").

[10] *See, e.g.*, *Lake Shore & Mich. S. Ry. v. Prentice*, 147 U.S. 101, 107 (1893) ("[T]he doctrine is well settled that in actions of tort the jury, in addition to the sum awarded by way of compensation for the plaintiff's injury, may award exemplary, punitive, or vindictive damages, sometimes called 'smart money,' if the defendant has acted wantonly, or oppressively, or with such malice as implies a spirit of mischief or criminal indifference to civil obligations . . . ."); *Phila., Wilmington & Balt. R.R. v. Quigley*, 62 U.S. (21 How.) 202, 214 (1859) ("Whenever the injury complained of has been inflicted maliciously or wantonly . . . the jury are not limited to the ascertainment of a simple compensation for the wrong . . . ."); *see also Arms*, 91 U.S. at 492.

[11] *See, e.g.*, *Denver & Rio Grande Ry. v. Harris*, 122 U.S. 597, 609-10 (1887) (affirming an award that included "punitive or exemplary damages"); *cf. Mo. Pac. Ry. v. Humes*, 115 U.S. 512,

There is no reason to conclude that FELA eliminated the longstanding availability of punitive damages. In expanding railroads' liability, Congress intended not only to provide more compensation to railway workers but also to "greatly lessen personal injuries." H.R. Rep. No. 60-1386, at 2 (1908). In the late nineteenth century, railway work was extraordinarily dangerous.[12] "In 1888 the odds against a railroad brakeman's dying a natural death were almost four to one; the average life expectancy of a switchman in 1893 was seven years." *Bhd. of R.R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 3 (1964) (footnotes omitted). President Benjamin Harrison deemed it "a reproach to our civilization" that rail workers were "subjected to peril of life and limb as great as that of a soldier in time of war." *Johnson v. S. Pac. Co.*, 196 U.S. 1, 19 (1904). Congress therefore sought to induce railroads "to exercise the highest degree of care . . . for the safety of [all employees] in the performance of their duties," H.R. Rep. No. 60-1386, at 2, and the threat of punitive damages above and beyond compensatory damages provided a greater incentive for railroads to operate safely than would the threat of compensatory damages alone.

522-23 (1885) (affirming award of statutory double damages as analogous to punitive damages).

[12] Although conditions have improved considerably since the late nineteenth century, working on the railroad remains dangerous into the twenty-first century. *See, e.g.*, Dino Drudi, *Railroad-Related Work Injury Fatalities*, MONTHLY LAB. REV., July/Aug. 2007, at 17 (noting that the railway industry has a "fatal injury rate more than twice the all-industry rate"), *available at* http://www.bls.gov/opub/mlr/2007/07/art2full.pdf.

It is thus implausible that Congress, in seeking to create incentives for railroads to improve safety standards, would—with no discussion of the subject—depart from a well-established common-law remedy that provided such an incentive. This situation parallels one addressed by this Court in *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 488-89 (2008), in which Exxon—relying on *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995) (en banc), *abrogated by Townsend*, 557 U.S. at 408, 424, and *Glynn v. Roy Al Boat Mgmt. Corp.*, 57 F.3d 1495 (9th Cir. 1995), *abrogated by Townsend*, 557 U.S. at 408, 424—argued that the penalties for water pollution under section 311 of the Clean Water Act, 33 U.S.C. § 1321, displaced its liability to pay punitive damages following the *Valdez* spill. This Court summarily rejected that argument, explaining:

> [W]e find it too hard to conclude that a statute expressly geared to protecting "water," "shorelines," and "natural resources" was intended to eliminate *sub silentio* oil companies' common law duties to refrain from injuring the bodies and livelihoods of private individuals.

554 U.S. at 486-89. It is, if anything, even harder to conclude that FELA, a statute expressly geared toward protecting railway workers and improving their remedies, was intended to eliminate *sub silentio* the railroads' corresponding liability to pay punitive damages for the breach of their common-law duties to refrain from injuring their employees. *Cf. id.*

Finally, this Court has never held that punitive damages are categorically unavailable under FELA.

Some lower courts have held that punitive damages are not permitted under FELA, but all rely on inapposite authority. *See, e.g.*, *Wildman v. Burlington N. R.R.*, 825 F.2d 1392, 1394 (9th Cir. 1987); *Kozar v. Chesapeake & Ohio Ry.*, 449 F.2d 1238, 1241-42 (6th Cir. 1971). Those decisions all look ultimately to three cases from this Court—none of which were punitive-damages cases. *See Gulf, Colo. & Santa Fe Ry. v. McGinnis*, 228 U.S. 173 (1913); *Am. R.R. v. Didricksen*, 227 U.S. 145 (1913); *Mich. Cent. R.R. v. Vreeland*, 227 U.S. 59 (1913).[13]

Instead, in *Vreeland*, this Court held that the widow of a railway worker killed in the railroad's service could not recover loss-of-society damages because wrongful-death statutes historically did not permit such damages. 227 U.S. at 70-71. In *Didricksen*, decided a week after *Vreeland*, this Court similarly held (following *Vreeland*) that loss-of-society damages were unavailable, this time in an action by the surviving parents of a railway worker fatally injured in service of the railroad. 227 U.S. at 149-50. Finally, in *McGinnis*, the Court held (following *Vreeland* and *Didricksen*) that the non-dependent child of an engineer killed

[13] In one case parsing the overlap between state-law and FELA claims for a railway worker's death, this Court noted that a demand by the plaintiff for punitive damages might have suggested reliance on the state statute, which expressly allowed them; but, because the plaintiff did not request punitive damages, there was no need for the Court to address their availability under FELA. *See Seaboard Air Line Ry. v. Koennecke*, 239 U.S. 352, 353-54 (1915).

in a derailment could not recover compensatory damages in a wrongful-death action. *See* 228 U.S. at 174-76. None of the plaintiffs in those three cases made a claim for punitive damages, and thus this Court did not rule on the issue. No authority from this Court supports the reasoning of lower courts that have mistakenly held that punitive damages are unavailable under FELA.

B. Even If Punitive Damages Are Not Available Under FELA, They Are Available Under The Jones Act.

Because the Jones Act incorporates FELA by reference, *see Pan. R.R.*, 264 U.S. at 391-92, seamen under that Act generally have *at least* the same rights as railway workers under FELA. Accordingly, because punitive damages are available under FELA, *see supra* at 6-14, they are also available under the Jones Act. Even if FELA were construed to disallow punitive damages, however, punitive damages are nonetheless available under the Jones Act because of the influence of general maritime law and the greater rights seamen have under the law.

Decisions from this Court indicate that FELA—as incorporated into the Jones Act—establishes the floor for seamen's rights, and not a ceiling. This Court's most recent ruling on this point came in *Townsend*, 557 U.S. 404, which involved general maritime common law. In *Townsend*, this Court recognized that seamen and

their families sometimes have greater rights than railroad workers when it upheld a seaman's right to seek punitive damages for the "willful and wanton disregard of the maintenance and cure obligation." *Id*. at 424. Even though injured railway workers are not entitled to maintenance and cure at all, much less to punitive damages for maintenance and cure, seamen retained that distinct right—and a corresponding punitive-damages remedy—regardless of the FELA-Jones Act relationship.

This Court similarly rejected an argument that FELA should limit the available actions under the Jones Act in *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 376-78 (1932). In *Cortes*, the employer argued that a seaman could not recover under the Jones Act for negligent withholding of maintenance and cure because a failure to provide maintenance or cure would not give rise to a negligence claim under FELA. *Id.* at 376. The Court stated that the duties of employers under FELA would not limit the Jones Act, and the seaman could recover for negligent withholding of maintenance and cure. *Id.* at 376-78.

Those greater rights are not limited to causes of action that existed in pre-Jones Act maritime law. In *The Arizona v. Anelich*, 298 U.S. 110 (1936), this Court recognized seamen's greater rights under the unseaworthiness doctrine by barring an assumption-of-the-risk defense, even though FELA did not eliminate the defense until three years later. *See supra* note 7. The Court barred this defense even though the seaman claimed only Jones Act negligence—a claim that did

not exist for seamen prior to the Jones Act. *The Arizona*, 298 U.S. at 118, 120-23. The understanding of the Jones Act as remedial legislation, intended to enlarge the protections of the wards of admiralty, underscores the decision. *Id.* at 122-23. Because maritime law before the Jones Act did not recognize the assumption-of-the-risk defense in unseaworthiness actions, and "[n]o provision of the Jones Act is inconsistent with the admiralty rule," this Court refused to assume "that Congress intended, by [the Jones Act's] adoption, to modify that rule by implication." *Id.* at 123. In other words, the Jones Act guarantees to seamen *at least* the same rights FELA guarantees to railway workers, but the background maritime law means that, in some contexts, seamen have *greater* rights under the Jones Act. *See id.* at 118, 123. As the Court stated, "[t]he [Jones Act] was remedial, for the benefit and protection of seamen who are peculiarly the wards of admiralty. Its purpose was to enlarge that protection, not to narrow it. Its provisions . . . are to be liberally construed to attain that end, and are to be interpreted in harmony with the established doctrine of maritime law of which it is an integral part." *Id.* at 123.

Just as general maritime law created greater rights for seamen in the assumption-of-the-risk context, it creates greater rights for seamen in terms of available damages when pursuing a statutory action under the Jones Act. Maritime jurisprudence prior to the Jones Act wholly approved punitive damages, especially on behalf of seamen. *See Townsend*, 557 U.S. at 411-12. Indeed, the general maritime law recognized

the availability of punitive damages before the nation even had railroads. *See The Amiable Nancy*, 16 U.S. (3 Wheat.) 546, 558 (1818). Because the Jones Act "was remedial, for the benefit and protection of seamen who are peculiarly the wards of admiralty," *The Arizona*, 298 U.S. at 123, it preserves and carries forward the well-established punitive-damages remedy for seamen in the absence of clear congressional intent otherwise. And, as *Townsend* made clear, the party that would deny punitive damages in a given class of cases must show either conflicting history or statutory language that justifies the exception to the general rule. *See Townsend*, 557 U.S. at 414 n.4. That burden cannot be met here.

CONCLUSION

The petition for a writ of certiorari should be granted.

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