No. 18-266

IN THE
Supreme Court of the United States

THE DUTRA GROUP,

Petitioner,

v.

CHRISTOPHER BATTERTON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND INTERNATIONAL GROUP OF P&I CLUBS SUPPORTING PETITIONER

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INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An

[1] Pursuant to Supreme Court Rule 37.6, amici curiae state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the Nation's business community.

This case raises critically important issues related to the respect due to congressional policy decisions on the availability of extra-statutory punitive damages remedies, and it concerns the proper role of courts in expounding upon the common law of punitive damages awards under federal maritime law. The Chamber has a vital interest in promoting a predictable, rational, and fair legal environment for its members. And the Chamber's knowledge of the practical implications for the business community should assist the Court.

The International Group of P&I Clubs is an association comprising thirteen mutual insurance associations that insure nearly 90% of the world's ocean-going ship tonnage. The Clubs cover, among other things, personal injury and death claims for seafarers. Their members are owners, operators, and charterers of ships of practically all maritime nations. And the Clubs provide coverage for many thousands of U.S. vessels. The International Group of P&I Clubs has a strong interest in evenhanded rules governing international commerce. Since punitive damages are not available under many nations' laws, the International Group of P&I Clubs believes that imposing them on the American shipping industry would both be unfair and have deleterious effects worldwide.

SUMMARY OF ARGUMENT

Allowing punitive damages for unseaworthiness claims would undermine the Framers' purpose for granting the federal courts maritime jurisdiction. The "fundamental interest giving rise to [the grant of] maritime jurisdiction is the protection of maritime commerce." *Norfolk S. Ry. Co.* v. *Kirby*, 543 U.S. 14, 25 (2004) (emphasis and internal quotation marks omitted). And this interest is furthered by the Court's well-established goal of ensuring "uniformity and consistency" in maritime law. *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1874).

But maritime law would be severely disrupted if punitive damages were allowed for unseaworthiness claims. Despite this Court's efforts to rein in punitive damages awards, they continue to pose a multimillion-dollar risk in maritime cases. State courts in maritime cases occasionally allow juries to award punitive damages far beyond the amount of compensatory damages. And compensatory damages for unseaworthiness claims can be significant. So even if a court adhered to capping punitive damages at the amount of compensatory damages, maritime businesses would face stifling litigation risks.

These risks, moreover, would be quite unpredictable. Simply put, it is often impossible for a maritime defendant to know with any degree of certainty whether its particular case will be one of the unlucky ones that result in an arbitrary award of massive punitive damages. This Court has already acknowledged the "stark unpredictability of punitive awards," recognizing this as a serious "problem." *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 499 (2008). And there has been a wide range of damages awarded for unseaworthiness claims. Plus, the availability of punitive damages should not turn on whether a plaintiff pleads a common-law

unseaworthiness cause of action versus a statutory Jones Act cause of action. But that is exactly what the Ninth Circuit's decision will entail. And the availability of unseaworthiness punitive damages certainly should not turn on the illogical factor adopted by the Ninth Circuit that punitive damages are available if a seaman survives his injuries—but not if he dies.

Making matters even worse, these risks of unpredictable, sizable punitive damages awards are particularly pernicious because many States do not permit insurance coverage for punitive damages. This combination of large potential exposure, unpredictability, and uninsurability make punitive damages a serious threat to maritime commerce. They create an "in terrorem" effect similar to the class action context. *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011). The result is that risk-averse maritime defendants are forced into overpriced settlements, even on questionable unseaworthiness claims. The downside risk is simply too great to take a chance at trial.

The costs of those overpriced settlements extend far beyond the payments themselves. They deter desirable economic conduct. Because these claims would be settled for more than their fair value, this price inefficiency would cause maritime businesses to overcorrect and engage in wasteful precautions and other economically inefficient activity. That hurts everyone because it adds costs to maritime shipping, which is often the most efficient and cost-effective means of transporting goods. Virtually all sectors of the economy would incur these new costs, which will become embedded in the price of countless goods.

Additionally, it is particularly unfair to impose these significant costs on *American* maritime commerce. Since maritime commerce occurs largely in international waters, this industry competes directly with foreign

maritime businesses. Yet many countries around the world, using the civil-code tradition, do not allow punitive damages for maritime claims. That means these foreign maritime businesses would have a competitive advantage, thus inhibiting American maritime commerce instead of "protect[ing]" it. *Kirby*, 543 U.S. at 25.

Congress has already recognized the problems in this context by rejecting punitive damages in the Jones Act, which created a statutory claim to address the same legal injury covered by a common-law unseaworthiness claim. A plaintiff should not be able to obtain a court-created remedy under the common law when Congress prohibited such a remedy in a statute. This Court has acknowledged—particularly in the maritime context—that proper respect should be accorded to Congress's determinations about policy-based judgments. Congress, here, has already performed the cost-benefit analysis, and it has determined that punitive damages should not be available for maritime personal injury claims.

In sum, the availability of punitive damages for unseaworthiness claims would upset the ordered, uniform system of maritime law, impose steep and pernicious costs on the American maritime industry, and thwart the will of Congress. The Court should reverse the Ninth Circuit's decision.

ARGUMENT

I. THE FRAMERS' FUNDAMENTAL INTEREST IN PROTECTING MARITIME COMMERCE WOULD BE UNDERMINED BY ALLOWING PUNITIVE DAMAGES FOR UNSEAWORTHINESS CLAIMS.

The Framers vested federal courts with maritime jurisdiction to protect maritime commerce. The Constitution extends the federal "judicial power" to "all Cases of admiralty and maritime Jurisdiction." U.S. Const. art. III, § 2. Likewise, Congress has long vested federal district courts with original jurisdiction in "[a]ny civil case of admiralty or maritime jurisdiction." 28 U.S.C. § 1333(1). As this Court has repeatedly reiterated, the "fundamental interest giving rise to [this grant of] maritime jurisdiction is the protection of maritime commerce." *Kirby*, 543 U.S. at 25 (emphasis and internal quotation marks omitted); *Exxon Corp.* v. *Cent. Gulf Lines, Inc.*, 500 U.S. 603, 608 (1991); *Sisson* v. *Ruby*, 497 U.S. 358, 367 (1990).

Consequently, this Court has long recognized the necessity for "uniformity and consistency" in maritime law. *The Lottawanna*, 88 U.S. (21 Wall.) at 575. The fundamental interest in protecting maritime commerce "cannot be fully vindicated unless 'all operators of vessels on navigable waters are subject to uniform rules of conduct.'" *Sisson*, 497 U.S. at 367 (quoting *Foremost Ins. Co.* v. *Richardson*, 457 U.S. 668, 675 (1982) (emphasis omitted)).

Far from fulfilling the Framers' aim of "protecti[ng] * * * maritime commerce," *Kirby*, 543 U.S. at 25, allowing punitive damages for unseaworthiness claims would imperil American maritime commerce and saddle the economy with pernicious new costs. Those costs would be substantial, unpredictable, and uninsurable in some jurisdictions. For all of those reasons, they would overdeter socially beneficial behavior.

A. One of the most salient facts about punitive damages awards is their size. *Baker* did hold that punitive damages generally should not exceed the amount of compensatory damages when punitive damages are available in maritime cases. 554 U.S. at 513-514. But this cap has proven to be less effective in practice than it might seem in theory.

Punitive damages can pose a multimillion-dollar risk in maritime cases. As an initial matter, "[n]otwithstanding the Supreme Court's ruling, state courts [in maritime cases] occasionally allow juries to award punitive damages in excess of the 1:1 ratio[], sometimes far in excess." Ronneberg, *Life Preserver: An Overview of U.S. Maritime Law for Non-Maritime Lawyers*, 26 U.S.F. Mar. L.J. 1, 38 (2014). (Those cases fell outside the scope of the Jones Act and unseaworthiness claims. See, *e.g.*, *Clausen* v. *Icicle Seafoods, Inc.*, 272 P.3d 827, 834-836 (Wash. 2012) (upholding a $1.3 million punitive damages award on a maintenance-and-cure claim despite the jury awarding only $37,420 in compensatory damages).)

And even when courts do enforce the cap, the punitive damages may still be substantial because plaintiffs can secure large compensatory damages awards in maritime cases. See, *e.g.*, *Ledet* v. *Smith Marine Towing Corp.*, 455 F. App'x 417, 421 (5th Cir. 2011) (upholding a $1.8 million compensatory damages award); *Garner* v. *Energy Transp. Corp.*, No. 95-7969, 1996 WL 346631, at *1 (2d Cir. 1996) (upholding a $1.1 million compensatory damages award).

B. Like most businesses, maritime businesses have a substantial interest in and need for predictability in connection with business risks and costs. As a result, maritime law has always emphasized uniformity and consistency. See *The Lottawanna*, 88 U.S. (21 Wall.) at

575. But punitive damages present a real and inherent danger of arbitrariness.

Against the backdrop of enormous potential punitive damage awards, it would be extremely difficult for maritime entities to predict when unseaworthiness punitive damages would be awarded and how large those damages could be. The Court has acknowledged the "stark unpredictability of punitive awards," recognizing this as a serious "problem." *Baker*, 554 U.S. at 499; see also Sunstein et. al., *Assessing Punitive Damages (with Notes on Cognition and Valuation in Law)*, 107 Yale L.J. 2071, 2076 (1998) (chronicling the "systematic evidence of unpredictability" of punitive damages awards). So permitting punitive damages for unseaworthiness claims would be particularly disruptive to the uniformity and predictability that is vital to maritime law.

General concerns about the unpredictability of punitive damages would apply with full force to unseaworthiness claims. As noted above, both compensatory and punitive damage awards in this context have varied widely. *See* p.7, *supra*. But there are multiple other ways in which punitive damage awards for unseaworthiness claims, in particular, would be unpredictable and undermine maritime uniformity.

The availability of punitive damages for a particular maritime injury would turn not on some objectively reasonable factor, but rather on the type of claim the plaintiff chooses to assert. As explained in more detail below, punitive damages are not available under the Jones Act, and a Jones Act claim is an alternative, overlapping remedy to a common-law unseaworthiness claim. See pp.14-15, *infra*; Pet. Br. 17-21. In an ordered, uniform system of maritime law, punitive damages would not be available for this alternative common-law unseaworthiness claim when they are prohibited for the remedially similar Jones Act statutory claim. Permitting

that weighty remedy to turn on whether a plaintiff asserts an alternative common-law claim for the same injury fractures the "uniformity and consistency" that should be the hallmark of maritime law. *The Lottawanna*, 88 U.S. (21 Wall.) at 575.

In fact, a system where a plaintiff can obtain punitive damages by pleading one type of claim but not another harkens back to the "meaningless formulas and distinctions" of common-law pleading that the law left behind nearly a century ago. Sugarman & Perlin, *Proposed Changes to Discovery Rules in Aid of "Tort Reform": Has the Case Been Made?*, 42 Am. U.L. Rev. 1465, 1487 (1993); see Redish & Amuluru, *The Supreme Court, the Rules Enabling Act, and the Politicization of the Federal Rules: Constitutional and Statutory Implications*, 90 Minn. L. Rev. 1303, 1308-1310 (2006) (chronicling the "frustrat[ion] with the common law pleading system" that provided the impetus for the Rules Enabling Act and the Federal Rules of Civil Procedure).

Furthermore, at least under the Ninth Circuit's reasoning below, the availability of punitive damages would depend on a further illogical factor—that the seaman did not die from his injuries. The Ninth Circuit tried to avoid this Court's straight-forward pronouncement in *Miles* v. *Apex Marine Corp.* that the Jones Act "forecloses more expansive remedies in a general maritime action [for unseaworthiness]." 498 U.S. 19, 36 (1990). To evade this clear language, the Ninth Circuit asserted that *Miles*' general pronouncement was somehow only "based on the restrictive recoveries permitted for wrongful death," which "have no application to general maritime claims by living seamen for injuries." Pet. App. 14a. In other words, punitive damages would be available if a seaman lives—but not if he dies. That distinction makes no sense and cannot be squared with this Court's clear command. *Miles* opined

on the remedies available "for seamen's *injury or* death," 498 U.S. at 36 (emphasis added), and the Jones Act prohibits punitive damages for both personal injury and wrongful death claims, see Pet. Br. 26-28.

The Ninth Circuit's effort to shove the square peg of punitive damages into the round hole of an unseaworthiness claim introduces additional disunity and unpredictability into maritime law. Two seamen who are injured by the same conduct in the same circumstances should have the same remedies available to them. The availability of punitive damages hinging on arbitrary factors like those identified by the Ninth Circuit drastically undermines the order, uniformity, and predictably of maritime law.

C. This multimillion-dollar risk of unpredictable punitive damages in maritime cases is particularly pernicious because "punitive damages are not insurable in all courts." Yetka, *Insurance Coverage for Punitive Damages*, 44-FALL Brief 18, 28 (ABA 2014). "[C]ertain jurisdictions hold that public policy prohibits enforcement of [a] clause in [an] insurance contract insuring against punitive damages." Plitt et al., 12 Couch on Ins. § 172:43 (2018); see also Davis, *Insurance Coverage for Punitive Damages—Time for A Uniform Rule Under General Maritime Law*, 12 Loy. Mar. L.J. 156, 162 (2013) (noting the "sharply divided state law addressing whether punitive damages are insurable"). And even in jurisdictions that permit such coverage, insurance companies sometimes will not, as a matter of policy, insure that extreme risk. This potential uninsurability heightens the dangers that punitive damages pose to maritime defendants.

The large, unpredictable potential exposure combined with uninsurability make punitive damages a troubling threat to maritime commerce. These factors combine to create an "in terrorem" effect similar to the class action

context. *Concepcion*, 563 U.S. at 350. "Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims." *Ibid.* Indeed, "[t]he risk of suffering a crushing punitive damages penalty gives rise to so-called 'blackmail settlements' in which defendants pay more than the * * * claims are reasonably worth." Henderson, *The Impropriety of Punitive Damages in Mass Torts*, 52 Ga. L. Rev. 719, 747 (2018); see also Scheuerman, *Two Worlds Collide: How the Supreme Court's Recent Punitive Damages Decisions Affect Class Actions*, 60 Baylor L. Rev. 880, 916 (2008) (demonstrating that the presence of punitive damages "increases exponentially" the pressure to settle and "creates acute settlement leverage"); Eisenberg et al., *The Predictability of Punitive Damages*, 26 J. Legal Stud. 623, 625 (1997) ("Perhaps uncounted thousands of cases settle on terms different than those on which they would otherwise settle because of the possibility of punitive damages.").

If maritime businesses cannot adequately predict the scope of potential punitive damage liability, they will be forced into overpriced settlements. Rather than litigate to final judgment an unseaworthiness claim, a maritime business would face significant pressure to settle the case simply to avoid a significant punitive damages award. This, too, undermines uniformity and consistency that should be the hallmark of maritime law.

D. The overpriced settlements that unseaworthiness plaintiffs could extract will come at a significant cost. The American maritime industry will pay that cost not only in the form of the substantial settlements themselves, but also by the attendant overdeterrence of desirable economic activity.

Liability for wrongful conduct must be commensurate with the wrong involved so businesses can put in place appropriate deterrents to wrongful conduct. This interest

is substantially undermined by punitive damages. The likely effect of allowing such an award is to make maritime commerce (and hence the goods transported in it) more expensive by injecting greater uncertainty into the system.

As many have recognized, "[t]hreats of blockbuster punitive damages * * * produce undesirable deterrent effects on corporate defendants' behavior." Henderson, *supra*, at 746. The inherent unpredictability of punitive damages exacerbates this problem, because "a risk of extremely high awards is likely to produce excessive caution in risk-averse managers and companies." Sunstein et al., *supra*, at 2077. "[C]ourts generally pay insufficient attention to the potential problem of overdeterrence" when analyzing punitive damages issues. Polinsky & Shavell, *Punitive Damages: An Economic Analysis*, 111 Harv. L. Rev. 869, 899 (1998). Yet significant economic and social costs result from the "wasteful precautions and the withdrawal of socially valuable products and services from the marketplace" caused by the threat of punitive damages. *Id.* at 900; see also Sunstein et al., *supra*, at 2077 ("[U]npredictable [punitive damages] awards create both unfairness and (on reasonable assumptions) inefficiency, in a way that may overdeter desirable activity."); Viscusi, *The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts*, 87 Geo. L.J. 285, 326 (1998) ("The threat of punitive damages can have a chilling effect on corporate behavior.").

The partial availability of insurance for punitive damages will not dampen these costs, but merely translate them into a new form. Where such insurance coverage is available, the American maritime industry will face inflated premiums that account for the uniquely pernicious risk of punitive damages. Thus, the American maritime industry will pay these costs one way or

another, even in that subset of cases in which insurance coverage is available and effective. There is no reason to upset the settled insurance expectations that reflect the longstanding balance Congress struck in the Jones Act between the interests of shipowners and the rights of injured seafarers.

These insidious inefficiencies act as a drag on not only the maritime industry, but the economy as a whole. The American maritime industry is massive. Its approximately 40,000 domestic vessels move almost a billion tons of cargo annually. American Maritime Partnership, Frequently Asked Questions, https://www.americanmaritimepartnership.com/about/faq/.

If substantial punitive damages can now result from the generic common-law duty to provide a seaworthy vessel, virtually any American maritime operator is at risk of significant (and potentially uninsurable) liability—far beyond any amount necessary to make whole an injured plaintiff. This will add significant costs to maritime shipping, and these costs will inevitably be passed on to businesses transporting their goods by sea as well as the ultimate consumers. In some instances, of course, these new substantial costs could cause certain maritime companies to cease operations entirely.

The bottom line is that maritime transportation—which historically has been the least expensive and most efficient means of shipping goods, see, *e.g.*, Dubner & Pastorius, *On the Ninth Circuit's New Definition of Piracy: Japanese Whalers v. the Sea Shepherd-Who Are the Real "Pirates" (i.e. Plunderers)?*, 45 J. Mar. L. & Com. 415, 418 (2014)—would become much more expensive. Whether businesses will pay the inevitably higher rates for maritime shipping or turn to less efficient and more costly modes of transportation, the result is the same: higher shipping costs that inflate prices on goods for everyone. These reverberating effects

will necessarily be felt by businesses throughout the economy. At a minimum, the Court should be cognizant of these drastic costs when it acts as a common-law court addressing the punitive damages implications of claims like unseaworthiness.

E. Exacerbating all these problems is that the fallout from allowing punitive damages for unseaworthiness claims will be limited largely to the *American* maritime industry. After all, "[n]oncompensatory damages are not part of the civil-code tradition and thus unavailable in such countries." *Baker*, 554 U.S. at 497; see also Gotanda, *Punitive Damages: A Comparative Analysis*, 42 Colum. J. Transnat'l L. 391, 396 n.24 (2004) (listing many countries from around the world as being among "the civil law countries that permit recovery of only compensatory damages in private actions").

Accordingly, permitting punitive damages would place the American maritime industry at a competitive disadvantage, because much of its international competition will not have to bear that particularly onerous cost. The result is the exact opposite of what the Framers intended—not the "protection" of American maritime commerce, but a step that imperils it. *Kirby*, 543 U.S. at 25.

II. CONGRESS'S CONSIDERED JUDGMENT IN THE JONES ACT WOULD BE EVISCERATED IF PUNITIVE DAMAGES WERE ALLOWED FOR UNSEAWORTHINESS CLAIMS.

Just like in *Miles*, this Court should "restore a uniform rule applicable to all actions" for the same injury to a seaman, "whether under * * * the Jones Act[] or general maritime law." 498 U.S. at 33. The Jones Act does not allow punitive damages for maritime personal injury claims, as petitioner correctly explains. See Pet. Br. 17-19. And a Jones Act claim overlaps with a common-law unseaworthiness claim. See Pet. Br. 19-21.

So in addition to thwarting the Framers' goals in vesting the federal courts with maritime jurisdiction, awarding punitive damages for unseaworthiness would also defy Congress's expressed judgment on this question in the Jones Act.

A. "Congress's prerogative to balance opposing interests and its institutional competence to do so * * * [merits] deference to its policy determinations." *Salazar* v. *Buono*, 559 U.S. 700, 717 (2010) (plurality op.); see *Patsy* v. *Bd. of Regents of State of Fla.*, 457 U.S. 496, 513 (1982) ("The very difficulty of these policy considerations, and Congress' superior institutional competence to pursue this debate, suggest that legislative not judicial solutions are preferable."). The Court has honored this "fundamental principle[]" in the maritime context. *Miles*, 498 U.S. at 27.

The Jones Act and unseaworthiness claims have overlapping remedies. This Court made that clear shortly after the Jones Act's passage, when it explained that this statute created an "alternative of the right to recover indemnity under the old rules on the ground that the injuries were occasioned by unseaworthiness." *Pac. S.S. Co.* v. *Peterson*, 278 U.S. 130, 138 (1928). In other words, when a seaman's injuries are caused by conduct covered by an unseaworthiness claim or the Jones Act, "there is but a single wrongful invasion of his primary right of bodily safety and but a single legal wrong." *Ibid.*

In *Miles*, the Court noted the "extensive[]" legislation on maritime law and acknowledged that "Congress retains superior authority in these matters." 498 U.S. at 27. It follows, the Court explained, that "an admiralty court should look primarily to these legislative enactments for policy guidance." *Ibid.* Courts must "keep strictly within the limits imposed by Congress" and be "vigilant not to overstep the well-considered boundaries imposed by federal legislation." *Ibid.*

"Cognizant of the constitutional relationship between the courts and Congress," *Miles* declined to "create, under our admiralty powers, a remedy that * * * goes well beyond the limits of Congress' ordered system of recovery for seamen's injury and death." *Id.* at 36-37. Instead, the Court "act[ed] in accordance with the uniform plan of maritime tort law Congress created in * * * the Jones Act," and it held that "[b]ecause [a seaman's] estate cannot recover for his lost future income under the Jones Act, it cannot do so under general maritime law." *Id.* at 36.

That reasoning mandates reversal of the Ninth Circuit's decision here. As *Miles* recognized, Congress has legislated "extensively" in the area of maritime law. *Id.* at 27. The most important of these enactments, the Jones Act, sought to "establish[] a uniform system of seamen's tort law." *Id.* at 29. That statute specifically addresses the same "wrongful invasion of [a seaman's] primary right of bodily safety" that the common-law unseaworthiness cause of action also protects. *Peterson*, 278 U.S. at 138. Exercising its legislative power to weigh the costs and benefits of various remedies, Congress chose to disallow punitive damages for that type of legal wrong. See Pet. Br. 15-21. *Miles* thus controls this case. Translated to this context, "[b]ecause [a seaman's] estate cannot recover [punitive damages] under the Jones Act, it cannot do so under general maritime law." *Miles*, 498 U.S. at 36.

Permitting punitive damages for unseaworthiness claims would severely undermine Congress's statutory mandate on this issue. This Court's "transformation of the shipowner's duty to provide a seaworthy ship into an absolute duty"—to which strict liability applies—has resulted in "unseaworthiness" displacing the Jones Act as "the principal vehicle for recovery by seamen for injury or death." *Moragne* v. *States Marine Lines, Inc.*,

398 U.S. 375, 399 (1970). Awarding punitive damages for these ubiquitous unseaworthiness claims would thus drown out Congress's considered judgment in disallowing that exact remedy for this type of conduct. Plaintiffs would not even have to go out of their way to circumvent the congressional mandate. They would merely do as they do now—file a common-law unseaworthiness claim in lieu of or alongside a Jones Act claim.

Congress's determination about how to balance the competing interests involved here cannot be so easily thwarted by a court-created cause of action. Rather, when the will of the legislature and the common law clash, it is the common law that must yield: "[i]t would be inconsistent with [this Court's] place in the constitutional scheme were [it] to sanction more expansive remedies in a judicially created cause of action." *Miles*, 498 U.S. at 32.

B. *Atlantic Sounding Co.* v. *Townsend*, 557 U.S. 404 (2009), changes none of this. As petitioner explained, the maintenance-and-cure context of that case renders it inapplicable in this unseaworthiness setting. See Pet. Br. 21-26.

The maintenance-and-cure cause of action differs from the unseaworthiness cause of action in several key respects. The most important here is that the maintenance-and-cure claim is *not* an alternative, overlapping remedy to a Jones Act claim—whereas an unseaworthiness claim is an alternative to a Jones Act claim. See *Townsend*, 557 U.S. at 420 ("[T]he Jones Act does not address maintenance and cure or its remedy."). While the Jones Act "created a statutory cause of action for negligence," maintenance-and-cure "concerns the vessel owner's obligation to provide food, lodging, and medical services to a seaman injured while serving the ship." *Id.* at 407-408, 415 (quoting *Lewis* v. *Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441 (2001)).

Accordingly, "a seaman's action for maintenance and cure is * * * 'in no sense inconsistent with, or an alternative of, the right to recover compensatory damages [under the Jones Act].'" *Id.* at 423 (quoting *Peterson*, 278 U.S. at 138-139) (alteration in original). Stated another way, "both the Jones Act and the unseaworthiness remedies are additional to maintenance and cure: the seaman may have maintenance and cure and also one of the other two." *Id.* at 424 (quoting Gilmore & Black, Law of Admiralty § 6-23 (2d ed. 1975)). So in *Townsend*, there was no tension between that maintenance-and-cure common-law claim and Congress's will expressed in the Jones Act, because maintenance-and-cure compensates seamen for a legal wrong that falls outside the remedial scope of the Jones Act.

But here, the court of appeals' treatment of the unseaworthiness common-law claim puts it in direct conflict with the Jones Act—just as in *Miles*. This case concerns the available remedies for unseaworthiness claims, which cover the same "single wrongful invasion of [a seaman's] primary right of bodily safety" and "legal wrong" as the Jones Act. *Peterson*, 278 U.S. at 138. Furthermore, because of the limited scope of maintenance-and-cure claims, *Townsend*'s allowance of punitive damages for such claims presents much less of a threat to maritime commerce than punitive damages for the broader and more lucrative unseaworthiness claims at issue here. Thus, *Miles*, not *Townsend*, controls the outcome here. And it mandates reversal of the Ninth Circuit's decision.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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