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March 27, 2019

*By Hand and Electronic Mail*  
(dmcnerney@supremecourt.gov)

The Honorable Scott S. Harris  
Clerk of the Court  
United States Supreme Court  
One First Street, N.E.  
Washington, D.C. 20543

Attn: Denise McNerney, Esq.

Re: Correction of Statement Made During Oral Argument in  
*The Dutra Group v. Batterton*, No. 18-266

Dear Mr. Harris:

At the March 25, 2019 oral argument in the above-captioned case, I stated that, among the several differences between the causes of action for Jones Act negligence on the one hand and unseaworthiness on the other, one difference is that a marine passenger can bring an unseaworthiness claim but cannot bring a Jones Act claim. *See* Tr. 32-33. We have identified a case not cited in the briefs indicating that passengers likely cannot bring unseaworthiness claims. *See Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 629 (1959) (holding that court properly dismissed visitor's unseaworthiness claim because visitor "was not a member of the ship's company, nor of that broadened class of workmen to whom the admiralty law has latterly extended the absolute right to a seaworthy ship"). Rather, a passenger's claim against the vessel owner under the general maritime law typically would sound in negligence, *see, e.g., The Washington*, 76 U.S. (9 Wall.) 513 (1870), or intentional tort, where the general rule allowing punitive damages has long applied, *see, e.g., Chamberlain v. Chandler*, 5 F. Cas. 413, 414-15 (C.C.D. Mass. 1823) (No. 2,575) (Story, J.) (discussing availability of "damages" with "an appropriate punishment" for "wanton cruelty" and "ill treatment").

I would be grateful if you made Chambers aware of this letter.

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

Hon. Scott S. Harris

March 27, 2019

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If you have any questions, please call me at (202) 326-7900.

Sincerely,

A handwritten signature in black ink that reads "David C. Frederick". The signature is written in a cursive style with a long horizontal flourish at the end.

David C. Frederick  
*Counsel of Record for Respondent*

cc: Counsel for Petitioner