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Atlantic Sounding Co. Inc., v. Townsend United States Supreme Court 129 S.Ct. 2561 (Decided June 25, 2009)

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EMPLOYER'S WILLFUL AND WANTON DISREGARD OF MAINTENANCE AND CURE OBLIGATIONS MAY LEAD TO PUNITIVE DAMAGES.

The Jones Act presents a statutory claim that injured seamen may elect to pursue, and does not present the only available remedy when a willful, wanton, or outrageous denial of maintenance and cure has occurred.

Atlantic Sounding Co. Inc., v. Townsend
United States Supreme Court
129 S.Ct. 2561
(Decided June 25, 2009)

This case stems from injuries suffered by Townsend, a tugboat crew member who had fallen on the deck of the Motor Tug Thomas. The tugboat owner, Atlantic Sounding, allegedly informed Townsend of its refusal to pay maintenance and cure. Atlantic Sounding ("Petitioner") then sought a declaratory action with respect to its obligations regarding payment of maintenance and cure. Townsend ("Respondent") filed a suit of his own under the Jones Act and general maritime law alleging, among other claims, an arbitrary and willful failure to pay the maintenance and cure. Additionally, Respondent filed similar counterclaims to Petitioner's suit, seeking punitive damages for the denial of payment.

The District Court consolidated the claims. The court then denied Petitioner's motion to dismiss the punitive damages claims, holding that it was bound by the decision in *Hines v. J.A. LaPorte, Inc.*, 820 F.2d 1187, 1189 (C.A. 11 1987) which held that punitive damages were available in actions for maintenance and cure. The question was certified for interlocutory appeal, and the Eleventh Circuit upheld the District Court's decision.²³ The Supreme Court granted writ of certiorari.

The Court addressed Respondent's claim that he was able to seek punitive damages because of Petitioner's breach in providing maintenance and cure. First, the Court noted that punitive damages have long been an available remedy in appropriate cases within both English common law and the majority of American law. Punitive damages, the Court noted, have often been available where there were instances of "wanton, willful, or outrageous conduct".²⁴ Next, the Court noted that the availability of punitive damages extends to maritime claims. The Court quoted from *Lake Shore & Michigan Southern R. Co. v. Prentice* as an example, stating that admiralty courts "proceed, in cases of tort, upon the same principles as courts of common law, in allowing exemplary damages...".²⁵ Punitive damages, the Court found, were regularly utilized within the course of maritime practice long before the passing of the Jones Act in 1920.²⁶ The Court noted that the centuries-old tradition of maintenance and cure was first recognized by American courts in the early 1830s. Failure to pay maintenance and cure has often resulted in consideration of what legal scholars categorized as punitive elements when calculating the damage awards.

The Court summarized that punitive damages had long been available at common law, that this tradition extended to maritime claims, and that maintenance and cure was not excluded from general maritime law. Denial of maintenance and cure through willful, wanton, or outrageous conduct could thereby justify punitive damages out of common law. Therefore, the Court reasoned, punitive damages remained available to Respondent unless Congress had enacted legislation altering this understanding.

The sole statute that the Court found relevant in determining whether common law had in fact been overturned was the Jones Act. The Jones Act had been created to overturn case law prohibiting seamen

²³ See *Atlantic Sounding Co., Inc., v. Townsend*, 496 F.3d 1282, 1284 (11th Cir., 2007).

²⁴ *Atlantic Sounding Co., Inc., v. Townsend*, 129 S.Ct 2561, 2566 (2009).

²⁵ 147 U.S. 101, 108 (1893).

²⁶ *Id.* at 2568.

from recovering for injury suffered due to their employer's negligence.²⁷ Although the Jones Act created a statutory cause of action for negligence, the Court noted that this was separate and apart from the remedies for maintenance and cure already in place. The Court specifically noted that by stating an injured seaman "may elect" to make a Jones Act claim, Congress had implicitly preserved the already-existing remedies in existence before the statute.²⁸ Moreover, the Court noted case law that had both preserved not only common-law claims of maintenance and cure after the Jones Act's passage, but importantly there had been cases recognizing punitive recovery in these later maintenance and cure claims. Hence, the Court found the Petitioners could not make claim to a statutory bar toward punitive damages.

Petitioners argued, however, that the Jones Act nonetheless controlled the availability of punitive damages to Respondent because of the *Miles* case.²⁹ In *Miles*, the Petitioners argued, the Court had limited maritime recovery for injury or death to either the Jones Act or the Death on the High Seas Act. However, the Court distinguished *Miles* first by noting that the case did not directly address maintenance and cure or resulting punitive damages. Rather, *Miles* involved the Court determining that Congress had intended for limits on the availability of remedies for wrongful death actions brought under general maritime law. Congress had created an avenue for claims of wrongful death where one had not previously existed in maritime law. In the present case, the Court noted that maintenance and cure and punitive damages stemming from its breach had been recognized in maritime practice long before any Congressional action resulted in passage of the Jones Act.

The Court stated that nothing in the Jones Act altered the understanding that punitive damages were an accepted remedy under general maritime law. Therefore, punitive damages may be an appropriate remedy for willful, wanton, or outrageous conduct associated with a breach of maintenance and cure. A reading of the Jones Act that would prohibit punitive damages would give the Act a far too narrowing effect on maritime law.

A dissent by Justice Alito stated that the decision went against the uniformity principle set forth in *Miles*. Justice Alito felt that the holding of *Miles* "teaches that if a form of relief is not available on a statutory claim, we should be reluctant to permit such relief on a similar claim brought under general maritime law".³⁰ The small case history of maintenance and cure cases that had awarded punitive damages led Justice Alito to believe that a reversal would have been the proper outcome.

The Court thereby affirmed the Eleventh Circuit and remanded the case for further proceedings.

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²⁷ *Id.* at 2569.

²⁸ *Id.* at 2570, quoting 46 USC §30104.

²⁹ *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990).

³⁰ *Atlantic Sounding v. Townsend*, at 2576.