No. 14-761

IN THE

Supreme Court of the United States

HALEIGH JANEE MCBRIDE,

Petitioner,

v.

ESTIS WELL SERVICE, L.L.C.,

Respondent.

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

AMICUS CURIAE BRIEF OF THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE

The American Association for Justice is a voluntary national bar association whose members primarily represent plaintiffs in personal injury and wrongful death suits, as well as plaintiffs in civil rights, employment rights, and consumer rights actions. Many seamen who will be impacted by the decision below are or will be represented by American Association for Justice members.

The American Association for Justice, and especially its Admiralty Law Section, is concerned that the decision below places seamen, who are already bound to their vessel and face the perils of the sea, in further danger due to the vessel owner's willful breach of the warranty of seaworthiness. The remedy of punitive damages promotes safety for those who go to sea by providing a financial incentive for owners to assure that their vessels are seaworthy and safe.

The American Association for Justice believes that its long history of representing injured seafarers and their families will assist this Court in acting on this Petition in favor of protecting the rights of the "wards of the Admiralty."

SUMMARY OF ARGUMENT

1. Federal courts of appeals representing most of the coastal and Great Lake regions of the United States have reached diametrically opposed positions on whether punitive damages are available under general maritime law in an action for unseaworthiness. The constitution-based national interest in maintaining uniformity in maritime law strongly supports granting the Petition in this case.

2. This Court should also grant review on the basis of the Court's historic and longstanding solicitude for the rights of seamen as "wards of the Admiralty."

Seafarers continue to require this Court's special protection of their rights. Pressures of globalization and competition have worsened the conditions faced by those who go down to the sea. Owners have strong financial incentives to cut corners with respect to prompt repair of dangerous conditions aboard their ships, providing safety equipment, and retiring aging vessels. Since the 1980s, owners have increasingly registered their vessels under "flags of convenience" with nations that offer lax safety regulation and inspection. Although labor unions have improved the lot of seafarers regarding compensation and benefits, many seamen continue to work under appalling conditions aboard unsafe vessels.

3. This Court should also grant the Petition to make clear the proper application of its precedents. Contrary to the en banc decision of the court of appeals below, this case is not controlled by this Court's decision in *Miles v. Apex Marine Corp.*, 498

U.S. 19 (1990), which declined to expand remedies under general maritime law to include loss of society. It is instead governed by *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 417 (2009), upholding the right of seamen to recover punitive damages under general maritime law for willful and wanton failure to provide maintenance and cure.

Where Congress has not directly spoken to the issue of remedies under general maritime law, it is this Court's constitutional role to declare the law, based on principles of justice. The sources of general maritime law include the common law of the states, which has long recognized the availability of punitive damages for willful misconduct.

In determining whether such damages are available for the specific cause of action for unseaworthiness, this Court should consider the principles that justify awards of punitive damages in products liability cases. As this Court has previously recognized, strict liability for breach of the warranty of seaworthiness closely resembles strict liability for placing unreasonably dangerous products into the stream of commerce. The rationale that punitive damages provide an incentive to invest in safety applies as well to the protection of seafarers from injury aboard unseaworthy vessels.

ARGUMENT

I. THE FEDERAL COURTS OF APPEAL ARE SHARPLY DIVIDED ON THE AVAILABILITY OF PUNITIVE DAMAGES WHEN A VESSEL OWNER HAS NOT ONLY BREACHED THE DUTY TO PROVIDE A SEAWORTHY VESSEL, BUT HAS DONE SO WILLFULLY.

Petitioner has outlined the sharp circuit split on the question whether punitive damages are available under general maritime law for an owner's willful and wanton failure to provide a seaworthy vessel. Pet. 24-25. *See Evich v. Morris*, 819 F.2d 256, 258 (9th Cir. 1987) ("Punitive damages are available under general maritime law for claims of unseaworthiness."); *Self v. Great Lakes Dredge & Dock Co*., 832 F.2d 1540, 1550 (11th Cir. 1987) ("Punitive damages should be available in cases where the shipowner willfully violated the duty to maintain a safe and seaworthy ship."). The Second Circuit has indicated in dicta that punitive damages may be awarded for unseaworthiness where "the defendant was guilty of gross negligence, or . . . reckless and wanton misconduct." *In re Marine Sulphur Queen*, 460 F.2d 89, 105 (2d Cir. 1972).

On the other hand, the First and Sixth Circuits have held that punitive damages are not recoverable in such cases. *See Horsley v. Mobil Oil Corp.*, 15 F.3d 200, 203 (1st Cir. 1994); *Miller v. Am. President Lines, Ltd*., 989 F.2d 1450, 1455 (6th Cir. 1993). A panel of the Fifth Circuit in this case held that the seamen in this case could recover punitive damages for defendants' "willful and wanton breach of the general maritime law duty to provide a seaworthy vessel."

McBride v. Estis Well Serv., L.L.C., 731 F.3d 505, 507 (5th Cir. 2013). A divided court on rehearing en banc reversed, over a strong and well-reasoned dissent by Judge Higginson. 768 F.3d 382 (5th Cir. 2014). Thus, federal circuits representing most of the coastal and Great Lakes maritime regions of the country have come to opposing conclusions.

It is particularly important that this Court grant review in this admiralty case to effectuate "the constitutionally based principle that federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.'" *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 402 (1970) (quoting *The Lottawanna*, 88 U.S. 558, 575 (1874)). *See also Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 164 (1920) (with respect to the law applicable to maritime injuries, the Court should preserve "the harmony and uniformity which the Constitution not only contemplated, but actually established.").

II. THIS COURT HAS HISTORICALLY AND CONSISTENTLY SHOWN SPECIAL SOLICITUDE FOR THE RIGHTS OF SEAMEN.

A. This Court Has Protected the Rights of Seamen as Wards of the Admiralty.

An additional and compelling reason for this Court to accept review of this case is that seafarers have always been accorded a special solicitude by the federal courts. From this country's beginnings, seafarers have been deemed "wards of admiralty." *U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351, 355

(1971). Early in our nation's history, Justice Story declared: "Every court should watch with jealousy an encroachment upon the rights of a seaman, because they are unprotected and need counsel; . . . They are emphatically the wards of the admiralty." *Harden v. Gordon*, 11 F. Cas. 480, 485 (C.C. Me. 1823).

This Court's special solicitude for the rights of those who go down to sea in ships has been consistent. In *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354 (1995), Justice O'Connor referred to Justice Story's famous "wards of the Admiralty" characterization as the "animating purpose behind the legal regime governing maritime injuries." *Id*. In fact, this Court has referred to seamen as "wards of admiralty" in some 24 decisions. David W. Robertson, *Punitive Damages in U.S. Maritime Law: Miles, Baker, and Townsend*, 70 La. L. Rev. 463, 499 n.107 (2010). It did so most recently, in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 417 (2009), upholding the right of seamen to recover punitive damages under general maritime law for willful failure to provide maintenance and cure.

It is because "admiralty courts have always shown a special solicitude for the welfare of seamen and their families," *Miles v. Apex Marine Corp.*, 498 U.S. 19, 36 (1990), that the remedy of punitive damages is so important. "Imposing exemplary damages . . . creates a strong incentive for vigilance" on the part of those best able to protect seamen from injury aboard unseaworthy vessels. *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 14 (1991). This Court should carefully review the decision below, which denied to seamen the remedy of punitive damages designed both to punish defendant for willfully exposing plaintiffs to an unseaworthy and dangerous

vessel, and to deter others from engaging in such unlawful conduct.

B. The Rights of Injured Seamen and Their Families Still Require the Special Protection of This Court.

The maritime industry has urged this Court to cast aside "the inaccurate, outdated 'wards of admiralty' stereotype." Petitioners' Reply Br. at 19, *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009) (No. 08-214). The vessel owner and employer there contended that seafarers nowadays are better educated, enjoy better working conditions, and are represented by unions, so that "no basis exists in law or fact for the assumption that seamen need special protections," including the remedy of punitive damages. *Id* at 23. This Court rejected those flawed arguments and reaffirmed that seamen "are peculiarly the wards of admiralty." 557 U.S. at 417.

The fact is that the rights of those who go down to the sea still need this Court's protection. The perils of the sea, of course, remain. The wreck of the freighter Edmund Fitzgerald, memorialized in song by Gordon Lightfoot, is not the tale of a 19th Century tragedy. The largest ship on the Great Lakes sank in a sudden winter storm amid near-hurricane force winds and 35-foot waves on Lake Superior, killing its entire crew of 29, on November 10, 1975. *See* Wikipedia.org, *S.S. Edmund Fitzgerald*, http://en.wikipedia.org/wiki/S.S._Edmund_Fitzerald (last visited Jan. 27, 2015).

International shipping, as well, continues to be "a high risk occupation, with a high rate of death and injury compared to most land-based occupations." Int'l

Comm'n on Shipping, *Inquiry Into Ship Safety: Ships, Slaves and Competition* 255 & Tbl. A9.12 (2000) ("ICONS").

Conditions for seafarers have actually worsened. The maritime industry was one of the first to feel the effects of globalization:

> [In the 1980s] shipping companies increasingly took advantage of the possibilities of registering vessels, not with domestic registers (flags), but with international open registers—so-called "flags of convenience." Open registers offered employers a range of cost advantages via reduced regulation and enforcement and were particularly attractive to owners in offering the option of recruiting relatively cheap labour on the global seafarer labour market.

Helen Sampson, *Powerful Unions, Vulnerable Workers: The Representation of Seafarers in the Global Labour Market* 3 (2003), *available at* http://portal.anpocs.org/portal/index.php?option=com_docman&task=doc_view&gid=4318&Itemid=316. Today, "[s]ubstantial numbers of seafarers from all over the world are engaged on temporary, fixed-term contracts, often at low wage rates." *Id*. at 2.

The remedies available for injury caused by unseaworthy vessels are of particular importance because the seaman's remedies under general maritime law "have been 'universally recognized as . . . growing out of the status of the seaman and his peculiar relationship to the vessel,'" and reflect "the

special hazards and disadvantages to which they who go down to sea in ships are subjected.'" *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 354 (1991) (quoting *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104 (1946) (Stone, C.J., dissenting)).

Specifically, the seafarer cannot leave his place of employment or refuse to work under unsafe conditions. As a leading scholar has noted,

> [S]hip's discipline impels the seaman to obey orders and stand by his ship. He is bound to perform the services required of him in the light of his employment. He cannot hold back and refuse prompt obedience because he may deem the appliances faulty or unsafe.

Martin J. Norris, *The Seaman As Ward of the Admiralty*, 52 Mich. L. Rev. 479, 497 (1954).

Because of this peculiar condition, seafarers today, as in Justice Story's time, "continue to be amongst the most exploited workers in the world. They often live in appalling accommodation on board dangerous and badly maintained vessels." Sampson, *supra*, at 15. The investigation by the International Commission on Shipping reached an even stronger conclusion: "For thousands of today's international seafarers life at sea is modern slavery and their workplace is a slave ship." ICONS, *supra*, at 3.

Unseaworthy vessels continue to endanger their crews. As previously noted, vessel owners have increasingly taken advantage of an "easily exploitable loophole" in international maritime law to register their vessels with nations that promise lax standards and few inspections. Shayna Frawley, *The Great*

Compromise: Labor Unions, Flags of Convenience, and the Rights of Seafarers, 19 Windsor Rev. of Legal & Soc. Issues 85, 86-91 (2005). A number of countries, such as Panama and Liberia, compete for registration income, resulting in a regulatory "race to the bottom" that leaves owners facing "little pressure to keep the ship in a state of good repair." *Id*. at 90. Competitive pressures give vessel owners a powerful incentive to cut corners and evade governmental inspections. The International Commission on Shipping estimates that "the financial advantages of non-compliance with international safety and environmental standards" amount to 15 percent of annual operating costs. ICONS at 150.

The International Transport Workers' Federation ("ITF"), a federation of some 700 trade unions in the transport industry from 150 countries, has conducted an ongoing campaign against the practice of registering vessels under flags of convenience ("FOC"). ITF's reports reveal:

> Many FOC vessels are older than the average age of the rest of the world fleet. Tens of thousands of seafarers endure miserable, life-threatening conditions on sub-standard vessels. Many of the detentions by Port State Control authorities involve ageing and badly maintained FOC vessels that should never have sailed. Many of these ships have been referred to as "floating coffins." . . . Poor safety practices and unsafe ships make seafaring one of the most dangerous of all occupations.

Int'l Transport Workers' Federation, *What Do FOCs Mean to Seafarers?*, http://www.itfseafarers.org/focs-to-seafarers.cfm (last visited Jan. 27, 2015).

Nor is the hazard of unseaworthiness limited to FOC vessels. The International Commission on Shipping, for example, reported that the average age of U.S vessels is 23 years, compared to 19 years for the world's international shipping fleet generally. ICONS, *supra*, at 246 & 247 Tbl. A9.2. The U.S. Coast Guard recently had occasion to announce:

> Coast Guard analysis of recent actions taken on U.S.-flag vessels by port state control (PSC) authorities overseas indicates an alarming trend in the number of significant deficiencies noted. These deficiencies mainly relate to improper manning, primary lifesaving equipment, engine room fire hazards, structural hull safety, and the inability to verify compliance with international conventions. . . .
>
> This pattern is illustrative of a decline of registry performance, which has firmly landed the U.S. on the "grey list" in at least one of the regional PSC regimes since 2008. This status is indicative of an average performance over the preceding three years and signifies the necessity to implement immediate corrective action.

Eric Christensen, Captain, *Sounding the Alarm on U.S.-Flag Compliance* (May 23, 2012), https://www.uscg.mil/hq/cgcvc/cvc1/general/sound_alarm_compliance/Sounding_the_Alarm_Compliance.pdf.

The Coast Guard also recently "inspected 140 foreign cruise ships last year when they reached U.S. ports and found 351 discrepancies from international safety standards." The most common problems were defective fire doors, defects in lifeboats, and crews unfamiliar with what to do in an emergency. Bart Jansen, *Coast Guard Inspects Cruise Ships Without Warning*, USA Today, Mar. 25, 2014.

Nor does union representation of seamen obviate the justification for special solicitude for their rights. Unions have, without doubt, improved the pay and conditions of seamen on United States vessels. The Seamen's International Union, for example, is the largest maritime labor organization in the United States, representing an estimated 35,000 mariners, fishermen, and boatmen working aboard vessels flagged in the United States or Canada. *See* Seafarers Int'l Union, *SIU Profile*, http://www.seafarers.org/aboutthesiu/siuprofile.asp (last visited Jan. 28, 2015) and Wikipedia.org, *Seafarers International Union of North America*, http://en.wikipedia.org/wiki/Seafarers_International_Union_of_North_America (last visited Jan. 28, 2015). *See also* Nat'l Mariners Ass'n, *Report to Congress: Outstanding Failures to Protect the Safety, Health & Welfare of 126,000 Limited Tonnage Merchant Mariners* (Jan. 1, 2010), *available at* https://towmasters.files.wordpress.com/2010/01/nma_r-205.pdf (detailing the union's efforts to obtain greater inspection and regulation of limited tonnage vessels).

Nevertheless, union power to improve seaworthiness is necessarily limited by the lack of union representation in some regions, the fact that employers or vessel owners can obtain compliant crews by recruiting under flags of convenience, and

the common practice of blacklisting workers who seek union representation or complain about conditions aboard their vessel, essentially destroying their chances for maritime employment. ICONS, *supra*, at 50; Frawley, *supra*, at 95; Sampson, *supra*, at 8-9.

Courts have found, therefore, "no basis to assume that the emergence of powerful seamen's unions . . . justifies our ignoring the Court's clear and frequent pronouncements that seamen remain wards of the admiralty." *Barnes v. Andover Co., L.P.*, 900 F.2d 630, 636-37 (3d Cir. 1990). *See also Gilliken v. United States*, 764 F. Supp. 261, 266 (E.D.N.Y. 1991) ("Although unions have undoubtedly reduced the historic vulnerabilities of seamen . . . this Court may not abdicate its role as a seaman's guardian.").

III. THE LOWER COURT ERRONEOUSLY HELD THAT THE REMEDIES AVAILABLE TO SEAMEN ARE LIMITED TO THOSE PROVIDED BY CONGRESS IN THE JONES ACT.

A. This Case Is Controlled by *Townsend*, Rather Than by *Miles*.

The court below denied punitive damages based on its view that this case was controlled by *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), which denied damages for loss of society under general maritime law. The Fifth Circuit determined that *Miles* obliged it to abdicate its role as an admiralty court and hold that the Jones Act, 46 U.S.C. §§ 30104 *et seq*., determin[es] the scope of damages [in] the personal injury actions as well as Ms. McBride's wrongful death action." *McBride v. Estis Well Serv., L.L.C.*, 768 F.3d 382, 389 (5th Cir. 2014).

In fact, *Miles* neither governs this case nor forecloses the remedy sought by Petitioners. In *Miles*, the Court faced a situation where "Congress has spoken directly to the question of recoverable damages on the high seas," in the Death on the High Seas Act, 46 U.S.C. App. §§ 761 *et seq*. 498 U.S. at 31. This Court declined to "supplement" Congress' answer with new or more expansive remedies. *Id*. If Congress has truly occupied the waters, "we are not free to expand remedies at will." *Id*. at 37.

This Court faced quite a different situation in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009), where plaintiff sought punitive damages, a remedy that had long been available under general maritime law, for willful refusal to provide maintenance and cure. Because Congress did not make the Jones Act the seaman's exclusive remedy, "it necessarily follows that Congress was envisioning the continued availability" of the "then-accepted remedies for injured seamen [that] arose from general maritime law," including punitive damages. *Id*. at 416.

This Court outlined the proper analysis for determining whether punitive damages are available under general maritime law: "First, punitive damages have long been available at common law. Second, the common-law tradition of punitive damages extends to maritime claims. And third, there is no evidence that claims for maintenance and cure were excluded from this general admiralty rule. *Id*. at 414-15.

Judge Higginson correctly stated that *Townsend*'s analysis resolves this case as well:

> Like maintenance and cure, unseaworthiness was established as a general maritime claim before the passage of the Jones Act, punitive damages were available under general maritime law, and the Jones Act does not address unseaworthiness or limit its remedies. I would conclude that punitive damages remain available to seamen as a remedy for the general maritime law claim of unseaworthiness until Congress says they do not.

768 F.3d at 419 (Higginson, J, dissenting).

This Court should grant the Petition to make clear the proper application of its precedents in this area.

B. In Determining Whether Punitive Damages Are Available in Unseaworthiness Actions, Courts Should Draw Upon the Principles of Justice Expressed in the Common Law of the States, Including the Availability of Punitive Damages in Product Liability Actions.

Justice Thomas in *Townsend* pointed out that, long before Congress enacted the Jones Act in 1920, "courts of admiralty . . . proceed[ed], in cases of tort, upon the same principles as courts of common law, in allowing exemplary damages." 557 U.S. at 411 (quoting *Lake Shore & Michigan S. Ry. Co. v. Prentice,* 147 U.S. 101, 108 (1893)). As early as 1818, this Court stated that, in the appropriate case, the court could "visit upon [wrongdoers] in the shape of exemplary

damages, the proper punishment." *The Amiable Nancy*, 16 U.S. 546, 3 Wheat. 546, 558 (1818). Among the lower federal courts of that era, Justice Thomas added, "maritime jurisprudence was replete with judicial statements approving punitive damages." *Townsend*, 557 U.S. at 412 (quoting David Robertson, *Punitive Damages in American Maritime Law,* 28 J. Mar. L. & Com. 73, 115 (1997)). *See*, *e.g.*, *Boston Mfg. Co v. Fiske*, 3 F. Cas. 957, 957 (C.C.D. Mass. 1820) (Story, J) ("In cases of marine torts . . . it is far from being uncommon in the admiralty to allow . . . exemplary damages, where the nature of the case requires it.").

It was also well-settled prior to 1920 that a cause of action would lie under general maritime law against a vessel's owner "for injuries received by seamen in consequence of the unseaworthiness of the ship." *The Osceola*, 189 U.S. 158, 175 (1903). To the extent that the availability of punitive damages for the specific cause of action for unseaworthiness may be an open question, this Court should grant the Petition to instruct the lower courts on the proper resolution of that question.

Seamen are not, as the Fifth Circuit assumed, limited to those remedies affirmatively provided by Congress in the Jones Act. The constitution expressly vests this Court with admiralty jurisdiction. U.S. Const. art. III, § 2, cl. 1 ("The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction."). Admiralty law is a "free-standing corpus, rather than a set of interstitial principles intended to flesh out the meaning of a federal statutory scheme." Ernest A. Young, *Preemption at Sea*, 67 Geo. Wash. L. Rev. 273, 282 (1999). The Court is not obliged to wait upon Congress to address

matters, such as the remedies available against vessel owners under general maritime law, that it did not directly address in the Jones Act cause of action against employers. Rather, the Court's role, as Justice Ginsburg aptly stated, is "a shared venture in which 'federal common lawmaking' does not stand still, but 'harmonize[s] with the enactments of Congress in the field.'" *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 821 (2001) (Ginsburg, J., concurring) (quoting *Am. Dredging Co. v. Miller*, 510 U.S. 443, 455 (1994)).

The workings of this partnership are evident in this Court's *Miles-Townsend* analysis: Where "Congress has spoken directly to the question of recoverable damages," this Court will not "supplement" them with new or more expansive remedies. *Miles*, 498 U.S. at 31. However, this Court may presume that Congress intended that "then-accepted remedies for injured seamen [that] arose from general maritime law" would continue to be available. *Townsend*, 557 U.S. at 416.

The fact that this Court has not specifically upheld an award of punitive damages for unseaworthiness does not foreclose their availability in the appropriate case. Federal common law making does not stand still. As Judge Henry Friendly has advised:

> Maritime law draws on many sources; when there are no clear precedents in the law of the sea, admiralty judges often look to the law prevailing on the land. *See* Gilmore and Black, Admiralty (1957), § 1-16. At least this much is true. If the common law recognized a wife's

> claim for loss of consortium, uniformly or nearly so, a United States admiralty court would approach the problem here by asking itself why it should not likewise do so; if the common law denied such a claim, uniformly or nearly so, the inquiry would be whether there was sufficient reason for an admiralty court's nevertheless recognizing one. So we turn to the common law.

Igneri v. Cie. de Transports Oceaniques, 323 F.2d 257, 259-60 (2d Cir. 1963) (citation omitted). *See also Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 839 (1996) ("[C]ourts sitting in admiralty may draw guidance from, *inter alia*, the extensive body of state law.").

American common-law courts have "permitted punitive damages awards in appropriate cases since at least 1784." *Townsend*, 557 U.S. at 410. The seaworthiness cause of action imposes strict liability on a vessel owner for breach of the owner's warranty that the vessel is seaworthy and its equipment is not defective. *The Arizona v. Anelich*, 298 U.S. 110, 120-22 (1936). *See also Mahnich v. S. Steamship Co.*, 321 U.S. 96, 102-03 (1944) ("owner's duty to furnish safe appliances" is "founded on the warranty of seaworthiness").

The unseaworthiness cause of action looks in much the same direction as strict products liability:

> The notion that manufacturers should be strictly liable for harm from product frustration is rooted in the doctrine of implied warranty of merchantability,

> which holds goods to the standard of reasonable fitness for their intended use. Products placed into the stream of commerce carry with them a representation of safety, the scope of which is determined by what the ordinary consumer would expect of those products.

Joseph A. Page, *Generic Product Risks: The Case Against Comment k and for Strict Tort Liability*, 58 N.Y.U. L. Rev. 853, 886 (1983).

Indeed, this Court has "recognize[ed] products liability, including strict liability, as part of the general maritime law." *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 865 (1986) (citing *Pan-Alaska Fisheries, Inc. v. Marine Constr. & Design Co.,* 565 F.2d 1129, 1135 (9th Cir. 1977) (adopting *Restatement (Second) of Torts* § 402A (1965)). This "Court's precedents relating to injuries of maritime workers long have pointed in that direction," *Id*. (citing *Sieracki*, 328 U.S. at 94 (strict liability for unseaworthiness)).

The "rationale in those [unseaworthiness] cases—that strict liability should be imposed on the party best able to protect persons from hazardous equipment—is equally applicable when the claims are based on products liability." *Id*. at 866. Finally, in determining whether a plaintiff could recover for damage to the product itself, this Court reviewed the rationales and policies discussed in the leading state court decisions and adopted the majority position denying that particular remedy. *Id*. at 871-71. *See also Exxon Shipping Co. v. Baker*, 554 U.S. 471, 508 n.21 (2008) (permitting the recovery of punitive damages

under general maritime law for commercial losses resulting from the *Exxon Valdez* oil spill, while at the same time imposing judicial limits on their amount, this Court described the "character of maritime law as a mixture of statutes and judicial standards, "an amalgam of traditional common-law rules, modifications of those rules, and newly created rules," quoting *East River S.S. Corp.*, 476 U.S. at 865).

The common-law rules on this question are very clear. Punitive damages are widely available in products liability actions where defendant has acted willfully and wantonly. *See* Annot., *Allowance of Punitive Damages in Products Liability Case*, 13 A.L.R.4th 52 (1982); *See*, *e.g.*, *Jackson v. Johns-Manville Sales Corp.*, 781 F.2d 394, 399-409 (5th Cir. 1986) (discussing the rationale for awarding punitive damages in strict products liability cases). Such awards serve the important public policy of "creat[ing] a strong incentive for vigilance by those in a position 'to guard substantially against the evil to be prevented.'" *Haslip*, 499 U.S. at 14 (quoting *Louis Pizitz Dry Goods Co. v. Yeldell*, 274 U.S. 112, 116 (1927)).

A highly respected jurist in the admiralty field has noted:

> [Historically,] admiralty judges exercised their Constitutional duty to declare the admiralty and maritime law based on enlarged principles of justice combined with the customs and usages of the sea. . . . Seamen were considered to be wards of the admiralty court and were treated with special solicitude by admiralty judges.

John R. Brown, *Admiralty Judges: Flotsam on the Sea of Maritime Law?*, 24 J. Mar. L. & Com. 249, 283 (1993); *see* Gus A. Schill, Jr., *John R. Brown (1910-1993): The Judge Who Charted the Course*, 25 Hous. J. Int'l L. 241, 243 (2003) (lionizing Judge Brown as "a leader in formulating admiralty law").

The American Association for Justice urges this Court to grant the Petition in order to apply those "enlarged principles of justice" in this case.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari in this case should be granted.

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