

No. 07-219

IN THE
Supreme Court of the United States

EXXON SHIPPING COMPANY, *et al.*,
Petitioners,

v.

GRANT BAKER, *et al.*,
Respondents.

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

**AMICUS CURIAE BRIEF OF MARITIME LAW ASSOCIATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS ¹

The Maritime Law Association (MLA) is a nationwide bar association founded in 1899 and incorporated in 1993. It has a membership of about 3200 attorneys, federal judges, law professors and others interested in maritime law. It is affil-

¹ Pursuant to this Court's Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, *amicus curiae* states that petitioner and respondents have consented to the filing of this brief. Petitioner has filed with the Clerk of the Court a letter granting blanket consent to the filing of amicus briefs, and a letter reflecting the consent of respondents to the filing of this brief has been filed with the Clerk.

iated with the American Bar Association and is represented in that Association's House of Delegates.

The MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—ship-owners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, stevedoring companies, passengers, marine insurance underwriters and brokers, and other maritime plaintiffs and defendants.

The MLA's purposes, as stated in its Articles of Incorporation, are

to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices of different nations.

To further these objectives, the MLA has sponsored a wide-range of legislation dealing with maritime matters and has cooperated with congressional committees in formulating other maritime legislation.² Similarly, the MLA has assisted with international maritime projects undertaken by the United Nations, the International Maritime Organization, and the Comité Maritime International.

² *E.g.*, Carriage of Goods by Sea Act, 46 U.S.C. §30701 note; Death on the High Seas Act, 46 U.S.C. §§30301-30308; Federal Arbitration Act, 9 U.S.C. §§1-16; Foreign Sovereign Immunities Act, 28 U.S.C. §§1330, 1602-1611; Jones Act, 46 U.S.C. §30104; Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§1251-1367; Convention of the International Regulations to Prevent Collisions at Sea, 28 U.S.T. 3459, *as amended*, T.I.A.S. 10672; United States Inland Navigation Rules, 33 U.S.C. §§2001-2073.

Consistent with its mission to promote uniformity in the interpretation of maritime law, the MLA has appeared as *amicus curiae* in cases that raise substantial questions affecting uniformity.³ The MLA believes that this case presents substantial questions about the availability and extent of punitive damages under maritime law, and that this Court should grant certiorari to resolve those questions.

SUMMARY OF ARGUMENT

The Ninth Circuit's ruling that a vessel owner may be subject to punitive damages in these circumstances conflicts with rulings of several other Circuits. The conflict created by that ruling creates substantial uncertainty for maritime actors, and those who advise them, about what standards and protections should be put in place to select, monitor, and control the conduct of maritime employees. That uncertainty will promote and prolong litigation, and so the Court should grant certiorari to resolve the uncertainty and prevent those undesirable results.

ARGUMENT

I. THE CONFLICT OVER THE AVAILABILITY OF PUNITIVE DAMAGES UNDER MARITIME LAW CREATES UNDESIRABLE UNCERTAINTY FOR MARITIME ACTORS AND THOSE WHO ADVISE THEM.

The Ninth Circuit's decision confirmed a split among the circuits as to when a vessel owner may be held liable for the conduct of the ship's captain. The Ninth Circuit in this case,

³ *E.g.*, *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002); *United States v. Locke*, 529 U.S. 89 (2000); *Yamaha Motor Corp., U.S.A. v. Calhoun*, 515 U.S. 1186 (1995); *American Dredging Co. v. Miller*, 510 U.S. 443 (1994); *Sisson v. Ruby*, 497 U.S. 358 (1990); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atl. Richfield Co.*, 435 U.S. 151 (1978).

following its decision in *Protectus Alpha Navigation Co., Ltd. v. North Pacific Grain Growers, Inc.*, 767 F.2d 1379 (CA9 1985), held that punitive damages can be imposed on a vessel owner based on the reckless conduct of the vessel's captain, when it upheld the jury instructions that required the jury, if it determined that the captain had been reckless, to find that Exxon had been reckless. *In re the Exxon Valdez (Valdez I)*, 270 F.3d 1215, 1233 (CA9 2001).

The Ninth Circuit's ruling conflicts directly with the rulings of a number of other circuits that have interpreted *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818), and other cases following it, to hold that the general maritime law prohibits the imposition of punitive damages in these circumstances. See *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694, 699 (CA1 1995); *In re P&E Boat Rentals, Inc. v. Ennia Gen. Ins. Co., Inc.* 872 F.2d 642, 652 (CA5 1989); *U.S. Steel Corp. v. Furhman*, 407 F.2d 1143, 1148 (CA6 1969); see also T. J. Schoenbaum, *Admiralty & Maritime Law* §5-17 (2005) (“[A]dmiralty cases deny punitive damages in cases of imputed fault.”).

The Ninth Circuit's decision in this case, therefore, confirms the persistence of a circuit split over when the actions of a ship captain can subject a vessel owner to punitive damages liability. That split will produce substantial uncertainty and difficulty for vessel owners, and those who advise them, because vessel owners now face two different legal standards to govern their conduct in hiring, training, managing, and monitoring their ships' captains.

In the waters of the Ninth Circuit—which comprise a large portion of the navigable waters of the United States, vessel owners will potentially be liable for any reckless act of the ship's captain, and will have to hire, plan, control—and insure—accordingly. Cf. *The Amiable Nancy*, 16 U.S., (3 Wheat) at 558-559 (“But it is to be considered, that this is a suit against the owners of the privateer, upon whom the law

has, from motives of policy, devolved a responsibility for the conduct of the officers and crew employed by them, and yet, from the nature of the service, they can *scarcely ever* be able to secure to themselves an adequate indemnity in cases of loss.”). Elsewhere, a different, narrower rule will govern liability for the conduct of the captain.

This disuniformity imposes shifting standards governing conduct and liability on specific individual voyages (*e.g.*, any voyage that takes a vessel to or from the waters of the Ninth Circuit into or from the Gulf of Mexico). Further, the discrepancy will frustrate efforts by the owners of vessels (and fleets of vessels) to develop and implement consistent internal policies relating to the selection and monitoring of managerial employees, and the result will be inefficiency and needless expense.

The uncertainty of outcome will also encourage needless litigation as parties will be encouraged to “roll the dice” until a verdict has been rendered and appealed. Finally, those uncertainties resulting from the conflict in the circuits will make it more difficult for maritime lawyers to effectively advise their clients about what policies to adopt, and what liabilities to anticipate, for their voyages. The MLA believes the Court should grant certiorari to resolve this conflict and avoid the undesirable consequences that will follow from it.

Further, the issues raised in the case implicate more broadly the Court’s recent constitutional punitive-damages jurisprudence, and how it applies to the arena of general maritime law.

This Court has in the past fifteen years significantly evolved its jurisprudence on the constitutional due process limits on punitive-damages awards, mainly in cases involving rulings on state-law claims by state courts. In a line of cases beginning with *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991), running through cases such as *BMW of*

North America v. Gore, 517 U.S. 559 (1996), and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and continuing up to last Term's decision in *Philip Morris USA v. Williams*, 127 S.Ct. 1057 (2007), the Court has developed and refined a substantial new legal framework for determining when an award of due process transgresses the constitutional limits of due process.

At the same time, though, the Court has been careful to emphasize that, when reviewing the constitutionality of state-law judgments, its role is highly circumscribed. See, e.g., *Haslip*, 399 U.S. at 42 (Kennedy, J, concurring in the judgment). In those cases, it is for the state courts to implement and interpret common-law or state-statutory guidelines for the assessment and limitation of punitive damages, and for this Court only to define the outermost constitutional bounds of permissible awards.

In the maritime context, however, the Court's authority and responsibility to prescribe rules for the assessment of punitive damages are much more far-reaching, extending to the development not only of constitutional but also common-law guidelines for the review of punitive-damages awards. See, e.g., *Norfolk Southern Ry. Co. v. James N. Kirby Pty Ltd.*, 543 U.S. 14, 22-25 (2004); *California v. Deep Sea Research*, 523 U.S. 491, 501 (1998); *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 396-397 (1970).

In this case, the Ninth Circuit simply applied the constitutional *BMW/State Farm* analysis, without conducting a separate analysis under maritime law. App. 68a-70a. Thus, the panel seems to have taken the general maritime rule to be coterminous with the limits of permissible punitive damages under the Constitution.

Ultimately, the Court may decide to equate the common-law general maritime rule with the constitutional one. But there are other possible answers. Given the Court's wide-

reaching responsibility and authority over maritime law, the Court's emphasis on the critical importance of the availability of common-law review of punitive damage awards, the logical corollary that there should be clear and well-defined standards for that constitutionally necessary review, and the Court's unique role as the only institution able to prescribe such clear and well-defined rules, it is appropriate for the Court to speak about the rules for reviewing punitive damage awards under maritime law and how those rules are informed by the Court's constitutional punitive-damages jurisprudence.

All of these concerns make it appropriate for the Court to grant certiorari in this case and resolve the conflict in the Circuits about the availability of punitive damages under maritime law.

CONCLUSION

The MLA respectfully requests that the Court grant certiorari.

Respectfully submitted,

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