



Are All Floating Structures Vessels?

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Why Does Vessel Status Matter?

- Seamen vs. Longshoremen
 - Injured seaman may bring negligence action against employer under Jones Act of 1920.
 - Longshoremen limited to state workmen's compensation benefits under Longshoremen and Harbor Workers Compensation Act .
- Jones Act and LHWCA are mutually exclusive.



To qualify for seaman status:

- Contribute to the function of a vessel or the accomplishment of the vessel's mission **and**
- Have an “employment-related connection to a vessel in navigation” which is substantial in both duration and nature.



Stewart v. Dutra Construction Co.

- In 1993, Willard Stewart injured while working on *Super Scoop*.
- Large floating platform which operates as dredge with clamshell bucket.
- Has navigation lights, ballast tanks, and dining area.
- Incapable of self-propulsion. Positional movement achieved via anchors and cables.

Super Scoop





Was Stewart a Seaman?

- District Court and First Circuit ruled that Stewart was not a seaman because *Super Scoop* not a vessel.
- Stewart barred from pursuing Jones Act negligence claim.
- Appealed to the Supreme Court



Vessel Status

- 1 U.S.C. § 3

- The word “vessel” includes “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”

- Special Purpose Structures

- Submersible drilling barges and mobile drilling barges – **Yes**

- Fixed offshore platforms, new vessels under construction, and floating work platforms – **No**



Stewart Test

- “Under Sec. 3, a ‘vessel’ is any watercraft practical capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment.”



Super Scoop is Vessel

- Capable of Transportation
 - “Dredges serve a waterborne transportation function, since in performing their work they carried machinery, equipment, and crew over water.”
 - Watercraft is not ‘capable of being used’ if permanently moored or otherwise rendered practically incapable of transportation or movement.”
- Moved workers and equipment around Boston Harbor



On Remand

- First Circuit found that:
 - Stewart's work contributed to the performance of the *Super Scoop's* mission and
 - His connection was substantial.
- Seaman for Jones Act purposes.
- Case remanded to District Court for further proceedings on liability, damages, etc.



Circuit Courts Post-*Stewart*

■ Seventh Circuit

□ *Tagliere v. Harrah's Illinois Corporation*

- Floating casino moored to a pier for two years is a vessel.
- No evidence that casino was “permanently” moored

Second Circuit

- *Uzdavines v. Weeks Marine*
- Bucket dredge is a vessel
- Limited capacity to move across the ocean floor by “walking” using cables





Fifth Circuit

- *Holmes v. Atlantic Sounding Co.*
- Holmes injured on BT-213, a 140-foot long and 40-foot wide floating dormitory moved by tugs.
- In 2005, ruled it was not a vessel.
- Reversed in light of *Stewart*
 - Practically capable of transporting equipment, personnel, and cargo
 - Vessel even though totally incapable of self-propulsion



Eighth Circuit

■ *Bunch v. Canton Marine Towing*

- Cleaning barge is a vessel even though
 - Moored to bottom of Missouri River by spud poles
 - Did not have propellers
 - Could not moved by itself
- Occasionally moved between banks of river
 - No evidence of permanent mooring
- “Near or at the outer limits of what this court would recognize as a vessel.”

Derrick Boat – Michigan District Court



Crane Platform – Penn. District Court

Sandy McClearn photo.





Casinos Not Vessels

- *M/V Belle of New Orleans*

- Alabama district court

- Permanently moored to dock with steel cables;
 - Received power and other utilities from shore;
 - Stationary at all times

- *M/V Crown Casino*

- Texas district court

- Indefinitely moored to land by lines tied to pilings
 - Received utilities from shore
 - Never been used in navigation since placement



Conclusions

- Under new test, any watercraft large enough to carry people, equipment, and/or cargo could be considered vessel.
 - Limiting factors – permanent mooring or taking out of service
- Ruling will likely increase number of injured workers who qualify for seaman remedies
- Carefully consider ramifications of a vessel determination and plan for all contingencies.



Questions????

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