# 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:

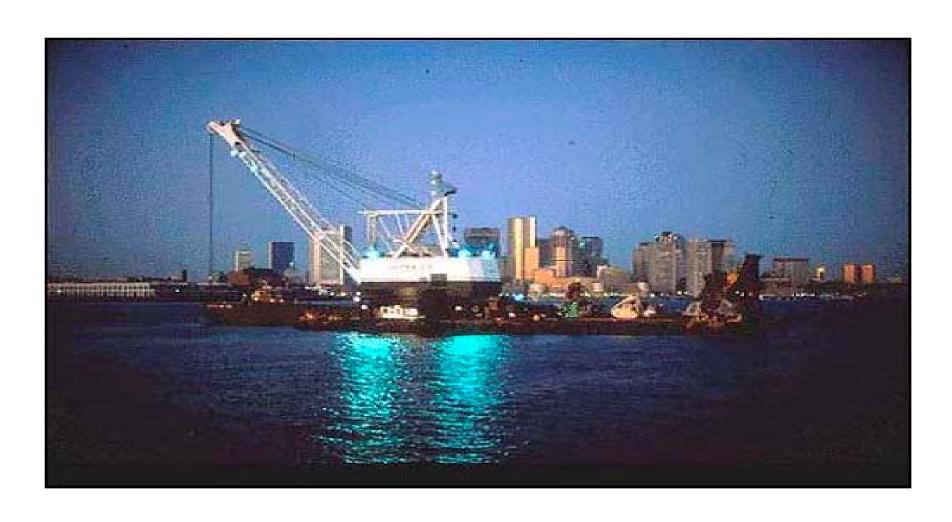
- Contribute to the function of a vessel or the accomplishment of the vessel's mission and
- Have an "employment-related connection to a vessel in navigation" which is substantial in both duration and nature.



#### 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

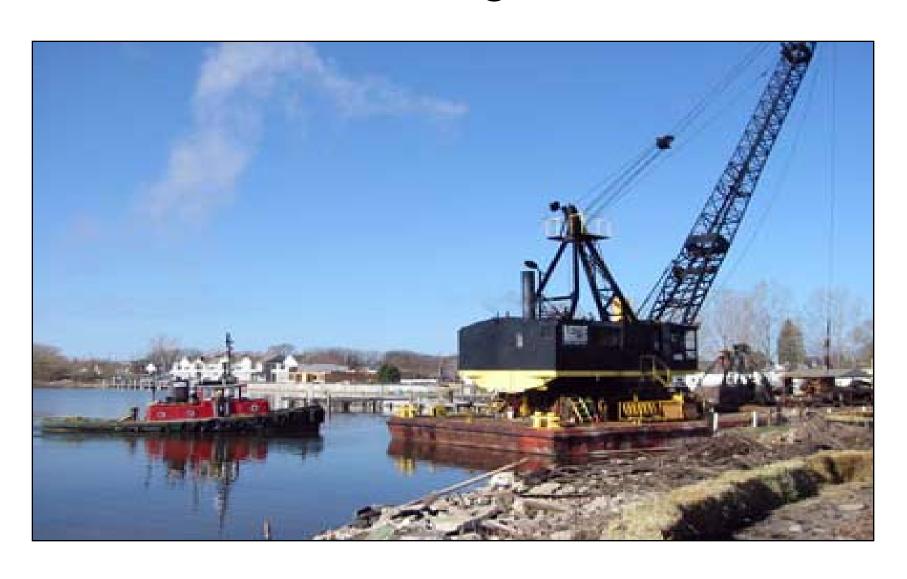
- Holmes v. Atlantic Sounding Co.
- Holmes injured on BT-213, a 140-foot long and 40-foot wide floating dormitory moved by tugs.
- In 2005, ruled it was not a vessel.
- Reversed in light of Stewart
  - Practically capable of transporting equipment, personnel, and cargo
  - Vessel even though totally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



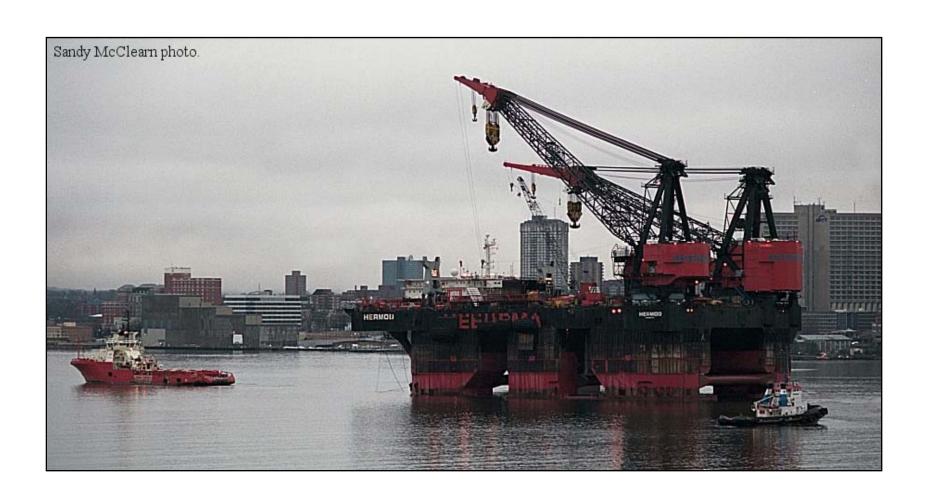
## Eighth Circuit

- 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."

## <u>Derrick Boat – Michigan District Court</u>



#### <u>Crane Platform – Penn. District Court</u>



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#### 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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