When is an Offshore Oilfield Worker a Seaman?

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WHEN IS AN OFFSHORE OILFIELD WORKER A SEAMAN?

The purpose of this Comment is to consider the classification of offshore oil workers as "seamen" and "members of a crew of a vessel in navigation" for purposes of recovery for injury or death under the Jones Act and general maritime law.

This area of admiralty law is important to Louisiana. Louisianaians probably constitute the great bulk of those persons directly connected with the Louisiana offshore industry. They pursue a livelihood similar to that of traditional seamen in that they spend a major portion of their lives on water.

Since the passage of the Jones Act in 1920, maritime workers, though not seamen in the traditional sense of the word, have nonetheless sought recovery for personal injuries under the maritime law relating to seamen; or their survivors have sought damages for wrongful death of seamen under the Jones Act. Proceeding under the Jones Act and being classified as a seaman and member of a crew of a vessel has significant advantages.

An offshore oil field worker injured by his employer's or the crew's negligence, if covered by the federal or a state compensation statute, would receive a limited weekly allowance as compensation without having to prove negligence. Under the Jones

1. 41 Stat. 1007 (1920), 46 U.S.C. § 688. The act provides, in part: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right to trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply." For more extensive discussion of the Jones Act see GILMORE & BLACK, ADMIRALTY 279-96 (1957); 2 NORRIS, SEAMEN §§ 653-700 (2d ed. 1962).

2. The oil industry's major domestic offshore operations are off the Louisiana coast, from the mouth of the Mississippi River west to the Texas coast. In 1966 there were 45 mobile units and 65 fixed platform units in operation with fields located 85 miles offshore and drilling at greater distances and at greater depths. U.S. DEP'T OF AGRICULTURE, PETROLEUM PRODUCTION, DRILLING, AND LEASING ON THE OUTER CONTINENTAL SHELF (1966).

3. The Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424 (1927), 33 U.S.C. §§ 901-950. Compensation for disability or death is payable on the basis of schedules. A maximum of $24,000 for any compensation received, except for cases of death or permanent total disability, is provided. In general the act provides more generous benefits than under state compensation statutes.

4. See, e.g., LA. R.S. 23:1021-1331 (1950). As under the Longshoremen's Act benefits are computed on the basis of 66 2/3% of the worker's average weekly wage. The Louisiana statute, however, restricts the weekly benefit to a maximum of $35 and the total amount recoverable to 400 weeks, or $14,000, even in cases of death or permanent total disability. The Longshoremen's Act, on the other hand, establishes no maximum weekly benefit. A maximum of $24,000 can
Act there is no statutory limitation of recovery and seamen are allowed, upon proving negligence, a lump sum recovery for pain and suffering, loss of past and future earnings, and residual disability. In addition to the Jones Act remedy seamen can recover maintenance and cure (a living allowance and medical expenses) under the general maritime law. A seaman can also couple his Jones Act claim with a claim based on the general maritime law warranty of seaworthiness. Although a finding of both Jones Act negligence and breach of the duty to provide a seaworthy vessel and safe place to work may not enhance the amount of the recovery, this dual basis can enhance chances of recovery by furnishing alternative grounds for liability. The claimant simply has two independent grounds on which to hold the shipowner liable when he is found to be a Jones Act seaman. The doctrine of seaworthiness is especially attractive since it imposes liability on the shipowner irrespective of negligence.

Another benefit arises when a worker is seriously injured, undergoes severe conscious pain and suffering, and then dies as a result of the injury. Under the Jones Act conscious pain and suffering are recoverable items of damage in a death action, whereas under the federal Death on the High Seas Act recovery for conscious pain and suffering is not permitted. Since the principal dangers to life in offshore operations are accidents involving heavy equipment, fires, explosions, or drownings, the possibility of severe pain and suffering between injury and death becomes an important consideration in a death action under the Jones Act.

Another generous facet of the Jones Act is the doctrine of comparative negligence incorporated from the Federal Employers' Liability Acts (FELA). This doctrine reduces the

be received as compensation for all cases except death or permanent total disability. In the latter cases the total payments will depend upon the life expectancy of the injured worker, or in the case of death, the life expectancy and remarriage of the widow and the term of minority of any children.

5. Cleveland Tankers v. Tierney, 169 F.2d 622 (6th Cir. 1948) (recovery under Jones Act is to include amount for pain and suffering if it is shown that decedent suffered compensable physical injury resulting in pain and suffering).


amount recovered by a seaman guilty of contributory negligence but prevents contributory negligence from being a complete bar to his action. Trial by jury is provided as an option to the seaman who feels that his financial interests may be better served thereby. Since it was established that the question of seaman status is essentially one of fact for jury resolution, marine laborers of all descriptions have sought recovery as seamen, and juries have responded sympathetically by enlarging the class of Jones Act seamen to include common laborers, handymen, pile drivers, and, in the area of offshore oil activities, to members of a drilling crew.

SEAMEN: THE "WARDS OF ADMIRALTY"

Rights of seamen are derived from the judicially declared general maritime law and from federal statutes. As "wards of admiralty," seamen have been accorded unique rights and remedies. The basic remedies available under the maritime law are recovery of maintenance, cure, and wages and recovery of an "indemnity" for injuries caused by the unseaworthiness of a vessel.

Maintenance, Cure and Wages

A seaman who is injured or falls ill while in the service of the ship is entitled to maintenance and cure until recovery or the

9. Wilkes v. Mississippi River Sand & Gravel Co., 202 F.2d 383 (6th Cir. 1953) (laborer lived on barge; his duties were limited to levelling gravel pumped onto barge from river bottom).

10. Senko v. LaCrosse Dredging Co., 352 U.S. 370 (1957) (although he lived at home and took most of his meals there, he worked an eight-hour shift aboard the dredge and all of his duties were performed on or for the benefit of the dredge).


13. U.S. Const. art. III, § 2, provides that the judicial power of the United States shall extend "to all Cases of admiralty and maritime Jurisdiction." Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1902) held that the effect of this provision was to incorporate the accepted rules of the general maritime law as part of the laws of the United States and empower Congress to legislate in respect to them and other matters within the maritime jurisdiction.

14. The Osceola, 189 U.S. 158 (1903) is viewed as the classic statement of a seaman's rights against the vessel and her owner under the general maritime law.
point of maximum cure. Unearned wages may be recovered to the end of the voyage (in the case of ocean-going vessels) or for the term signed (in the case of coastal shipping), or until the seaman recovers, whichever occurs first. This liability, imposed on the shipowner irrespective of fault, is based on the employment relationship. Historically, it is justified as an inducement for men to undertake what is inherently an arduous and hazardous livelihood. Although the justifications for the "wardship doctrine" have vanished because of technical advances in engineering changing the shape and concept of vessels, higher educational standards, social legislation, unions, and collective bargaining, the courts persist in relying on the doctrine to justify awards to seamen in the most unusual cases.

The seaman's contributory negligence will neither defeat recovery of maintenance, cure, and wages nor reduce his award. Only injury or illness caused through his willful misconduct or gross negligence or incurred prior to employment and knowingly concealed bars this recovery. This remedy has been generously allowed. The federal courts now allow recovery of maintenance, cure, and wages where the seaman is injured or falls ill while on authorized shore leave. The causal relation between injury and employment in such cases is deemed satisfied because rest and relaxation beyond the ship's confines is viewed as essential to the harmonious functioning of the ship's work.

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15. Farrell v. United States, 336 U.S. 511 (1949). This remedy is not intended as compensation or damages for personal injuries sustained in the course of employment. Although it is sometimes referred to as a kind of non-statutory workmen's compensation (liability without fault) the comparison stops there because the remedy is not restricted to actual scope of employment and is not the seaman's exclusive remedy. It has been compared to a system of health and accident insurance at the shipowner's expense. Gilmore & Black, Admiralty 254 (1957). For more extensive discussion of maintenance and cure see id. at 253-77; 1 Norris, Seamen §§ 536-608 (2d ed. 1962).

16. In 1897 Justice Holmes admonished the courts: "It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds on which it was laid down have vanished long ago and the rule simply persists from blind obedience to the past." Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897).

17. The seaman's contributory negligence operates to reduce his claims under the Jones Act and under the warranty of seaworthiness. 1 Norris, Seamen § 549 (2d ed. 1962).


Warranty of Seaworthiness

The shipowner also owes the seaman an absolute warranty of reasonable fitness of the vessel, her gear, appliances, and equipment. Indemnity awards are justified on the theory that seamen, unlike landbased workers, cannot while at sea quit their employment or object to the circumstances surrounding the work ordered. Although the duty has been held to be absolute and non-delegable, the quality of the ship or her appurtenances need not be perfect or the most modern. All that is required is reasonable fitness for intended use. The warranty of seaworthiness originated solely for the benefit of members of a crew. The United States Supreme Court, however, has extended the shipowner's duty to provide a seaworthy ship and a safe place to work to longshoremen, shoreside employees, and other land-based personnel aboard the vessel and contributing to her mission. The Court has predicated this extension on the theory that such workers become subject to some of the same dangers as members of the crew and should be accorded similar protection. Recently, this right has been extended to cases where the injury is caused by the unseaworthy condition of the vessel taking effect when the worker is not on board, as where he is on the dock. The damages recovered under this warranty are in addition to maintenance, cure, and wages.

Statutory Remedies

The general maritime law does not provide a remedy for wrongful death nor for injury caused by negligence. Unless

23. Gutierrez v. Waterman Steamship Corp., 373 U.S. 206 (1963) (longshoreman unloading ship's cargo of beans on dock slipped on spilled beans). This decision has been viewed as a step toward making shipowners insurers of all injuries to longshoremen and other land-based workers engaged in servicing the vessel. BAER, ADMIRALTY LAW OF THE SUPREME COURT 31-35 (1963, Supp. 1966). For a view that the law of recovery for maritime injuries will soon be stated exclusively in terms of seaworthiness, see GILMORE & BLACK, ADMIRALTY 315-16 (1957).
25. The Osceola, 189 U.S. 158 (1903).
unseaworthiness brought about the disability, the seaman was entitled to no more than maintenance, cure, and wages. In 1920 Congress enacted the Death on the High Seas Act and the Jones Act to provide such remedies. The Death on the High Seas Act establishes a cause of action for wrongful death occurring beyond a marine league from the shore of any state (three geographic miles). The general effect of the Jones Act is to extend to seamen the same recovery based upon negligence enjoyed by railroad employees under the Federal Employers' Liability Acts. The act covers any seaman suffering personal injury or death in the course of his employment on navigable waters. The Supreme Court has repeatedly stated that the Jones Act is remedial legislation and must be liberally construed.\textsuperscript{26}

The important determinations to be made under the Jones Act are, first, whether the worker is employed on a “vessel” and second, whether the worker’s status is that of a “seaman.” It has been stated that “almost any structure that once floated or is capable of floating on navigable waters”\textsuperscript{27} is a “vessel” for Jones Act purposes. Many special purpose craft such as dredges,\textsuperscript{28} floating derricks,\textsuperscript{29} and barges equipped for special purposes\textsuperscript{30} are today considered vessels. Persons regularly employed aboard or assigned to such a vessel in the furtherance of its purposes are classified as Jones Act seamen.\textsuperscript{31} For purposes of general admiralty jurisdiction Congress has defined “vessel” to include “every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”\textsuperscript{32} Although the seaman must be employed aboard a vessel “in navigation” to recover under the Jones Act, the question of whether the vessel is “in navigation” is a question of fact for

\textsuperscript{26} E.g., Cosmopolitan Shipping Co. v. McAllister, 337 U.S. 783, 790 (1949); Cortes v. Baltimore Insular Lines, 287 U.S. 367, 375 (1932).
\textsuperscript{27} Offshore Co. v. Robison, 266 F.2d 769, 771 (5th Cir. 1959).
\textsuperscript{29} Summerlin v. Massman Constr. Co., 199 F.2d 715 (4th Cir. 1952).
\textsuperscript{31} See Comment, 32 TUL. L. REV. 292 (1958) (barge and dredge workers as Jones Act seamen).
\textsuperscript{32} 1 U.S.C. § 3 (1947).
jury determination and will not be upset where there is sufficient evidence to support it.\textsuperscript{33} "In navigation" has been given a liberal meaning. Vessels unloading or loading at a dock, undergoing relatively minor repairs in a shipyard, or otherwise temporarily immobilized but still floatable, are still considered in navigation.\textsuperscript{34} Offshore floating drilling platforms and barges have recently been held, as a matter of law, to be vessels although they function primarily as part of the drilling equipment and only to a minimum extent as a means of transportation.

Determination of the "seaman status" necessary for the worker aboard the vessel to bring a claim under the Jones Act is only now becoming settled. Since seaman status carries with it unusual rights, an analysis of the development of the law of status determination seems useful.

SEAMAN STATUS: FROM SEARCH FOR DEFINITION TO SUMMARY JUDGMENT

Evolution of seaman status under the Jones Act can be divided into three stages. The first—from 1926 to the late 1950's—reflected confusion as to whether seaman status should be resolved by a jury as a question of fact or by the judge as a question of law. The second stage came in the late 1950's when it was clearly recognized that seaman status was a question of fact for the jury to resolve. This development reached its high point when the requirements for the evidentiary basis necessary before the case could go to the jury were set forth in \textit{Offshore Co. v. Robison}.\textsuperscript{35} This stage is also significant because the extremely broad and flexible guidelines set out in \textit{Robison} had the effect of shifting the definitional process to the jury as a matter of factual determination. The third stage of development, initiated by \textit{Producers' Drilling Co. v. Gray},\textsuperscript{36} recognizes that a claimant

\textsuperscript{33} Butler v. Whiteman, 356 U.S. 271 (1958) (tug withdrawn from actual navigation several months before accident held vessel "in navigation"). \textit{Cf.} Gonzales v. United States Shipping Board Emergency Fleet Corp., 2 F.2d 168 (D.N.Y. 1924); Kling v. United States, 22 F. Supp. 992 (D.N.Y. 1930) (vessels definitely withdrawn from navigation not "in navigation"). Relying on the definition of "vessel" in 46 U.S.C. § 713 ("every description of vessel navigating" (emphasis added) ) the federal courts have read into the Jones Act the requirement that the vessel be "in navigation" in order for the worker to recover as a seaman. See, \textit{e.g.}, Carumbo v. Cape Cod S.S. Co., 123 F.2d 901 (1st Cir. 1941).


\textsuperscript{35} 266 F.2d 769 (5th Cir. 1959).

\textsuperscript{36} 361 F.2d 432 (5th Cir. 1966).
can get a directed verdict or summary judgment on the question of status in the appropriate case.

**Question of Fact v. Question of Law**

Early decisions were intent on formulating and refining a legal definition of "seaman" in accord with the intent of Congress under the Jones Act. In *International Stevedoring Co. v. Haverty*, the Supreme Court adopted a liberal interpretation of the term and reasoned that Congress intended to classify as seamen under the Jones Act men engaged in traditional maritime duties on navigable waters. The Court admitted that the word as commonly used would not include a longshoreman. But, notwithstanding what "seaman" might mean in other laws, under the Jones Act a worker rendering maritime service of the nature normally rendered by the ship's crew was entitled to protection as a seaman because he incurred seaman's hazards. In *Haverty*, a longshoreman was injured while aboard the ship loading cargo—a service which the Court viewed as traditionally rendered by seamen.

Eight years later, in *Warner v. Goltra*, the Court stated that its concern was "to define the meaning of [seaman] for the purpose of a particular statute which must be read in the light of the mischief to be corrected and the end to be attained." In an attempt to achieve this task, the Court cited *The Buena Ventura*, a case pre-dating the Jones Act, for the proposition that "seaman" undoubtedly once meant only persons who could "hand, reef and steer," but that since the necessities of shipping had increased, the word had expanded its meaning. "In a broad sense, a seaman is a mariner of any degree, one who lives his life upon the sea. It is enough that what he does affects 'the operation and welfare of the ship when she is upon a voyage.'" In *The Buena Ventura* a wireless operator was held to be a seaman under the general maritime law. In *Warner* the Court concluded that Jones Act seaman status extended to the master of a tugboat who drowned through the negligence of a pilot engaged to navigate the tug.

*In South Chicago Coal & Dock Co. v. Bassett*, a 1940 case,

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37. 272 U.S. 50 (1926).
38. 293 U.S. 155 (1934).
39. Id. at 158.
41. 293 U.S. 155, 157 (1934).
42. 309 U.S. 251 (1940).
the Supreme Court rendered a significant decision on the question of seaman status which was apparently not fully understood by the lower federal courts until it was explained and elaborated upon by the Court some seventeen years later in *Senko v. La Crosse Dredging Corp.* and *Grimes v. Raymond Concrete Pile Co.* In *Bassett* decedent was employed aboard a barge used for supplying coal to vessels; he performed no duties while the lighter was in transit between the dock and vessels. The Court held that the effect of the Longshoremen's and Harbor Workers' Compensation Act of 1927 was to provide compensation to a class of employees working on vessels in navigation, who, although they might be classed as seamen were still regarded as distinct from "members of a crew" of a vessel. "They were persons serving on vessels, to be sure, but their service was that of laborers, of the sort performed by longshoremen and harbor workers and thus distinguished from those employees on the vessel who are naturally and primarily on board to aid in her navigation." (Emphasis added.) The Court then stated that whether a particular worker was a "member of a crew" entitled to recover under the Jones Act was a question of fact which once determined upon sufficient evidence was conclusive. It held that there was sufficient evidence to support the commissioner's finding that the decedent was not a member of a crew and that his remedy was the Longshoremen's Act. The fact that the Court had earlier concerned itself with defining seaman perhaps suggests that it felt that the issue of status was a matter of law; however, on petitioner's contention that the question was one of law, the Court concluded that, though the facts of the case might be undisputed, the term "crew" had no absolute or unvarying legal meaning. This meaning must be determined with reference to the purpose of the particular statute in which it is used and the decedent's *actual duties*, the latter being a question of fact for the jury to decide.

In *Gahagan Const. Corp. v. Armao*, a 1948 case, the First Circuit considered the Jones Act claim of a deckhand injured while employed on a dredge. The Court cited *Bassett* and the Supreme Court's affirmance of *Norton v. Warner* in upholding the trial judge's instructions to the jury that in order to be a

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43. 352 U.S. 370 (1957).
45. 309 U.S. 251, 260 (1940).
46. 165 F.2d 301 (1st Cir. 1948).
47. 137 F.2d 57 (3d Cir. 1944), affirmed, 321 U.S. 565 (1944).
Jones Act seaman "there must be a connection with a vessel, and that the person must play some part in connection with the labor about the operation and welfare of the vessel while in navigable waters." (Emphasis added.) In Norton, the First Circuit noted, the Supreme Court had again defined "crew" as those persons naturally and primarily aboard in aid of navigation, but had gone on to state that "navigation" was not to be limited to "putting over the helm"; it embraces duties necessary for other purposes. The Supreme Court had said that "crew" included all those who contribute to the operation and welfare of the ship when on a voyage. The First Circuit then cited its own decision in Carumbo v. Cape Cod. S.S. Co. where it had stated that the essential and decisive elements of the definition of a "member of a crew" were: (1) that the ship be in navigation, (2) that there be a more or less permanent connection with the vessel, and (3) that the worker be aboard primarily in aid of navigation. "It is important to note that one is aiding in navigation even though he happens to be a cook or an engineer; the whole ship's company is aiding in navigation."

The first case classifying offshore oil field workers as seamen and members of the crew of a vessel was decided in 1955. In Texas Co. v. Gianfala decedent was killed while operating a hydraulic lift used in unloading drilling pipe. Drilling operations were being conducted on a submersed drilling barge resting on bottom at the time of death; the barge was held in place by pilings and had been in that position some twenty-two days. Decedent worked six days on and six days off and was transported by speedboat to a land camp where members of the drilling crew ate and slept. One of his duties was to participate in the raising and sinking of the barge. When the rig was to be moved, he opened and closed the seacock valves which jetted water out of the barge compartments. He would then ride the tending boiler barge to the new drilling site, whereupon he assisted in sinking the barge by opening the valves and allowing the barge compartments to be flooded. The crewmen of the barge never signed seamen's articles, nor did they sleep aboard the barge. They

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48. 165 F.2d 301, 306 (1st Cir. 1948).
49. 123 F.2d 991 (1st Cir. 1941).
50. Id. at 995.
51. 222 F.2d 382 (5th Cir. 1955). In denying respondent's motion for directed verdict the district judge relied on the traditional legal requirements for status as a "member of a crew" set forth in McKie v. Diamond Marine, 294 F.2d 132 (5th Cir. 1961) (which in turn actually cites the requirements formulated in Carumbo v. Cape Cod S.S. Co., 123 F.2d 991 (1st Cir. 1941)).
were paid by the hour (and not by the month or voyage as are customary seamen), received overtime pay when they worked over the legal limit for one week, and could quit their employment at will. In the district court, the respondent drilling company moved for a directed verdict on the ground that the deceased was not a seaman or a member of a crew of a vessel. The district judge denied the motion and the jury returned a verdict for the libelant.

The Fifth Circuit reversed, holding that where the facts are undisputed there is no question for the jury, only a question of law for the judge. It held that there was no room for different conclusions of fact to be drawn from the evidence. The Court felt that Mrs. Gianfala was urging the theory that whether a person is a seaman and a member of a crew is always a question for the jury. Mrs. Gianfala's counsel was actually expressing the view espoused by the Supreme Court in Bassett that where the question to be resolved is not merely facts testified to, but what inferences might or should be drawn, there may yet be room for a jury verdict although the facts testified to are not in dispute. The Court concluded that when the accident occurred the vessel was not in navigation, nor was the decedent aboard in aid of navigation or as a member of the ship's crew, but as a member of a drilling crew. Martin had been engaged in work done strictly and uniquely by oil field workers which had no relation to navigation. On certiorari the United States Supreme Court reversed without discussion.52

Requirement of an Evidentiary Basis

The doubts created by the per curiam reversal of Gianfala were resolved by the Supreme Court in Senko v. La Crosse Dredging Corp.53 and Grimes v. Raymond Concrete Pile Co.54 Senko, a handyman employed on a dredge anchored to shore, was injured in the course of his employment while ashore; he brought suit under the Jones Act. The jury returned a favorable verdict. The court of appeals, however, set the verdict aside on the ground that there was insufficient evidence to support a finding that Senko was a member of a crew. The Supreme Court cited

52. In its per curiam at 350 U.S. 279 (1955), the Supreme Court cited South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251 (1940); Wilkes v. Mississippi River Sand & Gravel Co., 202 F.2d 333 (6th Cir. 1953); Summerlin v. Massman Constr. Co., 199 F.2d 715 (4th Cir. 1952); Gahagan Const. Corp. v. Armao, 165 F.2d 301 (1st Cir. 1948).
Bassett for the purpose of restating the principle that whether an employee is a “member of a crew” turns on questions of fact and that if a finding on this question has sufficient evidence to support it, the finding is conclusive. Since no issue of whether the barge was a vessel at the time of Senko’s injury was raised, the Supreme Court asserted that the sole question presented was whether there was an evidentiary basis for the jury’s finding that petitioner was a member of a crew at the time of his injury. The circuit court had concluded that Senko was not “naturally and primarily aboard in aid of navigation” and as a matter of law could not maintain an action under the Jones Act. The Supreme Court admitted that the facts were undisputed and uncontradicted, but concluded that there was a sufficient evidentiary basis for the jury to find that Senko was permanently attached to and employed by the dredge as a member of its crew. The Court noted that Senko performed substantially all of his duties on or for the dredge and that when the dredge would be put in transit he would have a “significant navigational function.” The majority felt that the jury could from these facts reasonably infer that Senko was a member of the dredge’s crew. In its concluding remarks, the Court stated that its decision in Bassett had not been fully understood:

“Our holding there that the determination of whether an injured person was a ‘member of a crew’ is to be left to the finder of fact meant that juries have the same discretion they have in finding negligence or any other fact. The essence of the discretion is that a jury’s decision is final if it has a reasonable basis, whether or not the appellate court agrees with the jury’s estimate.” (Emphasis added)

The Supreme Court repeated this reasoning in Grimes v. Raymond Concrete Pile Co. and in its denial of certiorari in Texas Co. v. Savoie. Following the Senko decision the lower federal courts began to reflect accurately the statement of law set forth in Bassett.

Savoie involved a Jones Act claim by survivors of an oil field worker employed on fixed platforms. Decedent was killed when a valve exploded and blew him off the well platform into the

56. Ibid.
58. 240 F.2d 674 (5th Cir. 1957), cert. denied, 355 U.S. 885 (1957).
water. Decedent had been transported from platform to platform by a lugger. The contention was made that he was acting as a member of the crew of the vessel in its operations on a navigable body of water. The Fifth Circuit reversed a judgment in favor of the claimants, stating that whether there was substantial evidence to support the jury's finding that he was a member of a crew was a question of law. The court asserted, however, that a jury question was presented even where there was no conflict in the evidence if reasonable minds could fairly draw, from the same evidence, conflicting inferences requiring different verdicts. The court also noted that the judge could direct a verdict if there was no issue of fact to be submitted to the jury on a decisive issue and there was no conflict in the evidence which might allow reasonable minds to fairly draw conflicting inferences from the same evidence. It concluded that the decedent was employed to work on fixed platforms and not on the lugger. He was strictly an oil field worker; his duties had no connection with the vessel "not even the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker. . . . He was merely a passenger." From these undisputed facts the Fifth Circuit held, as a matter of law, that there was no substantial evidence to support a jury finding that he was a member of a crew. The Supreme Court denied writs.

In Perez v. Marine Transport Lines the district court focused on the aspect of the legal requirements to constitute one a member of a crew. Perez foreshadowed the decision in Offshore Co. v. Robison by stating that the common sense, or real test of the coverage of the Jones Act is not whether the claimant is a seaman "assisting in navigation of the vessel" or whether the vessel herself is in navigation, but whether the claimant is more or less permanently employed aboard a vessel in a capacity contributing to the accomplishment of her mission. Perez, a seaman by trade, was hired for the specific purpose of cleaning the ship's tanks and not as a regular member of the crew. The court held that he was not a member of the vessel's crew at the time of his injury and that his exclusive remedy was under the Longshoremen's Act.

With the Gianfala, Senko, and Grimes series of cases behind

59. 240 F.2d 674, 675 (5th Cir. 1957).
60. 355 U.S. 885 (1957).
62. 266 F.2d 769 (5th Cir. 1959).
it the Fifth Circuit approached *Offshore Co. v. Robison* with some degree of stability as to what the legal requirements were for a maritime worker to be a "seaman." Robison was injured while employed in drilling operations aboard a submersible drilling barge and brought his claim under the Jones Act. Judge Wisdom noted that the common denominators of the earlier decisions were that the claimants were not ordinarily thought of as "seamen" aboard "primarily in aid of navigation." They served the vessel in the sense that the work they performed fit in with the function that the vessel served and the vessels were not conventional vessels but special purpose structures. Martin, in the *Gianfala* case, was a member of a drilling crew on a drilling barge; Gahagan, a deckhand on a dredge; Wilkes, a common laborer on a dredge; and Summerlin, a fireman on a derrick. Judge Wisdom also noted that *Bassett* was the sole decision which spoke in terms of requiring that the worker be aboard the vessel primarily to aid in navigation. He concluded, however, that the real issue in *Bassett* did not involve the legal requirements to constitute one a member of a crew but the sufficiency of the evidence to justify a decision under the Longshoremen's Act. After concluding that the question of status as a member of a crew was one properly for jury determination where the required evidentiary basis is met, Judge Wisdom stated that on the basis of the jurisprudence under the Jones Act there is a legally sufficient evidentiary basis for the case to go the jury:

"(1) if there is evidence that the injured workman was *assigned permanently to a vessel* (including special purpose structures not usually employed as a means of transport by water but designed to float on water), *or performed a substantial part of his work on the vessel*, and (2) if the *capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission*, or to the operation or welfare of the vessel in terms of maintenance during the movement or during anchorage for its future trips." 63 (Emphasis added.)

In regard to the district court's minimal instructions concerning the earlier "aboard primarily to aid in navigation" requirement, Judge Wisdom stated that a review of the cases revealed that this test had been "watered down until the words have lost their natural meaning." 64 The Fifth Circuit preferred

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63. Id. at 779.
64. Id. at 780.
to disregard this "catch-phrase" as well as the Supreme Court's observation in Senko that the jury might infer that Senko would have "significant navigational functions" when the dredge was in transit, in preference to the many cases allowing recovery where it could not possibly be said that the claimant had anything to do with navigation, but was viewed as a member of a crew nonetheless because his duties had a connection with the mission or function of the floatable structure on which he was injured.65

It is submitted that the cases which eroded the requirement of being aboard primarily in aid of navigation operated not so much to "water down" the natural meaning of those words as to recognize a changed state of affairs. In a sense Robison stands as a second Buena Ventura66 heralding the fact that the "necessities of shipping have indeed increased" and that the test of primarily aiding in navigation is outdated and unsuitable to cases involving special purpose craft not primarily suited for navigation. Despite the fact that these structures are not employed primarily as a means of transportation on water, they incur many of the hazards traditional vessels incur. In some cases more perilous risks are present, such as the risks incidental to oil drilling. Since there is a reasonable basis and justification for classifying such structures as vessels it seems only fitting that the next logical stage is to discard the traditional Jones Act seaman test requiring that the nature of the actual duties be primarily in aid of navigation, for a new test emphasizing substantial connection with the vessel and duties contributing to her mission. The requirements of the economy have multiplied; it is only reasonable that the law should provide a realistic test in accord with current conditions.

Robison was not without precedent. The Supreme Court itself emphasized permanent connection with the vessel and that the worker played some part in connection with duties affecting the operation and welfare of the vessel in affirming Norton v.

65. Cf. Bowers v. Kaiser Steel Corp., 422 P.2d 848 (Alaska 1967), where the Alaska Supreme Court applied the apparently outdated tests of being aboard "in aid of navigation" and expected to perform "a significant navigational function" to a worker injured aboard a barge loading and unloading materials. The court cited Bassett and Senko for the tests and held that since the worker was not aboard "primarily in aid of navigation" nor did he perform, or was he expected to perform "a significant navigational function" in regard to the barge but only to unload and load it, he was not a seaman. The court apparently chose to disregard the Robison guidelines because it did cite Rotolo and Thibodeaux. The result of applying Robison would have been the same because the employee was not more or less permanently assigned to the barge nor did he perform a substantial portion of his duties on board the barge.

and again in Senko. In 1956 the Second Circuit stated that the nature of the claimant’s duties aboard a vessel is not the controlling factor and that he need not be serving in a strictly navigational capacity. Cases subsequent to Robison can be discussed in terms of how the requirements it set forth have been followed.

Directed Verdict or Summary Judgment in Proper Case

One series of cases applying the Robison requirements has established the rule that since the status question is essentially an issue of fact for the jury there can be no summary judgment in favor of the respondent if the two requirements are met. The effect of fulfilling the evidentiary requirements is to place material fact issues in dispute. In Stanley v. Guy Scroggins Constr. Co. and Braniff v. Jackson Ave.—Gretna Ferry, Inc. the Fifth Circuit reversed summary judgments in favor of respondents on the ground that the Robison requirements had been met. Stanley was a construction worker pumping concrete into pilings of an offshore stationary platform. He lived on the vessel which contained cement and pumps used in the operations and divided his working time between the vessel and the fixed platform. In Braniff decedent was a foreman in charge of maintaining a fleet of ferries who often made repairs while the vessel was in transit.

A second series of cases stands for the proposition that the issue of seaman and member of a crew status is not always a question of fact for the jury to determine. Where the requirements of Robison are not met and no material issue of fact is in dispute the judge may hold, as a matter of law, that the claimant is not a member of a crew. In Thibodeaux v. J. Ray McDermott & Co. the judge directed a verdict for respondents because the requirement that the injured workman be assigned permanently to a vessel or perform a substantial part of his work on the vessel was not met. Thibodeaux was a regular land-based welder who lived and slept at home. He was neither assigned nor attached to any particular vessel, either as a member of a

67. 137 F.2d 57 (3d Cir. 1943), affirmed, 321 U.S. 565 (1944).
69. 287 F.2d 374 (5th Cir. 1961).
70. 280 F.2d 523 (5th Cir. 1960).
71. The Court stressed the fact that he was permanently assigned to a specific group of vessels and helped them complete their respective missions.
72. 276 F.2d 42 (5th Cir. 1960).
crew or otherwise. His relation to the barge on which he was injured was purely transitory. His sole remedy was the Longshoremen's Act. A directed verdict for the respondent was also upheld in Rotolo v. Halliburton Co.,73 in which a welder did occasional repair work on the company's vessels either at the base or at the wharf where they were moored. Decedent was killed while carrying out one of these repair jobs. The court granted the directed verdict on the ground that Rotolo's work in connection with the vessels was only sporadic and that he was not permanently assigned to any vessel or group of vessels.74

The third distinct series of cases reflect instances where the Robison requirements have been met and the case given to the jury for determination. In Adams v. Kelly Drilling Co.75 claimant was employed on a submersible drilling barge resting on the bottom of the Gulf of Mexico. Plaintiff moved for a directed verdict on the status issue, but was overruled, and the jury returned a verdict for the respondent. The Fifth Circuit affirmed saying that the jury verdict was final since there was evidence to support it.

In Ledet v. United States Oil of Louisiana, Inc.76 and Guibbeau v. Falcon Seaboard Drilling Co.77 the claimants, members of drilling crews aboard submersible drilling barges, were held to be seamen under the Jones Act. The Robison requirements were met since they were both employed on vessels (submersible drilling barges and mobile platforms are now unquestionably recognized as vessels), contributed to fulfilling the vessel's mission, and were assigned to their respective vessels more or less permanently.

Cases involving fixed platforms present a more perplexing situation. In Sirmons v. Baxter Drilling Co.78 a derrickman performed all of his duties and lived on a fixed platform. His duties were of the character normally performed in land-based employment. He had no maritime duties on the crewboat which

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74. The Fifth Circuit distinguished Rotolo from Braniff on the basis that the worker in Braniff regularly performed a substantial part of his work on every one of the several vessels, whereas the worker in Rotolo did not perform a substantial part of his work on a specific boat or group of boats, and the work was transitory in character.
75. 273 F.2d 887 (5th Cir. 1960), cert. denied, 384 U.S. 845 (1966).
78. 239 F. Supp. 348 (W.D. La. 1965).
transported him to the rig. The court relied on the Robison requirements and held that Sirmons was not a seaman entitled to Jones Act benefits because the rig was not a vessel in navigation. His exclusive remedy, the court held, was under the Longshoremen's Act. In Ross v. Delta Drilling Co. a roughneck regularly stationed on a fixed drilling platform was injured while mixing drilling mud on the deck of a tender supporting the drilling operations. Since he divided his work between the stationary platform and what was concededly a vessel, the question of seaman status was presented to the jury. When the jury was unable to render a verdict, the parties, by stipulation, tried the case before the judge. Ross was held not to be a seaman for Jones Act purposes because his primary duties were in connection with the stationary platform and he lacked the necessary identification with the vessel which would have been present had he performed a more substantial portion of his work on the tending vessel. Though Ross is of doubtful value as precedent, the case itself is significant since the issue of status was allowed first to go to the jury after the Robison requirements were apparently met.

The latest development in this area has been the granting of a summary judgment or directed verdict in favor of the claimant in the “appropriate case.” In Producers' Drilling Co. v. Gray the Fifth Circuit affirmed a directed verdict in favor of a roustabout injured in drilling operations on a submersed inland drilling barge. Although the claimant did not sleep or eat aboard the barge, he was transported to the location each day by crewboat and participated in chipping and painting, in lowering and raising the barge, and in handling mooring lines. Before the Fifth Circuit, respondents argued the decision in Adams v. Kelly Drilling Co., where the district court denied claimant's motion for directed verdict on the issue of status and the jury's verdict was returned and entered into judgment for the respondent. The Fifth Circuit noted that no significant factual distinction could be drawn between the case at bar and Adams; however, it limited its task to a determination of whether developments since Adams might require a different result. The Court answered in the affirmative and impliedly overruled Adams by holding that there would have been no reasonable evidentiary basis to support

80. 361 F.2d 432 (5th Cir. 1966).
a jury finding that Gray was not a seaman and member of a crew of a vessel or that the barge was not a vessel.

In *Marine Drilling Co. v. Autin* the Fifth Circuit considered a Jones Act claim arising out of an injury sustained during drilling on an offshore barge. Respondent contended that the judge's charge amounted to directing a verdict for the plaintiff. The Fifth Circuit held that the charge, which essentially spelled out the Robison guidelines, was correct and not in the nature of a directed verdict. The court added, however, that it considered the law applicable to offshore oil workers developed to the point that in the proper case it would be appropriate for the judge to direct a verdict for the claimant on both status questions.

In the recent unreported case of *Daws v. Movible Offshore, Inc.* the district judge granted a motion in favor of the plaintiff for summary judgment on the questions of status of a movable derrick barge as a vessel and the plaintiff's status as a Jones Act seaman. Daws was injured while employed as a crane operator on the derrick barge. The district judge noted that motions for summary judgments and for directed verdicts are alike in that neither may be granted unless there is no material issue of fact in dispute and differ only as to the time presented. Relying primarily on *Autin*, he concluded that if it is obvious, before trial, that there is no factual dispute and it does not appear that evidence will be introduced at the trial to raise a dispute as to the facts, a motion for summary judgment should be granted.

**RAMIFICATIONS**

**Mobile Barges and Platforms**

It seems settled that a worker injured aboard a submersible drilling barge or mobile platform while a member of the rig's crew will be able to recover under the Jones Act and maritime law as a seaman. Anyone who is more or less permanently employed on or assigned to such a vessel and does substantial work

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82. 363 F.2d 579 (5th Cir. 1966).
83. The district court's charge is reprinted id. at 580-81: "He does not have to live aboard to be a seaman. The important question is whether or not he did seaman's work and whether or not he contributed substantially to the mission of the vessel." Id. at 581. The "not having to live aboard" observation seems implicit in the Robison test and would cover the tender and fixed platform situations.
84. No. 14,978 (E.D. La. March 3, 1967). A successful summary judgment on the status issue can be valuable to the plaintiff because it forces the defendant to pay maintenance and cure immediately. Maintenance and cure and Longshoremen's Act benefits are often discontinued pending outcome of the suit when the worker sues under the Jones Act.
in connection with fulfilling the vessel's mission will be con-
sidered, as a matter of law, to be a seaman under the Jones Act. The logical consequence of holding workers on dredges and sub-
mersible drilling barges to be Jones Act seamen is to also extend 
to them the remedies of maintenance and cure and the warranty 
of seaworthiness under the general maritime law. Thus, it is 
submitted that if an offshore employee on a submersible barge 
or dredge is seriously injured, even if through his own negli-
gence, while home from his "hitch" or on his way to work, the 
"shore leave" doctrine under the general maritime law entitles 
him to maintenance and cure.\textsuperscript{85}

The submersible barge or mobile platform, however, is not 
the sole method of conducting offshore drilling. Depending on 
water depth, alternatives are the small platform and floating 
tender or the self-contained platform. In the former the fixed 
platform houses the rig and drilling equipment while the tender 
is used to store accessory equipment and supplies and serves as 
living quarters for the drilling crew. The self-contained fixed 
platform, on the other hand, has sufficient space to house person-
nel, supplies, and equipment and allow working area for the rig 
and its auxiliary equipment. Offshore production operations are 
customarily limited to the use of fixed platforms. Production 
platforms house completed wells, storage tanks, supplies, and 
equipment. Separate platforms are utilized for living quarters 
for production personnel and related workers. These stationary 
platform and tending vessel situations present more perplexing 
problems when attempting to determine seaman status.

\textit{Fixed Platform With Standby and Service Craft}

Although the law of seaman status appears to be relatively 
settled in the case of fixed drilling or production platforms, many 
problems remain. One stems from the language used by the 
Fifth Circuit in \textit{Savoie}.\textsuperscript{86} It was stated there that the decedent 
was strictly an oil field worker employed in connection with 
stationary well platforms and had no duties whatsoever on board 
the water-taxi used to transport him from platform to platform; 
he did not even have the incidental task of throwing a rope or 
catching mooring lines. This observation presents the question 
of whether employees or other subcontractors, such as electrici-
cians, fishing tool employees, or welders permanently employed

\textsuperscript{85} See note 19 \textit{supra} and accompanying text.
\textsuperscript{86} 240 F.2d 674 (5th Cir. 1957), \textit{cert. denied}, 355 U.S. 840 (1957).
on or assigned to a fixed platform can be converted into Jones Act seamen by performing seaman's chores while aboard a stand-by vessel or crewboat engaged, operated, or owned by their employer. These duties could be performed while aboard the crewboat used to transport personnel to and from the fixed structure or at some time during regular work in connection with drilling, production, or related operations.

Grimes v. Raymond Concrete Pile Co. and the Robison test indicate that incidental seaman's work while aboard a crewboat or standby vessel will not be sufficient to convert such an employee into a Jones Act seaman. In Grimes decedent assisted in the completion of a "Texas Tower," a metal platform permanently affixed to the ocean floor and used to operate as a radar warning station. Decedent lived on the tower while it was towed out to sea aboard a barge, prepared it for installation at the permanent location, and performed certain functions to keep the tower in safe tow. After the tower was anchored decedent performed only pile-driving duties. Six days after the tower had been permanently fixed he was sent to a nearby supply barge to help prepare materials for transfer to the tower. Grimes drowned when the life ring used to transfer personnel from the tug to the tower collided with the pilot house of the tug and caused him to fall. The majority of the Supreme Court concluded that there was sufficient evidence for the case to go to the jury for status determination. The Court, however, did not elaborate what facts constituted the sufficient evidentiary basis as it had done in Senko.

In a vigorous dissent Justice Harlan assailed the majority's conclusion and asserted that he was unable to see how a jury acting reasonably could find the petitioner to be a Jones Act seaman. He reasoned that the Court could not have considered the man-made island a vessel because it was permanently secured to the ocean floor before petitioner was injured. The only other possible basis for the majority's action, Justice Harlan stated, was that Grimes' sporadic work for a few hours on the barge, a minor incident to his normal employment on the tower, could be used as a justification for transforming him into a seaman. Although Harlan's analysis was by way of dissent, it seems to

present the accurate view relative to the possibility of a worker being transformed into a Jones Act seaman by performing incidental seaman’s chores while transitorily on board a vessel when his primary duties are in connection with a permanent structure. The Robison requirements demand a more or less permanent connection with the vessel, or that the worker perform a substantial portion of his duties on the vessel, and that his duties contribute to the mission or function of the vessel. If the Court was thinking in terms of Grimes' relation to the supply barge and the six hours of work he performed there it seems that Justice Harlan’s analysis is undoubtedly correct. If the Robison guidelines apply in such situation the claimant would fail because of the lack of permanent connection with the vessel and the fact that he did not perform a “substantial” portion of his work on the vessel. One aspect that the majority possibly considered as providing the reasonable basis for the claim, however, is that the tower itself was towed aboard a barge to its permanent location. Grimes’ presence on this barge during towage and the fact that he performed various duties on the tower and kept the barge in safe tow probably provided the required permanency of connection with a “vessel.” The majority, therefore, probably was looking to this barge, and not the supply barge or tower, when it asserted that the facts presented a sufficient evidentiary basis. Unless the employee normally assigned to a fixed platform performs a substantial portion of his duties aboard a vessel, therefore, his Jones Act claim will be defeated.89

Because of its lack of clear factual analysis Grimes presents the possible argument that a fixed platform, because of its location and vulnerability to the perils of the sea, is a “vessel” under the Jones Act. The court did not designate which “vessel” it was speaking of—the tower, the supply barge, or the barge which had towed the tower out to sea. This treatment of the factual situation by the majority leaves open the argument that since he was more or less permanently connected with the tower and not the supply barge the Court must have considered the tower a “vessel.” As mentioned earlier, the holding in Grimes could be explained on the grounds that Grimes had a more or less permanent connection with the barge that towed the tower out to its location and performed duties aboard it which “contributed to its mission.” Another possible basis for the holding is that the majority felt that the jury might infer that Grimes and his fellow
workers were going to spend a substantial portion of their future workdays on the supply barge. Explaining the holding on the basis of the barge which towed the tower to sea instead of on the basis of the supply barge or tower provides a more consistent line of reasoning since it has as its justification a more or less permanent connection with a vessel and duties aboard the vessel contributing to its function or mission.

The Supreme Court's silence in *Grimes* as to whether the tower itself might be considered a vessel was noted in *In re United States Air Force Texas Tower No. Four.* There a Texas tower collapsed during a storm injuring several employees. The Court held the tower not to be a "vessel" within the meaning and scope of the limitation of liability statute but noted that the Jones Act has always been liberally construed in reference to the definition of a vessel. The fixed nature of the tower and its incapability of being used as a means of transportation over water, or for purposes of navigation were stressed.

Although there would appear to be significant justification for enlarging the class of Jones Act vessels to include offshore fixed platforms this development seems both unlikely and undesirable. In *Offshore Co. v. Robison,* Judge Wisdom noted that many offshore workers share the same marine risks as traditional sailors and that in many instances the Jones Act seaman is exposed to even greater hazards. "They run the risk of top heavy drilling barges collapsing. They run all the risks incident to oil drilling." If the primary reason for extending the Jones Act is the dangerous aspect of the offshore oil industry and not just the dangers present because of location at sea, the Act's remedies should be extended to include almost all offshore oil workers and not just to those employed on submersible barges or performing substantial duties aboard a standby vessel. If the primary dangers to be considered are those stemming from

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89. For a consideration of classifying offshore oil workers for purposes of recovery under the general maritime law alone see Weiss v. Central R.R. of N.J., 235 F.2d 309 (2d Cir. 1956). Majority held criteria for determining seaman status under the Jones Act and under the general maritime law to be the same. Dissent felt that remedy of maintenance and cure should be limited to workers encountering the hazards of traditional seamen stemming from permanent connection with vessel. Cf. *Matherne v. Superior Oil Co.,* 207 F. Supp. 591 (E.D. La. 1962): offshore oil workers failing to meet the Robison requirements could proceed under the warranty of seaworthiness with good prospects of recovery where injury is caused by inadequacy of the vessel's gear and appurtenances.
91. 266 F.2d 769 (5th Cir. 1959).
92. Id. at 780.
offshore drilling it should not matter that the drilling operations are being conducted aboard a submersible barge, mobile platform or fixed drilling platform, or even on land because the actual perils from heavy drilling equipment are present in all four cases. It could also be argued that production platforms which encase wells producing under very high pressures pose such a great danger of fire and explosion as to justify Jones Act remedies for production personnel.

It seems more correct, however, to limit extension of the Jones Act remedies to situations where the primary dangers stem from the sea and the character of the structure as a vessel. Even using Judge Wisdom's very broad test of a vessel—"almost any structure that once floated or is capable of floating on navigable waters"—the fixed platform, because of its permanent nature, fails to qualify as a Jones Act vessel. It seems significant that the principles concerning vessels under the Jones Act developed first and that the principles concerning seaman status have evolved and been refined in the context of the type vessel involved and the particular facts of the cases. The cases reflect the fact that in practice the view prevails that a workman whose duties are performed primarily on a fixed platform will generally fail to produce the evidentiary basis required by Robison and that a fixed platform is not a "vessel in navigation."9

**Fixed Platform with Tender**

The use of a tending vessel to support drilling operations on fixed platforms also presents special problems. To satisfy the Robison guidelines it now seems that the worker must have performed a substantial portion of his duties aboard the tender. In addition, the actual duties performed must contribute in some way to the function of the tender or to the accomplishment of its mission. It is submitted that it would be insufficient that the worker spent a substantial portion of his time on board the tender. To permit the case to go to the jury when the worker's only connection with the vessel is that he eats, sleeps, and occasionally performs incidental duties there seems tantamount to allowing the jury to find that a mere passenger, such as on an ocean-going liner, is in fact a Jones Act seaman. Robison

93. Sirmons v. Baxter Drilling Co., 239 F. Supp. 348 (W.D. La. 1965) (fixed platform not a vessel and claimant not a "member of a crew"); Pure Oil Co. v. Snipes, 186 F. Supp. 373 (W.D. La. 1960) (roughneck employed on fixed platform held to exclusive remedy under Longshoremen's Act although it appears that he did not attempt to claim under the Jones Act).
expressly requires a more or less permanent connection with the vessel or the performance of a substantial portion of the person's work on the vessel. Where the worker's permanent connection with the vessel stems only from the fact that he eats and sleeps aboard the tender and from time to time is ordered to perform duties thereon the worker is more correctly a recipient of the ship's services rather than a seaman contributing to its mission. The Robison guidelines may prove difficult to apply in given cases because of the endless variety of fact situations which may arise. However the general test it announces seems adequate to meet this challenge. It would not seem adequate that the worker primarily employed on a fixed drilling platform performs incidental chores aboard the tender such as chipping, painting, and handling lines. This would even seem to be true in cases where full days are spent aboard the tender in doing this type of work because of bad weather or when the vessel is being moved. Should there be an extended period where such duties were performed, the court would be faced with a close question. It must not be forgotten, however, that Robison requires substantial "connection" and "duties contributing to the mission of the vessel." If a member of the drilling crew is more or less permanently assigned to the tender as a pump operator or mud mixer and his duties are performed almost exclusively on the tender there seems to be no problem in meeting the Robison guidelines. Such an employee who is injured while incidentally on the fixed platform would still be a seaman if he is acting in the course and scope of his employment.

It seems likely, however, in view of the decision in Ross v. Delta Drilling Co., that the judge will be liberal in tender cases and allow them to go to the jury where there is a showing that some duties were performed on the tender, rather than hold as

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94. See Johnson v. Noble Drilling Co., 264 F. Supp. 104 (W.D. La. 1966) (worker primarily assigned to stationary drilling platform who performed only irregular duties aboard tender held not seaman; sole remedy the Longshoremen's Act); Creel v. The Drill Tender Jack Cleverly, 264 F. Supp. 98 (W.D. La. 1966) (member of drilling crew who performed duties almost exclusively on tender prior to injury held seaman). Cf. Fontenot v. Halliburton Co., 264 F. Supp. 45 (W.D. La. 1967) (judge used statistical breakdown of worker's time spent in connection with offshore and inland operations; held not seaman because of lack of more or less permanent assignment to a specific vessel or group of vessels and failure to perform a substantial part of his work on a specific vessel or group of vessels).


a matter of law that the worker is not entitled to Jones Act benefits. It does not seem significant that the tender may be actually attached to the fixed drilling platform by a ramp and that it is such an integral part of the overall drilling operations. The character of the platform remains that of a permanent structure.

In Ross a roughneck was injured while working on the deck of the tender. The case was at first allowed to go to the jury although the claimant performed the duties he was performing at the time of injury only about once or twice a month. The judge, trying the case by stipulation, held that Ross was not entitled to recover under the Jones Act on the ground that his normal duties and those to which he was more or less permanently assigned were on the fixed platform as a roughneck. Although the claimant lived and ate on the tender and on irregular occasions performed duties on the tender, he lacked the required "connection" with the vessel. Ross is significant in that the judge recognized that there was a sufficient evidentiary basis for the issue of status to go to the jury although the Robison guidelines require that substantial duties be performed on the vessel. The court also disposed of the claimant's alternative claim for Louisiana Workmen's Compensation by citing Pure Oil Co. v. Snipes97 where the Fifth Circuit held that it was the intention of Congress under the Outer Continental Shelf Lands Act98 that the exclusive remedy of non-seamen employees injured on artificial islands and permanent structures on the Continental Shelf be under the Longshoremen's Act.99

97. See note 93 supra.
98. 67 Stat. 462 (1953), 43 U.S.C. § 1331(a) defines the Outer Continental Shelf as "all submerged lands lying seaward outside of the area of lands beneath navigable waters." Section 1333(c) provides that compensation for death or disability resulting from any injury from operations conducted on the Continental Shelf for the purpose of exploiting its natural resources shall be payable under the Longshoremen's Act. Section 1333(a)(1) extends the Constitution, laws and civil and political jurisdiction of the United States "to all artificial islands and fixed structures which may be erected thereon . . . to the same extent as if the outer Continental Shelf was an area of exclusive Federal jurisdiction located within a State."
99. Snipes and Gravois v. Travelers Indem. Co., 173 So. 2d 550 (La. App. 1st Cir. 1965), cert. denied, 175 So. 2d 301 (1965) hold that the effect of the Outer Continental Shelf Lands Act is to confer exclusive jurisdiction over claims resulting from injuries on artificial islands and fixed structures erected on the Continental Shelf in the federal courts. Under the act the sole remedy for workers not classified as seamen has been held to be the Longshoremen's Act.
Drilling companies seem to be in a dilemma. The only way to avoid exposure to Jones Act claims would seem to be the utilization of self-contained, fixed drilling platforms. Although submersible barges and mobile platforms involve higher initial cost than self-contained permanent platforms, the former methods are favored because they are believed to be more economical in the long run since one unit can drill several wells. One way of at least limiting exposure to Jones Act liability is the hiring of able-bodied seamen to exclusively maintain and perform duties aboard the tender. Drilling companies are not permitted, however, to hire drilling crew personnel to do the work of Jones Act seamen aboard the tender and then try to defend themselves by setting up the fact that their primary duties are as members of the drilling crew and not as members of the vessel's crew.\footnote{100. "[A]n employer who hires men to work on the water on vessels engaged in navigation and permits them to have such a permanent connection with the vessel as to expose them to the same hazards of marine service as those shared by all aboard should not be permitted, by merely restricting their duties or by adopting particular nomenclature as descriptive of their tasks, to limit his liability to such employees . . . to the extent prescribed in the Longshoremen's Act", Wilkes v. Mississippi River Sand & Gravel Co., 202 F.2d 383, 388 (6th Cir. 1953).

101. In Offshore Co. v. Robison, 266 F.2d 769 (5th Cir. 1959), Judge Wisdom noted that the history of liberal interpretation under the Jones Act had not prompted congressional amendment restricting coverage of the act. "The absence of any legislative restriction has enabled the law to develop naturally along with the development of unconventional vessels, such as the strange-looking specialized watercraft designed for oil operations offshore and in the shallow coastal waters of the Gulf of Mexico." Id. at 780. "[R]ecognition should and must some day be given to the fact that the marine petroleum industry is an entirely new, unique, marine industry which has little or no similarity to those historical activities from which existing laws . . . have evolved. It cannot be fairly compared with any other in existence." Denzler, Tidelands Operations Under Coast Guard Regulation, 32 TUL. L. REV. 199, 200 (1958).}

Extension of the Jones Act by analogy to the hazards encountered by traditional seamen beyond the tender cases to the fixed platform cases seems undesirable. In view of the justified liberal interpretation of the Jones Act\footnote{101.} the resulting situation seems to pivot on the distribution of losses factor. A major consideration which undoubtedly underlies this area is the extremely hazardous nature of offshore operations, not to mention extremely high overhead costs. Drilling companies simply take into consideration the extra costs of liability insurance in their contracts with oil companies. The oil companies in turn pass the increased cost to the consumer. The practical result of this development in admiralty law seems to be that modern day
consumers are simply paying the cost of the many essential, as well as luxurious, products traceable either directly or indirectly to the marine petroleum industry. It is doubtful that this situation would be tolerated were the oil industry more competitive—were there no tariffs or import quotas. Only because they enjoy a privileged position can oil companies get prices to cover such costs and pass the ultimate burden of Jones Act liability on to the consumer.

Larry P. Boudreaux, Sr.

FEDERAL HABEAS CORPUS—A HINDSIGHT VIEW OF TRIAL ATTORNEY EFFECTIVENESS

As a result of federal court decisions extending the right to counsel in state criminal proceedings,1 a flood of habeas corpus petitions from state prisoners has come to the federal courts.2 Many relate to the lack of counsel at some stage of the criminal proceedings from arrest3 to appeal,4 but a large number of them complain of the lack of "effective" trial counsel.

The right to effective assistance of counsel was first enunciated by the Supreme Court in Powell v. Alabama,5 an extreme case in which the trial judge had appointed on the morning of the trial the entire bar of the county to defend a group of Negro boys accused of raping two white girls. Justice Sutherland, speaking for the Court, laid down the rather broad pronouncement that failure to make an effective appointment of counsel violated the sixth amendment's right to counsel provision and was thus a denial of due process within the meaning of the fourteenth amendment.6 Justice Black in the later case of Avery

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2. The right of state prisoners to seek federal habeas corpus was broadened by the Supreme Court in Fay v. Noia, 372 U.S. 391 (1963). The Court held that only state remedies "presently" available need be exhausted before petitioning for habeas corpus in the federal district courts. This eliminated the need to "exhaust" all state remedies and to seek certiorari in the United States Supreme Court before seeking relief by habeas corpus. See Comment, 26 La. L. Rev. 705 (1966).
5. 287 U.S. 45 (1932).
6. Id. at 71.
7. 308 U.S. 444 (1940).