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should work when the seller is in bad faith,[53] but here also the opinion does not show a basis for the holding. Possible hardships caused by the holdings of older cases when applied to automobile sales might have persuaded the courts to alter their positions. The fact that an automobile's value depreciates so quickly focuses attention on the seller's situation in redhibition.[54] The result in these two cases are correct, but the courts in the future should reconsider the nature of the redhibitory action in developing sound legal foundations for their conclusions.

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TORTS OFFSHORE—THE RODRIGUE INTERPRETATION OF THE LANDS ACT

An offshore worker fell to his death on the floor of an artificial island more than one marine league off the Louisiana gulf shore. Decedent's widow and two children brought actions in the federal district court for the eastern district of Louisiana based on the Death on the High Seas Act[1] (hereinafter the "Seas Act") and Louisiana's general tort recovery statute[2] allegedly made applicable by the Outer Continental Shelf Lands Act[3] (hereinafter the "Lands Act"). The district court reasoned that since the Seas Act provided a federal remedy inconsistent with the Louisiana statute, the latter could not be urged via the Lands Act.[4] That portion of the actions based on the Louisiana statute was dismissed. The Fifth Circuit Court of Appeals affirmed the district court's dismissal.[5] Certiorari was granted in this and a closely analogous case,[6] and the Supreme Court reversed, holding that petitioners' remedy was under the Lands

53. The court apparently took into account the buyer's extravagant claims for damages in computing the fair rental value of the car. To avoid theoretical confusion, perhaps it would be advantageous for the court to compute fair use value and damages to be paid the buyer separately. *See* note 47 *supra*.

54. *See* Gauche v. Ford Motor Co., 226 So.2d 198, 207 (La. App. 4th Cir. 1969). The court treated depreciation and the buyer's use as interchangeable terms.

1. 46 U.S.C. §§ 761-768 (1920).

2. LA. CIV. CODE art. 2315.

3. 43 U.S.C. §§ 1331-1343 (1953).

4. *Id.* § 1333(a)(2) provides: "To the extent that they are applicable and *not inconsistent* with this subchapter or with other Federal laws and regulations . . . , the civil and criminal laws of each adjacent State . . . are declared to be the law of the United States for . . . the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures thereon. . . ." (emphasis added).

5. 395 F.2d 216 (5th Cir. 1968).

6. Dore v. Link Belt Co., 391 F.2d 671 (5th Cir. 1968).

Act and Louisiana law made applicable thereby. *Rodrigue v. Aetna Cas. & Surety Co.*, 395 U.S. 352 (1969).

The area affected by the instant case includes all the continental shelf lying seaward from coastal state boundaries.[7] Ascertaining the law applicable to workers injured while engaged in the extraction of minerals in this area has been primarily a matter of defining the worker's status at the time of injury. This process of definition has traditionally involved not only the duties assigned the worker, but also the type of structure upon which he was injured or killed. For analytical purposes, offshore oil field workers can be divided into two categories, seamen and non-seamen. Placement of the worker into one of these categories determines the remedies available to him.

Initially the courts seemed confused as to whether classifying a worker as a seaman was a question of fact or law. This problem was finally decided in the 1950's to be one of fact,[8] and the Fifth Circuit in *Offshore Co. v. Robison*[9] set broad, flexible guidelines to assist the jury in determining this question. A worker classified as a seaman can proceed under general maritime law and the Jones Act,[10] which offer benefits not available under local workmen's compensation statutes,[11] or the Longshoremen's and Harbor Workers' Act[12] (hereinafter the Longshoremen's Act), a traditional compensation statute. Under

7. The total area of the Continental Shelf off the United States shore (including Alaska) is estimated at 890,000 square miles. Omitting Alaska, less than 10% lies within historic state boundaries. 2 U.S. CODE CONG. & AD. NEWS 2177 (1953). The Submerged Lands Act, 43 U.S. §§ 1301-1315 (1953), fixes coastal state boundaries at three geographical miles from a line representing the ordinary low water line unless the state was admitted to the union conditioned upon a more distant boundary. It is apparently now settled that only Texas and Florida have valid claims outside the three mile limit. United States v. Louisiana, 389 U.S. 155 (1967), *rehearing denied*, 389 U.S. 1059 (1968).

8. Comment, 27 LA. L. REV. 757, 763 (1967).

9. 266 F.2d 769 (5th Cir. 1959). "[T]here is an evidentiary basis for a Jones case to go to the jury: (1) if there is some 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 in terms of maintenance during its movement or during anchorage for its future trips." *Id.* at 779. The latest development in defining workers as seamen was in Producer's Drilling Co. v. Gray, 361 F.2d 432 (5th Cir. 1966), where it was recognized that in appropriate cases the worker could get a directed verdict or summary judgment on the question of status.

10. 46 U.S.C. § 688 (1920).

11. *E.g.*, LA. R.S. 23:1021-1351 (Supp. 1968).

12. 33 U.S.C. §§ 901-950 (1927).

general maritime law an injured seaman has an action against his employer for maintenance and cure (no negligence need be proven) which has been likened to a "non-statutory workmen's compensation." The Jones Act allows the seaman, upon proving his employer's negligence, to recover a lump sum for pain and suffering, loss of past and future earnings, and residual disability. A seaman may couple his Jones Act claim with an independent action against his employer based on the doctrine of unseaworthiness which focuses attention on the condition of the vessel rather than the amount of care exercised by the employer. The use of these independent grounds does not permit double recovery by the seaman, but it does enhance his chances of recovery by providing a dual basis on which to hold his employer liable. Therefore, the injured seaman has the opportunity of recovering compensation-type benefits without proving his employer's negligence; and he can further recover upon proving either his employer's negligence, or the unseaworthiness of the vessel.[13]

The first legislation treating those workers not classified as seamen was the Seas Act which limited its coverage to pecuniary loss for wrongful deaths occurring on the high seas.[14] Prior to its passage admiralty courts compensated for this statutory void by enforcing state wrongful death statutes.[15] The Longshoremen's Act extended compensation coverage to those non-seamen not covered by state compensation statutes.[16] In 1953 the Lands Act made its debut in this already confusing area providing federal legislation to cover non-seamen working on platforms permanently fixed to the outer Continental Shelf. Although the Lands Act was designed primarily to assert the federal government's right to lease and develop the seabed and subsoil in the outer Continental Shelf beyond state boundaries,[17] it purported to

13. For a more comprehensive comparison of relative benefits afforded by this legislation, *see* Comment, 27 LA. L. REV. 757 (1967).

14. *See* The Harrisburg, 119 U.S. 199 (1886).

15. The Hamilton, 207 U.S. 398 (1907).

16. Weiss v. Central R.R. of N.J., 235 F.2d 309, 311 (2d Cir. 1956): "[I]t was the purpose of the Longshoremen's Act to provide recovery for longshoremen and harbor workers previously unable to obtain it under state compensation laws, but at the same time to leave distinct and unimpaired the traditional rights and remedies of seamen, for whom maintenance and cure had long served as a kind of non-statutory workmen's compensation."

17. 2 U.S. CODE CONG. & AD. NEWS 2177 (1953): "The purpose of H.R. 5134 (Lands Act) is to amend the Submerged Lands Act in order that the area in the outer Continental Shelf beyond boundaries of the States may be leased and developed by the Federal Government. At the present time the submerged Lands Act merely established that the seabed and subsoil in the

establish a body of criminal and civil law to govern this area and the fixed structures thereon.[18]

The provision in the Lands Act adopting all adjacent state criminal and civil law not inconsistent with existing federal laws did not receive close judicial scrutiny until 1961 in *Pure Oil Co. v. Snipes*.[19] In *Snipes*, plaintiff was severely injured while falling from a water tank through the floor of an artificial island located about sixty-five miles off the Louisiana coast. Since the action was brought twenty-two months later, the specific issue to be decided was whether a local statute dictating that tort actions prescribe in one year[20] or the equitable doctrine of laches controlled. The court assured Snipes' recovery by holding that the law governing the outer Continental Shelf was the "per-

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outer Continental Shelf beyond State boundaries appertained in the United States and was subject to its jurisdiction and control.

18. 43 U.S.C. §§ 1332, 1333 (1953): "§ 1332—Congressional declaration of policy.

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

"§ 1333. Laws and regulations governing lands.

"(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental shelf were an area of exclusive Federal jurisdiction located within a State; *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

19. 293 F.2d 60 (5th Cir. 1961).

20. LA. CIV. CODE art. 3536.

vasive maritime law," which precluded application of the local prescriptive statute.[21] This holding had considerable impact on subsequent tort[22] and compensation[23] litigation.

The *Rodrigue* decision, by holding that petitioners' remedy was under the Lands Act and applicable Louisiana law, effectively undercut the reasoning of *Snipes* and those cases relying on the *Snipes* rule that general maritime law governed the area encompassed by the Lands Act.[24] Justice White determined that the clear meaning of the language of the Lands Act was to make the affected area subject to the jurisdiction, control, and power of disposition of the federal government as if it were a "federal enclave" in an upland state. The adjacent states' laws were federalized as of the effective date of the act, but only to "the extent that they are applicable and not inconsistent with . . . other Federal laws."[25] This, reasoned the Court, had the effect of adopting adjacent state law as surrogate federal law to fill the legal gaps inherent in our federal system.[26] The Court then determined that the Seas Act did not apply as it redressed only those deaths "occurring on the high seas."[27] Finally the Court

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21. Pure Oil Co. v. Snipes, 293 F.2d 60, 62 (5th Cir. 1961). In affirming the district court's judgment that the local prescriptive statute did not apply, the court said: "At the heart of this appeal is the question whether under the [Lands Act], . . . the applicable substantive law for an injury received in connection with a fixed offshore platform is that of Louisiana, the adjacent state, or general maritime law."

The court concluded that "a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State, law, and (b) *that the Federal law thereby promulgated would be the pervasive maritime law of the United States.*" *Id.* at 64 (emphasis added).

22. *See, e.g.*, Loffland Bros. Co. v. Roberts, 386 F.2d 540 (5th Cir. 1967), *cert. denied*, 389 U.S. 1040 (1968), where an injured worker on a fixed platform more than three miles off Louisiana's coast was not barred from recovery by Louisiana law pertaining to contributory negligence because federal 6maritime law applied. Movible Offshore Co. v. Ousley, 346 F.2d 870 (5th Cir. 1965) held that since federal maritime law applied to offshore workers, the doctrine of comparative negligence, not assumption of risk, applied.

23. *See, e.g.*, Tate, J., concurring in Crooks v. American Mut. Liab. Ins. Co., 173 So.2d 875 (La. App. 3d Cir. 1965). *Cf.* Landry, J., who, while dissenting in Gravois v. Travelers Indem. Co., 173 So.2d 550 (La. App. 1st Cir. 1965), concedes the exclusiveness of the Longshoremen's Act in these situations, but vigorously maintains that the state has concurrent jurisdiction in third party actions provided thereby.

24. *See* notes 22, 23 *supra.*

25. *See* 43 U.S.C. § 1332 (1953), quoted at note 18 *supra.*

26. Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352, 357 (1969).

27. To buttress this contention the Court noted that in the past, admiralty jurisdiction had not applied to fixed structures unless they were erected as navigational aids or had been in a collision with a ship. *Id.* at 360.

concluded that Congress specifically intended that the general maritime law not apply to the affected area.[28]

The apparent effect of *Rodrigue* is to preclude application of the Seas Act to these offshore artificial islands encompassed by the Lands Act, thus allowing the non-seamen (or their survivors) injured thereon broader possibilities for recovery. However, the gain in benefits may be more apparent than real since *Snipes* and its progeny are now questionable precedents. It now appears that prescriptive yardstick for initiating tort actions is that of the adjacent state.[29] It could also be argued that contributory negligence and assumption of risk doctrines are now applicable instead of the plaintiff-oriented comparative negligence doctrine of admiralty.[30] Certainly those maintaining that workers who are hired in Louisiana should have a choice of compensation remedies (Longshoremen's Act or state workmen's compensation statutes) will have a stronger position from which to argue.[31]

Today, American workers in the mineral extractive industries are covered by compensation remedies whether they are classed as seamen or non-seamen regardless of where they are injured or killed as long as it is within the scope of their employment.[32] However, there is a disparity of remedies available to these workers who attempt to gain additional recovery based on negligence.[33] The non-seaman is limited by workmen's compensation legislation to negligence actions against third parties. The seaman, on the other hand, has the right to seek redress not only from negligent third parties under general maritime law, but also from his negligent employer via the Jones Act or general maritime law, or both. Other relative disadvantages the non-seaman faces in maintaining negligence actions are his ap-

28. At the time of the act's formulation, many of its proponents thought that admiralty would be the most suitable body of law for this area. However, consideration for the close ties the thousands of offshore workers had with adjacent states, coupled with admiralty's inappositeness to mineral law, caused all references to maritime law to be excluded in the final act. "The very decision to [treat activity on these artificial islands as though it occurred on ship] in the initial bill recognized that if it were not adopted explicitly, *maritime law simply would not apply to these stationary structures not erected as navigational aids.*" *Id.* at 361-62 (emphasis added).

29. *See* note 20 *supra.* In Mississippi personal injury and wrongful death actions are prescribed in six years, 1A MISS. CODE ANN. § 722 (1942), and in Texas in two years, 16A TEX. STAT. ANN. art. 5526 (Vernon 1925).

30. *See* note 22 *supra.*

31. *See* note 23 *supra.*

32. In Babineaux v. Southeastern Drilling Corp., 170 So.2d 518 (La. App. 3d Cir. 1965), plaintiff, who contracted his employment in Louisiana, was held entitled to receive state compensation even though injured in Arabia.

33. *See* note 13 *supra* and accompanying text.

parent subjection to the doctrines of contributory negligence and assumption of risk. Both the Jones Act and general maritime law spare the seaman from these possible bars to recovery by affording him the benefit of the doctrine of comparative negligence.[34] Perhaps the most startling disparateness involves the wrongful death remedy available to the non-seaman's survivors when the non-seaman is killed while traveling between the rig and the adjacent state boundary.[35] The non-seaman's wrongful death coverage is limited to pecuniary loss from the moment he steps off the platform until he is within the adjacent state's boundary.[36]

The situation as it now exists is not supportable on any reasonable basis and may involve denial of equal protection of the law to non-seamen. Extension of Jones Act coverage to non-seamen is probably undesirable considering the substantial increased social cost that would result. Nevertheless, the relative hazards faced by these groups of men do not differ perceptibly and do not justify such disparate treatment. A reasonable solution to the problem would be remedial federal legislation designed to extend the coverage presently offered by the Lands Act to non-seaman, fixed-platform workers to include all mishaps occurring while in the scope of their employment over the

34. *See* note 22 *supra.* The Jones Act gave seamen the same benefits afforded railway workers by the Federal Employers' Liability Act including the doctrine of comparative negligence. 35 Stat. 65 (1908), 36 Stat. 291 (1910), 53 Stat. 1404 (1939), 45 U.S.C. §§ 51-60 (1948). This doctrine, while reducing the amount recoverable by a contributorily negligent seaman, does not act as a complete bar to his recovery. In fact, the proviso of 45 U.S.C. § 53 (1948) eliminates even a diminution of damages if the employer is guilty of violating any statute enacted for the safety of the employees.

35. Under the provisions of the Jones Act, a seaman is covered as long as he is within the scope of his employment. Magnolia Towing Co. v. Pace, 378 F.2d 12 (5th Cir. 1967) held that the Jones Act applied when a seaman was injured in an auto accident in the vicinity of Vicksburg, Mississippi, while en route to his tugboat. Guess v. Read, 290 F.2d 622 (5th Cir. 1961) concerned a non-seaman who was killed in a helicopter crash just after take-off from a fixed platform. The Court held, in effect, that the law governing decedent changed after the helicopter left the platform. *See* the remarks of the Court in *Rodrigue* approving this concept. Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352, 359 (1969).

36. Under the Seas Act the successful plaintiff is limited to a recovery of pecuniary loss which excludes recovery for such items as conscious suffering between injury and death, funeral expenses, and grief or loss of society and companionship. "Award should be based on present value of pecuniary benefits that would have resulted from continued life of deceased." Peterson v. United New York Sandy Hook Pilots Ass'n, 17 F. Supp. 676 (E.D.N.Y. 1936). In *Rodrigue* the Court remarked that "if the . . . Seas Act [were] applicable . . . , the artificial island worker would be entitled to far less comprehensive remedies in many cases than he is now." Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352, 361 (1969).

outer Continental Shelf. This limited "scope of employment" addition need not encroach on the adjacent state's jurisdiction. Non-seamen would receive basically the same coverage if injured or killed within the state boundaries. Man's exploitation of the wealth of natural resources off our nation's shores will send ever-increasing numbers of non-seaman workers into this harsh environment, and the protection of them and their families should be of prime importance to our lawmakers.

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UNION USE OF AUTHORIZATION CARDS TO OBTAIN RECOGNITION UNDER SECTION 8(A) (5)

Members of Food Stores Employees Union, Local No. 347, began an organizational drive with a view to election and certification as the representative of the employees of Gissel Packing Company as provided in section 9(c) of the National Labor Relations Act.[1] In the early stages of this effort, the employer instituted his own vigorous antiunion campaign.[2] Nevertheless, a majority of the employees, 31 of the 47 in the bargaining unit, signed union authorization cards.[3] The company rejected the demand for recognition and continued its assault by interrogating employees, assuring higher wages if the company were not unionized, and warning employees of dire effects if the union were successful. Subsequently, the union filed unfair labor practice charges rather than seek an election. The three charges alleged refusal to bargain,[4] coercion of employees,[5] and a violation of section 8(a)(3)[6] due to discharge of union adherents. After the Board issued a bargaining order and after the Court of Appeals for the Fourth Circuit refused enforcement, a writ

1. Labor Management Relations Act (Taft-Hartley Act) § 9(c), 29 U.S.C. § 159(c) (1964).

2. NLRB v. Gissel Packing Co., 395 U.S. 575, 580 n.1 (1969). Despite a company vice-president's warning to two employees that union activity would result in "you God-damned things" leaving, they attended a union meeting at which a company agent was present and had their employment terminated shortly thereafter.

3. The authorization cards distributed to the employees unambiguously authorized the union to represent the signers as exclusive bargaining agent. This is the single purpose type. The dual-purpose or ambiguous cards, which the Court does not consider, contain statements that they may be used to obtain a Board election or that they provide the union representative bargaining status. It, however, does not take a strained reading of the decision to be warned away from the use of such ambiguous cards.

4. 29 U.S.C. § 158(a)(5) (1964).

5. 29 U.S.C. § 158(a)(1) (1964).

6. 29 U.S.C. § 158(a)(3) (1964).