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Louisiana's Third Circuit Expansively Interprets Vessel Status, Potentially Opening Door for More Jones Act Seamen

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In early July 2019, the Louisiana Court of Appeals for the Third Circuit, based in Lake Charles, issued an *en banc* decision that **found that a riverboat was a "vessel" for Jones Act purposes**, potentially opening the door for workers who traditionally have not been considered Jones Act seamen to now be considered such. The case is *Caldwell v. St. Charles Gaming Co.*, 18-868 (La. App. 3 Cir 07/03/19), 2019 La. App. LEXIS 1208.

At issue in *Caldwell* was whether the plaintiff — a "deckhand" who was operating a scissor-lift aboard a riverboat casino (the *Grand Palais Casino*) — qualified as a Jones Act seaman. To be considered a Jones Act seaman, a plaintiff has to satisfy a two-prong test. First, a plaintiff must show that his duties contribute to the function of the vessel or to the accomplishment of its mission. Second, a plaintiff must demonstrate a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature.

Whether a plaintiff qualifies as a Jones Act seaman is significant for a number of reasons, including the determination of whether he/she is entitled to maintenance and cure benefits and whether his/her claims fall under the Jones Act or another law, such as the Longshore and Harbor Workers' Compensation Act. In *Caldwell*, the answer to the Jones Act seaman question turned on whether the Grand Palais Casino qualified as a "vessel" under General Maritime Law.

In November 2017, a panel of the Third Circuit held that the Grand Palais Casino was not a vessel because of changes to its physical characteristics and the fact that its primary purpose and function was for dockside gambling, not transportation. However, in an 8-4 decision, the *en banc* Third Circuit overruled this prior decision and held that the Grand Palais Casino was a vessel for purposes of General Maritime Law. Given that, the plaintiff was a Jones Act seaman.

Much of the *en banc* decision focused on the prior November 2017 ruling, rehashing the various arguments made in that ruling. The crux of the November 2017 ruling was a discussion of federal law and the how the term "vessel" is defined by statute under 1 U.S.C. §3, which states that the word "vessel" "includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

In finding that the Grand Palais Casino was a vessel, the *en banc* Third Circuit adopted the reasoning

that the Grand Palais Casino, though a riverboat casino, was nonetheless "designed for navigation, was capable of navigation, and had been used in navigation." Therefore, even though the Grand Palais Casino had been moored in the same location for 16 years, the *en banc* Third Circuit noted that the "frequency of navigation" was essentially irrelevant. Relying on the US Supreme Court's decisions in *Stewart v. Dutra Const. Co.*, 543 U.S. 481, 125 S.Ct. 1118 (2005) and *Lozman v. City of Riviera Beach, Florida*, 568 U.S. 115, 133 S.Ct. 735 (2013), the *en banc* Third Circuit held that the Grand Palais Casino was a vessel because it was "capable of transportation" and, even though docked indefinitely, it had not been "removed from navigation."

Interestingly, the *en banc* Third Circuit's ruling did not offer a particularly substantive discussion of the *Lozman* holding, which is the Supreme Court's definitive case regarding "vessel" status. Instead, the *en banc* Third Circuit referred to *Lozman* only in its Conclusion section, wherein it noted:

This court finds the US Supreme Court's decisions in Stewart, 543 U.S. 481, and Lozman, 568 U.S. 115, to be controlling. As such, we find that the Grand Palais was a vessel at the time of the incident; thus, the trial court should have granted the Plaintiffs' motion for summary judgment.

The lack of substantive discussion regarding *Lozman* is notable because *Lozman* has generally been read to limit, not expand, the "vessel" status analysis. This is especially true with respect to permanently moored structures, such as riverboat casinos and work docks.

In *Lozman*, the Supreme Court explained that "a water craft is not 'capable of being used' for maritime transport in any meaningful sense if it has been permanently moored." Specifically citing a case involving a riverboat casino, the Supreme Court went on to state that "a watercraft whose objective physical connections to land 'evidence a permanent location' does not fall within §3's ambit." In other words, a structure that is physically connected to land in such a way that it "evidence[s] a permanent location" should not be considered a "vessel." The Supreme Court arguably left little room for interpretation by then noting: "Put plainly, structures 'permanently affixed to shore or resting on the ocean floor' have never been treated as vessels for the purposes of §3."

The *en banc* Third Circuit's ruling in *Caldwell* is principally silent on whether the Grand Palais Casino's mooring to land was considered in determining whether it was "capable of transportation." The *en banc*Third Circuit did note that the Grand Palais Casino was "connected to the dock by temporary connections and gangways designed to be lifted and retracted." Whether these so-called temporary connections were the deciding factor in the *en banc* Third Circuit's decision is unclear. However, it does appear that the undisputed fact that the Grand Palais Casino had been moored in the same spot, and not moved at any time, for 16 years was of minimal consequence.

The *en banc* Third Circuit's decision in *Caldwell* could be appealed to the Louisiana Supreme Court. It may ultimately be an outlier in the cases post-*Lozman* that have addressed the issue of "vessel" status. However, regardless of the ultimate disposition of the case, the decision stands for an expansive reading of "vessel" status in spite of the US Supreme Court's interpretation of vessel status in *Lozman*.

Riverboat operators should be mindful of whether their employees could now be considered Jones Act seamen because of how their riverboat is physically attached to land. But other operators in the maritime industry should be equally mindful of whether their work dock or platform or offshore platform — though docked or moored indefinitely and/or attached to shore in some fashion — could potentially be considered a "vessel" because, at some point in time, the work dock or platform was "capable of transportation" and it arguably has not been "removed from navigation." Additionally, an

expansive definition of “vessel” can also expand the scope of admiralty jurisdiction, as well as the availability of maritime liens, which do not exist with respect to structures that are not “vessels.”

We will continue to monitor this case, as well as any developments or similar decisions reached as a result of the *en banc* Third Circuit’s decision.

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