IADC COMMITTEE NEWSLETTER
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ENVIRONMENTAL AND ENERGY LAW

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IN THIS ISSUE

Ivan M. Rodriguez and Justin C. Warner of Phelps Dunbar LLP report on an interesting recent ruling in which the United States Court of Appeals for the Fifth Circuit questioned its precedent for determining if an individual qualifies as a Jones Act seaman and hinted that application of the seaman status test within the Fifth Circuit should be changed. Should that occur, it would have significant implications for parties operating in the offshore energy sector and within the Fifth Circuit as it would likely substantially decrease the pool of their workers who qualify as seamen.

To Sea or not to Sea?
The Fifth Circuit's Potential Reconsideration of how it will Apply the Test for Jones Act Seaman Status for Certain Workers in Future Cases

ABOUT THE AUTHORS

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Justin C. Warner is an associate in Phelps Dunbar LLP's New Orleans, Louisiana office. His practice primarily focuses on representing clients in the marine and energy industries with difficult issues as they arise, whether in litigation or otherwise. He represents both U.S. and foreign vessel owners as well as offshore energy companies in various matters, including disputes under the Jones Act, vessel collisions/allisions, injuries to ferry passengers, barge breakaways, property damages claims, loss of use, and oil platform fires and explosions. Justin is a member of both the Southeastern Admiralty Law Institute and the Maritime Law Association of the United States. He can be reached at Justin.Warner@phelps.com.

ABOUT THE COMMITTEE

The Environmental and Energy Law Committee assists all members whose practice relates to environmental and energy areas consisting of regulatory compliance, permitting issues and litigation. The Committee conducts monthly conference calls and publishes newsletters to keep our members abreast of current issues relating to the energy field and environmental practice. The members also present educational seminars, and provide an opportunity to network with fellow practitioners in those fields to enhance practice opportunities across the country and internationally. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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The case, *Gilbert Sanchez v. Smart Fabricators of Texas, LLC,*[1] involved a welder, Gilbert Sanchez, who worked for Smart Fabricators of Texas, LLC ("SmartFab"). During his employment, Sanchez worked 61 out of 67 days aboard two jack-up drilling rigs. Most of those days were spent on a jack-up rig next to an inland pier. While aboard one of these rigs, Sanchez sustained an injury.

Sanchez filed suit against SmartFab in state court alleging he was a Jones Act seaman. SmartFab challenged Sanchez' claim that he was a seaman, removed the case to the United State District Court for the Southern District of Texas, and sought summary judgment on the seaman status issue. The district court granted summary judgment in favor of SmartFab and held that Sanchez was not a seaman because he could not prove his connection to a vessel was substantial in nature.

On appeal, the initial panel, (consisting of Judges Patrick Higginbotham, James Ho, and Kurt Engelhardt), affirmed the trial court's decision denying seaman's status and upheld the removal. However, this opinion was later withdrawn and scheduled for rehearing by a new panel consisting of Judges Eugene Davis, Edith Jones, and Don Willett.

The new panel, with Judge Davis writing the opinion, applied the Supreme Court's two-prong test for determining seaman status set forth in the United States Supreme Court's ruling in *Chandris, Inc. v. Latsis*.[2] For an individual to qualify as a seaman under the *Chandris* test, the individual must demonstrate that:

- His/her duties contribute to the function of the vessel or to the accomplishment of its mission
- He/she has a connection to a vessel in navigation that is substantial in terms of both duration and nature

Here, the question was whether Sanchez' connection to any vessel was substantial in nature. The district court held that Sanchez' work on vessels did not expose him to the perils of the sea, and he was not a seaman. On rehearing, the Fifth Circuit stated that its controlling precedent established that a worker is a seaman, even if the relevant vessel is docked or anchored at a pier. As a result, the Fifth Circuit ultimately reversed the district court and concluded that Sanchez' suit could not be removed and had to be remanded because there was a fact question as to whether Sanchez was a seaman. This, despite the fact that most of Sanchez' work was aboard a drilling rig jacked up above the water and next to a pier.

However, in a concurring opinion, (also written by Judge Davis and joined by Judges Jones and Willet), the judges indicated that, while they were bound by Fifth Circuit precedent, such precedent was inconsistent

[1] 2020 WL 4726062 (5th Cir., Aug. 14, 2020).

[2] 515 U.S. 347 (1995).

with the teaching of the Supreme Court's decision in *Harbor Tug & Barge Co. v. Papai*,[3] which decision focused the seaman inquiry on whether the worker's duties actually take him/her to sea. Accordingly, the judges urged the Court to rehear the case *en banc* to bring its jurisprudence in line with Supreme Court case law.

SmartFab is expected to seek an application for rehearing *en banc.*

[3] 520 U.S. 548 (1997).

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