



SUPREME COURT TO CLARIFY VESSEL STATUS OF INDEFINITELY MOORED FLOATING STRUCTURES

The U.S. Supreme Court has recently granted a writ of certiorari to review the U.S. 11th Cir. Court of Appeals' decision in *City of Riviera Beach v. That Certain Unnamed Gray, Two-Story Vessel Approximately Fifty-Seven Feet in Length*, 649 F.3d 1259. The question presented to the Supreme Court is whether a floating structure that is indefinitely moored, receives power and other utilities from shore, and is not intended to be used in maritime transportation or commerce constitutes a "vessel" under 1 U.S.C. § 3, thus triggering federal maritime jurisdiction. *Lozman v. City of Riviera Beach*, Docket No. 11-626, U.S. Supreme Court.

The Supreme Court, in *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2007) defined a "vessel" as "any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment." 543 U.S. 481, 497, 125 S.Ct. 1118, 1129, 160 L.Ed.2d 932 (2005). The Court further found that "a watercraft is not 'capable of being used' for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement." *Id.* at 494. The Court cited, but did not specifically affirm, the 5th Cir. decision in *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995).

Following *Stewart v. Dutra*, a split developed between the U.S. 5th and 11th Cir. Courts of Appeals regarding the interpretation of the Supreme Court's definition of a "vessel" as set forth in *Stewart v. Dutra*. The 5th Cir. set forth the following three part test to be used in determining if a floating structure is a non-vessel: 1) the structure was constructed to be used primarily as a work platform; 2) the structure is moored or otherwise secured; and 3) although capable of movement, any transportation function is merely incidental to the structure's primary purpose. *Pavone v. Mississippi Riverboat Amusement Corp.*, *Id.* at 570. This test has been applied by the 5th Cir. in determining that floating casinos and other structures semi-permanently or indefinitely moored to shore are not "vessels" under maritime law even though they may have been towed in the past or could be towed in the future, such as for an evacuation in the event of a hurricane. The 5th Cir. has also held that indefinitely moored offshore production platforms called SPARS are not vessels. *Mendez v. Anadarko*, 2012 WL 1003575 (5th Cir. 2012).

The 11th Cir., in a similar case involving a floating casino, rejected the test set forth in *Pavone* on the basis that the *Pavone* test focused "on the intent of the ship owner rather than whether the boat has been 'rendered practically incapable of transportation or movement.'" *Board of Commissioners of Orleans v. M/V BELLE OF ORLEANS*, 535 F.3d 1299 (11th Cir. 2008). In focusing on whether the BELLE OF ORLEANS was "rendered practically incapable of transportation or movement," the 11th Cir. found that she was a "vessel" because she was capable of being transported over water either under her own power or by tow if her mooring cables were unmoored. This interpretation of *Stewart v. Dutra* is broader than that in *Pavone* as it appears to encompass any floating structure that is capable of being towed and capable of being unmoored.



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The U.S. Supreme Court's decision in this matter may impact not only floating casino operators, but also operators of floating docks, wharfs, and drilling platforms. This decision could have potentially far-reaching implications affecting many areas of maritime law, including Jones Act seaman status, OCSLA coverage, vessel mortgages and financing, the applicability of U.S. Coast Guard regulations, marine insurance, maritime contracts, maritime liens, and maritime jurisdiction. Jones Walker will continue to monitor the progress of this case and will provide updates in future e*lets regarding the manner in which this decision may impact your business operations.

—[William P. Wynne](#)