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U.S. SUPREME COURT EXPANDS LHWCA JURISDICTION UNDER OCSLA

The Outer Continental Shelf Lands Act (“OCSLA”) extends the federal workers' compensation scheme established in the LHWCA, 33 U.S.C. § 901 *et seq.*, to injuries “occurring as the result of operations conducted on the Outer Continental Shelf (“OCS”)” for the purpose of extracting natural resources from the shelf. A split amongst various U.S. Courts of Appeals developed as to the proper test to apply in determining whether a worker was injured “as the result of operations conducted on the Outer Continental Shelf.” The split was resolved in *Pacific Operators Offshore, LP v. Valladolid*, 132 S.Ct. 680 (2012).

The U.S. 5th Cir. Court of Appeals had adopted a geographical “situs-of-injury” test holding that LHWCA coverage through OCSLA only applied to workers who “suffer injury or death on an OCS platform or the waters above the OCS.” *Mills v. Director, Office of Workers’ Compensation Programs*, 877 F.2d 356 (5th Cir. 1989). In contrast, the U.S. 9th Cir. Court of Appeals adopted a broader “substantial nexus” test holding that a “claimant must establish a substantial nexus between the injury and extractive operations on the shelf” to be eligible for LHWCA benefits through OCSLA. *Valladolid v. Pacific Operators Offshore, LLP*, 604 F.3d 1126 (9th Cir. 2010). To meet this standard, the injured worker must establish that the work performed directly furthers OCS operations and is in the regular course of such operations.” *Id.* at 1139.

In *Pacific Operators Offshore, LLP v. Valladolid* the Supreme Court adopted the 9th Cir.’s “substantial nexus” test. -- U.S. --, 132 S.Ct. 680, 181 L.Ed.2d 675 (2012). In *Pacific Operators*, the injured worker spent 98% of his time as a roustabout working aboard offshore drilling platforms but was killed in a forklift accident at an onshore oil and gas processing facility. After the Benefits Review Board denied coverage based upon the 5th Cir.’s “situs-of-injury” test, the 9th Cir. reversed and remanded holding that the proper test to be used when determining LHWCA coverage through OCSLA was the “substantial nexus” test. The Supreme Court affirmed the decision of the Ninth Circuit finding that “substantial nexus” test best reflects the text of OCSLA. A dissent by Justice Scalia questioned how the new test will be employed.

This decision will likely broaden the scope of LHWCA benefits coverage under OCSLA, which will impact insurance requirements for oil and gas operators and service providers operating both on the OCS and onshore. As demonstrated in *Pacific Operators*, it is likely that at least some injured shore based personnel may now fall under the scope of OCSLA if their injuries demonstrate a “substantial nexus” to oil and gas operations on the OCS. The extent to which this decision will broaden LHWCA benefits coverage under OCSLA is uncertain at this time as it is yet to be seen how courts will apply this test. As noted by the Supreme Court, the “substantial nexus” test “may not be the easiest to administer” and “will depend on the individual circumstances of each case.” *Pacific Operators Offshore, LLP v. Valladolid*, -- U.S. --, 132 S.Ct. 680, 181 L.Ed.2d 675 (2012). The case was remanded, and the application of this test will be followed.

—[Matthew S. Lejeune](#)