



October 2012

IN *BEECH V. HERCULES DRILLING CO., L.L.C.*, THE FIFTH CIRCUIT DEFINES "SCOPE OF EMPLOYMENT" IN VICARIOUS LIABILITY CASES UNDER THE JONES ACT

The Jones Act provides an injured seaman with a private civil cause of action against his employer in the event of personal injury or death arising from an employer's or co-employee's negligent conduct and occurring in the course of employment. For an employer to be found vicariously liable for an employee's negligence, the employee must be acting "in the course of employment." In *Beech v. Hercules Drilling Co., L.L.C.*, the court defined the meaning of the phrase "in the course of employment" when analyzed in the context of a Jones Act lawsuit. 2012 U.S. App. LEXIS 17476 at *11, (5th Cir. 2012)

In *Beech*, the court was tasked with deciding whether or not an employee on an oil rig was acting in the course of employment when he accidentally discharged a firearm resulting in the death of a coworker. On December 13, 2009, Michael Cosenza was assigned to work a night shift aboard a jack-up drilling rig and was the only crew member on duty. His duties that night were to monitor the rig's generator, to check certain equipment, and to report any suspicious activity or problems, which were performed at the direction of his employer while watching television and commiserating with fellow employees in the break room. Keith Beech, who was not on duty that night, but was subject to the call of duty, was also in the break room. During the two men's conversation, Cosenza retrieved his firearm which he had accidentally brought onboard in order to display to Beech. As Cosenza sat back down, his arm accidentally bumped a part of the couch and the firearm discharged, mortally wounding Beech. *Id.* at *2-4.

The district court concluded that Cosenza was acting within the course of employment because at the time of discharge, he had "abandoned his purpose of showing off the gun and was in the process of sitting down on the couch to watch television." Because Hercules encouraged its night watchmen to watch television, doing so was within the scope of employment. After so ruling, the district court awarded Beech's survivors a total of \$1,194,329.

On appeal, Hercules alleged, and the Fifth Circuit agreed, that the district court had erred in finding Cosenza's conduct to be within the scope of his employment. The court quoted a prior holding in which it held that "an employer is only liable for the wrongful acts committed by its employee when the employee's tortious conduct *is in furtherance of the employer's business.*" *Stoot v. D&D Catering Serv. Inc.* 807 F.2d 1197, 1199 (5th Cir. 1987). The Court of Appeals rejected Beech's argument that *Stoot* only applied to intentional torts. In so ruling, the Fifth Circuit took advantage of an opportunity to explicitly state its rule for vicarious liability under the Jones Act. Specifically, the court stated that "whether the underlying injurious conduct was negligent or intentional, the test for whether a Jones Act employee was acting within the course and scope of his employment is whether his actions at the time of the injury were in furtherance of his employer's business interests." Showing off one's handgun clearly falls outside this scope.

Jones Act employers should take comfort in this holding as it eliminates from the scope of employment activity undertaken for private purposes which lack a causal relationship with the actor's employment. Instead, employers can be confident that vicarious liability will only arise from employee conduct undertaken in furtherance of their business



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interests. As always, Jones Walker will continue to monitor all issues that can potentially impact our clients. Should there be any changes in the law, we will provide updates in future E*Lerts.

—[William C. Baldwin](#)

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