



IN *NEW ORLEANS DEPOT SERVICES, INC. V. DIRECTOR*, THE FIFTH CIRCUIT CONTINUES TO EXPAND LHWCA COVERAGE

The Longshore and Harbor Workers' Compensation ("LHWCA") provides a federal workers' compensation scheme for the benefit of maritime workers. For a claimant to be eligible for benefits under the LHWCA (1) his injury must occur on a maritime situs, and (2) his status must be that of a maritime employee. The situs requirement is fulfilled when the injury occurs upon navigable water, including any pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.

In *New Orleans Depot Services, Inc. v. Director*, a former container repair mechanic who repaired both marine and land based containers sought permanent partial disability benefits under the LHWCA as a result of hearing loss, 2012 U.S. App. LEXIS 15336. The repair yards in which the claimant worked were 300 yards or less from the Industrial Canal, but did not have docks, piers, or wharfs. Considering the above facts, the Administrative Law Judge ("ALJ") held that the claimant satisfied both the situs and status requirements of the LHWCA. On December 3, 2010, the Benefits Review Board ("BRB") affirmed the ALJ's decision. The claimant's employer then appealed the BRB's decision to the Fifth Circuit.

On appeal, the Fifth Circuit affirmed the BRB's decision. In doing so, the court stated that when deciding whether or not a location satisfies the LHWCA's situs requirement, courts should consider both the geographic proximity to the water's edge and also the functional relationship of the location to maritime activity. In other words, the perimeter of an area is defined by its function. The Court found that the repair yard satisfied the situs test as it was used to store and repair containers which were used in or had previously been used in marine transportation. Furthermore, "if a particular area is associated with items used as part of the loading process, the area need not itself be directly involved in loading or unloading a vessel or physically connected to the point of loading or unloading." The court found that the containers being repaired "were used as part of the loading process," thus satisfying the situs requirement. Furthermore, the court determined that claimant's work on maritime containers met the status requirement as the maintenance or repair of tools essential to the loading process are covered by the LHWCA. The court deemed it irrelevant that the skills utilized by the claimant were "essentially nonmaritime."

The Court's ruling is troubling for any business operating in close proximity to navigable waters. As Judge Clement notes in her dissent, there are no facts indicating that the container repair work done at the repair yard is part of any loading or unloading process. Thus, she argues that the yards lack the required functional nexus to maritime activity. Judge Clement states that "'loading and unloading' cannot reasonably be interpreted to encompass every step in the overall supply chain surrounding marine shipping." Her dissent concludes by stating that "[t]he majority's reasoning sweeps so broadly that it threatens to swallow every employer with even a tangential relation to the maritime industry. If a worker whose sole responsibility is to repair containers is covered by the LHWCA, why not the factory work who manufactures the same containers?" For now, employers operating near navigable water should be aware that even the most attenuated relationship to the loading and unloading of vessels may lead to LHWCA liability. As the caselaw continues to develop in



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this uncertain area of maritime law, Jones Walker will continue to monitor it and will relate any developments in future editions of our E*Lerts.

—[Stephen H. Clement](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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