



Fifth Circuit Dismisses Jones Act Claim of Foreign Worker Injured in Foreign Waters

In *Croke v. PPI Technology Services, L.P., et al.*, C.A. No. 14-30424, ___ Fed. Appx. ___ (5th Cir. June 1, 2015), the Fifth Circuit recently affirmed a district court’s dismissal of a Jones Act claim brought by a Canadian oil rig worker who was allegedly injured off the coast of Nigeria. Robert Croke alleged that, while working aboard an oil rig off the coast of Nigeria, gunmen boarded the rig, kidnapped him and held him hostage for a number of days. Croke is a citizen of Canada. The district court dismissed Croke’s claim under the foreign seaman exclusion provisions of the Jones Act, 46 U.S.C. §30105(b).

The Jones Act, 46 U.S.C. §30104, *et seq.*, provides remedies to seamen injured aboard vessels in the United States, as well as those American seamen injured abroad. In general, the Jones Act expressly precludes foreign seamen from bringing actions under the Jones Act when (1) the individual is not a citizen of the United States; (2) the accident occurred in non-U.S. territorial waters; and (3) the individual is engaged in the certain activities related to the offshore exploration or development of oil and gas.

There is, though, an exception to this general exclusion if the individual bringing the claim establishes that a remedy is not available to him/her (1) under the laws of the country asserting jurisdiction over the area where the accident happened; or (2) under the laws of the country where the individual maintains his/her permanent citizenship. 46 U.S.C. §30105(c). In other words, in this case, if a remedy were not available under the laws of Nigeria (where the accident occurred) or Canada (where Croke permanently resided), then Croke would likely have been permitted to bring his claim under the Jones Act.

On appeal, Croke argued that the district court made too narrow an inquiry into whether Nigerian or Canadian law may provide him a remedy. In support, Croke relied upon an earlier ruling in the case that found that his defendant/employer failed to prove that Nigeria was an available forum for purposes of its *forum non conveniens* argument.

The Fifth Circuit dismissed Croke’s argument, stating that Croke’s argument and the finding as to *forum non conveniens* were inapposite because it was Croke’s burden to show the unavailability of remedies under Nigerian law. Whether the Nigerian courts were “available” for purposes of Croke’s employer’s argument for *forum non conveniens* was immaterial to the inquiry required for Croke’s claim. The Fifth Circuit also emphasized that a plaintiff must give notice that he may be relying upon foreign law to assert his/her claim. The Fifth Circuit denied Croke’s attempt to retroactively assert that he was relying upon Nigerian law because neither his Complaint nor any other pleading indicated such reliance.

Ultimately, the Fifth Circuit's finding is significant for a number of reasons. First, considering the international nature of oil and gas exploration at this time, it is likely that more foreign workers, employed by domestic companies and working in foreign waters, will try to bring claims in the courts of the United States. As more and more development and drilling occurs off the coasts of Brazil, Mexico and the like, these companies should be mindful of this exclusion and exception to claims brought under the Jones Act. Second, the Fifth Circuit clearly outlined that it is the plaintiff's burden to establish that remedies are not available under the applicable foreign law. Third, a plaintiff's failure to allege that he or she is asserting a claim under foreign law may result in that claim being "forfeited." The latter reasons suggest that these cases will remain both fact-specific and procedurally critical.

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