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www.joneswalker.com
maritime@joneswalker.com

Fifth Circuit holds that a floating casino is a "recreational operation" as defined in Section 902(3)(b) and, as such, employees thereof are not entitled to LHWCA coverage.

In *Boomtown Belle Casino v. Bazor*, No. 01-60705, Slip Op. (5th Cir. December 2, 2002), the Fifth Circuit held that, a plaintiff employed as chief engineer at the Boomtown Casino was not entitled to benefits under the LHWCA.

Mr. Bazor was employed as a chief engineer for the "Boomtown Facility" the land-based operations of the casino. At the time of Mr. Bazor's employment, the casino boat was under construction and had not yet been moored at the facility. Mr. Bazor was responsible for the work of supervisors and employees in the Housekeeping/Maintenance and Outside Grounds Department, and at some point oversaw work regarding the placement of the gangplank. During his employment, Mr. Bazor suffered a stroke while working under a temporary tent which was to provide a waiting area for patrons after the boat was in place.

The Administrative Law Judge held that Bazor satisfied both the status and situs requirement predicates to LHWCA coverage under Section 902(3) and Section 903(a), and the Benefits Review Board affirmed. The Fifth Circuit reversed the Benefits Review Board's decision holding that Bazor did not satisfy either the status or situs requirements. In its decision, the Fifth Circuit noted that "the plain language of Section 902(3)(b) excludes from coverage 'individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet' without reference to the nature of the work they do." The Court held that a floating casino was a "recreational operation" for purposes of Section 902(3)(b) and thus Mr. Bazor was not covered by the LHWCA.

Fifth Circuit Upholds Reciprocal Indemnity Agreement for Injury on Outer Continental Shelf.

In *Sumrall v. Ensco*, 291 F.3d 316 (5 Cir. 2002), Santa Fe Energy Resources, Inc. ("Santa Fe") was the operator of a drilling operation who, in turn, contracted with Ensco to provide the drilling rig vessel and drilling services. The contract contained a Reciprocal Indemnity Agreement requiring

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Santa Fe to indemnify Ensco for any claims asserted for employees of subcontractors hired by Santa Fe. Premier, a subcontractor hired by Santa Fe, also had a reciprocal indemnity provision in its contract with Santa Fe requiring Premier to indemnify Santa Fe for its indemnity obligations. A Premier employee, who was a longshoreman under the OCSLA, was injured while working on the Outer Continental Shelf.

Jones Walker, representing Santa Fe assumed Ensco's defense and tendered same to Premier. Premier argued that it owed indemnification for only those obligations flowing from actions filed directly against Santa Fe by Premier or Premier employees. Premier contended that its indemnification agreement with Santa Fe was not reciprocal and therefore unenforceable under the LHWCA. The Fifth Circuit found that the agreements were sufficiently reciprocal and enforceable pursuant to 33 USC Section 905(c). In its decision, the Fifth Circuit elaborated on its previous decisions in *Demette v. Falcon Drilling, Inc.*, 280 F.3d 492 (5 Cir. 2002) and *Campbell v. Sonat Drilling,* 27 F.3d 185 (5 Cir. 1994). Like in *Campbell*, Premiere expressly agreed to indemnify not only Santa Fe, but also Santa Fe's "contractors and subcontactors," thus including Ensco, for obligations that arose due to claims of injury brought by Premiere employees.

District Court Refuses to Recognize Duty on Behalf of Maritime Employer.

In *Martin v. Pride Offshore*, No. 99-3357, Slip Op. (Sept. 30, 2002), the plaintiff was required to work at least four consecutive eighteen-hour hitches on a jack-up rig. At the end of his seven-day hitch, plaintiff was injured when he allegedly fell asleep at the wheel of his personal vehicle while traveling on his journey home. Plaintiff was denied Jones Act Seaman status and the Administrative Law Judge found that the plaintiff's automobile accident did not occur on a covered situs under the LHWCA and therefore there was no jurisdiction under the LHWCA.

After being denied a remedy under the Jones Act and the LHWCA, plaintiff pursued a cause of action in negligence purportedly under Louisiana law against his employer, Pride Offshore. Plaintiff's petition alleged that Pride Offshore had negligently created plaintiff's fatigue, had knowledge of the fatigue and had failed to take the steps to protect one of its employees. Jones Walker successfully defended Pride Offshore, and the Court granted Pride Offshore's Motion for Summary Judgment dismissing all

plaintiff's claims. In his decision, Judge Duval noted that under Louisiana law an employer does not owe a duty to prevent an exhausted employee from driving home, and that Pride Offshore would have had little, if any, power to prevent the plaintiff from returning home in his "fatigued" state.

- Brian Capitelli, Associate, Admiralty and Maritime

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, please email **maritime@joneswalker.com.**

Admiralty & Maritime Practice Group

ROBERT B. ACOMB, JR.
NORMAN E. ANSEMAN, III
L. ETIENNE BALART
RICHARD D. BERTRAM
JOHN J. BRODERS
BRIAN J. CAPITELLI
GEORGE DENÈGRE
J. KELLY DUNCAN
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WAYNE G. ZERINGUE, JR.