



January 2013

## ***LOZMAN V. CITY OF RIVIERA BEACH, FLORIDA: "ALL THAT FLOATS IS NOT A VESSEL"***

Whether a floating structure is considered a vessel or not has significant legal consequences for employment, finance, regulatory, and other issues. The status of a facility may evoke state or federal laws. The U.S. Supreme Court handed down its much anticipated decision in [\*Lozman v. City of Riviera Beach, Florida\*](#), on Tuesday, January 15, 2013, with Justice Breyer writing for the majority of seven, and Justice Sotomayor writing a dissenting opinion, in which Justice Kennedy joined.

*Lozman* is a significant decision for the maritime community, as it sets forth methodology for characterizing a floating object as a "vessel" under the maritime law, both statutory and general, of the United States. In *Lozman*, the Court ruled that a structure/watercraft does not fall within 1 U.S.C. § 3's definition of a "vessel" unless a "reasonable observer," looking to the structure/watercraft's physical characteristics and activities, would consider it designed to a practical degree for carrying people and things over water. This general and subjective methodology for determining whether something is a "vessel" for admiralty jurisdiction and maritime law affects numerous maritime interests including casino vessel owners, marina and floating home owners, floating platform and rig owners. Also, potential Jones Act/unseaworthiness, maintenance and cure, liens and other remedies may be impacted by this decision.

### **Factual Circumstances of *Lozman***

Lozman owned a 60-foot-by-12-foot floating house-like plywood structure without motive power or steering. An empty bilge space underneath the main floor kept it afloat. The structure had been towed several times and was finally docked at the city of Riviera Beach marina. As a result of various disputes with Lozman, the city ultimately filed a federal admiralty lawsuit *in rem* against the floating home, seeking to enforce a maritime lien for dockage fees and damages for trespass. Lozman sought dismissal of the suit on the ground that the Court lacked admiralty jurisdiction. Lozman argued that the floating home was not a "vessel" for admiralty law purposes and that, as a consequence, the Court did not have admiralty jurisdiction. The district court decided that it had jurisdiction, conducted a bench trial on the merits and awarded the city roughly \$3000 for dockage along with \$1.00 damages for trespass.

On appeal, the Eleventh Circuit Court of Appeals affirmed vessel status. In its view, the home was "capable" of movement over water, and the owner's subjective intent to have the structure moored indefinitely was irrelevant.

### **The Court's Analysis**

The Court has previously considered the definition of a vessel. In its 2005 decision in *Stewart v. Dutra*, the Court decided that the controlling definition of a "vessel" was found in 1 U.S.C. §3, which held a "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." There were some exceptions noted, but no specific clarity offered. Following the *Stewart* decision, there arose uncertainty among the Circuit Courts of Appeal about application of the term "capable." Courts below split on the question of whether the intent of the owner was relevant to the capability issue. In *Lozman*, the Court focused primarily upon the phrase "capable of being used . . . as a means of transportation on water." Justice Breyer sought to apply the definition in a practical, not theoretical, way, leading to the "reasonable observer" test.



January 2013

The Court affirmed that not every floating structure is a vessel and rejected a broad interpretation of 1 U.S.C. § 3. The "anything that floats" approach was specifically rejected. To clarify "what we have in mind," the Court discussed the factual considerations regarding the case under review, while relying upon the statutory text, precedent and relevant purposes of the definition.

#### **The Dissent**

Justice Sotomayor, joined by Justice Kennedy, agreed with much of the majority's reasoning, but dissented from what they characterized as "a novel and unnecessary reasonable observer reformulation" of the governing definitional principles. The dissent favored legal precedents offering substantial guidance, saying that the capacity to float and carry things or people is an obvious prerequisite to vessel status, that structures or ships that are permanently moored or fixed in place are not vessels under the statutory language and that those watercraft whose physical characteristics and usage history reveal no maritime transport purpose or use are not vessels under the statutory language. The dissent criticized the subjective component of the reasonable observer test and described the methodology as opaque and unpredictable. The dissent emphasized that the methodology established by the majority provides no guidance for the maritime industry, confuses the lower courts and upsets longstanding admiralty precedent.

#### **Commentary**

The *Lozman* opinion provides no bright line rule to be followed in characterizing a watercraft as a vessel for maritime law purposes. The majority opinion readily recognizes that the methodology decided upon is general, contradicts the express statutory language and may, in fact, simply offer guidance in borderline cases where "capacity" to transport over water is in doubt. The Court expressly states that "we . . . understand that our approach is neither perfectly precise nor always determinative."

The Court's methodology is fact driven and reminds one of Justice Potter Stewart's statement in a famous pornography case decided by the Court: "I know it when I see it." Presumably, a reasonable observer will know a vessel upon seeing one. The decision may have little effect on current Fifth Circuit precedent. However, it will affect those Circuits like the Eleventh Circuit, which have traditionally defined a vessel as anything that floats.

It is strongly suggested that the opinion be read carefully in the light of one's particular aspect of the maritime community. Look for further commentary and analysis in Jones Walker's February edition of the Maritime E\*Lert.

– [Bradley A. Jackson](#)



January 2013

*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:*

**Glenn S. Goodier**

*Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P.*

201 St. Charles Avenue

New Orleans, LA 70170-5100

504.582.8174 *tel*

504.589.8174 *fax*

[ggoodier@joneswalker.com](mailto:ggoodier@joneswalker.com)

*This newsletter should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your own situation and any specific legal questions you may have.*

To subscribe to other E\*Bulletins, visit <http://www.joneswalker.com/ecomunications.html>.