SANCHEZ V. SMART FABRICATORS – SEAMAN STATUS WHIPLASH OR GROUNDWORK FOR FUTURE EN BANC COURSE CORRECTION?

We previously reported[1] on the Fifth Circuit's opinion in *Sanchez v. Smart Fabricators of Texas, LLC* where the court took up the issue of Jones Act seaman status, holding that a welder working aboard jacked-up offshore drilling rigs was not a seaman.

In April, however, the Fifth Circuit withdrew its opinion, 952 F.3d 620 (5th Cir. 2020) (withdrawn Apr. 14, 2020), and in August issued a new opinion reversing course and determining that the worker was, in fact, a seaman. No. 19-20506, 2020 WL 2726062 (5th Cir. Aug. 14, 2020). **Although this seems like a bad turn for Jones Act defendants, it may be the Fifth Circuit's way of attempting a course correction by setting the groundwork for future en banc consideration of the seaman status issue.**

1 https://www.hfw.com/Sanchez-v-Smart-Fabricators-Fifth-Circuit-Denies-Seaman-Status-to-Offshore-Worker-Injured-on-Jack-Up-Rig

In both opinions, the circuit court focused on the Supreme Court's two-prong test to determine whether a person is a seaman under the Jones Act as set out in *Chandris v. Latsis*, 515 U.S. 347 (1995). First, the person's duties must contribute to the function or mission of a vessel. Second, the person must have a connection to a vessel or fleet of vessels substantial in terms of both *duration* and *nature*. The key issue in *Sanchez* is whether Sanchez's connection to the vessels was substantial in *nature*.

Sanchez was a welder working for Smart Fabricators of Texas aboard jacked-up offshore drilling rigs. He was injured when he tripped on a pipe welded to the deck of the rig. He claimed to be a seaman and sued his employer for negligence under the Jones Act.

The Fifth Circuit's withdrawn opinion focused on the Supreme Court's observation that the inquiry "must concentrate on whether the employee's duties take him to sea." *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997). In so focusing, the court scrutinized the surface upon which Sanchez worked (jacked up drilling rigs "stable, flat, and well above the water"), his duties (as a welder, he did not operate or navigate the rig or its equipment), and whether his injury was related to the "perils of the sea" (tripped on a pipe welded to the deck of the vessel). Based on these facts, the Fifth Circuit affirmed the lower court's holding that Sanchez did not have a connection to vessels in navigation substantial in nature, and thus was not a Jones Act seaman.

The Fifth Circuit's August 2020 opinion reached the opposite result. It held that the nature of Sanchez's employment could not be distinguished from the plaintiffs' employment in *In re Endeavor Marine Inc.,* 234 F.3d 287 (5th Cir. 2000) (per curiam) and *Naquin v Elevating Boats*, 744 F.3d 927 (5th Cir. 2014). These prior Fifth Circuit cases found seaman status where: a person's duties were on a vessel jacked up next to a dockside pier; he was performing any type of ship's work on the vessel; the vessel was jacked up out of the water; and the worker returned home to sleep every evening.

The most interesting part of the more recent opinion, however, is not the holding that Sanchez is a seaman. Instead, it is the concurrence, written by Judge Davis and joined by Judges Jones and Willett, which concludes that **although the court is bound by its own circuit precedent, such precedent has not correctly applied Supreme Court authority**. The concurrence references three key pillars in the Supreme Court's seaman status jurisprudence:

- Coverage under the Jones Act and the Longshore and Harbor Workers' Compensation Act is mutually exclusive making very important the distinction between land-based and sea-based maritime workers. *McDermott International, Inc. v. Wilander,* 498 U.S. 337 (1991).
- "[T]he ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time." *Chandris v. Latsis,* 515 U.S. 347 (1995).
- "For the substantial connection requirement to serve its purpose, the inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties *take him to sea*." *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997) (emphasis added).

After reviewing these key points, the concurrence said the Fifth Circuit's opinions in *Endeavor* and *Naquin* were likely wrong, thereby guiding *Sanchez* to the wrong result. As to Sanchez, it wrote:

> All of his welding work on the ENTERPRISE WFD 350 was done while the rig was jacked up adjacent to the dock. He was never assigned to sail on the vessel, and instead only had to take two steps off the rig and onto land every evening at the end of his shift. His work was essentially land-based, never exposing him to the perils of the sea.

It ultimately urged all of the judges of the Fifth Circuit to review the *Sanchez* case en banc to bring the Fifth Circuit's jurisprudence in line with Supreme Court case law.

It is not often a three-judge panel of the Fifth Circuit issues an opinion finding no seaman status, withdraws the opinion, a different three-judge panel issues a new opinion finding seaman status, but drafting a concurrence that puts the status of the plaintiff in doubt and begs en banc review. Maybe the panel, although bound by circuit precedent, hopes to bring circuit law in line with guiding Supreme Court jurisprudence and establish greater certainty regarding the seaman status question. We expect Smart Fabricators to accept the court's invitation and file a petition for rehearing en banc any day. Stay tuned.

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