

**23RD ANNUAL ADMIRALTY  
AND MARITIME LAW CONFERENCE**

**UNIVERSITY OF TEXAS SCHOOL OF LAW**

**October 17, 2014**

**MARITIME *EN BANC* CASES  
IN THE FIFTH CIRCUIT**

**The Honorable W. Eugene Davis  
United States Court of Appeals  
For the Fifth Circuit**

**Kenneth G. Engerrand  
Brown Sims, P.C.**

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## **II. Selected Maritime *En Banc* Opinions**

*Barrett v. Chevron, U.S.A., Inc.*,  
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No. 12-30714 (5th Cir. Sept. 25, 2014) (en banc)

781 F.2d 1067  
United States Court of Appeals,  
Fifth Circuit.

Jethro BARRETT, Plaintiff,  
v.  
CHEVRON, U.S.A., INC., E.B.B. Co., Inc. and  
Lift Barge, Inc., et al., Defendants-Appellees,

v.  
MARYLAND CASUALTY  
COMPANY, Intervenor-Appellant.

No. 82-3693. | Jan. 31, 1986.

Offshore oil field worker brought action to recover benefits under the Jones Act. The United States District Court for the Eastern District of Louisiana, Robert F. Collins, J., found worker to be Jones Act seaman, and appeal was taken. The Fifth Circuit Court of Appeals, 752 F.2d 129, affirmed. Following rehearing en banc, the Court of Appeals, W. Eugene Davis, Circuit Judge, held that worker was not a seaman under Act where he did not perform substantial portion of his work aboard a vessel or fleet of vessels.

Reversed and rendered.

Gee, Circuit Judge, filed a specially concurring opinion in which E. Grady Jolly, Robert Madden Hill and Edith Hollan Jones, Circuit Judges, joined.

Alvin B. Rubin, Circuit Judge, filed a dissenting opinion, in which Reavley, Politz, Tate, Johnson, and Jerre S. Williams, Circuit Judges, joined.

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Appeal from the United States District Court For the Eastern District of Louisiana.

Before CLARK, Chief Judge, GEE, RUBIN, REAVLEY, POLITZ, RANDALL, TATE, JOHNSON, WILLIAMS, JOLLY, HIGGINBOTHAM, DAVIS, HILL, and JONES, Circuit Judges.

#### Opinion

W. EUGENE DAVIS, Circuit Judge:

This case brings before the en banc court a question frequently confronted in this circuit: when is an offshore oilfield worker a "seaman" for purposes of the Jones Act?<sup>1</sup> We take the opportunity for en banc consideration of whether, after twenty-six years of development and interpretation, the test for Jones Act seaman status enunciated in *Offshore Company v. Robison*, 266 F.2d 769 (5th Cir.1959) should be modified.

The panel opinion, 752 F.2d 129, recites these facts to which we add only the material in brackets:

#### I.

#### FACTS

In 1979, Tilden J. Elliott Contractor, Inc. ("Tilden") contracted with Chevron, U.S.A., Inc. to provide welding crews for maintenance and repair work to offshore platforms and other structures in Chevron's Bay Marchand Field located in the Gulf of Mexico off the coast of Louisiana. Plaintiff, Barrett, was an employee of Tilden who performed services as a welder's helper under the contract between Tilden and Chevron. [Barrett had worked in the Bay Marchand Field for approximately one year before the accident. Plaintiff and his welding crew worked fourteen days on and seven days off. They were dispatched to different platforms in the field and ordinarily continued working on those platforms until the repairs and renovations were completed. Most of the platforms were large enough to permit the welding crew to perform their assigned work on the platform without the aid of a standby vessel. According to Mr. Barrett's testimony, seventy to eighty percent of his work was performed on such platforms where no auxiliary vessel was needed.] On one particular assignment, Tilden was \*1069 to perform welding services on a caisson located approximately ten to twelve miles offshore. The caisson was a small fixed structure, measuring only ten by fifteen feet, comprised basically of one producing well which was tied into the underwater pipeline system in the field. Barrett was a member of the Tilden welding crew assigned to perform welding operations on the caisson.

Because of the small size of the caisson, a jack-up barge, the D/B FALCON, was positioned alongside the caisson in order to provide space on which the necessary equipment and materials for the Tilden crew could be placed and to provide a work area for the crew. The D/B FALCON was the only barge assigned to the Chevron Bay Marchand Field. The vessel would remain stationary at one job site until an assignment was completed, and then move on to the next site.

The Tilden crew was assigned to the caisson to remove old parts and to fabricate and attach new parts. The only work performed on the caisson itself was the cutting of the old pipe from the caisson and replacing it with the new pipe. The old parts, after removal, were brought by one of the D/B FALCON's two cranes back to the D/B FALCON where they were measured and new pipes were fabricated. Barrett spent seventy to eighty percent of his time on the D/B FALCON assisting in the measuring and fabricating of new pipe sections.

During the fourteen-day offshore hitch, the Tilden crews were provided living quarters on a large fixed platform called Mike's Structure. Each morning, the crew boat M/V LADY JUNE, owned and operated by E.B.B. Company, transported the crew members from Mike's Structure to their respective work sites. Crew members ate lunch at the job site and at the end of each day's shift, were transported back to Mike's Structure to eat and sleep.

On the morning of May 23, 1979, Barrett, along with the rest of the Tilden crew, was transported by the crew boat M/V LADY JUNE to the caisson under repair. Crew members were transferred from the M/V LADY JUNE to the D/B FALCON by means of a personnel basket. The basket was lifted by a crane located on the D/B FALCON. While being transferred from the M/V LADY JUNE to the D/B FALCON in the personnel basket, Barrett injured his back. Despite this injury, Barrett continued to perform his duties and returned to the D/B FALCON the following day to perform his usual assignments. On that day, while assisting a co-worker in lifting a heavy piece of pipe, Barrett suffered further injury to his back and was taken from the offshore work site to seek medical care. This second injury or aggravation was sustained while Barrett was aboard the D/B FALCON.

Barrett brought a personal injury action originally against Chevron, owner of the production platform, E.B.B. Company, Inc., owner and operator of the M/V LADY JUNE, and Lift Barge, Inc., owner and operator of the D/B FALCON. Barrett alleged that the D/B FALCON crane operator, an employee of Lift Barge, caused the personnel basket to strike the deck of the M/V LADY JUNE with greater than usual force resulting in injury to Barrett. Barrett claimed that his injury was subsequently aggravated by lifting the pipe on board the D/B FALCON. Barrett and his wife then filed a second suit for the aggravation of the injury against Tilden and Lift Barge. Plaintiffs sought damages under the Jones Act and general maritime law for negligence and unseaworthiness, and maintenance and cure. The two actions were eventually consolidated.

752 F.2d at 131-32 (footnotes omitted).

In a non-jury trial, the district court found that Barrett was a Jones Act seaman. On these facts, the majority of the panel agreed with the district court.

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