

PRESENTED AT

25th Annual
Admiralty and Maritime Law Conference

August 26, 2016
Houston, Texas

Maritime Cases in State Court

Justice Martha Hill Jamison

Justice Martha Hill Jamison
Fourteenth Court of Appeals
Houston, Texas

Martha.Jamison@txcourts.gov
713.274.2800

I. SCOPE OF THIS ARTICLE

This article provides selected admiralty law cases that were decided by Texas state courts from January 1, 2015 until July 15, 2016.

II. JONES ACT CASES

1. Cepeda v. Orion Marine Constr., Inc., No. 01-15-00504-CV, 2016 WL 3902467, at *1 (Tex. App.—Houston [1st Dist.] July 14, 2016, no pet. h.).

At issue in this case was the ability of a maritime employee to bring a Jones Act suit for an injury that allegedly occurred within hours of his termination.

A man was employed as captain of a dredge in the Houston Ship Channel. After being fired from his position, the captain left the dredge and boarded a skiff en route to Baytown, which he piloted. He alleged that the skiff collided with a log in the water, causing him to become injured.

The captain filed suit against his employer under the Jones Act and general maritime law. The employer moved for partial summary judgment, asserting that the captain was unable to file suit under these claims because as a matter of law, he was not a seaman at the time of accident. The employer explained that because the captain was terminated before the alleged accident, there was no employer-employee relationship when the captain allegedly was injured. Therefore, he could not be classified as a seaman. Since seaman status is an element of the captain's causes of action, the employer argued that the trial court must dispose of those claims. The trial court granted partial summary judgment but maintained the captain's negligence claim under general maritime law. Following a jury trial on this one claim, the court entered a take-nothing judgment against the captain.

The First Court of Appeals reversed the trial court's partial summary judgment and remanded the case. The court noted that federal law requires an employer-employee relationship between a seaman and ship owner for the seaman to recover under the Jones Act. However, the court explained that if "a seaman is terminated while he is at sea, then he remains a seaman for purposes of the Jones Act, maintenance and cure, and unseaworthiness claims until he returns to dry land." Therefore, the trial court erred when it granted partial summary judgment against the captain. The court reversed the trial court's ruling and remanded the case, finding that the jury's verdict against the captain on his negligence claim did not foreclose any of the claims dismissed through summary judgment.

2. In re Offshore Marine Contractors, Inc., No. 01-16-00238-CV, 2016 WL 3362658, at *1 (Tex. App.—Houston [1st Dist.] June 16, 2016, no pet. h.).

At issue in this case was whether the trial court abused its discretion by denying the defendant's motion for a neuropsychological exam of the plaintiff under Texas Rule of Civil Procedure 204.1.

A seaman was injured while working aboard a vessel, with symptoms including a concussion, impaired vision, and upper body pain. He filed suit against his employer, Offshore Marine Contractors ("OMC"), under the Jones Act. He was treated by a neurologist, speech and language pathologist, and neuropsychologist. These physicians diagnosed the seaman with a major neurocognitive disorder, cognitive-linguistic deficits, major depressive disorder, and mood disturbance.

OMC filed a motion for the court to allow both a physical and neurological examination of the seaman to be conducted by OMC's designated experts. The court

denied OMC's request for the neuropsychological exam but granted the request for a physical exam. OMC filed a report with the court to further argue the importance of additional neurological testing. After the court denied this supplemental motion, OMC filed a writ of mandamus.

Rule of Civil Procedure 204.1 governs requests by opposing parties for physical or mental examinations. A movant must demonstrate both that the party's condition is in controversy and that there is good cause for the court to order an examination. The good cause requirement has three elements: "(1) the examination is relevant to genuine issues in the case; (2) a reasonable nexus exists between the condition alleged and the examination sought; and (3) the 'desired information' cannot be obtained through less intrusive means." The seaman contested the third element of the good cause requirement, arguing that OMC could take less intrusive means by relying on the myriad of test results from the seaman's prior examinations.

The court held that the trial court abused its discretion by denying OMC's request for its own neuropsychological exam of the seaman, disagreeing with the seaman's argument that no good cause existed to justify OMC's request to conduct its own neuropsychological exam. The court weighed privacy concerns against the need for OMC to present sufficient evidence in its defense and held that denial of OMC's request for expert evaluations could cause OMC to face "a disadvantage in the battle of the experts." The court remanded the case to the trial court, noting that while the court could not deny OMC's request for neuropsychological testing, it was within the court's discretion to place limitations on the tests.

3. Orion Marine Constr., Inc. v. De Leon, No. 13-13-00254-CV, 2016 WL 2609319, at *1 (Tex. App.—Corpus Christi May 5, 2016, no. pet. h.) (mem. op.).

At issue in this case was whether the primary duty doctrine bars recovery under the Jones Act in Texas.

A seaman sustained shoulder injuries after a slip and fall on the deck of a ship. He brought suit against his employer under general maritime law and the Jones Act. The jury found for the seaman on both his unseaworthiness claim and his Jones Act negligence claim. The jury also found the seaman to be ten percent at fault for his injury. The trial court entered judgment in favor of the seaman; the employer appealed.

The Thirteenth Court of Appeals affirmed the trial court's decision. The maritime law issue raised on appeal concerned the applicability of the primary duty doctrine, which was developed by the Second Circuit. The employer argued that either it had no duty, or alternatively, that the primary duty doctrine created a bar to recovery. The primary duty doctrine requires a recovery to be barred when the seaman is the sole cause of his own injuries.

The court rejected the employer's suggested application of the primary duty doctrine in the case at hand. The court first noted that the doctrine is not recognized in either the Fifth Circuit or Texas courts as a bar to Jones Act cases. Additionally, the court noted that there was evidence presented at trial that the seaman was not the sole cause of the injuries he sustained aboard the vessel. Therefore, the court held that as a matter of law, the seaman was entitled to recover under the Jones Act and his claim was not barred by the primary duty doctrine.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Maritime Cases in State Court

Also available as part of the eCourse

[Recent Developments in Admiralty and Maritime Law, Judicial Insights, and Cases in State Court; plus What to Do if Your Client is Misbehaving, Part VI](#)

First appeared as part of the conference materials for the
25th Annual Admiralty and Maritime Law Conference session
"Maritime Cases in State Court"