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Longshore Update

By

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Anthony v. Deep South Airboats, LLC, No. 21-1070, 2021 U.S. Dist. LEXIS 186507 (E.D. La. Sept. 29, 2021) (Ashe). Kendrick Anthony, a longshore worker employed by Weeks Marine, was being transported to his worksite near Port Fouchon and West Belle Pass in Louisiana on a vessel owned and operated by Deep South when the vessel struck a sandbar, throwing Anthony out of the boat. Anthony brought this action in federal court in admiralty against Deep South alleging negligence and unseaworthiness and mentioning res ipsa loquitur and respondeat superior as methods of imposing liability. Anthony also demanded a jury. Reasoning that the exclusive remedy provided against the vessel for longshore workers covered by the Longshore & Harbor Workers' Compensation is based on negligence under *Scindia*, Judge Ashe dismissed the unseaworthiness claim; however, he declined to dismiss the allegations of res ipsa loquitur and respondeat superior because they are legal theories in support of negligence and are not independent causes of action. As the claim under Section 905(b) is based on the general maritime law and does not independently confer a right to a jury trial, Judge Ashe struck Anthony's jury demand.

Barrosse v. Huntington Ingalls Inc., No. 20-2042, 2021 U.S. Dist. LEXIS 182939, 224592 (E.D. La. Sept. 24, 2021, Nov. 22, 2021) (Vitter). Ronald J. Barrosse claimed that he suffered from mesothelioma from exposure to asbestos while working as an electrician at Avondale's shipyard on destroyer escorts for the Navy. He brought this action under Louisiana state law in the Civil District Court for the Parish of Orleans, Louisiana, against Avondale and several product suppliers, and Avondale removed the case to federal court under the Federal Officer Removal Statute. After Barrosse died, his surviving spouse and children maintained the action. Avondale moved for summary judgment on the basis that the exclusive-remedy provision of the LHWCA preempted the claims under state law. A pivotal issue was whether the pre- or post-1972 LHWCA applied, and Judge Vitter followed the decisions from other judges in the Eastern District of Louisiana, holding that the version in effect at the time of the manifestation, not exposure, governed (post-1972 Amendments). Consequently, Barrosse's exposure on ships and adjoining areas was covered under the LHWCA (as it was expanded in 1972), and that coverage extended to exposure in his car and at home to dust on his clothes as it arose out of his employment. Judge Vitter then addressed whether the LHWCA was the exclusive remedy in light of the concurrent jurisdiction that is permitted between the LHWCA and state workers' compensation statutes by the Supreme Court in the *Sun Ship* case for the twilight zone where both acts can apply. This case was not brought seeking state workers' compensation benefits, however, and Judge Vitter held that the exclusive remedy provision in the

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LHWCA preempted the state negligence claims against Avondale. Finally, Judge Vitter rejected the plaintiffs' argument that the application of the 1972 Amendments to exposure before 1972 was unconstitutional, holding that Congress' action was not irrational or arbitrary. Avondale then requested that Judge Vitter enter a final judgment pursuant to Rule 54(b) so that the issue of LHWCA preemption could be appealed. Avondale argued that the issue of LHWCA preemption has arisen in at least 16 other cases pending in federal courts in Louisiana and that it was likely that the issue will continue to arise. Therefore, Avondale sought to avoid repeatedly litigating the question in the district courts before the Fifth Circuit can address the issue. Concluding that delay in entry of a final judgment would prejudice Avondale, Judge Vitter entered a final judgment in favor of Avondale.

Becnel v. Lamorak Insurance Co., No. 19-14536, 2022 U.S. Dist. LEXIS 107310 (E.D. La. June 16, 2022) (Lemelle). James Becnel brought this suit against his shipyard employer, Avondale, and others for asbestos-related lung cancer based on exposure to asbestos and asbestos-containing products while Becnel was employed at the shipyard. After his death, his heirs filed an amended complaint that included a strict liability claim. The defendants removed the case at that time pursuant to the Federal Officer Removal Statute, and the heirs moved to remand the case, arguing that the removal was too late and should have been filed when it became evident from Becnel's deposition that he worked on a Navy vessel. The defendants responded that the original action asserted negligence claims that were not removable until the en banc decision of the Fifth Circuit in the *Latiolais* case. Agreeing that removal would have been unwarranted before the amendment and that the defendants had made a sufficient showing of a defense of federal contractor immunity, Judge Lemelle held that the defendants properly removed the case. Avondale and its insurers moved for summary judgment, arguing that the state tort claims asserted against Avondale were preempted by the LHWCA. Citing several decisions from judges in the Eastern District of Louisiana for support, Judge Lemelle held that Becnel's lung cancer manifested itself at the time of his diagnosis in 2019, so the LHWCA, as amended in 1972, was applicable to his cancer claim. Accordingly, Becnel's work as a tacker and shipfitter was covered under the LHWCA, and the exclusive remedy provision of the LHWCA barred the tort claims brought under state law against Avondale and its insurers. Judge Lemelle noted that the Fifth Circuit had not recognized an intentional tort exception to the exclusive remedy provision of the LHWCA, but the evidence was insufficient to establish an intentional tort claim under Louisiana law if there were such an exception (no evidence that Avondale consciously intended to harm Becnel or that his cancer was inevitable).

Blanda v. Cooper/T. Smith Corp., No. 20-cv-678, 2022 U.S. Dist. LEXIS 72458 (M.D. La. Apr. 20, 2022) (deGravelles). Douglas Blanda was employed by Cooper/T. Smith from 2013 to 2020. Cooper asserted that Blanda was a lineman, and Blanda claimed that he was a blend of lineman and deckhand until October 2019, when he became an operator/deckhand for a majority of the time. Bland was injured on the deck of a Cooper mooring vessel while assisting in the mooring of an oceangoing vessel, the M/V SEA

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