

## ADMIRALTY LAW

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### U.S. Supreme Court Revisits Meaning of "Vessel"

It may come as a surprise, but the issue of what may or may not be a "vessel" is not as settled as one might think. Indeed, this was the subject of a dispute recently decided by the U.S. Supreme Court.

#### Marine Engineer Injured

The case involved an injury to Willard Stewart, a marine engineer hired to maintain the mechanical systems aboard "Super Scoop," the world's largest dredge. As part of Boston's Tunnel Project, or "Big Dig," Massachusetts undertook to extend the Massachusetts Turnpike through a tunnel running beneath South Boston and Boston Harbor to Logan Airport and employed Dutra Construction Co. to assist. Dutra Construction owned the Super Scoop which was capable of digging the 50-foot deep, three-quarter-mile long trench beneath Boston Harbor that is now known as the Ted Williams Tunnel.

The Super Scoop is a massive floating platform with a large clamshell bucket attached to scoop sediment from the ocean floor and dump it into scows floating alongside the dredge. The scows were then transported offshore for dumping.

At the time of the accident, the dredge was idle and Mr. Stewart was working aboard one of the scows near an open hatch 10 feet above the engine space. While Mr. Stewart was in that position, Super Scoop shifted its bucket to move the scow. In the process, the bucket and scow collided hard, causing him to plunge headfirst through the hatch to the deck below. He was seriously injured.

#### The Jones Act and Longshore Act

Mr. Stewart brought a negligence action against his employer, Dutra Construction, in federal court alleging he was a "seaman" under the Jones Act.<sup>1</sup> He also asserted an alternate claim under the Longshore and Harbor Workers' Compensation Act (LHWCA).<sup>2</sup> The Jones Act provides tort remedies for crew members injured on a vessel against the employer. The LHWCA provides federal Workers' Compensation benefits to land-based maritime employees injured on a vessel, with a claim against the employer if the employer is also at fault as the "shipowner." Excluded from coverage under the LHWCA is the "master or member of a crew of any vessel" as that would equate with "seaman" status—which is the status needed to achieve remedies under the Jones Act. Seaman status matters in admiralty because it means the difference between recovery in tort from the employer under the Jones Act, or recovery through Workers' Compensation under the Longshore Act.<sup>3</sup> If covered by the LHWCA and there was no employer fault as shipowner, Mr. Stewart would only be eligible for worker's compen-



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sation, as for instance if the accident was solely the fault of a fellow Longshore Act employee. To steer Mr. Stewart's recovery into the LHWCA's compensation scheme, Dutra Construction denied that he was a "seaman" injured aboard a "vessel."

The main issue in the case was whether a dredge is a "vessel" under the LHWCA. The district court and U.S. Court of Appeals for the First Circuit held that the dredge did not qualify as a vessel under its precedents.

#### Vessel Definition Clarified

The federal trial court and the First Circuit had reasoned that the Super Scoop's primary purpose was dredging rather than transportation and that it was stationary at the time of Mr. Stewart's injury. According to these courts, since its primary function was construction, any navigation or transportation was merely incidental.

The U.S. Supreme Court accepted the case to resolve confusion over how to determine whether a watercraft is a "vessel" for purposes of the Longshore Act. In a unanimous opinion delivered by Justice Clarence Thomas on Feb. 22, 2005, the Court in *Willard Stewart v. Dutra Construction Co.*, held that the dredge was a "vessel."<sup>4</sup>

Congress did not define the term vessel in either the Jones Act or the LHWCA. However, the definition appears in an 1873 U.S. statute:

The term 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.<sup>5</sup>

The Supreme Court explained that before the Jones Act and LHWCA were enacted, courts had relied on this 1873 definition and concluded that dredges and special-purpose watercraft were vessels.<sup>6</sup>

In *Stewart*, the Supreme Court explained that the 1873 statute only requires a watercraft be "used, or capable of being used, as a means of transportation on water" to qualify as a vessel. It does not, as the lower court suggested, require a watercraft be used primarily for that purpose. The Court observed that Super Scoop has certain characteristics common to a seagoing vessel such as a captain and crew, navigation lights, ballast tanks and a crew dining area. It lacks other characteristics of a vessel such as a means of self-propulsion (it moves long distances only with the aid of a tugboat), and it navigates short distances by manipulating its anchors and cables. While engaged in the Big Dig, the dredge moved in this fashion once every couple of hours, covering a distance of 30 to 50 feet each time.

The Supreme Court then clarified its prior "vessel in navigation" test for vessel status<sup>7</sup> stating that that doesn't end the inquiry, but is merely one element of the test. Also to be explored is "whether the watercrafts' use 'as a means of transportation on water' is a practical possibility or merely a theoretical one." Here, the dredge's use as a means of transportation on water was more than a practical possibility—it was a fact. Indeed, the Court held it could not have dug the Ted Williams Tunnel had it been unable to traverse the Boston Harbor, ear-

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rying with it workers like Mr. Stewart.

Accordingly, the Court of Appeals decision was reversed and the case was remanded to the trial court for further proceedings. It appears Mr. Stewart may benefit by Jones Act status on remand; the significance of this being that he will be entitled to a trial on liability and damages with a "featherweight" causation test for negligence. Or, the jury may find he is under the LHWCA with the right to recover against his employer as the vessel owner. If none of the two is established, he will be restricted to compensation.

A watercraft that is not "capable of being used" for transportation on

water does not qualify as a "vessel" under the Jones Act or LHWCA. For example, a dockside floating casino,<sup>8</sup> a dry dock,<sup>9</sup> and a wharfboat have previously been ruled out of vessel status under the 1873 definition. These rulings would seem to withstand scrutiny even under the objective vessel status test enunciated in *Stewart*, to wit: "whether the watercraft's use as a means of transportation on water is a practical possibility or merely a theoretical one."<sup>10</sup>

### Conclusion

Whatever the outcome at the trial level, the Supreme Court decision must be considered a victory for sea-based maritime workers injured

aboard nontraditional watercraft. The broad interpretation of the term vessel will likely assist sea-based workers seeking tort remedies under the Jones Act and the general maritime law.

1. 46 U.S.C. App. §688.
2. 33 U.S.C.A. §901 et seq.
3. 3 Benedict's Mar. Bull. 1 (First Quarter 2005) at 4.
4. 112 S.Ct. 1118, 116 L.Ed. 2d 932 (2005).
5. 1 U.S.C.A. §3.
6. *The Alabama*, 19 F. 544, 546 (S.D. Ala. 1884); *Huisman v. Pioneer*, 30 F. 206, 207 (E.D.N.Y. 1886).
7. *Chandris Inc. v. Latsis*, 515 US 347, 357 (1998).
8. *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995).
9. *Cope v. Vallette Dry Dock Co.*, 119 US 625 (1887).
10. *Evansville and Bowling Green Bucket Co. v. Chero Cola Bottling Co.*, 271 US 19 (1926).