

## JONES ACT - VESSEL IN NAVIGATION

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In order to qualify as a Jones Act seaman, a maritime worker must be more or less permanently assigned to or do substantial work on a vessel (or an identifiable fleet of vessels) in navigation, on navigable waters. The Jones Act, 46 U.S.C. 688, *et seq.*, however, does not define “vessel in navigation.” Thus, two preliminary questions to be answered are: a.) what is a “vessel” and; b.) what constitutes “in navigation.”

A “vessel”, generally, is any floating structure used as an instrument of commerce and/or intended for transportation on navigable waters. Martin J. Norris, *The Law of Seamen*, 4<sup>th</sup> Ed., Vol. 2 Sec. 30:12, p. 360. This floating structure, however, need not be engaged in transportation at the time of the incident; neither must it have its own motive power. Thus, navigable structures that are moored, anchored, spudded down, jacked up, etc., can still qualify as vessels. Often, whether a structure is “floating” or “engaged in transportation” becomes a question of the owner’s intent. A drilling platform permanently affixed to the sea floor is not a vessel. *Thompson v. Crown Petroleum Corp.*, 418 F.2d 239 (5<sup>th</sup> Cir. 1969). Nor is a drilling facility that has been in one place for over twenty years when the owner has no intention of moving it. *Johnson v. Odeco Oil & Gas Co.*, 864 F. 2d 40 (5<sup>th</sup> Cir. 1989). However, despite the fact that a riverboat casino was moored for four months, because of low water on the Missouri River where it normally navigated, the vessel retained the crew as mandated by the Coast Guard and was still a vessel “in navigation.” *Greer v. Continental Gaming Co.*, 5 S.W.3d 559 (Mo. Ap. 1999). In the Fifth Circuit, *Ellender v. Kiva Construction & Engineering, Inc.*, 909 F.2d 803 (5<sup>th</sup> Cir. 1990) discusses the factors involved in

identification of a vessel in the context of a seaman's remedies.

A vessel is generally "in navigation" when it is engaged as an instrument of commerce and transportation on navigable waters." *McKinley v. All-Alaskan Seafoods, Inc.*, 980 F.2d 507 (9<sup>th</sup> Cir. 1992), quoting *Caruso v. Sterling Yacht & Shipbuilders, Inc.*, 828 F.2d 14 (11<sup>th</sup> Cir. 1987). However, the transportation function of the floating structure is not controlling. In both the Fifth and the Ninth Circuits, watercraft whose purposes were not "transportation" *per se*, have been held to be "vessels." See *Ellender*, *supra*, and *Gizoni v. Southwest Marine, Inc.*, 56 F.3d 1138 (9<sup>th</sup> Cir. 1995). Determining this inevitably involves a fact-intensive analysis.

"In navigation" also means that the vessel's construction has been completed and that it has not been withdrawn from navigation. The commissioning of a vessel is a major factor in determining whether it is "in navigation." Vessels undergoing sea trials, but not yet placed in service have been found not to be "in navigation" for purposes of the Jones Act in the Fifth and Eleventh Circuits. See, *Reynolds v. Ingalls Shipbuilding Div.*, 788 F.2d 264 (5<sup>th</sup> Cir, 1986); *Williams v. Avondale Shipyards, Inc.*, 452 F.2d 955 (5<sup>th</sup> Cir. 1971) and *Caruso*, *supra*. However, once commissioned, or placed in service, a vessel is generally deemed to be "in navigation" until it is specifically taken out of navigation. That is, a vessel that is moored, undergoing repairs (even in drydock) generally retains its status. The nature of the work being done is an important factor. If the repairs are so extensive as to constitute a reconstruction of the vessel, courts have found that it has been taken out of navigation. See eg., *West v. United States*, 361 U.S. 118 (1959); *McLendon v. OMI Offshore Marine Service*, 807 F. Supp. 1266 (E.D. Tex. 1992). However, where the work being done is more preparatory in nature and a voyage is planned in the reasonably foreseeable future, the vessel is generally considered still to be "in navigation." See *Senko v. LaCross Dredging Corp.*, 352 U.S. 370 (1957); *First Bank and Trust v. Knachel*, 999 F. 2d 107 (5<sup>th</sup> Cir. 1993); *Griffith v. Wheeling*

*Pittsburgh Steel Corp.*, 521 F.2d 31 (3<sup>rd</sup> Cir. 1975).

Structures that are floating work stations and have no transportation or commercial function are not normally considered “vessels.” Even though such structures are capable of being moved, their movement is only incidental to their use; it is not part of their purpose. See *Ellender*, *supra*; *Ducrepont v. Baton Rouge Marine Enterprises, Inc.*, 877 F. 2d 393 (5<sup>th</sup> Cir. 1989); *Bennett v. Perini Corp.*, 510 F. 2d 114 (1<sup>st</sup> Cir. 1975); *Lash v. Ballard Construction Co.*, 707 F. Supp. 461 (W.D. Wa. 1989).

Structures identified as “special purpose vessels” would seem to beg the question. However, because of the wide variety of structures that fall into this category and the even wider range of uses to which they are put, determination of vessel status for these structures (e.g., dredges, jack-up barges, crane barges, spud barges, moveable drilling rigs, etc.) cannot be so easily accomplished. Moreover, different Circuits use different tests to determine whether these structures are vessels. However, elements common to all the tests include: whether the structure was being used primarily as a work platform; whether the structure was moored or otherwise secured for a reasonable period of time before the event; whether, though capable of movement and sometimes moved across navigable waters, any transportation function of the structure was simply incidental to its primary function as a work platform. However, even structures whose primary purpose is *not* transportation may be “vessels” for purposes of the Jones Act if the structure was actually engaged in navigation at the time of the worker’s injury. See *Bernard v. Binnings Construction Co.*, 741 F.2d 824, (5<sup>th</sup> Cir. 1984).

Thus, unlike the proverbial duck, just because a structure floats like a vessel, moves like a vessel and looks like a vessel, it may not *be* a “vessel in navigation” for purposes of the Jones Act.

For further information on the question of vessel status in similar (but not identical) contexts, see:

- Robert S. Crowder, Comment, *Is A LASH Lighter A Vessel For Purposes of Shipowner Limitation of Liability?*, 22 Tul. Mar. L.J. 255 (1997).
- John T. Lozier, Comment, *A Vessel or Not A Vessel – That Is The Question: The Definition of the Term “Vessel” Under the Longshore and Harbor Workers’ Compensation Act*, 20 Tul. Mar. L.J. 139 (1995).