A Nail in the Coffin for Overtime Pay: The Fifth Circuit Clarifies the FLSA Seaman Exemption in Coffin v. Blessey Marine Services, Inc.

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I. Introduction

In its November 2014 decision in Coffin v. Blessey Marine Services, Inc., the United States Court of Appeals for the Fifth Circuit abruptly ended a burst of litigation recently brought by towboat and barge-based tankermen in the Texas, Louisiana, and Alabama federal district courts. The plaintiffs in these cases sought to recover back overtime pay allegedly due them under the Fair Labor Standards Act (FLSA or Act). The plaintiffs’ employers grounded their refusal to pay in the argument that towboat and barge-based tankermen are employed as “seamen” and are thus exempt from the FLSA’s overtime pay provisions. In one of the cases,

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2 771 F.3d 276 (5th Cir. 2014).

the United States District Court for the Southern District of Texas disagreed, holding that the plaintiffs were nonseamen as a matter of law and were therefore entitled to back overtime pay.\(^4\)

On appeal, the Fifth Circuit reversed the district court’s ruling, holding that: (1) the court erroneously concluded that loading and unloading duties carried out by vessel-based tankermen were nonseaman duties as a matter of law, and (2) the FLSA seaman exemption applied because the vessel-based tankermen before the court performed seaman’s work when carrying out the loading and unloading duties at issue in the case.\(^5\) This Article will begin with an analysis of the seaman exemption’s history in Part two and its construction by the Fifth Circuit and its district courts in Part three. Part four will provide an in-depth examination of the Fifth Circuit’s opinion in Coffin. Finally, Part five of this Article will conclude that the Fifth Circuit properly answered the questions presented in Coffin in a way that corrected the district court’s erroneous legal conclusions, avoided clashing with the FLSA’s underlying purposes, and forestalled the potential negative impact a contrary opinion would have inflicted on much of the Gulf Coast’s towboat and tank barge industry.

II. The FLSA and the Seaman Exemption

Congress enacted the FLSA in 1938 to remedy poor working conditions in the United States following the Great Depression.\(^6\) The FLSA accomplishes that goal by, among other


\(^5\) 771 F.3d 276, 285 (5th Cir. 2014).

things, “providing for minimum wages and overtime pay for workers ‘engaged in’ or ‘in the
production of goods for’ interstate and foreign commerce.”

With respect to overtime pay, the FLSA protects workers by requiring employers to compensate their employees “at a rate not less than one and one-half times the regular rate at which [they are] employed” if employees work more than forty hours in a single workweek. However, Congress chose not to extend the FLSA’s overtime pay protections to certain employee classes by specifically exempting them from its coverage. For example, persons “employed in a bona fide executive, administrative, or professional capacity” are not entitled to “time-and-a-half” pay.

Important for this Article’s purposes, the FLSA specifically exempts “seam[e]n” from its overtime pay protections. Initially, one might question the wisdom of Congress’s decision to exempt seamen from the FLSA’s overtime pay provisions when their status as “wards of the admiralty” traditionally affords them greater protections than other workers. In fact, an early

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9 See, e.g., Meza v. Intelligent Mexican Mktg., 720 F.3d 577 (5th Cir. 2013) (discussing the FLSA’s outside salesmen exemption).
12 Harden v. Gordon, 11 F. Cas. 480, 488, 2000 AMC 893, __ (C.C.D. Me. 1823) (No. 6,047) (Story, J.); see also Harkins v. Riverboat Servs., 385 F.3d 1099, 1103 (7th Cir. 2004) (“A
iteration of the FLSA bill contained no language exempting seamen from its provisions. When the bill was considered in committee, however, two prominent seamen’s unions—the Sailors' Union of the Pacific and the National Maritime Union—appeared in person and wrote to support an exemption.

Apparently satisfied with the regulatory regime governing seamen then in place, the unions sought to avoid the FLSA’s possible interference with other maritime legislation, namely, the Merchant Marine Act of 1920, commonly referred to as the Jones Act. For example, concerned with the possibility of overlapping legislation, the representative of the Sailor’s Union of the Pacific testified:

consideration in probing the outer boundaries of the exemption is that admiralty law guarantees employment benefits to seamen that are not guaranteed by law to other workers. The doctrine of maintenance and cure obligates employers to provide room, board, and medical care to a seaman injured on the job, even if through no fault of the employer, Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 440-41, 148 L. Ed. 2d 931, 121 S. Ct. 993 (2001); Greenwell v. Aztar Indiana Gaming Corp., 268 F.3d 486, 489 (7th Cir. 2001); Wills v. Amerada Hess Corp., 379 F.3d 32, 52 (2d Cir. 2004), while the Jones Act extends the uniquely liberal employer-liability standard of the Federal Employers Liability Act to seamen. Miles v. Apex Marine Corp., 498 U.S. 19, 23-24, 112 L. Ed. 2d 275, 111 S. Ct. 317 (1990); Greenwell v. Aztar Indiana Gaming Corp., supra, 268 F.3d at 489; Wills v. Amerada Hess Corp., supra, 379 F.3d at 47 n. 8.)."

13 See Walling v. Bay State Dredging & Contracting Co., 149 F.2d 346, 349 (1st Cir. 1945).


Our union does not like to see any further or additional legislation enacted to cover a group of workers already so well covered, which might tend to create some confusion in labor relations, which are now on the road to practical and successful operation. Therefore, I ask on behalf of the Sailors' Union of the Pacific, that the bill be so written as to exclude the seamen from the operation of the provisions of the bill.16

The National Maritime Union’s representative testified to the same effect:

that the way has been left open for the proposed Labor Standards Board [created by the FLSA] to have jurisdiction over those classes of workers who are engaged in transportation. While this may not have an unfavorable effect upon the workers engaged in transportation by water, we feel that it may conflict with the laws now in effect regarding the jurisdiction of the government machinery now set up to handle those problems…. We feel that for the present time that the [U.S. Maritime Commission's] jurisdiction should not be hampered or impaired by any legislation that would be conflicting.17

The FLSA’s legislative history thus reveals that Congress did not exempt seamen from the overtime pay provisions “because of any substantive policy judgment about the propriety of paying seamen overtime.”18 Rather, Congress acquiesced in the unions’ request and exempted seamen “so as to avoid conflict[s] of jurisdiction and confusion of labor relations.”19 Since then, the exemption has been further justified based on the industry’s practical realities; because of the

19 McLaughlin, 419 F.3d at 55 (quoting Walling v. Keansburg S. B. Co., 162 F.2d 405, 407 n.6 (3d Cir. 1947).
nature of their work, seamen must often labor in excess of forty hours per week.\textsuperscript{20} To avoid casually exempting whole employee classes from FLSA coverage and to effectuate its remedial purposes, however, courts have long held that the FLSA’s exemptions are to be read narrowly,\textsuperscript{21} and that employers bear a heavy burden of proving that their employees fall outside the Act’s ambit.\textsuperscript{22}

Although the FLSA has exempted “seamen” from its overtime pay provisions since its inception, it has never clearly defined the term. Instead, the Act rather circuitously exempts “any employee employed as a seaman” from its coverage.\textsuperscript{23} Congress thus left to the judiciary the task of interpreting the exemption’s scope. Indeed, when Congress amended the FLSA in 1961, it extended the Act’s minimum wage provisions to persons employed as seamen on American

\textsuperscript{20} \textit{Harkins v. Riverboat Servs.}, 385 F.3d 1099, 1102 (7th Cir. 2004) (“The exemption recognizes that at sea, with a normal life impossible, working more than 40 hours a week is an appropriate work norm, as distinct from the situation in most ordinary employments, where, because 40 hours is the norm, requiring the employer to pay time and a half for overtime encourages him to spread the work by hiring enough workers to minimize the need and resulting expense of overtime.”).


\textsuperscript{22} \textit{Martin v. Bedell}, 955 F.2d 1029, 1035 (5th Cir. 1992) (citing \textit{Idaho Sheet Metal Works, Inc. v. Wirtz}, 383 U.S. 190, 206 (1966)).

vessels while leaving the overtime pay provisions with respect to seamen intact verbatim.\textsuperscript{24} Meanwhile, the United States Department of Labor ("DOL") set about crafting regulations to offer some guidance regarding the interpretation of the Act’s broad language. Those regulations read, in relevant part:

An employee will ordinarily be regarded as ‘employed as a seaman’ if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels. The Act’s provisions with respect to seamen apply to a seaman only when he is ‘employed as’ such; it appears also from the language of section 6(b)(2) and 13(a)(14) that they are not intended to apply to any employee who is not employed on a vessel.\textsuperscript{25} The regulations go on to define nonseaman work as ‘“substantial’ if it occupies more than 20 percent of the time worked by the employee during the workweek.”\textsuperscript{26} At first, it was unclear whether courts would apply the definition contained within the DOL regulations or the judicially crafted Jones Act seaman definition.\textsuperscript{27} The Fifth Circuit decided that threshold issue relatively early on in its FLSA seaman exemption jurisprudence.

III. FLSA Litigation over Overtime Pay in the Fifth Circuit

In \textit{Dole v. Petroleum Treaters, Inc.},\textsuperscript{28} one of the earliest Fifth Circuit cases to address the seaman exemption,\textsuperscript{29} the court settled the question whether the Jones Act seaman definition was

\textsuperscript{24} 29 C.F.R. § 783.30 (2014); \textit{Tate v. Showboat Marina Casino P'ship}, 431 F.3d 580, 584 (7th Cir. 2005).
\textsuperscript{25} \textit{Id.} § 783.31 (citations omitted).
\textsuperscript{26} \textit{Id.} § 783.37.
\textsuperscript{28} 876 F.2d 518, 520 (5th Cir. 1989).
applicable to determine entitlement to overtime pay under the FLSA. There, the DOL sued Petroleum Treaters, Inc. (Treaters), a corporation that employed workers to service Louisiana oilfield platforms, seeking to recover overtime compensation allegedly due thirty-two Treaters employees under the FLSA. The employees, who generally worked for seven days, followed by seven days off, spent the majority of their work time maintaining oil wells from barges connected to the wells.

Litigation arose when Treaters amended its compensation structure to provide that employees would be paid a “day rate,” rather than an hourly rate with time-and-a-half

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29 The Fifth Circuit addressed the FLSA seaman exemption in Gale v. Union Bag & Paper Corp., wherein it held that “[t]he word ‘seaman’ has a plain, ordinary meaning universally applied. Whether a person is a seaman depends upon the character of his duties. If they are maritime in character and rendered on a vessel in commerce, in navigable waters, he is a seaman.” 116 F.2d 27, 27-28 (5th Cir. 1940). However, the court there “did not articulate any distinction between the definition of ‘seaman’ under the FLSA and the definition under the Jones Act.” Owens v. SeaRiver Mar., Inc., 272 F.3d 698, 701, 2002 AMC 625, ___ (5th Cir. 2001), cert. denied, 535 U.S. 1073 (2002). Again, in Walling v. W. D. Haden Co., the court focused on the nature of the employees’ work when determining whether the seaman exemption applied. 153 F.2d 196 (5th Cir. 1946); see also text accompanying notes 37-40.


31 Id. at 519.

32 Id. The work “consist[ed] of clearing flow lines by using a hot oil chemical to remove paraffin build-up from the wells.” Id.
compensation for hours worked over forty. 33 Before the district court, Treaters argued that its employees were clearly seamen under the Jones Act and, therefore, the court should properly consider them seaman under the FLSA and deny them overtime pay. 34 The district court agreed and dismissed the suit, reasoning that Congress had not intended FLSA seamen and Jones Act seamen to be defined differently. 35 On appeal, the Fifth Circuit reversed, holding that the district court should have inquired into each employee’s particular work to determine if it met the test under the FLSA, and then measured that part of the employee’s work that was seaman against the employee’s nonseaman work to determine if they fell within the exemption as defined in the DOL regulations. 36

The employees in issue obviously constituted Jones Act seaman “because they [were] more or less permanently attached to vessels in navigation and … the activities in which they [were] engaged contribute[d] to the function of the vessels.” 37 However, the court concluded that a finding that the employees were Jones Act seamen did not necessarily compel the conclusion that they were FLSA seamen. 38 The court found support in Walling v. W. D. Haden Co. 39 At issue there was the FLSA seaman exemption’s applicability to dredgeboat workers. 40

33 Id. Treaters based the day rate on a twelve-hour day, and paid the workers in “hourly increments based upon the day rate” for hours worked over twelve in a given day. Id.

34 Id. at 520.

35 Id.

36 Id.

37 Id.

38 Id.

39 153 F.2d 196 (5th Cir. 1946).
By examining what the workers were “employed as” and looking at the plain meaning of “seaman” under the FLSA, the W. D. Haden court reached the conclusion that the employees—who were engaged primarily in dredging shells—were more properly characterized as “industrial” workers and not seamen. Based on that holding, Treaters’ employees did not fall within the FLSA seaman exemption because they were “principally employed … to service and maintain the wells,” which duties were properly characterized as “industrial” and “nonseaman.”

An analysis of the DOL regulations, which are entitled to great weight and require an examination of “the nature of the work actually performed by the employees and of the comparative amount of seamen versus nonseamen duties, without … reference to the Jones Act,” further supported the conclusion that Treaters’ employees were nonseamen. That Congress did not revise the seaman exemption when it made statutory changes to the FLSA in 1961 reinforced the court’s reliance on the DOL’s interpretation of the Act. In response to Treaters’ argument that Congress did not intend seamen to enjoy the Jones Act’s protections without being treated as seamen for FLSA purposes, the court disagreed, explaining that the FLSA and the Jones Act are directed at achieving different ends. The Jones Act “net is … cast broadly to maximize the scope

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40 Id. at 197.
41 Id. at 198. The court used “‘one whose occupation is to assist in the management of ships at sea; a mariner,’” as the appropriate definition of a “seaman.” Id.
42 Id. at 199.
43 Dole, 876 F.2d at 521.
44 Id.
45 Id.
of the remedial coverage.” Conversely, the FLSA’s exemptions are drawn narrowly to minimize those employees who fall outside its purview. Further, the FLSA’s legislative history makes no reference to the Jones Act, where it otherwise makes reference to statutes (namely, the Social Security Act and the Longshore and Harbor Workers’ Compensation Act). Therefore, the court rejected Treaters’ arguments that Congress intended the in pari materia doctrine to apply to the FLSA and Jones Act’s use of the term “seamen.”

Finally, the structure of the FLSA’s exemptions supported the Fifth Circuit’s determination regarding the seaman exemption—Congress listed various statutes specifically when defining certain exemptions, and did not do so with respect to the seaman exemption. Had Congress intended the Jones Act definition to govern, it would have referenced the Jones Act in the FLSA. Moreover, the FLSA’s wording indicates that a meaning other than the Jones Act definition was to apply, noting, “The words ‘employees employed as seaman’ … are not mere tautology. They warn us to look at what the employees do and not rest on a matter of a name, or the place of their work.” Accordingly, it was improper for the district court to decide the employees’ entitlement to overtime pay on the basis of their status as Jones Act seamen. Because the workers spent at least fifty percent of their time engaged in nonseamen duties, they

46 Id. at 522.
47 Id. at 523.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id.
were not "employed as" seamen for purposes of the FLSA overtime pay provisions and thus were entitled to receive back overtime pay compensation.53

Since Dole, the Fifth Circuit and its district courts have routinely deferred to the DOL regulations when interpreting the seaman exemption's scope.54 While it is clear that the DOL regulations apply and must be considered when determining who is a seaman for FLSA exemption purposes, whether a worker’s duties constitute seamen’s duties under this line of inquiry is not so clear. The Fifth circuit had occasion to address that question almost twelve years after Dole in Owens v. SeaRiver Maritime, Inc.55 There, Owens sought to recover damages from his employer, SeaRiver Maritime, Inc. (SeaRiver), under the FLSA’s maximum

53 Id. at 524.

54 See, e.g., Martin v. Bedell, 955 F.2d 1029, 1036 (5th Cir. 1992) (remanding for a determination whether catering company cooks working for a company that provided offshore support to oil companies in the Gulf of Mexico spent more than 20% of their time preparing food for non-crew members, and instructing that, if so, in accordance with the DOL regulations, they are not seamen under the FLSA); Bryant v. Am. Commer. Lines, LLC, 2013 U.S. Dist. LEXIS 52605, 3 (S.D. Tex. Apr. 12, 2013) (“Those regulations instruct a District Court to examine the character of the work being performed, not where it is performed, and to determine whether the non-seaman's work being performed by the Plaintiff is substantial, that is, whether it occupies more than 20 percent of the time worked by Plaintiff during the work week.”); Dole v. Bedell, 1990 U.S. Dist. LEXIS 10332, 8 (E.D. La. Aug. 9, 1990) (citing DOL regulations); Buckley v. Nabors Drilling United States, 190 F. Supp. 2d 958, 963 (S.D. Tex. 2002) (same).

55 272 F.3d 698 (5th Cir. 2001).
hour and overtime pay provisions. Over the course of his employment with SeaRiver—a company that engaged in the transportation of petroleum and chemical products—Owens worked in various positions, including apprentice tankerman, vessel-based tankerman, and senior vessel-based tankerman. Owens did not dispute that his duties under the latter two positions were seaman’s duties. The only issue was whether Owens’ duties as a member of the shore-based “SeaRiver’s Baton Rouge Strike Team,” to which he had then most recently been assigned, constituted seaman duties.

Owens’ duties as a member of the shore-based Strike Team encompassed “work usually done by SeaRiver towboat crews, including loading and discharge of product.” As a shore-based unit, the Strike Team was stationed at SeaRiver’s landing barge, a permanently moored oil

56 Id. at 700.

57 Id.

58 Id. at 700-01. Those duties included: (1) manning barges and towboats during inland cargo transportation; (2) inspecting barges to prepare for towing, loading, and discharging; (3) monitoring and adjusting the trim and draft of barges during loading and discharge; (4) checking and handling lines; (5) rearranging or breaking up the tow in response to weather conditions or to allow passage through locks; (6) painting and conducting repair work; (7) maintaining equipment, including engines and pumps used for loading and discharging; and (8) placing and removing navigation and mooring lights. Id. At times, Owens was also made the "person in charge" of barges during cargo loading or discharge, assigning him responsibility for barges safety and integrity. Id. at 700.

59 Id. at 700.

60 Id.
barge, which contained housing quarters, offices, a workshop, and training space.\(^{61}\) Despite that the skills Owens used as a Strike Team member were similar to those he used as a vessel-based tankerman (that is, skills related to the loading and unloading of cargo), Owens worked solely on “unattended or ‘tramp’ barges that were neither towed by SeaRiver boats nor attended by SeaRiver crews” and he “attended the barges only for the purposes of loading and discharging” cargo.\(^{62}\) Owens sued SeaRiver in a putative class action, seeking to recover, \textit{inter alia}, overtime pay under the FLSA on behalf of himself and other tankermen.\(^{63}\) SeaRiver argued in response that Owens was a seaman and was thus exempt from the Act’s overtime pay provisions.\(^{64}\) The parties cross-moved for summary judgment, and the district court granted SeaRiver’s motion, holding that Owens was a seaman.\(^{65}\) Owens appealed.\(^{66}\)

Following its precedent in \textit{W. D. Haden} and \textit{Dole}, among other cases, the Fifth Circuit reversed.\(^{67}\) The court first isolated the dispositive legal issue; despite that Owens had several duties as a Strike Team member, he spent most of his time loading and unloading cargo from barges.\(^{68}\) Specifically, the Strike Team was employed to load and unload “unmanned and

\(^{61}\) Id.

\(^{62}\) Id.

\(^{63}\) Id. at 701.

\(^{64}\) Id.

\(^{65}\) Id.

\(^{66}\) Id.

\(^{67}\) Id. at 704.

\(^{68}\) Id. at 703.
undermanned tows and barges in Baton Rouge.” 69 Neither Owens nor SeaRiver’s fleet manager could accurately estimate the amount of time Owens or other Strike Team members spent loading and unloading, but it was clear that “[l]oading and discharging the barges was the primary purpose of … the Strike Team.” 70 Accordingly, the court explained and SeaRiver conceded, if the Strike Team’s loading and unloading duties constituted nonseaman work, then nonseaman work consumed a substantial amount of the Strike Team’s overall work, and members of the Team, including Owens, necessarily could not qualify as seaman for FLSA purposes. 71

The court then concluded that the district court erroneously held that Owens and the Strike Team’s loading and unloading duties constituted seaman’s work for FLSA purposes. 72 An employee’s work constitutes seaman’s work only “if it is ‘rendered primarily as an aid in the operation of [a] vessel as a means of transportation.’” 73 In a statement that the Coffin panel would later revisit, the court then proclaimed, “Workers who are primarily concerned with loading and unloading cargo are not, generally speaking, Seamen within the meaning of the FLSA.” 74 SeaRiver vehemently argued that the Strike Team’s loading and unloading duties

69 Id.
70 Id.
71 Id.
72 Id. at 704.
73 Id. (citing 29 C.F.R. § 783.31) (alteration in original).
74 Id. (citing 29 C.F.R. § 783.36).
aided in the operation of the vessel as a means of transportation because they made the barge safe for transportation.\textsuperscript{75}

The court did not buy it. The problem with SeaRiver’s argument was its broad sweep—it would capture within the definition of “seaman’s work” for purposes of the Act “quite a few activities, most of which would not fit comfortably within a commonsense definition of ‘seaman's work.’”\textsuperscript{76} Additionally, such a definition would ignore the primary purpose of loading and unloading, which is to move cargo on and off a barge.\textsuperscript{77} At base, the court reasoned, the loading and unloading duties Owens and the Strike Team carried out were just that—loading and unloading duties.\textsuperscript{78} They did not, as a primary purpose, aid in the operation of the vessel as a means of transportation.\textsuperscript{79} Therefore, Owens and the other members of the Strike Team were not FLSA seaman while working on the Strike Team, and they were thus entitled to back overtime pay.\textsuperscript{80}

Following the broad pronouncement in Owens, that “Workers who are primarily concerned with loading and unloading cargo are not, generally speaking, Seamen within the meaning of the FLSA,”\textsuperscript{81} the issue certainly seemed settled; shore-based tankermen were not

\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id. (citing 29 C.F.R. § 783.36).
seamen for FLSA purposes. However, in early 2011, Coffin, a vessel-based tankerman employed by Blessey Marine Services, Inc. (Blessey), filed a collective action lawsuit in the Southern District of Texas on behalf of himself and similarly situated vessel-based tankermen, seeking to recover compensation for unpaid overtime wages under the FLSA. Blessey had classified the vessel-based tankermen as seamen and refused to pay them any overtime pay. Coffin did not dispute that much of the work the vessel-based tankermen performed was seaman work. Instead, the dispute centered on Coffin’s claim that the vessel-based tankermen’s loading and unloading duties were nonseaman duties for FLSA purposes—an issue Coffin asserted had been settled by the Owens court. On that basis, Coffin argued that a substantial amount of the vessel-based tankermen’s duties were nonseaman and, therefore, they fell outside the FLSA seamen exemption, entitling the plaintiffs to overtime pay. Blessey moved for a summary judgment, contending that the Fifth Circuit’s decision in Owens did not apply to vessel-based tankermen.

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84 See Id. at *18.
85 Id. at *3. Much of that work was the same work performed by the shore-based tankermen in Owens. See text accompanying note 57.
86 Id.
87 Id. at *3-4.
The Southern District framed the questions presented accordingly: “first, whether [Coffin’s] work was ‘rendered primarily as an aid in the operation of [the] vessel as a means of transportation; and second, whether [Coffin] performed a substantial amount of work of a different character and therefore fell outside the definition of a seaman.”

Like the court in Owens, Judge Atlas distilled the issues down to the dispositive question whether Coffin’s “[l]oading and [u]nloading [d]uties were seaman’s work as a matter of law.” If so, all of Coffin’s work would fall within the exemption, and Coffin and his colleagues could not recover overtime compensation under the FLSA. Like SeaRiver in Owens, Blessey vigorously contended that loading and unloading carried out by vessel-based tankermen must constitute seamen’s work because those duties “aid in the operation of the vessel as a means of transportation,” by directly affecting vessel seaworthiness.

Judge Atlas, however, read the Fifth Circuit’s decision in Owens as having “squarely rejected” Blessey’s argument. Specifically, the court honed in on the policy rationale the Fifth Circuit expressed in Owens that “A rule that includes within the definition of "seaman's work" for FLSA purposes all work that prepares a vessel for navigation would include quite a few activities, most of which would not fit comfortably within a commonsense definition of "seaman's work." On that basis, Judge Atlas reasoned that the argument the Fifth Circuit

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88 Id. at *10 (second alteration in original).
89 Id.
90 Id. at *11.
91 Id.
92 Id. at *12.
93 Id. at *13-14.
rejected in Owens was “not materially distinguishable” from Blessey’s argument.\textsuperscript{94} Rather, Owens required the court to hold that Coffin’s loading and unloading duties did not “aid in the operation of the vessel as a means of transportation,” and were not seaman’s work under the FLSA.\textsuperscript{95}

To bolster her conclusion, Judge Atlas cited the DOL regulations, which provide, in relevant part:

\begin{quote}
[A]n employee employed as a seaman does not lose his status as such simply because, as an incident to such employment, he performs some work not connected with operation of the vessel as a means of transportation, such as assisting in the loading or unloading of freight at the beginning or end of a voyage, if the amount of such work is not substantial.\textsuperscript{96}
\end{quote}

Therefore, the court held that Coffin’s loading and unloading duties were not seamen’s work, and the court thus denied Blessey’s motion for a summary judgment.\textsuperscript{97} The court declined to reach the second question presented—whether Coffin’s loading and unloading duties comprised more than 20% of his work, thereby constituting a substantial amount of work sufficient to preclude Coffin’s status as a seaman under the FLSA—because Blessey had not moved for a summary judgment on that issue. Blessey immediately took an interlocutory appeal, challenging the district court’s denial of its motion.\textsuperscript{98}

\begin{footnotes}
\footnote{\textsuperscript{94} Id. at *14.}
\footnote{\textsuperscript{95} Id. at *14-15.}
\footnote{\textsuperscript{96} Id. at *16-17 (citing 29 C.F.R. § 783.32) (alteration in original).}
\footnote{\textsuperscript{97} Id. at *17 (citing 29 C.F.R. § 783.32) (alteration in original).}
\footnote{\textsuperscript{98} Coffin v. Blessey Marine Servs., 771 F.3d 276, 277 (5th Cir. 2014).}
\end{footnotes}
III. A Nail in the Coffin for Back Overtime Pay

In an opinion drafted by Judge Jolly, the Fifth Circuit reversed. Critically, the court first noted that during discovery Blessey had produced largely uncontroverted evidence that Coffin’s loading and unloading duties were “done as part of the vessel crew and aided in the seaworthiness of the vessel.” Rather than responding to that evidence, Coffin’s arguments focused primarily on loading and unloading and, as discussed above, the question whether Owens foreclosed a “factual inquiry into the nature and character of loading and unloading duties.” The district court found that it had, but the Fifth Circuit disagreed.

Blessey’s uncontroverted evidence established that it had employed a “unit tow, which consist[ed] of a towboat and two tank barges” to ship liquid cargo on inland waterways. Propulsion and navigation came from the towboat. The towboat pushed the connected barges, which had several tanks suitable for storing chemical and other liquid cargoes. Blessey’s unit tows were manned by a crew that, similar to the employees in Dole, worked for twenty days, followed by ten days off. Among the members of Blessey’s unit tow crew were tankermen. Judge Jolly described the tankermen as follows:

99 Id. 278.
100 Id. 277. In fact, the court stated that Blessey’s evidence was “largely ignored.” Id.
101 Id.
102 Id. at 278.
103 Id.
104 Id.
105 Id.
106 Id.
Blessey's tankermen are vessel-based and share the nineteen duties that deckhands perform along with various additional tasks related both to the maintenance of the barges and the loading and unloading process. Blessey requires its tankermen to perform the loading and unloading process for the unit tow. Thus, the tankermen both load and unload the barges and perform other tasks related to the loading and unloading process.

While the parties agreed that most of the tasks Blessey’s tankermen performed were seaman work, Coffin argued that the portion of the tankermen’s work that involved loading and unloading the barges and other related work constituted nonseaman work. Blessey’s tankermen routinely worked in excess of eighty hours per week and were paid a day rate, earning no overtime compensation.

107 Id.

108 Id. (emphasis added). The nineteen seaman duties to which the court referred, and about which the parties agreed were:

(1) cleaning, (2) handling lines, (3) standing watch, (4) making locks, (5) putting out lights, (6) handling running lights, (7) cooking, (8) changing engine filters, (9) radio communications, (10) repairing lines, (11) troubleshooting barge engines, (12) troubleshooting boat engines, (13) painting, (14) changing oil in engines, (15) purchasing supplies, (16) chipping, (17) changing oil in generators, (18) tying off to docks, and (19) building tow. Similarly, the parties agree that three tankerman duties are also seaman work: (1) pumping out bilge water, (2) fueling the vessels, and (3) adding lube oil.

109 Id. at 278-79.

110 Id. at 279.
Turning to the seaman exemption, Judge Jolly first set out the relevant FLSA statutory language and the DOL’s interpretation of that language in the federal regulations. 111 Importantly, Judge Jolly noted that the DOL’s use of the term “ordinarily” in 29 C.F.R. § 783.31 mandates that courts take a flexible approach to defining the term, “seaman.” 112 The construction of the term must be colored “by the context in which it is used and the purpose of the statute in which it is found.” 113 This approach requires that the court focus not just on the nature of the employee’s work, but on what he “actually does.” 114 Based on the foregoing, the court found error in the district court’s holding that “Owens establishes that loading and unloading a vessel is always nonseaman work,” for three reasons. 115

First, Coffin factually differed from Owens in that Owens did not involve a claim for overtime pay that arose from the plaintiff’s vessel-based work; Owens had sought recovery for unpaid wages in connection with his work on SeaRiver’s land-based Strike Team. 116 Owens specifically did not pursue FLSA compensation related to his vessel-based work. 117 Further, unlike the Coffin plaintiffs—who were members of the unit tow crew and were tied to particular

111 Id. at 279-80. Specifically, Judge Jolly cited the criteria that control the seaman exemption, which have been set forth in full in Parts II and III, supra.

112 Id. at 280.

113 Id. (citing 29 C.F.R. 783.29(c)).

114 Id. (citing Walling v. W. D. Haden Co., 153 F.2d 196, 199 (5th Cir. 1946)).

115 Id. at 280-81.

116 Id. at 280.

117 Id.
vessels—Owens was not a crew member, nor was he tied to any particular vessel.\textsuperscript{118} Moreover, Owens performed his work from an unmanned barge that was neither towed by a SeaRiver vessel nor attended by a SeaRiver crew.\textsuperscript{119} Coffin and his colleagues were, by contrast, performing work on Blessey barges crewed by Blessey employees.\textsuperscript{120} The court rejected Coffin’s contention that these distinctions were without a difference and that the DOL regulations suggest that loading and unloading duties constitute nonseaman work, explaining:

We acknowledged such language in \textit{Owens}, but we noted with some caution that ‘[w]orkers who are primarily concerned with loading and unloading cargo are not, generally speaking, seamen within the meaning of the FLSA.’ Our inclusion of the words "generally speaking" is significant because we explicitly acknowledged through this language that we always consider the factual context when deciding whether an employee is exempt. While the DOL regulations suggest that in many cases loading and unloading duties are nonseaman work, we recognized that such a rule cannot be categorical in the light of the DOL's crucial qualification that the application of the seaman exemption 'depends upon the character of the work [an employee] actually performs and not on what it is called or the place where it is performed.'\textsuperscript{121}

In practical terms, such a factually driven approach makes sense in the case of vessel-based crews. As the court noted within a footnote in \textit{Owens}, a rigid application of the 20% rule would yield absurd results where, for example, “an employee works primarily at sea but is a nonseaman for a brief period when he loads or unloads at port.”\textsuperscript{122}

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} \textit{Id.}

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.} at 280-81 (quoting \textit{Owens v. SeaRiver Mar., Inc.}, 272 F.3d 698, 704 (5th Cir. 2001), and citing 29 C.F.R. § 783.33) (citations omitted) (alterations in original).

\textsuperscript{122} \textit{Id.} at 281 (citing \textit{Owens}, 272 F.3d at 702 n.5).
Finally, the court rejected the notion that Blessey could not rely on evidence that established a connection between seaworthiness as an “aid in the operation of [a] vessel as a means of transportation” and loading and unloading duties.\(^\text{123}\) The Fifth Circuit rejected that evidence in Owens as dispositive of the seaman exemption issue out of concern that such an expansive interpretation would enlarge the scope of the seaman exemption to encompass many land-based positions.\(^\text{124}\) The court did not categorically reject that evidence as irrelevant in seaman exemption cases, especially in cases where a vessel-based crew is at issue.\(^\text{125}\) The court thus concluded that Judge Atlas erred in her determination that Owens foreclosed a “factual inquiry into the nature and character of loading and unloading duties.”\(^\text{126}\)

The court then held that the loading and unloading work Coffin and his vessel-based colleagues performed was seaman work under the criteria established in 29 C.F.R. § 783.31.\(^\text{127}\) The parties did not dispute that Coffin was subject to the master’s control. With respect to the question whether Coffin’s “service [was] primarily offered to aid the ‘vessel as a means of transportation,’” the court turned to its opinion in Gale v. Union Bag & Paper Corp.\(^\text{128}\) There, the Fifth Circuit held that vessel-based barge tenders were exempt seaman under the FLSA.\(^\text{129}\) Specifically, the court in Gale found that the employees were “necessary for the operation,

\(^{123}\) Id.

\(^{124}\) Id. (quoting Owens, 272 F.3d at 704 n.6).

\(^{125}\) Id.

\(^{126}\) Id. at 277.

\(^{127}\) Id. at 281. The criteria are set forth in full at Part II, supra.

\(^{128}\) Id. at 281-82 (citing Gale v. Union Bag & Paper Corp., 116 F.2d 27, 29 (5th Cir. 1940)).

\(^{129}\) Id. at 282.
welfare and safety of the barges.”

In addition, those employees “worked, ate, and slept on board their assigned barges.” Similarly, the Coffin plaintiffs ate, slept, lived, and worked on Blessey’s vessels. Further, unlike Owens in his capacity as a member of the Strike Team, the Coffin plaintiffs were members of the crew, working at the direction of the captain.

While the court’s opinion in Gale dealt with the seaman exemption’s application to barge tenders, which DOL regulations specifically exempt in certain cases, the regulations also provide:

[T]here are employees who, while employed on vessels such as barges and lighters, are primarily or substantially engaged in performing duties such as loading and unloading or custodial service which do not constitute service performed primarily as an aid in the operation of these vessels as a means of transportation and consequently are not employed as ‘seamen.’

The Fifth Circuit rejected the plaintiffs’ offer to interpret that language narrowly. As noted above, categorical rules are inappropriate in the seaman exemption context, and the plaintiffs’ proffered interpretation of that statement was misleading—it merely “recognize[d] the presumption that loading and unloading duties are nonseaman [in many cases] because those duties are usually performed by” longshore and harbor workers. By contrast, here, the fact

130 Id. (quoting Gale, 116 F.2d at 28).
131 Id. (citing Owens v. SeaRiver Mar., Inc., 272 F.3d 698, 701 (5th Cir. 2001)).
132 Id.
133 Id.
134 Id. (quoting 29 C.F.R. § 783.36).
135 Id.
136 Id. (citing McCarthy v. Wright & Cobb Lighterage Co., 163 F.2d 92 (2d Cir. 1947); Anderson v. Manhattan Lighterage Corp., 148 F.2d 971 (2d Cir. 1945)).
that the tankermen were vessel-based affected the character of their work. As the court had previously concluded in Martin v. Bedell, “the context in which work is done can affect whether it is seaman or nonseaman work.” While loading and unloading operations might be characterized as nonseaman work, as was the case in Owens because the work was “divorced from the subsequent navigation of the barge,” the Coffin plaintiffs’ loading and unloading duties were integrated with their other duties as members of a vessel-based crew. Accordingly, the court concluded that the Coffin plaintiffs were engaged in seaman work when performing loading and unloading duties.

Finally, the court bolstered its conclusions by citing the FLSA’s policy goals. FLSA is a remedial legislation that applies to “a kind of work that was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week, making compliance with the overtime provisions difficult and generally precluding the potential job expansion intended by the FLSA's time-and-a-half overtime premium.” Because of the nature of their work, the amount of time vessel-based tankermen devote to loading and unloading duties varies with each voyage, which could render a tankerman a seaman while working on one voyage, and not when working on another. Further, vessel-based tankermen often live aboard

137 Id. at 282-83.
138 955 F.2d 1029, 1035 (5th Cir. 1992). See also text accompanying note 54.
139 Coffin, 771 F.3d at 283 (quoting Martin v. Bedell, 955 F.2d 1029, 1035 (5th Cir. 1992)).
140 Id.
141 Id. at 284.
142 Id. (quoting Christopher v. SmithKline Beecham Corp., 132 S.Ct. 2156, 2173 (2012)).
143 Id. (citing Owens v. SeaRiver Mar., Inc., 272 F.3d 698, 702 n. 5 (5th Cir. 2001)).
IV. Analysis and Practical Effects

An analysis of the FLSA seaman exemption and its interpretation by the DOL and the courts within the Fifth Circuit reveals that the Coffin panel properly resolved the questions presented. Not only did the Fifth Circuit’s opinion in Coffin correct the district court’s erroneous legal conclusions, as this Part will explain, it employed a practical, fact-driven, and industry-sensitive approach to defining the seaman exemption’s scope. By doing so, the Fifth Circuit’s decision avoided clashing with the FLSA’s underlying purposes, and prevented adverse impacts the Gulf Coast’s towboat and tank barge industry surely would have faced had the Fifth Circuit affirmed the district court’s ruling.

At base, the Coffin decision’s importance lies in the panel’s correcting the district court’s misapplication of Owens; Owens was clearly inapposite. While it is not surprising that the Southern District of Texas substantially relied on Owens—it is in fact the only recent case to address the FLSA seaman exemption’s applicability to tankermen—Owens is clearly factually distinguishable and should have compelled the opposite conclusion in the district court. As

\[144\] Id. (citing Harkins v. Riverboat Servs., 385 F.3d 1099, 1102 (7th Cir. 2004)).

\[145\] It bears mentioning that United States District Court for the District of Rhode Island in Jordan v. Am. Oil Co., 51 F. Supp. 77 (D.R.I. 1943), which appears to be the only federal court decision to address the FLSA seaman exemption with respect to a vessel-based tankerman, determined, relying on Gale, that the employee was exempt.

\[146\] See Part III, supra.
noted above, Owens involved the exemption’s applicability to a shore-based tankerman.\textsuperscript{147} Indeed, the parties did not dispute that Owens’ prior work as a vessel-based tankerman constituted seaman’s work.\textsuperscript{148} The sole issue before the court was whether Owens’ work as a shore-based tankerman on SeaRiver’s Baton Rouge Strike Team, which work consisted primarily of loading and unloading liquid cargo from a permanently moored landing barge, was seaman’s work.\textsuperscript{149} With respect to Owens’ shore-based work, the court held that those loading and unloading activities did not constitute seaman’s work.\textsuperscript{150} Critical to the court’s determination were the facts that Owens was not a crew member, Owens was not tied to any particular vessel, and Owens performed his work from an unmanned barge that was neither towed by a SeaRiver vessel nor attended by a SeaRiver crew.\textsuperscript{151} Those facts stand in stark contrast to the facts in Coffin. Coffin and his colleagues were members of the unit tow crew and were tied to particular vessels; they performed work on Blessey barges crewed by Blessey employees.\textsuperscript{152} Moreover, as opposed to Owens’ work, which only “prepare[d the] vessel for navigation”\textsuperscript{153} in a way that was “divorced from the subsequent navigation of the barge,” the Coffin plaintiffs’ loading and unloading duties were integrated with their other duties as members of the vessel-based crew,

\textsuperscript{147} See text accompanying notes 60-61.

\textsuperscript{148} See text accompanying note 58.

\textsuperscript{149} See text accompanying note 59.

\textsuperscript{150} See text accompanying note 72.

\textsuperscript{151} See text accompanying notes 118, 119.

\textsuperscript{152} Coffin v. Blessey Marine Servs., 771 F.3d 276, 280 (5th Cir. 2014).

and thus constituted “service … rendered primarily as an aid in the operation of [the] vessel as a means of transportation,” as the DOL regulations require.\textsuperscript{154}

The Fifth Circuit therefore did not, as Coffin urged on appeal, craft an unconditional rule, holding that all tankermen are never seaman for FLSA purposes.\textsuperscript{155} In fact, the Owens\textsuperscript{156} court did just the opposite by expressly and repeatedly limiting its holding to Owens’ shore-based work “as a member of the Strike Team.” Had the Owens court ruled that all loading and unloading activities, whether shore-based or vessel-based, constituted seaman’s work as a matter of law, the opinion would have, sub silentio, overturned the court’s prior decisions in W.D. Haden, Martin, and Gale, among others, and ignored the DOL regulations, to which the Fifth Circuit has consistently deferred since issuing its decision in Dole.\textsuperscript{157} No matter how expansively interpreted, Owens cannot reasonably be construed to support such a conclusion. By refusing to read Owens in that way, the court abruptly put an end to the slew of lawsuits relying on these untenable arguments, which had been clogging dockets in the Fifth Circuit pending Coffin’s outcome.\textsuperscript{158}

\textsuperscript{154} Coffin, 771 F.3d at 283.

\textsuperscript{155} See text accompanying note 102.

\textsuperscript{156} Owens v. SeaRiver Mar., Inc., 272 F.3d 698, 703-04 (5th Cir. 2001).

\textsuperscript{157} See text accompanying note 54.

\textsuperscript{158} Those cases include: Bryant v. Am. Comm. Lines, LLC, Case No. 3:11-cv-00297, filed in S.D. Tex (June 29, 2011); Figgs v. Kirby Corp., Case No. 3:11-cv-00306, filed in S.D. Tex., (July 1, 2011); Samples v. Ent. Prod. Partners, LP, Case No. 3:11-cv-00296, filed in S.D. Tex., (June 29, 2011); Thompson v. Stone Oil, Case No. 2:12-cv-767, filed in E.D. La. (March 22, 2012); Webb v. Settoon Towing LLC, Case No. 3:2012-cv-00143, filed in S.D. Tex. (May 9,
Similarly, the FLSA’s underlying purposes would not support a contrary Fifth Circuit ruling. The FLSA’s overtime pay provisions were enacted “to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost.” These purposes do not easily apply to the type of work maritime employees perform. As The American Waterways Operators (AWO) rightly pointed out in its amicus brief:

The pervasive reality of commerce on inland and coastal waterways renders a 40-hour workweek impossible for vessel-based crews. Crews live and work together for weeks at a time in tight quarters, alternating on-duty and off-duty according to their twice-a-day ‘watches.’ The particular tasks performed in a given day or week by each crewman—including the tankerman—vary depending on weather, cargo schedules, mechanical issues, water traffic, crew illness or injury, and a myriad other unpredictable factors…. In light of the realities of maritime commerce, applying the FLSA overtime provisions to typical crewmen doing typical maritime work would ill serve FLSA’s underlying goals.

The AWO went on to opine on the absurd results that would obtain if, for example, maritime employers simply hired additional crew to “spread employment.” Where would the additional crew live? They could not be expected simply to cram “for their nonworking time—16 hours per day, 20-28 days a month—in tiny quarters on a working vessel in an inland or coastal

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2012); Brooks v. LeBeouf Bros. Towing LLC, Case No. 2:12-cv-02002, filed in E.D. La. (May 9, 2012).

159 Bay Ridge Operating Co. v. Aaron, 334 U.S. 446, 460, 68 S.Ct. 1186, 1194 (1948)

waterway.” If that were the case, the FLSA would engender, rather than remedy, the poor working conditions that prompted its enactment in the first place.

While Congress initially incorporated an exemption for seamen at the behest of the seamen’s unions, it elected to retain the exemption when it amended the FLSA in 1961. Though the legislative history of the 1961 amendments is silent as to the seaman exemption, Congress’s retention “in the 1961 amendments of the basic language of the original exemption, ‘employee employed as a seaman’” indicates Congress’s acknowledgement of its continuing necessity. By leaving the exemption in place, Congress recognized, as the United States Court of Appeals for the Seventh Circuit noted:

that at sea, with a normal life impossible, working more than 40 hours a week is an appropriate work norm, as distinct from the situation in most ordinary employments, where, because 40 hours is the norm, requiring the employer to pay time and a half for overtime encourages him to spread the work by hiring enough workers to minimize the need and resulting expense of overtime.

The nature of the maritime industry, as noted in the preceding paragraph, justified the exemption in 1938 and in 1961, and the nature of the industry has not since changed in this regard. Maritime employers, particularly those employing tankermen, simply cannot effectively operate

161 Id. at 23.
162 See text accompanying note 6.
163 See text accompanying notes 15-17.
164 See text accompanying note 24.
165 29 C.F.R. § 783.30 (2014).
166 Harkins v. Riverboat Servs., 385 F.3d 1099, 1102 (7th Cir. 2004). As noted in Part IV, supra, the United States Supreme Court recently has recognized this rationale as relevant in considering the FLSA’s application. See text accompanying note 142.
on a forty-hour workweek schedule. Over the years, courts across the country have routinely recognized that is the case.  

Turning to the practical realities of the maritime industry, requiring maritime employers to provide vessel-based tankermen with overtime pay would unduly burden these employers while simultaneously creating absurd results. First, as the AWO explained in its amicus brief, had the Fifth Circuit agreed with Coffin, maritime employers like Blessey would be forced to log the daily operations of each of their employees in order to determine whether any of the work the employees performed constituted nonseaman work. Undoubtedly at least some of it would. Employers would then have to estimate whether the time their employees spent carrying out non-exempt work constituted more than twenty percent of their respective workweeks. If so, the FLSA would not exempt those employees, and they would be entitled to overtime pay. If not,

167 See, e.g., Tate v. Showboat Marina Casino P’ship, 431 F.3d 580, 584 (7th Cir. 2005) (“The overtime provisions of the FLSA have nothing to do with the hazardousness of sea duty. The pertinent fact is rather that seamen do not work an ordinary 40-hour week . . . because it usually is impractical to use shifts and thus avoid overtime—a ship that is at sea for a week cannot change crews every few hours.”); Anderson v. Manhattan Lighterage Corp., 148 F.2d 971, 973 (2d Cir. 1945) (noting the impracticality of regulating the wages and hours of seamen in the manner contemplated by the FLSA); Jordan v. Am. Oil Co., 51 F. Supp. 77, 79 (D.R.I. 1943) (“to restrict the employment of a seaman to 40 hours per week would greatly interfere with the operation of such means of transportation.”).

the FLSA would exempt those employees from its overtime pay protections, and the employer would likely seek to pay them the prevailing day rate.\textsuperscript{169}

Such a system would create meaningless distinctions between employees; two sets of workers performing virtually the same duties (only in varying percentages of their respective workweeks) while working for the same company would be subject to different compensation structures. Of course, this system would also create the further inefficiency of forcing employers to require their employees to log their precise hours worked, if they don’t already, in order to determine the overtime pay to which the employees are entitled. By declining to affirm the district court, the Fifth Circuit prevented what surely would have become contentious litigation concerning whether a given employee spent, for example, nineteen or twenty-one percent of their time performing non-exempt nonseaman work.\textsuperscript{170} The American Maritime Association put it well in its amicus brief when its explained, “All of these facts, and the recordkeeping morass they would require, [would] threaten the financial stability of the merchant marine industry vital to the country’s defense.”\textsuperscript{171}

Finally, the various factually similar cases involving vessel-based tankermen that were pending at the time the Fifth Circuit decided \textit{Coffin} demonstrate that treatment of vessel-based

\textsuperscript{169} Id.

\textsuperscript{170} Id.

tankermen as exempt seaman is an industry-wide practice. Rather than turning this long-standing practice on its head, the Fifth Circuit’s decision in Coffin eliminates the possible absurd result of compensating vessel-based tankermen at time-and-a-half pay, without providing the same compensation to, for example, vessel captains or pilots, who clearly fall within the FLSA seaman exemption. With this decision, the court also prevented shifting entitlement to overtime coverage over the course of a worker’s career. A given crewmember, for example, might begin his career as a FLSA-exempt deckhand and, after a few years, move on to become a FLSA non-exempt tankerman (who, incidentally, like the employees in Coffin, would continue to perform FLSA-exempt deckhand duties). After a few years, that same employee might be promoted to, say, the ship’s FLSA-exempt captain. The FLSA does not envision withholding overtime pay protection to that employee when he works as a deckhand, providing it when he becomes a tankerman (while still performing roughly the same duties), and then retracting it again when he eventually becomes a captain. Such an absurd result would make nonsense of the FLSA’s underlying purposes and sow confusion within particular companies and across the industry.

V. Conclusion

Coffin clearly represents a significant legal victory for the towboat and tank barge industry. Maritime employers can now comfortably structure employee compensation schemes, knowing it is settled law that vessel-based tankermen of the type at issue in Coffin are not entitled to overtime pay under the FLSA. The Fifth Circuit’s decision in Coffin certainly

172 See supra note 154.

173 See supra note 108.

174 See text accompanying note 163.
corrected the district court’s erroneous reliance on Owen, and the opinion may have broader implications as well. Going forward, it will be interesting to observe where the Fifth Circuit’s district courts take the Coffin decision and whether and to what limits they expand it to others beyond those employed in the towboat and tank barge industry.