

## WHAT THE HECK IS A VESSEL? How Courts Have Applied *Stewart v. Dutra* By Sterling J. Stires

It would seem to a casual observer that a vessel is a vessel, and anything that is not a vessel is not a vessel. Ridiculous? Yes, but whether something that floats is a “vessel” or is not has great significance with regard to maritime work-related injuries.

The compensation regimes of the Longshore and Harbor Workers’ Compensation Act<sup>1</sup> (the LHWCA) and the Jones Act<sup>2</sup> are mutually exclusive means of compensation for injured maritime workers. The Jones Act provides for “an action for damages at law” for “any seaman who . . . in the course of his employment” sustains an injury. 46 U.S.C. App. § 688(a). To qualify as a Jones Act seaman, a worker must have an employment-related connection to a “vessel in navigation.” *Chandris, Inc. v. Latsis*, 515 U.S. 347, 357 (1995)(emphasis added). The LHWCA, on the other hand, provides for compensation for injured land-based maritime workers, and expressly excludes “a master or member of a crew of any vessel.” 33 U.S.C. §§ 902(3) (G) and 905(a)(emphasis added). In other words, the LHWCA does not provide compensation to an injured seaman. Therefore, if a watercraft is involved in an injury, a determinative issue as to which compensation regime applies is whether the watercraft is a “vessel.” So, what the heck is a “vessel?”

In February 2005, the United States Supreme Court addressed this issue in the case of *Stewart v. Dutra Construction Company*, 543 U.S. 481 (2005). Below is a brief summary of *Stewart* and how various courts throughout the country have applied the analysis set forth in the *Stewart* case.

The *Stewart* case arose out of injuries sustained by a marine engineer, Willard Stewart, who was employed by Dutra Construction. Stewart worked aboard Dutra’s very large dredge, the SUPER SCOOP. The SUPER SCOOP was being used in the construction of a highway tunnel under Boston Harbor. Stewart was feeding wires through an open hatch on one of the scows associated with the SUPER SCOOP when the SUPER SCOOP bumped into the scow. As a result of the impact, Stewart fell through the hatch to the deck below. Stewart sustained serious injuries in the fall.

Stewart sued Dutra under the Jones Act and, alternatively, under Section 905(b) of the LHWCA. Dutra contested Stewart’s seaman status by arguing that the SUPER SCOOP was not a “vessel in navigation.” The First Circuit agreed with Dutra’s contentions, and ruled that the SUPER SCOOP was not a “vessel.” The case was appealed to the United States Supreme Court.

In its ruling, rather than rely on the Jones Act or the LHWCA, the Supreme Court relied on the definition set forth in the U.S. Code:

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. 1 U.S.C. § 3.

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<sup>1</sup> 33 U.S.C. § 901 et seq.

<sup>2</sup> 46 U.S.C. App. § 688.

Though the SUPER SCOOP had very limited means of self propulsion, and was moved by tug vessels from place to place, the Supreme Court ruled that the SUPER SCOOP was a vessel. Because the SUPER SCOOP was “*practically capable*” of being used as a method of transportation on the water, the Court determined that the SUPER SCOOP was a “vessel” as defined by the U.S. Code. It is now clear, for the first time, that the term “vessel” means the same thing in the Jones Act as it does in the LHWCA.

**Post-*Stewart v. Dutra*:**

In the same week that the U.S. Supreme Court decided the *Stewart* case, a federal district court in Michigan held that a floating work raft was not a vessel. *Arnold v. Luedtke Eng'g, Co.*, 357 F.Supp.2d 1019 (W.D. Mich. 2005). The work raft was a 40-foot by 6-foot floating platform that Arnold used to stand on while he installed metal plates to the water-side of a seawall. Relying on *Stewart*, the court found that the work raft was not a vessel because it was not “practically capable” of being used as a method of transportation. This was despite the fact that the work raft was often moved along the seawall, presumably with Arnold and his equipment aboard.

In *Cain v. Transocean Offshore Deep Water Drilling, Inc.*<sup>3</sup>, a federal court in Louisiana found that an oil rig that was still under construction was a “vessel” when it was undergoing sea trials. The fact that the oil rig was moving while workers were aboard seems to have been proof enough that it was “practically capable” of transportation.

In the case *Bunch v. Canton Marine Towing Co., Inc.*, 419 F.3d 868 (8<sup>th</sup> Cir. 2005), the Eighth Circuit held that a stationary cleaning barge was a “vessel,” despite the spud moorings that anchored the barge directly into the bed of the Missouri River. Apparently, the barge had only been moved once.

Most recently, in the case of *Booten v. Argosy Gaming Co.*, 848 N.E.2d 141 (Ill. App. Ct. 5<sup>th</sup> Dist. 2006), an Illinois appellate court ruled that the M/V ALTON BELLE II, a moored river boat casino, was a vessel. The M/V ALTON BELLE II was released from its moorings only about five times per year when it was spun around to remove accumulated drift materials. The court found that there was more than a “theoretical possibility” of the boat being a method of transportation and, therefore, a “vessel” under the *Stewart v. Dutra* analysis.

It remains to be seen whether the *Stewart* decision will bring uniformity to decisions regarding vessel status. As in the past, cases involving river boat casinos will likely drift towards more confusion. It is fairly clear that if a floating craft is capable of moving with persons or cargo aboard, courts will grant the craft vessel status. Other than the *Arnold* case, it seems that courts have increasingly applied this reasoning. How will this impact maritime claims in the future? One thing is fairly certain: more maritime workers are likely to be considered Jones Act seamen.

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<sup>3</sup> 2005 WL 1959147 (W.D. La., 2005) (only Westlaw cite available).