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ADMIRALTY--CHOICE OF LAW--SHIPOWNER WITH SUBSTANTIAL BUSINESS CONTACTS IN THE UNITED STATES IS AN EMPLOYER WITHIN MEANING OF JONES ACT

Plaintiff, a Greek seaman, sought relief in federal court under the Jones Act[1] for injuries suffered aboard ship while docked in a United States seaport. Defendants, corporations,[2] controlled by a permanent resident alien of the United States,[3] contended the Court was without jurisdiction since they were not employers within the meaning of the Jones Act and because the contract of employment with plaintiff provided for the application of Greek law. The District Court found for the plaintiff.[4] The Fifth Circuit affirmed.[5] On certiorari to the United States

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1. The Merchant Marine Act of 1920 § 33, 46 U.S.C. § 688 (1964), provides: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendent employer resides or in which his principal office is located."

2. Universal Cargo Carriers Inc., is the Panamanian corporation owning the ship; Hellenic Lines is the Greek corporation managing the ship. Both in turn are owned by Pericules who holds in excess of 95% of the outstanding stock of each corporation.

3. Pericules has resided in this country since 1945 and achieved permanent resident status in 1953.

4. Hellenic Lines Ltd. v. Roditis, 273 F. Supp. 248 (S.D. Ala. 1967) (plaintiff awarded $1,000 for lost wages; $5,000 for pain and suffering).

5. Hellenic Lines Ltd. v. Roditis, 412 F.2d 919 (5th Cir. 1969).

Supreme Court, held, affirmed. A shipowner with substantial business contacts in the United States who receives the benefits of American citizenship is an "employer" within the meaning of the Jones Act. Hellenic Lines Ltd. v. Roditis, 398 U.S. 306 (1970).

Admiralty law has traditionally allowed recovery by a seaman from his employer for care and maintenance expenses[6] under an implied warranty of a seaworthy vessel.[7] The Jones Act of 1920 provided a new remedy for seamen: recovery for negligence of the shipowner or fellow servants.[8] Although there was no discussion of this particular provision in the Congressional debates, the Legislature apparently intended to protect foreign as well as domestic seamen.[9] However,

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6. "'Maintenance and cure' gives to the seaman, ill or injured in the service of the ship without willful misbehavior on his part, wages to the end of the voyage and subsistence, lodging, and care to the point where the maximum cure attainable has been reached." 2 M. NORRIS, THE LAW OF SEAMEN § 539 (1970).

7. The "Osceola," 189 U.S. 158, 175 (1903); see 2 M. NORRIS, supra note 6, ch. 27.

8. 46 U.S.C. § 688 (1964) was enacted by Congress on June 5, 1920 as an amendment offered by Senator Jones of Washington to the Seaman's Act of 1915. 38 Stat. 1164, as amended, 46 U.S.C. § 569 (1964). At the same time Congress passed other amendments affecting the merchant marine. These were grouped under the heading "To provide for the promotion and maintenance of the American merchant marine . . . ." H.R. 10378, 66th Cong., 2d Sess. (1920).

9. On May 11, 1920, three days before the Senate adopted the Jones Act, Senator King of Utah, with reference to another section of the Seaman's Act, stated:

"It is important that we should have a broad and comprehensive act dealing with this very important subject, one so vital to American interests and to commercial prosperity and development of our country; but no matter how important a measure may be, we cannot afford to incorporate within its provisions that which may do an injustice, even to aliens, or those who may be carrying commerce under an alien flag.

in applying the statute, courts have been reluctant to follow the literal words of the Act where its application would conflict with traditional rules of international law. Thus, where defendants had registered their vessel in a foreign country, jurisdiction under the Jones Act was denied because of the ancient maritime principle that the law of the flag

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I think I would be as punctilious in preserving the rights of a foreigner where there are dealings between nations, as there must be, as I would be in preserving the rights of Americans. That is to say, I would afford a full and fair opportunity for a foreigner to have his rights determined, and I would not act in a summary way in dealing with foreigners any more than I would act in a summary way in dealing with the sights of American citizens."

On May 13, 1920, Senator Jones said, "This does not pretend, either, to affect those vessels in the ports of a foreign country. The matter would be governed there by the laws of the country." 59 CONG. REC. 6994 (1920).

On the day of the Jones Act's adoption, Senator Jones in discussion of an amendment to the law regulating payment of half wages in American ports asserted the purpose was "to bring the foreign seamen up to a level with our own seamen by giving them the remedy here in our own ports that our seamen have." 59 CONG. REC. 7036-37 (192). Following this, he and Senator King discussed the issue of jurisdiction:

"Mr. King. 'Does the Senator say that the Supreme Court has held that we have jurisdiction over the foreign seamen and foreign ships?'

Mr. Jones. 'Under the present statute we have such jurisdiction in our ports.

The Supreme Court held that act to be constitutional only a short time ago.'

Mr. King. 'A vessel then, that sails under the Norwegian flag, for instance, with Norwegian sailors, if it touched at an American port for a day would become subject to the jurisdiction of our courts and the provisions of this proposed law, and the sailors could invoke the law for their protection?'

Mr. Jones. 'Yes, while in an American port. It was one of the main contentions, the Senator from Utah will remember, in favor of the [S]eaman's [A]ct, that it would instead of placing a great burden on our seamen and shippers, bring the

of the vessel was controlling.[10] Nevertheless, other courts have found liability despite the law of the flag where the plaintiff was an American seaman on a ship substantially owned by Americans;[11] where a foreign seaman was aboard an American owned vessel in United States waters;[12] where a resident alien seaman was injured in American waters;[13] and where a foreign seaman had signed shipping orders in the United States.[14] Prior to 1953, the cases were decided on an ad hoc basis, and no standard was developed for proper application of the Jones Act. In Lauritzen v. Larsen,[15] a 1953 decision, the Supreme Court formulated the basic test to determine the extent of jurisdiction under the Jones Act. The Court suggested seven factors to be balanced in making this determination: place of the wrongful act; law of the flag; allegiance or domicile of the injured seaman; allegiance of the defendant shipowner; place of contract; inaccessibility of foreign forum; and law of the

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wages of the seamen of other countries up to a level with our own. This provision is intended to aid in carrying out that great purpose.'" 59 CONG. REC. 6494 (1920). See generally Harolds, Some Legal Problems Arising Out of Foreign Flag Operations, 28 FORDHAM L. REV. 295 (1959).

10. La Bourgogne, 210 U.S. 95 (1908); In re Ross 140 U.S. 453 (1891); Wildenhus's Case, 120 U.S. 1 (1887); The "Belgenland," 114 U.S. 355 (1885); The "Scotland," 105 U.S. 24 (1881).

11. Carroll v. United States, 113 F.2d 690 (2d Cir. 1943) (foreign seaman aboard American ship on the high seas); Gerradin v. United Fruit Co., 60 F.2d 927 (2d Cir. 1932) (American seaman aboard vessel of Honduran registry but American owned, while on high seas).

12. Torgersen v. Hutton, 267 N.Y. 535, 196 N.E. 566 (1935), cert. denied, 296 U.S. 602 (1935) (foreign seaman aboard schooner half-owned by American interests, in American waters).

13. Gambera v. Bergoty, 132 F.2d 414 (2d Cir. 1942, cert. denied, 319 U.S. 742 (resident alien injured aboard foreign vessel in American waters granted relief).

14. Kyriakos v. Goulandris, 151 F.2d 132 (2d Cir. 1945) (2-1 decision; L. Hand, C.J., dissenting); Taylor v. Atlantic Maritime Co., 179 F.2d 597 (2d Cir. 1950), cert. denied, 341 U.S. 915 (1951).

15. 345 U.S. 571 (1953).

forum. These factors were to be considered in light of the basic American policy in admiralty law, which is the promotion of stability and order in the international maritime community.[16] However, the balanced interest test, enunciated in Lauritzen, has proved difficult to apply. As a result, the Supreme Court, since Lauritzen, has found that a Spanish seaman injured aboard a Spanish ship in New York Harbor had insufficient contacts with the United States to establish jurisdiction under the Jones Act.[17] Some courts have found that substantial contacts of either party with the United States were sufficient to overcome the law of the flag.[18] In Bartholomew v. Universe Tankships, Inc.,[19] the Second Circuit found the Jones Act applicable to a Liberian flag ship in which American citizens held controlling interest in the registered owner and the injury occurred in American waters. However, in Tsakonites v. Transpacific Carriers Corp.,[20] the Second Circuit held that a Greek seaman injured aboard a Greek ship in Brooklyn Harbor could not recover under the Jones Act, although the principal shareholder of the shipowner was a permanent resident alien of the United States.

In the instant case, the Court found the answer to the question of whether to apply the Jones Act to be grounded in the relationship of the defendant employer to the United States. The Court further found the seven factors articulated in Lauritzen[21] were not an exhaustive list for determining who was an employer. In addition to the established tests, the Court added the shipowner's "base of operations" as an

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16. 345 U.S. at 582.

17. Romero v. International Terminal Operating Co., 358 U.S. 354 (1959).

18. Bartholomew v. Universe Tankships, Inc., 263 F.2d 437 (2d Cir. 1959), cert. denied, 359 U.S. 1000 (1954); Voyiatzis v. National Shipping & Trading Corp., 199 F. Supp. 920 (S.D.N.Y. 1961); Bobolakis v. Compenia Panamena Maritima, 168 F. Supp. 236 (S.D.N.Y. 1958). See also Southern Cross S.S. Co. v. Tiripis, 285 F.2d 651 (4th Cir. 1960), cert. denied, 365 U.S. 869 (1961); Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320 (S.D.N.Y. 1962).

19. 263 F.2d 437 (1959).

20. 368 F.2d 426 (2d Cir. 1966), cert. denied, 386 U.S. 1007 (1967).

21. 345 U.S. 571, 583-92 (1953).

additional factor.[22] The Court reasoned that since the shipowner benefited from the business and citizenship laws of the United States,[23] he also should bear the burden of Jones Act liability. Although the majority found a numerical listing of contacts favored the defendant, the Court concluded that the list of contacts was minor "compared with the real nature of the operation and a cold objective look at the actual operational contacts . . . ."[24] Mr. Justice Harlan, dissenting, indicated that application of the Jones Act was limited by international comity. He rejected a substantial contacts test founded solely on the defendant shipowner's connection with the United States, recognizing that both the plaintiff's and defendant's contacts should be evaluated. In addition, since Justice Harlan could find no legislative policy which required overturning recognized maritime law, he argued that the law of the flag should control.

In the instant case, the Court granted jurisdiction under the Jones Act solely on the basis of the defendant's contacts with the United States.[25] In doing so, the Court failed to consider adequately the relationship of the Jones Act to a recognized national policy of promoting amicable and workable commercial relations with foreign countries.[26] The implication

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22. 398 U.S. 306, 309 (1970) (the Court intimated that the list of factors was not exhaustive).

23. The same constitutional protection of due process accorded citizens is extended to a permanent resident alien. Kwong Hai Chew v. Colding, 344 U.S. 590, 596 (1953). See Bridges v. Wixon, 326 U.S. 135, 161 (1945) (Murphy, J., concurring) (resident alien protected in deportation review which violated Bill of Rights).

24. 398 U.S. 306, 310 (1970).

25. Judge Waterman also took this position in his dissent to the Second Circuit's opinion in Tsakonites v. Transpacific Carriers Corp., 368 F.2d 426, 429 (2d Cir. 1966). In Bartholomew v. Universe Tankships, Inc., 263 F.2d 437, 441 (2d Cir. 1969), the court stated, "[t]he decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are substantial."

26. Romero v. International Terminal Operating Co., 358 U.S. 354, 382 (1959).

of this decision is that once sufficient contacts of the defendant are found, the Jones Act will apply, irrespective of either international rules of law or the contacts of the plaintiff with the United States. As the dissent points out, this is a misapplication of the Lauritzen tests which weighed both the defendant's and the plaintiff's contacts with the United States in light of a national policy of promoting recognized rules of international law. By ignoring not only plaintiff's substantial contacts with Greece but also the Greek flag of the ship on which plaintiff was injured, the Court has placed in a secondary position the policy of promoting workable international commercial relations. Rather, it has put primary emphasis on a policy which favors application of the Jones Act. It is submitted that this change in emphasis will not "foster amicable and workable commercial relations,"[27] but will damage the United States' standing in the international commercial community by expanding the number of cases in which the courts will disregard the law of the flag and apply the Jones Act. The better course would be to return to the balanced approach of the Lauritzen case which would permit the courts to retain rules of international law when the national interest so requires.

27. Lauritzen v. Larsen, 345 U.S. 571, 582 (1953).