



**The Fifth Circuit Limits the *Dutra's* Expansive  
Definition of "Vessel" For Jones Act Seamen Set Forth In the  
Supreme Court's *Dutra* Decision**

In *Rocky H. Cain v. Transocean Offshore USA, Inc., et. al.*, 518 F.3d 295, (5<sup>th</sup> Cir. 2008), Rocky Cain worked as a toolpusher for Transocean. In 2000, Transocean assigned Cain to its "Cajun Construction Site" in Singapore, where Transocean was building a fifth-generation semi-submersible rig called the *Cajun Express*. After working for six months at the site in Singapore, Cain continued to work on the rig while tugboats towed it from Singapore to the Gulf of Mexico. Two hundred others also worked on the rig while it was in transit. Upon its arrival in the Gulf of Mexico, the rig was moored in a "floating shipyard," where the workers would complete the rig's construction.

In September 2000, while working onboard the *Cajun Express* in the floating shipyard, Cain hit his head on light fixture and injured his neck and back. Cain subsequently sued Transocean under the Jones Act, and he claimed that the *Cajun Express* was a vessel under *Stewart v. Dutra*, which he argued broadened the definition of vessel to include "any watercraft practically capable of maritime transportation." Transocean disputed Cain's argument, and it moved for summary judgment, arguing the *Cajun Express* was still under construction when Cain was injured and thus, it was not a vessel under the Jones Act. Transocean offered expert testimony that, although when Cain was injured the *Cajun Express* could perform its intended function under limited conditions, "no drilling contractor would have found the *Cajun Express* fit for the purpose of drilling a deepwater well in the Gulf of Mexico."

The U.S. District Court for the Western District of Louisiana held that the expansive *Dutra* definition of "vessel" applied to the *Cajun Express*, and therefore Cain could maintain his claim as a Jones Act seaman. Transocean appealed, and the Fifth Circuit reversed the district court.

The Fifth Circuit distinguished the dredge in *Dutra* from the *Cajun Express* on several grounds. Historically, in the Fifth Circuit the Jones Act did not apply to vessels under construction because such structures are not yet instrumentalities of commerce, nor are they being used for their intended purpose. The court then applied this reasoning to the *Cajun Express* and concluded that the rig was not finally complete or placed into service until April or May 2001. Only then would it gain its



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identity as a “vessel.” Therefore, under the traditional Fifth Circuit test, the rig was not a Jones Act vessel at the time of Cain’s injury. The court cited cases from the Fourth and Eleventh Circuits, and the Supreme Court that supported its position that incomplete structures are not vessels.

Discussing *Dutra*, the court limited the Supreme Court’s expansive definition of a vessel to structure whose construction has been completed and that have begun the commercial life as a vessel. The court explained that *Dutra* answered only the narrow question of whether a dredge, a wholly completed structure, was a vessel. The court stated that *Dutra* did not address the question of whether incomplete structures are vessels. Instead, the court believed *Dutra*’s vessel analysis turned on whether the structure was “in-navigation” at the time of the injury. The court stressed that a structure cannot “obtain vessel status before it is ever put into ‘navigation.’” The court considered that *Dutra* did not change precedent regarding incomplete structures, and a vessel under construction is still not a Jones Act vessel until it is complete and fit for sea duty.

The court also noted policy reasons its decision. First, applying *Dutra* to incomplete structures will mean land-based construction workers whose work takes them aboard a ship under construction can potentially sue under the Jones Act. Next, maritime commerce, and especially marine insurers, benefit from the predictability that comes with the certainty that incomplete structures are not Jones Act vessels. If the definition of “vessel” covered incomplete structures, workers could walk in and out of various coverages on a daily basis. The court found the current “bright line” rule for vessels under construction benefits all concerned.

Finally, to bolster its argument, the court noted that, at the time of Cain’s injury, the *Cajun Express* had not passed the inspection that the Coast Guard requires before a vessel can be documented to transport persons and cargo. The court did not hold that Coast Guard certification was a dispositive factor, but only that courts should examine documentation when deciding whether a the structure is yet capable of transportation.

Justice Owen dissented from the court’s holding. She gave weight to the majority opinion, but felt *Dutra* required the court to characterize the *Cajun Express* as a vessel. She believed that, given the rig’s advanced stage of construction and that it did in fact transport two hundred people from



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Singapore to the Gulf of Mexico, *Dutra's* breadth probably required the court to deem the *Cajun Express* a vessel.

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If you have any questions about this topic, please contact

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