



**Forum Selection Agreements Upheld by U.S. District Court  
In Cases Involving Domestic Jones Act Seamen**

On 15 August 2007, Judge Rosenthal, United States District Judge for the Southern District of Texas, Houston Division, issued a ruling upholding the terms of the Employee Acceptance of Forum Selection document used by Great Lakes Dredge & Dock Company, L.L.C. ("GLDD"). The decision was issued in three separate declaratory judgment actions filed by GLDD against seamen they alleged to have violated the forum selection agreement.<sup>1</sup>

**Synopsis of the 50-page Memorandum and Opinion**

Judge Rosenthal held that forum selection clauses in domestic seamen cases are enforceable (pp. 48-49). Hopefully this ruling can be used as *res judicata* regarding the validity of forum selection agreements in every federal and state case where the plaintiff has executed a similar agreement.

*We also believe that Judge Rosenthal's opinion is the most recent, detailed, and reasoned judicial opinion that may have a significant impact all cases involving forum-selection agreements and clauses of other members of the Club pending in U.S. courts.*

**The Court's Ruling in Detail**

Specifically and most significantly, relying on *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271 (5th Cir. 2007), Judge Rosenthal held that the Fifth Circuit has removed the statutory underpinning for the holdings in *Boutte v. Cenac Towing, Inc.*, 346 F. Supp. 2d 922 (S.D. Tex. 2004) (Kent, J.) and *Nunez v. American Seafoods*, 52 P.3d 720 (Alaska 2002) that forum-selection agreements are unenforceable in Jones Act claims brought by domestic seamen.

Judge Rosenthal ruled that without the statutory basis on which the *Boutte* and *Nunez* cases relied to find forum-selection agreements involving domestic seamen unenforceable, and with no other statutory or case law basis for finding that such agreements generally offend public policy, the



established factors for analyzing such clauses apply. See *The Bremen v. Zapata Offshore Co.*, 407 U.S. 1 (1972); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), *Mitsui & Co. (USA), Inc. v. Mira M/V*, 111 F.3d 33 (5<sup>th</sup> Cir. 1997); *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216 (5<sup>th</sup> Cir. 1998); and *Calix-Chacon v. Global Int'l Marine, Inc.*, 2007 WL 2056505 (5<sup>th</sup> Cir. July 19, 2007) (revised August 22, 2007). That analysis shows no basis for invalidating the agreements as against public policy. Based on the applicable authority and this record, the Court did not find “a principled basis on which to conclude that the forum-selection agreements in these cases are unenforceable as a matter of law.” See Memorandum and Opinion at p. 49.

Judge Rosenthal denied the two of the claimants' identical motions to dismiss Great Lakes's declaratory judgment actions in both of those cases.

The remaining claimant's motion to dismiss was denied in part and his remaining argument that the forum-selection agreement is unenforceable as to him because it was procured by overreaching was converted into a motion for summary judgment. Discovery limited to that issue is to be conducted by September 28, 2007. See Memorandum and Opinion at p. 50.

Based on the Anti-Injunction Act, 28 U.S.C. § 2283, and federalism concerns embedded in that U.S. statute and its interpreting jurisprudence, Great Lakes's claims for injunctive relief prohibiting the state suits from proceeding and for a declaration that the seamen-plaintiffs may only bring suit in a forum provided in the forum-selection agreements were dismissed with prejudice. However, as Judge Rosenthal emphasized, “[t]he state-court actions do not impair this court's 'flexibility and authority' to decide whether the forum-selection agreements are valid and enforceable.” See Memorandum and Opinion at p. 13.

Despite not granting Great Lakes's injunctive relief sought, the Court clearly ruled: “For the reasons explained, however, this does not preclude Great Lakes from proceeding with its claim for a declaratory judgment that the forum-selection agreements are enforceable and that the seamen-plaintiffs breached those agreements by filing their state-court suits in Cameron, Starr, and Hidalgo Counties rather than in state of federal courts in Harris County, Texas.” See Memorandum and Opinion at p. 15.



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We are very pleased with this result for GLDD and believe that it may pave the way for similar treatment of forum selection clauses involving seamen in Texas. Legge Farrow remains involved in the foregoing litigation and will keep you apprised of continued significant developments.

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*<sup>i</sup> Great Lakes Dredge & Dock Company, L.L.C. v. Larrisquitu; C.A. No. H-06-3489 (S.D. of Tex. [Houston]); Great Lakes Dredge & Dock Company, L.L.C. v. Quintanilla, C.A. No. H-06-3669 (S.D. of Tex. [Houston]); Great Lakes Dredge & Dock Company, L.L.C. v. Arredondo; C.A. No. H-06-4040 (S.D. of Tex. [Houston]).*

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