



January 2006

**The Fifth Circuit Reverses Course – Holds Quartersbarge is a Vessel Under the Jones Act.  
*Holmes v. Atlantic Sounding Company, Inc. et al.*, CA No. 04-30732, 2006 WL 133537  
(5<sup>th</sup> Cir. Jan. 19, 2006)**

Following the Supreme Court's holding in *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005) regarding vessel status, admiralty practitioners and scholars wondered what effect, if any, the Supreme Court's holding would have on the various circuit court's "vessel" jurisprudence. The answer now becomes clearer with the Fifth Circuit's reversal of its earlier decision in *Holmes v. Atlantic Sounding Company, Inc. et al.*

The first court to wrestle with the Supreme Court's opinion of what constitutes a vessel for the purposes of the Jones Act was the First Circuit in the remand of *Stewart*. The First Circuit initially noted the confusion left by the Supreme Court: "Whatever uncertainty trails in the wake of the [Supreme] Court's decision is largely the Court's own making. Although the *certiorari* petition's primary focus was on the Jones Act claim, the *Stewart* Court explained that it had approximately granted *certiorari* to resolve confusion over how to determine whether a watercraft is a vessel for purposes of the LHWCA." (Emphasis added). Despite this backdrop, the First Circuit decided the dredge *Super Scoop* was a vessel for the purposes of both the LHWCA and the Jones Act relying on the fact that the LHWCA and Jones Act are "complimentary regimes which work in tandem." Thus, the First Circuit held that the definition of vessel in 1 U.S.C. §3, "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water" is also to be used to determine if a watercraft is a vessel under the Jones Act.

The Fifth Circuit was the next court to visit the issue. While agreeing with the First Circuit's reading of the Supreme Court's *Stewart* opinion that the definition of vessel under §3 was also applicable to the Jones Act, the majority of the 2-1 panel nevertheless held "*Stewart* does not fundamentally alter our 'vessel' jurisprudence." The majority stated the Court had historically held that the term "vessel" "connotes a structure designed or used for 'transportation of passengers, cargo or equipment from place to place across navigable waters.'" The court held this definition was consistent with the text of §3.



January 2006

Having previously decided a quartersbarge was not a vessel in *Gremillion v. Gulf Coast Catering Co.*, 904 F.2d 290 (5<sup>th</sup> Cir. 1990), the majority held the quartersbarge at issue in the *Holmes* case was not a vessel because it (1) was not designed for navigational or transportation purposes, (2) relied on tugs to move it, (3) had no means of self-propulsion, (4) had never been registered with or inspected by the Coast Guard, (5) was constructed exclusively to house dredge workers, and (6) never transported, or was even capable of transporting anything. The majority concluded the quartersbarge was not a vessel as it did not serve a “waterborne transportation function.”

The unexpected occurred yesterday when the panel reversed direction issuing a unanimous decision that the quartersbarge in *Holmes* was a vessel. While retaining a majority of the earlier decision including the statement that “despite *Stewart’s* broadening of the definition of vessel, there still exist limits on a potential plaintiff’s seaman status under the Jones Act,” the court applied the §3 definition to the quartersbarge concluding since it is “practically capable” of transporting equipment (and actually does transport the equipment present in the quarters like bunks, etc.), the quartersbarge is a vessel for the purposes of the Jones act. In order to distinguish *Gremillion*, the court relied on the fact that the quartersbarge in that case was partially sunk into a shoreside mudbank.

With the recent reversal, it now appears the Fifth Circuit’s statement in *Burks v. Am. River Transp. Co.*, 679 F.2d 69, 75 (5<sup>th</sup> Cir. 1982) that “three men in a tub would . . . fit within our definition [of a Jones Act seaman], and one probably could make a convincing case for Jonah inside the whale” is likely true.

\*\*\*\*\*

If you have any questions about this topic, please contact either of the following Legge Farrow partners:

James T. Brown  
[jimbrown@leggefarrow.com](mailto:jimbrown@leggefarrow.com)  
(713) 706-1947

W. Sean O’Neil  
<mailto:seanoneil@leggefarrow.com>  
(713) 706-1945

This publication is intended for educational purposes only and is not a substitute for legal advice based on unique facts and circumstances. It is provided free of charge as a courtesy to clients and friends of the firm.