



**THE U.S DISTRICT FOR THE EASTERN DISTRICT OF TEXAS HOLDS
SPAR PLATFORM *THUNDER HORSE* IS NOT A VESSEL
AND DENIES JONES ACT SEAMAN STATUS TO WORKER INJURED THEREON**

The *Thunder Horse* is a floating offshore oil production facility located in the Gulf of Mexico, jointly owned and operated by BP and Mobil. It is commonly known as a “Spar”-type platform. Basically, it consists of a large production platform that floats atop four large, buoyant columns that have sufficient buoyant force to keep the offshore structure afloat. The *Thunder Horse* is connected to the sea floor, at a depth of 6,000 feet, by a complex mooring system along with various pipelines and other drilling equipment that extend downward from the platform to the Outer Continental Shelf.

In *Moore v. Bis Salamis, Inc.*, C.A. No. 1:09-CV-1008, 2010 WL 3745023 (E.D. Tex. Sept. 20, 2010), Reston Moore, the plaintiff, was employed by Bis Salamis, Inc. (“BSI”) as part of BSI’s workforce on the platform. BSI is an independent contractor hired to perform various maintenance services on the *Thunder Horse*. The plaintiff alleged suffering injuries and sued as a Jones Act seaman in state court in Jefferson County, Texas. Defendants (BSI, BP, and Mobil) removed the case to federal court contending that the plaintiff fraudulently pled Jones Act seaman status and asserting federal question jurisdiction based upon the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1301, *et seq.*

The plaintiff moved to remand. The sole issue with regard to the remand motion was whether or not the *Thunder Horse* is a vessel. If the platform was found to be a vessel, the plaintiff would be a Jones Act seaman and the case would be non-removable. The parties conducted extensive discovery and U.S. District Judge Marcia A. Crone of the Eastern District of Texas issued a thorough and scholarly opinion and analysis.

Judge Crone discussed the often-cited *Stewart v. Dutra Construction Company* case issued by the U.S. Supreme Court in 2005. In that case, the Court appeared to expand the definition of a “vessel.”



However, the Supreme Court maintained that regardless of the design of the putative “vessel,” the structure must still be able to be utilized as a “means of transportation on water.” *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 489 (2005). While *Dutra* may have expanded the realm of various structures that may be considered for “vessel” status, the *sine qua non* criterion that was always considered by courts in their analysis remained as stated by the *Dutra* court itself: “[T]he question remains in all cases whether the watercraft’s use as a means of transportation on water is a practical possibility or merely a theoretical one.” *Dutra* at 496 (internal quotations omitted).

Judge Crone then discussed the Fifth Circuit’s treatment of *Dutra* in its *Holmes v. Atlantic Sounding Co., Inc.*, 437 F.3d 441 (5th Cir. 2006) decision, in which the Fifth Circuit noted that while *Dutra* did not expressly overrule prior Fifth Circuit jurisprudence, the Supreme Court nonetheless appeared to have broadened the class of water-borne structures eligible for Jones Act status. *Holmes* at 449.

Judge Crone then noted that the *Thunder Horse* was initially towed into position in the Gulf of Mexico and was extensively modified to become permanently fixed in place. It is fastened to the ocean floor by 16 mooring lines connected to 16 “suction piles” that are 19 feet in diameter and are driven 90 feet into the subsoil. It is also tethered to the seabed by two production pipelines and an assortment of risers, water injection lines, and umbilical control lines. Judge Crone concluded that relocating the *Thunder Horse*, while possible, would be a monumental and protracted undertaking. It would cost between \$400-\$500 million. Considering the totality of these circumstances, the court held that it is “undisputed that the *Thunder Horse* was designed to remain at its current location for the duration of its service life” Under those same circumstances, the court concluded that “the *Thunder Horse* is a permanent structure attached to the seabed and, thus, not *practically* capable of maritime transportation.” *Moore v. Bis Salamis, Inc.*, 2010 WL 3745023, at *6.

Importantly, in her opinion, Judge Crone recognized that, while in production, the *Thunder Horse* is capable of lateral movement within a 350-foot maximum radius from the drill center to which it is



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attached and, in fact, moves on occasion. However, because the *Thunder Horse* has no system of self-propulsion, it moves within its operational parameters by manipulating the chain mooring system connecting it to the sea floor. Moreover, the purpose of this limited movement is for the *Thunder Horse* to reposition over and service a group of closely-packed wellheads around the drill center. The court found this ability really incidental to the structure's primary function as a work platform. *Moore v. Bis Salamis, Inc.*, 2010 WL 3745023, at *7-8.

In his motion to remand, the plaintiff attempted to persuade the court that the *Thunder Horse* is akin to a semi-submersible drilling rig. This argument was rejected by the court, which noted that semi-submersibles are specialty-purpose watercraft that are "highly mobile and transient" in nature. *Moore v. Bis Salamis, Inc.*, 2010 WL 3745023, at *7. Semi-submersible drilling rigs normally complete their work at one site, and then move on to the next drilling site. Their transportation function is more than merely incidental to their purpose. By contrast, the *Thunder Horse* is bound to a particular location for the entirety of its usable life. It is not practically capable of regular and extensive movement that typically characterizes semi-submersibles. *Moore v. Bis Salamis, Inc.*, 2010 WL 3745023, at *7. As a result, the court concluded that since the *Thunder Horse* was not a vessel, the plaintiff was not a Jones Act seaman and, thus, had no possibility of prevailing on his Jones Act claims. Accordingly, removal was proper and the plaintiff's remand motion was denied.

After finding that the *Thunder Horse* is not a vessel, but a work platform attached to the seabed in the Outer Continental Shelf, the court then held that it had subject matter jurisdiction over this lawsuit because under the OCSLA's jurisdictional grant, federal courts have subject matter jurisdiction (federal question) in controversies "arising out of or in connection with . . . any operation conducted in the Outer Continental Shelf which involves exploration, development, or production of the minerals" from the Shelf. *Moore v. Bis Salamis, Inc.*, 2010 WL 3745023, at *8.



Conclusion

The oil and gas industry continues to create new and varied offshore structures in its quest to provide energy to the world. The structures later must be characterized by the courts in relation to their legal status. For the time being, it appears that a Spar-type platform attached to the seabed in deepwater production, is not a vessel. Personnel working on them are non-seamen whose remedy for personal injury or death is the LHWCA.

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