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James Baker, Jr. v. Director, Office of Worker's Compensation Programs, United States Department of Labor; Gulf Island Marine Fabricators, L.L.C. 834 F.3d 542 United States Court of Appeals, Fifth Circuit (Filed on August 2016)

George Beck, Class of 2019

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**HOUSING MODULE DESIGNED FOR USE ON TENSION LEG OFFSHORE OIL
PLATFORM WAS NOT A VESSEL FOR LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT PURPOSES AND WHERE CLAIMANT'S EMPLOYMENT
WAS LOCATED SOLELY ON LAND CLAIMANT WAS NOT ENTITLED TO
COMPENSATION UNDER THE ACT**

*James Baker, Jr. v. Director, Office of Worker's Compensation Programs, United States
Department of Labor; Gulf Island Marine Fabricators, L.L.C.*

834 F.3d 542

United States Court of Appeals, Fifth Circuit.

(Filed on August, 2016)

The issue before the court was whether the Benefits Review Board (BRB) erred in its ruling that James Baker was not eligible for benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA) and the Outer Continental Shelf Lands Act (OCSLA) following an injury that occurred during the construction of an offshore oil rig (Big Foot). The United States Court of Appeals, 5th Circuit affirmed the judgment of the BRB, holding that he was not a maritime employee for the purpose of recovering under the LHWCA, and that a significant nexus did not exist between his employment and the resource extraction activities occurring on the outer Continental Shelf, thereby precluding the claim for benefits under OCSLA.¹

James Baker, Jr., a marine carpenter employed by Gulf Island Marine Fabricators, L.L.C., allegedly was injured while constructing the housing for the "tension leg offshore oil platform" Big Foot.² A hearing was held to determine if benefits could be claimed under the two Acts. An Administrative Law Judge denied benefits on the grounds that he was "not engaged in maritime employment," as Big Foot "was not a vessel" under the LHWCA.³ Furthermore there was "no significant causal link between Baker's alleged injury and operations in the OCS," precluding benefits under the OCSLA.⁴ Baker appealed this decision to the Benefits Review Board, which affirmed the ALJ's ruling. Baker then appealed to the United States Court of Appeals, 5th Circuit.

The Benefits Review Board must uphold the ruling of the judge if it is based on substantial evidence. Evidence is substantial if it is the kind that would "cause a reasonable person to accept the fact finding."⁵

The LHWCA first enacted in 1927 established a "federal workers' compensation scheme" for maritime workers.⁶ In 1972 the Act's scope was expanded to incorporate workers injured during maritime activities "occurring on land near the water."⁷ To meet this requirement the claimant must satisfy "situs" and "status" requirements.⁸ Both parties stipulated that Baker met the situs requirement as he was working at a maritime facility. But the issue still remained as to whether he met the status requirement of maritime employment as defined by U.S.C. section 902(3), which includes, but is not limited to, "ship repairman,

¹ *Baker v. Director, Office of Workers' Compensation Programs*, 834 F.3d 542, 544 (5th Cir. 2016).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*, at 545. (citing *Coastal Prod. Servs. Inc. v. Hudson*, 555 F.3d 426, 430 (5th Cir. 2009)).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

shipbuilder, and ship-breaker.”⁹ The Supreme Court expanded this definition to include “activities that are integral or essential part of the loading, unloading, building, or repairing of a vessel.”¹⁰ The court then needed to determine whether Big Foot for the purposes of the LHWCA was a vessel.

The court agreed with the conclusion of the ALJ and the BRB that Big Foot is not a vessel. According to the Supreme Court the word “vessel” is to include “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation over water.”¹¹ This definition was then incorporated into the language of the LHWCA. The court found that Big Foot has no means of self-propulsion, no steering mechanism or rudder, and has an no raked bow.¹² Furthermore, Big Foot “is only intended to travel over water once in the next twenty years.”¹³ These facts would lead the reasonable observer to conclude that Big Foot was not a vessel meant to carry “people or things” over water.¹⁴ Further reinforcing this is Big Foot’s mission. Once in place over the outer Continental Shelf Big Foot would be anchored in place so as to conduct resource extraction from the shelf.

The court ruled that this determination is in line with existing precedent. The same court ruled in *Bernard v. Binnings Constr. Co. Inc* that a “work punt was not a vessel.”¹⁵ A work punt is floating structure that, although maneuverable around a maritime work site, “functioned as a work platform and was not designed for or engaged in the business of navigation.”¹⁶ Fundamental to the analysis of the *Bernard* court was the punt’s lack of all “indicia of a structure designed for navigation such as “[a] raked bow,” “means of self-propulsion,” or “crew quarters or navigational lights”¹⁷ Big Foot likewise lacked the “indicia” of a contrivance intended for navigation as it had no means of serving the purpose of transporting people or things over water. Therefore, as Baker’s employment did not relate to a vessel, he is precluded from claiming benefits under the LHCWA.

Lastly, and more simply, the court determined whether a significant nexus existed between Baker’s employment and the resource extraction projects at the outer Continental Shelf, thereby allowing him to claim benefit under OCSLA. The court concluded that no such nexus can be established. The OCSLA extends the coverage of the LHWCA to “injur[ies] occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources . . . of the outer Continental Shelf.”¹⁸ Under the Supreme Court’s ruling in *Valladolid v. Pac. Operations Offshore, LLP*, the nexus is established if the injured employee can “establish a significant causal link between the injury he suffered and his employer’s on-OCS operations conducted for the purpose of extracting natural resources from the OCS.”¹⁹ Baker’s injury occurred on dry land while constructing “the living and dining quarters for [Big Foot],” and therefore the court concluded that no significant nexus existed.²⁰ The court reasoned that Baker’s employment activities were too “attenuated from future purpose of extracting natural

⁹ *Id.*(citing 33 U.S.C. § 902(3))

¹⁰ *Id.*

¹¹ *Id.* (citing 1 U.S.C. §3)

¹² *Baker*, supra note 142 at 545.

¹³ *Id.* at 547.

¹⁴ *Id.*

¹⁵ *Id.* (citing *Bernard*, 741 F.2d at 830)

¹⁶ *Baker*, supra note 142 at 547.

¹⁷ *Id.* (citing *Bernard*, 741 F.2d at 832)

¹⁸ *Id.* (citing 43 U.S.C. § 1333(3)(b))

¹⁹ *Id.* (citing *Valladolid v. Pac. Operations Offshore, LLP*, 132 S. Ct 680, 685 (2012))

²⁰ *Baker*, supra note 142 at 548.

resources from the OCS for the OCSLA to cover his injury.”²¹ All of Baker’s employment occurred on dry land, while in *Valladolid* “the deceased” “spent ninety-eight percent of his time on an offshore drilling platform.”²² Furthermore Baker never traveled to the OCS, had no role in moving Big Foot into position over the OCS, nor will he have a role in operating Big Foot once in position.²³

Accordingly, the Court affirmed the judgment of the ALJ preventing Baker from claiming benefits under the LHWCA, as he was not a maritime employee and under OCSLA, there was no nexus between his injury and resource extraction operations occurring at the OCS.

George Beck
Class of 2019

²¹ *Id.* at 549.

²² *Id.*

²³ *Id.*