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## **It Looks Like a Vessel, It Moves Like a Vessel, But It's Not a Vessel: Revisiting Vessel Status in Louisiana after *Caldwell v. St. Charles Gaming Company***

William Mathews

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# **It Looks Like a Vessel, It Moves Like a Vessel, But It's Not a Vessel: Revisiting Vessel Status in Louisiana after *Caldwell v. St. Charles Gaming Company***

*William Mathews\**

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### INTRODUCTION

In 2019, the Louisiana Supreme Court determined in *Caldwell v. St. Charles Gaming Company* that the Grand Palais, a riverboat casino operating in Lake Charles, Louisiana, was not a vessel for purposes of maritime law.<sup>1</sup> Months later, the Grand Palais broke free of its moorings during Hurricane Laura and collided with the Interstate 10 bridge in Lake Charles.<sup>2</sup> Luckily, both the bridge and the riverboat avoided significant damage.<sup>3</sup> Subsequently, the Grand Palais moved again when it left the Lake Charles-area permanently in October 2021.<sup>4</sup> This time, two tug boats navigated the riverboat through the waterways.<sup>5</sup>

These subsequent movements of the Grand Palais magnify the errors of the Louisiana Supreme Court’s dubious decision in *Caldwell*.<sup>6</sup> Before *Caldwell*, the United States Supreme Court refined its definition of *vessel* in *Lozman v. City of Riviera Beach, Florida*.<sup>7</sup> In *Lozman*, the Court held that a determination of vessel status focuses on whether a reasonable

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1. *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562 (La. 2020).

2. The Associated Press & Emma Discher, *Photos: Hurricane Laura Blows Riverboat Casino into I-10 Bridge Supports in Lake Charles*, THE ADVOCATE (Aug. 27, 2020), [https://www.theadvocate.com/baton\\_rouge/news/weather\\_traffic/photos-hurricane-laura-blows-riverboat-casino-into-i-10-bridge-supports-in-lake-charles/article\\_af35c8f6-e86d-11ea-9cb8-77e371113d2f.html](https://www.theadvocate.com/baton_rouge/news/weather_traffic/photos-hurricane-laura-blows-riverboat-casino-into-i-10-bridge-supports-in-lake-charles/article_af35c8f6-e86d-11ea-9cb8-77e371113d2f.html) [https://perma.cc/T4VP-YBU5] [hereinafter Discher] (click the video located at the top of the webpage).

3. *Id.*

4. Andrea Robinson, *Grand Palais Casino riverboat says farewell to Lake Area*, KPLC NEWS (Oct. 12, 2021, 7:18 PM CDT), <https://www.kplctv.com/2021/10/13/grand-palais-casino-riverboat-says-farewell-lake-area/> [https://perma.cc/AL4Z-5RTE].

5. *Id.*

6. *See id.*; Discher, *supra* note 2; *see also Caldwell*, 347 So. 3d 562.

7. *See Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013).

observer would view a structure as designed to a practical degree for transportation over water.<sup>8</sup> The *Lozman* decision narrowed the Court's previous definition of vessel under *Stewart v. Dutra Construction Company*.<sup>9</sup> The Louisiana Supreme Court's majority opinion in *Caldwell* defended its analysis as congruent with *Lozman*.<sup>10</sup> But, the Louisiana Supreme Court failed to apply the reasonable observer test despite quoting large portions of the *Lozman* opinion.<sup>11</sup> Further, the Louisiana legislature's amendments to laws regulating gaming aboard riverboat casinos acknowledge that there are risks associated with water-based structures.<sup>12</sup> The *Caldwell* decision is directly contrary to the Louisiana legislature's acknowledgement that workers aboard riverboat casinos face elevated dangers.<sup>13</sup> The discrepancy between the legislature's reasoning and the Louisiana Supreme Court's inaccurate application of United States Supreme Court precedent will improperly render those aboard casino riverboats without a remedy under maritime law.

In its recent decisions, the United States Supreme Court narrowed the definition of vessel by removing a subjective-intent factor from the vessel-status inquiry.<sup>14</sup> The Louisiana Supreme Court's decision in *Caldwell* hinged on the riverboat remaining stationary under the control of its owners, St. Charles Gaming.<sup>15</sup> Under *Lozman*, the emphasis placed on a structure's use is improper.<sup>16</sup> To prevent improper results in the future, the Louisiana Supreme Court must appropriately analyze riverboat casinos under the *Lozman* test for vessel status.<sup>17</sup> This analysis, if done properly, will ensure results that uphold the Louisiana legislature's policy while following United States Supreme Court precedent.<sup>18</sup>

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8. *Id.* at 121.

9. *Id.* at 123–24. *See* *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 494 (2005); Caroline E. Frilot, *Crisis Averted: The Supreme Court Rejects a Subjective Vessel Test in Lozman v. City of Riviera Beach, Florida*, 38 TUL. MAR. L.J. 215, 229 (2013).

10. *Caldwell*, 347 So. 3d at 567.

11. *Id.* at 568–71; *Lozman*, 568 U.S. at 120–21, 123–25.

12. *See generally* LA. REV. STAT. §§ 27:41–103 (2023).

13. *Amendments to the Louisiana Riverboat Economic Development and Gaming Control Act: Hearing on S.B. 318 Before the Judiciary B Comm.*, 2018 Leg., Reg. Sess. (La. 2018) [hereinafter *S.B. 318 Hearing*].

14. *Stewart*, 543 U.S. at 494–96; *Lozman*, 568 U.S. at 127–28; Frilot, *supra* note 9, at 229.

15. *Caldwell*, 347 So. 3d at 566.

16. *Id.*; *see Stewart*, 543 U.S. 481; *Lozman*, 568 U.S. 115.

17. *See Lozman*, 568 U.S. at 121.

18. *S.B. 318 Hearing*, *supra* note 13.

Part I of this Comment provides a background for defining vessels under maritime law. It contains an in-depth discussion of the federal definition of a vessel, including the two most recent United States Supreme Court opinions defining vessel.<sup>19</sup> This Part also discusses Louisiana law concerning the vessel status of casino riverboats, including a presentation of both the Louisiana Third Circuit Court of Appeal's and the Louisiana Supreme Court's opinions.<sup>20</sup> Part II illustrates the inconsistencies between the Louisiana legislature's stated purpose in allowing riverboat casinos to conduct gaming operations and the Louisiana Supreme Court's flawed analysis in *Caldwell*.<sup>21</sup> This Part discusses several issues in the classification of riverboat casinos. Part III demonstrates how a proper application of *Lozman*'s reasonable observer test<sup>22</sup> will ensure that courts accurately determine vessel status going forward. This Part engages in the proper analysis for a Louisiana-based riverboat casino.

## I. BACKGROUND

Section 3 of Title 1 of the United States Code<sup>23</sup> defines *vessel* as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."<sup>24</sup> Congress enacted Section 3 in 1873.<sup>25</sup> At the time of this Comment's writing, 150 years have passed since Section 3's enactment, but the United States Supreme Court continues to wrestle with its meaning.<sup>26</sup>

### A. *It's a Boat, It's a Ship, It's a Vessel?*

Admiralty law governs tort claims that have a maritime nexus.<sup>27</sup> Generally, to invoke maritime jurisdiction, the tort or contract must

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19. *Stewart*, 543 U.S. 481; *Lozman*, 568 U.S. 115.

20. *See Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940 (La. Ct. App. 3d Cir. 2019); *see also Caldwell*, 347 So. 3d 562.

21. *S.B. 318 Hearing*, *supra* note 13; *Caldwell*, 347 So. 3d at 571.

22. *Lozman*, 568 U.S. at 121.

23. 1 U.S.C. § 3. Throughout this Comment, 1 U.S.C. § 3 will be referred to as "Section 3."

24. *Id.*

25. *See id.*

26. *See Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005); *Lozman*, 568 U.S. 115.

27. FRANK L. MARAIST ET AL., *CASES AND MATERIALS ON MARITIME LAW* 41 (3d ed. 2016).

involve or have a sufficient relationship to a vessel.<sup>28</sup> If a structure is a vessel, several important consequences flow from the classification.<sup>29</sup> For example, a maritime lien or preferred ship mortgage will only attach to a vessel.<sup>30</sup> Additionally, a seaman may recover special damages under the Jones Act if the person has a sufficient relationship to a vessel.<sup>31</sup> Further, a *stevedore*<sup>32</sup> may have a negligence claim against a vessel under the Longshore and Harbor Workers' Compensation Act (LHWCA).<sup>33</sup> Thus, a determination of vessel status is central to many cases in which a party is seeking to invoke maritime law.

Congress enacted Section 3 to provide a definition of vessel.<sup>34</sup> Section 3's definition of vessel extends vessel status to structures "capable of being used" for transport over water.<sup>35</sup> Section 3 is so broad it has been said to encompass the three men in the tub or the whale that swallowed Jonah.<sup>36</sup> The ambiguous language of Section 3 has resulted in courts and legal scholars struggling to define vessel.<sup>37</sup> The numerous interpretations of Section 3 further evidence this struggle.<sup>38</sup> Despite this multiplicity, courts applying modern approaches to vessel status still "run aground" and misclassify structures.<sup>39</sup>

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28. FRANK L. MARAIST ET AL., ADMIRALTY IN A NUTSHELL 15 (7th ed. 2017).

29. See *Stewart*, 543 U.S. at 484; *Lozman*, 568 U.S. at 119.

30. *Lozman*, 568 U.S. at 118.

31. Jones Act, 46 U.S.C. §§ 55101–55123.

32. *Stevedore*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/stevedore> [<https://perma.cc/TB82-Z92C>] (last visited Feb. 21, 2023) (Merriam-Webster defines a *stevedore* as "one who works at or is responsible for loading and unloading ships in port.").

33. Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950.

34. 1 U.S.C. § 3.

35. *Id.*

36. See *Burks v. Am. River Transp. Co.*, 679 F.2d 69, 75 (5th Cir. 1982).

37. 1 U.S.C. § 3; *McRae v. Bowers Dredging Co.*, 86 F. 344, 347 (D. Wash. 1898); *Bunch v. Canton Marine Towing Co.*, 419 F.3d 868, 874 (8th Cir. 2006); Taylor Simpson-Wood, *Loose Lips Launch Ships: Stewart v. Dutra Construction Company, Inc.*, 37 J. MAR. L. & COM. 113, 117 (2006).

38. See, e.g., *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013); *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982); *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926).

39. *Lozman*, 568 U.S. at 122 (United States Supreme Court establishing a "reasonable observer" test for determining vessel status); *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 571 (La. 2020).

1. *The Murky Waters of Vessel Status Before the Enactment of Section 3*

Before Congress enacted Section 3 in 1873, American courts were left to their own devices in determining whether a structure was a vessel.<sup>40</sup> The United States Supreme Court's unwillingness to directly adopt a definition of vessel exacerbated the lack of congressional guidance.<sup>41</sup> The absence of authority on the matter led to a wide array of approaches to classifying structures as vessels or not vessels.<sup>42</sup> An inclusive but unrefined definition of vessel emerged due to the lack of uniformity amongst courts.<sup>43</sup>

Judges used a variety of analyses when faced with the question of which structures were vessels.<sup>44</sup> Some courts turned to European decisions and scholarship on vessel status, while others opted to examine structures on a more individualized basis.<sup>45</sup> For example, in *United States v. The Ohio*, the Eastern District of Pennsylvania concluded that a boat was not a vessel since the structure lacked any means of independent propulsion.<sup>46</sup> Contrariwise, in *Van Santwood v. The John B. Cole*, the Northern District of New York rejected classifying structures based on "the manner in which the vessel is equipped."<sup>47</sup> It was clear that outer bounds limited vessel

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40. See *Kate Tremaine*, 14 F. Cas. 144 (E.D.N.Y. 1871); *Van Santwood v. John B. Cole*, 28 F. Cas. 1075 (N.D.N.Y. 1846).

41. See *Gibbons v. Ogden*, 22 U.S. 1 (1824) (The Court addressed the famous constitutional issue but did not first consider whether the structure at issue was even a vessel.).

42. Compare *United States v. Ohio*, 27 F. Cas. 219, 230 (E.D. Penn. 1872) (concluding that a laden boat was not a vessel based on its lack of internal mast or steam power), with *John B. Cole*, 28 F. Cas. at 1077 (citing *Thackarey v. Farmer of Salem*, 23 F. Cas. 877 (E.D. Penn. 1835)) (refusing to determine vessel status based on "the manner in which the vessel is equipped").

43. *Kate Tremaine*, 14 F. Cas. at 145 (determining that a canal boat moved via tow lines that used force external to the structure to be a vessel).

44. See *id.*; *Ohio*, 27 F. Cas. 219 at 230; *Hendrick Hudson*, 11 F. Cas. 1085, 1086 (S.D.N.Y. 1869).

45. Compare *Kate Tremaine*, 14 F. Cas. at 145 (borrowing the phrase "navires et autres batiments de mer" which, translated from French to English, means "ships and other sea vessels"), with *Ohio*, 27 F. Cas. at 230 (canal boat was not a vessel under an act since it lacked self-propulsion), and *Hendrick Hudson*, 11 F. Cas. at 1086 (test focused on the actual status of the structure and the structure was not engaged in navigation and, thus, not a vessel).

46. *Ohio*, 27 F. Cas. at 220.

47. *John B. Cole*, 28 F. Cas. at 1077. Compare *Ohio*, 27 F. Cas. at 230 (concluding that a laden boat was not a vessel based on its lack of internal mast or steam power), with *John B. Cole*, 28 F. Cas. at 1077 (citing *Farmer*, 23 F. Cas.

status to some degree in spite of the broad views many courts adopted.<sup>48</sup> Although these outer bounds existed, Congress was jolted into action in 1873 when it enacted Section 3 in an attempt to provide a consistent definition of *vessel*.<sup>49</sup>

## 2. Congress's Attempt at Making the Murky Water Clearer

Section 3 classifies a *vessel* as “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”<sup>50</sup> Despite Congress’s attempt to streamline the definition of vessel, courts continued to look to earlier jurisprudence on vessel status.<sup>51</sup> For example, in *Endner v. Greco*, the Southern District of New York relied on precedent instead of Section 3, despite its enactment, in determining that scows without “steam-power nor sails nor rudders” were still vessels.<sup>52</sup> Similarly, in *The Old Natchez*, the United States District Court for the Southern District of Mississippi relied on past decisions to determine whether maritime jurisdiction extended to a structure based on its relation to commerce and navigation.<sup>53</sup> The reluctance to incorporate Section 3 in the vessel-status inquiry persisted throughout the court system.<sup>54</sup>

More than a decade after Congress enacted Section 3, the United States Supreme Court had an opportunity to adopt Congress’s definition in *Cope v. Vallette Dry-Dock Company*.<sup>55</sup> Instead of implementing Section 3’s definition of vessel, the Supreme Court continued to rely on

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877) (refusing to determine vessel status based on “the manner in which the vessel is equipped”).

48. *Hendrick Hudson*, 11 F. Cas. at 1086 (determining that a ship stripped of its internal mechanisms such that it was essentially a “hulk” was no longer a vessel under the admiralty and maritime jurisdiction of the federal courts).

49. See 1 U.S.C. § 3.

50. *Id.*

51. See *Endner v. Greco*, 3 F. 411 (S.D.N.Y. 1880); *Old Natchez*, 9 F. 476 (S.D. Miss. 1881); *Aitcheson v. The Endless Chain Dredge*, 40 F. 253 (E.D. Va. 1889).

52. *Endner*, 3 F. at 413; see also *Kate Tremaine*, 14 F. Cas 144 (E.D.N.Y. 1871); *Onore*, 18 F. Cas. 728 (E.D.N.Y. 1873); *The River Queen*, 20 F. Cas. 846 (D. Mass. 1846); *The Monongahela Navigation Co. v. The Steam Tug ‘Bob Connell’*, 1 F. 218 (W.D. Penn. 1880); *Ins. Co. v. Dunham*, 78 U.S. 1 (1870).

53. *Old Natchez*, 9 F. 476 (citing *The Cheeseman v. Two Ferry-boats*, 5 F. Cas. 528 (S.D. Ohio 1870)).

54. See generally *Endner*, 3 F. 411; *Old Natchez*, 9 F. 476; *The Endless Chain Dredge*, 40 F. 253. See also *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625 (1887).

55. *Cope*, 119 U.S. at 630.



jurisprudence to guide its analysis of vessel status.<sup>56</sup> The Court relied in part on the Eastern District of Missouri's decision in *Salvor Wrecking Company v. Sectional Dock Company*.<sup>57</sup> The Supreme Court concluded the structure in *Cope* was not a vessel because it was not being used for transportation.<sup>58</sup> The Supreme Court did not consider Section 3 in determining that a structure not actively being used in transportation is not a vessel.<sup>59</sup> The *Cope* decision contrasts with Section 3's definition, which broadens vessel status to structures *capable* of being used in transportation, not just those actively involved in transportation.<sup>60</sup> The Supreme Court's failure to utilize Section 3 in its analysis perpetuated the lower courts' inconsistent approaches.

It was not until 16 years after Section 3 was enacted that a court cited the statute in support of its determination of vessel status.<sup>61</sup> In *Seabrook v. Raft of Railroad Cross-Ties*, the United States District Court for the District of South Carolina held that a 20-by-60-foot dredge<sup>62</sup> was a vessel based in part on Section 3.<sup>63</sup> Although the court acknowledged Congress's definition of vessel, the *Seabrook* court relied heavily on prior American jurisprudence and European interpretations of vessel status.<sup>64</sup>

The opinion of the court in *McRae v. Bowers Dredging Company* is emblematic of the breadth of approaches courts took in defining vessel before a clear definition emerged.<sup>65</sup> In determining whether a dredge was a vessel subject to maritime jurisdiction, the court stated, "There is great confusion in the decisions as to whether particular structures . . . are to be classed within or without the pale of admiralty jurisdiction."<sup>66</sup> To emphasize just how convoluted the area had become, the court cited 41

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56. *Id.*

57. *Id.* (citing *Salvor Wrecking Co. v. Sectional Dock Co.*, 21 F. Cas. 281 (E.D. Mo. 1876)).

58. *Id.*

59. *Id.*

60. *Id.*; 1 U.S.C. § 3.

61. *Seabrook v. Raft of R.R. Cross-Ties*, 40 F. 596 (D.S.C. 1889).

62. Mayur Agarwal, *Different Types of Dredgers Used in the Maritime Industry*, MARINE INSIGHT (July 29, 2021), <https://www.marineinsight.com/types-of-ships/different-types-of-dredgers-used-in-the-maritime-industry/> [<https://perma.cc/67WT-MYMA>] (describing a dredger as "[a] marine vessel fitted with a device[] to scrap or suck the sediment deposition over a sea bed").

63. *Seabrook*, 40 F. at 598.

64. *Id.* (citing *Ship*, ENCYCLOPEDIA BRITANNICA (1889); *The Rock Island Bridge*, 73 U.S. 213 (1867)).

65. *McRae v. Bowers Dredging Co.*, 86 F. 344, 347 (D. Wash. 1898).

66. *Id.* at 347–48.

cases adopting various approaches.<sup>67</sup> These cases, including *Seabrook*, which was one of only two cases cited by the court that cited Section 3, demonstrated the many different analyses that courts implemented in determining vessel status without a clear definition.<sup>68</sup> The difficult task of reconciling so many inconsistent approaches eventually led judges to seek out a clearer definition of *vessel*.<sup>69</sup>

In 1900, almost 30 years after Congress enacted Section 3, the Northern District of Ohio recognized the importance of Congress's action.<sup>70</sup> In *United States v. Holmes*, the court stated that the congressional definition of vessel should be used to determine if a structure is a vessel.<sup>71</sup> The court, in an oral opinion, stated, "[W]e find certain provisions at the beginning of the act [Section 3] . . . applicable to all of the sections of the Revised Statutes of the United States . . . ."<sup>72</sup> As illustrated by *Holmes*, courts finally began to recognize that when a case involves classifying a structure as a vessel or not a vessel, Section 3 is the ultimate authority.<sup>73</sup> Although lower courts slowly began using Congress's definition of vessel, the United States Supreme Court continued to lag behind.<sup>74</sup>

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67. *Id.* (citing *The Cheeseman v. Two Ferry-boats*, 5 F. Cas. 528 (S.D. Ohio 1870); *The Dick Keys*, 7 F. Cas. 678 (S.D. Ohio 1863); *The E.M. McChesney*, 8 F. Cas. 668 (S.D.N.Y. 1875); *Fifty Thousand Feet of Timber*, 9 F. Cas. 47 (D. Mass. 1871); *The Florence*, 9 F. Cas. 294 (E.D. Mich. 1877)).

68. *See id.* (citing *The Cheeseman*, 5 F. Cas. 528; *The Dick Keys*, 7 F. Cas. 678; *The E.M. McChesney*, 8 F. Cas. 668; *Fifty Thousand Feet of Timber*, 9 F. Cas. 47; *The Florence*, 9 F. Cas. 294). *Seabrook* and *Saylor* were the only two cases referenced by Judge Hanford that cited 1 U.S.C. § 3. *See Seabrook*, 40 F. 596; *Saylor v. Taylor*, 77 F. 476 (4th Cir. 1896).

69. *See Arnold v. Eastin's Tr.*, 76 S.W. 855, 857 (Ky. Ct. App. 1903) (finding that the "only efficacious and practical method" of determining vessel status was 1 U.S.C. § 3); *The Annie S. Cooper*, 48 F. 703, 704 (E.D. La. 1891) (determining that a raft of logs was not "strictly a vessel" based on 1 U.S.C. § 3); *Saylor*, 77 F. 476 (recognizing that if a structure falls within 1 U.S.C. § 3's definition of "vessel," then it is within the maritime jurisdiction of the United States); *The International*, 89 F. 484, 485 (3d Cir. 1898) (concluding that a dredge was a vessel thus making the structure exempt from the Tariff Act of 1894).

70. *United States v. Holmes*, 104 F. 884, 886–87 (N.D. Ohio 1900).

71. *Id.*

72. *Id.* at 886.

73. *Id.* at 886–87; 1 U.S.C. § 3.

74. *Compare Holmes*, 104 F. at 886–87, *Arnold*, 76 S.W. at 857, *The Annie S. Cooper*, 48 F. 703, and *The International*, 89 F. at 485, with *Perry v. Haines*, 191 U.S. 17 (1903).

In 1903, the Supreme Court was presented with another opportunity to apply Congress's definition of vessel in *Perry v. Haines*.<sup>75</sup> This time, the Supreme Court considered whether a canal boat was a vessel.<sup>76</sup> The Supreme Court once again failed to expressly recognize Congress's definition of vessel and instead determined that the proper analysis considered "the purpose for which the craft was constructed, and the business in which it is engaged."<sup>77</sup> The Supreme Court's language ignored Congress's definition which broadens vessel status to include structures capable of engaging in transportation on water.<sup>78</sup> Although the Supreme Court found the canal boat in *Perry* to be a vessel, the emphasis the Court placed on the events occurring while the structure was moving misled lower courts.<sup>79</sup>

The United States Supreme Court referenced Section 3 for the first time in *Evansville & Bowling Green Packet Company v. Chero Cola Bottling Company*, 20 years after *Perry* was decided and more than 50 years after Congress enacted Section 3.<sup>80</sup> In *Evansville*, the Court cited Congress's definition of vessel in Section 3 as the legal authority for deciding a wharf boat's<sup>81</sup> vessel status.<sup>82</sup> Under Section 3, the Court determined the structure in question was not a vessel.<sup>83</sup> The Court found the structure "was not *practically* capable of being used as a means of transportation."<sup>84</sup> The *Evansville* decision notably broadened vessel status

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75. See *Perry*, 191 U.S. 17.

76. *Id.* at 28.

77. *Id.* at 30.

78. Compare *id.* (the Supreme Court stating vessel status turns on "the purpose for which the craft was constructed, and the business in which it is engaged"), with 1 U.S.C. § 3 (Congress stating vessel status turns on a structure being "used, or capable of being used, as a means of transportation on water").

79. *Perry*, 191 U.S. 17; *Campsie v. Catton, Neill & Co.*, 26 Haw. 737 (Haw. Terr. 1923) (denying workers' compensation damages to the widow of a man who died while repairing a boat on the grounds that the contract between the parties was nonmaritime despite the work clearly being maritime in nature).

80. *Perry*, 191 U.S. 17; *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926) (quoting 1 U.S.C. § 3).

81. *Wharf boat*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/wharf%20boat> [<https://perma.cc/FRU5-GKYG>] (last visited Mar. 7, 2023) (Merriam-Webster defines a *wharf boat* as "a boat moored and used for a wharf at a bank of a river or in a like situation where the height of the water is so variable that a fixed wharf is impracticable.").

82. *Evansville & Bowling Green Packet Co.*, 271 U.S. at 20 (quoting 1 U.S.C. § 3).

83. *Id.* at 20–21.

84. *Id.* (emphasis added).

to consider practical capability for transportation on water, in addition to a structure's actual use.<sup>85</sup> A court remarked that the definition of vessel was expanded such that there was "[n]o doubt the three men in a tub would also fit within our definition [of vessel]" following *Evansville*.<sup>86</sup>

*3. The Supreme Court Embarks on a New Voyage Guided by the Section 3 Lighthouse*

The Supreme Court briefly revisited its definition of vessel in *Foremost Insurance Company v. Richardson* in 1982.<sup>87</sup> In *Foremost Insurance*, the Court did not drastically alter its definition of what constitutes a vessel.<sup>88</sup> The Court iterated that vessel status is not dependent on a structure having a commercial purpose.<sup>89</sup> Following its decision in *Foremost Insurance*, the Supreme Court was silent on vessel status until after the turn of the twenty-first century.<sup>90</sup> In 2005, the Supreme Court revisited the definition of vessel in *Stewart v. Dutra Construction Company*.<sup>91</sup>

*a. The Simple Case of the Super Scoop Provided a False Sense of Security*

In *Stewart*, the United States Supreme Court confronted whether the Super Scoop, a dredge used to remove silt from the ocean floor, was a vessel under Section 3.<sup>92</sup> The plaintiff, Williard Stewart, argued that the Super Scoop was a vessel at the time he sustained his injuries, which entitled him to damages under the LHWCA.<sup>93</sup>

The Supreme Court granted certiorari in *Stewart* to "resolve confusion over how to determine whether a watercraft is a 'vessel' for purposes of the LHWCA."<sup>94</sup> In the unanimous *Stewart* opinion, the Court explicitly

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85. *Id.*; 1 U.S.C. § 3; Kenneth G. Engerrand, *Vessel Status Reconsidered*, 11 LOY. MAR. L.J. 213, 219–20 (2013) (internal citations omitted).

86. *Burks v. Am. River Transp. Co.*, 679 F.2d 69, 75 (5th Cir. 1982).

87. *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982).

88. *See id.* at 668.

89. *Id.* at 676 (case pertaining to a private injury between two personally owned vessels).

90. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005).

91. *See id.*

92. *Id.* at 497.

93. *Id.* at 485–86; Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950.

94. *Stewart*, 543 U.S. at 486.

recognized that Section 3 provided the appropriate definition of vessel.<sup>95</sup> The Supreme Court said that Section 3 mirrored the historical definition of vessel in general maritime law.<sup>96</sup> Although the Court relied on Congress's definition of vessel, the Supreme Court recognized that a clear analysis does not follow from Section 3's wording.<sup>97</sup>

The Supreme Court attempted to prevent vessel status from returning to its previous ambiguity.<sup>98</sup> The Supreme Court did this in part by rejecting several approaches that various courts had adopted.<sup>99</sup> The Court rejected the First Circuit Court of Appeal's approach that emphasized a structure's primary purpose in determining vessel status.<sup>100</sup> *Stewart* made it clear that a structure's primary purpose does not have to be navigation or commerce to be a vessel.<sup>101</sup> Likewise, the Court expressed its disapproval of the Eleventh Circuit's *snapshot* test that focused on whether a structure is moving at the time of the incident giving rise to a dispute.<sup>102</sup> After rejecting the lower courts' proposals, the Court established the proper approach to vessel classification.<sup>103</sup>

The Court reasoned that a correct analysis focuses on a structure either being *used* or *capable of being used* for transportation on water.<sup>104</sup> Encapsulating the decision, the Supreme Court stated, "[A] 'vessel' is any watercraft *practically capable* of maritime transportation, regardless of its primary purpose or state of transit at a particular moment."<sup>105</sup> Applying that definition, the Court concluded that the Super Scoop was a vessel since it was actively engaged in maritime transportation.<sup>106</sup> The Super Scoop was capable of being used and was actively being used as a vessel, thus satisfying the Supreme Court's new test.<sup>107</sup>

The *Stewart* Court's interpretation of Section 3 should allow a structure practically capable of transportation to be classified as a

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95. *Id.* at 488–91.

96. *Id.* (citing STEVEN FRIEDEL, *BENEDICT ON ADMIRALTY* § 165 (rev. 7th ed. 2004)) (Congress "merely codified . . . the term" when enacting Section 3.).

97. *Id.* at 492.

98. Simpson-Wood, *supra* note 37.

99. *Stewart*, 543 U.S. at 492–96.

100. *Id.* 494–96.

101. *Id.*

102. *Id.* at 495–96.

103. *Id.*

104. *Id.* (quoting 1 U.S.C. § 3).

105. *Id.* at 497 (emphasis added).

106. *Id.*

107. *Id.*

vessel.<sup>108</sup> The Super Scoop was *actually* capable of transportation and was only momentarily stopped at the time of Stewart's injuries.<sup>109</sup> The facts before the Court in *Stewart* did not present the issue of practical capability.<sup>110</sup> After *Stewart*, lower courts naturally faced facts that the Supreme Court did not consider. In bringing clarity to the area of vessel status, the Court provided an analysis that could be consistently applied to most cases, but not all.<sup>111</sup>

In *Bunch v. Canton Marine Towing Company*, a case illustrating *Stewart's* incompleteness, the United States Court of Appeals for the Eighth Circuit decided that a cleaning barge was a vessel.<sup>112</sup> The structure at issue in *Bunch* was the M/V Sir Joseph, a cleaning barge anchored to the bed of the Missouri River with long posts placed vertically through its hull.<sup>113</sup> The M/V Sir Joseph lacked the locomotion of the Super Scoop in *Stewart*.<sup>114</sup> Even after recognizing that the only time the structure moved was with the current of the Missouri River, the Eighth Circuit determined the barge was a *vessel*.<sup>115</sup> Judge Gruender, writing in dissent on the vessel-status issue, voiced concern with the *Stewart* opinion's ramifications.<sup>116</sup> Judge Gruender wrote, "In *Stewart*, the Supreme Court eschewed this focus on a separate 'in navigation' requirement."<sup>117</sup> The majority in *Bunch* struggled to classify the Sir Joseph under *Stewart's* guidance as the structure was largely stationary.<sup>118</sup> With the Supreme Court rejecting a *snapshot* test "allowing vessel status to turn on whether a watercraft is in motion at a given time," the Eighth Circuit wrestled with defining *practical* capability.<sup>119</sup> Judge Gruender's opinion highlighted the difficulty in discerning between a structure being "permanently or semi-permanently moored."<sup>120</sup>

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108. 1 U.S.C. § 3.

109. *Stewart*, 543 U.S at 495–96.

110. *Id.*

111. Simpson-Wood, *supra* note 37, at 117.

112. *Id.*; *Bunch v. Canton Marine Towing Co.*, 419 F.3d 868, 874 (8th Cir. 2006).

113. *Bunch*, 419 F.3d at 870.

114. *Id.* at 874; *Stewart*, 543 U.S at 497.

115. *Bunch*, 419 F.3d at 873 (concluding that despite being "secure in position," the evidence did not show that the barge had been "taken out of service or rendered *practically incapable* of maritime transportation" (emphasis added)).

116. *Id.* at 875 (Gruender, J., concurring in part, dissenting in part).

117. *Id.* at 870 (Gruender, J., concurring in part, dissenting in part) (citing *Stewart*, 543 U.S. at 496).

118. *Bunch*, 419 F.3d 868.

119. *Id.* at 873–74.

120. *Id.* at 877 (Gruender, J., concurring in part, dissenting in part).

*Stewart* and its progeny such as *Bunch* prompted the Supreme Court to readdress vessel status only eight years later.<sup>121</sup> In 2013, the Supreme Court once again considered the definition of a vessel in *Lozman v. City of Riviera Beach, Florida*.<sup>122</sup> In *Lozman*, the Supreme Court altered its vessel-status test, providing that vessel status depends on what a “reasonable observer” looking at the structure in question would conclude.<sup>123</sup>

*b. Lozman Lights the Way for Reasonable Observers*

In 2013, the United States Supreme Court once again revisited the question of vessel status in *Lozman v. City of Riviera Beach, Florida*.<sup>124</sup> In *Lozman*, the Supreme Court decided that the structure at issue, a houseboat, was not a vessel.<sup>125</sup> In classifying the structure in question, the Court focused on how the structure appeared to a reasonable observer.<sup>126</sup> *Lozman*’s houseboat was a “60-foot by 12-foot floating home” built mostly of plywood.<sup>127</sup> The City of Riviera Beach sought to enforce a maritime lien on the structure.<sup>128</sup> But, a maritime lien would only attach if the structure was a vessel.<sup>129</sup> In *Lozman*, the Court filled in the blanks related to practical capability that were left unanswered in *Stewart*.<sup>130</sup>

Both the United States District for the Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit concluded that *Lozman*’s home was a vessel, and accordingly, the City’s lien attached.<sup>131</sup> The Supreme Court decided that the Eleventh Circuit’s conclusion, based upon *Stewart*, was erroneous.<sup>132</sup> The Eleventh Circuit had found *Lozman*’s

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121. See *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013).

122. See *id.*

123. *Id.* at 118, 121, 127.

124. *Id.* at 118.

125. *Id.* at 130.

126. *Id.* at 121.

127. *Id.* at 118.

128. *Id.* at 118–19.

129. *Id.*; Federal Maritime Lien Act, 46 U.S.C. § 31342; 28 U.S.C. § 1333(1).

130. *Lozman*, 568 U.S. at 119 (comparing *De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185, 187 (5th Cir. 2006), with *Bd. of Comm’rs of Orleans Levee Dist. v. M/V Belle of Orleans*, 535 F.3d 1299, 1311–12 (11th Cir. 2008)).

131. *City of Riviera Beach v. That Certain Unnamed Gray, Two Story Vessel Approximately Fifty-Seven Feet in Length*, No. 09-80594, 2009 WL 8575933 (S.D. Fla. July 2, 2009); *Riviera Beach v. That Certain Unnamed Gray, Two-Story Vessel Approximately Fifty-Seven Feet in Length*, 649 F.3d 1259 (11th Cir. 2011).

132. *Lozman*, 568 U.S. at 120.

home to be capable of transportation because it had moved from one site to another with its fixtures aboard.<sup>133</sup> The Eleventh Circuit concluded that the houseboat's mooring was insufficient to render it practically *incapable* of transportation.<sup>134</sup> The Supreme Court said that this expansive view might lead to a finding that "every floating structure is a 'vessel.'"<sup>135</sup> Justice Breyer stated that Section 3 must be applied "in a 'practical,' not a 'theoretical' way."<sup>136</sup> The Supreme Court classified the Eleventh Circuit's analysis focusing on largely sporadic movements as much too lenient.<sup>137</sup>

The Supreme Court concluded that the critical consideration was whether "a *reasonable observer*, looking to the home's physical characteristics and activities, would consider it *designed to a practical degree* for carrying people or things over water."<sup>138</sup> As some commentators have alternatively put it: "[H]ow likely it is that a reasonable person would consider that the structure . . . [is] designed for carrying things or people over . . . water?"<sup>139</sup> The Court noted that the structure's lack of a steering mechanism and means of self-propulsion, unraked hull, and interior appearance were all important indicators of the home not being a vessel.<sup>140</sup> The Court found that the houseboat's physical characteristics would not lead a reasonable observer to conclude it was designed to transport things over water.<sup>141</sup> The Supreme Court's ruling in *Lozman* rejected an "anything that floats" approach to vessel status.<sup>142</sup>

The Court noted that a proper analysis of vessel status uses Section 3 as its starting point.<sup>143</sup> But the majority interpreted Section 3 to limit vessel status to structures actively engaged in transport or those practically capable of transporting things over water to a reasonable observer.<sup>144</sup> The Court reiterated that the purpose a vessel serves is not dispositive of vessel

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133. *That Certain Unnamed Gray, Two-Story Vessel Approximately Fifty-Seven Feet in Length*, 649 F.3d at 1266 (quoting *M/V Belle of Orleans*, 535 F.3d at 1312).

134. *Id.*

135. *Lozman*, 568 U.S. at 121 (emphasis omitted).

136. *Id.* (quoting *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 496 (2005)).

137. *Id.*

138. *Id.* (emphasis added).

139. David Herr & Steve Baicker-McKee, *Maritime Jurisdiction - Definition of "Vessel" - Rules of Construction Act*, 28 NO. 4 FED. LITIGATOR 2; 1 U.S.C. § 3; 28 U.S.C. § 1333; *Lozman*, 568 U.S. at 121.

140. *Lozman*, 568 U.S. at 121–22.

141. *Id.*

142. *Id.* at 126.

143. *Id.* at 123–24 (quoting 1 U.S.C. § 3; *Contrivance*, OXFORD ENGLISH DICTIONARY (3d ed. 2013); *Craft*, OXFORD ENGLISH DICTIONARY (3d ed. 2013)).

144. *Id.* at 121–24.



status but that it is a valid consideration.<sup>145</sup> The *Lozman* rule requires courts to determine vessel status through the eyes of a reasonable observer viewing a structure's physical characteristics.<sup>146</sup> While the Court tried to clarify its decision in *Stewart*, Justice Breyer honestly admitted that the reasonable observer test was not perfect, but he said it would provide a *workable* guidepost.<sup>147</sup>

As Justice Breyer recognized, the reasonable observer test does not always yield a straightforward result.<sup>148</sup> The lack of a clear answer in applying *Lozman* in some situations is particularly difficult when analyzing unconventional maritime structures.<sup>149</sup> For example, in *Baker v. Director, Officer of Workers' Compensation Programs*, the United States Court of Appeals for the Fifth Circuit applied *Lozman's* reasonable observer test to a housing module built to be attached to an offshore oil platform.<sup>150</sup> The structure in *Baker*, the Big Foot, lacked means of self-propulsion and steering and had an unraked bow—all characteristics of a structure not being a vessel.<sup>151</sup> The court found that the purpose of the Big Foot required it to only move once, further supporting a finding the structure was not a vessel.<sup>152</sup> By looking at the Big Foot's physical characteristics, the Fifth Circuit sufficiently considered the view of a reasonable observer.<sup>153</sup>

Similarly, the United States District Court for the Western District of Kentucky had to determine whether a barge converted into a dock was a vessel in *Thomas v. Riverfront Limestone*.<sup>154</sup> The barge had been converted to a dock and was used for unloading cargo from adjacent barges.<sup>155</sup> The district court concluded that the barge was no longer a vessel given its

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145. *Id.* at 128 (“[W]e cannot agree that the need [to eliminate a subjective intent] requires abandonment of all criteria based on ‘purpose.’”).

146. Herr & Baicker-McKee, *supra* note 139; *Lozman*, 568 U.S. at 121.

147. *Lozman*, 568 U.S. at 129.

148. *Id.*

149. *Dufrene v. Hosp. Enters. Inc.*, 523 F. Supp. 3d 913, 920 (E.D. La. 2021); *Gulf Marine Fabricators, LP v. ATP Innovator*, No.16-430, 2017 WL 8677356 (S.D. Tex. Oct. 20, 2017); *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562 (La. 2020); *Baker v. Dir., Off. of Workers' Comp. Programs*, 834 F.3d 542, 546 (5th Cir. 2016); *Thomas v. Riverfront Limestone, LLC*, No. 14-191, 2018 WL 1413342 (W.D. Ky. Mar. 21, 2018).

150. *Baker*, 834 F.3d at 546.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Thomas*, 2018 WL 1413342, at \*4.

155. *Id.* at \*1.

current configuration.<sup>156</sup> In reaching this conclusion, the court focused on the changes made to the barge.<sup>157</sup> The court determined that a *reasonable observer* would conclude a barge with trucks driven on it that is unsafe for general transportation is not designed to a practical degree for transportation over water.<sup>158</sup> The *Baker* and *Thomas* courts confronted less traditional maritime structures, but they were able to apply the reasonable observer analysis to the particular structure.<sup>159</sup> Since the Supreme Court's definition of vessel is the ultimate authority in admiralty law, a court analyzing a vessel post-*Lozman* must utilize the reasonable observer test.<sup>160</sup>

*B. All Aboard, Next Stop Louisiana! Except for Reasonable Observers!*

The history, economy, and topography of Louisiana has resulted in the maritime industry being heavily linked with the State.<sup>161</sup> The maritime industry has an annual economic impact of \$11 billion in Louisiana, and nearly one in five jobs in the State are linked to the industry.<sup>162</sup> The prominence of the maritime industry is due in large part to the State's waterways.<sup>163</sup> Louisiana has 7,721 miles of shoreline, the third-highest of any state.<sup>164</sup> In addition to the State's coastline, another important maritime feature of Louisiana is the Mississippi River. The access Louisiana offers to prominent waterways is the reason that four of the nation's largest ports are located in the state.<sup>165</sup> These ports provide

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156. *Id.* at \*3–4

157. *Id.* (stating “[the barge at issue’s] design was modified and it is no longer used for that function”).

158. *Id.*

159. *Id.*; *Baker*, 834 F. 3d at 546; *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013).

160. *Lozman*, 568 U.S. at 121; *see S. Pac. Co. v. Jensen*, 244 U.S. 205 (1917).

161. *See generally* LA. ASS’N OF BUS. & INDUS., AN INVISIBLE GIANT: THE MARITIME INDUSTRY IN LOUISIANA (Apr. 2015), [https://www.labi.org/wp-content/uploads/2021/06/Maritime\\_Workforce\\_Study\\_LABI\\_LCTCS.pdf](https://www.labi.org/wp-content/uploads/2021/06/Maritime_Workforce_Study_LABI_LCTCS.pdf) [<https://perma.cc/Z7BU-YUDG>].

162. *Id.* at 5.

163. NOAA OFF. OF COASTAL MGMT., SHORELINE MILEAGE OF THE UNITED STATES, <https://coast.noaa.gov/data/docs/states/shorelines.pdf> [<https://perma.cc/ZZG7-WZP3>].

164. *Id.* Alaska and Florida have the first and second longest shorelines in all of the United States with 33,904 and 8,436 miles, respectively. *Id.*

165. *See Tonnage of Top 50 U.S. Water Ports, Ranked by Total Tons*, U.S. DEP’T OF TRANSP., <https://www.bts.gov/content/tonnage-top-50-us-water-ports-ranked-total-tons> [<https://perma.cc/5HEB-2PUD>] (last visited Feb. 21, 2023)

transportation access connecting the maritime industry to major inland American cities.<sup>166</sup> Due to the marriage between Louisiana and the maritime industry, courts in the state regularly face maritime issues, including vessel status.<sup>167</sup>

Maritime law is federal law, and thus, federal law governs the concept of a vessel.<sup>168</sup> The inclusion of maritime law in the United States Constitution directs state courts to align with the newest Supreme Court guidance.<sup>169</sup> When Louisiana courts are faced with a dispute that requires a determination of whether a structure is a vessel, a court will necessarily look to Section 3 and the jurisprudence interpreting it.<sup>170</sup> Louisiana's unique civil law tradition has developed several definitions of vessel.<sup>171</sup> These state law definitions of vessel exist alongside Section 3 but yield to the federal law when required.<sup>172</sup> In the majority of instances, the definition of vessel in Louisiana law either mirrors or closely resembles Section 3.<sup>173</sup> Other times, the word *vessel* is included as a component part of a larger statutory scheme.<sup>174</sup> For example, Louisiana Revised Statutes § 27:44(24) defines a *riverboat* as:

[A] vessel or facility which: (a) Carries a valid Certificate of Inspection issued by the United States Coast Guard with regard to

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(citing *Principal Ports of the United States*, ARMY CORPS OF ENG'RS (Dec. 31, 2021), <https://www.iwr.usace.army.mil/about/technical-centers/wscs-waterborne-commerce-statistics-center/> [<https://perma.cc/R77H-GCSQ>]).

166. *Port 101*, PORT NOLA, <https://www.portnola.com/info/port-101> [<https://perma.cc/VS3J-L8XS>] (last visited Feb. 21, 2023); *Port of Greater Baton Rouge*, PORT OF GREATER BATON ROUGE, <https://www.portgbr.com/> [<https://perma.cc/ZDJ4-9SLT>] (last visited Feb. 21, 2023).

167. *Bell v. Dunn*, 924 So. 2d 224, 236–37 (La. Ct. App. 4th Cir. 2005); *Lafayette Elec. & Marine Supply, Inc. v. Abdon Callais Offshore, LLC*, 44 So. 3d 890, 894–95 (La. Ct. App. 1st Cir. 2010); *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562 (La. 2020).

168. U.S. CONST. art. III, § 2; 1 U.S.C. § 3.

169. U.S. CONST. art. III, § 2.

170. *Caldwell*, 347 So. 3d at 568; 1 U.S.C. § 3.

171. *See* LA. REV. STAT. § 47:818.2 (2023).

172. *Id.*; *id.* § 34:852.2(13); 1 U.S.C. § 3.

173. *See* LA. REV. STAT. § 47:818.2 (2023) (defining *vessel* nearly identically to the definition within 1 U.S.C. § 3 but omits “or other artificial contrivance”); *id.* § 34:852.2(13) (defining *vessel* nearly identically to 1 U.S.C. § 3 via incorporating a definition of *watercraft* from Louisiana Revised Statutes § 34:852.2(12)); 1 U.S.C. § 3 (defining *vessel* as “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water”).

174. LA. REV. STAT. § 27:44(24) (2023).

the carriage of passengers on designated rivers or waterways within or contiguous to the boundaries of the state of Louisiana; (b) Carries a valid Certificate of Inspection from the United States Coast Guard for the carriage of a minimum of six hundred passengers and crew; (c) Has a minimum length of one hundred fifty feet; (d) Is of such type and design so as to replicate as nearly as practicable historic Louisiana river borne steamboat passenger vessels of the nineteenth century era. It shall not, however, be a requirement that the vessel be: (i) Steam-propelled or maintain overnight facilities for its passengers; (ii) Paddlewheel-driven or have an operable paddlewheel; (e) Is approved by the board and a portion of its designated gaming area is located within one thousand two hundred feet of a riverboat's licensed berth. Such facilities shall be inspected pursuant to R.S. 27:44.1(D)(1)(b).<sup>175</sup>

Statutes such as Louisiana Revised Statutes § 27:44(24) provide Louisiana courts with guidance on the State legislature's view on various structures' vessel statuses, often done for specific contexts.<sup>176</sup>

*1. Once Upon a Time These Riverboats Sailed—The History of Louisiana Revised Statutes § 27:44*

In 1991, the Louisiana legislature enacted the first version of the Riverboat Gaming Act (the Act).<sup>177</sup> The Act established the Riverboat Gaming Enforcement Division (the Division) that was responsible for issuing up to 15 licenses for casino riverboats to operate.<sup>178</sup> One of the key components in the new legislation was the requirement that riverboat casinos periodically sail and not remain moored indefinitely.<sup>179</sup> Under the Act, the Division was empowered to revoke licenses and even seize entire riverboats for failing to comply with the Act's requirements.<sup>180</sup> The sailing requirement was not included just for show; it was actively enforced by the Division.<sup>181</sup>

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175. *Id.*

176. *Id.*; see generally *id.* §§ 27:41–113 (Riverboat Gaming Act covers the operation of riverboat casinos in Louisiana).

177. LA. REV. STAT. ANN. §§ 27:41–114 (1991); see *id.* § 27:44(23).

178. *Id.* §§ 27:41–113.

179. *Id.*

180. LA. REV. STAT. ANN. § 4:530 (1992).

181. Bob Evans, *A Guide to Riverboat Law: Riverboat Gambling: Rules of the Game*, DAILY PRESS (Jan. 30, 1995, 12:00 AM), <https://www.dailypress.com/>

The riverboats sailing under the first iteration of the Act were vessels for purpose of maritime law.<sup>182</sup> In 2001, the Louisiana legislature amended the Act to permit casino riverboats to conduct gaming activities while moored indefinitely.<sup>183</sup> No longer were casino riverboats required to sail, which gave rise to the question: are these structures that were indisputably vessels before, no longer vessels?<sup>184</sup> In *Pavone v. Mississippi Riverboat Amusement Corporation*, the United States Court of Appeals for the Fifth Circuit considered the vessel status of a casino riverboat operating under a similar Mississippi state law.<sup>185</sup> The court determined that a riverboat casino that was indefinitely moored was not a vessel on grounds that it had been removed from navigation.<sup>186</sup> The Fifth Circuit found that the stationary structure was not a vessel for maritime law purposes since any movement was only incidental to the structure's primary purpose of dockside gambling.<sup>187</sup> Under the generally accepted view of vessels for purposes of maritime law, a riverboat casino transporting people on a waterway is a vessel.<sup>188</sup> As the Louisiana legislature continued changing the Act, issues surfaced, requiring courts to take a closer look at whether riverboat casinos were vessels.<sup>189</sup>

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news/dp-xpm-19950201-1995-02-01-9502010289-story.html [https://perma.cc/6WM6-UT7R].

182. *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995); *Chase v. La. Riverboat Gaming P'ship*, 709 So. 2d 904, 911–12 (La. Ct. App. 2d Cir. 1998) (Brown, J., dissenting).

183. See LA. REV. STAT. ANN. § 25:66 (2001); Tyler Bridges, *The story of casino companies in Louisiana: How they cracked open the door then pushed it open even wider*, NOLA.COM (June 27, 2021, 4:00 AM), [https://www.nola.com/news/politics/article\\_0c7c8ed8-d5ed-11eb-b516-272921a71545.html](https://www.nola.com/news/politics/article_0c7c8ed8-d5ed-11eb-b516-272921a71545.html) [https://perma.cc/DBP2-9YYK].

184. *Pavone*, 52 F.3d 560.

185. *Id.*

186. *Id.* at 570.

187. *Id.*

188. *Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379 (7th Cir. 2001); *Harvey's Casino v. Isenhour*, 713 N.W.2d 247 (Iowa Ct. App. 2006).

189. *De La Rosa v. St. Charles Gaming Co.*, 474 F.2d 185, 187 (5th Cir. 2006); LA. REV. STAT. §§ 27:41–113 (2023).

2. *Is the Grand Palais a Vessel? The Louisiana Third Circuit Thought So*

In 2019, the Louisiana Third Circuit Court of Appeal, sitting *en banc*, determined that the Grand Palais, a riverboat casino, was a vessel.<sup>190</sup> In *Caldwell v. St. Charles Gaming Company*, Don Caldwell sought damages for injuries he sustained while operating a scissor lift aboard the Grand Palais.<sup>191</sup> Mr. Caldwell claimed that the Grand Palais was a vessel and that he was a seaman entitled to recovery under the Jones Act.<sup>192</sup> In response, St. Charles Gaming Company, the defendant, filed a motion for summary judgment alleging that the Grand Palais was not a vessel, so Caldwell had “no connection to a vessel in navigation” and consequently could not be a seaman.<sup>193</sup> Caldwell filed a cross motion for summary judgment claiming that the Grand Palais was a vessel.<sup>194</sup>

At the time of Mr. Caldwell’s injury, the Grand Palais was operating as a riverboat casino in Lake Charles, Louisiana.<sup>195</sup> Pursuant to the 2001 Amendments to the Act, the Grand Palais no longer sailed at the time of Mr. Caldwell’s injury.<sup>196</sup> Mr. Caldwell argued that St. Charles Gaming spent considerable time and money ensuring that the Grand Palais remained capable of operating as a vessel in line with the requirements of the Act.<sup>197</sup> Several witnesses testified that the Grand Palais “could be made ready to sail in *thirty* minutes.”<sup>198</sup> The court noted that many of the Grand Palais’s features had not changed since 2001 when it last sailed.<sup>199</sup> Mr. Caldwell argued that the lack of alterations to the structure that was once indisputably a vessel supported a conclusion that it remained a vessel when he sustained his injuries.<sup>200</sup>

St. Charles Gaming countered Mr. Caldwell’s claims by focusing on the Grand Palais’s lack of movement.<sup>201</sup> St. Charles Gaming argued that the Grand Palais ceased being a vessel in 2001 when it became indefinitely

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190. *Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940, 947–48 (La. Ct. App. 3d Cir. 2019).

191. *Id.* at 941.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*; LA. REV. STAT. ANN. §§ 27:41–113 (2018).

197. *Caldwell*, 279 So. 3d at 943; LA. REV. STAT. ANN. §§ 27:41–113 (2018).

198. *Caldwell*, 279 So. 3d at 943 (emphasis added).

199. *Id.*

200. *Id.*

201. *Id.* at 942–43.

moored.<sup>202</sup> St. Charles Gaming argued its position was supported by the court's prior decision in *Benoit v. St. Charles Gaming Company*, where it had decided that the Grand Palais was not a vessel.<sup>203</sup> But, in *Caldwell*, the court concluded that its decision in *Benoit* was inconsistent with *Stewart*.<sup>204</sup> The Third Circuit reasoned that a proper analysis, per *Stewart*, focuses on "whether the watercraft's use 'as a means of transportation on water' was a practical possibility or merely a theoretical one."<sup>205</sup> The Third Circuit also rejected St. Charles Gaming's argument that the Grand Palais's mooring demonstrated it was practically *incapable* of engaging in maritime transportation.<sup>206</sup>

The Third Circuit also distinguished Mr. Caldwell's case from its prior decision in *Breaux v. St. Charles Gaming Company*, another case involving a riverboat casino.<sup>207</sup> The court noted that the Grand Palais was structurally different from the M/V Crown, a riverboat casino it had ruled was not a vessel.<sup>208</sup> In rejecting the contention that the Grand Palais was not a vessel, the court stated that the M/V Crown could only "theoretically . . . sail again" and that "such casinos [are] outside the definition of a 'vessel in navigation.'"<sup>209</sup> The appellate court further noted that its reliance in *Breaux* on *De La Rosa v. St. Charles Gaming Company* was erroneous.<sup>210</sup> The Third Circuit determined *Breaux*'s interpretation of *De La Rosa* risked the adoption of a per-se rule that riverboat casinos are not vessels.<sup>211</sup> The court determined a correct analysis post-*Stewart* emphasizes a structure's capability to transport things over water.<sup>212</sup>

The Third Circuit ultimately concluded in its 10–2 *en banc* decision that the Grand Palais was a vessel.<sup>213</sup> In so holding, the court found that that Grand Palais was not "disabled, removed from the water, or sunk to the bottom of the lake, enclosed in a cofferdam."<sup>214</sup> In sum, the Grand

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202. *Id.* at 941.

203. *Id.*; *Benoit v. St. Charles Gaming Co.*, 230 So. 3d 997 (La. Ct. App. 3d Cir. 2017).

204. *Caldwell*, 279 So. 3d at 941.

205. *Id.*

206. *Id.*; *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 120–21 (2013).

207. *Caldwell*, 279 So. 3d at 944 (citing *Breaux v. St. Charles Gaming Co.*, 68 So. 3d 684 (La. Ct. App. 3d Cir. 2011)).

208. *Id.* at 946.

209. *Id.* at 944–45.

210. *Id.* at 945, 947.

211. *Id.*

212. *Id.* at 945.

213. *Id.*

214. *Id.* at 947.

Palais was “*capable* of being used . . . as a means of transportation on water” according to the appellate court.<sup>215</sup>

### 3. *The Louisiana Supreme Court Reverses Course*

After the Third Circuit decided that the Grand Palais was a vessel, the Louisiana Supreme Court granted certiorari to rule on the vessel-status issue.<sup>216</sup> In its majority opinion, the Louisiana Supreme Court reversed, holding that the Grand Palais was *not* a vessel for purposes of maritime law.<sup>217</sup> In its decision, the Court emphasized that the Grand Palais had not moved since it became moored indefinitely on March 24, 2001.<sup>218</sup> The Grand Palais, operating in accordance with the 2001 amendments to the Act, had stopped sailing and started using shore-side utility lines.<sup>219</sup>

The Louisiana Supreme Court interpreted the definition of vessel under Section 3 quite differently from the appellate court.<sup>220</sup> The Court found the Third Circuit’s decision in *Breaux*—the same opinion that the Third Circuit found to be inconsistent with *Stewart*—to be particularly persuasive.<sup>221</sup> The Louisiana Supreme Court stated that the *Breaux* decision correctly recognized that prior decisions did not grant vessel status to a docked riverboat casino attached to the shore.<sup>222</sup> The majority found that the two recent decisions of the United States Supreme Court, *Stewart* and *Lozman*, supported a conclusion that the Grand Palais was not a vessel.<sup>223</sup> Justice *ad hoc* Boddie, writing the majority opinion, concluded “both *Stewart* and *Lozman* make it clear that the question of the ‘watercraft’s use “as a means of transportation on water” is . . . practical,’ and not ‘merely . . . theoretical.’”<sup>224</sup> The majority criticized the Third Circuit for “rel[ying] on language in *Stewart* for the proposition that a craft *capable for use in maritime transportation* is a vessel.”<sup>225</sup> In the rejection

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215. *Id.* (alteration in original) (quoting 1 U.S.C. § 3).

216. *See* *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 563 (La. 2020).

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.* at 565.

222. *Id.*

223. *Id.* at 571 (internal citations omitted).

224. *Id.* (alterations in original).

225. *Id.* at 570–71 (emphasis added).



of the appellate court's analysis and conclusion, the majority referenced a "reasonable observer" only once in its entire opinion.<sup>226</sup>

The Louisiana Supreme Court concluded that the level of integration between the Grand Palais and the adjacent land-based hotel rendered the structure not a vessel.<sup>227</sup> The Court noted that despite "the Grand Palais [being] originally designed to transport people over water, and theoretically [being] capable of navigation," it was no longer a vessel based on "the changes to its physical characteristics, purpose, and function . . . ."<sup>228</sup> Despite quoting considerable portions of both *Stewart* and *Lozman*, the Court failed to fully consider a reasonable observer's view.<sup>229</sup> Instead, the Court's primary interpretation of *Lozman* was that structures not primarily engaged in maritime transportation are not per-se vessels.<sup>230</sup>

Writing in dissent, Justice Hughes was unable to understand how the majority reached its conclusion that the Grand Palais was not a vessel.<sup>231</sup> In support of the Third Circuit's conclusion, Justice Hughes pointed out that "[the Grand Palais] has a captain and crew and can sail at any time."<sup>232</sup> As Justice Hughes noted, the Grand Palais's striking resemblance to traditional vessels was erroneously ignored by the majority.<sup>233</sup>

Less than one year after the Louisiana Supreme Court's *Caldwell* decision, the Grand Palais moved for the first time in nearly 20 years.<sup>234</sup> This movement suggests the Grand Palais was not as "integrated into the adjacent land" as the Louisiana Supreme Court thought.<sup>235</sup> Instead, the riverboat casino appeared to be much more than "theoretically . . . capable" of transportation.<sup>236</sup>

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226. See *id.* at 569 (quoting *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 120–21 (2013)) (The majority opinion quoted a portion of the *Lozman* opinion stating, "[A] structure does not fall within the scope of this statutory phrase [1 U.S.C. § 3] unless a reasonable observer . . . would consider it designed to a practical degree for carrying people or things over water.").

227. *Id.* at 567.

228. *Id.* at 571.

229. See *id.* at 565–71.

230. *Id.* at 570–71.

231. *Id.* at 571 (Hughes, J., dissenting).

232. *Id.* (Hughes, J., dissenting).

233. *Id.* (Hughes, J., dissenting).

234. Discher, *supra* note 2.

235. *Id.*; *Caldwell*, 347 So. 3d at 571; Robinson, *supra* note 4.

236. *Caldwell*, 347 So. 3d at 571.

#### 4. *The Grand Palais Caught Wind of Hurricane Laura*

During the night of August 26 and the early morning of August 27, 2020, Hurricane Laura made landfall near Lake Charles, Louisiana.<sup>237</sup> The hurricane left widespread destruction across large areas of Southwest Louisiana.<sup>238</sup> During the course of the storm, the Lake Charles-area experienced wind gusts of more than 120 miles per hour.<sup>239</sup>

One of the most noticeable displays of Hurricane Laura's power in Lake Charles was the movement of the Grand Palais.<sup>240</sup> During the storm, the Grand Palais broke free of its mooring at the Isle of Capri Casino and drifted across Lake Charles until it collided with the Interstate 10 bridge that crosses the lake.<sup>241</sup> After the hurricane conditions subsided, a tugboat dislodged the Grand Palais from under the bridge and moved it to a safer location.<sup>242</sup> The Grand Palais finally left the Lake Charles-area on October 12, 2021, when it was moved to a new location with the assistance of two tug boats.<sup>243</sup> The events following the Louisiana Supreme Court's *Caldwell* decision emphasize the Court's failure to apply the reasonable observer test. If the Grand Palais was as incapable of transportation as stated, it should have never moved again.

Instead, the Grand Palais moved twice following the Supreme Court's decision. The reasonable observer test considers a structure's natural appearance. By avoiding a proper analysis, the Louisiana Supreme Court steered clear of confronting how the Grand Palais, a structure statutorily required to resemble a vessel, would not appear to a reasonable observer to be a vessel.<sup>244</sup>

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237. Jason Hanna et al., *Hurricane Laura smashes parts of Louisiana and Texas, killing 6 and leaving widespread wind damage*, CNN (Aug. 27, 2020, 8:52 PM ET), <https://www.cnn.com/2020/08/27/weather/laura-gulf-coast-weather-fo-recast-Thursday/index.html> [<https://perma.cc/5JCE-3D8A>].

238. *Id.*

239. *Id.*

240. *Id.*; *Caldwell*, 347 So. 3d at 562; *Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940 (La. Ct. App. 3d Cir. 2019).

241. Daniella Medina, *Isle of Capri Casino in Lake Charles blown away by Laura, wedged under I-10 bridge*, LAFAYETTE DAILY ADVERTISER (Aug. 28, 2020, 8:04 AM CT), <https://theadvertiser.com/story/news/2020/08/27/hurricane-laura-aftermath-isle-capri-riverboat-casino-blown-away/5644697002/> [<https://perma.cc/9FE8-RNCG>].

242. Bryn Stole (@brynstole), TWITTER (Aug. 27, 2020, 12:27 PM), <https://twitter.com/brynstole/status/1299035829684375552> [<https://perma.cc/VD2Q-WM8A>].

243. Robinson, *supra* note 4.

244. LA. REV. STAT. § 27:44(24)(d) (2023).

II. THE LOUISIANA SUPREME COURT MADE A *TITANIC* MISTAKE

In the wake of Hurricane Laura, the last thing anyone was thinking about was whether the Grand Palais was a vessel.<sup>245</sup> However, the Grand Palais becoming lodged under the Interstate 10 bridge crossing Lake Charles captured the attention of even laypersons.<sup>246</sup> But the Grand Palais's movement raised skepticism with the Louisiana Supreme Court's *Caldwell* decision.

It is clear that despite the Louisiana Supreme Court's decision in *Caldwell*, the Grand Palais was not prepared to be "moored indefinitely" and was not as integrated with the land-based hotel as initially thought to be.<sup>247</sup> The Grand Palais's journey from the casino to the bridge cast doubt on the Louisiana Supreme Court's vessel-status analysis.<sup>248</sup> Not only did the Grand Palais move again during Hurricane Laura; just over a year later, the Grand Palais moved again.<sup>249</sup> This time, the riverboat casino bid farewell as it departed from the Lake Charles-area with two tug boats helping.<sup>250</sup> Although neither of these moves were for the *purpose* of transporting things over water, they indicate the Grand Palais is more capable of doing so than the *Caldwell* majority concluded.<sup>251</sup>

The Louisiana Supreme Court's decision in *Caldwell* focused on the Grand Palais's lack of movement and its integration with land-adjacent structures.<sup>252</sup> The Court found that these features were paramount to the structure not being a vessel.<sup>253</sup> However, the Grand Palais was clearly capable of movement.<sup>254</sup> The Grand Palais's movement post-*Caldwell* emphasizes the Louisiana Supreme Court's errant analysis which relied

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245. Bill Chappell, *Hurricane Laura Losses Include 10 Deaths, Up to \$12 Billion*, NPR (Aug. 28, 2020, 4:08 PM ET), <https://www.npr.org/sections/hurricane-laura-live-updates/2020/08/28/907133279/hurricane-laura-losses-include-10-deaths-up-to-12-billion-it-couldve-been-worse> [https://perma.cc/6SY2-6CYM].

246. WBRZ Staff, *Riverboat casino pushed into Lake Charles bridge during storm*, WBRZ (Aug. 27, 2020, 11:31 AM), <https://www.wbrz.com/news/storm-pushes-riverboat-casino-into-i-10-bridge-in-lake-charles/> [https://perma.cc/AL9B-BHY4].

247. Medina, *supra* note 241; *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 571 (La. 2020).

248. Medina, *supra* note 241; *Caldwell*, 347 So. 3d at 571.

249. Robinson, *supra* note 4.

250. *Id.*

251. *Caldwell*, 347 So. 3d at 571.

252. 1 U.S.C. § 3.

253. *Caldwell*, 347 So. 3d at 571.

254. Medina, *supra* note 241.

heavily on the structure's stationary nature instead of applying *Lozman's* reasonable observer test.<sup>255</sup> The problems in *Caldwell* were magnified even further by the Grand Palais showing its capability of *actual* movement.<sup>256</sup> No longer was the Grand Palais merely theoretically capable of movement; it actually moved. The subsequent events indicate the Grand Palais may be more like a vessel than the Court initially thought. Unfortunately, in deciding that the Grand Palais was not a vessel, the Louisiana Supreme Court barred Mr. Caldwell from receiving damages as a seaman under the Jones Act.<sup>257</sup>

An accurate application of *Lozman* will prevent possible errors in determining vessel status. A correct analysis is crucial in riverboat casino cases in which a court must ask: "Would a reasonable observer consider structures that once moved on water and are required to resemble boats designed to a practical degree for transporting over water?"<sup>258</sup> Not only will a proper result follow a proper analysis, the Louisiana Supreme Court *must* apply the *Lozman* rule, something it failed to do in *Caldwell*.<sup>259</sup>

*A. Even in Muddy Water, the United States Supreme Court was Clear*

The United States Supreme Court has attempted to define *vessel* since the issue first arose in late-nineteenth-century admiralty cases.<sup>260</sup> The Supreme Court's most recent decisions in *Stewart* and *Lozman* clarified the definition of vessel more than earlier jurisprudence.<sup>261</sup> In *Lozman*, the United States Supreme Court stated that vessel status is dependent upon whether a "reasonable observer" would classify the structure as a vessel.<sup>262</sup> Since the *Lozman* opinion was handed down in 2013, the open-endedness of defining a vessel under the reasonable observer test has led to some

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255. *Id.*; Robinson, *supra* note 4.

256. *Id.*

257. *Caldwell*, 347 So. 3d at 571.

258. *See* Medina, *supra* note 241; Robinson, *supra* note 4.

259. U.S. CONST. art III, § 2; *see generally* *S. Pac. Co. v. Jensen*, 244 U.S. 205 (1917); *Caldwell*, 347 So. 3d 562.

260. *See* *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625 (1887); *Perry v. Haines*, 191 U.S. 17 (1903); *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926); *Norton v. Warner Co.*, 321 U.S. 565 (1944); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982); *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005); *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013).

261. *See* *Stewart*, 543 U.S. 481; *Lozman*, 568 U.S. 115.

262. *Lozman*, 568 U.S. at 118.

problems. The Louisiana Supreme Court's decision in *Caldwell* is emblematic of an improper analysis under *Lozman*.<sup>263</sup>

In *Lozman*, the United States Supreme Court left unanswered the crucial question of who is a reasonable observer. Is it a marine engineer or someone who has never been on a boat? A lifelong citizen of South Florida or a teenager from Iowa? A preeminent scholar of maritime law or a first-year law student? All of these people are likely to have vastly different views on which structures are designed to a practical degree for transporting things over water. An example of *Lozman*'s ambiguity can be seen in the United States Court of Appeals for the Eighth Circuit's jury instructions, which state that the definition of *vessel* is "any structure that a reasonable person would believe is designed to a practical degree for carrying people or things over water."<sup>264</sup> These instructions define *vessel* in lay terms but only raise more questions such as—*what is a "practical degree"?*<sup>265</sup> A proper application of the reasonable observer test must, at a minimum, consider a structure's physical capability to engage in transportation over water.<sup>266</sup> Not only is this the proper analysis, but also courts are bound to follow the United States Supreme Court's guidance.<sup>267</sup>

In *Caldwell*, the Louisiana Supreme Court's application of *Lozman*'s rule failed to consider the Grand Palais's practical capabilities.<sup>268</sup> The *Caldwell* decision suggests that even structures that "could be made ready to sail in thirty minutes" are not vessels.<sup>269</sup> However, a reasonable observer is likely to see 30 minutes as being rather quick to get a structure ready for transportation over water.<sup>270</sup> The *Caldwell* decision, however, focuses too much on the Grand Palais's *actual* use.<sup>271</sup> A court properly applying *Lozman* must focus on a structure's capability to transport things over

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263. Compare *Caldwell*, 347 So. 3d 562 (the Court purportedly applied *Lozman*, but focused almost exclusively on the structure's primary purpose with little consideration given to other factors), with *Lozman*, 568 U.S. 115 (a proper analysis under *Lozman* considers all relevant facts, not merely a structure's primary purpose, in forming a reasonable observer's viewpoint).

264. MANUAL OF MODEL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE EIGHTH CIRCUIT § 17.23 (2021) (emphasis added) (defining *vessel* for purposes of jury instructions relating to claims under the Jones Act).

265. See *id.*

266. *Lozman*, 568 U.S. at 122.

267. U.S. CONST. art III, § 2; *S. Pac. Co. v. Jensen*, 244 U.S. 205 (1917).

268. See *Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940, 943 (La. Ct. App. 3d Cir. 2019) (emphasis added).

269. *Id.*

270. *Id.*; *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 571 (La. 2020) (Hughes, J., dissenting).

271. See, e.g., *Caldwell*, 347 So. 3d at 564.

water.<sup>272</sup> In *Stewart* and *Lozman*, the Supreme Court rejected approaches that broaden vessel status to structures theoretically capable of transportation.<sup>273</sup> Nonetheless, the United States Supreme Court insists that a structure practically capable of transportation is a vessel.<sup>274</sup>

The lack of a clear answer for which unconventional maritime structures are vessels to a reasonable observer makes a proper analysis more difficult, but it is achievable.<sup>275</sup> In *Baker* and *Thomas*, each court adequately considered the viewpoint of a reasonable observer.<sup>276</sup> The court in *Baker* noted that a structure built to move only once would not appear to be a vessel to a reasonable observer.<sup>277</sup> The *Thomas* court noted that experts determined the barge at issue was “unsuitable for general transportation” due to the changes made.<sup>278</sup> The analyses of the courts in these cases correctly focused on the design and appearance of the structures at issue.<sup>279</sup> Unlike the courts in *Baker* and *Thomas*, the *Caldwell* decision failed to consider the appearance of the Grand Palais to a reasonable observer.<sup>280</sup> The Louisiana Supreme Court did not recognize the presence of a crew aboard the Grand Palais, nor was consideration given to the speed with which the Grand Palais could be made ready to sail.<sup>281</sup> Instead, the Louisiana Supreme Court determined the mooring of the structure and its primary purpose were largely dispositive of the vessel issue.<sup>282</sup> The Court stated that because the Grand Palais “ha[d] been moored indefinitely to provide and maintain its primary purpose of gaming activities,” it was not a vessel.<sup>283</sup>

The United States Supreme Court in *Stewart* stated that “Section 3 requires only that a watercraft be ‘used, or *capable* of being used, as a means of transportation [.]’ . . . . It does not require that a watercraft be

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272. *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013).

273. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 496 (2005); *Lozman*, 568 U.S. at 118.

274. *See Stewart*, 543 U.S. at 496; *Lozman*, 568 U.S. at 118.

275. *See Baker v. Dir., Off. of Workers’ Comp. Programs*, 834 F.3d 542, 546 (5th Cir. 2016); *Thomas v. Riverfront Limestone, LLC*, No. 14-191, 2018 WL 1413342, at \*3 (W.D. Ky. Mar. 21, 2018).

276. *Baker*, 834 F.3d at 546; *Thomas*, 2018 WL 1413342, at \*3–4.

277. *Baker*, 834 F.3d at 547.

278. *Thomas*, 2018 WL 1413342, at \*3.

279. *Baker*, 834 F.3d at 546–48; *Thomas*, 2018 WL 1413342, at \*4.

280. *See Baker*, 834 F.3d 542; *Thomas*, 2018 WL 1413342; *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562 (La. 2020).

281. *Caldwell*, 347 So. 3d 562.

282. *Id.* at 571.

283. *Id.*

used *primarily* for that purpose.<sup>284</sup> The courts in *Baker* and *Thomas* applied the reasonable observer test, which preserved the concerns with a structure's practical capability, to less traditional maritime structures.<sup>285</sup> The *Caldwell* Court focused almost exclusively on the primary purpose of the Grand Palais and the intentions of St. Charles Gaming—an approach that the United States Supreme Court rejected.<sup>286</sup>

### *B. The Louisiana Supreme Court Gets Lost at Sea*

Despite the reasonable observer test not presenting an obvious outcome in all cases, *Lozman*'s rule is the United States Supreme Court's latest guidance, and the Louisiana Supreme Court must apply this interpretation of Section 3.<sup>287</sup> The subsequent movements of the Grand Palais magnify the Louisiana Supreme Court's failure to apply *Lozman* in *Caldwell*.<sup>288</sup> The problems associated with determining the vessel status of riverboat casinos, such as the Grand Palais, arose when the Louisiana legislature passed the Act in 1991.<sup>289</sup> The legislature has amended Louisiana Revised Statutes § 27:44 on nine separate occasions.<sup>290</sup> As the Act changed, the issue of whether these riverboats are vessels has been central in many cases.<sup>291</sup> This issue is incredibly relevant because often times it “makes or breaks” a plaintiff's case.<sup>292</sup>

In 2018, Senator Daniel Martiny proposed two changes to Louisiana Revised Statutes Title 27 in Senate Bill 318 (S.B. 318).<sup>293</sup> One of the changes proposed in S.B. 318 was to permit riverboat casino operators to move gaming activities off the riverboats.<sup>294</sup> Senator Martiny proposed

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284. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 495 (2005) (first emphasis added) (quoting 1 U.S.C. § 3).

285. *Baker*, 834 F.3d at 546–49; *Thomas*, 2018 WL 1413342, at \*4.

286. *Caldwell*, 347 So. 3d at 571; *Stewart*, 543 U.S. at 494–96; Frilot, *supra* note 9, at 229.

287. *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 121–22 (2013); U.S. CONST. art III, § 2.

288. *Caldwell*, 347 So. 3d at 570–71.

289. LA. REV. STAT. ANN. § 27:44(24) (1991).

290. *See* LA. REV. STAT. § 27:44 (2023).

291. *Chase v. La. Riverboat Gaming, P'ship*, 709 So. 2d 904, 911 (La. Ct. App. 2d Cir. 1998); *Hertz v. Treasure Chest Casino, L.L.C.*, 274 F. Supp. 2d 795 (E.D. La. 2003); *Bd. Of Comm'rs of the Orleans Levee Dist. V. M/V Belle of Orleans*, 535 F.3d 1299 (11th Cir. 2008).

292. *See, e.g., Chase*, 709 So. 2d at 911; *Hertz*, 274 F. Supp. 2d 795; *M/V Belle of Orleans*, 535 F.3d at 1299.

293. *S.B. 318 Hearing*, *supra* note 13; LA. REV. STAT. § 27 (2023).

294. LA. REV. STAT. § 27:67 (2023); *S.B. 318 Hearing*, *supra* note 13.

allowing gaming activities onshore up to 1,200 feet away from existing riverboats.<sup>295</sup> Senator Martiny stated that moving some gaming activities ashore would reduce the number of people facing risks aboard riverboat casinos.<sup>296</sup> In amending the Act, the legislature recognized the heightened risks maritime workers face working on or near bodies of water.<sup>297</sup> The legislature passed S.B. 318's amendments to alleviate these risks to an extent.<sup>298</sup> But these risks still remain present for those working aboard riverboat casinos. The heightened risks maritime workers face is a primary reason maritime workers are afforded specialized compensation.<sup>299</sup>

Part of the legislature's policy in allowing gaming activities to come ashore is to prevent dangerous situations out on the water and protect casino employees.<sup>300</sup> This clearly indicates that the legislature believes that those aboard the riverboat casinos are exposed to dangers inherently associated with the water.<sup>301</sup> In *Caldwell*, the Louisiana Supreme Court denied the existence of these risks by classifying casino riverboats as non-vessels.<sup>302</sup> As a result of these contradictory positions, the Court denied Mr. Caldwell recovery.<sup>303</sup> Mr. Caldwell was determined to have no connection to a vessel and was barred from receiving damages under the Jones Act or LHWCA.<sup>304</sup> Mr. Caldwell was injured on a riverboat casino that was statutorily required to resemble historical vessels.<sup>305</sup> The legislature recognizes that those working aboard riverboat casinos face the risks maritime law is meant to provide remedies for.<sup>306</sup> The Louisiana Supreme Court directly contradicted the legislature's express purpose behind amending Louisiana Revised Statutes § 27:44 and maritime law's ability to protect maritime workers by denying Mr. Caldwell an opportunity to pursue his claim for injuries sustained aboard the Grand Palais.<sup>307</sup>

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295. LA. REV. STAT. § 27:67 (2023); *S.B. 318 Hearing*, *supra* note 13.

296. *S.B. 318 Hearing*, *supra* note 13.

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *See generally* Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950; Jones Act, 46 U.S.C. §§ 55101–55123.

302. *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 571 (La. 2020).

303. *Id.*

304. *Id.*

305. LA. REV. STAT. § 27:44(24)(d) (2023).

306. *Id.* § 27:44(24); *S.B. 318 Hearing*, *supra* note 13.

307. *Caldwell*, 347 So. 3d at 371.



*C. Setting the Louisiana Supreme Court “On the Right Tack”*

The decision of the Louisiana Supreme Court in *Caldwell* is consistent with the resistance some courts have shown in classifying riverboat casinos as vessels.<sup>308</sup> The Louisiana Supreme Court’s skewed analysis focused too much on the Grand Palais’s primary purpose of conducting gaming activities, as opposed to considering the structure’s practical capability for transporting things over water from a reasonable observer’s perspective.<sup>309</sup> The *Caldwell* Court stated that “*Lozman* refined [the language in the *Stewart* opinion], explaining that the statutory definition of a vessel may or may not apply when the craft has some other primary purpose.”<sup>310</sup> The Louisiana Supreme Court did not apply *Lozman*’s reasonable observer test in *Caldwell*.

The words “reasonable observer” appear once in the entire opinion.<sup>311</sup> This reference is made in one of Justice Boddie’s page-long excerpts of *Lozman*; the words “reasonable observer” do not appear in any substantive application.<sup>312</sup> When the legislature amended Louisiana Revised Statutes § 27:44, it established that, in its opinion, casino riverboats face some maritime risks.<sup>313</sup> Not only does the legislature associate riverboat casinos with maritime risks, but it also statutorily requires the Grand Palais to resemble a vessel.<sup>314</sup> If workers are exposed to the inherent risks of maritime activities while aboard structures resembling vessels, these structures must be perceived as vessels.<sup>315</sup>

In *Caldwell*, the testimony revealed that the Grand Palais could be made ready to sail within 30 minutes’ notice.<sup>316</sup> The Grand Palais maintained a maritime crew, of which Mr. Caldwell was a part.<sup>317</sup> Before

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308. *Id.*; *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995); *Hertz v. Treasure Chest Casino, L.L.C.*, 274 F. Supp. 2d 795 (E.D. La. 2003).

309. *Caldwell*, 347 So. 3d at 570–71 (citing *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 123–25 (2013)); 1 U.S.C. § 3.

310. *Caldwell*, 347 So. 3d at 570–71 (citing *Lozman*, 568 U.S. at 124).

311. *Id.* at 569.

312. *Id.*; *S.B. 318 Hearing*, *supra* note 13.

313. *S.B. 318 Hearing*, *supra* note 13.

314. LA. REV. STAT. § 27:44(24)(d) (2023) (Section 27:44(24)(d), in pertinent part, requires riverboat casinos to “replicate as nearly as practicable historic Louisiana river borne steamboat passenger vessels of the nineteenth century era.”).

315. *Caldwell*, 347 So. 3d at 571.

316. *Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940, 943 (La. Ct. App. 3d Cir. 2019).

317. *Caldwell*, 347 So. 3d at 571 (Hughes, J., dissenting).

becoming moored at the Isle of Capri Casino in 2001, the Grand Palais operated as a *moving* riverboat casino that *transported* passengers.<sup>318</sup> Such characteristics suggest a more practical than theoretical capability to move. In the years following the Louisiana Supreme Court's opinion in *Caldwell*, this practicability became actuality.<sup>319</sup> The Grand Palais moved twice following the Court's decision that the structure was not a vessel; once in August 2020, when Hurricane Laura hit the Lake Charles area, and once again on October 12, 2021, when the riverboat casino left the area.<sup>320</sup>

The Louisiana Supreme Court's opinion is bereft of any actual application of *Lozman's* reasonable observer test and instead focuses on the Grand Palais's primary purpose or a snapshot test.<sup>321</sup> The United States Supreme Court rejected both of those approaches.<sup>322</sup> Despite the United States Supreme Court providing guidance on the definition of *vessel*, the Louisiana Supreme Court improperly determined vessel status under approaches the United States Supreme Court has rejected.

The classification of riverboat casinos in Louisiana, such as the Grand Palais, must be done under the United States Supreme Court's current test for vessel status.<sup>323</sup> Under *Stewart* and *Lozman*, the proper analysis of the Grand Palais would consider if a reasonable observer would view it as designed to a *practical degree* for transporting things over water.<sup>324</sup> A reasonable observer viewing a structure that: resembles a vessel,<sup>325</sup> can

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318. *Caldwell*, 279 So. 3d at 942–43.

319. *See generally Caldwell*, 347 So. 3d 562; Discher, *supra* note 2; Robinson, *supra* note 4.

320. Discher, *supra* note 2; Robinson, *supra* note 4.

321. *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013); *Caldwell*, 347 So. 3d 562.

322. *See Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 482–83 (2005) (ruling against a “snapshot” test and rejecting the First Circuit’s primary purpose analysis).

323. Alice K. Mulvaney, *King v. Grand Casinos of Mississippi, Inc.—Gulfport: Is Vessel Status Under Federal Maritime Law More Than a Roll of the Dice?*, 73 TUL. L. REV. 365, 375–76 (1998) (citing *King v. President Riverboat Casino-Miss., Inc.*, 894 F. Supp. 1008, 1013–14 (S.D. Miss. 1995); MISS. CODE ANN. § 97-33-1 (1997)); *id.* at 384 (confusion arises from state statutes regulating casino riverboats and the applicability of these statutes to vessel status, state laws “should not have any [e]ffect on the federal law standards or definitions of those terms”).

324. *Lozman*, 568 U.S. 115; *Stewart*, 543 U.S. 481.

325. LA. REV. STAT. § 27:44(24)(d) (2023).

move with 30 minutes' notice,<sup>326</sup> maintains a crew and captain,<sup>327</sup> and has moved multiple times<sup>328</sup> would likely view the structure as a vessel. As Justice Hughes stated, “[T]his riverboat [the Grand Palais] has so many of the qualities of a traditional vessel that *I do not see how its status can be denied.*”<sup>329</sup>

### III. LOUISIANA SHOULD REASONABLY OBSERVE CASINO RIVERBOATS

Several possible solutions exist for correcting the Louisiana Supreme Court's misguided approach to determining the vessel status of riverboat casinos. Further amendment or outright repeal of the Act could prevent consideration of riverboat casinos as vessels.<sup>330</sup> This resolution would require riverboat casino operators to take one of two actions: (1) riverboat casino operators could be banned from operating on the water; or (2) riverboat casino operators could position the riverboats in such a way that the structures would indisputably be non-vessels. Possible solutions include: enclosing a riverboat casino in a cofferdam, a watertight enclosure that would result in the riverboat only having the appearance of being on water; permanently attaching the structure to the bed of a waterway; or removing all navigational and locomotive capabilities from a structure. An operator doing one of these would render a riverboat casino practically incapable of transportation over water and thus not a vessel.<sup>331</sup> The only amendment of the Act that would outright stop issues of vessel status from arising is banning riverboat casinos.<sup>332</sup> Therefore, as long as riverboat casinos operate in Louisiana, the Louisiana Supreme Court must analyze vessel status according to the latest United States Supreme Court guidance.<sup>333</sup>

Banning riverboat casinos would undermine the legislature's stated purpose for enacting the Act.<sup>334</sup> Louisiana Revised Statutes Title 27, § 42(A)(1) states that the public policy supporting the Act is to develop “a

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326. *Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940, 943 (La. Ct. App. 3d 2019).

327. *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 571 (La. 2020) (Hughes, J., dissenting).

328. Discher, *supra* note 2; Robinson, *supra* note 4.

329. *Caldwell*, 347 So. 3d at 571 (Hughes, J., dissenting) (emphasis added).

330. LA. REV. STAT. §§ 27:41–113 (2023).

331. 1 U.S.C. § 3; *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005); *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013).

332. *See generally* LA. REV. STAT. §§ 27:41–103 (2023).

333. *See Lozman*, 568 U.S. 115.

334. LA. REV. STAT. § 27:42(A)(1) (2023).

historic *riverboat industry* [that] is important to the *economy* of the state of Louisiana.<sup>335</sup> The Act has been amended such that the riverboat casinos are no longer required to sail.<sup>336</sup> But as the legislature recognized when proposing S.B. 318, those aboard riverboat casinos are still exposed to the inherent dangers of the water.<sup>337</sup> If the primary public policy behind the Act is the historic context of the riverboat casinos, the industry should be preserved as much as possible.<sup>338</sup> The revenues generated by the riverboat casino industry further justify keeping the gaming activities aboard the riverboat casinos.<sup>339</sup> Given these reasons, amending the Act to require casino operators to abandon casino riverboats is not well founded and would have an unfavorable impact on the State's economy and history.

Louisiana legislatively declaring that riverboat casinos are *de facto* not vessels is untenable.<sup>340</sup> Congress provided the definition of vessel in Section 3, and the United States Supreme Court adopted Section 3 for determining vessel status for purposes of federal maritime law.<sup>341</sup> Since federal law is controlling, Louisiana cannot self-determine the vessel status of casino riverboats.<sup>342</sup> Congress is the only body that could legislatively declare riverboat casinos as non-vessels.<sup>343</sup> As a result of this power structure, any declaration by the Louisiana legislature would be inconsequential.<sup>344</sup>

The most direct solution is for the Louisiana Supreme Court to properly apply the latest United States Supreme Court precedent as is constitutionally required.<sup>345</sup> The best solution for Louisiana courts determining the vessel status of riverboat casinos in the post-*Stewart* and

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335. *Id.* (emphasis added).

336. *S.B. 318 Hearing, supra* note 13.

337. *Id.*

338. *Id.*

339. SPECTRUM GAMING GRP., COMPREHENSIVE GAMING INDUSTRY ANALYSIS: STATE OF LOUISIANA ii–iii (Apr. 2, 2019), [http://lgcb.dps.louisiana.gov/docs/Comprehensive\\_Gaming\\_Industry\\_Analysis.pdf](http://lgcb.dps.louisiana.gov/docs/Comprehensive_Gaming_Industry_Analysis.pdf) [https://perma.cc/6F CM-J55K] (independent report compiled on behalf of the State of Louisiana estimating that 75% of the overall employment, 47,647 jobs supported, and value added (\$3.8 billion) are derived from the riverboat sector of the state's gaming industry).

340. Mulvaney, *supra* note 323, at 375–76.

341. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 489–90 (2005); *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 118 (2013).

342. U.S. CONST. art III, § 2.

343. *Id.*

344. *S. Pac. Co. v. Jensen*, 244 U.S. 205, 253–54 (1917).

345. U.S. CONST. art III, § 2; *Lozman*, 568 U.S. 115; *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562 (La. 2020).

*Lozman* jurisprudential landscape requires two considerations. First, the Louisiana Supreme Court is constitutionally required to apply the United States Supreme Court's reasonable observer test when analyzing riverboat casinos, such as the Grand Palais in *Caldwell*.<sup>346</sup> Second, a proper reasonable observer analysis recognizing casino riverboats as vessels is consistent with the Louisiana legislature's expressly stated policies.<sup>347</sup> If Louisiana courts are to recognize the authority of both the United States Supreme Court and the Louisiana legislature's policies, then the vessel status of riverboat casinos must be analyzed differently.

Additionally, the Louisiana Supreme Court properly applying *Lozman*'s rule would recognize the legislature's policies underlying the Act.<sup>348</sup> The Louisiana legislature has already established backing for a reasonable observer viewing riverboat casinos as vessels.<sup>349</sup> Louisiana Revised Statutes § 27:44(24)(d) states that a *riverboat* should be "of such type and design so as to replicate as nearly as practicable historic Louisiana river borne steamboat *passenger vessels* of the nineteenth century era."<sup>350</sup> These historic riverboats were not merely capable of, but were actually used "as a means of transportation on water."<sup>351</sup> Further, riverboat casinos, such as the Grand Palais, that operated under the Act's initial requirements *did* sail.<sup>352</sup> Under the Act, these casino riverboats are statutorily required to mimic riverboats that actually carried passengers on Louisiana's waterways.<sup>353</sup> Thus, a reasonable observer examining a structure that has engaged in transportation over water and is meant to resemble boats that carried passengers would very likely view that structure as a vessel.<sup>354</sup>

The establishment of the reasonable observer test by the United States Supreme Court in *Lozman* bolsters the argument that some Louisiana riverboat casinos are vessels.<sup>355</sup> Properly applying the Supreme Court's reasonable observer test should result in the riverboat casinos, structures statutorily required to resemble vessels, as being viewed in one way.<sup>356</sup>

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346. *Lozman*, 568 U.S. at 122.

347. *S.B. 318 Hearing*, *supra* note 13.

348. *Id.*

349. LA. REV. STAT. § 27:44(24)(d) (2023).

350. *Id.* (emphasis added).

351. 1 U.S.C. § 3.

352. LA. REV. STAT. ANN. § 27:41–114 (1991).

353. LA. REV. STAT. § 27:44(24)(d) (2023).

354. *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 130 (2013).

355. *See id.*

356. *See id.*; LA. REV. STAT. § 27:44(24)(d) (2023).

The result is that a riverboat casino should, at a glimpse, appear to a reasonable observer to be a vessel.<sup>357</sup>

The vessel status of riverboat casinos in Louisiana became contentious when the Act was amended in 2001.<sup>358</sup> After the Act's requirements changed, riverboat casinos stopped sailing and became moored at various locations throughout Louisiana.<sup>359</sup> Since the riverboats stopped sailing, courts have viewed these structures as "dead ships."<sup>360</sup> Riverboat casinos operating in Louisiana are distinct from structures that are commonly viewed as dead ships. For example, the *Queen Mary*, a cruise liner that once sailed but now operates as a hotel in California, is enclosed within a cofferdam on all sides.<sup>361</sup> The Grand Palais is not confined in a similar manner, but the only thing that prevented the riverboat casino from moving was the subjective intent of its owners who kept the structure indefinitely moored.<sup>362</sup> In spite of St. Charles Gaming's subjective intent and the Grand Palais's primary purpose, the riverboat casino moved on two separate occasions.<sup>363</sup> The Grand Palais and similar riverboat casinos in Louisiana are statutorily required to, and thus actually do, resemble steamboat passenger vessels.<sup>364</sup> Riverboat casinos in Louisiana would not be seen as dead ships to a reasonable observer unless clear measures are taken to limit a structure's mobility.

The best way to demonstrate the effects of a proper application of the *Lozman* reasonable observer is an application of the test to one of the many riverboat casinos operating in Louisiana.<sup>365</sup> Although several casinos in

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357. *Lozman*, 568 U.S. at 122; LA. REV. STAT. § 27:44(24)(d) (2023).

358. LA. REV. STAT. ANN. § 25:66 (2001); Bridges, *supra* note 183.

359. *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 563 (La. 2020).

360. John Mulch, *From the "Dead Ship" Doctrine to Vessels "In Navigation": One Changing Aspect in Determining Admiralty Jurisdiction and Available Maritime Remedies*, 70 TUL. L. REV. 717, 719 n.6 (1995) (internal citations omitted) ("dead ship" refers to "a vessel . . . not engaging in maritime navigation or commerce").

361. Hugo Martín, *Long Beach takes over Queen Mary, vowing to preserve the landmark ship*, L.A. TIMES (June 4, 2021, 6:11 PM PT), <https://www.latimes.com/business/story/2021-06-04/long-beach-takes-over-queen-mary> [<https://perma.cc/YMY9-J6S2>].

362. *Caldwell*, 347 So. 3d at 571.

363. *Id.*; Discher, *supra* note 2; Robinson, *supra* note 4.

364. LA. REV. STAT. § 27:44(24)(d) (2023).

365. See LA. GAMING CONTROL BD., SEPTEMBER 2021 RIVERBOAT REVENUE REPORT (Sept. 30, 2021), [https://dpsweb.dps.louisiana.gov/lgcb.nsf/ddb20cf421af536586256e9b0049df46/8c1bd124656ee6bc86258775006614e2/\\$FILE/SEPTEMBER%202021%20-%20Riverboat%20Revenue.002.pdf/SEPTEMBER%202021%20-%20Riverboat%20Revenue.pdf](https://dpsweb.dps.louisiana.gov/lgcb.nsf/ddb20cf421af536586256e9b0049df46/8c1bd124656ee6bc86258775006614e2/$FILE/SEPTEMBER%202021%20-%20Riverboat%20Revenue.002.pdf/SEPTEMBER%202021%20-%20Riverboat%20Revenue.pdf) [<https://perma.cc/W6YY->

Louisiana operate under the Act, many casinos lack characteristics commonly associated with a riverboat such as a hull, gangway, or steering wheel.<sup>366</sup> Many of these “riverboat” casinos opened after the 2001 amendments to the Act were passed.<sup>367</sup> For example, the Golden Nugget Casino Resort in Lake Charles “put its gambling floor over a slough” to satisfy the Act’s requirements despite the structure appearing to a reasonable observer as a resort building.<sup>368</sup> These “riverboats” would certainly not appear as vessels to a reasonable observer.<sup>369</sup> Despite some casinos adopting approaches similar to the Golden Nugget’s, nine casinos operating in Louisiana resemble the historic riverboats.<sup>370</sup>

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U5W6] [hereinafter SEPTEMBER 2021 - RIVERBOAT REVENUE REPORT]. The report states that, as of September 30, 2021, there are 15 casinos operating as casino riverboats in the state of Louisiana. *Id.*

366. Mark Ballard, *First riverboat casino approved to come ashore near Lake Charles; see next steps, expected completion*, THE ADVOCATE (Dec. 19, 2019), [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/article\\_62bf5c30-22c0-11ea-bac4-577d6cc348dd.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_62bf5c30-22c0-11ea-bac4-577d6cc348dd.html) [<https://perma.cc/CWU3-8JHJ>].

367. Erin Mulvaney, *Houston billionaire’s Lake Charles casino opens early*, HOUS. CHRON. (Dec. 11, 2014, 8:27 AM), <https://www.chron.com/business/real-estate/article/Houston-billionaire-s-Lake-Charles-casino-set-to-5941718.php> [<https://perma.cc/3M8U-5MXC>] (Golden Nugget in Lake Charles opened on December 7, 2014.); *Pinnacle Entertainment Announces L’Auberge Casino & Hotel Baton Rouge to Open Saturday, Sept. 1 at 2:00pm CDT*, GLOBENEWSWIRE (Aug. 31, 2012, 6:28 PM ET), <https://www.globenewswire.com/news-release/2012/08/31/488308/20618/en/Pinnacle-Entertainment-Announces-L-Auberge-Casino-Hotel-Baton-Rouge-to-Open-Saturday-Sept-1-at-2-00pm-CDT.html> [<https://perma.cc/FSK5-N942>] (L’Auberge in Baton Rouge opened on September 1, 2012.).

368. Ballard, *supra* note 366.

369. *See id.*; e.g., Courtney Heppe, *\$205 million Bossier City casino set to open doors*, RED RIVER RADIO (June 10, 2013, 9:59 AM CDT), <https://www.redriverradio.org/post/205-million-bossier-city-casino-set-open-doors> [<https://perma.cc/TG5J-68T4>] (Margaritaville Resort Casino); Marcy de Luna, *Tilman Fertitta’s Golden Nugget in Lake Charles reopens*, HOUS. CHRON. (Oct. 13, 2020), <https://www.chron.com/business/article/Tilman-Fertitta-s-Golden-Nugget-in-Lake-Charles-15644394.php> [<https://perma.cc/U5W8-BJ6U>] (Landry’s, Inc.); *L’Auberge, Hollywood casinos in Baton Rouge reopening May 18; here are restrictions and health and safety protocols*, THE ADVOCATE (May 15, 2020), [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_b91ba1a8-96c7-11ea-a162-6be632668b42.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_b91ba1a8-96c7-11ea-a162-6be632668b42.html) [<https://perma.cc/N6MP-YPMQ>] (Heather McClelland) (see photos contained in articles for examples of casinos that operate as riverboats but do not have riverboat features).

370. SEPTEMBER 2021 - RIVERBOAT REVENUE REPORT, *supra* note 365 (Boomtown Bossier, El Dorado Resort, Horseshoe, Diamond Jacks, and Sam’s

For example, the Belle of Baton Rouge (the Belle) operates on the Mississippi River as a riverboat casino in Baton Rouge, Louisiana.<sup>371</sup> The Belle began operating in 1994 and initially conducted 90-minute cruises throughout the day in accordance with the Act's requirements at the time.<sup>372</sup> Now, the Belle is adjoined to a nearby hotel and convention complex.<sup>373</sup> For guests to board the actual casino riverboat, they must embark down a promenade that connects the adjacent land-based complex and the riverboat.<sup>374</sup> The riverboat is moored alongside a two-story platform that provides access to the riverboat.<sup>375</sup> The below pictures demonstrate the appearance of the Belle from multiple angles.



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Town in the Shreveport-Bossier-area; Amelia Belle, Boomtown N.O., and Treasure Chest in the New Orleans-area; and the Belle of B.R. in Baton Rouge all resemble classic riverboats.).

371. Timothy Boone, *Caesars Entertainment to sell Belle of Baton Rouge to Illinois-based company*, THE ADVOCATE (Dec. 2, 2020), [https://www.theadvocate.com/baton\\_rouge/news/business/caesars-entertainment-to-sell-belle-of-baton-rouge-to-illinois-based-company/article\\_a72abdfa-34e5-11eb-bb73-531413404927.html](https://www.theadvocate.com/baton_rouge/news/business/caesars-entertainment-to-sell-belle-of-baton-rouge-to-illinois-based-company/article_a72abdfa-34e5-11eb-bb73-531413404927.html) [https://perma.cc/P782-LJJE].

372. Greg Garland, *Roll 'em \*\*\* Belle Gamblers got what they came for*, THE ADVOCATE (Oct. 1, 1994), <https://infoweb.newsbank.com/apps/news/document-view?p=AWNB&docref=news/0EB477A829E54164&f=basic> [https://perma.cc/PN6N-UBHQ].

373. Chad Calder, *\$7 million revamp planned at Belle*, THE ADVOCATE (Apr. 13, 2011), <https://infoweb.newsbank.com/apps/news/document-view?p=AWNB&docref=news/13698720C5E110E0&f=basic> [https://perma.cc/6MLP-VGKY].

374. *Id.*

375. *Id.*

376. Belle of Baton Rouge I casino opens, in *Gaming History – Week of November 01, 1987*, MUSEUM OF GAMING HIST., <http://museumofgaminghistory>





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As the pictures illustrate, the Belle is integrated with an adjacent structure to some extent. This is quite similar to the Grand Palais involved

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.org/mogh.php?p=history&sd=562741200 [https://perma.cc/AZE8-DBZ5] (last visited Feb. 21, 2023).

377. Photograph of The Belle of Baton Rouge from a Top-down Perspective, in *The Belle of Baton Rouge*, GOOGLE MAPS, <http://maps.google.com> [https://perma.cc/R69F-Z3TK] (last visited Feb. 21, 2023) (search “Belle of Baton Rouge”; then switch to “Satellite” view in the “Layers”).

378. Photograph of The Belle’s Side from the Mississippi River, in Holly Duchmann, *Belle of Baton Rouge changing hands again*, GREATER BATON ROUGE BUS. REP. (Dec. 2, 2020), <https://www.businessreport.com/business/belle-of-baton-rouge-changing-hands-again> [https://perma.cc/5SG7-L3VM].

in the *Caldwell* decisions.<sup>379</sup> The physical appearance of the Belle to a reasonable observer, such as that contemplated by the Supreme Court in *Lozman*, suggests that the casino riverboat would be a vessel.<sup>380</sup> The Belle appears to be quite similar to structures commonly thought of as vessels. The Belle was initially designed to transport passengers and did so for several years.<sup>381</sup> The design and use of casino riverboats, like the Grand Palais and the Belle, resemble that of vessels, and these structures are unmistakably different from “casino riverboats” such as the Golden Nugget.<sup>382</sup> It was only in accordance with the 2001 amendments to the Act that the Belle and similar casino riverboats that were sailing at the time became moored.<sup>383</sup>

The appearance of the Belle is meant to mimic the riverboats that sailed Louisiana’s waterways decades ago. The close resemblance that is statutorily required furthers an argument that the Belle, the Grand Palais, and other casino riverboats are vessels. Further, if Senator Martiny’s justifications for proposing S.B. 318 are to be taken at face value, classifying the casino riverboats as vessels for maritime law purposes makes sense. Senator Martiny’s proposal implies that the legislature views the casino riverboats as having some inherent maritime characteristics, even further supporting casino riverboats being classified as vessels. In many maritime cases in which a party is seeking damages, whether the structure at issue is a vessel is a vital component of the case. Structures that have transported passengers over water in most situations and are built to resemble historical vessels should almost certainly be found to be vessels to a reasonable observer.

A proper application of the *Lozman* reasonable observer test would ensure that a just result is reached regardless of whether the Belle is ultimately a vessel. Applying the newest United States Supreme Court guidance properly ensures that maritime workers are able to receive adequate compensation for injuries suffered aboard casino riverboats. Classifying riverboat casinos operating pursuant to the Act as vessels for purposes of maritime law will preserve many of the policies associated

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379. See *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562 (La. 2020); *Caldwell v. St. Charles Gaming Co.*, 279 So. 3d 940 (La. Ct. App. 3d Cir. 2019).

380. *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 122 (2013).

381. Garland, *supra* note 372.

382. Photograph of The Belle’s side from the Mississippi River, *supra* note 378; Ballard, *supra* note 366.

383. LA. REV. STAT. § 27:44(24)(d) (2023); Scott Dyer, *Baton Rouge riverboats winning big after shutdown of video poker*, THE ADVOCATE, Feb. 11, 2001, at 1A.

with Louisiana's riverboat gaming industry while paying proper homage to the Supreme Court's definition.

#### CONCLUSION

The proper application of *Lozman*'s reasonable observer test regarding the vessel status of casino riverboats acknowledges both the Supreme Court's guidance and the Louisiana legislature's intent in S.B. 318. The Louisiana Supreme Court must honor the public policy and abide by these decisions. In *Caldwell*, the Louisiana Supreme Court failed to consider the legislature's express reason for adopting amendments to the Riverboat Gaming Act and the reasonable observer test in *Lozman*. To acknowledge the dangers faced aboard the casino riverboats, Louisiana courts must abide by the *Lozman* standard in finding that casino riverboats, a boat meant to mimic a vessel, is a vessel.

In *Lozman*, the United States Supreme Court mandated that a structure is a vessel if a reasonable observer would conclude as much.<sup>384</sup> The Louisiana Supreme Court asserts that a reasonable observer would not view a riverboat casino as a vessel.<sup>385</sup> As a result, maritime law remedies are unavailable to those working aboard such structures. Nonetheless, the Louisiana legislature presupposes that these workers face heightened risks in rationalizing further movement of gambling ashore. The Louisiana Supreme Court has ignored the Louisiana legislature and inadequately applied United States Supreme Court precedent. The Louisiana Supreme Court has essentially stated, "It looks like a vessel, it moves like a vessel, but it's not a vessel."

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384. *Lozman*, 568 U.S. at 121.

385. *Caldwell v. St. Charles Gaming Co.*, 347 So. 3d 562, 569 (La. 2020).