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Admiralty - Applicability of the Jones Act to Foreign Seamen and Foreign Shipowners. Hellenic Lines Ltd. v. Rhoditis, 90 S. Ct. 1731 (1970)

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CURRENT DECISIONS

Admiralty—APPLICABILITY OF THE JONES ACT TO FOREIGN SEAMEN AND FOREIGN SHIPOWNERS. *Hellenic Lines Ltd. v. Rhoditis*, 90 S.Ct. 1731 (1970).

The plaintiff was a Greek seaman injured in the port of New Orleans aboard a Greek flag vessel, owned by a Greek corporation. He brought suit under the Jones Act, and the district court rendered judgment in his favor.[1] Subsequently, the Court of Appeals for the Fifth Circuit affirmed.[2]

In affirming the lower courts' decisions,[3] the Supreme Court of the United States held that the test enunciated in *Lauritzen v. Larsen*[4] for determining if a shipowner should be held to be an employer for Jones Act purposes is not to be applied strictly.[5] Rather, the factors stated in *Lauritzen* are to be considered in light of the promotion of the national interest.[6]

Section 33 of the Merchant Marine Act of June 5, 1920,[7] commonly called the Jones Act, permits a seaman injured in the course of his employment to maintain an action for damages at law against his employer with a right of trial by jury.[8] From a literal reading of its terms, the Act seems to indicate it applies to "any seaman".[9] Such an interpretation could mean that "a hand on a Chinese junk, never outside Chinese waters,

1. Rhoditis v. Hellenic Lines, Ltd., 273 F. Supp. 248 (S.D. Ala. 1967).

2. Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919 (5th Cir. 1969).

3. Hellenic Lines Ltd. v. Rhoditis, 90 S. Ct. 1731 (1970).

4. 345 U.S. 571 (1953). *See* Annot., 97 L.Ed. 1274 (1953); Annot., 84 A.L.R.2d 906 (1962); H. BAER, ADMIRALTY LAW OF THE SUPREME COURT 59 (1963).

5. 90 S. Ct. at 1734. *Lauritzen* recognized that the enumerated factors are conceded to only "influence" the choice of law which will govern a maritime tort claim. 345 U.S. 571, 583 (1953).

6. 90 S. Ct. at 1734.

7. 46 U.S.C. § 688 (1964):

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . . Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

8. *See* 2 M. NORRIS, THE LAW OF SEAMAN 787 (2d ed. 1962).

9. Lauritzen v. Larsen, 345 U.S. 571, 576 (1953).

would not be beyond its literal wording." [10] However, the Court in its consideration of the Jones Act in *Lauritzen* found as a matter of statutory construction that it applies only to areas in which American law would be considered operative under doctrines of international law.[11] This theory of construction is in accord with Chief Justice Marshall's statement that "an act of congress ought never to be construed to violate the law of nations if any other possible construction remains." [12]

Assuming that a person at the time of his injury is employed as a seaman,[13] a question arises as to whether he is protected by the Jones Act if he is an alien, or was injured aboard a foreign ship, or was hired by a foreign employer. The Court in *Lauritzen*[14] attempted to formulate general principles which would apply in these situations, in addition to related choice of law problems.[15] The test consists of a court determination concerning the weight and significance to be given seven factors: "(1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured seaman; (4) allegiance of the defendant shipowner; (5) the place where the contract of employment was made; (6) the inaccessibility of a foreign forum; and (7) the law of the forum." [16] These factors were to be accorded different weights with the "law of the flag" receiving greatest stress while the "place of the wrongful act" was to receive the least.[17]

The intended flexibility of the *Lauritzen* test was stifled in subsequent cases where courts applied it as a rigid rule of thumb.[18] The resulting confusion caused some courts to search for an alternative, usually

10. *Id.* at 577.

11. *Id.*

12. The Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).

13. Another question often faced by courts involves the kind of work done by a person claiming to be a seaman within the meaning of the Jones Act. *See* Annot., 75 A.L.R.2d 1312 (1961).

14. 345 U.S. 571 (1953).

15. *See* 44 TUL. L. REV. 347 (1970).

16. 90 S. Ct. at 1733, discussing the *Lauritzen* criteria set out in 345 U.S. at 583-92.

17. 345 U.S. at 583-91.

18. 44 TUL. L. REV. 347, 348 (1970). For cases which have relied heavily on "the law of the flag" *see* Samaras v. The S.S. Jacob Verolme, 187 F. Supp. 406 (E.D. Pa. 1960); Hansen v. A.S.D. S.S. v. Endborg, 155 F. Supp. 387 (S.D.N.Y. 1957) (absent "special circumstances" the law of the flag prevails); Nakken v. Fearnley & Eger, 137 F. Supp. 288 (S.D.N.Y. 1955); Jonassen v. United States, 103 F. Supp. 862 (E.D.N.Y. 1952); Catherall v. Cunard S.S. Co., 101 F. Supp. 230 (S.D.N.Y. 1951). Some courts have "looked past the law of the flag" where it appears that the foreign flag is merely illusory and the ship is controlled by U. S. domiciliaries. Southern Cross S.S. Co. v. Firipis, 285 F.2d 651 (4th Cir. 1960), *cert. denied,* 365 U.S. 869 (1961).

with no success.[19] The problem of the varied and usually strict applications of *Lauritzen* was highlighted by the decision in *Tsakonites v. Transpacific Carriers Corp.*[20] which, on facts similar to the instant case, held the Jones Act inapplicable.[21]

In light of the remedial purpose of the Jones Act, the need was apparent for the Supreme Court to reinterpret the test esposed in *Lauritzen.* In *Hellenic Lines Ltd. v. Rhoditis,*[22] the Court recognized the pitfalls inherent in a mechanical application of the *Lauritzen* test.[23] The Court emphasized the need for weighing the seven factors in *Lauritzen* in light of the national interest served by the assertion of Jones Act judisdiction.[24] It placed its emphasis on the fact that the ship involved, the *Hellenic Hero,* as well as many of defendant's other ships, where not casual visitors to the United States ports.[25] The defendant's ships were earning income from cargo originating or terminating in the United States. Thus the Court indicated that the shipowner's base of operation is another significant factor in a court determination of the Jones Act's application.[26] But *Hellenic Lines* most importantly holds that the factors enunciated in

19. *E.g.,* Bartholomew v. Universe Tankships Inc., 263 F.2d 437 (2d Cir. 1959), *cert. denied,* 359 U.S. 1000 (1959).

20. 368 F.2d 426 (2d Cir. 1966).

21. *Id.* at 429. *But see* 18 W. RES. L. REV. 1761 (1967).

22. 90 S. Ct. 1731 (1970).

23. *Id.* at 1734.

24. *Id.* The Court cites Bartholomew v. Universe Tankships Inc., 263 F.2d 437, 441 (2d Cir. 1959) where Judge Medina said:

> . . . the decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States . . . . [E]ach factor is to be "weighed" and "evaluated" only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act.

25. 90 S. Ct. at 1734.

26. *Id.* The dissent believes that the decision relies on the fact that Hellenic Lines is an American based operation and its vessels would have a competitive advantage over American-flag vessels were the United States to permit the foreign shipowner to avoid responsibility under the Jones Act. The dissent argues that "liability is only one factor that contributes to the higher cost of operating an American-flag vessel," and therefore should not be regarded as a reason for extending Jones Act recovery to foreign seamen "when the underlying concern of the legislation before us is the adjustment of the risk of loss between individuals and not the regulation of commerce or competition." *Id.* at 1738.

Lauritzen are not to be construed as exhaustive.[27] The result would appear to be that future courts, since they will be allowed to consider additional factors under the *Hellenic Lines* rationale, will move toward a broadened application of the Jones Act.

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Admiralty—WRONGFUL DEATH. *Moragne v. States Marine Lines, Inc.*, 90 S. Ct. 1772 (1970).

The surviving widow of a longshoreman killed while working aboard the *Palmetto State* on navigable waters within the state of Florida brought a wrongful death action against the shipowner, States Marine Lines, Inc., claiming unseaworthiness of the vessel.[1] The district court and the Court of Appeals dismissed petitioner's complaint on the grounds that general maritime law did not support a death action, and that unseaworthiness was not a basis of liability under the Florida statute.[2] The United States Supreme Court reversed, holding that wrongful death based on unseaworthiness is maintainable under the authority of "general maritime law." [3] The Court reasoned that maritime law has always been a separate body of jurisprudence, administered by different courts, with components of civil law and common law. To insure uniform application, maritime law should not be dependent upon either state law or common law.

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27. *Id.* at 1734.

1. Petitioner initially brought suit in a Florida state court (not reported) from which the case was removed to the federal District Court for the Middle District of Florida on diversity grounds. The district court dismissed the unseaworthiness count (not reported) and the widow appealed. The United States Court of Appeals for the Fifth Circuit certified a stipulated question whether unseaworthiness is within the contemplation of Florida's wrongful death statute to the Florida Supreme Court. *See* FLA. STAT. ANN. § 25.031 (1965) (certification procedure). Following a negative answer to the certified question, 211 So. 2d 161 (Fla. 1968), the Court of Appeals affirmed the district court's dismissal. 409 F.2d 32 (5th Cir. 1969).

2. FLA. STAT. ANN. § 768.01 (1965).

3. Moragne v. States Marine Lines, Inc., 90 S. Ct. 1772 (1970). General maritime law is a curious blend of bits and pieces gathered from various legal systems. It is a general and rather vague set of principles that have validity in a nation only to the extent that the nation accepts and implements them through its courts or legislation. *See, e.g.*, Southern Pacific R.R. v. Jensen, 244 U.S. 205 (1916); The Lottawana, 88 U.S. (21 Wall.) 558, 572, 574 (1874). "To ascertain, therefore, what the maritime law of this country is, it is not enough to read the French, German, Italian and other foreign works on the subject, or the codes which they have framed; but we must have regard to our own legal history, constitution, legislation, usages and adjudications as well." 88 U.S. at 576.