

**BOUDREAUX V. THIBODEAUX (OIL CO.): A TOUR THROUGH
THE SWAMPS OF A LOUISIANA MARITIME CASE**

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Introduction

From contracts to family law, every field of the law can claim specific subject areas which are particularly challenging. But no field of law is more generally complex in its principles, analysis, and application than admiralty law.² Even a straightforward case on land can turn treacherously complicated when it occurs on water. Why? Admiralty law is deeply rooted in history, some of it tracing directly to medieval maritime codes of the Mediterranean Sea.³ Its rules have followed tortured jurisprudential paths ending in principles which can be counterintuitive and contradictory. There is no Restatement of Admiralty law to which a lazy maritime practitioner can turn for a quick answer.

But Louisiana's maritime lawyers are up to these daunting challenges. They have no need for a restatement. Complicated maritime issues are their bread and butter. And to the test that hypothesis, we give you a not so unusual plaintiff who wanders into your office and tells you the following story.

Your New Case – The Facts

¹ Special thanks to Ben Treuting, Associate with deGravelles, Palmintier, Holthaus & Fruge, for his assistance in preparing this paper.

² A good example is found in the “rules” which govern when it is appropriate to apply state law in a maritime case. The Honorable John W. deGravelles, *The Application of State Law in A Maritime Case: A Primer on “The Devil’s Own Mess”*, 15 LOY. MAR. L.J. 5 (2016).

³ W. Eugene Davis, *The Role of Federal Courts in Admiralty: The Challenges Facing the Admiralty Judges of the Lower Federal Courts*, 75 Tul. L. Rev. 1355, 1358-59 (2001).

Pierre Boudreaux has been seriously hurt while working for Thibodeaux Oil Company. Thibodeaux Oil Company is owned by Francois Thibodeaux and is in the business of plugging and abandoning shallow water platform wells which have become commercially non-viable. Thibodeaux owns ten (10) spud barges which are towed by tug to location and then spud down to serve as a dormitory, galley, and, occasionally, a work station for work done on the adjoining fixed platforms of Thibodeaux's customers. Thibodeaux's workers eat and sleep on the barges during their seven (7) day tours of duty (their schedule calls for seven (7) days on and seven (7) days off). In the ordinary course of business, most of the actual work done by Thibodeaux employees is done on the platform, but sometimes they will perform their work on the spud barge.

Thibodeaux Oil Company has recently purchased a fancy duck camp in Attakapas Basin at which to entertain Thibodeaux's customers. The Attakapas Basin is a swampy area near the Atchafalaya Basin and is a great venue for fishing and bird hunting of all kinds. Tied to a dock at the camp is a floating structure welded to two (2) pontoons which provide its flotation. It has a deck that is thirty (30) feet in length and eighteen (18) feet wide. On top of the deck is a house-like structure twenty one (21) feet in length and twelve (12) feet wide.

Inside the structure is a bedroom, a living area, and a kitchen. At the back of the structure is a wooden apparatus which appears to be a place which might be capable of holding an outboard motor, but there is no motor there and no other means of self-propulsion. The kitchen has been refurbished with new appliances. During the negotiations for the camp, a Thibodeaux Oil executive, Antoine Lozeman, inspected the floating structure and attempted to turn on the new GE electric stove. When he did, he felt a strong shock but was not injured. Unbeknownst to

the executive, GE (the stove's designer and manufacturer) made the new stove without a grounding mechanism. GE failed to reveal this defect to the public.

After buying the duck camp, Thibodeaux Oil Company hired your client, Boudreaux, to be the caretaker of the camp. When he was hired, Boudreaux was told that, among his other duties, he would need to check to make sure all equipment on the floating structure was working properly. He was further instructed that, when needed, he would take Thibodeaux Oil's customers on swamp tours as well as duck hunting and fishing expeditions. He was also told that when Thibodeaux Oil's regular lift boat crews were shorthanded, he would cover for sick or vacationing crew members.

During the two months that he worked for Thibodeaux Oil Company before he was injured, he traveled from his home located in the Attakapas Basin to the duck camp by way of a twelve (12) foot bateau with a ten (10) horsepower motor. He also worked on the Thibodeaux spud barges on a number of occasions. However, he never gave any swamp tours nor did he lead any hunting or fishing expeditions. He did spend a considerable amount of time maintaining and provisioning the floating structure when it was needed.

On the date of the accident, Boudreaux was in the process of checking out the structure's kitchen appliances. When he attempted to turn on the new GE electric stove, he received a severe shock. His injuries were made worse because he was standing on a wet kitchen floor. Boudreaux was never told about the prior experience of the Thibodeaux Oil executive, Antoine Lozeman, being shocked. As a result of the accident, the electricity entered his right hand, traveled through his body and exited through his right foot, causing him to suffer serious internal injuries plus the loss of the hand and foot.

Do you take the case? If so, who do you pursue, under what theories and for what relief?

To assist you in answering those broad questions, we ask you to answer the following specific questions. The lawyer with the highest score wins a valuable prize.

Pop Quiz

1. Is there maritime jurisdiction? Yes___ No___ Can't say___
2. Which of the following is a vessel?
 - a. Thibodeaux Oil Co. floating structure? Yes___ No___
 - b. Spud barge? Yes___ No___
 - c. Bateau? Yes___ No___
3. Is Boudreaux
 - a. A seaman? Yes___ No___
 - b. A maritime worker under LHWCA? Yes___ No___
 - c. A worker covered by State worker's compensation? Yes___ No___
 - d. A pseudo-seaman? Yes___ No___
 - e. None of the above? Yes___ No___ If not, what? _____
4. Can Boudreaux recover tort damages and, if so, on what theory of liability, from
 - a. Thibodeaux Oil Co.
 - i. Maritime Negligence? Yes___ No___
 - ii. Unseaworthiness? Yes___ No___
 - iii. State law negligence? Yes___ No___
 - b. GE
 - i. Negligence? Yes___ No___
 - ii. Maritime products liability? Yes___ No___

- iii. Louisiana products liability? Yes___ No___
5. Can Boudreaux recover punitive damages, and if so, from whom?
- a. Thibodeaux Oil Co.? Yes___ No___
- b. GE? Yes___ No___
6. Given the answers to the above, if you could massage the facts so as to have Boudreaux be a certain kind of worker, what would you *want* him to be?
- a. Seaman? Yes___ No___
- b. Maritime Worker under LHWCA? Yes___ No___
- c. State worker? Yes___ No___
- d. Pseudo-Seaman? Yes___ No___

HINTS TO ANSWER HYPOTHETICAL

Jurisdiction

Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995);

In re La. Crawfish Producers, 772 F.3d 1026 (5th Cir. 2014);

Petrobras Am., Inc. v. Vicinay Cardenas, S.A., 815 F.3d 211, 2016 AMC 609 (5th Cir. 2016).

Navigability

The Daniel Ball, 77 U.S. (10 Wall.) 557, 563, 19 L. Ed. 999 (1871);

Meche v. Richard, No. 05-0385, 2007 WL 634154 (W.D. La. Feb. 26, 2007).

Seaman Status

Chandris, Inc. v. Latsis, 115 S. Ct. 2172 (1995);

Harbor Tug & Barge Co. v. Papai, 117 S. Ct. 1535 (1997);

Wisner v. Prof'l Divers of New Orleans, 98-1755 (La. 3/2/99); 731 So. 2d 200, 1999 AMC 1189; *but see, e.g., Willis v. Fugro Chance, Inc.*, 278 F. App'x. 443, 2008 AMC 1461 (5th Cir. 2008);
Alexander v. Express Energy Services Operating, L.P., 784 F.3d 1032 (5th Cir. 2015);
Wilcox v. Wild Well Control, Inc., 794 F.3d 531 (5th Cir. 2015);
Pellegrin v. Montco Oilfield Contractors, L.L.C., No. 14-261, 2015 WL 3651159 (E.D. La. June 11, 2015).

Vessel Status

Stewart v. Dutra Constr. Co., 543 U.S. 481, 2205 AMC 609 (2005);
Lozman v. City of Riviera Beach, Fla., 133 S. Ct. 735 (2013);
Martin v. Fab-Con, Inc., 9 F. Supp. 3d 642, 2014 AMC 1280 (E.D. La. 2014);
Higginbotham v. Drake Towing, L.L.C., No. 15-898, 2015 WL 5682628 (E.D. La. Sept. 24, 2015);
Armstrong v. Manhattan Yacht Club, Inc., No. 12-CV-4242, 2013 WL 1819993, 2013 AMC 1938 (E.D.N.Y. Apr. 26, 2013).

LHWCA Status

33 U.S.C. § 902;
Ne. Marine Terminal v. Caputo, 432 U.S. 249, 97 S. Ct. 2348 (1977);
Dir. v. Pereni N. River Associates, 103 S. Ct. 634 (1983);
Bienvenu v. Texaco, Inc., 164 F.3d. 901, 908, 199 AMC 1255 (5th Cir. 1999);
Johnson v. Abe's Boat Rentals, Inc., No. 14-2213, 2016 WL 127982 (E.D. La. Jan. 12, 2016).

Pseudo-Seaman Status

Green v. Vermillion Corp., 144 F.3d 332 (5th Cir. 1998);

Frazier v. Carnival Corp., 492 F. Supp. 2d 571, 574 (E.D. La. 2007).

Seaman v. Employer/Vessel Owner – Rights and Remedies

“Remedial Trident” - M&C, Unseaworthiness, Jones Act Negligence

Chandris, Inc. v. Latsis, 515 U.S. 347, 354 (1996);

Fitzgerald v. U.S. Lines Co., 374 U.S. 16, 18, 1963 AMC 1093, 1095 (1963).

Punitive Damages - M&C

Atl. Sounding Co. v. Townsend, 129 S. Ct. 2561 (2009).

Punitive Damages – Jones Act

McBride v. Estis Well Serv., L.L.C., 768 F.3d 382 (5th Cir. 2014), *cert. denied*,

135 S. Ct. 2310 (2015);

But see Gail Nes v. Sea Warrior, Inc., 2010 AMC 2297 (Wash. King Cnty. Super.

Ct. 2010).

Punitive Damages – Unseaworthiness

McBride v. Estis Well Serv., L.L.C., 768 F.3d 382 (5th Cir. 2014), *cert. denied*,

135 S. Ct. 2310 (2015);

But cf. Osage Marine Services, Inc., 2012 AMC 953, 957 (E.D. Mo. 2012)

(applying *Townsend* analysis to permit an injured seaman’s claim for punitive

damages to proceed in an unseaworthiness action because “unseaworthiness is a general maritime action that was well established before the Jones Act” and

“punitive damages well established as a remedy under the general maritime law before the passage of the Jones Act.”);

Wagner v. Kina Blue Water, 2010 AMC 1217 (D. Haw. 2010);

Gail Nes v. Sea Warrior, Inc., 2010 AMC 2297 (Wash. King Cnty. Super. Ct. 2010).

Seaman v. Third Parties – Rights and Remedies

Negligence

Kermarec v. Compagnie Generale Transatlantique, 79 S. Ct. 406 (1959).

Products Liability

E. River S.S. Corp. v. TransAmerica Delaval, Inc., 476 U.S. 858, 106 S. Ct. 2295 (1986) (We ... recogni[ze] products liability, including strict liability, as part of the general maritime law.”) (*Id.* at 865);

Vickers v. Chiles Drilling Co., 822 F.2d 535, 538 (5th Cir. 1987).

Punitive Damages

Collins v. A.B.C. Marine Towing, L.L.C., No. 14-1900, 2015 WL 5970392 (E.D. La. October 14, 2015) (answering “Yes”);

Howard v. Offshore Lifeboats, L.L.C., 2015 WL 7428581 (E.D. La. Nov. 20, 2015) (answering “No”).

Maritime Worker v. Employer/Vessel Owner – 905(b) Rights and Remedies

Dual-Capacity Negligence Action: Vessel Negligence v. Employer Negligence

Reed v. The S.S. Yaka, 373 U.S. 410, 83 S. Ct. 1349, 1963 AMC 1373 (1963);

Jones & Laughlin Steel Corp. v. Pfeifer, 462 U.S. 523, 103 S. Ct. 2541, 1983 AMC 1881 (1983);

Landry v. G.C. Constructors, 514 F. App'x. 432 (5th Cir. 2013) (per curiam);

Jones v. Cooper T. Smith Stevedoring Co., 354 F. App'x. 143 (5th Cir. 2009).

905(b) Negligence Action Against Vessel Owner

Scindia Steam Navigation Co. v. De Los Santos, 451 U.S. 156, 101 S. Ct. 1614, 1981 AMC 601 (1981);

Landry v. G.C. Constructors, 514 F. App'x. 432 (5th Cir. 2013) (per curiam);

Kirksey v. Tonghai Mar., 585 F.3d 388, 2008 AMC 1906 (5th Cir. 2008);

Hewitt v. Noble Drilling US, L.L.C., No.15-1197, 2016 WL 2820504 (E.D. La. May 13, 2016).

Punitive Damages – Generally

Robert Force, *The Legacy of Miles v. Apex Marine Corp.*, 30 TUL. MAR. L.J. 35 (2006);

Rutherford v. Mallard Bay Drilling Co., No. CIV A 99-3689, 2000 WL 805230 (E.D. La. June 21, 2000).

Punitive Damages – Vicarious Liability

Exxon Shipping Co. v. Baker, 544 U.S. 471, 128 S. Ct. 2605 (2008);

In Re P&E Boat Rentals Inc., 872 F.2d 642 (5th Cir. 1989);

In Re Oil Spill, 21 F. Supp. 3d 657, 749-50 (E.D. La 2014);

See also Geoffrey L. Wendt, *The Fog of Uncertainty Enshrouding Employer Punitive Damage Liability Under General Maritime Law*, MAR. L. BULL., Summer 2010, insert at pp. 62-63, 69-70.

Maritime Worker v. Third Party – 933 Rights and Remedies

Kind of Negligence/Fault

Parta v. Grand Isle Shipyard, Inc., 2008 WL 5262728 (W.D. La. Dec. 17, 2008),
but see Hewitt v. Noble Drilling US, LLC, No. 15-1197, 2016 WL 2820504 (E.D. La. May 13, 2016).

Maritime Products Liability

E. River S.S. Corp. v. TransAmerica Delaval, Inc., 476 U.S. 858, 106 S. Ct. 2295 (1986).

Punitive Damages – Generally Available to Non-Seamen

Rebardi v. Crewboats, Inc., 04-641 (La. App. 1 Cir. 2/11/06); 906 So. 2d 455;
Doxey v. Lake Charles Pilots, Inc., 00-530 (La. App. 3 Cir. 1/31/01); 781 So. 2d 589, *writ denied*, 01-614 (La. 5/4/01); 791 So. 2d 654, *cert. denied*, 534 U.S. 895, 122 S. Ct. 215 (2001);

Robert Force, *The Legacy of Miles v. Apex Marine Corp.*, 30 TUL. MAR. L.J. 35 (2006);

John W. deGravelles, *Supreme Court Charts Course for Maritime Punitive Damages*, 22 U.S.F. MAR. L.J. 123, 131-32 (2009-2010).

Punitive Damages for Maritime Products Liability?

Jurgensen v. Albin Marine, Inc., 214 F. Supp. 2d 504, 509 (D. Md. 2002);
Delta Marine, Inc. v. Whaley, 813 F. Supp. 414, 416-17, (E.D.N.C. 1993).

Pseudo-Seaman – Rights and Remedies

Against Vessel Owner/Employer - Unseaworthiness and Negligence

Green v. Vermillion Corp., 144 F.3d 332 (5th Cir. 1998);

Maritime Products Liability

See above.

Punitive Damages

As to maritime products liability – see above.
