



DISTRICT COURTS CONTINUE TO HOLD FLOATING PRODUCTION FACILITIES TO BE NON-VESSELS: IN *MENDEZ V. ANADARKO*, THE U.S DISTRICT FOR THE SOUTHERN DISTRICT OF TEXAS HOLDS THE *RED HAWK* SPAR PLATFORM IS NOT A VESSEL AND DENIES JONES ACT SEAMAN STATUS TO WORKER INJURED THEREON

In *Grix Mendez v. Anadarko Petroleum Corp.*, C.A. No. H-10-1755 (S.D. Tex. Nov. 9, 2010), Legge Farrow represented Anadarko Petroleum Corporation, the owner of the deep water spar platform *Red Hawk*. Hon. Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas, Houston Division ruled that, as a matter of law, Anadarko's *Red Hawk* Spar platform is not a Jones Act "vessel" and, therefore, the injured plaintiff was not a Jones Act seaman. As a result, the Court in *Mendez v. Anadarko* denied the plaintiff's motion to remand his case to Texas state court.

In *Mendez v. Anadarko*, the plaintiff filed suit in Texas state court alleging that he suffered severe injuries while working on Anadarko's *Red Hawk* Spar in the Gulf of Mexico and that he was a Jones Act, 45 U.S.C. § 51, *et seq.*, seaman. Anadarko removed the lawsuit to federal court on the basis that the plaintiff was not a Jones Act seaman because the *Red Hawk* Spar is not a vessel. The plaintiff filed a motion to remand the case to state court and the parties fully briefed the Jones Act "vessel" status issue.

The Court's Findings of Fact in *Mendez v. Anadarko*

The plaintiff, an Anadarko employee, was allegedly injured on April 8, 2008, while working on the *Red Hawk* Spar. He had worked for Anadarko exclusively on the *Red Hawk* since November 8, 2004. After his injury, the plaintiff applied for, and received, longshore worker's compensation benefits.

Similar to the *Thunder Horse*, which is a large semi-submersible oil and gas production platform permanently moored to the seabed at a depth of 6,000 feet, by a complex mooring system along with various pipelines and other drilling equipment, the *Red Hawk* Spar is a floating gas production platform moored in over 5,000 feet of water approximately 210 miles from Sabine Pass, Texas. The *Red Hawk* Spar has been moored in Red Hawk field since shortly after its construction in 2004.



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Notably, the *Red Hawk* Spar differs from many other oil and gas production spars in that it is the world's first cell spar. It does not have a single hull but rather different, smaller "tube" cells that together serve as the hull, allowing for greater stability and decreased construction costs.

Significantly, the *Red Hawk* Spar has no means of self-propulsion. The Spar's work platform consists of three individual decks and sits on top of the hull. The *Red Hawk* Spar supports a 12-person living quarters, boom, heli-deck, power generators, production equipment, mono-ethylene-glycol recovery unit, glycol storage tanks, utilities, pipeline launchers and receivers, and safety and survival capsules. In 2004, the Spar was floated into place on its side, righted, and attached to the anchors by the six mooring lines. When the Spar was installed, the suction anchors were first put in place, and then the hull was towed and upended by flooding the lower segments. The hull was then moored, the deck was lifted onto the hull and fixed in place, and the lines were then installed. There are six permanently taut mooring lines which ensure the *Red Hawk* Spar maintains stability and cannot move laterally. There is also an underwater infrastructure of flowlines and export pipeline systems, as well as umbilicals extending from the Spar to the subsea wellheads.

In *Mendez v. Anadarko*, the Court noted that the *Red Hawk* Spar was intended to remain in place for the anticipated productive life of the field. While production began on July 19, 2004, the field proved less productive than anticipated and the *Red Hawk* Spar has now ceased production. The Court concluded that the Spar could be relocated to another field by vertical tow; however, such relocation would involve severing the anchor moorings, subsea pipelines, risers, and umbilicals.

Despite noting that the Spar has some features commonly associated with maritime life, including life preservers, ring buoys, and life boats, and although the *Red Hawk* Spar must perform periodic evacuation drills under the Coast Guard rules, Judge Rosenthal emphasized that these features are consistent with a fixed structure permanently moored far offshore, not merely with vessel status. The Court also pointed out that the Coast Guard designated the *Red Hawk* Spar as an "industrial vessel," but the Coast Guard Certificate of Inspection ("COI") also states that the Spar is "considered a floating facility with passive ballast systems" and that the *Red Hawk* Spar is not permitted to carry passengers or move from its location.



The Court's Conclusions of Law in *Mendez v. Anadarko*

Given these findings, Judge Rosenthal proceeded to analyze the single legal issue in question—whether the *Red Hawk Spar* is a “vessel.” In the context of her analysis of the applicable legal standard, the Court was guided by the well-established principle that “to maintain a cause of action under the Jones Act, the plaintiff must be a seaman.” *Mendez v. Anadarko* at 6 (quoting *Hufnagel v. Omega Serv. Indus., Inc.*, 182 F.3d 340, 346 (5th Cir. 1999)). “The Court pointed out that “[c]ourts have long recognized a distinction between ‘work platforms’ that are designed for primarily stationary residence and true vessels.” *Id.* (quoting *Fields v. Pool Offshore, Inc.*, 182 F.3d 353, 357 (5th Cir. 1999) (citation omitted)).

Judge Rosenthal noted that the Fifth Circuit traditionally used a 3-part test to determine whether work platforms were Jones Act vessels. The test considered (1) whether the craft was designed primarily to serve as a work platform, (2) whether the structure was moored or otherwise secured at the time of the accident, and (3) “whether the transportation function of the structure went beyond theoretical mobility and occasional incidental movement.” *Id.* at 6-8 (citing and quoting *Fields*, 182 F.3d at 357-58). Under this test, the Fifth Circuit held in *Fields* that a spar similar to the *Red Hawk Spar* was not a Jones Act vessel, because unlike other drilling rigs that were vessels, the *Neptune Spar* would sit in its field until the field was exhausted. *Id.* at 7 (citing *Fields*, 182 at 358). Moreover, Judge Rosenthal noted that, in *Fields*, the Fifth Circuit concluded that “[w]hile there remains some theoretical possibility of more lengthy movement when the current field is exhausted, the mere possibility of movement so many years hence hence cannot render irrelevant the structure’s current and long-term immobility.” *Id.* at 8 (quoting *Fields*, 182 at 359).

In *Mendez v. Anadarko*, the Court continued its legal analysis by stating that the U.S. Supreme Court has clarified the definition of “vessel” by citing to the *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 497 (2005). As Judge Rosenthal noted, “a watercraft is not ‘capable of being used for maritime transport’ in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.” *Id.* at 8 (quoting *Stewart*, 543 U.S. at 495). While the Fifth Circuit has observed that the *Stewart* opinion resulted in a “significant broadening of the set of



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unconventional watercraft that must be deemed vessels” (quoting *Holmes*, 437 F.3d at 448), Judge Rosenthal pointed out that the Fifth Circuit has also recognized that “there still exist limits on a potential plaintiff’s seaman status under the Jones Act.” *Id.*

Judge Rosenthal noted that since *Stewart*, the Fifth Circuit has not considered whether a floating platform, such as the *Red Hawk Spar*, is a vessel under the Jones Act. Most courts in the Fifth Circuit to consider the issue have held that *Stewart* has not changed the consistent result that a spar such as the *Red Hawk* is not a vessel under the Jones Act. Citing extensively to *Moore v. Bis Salamis, Inc.*, C.A. No. 1:09-CV-1008, 2010 WL 3745023 (E.D. Tex. Sept. 20, 2010) and *Scroggs v. Bis Salamis, Inc.*, Civ. A. No. 1:09-CV-1007, 2010 WL 3910563 (E.D. Tex. Oct. 5, 2010), in both of which the U.S. District Court for the Eastern District of Texas held that the *Thunder Horse* platform was not a vessel, Judge Rosenthal decided that based on the cases discussed in her opinion and the record evidence of the *Red Hawk Spar*’s structure, purpose, and features, that the *Red Hawk* is not a Jones Act vessel. *Mendez v. Anadarko* at 10.

Judge Rosenthal held that although the *Red Hawk Spar* floats, it is permanently affixed to the sea floor and can only be moved after detaching the substantial moorings and pipelines that have been joined to its structure. This renders it not “practically capable” of marine transportation and, hence, a non-vessel. It is permanently moored to the sea floor, has been in one place since it was built in 2004, with no present intent to move it. *Id.* at 11-12 (citing *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995)).

Rejecting the plaintiff’s arguments, Judge Rosenthal held that the essential safety equipment (life jackets, ring buoys, and inflatable rafts), that the *Red Hawk Spar* carries, does not weigh in favor of finding that the Spar is a vessel in this context; instead, it is what one would expect to find on a stationary structure sitting in deep water 120 miles from the coast. The need to maintain the Spar’s stability in often-rough seas does not make it capable of transportation. *Id.* at 12 (citing and quoting *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625, 627 (1887) (“The fact that it floats on the water does not make it a ship or vessel....”).



Conclusion

Commentators and others have often postulated that the Supreme Court's *Stewart v. Dutra* case radically increased the type of structures that may qualify for vessel status. It is the authors' opinion that *Stewart v. Dutra* actually defined a more common sense test that is capable of interpretation by persons other than lawyers—such as those who build, commission, own, and operate structures in the offshore oilfield. *Stewart v. Dutra* reinforced the fact that no matter how similar the characteristics of a structure may be to a traditional vessel, if that structure is not practically capable of transporting persons or cargo by water, it is simply not a vessel. Judge Rosenthal seems to have embraced that test, as has Judge Crone in the Eastern District of Texas in the two recent *Thunder Horse* cases. As a result, more certainty can be expected when litigating cases involving personnel injured working on floating work platforms, who are non-seamen and whose remedy for personal injury or death is exclusively the LHWCA.

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