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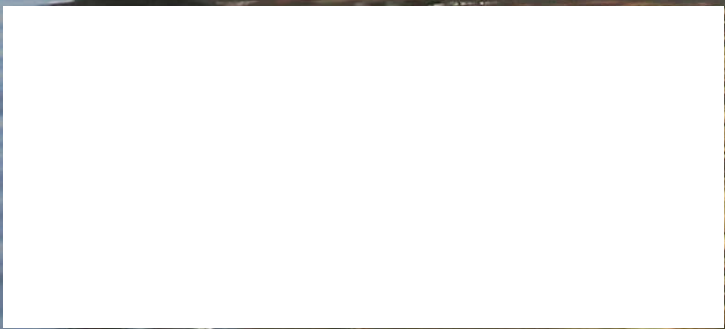
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The U.S. Supreme Court Weighs In

The Consequences of Being a “Vessel in Navigation”

By Frederick B. Goldsmith



Whether a boat or other vessel-like equipment qualifies as a “vessel” and one “in navigation” under maritime law impacts many things. These include many variables such as whether (a.) hull, protection and indemnity, and other types of marine (versus traditional land-based) insurance is required to insure it, (b.) those who work on or aboard it may be considered “seamen” under the Jones Act (and thus entitled to bring negligence, unseaworthiness, and maintenance and cure claims), (c.) the owner may be liable in negligence to land-based maritime workers for “vessel negligence” under the U.S. Longshore and Harbor Workers’ Compensation Act, (d.) the owner may qualify as a “vessel owner” under the federal Vessel Owners’ Limitation of Liability Act, and (e.) a maritime lien may be asserted. Hence, the matter is not as simple as it may otherwise seem.

The U.S. Supreme Court decided what constitutes a “vessel in navigation” under maritime law in 2005 *in Stewart v. Dutra Construction Company*. The Stewart case addressed whether a dredge called the Super Scoop, and its associated scows, all owned by Dutra, was a “vessel in navigation,” in light of the facts the dredge was not self-propelled, moved slowly and sporadically in the water, and was not moving at the time of the accident in which Willard Stewart, a marine engineer hire by Dutra to maintain the Super Scoop’s mechanical systems, was seriously injured.

The Super Scoop was at the time of the accident the world’s largest dredge, capable of digging the 50-foot deep, 100-foot wide, ¾ mile long trench (which came to be called “the Big Dig”) under Boston Harbor that is now the Ted Williams Tunnel and part of the Massachusetts Turnpike which connects South Boston and Logan Airport. The Supreme Court described the Super Scoop as follows:

“The Super Scoop is a massive floating platform from

which a clamshell bucket is suspended beneath the water. The bucket removes silt from the ocean floor and dumps the sediment onto one of two scows that float alongside the dredge. The Super Scoop has certain characteristics common to seagoing vessels, such as a captain and crew, navigational lights, ballast tanks, and a crew dining area. But it lacks others. Most conspicuously, the Super Scoop has only limited means of self-propulsion. It is moved long distances by tugboat. (To work on the Big Dig, it was towed from its home base in California through the Panama Canal and up the eastern seaboard to Boston Harbor.) It navigates short distances by manipulating its anchors and cables. When dredging the Boston Harbor trench, it typically moved in this way once every couple of hours, covering a distance of 30-to-50 feet each time.”

At the time Stewart was hurt, the Super Scoop was not moving, because the engine of one of its scows, Scow No. 4, was malfunctioning, and the other scow was at sea. Stewart was aboard Scow No. 4 feeding wires through a hatch and the Super Scoop was using its clam shell bucket to move the scow. While this was occurring, the scow collided with the Super Scoop itself, causing Stewart to be thrown headfirst through the hatch and ten feet to the deck below.

When Stewart filed suit in federal district court in Boston, he claimed he was a Jones Act seaman, and, alternatively, a longshoreman or harbor worker covered by the federal Longshore and Harbor Workers’ Compensation Act. Both statutes, however, required the Super Scoop to be a “vessel in navigation” in order for Stewart to have the right to sue under them. This is why the Supreme Court was required to decide whether the Super Scoop was a “vessel” and one “in navigation.”

Dutra asked the federal trial court to dismiss Stewart’s case on the basis Stewart could not be a Jones Act seaman because in order to qualify as such Stewart would have to be the member of the crew of a vessel in navigation. Dutra further argued the Super Scoop’s primary purpose was not navigation or commerce and that Stewart could only be a

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seaman if the Super Scoop was in actual navigation or transit at the time of his injury. Dutra argued the Super Scoop's primary purpose was dredging, not transportation, and it was stationary at the time Stewart was hurt. The federal trial court agreed with Dutra and dismissed Stewart's case. Later, the trial court also dismissed Stewart's alternative claim, that he was entitled to sue Dutra for "vessel negligence" under the Longshore and Harbor Workers' Compensation Act, agreeing with Dutra the Super Scoop was not a "vessel in navigation" under that statute, either. The First Circuit Court of Appeals

affirmed both of the federal district court's rulings.

The Supreme Court reversed. It first reviewed the federal statutory definition of a "vessel" codified at 1 United States Code Section 3, which reads: "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." The Supreme Court wrote that "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." But, the high court held,

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for a watercraft to be “used, or capable of being used, as a means of transportation on water,” does not mean the watercraft must be used “primarily for that purpose.”

The Supreme Court held the Super Scoop “was not only ‘capable of being used’ to transport equipment and workers over water—it was used to transport those things. Indeed it could not have dug the Ted Williams Tunnel had it been unable to traverse Boston Harbor, carrying with it workers like Stewart.” The Court held the fact the Super Scoop was not self-propelled was not an impediment whatsoever to it being a “vessel in navigation.” The Supreme Court also reaffirmed its rejection of the “snapshot test,” meaning the watercraft need not be in motion at the time of the accident to qualify as a “vessel in navigation.”

As for the “in navigation” requirement to qualify as a vessel, the Supreme Court held in the Stewart case this is only an element of the “vessel” status of a watercraft, only relevant to whether “the craft is ‘used, or capable of being used’ for maritime transportation.” On this “in navigation” aspect of “vessel” status, the Supreme Court held: “The question remains in all cases whether the watercraft’s use ‘as a means of transportation on water’ is a practical possibility or merely a theoretical one.” In the Stewart case, Dutra conceded the Super Scoop was only temporarily stationary while undergoing repairs, that it “had

not been taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport.”

Thus, the Supreme Court held in Stewart the Super Scoop qualified as a “vessel in navigation” under both the Jones Act and the Longshore and Harbor Workers’ Compensation Act.

Whether a boat or other vessel-like equipment qualifies as a “vessel in navigation” under maritime law and various federal statutes can require a fact-intensive legal analysis. Courts have been asked in recent years, for example, to determine if floating casinos, “spars” and tension leg platforms used in the oil and gas industry, barges, dock barges, floating dormitories, vessels undergoing extensive repairs, and even Coastal Research Amphibious Buggies -- or “CRABs,” are, or are not, “vessels in navigation.” It is an issue which is hotly litigated every day in courts across the country because of the significant consequences which attend the outcome.

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