NO. 2005-66899

JUAN LONGORIA	§	IN THE DISTRICT COURT OF
	§	
VS.	§	
	§	
GLOBALSANTAFE CORPORATION,	§	HARRIS COUNTY, T E X A S
SEAFLEX, INC., GLOBALSANTAFE	§	
DRILLING COMPANY and	§	
GLOBALSANTAFE C. R. LUIGS LIMITED	§	129th JUDICIAL DISTRICT

PLAINTIFF'S RESPONSE TO SEAFLEX, INC.'S
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Juan Longoria ("Longoria") and files this Response to Defendant Seaflex, Inc.'s ("Seaflex") Motion for Summary Judgment and would show unto this Honorable Court the following:

I. Summary of Response

1. The sole basis for Seaflex's summary judgment is Longoria's Jones Act "seaman" status. Seaflex does not dispute that the mobile offshore drilling unit, or "MODU," the C.R. Luigs (the "Luigs") was a "vessel," nor does it dispute that the Luigs was "in navigation" when Longoria was injured.

2. Seaflex has a heavy burden in attempting to take the question of "seaman" status from the jury. According the U.S. Supreme Court, the determination of Jones Act seaman status is almost always a question for the jury, and only in "rare circumstances" will the Court take this question from the jury or finder of facts. Such "rare circumstances" do not exist in this case, and Seaflex has offered no argument, and cited no cases, establishing that this case falls within the "rare circumstances" where a jury or the finder of facts does not decide seaman status.

3. Further, as explained more fully below, Seaflex's motion for summary judgment demonstrates a fundamental misunderstanding of the proper legal and factual analysis for Jones Act seaman status.

II. Factual Background

This litigation arises out of an offshore injury that occurred on September 3, 2004 in the Gulf of Mexico on the drilling vessel C.R. Luigs. Plaintiff was employed at the time by

Seaflex, Inc. a company that provides offshore services, including installing fall protection and fall arrest systems, on offshore vessels such as the C. R. Luigs.

On January 20, 2003, before Longoria came aboard the vessel, Seaflex and Global Santa Fe executed a Master Services Agreement, which specifically stated that Seaflex's work aboard the Luigs and other Global Santa Fe vessels would be conducted "primarily aboard and in furtherance of the mission of [Global Santa Fe] vessels." [1]

On August 16, 2004, pursuant to this Master Services Agreement, Longoria and his supervisor took a crew boat into the Gulf of Mexico and came aboard the C.R. Luigs. Upon boarding, Longoria was given safety instructions and an introduction to the vessel by the vessel's crew.

Longoria spent the next 10 days eating and sleeping on the Luigs, working with members of the Global Santa Fe crew, participating in safety meetings and pre-job meetings, and installing fall protection on the C.R. Luigs alongside Luigs crewmembers. During this entire time, the C.R. Luigs was on the water, navigating in the Gulf of Mexico, performing her standard offshore drilling work.

With respect to this specific job, the Global crew was responsible for installing the fall protection systems, manning decisions, and providing proper safety equipment and devices. The Seaflex crew, by contrast, was originally intended to provide guidance and support, but they were press-ganged into the service of the vessel by the Global crew and ended up performing difficult manual labor on the vessel over a period of 10 days at the request of the Global supervisors without adequate training, guidance or equipment.

Rather than provide appropriate safety training, safety equipment, and an adequate complement of personnel, Global, and the Seaflex supervisor, chose to use a skeleton crew with no lifting aids or appliances to install the unwieldy, heavy metal "davits" that constituted

[1] Master Services Agreement attached as Exhibit A and incorporated herein for all purposes.

part of the fall arrest system. [2] Before he was injured, Longoria noticed that the Global Santa Fe had mechanical lifting aids including cranes, "air tuggers," and "come-alongs" and asked to use them.[3]

Longoria had specifically requested to use such devices before he was hurt, yet Seaflex and Global refused to provide them and offered no explanation therefore. As a direct result of this unexplained and improper refusal to provide proper lifting aids, Longoria suffered severe, career-ending injuries while lifting a davit. He reported his injury to the Global medic. In keeping with the standard protocol, the Global medic logged the incident and prescribed painkillers. Until recently, Global denied an incident ever occurred. After obtaining the medic's log, however, Global apparently now concedes that Longoria, was, in fact, injured.

III. Summary Judgment Evidence

In support of his summary judgment response, Longoria relies on the following evidence:

1. Deposition of Hugo Gomez[4]
2. Deposition of Juan Longoria[5]
3. Master Services Agreement Between Global and Seaflex

Some of this evidence may be discovery products, and Longoria hereby gives notice that he may rely on the above in whole or in part in responding to the Seaflex Motion for Summary Judgment.

III. Argument and Authorities

Longoria generally concedes the standard for summary judgment set forth in page 2 of Seaflex's Motion for Summary Judgment and the first sentence of page 3 of the summary

[2] A "davit" is a 6 foot long heavy metal pole used for fall protection purposes.
[3] A "come-along" is essentially a cable-pulley system specifically intended to provide mechanical assistance to workers lifting heavy or unwieldy objects such as the davit Longoria was lifting when he was injured.
[4] Deposition transcript of Hugo Gomez is attached hereto and incorporated herein as Exhibit B.
[5] Deposition transcript of Juan Longoria is attached hereto and incorporated herein as Exhibit C.

judgment (starting with "if plaintiff fails to do so…."). That is, Longoria agrees that he need only provide a scintilla of evidence to survive summary judgment.

After the first full sentence on page 3, however, Longoria and longstanding case law depart from Seaflex's interpretation of the appropriate legal standard and its analysis of the facts of this case.

1. Seaman Status Is Almost Always A Jury Question

The United States Supreme Court has written that "[i]f reasonable persons, applying the proper legal standard, could differ as to whether the employee was a "member of the crew," it is a question for the jury. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 369 (1995) (quoting *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 356 (1991)). Similarly, the Fifth Circuit has observed that "[s]eaman status is generally a question for the jury" and that ***"[o]nly in rare cases is the question taken from the jury or trier of facts***." *Wallace v. Oceaneering Int'l*, 727 F.2d 427, 432 (5th Cir. 1984) (emphasis added).

With regard to the appropriate standard of review for seaman status, the United States Supreme Court has commented that ". . . the determination of whether an injured person was a 'member of a *crew'* ***is to be left to the finder of fact"*** *and that* ***"a jury's decision is final if it has a reasonable basis, whether or not the appellate court agrees with the jury's estimate."*** *Senko*, 352 U.S. at 374 (emphasis added).

Simply put, "[t]he standard for testing a jury's finding that a worker is or is not a Jones Act seaman is whether there is a reasonable evidentiary basis to support that finding." *Savoie v. Otto Candies, Inc.,* 692 F.2d 363, 365 (5th Cir. 1982).

Seaflex urges this Court to take this case from the jury and grant summary judgment. Under the controlling law and facts of this case, Seaflex's arguments should be rejected.

2. The Test for Seaman Status

Approximately forty-five years ago, the Fifth Circuit in *Offshore Co. v. Robison*, established the test for seaman status. *Offshore Co. v. Robison*, 266 F.2d 769, 779 (5th Cir. 1959). Therein, the Fifth Circuit wrote that:

> . . . there is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel . . *or performed a substantial part of his work on the vessel* and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for future trips."

Id. (emphasis)

In the *Chandris* case, Justice O'Connor quoted the above language approvingly. *Chandris* at 366. In addition, Justice O'Connor observed that "[s]ince *Barrett*, the Fifth Circuit consistently has analyzed the problem in terms of the percentage of work performed on vessels for the employer in question – and has declined to find seaman status where the employee spent less than 30% of his time aboard ship." *Chandris* at 267.

According to the U.S. Supreme Court and the Fifth Circuit, "[a]ll who work at sea in the service of the ship" are potential seaman. *Chandris* 515 U.S. at 368 (quoting *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 354)). It is neither necessary for the maritime worker to aid in navigation nor to participate in actual transportation of the vessel to qualify as a seaman. *Wilander*, 498 U.S. 337.

Relying on these cases, the Fifth Circuit Pattern Jury Instructions on seaman status provide that:

> The plaintiff is a seaman if he proves by a preponderance of the evidence that he performs the work of the vessel. He performs the work of the vessel if and only if:
>
> 1. He was assigned permanently to a vessel or performed a substantial part of his work on a vessel; and
>
> 2. the capacity in which he was employed or the duties that he performed contributed to the function of a vessel or the accomplishment of the vessel's mission or the operation or maintenance of the vessel during its movement or while at

> anchor for the vessel's future trips. A person need not aid in the navigation of a vessel in order to qualify as a seaman.

(Fifth Circuit Pattern Instructions Section 4.1 (2004).

3. There Is More Than A Scinitlla of Evidence to Support Seaman Status In this Case

Longoria worked aboard the C.R. Luigs for the entire time the subject work was being performed. Thus, he more than qualifies, on this basis alone, under the *Chandris* 30% test. Longoria's work took him aboard a vessel, the C.R. Luigs, which was actively navigating on the open waters in the Gulf of Mexico when he was hurt.[6] Moreover, Longoria slept and ate aboard the C.R. Luigs. Additionally, Hugo Gomez, Seaflex's supervisor, testified that Longoria's work contributed to the function of the vessel of the Luigs.

Page	**Line**		
18	8-10	Q.	Okay. So, in that sense, what you-all were doing out there was helping the vessel accomplish its mission in a safe manner?
18	14	A	I would say so[7]

Perhaps the most compelling evidence of seaman status, however, comes from Seaflex itself. On January 20, 2003, Seaflex and Global Santa Fe executed a Master Services Agreement which governed the work that Longoria was to perform for this and other jobs on Global Santa Fe vessels. The Master Services Agreement states, in relevant part, as follows:

> WHEREAS, CONTRACTOR [Global], it subsidiary and affiliated companies are engaged in the business of drilling offshore wells in all areas of the world through the use of vessels designated as mobile offshore drilling units (MODU's); and
>
> WHEREAS, SUBCONTRACTOR [Seaflex], its subsidiary and affiliated ***companies are engaged in the business of providing services and/or***

[6] Note that neither Global nor Seaflex has argued that the Luigs was not a "vessel" for Jones Act status or that it was not "in navigation".

[7] See Hugo Gomez deposition, p. 18 attached hereto and incorporated herein as Exhibit "B".

> ***equipment on MODU's in connection with the drilling of offshore wells in all areas of the world***; and
>
> WHEREAS, CONTRACTOR, its subsidiary and affiliated companies desire to retain and SUBCONTRACTOR, its subsidiary and affiliated companies desire ***to perform certain services and/or provide equipment in conjunction with the drilling of offshore wells using a MODU as provided for in an applicable Work Order***; and
>
> WHEREAS, the performance of the Work by [Seaflex] will be conducted ***primarily upon and in the furtherance of the mission of such vessels;*** [8]

MSA, p.1

The above language essentially tracks the U.S. Supreme Court's language setting forth the test for seaman status. Yet Seaflex ignores its own Master Services Agreement, entered into before this litigation arose, and fails to explain why the Master Services Agreement itself does not create a fact question for the jury in this case.

4. Seaflex's Myopic Focus on Longoria's Previous Work

Seaflex focuses almost entirely on the length of time Longoria was assigned to the Luigs. Courts have repeatedly rejected this myopic view of seaman status, for good reason.

For instance, the "lack of long-continued [durational] attachment to a vessel, cannot, as a matter of law, serve to deny [Jones Act] seaman status to an employee who is injured while assigned to and performing normal crew service." *Reeves v. Mobile Dredging & Pumping Co, Inc*., 26 F.3d 1247, 1252 (3rd. Cir. 1994) (citing *Chandris* with approval).

Similarly, in *Foulk v. Breakwaters et al*, 963 F.Supp. 427, 1998 A.M.C. 1516, D.N.J., May 12, 1997, the Court was confronted with an argument almost identical to the argument Seaflex advances in this case. Foulk, a diver, was helping to install an offshore reef. Breakwaters had contracted with Foulk's employer, Donjon Marine, to provide material,

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[8] Importantly, and interestingly, Global anticipates this argument in its summary judgment motion and attempts, unsuccessfully, to explain it away, without citing a single case in support of its explanation. *Global MSJ* p. 7. Seaflex, on the other hand, has chosen to ignore its own Master Services Agreement and makes no effort to explain its provisions.

barges, tugs, and a floating crane barge. The Donjon dive crew slept ashore and reported to the motor launch each morning. Foulk was hired to work only 10 days, the duration of the project. He was hurt on his first day of work.

The Court specifically rejected a "minimal durational element by an absolute number, such as 10 days." The Court cited the *Reeves* case for the proposition that the lack of a long-standing attachment to a vessel cannot, as a matter of law, deprive an injured worker of seaman status if he was injured while assigned to and performing normal crew operations. Critically, the Court went on to write that ["t]en days is not a clearly inadequate temporal connection to vessels in navigation, sufficient to take the question from the jury by granting summary judgment." (citing *Palmer v. Fayard Moving and Transportation Corp.*, 930 F.2d 437 (5th Cir. 1991)). The Court reversed the trial court's grant of summary judgment on seaman status and ordered the case remanded to the trial court.

Like the defendant in the *Foulk* case, Seaflex focuses heavily on the short time that Longoria was working on the Luigs. But this does not end the inquiry. According to *Reeves* and *Foulk*, and many other Jones Act decisions, the length of time a worker is on a vessel is only one of many factors to consider. Seaflex focuses myopically on this one factor, because the other factors (working on a "vessel," working on a vessel "in navigation," working in furtherance of the vessel's mission, being exposed to the "perils of the sea," etc.) all weigh heavily in Longoria's favor in this case.

Simply put, this case is not one of those "rare circumstances" where an adverse determination of seaman status should be made as a matter of law. Instead, like the vast majority of such cases, and in accordance with well-established law, the jury should decide, based on the evidence presented, whether Longoria qualifies as a Jones Act seaman.

IV. Conclusion and Prayer

WHEREFORE, Plaintiffs request that the Court deny Defendants' Motion for Summary Judgment, and request all further relief to which they may be entitled.

Respectfully submitted,

VUJASINOVIC & BECKCOM, L.L.P.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned authority hereby certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record via certified mail, return receipt requested, facsimile and/or hand delivery on this _____ day of January, 2007.

_____

BRIAN A. BECKCOM

NO. 2005-66899

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	§	
GLOBALSANTAFE CORPORATION,	§	HARRIS COUNTY, T E X A S
SEAFLEX, INC., GLOBALSANTAFE	§	
DRILLING COMPANY and	§	
GLOBALSANTAFE C. R. LUIGS LIMITED	§	129th JUDICIAL DISTRICT

AFFIDAVIT OF BRIAN BECKCOM

COUNTY OF HARRIS	§
	§
STATE OF TEXAS	§

BEFORE ME, the undersigned authority, personally appeared Brian Beckcom who, after being duly sworn, deposes and says as follows:

"My name is Brian Beckcom. I am over eighteen [18] years of age, am competent to make this affidavit, and have personal knowledge of the facts contained herein. All of the matters stated herein are within my personal knowledge and are true and correct.

I am an attorney licensed by the Texas Supreme Court to practice in Texas and presently serve as attorney of record for Plaintiff, Juan Longoria, in the above-styled and numbered cause. Plaintiff's Response to Defendant's Motion for Summary Judgment has attached various Exhibits. These exhibits constitute true and correct copies and all parties are being put on notice by this affidavit that these exhibits will be relied upon by Plaintiff as proof in support of his Response to Defendant's Motion for Summary Judgment.

_____

BRIAN A. BECKCOM

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this the _____ day of January, 2007, to certify which witness my hand and official seal.

_____
Notary Public in and for
The State of Texas

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DRILLING COMPANY and	§	
GLOBALSANTAFE C. R. LUIGS LIMITED	§	129th JUDICIAL DISTRICT

ORDER

CAME ON to be heard Defendant Seaflex, Inc.'s Motion for Summary Judgment, and the Court, after a review of same, and after hearing arguments of counsel, if any, is of the opinion that Defendant Seaflex, Inc.'s Motion for Summary Judgment should be, and hereby is, in all respects denied. Accordingly,

It is therefore, ORDERED, ADJUDGED, and DECREED that Defendant Seaflex, Inc.'s Motion for Summary Judgment is DENIED.

SIGNED: _____.

_____
JUDGE PRESIDING

APPROVED AS TO FORM:

VUJASINOVIC & BECKCOM, L.L.P.

_____

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