

Soudelier v. PBC Mgmt.: Land-Based Employee’s Stranded at Sea—A Deep Dive Comparison of Land-Based and Jones Act Negligence

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I. INTRODUCTION

Jeffrey Soudelier, Jr. (Soudelier) was captain of the *M/V Steven M Bryan* operated by PBC Mgmt. (PBC).¹ While captaining the vessel, the captain was ordered by PBC to move a twenty-five-foot defective crossover hose from a red flag barge, *FMT 3180*, and return it to a fleet dock.² Soudelier convened with three other crew members to devise a plan for moving the hose, which had residual product within, adding weight to the hose.³ They decided to lift and carry the hose from the red flag barge to the vessel of operation.⁴ Soudelier bent his back to lift as he was positioned under a pipeline on the barge.⁵ While lifting the hose, Soudelier felt a “pop” in his hip; he “walked off” his pain and proceeded to lift the hose.⁶ Upon completing the move, Soudelier’s pain persisted throughout the day, and he immediately filed two accident reports describing the incident.⁷ Two other crew members filed witness statements.⁸ After seven months, Soudelier filed a Seaman’s Petition for Damages seeking recovery from PBC under the Savings to Suitor clause pursuant to the Jones Act and unseaworthiness.⁹ Soudelier alleged that his injuries sustained required multiple surgeries and could cause permanent

1. *Soudelier v. PBC Mgmt. Inc.*, 355 So. 3d 137, 137, 2022 AMC 451 (La. App. 5th Cir. 2022).

2. *Id.* at 137-38.

3. *Id.* at 138.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

health issues.¹⁰ Soudelier claimed that PBC made him perform heavy physical work and that PBC was negligent in providing alternative methods for moving the hose and training the crew properly.¹¹

PBC filed a motion for partial summary judgment, which the trial court granted, contending that Soudelier could not prove unseaworthiness nor Jones Act negligence.¹² On review, the Fifth Circuit Court of Appeals reversed, finding that moving the hose was not a routine task, that Soudelier was not trained for such tasks, and that he did not have alternatives for moving the hose.¹³ Upon remand at a bench trial, the trial court rendered judgment in favor of PBC and found that Soudelier could not prove negligence per se nor unseaworthiness.¹⁴ Soudelier appealed to the Fifth Circuit.¹⁵

II. HISTORICAL BACKGROUND

The Supreme Court has continually upheld the constitutionality of the Jones Act.¹⁶ Under the Jones Act, “a seamen injured in the course of employment . . . may elect to bring a civil action at law, with the right of trial by jury, against the employer.”¹⁷ In doing so, the seaman must only show that they sustained an injury while employed.¹⁸ The burden of proving employer negligence rests solely on the seaman bringing the action.¹⁹ To bring a suit of negligence per se under the Jones Act, the seaman must show that the employer breached this duty.²⁰ In doing so, “[s]uch employee shall not be held to have assumed the risks of his employment in any case where such injury . . . resulted in whole or in part from the negligence [or fault] . . . of such carrier.”²¹ General maritime law holds that a seaman must establish a causal connection between the injury sustained and the employer’s negligence while also making a case that the

10. *Id.*

11. *Id.* at 138.

12. *Id.*

13. *Id.*

14. *Id.* at 138-39.

15. *Id.* at 139.

16. *See generally* *Panama R. Co. v. Johnson*, 264 U.S. 375 (1924).

17. 46 U.S.C. § 30104.

18. ROBERT FORCE & NIELS F. JOHNSEN, *ADMIRALTY AND MARITIME LAW* 100 (2nd ed. 2013) (citing *Braen v. Pfeifer Oil Transp. Co.*, 361 U.S. 129 (1959) (seaman boarding raft to perform repair work on barge); *Hopson v. Texaco, Inc.*, 383 U.S. 262 (1966) (seamen being driven to consul’s office to be discharged); *Mounteer v. Marine Transp. Lines, Inc.*, 463 F. Supp. 715 (S.D.N.Y. 1979) (seaman being transported to vessel)).

19. *Soudelier*, 355 So. 3d at 142.

20. *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 432, 1958 AMC 251 (1958).

21. 45 U.S.C. § 54.

event was foreseeable.²² Still, where a seaman is solely at fault in causing the injury, the Jones Act bars recovery because proof of employer fault is essential for recovery under the Jones Act.²³ Under Jones Act comparative negligence, an employer can be held liable if an incompetent seaman is required to perform tasks for which they have not received training or when working in an unsafe environment.²⁴

In *Gautreaux v. Scurlock Marine*, the Fifth Circuit describes a seaman's duty of care under the Jones Act.²⁵ The court noted that according to the Jones Act, "seamen are afforded rights parallel to those of railway employees under the Federal Employers' Liability Act (FELA)."²⁶ The Fifth Circuit reasoned that although some courts have replaced the phrase "in whole or in part" with "slightest" in interpreting § 51, the court used the term "slightest" to describe the reduced standard of causation between employer and employee negligence.²⁷ In upholding the traditional view of duty of care under the Jones Act, the court emphasizes that, "employers . . . [are] to be held to a higher degree of personal responsibility" contrasting with the understanding that "seamen were understood to be held to a lower degree of personal responsibility for themselves."²⁸ The Fifth Circuit found that the district court erred in instructing the jury that a Jones Act seaman does not have a duty to use ordinary care.²⁹

In *Populis v. State*, the Fifth Circuit clarifies that "[t]he elements of a maritime cause of action are essentially the same as land-based negligence."³⁰ In making a negligence case against an employer, the seaman must show the defendant owed a duty; there was a breach of that duty; and a causal connection between a reasonably foreseeable injury sustained and the defendant's conduct.³¹ The Fifth Circuit notes the main difference between a land-based negligence cause of action and a

22. *Populis v. State*, 222 So. 3d 975, 982 (La. App. 5th Cir. 2017) (citing *Dean v. Ramos Corp.*, 781 So. 2d 796, 802 (La. App. 5th Cir. 2001)).

23. *FORCE*, *supra* note 18, at 107 (citing 45 U.S.C. § 151). *See also In re Cooper/T. Smith*, 929 F. 2d 1073, 1991 AMC 2169 (5th Cir. 1991); *Valentine v. St. Louis Ship Bldg. Co.*, 620 F. Supp. 1480, 1988 AMC 1216 (E.D. Mo. 1985), *aff'd*, 802 F. 2d 464 (8th Cir. 1986).

24. *See generally Spinks v. Chevron Oil Co.*, 507 F. 2d 216, 1979 AMC 1165 (5th Cir. 1975).

25. *See generally Gautreaux v. Scurlock Marine*, 107 F. 3d 331, 1997 AMC 1521 (5th Cir. 1997).

26. *Id.* at 335.

27. *Id.* (citing *Rogers v. Missouri Pac. R. Co.*, 352 U.S. 500, 506 (1957)).

28. *Id.* at 336.

29. *Id.* at 339.

30. *Populis v. State*, 222 So. 3d 975, 982 (La. App. 5th Cir. 2017) (citing *Dunaway v. La. Wildlife & Fisheries Comm'n*, 6 So. 3d 228, 233 (La. App. 1st Cir. 2009)).

31. *Id.* (citing *Dean v. Ramos Corp.*, 781 So. 2d 796, 802 (La. App. 5th Cir. 2001)).

maritime one is that “state law would apply a ‘duty/risk’ analysis, rather than a ‘reasonably foreseeable’ analysis.”³²

The Jones Act establishes that a seaman has a duty to exercise ordinary prudence while working aboard a ship.³³ In categorizing this ordinary prudence, “[t]he seaman must act with the care, skill, and ability expected of a reasonable seaman.”³⁴ Throughout employment, the Jones Act employer has a continuing duty of care.³⁵ This employer duty requires that the employer provide a reasonably safe workplace and use ordinary care to maintain a vessel.³⁶ Jones Act seamen are afforded the same rights as railroad employees under the Federal Employers’ Liability Act.³⁷ These rights include the right to hold employers liable for injuries or death “resulting in whole or in part” from an employer’s or its officers’ negligence.³⁸ The Supreme Court has construed this language as inferring that an employer can be found liable even for the “slightest” involvement in injury.³⁹ This language and different cases’ interpretations of such have been held only to affect the causation element rather than the duty owed.⁴⁰ Thus, the seaman and the employer owe a duty of ordinary prudence regarding the negligence standard, while an employer has a heightened probability of fault allocation.⁴¹

Under general maritime law and the Jones Act, vessel owners have a continuing duty to furnish a seaworthy vessel.⁴² The Fifth Circuit “recognizes two different standards of causation” between Jones Act negligence and unseaworthiness.⁴³ The Fifth Circuit applies the usual tort standard of causation to determine unseaworthiness: proximate cause.⁴⁴ The employer’s negligence must be a substantial factor in bringing about the injury.⁴⁵ In stating a cause of action for unseaworthiness, the seamen must prove the employer caused a defect in the ship, equipment aboard it,

32. *Id.* (citing *Dean*, 781 So. 2d at 802).

33. *Gautreaux*, 107 F. 3d at 335.

34. *Gaylor v. Canal Barge Co.*, 2015 WL 5321756, at *2, 2015 AMC 2444 (E.D. La. Sept. 10, 2015) (citing *Gautreaux*, 107 F. 3d at 339)).

35. Robert Force, *Allocation of Risk and Standard of care under the Jones Act: “Slight Negligence,” “Slight Care,”* 25 J. MAR. L. & COM. 1, 22 (1994).

36. *Soudelier v. PBC Mgmt. Inc.*, 194 So. 3d 1178, 1182 (La. App. 5th Cir. 2016).

37. 46 U.S.C. § 688.

38. 45 U.S.C. § 51.

39. *Rogers v. Missouri Pac. R. Co.*, 352 U.S. 500, 506 (1957).

40. *Gautreaux v. Scurlock Marine*, 107 F. 3d 331, 335, 1997 AMC 1521 (5th Cir. 1997).

41. *Page v. St. Louis S. R. Co.*, 349 F. 2d 820, 823 (5th Cir. 1965).

42. *Vendetto v. Sonat Offshore Drilling Co.*, 725 So. 2d 474, 481, 1999 AMC 1382 (La. 1999).

43. *Chisholm v. Sabine Towing & Transp. Co.*, 679 F. 2d 60, 62 (5th Cir. 1982).

44. *Id.* at 63.

45. *Id.*

or appurtenances.⁴⁶ Employer liability can also be found if it gives negligent orders or uses an understaffed or ill-trained crew.⁴⁷ The seaman must show that the defective condition substantially affected or caused the injury sustained.⁴⁸ Still, an isolated negligent act of a seaman does render a vessel unseaworthy.⁴⁹ The above points are reinforced by the notion that “unseaworthiness is a distinct concept from negligence.”⁵⁰ Determining whether a vessel is unseaworthy is a fact-based question.⁵¹

III. COURT’S DECISION

In the noted case, the Fifth Circuit Court of Appeals found (1) the trial court correctly dismissed Capt. Soudelier’s claims that PBC was vicariously liable under the Jones Act for his sustained injuries while working under their employment, and (2) that he failed to provide evidence that the crew lacked sufficient training to claim unseaworthiness.⁵² At trial in 2015, the Twenty-Ninth Judicial District of Louisiana found in favor of PBC because Soudelier’s Accident and Injury Reports failed to mention any condition out of the ordinary that would have contributed to his injuries and provided no evidence of negligence.⁵³ Further, the court reasoned that Soudelier’s testimony confirms “that there was nothing that anyone did which was wrong, there was no missing equipment, and there were no unsafe conditions.”⁵⁴ On appeal to the Fifth Circuit in 2016, the court reversed and remanded, finding that the trial court erred in granting summary judgment and that the evidence did not support that moving the crossover hose was a routine task.⁵⁵ The court found that Soudelier was not adequately trained in handling such assignments and should have been provided “some mechanical means to move the hose.”⁵⁶ Upon remand at a bench trial in 2021, the trial court reversed, found in favor of PBC, and found that “Soudelier failed to prove

46. *Vendetto*, 725 So. 2d at 481.

47. *Id.* (quoting, 1 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 6-25, at 333-34 (2d ed. 1994)).

48. *Id.* at 481-82.

49. *Rogers v. Eagle Offshore Drilling Servs., Inc.*, 764 F. 2d 300, 303 (5th Cir. 1985).

50. *Soudelier v. PBC Mgmt.*, 194 So. 3d 1178, 1183 (La. App. 5th Cir. 2016).

51. *Vendetto*, 725 So. 2d at 481.

52. *Soudelier v. PBC Mgmt.*, 355 So. 3d 137, 142-43, 2022 AMC 451 (La. App. 5th Cir. 2022).

53. *PBC Mgmt.*, 194 So. 3d at 1181.

54. *Id.*

55. *Id.* at 1184.

56. *Soudelier*, 335 So. 3d at 138.

negligence beyond a preponderance of the evidence, and the defendants were not liable under any cause of action.”⁵⁷

An appeal to the Fifth Circuit followed in 2022; Soudelier claimed that the trial court erred in providing him due process, failed to engage in a meaningful comparative fault analysis, and wrongfully applied a contributory negligence standard in a maritime case.⁵⁸ In making its determination, the Fifth Circuit found that evidence supported the proposition that Soudelier’s injuries when improperly lifting the crossover hose with his crew members were due to his poor planning and judgment.⁵⁹ Further, the Fifth Circuit, using expert testimony, reasoned that Soudelier’s actions were contrary to training received by Florida Marine in such tasks.⁶⁰ Thus, Soudelier’s negligence solely caused his injuries, and his unseaworthiness claims of an ill-trained crew held no ground.⁶¹

The Fifth Circuit applied a manifest error standard of review to the trial court’s findings.⁶² The Fifth Circuit pointed out that the Jones Act, under which Soudelier was seeking vicarious liability, provided that an employer must provide a reasonably safe workplace and use ordinary care to maintain a vessel.⁶³ Soudelier argued that the trial court could not explain why his negligence was the sole cause of his injury.⁶⁴ To recover damages from an employer in a negligence suit under the Jones Act, the court stated that a seaman has the burden of proving an employer breached this duty of care by making a causal connection between the defendant’s conduct and the sustained injuries while confirming that the harm was foreseeable.⁶⁵ The Seamen must conduct themselves with reasonable care, skill, and ability expected of a sensible seaman.⁶⁶ In these instances, the Fifth Circuit held that comparative negligence applied and can bar recovery for damages sustained because of a seaman’s fault.⁶⁷ Soudelier’s negligence prevented recovery for his injuries because he (1) improperly lifted the hose; (2) expert testimony highlighted better alternatives for moving the hose; and (3) his method contradicted the

57. *Id.* at 139.

58. *Id.*

59. *Id.* at 142.

60. *Id.* at 143.

61. *Id.* at 144.

62. *Id.* at 140.

63. *Id.*

64. *Id.* at 139.

65. *Id.* at 140.

66. *Id.*

67. *Id.*

training received from Florida Marine.⁶⁸ The Fifth Circuit's analysis of the facts and testimony showed that PBC maintained safe working conditions and that their seamen received adequate training for the task that caused injury here; Soudelier's negligence alone was the cause for his dismay.⁶⁹ During the lift, Soudelier positioned himself under a pipeline with his back bent, contrary to the training he received from Florida Marine.⁷⁰ The Fifth Circuit found that much of the expert testimony disfavored Soudelier's position.⁷¹ The court reasoned that there were alternatives to lifting the hose, that moving the hose was not an out-of-the-ordinary task, and that Soudelier, as captain, is responsible for ensuring employees are aware of potential hazards.⁷²

Further, an unseaworthiness claim is distinct from one of negligence.⁷³ Maritime law holds that the owner of a vessel has an absolute duty to furnish a seaworthy vessel.⁷⁴ To allege unseaworthiness, a plaintiff must allege that a defect in the ship, equipment, or its members caused their injury.⁷⁵ The Fifth Circuit further reasoned that the unseaworthy condition must raise the injuries sustained.⁷⁶ The court determined that the barge upon which the hose was situated and the vessel itself were both seaworthy.⁷⁷ Additionally, there was no evidence of compromise to the structural integrity of the equipment on board either vessel, nor was there any indication of incompetence among the crew members.⁷⁸ The physical condition of the vessel and the equipment on board it did not cause Soudelier's injuries, nor was PBC liable for using an ill-trained crew.⁷⁹

From the above reasoning, the Fifth Circuit found that Soudelier's argument had no merit. Most importantly, multiple testimonies at trial support that the crew has acquired adequate training to handle tasks such as lifting and moving the crossover hose.⁸⁰ Using this expert testimony, the court ruled that the trial court was proper with its determinations and barred Soudelier from recovery from PBC's alleged negligence under the

68. *Id.* at 142.

69. *Id.* at 141-42.

70. *Id.* at 142.

71. *Id.*

72. *Id.* 141-42.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

Jones Act.⁸¹ As to the unseaworthiness claims, The Fifth Circuit ruled that Soudelier's unseaworthiness claims due to PBC and Florida Marine's negligence in providing improper training held no ground and that his choice to ignore training rested solely on him.⁸²

IV. ANALYSIS

The Fifth Circuit in *Soudelier v. PBC Management* relied on maritime law consistent with Jones Act negligence and unseaworthiness to determine whether PBC could be found contributorily negligent for Soudelier's injuries while under their employment.⁸³ The opinion cites various cornerstone cases, most importantly *Chandris* and *Populis*, to establish the cause of action and duty of care for Jones Act negligence in agent/principal relationships.⁸⁴ In the Fifth Circuit's analysis of this causation in these cases, various other cases within their decisions are cited (many unreported) that dissect the duty of care maritime employers owe their seamen, and vice versa, under the Jones Act.⁸⁵ Further, using their reasoning in *Populis*, the court dissects the differences between land-based and general maritime negligence elements.⁸⁶

The court in *Soudelier v. PBC Management* did not err in affirming the lower court's decision that PBC was not liable for Soudelier's injuries sustained while working aboard their ship. There were a variety of flaws in Soudelier's argument, primarily that the trial court ignored his protected status as a seaman and that it deviated from admiralty law by applying a contributory negligence standard.

Although the court's decision is correct, it prompts a broader examination of the dynamics of agent/principal relationships concerning an employer's duty to their employees on a wider scale. Tort law negligence cases involving an employer/employee relationship often involve the cause of action concepts similar to those of a Jones Act/maritime negligence case.. These similarities include the elements of the employee's burden for proving the defendant's negligence and the needed connection between the defendant's negligence and the harm endured. Yet, employer duty of care is heightened under general maritime law compared to tort law negligence. It is crucial to discern the distinctions and commonalities between these two categories.

81. *Id.* at 142.

82. *Id.* at 143.

83. *Id.* at 140, 143.

84. *Id.* at 140-41, 143.

85. *Id.* at 140, 143.

86. *Id.* at 140 (citing *Populis v. State*, 222 So. 3d 975, 982 (La. App. 5th Cir. 2017)).

Soudelier highlights the importance of such an assessment. Though similar to the Jones Act duty of care, *Soudelier v. PBC Management* suggests that a typical tort employer duty of care for high-risk occupations should impose obligations that draw from the principles regarding the duty of care under the Jones Act and general maritime law that the *Soudelier* court relies on. Many employees in fields unrelated to maritime are not owed the duty of care that the Jones Act and general maritime law affords to seamen from their employers. This lack of employer duty in tort actions has led to a history of employees facing severe disadvantages when they have legitimate claims against such employers, often because of workers' compensation acts.⁸⁷ By aligning employer negligence duties under tort law more closely with the Jones Act/general maritime negligence duties, employees in high-risk occupations would receive greater protection against employer negligence in tort scenarios.

Gautreaux established that under the Jones Act it is within a seaman's duty to act with ordinary prudence under given circumstances of employment, which the court in *Soudelier* reaffirms.⁸⁸ These employment circumstances include the seaman's "reliance on his employer to provide a safe work environment, but also his own experience, training, or education."⁸⁹ The *Soudelier* court, through the *Gaylor v. Canal Barge Co.* court's interpretation of this language in *Gautreaux*, finds that under this "ordinary prudence," a seaman is required to operate with the care, skill, and ability expected of a reasonable seaman.⁹⁰ Thus, "comparative negligence applies in both Jones Act and unseaworthiness actions, barring an injured party from recovering for the damages . . . as a result of his own fault," a notion upheld by the *Soudelier* court.⁹¹

The Fifth Circuit in *Soudelier* makes clear that employers operating under the Jones Act have "a continuing duty to provide a reasonably safe place to work and to use ordinary care to maintain the vessel in reasonably safe condition."⁹² In *Populis*, the Fifth Circuit differentiated between land-based negligence and maritime negligence; this distinction is given great deference in *Soudelier*.⁹³ *Populis* reasons that the elements of both types

87. Thomas D. Schroeder, *Workers' Compensation: Expanding the Intentional Tort Exception to Include Willfull, Wanton, and Reckless Employer Misconduct*, 58 NOTRE DAME L. REV. 890, 890 (1983).

88. *Gautreaux v. Scurlock Marine*, 107 F. 3d 331, 339, 1997 AMC 1521 (5th Cir. 1997).

89. *Id.*

90. *Soudelier*, 355 So. 3d at 140 (citing *Soudelier v. PBC Mgmt.*, 194 So. 3d 1178, 1181-82 (La. App. 5th Cir. 2016)).

91. *Miles v. Melrose*, 882 F. 2d 976, 984, 1990 AMC 57 (5th Cir. 1989).

92. *Soudelier*, 355 So. at 140 (citing *PBC Mgmt.*, 194 So. 3d at 1182).

93. *Id.* (citing *Populis v. State*, 222 So. 3d 975, 982 (La. App. 5th Cir. 2017)).

of negligence are very similar.⁹⁴ However, in citing *Dean v. Ramos Corp.*, *Populis* finds that state law would apply a duty/risk analysis rather than the reasonably foreseeable analysis consistent with Jones Act/maritime negligence.⁹⁵ If an employer's action or inaction was a foreseeable cause of injury, they can be found liable.⁹⁶ Notably, the *Soudelier* court cites *Chandris* in noting that an employer's duty of care is heightened under the Jones Act compared to tort law, for if the employer's negligence plays "any part, even the slightest," in causing the injury, then there is grounds for employer liability.⁹⁷

The heightened standard in *Soudelier*, derived from FELA, differs from a tort action whereby an employer must be found to be the proximate or substantial cause of the injury sustained to be held liable.⁹⁸ The *Soudelier* standard supports the notion that when an employer violates its statutory duty and causes harm to a seaman, they are responsible without regard to negligence.⁹⁹ Unlike land-based negligence, it is irrelevant whether or not the seaman is a person for whom the statute was to protect or if the harm sustained is the type the rule was to prevent.¹⁰⁰

At first, it may seem irrational to stray away from the FELA's slight proximate cause approach because of the similarities between railroad workers and seamen. However, airline workers, similar to railroad workers and seamen, have not found themselves at the mercy of FELA.¹⁰¹ The Fifth Circuit has held if the evidence establishes employer negligence was the proximate cause of the employee's injury, then the employee is entitled to recovery.¹⁰² There are positive and negative effects of applying Jones Act/maritime proximate cause to tort actions brought by high-risk employees, and the positive effects greatly outweigh the negative. However, it would be difficult to argue that using a Jones Act standard for proximate cause would not create more litigation, potentially opening the floodgates for causes of action against employer negligence in these tort scenarios. Still, litigation is necessary because "[c]ourts and legislatures

94. *Populis*, 222 So. 3d at 982 (citing *Dean v. Ramos Corp.*, 781 So. 2d 796 (La. App. 5th Cir. 2001)).

95. *Id.* (citing *Dean*, 781 So. 2d at 802).

96. *Id.*

97. *Soudelier*, 355 So. at 140 (citing *PBC Mgmt.*, 194 So. 3d at 1181-82).

98. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 688, 2011 AMC 1521 (2011).

99. *FORCE*, *supra* note 18, at 102 (citing *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 1958 AMC 251 (1958)).

100. *Id.*

101. *See generally* *Braniff Int'l Airways, Inc. v. Harman*, 202 F. 2d 928 (5th Cir. 1953).

102. *Id.* at 929 (citing Art. 8306, Sec. 1 Subd. 4, and Art. 8306, Sec. 4, *Vernon's Ann. Civil Statutes*; *Western Union Tel. Co. v. Coker*, 204 S.W. 2d 977 (1947); *Mender v. Bryant*, 255 S.W. 2d 877 (Tex. Civ. App. 1949)).

have almost uniformly limited an employee to exclusive recovery under workers' compensation for any employer conduct lacking . . . intent to injure."¹⁰³ Put plainly, many courts have essentially thrown out employer's proximate cause liability, permitting them to "impose obviously dangerous working conditions on employees . . . at workers' compensation's relatively reduced level of recovery."¹⁰⁴

But why has tort law considered workers' compensation to be a "trade-off" for liability when an employee is injured? It presumably provides employees with no-fault compensation and more specific means of compensation while averting litigation between the parties and limiting employer liability. Workers' compensation statutes entail benefits, such as medical benefits and wage replacements, that are predetermined and thus act as no-fault compensation for the employee.¹⁰⁵ However, because these benefits are predetermined and standardized in many regards, they may not fully compensate injured workers; some employees will be undercompensated.¹⁰⁶ Workers' compensation acts also lack deterrence power; with no threat of a lawsuit, employers are less likely to maintain a safe working environment.¹⁰⁷ Further, though workers' compensation acts may advert lengthy litigation, there is a chance for administrative delays that disrupt timely compensation.¹⁰⁸

What would change for the better if tort law took up an employer standard of care closer to the standard in the Jones Act? If tort law drew from the Jones Act duty of care used in *Soudelier*, all of the issues above, minus the possibility of lengthy litigation, would be non-existent. Under the Jones Act, there is a lower or "featherweight" standard of causation different from the negligence per se standard in typical tort negligence.¹⁰⁹ If tort law used the Jones Act standard, finding an employer liable would be objectively easier. The Jones Act does not require gross negligence on the part of the employer, making it easier to ascertain employer liability and the proportionate fault liability of both parties. Thus, any lengthy litigation typical in tort actions would be substantially cut down.

The Jones Act was created to afford seamen a favorable means of seeking retribution under a broad interpretation of negligence.¹¹⁰ If tort law were to take from the Jones Act, there would be greater employee

103. Schroeder, *supra* note 87.

104. *Id.*

105. La. R.S. § 23:1203; La. R.S. § 23:1201.

106. *See generally* Richardson v. Bartlett, 990 P. 2d 305 (Okla. Civ. App. Div. 2, 1999).

107. Schroeder, *supra* note 87.

108. *See generally* Noble v. United States, 216 F.3d 1229 (11th Cir. 2000).

109. FORCE, *supra* note 18, at 102-03.

110. *See generally* Chandris, Inc. v. Latsis, 515 U.S. 347, 1995 AMC 1840 (1995).

protection, more access to compensation, less legal complexity in litigation, increased incentives for workplace safety, fairer outcomes in litigation, and less need for workers' compensation. A lower threshold for employer negligence would make it easier to establish employer liability and seek just compensation from employers guilty of slight negligence. Both would result in more efficient resolutions of claims while simplifying legal proceedings, which would in turn lead to fewer disputes over the standard of care and foreseeability in tort actions. Using the Jones Act negligence standard in tort cases would induce employers to maintain safer workplaces and take precautions to prevent injuries. Lastly, in many cases, employees would not need to rely solely on workers' compensation acts that limit their benefits and may not fully cover their losses.

V. CONCLUSION

The Fifth Circuit's analysis of the facts and expert testimony and their analysis of legal theories surrounding Jones Act negligence and unseaworthiness show that Soudelier is solely responsible for his injuries while moving the hose with his crew members. *Soudelier v. PBC Management* might be a standard maritime Jones Act case. Still, it illustrates the advantages of the Jones Act standard of employer negligence to seamen over those of the U.S. tort law standard for land-based employees. Regardless of whether those standards are set by workers' compensation acts or general tort law negligence principles, employees in high-risk occupations would greatly benefit from a Jones Act standard of negligence.

If the standard of tort proximate cause were more closely aligned to that used in *Soudelier*, there would be no worries of extended litigation and employers under-compensating through workers' compensation. Using the Jones Act standard for employer care, the negligence and retribution of all parties would be easier to ascertain because it would operate as a sort of strict liability against the employer. Using the Jones Act/maritime standard for employer negligence would cut litigation time,

and the benefits received would be more straightforward to determine and measure. Most importantly, it would provide a just and reasonable avenue for workers in high-risk occupations to seek compensation while ensuring these employees receive due process from their employers. The litigation is necessary for ensuring proper employee retribution.

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