



Maritime Jobs for Texas is a non-profit coalition of public and private maritime employers including Port Authorities, Dredging and Towing Companies, and maritime related industry associations. The group was formed to protect the marketplace for Texas workers by maintaining worker rights under the Jones Act by closing a venue statute loophole remaining after the Texas tort reforms of 1995. This obscure loophole is only found in Texas and only for maritime and railroad workers. These maritime employers endorse the Jones Act and its application in other states, but oppose its unique and unfair application under the current venue rules in Texas.

Background

Legislative reforms to the Texas civil justice system have been widely heralded as among the most successful ever made. Unfortunately, the venue loophole is now being exploited primarily by two law firms who have attacked maritime industries working in Texas with an epidemic of personal injury lawsuits venued in South Texas.

This loophole has become a tool for some workers to file apparently non-meritorious or exaggerated personal injury claims and seek unusually high awards. If the venue exception is not changed to conform to general venue rules, Texas-based maritime business will continue to suffer in a variety of ways, resulting in severe negative impact to ports and related maritime industry.

The actions of a few tarnish the reputation of the entire maritime community and threatens to have impacts far greater than the individual cases would seem to indicate. Economic

impacts are already being felt, and loss of jobs are not far behind.

Action Needed

The legislative fix to the railroad and maritime exception is a simple one. Simply bring Maritime Lawsuits in line with general venue rules by saying that venue is appropriate in the Texas county of defendant's primary place of business, or in the county in which the incident causing the alleged injury arose, or in the county of plaintiff's residence if the first two venue choices do not apply.

Texas lawmakers who are justifiably proud of their tort reform efforts need to know that this is a serious issue impacting industries that are vitally important to Texas commerce, and until this exception is removed, their work is not done. The mission of Maritime Jobs for Texas is to make sure that Texas lawmakers know about the abuses currently caused by the maritime exception to venue and that those abuses have a seriously negative impact on the Texas economy and on jobs for Texas workers.

If you would like more information on the issue or wish to join our effort, please contact Bill Hanson, MJT Chairman, at 281 221 2055.



The Lawsuit Explosion Against Dredgers In Texas: A Summary Of The Problem

More than 300 million tons of cargo pass through Texas ports each year, producing more than \$178 billion in business sales, but an explosion of personal injury lawsuits are impeding maintenance and improvement projects in Texas ports and waterways. Our port trade is a crucial part of the Texas economy and critical to providing jobs for Texans. Dredging companies are already be impacted by an unusually high rate of suits that are threatening to spread to other maritime industries. If Texas ports and waterways cannot be cost-efficiently maintained and improved it is the citizens of Texas who lose.

The general venue rule in Texas is that venue in a lawsuit against a corporation is in the county of the defendant's principal place of business or the county where the incident causing the alleged injury occurred. Only if a plaintiff cannot sue in one of those counties, can the plaintiff bring a lawsuit in his or her county of residence. In Texas, there is an exception to that general venue rule that allows a person working on dredges to bring a federal Jones Act lawsuit against his or her employer in the county of the plaintiff's residence.

As a result of this exception, there has been an explosion of lawsuits against dredgers in Texas in recent years, filed primarily by two law firms in just four South Texas counties – Starr, Hidalgo, Cameron and Zapata. The number of lawsuits against dredging companies in Texas far exceeds those filed against dredgers in other coastal states and is exponentially greater than the number of lawsuits that historically has been filed against dredgers operating in Texas.

One can look to the comments of the lawyer who is filing most of the dredging lawsuits for the answer to why there is this recent explosion in lawsuits. In commenting on the lawsuits he files in Starr County, this plaintiff's lawyer has observed: "That venue probably adds about seventy-five percent to the value of the case." In commenting on the lawsuits he files in Hidalgo County, this lawyer has commented about his ability to eliminate certain potential jurors in the jury selection process: "And the Hidalgo County judge is going to give me my two hours [for voir dire]; that's enough to knock out jurors and then you're left with a jury who is favorably disposed to the [plaintiff's] case."

The Jones Act cases that are filed in Texas courts should be subject to the sound principles of the Texas general venue statute. Plaintiffs in Jones Act cases should be allowed to sue in their county of residence only if they cannot sue in the county where the injury-causing incidents occurred or in the county of defendant's principal place of business.

1 By: _____

____.B. No. _____

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A BILL TO BE ENTITLED

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AN ACT

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10 relating to venue in Federal Employers' Liability Act and Jones Act.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

12 SECTION 1. Section 15.018, Civil Practices and Remedies Code, is amended to
13 read as follows:

14 § 15.018. FEDERAL EMPLOYERS' LIABILITY ACT AND JONES ACT. (a)

15 This section only applies to suits brought under the Federal Employers' Liability Act (45
16 U.S.C. Section 51 et seq.) or the Jones Act (46 U.S.C. Section 688).

17 (b) All suits brought under the federal Employers' Liability Act or the Jones Act
18 shall be brought:

19 (1) in the county in which all or a substantial part of the events or
20 omissions giving rise to the claim occurred;

21 (2) in the county where the defendant's principal office in this state is
22 located; or

23 (3) if Subdivisions (1) and (2) do not apply, in the county where the
24 plaintiff resided at the time the cause of action accrued.

1 SECTION 2. This Act applies only to an action commenced on or after the
2 effective date of this Act. An action that is commenced before the effective of this Act is
3 governed by the law applicable to the action immediately before the effective date of this
4 Act, and that law is continued in effect for that purpose.

5 SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds
6 of all the members elected to each house, as provided by Section 39, Article III, Texas
7 Constitution. If this Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2007.

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The Lawsuit Explosion Against Dredgers Operating In Texas Ports And Waterways

Introduction

Lawsuits are generally filed where the defendant has its principal place of business or where the incident occurred. Two plaintiff lawyers are using a loophole in the current Texas venue law to file cases against dredging companies operating in Texas ports and waterways in the plaintiff's home county. This deviation from general venue law means dredging work in Texas is becoming far more expensive, or in some cases not being done at all, because of the high liability costs that are now considered in dredging bids resulting from the recent explosion of lawsuits against dredgers filed in four South Texas counties. This hurts our ports and canals, economically depresses our coastal towns, negatively impacts the entire state economy, and costs Texans jobs. Fixing this loophole will make dredging cases consistent with general venue law. Plaintiffs should be able to file lawsuits in the county of their residence only if they are unable to sue in the county where the incident occurred or where the defendant has its principal place of business.

The Importance of Texas Ports to the Texas Economy

The maritime industry is a vital part of the Texas economy. More than 1,000 port facilities are located along 1,000 miles of channel maintained by the U.S. Army Corps of Engineers. Annually, Texas ports handle almost 15,000 vessels – 20% of the national total.

Every year, almost 300 million tons of cargo pass through Texas ports, directly and indirectly generating nearly one million jobs for Texans and more than \$178 billion in business sales. Types of cargo include passengers, crude oil, lumber and paper, steel, agricultural products, consumer goods, chemicals, containers, aggregate, automobiles, construction equipment and strategic military cargo. Texas ports are home to a vibrant commercial seafood business and serve the offshore drilling and recreational boating industries.

Marine and intermodal transportation accounts for nearly \$65 billion, or 10%, of the Texas gross state product. Annually, ports bring in almost \$5 billion in local and state tax revenue. Ports have far-reaching effects even on inland regions of Texas. Ships carry agricultural products, such as wheat, corn, rice, peas, vegetable oils, and sorghum from Texas farms and ranches to international markets. The U.S. petroleum and chemical industries import and export their products via tankers at Texas ports. Manufactured machinery is both imported and exported. Wood products and fertilizers make their way from areas in Texas to be exported to countries poor in natural resources like Japan and Taiwan. Fish, shrimp, and other seafood reach Texas consumers through ports. The U.S. military uses Texas ports to transport equipment, materials, supplies, and people. Fort Hood and other military complexes in Texas make up 40 percent of the U.S.'s combat power, and also have an enormous beneficial impact on the Texas economy.

If our ports are not adequately maintained and improved, Texas cannot continue to prosper in the global economy and cannot compete effectively against rival Gulf Coast ports in other states. In general, dredging of Texas ports and intercoastal waterways are supervised and paid for by the U.S. Army Corps of Engineers. Recently, two essential port improvement projects have been cancelled due to problems related to Texas lawsuit abuse. If lawsuits continue to cause dredging bids to become unreasonably high on Texas projects, then the Corps will not undertake those projects and that federal money will go to other states. There is also evidence that the cost of lawsuits and the fear of further financial harm by lawsuits is causing dredgers not to bid on Texas projects.

Jones Act Cases

The Jones Act is a federal statute concerning maritime workers. Lawsuits filed under the Jones Act can be filed in either federal or state courts. Jones Act cases require a relatively low burden of proof on liability issues and the disputes between parties usually focus on the nature and extent of the alleged injury and the amount of damages to be awarded.

Venue – the place where a lawsuit is filed and the trial is conducted – is an important consideration in any lawsuit. The general rule in Texas, which is consistent with the prevailing rule in the country, is that a lawsuit against a corporate defendant is to be filed in the county of the defendant's principal place

of business or in the county in which the incidents leading to the alleged injury took place. Only if neither of those venues is appropriate is a plaintiff allowed to file a lawsuit in his or her county of residence. This venue rule is based on sound public policy. Plaintiffs have a number of advantages when filing lawsuits, including choosing *who* to sue, *when* to sue, and *what* to claim in the lawsuit.

These advantages would be magnified if a plaintiff also had wide leeway in determining *where* to sue. Also, the residence of a plaintiff can be manipulated to establish venue, and that is another reason why a plaintiff's residence should be a last resort to establish venue.

In Texas, however, there is an unfortunate, and unjustified, Jones Act exception to the general venue rule and Jones Act plaintiffs are allowed to file in their county of residence. This exception to the venue rule is causing significant adverse impacts that can and should be addressed by Texas policymakers.

The Recent Lawsuit Explosion In Texas

The number of personal injury suits being filed against dredging companies operating in the Gulf Coast is exploding beyond any reasonable explanation. The vast majority of the actions being filed are from only two law firms in Texas representing an exceptional number of cases for clients claiming residence in South Texas.

This explosion of lawsuits is concentrated in just four south Texas counties – Starr, Hidalgo, Cameron and Zapata – places where many plaintiff lawyers prefer to establish venue and where many observers believe that the lawsuit process is biased against defendants, often resulting in unjustified liability verdicts and unusually large damage awards. The plaintiff's lawyer handling most of the cases against dredgers in these counties seems to agree that the deck is stacked against defendants in these types of cases in those jurisdictions, when he asserted: "Cases in Starr County, which is traditionally the best venue in the State of Texas. That venue probably adds about seventy-five percent to the value of the case."

The number of personal injury lawsuits against dredgers in South Texas counties defies logic because the number of lawsuits filed in these jurisdictions in recent years are hugely higher than the number of lawsuits filed against dredgers in other states. Between 2003 and 2004, eight dredging companies had a total of 170 Jones Act lawsuits filed against them nationwide, and 98, or fully 58%, of

those were filed in South Texas (and 59 of those 98 lawsuits were filed by just one law firm).

Not only are recent Jones Act lawsuits in south Texas unusual as compared to other states, but they are also startling as compared to similar lawsuits filed in the past. One Texas-based dredging company, in business since 1940, has had fifteen Jones Act cases filed against it in South Texas in 2005 and 2006, whereas it had had only four such cases filed against it in the previous eight years.

One must ask why there would be such a disproportionate number of Jones Act cases filed in South Texas in the last few years. One need only look to the

statements of the plaintiff's attorney who has filed the greatest number of these lawsuits for the answer.

This attorney, in public comments, has implied that even the relatively low threshold of fault necessary to establish liability in a Jones Act case is not necessary in the courts where he files his lawsuits. He has said: "Maybe in Harris County, Galveston County, we need to show here's what the company did wrong, all right? But when you're in Starr County, traditionally, you need to just show that the guy was working, and he was hurt. And that's the hurdle: just prove he wasn't hurt at Walmart, buying something on his off time, and traditionally, you win the case."

He also stated that he is able to get at least one judge in Hidalgo County to give him the leeway necessary to get a jury favorable to his clients: "... it is very easy for me as representative of the plaintiff to knock out all those jurors that will be good for your [defendant's] interest. Very easy. Generally speaking, if the judge will give me two hours, which I can generally get from the particular judge in Hidalgo County, I can knock out all those jurors. I've busted several panels, by that I mean knocked out jurors favorable to your case, that are against me. And the Hidalgo County judge is going to give me my two hours; that's enough to knock out jurors and then you're left with a jury who is favorably disposed to the [plaintiff's] case."

These comments illustrate why venue statutes generally are constructed in ways to discourage forum shopping – that is, the practice of an attorney "shopping" for the courthouse that is most likely to be biased toward his or her client. Society's interest is in having every litigant, plaintiff or defendant, receive

a fair and impartial trial. Clearly, the abuses stemming from the Texas venue exception for Jones Act cases prove the validity of the general rule requiring venue in the defendant's principal place of business or in the place where the cause of action arose, and the Jones Act exception to the general venue rule should be modified to bring Jones Act cases into generally accepted venue principles.

Harming The Dredging Industry, Harming Texas Ports, Harming The Texas Economy

The effects of these lawsuits are threatening the vitality of Texas's crucial maritime industry. Needed dredging projects are not being completed, creating potential logjams for maritime commerce. The increased cost of doing business in Texas is being factored in the bids submitted on dredging contracts. The dredging industry is unique in that most dredging companies work almost 100% for the US Army Corps of Engineers. Therefore, if this situation is allowed to continue, the increased costs in the future will be borne directly by the American taxpayer.

Recently, there two projects have received high bids due to the lawsuit issue or suffered from having major companies decline to bid.

Cost-efficient dredging is necessary not only to the future viability of our ports and waterways, but also to the development of new coastal activities, such as LNG unloading facilities that are planned for the Texas coast.

If the Jones Act venue exception continues to be lucratively exploited by a few attorneys against the dredging industry, then it must be assumed that those attorneys will soon turn their attention to other participants in the maritime industry, causing even more economic damage to our state.

A less vibrant Texas maritime industry would adversely impact Texas jobs. Just as lawsuit abuse was significantly harming Texans' access to doctors, especially specialists, and the Texas Legislature responded by lawsuit reforms that have resulted in large increases in medical specialists practicing in Texas, so too should the Legislature make sure that lawsuit abuse does not undermine the operation of Texas ports and waterways.

The Cure

The Jones Act exception, Section 15.018 of the Texas Civil Practices and Remedies Code, should be amended to follow the generally accepted principles of venue: namely, that a Jones Act case can be filed in the county of defendant's principal place of business or in the county in which the acts or omissions giving rise to the claim occurred, and only if those two venue provisions do not apply, could plaintiff file a lawsuit in his or her county of residence.

Cancelled Dredging Projects: Real Life Examples

The projects listed below are US Army Corps of Engineers maintenance dredging projects managed by the Galveston District and performed every few years.

1. Port Mansfield

Bid Date – 26 Apr 2006

Bids Received:

- Bean Stuyvesant \$5,028,200
- Great Lakes \$5,208,770
- Government Budget \$2,074,937

The project subsequently was cancelled as too expensive. The Project has not been rebid and Port Mansfield continues to suffer economic losses due to shallow draft. Great Lakes Dredge & Dock has been quoted publicly as saying \$1.5 million was added to the bid as contingency for lawsuits, but even at that price, the project was not worth the risk.

2. Brownsville

Bid Date – 19 Dec 2006

Bids Received:

- Weeks Dredging \$6,587,110
- Great Lakes No Bid
- Government Budget \$4,088,627

The project subsequently was cancelled as too expensive. The project is being rebid as a hopper dredging job but, as a cost saving measure, sand dredged from the harbor will be dumped offshore instead of being used to restore beaches on South Padre Island as originally intended. Great Lakes Dredge & Dock declined to submit a bid, citing the major reason as its inability to assess the risk of potential lawsuits.



COALITION MEMBERS

(as of January 26, 2007)

PORTS

Port of Beaumont
Port of Brownsville
Port of Port Mansfield
Port of Port Isabel
Port of Victoria
Port of Harlingen
Port of Houston
Port of Palacios
Port of Orange
Port of Port Arthur
Port of West Calhoun
(Others interested)

ASSOCIATIONS

Texas Ports Association (TPA)
Texas Waterways Operators
Association (TWOA)
Gulf Intracoastal Canal Association
(GICA)
Dredging Contractors of America
(DCA)
Texans for Lawsuit Reform (TLR)

COMPANIES

Kingfisher Marine
T.W. Laquay Dredging
Great Lakes Dredge & Dock
Company, LLC
Weeks Marine Company
Mike Hooks Dredging
CF Bean Corporation
Pine Bluff Sand & Gravel
Steel Processors, Inc.
Gahagan Bryant Associates
Affolter Contracting
Inland Marine Management
Central Gulf Towing
Delta Towing
United Tugs
Oil Patch Petroleum