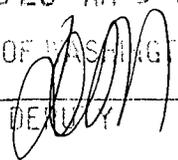


COURT OF APPEALS
DIVISION II

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No. 41892-4-II

STATE OF WASHINGTON
BY  DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

LEIGH ANN SHOFFNER,

Appellant,

vs.

STATE OF WASHINGTON; and VICTORIA RAPID TRANSIT,
INC., a Washington for-profit corporation,

Respondents.

APPELLANT'S AMENDED OPENING BRIEF

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I. INTRODUCTION

Appellant Leigh Ann Shoffner (“Shoffner”), a Washington State ferry able-bodied seaman, respectfully asks this Court to reverse the trial court’s summary judgment dismissal of her case finding that she was not in the course of employment when she was injured in an area exclusively controlled by her employer and being used as a bus staging area for loading and unloading ferry passengers directly adjacent to the ferry dock. Because a seaman is deemed to be in the course of employment while going to her place of work by the only practicable route of immediate ingress to the vessel, Shoffner is entitled to coverage as a seaman and maritime remedies. See, e.g., Aguilar v. Standard Oil Co., 318 U.S. 724, 730 (1943).

II. ASSIGNMENT OF ERROR

Where State of Washington, Ferries Division (hereinafter “WSF”) requires its employees to park in a designated parking lot, pays for employee parking in the designated parking lot, requires employees to post an employee “on-duty” placard in the windows of their private vehicles when they park, instructs employees to walk down NW Wesley Way from the parking lot to the Lofall Dock, and

controls the area where the injury occurred immediately adjacent to the dock by closing the road for bus staging, the trial court erred when it granted summary judgment in defendant's favor on March 11, 2011 and held that Shoffner was not in the service of the vessel when she was injured.

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court err when it concluded that Shoffner was not in the service of the vessel at the time of her injury?

IV. STATEMENT OF CASE

WSF assigned able-bodied seaman Shoffner to work on board the MV VICTORIA EXPRESS during the Hood Canal Bridge closure in May and June, 2009. CP 268. This temporary assignment was a departure from Shoffner's normal duties as an able-bodied seaman on the Bainbridge to Seattle ferry run. CP 268-69. Instead of traveling to the Bainbridge Ferry Terminal to begin work, Shoffner was instructed during training by WSF supervisors to report to the Lofall Dock in Kitsap County by 5:45 a.m. CP 269. As part of her collective bargaining agreement with WSF, Shoffner could be called out to work before or after a

regularly scheduled shift or on her regular days off at the discretion of WSF. CP 269; CP 285 (Rule 10.06) (“ . . .The Employer has the right to require an employee to work overtime if no other qualified employee is available or if vessel manning requirements cannot be fulfilled in a timely manner”). Under the collective bargaining agreement, Shoffner was subject to the call of duty at any time. CP 269.

To avoid congestion near the Lofall Dock, WSF had leased a parking lot near the Lofall Dock on NW Wesley Way for \$122 per day during the Hood Canal Bridge closure for employee designated parking. CP 391-92; 394. Under its charter agreement with Victoria Rapid Transit, Inc., WSF agreed: “WSF shall be responsible for the cost of all WSF Master and deckhand wages, travel and related benefits incurred in the performance of this Agreement.” CP 404. Shoffner and other WSF employees reporting to work at the Lofall Dock were required by WSF managers to park in the employee parking lot up the street from the terminal on NW Wesley Way. CP 269. WSF paid for its employees’ parking in the leased parking lot and told employees during training that they were prohibited from parking closer to the

Lofall Dock elsewhere along NW Wesley Way or NW Ferry Street. CP 269. The employee designated parking lot was closed to the public and only WSF employees and emergency personnel could park in the parking lot. CP 269.

After parking in the employee designated parking lot, Shoffner and other WSF crew were instructed by WSF managers to place their "on-duty" placards in the windows of their private vehicles and walk westbound down NW Wesley Way to the Lofall Dock. CP 269-70. This was the only route of access from the employee designated parking lot to the ferry dock. Before the bridge closure, WSF had entered into an agreement with Kitsap County to close the end of the NW Wesley Way and to posted signs closing the street to vehicles, bicycles, and pedestrian traffic. CP 381.

At the intersection of NW Wesley Way and NW Ferry Street, WSF closed the street to the public and posted a Washington State Patrol vehicle and trooper to control access west of the intersection. CP 366. The only traffic permitted beyond NW Ferry Street were buses transporting WSF passengers to the Lofall Dock and WSF crew walking to the dock on-foot from the employee designated parking lot. CP 366. At the end of NW Wesley Way past the police

checkpoint, WSF had established a staging area for buses to drop off and pick up passengers. CP 366. The staging area was directly adjacent to the dock where the ferry was moored. CP 270.

Answering the call of duty on May 6, 2009, Shoffner came to work and parked in the employee designated parking lot where WSF managers instructed her to park during training. CP 270-71. Shoffner posted her "on-duty" placard in the window of her vehicle as instructed by WSF managers and walked westbound down NW Wesley Way towards the Lofall Dock in her WSF uniform. CP 270. When Shoffner arrived at the intersection of NW Wesley Way and NW Ferry Street, Shoffner was allowed to pass the checkpoint by the Washington State Patrol trooper on duty. CP 270. After passing the checkpoint, Shoffner entered the bus staging area controlled by WSF directly adjacent to the dock where the vessel was moored. CP 270.

As Shoffner was walking westbound in darkness just before 5:30 a.m. down the sidewalk in the bus staging area controlled by WSF, Shoffner stepped into a depression in the sidewalk and twisted her knee. CP 270; CP 362 (photograph of bus staging area). Shoffner had immediate pain in her knee and was limping

when she arrived at the vessel. CP 270. Shoffner told the captain and co-worker Hallette Salazar about the incident, but was not asked to fill out an accident report. CP 270-71.

When Shoffner brought a claim for maintenance and cure, WSF rejected her claim and refused to pay for her injury-related medical cure, maintenance, or other maritime benefits. Shoffner brought the subject lawsuit to collect maritime remedies, including maintenance and cure. CP 1-3. The parties cross-moved for summary judgment on the issue of whether Shoffner was in the service of the vessel at the time of her injury. On March 11, 2011, the trial court granted summary judgment in favor of WSF, finding that Shoffner was not entitled to maritime remedies as she was not in the service of the vessel when she was injured on the sidewalk inside the Lofall Dock bus staging area established by WSF. CP 558-560. This appeal followed.

V. ARGUMENT

Shoffner brought this lawsuit under general maritime law to recover unpaid maintenance, cure, and unearned wages and for damages under the Jones Act, 46 U.S.C. § 30104 and general maritime law. Summary judgment is proper only where there are

no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Taggart v. State, 118 Wn.2d 195, 199, 822 P.2d 243 (1992); CR 56(c). The facts and reasonable inferences from the facts are considered in the light most favorable to the nonmoving party. Taggart, 118 Wn.2d at 199.

A. "Course of Employment" is Broadly Construed for The Protection of Seamen.

The rights of seamen to maintenance, cure and unearned wages were established in the maritime common law of the United States. It has been described as "among the most pervasive incidents of the responsibility anciently imposed upon shipowners." Aguilar v. Standard Oil Co., 318 U.S. 724, 730 (1943). See also Vaughan v. Atkinson, 369 U.S. 527, 532 (1961); Black v. Red Star Towing, 860 F.2d 30, 32 (2d Cir. 1988). These rights have been closely guarded by the courts in carrying out its guardianship role for seamen as wards of the Admiralty. Vaughan v. Atkinson, *supra* at 531-32; Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 528 (1938).

Maintenance and cure serve to provide seamen "essential certainty of protection against the ravages of illness and injury." Vella v. Ford Motor Co., 421 U.S. 1, 4 (1975). To facilitate this process, maintenance and cure must be "so inclusive as to be

relatively simple, and it can be understood and administered without technical considerations. It has few exceptions or conditions to stir contentions, cause delays and invite litigations." Farrell V. United States, 336 U.S. 511, 516 (1949). Seamen are entitled to recovery from the vessel owner under general maritime law for maintenance, cure, and unearned wages and under the Jones Act for negligence when they are injured in the course of their employment. 46 U.S.C. § 30104.

Courts have construed the term "course of employment" broadly for purposes of the Jones Act. "As remedial legislation enacted for the protection and benefit of the seaman, the Jones Act 'is entitled to a liberal construction to accomplish its beneficent purposes.'" Daughenbaugh v. Bethlehem Steel Corp., Great Lakes S.S. Div., 891 F.2d 1199, 1204 (6th Cir. 1989), citing Cosmopolitan Shipping Co. v. McAllister, 337 U.S. 783, 790 (1949). "[T]he nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes. If leeway is to be given in either direction, all the considerations which brought the liability into being dictate it should be in the sailor's behalf." Aguilar, 318 U.S. at 735.

The "policy of providing an expansive remedy for seamen" underscores the Jones Act analysis. Daughenbaugh, 891 F.2d at 1205 (6th Cir. 1989).

In defining "course of employment," "[t]he employment of a seaman includes not only the performance of the physical tasks required of him, but also includes the performance of such ordinary tasks for his own comfort and convenience as are incident to and necessarily connected with the employment." States S.S. Co. v. Berglann, 41 F.2d 456, 457 (9th Cir. 1930). "The scope of a seaman's employment or the activities which are related to the furtherance of the vessel are not measured by the standards applied to land-based employment relationships," Braen, 361 U.S. at 132, and "unlike the statutory liability of employers on land, it is not limited to strictly occupational hazards or to injuries which have an immediate causal connection with an act of labor." Aguilar, 318 U.S. at 734-35. "An obligation which thus originated and was shaped in response to the needs of seamen for protection from the hazards and peculiarities of marine employment should not be narrowed to exclude from its scope characteristic and essential elements of that work." Id.

Applying this broad construction of “course of employment,” courts have found seamen entitled to recovery for injuries sustained while engaged in a variety of activities beyond what would normally be seen as part of their job duties—activities that are not required as part of the employment but are connected in some other way to the seaman’s employment. As early as 1930, the Ninth Circuit recognized that a seaman need not be required or directed by their employer to perform a task in order for the task to be in the “course of employment” for the purposes of the Jones Act or general maritime law. States S.S. Co., 41 F.2d at 457.¹

B. “Course of Employment” Includes Injuries Occurring Off the Vessel.

In addition, a seaman's remedies do not hinge upon whether the seaman’s injury was sustained onboard the vessel. Courts have long recognized the right of seamen to recover for injuries suffered during ingress/egress, commuting, and shore leave. The Supreme Court of the United States extended Jones Act recovery to land-based injuries in 1943, and since then recovery has become

¹ The seaman was injured while fetching a bucket of warm water to wash up after having completed his day’s work.

progressively more expansive. O'Donnell v. Great Lakes Dredge and Dock Company, 318 U.S. 36 (1943). Today, “a seaman is as much in the service of his ship when boarding it on first reporting for duty, quitting it on being discharged, or going to and from the ship while on shore leave, as he is while on board at high sea.” Braen, 361 U.S. at 132, citing, Aguilar, 318 U.S. at 736-37.

C. A Seaman is Covered While Going To The Vessel By the Only Practical Route of Immediate Ingress.

Because Shoffner was injured in an area controlled by her employer while in route to the vessel by the only practicable route of immediate ingress, she is entitled to coverage. As a rule, an employee is deemed to be in the course of employment while going to or from her place of work by the only practicable route of immediate ingress and egress. See, e.g., Marceau v. Great Lakes Transit Corp., 146 F.2d 416 (2nd Cir. 1945). In Marceau, the court recognized that injuries that occur during ingress and egress to the vessel in an area controlled by a seaman’s employer, or adjacent property, are within the scope of employment:

The plaintiff was acting under orders when he returned to the ship. Consequently at the time of the accident he was not only acting in the course of his employment but suffered his injuries while on property in the possession and under the control of the

defendant as lessee and over which the plaintiff had to pass in order to return to his work. Under the decisions *a man is acting in the course of his employment when coming to or returning from work, and upon the employer's premises or upon adjacent property if approaching by a customary route.*

Id. at 418 (emphasis added). A seaman acts as much in the course of her employment or in the service of his ship when boarding or going to and from the ship as she is while on board at high sea. Wilson v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 841 F.2d 1347, 1355 (7th Cir. 1988) (an act may be within the scope of employment when it is "a necessary incident of a day's work"--i.e., not undertaken for a private purpose and having some causal relationship to the job); Pensiero v. Bouchard Transportation, Co., 2008 AMC 363 (2007) (plaintiff in the course and scope of employment when injured while passing over tugs owned by another company to gain access to the vessel). See also Bavaro v. Grand Victoria Casino, 1998 U.S. Dist. LEXIS 23095 (N.D. Ill. 1998) ("many cases hold that an injury to an employee while entering upon and leaving the employer's premises in the course of arriving at or departing from work is a necessary incident to employment and thus within its course.")

In Bavaro, the court held that plaintiff a riverboat casino employee was acting in the course and scope of her employment when she slipped in a parking garage controlled by her employer while on her way to work. Id. See also Erie Railroad Co. v. Winfield, 244 U.S. 170, 173 (1917); Schneider v. National Railroad Passenger Corp., 854 F.2d 14, 17 (2d Cir. 1988).

As another example, in Knight v. Grand Victoria Casino, 2000 U.S. Dist. LEXIS 14471 (E.D. Ill. 2000), the plaintiff was a riverboat casino employee who slipped on ice on a walkway while walking from the parking garage to a land-based pavilion where she was going to attend a training class. Holding that a trier of fact could conclude that the plaintiff was in the course of employment when she slipped on the walkway, the court stated:

Knight came to Grand Victoria's property on November 17, 1997 not to pursue her own private interests but to attend a training seminar; the company paid her for her services that day (or it would have had she not been injured). From this, a jury could conclude that Knight was injured in the course of her employment.

Id. at 9. See also Rannals v. Diamond Jo Casino, 265 F.3d 442, 447 (6th Cir. 2001) (riverboat casino employee injured while at a

training session in another state was in the course of employment); Rodriguez v. Trump Casino, 2009 U.S. Dist. LEXIS 65501, 16-18 (N.D. Ind. 2009) (riverboat casino employee injured in land-based cafeteria after the end of her shift raised genuine issue of material fact concerning whether she was in course of employment).

Like the plaintiffs in Pensiero, Bavaro, and Knight, Shoffner was answering the call of duty and was not in pursuit of her own private interests when she was injured. She was walking from the parking lot selected by WSF where she was told to park, in an area where her employer instructed her to walk to gain access to the vessel, and inside an area exclusively controlled by her employer immediately adjacent to the dock. Having arrived at work, Shoffner was acting in the course and scope of employment when she was injured and is entitled to maritime remedies, including maintenance and cure. Indeed, Shoffner could have been subject to discipline had she disobeyed her employer's orders to park in the employee parking lot. As the court noted in Empey v. Grand Trunk W. R.R. Co., 869 F.2d 293, 295 (6th Cir. 1989), "[I]t would violate the notions of fair play for [an employer] to encourage its employees to [perform a particular activity] and then escape liability for injuries

suffered by its workers as a result of the poor quality of the facilities it encouraged them to use.” Id. at 295.

It has long been established that seamen injured during ingress and egress to vessels are considered to be in the course of employment. For example, in Todahl v. Sudden & Christenson, 5 F.2d 462, 462 (9th Cir. 1925), the plaintiff seaman recovered under the Jones Act for “injuries sustained on a wharf alongside of which the vessel was moored” while returning to the ship after running a personal errand on shore. For purposes of Jones Act recovery, the concept of ingress/egress is not limited to the acts of boarding or disembarking the vessel. In Aguilar, the court saw “no significant difference . . . between imposing the liability for injuries received in boarding or quitting the ship and enforcing it for injuries incurred on the dock or other premises which must be traversed in going from the vessel to the public streets or returning to it from them. That much, at least, is within the liability.” 318 U.S. at 737.

The facts of the present case are indistinguishable from other Jones Act cases where seamen have been entitled to recovery. In Aguilar, for instance, the Court consolidated two cases, both dealing with seamen injured while in the vicinity of the

vessel and traveling to or from the vessel. In the first set of facts in Aguilar, the seaman was injured when he was struck by a car while he was walking along a road one-half mile from the vessel in an area that was necessary to cross to get to the ship. 318 U.S. at 725. In the second set of facts in Aguilar, the seaman was injured when he fell into open ditch at a railroad siding while going through a pier to get to the street for shore leave. Id.

In Hocut v. Ins. Co. of N. America, 254 So. 2d 108, 110 (La.App. 3 Cir. 1971), the seaman's body was found drowned seventy-five yards from where the vessel was moored and there was no indication that he had any reason to go near the water other than to board the vessel. In Daughenbaugh, three seamen on shore leave, one being the plaintiff, were patrons at a bar within walking distance of where the vessel was moored. 891 F.2d at 1201. On the dock where the vessel was moored en route from the bar to the vessel, the plaintiff was very intoxicated and ran away from his two companions. Id. The plaintiff returned to the bar, and then was not seen until his body was found drowned two thousand feet from the vessel. Id. at 1202. The court determined that the seaman was acting in the course of his employment when, en route

to the vessel, he disappeared on the dock. Id. at 1206. Similarly, in Farrell v. United States, 336 U.S. 511, 512 (U.S. 1949), the seaman was injured while upon return from shore leave he entered an unlit shore-front area about a mile from the ship and fell over a guard chain to a dry-dock.

In all of these cases, like Shoffner, the seamen were injured while crossing an area on their way to or from the vessel which they would not have been crossing but for attempting to board or disembark the vessel. The rationale for imposing liability in cases where a seaman is injured during ingress/egress is that since the seamen “were injured while traversing an area between their moored ships and the public streets by an appropriate route...it was the shipowner's business which required the use of those facilities.” Aguilar, 318 U.S. at 736. In the present case, Shoffner was injured in an area which she was specifically required by WSF to cross in order to get from the employee designated parking lot to the vessel. Since it was WSF’s business that required her to traverse the bus staging area controlled by WSF where she fell, the injury occurred in the course of her employment.

D. “Brown-Water” Seaman Distinction Does Not Apply Where The Injury Occurs During Immediate Ingress to the Vessel.

Attempting to avoid responsibility for Shoffner’s maritime benefits, WSF cited three cases to the trial court involving brown-water seamen commuting to work in their private vehicles: Lee v. Mississippi River Gran Elevator, Inc., 591 So.2d 1371 (La. App. 1991); Sellers v. Dixilyn Corp., 433 F.2d 446 (5th Cir. 1970); and Daughdrill v. Diamond M. Drilling Co., 447 F.2d 781 (5th Cir. 1971). In each of the cases cited by respondents, the plaintiffs were injured miles from the work site in automobile accidents while traveling to work in their private vehicles. Unlike those cases, here, Shoffner was injured while on a direct path to the vessel and in an area controlled by her employer immediately adjacent to the vessel. Shoffner had arrived at work, parked in the employee only designated lot paid for by her employer, posted her employee “on-duty” placard in the window of her vehicle, walked down NW Wesley Way in her WSF uniform as instructed by her employer, and was past the police checkpoint in an area exclusively controlled by WSF and being used as a staging area for buses loading and unloading passengers. The area where Shoffner was injured was

directly adjacent to the dock where the vessel was moored, was the only available means to gain access to the vessel, and she was answering the call of duty by following her employer's orders on where to park her vehicle and how to gain access to the vessel. In contrast to the cases cited by respondents, Shoffner was following the orders of her employer when she was injured and is entitled to coverage under maritime law.

In fact, the requirement that employees park in the WSF employee parking lot had a direct benefit to WSF. As stated in WSF's memorandum in support of their motion for summary judgment: "To avoid traffic congestion at South Point and Lofall, motorists were not allowed to pick up or drop-off passengers in the vicinity of the docks. This limited access was enforced by Washington State Patrol Troopers on duty at each terminal." CP 12. By mandating that employees park in the designated parking lot and paying for their parking, WSF was able to avoid the additional congestion near the terminal that would result from employees parking closer to the terminal. Walking from the designated parking lot to the dock ". . . was part of the job [the plaintiff] was employed to perform – that in the circumstances of

this case “the hazards of the service.” Williamson v. Western Pacific Dredging Corp., 441 F.2d 65 (9th Cir. 1971) (holding that the plaintiff was in the course and scope of employment during commute to work in private automobile), citing Cardillo v. Liberty Mutual Insurance Co., 330 U.S. 469, 479 (1947).

Like respondents here, in Pensiero, supra, the employer attempted to distinguish between blue-water and brown-water seamen. Rejecting the employer’s argument that a seaman is only in the course and scope of employment when being paid for her time, the court granted summary judgment in the plaintiff’s favor and stated:

Bouchard's distinction between blue-water and brown-water seamen has validity in some cases, but not here. It would be one thing if plaintiff had been injured during his three weeks shore time while bowling or playing pool. See Baker v. Ocean Systems, Inc., 454 F.2d 379 (5th Cir. 1972). In such a case, the need for non-ship leisure time of blue-water seaman likely compels a broader entitlement to maintenance and cure. *But where the brown-water seaman is on a direct path to resume his duties on board, and is injured on that path, there is no reason to create such a distinction.* Both the blue-water and brown-water shipowners have to have their seamen on board; the seamen in both instances would be subject to discipline if they failed to get there; and their return to their vessels is for the shipowners' benefit as well as their own.

Id. (emphasis added). In further rejecting an attempt to distinguish between blue-water and brown-water seamen, in Williamson, supra, the court stated:

True enough, the seamen in Aguilar, Farrell and Warren were more or less permanently based aboard ship. Aguilar mentions that such men could not "live for long cooped up aboard ship without substantial impairment of their efficiency." Defendant attempts to make a distinction between these cases and one, such as here, where decedent commuted to his home each day after completing his work shift. It argues that decedent was the same as any shoreside worker. Inasmuch as decedent was less confined to the ship, says the defendant, his time spent away from the vessel, unlike the shore leave considered essential for a "cooped up" seaman, Aguilar, supra, should not here be considered to be in the service of the ship.

The framework of this rather misty distinction is destroyed by the well reasoned opinion in Weiss v. Central Ry. Co. of New Jersey, 235 F.2d 309 (2d Cir. 1956). There, the Court refused to deny a seaman his right to maintenance and cure because he did not live the life traditionally tailored to a seaman. In principle, the Court there held that a seaman was entitled to the traditional privileges of his status, even though he slept ashore at night. To hold otherwise, said the Court, would be to create a "genre of 'seamen' ineligible for the benefits of maintenance and cure, yet equally barred from recovery under the Longshoremens Act, 33 U.S.C. § 903(a)(1)." 235 F.2d at 313. Hudspeth v. Atlantic & Gulf Stevedores, Inc., 266 F. Supp. 937 (E.D.La.1967) is in full support of Weiss.

Id. at 515.

E. Seamen Are Entitled to Coverage When Commuting to Work if Commute Connected to Employment.

Beyond ingress/egress, courts have recognized that seamen are entitled to recovery under the Jones Act while commuting to and from a vessel. In many of these cases, the link between the seaman's employment and the seaman's activity at the time of injury is much looser than in the present case. For example, in Williamson v. Western Pacific Dredging Corp., 441 F.2d 65 (9th Cir. 1971), the seaman lived on land and commuted to work on the vessel each day and was injured in a car accident with another crew member while commuting. Commuting was held to be in the course of the seaman's employment because "commuting was part of the job [the seaman] was employed to perform—that in the circumstances of this case 'the hazards of the journey may fairly be regarded as the hazards of the service.'" Id. at 66.

Furthermore, in Vincent v. Harvey Well Service, 441 F.2d 146, 147 (5th Cir. 1971), the plaintiff worked aboard an amphibious drilling rig and was injured in a car accident forty miles from the pier where the vessel was moored. At the time of the accident, the seaman was riding as a passenger in an automobile furnished by the employer to transport off-duty employees from the pierhead to a

convenient metropolitan assembly point 50 miles away. Id. The plaintiff was not required to ride in the vehicle and was not paid for his time spent commuting. Id. Nonetheless, the injury occurred in the course of employment because the vessel “had no quarters suitable for sleeping, eating or relaxing during off-duty shift hours. The men physically had to leave the rig daily. And for continuity in the work force, that meant that the men (or replacements) had to return to the rig daily. In all of this the employer had a most vital interest.” Id. at 149.

F. Shore-Leave Cases Illustrate the Broad Scope of Coverage for Seamen.

Although this is not a case involving an injury sustained while on shore leave, the availability of recovery for such injuries demonstrates the breadth of circumstances that fall under the umbrella of the “course of employment” within the Jones Act and general maritime law. In Aguilar, the Supreme Court explained the rationale supporting recovery for seamen injured while on shore leave:

To relieve the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage. The assumption is hardly sound that the normal uses and purposes of shore

leave are "exclusively personal" and have no relation to the vessel's business.

318 U.S. at 733. Examples of injuries incurred in the course of employment while on shore leave include a seaman injured while cavorting at a shoreside dance hall, Warren v. United States, 340 U.S. 523 (U.S. 1951), a seaman injured in a friend's driveway where shore leave had been granted for the purpose of visiting the friend, Smith v. United States, 167 F.2d 550 (4th Cir. 1948), and a seaman injured during a robbery and attack while on shore leave, Central Gulf S.S. Corp. v. Sambula, 405 F.2d 291 (5th Cir. 1968).

Here, Shoffner was acting in the course of her employment when she injured her knee crossing through the bus staging area controlled by WSF. Shoffner was crossing an area that "must be traversed in going from the vessel to the public streets or returning to it from them," which under Aguilar is squarely within the course of employment. 318 U.S. at 737. For ingress/egress to be included in the course of employment, it need only be an "appropriate route" between the vessel and the public streets since it is "the shipowner's business which required the use of those facilities." Aguilar, 318 U.S. at 736. In the present case, WSF went several steps further by actually requiring that Shoffner park her vehicle in a

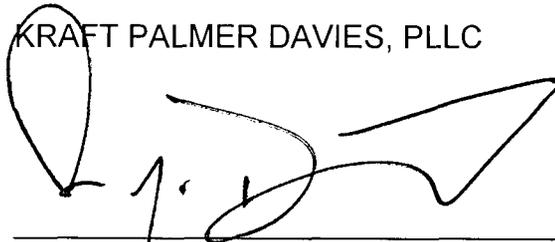
designated area and walk a specific route between her parked car and the vessel. The thrust of the Jones Act is to provide expansive compensation to seamen and the Act "is entitled to a liberal construction to accomplish its beneficent purposes." Cosmopolitan Shipping Co. v. McAllister, 337 U.S. 783, 790 (1949). In light of the extensive case law in this area finding circumstances much more tenuously connected to the employment to be in the course of employment, Shoffner is entitled to coverage for her maritime remedies.

VI. CONCLUSION

For the foregoing reasons, Shoffner respectfully asks this Court to reverse the trial court and hold that she was in the course and scope of her employment when she was injured on a direct path to the vessel inside the bus staging area immediately adjacent to the dock where the vessel was moored.

RESPECTFULLY SUBMITTED this 22nd day of August,
2011.

KRAFT PALMER DAVIES, PLLC

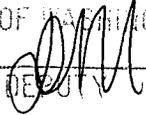
A handwritten signature in black ink, appearing to read 'R. J. Davies', is written over a horizontal line. The signature is stylized and cursive.

RICHARD J. DAVIES, WSBA #25365
Attorneys for Appellant Leigh Ann Shoffner

CERTIFICATE OF SERVICE

11 AUG 23 AM 9:14

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

STATE OF WASHINGTON
BY 

On this day, I caused to be served via legal messenger a copy of the following:

1. Appellant's Amended Opening Brief

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