

JEFFREY L. SOUDELIER, JR.

NO. 21-CA-744

VERSUS

FIFTH CIRCUIT

PBC MANAGEMENT INC., FLORIDA  
MARINE TRANSPORTERS, INC. AND  
FLORIDA MARINE, LLC

COURT OF APPEAL  
STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT  
PARISH OF ST. CHARLES, STATE OF LOUISIANA  
NO. 76,825, DIVISION "C"  
HONORABLE CONNIE M. AUCOIN, JUDGE PRESIDING

December 21, 2022

**MARC E. JOHNSON**  
**JUDGE**

Panel composed of Judges Jude G. Gravois,  
Marc E. Johnson, and Stephen J. Windhorst

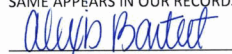
**AFFIRMED**

**MEJ**

**JGG**

**SJW**

FIFTH CIRCUIT COURT OF APPEAL  
A TRUE COPY OF DOCUMENTS AS  
SAME APPEARS IN OUR RECORDS



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Deputy, Clerk of Court

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## **JOHNSON, J.**

Plaintiff/Appellant, Jeffrey L. Soudelier, Jr., appeals the trial court judgment that dismissed his maritime claims against Defendants/Appellees, PBC Management, Inc., Florida Marine Transporters, Inc., and Florida Marine, LLC, with prejudice from the 29<sup>th</sup> Judicial District Court, Division “C”. For the following reasons, we affirm the trial court’s judgment.

### **FACTS AND PROCEDURAL HISTORY**

On November 11, 2011, Jeffrey Soudelier, Jr. (hereinafter referred to as “Capt. Soudelier”) was serving as captain of the M/V STEVEN M BRYAN, which was operated by Defendants. While at Mile Marker 125 in St. Charles Parish, Capt. Soudelier was ordered to move a 25 foot defective crossover hose from a red flag barge<sup>1</sup>, the FMT 3180, to the M/V STEVEN M BRYAN and return the hose to the Bayou Fleet dock near Hahnville, Louisiana. Before starting the move, Capt. Soudelier and his crew members, Dustin Stewart (steersman and tankerman), Jeffrey Soudelier, III (deckhand/Capt. Soudelier’s son), and Andy Karraker (deckhand assisting from the M/V HB-1), convened to discuss how to move the crossover hose. Capt. Soudelier and the crew executed the order by lifting the crossover hose and carrying it from the FMT 3180 to the M/V STEVEN M BRYAN. The crossover hose had residual product in it, which made the hose heavier to carry.

During the move, Capt. Soudelier was positioned under a pipeline on the FMT 3180 and could not stand up straight. After lifting his section of the crossover hose and taking his first steps, Capt. Soudelier felt a “pop” in his hip and stopped the task. Afterwards, he “walked off” his pain and proceeded to continue to lift the crossover hose as originally planned. Once the crossover hose was on the fleet deck of the M/V STEVEN M BRYAN, Capt. Soudelier felt severe pain as

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<sup>1</sup> A “red flag” barge is a barge designed to carry petroleum products.

he walked up the steps to the wheelhouse.

Capt. Soudelier immediately authored two accident reports (one handwritten and one digital) describing the incident. He also had Mr. Stewart and Mr. Soudelier draft witness statements to supplement his handwritten report. Capt. Soudelier left the M/V STEVEN M BRYAN on November 11, 2011 to obtain medical treatment and never returned to his employment with Defendants.

On May 9, 2013, Capt. Soudelier filed a “Seaman’s Petition for Damages” against Defendants, seeking recovery under the “Savings to Suitors” clause, 28 U.S.C. § 1333, the Jones Act, 46 U.S.C. § 688, and unseaworthiness pursuant to general maritime law, as well as a claim for maintenance and cure. He alleged that the November 11, 2011 accident caused injuries to his lower back and limbs—which required multiple surgeries—and possibly permanent severe and disabling injuries. Capt. Soudelier asserted that he was obligated by Defendants to perform heavy physical work, resulting in cumulative trauma. He also asserted that Defendants were negligent in failing to 1) provide alternative methods to move the crossover hose and 2) train employees on safety issues, and Defendants’ vessel was unseaworthy.

Defendants filed a partial motion for summary judgment, alleging Capt. Soudelier could not bear his burden of proving either negligence under the Jones Act or his unseaworthiness claims. The trial court granted Defendants’ motion and dismissed the Jones Act and unseaworthiness claims. The court found no remaining genuine issues of material fact as to Capt. Soudelier’s claims under the Jones Act or general maritime law. Upon review in *Soudelier v. PBC Management, Inc.*, 16-39 (La. App. 5 Cir. 5/26/16), 194 So.3d 1178, 1184, *writ denied*, 16-1211 (La. 10/17/16), 207 So.3d 1063, this Court reversed the partial summary judgment, finding the evidence did not establish that moving the crossover hose was a routine task; Capt. Soudelier was properly instructed and was

able to properly instruct his crew on the methods of lifting the crossover hose; and, Defendants did not have mechanical means to move the hose. The matter was remanded for further proceedings.

Upon remand, the matter proceeded to a bench trial, which began on October 5, 2020. Due to the aftermath of Hurricane Delta, the trial was recessed until January 25, 2021 and concluded on January 28, 2021. On August 12, 2021, the trial court rendered judgment in favor of Defendants, and Capt. Soudelier's claims against Defendants were dismissed with prejudice. In its 35-page written reasons for judgment, the trial court found that Capt. Soudelier failed to prove negligence beyond a preponderance of the evidence, and Defendants were not liable under any cause of action. The instant appeal followed.

### **ASSIGNMENTS OF ERROR**

On appeal, Capt. Soudelier alleges the trial court erred in failing to provide him due process of law by ignoring his protected status and concluding that Defendants were free from fault without engaging in a meaningful comparative fault analysis; and, the trial court erroneously deviated from essential principles of maritime and admiralty law by applying a contributory negligence standard to Capt. Soudelier's alleged neglect and assigning him fault.

### **LAW AND ANALYSIS**

#### Fault Allocation

Capt. Soudelier alleges the trial court failed to actually resolve the issue of comparative fault. He argues that the trial court did not weigh the evidence in light of the pertinent policy considerations and, ultimately, failed to resolve the corresponding legal responsibilities of the parties. He contends that the trial court did not specifically explain what rule he violated or exactly how his poor planning and judgment caused his injury to the exclusion of all other explanations; thus, the trial court did not and could not explain how or why his negligence solely and

exclusively caused his injury. He claims that, as a seaman, maritime law affords him protection from hazards of the profession through the employer's strict liability, and contributory negligence does not bar recovery in a seaman's personal injury case. Capt. Soudelier further argues that the trial court's dereliction defaulted on its obligation to provide him due process of law.

Defendants maintain that the trial court did not need to conduct a comparative fault analysis because it did not find more than one party at fault. Without that critical first step, they aver that the trial court lacked multiple parties among whom it could assess portions of fault. Defendants also argue that Capt. Soudelier did not prove negligence under the Jones Act. They assert Capt. Soudelier went against his training and employed an unsafe method of moving the crossover hose, despite the availability of safer alternatives; and as a result, the applicable law would not find them even slightly negligent.

In its written reasons for judgment, the trial court held that the evidence established it was the poor planning and judgment of Capt. Soudelier that caused the accident, not Defendants' negligence or failure in equipment or training. The court found Capt. Soudelier: 1) failed to evaluate or consider whether there was any residual product in the crossover hose; 2) decided to lift and carry a crossover hose that should have been dragged; 3) assigned himself to the job of heavy manual labor, despite knowing he had two prior lifting incidents; 4) positioned himself under the barge pipeline so that he was unable to use safe lifting posture; and, 5) after feeling pain on his first lift, decided to continue the operation of lifting and carrying the hose, despite knowing he was injured and that the hose was heavier than he anticipated. The trial court concluded that, as a matter of law, Capt. Soudelier failed to establish negligence under the Jones Act or liability under a negligence *per se* theory.

The Jones Act provides a cause of action in negligence for "any seaman"

injured “in the course of his employment.” *Soudelier*, 194 So.3d at 1181-82, *citing Chandris, Inc. v. Latsis*, 515 U.S. 347, 354, 115 S.Ct. 2172, 132 L.Ed.2d 314 (1995). Pursuant to the Jones Act, an employer has a continuing duty to provide a reasonably safe place to work and to use ordinary care to maintain the vessel in a reasonably safe condition. *Id.* at 1182. An employer is liable under the Jones Act if the negligence of its employees played “any part, even the slightest” in causing the injury or death for which damages are sought. *Id.*, *quoting Clay v. ENSCO Offshore Co.*, No. 14-2508, 146 F.Supp.3d 808, 2015WL7306436, 2015 U.S. Dist. LEXIS 156568, 2016 AMC 130 (E.D.La. 2015). To recover damages for his employer’s negligence, a seaman must prove that the employer breached its duty of care; ordinary prudence under the circumstances is the standard for the duty of care owed by an employer to a seaman. *Id.* However, the seaman must act with the care, skill, and ability expected of a reasonable seaman in like circumstances. *Id.*, *quoting Gaylor v. Canal Barge Co.*, No. 14-2398, 2015WL5321756, at \*2-3, 2015 U.S. Dist. LEXIS 121322, at \* 5 (E.D.La. 2015). Comparative negligence applies under the Jones Act, “barring an injured party from recovering for the damages sustained as a result of his own fault.” *Id.*

As a general rule, the state court applies the maritime or admiralty law to a case involving the injury of a passenger on a vessel, whether or not the petition designates it as such. *Populis v. State Dep’t of Transp. & Dev.*, 16-655 (La. App. 5 Cir. 5/31/17), 222 So.3d 975, 982, *writ denied*, 17-1106 (La. 10/16/17), 228 So.3d 753. The elements of a maritime negligence cause of action are essentially the same as land-based negligence. *Id.* Under the general maritime law, the plaintiff must demonstrate that there was a duty owed by the defendant, breach of that duty, injury sustained by the plaintiff, and a causal connection between the defendant’s conduct and the plaintiff’s injury. *Id.* Furthermore, the resultant harm must be reasonably foreseeable. *Id.* “These standards are not remarkably different from

state standards, except the state law would apply a ‘duty/risk’ analysis, rather than a ‘reasonably foreseeable’ analysis.” *Id.*, quoting, *Dean v. Ramos Corp.*, 00-1621 (La. App. 5 Cir. 2/28/01), 781 So.2d 796, 802. The employer’s potential liability extends to all personal injuries arising during the course of the seaman’s employment, but proof of negligence is essential to recovery. *Sims v. Wood Towing Co., Inc.*, 757 So.2d 783, 793, writ denied, 00-1539 (La. 6/30/00), 767 So.2d 41. The employer’s negligence may arise in many ways, including the failure to use reasonable care to provide a seaman with a safe place to work, the existence of a dangerous condition on or about the vessel, or any other breach of the duty of care. *Id.*

State courts are directed by the Louisiana Supreme Court to apply Louisiana’s manifest error standard of review in general maritime and Jones Act cases. *Populis*, 222 So.3d at 985. Under the manifest error standard of review, in order to reverse a factual determination, an appellate court must find: 1) a reasonable factual basis does not exist in the record for the finding, and 2) the record establishes that the finding is clearly wrong or manifestly erroneous. *Id.* at 986.

At trial, it was established that Capt. Soudelier was the master of the M/V STEVEN M BRYAN on the date of the accident and was in charge of the vessel. He was responsible for the safe operation of the vessel and for the safety of the crew. He also had the overriding authority and responsibility to take actions he deemed necessary when faced with an immediate and compelling danger to his vessel, crew, or the environment. As captain, Capt. Soudelier was tasked with having an expertise in the Florida Marine Operations Manual.

On the date of the incident, Capt. Soudelier estimated that the crossover hose weighed between 300-400 lbs., with the residual product in it, and four men could safely lift the hose. Capt. Soudelier testified that, in the event he was unfamiliar

with how to perform a task, the procedure was for him to call his immediate supervisor, the port-captain; yet, he did not request any help with the execution of moving the crossover hose. Pursuant to a meeting with the crew members moving the hose, it was decided that the crew would execute the moving order by lifting the crossover hose and carrying it from the FMT 3180 to the M/V STEVEN M BRYAN because it was the shortest, safest method.

During the lift, Capt. Soudelier positioned himself under a pipeline while on the FMT 3180 and could not straighten his back. After lifting his section of the crossover hose and taking his first steps, Capt. Soudelier felt a “pop” in his hip and stopped the lift. He then walked away to try to ease the pain, and afterwards, proceeded to lift the crossover hose a second time to complete the task. However, Capt. Soudelier testified that Defendants trained him to keep his back straight, bend with his knees, and keep the load close to his body when lifting.

Among the evidence offered to support his position, Capt. Soudelier presented expert testimony from Capt. Mitchell Stoller that Defendants failed to properly train its employees because it failed to establish appropriate standards for the maximum weight limits one should be allowed to lift. Capt. Soudelier also presented Dr. Steven Wiker, an expert in the areas of ergonomics, biomechanics, and safety engineering, who testified that Defendants should have provided a mechanical means to lift the crossover hose and Defendants’ safety program was ineffective.

Dustin Stewart, the steersman and tankerman who was also a licensed captain, testified that Capt. Soudelier was injured while doing a normal operation of moving a crossover hose. He testified that the crossover hose could not have been dragged across the deck of the barge because dragging the hose would have caused sparks. However, he stated that there were other methods that could have been used to move the crossover hose, *e.g.*, dragging the hose one end at a time

from vessel to vessel by using a winch. Mr. Stewart also stated that he was taught safe lifting techniques by Florida Marine, such as lifting with his legs and not his back, and not lifting while bent at the waist or hunched over.

In opposition, Defendants offered evidence that the best alternative method to move the crossover hose was to drag it, as opposed to lifting it. Defendants presented the testimony of Andrew Karraker, the deckhand from the M/V HB-1 who provided assistance on the day of the incident. He testified he was not taught that a crossover hose could not be dragged on a red flag barge, and he had dragged a crossover hose on barges over a thousand times. He also testified that he was given proper back and lifting training by Florida Marine.

Captain Matthew Ledet testified that a captain, as the master of the vessel, is responsible for ensuring that the employees are aware of hazards and properly instructing them of the safe practices. He stated that he was not told by anyone that dragging a crossover hose on a barge was a fire hazard. Capt. Ledet testified that, if given a similar scenario, his crew would drag the hose off of the barge onto the deck of the boat. He also stated that a crane or hose tongs could have been used as alternative methods to move the crossover hose. Capt. Ledet reiterated the notion that Florida Marine provided a training program on back safety and lifting for its employees.

Defendants' expert in the field of marine safety in manual material handling and fire safety and prevention, Bob Borison, testified that the captain of a vessel is responsible for his own safety and the safety of his crew. He testified that Florida Marine's training materials on lifting teaches to bend your knees, keep your back straight, and keep the load as close to the body as possible. Mr. Borison concluded that, if Capt. Soudelier had kept his back straight and lifted with his legs, he would not have been injured. Mr. Borison opined that Capt. Soudelier elected to execute a dangerous lift, contrary to his training, in an unsafe manner.

After considering the evidence presented, the trial court ruled in favor of Defendants.

A trier of fact's findings as to percentages of fault are factual and, in the absence of clear or manifest error, must be upheld on appeal. *Warden v. Richoux*, 09-794 (La. App. 5 Cir. 3/23/10), 40 So.3d 139, 147, *writ denied*, 10-921 (La. 6/25/10), 38 So.3d 340. Under this standard, the inquiry is not whether this Court, had it been sitting as the trier of fact, would have made a different finding; but instead, whether the fact finder's determination was reasonably supported by the evidence. *Antill v. State Farm Mutual Insurance Company*, 20-131 (La. App. 5 Cir. 12/2/20), 308 So.3d 388, 402, *citing Raspanti v. Liberty Mut. Ins. Co.*, 05-623 (La. App. 5 Cir. 1/31/06), 922 So.2d 631, 634.

Here, the trial court did not allocate any fault to Defendants and found that Defendants were not liable under any cause of action. The trial court concluded that the accident occurred because Capt. Soudelier failed to abide by his own training and educated judgment and lifted a crossover hose underneath a pipe; and, Capt. Soudelier was trained not to place himself in an awkward posture to lift a load. Because the evidence presented at trial supports the trial court's determinations on the causes of action under the Jones Act or liability under a negligence *per se* theory, we cannot find that the trial court's allocation of fault is manifestly erroneous.

#### Seaworthiness

Capt. Soudelier alleges that the trial court deviated from essential principles of maritime and admiralty law by applying a contributory negligence standard to his alleged neglect and assigning him fault based on its overestimation of the legal effect of his position as master of the M/V STEVEN M. BRYAN. He argues that the trial court's assessment that he knew and negligently failed to adhere to the

lifting rules meant that his crew—well-trained professionals with whom he discussed his plan to move the hose—were equally negligent in disregarding those rules. Capt. Soudelier contends that the trial court utterly fails to address why any fault of the assembled crew should not be vicariously assessed to Defendants for failing to intervene, and why the M/V STEVEN M. BRYAN was not found to be unseaworthy because the crew was unfit to serve.

Defendants maintain that Capt. Soudelier did not meet his burden of establishing unseaworthiness. They contend that Capt. Soudelier's arguments have nothing do with the adequacy of the training of the crew, and Capt. Soudelier's choice to ignore his training and lift the crossover hose in an unsafe posture rests solely on him. They aver that Capt. Soudelier's poor judgment cannot create a case of unseaworthiness against them.

In its written reasons for judgment, the trial court determined that the evidence did not establish that any physical condition of the FMT 3180 or M/V STEVEN M BRYANT or their equipment were unseaworthy. The court noted that no witnesses testified that the vessel was improperly designed, any equipment malfunctioned, or any physical condition of the vessel or its equipment caused Capt. Soudelier's injuries. The court also determined that Capt. Soudelier failed to prove that he or his crew received insufficient training from Defendants, and Defendants cannot be liable for failing to train their employees if those same employees hurt themselves by failing to abide by their own training.

Unseaworthiness is a distinct concept from negligence. *Soudelier*, 194 So.3d at 1183. An owner of a vessel has an absolute duty to furnish a seaworthy vessel, and a breach of that duty gives rise to a claim for general damages. *Vendetto v. Sonat Offshore Drilling Co.*, 97-3103 (La. 1/20/99), 725 So.2d 474, 481. To state a cause of action for unseaworthiness, the plaintiff must allege an injury "caused by a defective condition of the ship, its equipment or

appurtenances...Members of the crew of a vessel are also warranted as seaworthy, and there may be liability for...negligent orders, or for utilizing an understaffed or ill-trained crew.” *Id.*, quoting, 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 6-25, at 333-34 (2d. Ed. 1994). Whether a vessel is unseaworthy is a factual question to be decided on a case-by-case basis. *Id.*

Although the duty of seaworthiness is absolute and does not require negligence, the mere fact that an accident occurred does not establish unseaworthiness. *Id.* There is a more demanding standard of causation in an unseaworthiness claim than in a Jones Act negligence claim. *Soudelier*, 194 So.3d at 1183. The plaintiff bears the burden of proving that “the unseaworthy condition played a substantial part in bringing about or actually causing the injury and that the injury was either a direct result or a reasonably probable consequence of the unseaworthiness.” *Vendetto*, 725 So. 2d at 481-82, quoting, *Foster v. Destin Trading Corp.*, 96-803 (La. 10/21/97), 700 So.2d 199, 209 (*on reh 'g*).

At trial, Mr. Stewart testified that none of the crew members exercised their “stop-work authority”<sup>2</sup> because they thought the task of lifting the crossover hose and moving it could be safely performed. Mr. Karraker also testified that he did not exercise the stop-work authority because he did not think that lifting the crossover hose was unsafe. Mr. Stewart, Mr. Karraker, and Capt. Ledet all testified that Florida Marine taught the proper lifting techniques, which did not include lifting with a bend or hunched back. However, during the lift, Capt. Soudelier positioned himself under a pipeline while on the FMT 3180 and could not lift with a straightened back, which was contrary to his training. The evidence presented supports the trial court’s conclusion that Capt. Soudelier failed to prove that he or his crew received insufficient training from Defendants. Therefore, we

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<sup>2</sup> The “stop-work authority” is a safety procedure that allows any crew member the authority to stop a task that is unsafe.

cannot find the trial court erred in finding that evidence did not establish that any physical condition of the FMT 3180 or M/V STEVEN M BRYANT, their equipment, or their crews were unseaworthy.

**DECREE**

For the foregoing reasons, we affirm the trial court's August 12, 2021 judgment in favor of Defendants, PBC Management, Inc., Florida Marine Transporters, Inc., and Florida Marine, LLC. Capt. Soudelier is assessed the costs of this appeal.

**AFFIRMED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISSON, JR.

JUDGES



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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 21, 2022** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**21-CA-744**

**E-NOTIFIED**

29TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE CONNIE M. AUCOIN (DISTRICT JUDGE)

LAWRENCE N. CURTIS (APPELLANT)

ROBERT L. RAYMOND (APPELLANT)

COREY P. PARENTON (APPELLEE)

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