

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

KENNETH ANDERSON

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NO. 2:11-cv-00812-SSV-KWR

VERSUS

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JUDGE SARAH VANCE

**GLOBALSANTAFE OFFSHORE
SERVICES, TRANSOCEAN OFFSHORE
USA, INC., TRANSOCEAN DEEPWATER
DRILLING, INC., AND THE
CONSORTIUM OF TRANSOCEAN
OFFSHORE DEEPWATER DRILLING
(TODDI), USA & SCHLUMBERGER ASIA
SERVICES LTD (SASL), HONG KONG**

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MAG. KAREN WELLS ROBY

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**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
ON EMPLOYMENT STATUS**

Kenneth Anderson has filed this Jones Act and general maritime law claim against defendant herein GlobalSantaFe Offshore Services arising out of a lower back injury he suffered during August 2010 while being transported by bus by his employer in India. Mr. Anderson was issued a W-2 from GlobalSantaFe Offshore Services in 2009 and 2010.¹ These W-2 forms list the address for GlobalSantaFe as 4 Greenway Plaza, Houston, Texas, the building commonly known to be the United States headquarters for “Transocean”. Mr. Anderson therefore filed suit against the entity known as GlobalSantaFe Offshore Services under the Jones Act and general maritime law in relation to his injury. Throughout the course of this litigation counsel for GlobalSantaFe has asserted that GlobalSantaFe was not the “employer” of plaintiff. For the following reasons, plaintiff now seeks summary judgment in order to narrow the true issues at trial and dispel defendant’s meritlous defense which is simply without any support in the record.

¹ Attached hereto as Exhibit 1 please find redacted 2009 and 2010 w-2 forms.

FACTUAL BACKGROUND²

Kenneth Anderson is currently 39 years old. He is the quintessential offshore oil rig worker having started his career in the offshore oil field and continued until he reached the position of offshore installation manager (OIM) in approximately 2009. Prior to that time he held virtually every position on an offshore oil rig including roustabout, roughneck, tool pusher and ultimately OIM, serving as head of the oil rig in charge of more than 100 employees. He spent his career with essentially 3 to 4 “named” offshore entities. These consisted of R & B Falcon, Transocean Offshore Drilling and ultimately GlobalSantaFe Offshore Services.³ In reality, these entities were all predecessor/successor companies of the conglomerate known as “Transocean”. In other words, Mr. Anderson stayed employed by the same “entity” and his W-2 forms changed only when the company for which he was then working was purchased by a successor company. In Mr. Anderson’s eyes, his employer essentially stayed the same and he was simply moved through a series of acquisitions.

The facts giving rise to this litigation occurred in India in August 2010. Mr. Anderson was assigned to work aboard the DEEPWATER FRONTIER. [He had worked aboard this rig since 2001 when the rig was stationed off of the coast of Brazil. It was later moved to off of the coast of India.] Since the oil rig was located off of the coast of India it was necessary to transport the rig workers to and from the rig via helicopter. Initially for several months the rig workers were helicoptered from a town called Rajamundry, India directly to the rig. Then, a decision was made to stop using Rajamundry as the heliport operations once the operator of the rig, Reliance, had finished building its own heliport along the coastline. Once the heliport

² Plaintiff provides an extensive Factual Background in this Motion so that it may be relied upon by the Court in connection with additional Motions being filed at this time by plaintiff. Rather than repeat such facts in each Motion, plaintiff provides a lengthy, complete history of all relevant facts in this Motion.

³ Attached as Exhibit 2 please find Anderson’s redacted SSA printout indicating his employers.

operations for Reliance were available, a decision was made to transport the rig workers by vehicle from Rajamundry to the coastline. This trip on land took approximately 3 hours.

Stating that the roads in India are different than the roads of the United States, and that traveling via vehicle in India is a different experience than doing so in the United States, are gross understatements. Each of the witnesses in this case has testified that the roads in India are simply incomprehensible to an American citizen. The divers in India routinely do not follow the speed limit and most of the roads are not paved and subject to washouts and enormous potholes and ditches through which the vehicles must travel. When speaking of the nature of the travel in India from Rajamundry to the coastline and back again, witness Robert Wheeler explained:

Q. Sure. You can go ahead and answer. What were the road conditions from Rajahmundry to the Reliance heliport and back?

A. Poor.

Q. Okay. I think you started to say abysmal?

A. Yes.

Q. And why did you -- why were they like that? What makes you say it like that?

MR. WELCH: Let's make my objection continuous so I don't have to continue to interrupt.

MR. YOUNG: Sure.

A. Cows, yaks, people, bicycles in the road.

Q. Were they paved, the roadways themselves?

A. Partially, sometimes paved, some areas better than others. Sometimes it appeared to be dirt and rock.

Q. Would you encounter washouts from time to time along the road?

A. Yes.

Q. Meaning part of the road has actually been washed out?

A. That's correct.

Q. Would you have ever, yourself, tried to travel in a vehicle, you operating it down that type of a road?

A. No.⁴

When transportation was initially arranged from Rajadumy to the coastline for the rig workers vehicles described as similar to "Toyota Mini Vans" or "SUVs" were used. These vehicles provided some level of comfort, and safety, to the rig employees. Mr. Anderson's

⁴ Please see deposition of Robert Wheeler attached as Exhibit 3, pages 58-59.

injury occurred when he was required to travel by bus from the coastline back to Rajamundry. This bus was in deplorable condition. It did not have operational seatbelts or shocks to stabilize the ride. The depositions of the two individuals who were sitting next to Mr. Anderson during this ride have been taken. Eric Wilbanks, who was sitting next to Anderson at the time of the accident, provided testimony describing the nature of the ride in this particular bus as compared to the prior vehicles:

Describe for me on a scale of 1 to 10 the roughness, I'm going to call it, of the ride when you are in a van, with 10 being the worst. And I'm talking about the Toyota minivans. A 10 being riding down an interstate as you would be here in America with no bumps or anything. In the minivan itself, 0 to 10, with 10 being the absolute worse you could picture.

MR. WELCH: Object to the form.

A. Versus here in the States, it would have to be like a 5.

Q. That's in the minivan?

A. In the minivan.

Q. Let's move forward to the bus itself. On a regular bus ride, not particularly the bump or pothole or washout or whatever happened with Kenneth's accident but just the regular trip, pretty much 2-1/2 hours I think you said it took?

MR. WELCH: Object to form.

A. I'd have to give it an 8.

Q. Give me on that same scale what that impact was like with Kenneth's bump where he shot his legs out from under him and his veins popped out and complained about his back right away?

A. 10.⁵

When Mr. Anderson arrived to be transported by this bus, he actually inspected the seatbelts and made everyone get out of the bus in order that the seatbelts could be "fixed". The seatbelts did not appear to be working properly before the bus left and Kenneth demanded that they be worked on and fixed before his crew would be made to use the bus for transportation. The manager in charge of the transportation pulled on some of the seatbelts and they appeared to

⁵ Please see deposition testimony of Aric Wilbanks attached as Exhibit 4, page 98 to 99.

retract successfully. Based on this assumption, all of the rig workers then reentered the bus to be transported to Rajamundry.⁶

Mr. Anderson's injury occurred when the bus hit a massive washout on the road.⁷ The bus driver was going too fast and the seatbelts failed to operate at the time of the accident. Both witnesses sitting next to Mr. Anderson at the time of the accident have testified that they were all literally thrown feet in the air and came slamming down on the seats of the bus. When Mr. Anderson landed back on to his seat the witnesses have testified that it sounded like a loud "pop". Mr. Anderson immediately withered in pain and was diagnosed a short time later with a frank herniation of his lumbar discs. Mr. Wilbanks provided this account of the accident:

Q. At some point, do you all hit what I would characterize as an unusually large washout or pothole?

A. I don't know what it was we hit, but it was at the beginning of the bus ride.

Q. Tell me about that, please.

A. To me, when we went to the front gate, you stop at the gate; the bus driver and the agent have to get off, have to go inside to clear to leave. And once they cleared, come back on, got a security guide that will stick his head in and look and count how many people's in the bus. If it's the same number as on the list, they let us go. They walk around the bus with mirrors and look under the bus. And then we went out. They raised the little thing, went up. Then they opened the big metal door for us to go out. Went out, took a left; and there's a series of speed bumps or whatnot in there. And when we first left the plant, I think we went over two speed bumps; and then I don't know if it was a speed bump or a washout. To me, it was a speed bump because the bus went up first and then went down; but that doesn't mean anything. And then that's the way it happened. We hit a bump real hard. The bus driver never slowed down. I don't know if it was because he was still mad or what. And that's when Kenneth started making noise. I heard a pop when the bus jumped, coming from Kenneth; and he went straight in the seat legs out and --

Q. When you say a pop, like something in his body actually popped?

A. I don't know if it was in his body or what it was.

Q. All right. You heard a popping sound?

A. Popping noise coming from Kenneth.

Q. What condition was Kenneth in right after that?

A. He was in a lot of pain.

Q. Describe for me what you saw and how he was sitting or standing.

⁶ Please see deposition testimony of Tim Cox attached as Exhibit 5, page 18, and Exhibit 4, pages 65-66.

⁷ Witnesses have testified that they believe the bus struck a speed bump. Regardless of the obstruction that was encountered, all witnesses have stated that the bus experienced a huge impact which lifted all the passengers off of their seats.

A. He was in his seat; and when we hit the bump, he took his legs, both legs straight out, straightened up; and the veins in his neck and his face was red. And he was moaning. Tim [Cox] was sitting on the other side. He was trying to see if he was okay, and I was on the other side trying to do the same thing to see if he was all right.⁸

Mr. Tim Cox, who was the individual sitting on the other side of Mr. Anderson, has testified similarly:

Q. Do you recall a particular time when you and Kenneth Anderson were riding on a bus during which Kenneth Anderson complained that his back had suffered an injury during that ride?

A. Yes, I do.

Q. All right. Tell me about that situation, please.

A. When we go on the -- we boarded the bus, the first thing that we -- the major problem was the seatbelts -- seatbelts on the buses, and they weren't work properly. So actually Kenneth, being the OIM complained about it to the people, the driver, and seeing if we couldn't get them fixed, repaired. The driver actually come in to the -- each seatbelt, made an adjustment, or he just pulled back and forth on them and did -- they went back into. But they just seemed like the spring wasn't bringing the belt back in so it would be tight on your body to hold you from, you know, falling out of it type thing. Once that was done, then we took off out of the Reliance facility and proceeded to go down the highway. Well, the driver, he -- I don't know if he had an important appointment or whatever, but he took off like he was going to a race.

Q. Okay. Do you recall hitting any bumps in the road or --

A. Yes.

Q. -- rough patches?

A. Well, on the road, Reliance had put in speed bumps, and they had four or five in between -- on the Reliance Highway or Reliance Road into the facility from the municipality road. Well, the first bump we hit, it was like he didn't even know there was brakes in the bus at all. And we all -- I was in the back with Kenneth and Eric, and we came off the seat probably -- I'm going to say three inches off the seat when he hit that bump.

Q. Did your seatbelt work?

A. Well, that's a good question. I'm not even -- I can't answer that. I'm not completely --

Q. All right. What reaction did Kenneth have after you all hit that bump, if you recall?

A. Well, as soon as it happened, Eric was sitting on one side of Ken and I was sitting on the other, and we both heard this -- like a pop when he went -- when the -- when we over went that bump. And it was Kenneth, and you could see immediately just by the expression on his face that he was in pain.

Q. Describe for me how -- describe for me the degree of that bump, please, Tim.

MR. WELCH: Objection. Its been asked and answered.

BY MR. YOUNG:

⁸ Please see Exhibit 4, pages 71 to 72.

Q. Sir, you can answer. Go ahead and describe for me in more detail the degree of that bump that occurred.

A. I'm going to say -- I'm going to say that bump it was -- in somewhere around -- I'm going to say probably eight, maybe nine inches off the -- like, the grade. And it was probably, I'm going to say, 18 inches long, something like that.

Q. How fast was the driver going when he hit it, to your recollection?

MR. WELCH: Object to the form, lack of predicate.

A. I'm going to say --

BY MR. YOUNG:

Q. You can answer.

A. I'm going to say in the neighborhood, of say, 40 miles an hour.⁹

Following the bus ride Mr. Anderson began immediate medical treatment. He has undergone a lumbar fusion performed during May 2012 which was paid for by defendant herein.

The wage loss damages in this case are massive. In 2009 Mr. Anderson earned more than \$350,000. Dr. Randy Rice has calculated that Mr. Anderson's loss of future wages to be in excess of \$5 million dollars.

At this time plaintiff seeks summary judgment from the court holding that, as a matter of law, GlobalSantaFe Offshore Services is deemed to be plaintiff's Jones Act employer at the time of this accident. Mr. Anderson received his W-2 form from GlobalSantaFe Offshore Services in 2009 and 2010 and was receiving paychecks from such entity at the time of the accident.

Undersigned counsel candidly has never faced this type of defense; i.e.) having to prove that a W-2 issuer is not the "employer" of a Jones Act seaman. Nonetheless, the case law is clear that as the payroll employer GlobalSantaFe Offshore Services is legally deemed to be the Jones Act employer of Mr. Anderson.¹⁰

⁹ Please see deposition testimony of Tim Cox attached as Exhibit 5, pages 18 through 21.

¹⁰ Based on conversations with defense counsel, defendant appears to be maintain that it was 'only' the 'paymaster' of Mr. Anderson and therefore cannot be held liable as the employer. There is no such distinction in any cases found on the issue. To the contrary, the cases hold that a wage paying employer is liable *in addition to* any borrowing employers. Even if there is evidence of a borrowing employer relationship (which there is not), this does not relieve GlobalSantaFe of its status as an employer of Anderson.

FACTS ABOUT GLOBALSANTAFE OFFSHORE SERVICES

Undersigned counsel currently represents James Johnson and Robert Croke in Jones Act/maritime law claims against several entities arising out of Nigerian rebels who boarded an oil rig off the coast of Nigeria. During this incident Mr. Johnson was shot in the leg and Mr. Croke was taken hostage for ten days. In the course of that litigation Johnson and Croke have named GlobalSantaFe Offshore Services as a defendant based upon information that GlobalSantaFe Offshore Services issued the W-2 forms to numerous rig workers who were ultimately in charge of safety and security for the oil rig. In connection with that litigation the deposition of Bradley McKenzie was recently taken.¹¹ Mr. McKenzie is the global payroll manager for Transocean Offshore Deepwater Drilling.¹² In connection with his position he provided extensive testimony regarding GlobalSantaFe Offshore Services.

Essentially, GlobalSantaFe Offshore Services issues W-2 forms for more than 300 American citizens.¹³ If these American citizens work “overseas” (rather than in the Gulf of Mexico), on what are commonly known as “transocean” oil rigs, then these American citizens receive their W-2 forms from the entity known as GlobalSantaFe Offshore Services.¹⁴ Significantly, in Louisiana alone there are approximately 40 individuals who receive W-2 forms from GlobalSantaFe Offshore Services.¹⁵ Mr. McKenzie further explained that ‘processing’ and paperwork related to issuing the payroll to GlobalSantaFe employees is done out of the building at 4 Greenway Plaza in Houston, Texas.¹⁶ The controller who has authority to sign checks for

¹¹ Attached as Exhibit 6 please find depositions testimony of Bradley McKenzie. While this deposition was taken in another matter, GlobalSantaFe was represented by counsel and the facts testified to by Mr/ McKenzie are reliable and can be relied upon by the court. Undersigned counsel is seeking a stipulation from opposing counsel that is Mr. McKenzie’s deposition was taken in this matter, he would testify the same.

¹² Exhibit 6, page 5 and 7.

¹³ Exhibit 6, page 12, lines 13 through 22.

¹⁴ Id.

¹⁵ Exhibit 6, page 15, lines 12 through 17.

¹⁶ Exhibit 6, page 16, and page 18.

GlobalSantaFe works out of 4 Greenway Plaza.¹⁷ If there was any type of error made or questions raised in regard to a GlobalSantaFe issued w-2 forms, the 'payroll' department in Houston at 4 Greenway Plaza would handle such issues.¹⁸ When GlobalSantaFe individuals need assistance traveling abroad, such help is provided by the 'immigration' department which also works out of 4 Greenway Plaza.¹⁹ Finally, the actual transfer of money into the 'GlobalSantaFe' bank account for payroll is done by the 'treasury department' which also works out of 4 Greenway Plaza.²⁰

The entity known as GlobalSantaFe Offshore Services is an operating corporation which employs more than 300 American citizens. It regularly issues W-2 forms to these individuals and it maintains its own separate bank account out of which it pays these individuals. The stated address for GlobalSantaFe is 4 Greenway Plaza, Houston, Texas, according to the w-2 forms issued to plaintiff and Mr. McKenzie confirmed that significant, if not all, corporate actions of GlobalSantaFe are made at 4 Greenway Plaza.

APPLICABLE LAW

The United States Fifth Circuit case of Spinks v. Texaco, 507 F.2d 216, 223 (5th Cir.1975), is instructive on the issue of employment status under the Jones Act. Spinks involved a labor service company which issued paychecks and retained Social Security taxes out of the paychecks of an employee/seaman who was ultimately injured. The Fifth Circuit recognized that for purposes of the Jones Act an injured seaman may have two Jones Act employers, his actual payroll employer as well as, if applicable, a borrowing employer provided such borrowing employer exercised sufficient control of the employee's day-to-day activities. Critical for the

¹⁷ Exhibit 6, pages 19-20.

¹⁸ Exhibit 6, page 21-22.

¹⁹ Exhibit 6, page 29-30.

²⁰ Exhibit 6, page 33.

issue now before this court, Spinks specifically recognized that the payroll employer does not cease to become the Jones Act employer of the plaintiff even if there is a borrowing employer relationship:

That a seaman is a borrowed servant of one employer does not mean that he thereby ceases to be his immediate employer's servant. Restatement 2d Agency § 227, Comment b. In any common sense meaning of the term, Labor Services was Spinks' employer. He was hired and paid by Labor Services. That company, not Chevron, withheld taxes and social security payments from his salary, and forwarded them to the government as required of an employer by law. Labor Services employed Spinks' co-worker Walker and his supervisor Hanks. Hanks could fire Spinks; the record strongly suggests that Chevron could not— it could merely have Labor Services recall and replace him. Labor Services made a profit for every day Spinks was aboard the S-66. Now that he is injured, Labor Services cannot forget him. We do not quarrel with the trial court's finding that Chevron had sufficient control over him to be a borrowing employer. We merely hold that under the Jones Act, Labor Services remained his employer.²¹

In this matter, there has been absolutely no evidence that any entity other than GlobalSantaFe exercised control over the day-to-day activities of Mr. Anderson. Even if such a borrowing employer relationship existed as well as the payroll relationship with GlobalSantaFe Offshore Services, Spinks makes it clear that GlobalSantaFe Offshore Services would not cease to be the Jones Act employer in this matter. As Spinks held, Mr. Anderson would be entitled to sue either or both entities and those entities would then be required to “sort out” the employment status themselves:

If this means that an injured seaman must speculate at his peril on whether the trial court ultimately will find him a borrowed employee of the shipowner, or an employee of his immediate employer, we reject the theory. Such a rule can result

²¹ 507 F. 2d at 224.

in defeating Jones Act rights through contractual manipulations. See Mahramas, 471 F.2d at 173 (Oakes, J. dissenting), Hanks, 280 F.Supp. at 738. We see nothing offensive in suing an immediate employer under the Act, or even both employers in the alternative. The defendants can sort out which between them will bear the final cost of recovery, either through common law indemnity or contribution principles, or contractual provisions, as in the instant case. This is especially important in the area of offshore drilling operations, where oil exploration companies customarily contract for all labor.²²

The logic and holding of Spinks has been upheld and applied in facts nearly identical to this matter. In Smalls v. Global Industries, 1999 WL 225444, Judge Duval held that a payroll employer (Global Industries) was the Jones Act employer of a plaintiff for purposes of a motion for summary judgment on maintenance and cure. Addressing an issue identical to the one currently before this court, Judge Duval granted summary judgment and in doing so held that the payroll employer was, as a matter of law, the Jones Act employer of the plaintiff. The payroll defendant tried to argue that summary judgment was not appropriate as plaintiff may have been the borrowed employee of another defendant, and therefore (defendant argued) could not have also been the employee of the payroll defendant. Judge Duval directly rejected this argument, citing Spinks and Guidry:

This argument focuses on the fact that a) plaintiff alleged that he was the borrowed servant of Global and that as such Global should be responsible (if Smalls establishes that he had seaman status). Constructors relies on *Baker v. Raymond Intern., Inc.*, 656 F.2d 173 (5th Cir.1981) and *Hall v. Diamond M. Co.*, 635 F.Supp. 362 (E.D.La.1986). It also reviews the *Ruiz* factors found in *Ruiz v. Shell Oil*, 413 F.2d 310 (5th Cir.1969), and emphasizes how Global had control over Smalls. Constructors' analysis overlooks *Guidry v. South Louisiana Contractors, Inc.*, 614 F.2d 446, 452 (5th Cir.1980) and *Spinks v. Chevron*, 507 F.2d 216, 223 (5th Cir.1975). It is beyond cavil that a plaintiff can have more than one Jones Act employer. As stated in *Guidry* "[E]ven if a seaman is deemed to be a borrowed servant of one employer, this does not automatically mean that he ceases to be his immediate employer's servant for Jones Act purposes."

²² 507 F.2d at 225.

ARGUMENT

Under Spinks and Smalls plaintiff Kenneth Anderson is entitled to summary judgment holding that GlobalSantaFe Offshore Services was his Jones Act employer during August 2010 at the time of his injury. Throughout this case undersigned counsel has attempted to flesh out this unique defense maintained by defendant that GlobalSantaFe was not plaintiff's employer at the time of the accident despite the fact that it issued paychecks and W-2 forms to plaintiff. Opposing counsel has presented no evidence or witnesses in support of GlobalSantaFe's position that it did not "employ" Mr. Anderson. Trial of this matter is less than one month away and there has been no evidence throughout discovery to suggest that Mr. Anderson was employed by any entity other than GlobalSantaFe Offshore Services. He believed he was in an employee of such entity, he received paychecks from this entity and his W-2 form was issued by this entity which listed 4 Greenway Plaza as its base of operations. To require Mr. Anderson to present additional evidence in support of an employment relationship with GlobalSantaFe Offshore Services would create a bizarre burden upon Jones Act seamen to actually go beyond their issuing payroll employer when filing suit. One can only imagine the creative defenses that would surface requiring injured Jones Act seamen to conduct 30(b)(6) depositions of their W-2 issuer in order to "prove" an employment relationship above and beyond the fact that the named defendant issued payroll to the seamen. The law does not require such and Spinks specifically held that to the extent borrowed employer relationships coexist with a payroll employer relationship, the injured seaman is entitled to bring suit against either entity and it is up to those defendants to then sort out ultimate liability for the damages which may be awarded to the seaman.

For all such reasons, Kenneth Anderson prays for summary judgment on the issue of his employment relationship with defendant herein GlobalSantaFe Offshore Services at the time of his accident in August 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on all counsel of record by electronic means or depositing same in the U.S. Mail, postage prepaid and properly addressed this 3rd day of July, 2012.

S/Timothy J. Young
TIMOTHY J. YOUNG