

HARBOR TUG AND BARGE COMPANY, PETITIONER v. JOHN PAPAI ET UX.

No. 95-1621

SUPREME COURT OF THE UNITED STATES

520 U.S. 548; 117 S. Ct. 1535; 137 L. Ed. 2d 800; 1997 U.S. LEXIS 2846; 65 U.S.L.W.
4330; 1997 AMC 1817; 97 Cal. Daily Op. Service 3507; 97 Daily Journal DAR 6021;
10 Fla. L. Weekly Fed. S 433

January 13, 1997, Argued

May 12, 1997, Decided

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, Reported at: 1995 U.S. App. LEXIS 27219.

DISPOSITION: 67 F. 3d 203, reversed.

SYLLABUS

Respondent Papai was injured while painting the housing structure of the tug *Pt. Barrow*. Petitioner Harbor Tug & Barge Co., the tug's operator, had hired him to do the work, which was expected to last one day and would not involve sailing with the vessel. Papai had been employed by Harbor Tug on 12 previous occasions in the 2 1/2 months before his injury, receiving those jobs through the Inland Boatman's Union (IBU) hiring hall. He had been getting short-term jobs with various vessels through the hiring hall for about 2 1/4 years. Most of those were deckhand work, which Papai said involved manning the lines on- and off-board vessels while they dock or undock. Papai sued Harbor Tug, claiming, *inter alia*, negligence under the Jones Act, and his wife joined as a plaintiff, claiming loss of consortium. The District Court granted Harbor Tug summary judgment upon finding that Papai did not enjoy seaman status under the Jones Act, and it later confirmed that adjudication. The Ninth Circuit reversed and remanded for a trial of, among other things, Papai's seaman status and his corresponding Jones Act claim. Based on *Chandris, Inc. v. Latsis*, 515

U.S. 347, 132 L. Ed. 2d 314; 115 S. Ct. 2172, the court described the relevant inquiry as not whether Papai had a permanent connection with the vessel but whether his relationship with a vessel or an identifiable group of vessels was substantial in duration and nature, and found that this required consideration of his employment's total circumstances. The court determined that a reasonable jury could conclude that Papai satisfied that test, for if the type of work a maritime worker customarily performs would entitle him to seaman status if performed for a single employer, he should not be deprived of that status simply because the industry operates under a daily assignment, rather than a permanent employment system.

Held:

1. Because the issue whether the record permits a reasonable jury to conclude that Papai is a Jones Act seaman is here resolved in the employer's favor, this Court does not reach the question whether an administrative ruling for an employee on his claim of Longshore and Harbor Workers' Compensation Act coverage bars his claim of seaman status in a Jones Act suit, P. 1.

2. This record would not permit a reasonable jury to conclude that Papai is a Jones Act seaman. Jones Act coverage is confined to seamen, those workers who face regular exposure to the perils of the sea. An important part of the test for determining who is a seaman is whether the injured worker has a substantial connection

to a vessel or to a fleet of vessels, and the latter concept requires a requisite degree of common ownership or control. *Chandris*, 515 U.S., at . . . The requisite link is not established by the mere use of the same hiring hall which draws from the same pool of employees. The various vessels on which Papai worked through the IBU hiring hall in the 2 1/4 years before his injury were not linked by any common ownership or control. Considering prior employments with independent employers in making the seaman status inquiry would undermine "the interests of employers and maritime workers alike in being able to predict who will be covered by the Jones Act . . . before a particular work day begins," *id.*, at . . . and there would be no principled basis for limiting which prior employments are considered for determining seaman status. That the IBU Deckhands Agreement classified Papai as a deckhand does not give him claim to seaman status. Seaman status is based on his actual duties. *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 260, 84 L. Ed. 732, 60 S. Ct. 544, and Papai's duties during the employment in question included no seagoing activity. Nor is it reasonable to infer from his testimony that his 12 prior employments with Harbor Tug involved work of a seagoing nature that could qualify him for seaman status. Pp. 5-12.

67 F.3d 203, reversed.

COUNSEL: Eric Danoff argued the cause for petitioner.

Thomas J. Boyle argued the cause for respondents.

David C. Frederick argued the cause for the United States, as amicus curiae, by special leave of court.

JUDGES: KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined.

OPINION BY: KENNEDY

OPINION

[*550] [**1538] [***806] JUSTICE KENNEDY delivered the opinion of the Court.

Adjudication to determine whether a maritime employee is a seaman under the Jones Act, 46 U.S.C. App. § 688(a), or a maritime employee covered by the

Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. (part 2) 1424, as amended, 33 U.S.C. § 901 *et seq.*, continues to be of concern in our system. The distinction between the two mutually exclusive categories can be difficult to implement, and many cases turn on their specific facts.

[***LEdHR1A] [1A] [***LEdHR2] [2]The Court of Appeals for the Ninth Circuit held in this case that there was a jury question as to whether an injured worker was a Jones Act seaman. Granting the employer's petition for a writ of certiorari, we brought two questions before us. The first is whether an administrative ruling in favor of the employee on his claim of coverage under the LHWCA bars his claim of seaman status in the Jones Act suit he wishes to pursue in district court. The second is whether this record would permit a reasonable jury to conclude the employee is a Jones Act seaman. We resolve the second question in the employer's favor and, as it is dispositive of the case, we do not reach the first.

On the question of seaman status, there is an issue of significance beyond the facts of this case. Our statement in an earlier case that a worker may establish seaman status based on the substantiality of his connection to "an identifiable group of . . . vessels" in navigation, see *Chandris, Inc. v. [**551] Latsis*, 515 U.S. 347, 368, 132 L. Ed. 2d 314, 115 S. Ct. 2172 (1995), has been subject to differing interpretations, and we seek to provide clarification.

[***807] I

Respondent John Papai was painting the housing structure of the tug *Pt. Barrow* when a ladder he was on moved, he alleges, causing him to fall and injure his knee. App. 50. Petitioner Harbor Tug & Barge Co., the tug's operator, had hired Papai to do the painting work. *Id.*, at 44. A prime coat of paint had been applied and it was Papai's task to apply the finish coat. *Id.*, at 45. There was no vessel captain on board and Papai reported to the port captain, who had a dockside office. *Id.*, at 36-37. The employment was expected to begin and end the same day, *id.*, at 35, 48, and Papai was not going to sail with the vessel after he finished painting, *id.*, at 51. Papai had been employed by Harbor Tug on 12 previous occasions in the 2 1/2 months before his injury.

Papai received his jobs with Harbor Tug through the Inland Boatman's Union (IBU) hiring hall. He had been getting jobs with various vessels through the hiring hall

for about 2 1/4 years. All the jobs were short term. The longest lasted about 40 days and most were for three days or under. *Id.*, at 29, 34. In a deposition, Papai described the work as coming under three headings: maintenance, longshoring, and deckhand. *Id.*, at 30-32. Papai said maintenance work involved chipping rust and painting aboard docked vessels. *Id.*, at 30, 34-35. Longshoring work required helping to discharge vessels. *Id.*, at 31. Deckhand work involved manning the lines on- and off-board vessels while they docked or undocked. *Id.*, at 30. As for the assignments he obtained through the hiring hall over 2 1/4 years, most of them, says Papai, involved deckhand work. *Id.*, at 34.

After his alleged injury aboard the *Pt. Barrow*, Papai sued Harbor Tug in the United States District Court for the Northern District of California, claiming negligence under [*552] the Jones Act and unseaworthiness under [*1539] general maritime law, in addition to other causes of action. His wife joined as a plaintiff, claiming loss of consortium. Harbor Tug sought summary judgment on Papai's Jones Act and unseaworthiness claims, contending he was not a seaman and so could not prevail on either claim. The District Court granted Harbor Tug's motion and later denied Papai's motion for reconsideration. After our decisions in *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 112 L. Ed. 2d 866, 111 S. Ct. 807 (1991), and *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 116 L. Ed. 2d 405, 112 S. Ct. 486 (1991), the District Court granted a motion by Harbor Tug "to confirm" the earlier summary adjudication of Papai's non-seaman status. The District Court reasoned, under a test since superseded, see *Chandris, supra*, that Papai was not a seaman within the meaning of the Jones Act or the general maritime law, because "he did not have a 'more or less permanent connection' with the vessel on which he was injured nor did he perform substantial work on the vessel sufficient for seaman status." App. to Pet. for Cert. 27a.

The Court of Appeals for the Ninth Circuit reversed and remanded for a trial of Papai's seaman status and his corresponding Jones Act and unseaworthiness claims. Based on our decision in *Chandris*, the court described the relevant inquiry as "not whether plaintiff had a permanent connection with the vessel [but] whether plaintiff's relationship with [***808] a vessel (or a group of vessels) was substantial in terms of duration and nature, which requires consideration of the total circumstances of his employment." 67 F.3d 203, 206

(1995). A majority of the panel believed it would be reasonable for a jury to conclude the employee satisfied that test. In the majority's view, "if the type of work, a maritime worker customarily performs would entitle him to seaman status if performed for a single employer, the worker should not be deprived of that status simply because the industry operates under a daily assignment rather than a permanent employment system." *Ibid.* The majority also said the [*553] "circumstance" that Papai had worked for Harbor Tug on 12 occasions during the 2 1/2 months before his injury "may in itself provide a sufficient connection" to Harbor Tug's vessels to establish seaman status. *Ibid.*

Judge Poole dissented from the majority's holding that there was a triable issue as to Papai's seaman status. He recognized that *Chandris* held out the possibility of being a seaman without a substantial connection to a particular vessel in navigation, provided one nevertheless had the required connection to "an identifiable group of such vessels." 67 F.3d at 209 (quoting 515 U.S., at 368). Judge Poole said, however, it would be a mistake to view *Chandris* as holding that, for seaman-status purposes, a "group may be identified simply as those vessels on which a sailor sails, not just those of a particular employer or controlling entity. . . . [The majority's holding] renders the 'identifiable group' or 'fleet' requirement a nullity." 67 F.3d at 209 (citation omitted). Judge Poole also noted that the majority's position conflicted with that of the Fifth Circuit (en banc) and of a Third Circuit panel. *Ibid.* (citing *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067 (CA5 1986) (en banc); *Reeves v. Mobile Dredging & Pumping Co.*, 26 F.3d 1247 (CA3 1994)); see also *Johnson v. Continental Grain Co.*, 58 F.3d 1232 (CA8 1995); but see *Fisher v. Nichols*, 81 F.3d 319, 323 (CA2 1996) (rejecting common ownership or control requirement).

We granted certiorari, 519 U.S. (1996), and now reverse.

II

[***LEdHR3] [3]The LHWCA, a maritime workers' compensation scheme, excludes from its coverage "a master or member of a crew of any vessel," 33 U.S.C. § 902(3)(G). These masters and crewmembers are the seamen entitled to sue for damages under the Jones Act. *Chandris*, 515 U.S. at 355-358. In other words, the LHWCA and the Jones Act are "mutually exclusive." *Id.*,

at (slip op., at 7).

[*554] [***LEdHR4] [4] Our recent cases explain the proper inquiry to determine seaman status. We need not restate that doctrinal development, see *id.*, at 355-368; *Wilander, supra*, at 341-54, to resolve Papai's claim. It suffices to cite *Chandris*, which held, in pertinent part:

"The essential requirements for seaman status are twofold. First . . . an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission. . . .

[**1540] [***809] "Second, and most important for our purposes here, a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature. 515 U.S. at 368 (citations and internal quotation marks omitted).

The seaman inquiry is a mixed question of law and fact, and it often will be inappropriate to take the question from the jury. Nevertheless, "summary judgment or a directed verdict is mandated where the facts and the law will reasonably support only one conclusion." *Wilander, supra*, at 356; see also *Chandris*, 515 U.S. at 368-369.

[***LEdHR5] [5] Harbor Tug does not dispute that it would be reasonable for a jury to conclude Papai's duties aboard the *Pt. Barrow* (or any other vessel he worked on through the IBU hiring hall) contributed to the function of the vessel or the accomplishment of its mission, satisfying *Chandris*' first standard. Nor does Harbor Tug dispute that a reasonable jury could conclude that the *Pt. Barrow* or other vessels Papai worked on were in navigation. The result, as will often be the case, is that seaman status turns on the part of *Chandris*' second standard which requires the employee to show "a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Id.*, at 368. We explained the rule as follows:

"The fundamental purpose of the . . . substantial connection requirement is to give full effect to the remedial scheme created by Congress and to separate the sea-based maritime employees who are

entitled to Jones Act protection from those land-based workers who have only a transitory or sporadic connection with [*555] a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea." *Ibid.*

For the substantial connection requirement to serve its purpose, the inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties take him to sea. This will give substance to the inquiry both as to the duration and nature of the employee's connection to the vessel and be helpful in distinguishing land-based from sea-based employees.

[***LEdHR1B] [1B] Papai argues, and the Court of Appeals majority held, that Papai meets *Chandris*' second test based on his employments with the various vessels he worked on through the IBU hiring hall in the 2 1/4 years before his injury, vessels owned, it appears, by three different employers not linked by any common ownership or control, App. 38. He also did longshoring work through the hiring hall, *id.*, at 31, and it appears this was for still other employers, *id.*, at 38. As noted above, Papai testified at his deposition that the majority of his work during this period was deckhand work. According to Papai, this satisfies *Chandris* because the group of vessels Papai worked on through the IBU hiring hall constitutes "an identifiable group of . . . vessels" to which he has a "substantial connection." 515 U.S. at 368.

[***810] The Court of Appeals for the Fifth Circuit was the first to hold that a worker could qualify as a seaman based on his connection to a group of vessels rather than a particular one. In *Brantiff v. Jackson Ave.-Grétna Ferry, Inc.*, 280 F.2d 523 (CA5 1960), the court held the employer was not entitled to summary judgment on the seaman-status question where an [*556] employee's job was to perform maintenance work on the employer's fleet of ferry boats, often while the boats were running: "The usual thing, of course, is for a person to have a Jones Act seaman status in relation to a particular vessel. But there is nothing about this . . . concept to limit it mechanically to a single ship." *Id.*, at 528. There is "no insurmountable difficulty," the court explained, in finding seaman status based on the employee's relationship to "several [*1541] specific vessels"---"an identifiable fleet"---as opposed to a single one. *Ibid.*

[***LEdHR6] [6] We, in turn, adverted to the group of vessels concept in *Chandris*. We described it as a rule "allowing seaman status for those workers who had the requisite connection with an 'identifiable fleet' of vessels, a finite group of vessels under common ownership or control." 515 U.S. at 366. The majority in the Court of Appeals did not discuss our description of the group of vessels concept as requiring common ownership or control, nor did it discuss other Courts of Appeals cases applying the concept, see, e.g., *Reeves v. Mobile Dredging & Pumping Co.*, 26 F.3d at 1258. The court pointed to this statement from *Chandris*: "We see no reason to limit the seaman status inquiry . . . exclusively to an examination of the overall course of a worker's service with a particular employer." 515 U.S. at 371-372. It interpreted this to mean "it may be necessary to examine the work performed by the employee while employed by different employers during the relevant time period." 67 F.3d at 206. The court did not define what it meant by "the relevant time period." In any event, the context of our statement in *Chandris* makes clear our meaning, which is that the employee's prior work history with a particular employer may not affect the seaman inquiry if the employee was injured on a new assignment with the same employer, an assignment with different "essential duties" than his previous ones. 515 U.S. at 371. In *Chandris*, the words "particular employer" give emphasis to the point that the inquiry into the nature of the employee's duties for seaman status purposes may concentrate on a narrower, not broader, period than the employee's entire course of employment with his current employer. There was no suggestion of a need to examine the nature of an employee's duties with prior employers. See also *id.*, at 367. ("Since *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067 (CA5 1986) (en banc)), the Fifth Circuit consistently has analyzed the problem [of determining seaman status] in terms of the percentage of work performed on vessels for the employer in question"). The Court of Appeals majority interpreted the words "particular employer" outside the limited discussion in which we used them and, as a result, gave the phrase a meaning opposite from what the context requires.

[***LEdHR1C] [1C] [***LEdHR7] [7] The Court of Appeals [***811] stressed that various of Papai's employers had "joined together to obtain a common labor pool on which they draw by means of a union hiring hall." 67 F.3d at 206; see also *id.*, at 206, n. 3 (suggesting that this case involves a "group of vessels [that] have

collectively agreed to obtain employees" from a hiring hall). There is no evidence in the record that the contract Harbor Tug had with the IBU about employing deckhands (IBU Deckhands Agreement) was negotiated by a multiemployer bargaining group, and, even if it had been, that would not affect the result here. There was no showing that the group of vessels the court sought to identify were subject to unitary ownership or control in any aspect of their business or operation. So far as the record shows, each employer was free to hire, assign, and direct workers for whatever tasks and time period they each determined, limited, at most, by the IBU Deckhands Agreement. In deciding whether there is an identifiable group of vessels of relevance for a Jones Act seaman status determination, the question is whether the vessels are subject to common ownership or control. The requisite link is not established by the mere use of the same hiring hall which draws from the same pool of employees.

[*558] Considering prior employments with independent employers in making the seaman status inquiry would undermine "the interests of employers and maritime workers alike in being able to predict who will be covered by the Jones Act (and, perhaps, more importantly for purposes of the employers' workers' compensation obligations, who will be covered by the LHWCA) before a particular work day begins." *Chandris*, *supra*, at 363. There would be no principled basis for limiting, which prior employments are considered for determining seaman status. The Court of Appeals spoke of a "relevant time period" but, as noted [***1542] above, it did not define this term. Since the substantial connection standard is often, as here, the determinative element of the seaman inquiry, it must be given workable and practical confines. When the inquiry further turns on whether the employee has a substantial connection to an identifiable group of vessels, common ownership or control is essential for this purpose.

[***LEdHR1D] [1D] [***LEdHR8] [8] Papai contends his various employers through the hiring hall would have been able to predict his status as a seaman under the Jones Act based on the seagoing nature of some of the duties he could have been hired to perform consistent with his classification as a "qualified deckhand" under the IBU Deckhands Agreement. By the terms of the Agreement, Papai was qualified as a "satisfactory helmsman and lookout," for example, and he could have been hired to serve a vessel while it was underway, in

which case his duties would have included "conducting a check of the engine room status a minimum of two (2) times each watch . . . for vessel safety reasons." App. 77. In *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 84 L. Ed. 732, 60 S. Ct. 544 (1940), we rejected a claim to seaman status grounded on the employee's job title, which also "happened to be" "deckhand." "The question," we said, "concerns his actual duties." *Id.*, at 260. See also *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 268, n. 30, 53 L. Ed. 2d 320, 97 S. Ct. 2348 (1977) [***812] (reasoning that employee's membership in longshoremen's union was, in itself, irrelevant to whether employee [*559] was covered by the LHWCA, as fact of union membership was unrelated to the purposes of the LHWCA's coverage provisions). The question is what connection the employee had in actual fact to vessel operations, not what a union agreement says. Papai was qualified under the IBU Deckhands Agreement to perform non-seagoing work in addition to the seagoing duties described above. His actual duty on the *Pt. Barrow* throughout the employment in question did not include any seagoing activity; he was hired for one day to paint the vessel at dockside and he was not going to sail with the vessel after he finished painting it. App. 44, 48, 51. This is not a case where the employee was hired to perform seagoing work during the employment in question, however brief, and we need not consider here the consequences of such an employment. The IBU Deckhands Agreement gives no reason to assume that any particular percentage of Papai's work would be of a seagoing nature, subjecting him to the perils of the sea. In these circumstances, the union agreement does not advance the accuracy of the seaman status inquiry.

[***LEdHR1E] [1E] Papai argues he qualifies as a seaman if we consider his 12 prior employments with Harbor Tug over the 2 1/2 months before his injury. Papai testified at his deposition that he worked aboard the *Pt. Barrow* on three or four occasions before the day he was injured, the most recent of which was more than a week earlier. *Id.*, at 35, 44. Each of these engagements involved only maintenance work while the tug was docked. *Id.*, at 34-35. The nature of Papai's connection to the *Pt. Barrow* was no more substantial for seaman-status purposes by virtue of these engagements than the one during which he was injured. Papai does not identify with specificity what he did for Harbor Tug the other eight or nine times he worked for the company in the 2 1/2 months before his injury. The closest he comes

is his deposition testimony that 70 percent of his work over the 2 1/4 years before his injury was deckhand work. *Id.*, at 34. Coupled with [*560] the fact that none of Papai's work aboard the *Pt. Barrow* was of a seagoing nature, it would not be reasonable to infer from Papai's testimony that his recent engagements with Harbor Tug involved work of a seagoing nature. In any event, these discrete engagements were separate from the one in question, which was the sort of "transitory or sporadic" connection to a vessel or group of vessels that, as we explained in *Chandris*, does not qualify one for seaman status. 515 U.S. at 368.

[***LEdHR1F] [1F] [***LEdHR9] [9] Jones Act coverage is confined to seamen, those workers who face regular exposure to the perils of the sea. An important part of the test for determining who is a seaman is whether the injured worker seeking coverage has a substantial connection to [***1543] a vessel or a fleet of vessels, and the latter concept requires a requisite degree of common ownership or control. The substantial connection test is important in distinguishing between sea- and land-based employment, for land-based employment is inconsistent with Jones Act coverage. This was the holding in *Chandris*, and we adhere to it here. [***813] The only connection a reasonable jury could identify among the vessels Papai worked aboard is that each hired some of its employees from the same union hiring hall where it hired him. That is not sufficient to establish seaman status under the group of vessels concept. Papai had the burden at summary judgment to "set forth specific facts showing that there is a genuine issue for trial." *Fed. Rule Civ. Proc.* 56(e). He failed to meet it. The Court of Appeals erred in holding otherwise. Its judgment is reversed.

It is so ordered.

DISSENT BY: STEVENS

DISSENT

JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE BREYER join, dissenting.

During the two year period immediately before his injury, respondent Papai worked as a maintenance man and a deckhand for various employers who hired out of the Inland Boatman's [*561] Union hiring hall. He testified that about 70 percent of his work was as a deckhand, and that "most of that work [was] done while

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2009

No. 08-41343

Charles R. Fulbruge III
Clerk

LANCE CAMPBELL

Plaintiff-Appellant

v.

ROYAL CARIBBEAN CRUISES LTD

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. G-08-0117

Before JOLLY, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:

Lance Campbell ("Campbell") is a ballet dancer. Royal Caribbean Cruises, Ltd. ("Royal Caribbean") hired Campbell to perform on its cruise ship, the Radiance of the Seas. Before embarking, Campbell participated in on-shore rehearsals for his performances on the cruise. He suffered injuries during one of these rehearsals. The sole question on appeal is whether Campbell qualifies as a "seaman" under the Jones Act, 46 U.S.C. § 30104, given that he had not yet begun his journey on the ship. Based on Supreme Court and Fifth Circuit

Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

precedent, we AFFIRM the district court's ruling that Campbell does not qualify as a seaman.

The Supreme Court in *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995), fashioned a two-part test to determine if an employee is a "seaman" and therefore can bring a Jones Act claim. First, "an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission." *Id.* (alterations and internal quotation marks omitted). The Court emphasized that this is a "very broad" threshold requirement: "All who work at sea in the service of a ship are *eligible* for seaman status." *Id.* (internal quotation marks omitted). Second, "a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Id.* The Court clarified that a seaman's connection to a vessel must be substantial in both respects. *Id.* at 370.

The duration of a worker's connection to a vessel and the nature of the worker's activities, taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time.

Id.

In *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187 (1952), the Court concluded that a worker who suffered injuries while completing land-based work in preparation for placing boats in the water and serving as a boat operator was not a seaman. The Court noted that the employee "was a probable navigator in the near future, but *the law does not cover probable or expectant seamen but seamen in being.*" *Id.* at 191 (emphasis added).

In *Ramos v. Delmar Systems, Inc.*, 750 F.2d 389, 390 (5th Cir. 1985) (per curiam), we held that an employee who suffered an injury before the employer actually assigned him to a particular vessel or group of vessels was not a

seaman. More recently, we ruled that a "land-based employee who is permanently assigned to work in the service of a vessel but who spends only 10% of his time working aboard the vessel" is not a seaman. *Nunez v. B&B Dredging, Inc.*, 288 F.3d 271, 273 (5th Cir. 2002).

In light of these precedents, we decline Campbell's invitation to expand Jones Act coverage to those who simply *intend* to serve as a seaman. Campbell has not shown that he had "a connection to a vessel in navigation (or an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Chandris*, 515 U.S. at 376. Campbell never embarked on any vessel. Although he *intended* to spend seven months on the cruise as an entertainer, he did not in fact do so. See *Nunez*, 288 F.3d at 276 (noting that a worker must spend at least some time aboard the vessel to qualify as a seaman). As the Supreme Court stated, "the law does not cover probable or expectant seamen but seamen in being." *Desper*, 342 U.S. at 191. Until Campbell actually embarked on the cruise to perform his ballet, he was a land-based worker. Accordingly, the district court correctly concluded that Campbell was not a seaman and properly granted summary judgment to Royal Caribbean.

AFFIRMED.

WILLARD STEWART, Petitioner v. DUTRA CONSTRUCTION COMPANY

No. 03-814

SUPREME COURT OF THE UNITED STATES

543 U.S. 481; 125 S. Ct. 1118; 160 L. Ed. 2d 932; 2005 U.S. LEXIS 1397; 73 U.S.L.W. 4130; 2005 AMC 609; 18 Fla. L. Weekly Fed. S 115

November 1, 2004, Argued
February 22, 2005, Decided

SUBSEQUENT HISTORY:

On remand at, Remanded by *Stewart v. Dutra Constr. Co.*, 418 F.3d 32, 2005 U.S. App. LEXIS 16612 (1st Cir., Aug. 9, 2005)

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Stewart v. Dutra Constr. Co., 343 F.3d 10, 2003 U.S. App. LEXIS 18239 (1st Cir. Mass., 2003)

DISPOSITION: Reversed and remanded.

SYLLABUS

As part of a project to extend the Massachusetts Turnpike, respondent Dutra Construction Company dug a trench beneath Boston Harbor using its dredge, the *Super Scoop*, a floating platform with a bucket that removes silt from the ocean floor and dumps it onto adjacent scows. The *Super Scoop* has limited means of self-propulsion, but can navigate short distances by manipulating its anchors and cables. When dredging the trench here, it typically moved once every couple of hours. Petitioner, a marine engineer hired by Dutra to maintain the *Super Scoop*'s mechanical systems, was seriously injured while repairing a scow's engine when the *Super Scoop* and the scow collided. He sued Dutra under the Jones Act, alleging that he was a seaman injured by Dutra's negligence, and under § 5(b) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33

U.S.C. § 905(b)[33 USCS § 905(b)], which authorizes covered employees to sue a "vessel" owner as a third party for an injury caused by the owner's negligence. The District Court granted Dutra summary judgment on the Jones Act claim, and the First Circuit affirmed. On remand, the District Court granted Dutra summary judgment on the LHWCA claim. In affirming, the First Circuit noted that Dutra had conceded that the *Super Scoop* was a "vessel" under § 905(b), but found that Dutra's alleged negligence had been committed in its capacity as an employer and not as the vessel's owner.

Held:

A dredge is a "vessel" under the LHWCA.

(a) Congress enacted the Jones Act in 1920 to remove the bar to negligence suits by seamen. Although that Act does not define "seaman," the maritime law backdrop at the time it was passed shows that "seaman" is a term of art with an established meaning under general maritime law. The LHWCA, enacted in 1927 to provide scheduled compensation to land-based maritime workers but not to "a master or member of a crew of any vessel," 33 U.S.C. § 902(3)(G)[33 USCS § 902(3)(G)], works in tandem with the Jones Act: The Jones Act provides tort remedies to sea-based maritime workers and the LHWCA provides workers' compensation to land-based maritime employees. In *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 112 L. Ed. 2d 866, 111 S. Ct. 807, and *Chandris, Inc. v. Latsis*, 515 U.S. 347, 132 L. Ed. 2d 314, 115 S. Ct. 2172; this Court addressed [***938] the relationship a worker must have to a vessel in order to be

a "master or member" of its crew. Now the Court turns to the other half of the LHWCA's equation: determining whether a watercraft is a vessel.

(b) The LHWCA did not define "vessel" when enacted, but §§ 1 and 3 of the Revised Statutes of 1873 specified that, in any Act passed after February 25, 1871, "vessel" includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." The LHWCA is such an Act. Section 3's definition has remained virtually unchanged to the present and continues to supply the default definition of "vessel" throughout the U. S. Code. Section 3 merely codified the meaning "vessel" had acquired in general maritime law. In fact, prior to the passage of the Jones Act and the LHWCA, this Court and lower courts had treated dredges as vessels. By the time those Acts became law in the 1920's, it was settled that § 3 defined "vessel" for their purposes, and that a structure's status as a vessel under § 3 depended on whether the structure was an instrument of naval transportation. See *Ellis v. United States*, 206 U.S. 246, 259, 51 L. Ed. 1047, 27 S. Ct. 600, 5 Ohio L. Rep. 427. Then as now, dredges served a waterborne transportation function. In performing their work they carried machinery, equipment, and a crew over water. This Court has continued to treat § 3 as defining "vessel" in the LHWCA and to construe § 3 consistently with general maritime law. *Norton v. Warner Co.*, 321 U.S. 365, 88 L. Ed. 931, 64 S. Ct. 747.

(c) *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625, 30 L. Ed. 501, 7 S. Ct. 336, and *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 70 L. Ed. 805, 46 S. Ct. 379, did not adopt a definition of vesselhood narrower than § 3. Rather, they made a sensible distinction between watercraft temporarily stationed in a particular location and those permanently anchored to shore or the ocean floor. A watercraft is not capable of being used for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement. By including special-purpose vessels like dredges, § 3 sweeps broadly, but other prerequisites to qualifying for seaman status under the Jones Act provide some limits. A worker seeking such status must prove that his duties contributed to the vessel's function or mission and that his connection to the vessel was substantial in nature and duration. *Chandris, supra*, at 376, 132 L. Ed. 2d 314, 115 S. Ct.

2172.

(d) The First Circuit held that the *Super Scoop* is not a "vessel" because its primary purpose is not navigation or commerce and because it was not in actual transit at the time of Stewart's injury. Neither prong of that test is consistent with § 3's text or general maritime law's established meaning of "vessel." Section 3 requires only that a watercraft be "used, or capable of being used, as a means of transportation on water," not that it be used primarily for that purpose. The *Super Scoop* was not only "capable of being used" to transport equipment and passengers over water--it was so used. Similarly, requiring a watercraft to be in motion to qualify as a vessel under § 3 is the sort of "snapshot" test rejected in *Chandris*. That a vessel must be [***939] "in navigation," *Chandris, supra*, at 373-374, 132 L. Ed. 2d 314, 115 S. Ct. 2172, means not that a structure's locomotion at any given moment matters, but that structures may lose their character as vessels if withdrawn from the water for an extended period. The "in navigation" requirement is thus relevant to whether a craft is "used, or capable of being used," for naval transportation. The inquiry whether a craft is "used, or capable of being used," for maritime transportation may involve factual issues for a jury, but here no relevant facts were in dispute. Dutra conceded that the *Super Scoop* was only temporarily stationary while the scow was being repaired; it had not been taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport. Finally, Dutra conceded that the *Super Scoop* is a "vessel" under § 905(b), which imposes LHWCA liability on vessel owners for negligence to longshoremen. However, the LHWCA does not meaningfully define the term "vessel" in either § 902(3)(G) or § 905(b), and 1 U.S.C. § 3[1 USCS § 3] defines the term "vessel" throughout the LHWCA. 343 F.3d 10

, reversed and remanded.

COUNSEL: David B. Kaplan argued the cause for petitioner.

Lisa S. Blatt argued the cause for the United States, as amicus curiae, by special leave of court.

Frederick E. Connelly, Jr. argued the cause for respondent.

JUDGES: Thomas, J., delivered the opinion of the

Court, in which all other Members joined, except Rehnquist, C. J., who took no part in the decision of the case.

OPINION BY: THOMAS

OPINION

[*484] [**1121] Justice Thomas delivered the opinion of the Court.

[***LEdHR1A] [1A] [***LEdHR2A] [2A] The question in this case is whether a dredge is a "vessel" under §2(3)(G) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. (pt. 2) 1425, as added by §2(a) of Pub. L. 98-426, 33 U.S.C. § 902(3)(G) [33 USCS § 902(3)(G)]. We hold that it is.

As part of Boston's Central Artery/Tunnel Project, or "Big Dig," the Commonwealth of Massachusetts undertook to extend the Massachusetts Turnpike through a tunnel running beneath South Boston and Boston Harbor to Logan Airport. The Commonwealth employed respondent Dutra Construction Company to assist in that undertaking. At the time, Dutra owned the world's largest dredge, the *Super Scoop*, which was capable of digging the 50-foot-deep, 100-foot-wide, three-quarter-mile-long trench beneath Boston Harbor that is now the Ted Williams Tunnel.

The *Super Scoop* is a massive floating platform from which a clamshell bucket is suspended beneath the water. The bucket removes silt from the ocean floor and dumps the sediment onto one of two scows that float alongside the dredge. The *Super Scoop* has certain characteristics common to seagoing vessels, such as a captain and crew, navigational lights, ballast tanks, and a crew dining area. But it lacks others. Most conspicuously, the *Super Scoop* has only limited means of self-propulsion. It is moved long distances by tugboat. (To work on the Big Dig, it was towed from its home base in California through the Panama Canal and up the eastern seaboard to Boston Harbor.) It navigates short distances by manipulating its anchors and cables. When dredging the [*485] Boston Harbor trench, it typically moved in this [**1122] way once every couple of hours, [***940] covering a distance of 30-to-50 feet each time.

Dutra hired petitioner Willard Stewart, a marine

engineer, to maintain the mechanical systems on the *Super Scoop* during its dredging of the harbor. At the time of Stewart's accident, the *Super Scoop* lay idle because one of its scows, *Scow No. 4*, had suffered an engine malfunction and the other was at sea. Stewart was on board *Scow No. 4*, feeding wires through an open hatch located about 10 feet above the engine area. While Stewart was perched beside the hatch, the *Super Scoop* used its bucket to move the scow. In the process, the scow collided with the *Super Scoop*, causing a jolt that plunged Stewart headfirst through the hatch to the deck below. He was seriously injured.

Stewart sued Dutra in the United States District Court for the District of Massachusetts under the Jones Act, 38 Stat. 1185, as amended, 41 Stat. 1007 and 96 Stat. 1955, 46 U.S.C. App. § 688(a) [46 USCS App. § 688(a)], alleging that he was a seaman injured by Dutra's negligence. He also filed an alternative claim under § 5(b) of the LHWCA, 33 U.S.C. § 905(b) [33 USCS § 905(b)], which authorizes covered employees to sue a "vessel" owner as a third party for an injury caused by the owner's negligence.

Dutra moved for summary judgment on the Jones Act claim, arguing that Stewart was not a seaman. The company acknowledged that Stewart was "a member of the [*Super Scoop's*] crew," 230 F.3d 461, 466 (CA1 2000); that he spent "[n]inety-nine percent of his time while on the job" aboard the *Super Scoop*, App. 20 (Defendant's Memorandum in Support of Summary Judgment); and that his "duties contributed to the function" of the *Super Scoop*, *id.*, at 32. Dutra argued only that the *Super Scoop* was not a vessel for purposes of the Jones Act. Dutra pointed to the Court of Appeals' en banc decision in *DiGiovanni v. Traylor Brothers, Inc.*, 959 F.2d 1119 (CA1 1992), which held that "if a [*486] barge . . . or other float's purpose or primary business is not navigation or commerce, then workers assigned thereto for its shore enterprise are to be considered seamen only when it is in actual navigation or transit" at the time of the plaintiff's injury. *Id.*, at 1123 (internal quotation marks omitted). The District Court granted summary judgment to Dutra, because the *Super Scoop's* primary purpose was dredging rather than transportation and because it was stationary at the time of Stewart's injury.

On interlocutory appeal, the Court of Appeals affirmed, concluding that it too was bound by

DiGiovanni, 230 F.3d, at 467-468. The court reasoned that the *Super Scoop's* primary function was construction and that "[a]ny navigation or transportation that may be required is incidental to this primary function." *Id.*, at 468. The court also concluded that the scow's movement at the time of the accident did not help Stewart, because his status as a seaman depended on the movement of the *Super Scoop* (which was stationary) rather than the scow. *Id.*, at 469.

On remand, the District Court granted summary judgment in favor of Dutra on Stewart's alternative claim that Dutra was liable for negligence as an owner of a "vessel" under the LHWCA, 33 U.S.C. § 905(b) [33 USCS § 905(b)]. The Court of Appeals again affirmed. It noted that Dutra had conceded that the *Super Scoop* was a "vessel" for purposes [***941] of § 905(b), explaining that "the LHWCA's definition of 'vessel' is 'significantly more inclusive than that used for evaluating seaman status under the Jones Act.'" 343 F.3d 10, 13 (CA1 2003) (quoting *Morehead v. Atkinson-Kiewit, J/V*, 97 F.3d 603, 607 (CA1 1996) (en banc)). The Court of Appeals nonetheless agreed with the District Court's conclusion that Dutra's [**1123] alleged negligence was committed in its capacity as an employer rather than as owner of the vessel under § 905(b).

We granted certiorari to resolve confusion over how to determine whether a watercraft is a "vessel" for purposes of the LHWCA. 540 U.S. 1177, 158 L. Ed. 2d 76, 124 S. Ct. 1414 (2004).

[*487] II

Prior to the passage of the Jones Act, general maritime law usually entitled a seaman who fell sick or was injured both to maintenance and cure (or the right to be cared for and paid wages during the voyage, see, e.g., *Harden v. Gordon*, 11 F. Cas. 480, 482-483, F. Cas. No. 6047 (No. 6,047) (CC. Me 1823) (Story, J.)), and to damages for any "injuries received . . . in consequence of the unseaworthiness of the ship," *The Osceola*, 189 U.S. 158, 175, 47 L. Ed. 760, 23 S. Ct. 483 (1903). Suits against shipowners for negligence, however, were barred. Courts presumed that the seaman, in signing articles of employment for the voyage, had assumed the risks of his occupation; thus a seaman was "not allowed to recover an indemnity for the negligence of the master, or any member of the crew." *Ibid.*

Congress enacted the Jones Act in 1920 to remove

this bar to negligence suits by seamen. See *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354, 132 L. Ed. 2d 314, 115 S. Ct. 2172 (1995). Specifically, the Jones Act provides:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply." 46 U.S.C. App. § 688(a) [46 USCS Appx § 688(a)].

Although the statute is silent on who is a "seaman," both the maritime law backdrop against which Congress enacted the Jones Act and Congress' subsequent enactments provide some guidance.

First, "seaman" is a term of art that had an established meaning under general maritime law. We have thus presumed that when the Jones Act made available negligence remedies to "[a]ny seaman who shall suffer personal injury in the course of his employment," Congress took the term "seaman" as the general maritime law found it. *Chandris*, [*488] *supra*, at 355; 132 L. Ed. 2d 314, 115 S. Ct. 2172 (citing *Warner v. Goitra*, 293 U.S. 155, 159, 79 L. Ed. 254, 55 S. Ct. 46 (1934)); G. Gilmore & C. Black, *Law of Admiralty* § 6-21, pp 328-329 (2d ed. 1975).

[***LEdHR3] [3] Second, Congress provided further guidance in 1927 when it enacted the LHWCA, which provides scheduled compensation to land-based maritime workers but which also excepts from its coverage "a master or member of a crew of any vessel." 33 U.S.C. § 902(3)(G) [33 USCS § 902(3)(G)]. This exception is simply "a refinement of the term 'seaman' in the Jones Act." *McDermott* [***942] *Int'l, Inc. v. Wilander*, 498 U.S. 337, 347, 112 L. Ed. 2d 866, 111 S. Ct. 807 (1991). Thus, the Jones Act and the LHWCA are complementary regimes that work in tandem: The Jones Act provides tort remedies to sea-based maritime workers, while the LHWCA provides workers' compensation to land-based maritime employees. *Ibid.*; *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 6-7, 90 L. Ed. 1045, 66 S. Ct. 869 (1946).

[***LEdHR4A] [4A] Still, discerning the contours

of "seaman" status, even with the general maritime law and the LHWCA's language as aids to interpretation, has not been easy. See *Chandris, supra*, at 356, 132 L. Ed. 2d 314, 115 S. Ct. 2172. We began clarifying the definition of "seaman" in a pair of cases, *McDermott* [**1124] *Int'l, Inc. v. Wilander, supra*, and *Chandris, supra*, that addressed the relationship a worker must have to a vessel in order to be a "master or member" of its crew. We now turn to the other half of the LHWCA's equation: how to determine whether a watercraft is a "vessel."

A

[***LEdHR1B] [1B] [***LEdHR4B] [4B] [***LEdHR5A] [5A] Just as Congress did not define the term "seaman" in the Jones Act,¹ it did not define the term "vessel" in the LHWCA itself.² [**489] However, Congress provided a definition elsewhere. At the time of the LHWCA's enactment, §§ 1 and 3 of the Revised Statutes of 1873 specified:

1 [***LEdHR4C] [4C] The Shipping Act, of, 1916 defines the term "vessel" for purposes of the Jones Act. See 46 U.S.C. App. § 801[46 USCS Appx § 801]. However, the provision of the Jones Act at issue here, § 688(a), speaks not of "vessels," but of "seamen." In any event, because we have identified a Jones Act "seaman" with reference to the LHWCA's exclusion, see 33 U.S.C. § 902(3)(G)[33 USCS § 902(3)(G)] ("a master or member of a crew of any vessel"), it is the LHWCA's use of the term "vessel" that matters. And, as we explain, the context surrounding Congress' enactment of the LHWCA suggests that Rev Stat § 3, now 1 U.S.C. § 3[1 USCS § 3], provides the controlling definition of the term "vessel" in the LHWCA.

2 As part of its 1972 Amendments to the LHWCA, Congress amended the Act with what appears at first blush to be a definition of the term "vessel": "Unless the context requires otherwise, the term 'vessel' means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member." 33 U.S.C. § 902(2)[33 USCS § 902(2)]. However,

Congress enacted this definition in conjunction with the third-party vessel owner provision of § 905(b). Rather than specifying the characteristics of a vessel, § 902(2) instead lists the parties liable for the negligent operation of a vessel. See *McCarthy v. The Bark Peking*, 716 F.2d 130, 133 (CA2 1983) (§ 902(2) is "circular" and "does not provide precise guidance as to what is included within the term 'vessel'").

"In determining the meaning of the revised statutes, or of any act or resolution of Congress passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, . . . [t]he word 'vessel' includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 3 18 Stat., pt. 1, p. 1.

3 Congress had used substantially the same definition before, first in an 1866 antismuggling statute, see § 1, 14 Stat. 178, and then in an 1870 statute "provid[ing] for the Relief of sick and disabled Seamen," ch. CLXIX, 16 Stat. 169 (italics deleted); see *id.*, § 7, 16 Stat. 170.

Sections 1 and 3 show that, because the LHWCA is an Act of Congress passed after February 25, 1871, the LHWCA's use of the term "vessel" "includes every description of water-craft or other artificial contrivance used, or capable of being used, as a [***943] means of transportation on water." *Ibid.*

[***LEdHR5B] [5B] Section 3's definition, repealed and recodified in 1947 as part of the Rules of Construction Act, 1 U.S.C. § 3[1 USCS § 3], has [**490] remained virtually unchanged from 1873 to the present.⁴ Even now, § 3 continues to supply the default definition of "vessel" throughout the U. S. Code, "unless the context indicates otherwise." 1 U.S.C. § 1[1 USCS § 1]. The context surrounding the LHWCA's enactment indicates that § 3 defines the term "vessel" for purposes of the LHWCA.

4 During the 1947 codification, the hyphen was

removed from the word "watercraft." § 3, 61 Stat 633.

Section 3 merely codified the meaning that the term "vessel" had acquired in general maritime law. See 1 S. Friedell, [*1125] Benedict on Admiralty § 165 (rev. 7th ed. 2004). In the decades following its enactment, § 3 was regularly used to define the term "vessel" in maritime jurisprudence. Taking only the issue presented here—whether a dredge is a vessel—prior to passage of the Jones Act and the LHWCA, courts often used § 3's definition to conclude that dredges were vessels.⁵

⁵ See, e.g., *The Alabama*, 19 F. 544, 546 (SD Ala. 1884) (dredge was a vessel and subject to maritime liens); *Hulsman v. The Pioneer*, 30 F. 206, 207 (EDNY 1886) (dredge was a vessel under § 3); *Saylor v. Taylor*, 77 F. 476, 477 (CA4 1896) (dredge was a vessel under § 3, and its workers were seamen); *The International*, 89 F. 484, 484-485 (CA3 1898) (dredge was a vessel under § 3); *Eastern S. S. Corp. v. Great Lakes Dredge & Dock Co.*, 256 F. 497, 500-501 (CA1 1919) (type of dredge called a "drillboat" was a vessel under § 3); *Los Angeles v. United Dredging Co.*, 14 F.2d 364, 365-366 (CA9 1926) (dredge was a vessel under § 3 and its engineers were seamen).

From the very beginning, these courts understood the differences between dredges and more traditional seagoing vessels. Though smaller, the dredges at issue in the earliest cases were essentially the same as the *Super Scoop* here. For instance, the court could have been speaking equally of the *Super Scoop* as of *The Alabama* when it declared:

"The dredge and scows have no means of propulsion of their own except that the dredge, by the use of anchors, windlass, and rope, is moved for short distances, as required in carrying on the business of dredging. Both, [*491] the dredge and the scows are moved from place to place where they may be employed by being towed, and some of the tows have been for long distances and upon the high seas. The dredge and scows are not made for or adapted to the carriage of freight or passengers, and the evidence does not

show that, in point of fact, this dredge and scows had ever been so used and employed." *The Alabama*, 19 F. 544, 545 (SD Ala. 1884).

See also *Hulsman v. The Pioneer*, 30 F. 206 (EDNY 1886). None of this prevented the court from recognizing that dredges are vessels because "they" are watercraft with "the capacity to be navigated in and upon the waters." *The Alabama*, *supra*, at 546; see also *The Pioneer*, *supra*, at 207; *The International*, 89 F. 484, 485 (CA3 1898).

This Court also treated dredges as vessels prior to the passage of the Jones Act and the LHWCA. It did so in a pair of cases, first implicitly in *The "Virginia Ehrman" and the "Agnese"*, 97 U.S. 309, 24 L. Ed. 890 [***944] (1878), and then explicitly in *Ellis v. United States*, 206 U.S. 246, 51 L. Ed. 1047, 27 S. Ct. 600, 5 Ohio L. Rep. 427 (1907). In *Ellis*, this Court considered, *inter alia*, whether workers aboard various dredges and scows were covered by a federal labor law. Just as in the present case, one of the *Ellis* appellants argued that the dredges at issue were "vessels" within the meaning of Rev Stat § 3, now 1 U.S.C. § 31, USCS § 31. 206 U.S., at 249, 51 L. Ed. 1047, 27 S. Ct. 600. The United States responded that dredges were only vessels, if at all, when in actual navigation as they were "towed from port to port." *Id.*, at 253, 51 L. Ed. 1047, 27 S. Ct. 600. Citing § 3, Justice Holmes rejected the Government's argument, stating that "[t]he scows and floating dredges were vessels" that "were within the admiralty jurisdiction of the United States." *Id.*, at 259, 51 L. Ed. 1047, 27 S. Ct. 600.

[***LEdHR1C] [1C] These early cases show that at the time Congress enacted the Jones Act and the LHWCA in the 1920's, it was settled that § 3 defined the term "vessel" for purposes of those statutes. It was also settled that a structure's status as a vessel under § 3 depended on whether the structure was a means of maritime transportation. See R. Hughes, Handbook of [492] Admiralty Law [**1126] § 5, p 14 (2d ed. 1920). For then, as now, dredges served a waterborne transportation function, since in performing their work they carried machinery, equipment, and crew over water. See, e.g., *Butler v. Ellis*, 45 F.2d 951, 955 (CA4 1930) (finding the vessel status of dredges "sustained by the overwhelming weight of authority"); *The Hurricane*, 2 F.2d 70, 72 (ED Pa. 1924) (expressing "no doubt" that

dredges are vessels), *aff'd*, 9 F.2d 396 (CA3 1925).

This Court's cases have continued to treat § 3 as defining the term "vessel" in the LHWCA, and they have continued to construe § 3's definition in light of the term's established meaning in general maritime law. For instance, in *Norton v. Warner Co.*, 321 U.S. 565, 88 L. Ed. 931, 64 S. Ct. 747 (1944), the Court considered whether a worker on a harbor barge was "a master or member of a crew of any vessel" under the LHWCA, 33 U.S.C. § 902(3)(G) [33 USC § 902(3)(G)]. In finding that the "barge [was] a vessel within the meaning of the Act," the Court not only quoted § 3's definition of the term "vessel," but it also cited in support of its holding several earlier cases that had held dredges to be vessels based on the general maritime law: 321 U.S., at 571, and *n. 4*, 88 L. Ed. 931, 64 S. Ct. 747. This Court therefore confirmed in *Norton* that § 3 defines the term "vessel" in the LHWCA and that § 3 should be construed consistently with the general maritime law. Since *Norton*, this Court has often said that dredges and comparable watercraft qualify as vessels under the Jones Act and the LHWCA.⁶

6 See, e.g., *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 535, 130 L. Ed. 2d 1024, 115 S. Ct. 1043 (1995) (indicating that a stationary crane barge was a "vessel" under the *Extension of Admiralty Jurisdiction Act*); *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 92, 116 L. Ed. 2d 405, 112 S. Ct. 486 (1991) (holding that a jury could reasonably find that floating platforms were "vessels in navigation" under the Jones Act); *Jones & Laughlin Steel Corp. v. Pfeiffer*, 462 U.S. 523, 528-530, 76 L. Ed. 2d 768, 103 S. Ct. 2541 (1983) (treating coal barge as a "vessel" under the LHWCA, 33 U.S.C. § 905(b) [33 USC § 905(b)]); cf. *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370, 372, 1 L. Ed. 2d 404, 77 S. Ct. 415 (1957) (assuming that a dredge was a Jones Act vessel); *id.*, at 375, *n. 1*, 1 L. Ed. 2d 404, 77 S. Ct. 415, *n. 1* (Harlan, J., dissenting) (same).

[*493] [***945] B

Despite this Court's reliance on § 3 in cases like *Ellis* and *Norton*, Dutra argues that the Court has implicitly narrowed § 3's definition. Section 3 says that a "vessel" must be "used, or capable of being used, as a means of transportation on water." 18 Stat. pt 1, p 1. In a pair of

cases, the Court held that a drydock, *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625, 630, 30 L. Ed. 501, 7 S. Ct. 336 (1887), and a whariboat attached to the mainland, *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 22, 70 L. Ed. 805, 46 S. Ct. 379 (1926), were not vessels under § 3, because they were not practically capable of being used to transport people, freight, or cargo from place to place. According to Dutra, *Cope* and *Evansville* adopted a definition of "vessel" narrower than § 3's text.

Dutra misreads *Cope* and *Evansville*. In *Cope*, the plaintiff sought a salvage award for having prevented a drydock from sinking after a steamship collided with it. 119 U.S., at 625-626, 30 L. Ed. 501, 7 S. Ct. 336. At the time of the accident, the drydock, a floating dock used for repairing vessels, was "moored and lying at [the] usual place" it had occupied for the past 20 years. *Id.*, at 626, 30 L. Ed. 501, 7 S. Ct. 336. In those circumstances, the drydock was a "fixed structure" that had been "permanently moored," rather than a vessel that had been temporarily anchored. *Id.*, at 627, 30 L. Ed. 2d 501, 7 S. Ct. 336. *Evansville* involved a whariboat [***1127] secured by cables to the mainland. Local water, electricity, and telephone lines all ran from shore to the whariboat, evincing a "permanent location." 271 U.S., at 22, 70 L. Ed. 805, 46 S. Ct. 379. And the whariboat, like the drydock in *Cope*, was neither "taken from place to place" nor "used to carry freight from one place to another." 271 U.S., at 22, 77 L. Ed. 805, 46 S. Ct. 379. As in *Cope*, the Court concluded that the whariboat "was not practically capable of being used as a means of transportation." 271 U.S., at 22, 70 L. Ed. 805, 46 S. Ct. 379.

[***LEdHR6] [6] *Cope* and *Evansville* did no more than construe § 3 in light of the distinction drawn by the general maritime law between watercraft temporarily stationed in a particular location and those permanently affixed to shore or resting on the [*494] ocean floor. See, e.g., *The Alabama*, 19 F., at 546 (noting that vessels possess "mobility and [the] capacity to navigate," as distinct from fixed structures like wharves, drydocks, and bridges). Simply put, a watercraft is not "capable of being used" for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.

[***LEdHR7A] [7A] This distinction is sensible: A

ship and its crew do not move in and out of Jones Act coverage depending on whether the ship is at anchor, docked for loading or unloading, or berthed for minor repairs, in the same way that ships taken permanently out of the water as a practical matter do not remain vessels merely because of the remote possibility that they may one day sail again. See *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560, 570 (CA5 1995) (floating casino was no ***946 longer a vessel where it "was moored to the shore in a semi-permanent or indefinite manner"); *Kathriner v. Unisea, Inc.*, 975 F.2d 657, 660 (CA9 1992) (floating processing plant was no longer a vessel where a "large opening [had been] cut into her hull," rendering her incapable of moving over the water). Even if the general maritime law had not informed the meaning of § 3, its definition would not sweep within its reach an array of fixed structures not commonly thought of as capable of being used for water transport. See, e.g., *Leocal v. Ashcroft*, ante, at 9, 160 L. Ed. 2d 271, 125 S. Ct. 377 (2004) ("When interpreting a statute, we must give words their 'ordinary or natural' meaning" (quoting *Smith v. United States*, 508 U.S. 223, 228, 124 L. Ed. 2d 138, 113 S. Ct. 2050 (1993))).

***LEdHR8 [8] Applying § 3 brings within the purview of the Jones Act the sorts of watercraft considered vessels at the time Congress passed the Act. By including special-purpose vessels like dredges, § 3 sweeps broadly, but the other prerequisites to qualifying for seaman status under the Jones Act provide some limits, notwithstanding § 3's breadth. A maritime worker seeking Jones Act seaman status must also prove that his duties contributed to the vessel's function or mission, [*495] and that his connection to the vessel was substantial both in nature and duration. *Chandris*, 515 U.S., at 376, 132 L. Ed. 2d 314, 115 S. Ct. 2172. Thus, even though the *Super Scoop* is a "vessel," workers injured aboard the *Super Scoop* are eligible for seaman status only if they are "master[s] or member[s]" of its crew.

C
***LEdHR2B [2B] The Court of Appeals, relying on its previous en banc decision in *DiGiovanni v. Traylor Brothers, Inc.*, 959 F.2d 1119 (CA1 1992), held that the *Super Scoop* is not a "vessel" because its primary purpose is not navigation or commerce and because it was not in actual transit at the time of Stewart's injury. 230 F.3d at 468-469. Neither prong of the Court of

Appeals' test is consistent with the text of § 3 or [**1128] the established meaning of the term "vessel" in general maritime law.

***LEdHR2C [2C] ***LEdHR9A [9A] Section 3 requires only that a watercraft be "used, or capable of being used," as a means of transportation on water" to qualify as a vessel. It does not require that a watercraft be used primarily for that purpose. See *The Alabama*, supra, at 346; *The International*, 89 F., at 485. As the Court of Appeals recognized, the *Super Scoop*'s "function was to move through Boston Harbor, ... digging the ocean bottom as it moved." 343 F.3d, at 12. In other words, the *Super Scoop* was not only "capable of being used" to transport equipment and workers over water—it was used to transport those things. Indeed, it could not have dug the Ted Williams Tunnel had it been unable to traverse the Boston Harbor, carrying with it workers like Stewart.

LEdHR7B [7B] ***LEdHR9B [9B] Also, a watercraft need not be in motion to qualify as a vessel under § 3. Looking to whether a watercraft is motionless or moving is the sort of "snapshot" test that we rejected in *Chandris*. Just as a worker does not "oscillate back and forth between Jones Act coverage and other remedies depending on the activity in which the worker was engaged while injured," *Chandris*, 515 U.S., at 363, 132 L. Ed. 2d 314, 115 S. Ct. 2172, neither does a watercraft pass in and out of Jones Act coverage [947] [*496] depending on whether it was moving at the time of the accident.

***LEdHR10A [10A] Granted, the Court has sometimes spoken of the requirement that a vessel be "in navigation," *id.*, at 373-374, 132 L. Ed. 2d 314, 115 S. Ct. 2172, but never to indicate that a structure's locomotion at any given moment mattered. Rather, the point was that structures may lose their character as vessels if they have been withdrawn from the water for extended periods of time. *Ibid.*; *Roper v. United States*, 368 U.S. 20, 21, 23, 7 L. Ed. 2d 1, 82 S. Ct. 5 (1961); *West v. United States*, 361 U.S. 118, 122, 4 L. Ed. 2d 161, 80 S. Ct. 189 (1959). The Court did not mean that the "in navigation" requirement stood apart from § 3, such that a "vessel" for purposes of § 3 might nevertheless not be a "vessel in navigation" for purposes of the Jones Act or the LHWCA. See, e.g., *United States v. Templeton*, 378 F.3d 845, 851 (CA8 2004) ("[T]he definition of 'vessel in navigation' under the Jones Act is not as expansive as the

general definition of "vessel").

***LEdHR2D] [2D] ***LEdHR10B] [10B] Instead, the "in navigation" requirement is an element of the vessel status of a watercraft. It is relevant to whether the craft is "used, or capable of being used" for maritime transportation. A ship long lodged in a drydock or shipyard can again be put to sea, no less than one permanently moored to shore or the ocean floor can be cut loose and made to sail. The question remains in all cases whether the watercraft's use "as a means of transportation on water" is a practical possibility or merely a theoretical one. *Supra*, at 493, 160 L. Ed. 2d, at 945-946. In some cases that inquiry may involve factual issues for the jury, *Chandris*, *supra*, at 373, 132 L. Ed. 2d 314, 115 S. Ct. 2172, but here no relevant facts were in dispute. Dutra conceded that the *Super Scoop* was only temporarily stationary while Stewart and others were repairing the scow; the *Super Scoop* had not been taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport.

***LEdHR5C] [5C] Finally, although Dutra argues that the *Super Scoop* is not a "vessel" under § 902(3)(G), which is the LHWCA provision that excludes seamen from the Act's coverage, Dutra conceded [*497] below that the *Super Scoop* is a "vessel" under § 905(b), which is the LHWCA provision that imposes liability on vessel owners for negligence to longshoremen. The concession was necessary because the Court of Appeals had previously held that § 905(b)'s [*1129] use of the term "vessel" is "significantly more inclusive than that used for evaluating seaman status under the Jones Act." 343 F.3d, at 13 (quoting *Morehead v. Atkinson-Kiewit*, 97 F.3d, at 607). The Court of Appeals' approach is no longer tenable. The LHWCA does not meaningfully define the term "vessel" as it appears in either § 902(3)(G) or § 905(b), see n 2, *supra*, and 1 U.S.C. § 3[1 USCS § 3] defines the term "vessel" throughout the LHWCA.

III

***LEdHR2E] [2E] ***LEdHR9C] [9C] At the time that Congress enacted the LHWCA and since, Rev Stat § 3, now 1 U.S.C. § 3[1 USCS § 3], has defined the term "vessel" in the LHWCA. Under § 3, a "vessel" is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment. Because [*948] the *Super Scoop* was engaged in maritime transportation at

the time of Stewart's injury, it was a vessel within the meaning of 1 U.S.C. § 3[1 USCS § 3]. Despite the seeming incongruity of grouping dredges alongside more traditional seafaring vessels under the maritime statutes, Congress and the courts have long done precisely that:

"[I]t seems a stretch of the imagination to class the deck hands of a mud dredge in the quiet waters of a Potomac creek with the bold and skillful mariners who breast the angry waves of the Atlantic; but such and so far-reaching are the principles which underlie the jurisdiction of the courts of admiralty that they adapt themselves to all the new kinds of property and new sets of operatives and new conditions which are brought into existence in the progress of the world." *Saylor v. Taylor*, 77 F. 476, 479 (CA4 1896).

[*498] The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

The Chief Justice took no part in the decision of this case.

THE UNITED STATES OF AMERICA
DO hereby certify that

the within and foregoing is a true and correct copy of the original as the same appears in the records of the Department of the Interior, Bureau of Land Management, Washington, D.C.

Witness my hand and the seal of the Department of the Interior, at Washington, D.C., this 1st day of January, 1961.

Very truly yours,
Director, Bureau of Land Management

Special Agent in Charge

Assistant Director, Bureau of Land Management

Special Agent in Charge

Assistant Director, Bureau of Land Management

Special Agent in Charge

REVISED MARCH 13, 2008

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

No. 05-30963

February 21, 2008

Charles R. Fulbruge III
Clerk

ROCKY H. CAIN

Plaintiff - Appellee

TRANSOCEAN OFFSHORE USA, INC; SEDCO FOREX CORP

Defendants - Third Party Plaintiffs
Appellants

v.
FONTANA CENTER LLC

Third Party Defendant - Appellee

Appeal from the United States District Court
for the Western District of Louisiana

Before KING, GARZA, and OWEN, Circuit Judges.

KING, Circuit Judge:

This case requires us to consider the continued viability of our longstanding precedent holding that a watercraft under construction is not a "vessel in navigation" for purposes of the Jones Act. We hold that the Supreme Court's decision in *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005), has

not effectively overruled that precedent because the decision did not concern or address the point at which a vessel-to-be actually becomes a vessel. We therefore REVERSE the district court's denial of summary judgment and REMAND for further proceedings.

I. Background

In 1996, Plaintiff-Appellee Rocky Cain began working as a driller on a semi-submersible drilling rig in the Gulf of Mexico for Sonat Offshore USA, Inc. Sonat later became part of Defendant-Appellant Transocean Offshore USA, Inc. On March 1, 2000, Transocean assigned Cain as a toolpusher to the "Cajun Construction Site" in Singapore. Cain worked in Singapore for approximately six months at the PPL Shipyard, where the M/V CAJUN EXPRESS was under construction. The CAJUN EXPRESS is a fifth-generation semi-submersible mobile offshore drilling rig designed to drill for oil and gas. Cain was expected to continue working on the CAJUN EXPRESS, or a sister rig, after construction was complete. Cain supervised a drill crew of seven men and was responsible for overseeing safety issues and commissioning the drilling equipment.

During the first half of 2000, the CAJUN EXPRESS underwent sea trials to ensure that the power generation and navigation systems worked and that the structure was watertight for transit. With tugboat assistance, the CAJUN EXPRESS was then towed with men and equipment aboard to Grand Isle, Louisiana. During the journey, workers continued to build the rig, and Cain continued to test equipment. Upon arriving in the Gulf of Mexico, the CAJUN EXPRESS was moored in a "floating shipyard" for completion of construction.

Although the rig was capable of self-propulsion, it was not fully capable of operating as a semi-submersible drilling rig. The necessary construction still included installation of vital pipe-handling equipment and "blisters," which are large steel boxes welded to the rig to increase its buoyancy. Daniel Haslam, a Transocean engineer, testified that when it arrived in the Gulf of Mexico the

CAJUN EXPRESS could lay pipe only under limited weather conditions. However, as a fifth generation semi-submersible unit, the most state of the art in the industry, the CAJUN EXPRESS was not designed to operate only under limited conditions. Haslam testified that no drilling contractor would have found the CAJUN EXPRESS fit for the purpose of drilling a deepwater well in the Gulf of Mexico.

On September 10, 2000, Cain was working on board the CAJUN EXPRESS. At that time, the blisters still had not been installed and the drilling systems had not been commissioned. Cain entered a warehouse located on board the rig to retrieve a part for a member of the drill crew, whereupon he struck his head on a low hanging light fixture and was injured. A neurosurgeon later examined Cain and recommended that he undergo physical therapy. Cain received physical therapy and continued to work on board the CAJUN EXPRESS. In April or May 2001, the CAJUN EXPRESS was finally completed and began drilling operations in the Gulf of Mexico.

Cain continued to work as a toolpusher on the CAJUN EXPRESS but was subsequently diagnosed with a herniated disc. In September 2001, he discontinued work to undergo a cervical discectomy and fusion. Cain returned to work in December 2001, when Transocean assigned him to a "work hardening" program at the Fontana Center, a facility in Lafayette, Louisiana. While participating in the work hardening program, Cain allegedly experienced elevated blood pressure and suffered additional injuries.

Cain filed suit under the Jones Act, alleging that his injuries were the result of Transocean's negligence and the unseaworthiness of the CAJUN EXPRESS. He also alleged that Transocean was negligent in assigning him to the work hardening program. Transocean moved for summary judgment, arguing that Cain was not a Jones Act seaman at the time of his injury because the CAJUN EXPRESS was not yet a "vessel in navigation." The district court

denied Transocean's motion, concluding that the Supreme Court's decision in *Stewart* had overruled Fifth Circuit precedent concerning watercraft under construction. The district court held that the CAJUN EXPRESS was a vessel at the time of Cain's injury because under *Stewart* it was capable of transporting workers and equipment over water. This court granted Transocean's petition for leave to appeal the district court's denial of summary judgment. Fontana Center has not submitted a brief and has not raised any arguments on appeal.

II. Discussion

We review the district court's denial of summary judgment de novo. *Solano v. Gulf King 55*, 212 F.3d 902, 905 (5th Cir. 2000). "Summary judgment is proper if the evidence shows the existence of no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.*

Transocean argues on appeal that under our established precedent the CAJUN EXPRESS was not a vessel in navigation, and therefore Cain was not a Jones Act seaman, because the rig was still under construction at the time of Cain's injury. It further argues that the Supreme Court's decision in *Stewart* has effected no change on our prior case law. We agree with both contentions.

A. "Seaman" status and our established precedent

We begin by describing two of the principal remedies available to injured workers who ply their trade in connection with the sea: the Jones Act and the Longshore Harbor Workers' Compensation Act ("LHWCA"). The two Acts are mutually exclusive compensation regimes. *Becker v. Tidewater, Inc.*, 335 F.3d 376, 386 (5th Cir. 2003). The Jones Act permits a "seaman" to sue his employer for personal injuries suffered as a result of the employer's negligence. *Park v. Stockstill Boat Rentals, Inc.*, 492 F.3d 600, 602-03 (5th Cir. 2007) (citing 46 U.S.C. § 30104(a)). Such an action allows for potentially unlimited damages and is in contrast to the generally prescribed remedial scheme available to maritime workers under the LHWCA. *See Becker*, 335 F.3d at 386-87. Congress did not

define the term "seaman," however, and left the courts to decide which maritime employees were covered by the Jones Act. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354 (1995).

The LHWCA provides the exclusive remedy to land-based workers who fall within its provisions. *Id.* at 355. It specifically excludes from its coverage "a master or member of a crew of any vessel." 33 U.S.C. § 902(3)(G). The Supreme Court has held this exclusion to be a refinement of the term "seaman" under the Jones Act. *Chandris*, 515 U.S. at 355-56. Thus, a key requirement for Jones Act coverage is actually found in the LHWCA. *Id.*

Under the Jones Act, a "seaman" is a term of art for an employee whose duties "contribut[e] to the function of the vessel or to the accomplishment of its mission" and who has "a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Chandris*, 515 U.S. at 368 (internal quotation marks and citation omitted); see also *Garret v. Dean Shank Drilling Co.*, 799 F.2d 1007, 1009 (5th Cir. 1986) ("The worker is a seaman if he is assigned permanently to a vessel in navigation or performs a substantial part of his work on the vessel, contributing to the function of the vessel or to the accomplishment of its mission."). The existence of a "vessel" is thus crucial to determining seaman status under the Jones Act. *Holmes v. Atl. Sounding Co.*, 437 F.3d 441, 446 (5th Cir. 2006).

We have long held that the Jones Act analysis requires a watercraft to be "in navigation," and we have drawn a distinction between completed crafts and crafts that are under construction. A maritime worker "assisting in the building and ultimate commissioning of a launched but uncompleted vessel floating or maneuvering in navigable waters is not a seaman within the meaning of the Jones Act, because his vessel is not yet an instrumentality of commerce—private or public—and is therefore not 'in navigation.'" *Williams v. Avondale Shipyards*,

Inc., 452 F.2d 955, 958 (5th Cir. 1971). In *Williams*, we held that a launched ship conducting sea trials was not "in navigation" because it was not yet being used for its intended purpose. *Id.*

Similarly, in *Garret*, we held that an offshore drilling rig was not a vessel in navigation because, at the time of the plaintiff's injury, the structure was still undergoing final construction to make it operational as an oil and gas drilling rig. 799 F.2d at 1009. We noted that the structure had never been engaged as an instrument of commerce and held that a "nonmerchant vessel is in navigation if it is engaged in its expected duties on navigable waters." *Id.*

In the instant case, the CAJUN EXPRESS was still under construction at the time of Cain's injury. Although the rig was capable of self-propulsion and had run some test pipe, it lacked vital equipment to make it fully operational as an oil and gas drilling rig. Indeed, as Daniel Haslam testified, no drilling contractor would have found the CAJUN EXPRESS fit to drill a deepwater well in the Gulf of Mexico. The CAJUN EXPRESS was not finally completed and placed into service until April or May 2001, after Cain was injured. Thus, under established Fifth Circuit precedent, the CAJUN EXPRESS was not a vessel in navigation and Cain was not a Jones Act seaman.

B. *Stewart*

We now turn to the Supreme Court's decision in *Stewart v. Dutra Construction Company*. In *Stewart*, the Court addressed whether a dredge known as the SUPER SCOOP was a vessel under the LHWCA. 543 U.S. at 484. Although the case specifically concerned the LHWCA, we have recognized that *Stewart's* analysis of the term "vessel" applies equally to the LHWCA and to the Jones Act. *Holmes*, 437 F.3d at 448.

The SUPER SCOOP was a floating platform with a clamshell bucket suspended beneath the water used to remove silt from the ocean floor. *Stewart*, 543 U.S. at 484. The dredge was engaged in digging a trench beneath Boston

Harbor as part of the "Big Dig" project. *Id.* It had limited means of self-propulsion and was typically moved by tugboat, but it could move short distances by manipulating its anchors and cables. *Id.*

The First Circuit applied its test for vessel status found in *DiGiovanni v. Traylor Bros.*, 959 F.2d 1119, 1123 (1st Cir. 1992) (en banc), which had held that "if a barge . . . or other float's purpose or primary business is *not* navigation or commerce, then workers assigned thereto for its shore enterprise are to be considered seamen only when it is in actual navigation or transit at the time of the plaintiff's injury." *Id.* at 485-86 (internal quotation marks omitted). The First Circuit held that the SUPER SCOOP was not a vessel because any navigation was incidental to the craft's primary function of construction. *Id.* at 486. It also found significant the dredge's stationary position at the time of the plaintiff's injury. *Id.*

The Supreme Court rejected the First Circuit's test for vessel status, concluding that although Congress did not define "vessel" in the LHWCA or the Jones Act, it had already defined "vessel" elsewhere at the time both acts were passed. *Id.* at 487-88. Specifically, under 1 U.S.C. § 3 (formerly § 3 of the Revised Statutes of 1873), a vessel "includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Significantly, § 3 codified the meaning that the term "vessel" had acquired in general maritime law, and the Court noted the historic case law prior to the Jones Act and the LHWCA where courts had often used § 3's definition to conclude that dredges were vessels. *Id.* at 488-90 & n.5. The early case law showed that at the time the Jones Act and LHWCA were passed in the 1920s, a structure's status as a vessel depended on whether the structure was a means of transportation. *Id.* at 491.

Relying on § 3, the Court held that a vessel "is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state

of transit at a particular moment." *Id.* at 497. In other words, the Court rejected the First Circuit's two-pronged test, which had asked whether a craft was used primarily for transportation, and if not whether the craft was motionless or moving at the time of the plaintiff's injury. The Court looked only to whether the dredge could be used for transportation. Because the SUPER SCOOP was not only capable of transporting men and equipment but had actually done so, the Court found that the dredge was a vessel for purposes of the LHWCA. *Id.* at 495.

With respect to the requirement that a vessel be "in navigation," the Court clarified that the requirement was meant to show only that structures could lose their vessel status if they are withdrawn from the water for extended periods. *Id.* at 496. The "in navigation" requirement does not stand apart from § 3 and "is relevant to whether the craft is 'used, or capable of being used' for maritime transportation." *Id.* But "[t]he question remains in all cases whether the watercraft's use 'as a means of transportation on water' is a practical possibility or merely a theoretical one." *Id.*

C. *Stewart* and vessels to be

The district court held that the CAJUN EXPRESS was a vessel under *Stewart* because not only was it capable of transportation but it had also transported workers and equipment from Singapore to the Gulf of Mexico. We disagree, however, that *Stewart* was intended to apply to watercraft that are still under construction. "[W]e cannot overrule the decision of a prior panel unless such overruling is *unequivocally* directed by controlling Supreme Court precedent." *United States v. Zuniga-Salinas*, 945 F.2d 1302, 1306 (5th Cir. 1991) (emphasis added). We conclude that our well-settled body of law in this area has not been effectively overruled.

The language in *Stewart* is admittedly broad, and we have recognized that the Court's decision significantly enlarges the types of *unconventional* and

special purpose watercraft that now must be considered vessels that might not have met the test before *Stewart*. See *Holmes*, 437 F.3d at 448. *Stewart* began, however, by framing the issue before it narrowly: "whether a dredge is a 'vessel' under [the LHWCA]." *Stewart*, 543 U.S. at 484. The Court decided that specific question, concluding that the First Circuit's focus on an existing craft's purpose and movement was inconsistent with the text of § 3 and the established meaning of "vessel" in general maritime law. We thus read *Stewart*'s instruction that a craft is a vessel if it is *capable* of marine transportation in the context of that case to negate the First Circuit's test for an established structure.

Stewart examined an already-completed structure in use for its intended purpose. *Stewart* did not concern what to do with ships and other structures under construction, and so the Court did not address whether § 3's definition of vessel applies to incomplete structures that may be in a dry dock or a floating shipyard. In other words, *Stewart* did not consider whether an incomplete structure that "is not yet an instrumentality of commerce," *Williams*, 452 F.2d at 958, is a vessel in navigation. Rather, *Stewart* stressed that the "in navigation" requirement had nothing to do with locomotion and instead meant that "structures may lose their character as vessels if they have been withdrawn from the water for extended periods of time." *Stewart*, 543 U.S. at 496. But for a structure to be able to lose its vessel status by being taken out of navigation, it must be equally true that a structure may not attain vessel status before it is ever put into "navigation."

Other courts have similarly concluded that an incomplete structure that has not been put into navigation as an instrument of commerce is not a vessel. See *Caruso v. Sterling Yacht & Shipbuilders, Inc.*, 828 F.2d 14, 15-16 (11th Cir. 1987); *Frankel v. Bethlehem-Fairfield Shipyard*, 132 F.2d 634, 635-36 (4th Cir. 1942). Moreover, courts have historically spoken of navigation in tandem with commerce. See, e.g., *The Robert W. Parsons*, 191 U.S. 17, 31 (1903) (holding that

a barge drawn by horses in the Erie Canal was a vessel because "[s]o long as the vessel is engaged in commerce and navigation it is difficult to see how the jurisdiction of admiralty is affected by its means of propulsion"); *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625, 627-28 (1887) (noting that "[a] ship or vessel, used for navigation and commerce, though lying at a wharf, and temporarily made fast thereto, as well as her furniture and cargo, are maritime subjects"); *People's Ferry Co. of Boston v. Beers*, 61 U.S. 393, 401 (1857) ("[T]he admiralty courts now exercise jurisdiction over rivers and inland waters, wherever navigation is or may be carried on, and extends to almost every description of vessel which may be employed in transporting our products to market. . . . The admiralty jurisdiction, in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims, and services, purely maritime, and touching rights and duties appertaining to commerce and navigation.").

That is not to say that only commercial structures may become vessels and implicate admiralty jurisdiction. See, e.g., *Sisson v. Ruby*, 497 U.S. 358, 363-67 (1990) (admiralty jurisdiction in tort requires *inter alia* that an incident have a potentially disruptive effect on maritime commerce and be substantially related to maritime activity, such as navigation, but the tortfeasor's activity may be commercial or noncommercial). Rather, our precedent is not inconsistent with the historical perspective that vessels under construction are treated differently from completed vessels. See *The Francis McDonald*, 254 U.S. 242, 243-44 (1920) (holding in a contract case that shipbuilding has been considered a nonmaritime activity, whether or not the incomplete ship has been launched). We have previously noted "the historical tradition that vessels under construction give rise to neither a maritime contract nor a maritime tort." *Williams*, 452 F.2d at 958 n.5; see also *Alfred v. MV Margaret Lykes*, 398 F.2d 684, 685 (5th Cir. 1968) (holding that an employee may not maintain a tort action against his employer for an injury sustained on a vessel that has been launched but not fully

completed or commissioned). We do not read *Stewart* to change this body of law, so that a structure under construction remains a non-vessel until it is complete and ready for duty upon the sea.

We further think the preclusion from vessel status of crafts still under construction serves several important goals and is consistent with the concern for avoiding uncertainties and possible oscillation in and out of Jones Act status. See *Stewart*, 543 U.S. at 495 (asking whether a watercraft is motionless or moving is the kind of "snapshot" test previously rejected and would impermissibly allow structures to oscillate back and forth between Jones Act coverage).

Our cases show that shipbuilders frequently begin the construction process in a shipyard at one location and then transport the partially completed craft to another location to finish the construction process. See, e.g., *Garret*, 799 F.2d at 1008 (barge hull transported by tug from shipyard in Houma, Louisiana, to Harvey, Louisiana, for completion of superstructure); *Fredieu v. Rowan Cos., Inc.*, 738 F.2d 651, 652 (5th Cir. 1984) (ship partially constructed in Vicksburg, Mississippi, towed to Belle Chasse, Louisiana); *Hollister v. Luke Constr. Co.*, 517 F.2d 920, 921 (5th Cir. 1975) (barge towed from Harvey, Louisiana, to Houma, Louisiana, to complete drilling rig). Along the way, hundreds of employees work to complete these partially-built structures. The CAJUN EXPRESS had over 200 men working on its completion. *Stewart's* application to these vessels to be could have the consequence of creating vessels out of partial structures and transforming many land-based ship construction workers into Jones Act seaman, at least while they work in the service of the ship. At a minimum, it would unnecessarily expand the labyrinth that has developed in the case law concerning seaman status by requiring fact-intensive inquiries in the district courts into the relationship between such workers and the intended vessel. Cf. *Chandris*, 515 U.S. at 356 ("We have made a labyrinth and got lost in it.")

(internal quotation marks and citation omitted)). Marine employers (and their insurers) and employees, however, have an interest "in being able to predict who will be covered by the Jones Act . . . before a particular workday begins." *Id.* at 363.

That interest is hindered with respect to the construction of watercraft because there will be many points along the continuum of a ship's construction at which one could rationally argue it is "practically capable" of transportation and therefore a vessel. For example, a structure might become a vessel when it is merely capable of floatation but is still in dry dock; when it can be merely towed or pushed; when the navigation or propulsion systems are installed; when it has been inspected and commissioned; when it has been accepted for delivery; when a crew has been assigned; or when it is actually put to use. Our prior cases settle this uncertainty by asking whether the craft is complete. We continue to believe that "[f]or there to be a seaman, there must first be a ship," but "an incompleated vessel not yet delivered by the builder is not such a ship." *Williams*, 452 F.2d at 958.

The difficulty of applying *Stewart* to vessels under construction may be seen with respect to the CAJUN EXPRESS. The testimony showed that the rig lacked vital equipment for its operations and that no drilling contractor would have found the CAJUN EXPRESS acceptable for duty in the Gulf of Mexico. It strains reason to say that a craft upon the water that is under construction and is not fit for service is practically capable of transportation.

Moreover, mobile offshore drilling units like the CAJUN EXPRESS are subject to extensive Coast Guard regulations. See 46 C.F.R. §§ 107-09. Before operations begin the unit must receive an Original Certificate of Inspection certifying that it complies with all Coast Guard requirements, including regulations governing lifesaving and firefighting equipment. *Id.* §§ 107.211, 107.231. The record here shows that the Coast Guard performed an initial walk

through of the CAJUN EXPRESS on August 31, 2000, as the first step in the process of certification, but the rig was not put into service until April or May 2001. That the structure was not yet certified as operational and in compliance with all safety requirements casts doubt as to the practicality of its use as a means of transportation. To follow the district court's decision here also runs the risk of concluding that a vessel that may not be legally permitted to operate is nevertheless practically, rather than theoretically, capable of transportation.¹

In short, although *Stewart* instructs that the "in navigation" requirement "is relevant to whether the craft is 'used, or capable of being used' for maritime transportation," 543 U.S. at 496, that instruction does not consider in the first instance when a vessel-to-be *becomes* a vessel. We view that issue as a separate question from whether an unconventional watercraft *is* a vessel. We therefore hold that *Stewart* does not require us to modify our precedent regarding the vessel status of incomplete watercraft. As such, the CAJUN EXPRESS was not a "vessel in navigation," and Cain was not a Jones Act seaman. Cain was thus not entitled to relief under the Jones Act for his September 10, 2000, injury.²

III. Conclusion

¹ We do *not* hold that a watercraft that has not been certified by the Coast Guard can *never* be considered a vessel. See *Holmes*, 437 F.3d at 443-44 (holding that a barge containing a floating dormitory that had not been inspected by or registered with the Coast Guard was a vessel). We note only that the absence of certification when legally required should inform the evaluation of a structure's capability for transportation.

² We note that in the district court Cain argued that even if the CAJUN EXPRESS was not a vessel he was a Jones Act seaman based on his overall employment because he was a seaman before joining the CAJUN EXPRESS and his essential duties never changed. The district court did not reach this issue because it concluded that the CAJUN EXPRESS was a vessel. The parties have not briefed the issue to us, and we express no opinion on its merit. We merely note its existence and point out that it remains unresolved in the district court. Further, Cain's claims with respect to his alleged injuries at the Fontana Center are unresolved.

The district court's denial of Transocean's motion for summary judgment is **REVERSED** and the case is **REMANDED** to the district court for further proceedings consistent with this opinion. Costs shall be borne by Cain.

PRISCILLA R. OWEN, CIRCUIT JUDGE, DISSENTING:

This is a very difficult case, in my view. The panel's opinion sets forth cogent arguments as to why there should be a bright-line rule as to when a vessel under construction becomes a "vessel in navigation" for purposes of determining whether an injured worker was a "seaman" within the meaning of the Jones Act. However, the language used by the United States Supreme Court in *Stewart v. Dutra Construction Company*³ is broad and seems to require us to conclude that the CAJUN EXPRESS is a contrivance that is capable of being used as a means of transportation on water since the CAJUN EXPRESS did in fact transport Cain and others across an ocean.

There are undoubtedly conceptual difficulties in applying the principle that a "contrivance" becomes a vessel in navigation when it is a "watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment."⁴ At some point prior to its actual commissioning, a "contrivance" under construction may become capable of maritime transportation in a physical and practical sense whether moored in the water or in dry dock. The uncertainties as to the hour or day the practical capability of maritime transportation occurs would seem a fertile source of contract and tort litigation and may lead to overlapping insurance arrangements, and unnecessary costs in obtaining that coverage. Additionally, a contrivance under construction may be moored for long periods of time while further construction continues after an initial voyage transported crew members on the seas, as was the case here.

In spite of the certainty and predictability that the panel's decision would bring in many if not most scenarios involving vessels under construction, the

³ 543 U.S. 481 (2005).

⁴ *Id.* at 497.

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CAJUN EXPRESS appears to have all the attributes that the Supreme Court ascribed to a "vessel" in *Stewart*. I therefore, very respectfully, dissent.

The majority opinion, written by Justice Stevens, is a masterpiece of legal reasoning. It is a model of clarity and logic. The majority correctly identifies the legal issue at stake and applies the law to the facts of the case. The majority's reasoning is sound and persuasive. I am in complete agreement with the majority's conclusion.

The dissenting opinion, written by Justice O'Connor, is equally well-written. It presents a compelling argument for its position. However, I believe the majority's reasoning is more convincing. The dissenting opinion relies on a narrow interpretation of the law that I do not believe is correct. The majority's interpretation is more in line with the intent of the statute. I believe the majority's decision is the correct one.

I respectfully dissent from the majority's opinion. I believe the majority has misapplied the law to the facts of this case. I believe the dissenting opinion is more correct.