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WHO IS A SEAMAN?

Recovery for personal injury or death under the Jones Act and, in many instances, the general maritime law is dependent upon the plaintiff's status as a seaman. The term seaman, as recent legal developments reveal, is no longer limited to the traditional bluewater sailor, but has expanded to include a variety of offshore, coastal, and intercoastal workers on an assortment of crafts defined as "vessels." The protective scope of the statute is often determined by a nuance of factors surrounding the employee's activities and the definition of the areas upon which the work occurs.

The Supreme Court first addressed the question of defining a "seaman" in *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370 (1957). The Court held that a shore-side injury does not oust Jones Act coverage. The court concluded that the issue of seaman status is one for the jury to decide.

A three-pronged test has subsequently been developed to determine "seaman" status. To pass this test a worker must:

1. Be on a vessel or identifiable group of vessels in navigation (including special purpose vessels);
2. Have a substantial assignment to and work aboard a vessel or identifiable group of vessels under the same ownership or control; and
3. Aid in the navigation or purpose of the vessel or vessels.

Chandris, Inc. v. Latsis, 515 U.S. 347 (1995); *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337 (1991); *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986); *Beard v. Shell Oil Co.*, 606 F.2d 515 (5th Cir. 1979); *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959). The third category has been expanded to confirm the original *Robison* test of contributing to the function, operation, or welfare of the vessel or its mission, *Beard, supra*, at 517. The seaman need not participate in the vessel's navigational mission.

In order to be classified as a seaman, a worker must have a definite assignment to a vessel or identifiable group of vessels, as opposed to sporadic visits to different vessels. *Harbor Tug and Barge Co. v. Papai*, 520 U.S. 800, 117 S. Ct. 1535, 137 L. Ed. 800 (1997); *Roberts v. Cardinal Services, Inc.*, 266 F.2d 368, 373-78 (5th Cir. 2001); *Bach v. Trident Shipping*, 947 F.2d 1290 (5th Cir. 1991), *cert. denied*, 504 U.S. 931. See *Coats v. Penrod Drilling Corp.*, 5 F.3d 877 (5th Cir.

1993), *aff'd en banc* 61 F.3d 1113 (5th Cir. 1995). On the other hand, a worker assigned to a fixed platform (not a vessel) who is injured while he was temporarily working on an adjoining tender vessel or being transported in a crew boat does not come within the protection of the Jones Act. *Longmire v. Sea Drilling Co.*, 610 F.2d 1342 (5th Cir. 1980). The Ninth Circuit held that an employee who operated a crane on a barge was a land-based worker. He was only aboard the barge when it was on a project for which he was hired. *Cabral v. Healy Tibbits Builders, Inc.*, 128 F.3d 1289 (9th Cir. 1997); *Heise v. Fishing Co. of Alaska, Inc.*, 79 F.3d 903 (9th Cir. 1996). This area remains in a state of judicial flux, and a slight variance in the facts will be determinative of available remedies, monetary recoveries for which can vary greatly.

To establish an individual's status as a seaman for Jones Act purposes, an employee-employer relationship must exist between the plaintiff and defendant. The defendant's control or ownership of the vessel does not determine if the Jones Act is applicable. *Barrios v. Louisiana Constr. Materials Co.*, 465 F.2d 1157 (5th Cir. 1972).

When determining if the plaintiff meets the status requirement for purposes of the Jones Act or general maritime law recovery, the alternative forums and remedies should be noted for those plaintiffs who do not meet the requirements of seaman status. These other remedies will be discussed in subsequent sections of the text.

In *Pizzitolo v. Electro-Coal Transfer Corp.*, 812 F.2d 977 (5th Cir. 1987), the court added a new dimension to the issue of seaman status by stating that if a person were found to be one of the enumerated workers under the Longshore & Harbor Workers' Compensation Act, it would automatically follow that a Jones Act recovery was not possible. The court reasoned that the Jones Act and the Longshore Act are mutually exclusive; therefore, if a worker was covered by one, he could not later claim coverage by the other. This "negative test" for seaman's status has not been widely accepted. The Supreme Court in *Southwest Marine Inc. v. Gizoni*, 498 U.S. 1119 (1991) clearly disagrees with the Fifth Circuit, by holding that the threshold question is whether a person is a "master or member of a crew of a vessel" (the exclusionary language of the Longshore Act) regardless of the job being performed at the time of the accident. The Court states that this is a mixed question of fact and law which must be determined by the jury. In a subsequent appeal from the trial court's judgment finding Mr. Gizoni not to be a "seaman," the Ninth Circuit stressed that

a crewmember could be assigned to more than one vessel in the same ownership or control in order to come within coverage of the Jones Act. *Gizoni v. Southwest Marine, Inc.*, 56 F.3d 1358 (9th Cir. 1995).

The courts generally have held that the voluntary acceptance of worker's compensation payments pursuant to the Longshore Act without a determination of the injured worker's status does not constitute a waiver of the subsequent claim of seaman's status. *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 91, 112 S. Ct. 486, 116 L. Ed. 2d. 405 (1991). The same result probably will be reached in the context of voluntary compensation payments being received by the injured maritime worker pursuant to the terms of a state worker's compensation statute. *Reyes v. Delta Dallas Alpha Corp.*, 199 F.3d 626 (2d Cir. 1999).

OFFSHORE COMPANY and The Fidelity
& Casualty Company of New York,
Appellants-Appellees,

v.

Johnie M. ROBISON, Appellee-Appellant.

ROBISON

v.

OFFSHORE COMPANY and The Fidelity
& Casualty Company of New York.

No. 17445.

United States Court of Appeals
Fifth Circuit.

April 30, 1959.

Before RIVES, CAMERON and WIS-
DOM, Circuit Judges.

WISDOM, Circuit Judge.

The Jones Act gives a "seaman" (not defined) the right to sue in an action at law for damages arising from the neg-

1. The Jones Act is part of the Merchant Marine Act of June 5, 1920. 41 Stat. 1007, 46 U.S.C.A. § 653.

2. See the dissenting opinion of Mr. Justice Harlan in *Grimes v. Raymond Concrete Pile Co.*, 350 U.S. 252, 255, 78 S. Ct. 657, 659, 2 L.Ed.2d 737: "If the

ligence of the owner or personnel of a "vessel" aboard which the seaman is employed.¹ The reach of the Jones Act is a peril of the sea that could hardly have been dreamt of by the landlubbers in the oil business. The Act has always been construed liberally, but recent decisions have expanded the coverage of the Jones Act to include almost any workman sustaining almost any injury while employed on almost any structure that once floated or is capable of floating on navigable waters.² Our decision on this appeal turns on an examination of these cases and the applicability of their rationale to the facts before us.

I.

Johnie Robison was an oil field worker. The complaint alleges that in August, 1956, Offshore Company hired him as a member of the crew of the vessel "Offshore No. 55". Offshore Company says that he was hired as a roustabout at \$1.96 an hour. A roustabout is a general handyman in the oil fields, subject to any kind of duty involving manual labor. At the time of the accident resulting in this litigation Robison was working as a roughneck. A roughneck is a driller's helper, a laborer in a drilling crew who does the hard general work in the rigging and drilling of a well. Robison had never worked as a seaman on board a vessel, as the terms "seaman" and "vessel" are ordinarily understood. He had never carried seaman's papers, and none of the oil crew carried seaman's papers as a condition of employment.

Offshore Company is in the business of drilling and exploring for oil and gas, especially in the Gulf of Mexico. It owns and operates a drilling rig identified as "Offshore No. 55". This is a rig mounted on what Offshore calls a mobile drilling platform and what Robison calls

'standing' requirements of the Jones Act are still to be regarded as having any real content. I can find no room for debate that [Grimes, a pile driver employed to work on a Texas Tower] is not a seaman, unless a 'seaman' is to mean nothing more than a person injured while working at sea."

a barge. At the time of the accident it was resting firmly on the bottom of the Gulf of Mexico, about three miles from the Texas coast. It is 200 feet long, 104 feet wide, and 15 feet deep. It was built by the American Bridge Shipyards. Offshore No. 55 has a raked bow and carries navigation lights, bitts, anchors, bilge pumps, and cranes. It has only a top deck and a lower hull. The hull could not be used for cargo; the barge is strictly a drilling platform. It has no engines, and is moved by tugs from one well location in the Gulf to another. It has living quarters for the crew and a galley in a two story house on top of the deck. Six life rafts are carried, each capable of holding ten men. Regular abandon-ship drills were held aboard Offshore No. 55. Its lifesaving gear was approved by the Coast Guard.

Retractable legs are the distinctive feature of Offshore No. 55. These are eight legs or towers, caissons, twelve feet in diameter, running through the hull, two located on each of the four corners of the barge. When the drilling barge is in position the legs are dropped down to the ocean floor, then hydraulic jacks lift the barge above the water level so that the main deck of the barge may serve as a drilling platform. When the drilling barge is in a floating position, the spuds are recessed so that the barge will have a flat bottom.

The men employed on Offshore No. 55 work ten days on and five days off. The crew remains aboard the vessel when it is moved to well locations. While the vessel is moving, roustabouts and rough-necks prepare the machinery for a new location, secure the pipe and other material on deck, chip rust, paint, wash down decks, catch lines from vessels coming alongside, operate bilge pumps, load and unload supplies.

On the night of the accident, Robison was working on the main deck of the barge. Other workmen were running casing on the drilling floor, twelve feet above the main deck. When casing was needed, it was rolled onto a catwalk, extending from the main deck to the drill-

ing floor in a slanted position, and was pulled up to the drilling floor with the use of an air hoist line through V-doors in the side of the derrick. Robison's job was to crease the threaded ends of the drill casing and to hook the air hoist line onto the sections to be hoisted into the derrick on the drilling floor. Usually chain stoppers are placed across the catwalk to stop the pipe from sliding back down to the main deck. Usually, too, an oil line from the top of the derrick is secured to the casing after the air hoist line pulls it through the V-doors at which time the air hoist line is released and the oil line carries the casing up into the derrick itself.

At the time of the accident there was no chain stopper and the oil line was being used in another operation. One of the sections of casing was hoisted into the V-doors. A casing crew man took off the air hoist line leaving the casing unsecured. Forty feet of pipe, weighing 1620 pounds, slid, skidded, and catapulted down through the V-doors to the catwalk toward Robison. In attempting to escape, Robison caught his foot between a section of drill pipe and a beam. The casing struck the pipe, severely fracturing Robison's leg.

Robison sued the Offshore Company and its liability insurer, Fidelity and Casualty Company of New York on the theory that Robison was a seaman and a member of the crew of the vessel "Offshore No. 55"; as such, respondent owed him the duty to provide a safe and seaworthy vessel, under the Jones Act and the general maritime law. Robison alleged that the accident was caused by unsafe working conditions, unsafe lighting, defective equipment, the absence of a proper chain stopper, and the negligent management of the equipment. In addition to damages for his injury, he claimed maintenance and cure at eight dollars a day for the period of his disability. Respondents denied that Robison was a seaman and that Offshore No. 55 was a vessel; he was a member of a drilling crew who did nothing to assist in the navigation, maintenance or op-

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eration of Offshore No. 55; there is no such thing as a "crew of the vessel" in connection with Offshore No. 55, as that phrase is ordinarily known and related to a vessel in navigation. The respondents alleged that Robison was guilty of contributory negligence. Respondents pleaded that they had paid Robison \$54 a week during his disability and that all expenses for medical care had been paid.

The case was heard before a jury as an action under the Jones Act and the general maritime law. At the conclusion of the evidence, respondents moved for a directed verdict. The motion was denied. The case was submitted to the jury on special interrogatories. Judgment was entered for the plaintiff for \$2250, consisting of the \$3000 damages found by the jury less 25% for the complainant's contributory negligence. The motion for judgment for maintenance was allowed to the extent of 116 days at \$8 a day (\$919) subject to a previous payment of \$878.10. The Court denied defendants' motion for a judgment NOV. Defendants appealed from the final judgment of the lower court. The plaintiff appealed from the order denying a motion for a new trial on quantum only.

II.

[1] There are two aspects to the question at issue: (1) What is required in law to constitute a maritime worker a seaman and a member of a crew? (2) In the circumstances of this case, is the question one for the court or for the jury?

[2] The Jones Act was adopted in 1920. It applies in terms to "any seaman who shall suffer personal injury in the course of his employment". It has

always been interpreted broadly. Thus, in 1926, Mr. Justice Holmes, for the Supreme Court, held that a stevedore was a seaman under the Jones Act. "Words are flexible", the work of a stevedore is "a maritime service formerly rendered by the ship's crew", and Congress wanted to protect men engaged in the same maritime duties whether employed by a stevedore or a ship. *International Stevedoring Co. v. Haverly*, 1926, 272 U.S. 50, 47 S.Ct. 19, 71 L.Ed. 157.

In 1927, partly as a result of *Haverly*, Congress adopted the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C.A. § 901 et seq., covering all maritime workers except masters or "members of a crew of a vessel". The Supreme Court has held that the effect of this act is to restrict the benefits of the Jones Act to "members of a crew of a vessel". *Swanson v. Marra Bros., Inc.*, 328 U.S. 1, 66 S.Ct. 869, 90 L.Ed. 1045. In discussing the effect of the Longshoremen's and Harbor Workers' Act, the First Circuit stated: "The process of liberal construction of the Jones Act cannot now be ignored because Congress has seen fit to pass the Longshoremen's Act. As a result of the cases, we feel constrained to hold that one who does any sort of work aboard a ship in navigation is a 'seaman' within the meaning of the Jones Act." *Carumbo v. Cape Cod S. S. Co.*, 1 Cir., 1941, 123 F.2d 991, 995. In that case the court pointed out that even a cook or an engineer "is aiding in navigation".⁶ Whatever may have been the original intention of Congress, courts have given an extremely liberal interpretation to the terms "seaman" and "member of a crew of any vessel" without provoking any

6. In the instant case implicit in the respondent's argument is the same distinction Mr. Justice Harlan makes in his dissenting opinion in *Senko v. Lacrosse Dredging Corporation*, 1957, 352 U.S. 370, 377, 77 S.Ct. 415, 419, 1 L.Ed.2d 404: "I do not, of course, contend that

men such as ship's cooks cannot be members of a crew merely because their actual jobs have nothing to do with making the vessel move. The vital distinction is that such men do contribute to the functioning of the vessel as a vessel—as a means of transport on water. Not so *Senko*, whose duties had absolutely nothing to do with the dredge in its aspects as a vessel."

congressional amendments restricting the coverage of the act.

Gianfala v. Texas Company, 1955, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775, reversing *Texas Company v. Gianfala*, 5 Cir., 1955, 222 F.2d 382, is the key case in the conversion of offshore oil field workers into seamen. *Gianfala* and other members of a drilling crew slept at a Texas Company oil field camp and did regular oil field work aboard a submersible drilling barge. The barge was resting on the bottom of a bay at the time of the accident. The drilling crew was handling casing pipe in the completion of operations of a well drilled to a depth of 11,000 feet. A lift blew out a piston rod that struck and killed *Gianfala*. The defendant contended that the drilling barge was not a vessel in navigation and that the decedent was an oil field employee whose duties were not primarily in aid of navigation. The trial court held that the decedent's status was a question for the jury. This Court reversed the district court in a unanimous opinion, holding that the facts were undisputed and that the applicability of the Jones Act is a question of law to be determined by the court. As a matter of law, the decedent was not aboard ship, primarily to aid in navigation; "on the contrary he was aboard ship not as a member of the ship's crew, but as a member of the drilling crew" doing work done only by oil field workers. The Supreme Court, in a short per curiam opinion, granted a writ of certiorari, reversed this Court, and remanded the case to the district court with directions to reinstate its judgment.

The Supreme Court, without discussing the law, cited four cases in *Gianfala*: *South Chicago Coal & Dock Co. v. Bas-*

sett, 1940, 309 U.S. 251, 60 S.Ct. 544, 84 L.Ed. 732; *Summerlin v. Massman Construction Co.*, 4 Cir., 1952, 199 F.2d 715; *Wilkes v. Mississippi River Sand & Gravel Co.*, 6 Cir., 1953, 202 F.2d 383, and *Gahagan Construction Corp. v. Armao*, 1 Cir., 1948, 165 F.2d 301, 305. These cases must be examined in order to understand the reasoning behind the per curiam opinion.

In *South Chicago Coal & Dock Co. v. Bassett* the decedent was employed aboard a lighter to facilitate the flow of coal from the lighter to vessels being fueled. He did not work while the lighter was enroute from the dock to the vessel and he had no duties to perform while the lighter was in motion. The Court held that there was sufficient evidence to support a finding of the commissioner that the Longshoremen's Act was the proper remedy and that the decedent was not a member of the crew under the Jones Act. Mr. Justice Hughes held that "the word 'crew' does not have an absolutely unvarying legal significance" [309 U.S. 251, 60 S.Ct. 548.] The determination, therefore, whether a person is a "member of the crew", a word that has a "wide range of variation", is a question of fact to be left to the trier of the facts. The Supreme Court observed, however, that as used in the statute, "crew" seemed to mean "employees on the vessel who are naturally and primarily on board to aid in her navigation".

In *Summerlin v. Massman Construction Co.* the plaintiff was employed as a fireman on a floating derrick anchored in the York River. The derrick had no motive power of its own, no sleeping quarters, and was used in connection with pouring concrete into certain forms incident to building a bridge across the river. On an agreed statement of facts, the Fourth Circuit held that *Summerlin* was a Jones Act seaman and the derrick was a vessel engaged in navigation.⁷

7. The Court considered the case similar to *Jeffrey v. Henderson Bros.*, 4 Cir., 193 F.2d 589. There certain employees on a coal cleaning barge were held to be seamen. The barge had no motive power and was furnished with machinery and equipment for cleaning and screening coal.

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In *Wilkes v. Mississippi River Sand & Gravel Co.* certain laborers were employed in dredging operations. Their duty was to level off gravel pumped up from the river bottom and dumped on the barges where they were working. This was their only duty, a duty somewhat less, one would think, than the duties of those "naturally and primarily on board in aid of navigation". The district court found that the claimants were simply common laborers employed to remove gravel. The Sixth Circuit reversed the lower court [202 F.2d 387], holding, on the authority of *Bassett*, that whether a claimant is a member of a crew is "primarily a question of fact", since "the word 'crew' does not have an absolutely unvarying legal significance". The Court set up three requirements: "(1) that the vessel be in navigation; (2) that there be a more or less permanent connection with the vessel; and (3) that the worker be aboard primarily to aid in navigation". The Court paused only over the third requirement. This it construed as not confined to those who "hand, reef and steer" but applicable "to all whose duties contribute to the operation and welfare of the vessel". The decedents met the required standard. The Court was influenced by the fact that the decedents had a permanent connection with the barge and shared the same hazards as those shared by all aboard.⁸

8. "In our judgment, an employer who hires men to work on the water on vessels engaged in navigation and permits them to have such a permanent connection with the vessel as to expose them to the same hazards of marine service as those shared by all aboard should not be permitted, by merely restricting their duties or by adopting particular nomenclature as descriptive of their tasks, to limit his liability to such employees, in the event of disability or death alleged to have been caused by the negligence of the employer, to the extent prescribed by the Longshoremen's Act." *Wilkes v. Mississippi River Sand & Gravel Co.*, 6 Cir., 1953, 202 F.2d 383, 388.

In *Gahagan Construction Corporation v. Armao* the claimant was a deckhand on a dredge. The dredge pumped silt and sand from the bottom of the Boston harbor and by means of a pipeline extending from the dredge to the shore deposited it as fill on embankments for an airport. The district court refused to use the phrase "member of a crew" in charging the jury. The trial judge stated, however, that in order to be a "seaman" "there must be a connection with a vessel, and that the person must play some part in connection with the labor about the operation and welfare of the vessel while in navigable waters." In holding that such instructions were proper the First Circuit declared: "Although perhaps it would have been preferable for the trial judge to use the term 'member of the crew' and then define it, there is no magic in that phrase that absolutely requires its use in a charge. [These] words are not such as to have any peculiar or particular significance to a jury." [165 F.2d 306.] "Crew includes all those who contribute to the labors about the operation and welfare of the ship" but "each case presents a different situation" and "no single factor is controlling".

[3] There are common denominators in *Gianfala*, *Bassett*, *Summerlin*, *Wilkes*, and *Gahagan* decisions. (1) The claimants are not ordinarily thought of as "seamen" aboard "primarily in aid of navigation", although they may serve the vessel in the sense that the work they perform fits in with the function the vessel serves. *Gianfala* was a member of a drilling crew on a submersible barge, *Summerlin* a fireman on a derrick, *Wilkes* a common laborer on a dredge, *Gahagan* a deckhand on a dredge. They had absolutely nothing to do with navigation, as such, nothing to do with the operations or welfare of a vessel in the sense that a vessel is a means of transport by water, and were not members of a ship's company in the sense that ship's cook or carpenter are necessary or

appropriate members of a ship's complement. [But in the light of the function or mission of the special structure to which they were attached, they served in a capacity that contributed to the accomplishment of its mission in the same way that a surgeon serves as a member of the crew of a floating hospital.] The Bassett decision is the only one of the four cited in which there was judicial sanction of the requirement that the Jones Act seaman must be aboard "primarily in aid of navigation", and in that case the question at issue was the sufficiency of the evidence to justify a holding under the Longshoremen's Act. (2) The "vessels" were not conventional vessels but special purpose structures that in one case was on the bottom of the sea. In other words, under the Jones Act a vessel may mean something more than a means of transport on water.

Senko v. La Crosse Dredging Corp., 1957, 352 U.S. 370, 77 S.Ct. 415, 1 L.Ed. 2d 404, rehearing denied 353 U.S. 931, 77 S.Ct. 716, 1 L.Ed.2d 724 resolved some of the doubts the per curiam opinion in Gianfala raised. Senko was a handyman on a dredge. The dredge was anchored to shore and was used as a stationary earth-removing machine. He had applied to his union (Common Laborer's Union) for a job. The foreman of a construction gang assigned him to a job as "deckhand" or "laborer" on the dredge. Senko worked an eight hour shift, ran errands on shore, was paid by the hour, lived at home, drove back and forth each day, and brought his own meals to work. He had no duties connected with moving the dredge. Senko was injured ashore while placing a signal lantern from the dredge in a shack on land. He filed suit under the Jones Act in an Illinois state court. The jury returned a verdict in his favor, but it was set aside on appeal for lack of evidence to support a finding that he was a member of the crew. The Supreme Court reversed the holding and reiterated its position that such cases present a question of fact for the jury to decide. The majority opinion clarifies the Bassett holding: 10

"As we have said before, this Court does not normally sit to re-examine a finding of the type that was made below. We believe, however, that our decision in *South Chicago Coal & Dock Co. v. Bassett*, supra, has not been fully understood. Our holding there that the determination of whether an injured person was a 'member of a crew' is to be left to the finder of fact meant that juries have the same discretion they have in finding negligence or any other fact. The essence of this discretion is that a jury's decision is final if it has a reasonable basis, whether or not the appellate court agrees with the jury's estimate.

Because there was testimony introduced by petitioner tending to show that he was employed almost

10. Mr. Justice Harlan, however, points out: "[Bassett] does not suggest that a jury's verdict on this issue is to be accorded some special sanctity. That case simply held that a District Court could not grant a trial de novo on an issue within the primary jurisdiction of the Administrator, under the Longshoremen's Act. * * * [T]his Court did in fact examine the Administrator's determination that the plaintiff there was not a member of a crew, and sustained it only after concluding that it was supported by the evidence. Further, the Court's citation of *Bassett* in *Cantey v. McLain Line, Inc.*, 312 U.S. 687, 61 S.Ct. 828, 85 L.Ed. 1111, supra, would seem in context to imply that the Court regarded the result in *Bassett* as reflecting its own independent determination as to the status of the petitioner there, rather than as a decision passing merely on the scope of judicial review to be accorded to the determination of the Administrator. And, if that be so, *Bassett* should surely control the result here, since if the *Bassett* petitioner was, as a matter of law not a 'member of a crew,' a fortiori, Senko was not." *Senko v. La Crosse Dredging Corporation*, 1957, 352 U.S. 370, 77 S.Ct. 415, 420, 1 L.Ed.2d 404.

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solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have a significant navigational function when the dredge was put in transit, we hold there was sufficient evidence in the record to support the finding that petitioner was a member of the dredge's crew. cf. *Gianfala v. Texas Co.*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775, reversing 5 Cir., 222 F.2d 382. Accordingly, we reverse the decision below."

In finding support for the jury finding, the majority took into consideration Senko's duty "to maintain the dredge during its anchorage and for its future trips". This, the majority felt, "would have a significant navigational function when the dredge was put in transit". Substantially all of the petitioner's duties were performed on or for the dredge and therefore "a normal inference is that the petitioner was responsible for its seaworthiness". We take the phrase "significant navigational function" to mean something less than the phrase "aboard naturally and primarily in aid of navigation".

In *Grimes v. Raymond Concrete Pile Co.*, 1958, 356 U.S. 252, 78 S.Ct. 687, 688, 2 L.Ed.2d 737 a contractor was building a "Texas Tower", a radar station, 110 miles seaward of Cape Cod, permanently affixed to the floor of the ocean. The tower was constructed under a government contract subject to the Defense Bases Act (42 U.S.C.A. §§ 1651-1654).

This statute allows recovery for an injured employee under the Longshoremen's and Harbor Workers' Act, but expressly excepts members of a crew of a vessel; their remedy is under the Jones Act. Grimes was employed as a pile driver. For several weeks he assisted in the completion of the tower in the Bethlehem East Boston Yards. When the tower was towed to sea, he and twenty-five other workmen lived on it and kept it in condition. After the tower was anchored at its permanent site,

Grimes performed only pile-driving. He was drowned when he fell out of a life ring used to carry him from a tug to the tower. The Supreme Court, reversing the First Circuit, 245 F.2d 437, held that the "petitioner's evidence presented an evidentiary basis for a jury's finding whether or not the petitioner was a member of the crew of any vessel", citing *Senko*, *Gianfala*, and *Bassett*. Mr. Justice Harlan, dissenting, could "find no room for debate that this individual is not a seaman, unless a 'seaman' is to mean nothing more than a person injured while working at sea".

Shortly after deciding that a worker driving piles might be a seaman, the Supreme Court decided that an employee doing odd jobs around his employer's wharf might also be a seaman. *Butler v. Whiteman*, 1958, 356 U.S. 271, 78 S.Ct. 734, 735, 2 L.Ed.2d 754. *Butler* was last seen alive running across a barge to a tug, both owned by *Butler's* employer. The plaintiff's theory of the case was that the respondent was liable under the Jones Act because of his negligent failure to provide a gangplank for crossing between the two vessels. For some months before the accident the tug had been withdrawn from navigation as inoperable and for a year the tug had neither captain nor crew. Mr. Justice Harlan, with whom Mr. Justice Whitaker joined, dissented: "[It] taxes imagination to the breaking point to consider [*Butler*] * * * a seaman."

[4] Appellants in the instant case—correctly, we think—take the position that the traditional function of court and jury still obtains, in spite of the *Gianfala* to *Grimes*—*Butler* series of cases, and that a court, trial or appellate, may in the proper case hold that there is no reasonable evidentiary basis to support a jury finding that an injured person is a seaman and member of a crew of a vessel under the Jones Act. They contend that this is such a case and rely on *Texas Company v. Savoie*, 5 Cir., 1957, 240 F.2d 674, 675, rehearing denied 5 Cir., 242 F.2d 667, 668, certiorari denied 355 U.S. 840, 78 S.Ct. 49, 2 L.Ed.2d 51.

In the Savoie case the decedent, Guidry, was killed while working on a fixed platform in a navigable lake. Guidry, a roustabout, was carried from well-platform to well-platform aboard a lugger, the "Mary Virginia". He was on one of these platforms when he was killed by an explosion. It was contended that he was a member of the crew of the lugger and that he was about the overall function for which that vessel was being operated in navigation when he met his death. The jury found that he was a member of the crew of the "Mary Virginia". This Court set aside the verdict of the jury.

"We agree with appellant that the Supreme Court in *Texas Co. v. Gianfala*, supra, did not intend to do away with the established federal procedure, * * *. From the undisputed facts in this case, the decedent was employed as a roustabout by appellant. He was employed to work on the platforms, not on the vessel. There is not substantial evidence to support the jury's finding that he was a member of the crew. He was an oilfield worker strictly, and not a boat crewman. His duties did not pertain to navigation, not even to the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker. He had no such duties to perform. He was merely a passenger on the *Mary Virginia*, and he was not on the boat when he met his death."

On rehearing this Court found a "factual distinction between [*Senko* and *Savoie* in] that in the [*Savoie* case] there was no evidence reasonably tending to show that the decedent was a member of the crew"; he was "merely a passenger" and had no duties to perform in connection with its operation.

[5] Reading *Savoie* as a gloss on the cases cited, particularly *Senko*, this Court's position may be stated, affirmatively: there is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured

workman was assigned permanently to a vessel (including special-purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

The *Savoie* case is not this case. There was no showing that *Savoie* performed any duties on the lugger; he was a passenger on a water-taxi. His duties related entirely to work on permanently fixed well-platforms. Robison was attached, permanently, to Offshore No. 55. Offshore No. 55 is not a man-made island. Like the submersible barge in *Gianfala*, Offshore No. 55 was a special purpose vessel, a floating drilling platform. Robison's duties aboard that vessel contributed to her mission, to the operating function she was designed to perform as a sea-going drilling platform. Some of Robison's duties had a "significant navigational function", like *Senko's* in that they related to the seaworthiness, maintenance (welfare) of Offshore No. 55. Some of his duties—to which a jury might have attached importance—though minor are traditionally the duties of seamen in that they related to the movement of the vessel as a means of transport on water.

[6] Attempts to fix unvarying meanings have a firm legal significance to such terms as "seaman", "vessel", "member of a crew" must come to grief on the facts. These terms have such a wide range of meaning, under the Jones Act as interpreted in the courts, that, except

in rare cases, only a jury or trier of facts can determine their application in the circumstances of a particular case. Even where the facts are largely undisputed, the question at issue is not solely a question of law when, because of conflicting inferences that may lead to different conclusions, among reasonable men, a trial judge cannot state an unvarying rule of law that fits the facts. The Jones Act cases involving coverage are similar in this respect to many negligence and contributory negligence cases.

[7] Under the Jones Act, judicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that the claimant was a seaman, a member of a crew of a vessel. In the recent case of *Rogers v. Missouri Pacific R. Co.*, 1957, 352 U.S. 500, 507, 77 S.Ct. 443, 448, 1 L.Ed.2d 493, in an analogous situation, the Supreme Court stated that under the FELA "the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, *even the slightest*, in producing the injury or death for which damages are sought". Even if the test were *substantial supporting evidence*, on the record as it comes to us, we would have to hold that there was a sufficient evidentiary basis for the trial court to submit the case to the jury.

III.

[8-10] Appellants complain of certain instructions of the trial court, especially on the ground that the instructions minimized the test that in order to recover the worker be "aboard primarily to aid in navigation". Our review of the cases shows this test has been watered

down until the words have lost their natural meaning. On the *Senko* facts, "significant navigational function" is not an equivalent test. [352 U.S. 370, 77 S.Ct. 418.] With due deference to the Supreme Court, we attach less importance to either of these catchphrases than we do to the cases piled on cases in which recovery is allowed when by no stretch of the imagination can it be said that the claimant had anything to do with navigation and is a member of the ship's company only in the sense that his duties have a connection with the mission or the function of the floatable structure where he was injured.

There is no reason for lamentations. Expansion of the terms "seaman" and "vessel" are consistent with the liberal construction of the Act that has characterized it from the beginning and is consistent with its purposes. Within broad limits of what is reasonable, Congress has seen fit to allow juries to decide who are seamen under the Jones Act. There is nothing in the act to indicate that Congress intended the law to apply only to conventional members of a ship's company. The absence of any legislative restriction has enabled the law to develop naturally along with the development of unconventional vessels, such as the strange-looking specialized watercraft designed for oil operations offshore and in the shallow coastal waters of the Gulf of Mexico. Many of the Jones Act seamen on these vessels share the same marine risks to which all aboard are subject. And in many instances Jones Act seamen are exposed to more hazards than are blue-water sailors. They run the risk of top-heavy drilling barges collapsing. They run all the risks incident to oil drilling.

We find the trial judge's instructions fair, accurate, thorough, in step with the law.

IV.

[11] The admiralty doctrine of absolute liability for unseaworthiness is based on protection of seamen who sign articles for a voyage and are then under the absolute control of a master with power to order seamen to do the ship's work in any weather, under any conditions, using such equipment as may be furnished by the shipowner. Appellants argue that the warranty of seaworthiness has no application here.

Seas Shipping Co. v. Sieracki, 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099 applied the doctrine of recovery for unseaworthiness to a longshoreman; *Pope & Talbot, Inc. v. Hawn*, 1953, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143, to a workman for an independent contractor who was adjusting "feeders" used to load a vessel with grain; *Alaska Steamship Co. v. Petterson*, 1954, 347 U.S. 396, 74 S.Ct. 601, 98 L.Ed. 798, to a stevedore injured because of the breaking of a snatch-block brought aboard ship by the stevedore's employer. *Rogers v. United States Line*, 1954, 347 U.S. 984, 74 S.Ct. 849, 98 L.Ed. 1120 affirmed the broad application of the warranty of seaworthiness, as stated in *Peterson*. These and other cases stretch the warranty close to its breaking point in applying it to land-based harbor workers whose status as seamen is more dubious than *Robison's*. The only contrary authority cited by appellants is an able opinion by Judge Barnes for the Ninth Circuit, *Berryhill v. Pacific Far East Lines*, 1957, 238 F.2d 385. In that case Judge Barnes pointed out that in *Sieracki* and similar cases recovery was allowed because the stevedores do a seaman's work and incur a seaman's hazards; not so with *Berryhill*, who was injured when a grinding wheel furnished by his employer, a shipyard corporation,

disintegrated while he was making repairs to machinery of a ship in dry-dock.

On the facts of this case, there was sufficient evidence for the case to go to the jury for the determination of whether *Robison* was a seaman, a member of the crew of a vessel for purposes of the Jones Act and for purposes of recovering under the warranty of seaworthiness.

V.

We have considered all of the other points relied on by the parties to this appeal. We find it unnecessary to discuss these points.

The judgment is

Affirmed.

McDERMOTT INTERNATIONAL, INC., *Petitioner*

JON C. WILANDER, *Respondent*

Supreme Court of the United States, February 19, 1991
No. 89-1474

Before: Rehnquist, C.J., and White, Marshall, Blackmun, Stevens, O'Connor, Scalia, Kennedy and Souter, JJ.

On writ of certiorari to the United States Court of Appeals for the Fifth Circuit, 1990 AMC 2529, 887 F.2d 88. Affirmed.

JUSTICE O'CONNOR delivered the opinion of the Court.

The question in this case is whether one must aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act, 46 U.S.C. App. §688.

I

Jon Wilander worked for McDermott International as a paint foreman. His duties consisted primarily of supervising the sandblasting and painting of various fixtures and piping located on oil drilling platforms in the Persian Gulf. On July 4, 1983, Wilander was inspecting a pipe on one such platform when a bolt serving as a plug in the pipe blew out under pressure, striking Wilander in the head. At the time, Wilander was assigned to the American-flag vessel *M/V Gates Tide*, a "paint boat" chartered to McDermott that contained equipment used in sandblasting and painting the platforms.

Wilander sued McDermott in the United States District Court for the Western District of Louisiana, seeking recovery under the Jones Act for McDermott's negligence related to the accident. McDermott moved for summary judgment, alleging that, as a matter of law, Wilander was not a "seaman" under the Jones Act, and therefore not entitled to recovery. The District Court denied the motion. In a bifurcated trial, the jury first determined Wilander's status as a seaman. By special interrogatory, the jury found that Wilander was either permanently assigned to, or performed a substantial amount of work aboard, the *Gates Tide*, and that the performance of his duties contributed to the function of the *Gates Tide* or to the accomplishment of its mission, thereby satisfying the test for seaman status established in *Offshore Co. v. Robison*, 1959 AMC 2049, 266 F.2d 769 (5 Cir. 1959). The District Court denied McDermott's motion for judgment based on the jury findings.

The case then proceeded to trial on the issues of liability and damages. The jury found that McDermott's negligence was the primary cause of Wilander's injuries, but that Wilander had been 25% contributorily negligent. The jury awarded Wilander \$337,500. The District Court denied McDermott's motion for judgment notwithstanding the verdict, and both parties appealed.

The United States Court of Appeals for the Fifth Circuit affirmed the determination of seaman status, finding sufficient evidence to support the jury's finding under the *Robison* test. 1990 AMC 2529, 2532, 887 F.2d 88, 90 (1989). McDermott asked the court to reject the *Robison* requirement that a seaman "contribut[e] to the function of the vessel or

to the accomplishment of its mission," *Robison*, supra, 1959 AMC at 2062, 266 F.2d at 779, in favor of the more stringent requirement of *Johnson v. John F. Beasley Construction Co.*, 1985 AMC 369, 742 F.2d 1054 (7 Cir. 1984). In that case, the Court of Appeals for the Seventh Circuit—relying on cases from this Court requiring that a seaman aid in the navigation of a vessel—held that seaman status under the Jones Act may be conferred only on employees who make "a significant contribution to the maintenance, operation, or welfare of the transportation function of the vessel." *Id.* 1985 AMC at 382, 742 F.2d at 1063 (emphasis added).

The Fifth Circuit here concluded that Wilander would not meet the requirements of the *Johnson* test, but reaffirmed the rule in *Robison* and held that Wilander was a "seaman" under the Jones Act. 1990 AMC at 2532, 887 F.2d at 90-91. We granted certiorari, 496 U.S. —, 1990 AMC 2699 (1990), to resolve the conflict between the *Robison* and *Johnson* tests on the issue of the transportation/navigation function requirement, and now affirm.

II

A

In 1903, in *The Osceola*, 189 U.S. 158, this Court summarized the state of seaman's remedies under general maritime law. Writing for the Court, Justice Brown reviewed the leading English and American authorities and declared the law settled on several propositions:

- "1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.
- "2. That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship. . . .
- "3. That all the members of the crew . . . are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.

"4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew. . . ." *Id.* at 175.

The Osceola affirmed a seaman's general maritime right to maintenance and cure, wages, and to recover for unseaworthiness, but excluded seamen from the general maritime negligence remedy.

Congress twice attempted to overrule *The Osceola* and create a negligence action for seamen. The Merchant Marine Act of 1915, 38 Stat. 1164, dealt with proposition 3 of *The Osceola*, the fellow servant doctrine. Section 20 of the 1915 Act provided: "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority." 38 Stat. 1185. The change was ineffective. Petitioner in *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372 (1918), a fireman on board the steamship *J. L. Luckenbach*, attempted to recover from the ship's owner for injuries resulting from the alleged negligence of a superior officer. The Court explained that the 1915 Act was "irrelevant." *Id.* at 384. The Act successfully established that the superior officer was not Chelentis' fellow servant, but Congress had overlooked *The Osceola*'s fourth proposition. The superior officer was no longer a fellow servant, but he was still a member of the crew. Under proposition four, there was no recovery for negligence. 247 U.S. at 384.

Congress tried a different tack in 1920. It passed the Jones Act, which provides a cause of action in negligence for "any seaman" injured "in the course of his employment." 46 U.S.C. App. §688. The Act thereby removes the bar to negligence articulated in *The Osceola*.

The Jones Act does not define "seaman." Neither does *The Osceola*; it simply uses the term as had other admiralty courts. We assume that the Jones Act uses "seaman" in the same way. For one thing, the Jones Act provides what *The Osceola* precludes. "The only purpose of the Jones Act was to remove the bar created by *The Osceola*, so that seamen would have the same rights to recover for negligence as other tort victims." G. Gilmore & C. Black, *The Law of Admiralty* 328-329 (2d ed. 1975). See also *Warner v. Goltra*, 293 U.S. 155, 159, 1934 AMC 1436, 1441 (1934). The Jones Act, responding directly to *The Osceola*, adopts without further elaboration the term used in *The Osceola*. Moreover, "seaman" is a maritime term of art. In the absence of contrary indication, we assume that when a statute uses such a term, Congress intended it to have its established meaning. See *Morissette v. United States*, 342 U.S.

246, 263 (1952); *Gilbert v. United States*, 370 U.S. 650, 658 (1962). Our first task, therefore, is to determine who was a seaman under the general maritime law when Congress passed the Jones Act.

B

Since the first Judiciary Act, federal courts have determined who is eligible for various seamen's benefits under general maritime law. Prior to the Jones Act, these benefits included the tort remedies outlined in *The Osceola* and a lien against the ship for wages. See generally Gilmore & Black, *supra*, at 35-36, 281; *The John G. Stevens*, 170 U.S. 113, 119 (1898); *The Osceola*, *supra*, at 175. Certain early cases limited seaman status to those who aided in the navigation of the ship. The narrow rule was that a seaman—sometimes referred to as a mariner—must actually navigate: "[T]he persons engaged on board of her must have been possessed of some skill in navigation. They must have been able to 'hand, reef and steer,' the ordinary test of seamanship." *The Canton*, 5 F. Cas. 29, 30 (No. 2,388) (D Mass. 1858). See also *Gurney v. Crockett*, 11 F. Cas. 123, 124 (No. 5,874) (SDNY 1849).

Notwithstanding the aid in navigation doctrine, federal courts throughout the last century consistently awarded seamen's benefits to those whose work on board ship did not direct the vessel. Firemen, engineers, carpenters, and cooks all were considered seamen.

Some courts attempted to classify these seamen under a broad conception of aid in navigation that included those who aided in navigation indirectly by supporting those responsible for moving the vessel: "[T]he services rendered must be necessary, or, at least, contribute to the preservation of the vessel, or of those whose labour and skill are employed to navigate her." *Trainor v. The Superior*, 24 F. Cas. 130, 131 (No. 14,136) (ED Pa. 1834).

By the middle of the 19th century, the leading admiralty treatise noted the wide variety of those eligible for seamen's benefits: "Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, kitchen boys, engineers, pilots, firemen, deck hands, waiters,—women as well as men,—are mariners." E. Benedict, *The American Admiralty* §278, p. 158 (1850). Benedict concluded that American admiralty courts did not require that seamen have a connection to navigation.

195

By the late 19th and early 20th centuries, federal courts abandoned the navigation test altogether, including in the class of seamen those who worked on board and maintained allegiance to the ship, but who performed more specialized functions having no relation to navigation. The crucial element in these cases was something akin to Benedict's "great purpose of the voyage." Thus, in holding that a fisherman, a chambermaid, and a waiter were all entitled to seamen's benefits, then-Judge Brown, later the author of *The Osceola*, eschewed reference to navigation: "[A]ll hands employed upon a vessel, except the master, are entitled to a [seaman's lien for wages] if their services are in furtherance of the main object of the enterprise in which she is engaged." *The Minna*, 11 Fed. 759, 760 (E.D. Mich. 1882). Judge Learned Hand rejected a navigation test explicitly in awarding seamen's benefits to a bartender: "As I can see in principle no reason why there should be an artificial limitation of rights to those engaged in the navigation of the ship, to the exclusion of others who equally further the purposes of her voyage, . . . I shall decide that the libellant has a lien for his wages as bartender." *The J.S. Warden*, 175 Fed. 314, 315 (S.D.N.Y. 1910).

An 1883 treatise declared, "[a]ll persons employed on a vessel to assist in the main purpose of the voyage are mariners, and included under the name of seamen." M. Cohen, *Admiralty* 239.

We believe it settled at the time of *The Osceola* and the passage of the Jones Act that general maritime law did not require that a seaman aid in navigation. It was only necessary that a person be employed on board a vessel in furtherance of its purpose. We conclude therefore that, at the

time of its passage, the Jones Act established no requirement that a seaman aid in navigation. Our voyage is not over, however.

As had the lower federal courts before the Jones Act, this Court continued to construe "seaman" broadly after the Jones Act. In *International Stevedoring Co. v. Haverty*, 272 U.S. 50, 1926 AMC 1638 (1926), the Court held that a stevedore is a "seaman" covered under the Act when engaged in maritime employment. Haverty was a longshore worker injured while stowing freight in the hold of a docked vessel. The Court recognized that "as the word is commonly used, stevedores are not 'seamen.'" *Id.*, 272 U.S. at 52, 1926 AMC at 1639. "But words are flexible. . . . We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship." *Ibid.*

Congress would, and did, however. Within six months of the decision in *Haverty*, Congress passed the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. (part 2) 1424, as amended, 33 U.S.C. §§901-950. The Act provides recovery for injury to a broad range of land-based maritime workers, but explicitly excludes from its coverage "a master or member of a crew of any vessel." 33 U.S.C. §902(3)(G). This Court recognized the distinction, albeit belatedly, in *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 1946 AMC 715 (1946), concluding that the Jones Act and the LHWCA are mutually exclusive. The LHWCA provides relief for land-based maritime workers, and the Jones Act is restricted to "a master or member of a crew of any vessel": "We must take it that the effect of these provisions of the [LHWCA] is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the *Haverty* case only such rights to compensation as are given by the [LHWCA]." *Id.*, 328 U.S. at 7, 1946 AMC at 718-19. "[M]aster or member of a crew" is a refinement of the term "seaman" in the Jones Act; it excludes from LHWCA coverage those properly covered under the Jones Act. Thus, it is odd but true that the key requirement for Jones Act coverage now appears in another statute.

With the passage of the LHWCA, Congress established a clear distinction between land-based and sea-based maritime workers. The latter, who owe their allegiance to a vessel and not solely to a land-based

employer, are seamen. Ironically, on the same day that the Court decided *Swanson* it handed down *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946). With reasoning remarkably similar to that in *Haverty*, the Court extended to a stevedore the traditional seamen's remedy of unseaworthiness in those cases where the stevedore "is doing a seaman's work and incurring a seaman's hazards." *Id.*, 328 U.S. at 99, 1946 AMC at 708. It took Congress a bit longer to react this time. In 1972 Congress amended the LHWCA to bar longshore and harbor workers from recovery for breach of the duty of seaworthiness. See 86 Stat. 1263, 33 U.S.C. §905(b); *Miles v. Apex Marine Corp.*, 498 U.S. —, —, 1991 AMC 1, 6-7 (1990). Whether under the Jones Act or general maritime law, seamen do not include land-based workers.

The LHWCA does not change the rule that a seaman need not aid in navigation. "Member of a crew" and "seaman" are closely related terms. Indeed, the two were often used interchangeably in general maritime cases. See, e.g., *The Osceola*, 189 U.S. at 175; *The Buena Ventura*, 243 Fed. 797, 799 (SDNY 1916). There is nothing in these cases, or the LHWCA, to indicate that members of a crew are required to navigate. The "member of a crew" exception in the LHWCA overrules *Haverty*; "master or member of a crew" restates who a "seaman" under the Jones Act is supposed to be: a sea-based maritime employee.

III

The source of the conflict we resolve today is this Court's inconsistent use of an aid in navigation requirement. The inconsistency arose during the 19 years that passed between the enactment of the LHWCA in 1927 and the decision in *Swanson* in 1946—19 years during which the Court did not recognize the mutual exclusivity of the LHWCA and the Jones Act.

IV

We think the time has come to jettison the aid in navigation language. That language, which had long been rejected by admiralty courts under general maritime law, and by this Court in *Warner*, a Jones Act case, slipped back in through an interpretation of the LHWCA at a time when the LHWCA had nothing to do with the Jones Act.

We now recognize that the LHWCA is one of a pair of mutually exclusive remedial statutes that distinguish between land-based and sea-based maritime employees. The LHWCA restricted the definition of "seaman" in the Jones Act only to the extent that "seaman" had been taken to include land-based employees. There is no indication in the Jones Act, the LHWCA, or elsewhere, that Congress has excluded from Jones Act remedies those traditional seamen who owe allegiance to a vessel at sea, but who do not aid in navigation.

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In his dissent in *Sieracki*, Chief Justice Stone chastised the Court for failing to recognize the distinct nature of land-based and sea-based employment. Traditional seamen's remedies, he explained, have been "universally recognized as growing out of the status of the seaman and his peculiar relationship to the vessel, and as a feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to sea in ships are subjected." 328 U.S. at 104, 1946 AMC at 712. It is this distinction that Congress recognized in the LHWCA and the Jones Act. See *id.*, 328 U.S. at 106, 1946 AMC at 713; *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 1946 AMC 715 (1946). It also explains why all those with that "peculiar relationship to the vessel" are covered under the Jones Act, regardless of the particular job they perform.

We believe the better rule is to define "master or member of a crew" under the LHWCA, and therefore "seaman" under the Jones act, solely in terms of the employee's connection to a vessel in navigation. This rule best explains our case law, and is consistent with the pre-Jones Act interpretation of "seaman" and Congress' land-based/sea-based distinction. All who work at sea in the service of a ship face those particular perils to which the protection of maritime law, statutory as well as decisional, is directed. See generally Robertson, *A New Approach to Determining Seaman Status*, 64 Texas L. Rev. 79 (1985). It is not the employee's particular job that is determinative, but the employee's connection to a vessel.

Shortly after *Butler*, our last decision in this area, the Court of Appeals for the Fifth Circuit attempted to decipher this Court's seaman status cases. See *Offshore Co. v. Robison*, 1959 AMC 2049, 266 F.2d 769 (5 Cir. 1959). The Fifth Circuit correctly determined that, regardless of its language, this Court was no longer requiring that seamen aid in navigation. *Id.*, 1959 AMC at 2058-59, 266 F.2d at 776. As part of its test for seaman status, *Robison* requires that a seaman's duties "contribut[e] to the function of the vessel or to the accomplishment of its mission." *Id.*, 1959 AMC at 2062, 266 F.2d at 779.

The key to seaman status is employment-related connection to a vessel in navigation. We are not called upon here to define this connection in all details, but we hold that a necessary element of the connection is that a seaman perform the work of a vessel. See *Columbia Casualty Co. v. Lawson*, 1938 AMC 300, 301-02, 94 F.2d 190, 192 (5 Cir. 1938) ("There is implied a definite and permanent connection with the vessel, an obligation to forward her enterprise"), cited approvingly in *Norton*, 321 U.S.

at 573, 1944 AMC at 343. In this regard, we believe the requirement that an employee's duties must "contribut[e] to the function of the vessel or to the accomplishment of its mission" captures well an important requirement of seaman status. It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work.

V

Jon Wilander was injured while assigned to the *Gates Tide* as a paint foreman. He did not aid in the navigation or transportation of the vessel. The jury found, however, that Wilander contributed to the more general function or mission of the *Gates Tide*, and subsequently found that he was a "seaman" under the Jones Act. McDermott argues that the question should not have been given to the jury. The company contends that, as a matter of law, Wilander is not entitled to Jones Act protection because he did not aid in navigation by furthering the transportation of the *Gates Tide*.

We have said that seaman status under the Jones Act is a question of fact for the jury. In *Bassett*, an LHWCA case, the Court held that Congress had given to the deputy commissioner, an administrative officer, the authority to determine who is a "member of a crew" under the LHWCA. 369 U.S. at 257-258, 1940 AMC at 330-31. If there is evidence to support the deputy commissioner's finding, it is conclusive. *Ibid.* In *Senko*, we applied the same rule to findings by the jury in Jones Act cases. 352 U.S. at 374, 1957 AMC at 895. "[A] jury's decision is final if it has a reasonable basis." *Ibid.* We are not asked here to reconsider this rule, but we note that the question of who is a "member of crew," and therefore who is a "seaman," is better characterized as a mixed question of law and fact. When the underlying facts are established, and the rule of law is undisputed, the issue is whether the facts meet the statutory standard. See *Pullman-Standard v. Swint*, 456 U.S. 273, 289, n. 19 (1982) (defining a mixed question).

It is for the court to define the statutory standard. "Member of a crew" and "seaman" are statutory terms; their interpretation is a question of law. The jury finds the facts and, in these cases, applies the legal standard, but the court must not abdicate its duty to determine if there is a reasonable basis to support the jury's conclusion. If reasonable persons, applying the proper legal standard, could differ as to whether the employee was a "member of a crew," it is a question for the jury. See

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Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-251 (1986). In many cases, this will be true. The inquiry into seaman status is of necessity fact-specific; it will depend on the nature of the vessel, and the employee's precise relation to it. See *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187, 190, 1952 AMC 12, 14 (1952) ("The many cases turning upon the question whether an individual was a 'seaman' demonstrate that the matter depends largely on the facts of the particular case and the activity in which he was engaged at the time of injury"). Nonetheless, summary judgment or a directed verdict is mandated where the facts and the law will reasonably support only one conclusion. *Anderson*, supra, at 248, 250-51.

The question presented here is narrow. We are not asked to determine if the jury could reasonably have found that Wilander had a sufficient connection to the *Gates Tide* to be a "seaman" under the Jones Act. We are not even asked whether the jury reasonably found that Wilander advanced the function or mission of the *Gates Tide*. We are asked only if Wilander should be precluded from seaman status because he did not perform transportation-related functions on board the *Gates Tide*. Our answer is no. Accordingly, the judgment of the Court of Appeals is affirmed.

H
T

SOUTHWEST MARINE, INC., PETITIONER v. BYRON GIZONI

No. 90-584

SUPREME COURT OF THE UNITED STATES

502 U.S. 81; 112 S. Ct. 436; 116 L. Ed. 2d 405; 1991 U.S. LEXIS 7061; 60 U.S.L.W. 4020; 15 OSHC (BNA) 1369; 1992 AMC 305; 91 Daily Journal DAR 14793

October 15, 1991, Argued

December 4, 1991, Decided

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

DISPOSITION: 909 F.2d 385, affirmed.

SYLLABUS

Petitioner Southwest Marine, Inc., a ship repair facility operator, owns several floating platforms that, among other things, support ship repairmen engaged in their work. Respondent Gizoni, a rigging foreman, worked on the platforms and rode them as they were towed into place. Disabled when his foot broke through a wooden sheet covering a hole in a platform's deck, he applied for, and received, medical and compensation benefits from petitioner pursuant to the Longshore and Harbor Workers' Compensation Act (LHWCA). He later brought suit against petitioner under, *inter alia*, the Jones Act, alleging that he was a seaman injured as a result of his employer's negligence. The District Court granted petitioner's motion for summary judgment concluding that, as a matter of law, Gizoni was not a Jones Act seaman, and that he was a harbor worker precluded from bringing his action by the LHWCA, which provides the exclusive remedy for a maritime employee, 33 U.S.C. § 905(a). The term employee includes, *inter alios*, any harbor worker, including a ship repairman, but not "a master or member of a crew of any vessel," § 902(3). The Court of Appeals reversed both determinations. It held that questions of fact existed as to Gizoni's seaman status;

and it rejected the notion that any employee whose work involved ship repair was necessarily restricted to remedy under the LHWCA, reasoning that coverage under the Jones Act or the LHWCA depended not on the claimant's job title, but on the nature of the claimant's work and Congress' intent in enacting those statutes.

Held: A maritime worker whose occupation is one of those enumerated in the LHWCA may be a seaman within the meaning of the Jones Act. Pp. 86-92.

(a) It cannot be the case that, as a matter of law, the LHWCA provides the exclusive remedy for all harbor workers, since the LHWCA and its exclusionary provision do not apply to a harbor worker who is also a "member of a crew of any vessel," a phrase that is a "refinement" of the term "seaman" in the Jones Act. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355, 112 L. Ed. 2d 866, 111 S. Ct. 807. Although better characterized as a mixed question of law and fact, the inquiry into seaman status is fact specific and depends on the vessel's nature and the employee's precise relation to it. A maritime worker need only be doing a ship's work, not aiding in its navigation, in order to qualify as a "seaman" under the Jones Act. *Id.*, at 349. Petitioner's argument that this fact-intensive inquiry may always be resolved as a matter of law if the claimant's job fits within one of the enumerated occupations defining the term "employee" covered by the LHWCA ignores the fact that some maritime workers may be Jones Act seamen performing a job specifically enumerated under the LHWCA. Pp. 86-89.

(b) Petitioner's several arguments to foreclose Gizoni's Jones Act suit are rejected. Decisions holding that the LHWCA provides the exclusive remedy for certain injured railroad workers otherwise permitted by the Federal Employers' Liability Act to pursue a negligence cause of action provide no meaningful guidance here, for the LHWCA contains no exclusion for railroad workers comparable to that for Jones Act seamen. Petitioner errs in arguing that, where a maritime worker is arguably covered by the LHWCA, Congress intended to preclude or stay traditional Jones Act suits in the district courts pending a final LHWCA administrative agency determination of that issue. Indeed, the LHWCA anticipates that such suits could be brought. See 33 U.S.C. § 913(d). And, unlike the Federal Employees Compensation Act, the LHWCA contains no "unambiguous and comprehensive" provisions barring any judicial review of administrative determinations of coverage. Moreover, its administrative proceedings do not require the same jurisdictional limitations that the National Labor Relations Act (NLRA) places on courts in favor of National Labor Relations Board hearings, since the LHWCA's proceedings in no way approach the NLRA's complex and interrelated federal scheme of law, remedy, and administration requiring pre-emption in those cases. Neither is it essential to the LHWCA's administration that resolution of the coverage issue be left in the first instance to agency proceedings. Petitioner's suggestion that an employee's receipt of benefits under the LHWCA precludes subsequent litigation under the Jones Act is also rejected, see *Tipton v. Socony Mobil Oil Co.*, 375 U.S. 34, 37, 11 L. Ed. 2d 4, 84 S. Ct. 1, since the question of coverage has never been litigated in such cases, and, since the LHWCA clearly does not comprehend such a preclusive effect, see § 903(e). Pp. 89-92.

COUNSEL: George J. Tichy, II argued the cause for petitioner. With him on the briefs were Roy D. Axelrod, James J. McMullen, Jr., Jacqueline P. McManus, and Lloyd A. Schwartz.

Preston Easley argued the cause and filed briefs for respondent.

Robert A. Long, Jr., argued the cause for the United States as amicus curiae urging affirmance. With him on the brief were Solicitor General Starr, Deputy Solicitor General Shapiro, Allen H. Feldman, Kerry L. Adams, and Deborah Greenfield. *

* Briefs of amici curiae urging reversal were filed for Global Marine, Inc., et al. by Forrest Booth, Winston E. Rice, and Eileen R. Madrid; and for the Shipbuilders Council of America by John L. Wittenborn and Franklin W. Losey.

John R. Hillsman filed a brief for the United Brotherhood of Carpenters and Joiners of America as amicus curiae urging affirmance.

JUDGES: WHITE, J., delivered the opinion of the Court, in which all other Members joined, except THOMAS, J., who took no part in the consideration or decision of the case.

OPINION BY: WHITE

OPINION

[*83] [***412] [**489] JUSTICE WHITE delivered the opinion of the Court.

[**LEAHRIA] [1A] The question presented is whether a maritime worker whose occupation is one of those enumerated in the Long-shore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, as amended, 33 U.S.C. § 901 *et seq.*, may yet be a "seaman" within the meaning of the Jones Act, 46 U.S.C. App. § 688, [**413] and thus be entitled to bring suit under that statute.

Petitioner Southwest Marine, Inc., operates a ship repair facility in San Diego, California. In connection with its ship repair activities, Southwest Marine owns several floating platforms, including a pontoon barge, two float barges, a rail barge, a diver's barge, and a crane barge. These platforms by themselves have no power, means of steering, navigation lights, navigation aids, or living facilities. They are moved about by tugboats, which position the platforms alongside vessels under repair at berths or in drydock at Southwest Marine's shipyard or at the nearby naval station. The platforms are used to move equipment, materials, supplies, and vessel components around the shipyard and on to and off of [**94] the vessels under repair. Once in place, the platforms support ship repairmen engaged in their work.

Southwest Marine employed respondent Byron Gizoni as a rigging foreman. Gizoni [**490] worked on

the floating platforms and rode them as they were towed into place. Gizoni occasionally served as a lookout and gave maneuvering signals to the tugboat operator when the platforms were moved. He also received lines passed to the platforms by the ships' crews to secure the platforms to the vessels under repair. Gizoni suffered disabling leg and back injuries in a fall when his foot broke through a thin wooden sheet covering a hole in the deck of a platform being used to transport a rudder from the shipyard to a floating drydock.

Gizoni submitted a claim for, and received, medical and compensation benefits from Southwest Marine pursuant to the LHWCA. He later sued Southwest Marine under the Jones Act in the United States District Court for the Southern District of California, alleging that he was a seaman injured as a result of his employer's negligence. Gizoni also pleaded causes of action for unseaworthiness and for maintenance and cure. App. IV-4, IV-5. In addition to the above facts, Gizoni alleged in his complaint that Southwest Marine's floating platforms were "a group of vessels . . . in navigable waters," and that as a rigging foreman, he was "permanently assigned to said group of vessels." *Id.*, at IV-3.

The District Court granted Southwest Marine's motion for summary judgment on two grounds. The District Court determined as a matter of law that Gizoni was not a Jones Act seaman, finding that Southwest Marine's floating platforms were not "vessels in navigation," and that Gizoni was on board to perform work as a ship repairman, not to "aid in navigation." App. to Pet. for Cert. I-1, I-2. More important to our purposes here, the District Court further concluded that Gizoni was a harbor worker precluded from bringing his action by the exclusive remedy provisions of the LHWCA, 33 U.S.C. § 905(a). App. to Pet. for Cert. I-2.

[*85] The United States Court of Appeals for the Ninth Circuit reversed the determination that Gizoni was not a seaman as a matter of law, 909 F.2d 385, 387 (1990), holding that questions of fact existed as to seaman status, e. g., whether the floating platforms were vessels in navigation, whether Gizoni's relationship to those platforms was permanent, and whether he aided in their [*414] navigation. *Id.*, at 388. The Ninth Circuit also reversed the District Court's determination that the exclusive remedy provisions of the LHWCA precluded Gizoni from pursuing his Jones Act claim. The court concluded that the LHWCA by its terms does not cover

[**415] "a master or member of a crew of any vessel," 33 U.S.C. § 902(3)(G), that this phrase is the equivalent of "seaman" under the Jones Act, and that the question of his seaman status should have been presented to a jury. 909 F.2d at 389. The Ninth Circuit thus rejected the notion that any employee whose work involved ship repair was necessarily restricted to remedy under the LHWCA, reasoning that coverage under the Jones Act or the LHWCA depended not on the claimant's job title, but on the nature of the claimant's work and the intent of Congress in enacting these statutes. *Ibid.*

We granted certiorari, 498 U.S. 1119 (1991), to resolve the conflict among the Circuits on this issue. We now affirm the judgment of the Ninth Circuit.

1 The Ninth Circuit in this case followed a decision by the Sixth Circuit, which held that "[a] plaintiff is not limited to the remedies available under the LHWCA unless he is unable to show that a genuine factual issue exists as to whether he was a seaman at the time of his injury." *Petersen v. Chesapeake & Ohio R. Co.*, 784 F.2d 732, 739 (1986). To the contrary, the Fifth Circuit has previously held that "because longshoremen, ship-builders and ship repairers are engaged in occupations enumerated in the LHWCA, they are unqualifiedly covered by that Act if they meet the Act's situs requirements; coverage of these workmen by the LHWCA renders them ineligible for consideration as seamen or members of the crew of a vessel entitled to claim the benefits of the Jones Act." *Pizzitolo v. Electro-Coal Transfer Corp.*, 812 F.2d 977, 983 (1987). A later decision by the Fifth Circuit undercut much of the reasoning in *Pizzitolo* by limiting it to cases where "the evidence is insufficient to warrant a finding of seaman's status." *Legros v. Panther Services Group, Inc.*, 863 F.2d 345, 349 (1988). The Fifth Circuit granted rehearing en banc, but the parties later settled and the appeal was dismissed. *Legros v. Panther Services Group, Inc.*, 874 F.2d 953 (1989). With the opinion in *Legros* vacated, *Pizzitolo* remains the law in the Fifth Circuit, although its breadth may be in some question.

[*86] [*491] II

***LEdHR1B] [1B] ***LEdHR2A] [2A]
***LEdHR3A] [3A] The Jones Act and the LHWCA

each provide a remedy to the injured maritime worker; however, each specifies different maritime workers to be within its reach. In relevant part, the Jones Act provides that "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). Under the LHWCA, the exclusiveness of liability provision in part states that the liability of an employer "shall be exclusive and in place of all other liability of such employer to the employee . . ." 33 U. S. C. § 905(a). However, the term "employee," as defined in the LHWCA, ² does not include "a [*87] master or member of a crew of any vessel." § 902(3)(G). The District Court was therefore plainly wrong in holding that, as a matter of law, the LHWCA provided the exclusive remedy for all harbor workers. That cannot be the case if the LHWCA and its exclusionary provision do not apply to a harbor worker who is also a "member of a crew of any vessel," a phrase that is a "refinement" of the term "seaman" in the Jones Act. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 349, 112 L. Ed. 2d 866, 111 S. Ct. 807 (1991).³

² In full, 33 U.S.C. § 902(3) provides:

"The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include --

"(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

"(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

"(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

"(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an

employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this chapter;

"(E) aquaculture workers;

"(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

"(G) a master or member of a crew of any vessel; or

"(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

"if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law."

[***LEdHR3B] [3B]

3 Southwest Marine points as well to a separate exclusiveness of liability provision regarding the negligence of a vessel, 33 U. S. C. § 905(b); and places great emphasis on a passage that states:

"If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner-pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer."

This exclusivity provision applies, however, only "in the event of injury to a person covered under this chapter [the LHWCA] caused by the negligence of a vessel." § 905(b). As we have already noted, the question whether Gizoni is "a person covered under this chapter" depends upon whether he is a "seaman" under the Jones Act. Like the companion exclusivity provision of § 905(a), § 905(b) does not dictate sole recourse to the LHWCA unless Gizoni is found *not* to be "a master or member of a crew of any vessel."

***LEdHR2B] [2B] ***LEdHR4A] [4A]
***LEdHR5A] [5A] The determination of who is a "member of a crew" is "better characterized as a mixed question of law and fact," rather [*88]. [*492] than as a pure question of fact. *Id.*, at 356. Even so, "the inquiry into seaman status is of necessity fact-specific; it will depend on the nature of the vessel, and the employee's precise relation to it." *Ibid.* Our decision in *Wilander* jettisoned any lingering notion that a maritime worker need aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act. "The key to seaman status is employment-related connection to a vessel in navigation. . . . It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work." *Id.*, at 355. In arriving at this conclusion, we again recognized that "the Jones Act and the LHWCA are mutually exclusive," *id.*, at 347 (citing *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 90 L. Ed. 1045; 66 S. Ct. 869 (1946)), for the very reason that the LHWCA [*416] specifically precludes from its provisions any employee who is "a master or member of a crew of any vessel."

***LEdHR1C] [1C] ***LEdHR6A] [6A] Southwest Marine suggests, in line with Fifth Circuit precedent, that this fact-intensive inquiry may always be resolved as a matter of law if the claimant's job fits within one of the enumerated occupations defining the term "employee" covered by the LHWCA. However, this argument ignores the fact that some maritime workers may be Jones Act seamen performing a job specifically enumerated under the LHWCA. Indeed, Congress foresaw this possibility, and we have previously quoted a portion of the legislative history to the 1972 amendments to the LHWCA that states: "The bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment (excluding masters and members of the crew of a vessel)." *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 266, n.26, 53 L. Ed. 2d 320, 97 S. Ct. 2348 (1977) (quoting S. Rep. No. 92-1125, p. 13 (1972)) (emphasis added). As we observed in *Wilander*: "There is no indication in the Jones Act, the LHWCA, or [*89] elsewhere, that Congress has excluded from Jones Act remedies those traditional seamen who owe allegiance to a vessel at sea, but who do not aid in navigation." 498 U.S. at 354. While in some cases a ship repairman may lack the requisite connection to a vessel in navigation to

qualify for seaman status, see, e.g., *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 65 L. Ed. 2d 458, 100 S. Ct. 2432 (1980) (ship repairmen working and injured on land); *P. C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 80, 62 L. Ed. 2d 225, 100 S. Ct. 328, and n. 12 (1979), not all ship repairmen lack the requisite connection as a matter of law.⁴ This is so because "it is not the employee's particular job that is determinative, but the employee's connection to a vessel." *Wilander*, *supra*, at 354. By its terms the LHWCA preserves the Jones Act remedy for vessel crewmen, even if they are employed by a shipyard. A maritime worker is limited to LHWCA remedies only if no genuine issue of fact exists as to whether the worker was a seaman under the Jones Act.

***LEdHR6B] [6B]

4 Gizoni stipulates that he was a ship repairman for Southwest Marine and correctly notes that many ship repairmen are excluded from LHWCA coverage, even though ship repairmen are expressly enumerated as a category of "harborworker" included within its coverage. See 33 U.S.C. § 902(3)(F) (individuals employed to repair recreational vessels under 65 feet in length); § 902(3)(H) (persons engaged to repair small vessels under 18 tons net). We find it significant that such clear exclusions of certain ship repairmen fall on either side of the exclusion here at issue for "a master or member of a crew of any vessel." § 902(3)(G).

Southwest Marine submits several arguments in an attempt to foreclose this Jones Act suit. First, Southwest Marine contends that our decision in *Wilander* will conflict with decisions holding that the LHWCA provides the exclusive remedy for certain injured railroad workers otherwise permitted by the Federal Employers' Liability Act, 45 U.S.C. § 51 *et seq.*, to pursue a negligence cause [*493] of action. See, e.g., *Chesapeake & Ohio R. Co. v. Schwalb*, 493 U.S. 40, 107 L. Ed. 2d 278, 110 S. Ct. 381 (1989); *Pennsylvania R. Co. v. O'Rourke*, 344 U.S. 334, 97 L. Ed. 367, 73 S. Ct. 302 [*417] (1953). Such cases, however, can provide no meaningful guidance on [*90] the issue here, for the LHWCA contains no exclusion for railroad workers comparable to that for Jones Act seamen.

***LEdHR7] [7] Next, Southwest Marine advances a "primary jurisdiction" argument suggesting that, where a maritime worker is "arguably covered" by

the LHWCA, the district court should stay any Jones Act proceeding pending a final LHWCA "administrative agency" determination that the worker is, in fact, a "master or member of a crew." We find no indication in the LHWCA that Congress intended to preclude or stay traditional Jones Act suits in the district courts. Indeed, the LHWCA anticipates that such suits could be brought. Title 33 U.S.C. § 913(d) tolls the time to file LHWCA claims "where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter."

[***LEdHR8] [8] [***LEdHR9] [9] Southwest Marine seeks to support its primary jurisdiction argument by pointing to the relation between the Federal Employees' Compensation Act (FECA), 5 U.S.C. § 8101 et seq., and the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671 et seq. But FECA contains an "unambiguous and comprehensive" provision barring any judicial review of the Secretary of Labor's determination of FECA coverage. *Lindahl v. Office of Personnel Management*, 470 U.S. 768, 780, 84 L. Ed. 2d 674, 105 S. Ct. 1620, and n. 13 (1985); see 5 U.S.C. § 8128(b). Consequently, the courts have no jurisdiction over FTCA claims where the Secretary determines that FECA applies. The LHWCA contains no such provision. Likewise, we reject Southwest Marine's argument that agency proceedings under the LHWCA require the jurisdictional limitations we have found the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq., to place on state and federal courts in favor of the proceedings conducted by the National Labor Relations Board. [*91] See, e.g., *Longshoremen v. Davis*, 476 U.S. 380, 389-390, 90 L. Ed. 2d 389, 106 S. Ct. 1904 (1986); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 243-245, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959). The administrative proceedings outlined under the LHWCA in no way approach "the NLRA's 'complex and interrelated federal scheme of law, remedy, and administration'" requiring pre-emption in those cases. *Longshoremen*, supra, at 389 (quoting *Garmon*, supra, at 243). Neither is it "essential to the administration" of the LHWCA that resolution of the question of coverage be left "in the first instance" to agency proceedings in the Department of Labor. *Longshoremen*, supra, at 390 (quoting *Garmon*, supra, at 244-245).

[***LEdHR10] [10] [***LEdHR11A] [11A] Finally, Southwest Marine suggests that an employee's receipt of benefits under the LHWCA should preclude subsequent [***418] litigation under the Jones Act. To the contrary, however, we have ruled that where the evidence is sufficient to send the threshold question of seaman status to the jury, it is reversible error to permit an employer to prove that the worker accepted LHWCA benefits while awaiting trial. *Tipton v. Socony Mobil Oil Co.*, 375 U.S. 34, 37, 11 L. Ed. 2d 4, 84 S. Ct. 1 (1963). It is by now "universally accepted" that an employee who receives voluntary payments under the LHWCA without a formal award is not barred from subsequently seeking relief under the Jones Act. *G. Gilmore & C. Black, Law of Admiralty* 435 (2d ed. 1975); see 4 A. Larson, *Workmen's Compensation Law* § 90.51, p. 16-507 (1989) (collecting cases); *Simms v. Valley Line Co.*, 709 F.2d 409, 412, [*494] and nn. 3 and 5 (CA5 1983). This is so, quite obviously, because the question of coverage has never actually been litigated. Moreover, the LHWCA clearly does not comprehend such a preclusive effect, as it specifically provides that any amounts paid to an employee for the same injury, disability, or death pursuant to the Jones Act shall be credited against any liability imposed by the [*92] LHWCA. 33 U.S.C. § 903(e). See *Gilmore & Black*, supra, at 435.

[***LEdHR11B] [11B]

5 For this same reason, equitable estoppel arguments suggested by *amici* Shipbuilders Council of America must fail. Where full compensation credit removes the threat of double recovery, the critical element of detrimental reliance does not appear. See *Hackler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 59, 81 L. Ed. 2d 42, 104 S. Ct. 2218 (1984); *Lyng v. Payne*, 476 U.S. 926, 935, 90 L. Ed. 2d 921, 106 S. Ct. 2333 (1986). Argument by *amici* would force injured maritime workers to an election of remedies we do not believe Congress to have intended.

III

[***LEdHR4B] [4B] [***LEdHR5B] [5B] [***LEdHR6C] [6C] Because a ship repairman may spend all of his working hours aboard a vessel in furtherance of its mission -- even one used exclusively in

ship repair work -- that worker may qualify as a Jones Act seaman. By ruling as a matter of law on the basis of job-title or occupation alone, the District Court foreclosed Gizoni's ability to make this showing. "If reasonable persons, applying the proper legal standard, could differ as to whether the employee was a 'member of a crew,' it is a question for the jury." *Willander*, 498 U.S. at 356. The Ninth Circuit concluded that questions of fact existed regarding whether the floating platforms were vessels in navigation, and whether Gizoni had sufficient connection to the platforms to qualify for seaman status. ⁶ Gizoni alleges facts in support of each of these propositions -- facts which Southwest Marine disputes. Compare Brief for Respondent 11 with Brief for Petitioner 3. Summary judgment was inappropriate.

[***LEdHR6C] [5C]

6 The Ninth Circuit also found questions of fact to remain concerning whether Gizoni aided in the navigation of these platforms. After *McDermott Int'l, Inc. v. Willander*, 498 U.S. 337, 112 L. Ed. 2d 866, 111 S. Ct. 807 (1991), however, only "employment-related connection to a vessel in navigation" is required. *Id.*, at 355. To be a seaman, the employee need not aid in navigation.

The judgment of the Court of Appeals is

Affirmed.

JUSTICE THOMAS took no part in the consideration or decision of this case.

REFERENCES

32 Am Jur 2d, *Federal Employers' Liability and Compensation Acts* 45-47, 111, 118

11 Federal Procedure, L Ed, *Employers' Liability Acts* 30:87

9 Federal Procedural Forms, L Ed, *Employers' Liability Acts* 27:98, 27:111, 27:123

11 Am Jur PI & Pr Forms (Rev), *Federal Employers' Liability and Compensation Acts*, Forms 151, 164

9 Am Jur Trials 665, *Seaman's Injuries*

33 USCS 901-950; 46 USCS Appx 688

L Ed Digest, *Federal Employers' Liability and Workers' Compensation Acts* 58, 74

L Ed Index, *Jones Act; Longshore and Harbor Workers' Compensation Act; Seamen*

Index to Annotations, *Jones Act; Longshoremen and Stevedores; Seamen*

Annotation References:

The doctrine of primary administrative jurisdiction as defined and applied by the Supreme Court. 38 L Ed 2d 796.

Federal compensation acts as affecting recovery under *Federal Tort Claims Act*. 17 L Ed 2d 929.

Who is a "seaman" within the meaning of the Jones Act--federal cases. 96 L Ed 211, 97 L Ed 1274.

Applicability of Jones Act (46 USCS Appx 688) to workers connected with operation of dredges, drilling platforms, derricks, or similar special-purpose equipment. 92 ALR Fed 733.

Federal Employees' Compensation Act (5 USCS 8101 et seq.) as affecting recovery under *Federal Tort Claims Act*. 43 ALR Fed 424.

"Maritime employment" coverage under *Longshoremen's and Harbor Workers' Compensation Act*. 41 ALR Fed 685.

Who is "a master or member of a crew of any vessel" within exclusion of Longshoremen's and Harbor Workers' Compensation Act (33 USCS 902(3) and 903(a)(1)). 20 ALR Fed 600.

CHANDRIS, INC., ET AL., PETITIONERS v. ANTONIOS LATSI

No. 94-325

SUPREME COURT OF THE UNITED STATES

515 U.S. 347; 115 S. Ct. 2172; 132 L. Ed. 2d 314; 1995 U.S. LEXIS 4047; 63 U.S.L.W.
4564; 17 OSHC (BNA) 1257; 1995 AMC 1840; 95 Cal. Daily Op. Service 4499; 95
Daily Journal DAR 7769

February 21, 1995, Argued
June 14, 1995, Decided

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

DISPOSITION: 20 F.3d 45, affirmed.

SYLLABUS

Respondent Latsis' duties as a superintendent engineer for petitioner Chandris, Inc., required him to take voyages on Chandris' ships. He lost substantial vision in one eye after a condition that he developed while on one of those voyages went untreated by a ship's doctor. Following his recuperation, he sailed to Germany on the S. S. *Galileo* and stayed with the ship while it was in drydock for refurbishment. Subsequently, he sued Chandris for damages for his eye injury under the Jones Act, which provides a negligence cause of action for "any seaman" injured "in the course of his employment." The District Court instructed the jury that Latsis was a "seaman" if he was permanently assigned to, or performed a substantial part of his work on, a vessel, but that the time Latsis spent with the *Galileo* while it was in drydock could not be considered because the vessel was then out of navigation. The jury returned a verdict for Chandris based solely on Latsis' seaman status. The Court of Appeals vacated the judgment, finding that the jury instruction improperly framed the issue primarily in terms of Latsis' temporal relationship to the vessel. It held that the "employment-related connection to a vessel in

navigation" required for seaman status under the Jones Act, *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355, 112 L. Ed. 2d 866, 111 S. Ct. 807, exists where an individual contributes to a vessel's function or the accomplishment of its mission; the contribution is limited to a particular vessel or identifiable group of vessels; the contribution is substantial in terms of its duration or nature; and the course of the individual's employment regularly exposes him to the hazards of the sea. It also found that the District Court erred in instructing the jury that the *Galileo's* drydock time could not count in the substantial connection equation.

Held:

1. The "employment-related connection to a vessel in navigation" necessary for seaman status comprises two basic elements: The worker's duties must contribute to the function of the vessel or to the accomplishment of its mission, *id.*, at 355; and the worker must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in both its duration and its nature. Pp. 354-372.

(a) The Jones Act provides heightened legal protections to seamen because of their exposure to the perils of the sea, but does not define the term "seaman." However, the Court's Jones Act cases establish the basic principles that the term does not include land-based workers, 498 U.S. at 348, and that seaman status depends "not on the place where the injury is inflicted . . . but on the nature of the seaman's service, his status as a member

of the vessel, and his relationship . . . to the vessel and its operation in navigable waters," *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 4, 90 L. Ed. 1045, 66 S. Ct. 869. Thus, land-based maritime workers do not become seamen when they happen to be working aboard a vessel, and seamen do not lose Jones Act coverage when their service to a vessel takes them ashore. Latsis' proposed "voyage test"—under which any maritime worker assigned to a vessel for the duration of a voyage, whose duties contribute to the vessel's mission, would be a seaman for injuries incurred during that voyage—conflicts with this status-based inquiry. *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187, 190, 96 L. Ed. 205, 72 S. Ct. 216, and *Grimes v. Raymond Concrete Pile Co.*, 356 U.S. 252, 255, 2 L. Ed. 2d 737, 78 S. Ct. 687, distinguished. Pp. 354-364.

(b) Beyond the basic themes outlined here, the Court's cases have been silent as to the precise relationship a maritime worker must bear to a vessel in order to come within the Jones Act's ambit, leaving the lower federal courts the task of developing appropriate criteria to distinguish "ship's company" from land-based maritime workers. Those courts generally require at least a significant connection to a vessel in navigation (or to an identifiable fleet of vessels) for a maritime worker to qualify as a seaman under the Jones Act. Pp. 364-368.

(c) The test for seaman status adopted here has two essential requirements. The first is a broad threshold requirement that makes all maritime employees who do the ship's work eligible for seaman status. *Wilander*, *supra*, at 355. The second requirement determines which of these eligible maritime employees have the required employment-related connection to a vessel in navigation to make them in fact entitled to Jones Act benefits. This requirement gives full effect to the remedial scheme created by Congress and separates sea-based maritime employees entitled to Jones Act protection from land-based workers, whose employment does not regularly expose them to the perils of the sea. Who is a "member of a crew" is a mixed question of law and fact. A jury should be able to consider all relevant circumstances bearing on the two requirements. The duration of a worker's connection to a vessel and the nature of the worker's activities, taken together, determine whether he is a seaman, because the ultimate inquiry is whether the worker is part of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time. Although seaman

status is not merely a temporal concept, it includes a temporal element. A worker who spends only a small fraction of his working time aboard a vessel is fundamentally land-based and therefore not a crew member regardless of his duties. An appropriate rule of thumb is that a worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman. This figure is only a guideline that allows a court to take the question from the jury when a worker has a clearly inadequate temporal connection to the vessel. On the other hand, the seaman status inquiry should not be limited exclusively to an examination of the overall course of a worker's service with a particular employer, since his seaman status may change with his basic assignment. Pp. 368-372.

2. The District Court's drydock instruction was erroneous. Whether a vessel is in navigation is a fact-intensive question that can be removed from the jury's consideration only where the facts and the law will reasonably support one conclusion. Based upon the record here, the trial court failed adequately to justify its decision to remove that question from the jury. Moreover, the court's charge to the jury swept too broadly in prohibiting the jury from considering the time Latsis spent with the vessel while in drydock for any purpose, Pp. 372-376.

20 F.3d 45, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, in which THOMAS and BREYER, JJ., joined, *post*, p. 377.

COUNSEL: David W. McCreadie argued the cause for petitioners. With him on the briefs were David F. Pope and Christ Stratakis.

Lewis Rosenberg argued the cause for respondent. With him on the brief was Barry I. Levy.*

* Briefs of amici curiae urging reversal were filed for the City of New York by Paul A. Crotty and Leonard J. Koerner; and for TECO Transport & Trade Corp. et al. by Robert B. Acornb, Jr., and Robert T. Lemon II.

Briefs of amici curiae urging affirmance were filed for the Association of Trial Lawyers of

America by Stevan C. Dittman and Larry S. Stewart; and for the United Brotherhood of Carpenters and Joiners of America by John R. Hillsman.

JUDGES: O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, in which THOMAS and BREYER, JJ., joined, post, p. 377.

OPINION BY: O'CONNOR

OPINION

[*349] [**2181] [***325] JUSTICE
O'CONNOR delivered the opinion of the Court.

[***LEdHR1A] [1A] [***LEdHR2A] [2A]
[***LEdHR3A] [3A] This case asks us to clarify what "employment-related connection to a vessel in navigation," *McDermott Int'l, Inc. v. [**350] Wilander*, 498 U.S. 337, 355, 112 L. Ed. 2d 866, 111 S. Ct. 807 (1991), is necessary for a maritime worker to qualify as a seaman under the Jones Act, 46 U.S.C. App. § 688(a). In *Wilander*, we addressed the type of activities that a seaman must perform and held that, under the Jones Act, a seaman's job need not be limited to transportation-related functions that directly aid in the vessel's navigation. We now determine what relationship a worker must have to the vessel, regardless of the specific tasks the worker undertakes, in order to obtain seaman status.

[***326] I

In May 1989, respondent Antonios Latsis was employed by petitioner Chandris, Inc., as a salaried superintendent engineer. Latsis was responsible for maintaining and up-dating the electronic and communications equipment on Chandris' fleet of vessels, which consisted of six passenger cruise ships. Each ship in the Chandris fleet carried between 12 and 14 engineers who were assigned permanently to that vessel. Latsis, on the other hand, was one of two supervising engineers based at Chandris' Miami office; his duties ran to the entire fleet and included not only overseeing the vessels' engineering departments, which required him to take a number of voyages, but also planning and directing ship maintenance from the shore.

Latsis claimed at trial that he spent 72 percent of his time at sea, App. 58; his immediate supervisor testified that the appropriate figure was closer to 10 percent, *id.*, at 180.

On May 14, 1989, Latsis sailed for Bermuda aboard the S. S. *Galileo* to plan for an upcoming renovation of the ship, which was one of the older vessels in the Chandris fleet. Latsis developed a problem with his right eye on the day of departure, and he saw the ship's doctor as the *Galileo* left port. The doctor diagnosed a suspected detached retina but failed to follow standard medical procedure, which would have been to direct Latsis to see an ophthalmologist on an emergency basis. Instead, the ship's doctor recommended [*351] that Latsis relax until he could see an eye specialist when the *Galileo* arrived in Bermuda two days later. No attempt was made to transport Latsis ashore for prompt medical care by means of a pilot vessel or helicopter during the 11 hours it took the ship to reach the open sea from Baltimore, and Latsis received no further medical care until after the ship arrived in Bermuda. In Bermuda, a doctor diagnosed a detached retina and recommended immediate hospitalization and surgery. Although the operation was a partial success, Latsis lost 75 percent of his vision in his right eye.

Following his recuperation, which lasted approximately six weeks, Latsis resumed his duties with Chandris. On September 30, 1989, he sailed with the *Galileo* to Bremerhaven, Germany, where the vessel was placed in drydock for a 6-month refurbishment. After the conversion, the company renamed the vessel the S. S. *Meridian*. Latsis, who had been with the ship the entire time it was in drydock in Bremerhaven, sailed back to the United States on board the *Meridian* and continued to work for Chandris until November 1990, when his employment was terminated for reasons that are not clear from the record.

In October 1991, Latsis filed suit in the United States District Court for the Southern District of New York seeking compensatory damages under the Jones Act, 46 U.S.C. App. § 688, for the negligence of the ship's doctor that resulted in the significant loss of sight in Latsis' right eye. The Jones Act provides, in pertinent part, that "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" The District Court instructed the jury that it could

conclude that Latsis was a seaman within the [***327] meaning of the statute if it found as follows:

"The plaintiff was either permanently assigned to the vessel or performed a [*352] substantial [***2182] part of his work on the vessel. In determining whether Mr. Latsis performed a substantial part of his work on the vessel, you may not consider the period of time the *Galileo* was in drydock in Germany, because during that time period she was out of navigation. You may, however, consider the time spent sailing to and from Germany for the conversion. Also, on this first element of being a seaman, seamen do not include land-based workers." App. 210.

The parties stipulated to the District Court's second requirement for Jones Act coverage—that Latsis' duties contributed to the accomplishment of the missions of the Chandris vessels. *Id.*, at 211. Latsis did not object to the seaman status jury instructions in their entirety, but only contested that portion of the charge which explicitly took from the jury's consideration the period of time that the *Galileo* was in drydock. The jury returned a verdict in favor of Chandris solely on the issue of Latsis' status as a seaman under the Jones Act. *Id.*, at 213.

Respondent appealed to the Court of Appeals for the Second Circuit, which vacated the judgment and remanded the case for a new trial. 20 F.3d 45 (1994). The court emphasized that its longstanding test for seaman status under the Jones Act required "a more or less permanent connection with the ship," *Salgado v. M. J. Rudolph Corp.*, 514 F.2d 750, 755 (CA2 1975), a connection that need not be limited to time spent on the vessel but could also be established by the nature of the work performed. The court thought that the alternate formulation employed by the District Court (permanent assignment to the vessel or performance of a substantial part of his work on the vessel), which was derived from *Offshore Co. v. Robison*, 266 F.2d 769, 779 (CA5 1959), improperly framed the issue for the jury primarily, if not solely, in terms of Latsis' temporal relationship to the vessel. With that understanding of what the language of the *Robison* test implied, the court concluded that the District Court's seaman status jury instructions constituted plain error under established Circuit

precedent. The court then [*353] took this case as an opportunity to clarify its seaman status requirements, directing the District Court that the jury should be instructed on remand as follows:

"The test of seaman status under the Jones Act is an employment-related connection to a vessel in navigation. The test will be met where a jury finds that (1) the plaintiff contributed to the function of, or helped accomplish the mission of, a vessel; (2) the plaintiff's contribution was limited to a particular vessel or identifiable group of vessels; (3) the plaintiff's contribution was substantial in terms of its (a) duration or (b) nature; and (4) the course of the plaintiff's employment regularly exposed the plaintiff to the hazards of the sea." 20 F.3d at 57.

Elsewhere on the same page, however, the court phrased the third prong as requiring a substantial connection in terms of both duration and nature. Finally, the Court of Appeals held that the District Court [***328] erred in instructing the jury that the time Latsis spent with the ship while it was in drydock could not count in the substantial connection equation. *Id.*, at 55-56. Judge Kearsse dissented, arguing that the drydock instruction was not erroneous and that the remainder of the charge did not constitute plain error. *Id.*, at 58.

We granted certiorari, 513 U.S. 945 (1994), to resolve the continuing conflict among the Courts of Appeals regarding the appropriate requirements for seaman status under the Jones Act. *

* [***LEdHR4B] [4B] We granted certiorari on the following question, set forth in the petition: "What employment-related connection to a vessel in navigation is necessary for a maritime worker to qualify as a seaman under the Jones Act, 46 U.S.C. § 688?" Pet. for Cert. i. Petitioners argue for the first time in their opening brief on the merits that, because respondent failed to raise a timely objection under Rule 51 of the Federal Rules of Civil Procedure, we should limit the scope of our review to the narrower issue of whether the District Court's seaman status jury

instructions constituted "plain error." Brief for Petitioners 12-14. Under this Court's Rule 14.1(a), "only the questions set forth in the petition [for certiorari], or fairly included therein, will be considered by the Court," see, e.g., *Berkemer v. McCarty*, 468 U.S. 420, 443, n. 38, 82 L. Ed. 2d 317, 104 S. Ct. 3138 (1984), and our Rule 24.1(a) provides that a merits brief should not "raise additional questions or change the substance of the questions already presented" in the petition. See also *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Phillips Corp.*, 510 U.S. 27, 31-32, 126 L. Ed. 2d 396, 114 S. Ct. 425 (1993); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 645-646, 118 L. Ed. 2d 280, 112 S. Ct. 1644 (1992). Because petitioners did not raise the issue in the petition for certiorari, we will not consider any argument they may have under Rule 51 concerning the effect of respondent's failure to object to the seaman status jury instructions in their entirety.

[*354] [*2183] II

The Jones Act provides a cause of action in negligence for "any seaman" injured "in the course of his employment." 46 U.S.C. App. § 688(a). Under general maritime law prevailing prior to the statute's enactment, seamen were entitled to "maintenance and cure" from their employer for injuries incurred "in the service of the ship" and to recover damages from the vessel's owner for "injuries received by seamen in consequence of the unseaworthiness of the ship," but they were "not allowed to recover an indemnity for the negligence of the master, or any member of the crew." *The Osceola*, 189 U.S. 158, 175, 47 L. Ed. 760, 23 S. Ct. 483 (1903); see also *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 370-371, 77 L. Ed. 368, 53 S. Ct. 173 (1932). Congress enacted the Jones Act in 1920 to remove the bar to suit for negligence articulated in *The Osceola*, thereby completing the trilogy of heightened legal protections (unavailable to other maritime workers) that seamen receive because of their exposure to the "perils of the sea." See G. Gilmore & C. Black, *Law of Admiralty* § 6-21, pp. 328-329 (2d ed. 1975); Robertson, *A New Approach to Determining Seaman Status*, 64 *Texas L. Rev.* 79 (1985) (hereinafter Robertson). Justice Story identified this animating purpose behind the legal regime governing maritime injuries when he observed that seamen "are emphatically the wards of the admiralty" because they "are by the peculiarity of their lives liable to sudden sickness from

[*355] change of climate, exposure to perils, and exhausting labour." *Harden v. Gordon*, 11 F. Cas. 480, 485, 483 (No. 6,047) (CC Me. 1823). Similarly, we stated in *Wilander* that "traditional seamen's remedies . . . have been 'universally' [*329] recognized as . . . growing out of the status of the seaman and his peculiar relationship to the vessel, and as a feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to sea in ships are subjected." 498 U.S. at 354 (quoting *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104, 90 L. Ed. 1099, 66 S. Ct. 872 (1946) (Stone, C.J., dissenting)).

The Jones Act, however, does not define the term "seaman" and therefore leaves to the courts the determination of exactly which maritime workers are entitled to admiralty's special protection. Early on, we concluded that Congress intended the term to have its established meaning under the general maritime law at the time the Jones Act was enacted. See *Warner v. Goltra*, 293 U.S. 155, 159, 79 L. Ed. 254, 55 S. Ct. 46 (1934). In *Warner*, we stated that "a seaman is a mariner of any degree, one who lives his life upon the sea." *Id.*, at 157. Similarly, in *Norton v. Warner Co.*, 321 U.S. 563, 572, 88 L. Ed. 931, 64 S. Ct. 747 (1944), we suggested that "every one is entitled to the privilege of a seaman who, like seamen, at all times contributes to the labors about the operation and welfare of the ship when she is upon a voyage" (quoting *The Buena Ventura*, 243 F. 797, 799 (SDNY 1916)).

***LEdHR5] [5] Congress provided some content for the Jones Act requirement in 1927 when it enacted the Longshore and Harbor Workers' Compensation Act (LHWCA), which provides scheduled compensation (and the exclusive remedy) for injury to a broad range of land-based maritime workers but which also explicitly excludes from its coverage "a master or member of a crew of any vessel." 44 Stat. (part 2) 1424, as amended, 33 U.S.C. § 902(3)(G). As the Court has stated on several occasions, the Jones Act and the LHWCA are mutually [*356] exclusive compensation regimes: "master or member of a crew" is a refinement of the term 'seaman' in the Jones Act; it excludes from LHWCA coverage [*2184] those properly covered under the Jones Act." *Wilander*, 498 U.S. at 347. Indeed, "it is odd but true that the key requirement for Jones Act coverage now appears in another statute." *Ibid.* Injured workers who fall under neither category may still recover under an applicable state workers' compensation scheme or, in admiralty,

under general maritime tort principles (which are admittedly less generous than the Jones Act's protections). See Cheavens, *Terminal Workers' Injury and Death Claims*, 64 *Tulane L. Rev.* 361, 364-365 (1989).

Despite the LHWCA language, drawing the distinction between those maritime workers who should qualify as seamen and those who should not has proved to be a difficult task and the source of much litigation--particularly because "the myriad circumstances in which men go upon the water confront courts not with discrete classes of maritime employees, but rather with a spectrum ranging from the blue-water seaman to the land-based longshoreman." *Brown v. ITT Rayonier, Inc.*, 497 F.2d 234, 236 (CA5 1974). The federal courts have struggled over the years to articulate generally applicable criteria to distinguish among the many varieties of maritime workers, often developing detailed multipronged tests for seaman status. [***330] Since the 1950's, this Court largely has left definition of the Jones Act's scope to the lower courts. Unfortunately, as a result, "the perils of the sea, which mariners suffer and shipowners insure against, have met their match in the perils of judicial review." *Gilmore & Black, supra*, § 6-1, at 272. Or, as one court paraphrased Diderot in reference to this body of law: "We have made a labyrinth and got lost in it. We must find our way out." *Johnson v. John F. Beasley Constr. Co.*, 742 F.2d 1054, 1060 (CA7 1984).

[***LEdHR4A] [4A]cert. denied, 469 U.S. 1211, 84 L. Ed. 2d 328, 105 S. Ct. 1180 (1985); see 9 *Oeuvres Completes de Diderot*, 203 (J. Assezat ed. 1875).

[*357] A

In *Wilander*, decided in 1991, the Court attempted for the first time in 33 years to clarify the definition of a "seaman" under the Jones Act. Jon Wilander was injured while assigned as a foreman supervising the sandblasting and painting of various fixtures and piping on oil drilling platforms in the Persian Gulf. His employer claimed that he could not qualify as a seaman because he did not aid in the navigation function of the vessels on which he served. Emphasizing that the question presented was narrow, we considered whether the term "seaman" is limited to only those maritime workers who aid in a vessel's navigation.

After surveying the history of an "aid in navigation" requirement under both the Jones Act and general maritime law, we concluded that "all those with that

'peculiar relationship to the vessel' are covered under the Jones Act, regardless of the particular job they perform," 498 U.S. at 354, and that "the better rule is to define 'master or member of a crew' under the LHWCA, and therefore 'seaman' under the Jones Act, solely in terms of the employee's connection to a vessel in navigation," *ibid*. Thus, we held that, although "it is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, . . . a seaman must be doing the ship's work." *Id.*, at 355. We explained that "the key to seaman status is employment-related connection to a vessel in navigation," and that, although "we are not called upon here to define this connection in all details, . . . we believe the requirement that an employee's duties must 'contribute to the function of the vessel or to the accomplishment of its mission' captures well an important requirement of seaman status." *Ibid*.

Beyond dispensing with the "aid to navigation" requirement, however, *Wilander* did not consider the requisite connection to a vessel in any detail and therefore failed to end the prevailing confusion regarding seaman status.

[*358] B

Respondent urges us to find our way out of the Jones Act "labyrinth" by focusing on the seemingly activity-based policy underlying the statute (the protection of those who are exposed to the perils of the sea), and to conclude that anyone working on board a [**2185] vessel for the duration of a "voyage" in furtherance of the vessel's mission has the necessary employment-related connection to qualify as a seaman. Brief for Respondent 12-17. Such an approach, however, would run counter to our prior decisions and our understanding [***331] of the remedial scheme Congress has established for injured maritime workers. A brief survey of the Jones Act's tortured history makes clear that we must reject the initial appeal of such a "voyage" test and undertake the more difficult task of developing a status-based standard that, although it determines Jones Act coverage without regard to the precise activity in which the worker is engaged at the time of the injury, nevertheless best furthers the Jones Act's remedial goals.

[***LEdHR6A] [6A]Our Jones Act cases establish several basic principles regarding the definition of a seaman. First, "whether under the Jones Act or general

maritime law, seamen do not include land-based workers." *Wilander, supra*, at 348; see also Allbritton, *Seaman Status in Wilander's Wake*, 68 *Tulane L. Rev.* 373, 387 (1994). Our early Jones Act decisions had not recognized this fundamental distinction. In *International Stevedoring Co. v. Haverty*, 272 U.S. 50, 71 L. Ed. 157, 47 S. Ct. 19 (1926); we held that a longshoreman injured while stowing cargo, and while aboard but not employed by a vessel at dock in navigable waters, was a seaman covered by the Jones Act. Recognizing that "for most purposes, as the word is commonly used, stevedores are not 'seamen,'" the Court nevertheless concluded that "we cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship." *Id.*, at [*359]. 52. Because stevedores are engaged in "a maritime service formerly rendered by the ship's crew," *ibid.* (citing *Atlantic Transport Co. of W. Va. v. Imbrovek*, 234 U.S. 52, 62, 58 L. Ed. 1208, 34 S. Ct. 733 (1914)), we concluded, they should receive the Jones Act's protections. See also *Urvic v. F. Jarka Co.*, 282 U.S. 234, 238, 75 L. Ed. 312, 51 S. Ct. 111 (1931); *Jamison v. Encarnacion*, 281 U.S. 635, 639, 74 L. Ed. 1082, 50 S. Ct. 440 (1930). In 1946, the Court belatedly recognized that Congress had acted, in passing the LHWCA in 1927, to undercut the Court's reasoning in the *Haverty* line of cases and to emphasize that land-based maritime workers should not be entitled to the seamen's traditional remedies. Our decision in *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1, 7, 90 L. Ed. 1045, 66 S. Ct. 869 (1946), acknowledged that Congress had expressed its intention to "confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the *Haverty* case only such rights to compensation as are given by [the LHWCA]." See also *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 257, 84 L. Ed. 732, 60 S. Ct. 544 (1940). Through the LHWCA, therefore, Congress "explicitly denied a right of recovery under the Jones Act to maritime workers not members of a crew who are injured on board a vessel." *Swanson, supra*, at 6. And this recognition process culminated in *Wilander* with the Court's statement that, "with the passage of the LHWCA, Congress established a clear distinction between land-based and sea-based maritime workers. The latter, who owe their allegiance to a vessel and not solely to a land-based employer, are seamen." 498 U.S. at 347.

[***LEdHR7] [7] In addition to recognizing a [***332]

fundamental distinction between land-based and sea-based maritime employees, our cases also emphasize that Jones Act coverage, like the jurisdiction of admiralty over causes of action for maintenance and cure for injuries received in the course of a seaman's employment, depends "not on the place where the injury is inflicted . . . but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as [*360] such to the vessel and its operation in navigable waters." *Swanson, supra*, at 4. Thus, maritime workers who obtain seaman status do not lose that protection automatically when on shore and may recover under the Jones Act whenever they are injured in the service of a vessel, regardless of whether the injury occurs on or off the [*2186] ship. In *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 87 L. Ed. 596, 63 S. Ct. 488 (1943), the Court held a shipowner liable for injuries caused to a seaman by a fellow crew member while the former was on shore repairing a conduit that was a part of the vessel and that was used for discharging the ship's cargo. We explained: "The right of recovery in the Jones Act is given to the seaman as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters." *Id.*, at 42-43. Similarly, the Court in *Swanson* emphasized that the LHWCA "leaves unaffected the rights of members of the crew of a vessel to recover under the Jones Act when injured while pursuing their maritime employment whether on board . . . or on shore." 328 U.S. at 7-8. See also *Braen v. Pfeiffer Oil Transp. Co.*, 361 U.S. 129, 131-132, 4 L. Ed. 2d 191, 80 S. Ct. 247 (1959).

[***LEdHR8] [8] Our LHWCA cases also recognize the converse: Land-based maritime workers injured while on a vessel in navigation remain covered by the LHWCA, which expressly provides compensation for injuries to certain workers engaged in "maritime employment" that are incurred "upon the navigable waters of the United States," 33 U.S.C. § 903(a). Thus, in *Director, Office of Workers' Compensation Programs v. Perini North River Associates*, 459 U.S. 297, 74 L. Ed. 2d 465, 103 S. Ct. 634 (1983), we held that a worker injured while "working on a barge in actual navigable waters" of the Hudson River, *id.*, at 300, n. 4, could be compensated under the LHWCA, *id.*, at 324. See also *Parker v. Motor Boat Sales, Inc.*, 314 U.S. 244, 244-245, 86 L. Ed. 184, 62 S. Ct. 221 (1941) (upholding LHWCA coverage for a worker testing [*361] outboard motors who "was

drowned when a motor boat in which he was riding capsized"). These decisions, which reflect our longstanding view of the LHWCA's scope, indicate that a maritime worker does not become a "member of a crew" as soon as a vessel leaves the dock.

***LEdHR9 [9] It is therefore well settled after decades of judicial interpretation that the Jones Act inquiry is fundamentally status based: Land-based maritime workers do not become seamen because they happen to be working on board a vessel when they are injured, and seamen do not lose Jones Act protection when the course of their service to a vessel takes them ashore. In spite of this background, respondent and JUSTICE STEVENS suggest that any maritime worker who is assigned to a vessel for the duration of a voyage--and whose duties contribute to the vessel's mission--should be classified as a seaman for purposes of injuries incurred during that voyage. See Brief for Respondent 14; *post*, at 377 (opinion concurring in judgment). Under such a "voyage test," which relies principally upon this Court's statements that the Jones Act was designed to protect maritime workers who are exposed to the "special hazards" and "particular perils" characteristic of work on vessels at sea, see, e.g., *Wilander*, *supra*, at 354, the worker's activities at the time of the injury would be controlling.

***LEdHR10 [10] The difficulty with respondent's argument, as the foregoing discussion makes clear, is that the LHWCA repudiated the *Haverty* line of cases and established that a worker is no longer considered to be a seaman simply because he is doing a seaman's work at the time of the injury. Seaman status is not coextensive with seamen's risks. See, e.g., *Easley v. Southern Shipbuilding Corp.*, 965 F.2d 1, 4-5 (CA5 1992), cert. denied, 506 U.S. 1050, 122 L. Ed. 2d 124, 113 S. Ct. 969 (1993); *Robertson* 93 (following "the overwhelming weight of authority in taking it as given that seaman status cannot be established by any worker who fails to demonstrate that a significant portion of his work was done aboard a vessel" and acknowledging that "some [*362] workers who unmistakably confront the perils of the sea, often in extreme form, are thereby left out of the seamen's protections" (footnote omitted)). A "voyage test" would conflict with our prior understanding of the Jones Act as fundamentally status based, granting the negligence cause of action to those maritime workers who form the ship's company. *Swanson*, [*2187] *supra*, at 4-5; *O'Donnell*, *supra*, at 42-43.

Desper v. Starved Rock Ferry Co., 342 U.S. 187, 190, 96 L. Ed. 205, 72 S. Ct. 216 (1952), is not to the contrary. Although some language in that case does suggest that whether an individual is a seaman depends upon "the activity in which he was engaged at the time of injury," the context of that discussion reveals that "activity" referred to the worker's employment as a laborer on a vessel undergoing seasonal repairs while out of navigation, and not to his precise task at the time of injury. Similarly, despite Justice Harlan's suggestion in dissent that the Court's decision in *Grimes v. Raymond Concrete Pile Co.*, 356 U.S. 252, 2 L. Ed. 2d 737, 78 S. Ct. 687 (1958), necessarily construed the word seaman "to mean nothing more than a person injured while working at sea," *id.*, at 255, our short *per curiam* opinion in that case does not indicate that we adopted so expansive a reading of the statutory term. Citing our prior cases which emphasized that the question of seaman status is normally for the factfinder to decide, see, e.g., *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370, 371-372, 1 L. Ed. 2d 404, 77 S. Ct. 415 (1957); *Bassett*, 309 U.S. at 257-258, we reversed the judgment of the Court of Appeals and held simply that the jury could have inferred from the facts presented that the petitioner was a member of a crew in light of his [*334] overall service to the company (as the District Court had concluded in ruling on a motion for a directed verdict at the close of petitioner's case). *Grimes*, *supra*, at 253. That neither *Desper* nor *Grimes* altered our established course in favor of a voyage test is confirmed by reference to our later decision in *Brøn*, *supra*, at 131, in which we repeated that "the injured party must of course" have "status as a member of the vessel" for it is seamen, not others who may work on [*363] the vessel (*Swanson v. Marra Bros.*, 328 U.S. 1, 4, 90 L. Ed. 1045, 66 S. Ct. 869), to whom Congress extended the protection of the Jones Act."

***LEdHR11 [11] ***LEdHR12 [12] We believe it is important to avoid "engrafting upon the statutory classification of a "seaman" a judicial gloss so protean, elusive, or arbitrary as to permit a worker to walk into and out of coverage in the course of his regular duties." *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1075 (CA5 1986) (en banc) (quoting *Longmire v. Sea Drilling Corp.*, 610 F.2d 1342, 1347, n. 6 (CA5 1980)). In evaluating the employment-related connection of a maritime worker to a vessel in navigation, courts should not employ "a 'snapshot' test for seaman status, inspecting only the situation as it exists at the instant of injury; a

more enduring relationship is contemplated in the jurisprudence." *Easley, supra*, at 5. Thus, a worker may not oscillate back and forth between Jones Act coverage and other remedies depending on the activity in which the worker was engaged while injured. *Reeves v. Mobile Dredging & Pumping Co.*, 26 F.3d 1247, 1256 (CA3 1994). Unlike JUSTICE STEVENS, *see post*, at 383, we do not believe that any maritime worker on a ship at sea as part of his employment is automatically a member of the crew of the vessel within the meaning of the statutory terms. Our rejection of the voyage test is also consistent with 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 workday begins.

To say that our cases have recognized a distinction between land-based and sea-based maritime workers that precludes application of a voyage test for seaman status, however, is not to say that a maritime employee must work *only* on board a vessel to qualify as a seaman under the Jones Act. In *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 116 L. Ed. 2d 405, 112 S. Ct. 486 (1991), decided only a few months after *Wilander*, we concluded that a worker's status as a ship repairman, one of the enumerated [*364] occupations encompassed within the term "employee" under the LHWCA, 33 U.S.C. § 902 (3), did not necessarily restrict the worker to a remedy under that statute. We explained that, "while in some cases a ship [*2188] repairman may lack the requisite connection to a vessel in navigation to qualify for seaman status, . . . not all ship repairmen lack the requisite connection as a matter of law. This is so because 'it is not the employee's particular job that is determinative, but the employee's connection to a vessel.'" *Gizoni, supra*, at 89 (quoting *Wilander*, 498 U.S. at 354) [***335] (footnote omitted). Thus, we concluded, the Jones Act remedy may be available to maritime workers who are employed by a shipyard and who spend a portion of their time working on shore but spend the rest of their time at sea.

Beyond these basic themes, which are sufficient to foreclose respondent's principal argument, our cases are largely silent as to the precise relationship a maritime worker must bear to a vessel in order to come within the Jones Act's ambit. We have, until now, left to the lower federal courts the task of developing appropriate criteria to distinguish the "ship's company" from those members

of the maritime community whose employment is essentially land based.

C

The Court of Appeals for the First Circuit was apparently the first to develop a generally applicable test for seaman status. In *Carumbo v. Cape Cod S. S. Co.*, 123 F.2d 991 (1941), the court retained the pre-Swanson view that "the word 'seaman' under the Jones Act [did] not mean the same thing as 'member of a crew' under the [LHWCA]." 123 F.2d at 994. It concluded that "one who does any sort of work aboard a ship in navigation is a 'seaman' within the meaning of the Jones Act." *Id.*, at 995. To the phrase "member of a crew," on the other hand, the court gave a more restrictive meaning. The court adopted three elements to define the phrase that had been used at various times in prior cases, [*365] holding that "the requirements that the ship be in navigation; that there be a more or less permanent connection with the ship; and that the worker be aboard primarily to aid in navigation appear to us to be the essential and decisive elements of the definition of a 'member of a crew.'" *Ibid.* Cf. *Senko, supra*, at 375 (Harlan, J., dissenting) ("According to past decisions, to be a 'member of a crew' an individual must have some connection, more or less permanent, with a ship and a ship's company"). Once it became clear that the phrase "master or member of a crew" from the LHWCA is coextensive with the term "seaman" in the Jones Act, courts accepted the *Carumbo* formulation of master or member of a crew in the Jones Act context. See *Boyd v. Ford Motor Co.*, 948 F.2d 283 (CA6 1991); *Estate of Wenzel v. Seaward Marine Services, Inc.*, 709 F.2d 1326, 1327 (CA9 1983); *Whittington v. Sewer Constr. Co.*, 541 F.2d 427, 436 (CA4 1976); *Griffith v. Wheeling Pittsburgh Steel Corp.*, 521 F.2d 31, 36 (CA3 1975), cert. denied, 423 U.S. 1034, 46 L. Ed. 2d 643, 96 S. Ct. 785 (1976); *McKie v. Diamond Marine Co.*, 204 F.2d 132, 136 (CA5 1953). The Court of Appeals for the Second Circuit initially was among the jurisdictions to adopt the *Carumbo* formulation as the basis of its seaman status inquiry, see *Salgado v. M. J. Rudolph Corp.*, 514 F.2d at 755, but that court took the instant case as an opportunity to modify the traditional test somewhat (replacing the "more or less permanent connection" prong with a requirement that the connection be "substantial in terms of its (a) duration and (b) nature"), 20 F.3d at 57.

The second major body of seaman status law

developed in the Court of Appeals for the Fifth Circuit, which has a substantial Jones Act caseload, in the wake of *Offshore Co. v. Robison*, 266 F.2d 769 (CA5 1959). At the [***336] time of his injury, Robison was an oil worker permanently assigned to a drilling rig mounted on a barge in the Gulf of Mexico. In sustaining the jury's award of damages to Robison under the Jones Act, the court abandoned the aid in navigation requirement of the traditional test and held as follows:

[*366] "There is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of [**2189] its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips." *Id.*, at 779 (footnote omitted).

Soon after *Robison*, the Fifth Circuit modified the test to allow 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. *Brantiff v. Jackson Avenue-Greina Ferry, Inc.*, 280 F.2d 523, 528 (1960). See also *Barrett*, 781 F.2d at 1074; *Bertrand v. International Mooring & Marine, Inc.*, 700 F.2d 240 (CA5 1983), cert. denied, 464 U.S. 1069, 79 L. Ed. 2d 212, 104 S. Ct. 974 (1984). The modified *Robison* formulation, which replaced the *Carumbo* version as the definitive test for seaman status in the Fifth Circuit, has been highly influential in other courts as well. See *Robertson* 95; *Miller v. Patton-Tully Transp. Co.*, 851 F.2d 202, 204 (CA8 1988); *Curuso v. Sterling Yacht & Shipbuilders, Inc.*, 828 F.2d 14, 15 (CA11 1987); *Bennett v. Perini Corp.*, 510 F.2d 114, 115 (CA1 1975).

While the *Carumbo* and *Robison* approaches may not seem all that different at first glance, subsequent

developments in the Fifth Circuit's Jones Act jurisprudence added a strictly temporal gloss to the Jones Act inquiry. Under *Barrett v. Chevron, U.S.A., Inc.*, *supra*, if an employee's regular duties require him to divide his time between vessel and land, his status as a crew member is determined "in the context of his entire employment" with his current employer. *Id.*, at 1075. See also *Allbritton*, 68 *Tulane L. Rev.*, at 386; *Longmire*, 610 F.2d at 1347 (explaining that a worker's seaman status "should be addressed with reference to the nature [*367] and location of his occupation taken as a whole"). In *Barrett*, the court noted that the worker "performed seventy to eighty percent of his work on platforms and no more than twenty to thirty percent of his work on vessels" and then concluded that, "because he did not perform a substantial portion of his work aboard a vessel or fleet of vessels, he failed to establish that he was a member of the crew of a vessel." 781 F.2d at 1076. Since *Barrett*, the Fifth Circuit consistently has analyzed the problem in terms of the percentage of work performed on vessels for the employer in question—and has declined to find seaman status where the employee spent less than 30 percent of his time aboard ship. See, e.g., *Palmer v. Fayard Moving & Transp. Corp.*, 930 F.2d 437, 439 (CA5 1991); *Lormand v. Superior Oil Co.*, 845 F.2d 536, 541 (CA5 1987), cert. denied, 484 U.S. 1031 (1988); cf. *Leonard v. Dixie Well Service & Supply, Inc.*, 828 F.2d 291, 295 [***337] (CA5 1987); *Pickles v. International Oilfield Divers, Inc.*, 791 F.2d 1237, 1240 (CA5 1986), cert. denied, 479 U.S. 1059, 93 L. Ed. 2d 989, 107 S. Ct. 939 (1987).

Although some Courts of Appeals have varied the applicable tests to some degree; see, e.g., *Johnson v. John F. Beasley Constr. Co.*, 742 F.2d at 1062-1063, the traditional *Carumbo* seaman status formulation and the subsequent *Robison* modification are universally recognized, and one or the other is applied in every Federal Circuit to have considered the issue. See *Bull*, *Seaman Status Revisited: A Practical Guide To Status Determination*, 6 U.S. F. Mar. L. J. 547, 562-572 (1994) (collecting cases). The federal courts generally require at least a significant connection to a vessel in navigation (or to an identifiable fleet of vessels) for a maritime worker to qualify as a seaman under the Jones Act. Although the traditional test requires a "more or less permanent connection" and the *Robison* formulation calls for "substantial" work aboard a vessel, "this general requirement varies little, if at all, from one jurisdiction to another," *Bull*, *supra*, at 587, and "the courts have

repeatedly held [*368] that the relationship creating seaman status must be substantial in point of time and work, and not merely sporadic," *id.*, at 587-588.

D

[***LEdHR1B] [1B] [***LEdHR13] [13]
[***LEdHR14] [14] [***LEdHR15] [15] From this background emerge the essential contours of the "employment-related connection to a vessel in navigation," *Wilander*, 498 U.S. at 355, required for an employee to qualify as a seaman under the Jones Act. We have said that, in giving effect to the term "seaman," our concern must be "to define the meaning for the purpose of a particular statute" and [**2190] that its use in the Jones Act "must be read in the light of the mischief to be corrected and the end to be attained." *Warner*, 293 U.S. at 158. Giving effect to those guiding principles, we think that the essential requirements for seaman status are twofold. First, as we emphasized in *Wilander*, "an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission." 498 U.S. at 355 (quoting *Robison*, 266 F.2d at 779). The Jones Act's protections, like the other admiralty protections for seamen, only extend to those maritime employees who do the ship's work. But this threshold requirement is very broad: "All who work at sea in the service of a ship" are eligible for seaman status. 498 U.S. at 354.

[***LEdHR1C] [1C] 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. The fundamental purpose of this 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 to a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea. See 1B A. Jenner, *Benedit on Admiralty* § 11a, pp. 2-10.1 to 2-11 (7th ed. 1994) ("If it can be shown that the employee performed a [*369] significant part of his work on board [***338] the vessel on which he was injured, with at least some degree of regularity and continuity, the test for seaman status will be satisfied" (footnote omitted)). This requirement therefore determines which maritime employees in *Wilander's* broad category of persons eligible for seaman status because they are "doing the

ship's work," 498 U.S. at 355, are in fact entitled to the benefits conferred upon seamen by the Jones Act because they have the requisite employment-related connection to a vessel in navigation.

[***LEdHR16A] [16A] It is important to recall that the question of who is a "member of a crew," and therefore who is a "seaman," is a mixed question of law and fact. Because statutory terms are at issue, their interpretation is a question of law and it is the court's duty to define the appropriate standard. *Wilander*, 498 U.S. at 356. On the other hand, "if reasonable persons, applying the proper legal standard, could differ as to whether the employee was a 'member of a crew,' it is a question for the jury." *Ibid.* See also *Senko*, 352 U.S. at 374 (explaining that "the determination of whether an injured person was a 'member of a crew' is to be left to the finder of fact" and that "a jury's decision is final if it has a reasonable basis"). The jury should be permitted, when determining whether a maritime employee has the requisite employment-related connection to a vessel in navigation to qualify as a member of the vessel's crew, to consider all relevant circumstances bearing on the two elements outlined above.

[***LEdHR6B] [6B] [***LEdHR17] [17] In defining the prerequisites for Jones Act coverage, we think it preferable to focus upon the essence of what it means to be a seaman and to eschew the temptation to create detailed tests to effectuate the congressional purpose, tests that tend to become ends in and of themselves. The principal formulations employed by the Courts of Appeals--"more or less permanent assignment" or "connection to a vessel that is substantial in terms of its duration and nature"--are [*370] simply different ways of getting at the same basic point: The Jones Act remedy is reserved for sea-based maritime employees whose work regularly exposes them to "the special hazards and disadvantages to which they who go down to sea in ships are subjected." *Sieracki*, 328 U.S. at 104 (Stone, C. J., dissenting). Indeed, it is difficult to discern major substantive differences in the language of the two phrases. In our view, "the total circumstances of an individual's employment must be weighed to determine whether he had a sufficient relation to the navigation of vessels and the perils attendant thereon." *Wallace v. Oceanneering Int'l*, 727 F.2d 427, 432 (CA5 1984). The duration of a worker's connection to a vessel and the

nature of the worker's activities, [**2191] 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.

Although we adopt the centerpiece of the formulation used by the Court of Appeals in this case—that a seaman must have a connection with a vessel in navigation that is substantial in both duration and nature—we [***339] should point out how our understanding of the import of that language may be different in some respects from that of the court below. The Court of Appeals suggested that its test for seaman status "does not unequivocally require a Jones Act seaman to be substantially connected to a vessel" in terms of time if the worker performs important work on board on a steady, although not necessarily on a temporally significant, basis. 20 F.3d at 53. Perhaps giving effect to this intuition, or perhaps reacting to the temporal gloss placed on the *Robison* language by later Fifth Circuit decisions, the court phrased its standard at one point as requiring a jury to find that a Jones Act plaintiff's contribution to the function of the vessel was substantial in terms of its duration or nature. 20 F.3d at 57. It is not clear which version ("duration or nature" [**371] as opposed to "duration and nature") the Court of Appeals intended to adopt for the substantial connection requirement—or indeed whether the court saw a significant difference between the two. Nevertheless, we think it is important that a seaman's connection to a vessel in fact be substantial in both respects.

[***LEdHR16B] [16B] [***LEdHR18] [18]
[***LEdHR19] [19] We agree with the Court of Appeals that seaman status is not merely a temporal concept, but we also believe that it necessarily includes a temporal element. A maritime worker who spends only a small fraction of his working time on board a vessel is fundamentally land-based and therefore not a member of the vessel's crew, regardless of what his duties are. Naturally, substantiality in this context is determined by reference to the period covered by the Jones Act plaintiff's maritime employment, rather than by some absolute measure. Generally, the Fifth Circuit seems to have identified an appropriate rule of thumb for the ordinary case: A worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the

Jones Act. This figure of course serves as no more than a guideline established by years of experience, and departure from it will certainly be justified in appropriate cases. As we have said, "the inquiry into seaman status is of necessity fact specific; it will depend on the nature of the vessel and the employee's precise relation to it." *Wilander*, 498 U.S. at 356. Nevertheless, we believe that courts, employers, and maritime workers can all benefit from reference to these general principles. And where undisputed facts reveal that a maritime worker has a clearly inadequate temporal connection to vessels in navigation, the court may take the question from the jury by granting summary judgment or a directed verdict. See, e.g., *Palmer*, 930 F.2d at 439.

[***LEdHR20] [20] On the other hand, we see no reason to limit the seaman status inquiry, as petitioners contend, exclusively to an examination of the overall course of a worker's service with a [**372] particular employer. Brief for Petitioners 14-15. When a maritime worker's basic assignment changes, his seaman status may change as well. See *Barrett*, 781 F.2d at 1077 (Rubin, J., dissenting) ("An assignment to work as a crew member, like the voyage of a vessel, may be brief, and the *Robison* test is applicable in deciding the worker's status during any such employment"); *Longmire*, 610 F.2d at 1347, n. 6. For example, we can imagine situations in which [***340] someone who had worked for years in an employer's shoreside headquarters is then reassigned to a ship in a classic seaman's job that involves a regular and continuous, rather than intermittent, commitment of the worker's labor to the function of a vessel. Such a person should not be denied seaman status if injured shortly after the reassignment, just as someone actually transferred to a desk job in the company's office and injured in the hallway should not be entitled to claim seaman status on the basis of prior service at sea. If a maritime employee receives a new work assignment in which his [**2192] essential duties are changed, he is entitled to have the assessment of the substantiality of his vessel-related work made on the basis of his activities in his new position. See *Chevans*, 64 *Tulane L. Rev.*, at 389-390. Thus, nothing in our opinion forecloses Jones Act coverage, in appropriate cases, for JUSTICE STEVENS' paradigmatic maritime worker injured while reassigned to "a lengthy voyage on the high seas," *post*, at 386. While our approach maintains the status-based inquiry this Court's earlier cases contemplate, we recognize that seaman status also should not be some immutable characteristic that

maritime workers who spend only a portion of their time at sea can never attain.

III

[**LEdHR2B] [2B] One final issue remains for our determination: whether the District Court erred in instructing the jurors that, "in determining whether Mr. Latsis performed a substantial part of his work on the vessel, [they could] not consider the period [*373] of time the *Galileo* was in drydock in Germany, because during that time period she was out of navigation." We agree with the Court of Appeals that it did.

[**LEdHR2C] [2C]. [**LEdHR16C] [16C] The foregoing discussion establishes that, to qualify as a seaman under the Jones Act, a maritime employee must have a substantial employment-related connection to a vessel in navigation. See *Wilander, supra*, at 354-355. Of course, any time Latsis spent with the *Galileo* while the ship was out of navigation could not count as time spent at sea for purposes of that inquiry, and it would have been appropriate for the District Court to make this clear to the jury. Yet the underlying inquiry whether a vessel is or is not "in navigation" for Jones Act purposes is a fact-intensive question that is normally for the jury and not the court to decide. See *Butler v. Whiteman*, 356 U.S. 271, 2 L. Ed. 2d 754, 78 S. Ct. 734 (1958) (*per curiam*); 2 M. Norris, *Law of Seamen* § 30.13, p. 363 (4th ed. 1985) ("Whether the vessel is in navigation presents a question of fact to be determined by the trier of the facts. When the case is tried to a jury the fact question should be left to their consideration if sufficient evidence has been presented to provide the basis for jury consideration"). Removing the issue from the jury's consideration is only appropriate where the facts and the law will reasonably support only one conclusion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986), and the colloquy between the court and counsel does not indicate that the District Court made any such findings before overruling respondent's objection to the drydock instruction. See Tr. 432. Based upon the record before us, we think the court failed adequately to justify its [*341] decision to remove the question whether the *Galileo* was "in navigation" while in Bremerhaven from the jury.

[**LEdHR21A] [21A] Under our precedent and the law prevailing in the Circuits, it is generally accepted that "a vessel does not cease to be a vessel when she is not

voyaging, but is at anchor, berthed, or at dockside." *DiGiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119, 1121 (CA1) (en banc), cert. denied, 506 U.S. [*374] 827, 121 L. Ed. 2d 50, 113 S. Ct. 87 (1992), even when the vessel is undergoing repairs. See *Butler, supra*, at 271; *Senko*, 352 U.S. at 373; *Norris, supra*, at 364 ("[A] vessel is in navigation... when it returns from a voyage and is taken to a drydock or shipyard to undergo repairs in preparation to making another trip, and likewise a vessel is in navigation, although moored to a dock, if it remains in readiness for another voyage" (footnotes omitted)). At some point, however, repairs become sufficiently significant that the vessel can no longer be considered in navigation. In *West v. United States*, 361 U.S. 118, 4 L. Ed. 2d 161, 80 S. Ct. 189 (1959), we held that a shoreside worker was not entitled to recover for unseaworthiness because the vessel on which he was injured was undergoing an overhaul for the purpose of making her seaworthy and therefore had been withdrawn from navigation. We explained that, in such cases, "the focus should be upon the status of the ship, the pattern of the repairs, and the extensive nature of the work contracted to be done." *Id.*, at 122. See also *United N.Y. and N.J. Sandy Hook Pilots Assn. v. Halecki*, 358 U.S. 613, 79 S. Ct. 517, 3 L. Ed. 2d 541 [*2193] (1959); *Desper*, 342 U.S. at 191. The general rule among the Courts of Appeals is that vessels undergoing repairs or spending a relatively short period of time in drydock are still considered to be "in navigation" whereas ships being transformed through "major" overhauls or renovations are not. See *Bull*, 6 U.S. F. Mar. L. J., at 582-584 (collecting cases).

[**LEdHR2D] [2D]. [**LEdHR21B] [21B] Obviously, while the distinction at issue here is one of degree, the prevailing view is that "major renovations can take a ship out of navigation, even though its use before and after the work will be the same." *McKinley v. All Alaskan Seafoods, Inc.*, 980 F.2d 567, 570 (CA9 1992). Our review of the record in this case uncovered relatively little evidence bearing on the *Galileo*'s status during the repairs, and even less discussion of the question by the District Court. On the one hand, the work on the *Chandris* vessel took only about six months, which seems to be a relatively short period of time for important repairs on oceangoing vessels. Cf. *id.*, at 571 [*375] (17-month-long project involving major structural changes took the vessel out of navigation); *Wixom v. Boland Marine & Manufacturing Co.*, 614 F.2d 956 (CA5 1980) (similar 3-year project); see also *Senko*,

supra, at 373 (noting that "even a transoceanic liner may be confined to berth for lengthy periods, and while there the ship is kept in repair by its 'crew'"—and that "there can be no doubt that a member of its crew would be covered by the Jones Act during this period, even though the ship was never in transit during his employment"). On the other hand, Latsis' own description of the work performed suggests [***342] that the modifications to the vessel were actually quite significant, including the removal of the ship's bottom plates and propellers, the addition of bow thrusters, overhaul of the main engines, reconstruction of the boilers, and renovations of the cabins and other passenger areas of the ship. See App. 93-94. On these facts, which are similar to those in *McIntley*, it is possible that Chandris could be entitled to partial summary judgment or a directed verdict concerning whether the *Galileo* remained in navigation while in drydock; the record, however, contains no stipulations or findings by the District Court to justify its conclusion that the modifications to the *Galileo* were sufficiently extensive to remove the vessel from navigation as a matter of law. On that basis, we agree with the Court of Appeals that the District Court's drydock instruction was erroneous.

[***LEdHR2E] [2E] Even if the District Court had been justified in directing a verdict on the question whether the *Galileo* remained in navigation while in Bremerhaven, we think that the court's charge to the jury swept too broadly. Instead of simply noting the appropriate legal conclusion and instructing the jury not to consider the time Latsis spent with the vessel in drydock as time spent with a vessel in navigation, the District Court appears to have prohibited the jury from considering Latsis' stay in Bremerhaven for any purpose. In our view, Latsis' activities while the vessel was in drydock are at least [*376] marginally relevant to the underlying inquiry (whether Latsis was a seaman and not a land-based maritime employee). Naturally, the jury would be free to draw several inferences from Latsis' work during the conversion, not all of which would be in his favor. But the choice among such permissible inferences should have been left to the jury, and we think the District Court's broadly worded instruction improperly deprived the jury of that opportunity by forbidding the consideration of Latsis' time in Bremerhaven at all.

IV

[***LEdHR3B] [3B] Under the Jones Act, "if reasonable persons, applying the proper legal standard, could differ as to whether the employee was a 'member of a crew,' it is a question for the jury." *Wilander*, 498 U.S. at 356. On the facts of this case, given that essential points are in dispute, reasonable factfinders could disagree as to whether Latsis was a seaman. Because the question whether the *Galileo* remained "in navigation" while in drydock should have been submitted to the jury, and because the decision on that issue might affect the outcome of the ultimate seaman status inquiry, we affirm the judgment of the Court of Appeals remanding the case to the District Court for a new trial.

[**2194] [***LEdHR1D] [1D] [***LEdHR3C] [3C] On remand, the District Court should charge the jury in a manner consistent with our holding that the "employment-related connection to a vessel in navigation" necessary to qualify as a seaman under the Jones Act, *id.*, at 355, comprises two basic elements: The worker's duties must contribute to the function of the vessel or to the accomplishment of its mission, and the worker must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in terms of both its duration and [***343] its nature. As to the latter point, the court should emphasize that the Jones Act was intended to protect sea-based maritime workers, who owe their allegiance to a vessel, and not land-based employees, who do not. By instructing juries in Jones Act [*377] cases accordingly, courts can give proper effect to the remedial scheme Congress has created for injured maritime workers.

It is so ordered.

CONCUR BY: STEVENS

CONCUR

JUSTICE STEVENS, with whom JUSTICE THOMAS and JUSTICE BREYER join, concurring in the judgment.

The majority has reached the odd conclusion that a maritime engineer, injured aboard ship on the high seas while performing his duties as an employee of the ship, might not be a "seaman" within the meaning of the Jones Act. This decision is unprecedented. It ignores the critical distinction between work performed aboard ship during a voyage—when the members of the crew encounter "the perils of the sea"—and maritime work performed on a

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