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Chadris, Inc. v. Latsis and the Test for Seaman Status: The Supreme Court Muddies the Waters Again

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CHANDRIS, INC. v. LATSIS AND THE TEST FOR SEAMAN STATUS: THE SUPREME COURT MUDDIES THE WATERS AGAIN

On June 14, 1995, the Supreme Court issued its decision in *Chandris, Inc. v. Latsis*,[1] revising for the second time in four years the much-contested standard for Jones Act[2] seaman status. A worker seeking Jones Act coverage now must show that, in addition to doing the ship's work,[3] he has a connection to a vessel or fleet that is substantial, both in nature and in duration.[4] By leaving some traditional seamen vulnerable to the perils of the sea, the *Latsis* test is inconsistent with the policy of the Jones Act.

The Jones Act provides remedies for injured seamen, allowing them to sue their employers for negligence.[5] Seamen are not covered by state compensation systems; instead, activities on the water are covered by admiralty.[6] Traditionally, maritime law has sought to foster commerce by protecting investors and shipowners, often at the expense of seamen.[7] Until this century, maritime law had precluded seamen's recovery beyond maintenance and cure.[8]

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1. 115 S. Ct. 2172 (1995).

2. 46 U.S.C. app. § 688 (1994) (stating the procedures for recovery for injury to, or death of, seamen).

3. *See Latsis*, 115 S. Ct. at 2190 (citing McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 355 (1991) (holding that a necessary element of a seaman's employment-related connection to a vessel in navigation is that the seaman perform the work of the vessel)).

4. *See id.*

5. *See* 46 U.S.C. app. § 688.

6. *See, e.g.*, Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917) (holding that state workmen's compensation statutes may not be used to enforce injury compensation to maritime workers); *see also* THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 1-18 (2d ed. 1994) (discussing the doctrinal and theoretical bases for admirality jurisdiction).

7. *See* Robert M. Jarvis, *Maritime Personal Injury Law in the 21st Century*, *in* MARITIME PERSONAL INJURY LITIGATION 1, 3 (1992) (describing early 20th century attitudes toward seamen's rights).

8. *See* John W. Sims, *The American Law of Maritime Personal Injury and Death: An Historical Review*, 55 TUL. L. REV. 973 (1981); *see generally* John B. Shields,

The Jones Act, enacted in 1920, was an attempt to help seamen by providing them with legal remedies for injuries caused by the negligence of their employers.[9] Debate over who should receive those remedies, however, has created nearly as many problems as the Jones Act has solved.[10] Although some workers clearly qualify as seamen, the courts have had difficulty distinguishing other seamen from land-based workers.[11] The Jones Act's generous remedies[12] have made seaman status a hotly contested and frequently litigated issue for injured workers and their employers.[13]

The Supreme Court, in 1991, attempted to define seaman status in *McDermott International, Inc. v. Wilander*.[14] *Wilander* resolved the conflict between two popular approaches to the issue,[15] one from the Fifth Circuit[16] and the other from the Seventh.[17] The Court left many questions unanswered and confu-

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Seamen's Rights to Recover Maintenance and Cure Benefits, 55 TUL. L. REV. 1046 (1981) (discussing the remedy of maintenance and cure).

9. *See* 46 U.S.C. app. § 688; *see also* Sims, *supra* note 8, at 988-89 (noting that the Jones Act has provided both procedural and substantive benefits to negligently induced seamen).

10. "The perils of the sea . . . have met their match in the perils of judicial review." GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY § 6-1 (2d ed. 1975).

11. "[T]he 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 (5th Cir. 1974).

12. *See infra* note 55 for a description of recoverable damages. *But cf.* Joseph D. Cheavens, *Terminal Workers' Injury and Death Claims*, 64 TUL. L. REV. 361, 365-67 (1989) (arguing that Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 (1994), benefits may be preferable to a Jones Act recovery).

13. *See generally* Senko v. LaCrosse Dredging Corp., 352 U.S. 370 (1957) (finding that a worker on a dredge anchored to shore was a seaman); Palmer v. Fayard Moving & Transp. Corp., 930 F.2d 437 (5th Cir. 1991) (denying seaman status to a land-based public relations officer); Barrett v. Chevron, U.S.A., Inc., 781 F.2d 1067 (5th Cir. 1986) (holding that an offshore oil worker was not a seaman).

14. 498 U.S. 337 (1991).

15. *See id.* at 340.

16. *See* Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959) (holding that to qualify for seaman status, a worker must "contribute[ ] to the function of [a] vessel or to the accomplishment of its mission").

17. *See* Johnson v. John F. Beasley Constr. Co., 742 F.2d 1054, 1061 (7th Cir. 1984) (holding that seamen status requires that a worker contribute to the transportation function of the vessel).

sion continued in the lower courts.[18] In *Latsis*, the Court amended the *Wilander* definition of seaman status, further restricting the scope of the Jones Act.[19] By shifting the boundaries of seaman status, the Court has reduced potential liability for maritime employers and closed remedies to injured seamen. The *Latsis* opinion will have far-reaching effect.

In applying the Jones Act, Justice Cardozo wrote in *Warner v. Goltra*[20] that "the purpose . . . of [the] statute . . . must be read in the light of the mischief to be corrected and the end to be attained."[21] In *Latsis*, the Court has purported to do just that.[22] This Note assesses the judiciary's success in explaining the purpose of the Jones Act and in correcting the mischief that it was designed to remedy. By reviewing the background of the Jones Act and the case law leading up to the *Wilander* decision, this Note analyzes judicial interpretation of the Act's purpose. Through a critical discussion and comparison of *Wilander* and *Latsis*, this Note demonstrates the Court's mistakes in crafting its new definition of seaman. Finally, drawing on the history of Jones Act jurisprudence, this Note suggests a more appropriate approach to seaman status.

The Supreme Court needs to enunciate a more complete test for seaman status rooted firmly in the policy considerations of the Jones Act. This test should distinguish between land-based and sea-based employees by granting seaman status to those attached to a vessel at sea, without further consideration. The test should direct application of the factors identified in *Latsis* and *Wilander* to more ambiguous situations.

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18. *See generally* Bach v. Trident S.S., 920 F.2d 322 (5th Cir.) (holding that a river boat pilot was not a seaman), *vacated and remanded*, 500 U.S. 949, *reinstated*, 947 F.2d 1290 (5th Cir. 1991).

19. *See* Chandris, Inc. v. Latsis, 115 S. Ct. 2172, 2189-90 (1995).

20. 293 U.S. 155 (1934) (holding that ship masters are seamen under the Jones Act).

21. *Id.* at 158.

22. *See Latsis*, 115 S. Ct. at 2185 (defining the Court's task as that of developing a status-based standard that best furthers the remedial goals of the Jones Act).

BACKGROUND OF THE JONES ACT

In 1896, Patrick Shea, a crew member aboard the propeller *Osceola*, was struck and injured by a falling derrick.[23] This accident began nearly a century of litigation over legal remedies for seamen and the eligibility of workers to receive these remedies. Shea sued the *Osceola*'s owners for the master's negligence in ordering the use of the derrick at open sea.[24] In denying Shea's claims, the Supreme Court severely limited a seaman's ability to recover for his injuries.[25]

The Court determined in *The Osceola* that general maritime law limited the rights of Shea and other seamen to four propositions.[26] First, when a seaman became ill or was wounded in the ship's service, the vessel and its owners were liable for his maintenance and cure[27] and for his wages, "at least so long as the voyage [was] continued."[28] Second, the vessel and its owners were liable for injuries to a seaman caused by the unseaworthiness of the vessel.[29] Third, except for the ship's master, all the crew members were fellow servants of each other.[30] The vessel and its owners thus were not liable to a seaman for injuries caused by another seaman's negligence, beyond the remedies of maintenance and cure.[31] Fourth, a seaman could not recover in an indemnity action for the negligence of the ship's master.[32] Again, he was entitled only to maintenance and cure.[33]

Under *The Osceola*, a seaman injured by negligence, whether that of the ship's master or of a fellow servant, had no right to

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23. *See* The Osceola, 189 U.S. 158, 159 (1903).
24. *See id.* at 159-60.
25. *See id.* at 177.
26. *See id.* at 175.
27. For a definition and discussion of maintenance and cure, see Shields, *supra* note 8. The right to maintenance and cure dates back to the early middle ages. *See id.* at 1046. It is available regardless of fault and extends until the maximum possible cure is reached. *See id.* at 1047.
28. *The Osceola*, 189 U.S. at 175.
29. *See id.*
30. *See id.*
31. *See id.*
32. *See id.*
33. *See id.*

damages beyond maintenance and cure.[34] *The Osceola*'s holding incorporated the fellow servant defense[35] and the doctrine of assumption of the risk,[36] theories that originated in cases involving land-based workers, denying seamen the ability to sue their employers in a negligence cause of action.[37] In 1908, Congress restricted the application of the fellow servant defense and the doctrine of assumption of the risk in railway workers' suits by enacting the Federal Employers' Liability Act (FELA).[38] This legislation was a breakthrough for railway workers, granting them a negligence cause of action against their employers.[39]

Congress attempted similar reform for seamen in the Seaman's Act of 1915.[40] Intended as a legislative veto of *The Osceola*'s holding, the 1915 Act provided that a seaman in command of other seamen is not a fellow servant with those under his authority.[41] *The Osceola* had provided that seamen *were* fellow servants with everyone on board except the ship's master.[42] Under *The Osceola*, the fellow servant defense restricted a seaman injured by the negligence of his superior offi-

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34. *See id.*

35. The fellow servant defense shielded employers from liability by preventing the application of the doctrine of respondeat superior when a worker injured a fellow worker. *See* Murray v. South Carolina R.R., 26 S.C.L. (1 McMul.) 385 (1841) (applying the fellow servant defense).

36. As applied in *The Osceola*, the doctrine of assumption of the risk precluded employer liability because a worker, by accepting employment, assumed the risk of injury by a dangerous working condition that he could have discovered if he had been alert. *See* SCHOENBAUM, *supra* note 6, § 3-11; *see also* Priestley v. Fowler, 150 Eng. Rep. 1030, 1032-33 (1837) (explaining that workers are not required to risk their safety for their employer and may decline a position that involves the likelihood of injury). Encountering negligent fellow servants was a risk that a worker assumed by accepting employment. *See* Bartonshill Coal Co. v. Reid, 20 Sess. Cas. (D.) 13, 14-15 (H.L. 1858).

37. *See, e.g.*, *Murray*, 26 S.C.L. at 385 (involving railroad workers); *Priestly*, 150 Eng. Rep. at 1030 (involving a butcher).

38. Ch. 149, 35 Stat. 65 (1908) (codified as amended at 45 U.S.C. § 51 (1994)).

39. *See* MORRIS D. FORKOSCH, A TREATISE ON LABOR LAW § 58 (1965).

40. Ch. 153, § 20, 38 Stat. 1164, 1185 (1915) (codified as amended at 46 U.S.C. app. § 688 (1994)).

41. *See id.*; *see generally* Warner v. Goltra, 293 U.S. 155, 159 (1934) (describing the Seaman's Act of 1915 as "aimed at the fellow-servant rule in its application to torts upon navigable waters").

42. *See* The Osceola, 189 U.S. 158, 175 (1903) ("[A]ll the members of the crew, except perhaps the master, are, as between themselves, fellow servants.").

cer to maintenance and cure.[43] By declaring that a seaman was not a fellow servant of his superior officer, Congress apparently intended that the Seaman's Act of 1915 would allow seamen to sue the vessel and its owners for the negligence of their superior officers, thereby softening *The Osceola*'s harsh ruling.

Congress, however, overlooked *The Osceola*'s provision that barred suits to recover for the negligence of *any* crew member beyond the remedies of maintenance and cure.[44] Thus, even though the Seaman's Act of 1915 declared that a seaman was no longer a fellow servant of his superior officer, he still could not recover for the superior officer's negligence. The Supreme Court highlighted this error in *Chelentis v. Luckenbach S.S.*, pointing out that the 1915 Act did not affect *The Osceola*'s prohibition of a seaman's recovery for the negligence of a crew member.[45]

Congress went back to the drawing board, emerging in 1920 with the Jones Act,[46] modeled after FELA.[47] The Jones Act granted a negligence cause of action to seamen injured in the course of employment and extended to them the rights that FELA provided to railway workers. Under the Jones Act, the injured seaman may elect to sue in admiralty or at law with the right to trial by jury in either federal or state court.[48] The jury may also decide general maritime law claims.[49] Although judges craft the standard for seaman status, the jury usually decides whether a given plaintiff qualifies.[50] If a seaman sues in state

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43. *See id.* ("[S]eamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.").

44. *See id.* ("[T]he seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure.").

45. *See* Chelentis v. Luckenbach S.S., 247 U.S. 372, 380-84 (1918).

46. Merchant Marine (Jones) Act, ch. 250, § 33, 41 Stat. 988, 1007 (1920) (codified at 46 U.S.C. app. § 688 (1994)).

47. *See generally* Swanson v. Marra Bros., 328 U.S. 1, 3 (1946) ("The [Jones] Act . . . made applicable to seamen, injured in the course of their employment, the provisions of the Federal Employers' Liability Act."); O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 38-39 (1943) (characterizing the Jones Act as an extension of FELA benefits to seamen).

48. *See* 46 U.S.C. app. § 688(a). Generally, admiralty does not provide a right to a jury trial. *See* SCHOENBAUM, *supra* note 6, § 18-9.

49. *See* Fitzgerald v. United States Lines Co., 374 U.S. 16 (1963) (holding that general maintenance and cure claims that are joined with Jones Act claims must be submitted to the jury when they both arise out of the same set of facts).

50. *See generally* Peter Beer, *Keeping up with the Jones Act*, 61 TUL. L. REV. 379,

court, the defendant does not have the right of removal.[51] The locality test, which defines admiralty jurisdiction,[52] does not apply in Jones Act cases; therefore, seamen injured on land may be covered.[53] The Jones Act allows the personal representative of a deceased seaman to maintain an action.[54] Under the Act, an injured seaman may recover generous benefits.[55]

Congress failed to define the term "seaman" in the Jones Act. Ironically, the most complete statutory definition of the term appears in another act, the Longshore and Harbor Workers' Compensation Act (LHWCA).[56] Prior to the enactment of the LHWCA, longshoremen and harbor workers had recovered as seamen under the Jones Act.[57] In excluding seamen from its coverage, the LHWCA employs the most complete statutory definition of a seaman: "a master or member of a crew of any

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406-09 (1986) (considering the impact of assigning the decision to juries and suggesting that judges are better able to decide who is a seaman).

51. *See* Engel v. Davenport, 271 U.S. 33, 37-38 (1926) (establishing that a Jones Act claim filed in a state court of competent jurisdiction may not be removed to federal court).

52. Under the locality test, a tort is within admiralty jurisdiction if it is caused by an occurrence on navigable waters. *See* The Plymouth, 70 U.S. (3 Wall.) 20, 33 (1865). Congress has codified the locality test: "[T]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." 46 U.S.C. app. § 740.

53. *See* O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943) (awarding Jones Act recovery to a deckhand who was on shore performing repairs for his vessel when he was injured).

54. *See* 46 U.S.C. app. § 688(a).

55. An injured seaman may recover lost past wages, lost future wage earning capacity, past and future medical expenses, and pain and suffering, including psychological suffering. *See* SCHOENBAUM, *supra* note 6, § 4-18.

56. *See* 33 U.S.C. §§ 901-950, 902(3)(G) (1994); *see generally* Cheavens, *supra* note 12, at 369-73 (describing the legislative and judicial history behind the enactment of the LHWCA).

57. *See* International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926) (granting seaman status to a longshoreman). In the years immediately following passage of the LHWCA, the Supreme Court continued to find seaman status for shore-based workers. *See generally* Uravic v. F. Jarka Co., 282 U.S. 234 (1931) (granting seaman status to a stevedore); Jamison v. Encarnacion, 281 U.S. 635 (1930) (holding that a longshoreman injured on a vessel in navigable waters was entitled to coverage as a seaman). Later cases and statutory amendments curtailed the extension of seaman status to land-based maritime employees. *See infra* notes 79-85 and accompanying text.

vessel."[58] Since the passage of the LHWCA, this language has formed the basis for most seaman status analyses.[59]

EARLY JONES ACT JURISPRUDENCE: THE ACTIVITIES-BASED TEST

In its early Jones Act cases, the Supreme Court determined seaman status based on the worker's activities, comparing the worker's duties to traditional seaman activities.[60] The Court rejected the locality test as a method of determining seaman status[61] and found that seaman status is fact-specific,[62] turning on the worker's duties, both those immediately at hand[63] and those within the general scope of his employment.[64] For Jones Act coverage, the worker must be a seaman, meaning that he is engaged in activities customarily performed by seamen, and must be injured in the course of his employment.[65] The Court used the LHWCA, interpreting it as exclusive of the Jones Act, to gauge seaman status under the Jones Act.[66]

In one of its earliest considerations of seaman status, *Warner v. Goltra*,[67] the Court spoke of the purpose of the Jones Act in terms of protecting seamen, who were "'ward[s] of the admiralty,' often ignorant and helpless, and so in need of protection . . . ."[68] In holding that the Jones Act applied to the ship's master as well

58. 33 U.S.C. § 902(3)(G).

59. *See, e.g.*, Swanson v. Marra Bros., 328 U.S. 1, 6 (1946) (basing its denial of seaman status for a worker upon the LHWCA); Gizoni v. Southwest Marine, Inc., 909 F.2d 385, 388 (9th Cir. 1990), *aff'd*, 502 U.S. 81, 86-87 (1991) (holding that the Jones Act and the LHWCA are not mutually exclusive).

60. *See infra* notes 62-94 and accompanying text.

61. *See* O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 42-43 (1943) (establishing that seaman status does not depend on the place where injury was inflicted, but on the nature of the employee's service to a vessel).

62. *See* Desper v. Starved Rock Ferry Co., 342 U.S. 187, 190 (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.").

63. *See id.*

64. *See, e.g.*, Senko v. LaCrosse Dredging Corp., 352 U.S. 370, 373 (1957) (finding that a worker on a dredge anchored to shore was a seaman).

65. *See O'Donnell*, 318 U.S. at 39.

66. *See* Swanson v. Marra Bros., 328 U.S. 1, 6-7 (1946).

67. 293 U.S. 155 (1934).

68. *Id.* at 162.

as to the crew, the Court found that master and crew were equally vulnerable to injury.[69] The Court stated that "a seaman is a mariner of any degree, one who lives his life upon the sea."[70] The decisive factor in applying the Jones Act to the master of the vessel was the master's vulnerability to injury.[71]

In *O'Donnell v. Great Lakes Dredge & Dock Co.*,[72] the Court applied the Act to a deckhand who was injured while he was ashore.[73] Defining seamen as "those employed on a vessel in rendering the services customarily performed by seamen,"[74] the Court concluded that the locus of the seaman's injury was less important than his status as a seaman.[75] Seaman status turned on "the nature of the [worker's] service and its relationship to the operation of the vessel plying in navigable waters."[76] Finding that the Jones Act merely modified and did not supplant general maritime law,[77] the Court reasoned that Jones Act recovery, like the traditional maintenance and cure remedy, was available to seamen injured on land.[78]

Drawing on the distinction between shore-based and land-based workers in the LHWCA, the Court in *Swanson v. Marra Bros.*[79] found that a longshoreman injured while loading a docked vessel was not covered by the Jones Act.[80] The worker, already having received compensation under the Pennsylvania employers' liability act, sought additional coverage under the Jones Act.[81] In denying seaman status for the worker, the

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69. *See id.* ("Congress did not mean that the master, any more than the seaman, should be left without a remedy if wounded in his body.").

70. *Id.* at 157; *see also* Norton v. Warner Co., 321 U.S. 565, 572 (1944) (holding 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") (citing The Buena Ventura, 243 F. 797, 799 (S.D.N.Y. 1916)).

71. *Warner*, 293 U.S. at 162.

72. 318 U.S. 36 (1943).

73. *See id.*

74. *Id.* at 39.

75. *See id.* at 42-43.

76. *Id.*

77. *See id.* at 43.

78. *See id.* at 41-43.

79. 328 U.S. 1 (1946).

80. *See id.* at 7.

81. *See id.* at 2-3.

Court explained that the "master or member of a crew" provision in the LHWCA[82] confined Jones Act benefits to the crew members of a vessel in navigation, and excluded shore-based workers from the ranks of seamen.[83] Defining Jones Act seaman status with the aid of the LHWCA, the Court characterized the two acts as mutually exclusive.[84] LHWCA coverage precluded the plaintiff from seeking Jones Act remedies.[85]

In *Desper v. Starved Rock Ferry Co.*, the Court evaluated seaman status according to the activity that the worker was performing at the time of his injury.[86] The worker in that case was employed as a pilot by the owner of a fleet of sightseeing vessels.[87] The work was seasonal.[88] During the off-season, when the vessels were moored out of the water, the worker was killed in an accident while preparing a ship for the next season.[89] Though conceding that the worker would have been a seaman again later in the year, the Court overturned a jury finding of seaman status, concluding that "at the time of his

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82. 33 U.S.C. § 902(3)(G) (1994).

83. *See Swanson*, 328 U.S. at 7. Prior to the passage of the LHWCA, longshoremen had found refuge under the Jones Act. *See* International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926) (granting Jones Act coverage to a longshoreman); *supra* note 57 and accompanying text.

84. *See Swanson*, 328 U.S. at 6. *But see* Southwest Marine, Inc. v. Gizoni, 502 U.S. 81 (1991) (holding that the LHWCA and the Jones Act are *not* mutually exclusive).

85. *See Swanson*, 328 U.S. at 7. The Court continued, however, to grant LHWCA workers traditional seamen's remedies. *See* Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946). *Sieracki* held that a longshoreman covered by the LHWCA but performing the traditional work of a seaman could sue the vessel on which he was injured for unseaworthiness, a remedy previously available only to seamen. *See id.* at 99. This decision extended the warranty of seaworthiness to shore-based workers doing a seaman's work, thereby creating a new class of seamen, the *Sieracki*-seamen. *See generally* Salgado v. M.J. Rudolph Corp., 514 F.2d 750 (2d Cir. 1975) (holding that a longshoreman working aboard a vessel is a *Sieracki*-seaman and can recover for a breach of the warranty of seaworthiness). The 1972 LHWCA Amendments prevented unseaworthiness recovery by LHWCA workers and hence abolished the *Sieracki* class of seamen. Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972 (amendments codified at 33 U.S.C. § 905(b)). *See, e.g*, McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 347-48 (1991) (discussing Congress's legislative response to *Sieracki*).

86. 342 U.S. 187, 190 (1952).

87. *See id.* at 188.

88. *See id.*

89. *See id.* at 188-89.

death [the worker] quite clearly was not [engaged in work] usually done by a 'seaman'."[90] Stressing that the vessel was out of navigation at the time of the accident, the Court declared that the Jones Act "does not cover probable or expectant seamen but seamen in being."[91]

The early Supreme Court cases stressed the relationship of the worker's duties to the traditional duty of seamen. The Court excluded workers who were on board briefly[92] and included those drawn ashore only temporarily.[93] Although the worker's status as shore-based or sea-based undoubtedly played a role in the analysis, the principal focus was on the relationship of the worker's duties to seamen's work and to the risks faced by seamen.[94] The relation of the plaintiff's work to the duties of the traditional seaman was a surrogate for the plaintiff's exposure to a seaman's risks.

EMERGING POLICY IN THE CIRCUIT COURTS

Following the passage of the Jones Act, the circuit courts carved out various approaches to defining seaman status, the most prominent cases being the Fifth Circuit's decision in *Offshore Co. v. Robison*[95] and the Seventh Circuit's decision in *Johnson v. John F. Beasley Construction Co.*[96] Other circuits

90. *Id.* at 190-91.

91. *Id.* at 191.

92. *See id.* (denying recovery to a boat operator killed while doing repairs to vessels blocked-up on land).

93. *See* O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943) (allowing recovery to a deckhand injured when he went ashore to assist in repairs to the vessel).

94. *See* Warner v. Goltra, 293 U.S. 155, 162 (1934).

95. 266 F.2d 769 (5th Cir. 1959).

96. 742 F.2d 1054 (7th Cir. 1984). The Seventh Circuit was not the first to enunciate this standard, though the Supreme Court focused on the *Johnson* version in *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 353-55 (1991). The test originated in the First Circuit, in *Carumbo v. Cape Cod S.S.*, 123 F.2d 991 (1st Cir. 1941). *Carumbo* required that a seaman have a more or less permanent attachment to a vessel in navigation and that he be aboard primarily to aid in navigation. *See id.* at 995. It would probably be more accurate, therefore, to designate this standard as the *Carumbo* test; however, because the Supreme Court evaluated this test by reference to the *Johnson* decision, and because the First Circuit later dropped the "aid in navigation" requirement, this Note refers to it as the *Johnson* test.

generally fell into either the *Robison*[97] or the *Johnson* camp;[98] the primary distinction between the two groups was the *Johnson* test's requirement that a seaman aid in navigation.[99]

In *Robison*, the Fifth Circuit decided that a Jones Act case should go to the jury if (1) the "workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel and (2) . . . the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission . . . ."[100] Applying this test to an oil field worker stationed on a mobile offshore drilling platform, the court concluded that there was sufficient evidence for the jury to decide that Robison was a seaman.[101]

Focusing on the perils of the sea as a decisive factor, the Fifth Circuit found that Robison faced risks similar to those of seamen and that he, too, was in need of Jones Act protection.[102] Notwithstanding the drilling platform's attachment to the Gulf floor, the court reasoned that workers aboard platforms "share the same marine risks [as other seamen and] in many instances . . . are exposed to more hazards than are blue-water sailors. They run the risk of top-heavy drilling barges collapsing."[103]

The Fifth Circuit departed from the activities-related test of early Supreme Court cases.[104] Robison's work was outside the scope of traditional seaman's duties; he did, however, perform those duties on a "vessel"[105] and contributed to the function of

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97. *See* Hurst v. Pilings & Structures, Inc., 896 F.2d 504 (11th Cir. 1990); Bennett v. Perini Corp., 510 F.2d 114 (1st Cir. 1975); Slatton v. Martin K. Eby Constr. Co., 506 F.2d 505 (8th Cir. 1974).

98. *See* Boyd v. Ford Motor Co., 948 F.2d 283 (6th Cir. 1991); Gizoni v. Southwest Marine, Inc., 909 F.2d 385 (9th Cir. 1990), *aff'd*, 502 U.S. 81 (1991); Stephenson v. McLean Contracting Co., 863 F.2d 340 (4th Cir. 1988); Simko v. C & C Marine Maintenance Co., 594 F.2d 960 (3d Cir. 1979); Salgado v. M.J. Rudolph Corp., 514 F.2d 750 (2d Cir. 1975).

99. *See Johnson*, 742 F.2d at 1061.

100. *See* Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959).

101. *See id.* at 781.

102. *See id.* at 780.

103. *Id.*

104. *See* Desper v. Starved Rock Ferry Co., 342 U.S. 187 (1952); Swanson v. Marra Bros., 328 U.S. 1 (1946); O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943).

105. In addition to debating whether Robison was a seaman, *see Robison*, 266 F.2d at 779, the parties debated whether a drilling platform could be classified as a vessel, considering that the platform in question was attached to the bottom of the Gulf of

that vessel.[106] The Fifth Circuit admitted that the connection between Robison's duties and the traditional work of seamen was "minor," but his attachment to a vessel and the relationship of his work to the function of the vessel made him a seaman.[107]

Stressing navigation as a definitive duty for seamen, the Seventh Circuit in *Johnson v. John F. Beasley Construction Co.* required a seaman: (1) to be more-or-less permanently connected to a vessel in navigation and (2) to contribute significantly to the vessel's transportation function.[108] The court denied seaman status to the plaintiff, Johnson, who worked on a floating work platform repairing a bridge.[109] Though acknowledging that Johnson had a more-or-less permanent connection with a vessel in navigation, the court found that his duties did not contribute to the barge's navigation.[110]

The Seventh Circuit criticized the *Robison* test for giving "insufficient weight to the relationship between the employee and the *transportation function* of the vessel."[111] Like the Fifth Circuit in *Robison*,[112] the Seventh Circuit structured its test around the notion that the Jones Act should protect workers who perform the traditional work of seamen.[113] Whereas the

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Mexico and could only be moved by tugs. *See id.* at 772. The court decided that the platform was "not a man-made island [but] a special purpose vessel, a floating drilling platform." *Id.* at 779. *See generally* Jack L. Allbritton, *Seaman Status in* Wilander's *Wake*, 68 TUL. L. REV. 373, 392-402 (1994) (discussing the definition of "vessel"); David W. Robertson, *A New Approach to Determining Seaman Status*, 64 TEX. L. REV. 79, 100-05 (1985) (surveying vessel-connection jurisprudence); *infra* note 120.

106. *See Robison*, 266 F.2d at 779.

107. *See id.*

108. *See* 742 F.2d 1054, 1062-63 (7th Cir. 1984).

109. *See id.* at 1055-56. The court decided that the barge was a vessel, but cautioned that a "waterborne structure [with] no transportation function . . . can have no group performing navigational functions, and hence no maritime 'crew'." *Id.* at 1063 (footnotes omitted).

110. *See id.* at 1064.

111. *Id.* The court stated:

> [T]he second part of the Robison test strays from important Jones Act principles when it speaks of the employee's duties as having to relate only to the "function of the vessel or the accomplishment of its mission" without further qualifying "function" and "mission" in terms of the *transportation* function and mission of the vessel.

Id.

112. *See* 266 F.2d at 774.

113. *See Johnson*, 742 F.2d at 1061.

Fifth Circuit defined seamen's work broadly in light of the realities of the modern seaman and recognized a wide array of seawork,[114] the Seventh Circuit focused narrowly on navigation.[115] Workers who were not involved in navigation fell outside the scope of the Jones Act because, in the Seventh Circuit's reading, the Act's goal was "to provide protection for those subjected to risks associated with the transportation function of vessels on navigable waters."[116]

In addition to the "aid in navigation"[117] requirement, the Fifth and Seventh Circuits divided on two other aspects of seaman status. The Seventh Circuit, on one hand, required the worker to have a more-or-less permanent connection to a vessel in navigation.[118] The Fifth Circuit, on the other hand, allowed a worker to qualify as a seaman by proving either that he was assigned permanently to a vessel or that he performed a substantial part of his work aboard a vessel.[119] Furthermore, the Fifth Circuit did not require that the vessel be in navigation.[120]

The substantial work alternative of *Robison* led to litigation over how much work was "substantial."[121] Especially in the Fifth Circuit, courts have evaluated the substantial work alternative by comparing the percentage of the work done on board a vessel to the work done on land.[122]

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114. *See Robison*, 266 F.2d at 774-78.

115. *See Johnson*, 742 F.2d at 1061-63.

116. *Id.* at 1061-62.

117. The phrase "aid in navigation" originated in *Griffith v. Wheeling Pittsburgh Steel Corp.*, 521 F.2d 31, 36-37 (3d Cir. 1975).

118. *See Johnson*, 742 F.2d at 1063.

119. *See Robison*, 266 F.2d at 779.

120. *See id.* Although the term "vessel" has instigated several Jones Act debates centering on the fleet doctrine, the definition of vessel, and the navigation requirement, these issues are beyond the scope of this Note. *See supra* note 105.

121. *See* Allbritton, *supra* note 105, at 385-92.

122. *See* Latsis v. Chandris, Inc., 20 F.3d 45, 48 (2d Cir. 1994), *aff'd*, 115 S. Ct. 2172 (1995); Palmer v. Fayard Moving & Transp. Corp., 930 F.2d 437, 439 (5th Cir. 1991); Leonard v. Dixie Well Serv. & Supply, Inc., 828 F.2d 291, 295 (5th Cir. 1987); Barrett v. Chevron, U.S.A., Inc., 781 F.2d 1067, 1076 (5th Cir. 1986). In *Barrett*, the Fifth Circuit stated that when the substantiality of an employee's work aboard a vessel becomes an issue, seaman status should be determined "in the context of [the worker's] entire employment with his current employer." *Id.* at 1075.

AN INCHOATE ANSWER IN *WILANDER*

The Supreme Court rejected the Seventh Circuit's interpretation of the Jones Act in *McDermott International, Inc. v. Wilander*.[123] Abandoning the early case law approach that depended on the traditional work of seamen, the Court defined seaman status "solely in terms of the employee's connection to a vessel in navigation."[124] The specific type of work was unimportant: it mattered only that the worker be "doing the ship's work."[125]

Wilander, assigned to a paint boat in the Persian Gulf, was injured while inspecting a pipe on an oil platform.[126] Applying the *Robison* test,[127] the jury found that Wilander was a seaman.[128] McDermott appealed the Jones Act award, asking the Supreme Court to reject the broad *Robison* requirement that a seaman contribute to the vessel's function[129] in favor of the more restrictive *Johnson* "aid in navigation" standard,[130] thus precluding Wilander's Jones Act recovery.[131] The Court granted certiorari to resolve the conflict between the *Johnson* and *Robison* tests: namely, whether a seaman must aid in navigation.[132]

The Court looked for a historical seaman test, examining pre–Jones Act cases for workers labeled "seamen."[133] Although early cases had required seamen to "hand, reef and steer" a vessel,[134] the Court found that many nineteenth century courts

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123. 498 U.S. 337, 353-55 (1991).
124. *See id.* at 354.
125. *Id.* at 355.
126. *See id.* at 339.
127. *See* Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959) (establishing that a worker may be a seaman if he is assigned permanently to a vessel or performs a substantial part of his work aboard the vessel and his duties contribute to the function of the vessel or to the accomplishment of its mission).
128. *See Wilander*, 498 U.S. at 339-40.
129. *See Robison*, 266 F.2d at 779.
130. *See* Johnson v. John F. Beasley Constr. Co., 742 F.2d 1054, 1062-63 (7th Cir. 1984) (holding that to qualify for seaman status, a worker must not only be permanently connected to a vessel in navigation, but also must contribute significantly to the vessel's transportation function). *See supra* note 117.
131. *Wilander*, 498 U.S. at 340.
132. *See id.*
133. *See id.* at 343-46.
134. *See id.* at 343 (citing The Canton, 5 F. Cas. 29, 30 (D. Mass. 1858) (No. 2,388)).

had granted workers in nonnavigational jobs seaman benefits.[135] The Court concluded that at the time Congress enacted the Jones Act, courts had not required seamen to navigate and that "the time has come to jettison the aid in navigation language."[136] Because all workers on a ship in navigation face the perils of the sea, the Supreme Court found that the Jones Act should not favor workers who navigate.[137]

The Court's decision in *Wilander* signified the death of the activities-related test of early Jones Act jurisprudence and a recognition that the work of modern seamen is as varied as the types of vessels on which they labor. Saying only that "a seaman must be doing the ship's work,"[138] the *Wilander* opinion minimized the significance of a putative seaman's duties.[139] The Court found a new touchstone for seaman status: an "employment-related connection to a vessel in navigation."[140] The Court based this decision upon the notion that "[a]ll who work at sea in the service of a ship face those particular perils to which the protection of maritime law . . . is directed."[141]

Although rejecting the *Johnson* test,[142] the Court refrained from fully embracing the Fifth Circuit's approach[143] by cautiously restricting its holding to the issue of navigation.[144] The Court declined to explain the plaintiff seaman's required connection to the vessel.[145] By not elaborating on this feature of the test, the Court left the issue to the circuit courts.[146]

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135. *See id.* These occupations included cooks, firemen, engineers, carpenters, clerks, and others who were granted remedies traditionally reserved for seamen. *See id.*

136. *Id.* at 353.

137. *See id.* at 354.

138. *Id.* at 355.

139. *See id.* at 353-55.

140. *Id.* at 355. The Court stated that "[i]t is not the employee's particular job that is determinative, but the employee's connection to a vessel." *Id.* at 354.

141. *Id.*

142. *See supra* notes 108-10 and accompanying text.

143. *See supra* notes 100-02 and accompanying text.

144. *See Wilander*, 498 U.S. at 356-57.

145. *See id.*

146. Nor did *Wilander* address the issue of compulsory pilots who are aboard a particular ship only briefly and who are not attached to a vessel or fleet. *See* Harwood v. Partredereit AF 15.5.81, 944 F.2d 1187 (4th Cir. 1991) (denying seaman status to a compulsory pilot); Bach v. Trident S.S., 920 F.2d 322 (5th Cir.) (denying seaman status to a compulsory pilot), *vacated and remanded*, 500 U.S. 949, *reinstat-*

As illustrated by the Second Circuit's opinion in *Latsis v. Chandris, Inc.*,[147] a significant issue raised by the inconclusive *Wilander* decision was whether the seaman's connection to a vessel had to be permanent or if it sufficed that he performed a substantial amount of his work aboard the vessel, as the *Robison* test had permitted.[148] The *Wilander* decision gave no indication whether the substantial work alternative remained viable.[149]

ANOTHER EXAMINATION OF SEAMAN STATUS IN *CHANDRIS, INC. V. LATSIS*

In the summer of 1995, the Supreme Court returned to the issue of seaman status, elaborating on the connection to a vessel that *Wilander* required. The Court's opinion in *Chandris, Inc. v. Latsis* provided more detail regarding the Jones Act's applicability but unnecessarily narrowed the Act's coverage. The restrictive interpretation of the Jones Act in *Latsis* departed from prior case law and its application will exclude some workers who "go down to sea in ships"[150] from the Act's protection.

Latsis was employed as a superintendent electrical engineer.[151] Although Chandris's other electrical engineers each were assigned to a single vessel, Latsis, as superintendent, was based at the company's Miami office and supervised six vessels.[152] His duties occasionally required him to travel aboard Chandris vessels.[153] On one such voyage, Latsis developed an

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ed, 947 F.2d 1290 (5th Cir. 1991); Evans v. United Arab Shipping Co., 767 F. Supp. 1284 (D.N.J. 1991) (granting seaman status to a compulsory pilot), *aff'd*, 4 F.3d 207 (3d Cir. 1993).

147. 20 F.3d 45 (2d Cir. 1994), *aff'd*, 115 S. Ct. 2172 (1995).

148. *See id.* at 46; *see also* Allbritton, *supra* note 105, at 385-92 (predicting the demise of the substantial work alternative); Kenneth G. Engerrand, *Seaman Status Reconstructed*, 32 S. TEX. L. REV. 169, 182 (1991) (advocating that a seaman's duties aboard a vessel be "co-exclusive with the duration of the voyage").

149. *See* McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 354-55 (1991).

150. Seas Shipping Co. v. Sieracki, 328 U.S. 85, 104 (1946) (Stone, C.J., dissenting) (discussing those workers who subject themselves to the risks of a vessel's unseaworthiness, with little ability to avoid the dangers or recover from the responsible parties).

151. *See Latsis*, 20 F.3d at 47-48.

152. *See id.* at 48.

153. *See id.*

eye problem that required immediate surgery.[154] The ship's doctor negligently failed to send him ashore immediately, thus causing a significant loss in vision.[155] After surgery and recuperation, Latsis returned to the ship and sailed to Germany, where he remained with the vessel during the six months it spent in drydock undergoing renovations.[156] He then returned to the United States aboard the vessel.[157]

Latsis *in the Lower Courts*

The trial court instructed the jury that Latsis was a seaman if he were permanently assigned to the vessel or if he had done a substantial part of his work aboard the vessel.[158] In determining whether Latsis performed a substantial part of his work on the vessel, the jury was not allowed to consider the time the vessel spent in drydock because during that time it was out of navigation.[159] On the basis of these instructions, the jury denied seaman status to Latsis.[160]

The Second Circuit held that the trial court erred in excluding from consideration the time that the vessel spent in drydock.[161] Vacating and remanding for a new trial,[162] the Second Circuit instructed the trial court to find Latsis a seaman if (1) he contributed to the mission of (2) either a vessel or a fleet, (3) his contribution was substantial in either its duration or nature, and (4) his employment regularly exposed him to the perils of the sea.[163]

The Second Circuit pointed to the *Wilander*[164] decision's shortcomings, noting that the opinion did not address the Fifth and Seventh Circuits' conflicting requirements regarding the

154. *See id.* at 47.
155. *See id.*
156. *See id.* at 48-49.
157. *See id.* at 49.
158. *See id.*
159. *See id.*
160. *See id.*
161. *See id.* at 55-56.
162. *See id.* at 58.
163. *See id.* at 57.
164. McDermott Int'l, Inc. v. Wilander, 498 U.S. 337 (1991).

nature of the seaman's connection to a vessel.[165] Because the Supreme Court had remained mute on the issue of what constitutes a substantial connection to a vessel, the Second Circuit constructed its own test.[166] Drawing primarily upon *Wilander*, *Southwest Marine, Inc. v. Gizoni*,[167] and *Salgado v. M.J. Rudolph Corp.*,[168] the court found that a seaman must make substantial contributions to the vessel.[169]

Reasoning that the Supreme Court had not expressly embraced the *Robison* substantial work alternative,[170] the court decided to maintain the *Salgado* test[171] but to rephrase it to minimize the temporal nature of the connection,[172] conforming it to *Wilander*. Criticizing the *Robison* substantial work alternative as a "temporal concept to be determined by the duration of the putative seaman's connection to the vessel"[173] and hence unnecessarily restrictive, the court proposed that a more appropriate test would be whether the worker's contributions to the vessel were substantial, without regard to the amount of time he spent with the vessel.[174] The court also held that the vessel's time in drydock should be considered in evaluating whether Latsis's connection to the vessel was substantial.[175]

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165. *See Latsis*, 20 F.3d at 52.

166. *See id.* at 56-57.

167. 502 U.S. 81 (1991). *Gizoni*, decided shortly after *Wilander*, involved a worker who received benefits under the LHWCA and brought suit under the Jones Act. *See id.* at 84. Characterizing the Jones Act and LHWCA as being mutually exclusive, the district court held as a matter of law that Gizoni was not a seaman. *See id.* The Ninth Circuit reversed, 909 F.2d 385 (9th Cir. 1990), and the Supreme Court affirmed. *Gizoni*, 502 U.S. at 92. The Court held that a worker covered by the LHWCA may still be covered by the Jones Act even if his occupation is listed in the LHWCA: the two acts are not mutually exclusive. *Id.* at 91-92.

168. 514 F.2d 750 (2d Cir. 1975). The *Salgado* decision demonstrates the Second Circuit's test for seaman status. *Salgado* belonged to the *Johnson* group of cases, requiring that "the vessel must be in navigation, there must be a more or less permanent connection with the ship, and the worker must be aboard naturally and primarily as an aid to navigation." *Id.* at 755 (citing Klarman v. Santini, 503 F.2d 29, 33 (2d Cir. 1974)).

169. *See Latsis*, 20 F.3d at 52-57.

170. *See* Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959).

171. *See Salgado*, 514 F.2d at 755.

172. *See Latsis*, 20 F.3d at 56-57.

173. *Id.* at 54.

174. *See id.* at 56-57.

175. *See id.*

Latsis *in the Supreme Court*

The Supreme Court granted certiorari to "resolve the continuing conflict among the Courts of Appeals regarding the appropriate requirements for seaman status under the Jones Act."[176] The Court considered the nature of a seaman's relationship with a vessel and whether a jury should consider the time a vessel spent in drydock in assessing that relationship.[177] The Court identified four guiding principles of seaman status analysis.[178] First, the class of seamen does not include land-based workers.[179] Second, seaman status does not depend on the locus of the worker's injury but on his relationship to a vessel.[180] Third, a maritime worker does not become a crew member the moment a vessel leaves the dock.[181] Finally, the Court stated that Jones Act analysis is "fundamentally status-based."[182]

The Court held that in addition to contributing to the function of a vessel or to the accomplishment of its mission, a seaman must have a connection to a vessel in navigation that is substantial in terms of both duration and nature.[183] Although this test resembled the Second Circuit's approach,[184] the Supreme Court restricted its reach by including the temporal element that the Second Circuit had virtually abandoned.[185]

The Second Circuit had defined seaman status carefully, with-

176. Chandris, Inc. v. Latsis, 115 S. Ct. 2172, 2182 (1995).

177. *See id.* at 2190-93. As to the drydocking issue, the Court found that time spent with a vessel out of navigation should not be considered in assessing the plaintiff's connection with it. *See id.* at 2192. The determination of whether the vessel is in navigation, however, is an issue for the jury and the trial court erred in deciding it for them. *See id.* The Court went on to explain how a vessel in drydock may still be in navigation. *See id.* at 2192-93.

178. *See id.* at 2184-86.

179. *See id.* at 2185.

180. *See id.* at 2185-86; *see also* O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943) (granting Jones Act recovery to a deckhand who was injured while ashore).

181. *See Latsis*, 115 S. Ct. at 2186.

182. *Id.* The Court stated that "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." *Id.*

183. *See id.* at 2190.

184. *See Latsis*, 20 F.3d at 57.

185. *See id.* at 54; *Latsis*, 115 S. Ct. at 2191.

out requiring a time commitment to the vessel.[186] Under the Second Circuit's approach, a worker could qualify as a seaman if his *contributions* to the vessel were substantial in *either* nature *or* duration.[187] Instead of *contributions* to a vessel, the Supreme Court looked for a *connection*.[188] The Court required a connection that was substantial, both in nature and in duration: "[W]e think it is important that a seaman's connection to a vessel . . . be substantial in *both* respects."[189] The different language in the two decisions, though subtle, significantly alters the meaning of the test.

Gently repudiating the Second Circuit's analysis, the Supreme Court declared that time is an appropriate factor to consider in determining seaman status.[190] Though seaman status is "not *merely* a temporal concept . . . it necessarily includes a temporal element."[191] The Court cited the Fifth Circuit's standard that a seaman must spend thirty percent of his time in the service of the vessel, but quickly added that the figure was merely a guide.[192] The Court claimed that a temporal element would not foreclose Jones Act remedies to a previously land-based worker reassigned to a lengthy voyage and injured on board.[193] The Court's analysis, however, left open the question of how that hypothetical worker would fare were he injured shortly after the vessel left the harbor, or even while the vessel was still in the harbor.

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186. *See Latsis*, 20 F.3d at 57.
187. *See id.*
188. *See Latsis*, 115 S. Ct. at 2190.
189. *Id.* at 2191 (emphasis added). A few times in its discussion, the Supreme Court misquoted the Second Circuit version as a "requirement that the *connection* be 'substantial in terms of its (a) duration *and* (b) nature.'" *Id.* at 2188 (emphasis added). The Supreme Court later explained this difference as confusion in the Second Circuit: "It is not clear which version . . . the Court of Appeals intended to adopt for the substantial connection requirement—or indeed whether the court saw a significant difference between the two." *Id.* at 2191. A close reading of the Second Circuit's opinion, however, reveals that the court deliberately chose the disjunctive in the final formulation of its test, intending thereby to minimize if not eliminate the temporal element from seaman status analysis. *See Latsis*, 20 F.3d at 54-57.
190. *See Latsis*, 115 S. Ct. at 2191.
191. *Id.*
192. *See id.*
193. *See id.* at 2192.

Latsis argued that the Court should focus on the activities-related purpose of the Jones Act, the protection of workers exposed to the perils of the sea, and should include within the Act's coverage anyone working on board in furtherance of the vessel's mission during a voyage.[194] The Court rejected this approach, dubbed the "voyage" test, claiming that it would contradict earlier Supreme Court cases and the Court's interpretation of the Jones Act.[195] It did not matter that the injury occurred while the worker was on a voyage, the issue was the nature of the worker's service to the vessel.[196] An employer, the Court reasoned, needs to be able to predict which employees are covered by the Jones Act and which by the LHWCA.[197] Under a voyage test, the Court claimed that a worker could walk into and out of Jones Act protection daily.[198] The Court added that the policy of the Jones Act was "to protect sea-based maritime workers, who owe their allegiance to a vessel, and not land-based employees, who do not."[199]

The Court's decision leaves Latsis and similarly situated workers outside the scope of the Jones Act. Concurring, Justice Stevens criticized the Court for ignoring the obvious: a worker employed on a vessel, whose duties required him to be on that vessel while it traveled from Miami to Bermuda and then to Germany and back to the United States, was a seaman.[200] Justice Stevens argued that there had always been a clear delineation between workers on a ship at sea and workers on a ship in the harbor: the former are seamen per se; the latter present a more ambiguous situation, one better suited for judicial tests.[201] Finally, Stevens criticized the majority for reading the Jones Act as a protection for employers.[202]

194. *See id.* at 2184-85.
195. *See id.* at 2185.
196. *See id.* at 2185-87.
197. *See id.* at 2187.
198. *See id.*
199. *Id.* at 2194 (Stevens, J., concurring).
200. *See id.* at 2194-95 (Stevens, J., concurring).
201. *See id.* at 2194 (Stevens, J., concurring).
202. *See id.* at 2198 (Stevens, J., concurring).

POLICY

In *Latsis* and *Wilander*, the Supreme Court has constructed a seaman status test based solely on the worker's relationship with a vessel or fleet: A worker is a seaman if (1) he is connected to a vessel or fleet in navigation, (2) that connection is substantial both in duration and in nature, and (3) he contributes to the function of the vessel or to the accomplishment of its mission.[203] This test falls short of providing the protection for seamen that Congress sought when it passed the Jones Act. By excluding a worker such as Latsis, who fell prey to an historical risk of the sea,[204] the Court forsakes its own explanation of the Jones Act's purpose.

Given the history of the Jones Act and the case law interpreting it, the *Latsis* test is inconsistent and should be corrected. A more appropriate test for determining seaman status is to restrict the elements identified in the *Latsis* and *Wilander* opinions to the ambiguous situations of workers on board a vessel in a harbor. In those cases, it is often difficult to ascertain whether the worker should be covered by the LHWCA or the Jones Act, and the detailed test that the Court delivered in *Latsis* and *Wilander* is well suited to pick apart the facts and group the workers accordingly.[205] In situations such as Latsis's, however, when the worker is injured at sea, seaman status should be granted as a matter of law.[206]

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203. *See id.* at 2194 (Stevens, J., concurring).

204. Inaccessible medical care is a peril historically faced by seamen:

> [W]hile on board a seaman is very much reliant upon and in the care of the ship's physician. If that physician is unqualified or engages in medical malpractice, it is just as much a peril to the mariner on board as the killer wave, the gale or hurricane, or other dangers of the calling.

Id. at 2194 (Stevens, J., concurring). Although Latsis could have suffered a detached retina on land, his injury was aggravated by his delay in reaching a hospital. *See id.* at 2181. Because he was at sea, Latsis was at the mercy of the ship's doctor and did not have access to other medical personnel or facilities. *See id.*

205. "When the extent and consequence of the employee's exposure to the seaman's hazards is facially unclear, a test like the majority's may be appropriate. But no ambiguity exists when an employee is injured on the high seas." *Id.* at 2196 (Stevens, J., concurring).

206. *See id.* at 2194 (Stevens, J., concurring); *see generally* Beer, *supra* note 50, at 406-09 (suggesting that judges may be more qualified than juries to determine seaman status).

Throughout Jones Act jurisprudence, the Supreme Court has based seaman status evaluations on the idea that the policy underlying the Jones Act is to protect those exposed to sea hazards.[207] In early cases, the Court used the traditional duties of seamen as a method of determining whether a worker was exposed to the perils of the sea; those engaged in traditional seawork were necessarily at risk and in need of Jones Act protection.[208] By rejecting the locality test in Jones Act determinations, the Court made a Jones Act inquiry status-based; seamen are seamen even when on land, provided that they are on land only briefly and not in pursuit of a separate occupation.[209] The Jones Act's purpose, however, is not to dole out relief to only those workers classified by their employers as "sea-based," despite the implications of the majority opinion in *Latsis*.[210] The history of the Act and the cases applying it show that the Act does not defer to the employer's nomenclature. A more appropriate way to view the cases granting Jones Act benefits to seamen injured while on land is to recognize that a worker exposed to the perils of the sea has earned Jones Act coverage and retains it even when ordered ashore.[211]

Wilander, the Supreme Court's partial adoption of *Robison*,[212] departed from the activities-related deliberations of earlier Jones Act cases.[213] Dropping the activities-based analysis did not mean abandonment of protection from the perils of

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207. *See* David W. Robertson, *The Law of Seaman Status Clarified*, 23 J. MAR. L. & COM. 1, 9 (1992); Robertson, *supra* note 105, at 92 ("The primary goal of the seaman status jurisprudence is to afford the protection of the benevolent seamen's remedies to all workers who confront the characteristic seamen's hazards."). *But see* Cheavens, *supra* note 12, at 397-99 (arguing that the policy of the Jones Act is "rooted in concepts of federalism" and not in the perils of the sea).

208. *See, e.g.*, Warner v. Goltra, 293 U.S. 155, 157 (1934) ("[A] seaman is a mariner of any degree, one who lives his life upon the sea."). Conversely, those not engaged in the traditional work of seamen and hence not exposed to the perils of the sea were not in need of Jones Act protection. *See* Desper v. Starved Rock Ferry Co., 342 U.S. 187, 190-91 (1952) (denying seaman status to a worker who repaired ships located on shore).

209. *See* Chandris, Inc. v. Latsis, 115 S. Ct. 2172, 2186 (1995).

210. *See id.*

211. *See* O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 39 (1943) (awarding seaman status to a deckhand who was injured while ashore).

212. Offshore Co. v. Robison, 266 F.2d 769 (5th Cir. 1959).

213. *See* McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 353-55 (1991).

the sea as a central Jones Act policy. Rather, the *Robison* and *Wilander* opinions acknowledge that all who work at sea in the service of a vessel face the perils of the sea,[214] even those whose duties are unrelated to the traditional work of seamen.[215] A worker attached to a vessel in navigation and performing the work of that vessel is exposed to the perils of the sea and therefore in need of Jones Act protection.

In *Latsis*, the Court veered from the course plotted in *Wilander*. Purporting to follow the policy of the Jones Act, the Court in *Latsis* reconstructed the Act as a protection for employers. The Court spoke of the Jones Act in terms of predictability, rejecting the voyage test out of concern that it would somehow affect the employer's ability to determine which workers were covered by the Jones Act and which by the LHWCA.[216] Given that the employer picks the crew for each voyage, granting seaman status to workers at sea would not inconvenience the employer. In focusing on the worker's relationship with the vessel, the Court ignored the fact that anyone who works at sea is vulnerable to sea hazards, not just those who are assigned there permanently by their employers.[217]

In rejecting a substantial work alternative, the Court permits employers to manipulate Jones Act claims by permanently assigning a worker to an office and then, as in Latsis's case, requiring him to work aboard vessels for extended periods.[218] *Robison* recognized that there is more than one way to achieve seaman status; workers formally assigned to an office but who regularly work aboard their employers' vessels nonetheless are seamen.[219] As predicted by Jack L. Allbritton, "[t]he elimina-

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214. *Id.* at 354 ("All who work at sea in the service of a ship face those particular perils to which the protection of maritime law . . . is directed."); *Robison*, 266 F.2d at 780 (extending Jones Act protection to workers on an oil platform because they "share the same marine risks" borne by other seamen).

215. Workers who do not "hand, reef and steer" the vessel. *Wilander*, 498 U.S. at 343 (citing The Canton, 5 F. Cas. 29, 30 (D. Mass. 1858) (No. 2,388)).

216. *See* Chandris, Inc. v. Latsis, 115 S. Ct. 2172, 2186-87 (1995).

217. "I think it is a novel construction of the Jones Act to read it as a scheme to protect employers." *Id.* at 2198 (Stevens, J., concurring).

218. *But see* Engerrand, *supra* note 148, at 180-83 (arguing that a permanent assignment test is consistent with the *Wilander* decision jettisoning the aid in navigation test).

219. This result was made possible by the *Robison* test's substantial work alterna-

tion of the substantial work alternative would amount to a restrictive interpretation of the Jones Act, a remedial statute that has heretofore always been construed liberally and broadly."[220]

The *Latsis* test seems to require that a worker complete more than one voyage.[221] Although stressing a temporal relationship to the vessel, the test leaves open the question of precisely how long a seaman must be assigned to the vessel.[222] Undoubtedly, the confusion surrounding the Jones Act would be resolved best by Congress amending its seventy-five-year-old statute to define the term "seaman." In the absence of Congressional action, however, it is imperative that the Court reassess its Jones Act interpretation to correct the damage rendered by *Latsis*, bringing the case law into line with the policy behind the Jones Act.

CONCLUSION

In *Latsis*, the Supreme Court had an opportunity to issue a definitive opinion on the qualifications for seaman status, an issue that has plagued courts for years. Although the "search for a bright-line test of seaman status is futile"[223] and the issue will probably not be resolved until Congress again chooses to address it, and perhaps not even then, the Court could have used the *Latsis* case as an opportunity to identify a class of workers who are obviously seamen and thereby remove them from the Jones Act debate. By failing to do so, the Court in *Latsis* further confused an already convoluted jurisprudence, suggesting that one exposed to the perils of the sea might not be a seaman.

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tive. *See* Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959).

220. Allbritton, *supra* note 105, at 390.

221. *See Latsis*, 115 S. Ct. at 2190.

222. *See id.* at 2191.

223. Robertson, *supra* note 105, at 84.