

THE SUPREME COURT'S CLARIFICATION OF THE LAW OF SEAMAN STATUS

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I. INTRODUCTION

The Jones Act¹ was enacted in 1920 to alter the maritime law of the United States by providing seamen with a negligence remedy against their employers.² But Congress omitted any definition of the key term *any seaman* in the Act. Consequently the courts have had a long struggle to work out criteria for separating seamen from other types of maritime and amphibious workers. The struggle has been strenuous, because the remedies available to injured seamen--the Jones Act's negligence action plus the general maritime law remedies of unseaworthiness and maintenance and cure--are recurrently more attractive and valuable than the alternative (workers' compensation) remedies available to nonseamen.

¹ The Jones Act, 41 Stat. 1007, 46 U.S.C. app. §688(a), provides in pertinent part: "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...." The railway worker statutes that are incorporated by reference in the Jones Act comprise the Federal Employers Liability Act (FELA), 45 U.S.C. §§ 51-60.

² The *Osceola*, 189 U.S. 158 (1903), held that seamen could not sue their employers for negligence. The purpose of the Jones Act was to "remove the bar to negligence articulated in *The Osceola*." *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 342 (1991).

On its face, the Jones Act does not "alter the maritime law," as the text above claims. Instead it invites seamen to forego their rights under general maritime law (to seek maintenance and cure and occasionally to sue for damages caused by unseaworthiness) in order to pursue the far more generous FELA remedy on the law side of federal court. But *Panama R. Co. v. Johnson*, 264 U.S. 375 (1924), held that reading the Act that way would make it an unconstitutional removal of a quintessential maritime matter from the regime of admiralty. The *Panama R.* Court then essentially rewrote the Act, construing it to provide seamen with a remedy that can be asserted at the seaman's option in the admiralty court or (via the saving-to-suitors clause) on the law side of federal court or in state court.

In the four decades following the Jones Act's enactment in 1920, the Supreme Court decided ten cases with major bearing on the question, who is a Jones Act seaman, but in several respects the law was left unclear.³ The lower courts struggled on, while the Supreme Court fell into a long silence on the matter. Then in 1991 the Court returned to work on the issue. In what we will call the Court's modern seaman status jurisprudence-- five decisions handed down in the 1990s and subsequently--the Court has significantly clarified the law of seaman status.

II. THE SUPREME COURT'S MODERN SEAMAN STATUS CASES ENCAPSULATED

A. The Swanson Rule: A Jones Act Seaman is Statutorily Defined as "A Master or Member of a Crew of Any Vessel."

The Supreme Court's early seaman-status decisions failed to achieve clarity but did provide some useful benchmarks. The most useful benchmark was the determination in *Swanson v. Marra Brothers* that the spheres of coverage of the 1927 Longshore and Harbor Workers' Compensation Act (LHWCA) and the Jones Act are mutually exclusive; the LHWCA provision (33 U.S.C. § 902(3)(G)) excluding from that Act's coverage "a master or member of a crew of any vessel" thus defines the Jones Act term "seaman."⁴ In the five modern cases, the Court has consistently used *Swanson* as the takeoff point. Status as *a master or member of a crew of any vessel* takes an injured worker out of LHWCA coverage and entitles the worker to the protections of the Jones Act, the doctrine of unseaworthiness, and the maintenance and cure remedy.⁵ A worker

³ The ten cases are summarized in David W. Robertson, *A New Approach to Determining Seaman Status*, 64 TEX. L. REV. 79, 85-93 (1985). The last case in the series was *Butler v. Whiteman*, 356 U.S. 271 (1958) (per curiam).

⁴ 328 U.S. 1, 7 (1946). The LHWCA's crew-member exclusion presently appears as 33 U.S.C. §902(3)(G).

⁵ The Supreme Court has never explicitly said so, but it seems clear that the criteria for inclusion as a seaman under the Jones Act also control a worker's status as a seaman for purposes of the

who is not *a master or member of a crew of any vessel* is not entitled to any of the seamen's remedies but must look to the LHWCA for protection.

B. Wilander: A Seaman Need Not Aid in the Vessel's Navigation or Transportation Function.

Lacking adequate guidance from Congress or the Supreme Court, the lower courts disagreed over many points of detail. For example, an intercircuit split developed on whether a vessel worker whose duties do not contribute in any way to the vessel's navigation or transportation function can be a seaman. The Seventh Circuit position was no;⁶ the Fifth's was yes.⁷ In *McDermott Int'l, Inc. v. Wilander*, the Supreme Court held that the Fifth Circuit's position was correct:

[T]he time has come to jettison the aid in navigation language. * * * 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. * * * The Fifth Circuit correctly determined that [aiding in navigation is not required. The Fifth Circuit's] 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.⁸

C. Gizoni: Workers Who are Explicitly Listed by the LHWCA as Covered Workers May Be Excluded from that Act's Coverage and Made Jones Act Seamen By a Sufficient Work Connection to a Vessel or Fleet.

Another significant jurisprudential split developed within the Fifth Circuit. It centered on LHWCA § 2(3)(G), 33 U.S.C. 902(3)(G), which defines the employees covered by the LHWCA as follows:

unseaworthiness and maintenance and cure remedies. See David W. Robertson, Stephen F. Friedell, and Michael F. Sturley, *ADMIRALTY AND MARITIME LAW IN THE UNITED STATES* 240 & n. 2 (2001).

⁶ *Johnson v. John F. Beasley Constr. Co.*, 742 F.2d 1054, 1062-63 (7th Cir. 1984).

⁷ *Offshore Co. v. Robison*, 266 F.2d 769, 779-80 (5th Cir. 1959).

⁸ 498 U.S. 337, 353-55 (1991) (quoting *Robison*, *supra* note 7, at 779).

The term “employee” means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include * * * a master or member of a crew of any vessel * * *.

One Fifth Circuit panel, led by Judge Davis, read § 2(3)(G) to mean that “an employee engaged in one of the occupations expressly covered by the LHWCA [e.g., ship repairman] ... is unqualifiedly covered by the LHWCA and therefore ineligible for benefits under the Jones Act.”⁹ Another Fifth Circuit panel, led by Judge Rubin, disagreed, holding that §2(3)(G) will not bear the Davis construction:

If the classification of a worker as a shipbuilder, longshoreman, or ship repairman automatically precluded his having seaman status, it would have been unnecessary for the LHWCA to except ... crew members. Patently, the statute contemplates the possibility that some persons who might be “longshoremen” might also be considered crew members.¹⁰

In *Southwest Marine, Inc. v. Gizoni*, the Supreme Court held that the Rubin view was correct:

While in some cases a ship 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. * * * 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.¹¹

D. Chandris: Seaman Status Requires Contribution to a Vessel’s (or Fleet’s) Mission or Function and Having a Work Connection to a Vessel or Fleet that is Substantial in Both Nature and Duration.

In *Chandris, Inc. v. Latsis*,¹² the Court perceived that the Second and Fifth Circuits were in disagreement on the significance of the duration of an aspiring seaman’s attachment to a vessel. In the course of choosing a middle ground between the positions

⁹ Pizzitolo v. Electro-Coal Transfer Corp., 812 F.2d 977, 982 (5th Cir. 1987).

¹⁰ Legros v. Panther Services Group, Inc., 863 F.2d 345, 350 (5th Cir. 1989).

¹¹ 502 U.S. 81, 89 (1991) (citations omitted).

¹² 515 U.S. 347 (1995).

of the two circuit courts, the Court laid down a comprehensive test for Jones Act seaman status. In the quotation of that test that appears below, I use a Restatement-like format, putting the black-letter rule in bold type and the authoritative commentary on the rule in italics.¹³ Except for the expressions in brackets, everything below uses the Court's own words. The outline format is mine, and I have not signaled ellipses, omitted citations, or omitted internal quotation marks.

A. The essential requirements for seaman status are twofold.¹⁴

1. First, an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission.¹⁵

*a. This threshold requirement is very broad: All who work at sea are eligible for seaman status.*¹⁶

2. Second, a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature.¹⁷

*a. 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.*¹⁸

b. 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. 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

¹³ I used the same technique in David W. Robertson, *The Supreme Court's Approach to Determining Seaman Status: Discerning the Law Amid Loose Language and Catchphrases*, 34 J. MAR. L. & COM. 547, 571-72 (2003) (hereafter "*Catchphrases*").

¹⁴ *Chandris*, 515 U.S. at 368.

¹⁵ *Id.*

¹⁶ *Id.* The emphasis on "eligible" is the Court's own.

¹⁷ *Id.*

¹⁸ *Id.*

*circumstances bearing on the two elements outlined above [viz., the function/mission requirement and the substantial-connection requirement].*¹⁹

*c. The Jones Act remedy is reserved for sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which all who go down to sea in ships are subjected. 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. The duration of a worker's connection to a vessel and the nature of the worker's activities, taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time.*²⁰

B. [Ordinarily the substantial-connection inquiry looks back over the injured worker's entire period of employment with the current employer. But when] a maritime employee receives a new work assignment in which his 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.²¹

E. Papai: A "Fleet" Is an Identifiable Group of Vessels Under Common Ownership or Control.

As we saw in Part A(2) of the summary just above, the seaman status law laid down in *Chandris* contemplates that a worker may achieve seaman status through a work connection with a single vessel or with "an identifiable group" of vessels.²² At another point in the opinion, the *Chandris* Court made the same point in terms of "an 'identifiable fleet' of vessels."²³ In *Harbor Tug and Barge Co. v. Papai*,²⁴ the Supreme Court

¹⁹ *Id.* at 369. In stressing the jury's role, the Court did not mean to disfavor summary judgment or directed verdict in appropriate cases. *See, e.g., id.* at 371: "[W]here 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."

²⁰ *Id.* at 370.

²¹ *Id.* at 371-72.

²² *Chandris*, 515 U.S. at 368.

²³ *Id.* at 366, quoting *Braniff v. Jackson Avenue-Gretna Ferry, Inc.*, 280 F.2d 523, 528 (5th Cir. 1960).

determined that the Ninth Circuit had misinterpreted this “fleet doctrine.” The Ninth Circuit had used the fleet doctrine to uphold seaman status on behalf of a man who worked out of a union hiring hall on a series of short jobs for an indeterminate group of employers on an indeterminate group of vessels. Reversing, the *Papai* Court emphasized that the *Chandris* decision’s use of the “identifiable group” language was crucial:

In deciding whether there is an identifiable group of vessels of relevance for a Jones Act seaman-status determination, the question is whether the vessels are subject to common ownership or control. The requisite link is not established by the mere use of the same hiring hall which draws from the same pool of employees. * * * When the [seaman-status] inquiry ... turns on whether the employee had a substantial connection to an identifiable group of vessels, common ownership or control is essential for this purpose.²⁵

The principal importance of *Papai* is the foregoing delimitation of the fleet doctrine. The Court also shed significant light on a recurrent term of art in the Court’s modern seaman status jurisprudence: It signaled (as it had done in many previous decisions²⁶) that the word “sea” does not necessarily refer to the high seas or open ocean but contemplates any navigable water on which vessel work may be undertaken. This clarification occurred in the course of the Court’s repeated references to mooring, docking, and short-movement work on harbor craft as “seagoing” activity that entailed exposure to the “perils of the sea.”²⁷

F. Stewart: A Jones Act “Vessel” is Statutorily Defined as “Any Watercraft Used or [Practically] Capable of Being Used as a Means or Transportation on Water.”²⁸

One of the principal tools used by some lower courts to limit access to the Jones Act was restricting Jones Act “vessel” status narrowly. (Remember the *Swanson* rule: A

²⁴ 520 U.S. 548 (1997).

²⁵ *Id.* at 557-58.

²⁶ See *Catchphrases*, *supra* note 13, 34 J.MAR. L. & COM. at 568-69.

²⁷ 520 U.S. at 558-60.

²⁸ The Supreme Court’s *Stewart* decision is discussed from a broad variety of perspectives in a mini-symposium in 3 BENEDICT’S MARITIME BULLETIN at 103 et. seq. (2d quarter 2005).

seaman is statutorily defined as *a master or member of a crew of any vessel.*) In *DiGiovanni v. Traylor Brothers, Inc.*, the First Circuit developed a very restrictive “vessel” definition, holding that a worker could not achieve Jones Act status without showing that the vessel of which he or she claimed to be a crew member was either (a) a traditional ship, principally used for carrying goods or passengers or (b) in actual movement across the water at the time of the injury.²⁹ In *Stewart v. Dutra Const. Co.*³⁰ the Supreme Court granted certiorari to review the First Circuit’s decision using the *DiGiovanni* rule to deny Jones Act seaman status to Willard Stewart, a marine engineer assigned to the *Super Scoop*, a large dredge being used to dig a trench (50 feet deep, 100 feet wide, and three-quarters of a mile long) across Boston Harbor. (The trench is now the Ted Williams Tunnel, which extends the Massachusetts Turnpike beneath Boston Harbor to Logan Airport.)

In a unanimous (8-0) decision authored by Justice Thomas, the Supreme Court concluded that *DiGiovanni* --and hence the First Circuit’s *Stewart* holding--were badly wrong. It held that 1 U.S.C. § 3 provides the “default definition of ‘vessel’ throughout the U.S. Code”³¹ and thus in 33 U.S.C. § 902(3)(G), and thus (via the *Swanson* rule) for Jones Act purposes. 1 U.S.C. § 3 states:

The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

The *Stewart* Court also held that Jones Act coverage does not require separate “vessel” and “in navigation” showings: “Instead, the ‘in navigation’ requirement is an element of the vessel status of a watercraft. It is relevant to whether the craft is ‘used, or

²⁹ 959 F.2d 1119, 1123 (1st Cir. 1992) (*en banc*).

³⁰ 125 S.Ct. 1118 (2005).

³¹ *Id.* at 1124

capable of being used' for maritime transportation.”³² The Court read its decisions in *Cope v. Valette Dry-Dock Co.*³³ (holding that a floating drydock was not a vessel for salvage-law purposes) and *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*³⁴ (holding that a wharfboat attached to the mainland and used as a warehouse was not a vessel for shipowners' Limitation of Liability purposes) as straightforward applications of the 1 U.S.C. § 3 definition, taking these cases as illustrations of the common-sense view that “a watercraft is not ‘capable of being used’ for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.”³⁵

The *Stewart* Court provided this summary of its holding: “Under [1 U.S.C.] § 3 [and hence for Jones Act purposes], a ‘vessel’ is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment.”³⁶ It evaluated the effects of its holding on the law of seaman status in this way:

Applying § 3 brings within the purview of the Jones Act the sorts of watercraft considered vessels at the time Congress passed the Act. By including special-purpose vessels like dredges, § 3 sweeps broadly, but the other prerequisites to qualifying for seaman status under the Jones Act provide some limits, notwithstanding § 3's breadth. A maritime worker seeking Jones Act seaman status must also prove that his duties contributed to the vessel's function or mission, and that his connection to the vessel was substantial both in nature and duration. Thus, even though the *Super Scoop* is a “vessel,” workers injured aboard the *Super Scoop* are eligible for seaman status only if they are “master[s] or member[s]” of its crew.³⁷

³² *Id.* at 1128.

³³ 119 U.S. 625 (1887).

³⁴ 271 U.S. 19 (1926).

³⁵ 125 S.Ct. at 1127.

³⁶ *Id.* at 1129.

³⁷ *Id.* at 1127 (citation omitted).

And it indicated that it hoped it was now finished with the work of defining a Jones Act seaman. The Court began its discussion by characterizing *Wilander* and *Chandris* as “clarifying [half] the definition of ‘seaman’” and going on to say “[w]e now turn to the other half.”³⁸ It concluded its opinion with this peroration:

Despite the seeming incongruity of grouping dredges alongside more traditional seafaring vessels under the maritime statutes, Congress and the courts have long done precisely that:

“[I]t seems a stretch of the imagination to class the deck hands of a mud dredge in the quiet waters of a Potomac creek with the bold and skillful mariners who breast the angry waves of the Atlantic; but such and so far-reaching are the principles which underlie the jurisdiction of the court of admiralty that they adapt themselves to all the new kinds of property and new sets of operatives and new conditions which are brought into existence in the progress of the world.”³⁹

III. THE TEST FOR SEAMAN STATUS

The *Chandris* Court summarized the law of seaman status as follows:

[T]he employment-related connection to a vessel in navigation necessary to qualify as a seaman under the Jones Act 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 its nature.⁴⁰

On the face of the *Chandris* Court’s language, its “two basic elements” seem to include five potential requirements:

- plaintiff worked on or for a vessel
- the vessel was in navigation
- plaintiff’s duties contributed to the vessel’s function or mission
- plaintiff’s work connection to the vessel was substantial in duration
- plaintiff’s work connection to the vessel was substantial in nature.

³⁸ *Id.* at 1123-24.

³⁹ *Id.* at 1129 (quoting *Saylor v. Taylor*, 77 F. 476, 479 (4th Cir. 1896)).

⁴⁰ 515 U.S. at 376 (citations and internal quotation marks omitted).

Stewart has reduced the list to no more than four requirements.⁴¹ As was mentioned in Section II-F above, *Stewart* takes the putative “vessel in navigation” requirement out of play as follows:

Granted, the Court has sometimes spoken of the requirement that a vessel be “in navigation,” but never to indicate that a structure’s locomotion at any given moment mattered. Rather, the point was that structures may lose their character as vessels if they have been withdrawn from the water for extended periods of time. The Court did not mean that the “in navigation” requirement stood apart from [1 U.S.C.] § 3, such that a “vessel” for purposes of [1 U.S.C.] § 3 might nevertheless not be a “vessel in navigation” for purposes of the Jones Act or the LHWCA. * * *

Instead, the “in navigation” requirement is an element of the vessel status of a watercraft. It is relevant to whether the craft is “used, or capable of being used” for maritime transportation. A ship long lodged in a drydock or shipyard can again be put to sea, no less than one permanently moored to shore or the ocean floor can be cut loose and made to sail. The question remains in all cases whether the watercraft’s use “as a means of transportation on water” is a practical possibility or merely a theoretical one.⁴²

Stewart thus shows that we now have at most four requirements.⁴³ The first requirement is work on a vessel as defined in 1 U.S.C. § 3. The second is that the worker’s “duties contributed to the vessel’s function or mission.”⁴⁴ The remaining requirement or requirements is that the worker’s “connection to the vessel was substantial both in nature and duration.”⁴⁵ As will be developed in Section V below, *Chandris*--the case that establishes the substantial-in-duration and substantial-in-nature requirements--is not entirely clear on whether these should be combined or analyzed separately. Certainly a plaintiff can argue it either way. But for purposes of analysis, it seems clearer to posit that seaman status requires:

⁴¹ There may be only three. *See infra* Section V.

⁴² 125 S.Ct. at 1128 (citations and internal quotation marks omitted).

⁴³ There may be only three. *See infra* Section V.

⁴⁴ 125 S.Ct. at 1127.

⁴⁵ *Id.*

1. work on a vessel as defined in *Stewart* and 1 U.S.C. § 3 (or on a fleet of such vessels as defined in *Papai*);
2. contribution to the vessel's (or fleet's) function or mission;
3. a substantial-in-duration work connection to the vessel or fleet; and
4. a substantial-in-nature work connection to the vessel or fleet.

IV. HOW THE FOUR ELEMENTS ARE PROBABLY MEANT TO FUNCTION

The *Wilander-Chandris-Stewart* test for seaman status may “sweep[] broadly,”⁴⁶ but it still functions to exclude many injured maritime workers:

- The *vessel* requirement keeps crewboat helicopter pilots,⁴⁷ fixed-platform workers,⁴⁸ and workers on vessels that have “been taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport”⁴⁹ from being seamen.
- The *contribution* requirement is intended as a “threshold requirement [that] is very broad,”⁵⁰ but it nevertheless keeps amphibious workers who merely ride a vessel to work (for example, on a fixed offshore oil or gas platform) or sleep and eat on a vessel without doing any work there out of seaman status.⁵¹

⁴⁶ *Id.*

⁴⁷ *See* *Hebert v. Air Logistics, Inc.*, 720 F.2d 853 (5th Cir. 1983).

⁴⁸ *See Stewart*, 125 S.Ct. at 1127 (stating that the definition of *vessel* in 1 U.S.C. § 3 “would not sweep within its reach an array of fixed structures not commonly thought of as capable of being used for water transport”).

⁴⁹ *Id.* at 1128.

⁵⁰ *Chandris*, 515 U.S. at 368.

⁵¹ *See Ketnor v. Automatic Power, Inc.*, 850 F.2d 236, 239 (5th Cir. 1988) (“Ketnor merely rode on the vessels to go from rig to rig so that he could perform his rig servicing duties on the rig. He thus was not a Jones Act seaman.”); *Roberts v. Williams-McWilliams Co.*, 648 F.2d 255, 263 (5th Cir. 1981) (holding that an offshore worker could not claim to be a member of the crew of the barge on which he slept every night).

- The *substantial-in-duration* requirement (together with the *Papai* definition of a “fleet”) keeps everyday longshoremen out of seaman status by generally requiring that the worker must have spent at least “30 percent of his time [while working for the current employer] in the service of a [particular vessel or fleet of vessels under common ownership or control].”⁵²
- The *substantial-in-nature* requirement (at least on one view) keeps various sorts of amphibious workers out of seaman status by addressing whether the worker’s duties “regularly expose[d] [the worker] to the perils of the sea.”⁵³

V. TWO VIEWS OF THE SUBSTANTIAL-IN-NATURE REQUIREMENT

As can be seen by studying the quotations from *Chandris* set forth above in Section II-D, the Court was not entirely clear on the meaning and focus of the substantial-in-nature requirement.⁵⁴ However, there are good reasons for taking the view reflected in Section IV just above, i.e., for thinking that the *Chandris* Court meant this requirement as the doctrinal mechanism for addressing the extent to which the worker’s duties exposed him or her to the “perils of the sea,” viz., the dangers that are characteristic of a seaman’s work environment. The Court has repeatedly indicated that the central purpose of the Jones Act (and the general maritime law’s doctrines of unseaworthiness and maintenance and cure) is protecting workers who confront the characteristic seaman’s hazards.⁵⁵ In

⁵² *Chandris*, 515 U.S. at 371.

⁵³ *Id.* at 368.

⁵⁴ See also John R. Hillsman, *Navigating the “Zone of Uncertainty” in Stewart’s Wake: A Plaintiff’s Perspective on Jones Act/LHWCA Cross-Over Cases*, 3 BENEDICT’S MARITIME BULLETIN 158, 162 (2d quarter 2005) (“[The] prerequisites [for seaman status] are as ‘Delphic’ as ever—especially the requirement that a seaman’s vessel connection must be substantial in nature.”) (Hillsman’s italics.)

⁵⁵ See *Papai*, 520 U.S. at 560 (“Jones Act coverage is confined to seamen, those workers who face regular exposure to the perils of the sea.”); *Chandris*, 515 U.S. at 370 (“The Jones Act remedy is reserved for sea-based maritime employees whose work regularly exposes them to the

Chandris it affirmed the Second Circuit’s decision laying down the following test for seaman status:

[T]he 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.⁵⁶

The Supreme Court said this test was almost right, but that the Second Circuit misspoke when it used the word “or” to connect the duration and nature requirements: “We think it is important that a seaman’s connection to a vessel in fact be substantial in both respects.”⁵⁷ Later in the opinion the Court summarized its own test as follows:

[T]he employment related connection to a vessel in navigation necessary to qualify as a seaman under the Jones Act 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 its nature.⁵⁸

Note that the Supreme Court’s rephrasing of the Second Circuit’s test not only changes the crucial “or” to the crucial “and”; it also omits any explicit doctrinal reference to the Second Circuit’s fourth requirement, regular exposure to sea perils. Given the Court’s repeated statements of the importance of this datum, it seems likely that the Court’s substantial-in-nature requirement is the intended doctrinal mechanism for addressing it.

special hazards and disadvantages to which they who go down to sea in ships are subjected.”) (internal quotation marks and citation omitted); *Wilander*, 498 U.S. at 354 (“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.”).

⁵⁶ *Latsis v. Chandris, Inc.*, 20 F.3d 45, 57 (2d Cir. 1994), *aff’d*, 515 U.S. 347 (1995).

⁵⁷ 515 U.S. at 370-71.

⁵⁸ *Id.* at 376 (citation and internal quotation marks omitted).

A number of lower courts seem to take the foregoing view, using the substantial-in-nature doctrine as a means of addressing the extent to which the worker's duties exposed him or her to the characteristic seamen's hazards.⁵⁹ A number of others use a much vaguer version of the substantial-in-nature element, blending it with the substantial-in-duration element in such a way as to take the emphasis away from the sea-perils inquiry and in the direction of the stability of the worker's attachment to an apparatus that is either a traditional vessel or a close resemblance. A good example of this "blending" approach is *Lara v. Harveys Iowa Management Co.*,⁶⁰ which held that a casino-boat bartender who was aboard the vessel only while it was docked (the vessel cruised for a few hours every morning but the plaintiff always worked the afternoon/early evening shift) was entitled to go the jury with her claim of seaman status. The *Lara* court treated the substantial-in-nature element as follows:

That Lara never worked on board the Kaneshville Queen while the ship was in transit cannot be denied. However, * * * [t]here are facts here on which a reasonable jury could find that Lara was substantially connected to the Kaneshville Queen in both duration and nature. By way of example, although the Kaneshville Queen is outfitted with modern-day amenities like satellite and cable television, it remains a fully operational riverboat casino, equipped with all the accouterments [sic] of a sea-faring vessel. There is a captain, and he is helped by six deckhands, a mate, chief engineer, and an assistant engineer. According to the captain, the ship is powered by several electric generating engines as well as propellers which hold 6,000 gallons of fuel. It has life-preservers on board for the passengers and crew. There are two rescue boats aboard the Kaneshville Queen, and the ship is annually inspected by the United States Coast Guard. The captain's crew trains for emergencies like fire and rescue operations on a weekly basis. During the 7-month excursion season, which runs from April 1 through October 31 each year, the Kaneshville Queen makes approximately 100 trips per year along the Missouri River. See 491 Iowa Admin. Code § 25.13(1)-(3). Excursions are scheduled during the morning, during which the ship travels 3 miles up the river and then returns to shore. The Kaneshville Queen typically cruises with 50 to 350

⁵⁹ See, e.g., *In re Endeavor Marine, Inc.*, 234 F.3d 287, 290-92 (5th Cir. 2000); *Foult v. Donjon Marine Co.*, 144 F.3d 252, 258-59 (3d Cir. 1998); *Gault v. Modern Continental/Roadway Constr. Co.*, 123 Cal. Rptr. 2d 85, 92 (Cal.App. 2002).

⁶⁰ 109 F.Supp. 2d 1031 (S.D. Iowa 2000).

passengers. During the 5-month off-season, the ship is moored to the shore with cables and ropes. Lara was injured during the off-season.

From her deposition and affidavit testimony, the Plaintiff began work for the casino in November of 1995. [She was injured on February 22, 1998.] She considered herself an excellent worker, and the Court found nothing in the record to dispute that. Often she was asked to train other casino employees. The vast majority of Lara's work as a cocktail server and bartender was performed on board the Kanesville Queen. Her shift ran from 2:00 p.m. to 10:00 p.m. five days a week, although on occasion she worked extra hours on board the ship either before or after her shift to make up for lost time from training employees on land. At the time of her injury, Plaintiff was working in the "well" of the poker bar on the enclosed deck of the vessel pursuant to her duties as cocktail server and bartender. In August of 1998, Lara was terminated by the casino.

A jury could find that, even though Lara was injured while the vessel was docked, she was nevertheless substantially connected to it in terms of both duration and nature. During her tenure with the casino, she spent most of her working hours on board the Kanesville Queen located on the Missouri River doing that ship's work--serving drinks, clearing tables, and otherwise attending to the ship's customers. In *Chandris*, the Supreme Court approved a rule-of-thumb wherein one who spends greater than 30% of his time on board a ship satisfies the seaman test. 515 U.S. at 371. Clearly the record suggests that Plaintiff meets this minimum threshold. "If it can be shown that the employee performed a significant part of his work on board the vessel on which he was injured, with at least some degree of regularity and continuity, the test for seaman status will be satisfied." *Chandris*, 515 U.S. at 368-69 (citation omitted). Given that Lara routinely worked on Defendant's fully operational ship located on the Missouri River, a reasonable jury could conclude that she was a sea-based, Jones Act employee. See *Harbor Tug*, 520 U.S. at 555 (citing *Chandris*, 515 U.S. at 368); see also *Roth v. U.S.S. Great Lakes Fleet, Inc.*, 25 F.3d 707, 709 (8th Cir. 1994) (to be a seaman, "an employee must be assigned to a ship, owing his allegiance to a vessel and not solely to a land-based employer") (citation and quotation marks omitted).⁶¹

VI. SUMMARY AND CONCLUSION

Stewart substantially clarifies a very important point, but seaman-status puzzles and potential battlegrounds remain. As we have just seen, there is disagreement on the meaning and thrust of the substantial-in-nature element. Other matters that will seemingly require further litigation include the application of the *Stewart* Court's

⁶¹ *Id.* at 1036-37.

practical-vs.-theoretical transportation capability inquiry⁶² to indefinitely moored but fully operational casino boats, the relationship of the Court's earlier out-of-navigation jurisprudence to the *Stewart* Court's new rule that "the 'in navigation' requirement is an element of the vessel status of a watercraft,"⁶³ and the effects of *Stewart* on vessel-status inquiries in disputes over admiralty jurisdiction. Many of these matters are treated in a mini-symposium that has just been published in 3 BENEDICT'S MARITIME BULLETIN 103 et. seq. (2d quarter 2005). This group of papers might be good beginning point for ruminating about the near-term jurisprudential future.

⁶² "The question remains in all cases whether the watercraft's use 'as a means of transportation on water' is a practical possibility or merely a theoretical one." 125 S.Ct. at 1128.

⁶³ *Id.*