

Seamen Left Adrift: A Need for the Adoption of a Voyage Test After *Sanchez v. Smart Fabricators of Texas, LLC*

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I.	INTRODUCTION	51
II.	JONES ACT BACKGROUND (THE MERCHANT MARINE ACT OF 1920)	52
	A. <i>Why Congress Thought the Jones Act Was Necessary</i>	52
	B. <i>What the Jones Act Does for Maritime Workers</i>	54
III.	THE “SEAMAN” ANALYSIS.....	55
	A. <i>LHWCA Background</i>	56
	B. <i>LHWCA Compensation Scheme</i>	57
	C. <i>Wilander</i>	57
	D. <i>Chandris</i>	58
	E. <i>Papai</i>	60
	F. <i>Thirty Percent “Rule of Thumb”</i>	60
	G. <i>LHWCA & the Jones Act</i>	63
IV.	FIFTH CIRCUIT’S NEW APPROACH TO SEAMAN STATUS	64
	A. <i>Sanchez v. Smart Fabricators of Texas, LLC</i>	64
	B. <i>Ninth Circuit: Freitas v. Healy Tibbits Builders</i>	66
	C. <i>Discussion of Chandris Post-Sanchez</i>	66
V.	PROPOSAL FOR A HYBRID TEST.....	70
VI.	CONCLUSION	72

I. INTRODUCTION

In *Chandris, Inc. v. Latsis*, the Supreme Court created a fact-based test to determine which maritime workers are entitled to bring claims under the Jones Act. In a concurring opinion, Justice Stevens advocated for an alternative “voyage test” to be considered. In *Sanchez v. Smart Fabricators, LLC*, the Fifth Circuit created a more particularized test that provides clarity at the expense of unduly removing Jones Act protections

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from some maritime workers. The District Court of Hawaii in the Ninth Circuit determined the particularized *Sanchez* test to be inconsistent with the Supreme Court's *Chandris* test. This Article proposes that courts adopt a hybrid of both Justice Stevens's voyage test and the Fifth Circuit's *Sanchez* test to alleviate ambiguity for the benefit of both plaintiffs and defendants in Jones Act claims.

II. JONES ACT BACKGROUND (THE MERCHANT MARINE ACT OF 1920)

A. *Why Congress Thought the Jones Act Was Necessary*

Since time “immemorial,” men and women who worked on commercial vessels have been subject to injurious conditions as part of their employment.¹ Early American jurisprudence recognized the prolific nature of injuries at sea and referred to such injuries as a “sailor’s heritage for the residue of [their] life.”² It has long been accepted in American courts that work aboard vessels “is usually neither exhilarating nor salutary; frequently it is grim and dangerous.”³ The exposure to dangerous conditions as part of shipboard employment has been coined the “perils of the sea.”⁴

Even with training and safety procedures in place, the risk of serious injury and death is ever present for mariners in ways not shared by land-based employees.⁵ Horrific events which have produced large amounts of casualties span a broad horizon. Mass-casualty maritime tragedies have occurred in a variety of scenarios, including: on vessels traversing the oceans, as in the case of the *Titanic*; offshore in the Gulf of Mexico, as with the *Deep-Water Horizon*; and in relatively calm inland waterways, as with the *General Slocum*.⁶

1. *The City of Alexandria*, 17 F. 390, 393 (S.D.N.Y. 1883).

2. *The Atlantic*, 2 F. Cas. 121, 131 (S.D.N.Y. 1849).

3. *Litherland v. Petrolane Offshore Constr. Servs., Inc.*, 546 F.2d 129, 130, 1977 AMC 771 (5th Cir. 1977).

4. *Perils of the Sea*, JUSTIA LEGAL DICTIONARY, <https://dictionary.justia.com/perils-of-the-sea> (on file with the Tulane Maritime Law Journal) (last visited Aug. 9, 2026).

5. *Marine Transportation*, NAT’L INST. SAFETY AND OCCUPATIONAL HEALTH (Dec. 29, 2023) https://www.cdc.gov/niosh/programs/cms/marine_transportation.html (on file with the Tulane Maritime Law Journal) (showing the rate of fatal injuries of U.S. marine transportation workers to be nearly six times the rate of all U.S. workers).

6. Valerie Wingfield, *The General Slocum Disaster of June 15, 1904*, N.Y. PUB. LIBR. (June 13, 2011), <https://www.nypl.org/blog/2011/06/13/great-slocum-disaster-june-15-1904>, (on file with the Tulane Maritime Law Journal) (the paddle steamer *General Slocum* caught fire and sank in New York harbor on June 15, 1904, costing 1,021 individuals their lives, a mass casualty event only surpassed by the 9/11 terrorist attacks).

Although the term “perils of the sea” may evoke images of blue water shipping, the inherent dangers of work on the water are not contained to a specific area of operation. In the nineteenth century, American courts wrestled with the appropriate liability scheme to be applied in cases regarding injured mariners.⁷ Without statutory rights, injured mariners relied upon courts to apply the common law and ancient codes such as the thirteenth century’s early maritime laws in the Rolls of Oleron.⁸ Such provisions provided relatively little recovery for injured maritime workers.⁹

By the early twentieth century, the accepted rule for recovery was that vessel officers, crew, “and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.”¹⁰ This means that an injured seaman’s legal entitlements were their wages and medical treatment, which was provided by the crew until the ship reached the next port.¹¹ Essentially, the law left very little room for mariners to recover from workplace injuries.

During the labor movement of the early twentieth century, Congress decided to take action to provide injured seamen additional rights of recovery. Congress enacted a slew of legislation that would give seamen statutory rights and force employers to take responsibility for increasing the safety protocols onboard ships.¹² The first major piece of legislation enacted was the Merchant Marine Act of 1915 (the Seamen’s Act).¹³ The Seamen’s Act passed as a result of the government’s recognition of the necessity to maintain a merchant fleet during World War I.¹⁴ An additional focus on safety concerns became a public concern after the sinking of the *Titanic*.¹⁵

7. See *The City of Alexandria*, 17 F. 390 (S.D.N.Y. 1883).

8. Blair Pooler, *The Expansion of Admiralty Jurisdiction into the Realm of Workers’ Compensation: Newly Applying Learned Hand to Jones Act Personal Injury Claims to Incentivize Dangerous Seafaring Work and Protect Workers from the Perils of the Sea*, 48 J. MARSHALL L. REV. 877, 879-80 (2015).

9. *Reed v. Canfield*, 20 F. Cas. 426, 428 (C.C.D. Mass. 1832).

10. *The Osceola*, 189 U.S. 158, 175, 2000 AMC 1207 (1903).

11. *Id.*

12. Michael Reagan, *Maritime Workers and Their Unions*, HARRY BRIDGES CTR. FOR LAB. STUD. U. WASH. (2010), https://depts.washington.edu/dock/maritime_intro.shtml (on file with the Tulane Maritime Law Journal).

13. *Id.*

14. Philip B. Kennedy, *The Seamen’s Act*, 63 THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 232, 242 (1916). <http://www.jstor.org/stable/1012944> (on file with the Tulane Maritime Law Journal).

15. *Id.*

From the time of its enactment, the Seamen's Act was controversial because providing a safer workplace for seamen and holding employers liable for failing to keep seamen safe would lead to increased shipping costs.¹⁶ Shortly following the passage of The Seamen's Act, the Supreme Court reviewed a case where a seaman suffered an injury which lead to the amputation of his leg.¹⁷ The *Chelentis* court held that Congress had no intention to give seamen a right to pecuniary recovery from an employer beyond the seaman's wages and medical expense.¹⁸

Congress again endeavored to provide seamen the right to sue their employers for injuries resulting from negligence.¹⁹ As a result, Congress passed the Merchant Marine Act of 1920 (the Jones Act). The Jones Act and its progeny are referred to as such due to Senator Wesley Jones's instrumental role in the act's passage.²⁰

The Jones Act sought to avoid the legal difficulties encountered in *Chelentis* by using the statutory framework previously used to grant rail workers the right to sue their employers for negligence. The Jones Act incorporated the rights provided to railway workers under the Federal Employers' Liability Act (FELA).²¹

B. What the Jones Act Does for Maritime Workers

The Jones Act gives seamen the right to pursue wrongful death and personal injury claims against their employer.²² Additionally, the Jones Act allows these claims to be heard by a jury.²³ A right to a jury trial is a remedy not customarily permitted in admiralty actions.²⁴ This statutory right is maintained in addition to the seaman's common law right to recovery for maintenance and cure and for unseaworthiness.²⁵ Although maintenance and cure and unseaworthiness claims may overlap with

16. *Id.* at 232.

17. *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 378, 383-84 (1918).

18. *Id.*

19. Michael J. Rauworth, *Probing the Mysteries of the Jones Act—Part 2*, 160 SEA HIST., 2017, at 30, https://seahistory.org/wp-content/uploads/SH169_Feature_Jones_Act.pdf (on file with the Tulane Maritime Law Journal).

20. Salvatore R. Mercogliano, *A Century of the Jones Act*, 169 NAT'L MAR. HIST. SOC'Y: SEA HIST., 2019-20, at 12, 14, https://seahistory.org/wp-content/uploads/SH169_Feature_Jones_Act.pdf.

21. 45 U.S.C. § 51-60; 46 U.S.C. § 30104; *Dutra Grp. v. Batterton*, 139 U.S. 2275, 2281 (2019).

22. 46 U.S.C. § 30104.

23. *Id.*

24. *Great Lakes Ins. SE v. Andersson*, 525 F. Supp. 3d 205, 207, 2021 AMC 112 (D. Mass. 2021).

25. *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 415, 2009 AMC 1521 (2009).

Jones Act claims, they are discrete common law remedies outside the purview of this writing.

The Jones Act places a “distinct duty on the [vessel’s] owner to provide a reasonably safe workplace.”²⁶ Recovery under the Jones Act requires that the seamen show: “(1) a dangerous condition on the ship, (2) of which [the employer] had notice, that (3) proximately caused the plaintiff’s injuries.”²⁷ Contributory negligence and assumption of risk by the employee do not bar recovery under the Jones Act.²⁸ Furthermore, the Jones Act provides for recovery from the employer even if the negligent act is caused by an employer’s onboard agents such as other seamen, officers, or the vessel’s captain.²⁹

The Jones Act grants a favorable standard for pecuniary recovery because it extends FELA claims to seamen.³⁰ Under this standard, claims must be presented to a jury if there may be any finding of negligence, regardless of how slight the negligence may be.³¹ Essentially, the Jones Act creates a statutory relaxation of the proximate cause standard necessary under common law negligence cases.³²

The Jones Act scheme therefore provides *inter alia* two important legal protections for seamen. First, the Jones Act provides a low bar to defeat summary judgement by entitling such claims to be heard by a jury. Second, it provides a favorable standard for seamen to prove negligence against their employers. Overall, this scheme seeks to provide greater protections for seamen due to the inherently dangerous environments in which they live and work. The Jones Act encourages a system of liability for employers to vet the officers and captains entrusted to oversee the operation of their vessels. The Jones Act’s employer liability framework encourages best practices in maintaining a safe workplace in an environment that is perilous in the best of conditions.

III. THE “SEAMAN” ANALYSIS

Determining if a maritime worker is entitled to pursue a claim under the Jones Act hinges on a determination of whether or not the worker may be classified as a seaman. Maritime workers who do not fall under the

26. Oxley v. City of New York, 923 F.2d 22, 25, 1991 AMC 1816 (2d Cir. 1991).

27. Martinez v. City of New York, 684 F. App’x 90, 92 (2d Cir. 2017).

28. The Arizona v. Anelich, 298 U.S. 110, 123 (1936).

29. *In re Hechinger*, 890 F.2d 202, 208, 1990 AMC 765 (9th Cir. 1989).

30. Dutra Grp. v. Batterton, 588 U.S. 358, 365-66, 2019 AMC 1521 (2019). *See* 45 U.S.C. § 51.

31. Rogers v. Mo. Pac. R.R. Co., 352 U.S. 500, 506, 1957 AMC 652 (1957).

32. CSX Transp., Inc. v. McBride, 564 U.S. 685, 698, 2011 AMC 1521 (2011).

Jones Act must seek remedy under the Longshoreman and Harbor Worker Compensation Act (LHWCA) scheme.³³ The distinction between a “seaman” and another type of maritime worker is important because in the “vast majority of cases, the seamen’s remedies are far more favorable than those available to other maritime workers.”³⁴

The difficulty in determining which workers are Jones Act seamen and which are land-based maritime employees is caused by the lack of a statutory definition of the term seaman. This lack of a statutory definition has left the role of determining who is a “seaman” to the authority of the courts.³⁵ Early on, in *International Stevedoring v. Haverty*, the Court interpreted the Jones Act as having granted protection to an expansive group of maritime workers.³⁶ In doing so, the Court interpreted the “flexible” words of the Jones Act as having the intent of including longshoremen and other workers not traditionally considered seamen.³⁷

A. LHWCA Background

The Longshoreman and Harbor Worker Compensation Act of 1927 has been inextricably connected to the Jones Act’s definition of seaman.³⁸ In 1917, in the case of *Southern Pacific Co. v. Jensen*, the Court ruled that state workman’s compensation schemes would not be applicable to the maritime worker.³⁹ In 1926, the Court in *Haverty* held that shore-based maritime workers were included in the Jones Act.⁴⁰ Congress quickly responded to *Haverty* by passing the LHWCA a year later.⁴¹ The LHWCA became the first federal workman’s compensation scheme to provide protections for employees of private companies.⁴²

33. David W. Robertson, *A New Approach to Determining Seaman Status*, 64 TEX. L. REV. 79, 82 (1985).

34. *Id.* at 83.

35. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 355, 1995 AMC 1840 (1995).

36. *Int’l Stevedoring Co. v. Haverty*, 272 U.S. 50, 52, 1926 AMC 1638 (1926).

37. *Id.*

38. *Chandris*, 515 U.S. at 357.

39. Adam Hare, *Land Ho! Two Words an Injured Longshore or Harbor Worker Never Wants to Hear*, 64 CATH. U. L. REV. 161, 165 (2014).

40. *Haverty*, 272 U.S. at 52.

41. David W. Robertson, *The Supreme Court’s Approach to Determining Seaman Status*, 34 J. MAR. L. & COM. 547, 554 (2003); Casey B. McCormack, *A Modern Analysis of Obtaining “Seaman” Status Under the Jones Act*, 29 U.S.F. MAR. L.J. 1, 5 (2016).

42. Kathleen Krail Charvet, *Gilding the Lily*, 91 TUL. L. REV. 881, 886 (2017).

B. LHWCA Compensation Scheme

The LHWCA scheme provides workers “with no-fault workers’ compensation claims (against their employer, § 904(b)) and negligence claims (against the vessel, § 905(b)) for injury and death.”⁴³ The LHWCA “completely obliterates” the right for an injured worker to pursue any further legal action against their employer.⁴⁴ However, the LHWCA does preserve the right for an employee to bring a claim against a shipowner, in addition to receiving no fault compensation, if that shipowner’s negligence was the cause of their injury.⁴⁵ Courts struggled to cogently define which workers were seamen. This led to a series of decisions in the decades following the passage of the Jones Act which were described by the Supreme Court as “inconsistent,” “confusing,” “befuddling,” and “wayward.”⁴⁶

For seventy years following the Jones Act, determinations of who was a seaman and what the applicable test should be to make that determination varied.⁴⁷ Creating a test is inherently difficult due to the multifaceted nature of employment in the maritime industry.⁴⁸ In a trilogy of cases between 1991 and 1997 the Supreme Court sought to pin down a test to define “seaman” for Jones Act liability claims.⁴⁹ These three cases created a new seaman test which adopted portions of the earlier case law.⁵⁰

C. Wilander

The first of these cases was *McDermott International, Inc. v. Wilander*.⁵¹ In *Wilander*, a paint foreman was injured aboard a vessel which provided painting services to offshore oil rigs.⁵² The foreman was injured when a pipe he was inspecting burst.⁵³ The Court sought to settle

43. *Norfolk Shipbuilding & Drydock Corp. v. Garriss*, 532 U.S. 811, 818 (2001) (“[T]he LHWCA expressly pre-empts all other claims”); 33 U.S.C. §§ 902(3), 904(b), 905(b).

44. *Nations v. Morris*, 483 F.2d 577, 587, 1973 AMC 1413 (5th Cir. 1973).

45. 33 U.S.C. § 905(b); *Howlett v. Birkdale Shipping Co.*, 512 U.S. 92, 96, 1994 AMC 1817 (1994).

46. *Robertson*, *supra* note 41, at 555.

47. *Taylor Simpson-Wood, Loose Lips Launch Ships*, 37 J. MAR. L. & COM. 113, 114 (2006).

48. *Id.*

49. *Id.*

50. *See Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1071, 1986 AMC 2455 (5th Cir. 1986).

51. *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 348, 1991 AMC 913 (1991).

52. *Id.* at 339.

53. *Id.*

a conflict of law between the Fifth and Seventh circuits regarding how to determine who was a seaman.⁵⁴ The defendant employer argued that the Court should apply the Seventh Circuit's seaman test.⁵⁵ The Seventh Circuit test required the injured plaintiff to prove that they aided in the navigation of the vessel in order to be considered a seaman.⁵⁶ The defendant argued that since the injured employee's essential job function was to paint, and was not to "aid in the navigation of a vessel," they fell outside of Jones Act coverage.⁵⁷ By using this standard, the number of employees on ships classified as seamen would be narrowed. However, the *Wilander* Court decided to "jettison the aid in navigation" element from the seaman test."⁵⁸

In its decision, the Court stated that historically, under pre-Jones Act maritime law, various positions aboard ships such as cooks, barrel makers, and bartenders had been characterized as seamen.⁵⁹ Such a statement evidences the Court's apparent desire to adopt an expansive test for determining which shipboard workers may fall under the Jones Act.

Importantly, it shows the Court's willingness to define shipboard workers whose duties are not purely nautical in nature as seamen. The *Wilander* court opined that its holding was formed with the purpose of maintaining the congressional intent for the Jones Act to cover a wide array of workers employed aboard American vessels.⁶⁰

D. Chandris

The second case, *Chandris Inc., v. Latsis*, created the modern two-prong test for determining seaman status.⁶¹ In *Chandris*, an engineer suffered a detached retina while working aboard the defendant's cruise ship.⁶² The ship's medical personnel failed to provide adequate care, which resulted in the plaintiff losing 75% of the vision in his eye.⁶³ Although the plaintiff was primarily employed as a shoreside engineer, his job consistently required him to work aboard the defendant's vessels.⁶⁴ The plaintiff's shipboard work was necessary in order to monitor

54. *Id.* at 348.

55. *Id.* at 340.

56. *Id.*

57. *Id.*

58. *Id.* at 353.

59. *Id.* at 342.

60. *Id.*

61. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 376, 1995 AMC 1840 (1995).

62. *Id.* at 349.

63. *Id.* at 352.

64. *Id.* at 349

shipboard engineers.⁶⁵ The *Chandris* Court sought to do away with the varied and overly particularized tests applied in the lower courts.⁶⁶ For example, the seaman test utilized by the Second Circuit stated:

[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.⁶⁷

The Court stated a concern that overly restrictive tests were counterproductive to the congressional intent of the Jones Act.⁶⁸ The *Chandris* Court articulated a new test with two prongs. The *Chandris* test required that: (1) "The worker's duties must contribute to the function of the vessel or to the accomplishment of its mission," and (2) "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."⁶⁹

In a concurring opinion, Justice Stevens agreed with the ruling but disagreed with the adoption of a test which might exclude a crew member on a voyage from Jones Act protection.⁷⁰ Justice Stevens was particularly concerned that the majority's test may remove from coverage some shipboard workers who were essentially seamen.⁷¹ Such removal would be possible merely because an argument could be made that they did not satisfy a duration requirement.⁷² Justice Stevens stated that the test adopted by the Court's majority was useful "[w]hen the extent and consequence of the employee's exposure to the seaman's hazards is facially unclear."⁷³ However, Justice Stevens opined that an employee working on a vessel during a voyage is unambiguously a "seaman."⁷⁴ Therefore, the majority's test did not effectively extend Jones Act

65. *Id.*

66. *Id.* at 356.

67. *Id.* at 353 (quoting *Latsis v. Chandris*, 20 F.3d 45, 57, 1994 AMC 2894 (2d Cir. 1994)).

68. *Id.* at 361-62.

69. *Id.* at 376.

70. *Id.* at 378 (Stevens, J., concurring).

71. *Id.*

72. *Id.*

73. *Id.* at 381.

74. *Id.*

coverage to some workers who would have essentially been a seaman at the time of their injury.⁷⁵

The majority in *Chandris* disagreed with Justice Stevens, viewing his stance as too unfavorable to employers. The majority dismissed Justice Stevens's voyage test opining that it would allow an employee to "walk into and out of coverage in the course of his regular duties."⁷⁶ Justice Stevens countered this argument by stating, "[t]he employer controls who goes on that voyage; he knows, more or less, when that voyage will begin and when it will end."⁷⁷ Justice Stevens argued that the position taken by the majority could contravene the intent of the Jones Act by negating coverage of an employee on a voyage who was essentially a seaman merely because they had spent minimal time on the vessel when their injury occurred.⁷⁸

E. Papai

The final case of the trilogy was *Harbor Tug v. Papai*.⁷⁹ The Court in that case was focused on determining if a seaman was connected to a fleet of vessels and less focused on defining who was a seaman. However, this case is important because it is the first application of the *Chandris* test in the Supreme Court. In *Papai*, the Supreme Court stated that the second prong of the *Chandris* test hinges on whether the employee's duties take him to sea.⁸⁰

F. Thirty Percent "Rule of Thumb"

Throughout the seaman-status trilogy, the courts sought to clean up the "major mess" of confusing and conflicting rulings that had been generated in the decades following the passage of the Jones Act.⁸¹ The courts did not merely throw out all the prior rulings and start from scratch. Instead, they created what could be considered a logical synthesis of some of the more important decisions regarding Jones Act seaman status.⁸² The articulation of a thirty percent "rule of thumb" shows the Court's

75. *Id.* at 383.

76. *Id.* at 363 (quoting *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1075, 1986 AMC 2455 (5th Cir. 1986) (en banc)).

77. *Id.* at 386 (Stevens, J., concurring).

78. *Id.*

79. *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 1997 AMC 1817 (1997).

80. *Id.* at 555.

81. Robertson, *supra* note 41, at 556.

82. *Id.* at 557 (describing the Court's seaman status cases as "an accurate synthesis of those decisions' facts and results").

borrowing from law previously created and used in the Fifth Circuit.⁸³ The thirty percent rule of thumb, subsumed by the Supreme Court in *Chandris*, dates back to a 1986 en banc decision from the Fifth Circuit Court of Appeals.⁸⁴

In *Barrett v. Chevron Inc.*, the Fifth Circuit contemplated a standard for determining the necessary temporal connection of a seaman to a vessel to satisfy the Jones Act.⁸⁵ At the time of the *Barrett* decision, Supreme Court case law was “meager”⁸⁶ in regard to the Jones Act seaman analysis. The *Barrett* court ruled that a worker who only spent 20-30% of his time working in a qualifying seaman’s capacity lacked the temporal element required for Jones Act seaman status.⁸⁷

Importantly, *Barrett’s* en banc opinion distinguished a worker’s assigned duties at the time of the injury versus a worker’s duties throughout the entire course of their employment.⁸⁸ The *Barrett* court stated that it might be proper to find that the plaintiff was a seaman if they were to evaluate the temporal element using the job the plaintiff was performing at the time of the injury.⁸⁹ However, by evaluating the entire scope of assignments that the plaintiff performed for his employer, the *Barrett* court ruled that the plaintiff was not a seaman.⁹⁰

The dissent in *Barrett* noted that the decision would require evaluating portions of the worker’s career which were irrelevant to his job duties and location at the time of injury.⁹¹ The dissent opined that evaluating “the totality of [a] worker’s duties during the entire term of [their] employment” should be evaluated, but should not be ‘dispositive.’”⁹² The *Barrett* dissent further suggested a test where the worker’s assignment, contemporaneous to the injury, is more heavily considered.⁹³

In *Chandris*, the Supreme Court based its own rule of thumb on the *Barrett*⁹⁴ rule, stating:

An appropriate rule of thumb is that

83. *Id.*

84. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 367, 1995 AMC 1840 (1995).

85. *See Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1986 AMC 2455 (5th Cir. 1986).

86. *Id.* at 1073.

87. *Id.* at 1076.

88. *Id.* at 1075.

89. *Id.* at 1074-75.

90. *Id.* at 1076.

91. *Id.* at 1076-77 (Rubin, J., dissenting).

92. *Id.* at 1077.

93. *Id.*

94. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 367, 1995 AMC 1840 (1995).

[a] worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman. This figure of course serves as no more than a guideline established by years of experience, and departure from it will certainly be justified in appropriate cases.

This permits a court consider the question, instead of the jury, when a worker has a clearly inadequate temporal connection to the vessel. “On the other hand, [the Court] see[s] no reason to limit the seaman status inquiry . . . exclusively to an examination of the overall course of a worker’s service with a particular employer” since his seaman status may change with his basic assignment.⁹⁵

The *Chandris* Court emphasized that the rule of thumb was a flexible standard.⁹⁶ However, the ability for it to be used as a bright line distinction appears too tempting for some courts to resist.⁹⁷ It even led one court to negate seaman status for a plaintiff who was injured aboard a sinking vessel while performing “a classic seaman’s job.”⁹⁸

Additionally, the method used to calculate employment time is not always clear. How employment hours are calculated is subjective to the practices of the individual employer.

Results may vary depending on the plaintiff’s and defendant’s individual arguments for how their service to the vessel should be counted. This becomes an additional factual argument rather than a tool for clarity because a court needs to discern what constitutes service to the vessel.⁹⁹

However, it is easy to see why attorneys and courts will so eagerly look at the thirty percent determination as a main part of their seaman status analysis. A seaman status analysis is necessarily a mixed question of law and fact.¹⁰⁰ Trying to avoid making seaman status a jury question is difficult when the facts do not easily lend themselves to a single conclusion.

95. *Id.* at 371-72.

96. *Id.* at 371.

97. Robertson, *supra* note 41, at 564.

98. Washington v. Blanchard Contractors, Inc., No. H-08-1806, 2009 WL 1108922, at *15 (S.D. Tex. Apr. 24, 2009) (in which a plaintiff injured while working aboard a sinking vessel was not considered a Jones Act seaman because he had previously worked in a shoreside capacity).

99. See Guarascio v. Drake Assocs., No. 06 Civ. 15185, 2008 WL 4222034, at *2 (S.D.N.Y. 2008) (opining that different calculations could lead the court to determine that a plaintiff spent either 27.2% or 29.4% of their time employed as seaman’s work).

100. Grab v. Boh Bros. Constr. Co., LLC, 506 F. App’x 271, 275, 2013 AMC 597 (5th Cir. 2013) (unpublished).

Plaintiffs and defendants alike stand to benefit from avoiding trial before the determination of seaman status is settled. As a result, the factual and calculable nature of the thirty percent rule may become an end in and of itself rather than a helpful guideline.¹⁰¹

G. *LHWCA & the Jones Act*

The LHWCA was ostensibly enacted to statutorily separate two classes of maritime workers: the sea-based and the land-based. Therefore, discerning which workers the LHWCA excludes from coverage is determinative of which workers the Jones Act covers.

Indeed, this was the approach of the Supreme Court in *Wilander*.¹⁰² The Court reiterated this usage of the LHWCA in *Chandris*.¹⁰³ Under the LHWCA, “a master or member of a crew of any vessel” is excluded from LHWCA coverage.¹⁰⁴ The Court interpreted this language to be a “refinement of the term ‘seaman’ in the Jones Act.”¹⁰⁵

Understanding how the Supreme Court used the LHWCA in creating the *Chandris* test is important when analyzing what the test is truly designed to do. It is a test designed to separate maritime workers into two classes with two different recovery schemes. It is indeed “odd” to define the term “seaman” from the Jones Act on the basis of who is excluded from the LHWCA.¹⁰⁶ A lack of statutory clarity may be why the Court prescribed a thirty percent rule of thumb for determining seaman status.¹⁰⁷ At the heart of the matter, the “prerequisite” used in determining Jones Act coverage is to focus upon “the essence of what it means to be a seaman.”¹⁰⁸ The desire to create a status test rather than a clear definition is the reason why the Court rejected Justice Stevens’s voyage test.¹⁰⁹ Justice Stevens’s test suggests that “any maritime worker who is assigned to a vessel for the duration of a voyage—and whose duties contribute to the vessel’s mission—should be classified as a seaman for purposes of injuries incurred during that voyage.”¹¹⁰

101. *See id.*

102. *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 347, 1991 AMC 913 (1991).

103. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 357, 1995 AMC 1840 (1995).

104. 33 U.S.C. § 902(3)(G).

105. *Wilander*, 498 U.S. at 347.

106. *Id.*; *Chandris*, 515 U.S. at 357.

107. *Chandris*, 515 U.S. at 371.

108. *Id.* at 369.

109. *Id.* at 349.

110. *Id.* at 361.

IV. FIFTH CIRCUIT'S NEW APPROACH TO SEAMAN STATUS

The Fifth Circuit is particularly important to Jones Act jurisprudence. Courts in the Fifth Circuit have issued opinions citing to *Chandris* four times more than any other federal circuit.¹¹¹ The Fifth Circuit's jurisdiction has a robust maritime industry located within it as a result of the offshore oil and gas industry in the Gulf of Mexico.¹¹² In Louisiana alone there were over 70,000 Jones Act jobs in 2019.¹¹³ According to the Bureau of Labor Statistics there are approximately 75,400 water transportation workers in the United States.¹¹⁴ Texas and Louisiana account for 20,860 of this total.¹¹⁵ This shows how much of an impact the Fifth Circuit truly has on the American seaman. As a result, it is of particular importance to examine Fifth Circuit decisions that interpret and apply the Supreme Court's seaman status test.¹¹⁶

A. *Sanchez v. Smart Fabricators of Texas, LLC*

In a recent Fifth Circuit decision, *Sanchez v. Smart Fabricators of Texas, LLC*, the court appeared to steer away from the *Chandris* two-part test in an attempt to establish a "more definitive test." In *Sanchez*, the Fifth Circuit ruled en banc that a marine welder was not a seaman.¹¹⁷ In *Sanchez*, the plaintiff, Gilbert Sanchez, was a marine welder employed by

111. LEXIS, "Chandris, Inc. v. Latsis, 515 U.S. 347", 845 results (Aug. 9, 2026) (on file with the Tulane Maritime Law Journal) (when filtered by "Court", "5th Cir." 361 results).

112. NAT'L OCEANIC AND ATMOSPHERIC ADMIN. (NOAA), NAT'L OCEAN SERV. (NOS) SPECIAL PROJECTS DIV., THE GULF OF MEXICO AT A GLANCE: A SECOND GLANCE 18-20 (2011), <https://www.fws.gov/doiddata/dwh-ar-documents/1187/DWH-AR0008582.pdf> (on file with the Tulane Maritime Law Journal).

113. Workboat Staff, *Southeast Louisiana Leads U.S. in Jones Act Jobs, Report Says*, WORKBOAT, Feb. 13, 2019, <https://www.workboat.com/government/southeast-louisiana-leads-u-s-in-jones-act-jobs-report-says> (on file with the Tulane Maritime Law Journal).

114. *Occupational Outlook Handbook: Water Transportation Workers*, BUREAU OF LAB. STAT. (Sep. 8, 2022), <https://www.bls.gov/ooh/transportation-and-material-moving/water-transportation-occupations.htm> (on file with the Tulane Maritime Law Journal).

115. *53-5021 Captains, Mates, and Pilots of Vessels*, BUREAU OF LAB. STAT. (Mar. 31, 2022), <https://www.bls.gov/oes/current/oes535021.htm#st> (on file with the Tulane Maritime Law Journal); *53-5022 Motorboat Operators*, BUREAU OF LAB. STAT. (Mar. 31, 2022), <https://www.bls.gov/oes/current/oes535022.htm#st> (on file with the Tulane Maritime Law Journal); *53-5011 Sailors and Marine Oilers*, BUREAU OF LAB. STAT. (Mar. 31, 2022), <https://www.bls.gov/oes/current/oes535011.htm#st> (on file with the Tulane Maritime Law Journal); *53-5031 Ship Engineers*, BUREAU OF LAB. STAT. (Apr. 3, 2024), <https://www.bls.gov/oes/2023/may/oes535031.htm> (on file with the Tulane Maritime Law Journal).

116. *Sanchez v. Smart Fabricators of Tex., LLC*, 997 F.3d 564, 566, 2021 AMC 217 (5th Cir. 2021).

117. *Id.* at 576.

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65

a land-based fabrication company, Smart Fabricators of Texas LLC (Smart). The employer-defendant in *Sanchez* serviced equipment used in offshore energy production.¹¹⁸ While employed by Smart, Sanchez spent over 90% of his time working on jack-up rigs.¹¹⁹ The jack-up rig Sanchez was primarily working on was connected to the dock by a gangway.¹²⁰ However, when Sanchez was actually injured, he was working on an offshore jack-up vessel on the Outer Continental Shelf.¹²¹ Sanchez had spent the two weeks prior to his injury working on the same vessel on the Outer Continental Shelf.¹²² In the *Sanchez* opinion, the Fifth Circuit articulated several factors to be considered in addition to the *Chandris* test. Those additional factors are:

1. Does the worker owe his allegiance to the vessel, rather than simply to a shoreside employer?
2. Is the work sea-based or involving seagoing activity? And 3.(a) Is the worker's assignment to a vessel limited to performance of a discrete task after which the worker's connection to the vessel ends, or (b) Does the worker's assignment include sailing with the vessel from port to port or location to location?¹²³

The *Sanchez* court examined these factors in conjunction with the thirty percent rule of thumb test and determined that the plaintiff was not a seaman.¹²⁴ Courts in the Fifth Circuit now apply these additional elements to the *Chandris* test.¹²⁵ Under the new precedent, courts, at least in the Fifth and Eleventh circuits, examine the following:

- 1) [T]o whom does the worker owe his allegiance;
- 2) [I]s the work sea-based or involve sea-going activity;
- 3) [I]s the worker's assignment on the vessel discrete and when completed, does the connection to the vessel end or does the work include sailing with the vessel port to port or assignment to assignment; and,
- 4) [D]oes the work expose the worker to "perils of the sea?"¹²⁶

118. *Id.* at 566.

119. *Id.*

120. *Id.* at 567.

121. *Id.*

122. *Id.*

123. *Id.* at 574.

124. *Id.* at 576.

125. *Blanda v. Cooper/T. Smith Corp.*, 599 F. Supp. 3d 385, 397, 2022 AMC 149 (M.D. La. 2022).

126. *Id.* (citing *Sanchez*, 997 F.3d at 574).

In February 2022, a decision by the District Court of Alabama in the Eleventh Circuit adopted the *Sanchez* test.¹²⁷ That court found the Fifth Circuit's expansion of the *Chandris* test to be persuasive.¹²⁸ The *Monetro* court effectively utilized the extra elements put forth in *Sanchez* as a substitute for the second part of the *Chandris* test.¹²⁹

B. Ninth Circuit: Freitas v. Healy Tibbits Builders

Following the *Sanchez* opinion, a defendant in a Ninth Circuit District of Hawaii Court case, *Freitas v. Healy Tibbits Builders*, argued that *Sanchez* should be applied in that district as well.¹³⁰ In that case, the plaintiff was injured while on temporary assignment to a construction trestle which spanned the Moana Loa Creek.¹³¹ The *Freitas* court did not find the argument to adopt an expanded *Chandris* test availing.¹³² In that court's decision, it opined that *Sanchez* had created the sort of detailed test that the Supreme Court had sought to do away with.¹³³ The *Freitas* court reiterated the language from *Chandris* where the Supreme Court required that courts "focus upon the essence of what it means to be a seaman" rather than creating "detailed tests to effectuate the congressional purpose, tests that tend to become ends in and of themselves."¹³⁴

C. Discussion of Chandris Post-Sanchez

It appears that there is now a rift between the circuits. One preliminary question arises when evaluating whether or not *Sanchez* should be adopted. It must be determined if *Sanchez* has created a new test or if *Sanchez* has merely expounded upon the preexisting *Chandris* test. If it is in fact a new test, then it contradicts the law as set forth by the Supreme Court in *Chandris*. For the sake of the reader, three seaman tests previously discussed in this article follow.

First, the Second Circuit test which the Court in *Chandris* "jettisoned" stated:

127. *Montero v. Van Nguyen*, No. 21-cv-354-N, 2022 WL 551133, at *6, 2022 AMC 63 (S.D. Ala. Feb. 23, 2022).

128. *Id.*

129. *Id.* at *9.

130. *Freitas v. Healy Tibbits Builders*, No. 19-00309, 2021 WL 6428700, at *3 (D. Haw. Oct. 26, 2021).

131. *Id.* at *1.

132. *Id.* at *4.

133. *Id.*

134. *Id.* (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 369, 1995 AMC 1840 (1995)).

(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.¹³⁵

Second, the Court's majority test stated in the *Chandris* opinion:

[1.] The worker's duties must contribute to the function of the vessel or to the accomplishment of its mission, and

[2.] 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.¹³⁶

Third, the test being applied post-*Sanchez*. It should be noted that this test still maintains the first prong of the *Chandris* test as well as the following elements:

(1) Does the worker owe his allegiance to the vessel, rather than simply to a shoreside employer?

(2.) Is the work sea-based or [does it] involve sea-going activity? and

(3)(a) Is the worker's assignment to a vessel limited to performance of a discrete task after which the worker's connection to the vessel ends, or (b) Does the worker's assignment include sailing with the vessel port to port or location to location? . . . [and]

(4) 'whether [the plaintiff] was subject to the perils of the sea.'¹³⁷

In a decision from August of 2022, The Eastern District Court of Louisiana described the *Sanchez* opinion as having "evolved" the *Chandris* test.¹³⁸ Is adopting *Sanchez* for the "more exacting" substantive portion of the test really an evolution?¹³⁹

A side-by-side comparison of the old and new tests certainly gives the impression that the *Sanchez* test is the antithesis of evolution. Why

135. *Chandris*, 515 U.S. at 353 (quoting *Latsis v. Chandris, Inc.*, 20 F.3d 45, 57, 1994 AMC 2894 (2d Cir. 1994)).

136. *Id.* at 376.

137. *Barlow v. BP Expl. & Prod. Inc.*, 620 F. Supp. 3d 475, 478-79, 2022 AMC 245 (E.D. La. 2022) (first citing *Sanchez v. Smart Fabricators of Tex., LLC*, 997 F.3d 564, 374, 2021 AMC 217 (5th Cir. 2021); and then quoting *Meaux v. Cooper Consolidated, LLC*, 545 F. Supp. 3d 383, 389, 2021 AMC 290 (E.D. La. 2021) (alteration in original)).

138. *Id.*

139. *Groton Pac. Carriers, Inc. v. Jackson*, 149 So. 3d 596, 607, 2014 AMC 937 (Ala. 2014).

would courts be so tempted to drift from the purpose of the creation of the *Chandris* test and revive older and more complex tests?¹⁴⁰

The issues that occur with applying the *Chandris* test are somewhat predictable. Courts are unable to view a “snapshot” of when and how a plaintiff’s injury occurred.¹⁴¹ Instead, courts must take a holistic evaluation of the plaintiff’s entire employment.¹⁴² Frequently when seaman status is disputed, the nature of the plaintiff’s employment does not squarely place them on ship or shore. This places courts in the difficult position of needing to make a judgement call.

The line of Jones Act cases following the *Sanchez* opinion appear to rely heavily upon the precedent stated in *Sanchez* by evaluating the additional elements to be outcome determinative.¹⁴³ Previously, courts have analyzed various persuasive factors when making seaman status determinations.¹⁴⁴ This makes sense since ultimately the *Chandris* test is “fact-based” and “case specific.”¹⁴⁵ Therefore, courts are required to investigate a multitude of factors with none necessarily being dispositive. This course effectuates the liberal construction intended to be given to the term “seaman” under the Jones Act.¹⁴⁶

The cases following *Sanchez* go well beyond an additional factor inquiry. They are utilizing the test elements as dispositive and determinative of Jones Act seaman status.

For instance, in *Meaux v. Cooper Consolidation, LLC*, the court first performed a seaman status analysis before *Sanchez* and then another one after *Sanchez*.¹⁴⁷ In the *Meaux* court’s first determination, the plaintiff was found to have satisfied the *Chandris* test.¹⁴⁸ Thus, pre-*Sanchez*, Meaux

140. *Chandris*, 515 U.S. 347 at 369.

141. *Quiles v. City of New York*, 978 F. Supp. 2d 374, 383 (S.D.N.Y. 2013).

142. *Id.*

143. *See Bommarito v. Belle Chasse Marine Transp.*, 591 F. Supp. 3d 115, 121-22, 2022 AMC 97 (E.D. La. 2022); *see also Meaux v. Cooper Consol., LLC*, 601 F. Supp. 3d 38, 54, 2022 AMC 165 (E.D. La. 2022); *see also Johnson v. Cooper T. Smith Stevedoring Co.*, 610 F. Supp. 3d 867, 875 (M.D. La. 2022).

144. *See Tilcon N.Y., Inc. v. Volk (In re Complaint of Buchanan Marine, L.P.)*, 874 F.3d 356, 362 (2d Cir. 2017) (analyzing the plaintiff’s union status, shift schedule, marine credentials, where he ate meals, and where he slept to determine if the plaintiff was a Jones Act seaman).

145. *Rysz v. Norwalk Marine Contractors, Inc.*, No. FBTCV096004382S, 2014 WL 783687, at *3 (Super. Ct. Jan. 29, 2014) (unpublished).

146. *Owen v. W. Travel, Inc.*, No. C03-0659, 2003 WL 25961848, at *7, 2004 AMC 2828 (W.D. Wash. Dec. 12, 2003).

147. *Meaux v. Cooper Consol., LLC*, 601 F. Supp. 3d 38, 49-52, 2022 AMC 165 (E.D. La. 2022).

148. *Id.* at 41.

was a Jones Act seaman.¹⁴⁹ However, post-*Sanchez*, the defendant in *Meaux* filed a motion for reconsideration of Meaux's Jones Act seaman determination.¹⁵⁰ It should be noted that, the defendant in *Meaux* had filed an earlier pre-*Sanchez* motion for reconsideration, claiming that the plaintiff lacked the Jones Act's requisite thirty percent sea-time rule of thumb.¹⁵¹

The post-*Sanchez* reconsideration yielded a different result. Evaluating the same people, the same facts, and the same injury, the *Meaux* court found the plaintiff was no longer a Jones Act seaman under the *Sanchez* test.¹⁵²

Meaux is an important illustration for several reasons. First, it shows that *Sanchez* is acutely defendant-friendly. It must be questioned whether or not having such a detailed test, which is proving to eschew protection of the would-be seaman, is contrapositive to the congressional intent of the Jones Act. Does *Sanchez* then prevent the Jones Act from being, as it must be, “‘liberally construed’ in favor of seamen in order to accomplish its ‘beneficent purposes?’”¹⁵³

The Court in *Chandris* sought to create a balance between seamen and employers (the would-be plaintiffs and defendants). The potential defendants were not left out of the Court's reasoning when it articulated its test. In fact, Justice Stevens's voyage test, or “snapshot test,” was specifically disavowed due to fears that it would unfairly disadvantage defendants.¹⁵⁴ The majority in *Chandris* inferred that a balance of interests was posited in the articulated test.¹⁵⁵ Although case law is still building, the early indicators give the appearance that *Sanchez* will serve to tip the scales which the Court sought to balance. As previously mentioned in this writing, the importance of Fifth Circuit precedence is particularly important in maritime personal injury cases due to the amount of maritime worker claims heard in that jurisdiction. Any conflict of interpretation of maritime law between the Fifth Circuit and the other circuits is notable. The volume of Jones Act seaman disputes in the Fifth Circuit enables those courts to have a disproportionate impact on the outcomes of plaintiffs.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 53.

153. *Reynolds v. Sealift, Inc.*, No. 04-cv-4665-RER, 2007 WL 9725166, at *5 (E.D.N.Y. Aug. 3, 2007) (quoting *Gajewski v. United States*, 540 F. Supp. 381, 386, 1982 AMC 2830 (S.D.N.Y.1982)).

154. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 363, 1995 AMC 1840 (1995)

155. *Id.*

The Fifth Circuit is particularly persuasive in maritime law jurisprudence. Many of the precedents and principles that the *Chandris* Court utilized in distilling its own test came from the Fifth Circuit. It would be no surprise then if other jurisdictions which handle a mere fraction of the Fifth Circuit's maritime case load adopt *Sanchez*.

This is also the reason why the *Freitas* court's rejection of *Sanchez* is so important. As of the date of writing, only jurisdictions which border the Gulf of Mexico have adopted *Sanchez*.

Sanchez, like the tests before it, give legal tools to make distinctions where factual inquiries create ambiguities.¹⁵⁶

V. PROPOSAL FOR A HYBRID TEST

The *Chandris* Court articulated that the interests of the defendant and plaintiff need to be balanced.¹⁵⁷ It is important that the gracious Jones Act protections bestowed upon seamen are upheld.¹⁵⁸ It is also important to uphold the congressional intent of the LHWCA by ensuring that non-seamen do not recover under the Jones Act.¹⁵⁹ When a worker has one foot on the dock and one foot on the vessel, seaman status must necessarily be questioned. The *Sanchez* test fills a *Chandris*-sized gap. If applying and analyzing a set of facts under *Chandris* leads to an unclear result, what's next? It is predictable that courts would seek to implement tests with more exacting elements.

A more exacting test may benefit both defendants and plaintiffs by allowing them to determine where they stand at the outset of an action. If an injured plaintiff's only recovery is under the LHWCA, it is extremely important that they are aware of this fact in order to receive medical care and compensation. Since the LHWCA and Jones Act are not concurrent, an injured worker should unambiguously be on notice of where to seek remedy. However, disallowing maritime workers who would otherwise be considered a Jones Act seaman should not be the desired result of a more exacting test.¹⁶⁰

The solution could be two tests: a "voyage" test and a *Chandris* test, modified with the additional factors given in *Sanchez*. The dissent in *Barrett* and Justice Stevens's concurrence in *Chandris* both demonstrate

156. *Sanchez v. Smart Fabricators of Tex., LLC*, 997 F.3d 564, 574, 566, 2021 AMC 217 (5th Cir. 2021).

157. *Chandris*, 515 U.S. at 363.

158. *Dutra Grp. v. Batterton*, 588 U.S. 358, 366, 2019 AMC 1521 (2019).

159. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 347, 1991 AMC 913 (1991).

160. *See Meaux v. Cooper Consol., LLC*, 601 F. Supp. 3d 38, 54, 2022 AMC 165 (E.D. La. 2022).

a level of judicial concern for the worker who is doing a seaman's job while injured, yet falls out of the Jones Act because they do not satisfy the elements of a test.¹⁶¹ A voyage test solves that problem.

In crafting such a test, care must be taken to avoid ambiguous terms of art which have littered seaman tests in the past.¹⁶² It will be helpful to rely on solidly defined terminology. A fair and balanced test should have enough specificity to disallow a worker who should only be covered by the LHWCA from inadvertently walking into the Jones Act.

This can be accomplished by incorporating well-defined language from the International Regulations for Preventing Collisions at Sea, often referred to as the COLREGs or "the rules of the road."¹⁶³ The COLREGs define navigational terms and vessel arrangements relating to navigation.¹⁶⁴ These rules are applicable to all vessels operating internationally and domestically.¹⁶⁵

These rules define the word "underway" to mean "that a vessel is not at anchor, or made fast to the shore, or aground."¹⁶⁶ They also define the word "vessel" to mean "every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water."¹⁶⁷ Using these definitions, I posit that a seaman is a master or member of a crew employed in service of an "underway" "vessel."¹⁶⁸

This test seeks to make the "critical distinction between work performed aboard ship during a voyage—when the members of the crew encounter 'the perils of the sea'—and maritime work performed on a vessel moored to a dock in a safe harbor."¹⁶⁹ This comports with Justice Stevens's view that "an employee of [a] ship who is injured at sea in the course of his employment is always a 'seaman.'"¹⁷⁰ The proposed test is also harmonious with pre-*Chandris* law since it determines seaman status

161. See *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1076-77, 1986 AMC 2455 (5th Cir. 1986) (Rubin, J., dissenting); see also *Chandris*, 515 U.S. 347, 383 (Stevens, J., concurring).

162. Robertson, *supra* note 33, at 80.

163. See Convention on the International Regulations for Preventing Collisions at Sea, Oct. 20, 1972, 1050 U.N.T.S. 16 [hereinafter COLREGs].

164. See *id.*

165. *Id.* at Rule 1(a).

166. *Id.* at Rule 3(i).

167. *Id.* at Rule 3(a).

168. *Id.* at Rule 3(a), (i).

169. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 377, 1995 AMC 1840 (1995) (Stevens, J., concurring).

170. *Id.*

based on “the worker’s assignment when he is injured, not by the general characterization of his work.”¹⁷¹

A voyage test should only be the first step in the seaman analysis. Additional inquiry is necessary since “land-based maritime workers do not become seamen when they happen to be working aboard a vessel, and seamen do not lose Jones Act coverage when their service to a vessel takes them ashore.”¹⁷² If a worker is injured in a circumstance other than while employed for the service of an underway vessel, their status should still be “determined ‘in the context of [their] *entire* employment’ with [their] current employer.”¹⁷³

“The inquiry into seaman status is of necessity fact specific; it will depend on the nature of the vessel and the employee’s precise relation to it.”¹⁷⁴ Therefore, a test like *Sanchez* is appropriate because it empowers courts to make a more specific inquiry into the details of a worker’s employment. If, and only if, courts were to implement a prerequisite voyage test, they should also adopt the *Chandris* test as modified in *Sanchez*.

VI. CONCLUSION

The Jones Act and the LHWCA are intertwined yet mutually exclusive. The cases that fall in the seams of these statutes make it difficult to ascertain seaman status.¹⁷⁵ A maritime worker’s Jones Act claim is dependent upon the seaman analysis.¹⁷⁶ The difference between available remedies based on the theory of recovery is significant since the LHWCA is unable to compensate for, *inter alia*, “pain and suffering.”¹⁷⁷ Therefore, it is absolutely imperative that maritime workers and employers can adequately determine who is and who is not a Jones Act seaman.

Wilander, *Chandris*, and *Papai*, work together to straighten out a tangled area of jurisprudence. Although the *Chandris* test clearly discerns who is a traditional seaman and who is a traditional harbor worker, it

171. *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1078, 1986 AMC 2455 (5th Cir. 1986) (Rubin, J., dissenting).

172. *Chandris*, 515 U.S. at 349.

173. *Barrett*, 781 F.2d at 1075 (quoting *Longmire v. Sea Drilling Corp.*, 610 F.2d 1342, 1347, 1980 AMC 2625 (5th Cir. 1980)).

174. *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 356, 1991 AMC 913 (1991).

175. *O’Hara v. Weeks Marine, Inc.*, 294 F.3d 55, 62, 2002 AMC 1356 (2d Cir. 2002) (citing *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 86-87, 1992 AMC 305 (1991)).

176. 46 U.S.C. § 30104.

177. *Young v. Todd Pac. Shipyards Corp.*, 17 Ben. Rev. Bd. Serv. (MB) 201 (1985).

allows for ambiguity when a worker's full scope of employment is not completely at sea or ashore.¹⁷⁸ The ruling in *Sanchez* illustrates that the *Chandris* test has difficulty enveloping all workers who should be considered seamen.

The maritime industry is diverse in terms of operating areas, equipment, and jobs. The various sectors of the maritime industry are discrete and naturally operate offshore outside the purview of the public eye.¹⁷⁹ This has long made it difficult for a rule to sort an exceedingly broad horizon of employment encompassing the maritime industry.

This diversity is acute when considering "unconventional vessels, such as the strange-looking specialized watercraft designed for oil operations offshore and in the shallow coastal waters of the Gulf of Mexico."¹⁸⁰ The offshore oil and gas industry employs seamen on equipment unheard of when the Jones Act was passed.¹⁸¹ Any tests that may broaden the scope of liabilities for employers in this area is "hotly politicized."¹⁸² These factors may be a consideration for why the courts in the Fifth Circuit are eager to use the more detailed *Sanchez* test.

A more exacting test like *Sanchez* is a double-edged sword. It gives guidance to the analysis at the expense of removing rights from workers who would otherwise be entitled to seaman status. *Chandris* endeavored to articulate that courts must avoid complex tests and instead look at the spirit of what it meant to be a seaman.¹⁸³ Courts have trouble grappling with such a mixed analysis and sometimes have opted to apply a strict thirty percent rule of thumb as the definitive factor.¹⁸⁴ In such cases, it can be argued that the congressional intent for maritime worker's Jones Act protections are being unduly judicially negated.

Therefore, I propose the following test. Under 46 U.S.C. § 30104 a "seaman" is a master or member of a crew employed in service of an "underway vessel." Otherwise, 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.¹⁸⁵ To determine a connection to a vessel in navigation one must

178. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 381, 1995 AMC 1840 (1995) (Stevens, J., concurring).

179. 46 U.S.C. § 2101.

180. *Offshore Co. v. Robison*, 266 F.2d 769, 780, 1959 AMC 2049 (5th Cir. 1959).

181. *Id.*

182. *Robertson*, *supra* note 41, at 552.

183. *Chandris*, 515 U.S. at 369.

184. *Robertson*, *supra* note 41, at 564.

185. *Chandris*, 515 U.S. at 376.

consider: to whom does the worker owe his allegiance; is the work sea-based and/or does it involve sea-going activity; is the worker's assignment on the vessel discrete and, when completed, does the connection to the vessel end, or does the work include sailing with the vessel port to port or assignment to assignment; and does the work expose the worker to "perils of the sea?"

Using these two proposed tests in respective sequential order, seaman status will be more ascertainable. Additionally, it will ensure that the congressional intent behind creating the Jones Act is adequately protected. However, the *Sanchez* factors should only be adopted if the voyage test is adopted. Otherwise, implementing the *Sanchez* factors may unfairly limit seamen's rights of recovery under the Jones Act.