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***Naquin v. Elevating Boats, LLC:* The Fifth Circuit’s Improper Expansion of Jones Act “Seaman Status” Qualification**

Timothy M. O’Hara

I. Introduction

Imagine a deckhand that works aboard vessels utilized in offshore drilling and dredging operations.¹ As a deckhand, he must maintain the decks and superstructure, and assist with mooring and cargo handling.² He is employed by the owner of a fleet of vessels and required to work at offshore job sites for extended periods of time.³ While assigned to an offshore site, he works every day, sleeps aboard the vessel at night, and returns to shore when the job is completed.⁴

For the sake of comparison, now imagine a vessel repairman that works at a shipyard for a vessel service company.⁵ He works on vessels that are either moored or docked in the immediate area, or lifted up by a crane in the company shipyard.⁶ He spends roughly seventy percent of his time aboard these secured vessels performing repairs, replacements, and maintenance activities, and thirty percent of

1. See *Naylor v. Atl. Sounding Co.*, 481 F. App’x. 173 (5th Cir. 2012).

2. MARINE TRANSPORTATION SERVICES, INC., <http://marinetransportationservices.com/deckhand.pdf> (last visited August 14, 2015); SOUTHERN TOWING CO., <http://southerntowing.net/downloads/deckhand-job-description.pdf> (last visited August 14, 2015).

3. See *generally* *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 560 (1997) (holding that an employee whose work was not “of a seagoing nature” could not qualify as a seaman).

4. *Yelverton v. Mobile Labs., Inc.*, 608 F. Supp. 400,402-03, 406 (S.D. Miss. 1985), *aff’d*, 782 F.2d 555 (5th Cir. 1986).

5. See *Naquin v. Elevating Boats, L.L.C.*, 744 F.3d 927 (5th Cir. 2014).

6. *Id.*

his time performing duties in the shipyard.⁷ He goes home at the end of every workday and is rarely aboard the vessels while such are at open water.⁸

Which employee is exposed to the dangers of “unpredictable weather, rough tides, sudden sickness, and exhausting labour”⁹ that accompany working at sea? According to the United States Court of Appeals for the Fifth Circuit, the answer is both. In March 2014, in *Naquin v. Elevating Boats, L.L.C.*, a majority of that court held that the second worker qualified as the type of maritime employee that Congress decided to provide heightened legal protections because of the risks involved in working at sea.¹⁰ A strongly written dissent followed and asserted that this was not the type of worker that Congress had in mind.¹¹ This is just the latest chapter in the federal courts’ lengthy novel about the treatment of maritime workers in personal injury cases.

The story began nearly a century ago, when Congress enacted the Jones Act and effectively made “seamen the most generously treated personal injury victims in American law.”¹² But defining a Jones Act seaman has not come easy, as it took the United States Supreme Court seventy five years to arrive at the modern seaman status test.¹³ This commentary examines the “tortured history”¹⁴ of the Jones Act, how qualification for the statute’s protections has evolved, the modern seaman status test, and the implications of the Fifth Circuit’s recent application thereof. Section II gives a brief history and explanation of maritime law in the United States and the sources of federal court jurisdiction over maritime

7. *Id.*

8. *Id.*

9. *Harden v. Gordon*, 11 F. Cas. 480, 483 (C.C.D. Me. 1823).

10. *See generally* *Naquin*, 744 F.3d 927.

11. *Id.* at 941-44.

12. 46 U.S.C. § 30104 (2012); Shailendra U. Kulkarni, *The Seaman Status Situation: Historical Perspectives and Modern Movements in the U.S. Remedial Regime*, 31 TUL. MAR. L.J. 121, 121 (2006) (citing 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, 547 (2003)).

13. *See generally* *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995).

14. *Id.* at 358.

cases. Section III discusses pre-Jones Act maritime personal injury claims and the significance that the statute's enactment has had on the maritime industry. Section IV discusses the evolution of the seaman status test to the modern framework. Section V discusses the Fifth Circuit's decision in *Naquin v. Elevating Boats, L.L.C.* Section VI discusses the implications of this holding and proposes an adjustment to the seaman status test.

II. Maritime Law in the United States

A. What is Maritime Law?

Generally, “admiralty [law] is viewed as a legal realm that is—because of historical and practical considerations—weird and different.”¹⁵ It regulates the settlement of problems arising from sea navigation and commerce.¹⁶ Where relevant statutory law is lacking, an admiralty court will apply the general maritime law.¹⁷ General maritime law is judge-made federal common law that is drawn from many sources.¹⁸ When clear general maritime law precedent is absent, courts may look to, but are not bound by, the prevailing land law.¹⁹ Where relevant legislation and precedent are both lacking, admiralty courts may impose their own rule.²⁰ However, this authority is subject to limitation, as the courts' role is to adjust and not to revolutionize.²¹

15. See David J. Bederman, *Law of the Land, Law of the Sea: The Lost Link Between Customary International Law and the General Maritime Law*, 51 VA. J. INT'L L. 299, 302 (2011). See also Ernest A. Young, *Preemption at Sea*, 67 GEO. WASH. L. REV. 273, 305 (1998).

16. 2 C.J.S. *Admiralty* § 1 (2014) (citing *United States v. Matson Nav. Co.*, 201 F.2d 610 (9th Cir. 1953)).

17. *Id.*, at § 3 (citing *East River S.S. Corp. v. Transam. Delaval, Inc.*, 476 U.S. 858 (1986)).

18. *Id.* (citing *Fairest-Knight v. Marine World Distributors, Inc.*, 652 F.3d 94, 98 (1st Cir. 2011)).

19. *Id.* (citing *Igneri v. Cie. De Transports Oceaniques*, 323 F.2d 257 (2d Cir. 1963); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630-32 (1959); *Imperial Oil, Ltd. v. Drlik*, 234 F.2d 4 (6th Cir. 1956)).

20. *Id.* (citing *Trinh ex rel Tran v. Dufrene Boats, Inc.* 6 So. 3d 830, 839 (La. Ct. App. 2009)).

21. *Id.* (citing *Noel v. United Aircraft Corp.*, 204 F. Supp. 929, 939 (D.

B. Federal Court Jurisdiction of Maritime Cases

1. Statutory Authority

The federal courts' jurisdiction over maritime cases comes from several sources. The United States Constitution reads, in relevant part, that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; . . . to all Cases of admiralty and maritime jurisdiction."²² This constitutional authority is codified in title 28 United States Code section 1333(1), under which federal district courts have original jurisdiction, exclusive of state courts, over "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."²³

2. Judicial Interpretation of 28 U.S.C. § 1333(1)

The traditional test for determining whether the federal courts had maritime jurisdiction over a case was based on the locality of the wrong.²⁴ That is, "[i]f the wrong occurred on navigable waters, the action is within admiralty jurisdiction; if the wrong occurred on land, it is not."²⁵ The United States Supreme Court overruled the locality test in *Executive Jet Aviation, Inc. v. City of Cleveland*, holding that maritime jurisdiction based solely on the placement of the wrong was absurd.²⁶ The Court held that section 1333(1) jurisdiction requires a "maritime nexus," involving some relationship

Del. 1962).

22. U.S. CONST. art. III, § 2, cl. 1.

23. 28 U.S.C. § 1333(1). *See also* 2 AM. JUR. 2d *Admiralty* § 9 (2014) (citing *White v. United States*, 53 F.3d 43, 45 (4th Cir. 1995)).

24. *See Exec. Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 253 (1972).

25. *Id.*

26. *Id.* at 261. (The court compares this to conferring admiralty jurisdiction to a swimmer at a public beach, injured by another swimmer or a submerged object).

between the tort and traditional maritime activities relating to navigation or commerce on navigable waters.²⁷

The Court refined this concept in *Foremost Insurance Co. v. Richardson*, holding that section 1333(1) jurisdiction extends to cases of damage or injury on navigable waters where the alleged wrong bears a significant relationship to a traditional maritime activity, commercial or otherwise.²⁸ Factors that are significant to this analysis include the functions and roles of the parties, the involved vehicles and instruments, the type and cause of injury, and the traditional concepts of the role of admiralty law.²⁹

III. Personal Injury Claims of Maritime Workers

A. *The Osceola*

In the pre-Jones Act era, the federal courts treated seamen negligence claims against their employers harshly.³⁰ In fact, seamen did not have a viable claim to damages when injured as a result of their employers' negligence.³¹ In *The Osceola*, the plaintiff, an employee of the defendant vessel owner, was aboard a moving vessel when he and other crew members were ordered to use a derrick³² to lift the gangways,³³ although the vessel was at open sea and proceeding against strong winds.³⁴ He was struck and injured when the winds pushed the gangway and derrick over.³⁵ The United States Supreme Court denied the plaintiff's right to sue his employer for negligence and announced four rules relating thereto:

27. *Id.* at 256.

28. *See* *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982).

29. John B. Spitzer, Annotation, *Admiralty jurisdiction: maritime nature of tort – modern cases*, 80 A.L.R. Fed. 105 (1986).

30. *See* Courtney L. Collins, *The Act Up the Sleeve: Federal Courts Allow Employer Counterclaims for Property Damage to Wipe Out the Jones Act Claims of Seamen*, 37 TUL. MAR. L.J. 175, 177 (2012). *See also* 2 ROBERT FORCE & MARTIN J. NORRIS, *THE LAW OF SEAMEN* §30:2 (5th ed. 2011).

31. Collins, *supra* note 30, at 177.

32. A crane-like device.

33. A movable platform used to board and disembark a vessel.

34. *The Osceola*, 189 U.S. 158, 159 (1903).

35. *Id.*

1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.
2. That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.
3. That all members of the crew, except, perhaps, the master, are, as between themselves fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of maintenance and cure.
4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident.³⁶

The Court effectively limited a seaman's recovery for injuries caused by his employer's negligence to maintenance and cure, a duty imposed on vessel owners by reason of the employment contract that does not depend on the negligence of the vessel owner and is not limited to injuries sustained in the course of a seaman's employment.³⁷ Maintenance includes that which the seaman is entitled to while at sea, such as living expenses.³⁸ Cure includes the care, nursing, and medical expenses incurred in the period during which the duty continues.³⁹ Additionally, a seaman's right to damages was limited to injuries resulting from a vessel's unseaworthiness.⁴⁰

36. *Id.* at 175.

37. *Id.* at 175; *Calmar S. S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938).

38. *Calmar S.S. Corp.*, 303 U.S. at 528.

39. *Id.*

40. *Osceola*, 189 U.S. at 175.

B. *Jones Act Enactment*

The Osceola holding, rendered in 1903, brought to Congress's attention the inadequacies of the recovery scheme for seaman under the general maritime law.⁴¹ At this time, personal injury actions were experiencing change, as "modern workers' compensation schemes were increasingly available to certain land-based workers and railroad employees were afforded liberal actions against their employers."⁴² But, despite the federal courts' acknowledgement that the nature of their employment exposed them to greater dangers, seamen were afforded less generous treatment than their land based counterparts.⁴³ The imbalance needed rectifying.

In 1920, Congress attempted to resolve the disparity by enacting the Merchant Marine Act, more commonly known as the Jones Act, which granted seamen the same remedies afforded railway employees under the Federal Employers Liability Act of 1908 ("FELA"), including a cause of action based on the negligence of one's employer.⁴⁴ The Jones Act states:

A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.⁴⁵

41. See Kulkarni, *supra* note 12, at 126.

42. *Id.* (citing Taylor Simpson-Wood, *Loose Lips Launch Ships: Stewart v. Dutra Construction Company, Inc.*, 37 J. MAR. L. & COM. 113, 119 (2006)).

43. *Harden v. Gordon*, 11 F. Cas. 480, 483 (1823) (Circuit Justice Story stating that "Seamen are by the peculiarity of their lives, liable to sudden sickness from change of climate, exposure to perils, and exhausting labor.").

44. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354 (1995); Simpson-Wood, *supra* note 42, at 119. See also 45 U.S.C. §§ 51-60 (2012); Kulkarni, *supra* note 12, at 127.

45. 46 U.S.C. § 30104.

This enactment completed the trilogy of heightened legal protections provided to seamen because of their exposure to the perils of the sea: 1) maintenance and cure; 2) damages for injuries resulting from a vessel's unseaworthiness; and 3) damages for injuries resulting from the negligence of a vessel owner.⁴⁶ Significantly, Congress did not define the term seamen, failing to clarify exactly which workers qualified for Jones Act protection.⁴⁷ This omission "ultimately cause[d] great inconsistency and confusion" in federal courts for the next century.⁴⁸

C. *Early Interpretation of the "Seamen" Definition*

Before Congress enacted the Jones Act, the general maritime law employed a broad definition of the term seaman and granted that status to "virtually anyone who worked with or aboard any kind of vessel capable of any kind of movement."⁴⁹ Workers afforded seamen status included sailors, vessel officers, bartenders, cabin boys, carpenters, chambermaids, clerks, cooks, coopers, divers, doctors, dredge workers, engineers, firemen, fishermen, harpooners, horsemen, interpreters, masons, muleteers, musicians, pilots, pursers, radio operators, seal hunters, stewards, surveyors, and waiters.⁵⁰

In *International Stevedoring Co. v. Haverty*, a case involving a stevedore⁵¹ who was struck and injured when a supervisor, employed by the defendant-vessel owner, negligently caused freight to fall from the vessel, the United States Supreme Court considered the reach of the Jones Act.⁵² The Court held that, although stevedores are not seamen for most purposes, the work in which the plaintiff was engaged was a maritime service.⁵³ It did not believe "Congress willingly

46. Kulkarni, *supra* note 12, at 122.

47. *Chandris*, 515 U.S. at 355.

48. Kulkarni, *supra* note 12, at 127.

49. Robertson, *supra* note 12, at 554.

50. *E.g.*, Robertson, *supra* note 12, at 554-55.

51. A person employed at a dock, to load and unload cargo from ships.

52. *See generally* 272 U.S. 50 (1926).

53. *Id.* at 51-52.

would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than a ship.”⁵⁴ As one commentator has noted, the *Haverty* Court interpreted the Jones Act as making seaman status more inclusive, as opposed to restrictive.⁵⁵

D. *The Longshoreman and Harbor Workers’ Compensation Act*

After the Court’s *Haverty* decision, the “inconsistent,” “confus[ing],” “befuddling,” and “wayward” process of restricting the seamen definition began.⁵⁶ Congress unmistakably disapproved of that Court’s interpretation of a Jones Act seaman, taking just six months to enact the Longshoremen and Harbor Workers’ Compensation Act (“LHWCA”).⁵⁷ This was the first of many steps taken to restrict the definition of a Jones Act seaman.

The LHWCA provides workers’ compensation benefits to covered maritime employees for injuries incurred within the scope of one’s employment on the navigable waters of the United States, including an adjoining pier, wharf dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.⁵⁸ It also provides maritime workers a right to sue for negligence as third parties in certain circumstances.⁵⁹ Most importantly, the LHWCA specifically excludes “any master or member of the crew of any vessel” from its coverage.⁶⁰ Significantly, the LHWCA does not give an explicit definition of “master or member of the crew of any vessel,” but the United States Supreme Court, in bizarre

54. *Id.*

55. See Robertson, *supra* note 12, at 555.

56. Robertson, *supra* note 12, at 555, (citing *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 348-53 (1991)).

57. 33 U.S.C. §§ 901-9501. See *Swanson v. Marra Bros.*, 328 U.S. 1, 5-6 (1946).

58. 33 U.S.C. § 903(a).

59. 33 U.S.C. § 905(b) (“In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person...may bring an action against such vessel as a third party”).

60. 33 U.S.C. § 902(3)(g).

fashion, used this language to define a Jones Act seaman.⁶¹ In *Swanson v. Marra Bros.*, the Court dismissed the plaintiff-stevedore's Jones Act claim, holding that he was not a seaman:

We must take it that the effect of these provisions of the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the *Haverty* case only such rights to compensation as are given by the Longshoremen's Act.⁶²

The Court effectively declared seaman, as used in the Jones Act, and "master or member of a crew of any vessel," as used in the LHWCA, to be interchangeable phrases.⁶³ Thus, with the Jones Act's inclusion of seaman, and the LHWCA's exclusion of "any master or member of a crew of any vessel," the *Swanson* Court interpreted the compensation regimes as mutually exclusive.⁶⁴ It is worth noting that the mutually exclusive nature of these statutory remedies has been complicated in modern application.⁶⁵ The strange approach taken by the Court in tackling the definition of a Jones Act seaman has

61. See Robertson, *supra* note 22 at 555-56.

62. *Swanson*, 328 U.S. at -3, 7

63. Kulkarni, *supra* note 12, at 129-30.

64. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 355-56 (1995).

65. While the Jones Act's "seaman" and LHWCA "master or member of a crew" are synonymous, there is a "zone of uncertainty" where a fact finder may reasonably find coverage under either act. For example, there may be conflicting evidence concerning a particular worker's duties or undisputed evidence about a particular worker's duties that exhibits characteristics of both traditionally land and sea based duties. A discussion of this issue is beyond the scope of this commentary. See Evan T. Caffrey, *Splicing the Net: A Legislative Answer to the Problem of Seaman Status Under the Jones Act*, 14 TUL. MAR. L.J. 361, 372-73 (1990); Kenneth J. Reimer, *Showdown in the Fifth Circuit: Legros v. Panther Services Group, Inc.*, 13 TUL. MAR. L.J. 341 (1989). See also *Chenevert v. Travelers Indem. Co.*, 746 F.3d 581 (5th Cir. 2014) (holding that "an insurer who makes voluntary LHWCA payments to an injured employee on behalf of a ship owner/employer is entitled to recover these payments from the employee's settlement of a Jones Act claim against the ship owner/employer based on the same injuries for which the insurer has already compensated him.").

invited criticism. One commentator has asserted that, “[t]he *Swanson* Court’s conclusion . . . has led to a judicial course which is far different than the one originally envisioned by Congress for both shore-based and sea-based maritime workers.”⁶⁶ But regardless of the means employed, by enacting the LHWCA and issuing the *Swanson* holding, Congress and the Court, respectively, made clear that seaman, as used in the Jones Act, was a restrictive term reserved for a very particular class of workers.

E. *Advantages of Qualifying as a Jones Act Seaman*

Seamen are “the most generously-treated personal injury victims in American law.”⁶⁷ The advantages accompanying the protections of the Jones Act motivate maritime plaintiffs to vigorously seek seaman status. First, the burden on a seaman to establish employer negligence is “very light” and “featherweight.”⁶⁸ Second, Jones Act seamen are entitled to damages for the unseaworthiness of a vessel, and vessel owners’ face strict liability and a non-delegable duty under such claims.⁶⁹ Third, Jones Act seamen are also entitled to maintenance and cure payments,⁷⁰ of which there are no limitations on amount or duration.⁷¹ Fourth, the Jones Act grants a plaintiff the right to a jury trial, providing a greater potential for a substantial damages award.⁷²

In comparison, the benefits offered by the LHWCA are far less generous. First, the LHWCA’s workers’ compensation scheme, while similar to maintenance and cure, is

66. Simpson-Wood, *supra* note 42, at 123.

67. Robertson, *supra* note 12, at 547 (citing ROBERTSON, ET AL., ADMIRALTY AND MARITIME LAW IN THE UNITED STATES 240 (2001)).

68. Michael A. Orlando, *Supreme Court Rules a Dredge Is a Jones Act Vessel*, INT’L RISK MANAGEMENT INST. (March 2005), <http://www.irmi.com/expert/articles/2005/orlando03.aspx?cmd=print> (citing *Zapata Haynie Corp., v. Arthur*, 980 F.2d 287, 289 (5th Cir. 1992)). See Kulkarni, *supra* note 12, at 123.

69. Orlando, *supra* note 68.

70. See *supra* notes 41-48 and accompanying text.

71. Orlando, *supra* note 68.

72. Jones Act, 46 U.S.C. § 30104 (2012); Orlando, *supra* note 68.

distinguishable by its various limitations.⁷³ For example, there is a cap on available compensation, equal to two hundred percent of the applicable national average weekly wage.⁷⁴ Similarly, while Section 905(b) of the LHWCA permits a cause of action against a vessel for unseaworthiness, the maritime worker's burden in establishing causation is that of regular negligence.⁷⁵ Additionally, the LHWCA's compensation structure is managed by the federal government, whereby the Office of Workers' Compensation Programs determines the precise amount of compensation awarded to the non-seaman maritime worker.⁷⁶ Finally, the LHWCA does not provide a qualified injured maritime employee with a negligence action against his employer—"in exchange for no fault-liability for limited compensation benefits owed to their non-seaman employees, employers of such non-seamen garner immunity from tort liability."⁷⁷

The advantages of qualifying as a Jones Act seaman are obvious. As summarized by one commentator, "while the Jones Act seaman, bearing his 'featherweight' burden of proof, may have a legal remedy for his employer's negligence, the non-seaman is relegated to workers' compensation benefits under a scheme that is arguably less generous than even the seaman's additional remedy of maintenance and cure."⁷⁸

IV. The Jones Act Seaman Status Tests

In the seventy five years following Congress's enactment of the Jones Act, the federal courts' determination of who qualifies as a seaman was far from simple. The issue was frequently revisited by the United States Supreme Court, with analytical adjustments made upon each consideration. As one commentator has noted, the seaman status issue's instability caused a great deal of frustration and contradicted the

73. 33 U.S.C. §906(b). *See* Kulkarni, *supra* note 12, at 124.

74. *Id.*

75. *See* Kulkarni, *supra* note 12, at 123-24 (citing Orlando, *supra* note 68).

76. *Id.*

77. *Id.*

78. *Id.* at 125.

principles of predictability expected of a stare decisis judicial system.⁷⁹

In 1941, the United States Court of Appeals for the First Circuit considered the seaman status question in *Carumbo v. Cape Cod S.S. Co.*, and held that a Jones Act seaman and LHWCA “member of a crew” were not interchangeable terms.⁸⁰ A Jones Act seaman was any person employed or engaged to serve aboard a vessel in any capacity.⁸¹ Qualification as a LHWCA “member of a crew” required that the ship be in navigation, that the worker, more or less, have a permanent connection with the ship, and that he primarily aid in navigation.⁸² Despite the subsequent overruling *Swanson* holding,⁸³ the language of the *Carumbo* “member of a crew” requirements was retained in future seaman status tests advanced by the United States Supreme Court.

In 1943, in *O'Donnell v. Great Lakes Dredge & Dock Co.*, the Court considered the case of a deckhand injured by a falling counterweight after he was ordered ashore.⁸⁴ The Court held that the plaintiff was a Jones Act seaman and adopted a status based seaman status test:

The right of recovery in the Jones Act is given to the seaman as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters.⁸⁵

This extended the traditional general maritime law principles

79. See John R. Hillsman, *Still Lost in the Labyrinth: The Continuing Puzzle of Seaman Status*, 15 U.S.F. MAR. L.J. 49, 50 (2002).

80. *Carumbo v. Cape Cod S.S. Co.*, 123 F.2d 991, 994 (1st Cir. 1941).

81. *Id.* at 994-95.

82. *Id.* at 995.

83. See *supra* notes 62-63 and accompanying text.

84. See generally *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36 (1943).

85. *Id.* at 42-43. This was a drastic step from the *Haverty* line of cases which called for “seaman” status to be determined based on the location and type of activity performed when injured.

applied to maintenance and cure to the seaman's newly created rights under the Jones Act and indicated the desire for a purely status based inquiry.⁸⁶

In 1952, the United States Supreme Court took steps backwards in *Desper v. Starved Rock Ferry Co.*, a case involving a boat operator who was killed when a fire extinguisher handled by a colleague exploded as they prepared the defendants' boats for the summer season.⁸⁷ The Court held that Jones Act seaman status "depends largely on the facts of the particular case and the activity in which he was engaged at the time of the injury" and that the decedent's activities at the time of the accident were not those typically done by seaman, but "by exclusively shore-based personnel."⁸⁸ Even though the decedent would resume boat operating activities come summer, "[t]he fact that he had been, or expected in the future to be, a seaman does not render maritime work which was not maritime in its nature."⁸⁹ This was a retreat from the status based inquiry adopted in *O'Donnell* and return to the *Haverty* analysis that had been deemed incorrect.

The issue was revisited just six years later in *Grimes v. Raymond Concrete Pile Co.*, a case involving a pile driver that typically worked ashore, was sent to work from a barge at sea for several hours, and was injured aboard a tugboat as it returned to shore.⁹⁰ The United States Supreme Court held that the evidence was enough to create a factual question as to the plaintiff's seaman status.⁹¹ In a dissenting opinion, Justice Harlan claimed that the majority disregarded the principles outlined in *O'Donnell* and *Swanson* and reduced the seaman definition to "nothing more than a person injured while working at sea."⁹² He believed a greater connection was needed to be a Jones Act seaman.⁹³ Albeit through a dissenting opinion, the desire for restrictive, status based definition of

86. *See generally id.*

87. 342 U.S. 187, 188-90 (1952).

88. *Id.* at 190.

89. *Id.* at 191 (citing *Antus v. Interocean S.S. Co.*, 108 F.2d 185, 187 (6th Cir. 1939)).

90. 356 U.S. 252, 252-55(1958).

91. *Id.* at 253.

92. *Id.* at 255.

93. *Id.*

seaman was clear.

In 1959, in *Offshore Co. v. Robinson*, the United States Court of Appeals for the Fifth Circuit considered the case of a general laborer and driller's helper that was assigned to a drilling platform mounted on an engineless barge.⁹⁴ He severely fractured his leg as he tried to avoid sixteen hundred pounds of piping catapulting towards him, an accident, in part, caused by his employer's failure to provide additional safety personnel.⁹⁵ The Fifth Circuit held that:

[T]here is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.⁹⁶

This holding returned the analysis to the status based inquiry established in *O'Donnell* and *Swanson* and advocated by Justice Harlan in *Grimes*. Just one year later, the Fifth Circuit modified the *Robinson* test and held that a connection to an identifiable fleet of vessels or a finite group of vessels under common ownership were sufficient to achieve seaman status.⁹⁷

The modified *Robinson* test eventually became the prevalent seaman status test among the federal circuits, influencing Jones Act cases reviewed in the First,⁹⁸ Eighth,⁹⁹

94. 266 F.2d 769, 771-72 (5th Cir. 1959).

95. *Id.*

96. *Id.* at 779.

97. See generally *Braniff v. Jackson Ave.-Gretna Ferry, Inc.*, 280 F.2d 523 (5th Cir. 1960).

98. See *Bennett v. Perini Corp.*, 510 F.2d 114, 115 (1st Cir. 1975).

99. See *Miller v. Patton-Tully Transp. Co.*, 851 F.2d 202, 204 (8th Cir. 1988).

and Eleventh Circuits.¹⁰⁰ For the next thirty five years, the modified *Robinson* test and the *Carumbo* “member of a crew” test were recognized and applied, with slight variations, in every federal circuit to consider the seaman status issue.¹⁰¹ The consensus was that the proper analysis involved a status based inquiry. That is, each circuit required that a maritime worker have a significant connection to a vessel in navigation, or identifiable fleet of vessels, and, if not a more or less permanent connection to such, at least substantial work aboard a vessel.¹⁰²

In following years, the Fifth Circuit added a temporal element to the seaman status analysis.¹⁰³ In *Barrett v. Chevron, U.S.A., Inc.*, the plaintiff was a welder’s helper that sometimes performed maintenance and repair work from offshore platforms.¹⁰⁴ Approximately seventy to eighty percent of his work was performed on platforms where no auxiliary vessel was needed.¹⁰⁵ At the time of his injury, the plaintiff was performing welding services on a caisson¹⁰⁶ located ten to twelve miles offshore.¹⁰⁷ A barge was positioned alongside the caisson for equipment and material storage and remained stationary until the assignment’s completion.¹⁰⁸ The plaintiff initially injured his back while on the boat that transferred him to the job site, and hurt it a second time the next day while attempting to lift a heavy pipe on the barge.¹⁰⁹ The Fifth Circuit held that, “if the employee’s regularly assigned duties require him to divide his time between vessel and land (or platform) his status as a crew member is determined ‘in the context of his entire employment’ with his current employer.”¹¹⁰

100. See *Caruso v. Sterling Yacht & Shipbuilders, Inc.*, 828 F.2d 14, 15 (11th Cir. 1987).

101. See *Chandris, Inc. v. Latsis*, 515 U.S. 347, 367 (1995).

102. *Id.*

103. *Id.* at 366.

104. *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1068 (5th Cir. 1986).

105. *Id.*

106. A watertight chamber used in construction work under water.

107. *Barrett*, 781 F.2d at 1069.

108. *Id.*

109. *Id.*

110. *Id.* at 1075.

Because only twenty to thirty percent of the plaintiff's overall employment duties involved working from vessels, he did not qualify as a Jones Act seaman.¹¹¹ Since the *Barrett* decision, the Fifth Circuit has declined to confer seaman status where the worker spends less than thirty percent of his time aboard vessels.¹¹²

The United States Supreme Court set the stage for the modern seaman status test in 1991. In *McDermott International Inc. v. Wilander*, the plaintiff was a paint foreman that supervised sandblasting and painting work done on oil drilling platforms.¹¹³ While assigned to a vessel, he was struck in the head by a bolt that blew out under pressure.¹¹⁴ The Court granted certiorari to analyze and compare the "contribute to the function of the vessel" requirement of the *Robinson* test with the "aid in navigation" requirement of the *Carumbo* test.¹¹⁵ Ultimately, the Court abandoned the "aid in navigation" requirement in favor of an analysis that focused on an employee's connection to a vessel in navigation.¹¹⁶ Explaining that all *employees who work at sea in the service of ship are exposed to the perils which Congress intended to protect against*, the Court held that it is not the employee's particular job but his connection to a vessel that is determinative.¹¹⁷

In this regard, we believe the requirement that an employee's duties must 'contribut[e] to the function of the vessel or to the accomplishment of its mission' captures well an important requirement of seaman status. It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ships work.¹¹⁸

111. *Id.* at 1076.

112. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 367 (1995).

113. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 339 (1991).

114. *Id.*

115. *Id.* at 340.

116. *Id.* at 354.

117. *Id.*

118. *Id.* at 355.

The question of seaman status became a mixed question of law and fact.¹¹⁹ The inquiry was status based and dependent upon whether an employee's connection to a vessel, or fleet of vessels, exposed him to the dangers involved in working at sea that motivated Congress's enactment of the statute in 1920.¹²⁰

The *Wilander* holding was refined into the modern seaman status test four years later in *Chandris, Inc. v. Latsis*.¹²¹ The plaintiff, a salaried superintendent engineer, was responsible for maintaining and updating the electronic and communications equipment aboard the defendant's fleet of vessels.¹²² His duties extended to the entire fleet, requiring him to both take voyages on the vessels and direct ship maintenance from shore.¹²³ During a voyage to Bermuda, the plaintiff developed a problem in his right eye, and the vessel's doctor did not follow proper medical procedure when he advised the plaintiff to rest for two days until the plaintiff could see an eye specialist ashore.¹²⁴ In Bermuda, the plaintiff was diagnosed with a detached retina and underwent surgery.¹²⁵ He ultimately lost seventy five percent of the vision in his right eye and subsequently brought Jones Act claims.¹²⁶ The United States Supreme Court reviewed the case to resolve "the continuing conflict among the Courts of Appeals regarding the appropriate requirements for seaman status under the Jones Act."¹²⁷ The Court acknowledged that its *Wilander* decision was a step in the right direction but held that such "did not consider the requisite connection to a vessel in any detail and therefore failed to end the prevailing confusion regarding seaman status."¹²⁸

Consistent with the analysis of the *Swanson*, *O'Donnell*, and *Wilander* Courts before it, the majority rejected the defendant's proposition that "anyone working on board a vessel

119. *Id.* at 356.

120. *Id.*

121. 515 U.S. 347 (1995).

122. *Id.* at 350.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 350-51.

127. *Id.* at 353.

128. *Id.* at 357.

for the duration of a ‘voyage’ in furtherance of a vessel’s mission has the necessary employment-related connection to qualify as a [Jones Act] seaman.”¹²⁹ The Court explained:

A brief survey of the Jones Act’s tortured history makes clear that we must reject the initial appeal of such a ‘voyage’ test and undertake the more difficult task of developing a status-based standard that, although it determines Jones Act coverage without regard to the precise activity in which the worker is engaged at the time of the injury, nevertheless best furthers the Jones Act’s remedial goals.¹³⁰

After examining the extensive history of Jones Act interpretation in the federal courts, the Court confirmed that “the Jones Act inquiry is fundamentally status based,” such that land based maritime workers do not become seaman because they happen to be working on a vessel at the time of injury and seamen do not lose Jones Act protection when their employment takes them ashore.¹³¹ The Court explained that Jones Act jurisprudence makes clear that a more enduring relationship between the worker and a vessel is contemplated.¹³²

In light of those principles, the Court adopted a two-prong seaman status test. First, an employee’s duties must contribute to the function of the vessel or the accomplishment of its mission.¹³³ Second, the employee must have a connection to a vessel in navigation, or an identifiable group of vessels, that is substantial in both duration and nature.¹³⁴ Under the first requirement, initially established in *Wilander*, “all who work at sea in the service of the ship are eligible for seaman

129. *Id.* at 358.

130. *Id.*

131. *Id.* at 361.

132. *Id.* at 363 (citing *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1075 (5th Cir. 1986)).

133. *Id.* at 368.

134. *Id.*

status.”¹³⁵ The second requirement is intended to separate sea based maritime workers, entitled to Jones Act protection, from land based maritime workers possessing only a “transitory or sporadic connection to a vessel in navigation” and who are not exposed to the perils of the sea in the same way.¹³⁶ The seaman status inquiry remained a mixed question of law and fact, but was narrowed to only those with the requisite employment related connection to a vessel in navigation.¹³⁷ Also significant, the second requirement demands an employment related connection to a vessel in navigation that is substantial *in both duration and nature*:

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 a vessel at a given time.¹³⁸

While acknowledging that seaman status is not merely a temporal concept, the Court also held that the *Barrett* thirty percent rule, although not dispositive, should serve as a guideline.¹³⁹ The Court stressed that departure from this figure “will certainly be justified in appropriate cases.”¹⁴⁰

Just two years later, in *Harbor Tug & Barge Co. v. Papai*, the Court was tasked with clarifying the second prong of the *Chandris* test.¹⁴¹ There, it declared that the fundamental purpose of the *Chandris* test’s “substantial connection requirement” was to give effect to Congress’s intent to distinguish sea based maritime workers from those “whose employment does not regularly expose them to the perils of the

135. *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991).

136. *Id.*

137. *Id.* at 369.

138. *Id.* at 370.

139. *Id.* at 371. *See supra* notes 104-112 and accompanying text.

140. *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995).

141. *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997).

sea.”¹⁴² Thus, for it to serve its purpose, analysis of the second prong must focus on whether the employee’s duties take him to sea.¹⁴³

V. *Naquin v. Elevating Boats, L.L.C.* – What Happened?

In March 2014, the United States Court of Appeals for the Fifth Circuit reviewed *Naquin v. Elevating Boats, L.L.C.*¹⁴⁴ Elevating Boats, L.L.C. (“EBI”) manufactures, operates and maintains a fleet of specialty lift-boats and marine cranes out of numerous Louisiana ports.¹⁴⁵ In 2005, Edward Naquin, Sr. (“Naquin”) was hired at EBI’s Houma, Louisiana shipyard as a vessel repair supervisor, primarily responsible for the maintenance and repair of EBI’s lift-boat vessels.¹⁴⁶ Naquin typically worked aboard the lift-boats while such were moored, jacked-up, or docked in the canal adjoining EBI’s shipyard.¹⁴⁷ Roughly seventy percent of his time was spent aboard these vessels, performing repairs, cleaning and painting, replacing defective or damaged parts, going on test runs, securing equipment, and operating the vessels’ marine cranes.¹⁴⁸ About two or three times each week, he completed these duties while a given vessel was moved to another location within the immediate canal.¹⁴⁹ Rarely, Naquin repaired vessels and served as the crane operator aboard a vessel at open water.¹⁵⁰ He spent the remaining thirty percent of his time working in the shipyard’s fabrication shop or operating the shipyard’s land-based crane.¹⁵¹

In November 2009, Naquin was using an EBI land based crane to relocate a test block when the crane failed and toppled.¹⁵² Upon jumping from the crane house, he broke bones

142. *Id.*

143. *Id.*

144. *Naquin v. Elevating Boats, L.L.C.*, 744 F.3d 927 (5th Cir. 2014).

145. *Id.* at 930.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Naquin*, 744 F.3d at 930-31.

151. *Id.* at 931.

152. *Id.*

in both of his feet and sustained a lower abdominal hernia.¹⁵³ Naquin's cousin's husband, also an EBI employee, was killed when the crane toppled onto the building he was in at the time.¹⁵⁴ Subsequently, Naquin underwent several reparative surgeries but was unable to return to physical work due to residual chronic foot pains, difficulty walking, and depression.¹⁵⁵ He then filed a Jones Act claim against EBI in the United States District Court for the Eastern District of Louisiana.¹⁵⁶ After qualifying him for seaman status, the jury found EBI to be negligent and awarded Naquin \$1,000,000 for past and future physical pain and suffering, \$1,000,000 for past and future mental pain and suffering, and \$400,000 for future lost wages.¹⁵⁷ EBI appealed the grant of Jones Act seaman status to Naquin.¹⁵⁸

On appeal, the Fifth Circuit applied the two prong *Chandris* test and affirmed Naquin's seaman status.¹⁵⁹ First, the court found it clear that Naquin "did the ship's work and contributed to the function of EBI's vessels[.]" as a majority of his time was spent repairing, cleaning, painting, and maintaining EBI's thirty vessel fleet.¹⁶⁰ Additionally, the remainder of his tasks aboard the EBI vessels, which included operating the marine crane and securing the deck for voyages, were "necessary to the function and operation of any vessel."¹⁶¹ The court also found that Naquin's connection to EBI's lift-boat fleet was substantial in both duration and nature.¹⁶² It held that the repair, maintenance, and operation tasks that occupied seventy percent of Naquin's time satisfied the duration requirement, and that the danger involved in working on docked vessels was sufficient exposure to the sea's perils to satisfy the nature requirement of the *Chandris* test's second

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 933.

160. *Id.*

161. *Id.*

162. *Id.*

prong.¹⁶³

In a strongly written dissent, Circuit Judge Edith Jones asserted that Naquin was not a Jones Act seaman because he failed both the duration and nature components of the *Chandris* test's second prong.¹⁶⁴ She attacked the majority's conclusion that Naquin automatically satisfied the duration component because seventy percent of his duties were related to repair and maintenance of EBI's fleet of lift boats.¹⁶⁵ Circuit Judge Jones reminded her colleagues that the *Barrett* thirty percent rule was only a guideline "[a]nd where undisputed facts reveal that a maritime worker has a clearly inadequate temporal connection to vessels in navigation, the court may take the question from the jury[.]"¹⁶⁶ She explained that the thirty percent figure does not apply to land-based employees like Naquin, who work almost exclusively on vessels that underwent repairs while moored, jacked-up or docked in the shipyard canal.¹⁶⁷ According to Circuit Judge Jones, applying the *Barrett* guideline to employees like Naquin essentially allows all vessel repairmen to satisfy the duration requirement despite their protection from maritime dangers.¹⁶⁸ Such a rule would disregard the purpose of the Jones Act, as outlined in *Chandris*, to protect a special class of workers who, by the nature of their employment, are exposed to unique risks.¹⁶⁹ Similarly, Circuit Judge Jones criticized the majority for merely passing over the nature requirement by stating, without sufficient support, that employees working on docked vessels are exposed to the sea's perils and dangers.¹⁷⁰ She distinguished the many cases the majority used to justify its conclusion by explaining that those cases involved maritime workers whose exposure to and activity at sea were far more substantial than Naquin's.¹⁷¹ Circuit Judge Jones argued that

163. *Id.* at 933-35 (comparing this case to *In re Endeavor Marine, Inc.*, 234 F.3d 287 (5th Cir. 2000)).

164. *Id.* at 941-44.

165. *Id.*

166. *Id.* at 942 (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 371 (1995)).

167. *Id.*

168. *Naquin*, 744 F.3d at 942.

169. *Id.* at 942-43.

170. *Id.* at 944.

171. *See id.*

Naquin's primarily land based duties, performed dockside, should have prevented his qualification as a Jones Act seaman.¹⁷²

VI. Why This Holding Was A Mistake & An Alternative Approach

The *Naquin* holding will have a nationwide impact on Jones Act litigation going forward. The Fifth Circuit's "substantial Jones Act caseload" makes it the leader among the federal circuits in maritime litigation to which other circuits look to for guidance with their own maritime caseloads.¹⁷³ Therefore, the Fifth Circuit's broadening of Jones Act seaman status qualification in *Naquin* will be felt on a substantial scale. Yet its application of the seaman status test in *Naquin* is contrary to the purpose of the Jones Act and has expanded its inclusion beyond what Congress intended. Despite the United States Supreme Court's numerous corrective restrictions of the Jones Act seaman definition since 1920, the Fifth Circuit has inexplicably determined that a broad, all-inclusive definition is appropriate. It has created an over-qualification of eligibility for a remedy intended for a particular, special class of workers. With its *Naquin* holding, the Fifth Circuit has qualified an entirely new class of workers to the benefits and protections of the Jones Act by making satisfaction of the *Chandris* test's second prong improperly

172. *Id.*

173. *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995). *See, e.g.*, *Cunningham v. Interlake S. S. Co.*, 567 F.3d 758, 761 (6th Cir. 2009) (citing *Jones v. Tidewater Marine, L.L.C.*, 262 F. App'x. 646, 648 (5th Cir. 2008), to explain that in maintenance and cure actions, where there is no specific statute of limitations, the equitable defense of laches can serve as a limit on the time to bring suit); *Morehead v. Atkinson-Kiewit, J/V*, 97 F.3d 603, 613 (1st Cir. 1996) (following the analytical approach employed by the Fifth Circuit in determining whether a dual-capacity vessel could be held liable under section 905(b) of LHWCA for breach of its *Scindia* duties); *Kathriner v. UNISEA, Inc.*, 975 F.2d 657, 661 (9th Cir. 1992) (citing several Fifth Circuit cases where court held the structure at issue was not a "vessel in navigation" for Jones Act purposes); *Hurst v. Pilings & Structures, Inc.*, 896 F.2d 504, 505 (11th Cir. 1990) (citing the pre-*Chandris* test utilized in the Fifth Circuit pursuant to its analysis in *Guidry v. S. Louisiana Contractors, Inc.*, 614 F.2d 447, 452 (5th Cir. 1980)).

easy to achieve.¹⁷⁴

First, as Circuit Judge Jones correctly observed in her dissenting opinion, the *Barrett* thirty percent guideline applies to truly sea based maritime workers, whose duties and responsibilities bring them to sea for at least the minimum amount of time.¹⁷⁵ The *Chandris* Court did not hold to the contrary. Despite acknowledging that seamen do not have to solely work aboard a vessel to qualify as such and that not all ship repairmen, as a matter of law, lack the requisite connection, that Court specifically stated, “the Jones Act remedy may be available to maritime workers who are employed by a shipyard and who spend a portion of their time working on shore but spend the rest of their time at sea.”¹⁷⁶ By allowing repairmen like Naquin, whose duties almost entirely involved docked vessels and other land based work, to satisfy the duration component of the *Chandris* test’s second-prong, the Fifth Circuit has essentially ensured that all repairmen working on temporarily docked or moored vessels for the requisite length of time will satisfy that requirement without ever being at open sea and exposed to the dangers that concerned Congress a century ago. Its holding does away with a status based inquiry that the United States Supreme Court clearly prefers and returns the analysis to the *Haverty* Court’s locality of injury test that was unmistakably disapproved and overruled.¹⁷⁷ Qualifying Naquin as a Jones Act seaman suggests that any employee that works on a vessel for the thirty percent threshold is a seaman, regardless of whether his or her work is truly sea based or land based.

The Fifth Circuit’s holding has also liberalized the nature component of the *Chandris* test’s second prong. In *Chandris*, the Court explicitly stated that the purpose of the substantial connection requirement is to reserve Jones Act protection for “sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which they

174. *See* Naquin v. Elevating Boats, L.L.C., 744 F.3d 927, 942-43 (5th Cir. 2014).

175. *See id.*

176. *Chandris*, 515 U.S. at 364 (citing *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991)).

177. *See supra* notes 52-55 and accompanying text.

who go down to sea in ships are subject.”¹⁷⁸ It is incorrect to characterize Naquin’s exposure to maritime dangers while working on docked vessels as similar to those of maritime workers who spend extended periods of time at open sea. The particulars of Naquin’s employment did not expose him to the same risks of “sudden sicknesses from change of climate, exposure to perils, and exhausting labour”¹⁷⁹ that those sent to sea for substantial periods of time are exposed. Congress was not concerned about land based repairmen, like Naquin, who could call in sick, stay home, and pick up medicine from a local pharmacy if he had a simple cold. Congress was concerned about maritime employees who are often at sea and risk the consequences of injuring themselves or falling sick while unable to seek appropriate medical attention immediately. The Fifth Circuit has outright ignored the United States Supreme Court’s instruction that analysis of the nature component of the *Chandris* test’s second prong focus on whether the employee’s duties take him to sea.¹⁸⁰ Its holding has nullified the characterization of the Jones Act as a special remedy that is reserved for a class of workers that are inherently exposed to unique risks.

The consequences of the Fifth Circuit’s *Naquin* holding are alarming. It has the potential to increase the instances of maritime workers walking in and out of Jones Act coverage, a situation the courts have striven to avoid.¹⁸¹ It will certainly amplify the number of Jones Act cases filed, as land based maritime workers, once unquestionably covered exclusively under the LHWCA, attempt to seize the advantages of the more generous statute.¹⁸² The result will be an enormously

178. *Chandris*, 515 U.S. at 354 (citing *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104 (1946)).

179. See *Collins supra* note 30, at 177.

180. *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997).

181. Jim Brown & Danielle R. Carlson, *Naquin v. Elevating Boats: Fifth Circuit Court of Appeals [Over] Simplifies Its “Seaman Status” Analysis?*, LEGGE, FARROW, KIMMITT, McGRATH, & BROWN, L.L.P., Apr. 2014, at 3, <http://www.leggefarrow.com/assets/docs/news/Newsletter-NaquinvElevatingBoats.pdf>

182. *Id.* See also Stuart Crozier, *Land Based Workers and Potential Jones Act Status*, STEAMSHIP MUTUAL, Oct. 2014, <http://www.steamshipmutual.com/publications/Articles/potentialjonesactstatus.htm>.

heavy burden on vessel repair companies and other shipyard operators that now must anticipate Jones Act claims from all employees that spend thirty percent or more of their time on the company vessels, regardless of whether those vessels are at open sea, docked, or secured in the company shipyard.¹⁸³ The amount of insurance coverage for Jones Act claims, and expenses related thereto, required for such companies will increase substantially.¹⁸⁴ With a broadened pool of potentially injured workers capable of asserting Jones Act claims, insurance companies will rewrite their policies and increase the premiums demanded from vessel repair companies and other shipyard operators.¹⁸⁵ Such consequences put maritime employers at an unfair disadvantage and make their exploitation by employees desiring an easier path to substantial recovery more feasible.

Admittedly, a finite list of maritime occupations that qualify for Jones Act seaman status is not preferable. The American economy has always been shaped by the then existing state of technology. It is impossible to predict how future advancements will affect the maritime industry or what maritime jobs will exist decades from now. But, with the *Naquin* decision, the Jones Act has departed too far from what Congress intended it to be. At its core, the Jones Act is a special protection for maritime employees whose occupation exposes them to special dangers that the average American worker is not. The Supreme Court respected this intent and developed an analysis that was meant to distinguish the former from the latter.¹⁸⁶ It also made clear that, when making this distinction, one should focus on whether the employee's duties "take him to sea."¹⁸⁷ Certainly, the ideal seaman status test

183. Harry Morse, *In Naquin v. EBI, Fifth Circuit Concludes a Plaintiff Can be Both a Jones Act Seaman and a Longshoreman*, DUNCAN & SEVIN, L.L.C., March 18, 2014, <http://duncansevin.com/in-naquin-v-ebi-fifth-circuit-concludes-a-plaintiff-can-be-both-a-jones-act-seaman-and-a-longshoreman/>.

184. *Id.*

185. Christopher Hannan, *Fifth Circuit Expands Coverage of Jones Act, Rules That Shipyard Employee Injured in Shore-Based Crane Incident is a Seaman*, BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C. (Mar. 11, 2014), http://www.bakerdonelson.com/maritime_blog/?entry=474.

186. *See generally* Chandris, Inc. v. Latsis, 515 U.S. 347 (1995).

187. Harbor Tug & Barge Co. v. Papai, 520 U.S. 548, 555 (1997).

would respect these fundamental principles and also allow for future unknowns.

Therefore, the two prong *Chandris* seaman status test should endure, as the analysis should remain status based. This will preserve the congressional intent upon which the Jones Act was based through the economic changes and technological advancements in the decades and centuries to come. But the second prong of that test should be modified, particularly in relation to the implications of the *Barrett* thirty percent threshold. Instead, a maritime worker whose employment requires him to spend thirty percent of his time *on a vessel at sea*¹⁸⁸ is a Jones Act seaman. On the other hand, a maritime worker whose employment requires him to spend less than thirty percent of his time *on a vessel at sea* can only be deemed a Jones Act seaman if the nature of his employment exposes him to the perils of the sea in such a way that he falls within the special class of employees that the Jones Act was intended to protect. That additional inquiry shall be a mixed question of law and fact. That is, where there is no reasonable interpretation to the contrary, a court must determine whether the particular maritime employee is the class of worker that Congress intended to protect through the Jones Act. But, where reasonable persons could differ as to whether the particular employee falls within that class of worker, when considering all other relevant factors, it is a question of fact for the jury.

Thus, satisfaction of the duration component equals satisfaction of the nature component, because those who perform at least thirty percent of their duties at sea are presumptively exposed to the unique dangers that accompany such employment. But failing to satisfy the duration component does not necessarily preclude designation as a seaman. The burden is then placed on the maritime plaintiff, who is seeking a special remedy, to show that he is the type of employee that Congress had in mind when it enacted the Jones Act. By focusing the analysis on which workers are sent to sea in the course of their employment, the courts can ensure that the congressional intent supporting the Jones Act's enactment,

188. That is, aboard unsecured vessels while at open-water.

and the United States Supreme Court's interpretation of what that intent demands, will not be lost, while also allowing for future advancements in the maritime industry.

VII. Conclusion

The most recent chapter in the Jones Act's tortured history includes a movement away from what was intended by Congress nearly a century ago. The Fifth Circuit's holding in *Naquin v. Elevating Boats, L.L.C.* has broadened the scope of maritime employees eligible for the Jones Act's special protections in a way that has removed the special nature that Congress intended to attach to the statute. Upon its next opportunity, it is imperative that the United States Supreme Court restore Jones Act seaman status qualification to its proper reach.