

JONES ACT - SEAMAN STATUS

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The Jones Act, 46 U.S.C. 688 *et seq.*, permits “any seaman who shall suffer injury in the course of his employment” to sue his or her employer for negligence. However, the Jones Act does not define “seaman.”

The United States Supreme Court’s most recent statement on seaman status is found in *Harbor Tug and Barge Company v. Papai*, 520 U.S. 548, 117 S.Ct. 1535 (1997) and in *Chandris v. Latsis*, 515 U.S. 347, 115 S.Ct. 2172, 132 L.Ed.2d 314 (1995), both of which stem from the Fifth Circuit’s decision in *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959). (See also *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 111 S.Ct. 807, 112 L.Ed.2d (1991).) In *Papai*, the Supreme Court quoted its own decision in *Chandris*, saying:

“[T]he essential requirements for seaman status are twofold. First . . . an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission. . . .” Second, and most important for our purposes here, a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature. 515 U.S., at 368 (citations and internal quotation marks omitted).

In *Robison* the Fifth Circuit established the well-known, two-pronged seaman status test: 1.) that the maritime employee must be permanently assigned to a vessel in navigation or perform a substantial part of his work aboard a vessel; and 2.) that the maritime employee's duties aboard the vessel must have contributed to the function of the vessel or the accomplishment of its mission. The following year, the Fifth Circuit expanded the first part of that test, creating the “vessel or identifiable fleet of vessels” rule, whereby a maritime worker could satisfy the first prong of *Robison*

by showing that he was permanently assigned to or had performed a substantial part of his work on a group of specific vessels. *Braniff v. Jackson Avenue Gretna Ferry, Inc.*, 280 F.2d 523 (5th Cir. 1960); see also *Barrett v. Chevron U.S.A.*, 781 F.2d 1067 (5th Cir. 1986).

The Supreme Court adopted this approach defining an “identifiable fleet” as a group of vessels under “common ownership or control.” *Papai* at 1541. Thus, a maritime worker who cannot show substantial work on any one vessel in navigation may still qualify for seaman status if he performed substantial work on a specific group of vessels that were under common ownership or control.

In *Barrett v. Chevron U.S.A.*, 781 F.2d 1067 (5th Cir. 1986), the Fifth Circuit defined the phrase “a substantial part of his work on a vessel” by examining the totality of the employee’s work with the employer and comparing the percentage of his work time on “vessels” to the percentage of time spent doing land-based work. *Barrett* established the “rule of thumb” that a worker who performed less than 30% of his work in service of a vessel generally was not a seaman. However, the *Barrett* court did not create a “bright line” rule; that is, *Barrett* does not stand for the proposition that anyone who performs more than 30% of his work on vessels qualifies for seaman status. Rather, the 30% rule of thumb is intended as a factor to be considered with the other factors of a given case addressing status.

In *Wilander supra.*, the Supreme Court focused the inquiry on whether the maritime worker's duties contributed to the function or mission of the vessel and whether he had an employment-related connection to a vessel (or identifiable fleet of vessels) in navigation. Thus, the Supreme Court adopted the *Robison/Barrett* approach, requiring that the worker have “contributed to the function of the vessel or to the accomplishment of its mission” over the more restrictive test which required that a maritime worker, “aid in the navigation” of the vessel to achieve seaman status. (See,

e.g., *Johnson v. John F. Beasley Construction Co.*, 742 F.2d 1054 (7th Cir. 1984).) The Supreme Court's approach permits many persons who are not engaged in traditional seafaring jobs (musicians, cooks, clerks, barbers, bartenders, telephone operators, chambermaids, etc.) to qualify as Jones Act seamen depending on the function or mission of the vessel. However, *Wilander* failed to define the requisite "employment-related connection" between the worker and the vessel to establish seaman status.

Chandris, supra, clarified the nature of the requisite employment-related connection a maritime worker must have with a vessel in navigation or identifiable fleet of vessels to qualify for seaman status. In assessing the "essential contours" of the employment-related connection, the Supreme Court said,

It is therefore well settled after decades of judicial interpretation that the Jones Act inquiry is fundamentally status-based: land-based maritime workers do not become seaman because they happen to be working on board a vessel when they are injured, and seaman do not lose Jones Act protection when the course of their service to a vessel takes them ashore. (emphasis added)

In so doing, the Court embraced *Barrett's* "totality of circumstances" approach and *Barrett's* "rule of thumb" to determine what constitutes a "substantial" part of a maritime worker's work aboard a vessel in navigation. The Supreme Court's reason for doing so was,

...to give full effect to the remedial scheme created by Congress and to separate the sea-based maritime employees who are entitled to Jones Act protection from those land-based workers who have only a transitory or sporadic connection to a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea. (emphasis added)

Exposure to perils of the sea is sometimes cited in *dicta* as an additional factor. However, a worker who is exposed to the perils of the sea, but who lacks more or less permanent attachment or substantial work on a vessel or identifiable fleet of vessels and who does not contribute to the

mission or function of the vessel will not qualify as a Jones Act seaman.

For further information, see:

- Robert Force, *Tort Reform By The Judiciary: Developments in the Law of Maritime Personal Injury and Death Damages*, 23 Tul. Mar. L.J. 351, 366-75 (1999).
- Kris Elliott, Note, *Only in Louisiana Can You Find A Diver That's A Seaman: Wisner v. Professional Divers of New Orleans*, 24 Tul. Mar. L.J. 919 (2000).
- Todd D. Lochner, Note, *Seaman Status Revisited (Yet Again) – A Common Ownership Requirement and a New “Seagoing” Emphasis: Harbor Tug & Barge Co. v. Papai*, 22 Tul. Mar. L.J. 287 (1997).
- Julie R. Wohlgemuth, Note, *Seaman status and the Jones Act: Bach v. Trident Steamship Co.*, 17 Tul. Mar. L.J. 115 (1992).