No. 13-1268

In The
Supreme Court of the United States

JENNIFER EVANS DIZE,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF WILLIAM SMITH DIZE,

Petitioner,

v.

ASSOCIATION OF MARYLAND PILOTS,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

AMICUS BRIEF OF PRACTICING MARITIME LAWYERS IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICI CURIAE[1]

Amici listed in the Appendix are practicing attorneys who specialize in maritime cases and particularly represent injured seamen and longshoremen before state and federal courts and agencies located across the United States. As such, Amici have a deep and abiding interest in the accurate and efficient administration of justice in the law which governs maritime personal injury. Maritime law is uniquely federal and, as this Court has enunciated on many occasions, uniformity of maritime law and its application is important. Amici believe seaman-status determinations should be governed by the same legal standard irrespective of the jurisdiction in which the issue is litigated. The decision in *Dize v. Ass'n of Md. Pilots*, 435 Md. 150, 77 A.3d 1016 (2013), and the deeper conflict that the *Dize* decision exemplifies, will inevitably cause delay, confusion, and inefficiency in trial courts; cause unequal application of the seaman-status standard thereby causing uncertainty and inequality in the administration of seamen's and longshoremen's benefits; and create commercial uncertainty in the maritime industry. Amici's interest is to promote efficient, accurate, uniform, and

[1] Pursuant to Rule 37.2(1) Amici hereby disclose that counsel of record for all parties received notice at least ten days prior to the due date of Amici's intention to file this brief and all parties consented to the filing of this brief. Pursuant to Rule 37.6, Amici hereby disclose that no counsel for a party authored any part of this brief, nor did any person or entity other than Amici make a monetary contribution to its preparation.

predictable application of seaman-status standards in all courts confronted with this issue.

SUMMARY OF ARGUMENT

In *Chandris v. Latsis*, 515 U.S. 347 (1995), this Court endorsed a 30-percent rule of thumb to establish "seaman" status but the Court has never specified the types of activities that count toward the 30-percent threshold. As a result, lower courts are in irreconcilable conflict over whether to count the time a maritime worker spends in the service of a vessel in navigation that is moored, at the dock, or ashore. The resulting confusion and uncertainty harms thousands of maritime workers due to loss of benefits, delays in receiving benefits, the extra burdens in obtaining benefits, and waste of time and money in pursuing benefits to which they are not entitled. It also harms maritime employers and insurers who are uncertain of their responsibilities and, as a result, face increased expenses and exposure to legal risks. Finally, it imposes unnecessary costs on the judicial system, which must devote substantial resources to deciding which regime governs a particular case before it can resolve the underlying merits of a claim.

The work of a seaman preparing the vessel for sea and conducting or waiting to conduct the vessel's business should be included in the time credited to seaman status. The application of *Dize* to the Alaska salmon fishery, and many other small vessel

undertakings, would have devastating consequences for employers, employees and their insurers. Vessel owners deserve to know under which status their employees will fall so they can procure appropriate insurance. Employees deserve to have proper insurance coverage for their work injuries. The Court should take this opportunity to bring clarity to the seaman-status jurisprudence.

ARGUMENT

I. THE *DIZE* DECISION EXEMPLIFIES THE CONFUSION AND INCONSISTENCY OF SEAMAN-STATUS DETERMINATION AND REQUIRES REVIEW FOR CLARIFICATION

The Jones Act permits any "seaman injured in the course of employment" to bring a negligence claim against his employer. 46 U.S.C. § 30104. The term "seaman" is not defined in the Jones Act and over a period of years and through many case decisions courts developed their own methodologies for seaman-status determination. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487-88 (2005). Unfortunately, this Court's guidance as developed in the cases is less than clear in some respects and leads to inconsistent and conflicting application of the law. In short, the confusion caused a split in federal and state court decisions which only worsened when *Dize* was decided.

In *Chandris v. Latsis*, 515 U.S. 347 (1995), this Court created a two-pronged test to assist in the analysis of whether an employee is a seaman for Jones Act purposes. The Court stated in order for a maritime employee to qualify as a "seaman" under the Jones Act:

1. His "duties must contribute to the function of the vessel or the accomplishment of its mission," and

2. The employee must "have a connection to a vessel in navigation (or an identifiable group of such vessels) that is **substantial in terms of both its duration and its nature**." *Id.* at 368.

The second prong of the test is at issue and needs clarification by this Court.

In assessing "substantiality," this Court as a general guideline endorsed the notion that a qualifying seaman must spend 30 percent or more of his time in service of a vessel in navigation,[2] but the Court has never specified the types of activities that count toward the 30-percent threshold. As a result, lower courts are in irreconcilable conflict over whether to count the time a maritime worker spends in the service of a vessel in navigation that is moored, is at the dock, or is ashore. The Third, Fifth, Sixth, and

[2] "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." *Chandris* at 371.

Ninth Circuits have held that courts may include this time in the *Chandris* calculation; the Eleventh Circuit and the Maryland Court of Appeals have flatly disagreed.

Amici urge this Court to resolve the conflict and provide guidance on the application of the "substantiality" prong of the *Chandris* seaman-status test. The circuit split is stark evidence of the *Chandris* test's lack of clarity on that point. The existing confusion in the lower courts has needlessly hampered maritime workers in their pursuit of timely and adequate compensation, created untenable uncertainty for maritime employers and insurers, and imposed unnecessary burdens on litigants and the judicial system at large. The opinion below underscores the inconsistent application of the rule and the present case provides the perfect opportunity for this Court to clarify prong two of the *Chandris* test and correct the inequities created by the Eleventh Circuit and Court of Appeals of Maryland holdings.

A. State and Federal Courts Are Divided on the Proper Interpretation of the *Chandris* 30-Percent Rule

Lower courts are in entrenched disagreement about how to apply the *Chandris* 30-percent rule. As the Maryland Court of Appeals remarked in the decision below, "When one attempts to apply the case law from the various federal circuits and state courts under the Jones Act, one encounters a bewildering

array of decisions in which there is a citation to support any outcome and no outcome that fits comfortably with every precedent." *Dize v. Ass'n of Md. Pilots*, 77 A.3d 1016, 1025 (Md. 2013). This unfortunate state of affairs is largely attributable to a lack of clarity in the second prong of the *Chandris* test. There is a misunderstanding of the traditional duties of a seaman and, accordingly, a disagreement about the identity of work activities that satisfy the 30-percent threshold. As a result, federal and state court decisions diverged as to whether an employee's work on vessels that are tied up at the dock, are moored, or are ashore shall be credited toward the *Chandris* 30-percent threshold. The *Dize* case below is the latest example of a decision that such time is not credited.

The *Dize* decision represents the minority rule. On one hand, the Eleventh Circuit, some district courts, and the Maryland state courts categorically exclude time spent working on vessels that are not on open water. *See Clark v. Am. Marine & Salvage, LLC*, 494 F. App'x 32, 34-35 (11th Cir. 2012) (per curiam); *Dize*, 77 A.3d at 1018. On the other hand, the Third, Fifth, Sixth, and Ninth Circuits, following the majority rule, include such work time in the *Chandris* calculation. *See Naquin v. Elevating Boats, LLC*, 744 F.3d 927, 934-35 (5th Cir. 2014); *Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835, 842 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 2825 (2013); *Shade v. Great Lakes Dredge & Dock Co.*, 154 F.3d 143, 150 (3d Cir. 1998); *Searcy v. E. T. Slider, Inc.*, 679 F.2d 614, 615-16 (6th Cir. 1982) (per curiam). The split is so

clear and fundamental that *Dize* – a case with straightforward and hardly uncommon facts – would have been decided differently in any of the four circuits that count work in service of moored, docked, or drydocked vessels toward seaman status. The fact that an injured maritime worker's seaman status depends on the fortuity of the circuit where his Jones Act claim is adjudicated smacks of inequity and contravenes the purpose of a uniform federal system of maritime law and policy.

B. The Split in Lower Courts on the Proper Application of the *Chandris* Test Harms Thousands of Maritime Workers

Federal law governing seaman status affects tens of thousands of American men and women who work on water or on land near water.[3] Lack of uniformity of determination of seaman status creates uncertainty for maritime employees and prevents them from securing prompt and reliable compensation for work injuries. As noted by the court below, whether an

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[3] *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook: Water Transportation Occupations* (Jan. 8, 2014), http://www.bls.gov/ooh/transportation-and-material-moving/water-transportation-occupations.htm; Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook: Fishers and Related Fishing Workers* (Jan. 8, 2014), http://www.bls.gov/ooh/farming-fishing-and-forestry/fishers-and-related-fishing-workers.htm; International Longshoremen's Association, AFL-CIO website, www.ILA.org; International Longshoremen's and Warehouse Union website, www.ILWU.org.

employee is a seaman is a frequently litigated issue. It said:

> Who is a "seaman"? This is a recurring question in the case law under the Jones Act. The Supreme Court offered guidance in three decisions in the 1990s, but subsequent lower court decisions have resulted in a tempest of varying and often conflicting interpretations.

Dize at 1017.

Two entirely different and mutually exclusive compensation systems exist for maritime employees. The first is the negligence-based Jones Act; it applies to seamen. The second is the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901-950, which applies to "a broad range of land-based workers," *Chandris*, 515 U.S. at 355-56, and imposes nearly strict liability upon employers.[4] A maritime worker is covered either by the Jones Act or LHWCA but not both. As a result, any murkiness in the definition of a Jones Act seaman necessarily spills over to the LHWCA, adversely affecting maritime workers in both groups.

Lack of clarity in the *Chandris* test created an open door for incorrect application of the law and inconsistent treatment in varying jurisdictions. Lack of clarity and inconsistent treatment harms maritime workers in the following ways:

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[4] By its terms, LHWCA § 2(3)(G) excludes "a master or member of a crew of any vessel," 33 U.S.C. § 902(3)(G).

1. Jones Act seamen in some jurisdictions are at risk of erroneously losing benefits to which their work entitles them.

2. Some maritime employees, who under traditional rules believe in good faith they are Jones Act seamen, waste time and money pursuing their right to compensation via Jones Act claims, only to find they qualified solely for LHWCA coverage.

3. Receipt of the compensation to which they are entitled is delayed.

4. The time they spend resolving the most basic coverage question – deciding on which side of a hazy line a worker falls – is often measured in years. These are years during which injured maritime workers and their families are waiting for the compensation to which they are justly entitled and need. Indeed, Mr. Dize died while he was waiting for his status to be determined by the Maryland courts.

5. In some jurisdictions but not others, their status could change from year to year in spite of the fact their jobs or job duties do not change, depending upon subtle changes in the amount of time they devote to various tasks or where they undertake various tasks (generally for reasons beyond their control). Maritime law eschews requiring seamen or longshoremen to walk into and out of coverage under the Jones Act. *Chandris* at 363 ("We believe it is important to avoid '"engrafting upon the statutory classification of a 'seaman' a judicial gloss so protean, elusive, or arbitrary as to permit a worker to walk

into and out of coverage in the course of his regular duties."'" (quoting *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1075 (5th Cir. 1986) (en banc), which quoted *Longmire v. Sea Drilling Corp*., 610 F.2d 1342, 1347 n.6 (5th Cir. 1980)).

6. Many vessel owners cannot afford to pay out of pocket the cost of either Jones Act claims or LHWCA claims; therefore, if there is no coverage for an employee's injuries, the employee will not be compensated for his injuries and loss of work.

7. The uncertainty will force injured employees to make dual claims for both LHWCA and Jones Act negligence, unnecessarily clogging already backlogged court and administrative dockets.

8. The same employee performing the same duties for the same employer in different jurisdictions could be considered a Jones Act seaman in one jurisdiction and a harbor worker in another.

C. The Split in Lower Courts on the Proper Application of the *Chandris* Test Creates Uncertainty for Maritime Employers and Insurers

Not only does application of the rule as espoused by the *Dize* court destabilize employers' businesses, but also the mere existence of the conflict among jurisdictions has the potential to do the same if it is not resolved quickly. Uncertainty about the definition of "seaman" threatens employers in the following ways:

1. Employees who perform jobs with duties that for hundreds of years were classified as seamen suddenly will be converted into longshoremen or harbor workers if the employee does not spend at least 30 percent of his time on the vessel while it is underway.

2. As a result, those converted employees will no longer be covered by the employer's Jones Act insurance coverage and the employer will be uninsured as to those employees. Maritime employers such as commercial fishing enterprises, tug and barge companies, dredging companies, fire and rescue companies, and others must of necessity purchase liability insurance and insure against injury to their crew members as Jones Act seamen, a negligence-based scheme. Such coverage is part of overall coverage that typically excludes injuries covered by LHWCA. Thus, if the employee is later determined to be a longshore worker under the test espoused by *Dize*, the employer has no insurance to cover the injury and loses any defense to the LHWCA claim. *See* LHWCA § 5(a), 33 U.S.C. § 905(a).

3. Employers will be forced to buy expensive LHWCA coverage in addition to Jones Act coverage, thereby paying double insurance costs or they will be left without coverage. LHWCA coverage may not be available or affordable for them.

4. The uncertainty of the rule has the potential to dramatically destabilize the maritime industry as business levels go up and down. For example, the commercial fishing industry is highly regulated

through licenses, quotas, and limited fishing seasons. Commercial fisheries nationwide employ thousands of seamen to crew their vessels. Many of the seamen are employed whether the ship is underway or at the dock. Business levels have a huge impact on when and how long the ships are allowed to fish. In a fluctuating business environment, it may be impossible for a fleet owner to determine in advance whether his employees will meet the 30-percent rule of thumb necessary for Jones Act coverage to be adequate if the substantial time the crew spends in port working on the ship readying it to fish is not counted toward the 30-percent threshold. The fleet owner should not need to worry about the time that the crew spends readying the vessel for its mission because those crew duties are traditional seaman duties, but application of the standard set forth in *Dize* and by the Eleventh Circuit create this kind of instability and uncertainty.

5. Uncertainty and difficulty in distinguishing Jones Act seamen from LHWCA maritime workers imposes costs on employers and insurers, who, in turn, pass those costs on to the consumers of goods in maritime commerce. Both employers and insurers, especially in the high-risk, high-volume maritime industry, must have the ability to predict their costs and their legal exposure. Without a clear rule to delineate the border between Jones Act and LHWCA coverage, employers and insurers will be unable to accurately anticipate their costs, creating an incentive to preserve revenue through lower wages, higher prices, and sub-optimal insurance plans. Moreover, in

the absence of a firm boundary between Jones Act and LHWCA coverage, employers and insurers, like the seamen and longshoremen described above, will expend valuable time and money litigating the boundaries of the two regimes in different venues. These costs, too, will ultimately be borne by consumers.

6. Many maritime employers conduct businesses in multiple jurisdictions and will be subjected to different definitions of seaman status depending upon where their employee is located or injured, or where the employee decides to file suit.

D. The Split in Lower Courts on the Proper Application of the *Chandris* Test Imposes Unnecessary Costs on the Judicial System

The disagreement in the lower courts impedes the efficient administration of justice. The determination of seaman status is a threshold jurisdictional matter as a maritime employee seeking compensation is subject either to the Jones Act or the LHWCA. *Chandris*, 515 U.S. at 355-56. The facts that are relevant to seaman status usually have little bearing on the underlying merits of his claim. Bearing this procedural posture in mind, the amount of litigants' time, effort, and money, and the judicial resources invested in the incipient phases of a typical Jones Act case are staggering. The case below is a perfect example. Beginning in 2008, it passed through three courts en route to this Court and generated 59 pages

of non-merits opinions (as reprinted in the Petition Appendix). Litigants and courts are forced to uncover and litigate a host of facts that are rarely material to the ultimate outcome of the claim, merely to satisfy a jurisdictional rule that this Court could readily clarify. The dividing line between LHWCA and the Jones Act should be clarified so parties and courts can devote their efforts to resolving the merits of cases instead of spending years simply to decide which regime applies.

II. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY PRONG TWO OF THE *CHANDRIS* TEST.

The court below refused to credit as seaman's work under the *Chandris* calculation the time Mr. Dize spent maintaining, repairing, and watching over the very vessels he operated. *Dize* at 173, 1029. The court did not specifically address or credit the time Mr. Dize spent on call waiting to operate the vessels to transport harbor pilots to larger vessels entering and exiting port, which was his primary duty. *Id.*

Maintenance and repair of their vessels has long been considered part of the everyday, traditional duties of seamen. Indeed, generalized duties of some categories of seamen are defined in the U.S. Department of Labor, Dictionary of Occupational Titles, and are instructive for the *Chandris* analysis. Examples include:

Marine engineer: Supervises and coordinates activities of crew engaged in operating and maintaining propulsion engines and other engines, boilers, deck machinery, and electrical, refrigeration, and sanitary equipment aboard ship: Inspects engines and other equipment and orders crew to repair or replace defective parts. Starts engines to propel ship and regulates engines and power transmission to control speed of ship. Stands engine-room watch during specified periods, observing that required water levels are maintained in boilers, condensers, and evaporators, load on generators is within acceptable limits, and oil and grease cups are kept full. Repairs machinery, using handtools and power tools.[5]

Deckhand: Performs any combination of following duties aboard watercraft, such as dredges, ferryboats, scows, and river boats: Handles lines to moor vessel to wharves, tie up vessel to another vessel, or rig towing lines. Sweeps and washes decks, using broom, brushes, mops, and firehose. Lowers and mans lifeboat in case of emergencies. Stands steering watches or lookout watches while underway. Moves controls or turns handwheels to raise or lower passenger or vehicle landing ramps or kelp-cutter mechanism. Inserts blocks under wheels of vehicles to prevent them from moving on ferryboats.

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[5] Department of Labor, *Dictionary of Occupational Titles*, Engineer 197.130-010, http://www.occupationalinfo.org/19/197130010.html.

> Loads or unloads material from barges, scows, and dredges. Paints lifeboats, decks, and superstructure of vessel, using brush. Lubricates machinery and equipment. Splices and repairs cables and ropes, using hand-tools. Examines cables that hold vessels in tow and tightens cables to ensure vessels are snug.[6] (underline added).

The Dictionary makes it clear that cleaning, maintenance, and general repair of vessels are among the normal duties of members of the crew.

The commercial fishing industry provides excellent examples to show that seamen's duties include in-port cleaning, maintenance, repair, and stocking of the vessel and its appurtenances. In the commercial fishing arena, including those in the Alaska salmon fishery, the crew spends substantially more time cleaning, maintaining, and preparing the vessel; mending nets; and waiting for the fishery to open than the crew actually spends at sea either traveling or catching fish. All of their jobs are traditional work of seamen and traditional work of ship's crews.

A typical example illustrates the point. The *F/V Muzon*, a 58-foot salmon purse seiner, is home-ported in Seattle, Washington, and is representative of fishing vessels throughout the United States, whether on

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[6] Department of Labor, *Dictionary of Occupational Titles*, Deckhand 911.687-022, http://www.occupationalinfo.org/91/911687022.html.

the Atlantic, Pacific, or Gulf Coasts or on the Great Lakes.

The captain and crew prepare the ship for the salmon-fishing season. This preparatory work is performed while the *Muzon* is moored to a pier or, for below-the-water repair and maintenance, such as bottom painting or shaft and keel cooler work, on blocks in the shipyard adjacent to or near the pier. Fishermen also work ashore to ready the nets for the season. A minimum of six weeks of maintenance work is required to enable the vessel to fish the summer salmon season. The work is performed by the crew whose duties also include stocking the ship with crew provisions for the voyage and loading all things necessary for the fishing operation. All is ship's work and all tasks are performed by the captain and crew as part of their normal and customary duties as seamen.

Once the vessel is readied, it sails to southeast Alaska. The trip takes three to four days. Due to treaties with Canada that regulate the sockeye fishery, when the vessel arrives in Alaska it will fish only two days a week at the beginning of the season. The crew is employed seven days a week working on the vessel and simply waiting to fish. Toward the end of the season the vessel may be able to fish up to four days a week. Once the season is over, the vessel sails for three or four days back to port in Seattle. Once home, the captain and crew spend approximately three weeks to prepare the vessel for the winter. A minimum of eight weeks of on-shore crew work is

required to take care of the vessel and net so that it can harvest salmon. In the Ninth Circuit, this time counts towards seaman status. *Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835, 842 (9th Cir. 2012).[7]

The typical Southeast Alaska salmon fisherman has the prospect of working 153 days on the same vessel, only about 46 of which will actually be at sea, either traveling to the fishing grounds or catching the fish. If only service on a vessel at sea counts, the ratio falls just at the 30-percent rule of thumb. Only two fewer days of fishing or extra time on shore effecting needed repairs and maintenance will cause the ratio to drop below the *Chandris* guideline and, if the *Dize* rationale were followed, trigger unnecessary litigation over seaman's status if one of the crew is injured either aboard or on shore doing the ship's work. If preparation work and waiting time are included, as is

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[7] As stated by the Ninth Circuit:

> Global hired Tracy to be the barge foreman of the *Iroquois*, and substantial evidence supported the ALJ's finding that his various duties related to the *Iroquois*, including during the three-week period when he was engaged in various repairs, maintenance, and preparations while the *Iroquois* was in dry dock, were in furtherance of accomplishing its mission of laying pipe. Considering the total circumstances of Tracy's work in the Louisiana shipyard, the ALJ did not err in determining that his duties contributed to the function of the *Iroquois* and the accomplishment of its mission.

696 F.3d at 842.

the sensible rule applied in the majority of circuits that have addressed the issue, 100 percent of the fisherman's time counts towards Jones Act seaman status. Both employers and employees have reasonable expectations that employees performing the work of the vessel, whether on shore or when the vessel is underway, are seamen. It also ensures insurance coverage because all fishing boat owners who are insured have Jones Act insurance and do not have LHWCA coverage.

The *Dize* opinion is a perfect demonstration that Jones Act seaman-status litigation is not only time-consuming for the litigants but is also inefficient and time-consuming for trial and appellate courts.[8]

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[8] Litigation over seaman status is common. Another example of how time consuming the issue can be is *Myers v. Joe Bernert Towing Co.*, No. 04-CV-437-MO (U.S. Dist. Ct. Oregon). The defendant filed a motion for summary judgment regarding seaman status. Mr. Myers countered with what he contended were the undisputed facts, including the following. (All of the facts are from Plaintiff's Concise Statement of Material Facts, Docket No. 47, January 5, 2005). Mr. Myers was hired as a tug boat captain. His primary duty was to pilot tugs and barges on the Willamette River and to perform routine maintenance on the tugs. (¶ 4). 70 percent to 80 percent of the time, Mr. Myers worked as a tug boat operator. (¶ 5). During the balance of his time he did various jobs including working ashore. (¶ 6). Mr. Myers was injured while working ashore helping to offload a piece of construction equipment from a barge. (¶ 10). Mr. Myers sometimes worked ashore, and he was injured ashore while offloading cargo. These two facts provided the employer the opportunity to file a summary judgment motion. Although the Court appropriately denied the motion and the case ultimately settled, the Court nevertheless spent valuable judicial and court

(Continued on following page)

A trial court and two levels of state appellate courts addressed Dize's seaman's status before it came to this Court. It does, however, present the perfect opportunity for this Court to clarify the *Chandris* test by making it clear that time ashore performing the work of the vessel counts toward seaman status.

CONCLUSION

The *Dize* reasoning poses a danger to thousands of employers and employees. The uncertainty in Jones Act coverage prevents severely injured maritime workers from securing reliable and prompt compensation for injuries. In state courts, a fight over seaman status can take five years or longer to resolve. Meanwhile, an injured seaman or the family of a deceased seaman has to wait for the compensation that is properly due. There does not need to be a major conflict between classifying workers as seamen or longshore workers. Established custom and tradition will answer most cases. A worker employed by the Pacific Maritime Association to load containers on a cargo ship is quintessentially a longshore worker. Before the *Dize* decision, a fisherman employed

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resources addressing a summary judgment motion for an issue which should not have been disputed. Mr. Myers was a tug boat captain and clearly a seaman. Accordingly, the open issue in prong two of *Chandris* causes uncertainty, confusion and unnecessary litigation that result in inequitable results. This Court needs to clarify the requirement set forth in *Chandris*.

aboard a salmon seiner for 150 days a year was quintessentially a seaman. But the *Dize* rationale to exclude preparation and waiting time from seaman credit would turn employees who have been considered seamen in the United States for at least two hundred years into longshore workers. This approach is intolerable not only to the fishing industry and those employed aboard those vessels but also to maritime interests in a host of comparable contexts.

At the end of the day, in order to save itself the cost of a negligence claim, the Respondent asked the Maryland court to redefine the traditional role of crew as the entire maritime industry knows it. For hundreds if not thousands of years, seamen as crew of vessels have been responsible for basic everyday cleaning, maintenance, and basic repair of the vessels to which they are assigned while they are in port awaiting the next voyage, whether the voyage is short or long. Cleaning, maintenance, and basic repair of their vessels have always been and always will be the work of the crew in furtherance of the mission of their vessels. Every minute of time an employee spends in port in support of a vessel to maintain it and ready it for sea is traditional seamen's work. Many ships spend much more time in port than at sea, but the crew continues its necessary work ashore. Failure to include that time in the *Chandris* calculation would turn the notion of a traditional seaman on its head and destabilize much of the American maritime industry.

A clear bright line defining seamen as opposed to longshoremen and harbor workers is a necessary part

of the foundation upon which seamen, longshoremen, ship owners, terminal operators, and insurers operate. The Eleventh Circuit and Maryland Court of Appeals have blurred the line and this Court should take this opportunity to address the issue directly and clarify the analysis of whether an employee is a seaman. The Maryland decision below seeks to redefine the role of a traditional seaman.

Accordingly, Amici urge the Court to grant the Petition for Writ of *Certiorari* and provide clarification of this very important issue.

Respectfully submitted,

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