

No. __-____

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**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

To qualify as a “seaman” under the Jones Act, 46 U.S.C. § 30104, a maritime worker who “contribute[s] to the function of [a] vessel or to the accomplishment of its mission” 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.” *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995) (internal quotation marks and alteration omitted). In assessing “substantiality,” this Court has endorsed a “rule of thumb” that, ordinarily, a qualifying seaman must spend 30 percent or more of his time in service of a vessel in navigation, *id.* at 371, but this Court has never specified the types of activities that count toward that 30-percent threshold.

The question presented is:

When applying the *Chandris* 30-percent rule, may a court consider the time a maritime worker spends in the service of a vessel in navigation that is moored, dockside, or ashore, as the Third, Fifth, Sixth, and Ninth Circuits have held, or must a court categorically exclude such time, as the Eleventh Circuit and the Maryland Court of Appeals have held?

PARTIES TO THE PROCEEDINGS

Petitioner Jennifer Evan Dize, Personal Representative of the Estate of William Smith Dize, was the petitioner before the Maryland Court of Appeals. William Smith Dize was the original petitioner before the Maryland Court of Appeals, the appellant before the Maryland Court of Special Appeals, and the plaintiff before the Circuit Court for Baltimore City.

Respondent Association of Maryland Pilots was the respondent before the Maryland Court of Appeals, the appellee before the Maryland Court of Special Appeals, and the defendant before the Circuit Court for Baltimore City.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	vi
INTRODUCTION	1
OPINIONS BELOW	3
JURISDICTION.....	3
STATUTORY PROVISIONS INVOLVED	4
STATEMENT.....	4
A. Statutory Background.....	4
B. Factual Background.....	7
C. Proceedings Below	10
REASONS FOR GRANTING THE WRIT	13
I. STATE AND FEDERAL COURTS CON- FLICT OVER WHETHER TO INCLUDE TIME SPENT WORKING ON VESSELS THAT ARE MOORED, DOCKSIDE, OR ASHORE WHEN APPLYING <i>CHAN- DRIS</i> 'S "SUBSTANTIAL IN DURA- TION" REQUIREMENT.....	13
A. The Eleventh Circuit And The Mary- land Courts Categorically Exclude From The 30-Percent Calculation Time Spent Working On Vessels While They Are Moored, Dockside, Or Ashore	13
1. The Maryland courts.....	14
2. The Eleventh Circuit.....	14

B. The Third, Fifth, Sixth, And Ninth Circuits Include Time Spent Working On Vessels While They Are Moored, Dockside, Or Ashore	15
1. The Third Circuit	15
2. The Fifth Circuit	16
3. The Sixth Circuit.....	17
4. The Ninth Circuit.....	18
II. THE COURT BELOW ERRONEOUS- LY UNDERSTOOD <i>CHANDRIS</i> 'S 30- PERCENT RULE TO PERMIT A COURT CATEGORICALLY TO REFUSE TO CONSIDER EMPLOYMENT-RELATED TASKS PERFORMED IN THE SERVICE OF VESSELS THAT ARE MOORED, DOCKSIDE, OR ASHORE	19
A. The Decision Below Improperly Narrows The Durational Requirement Articulated In <i>Chandris</i>	21
B. This Court Has Held That Seaman Status May Be Achieved By Work Done On Moored Vessels	22
III. THIS CASE PRESENTS A CLEAN VEHICLE TO RESOLVE AN IMPOR- TANT ISSUE OF MARITIME LAW LEFT OPEN IN <i>CHANDRIS</i>	24
CONCLUSION.....	25

APPENDIX:

Opinion of the Court of Appeals of Maryland, <i>Dize v. Association of Maryland Pilots</i> , No. 56, Sept. Term, 2012 (Sept. 23, 2013)	1a
Opinion of the Court of Special Appeals of Maryland, <i>Dize v. Association of Maryland Pilots</i> , No. 26, Sept. Term, 2010 (May 31, 2012).....	29a
Memorandum of the Circuit Court for Balti- more City, <i>Dize v. Association of Maryland Pilots</i> , Case No. 24-C-08-003232 (Feb. 25, 2010)	49a
Order of the Circuit Court for Baltimore City, <i>Dize v. Association of Maryland Pilots</i> , Case No. 24-C-08-003232 (Feb. 25, 2010)	58a
Order of the Court of Appeals of Maryland Denying Reconsideration, <i>Dize v. Association of Maryland Pilots</i> , No. 56, Sept. Term, 2012 (Nov. 21, 2013)	59a
Statutory Provisions Involved	60a
Jones Act, 46 U.S.C. § 30104	60a
Longshore and Harbor Workers' Compen- sation Act, § 2(3)(G), 33 U.S.C. § 902(3)(G)	60a
Letter from Supreme Court Clerk regarding grant of extension of time for filing a petition for a writ of certiorari (Feb. 11, 2014)	61a

TABLE OF AUTHORITIES

	Page
CASES	
<i>American Dredging Co. v. Miller</i> , 510 U.S. 443 (1994)	3
<i>Association of Maryland Pilots, In re</i> , 596 F. Supp. 2d 915 (D. Md. 2009).....	10
<i>Bach v. Trident S.S. Co.</i> , 920 F.2d 322 (5th Cir. 1991).....	7
<i>Chandris, Inc. v. Latsis</i> , 515 U.S. 347 (1995)...	1, 3, 4, 5, 6, 12, 13, 14, 15, 17, 19, 20, 21, 22
<i>Clark v. American Marine & Salvage, LLC</i> , 494 F. App'x 32 (11th Cir. 2012)	1, 12, 14, 15
<i>Endeavor Marine Inc., In re</i> , 234 F.3d 287 (5th Cir. 2000).....	17
<i>Garrett v. Moore-McCormack Co.</i> , 317 U.S. 239 (1942)	3
<i>Guy v. Donald</i> , 203 U.S. 399 (1906)	8
<i>Harbor Tug & Barge Co. v. Papai</i> , 520 U.S. 548 (1997)	5, 6
<i>Keller Found./Case Found. v. Tracy</i> , 696 F.3d 835 (9th Cir. 2012), <i>cert. denied</i> , 133 S. Ct. 2825 (2013)	18, 19
<i>Kotch v. Board of River Port Pilot Comm'rs</i> , 330 U.S. 552 (1947)	7, 8
<i>Kuhlman v. W. & A. Fletcher Co.</i> , 20 F.2d 465 (3d Cir. 1927)	16
<i>McDermott Int'l, Inc. v. Wilander</i> , 498 U.S. 337 (1991)	4, 5, 6

<i>Naquin v. Elevating Boats, LLC</i> , No. 12-31258, 2014 WL 917053 (5th Cir. Mar. 10, 2014) (to be reported at 744 F.3d 927).....	1, 2, 16, 17
<i>Rogosich v. Union Dry Dock & Repair Co.</i> , 67 F.2d 377 (3d Cir. 1933).....	16
<i>Searcy v. E. T. Slider, Inc.</i> , 679 F.2d 614 (6th Cir. 1982).....	17, 18
<i>Senko v. La Crosse Dredging Corp.</i> , 352 U.S. 370 (1957)	20, 22, 23
<i>Shade v. Great Lakes Dredge & Dock Co.</i> , 154 F.3d 143 (3d Cir. 1998).....	15, 16, 19
<i>Southwest Marine, Inc. v. Gizoni</i> , 502 U.S. 81 (1991)	5
<i>Taylor v. Anderson-Tully Co.</i> , No. 91-6022, 1992 WL 78101 (6th Cir. Apr. 17, 1992) (judgment noted at 960 F.2d 150).....	18

STATUTES

Jones Act, 46 U.S.C. § 30104.....	1, 3, 4, 10, 15, 16, 18, 22, 23, 24
Limitation Act, 46 U.S.C. §§ 30501-30512.....	10
Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950.....	4, 24
§ 2(3)(G), 33 U.S.C. § 902(3)(G).....	4
28 U.S.C. § 1257(a)	4

ADMINISTRATIVE MATERIALS

Bureau of Labor Statistics, U.S. Dep't of Labor:

<i>Occupational Outlook Handbook: Fishers and Related Fishing Workers</i> (Jan. 8, 2014), http://www.bls.gov/ooh/farming-fishing-and-forestry/fishers-and-related-fishing-workers.htm	24
<i>Occupational Outlook Handbook: Water Transportation Occupations</i> (Jan. 8, 2014), http://www.bls.gov/ooh/transportation-and-material-moving/water-transportation-occupations.htm	24

OTHER MATERIALS

<i>Ezekiel 27:26-27</i> (King James)	7
Paul G. Kirchner & Clayton L. Diamond, <i>Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulations in the United States</i> , 23 U.S.F. MAR. L.J. 168 (2010-11)	8
THOMAS J. SCHOENBAUM, ADMIRALTY & MARITIME LAW: HORNBOOK SERIES (5th ed. 2012).....	8
THE OXFORD COMPANION TO SHIPS & THE SEA (Peter Kemp ed. 1988)	7
YouTube, "The Longest Passage," at http://www.youtube.com/watch?v=m4m8bhDXJRM	7

Jennifer Evan Dize, Personal Representative of the Estate of William Smith Dize, respectfully petitions for a writ of certiorari to review the judgment of the Maryland Court of Appeals in this case.

INTRODUCTION

Only a “seaman” — the master or a member of a vessel’s crew — can claim the benefit of the Jones Act, 46 U.S.C. § 30104. In a trio of 1990s cases, particularly *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), this Court further refined the concept, defining a Jones Act “seaman” as a maritime worker who has “a connection to a vessel in navigation . . . that is substantial in terms of both its duration and its nature.” *Id.* at 368. To assist lower courts applying the durational requirement, *Chandris* also provided a rule of thumb: “A worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act.” *Id.* at 371.

The application of *Chandris*’s rule of thumb divides the lower courts. More specifically, the courts disagree about which job-related tasks should be counted when determining the percentage of time that a worker spends in the service of a vessel. The Fifth Circuit, for example, credits tasks performed on “moored, jacked up, or docked” vessels to reach the 30-percent threshold. *E.g., Naquin v. Elevating Boats, LLC*, No. 12-31258, 2014 WL 917053, at *1 (5th Cir. Mar. 10, 2014) (to be reported at 744 F.3d 927). The Eleventh Circuit, in contrast, refuses to credit any work done while a vessel is “on land, or at least, while tethered to a land base.” *Clark v. American Marine & Salvage, LLC*, 494 F. App’x 32, 34 (11th Cir. 2012) (per curiam). The court below adopted the latter approach, refusing to credit work

done while vessels were “moored, dockside, or ashore.” App. 8a.¹

William Dize, petitioner’s decedent, worked as a pilot launch operator. App. 5a-6a. He was on-call 24 hours per day on alternating weeks to transport maritime pilots in a small boat — a “pilot launch” — to and from ships entering or exiting Chesapeake Bay. App. 5a. While awaiting the call to perform his primary duty, he also performed maintenance work on the launches and general upkeep of the launch station. App. 6a.

Maryland’s highest court held that “time spent maintaining [those] vessels while they were docked or onshore . . . does not count toward the 30 percent threshold.” App. 27a. Recognizing that it stood on uncertain ground, the court noted that “subsequent lower court decisions [since this Court’s most recent guidance] have resulted in a tempest of varying, and often conflicting, interpretations” of seaman status. App. 2a. It added: “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.” App. 18a.

The Fifth Circuit’s conflicting *Naquin* decision, issued just last month, demonstrates that the Maryland court’s comments were not only an accurate report of then-current conditions but also a forecast of continuing problems. *See Naquin*, 2014 WL 917053

¹ When a vessel is not on open water, it can be immobilized in several ways to enable work to be done upon it. For example, a vessel may be “moored” at a floating buoy in a harbor, or at a dock (“dockside”). Alternatively, it might be brought onto land (“ashore”), often in a drydock.

(upholding seaman status of worker whose primary job duties were performed on vessels docked or at anchor). The “tempest” of disuniformity creates special problems in the administration of the Jones Act, which “[t]his Court has specifically held . . . to have uniform application throughout the country,” whether applied by state or federal courts. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 244 (1942); see *American Dredging Co. v. Miller*, 510 U.S. 443, 456 (1994) (“[T]he Jones Act adopts the ‘uniformity requirement’ of the [Federal Employers’ Liability Act], requiring state courts to apply a uniform federal law.”).

This case presents an ideal vehicle for this Court to clarify which categories of activities count when applying *Chandris*’s 30-percent rule to satisfy the durational requirement for seaman status under the Jones Act, and thus to resolve a long-standing conflict on an important issue that this Court has not directly addressed in prior seaman-status cases.

OPINIONS BELOW

The opinion of the Maryland Court of Appeals (App. 1a-28a) is reported at 435 Md. 150, 77 A.3d 1016. The opinion of the Maryland Court of Special Appeals (App. 29a-48a) is reported at 205 Md. App. 176, 44 A.3d 1033. The memorandum and order of the Circuit Court for Baltimore City (App. 49a-58a) is not reported (but is available at 2010 WL 2011594).

JURISDICTION

The Maryland Court of Appeals entered its judgment on September 23, 2013, and denied a timely motion for reconsideration on November 21, 2013. App. 1a, 59a. On February 11, 2014, Chief Justice Roberts extended the time within which to file a petition for a writ of certiorari to and including April

18, 2014. App. 61a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The Jones Act, 46 U.S.C. § 30104, and Section 2(3)(G) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 902(3)(G), are set forth at App. 60a.

STATEMENT

William Dize died from the injuries that gave rise to this action. The Maryland Court of Appeals (the state's highest court), which had by then already granted his petition for review, substituted his wife, Jennifer Dize, as petitioner. App. 3a n.5. "Petitioner" thus refers to Jennifer Dize, whereas "Mr. Dize" refers to her late husband.

A. Statutory Background

The Jones Act, 46 U.S.C. § 30104, provides that "[a] seaman injured in the course of employment" may "bring a civil action at law . . . against the employer." Only a maritime worker who qualifies as a "seaman" has access to this remedy, but the Jones Act left the term undefined. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 355 (1995). Congress first gave content to the term "seaman" in the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901-950. The Jones Act and LHWCA provide mutually exclusive remedies, the latter covering "a broad range of land-based workers," rather than seamen. *Chandris*, 515 U.S. at 355-56. LHWCA § 2(3)(G) accordingly excludes from coverage "a master or member of a crew of any vessel." 33 U.S.C. § 902(3)(G). That phrase refines "the term 'seaman' in the Jones Act. . . . Thus, it is odd but true that the key requirement for Jones Act coverage now appears in another statute." *McDermott Int'l, Inc. v.*

Wilander, 498 U.S. 337, 347 (1991). Regardless, “Congress intended the term to have its established meaning under the general maritime law at the time the Jones Act was enacted.” *Chandris*, 515 U.S. at 355.

In a trio of 1990s cases, this Court fleshed out the framework for determining when a maritime employee qualifies as a “seaman.” See *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548 (1997); *Chandris, Inc. v. Latsis*, *supra*; *McDermott Int’l, Inc. v. Wilander*, *supra*.² The *Wilander* Court clarified that seaman status depends upon “the employee’s connection to a vessel in navigation”³ and disavowed prior cases requiring a seaman to “aid in navigation” of the vessel. 498 U.S. at 354. “It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship’s work.” *Id.* at 355.

The *Chandris* Court articulated the seaman-status inquiry as a two-part test that ascertains what “‘employment-related connection to a vessel in navigation’ . . . [is] required for an employee to qualify as a seaman under the Jones Act.” 515 U.S. at 368 (quoting *Wilander*, 498 U.S. at 355). First, “an employee’s duties must contribut[e] to the function of the vessel or to the accomplishment of its mission.”

² *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991), also addressed seaman status, but it is less relevant here.

³ The phrase “in navigation” is a term of art in maritime law. A vessel may remain “in navigation” even when it is neither moving nor on open water. Generally, “vessels undergoing repairs or spending a relatively short period of time in drydock are still considered to be ‘in navigation.’” *Chandris*, 515 U.S. at 374. Respondent agrees that the vessels on which Mr. Dize worked were “in navigation” at all relevant times. See App. 16a.

Id. (internal quotation marks omitted). “But this threshold requirement is very broad: ‘All who work at sea in the service of the ship’ are *eligible* for seaman status.” *Id.* (quoting *Wilander*, 498 U.S. at 354). Second, “a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature.” *Id.* Although “seaman status is not *merely* a temporal concept, . . . it necessarily includes a temporal element.” *Id.* at 371. The Court then endorsed “an appropriate rule of thumb for the ordinary case: A worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act.” *Id.* Because the *Chandris* employee had performed some of his service to the vessel while it was in drydock, the Court remanded the case for a determination of whether that vessel had remained “in navigation” during its extended time in drydock. *Id.* at 376-77.

Finally, *Papai* embellished the reference in the second prong of the *Chandris* test to “‘an identifiable group of . . . vessels’ in navigation.” 520 U.S. at 550 (quoting *Chandris*, 515 U.S. at 368) (ellipsis in *Papai*). To qualify as a seaman, an employee may point to a “substantial connection to a vessel or *a fleet of vessels*.” *Id.* at 560 (emphasis added). This “latter concept requires a requisite degree of common ownership or control” of the vessels that allegedly make up the “fleet.” *Id.*

B. Factual Background⁴

Understanding Mr. Dize’s work as a pilot launch operator requires some background information. In the maritime industry, pilots are “those localized persons who come aboard the ship to assure successful navigation of the vessel through the local shoals, eddies, sandbars, influence of local tides, wind, currents and the ever-growing industrial installations emerging from the commercial developments of the area.” *Bach v. Trident S.S. Co.*, 920 F.2d 322, 329 (5th Cir. 1991) (John R. Brown, J., dissenting); see also *THE OXFORD COMPANION TO SHIPS & THE SEA* 647 (Peter Kemp ed. 1988).⁵

This Court has called pilotage “a unique institution.” *Kotch v. Board of River Port Pilot Comm’rs*, 330 U.S. 552, 557 (1947).⁶ To help vessels “avoid invisible hazards,” a pilot must be “intimately familiar with the local waters.” *Id.* at 558. His “job generally requires that he go outside the harbor’s entrance in a small boat to meet incoming ships, board them and direct their course from open waters to the port.” *Id.* He must do the same in reverse for outbound ships. *Id.* “Pilots are thus indispensable cogs in the trans-

⁴ This case comes before the Court after judgment for respondent on its motion for summary judgment. In this procedural context, Maryland courts (like federal courts) “accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.” App. 41a (internal quotation marks omitted).

⁵ An on-line video provides a convenient overview of the work of Chesapeake Bay pilots: <http://www.youtube.com/watch?v=m4m8bhDXJRM>.

⁶ Pilotage is also an *ancient* institution. See *Ezekiel* 27:26-27 (King James) (“[T]he east wind hath broken thee in the midst of the seas. . . . [T]hy pilots . . . shall fall into the midst of the seas . . .”).

portation system of every maritime economy.” *Id.* Coastal states accordingly regulate and license pilots “through comprehensive pilotage systems aimed at ensuring well-trained independent pilots are always available, without discrimination, to any vessel required to use a state pilot.” Paul G. Kirchner & Clayton L. Diamond, *Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulations in the United States*, 23 U.S.F. MAR. L.J. 168, 170 (2010-11). “Pilots are often members of pilots’ associations that are typically voluntarily formed non-profit corporations or unincorporated associations.” THOMAS J. SCHOENBAUM, ADMIRALTY & MARITIME LAW: HORNBOOK SERIES § 10-5, at 750 (5th ed. 2012).⁷

As a launch operator, Mr. Dize navigated the “small boat[s]” that carry pilots “to meet incoming ships, board them and direct their course from open waters to the port.” *Kotch*, 330 U.S. at 558. His work schedule alternated weekly — one week “on,” one week “off” — at the Solomons Island Transfer Station, which is located on the western shore of the Chesapeake Bay near the mouth of the Patuxent River (about 50 miles southeast of Washington). During his “on” weeks, he remained on-call 24 hours per day. He worked and slept at the station and carried pilots to or from ships whenever necessary. Launch operators work those hours because a ship

⁷ Justice Holmes in 1906 provided a still-useful description of how these associations are often structured. *See Guy v. Donald*, 203 U.S. 399, 404 (1906).

can require a pilot's services at any time of the day or night.⁸

Transporting pilots to and from ships was Mr. Dize's primary responsibility. He had operated launches for about 20 years and, at the time of his injuries, operated those owned and maintained by respondent. Initially hired by respondent as a launch operator, he continued operating launches when he was promoted to Assistant Station Manager in 1997. Throughout his career, Mr. Dize was a member of the Seafarers International Union.

Although Mr. Dize was on call to transport pilots 24 hours a day, the unpredictable nature of the work meant that he spent less than 20% of his time actually operating launches. While he waited, therefore, respondent required him to "perform other work involving the vessels . . . as well as work involving the station itself." App. 50a. Other responsibilities included "maintenance work on the launches, both

⁸ James Merryweather, Mr. Dize's supervisor, testified:

Q: And [Mr. Dize] would be on a 24 hour shift while he was on during a one week shift?

A: Correct.

Q: Because you never know when those ships are coming up?

A: Correct. I say you never know, [but] I'd know tomorrow.

Q: Right, you'd have a schedule?

A: I wouldn't know next week what was coming.

Q: I mean they'll come 24 hours a day, seven days a week because they're coming from all over the place, is that fair to say?

A: Yes.

Dep. Tr. of James Merryweather at 53-54 (Record Extract at E226-27). (The "Record Extract" is a compilation of the proceedings that was filed with the Court of Special Appeals.)

in the water and while the boats were undergoing overhaul and refits in dry dock.” App. 6a. Routine maintenance of the launches included such tasks as sanding and painting them, changing their propellers, and fueling them. More significant repair projects included overhauling the launches’ engines, sandblasting their hulls, and removing their rub rails. Management of the station included ordering supplies, maintaining the buildings, and mowing the lawn. *Id.*

Mr. Dize was injured during one of the more significant maintenance projects. Respondent assigned him to sandblast the hull of a drydocked launch boat and insisted that he perform the task despite his inability to use the proper safety equipment. Am. Compl. ¶¶ 6-7. During the sandblasting, Mr. Dize was exposed to free silica in the sandblasting abrasive. As a result of that exposure, he developed silicosis. As his silicosis progressed, his respiratory system gradually failed. In the end, he was “not getting enough oxygen, even with supplementation,” and he died. Dep. Tr. of Orn Eliasson, M.D. at 34 (Record Extract at E264); *see also* App. 6a.

C. Proceedings Below

1. Mr. Dize filed this action in the Circuit Court for Baltimore City asserting seaman status and seeking to recover under the Jones Act for his injuries. App. 49a.⁹ Respondent moved for summary judgment on the seaman-status issue, arguing that

⁹ While this action was pending before the trial court, respondent petitioned in federal district court for exoneration from or limitation of liability under the Limitation Act, 46 U.S.C. §§ 30501-30512. *In re Ass’n of Maryland Pilots*, 596 F. Supp. 2d 915, 917 (D. Md. 2009). The federal district court administratively closed that action. *See* App. 7a n.10.

Mr. Dize did not satisfy the *Chandris* 30-percent test. The court granted that motion. App. 58a.

The trial court assumed that the hours “spent maintaining and servicing vessels . . . moored at the dock or on shore for repairs, when added to the hours ‘on the water,’ would have put Mr. Dize over the 30 percent threshold.” App. 16a-17a. Thus, the “dispositive question” was whether “only . . . time spent on the water” counted toward “the 30% requirement adopted by the Supreme Court” or whether “other time spent in the performance of duties that might be viewed as seaman’s duties or that contributed to the operation of the vessels” also should be credited. App. 53a. The court held that “the duration requirement must be measured in terms of time actually spent aboard vessels in navigation,” refusing to count time spent in “activities traditionally performed by seamen” and “activities that contribute to the navigational operation of the vessel” while vessels were moored at the dock or on shore for repairs. App. 56a.

2. On appeal, a panel of the Court of Special Appeals of Maryland affirmed. App. 30a. It concluded that “neither the maintenance projects [Mr. Dize] performed on docked vessels nor his land-based duties” exposed him to the perils of the sea and thus those activities “should not be credited toward the ‘30 percent “temporal element” of seaman status.’” App. 45a. It affirmed the trial court’s decision categorically to exclude his dockside activities because they were not “activities he performed on board a vessel that actively subjected [him] to ‘the perils of the sea.’” App. 47a.

3. The Maryland Court of Appeals granted Mr. Dize’s petition for review to resolve the question

whether “work time spent maintaining vessels that are moored, dockside, or ashore is to be counted along with time spent at sea” when determining seaman status. App. 8a. The state high court held “that the time Mr. Dize spent maintaining vessels that were dockside or ashore is not to be considered.” App. 3a.

The court first surveyed relevant decisions and noted the difficulty of “construing the Jones Act ‘uniformly’ with the other federal and state courts that decide these cases.” App. 17a-18a. “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.” App. 18a.

The court cited a number of decisions that counted time spent working on “a vessel when it is moored or dockside (or perhaps even on shore for repairs).” App. 19a. But it rejected those decisions in favor of the position taken by the Eleventh Circuit in *Clark v. American Marine & Salvage, LLC*, 494 F. App’x 32 (11th Cir. 2012) (per curiam). App. 20a. Rather than focusing on whether Mr. Dize’s duties were performed in the service of a vessel in navigation, it instead emphasized the goal of protecting workers who are exposed to the “perils of the sea,” App. 16a-18a, and adopted a “sea-based duties” test, App. 23a-25a. Because the court assumed that the “time spent maintaining [respondent’s] vessels while they were docked or onshore” could “not subject Mr. Dize to the perils of the sea,” App. 27a, it categorically excluded that time from consideration when applying the *Chandris* 30-percent rule.

REASONS FOR GRANTING THE WRIT

I. STATE AND FEDERAL COURTS CONFLICT OVER WHETHER TO INCLUDE TIME SPENT WORKING ON VESSELS THAT ARE MOORED, DOCKSIDE, OR ASHORE WHEN APPLYING *CHANDRIS*'S "SUBSTANTIAL IN DURATION" REQUIREMENT

Lower courts are in an entrenched and irreconcilable conflict on how to apply the 30-percent rule of thumb to determine seaman status adopted by this Court in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995). As the court below acknowledged, "the case law from the various federal circuits and state courts" presents "a bewildering array of decisions in which there is a citation to support any outcome and no outcome that fits comfortably with every precedent." App. 18a. When calculating whether a worker has a substantial connection to a vessel in navigation, the Eleventh Circuit and the Maryland courts categorically exclude activities performed in the service of a vessel while it is moored, dockside, or ashore. In contrast, the Third, Fifth, Sixth, and Ninth Circuits explicitly include those activities.

A. The Eleventh Circuit And The Maryland Courts Categorically Exclude From The 30-Percent Calculation Time Spent Working On Vessels While They Are Moored, Dockside, Or Ashore

In their application of the substantial-in-duration requirement, the Eleventh Circuit and the Maryland courts (following the Eleventh Circuit) refuse to credit time working on vessels in navigation that are moored, dockside, or ashore.

1. The Maryland courts

When determining whether Mr. Dize satisfied *Chandris*'s 30-percent test in this case, the Maryland high court categorically excluded time spent maintaining vessels that were docked or onshore. Mr. Dize's primary responsibility was operating launch boats, *see* App. 5a-6a, and he faced the "perils of the sea" during that time, *see* App. 25a. But he also maintained the launches while they were dockside, performing "tasks such as painting; sanding; changing propellers, rotors, shafts, and rub rails; replacing zinc anodes; cleaning the boat interiors; and fueling." App. 6a. Although the launches remained "in navigation" at all relevant times, *see* App. 16a; *see also supra* p. 5 n.3, and Mr. Dize's work contributed to their function, *see* App. 16a, Maryland's highest court held that "the time Mr. Dize spent maintaining vessels that were dockside or ashore is not to be considered [in deciding seaman status]." App. 3a. In reaching that conclusion, the court below followed the Eleventh Circuit's recent decision in *Clark v. American Marine & Salvage, LLC*, 494 F. App'x 32 (11th Cir. 2012) (*per curiam*). App. 20a.

2. The Eleventh Circuit

The Eleventh Circuit also categorically excludes from the 30-percent calculation time spent working on a vessel that is not on the open water. In *Clark*, the court considered the status of a commercial diver employed by a company with two vessels in its fleet — a dive boat and a work barge. The diver spent time working either from those vessels or from customers' vessels. He also spent part of his time repairing the work barge, primarily "while the barge was drug up on the shore." 494 F. App'x at 33.

In calculating whether the diver satisfied *Chandris*'s 30-percent test, the court counted only his time spent working from his employer's vessels. *Id.* at 34-35. It would not credit his "dockside repair work" on the work barge, even though the barge "was a vessel in navigation" and his work "contributed to its functionality." *Id.* at 34. "[T]hat work was not of a seafaring nature." *Id.* at 35.

B. The Third, Fifth, Sixth, And Ninth Circuits Include Time Spent Working On Vessels While They Are Moored, Dockside, Or Ashore

In contrast to the Eleventh Circuit and the court below, the Third, Fifth, Sixth, and Ninth Circuits all include in the 30-percent calculation work done on vessels that are moored, dockside, or ashore.

1. The Third Circuit

The Third Circuit appears to have been the first to hold that dockside activities can be sufficient to establish seaman status under the Jones Act. Since this Court's decision in *Chandris*, the Third Circuit has held that even activities ashore that are far from the vessel may be counted when considering whether a worker has a substantial connection to a vessel in navigation.

In *Shade v. Great Lakes Dredge & Dock Co.*, 154 F.3d 143 (3d Cir. 1998), a worker was hired as part of a beach renourishment project in which sand was dredged from the ocean floor, transported to the area, and pumped through a 1.25-mile submersible pipe to the beach. *Id.* at 145. Part of the time the employee worked on the barge that transported the sand; part of the time he worked on the beach, assisting in the pumping of the sand. *Id.* at 146. Applying the *Chandris* test, the Third Circuit held that "even [his]

duties on the beach were not unrelated to the work of a vessel in navigation; instead, they contributed to the purpose of the dredging operation.” *Id.* at 150. It accordingly was proper to consider those shoreside activities in determining whether he was a seaman. *Id.*

In the Third Circuit, the principle that dockside activities can be sufficient to establish seaman status under the Jones Act dates back to a case that arose just two months after the Act’s passage. In *Kuhlman v. W. & A. Fletcher Co.*, 20 F.2d 465 (3d Cir. 1927), the court upheld seaman status for a ship’s carpenter who did repair work on docked vessels. *Id.* at 466. The court held that his work gave him a “direct relation to navigation and commerce,” and, “though not a sailor, he was, within the meaning of the [Jones Act] in respect to the work he was doing, a seaman.” *Id.* at 468; *see also Rogosich v. Union Dry Dock & Repair Co.*, 67 F.2d 377, 378 (3d Cir. 1933) (“[A ship carpenter], while engaged in repairing a scow on [his employer’s] dry dock upon navigable waters, had the status of a seaman.”).

2. The Fifth Circuit

The Fifth Circuit is the most recent court to hold that work on moored vessels can be sufficient to establish a substantial connection to a vessel in navigation. Just last month, in *Naquin v. Elevating Boats, LLC*, No. 12-31258, 2014 WL 917053 (5th Cir. Mar. 10, 2014) (to be reported at 744 F.3d 927) (W. Eugene Davis, J.), the court upheld seaman status for a vessel repair supervisor at a shipyard facility. He “spent the majority of his time repairing, cleaning, painting, and maintaining the 26-30 lift-boat vessels that [his employer] operated out of [that] shipyard.” *Id.* at *3. Seventy percent of his work

was aboard vessels that were ordinarily “moored, jacked up, or docked,” performing tasks such as “inspecting [the vessels] for repairs, cleaning them, painting them, replacing defective or damaged parts, performing engine repairs, going on test runs, securing equipment, and operating the vessel’s marine cranes and jack-up legs.” *Id.* at *1. In challenging the worker’s seaman status, the employer argued that “the vessels . . . were ordinarily docked” and that the worker’s duties did not regularly expose him to the “perils of the sea.” *Id.* at *4. The Fifth Circuit (in an opinion by the court’s most experienced admiralty judge) noted that “courts have consistently rejected the categorical assertion that workers who spend their time aboard vessels near the shore do not face maritime perils.” *Id.* The time spent working “on vessels docked or at anchor in navigable water” counted in establishing the worker’s “connection with the fleet that is substantial in terms of both duration and nature.” *Id.* at *4-5.

Naquin builds on a line of prior Fifth Circuit decisions upholding seaman status on the basis of maintenance work done on stationary vessels when the workers never “went to sea.” *See, e.g., In re Endeavor Marine Inc.*, 234 F.3d 287, 291-92 (5th Cir. 2000) (per curiam) (considering the “substantial in nature” aspect of the seaman-status test and finding seaman status based on work performed on a moored barge that did not “literally carry [the worker] to sea”).

3. The Sixth Circuit

The Sixth Circuit held that dockside activities can count towards establishing a seaman’s connection to a vessel even before the *Chandris* Court adopted the 30-percent rule of thumb. In *Searcy v. E. T. Slider, Inc.*, 679 F.2d 614 (6th Cir. 1982) (per curiam), the

Sixth Circuit held that a watchman who maintained security over “vessels moored at the dock” could qualify for seaman status based on his connection to that fleet. *Id.* at 615. “The job required the watchman to go on board vessels approximately once every two hours to check on and put gas into any gas pumps that were pumping water from any leaking barges,” and also to set lanterns for certain barges. *Id.* The job did not require the watchman to reside, eat, or sleep on any of the vessels, *id.*, and the opinion does not suggest that the watchman ever sailed with any of the vessels. The watchman’s work on the dockside vessels nevertheless counted toward establishing his connection to vessels in navigation. *Id.* at 616.

The Sixth Circuit continues to adhere to the approach that it adopted in *Searcy*. *Taylor v. Anderson-Tully Co.*, No. 91-6022, 1992 WL 78101 (6th Cir. Apr. 17, 1992) (unpublished) (per curiam) (judgment noted at 960 F.2d 150 (table)), was “remarkably similar to the situation in *Searcy*.” *Id.* at *6. Again, the court held that a watchman’s activities on moored barges could be sufficient to establish a substantial connection to a fleet of vessels for seaman status under the Jones Act.

4. The Ninth Circuit

Finally, the Ninth Circuit has joined the majority of courts in crediting work performed on a moored vessel to establish seaman status. In *Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 2825 (2013), an employee spent three weeks doing repairs, maintenance, and modification work on a barge while it was moored in a Louisiana shipyard. *Id.* at 840. He then sailed with the barge from the shipyard to Mexico. *Id.* The Ninth Circuit emphatically

rejected the argument that the three weeks in the shipyard should not be credited when applying the *Chandris* test. That work “contributed to the function of the [barge] and the accomplishment of its mission.” *Id.* at 842.

* * * * *

Mr. Dize’s work history would have presented an easy case for seaman status in the Third, Fifth, Sixth, and Ninth Circuits. All of those courts, when evaluating the nature and duration of a worker’s connection to a vessel, have considered activities that either were comparable to those rejected by the court below or were more removed from the perils of the sea. The *Shade* court, for example, credited work performed on land more than a mile away from the relevant vessel because it still contributed to the vessel’s purpose. While Mr. Dize regularly “went to sea” (under even the most restrictive understanding of the term), the Third, Fifth, and Sixth Circuits have all upheld seaman status for workers who rarely if ever travelled on the vessels to which they were connected. Mr. Dize’s case undoubtedly would have been decided differently in each of these other courts.

II. THE COURT BELOW ERRONEOUSLY UNDERSTOOD *CHANDRIS*’S 30-PERCENT RULE TO PERMIT A COURT CATEGORICALLY TO REFUSE TO CONSIDER EMPLOYMENT-RELATED TASKS PERFORMED IN THE SERVICE OF VESSELS THAT ARE MOORED, DOCKSIDE, OR ASHORE

The Maryland Court of Appeals erred in holding that “the time Mr. Dize spent maintaining vessels that were dockside or ashore is not to be considered” in determining seaman status. App. 3a. As this

Court made clear in *Chandris*, “a vessel does not cease to be a vessel when she is not voyaging, but is at anchor, berthed, or at dockside, even when the vessel is undergoing repairs.” 515 U.S. at 373-74 (citation omitted). Thus, “vessels undergoing repairs or spending a relatively short period of time in drydock are still considered to be ‘in navigation.’” *Id.* at 374. Because the employment-related tasks that Mr. Dize performed on respondent’s launches while they were “moored, dockside, [and] ashore,” App. 8a,¹⁰ was work done “in the service of a vessel in navigation,” 515 U.S. at 371, that work counts in applying the durational requirement of *Chandris*’s second prong.

Respondent concedes that Mr. Dize would have qualified as a seaman if his job had required him simply to operate the launches as needed and to wait between voyages. See Baltimore City Cir. Ct. Hr’g Tr. at 36 (Record Extract at E309). It defies common sense to argue that Mr. Dize lost his seaman status because respondent required him to spend his waiting time maintaining and repairing the vessels that he operated. Cf. *Chandris*, 515 U.S. at 375 (citing and quoting *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370, 373 (1957) (noting that “[e]ven a trans-oceanic liner may be confined to berth for lengthy periods, and while there the ship is kept in repair by its ‘crew,’” and that “[t]here can be no doubt that a member of its crew would be covered by the Jones Act during this period”)).

¹⁰ The parties agree that all the vessels on which Mr. Dize worked were “in navigation” at all relevant times. App. 16a; see *supra* p. 5 n.3.

**A. The Decision Below Improperly Narrows
The Durational Requirement Articulated
In *Chandris***

As this Court explained in *Chandris*, the “ultimate inquiry [under the Jones Act] is whether the worker in question is a member of the vessel’s crew or simply a land-based employee who happens to be working on the vessel at a given time.” 515 U.S. at 370. Assessed under that standard, Mr. Dize was a member of the launches’ crew. Just as a firefighter does not cease to be a firefighter simply because most of a shift does not entail fighting fires, neither does the operator of a pilot launch lose his status as a crew member simply because a portion of his employment requires maintaining the launches while he waits to operate them. Indeed, when Mr. Dize was actually operating one of respondent’s pilot launches, he and a deckhand were the *only* members of the launch’s crew. The pilot being transported to or from a commercial ship was merely a passenger.

Chandris makes clear that work performed on a docked vessel cannot be categorically excluded when applying the 30-percent rule. The employee claiming seaman status in *Chandris* was a “salaried superintendent engineer” whose duties “required him to take a number of voyages but also [to] plan[] and direct[] ship maintenance from shore,” including a six-month project refurbishing a ship while it was in drydock. *Id.* at 350-51. Although it was unclear how much of his time was spent at sea, it might have been as little as 10 percent. *Id.* Thus, the lower courts were instructed to determine on remand whether the employee’s work while the ship was in drydock could be counted toward the 30-percent threshold. In deciding that the drydock work might

count, the *Chandris* Court rejected the categorical exclusion of drydock maintenance work when considering a worker's seaman status. *Id.* at 372.

Chandris's remand instructions made clear that an employee's work in service of a vessel in navigation counts toward the 30-percent threshold even if the vessel has been taken completely out of the water for six months for comprehensive refurbishment. So long as a vessel is "in navigation" — as every vessel was here, *see supra* p. 5 n.3 — an employee's work in service of the vessel in navigation counts. If in *Chandris* it was reversible error categorically to exclude maintenance on a ship in drydock for six months or more in the application of the 30-percent rule, the court below certainly erred to exclude categorically the work done on vessels that are merely docked or ashore temporarily.

While operating respondent's launches, Mr. Dize was responsible for their safe navigation. And because all of respondent's launch operators and deckhands spend more than 70% of their time on dockside maintenance and similar tasks while waiting to ferry pilots to and from ships, the decision below, if left standing, would create the bizarre scenario in which respondent can run a seafaring business with no Jones Act seamen at all. If Mr. Dize and those similarly situated were not seamen, then respondent's launches had no crew members.

B. This Court Has Held That Seaman Status May Be Achieved By Work Done On Moored Vessels

This Court has made clear that work performed on a stationary vessel may count in determining whether a maritime worker is a seaman. At least as far back as *Senko v. La Crosse Dredging Corp.*,

352 U.S. 370 (1957), this Court has recognized that duties aimed at maintaining the seaworthiness of a vessel count toward seaman status, even if the seaman never travels on the vessel.

In *Senko*, this Court held that a worker whose responsibilities included cleaning and taking care of the deck, splicing ropes, stowing supplies, and generally keeping things “in shape” on the dredge on which he worked could be considered a seaman under the Jones Act. *Id.* at 372. This was true even though “the dredge was anchored to the shore at the time of petitioner’s injury and during *all the time* petitioner worked for the respondent.” *Id.* (emphasis added). The Court noted that the type of tasks completed by the worker indicated he was “responsible for [the vessel’s] seaworthiness.” *Id.* at 372-73.

Like the *Senko* plaintiff, Mr. Dize’s dockside activities contributed to the seaworthiness of the launches on which he worked. While his primary responsibility was operating launches to shuttle pilots whenever necessary, Mr. Dize also was required to maintain the vessels’ seaworthiness while they were docked. He performed overhauls and refits of the launches; painting; sanding; changing propellers, rotors, shafts, and rub rails; replacing zinc anodes; cleaning the boat interiors; and fueling them. App. 6a, 27a. Just as the *Senko* plaintiff qualified for seaman status on the basis of his work on a stationary vessel, Mr. Dize should receive credit for his time spent doing similar tasks on vessels in navigation that were similarly moored, docked, or ashore.

III. THIS CASE PRESENTS A CLEAN VEHICLE TO RESOLVE AN IMPORTANT ISSUE OF MARITIME LAW LEFT OPEN IN *CHANDRIS*

The law governing seaman status affects many Americans who work on or near water, as well as the industries that employ them. According to the Bureau of Labor Statistics, there are about 81,600 people employed in “Water Transportation Occupations” and 31,300 people employed as “Fishers and Related Fishing Workers” in the United States. By 2022, those sectors of the workforce are expected to add thousands of new jobs. *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>. The Jones Act potentially covers each of those workers.

Determining whether those employees are seamen is a particularly important aspect of maritime law that is frequently litigated. As the Maryland Court of Appeals noted, this 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.” App. 2a. Because seaman status defines the border between Jones Act coverage and LHWCA coverage, that uncertainty in Jones Act coverage also creates uncertainty in applying LHWCA. That boundary line, in turn, affects numerous maritime workers

whose employment demands that they work on both land and sea, such as pilot-launch operators (like Mr. Dize), tugboat crews, day-cruise workers, charter-boat captains, and fireboat personnel.

This case also presents a clean vehicle to resolve the issue that has divided state and federal courts. The relevant facts are undisputed, and there are no secondary issues of law that would affect the Court's ability to answer the question presented. The only issue that was appealed below is whether Mr. Dize was a seaman. *See, e.g.*, App. 7a n.9 (observing that unseaworthiness "is not before us"), 41a n.12 (same). The Maryland Court of Appeals determined that he was not a seaman by categorically excluding all dockside and onshore activity from its consideration of his connection to vessels in navigation. App. 3a. More particularly, the only issue addressed by the court below was whether "work time spent maintaining vessels that are moored, dockside, or ashore is to be counted along with time spent at sea" when determining seaman status. App. 8a. If those activities qualify, Mr. Dize was a seaman; if they do not qualify, Mr. Dize was not a seaman. This case accordingly presents an excellent vehicle for the Court to determine whether dockside or onshore activities categorically cannot be seaman's work.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

	Page
Opinion of the Court of Appeals of Maryland, <i>Dize v. Association of Maryland Pilots</i> , No. 56, Sept. Term, 2012 (Sept. 23, 2013).....	1a
Opinion of the Court of Special Appeals of Maryland, <i>Dize v. Association of Maryland Pilots</i> , No. 26, Sept. Term, 2010 (May 31, 2012)	29a
Memorandum of the Circuit Court for Balti- more City, <i>Dize v. Association of Maryland Pilots</i> , Case No. 24-C-08-003232 (Feb. 25, 2010).....	49a
Order of the Circuit Court for Baltimore City, <i>Dize v. Association of Maryland Pilots</i> , Case No. 24-C-08-003232 (Feb. 25, 2010).....	58a
Order of the Court of Appeals of Maryland Denying Reconsideration, <i>Dize v. Association of Maryland Pilots</i> , No. 56, Sept. Term, 2012 (Nov. 21, 2013).....	59a
Statutory Provisions Involved.....	60a
Jones Act, 46 U.S.C. § 30104	60a
Longshore and Harbor Workers' Compen- sation Act, § 2(3)(G), 33 U.S.C. § 902(3)(G).....	60a
Letter from Supreme Court Clerk regarding grant of extension of time for filing a petition for a writ of certiorari (Feb. 11, 2014)	61a

IN THE COURT OF APPEALS OF MARYLAND

No. 56, Sept. Term, 2012

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

v.

ASSOCIATION OF MARYLAND PILOTS,
Respondent.

[Filed Sept. 23, 2013]

Argued before BARBERA, C.J., HARRELL,
BATTAGLIA, GREENE, ADKINS, McDONALD and
BELL*, JJ.

McDONALD, J.

Maritime law has long recognized the “special hazards and disadvantages to which they who go down to sea in ships are subjected,” especially exposure to “the perils of the sea . . . with little opportunity to avoid those dangers or to discover and protect themselves from them.”¹ When maritime workers at sea suffer sickness or injury, they are entirely at the mercy of their employer, and it is often said that they

* Bell, C.J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

¹ *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104, 66 S.Ct. 872, 90 L.Ed. 1099 (1946).

are “wards of admiralty.”² Federal law provides certain rights and protections to compensate for those risks. One such measure is the Jones Act, 46 U.S.C. § 30104, which provides a seaman with a cause of action against the seaman’s employer for injuries incurred within the scope of employment.

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.³ Although as a state court we do not speak authoritatively on this issue, it is our task in this case to discern what we can from these decisions.⁴

² E.g., *The Arizona v. Anelich*, 298 U.S. 110, 123, 56 S.Ct. 707, 80 L.Ed. 1075 (1936).

³ See, e.g., Kulkarni, *The Seaman Status Situation: Historical Perspectives and Modern Movements in the U.S. Remedial Regime*, 31 Tul. Mar. L.J. 121 (2006) (“Unfortunately, the judiciary has been less than clear in addressing the topic of seaman status”); Robertson, *The Supreme Court’s Approach to Determining Seaman Status: Discerning the Law Amid Loose Language and Catchphrases*, 34 J. Mar. L. & Com. 547 (2003) (“[S]eaman status is vigorously litigated in case after case. The Supreme Court of the United States is regularly beseeched for guidance, often by those who later wish they had not asked”); *Hillsman, Still Lost In The Labyrinth: The Continuing Puzzle of Seaman Status*, 15 U.S.F. Mar. L.J. 49 (2003) (“Imagine, then, how frustrating it is to practice in the ‘zone of uncertainty,’ the realm of the poor Jones Act lawyers who scratch out a living representing ‘injured maritime workers employed at the border of harbor/work seaman status’”).

⁴ Although federal courts have exclusive, original jurisdiction over admiralty and maritime cases pursuant to 28 U.S.C. § 1333, a “savings to suitors” clause in the statute provides state courts with concurrent jurisdiction for *in personam* claims such as the Jones Act. See, e.g., *Offshore Logistics, Inc. v.*

In the complaint under the Jones Act that commenced this case, William S. Dize⁵ alleged that he was injured as a result of the negligence by his employer, Respondent Association of Maryland Pilots (the “Association”). Whether that claim was properly made under the Jones Act depends on whether Mr. Dize was a “seaman” at the time of the alleged negligence. To distinguish seamen from land-based workers, the Supreme Court has adopted a “rule of thumb” that a seaman must ordinarily have spent at least 30 percent of work time in service of a vessel in navigation. We hold, consistent with the purpose of the Jones Act and guidance of the Supreme Court, that the time Mr. Dize spent maintaining vessels that were dockside or ashore is not to be considered and, accordingly, that the lower courts correctly concluded that he was not a seaman.

Background

Remedies for Seamen

Remedies for employment-related injuries of seamen are provided under federal admiralty law rather than state worker compensation schemes. *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 218, 37 S.Ct. 524, 61 L.Ed. 1086 (1917). Two of those remedies have long existed under general maritime law, but are limited in scope. A third, broader, remedy has been created by statute.

Tallentire, 477 U.S. 207, 221-23, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986). State courts must abide by federal maritime standards and apply the Act “uniformly.” *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 244, 63 S.Ct. 246, 87 L.Ed. 239 (1942).

⁵ The complaint was filed by Mr. Dize. After judgment was entered against him in the lower courts, he filed the petition for certiorari in this matter, but died after we granted the petition. His wife Jennifer has been substituted as Petitioner.

Under general maritime law at the beginning of the 20th century, a maritime worker had two potential claims for injuries incurred during employment in service of a vessel: seaworthiness and “maintenance and cure.” A ship owner has an “absolute, non-delegable” duty to a seaman to provide a seaworthy vessel; liability for an unseaworthy vessel attaches regardless of fault. *Chisholm v. UHP Projects*, 205 F.3d 731, 734 (4th Cir. 2000). The warranty of seaworthiness applies only to vessels that are “in navigation.” *Roper v. United States*, 368 U.S. 20, 82 S.Ct. 5, 7 L.Ed.2d 1 (1961). “A claim for maintenance and cure relates to the vessel owner’s obligation to provide food, lodging, and medical services to a seaman injured while serving the ship.” *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441, 121 S.Ct. 993, 148 L.Ed.2d 931 (2001).

Neither “seaworthiness” nor “maintenance and cure” provided a seaman with a cause of action for negligence of a ship owner. *The Osceola*, 189 U.S. 158, 175, 23 S.Ct. 483, 47 L.Ed. 760 (1903).⁶ Congress created such a cause of action when it passed the Jones Act in 1920. That statute reads, in pertinent part:

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 to a trial by jury, against the employer.

46 U.S.C. § 30104. To prevail on a negligence claim under the Jones Act, a seaman must show: “(1) that he is a seaman under the Act; (2) that he suffered

⁶ In that case, the Court applied the fellow servant defense from tort law to conclude a seaman could not sue a ship owner for negligence.

injury in the course of his employment; (3) that his employer was negligent; and (4) that his employer's negligence caused his injury at least in part." *Martin v. Harris*, 560 F.3d 210, 216 (4th Cir. 2009).⁷ The term "seaman" is not defined in the Jones Act. But, as in many cases under the Jones Act, the interpretation of that term is key to the decision of this case.

Mr. Dize's Employment

Mr. Dize initially worked for the Association as a launch boat operator at the Solomons Island Transfer Station in Solomons, Maryland, beginning in the 1980s. In that capacity, he transported pilots to and from large commercial ships traveling on the Chesapeake Bay—a duty that he continued to perform after he was promoted to assistant station manager in 1997. As assistant station manager, Mr. Dize worked every other week but, during the weeks he was on duty, he was on-call all day every day. As will become apparent, the allocation of his work time among the various duties of assistant station manager is significant for determining whether he was a seaman at the time of the alleged negligence in 2007.

During the five-year period prior to his injury, Mr. Dize spent somewhat less than 20 percent of his time

⁷ The remedy provided for seamen in the Jones Act was based on a remedy for negligence that Congress had provided for railroad workers when it enacted the Federal Employers' Liability Act (FELA) in 1908. See 45 U.S.C. § 51. Indeed, the Jones Act expressly incorporates law relating to FELA. 46 U.S.C. § 30104 ("Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section"). Thus, principles developed in the case law under FELA are applied in Jones Act cases. *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 439, 78 S.Ct. 394, 2 L.Ed.2d 382 (1958).

operating launches.⁸ He also did maintenance work on the launches, both in the water and while the boats were undergoing overhaul and refits in dry dock. In deposition testimony, Mr. Dize estimated that, while the launches were tied up at the dock, he spent between 42 and 50 percent of his time on maintenance tasks such as painting; sanding; changing propellers, rotors, shafts, and rub rails; replacing zinc anodes; cleaning the boat interiors; and fueling. Relying on its records, the Association also estimated that between 3 and 5 percent of Mr. Dize's time was spent on overhaul and refits while the boats were out of the water. Adding up those estimates, Mr. Dize calculated that well over 60 percent of his time was spent operating, or performing maintenance on, launch boats. Mr. Dize also performed general maintenance on station buildings and property, ordered work supplies and groceries, unloaded trucks, installed rugs, mowed the lawn, and cleaned the docks.

In January 2008, Mr. Dize was diagnosed with silicosis. He thereafter suffered increasing breathing difficulties, required supplemental oxygen to live, and eventually died from his illness in September 2012.

Negligence Action under the Jones Act

On May 22, 2008, Mr. Dize sued the Association in the Circuit Court for Baltimore City, pursuant to the Jones Act, alleging negligence in regard to injuries he

⁸ In the Association's original filings with the trial court, it calculated that Mr. Dize spent approximately 19 percent of his work time in 2006 and 2007 piloting launches. However, in its briefs submitted to the Court of Special Appeals and this Court, the Association contends that a recalculation of Mr. Dize's work time yields a figure closer to 16 percent. In any event, use of the larger figure would not change the analysis or our conclusion on the ultimate issue of seaman status.

suffered from exposure to free silica during a sandblasting project.⁹ The complaint alleged that, as part of his duties in June 2007, Mr. Dize sandblasted paint off the bottom of an Association boat in dry dock, using coal slag abrasive that contained free silica. It further alleged that the Association did not perform adequate occupational safety testing, as required by federal and State work safety standards, to determine whether Mr. Dize was fit to participate in sandblasting or should have worn a respirator mask while doing so. Because he had previously suffered from lung disease, the complaint alleged, he likely would have been excluded from the work as a result of the test.

In January 2010, both Mr. Dize and the Association filed motions for summary judgment.¹⁰ The Association argued that Mr. Dize was not a seaman for purposes of the Jones Act and therefore could not maintain a negligence claim.

On February 25, 2010, the Circuit Court granted the Association's motion for summary judgment on the Jones Act claim on the basis that Mr. Dize was

⁹ The complaint referred to the vessel on which Mr. Dize worked as "unseaworthy," but only in the context of what was entitled a claim under the Jones Act. Mr. Dize later filed an amended complaint to assert a cause of action for maintenance and cure. The Association moved to strike the amended complaint as untimely and the Circuit Court granted that motion. That decision is not before us.

¹⁰ The action had been stayed for several months when the Association filed a complaint for limitation of liability in federal district court under the Exoneration and Limitation of Liability Act, 46 U.S.C. § 30501 *et seq.* In February 2009, the federal district court dissolved the stay and administratively closed the federal action. After dissolution of the stay, the Association impleaded Harsco Corporation, the manufacturer of the sandblasting material.

not a seaman at the time of his injury.¹¹ In doing so, the court concluded that Mr. Dize had not spent 30 percent of his work time in service of vessels in navigation, as required by a “rule of thumb” adopted by the Supreme Court to decide seaman status for Jones Act cases. Mr. Dize appealed. On March 8, 2012, the Court of Special Appeals, in an unreported opinion, affirmed the Circuit Court. At the request of the Association, the court reissued its decision as a reported opinion on May 31, 2012. *See Dize v. Ass’n of Md. Pilots*, 205 Md.App. 176, 44 A.3d 1033 (2012).

We granted certiorari to resolve whether, in determining Mr. Dize’s status for purposes of the Jones Act, work time spent maintaining vessels that are moored, dockside, or ashore is to be counted along with time spent at sea.

Discussion

Standard Of Review

A Circuit Court may grant summary judgment if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Maryland Rule 2-501(f). With specific reference to the Jones Act, the issue of seaman status is a mixed question of law and fact, for which summary judgment is appropriate “where the facts and law reasonably support only one conclusion.” *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 554, 117 S.Ct. 1535, 137 L.Ed.2d 800 (1997) (citations omitted). Our role is to review whether the Circuit Court’s legal conclusions were correct without accord-

¹¹ The court also granted summary judgment in favor of the Association on the issue of unseaworthiness, on the grounds that it had not been pled in the complaint and that the vessel he was sandblasting was not “in navigation” at the time of the alleged injury.

ing any special deference to that court. *D'Aoust v. Diamond*, 424 Md. 549, 574, 36 A.3d 941 (2012).

Seaman Status under the Jones Act

As indicated above, the Jones Act does not itself define the term “seaman.” Courts have defined the term affirmatively by looking to the meaning of the term in the general maritime law that preceded the Jones Act and negatively by distinguishing seamen for purposes of the Jones Act from land-based maritime workers covered by the less generous and later-enacted Longshore and Harbor Workers’ Compensation Act (“LHWCA”). The key factors that are currently applied by the courts, including a numerical rule of thumb, derive from three Supreme Court decisions during the 1990s.

Relation to Seaman under General Maritime Law

When the Supreme Court upheld the constitutionality of the Jones Act a few years after its passage, it appeared to equate seaman status under the statute to that under general maritime law. *Panama R. Co. v. Johnson*, 264 U.S. 375, 388-89, 44 S.Ct. 391, 68 L.Ed. 748 (1924). Shortly thereafter, however, the Court, stating that “words are flexible,” held that the statute also applied to an injured longshoreman even though a longshoreman did not fit the common understanding of a “seaman.” *Int’l Stevedoring Co. v. Haverty*, 272 U.S. 50, 52, 47 S.Ct. 19, 71 L.Ed. 157 (1926) (stevedore injured while storing freight in ship hold covered by the Act).

Relation to Workers Covered by LHWCA

In 1927—one year after *Haverty*—Congress enacted the LHWCA. That statute provides compensation and other remedies for land-based maritime employees who suffer injuries while working on navigable waters “including any 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.” 33 U.S.C. § 903(a). The LHWCA specifically omitted from its coverage “a master or member of a crew of any vessel.” 33 U.S.C. § 902(3)(G). The Supreme Court held that this exclusion is synonymous with “seaman” under the Jones Act and that the LHWCA “confine[d] the benefits of the Jones Act to the members of the crew of a vessel.” *Swanson v. Marra Bros.*, 328 U.S. 1, 7, 66 S.Ct. 869, 90 L.Ed. 1045 (1946). As construed in *Swanson*, the LHWCA thus had the effect of narrowing *Haverty*’s broad construction of the term “seaman” under the Jones Act.

Efforts to Distinguish Seamen from Land-Based Workers

In the 12 years following *Swanson*, the Court continued to provide guidance on the definition of “seaman,” although its holdings were not easily condensed into an understandable standard. In *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187, 72 S.Ct. 216, 96 L.Ed. 205 (1952), the Court held that a pilot of sightseeing vessels who was killed during off-season work on a ship that had been taken out of the water was not a seaman in those circumstances. The Court found persuasive that “there was no vessel engaged in navigation” and that the activity that caused the injury was not typically a duty of a seaman. 342 U.S. at 190, 72 S.Ct. 216.

Nevertheless, five years later, in determining whether a handyman from an anchored dredge could recover under the Jones Act for injuries suffered while transporting equipment on the shore, the Court decided that whether the vessel was in transit during the worker’s employment was not pertinent to

seaman status. Rather, the designation “seaman” was appropriate where “substantially all” of the employee’s duties were performed “on or for” the vessel. *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370, 372, 77 S.Ct. 415, 1 L.Ed.2d 404 (1957). That the injury occurred on land was not relevant to the analysis, although it was appropriate to consider whether the worker would “have a significant navigational function” when the vessel was in transit. 352 U.S. at 373, 77 S.Ct. 415. A seaman therefore did not necessarily have to be employed on a vessel in transit at the time of the injury, but perhaps had to have duties that assisted in the navigation of a vessel. *See Butler v. Whiteman*, 356 U.S. 271, 78 S.Ct. 734, 2 L.Ed.2d 754 (1958).

For the next three decades, the Supreme Court had nothing further to say on the subject. Meanwhile, the federal circuit courts of appeals split on whether the worker’s employment had to aid the navigation of a vessel in order to qualify for Jones Act coverage. *See DeGravelles, Harbor Tug & Barge Co. v. Papai: Another Turn in the Labyrinth?* 10 U.S.F. Mar. L.J. 209, 211 (1998).

Deriving the Modern Test for Seaman Status

The Supreme Court revisited the question of seaman status under the Jones Act in three cases during the 1990s in which it attempted to devise a workable test.

Wilander—whether the worker must aid navigation

In *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991), the Court held that a worker on a paint boat who supervised sandblasting and painting of oil drilling platforms at sea was a “seaman” even though he did not aid in the navigation of the vessel to which he was assigned.

Reasoning that Congress had not intended to limit the Jones Act only to employees with navigational duties and noting that all workers on ships in navigation risk the perils of the sea, the Court employed a broader test: whether a worker asserting seaman status has a “connection” to a vessel in navigation—*i.e.*, whether the employee “contribute[s] to the function of the vessel or to the accomplishment of its mission” and does “the ship’s work.” 498 U.S. at 354–55, 111 S.Ct. 807.

Chandris—articulating a two-part test

Four years later, the Court elaborated on the extent and nature of the required “connection” in *Chandris, Inc. v. Latsis*, 515 U.S. 347, 115 S.Ct. 2172, 132 L.Ed.2d 314 (1995). Mr. Latsis was an engineering supervisor who worked primarily from an office on shore but occasionally traveled on his employer’s vessels. On one such trip, he injured his eye and received, he alleged, substandard care from the ship’s doctor that resulted in a significant loss of vision in the eye. After he recuperated from his injury on shore, he returned to the ship and sailed to Germany, where he remained with the vessel while it underwent renovations in dry dock. Six months later, he traveled back to the United States aboard the ship. In his lawsuit under the Jones Act, Mr. Latsis claimed that he spent 72 percent of his employment working on his employer’s vessels, while the employer put the figure at closer to 10 percent. The trial court instructed the jury that the time that Mr. Latsis spent with the ship while it was in drydock could not be considered because the ship was not “in navigation.” The jury returned a verdict in favor of the ship owner on the basis that Mr. Latsis was not a seaman.

The Supreme Court held that the trial court had defined “in navigation” too narrowly and remanded the case for a retrial. The Court also stated certain principles for the determination of seaman status. The Jones Act is “reserved for sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which they who go down to sea in ships are subjected.” *Chandris*, 515 U.S. at 370, 115 S.Ct. 2172 (internal citations omitted).¹² The policy of the Act is “to protect sea-based maritime workers, who owe their allegiance to a vessel, and not land-based employees, who do not.” *Id.* at 376, 115 S.Ct. 2172. Accordingly, whether an employee is covered by the Jones Act depends on the status of the employee’s relationship with the vessel or vessels, not the cause or place of the injury.

To aid in the analysis, the Court created a two-part test. To be a “seaman” under the Jones Act, the employee must (1) contribute to the function of a vessel or to the accomplishment of its mission, and (2) have a connection to a vessel in navigation that is substantial in both duration and nature. *Chandris*, 515 U.S. at 368, 115 S.Ct. 2172. The Court explained that the purpose of the latter requirement 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

¹² The Court cautioned that an employee is not a “seaman” simply because the employee is doing “seaman’s work” at the time of injury and therefore “[s]eaman status is not coextensive with seaman’s risks” if the employee does not spend a significant portion of work time aboard a vessel. 515 U.S. at 361, 115 S.Ct. 2172.

and, therefore, whose employment does not regularly expose them to the perils of the sea.” *Id.*

As to the temporal element of its test—*i.e.*, whether the duration of the employee’s connection to a vessel in navigation was substantial—the Court favorably referred to a rule of thumb that had been developed in the Fifth Circuit: “a worker who spends less than about 30 percent of his time in the service of a vessel in navigation” would presumably not satisfy the substantial duration requirement. *Chandris*, 515 U.S. at 371, 115 S.Ct. 2172. The Court also referred to this rule of thumb as computing the percentage of time “on vessels” or “aboard ship.” *Id.* at 367, 115 S.Ct. 2172.¹³ The Supreme Court characterized 30 percent as a guideline and noted that “departure from it will certainly be justified in appropriate cases.” *Id.* at 371, 115 S.Ct. 2172.

In a passage that has generated some confusion as to where an employee may work for the time to be counted toward seaman status under the 30 percent guideline, the Court also considered whether a vessel

¹³ This description appears consistent with the Fifth Circuit decisions cited by the Court. See *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067, 1073-76 (5th Cir. 1986) (“[I]t must be shown that [the claimant] performed a significant part of his work *aboard the vessel* with at least some degree of regularity and continuity. . . . Because [the appellant] did not perform a substantial portion of his work *aboard a vessel or fleet of vessels*, he failed to establish that he was a member of the crew of a vessel.”) (emphasis added); *Lormand v. Superior Oil Co.*, 845 F.2d 536, 541 (5th Cir. 1987) (noting that the appellant “spent proportionally even less time working *on a vessel*” than did the appellant in *Barrett*) (emphasis added); *Palmer v. Fayard Moving & Transp. Corp.*, 930 F.2d 437, 439 (5th Cir. 1991) (finding that the plaintiff did not show that she “performed a substantial part of her work *on board a vessel*”) (emphasis added).

in dry dock was necessarily not “in navigation.” The Court held that a vessel undergoing repairs or spending a relatively short period of time in dry dock is still “in navigation”; at some point, however, repairs become “sufficiently significant” that the ship must be considered out of navigation. *Chandris*, 515 U.S. at 374, 115 S.Ct. 2172. In the case before it, the Court held that, in light of the conflicting evidence in the record as to the significance of the dry dock repairs and the potential significance of evidence from that period as to Mr. Latsis’ duties, the trial court’s jury instruction that the period in dry dock was to be disregarded was erroneous. Accordingly, the Court remanded the case for a new trial.

Harbor Tug—connection to vessel must take worker “to sea”

Only two years after the *Chandris* decision, the Court provided a further clarification that seemingly narrowed the definition of seaman. In *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 117 S.Ct. 1535, 137 L.Ed.2d 800 (1997), the Court held that a deckhand who never went to sea and was injured during a one-day painting assignment on a tugboat was not a seaman under the Jones Act. The Court emphasized that seamen are “those workers who face regular exposure to the perils of the sea.” 520 U.S. at 560, 117 S.Ct. 1535. Accordingly, “[f]or the substantial connection requirement to serve its purpose, the inquiry into the *nature* of the employee’s connection to the vessel must concentrate on whether the employee’s duties take him to sea. This will give substance to the inquiry both as to *duration and nature* of the employee’s connection to the vessel and be helpful in distinguishing land-based from sea-based employees.” *Id.* at 555, 117 S.Ct. 1535 (emphasis added). Thus, although the Court in that case was

focused on the nature of the employee's connection to a ship in navigation, it related the seagoing nature of the employee's duties to the duration test as well. In the case before it, the Court held that the deckhand did not have seaman status in part because his duties "did not include any seagoing activity" but consisted only of maintenance work while the boat was docked. *Id.* at 559, 117 S.Ct. 1535.

Application of the Chandris Test to Mr. Dize

The resolution of this case turns on the application of the *Chandris* test to the circumstances of Mr. Dize's employment. Under that test, Mr. Dize would qualify as a seaman under the Jones Act if his position (1) contributed to the function of a vessel or to the accomplishment of its mission, and (2) had a connection to a vessel in navigation that was substantial in both duration and nature. The parties agree that the first prong is satisfied, and also that, as to the second prong, Mr. Dize worked on vessels "in navigation." Therefore, the only issue is whether Mr. Dize's position had a connection to those vessels that was substantial in both duration and nature.

Application by the Circuit Court and Court of Special Appeals

The Circuit Court concluded that, on the undisputed facts, Mr. Dize did not have a connection with a fleet of vessels in navigation that was substantial in duration. The court calculated that the time Mr. Dize spent on water operating launches, which comprised less than 20 percent of his work time, did not satisfy the 30 percent rule of thumb adopted in *Chandris*. For purposes of the Association's summary judgment motion, the Circuit Court assumed that the additional hours that Mr. Dize spent maintaining and servicing vessels, whether those vessels were moored

at the dock or on shore for repairs, when added to the hours “on the water,” would have put Mr. Dize over the 30 percent threshold. But the court believed “the number of these hours is not material” and declined to count them. The Circuit Court explained its reasoning:

The purpose of the duration requirement is to ensure that the individual's service regularly exposes him to the perils of the sea. That purpose is best served by a test that measures time spent aboard a vessel, regardless of whether other work activities contribute to the operation of a vessel. Time spent in other tasks on land, even if those activities are activities traditionally performed by seamen or are activities that contribute to the navigational operation of the vessel, do not contribute to this purpose. Therefore, the duration requirement must be measured in terms of time actually spent aboard vessels in navigation.

In answer to Mr. Dize's argument that the court should deviate from the 30 percent rule of thumb, as *Chandris* indicated could be appropriate in some circumstances, the Circuit Court noted that Mr. Dize had not provided a specific reason for such a departure.

On appeal, the Court of Special Appeals agreed that the focus should be on “activities [Mr. Dize] performed on board a vessel that actively subjected [him] to the perils of the sea.” 205 Md.App. at 193, 44 A.3d 1033. It held that maintenance projects that Mr. Dize undertook on docked vessels and his various land-based duties should not be counted toward the 30 percent threshold. *Id.* at 191, 44 A.3d 1033.

In our review of this case, we are charged with construing the Jones Act “uniformly” with the other

federal and state courts that decide these cases. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 244, 63 S.Ct. 246, 87 L.Ed. 239 (1942). 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. In such circumstances, we must, like the Circuit Court, focus on the purpose of the statute and the guidance of the Supreme Court in its most recent interpretations of the Jones Act.

The 30 Percent Test and Going to Sea

As noted above, the Supreme Court in *Chandris* used two different phrasings to refer to the 30 percent rule of thumb—in one instance, stating that an employee must spend at least 30 percent of the employee’s time “aboard ship” to be a seaman; in the other, declaring that an employee who spent less than 30 percent of work time “in the service of a vessel in navigation” would fail the test. *Chandris*, 515 U.S. at 367, 371, 115 S.Ct. 2172. The Court thus apparently equated “in the service of a vessel in navigation” with “aboard ship.” Accordingly, many courts have concluded that, for purposes of the duration requirement, an employee must spend at least 30 percent of the employee’s time aboard or on a vessel to be a seaman.¹⁴

¹⁴ See *Sologub v. City of New York*, 202 F.3d 175, 180 (2d Cir. 2000); *Nunez v. B & B Dredging, Inc.*, 288 F.3d 271, 273 (5th Cir. 2002) (employee who only spent 10 percent of time aboard vessels not a seaman); *Landry v. Specialty Diving of La.*, 299 F. Supp. 2d 629, 634 (E.D. La. 2003) (employee who spent less than 5 percent of work time aboard a vessel not a seaman); *In re Endeavor Marine*, 234 F.3d 287, 292 (5th Cir. 2000) (employee who spent almost all of his time “on the vessel” was a seaman);

The parties have debated whether time “aboard ship” also must be “at sea” in order to count for purposes of the 30 percent guideline. The cases that originated the guideline did not require that time aboard ship be at sea¹⁵ and a number of courts have held, explicitly or implicitly, that a worker may be “aboard” a vessel when it is moored or dockside (or perhaps even on the shore for repairs).¹⁶

Naquin v. Elevating Boats, LLC, 842 F. Supp. 2d 1008, 1017 (E.D. La. 2012) (employee’s testimony that he spent at least 70 percent of his time “working aboard vessels” was sufficient to satisfy duration element for summary judgment purposes); *Hayles v. Sonat Exploration Co.*, 868 So. 2d 276, 280-81 (La. App. 2004) (“[W]orkers who spend less than 30% of their time on a vessel do not qualify” as seamen, and plaintiff did not spend “a sufficient amount of time aboard” the vessel); *Roberts v. Cardinal Servs., Inc.*, 266 F.3d 368, 377 (5th Cir. 2001) (“[A] worker who aspires to seaman status must show that at least 30 percent of his time was spent on vessels. . .”).

¹⁵ Contrary to the Association’s assertions, the Fifth Circuit cases giving rise to the 30-percent rule do not establish that one must be voyaging at sea to be “aboard” a vessel. In *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1074 (5th Cir. 1986), and *Lormand v. Superior Oil Co.*, 845 F.2d 536, 540-41 (5th Cir. 1987), the employees seeking seaman status spent up to 80 percent of their time on offshore platforms and “jack-up” vessels supported by legs that extended to the seabed—not vessels that actually floated upon the water. In *Palmer v. Fayard Moving & Transp. Corp.*, 930 F.2d 437 (5th Cir. 1991), the plaintiff spent more than 80 percent of her time wholly on land; furthermore, that case describes the rule of *Barrett* and *Lormand* as merely requiring work “on vessels.” *Id.* at 439. These three cases did not hold that one must be voyaging to be considered “aboard” a vessel.

¹⁶ See *In re Endeavor Marine, Inc.*, 234 F.3d 287, 291-92 (5th Cir. 2000) (holding that the employee was “aboard” a vessel when working on a moored barge); *Smith v. Kanawha River Terminals, LLC*, 829 F. Supp. 2d 401, 406-07 (S.D. W. Va. 2011) (same). Similarly, in *Naquin v. Elevating Boats, LLC*, 842 F.

But this broader understanding of what it means to be “aboard ship” would seem to qualify many land-based workers for seaman status. *Harbor Tug* offers useful clarification: To give “substance to the inquiry” as to the nature and duration of the employee’s connection to the vessel and be “helpful in distinguishing land-based from sea-based employees,” a court must “concentrate on whether the employee’s duties take him to sea.” *Harbor Tug*, 520 U.S. at 555, 117 S.Ct. 1535.

One might incorporate *Harbor Tug*’s emphasis on sea-going duties into the durational connection test by requiring, as the Circuit Court held, that the employee must spend at least 30 percent of the employee’s time actually at sea. This understanding also appears in two recent federal court decisions. *Clark v. Am. Marine & Salvage*, 494 Fed. Appx. 32, 35 (11th Cir. 2012) (counting only hours spent on work that was of “a seafaring nature” toward the 30 percent threshold); *Casser v. McAllister Towing & Transp. Co.*, 2010 WL 5065424 at *3 (S.D.N.Y. 2010) (counting only “sea time” in which employee was on vessels that were “actually underway”). This is a straightforward rule that is easy to apply and thus has great appeal. But it is somewhat at odds with the discussion of the “in navigation” requirement in *Chandris* and other courts’ analysis of the “substantial nature” determination under *Harbor Tug*.

Supp. 2d 1008, 1017 (E.D. La. 2012), the court found that an employee was “aboard” liftboats that were either moored or jacked-up. (Although the conclusion about jacked-up vessels appears to be contrary to the Fifth Circuit’s pre-*Chandris* case law on the 30-percent rule, even just the time spent by the *Naquin* plaintiff on moored vessels—approximately 35 percent—would have been sufficient under the court’s interpretation of the test.)

“In Navigation,” “Seagoing Nature,” and the Totality of the Circumstances

Under *Chandris*, a vessel need not be in transit on the water in order to be considered “in navigation.” In that case, the Court remanded the case for a jury determination whether the ship in question was “in navigation” during a six-month stay in dry dock. In light of that holding, courts have held that a vessel may remain “in navigation” even if it has been removed from the water.¹⁷

With respect to the statement in *Harbor Tug* that the employee’s duties must be of a “seagoing nature, subjecting him to the perils of the sea,” the lower courts have reached a variety of interpretations. As noted above, some courts have read this in conjunction with *Chandris* to require that the worker spend at least 30 percent of the worker’s time at sea. But other courts have understood this to be a requirement only that the employee’s duties take the employee to sea, not necessarily that the seagoing activities exceed 30 percent of work time.¹⁸ Under

¹⁷ *Carter v. Bisso Marine Co.*, 238 F. Supp. 2d 778, 783-84 (E.D. La. 2002) (28-foot survey boat transported between projects on land by a trailer is not necessarily out of navigation); *see also Smith v. Kanawha River Terminals LLC*, 829 F. Supp. 2d 401, 406-08 (S.D. W. Va. 2011) (floating, unanchored barge moored to a dock is not necessarily out of navigation); *Delange v. Dutra Const. Co.*, 183 F.3d 916, 920 (9th Cir. 1999) (seaman status determined to be a valid jury question where the employee worked on a barge that only moved four times in five months).

¹⁸ *See Schultz v. La. Dock Co.*, 94 F. Supp. 2d 746, 750 (E.D. La. 2000) (“Regardless of whether plaintiff spent one percent or 100 percent of his time” on vessels, “[n]one of plaintiff’s work was of a seagoing nature” and “[h]e did not go to sea” and was therefore not a seaman); *Saienni v. Capital Marine Supply, Inc.*, 2005 WL 940558 at *8 (E.D. La. 2005) (assessing whether the

that view, a worker who “never went to sea” could not be a Jones Act seaman.¹⁹ Other courts, however, have concluded that *Harbor Tug* did *not* create a requirement that an employee’s duties “literally carry him to sea” in order to achieve seaman status.²⁰

Some courts have scrapped specific analysis of the elements of the substantial connection test in favor of a “totality of the circumstances” review derived from the following passage in *Chandris*:

[T]he total circumstances of an individual’s employment must be weighed to determine whether he had a sufficient relation to the navigation of vessels and the perils attendant thereon. The duration of a worker’s connection to a vessel and the nature of the worker’s activities,

nature of the plaintiff’s repair work “included any ‘seagoing activity’ or whether he ‘was hired to perform seagoing work during the employment in question’” and deciding that he was not a seaman even though he spent more than 30 percent of his time aboard vessels) (internal citations omitted); *Peterson v. Reinauer Transp. Co.*, 1997 WL 706220 at *4 (S.D.N.Y. 1997) (employee not a seaman because he “never went to sea . . . and his duties did not contemplate that he would ever go to sea”).

¹⁹ See *Lara v. Arctic King Ltd.*, 178 F. Supp. 2d 1178, 1182 (W.D. Wash. 2001).

²⁰ *In re Endeavor Marine*, 234 F.3d 287, 292 (5th Cir. 2000); *Naquin v. Elevating Boats, LLC*, 842 F. Supp. 2d 1008, 1016 (E.D. La. 2012) (*Harbor Tug* “does not mean, of course, that the employee’s duties must *literally* take him to sea”); *Smith v. Kanawha River Terminals LLC*, 829 F. Supp. 2d 401, 407 (S.D. W. Va. 2011) (“[T]he Court . . . rejects the notion that the Supreme Court meant to require that a plaintiff’s job duties literally take him to sea.”); *Navarre v. Kostmayer Const. Co.*, 52 So. 3d 921, 928 (La. App. 2010); *Gault v. Modern Cont’l/Roadway Const. Co. Joint Venture*, 100 Cal. App. 4th 991, 1002-03, 123 Cal. Rptr. 2d 85 (2002) (concluding that the *Harbor Tug* ruling did not prevent an employee who worked in a storm drainage channel from being a seaman).

taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time.

Chandris, 515 U.S. at 370, 115 S.Ct. 2172 (internal citation omitted). These cases rely less on numerical computations and more on a weighing of the employee's duties to determine whether they are primarily sea-based or land-based.²¹

Sea-Based Duties

Because the Supreme Court in *Chandris* stressed that land-based maritime workers are not seamen, courts in the Second and Ninth Circuits, in ruling on summary judgment motions concerning seaman status, have focused on whether the employee's duties are "sea-based activities."²² For example, in

²¹ For example, in *Richard v. Mike Hooks, Inc.*, 799 So. 2d 462, 466-67 & n.2 (La. 2001), the Supreme Court of Louisiana held that a welder who spent more than 30 percent of his time "on defendant's vessels" was not a seaman. Rather than specifically analyzing how much time the employee spent at sea, the court simply tallied up his duties and concluded that, overall, they indicated he was "a land-based employee who happens to spend some of his time working aboard defendant's vessels." See also *Tinin v. Laredo Const., Inc.*, 978 F. Supp. 700, 702 (S.D. Tex. 1997) (where employee did not perform "a substantial part of his work on any vessel or fleet of vessels with any degree of regularity and continuity," the totality of the circumstances indicated that he was not a seaman).

²² See *O'Hara v. Weeks Marine, Inc.*, 294 F.3d 55, 64 (2d Cir. 2002) ("[Plaintiff] thus produced no evidence from which a reasonable jury could conclude that he 'derives his livelihood from sea-based activities.'" (internal citations omitted); *Cabral v. Healy Tibbits Builders, Inc.*, 128 F.3d 1289, 1293 (9th Cir. 1997) (when analyzing the nature of the employee's connection

Vasquez v. McAllister Towing & Transp. Co., 2013 WL 2181186 at *1 (S.D.N.Y. 2013), the court considered whether a boatyard worker—with repair and maintenance duties very similar to those of Mr. Dize—was a Jones Act seaman. Although the court acknowledged that there was authority for the proposition that the substantial connection test does not require that an employee’s duties literally take the employee to sea, the court found that the plaintiff nonetheless failed “to demonstrate that his employment ‘regularly expose[d]’ him to seagoing perils” and granted summary judgment in favor of the defendant. *Vasquez*, 2013 WL 2181186 at *5 (citing *Chandris*, 515 U.S. at 368, 115 S.Ct. 2172).

From this perspective, “sea-based” duties that count for the purposes of the duration analysis are those that regularly expose the worker to seagoing perils. This is not to say that only time aboard a ship in transit over the water counts. There may be a variety of other circumstances that involve sea-based duties that expose a worker to the “perils of the sea.” *E.g.*, *Navarre v. Kostmayer Construction Co.*, 52 So. 3d 921, 930 (La. App. 2010) (employee who worked on off-shore barge entitled to trial on Jones Act claim); *In re Endeavor Marine*, 234 F.3d 287, 292 (5th Cir. 2000) (worker who spent 18 months on derrick barge regularly “exposed to the perils of the sea” entitled to trial on Jones Act claim); *Delange v. Dutra Construction Co.*, 183 F.3d 916, 920-21 (9th Cir. 1999) (carpenter who spent more than 80 percent of his time on

to the vessel, the court should focus on whether his duties “were primarily sea-based activities”); *accord Scheuring v. Traylor Bros., Inc.*, 476 F.3d 781, 786 (9th Cir. 2007); *Milligan v. Crux Subsurface, Inc.*, 2012 WL 4478664 at *5 (D. Alaska 2012); *Spears v. Kajima Eng’g & Constr., Inc.*, 101 Cal. App. 4th 466, 479, 124 Cal. Rptr.2d 97 (2002).

board barge performing variety of seaman's duties in addition to carpentry raised triable issue as to his status under Jones Act); *Roberts v. Cardinal Services, Inc.*, 266 F.3d 368, 376 (5th Cir. 2001) (although affirming summary judgment in favor of employer, court counted plaintiff's duties on liftboats toward 30 percent threshold). We need not catalog all of the possibilities for purposes of this case. But we can say that this approach, though not as bright a line as that drawn by the Circuit Court, serves the purpose of the statute with the degree of flexibility that the Supreme Court's decisions permit. We shall apply it in this case.

Application to Mr. Dize

As the trial court did, we shall assume, without deciding, that Mr. Dize's piloting of the launch boats, which constituted less than 20 percent of his work time, was a "sea-based" activity that sufficiently exposed him to the perils of the sea. The question therefore becomes whether his dockside or onshore maintenance of the boats—which he estimated as taking up to 50 percent of his time—was "sea-based" work.

The case law on seaman status reveals a widely shared conclusion that "[p]erforming repairs and conducting inspections on vessels that are dockside hardly exposes the plaintiff to 'the perils of the sea.'" *Casser*, 2010 WL 5065424 at *3. *Harbor Tug* itself held that the employee's maintenance work and painting aboard a docked tugboat were not "substantial for seaman-status purposes." *Harbor Tug*, 520 U.S. at 559, 117 S.Ct. 1535. Subsequent cases have expounded upon this reasoning. For example, in *Vasquez*, the court noted:

While working on vessels tied to the dock, plaintiff was not subjected to storms, high seas, or other caprices of open water. . . . [O]nshore assistance was never far away. Accordingly, a reasonable jury simply could not conclude that plaintiff's employment exposed him to the "special hazards and disadvantages" of seamanship.

2013 WL 2181186 at *5.

In *Lara v. Arctic King, Ltd.*, 178 F. Supp. 2d 1178 (W.D. Wash. 2001)—another case involving a shipyard employee whose duties were similar to Mr. Dize's—the court also held that maintenance work on moored vessels did not subject the individual to the "special hazards and disadvantages" of sea duty:

The fact the vessel remained tied to a pier obviously eliminated many of the peculiar risks that seamen face, such as the need to fight fires without outside assistance, the need to abandon ship, and the need to survive exposure to the elements until help arrives. . . . Another seaman hazard or disadvantage that plaintiff did not face was potential delay or inconvenience in being transported to medical attention for injuries. . . . [Plaintiff could] depart his work place at any time. He therefore did not have any of the inconveniences, limitations and pressures encountered by seamen who are often stuck with their vessel and the control of its Master and operator for extended periods until the next port call.

Id. at 1182.²³

²³ Other positions that have been held to be free of the perils of the sea include a repairman on a barge moored at a repair facility, see *Schultz v. La. Dock Co.*, 94 F. Supp. 2d 746, 750 (E.D. La. 2000) (employee's duties "were limited to inspecting and repairing barges moored at the facility" and he therefore

Mr. Dize’s time spent maintaining the Association’s vessels while they were docked or onshore at the Solomons Island Transfer Station (as well as his time spent performing upkeep of the station property) does not count toward the 30 percent threshold for the same reasons. As in the cases cited above, these duties—performing overhauls and refits of vessels; painting; sanding; changing propellers, rotors, shafts, and rub rails; replacing zinc anodes; cleaning the boat interiors; and fueling—did not subject him to the “caprices of open water,” and, in the case of an emergency, “onshore assistance was never far away.” During his commission of this work, there would never be a “need to abandon ship” or “survive exposure to the elements until help arrives.” His proximity to shore meant that there was no danger of unusual “delay or inconvenience in being transported to medical attention for injuries.” This work plainly did not subject Mr. Dize to the perils of the sea, and therefore did not comprise sea-based activities that should have been counted in the Circuit Court’s duration analysis.

Conclusion

As the Supreme Court has observed, the Jones Act provides a special remedy to maritime employees who face the “perils of the sea.” Accordingly, in order to satisfy the substantial connection test articulated in *Chandris*, an employee must perform sea-based duties that give rise to those unique dangers. Because Mr. Dize did not spend at least 30 percent of

did not “face the perils of the sea in the manner associated with seaman status”), and an air-conditioning repairman on vessels moored at a shipyard, *Peterson v. Reinauer Transp. Co.*, 1997 WL 706220 at *4 (S.D.N.Y. 1997) (employee was a “land-based worker whose duties did not . . . regularly expose him to the perils of the sea”).

his work time performing such duties, he did not have a connection to a vessel that was substantial in both duration and nature. He therefore was not a seaman for the purposes of the Jones Act.²⁴

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. COSTS TO BE PAID BY PETITIONER.

²⁴ What, if any, benefits Mr. Dize or his survivors would be entitled to under the LHWCA is not before us.

29a

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

No. 26
September Term, 2010

WILLIAM S. DIZE,
Appellant,
v.

ASSOCIATION OF MARYLAND PILOTS,
Appellee.

Graeff,
Hotten,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),
JJ.

Opinion by Graeff, J.

Filed May 31, 2012

William S. Dize, appellant, filed a claim in the Circuit Court for Baltimore City against his employer, the Association of Maryland Pilots (the “Association”), appellee, pursuant to the Jones Act, 46 U.S.C. § 30104 (2006),¹ after he was diagnosed with silicosis

¹ Appellant cited to the Jones Act as 46 U.S.C.A. § 688 (1920) in his claim. This portion of the United States Code was recodified in 1983 and again in 2006 as 46 U.S.C. § 30104.

of the lungs. In his claim, Mr. Dize attributed his condition to the Association's negligence in failing to provide him with adequate protective equipment to safely perform a sandblasting project that took place in 2007. Both parties filed motions for summary judgment, and the court granted summary judgment in favor of the Association.

On appeal, Mr. Dize presents two questions for our review,² which we have consolidated and rephrased as follows:

Did the circuit court err in granting the Association's motion for summary judgment after finding, as a matter of law, that Mr. Dize was not a seaman under the Jones Act?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 22, 2008, Mr. Dize filed a claim against the Association in the Circuit Court for Baltimore City pursuant to the Jones Act.³ He alleged that, during

² The questions presented as they appear in Mr. Dize's brief are as follows:

1. Whether the Circuit Court for Baltimore City erroneously granted summary judgment on the issue of whether Appellant was entitled to "seaman status" under the Jones Act, by misapplying the elements constituting Appellant's time spent in service of a fleet of vessels in navigation?
2. Alternatively, whether the Circuit Court for Baltimore City erred as a matter of law, by improperly excluding any inquiry into Appellant's "seaman status" from a jury's consideration of additional creditable time in support of a fleet of vessels in navigation?

³ An individual pursuing a claim under the Jones Act may choose to do so in either state or federal court; the opposing party may not deprive the plaintiff of his or her preferred forum by removing the claim to federal court. 28 U.S.C. § 1333(1)

the first week of June 2007, while employed by the Association, he was “assigned to sandblast old paint from the bottom of the Annapolis Pilot” while the boat was dry-docked. The Association provided him and the other crew members with safety equipment, including safety suits, masks, and helmets to perform the task, but Mr. Dize was unable to wear the safety equipment because he was claustrophobic. The Association was aware of his condition, but the Association insisted that he participate in the sandblasting project or be terminated. Mr. Dize wore the mask and helmet “as much as possible during the work, which went on for approximately one week.”⁴

Mr. Dize was diagnosed with silicosis of the lungs on January 14, 2008. He maintained that the Association negligently caused his injuries by: (1) failing “to provide [a] safe place in which to work”; (2) failing “to properly provide adequate safety equipment and/or facilities to prevent [his] exposure to harmful agents from sandblasting”; (3) failing to warn him of the dangerous conditions associated with performing his duties; (4) failing “to conduct proper inspections of the pier and/or appurtenant facilities aforesaid in order to discover and remedy said hazardous condi-

(2006) (“The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.”); *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 455 (2001) (“the saving to suitors clause preserves remedies and the concurrent jurisdiction of state courts over some admiralty and maritime claims[.]” including claims brought under the Jones Act).

⁴ Mr. Dize noted that, on June 15, 2007, the Maryland Department of the Environment ordered the Association to cease and desist the sandblasting operation because “coal dust was polluting the nearby waterways and spreading black soot all over a nearby private marina.”

tion”; (5) failing “to condemn the Pier as appropriate”; (6) failing “to provide adequate lighting to allow [him] to perform his job in a safe and reasonable manner”; (7) providing him “an unseaworthy vessel”; (8) failing “to provide adequate manpower to allow [him] to perform his job in a safe and reasonable manner”; and (9) engaging in conduct that was otherwise “careless, reckless and negligent.” Mr. Dize asserted that, as a result of the Association’s negligence, he sustained injuries to his “lungs, neck, mouth, nose, airways and other internal organs.” Additionally, he alleged damage to his nervous system, as well as great physical pain and mental anguish. Mr. Dize estimated that his lost earning potential was between \$48,000 and \$62,000 annually, and he sought \$5,000,000 in damages.

On July 16, 2008, the Association filed its answer to Mr. Dize’s claim. It asserted that the circuit court lacked subject matter jurisdiction because Mr. Dize was not a seaman for purposes of the Jones Act, but rather, Mr. Dize’s injuries were covered by the Longshore and Harbor Workers’ Compensation Act or the Maryland Workers’ Compensation Act. It further denied any negligence on its part and alleged that any injuries sustained by Mr. Dize were caused by his own contributory negligence, insubordination, a preexisting condition, or the acts of others.⁵

⁵ On March 31, 2009, the Association filed a Third-Party Complaint against Harsco Corporation (“Harsco”), a Delaware corporation with its principal place of business in Pennsylvania. The Association stated that Reed Minerals, a division of Harsco, manufactured and distributed “Black Beauty,” the blasting abrasive used during the sandblasting project, and it asserted that, if Mr. Dize’s injuries were sustained as a result of his participation in the sandblasting project, it was a result of Harsco’s negligence.

On November 30, 2009, Mr. Dize filed an amended claim, in which, among other things, he alleged that the Association had “failed to adhere to federal and state occupational safety standards” and that it had wilfully failed to pay “maintenance and cure at the rate of fifteen dollars (\$15.00) a day as required.” He demanded \$10,000,000 in compensatory damages, \$5,000,000 in punitive damages, and reasonable attorneys’ fees.

On December 14, 2009, the Association filed a motion to strike Mr. Dize’s amended complaint, arguing that it would be unduly prejudicial to allow Mr. Dize to add a maintenance and cure claim more than a year after litigation had commenced. The court ultimately granted the motion to strike the amended complaint.

On January 15, 2010, the Association filed a Motion for Summary Judgment, alleging that Mr. Dize did not spend 30% of his time working onboard a vessel, as required to qualify as a seaman under the Jones Act. It asserted that there was no dispute of material fact that Mr. Dize did not qualify as a Jones Act seaman, and the Association was entitled to judgment as a matter of law. In support, the Association submitted an affidavit signed by James Merryweather, Mr. Dize’s supervisor, which described Mr. Dize’s responsibilities as follows:

Mr. Dize’s duties included running the office at [the Association’s Pilot Transfer Station (“PTS”)], enforcing Association policies and work rules, dealing with local vendors, managing the shop, dispatching pilots and boat operators, making runs on (operating) the pilot launches, supervising the housekeeping crew, and overseeing routine and special projects that occurred during

his one-week watch. Mr. Dize was a salaried employee who worked one week on, one week off. During the week he was on, Mr. Dize was on duty twenty-four hours a day, seven days a week. During his week on, Mr. Dize was the sole manager at the Station and was supervising other employees.

Mr. Merryweather's affidavit detailed the hours that Mr. Dize spent operating pilot launches. It further stated:

When he was not on the water, Mr. Dize spent no more than half of an hour a day on average . . . while ashore in the service of vessels he operated, doing such things as maintenance, repairs, fueling, supplying, and other duties relating to his work as a launch operator. The rest of his time on duty was spent doing . . . other tasks . . . that did not relate to his work as a launch operator. According to the records of the Association, Mr. Dize worked 26 weeks, seven days a week, in 2006 and 2007. Accordingly, Mr. Dize worked no more than a total of 91 hours each of those years while ashore in the service of the vessels he operated.

On February 2, 2010, Mr. Dize filed his motion opposing the Association's Motion for Summary Judgment. Despite filing his own motion for summary judgment several weeks earlier, he alleged that "[t]here are genuine issues as to material fact to be submitted to the jury as to whether [Mr. Dize] is a Jones Act seaman for the purposes of this act." Mr. Dize stated that he had been a Pilot Launch Operator or crew member for 21 years prior to his injury in 2007, and he "was required to ride, operate and maintain the [Association's] pilot launch (or group of

launches).”⁶ Mr. Dize provided percentages of his time spent on the water for 1994 through 2007; these percentages varied, but the average was well under 20%.⁷

Mr. Dize described his maintenance duties as Assistant Station Manager as including “general maintenance of the buildings on the station property itself as well as painting boats, sanding them, filling them in, painting them and changing their props, replacing worn zincs, changing rotors and shafts, changing rub rails and the fueling of all the launches.” In the affidavit attached to his motion, Mr. Dize stated that he spent at least three to four hours each day “performing these shoreside support tasks.”⁸ Mr. Dize asserted that he “did not have a passive desk job as a shore-side manager.” He explained:

Our longest days, over four (4) or more hours a day, would be spent working on the boats when they were pulled out of the water and drydocked in the spring and the fall for Re-Fit projects. My regular maintenance duties were sanding,

⁶ Mr. Dize explains in his brief, consistent with the deposition testimony of Mr. Merryweather, that a Pilot Launch Operator transports pilots to and from large commercial ships. Mr. Dize worked alternating weeks, 24 hours per day, sleeping at the Solomons Island Pilot Transfer Station/Maintenance & Repair Facility at night.

⁷ The percentages ranged from approximately 3% in 1994 to 22.48% in 2001.

⁸ In his brief on appeal, Mr. Dize points to deposition testimony where he said that he worked “5 to 6 hours per day” on maintenance to the boats, which he asserts was 42% to 50% of his time. Mr. Dize’s counsel below, however, did not point out this testimony or make that argument to the circuit court. As explained in more detail, *infra*, however, that dispute is not relevant to the ultimate resolution of the case.

puttying, painting and re-gelling the boats. The most time consuming tasks [were] pulling off and installing rub rails on the sides of these boats. . . . Sometimes we would pull out engines and overhaul them, as well as re-deck the boats and gut and rebuild the cabins.

The affidavit stated that, “in addition to my time on the water and the fleet support activities I participated in as recorded by the maintenance logs for each of the pilot launches,” Mr. Dize spent considerable time on the re-fit of various pilot launches: 110 hours in the fall of 2002 through the spring of 2003; 210 hours through January 2004; an additional 148 hours through December 2004; 219 hours from January to August 2005; 200 hours from October of 2005 through the spring of 2006; and 100-150 hours on a repair project in 2005, which involved painting and hull work. Mr. Dize stated that his work was “in support of the fleet of pilot launches in navigation,” and he “spent practically 100% of his time in the service of the fleet of pilot launches.”

On February 4, 2010, the Association filed its opposition to Mr. Dize’s Motion for Summary Judgment. It alleged that there was no dispute that Mr. Dize spent only “a small fraction of his working time on board a vessel,” the relevant inquiry for a determination of seaman status. It noted that, although its calculations of Mr. Dize’s “times on the water” in 2006 and 2007 did not “exactly match” Mr. Dize’s calculations, even using Mr. Dize’s calculations, “the average percentage of his working time aboard a vessel in navigation over the last 14 years . . . was only 12.81 percent.” It asserted that there was no dispute that his time working on a vessel did not approach 30%, as required for seaman status under the Jones Act.

On February 24, 2010, the circuit court held a hearing on the motions. Counsel for the Association argued that, in determining whether Mr. Dize qualified as a seaman under the Jones Act, the court should consider only the time Mr. Dize spent on the water. Even if the court considered the time that Mr. Dize spent “off the water in service of the vessel . . . he still doesn’t get anywhere close to 30[%].” Counsel argued that, even if Mr. Dize spent 16.06% of his time working on the water in 2006 and 2007, and even if the time Mr. Dize spent refitting the vessel were added to that total, he would have worked only 20.64% of his time in service to the vessel.⁹ Although counsel agreed that Mr. Dize had contributed to the function of the vessel or the accomplishment of its mission, counsel maintained that there was “no evidence that would allow a reasonable juror to find that the duration test has been met in this case,” stating that Mr. Dize was “a shoreside worker.”

Counsel for Mr. Dize responded that the 30% rule was merely a “rule of thumb,” and it was appropriate to depart from the rule in certain cases. He maintained that departing from the 30% rule would be consistent with the Supreme Court’s holding in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), which determined that a marine engineer who spent no more than 10% of his time on the vessels was a seaman under the Jones Act because he had a

⁹ In its brief, the Association notes that it initially had calculated the amount of time Mr. Dize spent in service to the vessel “on the water to be 18.99% of his work time in 2006 and 19.79% of his work time in 2007.” During preparation for trial, “the Association determined that it had counted certain launch trips twice, thereby incorrectly inflating those figures.” After adjusting the figures to correct its error, the Association concluded that Mr. Dize had spent 16.06% of his time on the water in both 2006 and 2007.

substantial connection to a fleet of vessels in navigation. Counsel argued that Mr. Dize similarly had a substantial connection to a fleet of vessels in navigation given his role in facilitating the launches. He concluded:

[T]he facts in *Chandris* are clear on this, that even if you have a substantial connection duration and we, again, argue . . . that practically a hundred percent of his time is in support of a fleet of vessels in navigation . . . that he should qualify as a Jones Act seaman and . . . clearly, he's way beyond the 30 percent which is a rule of thumb and not a bright line as the Association argues.

On February 25, 2010, the circuit court issued an order granting the Association's motion for summary judgment. The court found that the issue was governed by *Chandris*, and that, to qualify as a seaman under the Jones Act, a claimant must demonstrate: (1) that his or her duties contributed to the function of the vessel or the accomplishment of its mission; and (2) he or she must have had a "connection to the vessel in navigation . . . that is substantial in terms of both its duration and nature."

Regarding the durational requirement, the court noted that the Supreme Court in *Chandris* adopted, as "an appropriate rule of thumb," a requirement that a worker spend at least 30% of his time in the service of a vessel in navigation to qualify as a seaman. The court reviewed the parties' calculations regarding the time Mr. Dize spent on the water performing his duties as a launch operator.¹⁰ The court

¹⁰ The court listed various percentages given by the parties, which shows that, despite some differences in calculations, the average percentage of time Mr. Dize spent on the water clearly was less than 20%.

then addressed the hours spent on refit projects. It noted that counsel for appellee estimated that those hours would amount to 3-5% of Mr. Dize's total work hours, a calculation not challenged by counsel for Mr. Dize.¹¹ The court noted that, "[i]f the time spent on re-fit projects were added thereto, it would still fall well short of 30%."

The court then addressed Mr. Dize's claim that it should look to other duties he performed, duties that Mr. Dize asserted were in the service of a vessel or fleet of vessels. The court listed these duties as including "maintenance of the vessels; enforcement of Association policies and work rules; servicing vessels in navigation; keeping shop supplies on hand to service the vessels; ordering fuel; managing the repair shop; dispatching pilots and launch operators to ships; assisting with cleaning the quarters on the boats; and supervising fueling." The court explained that, "[a]lthough time spent on other activities around the station that contributed to the operation of the vessels is not specifically enumerated in hours, for summary judgment purposes, the court will assume that it would raise the figure to over 30%."

The court then stated:

The dispositive question is whether the 30% requirement adopted by the Supreme Court applies only to time spent on the water or it should include other time spent in the performance of duties that might be viewed as seamen's duties or that contributed to the operation of vessels. There is no dispute that the time spent on the vessel by plaintiff falls well short of 30% of his work hours.

¹¹ Mr. Dize similarly makes no challenge on appeal to this calculation.

The court noted that the language used in *Chandris* supported the view that only time aboard a vessel in navigation should be counted. *See* 515 U.S. at 368-69 (“If it can be shown that the employee performed a significant part of his work on board the vessel on which he was injured, with at least some degree of regularity and continuity, the test for seaman status will be satisfied.”) (quoting 1B A. JENNER, BENEDICT ON ADMIRALTY § 11a, 2-10.1 to 2-11 (7th ed. 1994)). It continued:

Furthermore, reflection upon the reason for the requirement adopted by the Court in *Chandris* convinces the court that this conclusion is the proper one. The purpose of the duration requirement is to ensure that the individual’s service regularly exposes him to the perils of the sea. That purpose is best served by a test that measures time spent aboard a vessel, regardless of whether other work activities contribute to the operation of the vessel. Time spent in other tasks on land, even if those activities are activities traditionally performed by seamen or are activities that contribute to the navigational operation of the vessel, do not contribute to this purpose. Therefore, the duration requirement must be measured in terms of time actually spent aboard vessels in navigation.

The court rejected Mr. Dize’s argument that a departure from the 30% test was appropriate because Mr. Dize did not provide a “specific reason why the threshold is not [an] appropriate tool under the facts of the case.” It concluded that, “as a matter of law, [Mr. Dize] is not a seaman within the meaning of the Jones Act, which compels the conclusion that his claim under the statute must fail.” Accordingly, the

court entered summary judgment in favor of the Association.¹²

This timely appeal followed.

STANDARD OF REVIEW

Maryland Rule 2-501(f) governs motions for summary judgment and provides that a trial court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” *Accord Reiter v. Pneumo Abex, LLC*, 417 Md. 57, 67 (2010). When we review a circuit court’s order granting summary judgment, “we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.” *Napata v. Univ. of Md. Med. Sys. Corp.*, 417 Md. 724, 732 (2011) (quoting *Sprenger v. PSC*, 400 Md. 1, 21 (2007)). “[W]e independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” *Reiter*, 417 Md. at 67 (quoting *Livesay v. Baltimore County*, 384 Md. 1, 10 (2004)).

¹² Counsel for the parties also addressed Mr. Dize’s claim that the Association was strictly liable for Mr. Dize’s injuries because the vessel was unseaworthy. The court rejected Mr. Dize’s unseaworthiness claim for two reasons: (1) Mr. Dize failed to adequately plead the action in his complaint; and (2) Mr. Dize failed to “establish[] the existence of a material dispute of fact as to whether the vessel was in navigation at the time of the injury.” Mr. Dize did not challenge the circuit court’s findings with respect to his unseaworthiness claim, and therefore, it is not before us for review.

DISCUSSION

I.

THE JONES ACT

The Jones Act permits any seaman who suffers a personal injury in the course of his employment to pursue a direct negligence claim against his or her employer. 46 U.S.C. § 30104. It provides “heightened legal protections . . . [to] seamen . . . because of their exposure to the ‘perils of the sea.’” *Chandris*, 515 U.S. at 354. To prevail on a negligence claim under the Jones Act, “a seaman must show: (1) that he is a seaman under the Act; (2) that he suffered injury in the course of his employment; (3) that his employer was negligent; and (4) that his employer’s negligence caused his injury at least in part.” *Martin v. Harris*, 560 F.3d 210,216 (4th Cir. 2009).

The Jones Act does not define the term “seaman,” charging courts with the task of distinguishing sea-based and land-based maritime employees. *Chandris*, 515 U.S. at 355. In *Chandris*, the Court articulated a two-part test to determine seaman status under the Jones Act. First, the worker’s “duties must contribute to the function of the vessel or the accomplishment of its mission.” 515 U.S. at 368. Second, the worker “must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in terms of both its duration and its nature.” *Id.* The Court noted that the Jones Act remedy was “reserved for sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which they who go down to sea in ships are subjected.” *Id.* at 370 (quotation omitted). It explained that the substantial connection requirement was intended 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.” *Id.* at 368. *Accord Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997) (“For the substantial connection requirement to serve its purpose, the inquiry into the nature of the employee’s connection to the vessel must concentrate on whether the employee’s duties *take him to sea*. This will give substance to the inquiry both as to the duration and nature of the employee’s connection to the vessel and be helpful in distinguishing land-based from sea-based employees.”) (emphasis added).

Thus, the Court stated, “[a] maritime worker who spends only a small fraction of his working time *on board* a vessel is fundamentally land based and therefore not a member of the vessel’s crew.” *Chandris*, 515 U.S. at 371 (emphasis added). In determining what fraction of time is appropriate for separating land-based workers from sea-based workers, the Court adopted the “rule of thumb” set forth by the United State Court of Appeals for the Fifth Circuit, *i.e.*, that “[a] worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act.” *Id.*¹³

The question of who is a seaman under the Jones Act is a mixed question of law and fact. *Id.* at 369. “The jury should be permitted . . . to consider all relevant circumstances bearing on the two elements” of the test. *Id.* “Removing the issue from the jury’s

¹³ The Court noted that this was a guideline, but the Fifth Circuit consistently had “declined to find seaman status where the employee spent less than 30 percent of his time aboard ship.” *Chandris, Inc. v. Latsis*, 515 U.S. 347, 367 (1995) (emphasis added).

consideration is only appropriate where the facts and the law will reasonably support one conclusion” *Id.* at 373. “[W]here undisputed facts reveal that a maritime worker has a clearly inadequate temporal connection to vessels in navigation, the court may take the question from the jury by granting summary judgment or a directed verdict.” *Id.* at 371. *Accord Harbor Tug*, 520 U.S. at 560 (to survive summary judgment, a Jones Act claimant bears the burden of alleging facts sufficient to demonstrate a genuine issue for trial).

II.

SEAMAN STATUS

To satisfy the first part of the test, that the worker contributes to the function of the vessel or the accomplishment of its mission, a claimant need only show that he “do[es] the ship’s work.” *Chandris*, 515 U.S. at 368. This prong of the test is very broad and involves a claimant’s eligibility for seaman’s status. *Id.* There is no dispute here that this part of the test was satisfied; the parties agree that Mr. Dize’s work contributed to the function or mission of the fleet of pilot launch vessels.

The issue raised on appeal relates to the second prong of the test, whether Mr. Dize’s connection to a vessel in navigation was substantial in terms of duration and nature. Mr. Dize argues that the circuit court erred in considering only his time at sea in its analysis, arguing that time spent in maintenance of ships and “additional shore-based duties” should have been considered in the substantial connection analysis. Specifically, Mr. Dize contends that the circuit court erroneously excluded two categories of work activities: (1) maintenance activities, including “painting, sanding, [and] re-gelling the boats, chang-

ing their props, replacing worn zincs, changing rotors and shafts, changing rub rails, and the fueling of all launches”; and (2) “shore-based duties,” such as “running the Solomons Pilot Transfer Station/Maintenance Repair Facility,” “enforcing association policies, keeping supplies on hand, cleaning the shop, managing paint and tools, and ordering fuel.” Mr. Dize argues that, had these activities been considered, he would have satisfied the 30% requirement and avoided summary judgment.

The Association contends that the circuit court’s “entry of summary judgment was proper” because Mr. Dize did not spend a sufficient amount of time aboard a vessel to attain seaman status. It argues that only time spent aboard a vessel should be credited as time spent in service to a vessel in navigation. Accordingly, it maintains that “mere assertions that [Mr. Dize] spent an additional 3-4 hours or 5-6 hours a day . . . doing work in support of the vessel does not rise to the level of evidence substantial enough to defeat summary judgment” because neither the maintenance projects he performed on docked vessels nor his land-based duties constitute “working time aboard a vessel” or “time in service of a vessel,” and they should not be credited toward the “30 percent ‘temporal element’ of seaman’s status.”

Case law supports the Association’s argument, and the circuit court’s conclusion, that the determination whether a person qualifies as a seaman pursuant to the Jones Act involves looking to whether the employee’s duties were of a seagoing nature that exposed the employee to the perils of the sea. See *Harbor Tug*, 520 U.S. at 555 (“[T]he inquiry into the nature of the employee’s connection to the vessel must concentrate on whether the employee’s duties take him to sea. This will give substance to the

inquiry both as to the duration and nature of the employee's connection to the vessel and be helpful in distinguishing land-based from sea-based employees."); *Nunez v. B & B Dredging, Inc.*, 288 F.3d 271, 276 (5th Cir.) (a worker must "spend a substantial part of his work time aboard the vessel" to qualify as a seaman), *cert. denied*, 537 U.S. 1045 (2002); *Sologub v. City of New York*, 202 F.3d 175, 180 (2d Cir. 2000) (plaintiff's duties were land-based and did not have a sufficient connection with a vessel in navigation, in terms of both duration and nature, "when analyzed in light of the Jones Act's intention to protect sea-based maritime workers and not land-based employees"); *Hollingsworth v. Anderson-Tully Co.*, 940 F. Supp. 967, 970 (N.D. Miss. 1996) (employer entitled to summary judgment when plaintiff spent only a small fraction of his working time on board the vessel, and therefore, it was "clear that [plaintiff] was 'simply a land-based employee who happened to be working on the vessel' at the time of his injury"); *Dorr v. Maine Maritime Academy*, 670 A.2d 930, 933 (Me. 1996) ("[B]ecause [plaintiff] spent only twenty-five percent of his time on board the Argo, he had 'only a transitory or sporadic connection to a vessel in navigation, and therefore [his] employment [did] not regularly expose [him] to the perils of the sea.'") (quoting *Chandris*, 515 U.S. at 368). These cases comport with the Supreme Court's statement that the purpose of the Jones Act was 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." *Chandris*, 515 U.S. at 368.

In *Richard v. Mike Hooks, Inc.*, 799 So. 2d 462, 467 (La. 2001), *cert. denied*, 535 U.S. 1018 (2002), the Louisiana Supreme Court held that a repairman employed in a dockside yard, who spent more than 30% of his time repairing vessels, was not a seaman. It noted several factors in reaching this decision: the vessels on which Richard worked were dockside, some of which were on land when he was performing repairs; Richard never ate or slept on the vessels or kept “watch on the vessels overnight”; and he was “aboard small moving vessels once every month, for short durations.” *Id.* at 467. It concluded that these circumstances showed that Richard “was a land-based employee, not a seaman.” *Id.*

The circuit court here looked to all of Mr. Dize’s activities in assessing whether Mr. Dize was a seaman under the Jones Act. It properly focused on the activities he performed on board a vessel that actively subjected Mr. Dize to “the perils of the sea.” There is no dispute that Mr. Dize’s time aboard a pilot launch was less than 30% of his time.

Mr. Dize contends, however, that the 30% rule is merely a rule of thumb, and that the court would be justified in departing from the rule given the circumstances of his employment. The circuit court rejected that contention, stating that a reduction in the threshold was not authorized “without a showing of a specific reason why the threshold is not [an] appropriate tool under the facts of the case.” We agree that Mr. Dize has not given any persuasive reason why the 30% rule should be rejected here.¹⁴

¹⁴ Mr. Dize does not explain what standards a court would apply in deciding when to ignore the 30% standard adopted by the Supreme Court. One reason suggested by other courts is a recent change in duties. In *Becker v. Tidewater, Inc.*, 335 F.3d

The circuit court properly determined, as a matter of law, that Mr. Dize was not a seaman under the Jones Act. Accordingly, it properly granted summary judgment in favor of the Association.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**

376, 389 (5th Cir. 2003), the court recognized an exception to the 30% rule in this situation, stating that (1) “an employee who has worked for years in an employer’s shoreside headquarters and who is then reassigned to a ship in a classic seaman’s job qualifies for seaman status even if he is injured shortly after reassignment”; and (2) “a worker who has been reassigned to a land-based job cannot claim seaman status based on prior service at sea.” *Id.* 335 F.3d at 389-90. *Accord Reeves v. F. Miller & Sons, Inc.*, 967 So. 2d 1178, 1184 (La. Ct. App. 2007) (The narrow exception to the 30% rule applies when “an employee receives a new work assignment in which his *essential duties* are changed”; a court may then assess “his vessel-related work made on the basis of his activities in his new position”). This exception does not apply here.

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Case No. 24-C-08-003232

WILLIAM S. DIZE,
Plaintiff,

v.

ASSOCIATION OF MARYLAND PILOTS,
Defendant.

MEMORANDUM

Now pending before the court are the Motion for Summary Judgment filed by defendant, Association of Maryland Pilots (Pleading No. 72), and the Motion for Summary Judgment filed by plaintiff. (Pleading No. 73). A hearing was held on February 24, 2010, following which the court held the motions *sub curia* for further review of the authority cited by the parties.

The primary issue posed by the motions involves plaintiff's claim under the Jones Act. 46 U.S.C. § 30104. Plaintiff asserts that he is entitled to a summary adjudication that he is a seaman within the terms of the Act, and defendant asserts that it is entitled to an adjudication that as a matter of law plaintiff is not a seaman within the meaning of the Act.

Plaintiff asserts that he suffered injury in the course of his employment with defendant as the result of a sandblasting operation upon the hull of the pilot launch M/V Annapolis Pilot performed in June 2007. At that time plaintiff was the Assistant

Station Manager of the Solomons Pilot Station. Plaintiff's work schedule required that he remain on call at the station around the clock in alternating weeks. During those weeks he would operate the pilot launch as required in order to effect pilot transfers, and would also perform other work involving the vessels owned by defendant, as well as work involving the station itself.

The issue before the court is governed by *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995). In that case, the Supreme Court undertook to clarify what employment-related-connection to a vessel in navigation is necessary for a maritime worker to qualify as a seaman under the Jones Act. Noting that Jones Act coverage depends "not on the place where the injury is inflicted . . . but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as such to the vessel and its operation in navigable waters," the Court adopted the following test:

[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. The Jones Act's protections, like the other admiralty protections for seamen, only extend to those maritime employees who do the ship's work. But this threshold requirement is very broad: All who work at sea in the service of a ship are eligible for seaman status.

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. The fundamental purpose of this substantial connection requirement

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

515 U.S. at 368-69 (citations and internal quotation marks omitted). The Court went on to give additional content to the durational element, stating that:

[S]eamanship status is not *merely* a temporal concept, but we also believe that it necessarily includes a temporal element. A maritime worker who spends only a small fraction of his working time on board a vessel is fundamentally land based and therefore not a member of the vessel's crew, regardless of what his duties are. Naturally, substantiality in this context is determined by reference to the period covered by the Jones Act plaintiff's maritime employment, rather than by some absolute measure. Generally, the Fifth Circuit seems to have identified an appropriate rule of thumb for the ordinary case: A worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act. 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.

515 U.S. at 371 (emphasis in original).

If reasonable persons, applying the proper legal standard, could differ as to whether the employee was a member of a crew, the question is for the jury.

However, where undisputed facts reveal that a maritime worker has a clearly inadequate temporal connection to vessels in navigation, then summary judgment is appropriate. *Id.* at 371.

Each party has proffered facts to support its respective view of the correct application to this case of the test set forth in *Chandris*. According to defendant, its records show that 18.99% of plaintiff's total work time in 2006 and 19.79% of his total work time in 2007 were spent on the water performing his duties as a launch operator.¹

According to plaintiff's calculations, the time spent on the water during the period preceding the injury is as follows:

Year	Time on Water
2002	18.40%
2003	18.71%
2004	19.73%
2005	21.43%
2006	16.06%
2007	16.06%

Plaintiff also points to additional hours that he spent working on re-fit projects, as follows: 110 hours on the re-fit of the M/V Baltimore Pilot in 2002-2003; 210 hours on the re-fit of the M/V Maryland Pilot in 2003-2004; 148 hours on the re-fit of the M/V Calvert Pilot in 2004; 219 hours on the re-fit of the M/V Calvert Pilot in 2005; 200 hours on the re-fit of the

¹ These percentages are based on a comparison of the hours shown by log entries with total hours per year of 2,184 based on the week on/week off schedule.

M/V Pilot Express in 2005-2006; and 100-150 hours on the M/V Pilot Dispatch repair project in 2005. At the hearing, defendant's counsel estimated that these hours would amount to another 3 to 5% of plaintiffs total work hours. This calculation was not challenged by plaintiff's counsel.

Plaintiff also points to evidence of additional hours worked by plaintiff, which, he asserts, could qualify as time spent in the service of a vessel or fleet of vessels. He cites the deposition testimony of James Merryweather, a supervisor of plaintiff, that many of plaintiff's duties as Assistant Station Manager were in support of the fleet of vessels in navigation. These tasks included maintenance of the vessels; enforcement of Association policies and work rules; servicing vessels in navigation; keeping shop supplies on hand to service the vessels; ordering fuel; managing the repair shop; dispatching pilots and launch operators to ships; assisting with cleaning the quarters on the boats; and supervising fueling.²

The dispositive question is whether the 30% requirement adopted by the Supreme Court applies only to time spent on the water or it should include other time spent in the performance of duties that might be viewed as seamen's duties or that contributed to the operation of vessels. There is no dispute that the time spent on the vessel by plaintiff falls well short of 30% of his work hours. If the time spent on re-fit projects were added thereto, it would still

² There is no evidence about the number of hours spent in the performance of these duties, and Merryweather testified that portions of these duties were performed by others. The court has not considered which party would have the burden of demonstrating the number of such hours in terms of allocating the summary judgment burden. In the view that the court takes of the case, the number of these hours is not material.

fall well short of 30%. Although time spent on other activities around the station that contributed to the operation of the vessels is not specifically enumerated in hours, for summary judgment purposes, the court will assume that it would raise the figure to over 30%.

The court has reviewed the authority cited by defendant, which supports defendant's contention that the 30% threshold is limited to time spent on the water. See *Nunez v. B&B Dredging, Inc.*, 288 F.3d 271 (5th Cir. 2002); *Roberts v. Cardinal Services, Inc.*, 266 F.3d 368 (5th Cir. 2001); *Butcher v. Superior Offshore Intl, LLC*, 2009 A.M.C. 173 (E.D. La. 2008); *Hollingsworth v. Anderson-Tully Co.*, 940 F. Supp. 967 (M.D. Miss. 1996); *Hayles v. Sonat Exploration Co.*, 868 So. 2d 276 (La. Ct. App. 2004). Other authority reviewed by the court also supports this proposition. See *Sologub v. City of New York*, 202 F.3d 175 (2d Cir. 2000); *Landry v. Specialty Diving of Louisiana, Inc.*, 299 F. Supp. 2d 629 (E.D. La. 2003); *Scott v. MGI America, Inc.*, 2001 U.S. Dist. LEXIS 2022 (N.D. Ill. Feb. 21, 2001); *Dorr v. Maine Maritime Academy*, 670 A.2d 930 (Me. 1996).

Plaintiff cites *Ryan v. United States*, 331 F. Supp. 2d 371 (D. Md. 2004). In *Ryan*, the court determined that an approach that evaluated the durational test based solely on activities that were performed on the water was "too narrow." The court held that it was appropriate to take into consideration not only work that Ryan actually performed on the dive boat, but also the work he performed on shore in relation to the diving mission. In support of this conclusion, the court relied upon *Barrett v. Chevron Company USA, Inc.*, 781 F.2d 1067 (5th Cir. 1986). This court's review of *Barrett* does not lead it to conclude that *Barrett* supports such a result; in fact, it seems to

support the opposite conclusion. In any event, *Ryan* appears to be the only case after *Chandris* that expressly holds that time not on the water should be counted.

Plaintiff contends that the facts of the *Chandris* case itself support the conclusion that the countable time does not include only time spent at sea.³ However, the Court did not rule that the plaintiff in that case had sufficient time to satisfy the duration requirement, but remanded the case because the instructions to the jury were incorrect. Language used in the opinion supports the view that only time aboard a vessel in navigation should be counted. *See* 515 U.S. at 369 (“If it can be shown that the employee performed a significant part of his work on board the vessel on which he was injured, with at least some degree of regularity and continuity, the test for seaman status will be satisfied”) (*quoting* Benedict on Admiralty); 515 U.S. at 373 (“[T]o qualify as a seaman under the Jones Act, a maritime employee must have a substantial employment-related connection to a vessel *in navigation*. Of course, any time Latsis spent with the *Galileo* while the ship was out of navigation could not count as time spent *at sea* for purposes of that inquiry.”) (internal citations omitted and second emphasis added).

Furthermore, reflection upon the reason for the requirement adopted by the Court in *Chandris* convinces the court that this conclusion is the proper one. The purpose of the duration requirement is to ensure that the individual’s service regularly exposes him to the perils of the sea. That purpose is best

³ According to the opinion, Latsis claimed that he spent 72% of his time at sea, and his supervisor testified that the figure was closer to 10%. 515 U.S. at 350.

served by a test that measures time spent aboard a vessel, regardless of whether other work activities contribute to the operation of a vessel. Time spent in other tasks on land, even if those activities are activities traditionally performed by seamen or are activities that contribute to the navigational operation of the vessel, do not contribute to this purpose. Therefore, the duration requirement must be measured in terms of time actually spent aboard vessels in navigation.

Finally, plaintiff notes that the Court stated that departure from the 30% threshold would be justified in appropriate cases. In the court's view, that statement was not intended to authorize a reduction in the threshold without a showing of a specific reason why the threshold is not appropriate tool under the facts of the case. *See Roberts v. Cardinal Services, Inc., supra*, 266 F.3d at 377, and cases cited therein.

For these reasons, the court is convinced that as a matter of law, plaintiff is not a seaman within the meaning of the Jones Act, which compels the conclusion that his claim under that statute must fail. Therefore, defendant is entitled to summary judgment upon the claim under the Jones Act.

The remaining issue involves plaintiff's claim for unseaworthiness. The court concludes that plaintiff is not entitled to recover upon a seaworthiness claim for two reasons. First, a claim for seaworthiness was not pled in this action. Second, plaintiff has not established the existence of a material dispute of fact as to whether the vessel was in navigation at the time of the injury. Therefore, the Motion for Summary Judgment will be granted as to this claim as well.

A separate order will be entered.

Dated: February 25, 2010

/s/ W. Michel Pierson
Judge W. Michel Pierson

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Case No. 24-C-08-003232

WILLIAM S. DIZE,
Plaintiff,

v.

ASSOCIATION OF MARYLAND PILOTS,
Defendant.

ORDER

For the reasons set forth in a Memorandum of even date, it is, this 25th, day of February, 2010,

ORDERED that plaintiff's Motion for Summary Judgment (Pleading No. 73) be and it hereby is Denied, and further

ORDERED that defendant's Motion for Summary Judgment (Pleading No. 72) be and it hereby is Granted, and further

ORDERED that judgment be entered in favor of defendant, Association of Maryland Pilots, costs to be paid by plaintiff.

/s/ W. Michel Pierson

Judge W. Michel Pierson

IN THE COURT OF APPEALS OF MARYLAND

No. 56, Sept. Term, 2012

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

v.

ASSOCIATION OF MARYLAND PILOTS,
Respondent.

[Filed Nov. 21, 2013]

ORDER

The Court having considered the motion for reconsideration filed in the above-captioned case, it is this twenty-first day of November, 2013,

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, DENIED.

/s/ Mary Ellen Barbera
Chief Judge

STATUTORY PROVISIONS INVOLVED

1. The Jones Act, 46 U.S.C. § 30104, provides:

46 U.S.C. § 30104. Personal injury to or death of seamen

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.

2. Section 2(3)(G) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 902(3)(G), provides:

§ 902. Definitions

When used in this chapter—

* * *

(3) The term “employee” means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

* * *

(G) a master or member of a crew of any vessel

....

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

SCOTT S. HARRIS
Clerk of the Court
(202) 479-3011

February 11, 2014

Mr. David C. Frederick
Kellogg Huber, et al.
1615 M Street, N.W.
Suite 400
Washington, DC 20036

Re: Jennifer Evans Dize, etc.
v. Association of Maryland Pilots
Application No. 13A818

Dear Mr. Frederick:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to the Chief Justice, who on February 11, 2014, extended the time to and including April 18, 2014.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk
by /s/ SANDY SPAGNOLO
Sandy Spagnolo
Case Analyst

[attached notification list omitted]