No. 94-325

CHANDRIS, INC., et al., PETITIONERS *v.* ANTONIOS LATSIS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 14, 1995]

Justice Stevens , with whom Justice Thomas and

The Jones Act, [n.1] 46 U. S. C. App. §688, provides, in part, "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law." In this case, it is undisputed that respondent, Antonios Latsis, was injured in the course of his employment. When the injury occurred, he was on board the steamship *Galileo*, a vessel in navigation in the Atlantic Ocean. He was therefore exposed to the perils of the sea; indeed, as the Court of Appeals correctly noted, "his injury was the result of such a peril." [n.2] Respondent was not a mere passenger; he was performing duties for his employer that contributed to the ship's mission. In common parlance, then, he was a member of the crew of the *Galileo*. I think these facts are sufficient to establish that respondent was, as a matter of law, a "seaman" within the meaning of the Jones Act at the time of his injury. Although the character of Latsis' responsibilities before the voyage began and after it ended would be relevant in determining his status if he had been injured while the ship was in port, they have no bearing on his status as a member of the *Galileo*'s crew during the voyage.

This conclusion follows, first, from the language of the Jones Act and of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 *et seq*. The latter, a federal workers' compensation scheme for shore based maritime workers, exempts any "master or member of a crew of any vessel," 33 U.S.C. § 902(3) (G)--a formulation that, we have held, is coextensive with the term "seaman" in the Jones Act. *McDermott International, Inc.* v.*Wilander*, 498 U.S. 337, 347 (1991). In ordinary parlance, an employee of a ship at sea who is on that ship as part of his employment and who contributes to the ship's mission is both a "seaman" and a "member of [the] crew of

[the] vessel." Indeed, I am not sure how these words can reasonably be read to exclude such an employee. Surely none of the statutory language suggests that the individual must be a member of the ship's crew for longer than a single voyage.

My conclusion also comports with the clear purpose of the Jones Act and of the other maritime law remedies traditionally afforded to seamen: [n.3] to protect maritime workers from exposure to the perils of the sea. In *Wilander*, 498 U. S., at 354, we endorsed Chief Justice Stone's explanation of the admiralty law's favored treatment of seamen. Chief Justice Stone wrote:

"The liability of the vessel or owner for maintenance and cure, regardless of their negligence, was established long before our modern conception of contract. But it, like the liability to indemnify the seaman for injuries resulting from unseaworthiness, has been universally recognized as an obligation growing out of the status of the seaman and his peculiar relationship to the vessel, and as a feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to sea in ships are subjected. They are exposed to the perils of the sea and all the risks of unseaworthiness, with little opportunity to avoid those dangers or to discover and protect themselves from them or to prove who is responsible for the unseaworthiness causing the injury.

"For these reasons the seaman has been given a special status in the maritime law as the ward of the admiralty, entitled to special protection of the law not extended to land employees. Justice Story said in *Reed* v. *Canfield*, Fed. Cas. No. 11,641, 1 Sumn. 195, 199: `Seamen are in some sort co adventurers upon the voyage; and lose their wages upon casualties, which do not affect artisans at home. They share the fate of the ship in cases of shipwreck and capture. They are liable to different rules of discipline and sufferings from landsmen. The policy of the maritime law, for great, and wise, and benevolent purposes, has built up peculiar rights, privileges, duties, and liabilities in the sea service, which do not belong to home pursuits.' " *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 85, 104-105 (1946) (dissenting opinion) (citations omitted).

This exposure to the perils of the sea is what separates seamen from longshoremen, who are subject to entirely different, and usually less advantageous, remedies for injuries suffered in the course of their employment. Chief Justice Stone continued:

"It is for these reasons that throughout the long history of the maritime law the right to maintenance and cure, and later the right to indemnity for injuries attributable to unseaworthiness, have been confined to seamen. Longshoremen and harbor workers are in a class very different from seamen, and one not calling for the creation of extraordinary obligations of the vessel or its owner in their favor, more than other classes of essentially land workers. Unlike members of the crew of a vessel they do not go to sea; they are not subject to the rigid discipline of the sea; they are not prevented by law or ship's discipline from leaving the vessel on which they maybe employed; they have the same recourse as land workers to avoid the hazards to which they are exposed, to ascertain the cause of their injury and to prove it in court." *Id.*, at 105.

In some cases, workers who labor on ships close to shore may face sufficient exposure to the perils of the sea to merit seaman status. The determination of seaman status will depend on the particular facts of the case. See, *e.g.*, *Desper* v. *Starved Rock Ferry Co.*, 342 U.S. 187 (1952); [n.4] *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370 (1957); *Grimes* v. *Raymond Concrete Pile Co.*,356 U.S. 252 (1958); *Butler* v. *Whiteman*, 356 U.S. 271 (1958). When the extent and consequence of the employee's exposure to the seaman's hazards is facially unclear, a test like the majority's may be appropriate. But no ambiguity exists when an employee is injured on the high seas. Unquestionably, that employee faces the perils associated with the voyage. Incontrovertibly, that employee is a "master or member of a crew of any vessel," within the meaning of the LHWCA, and hence a "seaman" under the Jones Act. Whatever treatment Congress intended for employees working in proximity to the shoreline, certainly it intended to extend Jones Act protection to the captain and crew of a ship on the high seas.

This conclusion is consistent with every Jones Act case that this Court has decided. Justice Cardozo's opinion for the Court in*Warner* v. *Goltra*, 293 U.S. 155 (1934),set a course

that we have consistently followed. Explaining our holding that the master of a tugboat is a "seaman," he explained that "[i]t is enough that what he does affects `the operation and welfare of the ship when she is upon a voyage.' " *Id.*, at 157. [n.5] Indeed, apart from the argument that a seaman must assist in performing the transportation function of the vessel--an argument finally put to rest in*McDermott International, Inc* v. *Wilander*, 498 U.S. 337 (1991)--I am not aware of a single Jones Act case decided by this Court, other than *Warner*, [n.6] in which anyone even *argued* that an employee who was aboard the ship contributing to the ship's mission while the vessel was in navigation on the high seas was not a seaman. In light of the purposes of the Jones Act, that position is simply too farfetched. As a leading admiralty treatise has recognized, "[i]t seems never to have been questioned that any member of a ship's company who actually goes to sea, no matter what his (or her) duties may be, is a seaman." G. Gilmore & C. Black, Law of Admiralty §6-21, p. 331 (2d ed. 1975).

Surely nothing in *Wilander* contradicts this basic proposition. In that opinion, we made several references to the importance of work performed on a voyage. Thus, we quoted from leading 19th century treatises on admiralty: " `The term mariner includes all persons employed on board ships and vessels during the voyage to assist in their navigation and preservation, or to promote the purposes of the voyage. . . . [A]t all times and in all countries, all the persons who have been necessarily or properly employed in a vessel as co laborers to the great purpose of the voyage, have, by the law, been clothed with the legal rights of mariners.' " 498 U. S., at 344-345 (emphasis deleted), quoting E. Benedict, American Admiralty §§278, 241, pp. 158, 133-134 (1850). "An 1883 treatise declared: `All persons employed on a vessel to assist in the main purpose of the voyage are mariners, and included under the name of seamen.' M. Cohen, Admiralty 239." 498 U. S., at 346. Summarizing our conclusion, we wrote:

> "We believe the better rule is to define `master or member of a crew' under the LHWCA, and therefore `seaman' under the Jones Act, solely in terms of the employee's connection to a vessel in navigation. This rule best explains our case law and is consistent with the pre-Jones Act interpretation of `seaman' and Congress' land based/sea based

> distinction. All who work at sea in the service of a ship face those particular perils to which the protection of maritime law, statutory as well as decisional, is directed." *Id.*, at 354.

Our opinion in *Wilander* is thus entirely consistent with my view that while a vessel is at sea every member of its crew is a seaman within the meaning of the Jones Act.

Despite the language, history, and purpose of the Jones Act, the Court today holds that seaman status may require more than a single ocean voyage. The Court's opinion thus obscures, if it does not ignore, the distinction between the perils of the sea and the risks faced by maritime workers when a ship is moored to a dock. The test that the Court formulates may be appropriate for the resolution of cases in the latter category. The Court fails, however, to explain why the member of the crew of a vessel at sea is not always a seaman.

Respondent's argument, "that any worker who is assigned to a vessel for the duration of a voyage and whose duties contribute to the vessel's mission must be classified as a seaman respecting injuries incurred on that voyage," Brief for Respondent 14, is not inconsistent with the Court's view, *ante*, at 11-13, that an employee must occupy a certain status in order to qualify as a seaman. It merely recognizes that all members of a ship's crew have that status while the vessel is at sea. In contrast, when the ship is in a harbor, further inquiry may be necessary to separate land based from sea based maritime employees. The Court is therefore simply wrong when it states that a " `voyage test' would conflict with our prior understanding of the Jones Act as fundamentally status based, granting the negligence cause of action to those maritime workers who form the ship's company,"*ante*, at 14. The "ship's company" is readily identifiable when the ship is at sea; the fact that it may be less so when the ship is in port is not an acceptable reason for refusing to rely on the voyage test in a case like this one.

The Court is also quite wrong to suggest that our prior cases "indicate that a maritime worker does not become a `member of a crew' as soon as a vessel leaves the dock," *ante*, at 13. In neither of the two cases on which it relies to support this conclusion did the injured workman

even claim the status of a seaman. In*Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, 459 U.S. 297 (1983), we held that an employee of a firm that was building the foundation of a sewage treatment plant, which extended over the Hudson River adjacent to Manhattan, was covered by the LHWCA because he was injured while working on a barge in navigable waters. The Court of Appeals had denied coverage on the ground that this worker was not engaged in maritime employment. Thus, *Perini* had nothing to do with any possible overlap between the Jones Act and the LHWCA; this Court's reversal merely found a sufficient maritime connection to support LHWCA coverage of an admittedly shore based worker.

The other case that the Court cites, *Parker* v. *Motor Boat Sales, Inc.*, 314 U.S. 244 (1941), involved a janitor who had drowned while riding in a motor boat on the James River near Richmond. The Court of Appeals had held that his widow was not entitled to compensation under the LHWCA on the alternative grounds (1) that the janitor was not acting in the course of his employment when the boat capsized, and (2) that the LHWCA did not apply because Virginia law could provide compensation. See *id.*, at 245. As in *Perini*, our opinion reversing that decision did not discuss the Jones Act, because no one had even mentioned the possibility that the janitor might be a "seaman."
Because *Parker* was decided during the 19 year period "during which the Court did not recognize the mutual exclusivity of the LHWCA and the Jones Act,"*Wilander*, 498 U. S., at 348, [n.7] it is not at all clear that the Court, if asked to do so, would not have found that the janitor was a Jones Act seaman as well as an LHWCA covered employee. Accordingly, the cases cited by the majority lend no support to its holding that the member of a crew of a ship at sea is not always a seaman.

The Court's only other justification for refusing to apply a voyage test is its purported concern about a worker who might "walk into and out of coverage in the course of his regular duties." *Ante* at 15 (internal quotation marks omitted). Because the only way that a seaman could walk out of Jones Act coverage during a voyage would be to quit his job and become a passenger (or possibly jump overboard), I take the majority's argument to mean that a single voyage is not a long enough time to establish seaman

status. [n.8] I simply do not understand this argument. Surely a voyage is sufficient time to establish an employment related, status based connection to a vessel in navigation that exposes the employee to the perils of the sea. The majority cannot explain why an employee who signs on for a single journey is any less a "seaman" or "member of a crew" if he intends to become an insurance agent after the voyage than if he intends to remain with the ship. What is important is the employee's status at the time of the injury, not his status a day, a month, or a year beforehand or afterward.

Apparently, the majority's real concern about walking in and out of coverage is that an employer will be unable to predict which of his employees will be covered by the Jones Act, and which by the LHWCA, on any given day. I think it is a novel construction of the Jones Act to read it as a scheme to protect employers. [n.9] But even if Congress had shared the Court's concern, this case does not implicate it in the least. We are talking here about a lengthy voyage on the high seas. The employer controls who goes on that voyage; he knows, more or less, when that voyage will begin and when it will end. And, but for the majority's decision today, he would know that while the ship is at sea, all his employees thereon would be covered by the Jones Act and not by the LHWCA. Thus, no one is walking out of Jones Act coverage and into LHWCA coverage (or vice versa) without the employer's knowledge and control. Once again, the majority's concern--and its method of determining seaman status--is properly directed at injuries occurring while the ship is at port.

As a matter of history, this concern with oscillating back and forth between different types of compensation systems recalls a very different and far more serious problem: the difficulty of defining who is a "maritime employee" (a class of workers that includes both seaman and longshoremen) and who is not. Over the powerful dissent of Justice Holmes, in *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917), the Court held that the constitutional grant of admiralty and maritime jurisdiction to the federal courts prevented the State of New York from applying its workmen's compensation statute to a longshoreman who was injured on a gang plank about 10 feet seaward of Pier 49 in New York City. Jensen was a shore based worker who had walked out of the coverage of the state law into an

unprotected federal area--the area seaward of the shoreline. In enacting the LHWCA, Congress in 1927 responded to *Jensen* and its progeny by extending federal protection to shore based workers injured while temporarily on navigable waters. The statute excluded Jones Act seamen, on the one hand, and shore based workers while they were on the landward side of the *Jensen* line, on the other. As we have explained on more than one occasion, then, the LHWCA was originally a "gap filling" measure intended to create coverage for those workers for whom, after *Jensen*, States could not provide compensation. See, *e.g.*, *Norton* v. *Warner Co.*, 321 U.S. 565, 570 (1944); *Davis* v. *Department of Labor and Industries of Wash.*, 317 U.S. 249, 252-253 (1942); see also S. Rep. No. 973, 69th Cong., 1st Sess., 16 (1926). [n.10]

Thus, the majority's concern about employees "walking in and out of coverage" evokes images of a real problem engendered by*Jensen - the* problem of employees changing their legal status, sometimes many times a day, merely by walking from one place to another in the course of their employment. That problem is not implicated in this case. At the time of his injury Latsis was employed, with the full knowledge of his employer, on a ship at sea. He could not walk out of coverage until the voyage was over. At the end of the voyage, if Latsis had taken on other duties, wholly or partly on land, and had been injured while so engaged, then the majority's concern might have substance. But in this case, the majority's concern--and its test for seaman status--is completely misplaced.

In my opinion every member of the crew of a vessel is entitled to the protection of the Jones Act during a voyage on the high seas, even if he was not a part of the crew before the ship left port, and even if he abandoned the ship the moment it arrived at its destination. This view is consistent with every Jones Act case this Court has ever decided, and it is faithful to the statutory purpose to provide special protection to those who must encounter the perils of the sea while earning their livelihood. Whether a sailor voluntarily signs on for a single voyage, as Jim Hawkins did, [n.11]or, like Billy Budd, is impressed into duty against his will, [n.12] he is surely a seaman when his ship sails, whatever fate might await him at the end of the voyage.

NOTES

[1] The "Jones Act" is actually §33 of the Merchant Marine Act, 1920, 41 Stat. 1007.

[2] "Latsis's employment did expose him to the perils of the sea--in fact, his injury was the result of such a peril in the sense that while on board a seaman is very much reliant upon and in the care of the ship's physician. If that physician is unqualified or engages in medical malpractice, it is just as much a peril to the mariner on board as the killer wave, the gale or hurricane, or other dangers of the calling." 20 F. 3d 45, 55 (CA2 1994).

[3] These remedies are maintenance and cure and recovery for unseaworthiness. See G. Gilmore & C. Black, Law of Admiralty, ch. VI (2d ed. 1975).

[4] In *Desper*, we held that a workman on a moored barge was not a "seaman" at the time of his death even though "he was a probable navigator in the near future." 342 U. S., at 191. We noted that "[t]he many cases turning upon the question whether an individual was a `seaman' demonstrate that the matter depends largely on the facts of the particular case and the activity in which he was engaged at the time of injury. . . . [T]here was no vessel engaged in navigation at the time of the decedent's death." *Id.*, at 190-191.

[5] The quotation is from a pre-Jones Act case, *The Buena Ventura*, 243 F. 797, 799 (SDNY 1916). Earlier in his opinion, Justice Cardozo had noted: "In the enforcement of the statute a policy of liberal construction announced at the beginning has been steadily maintained." *Warner*, 293 U. S., at 156.

[6] Even in *Warner*, no one contested the basic proposition that an employee of a ship at sea is a "seaman." Instead, the issue in that case was whether the term "seaman" extended to the *captain* of such a ship, or whether it referred only to lower level employees. The Court, applying the "liberal construction" that Congress intended, held that the master was a "seaman."

[7] During this period, the Court incorrectly treated stevedores working on moored vessels as seamen covered by

the Jones Act under the pre-LHWCA ruling in *International Stevedoring Co.* v.*Haverty*, 272 U.S. 50 (1926).
See *Wilander*, 498 U. S., at 348-349.

[8] Or at least, it is not necessarily a long enough time. It depends on the facts. See *ante*, at 24-25.

[9] The Jones Act was passed to overturn the harsh rule of *The Osceola*, 189 U.S. 158 (1903), which disallowed any recovery by a seaman for negligence of the master or any member of the crew of his ship under general maritime law. *McDermott International, Inc.* v. *Wilander*, 498 U.S. 337, at 342 (1991). The aim of the statute, then, was to expand the remedies available to employees, not to aid their employers.

[10] Whereas the LHWCA as enacted in 1927 responded to the problem of employees who walked out of state coverage every time they boarded a ship, the 1972 Amendment to that Act responded to the opposite concern--longshoremen who walked out of federal coverage every time they left the ship. Because state compensation schemes were sometimes less generous than the LHWCA, Congress expanded the federal coverage to encompass injuries occurring on piers and adjacent land used for loading and unloading ships. See H. R. Rep. No. 92-1441, pp. 10-11 (1972). Because the class of workers protected by the LHWCA continued to be composed entirely of shore based workers, the 1972 amendment appropriately preserved the exclusion of Jones Act seamen. It did not alter the original 1927 Act's constructive definition of "seaman" as "master or member of a crew of any vessel."

[11] R. Stevenson, Treasure Island (1883).

[12] H. Melville, Billy Budd (1924).