1995

The Ocean Research Vessel Act of 1965: An Inequitable Result Suggests Reevaluation

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THE OCEAN RESEARCH VESSEL ACT OF 1965: AN INEQUITABLE RESULT SUGGESTS REEVALUATION

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A PAPER SUBMITTED IN PARTIAL FULFILLMENT OF

THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF MARINE AFFAIRS

UNIVERSITY OF RHODE ISLAND

1995

MAJOR PAPER

OF

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APPROVED:

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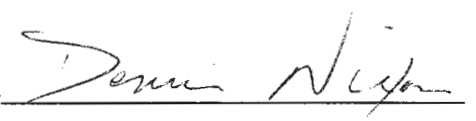
PROFESSOR 

UNIVERSITY OF RHODE ISLAND
1995

ABSTRACT

In 1965 Congress passed the Ocean Research Vessel Act (ORVA) with the purpose of encouraging the nation's efforts in oceanographic studies. Section 4 of the ORVA states that "scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes...". As a result of a literal interpretation of this wording, the Courts have ruled that scientific personnel are excluded from the beneficial remedies afforded all other seamen under the Jones Act. Some courts have also denied an injured scientist "seaman status" under the general maritime law. This paper argues that Congress never intended to exclude scientists from the statutory protection of the Jones Act, and that this inequitable circumstance has arisen due to faulty interpretation of the ORVA's legislative history. Scientists on research vessels work in a hazardous environment. They are exposed to the "perils of the sea" to the same degree as all other blue water seamen. The paper calls for Congressional re-evaluation of the ORVA, with the purpose of amending Section 4, in order to clarify its original meaning and ensure an injured scientist the same remedies afforded all seamen.

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PREFACE

On a sunny Wednesday afternoon in mid-June, my computer and printer were both humming, churning out what I hoped would be the final draft of this paper. I felt it was a good paper, perhaps very good. I had researched the Ocean Research Vessel Act of 1965 and all subsequent court decisions which referenced that law. An inequity seemed to exist. Compared to their shipmates, scientists aboard research vessels are at a considerable disadvantage with respect to legal remedies available in case of personal injury. In addition, the legislative history of the Act did not seem to support the judicial outcome. While the number of persons who were affected by this inequity was not large, the issue was significant for those who were so affected, and therefore seemed worthy of consideration.

I put the paper into the proper format, packaged it up, and prepared to submit it. Only hours before I dropped the envelope in the mail, I learned that the United States Supreme Court had handed down a new decision on a "seaman's status" case. Interesting I thought. I was quite surprised that a "seaman status" case had made it up to the Supreme Court without my having unearthed it. But it was not an ORVA seaman status case. I didn't imagine that it would

significantly impact the paper which I had just completed. I was extremely interested in reading the decision, but that would have to wait. My bags were already packed and I was on my way to Alaska, where I was scheduled to take command of a small research vessel for the summer[1].

Upon my return from sea, I anxiously called my advisor to inquire what his reaction to my paper had been. I was extremely disheartened to learn that the Court's June seaman status decision was a far reaching one which might have considerable impact on my conclusions. The paper would have been acceptable except for that decision handed down the same day that the paper was completed. He suggested I get a copy of the decision, study it, and then get back to him.

I immediately logged on to the Internet, and downloaded a copy of the Court reporter's syllabus for the decision. It would be a few more days before I could get a copy of the full opinion. I could tell from the syllabus, however, that the Court had used this case as a forum to elaborate on the broad issue of standards a maritime worker must meet in order to attain that valued classification known as "seaman's status." The case in question was a Jones Act suit brought by a superintendent engineer injured while

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[1]The author is a licensed Master Mariner who specializes in research vessel operation.

working aboard a cruise ship.[2] The vessel was not a research vessel, and the injured employee was not a scientist. The decision in this case, however, was a statement by the Court on the broader question of seaman status for all maritime workers.

After careful consideration of the decision and the concurring opinion in *Chandris v. Latsis*, I feel that the arguments presented and the conclusions drawn in this work remain valid. The paper which follows has been re-written, where necessary, in order to incorporate the new jurisprudence on "seaman status", as elaborated by the Supreme Court in June.

The decision in *Chandris* may well have a major impact on "seaman status" cases. It is likely to do so. Only time will tell. The *Chandris* decision may be a turning point in the Court's general direction on Jones Act "seaman status" cases which has been evident for over half a century, since the enactment of the Jones Act. The Court's decision may serve to limit those maritime workers eligible for such "status." If so, certainly some scientists will be affected by the *Chandris* decision. Under the *Chandris* rule alone, some scientists probably would fail to qualify for "seaman status", and thereby Jones Act applicability. But not all

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[2]Chandris v. Latsis, 1995 U.S. LEXIS 4047, *

will be so affected. Some oceanographic scientists and technicians will pass the *Chandris* test, and yet still be denied Jones Act protection due to the decisional law pertaining to the ORVA.

Therefore, in the wake of the Supreme Court's *Chandris* decision, the inequity outlined in this paper still exists. It is likely that fewer sea-going scientists will be denied the valuable "seaman status" classification under the ORVA jurisprudence because some will already be disqualified from such status due to failure to meet the *Chandris* test. But for scientists who **do** meet the *Chandris* test, the inequity will now be even greater. The conclusions found in this paper still stand. An inequity exists due to judicial misinterpretation of Congressional intent in enacting the ORVA.

I. INTRODUCTION

Sea-going is a dangerous enterprise. Seamen confront the perils of the sea -- the power and whim of wind, wave and tide. The missions of water-borne ventures often require voyages of great distance, far from safe refuge, depriving seamen of the facilities, support and comfort of home. Society has long recognized the hardships and dangers faced by seamen. As early as Medieval times, the ancient sea codes provided seamen the right of "maintenance and cure" for illness and injuries sustained at sea.[1] In the United States the law has long afforded greater remedy for seamen than for land based workers.[2]

Three basic remedies are available to an injured seaman under present United States law. Two are maintained under the general maritime law: the right to "maintenance and cure" and the right to maintain an action against a vessel or shipowner for injuries caused by breach of the warranty of seaworthiness.[3] The third is a statutory right, available since 1920, to bring suit for injuries sustained,

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[1]Gilmore and Black, The Law of Admiralty, 2d Edition, Mineola: The Foundation Press, 1975 @ 281; Also see J. Sims, The American law of maritime personal injury and death: An historical review. 55 Tul. L. Rev. 973, @974- 977 (June 1981)

[2]Frank 1. Maraist, Admiralty in a Nutshell 2d Edition. St. Paul:West Publishing Co. 1988 , p.175

[3]The Osceola, 189 U.S. 158 (1903)

against a negligent employer under the provisions of the Jones Act.[4] The right to maintain an action under any of the above doctrines depends upon the injured worker's status, i.e. whether he or she can be classified as a "seaman". Therefore, a great body of litigation and case law has developed over the issue of "seaman status".

In 1965 Congress enacted the Ocean Research Vessel Act (ORVA)[5], intended to encourage oceanographic research by removing several restrictions on research vessels which previously had hampered the nation's expansion in the marine sciences.[6] Prior to the enactment of this law, research vessels were required to be inspected as either passenger vessels or cargo vessels. The operators of such vessels maintained that regulatory requirements for passenger and cargo vessels were not appropriate for the special construction and operation of research vessels.[7] One of

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[4]46 U.S.C.A. § 688. The Jones Act is the common name for a section of the Merchant Marine Act of 1920 which established an employers liability to an injured seaman caused by the negligence of any of the officers, agents, or employees of the employer.

[5]Ocean Research Vessel Act of 1965, 46 U.S.C.A. §§ 441-445

[6]Senate, Commerce Committee, Exemption of oceanographic research vessels from certain inspection laws: Purpose of the bill. 89th Congress, 1st session, 1965, S.R. 168.

[7]see United States House of Representatives, Oceanographic Research Vessel Exemption: Hearings before the Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries. 89th Congress, 1st session, No.89-8, May

the problems faced by the research vessel operators was that scientific personnel had to be classified as either passengers or crew. Vessels were only permitted to carry a limited number of passengers before being required to meet the comprehensive safety standards for passenger carrying vessels, with which few research vessels could comply.[8] On the other hand, if considered members of the crew, scientists were required to apply for, and obtain, Merchant Mariner's documents from the United States Coast Guard (USCG). This was seen as an inefficient requirement which was both costly and time consuming.

The method chosen by Congress to grant the relief sought by research vessel operators[9] was to declare that:

> Sec. 2 - "An oceanographic research vessel shall not be considered a passenger vessel..."[10]

and

4,5, 1965.

[8]Id.

[9]It is worth noting that not only was oceanographic research deemed to be in the public interest, but at that time, most research vessels operating in the United States were either owned or supported by the federal government. Even today, when there is a larger commercial research vessel industry, the United States government maintains operational and/or financial control over a fleet of over 60 vessels. Philip A. Sacks, "The changing environment for the federal research vessel fleet: Where lies the future?" Unpublished paper, University of Rhode Island, Kingston, 1995.

[10]46 U.S.C.A. § 442. Repealed 1983 by P.L. 98-89, now contained in 46 U.S.C.A. § 3302

> Sec. 4 - " Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act[sic] amendatory thereof or supplementary thereto."[11]

The language in section 4 is vague, and does not clearly define what provisions of title 53 Congress had been concerned with. The Courts have taken a very broad reading of section 4, interpreting it literally, while holding in several cases that Congress intended to broadly exclude scientists from seaman status. The jurisprudence has produced an inequitable result which is regrettable. Scientists on research vessels are now excluded from the right to seek remedy under the statutory provisions of the Jones Act and the Death on the High Seas Act (DOSHA), which have been ruled by the courts to be supplementary to title 53. Scientists have in most courts maintained their remedies as seamen under the general maritime law, but in some courts even these protections are jeopardized.[12] The result is unfortunate on several counts.

Scientists on ORVs are blue water seamen who face the "perils of the sea" to the same degree, if not greater, than most crew members today who are employed in the more

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[11]46 U.S.C.A. § 444

[12]Craig v. M/V Peacock 760 F. 2d 953

"traditional" seaman's positions. Except for scientists, who, as a result of misinterpretation of the ambiguities found in section 4 of the ORVA[13] have been excluded "seaman status" for several important remedies, the courts have been expanding the application of "seaman status" to include all other blue water sailors who in the course of their employment are regularly exposed to the hazards of the sea.[14]

Due to the fact that scientists are excluded from important federal protections afforded injured seamen, they are often forced to seek relief from state workers' compensation

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[13]Instructors and students on Sailing School Vessels were similarly also exempted by Congress in the Sailing School Vessel Act of 1982, a law modeled after the ORVA, with a similar purpose of granting relief from passenger vessel regulations deemed inappropriate for vessels of a specialty class. 46 U.S.C.A § 446

[14]In June of this year, the Supreme Court spoke to the issue of "seaman status" in *Chandris v. Latsis*, 1995 U.S. LEXIS 4047, *: a Jones Act suit involving a superintendent engineer injured while working on a cruise ship. In its *Chandris* decision the Court seems to have reversed its general trend of expanding applicability of Jones Act coverage through seaman's status decisions which has been evident since the passage of the Act in 1920. However, the ruling in *Chandris* establishes only the minimum temporal connection with the vessel in order to distinguish a sea-going maritime worker from a land-based maritime employee. The *Chandris* decision does nothing to alter the Court's 1991 decision in *McDermott International v. Wilander*, 498 U.S. 112, which very clearly expands "seaman status" applicability to any employee doing the "ships work." In fact, in *Chandris* the Court continues to hold that: "The Jones Act is reserved for sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which those who go down to the sea in ships are exposed." (Quoting *Seas Shipping Co. V. Sieracki*, 328 U.S. at 104, 1946, Stone, C. dissenting.)

statutes. This serves to undermine the longstanding policy of maintaining uniformity and consistency within the federal maritime law. In addition, further inequity can result from the differences in applicability and relief provided by the compensation laws of the various states.

It is the purpose of this paper to examine this inequitable result. To ask why, two persons, perhaps the bosun and a scientist, working side by side on the aft deck of an ORV may, if injured, have very different remedies available to them, depending upon the determination of their respective "seaman status"? The remainder of this paper is divided into six sections. In the next, the three basic remedies available to seamen: maintenance and cure, unseaworthiness, and the Jones Act, are discussed in more detail. The third section reviews the history of the jurisprudence on "seaman status" in general. Then follows a review of the Ocean Research Vessel Act, including a close examination of the legislative history, in an attempt to determine Congress' purpose in enacting the law, and whether it intended to severely limit the remedies available to an injured scientist. The case law which has resulted from court interpretation of the "seaman status" of scientists is outlined in section V. An analysis and discussion follows in section VI, in which the paper argues that the courts have misinterpreted the legislative history concerning

Congressional intent in the ORVA. The paper finds only one reference to the Jones Act in the entire record of the legislative hearings on the bill, and holds that the reference to "seaman status" and title 53 of the Revised Statutes intended only to exempt scientists from the requirement to carry Merchant Mariners Documents, not to exclude scientists from coverage under the Jones Act. The paper finds no policy justification for the result that has ensued, where an individual class of blue-water workers is singularly denied the beneficial remedies afforded all other "seamen". In the concluding section, two options are suggested to rectify the inequity which now exists. The first is for the Supreme Court to grant *certiorari* of an ORVA "seaman's status" case in order to re-analyze the legislative history. Although it is unlikely that the Court will express an interest in such a narrow area of the maritime law, it has shown an interest in "seaman status" cases over the last few years, and may choose to hear a case in order to reconcile the differences between the Circuits in their ORVA decisions. It could give the Court an opportunity to elaborate the "seaman status" test started in 1991[15] and further defined this year in the case of *Chandris v. Latsis*[16], if it feels additional elaboration is necessary. The second, and more likely solution suggested

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[15]McDermott International v. Wilander 498 U.S. 112

[16]115 S. Ct. 2172 (1995)

is for Congress to recognize the mischief which has been done with ambiguities in section 4 of the ORVA, and to amend the law in order to clarify its original intent, and overrule the jurisprudence which has led to the inequity.

II. REMEDIES AVAILABLE TO SEAMEN

Maintenance and cure

The right to maintenance and cure is the only remedy available to seamen which is ancient in origin.[17] It was a recognized right of seamen even before the American Revolution, when a seaman who was wounded, maimed or fell ill in service to the ship was entitled to maintenance and cure at the expense of the vessel.[18] Maintenance and cure in the United States is a right created under the general maritime law, first mentioned by Justice Story in 1823.[19] Courts have since recognized maintenance and cure as an obligation of the vessel to a sick or injured seaman -- a right which could only be lost if the injury resulted from the seaman's willful misconduct. Even though this seaman's remedy was long recognized, precise definition concerning

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[17]Sims, *supra* @ 973

[18]Id. @ 978

[19]Harden v. Gordon 11 F. Cas. 480 (1823), cited by T. Schoenbaum, *supra*. @ 159

the extent of the right developed through case law slowly. A seaman is now considered "in service to his ship" if he is subject to call by the vessel.[20] Maintenance refers to the seaman's right to room and board while receiving medical treatment. The courts have held that the seaman under treatment is entitled to the value of room and board he was receiving onboard the ship,[21] which has been held in modern times to be anywhere between eight and thirty dollars per day.[22] "Cure" is the right to necessary medical treatment, but the ship's duty only continues until the seaman is cured or has reached the point of maximum recovery.[23] The injured seaman is also entitled to unearned wages until the end of the voyage.[24] The vessel's obligation to provide maintenance and cure is without regard to fault. Neither negligence nor causation is relevant[25], therefore maintenance and cure have been described as a type of no-fault health insurance. In order to be entitled to the right of maintenance and cure the injured worker must

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[20]Id. @ 979, citing The Bouker No. 2, 241 F. 831 (Second Circuit 1917)

[21]Id.

[22]D. Nixon, "Recent developments in U.S. commercial fishing vessel safety, insurance, and law." 17 J. Mar. L. Com. 359,364 (1986).

[23]Schoenbaum, *supra.*, @ *161*, citing Farrell v. United States, 336 U.S. 511

[24]Id. @ 160

[25]Id.

qualify as a "seaman."[26] The injured worker's employer[27], is liable *in personam* for the expenses of maintenance and cure, and the vessel may also be liable *in rem*. Sick and injured seamen formerly received free medical care at Public Health Service hospitals, at U.S. government expense, until these facilities were closed in 1981.[28]

The Osceola

Before the twentieth century, the American law of maritime personal injury and death was narrow in scope and nearly static.[29] In this century however, it has become a dynamic and complex aspect of the law, as Congress and the Courts have sought to create "new remedies to meet the social,

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[26]According to Schoenbaum: "The legal test for seaman status for purposes of maintenance and cure is the same as that established for determining status under the Jones Act." *supra*. @ 160. See however, section V *infra*, the test of "seaman status" for scientists is now different under the general maritime law and the Jones Act. Sennett v. Shell Oil Company, 325 F. Supp. 1 (D. New Orleans 1971).

[27]Traditionally the "seaman's" employer was the shipowner. In recent years, however, the nature of the maritime industry, and the employer/ employee relationship between sea-going workers and the ship owner has been changing. In the offshore oil industry, for example, many workers may be working aboard a vessel for an employer other than the shipowner. The same is true in the oceanographic research field. Scientists aboard research vessels may be employees of the shipowner, but often are not. It is not uncommon to have groups of scientists with various different employers, possibly from several states or even foreign countries, working together on the same vessel.

[28]Nixon, *supra*. @ 364.

[29]Sims, *supra*. @ 973.

economic and human needs resulting from ever-expanding maritime operations."[30] In 1903, the Supreme Court summarized seamen's remedies available under American law. In the landmark case of *The Osceola*[31], the Court held that:

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

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[30]Id.

[31]189 U.S. 158 (1903).

> indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident.[32]

The Court's opinion in *Osceola* consolidated maintenance and cure jurisprudence, and clarified the long recognized duty of a ship owner to provide a seaworthy vessel for the crew by declaring the seaman's right to indemnity for injuries sustained as a result of unseaworthiness. Significantly, the Court also declared that the general maritime law contained no right for a seaman to maintain a negligence action for injuries sustained. Only the *Osceola's* first proposition, concerning the vessel's and shipowner's duty to provide maintenance and cure, has stood the test of time.[33] The other three have been either abrogated or substantially modified by the Courts and by Congress, with the changes in most cases expanding not only the type of remedy available for the protection of an injured seaman, but also the types of maritime workers who could be classified as eligible to maintain a "seaman's" action.[34]

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[32]Id. @ 175.

[33]Sims, *supra* @ 984.

[34]A significant exception to this trend was Congress' 1972 action which overruled earlier court trends which extended seaman's status to shorebased maritime workers who performed the work normally done by seamen. In amending the Longshore and Harborworkers Compensation Act (LHWCA), however, Congress

Unseaworthiness

The shipowner's duty to provide a seaman with a seaworthy vessel is greater than the seaworthiness duty owed to others. A vessel seaworthy for a crewman has been defined as one which is "reasonably fit for [its] intended use".[35] Because seamen live and work on the vessel, the concept of "seaworthiness" means a place reasonably fit to both live and work.[36] The obligation of the shipowner to provide a seaworthy vessel is absolute. It has therefore been described as a warranty. However, it is not contractual but imposed by tort law as a consequence of the seaman's relationship to the vessel.[37] It is a difficult task to determine when a work area for a hazardous occupation is reasonably fit for its intended use, and the courts have not established a precise formula for application.[38] In its well cited opinion in *Mitchell v. Trawler Racer, Inc.*, the Supreme Court defined the ship operator's obligation in the following way:

> What has been said is not to suggest that the owner is obligated to furnish an accident free ship. The duty

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extended another federal remedy to the workers who it was denying seaman status. 33 U.S.C. 901 et. sec.

[35]Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960)

[36]Maraist, *supra*. @ 196.

[37]Id.

[38]Id. @ 197.

> is absolute, but it is a duty only to furnish a vessel and appurtenances reasonably fit for their intended use. The standard is not perfection, but reasonable fitness; not a ship that will weather every conceivable storm or withstand every imaginable peril of the sea, but a vessel reasonably suitable for her intended service...[39]

An unseaworthy condition can be both temporary and transitory.[40] To establish unseaworthiness, it is not required that the owner had an opportunity to remedy the unseaworthy condition, nor that he was even aware of its existence.[41] It may arise after the vessel has left port.[42] The duty of seaworthiness is absolute and does not depend upon a ship owner's negligence.[43] Unseaworthiness and negligence were originally considered to be distinctly separate concepts, with unseaworthiness restricted to the structure of the ship and its appurtenances, and negligence arising only from error in the direction and control of operations aboard ship.[44] In its 1944 opinion in *Mahnich*

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[39]362 U.S. 539 (1960).

[40]Id.

[41]Id.

[42]Id.

[43]Schoenbaum, *supra*. @ 166.

[44]Sims, *supra*. @ 985.

v. Southern Steamship Company[45], the Supreme Court muddied this distinction, finding a vessel unseaworthy as a result of the mate's operational error in selection of a faulty rope. The Court's trend to broaden the concept of unseaworthiness continued until its apparent reversal of direction in 1971, finding that an "isolated personal negligent act"[46] did not render the vessel unseaworthy.[47]

The duty of seaworthiness is owed by the vessel operator. Often the operator is the seaman's employer. However, in the changing environment of shipping and other maritime ventures, the seaman may be working for an employer other than the vessel operator.[48] In this case, the seaman is still owed the duty of seaworthiness by the operator. Under a demise charter, the operator becomes the owner *pro hac vice* and assumes the obligation to provide a seaworthy vessel.[49]

Negligence

The third and fourth propositions of *The Osceola* establish a

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[45]321 U.S. 96 (1944).

[46]Usner v. Luckenbach Overseas Corp., 400 U.S. 494 (1971).

[47]Sims, *supra*. @ 986.

[48]See n.25 *supra*.

[49]Maraist, *supra*. @ 198

single rule. Namely, that seamen could not recover damages for injuries caused by negligent actions of the master or a fellow crew member.[50] The seaman's union was not satisfied with this limitation on compensation, and advocated for change. Congress first attempted to overrule the Supreme Court's *Osceola* decision, with the passage of the Merchant Seaman's Act of 1915, which provided in section 20, that seamen having command shall not be considered fellow servants of those under their authority.[51] Three years later, the Court declared that Congress has missed the mark with the 1915 Act, in its (Congress') belief that the "fellow servant" doctrine was what barred seamen's recovery for negligence. In *Chelentis v. Luckenbach Steamship Co.*[52], the Court held that it was not the "fellow servant" rule contained in proposition three of Osceola, but the fourth proposition, denying recovery for injuries sustained due to the negligence of the master or a member of the crew, which barred the seaman's recovery.[53]

Chelentis was a fireman aboard the steamship *J.L. Luckenbach* whose leg was broken when he was knocked down by a wave. He received due care immediately, entered the marine hospital on arrival in New York, but eventually his leg required

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[50]Sims, *supra*. @ 987.

[51]38 Stat.1164, § 20.

[52]247 U.S. 372 (1918).

[53]Sims, *supra*. @ 987.

amputation. The seaman filed an action asserting that the injury resulted from the negligence and an improvident order of a superior officer. In the complaint, the seaworthiness of the vessel was not questioned and no claim was made for maintenance and cure. In affirming summary judgement denying Chelentis a negligence action, the Supreme Court mooted Congress' 1915 efforts, holding:

> The language of the section disclose no intention to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees ashore.[54]

Congress quickly responded to the Court's challenge, passing the Jones Act in 1920, which established the right to recover damages for injury to, or death of, a seaman arising from the negligence of the owner, master, or fellow crew member.[55] The method chosen by Congress to grant a remedy to seamen for injury caused by negligence was to extend the applicability of the Federal Employer's Liability Act[56] (FELA). The law established the seaman's right to trial by jury and eliminated contributory negligence as a defense.[57]

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[54]Id.

[55]46 U.S.C. @ 688

[56]45 U.S.C. @ 51 et. seq.

[57]Sims, *supra.*, @ 988

The defendant in a Jones Act suit is the seaman's employer, which may or may not be the vessel owner.[58] The Jones Act gives the seaman the option to bring suit in federal admiralty jurisdiction or to file his claim at law with right to a jury trial in either state or federal court. Actions filed in state court are not removable.

The Jones Act was used as the principal tool for asserting seaman's personal injury and death claims from the time of its passage until 1950. Since then, unseaworthiness claims have gained in importance because of the more liberal interpretation of the concept of seaworthiness, with the Jones Act being used to obtain trial by jury.[59]

Wrongful death

Historically, under common law and the English Admiralty doctrine, no duty was owed the survivors of a deceased seaman other than the payment of wages and the return of his effects.[60] In 1886, the Supreme Court ruled that:

> ...it is now established that in the courts of the United States no action can be maintained for [a wrongful death] in the absence of a statute giving the right...[and] we are forced to the conclusion that no

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[58]See *supra* note 25.

[59]Id.

[60]Sims, *supra* @ 1004.

such action will lie in the courts of the United States under the general maritime law.[61]

Congress and the Court allowed state wrongful death statutes to fill the void created by the lack of a federal remedy until 1920 when Congress granted wrongful death and survivors actions to survivors of seamen[62], with the Jones Act provision which extended FELA applicability to seaman. In the same year, Congress passed the Death on the High Seas Act[63] (DOHSA), which provides a cause of action for the death of any person caused by wrongful act, neglect, or default more than three miles from shore.[64] A deceased seaman's survivors may seek remedy under both the Jones Act and DOSHA. The Supreme Court addressed a number of anomalies in the remedies available for wrongful death at sea with its 1970 *Moragne*[65] opinion which overruled *The Harrisburg*[66], finding a wrongful death action within the general maritime law.

The current U.S. law concerning wrongful death at sea is generally regarded as a strange and confusing array of

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[61]The Harrisburg, 119 U.S. 199 (1886).

[62]Maraist, *supra* @ 279.

[63]46 U.S.C. §§ 761-768.

[64]Schoenbaum, *supra* @ 237.

[65]Moragne v. States Marine Lines, Inc., 398 U.S. 375.

[66]119 U.S. 199 (1886).

remedies, depending upon a complex interplay of a decedent's "status", the "situs", or location of death, and the instrumentality involved --vessel, platform, or aircraft.[67] A seaman's survivors now may maintain an action for wrongful death under several federal statutes, under the general maritime law, and in some instances under state wrongful death statutes.

Interaction between remedies in seamen's injury cases

There is considerable overlap between the damages awardable under the doctrines of maintenance and cure, unseaworthiness, and the Jones Act. Double damages are not allowed, and any awards received under a claim for one of the above stated remedies will reduce an award for the same injury granted under another. Double damages are not a problem, because unseaworthiness and Jones Act negligence claims arising out of the same injury must be joined.[68] Because an unseaworthiness action arises out of the general maritime law, and the Jones Act claim does not, some elements of damages may be recoverable under one but not the other.[69] Punitive damages are not available under the Jones Act, but may be awarded in an unseaworthiness

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[67]Sims, *supra* @ 1008.

[68]Maraist, *supra* @ 205.

[69]Id.

claim[70]. Loss of society (consortium) can also be awarded under the general maritime law but is not available under the statutory provisions of the Jones Act.[71] Damages recoverable under both the Jones Act and the general maritime law of unseaworthiness include:

1. Pre-judgement loss of wages sustained by the injured party;
2. loss of future wage earning capacity;
3. past and future costs of medical care and any other economic loss incurred;
4. physical pain and suffering; and
5. mental anguish and anxiety.[72]

With the expansion of the applicability of the doctrine of unseaworthiness since 1950, much of the distinction between a Jones Act claim and an unseaworthiness action have been erased. Nevertheless, practitioners will always file a Jones Act claim whenever it is remotely available because it establishes the right to trial by jury, and maintenance and cure and unseaworthiness cases can be joined and also heard by the jury. It is well accepted that a jury is more likely to award greater damages to an injured worker than a

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[70]Id.

[71]Schoenbaum, *supra* @ 187

[72]Id. @ 186.

judge.[73] Additionally, the Jones Act claim remains important to an injured seaman, because it is still possible for a worker to be injured on a vessel found to be seaworthy[74], in which case a negligence claim against the employer may be the only remedy available in addition to perhaps meager damages awarded under maintenance and cure.

Workmen's compensation

Remedies available to injured land-based workers are generally found within the workmen's compensation system of the state in which the injured worker is employed. In workmen's compensation systems employers accept a type of strict liability for all injuries sustained by workers in their employ. In exchange for acceptance of this "no-fault" arrangement, the amount of damages awarded are limited and fixed by law, thereby protecting the employer from unlimited liability for a worker's injuries. Each state has its own workmen's compensation system with its own governing laws and award levels.

Workmen's compensation is generally deemed to be mutually exclusive from damages awarded to an injured seaman under

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[73]Nixon, *supra* @ 367.

[74]Usner v. Luckenbach Overseas Corp., 400 U.S. 494 (1971).

the Jones Act.[75] In 1917, in the landmark decision of *Southern Pacific Co. v. Jensen*,[76] the Supreme Court ruled that a state could not constitutionally apply its workers' compensation system to a worker injured on a vessel upon navigable waters. The Court concluded that in the interest of uniformity of the nation's maritime law, state laws concerning workers' injuries could not be effective on navigable waters. A "twilight zone" was thereby created, which included persons injured while working on vessels, but who could not be considered seamen. In order to rectify the situation, where certain workers could find themselves without remedy in case of injury, Congress first attempted to extend applicability of state workmen's compensation laws to non-seamen injured on navigable waters. This too was struck down by the Supreme Court as an unconstitutional delegation of the federal legislative power.[77] The Court did permit the application of state workmen's compensation statutes in certain instances if injuries sustained by a worker on navigable waters were deemed to be "maritime but local"[78]. In 1926 the Court ruled that a maritime worker

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[75]See Benders v. Board of Governors for Higher Education, 636 A.2d 1313 (R.I. 1994); and DeCourt v. Beckman Instruments, Inc., 32 Cal. App.3d 628 (C.A. Cal. 4th Appellate Dist., Div. 1 1973).

[76]244 U.S. 205 (1917).

[77]Maraist, *supra* @ 223.

[78]Id. citing Grant Smith-Porter Ship Co. v. Rhode, 257 U.S. 469 (1922).

performing work aboard a vessel normally done by a member of the crew could be considered a Jones Act seaman.[79] Congress reacted to this by passing the Longshoremen's and Harborworkers Compensation Act[80] (LHWCA) in 1927, which created a federal workers' compensation system for landbased maritime workers injured upon navigable waters, and for the most part eliminated the "twilight zone" of overlapping and/or vanishing remedies for certain classes of injured workers. The LHWCA has since been amended to extend coverage inland of the waters edge and to specifically include additional maritime workers, further defining the line between maritime workers who should receive awards for injuries under a no-fault workmen's compensation type system, and seamen, who because of the hazards faced by their exposure to the perils of the sea, are awarded the more generous beneficial remedies of the Jones Act and the general maritime law.

III. "SEAMAN STATUS" - THE RIGHT TO SEAMEN'S REMEDIES

"In recognition of their exposure to the physical and psychological hazards of their distinctly maritime high risk

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[79]International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926).

[80]33 U.S.C.A. §§ 901 et seq.

environment, seamen are afforded special protections under the United States maritime law."[81] The right to maintain a claim under any of the special protections outlined in the previous section[82] depends upon determination that an injured worker is a seaman.[83] As a result, most litigation over damages awarded for injury or death to a maritime worker have involved the question of "seaman status". A huge body of case law exists on the subject. The courts have been involved with the issue for the last sixty years, struggling to establish and apply sensible criteria for determining "seaman status."[84]

The Supreme Court broke its silence on the issue of "seaman

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[81]D. Robertson, A new approach to determining seaman status. 64 Texas L. Rev. 79,80 (1985).

[82]Except DOSHA which provides an action for wrongful death by any person, not just seamen. However, courts have interpreted section 4 of the ORVA as precluding scientists from seamen status for DOSHA application, which prevents a decedent scientist's "personal representative" from asserting an unseaworthiness claim under DOSHA, an action available to the survivors of seamen. see Schoenbaum, *supra* @ 237, note 9.

[83]An action under DOHSA is available to all persons, not only seamen. Some courts have extended interpretation of section 4 of the ORVA to exclude a scientist from "seaman status" under DOHSA as well as the Jones Act. In cases such as this however, the decedent scientists survivors should still be able to maintain a non-seaman's wrongful death action under DOSHA.

[84]Robertson, *supra* @ 83.

status" in 1991[85], after having allowed the Circuits to create the law in this area for over three decades.[86] Even after the Court's decision in *McDermott International v. Wilander*, we were far from having a bright line rule available for guidance with respect to seaman status. In *Wilander*, the Court did little to provide policy guidance to clarify the complex and confusing body of law pertaining to remedies for seamen's injuries. The Court responded again earlier this year. In its decision in the case of *Chandris v. Latsis*[87], the Court attempts to set a policy justification for the Jones Act and the determination of seaman status. How well the *Chandris* decision clarifies the ambiguities and simplifies the determination of "seaman status" in practice will only be seen over time.

The problem with respect to the "seaman status" of scientists aboard research vessels is but a small part of this much larger issue concerning the public policy inherent in the existence of generous beneficial remedies for those

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[85]McDermott International v. Wilander 498 U.S. 112 (1991); Bach v. Trident Steamship Co. 920 F. 2d 322 (Fifth Circuit 1991), *cert.* granted and judgement vacated; Southwest Marine, Inc. v. Gizoni 112 S.Ct. 486.

[86]The courts last hearing of a "seaman's status" case previous to *Wilander* was in its Butler v. Whitemen opinion re-affirming that determination of "seaman status" in a Jones Act suit is a question for the jury. 356 U.S. 271 (1958).

[87]115 S. Ct. 2172

workers who **regularly face the perils of the sea**, and the determination of the proper extent of applicability of those regulations through the definition of the term "seaman". Even the *Chandris* Court, in its attempt to define the policy justification behind the Jones Act, still speaks favorably of this justification for sea-based maritime employees whose work **regularly exposes them to the special hazards of the sea.**[88]

Early seaman status decisions

The earliest Admiralty law concept restricted seamen's remedies to those who could "hand, reef, and steer."[89] The narrowest rule was that a seaman must actually navigate, but throughout the nineteenth century, the "federal courts consistently awarded seamen's benefits to those whose work on board ship did not direct the vessel. Firemen, engineers, carpenters and cooks were all considered seamen."[90] As early as 1832 a cooper on a whaling vessel was held to be a seaman.[91] In *United States v. Thompson*, Justice Story, sitting on circuit, held that "[a] cook and

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[88]1995 U.S. LEXIS 4047, @*43

[89]Fugleberg, *infra* citing The Canton 5 F. Cas. 29, 30 (D. Mass. 1858).

[90]McDermott International v. Wilander, 498 U.S. 112 (1991).

[91]28 F. Cas. 102 (No.16,492) (CCD Mass.), cited in Wilander, 498 U.S. 112 (1991).

steward are seamen in the sense of the maritime law, although they have peculiar duties assigned them. So a pilot, a surgeon, a ship carpenter, and a boatswain are deemed seamen, entitled to sue in the admiralty."[92] By 1850, the noted scholar Benedict wrote in The American Admiralty:

> ...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 -- no matter what might be their sex, character, station or profession.[93]

In 1882 a requirement that an injured worker have aided in navigation was explicitly rejected by Judge Learned Hand in awarding seamen's benefits to a bartender.[94]

Seaman status and the Jones Act

The Jones Act creates a cause of action in favor of "any seaman" who suffers personal injury or death in the course of his employment. The benefits of the Act, however, are available only to a "seaman". Thus, to be admitted into the charmed circle of seamen is of

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[92]Id.

[93]E. Benedict, The American Admiralty, Sec. 241, pp.133-34. cited in Wilander, 498 U.S. 112 (1991).

[94]The Minna, 11 Fed. 759, 760 (E.D. Mich. 1882), cited in Wilander, id.

special importance to the plaintiff.[95]

Unfortunately, the Act does not provide a definition of the term, and at the time of its enactment, neither had the courts provided any clear definition.[96] Early Court rulings after passage of the Jones Act used a very expansive definition of the term "seaman."[97] In *International Stevedoring Co. v. Haverty*[98] the Court set the early pattern, upholding Jones Act coverage for a longshoreman injured while working during unloading operations aboard a vessel located upon navigable waters.

In 1927, in response to earlier Court rulings that application of state worker's compensation statutes on navigable waters violated constitutional requirements for a uniform federal maritime law, Congress enacted the Longshore and Harborworkers Compensation Act (LHWCA).[99] This law established a federal worker's compensation system for maritime workers, specifically excluding the "master or member of a crew of any vessel".[100] The question then

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[95]Schoenbaum, *supra* @ 173.

[96]Robertson, *supra* @ 85.

[97]Id.

[98]272 U.S. 50 (1926)

[99]33 U.S.C. §§ 901 et seq.

[100]Id.

arose if the federal compensation systems provided by the Jones Act and the LHWCA were mutually exclusive.[101] Early Court holdings on the issue proved equivocal[102], but the issue was resolved with the opinion in *Swanson v. Marra Brothers*[103], holding that Congress intended the Jones Act and the LHWCA systems to be mutually exclusive.[104] The Jones Act term "any seaman" and the LHWCA term "master or member of the crew of any vessel" are now deemed to be synonymous.[105] In fact, the courts have recently begun using the LHWCA term for determination of seaman status in Jones Act suits, prompting some commentators to reflect on the irony, of a term used in one law receiving its definition in another.[106] In *Wilander* the Supreme Court concluded that the Jones Act and the LHWCA are mutually exclusive and the "key requirement for Jones Act coverage now appears in another statute."

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[101]Robertson, *supra* @ 86.

[102]See Robertson, *supra, note 37*, citing Norton v. Warner Co., 321 U.S. 565 (1944); South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251 (1940); Warner v. Goltra, 293 U.S. 155 (1934); Nogueira v. New York, N.H. & H.R.R., 281 U.S. 128 (1930).

[103]328 U.S. 1 (1946).

[104]Robertson, *supra* @ 86.

[105]Id.

[106]N. Fugleberg, McDermott International v. Wilander: Seaman status revisited. 27 New Eng. L. Rev. 1017,1032.

The Supreme Court's decisions in the middle part of this century provide only general guidance as to who qualifies as a member of a vessel's crew.[107] In *South Chicago Coal & Dock Co. v. Bassett*[108] the Court sustained LHWCA coverage, thereby denying Jones Act "seaman status", for a barge worker whose main duties involved facilitating the flow of coal from a lighter, and who did not participate in the navigation of the vessel.[109] The court also found that determination of seaman's status is ordinarily a question of fact.[110] In *Norton v. Warner Co.*[111], distinguishing the injured worker from Basset, the Court held that seaman status and remedy in admiralty existed for a worker who performed maintenance on a barge. In *Norton* the Court recognized it as important that the worker "had the permanent attachment to the vessel which commonly characterizes crew."[112] The Court denied seaman status in *Desper v. Starved Rock Ferry Co.*[113] to a worker who was injured while doing maintenance on a vessel laid up for the season, despite the fact that he was a member of the

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[107]Robertson, *supra*, @ 86.

[108]309 U.S. 251 (1940).

[109]Robertson, *supra* @ 86.

[110]Robertson, *supra* @ 87.

[111]327 U.S. 565 (1944).

[112]Id.

[113]342 U.S. 187 (1952).

operational crew when the vessel was in service, concluding that one aspect of the test for seaman's status required the vessel to be in navigation. In *Senko v. Lacrosse Dredging Corp.*[114] the Court heard the case of an injured worker who, as a handyman on a dredge anchored in navigable waters, slept home at night and had never been aboard when the dredge had been moved. In finding the plaintiff a Jones Act seaman, the *Senko* decision clearly negates any requirement that a seaman be aboard the vessel primarily in aid of navigation.[115] The Court also re-established that the status issue is to be decided by a jury except in the clearest of cases.[116]

In these, and several *per curiam* decisions handed down in the 1950s[117], the Court failed to provide clear direction on the question of status, preferring to offer only general guidance on the issue.[118] Robertson, in a 1985 article entitled "A New Approach to Determining Seaman Status" writes that the Court had been criticized for its failure to

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[114]352 U.S. 370 (1952).

[115]Robertson, *supra* @ 90.

[116]Id.

[117]Texas Co. v. Gianfala, 222 F.2d 382 (5th Cir.), *rev'd per curiam*, 350 U.S. 879 (1955); Grimes v. Raymond Concrete Pile Co., 356 U.S. 252 (1958)(per curiam); Butler v. Whitemen356 U.S. 271 (1958)(per curiam).

[118]Robertson, *supra* @ 92.

discuss the policies supporting special protections for seamen.[119] Robertson, however, found a policy perception clearly at work, and summarized it in the following way:

> ... the two policies at work in the seaman status cases are, first the protection of the benevolent seamen's remedies to those who confront the characteristic seamen's hazards and, second, confining other maritime and amphibious workers to alternative remedial systems.[120][121]

The Fifth Circuit - *Offshore v.Robison*

In 1959, the Fifth Circuit attempted to consolidate seaman status jurisprudence. In *Offshore v. Robison*[122] seaman status was upheld for a roustabout assigned to a jack-up rig who was injured at a time when the platform was immobile. In dicta, Judge Wisdom's opinion pointed to the need to protect workers who are exposed to the characteristic seamen's dangers as a central policy reference.[123] The *Robison* test for seaman status relies on a two prong consideration:

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[119]Id.

[120]Id.

[121]*see section VI infra*. It is the contention of this paper that the above policy goals are generally at work in the "seaman status" jurisprudence, but that both have been ignored in fashioning the law concerning remedies available to scientists on research vessels.

[122]266 F.2d 769 (5th Cir. 1959).

[123]Robertson, *supra* @ 95.

> [T]here is an evidentiary basis for a Jones Act case to go to the jury : (1) if there is evidence that the injured workman was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.[124]

It is clear that under the *Robison* test, scientists on research vessels have the necessary connection to a vessel, and perform duties which contribute to the accomplishment of the vessel's mission. Therefore, except for the statutory exclusion that has been interpreted as contained within the ORVA, scientists would be afforded the same beneficial remedies as their "crew member" shipmates.

The Fifth Circuit hears most seamen status cases, and the *Robison* formula has been widely adopted by the other circuits, although not unanimously so. The Seventh Circuit held in 1984, in *Johnson v. John F. Beasely Construction*

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[124]Offshore v. Robison, *supra* @ 779.

Co., that an injured worker's duties must make a "significant contribution to the maintenance, operation or welfare to the transportation function of the vessel."[125] The Fifth Circuit, however, continued to construct its more expansive policy on seaman status in several subsequent cases. In 1984, the same year in which the Seventh Circuit decided the *Johnson* case, the Fifth handed down its decision in *Wallace v. Oceaneering International*, rejecting the narrower *Johnson* approach while upholding a *Robison* type analysis. In affirming judgement on a jury verdict for the plaintiff, a diver seriously hurt during a deep water dive, the court stated that:

> [I]n ambiguous cases, our analysis again and again has focused on (1) the degree of exposure to the hazards or perils of the sea, and (2) the maritime or terra firma nature of the workers duties.
>
> [and]
>
> [T]he seaman status of Wallace is established by his exposure to maritime perils with regularity and continuity, and the maritime nature of his primary duties.[126]

Two years later, in its *Barrett v. Chevron U.S.A., Inc.*[127]

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[125]Johnson v. John F. Beasely Construction Co., 742 F.2d 1054 (7th Cir. 1984).

[126]727 F.2d 427,434 (5th Cir. 1984).

[127]752 F.2d 129, *rev'd on rehearing* (5th Cir. 1986)(en banc)

decision, the Fifth Circuit again reaffirmed its support of the *Robison* doctrine. A strong majority, in an en banc decision showed firm commitment to *Robison*.

The Supreme Court re-evaluates seaman status

In 1991 the Supreme Court decided to end its thirty-three year silence on the issue, agreeing to hear three seaman status cases. The Court accepted *certiorari* to resolve the difference between the circuits, and announced in its decision in *McDermott International v. Wilander*[128] that the Fifth Circuit's *Robison* test would hold over the Seventh's *Beasely* formula. It can be seen then that the Court, after years of allowing the circuits to establish policy on the seaman status issue,, has decided that the more expansive Robison type approach -- with an inherent policy reacting favorably to workers who face the perils of the sea -- should now be the law of the land. After extending seaman status and the concomitant beneficial remedies to workers who face the perils of the sea, the second part of the policy theme has been to restrict other maritime and amphibious workers to alternative remedies. Both of the above policy forces helped to shape the *Wilander* decision.[129]

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[128]498 U.S. 112 (1991).

[129]J. Kavanaugh, Jr. and D.Plunkett, Recent development: McDermott International, Inc. v. Wilander: Robison revisited --The "aid-in-navigation" test walks the plank. 65 Tul.L. Rev.

The *Wilander* decision firmly established that a maritime worker did not have to be involved in the navigation of the vessel to be considered a seaman. Doing the ship's work is enough to qualify the worker for "seaman status". The *Wilander* court spoke only to the nature of the maritime worker's duties, the second prong of the "seaman status" test established by the *Robison* court.

Earlier this year, the Supreme Court used the Jones Act suit of Antonios Latsis against his employer Chandris, Inc. to speak to the first prong of the *Robison* test. While the second prong pertains to the nature of the work performed, the first prong of *Robison* deals with the required temporal connection with the vessel (or fleet of vessels). In *Chandris*, the Court found that the various temporal requirements used to establish "seaman status" by the circuits varied little.[130] The Court saw no substantive difference between the traditional test which required a "more or less permanent connection" with the vessel and the Robison formulation which requires a "substantial" portion of the employee's work be carried out aboard the vessel.[131]

Within its analysis the Court discerned "the essential

1747,52 (1991).

[130]1995 U.S. LEXIS 4047 @ *39.

[131]id.

contours of the 'employment-related connection to a vessel in navigation.'"[132] It held that

> "... 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 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."[133]

The Court went even further in actually establishing a quantitative guideline for the percentage of an employee's working time which should be aboard ship to qualify him for "seaman status." It relied heavily on the history of "seaman status" determinations of the Fifth Circuit, noting with approval that the appeals court "... has declined to find seaman status where the employee spends less than 30 percent of his time aboard ship."[134]

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[132]id. quoting McDermott International v. Wilander 498 U.S. @355.

[133]id. @ *40

[134]id. @ *38.

Therefore, as of the *Chandris* decision, the court has created a two pronged test for "seaman status." To qualify, a maritime employee's duties must "contribute to the function of the vessel or the accomplishment of its mission" and the "seaman must have a connection to a vessel (or an identifiable group of such vessels) that is substantial in both its duration and its nature."[135]

The Sieracki Seaman

In another line of cases, dating to its 1946 decision in the case of *Seas Shipping Co. v. Sieracki*[136], the Supreme Court extended seaman's status to longshoremen exerting unseaworthiness actions against the shipowner for injury incurred aboard a vessel in navigable waters. In his dissent to the majority opinion in *Sieracki*, Justice Stone wrote that it was exposure to the "perils of the sea" and the risks attending the movement of vessels on navigable waters which distinguish a seaman's work.[137] Congress overruled *Sieracki*, with an amendment to the LHWCA which excluded maritime workers covered under the Act from asserting a seaman's unseaworthiness action against a shipowner, while at the same time broadening protection

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[135]id. @ *40

[136]328 U.S. 85 (1946); rehearing denied, 328 U.S. 878 (1946).

[137]Id., cited by Robinson, *supra* @ 80.

provided by the Act to injuries occurring on piers, docks, and other inland harbor areas. Here, in Congress' workings, its policy can be discerned: A policy which includes seaman's remedies for those who perform a substantial portion of their work aboard vessels, and who are regularly exposed to the perils of the sea, but denies them to others. Congress did not deem harborworkers so exposed, and thus the 1972 amendments. However, Congress did not take away the Sieracki seaman's unseaworthiness remedy without providing an alternate remedy, i.e. extending the application of the LHWCA to a more inclusive group of maritime workers over a more expansive qualifying "situs".[138] The dual policy is clear: Seamen's remedies for those who face the perils of the sea, and an alternate remedy for other maritime workers. It will be shown in the following sections, therefore, that it is illogical to interpret the ambiguous wording of section 4 of the ORVA as having intended to repudiate both of these policies as far as scientists are concerned; i.e. remove protection from blue water sailors exposed to the perils of the sea, while offering no alternative remedy.

It has been shown in this section that seaman status determines access to the remedies provided by both the Jones Act and maintenance and cure, and in most cases the duty of

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[138]Sims, *supra* @ 994.

the warranty of seaworthiness.[139] According to Schoenbaum:

> The warranty of seaworthiness is a powerful doctrine, but it is a duty owed to a narrow class of maritime workers -- those who can claim "seaman" status under the law. Other persons who come aboard a vessel, such as passengers, visitors, and **even scientists who serve on an oceanographic research vessel** (emphasis added), are not seamen and cannot claim the benefit of the warranty.[140]

The next section of the paper reviews the Ocean Research Vessel Act of 1972 (ORVA), and the pertinent legislative history, in order to determine on what policy consideration Congress might have based its actions in the passage of the Act -- provisions of which have been construed by the courts as intended to limit the application of seamen's status within a legal environment that has generally been extending such status to most similar maritime workers. In fact, the current state of the law, while still without a bright line test for seaman status, has clarified the distinction of remedies available to harborworkers and seamen. Although some difficulties still arise concerning the status of inshore maritime workers (brown water seamen), for blue

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[139]Schoenbaum, *supra* @ 173.

[140]Id. @ 170., citing Craig v. M/V Peacock, 760 F.2d 953 (9th Cir. 1985).

water sailors, those who are **regularly** exposed to the perils of the sea, the issue seems well settled. Blue water employees falling within the *Robison/ Wilander/Chandris* decisions are seamen. Except, that is, for scientists on research vessels,[141] who are excluded from many of the protections the availability of seaman's status provides.

IV. THE OCEAN RESEARCH VESSEL ACT OF 1965

The Problem

In 1965 Congress passed the Ocean Research Vessel Act (ORVA) with the purpose of promoting oceanographic studies.[142] Previous to the passage of the ORVA, research vessels were required to be inspected either as passenger or miscellaneous cargo vessels. The regulations likewise offered only two possible classifications for scientists. They could be considered either passengers or members of the crew. If more than a small number of scientists were listed as passengers, then the vessel had no alternative than to be designated as a passenger vessel, and thereby be required to

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[141]Also excepting instructors on Sailing School Vessels, who, as scientists on ORVs, are precluded from the remedies according to provisions in the SSVA, a law modeled in several important ways after the ORVA.

[142]see generally Hearings before the Subcommittee on Oceanography, House Merchant Marine and Fisheries Committee, 88th Congress, 1st session, Serial No. 89-8, May 4,5 1965.

meet the stringent and comprehensive construction and operational standards which apply to passenger carrying vessels. Most research vessels at that time were conversions of cargo and work vessels which could not easily, if at all, comply with passenger vessel standards. In addition, it was felt by the research vessel operators that construction and operational standards for either passenger or cargo vessels were not appropriate for the working mission of research vessels, and even when compliance was feasible, it was at some compromise to the scientific mission.

The U.S. Coast Guard, the federal agency responsible for vessel inspection and operational safety, was sympathetic with the problems confronting the research vessel operators, and interpreted regulations as flexibly as the law allowed. Scientists were permitted by the Coast Guard to be signed onto the vessel's roster as members of the crew. This required, however, that each scientist apply for and receive a Merchant Mariner's document, an identification and rating card carried by all seamen. The manning regulations only allowed approximately one third of the seamen to be unrated "ordinary seamen". Therefore, if too many scientists were signed onto the ship's roster as members of the crew, some could be required to obtain an "able seaman's" rating -- a process which required first establishing qualification

through extensive sea service, and then demonstrating proficiency through examination. These were seen as onerous and unnecessary requirements. The research vessel operators considered it time consuming and costly.[143] Scientists might be forced to travel long distances in order to find a Coast Guard licensing office authorized to issue the documents.

In 1962 a group of research vessel operators, mostly from university and non-profit research institutions, organized an industry group known as the Research Vessel Operators Council (RVOC). This group decided to approach Congress with the hope of finding relief from the regulatory corner they found themselves in. It should be noted that almost all of the funding for the vessels operated by the members of the RVOC came from federal sources, primarily the Navy and the National Science Foundation (NSF). Therefore it is not surprising that these, and all other agencies involved in marine studies were completely supportive of some measure of relief. The Coast Guard supported a change in the shipping laws which would allow it to treat research vessels more favorably. In addition, during the 1960s the nation's interest in the oceans was growing. Funding for oceanographic studies was expanding rapidly. The cold war

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[143]Id. @ 49. Position paper prepared by the RVOC, submitted into testimony.

was at its peak, and it was deemed a national priority to maintain a leadership position concerning knowledge about the oceans.[144] This could be accomplished only with a concerted program in oceanographic research, which, according to many of those involved, was severely hampered by the inappropriate classification, manning, and inspection regulations being applied to research vessels. The stage was well set for a receptive ear in Congress to the research vessel operators' concerns.

The legislative history

The problem faced by research vessel operators had been under study by the concerned federal agencies since 1962.[145] The Research Vessel Operators Council submitted a proposed bill for consideration by both Houses of the 88th Congress. S. 2552 was reported favorably by the Senate Commerce Committee[146] but died when the House failed to take action on it. It was re-introduced in the 89th Congress as S.627[147] in the Senate and H.R.3419 and

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[144]Id. @ 10. See statement of Hon. Hastings Keith, Rep. from Mass.

[145]Hearings, *supra* @ 1.

[146]U.S. Senate, Exemption of oceanographic vessels from vessel inspection laws. Report No.1276, 88th Congress, 2d Session, July 31, 1964.

[147]U.S. Senate, Exemption of oceanographic research vessels from certain inspection laws. Report No. 168, 89th Congress, 1st session, April 28 1965.

H.R.7320 in the House.[148] Hearings were held by the Subcommittee on Oceanography of the House Merchant Marine and Fisheries Committee (SOHMMFC) on May 4 & 5, 1965. The bill passed the floor of the House on July 12, 1965, the floor of the Senate one week later, and was enacted as the Ocean Research Vessel Act of 1965[149].

The purpose of the Act was:

> ...to encourage and facilitate oceanographic research and to remove several restrictions which have hampered the expansion of research in the marine sciences. This will be accomplished by exempting oceanographic research vessels from the application of certain vessel inspection laws.[150]

The bill was presented as a remedial action in the public interest.[151] The goal was to get more scientists to sea. In the original draft, the applicability was to be only for RVs operated by non-profit or educational institutions, or state or local governments. In the 88th Congress the bill was amended, broadening its application to all vessels operated "in the public interest." Still, even this phrase

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[148]U.S. House of Representatives, Merchant Marine and Fisheries Committee, Report No. 599, July 7, 1965.

[149]Public Law 89-99: 46 U.S.C. §441-445.

[150]Senate Report No. 89-168.

[151]Hearings, *supra* @66.

generated considerable debate, particularly from a contingent of private research vessel operators because the Coast Guard testified that it interpreted the term "in the public interest "to exclude certain commercial research operations.[152] In the end, the bill was amended again, treating all research vessels employed "exclusively in instruction in oceanography or limnology or both, or exclusively in oceanographic research..."[153] -- whether commercial or non-profit -- equally.

The law as enacted is less than one page long, and contains five sections. The full text of the Act reads as follows:

> (1) the term "oceanographic research vessel " means a vessel which the Secretary of the department in which the Coast Guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research;
>
> (2) the term "scientific personnel" means persons

[152]Hearings, *supra*.

[153]Id.

who are aboard a vessel solely for the purpose of engaging in scientific research, instructing, or receiving instruction, in oceanography or limnology.

Sec. 2. An oceanographic research vessel shall not be considered a passenger vessel, a vessel carrying passengers, or a passenger-carrying vessel under the provisions of the laws relating to the inspection and manning of merchant vessels by reason of the carriage of scientific personnel.

Sec. 3. An oceanographic research vessel shall not be deemed to be engaged in trade or commerce.

Sec. 4. Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto.

Sec 5. If the Secretary of the department in which the Coast Guard is operating determines that the application to any oceanographic research vessel of any provision of title 52 or 53 of the Revised Statutes, or Acts amendatory thereto, is not necessary in the performance of the mission of the vessel, he may by regulation exempt such vessel from such provision, upon such terms and conditions as he may specify.[154]

Congress thereby granted the following relief to the

[154]Public Law 89-98, July 30, 1965; 79 Stat. 424.

operators of research vessels: RVs would not be deemed to be passenger vessels and the scientists would therefore not be passengers. Sec. 5 authorizes the Coast Guard to exempt research vessels from any shipping regulations which it deems unnecessary. Section 4 declares that scientific personnel will not be considered seamen under title 53. It is unclear what Congress really intended to accomplish with the wording in section 4. It is ambiguous. The Courts have found in Section 4 that it was Congress' intent to exclude scientific personnel from the protection of the Jones Act. A close reading of the legislative history does not support such a conclusion.[155] The hearing held by the OSHMMFC spanned two days, and in print, covers some 71 pages. There is only one reference to the Jones Act in the entire hearings, made by D.W. Pritchard, in which he mistakenly attributes the requirement to provide medical care to sick and injured seamen to the Jones Act, as opposed to the doctrine of maintenance and cure.[156] Nowhere in the testimony, has reference been found, to any intent to exclude scientists from seaman status for Jones Act protection. On the other hand, however, there is ample

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[155]See Judge Gibson's analysis of the legislative history of the ORVA in his opinion in Presley v. M/V Caribbean Seal, 537 F.Supp. 956 (S.D. Texas 1982), *partially rev'd.*

[156]Testimony of D.W. Pritchard, member, National Academy of Sciences; chairman, Dept. of Oceanography, Johns Hopkins University; Director, Chesapeake Bay Institute, Hearings, *supra*.

evidence in the record of the hearings that Congress was concerned about avoiding inequitable treatment. For example, Congressman Lennon, in discussing possible reduction in standards for living quarters for seamen under the Act stated:

> We can't let discrimination get into this document. We must not have that, even among seamen.[157]

While Cong. Lennon was not referring to scientists at the time, it does express the sentiment that unfair or unequal treatment had no place in the ORVA.

Considerable discussion took place, and testimony presented, concerning adding an amendment to the bill which would have made it clear that crew members on RVs would be eligible for free medical treatment at public health service hospitals, a right of all merchant seamen and even fisherman. This amendment failed to carry due to concern that it would meet opposition in another committee, purely on a financial basis.[158] The record is clear however that the Oceanography Subcommittee supported the amendment, and was loathe to discriminate at all in the bill.

Absent any intent to discriminate against scientists with respect to seamen's protections afforded by the Jones Act,

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[157]Hearings, *supra* @ 56.

[158]Id. @ 9.

the question then arises what did Congress intend in Sec. 4. The answer can be found in the following statement of Cmdr. William Benkert, Assistant Chief, Merchant Vessel Inspection Division, the senior Coast Guard officer testifying at the hearings:

> The elimination of scientific personnel from seaman status will remove them from statute applicability involving obtainment of merchant mariner documents and other related requirements which were not initially contemplated for this type of personnel.[159]

A more reasonable interpretation of Sec. 4 of the ORVA, one that is consistent with the testimony presented at the hearings, is that it was intended *only* to eliminate the statutory requirement that scientists carry merchant mariner's documents.

At the time of the enactment of the ORVA, most commercial fishermen were not required to carry merchant mariner's documents but did have seaman status for Jones Act applicability.[160] Testimony provided at the hearings pointed out the similarity between scientists on research vessels and commercial fisherman. Dr. Leland Hawthorne, Director of the National Science Foundation, testified:

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[159]Hearings, *supra*. @ 12.

[160]For a discussion of remedies available to fishermen, see Nixon, *supra*.

> Fishing vessels are an excellent example; in many respects they are similar to oceanographic research vessels. They carry complements of fishermen who, like the scientists on oceanographic vessels, are engaged in the primary mission of their vessels but are not necessarily part of the crew. Such vessels have been set apart from merchant vessels in the regulations regarding manning, inspection, and documentation. It has become increasingly evident that research vessels should also be set apart from the usual vessels that ply the sea.[161]

In similar testimony by John Dermody, Principal Oceanographer, Dept of Oceanography, University of Washington, scientists on research vessels were compared to:

> ...fishermen, whalers, and salvage crews ... who, like the scientific crew on a research vessel, are engaged in the primary mission of the vessel but are not necessarily part of the operating crew. Vessels of these three categories have been set apart from merchant vessels in the regulations regarding manning, inspection, and documentation.[162]

Each of these classes of shipboard workers, while receiving special consideration for manning, inspection, and documentation purposes, still are fully protected by all of

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[161]Hearings, *supra* @ 37.

[162]Id. @ 26.

the beneficial remedies available to seamen, including the Jones Act.

It can be clearly seen that the intent of those seeking the regulatory relief viewed scientists on research vessels as similar to fishermen, and deemed regulatory treatment similar to fishermen appropriate for scientific personnel. As mentioned above, fishermen while exempt from certain manning and merchant mariner documentation requirements, had all of the remedies available to the traditional seamen. Certainly fishermen face the perils of the sea every bit as much as any other group of blue-water sailors.[163] In fact the work done by scientific personnel on research vessels is quite similar to that performed by fisherman. Both are often working close to the rail of the vessel (thereby in great danger of falling overboard), deploying and retrieving equipment, often heavy and unwieldy, on small, often unstable vessels, in all weather. Scientists are exposed to the dangers of working near winches and cables in the same way fishermen are.

In his testimony to the Committee, Stanford T. Crapo, President, Marine Acoustical Services, Inc., stated:

> ...the members of the scientific party aboard are aware of the perils of the sea and are prepared to accept

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[163]Nixon, *supra* @ 372.

their exposure to them as a condition of their employment, in exactly the same manner as do the crewmembers of ships of all types.[164]

It can be seen that supporters of the bill understood the dangers faced by scientists, and expected them to be considered as similar to crewmembers as opposed to passengers.

In all of the above cited testimony, as well as the entire record of the Congressional hearings, it is evident that the intent of the interested parties seeking the passage of the ORVA was to modify the regulations regarding manning, inspection, and documentation. Never was it contemplated that scientists on research vessels, exposed to the perils of the sea, every much the same as all other blue-water sailors, would be denied the special protections afforded seamen. It is also clear from the testimony, which recognizes scientists as involved in the primary mission of the vessel, that except for the current court interpretation of Sec. 4, based upon an erroneous reading of the legislative history, scientists would be considered seamen for Jones Act applicability, and properly afforded such a remedy.

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[164]Hearings, *supra* @ 28.

V. JUDICIAL INTERPRETATION OF THE ORVA

Sennett v. Shell Oil Company

The first case which forced court interpretation of the ORVA came six years after its enactment in *Sennett v. Shell Oil Company*[165], still the most cited decision in cases involving injured scientists. Albert Sennett was an employee of Shell Oil Company, who was killed when "a defective seismic air gun misfired and blew off the right side of his head."[166] Sennett's widow and children filed suit against Shell under the provisions of the Jones Act, DOHSA, General Maritime Law and the Louisiana Civil Code.[167] Shell argued that because the worker was hired in Louisiana, and because all other remedies were foreclosed by the ORVA, the sole remedy available was under the Louisiana Workmen's Compensation Law. The court turned to the legislative history of the Act to find the answer. Not before stating, however, that:

> It would be a strange result if one who labors on the high seas may recover against his employer only under

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[165]325 F. Supp 1 (D. New Orleans 1971).

[166]Id. @ 3. This graphic description of Albert Sennett's death taken from Judge Rubin's decision clearly underscores the hazards to which scientific personnel on research vessels are exposed.

[167]Id.

state compensation laws for an industrial accident.[168]

In the legislative history the court found that the law:

> ...does not, with respect to either their traditional maritime crew or their scientific personnel, change the provisions of general maritime law. It does not provide any compensation scheme with respect to industrial accidents to scientific personnel although Congress clearly had the power to do so. And it neither says nor implies that scientific personnel shall have the protection of the statutes of each of the fifty states depending upon where each made his contract of employment.[169]

The court also found that:

> The O.R.V. Law does not in terms remove scientific personnel from seaman's status under either the general maritime law or the Jones Act. It provides merely that they are not considered seamen under Title 53 of the Revised Statutes "and Act (sic) amendatory thereof or supplementary thereto."[170]

Judge Rubin did not find plaintiff's arguments persuasive that "because the Jones Act is neither a part of Title 53

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[168]Id.

[169]Id. @ 4.

[170]Id. @ 6.

nor expressly mentioned in the O.R.V. Law it should remain fully applicable to O.R.V.'s."[171] He held that the Act excluded Sennet's survivors from maintaining an action under the statutory provisions of the Jones Act or DOSHA. The opinion upheld Sennet's seaman status under the general maritime law however, and citing *Moragne v. States Marine Lines*[172] found Sennet's survivors had a right to sue for wrongful death under the general maritime law.

The Sennet decision therefore established the precedent that the ORVA excludes scientific personnel aboard ORVs from bringing suit under the statutory protections afforded "seamen" in the Jones Act, while maintaining their right to "seaman status" and remedies available under the general maritime law.

Castro v. Vessel Lafeyette[173]

In 1978, seven years after the *Sennett* decision, the Houston Division of the Southern District Court of Texas, heard the case of Basilio T. Castro, who brought suit against the vessel, and his employers (neither the vessel's owners or operators) for injuries sustained aboard the RV LAFAYETTE,

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[171]Id.

[172]398 U.S. 375 (1970). Overruled *The Harrisburg*, 119 U.S. 199 (1886).

[173]Civil Action No. 76-H755 (S.D. Texas, Houston Division, Slip Opinion, March 2, 1978).

during the course of his employment. The court found the ORVA applicable, as the LAFAYETTE was a research vessel, and Castro was "scientific personnel" under the meaning of the Act. In a slip opinion, the court affirmed summary judgement for the defendant employers. The court cited *Sennett* in finding that plaintiff was barred from a Jones Act remedy, but went even further, holding that the ORVA precluded Castro from asserting seaman status under the general maritime law as well.

Delahoussey v. Western Geophysical[174]

In the year following the *Castro* decision, another District Court considered a case brought by an injured scientist. Leo Delahousey filed an action against Western Geophysical, his employer for over eleven years, and the owner of the six vessels plaintiff had worked on during that period. Delahoussey claimed he had suffered noise-induced hearing loss due to excessive noise at his workplace aboard the vessels which thereby constituted an unseaworthy condition. No Jones Act action was filed, only an action for unseaworthiness under the general maritime law. The court cited both *Robison* and *Sennett* in upholding Delahousey's status as a seamen while awarding damages for the injuries

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[174]Delahoussey v. Western Geophysical Company and the M/V WESTERN CREST, WESTERN REEF, WESTERN GULF, WESTERN BEACON, WESTERN CAY, and WESTERN GEOPHYSICAL II, 476 F. Supp. 54, Civil Action No. S76 -365(N), (S.D. Miss., June 29, 1979).

sustained due to defendant's failure to provide a seaworthy vessel upon which plaintiff could perform his duties.

Presley v. Caribbean Seal[175]

In 1982, yet another district court, the fourth to do so, had the opportunity to comment on Congressional intent in enacting the ORVA. James Presley was a compressor mechanic who, during the course of his employment aboard the *RV Caribbean Seal*, was injured when his arm became entangled in a piece of operating machinery. He brought suit for negligence under the Jones Act and for unseaworthiness under the general maritime law. Judge Gibson of the U.S. District Court of Southern Texas, Galveston Division, took a different reading on the legislative history of the ORVA than judges in the districts previously to have considered the issue. He determined that Congress had **not** "envisioned the exclusion of scientific personnel from consideration as seamen for purposes of the Jones Act and the general maritime law."[176]

Judge Gibson found "an inherent tension in the *Sennett* opinion"[177] with its (Sennett's) finding that scientific

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[175]709 F.2d 406 (Fifth Circuit, 1983) *cert denied;* 537 F. Supp. 956 (1982) Civil Action No. G-81-56 (S.D. Texas, Galveston Division, April 26, 1982).

[176]537 F. Supp. 956,960 (S.D. Texas 1982).

[177]Id. @ 961

personnel, could be considered seamen under the general maritime law while at the same time non-seamen under the statutory provisions of the Jones Act. Gibson on the other hand, after a detailed review of the ORVA legislative history, found that "a narrower construction of the statute [was] required."[178]

He noted that

> The Research Vessel Operators Council, which logically would seem to have been the group most concerned with liability under the Jones Act and general maritime law, expressed dissatisfaction only with licensing and manning provisions.[179]

Judge Gibson denied summary judgement for the defendant, holding that the ORVA does **not** preclude scientific personnel from maintaining an action under either the Jones Act or the general maritime law. He wrote:

> Nor does the legislative history of the ORVA, on balance, support the defendant's contention that scientific personnel may not retain seamen status under the Jones Act and general maritime law. Congress adopted the ORVA in 1965 to exempt research vessels from the strict inspection and personnel protection laws mandated for commercial vessels. The legislative

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[178]Id. @ 960.

[179]Id.

history, and particularly the hearings before the House Subcommittee, clearly show that Congress excluded scientific personnel from consideration as seamen under Title 53 to avoid the operation of regulations that were ill-suited to such personnel and unnecessarily hindered them in their performance of their technical or scientific functions. There is no indication, however, that Congress believed the Jones Act standard of care or the general obligation to provide a seaworthy vessel to be so onerous when applied to scientific personnel as to require the exclusion of these persons from the range of the laws humanitarian policy. *See Seas Shipping Co. v. Sieracki*. This is amplified by absence of a congressional provision of a compensation scheme to scientific personnel, and the failure of the Act to state or imply that scientific personnel would have the protection of the statutes of each of the 50 states depending on the happenstance of where each made his contract of employment. *See Sennett v. Shell Oil*

In sum, the Court finds that Congress in enacting the ORVA did not intend that scientific personnel, any more than traditional blue water sailors, should be left without a remedy if injured, or that their dependents were to be helpless if the injury resulted in death. *See Warner v. Goltra*. The Court holds that

> scientific personnel on board oceanographic research vessels, if otherwise entitled to assert seaman status under the Jones Act and general maritime law, are not prevented from doing so by the ORVA, but are entitled to the same remedies available to "all those whose duties contribute to the operation and welfare of the vessel." *Offshore v. Robison* [180]

The defendants appealed the district court's decision, and the Fifth Circuit became the first Court of Appeals to hear an ORVA case concerning remedies available to an injured scientist.[181] The Fifth Circuit upheld the District Court's finding with respect to the general maritime law but reversed that part of the opinion related to the Jones Act. The Appeals Court:

> [was] persuaded by Judge Rubin's analysis in *Sennett v. Shell Oil*, that the Jones Act either amends or supplements title 53.[182]

Craig v. M/V Peacock[183]

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[180]Id. @ 964, some citations omitted.

[181]The Ninth Circuit, held in 1981 in the case of *United States v. Blue Water Marine Industries*, 661 F.2d 793, that ORVs are subject to merchant-vessel manning statutes. No scientist injury question was involved.

[182]709 F. 2d 406 (5th Cir. 1983).

[183]Craig v. M/V Peacock, 760 F.2d 953 (Ninth Circuit 1985).

In the year following the *Presley* decision, the Ninth Circuit heard the case of Larry Lewis, a scientist who died when he fell overboard from the research vessel *Peacock* during the course of his employment. Dianne Craig, Lewis' wife, filed suit for wrongful death. At the trial the parties assumed applicability of the ORVA.[184] As was the Fifth in *Presley*, the Ninth Circuit was "persuaded by Judge Rubin's analysis in *Sennett*."[185] The *Craig* opinion also cites the Fifth Circuit's *Presley* decision, but goes much farther than *Presley*, relying on its own earlier decision in the *Estate of Wenzel v. Seaward Marine Services, Inc.*[186] in holding that scientific personnel are **not** seamen and therefore **not** entitled to benefit from the doctrine of seaworthiness. The ruling thereby exonerated the shipowners in the death of Larry Lewis.

Judge Wisdom, Senior Circuit Judge from the Fifth Circuit (the author of the *Robison* decision), sitting by designation, issued a lengthy dissent, which begins:

> The majority in this case does a serious injustice to scientific personnel serving on oceanographic research

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[184]Id. @ 955.

[185]Id. @ 956.

[186]709 F.2d 1326 (9th Cir. 1983). A case similar to the Seventh Circuit's Johnson v. John F. Beasely. One requirement for a determination of seaman's status is that "the claimant must be aboard primarily in the aid of navigation."

> vessels. Seamen-scientists serving as members of an ORV crew may, at times be exposed to greater perils of the sea than are traditional seamen.[187]

And adds later:

> I would hold that as a matter of law a member of the scientific crew of a research vessel is a seaman. Lewis's widow may have no claim under the Jones Act, because of a literal reading of ORVA, but she has a claim under the general maritime law.[188]

Judge Wisdom, therefore would hold *Presley* over the majority decision in *Craig*. His reference to "**may** have no claim under the Jones Act, because of a literal reading of the ORVA" (emphasis added) seems to imply that he is not completely supportive of that literal reading, and perhaps would also agree with Judge Gibson's District Court opinion in *Presley*.

Smith v. Odum Offshore Surveys, Inc.[189]

Roger Smith was a hydrographic party chief, normally assigned to a survey vessel, who was killed while working temporarily ashore. The trial court found that Smith was a

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[187]Id. @ 957.

[188]Id. @ 961.

[189]791 F.2d 411 (5th Circuit 1986); 588 F. Supp. 1168 (M.D. Louisiana 1984).

seaman under the *Robison* criteria. Defendant's argument that the ORVA precluded Smith's Jones Act claim was denied because the vessel had not applied for, nor been designated by the U.S. Coast Guard as an Ocean Research Vessel, as required under the ORV Law. The finding was affirmed by the Fifth Circuit Court of Appeals.

Mitola v. Johns Hopkins University Applied Physics Laboratory, et al[190]

Dan Mitola, a twenty year employee of defendant Johns Hopkins University Applied Physics Lab (JHU/APL) was assigned to the R/V AMY CHOEST as the Supervisor of Marine Operations. His responsibilities included deployment and recovery of towed equipment used in oceanographic research. Mitola was knocked down and injured by a large wave, while working on the vessel's back deck. Mitola brought an action against his employer, JHU/APL and the vessel's owner Alpha Marine Services for negligence under the Jones Act, and for unseaworthiness of the vessel and for maintenance and cure. Defendants filed for summary judgement which was granted on all counts. The court, citing *Craig*, *Presley*, and *Sennet*, held that:

> Even assuming Mitola was a "seaman" under general maritime law principles, his Jones Act claim is barred

[190]839 F. Supp. 351 (D.C. Maryland 1993).

by the Oceanographic Research Vessel Act.[191]

The court found that "the evidence undisputedly establishes that Mitola was a member of the scientific research team, not the vessels crew," thereby finding Mitola excluded from a Jones Act claim as a matter of law. The court was not persuaded by Mitola's claim that he was a seaman in "functional capacity" because his job entailed on-deck rigging, which involved the operation of cranes and winches, as well as the handling of lines, cables and shackles, holding that " the mere performance of such manual duties fails to transform Mitola into a seaman."[192]

Again citing *Craig*, *Presley*, and *Sennett*, the court stated that:

> Although classification as scientific personnel under ORVA precludes an individual from being considered a seaman for purposes of the Jones Act, it does not prevent that individual from being a "seaman" under general maritime law for other purposes.[193]

However, the court also upheld summary judgement for the defendants on the unseaworthiness claim finding that Mitola had not offered any evidence that the vessel was unseaworthy, but merely alleged that the Master's decision

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[191]Id. @ 354.

[192]Id. @ 356.

[193]Id. @ 357

to drive the vessel through a hurricane as "imprudent." The court found that:

> Even assuming the truth of this allegation, a single negligent act committed by an otherwise competent crew member cannot render a ship unseaworthy. This well-established principle derives from the basic distinction between liability based upon seaworthiness and that based upon negligence.[194]

In *Mitola*, therefore, we have a 1993 seaman-scientist's equivalent to *Chelentis*[195], the landmark 1918 Supreme Court decision which ultimately led Congress to enact the Jones Act. Chelentis, too, was injured by a wave in rough weather, and similar to the facts in *Mitola*, because the vessel was not deemed unseaworthy, he was denied any remedy beyond maintenance and cure even though his leg was eventually amputated.

Chandler v. Alpha Marine Services[196]

This is a consolidated case initiated by the survivors of two workers aboard the R/V AMY CHOEST who were killed when an explosive charge accidentally detonated on deck. The

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[194]Id. @ 358. Citing Usner v. Luckenbach Overseas Corp., 400 U.S. 494 (1971).

[195]247 U.S. 372 (1918).

[196]Patsy L. Chandler et al v. Alpha Marine Services et al 1994 U.S. Dist LEXIS 5148 (E.D. Louisiana 1994).

defendants filed for summary judgement on the grounds that the plaintiffs were barred by the ORVA from proclaiming seaman status. The court granted summary judgement to defendants only on the Jones Act claim. The court cited the Fifth Circuit's *Presley* decision while holding:

> ...scientific personnel aboard research vessels can still maintain an action as seamen against the vessel under general maritime law for unseaworthiness and a negligence action under general maritime law against parties who were not their employers.[197]

The court found that the two decedents, "Sinclair and Burks were constantly exposed to the perils of the sea."[198] They "slept and ate on the vessel and were therefore exposed to the hazards of the sea 24 hours a day for the entire voyage."[199] "Sinclair and Burks exposure to marine perils was "substantial in point and time and not merely spasmodic."[200]

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[197]Id. @ 9.

[198]Id @ 7.

[199]Id.

[200]Id. @ 8.

Workmen's compensation cases

Benders v. Board of Governors for Higher Education[201]

Benders was the chief steward aboard the RV ENDEAVOR, a U.S. Coast Guard designated research vessel, operated by the University of Rhode Island. He was injured in 1985, while the vessel was operating off the coast of Brazil. In 1986, Benders entered into a memorandum of agreement with the State of Rhode Island that was filed with the Workers' Compensation Court, and he began receiving benefits from the Rhode Island Employee's Compensation Fund for medical expenses and lost wages.[202] Benders subsequently initiated a Jones Act suit in Federal District Court. He was awarded $200,000. The Compensation fund sued for the return of the $132,000 it had already paid for the injury. The District Court denied this motion because it had already considered this amount in establishing the steward's Jones Act award. Bender sued the Fund in state court to continue payments. The Rhode Island Supreme Court affirmed the appellate court ruling that no further payments were owed plaintiff.

Although this case involved a steward who was not barred by the ORVA from a Jones Act action, and perhaps only coincidentally took place on a research vessel, the Court's

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[201]636 A.2d 1313 (R.I. 1994)

[202]Id. @ 1314.

opinion is illustrative of the problems that can arise when a blue water worker seeks remedy within a state compensation system. The *Bender* Court recognized that the Jones Act provides for recovery for pain and suffering and derivative claims such as loss of consortium, neither of which are compensable under R.I. workers' compensation law[203], making clear that a seaman limited to a workers's compensation scheme would be at a disadvantage with respect to potential award. The Court went on to say:

> The interrelation of federal and state law as it applies to maritime workers is often complex. Traditionally the law of the sea is federal in nature and falls under the jurisdiction of the federal courts.[204]

The Court refers to its own earlier recognition of the *Jensen* rule where an injured maritime worker was found to be limited to his federal remedy.[205] Also cited in the *Bender* decision is the United States Supreme Court ruling in *Lindgren v. United States*[206] in which the Court concluded: "that the Jones Act operates uniformly within all of the States...and that, as it covers the entire field of

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[203]Id. @ 1315.

[204]Id. @ 1316.

[205]Id. @ 1316, citing Duffy v. Providence Teaming Co., 49 R.I. 476 (1929).

[206]281 U.S. 38 (1930).

liability for injuries to seamen, it is paramount and exclusive, and supersedes the operation of all state statutes dealing with that subject."

The Rhode Island Court recognizes that in certain circumstances the courts have modified the *Jensen* and *Lindgren* rules, in order to avoid "the harsh result of uncovered or undercovered workers", but that these modifications are normally acceptable only when a maritime matter such as an injury to a seaman is deemed to be of "purely local concern."[207] The Court held that "Benders was not engaged in essentially 'local' activities when he was injured" and therefore "... this is not a case wherein the injured worker falls within a so-called twilight zone between federal and state recovery and would have no remedy for his injury."[208]

However, had Bender been a member of the scientific party on that same vessel, the R.I. Supreme Court might very well have been dealing with an injured worker who **was** within a "twilight zone" of coverage.[209]

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[207]Bender v. Board of Governors for Higher Education, *supra* @ 1317.

[208]Id.

[209]See Discussion, Section VI *infra*.

DeCourt v. Beckman Instruments, Inc.[210]

William A. DeCourt was a technician employed by respondent Beckman Instruments, Inc. with responsibility to perform tests on developmental diving equipment from the decks of the research vessel EL TORITO and the EL TORITO's skiff.[211] DeCourt was drowned during the course of his employment. The California Appellate Court reversed the trial court's finding that the California Industrial Accident Commission had jurisdiction over the accident. The Appeals Court relied heavily on the U.S. Supreme Court's ruling in *London Co. v. Industrial Commission*[212] and the California Supreme Court's decision in *Occidental Indemnity Co. v. Industrial Accident Commission*[213], while finding that the state compensation court was not competent to make an award for damages in a maritime case.

In *London Co.* the Supreme Court held that:

> A seaman's injury or death on navigable waters can never be a local matter within local jurisdiction.

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[210]32 Cal. App. 3d 628, (C.A.Cal., 4th App. Dist., Div. 1 1973).

[211]The court records do not indicate if the EL TORITO was designated by the U.S. Coast Guard as an ORV. Applicability of the ORVA did not surface in the case, and Decourt was deemed to be a Jones Act seaman.

[212]279 U.S. 109 (1930); An appeal of a California case.

[213]24 Cal.2d 310 (1944).

> Application of a state workmen's compensation act to a claim ...having no features other than those characteristically maritime, is a violation of the exclusive maritime jurisdiction.

and

> The state compensation act cannot be made applicable to an accident in which the employee was a seaman...without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this Court.[214]

In *Occidental Indemnity*, the California Supreme Court reversed and nullified an award by the Industrial Accident Commission for lack of jurisdiction, even **after** the Commission specifically found that the claimant was not a seaman. In the DeCourt case, the majority held:

> The rights and duties involved in the Jones Act remedy differ from those under the state compensation act both in their source under the Constitution of the United States and in their nature as developed by the federal cases. The issues determinative of jurisdiction under the Jones Act are thus far different from those determinative of jurisdiction under the state compensation law.[215]

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[214]279 U.S. 109,122.

[215]32 Cal. App.3d 628,635.

It can thus be seen that circumstances could arise in which a scientist could be barred from a Jones Act suit by the ORVA, and yet still be beyond the jurisdiction of the state workers' compensation system of one or more of the 50 States.

VI. DISCUSSION AND ANALYSIS

The thesis of this paper is that a scientist injured on a research vessel is at a serious disadvantage with respect to available remedies when compared to all other "seamen" -- even a co-worker, on the same vessel, perhaps injured in the same accident, if the co-worker is classified as a "non-scientist," or more "traditional" crewmember. This inequity arises as a result of the ambiguous wording of Section 4 of the Ocean Research Vessel Act of 1965, and subsequent literal interpretation by several courts, which found that Congress intended to specifically deny scientists the statutory remedy afforded all other seamen under the Jones Act. The above sections have attempted to show that: (1) The legislative history clearly indicates that Congress never intended such a result; and (2) Exclusion of scientists, who face the perils of the sea to the same degree as all other blue water seamen, is directly in conflict with trends of both Congress and the Courts with

respect to providing beneficial remedies for workers who face such hazards.

The paper has outlined two basic policy considerations with respect to remedies afforded injured maritime workers: (1) The beneficial remedies for seamen are extended to all those who regularly face the hazards of the sea in the course of their employment; and (2) Alternative remedies are afforded all others, such as longshoremen and maritime workers. It is clear that both the Courts[216] and Congress[217] recognize that scientists on research vessels are, in the course of their employment, exposed to the same hazards as "traditional" seamen. Scientists have not been granted any alternative remedy for injury, in compensation for the remedies denied them by court interpretation of the ORVA, "although Congress clearly had the power to do so."[218] It is illogical that the Fifth Circuit, the same court which handed down the *Robison* decision, extending "seaman's status", could also have held in *Presley*, that an injured scientist was barred from "seaman status" for Jones Act applicability. That same Court also held in *Wallace v. Oceaneering International* that:

> [I]n ambiguous cases, our analysis again and again has

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[216]See *supra* Section V.

[217]See *supra* Section IV.

[218]See supra p. [30], Sennett v. Shell Oil Co.

> focused on (1) the degree of exposure to the hazards or perils of the sea, and (2) the maritime or terra firma nature of the workers duties.
>
> [and]
>
> [T]he seaman status of Wallace is established by his exposure to maritime perils with regularity and continuity, and the maritime nature of his primary duties.[219]

There can be no doubt, that except for interpretation of Section 4 of the ORVA, scientific personnel on research vessels would be afforded by the courts all of the remedies available to seamen, if they otherwise qualify for such status under the new two prong test established this year in *Chandris v. Latsis*.[220]

The only policy justification which can be imagined supporting exclusion of oceanographic personal from the beneficial remedies of the Jones Act would be to limit their employer's liability. However, as Judge Gibson pointed out in his *Presley* decision, there is no reference to such a goal in the legislative history.[221] Additionally, in his concurring opinion in *Chandris v. Latsis*, Justice Stevens unequivocally points out that the Jones Act was enacted to

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[219]727 F.2d @ 434.

[220]1995 U.S. LEXIS 4047

[221]See *supra* note 179.

protect workers exposed to the perils of the sea, not "as a scheme to protect employers."[222]

The Fifth Circuit, in its *Presley* decision, relied too heavily on the literal interpretation of the *Sennett* Court. They should have let Judge Gibson's holding in *Presley* stand.[223] His was a more thorough analysis of the ORVA legislative history than that in *Sennett*. Gibson correctly determined that Congress did not intend to deny scientists the beneficial remedy of the Jones Act, and in the opinion of this author, was the only court to correctly interpret the ORVA. Judge Wisdom's dissent in *Craig*[224] also appears to indicate his dissatisfaction with the literal interpretation of the *Sennett* analysis.

The hazards faced by scientists on research vessels does not seem to be in question. The accidental deaths of Albert Sennett, Larry Lewis (*Craig v. M/V PEACOCK*), and Lee Roy Burks and Burney Sinclair (*Chandler v. Alpha Marine Services*) underscore this fact. It is therefore contrary to the general policy which provides beneficial remedies to injured seamen, to deny an individual class of blue-water seamen some (potentially all) of those remedies. Although

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[222]1995 U.S. LEXIS @ *70, J.Stevens concurring.

[223]See *supra* p. [33].

[224]See *supra* p.[35].

injured scientists have in some jurisdictions been able to maintain actions under the general maritime law, other courts have denied this avenue of relief as well,[225] thereby reopening a "twilight zone" where an injured maritime worker is forced to straddle the remedies available under the federal maritime law and state workers' compensation systems.

Clearly this is a huge step into the past. In 1942, the Supreme Court recognized the concept of a "twilight zone" with respect to coverage for injured land based maritime workers covered under the LHWCA.[226]

> In determining whether state law or the LHWCA applied to the injuries to land-based maritime workers, the Court recognized that no clear line existed to determine which compensation regime ruled but rather that a twilight zone existed wherein a case-by-case determination needed to be made about whether the state or the federal remedy would compensate a worker.[227]

The Court later recognized the amendments to the LHWCA and

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[225]See *supra* Section V: Castro v. Vessel LAFAYETTE, Civil Action No. 76-H755 (S.D. Texas, Houston Division, Slip Opinion, March 2, 1978); Craig v. M/V PEACOCK, 760 F.2d 953 (9th Cir. 1985).

[226]Davis v. Dept. of Labor and Industries, 317 U.S. 49 (1942).

[227]Benders v. Board of Education, 636 A.2d 1313,1317 (R.I. 1994), citing Davis v. Dept. of Labor and Industries of Washington, 317 U.S. 49 (1942).

for the most part the "twilight zone" has been closed. However, "neither Congress nor the Court has ever abrogated Jensen as it relates to seamen covered under the Jones Act."[228]

It is possible, even likely, that a new and more dangerous "twilight zone" has been created with rulings barring scientists from Jones Act coverage. Take, for example, the case of *Mitola v. JHU/APL*[229]. Dan Mitola was injured on a vessel found to be seaworthy, but was denied a Jones Act suit under Section 4 of ORVA. Mitola's only other remedy would therefore seem to lie within a state workers' compensation scheme. But, had Mitola's employment contract been based in California, he might have been denied an award by the Industrial Accident Commission under the decision in *Occidental Indemnity Co.*, which held that the state compensation court is not competent to make an award for damages in a maritime case.[230] The *Mitola* case is clearly maritime. Even though he was denied a Jones Act suit as a matter of law, he was still entitled to an unseaworthiness action. But, as in this case, if the vessel is found to be seaworthy, would Mitola then be able to receive benefits payable under a state compensation system? Would the answer

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[228]Id. @ 1317.

[229]839 F. Supp. 351 (D.C. Maryland 1993).

[230]See supra p.[40], 24 Cal. 2d 310 (1944).

be the same in all of the fifty States?

The record does not indicate precisely how much of his working time Mitola spent aboard ship, therefore it is not possible to speculate whether he would have satisfied the "approximately 30 percent" of work time requirement laid out in the 1995 *Chandris* decision. There is no doubt however that there are oceanographic personnel, both scientists and technicians, who **do** meet the *Chandris* test. Any of these workers could have an accident with circumstances similar to Mitola, and potentially be denied all of the beneficial remedies intended to protect maritime workers who **regularly are exposed to the perils of the sea.**

The *Sennett* Court itself stated:

> It would be a strange result if one who labors on the high seas may recover against his employer only under state compensation laws for an industrial accident.[231]

But this is exactly the result, in cases such as Mitola's where seaman status under the general maritime law is maintained, but the vessel is determined to be seaworthy, and also in cases in circuits such as the Ninth, where Section 4 of the ORVA is held to preclude all seaman's actions, including those under the general maritime law.

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[231]325 F.Supp. 1,3.

This brings rise the question of consistency and uniformity of the federal maritime law. The *Sennett* Court was very concerned with the uniformity of the maritime law. In spite of the fact that the Court's interpretation of the ORVA resulted in denial of a scientist's seaman status under the Jones Act, in support of its holding that the ORVA did nothing to alter a scientist's right to seaman status under the general maritime law, the Court quoted a lengthy passage from the Supreme Court's 1970 decision in *Moragne v. States Marine Lines*.[232] *Moragne*, decided only the year before *Sennett*, overruled the *Harrisburg* while finding a wrongful death action within the general maritime law. The Supreme Court stated:

> The existence of a maritime remedy for deaths of seamen in territorial waters will further, rather than hinder, "uniformity in the exercise of admiralty jurisdiction";

and

> The Court's ruling in *Gillespie*[233] was only that the Jones Act, which was intended to bring about the uniformity in the exercise of admiralty jurisdiction required by the Constitution * * * necessarily supersedes the application of the death statutes of the

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[232]398 U.S. 375 (1970).

[233]Citing Gillespie v. United States Steel Corp., 379 U.S. 148 (1964).

several States.[234]

It is therefore extremely unfortunate that the Sennet Court, so concerned with the uniformity of the federal maritime law, through a literal interpretation of the ORVA and a faulty review of the legislative history, set the precedent by which that uniformity has been seriously compromised. Uniformity is currently compromised in several ways. Scientists have seamen's rights under the maritime law in some circuits but are denied them in others. Additionally, injured scientists are likely to be forced into one of fifty separate and different state workers' compensation systems -- seeking relief under laws that never contemplated maritime injuries. The nation's policy of maintaining a uniform maritime law, as well as equitable considerations for injured scientists, speak strongly for a reevaluation of the current state of the law, with regard to interpretation and application of the ORVA.

In addition to the Jones Act remedies and those contained within the maritime law which may be unavailable to an injured scientist, he also is denied access to a jury trial, which is provided for in the Jones Act, but not

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[234]Sennett v. Shell Oil Co., 325 F. Supp. 1,7; citing Moragne v. States Marine Lines.

otherwise guaranteed in Admiralty by the Federal maritime law. Again, no policy justification has been made for this exclusion. The determination of "seaman status" is a mixed question of law and fact. There is no reason why scientists should be denied a jury hearing their "seaman status" claim as a matter of law under the ORVA decisions. In *Chandris v. Latsis* the Supreme Court held that:

> The jury should be permitted, when determining whether a maritime employee has the requisite employment-related connection to a vessel in navigation to qualify as a member of the vessel's crew, to consider all relevant circumstances...".[235]

An injured scientist should have this right as do all other blue-water sailors.

VII. SUMMARY AND CONCLUSION

This paper has described the inequitable situation which exists with respect to remedies available to scientists injured aboard research vessels. This inequity is attributed to faulty Court analysis of the legislative history of the Ocean Research Vessel Act of 1965. The paper does not argue that Congress could not have denied scientists seaman status under the Jones Act. It clearly

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[235]1995 U.S. LEXIS 4047, *42.

had the power to do so. In upholding the constitutionality of the Jones Act, the Supreme Court held that Congress is empowered to add to the maritime law.[236] Certainly if Congress was able to enact the Jones Act it was authorized to limit its applicability. This paper has presented evidence which indicates that Congress, in enacting the ORVA, never contemplated such a result. The Supreme Court has also held that the desire for uniformity is insufficient to override federal statute.[237] However, this paper has argued that uniformity of the maritime law has been compromised, but not out of Congressional intent. The thesis of this paper is that regular exposure to the "perils of the sea" is the foundation of Jones Act coverage[238], and therefore scientists should be afforded that coverage as are all other seamen.

As discussed in the preface, this paper was substantially complete before the Supreme Court's ruling earlier this year in *Chandris v. Latsis.*[239] The Chandris rule which now requires that an employee spend 30 percent, more or less, of his working time at sea in order to be classified as a ship-

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[236]Panama R.R. v. Johnson, 264 U.S. 375 (1924).

[237]Sims *supra* @ 1008, citing Mobil Oil v. Higgenbotham, 436 U.S. 618 (1978).

[238]Robertson *supra* @ 96, citing Mungia v. Chevron Co. 675 F.2d 630 (5th Circuit 1982) (quoting Robison, 266 F.2d @ 771).

[239]1995 U.S. LEXIS 4047

based (as opposed to land based) maritime worker entitled to "seaman status" would likely disqualify many scientific personnel from such a determination. However, this new temporal test for seaman status only makes the existing inequity even greater for those oceanographic personnel who would otherwise qualify for "seaman status", but will be denied this valued status according to interpretation of Section 4 of the ORVA. An interpretation which has been shown to be misplaced.

The paper has pointed out that no policy justification can be shown for the interpretation of section 4 which denies scientific personnel the beneficial remedies of the Jones Act and the general maritime law despite their regular exposure to the perils of the sea which would otherwise qualify them for seaman status. In light of the Supreme Court's "seaman status" test outlined in its *Wilander/ Chandris* decisions, it is now even more imperative that the inequity be addressed, for the benefit of the injured scientists who may be denied appropriate remedies, and for the purpose of maintaining the consistency of the federal maritime law.

Some commentators have argued that the Jones Act itself may be unnecessary today, and that a workmen's compensation type

approach would be more useful.[240] That question is beyond the scope of this paper, which is concerned with the inequity of denying beneficial remedies to only one small class of blue-water workers. However, studies do indicate that seafaring remains substantially more dangerous than most shorebased occupations.[241]

The present inequity may be rectified by either the Congress or the Supreme Court. The Court might accept *certiorari* of an ORVA case in order to end the inconsistency which currently exists in the lower courts. However, having so recently created its two prong seaman status test with the *Wilander/ Chandris* decisions, it is unlikely that the Court will chose to review another "seaman status" case in the near future. Particularly one with such a narrow focus, pertaining only to scientist seamen.

Congress could also seek to remedy the inequity caused by the misinterpretation of its 1965 Act. This author believes that Congressional action, amending the ORVA, is not only the more likely solution, but the preferred one as well. A

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[240]See Schoenbaum *supra* @ 181 and Nixon, Recent developments in U.S. commercial Fishing vessel safety, insurance and law. 17 J.Mar. Com. Law No.3:359, July, 1986.

[241]Barss, Monaghan, and Hall, A review of injuries and illnesses aboard research vessels of the University National Oceanographic System. Unpublished study funded by the National Science Foundation, August, 1988.

rewording could clarify that Section 4's original reference to Title 53 of the Revised Statutes referred only to manning regulations and requirements for merchant seaman's documents, and that scientists, because of the hazards they face, are to be considered "seamen" entitled to all beneficial remedies afforded other seamen exposed to the "perils of the sea." Congress can, and should, address this issue to right the serious injustice which has been done to scientific personnel who serve on oceanographic research vessels.[242]

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[242]Paraphrasing Judge Wisdom's dissent in Craig v. M/V Peacock 760 F.2d @ 957 (1985).

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