STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2022 CA 0043

CLARENCE JACKSON

VERSUS

CHEM CARRIERS, L.L.C., ET AL

Judgment Rendered: NOV 04 2022

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Appealed from the
18th Judicial District Court
In and for the Parish of Iberville
State of Louisiana
Case No. 78406, Division A

The Honorable J. Kevin Kimball, Judge Presiding

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BEFORE: THERIOT, CHUTZ, AND HESTER, JJ.

THERIOT, J.

Defendants-appellants, Plaquemine Point Shipyard, LLC ("PPS") and Starr Indemnity & Liability Company ("Starr"), appeal the trial court's July 15, 2021 judgment, which was rendered in favor of plaintiff-appellee, Clarence Jackson ("Jackson"), and against PPS and Starr jointly, several and in solido for the full sum of $1,000,000.00, rendered in favor of Jackson and against PPS for the full sum of $406,668.19, rendered in favor of Jackson and against PPS for maintenance at $75.00 per day, ordered that all amounts awarded shall bear interest from the date of injury on October 20, 2016 until paid, and ordered that all costs of court are assessed to PPS and Starr. For the following reasons, we reverse and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL BACKGROUND

The PPS shipyard is a floating ship repair and cleaning facility attached to the east bank of the Mississippi River. See Trial Exhibit J-6. The PPS cleaning plant prepares cargo barges for load preparation, and the repair facility repairs barges as customers need. The PPS repair facility includes the following: the TT-24602 barge ("TT barge"), which is a platform running perpendicular to the bank and connected thereto with a welded ramp and utility lines and by two shore wires connected to two "dead men" weighted into the bank; the PPS-10 barge, which is secured perpendicular to the TT barge *via* two 7/8 to one-inch winch cables and has utility connections running to the TT barge; the Tucker barge, which is held in place with barge fittings and tied off with soft lines, includes a cherry picker and small crane, and moves weekly; the dry dock; and the shop barge. PPS owns other floating equipment including the following: a pontoon boat (i.e. the Honky Tonk); two pontoon barges used as work platforms (i.e., the "big pontoon" and the "small pontoon"); two sandblasting barges; a rescue boat; the Patterson 82, a deck/utility

barge used for storage and as a work platform; a containment barge with tanks used to store chemicals; and the JAM-401, which is work platform/utility barge.

Jackson was employed by PPS as a welding foreman. In addition to his own welding duties, he trained other welders and inspected welds of others. Additionally, Jackson would go out onto barges at the facility and test tanks to make sure the barge was safe for men to work, and he would sometimes assist with tying off incoming barges. Jackson operated heavy equipment and knew how to run a forklift and crane, including the crane on the Tucker barge. Testimony reflects Jackson traveled by boat two to three times to weld.

Jackson's job title did not include being employed as a captain, deckhand, or an engineer on any boats. He did not live at the shipyard or on any boats in the shipyard. He drove to the shipyard every day in his own vehicle and brought his lunch. Jackson does not have a Transportation Worker Identification Card.

On October 20, 2016, Jackson was welding on the TT barge, when a CBC barge representative called out to him to look at a weld on the CBC 186, which had been secured between the Tucker barge and the PPS-10. Jackson went down the TT barge, got on temporary steps, and went directly from the TT barge onto the CBC 186. Jackson had returned to the TT barge *via* the steps, when he heard welders calling out to him about a problem with their welding machine on the PPS-10. Jackson went onto the PPS-10 from the TT barge, checked the machine to see what the problem was, and then went to the breaker box on the back of the machine. After clicking the breaker box, the machine came back on. The welders started welding, and Jackson went back between the PPS-10 and the CBC 186 to go around the machine to return to his jobsite. As he was making the turn to go

around the machine, he tripped over welding lead, which was piled up on a brick[1] behind the machine, and fell on his right shoulder.

On October 30, 2018, Jackson filed a Petition for Damages, naming PPS, Chem Carriers, L.L.C., and their insurer(s) as defendants. Jackson alleged PPS and Chem Carriers, L.L.C. owned the facility at issue and employed him, and he asserted he was a member of the crew of the vessels they owned and operated. Jackson alleged he fell due to a defective, unseaworthy, or other unreasonably dangerous condition of the vessel. Jackson brought his action as a "seaman" pursuant to the Jones Act or, alternatively, pursuant to Longshore and Harbor Workers Compensation Act ("LHWCA").

On October 14, 2020, the trial court granted leave for Jackson to file a First Supplemental and Amending Petition for Damages, naming Chem Carriers Towing, L.L.C., CCL Holdings, L.L.C.,[2] and Starr, as defendants. Jackson alleged "Chem Carriers, L.L.C. and/[PPS] and/or Chem Carriers Towing, L.L.C. and CCL Holdings, L.L.C. operated under common ownership and control, and constitute a 'single business enterprise' … ."

A bench trial was held from March 15, 2021 through March 19, 2021. In a written ruling dated July 1, 2021, the trial court found the PPS-10, Tucker barge, the three pontoon "boats," the sand barges, and the rescue skiff were all vessels owned and controlled by PPS and a part of an identifiable fleet. As to the PPS-10, the trial court noted "[a]ny reasonable observer could look at the double raked bow [sic] PPS-10 and concluded [sic] that its primary purpose is to transport things over water." Finding the PPS-10 was a vessel, the trial court concluded Jackson's time spent on the fleet was well over 30%, and he was subject to the perils of the sea.

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[1] On the deck of the PPS-10 were four columns of metal bricks (the size of a cell phone), which were cleats designed for a railroad track system for moving rail cargo.

[2] On October 27, 2020, Jackson filed a motion to voluntarily dismiss CCL Holdings, L.L.C., which the trial court granted on November 13, 2020.

The trial court found PPS was negligent and liable under the Jones Act, and Jackson had a claim for unseaworthiness. However, the trial court found the single business enterprise theory was not applicable as between Chem Carriers, L.L.C., Chem Carriers Towing, L.L.C., and PPS. The ruling set forth damage awards as follows: $38,677.07 for past medical expenses; $94,310.65 for future medical expenses; $286,273.56 for past lost wages; $287,406.91 for future lost wages/loss of earning capacity; $300,000 for pain and suffering; $100,000 for mental anguish and trauma; $100,000 for disability; $100,000 for loss of enjoyment of life; maintenance at $75 per day; and $100,000 in general damages for PPS's failure to pay maintenance and cure. Jackson was directed to submit a judgment reflecting the ruling.

On July 15, 2021, the trial court signed a judgment in favor of Jackson and against PPS and Starr jointly, several and in solido for the full sum of $1,000,000.00. Judgment further was rendered in favor of Jackson and against PPS for the full sum of $406,668.19 and for maintenance at $75.00 per day, commencing on February 20, 2017 until Jackson is determined to be at maximum medical improvement. The judgment awarded legal interest on all amounts awarded from the date of injury on October 20, 2016 until paid and further dismissed Jackson's claims against Chem Carriers, L.L.C. and Chem Carriers Towing, L.L.C.

PPS and Starr appeal the trial court's July 15, 2021 judgment, assigning as error the following: (1) the trial court's factual and legal determination that Jackson is a Jones Act seaman was manifestly erroneous and clear error; (2) the trial court's factual and legal determination that the PPS-10 is a vessel was manifestly erroneous and clear error; (3) the trial court's failure to assign any percentage of comparative fault to Jackson was manifestly erroneous; (4) the trial court's award of past and future economic loss was clear error; (5) the trial court's

award of $75/day in maintenance payments was unsupported by the record and manifestly erroneous; (6) the trial court's award of $100,000 for PPS's failure to pay maintenance and cure was clear error; (7) the trial court's award of interest on future damages was clear error; and (8) the trial court's award of prejudgment interest retroactive to the date of injury was an abuse of discretion.

DISCUSSION

46 U.S.C. § 30104 states in part: "A seaman injured in the course of employment ... may elect to bring a civil action at law, with the right of trial by jury, against the employer." The Jones Act does not define "seaman." **McDermott International, Inc. v. Wilander**, 498 U.S. 337, 342, 111 S.Ct. 807, 810, 112 L.Ed.2d 866 (1991). As discussed below, an employment-related connection to a vessel in navigation necessary to qualify as a seaman under the Jones Act comprises two basic elements: The worker's duties must contribute to the function of the vessel or to the accomplishment of its mission, and the worker must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in terms of both its duration and its nature. See **Chandris, Inc. v. Latsis**, 515 U.S. 347, 376, 115 S.Ct. 2172, 2194, 132 L.Ed.2d 314 (1995). The plaintiff bears the burden of establishing seaman status. **Becker v. Tidewater, Inc.**, 335 F.3d 376, 390 (5th Cir. 2003), as revised (July 24, 2003).

A. Vessel Status

We first consider appellants' second assignment of error, whereby they argue the trial court's legal determination that the PPS-10 is a vessel was manifestly erroneous.[3] PPS and Star assert the PPS-10 is not practically capable of transporting people or cargo over water and has large openings in its deck and bulkheads, and witnesses agree it is a work platform. They further argue the

[3] Appellants have not assigned error or provided argument with regard to the trial court's determination that the Tucker barge, the three pontoon "boats," the sand barges, and the rescue skiff were all vessels owned and controlled by PPS and a part of an identifiable fleet.

relative permanence of the PPS-10's moorings is not dispositive of vessel status, and the PPS-10 has been withdrawn from navigation for decades and is only moved for repair and repositioning. Jackson responds that the PPS-10 is not permanently moored and has moved several times since arriving at the shipyard.

1. Applicable Law

The Rules of Construction Act provides "[t]he word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C. § 3. In **Stewart v. Dutra Construction Co.**, 543 U.S. 481, 125 S.Ct. 1118, 160 L.Ed.2d 932 (2005), the U.S. Supreme Court noted § 3 defined the term "vessel" for purposes of the Jones Act and the LHWCA. See **Stewart**, 543 U.S. at 491, 125 S.Ct. at 1125. Referencing the seaman test in **Chandris**, supra, the court explained:

> ... the Court has sometimes spoken of the requirement that a vessel be "in navigation," but never to indicate that a structure's locomotion at any given moment mattered. Rather, the point was that structures may lose their character as vessels if they have been withdrawn from the water for extended periods of time. ... Instead, the "in navigation" requirement is an element of the vessel status of a watercraft. It is relevant to whether the craft is "used, or capable of being used" for maritime transportation. ... The question remains in all cases whether the watercraft's use "as a means of transportation on water" is a practical possibility or merely a theoretical one.

Stewart, 543 U.S. at 494-96, 125 S.Ct. at 1128 (internal citations omitted); see also **Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.**, 271 U.S. 19, 22, 46 S.Ct. 379, 380, 70 L.Ed. 805 (1926) (a wharfboat previously in navigation was no longer a "vessel," after it was permanently attached to the shore by four or five cables, connected with the water, electric light, and telephone systems of the city, used as a floating platform to transfer freight and for storage, and remained at the same point except when moved to conform to the stage of the river); **Pavone v. Mississippi Riverboat Amusement Corp.**, 52 F.3d 560, 570 (5th Cir. 1995) (a floating casino, which was moored to the shore in "a semi-

permanent or indefinite manner" but otherwise capable of navigation was not a vessel).

Thereafter, in **Lozman v. City of Riviera Beach, Fla.**, 568 U.S. 115, 133 S.Ct. 735, 184 L.Ed.2d 604 (2013), the U.S. Supreme Court clarified that not every floating structure is a "vessel;" rather, the court noted:

> ... the statute [1 U.S.C. § 3] applies to an "artificial contrivance ... capable of being used ... *as a means of transportation on water*." "[T]ransportation" involves the "conveyance (of things or persons) from one place to another." And we must apply this definition in a "practical," not a "theoretical," way. Consequently, in our view a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.

Lozman, 568 U.S. at 121, 133 S.Ct. at 740-41 (internal citations omitted) (emphasis added).

As such, the **Lozman** court noted "the statutory definition [§ 3] *may* (or may not) apply—not that it *automatically must* apply—where a structure has some other *primary* purpose, where it is stationary at relevant times, and where it is attached—but not permanently attached—to land." **Lozman**, 568 U.S. at 124, 133 S.Ct. at 742; see also **Caldwell v. St. Charles Gaming Co.**, 2019-1238 (La. 1/29/20), ---So.3d---, 2020 WL 499159, *8 ("Although the Grand Palais [a riverboat casino] could be returned to service as a vessel, albeit with some modifications, the evidence establishes that for a decade and a half, it has been moored indefinitely to provide and maintain its primary purpose of gaming activities.").

Furthermore, the U.S. Fifth Circuit Court of Appeals repeatedly has held that barges are not vessels when they are permanently attached to land, and when any transportation function is incidental to their primary purpose as a non-vessel work platform. See **Young v. T.T. Barge Services Mile 237, LLC**, 290 F.Supp.3d 562, 567 (citing **Daniel v. Ergon, Inc.**, 892 F.2d 403, 407-08 (5th Cir. 1990) (floating barge cleaning and stripping platform was not a vessel, where it had no self-

propulsion, crew quarters, or navigation lights, ingress and egress were provided by a steel catwalk, it was moored to steel pilings along shore with wires taking a day or more to disconnect, utility and other lines ran to shore, it was never moved to job sites and never transported cargo from place to place, and had not moved since its placement in 1979); **Waguespack v. Aetna Life & Casualty Co.**, 795 F.2d 523, 526-27 (5th Cir. 1986) (floating work platforms were not vessels; with the exception of a monthly "housekeeping" chore where a work barge was used to carry debris, the platform was permanently located in a slip and was used almost exclusively to facilitate the unloading of cargo, was not self-propelled or designed to carry goods or passengers, and had neither navigation lights, conventional navigational equipment, nor crew quarters); **Ducrepont**, infra); see also **Matter of Ingram Barge Co. LLC**, No. 20-CV-00313-BAJ-SDJ, 2022 WL 1524984, *2 (M.D. La. May 13, 2022) (work platforms, which were permanently moored to the shore by steel cables, moved to make repairs or to accommodate dredging operations, and not documented as vessels by the U.S. Coast Guard, were not vessels).

In **Lozman**, the Supreme Court cited **Bernard v. Binnings Construction Co.**, 741 F.2d 824 (5th Cir. 1984), which found a work punt was not a "vessel" noting "the mere capacity to float or move across navigable waters does not necessarily make a structure a vessel." See **Lozman**, 568 U.S. at 125, 133 S.Ct. at 743 (citing **Bernard**, 741 F.2d at 828, n. 13, 832, n. 25). Reviewing its prior decisions finding other floating work platforms were not vessels, the **Bernard** court noted three common factors: (1) the structures involved were constructed and used primarily as work platforms; (2) they were moored or otherwise secured at the time of the accident; and (3) although they were capable of movement and were sometime moved across navigable waters in the course of normal operations, any transportation function they performed was merely incidental to their primary

purpose of serving as work platforms. **Bernard**, 741 F.2d at 831. **Bernard** found the work punt was not designed for navigation, was not engaged in the business of navigation, and was not actually in navigation at the time of the plaintiff's injuries. **Id.** at 832. It lacked all indicia of a structure designed for navigation, and the parties stipulated it was used solely as "a small work platform." **Id.** Although the record did not reveal the full details of the work punt's movement, the court found the parties' stipulation that it was used solely as small work platform strongly suggested the plaintiff's use of it as a means of transportation, if any, was minimal; at any rate, the court noted "a structure whose primary function is to serve as a work platform does not become a vessel even if it sometimes moves significant distances across navigable waters in the normal course of operations." **Id.**

Subsequently, in **Ducrepont v. Baton Rouge Marine Enterprises, Inc.**, 877 F.2d 393 (5th Cir. 1989), which is factually-similar to the present case, the U.S. Fifth Circuit Court of Appeals found a barge, which originally was designed as a cargo barge and was used as a stationary work platform from which the defendant conducted its repairing and cleaning operations, was not a Jones Act vessel. **Id.** at 394-95. The barge housed two boilers used to clean neighboring barges, had no means of self-propulsion, and was usually moored to the shore by wires; on occasion, it was tugged a short distance from shore due to the level of the water. **Id.** at 394. The barge was not equipped with navigational lights or equipment. **Id.** at 395. During the time the defendant was in business, the barge was never moved from its location of the bank of the Mississippi River and never underwent a United States Coast Guard marine inspection. **Id.** Thus, although not constructed as a work platform, the court found the barge was used primarily as a work platform, and it was moored at the time of the accident; any transportation function it performed was merely incidental to its primary purpose of serving as a

work platform. **Id.** Referencing its prior decision in **Bernard**[4] and other matters, the court noted that it had consistently held "that dry docks and analogous structures whose primary purpose is to provide a work platform, even if the structures are afloat, are not Jones Act vessels as a matter of law." **Id.**

2. Standard of Review

Whether a floating structure is a vessel is a factual question. See **Ebanks v. Reserve Marine Enterprises, Inc.**, 625 So.2d 1050 (La. 1993) (*per curiam*). To reverse a factfinder's determinations, the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court and further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). See **Stobart v. State through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). Appellants argue *de novo* review is proper, where the trial court impermissibly adopted an "anything that floats" definition to find the PPS-10 and other shipyard equipment are a fleet of vessels and, thus, interdicted the fact-finding process. However, nothing reflects the trial court adopted an "anything that floats" approach; rather, it analyzed the physical characteristics of the PPS-10 and its movement around the shipyard, which are relevant inquiries in determining vessel status. Accordingly, we apply the manifest error standard of review as to the trial court's finding that the PPS-10 was a vessel.

3. Analysis of Whether the PPS-10 Is a Vessel

The PPS-10 originally was designed to haul rail cars and has a heavy flat iron deck, one-inch steel size side shells, and a double-raked bow. It was brought to PPS in the mid-1990s and was physically altered; trial witnesses agreed the PPS-

[4] The **Ducrepont** court further clarified that **Bernard** did not attempt to set forth minimum criteria necessary to place a floating structure outside the scope of the definition of "vessel" under the Jones Act; rather, it merely listed criteria common to structures previously found not to be Jones Act vessels. **Ducrepont**, 877 F.2d at 395. Thus, a structure may be a non-vessel for Jones Act purposes even if it failed to meet each criterion noted in **Bernard**. **Id.**

10 has been and is used as a work platform. There are two wired connections—one on the shoreside and one on the river side—holding the PPS-10 to the TT barge, specifically two winches with winch wire routed around a button with a reset button. There are no lines going from the PPS-10 to shore. The PPS-10 also is connected to the dry dock with soft lines. It would take two people ten to fifteen minutes to unhook the PPS-10 from the TT barge and two minutes to unhook the PPS-10 from the dry dock. Utility connections also run from the PPS-10 to the TT barge, which can be disconnected in a couple of seconds to an hour with tools available in the yard. Stairs lead from the TT barge to the PPS-10, but they are not welded to the PPS-10. Additionally, a ramp extends from the TT barge to the PPS-10, which likewise is not connected to the PPS-10.

Since arriving, the PPS-10 has moved several times around the shipyard in connection with its original positioning, repair, and repositioning. In particular, the PPS-10 originally was in the "access barge" position the TT barge now occupies, and it moved to "the fleet"[5] for four or five hours, while the TT barge was put into position, and shifted back to the TT barge that same day. The PPS-10 later transitioned to the dry dock for repairs, and it then was tied off to the TT barge in its current position. James Gauthreaux ("Gauthreaux"), former operations manager at PPS, testified that, after it was tied off, he did not recall it moving anymore other than the lashings breaking, and it shifted no more than three to four feet for incoming barges.

There are no engines or galley on the PPS-10, and there is no housing or crew quarters. It is hooked up to another boat to move. The PPS-10 has not traveled anywhere to do repairs on other equipment; instead, it has been used as an access barge on the lower repair yard. When asked whether the PPS-10 has

[5] "The fleet" references where the fleet of barges is stationed when they are not in transit on the river. The distance from the repair facility to "the fleet" located below the repair facility is approximately five hundred feet.

remained in the confines of the shipyard other than perhaps being repositioned, Frank Banta ("Banta"), owner of PPS, referencing an allision with Kirby Marine, testified, "The only other time that I would know that this barge was out of position was when the Kirby wiped us out in '17, '18 and knocked out the cleaning and repair." Banta agreed the PPS-10 has been out of navigation, since the time he purchased the company. Doug LeBlanc, a health and safety director at Chem Carriers who also works at PPS, testified the PPS-10 has not been used for waterborne transportation or to transport personnel or equipment on navigable waters in the last nineteen years.

As noted above, when it was purchased, physical alterations were made to the PPS-10. Penetrations were made in the bulkheads for air, water, power supply, and for creating a tool storage room. More particularly, an 8 x 15 hole was cut into the deck, stairs were placed to the bottom, and two bulkheads were cut out to open up the area for storage. These penetrations were not re-sealed or made watertight. There is no American Bureau of Shipping certificate on the PPS-10, and it does not have a Coast Guard certificate of inspection. The PPS-10 is insured as a permanently moored work platform and is not insured to carry people or cargo over water.

Mitchell Futrell ("Futrell"), PPS repair supervisor, agreed cargo could be stored on the PPS-10 to move up and down the river, and it had equipment on it when it moved for repair and repositioning. Futrell further agreed the PPS-10 still looks like a railroad barge, floats, and can be moved without repairing the bulkheads; moreover, there are people on the PPS-10 all day, and it is safe in its current condition. Banta stated repairs were made when needed, and he made certain the PPS-10 was safe for his use and for his employees. Gauthreaux agreed the PPS-10 was structurally safe and a "strong barge." Gauthreaux further agreed it would be safe to use the PPS-10 to bring men down to the Shintech dock for a

repair job, and it would be safe to take the PPS-10 and run to a Baton Rouge scrap yard. Although the PPS-10 had hull problems when the facility was purchased, Banta testified it was repaired, and they "made sure it was sea worthy [sic]."

However, Futrell testified that, with the penetrations and physical alterations in the bulkhead, the PPS-10 was not practically capable of carrying people or cargo over water, and it would not be safe to put the PPS-10 out on open waters because it could take a collision and would flood quickly. Banta likewise testified that, given the penetrations and the physical alterations in the PPS-10, it is not practically capable of transporting people or cargo ever open waters because it is not safe. Gauthreaux stated it would take three days and $10,000-$15,000 to install hatch covers and a week and $20,000-$25,000 to repair the doorways in the bulkheads.

The evidence and testimony reflect that, although the PPS-10 originally was constructed as a railroad barge, it now is used as a work platform and is secured to the TT barge and dry dock with wires. It has no self-propulsion or Coast Guard certificate of inspection. Although it is capable of movement and has moved for positioning, repair, repositioning, and with the movement of the river, we find it was moved seldomly and required the assistance of a motorized vessel. The PPS-10 has not traveled anywhere to do repairs on other equipment. The U.S. Supreme Court in **Lozman** outlined a structure is not a vessel unless a reasonable observer, looking to its physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water. See **Lozman**, 568 U.S. at 121, 133 S.Ct. at 741. Although originally designed as a railroad barge, we find the record reflects a reasonable observer, looking to the PPS-10's activities, would not consider it designed to a practical degree for carrying people or things over water. Thus, the evidence and testimony do not provide a reasonable factual basis

for the trial court's finding that the PPS-10 is a vessel, and the record establishes that finding is manifestly erroneous.

B. Seaman Status

Turning to their first assignment of error, PPS and Starr assert the trial court's determination that Jackson is a Jones Act seaman is manifestly erroneous, as he did not satisfy the substantial in nature and substantial in duration prongs of **Chandris**, supra. They argue Jackson was employed as a welder in a shipyard, who returned home each night, was not a member of a vessel crew, and his assignments to vessels were random and impermanent with no allegiance thereto. They further contend there is no evidence Jackson spent the requisite 30% of his time on the equipment identified as the fleet. In response, Jackson argues his work contributed to the function or accomplishment of the mission of the PPS fleet of vessels, his connection to the fleet was substantial in duration, exceeding the requisite 30%, and his connection to the PPS fleet of vessels was substantial in nature based on the amount of his time spent on water and his being subject to perils of the sea.

1. Applicable Law

The Jones Act grants "a seaman" a cause of action against his employer in negligence; only seamen may sue thereunder. **Sanchez v. Smart Fabricators of Texas, L.L.C.**, 997 F.3d 564, 568-69 (5th Cir. 2021). In contrast, Congress enacted the LHWCA to establish a federal compensation remedy for injuries to certain land-based workers occurring on navigable waters. **Id.** at 569. Generally, coverage the LHWCA excluded "a master or member of a crew of any vessel." **Id.** The LHWCA, therefore, limits the definition of "seaman" in the Jones Act so as "to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery ... only such rights to compensation as are given by the LHWCA." **Id.** Thus, the seaman's

remedy is limited to rights granted by the Jones Act, and rights granted to other maritime workers are provided exclusively by the LHWCA. **Id.** The two remedies are mutually exclusive. **Id.**

Although the term "seaman" is not defined in the Jones Act, "Congress intended the term to have its established meaning under the general maritime law at the time the Jones Act was enacted." **Chandris**, 515 U.S. at 355, 115 S.Ct. at 2183. In **McDermott International, Inc. v. Wilander**, 498 U.S. 337, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991), the U.S. Supreme Court outlined "[w]ith the passage of the LHWCA, Congress established a clear distinction between land-based and sea-based maritime workers. The latter, who owe their allegiance to a vessel and not solely to a land-based employer, are seamen." **Wilander**, 498 U.S. at 347, 111 S.Ct. at 813. Whether under the Jones Act or general maritime law, seamen do not include land-based workers. **Id.** at 348, 111 S.Ct. at 814. The court determined "a seaman need not aid in navigation"; however, a "seaman" under the Jones Act is supposed to be a sea-based maritime employee. **Id.** "The key to seaman status is employment-related connection to a vessel in navigation." **Id.** at 355, 111 S.Ct. at 817. The court held that a necessary element of the connection is that a seaman perform the work of a vessel. **Id.** The requirement that an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission captures well an important requirement of seaman status. **Id.** Although it is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, a seaman must be doing the ship's work. **Id.**

Thereafter, in **Chandris**, supra, the court, in explaining the employment-related connection of a seaman to a vessel, rejected a "snapshot test" for seaman status, denounced a test that inspected "only the situation as it exists at the instance of injury" and noted "a more enduring relationship is contemplated in the jurisprudence." **Chandris**, 515 U.S. at 363, 115 S.Ct. at 2187. The court

emphasized "a worker may not oscillate back and forth between Jones Act coverage and other remedies depending on the activity in which the worker was engaged while injured." **Id.** Moreover, "[s]eaman status is not co-extensive with seamen's risk." **Id.** at 361, 115 S.Ct. at 2186. Accordingly, the essential requirements for seaman status are twofold. **Id.** at 368, 115 S.Ct. at 2190. First, an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission. **Id.** Second, "a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature. The fundamental purpose of this substantial connection requirement is to give full effect to the remedial scheme created by Congress and to separate the sea-based maritime employees who are entitled to Jones Act protection from those land-based workers who have only a transitory or sporadic connection to a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea." **Id.** As to the duration element, the court stated "[a] worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act." **Id.** at 371, 115 S.Ct. at 2191.

Subsequently, in **Harbor Tug and Barge Co. v. Papai**, 520 U.S. 548, 555, 117 S.Ct. 1535, 1540, 137 L.Ed.2d 800 (1997), the court outlined that "[f]or the substantial connection requirement to serve its purpose, the inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties take him to sea. This will give substance to the inquiry both as to duration and nature of the employee's connection to the vessel and be helpful in distinguishing land-based from sea-based employees." **Id.** In **Papai**, the court found the worker was not a seaman, as his actual duty did not include any seagoing activity, where he was hired for one day to paint the vessel at dockside and he was not going to sail with the vessel after he finished painting it. See **Id.** at 559-60,

117 S.Ct. at 1542-43. The court further found each of his engagements on other occasions involved only maintenance work while the tug was docked, and the nature of his connection to the vessel was no more substantial for seaman status purposes by virtue of these engagements than the one during which he was injured. See **Id.** at 559, 117 S.Ct. at 1542.

Thereafter, in **Sanchez**, supra, the U.S. Fifth Circuit Court of Appeals noted its prior decisions asked whether plaintiffs were subject to the "perils of the sea" as the primary test of their satisfaction of the nature element and concluded that "[w]hile this is one of the considerations in the calculus, it is not the sole or even the primary test." **Sanchez**, 997 F.3d at 573. Overruling its prior decision in **Naquin v. Elevating Boats, L.L.C.**, 744 F.3d 927 (5th Cir. 2014), the **Sanchez** court noted that, in **Chandris**, the U.S. Supreme Court made clear that seamen and non-seamen maritime workers may face similar risks and perils, and that this is not an adequate test for distinguishing between the two. **Id.** at 573-74. The court, therefore, concluded the following additional inquiries should be made:

> (1) Does the worker owe his allegiance to the vessel, rather than simply to a shoreside employer?
>
> (2) Is the work sea-based or involve seagoing activity?
>
> (3) (a) Is the worker's assignment to a vessel limited to performance of a discrete task after which the worker's connection to the vessel ends, or (b) Does the worker's assignment include sailing with the vessel from port to port or location to location?

Id. at 574.

In **Sanchez**, Gilbert Sanchez was employed as a land-based welder by Smart Fabricators of Texas, LLC ("SmartFab"). **Sanchez**, 997 F.3d at 566. He worked for SmartFab doing welding jobs aboard two jack-up drilling vessels owned by SmartFab's customer, Enterprise Offshore Drilling LLC ("Enterprise"): the Enterprise WFD 350 and the Enterprise 263. **Id.** at 566-67. Sanchez worked on the WFD 350 jack-up barge doing welding work on a discrete repair job. **Id.** at

567. The entire time he worked on this vessel, it was jacked-up so the deck of the barge was level with a dock and separated from the dock by a gangplank; Sanchez could take two steps on the gangplank, and he was ashore. **Id.** Sanchez commuted from his home to the vessel daily. **Id.** When Sanchez was dispatched to the Enterprise 263, it was located on the Outer Continental Shelf ("OCS"). **Id.** Sanchez was aboard the rig when it was moved by tugboats to the new drilling location, and he performed welding and related work on the deck of the Enterprise 263; on August 8, 2018, he fell and sustained injury. **Id.** Sanchez filed suit under the Jones Act. **Id.** SmartFab filed a motion for summary judgment, arguing Sanchez did not qualify as a seaman, which the district court granted. **Id.** On appeal, the U.S. Fifth Circuit Court of Appeals concluded Sanchez, a land-based welder directed by his employer to work on two discrete short-term transient repair jobs on two vessels, was not a seaman. **Id.** at 566. Affirming the district court's grant of summary judgment, the court noted Sanchez was not engaged in sea-based work that satisfied the requirement that he be substantially connected to a fleet of vessels in terms of the nature of his work. **Id.**

The court found Sanchez spent approximately 90% of his total employment time with SmartFab aboard the two Enterprise vessels and, therefore, satisfied the duration prong of the substantiality test. **Id.** at 574. However, as to the work Sanchez did aboard the WFD 350, the court noted **Papai** made it clear this work was not "sea-based" and did not satisfy the nature test. **Id.** at 575. His duties on the WFD 350 did not "take him to sea;" his work on the docked vessel was not "of a seagoing nature;" and after he finished his work at the dock, he was not going to sail with the vessel. **Id.** Furthermore, the court noted Sanchez's work on the Enterprise 263, even though it was located on the OCS, was work performed on a discrete, individual job; when he and the SmartFab crew were finished, Sanchez would have no further connection to the vessel. **Id.** at 576. Thus, the court found

Sanchez failed to create a genuine issue of material fact that he had a substantial connection to the Enterprise fleet of vessels as it related to the nature of his work and failed to meet the requirements for seaman status. **Id.**

2. Standard of Review

The question of seaman status under the Jones Act is a mixed question of law and fact. **Wilander**, 498 U.S. at 356, 111 S.Ct. at 818. When the underlying facts are established and the rule of law is undisputed, the issue is whether the facts meet the statutory standard, and it is for the court to define the statutory standard. **Id.** "Member of a crew" and "seaman" are statutory terms; their interpretation is a question of law. **Id.** If reasonable persons, applying the proper legal standard, could differ as to whether the employee was a "member of a crew," it is a question for the jury. **Id.** Seaman status is fact specific; it will depend on the nature of the vessel and the employee's precise relation to it. **Id.** In **Milstead v. Diamond M Offshore, Inc.**, 95-2446 (La. 7/2/96), 676 So.2d 89, 96, the Louisiana Supreme Court directed state appellate courts to apply Louisiana's manifest error standard of review in general maritime and Jones Act cases. **Id.**

Appellants likewise seek *de novo* review of seaman status, arguing the trial court ignored **Sanchez**, supra, and engaged in a "rejected" "perils of the sea" analysis, which interdicted the fact-finding process. However, nothing reflects the trial court improperly analyzed whether Jackson was subject to perils of the sea, as such remains relevant to seaman status. See e.g., **Sanchez**, 997 F.3d at 573. Moreover, in its ruling, the trial court referenced the **Chandris** test, which remains the seminal case of the U.S. Supreme Court for determining seaman status, and analyzed whether Jackson was a seaman thereunder. However, while we cannot say the trial court erroneously applied the law in this case in failing to reference **Sanchez**, when the court of appeal finds that a manifest error of fact occurred in the trial court, it is required to redetermine the facts *de novo* from the entire record

and render a judgment on the merits. See **Tillman v. Johnson**, 94-0480 (La. App. 1st Cir. 3/3/95), 652 So.2d 605, 609 (citing **Rosell v. ESCO**, 549 So.2d 840, 844, n. 2 (La. 1989)). Because the trial court's finding that the PPS-10 was a vessel was manifestly erroneous and the trial court considered such in analyzing Jackson's seaman status, we redetermine the facts as to seaman status *de novo* from the entire record.

3. Analysis of Whether Jackson Is a Seaman

Preliminarily, we note PPS and Starr have not asserted that Jackson failed to meet the first prong of the **Chandris** test, which requires that the worker's "duties must contribute to the function of the vessel or to the accomplishment of its mission."[6] Instead, they contend Jackson did not satisfy the second prong of the **Chandris** test, requiring a seaman to have a connection to a vessel in navigation (or an or an identifiable group of vessels) that is both substantial in nature and in duration.

a. Substantial In Nature

Although we find the PPS-10 was not a vessel and cannot be considered in the seaman status analysis, the trial court further found the Tucker barge, the three pontoons, the sand barges, and the rescue skiff were all vessels owned and controlled by PPS and a part of an identifiable fleet. Thus, our analysis of whether Jackson met his burden of proving seaman status focuses on whether he established the requisite connection to these "vessels."

i. Allegiance

As to whether Jackson has proven a connection to a vessel in navigation or to an identifiable group of such vessels that is substantial in nature, we begin by assessing whether Jackson owed his allegiance to a vessel, rather than simply to a

[6] We, nevertheless, find Jackson established this prong of the **Chandris** test, where he is a welder at the facility, Banta agreed the mission of PPS is repairing barges and boats, and Jackson testified all the utility vessels and barges were used daily in his line of work.

shoreside employer. See **Sanchez**, 997 F.3d at 574. In **Blanda v. Cooper/T. Smith Corp.**, No. 20-CV-678-JWD-SDJ, ---F.Supp.3d---, 2022 WL 1182701 (M.D. La. Apr. 20, 2022), the Middle District of Louisiana noted that, because in **Sanchez**, the employer and vessel owner were different, the question of whether the worker's allegiance was to one or the other was meaningful. **Blanda,** 2022 WL 1182701 at *10. Conversely, where the employer and vessel owner are same, this factor is much less important. See **Id.** In the present case, testimony reflects that, in addition to his work on the PPS-10, Jackson worked from the Tucker barge, the "big pontoon barge," and the sandblasting barges.[7] Because PPS both employed Jackson and owned the Tucker barge, the "big pontoon barge," and the sandblasting barges, we find Jackson owed his allegiance to both the vessels and PPS, as his shoreside employer, and not simply to PPS. See **Id.**

ii. Sea-Based or Seagoing Activity

As to whether Jackson's work was sea-based or involved seagoing activity, according to the court in **Blanda**, **Sanchez** made clear that the sea-based/seagoing-activity prong of the test does not require the worker literally to "go to sea." **Blanda**, 2022 WL 1182701 at *10. As to Sanchez's work on the docked vessel, the **Sanchez** court held he failed the nature test because his work was not sea-based; however, as to his work on the offshore rig, the court appeared to have

[7] Testimony also reflects Jackson worked from the Ava Hays and the Robert Banta, two fleet boats. However, these vessels were owned by Chem Carriers Towing and not PPS. 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. See **Chandris**, 515 U.S. at 368, 115 S.Ct. at 2190. In deciding whether there is an identifiable group of vessels of relevance for a Jones Act seaman-status determination, the question is whether the vessels are subject to common ownership or control. **Papai**, 520 U.S. at 557, 117 S.Ct. at 1541. For example, in **Sanchez**, the court noted the plaintiff's time spent working on welding jobs on vessels not owned or controlled by Enterprise were irrelevant to his status as a seaman. See **Sanchez**, 997 F.3d at 566. Thus, where the Ava Hays and Robert Banta were not owned by PPS, we do not consider Jackson's work on them for purposes of the substantial in nature and duration prongs of the **Chandris** test. See e.g., **George v. Cal-Dive International, Inc.**, No. CIV.A. 09-5472, 2010 WL 2696876, *3 (E.D. La. July 1, 2010) (plaintiff will qualify as a seaman only if he can show a connection to a vessel or an identifiable group of vessels under common ownership or control that is substantial in terms of both its duration and nature).

concluded that this assignment satisfied the sea-based/seagoing-activity activity factor. **Id.** at *11.

As discussed above, Jackson was employed by PPS as a welding foreman, trained other welders, and inspected welds of others. Jackson also tested tanks on barges and sometimes assisted with tying off incoming barges. Testimony reflects Jackson traveled by boat two to three times to weld, but he never operated the vessel upon which he was traveling. Jackson's job title did not include captain, deckhand, or engineer on any boats. Jackson did not live at the shipyard or on any boats in the shipyard; he drove to the shipyard every day in his own vehicle and brought his lunch.

No evidence reflects the specific amount of time Jackson spent on the Tucker barge, the "big pontoon barge," and the sandblasting barges, respectively, or the precise nature of his work thereon.[8] However, as to work generally done on the Tucker barge, it is a floating crane barge without motive power, used as a work platform to facilitate repair work at the shipyard, and held in place with barge fittings and would be tied off with soft lines. It moved weekly and could be used to work off the side shell of a barge. Jackson operated the cherry picker and crane on the Tucker barge. Jackson would get on the Tucker barge and do work on a vessel. On one occasion at the Shintech plant, Jackson welded while in a basket suspended from the crane on the Tucker barge.

The "big pontoon" barge was a "work plat" used to work on wing walls mainly and repairs close to the waterline. Welders, fitters, and painters worked on the big pontoon barge. The big pontoon barge was used two to three times a week and was pulled around the facility by hand or boat.

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[8] Although we do not consider Jackson's work on the PPS-10, we, nevertheless, note courts have found that work done on a vessel dockside is not seagoing activity. See **Papai**, supra; **Sanchez**, supra. As noted above, the PPS-10 is secured to the TT barge and used as a work platform.

As to the two sandblast barges, the first was used for painting and coating operations and had a hopper. It would be moved three times in a month to position it on different areas on a barge for painting operations, and it was held in place with barge fittings and soft lines. During low water, it was filled by a truck that would back onto the plant; however, during high water, it sometimes had to be shoved into the bank by boat to be filled. A second smaller sandblasting barge, which was a deck barge used as a work platform, was held in place with soft lines and deck fittings and moved once or twice a month. It held different supplies, steel, and equipment, and it was used to add to a painting job.

Jackson testified 90%-100% of his time was spent over water. However, in **Schultz v. Louisiana Dock Co.**, 94 F.Supp.2d 746 (E.D. La. 2000), the court, referencing **Chandris** and **Papai**, stated, in part, as follows:

> Regardless of whether plaintiff spent one percent or 100 percent of his time performing repair work *on* barges brought to the facility for repair, working *from* vessels (the Louisiana Dock tugs) or being transported around the facility *by* vessels, the aggregation of circumstances speaking to the nature of his work and his connection to any identifiable vessel(s) demonstrate that, as a matter of law, he is not a seaman. None of plaintiff's work was of a seagoing nature. Plaintiff's duties were limited to inspecting and repairing barges moored at the facility. He did not go to sea or face the perils of the sea in the manner associated with seaman status. Plaintiff ate meals ashore and went home every night. He admitted that with respect to the vessels used to transport him around the facility he did not serve as a deckhand.

Schultz, 94 F.Supp.2d at 750; see also **Ingram**, 2022 WL 1524984 at *3 (plaintiff's work was not sea-based and did not involve seagoing activity, where he only worked on docked vessels, his injury occurred on a barge tied to a platform and not at sea, and he only entered vessels to clean them and not while the vessel performed any transportation activities).

Similar to the present case, **Schultz** involved a welder/fitter, who brought Jones Act and general maritime law claims against his employer, Louisiana Dock Company, LLC, and its parent company, American Commercial Barge Line, LLC,

after slipping and falling inside the tank of a hopper barge that he was checking for leaks. **Schultz**, 94 F.Supp.2d at 747. Louisiana Dock owned and operated a barge repair facility located on the shore of the Mississippi River; part of the facility consisted of a number of dumb barges connected together and permanently moored to the bank for purposes of creating a stationary work platform. **Id.** Some of the barges that came to the facility for repairs remained in the river but were moored to the work platform during the repair process. **Id.** Two vessels owned by Louisiana Dock occasionally were used to access barges in certain tiers of the fleeting area. **Id.** There was also a dry dock at the facility. **Id.** As a welder/fitter, the plaintiff in **Schultz** inspected barges and welded and repaired barges as necessary; tangential duties included tying and untying barges and pumping water out of the holds of barges. **Id.** He did not eat or sleep on any of the barges that came to the facility for repair work or on any of the Louisiana Dock boats used to access outlying barges. **Id.** The plaintiff never traveled or participated in any voyages with any of the barges being repaired at the facility, and he never acted as a deckhand on any of the vessels. **Id.** Thus, for the foregoing reasons and others, the **Schultz** court granted summary judgment on seaman status, dismissing the plaintiff's claims under the Jones Act and general maritime law. **Id.** at 751.

Additionally, in **Meaux v. Cooper Consolidated, LLC**, No. 19-CV-10628, --- F.Supp.3d ---, 2022 WL 1315492 (E.D. La. May 3, 2022), the court found the plaintiff, a flagger and utility man performing cargo-handling work midstream in the Mississippi River, was not a seaman, as it could not be said that the plaintiff's duties took him to sea in the way **Sanchez** envisioned to allow his work to be considered sea-based or its nature seagoing activity. **Meaux**, 2022 WL 1315492 at *10-11. The court noted boarding a crew boat to get to work is not seagoing activity nor is performing longshore work near or around water; otherwise, scores of maritime workers would be transformed into Jones Act seamen, who the law

currently does not recognize as such. **Id.** at *11. The court further noted the plaintiff certainly would not be categorized as a seaman if the vessel being loaded and on which he worked was dockside. See **Id.**; see also **Papai**, 520 U.S. at 559, 117 S.Ct. at 1542.

Conversely, in **Blanda**, supra, although the court ultimately found the plaintiff did not meet the **Chandris** substantial in duration requirement, it noted the work of the plaintiff, an employee who assisted in mooring vessels, "took him to sea" and involved "seagoing activities" as those terms of art are used in **Sanchez**. **Blanda**, 2022 WL 1182701 at *11. Most of the **Blanda** plaintiff's vessel work was performed while the vessels were away from the dock and in the Mississippi River, and his use of his employer's vessels was not just for traveling to and from his work but was an integral part of how he performed his job. **Id.** The essential nature of the work required him, while located in launch boats approximately 25 feet long, to take mooring lines dropped from oceangoing vessels and tie or untie them to or from buoys midstream in the Mississippi River. **Id.**

Considering the facts and foregoing jurisprudence, we find Jackson's work was not of a seagoing nature. Boats and barges came into the shipyard for repair. The evidence indicates Jackson only traveled outside the facility two or three times for welding work. Nothing reflects Jackson work was done while any vessel performed transportation activities. Although he assisted with tying off incoming vessels, Jackson was not a deckhand. Thus, we cannot say Jackson's duties took him to sea within the meaning of **Papai** and **Sanchez** to allow his work to be considered sea-based or its nature seagoing activity.

iii. Discrete Task/Sailing with the Vessel

As to whether Jackson's assignment to a vessel limited to performance of a discrete task after which his connection to the vessel ends or whether his assignment included sailing with the vessel, the **Meaux** court noted the plaintiff

therein was assigned the jobs of flagger or utility man, which were not discrete tasks and each of which assisted his employer's crane barges to complete their cargo-handling missions. See **Meaux**, 2022 WL 1315492 at *11; see also **Blanda**, 2022 WL 1182701 at *12 (the plaintiff's work fulfilled what was essentially the sole function of the vessels, to assist in mooring ocean-going vessels to buoys in the river, was not "transitory" or "sporadic," and was consistent over the life of his employment; additionally, he did other jobs from the boats (i.e., cleaning buoys, transporting river pilots, clearing tangled lines, mooring an ocean-going vessel to a dock, and bringing spring lines to the dock) and prepared the vessel for use).

However, **Meaux** found the question of whether the plaintiff's assignment included sailing with the crane barges from port to port or location to location tipped decidedly against seaman status. See **Meaux**, 2022 WL 1315492 at *11. The plaintiff therein did not sail with any of his employer's crane barges from cargo-handling location to cargo-handling location in the Mississippi River, and there was no evidence he did any work on any crane barge while it was in transit. **Id.**; but see **Blanda**, 2022 WL 1182701 at *12 (plaintiff traveled from the vessel's home port *via* the launch boats to perform his work and returned to the vessel's port when the work was complete). Only once did the **Meaux** plaintiff ride a crane barge to its work destination, and then only as a passenger, and only because his crew boat caught up to it. **Meaux**, 2022 WL 1315492 at *11. On all the other days, he boarded a crew boat or walked a gangplank to board the crane barge with which he was assigned to work that day and then, most often, only to cross over the deck of the crane barge to board the cargo vessel to perform his signaling duties as flagger. **Id.** Then, at the end of the day, he would take the crew boat to shore, and he would go home like any other longshoreman. **Id.**

Although we find Jackson's work on PPS's floating equipment was not discrete tasks as he assisted them in their respective repair missions, Jackson was

not a member of a crew of any of the PPS floating equipment. No evidence demonstrates he "sail[ed]" on any of PPS's barges; rather, he only traveled two to three times to weld, and he rode boats not owned by PPS. Thus, Jackson's assignment did not include sailing with a PPS vessel.

iv. Perils of the Sea

As to maritime perils, trial testimony shows welders faced risks from wakes and had to have one hand on the barge and what they were welding in order to understand the barge was moving and move their hand with the wake. Welders could fall in the water and were provided man overboard training. Workers wore life jackets and, at times, safety harnesses. Gauthreaux testified the term "watch the bump" means a boat and barge are coming into the plant and are going to make impact with the dock, so "keep your head up" to maintain balance. Workers are taught to carry things on their outside hand toward the river side, so they can grab the barge with their other hand and release the load. Normally, life rings are kept on the downstream side of most of the utility platforms or work platforms. Vessels taking on water is a risk, and there is a risk of falling in when barges gap open (i.e. "duck pond"). However, because Jackson's work was not sea-based and did not involve seagoing activity and his assignment did not include sailing with a PPS vessel, we find Jackson has not established a substantial connection to a PPS fleet of vessels as it related to the nature of his work.

b. Substantial in Duration

Additionally, we find Jackson has not established the substantial in duration requirement of **Chandris**. The analysis of this **Chandris** factor is unaffected by **Sanchez**. **Blanda**, 2022 WL 1182701 at *14. Gauthreaux testified as to the percentages of work done from various PPS floating equipment, and he testified these percentages applied to Jackson. In particular, he stated:

Q: … if we include the – Tucker barge, pontoon barge – one pontoon barge, two container barge [sic], Patterson barge, rescue boat, pontoon boat, the two sand barges, the Honky Tonk, the JAM401, and the PPS-10, when you consider all those work platforms, how much work was done from those versus the say –
A: The work on the topside of the barge?
Q: Correct. …

…

A: And you said including the PPS-10?
Q: Correct.
A: About 50 percent.
Q: If you back the PPS-10 out, what would be your estimate? …

…

A: Probably 30 percent.

Pertinent to this analysis and as noted above, testimony solely reflects Jackson worked from the Tucker barge, the "big pontoon" barge, and the sandblasting barges.[9] However, Gauthreaux's remaining 30% estimate of time spent working on PPS floating equipment, without the PPS-10, included floating equipment for which there is no evidence Jackson worked. In particular, there is no evidence Jackson worked on the container barge, the Patterson 82 barge, the rescue boat, the pontoon boat (i.e. the Honky Tonk), or the JAM-401, which were included in Gauthreaux's 30% estimate. There is no evidence as to the percentage of time Jackson worked on PPS floating equipment without this equipment, upon which he did not work, factored into the estimate. Moreover, the question posed to Gauthreaux referenced "one pontoon barge"; however, Gauthreaux did not clarify which pontoon barge was included in the calculation. In this regard, Jackson only worked on the big pontoon barge; nothing indicates he worked on the small pontoon barge. Moreover, Gauthreaux testified that reviewing Jackson's time sheets would not assist with determining "where he [Jackson] was." Futrell agreed time sheets were a method of billing, and the job codes do not indicate where the worker is standing or where the work is being done.

[9] See footnote 7, supra.

Although Jackson testified he spent 90-100% of his time over water, Jackson's work on customer barges or vessels not owned by PPS cannot be considered for purposes of establishing the substantial in duration prong, as these vessels are not under the common ownership of PPS. See e.g., **Chandris**, 515 U.S. at 368, 115 S.Ct. at 2190; **Papai**, 520 U.S. at 557, 117 S.Ct. at 1541; **Sanchez**, 997 F.3d at 566. Jackson's time traveling on vessels also cannot be considered as he merely was a passenger and not "in service" of that vessel. See e.g., **Lee v. Nacher Corp.**, 362 F.Supp.3d 359, 367 (E.D. La. 2019) (plaintiff's time being transported to the platform is not time spent in service of a vessel; these hours cannot be counted toward the required 30% of time spent in the service of a vessel).

After a thorough review of the record, we find Jackson is not a seaman, and the trial court erred in finding PPS was liable under the Jones Act. Nevertheless, the result herein would not change if the manifest error standard were applied, where for the reasons described above, a reasonable factual basis does not exist for the trial court's finding that PPS is liable under the Jones Act, and the record establishes that finding is manifestly erroneous. Accordingly, we reverse the trial court's finding of liability against PPS under the Jones Act, reverse the damage awards rendered in favor of Jackson and against PPS and/or Starr, and remand this matter to the trial court for further proceedings under the LHWCA. We pretermit discussion of appellants' remaining assignments of error.

CONCLUSION

For the foregoing reasons, the portion of the trial court's July 15, 2021 judgment, which was rendered in favor of plaintiff-appellee, Clarence Jackson, and against defendants-appellants, Plaquemine Point Shipyard LLC and Starr Indemnity & Liability Company, jointly, several and in solido for the full sum of $1,000,000.00, was rendered in favor of Clarence Jackson and against Plaquemine

Point Shipyard, LLC for the full sum of $406,668.19, was rendered in favor of Clarence Jackson and against Plaquemine Point Shipyard, LLC for maintenance at $75.00 per day commencing on February 20, 2017 until such time as Clarence Jackson is determined to be at maximum medical improvement, awarded legal interest on all amounts awarded from the date of injury on October 20, 2016 until paid, and assessed all costs of court to Plaquemine Point Shipyard, LLC and Starr Indemnity & Liability Company, is reversed. This matter is remanded for further proceedings consistent with this opinion. Costs of this appeal are assessed to plaintiff-appellee, Clarence Jackson.

REVERSED AND REMANDED.