NOT DESIGNATED FOR PUBLICATION

MEAK B. MCDANIEL, JR.	*	**NO. 2004-CA-2156**
VERSUS	*	**COURT OF APPEAL**
PACORINI USA, INC.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-15875, DIVISION "F-10"
Honorable Yada Magee, Judge
* * * * * *
Judge Edwin A. Lombard
* * * * * *

(Court composed of Judge David S. Gorbaty, Judge Edwin A. Lombard, Judge Roland L. Belsome)
BELSOME, J. DISSENTS WITH REASONS.

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AFFIRME

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This is an appeal from a judgment granting a Motion for Summary Judgment in favor of the appellee, Pacorini USA, Inc.

RELEVANT FACTS AND PROCEDURAL HISTORY

The appellant, Meak McDaniel, was employed by Pacorini and alleged that he was employed as a Jones Act Seaman. Mr. McDaniel had been hired by Pacorini on February 18, 2002. On February 19 and 20, the appellant worked on barges owned and/or chartered by MBLX, Inc. (the

NBI-9608) and American Commercial Barge Line (ACBL 5049) unloading coils of steel from an ocean-going vessel in mid-stream of the Mississippi River onto referenced barges. On February 20, 2002, the appellant's arm was crushed between a forklift on the barge and the steel coils that were being loaded onto Barge NBI-9608.

Appellant filed his Original Petition in the district court. The parties proceeded to conduct discovery and, on July 9, 2004, Pacorini filed a Motion for Summary Judgment seeking to dismiss the appellant's claims; appellee alleged that appellant was not a Jones Act seaman. Appellant opposed the motion. A hearing was held on September 10, 2004, at which time the district court granted the Motion for Summary Judgment, dismissing all claims by the appellant against the appellee.

LAW AND DISCUSSION

Appellate courts review summary judgments *de novo* under the same criteria that govern the trial judge's consideration of whether a summary judgment is appropriate. *Guillory v. Interstate Gas Station,* 94-1767, p. 5 (La.3/30/95), 653 So.2d 1152, 1155. A motion for summary judgment is properly granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is

entitled to judgment as a matter of law. La. C.C.P. art. 966(B). The summary judgment procedure is favored and shall be construed to accomplish the just, speedy, and inexpensive determination of actions. La. C.C.P. art. 966(A)(2).

The initial burden of proof is on the mover to show that no genuine issue of material fact exists. La. C.C.P. art. 966(C)(2). However, once the mover has made a prima facie showing that the motion should be granted, if the non-movant bears the burden of proof at trial on the issue before the court, the burden shifts to him to present evidence demonstrating that material factual issues remain. La. C.C.P. art. 966(C)(2).

JONES ACT RELIEF

The Jones Act, 46 U.S.C.App. § 688, provides in part, that "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law." This statute was enacted with the purpose of removing the bar to a seaman's ability to recover damages in suits alleging negligence. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354, 115 S.Ct. 2172, 2183, 132 L.Ed.2d 314 (1995); *Little v. Amoco Production Co.*, 98-1130, p. 4 (La.App. 1st Cir.5/14/99), 734 So.2d 933, 935, *writ denied*, 99-1752 (La.10/1/99), 748 So.2d 446. The Jones Act applies only to those plaintiffs who hold seaman status. *See Little*, 98-1130 at pp. 4-5, 734 So.2d at 935 (citing *Chandris*, 515 U.S. at 354-55, 115 S.Ct.

at 2183).

An inquiry into seaman status is fact-driven and will depend on the nature of the vessel and the worker's precise relation to it. *See McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 356, 111 S.Ct. 807, 818, 112 L.Ed.2d 866 (1991). The United States Supreme Court articulated a two-pronged test for seaman status in *Chandris*, 515 U.S. at 368, 115 S.Ct. at 2190; *Harbor Tug and Barge Co. v. Papai*, 520 U.S. 548, 554, 117 S.Ct. 1535, 1540, 137 L.Ed.2d 800 (1997). In order to be deemed a seaman, plaintiff must have (1) contributed to the function of the vessel or the accomplishment of its mission; and (2) had a connection to the function of the vessel or an identifiable group of vessels that was substantial in both duration and nature. *See Chandris*, 515 U.S. at 368, 115 S.Ct. at 2190; *see Little*, 98-1130 at p. 6, 734 So.2d at 936. The second prong of the seaman status test separates those "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." *See Chandris*, 515 U.S. at 368, 115 S.Ct. at 2190.

The Supreme Court has held that in determining a plaintiff's seaman status, courts must examine the total circumstances of the worker's

employment. *See Chandris,* 515 U.S. at 368, 370, 115 S.Ct. at 2191. And although it is not fixed in stone, the "rule of thumb" is that those workers who spend less than about 30 percent of their employment in the service of a vessel in navigation should not qualify as seamen under the Jones Act. *Id.,* 515 U.S. at 371, 115 S.Ct. at 2191 (citing *Barrett v. Chevron, U.S.A., Inc.,* 781 F.2d 1067 (5th Cir.1986)); *see Little,* 98-1130 at pp. 6-7, 734 So.2d at 936. Courts should not employ a snapshot test for seaman status, inspecting only the situation as it existed at the time of the accident. *Chandris,* 515 U.S. at 363, 115 S.Ct. at 2187. And not any maritime worker on a ship at sea as part of his employment is automatically a member of the crew of the vessel within the meaning of the statutory terms. *Id.* The ultimate inquiry is whether the employee is a member of the vessel's crew, or simply a land-based worker who happens to be working on the vessel at the given time. *Chandris,* 515 U.S. at 370.

After *de novo* review of the record, we find no evidence sufficient to show McDaniel's connection to the function of a vessel or an identifiable group of vessels that was substantial in both duration and nature. Prior to his accident, McDaniel worked for Pacorini for two days. During that time, McDaniel assisted in loading and unloading cargo on two different barges and his duties never took him to sea. Appellant presented no factual

evidence regarding the ownership or common control of the barges by Pacorini at the time of his accident. Accordingly, McDaniel cannot be considered a Jones Act seaman.

McDaniel simply failed to produce the requisite factual support necessary to establish that he will be able to satisfy his evidentiary burden of proof at trial. Thus, the district court's decision, granting summary judgment in favor of Pacorini and dismissing McDaniel's claims with prejudice, is affirmed.

AFFIRMED