No. 21-266

In the

Supreme Court of the United States

ARTHUR SEWALL & CO.,

Petitioner,

v.

MARIA MURPHY,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the First Circuit

COMPETITION PACKET FOR THE
TWENTY-NINTH ANNUAL JUDGE JOHN R. BROWN
ADMIRALTY MOOT COURT COMPETITION, 2022

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United States Court of Appeals
For the First Circuit

No. 20-2318

MARIA MURPHY,

Plaintiff, Appellant,

v.

ARTHUR SEWALL & CO.,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Michele Y. Portia, U.S. District Judge]

Before

Justinian, Solomon, and Hammurabi,
Circuit Judges.

May 7, 2021

HAMMURABI, Circuit Judge.

This appeal requires us to address two issues relating to the legal status of harbor pilots. On the first issue, we hold that a pilot does not qualify as a "seaman"[1] under the general maritime law for purposes of claiming the benefit of a vessel owner's warranty of seaworthiness. On the

[1] Ordinarily, we would prefer to use a gender-neutral term such as "seafarer." *See*, *e.g.*, *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 208, 1996 AMC 305, 312 (1996). But this case turns on the meaning of a long-standing term of art in maritime law that Congress has enshrined in statute. With apologies, therefore, we will use the traditional term — even though it is particularly inappropriate on the facts of this case.

second issue, we hold that a pilot may nevertheless bring an unseaworthiness action as a "*Sieracki* seaman" under the Supreme Court's decision in *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946).

I
Facts and Proceedings

The relevant facts for purposes of this appeal can be stated quickly. Capt. Maria Murphy, a licensed State Branch Bar Pilot and member of the Portland Pilots, lost both of her legs in a tragic accident that she suffered while disembarking from the *Shenandoah* after she had safely piloted the ship from the Portland Ocean Terminal to the open sea. The *Shenandoah* is owned and operated by Arthur Sewall & Co. ("Sewall"). For purposes of this appeal, we must assume that the accident was caused by the unseaworthiness of the *Shenandoah*.

Capt. Murphy brought the present action against Sewall to recover for her personal injuries. She raised two theories to recover for Sewall's alleged breach of the warranty of seaworthiness and two theories to recover for Sewall's alleged negligence. The district court granted Sewall's motion for partial summary judgment dismissing the unseaworthiness claims, and that is the only aspect of the case currently before us. We need not address Capt. Murphy's negligence claims.

The district court also certified its ruling under 28 U.S.C. § 1292(b) for immediate interlocutory appeal and we agreed to hear the appeal. We now reverse and remand the case for further proceedings.

II
Seaman Status for Pilots Under the General Maritime Law

We agree with the district court that Capt. Murphy may not claim seaman status under the general maritime law. However logical it may be to treat a pilot as a "seaman," Supreme Court precedent forecloses that possibility. Even if pilots were considered seamen before 1990, a series of decisions starting with *McDermott International Inc. v. Wilander*, 498 U.S. 337, 1991 AMC

913 (1991), reformulated the requirements for seaman status. In *Chandris Inc. v. Latsis*, 515 U.S. 347, 370-371, 1995 AMC 1840, 1856 (1995), the Court announced the imprecise test that we are bound to apply today: (1) a worker's duties must contribute to the function of the vessel or to the accomplishment of its mission; and (2) the worker's connection to the vessel or an identifiable group of vessels must be substantial in both its duration and nature. Capt. Murphy concedes that her connection to any particular vessel (or even a fleet[2] of vessels) is not substantial in its duration. She does not even come close to meeting the 30% rule of thumb that the *Chandris* Court endorsed. *See* 515 U.S. at 371, 1995 AMC at 1858.

Capt. Murphy seeks to avoid the *Chandris* requirements by arguing that they apply only to seaman status under the Jones Act — the context in which that case arose. We are unpersuaded. Although the *Chandris* Court never explicitly said so, it clearly assumed that a worker's status as a "seaman" applied equally in the context of statutory claims under the Jones Act or general maritime law claims for maintenance and cure[3] or breach of the warranty of seaworthiness. If Capt. Murphy's distinction is to succeed, she must persuade the Supreme Court to adopt it. We will not be the first court to do so.

III
Sieracki Seaman Status for Pilots

Although we agree with the district court's conclusion that Capt. Murphy may not rely on pre-1920 decisions to establish seaman status, we part company with the district court on the second issue. It is beyond dispute that Congress in 1972 denied covered longshore workers the

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[2] Capt. Murphy does not argue that "the vessels calling at the Port of Portland" constitute an "identifiable group of vessels" for purposes of the fleet doctrine. Any such argument would have been foreclosed by the Supreme Court's decision in *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 557, 1997 AMC 1817, 1823 (1997).

[3] Capt. Murphy does not make any claim under the Jones Act or the general maritime law doctrine of maintenance and cure — nor could she. Those actions lie only against a seaman's employer, and Capt. Murphy is not employed by anyone.

benefit of *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946), when it amended the Longshore and Harbor Workers' Compensation Act (LHWCA). Courts have often said as a result that Congress overruled *Sieracki*. *See*, *e.g.*, *Harwood v. Partredereit AF 15.5.81*, 944 F.2d 1187, 1190 n.1, 1992 AMC 375, 377 n.1 (4th Cir. 1991). But that legislative "overruling" of *Sieracki* can apply only when the statute applies.[4] In amending the LHWCA, Congress did not (and could not) act beyond the scope of the statute. For those who are not covered by the LHWCA, the overruling of *Sieracki* is irrelevant.

The district court relied primarily on *Harwood* to conclude that *Sieracki* is unavailable to Capt. Murphy. We find the Fifth Circuit's contrary reasoning in an entire line of cases dating back over four decades to be far more persuasive. *See*, *e.g.*, *Rivera v. Kirby Offshore Marine, LLC*, 983 F.3d 811 (5th Cir. 2020); *Green v. Vermilion Corp.*, 144 F.3d 332, 337-338 (5th Cir. 1998); *Cormier v. Oceanic Contractors, Inc.*, 696 F.2d 1112, 1113 (5th Cir. 1983); *Aparicio v. Swan Lake*, 643 F.2d 1109, 1113-18, 1981 AMC 1887, 1893-1902 (5th Cir. Unit A Apr. 1981). Applying those well-reasoned cases, we hold that *Sieracki* is alive and well and living in the spaces that the LHWCA does not reach.

The more challenging question is whether Capt. Murphy was covered by the LHWCA. Sewall argues that she was, relying primarily on *Director, Office of Workers' Compensation Programs v. Perini North River Associates*, 459 U.S. 297, 1983 AMC 609 (1983). Sewall reads *Perini* as holding that all workers injured on navigable waters are necessarily covered by the LHWCA unless they are excluded by section 2(3)(A)-(H), 33 U.S.C. § 902(3)(A)-(H), or are "transiently or fortuitously upon actual navigable waters," *Perini*, 459 U.S. at 324 n.34, 1983 AMC at 631 n.34. But what the Supreme Court really held was "that when a worker is injured on the

[4] It is true that Congress overruled *Sieracki* on its facts. The injured worker in that case *was* covered by the LHWCA. *See Sieracki*, 328 U.S. at 100-103.

actual navigable waters in the course of his employment on those waters, he satisfies the status requirement in § 2(3), and is covered under the LHWCA, providing, of course, that he is the employee of a statutory 'employer,' and is not excluded by any other provision of the Act." *Id*. at 324, 1983 AMC at 631.

Capt. Murphy was not covered by the LHWCA because she was not the employee of anyone, let alone of a statutory employer. She was undoubtedly doing maritime work, but in the absence of an employee-employer relationship, she was not "engaged in maritime *employment*." LHWCA § 2(3), 33 U.S.C. § 902(3) (emphasis added). The Fifth Circuit recognized that limitation on LHWCA coverage in *Bach v. Trident Steamship Co.*, 920 F.2d 322, 327 n.5, 1991 AMC 928, 936 n.5 (5th Cir. 1991), where it was arguably dictum, but then applied it as a clear holding in *Rivera*, 983 F.3d at 817-818.

There can be no doubt that Capt. Murphy falls within *Sieracki*'s scope. Sewall concedes that she did the traditional work of a seaman — navigating the vessel — and that she not only faced a seaman's hazards but was seriously injured as the result of a seaman's hazard. *See also Bach*, 920 F.2d at 324, 1991 AMC at 931.

IV
Conclusion

For the foregoing reasons, the decision below is reversed, and the case is remanded for further proceedings consistent with this opinion.

SOLOMON, Circuit Judge, concurring in part and in the judgment and dissenting in part:

Although I concur in the judgment and in parts I, III, and IV of the Court's opinion, I respectfully dissent from part II of the Court's opinion. I am fully persuaded by the arguments so forcefully presented by the legendary Judge John R. Brown that a pilot is a "seaman" notwithstanding the lack of a permanent connection to a particular vessel. See *Bach v. Trident Steamship*

Co., 947 F.2d 1290, 1291-93 (5th Cir. 1991) (Brown, J., dissenting); *Bach v. Trident Steamship Co.*, 920 F.2d 322, 327-333, 1991 AMC 928, 936-945 (5th Cir. 1991) (Brown, J., dissenting). Although Judge Brown's arguments were made in dissent, they are no less persuasive here.

JUSTINIAN, Circuit Judge, concurring in part and dissenting in part:

I fully agree with part II of the Court's opinion, which explains why Capt. Murphy is not a seaman entitled to the benefit of the vessel owner's warranty of seaworthiness under the general maritime law. But I cannot agree with part III of the Court's opinion, which erroneously holds that Capt. Murphy is nevertheless entitled to the benefit of the vessel owner's warranty of seaworthiness under *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946). I must therefore respectfully dissent. I would affirm the district court's partial summary judgment and remand for consideration of Capt. Murphy's negligence claims.

In my view, the presumed facts of this case well illustrate why pilots should not have the benefit of the vessel owner's warranty of seaworthiness. Everyone recognizes that Capt. Murphy has suffered terrible injuries through no fault of her own. In the present procedural posture of the case, we must accept the plausible factual allegations in the complaint as true — and those allegations strongly point to an accident that was almost inevitable, if not for Capt. Murphy then for some other person trying to board or disembark from the vessel using the ship's ladder. Moreover, the cause of the accident (accepting the factual allegations in the complaint as true) was the negligence, even gross negligence, of the vessel owner.[1] The temptation to ensure that Capt. Murphy receives compensation for her injuries in these circumstances is powerful indeed, but in

[1] Capt. Murphy did not seek punitive damages (and they are in any event not available on her unseaworthiness claims, *see Dutra Group v. Batterton*, 139 S. Ct. 2275, 2019 AMC 1521 (2019)), but if punitive damages are available on her negligence claims this is surely a case that cries out for them.

the present procedural posture only her unseaworthiness claim is before us. My colleagues in the majority have been unable to resist that temptation and have therefore permitted her to proceed on her *Seracki* unseaworthiness claim. In the process, they have lost sight of the larger picture and failed to appreciate the implications of our decision today.

If Capt. Murphy can prove the allegations in her complaint, I fully agree that she should be allowed to recover from Sewall for her injuries. But that recovery should be based on Sewall's negligence, not under the no-fault unseaworthiness cause of action. If Capt. Murphy is covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950, she should prevail on her claim under section 5(b), 33 U.S.C. § 905(b). If not, she can still assert her negligence claim under *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632, 1959 AMC 597, 602 (1959), which recognized that a vessel owner is subject to a "duty of exercising reasonable care under the circumstances" to every person who is "on board for purposes not inimical to [the owner's] legitimate interests." Today's decision, in contrast, will allow pilots to recover on the basis of an unseaworthy condition even if the vessel owner is entirely without fault. *See*, *e.g.*, *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 1960 AMC 1503 (1960); *Mahnich v. Southern Steamship Co.*, 321 U.S. 96, 1944 AMC 1 (1944). I see no basis for permitting such recoveries. I would affirm the judgment below and remand the case to permit Capt. Murphy to prove her negligence claim against Sewall (if she can).

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MARIA MURPHY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**2:19-cv-00945-MYP**
	)	
ARTHUR SEWALL & CO.,	)	
	)	
Defendant.	)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Capt. Maria Murphy brings this action in admiralty against Arthur Sewall & Co. ("Sewall") to recover for personal injuries that she suffered while attempting to disembark from Sewall's vessel, the *Shenandoah*. Capt. Murphy has raised two theories to permit recovery for Sewall's alleged breach of the warranty of seaworthiness and two theories to permit recovery for Sewall's alleged negligence. Sewall has moved for partial summary judgment to dismiss the unseaworthiness claims. That motion is granted. The Court also certifies its ruling under 28 U.S.C. § 1292(b) for immediate interlocutory appeal.

I. The Facts of the Case

The parties have stipulated to the following facts or this Court must accept them as true based on the allegations of Capt. Murphy, the non-moving party in this summary judgment motion.

1. On August 10, 2018, Capt. Murphy,[1] then a 36-year-old licensed State Branch Bar Pilot and member of the Portland Pilots, suffered a horrendous accident while disembarking from the *Shenandoah*, a Panamanian-flagged ship owned and operated by Sewall.

[1] Before becoming a pilot, Capt. Murphy had a distinguished career as a merchant mariner, ultimately obtaining the highest possible merchant-mariner credential: unlimited master.

2. Capt. Murphy boarded the *Shenandoah* by use of a portside gangway at Pier 1, Portland Ocean Terminal, to navigate the outbound ship to a point offshore where she would meet a pilot launch and disembark the ship, leaving the *Shenandoah*'s captain to proceed with the ocean voyage.

3. After the pilot launch met the *Shenandoah*, Capt. Murphy began disembarking the ship by use of its rope-handled ladder with steps of wooden slats down the starboard side of the ship to the waiting pilot launch to return to shore.[2]

4. As Capt. Murphy descended the ship's ladder, the seas were four to five feet with an onshore wind. The pilot launch was holding station off the ship's side by use of its engines and rudder. When Capt. Murphy neared the bottom of the ladder, the pilot launch planned to draw closer to the ship's side to allow her to step from the ladder onto the pilot launch, holding onto a railing on the pilot launch to maintain her balance.

5. At the top of the ladder, near the ship's deck, disembarkation proceeded normally. But when Capt. Murphy reached a point eight feet above the approaching pilot launch, two of the ladder's wooden slats virtually disintegrated under her weight — with the result that she fell from the ladder into the ocean between the *Shenandoah* and the pilot launch. Wave and wind action caused the pilot launch to smash against the ship's side, crushing Capt. Murphy's legs between the two vessels.

6. James Murphy, a member of the *Shenandoah*'s crew, tossed a life ring down the vessel's side and Richard Quick, a deck hand on the pilot launch, helped Capt. Murphy place the life ring over her head and chest. After some difficulty, Capt. Murphy was lifted aboard the pilot launch, which rushed her to a waiting ambulance at the dock.

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[2] This is a typical method for pilots to board and disembark from ocean-going vessels. *See*, *e.g.*, https://www.youtube.com/watch?v=tAumG0NRdhw.

7. Hospital medical personnel were unable to save Capt. Murphy's crushed legs, which had to be amputated.

8. Sewall's post-incident investigation revealed that the ship's ladder slats nearest the water were rotted but had been painted over by the *Shenandoah*'s crew during maintenance. For purposes of this motion, Sewall admits that the *Shenandoah* was unseaworthy by reason of the inadequate ship's ladder, which failed to provide a safe means of access to and from the ship.

II. Conclusions of Law

1. Capt. Murphy raises four independent theories to justify recovering damages from Sewall for her tragic injuries. Although she concedes that she would not qualify as a "seaman" under modern Supreme Court jurisprudence interpreting the Jones Act, she first claims that she is a "seaman" for purposes of maintaining an action for a breach of the vessel owner's warranty of seaworthiness under principles of general maritime law dating back to the nineteenth century. Second, she claims that she is a "*Sieracki* seaman," citing *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946), and thus entitled to maintain an unseaworthiness action. Third, she claims that if she does not qualify as a seaman under either of her first two claims then she is entitled to bring a negligence action against Sewall under section 5(b) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 905(b). Fourth, she claims that even if she lacks seaman status and is not protected by the LHWCA, she is still entitled to bring a negligence action against Sewall under the general maritime law because Sewall is subject to a "duty of exercising reasonable care under the circumstances" to a person who is "on board for purposes not inimical to [Sewall's] legitimate interests." *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632, 1959 AMC 597, 602 (1959).

2. Only the first two claims are at issue here. Currently pending before this Court is Sewall's motion for partial summary judgment that Capt. Murphy is not entitled as a matter of law

to maintain an unseaworthiness action because she is not a "seaman." On the first claim, Sewall argues that whatever the general maritime law may have recognized in the nineteenth and early twentieth century, the seaman-status doctrine evolved in the late twentieth century to require a connection to a vessel or fleet of vessels that Capt. Murphy concededly does not have. And on Capt. Murphy's second claim, Sewall argues that whatever force the *Sieracki* doctrine may have had for its first quarter-century, Congress overruled the Supreme Court's decision when it enacted the 1972 Amendments to the Longshore and Harbor Workers' Compensation Act (LHWCA).

3. The first claim can be quickly rejected. Capt. Murphy relies on a simple syllogism. The major premise adopts the Supreme Court's observation "that Congress intended the term [seaman] to have its established meaning under the general maritime law at the time the Jones Act was enacted." *Chandris Inc. v. Latsis*, 515 U.S. 347, 355, 1995 AMC 1840, 1845 (1995); *see also McDermott International Inc. v. Wilander*, 498 U.S. 337, 342, 1991 AMC 913, 916-917 (1991). Capt. Murphy's minor premise is that pilots were considered seamen under the general maritime law prior to 1920. *See*, *e.g.*, *The China*, 74 U.S. (7 Wall.) 53, 67, 2002 AMC 1504, 1513 (1868) (describing pilots as "seamen"); *United States v. Thompson*, 28 F. Cas. 102, 102 (No. 16,492) (C.C. D. Mass. 1832) (Story, J.) (same). The flaw in Capt. Murphy's reasoning is that the Supreme Court did not stop with the observation on which she relies. The Court continued to develop an entire set of requirements for seaman status. Of particular relevance here, "a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Chandris*, 515 U.S. at 368, 1995 AMC at 1856. Because Capt. Murphy concedes that she — like virtually all pilots — does not work for a particular vessel or fleet, but rather is "on call" for whatever vessel requires her services, she does

not have the required connection. Under binding Supreme Court authority, therefore, she cannot be a true seaman.[3]

4. The analysis on the second claim is somewhat more complicated, but that claim must also be rejected. In *Sieracki*, the Supreme Court held that workers who would not ordinarily qualify as seamen — indeed, workers who were undeniably longshore workers protected by the LHWCA — could nevertheless bring an action asserting a breach of the warranty of seaworthiness against the owner of a vessel on which they were injured because they were doing the work traditionally done by seamen and facing a seaman's hazards. 328 U.S. at 89-103, 1946 AMC at 701-710. In *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 412-413, 1954 AMC 1, 9 (1953), the Court further recognized that "*Sieracki* seaman" status was not limited to longshore workers but extended to any worker doing traditional seaman's work. If the development of the law had stopped there, Capt. Murphy could certainly bring her unseaworthiness claim.

Unfortunately for Capt. Murphy, the law changed significantly in 1972 when Congress amended the LHWCA. That legislation involved a number of well-documented compromises. *See*, *e.g.*, *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 261-262 & n.18, 1977 AMC 1037, 1046-47 & n.18 (1977). One key aspect of those compromises was the elimination of the unseaworthiness action for *Sieracki* seamen. *See id*. at 261-262, 1977 AMC at 1047. LHWCA § 5(b) now provides: "The liability of the vessel under this subsection shall not be based upon the

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[3] Capt. Murphy argues that the detailed requirements for seaman status adopted by the Supreme Court in *Chandris* and earlier cases are applicable only in the Jones Act context in which those cases arose and not in the unseaworthiness context at issue here. On an unseaworthiness claim, she argues, this Court should look to the well-established general maritime law as it existed prior to the Jones Act. She cites no authority for the argument that seaman status is not consistent across all of the traditional seamen's remedies — Jones Act, unseaworthiness, and maintenance and cure. There is authority rejecting her argument. *See*, *e.g.*, *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1499, 1995 AMC 2409, 2412 (5th Cir. 1995) (en banc) (quoting *Hall v. Diamond M Co.*, 732 F.2d 1246, 1248 (5th Cir. 1984) (per curiam)), *overruled on other grounds*, *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 2009 AMC 1521 (2009).

warranty of seaworthiness or a breach thereof at the time the injury occurred." 33 U.S.C. § 905(b). As a number of courts of appeals have recognized, that language means that "Congress specifically overruled *Sieracki* with the 1972 amendments to the LHWCA." *Harwood v. Partredereit AF 15.5.81*, 944 F.2d 1187, 1190 n.1, 1992 AMC 375, 377 n.1 (4th Cir. 1991) (rejecting pilot's reliance on *Sieracki*); *see also*, *e.g.*, *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 208 n.6 (1996) ("The Court extended the duty to provide a seaworthy ship . . . to longshore workers in [*Sieracki*]. Congress effectively overruled this extension in its 1972 amendments to the [LHWCA]."); GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY § 6-57, at 449 (2d ed. 1975) (arguing that "the draftsman [of LHWCA § 5(b)] meant to abolish the entire class of Sieracki-seamen; if the section is so construed, no one could sue as a Sieracki-seaman whether or not he was technically 'covered' [by LHWCA]"). Because Congress has eliminated the doctrine, Capt. Murphy cannot be a *Sieracki* seaman.

III. Conclusion

Defendant's motion for partial summary judgment is *granted*. Plaintiff has no claim for unseaworthiness. This Court is nevertheless "of the opinion that [the present] order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from [this] order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). This Court therefore certifies this interlocutory order for immediate appeal under 28 U.S.C. § 1292(b) and stays all proceedings in this Court until the Court of Appeals has either denied permission to appeal or finally acted on the appeal.

SO ORDERED.

Dated this 13th day of March 2020

/s/ MICHELE Y. PORTIA
U.S. DISTRICT JUDGE

United States Court of Appeals
For the First Circuit

No. 20-2318

MARIA MURPHY,

Plaintiff, Appellant,

v.

ARTHUR SEWALL & CO.,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Michele Y. Portia, U.S. District Judge]

Before

Justinian, Solomon, and Hammurabi,
Circuit Judges.

June 26, 2021

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

SOLOMON, Circuit Judge, concurring:

I agree that the present case is not appropriate for further review in our Court. Whatever we may have to say about the continued validity of *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946), in light of the 1972 Amendments to the Longshore and Harbor Workers'

Compensation Act (LHWCA), the circuit courts would still be in conflict. That is an issue that only the Supreme Court can resolve.

I write to add that if we had agreed to review the case *en banc*, our review should not have been limited to the *Sieracki* issue. We should also have considered whether a pilot should be treated as a "seaman" under the general maritime law for purposes of an unseaworthiness action. That is an issue that we could helpfully address. Although seaman-status jurisprudence has evolved in the Supreme Court in a manner that suggests that Capt. Murphy cannot qualify as a "seaman" for lack of a sufficient connection to a vessel or a fleet of vessels, that jurisprudence was in the statutory context of the Jones Act or the LHWCA. The Supreme Court has never held that "seaman" has the same meaning in unseaworthiness (or maintenance-and-cure) actions under the general maritime law that it does in negligence actions under the Jones Act. *See*, *e.g.*, DAVID W. ROBERTSON, STEVEN F. FRIEDELL & MICHAEL F. STURLEY, ADMIRALTY AND MARITIME LAW IN THE UNITED STATES 189 (4th ed. 2020).

JUSTINIAN, Circuit Judge, dissenting:

I would grant the petition for rehearing and set the case for argument *en banc*. The panel's conclusion that *Sieracki* has survived Congress's attempt to overrule it puts our court in clear and direct conflict with the Fourth and Ninth Circuits.

Selected Chronology of the Case[*]

Aug. 10, 2018	Capt. Murphy injured while attempting to disembark from the *Shenandoah*
Aug. 1, 2019	Capt. Murphy files present action raising unseaworthiness and negligence claims against Arthur Sewall & Co. in federal district court in Portland, Maine
Jan. 17, 2020	Arthur Sewall & Co. moves for partial summary judgment to dismiss Capt. Murphy's claim for unseaworthiness
Mar. 13, 2020	District court grants Arthur Sewall & Co.'s motion for partial summary judgment and certifies the case for interlocutory appeal under 28 U.S.C. § 1292(b)
Mar. 22, 2020	Capt. Murphy files notice of appeal and petitions for permission to bring interlocutory appeal under 28 U.S.C. § 1292(b)
May 26, 2020	Court of appeals grants permission to appeal
Mar. 4, 2021	Oral argument in the court of appeals
May 7, 2021	Court of appeals issues its opinion reversing the judgment below
May 14, 2021	Arthur Sewall & Co. files petition for rehearing
June 26, 2021	Court of appeals denies petition for rehearing
Sept. 4, 2021	Arthur Sewall & Co. files petition for writ of certiorari raising two issues: (1) whether a pilot qualifies as a traditional seaman protected by the warranty of seaworthiness, and (2) whether a pilot may rely on *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 AMC 698 (1946), to maintain an action for unseaworthiness
Dec. 2, 2021	Supreme Court grants petition

[*] This information is included in the packet for the information of Competition participants. Unlike the preceding pages, it should not be considered part of the APPENDIX TO THE PETITION FOR CERTIORARI filed with the Court.