S282264

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRIAN RANGER,
Plaintiff and Appellant,

vs.

ALAMITOS BAY YACHT CLUB
Defendant and Respondent

After a Decision by the Court of Appeal,
Second Appellate District, Division Eight, Case No. B315302

Appeal From the Superior Court of the State of California for
The County of Los Angeles
The Honorable Mark C. Kim, Judge Presiding
Case No. 19STCV22806

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF OF SUSAN J. GARNER, SUSAN M. GEERLINGS, AND MELISSA G. TATMAN IN SUPPORT OF THE APPELLANT

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Susan J. Garner, Susan M. Geerlings, and Melissa G. Tatman respectfully request permission to file the attached amicus brief in this appeal.

Amici are surviving family members and the Executors or Administrators of the Estates of Shane Garner, Spencer Geerlings, and Eric Tatman, who died on May 10, 2023, when a Learjet, which was transporting them across the Santa Barbara Channel from the marine air base at Point Magu on the mainland to a naval base on San Clemente Island, caught fire and crashed into navigable waters. Amici anticipate filing wrongful-death actions in California Superior Court under general maritime law. *See Moragne v. States Marine Lines*, 398 U.S. 375, 409 (1970) (recognizing wrongful-death actions under general maritime law). An intended defendant in those prospective wrongful-death actions was the owner and operator of the Learjet and the decedents' employer. That prospective defendant has offered to compensate amici for their losses under the workers' compensation statute and may argue that workers' compensation is the exclusive remedy for their losses, much as Alamitos Bay Yacht Club ("ABYC"), the defendant-respondent in the present appeal, has argued here.

Amici anticipate making arguments in their wrongful-death actions that are similar to those of Brian Ranger, the plaintiff-appellant in the present appeal. For example, they will likely argue that their claims are subject to general maritime law under the reverse-*Erie* doctrine because a federal court would have admiralty jurisdiction over those claims. *See, e.g., In re Air Crash off Point Mugu*, 145 F. Supp. 2d 1156, 1164 (N. D. Cal. 2001) (in offshore airplane-crash cases, "admiralty jurisdiction may arise where the airplane was fulfilling a role that, but for air travel, would have been done by a vessel"). In addition, they will likely argue that state law cannot deprive them of their maritime-law rights. This Court's decision in the present case accordingly has the potential to impact the decision in the wrongful-death actions that amici expect to file.

Amici believe that the dispositive issue in this appeal is admiralty jurisdiction, but neither of the courts below devoted sufficient attention to the issue. The Superior Court described the parties' arguments on admiralty jurisdiction and briefly summarized some of the leading cases, but devoted barely half a dozen lines to analyzing and deciding the issue. The Court of Appeal did not address the admiralty-jurisdiction issue at all. The

parties therefore focused most of their attention on other issues in the case, discussing the dispositive admiralty-jurisdiction issue in only a few pages at the end of each brief. This Court could accordingly benefit from a more thorough analysis of the admiralty-jurisdiction issue.

No party or any counsel for a party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the proposed amicus brief. Professor Michael F. Sturley, Esq. 727 East Dean Keeton Street, Austin, TX 78705, is the author of this Amicus Brief.

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DATED: May 21, 2024

Respectfully Submitted,

Charles D. Naylor Esq.

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By: */s/Charles D. Naylor*

Charles D. Naylor

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INTEREST OF *AMICI CURIAE*

Amici are Susan J. Garner, Susan M. Geerlings, and Melissa G. Tatman, who anticipate filing wrongful-death actions in California Superior Court under general maritime law. *See Moragne v. States Marine Lines*, 398 U.S. 375, 409 (1970) (recognizing wrongful-death actions under general maritime law). Shane Garner, Spencer Geerlings, and Eric Tatman died on May 10, 2023, when a Learjet transporting them across the Santa Barbara Channel from the marine air base at Point Magu on the mainland to a naval base on San Clemente Island caught fire and crashed into navigable waters. An intended defendant in those prospective wrongful-death actions was the owner and operator of the Learjet and the decedents' employer. That prospective defendant has offered to compensate amici for their losses under the workers' compensation statute and may argue that workers' compensation is the exclusive remedy for their losses, much as Alamitos Bay Yacht Club ("ABYC"), the defendant-respondent in the present appeal, has argued here.

Amici anticipate making arguments in their wrongful-death actions that are similar to those of Brian Ranger, the plaintiff-appellant in the present appeal. For example, they will likely

argue that their claims are subject to general maritime law under the reverse-*Erie* doctrine because a federal court would have admiralty jurisdiction over those claims. *See, e.g., In re Air Crash off Point Mugu*, 145 F. Supp. 2d 1156, 1164 (N. D. Cal. 2001) (in offshore airplane-crash cases, "admiralty jurisdiction may arise where the airplane was fulfilling a role that, but for air travel, would have been done by a vessel"). In addition, they will likely argue that state law cannot deprive them of their maritime-law rights. This Court's decision in the present case accordingly has the potential to impact the decision in the wrongful-death actions that amici expect to file.

INTRODUCTION

The dispositive issue in this appeal is admiralty jurisdiction. Once it is recognized that Mr. Ranger's claims would have been within the admiralty jurisdiction of a federal court if he had chosen to assert his claims there, the reverse-*Erie* doctrine requires the application of federal maritime law — even in state court. Binding decisions of the United States Supreme Court recognize the viability of Mr. Ranger's maritime-law claims unless Congress has overruled those decisions by statute. But the only federal statute

that could even arguably have done that (the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950) does not apply to Mr. Ranger. And under the Supremacy and Admiralty Clauses of the federal Constitution, a state statute (such as Cal. Lab. Code § 3600) cannot deprive Mr. Ranger of his rights under federal maritime law. The existence of admiralty jurisdiction accordingly determines the outcome of this appeal.

Because admiralty jurisdiction is the dispositive issue in this appeal, amici will focus on that issue and explain why the facts alleged in Mr. Ranger's complaint are sufficient to invoke a federal court's admiralty jurisdiction over his negligence and unseaworthiness claims. That conclusion, in turn, invokes the reverse-*Erie* doctrine and requires state courts to apply federal maritime law to decide this case.

FACTUAL BACKGROUND

Because the present appeal comes to this Court following ABYC's demurrer, the facts alleged in Mr. Ranger's complaint must be accepted as true. The key fact is that Mr. Ranger was injured aboard the *Latham B*, a vessel owned and operated by ABYC, while that vessel was moored in navigable waters. Mr.

Ranger alleges that his injuries were caused by ABYC's negligence and the unseaworthiness of the *Latham B*.

STATUTORY AND MARITIME LAW BACKGROUND

Article III, section 2, clause 1 of the United States Constitution (the (Admiralty Clause)) provides, in relevant part, that "[t]he judicial Power shall extend . . . to all Cases of admiralty and maritime jurisdiction." Relying on that authority, Congress granted admiralty jurisdiction to the federal courts in 28 U.S.C. § 1333(1), which provides that "[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." Because of the saving-to-suitors clause (the final fifteen words of 28 U.S.C. § 1333(1)), the federal district courts' admiralty jurisdiction is in practice almost never "exclusive of the courts of the States." A plaintiff with a maritime claim — meaning a claim that could be subject to admiralty jurisdiction if it were filed in federal court — almost always has the option to pursue that claim

either in a federal district court in admiralty or in a non-admiralty court, including in a state court.[1]

That grant of admiralty jurisdiction to the federal courts is relevant here because the so-called "reverse-*Erie* doctrine" requires a non-admiralty court hearing a maritime claim to apply the same substantive law that an admiralty court would have applied. *See*, *e.g.*, *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223 (1986); *Price v. Connolly-Pacific Co.*, 162 Cal. App. 4th 1210, 1213-14 (2008); *Hutchins v. Juneau Tanker Corp.*, 28 Cal. App. 4th 493, 499 (1994). Just as *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), requires federal courts sitting in diversity to apply the same substantive law as the relevant state court would have applied, so the reverse-*Erie* doctrine ensures that the choice of substantive law in maritime cases will not depend on the

[1] The federal courts' admiralty jurisdiction is truly exclusive with respect to only *in rem* claims and claims under a few federal statutes, including the Limitation Act, 46 U.S.C. §§ 30501-12. But *in personam* general-maritime-law claims (such as Mr. Ranger's claims in the present case) can invariably be filed in any state court that otherwise has jurisdiction over the claim (*e.g.*, that has personal jurisdiction over the defendant).

identity of the court that hears the case.[2] In other words, the existence of admiralty jurisdiction controls the choice-of-law question. *See, e.g.*, *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864 (1986) ("With admiralty jurisdiction comes the application of substantive admiralty law.").

Because Congress did not define "Cases of admiralty and maritime jurisdiction," the United States Supreme Court has taken the primary responsibility to fill the void by creating judicial requirements for admiralty jurisdiction. In tort cases,[3] the "traditional test" created by the courts "asked only whether the tort occurred on navigable waters." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531 (1995). Starting in the mid-twentieth century, however, Congress and the Court both modified that traditional test.

Congress expanded the scope of admiralty tort jurisdiction in 1948 with the Admiralty Extension Act, ch. 526, 62 Stat. 496

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[2] Despite its popular name, the reverse-*Erie* doctrine predates *Erie* by at least twenty years. *See Chelentis v. Luckenbach Steamship Co.*, 247 U.S. 372, 384 (1918).

[3] The requirements for admiralty contract jurisdiction are completely different. *See*, *e.g.*, *Norfolk Southern Railway Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 23-25 (2004).

(1948), *codified as amended at* 46 U.S.C. § 30101. In its current form, that Act provides in relevant part:

> The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

46 U.S.C. § 30101(a). The *Grubart* Court explained that the statute was intended "to gather the odd case into admiralty." *Grubart*, 513 U.S. at 532.

In an effort to "keep[] a different class of odd cases out" of admiralty, *Grubart*, 513 U.S. at 532, the United States Supreme Court announced the first judicial modification of the traditional test in *Executive Jet Aviation, Inc. v. Cleveland*, 409 U.S. 249 (1972), which involved an airplane that crashed into the navigable waters of Lake Erie. The Court held that for an aviation tort to be within the admiralty jurisdiction, the wrong must "bear a significant relationship to traditional maritime activity." *Executive Jet*, 409 U.S. at 268.

In *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982), the Court expanded the *Executive Jet* principle beyond the aviation context to decide that admiralty jurisdiction extended to a collision between two recreational vessels on a river that was

"seldom, if ever, used for commercial traffic." *Foremost*, 457 U.S. at 670 n.2. In considering whether the defendant's negligent operation of a vessel bore "a significant relationship to traditional maritime activity," one factor in the analysis was whether that conduct might disrupt maritime commerce. *Id.* at 675 & n.5. The Court offered no guidance on how to determine what conduct had a sufficient potential to disrupt maritime commerce. The Court instead reasoned that the negligent operation of a vessel bore "a significant relationship to traditional maritime activity" in part because it had the potential to disrupt maritime commerce.

The Court next addressed admiralty tort jurisdiction in *Sisson v. Ruby*, 497 U.S. 358 (1990), which involved a fire that spread from a moored "pleasure yacht" to the neighboring marina. In applying the *Foremost* test to determine whether the district court had admiralty jurisdiction, the *Sisson* Court appeared to treat the potential to disrupt maritime commerce as an independent factor rather than an element to consider in analyzing the significant-relationship-to-traditional-maritime-activity test. But the *Sisson* Court still offered no guidance on how to determine what conduct had a sufficient potential to disrupt maritime commerce. It instead declared: "*Certainly*, such a fire

has a potentially disruptive impact on maritime commerce, as it can spread to nearby commercial vessels or make the marina inaccessible to such vessels." *Sisson*, 497 U.S. at 362 (emphasis added); *see also id*. at 363 (noting that the "general features" of the incident "*plainly* satisfy the requirement of potential disruption to commercial maritime activity") (emphasis added).

In *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), the Court provided its latest explanation of the standard for determining the existence of admiralty tort jurisdiction. It explained that "a party seeking to invoke federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) over a tort claim must satisfy conditions both of location and of connection with maritime activity." *Id*. at 534. The Court clarified the connection test as follows:

> The connection test raises two issues. A court, first, must "assess the general features of the type of incident involved," [*Sisson*,] 497 U.S., at 363, to determine whether the incident has "a potentially disruptive impact on maritime commerce," *id*., at 364, n.2. Second, a court must determine whether "the general character" of the "activity giving rise to the incident" shows a "substantial relationship to traditional maritime activity." *Id*., at 365, 364, and n.2.

Grubart, 513 U.S. at 534. On the first issue, the *Grubart* Court focused on the proper way to characterize the tortious activity — "at an intermediate level of possible generality," *id*. at 538 — but once again offered no guidance on how to determine what activity had a sufficient potential to disrupt maritime commerce. The Court instead explained:

> [T]he "general features" of the incident at issue here may be described as damage by a vessel in navigable water to an underwater structure. So characterized, there is little question that this is the kind of incident that has a "potentially disruptive impact on maritime commerce."

Id. at 539.

Literally hundreds of lower-court decisions have addressed the potential-to-disrupt-maritime-commerce test since the *Foremost* Court introduced the concept, and the results have been inconsistent. The discussion here, however, will focus on the decisions of the United States Supreme Court because only those decisions are binding on this Court. Lower-court decisions, including decisions of the Ninth Circuit, are at best persuasive authority.[4] *See*, *e.g.*, *Rohr Aircraft Corp. v. County of San Diego*,

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[4] Although the reverse-*Erie* doctrine requires this Court to apply the general maritime law in this case, this Court is not bound by decisions of lower federal courts when determining the

51 Cal.2d 759, 764-765 (1959), *overruled on other grounds*, 362 U.S. 628 (1960); *Wagner v. Apex Marine Ship Mgmt. Corp.*, 83 Cal. App. 4th 1444, 1451 (2000); *Black v. Dept. of Mental Health*, 83 Cal. App. 4th 739, 747 (2000).

Moving from jurisdictional issues to substantive law, the relevant maritime-law principles are well established. The United States Supreme Court has recognized a cause of action for negligence under the general maritime law since the nineteenth century. *See*, *e.g.*, *Leathers v. Blessing*, 105 U.S. 626, 630 (1881)

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content of the general maritime law. Justice Thomas succinctly explained the relevant principle in *Lockhart v. Fretwell*, 506 U.S. 364 (1993):

> [N]either federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a (lower) federal court's interpretation. In our federal system, a state trial court's interpretation of federal law is no less authoritative than that of the federal court of appeals in whose circuit the trial court is located.

506 U.S. at 376 (Thomas, J., concurring); *see also*, *e.g.*, Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489, 510 (1954) ("The suggestion seems never to have been seriously made that the courts of the states are formally bound by the decisions . . . of federal courts of appeal on questions of federal law."). The U.S. Supreme Court is the only federal court whose decisions (on questions of federal law) are binding on this Court.

(recognizing a maritime-law "duty . . . to see that the [plaintiff] was not injured by the negligence of the [defendant]"). In *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959), the Court defined the relevant duty as follows: "We hold that the owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case."

Although the general-maritime-law cause of action for negligence is closely related to its common-law analogue, the two are not identical. "The common-law duties of care have not been adopted and retained unmodified by admiralty, but have been adjusted to fit their maritime context . . . ." *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 815 (2001). The United States Supreme Court has been clear that state-law doctrines may not deprive plaintiffs of their right to pursue a negligence cause of action under the general maritime law. *See*, *e.g.*, *Kermarec*, 358 U.S. at 628; *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409-411 (1953).

The United States Supreme Court first recognized a cause of action to recover for personal injuries caused by a vessel's unseaworthiness in dicta in *The Osceola*, 189 U.S. 158, 175 (1903).

Since then, the Court has frequently held that injured workers can recover personal-injury damages for unseaworthiness. *See*, *e.g.*, *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539 (1960); *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946); *Mahnich v. Southern Steamship Co.*, 321 U.S. 96 (1944). The unseaworthiness cause of action is unique to maritime law.

Leathers, *Kermarec*, *Pope & Talbot*, *Mitchell*, and *Sieracki* were all cases involving personal injuries sustained on a moored vessel. When a moored vessel is on navigable waters, that is all that is required to satisfy the location test. As the *Kermarec* Court explained: "Kermarec was injured aboard a ship upon navigable waters. It was there that the conduct of which he complained occurred. The legal rights and liabilities arising from that conduct were therefore within the full reach of the admiralty jurisdiction and measurable by the standards of maritime law." 358 U.S. at 628.

SUMMARY OF ARGUMENT

A federal court would have had admiralty jurisdiction over Mr. Ranger's claims for either of two reasons. Because Mr. Ranger alleges a "case[] of injury . . . to person . . . caused by a vessel on

navigable waters," the Admiralty Extension Act, 46 U.S.C. § 30101, by its plain terms, provides an independent basis for admiralty jurisdiction without regard to the judicially established requirements for jurisdiction under 28 U.S.C. § 1333.

In addition, Mr. Ranger's claims satisfy the requirements for admiralty jurisdiction under 28 U.S.C. § 1333 that have been announced by the United States Supreme Court. In particular, the relevant activity — when properly described "at an intermediate level of possible generality" — has a potential to disrupt maritime commerce. Moreover, recognizing admiralty jurisdiction over Mr. Ranger's claims is consistent with the U.S. Supreme Court's purpose in developing the current requirements. Although not binding on this Court, the most relevant lower-court decisions also support that conclusion.

Section 2(3) or the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 902(3), defines the term "employee" for purposes of LHWCA coverage. It has no role to play in determining admiralty jurisdiction.

ARGUMENT

I. Admiralty Jurisdiction Exists Over Mr. Ranger's Claims Under the Plain Language of the Admiralty Extension Act, 46 U.S.C. § 30101

Although Mr. Ranger's claims satisfy the *Grubart* requirements, *see infra* at 27-43, this Court need not address those requirements because the plain text of the Admiralty Extension Act, 46 U.S.C. § 30101, extends admiralty jurisdiction to Mr. Ranger's claims. Mr. Ranger alleges a "case[] of injury . . . to person . . . caused by a vessel on navigable waters." Congress has declared that "[t]he admiralty and maritime jurisdiction of the United States extends to and includes [such] cases," even when the injury "is done or consummated on land." *Id.* It follows *a fortiori* that injuries consummated on navigable waters are covered.

The *Grubart* Court declined to address whether the Admiralty Extension Act provided an independent basis for admiralty jurisdiction, *see* 513 U.S. at 543 n.5, thus leaving the question open for this Court. But the Seventh Circuit addressed the issue in a case involving a plaintiff injured "when the stool she was leaning against collapsed and she fell" while she was playing a slot machine aboard a riverboat casino "moored to a pier on a navigable" waterway. *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d

1012, 1013 (7th Cir. 2006). In a well-reasoned opinion by Judge Posner, the *Tagliere* court recognized that the Admiralty Extension Act provided an "independent basis of federal jurisdiction — independent, that is, of the basic grant of admiralty jurisdiction in 28 U.S.C. § 1333(1)." *Id.* at 1214 (citing *inter alia* 1 ROBERT FORCE & MARTIN J. NORRIS, THE LAW OF MARITIME PERSONAL INJURIES § 1:17 (5th ed. 2005); David W. Robertson & Michael F. Sturley, *The Admiralty Extension Act Solution*, 34 J. MAR. L. & COM. 209, 239-243, 269-273, 297 (2003)). That independent grant of admiralty jurisdiction similarly applies to Mr. Ranger's claims for his injuries caused by the *Latham B.*

II. Mr. Ranger's Claims Also Satisfy the *Grubart* Requirements for Admiralty Jurisdiction

Even if the Admiralty Extension Act did not extend admiralty jurisdiction to cover Mr. Ranger's claims, a federal court would in any event have admiralty jurisdiction over his claims under 28 U.S.C. § 1333(1). All of the *Grubart* requirements are satisfied.

A. ABYC's Tortious Conduct Had the Potential to Disrupt Maritime Commerce

It is undisputed that the tort at issue occurred on navigable waters, thus satisfying the location requirement of both the traditional rule and the *Grubart* test. It is also undisputed that "'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" *Grubart*, 513 U.S. at 534 (quoting *Sisson*, 497 U.S. at 365, 364 & n.2). The only admiralty-jurisdiction issue in dispute is "whether the incident has 'a potentially disruptive impact on maritime commerce.'" *Id.* (quoting *Sisson*, 497 U.S. at 364 n.2). Amici will accordingly focus primarily on that issue.

Although the United States Supreme Court has offered little guidance on how to determine what conduct has a sufficient "potential to disrupt maritime commerce," *see supra* at 19-21, that Court has been very clear that the focus must be on the "general features" of the tort-feasor's wrongful conduct. In *Foremost*, the "wrong" was not the particular collision that actually occurred but "the negligent operation of a vessel on navigable waters." 457 U.S. at 674. In *Sisson*, the relevant "incident" was not the particular fire (which had no actual impact on maritime commerce) but a

hypothetical "fire on a vessel docked at a marina on navigable waters." 497 U.S. at 363. And most tellingly, in *Grubart* "the 'general features' of the incident at issue" were "described as damage by a vessel in navigable water to an underwater structure," 513 U.S. at 539, not the bursting of the damaged tunnel or the flooding of the buildings of the Chicago Loop seven months later.

ABYC thus errs in characterizing the incident here as "a slip-and-fall on a boat attached to a hoist on a dock at a club." Respondent's Answering Brief ("RAB") at 59. Most obviously, ABYC fails to describe "the incident at an intermediate level of possible generality," as required by *Grubart*, 513 U.S. at 538. It describes the accident very specifically. More fundamentally, ABYC completely ignores its own tortious conduct, which is the proper focus of the potential-to-disrupt-maritime-commerce test. Its characterization is the equivalent of describing the *Grubart* incident as "the flooding of downtown office buildings." ABYC focuses solely on what happened to the victim and not on the tortious activity that caused the victim's injuries.

The Superior Court's characterization — an "injury . . . sustained on the deck of a boat docked at a private yacht club, and

the boat was not used for commerce," Clerk's Transcript at 356 — is equally erroneous. It describes the accident even more specifically than ABYC does in some respects, but it makes the same fundamental mistake in focusing solely on the victim's injuries instead of the tortious activity that caused those injuries.

The proper characterization of the relevant "incident" here is "the failure to maintain a seaworthy vessel on navigable waters" or "the failure to ensure a safe means of boarding and disembarking from a vessel on navigable waters." Either of these characterizations focuses on the activity in which ABYC was engaged, which is the activity that the United States Supreme Court requires a court to consider when determining whether admiralty tort jurisdiction exists under the *Grubart* factors.

By focusing on ABYC's activity rather than the victim's injury — as the *Grubart*, *Sisson*, and *Foremost* Courts did —this Court can perform the correct potential-to-disrupt-maritime-commerce analysis. Where the actual accident took place is irrelevant (so long as it took place on navigable waters to satisfy the location test). The *Foremost* Court recognized that "the negligent operation of a vessel on navigable waters" had the potential to disrupt maritime commerce because that wrongful

activity could cause a collision "at the mouth of the St. Lawrence Seaway," 457 U.S. at 675, which is over 1500 miles from site of the actual *Foremost* accident.

As it happens, ABYC's breach of its maritime-law duty to maintain a seaworthy vessel injured Mr. Ranger while the vessel was moored to pier, but an unseaworthy vessel is a risk to maritime commerce wherever it sits or sails. It is not fanciful to imagine that an unseaworthy vessel would break down on the high seas, and the ensuing rescue operations would disrupt maritime commerce, or that it would collide with another vessel in a navigable waterway, disrupting maritime commerce in the same way as the hypothetical collision at the mouth of the St. Lawrence Seaway in *Foremost*.

Even if ABYC's activity is described more specifically (while still avoiding the "extremes" of which the *Grubart* Court warned, 513 U.S. at 539), the failure to ensure a safe means of boarding and disembarking from a vessel on navigable waters can disrupt maritime commerce in any number of ways. If an injury occurs while the vessel is moored to a pier used by commercial vessels, for example, maritime commerce could be disrupted if the accident requires the vessel to remain at the pier and prevents other vessels

from using it. If an injury occurs while the vessel is moored to a remote pier, commercial vessels may have to divert to render aid. The Superior Court failed to consider those possibilities because it limited its analysis to the specific location at which the actual accident occurred — in direction contravention of the *Foremost* Court's teaching — and it incorrectly focused on the victim rather than the tort-feasor.

B. Recognizing Admiralty Jurisdiction Over Mr. Ranger's Claims Is Consistent With the Supreme Court's Purpose in Modifying the Traditional Requirements for Admiralty Jurisdiction

The United States Supreme Court has never used the potential-to-disrupt-maritime-commerce test to deny admiralty jurisdiction. Indeed, the *Foremost* Court recognized that even the airplane crash in *Executive Jet*, which was not subject to admiralty jurisdiction, still had the potential to disrupt maritime commerce. *See* 457 U.S. at 675 n.5. The Court has instead stressed that the modifications of the traditional location-only test were not intended to be revolutionary. The Admiralty Extension Act was designed "to gather the odd case into admiralty," while the connection test was simply "aimed at keeping a different class of

odd cases out." *Grubart*, 513 U.S. at 532. It was not designed to exclude typical accidents aboard vessels in navigable waters.

The *Grubart* Court explained this point most clearly:

> This Court has not proposed any radical alteration of the traditional criteria for invoking admiralty jurisdiction in tort cases, but has simply followed the lead of the lower federal courts in rejecting a location rule so rigid as to extend admiralty to a case involving an airplane, not a vessel, engaged in an activity far removed from anything traditionally maritime.

513 U.S. at 542. This explanation came in response to a party's argument that the Court's connection test was "too expansive." One of the petitioners was concerned that under the Court's rule "virtually 'every activity involving a vessel on navigable waters' would be 'a traditional maritime activity sufficient to invoke maritime jurisdiction.'" *Id.* (quoting a petitioner's brief). The Court did not disagree with the argument but instead responded that "this is not fatal criticism." *Id.* The discussion concluded with the Court's explicit recognition that the usual result in vessel cases would be admiralty jurisdiction: "Although we agree with petitioners that [*Sisson* and *Foremost*] do not say that every tort involving a vessel on navigable waters falls within the scope of

admiralty jurisdiction no matter what, they do show that ordinarily that will be so." *Id.* at 543.

From the first case in the process, the Court was consistent in explaining the limited role of its modification of the traditional location test. The *Executive Jet* Court explicitly recognized that the location test alone was satisfactory most of the time:

> Th[e] locality test, of course, was established and grew up in an era when it was difficult to conceive of a tortious occurrence on navigable waters other than in connection with a waterborne vessel. Indeed, for the traditional types of maritime torts, the traditional test has worked quite satisfactorily.

409 U.S. at 254. In short, the new connection test was designed to exclude "odd cases" that had no "connection with a waterborne vessel." The two textual examples that the *Executive Jet* Court offered to explain its decision reinforce that conclusion: the claims that arise when "a swimmer at a public beach is injured by another swimmer or by a submerged object on the bottom," or when "a piece of machinery sustains water damage from being dropped into a harbor by a land-based crane." *Id.* at 255. *Executive Jet* itself involved a plane crash during a domestic flight between two points in the continental United States. None of those examples had any

"connection with a waterborne vessel."[5] All were far removed from a typical accident on a moored vessel in navigable waters.

Later in the opinion, the *Executive Jet* Court explained the policy behind its decision to put new restrictions on admiralty jurisdiction: "The law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world, beyond whose shores they cannot go." 409 U.S. at 269-270. It was implicit that ordinary cases involving the "problems of vessels" should continue to be heard in admiralty. Of particular relevance to the present appeal, the *Executive Jet* Court explicitly observed that "[t]hrough long experience, the law of the sea knows how to determine whether a particular ship is seaworthy." *Id.* at 270. The Court recognized that unseaworthiness cases belong in admiralty.

When the *Foremost* Court introduced the potential-to-disrupt-maritime-commerce concept, it was also clear that it did

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[5] In the *Executive Jet* footnotes, the cited examples of "odd" cases that should not be within the admiralty jurisdiction similarly involved swimmers, water skiers, airplanes, and machinery dropped into a harbor by a land-based crane. *See* 409 U.S. at 256 nn.5-6. The *Foremost* Court stressed the importance of the cited examples in understanding the scope of the *Executive Jet* decision. *See Foremost*, 457 U.S. at 673-674.

not intend the new test to result in a wholesale restriction of admiralty jurisdiction. On the contrary, it expressly relied on decisions prior to *Executive Jet* to justify its conclusion that the claim before it was subject to admiralty jurisdiction:

> When presented with this precise situation in the past, this Court has found it unnecessary even to discuss whether the district court's admiralty jurisdiction had been properly invoked, instead assuming the propriety of such jurisdiction merely because the accident occurred on navigable waters. *Levinson v. Deupree*, 345 U.S. 648, 651 (1953). See also *Just v. Chambers*, 312 U.S. 383 (1941) (injury to guest from carbon monoxide poisoning in the cabin of a pleasure boat). Cf. *Coryell v. Phipps*, 317 U.S. 406 (1943). In light of these decisions, we address here only the narrow question whether *Executive Jet* disapproved these earlier decisions *sub silentio*.

Foremost, 457 U.S. at 672. In upholding the reach of admiralty jurisdiction to include cases involving recreational vessels, the *Foremost* Court affirmed the continued vitality of decisions such as *Levinson*, *Just*, and *Coryell*.[6]

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[6] Many of the lower court decisions denying admiralty jurisdiction for failure to meet the potential-to-disrupt-maritime-commerce test can be explained only by those courts' failure to appreciate the United States Supreme Court's teachings. Some courts, for example, have held that carbon-monoxide poisoning on a recreational vessel has no potential to disrupt maritime commerce. *See*, *e.g.*, *H2O Houseboat Vacations Inc. v. Hernandez*, 103 F.3d 914 (9th Cir. 1996); *In re D'Ancona*, 2023 U.S. Dist. LEXIS 201841, 2023 WL 7403897 (E.D.N.Y. Nov. 9, 2023). But

Like the present case, *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959), began with a slip-and-fall accident when the plaintiff was leaving a moored vessel in navigable waters. The plaintiff brought his action in diversity, but the *Kermarec* Court (like the *Levinson* Court) held without extended discussion that admiralty jurisdiction would have been appropriate, and maritime law accordingly governed. *See id*. at 628. *Kermarec* is not unique. Before *Executive Jet*, the Court without extended discussion frequently recognized the availability of admiralty jurisdiction over claims for personal injuries on moored vessels. *See*, *e.g.*, *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539 (1960) (slip-and-fall injury while disembarking from moored vessel); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953) (slip-and-fall injury while working on moored vessel); *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946) (personal injury while working on moored vessel); *Leathers v. Blessing*, 105 U.S. 626 (1881) (personal injury while boarding a moored vessel). The United States

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Just v. Chambers, 312 U.S. 383, 384 (1941), permitted "claims for damages for personal injuries due to carbon monoxide gas poisoning alleged to have occurred on board [a] vessel" to proceed in admiralty. The *Foremost* Court's unambiguous message was that admiralty tort jurisdiction still extended to such claims, even under the potential-to-disrupt-maritime-commerce test.

Supreme Court has not "disapproved these earlier decisions *sub silentio*," just as it did not disapprove of *Levinson*, *Just*, and *Coryell*. The Superior Court's decision to deny the existence of admiralty jurisdiction on the ground that the vessel was moored at the time of Mr. Ranger's injury, *see* Clerk's Transcript at 356, is flatly inconsistent with the teachings of the United States Supreme Court.

C. Recognizing Admiralty Jurisdiction Over Mr. Ranger's Claims Is Consistent With the Most Relevant Lower-Court Decisions

To be sure, the Superior Court's mistake in failing to follow the teachings of the United States Supreme Court is not unique. Other lower courts (whose decisions are not binding on this Court) have also applied the potential-to-disrupt-maritime-commerce test more restrictively than the U.S. Supreme Court intended. But the most relevant lower-court decisions support a finding of admiralty jurisdiction here.

In the almost forty-two years since the *Foremost* Court first introduced the concept, literally dozens of courts have found that the potential-to-disrupt-maritime-commerce test has been satisfied when a personal-injury claimant alleges that the

unseaworthiness of an active vessel caused the injury. Those courts have implicitly followed the *Executive Jet* Court's observation that "[t]hrough long experience, the law of the sea knows how to determine whether a particular ship is seaworthy." 409 U.S. at 270.

In one leading case, for example, the *en banc* Fifth Circuit addressed a claim for personal injuries suffered on an allegedly unseaworthy vessel "connected to land by a gangway." *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1117 (5th Cir. 1995) (en banc). The court concluded "[w]ithout a doubt" that onboard worker injuries "can have a disruptive impact on maritime commerce." *Id.* at 1119. Similarly, in *Cannon v. United States*, 2017 U.S. Dist. LEXIS 176283, 2017 WL 4792428 (S.D. Cal. Oct, 24, 2017), *vacated on other grounds*, 772 F. App'x 505 (9th Cir. 2019) (mem.), the plaintiff injured his back while working on a moored ship, and he alleged that the ship's unseaworthiness was a cause of the injury. Applying the *Grubart* standards, the district court found that "there is little question that admiralty jurisdiction applies here." 2017 U.S. Dist. LEXIS 176283 at *11, 2017 WL 4792428 at *4.[7]

[7] In an earlier ruling in the litigation, the district court had similarly concluded that the potential-to-disrupt-maritime-

See also, *e.g.*, *Oran v. Fair Wind Sailing, Inc.*, 2009 U.S. Dist. LEXIS 110350, at *16-17, 2009 WL 4349321 at *5 (D.V.I. Nov. 23, 2009) (potential-to-disrupt-maritime-commerce test satisfied in slip-and-fall case on 45-foot recreational vessel) (citing similar cases); *Hardesty v. Rossi*, 1995 AMC 2596, 2603-04 (D. Md. 1995) (potential-to-disrupt-maritime-commerce test satisfied when a passenger fell while disembarking from a recreational vessel).

Amici have found only three cases in which a lower court rejected admiralty jurisdiction over an unseaworthiness claim based on the potential-to-disrupt-maritime-commerce test.[8] In all three, the allegedly unseaworthy vessel was permanently moored, and thus no longer involved in commerce. *See Watson v. Indiana Gaming Co., LP*, 337 F. Supp. 2d 951, 955-956 (E.D. Ky. 2004) (injured employee on indefinitely moored riverboat casino alleged

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commerce test was satisfied. *See Cannon v. Austal USA, LLC*, 2016 AMC 1666, 1674 (S.D. Cal. 2016).

[8] Courts have found that unseaworthiness claims were not subject to admiralty jurisdiction for other reasons. In *Griffin v. Specialized Environmental Resources, Inc.*, 655 F. Supp. 3d 477, 483-485 & n.5 (W.D. La. 2023), for example, the claim did not satisfy the location test, so the court did not consider the potential-to-disrupt-maritime-commerce test. It is undisputed here that the *Latham B* was moored in navigable waters when Mr. Ranger was injured.

unseaworthiness); *Ward v. Boyd Gaming Corp.*, 2004 U.S. Dist. LEXIS 3509, 2004 WL 422012 (E.D. La. Mar. 4, 2004) (same); *Arch v. Treasure Chest Casino, L.L.C.*, 306 F. Supp. 2d 640, 646 (E.D. La. 2004) (same). Under current law, it is questionable whether those riverboat casinos would even qualify as "vessels." *See Stewart v. Dutra Construction Co.*, 543 U.S. 481, 493-494 (2005) (explaining that permanently moored watercraft do not satisfy the definition of a "vessel").

Amici have found only one case in which a personal-injury claimant alleged that the unseaworthiness of an active vessel caused the injury and the court held that the potential-to-disrupt-maritime-commerce test had not been satisfied. Eighteen years ago, a federal district court ruled in *Reed v. Kerr McGee Oil & Gas Co.*, 2006 WL 8460527, at *2-3 (W.D. La. May 30, 2006), that one defendant was entitled to a jury trial because the plaintiff's claim for injuries suffered when disembarking from a vessel did not satisfy the potential-to-disrupt-maritime-commerce test. That decision is reported only on Westlaw, and it has never been cited by a subsequent court. It is unpersuasive in the present context for multiple reasons.

Most fundamentally, *Reed* is irrelevant here because it addressed only the plaintiff's claim against the non-vessel-owning defendant. The court explicitly noted that important distinction: "Although there are maritime claims against [the vessel owner], the claims against Kerr McGee cannot be considered to fall under maritime jurisdiction simply because the vessel owner is also being sued." *Id*. at *3. In short, the court did not reject admiralty jurisdiction over the unseaworthiness claim (for which only the vessel owner could be liable); the potential-to-disrupt-maritime-commerce test affected only a different claim against a different defendant.

Reed's potential-to-disrupt-maritime-commerce analysis was not only irrelevant to the unseaworthiness claim against the vessel owner, it is also unpersuasive because it was inconsistent with *Grubart*. The *Reed* court began with the wrong focus. It viewed "[t]he relevant activity" as the plaintiff's "act of stepping or jumping from the deck of a vessel onto a fixed platform." *Id*. at *3. The correct focus is on the defendant's tortious conduct, not the plaintiff's injury. *See supra* at 28-30. The court then erred by focusing on the facts of the specific case. *Cf. Grubart*, 513 U.S. at 538 (noting that the potential-to-disrupt-maritime-commerce test

goes "to potential effects, not to the 'particular facts of the incident'") (quoting *Sisson*, 497 U.S. at 363). The *Reed* court actually recognized a scenario in which the activity that it had (incorrectly) chosen could disrupt maritime commerce, but it rejected the conclusion that should have followed its recognition because "those facts are not present in this case." 2006 WL 8460527, at *3.

Once *Reed* is recognized as irrelevant, the lower courts are unanimous in holding that the potential-to-disrupt-maritime-commerce test is satisfied when a personal-injury claimant alleges that the unseaworthiness of an active vessel caused the injury.

III. Section 2(3) of the Longshore and Harbor Workers' Compensation Act (LHWCA) Is Irrelevant to Admiralty Tort Jurisdiction

Congress, in the Admiralty Extension Act, 46 U.S.C. § 30101, and the United States Supreme Court, in a series of judicial decisions, have defined the requirements for admiralty tort jurisdiction. Section 2(3) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 902(3), has no role to play in that process. Yet ABYC frequently repeats the argument that Congress decided that Mr. Ranger is not a

"maritime" employee. *See*, *e.g.*, RAB at 13, 16, 18-22, 36, 38, 44, 46, 64. The argument fails on multiple levels.

Most fundamentally, the status of the tort victim is irrelevant to admiralty jurisdiction. In *Grubart*, for example, the tort victims were downtown Chicago businesses with no maritime connections whatsoever. As the Court's characterization of the "general features" of the relevant "incident" demonstrates, 513 U.S. at 539, the focus in the jurisdictional inquiry is on the tortfeasor's actions — not the victim's status or injury. *See supra* at 28-30.[9] If the *Grubart* incident had been "the flooding of downtown buildings," it is unlikely it would have had the potential to disrupt maritime commerce.

Even if the status of the tort victim were relevant, section 2(3) of the Longshore and Harbor Workers' Compensation Act would still be a red herring. Congress decided that club employees would not be covered by the Act, so section 2(3)(B) excludes them from the "employee" definition. But that does not mean that they

[9] The jurisdictional focus on the tortfeasor is further reinforced by the *Grubart* Court's discussion of the second prong of the connection test. *See*, *e.g.*, 513 U.S. at 541 ("[W]e need to look only to whether one of the arguably proximate causes of the incident originated in the maritime activity of a tortfeasor.").

are excluded from all of maritime law for all purposes. Section 2(3)(G) excludes the "master or member of a crew of any vessel" from the LHWCA "employee" definition, but it would be absurd to suggest that all seamen are excluded from maritime law as a result of Congress's decision to exclude them from the LHWCA. Section 2(3) has a very specific purpose, which is to define which workers are covered by the LHWCA. It does not define the scope of admiralty jurisdiction.

The absurdity of treating the subsection 2(3)(B) exclusion from employee status as defining the scope of admiralty jurisdiction is further illustrated by the proviso at the end of section 2(3). When club employees are not "subject to coverage under a State workers' compensation law," then section 2(3)(B) does not exclude them from LHWCA coverage; they could still be employees for LHWCA purposes. In other words, Congress explicitly recognized that club employees such as Mr. Ranger could, in some circumstances, be engaged in maritime employment for LHWCA purposes. It did not categorically exclude them from maritime employment in all circumstances. And if club employees can be "maritime" for LHWCA purposes in some circumstances, they can certainly be "maritime" for purposes of applying the

general maritime law. The major premise of ABYC's argument is simply wrong.

CONCLUSION

The judgment below should be reversed, and the case should be remanded for trial.

DATED: May 21, 2024

Respectfully Submitted,

Charles D. Naylor Esq.

LAW OFFICES OF CHARLES D. NAYLOR

By: *<u>/s/Charles D. Naylor</u>*

Charles D. Naylor

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In compliance with the provisions of California Rules of Court, rule 8.520(c)(1), I hereby certify in my capacity as counsel on behalf of Amici Curiae SUSAN J. GARNER, SUSAN M. GEERLINGS, AND MELISSA G. TATMAN, that this Amicus Curiae Brief has been produced on a computer with the Microsoft Word program. According to the word count of said Microsoft Word program, there are 6873 words in this document, not counting the items excluded under California Rules of Court, rule 8.520(c)(3).

DATED: May 21, 2024

/s/ Charles D. Naylor
Charles Naylor, Declarant

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SUSAN M. GEERLINGS, AND MELISSA G. TATMAN
IN SUPPORT OF THE APPELLANT

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