

No. 10-235

In The
Supreme Court of the United States

—————◆—————
CSX TRANSPORTATION, INC.,
Petitioner,
v.
ROBERT MCBRIDE,
Respondent.

—————◆—————
**On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

—————◆—————
**BRIEF OF CHERYL CAMPAGNO,
DANIEL D. HILL, AND FRANCES K.
JENNINGS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

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**STATEMENT OF INTEREST
OF *AMICI CURIAE*¹**

Amici are seamen injured in the service of their ships or the personal representatives of the estates of seamen killed in the service of their ships. They accordingly have claims under the Jones Act, 46 U.S.C. § 30104. Although this Court has recognized some situations in which Jones Act seamen have greater rights than railroad workers, injured seamen generally have the same rights under the Jones Act as injured railroad workers have under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60. The Court's construction of FELA in this case may therefore impact *amici's* ability to recover for the injuries that they or their decedents suffered. *Amici* accordingly have an interest in ensuring that this Court understands the broader context in which this case will be decided.

Amicus Cheryl Campagno is the personal representative of the estate of her late husband, John Campagno. At the time of his death, John Campagno was employed as a seaman on the tug *Lucinda Smith* and the barge *Mudcat*, which were engaged in dredging

¹ The parties have consented to the filing of this brief. Letters expressing their consent have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

the harbor in Norwalk, Connecticut. While off-duty and asleep in the crew quarters on the barge, he succumbed to carbon monoxide fumes and died. *Amicus* Campagno's Jones Act case is currently pending in the United States District Court for the District of Connecticut.

Amicus Daniel D. Hill was employed as a seaman on various tank barges. In 2008, while working as a member of the crew of tank barge *Energy 6503* in the territorial waters of Puerto Rico, and in 2009, while working as a member of the crew of tank barge *Energy 6505* in the Atlantic Ocean off the coast of Virginia, he suffered serious injuries requiring multiple surgeries as the result of his employer's negligence. His Jones Act case is currently pending in the United States District Court for the Eastern District of Louisiana.

Amicus Frances K. Jennings is the co-personal representative of the estate of her late son, Russell David Jennings. At the time of his death, Russell Jennings was employed as a seaman on the fishing vessel *Siberian Sea* in the Bering Sea. Immediately before his death, he was working alone in the vessel's freezer hold. A conveyer belt in the middle of the hold runs through a small bulkhead opening. Mr. Jennings's body was found face-down with his arms above his head, wedged on the conveyer belt between the chute's narrowing aluminum walls. Although no one witnessed the fatal injury, the physical evidence shows that he had become caught in the running conveyer belt, which had pulled him into the chute,

funneled him into the narrow passage as he struggled to escape, and crushed him to death. The estate's Jones Act case is currently pending in the Superior Court of Washington for King County.

Congress passed the Jones Act in 1920 to give injured seamen (or their estates) a negligence remedy against their employers – a remedy that this Court had previously denied in *The Osceola*, 189 U.S. 158, 175 (1903). Rather than detailing the requirements for this new cause of action, however, Congress instead declared that “in [the seaman’s] action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply.” Merchant Marine Act, c. 250, § 33, 41 Stat. 1007 (1920), codified as amended at 46 U.S.C. § 30104. In its first case under the Jones Act, this Court “readily understood” that the reference was to FELA “and its amendments.” *Panama Railroad v. Johnson*, 264 U.S. 375, 391-392 (1924). Congress had simply incorporated FELA by reference into the Jones Act.

This Court has frequently declared that “the Jones Act adopts ‘the entire judicially developed doctrine of liability’ under [FELA].” *American Dredging Co. v. Miller*, 510 U.S. 443, 456 (1994) (quoting *Kernan v. American Dredging Co.*, 355 U.S. 426, 439 (1958)). See also, e.g., *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (when Congress “incorporate[ed] FELA unaltered into the Jones Act” the judicial “gloss” on FELA was intended to be part of the package). Thus the Court has adopted FELA interpretations

in Jones Act cases both when those interpretations have protected the rights of injured workers, *see, e.g., Kernan*, 355 U.S. at 436 (applying “the principles developed in [a] line of FELA cases”), and when those interpretations have restricted those rights, *see, e.g., Miles*, 498 U.S. at 32 (applying *Michigan Central Railroad Co. v. Vreeland*, 227 U.S. 59, 69-71 (1913)). Indeed, this Court has held that seamen under the Jones Act have the benefit of a relaxed standard of proximate cause precisely because “the standard of liability under the Jones Act is that established by Congress under [FELA].” *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521, 523 (1957).

To be sure, this Court has recognized situations in which Jones Act seamen properly have greater rights than railroad workers. In *Cortes v. Baltimore Insular Line*, 287 U.S. 367 (1932), for example, Justice Cardozo used very broad language when writing for the unanimous Court to explain a result under the Jones Act that would not have been possible under FELA:

We do not read the [Jones Act] as expressing the will of Congress that only the same defaults imposing liability upon carriers by rail shall impose liability upon carriers by water. The conditions at sea differ widely from those on land, and the diversity of conditions breeds diversity of duties. . . . Congress did not mean that the standards of legal duty must be the same by land and sea.

287 U.S. at 377-378. Thus the estate of a seaman fatally injured as a result of his employer's failure to furnish "maintenance and cure," an obligation uniquely owed to seamen, could recover under the Jones Act even though no similar recovery would have been possible under FELA. In so ruling, the Court rejected the common-law rule (followed by the court below) that a "right of action for negligent care or cure was ended by [the victim's] death, and did not accrue to the [estate]." 287 U.S. at 370.

This Court again spoke expansively in *Cox v. Roth*, 348 U.S. 207 (1955), to suggest that the Jones Act does not always incorporate FELA concepts:

The Jones Act, in providing that a seaman should have the same right of action as would a railroad employee, does not mean that the very words of the FELA must be lifted bodily from their context and applied mechanically to the specific facts of maritime events. Rather, it means that those contingencies against which Congress has provided to ensure recovery to railroad employees should also be met in the admiralty setting.

348 U.S. at 208. Thus the Court held that an action under the Jones Act survives the death of the tortfeasor, notwithstanding "the old common-law rule abating actions on the death of the tortfeasor," *id.* at 210, and notwithstanding the failure of FELA by its literal terms to provide for the survival of an action in that context. *See also The Arizona v. Anelich*, 298 U.S. 110 (1936) (unanimously holding that the common-law

assumption-of-the-risk doctrine does not defeat a Jones Act suit when a seaman's employer breached its seaworthiness obligation even though FELA at that time² provided for a narrower exception to the doctrine and FELA does not impose a seaworthiness obligation); *Beadle v. Spencer*, 298 U.S. 124 (1936) (following *The Arizona*).

In view of this Court's decisions in *Cortes*, *Cox*, *The Arizona*, and *Beadle*, the decision in this case will not necessarily impact *amici*. Even if this Court were to impose a more demanding proximate-cause standard under FELA in the present case, *amici* might still be able to claim the benefit of the well-established relaxed standard under the Jones Act. In view of this Court's frequent declarations of the connection between the two statutes, however, including *Ferguson's* statements in the precise context of this case, a reversal here under FELA might complicate *amici's* ability to recover under the Jones Act. Each *amicus* has a strong case for recovery under any causation standard, but common sense suggests that recovery will be less complicated under the familiar relaxed standard than under the new standard (whatever it might be) that petitioner advocates here.

² As originally enacted, FELA eliminated the assumption-of-the-risk doctrine only in cases in which a railroad violated a safety statute. In 1939, Congress amended FELA to eliminate the doctrine entirely. See Federal Employers' Liability Act Amendments of 1939, c. 685, § 1, 53 Stat. 1404 (1939) (amending FELA § 4), codified at 45 U.S.C. § 54.

The possibility that the decision in the present case may impact *amici*'s rights gives them an interest in ensuring that this Court understands the broader context of the case. Restricting respondent's right to rely on the "relaxed standard of causation [that] applies under FELA," *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 543 (1994), might also deprive injured seamen of the right to rely on the well-established causation standard under the Jones Act that this Court and the lower courts have applied for decades. Accepting the railroad's argument would not only make recovery more difficult for *amici* but would also upset the Congressional scheme for ensuring adequate compensation for seamen's workplace injuries.



STATEMENT

Respondent was injured in the course of his employment with petitioner. A jury concluded that his injury was caused in part by petitioner's negligence. The jury was instructed in language drawn from this Court's opinion in *Rogers v. Missouri Pacific Railroad Co.*, 352 U.S. 500, 506 (1957), to apply the well-established "relaxed standard" of proximate cause³

³ Courts and commentators have recognized for generations that "proximate cause" is a confusing and unfortunate term. *See, e.g., Norfolk Southern Railway Co. v. Sorrell*, 549 U.S. 158, 180 (2007) (Ginsburg, J., concurring in the judgment); W. PAGE KEETON, DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, (Continued on following page)

applicable in cases under FELA and the Jones Act. The district court declined to give petitioner's inconsistent instructions that would have required the jury to follow a more restrictive form of proximate cause – one of several variations that state courts have recognized over the decades.

On appeal, the Seventh Circuit held that it was not reversible error for the district court to decline to give petitioner's proposed instructions. That is the judgment now under review.



SUMMARY OF ARGUMENT

Petitioner invites this Court to make a revolutionary change in the law by abandoning the well-established “relaxed” or “featherweight” standard of proximate cause that this Court articulated in *Rogers* and that lower courts have applied without difficulty for decades. This Court rejected the strict common-law proximate-cause approach in *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521 (1957). *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958), also demonstrates that causation under the Jones Act

PROSSER AND KEETON ON THE LAW OF TORTS § 41, at 264 (5th ed. 1984). Modern scholarship thus prefers the term “legal cause.” *See, e.g., id.* This brief nevertheless adheres to the terminology used by the parties and many of the prior decisions, notwithstanding its shortcomings.

(and thus presumably under FELA) is not limited by narrow common-law doctrines.

The lower courts have consistently followed the relaxed proximate-cause standard under the Jones Act for over 50 years. The secondary commentary also recognizes that the relaxed standard is firmly established. Changing that well-established regime at this time would be disruptive for all concerned.

The relaxed proximate-cause standard is appropriate in view of the unique role that the Jones Act plays. Although a negligence statute, the Jones Act works in tandem with workers' compensation regimes and serves many of the same goals. Seamen lack the other remedies that are commonly available to land-based workers. But they are exposed to far greater dangers.

There is no need to impose a strict common-law proximate-cause standard under the Jones Act. That standard was intended largely to protect defendants from "infinite liability for all wrongful acts." But Congress and this Court have created other limits under the Jones Act that help to ensure that only a limited class of plaintiffs are protected by the Jones Act, and there are limits on the available damages.



ARGUMENT

Petitioner labors strenuously to persuade the Court that this case offers a clear choice between applying and not applying a proximate-cause requirement in FELA cases. That framing of the issue is a distraction. The status quo that petitioner attacks is not an absence of a proximate-cause requirement but a relaxed proximate-cause requirement recognized by this Court in *Rogers* and thereafter applied with the language of *Rogers* for over 50 years. Proximate cause is not so much about defining causation as it is about imposing policy limits on the extent to which a defendant is liable for the injuries that it causes. *See, e.g., Norfolk Southern Railway Co. v. Sorrell*, 549 U.S. 158, 178 (2007) (Ginsburg, J., concurring in the judgment); W. PAGE KEETON, DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, PROSSER AND KEETON ON THE LAW OF TORTS § 41, at 264 (5th ed. 1984). No one suggests that there are *no* policy limits on the extent of a defendant's liability. No one suggests that a FELA or Jones Act plaintiff should recover based on any of the truly remote causes suggested by petitioner (at 23) – and petitioner has cited no case in which a jury instructed under the well-established “relaxed standard” articulated by this Court in *Rogers* has awarded damages to a plaintiff in such circumstances.

I. A Relaxed Standard of Proximate Cause Has Applied Under the Jones Act for Over Half a Century

Petitioner asks this Court to radically reformulate the law as it has been accepted and applied for over 50 years. Such a radical change would disrupt the settled expectations of employers and employees, flood the lower courts with cases seeking to reopen long-settled questions that might be answered differently in light of such a fundamental change, undermine Congress's goals in enacting FELA and the Jones Act, and defeat the assumptions on which Congress has legislated in this field during the ensuing decades.

A. This Court Rejected a Strict Common-Law Proximate-Cause Standard Comparable to that Advocated by Petitioner in Favor of a Relaxed Standard of Proximate Cause Under the Jones Act

This Court resolved the central issue in this case just over 54 years ago, and that resolution has worked effectively ever since. Petitioner argues that the *Rogers* Court did not recognize a relaxed standard of proximate cause in FELA cases and that subsequent statements to the contrary are merely dicta that should no longer be followed. *See* Pet. Br. 33-45. Even if petitioner's characterization of *Rogers*

were accurate,⁴ the argument ignores this Court's contemporaneous decision in *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521 (1957), a Jones Act case in which the appropriate standard of proximate cause was squarely before the Court – and there was no suggestion of multiple causes. In *Ferguson*, a seaman had lost two fingers on his right hand when he used “a sharp butcher knife” to serve ice cream that was too hard to serve with a normal scoop. *Id.* at 522. The district court entered judgment for the injured seaman on a jury verdict.

The Second Circuit reversed, concluding that the district court should have granted the employer's motion for a directed verdict. It reasoned: “The knife . . . was never designed for or intended to be used as a dagger or ice pick for chipping frozen ice cream. And that it would be put to such use was not within the realm of reasonable foreseeability.” *Ferguson v. Moore-McCormack Lines, Inc.*, 228 F.2d 891, 892 (2d Cir. 1956). The use of the phrase “reasonable foreseeability” signals that the court of appeals relied on a stricter standard of proximate cause.⁵

⁴ In fact, petitioner's characterization of *Rogers* is inaccurate. See Resp. Br. 42-47.

⁵ Courts and commentators have used a wide range of terms to discuss common-law proximate cause, just as they apply a wide range of differing approaches to common-law proximate cause. See, e.g., Resp. Br. 5-9; see generally PROSSER AND KEETON, *supra*, §§ 41-45. Liability for unforeseeable consequences, however, is one of the core issues addressed by proximate cause. See, e.g., *id.* § 43.

This Court rejected the Second Circuit's effort to impose a stricter standard of proximate cause. The four-justice plurality (in a 4-1-1-1⁶ decision) explained the Court's holding as follows:

Respondent urges that it was not reasonably foreseeable that petitioner would utilize the knife to loosen the ice cream. . . . It was not necessary that respondent be in a position to foresee the exact chain of circumstances which actually led to the accident. . . . Since the standard of liability under the Jones Act is that established by Congress under [FELA], what we said in [*Rogers*] is relevant here:

“Under this statute the test of a jury case is simply whether the proofs justify with reason an inference that employer negligence played any part even the slightest in producing the injury or death for which damages are sought.”

352 U.S. at 523. Even if the plurality's reliance on the *Rogers* standard is not, strictly speaking, binding authority, the Court's holding is nevertheless

⁶ Only Justice Harlan dissented on the causation standard. See 352 U.S. at 559. Justice Reed would have affirmed the judgment below, *id.* at 524, but he did not explain the basis for his vote. Justice Frankfurter dissented on the ground that the petition for certiorari should have been dismissed as improvidently granted. *Id.* Justice Burton concurred in the judgment, *id.*, and Justice Black did not participate, *id.*

directly on point. At the very least, the *Ferguson* Court rejected a strict common-law standard of proximate cause. Even if Justice Burton (the fifth member of the majority) favored some different proximate-cause standard, in order to reverse he necessarily applied a more relaxed standard than any of the various common-law versions that had been adopted in the general torts context – or any proximate-cause standard that would permit petitioner to succeed in the present case. A proximate-cause standard (whatever it might be) that permitted the *Ferguson* seaman to succeed on his more extreme facts, which is precisely what the majority held, is not only more relaxed than any standard that petitioner here could describe as a “common-law standard” but is also necessarily relaxed enough to permit respondent to succeed on the present facts (which in any event may well fall within the limits of even the instruction that petitioner requested).

In *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958), this Court again examined the causation standard in a Jones Act case. The *Kernan* seaman was killed in a fire that started when an open-flame kerosene lamp carried on the deck of scow, no more than three feet above the water, ignited the flammable vapors of petroleum on the water’s surface. A Coast Guard regulation required the lamp to be carried at least eight feet above the water, but that regulation was designed to ensure visibility and thus

prevent collisions. It was not created to avoid fires. *See id.* at 427-428. The lower courts, the respondent, and the dissent all argued that the seaman's estate could not recover under the Jones Act because common-law "tort doctrine . . . imposes liability for violation of a statutory duty only where the injury is one which the statute was designed to prevent." *Id.* at 432; *see also, e.g., id.* at 442 (Harlan, J., dissenting). This Court once again "rejected [one] of the refined distinctions necessary in common-law tort doctrine for the purpose of allocating risks between persons who are more nearly on an equal footing as to financial capacity and ability to avoid the hazards involved." *Id.* at 438. It instead held that when

the employer's conduct falls short of the high standard required of him by [the Jones Act], and his fault, in whole or in part, causes injury, liability ensues. And this result follows whether the fault is a violation of a statutory duty or the more general duty of acting with care. . . .

Id. at 438-439.⁷ *Kernan* is thus solid authority at least for the proposition that causation under the Jones Act

⁷ In subsequent decisions, the *Kernan* Court's broad rejection of a proximate-cause requirement under the Jones Act has generally been limited to the breach-of-statutory-duty context in which *Kernan* arose, notwithstanding the Court's expansive dictum that the result would be the same "whether the fault is a violation of a statutory duty or the more general duty of acting with care," 355 U.S. at 439.

(and thus presumably under FELA) is not limited by narrow common-law doctrines. Petitioner's argument that the entire body of common-law proximate-cause doctrine (whatever that doctrine might be) must be incorporated wholesale into FELA and the Jones Act is flatly inconsistent with *Kernan*. In *Kernan*, this Court rejected a significant (and well-defined) aspect of that doctrine.⁸

B. The Lower Courts Have Consistently Recognized and Applied a Relaxed Standard of Proximate Cause Under the Jones Act

In view of this Court's clear holdings in *Ferguson* and *Kernan*, it is hardly surprising that the courts of appeals have consistently recognized the relaxed standard of proximate cause under the Jones Act, often describing it as a "featherweight" burden. *E.g.*, *Bielunas v. F/V Misty Dawn, Inc.*, 621 F.3d 72, 76 (1st Cir. 2010); *Alholm v. American Steamship Co.*, 144 F.3d 1172, 1178 (8th Cir. 1998); *Evans v. United Arab Shipping Co.*, 4 F.3d 207, 213 (3d Cir. 1993); *In re*

⁸ Indeed, it is noteworthy that the common-law doctrine that this Court rejected in *Kernan* has been widely accepted practically since it was first promulgated in *Gorris v. Scott*, L.R. 9 Ex. 125 (Exch. Ch. 1874). This is in sharp contrast with common-law efforts to agree on a standard of proximate cause. *See* Resp. Br. 5-9.

River Transportation Associates v. Wall, 5 F.3d 97, 100 n.4 (5th Cir. 1993) (John Minor Wisdom, J.).

1. The Fifth Circuit

This Court has recognized that the Fifth Circuit “has a substantial Jones Act caseload,” and has accordingly shown particular respect for its expertise. *See, e.g., Chandris Inc. v. Latsis*, 515 U.S. 347, 365-368 (1995). Thus it is particularly relevant that the relaxed standard of proximate cause under the Jones Act is firmly entrenched in the court of appeals with the most practical experience in applying the statute (particularly in recent decades). In *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331 (5th Cir. 1997) (en banc), for example, seventeen judges unanimously agreed on the following summary of well-established legal principles:

FELA provides, in pertinent part, that “[e]very common carrier by railroad . . . shall be liable in damages . . . for such injury or death *resulting in whole or in part* from the negligence of any of the officers, agents, or employees of such carrier.” [FELA § 1,] 45 U.S.C. § 51 (emphasis added). A seaman is entitled to recovery under the Jones Act, therefore, if his employer’s negligence is the cause, in whole or in part, of his injury. In their earlier articulations of [FELA] liability, courts had replaced the phrase “in whole or in part” with the adjective “slightest.” In [*Rogers*], the Supreme Court used the term “slightest” to describe the reduced standard

of causation between the employer's negligence and the employee's injury in [FELA] cases. In [*Ferguson*, 352 U.S. at 523], the Court applied the same standard to a Jones Act case writing, "Under this statute the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." (quoting [*Rogers*]). * * * [T]he phrase "in whole or in part" as set forth in the statute, or, as it has come to be known, "slightest," modifies . . . the causation prong of the inquiry.

107 F.3d at 335 (first two omissions in original). Countless examples could be given of cases – both before and after *Gautreaux* – in which the court has recognized this relaxed standard. The Fifth Circuit routinely applies the relaxed standard of proximate cause when it rules in favor of seamen. *See, e.g., In re River Transportation Associates*, 5 F.3d at 100 n.4 (John Minor Wisdom, J.) ("[T]he [Jones Act] plaintiff's burden[] of proving causation is 'featherweight.'"); *Theriot v. J. Ray McDermott & Co.*, 742 F.2d 877, 881 (5th Cir. 1984) (applying "the principle that a Jones Act defendant must bear the responsibility for his negligence if such negligence played any part, *even the slightest*, in producing the injury"); *White v. Rimrock Tidelands, Inc.*, 414 F.2d 1336, 1338 (5th Cir. 1969) ("[T]he oft-repeated principle apparently still bears repeating that ' . . . [t]he employer may be held liable if his negligence "played any part,

even the slightest, in producing the injury or death for which damages are sought.””) (quoting *Hampton v. Magnolia Towing Co.*, 338 F.2d 303, 305 (5th Cir. 1964), which quoted *Rogers*); see also *Landry v. Oceanic Contractors, Inc.*, 731 F.2d 299, 302 (5th Cir. 1984) (“[T]he traditional ‘proximate cause’ test is not applicable to Jones Act claims; rather, in such a claim, a defendant must bear responsibility for his negligence if such negligence played any part, even the slightest, in producing the injury.”).

Perhaps even more significantly, the Fifth Circuit also routinely applies the relaxed standard when it rules against seamen and holds that they did not satisfy even the relaxed standard. See, e.g., *Gavagan v. United States*, 955 F.2d 1016, 1019 (5th Cir. 1992) (“[t]he question of proximate cause . . . under the Jones Act turns on whether the actions of the defendant contributed to the injury even in the slightest degree.”) (quoting *Sanford Bros. Boats, Inc. v. Vidrine*, 412 F.2d 958, 966 (5th Cir. 1969)) (alterations in original); see also *Johnson v. Cenac Towing, Inc.*, 544 F.3d 296, 302 (5th Cir. 2008) (“The standard of causation in Jones Act cases is not demanding.”).

The Fifth Circuit’s most recent decision to address the standard of proximate cause under the Jones Act strikingly demonstrates how firmly the *Rogers* standard is entrenched. At the trial in *Clark v. Kellogg Brown & Root*, No. 2:07-CV-191 (E.D. Tex. Oct. 22, 2009), even the defendant-employer accepted the familiar “featherweight” standard under which “a seaman’s employer is liable if the employer’s

negligence played any part, even the slightest, in causing the injury for which damages are sought.” Defendant’s Proposed Conclusion of Law 13, *Clark*. When the employer subsequently changed its mind and challenged the relaxed standard on appeal, the Fifth Circuit concluded that the law was so well-established – notwithstanding this Court’s grant of certiorari in the present case – that it affirmed the district court in an unpublished opinion.⁹ See *Clark v. Kellogg Brown & Root*, 2011 U.S. App. LEXIS 2354, 2011 WL 386787 (5th Cir. Feb. 4, 2011) (No. 09-41190) (unpublished).

It is not unusual for a Jones Act employer in the Fifth Circuit (such as the employer in *Clark*) to recognize the firmly entrenched application of the relaxed proximate-cause standard. Thus in *Danos v. United States*, 211 F.3d 125 (5th Cir. 2000) (unpublished), the plaintiff was employed as a member of the crew of the *SS Diamond State*, a public vessel of the United States. He sued the government as his employer for injuries that he allegedly suffered while serving as a seaman on the vessel. The principal issue on appeal was whether the seaman had satisfied the causation requirement to link the government’s actions to his injury. Although it would have been in the government’s interest to argue for a stricter version of the proximate-cause standard, the government forthrightly admitted that

⁹ In the Fifth Circuit, as in other circuits, the court may choose not to publish “opinions that merely decide particular cases on the basis of well-settled principles of law.” 5th Cir. R. 47.5.1.

Danos correctly cites the Jones Act standards, as defined by the courts, by which a plaintiff's traditional burden of proof of proximate cause is reduced. He may recover if defendant's negligence played even the slightest part in causing the injury.

Appellee United States' Br. 9, *Danos* (No. 98-31372), available at 1998 WL 34095836 (citing *Rogers*; *Ferguson*; *Gautreaux*). See also, e.g., Brief of Appellee, United States of America 11, *Lopez v. United States*, 77 F.3d 477 (5th Cir. 1995) (No. 95-30216) (unpublished), available at 1995 WL 17116751 ("Featherweight burden' or 'slight negligence' are terms oft-invoked by Jones Act plaintiffs, and rightly so."). Indeed, the United States routinely recognizes the application of the relaxed proximate-cause standard under the Jones Act – even when the government is the defendant as a Jones Act employer – not only in the Fifth Circuit but also in other courts of appeals. See, e.g., Brief of Appellee and Cross-Appellant the United States of America 24, *Broderick v. United States*, 88 F. App'x 381 (11th Cir. 2003) (No. 03-10399), available at 2003 WL 23213489 ("Another 'qualification' of the Jones Act that distinguishes it from the common-law is the relaxed standard of causation manifested by the imposition of liability whenever 'employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought.'" (quoting *Rogers*); Brief of Appellee 16, *Callbreath v. United States*, 42 F. App'x 969 (9th Cir. 2002) (No. 00-35478), available at 2001 WL 34103547 ("the shipowner-employer may be

found liable if its negligence played even the slightest part in causing plaintiff's injuries").

2. Other Coastal Circuits

The law is substantially the same in every other maritime circuit. In *Napier v. F/V Deesie, Inc.*, 454 F.3d 61 (1st Cir. 2006), for example, the First Circuit reversed a summary judgment for the defendant that had been granted on the basis of insufficient evidence. The court explained:

While *Napier* [the plaintiff] must establish all the elements of a common-law negligence claim, the burden to prove causation under the Jones Act is "featherweight." *Toucet [v. Maritime Overseas Corp.]*, 991 F.2d [5,] 10 [(1st Cir. 1993)] (citations omitted). *Napier* need only demonstrate that the vessel's "negligence played any part, even the slightest, in producing the injuries for which the plaintiff seeks damages." *Connolly v. Farrell Lines, Inc.*, 268 F.2d 653, 655 (1st Cir. 1959) (citing [*Rogers*]).

454 F.3d at 67; *see also, e.g., Bielunas*, 621 F.3d at 76.

In *Wills v. Amerada Hess*, 379 F.3d 32 (2d Cir. 2004), Justice Sotomayor – then serving on the Second Circuit – recognized not only that "the [Jones Act] plaintiff bears a reduced burden of proof with respect to causation," *id.* at 47 n.8, but also that the

“well established” burden is to prove ““that employer negligence played any part, *even the slightest*, in producing the injury,”” *id.* at 50 (quoting *Diebold v. Moore McCormack Bulk Transport Lines, Inc.*, 805 F.2d 55, 57-58 (2d Cir. 1986), which quoted *Rogers*).

In *Wilburn v. Maritrans GP Inc.*, 139 F.3d 350 (3d Cir. 1998), the Third Circuit reiterated the “relaxed” standard in Jones Act cases: “Causation is satisfied if ‘the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury.’” *Id.* at 357 (quoting *Rogers*).

In *Martin v. Harris*, 560 F.3d 210, 216 (4th Cir. 2009), the Fourth Circuit recently summarized the governing law in substantially the same terms:

Although the elements of duty, breach, and injury draw on common-law principles, the standard of causation in a Jones Act negligence action is relaxed. *See Hernandez [v. Trawler Miss Vertie Mae, Inc.]*, 187 F.3d [432,] 436-37 [(4th Cir. 1999)]. Thus, an employer is liable if his “negligence played any part, even the slightest, in producing the injury or death for which damages are sought.” *Id.* at 436 (quoting [*Gottshall*, 512 U.S. at 543]) (internal quotation marks omitted).

In *Ribitski v. Canmar Reading & Bates, Ltd.*, 111 F.3d 658 (9th Cir. 1997), the Ninth Circuit discussed the requirements for a Jones Act case in some detail. The court explained, “[t]o recover on [a] Jones Act claim, [the plaintiff] must establish that his employer

... was negligent and that this negligence was a cause, however slight, of his injuries.” *Id.* at 662. Elaborating on the causation requirement, the court continued:

“[T]he test of a jury case [on the question of causation] is simply whether the proofs justify . . . that employer negligence played any part, even the slightest, in producing the injury . . . for which damages are sought.” *Lies v. Farrell Lines, Inc.*, 641 F.2d [765,] 771 [(9th Cir. 1981)] (quoting [*Rogers*]). This test, often described as a featherweight causation standard, allows a seaman to survive summary judgment by presenting even the slightest proof of causation.

111 F.3d at 664 (omissions in original). *See also, e.g., MacDonald v. Kahikolu, Ltd.*, 581 F.3d 970, 975 n.7 (9th Cir. 2009) (recognizing “the relaxed causation standard under the Jones Act”).

Because the Eleventh Circuit is bound by pre-1981 Fifth Circuit decisions, *see Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), the relaxed standard of proximate cause is well-established there, too. And the Eleventh Circuit has continued to recognize the familiar standard. In *Dempsey v. Mac Towing, Inc.*, 876 F.2d 1538, 1542 (11th Cir. 1989), for example, the court explained that a seaman may “recover on a Jones Act claim with a lower showing of proximate cause than would be required in a non-admiralty case.” *See also, e.g., McClow v. Warrior & Gulf Navigation Co.*, 842 F.2d

1250, 1251 (11th Cir. 1988) (per curiam) (“Jones Act claims . . . involve a less demanding standard of causation: ‘causation may be found if the defendant’s acts or omissions played any part, no matter how small, in bringing about the injury.’”) (quoting *Joyce v. Atlantic Richfield Co.*, 651 F.2d 676, 685 (10th Cir. 1981)).

3. Inland Circuits

Inland circuits have also consistently recognized the relaxed causation standard in Jones Act cases. In *Rannals v. Diamond Jo Casino*, 265 F.3d 442, 447-448 (6th Cir. 2001), for example, the Sixth Circuit – reversing a district court that had applied common-law principles to grant summary judgment to a Jones Act defendant – followed the Fifth Circuit’s en banc decision in *Gautreaux* and explained that “once negligence is established, the plaintiff need only show that her employer’s negligence ‘played any part, even the slightest, in producing the injury or death for which damages are sought.’” (quoting *Rogers*). See also, e.g., *Szymanski v. Columbia Transportation Co.*, 154 F.3d 591, 596-597 (6th Cir. 1998) (en banc) (noting that “the Jones Act requires . . . a relaxed standard of causation” as opposed to “traditional proximate cause”); *Alholm v. American Steamship Co.*, 144 F.3d 1172, 1178 (8th Cir. 1998) (“In Jones Act cases the verdict must stand if ‘the proofs justify with reason, the conclusion that employer negligence played any part, even the slightest, in producing the injury or death. . . .’”) (quoting *Ferguson*, 352 U.S. at 523,

which quoted *Rogers*); *Cella v. United States*, 998 F.2d 418, 427 (7th Cir. 1993) (“Under the Jones Act, the plaintiff’s burden to prove causation is ‘very light’ and has been described as ‘featherweight.’”); *Joyce v. Atlantic Richfield Co.*, 651 F.2d 676, 685 (10th Cir. 1981) (“It is settled that in Jones Act cases causation may be found if the defendant’s acts or omissions played any part, no matter how small, in bringing about the injury.”) (citing *Rogers*; *Ferguson*).

C. Commentators Have Consistently Recognized that a Relaxed Standard of Proximate Cause Applies Under the Jones Act

With the courts’ substantially unanimous recognition of the relaxed proximate-cause standard under the Jones Act, it is no surprise that commentators have consistently recognized the long-established legal principles.

The leading treatise devoted specifically to the law governing seamen includes a full section on the “causation element” of a Jones Act case. *See* 2 ROBERT FORCE & MARTIN J. NORRIS, *THE LAW OF SEAMEN* § 30:41 (2003 & Supp. 2009). The discussion opens with the general statement that the Jones Act plaintiff must “prove not only that he suffered an injury but that the [defendant’s] negligent act or omission was a cause of his injury or illness.” *Id.* at 30-172. It continues with an explanation of how *Rogers* defined the “light burden of proof of causation” applicable

under the Jones Act, *id.* at 30-173, concluding that “[t]he burden to prove causation in a Jones Act case is ‘very light’ or ‘featherweight,’” *id.* (quoting *Bommarito v. Penrod Drilling Corp.*, 929 F.2d 186, 188 (5th Cir. 1991)). To illustrate how the causation requirement works in practice, the authors quote the Fifth Circuit’s approved jury instruction, which is directly based on *Rogers*. *See id.* at 30-173 to -174. And they carefully note the “important distinction between the legal standard as to the level of causation required” under the Jones Act and the level “required for other torts and the general maritime law.” *Id.* at 30-174.

The most detailed treatise on maritime law also includes a full section on “proximate cause” in Jones Act cases. *See* 1B BENEDICT ON ADMIRALTY § 28 (7th rev. ed. 2010). That discussion opens with the observation that “[t]he issue of proximate cause assumes special significance in seamen’s personal injury litigation because different standards of causation are applied” under the Jones Act and other causes of action. *Id.* at 3-159 (footnote omitted). With that distinction in mind, the authors summarize the law in familiar terms:

The burden on the plaintiff of proving causal negligence under the Jones Act . . . is considerably lighter; the Act does not exclude liability for remote damages: the shipowner will be held liable if his “negligence played any part, even the slightest, in producing the

injury or death for which damages are sought.”

Id. at 3-163 (quoting *Rogers*). They further explain that “[a]lthough *Rogers* spoke only of a ‘jury case,’ its language has been adopted to define proximate cause under the Jones Act.” *Id.* at 3-172 (footnotes omitted).

The relaxed standard of proximate cause under the Jones Act is such a fundamental principle in maritime law, that it is noted even in the most basic and general treatises. *See, e.g.*, FRANK L. MARAIST, THOMAS C. GALLIGAN, JR. & CATHERINE M. MARAIST, *ADMIRALTY IN A NUTSHELL* 254 (6th ed. 2010) (summarizing the Jones Act causation rule as “employer is responsible for injuries caused ‘in whole or in part’ by its negligence” and adding that “the Jones Act plaintiff’s burden of proof on causation is ‘featherweight’”); GRANT GILMORE & CHARLES L. BLACK, JR., *THE LAW OF ADMIRALTY* § 6-36, at 377 (2d ed. 1975) (noting that on “the proximate cause issue” a Jones Act plaintiff’s “burden is . . . reduced to featherweight”); THOMAS J. SCHOENBAUM, *ADMIRALTY AND MARITIME LAW* § 4-22, at 276-277 (4th ed. 2004) (“The standard of causation in a Jones Act case is quite clear. The plaintiff may recover if, under the facts, the negligence of the defendant played any part, even the slightest, in producing the injury or death for which damages are sought. Thus, the burden on the plaintiff to prove causation is ‘very slight.’”) (footnotes omitted).

II. A Relaxed Standard of Proximate Cause Under the Jones Act Is Appropriate in View of the Unique Role That the Jones Act Plays in Compensating Seamen Who Have Been Injured in the Service of Their Ships

In *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958), this Court explained in detail the role that the Jones Act plays in ensuring adequate compensation for injured seamen. The nineteenth century common-law doctrines, one of which petitioner seeks to resurrect here, were “designed to give maximum freedom to infant industrial enterprises, ‘to insulate the employer as much as possible from bearing the “human overhead” which is an inevitable part of the cost – to someone – of the doing of industrialized business.’” 355 U.S. at 431 (quoting *Tiller v. Atlantic Coast Line Railroad Co.*, 318 U.S. 54, 59 (1943)). But roughly a century ago, Congress and the state legislatures “recognized that, whatever the rights and duties among persons generally, the industrial employer had a special responsibility toward his workers, who were daily exposed to the risks of the business and who were largely helpless to provide adequately for their own safety.” *Id.* For most employees injured on the job, workers’ compensation statutes have created a no-fault system to ensure that medical bills are paid and sufficient resources on which to live are available when accidents occur. *See, e.g.*, Federal Employees’ Compensation Act (FECA), 5 U.S.C. §§ 8101-93 (workers’ compensation statute for federal employees). “In the railroad and shipping industries, however, the FELA and Jones Act provide the framework for determining liability for industrial accidents.” 355 U.S. at 432. Any comparison between

FELA or the Jones Act and “*other* statutes that authorize private parties to recover for injuries resulting from tortious conduct – the antitrust, RICO, and securities statutes,” Pet. Br. 47; *cf.* AAR Br. 25-26, is therefore misplaced. Those statutes address “the rights and duties among persons generally.” 355 U.S. at 431. FELA and the Jones Act are more closely analogous to no-fault workers’ compensation statutes, which require neither negligence nor causation – let alone proximate causation – for recovery. Recognizing that employers should now bear the “human overhead,” the *Kernan* Court concluded that “it is clear that the general congressional intent was to provide liberal recovery for injured workers.” *Id.* at 432.

A. It is Essential for Seamen to Retain the Robust Remedy Under the Jones Act That Has Existed for Decades

The need for a robust remedy is particularly strong in the Jones Act context for injured seamen and their families do not – and cannot – have the remedies that are generally available to other workers.¹⁰ While the majority of U.S. workers are protected

¹⁰ Seamen admittedly benefit from two personal injury remedies under the general maritime law that are unavailable to most workers, but without the Jones Act they are inadequate to give seamen the protection they need and have long enjoyed. Under the ancient doctrine of “maintenance and cure,” injured seamen are entitled to modest living expenses (“maintenance”) and medical expenses (“cure”). *See, e.g., The Osceola*, 189 U.S. 158, 175 (1903). At best, the seaman’s “cure” right simply matches the comparable right to have medical expenses paid under a workers’ compensation statute. But the right is more limited. The obligation

(Continued on following page)

by state workers' compensation statutes, this Court has established as a matter of constitutional law that no state workers' compensation statute can apply to a

extends only "until such time as the [seaman's] incapacity is [medically] declared to be permanent." *Vella v. Ford Motor Co.*, 421 U.S. 1, 5 (1975). This means, for example, that a seaman who "is totally and permanently blind and suffers post-traumatic convulsions which probably will become more frequent and are without possibility of further cure" is not entitled to further payments, even though "he will require some medical care to ease attacks of headaches and epileptic convulsions." *Farrell v. United States*, 336 U.S. 511, 513 (1949).

"Maintenance" is intended to provide money for food and lodging comparable to what the seaman would have had on the ship, but in the 1940s and '50s courts "fell into the habit" of awarding only \$8.00 a day. *Incandela v. American Dredging Co.*, 659 F.2d 11, 14 (2d Cir. 1981). Even today, that is often all a seaman receives. See, e.g., *Skowronek v. American Steamship Co.*, 505 F.3d 482 (6th Cir. 2007); *Ammar v. United States*, 342 F.3d 133 (2d Cir. 2003). And even this limited right terminates when "the [seaman's] incapacity is [medically] declared to be permanent." *Vella*, 421 U.S. at 5.

In certain circumstances, a seaman may also be entitled to recover under the general maritime law "for injuries received . . . in consequence of the unseaworthiness of the ship." *The Osceola*, 189 U.S. at 175. The available damages are the same as a seaman with a valid Jones Act claim could recover (and of course no double recovery is possible). The remedy is available on a no-fault basis, in recognition of the compelling need to ensure compensation for seamen who are injured in the course of their employment. See, e.g., *Mahnich v. Southern S.S. Co.*, 321 U.S. 96, 103-104 (1944). But it is no substitute for a robust remedy under the Jones Act because it is available only in limited circumstances. See, e.g., *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494, 500 (1971) (denying recovery for unseaworthiness because the injury was caused not by an unseaworthy condition but instead by the negligence of a fellow employee).

maritime worker injured at sea. *See Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917). Even Congress has been held to lack the power to authorize the extension of a state workers' compensation statute to a maritime worker injured at sea. *See Washington v. W.C. Dawson & Co.*, 264 U.S. 219 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1920). And when Congress enacted the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. §§ 901-950 – the federal workers' compensation statute that covers most maritime workers – it quite deliberately excluded seamen from that coverage. *See* LHWCA § 2(3)(G), 33 U.S.C. § 902(3)(G).¹¹ If this Court were to increase the burden on seamen to prove causation, it would be removing a fundamental protection when no adequate alternative is available.

This Court has frequently recognized that “the Jones Act and the LHWCA are complementary regimes that work in tandem.” *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 488 (2005). LHWCA provides coverage for land-based maritime workers who do not qualify as seamen while the Jones Act limits its coverage exclusively to seamen. Indeed, the two statutes are so closely linked that this Court has noted the irony that the Jones Act's central term – “seaman” – is defined not in the Jones Act but in

¹¹ Congress similarly excluded seamen from workers' compensation benefits in other maritime statutes. *See, e.g.*, Outer Continental Shelf Lands Act § 4(b)(1), 43 U.S.C. § 1333(b)(1).

LHWCA § 2(3)(G), 33 U.S.C. § 902(3)(G). *See Chandris Inc. v. Latsis*, 515 U.S. 347, 356 (1995); *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 347 (1991). The two statutes are undoubtedly distinct, and each has its own set of requirements that must be satisfied to permit recovery. The Jones Act, for example, requires proof of negligence whereas LHWCA does not. But the two statutes share the same fundamental purpose of ensuring adequate compensation for injured maritime workers.

The special need to protect seamen has been well-recognized for centuries. Justice Story declared that “[t]hey are emphatically the wards of the admiralty.” *Harden v. Gordon*, 11 Fed. Cas. 480, 485 (C.C.D. Me. 1823) (No. 6,047). This Court has continued to recognize that status. *See, e.g., Atlantic Sound-ing Co. v. Townsend*, 129 S.Ct. 2561, 2570 (2009) (quoting *The Arizona*, 298 U.S. at 123); *Chandris Inc. v. Latsis*, 515 U.S. at 354-355. To be sure, this Court has also observed that the admiralty courts’ “special solicitude for the welfare of seamen and their families” is “insufficient” to create new remedies, without Congressional authority, that seamen have not traditionally possessed. *Miles*, 498 U.S. at 36. But that is a far cry from the present situation in which petitioner seeks a radical reinterpretation of the law that would call into question rights created by Congress that seamen have enjoyed without significant controversy for decades. If the special rights of seamen have any

meaning at all, it must surely protect them from being deprived of such well-established rights.

Although the working conditions for many seamen have improved considerably since Justice Story's time, seamen continue to work long hours under dangerous conditions without the safeguards that are commonly available to other workers. For example, Russell Jennings, *amicus* Jennings's decedent, was a crew member on a fishing vessel in the Bering Sea – recently recognized by the Bureau of Labor Statistics as the nation's most deadly occupation.¹² Like virtually all U.S. fishermen (and most seamen), he had no union to protect his interests. This Court has often recognized that the dangers of railroad employment justify a liberal interpretation of FELA. *See, e.g., Gottshall*, 512 U.S. at 542. That concern applies even

¹² The most recent data from the Bureau of Labor Statistics identifies “fishers and related fishing workers” as the occupation during the previous year with the highest fatal injury rate (200 deaths per 100,000 full-time equivalent workers). *See Selected occupations with high fatal injury rates, 2009*, in Bureau of Labor Statistics, U.S. Dept. of Labor, National Census of Fatal Occupational Injuries in 2009 (Preliminary Results), at 19 (August 19, 2010), available at <http://www.bls.gov/iif/oshwc/foi/cfch0008.pdf>. Indeed, the fatal injury rate for “fishers and related fishing workers” was well over three times as high as it was for the second most deadly occupation (“logging workers,” with a rate of 61.8 deaths per 100,000 full-time equivalent workers) and over 60 times as high as the fatal injury rate for all workers (3.3 deaths per 100,000). *See id.*

more strongly in the even more dangerous Jones Act context.

B. There is No Need Under the Jones Act for a More Onerous Proximate-Cause Standard

The principal rationale at common law for a strict proximate-cause standard was the need to protect defendants from “infinite liability for all wrongful acts.” PROSSER AND KEETON, *supra*, § 41, at 264. But Congress and this Court have already created substantial safeguards to ensure that “infinite liability” is not a risk under the Jones Act.

Most fundamentally, only “[a] seaman injured in the course of employment” (or the seaman’s personal representative, in the case of fatal injuries) can bring an action under the Jones Act “against the employer.” 46 U.S.C. § 30104. In other words, a defendant’s liability under the Jones Act is limited to injured workers who qualify as “seamen.” In a line of over a dozen cases, this Court has established strict requirements limiting the class of workers that is entitled to seaman status. *See, e.g., Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005); *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548 (1997); *Chandris Inc. v. Latsis*, 515 U.S. 347 (1995); *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991); *McDermott International, Inc. v. Wilander*, 498 U.S. 337 (1991). A defendant will not be liable under the Jones Act for injuries to its other employees, even if they are

injured on board a ship at sea. Thus the employee in *Chandris v. Latsis* was ultimately unsuccessful in his Jones Act suit when the jury found (on remand from this Court) that he did not qualify as a seaman. See Docket, *Latsis v. Chandris, Inc.*, 1998 WL 458095 (S.D.N.Y. Aug. 4, 1998) (No. 91 Civ. 6900(LAP)) (entry for May 5, 1999).¹³

In 1982, Congress amended the law to ensure that certain foreign workers could not sue “for damages for personal injury or death” under the Jones Act (or under any U.S. maritime law), 46 U.S.C. § 30105, thus further protecting employers from “infinite liability for all wrongful acts.” Decades before, this Court had developed choice-of-law rules in the Jones Act context that effectively limit the ability of foreign seamen to claim the protection of the Jones Act. See *Lauritzen v. Larsen*, 345 U.S. 571 (1953); *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 381-384 (1959).

And even when a seaman is able to recover under the Jones Act, this Court has restricted the recoverable damages, thus further protecting defendants from “infinite liability for all wrongful acts.” In *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), for example, this Court explained that “[t]here is no recovery for

¹³ Similarly, a defendant is not liable under the Jones Act to seamen injured by its negligence if they work for another employer. See, e.g., *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 384-385 (1959).

loss of society in a Jones Act wrongful death action,” *id.* at 32, and that the Jones Act “survival provision limits recovery to losses suffered during the decedent’s lifetime,” *id.* at 36, thus precluding recovery for a decedent’s lost future earnings.

In sum, a combination of doctrines serve to protect Jones Act defendants from “infinite liability for all wrongful acts” far more effectively than the strict common-law proximate-cause doctrine that petitioner seeks to resurrect here. The only purpose that would be served by imposing that long-rejected requirement in the present context would be “to insulate the employer as much as possible from bearing the ‘human overhead’ which is an inevitable part of the cost – to someone – of the doing of industrialized business.” *Tiller*, 318 U.S. at 59. But that is a result that Congress has long since rejected.

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CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,
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