No. 10-507

IN THE
Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, ET AL.,
Petitioners,
v.
LUISA L. VALLADOLID, ET AL.,
Respondents.

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

BRIEF FOR RESPONDENT LUISA L. VALLADOLID

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QUESTION PRESENTED

Section 4(b) of the Outer Continental Shelf Lands Act extends workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 *et seq*., to "any injury occurring as the result of" specified "operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b).

The question presented is:

Does § 4(b) extend LHWCA coverage to an injury suffered by an outer continental shelf worker during the course of employment while performing a task that is causally connected to specified outer continental shelf operations even though the injury itself did not occur on the outer continental shelf?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES AND REGULATIONS

LEGISLATIVE MATERIALS

OTHER MATERIALS

INTRODUCTION

In the Outer Continental Shelf Lands Act ("OCSLA"), Congress sought to clarify the applicable law for a range of potential issues as workers and their employers developed the resources of the outer continental shelf ("OCS"). One such issue is the law governing OCS workers' injuries. Instead of a fault-based tort scheme to compensate injured workers of a kind Congress earlier had enacted for railroad employees and seamen, Congress chose to incorporate into OCSLA the workers' compensation benefits of the Longshore and Harbor Workers' Compensation Act ("LHWCA"). Under that approach, injured workers obtain a capped amount of compensation for their injuries without regard to their employers' or their own negligence. The general notions behind workers' compensation are to provide a speedy remedy for workers' injuries and death, to establish greater financial certainty for employers, and to spare both sides the protracted struggles and uncertain issues of litigation through a more streamlined dispute-resolution process.

The plain language of OCSLA § 4(b) – the provision describing OCSLA's compensation system for workers killed or injured on the job – nowhere requires the accident to have occurred on the OCS. Petitioners nevertheless advocate a situs-of-injury requirement that lacks any support in the statutory text and that has bedeviled courts in the Fifth Circuit, the only court of appeals to adopt such a test. The situs-of-injury test creates numerous practical problems as well. All OCS workers at some point need to be transported to and from the OCS, and some of their work invariably occurs on the high seas, state territorial waters, and the land of a state (because that is

where the resources extracted from the OCS need to be processed for market). The upshot of petitioners' approach is an impractical morass of geography-based difficulties: for example, a worker injured in a helicopter crash on the OCS platform receives OCSLA compensation, but does not if the crash occurs within state territorial waters or on a land-based takeoff or landing en route to or from the OCS. Because petitioners' approach is inconsistent with OCSLA's text and would create unreasonable and unworkable results based on the fortuity of geography, this Court should reject it. A better and simpler solution would look primarily to the worker's status: someone whose job substantially involves work in operations conducted on the OCS, and who is injured in the course of that work, has suffered a covered injury, even if the injury happened to occur off the OCS.

In this case, the late Juan Valladolid (whose widow brought the death-benefits claim below and is a respondent in this Court) spent 98% of his time working as a roustabout on an OCS platform. Valladolid sustained a fatal injury during an infrequent land-based task related to petitioners' offshore platform operations that he was ordered to perform. Petitioners contend that the unusual geographical location where the injury occurred means that they are required to pay respondent only at the lower workers' compensation rate for widows mandated by state law, rather than the somewhat higher amount provided by federal law. Because plain language, statutory structure, and sound policy compel rejection of a situs-based test under OCSLA § 4(b), the court of appeals' judgment should be affirmed.

STATEMENT

A. Statutory Background

1. LHWCA

The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, is a federal workers' compensation statute designed to provide benefits to longshore workers and other land-based maritime workers. Like other workers' compensation schemes, LHWCA provides injured workers or their dependents with a no-fault system of recovery. LHWCA directs that benefits be paid regardless of whether the injuries were the worker's own fault, the employer's fault, someone else's fault, or no one's fault at all. *See* LHWCA §§ 3(a), 4(b), 33 U.S.C. §§ 903(a), 904(b) ("Compensation shall be payable irrespective of fault as a cause for the injury."); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 485 (1992).

Prior to the enactment of LHWCA in 1927, the only federal statute allowing maritime workers or their beneficiaries to recover for work-related injuries was the Jones Act.[1] Act of June 5, 1920, ch. 250, § 33, 41 Stat. 988, 1007 (codified as amended at 46 U.S.C. § 30104 (formerly codified at 46 U.S.C. app. § 688(a) (2000))). Unlike LHWCA, the Jones Act is a negligence-based scheme that incorporates by reference the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, to allow recovery only if a claimant proves that the employer's fault caused the

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[1] Under general maritime law, seamen also could recover for work-related injuries under the doctrine of maintenance and cure, which this Court long has considered to be a maritime analog to workers' compensation. *See Atlantic Sounding Co. v. Townsend*, 129 S. Ct. 2561, 2568-69 (2009); *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 212 n.12 (1971).

worker's injuries. Moreover, the Jones Act covers only maritime workers who qualify as "seamen."

In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), this Court cited the interest of promoting a "uniform[]" maritime law to hold that longshoremen injured on "navigable waters" could not recover under state workers' compensation law. *Id.* at 217. The effect of *Jensen*'s holding was that longshore workers injured on land could pursue claims under state workers' compensation law, but those injured on the seaward side of the infamous "*Jensen* line" were left without any source of workers' compensation. *See Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 216 (1969); *State Indus. Comm'n v. Nordenholt Corp.*, 259 U.S. 263, 272-73 (1922). The given rationale was that, because such workers were injured "on navigable waters," they fell within admiralty tort jurisdiction under the situs-of-injury criterion that controlled until *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 253-54, 260-61 (1972) (holding that locality-of-wrong test alone was insufficient for determining maritime jurisdiction under *The Plymouth*, 70 U.S. (3 Wall.) 20 (1866)).

Congress responded to *Jensen* by enacting LHWCA, which created a federal workers' compensation scheme to replace the state benefits cut off by *Jensen*. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 386-87 (1995) (Stevens, J., concurring in the judgment); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 72 (1979).[2] LHWCA balances the interests of maritime

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[2] Congress attempted, on two separate occasions, to overrule *Jensen* legislatively by extending state workers' compensation to land-based workers injured on navigable waters. Act of Oct. 6, 1917, ch. 97, §§ 1-2, 40 Stat. 395, 395; Act of June 10, 1922, ch. 216, §§ 1-2, 42 Stat. 634, 634-35. This Court, however, struck

workers and their employers by granting claimants a no-fault system of speedy recovery for disability or death, while at the same time immunizing employers from negligence-based tort actions for full compensatory damages. *See* LHWCA §§ 3(a), 4(b), 5(a), 33 U.S.C. §§ 903(a), 904(b), 905(a) (providing that LHWCA benefits, if accepted, are an employee's sole remedy against his employer).

In exchange for providing greater certainty to injured workers and their decedents by lowering their burden of proof and allowing speedy recovery without regard to fault, LHWCA reduces employers' liability by limiting scheduled benefits to an amount that is "less than full damages" for the employee's injuries. *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 279 (1979) (Blackmun, J., dissenting). As a consequence, LHWCA denies covered workers the tort-based remedy available to seamen under the Jones Act. *See* LHWCA § 2(3)(G), 33 U.S.C. § 902(3)(G) (excluding seamen from LHWCA coverage); *Latsis*, 515 U.S. at 355-56 (describing Jones Act and LHWCA as "mutually exclusive compensation regimes").

As originally enacted in 1927, LHWCA did not contain any meaningful "status" requirement. The Act covered any "employee," as defined under § 2(3), and the only significant limitation included in that definition was the crew-member exclusion. *See* LHWCA ch. 509, §§ 2(3), 3(a), 44 Stat. 1424, 1425, 1426. Under LHWCA's "situs" requirement, however, the Act covered only workers injured "upon the

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down both statutes as unconstitutional delegations of congressional power to the states. *See Washington v. W.C. Dawson & Co.*, 264 U.S. 219, 225-26 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 163-64 (1920).

navigable waters of the United States (including any dry dock)." *See id.* § 3(a), 44 Stat. 1426. The result of LHWCA's original narrow situs requirement was yet more confusion and uncertainty for both employers and workers, as workers moved between state and federal coverage every time they moved between a pier and a docked ship.

This Court responded to the ensuing difficulties by recognizing "a twilight zone in which the employees must have their rights determined case by case," with "great – indeed, presumptive – weight" given "to the conclusions of the appropriate federal authorities and to the state statutes themselves." *Davis v. Department of Labor & Indus.*, 317 U.S. 249, 256 (1942). The *Davis* Court thus sanctioned an area in which either the states or the federal government could permissibly assert jurisdiction to protect injured workers' benefits. *See Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 128-29 (1962) (explaining that, under *Davis*, an award of compensation under state law or under LHWCA "in the very same circumstances would have been supportable").

In *Calbeck*, the Court held that LHWCA coverage extended to *all* injuries in the course of work on navigable waters, even as to workers within the states' valid authority. *See id.* at 126. *Cf. Industrial Comm'n v. McCartin*, 330 U.S. 622, 627-28 (1947) (workers' compensation laws' exclusive-remedy provisions should not be read to foreclose relief under other jurisdictions' workers' compensation remedies absent "unmistakable language"); *compare* LHWCA § 5(a), 33 U.S.C. § 905(a) (foreclosing other remedies against the employer "at law or in admiralty"), *with* Defense Base Act § 1(c), 42 U.S.C. § 1651(c), and Nonappropriated Funds Instrumentalities Act § 2(c),

5 U.S.C. § 8173 (each explicitly foreclosing relief under state workers' compensation laws).

In 1972, Congress amended LHWCA. *See* Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. No. 92-576, 86 Stat. 1251. The amendments affected LHWCA's situs requirement by expanding coverage under the Act to include injuries occurring not only "upon the navigable waters of the United States" but also on "any adjoining pier . . . or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel," LHWCA § 3(a), 33 U.S.C. § 903(a); *see Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 263 (1977). The 1972 amendments thus created concurrent jurisdiction between state and federal workers' compensation schemes for injuries to maritime employees occurring on land. *See Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 721-22 (1980). Those amendments also added a meaningful status requirement under which only persons "engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations," are eligible for LHWCA benefits. LHWCA § 2(3), 33 U.S.C. § 902(3); *see Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 423 (1985).

2. OCSLA

In 1953, Congress enacted the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, as part of a package of legislation (that also included the Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*) to provide for federal administration of the development of OCS mineral resources. *See generally* David W. Robertson, *The Outer Continental Shelf Lands Act's Provisions on Jurisdiction, Remedies, and Choice of Law: Correcting the Fifth Circuit's Mistakes*, 38 J.

MAR. L. & COM. 487, 493-95 (2007). In so doing, Congress sought to facilitate the development and operation of the outer continental shelf ("OCS"), which Congress recognized was "vital to our national economy and security." H.R. Rep. No. 83-413, at 2 (1953), *reprinted in* 1953 U.S.C.C.A.N. 2177, 2178. OCSLA supplemented the Submerged Lands Act, under which Congress ceded to the coastal states the federal government's interests in the seabed and natural resources in state territorial waters, *see* Submerged Lands Act §§ 2(a)(2), 4, 43 U.S.C. §§ 1301(a)(2), 1312.

Section 4(a)(1) of OCSLA asserted exclusive federal jurisdiction over the "subsoil and seabed of the [OCS] and to all artificial islands and fixed structures . . . erected thereon" for mineral development. Ch. 345, 67 Stat. 462, 462 (codified at 43 U.S.C. § 1333(a)(1) (1976)).[3] Other provisions of § 4 define the substantive federal law applicable to the OCS. In OCSLA § 4(b), Congress sought to provide a uniform federal benefits scheme to workers engaged in OCS operations who sustained work-related injuries. It did so by incorporating the no-fault workers' compensation scheme contained in LHWCA, rather than the fault-based approach of FELA for rail workers or the Jones Act for seamen.

As originally enacted in 1953, OCSLA § 4 provided, in relevant part:

> (b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any opera-

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[3] Section 4(a)(1) was amended in 1978 to encompass "all installations and other devices permanently or temporarily attached to the seabed" for mineral-development purposes, rather than only "fixed" structures. 43 U.S.C. § 1333(a)(1).

> tions conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources[,] of the subsoil and seabed of the outer Continental Shelf . . . .
>
> (c) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

OCSLA § 4(b)-(c), 67 Stat. 463.

Congress's decision to incorporate into OCSLA the no-fault workers' compensation scheme contained in LHWCA followed a path similar to other previous enactments. By 1953, Congress already had incorporated the substantive provisions of LHWCA into three other federal statutes: the District of Columbia Workmen's Compensation Act, ch. 612, 45 Stat. 600 (1928) (repealed 1979) (adopting LHWCA as the local workers' compensation statute for the District of Columbia); the Defense Base Act, ch. 357, § 1, 55 Stat. 622, 622 (1941) (codified as amended at 42 U.S.C. § 1651) (adopting LHWCA as the workers' compensation statute for persons employed at U.S. defense bases overseas); and the Nonappropriated Fund Instrumentalities Act, ch. 444, § 2, 66 Stat. 138, 139 (1952) (codified as amended at 5 U.S.C. § 8171(a)) (adopting LHWCA as the workers' compensation statute for certain civilian employees of self-supporting Armed Forces instrumentalities such as stores, theaters, and base exchanges).

Under each of those three statutes, coverage depended solely on a worker's status as a particular

type of employee, rather than on the place of the injury. The mechanisms by which Congress achieved that result, however, differed over time. In 1928 and 1941, when it passed the D.C. Workmen's Compensation Act and the Defense Base Act, Congress provided that workers qualified for benefits "irrespective of the place where the injury or death occurs." D.C. Workmen's Compensation Act § 1, 45 Stat. 600; Defense Base Act § 1, 55 Stat. 622 (same). In the Nonappropriated Fund Instrumentalities Act, however, as in OCSLA, Congress did not include that language.

State workers' compensation law evolved in parallel fashion. As of 1941, when Congress passed the Defense Base Act, at least a few states still viewed workers' compensation as a substitute for tort liability, *see* LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 143.02[2] (Matthew Bender, rev. ed. 2011) ("LARSON"), and therefore limited state workers' compensation coverage to injuries that occurred within the state. By 1953, however, almost every state had rejected or overruled a situs-of-injury requirement for workers' compensation benefits. *See infra* note 26.

In 1978, Congress amended OCSLA for reasons unrelated to workers' compensation. The amendments did not alter the substantive meaning of § 4. *See* H.R. Conf. Rep. No. 95-1474, at 81 (1978) ("This amendment involves no change in existing law. It was not the intent . . . to alter in any way the existing coverage of [LHWCA]."), *reprinted in* 1978 U.S.C.C.A.N. 1674, 1680; *Curtis v. Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988). The 1978 amendments, however, did alter OCSLA's structure. The original § 4(b) was moved to

§ 23(b)(1), 43 U.S.C. § 1349(b)(1), and the original § 4(c) became the current § 4(b). The wording of original § 4(c) was correspondingly revised. Rather than incorporating the original § 4(b) by reference, Congress instead used substantially the same language to describe the covered operations. As a result of the amendments, the current § 4(b) provides:

> With respect to disability or death of an employee resulting from any injury occurring *as the result of operations conducted on the outer Continental Shelf* for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act.

Id. § 1333(b) (emphasis added).

B. Factual Background

Petitioner Pacific Operators Offshore, LLP is engaged in the business of oil exploration, extraction, and sales. *See* App. 57; JA89.[4] Pacific's operations include owning and operating two offshore production platforms – the Hogan and the Houchin. *See* App. 3; JA66. Both platforms are located more than three miles off the coast of California, on the OCS. *See* App. 3.

Respondent's late husband, Juan Valladolid, worked as a "roustabout" for Pacific. *See* App. 3-4. As a roustabout, Valladolid spent approximately 98% of his time working on the Hogan. *See* App. 3; JA51.

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[4] "App. _" refers to the appendix filed with the certiorari petition, and "JA_" refers to the Joint Appendix filed with petitioners' opening merits brief.

His regular job duties on the Hogan included such tasks as washing platform decks, repairing wellhead safety equipment, assisting with piping projects, helping with crane loads going on or off the platform, painting, and picking up trash. *See* App. 3, 57.

On rare occasions – once or twice a year, *see* JA40 – Pacific would assign Valladolid to work at its onshore oil flocculation facility, referred to as La Conchita. *See* App. 3 & n.1, 57. La Conchita's primary purpose was to service Pacific's two platforms located on the OCS by taking in, separating, and storing crude oil from those platforms. *See* App. 3, 33, 57. Well fluids are pumped ashore to La Conchita via pipeline from offshore. Water is then separated from the crude oil and gas, purified (through the "flocculation" process), and either sent back to the ocean via pipeline or otherwise released. *See* JA68. The separated, or processed, crude oil is temporarily stored in tanks at La Conchita before being transported out of the plant. *See* App. 3, 57; JA68, 159-60.

On June 2, 2004, Valladolid was working for Pacific at La Conchita. *See* App. 36-37. Valladolid had been temporarily assigned to work at La Conchita for approximately four weeks (from May 5 to June 5, 2004) to assist in retrofitting a water-processing tank and to perform other assigned duties. *See* JA26. At the end of that assignment, Valladolid would have returned to his normal duties on the Hogan.

Valladolid's day-to-day duties when on temporary assignment to La Conchita varied. *See* App. 3, 57; JA37-38. In addition to performing certain maintenance and clean-up duties, Valladolid sometimes used a forklift to transport equipment and other materials on the property. *See* JA114. On several occasions, for example, Valladolid unloaded rig equipment that

Pacific had used on its offshore platforms. After unloading the rig equipment, Valladolid would use a forklift to move the equipment within the La Conchita property, where it would be stored until it was needed again on Pacific's offshore platforms. *See* JA77-79. He also sometimes used a forklift to move and consolidate scrap metal (such as pieces of chain, grating, and pipe) that had been brought ashore from the Hogan or the Houchin and dumped around the La Conchita property for ultimate disposal off-site. *See* App. 4; JA56-57.

At approximately 4:00 pm on June 2, 2004, Valladolid's supervisor at La Conchita directed him to go to the rear yard of the plant and use a forklift to "centralize" scrap metal from various locations on the property to a single location so that third-party vendors could haul it away. *See* App. 4, 58; JA38, 54. This "consolidation" process was performed roughly once every two years. *See* App. 4. While completing that process, Valladolid was crushed by the forklift. *See* App. 4, 58. At approximately 5:15 pm, Valladolid's supervisor found him lying on his back with the forklift resting on his abdomen and chest. *See* App. 37, 58. Valladolid was pronounced dead shortly thereafter from asphyxia by abdominal and chest compression. *See id.* No one witnessed the accident. *See* JA10. Accident reports later prepared by Pacific and the local Sheriff's Department stated that it "appear[ed]" that Valladolid had been crushed by the forklift after he climbed onto its raised tines to pick a piece of fruit hanging from a tree. JA14, 19. Neither report contained any conclusive finding about what Valladolid was doing just before he died. *See* JA14-15, 19; App. 37, 58.

C. Procedural Background

The day after Valladolid's death, Pacific submitted a claim on respondent's behalf for death benefits under the California Workers' Compensation Act, Cal. Lab. Code § 3600 *et seq.*, and began paying benefits to Luisa Valladolid. Over the course of the following 52 weeks, petitioners paid a total of $42,000.[5] For a dependent to receive benefits under California's workers' compensation scheme, the injury or death for which the dependent seeks benefits must have occurred while the employee was "performing service growing out of and incidental to his or her employment" and was "acting within the course of his or her employment." *Id.* § 3600(a)(2).

Mrs. Valladolid subsequently filed a claim for federal workers' compensation benefits under LHWCA, claiming she was entitled to benefits either directly under LHWCA or indirectly through OCSLA § 4(b), which incorporates LHWCA by reference. *See* App. 54. A surviving spouse eligible for benefits under LHWCA is generally entitled to 50% of the decedent's average weekly wage until the surviving spouse dies or remarries. *See* LHWCA § 9(b), 33 U.S.C. § 909(b). Under LHWCA's "offsetting" provision – designed to prevent double recoveries – any benefits paid to respondent under LHWCA would be reduced by the amounts already paid to her under any other workers' compensation scheme. *See id.* § 3(e), 33 U.S.C. § 903(e).[6] Thus, should respondent ultimately

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[5] Petitioners paid Valladolid's widow $807.69 per week for 52 weeks. *See* App. 37 n.2, 54 n.2.

[6] LHWCA § 3(e) provides:

> Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this [Act] pur-

succeed in obtaining LHWCA benefits (via OCSLA § 4(b)), she would be entitled to $24,216 per year, offset by all payments that petitioners previously made to her under the California statute.[7]

Petitioners challenged respondent's claim, arguing that Valladolid was not covered under LHWCA directly or through OCSLA's incorporation of the LHWCA benefits scheme. In particular, they argued that Valladolid was not indirectly covered under OCSLA § 4(b) because his injuries did not occur "*on the OCS*," *see* JA145.[8] That is the sole issue before this Court. The direct application of LHWCA to respondent is not at issue.

1. Administrative Proceedings

The administrative law judge ("ALJ") granted petitioners' motion for summary judgment, holding that respondent could not establish indirect coverage under OCSLA.[9] *See* App. 74, 93. The ALJ concluded that "[t]here is no dispute" that Valladolid satisfied the OCSLA § 4 status requirement because he was working to develop the mineral wealth of the OCS when he was injured. App. 87-88. But the ALJ also concluded that § 4(b) applies only to injuries that

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suant to any other workers' compensation law or [the Jones Act] shall be credited against any liability imposed by this [Act].

33 U.S.C. § 903(e).

[7] *See supra* p. 14 & n.5.

[8] Petitioners argued that LHWCA did not directly cover Valladolid because he had not been engaged in "maritime employment" at the time he was injured and because his injuries had not occurred "upon the navigable waters of the United States" or in any "adjoining area." *See* JA123-24.

[9] The ALJ also held that respondent could not establish coverage under LHWCA directly. *See* App. 74, 93.

occur *on* the OCS. *See* App. 92-93. To reach that conclusion, the ALJ incorporated into § 4(b) the narrow "situs-of-injury" requirement that a divided Fifth Circuit had articulated in *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (en banc).[10] *See* App. 91-92; *see also infra* pp. 30-31. Because it was undisputed that Valladolid was killed "at an onshore facility that served offshore oil platforms," and not *on* the OCS, the ALJ concluded that respondent was not entitled to benefits under § 4(b). *See* App. 92-93.

The U.S. Department of Labor's Benefits Review Board ("BRB") affirmed. *See* App. 51-52. Like the ALJ, the BRB concluded that OCSLA § 4(b) contains a "situs-of-injury" requirement and that, because Valladolid's injuries did not occur while he was working "*on* the OCS," respondent could not recover under the statute. App. 51 (emphasis added).[11]

2. The Decision Below

On appeal, the Ninth Circuit reversed the BRB's holding that OCSLA § 4(b) includes a "situs-of-injury" requirement. *See* App. 13-19.[12] The court

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[10] The en banc decision in *Mills* overruled a line of earlier Fifth Circuit cases. *See*, *e.g.*, *Nations v. Morris*, 483 F.2d 577, 584 (5th Cir. 1973) ("OCSLA, in its incorporation of [LHWCA], did not speak in terms of injuries occurring *on* such platforms so as to distinguish them from those *off* the platforms. . . . Congress purposefully established a system that would apply without regard to physical location.").

[11] The BRB also affirmed the ALJ's denial of benefits under LHWCA directly. *See* App. 51-52.

[12] The court affirmed the BRB's decision that respondent could not qualify for death benefits directly under LHWCA because Valladolid's injury did not occur "upon the navigable waters of the United States" or in any "adjoining area." *See* App. 30-34.

first acknowledged that two other courts of appeals had squarely addressed whether § 4(b) contains a situs-of-injury requirement. *See* App. 6-13. The Third Circuit, in *Curtis v. Schlumberger Offshore Service, Inc.*, had rejected any situs-of-injury test under § 4(b), *see* 849 F.2d at 809-11, whereas the Fifth Circuit, in *Mills*, had adopted a situs-of-injury requirement under which a claimant must show that his injury occurred on an OCS platform or on the waters above the OCS, *see* 877 F.2d at 362. *See* App. 7.

The Ninth Circuit also analyzed this Court's case law, but found no "clear precedent." App. 8-13. Although in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), this Court referred in a footnote to the "OCSLA situs requirement," *id.* at 219 n.2, the court of appeals concluded that *Tallentire* was "simply not on point." App. 9. The court below understood *Tallentire* to address "whether a choice-of-law provision in OCSLA, [§ 4(a)(2)(A)], applied so as to allow the widows of employees killed in a helicopter crash to pursue a wrongful death action under state law." App. 8. But because *Tallentire* did not "'involve a suit by an injured employee against his employer pursuant to [§ 4(b)], this provision ha[d] no bearing on'" this Court's decision in that case. App. 8-9 (quoting *Tallentire*, 477 U.S. at 219 n.2).

Finding no clear precedent, the Ninth Circuit concluded that it was faced with "a straightforward question of statutory construction." App. 13. The court decided that § 4(b)'s plain language is "unambiguous in not including a situs-of-injury requirement." App. 18. First, the court rejected petitioners' argument that the text of § 4(b) itself contains a situs-of-injury requirement, *see* App. 13-

16, concluding that § 4(b)'s plain language provides benefits broadly to "'any injury occurring *as the result of* operations conducted on the [OCS],'" App. 15 (quoting § 4(b)). Second, the court rejected the argument that § 4's other subsections – each of which includes an explicit situs requirement – indicate that Congress intended a situs-of-injury requirement for § 4(b). *See* App. 16-17. The court reasoned instead that Congress's deliberate decision *not* to write a situs-of-injury requirement into § 4(b) indicates that Congress did *not* intend for § 4(b) to include that requirement. *See* App. 17. Third, the court rejected petitioners' argument that § 4(a)'s situs requirement applies to *all* of § 4, concluding that nothing in the language of § 4(a), or the rest of § 4, supported petitioners' position. *See* App. 24-27.

The Ninth Circuit further concluded that § 4's legislative history "is inconclusive on the situs issue" and "certainly [contained] nothing clear enough to persuade [the court] that [its] reading of the statute [was] incorrect." App. 22. Finally, the court briefly addressed various policy considerations but found nothing that would "compel the addition of a situs-of-injury requirement" to § 4(b). App. 23-24.

Having concluded that § 4(b) does not contain a situs-of-injury requirement, the court of appeals then adopted a "substantial nexus" test, under which – to satisfy § 4(b)'s requirement that an injury must be "the result of operations conducted on" the OCS – a claimant must show that the work performed "directly furthers [OCS] operations and is in the regular course of such operations." App. 28. The court did not address whether Valladolid satisfied its test, instead remanding the issue to the BRB for further proceedings. *See* App. 30.

SUMMARY OF ARGUMENT

I.A. The plain language of OCSLA § 4(b) contains no requirement that an injury, to be covered, must occur on the OCS itself. Section 4(b) covers injuries that occur "as the result of operations conducted on" the OCS. By its ordinary meaning, that language requires that those injuries be causally connected with those operations, but it does not require that they happen in the same place. Simply reading the statute is enough to dispose of the question presented here. This conclusion is reinforced by the structure of OCSLA § 4 as a whole, which contains several other carefully crafted provisions that apply only to events that occur in specific (and different) geographical areas. Accordingly, this is a case "[w]here Congress [has] include[d] particular language in one section of a statute but omit[ted] it in another section of the same Act," and this Court should "presume[] that Congress act[ed] intentionally and purposely" in doing so. *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted).

B. Any inclination by this Court to create a situs-of-injury requirement for § 4(b) would present significant difficulties in determining what that situs should be. Because the statutory text contains no situs requirement, petitioners are left to offer a range of inconsistent standards drawn from statutory language that does not apply to the employer-employee situation expressly covered by § 4(b). Petitioners variously refer to "offshore areas" (at 15), the "shelf" (at 15, 16), and "offshore" (at 16, 17, 29), among others, which provide no guidance at all. The effect of adopting petitioners' approach would be to ensnare courts in a morass of inconsistent standards under which workers injured in commonly occurring accidents would receive or be denied coverage based on where

the accident occurred. Indeed, the Fifth Circuit's cases applying the situs-of-injury requirement of *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (en banc), demonstrate the confusion that has arisen from that court's departure from the statutory text.

C. Neither *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), nor *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), decided the question presented here. *Herb's Welding* concerned the direct application of LHWCA, not its incorporation through OCSLA § 4(b). Indeed, this Court expressly reserved the question whether OCSLA § 4(b) would apply on the facts of *Herb's Welding*. *Tallentire* addressed the applicability to a wrongful death action of the OCSLA provision (§ 4(a)(2)(A)) that specifies when state law may apply as surrogate federal law. Petitioners rely heavily on a single footnote in which the *Tallentire* Court discussed § 4(b), but this Court nowhere said that § 4(b) contains the kind of situs-of-injury requirement that petitioners now urge. In any event, in that footnote itself the Court stated that § 4(b) "has no bearing on this case." 477 U.S. at 219 n.2.

II.A. Petitioners' arguments in favor of a situs-of-injury requirement fail to overcome the statutory text. They contend that an injury that is "the result of operations conducted on" the OCS necessarily must itself occur "on" the OCS, but their textual arguments rest ultimately on bare and unpersuasive assertions that are not consistent with the ordinary meaning of the language that Congress used. They also contend that Congress used the phrase "as the result of" to deal with latent injuries, but are unable to show either that latent injuries were a real concern for the drafters of the statute or that the language Congress chose would have been a natural

way to deal with such a concern while maintaining a situs-of-injury requirement.

B. Petitioners argue that a situs-of-injury requirement is necessary to give effect to Congress's intent that OCSLA § 4(b) only fill gaps in workers' compensation coverage under state law. But they give no reason to believe that Congress had such a limited view of OCSLA's function, and indeed the drafting history shows the contrary: the Senate committee that proposed § 4(b) *rejected* an amendment that would have restricted coverage to situations in which there was a gap to fill. Further, the legislative history also shows that Congress wanted more broadly to encourage economic development on the OCS. Covering workers such as Valladolid – who was injured on land despite working almost entirely on the OCS advancing OCS operations – makes sense in light of that broader purpose.

C. Petitioners also argue that their situs-of-injury requirement has the administrative virtues of a bright-line rule and that it would prevent employers from having to buy duplicative workers' compensation insurance coverage under both LHWCA and state law. To the contrary, there is no reason to think that the line petitioners propose to draw would be easily administrable. Both the Fifth Circuit's experience with *Mills* and this Court's long and unpleasant experience with the "*Jensen* line" counsel a different course.

Further, any double-insurance problem for employers is readily manageable. Employers must obtain insurance under both state-law and OCSLA compensation schemes because of the uncertain and varied locations where workers are injured, but multi-

jurisdictional insurance covering state workers' compensation and OCSLA is routine and unproblematic.

If duplicative insurance were a serious concern, the need for double insurance would be greater under petitioners' situs-of-injury test. That test would ensure that every OCS worker regularly faces a risk of injuries that would be covered by state law and those that would be covered by OCSLA. Under a status test, most OCS workers' injuries would be covered by the federal scheme.

In any event, petitioners' situs-of-injury approach would raise a real and practical duplicative-insurance problem that does not arise under the status test. Under petitioners' approach, OCS workers could lose both federal and state workers' compensation for injuries on the high seas. As a result, employers would be exposed to tort suits and therefore would need to obtain liability insurance coverage as well as workers' compensation coverage.

III. In applying OCSLA § 4(b), this Court should adopt a test that focuses on the need for a causal connection between operations conducted on the OCS and a covered injury. Consistent with general principles of workers' compensation law, that causal inquiry generally should focus on the nature of the injured worker's employment. Individuals who work primarily on the OCS should be covered, wherever they may be injured, because the close connection between their employment and OCS-based operations itself supplies the requisite causal link. By contrast, individuals who do *not* work primarily on the OCS should not be covered because any link between OCS-based operations and a work-related injury they might suffer would be attenuated and remote.

ARGUMENT

I. OCSLA § 4(b) DOES NOT INCLUDE A SITUS-OF-INJURY REQUIREMENT

A. OSCLA's Text And Structure Show That § 4(b) Contains No Situs-Of-Injury Requirement

1. The "cardinal canon" of statutory interpretation is that "a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Statutory interpretation thus "begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). If that "language provides a clear answer, [interpretation] ends there as well." *Harris Trust & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 254 (2000) (internal quotation marks omitted). This is such a case.

The parties dispute whether a worker's injury may fall within the scope of OCSLA § 4(b) (and therefore of LHWCA) when the worker was not physically located on the OCS at the time the relevant injury occurred. Section 4(b)'s plain language answers that question. The "disability or death of an employee" falls within the scope of § 4(b) if it "result[s] from any injury occurring as the result of operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources . . . of the subsoil and seabed of the [OCS]." 43 U.S.C. § 1333(b). The ordinary, natural meaning of the word "result" encompasses occurrences that are linked by a chain of cause and effect but do not necessarily happen in the same physical

location.[13] Section 4(b) thus covers at least some deaths and disabilities even though the injuries do not themselves occur on the OCS.

To limit § 4(b)'s coverage to injuries "occurring . . . on the [OCS]" would require a rewriting of the statute by eliding the words "as the result of operations conducted." *See Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883) ("It is the duty of the court to give effect, if possible, to every clause and word of a statute . . . ."); *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (same). The textual surgery would be even more radical in light of the extensive clauses that follow, which enumerate the particular types of operations – exploration, development, removal, and transport – from which a covered injury must result. One cannot read § 4(b) as silently creating a requirement as to *where* an injury must take place without somehow explaining why Congress chose to write an extensive and careful description of *why* and *to whom* the injury must occur.

2. The ordinary meaning of the term "result" in the phrase "occurring as the result of" is confirmed by *Brown v. Gardner*, 513 U.S. 115 (1994). In that case, this Court construed a statute providing compensation for "'an injury[,] or an aggravation of an injury,' that occurs 'as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation' provided under any of the laws administered by" the Veterans Administration ("VA"). *Id.* at 116 (quoting 38 U.S.C. § 1151 (1994)). The government had contended that the phrase "as the result of" in § 1151 "signifie[d]

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[13] *See, e.g.*, *Webster's New International Dictionary* 2126 (2d ed. 1952) (defining "result" to include a "consequence, effect, issue, or conclusion").

a proximate cause requirement that incorporate[d] a fault test." *Id.* at 119. This Court found that argument "implausible," reasoning that the phrase "as the result of" was instead "naturally read simply to impose the requirement of a causal connection" between an injury and the VA's treatment, without "requiring a demonstration of fault." *Id.*

The situs-of-injury requirement that petitioners would read into the "as the result of" language of § 4(b) is even more foreign to that language than the fault requirement that this Court found unpersuasive in the same language of the VA statute (38 U.S.C. § 1151 (1994)) in *Brown*. Whereas in *Brown* the Court rejected adding a fault requirement to the phrase "as the result of," here petitioners seek to restrict the geographical scope of the applicable occurrences. But the phrase "as the result of" conveys no such geographical description or restriction. In both cases, the ordinary meaning of the term gives rise to a "clear textually grounded conclusion" that ought to be "the end of the matter." 513 U.S. at 120 (internal quotation marks omitted).

3. The reading of § 4(b) as lacking a situs-of-injury requirement is "fortified" by a comparison to the surrounding structure of the statute. *See Russello v. United States*, 464 U.S. 16, 22 (1983). Several neighboring provisions apply only to certain geographical areas, and Congress imposed those geographical limitations using the words one would expect. This Court has recognized that, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Id.* at 23 (internal quotation

marks omitted); *see also*, *e.g.*, *Kucana v. Holder*, 130 S. Ct. 827, 838 (2010) (same); *Brown*, 513 U.S. at 120 (same). In OCSLA § 4, Congress imposed explicit and varying geographic limitations on the application of five out of six subsections, omitting such a limitation in only one subsection – § 4(b). *Russello*'s teaching thus applies with great force.

Section 4(a)(1) extends federal law "to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed" for purposes of exploiting OCS resources.

Section 4(a)(2)(A) specifies when the law of each adjacent state may be adopted as surrogate federal law, but not in as many places as § 4(a)(1). The subsoil, seabed, and artificial islands are still covered, but § 4(a)(1)'s "installations and other devices permanently or temporarily attached to the seabed" are omitted in favor of "fixed structures."[14]

Sections 4(c), (d), and (e) extend the National Labor Relations Act, certain authority of the Coast Guard, and certain authority of the Secretary of the Army to the artificial islands, installations, and other devices mentioned in § 4(a)(1), but not the subsoil and seabed. In addition, § 4(d)(1) alone includes "the waters adjacent" to the artificial islands, installations, and other devices – the others do not. And § 4(f) preserves the application of other laws, referring to "the subsoil and seabed of the [OCS] and the artificial

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[14] As a leading admiralty scholar has explained, the zone of coverage under § 4(a)(2)(A) is narrower than that under § 4(a)(1) because § 4(a)(2)(A) excludes a "'temporarily attached' apparatus." Robertson, 38 J. MAR. L. & COM. at 527-28.

islands, installations, and other devices referred to in subsection (a)."[15]

Thus, § 4 establishes four different explicit geographical requirements in five of its six subsections, but *not* in § 4(b). The care with which Congress fine-tuned the scopes of those different provisions reinforces the presumption that it "act[ed] intentionally and purposely" by including them – and with just as much intent and purpose when it "exclu[ded]" any such requirement from § 4(b). *Russello*, 464 U.S. at 23 (internal quotation marks omitted).

4. A fair reading of the statutory language encompasses injuries of the type readily foreseeable when Congress chose in § 4(b) to limit injuries compensable through the workers' compensation scheme to those occurring as the result of operations conducted on the OCS. One such example is a helicopter crash in the course of transporting workers to or from the OCS.[16] Crashes of that type may occur when the helicopter is over the high seas, the territorial waters of a state, or dry land. In none of these situations is the helicopter "on" the OCS. Never-

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[15] Petitioners contend that § 4(f) "makes clear that the entirety of [§ 4], including [§ 4(b)], is intended to extend federal law generally, and certain federal laws in particular, to the [OCS]," and that it creates "no suggestion that one subsection [*i.e.*, § 4(b)] goes much further." Pet. Br. 25. But § 4(f) includes an express definition of its geographical limitations, whereas § 4(b) has no such limitation. That contrast creates just the suggestion that petitioners deny. *See supra* pp. 26-27.

[16] This is a real and recurring fact pattern. Helicopters are hazardous enough to cause frequent injuries and yet are often necessary to reach the OCS on an urgent basis. *See, e.g.*, *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337 (5th Cir. 1982); *Stansbury v. Sikorski Aircraft*, 681 F.2d 948 (5th Cir. 1982).

theless, in all of them (under any fair reading of this statute), an injury to employees on board the helicopter would be "the result of" operations conducted on the OCS. The same would be true for maritime mishaps when transporting crew or supplies to or from an OCS platform.

Another example would be an injury in the course of disaster response or environmental remediation operations after an oil spill, explosion, or similar catastrophe. As the 2010 Gulf of Mexico oil spill demonstrates, response and clean-up efforts can be massive exercises that involve the deployment of a workforce not merely on the OCS itself, but throughout the entire affected area. A worker who generally works on the OCS might be injured on the OCS, on land, on a state's territorial water, or on the high seas while participating in a clean-up effort. Nothing in the statute prevents that worker from recovering compensation for that injury.

This case presents a third example. Valladolid spent 98% of his time on the OCS: he would never have been in his job, doing the work he was ordered to perform, if he had not been hired to participate in operations conducted on the OCS. The day he was injured, moreover, his assigned task was to pick up scrap metal generated by petitioners' operations on its OCS platforms. JA54-56.[17] Thus, the task itself was also tied directly to operations conducted on the OCS. The words that Congress used to define eligibility for benefits under § 4(b) – "death . . . resulting

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[17] *Cf. Tallentire*, 477 U.S. at 219 (reading *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969), and *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), as presuming applicability of OCSLA because "the fatalities were intimately connected with the decedents' work on the platforms").

from any injury occurring as the result of operations conducted on the [OCS]" – therefore apply to these facts.

B. OCSLA Provides No Guidance About *Which* Situs Requirement Would Apply

Even if this Court was inclined to devise a situs-of-injury requirement for § 4(b), it nevertheless would encounter a major obstacle: nothing in OCSLA, nothing in petitioners' brief, and (especially) nothing in the Fifth Circuit's tangled and contradictory line of cases following *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (en banc), offers a clear picture of what the situs requirement for § 4(b) should be. On the contrary, there are many different candidates, with no apparent principled basis for choosing among them. That is another good reason to interpret OCSLA according to its plain text rather than attempting to insert a requirement not expressly provided by Congress.

1. Petitioners are adamant that OCSLA § 4(b) imposes a situs-of-injury requirement, but they have not defined the relevant situs. When describing their test, they refer vaguely to "offshore areas" (at 15), "the shelf" (at 15, 16), "offshore" (at 16, 17, 29), "the outer continental shelf" (at 17, 19, 22, 23, 24, 25, 26, 30, 32, 33), "[OCS] structures" (at 24, 25), and "the offshore continental shelf" (at 29). When Congress imposed the sort of situs requirement that petitioners advocate, it defined the situs quite precisely. Indeed, § 4's other subsections each adopt detailed – and different – situs definitions. *See supra* pp. 25-27.

Petitioners' sole effort to rely on statutory language for a "situs" definition suggests (at 24-25) that § 4(b)'s situs-of-injury requirement should correspond to the "neighboring" situs requirements in § 4(a) and

§ 4(c). But § 4(a) adopts somewhat different situs definitions in § 4(a)(1) and § 4(a)(2)(A), while § 4(c) adopts yet a third definition. *See supra* p. 26. None of those definitions, moreover, would include "the waters above the OCS," *Mills*, 877 F.2d at 362, on or over which OCS workers regularly must travel as part of their jobs.

Without a clear definition of the governing situs, petitioners' requirement would create enormous difficulties that the lower courts would need to resolve. If Valladolid had been injured on a crew boat as it approached or left the platform (a typical injury for an OCS worker), would he have been entitled to OCSLA compensation? He would have been "offshore" (*cf.* Pet. Br. 16, 17, 29), but he would not have been on "the shelf" (*cf. id.* at 15, 16). He would have been on the situs defined by § 4(d)(1) and within the scope of § 23(b)(1), but not on the situs defined by § 4(a)(1) or § 4(a)(2)(A). Petitioners' proposed rule offers no answer grounded in OCSLA's actual text.

2. Similarly, no answer to these questions can be found in the Fifth Circuit's cases trying to apply a situs-of-injury requirement under OCSLA. On the contrary, the lesson to be drawn from that unfortunate experience is that petitioners' proposed rule would complicate rather than clarify the operation of § 4(b).

In *Mills*, the en banc court departed from previous Fifth Circuit precedent to create the situs-of-injury requirement that petitioners advocate here.[18] The

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[18] For an example of that pre-*Mills* precedent, see *Nations v. Morris*, 483 F.2d 577 (5th Cir. 1973), which explained that the OCSLA workers' compensation provision of § 4(b) "appl[ies] without regard to physical location" of injury. *Id.* at 584. *See also supra* note 10.

Fifth Circuit's efforts to apply that requirement have created only confusion and uncertainty. *Mills* itself declared that § 4(b) extended coverage only to workers injured "on an OCS platform or the waters above the OCS," 877 F.2d at 362, even though the term "platform" never appears in § 4,[19] and none of the several situs definitions in § 4 includes "the waters above the OCS" (except to the limited extent that § 4(d)(1) includes "the waters adjacent" to artificial islands, installations, and other devices).[20]

In *Demette v. Falcon Drilling Co.*, 280 F.3d 492 (5th Cir. 2002), *overruled in part by Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778, 788 n.8 (5th Cir. 2009) (en banc), the court "parsed the precise language of [amended § 4(a)(1)] to specify the exact contours of the situs test," 280 F.3d at 496, ultimately devising a list of covered locations.[21] Its list did not include "the waters above the OCS," which the *Mills* court had said were covered by its situs requirement for the application of § 4(b).

In *Diamond Offshore Co. v. A&B Builders, Inc.*, 302 F.3d 531 (5th Cir. 2002), *overruled in part by Grand Isle Shipyard*, 589 F.3d at 788 n.8, the court

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[19] OCS platforms are generally covered by more detailed definitions in § 4(a)(1) and § 4(a)(2)(A). Not every "platform" necessarily satisfies those more detailed definitions.

[20] Indeed, this Court's decision in *Tallentire*, 477 U.S. at 217-20, establishes that § 4(a)(2)(A) at least does *not* cover "the waters above" the OCS. *See infra* pp. 35-37 (discussing *Tallentire*).

[21] *Demette*'s list included the subsoil and seabed of the OCS and some, but not all, "artificial island[s], installation[s], [and] other device[s]," depending on the purposes for which they were present on the OCS and on other factors as well. 280 F.3d at 497.

applied *Demette* to reach the remarkable conclusion that a welder injured during OCS operations "more than 100 miles offshore in the Gulf of Mexico," 302 F.3d at 537, was not eligible for benefits under § 4(b) unless the semi-submersible drilling rig on which he worked "was 'attached' to and 'erected' on the seabed of the OCS," *id.* at 544. Contrary to the analysis in *Mills* – but not acknowledging the conflict – the *Diamond Offshore* court reasoned that "the OCSLA situs test is not satisfied merely because [the worker's] alleged injury occurred on the navigable waters overlying the OCS." *Id*. at 543.

Most recently, in *Becker v. Tidewater, Inc.*, 586 F.3d 358 (5th Cir. 2009), the Fifth Circuit held that "all employees suffering injury or death on the [OCS] are covered [under OCSLA § 4(b)] if they are engaged in exploring for or developing natural resources." *Id*. at 366. That panel then challenged *Demette* in a footnote:

> Although we are persuaded that the above analysis is the correct approach in determining whether a worker injured on the [OCS] is covered by the LHWCA, we recognize that some of our cases have suggested that more is required to satisfy the situs requirement.

Id. at 367 n.6 (citing *Demette*, 280 F.3d at 498-500).

The Fifth Circuit's inconsistent approaches in *Mills*, *Demette*, *Diamond Offshore*, and *Becker* – which also have drawn critical attention from scholars and practitioners[22] – is not surprising. Because OCSLA § 4(b)

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[22] *See*, *e.g.*, Robertson, 38 J. MAR. L. & COM. at 539 (describing *Diamond Offshore* as applying a "rule [that] seems to exemplify instability"); Julia M. Adams & Karen K. Milhollin, *Indemnity on the Outer Continental Shelf – A Practical Primer*, 27 TUL. MAR. L.J. 43, 57-58, 70, 100 (2002) (listing *Demette* and

itself contains no situs-of-injury requirement, the *Mills* and *Demette* courts necessarily made up their (inconsistent) definitions for § 4(b)'s situs requirement out of whole cloth. Nothing in the Fifth Circuit's experience trying to administer an actual situs requirement commends itself to this Court.

C. Neither *Herb's Welding* Nor *Tallentire* Leads To The Conclusion That § 4(b) Contains A Situs-Of-Injury Requirement

This Court never has decided whether OCSLA § 4(b) contains a situs-of-injury requirement. On the one previous occasion when the question was presented, the Court expressly declined to resolve it. The decision here should be based on the governing statute and sound principles of statutory interpretation, rather than on ambiguous *dicta* in previous cases construing unrelated provisions of OCSLA.

1. Petitioners invoke *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), but that reliance is misplaced. In that case, a welder (Gray) was injured while working on a fixed platform erected on the seabed within state territory. *See id.* at 416-17. Gray spent most of his time on platforms in Louisiana waters, but some of his time on OCS platforms. He was injured on a platform in Louisiana waters. *See id.* The BRB held that Gray was entitled to LHWCA benefits under OCSLA § 4(b): even though he was not on the OCS at the time he was injured, the BRB considered his work "'integrally related'" to OCS operations. *Id.* at 417-18. The Fifth Circuit affirmed on different grounds: it held that Gray had

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Diamond Offshore among a series of Fifth Circuit OCSLA decisions that tend to leave a lawyer's "office aspirin bottle . . . empty"). *See also* Opp. 12 n.6 (collecting authorities criticizing *Mills*).

been engaged in maritime employment at the time of his injury and therefore qualified for benefits directly under LHWCA, without any need to invoke § 4(b). *See id.* at 418-19.

This Court reversed. It held, contrary to the Fifth Circuit's view, that LHWCA did not apply directly because work on artificial islands is not "maritime employment" within the LHWCA status requirement. As a "land"-based welder on a fixed platform, Gray was not engaged in maritime employment. *See id.* at 421-26. Relying on § 4(b), Gray sought to defend the judgment on the BRB's original grounds. But this Court refused to reach the § 4(b) issue because it had "not been fully briefed and argued here and was not discussed by the Court of Appeals." *Id.* at 426 n.12. It explicitly left the issue "open to the Court of Appeals on remand." *Id.*

Petitioners argue (at 29) that *Herb's Welding* supports them. They rely upon its statement that OCSLA contains an "explicit geographic limitation," 470 U.S. at 427, as endorsing their view that OCSLA contains a situs-of-injury requirement. But, if that had been the Court's meaning, the § 4(b) issue would not have been "open to the Court of Appeals on remand" – that question already would have been decided, because there was no dispute that Gray was not injured on the OCS.

In context, the limitation to which the *Herb's Welding* Court referred was not a situs-of-injury requirement, but a *situs-of-operations* requirement. Because Gray's job involved going back and forth between state-water and OCS platforms, it was necessary in his case to distinguish between an injury that occurred as a result of extractive operations conducted in Louisiana waters and one that occurred as a result

of operations conducted on the OCS. The explosion there occurred due to gas lines from a fixed platform within state territorial waters, and not from OCS platform operations. That is the "explicit geographical limitation" to which the Court referred. 470 U.S. at 427. But that limitation is not relevant to this case, in which no one disputes that the only relevant extractive operations were conducted on the OCS.

2. Just over a year after *Herb's Welding*, this Court, in *Tallentire*, addressed the relationship between OCSLA, state law, and the Death on the High Seas Act ("DOHSA") (now codified at 46 U.S.C. § 30301 *et seq.*). *Tallentire* involved a tort claim by the surviving widows of two OCS workers who were killed when the helicopter transporting them from their platform to the shore crashed 35 miles off the Louisiana coast. The question was whether the widows had tort claims against the operator of the helicopter under state-law remedies arguably incorporated into federal law through OCSLA § 4(a)(2), or whether DOHSA instead applied. *See* 477 U.S. at 209.

This Court held that DOHSA governed. It rejected the widows' arguments that OCSLA § 4(a)(2)(A) incorporated state law in that context as surrogate federal law, which would have saved their claims. The *Tallentire* Court reasoned that the helicopter crash happened on the high seas, outside the geographical coverage of § 4(a)(2)(A). *See id.* at 219-20. In the course of interpreting § 4(a)(2)(A), the Court included a footnote comparing the scope of application of § 4(a)(2)(A) to that of § 4(b). That footnote read:

> Only one provision of OCSLA superimposes a status requirement on the otherwise determinative OCSLA situs requirement; [§ 4(b)] makes

> compensation for the death or injury of an "employee" resulting from certain operations on the [OCS] payable under [LHWCA]. We note that because this case does not involve a suit by an injured employee against his employer pursuant to [§ 4(b)], this provision has no bearing on this case.

Id. at 219 n.2.

Petitioners argue at length (at 28-29) that this Court's statement that § 4(b) "superimposes" a status requirement on a situs requirement supports their position that § 4(b) contains a situs-of-injury requirement. That argument has no merit, for two reasons. *First*, the *Tallentire* footnote does not address the question presented here. As the discussion above of *Herb's Welding* demonstrates, § 4(b) undisputedly contains a "situs requirement": the provision does not apply unless the relevant extractive operations were conducted "on" the OCS. But the question presented here is whether § 4(b) contains a situs-of-injury requirement, which is a very different thing. *Tallentire* sheds no light on that question.

Indeed, it would have been very odd if the *Tallentire* Court had undertaken to decide the situs-of-injury question presented here. The *Herb's Welding* Court carefully reserved that same question – even when directly presented – as one that deserved full briefing and argument. *See supra* p. 34. It is thus unlikely that the *Tallentire* Court would have chosen to resolve the issue in an ambiguous footnote only one year later, without briefing or argument, when the facts did not present the issue.

Second, the Ninth Circuit was unquestionably correct when it categorized the *Tallentire* footnote as *dictum* with no binding force. *See* App. 9-10. When

this Court says that an issue "has no bearing on [a] case," it is not making law. "It is extremely dangerous to take general *dicta* upon supposed cases not considered in all their bearings, and, at best, inexplicitly stated as establishing important law principles." *Alexander v. Baltimore Ins. Co.*, 8 U.S. (4 Cranch) 370, 379 (1808) (Marshall, C.J.). The Court can and should focus instead on the statutory language that actually controls this case.

II. PETITIONERS' ARGUMENTS IN SUPPORT OF A SITUS-OF-INJURY REQUIREMENT ARE UNPERSUASIVE

Petitioners advocate a *per se* rule whereby no injury is deemed to "occur[] as the result of operations conducted on the [OCS]" unless that injury occurs "on" the OCS. *E.g.*, Pet. Br. 26. They urge this Court to reject the situs-of-*operations* construction adopted below, *see* App. 15, in favor of a strict situs-of-*injury* requirement under which no OCS worker may recover § 4(b) compensation for work-related injuries that occur off the OCS, regardless of their cause. Petitioners' arguments lack merit.

A. Petitioners' Textual Arguments That § 4(b) Imposes A Situs-Of-Injury Requirement Have No Merit

Petitioners assert (*e.g.*, Pet. Br. 14-15) that § 4(b)'s plain language imposes a situs-of-injury requirement. The nub of their textual argument is this: "An injury is not 'the result of operations conducted on the [OCS]' unless it was caused by something that *happened* on the [OCS]. Thus, the injury must occur on the [OCS] to come within the statutory text." *Id.* at 15. The first sentence is correct, but trivial. Certainly, any injury that is the result of operations on the OCS is caused by something that happened on

the OCS. Specifically, it is caused by the relevant "operations," which happened on the OCS because they were "conducted" there. The second sentence, however, is a *non sequitur*. Petitioners simply assert that the injury necessarily must happen in the same place as its cause. But that is not so, as, for example, coastal residents hundreds of miles from the OCS site of the 2010 Gulf of Mexico oil disaster are particularly aware. *See supra* p. 28.

Petitioners further speculate (at 16) that Congress "likely used the phrase 'injury occurring as a result of operations conducted'" to ensure coverage for "latent injuries" rather than to convey the obvious meaning that the words suggest. Petitioners cite two state cases that they claim otherwise might have prevented recoveries for latent injuries, but offer no evidence that Congress used any particular specific language to encompass OCS latent injuries.[23] Further, even if there were some actual reason to think that Congress was motivated by this particular concern, "[t]he best evidence of [a law's] purpose is the statutory text adopted by both Houses of Congress and submitted to the President." *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991). Where that text is "clear," as it is here, this Court will not "ignore . . .

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[23] Petitioners cite no example of any reported case under § 4(b) involving a latent injury, in which the disease or injury occurs well outside the immediate period or incident at the job site. In any event, it has been so well-settled that latent injuries are compensable under LHWCA itself that in only a single case has such coverage even been challenged, and that challenge was readily rejected. *See Andras v. Donovan*, 414 F.2d 241, 243 (5th Cir. 1969) (per curiam) (collecting authorities). Thus, it seems especially doubtful that Congress used such ambiguous and unspecific language to accomplish a goal already achieved in the statute.

[it] in reliance upon supposition of what Congress *really* wanted." *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 237 (2007). If Congress had been so eager to cover only latent injuries resulting from work on the OCS as well as those occurring there, it would have used language that conveyed that meaning to an ordinary reader.[24]

Petitioners' attempt to invoke § 4's structure fares no better. Incorporating a lengthy passage from the Fifth Circuit's decision in *Mills*, petitioners contend that § 4's structure favors their situs-of-injury argument because the specific geographical limitations contained in all parts of § 4, except for § 4(b), "'demonstrate that Congress intended to regulate the OCS, not those areas that already were governed by state law,'" and because there is no "'legislative history suggesting that Congress intended to single out OCSLA's workers' compensation scheme for different treatment.'" Pet. Br. 24 (quoting 877 F.2d at 359). The *textual* differences between the various provisions of § 4 – rather than anything in the legislative history – support a compelling inference of legislative intent to treat workers' compensation differently from the other federal laws extended to the OCS. *See supra* pp. 25-27. "[I]t would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a

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[24] For example, Congress easily could have written § 4(b) to cover injuries "occurring on the OCS and latent injuries or occupational diseases resulting from occurrences or working conditions on the OCS regardless of where they become manifest," had it been concerned about the possibility that latent injuries would not be covered.

statute." *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 592 (1980).

B. Section 4(b) Was Not Enacted Simply To Fill Gaps In The Law

Petitioners follow the Fifth Circuit's lead in *Mills* by arguing (at 17-23) that Congress's purpose in adopting § 4(b) was to fill a void in applicable law on the OCS that adjacent states' laws did not reach. From that premise, they argue that OCSLA should not be construed to apply on land, where no void ever would have existed. That contention is unpersuasive. OCSLA's text is "sufficiently clear in its context" that there is no need "to examine the additional considerations of policy that may have influenced the lawmakers in their formulation of the statute." *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam) (internal quotation marks and alteration omitted). Nevertheless, even taken on their own terms, petitioners' arguments fail to show that Congress's purposes in passing the statute require this Court to read a situs-of-injury requirement into § 4(b).

1. Petitioners make no persuasive showing that a void in workers' compensation coverage even existed before OCSLA. They weakly distinguish the California, Louisiana, and Texas cases cited by the court below to show the absence of any such void,[25]

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[25] Petitioners object (at 19) that the cases cited in the opinion below to demonstrate the extraterritorial application of state workers' compensation statutes all involved injuries suffered in another state. But that is an irrelevant distinction. If anything, a state would be more likely to apply a statute extraterritorially to a location in which no competing sovereignty exists (such as the pre-1953 OCS) than to a location in another state. In any event, states do apply their workers'

but their principal contention (at 19-20) is that a void *might* have existed with respect to some other (unidentified) state. That speculation is unfounded. This Court already has recognized that, "[w]hen extractive operations first moved offshore, all claims for injuries on fixed platforms proceeded under state workers' compensation schemes." *Herb's Welding*, 470 U.S. at 419. By 1953, no coastal state still limited its workers' compensation law to in-state injuries.[26]

In addition, the Senate's discussion and rejection of an amendment that would have made LHWCA applicable only "if recovery for such disability or death through workmen's compensation proceedings is not provided by State law," S. Rep. No. 83-411, at 16 (1953), further shows that OCSLA was not intended purely as a gap-filling measure. If gap-filling had been Congress's goal, passing that amendment would have been logical. The committee

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compensation statutes to OCS injuries. *See*, *e.g.*, *Bobbitt v. Workers' Comp. Appeals Bd.*, 143 Cal. App. 3d 845 (1983); *Thompson v. Teledyne Movible Offshore, Inc.*, 419 So. 2d 822 (La. 1982).

[26] At one time, three coastal states (and four inland states) followed a since-abandoned "tort theory" whereby workers' compensation laws were limited to in-state injuries. *See* 71 C.J. *Workmen's Compensation Acts* § 46, at 304 & n.50 (1935) (listing California and Massachusetts as adherents to the "tort theory"); LARSON § 143.02 n.3 (adding Delaware). Tort theory vanished almost entirely by the 1940s, as legislatures by statute overturned court decisions implementing it. It was statutorily overturned or expanded to cover out-of-state injuries in California in 1917, in Massachusetts in 1927, and in Delaware by 1939. *See id.* When Congress enacted OCSLA in 1953, only Oklahoma still followed the tort theory. It became the last state to abandon the discredited doctrine (and thus the in-state situs requirement) in 1955. *See id*.

instead found it "inadvisable to have [LHWCA] apply only if there is no applicable State law." *Id.* at 23. The amendment's rejection demonstrates that Congress was not focused on gap-filling and contemplated (even endorsed) an overlap between state and federal coverage. *See id.*

Indeed, when they address the Senate's rejection of that amendment, petitioners concede (at 20-21) that Congress was not so concerned with gap-filling after all. Congress instead intended to "provid[e] [OCS] workers with a uniform compensation scheme" without regard for "the applicability and vagaries of the adjacent state's workers' compensation scheme." Pet. Br. 20. Petitioners' standard, however, would not serve that purpose: instead, it would subject OCS workers to "the applicability and vagaries of the adjacent state's workers' compensation scheme" if they are injured when their OCS work happens to bring them ashore or *anywhere* off the platform, as such work inherently must do.

2. Further, when it passed OCSLA in 1953, Congress's purpose was fully consistent with extending coverage to workers in Valladolid's position. That purpose was to capture the mineral resources of the OCS for the Nation's benefit. OCSLA § 3 declares as the policy of the United States that:

> (1) the subsoil and seabed of the [OCS] appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this [Act]; . . . [and]
>
> (3) the [OCS] is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is

> consistent with the maintenance of competition and other national needs[.]

43 U.S.C. § 1332(1), (3).

Similarly, the House Report on H.R. 5134, 83d Cong. (1953), declared that "operation[s] [on the OCS] are vital to our national economy and security" and cited the lack of positive law enabling economic development of the OCS as making it "the duty of the Congress to enact promptly a leasing policy for the purpose of encouraging the discovery and development of the oil potential of the Continental Shelf." H.R. Rep. No. 83-413, at 2-3, 1953 U.S.C.C.A.N. 2178. The bill's avowed goal was "that the area in the [OCS] may be leased and developed by the Federal Government." *Id.* at 2. The Senate committee also urged that "'the full development[] of the estimated values in the [OCS] area will require the efforts and the physical presence of thousands of workers on fixed structures in the shelf area. Industrial accidents, accidental death, peace and order – these and many other problems and situations need and must have legislative attention." S. Rep. No. 83-411, at 4 (quoting S. Rep. No. 83-133, at 9 (1953)).

Congress's intent to extend federal workers' compensation benefits as a means of promoting economic development and industrial peace did not compel it to adopt any particular stopping point for the extension of those benefits, and certainly does not by itself furnish a workable test. Nevertheless, that purpose *does* at least suggest that Congress would not have found someone like Valladolid – whose employment focused on OCS-based operations and unquestionably contributed to the overall project of developing the OCS – beyond its concern. Accordingly, congressional purpose provides no reason to read a situs-of-

injury requirement into text that does not contain one.

C. Other Policy Considerations Do Not Favor A § 4(b) Situs-Of-Injury Requirement

Petitioners also argue that policy considerations favor a situs-of-injury requirement, and they tout (at 32) the benefits of a "bright-line situs-of-injury test." Even if that contention were properly addressed to this Court rather than to Congress, those supposed "benefits" are illusory. Petitioners' approach presents a substantial line-drawing problem; exacerbates any double-insurance concerns that might exist; and is inconsistent with the historical development of state workers' compensation laws, which have rejected situs-of-injury requirements.

1. The history of *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), and the resulting LHWCA situs requirement provide strong evidence of the inadvisability of grafting a situs-of-injury requirement onto § 4(b). LHWCA is the last remaining workers' compensation statute with a situs-of-injury requirement, *see* LHWCA § 3(a), 33 U.S.C. § 903(a), which Congress created in specific response to *Jensen*. The resulting difficulties were notorious.

To define coverage, the original LHWCA adopted what became known as the "*Jensen* line": the statute governed only injuries "occurring upon the navigable waters of the United States." LHWCA § 3(a), 44 Stat. 1426. Although that line was at least as "bright" as any that petitioners advocate here, "[t]his Court [was] unable to give any guiding, definite rule . . . in advance of litigation . . . . The determination of particular cases, of which there [were] a great many, [was] extremely difficult." *Davis v. Department of Labor & Indus.*, 317 U.S. 249, 253 (1942).

Employees were "asked to determine with certainty before bringing their actions [a] factual question over which courts regularly divide among themselves and within their own membership." *Id.* at 254. The "result defeat[ed] the purpose of the federal act." *Id.* Moreover, "[t]he horns of the jurisdictional dilemma press[ed] as sharply on employers as on employees," *id.* at 255, because they were unable to predict what insurance was required.

The problems began soon after *Jensen* was decided, as this Court almost immediately created the "maritime but local" doctrine to mitigate some of *Jensen*'s problems. *See Western Fuel Co. v. Garcia*, 257 U.S. 233, 242 (1921) (permitting state law to apply when the "subject is maritime and local in character"); *see also*, *e.g.*, *Millers' Indem. Underwriters v. Braud*, 270 U.S. 59, 64-65 (1926) (state law applies because "the matter is of mere local concern"); *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 476-77 (1922) (following *Western Fuel*). That doctrine became a major part of the problem in applying the LHWCA situs requirement. *See*, *e.g.*, *Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 128-29 (1962); *Davis*, 317 U.S. at 253-54.

This Court's frequent intervention was required even for cases not involving the "maritime but local" doctrine. In *T. Smith & Son, Inc. v. Taylor*, 276 U.S. 179 (1928), for example, a longshoreman was knocked from a wharf into the water, where he died. This Court held that state workers' compensation applied on the theory that the "sole, immediate and proximate cause of his death" occurred on the wharf, an extension of the land. *Id.* at 182. In *Minnie v. Port Huron Terminal Co.*, 295 U.S. 647 (1935), by contrast, a longshoreman was swept from the deck of

a vessel, landing on a wharf where he was injured. This Court held that he was not entitled to state workers' compensation because the cause of the injury occurred when he was on the vessel. *Id.* at 649. *See also*, *e.g.*, Arthur Larson, *The Conflict of Laws Problem Between the Longshoremen's Act and State Workmen's Compensation Acts*, 45 S. CAL. L. REV. 699, 737 (1972) (noting the "troublesome borderline cases" that arose under the situs-of-injury test, despite its being "seemingly so physically self-evident").

Even when the application of the situs requirement was fairly clear, it created tremendous difficulties in practice because workers regularly moved between state and federal coverage every time they moved between a pier and a docked ship. *See*, *e.g.*, *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 49 (1989) (Blackmun, J., concurring) (noting "the problem that under the pre-1972 Act employees would walk in and out of LHWCA coverage during their workday") (citing *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 273 (1977)).

The confusion and uncertainty were so bad that Congress ultimately had to amend the situs requirement in 1972. *See supra* p. 7. Despite the improvement, this Court still confronted cases seeking to clarify the new situs requirement. *See*, *e.g.*, *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980); *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69 (1979); *Northeast Marine Terminal*, *supra*. Even today, LHWCA provides what one prominent defense lawyer recently described as "a playpen of litigation possibilities that can only delight the appellate bar." Thomas C. Fitzhugh III, *Who Is Covered? Recent Cases Regarding Longshore Situs and Status*, 16 U.S.F. MAR. L.J. 265, 318 (2003-2004).

In advocating a "bright-line situs-of-injury test," Pet. Br. 33, petitioners invite this Court to create another "jurisdictional monstrosity," *Sun Ship*, 447 U.S. at 720, comparable to that which has bedeviled the courts under LHWCA's situs requirement. The LHWCA experience showed that such lines are difficult to apply in practice and that they create uncertainty and confusion. Petitioners' ill-defined situs-of-injury test would be even more difficult to apply, and thus would create even greater uncertainty and confusion. Even if the situs were eventually well-defined, petitioners' proposal would result in OCS workers' moving between state and federal coverage every time they move on or off a covered situs. Congress was wise enough to avoid the mistake when it enacted OCSLA. This Court similarly should decline to impose a situs-of-injury requirement under § 4(b).

2. Petitioners also wrongly argue (at 33-34) that a "bright-line situs-of-injury test" would clarify insurance decisions and limit the need for employers to obtain double insurance coverage. That concern is unjustified. If duplicative insurance were any concern at all, petitioners' test would exacerbate the problem and create distinctive problems for OCS employers that do not exist with a status test.

First, petitioners' argument about duplicative insurance is misplaced. The nature of OCS development and its relationship to economic activities on land mean that employers are responsible for obtaining insurance that covers both state workers' compensation and LHWCA/OCSLA compensation liabilities. As a practical matter, workers injured on an OCS platform generally claim LHWCA compensation under OCSLA, but, because state coverage extends to

the OCS (*see supra* p. 40 & n.25), employers must insure against that risk. This is no problem in practice because single policies covering all workers' compensation obligations – state and federal – are readily available.[27]

Second, if duplicative insurance were a serious concern, it would provide another reason to reject petitioners' arguments because the need for double coverage would be greater under a situs-of-injury test. Coverage under a status test is clear for most employees. For those workers such as Valladolid, who worked almost exclusively on the OCS, employers like Pacific would recognize that as a practical matter virtually all claims would be filed under the federal system. A situs-of-injury test, by contrast, would always require employers to obtain both state

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[27] Concurrent coverage has been necessary at least since the *Davis* Court's recognition of a twilight zone in which workers on navigable waters may claim either LHWCA benefits or state workers' compensation benefits. *See supra* p. 6. The need simply became more obvious with *Calbeck*, 370 U.S. at 126-27, and *Sun Ship*, 447 U.S. at 719-26. *See supra* pp. 6-7. Accordingly, dual coverage has been available for many years to employers whose workers might claim under either state workers' compensation or LHWCA. *See*, *e.g.*, LESLIE J. BUGLASS, MARINE INSURANCE AND GENERAL AVERAGE IN THE UNITED STATES 419-20 (3d ed. 1991) (explaining how employers take out standard state workers' compensation policies and add endorsements for LHWCA coverage); Larson, 45 S. CAL. L. REV. at 736-37 & n.121 (noting that it is simple and inexpensive to add a "Longshoremen's Endorsement" to a state workers' compensation policy); *see also* 20 C.F.R. §§ 703.109, 704.351 (regulations providing forms for employers to add insurance endorsements for LHWCA and OCSLA coverage to standard state workers' compensation policies). Indeed, LHWCA § 32(a)(1), 33 U.S.C. § 932(a)(1), and 20 C.F.R. § 703.101 require that an insurance company must be authorized to write coverage under a state workers' compensation law to be authorized to sell LHWCA insurance.

and federal coverage for all OCS workers because all employees, even those who spend 98% of their time on platforms, are on land or in transit over state waters for at least part of their working time. Employers can never know for certain where workers' injuries will occur, and thus they would need to insure against the real possibility that workers will seek compensation under either system.

Third, petitioners would create a unique double-insurance problem that arises only under a situs-of-injury test. Their approach exposes employers to liability in tort when the location of the injury is outside both their preferred OCSLA situs (however they define it) and state workers' compensation jurisdiction. That consequence flows from one of the tradeoffs of workers' compensation – that workers forgo tort recoveries in return for workers' compensation coverage. *See*, *e.g.*, LHWCA § 5(a), 33 U.S.C. § 905(a). That bargain does not apply for injuries not covered by a workers' compensation regime.

Under petitioners' approach, OCS workers lose OCSLA protection when they are injured off the OCS. OCS workers injured on the high seas, therefore, might well have no workers' compensation coverage whatsoever (the very problem that Congress sought to avoid when enacting OCSLA). Although petitioners have not defined their proposed situs for § 4(b) (*see supra* p. 29), the high seas fall outside the situs defined in other subsections of § 4 (*see supra* p. 30; *Tallentire*, 477 U.S. at 219-20). Under *Jensen*, 244 U.S. at 217-18, state workers' compensation coverage is questionable for injuries on the high seas. And *Herb's Welding*, 470 U.S. at 425, held that a platform welder was not engaged in maritime employment as required for direct LHWCA coverage.

Without workers' compensation coverage, the workers' only recourse would be tort actions[28] seeking full recovery for their injuries – and without workers' compensation coverage employers would be exposed to those suits. The exposure to that risk would require employers to obtain liability insurance coverage. That double-insurance problem – which is very real given the dangers and hazards of the work involved – would not apply if all OCS workers are covered by LHWCA under OCSLA § 4(b) when they are injured "as the result of" OCS operations.

3. General experience in the field of workers' compensation also weighs against a situs-of-injury requirement. The states uniformly have rejected such requirements. In the early 20th century, judicial interpretation in seven states created in-state situs-of-injury requirements under state workers' compensation statutes. *See supra* p. 41 & n.26. Every state that once had such a requirement, however, has since rejected it, *see id.*, generally when the state legislature recognized that the better policy is to tie workers' compensation coverage to legitimate state governmental interests in the injury *or* the employment relationship rather than the location of the injury alone. No state in more than 50 years has limited the scope of its workers' compensation legislation to injuries that occur within that state. *See id.*

In the federal system, Congress imposed a situs-of-injury requirement only under LHWCA – a *sui generis* decision that can be explained only by the unique history surrounding this Court's decision in *Jensen*. *See supra* pp. 4-5. In every subsequent workers'

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[28] Depending on the circumstances, the tort action could arise under state law, general maritime law, or (for fatal injuries) DOHSA.

compensation statute,[29] including those incorporating LHWCA by reference, Congress tied coverage to employment status with no situs-of-injury requirement, even if employment status may have had a situs element. When Congress adopted LHWCA as the local workers' compensation statute for the District of Columbia, for example, employment status required a connection with the District (which could be described as a "situs"), but workers covered by that law received compensation for work-related injuries regardless of where they occurred. *See*, *e.g.*, *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 474-77 (1947); *Greenfield v. Volpe Constr. Co.*, 849 F.2d 635, 637-38 (D.C. Cir. 1988) (per curiam); *see also* Defense Base Act, 42 U.S.C. § 1651(a).

Under the analogous non-statutory schemes that federal courts apply in maritime law, this Court also has rejected any situs-of-injury requirement. Seamen are not covered by workers' compensation, but "maintenance and cure" is an ancient doctrine that compensates injured seamen on a no-fault basis, much as do workers' compensation statutes. This Court long has recognized that a seaman injured in the service of the ship is entitled to maintenance and cure regardless of where the injury occurred. *See*, *e.g.*, *Aguilar v. Standard Oil Co. of New Jersey*, 318 U.S. 724, 732 (1943) ("When the seaman's duties carry him ashore, the shipowner's obligation is neither terminated nor narrowed."); *Warren v. United*

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[29] *See supra* pp. 9-10 (discussing other statutes incorporating LHWCA); *see also*, *e.g.*, Federal Employees' Compensation Act, 5 U.S.C. § 8101 *et seq.* (general workers' compensation statute for federal civilian employees, which does not contain a situs-of-injury requirement).

States, 340 U.S. 523, 530 (1951) (permitting recovery for injuries suffered ashore).[30]

The entire theory of workers' compensation statutes is that employees are covered for accidental injuries "arising out of and in the course of employment." LARSON § 1.01 (internal quotation marks omitted). Congress and the states thus have recognized that coverage should be tied to employment status. So long as a covered employee is injured "in the course of employment," other factors generally should be irrelevant. Petitioners seek to reinstitute a minority approach from the early 20th century that has been almost universally rejected. *See generally id.* § 143.02[6] (explaining that "place of injury" should only be the "residual" test for compensation when claimant "is caught in the cross-fire of inconsistent state rules").

III. THE CORRECT TEST UNDER § 4(b) IS A STATUS-BASED INQUIRY

OCSLA's plain language makes clear that § 4(b) does not limit compensation to injuries that occur on the OCS. *See supra* Part I. Properly construed, OCSLA § 4(b) covers OCS workers whose status causes them to be engaged in "operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the

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[30] The Jones Act, 46 U.S.C. § 30104, provides injured seamen a negligence remedy against their employers that Congress chose to preserve when it excluded seamen from LHWCA. *See* LHWCA § 2(3)(G), 33 U.S.C. § 902(3)(G). The theory is that seamen did not need to be covered by LHWCA because the Jones Act served many of the same goals. Again, this Court long has held that the Jones Act applies to injuries suffered on land if they were suffered "in the course of" the seaman's employment. *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 41-42 (1943).

natural resources, or involving rights to the natural resources, of the subsoil and seabed of the [OCS]," and whose death or injury is the "result" of those operations. That interpretation is consistent with the language and the purpose of § 4(b), and sound policy.

OCLSA § 4(b), like LHWCA, is a workers' compensation scheme. Unlike tort law, which is most concerned with fault and negligence, workers' compensation law focuses on the employment relationship. *See* LARSON §§ 1.01, 1.03[1] ("[T]he test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment."). OCSLA § 4(b) provides workers' compensation benefits to employees engaged in a specific type of employment in OCS operations. In most if not all cases, employment in operations conducted on the OCS (regardless of the location of the injury) should be both necessary and sufficient to prove that causal connection. For such a worker, the employment relationship *itself* results from the OCS-based operations for which the worker was hired. And any injury in the course of that employment thus also results from those operations. *Cf. Tallentire*, 477 U.S. at 219 (noting applicability of OCSLA when "the fatalities were *intimately connected* with the decedents' work on the platforms" even when the accidents did not occur on the platforms) (emphasis added).

When read in this way as a status-based workers' compensation provision that covers OCS workers for injuries that are causally connected to OCS operations, § 4(b) covers only injuries that are connected to OCS operations. Injuries remotely linked to OCS operations – for example, an injury to an on-shore human resources worker or an entirely land-based

welder – would not be covered. *See Brown*, 513 U.S. at 119 ("Assuming that the connection is limited to proximate causation so as to narrow the class of compensable cases, that narrowing occurs by eliminating remote consequences, not by requiring a demonstration of fault."). Thus, the problem asserted in *Mills* and quoted by petitioners – that one welder would be more generously compensated than another working next to him because the first welder happened to be working on equipment destined for an OCS platform, *see Mills*, 877 F.2d at 362 (*quoted at* Pet. Br. 34) – simply would not exist. A worker not generally involved in operations conducted on the OCS is not an OCS worker and therefore would not be covered under OCSLA § 4(b) simply because he happened to be working on equipment related to the OCS. Because Juan Valladolid's status clearly falls on the coverage side of that line, the Ninth Circuit was correct to remand the case for further proceedings.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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