No. 18-266

IN THE

Supreme Court of the United States

Francis & Mary Marion, Charles & Mary Pinckney, John & Elizabeth Rutledge, James S. Thurmond, and Essie Mae Washington-Williams,
Petitioners,
v.

Sally's Seafood Shack, Inc.,
Respondent,

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

BRIEF FOR PETITIONERS

Team A
Counsel for Petitioners

QUESTIONS PRESENTED

I. Does the Limitation Act, 46 U.S.C. §§ 30501–30512, provide an independent basis for admiralty jurisdiction when there is no explicit grant of jurisdiction in the Act and when a vessel turned restaurant was not used as a means of transportation on water and was not capable of doing so?

II. Does 28 U.S.C. § 1292(a)(3) provide appellate jurisdiction to review the district court's interlocutory decision if that court has granted limitation of liability in admiralty jurisdiction and determined the rights and liabilities of parties?

RULE 24.1 (b) STATEMENT

Pursuant to Supreme Court Rule 24.1(b), counsel for Petitioners Francis & Mary Marion, Charles & Mary Pinckney, John & Elizabeth Rutledge, James S. Thurmond, and Essie Mae Washington-Williams state that all parties to the proceeding below appear in the caption of the case on the cover page.

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The opinion of the court of appeals is reported as *In re Sally's Seafood Shack, Inc.*, 890 F.3d 1384, 2018 AMC 3333 (4th Cir. 2013). The order of the court of appeals denying Petitioners' Motion for Rehearing *en banc* dated June 26, 2018, is unreported but appears in the Appendix to the Petition for Certiorari. R. 7a. The opinion of Judge Solomon, Circuit Court Judge, United States Court of Appeals for the Fourth Circuit, dissenting in the judgment of the circuit court appears in the Appendix to the Petition for Certiorari. *Id.* The district court's order omitting Respondent's liability is reported as *In re Sally's Seafood Shack, Inc.*, 243 F. Supp. 3d 702 (D. S.C. 2017).

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on May 7, 2018. R at 1a. Petitioners filed a motion for rehearing on May 14, 2018, which the Court of Appeals for the Fourth Circuit denied by order entered on June 26, 2018. R. at 7a. Petitioners timely filed a Petition for Writ of Certiorari on September 4, 2018 and was granted on December 3, 2018. R at 1b. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following statutory and regulatory provisions are relevant to the determination of the present action:

46 U.S.C. § 30502 provides in pertinent part:

> Except as otherwise provided, this chapter (except section 30503) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

46 U.S.C. § 30511 provides in pertinent part:

> The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter.

28 U.S.C. § 1292 (a)(3) provides in pertinent part:

> Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

STATEMENT OF THE CASE

I. The Explosion:

On July 17, 2015, the *F/V Flamingo's* galley exploded while at anchorage. R. at 10a. The explosion ripped a hole in its hull, causing it to quickly sink in 12 feet of water. *Id.* While the *F/V Flamingo* previously operated as a fishing vessel in the Atlantic Ocean, in 2008 it was converted into a restaurant titled Sally's Seafood Shack Inc. ("Sally's Seafood") and has existed as such ever since. *Id.* As part of its conversion into a restaurant, the *F/V Flamingo* was permanently moored on the Cooper River in Charleston, South Carolina, and surrounded by cofferdam. *Id.* The cofferdam surrounding the *F/V Flamingo* prevents it from reaching "the main portion of" the Cooper River and from fully navigating it. *Id.*

John Calhoun—a Sally's Seafood employee "responsible for washing dishes, cleaning the [galley], and assisting the chef as needed"—caused the explosion. *Id.* Upon direction to light the stove, Mr. Calhoun turned on the gas. R. at 14a. Just before lighting the flame, Mr. Calhoun received a phone call, distracting him the task at hand. *Id.* While Mr. Calhoun stepped out of the galley to complete his phone call, the gas continued to spread throughout the galley until something triggered the explosion. *Id.*

II. Statement of the Proceedings:

Petitioners were dining aboard the *F/V Flamingo* at the time of the explosion and suffered injuries as a result. R. at 10a. Petitioners subsequently filed state-law tort actions against Respondent—owner of the *F/V Flamingo* and restaurant. R. at 2a. On November 5, 2015, Sally's Seafood invoked the district court's admiralty jurisdiction and filed a petition for limitation of liability in the United States District Court for the District of South Carolina. R. at 9a. Sally's Seafood posted a sufficient deposit, which stayed the state-court tort actions. R at 2a.

After Phase One of a bifurcated trial, the district court ruled that the Limitation Act, 46 U.S.C. §§ 30501–30512, "provided an independent basis for admiralty jurisdiction" and that the *F/V Flamingo* qualified as a vessel under the Limitation Act. R. at 13a. The court ruled that Sally's Seafood was entitled to limit its liability in the matter to the value of the vessel (less than $1,000), which stayed state court proceedings. R. at 10a, 13a–14a. Petitioners subsequently appealed to the Fourth Circuit on interlocutory appeal, arguing Seafood Shack was not entitled to limit its liability. R. at 2a–3a. While the Fourth Circuit upheld the district court's decision that the Limitation Act provided admiralty jurisdiction, the court dismissed the appeal for lack of appellate jurisdiction. R. at 4a, 6a. The Petitioners requested a rehearing en banc, and the Fourth Circuit denied. R. at 7a.

Petitioners appeal to this Court for writ of certiorari, which was granted. *Id.*

SUMMARY OF THE ARGUMENT

Petitioners request that this Court reverse the Fourth Circuit's decision. The Limitation Act does not provide an independent basis of admiralty jurisdiction. However, even if this Court holds that the Limitation Act confers admiralty jurisdiction, the Fourth Circuit erred in holding that it lacked jurisdiction over the Petitioners' interlocutory appeal.

The Limitation Act does not provide an independent grant of admiralty jurisdiction to federal courts, and nothing in its structure or enactment supports a contrary holding. While this Court did expand the Limitation Act to apply to what was then a non-maritime tort occurring on land in *Richardson v. Harmon*, 222 U.S. 96, 2001 AMC 1207 (1911), the reasons for doing so were subsequently addressed by both Congress and the courts. Treating the Limitation Act as an independent grant of admiralty jurisdiction would greatly expand the reach of the Act—beyond what was intended by Congress—and allow litigants to bypass the tests this Court has established to see if a claim is cognizable in admiralty.

Even if this Court were to find that the Limitation Act provides an independent basis for admiralty jurisdiction however, admiralty jurisdiction is still not appropriate because the *F./V Flamingo* does not meet the definition of a vessel required for the Limitation Act. While the *F/V Flamingo* was a former fishing vessel, its current configuration as a restaurant, connected to the shore by lines and a ramp, and separated from the Cooper River by cofferdam, prevent a reasonable person from viewing the *F/V Flamingo* as a construct capable of transportation on water. It thus cannot be considered a vessel under the Rules of Construction Act, 1 U.S.C. § 3, and thus does not meet the requirements for the Limitation Act to apply.

The Fourth Circuit also incorrectly found that it did not have appellate jurisdiction to hear the interlocutory appeal of Petitioner. Section 1292(a)(3) of Title 28 provides circuit courts with jurisdiction over interlocutory rulings when district courts: (1) determine rights and liabilities of parties in (2) an admiralty case. Congress intended this statute to permit appeal in these cases to avoid unnecessary and protected litigation. The circuit courts are split on how narrowly to construe these requirements. In this case, the Fourth Circuit wished to apply the sound reasoning of its four sister circuits; however, was bound by its own precedent and dismissed the appeal. The district court entitled the Respondent to limitation of liability for an amount less than one thousand dollars. Without permitting interlocutory review, Petitioners' claims in both state and federal proceedings effectively end. This result is contrary to Congress's intent.

In order to resolve the circuit split, this Court should hold that if a district court gives an interlocutory order entitling a party to limitation of liability then the federal circuit courts have jurisdiction to review the order.

ARGUMENT

I. The Fourth Circuit erred in holding that the Limitation Act conferred admiralty jurisdiction to it and the district court to hear Respondent's Petition for Limitation of Liability.

The Limitation Act by itself does not confer admiralty jurisdiction to federal courts. In holding that it does, both the Fourth Circuit and district court greatly expand the scope of the Limitation Act beyond what was envisioned by Congress, and beyond the traditional scope of admiralty jurisdiction. Furthermore, both the District Court and Fourth Circuit wrongfully allowed Sally's Seafood Shack, Inc. to avail itself of the Act, which only applies to vessels under 46 U.S.C. § 30502, even though the *F/V Flamingo* could not pass the Supreme Court's test for what constitutes a vessel established in *Lozman v. City of Riviera Beach*. *See* 568 U.S. 115, 2013 AMC 1 (2013). Both courts came to this conclusion even though the *F/V Flamingo* has been moored to the shore and permanently separated from the main river by cofferdam for the past seven years, making it impossible for any reasonable observer to conclude that it is "designed to a practical degree for carrying people or things over water." *See id.* at 121, 2013 AMC at 6. Since the *F/V Flamingo* cannot be considered a vessel Respondent may not avail themselves of the Limitation Act.

The Fourth Circuit and district court erred in allowing Respondent's petition for limitation of liability because the Limitation Act does not provide an independent basis of admiralty jurisdiction, and the *F/V Flamingo* does not meet the requirements for it to apply.

A. The Limitation Act is not an independent basis for admiralty jurisdiction

The Limitation Act does not establish an independent basis for admiralty jurisdiction. Instead it provides a cause of action to claimants in admiralty cases. Federal courts have original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction." 28 U.S.C § 1333(1)

(2012); *see also* U.S. Const. art. III § 2. For a federal court to establish admiralty jurisdiction over a tort action, each claim in the matter must pass this Court's two tests of location and connection to maritime activity, most recently articulated in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.* 513 U.S. 527, 1995 AMC 913 (1995). While the Supreme Court did extend the Limitation Act to apply to what was then a "non-maritime tort" involving a structure on land in *Richardson v. Harmon*, this was done because the circumstances in that case fell within the scope of the legislative intent of the Act. *See* 222 U.S. 96, 104, 2001 AMC 1207, 1215 (1911). Additionally, Congress later passed the Admiralty Jurisdiction Extension Act, 46 U.S.C. § 30101 (2012), extending admiralty jurisdiction to include injuries and damage on land and rendering the *Richardson* court's reasoning for extending the Act moot. Finally, the accident in the *Richardson* still would have met the Court's locality and nexus test for admiralty jurisdiction; something that Respondents in this case do not. Because the Limitation Act does not confer admiralty jurisdiction by itself, claimants must still meet the Court's location and nexus test to establish jurisdiction and avail themselves of the Limitation Act.

1. The Limitation Act was enacted to provide a defense for shippers in admiralty cases; it still requires an independent source of admiralty jurisdiction.

The Limitation Act provides shipowners a cause of action or a defense that may be raised in admiralty cases; it does not provide an independent basis for admiralty jurisdiction. The majority of circuit courts that have encountered the issue agree. *See MLC Fishing, Inc. v. Velez*, 667 F.3d 140, 143, 2012 AMC 485, 488 (2d Cir. 2011) ("§ 30511(a) appears to be intended as granting vessel owners a private right of action to enforce their rights under the Limitation Act in a federal court, assuming that the court otherwise has subject-matter jurisdiction over the controversy"); *David Wright Charter Serv. of N. Carolina, Inc. v. Wright*, 925 F.2d 783, 785, 1991 AMC 2927, 2929 (4th Cir. 1991) ("[T]he Limitation Act is not a source of admiralty jurisdiction. Rather it is a procedure that may be invoked when general admiralty and maritime jurisdiction has been established."); *Three Buoys Houseboat Vacations U.S.A. Ltd. v. Morts*, 921 F.2d 775, 780, 1991 AMC 1356, 1361 (8th Cir. 1990) ("The Act is really in the nature of a defense"); *see also Seven Resorts, Inc. v. Cantlen*, 57 F.3d 771, 772, 1995 AMC 2087, 2088 (9th Cir. 1995); *Guillory v. Outboard Motor Corp.*, 956 F.2d 114, 115, 1993 AMC 605, 606 (5th Cir. 1992); *In re Sisson*, 867 F.2d 341, 350, 1989 AMC 609, 618 (7th Cir. 1989), *rev'd sub nom. Sisson v. Ruby*, 497 U.S. 358, 1990 AMC 1801 (1990). Since the Limitation Act does not contain its own grant of admiralty jurisdiction, it may only be raised in federal court if a matter already meets the requirements for admiralty jurisdiction. *See Three Buoys*, 921 F.2d at 780, 1991 AMC at 1361 ("The [Limitation] Act's reach is only coextensive with that of admiralty jurisdiction. Where admiralty jurisdiction fails…so does the reach of the Act.").

There is no grant of jurisdiction in the Limitation Act. Whether a statute confers jurisdiction is a question of statutory interpretation. *See, e.g.*, *Califano v. Sanders*, 430 U.S. 99, 104–05 (1977). Courts must look to the language of the statute itself when interpreting statutes and must assume that "the ordinary meaning of that language accurately expresses the legislative purpose. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). This is especially the case with statutes that may affect federal jurisdiction. *See Kucana v. Holder*, 558 U.S. 233, 252 (2010) (noting that "statute affecting federal jurisdiction must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes'") (citing *Cheng Fan Kwok v. Immigration & Naturalization Serv.*, 392 U.S. 206, 212 (1968)). It has also been noted by members of this Court that it "pursues clarity and efficiency in other areas of federal subject-matter jurisdiction, and it should demand no less in admiralty and maritime law." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 556, 1995 AMC 913, 942 (1995) (O'Connor, J., concurring).

There is no specific language within the text of the Limitation Act which indicates a grant of jurisdiction. Section 30511 of the Limitation Act allows for the owner of a vessel to bring "a civil action in a district court of the United States for limitation of liability . . . ." 46 U.S.C. § 30511 (2012). Apart from this section, there is no reference to federal courts' jurisdiction under the Limitation Act. *See* 46 U.S.C. §§ 30501–30512. While the statute does contemplate litigation in federal district courts, it does not use language that Congress typically uses when granting subject-matter jurisdiction; Congress generally uses explicit and specific language in statutes to confer subject matter jurisdiction. *See MLC Fishing*, 667 F.3d at 143, 2012 AMC at 488 (citing *In re Carter*, 743 F. Supp. 2d 103, 112, 2010 AMC 2574, 2583 (D. Conn. 2010)); *cf. Califano*, 430 U.S. at 104. In *Califano*, the Court examined the text of the Administrative Procedure Act (APA) to determine whether it provides an independent basis for federal subject-matter jurisdiction. *Califano*, 430 U.S. at 104. The court found that none of the language in § 10 of the APA (5 U.S.C. §§ 701–706) was "phrased like the usual grant of jurisdiction to proceed in the federal courts." *Id.* This Court ultimately held that the APA did not provide an independent grant of jurisdiction, but rather a cause of action dependent upon federal jurisdiction under 28 U.S.C. § 1331. *Id.* Like the APA, the Limitation Act references actions in federal court, but it lacks the wording Congress typically uses when it intends for a statute to grant jurisdiction. Both statutes are entirely dependent on another source for federal jurisdiction.

The use of explicit language conferring jurisdiction can be seen in numerous other statutes. *See, e.g.*, 28 U.S.C. § 1330 (2012) ("The district courts *shall have original jurisdiction* without regard to amount in controversy of any nonjury civil action against a foreign state . . . .")

(emphasis added); *id.* § 1331 ("The district courts *shall have original jurisdiction* of all civil actions arising under the Constitution, laws, or treaties of the United States.") (emphasis added); *id.* § 1350 ("The district courts *shall have original jurisdiction* of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.") (emphasis added). The language which Congress normally uses in statutes to confer jurisdiction cannot be found in the Limitation Act. Contrast the language in the Limitation Act to 28 U.S.C. § 1333(1) and the Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 30101, both of which explicitly confer jurisdiction over admiralty and maritime matters to federal courts. *Compare* 46 U.S.C. §§ 30501–30512, *with* 28 U.S.C. § 1333(1) ("The district court shall have original jurisdiction . . . [a]ny civil case of admiralty or maritime jurisdiction . . . ."), *and* 46 U.S.C. § 30101 ("The admiralty and maritime jurisdiction of the United States extends to and includes cases of . . . ."). Congress uses explicit language when conferring jurisdiction on federal courts, including admiralty jurisdiction. Because the Limitation Act lacks the normal specific language indicative of a grant of federal jurisdiction, it should be treated merely as a defense or cause of action which one may pursue in admiralty cases.

The legislative history of the Limitation Act also does not indicate Congress intended the Act to be an independent source of admiralty jurisdiction. Congress created the Limitation Act to promote maritime commerce by protecting the American shipping industry and making it competitive with British shipping interests. *See Norwich & N.Y. Transp. Co. v. Wright*, 80 U.S. 104, 1998 AMC 2061 (1871); *The Main v. Williams*, 152 U.S. 122, 2007 AMC 2966 (1804); *The Rebecca*, 20 Fed. Cas. 373, No. 11.619, 2007 AMC 1193 (D. Me. 1813). Congress drew upon a similar British provision when adopting the statute, stating that the Act would provide similar protections to American shipping interests as England had provided to their own. *See* 23 CONG.

GLOBE, 31st Cong., 2d Sess. 331–32, 713–20, 776–77 (1851). Nowhere in the Act, its subsequent amendments, or its legislative history has there been an express intent to treat the Act as a separate basis for admiralty jurisdiction. *See MLC Fishing*, 667 F.3d at 143, 2012 AMC at 488; *In re Canada S.S. Lines*, 93 F. Supp. 549, 553, 1950 AMC 1499, 1503 (N.D. Ohio 1950).

Because there is no evidence Congress intended the Limitation Act to provide admiralty jurisdiction, courts for the most part have only allowed limitation of liability actions to proceed if the action already falls under the courts' admiralty jurisdiction. This is why courts—when confronted with cases involving the Limitation Act—still apply this Court's test of location and nexus to maritime activity to determine whether a tort action may proceed in admiralty. *See, e.g., In re Sisson,* 867 F.2d at 350, 1989 AMC at 618, *rev'd sub nom. Sisson v. Ruby,* 497 U.S. 358, 1990 AMC 1801 (1990); *In re Paradise Holdings, Inc.*, 795 F.2d 756, 758–60, 1987 AMC 104, 106–08 (9th Cir.), *cert. denied,* 479 U.S. 1008, 1987 AMC 2408 (1986); *Duluth Superior Excursions, Inc. v. Makela,* 623 F.2d 1251, 1252–54, 1980 AMC 2518, 2519–20 (8th Cir.1980); *In re Brown,* 536 F. Supp. 750, 751–52, 1983 AMC 1816, 1817–18 (N.D. Ohio 1982); *Clinton Bd. of Park Comm'rs v. Claussen,* 410 F. Supp. 320, 323–26, (S.D. Iowa 1976). When confronted by fact patterns that do not pass the locality and nexus tests for admiralty jurisdiction, the majority of circuits deny petitioners' rights to proceed solely under the Limitation Act. *See MLC Fishing,* 667 F.3d at 143, 2012 AMC at 488; *Seven Resorts,* 57 F.3d at 773, 1995 AMC at 2089; *Guillory,* 956 F.2d at 115, 1993 AMC at 606 (per curiam); *David Wright Charter Serv.,* 925 F.2d at 785, 1991 AMC at 2929 (per curium); *Three Buoys*, 921 F.2d at 779–80, 1991 AMC at 1360–61; *Lewis Charters, Inc. v. Huckins Yacht Corp.*, 871 F.2d 1046, 1053–54, 1989 AMC 1521, 1528–29 (11th Cir. 1989); *In re Sisson,* 867 F.2d at 349–50, 1989 AMC at 617–18, *rev'd on other grounds sub nom. Sisson v. Ruby,* 497 U.S. 358, 1990 AMC 1801 (1990).

In *Three Buoys Houseboat*, the Eighth Circuit determined that a collision between two boats on a lake separated from the river by a dam did not pass the locality test, because it was not a navigable waterway. *Three Buoys Houseboat*, 921 F.2d at 779, 1991 AMC at 1360. The Eighth Circuit concluded that the Limitation Act was coextensive with admiralty jurisdiction and that "[w]here admiralty jurisdiction fails for want of a navigable waterway, so does the reach of the [Limitation] Act." *Id.* at 780, 1991 AMC at 1361. The Eighth Circuit based this decision, in part, on this Court's then recent decision on the matter, *Sisson v. Ruby*. In *Sisson v. Ruby*, the Seventh Circuit held that the owner of a pleasure yacht which caused a fire at a marina was not able to sustain their claim under the Limitation Act. *See In re Sisson*, 867 at 342, 1989 AMC at 610, *rev'd sub nom. Sisson v. Ruby*, 497 U.S. 358, 1990 AMC 1801 (1990). While the Eighth Circuit found that the locality test was met, it concluded that a pleasure yacht docked at a marina did not satisfy the nexus to traditional maritime activity and could not be heard under the court's admiralty jurisdiction. *Id.* at 345–48, 1989 AMC at 613–16. It concluded that "when a cause of action in tort does not bear any connection to traditional maritime activity, there is no justification for allowing the Limitation of Liability Act . . . to provide an independent basis for admiralty jurisdiction." *Id.* at 349–50, 1989 AMC at 617–18. This decision was ultimately reversed by this Court on the grounds that "the storage and maintenance of a vessel at a marina in navigable waters [was] substantially related to traditional maritime activity" and thus passed the nexus test for admiralty jurisdiction to apply. *Sisson v. Ruby*, 497 U.S. 358, 367, 1990 AMC 1801, 1810 (1990). Since admiralty jurisdiction could be established, the Seventh Circuit was reversed and the petition for limitation of liability allowed to proceed. *Id.* However, this Court also specifically declined to address the question of whether jurisdiction could be established under the Limitation Act, stating that it was not necessary because jurisdiction could be established under § 1333(1), calling into question the Court's earlier decision regarding the matter in *Richardson v. Harmon*. *Id.* at 359 n.1, 1990 AMC at 1802.

Rather than following the example of its sister circuits, the Fourth Circuit in the case at hand decided to allow Respondent's petition to proceed in admiralty solely based on the Limitation Act. The Fourth Circuit did this even though it had already determined that Respondent had met neither the locality nor nexus requirements for admiralty tort jurisdiction. *See* R. at 4a. If the Fourth Circuit had performed a close statutory construction of the Act it would have concluded, as the majority of its sister circuits have, that the Limitation Act does not provide a basis for admiralty jurisdiction, and that Respondent's limitation action could only move forward if admiralty jurisdiction was established via another source.

2. The Fourth Circuit's reliance on *Richardson v. Harmon* to find admiralty jurisdiction through the Limitation Act is misplaced because subsequent case law and legislation have made its decision and reasoning moot.

The District Court and Fourth Circuit incorrectly rely upon *Richardson v. Harmon* to establish admiralty jurisdiction under the Limitation Act. Both lower courts argue that this Court expanded the Limitation Act to apply to non-maritime torts in *Richardson v. Harmon*, and in doing so authorized federal courts to entertain cases under the Act, even if the they would have otherwise fallen outside of admiralty jurisdiction. *See* R. at 4a, 13a.

In *Richardson v. Harmon*, a barge proceeding on a river collided with a railway drawbridge, causing damage to both. 222 U.S. 96, 99–100, 2001 AMC 1207, 1210–11 (1911). The owners of the barge filed a request for limitation of liability under the Limitation Act, which was contested by the bridge owner on the grounds that the action was a "non-maritime tort" because the damage occurred to a structure on land. *See id.* at 100–01, 2001 AMC at 1211–12. This Court ultimately ruled that the Limitation Act could be extended to non-maritime torts, bypassing the traditional requirement for admiralty jurisdiction that injuries not occur on land. *Id.; see also In re Sisson,* 867 F.2d 341, 349, 1989 AMC, 609, 617 (7th Cir. 1989) *rev'd sub nom. Sisson v. Ruby*, 497 U.S. 358, 1990 AMC 1801 (1990). This Court justified its position by arguing it was the intent of Congress in passing the Limitation Act and its subsequent amendments to provide protection from liability to shipowners, including liability for damages that occurred on land. *Richardson*, 222 U.S. at 101, 2001 AMC at 1212.

While this decision did technically extend the Limitation Act to what was then considered a non-maritime tort, the requirement that "the vessel involved in the tort bear a 'relation' to navigable waters" meant that the locality requirement for admiralty jurisdiction was still more or less met. *See In re Sisson,* 867 F.2d at 349, 1989 AMC at 617, *rev'd sub nom. Sisson v. Ruby*, 497 U.S. 358, 1990 AMC 1801 (1990). Furthermore, while the only test at that time for admiralty jurisdiction was locality, the fact pattern in *Richardson* would also likely satisfy the modern requirement of a nexus to maritime activity given that the accident occurred while a steam barge was traveling on a navigable waterway. *See Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 541, 1995 AMC 913, 927 (1995) ("[A]s long as one of the putative tortfeasors was engaged in traditional maritime activity the allegedly wrongful activity will "involve" such traditional maritime activity and will meet the second nexus prong."); *Richardson*, 222 U.S. at 100, 2001 AMC at 1207. This directly contrasts to the present case where Respondent fails both tests for admiralty tort jurisdiction. *See* R. at 11a.

While the *Richardson v. Harmon* decision has not been overturned, it has also not been updated to reflect subsequent changes made by Congress and this Court to admiralty law.

In 1948, Congress enacted the Extension of Admiralty Jurisdiction Act, which provides in part:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

46 U.S.C. § 30101 (2012). Before this, claims could only arise under admiralty if the injury occurred on navigable waters. *See In re Sisson*, 867 F.2d at 349, 1989 AMC at 617, *rev'd sub nom. Sisson v. Ruby*, 497 U.S. 358, 1990 AMC 1801 (1990). By passing the Extension of Admiralty Jurisdiction Act, Congress sought to correct the hole in admiralty jurisdiction where a ship that damaged land structures on navigable waters, such as a bridge or dam, could not limit its liability. *See Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 260, 1973 AMC 1, 12 (1972). By explicitly extending admiralty jurisdiction to injuries that occur on land, the Extension of Admiralty Jurisdiction Act eliminates the need and justification given by the *Richardson* Court for extending the Limitation Act beyond the then traditional confines of admiralty tort jurisdiction.

Additionally, the test for admiralty jurisdiction has advanced since the decision in *Richardson v. Harmon*. As previously mentioned, at the time of the decision the test for admiralty jurisdiction exclusively revolved around one of location. *See In re Sisson,* 867 F.2d at 349, 1989 AMC at 617, *rev'd sub nom. Sisson v. Ruby*, 497 U.S. 358, 1990 AMC 1801 (1990); *Executive Jet Aviation*, 409 U.S. at 254, 1973 AMC at 6. Under that test, it is still easy to maintain a semblance of a connection between traditional maritime jurisdiction and damage to a non-maritime structure such as a bridge or dam, since the event that gave rise to the claim still primarily occurred on navigable waters. However, courts began to encounter cases where the locality test was not adequate alone to determine whether admiralty jurisdiction applied to a tort, with the prime example being airplane crashes over water. *Executive Jet Aviation*, 409 U.S. at

261, 1973 AMC at 13. Confronted with an attempt to bring a suit in admiralty over an airplane crash in navigable waters, this Court adopted a second requirement for a tort to be cognizable in admiralty in addition to the traditional locality requirement. *Id.* at 268, 1973 AMC at 20. The Supreme Court held that claims arising out of airplane crashes over water would not be cognizable in admiralty unless they bore a "significant relationship to traditional maritime activity." *Id.* While this requirement was initially reserved only for airplane crashes, a series of subsequent decisions by this Court expanded the test to all admiralty tort claims. *See Grubart,* 513 U.S. at 532, 1995 AMC at 918.

The Limitation Act broadly aligns with the locality test by requiring the involvement of "seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters." *See* 46 U.S.C. § 30502. However, there is no equivalent requirement for a nexus to traditional maritime activity within the Act. *See* 46 U.S.C. §§ 30501–30512. Permitting an injured party to obtain admiralty jurisdiction only through the Limitation Act would render the nexus requirement null, allowing all manner of claims that this Court has attempted to keep out of admiralty. *See Grubart,* 513 U.S. at 532, 1995 AMC at 918 ("[T]he jurisdictional rule was qualified again in three decisions of this Court aimed at keeping a different class of odd cases out."). The present case is a prime example. It is undisputed that Respondent meets none of the requirements outlined in *Grubart* for admiralty tort jurisdiction. R. at 4a. The accident did not occur in navigable waters, it will not disrupt maritime commerce, and by operating as a restaurant there is no significant relationship to traditional maritime activity. *Id.* Allowing the Limitation Act to be a loophole into admiralty jurisdiction, undermines the goal of limiting what claims are cognizable in admiralty and the requirement that a matter have a connection beyond occurring on a boat or body of water. *See Grubart*, 513 U.S. at 533, 1995 AMC at 919.

Since the reasoning for this Court's decision to extend the Limitation Act in *Richardson v Harmon* is no longer applicable and because the traditional test for determining admiralty tort jurisdiction has evolved since its decision, the Fourth Circuit's reliance upon it is misplaced. Admiralty tort jurisdiction must still be determined through a locality and nexus test which respondent has not satisfied.

B. The *F/V Flamingo* does not qualify as a vessel for purposes of the Limitation Act

Even if this Court were to find that the Limitation Act did confer admiralty jurisdiction, Respondent is still unable to avail themselves of the Limitation Act because the *F/V Flamingo* cannot be considered a vessel. The Limitation Act only applies to "seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters." 46 U.S.C. § 30502 (2012). Because the *F/V Flamingo* was incapable of traveling or navigating a body of water due to the cofferdam surrounding it, the *F/V Flamingo* does not meet the definition of a vessel required for use of the Limitation Act.

To be considered a vessel, a construct or object must be "capable of being used as a means of transportation on water." *See* 1 U.S.C. § 3 (2012). However, just because something floats on water and could be capable of carrying some objects or a few people does not mean it can be considered a vessel. *See Lozman v. City of Riviera Beach*, 568 U.S. 115, 121, 2013 AMC 1, 7 (2013). This Court use the standard of whether a reasonable observer looking to the physical characteristics and activities of a structure "would consider it designed to a practical degree for carrying people or things over water" to determine whether a construct is a vessel. *Id.* This test was established in *Lozman v. City of Riviera Beach*, when this Court determined that a houseboat did not qualify as a vessel because no objective observer could conclude that the structure "was designed to any practical degree to transport persons or things over water." *Id.* at 122, 2013 AMC at 8. There were several factors taken into consideration while making this decision, including the lack of a rudder, unraked hull, no steering mechanism, low waterline, no ability to produce its own electricity, atypical maritime living quarters, and French doors and ordinary windows instead of portholes. *See id.* at 121–22, 2013 AMC at 7–8. The list of factors is also not dispositive. *Id.* at 122, 2013 AMC at 8.

While the *F/V/ Flamingo* did previously operate as a fishing vessel that would fully meet the test in *Lozman*, its current configuration and use does not. The *F/V Flamingo*, while moored along the Cooper River in South Carolina, has been used as a restaurant and separated from the main river by cofferdam for the past seven years. R. at 10a. Cofferdam is "an enclosure built within, or in pairs across, a body of water to allow the enclosed area to be pumped out." *Cofferdam*, Encyclopedia Britannica (11th ed. 1911). Its purpose, in this case, was to prevent the *F/V Flamingo* "from reaching the main portion of the river even if it were detached from its moorings." R. at 10a. Given that the *F/V Flamingo* was permanently surrounded by cofferdam, connected to the shore by ropes and a ramp, and operated as a restaurant for the past seven years, it is unlikely that a reasonable observer could conclude it was a capable means of transportation on water.

The *F/V Flamingo*, under these conditions, is like other constructs that this Court has ruled are not vessels. In *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, this Court found that a wharf boat connected to the dock with cables and a ramp and used to transport cargo from ship to dock and ship to ship was not a vessel. *See* 271 U.S. 19, 22, 1926 AMC 684, 687 (1926). This was "because it was not used to carry freight from one place to another" and did not "encounter perils of navigation to which craft used for transportation are exposed." *Id.* Similarly, in *Cope v. Vallette Dry-Dock Co.*, this Court determined that a floating drydock was not a vessel because it was permanently fixed to a wharf. *See* 119 U.S. 625, 2002 AMC 2694 (1887). Despite both structures in each case having characteristics that could make one consider them "a vessel," the Court determined that both could not be considered one, mainly because of their characteristics confining them to the shore.

In the case of the *F/V Flamingo,* the cofferdam surrounding it confines it to shore and prevents a reasonable observer from considering it a vessel. This Court has even explicitly used a floating object surrounded by cofferdam as an example of what cannot be considered a vessel. In *Cope v. Vallette Dry-Dock Co.*, the Court used the example of "[a] sailor's floating bethel or meeting-house, moored to a wharf, and kept in place by a paling of surrounding piles" stating "[w]e think no case can be found which would construe the terms [ship or vessel] to include a dry-dock, a floating-bridge, *or meeting-house, permanently moored or attached to a wharf*." *Id.* at 630, 2002 AMC at 2699 (emphasis added). A restaurant permanently moored to the shore and cut off from navigable water should be in the same boat.

Because a reasonable observer, upon seeing the *F/V Flamingo* attached to the shore and surrounded by cofferdam could not reasonably consider it capable of transportation on water, it cannot be considered a vessel under the Rules of Construction and does not meet the requirements for an application of the Limitation Act.

II. The court of appeals erred in holding that it lacked appellate jurisdiction under Section 1292(a)(3) because the district court determined it had admiralty jurisdiction and determined parties' rights and liabilities in granting limited liability.

A federal court's jurisdiction over admiralty cases derives from Art. III of the United States Constitution. *See* U.S. Const. art. III, § 2 (extending jurisdiction over "all Cases of admiralty and maritime Jurisdiction.”). Federal district courts may assert admiralty jurisdiction over a claim either under Title 28 of the U.S. Code or a cognizable admiralty case designated by statute. *See* 28 U.S.C. § 1333(1)–(2) (2012) (conferring districts courts with original jurisdiction of admiralty, maritime, or prize cases); Fed. R. Civ. P. 9(h) (2007) (requiring plaintiff to designate claim as admiralty to be heard under admiralty jurisdiction); *see also, e.g.*, 46 U.S.C. §§ 31301–31342 (Ship Mortgage Act), *Id.* §§ 30301–30308 (Death on the High Seas Act). Congress determined that courts of appeals should have jurisdiction of interlocutory decrees in admiralty cases. 28 U.S.C. § 1292(a)(3) provides appellate jurisdiction from:

> . . . Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

28 U.S.C. § 1292(a)(3) (1992). This provision is an exception to the general rule of finality codified in § 1291. *Evergreen Int’l (USA) Corp. v. Standard Warehouse*, 33 F.3d 420, 424, 1995 AMC 635, 639 (4th Cir. 1994) (noting that §1291 “is to be construed narrowly.”). Congress intended §1292(a)(3) to permit the appeal of findings of liability on the merits “before undergoing the long, burdensome, and perhaps unnecessary damages proceeding.” *City of Fort Madison v. Emerald Lady*, 990 F.2d 1086, 1089, 1993 AMC 2091, 2094 (8th Cir. 1993) (stating that §1292(a)(3) was not intended to fill the federal docket with “interlocutory odds and ends.”). Congress intended this provision to permit appeals after determination of liability in admiralty proceedings before submitting to protracted litigation of damages. *Sw. Marine Inc. v. Danzig*, 217 F.3d 1128, 1138, 2000 AMC 2088, 2098 (9th Cir. 2000); *Slatton v. Martin K. Eby Constr. Co.*, 491 F.2d 707, 708 (8th Cir. 1974); *The Maria*, 67 F.2d 571, 571 (2d Cir. 1933) (“That statute was primarily intended to avoid the expense and delay of a reference to compute damages . . . ; and, although it would perhaps be too much to say that it covers that situation alone, it is

hard to imagine other instances."); 16 Charles Alan Wright et al, *Federal Practice and Procedure* § 3927 (3d ed. 2018).

Section 1292(a)(3) confers interlocutory appellate review upon satisfaction of two criteria: (1) rights and liabilities of parties are determined in (2) an admiralty case. § 1292(a)(3). Courts agree that § 1292(a)(3) is to be narrowly construed. *e.g., Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 832–34, 2002 AMC 2270, 2274–76 (9th Cir. 2002). However, the federal circuit courts are split on how to interpret that narrow construction. *See* Wright, *supra* at § 3927. Petitioners ask this Court to settle the circuit split and hold that if a district court has determined—in the interim—that a party is entitled to limitation of liability, then rights and liabilities of the parties are affected and federal appellate courts have jurisdiction for interlocutory review.

A. Regardless of final determination, the district court's *vel non* determination—that Respondent is entitled to limit limitability—provides the Fourth Circuit with jurisdiction to review the interlocutory appeal.

The plain language and purpose in enacting § 1292(a)(3) supports providing appellate jurisdiction to review interlocutory decisions limiting liability. *See Roco Carriers, Ltd. v. M/V Nurnberg Express*, 899 F.2d 1292, 1297, 1990 AMC 913, 918 (2d Cir. 1990) ("the language of section 1292(a)(3) is not limited to admiralty claims; instead, it *refers* to admiralty cases") (emphasis added); *Loeber v. Bay Tankers, Inc.*, 924 F.2d 1340, 1346–47, 1992 AMC 1500, 1506–07 (5th Cir. 1991) (noting that § 1292(a)(3) is "strikingly broad" and merely provides jurisdiction over admiralty cases including non-admiralty claims). The purpose of § 1292(a)(3) was to permit a party to immediately appeal from finding of liability and "avoid an oftentimes costly and protracted trial of the damage issues." 9 J. Moore, *Moore's Federal Practice* 210 (1985). Some circuits have incorrectly interpreted 1292(a)(3) narrowly to permit appeal only for claims wholly rooted in admiralty. *See Beluga Holding, Ltd. v. Commerce Capital Corp.*, 212

F.3d 1199, 1203, 2000 AMC 1857, 1861 (11th Cir. 2000) (determining jurisdiction only if it is "integrally linked" to the admiralty claim); *Wingerter v. Chester Quarry Co.*, 185 F.3d 657, 664, 2000 AMC 1596, 1603 (7th Cir. 1999); *Bodden v. Osgood*, 879 F.2d 184, 186–87, 1989 AMC 2312, 2314–15 (5th Cir. 1989).

The First, Second, Sixth, and Ninth circuits permit interlocutory review of a non-admiralty claim within an admiralty case. *See Williamson v. Recovery Ltd. P'ship*, 731 F.3d 608, 617, 2014 AMC 330, 339 (6th Cir. 2013); *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 832, 2002 AMC 2270, 2275 (9th Cir. 2002) (holding it had jurisdiction over limitation of liability rulings); *Roco Carriers*, 899 F.2d at 1297, 1990 AMC at 918 (determining jurisdiction for claim arising from the same transaction as sufficiently an admiralty claim); *Martha's Vineyard Scuba Headquarters, Inc. v. The Unidentified, Wrecked, and Abandoned Steam Vessel*, 833 F.2d 1059, 1064, 1988 AMC 1109 (1st Cir. 1987) (holding jurisdiction under § 1292(a)(3) to review interlocutory determination of salvage title). *Williamson v. Recovery Ltd. P'ship* involved the S.S. Central America—the "Ship of Gold"—one of the most notable treasure salvages in U.S. history. 731 F.3d at 611, 2014 AMC at 333. The underlying matter involved contract interpretation; however, the primary issue on appeal was whether the Sixth Circuit had jurisdiction to review an interlocutory order in admiralty. *Id.* at 612, 2014 AMC at 334. The court relied on the plain language of § 1292(a)(3) and held that the order was immediately appealable, regardless of whether all the issues raised on appeal were admiralty claims. *Id.* at 618, 2014 AMC at 340 (citing § 1292(a)(3)); Fed. R. Civ. P. 9(h)(2) ("A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. § 1292(a)(3)"); *see also Buccina v. Grimsby*, 889 F.3d 256, 261, 2018 AMC 988, 993 (6th Cir. 2018). Similarly, the Seventh Circuit reasons that the Federal Rule 9(h) "is integral to our jurisdictional analysis" under § 1292(a)(3) "because of the ipso facto quality of its last sentence." *Wingerter*, 185 F.3d at 664, 2000 AMC at 1603 (holding that if the underlying case is properly designated as an admiralty case, "it is also an admiralty case for purposes of § 1292(a)(3)"); s*ee also Cont'l Cas. Co. v. Anderson Excavating & Wrecking Co.*, 189 F.3d 512, 517, 1999 AMC 2714, 2719 (7th Cir. 1999) (holding that § 1292(a)(3) appeal was proper even though the action was consolidated with a non-admiralty action).

In this case, the Respondent's assertion and the district court's limitation order are sufficient to permit interlocutory review. The Respondent itself invokes admiralty jurisdiction to limits its liability. *Cf. Newman v. Indiana Gaming Co.*, 1999 A.M.C. 2896, 2897 (6th Cir. 1999) (holding admiralty interlocutory appeal cannot be pursued unless admiralty jurisdiction is expressly invoked). The plain language of § 1292(a)(3) does not specify the scope of what is considered an admiralty case for interlocutory review; the statute merely limits review "to admiralty cases." § 1292(a)(3). The *Williamson* Court determined that a contract interpretation issue fell within interlocutory review, interpreting the plain language of § 1292(a)(3) dealing with admiralty cases, not just an admiralty claim. 731 F.3d at 618, 2014 AMC at 340 ("There is no ambiguity in Congress's word choice, and we thus cannot adopt a reading that would effectively strike out the word 'cases' and replace it with the word 'claims'). The district court held that it had admiralty jurisdiction under the Limitation Act and entitled Sally's Seafood to limit its liability. R. at 3a. Accordingly, the Fourth Circuit had jurisdiction for interlocutory review under § 1292(a)(3). Holding otherwise, would directly contravene the statutory requirement. Without interlocutory review on a district court's finding of admiralty jurisdiction, the court's ruling is effectively final.

B. The district court's ruling on entitlement of limitation of liability affects rights and liabilities of parties sufficient to trigger interlocutory jurisdiction in admiralty.

Section 1292(a)(3) permits interlocutory review only when a lower court has determined substantive rights and liabilities of parties. *See* § 1292(a)(3) (restricting appeal to decisions "determining the rights and liabilities of the parties to admiralty cases."); *Columbus-America Discovery Grp. v. Atl. Mut. Ins. Co.*, 56 F.3d 556, 562 n.6, 1995 AMC 1985, 1991 n.6 (4th Cir. 1995), *cert. denied*, 516 U.S. 938 (1995); *Seattle-First Nat'l Bank v. Bluewater P'ship*, 772 F.2d 565, 569, 1986 AMC 1296, 1300 (9th Cir. 1985). An interlocutory order does not need to address *all* of the rights and liabilities at issue in the litigation for it to be appealable under § 1292(a)(3). *O'Donnell v. Latham*, 525 F.2d 650, 652, 1976 AMC 61, 63 (5th Cir. 1976); *cf. Lloyds Leasing Ltd. v. Bates*, 902 F.2d 368, 370 (5th Cir. 1990) ("in admiralty the liability of only one party need be determined for an interlocutory appeal to lie.") (citing *Stoot v. Flour Drilling Servs., Inc.*, 851 F.2d 1514, 1516–17, 1989 AMC 20, 22–23 (5th Cir. 1988)). Rather, most circuits interpret that § 1292(a)(3) only requires a decision on the merits of *some* claim or defense. *See In re Aramark Sports and Entm't Servs.*, 831 F.3d 1264, 1276, 2016 AMC 2138, 2150 (10th Cir. 2016); *Kesselring v. F/T Artic Hero*, 30 F.3d 1123, 1125, 1995 AMC 539, 561 (9th Cir. 1994) (holding preferred wage liens on equipment eliminated any possibility of recovery; therefore, interlocutory appeal was permissible)*; Kingstate Oil v. M/V Green Star*, 815 F.2d 918, 921, 1987 AMC 1521, 1524 (3d Cir. 1987); *Gulf Towing Co. v. Steam Tanker*, 648 F.2d 242, 244, 1982 AMC 125, 127 (5th Cir. 1981); *Hellenic Lines Ltd. v. Brown & Williamson Tobacco Corp.*, 277 F.2d 9, 15, 1960 AMC 1112, 1118 (4th Cir. 1960), *cert denied*, 364 U.S. 879 (1960); *In re Intercontinental Props. Mgmt, S.A.*, 604 F.2d 254, 258 n.2, 1979 AMC 1680, 1684 n.2 (4th Cir. 1979) (holding jurisdiction to review order granting exoneration from liability as affecting rights and liabilities). Courts permit interlocutory review of orders that conclusively "lash[] down the merits of some particular claim or defense."); *Martha's Vineyard Scuba Headquarters, Inc. v. The Unidentified, Wrecked, and Abandoned Steam Vessel*, 833 F.2d 1059, 1064, 1988 AMC 1109, 1114 (1st Cir. 1987) (citing *Hellenic Lines*, F.2d at 15, 1960 AMC at 1121).

In *Sw. Marine Inc. v. Danzig*, the U.S. Navy sued to recover overpayments for a previous maritime contract. 217 F.3d 1129, 1131, 2000 AMC 2088, 2098 (9th Cir. 2000). The Armed Services Board of Contract Appeals (ASBCA) ruled for the contractor, and the U.S. Navy appealed. *Id.* The Federal Circuit held that it lacked jurisdiction and transferred the case to the district court, sitting in admiralty. *Id.* at 1135, 2000 AMC at 2094. The district court entered judgment for the Navy and remanded to the ASBCA for determination of damages. *Id.* at 1131, 2000 AMC at 2098. Upon appeal, the *Danzig* Court held that the lower court ruling determined the rights and liabilities of the contractor because the ASBCA was unable to further adjudicate entitlement. *Id.* Accordingly, the court held that this matter was properly appealable under §1292(a)(3). *Id.* at 1132, 2000 AMC at 2099.

In *Evergreen Int'l (USA) Corp. v. Standard Warehouse*, individuals and entities sued the parties to recover costs resulting from a chemical leak while loading materials for shipment in port. 33 F.3d 420, 421, 1995 A.M.C. 635, 636 (4th Cir. 1994). The court held that the district court properly had admiralty jurisdiction under 28 U.S.C. § 1331. *Id.* To facilitate resolution of the third-party claims, the parties entered into an arbitration agreement. *Id.* at 422, 1995 AMC at 637. The underlying dispute involved interpretation of that agreement. *Id.* Upon partial grants and one denial of summary judgment by the district court, Evergreen appealed pursuant to § 1292(a)(3). *Id.* During oral arguments, the court *sua sponte* raised the question of whether it had the jurisdiction to hear the interlocutory appeal. *Id.* The court held that the appeal was not entitled to special treatment under 1292(a)(3) because there was nothing about the appeal, or the case as a whole, that gave it a distinctly "maritime air." *Id.* at 425, 1995 AMC at 640.

The Tenth Circuit's analysis distinguishing *Evergreen* is instructive. *In re Aramark* involved a recreational boating accident resulting in deaths. 831 F.3d 1264, 1269, 2016 AMC 2138, 2143 (10th Cir. 2016). Anticipating litigation, Aramark—owner of the boat—filed petition to limit its liability in federal district court. *Id.* The district court denied the petition, and Aramark appealed. *Id.* The decedents' estates challenged jurisdiction under § 1292(a)(3), claiming that the district court did not "fully or ultimately determine the rights and liabilities of the parties," and did not rule on liability. *Id.* at 1275, 2016 AMC at 2149. Relying on § 1292(a)(3)'s plain meaning, the *Aramark* Court held that the denial of petition affected substantive rights and liabilities. *Id.* at 1276, 2016 AMC at 2150. The court reasoned that the order determined Aramark's liability because "Aramark was not exonerated and would have to pay *some* damages, with the amount depending on how much at fault others were." *Id.*

Here, the district court's ruling on entitlement to limited liability had the practical effect of ending the case. Like in *Danzig*, the District Court of South Carolina's order limiting liability resulted in an appeal to the Fourth Circuit, being the only feasible means to adjudicate the matter without reaching Phase Two of the proceedings. Notably, the Fourth Circuit court, itself, acknowledged that affirming the district court's decision to grant limitation "would effectively end the case…and both parties would have every incentive to settle." R at 5a–6a. This is precisely the type of result that Congress intended appellate courts to review under § 1292(a)(3). *See id.* at 6a. In the concurrence, Judge Solomon opined that *Evergreen* is distinguishable and there is a "sensible result that is indeed more consistent with the policy goals that motivated the enactment of section 1292(a)(3)." *Id.* Similarly, the reasoning of most courts in permitting interlocutory review of a decision on *some* claim or defense is instructive. In *Kesselring*, the Ninth Circuit permitted interlocutory review because an order on preferred wage liens eliminated any possibility of recovery. Here, if Petitioners are not granted review of the district court's decision to limit Respondent's liability, Petitioners' entire right to claims are extinguished.

The Respondent erroneously relies on *Evergreen* because this case is clearly distinguishable. The *Evergreen* Court dismissed the interlocutory appeal as *untimely* and because the district court in that case had already ruled on the merits of its admiralty jurisdiction. *See* 33 F.3d at 422, 425, 1995 AMC at 639. Here, the primary issue on appeal is whether the district court had admiralty jurisdiction under the Limitation Act to limit the Respondent's liability. *See* R at 3a. The Respondent only now challenges interlocutory review because the favorable ruling of limitation of liability. The district court's assertion of admiralty jurisdiction and limitation of liability for Respondent effectively determines the rights of the parties, which warrants interlocutory review. The Fourth Circuit, itself, noted that "[i]f we could approach the issue afresh . . . it is abundantly clear that the district court has determined that Seafood Shack will not bear any real liability for the claimants' injuries." R. at 5a. The court reluctantly ruled for the Respondent because the court believed it was bound by *Evergreen*. R. at 6a. The *Evergreen* Court also was bound by precedent and decided that the "better course…is to construe this exceptive statute narrowly, and thus limit the statute's special treatment to the special circumstances that justified its inception." 33 F.3d at 425, 1995 AMC at 639. Notably, *Aramark* contemplated the problem this Court faces. The *Aramark* Court recognized that "[i]f the ship owner files a limitation claim after suit has been brought against it in a different forum (say, a state court), the earlier suit would be stayed. *Aramark*, 831 F.3d at 1276, 2016 AMC at 2150. Here, holding that the Fourth Circuit lacked interlocutory review ends the both the admiralty and state court proceedings. *See id.* at 1277, 2016 AMC at 2151 ("It makes sense to resolve finally (though appellate review) those limitation rulings to which the state court must defer during its proceedings . . . ." This Court unbeholden to circuit court precedent may now apply the sound reasoning of the lower courts, with which they wished they themselves could adopt.

Moreover, the Fifth Circuit—perhaps the strongest proponent of narrow construction of 1292(a)(3)—has recently moved toward a broader interpretation. *See SCF Waxler Marine, L.L.C. v. Aris T*, 902 F.3d 461, 467, 2018 AMC 2420, 2426 (5th Cir. 2018) (acknowledging that jurisdiction "would likely be appropriate" where a district court determined that insurers were not entitled to exoneration from, or limitation of, liability); *MS Tabea Schiffahrtsgesellschaft MBH & Co. KG v. Bd. of Comm'rs*, 636 F.3d 161, 2011 AMC 2015 (5th Cir. 2011) (holding that an order dismissing part of an appellant's claims was appropriate for 1292(a)(3) interlocutory review because the statute does not require all claims be disposed of among all the parties); *see also Drill Barge No. 2 Cross Contracting Co. v. Law*, 454 F.2d 408, 1972 AMC 1008 (5th Cir. 1972) (permitting interlocutory review of order to increase amount of limitation security). If the policy reasons behind § 1292(a)(3) are to avoid piecemeal and inefficient resolution, the sound considerations of judicial economy support prompt resolution of Petitioners' appeal. Appellate review of this interlocutory order would in fact avoid protracted litigation. Unlike courts bound by precedent, this Court has the opportunity to clarify to lower courts that permitting interlocutory review of a district court's limitation of liability is consistent with Congress's intent under §1292(a)(3).

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Fourth Circuit Court of Appeals because it had jurisdiction for interlocutory review and hold that the District Court lacked admiralty jurisdiction.

DATED: February 4, 2018

/s/
Team A
Counsel for the Petitioners