No. 10-507

In The Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

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 PETITIONERS

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356 (OCSLA), governs those who work on oil drilling platforms and other fixed structures beyond state maritime boundaries. Workers are eligible for compensation for "any injury occurring as the result of operations conducted on the outer Continental Shelf." 43 U.S.C. § 1333(b) (2006). When an outer continental shelf worker is injured *on land*, is he (or his heir):

1. *always* eligible for compensation, because his employer's operations on the shelf are the but for cause of his injury (as the Third Circuit holds); or

2. *never* eligible for compensation, because the Act applies only to injuries occurring on the shelf (as the Fifth Circuit holds);

3. *sometimes* eligible for compensation, because eligibility for benefits depends on the nature and extent of the factual relationship between the injury and the operations on the shelf (as the Ninth Circuit holds)?

RULES 24.1(b) AND 29.6 STATEMENT

All parties are listed in the caption.

Petitioner Pacific Operators Offshore, LLP, is a limited liability corporation wholly-owned by AnAmerica Corporation, a successor to AnAmerica & Drilling Company. Petitioner the Insurance Company of the State of Pennsylvania (ICSOP) is a direct, wholly-owned subsidiary of Chartis U.S., Inc. Chartis U.S., Inc., is a wholly-owned subsidiary of Chartis, Inc. Chartis, Inc., is a wholly-owned subsidiary of American International Group, Inc., which is a publicly held corporation. With the exception of the AIG Credit Facility Trust (a trust established for the sole benefit of the United States Treasury), no parent corporation or publicly held corporation owns 10 percent or more of the stock of American International Group, Inc.

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The decision of the Administrative Law Judge in the Department of Labor's Office of Workers' Compensation Programs is reported at 41 Ben. Rev. Bd. Serv. (MB) 795 (ALJ) and is printed in the petition appendix (Pet. App.) at 53a. The decision of the Benefits Review Board is reported at 42 Ben. Rev. Bd. Serv. (MB) 67 and is reprinted at Pet. App. 35a. The opinion of the Court of Appeals is reported at 604 F.3d 1126 and is reprinted at Pet. App. 1a. The unpublished order of the Court of Appeals denying rehearing en banc is reprinted at Pet. App. 94a.

JURISDICTION

The Benefits Review Board had jurisdiction under 33 U.S.C. § 921(b)(3). The Ninth Circuit had jurisdiction to review the decision of the Benefits Review Board under 33 U.S.C. § 921(c). The Ninth Circuit entered judgment on May 13, 2010, Pet. App. 1a, and denied petitioners' timely petition for rehearing en banc on July 19, 2010. Pet. App. 94a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of 33 U.S.C. § 903 and 43 U.S.C. §§ 1301, 1312, 1331, 1332, and 1333 are reproduced at Pet. App. 96a-106a.

STATEMENT

1. The Outer Continental Shelf Lands Act (OCSLA), Pub. L. No. 83-212, 67 Stat. 562 (1953) (codified at 43 U.S.C. §§ 1331-1356), extends the jurisdiction of the United States to the seabed, subsoil, and fixed structures of the outer continental shelf (OCS), an area that lies more than three miles offshore and beyond the territorial jurisdiction of the States. 43 U.S.C. §§ 1301(a)(2), 1312, 1331(a). The Act governs the rights and obligations of those who own, operate, and work on offshore drilling platforms.

A separate federal law, the Longshore and Harbor Workers' Compensation Act (LHWCA), provides workers' compensation benefits to designated maritime employees, 33 U.S.C. § 903(a) (2006), and OCSLA extends LHWCA benefits to outer continental shelf workers in certain circumstances:

> 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.

43 U.S.C. § 1333(b).

2. Respondent Luisa Valladolid, the widow of decedent Juan Valladolid, brought this proceeding against Pacific Operators and ICSOP for workers' compensation benefits under LHWCA and OCSLA. Joint Appendix (J.A.) 5. Pacific's primary business involves oil exploration and extraction. J.A. 8. The decedent worked for Pacific as a roustabout, stationed primarily on Pacific's drilling platforms located on the outer continental shelf off California. J.A. 9, 25-26. He spent approximately 98 percent of his working time on drilling platforms, primarily performing maintenance and repair duties. J.A. 26, 51. He spent limited time working at Pacific's onshore oil and gas facility on dry land in Ventura, California. J.A. 51. The facility is separated from the Pacific Ocean by railroad tracks, a highway, and a beach. J.A. 11, 28. The facility received crude oil from the offshore platforms by pipeline. J.A. 8. Pacific processed the crude oil, separating its oil, gas, water, and solid constituents, then routed the oil and gas through pipelines to third parties. J.A. 8, 12, 25. The decedent performed maintenance duties at the facility, including painting, sandblasting, weed-pulling, cleaning drain-culverts, and operating a forklift. J.A. 9, 26.

The decedent and other Pacific employees traveled to the offshore platforms on a crew boat departing from a pier located approximately three miles from the oil and gas facility. J.A. 26, 43. The crew boat also ferried equipment and supplies, and removed scrap metal from the platforms. At the pier, workers loaded scrap metal into trucks and drove it to the facility, where the metal was dumped at various spots on the property. J.A. 56. The decedent's duties at the onshore facility included using a forklift to retrieve the scattered scrap metal and transport it to a central location so that third-party vendors could pick up the metal and haul it away. J.A. 77, 79-80. He performed this process roughly once every two years. J.A. 80.

Between May 5 and June 5, 2004, Pacific assigned the decedent to assist in painting a water tank at the onshore facility. J.A. 26. On June 2, 2004, at 4:00 p.m., the decedent's supervisor directed him to take a forklift to the rear yard of the facility and move scrap metal. J.A. 10, 27, 38, 53-54. One hour and 15 minutes later, the supervisor found the decedent next to a tree roughly 10 feet from a service road in the facility, with the forklift resting on his abdomen and chest. He was pronounced dead at the scene. J.A. 10, 27, 52.

According to the accident report, the decedent stood atop one of the raised tines of the forklift to cut fruit from a tree. The forklift apparently moved forward while the decedent was picking the fruit, which caused him to lose his balance and fall in front

of the forklift, which then rolled over him. J.A. 10-11, 13-15, 18-19. The decedent had not moved any of the scrap metal he had been directed to move. J.A. 52.

3. As the accident occurred on dry land in California, respondent received death benefits under California's workers' compensation scheme. Pet. App. 54a n.2. She also filed a claim for benefits under OCSLA and LHWCA. An administrative law judge in the Department of Labor's Office of Workers' Compensation Programs denied respondent's claim under OCSLA on the ground the death had not occurred on the outer continental shelf. Pet. App. 93a. The administrative law judge also denied the direct LHWCA claim. Pet. App. 81a. The Benefits Review Board upheld the administrative law judge's decision. Pet. App. 42a-43a, 51a-52a.

4. Respondent petitioned for review in the United States Court of Appeals for the Ninth Circuit. The court agreed with the Board that respondent had no direct right to LHWCA benefits. *Valladolid v. Pac. Operations Offshore, LLP*, 604 F.3d 1126, 1141 (9th Cir. 2010), Pet. App. 32a.

On the claim under OCSLA, however, the court rejected the Board's position that eligibility for benefits is determined by a situs of injury test. *Valladolid*, 604 F.3d at 1137-38, Pet. App. 23a-24a. According to the Ninth Circuit, while "the *operations* must be conducted on the outer continental shelf . . . the only limitation on the *injury* is that it be 'the result of' operations on the outer continental shelf. . . . [T]he phrase 'as the result of' simply denotes causation . . . . Thus, the most natural reading of § 1333(b) provides

coverage for any injury *caused by* outer continental shelf operations regardless of where the injury occurred." *Id.* at 1134, Pet. App. 15a.

The Ninth Circuit held: "An injury is 'the result of' outer continental shelf operations if there is a substantial nexus between the injury and the operations." *Valladolid*, 604 F.3d at 1142, Pet. App. 34a. "To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations." *Id.* at 1139, Pet. App. 28a. Rather than deciding whether the facts of this case (which are undisputed) satisfied its "substantial nexus" test, the Ninth Circuit remanded for further agency proceedings involving the new test. *Id.* at 1142, Pet. App. 34a.

5. The Ninth Circuit's test conflicts with the tests formulated by both the Third Circuit and the Fifth Circuit for determining eligibility for LHWCA benefits under OCSLA. It is also in tension with language from decisions of this Court, which the Ninth Circuit dismissed as "unconsidered" dictum "not entitled to any special deference." *Valladolid*, 604 F.3d at 1132, Pet. App. 10a.

In *Curtis v. Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809 (3d Cir. 1988), the Third Circuit held that an oil rig worker injured in a car accident on a New Jersey freeway while traveling to a helicopter that would have taken him to an offshore rig was entitled to LHWCA benefits. As interpreted by the Third Circuit, "[t]he only criterion [under OCSLA] . . . for securing LHWCA benefits is for injured employees to be involved in 'any operations conducted on the

outer Continental Shelf for the purpose of exploring for, [and] developing . . . the natural resources . . . of the outer Continental Shelf.' There [is] . . . no limitation . . . to 'artificial islands and fixed structures'. . . ."; *id.* at 810 n.9 ("[s]itus does not control the application of the LHWCA"). Thus, the Third Circuit has adopted a "but for" test: the employee's injury on the freeway occurred as a result of operations on the outer continental shelf because "'[b]ut for' his traveling to the [offshore rig] for the purpose of conducting 'operations' within § 1333(b), [he] would not have sustained injuries in the automobile accident." *Id.* at 811.

The Fifth Circuit took a different approach in *Mills v. Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356 (5th Cir. 1989). Holding that a welder injured during the onshore construction of a platform designed for the outer continental shelf was not eligible for LHWCA benefits, it explained: "Mills and the Director read 'operations' broadly to encompass work by employees – wherever located – provided their work furthers OCS mineral extraction activity in some significant way. But under an equally plausible reading of § 1333(b), coverage requires that the relevant 'operations' out of which the injury arises occur on the OCS." *Id.* at 359. Consequently it held that "§ 1333(b) . . . require[s] that covered operations be (1) related to OCS development; and (2) conducted on the OCS. Given the second requirement, activity conducted off the OCS, even though related to OCS mineral extraction, does not satisfy § 1333(b)." *Id.*

The Ninth Circuit disagreed with both the Third and Fifth Circuits. Rejecting the Fifth Circuit's holding in *Mills*, it held that "a situs-of-injury test is unambiguously absent from § 1333(b)." *Valladolid*, 604 F.3d at 1135, Pet. App. 19a. However, refusing to follow the Third Circuit, the Ninth Circuit did not "find that Congress intended to enact a simple 'but for' test in covering injuries that occur 'as the result of' outer continental shelf operations. Injuries with a tenuous connection to the outer continental shelf are not covered." *Id.* at 1139, Pet. App. 27a.

The Ninth Circuit also rejected petitioners' reliance on this Court's decision in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986). There, the Court had to determine whether OCSLA or a separate federal statute dealing with a unique jurisdictional area, the Death on the High Seas Act, 46 U.S.C. §§ 30301-30308 (DOHSA), applied to offshore rig workers injured 35 miles off the coast while being transported back from work on an oil rig. The Court held that DOHSA, not OCSLA, governed the injuries. Because *Offshore Logistics* did not involve a claim against the workers' employer, subsection 1333(b) was not directly implicated. Nonetheless, the Court relied on OCSLA's general focus on the situs of the injury, not the status of the worker, and the Court specifically noted that subsection 1333(b) "superimposes a status requirement" – that of being an employee suffering injury from certain operations – "on the otherwise determinative OCSLA situs requirement." 477 U.S. 220 n.2.

The Ninth Circuit acknowledged that *Offshore Logistics* supported the position adopted by the Benefits Review Board and the Fifth Circuit and urged by petitioners but nonetheless dismissed it as dictum of "the unconsidered variety unworthy of any special deference." *Valladolid*, 604 F.3d at 1132, Pet. App. 10a.

This Court granted a petition for writ of certiorari to resolve this conflict among the Courts of Appeals regarding eligibility for OCSLA workers compensation benefits.

SUMMARY OF ARGUMENT

1. 43 U.S.C. § 1333(b) provides workers' compensation benefits for disability or death "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 the rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf. . . ." This statute plainly means that workers are eligible for benefits only when they are injured *on* the shelf. As a matter of common sense, an injury is not "the result of operations conducted on the outer Continental Shelf" unless it was caused by something that happened on the shelf (as opposed to something that happened on land). This is clear from the textual focus on "operations conducted on the outer Continental Shelf." Injuries resulting from operations on dry land are self-evidently not covered.

The Ninth Circuit gave the statute broader scope based on the phrase "as the result of operations conducted," since the statute unambiguously would impose a situs of injury test without that phrase. But that misreads both the import of that phrase and the broader statutory text and context. Omission of that phrase might have unduly narrowed the statute by raising questions about its application to latent injuries that clearly result from offshore operations but do not manifest themselves until later. Equally important, omission of that phrase might have unduly expanded the statute by allowing recovery under OCSLA for employee injuries having nothing to do with offshore operations for the purposes covered by the statute. In short, there are ample explanations for the inclusion of that phrase that do not lead to the counterintuitive conclusion that OCSLA covers injuries suffered on dry land. Moreover, the statutory text, structure and context all reinforce the conclusion that subsection 1333(b), like the rest of OCSLA, is focused on the unique problems of the outer continental shelf and covers only injuries sustained there.

2. This common sense reading of the statute matches Congress' purpose in enacting OCSLA, which was to provide a "body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf," an area that previously lacked an established legal system because it lies beyond state boundaries. By fashioning a uniform *federal* workers' compensation scheme for workers injured on the outer continental shelf, Congress saved

employers and employees from the uncertain application, and procedural vagaries, of adjacent *states'* workers' compensation acts. The federal regime protected against some workers having no remedy, while others might be covered by overlapping jurisdictional claims from more than one state. There is no indication that, or logical reason why, Congress desired to extend LHWCA benefits to workers injured on land, where there was not the same kind of jurisdictional confusion and workers with a connection to offshore operations would have a clear entitlement to the same state-law benefits as other land-based workers who were exposed to the identical workplace hazards. Moreover, in light of Congress' clear intent to deal with the special jurisdictional challenges of the outer continental shelf, there is no reason to lightly extend OCSLA's protections to injuries suffered on dry land. This Court has repeatedly refused to casually extend a statute focused on domestic concerns extraterritorially. It makes no more sense to read OCSLA as governing not just the special circumstances of the outer continental shelf, but Ventura, California and the turnpikes of New Jersey as well.

3. The structure and context of § 1333(b) also support a construction that limits its applications to injuries suffered on the outer continental shelf. None of § 1333's other subsections applies beyond the outer continental shelf. To the contrary, those provisions demonstrate that Congress intended to regulate solely the outer continental shelf, not areas already governed by state law or other jurisdictional provisions, like DOHSA. There is no legislative history

suggesting that Congress intended to single out the OCSLA workers' compensation scheme for different treatment. Indeed, § 1333(f) refers generally to "[t]he specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a). . . ." Section 1333(b) is not carved out from this provision. Rather, it is clear from the statute as a whole that the focus of OCSLA in its entirety, including § 1333(b), is only to extend certain federal laws to the outer continental shelf, not create additional remedies to augment clearly applicable state law remedies on land.

4. This Court has made clear in prior decisions that the general scope of OCSLA's coverage is determined principally by locale, not by the status of an individual. It covers workers injured offshore, not offshore workers. In *Offshore Logistics*, 477 U.S. 207, the Court explained that OCSLA is focused on the unique problems of the outer continental shelf and thus generally addresses the situs of injury, not the status of workers. Recognizing that OCSLA focused on the unique problems of the outer continental shelf, and that Congress had addressed the unique problems of the high seas in DOHSA, the Court found OCSLA not to extend beyond the outer continental shelf. *Id.* at 218-19. In so holding, the Court noted that § 1333(b) "superimposes" – that is, adds to, rather than replaces – the "otherwise determinative OCSLA situs requirement" by making "compensation for the death or injury of an 'employee' resulting from certain operations on the outer Continental Shelf

payable under the Longshoreman's and Harbor Workers' Compensation Act." *Id.* at 220 n.2. That was not some "unconsidered" dictum. Both that observation and the Court's general approach to OCSLA in *Offshore Logistics* point the way to reversal.

5. Limiting eligibility for LHWCA benefits to workers who are injured on the outer continental shelf is sound policy as well. Such a bright-line rule reduces the need for litigation by ensuring predictable results before the Benefits Review Board. In contrast, the Ninth Circuit's "substantial nexus" test and the Third Circuit's "but for" test are so imprecise that they invite litigation and inevitably will cause inconsistent eligibility determinations in cases with similar facts. This predictable, bright-line rule also vitiates adverse insurance consequences that would stem from a vague rule that might extend eligibility for LHWCA benefits to workers who never step on the outer continental shelf. To hedge against that possibility, employers would be forced to obtain insurance coverage for their *land-based* workers under both the applicable state scheme and OCSLA.

6. The test proposed by the Director, Office of Workers' Compensation programs, departs from the sensible course charted by the Benefits Review Board and suffers from many of the same flaws as the Ninth and Third Circuits' tests. According to the Director, outer continental shelf workers retain eligibility for LHWCA benefits when they perform outer continental shelf-related work on land. But this effort to make recovery turn on the status of the worker without regard to situs of injury cannot be reconciled with the

OCSLA's text or this Court's precedents. Under this test, an outer continental shelf worker injured on land will receive more generous benefits than a land-based worker, who is limited to recovery under a state workers' compensation scheme, even though both workers face identical workplace hazards. Further, the Director's test suffers from the same lack of simplicity and predictability as the Ninth Circuit's "substantial nexus" test and the Third Circuit's "but for" test.

ARGUMENT

AN OUTER CONTINENTAL SHELF WORKER INJURED ON LAND IS NOT ELIGIBLE FOR LHWCA BENEFITS.

A. The text, structure, and purpose of 43 U.S.C. § 1333(b) establish that eligibility for LHWCA benefits depends on a simple and administrable factor: the location where a worker is injured. Workers injured on the shelf are eligible for benefits; workers injured on land are not.

1. The text of § 1333(b) limits LHWCA benefits to disability or death "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 the rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf. . . ." That

language unambiguously imposes a situs requirement. The question becomes whether the statute confers LHWCA benefits to anyone who can trace his injury to offshore operations or whether it instead applies only to those who suffer their injury in offshore areas raising the unique jurisdictional problems OCSLA addresses. The text, structure and purpose of § 1333(b), not to mention this Court's precedents, all point to the latter, more limited role for § 1333(b).

According to the Ninth Circuit, while § 1333(b)'s text makes clear that "the *operations* must be conducted on the outer continental shelf . . . the only limitation on the *injury* is that it be the result of operations on the outer continental shelf." *Valladolid*, 604 F.3d at 1134, Pet. App. 15a. But the Ninth Circuit's effort to decouple the "injury" and the "operations" ignores the text and context of § 1333(b), not to mention common sense. An injury is not "the result of operations conducted on the outer Continental Shelf" unless it was caused by something that *happened* on the shelf. Thus, the injury must occur on the shelf to come within the statutory text. An injury occurring on land is not embraced within the statute.

The Ninth Circuit seems to have decoupled injury and operations by placing undue weight on the phrase "as a result of operations conducted." In the absence of that phrase, the statute would allow for recovery for "any injury occurring on the outer Continental Shelf," and might have greater superficial similarity to other OCSLA provisions, such as § 1333(c), which extends the National Labor Relations Act (NLRA)

to any "unfair labor practice . . . occurring upon" the outer continental shelf. But omitting that phrase would not have worked. It would have rendered the statute both underinclusive and overinclusive.

Congress likely used the phrase "injury occurring as a result of operations conducted on the outer Continental Shelf," rather than "injury occurring upon" the shelf, to make clear that workers would be able to obtain recovery for latent injuries. For example, an outer continental shelf worker might be injured by exposure to harmful substances on the shelf but the injury might not manifest until later, when the worker is on land. Congress' word choice forecloses employers from arguing, based on cases decided before it enacted OCSLA, that an injury that did not manifest until later was not compensable because it did not occur on the shelf. *See Reiser v. Metropolitan Life Ins. Co.*, 262 A.D. 171, 28 N.Y.S.2d 283 (1941) (disease does not occur within meaning of disability insurance policy until it reveals itself), and *Cohen v. North American Life & Casualty Co.*, 150 Minn. 507, 185 N.W. 939 (1921) (disease began when it manifested itself, even though the medical cause of the disease existed prior to inception of health policy).

On the other hand, omitting the phrase "as a result of operations conducted" might have provided greater coverage than Congress intended by giving an employee a LHWCA cause of action against his employer for injuries occurring offshore but with no nexus to operations conducted for the purposes specified in the statute. Congress' intent, after all,

was to provide a LHWCA cause of action for workers who suffered injuries in the course of performing operations for the purposes of developing, removing and transporting the natural resources of the outer continental shelf. Congress did not intend to make employers absolutely responsible for any injury suffered by an employee offshore. Someone suffering a heart attack while sleeping or injured while engaged in operations for a different purpose was not intended to recover under LHWCA. They might or might not have had an action under the law extended to the offshore facility by § 1333(a), but the more limited recovery under LHWCA pursuant to § 1333(b) would not be available.

Thus, the Court should not assume – as the Ninth Circuit did – that by including the phrase "as the result of operations conducted" Congress desired to confer benefits on workers injured on land. That phrase does ample work without giving it a meaning that would extend § 1333(b) well beyond the reach of the outer continental shelf and its unique jurisdictional problems.

2. The statute's very specific and unique purpose confirms that Congress did not intend to cover outer continental shelf workers injured on land and that the Ninth Circuit's statutory construction was misguided. OCSLA addressed a very specific problem: that the outer continental shelf was something of a jurisdictional no-man's land which sometimes left injured parties without a remedy and other times involved competing and overlapping jurisdictional

claims. Before the enactment of OCSLA in 1953, the outer continental shelf was "an area of intense activity that lacked an established legal system because it lies beyond state boundaries." *Mills*, 877 F.2d at 358. *See also Outer Continental Shelf: Hearings on S. 1901 Before the Comm. on Interior and Insular Affairs*, 83d Cong. 406 (1953) [hereinafter *Hearings*] (statement of Sen. Anderson: "I think what Senator Cordon [the bill's author] has tried to do is recognize there is now an area out there in which there is a void and no administration, and the Government has to come to administer that area . . . "). Consequently, "to define a body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf," *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969), Congress extended "[t]he Constitution and laws and civil and political jurisdiction of the United States" to those locales "to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state. . . ." 43 U.S.C. § 1333(a)(1) (2006). In the event no federal law existed on a particular issue, Congress borrowed the adjacent state's law as surrogate federal law. 43 U.S.C. § 1333(a)(2)(A) (2006). Congress not only extended federal law to these structures generally in § 1333(a), but also extended specific federal protections in § 1333's other subsections.

"One obvious void in the law governing the OCS was the lack of a workers' compensation scheme for thousands of workers employed in the dangerous oilfield extraction industry. Congress filled that void

in § 1333(b) when it adopted the LHWCA's benefits provision to cover non-seamen employed in the oil patch on the OCS." *Mills*, 877 F.2d at 358. The exclusion of seamen who already enjoyed Jones Act coverage underscores that Congress was not interested in supplying duplicative remedies, but rather wanted to address a jurisdictional void. No such void existed when outer continental shelf workers were injured *on land*. Like the decedent in this case, those workers were covered by applicable state workers' compensation schemes.

The Ninth Circuit nonetheless believed there was no void because, when OCSLA was enacted, some state workers' compensation schemes applied extraterritorially and would have covered some workers injured on the shelf. *Valladolid*, 604 F.3d at 1136, Pet. App. 20a-21a (citing Louisiana, Texas, and California cases). The three cases cited by the Ninth Circuit address when a state workers' compensation scheme applies to an injury suffered in another *state*. But an injury occurring on the outer continental shelf would not have been considered an injury occurring in another *state* – since the United States had not recognized state boundaries as extending to the limits of the outer continental shelf. Thus, in drafting OCSLA, Congress could not anticipate whether all shelf workers would be covered by state workers' compensation schemes. Moreover, the three states whose cases were cited by the Ninth Circuit do not embrace the entirety of our Nation's outer continental shelf, and Congress would not have wanted the

availability of workers' compensation benefits to depend on which state was closest. To remove all doubt on this point, Congress created *federal* workers' compensation benefits, under § 1333(b).

The Ninth Circuit also found it significant that a provision allowing LHWCA benefits only "if recovery for such disability or death through worker's compensation proceedings is not provided by State Law" was deleted from an early version of OCSLA. *Valladolid*, 604 F.3d at 1136, Pet. App. 19a-20a, citing S. Rep. No. 83-411, at 16 (1933). According to the Ninth Circuit, "[t]he deletion of this overlap provision gives a clear indication that Congress intended to provide [OCSLA] coverage regardless of the applicability of state law, seriously undercutting the conception of § 1333(b) as a gap-filler." *Id*.

But the Ninth Circuit failed to appreciate that Congress' purpose in providing outer continental shelf workers with a uniform compensation scheme was not dependent on the applicability and vagaries of the adjacent state's workers' compensation scheme. Congress was concerned not just with jurisdictional gaps and voids, but with jurisdictional overlaps and confusion as well. *See Hearings*, *supra*, at 422 (statement of Frank J. Zito, Att'y: "The question arises as to what State. . . . [T]here may be as many [state] compensation laws applicable as there are owners of structures"). A system where one worker might be left without a remedy while another would arguably be entitled to benefits from more than one state had little to recommend it. Similar competing jurisdictional

provisions – sometimes overlapping, sometimes leaving a void – caused Congress to enact DOHSA. *See Offshore Logistics*, 477 U.S. at 214.

Finally, Congress may have deleted the overlap provision because it would be capricious to extend the more generous benefits available under LHWCA[1] only to workers injured on a platform adjacent to a state that provided *no* workers' compensation coverage for injuries on the outer continental shelf. *Hearings*, *supra*, at 418 (statement of Sen. Anderson explaining that LHWCA benefits – which OCSLA made available – are "liberal" and "much better than Texas and Louisiana have"); *id.* at 512 (similar). *See also Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 723 (1980) (explaining that Congress amended § 1(a) of LHWCA, 33 U.S.C. § 903(a), to expressly cover marine workers injured on piers and other areas adjoining navigable waters in order to eliminate "the disparities . . . [that] lay primarily in the paucity of relief under *state* compensation laws"). The deletion does not support the inference that Congress intended that outer continental shelf workers injured on land and covered by state workers' compensation should receive greater benefits than their land-based co-workers. To the

[1] In 2004, the death benefit payable to a single dependent like respondent under the California Workers' Compensation Act was $125,000. Cal. Labor Code, § 4702(3). Under OCSLA (through LHWCA), a surviving spouse is generally entitled to 50 percent of the decedent's average weekly wage until the spouse's death or remarriage. 33 U.S.C. § 909(b). The decedent's weekly wage was $928.22. Pet. App. n.54.

contrary, there is no conceivable reason why Congress would have intended that workers facing identical workplace hazards should receive different benefits based on the fortuity of where they did the majority of their work.

The unique problem that Congress was attempting resolve in OCSLA provides a key insight into the proper reading of § 1333(b)'s "as the result of operations conducted" language. In the abstract, that language, like any phrase suggesting a causal relationship, could be read to incorporate a broad "but for" test (as the Third Circuit did) or a slightly narrower "substantial nexus" test (as the Ninth Circuit adopted). But once it is understood that § 1333 generally and § 1333(b) in particular address a unique jurisdictional problem that arises in connection with structures on the outer continental shelf, there are powerful reasons not to read the statute to extend to injuries on dry land where state law unambiguously applies. This Court understood and applied this principle in *Offshore Logistics*. There, the Court confronted an argument that OCSLA should extend to cover an injury suffered on the high seas. The Court focused on the fact that OCSLA was addressed to the specific jurisdictional problems of offshore structures, and that the distinct jurisdictional questions raised by injuries on the high seas were best addressed by DOHSA. *Offshore Logistics*, 477 U.S. at 218-19. Here, when state law clearly provides respondent a remedy for an injury sustained on dry land, there is likewise no reason to extend OCSLA to

a situation where there is no unique jurisdictional difficulty to be addressed.

More broadly, in the context of statutes directed at domestic concerns, this Court has repeatedly warned against lightly assuming that Congress intended to legislate extraterritorially. *See, e.g.*, *Small v. United States*, 544 U.S. 385, 388 (2005); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). In that context, it is fair to assume "that Congress generally legislates with domestic concerns in mind." *Small*, 544 U.S. at 388. But by the same token, when Congress specifically addresses the unique jurisdictional problems presented by structures on the outer continental shelf, courts should not lightly assume that Congress intended to cover domestic situations where state law already provides a remedy. In light of the unique problem OCSLA addresses, courts should not casually conclude that it not only covers workers injured during the course of operations on the outer continental shelf, but that it also provides a remedy for those working on dry land or traversing the turnpikes of New Jersey.

3. Other subsections of § 1333 confirm that Congress did not intend that § 1333(b)'s coverage would extend to injury or death occurring off the outer continental shelf. As explained by the Fifth Circuit,

> none of § 1333's other subsections purport[s] to apply beyond the OCS. Section 1333(a), which establishes the Shelf's substantive

> law, applies only to activity that occurs on the OCS. Subsection (c) applies the National Labor Relations Act to unfair labor practices on OCS platforms. Subsection (d) delegates to the Coast Guard the duty of promoting safety on the artificial islands and adjacent waters on the outer Continental Shelf. Subsection (e) extends the Secretary of the Army's authority to prevent obstruction of navigation to those artificial islands, while subsection (f) also focuses on certain legal provisions that apply to these same installations. These subsections demonstrate that Congress intended to regulate the OCS, not those areas that already were governed by state law. Neither Mills nor the Director of the Office of Workers' Compensation identifies any legislative history suggesting that Congress intended to single out OCSLA's workers' compensation scheme for different treatment.

Mills, 877 F.2d at 359 (footnotes omitted).

All of § 1333(b)'s neighboring provisions evince a concern for the special choice of law questions that stem from the broader problem of the absence of clearly applicable law on structures on the outer continental shelf. Section 1333(a) provides a general choice of law rule and extends federal law (which often incorporates state law) to such structures, and § 1333(c) makes clear that the NLRA extends to those structures. There is no reason to interpret the intervening provision, § 1333(b), as doing anything other than extending LHWCA to non-seamen on those same

structures when they were injured by operations for certain qualifying purposes. That is particularly true in light of § 1333(f). That subsection provides:

> The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

This provision, a savings clause of sorts, makes clear that the entirety of section 1333, including § 1333(b), is intended to extend federal law generally, and certain federal laws in particular, to the outer continental shelf. There is certainly no suggestion that one subsection goes much further and extends a unique federal law to circumstances otherwise covered by state law.

The Ninth Circuit drew a different inference from the surrounding provisions, asserting that the other subsections of § 1333 include situs requirements, while subsection (b) does not. "Congress had the ability to craft a situs-of-injury requirement – and did so within the very same section of the statute – yet left it out of subsection (b)." *Valladolid*, 604 F.3d at 1135, Pet. App. 17a. That is doubly wrong. The other subsections did not impose a "situs-of-injury requirement" at all, they simply extended federal laws to govern the unique situs addressed by OCSLA. It is

thus § 1333(b), and not the surrounding provisions, that addresses the situs-of-injury most specifically. That language, moreover, should not be read to cover any injury with a minimal or substantial nexus to the offshore activities. Rather, that language extends LHWCA to the unique situs addressed by OCSLA and then further requires the injury be related to operations for the purposes specified in subsection (b). But injury on the outer continental shelf remains the sine qua non. An injury does not occur "as a result of operations conducted on the outer Continental Shelf" unless the injury occurred on the shelf. This is the only statutory interpretation that is faithful to Congress' overall purpose in enacting the OCSLA – to extend a body of law, including LHWCA, to the seabed, subsoil, and fixed structures of the outer continental shelf.

4. This Court's precedents support an interpretation that limits eligibility for benefits under § 1333(b) to injuries occurring on the outer continental shelf.

In *Offshore Logistics*, 477 U.S. 207, two offshore drilling platform workers were killed when a helicopter carrying them to shore crashed 35 miles off the Louisiana coast. Their widows sued the owner and operator of the helicopter. They claimed they were not limited to pecuniary damages under the DOHSA, 46 U.S.C. §§ 30301-30308, but were also entitled to nonpecuniary damages under the Louisiana wrongful death statute, which applied either of its own force, or

as surrogate federal law under OCSLA. *See* 43 U.S.C. § 1333(a)(2)(A) (2006). This Court held that because the helicopter crash did not occur in the area covered by OCSLA, the maritime remedy for wrongful death under DOHSA controlled. *Offshore Logistics*, 477 U.S. at 220.

While *Offshore Logistics* did not directly involve § 1333(b), both its general reasoning and its specific reference to § 1333(b) point the way to the proper resolution of this case. First, in considering the interaction of OCSLA and DOHSA, the Court did not interpret either in a vacuum, but gave them a scope consistent with the unique problems and geographical areas the two statutes were intended to address. After surveying the jurisdiction confusion that gave rise to DOHSA, the Court unanimously concluded that OCSLA did not reach the injuries that occurred on the high seas.

> We do not interpret § 4 of OCSLA, 43 U.S.C. § 1333 to require or permit us to extend the coverage of the statute to the platform workers in this case who were killed miles away from the platform and on the high seas simply because they were platform workers. Congress determined that the general scope of OCSLA's coverage, like the operation of DOHSA's remedies, would be determined principally by locale, not by the status of the individual injured or killed. Because the fatalities underlying this suit did not arise from an accident in the area covered by

> OCSLA but rather occurred on the high seas, DOHSA plainly was intended to control.

477 U.S. at 219-20.

At the same time that the Court emphasized OCSLA's general focus on the situs of the offshore continental shelf, the Court noted that § 1333(b) uniquely had an additional – not different, but additional – requirement.

> Only one provision of OCSLA superimposes a status requirement on the *otherwise determinative OCSLA situs requirement*; § 1333(b) makes compensation for the death or injury of an "employee" resulting from certain operations on the Outer Continental Shelf payable under the Longshoreman's and Harbor Workers' Compensation Act. We note that because this case does not involve a suit by an injured employee against his employer pursuant to § 1333(b), this provision has no bearing on this case.

477 U.S. at 220 n.2 (emphasis added).

The Court thus recognized that § 1333(b) superimposes a distinct requirement on top of the general situs focus of all the provisions of § 1333, including § 1333(b). Moreover, the Court's description captures the limiting nature of that additional requirement. It does not extend coverage beyond the situs, but rather limits the coverage of LHWCA to employees "resulting from certain operations on the Outer Continental Shelf." *Offshore Logistics*, 477 U.S. at 220 n.2. That

discussion, as well as the Court's broader sensitivity to the unique territorial focus of both OCSLA and DOHSA, both underscore that § 1333(b) applies only to offshore injuries.

The same is true of *Offshore Logistics*' discussion of another of the Court's precedents. In *Offshore Logistics*, this Court referred to its discussion in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), regarding the "status and situs requirements of the Longshoremen's and Harbor Workers' Compensation Act as applied to platform workers making claims against their employers. . . ." *Offshore Logistics*, 477 U.S. at 220. In *Herb's Welding,* a welder who divided his time between oil drilling platforms in state waters and on the outer continental shelf was injured on a platform in state waters. This Court declined to decide whether the welder was entitled to LHWCA benefits, but made clear that such entitlement would depend on the location of injury, as well as the worker's status. Noting "the explicit geographical limitation to the Lands Act's incorporation of the LHWCA," it commented that "Gray would indeed have been covered for a significant portion of his work time, but because of the Lands Act, not because he fell within the terms of the LHWCA. . . . [T]hat statute draws a clear geographical boundary that will predictably result in workers moving in and out of coverage." *Herb's Welding*, 470 U.S. at 427.

These decisions demonstrate that § 1333(b) shares the same basic situs requirement as the remainder of § 1333. Just as § 1333(a) extends federal law generally to the offshore continental shelf, § 1333(b) extends

LHWCA to that same area, just as § 1333(c) extends the NLRA. What makes § 1333(b) different is not that it also applies on dry land. The Court has understood that workers would move in and out of OCSLA coverage and would sometimes be in DOHSA coverage or sometimes be in the coverage of states. What makes § 1333(b) different from the rest of OCSLA is that it "superimpose[s]" an additional requirement – a status requirement – limiting recovery of LHWCA benefits to non-maritime "employees" engaged in offshore operations for certain purposes – "on the otherwise determinative . . . situs requirement" found in § 1333(a). *Offshore Logistics*, 477 U.S. at 220 n.2.

This analysis leads to one conclusion: § 1333(b) does not confer benefits on outer continental shelf workers injured on land. This is not just a "plausible reading" of the statute's text, *Mills*, 877 F.2d at 359, it is the only reading faithful to OCSLA's purpose and context, and to this Court's decisions interpreting OCSLA.

B. Two policy considerations support limiting benefits to workers injured on the outer continental shelf.

1. Time and again in recent years, across a wide spectrum of cases and subjects, this Court has extolled the virtues of easy-to-apply, bright-line rules. In *Maryland v. Shatzer*, 130 S. Ct. 1213, 1222-23 (2010), for example, the Court noted that: "It is impractical to leave the answer to that question for

clarification in future case-by-case adjudication; law enforcement officers need to know, with certainty and beforehand, when renewed interrogation is lawful." *See also Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 129 S. Ct. 865, 875-76 (2009) ("ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: 'simple administration, avoid[ing] double liability, and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules'"). The need for bright lines and clear rules is particularly imperative when it comes to jurisdictional tests. In *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1184, 1186, 1193 (2010), the Court placed "primary weight upon the need for judicial administration of a jurisdictional statute to remain as simple as possible," and noted that "administrative simplicity is a major virtue in a jurisdictional statute," and that "[p]redictability is valuable to corporations making business and investment decisions." *See also Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 621 (2002) (explaining, in adopting a bright-line waiver test for state sovereign immunity, that "jurisdictional rules should be clear").

It is equally important to adopt a straightforward, bright-line test for determining eligibility for LHWCA benefits under § 1333(b). A simple rule, like the situs-of-injury test we advocate, will reduce the expense of litigation and assure the same treatment for similarly-situated claimants. The Ninth Circuit's "substantial nexus" test defeats these objectives.

Rather than fostering ease of administration and predictability, the Ninth Circuit would require, in every case, a fact-based inquiry focused on the particulars of a given injury, providing little guidance to employers, employees, administrative law judges or the Benefits Review Board in future cases. If injuries off the outer continental shelf may or may not be covered, depending on how individual administrative law judges weigh the facts of each case, inconsistent eligibility determinations based on similar facts are inevitable.

This case furnishes a good example of the drawbacks to the Ninth Circuit's approach. Although the facts are undisputed (the decedent was assigned to move scrap metal with a forklift at Pacific's onshore facility and suffered fatal injuries while attempting to harvest fruit), the Ninth Circuit declined to decide whether its "substantial nexus" test was satisfied – suggesting that reasonable minds could differ in applying this test to these facts. Instead, it remanded the case for further agency consideration. And the Ninth Circuit's test leaves open the possibility that a land-based worker, like the welder in *Mills*, 877 F.2d 356, might be covered if an administrative law judge determined that his or her work "directly furthers outer continental shelf operations and is in the regular course of such operations." *Valladolid*, 604 F.3d at 1139, Pet. App. 28a.

The Third Circuit's "but for" test is no better: what does it mean for an employee "to be involved in 'any operations conducted on the outer Continental

Shelf . . . ?'" *See Curtis*, 849 F.2d at 809. How would that test apply to the facts in this case? And, would that test also extend LHWCA benefits to workers who never set foot on the outer continental shelf, but participate in land-based activities that assist workers on the shelf (a human resources employee who handles shelf workers' health and pension inquiries? a construction worker building the offshore platforms? a secretary answering the phones for a company engaged exclusively in outer continental shelf operations?). And, to the extent that the Third Circuit's "but for" test is nothing more than a status test, it is in direct conflict with this court's explanation in *Offshore Logistics*, 477 U.S. at 219 that "the general scope of OCSLA's coverage . . . [is] determined principally by locale. . . ."

2. The bright-line situs-of-injury test we advocate would also clarify precisely when employers must purchase insurance covering LHWCA benefits. Under the tests adopted by the Ninth and Third Circuits, employers must purchase both state workers' compensation and LHWCA coverage for land-based workers because it is uncertain whether and when courts will allow land-based workers to obtain LHWCA benefits.

In both circuits, workers who never step on the outer continental shelf potentially could be entitled to LHWCA benefits. Consequently, employers engaged in offshore operations must protect themselves against that potential by purchasing insurance covering land-based workers under both the state worker's

compensation and the federal compensation acts.[2] As the Fifth Circuit explained, if § 1333(b) does not include a situs requirement,

> an employee injured while working on equipment destined for the OCS receives more generous benefits than the employee next to him who suffers an injury building similar equipment destined for land-based uses. To cover this exposure, employers who assign even a small percentage of their employees to constructing, servicing or repairing equipment destined for offshore platforms would have no choice but to purchase insurance coverage for liability under both the state and federal compensation acts. [There is] no evidence indicating that Congress intended to create such a cumbersome and uncertain compensation scheme or that it intended to intrude in a significant way on established state workers' compensation programs.

Mills, 877 F.2d at 362.

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[2] An employer's failure to secure required LHWCA coverage is punishable by a fine of up to $10,000 or up to one year's imprisonment, or both. If the employer is a corporation, the president, secretary, and treasurer are severally liable for such fine or imprisonment. 33 U.S.C. § 938(a).

C. The Director's proposed test should be rejected because it is contrary to § 1333(b)'s text and purpose.

The Director proposed yet another interpretation of § 1333(b) in its brief in opposition to the petition for writ of certiorari. (Director's Opp. at 14.) That interpretation adds further complexity and is not entitled to deference. An agency position first advanced in a brief to this Court may control when it interprets the agency's own *regulations*. *Compare Auer v. Robbins*, 519 U.S. 452, 461 (1997) (deferring), *with Gonzales v. Oregon*, 546 U.S. 243, 256-58 (2006) (not deferring). But the Court's decisions have not extended this approach to interpretations of a *statute* that an agency first advances in a litigation brief. And this would be a particularly odd context to afford such deference, when the Director's position differs from the decisions reached by the Benefits Review Board.

At best, the Director's interpretation is entitled to *Skidmore* deference. *See Skidmore v. Swift*, 323 U.S. 134, 140 (1944); *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 136 (1997) ("the Director's reasonable interpretation of the Act brings at least some added persuasive force to our conclusion"). Under *Skidmore*, the Court follows an agency's interpretation only to the extent it is persuasive. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000).

Indeed, as the Director acknowledges, the interpretation in his opposition brief is the third interpretation of § 1333(b) he has urged a court to adopt. (Director's Opp. at 15 n.10.) However, there have been no substantive changes to the statute since its enactment in 1953. The Director's inability to formulate a consistent interpretation of the statute militates against giving his most recent interpretation even the minimal deference to which it would otherwise be entitled.

Turning to substance, the Director's eligibility test, which requires "a nexus between OCS operations and the employer's 'work performed' generally" (Director's Opp. at 14), at least has the virtue of precluding coverage for workers who are entirely land-based. The Director concedes that because "it is undeniable that the OCSLA's primary focus is the OCS itself[,] [c]overing injuries to entirely land-based workers would be in tension with that intent." *Id.* at 15.

Nonetheless, other problems with the Director's test remain. According to the Director, "section 1333(b) is best interpreted as creating a class of OCS workers who retain their Longshore Act coverage when they perform OCS-related work on land." (Director's Opp'n at 15; *see also id.*, n.10 ("the best interpretation of section 1333(b)" is "'that Congress intended to create a class of OCS workers who would retain LHWCA coverage wherever their work activities took them'").) Thus, under the Director's test, if two employees – one an offshore worker and the other a land-based

worker – are injured working side-by-side constructing a drilling platform (which presumably constitutes "OCS-related work"), the first is entitled to LHWCA benefits while the second is not. The Director fails to explain how providing more generous compensation to the first employee based on the fortuity that he generally works on the outer continental shelf can be squared with Congress' purpose to provide protection for "workers employed in the dangerous oil field extraction industry." *Mills*, 877 F.2d at 358. And the Director's test is also at odds with this Court's observation that OCSLA "superimposes a status requirement on the otherwise determinative OCSLA situs requirement." *Offshore Logistics*, 477 U.S. at 220 n.2.

The Director says his proposed test is analogous to the test developed in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), which held workers are entitled to Jones Act coverage if they have a "'connection to a vessel . . . that is substantial in terms of both its duration and its nature.'" Director's Opp'n, at 16, quoting *Chandris* at 368. But the Jones Act analogy undermines any claim for deference to the Director's interpretation of OCSLA. Eligibility for benefits under the Jones Act hinges solely on a worker's status, not where the injury occurs. *Chandris*, 515 U.S. at 359-60 ("Jones Act coverage . . . depends, not on the place where the injury is inflicted . . . but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as such to the vessel and its operation in navigable waters.").

In contrast, "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale. . . ." *Offshore Logistics*, 477 U.S. at 219. Because eligibility for Jones Act coverage depends on status, and eligibility for benefits under OCSLA depends on locale, the Director's proposal that this Court borrow its *Chandris* test is misplaced.

Finally, under the Director's test, there need not be "a strict nexus between OCS operations and the particular task a worker was performing at the moment of injury. . . ." All that is required is that an employee "perform OCS-related work on land." Director's Opp'n, at 15-16. It is unclear what constitutes "OCS-related work" under this proposed test. Would it include the decedent's assignment to move scrap metal with a forklift? The Director's brief does not even hint at what the answer might be. Thus his proposed test suffers from the same lack of simplicity and predictability as the Ninth Circuit's "substantial nexus" test and the Third Circuit's "but for" test and should be rejected for the same reasons.

CONCLUSION

The judgment of the Court of Appeals should be reversed. The final order of the Benefits Review Board denying respondent's claim should be reinstated.

Respectfully submitted,

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