

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

REBECCA KOPRAS,

*Petitioner,*

v.

MARCO MARINE CONSTRUCTION, INC.,

*Respondent.*

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On Petition for Writ of Certiorari to the  
Florida Second District Court of Appeal

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED FOR REVIEW

In *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 538 (1995), this Court fashioned a multifaceted test for deciding when federal maritime law displaces State tort law. One facet requires courts to describe the case’s “general features” at an “intermediate level of possible generality” to discern if the incident could “potentially” disrupt maritime commerce. The question presented is:

Does damaging a recreational vessel while it rests securely in a boat lift both before and well after the damage have a realistic potential to disrupt maritime commerce?

## **LIST OF PARTIES**

Petitioner Rebecca Kopras was the appellant and plaintiff below. An additional plaintiff was Robert Kopras, but he voluntarily dismissed his case before trial, was not before the appellate court, and is not before this Court.

Respondent Marco Marine Construction, Inc. was the appellee and defendant below.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Rebecca Kopras respectfully petitions for a writ of certiorari to review the judgment of the Florida Second District Court of Appeal.

### INTRODUCTION

The crux of this case is the jurisdictional line between federal maritime law and State tort law. In this Court’s last word on the subject, it developed a multifaceted test for determining when the federal interest in maritime commerce is sufficiently implicated to warrant displacing State law. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531–34 (1995). One facet provides that maritime law applies when an incident’s “general features”—described at an “intermediate level of possible generality”—pose a “potential” risk to maritime commerce beyond the “fanciful.” *Id.* at 538–39.

Federal courts of appeals are divided over how to properly apply this facet, especially when the tort occurs on a fixed or restrained vessel, rather than a moving or unrestrained one. The Second, Third, and Ninth Circuits have held that incidents on anchored or moored vessels, unlike those on moving vessels, do not pose a realistic threat

to maritime commerce because the harm is self-contained. In contrast, the court below, in agreement with the Fourth Circuit, reached the opposite conclusion in substantially the same context. By focusing on different features and then pyramiding inferences, those courts each found a potential threat to maritime commerce even when the incident involved a restrained vessel. In circuits that have not addressed the question, district courts reach inconsistent results on indistinguishable facts—a problem that commentators have widely acknowledged.

This Court should use this case to resolve the reoccurring conflict. Because the issue involves federal jurisdiction displacing a State's right to enforce its own tort law, the question's importance is unmistakable. Several courts, including the Second Circuit, have expressly sought additional guidance on *Grubart's* application. And this case—which cleanly presents the legal issue on straightforward, undisputed facts—provides the ideal vehicle for responding to this request and resolving the conflict. Accordingly, this Court should grant certiorari.

## OPINIONS BELOW

The state appellate court's opinion is reported at *Kopras v. Marco Marine*

*Construction, Inc.*, No. 2D16-3362, 2017 WL 3793201 (Fla. Dist. Ct. App. Sept. 1, 2017), and is reprinted at Appendix 1a–2a. The trial court’s unreported order granting partial summary judgment on federal maritime law’s application is reprinted at Appendix 3a–7a. The trial court’s unreported final judgment based on the jury verdict is reprinted at Appendix 8a–12a.

### JURISDICTION

This Court has certiorari jurisdiction under 28 U.S.C. § 1257(a).

When, as here, a Florida appellate court summarily resolves a case through a per curiam affirmance without opinion (App. 1a), the Florida Supreme Court lacks jurisdiction to review the matter further. *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). Thus, as this Court has recognized, a Florida appellate court’s summary decision is “the highest court of a State in which a decision could be had” under § 1257(a). *E.g.*, *Palmore v. Sidoti*, 466 U.S. 429, 431 (1984); *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 139 n.4 (1987).

Finally, jurisdiction is timely invoked. The Florida appellate court entered its judgment on September 1, 2017. (App. 1a). On November 17, 2017, Justice Thomas extended the time for filing this petition for

certiorari to and including January 29, 2018. (Application No. 17A538). The petition was filed on or before that date.

### **CONSTITUTIONAL PROVISION AND STATUTE AT ISSUE**

Article III, section 2 of the United States Constitution:

The judicial power shall extend . . . to  
all Cases of admiralty and maritime  
Jurisdiction . . . .

28 U.S.C. § 1333(1) confers original  
jurisdiction of:

(1) Any civil case of admiralty or  
maritime jurisdiction, saving to  
suitors in all cases all other remedies  
to which they are otherwise entitled.

### **STATEMENT OF THE CASE**

#### **A. Factual Background**

Petitioner Rebecca Kopras and her husband, Robert Kopras, reside in Marco Island, Florida along Caxambas Pass, which connects to the Gulf of Mexico. In October 2007, Mr. Kopras contracted with respondent Marco Marine Construction, Inc. to construct and install a boat lift behind their home for Mrs. Kopras's 43-foot Sea Ray Sundancer.

After the lift's installation, the vessel rested securely on it without apparent incident for approximately one month. Then, when undergoing routine maintenance, the vessel was lowered into the water (while still in the lift), but then immediately lifted back out of the water because it was taking on water. After several inspections over the next several months, experts concluded that the lift's support bunks had caused severe cracks and several holes in the vessel's hull.

The vessel's damage was not viewable when the lift was in its normal position. Nor was the lift itself damaged in any way. Rather, the vessel and lift looked like any other boat resting on a boat lift.

No part of the vessel or the lift ever fell into the water or was at risk to do so. In fact, the vessel rested so securely on the lift that experts went onto, into, and under the vessel to inspect the damage without any concern. Appendix E contains trial photographs of petitioner's vessel on the lift, which were taken during the expert inspections several months after the incident. (App. 13a–15a).

The vessel remained securely on the lift out of the water for over a year without further incident. During that time, petitioner assessed several options for obtaining repairs and, on expert advice, ultimately decided that using a professional

barge company was the safest and best option. That company used a floating crane to move the vessel onto a barge for transport to a Sea Ray plant in Ft. Myers, Florida.

## **B. Legal Background**

The United States Constitution recognized the federal interest over maritime activities in article III, section 2 and the first Congress then implemented that policy in the Judiciary Act of 1789, which is codified in its current form at 28 U.S.C. § 1333(1).

Federal courts do not have exclusive jurisdiction to hear maritime cases. State courts have concurrent jurisdiction in most cases, but they must apply federal maritime law when a federal court would have had admiralty jurisdiction over a claim. 28 U.S.C. § 1333(1); *Atl. & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 359 (1962). This is known as the reverse-*Erie* doctrine. *See, e.g., Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223 (1986).

In *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531–34 (1995), this Court refined a two-part test for admiralty jurisdiction that a trilogy of earlier decisions had developed. The first part, known as the location test, requires the tort to occur on navigable waters. *Id.* at 531–32. The second part, known as the

connection test, has two prongs: First, the incident's "general features" must have "a potentially disruptive impact on maritime commerce." *Id.* at 534. Second, the activity at issue must bear a "substantial relationship to traditional maritime activity." *Id.* at 539–540.

This case turns on the connection test's first prong. According to *Grubart*, this prong's focus is on the "potential effects, not the 'particular facts of the incident . . .'" *Id.* at 538 (citations omitted). As a result, a court should first describe an incident's features at "an intermediate level of possible generality" and then determine if those features "could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping." *Id.* at 539.

### **C. Proceedings in the Trial Court**

Mr. and Mrs. Kopras filed a two-count complaint for damages in state court. The first count concerned Mr. Kopras's breach-of-contract claim, which was settled and dismissed. The second count was Mrs. Kopras's negligence count, which sought property damages under Florida law for the cost of repairing the vessel, its diminution in value, and its loss of use.

After litigating for two years under Florida law, respondent moved for partial summary judgment on all damages except

the cost of repair. Respondent argued that federal maritime law—not state law—applied and that maritime law permits recovery only for the cost of repair. (R. 82–92).

Petitioner argued that the *Grubart* test was not met because the incident’s general features did not involve catastrophic events like collisions, physical injuries, or other catastrophes (such as fires) that could realistically disrupt maritime commerce. (R. 125–36). Rather, the general features of the incident—i.e., unobservable damage to a vessel resting securely in a boat lift—could never pose more than a fanciful risk to maritime commerce. (*Id.*).

The trial court initially agreed and denied partial summary judgment. (R. 138). The case then proceeded to trial under Florida law, and petitioner presented evidence showing damages in excess of \$400,000. But for unrelated reasons, the first trial ended in a mistrial.

Before the second trial, respondent renewed its earlier motion. This time, the trial court granted the motion to apply federal maritime law instead of Florida law. (App. 3a–7a). The trial court reasoned that because this case involved a lift, it was controlled by two federal district court cases, holding that lift incidents potentially disrupt commerce. (App. 5a–7a (following

*Parker v. Darby*, 109 F. Supp. 3d 1347 (M.D. Fla. 2015); *Burke v. Quick Lift, Inc.*, 464 F. Supp. 2d 150 (E.D.N.Y. 2006)).

The case then proceeded to trial, but this time under maritime law, which limited trial issues to liability and cost-of-repair damages. The jury found respondent 100% negligent and awarded petitioner \$135,865 for the cost of repair. (App. 8a–12a). The trial court rendered a final judgment on that verdict. (*Id.*).

### **D. The Court of Appeal’s Decision**

Petitioner appealed the judgment to the Florida Second District Court of Appeal. The salient appellate issue<sup>1</sup> was whether the incident’s “general features”—described at an “intermediate level of possible generality”—posed a “potentially disruptive impact on maritime commerce.” (Initial Br. 16–17 (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 538 (1995))).

The focal point became how to describe the incident’s features under the *Grubart* standard. Petitioner described the incident

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<sup>1</sup> Petitioner also raised the related issue of whether the trial court’s error in failing to apply Florida law constituted harmful error given that it substantially reduced her potential damages. Respondent, however, did not squarely dispute that issue.

as “unobservable damage to a vessel while resting securely on a boat lift.” (Initial Br. 19–20). Those general features, she argued, put the case in a class of incidents involving torts contained to moored structures or anchored vessels, which—according to three federal circuits—do not pose a realistic threat to maritime commerce. (Initial Br. 21–25 & Reply Br. 9–10 (citing *Hargus v. Ferocious & Impetuous, LLC*, 840 F.3d 133 (3d Cir. 2016); *Tandon v. Captain’s Cove Marina of Bridgeport, Inc.*, 752 F.3d 239 (2d Cir. 2014); *Peru v. USS Missouri Mem’l Ass’n, Inc.*, 207 Fed. App’x 843, 844 (9th Cir. 2006); *H2O Houseboat Vacations Inc. v. Hernandez*, 103 F.3d 914 (9th Cir. 1996)).

Respondent advocated for, among others, the following description: “Damage to a vessel, and failure of its lift, at the vessel’s normal place of dockage on navigable water.” (Ans. Br. 13, 25). Because that description involved the lift’s failure, respondent argued that the case was controlled by three federal district court cases holding that vessels and people falling into the water due to failing lifts could potentially disrupt maritime commerce. (Ans. Br. 17–20 (citing *Parker*, 109 F. Supp. 3d at 1347; *Hupp v. Danielson*, No. 3:12-CV-00375, 2013 WL 3208588, \*1 (S.D. Tex. June 24, 2013); *Burke*, 464 F. Supp. 2d at 150)).

Petitioner replied that respondent's description was not moored to reality because no evidence showed or even suggested that the lift "failed" in the sense that *Hupp* and *Burke* used that term. (App. 13a–15a). Although she acknowledged that the *Grubart* standard allows some speculation when predicting commerce's potential impact, she argued that the description itself must still describe features of the incident that actually happened and not features of an incident that never happened. (Reply Br. 2–7).

The Florida appellate court ultimately agreed with respondent and affirmed the trial court's ruling without an opinion. (App. 1a–2a).

## REASONS FOR GRANTING THE WRIT

### **I. Lower courts are in conflict on the proper application of *Grubart's* general-features standard.**

In *Grubart*, Justice Thomas questioned the general-feature standard's meaning and prophetically suggested that the Court "cannot expect that district courts will apply such a concept uniformly in similar cases." 513 U.S. at 553 (Thomas, J., concurring). Although there are many examples proving Justice Thomas correct over the past 23 years, this case joins the growing conflict

over whether incidents contained to a moored vessel or structure pose a realistic threat to maritime commerce.

The Second, Third, and Ninth Circuits have held that incidents on fixed or restrained vessels—unlike incidents on moving or unrestrained vessels—do not potentially disrupt maritime commerce because the harm is self-contained. In contrast, the Fourth Circuit (and now the court below) reached the opposite conclusion in substantially the same context by focusing on different features and then pyramiding inferences to find potential maritime disruptions. Similar confusion and discord in applying *Grubar*'s standard plays out among district courts in circuits that have not addressed the question. Commentators have also highlighted this problem. Therefore, this Court should grant review to resolve this growing conflict and provide guidance on the standard's proper application.

**A. Three federal circuits have held that self-contained incidents on restrained vessels do not potentially disrupt maritime commerce.**

A key feature in this case is that the vessel was damaged while resting securely on the boat lift and not while it was unrestrained or moving through the water

(or at any risk of doing so). (App. 13a–15a). That feature should have brought the case within the class of incidents occurring on restrained vessels or structures, which three federal circuits have held would not realistically disrupt maritime commerce.

The first of these is *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 242 (2d Cir. 2014), which concerned a person injured after being knocked into the water during a fistfight on a floating dock anchored in navigable waters. The Second Circuit rejected the trial court's generic description of a "fight on a dock" and instead characterized the incident as "a physical altercation among recreational visitors on or around a permanent dock surrounded by navigable water." *Id.* at 243 & 249.

The Second Circuit concluded that those features could not realistically threaten maritime commerce because, among other things, incidents occurring on restrained objects like anchored, floating docks pose much different threats than incidents occurring on a traveling vessel. *Id.* at 249–250. Unlike an unrestrained vessel, the anchored dock could not immediately impede or damage nearby commercial traffic. *Id.* at 249 & 251. In other words, the incident does not realistically threaten maritime commerce because the harm is contained to a fixed object. *Id.* at 249–251.

The Third Circuit recently reached the same conclusion in *Hargus v. Ferocious & Impetuous, LLC*, 840 F.3d 133, 134 (3d Cir. 2016). In that case, an empty coffee cup thrown from shore injured a person who was standing on the deck of a vessel anchored near the shore in knee-deep water. *Id.* at 134–35. The lower court described the incident as “personal injury to the passenger of a vessel caused by the captain of the vessel . . . .” and concluded that these features could impact maritime commerce. *Id.* at 135.

The Third Circuit disagreed. It described the incident as “throwing a small inert object from land at an individual onboard an anchored vessel.” *Id.* at 137. And like *Tandon’s* fistfight, the Third Circuit concluded that those features could not potentially disrupt maritime commerce because they were contained to an anchored vessel and thus could not impede navigation, damage nearby commercial vessels, or cause them to divert their course. *Id.* at 138.

The Ninth Circuit applied the same rationale to moored vessels on two occasions. First, in *H2O Houseboat Vacations Inc. v. Hernandez*, 103 F.3d 914, 915 (9th Cir. 1996), the court described the incident’s general features as “the emission of carbon monoxide fumes inside a contained

space within a houseboat tied to the shore.” The court reasoned that those features could not potentially disrupt maritime commerce because the fumes were dangerous only when contained in the houseboat’s sleeping area. *Id.* at 916. The Court rejected arguments that the boat could have drifted after slipping its tie or that this incident could have happened after the family had taken the boat out. *Id.* at 916–17. According to the court, such speculation would require ignoring the “actual ‘incident’ that caused the injury . . . .” *Id.*

The Ninth Circuit reaffirmed its conclusion ten years later in *Peru v. USS Missouri Mem’l Ass’n, Inc.*, 207 Fed. App’x. 843, 844 (9th Cir. 2006), when a tourist fell from a ladder on the USS Missouri, a museum ship that is moored in navigable waters. The court reasoned that maritime law did not apply because the defective ladder was contained within the museum ship and thus could not possibly injure a person or thing outside the ship. *Id.*

The uniform rule arising from *Tandon*, *Hargus*, *H2O*, and *Peru* is that incidents occurring on a fixed or restrained vessel do not potentially disrupt maritime commerce because the harm is self-contained. Logically, this makes sense because a moving or unrestrained vessel poses significantly greater and more realistic risks

to nearby commercial ships, which are more likely to crash into an unrestrained vessel, to alter their course for it, or to even become distracted by it than they would for incidents on a fixed or restrained vessel, especially one fixed or restrained near the shore out of the waterway.

**B. The Fourth Circuit reached the opposite conclusion in the same context.**

Similar features should produce a similar degree of risk under this Court's standard. But that was not the case in *White v. United States*, 53 F.3d 43, 47 (4th Cir. 1995). That case similarly involved an incident on a vessel docked at a pier while undergoing repairs. A security guard injured herself when she stepped off the restrained vessel and stumbled into equipment stored on the pier. *Id.*

The Fourth Circuit broadly described the incident as “injury to a person disembarking from a vessel in navigable water.” *Id.* The court reasoned that this feature could potentially disrupt maritime commerce because the “inability safely to avail oneself of the gangway and its appurtenances would greatly inhibit a variety of activities essential to commercial shipping, more specifically loading, resupply, and the

coming and going of crew and contractors.”  
*Id.*

Yet, a person stumbling while disembarking from a moored vessel is fundamentally no different than a tourist falling from a ladder within a moored vessel (as in *Peru*), a person falling from an anchored-floating dock during a fistfight (as in *Tandon*), or a family being poisoned after falling asleep on a moored houseboat (as in *H2O*): All involve self-contained incidents on a fixed vessel or structure, which the Second, Third, and Ninth Circuits held would not implicate maritime law because they posed no realistic risks to maritime commerce.

But the Fourth Circuit (and the court below) reached a different result by focusing on different features and then pyramiding inferences to find a potential disruption. The Second, Third, and Ninth Circuits, however, refused to pyramid inferences because, before long, the pyramid describes a completely different incident than the one that actually happened just to show a “potential” effect on maritime commerce. *See, e.g., H2O*, 103 F.3d at 917 (“Such speculation, however, would require us to ignore the actual ‘incident’ that caused injury . . . .”); *Tandon*, 752 F.3d at 250–53 (rejecting each of the petitioners’ broad potential impacts as too speculative).

**C. Conflicting district court rulings on similar features further illustrate the confusion in the lower courts.**

Even in federal circuits that have not yet addressed the question, district courts are inconsistently applying the *Grubart* standard on virtually indistinguishable facts.

For example, *In re Houseboat Starship II*, No. 2:05-0086, 2005 WL 3440788, at \*1–\*2 (M.D. Tenn. Dec. 12, 2005), squarely conflicts with the Ninth Circuit’s decision in *H2O*, 103 F.3d at 915–17. Both cases feature injuries from carbon monoxide while sleeping on houseboats tied to a shore. *Id.* But *Starship* found a potential disruption, while *H2O* did not. *Id.* *Starship* claimed *H2O* was distinguishable because *H2O*’s injuries occurred before the houseboat commenced its journey, while *Starship*’s occurred during the journey on an overnight stop. *Starship*, 2005 WL 3440788, \*2. The distinction defies logic because whether an incident self-contained to a moored vessel occurs at the beginning, middle, or end of a trip, the potential risks to maritime commerce do not change.

In contrast, *Boudwin v. Hastings Bay Marina, Inc.*, No. 4:07CV00299 JLH, 2008 WL 2741557, at \*3 (E.D. Ark. July 11, 2008), reached a conclusion similar to the Ninth Circuit’s on facts substantially the same as

those in *Peru*, 207 Fed. App'x. at 844. In *Boudwin*, a person fell through an open hatch after its cover was unknowingly removed behind him. *Boudwin*, 2008 WL 2741557, at \*1. As in *Peru*, the district court concluded that the incident's general features could not threaten maritime commerce because "the injury was isolated to a single pleasure boat docked at a yacht club. No other boats were involved, nor could they have been affected by a single passenger on a docked vessel falling through an open hatch." *Id.* at \*3.<sup>2</sup>

**D. Commentators have also written about the *Grubart* standard's inconsistent application.**

Finally, commentators have also expressed concern about the inconsistent results in admiralty cases over the past 23 years. For example, one scholar surveyed five cases applying this Court's standard to reach conflicting rulings on similar facts. *See* Lawrence D. Bradley, Jr., *The Supreme Court and Maritime Jurisdiction*, 25 Tul. Mar. L.J. 207, 237 (2000). And one student incisively observed that "[s]ince *Grubart*, federal appellate courts' analysis have

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<sup>2</sup> Although *Boudwin*'s final judgment was appealed, the Eighth Circuit did not address the admiralty issue. *Boudwin v. Hastings Bay Marina, Inc.*, 614 F.3d 780, 783 n.3 (8th Cir. 2010).

become less consistent.” Catherine E. Parsiola, Comment, *Lu Junhong v. Boeing Co.: Muddying the Waters of Admiralty Jurisdiction and Removal in Aviation Tort Claims*, 90 Tul. L. Rev. 1045, 1048 (2016).

Other commentators have agreed and some have even attempted to explain the inconsistencies by boldly suggesting that results-oriented judges might be manipulating the general-features standard to reach desired outcomes. *E.g.*, David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 41 Tul. Mar. L.J. 437, 443–46 (2017); Matthew P. Harrington, *After the Flood: Cleaning Up the Test for Admiralty Jurisdiction over Tort*, 29 U.C. Davis L. Rev. 1, 4 & 30–34 (1995); Thomas C. Galligan, Jr., *Of Incidents, Activities, and Maritime Jurisdiction: A Jurisprudential Exegesis*, 56 La. L. Rev. 519, 526–27, 529–31 (1996).

**II. The question presented typifies the important, reoccurring struggle to select the correct level of generality for deciphering between possible versus fanciful maritime disruptions.**

The need for a uniform, predictable line between admiralty and State law cannot be understated. In first holding that a tort’s

location alone was insufficient to displace State law, this Court recognized that courts should “‘proceed with caution’” when “determining whether to expand admiralty jurisdiction . . . .” *Exec. Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 272 (1972). And it is this jurisdictional line that drove Justice Powell and three other dissenters to sound the alarm of federal overreach when, in *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 675–86 (1982), this Court ruled that maritime law could apply to recreational-vessel collisions even if no commercial vessels were involved or actually impacted.

Clarifying this jurisdictional line was also at the heart of *Grubart*’s test, which was intended to catalogue uniform and predictable incidents that are subject to admiralty jurisdiction because the federal interest in protecting maritime commerce was clearly implicated, while eliminating from admiralty the borderline categories of incidents that were clearly unrelated to maritime commerce and for which a State’s interest in its own tort law was more compelling. *See Grubart*, 513 U.S. at 538–39, 544–45.

Unfortunately, as Justice Thomas foretold in *Grubart*, 513 U.S. at 553, this case embodies the pervasive, reoccurring struggle among lower courts to select the

correct level of generality from which to make plucky predictions about whether an incident implicates the federal interest in maritime commerce or a State interest's in local torts. And this struggle arises every time “water is in the air . . . .” Galligan, *supra*, at 526–27.

Federal circuit and district courts have also pleaded for further guidance on this Court's standard. *E.g.*, *In re Petition of Germain*, 824 F.3d 258, 268 n.10 (2d Cir. 2016) (lamenting that this “Court provided no additional guidance as to how lower courts should select the right level of generality.”); *Complaint of Bird*, 794 F. Supp. 575, 581 n.9 (D.S.C. 1992) (pinning for a “clear jurisdictional rule” because the test “invite[s] confusion and inconsistent application . . . .”). This Court should therefore grant review to offer additional guidance on the important, reoccurring jurisdictional question of where State tort law ends and maritime law begins.

### **III. This case provides the ideal vehicle to clarify the important line between maritime and State law.**

This case provides the ideal vehicle for resolving the conflict and affording guidance to lower courts on properly applying the *Grubart* standard for three reasons.

First, the case has straightforward and undisputed facts: A vessel suffering damage while resting securely on a boat lift like any other vessel on a lift. (App. a13–a15). As incidents go, this is about as unremarkable as they come, and yet it could happen to virtually any boat owner throughout the nation.

The Court has previously recognized that “[n]ot every accident in navigable waters that might disrupt maritime commerce will support federal admiralty jurisdiction.” *Foremost*, 457 U.S. at 675 n.5. Yet, the Court’s precedents have never provided an example of features that did not implicate federal admiralty interest because they posed only fanciful risks to maritime commerce. *Id.* at 674–77 (colliding vessels potentially disrupt); *Exec. Jet*, 409 U.S. at 254 (deciding a plane-crash case on a different prong); *Sisson v. Ruby*, 497 U.S. 362–64 (1990) (fires on vessels at marinas potentially disrupt); *Grubart*, 513 U.S. at 538–39 (damaging underwater structures potentially disrupt). This case’s commonplace features—which stand in stark contrast to the disasters addressed in this Court’s precedents—provide the ideal springboard for clarifying both the correct degree of generality for describing incidents and the degree of stackable inferences before

a “potential” risk is pushed into the realm of the “fanciful.”

Second, this case’s sole remaining issue is the proper application of *Grubart*’s standard. All other issues have been resolved, and no collateral issue will interfere with this Court’s ability to answer the question presented.

Finally, the maritime-law issue largely dictated the case’s outcome. Had the trial court not changed course after the first trial by applying maritime law, a jury would have likely also awarded petitioner diminution-in-value and loss-of-use damages since it found respondent 100% negligent and awarded petitioner all the damages she could seek under maritime law (cost of repair). (App. a11–a12). Procedurally, the issue is cleanly presented and outcome determinative.

#### **IV. The Florida court’s decision is wrong.**

Nothing about this case even remotely implicates federal maritime interests. Rather, this is just a simple negligence case, in which respondent caused over \$400,000 in property damages when it failed to properly install a boat lift’s bunks. In holding that maritime law applied, the Florida courts—like the Fourth Circuit in *White*—misapplied this Court’s *Grubart* standard.

When described at an “intermediate level of possible generality,” the general features of this case’s incident are best described as: damaging a vessel while it rests securely on a boat lift. This description is neither too general to differentiate between different cases, nor so specific that it could apply only to this case. *See Grubart*, 513 U.S. at 538–39.

Indeed, that description puts the case well within the class of incidents involving self-contained incidents on restrained vessels like those in the Second, Third, and Ninth Circuits, *supra* pp. 12–16. And like those circuits’ decisions, vessels damaged while resting securely on a lift cannot realistically impede a nearby ship’s navigation, spread the damage to other vessels, distract or remove a commercial vessel or its crew from participating in maritime commerce, or require heroic rescues or other emergency operations as might an incident on a moving or unrestrained vessel.

Because the incident posed no real threat to maritime commerce, respondent needed to invent a potential disruption by recasting the incident’s features to describe an incident that never happened, namely: “damage to a vessel, and failure of its lift, at the vessel’s normal place of dockage on navigable water.” (Ans. Br. 13, 25).

That description's fundamental flaw is that neither the vessel nor the boat lift—nor any part of them—fell into the water or were at risk of falling into the water. (R. 3777:13–15). Rather, by all accounts, the boat lift was not damaged and the vessel rested securely on it for well over a year without further incident. (R. 3478:10–3480:7; 2447:23–2448:2; App. a13–a15). No evidence to the contrary exists to support respondent's description.

Although *Grubart's* standard allows for a certain degree of speculation in determining what potential impact an incident's features may have on maritime commerce, the general features themselves must still be tied to the case's actual facts. *See Grubart*, 513 U.S. at 538–39 (basing description on what actually happened); *H2O*, 103 F.3d at 917 (refusing to consider the possibility that a vessel could slip its tie because that “would require [the court] to ignore the actual ‘incident’ that caused injury to the [appellant]”). Once “failure of its lift” is removed from respondent's description, it is really no different than petitioner's and thus should have been controlled by the Second, Third, and Ninth Circuit's well-reasoned decisions, *supra* pp. 12–16.

In short, a vessel damaged while resting securely on a boat lift poses no greater risk to maritime commerce than an undamaged

vessel resting securely on a lift. To find otherwise would mean that a person could superficially damage the paint of a vessel on a boat lift, and maritime law would apply to the ensuing claim despite the lack of any realistic risk to maritime commerce. That could not have been what the Framers intended or what this Court intended in *Grubart*. This Court should grant certiorari to resolve this case's conflict with federal circuit precedents and to clarify the confusion surrounding *Grubart's* general-feature standard.

### CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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*Counsel for Petitioner*

Dated: January 26, 2018

**APPENDIX A:  
APPELLATE COURT'S JUDGMENT**

District Court of Appeal of Florida,  
Second District.

Rebecca Kopras,

Appellant,

v.

Marco Marine Construction, Inc., a Florida  
Corporation,

Appellee.

Case No. 2D16–3362

Decided: September 1, 2017.

Appeal from the Circuit Court for Collier  
County; Mark A. Steinbeck, Senior Judge  
and Hugh D. Hayes, Judge.

Christopher D. Donovan of Roetzel &  
Andress, LPA, Naples; and Jason Hunter  
Korn and Rachael S. Loukonen of Cohen &  
Grigsby, P.C., Naples, for Appellant.

James N. Hurley, Esther E. Galicia, and  
Christine M. Walker of Fowler White  
Burnett, P.A., Miami, for Appellee Marco  
Marine Construction, Inc.

Before VILLANTI, BLACK, and  
SALARIO, Florida District Court of Appeal  
Judges

Opinion

PER CURIAM:

Affirmed.

**APPENDIX B:  
TRIAL COURT'S ORDER ON ADMIRALTY**

In the Circuit Court of the Twentieth  
Judicial Circuit in and for Collier County,  
Florida.

Robert Kopras and Rebecca Kopras,

Plaintiffs,

v.

Marco Marine Construction, Inc., a Florida  
Corporation,

Defendants.

Case No. 12-CA-908

Signed April 18, 2016

Filed April 18, 2016

**ORDER ON DEFENDANT'S RENEWED  
MOTION FOR APPLICATION OF  
GENERAL MARITIME LAW**

Before HUGH D. HAYES, Circuit Court  
Judge

THIS CAUSE having come before the  
Court upon the Motion of Defendant,  
MARCO MARINE CONSTRUCTION, INC.,

(“MARCO”) for application of general maritime law to this matter, the Court having been advised, it is hereby,

ORDERED AND ADJUDGED as follows:

1. Defendant, MARCO’s motion is GRANTED, see *Parker v. Darby*, 2015 U.S. Dist. LEXIS 64708 (M.D. Fla. May 18, 2015).

2. General maritime law applies to the facts of this case.

DONE AND ORDERED in Chambers, at Collier County, Florida, this 18th day of April, 2016.

**APPENDIX C:  
TRIAL COURT'S ORAL RULING**

In the Circuit Court of the Twentieth  
Judicial Circuit in and for Collier County,  
Florida.

Robert Kopras and Rebecca Kopras,

Plaintiffs,

v.

Marco Marine Construction, Inc., a Florida  
Corporation,

Defendants.

Case No. 12-CA-908

**HEARING TRANSCRIPT**

March 30, 2016

Before HUGH D. HAYES, Circuit Court  
Judge

JUDGE HAYES: Okay. I think that there is reason to reconsider the Court's earlier argument. There is some, of course some case law that was presented by the defense as to the Burke case – and for the court reporter B-U-R-K-E, 464 Federal Supp. 2nd 150. But that case is helpful not

only, of course, because it was involving the installation and failure of a device that was used, specifically a davit, but device used to raise the boat in and out of the water. But its discussion as to what is a potentially disruptive impact on maritime commerce, it was very helpful. Interestingly, in that case neither the plaintiff nor the defendant raised the issue of admiralty jurisdiction. And the judge in that case said kind of sua sponte raised that issue and went into some detail about the potentially disruptive impact language. However, I think that as pointed out by Mr. Dunleavy, the case that Judge Merryday from Tampa District came out with in Parker really is pretty much instructed and binding, I think, on the trial court here. And so that, of course, was the case, as you pointed out, was not available to us the last time. And even as Judge Merryday points out it says, even a boat that it raised above the water, does not affect whether that boat is in navigable waters for the purpose of Federal admiralty jurisdiction. And then they cite several Texas cases. And those also cite to the Supreme Court case. And in that case they cite sea vessel. Says, the Supreme Court has said that a vessel in dry dock is on water not on land for purposes of admiralty jurisdiction.

Not to argue with the Federal judges, but the definition of what isn't on navigable

water and what is on navigable water. I remember when I was in law school we took admiralty and we used to talk about the Everglades. And, you know, it's like the largest body of water in Florida, but it's only one-inch deep. Well, it was just for argument sake I'm saying that. And yet everybody believed that was navigable water.

But, nevertheless, it's kind of an aside. The definition of what is navigable for admiralty jurisdiction are extremely, no puns intended, but extremely fluid and very amorphous. But I think that Judge Merryday's case, I mean, in essence I can see that's really what it boils down to. I think that Florida state law is adequate to handle all of these cases, but it is true that these are affected by Federal maritime policies and procedures. And as an example would be the Parker case that Judge Merryday has entered. And so I would agree that that does apply. And understandably, it does affect the measure of damages. Well, it may also affect the statute of limitations, but I'm not sure that's an issue here. So I'll ask counsel to prepare an order that just reflects that. If you want, you can say that motion granted. See Parker versus Darby, et al as authority in case there's the issue for review.

**APPENDIX D:  
TRIAL COURT'S FINAL JUDGMENT**

In the Circuit Court of the Twentieth  
Judicial Circuit in and for Collier County,  
Florida.

Robert Kopras and Rebecca Kopras,

Plaintiffs,

v.

Marco Marine Construction, Inc., a Florida  
Corporation,

Defendants.

Case No. 12-CA-908

Signed June 28, 2016

Filed July 6, 2016

**FINAL JUDGMENT (Repair Costs)**

Before MARK A. STEINBECK, Senior  
Judge

THIS CAUSE came before the Court for  
trial by jury on May 16-20, 2016 upon the  
claims of Plaintiff, Rebecca Kopras, against  
Defendant, Marco Marine Construction, Inc.

This Court, having heard testimony, considered the evidence presented at trial, and having reviewed and accepted the verdict rendered in this action, it is hereby

ORDER AND ADJUDGED as follows:

1. The trial addressed Plaintiff, Rebecca Kopras' First Amended Complaint against Defendant, Marco Marine Construction, Inc., for Negligence (Count II) wherein Plaintiff alleged a claim for property damages including repair costs, diminished value, and loss of use. Prior to trial, on April 18, 2016, this Court granted Defendant's Renewed Motion for the Application of General Maritime Law ruling that general maritime law applies, thereby limiting Plaintiff's property damages to repair costs and excluding her property damages for diminished value and loss of use.

2. A unanimous verdict was rendered by the jury on May 20, 2016, a copy of which is attached hereto as Exhibit "A." Pursuant to the Verdict, Plaintiff prevailed on her negligence claim (Count III). The jury assigned 100% negligence or fault to Defendant Marco Marine Construction, Inc.; 0% negligence or fault to Plaintiff; and 0% negligence or fault to Robert Kopras (*Fabre* Defendant). The total amount of damages awarded by the jury was \$135,865.00, representing only Plaintiff's repair costs.

3. Pursuant to the Verdict rendered on May 20, 2016, Final Judgment is hereby entered in favor of Plaintiff, REBECCA KOPRAS on Count II (Negligence) of Plaintiff's First Amended Complaint.

4. Pursuant to and in accordance with the Verdict rendered on May 20, 2016, Plaintiff, REBECCA KOPRAS, whose address is 1801 S. Inlet Drive, Marco Island, Florida 34145, shall recover from Defendant, MARCO MARINE CONSTRUCTION, INC., whose last known address is 1757-A San Marco Road, Marco Island, Florida 34145, the principal sum of \$135,865.00 plus prejudgment interest in the sum of \$31,761.54, making a total of \$167,626.54 that is immediately due and payable, for which let execution issue. The principal sum of \$135,865.00 shall continue to bear interest at the rate of 4.78% per year (adjusted annually in accordance with Fla. Stat. § 55.03) until paid, for which let execution issue.

5. Jurisdiction of this case is retained as to the issues of costs and attorneys' fees.

DONE AND ORDERED in Chambers, at Collier County, Naples, Florida, this 28th day of June, 2016.

**EXHIBIT "A"**

**VERDICT**

We, the jury, return the following verdict:

1. Was there a negligent act or omission on the part of Marco Marine Construction, Inc. which was a legal cause of loss, injury, or damage to Rebecca Kopras?

YES ☒ NO ☐

If your answer to question 1 is NO, your verdict is for defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of Rebecca Kopras which was a legal cause of her loss, injury, or damage?

YES ☐ NO ☒

Please answer question 3.

3. Was there negligence on the part of Robert Kopras, which was a contributing legal cause of loss, injury, or damage to Rebecca Kopras?

YES ☐ NO ☒

If your answer to either question 2 or 3 is YES, please answer question 4. If your answers to questions 2 and 3 are NO, skip question 4 and answer questions 5 and 6.

4. State the percentage of any negligence, which was a legal cause of loss,

injury, or damage to Rebecca Kopras that you charge to: (Note: For any response to "NO" to question 2 or 3, place a zero as to that person in answering question 4.)

|                                 |             |
|---------------------------------|-------------|
| Marco Marine Construction, Inc. | <u>100%</u> |
| Rebecca Kopras                  | <u>0%</u>   |
| Robert Kopras                   | <u>0%</u>   |

Total must be 100%

In determining the total amount of damages, do not make any reduction because of the negligence, if any, of Rebecca Kopras and Robert Kopras. If you find that either Rebecca Kopras or Robert Kopras were to any extent negligent, the court, in entering judgment, will make an appropriate reduction in the damages awarded.

Please answer question 5.

5. What is the total amount of Rebecca Kopras' damages?

\$135,865.00

SO SAY WE ALL, this 20th day of May,  
2016.

s/Foreperson

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**APPENDIX E:  
PHOTOGRAPH EXHIBITS**



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