ZARELLA, J., dissenting. Under the rule articulated by the majority, state compensation laws will be extended seaward and allowed to coexist with federal jurisdiction over any claim "involving injuries incurred on navigable waters when the employer and the employee are locally based, the employment contract is performed within the state and partly on land, the injury took place on the state's territorial waters and the employer [is] required under the state [Workers' Compensation] [A]ct to secure compensation for any land based injuries incurred by the employee." Majority opinion, p. ; cf. *Lane* v. *Universal Stevedoring Co.*, 63 N.J. 20, 30–34, 304 A.2d 537 (1973). Thus, the emphasis will be on the "employment relation" and "the determinative factor [will] no longer [be] the precise nature of the employee's activity or his location at the time of his injury, but whether the application of the state's compensation law to the claim materially could undermine the uniformity of the federal laws governing navigation or commerce." Majority opinion, p. . The majority reasons that adoption of such a rule will reduce the jurisdictional uncertainty and confusion that has reigned since *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917), in cases in which waterfront claims previously would have been barred because of the type of work in which the employee was engaged or because of his location at the time of the injury. I disagree. In my view, the rule represents an unwarranted departure from United States Supreme Court precedent, will have the deleterious effect of freeing state jurisdiction from traditional constitutional restraints and will undermine the uniformity and harmony of maritime law that the majority purportedly seeks to protect. Accordingly, I respectfully dissent.

I

I begin by reviewing the applicable legal principles. In light of the fact that "this area of the law [has] been dominated—indeed created—from the beginning by the United States Supreme Court, by far the most important inquiry [is] what the Supreme Court [has] revealed as to its actual or probable position . . . ." 9 A. Larson & L. Larson, Workers' Compensation Law (2006) § 145.05 [3], p. 145-127. I therefore focus my discussion on Supreme Court precedent.

Since *Jensen*, the United States Supreme Court has attempted to balance several considerations each time it has ruled on claims involving maritime injuries. These include a desire to (1) minimize uncertainty for the injured worker with respect to the source of coverage, (2) encourage uniformity in the law so as not to impede or hamper interstate and international commerce, (3) ensure a degree of equity in the relief available to work-

ers within the different states, and (4) maintain the constitutional requirement of exclusive federal jurisdiction in cases involving indisputable maritime injuries that occur on navigable waters.

Because of the seemingly infinite number of ways in which maritime workers may be injured, the legal analysis in any given case is fact intensive, sometimes making it difficult to articulate general principles for future guidance. Nevertheless, a review of the case law suggests that, at different times, one or another of the previously enumerated considerations has caused the court to move in a particular direction. *Jensen*, for example, is notable for having drawn a clear line of demarcation between state and federal jurisdiction at water's edge. See *Southern Pacific Co.* v. *Jensen*, supra, 244 U.S. 217–18. This had the benefit of maintaining the uniformity of maritime law by preventing the states from intruding on what the court deemed an area of exclusive federal jurisdiction. Id., 218. It also reduced uncertainty by making clear where state and federal jurisdiction began and ended for purposes of seeking compensation. At the same time, the *Jensen* line exposed the fact that substantial inequities existed in the availability of relief because Congress had provided no compensation for maritime injuries incurred by workers on navigable waters, whereas many states had provided at least some degree of coverage for maritime related injuries that occurred on land. See, e.g., 9 A. Larson & L. Larson, supra, § 145.02 [2], pp. 145-5 through 145-6 ("the law was relatively clear—perhaps clearer than it has ever been since, but the clarity was obtained at the price of denying compensation to thousands of workers in very hazardous 'amphibious' occupations").

Thereafter, the Supreme Court established the "maritime but local" doctrine in *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469, 42 S. Ct. 157, 66 L. Ed. 321 (1922). In that case, the court determined that states would be permitted to extend their jurisdiction and coverage seaward to "non-maritime" injuries on navigable waters, which were defined as injuries not directly related to navigation or commerce. Id., 476. Because the injuries were considered local, the doctrine did not interfere with the uniformity of maritime law or with the exclusivity of federal jurisdiction over purely maritime injuries. See id. However, the newly articulated rule assigning states sole jurisdiction over such injuries required case-by-case determinations, forced workers to make difficult choices as to the applicability of a state's compensation scheme and created uncertainty for employers as to whether their contributions to a state insurance fund would be sufficient to protect them from liability. See *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, 459 U.S. 297, 306–307, 103 S. Ct. 634, 74 L. Ed. 2d 465 (1983). It also failed to address the continuing differences in coverage provided by the various states and the lack

of federal coverage for strictly maritime injuries incurred on navigable waters. See *John Baizley Iron Works* v. *Span*, 281 U.S. 222, 230–31, 50 S. Ct. 306, 74 L. Ed. 2d 819 (1930) (rejecting application of state compensation laws because repairing completed ship in navigable waters had direct and intimate connection with navigation and commerce).

To remedy the inequities created by this situation, Congress passed the Longshoremen's and Harbor Workers' Compensation Act (longshore act) in 1927; c. 509, 44 Stat. 1424, codified as amended at 33 U.S.C. § 901 et seq.; which codified the *Jensen* line of demarcation between state and federal jurisdiction and provided the coverage previously lacking for maritime workers injured on navigable waters "if recovery . . . through work[ers'] compensation proceedings may not validly be provided by state law." (Internal quotation marks omitted.) *Davis* v. *Dept. of Labor & Industries*, 317 U.S. 249, 253, 63 S. Ct. 225, 87 L. Ed. 2d 249 (1942). Disputes continued, however, regarding whether injuries on navigable waters were directly related to commerce or navigation, with sometimes puzzling results. See, e.g., *Parker* v. *Motor Boat Sales, Inc.*, 314 U.S. 244, 245–47, 62 S. Ct. 221, 86 L. Ed. 184 (1941) (worker who drowned while testing outboard motor was clearly engaged in maritime employment, even though normal duties were primarily nonmaritime in character). This led to the court's articulation of the "twilight zone" in *Davis* v. *Dept. of Labor & Industries*, supra, 256, to resolve jurisdictional questions in very close cases.

In *Davis*, the husband of the petitioner, who was seeking state benefits, had drowned after falling off a barge lying in navigable waters while examining steel he had cut in the process of dismantling a bridge. Id., 251. The United States Supreme Court reversed the decision of the Washington Supreme Court denying the petitioner state benefits because of the difficulty in determining whether relief should be provided under federal or state law. Id., 257–58. The court defined the "twilight zone" as that area of uncertainty between state jurisdiction under the "maritime but local" doctrine and exclusive federal jurisdiction when the injury occurred on navigable waters but its essential character was in doubt. Id., 256. In that "shadowy area"; id., 253; in which both workers and employers were thrust on the "horns of [a] jurisdictional dilemma" because they could not be certain in advance of litigation whether state or federal law applied; id., 255; "the line separating the scope of the two being undefined and undefinable with exact precision" and such a determination being largely a question of fact, the court would give "presumptive . . . weight to the conclusions of the appropriate federal authorities," in the absence of substantial evidence to the contrary, *and* to the constitutionality of the applicable state statutes. Id., 255–56. Consequently, borderline cases would be resolved in favor of coverage by

the jurisdiction that the injured worker initially had selected. 9 A. Larson & L. Larson, supra, § 145.02 [5], p. 145-10.

The concept of the "twilight zone" reduced uncertainty because maritime workers now could apply for state or federal benefits in circumstances "where [longshore act] coverage was available and where the applicability of state law was difficult to determine"; *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, supra, 459 U.S. 309; and be assured of receiving compensation without suffering serious financial loss due to an error of choice. See *Davis* v. *Dept. of Labor & Industries*, supra, 317 U.S. 254. The uniformity of maritime law would be affected only in marginal situations in which state jurisdiction was, in any event, questionable. The "twilight zone" did not affect injuries subject to exclusive federal jurisdiction because their essential character was not in doubt. In fact, *Davis* expressly recognized the continued existence of the *Jensen* line separating federal and state jurisdiction when it stated that "[o]verruling the *Jensen* case would not solve [the jurisdictional] problem" because the court had held in *Parker* that Congress, by enacting the longshore act, had "accepted the *Jensen* line of demarcation between state and federal jurisdiction."[1] Id., 256.

The Supreme Court's next major ruling was issued in *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114, 82 S. Ct. 1196, 8 L. Ed. 2d 368 (1962), in which it determined that concurrent state and federal jurisdiction could be exercised in cases governed by the "maritime but local" doctrine. See id., 126–27. The extension of federal jurisdiction to cases previously covered by state law had the effect of ensuring less uncertainty as to whether an exclusive state remedy applied when the injury occurred on navigable waters, greater equity in the relief available to workers in different states and, to the extent that federal benefits were higher than state benefits, greater uniformity in the law. As a result, all workers who incurred injuries on navigable waters would be covered by the longshore act, regardless of whether state law also applied. This modification to the "maritime but local" doctrine had no material effect on exclusive federal jurisdiction in cases in which an injury was clearly maritime in character.

In 1972, Congress amended the longshore act to provide federal coverage for maritime injuries that occurred on land by expanding the definition of "navigable waters" to include "any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." Pub. L. No. 92-576, § 2, 86 Stat. 1251 (1972), codified as amended at 33 U.S.C. § 903 (a). The amendment defined workers eligible to receive benefits as "any person engaged in

maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairperson, shipbuilder and shipbreaker . . . .'' Pub. L. No. 92-576, § 2, 86 Stat. 1251 (1972), codified as amended at 33 U.S.C. § 902 (3). Previous language providing that federal coverage was available "if recovery . . . through work[ers'] compensation proceedings may not validly be provided by State law'' was eliminated; Pub. L. No. 92-576, § 2, 86 Stat. 1251 (1972); thus recognizing the principle of concurrent jurisdiction established in *Calbeck*. At the same time, Congress enacted a generous increase in federal benefits that exceeded most existing state benefits. The amendments were inspired by, among other things, a desire to eliminate the inequities created when workers whose duties required them to make frequent trips between ship and shore continually moved in and out of federal jurisdiction and received different benefits depending on where they were injured. See *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 262–63, 97 S. Ct. 2348, 53 L. Ed. 2d 320 (1977). The amendments also sought to eliminate disparities in the benefits received by workers in different states for land based injuries and to protect ship owners and employers of longshoremen from lawsuits seeking damages in tort on navigable waters. See id., 261–63. Accordingly, the amendments, which allowed maritime workers on land and sea to receive the same federal benefits regardless of where they were injured, ensured certainty for both employers and workers as to the source and amount of compensation, greater uniformity in the law[2] and an overall increase in benefits for workers across the nation. See id., 272 ("Congress wanted a uniform compensation system to apply to employees who would otherwise be covered by [the longshore] [a]ct for part of their activity. . . . It wanted a system that did not depend on the fortuitous circumstance of whether the injury [to the longshoreman] occurred on land or over water.'' [Citation omitted; internal quotation marks omitted.]).

Several years later, in *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 720–22, 100 S. Ct. 2432, 65 L. Ed. 2d 458 (1980), the Supreme Court held that the 1972 amendments did not preclude state compensation for land based injuries that fell within the longshore act. Concurrent jurisdiction thus was permitted for maritime injuries on both land and sea except in cases of exclusive federal jurisdiction beyond the "twilight zone" in which clearly maritime workers were injured over indisputably navigable waters. See 9 A. Larson & L. Larson, supra, § 145.07 [4], p. 145-143. In sum, Congress and the Supreme Court gradually extended federal jurisdiction across the shoreline and increased federal benefits over the course of sixty-five years to create a uniform body of law that overcame the inequities arising from the multiplicity of state compensation laws and the disparit-

ies that had existed between federal benefits for maritime injuries incurred on navigable waters and state benefits for maritime injuries that occurred on land, without interfering with exclusive federal jurisdiction in appropriate cases.

II

The rule adopted by the majority disrupts this scheme because its practical effect is to permit concurrent state and federal jurisdiction over *all* maritime injuries that occur on navigable waters, thus eliminating exclusive federal jurisdiction over *any* injury covered by the longshore act. The rule thus constitutes a major departure from United States Supreme Court precedent.

The majority's rule is based on its conclusion that "the United States Supreme Court, in its decisions in [*Bethlehem Steel Co.* v. *Moores*, 335 U.S. 874, 875, 69 S. Ct. 239, 93 L. Ed. 417 (1948) (per curiam),[3] aff'g *Moores's Case*, 323 Mass. 162, 80 N.E.2d 478 (1948), and *Baskin* v. *Industrial Accident Commission*, 338 U.S. 854, 70 S. Ct. 99, 94 L. Ed. 523 (1949) (per curiam), vacating 89 Cal. App. 2d 632, 201 P.2d 549 (1949)], clearly has signaled that it no longer will apply the *Jensen* rule to bar waterfront claims under a state's workers' compensation law in cases in which the claim previously would have been barred solely on the basis of the particular type of work that the employee was engaged in or his precise geographical location at the time of injury." Majority opinion, p. . Thus, according to the majority, *every* waterfront case involving facts pertaining to land and sea now falls within the "twilight zone." I do not agree that *Moores's Case* and *Baskin* are susceptible to such a broad interpretation.

In *Moores's Case* and *Baskin*, the Massachusetts Supreme Judicial Court and California District Court of Appeal respectively considered whether claims brought by workers seeking state compensation for injuries incurred while repairing ships fell within the "twilight zone." See *Baskin* v. *Industrial Accident Commission*, supra, 89 Cal. App. 2d 637–38; *Moores's Case*, supra, 323 Mass. 167–68. Almost two decades earlier, the Supreme Court had held in *John Baizley Iron Works* v. *Span*, supra, 281 U.S. 222, that, although the issue of whether work has a direct relation to navigation or commerce "must, of course, be determined in view of [the] surrounding circumstances as cases arise"; id., 230; "[r]epairing a completed ship lying in navigable waters has [a] direct and intimate connection with navigation and commerce . . . ." Id., 232.

In *John Baizley Iron Works*, the worker had been injured while painting angle irons and repairing the floor in the ship's engine room. Id., 228–29. In contrast, the worker in *Moores's Case*, also a ship repair case, was a "rigger" or "tag man" whose duties included assisting crane operators by directing the movement of

material from piers on land to dry docks or ships but required only infrequent work on ships. (Internal quotation marks omitted.) *Moores's Case*, supra, 323 Mass. 164. Although he spent most of his time on the piers, the worker was injured when he slipped on board a ship undergoing repairs while moving to a location where the crane operator could see him better for the purpose of giving signals. Id. The Massachusetts Supreme Court noted that, although ship repair work had been considered a matter of exclusive federal jurisdiction since *John Baizley Iron Works*, the "twilight zone" established in *Davis* had changed the law by setting "up a means of escape from the difficulties involved in drawing the line between State and Federal authority under . . . *Jensen* . . . ." Id., 166. The Massachusetts court explained: "[A]lthough apparently some heed must still be paid to the line between State and Federal authority as laid down in the cases following the *Jensen* case, the most important question has now become the fixing of the boundaries of the new 'twilight zone,' and for this the [*Davis*] case gives us no rule or test other than the indefinable and subjective test of doubt. . . . Probably therefore our proper course is not to attempt to reason the matter through and to reconcile previous authorities, or to preserve fine lines of distinction, but rather simply to recognize the futility of attempting to reason logically about 'illogic,' and to treat the *Davis* case as intended to be a revolutionary decision deemed necessary to escape an intolerable situation and as designed *to include within a wide circle of doubt all water front cases involving aspects pertaining both to the land and to the sea where a reasonable argument can be made either way*, even though a careful examination of numerous previous decisions might disclose an apparent weight of authority one way or the other." (Citation omitted; emphasis added.) Id., 167. The court concluded: "We are the more inclined to include within the 'twilight zone' the case of a workman engaged in an ordinary land occupation although occasionally going upon a dry dock or vessel to make repairs because in the latest case of that particular type decided in the Supreme Court of the United States, *John Baizley Iron Works* . . . although . . . held to be one exclusively of Federal cognizance, three of the justices dissented, and [Associate] Justice [Hugo L.] Black in his opinion in the *Davis* case refers to the [*John*] *Baizley Iron Works* case as if it were one of those responsible for the existing confusion." Id. In a per curiam decision, the United States Supreme Court, citing *Davis*, affirmed the Massachusetts decision upholding the state award of compensation. *Bethlehem Steel Co.* v. *Moores*, supra, 335 U.S. 875.

The following year, the California District Court of Appeal denied a worker's request for state compensation in another ship repair case, concluding that the case fell within exclusive federal jurisdiction. *Baskin*

v. *Industrial Accident Commission*, supra, 89 Cal. App. 2d 637. The worker was a "materialman" whose duties were performed almost entirely on shore. Id., 632. Despite standing instructions that he not be sent aboard ships undergoing repairs, he was ordered on board a ship that was being repaired to assist in moving planks from one hold to another because the crane was unable to do so. Id., 633. While aboard the ship, he fell and suffered injuries. Id. The California court, citing *John Baizley Iron Works*, concluded that the case did not fall within the "twilight zone" because the repairs had a direct and intimate connection with navigation and commerce, and, therefore, application of state law would invade federal jurisdiction. Id., 637. On appeal, the United States Supreme Court vacated the decision and remanded the case for reconsideration in light of *Moores's Case* and *Davis*. *Baskin* v. *Industrial Accident Commission*, supra, 338 U.S. 854.

The Supreme Court's decisions in *Moores's Case* and *Baskin* represented a departure from *John Baizley Iron Works* because they indicated that the court now believed that injuries incurred in ship repair cases or cases involving facts relating to both land and sea did not always fall within exclusive federal jurisdiction, as the court had suggested previously. In neither case, however, did the state court or the United States Supreme Court conclude that *all* ship repair cases necessarily fell within the "wide circle of doubt"; *Moores's Case*, supra, 323 Mass. 167; constituting the "twilight zone." The Massachusetts court simply stated that "[w]e are the *more inclined to include within the 'twilight zone' the case of a workman engaged in an ordinary land occupation* although occasionally going upon a dry dock or vessel to make repairs"; (emphasis added) id.; thus suggesting that the court also believed that ship repair cases involving workers who ordinarily performed their duties on board ships would *not* fall within the "twilight zone."[4]

Moreover, in neither *Moores's Case* nor *Baskin* did the Supreme Court choose to issue an opinion presenting the kind of legal analysis and discussion that might have been expected had it wished to repudiate *John Baizley Iron Works* entirely in order to establish the principle that exclusive federal jurisdiction no longer should govern in *any* ship repair case. The most that can be said after *Moores's Case* and *Baskin* is that the court believed that *some* ship repair cases did not have a "direct and intimate" connection with navigation and commerce, and, consequently, courts could consider those cases as falling within the "twilight zone." Indeed, the Massachusetts court expressly acknowledged continued exclusive federal jurisdiction in cases involving maritime injuries in navigable waters when it stated that "some heed must still be paid to the line between State and Federal authority" and that the "twilight zone" included "all water front cases involving

aspects pertaining both to the land and to the sea *where a reasonable argument can be made either way . . . .*" (Emphasis added.) Id. When the Supreme Court decided *Baskin* one year later, it again determined that the facts raised sufficient jurisdictional doubt to place that case within the "twilight zone." Significantly, in both *Moores's Case* and *Baskin*, the injured workers performed most of their duties on land and were not engaged in the same type of traditional ship repair work as the injured worker in *John Baizley Iron Works*.[5] In fact, the worker in *Baskin* had violated a standing order *not* to board ships when he went on board the ship to assist in moving planks. *Baskin* v. *Industrial Accident Commission*, supra, 89 Cal. App. 2d 633.

That the Supreme Court did not intend *Davis*, *Moores's Case* and *Baskin* to eliminate the *Jensen* line of demarcation is confirmed by the court's direct and indirect references in subsequent opinions to exclusive federal jurisdiction in waterfront cases. For example, in *Hahn* v. *Ross Island Sand & Gravel Co.*, 358 U.S. 272, 273, 79 S. Ct. 266, 3 L. Ed. 2d 292 (1959), in which the court reversed the decision of the Oregon Supreme Court dismissing an action by a worker seeking state compensation for an injury incurred on a barge dredging sand and gravel in navigable waters, the court declared in a per curiam decision that, "if the case were not within the 'twilight zone' . . . the [longshore] [a]ct would provide the *exclusive remedy*."[6] (Emphasis added.) Id. In *Nacirema Operating Co.* v. *Johnson*, 396 U.S. 212, 90 S. Ct. 347, 24 L. Ed. 2d 371 (1969), the court observed that its previous decisions "had permitted state remedies in *narrow areas seaward* of [the *Jensen*] line"; (emphasis added) id., 221; thus suggesting that a broad category of injuries incurred over navigable waters remained subject to exclusive federal jurisdiction. Similarly, in *Sun Ship, Inc.* v. *Pennsylvania*, supra, 447 U.S. 715, the court made several references to the continuing viability of exclusive federal jurisdiction. The court first noted that, before 1972, "marine-related injuries fell within one of three jurisdictional spheres as they moved landward. At the furthest extreme, *Jensen* commanded that nonlocal maritime injuries fall under the [longshore act]. 'Maritime but local' injuries 'upon the navigable waters of the United States' . . . could be compensated under the [longshore act] or under state law. And injuries suffered beyond navigable waters—albeit within the range of federal admiralty jurisdiction—were remediable only under state law." (Citation omitted.) Id., 719. Thereafter, the court also stated that "the pre-1972 [longshore act] ran concurrently with state remedies in the 'maritime but local' zone"; id., 720; and that, in adopting the 1972 amendments extending federal jurisdiction landward, Congress had not expressed an intent to alter the "accepted understanding that federal jurisdiction would coexist with state compensation laws in that field in which the

latter *may constitutionally operate under the Jensen doctrine.*" (Emphasis added.) Id., 722. The court thus expressly recognized the existence of the *Jensen* doctrine more than thirty years after *Moores's Case* and *Baskin*, and said nothing to alter the impression that exclusive federal jurisdiction still governed in cases involving nonlocal maritime injuries.[7] Accordingly, although the Supreme Court has narrowed the doctrine of exclusive federal jurisdiction, it has not overruled *Jensen*, even in ship repair cases.

Other federal and state jurisdictions also have continued to recognize exclusive federal jurisdiction in ship repair cases decided after *Moores's Case* and *Baskin*. See, e.g., *Hughes* v. *Chitty*, 415 F.2d 1150, 1151, 1152 (5th Cir. 1969) (claim subject to exclusive federal jurisdiction when carpenter was injured while repairing ship); *Flowers* v. *Travelers Ins. Co.*, 258 F.2d 220, 221, 228 (5th Cir. 1958) (claim subject to exclusive federal jurisdiction when welder was injured while repairing ocean going tanker), cert. denied, 359 U.S. 920, 79 S. Ct. 591, 3 L. Ed. 2d 582 (1959); *Wellsville Terminals Co.* v. *Workmen's Compensation Appeal Board*, 534 Pa. 333, 335, 338–40, 632 A.2d 1305 (1993) (claim subject to exclusive federal jurisdiction when welder was injured while repairing barge); *Wixom* v. *Travelers Ins. Co.*, 357 So. 2d 1343, 1344 (La. App. 1978) (claim subject to exclusive federal jurisdiction when ironworker was injured while repairing ship). Contra *Duong* v. *Workers' Compensation Appeals Board*, 169 Cal. App. 3d 980, 981, 984, 215 Cal. Rptr. 609 (1985) (claim subject to state jurisdiction when worker was injured while repairing ship); *Beverly* v. *Action Marine Services, Inc.*, 433 So. 2d 139, 140, 143 (La. 1983) (claim subject to state jurisdiction when worker died from inhalation of toxic fumes while repairing ship).

In the present case, the plaintiff was a stevedore whose duties included the loading and unloading of cargo from a ship and who fell because a step gave way while he was descending into the ship's hold. The work of a stevedore or longshoreman differs from that of a ship repair worker and has long been regarded as strictly maritime in nature. See *Northern Coal & Dock Co.* v. *Strand*, 278 U.S. 142, 144, 49 S. Ct. 88, 73 L. Ed. 232 (1928) (work of longshoreman or stevedore on vessel lying in navigable waters has direct relation to commerce and navigation and is clearly maritime); *Southern Pacific Co.* v. *Jensen*, supra, 244 U.S. 217 ("[t]he work of a stevedore . . . is maritime in its nature"); *Atlantic Transport Co.* v. *Imbrovek*, 234 U.S. 52, 61, 34 S. Ct. 733, 58 L. Ed. 1208 (1914) ("[w]e entertain no doubt that the service in loading and stowing a ship's cargo is [a maritime service]"). State and federal courts have not hesitated since *Moores's Case* and *Baskin* to conclude that injuries incurred on navigable waters while loading and unloading cargo are covered exclusively by federal law. See, e.g., *Noah* v. *Liberty*

Mutual Ins. Co., 267 F.2d 218, 218–19 (5th Cir. 1959); *Wells* v. *Industrial Commission*, 277 Ill. App. 3d 379, 380, 386, 660 N.E.2d 229 (1995); *Ellis* v. *Travelers Ins. Co.*, 241 La. 433, 435, 464–65, 129 So. 2d 729 (1961). In addition, the majority has cited no federal authority involving injury to a stevedore in support of its conclusion that stevedores or longshore workers injured while performing their duties on navigable waters should be subject to concurrent state and federal jurisdiction.[8] I would therefore conclude that, because the Supreme Court has not overruled *Jensen* and still refers to the concept of exclusive federal jurisdiction in cases involving maritime injuries that occur on navigable waters, the state lacks jurisdiction to award the plaintiff benefits under the state workers' compensation laws.

The majority relies on *Lane* v. *Universal Stevedoring Co.*, supra, 63 N.J. 20, which quotes from a 1971 treatise on workers' compensation law by Arthur Larson, for the proposition that, after *Moores's Case* and *Baskin*, "[e]ither categories previously held federal are outside the twilight zone or they are not. Both ship repair and ship loading had equally been held federal. Once that line has been broken by a holding that a ship repair case can be treated as a twilight zone case, there is no further ground for distinguishing an unloading case." (Internal quotation marks omitted.) Id., 33, quoting 3 A. Larson, Workmen's Compensation Law (1971) § 89.40, p. 444 n.55. The foregoing quotation from Larson's 1971 treatise, however, was not included in the work's most recent edition. Larson instead writes in 2006 that, "even under the twilight zone doctrine there will be cases falling outside the twilight zone, as when the claimant is clearly a maritime worker and is injured over indisputably navigable waters."[9] 9 A. Larson & L. Larson, supra, § 145.07 [4], p. 145-143, citing, among other cases, *Wixom* v. *Travelers Ins. Co.*, supra, 357 So. 2d 1344 (claim in ship repair case subject to exclusive federal jurisdiction). Accordingly, it cannot be concluded, in light of recent developments in the law, that Larson now believes that the Supreme Court extended the "twilight zone" in *Moores's Case* and *Baskin* to eliminate exclusive federal jurisdiction in all ship repair and ship loading cases.

Moreover, the majority itself points out the paradox in *Lane* that, after concluding that the case was governed by *Moores's Case*, the New Jersey court distinguished the operative facts from the facts in *Jensen* on the ground that the injured worker in *Lane* had "very seldom" been required to work on board a ship; (internal quotation marks omitted) *Lane* v. *Universal Stevedoring Co.*, supra, 63 N.J. 33; thereby suggesting that the court may have believed that *Jensen* and other cases with similar facts would not fall within the "twilight zone."

Finally, I agree with the Fifth Circuit's statement in

Flowers v. *Travelers Ins. Co.*, supra, 258 F.2d 220, that a federal court's "duty faithfully to interpret and apply Federal constitutional principles and . . . [the longshore act]" is too important for it "to be swayed by State Court decisions [it] think[s] are fundamentally erroneous in a field in which . . . the Federal Judiciary . . . has the last say." Id., 227. As a result, although I would not rule out the possibility that the facts in a particular stevedoring case might create sufficient doubt to bring it within the "twilight zone," I do not agree with *Lane* and the majority in the present case that all future ship repairing and stevedoring cases can be expected to raise significant issues of doubt under *Davis*.

III

I also disagree with the rule espoused by the majority because wholesale adoption of such an approach by other jurisdictions could potentially reverse much of the progress that the United States Supreme Court and Congress has made since *Jensen*. As I described in part I of this dissent, the Supreme Court originally permitted overlapping federal and state jurisdiction in *Calbeck* to remedy inequities in the benefits available to workers injured on navigable waters under the "maritime but local" doctrine. This had no effect on the uniformity and harmony of federal maritime law because the injuries in such cases were not directly related to navigation and commerce. The 1972 amendments encouraged uniformity and, therefore, predictability in the law for both employers and workers by limiting employer liability in exchange for an increase in federal benefits and their extension landward. The concept of concurrent jurisdiction that was endorsed in *Sun Ship, Inc.*, did not disrupt the uniformity and predictability achieved by the 1972 amendments because federal benefits generally exceeded state benefits. Expanding *state* jurisdiction *seaward* to cover all cases arising under the longshore act for the purpose of ensuring that workers will receive greater state compensation benefits, however, is not consistent with this pattern. Instead of fostering the harmony and uniformity achieved under federal law, such a rule would introduce variation into the compensation scheme with respect to maritime injuries traditionally subject to exclusive federal jurisdiction, depending on the state in which the injury occurred, and thus would compromise the uniformity and predictability that was a primary motivation behind adoption of the 1972 amendments.[10]

In *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 163–64, 40 S. Ct. 438, 64 L. Ed. 834 (1920), the Supreme Court declared unconstitutional a sweeping law passed by Congress granting states the right to extend remedies to *any* maritime injury incurred on navigable waters. The court concluded that such a delegation of legislative power to the states would defeat the purpose of the

constitution of preserving the harmony and uniformity of federal law. Id., 164. The court explained: "The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere." Id., 160. "[I]f every State may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which framers of the Constitution both foresaw and undertook to prevent." Id., 166.

Almost all of the issues that motivated Congress and the Supreme Court to clarify *Jensen* over the past ninety years have been addressed. Uncertainty with respect to the source of coverage and inequities in the relief available to injured workers has been eliminated because federal law presently covers all maritime related injuries, regardless of whether they occur on land or sea. Moreover, federal law has achieved uniformity with respect to maritime injuries incurred on navigable waters, except in doubtful cases that fall within the "twilight zone." Lastly, exclusive federal jurisdiction has been preserved over indisputably maritime injuries that occur on navigable waters. Permitting state compensation laws to govern in *all* cases arising under the longshore act cannot help but introduce the type of uncertainty and variability into the compensation scheme that the Supreme Court and Congress have sought to overcome since *Jensen* because such laws may provide benefits in many cases that differ from those provided under federal law.

Ironically, the principal rationale that the majority advances to broaden concurrent jurisdiction is that it would eliminate "uncertainty and confusion about whether the choice of jurisdiction would be the correct one and the need for courts to maintain hairline distinctions that [seem] implausible on their face." Text accompanying footnote 22 of the majority opinion. Although I agree that this was an appropriate justification for creating the "twilight zone," it has no relevance to cases involving clearly maritime injuries incurred on navigable waters because such cases, by definition, do *not* generate confusion and uncertainty as to the choice of jurisdiction. Accordingly, I believe that if the law is changed to permit concurrent state and federal jurisdiction in all cases arising under the longshore act, such

a change should be implemented by the United States Supreme Court, which has not overruled *Jensen* or decided that stevedoring cases do not fall within exclusive federal jurisdiction.

Accordingly, I respectfully dissent.

[1] In asserting that the United States Supreme Court's affirmation of the *Jensen* line in *Davis* "hardly constitutes a ringing endorsement of the rigid *Jensen* rule," the majority uses unnecessary hyperbole to suggest that I believe that *Davis* unequivocally endorses *Jensen*. Footnote 9 of the majority opinion. This is not the case. I do not view *Davis* as a "ringing endorsement" of *Jensen* because, in creating the "twilight zone," the court *precluded* exclusive federal jurisdiction in cases that occupied that "shadowy area" in which state laws also could provide compensation for injuries incurred on navigable waters. *Davis* v. *Dept. of Labor & Industries*, supra, 317 U.S. 253. I merely make the point that the court acknowledged that areas of exclusive state and federal jurisdiction continued to remain *even after* creation of the "twilight zone" to deal with the "doubtful jurisdictional line" separating the two; id., 256; a conclusion that the majority does not appear to dispute. Although the Supreme Court subsequently endorsed concurrent jurisdiction in cases falling within the "maritime but local" doctrine; see *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114, 126–27, 82 S. Ct. 1196, 8 L. Ed. 2d 368 (1962); and interpreted *Davis* to mean that concurrent jurisdiction could be exercised in cases falling within the "twilight zone"; see *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 718, 100 S. Ct. 2432, 65 L. Ed. 2d 458 (1980); thus demonstrating, as the majority points out, that "the scope of the longshore act does not negatively [define] the scope of states' jurisdiction under the federal constitution," these developments do not diminish the fact that the court in *Davis* did not overrule *Jensen* or suggest that exclusive jurisdiction no longer existed with respect to cases that did not fall within the "twilight zone."

[2] The majority states that, "in enacting the longshore act and subsequent amendments, Congress was not concerned with protecting the uniformity of maritime law, but with ensuring a minimum recovery for all injured waterfront workers . . . ." Footnote 22 of the majority opinion. This is not an accurate representation of Congressional intent, as indicated in the following passage from the Congressional committee report explaining the purpose of the act: "The present Act, insofar as longshoremen and ship builders and repairmen are concerned, covers only injuries which occur 'upon the navigable waters of the United States.' Thus, *coverage of the present Act stops at the water's edge*; *injuries occurring on land are covered by State Work*[*ers'*] *Compensation laws. The result is a disparity in benefits payable . . . for the same type of injury depending on which side of the water's edge and in which State the accident occurs.*

* * *

"*The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity.*" (Emphasis added.) H.R. Rep. No. 92-1441, pp. 10–11 (1972); accord S. Rep. No. 92-1125, pp. 12–13 (1972); see also *P.C. Pfeiffer Co.* v. *Ford*, 444 U.S. 69, 83, 100 S. Ct. 328, 62 L. Ed. 2d 225 (1979) ("Congress intended to apply a simple, uniform standard of coverage").

The Supreme Court further explained in *Northeast Marine Terminal Co.* v. *Caputo*, supra, 432 U.S. 249, that "[t]he main concern of the 1972 Amendments was not with the scope of coverage but with accommodating the desires of three interested groups: (1) shipowners who were discontented with the decisions allowing many maritime workers to use the doctrine of 'seaworthiness' to recover full damages from shipowners regardless of fault; (2) employers of the longshoremen who, under another judicially created doctrine, could be required to indemnify shipowners and thereby lose the benefit of the intended exclusivity of the compensation remedy; and (3) workers who wanted to improve the benefit schedule deemed inadequate by all parties. Congress sought to meet these desires by 'specifically eliminating suits against vessels brought for injuries to longshoremen under the doctrine of seaworthiness and outlawing indemnification actions and "hold harmless" or indemnity agreements[; continuing] to allow suits against vessels or other third parties for negligence[; and raising] benefits to a level commensurate with present day salaries and with the needs of injured workers whose sole support will be payments under the Act.' " Id., 261–62. Thus, "the [longshore] [a]ct [is] not a simple remedial statute intended for the benefit of the workers. Rather, it was designed to strike a balance

between the concerns of the longshoremen and harbor workers on the one hand, and their employers on the other. Employers relinquished their defenses to tort actions in exchange for *limited and predictable liability*. Employees accept the limited recovery because they receive prompt relief without the expense, uncertainty, and delay that tort actions entail." (Emphasis added.) *Morrison-Knudsen Construction Co.* v. *Director, Office of Workers' Compensation Programs*, 461 U.S. 624, 635–36, 103 S. Ct. 2045, 76 L. Ed. 2d 194 (1983). Thus, in addition to increasing benefits and reducing uncertainty for maritime workers, the 1972 amendments promoted the equally important goal of predictability and uniformity in the law for employers.

[3] In the interest of simplicity, we refer to the United States Supreme Court's decision in *Bethlehem Steel Co.* v. *Moores*, supra, 335 U.S. 874, as *Moores's Case*.

[4] The majority states that the Massachusetts court's reference in the next sentence to the fact that the distinction between making repairs to a completed ship on navigable waters and performing similar work on a ship under construction on navigable waters is of "doubtful practical validity"; *Moores's Case*, supra, 323 Mass. 168; clearly indicates that, "even if the claimant's primary employment had been ship repair, his claim would have been treated [by the Massachusetts court] the same as if he had been engaged in shipbuilding, that is, as subject to state compensation law." Footnote 21 of the majority opinion. I disagree because such a conclusion is unsupported by the express words of the court. Not only did the Massachusetts court state that it was "more inclined" to include within the "twilight zone" cases involving workers engaged in "ordinary land occupation[s]"; *Moores's Case*, supra, 167; it also recognized that *Davis* did *not* overrule *Jensen*; id., 166; and stated that "some heed must still be paid to the line between State and Federal authority as laid down in the cases following the *Jensen* case . . . ." Id., 167. More importantly, however, it never suggested that *all* future ship repair cases in Massachusetts should be subject to concurrent state and federal jurisdiction. See id., 166–67.

[5] Compare *Baskin* v. *Industrial Accident Commission*, supra, 89 Cal. App. 2d 632–33, and *Moores's Case*, supra, 323 Mass. 164, with *John Baizley Iron Works* v. *Span*, supra, 281 U.S. 230, 232.

[6] The majority grossly oversimplifies and misrepresents *Hahn* when it states that the case stands for the proposition that "states have jurisdiction over [claims involving] an injury incurred by an employee while on a boat in navigable waters" and that the court's reference to "exclusive federal jurisdiction is: (1) dict[um]; and (2) of no assistance in determining the contours of the twilight zone." Footnote 22 of the majority opinion. Properly understood, *Hahn* stands for the proposition that the longshore act does not prevent an injured worker from obtaining state compensation benefits in a "twilight zone" case. *Hahn* v. *Ross Island Sand & Gravel Co.*, supra, 358 U.S. 273; see also *Peter* v. *Hess Oil Virgin Islands Corp.*, 903 F.2d 935, 947 (3d Cir. 1990), cert. denied, 498 U.S. 1067, 111 S. Ct. 783, 112 L. Ed. 2d 846 (1991). Moreover, I do not cite *Hahn* for the purpose of determining the "contours" of the "twilight zone" but simply to demonstrate that the Supreme Court continued to recognize exclusive federal jurisdiction in cases involving maritime injuries in the years following *Moores's Case* and *Baskin*.

[7] The majority minimizes the court's references to exclusive federal jurisdiction over nonlocal maritime injuries in *Sun Ship, Inc.*, when it claims that the court was not attempting "to define the current scope of 'nonlocal maritime injuries' under the [federal] constitution." Footnote 22 of the majority opinion. The majority misses the point that, in its most recent full-fledged opinion addressing concurrent state and federal jurisdiction over maritime injuries, the Supreme Court declined to question the "accepted understanding" in 1972 that state jurisdiction in compensation matters was subject to certain *constitutional limitations* under *Jensen*. *Sun Ship, Inc.* v. *Pennsylvania*, supra, 447 U.S. 722; see also *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, supra, 459 U.S. 306 ("[b]eginning with [the court's] decision in *Southern Pacific Co.* v. *Jensen*, [supra, 244 U.S. 205, it was] held that there were certain circumstances in which States could not, consistently with Art. III, § 2, of the Constitution, provide compensation to injured maritime workers"). Furthermore, it is irrelevant that the Supreme Court has not preempted the application of state law from the field covered by exclusive federal jurisdiction in light of the fact that it has never been required to decide that question.

[8] The only three cases involving stevedores cited by the majority are *Allsouth Stevedoring Co.* v. *Wilson*, 220 Ga. App. 205, 469 S.E.2d 348 (1996),

cert. denied sub nom. *Strachan Shipping Co.* v. *Wilson*, No. S96CO936, 1996 Ga. LEXIS 570 (May 3, 1996), *Lane* v. *Universal Stevedoring Co.*, supra, 63 N.J. 20, and *Richard* v. *Lake Charles Stevedores*, 95 So. 2d 830 (La. App. 1957), cert. denied, 355 U.S. 952, 78 S. Ct. 535, 2 L. Ed. 2d 529 (1958). In *Allsouth Stevedoring Co.*, the Georgia Court of Appeals concluded that, in light of the split of authority among states that have dealt with the issue of exclusive federal jurisdiction in cases involving stevedores injured on navigable waters, the matter should be resolved on the basis of policy considerations. *Allsouth Stevedoring Co.* v. *Wilson*, supra, 209–10. The court then determined that concurrent state and federal jurisdiction was appropriate because to decide otherwise would create the untenable situation of a stevedore "walk[ing] in and out of state [jurisdiction] many times each day." Id., 210. The Georgia court reasoned that state coverage of employees for identical injuries suffered on land or sea would place "no new burdens on employers." Id. I reject this reasoning because it is unrelated to the criteria used by the Supreme Court for determining whether a case falls within the "twilight zone." I also note that *Allsouth Stevedoring Co*. is not a federal case.

In *Richard* v. *Lake Charles Stevedores*, supra, 95 So. 2d 832, in which the injured stevedore also was granted permission to recover under state compensation law, the United States Supreme Court denied the employer's petition for a writ of certiorari to appeal from the decision of the Louisiana appeals court, thus expressing no opinion on the matter. See, e.g., *Boumediene* v. *Bush*, U.S. (58 U.S.L.W. 3528, April 2, 2007) (Stevens and Kennedy, Js.) ("denial of certiorari does not constitute an expression of any opinion on the merits"). I further discuss *Lane* in the text of this opinion.

[9] The majority characterizes this conclusion as an "inexplicable discrepancy" that is "unsupported by any analysis and . . . is entirely inconsistent with the analysis that Larson had performed"; footnote 17 of the majority opinion; in prior sections of the treatise, in which he states that "everything [the Supreme Court] had said [prior to 1972], or, more exactly, everything that it had done or omitted to do, placed it on the side of . . . not limiting state jurisdiction by pre-*Davis* tests." 9 A. Larson & L. Larson, supra, § 145.05 [3], p. 145-127. The majority, however, misconstrues Larson, who makes repeated references to the fact that the law was fraught with ambiguity prior to 1972. For example, Larson writes immediately before making the above quoted statement that the Supreme Court never had formally addressed the issue of whether state jurisdiction should be extended to injuries previously subject to exclusive federal jurisdiction, such as those arising in the course of loading and unloading ships or repairing completed vessels. Id. Larson further writes that, although there was "an impressive line of decisions" in favor of concurrent jurisdiction in such cases, there also was "substantial authority" in favor of exclusive federal jurisdiction. Id. Larson then speculates, in effect, that nothing in the Supreme Court's decisions prior to 1972 was *inconsistent* with the conclusion that exclusive federal jurisdiction over maritime injuries no longer existed. Id. He goes on to cite *Moores's Case* and *Baskin*, among others, to support his view that, prior to 1972, the Supreme Court had not precluded a state from applying its compensation law to a waterfront injury on *grounds related to the "local-concern doctrine*" in more than forty years. (Emphasis added.) Id., p. 145-129. Larson concedes that "[s]uch agonizing as was done over this problem in the last couple of generations was done, not by the United States Supreme Court, but by several state courts, and, within the federal system, chiefly by the Fifth Circuit. Louisiana, New Jersey, and Texas produced decisions facing *both ways*. So did the Fifth Circuit . . . ." (Emphasis added.) Id. In discussing *Calbeck*, Larson continues to acknowledge ambiguity in the law when he states that the Supreme Court's ruling "did not necessarily imply that a symmetrical result must follow" in cases in which exclusive federal jurisdiction is presumed. Id. Larson nevertheless writes that a "strong case could be made" for the proposition that the rationale of *Calbeck* cut in both directions. Id.

The treatise later discusses the development of the law *following* the enactment of the 1972 amendments. In response to the question of "[w]hat, if anything, did the 1972 amendments do to change the law as [it related] to the 'twilight zone' and concurrent jurisdiction doctrines," Larson declares, "legally, nothing." Id., § 145.07 [1], p. 145-138. Larson ultimately concludes that, even after 1972, certain cases would continue to fall outside the "twilight zone." Id., § 145.07 [3], p. 145-143. Viewed in its entirety, Larson's commentary thus recognizes that different jurisdictions had reached different conclusions about the continued viability of exclusive federal jurisdiction over

maritime injuries incurred on navigable waters. He would interpret Supreme Court precedent such as *Moores's Case*, *Baskin* and *Calbeck*, however, as supporting the notion that concurrent federal and state jurisdiction exists over injuries formerly subject to exclusive federal jurisdiction, although he still believed that, under present law, some cases would continue to fall outside the "twilight zone." Larson's final conclusion is therefore not an "inexplicable discrepancy" that is inconsistent with his prior analysis but grows out of his express recognition of the unresolved controversy surrounding the issue since Congress enacted the 1972 amendments.

The majority also discredits Larson's conclusion regarding the limits of the "twilight zone" on the ground that one of the cases that Larson cites, namely, *Hernandez* v. *Mike Cruz Machine Shop*, 389 So. 2d 1251, 1252 (Fla. App. 1980), was governed by a state statute that precluded application of state compensation laws when an employee's injury was covered by the longshore act. The majority further notes that, although Larson also cites *Wixom* v. *Travelers Ins. Co.*, supra, 357 So. 2d 1344, in which there was no similar state statute and in which a Louisiana appeals court determined that the worker could not receive state benefits because his injury was subject to exclusive federal jurisdiction, *Wixom* has been questioned by the Louisiana Supreme Court. See *Logan* v. *Louisiana Dock Co.*, 541 So. 2d 182, 188 n.17 (La.) (*Wixom* "reflect[s] an anomalous and overly restrictive view of concurrent jurisdiction"), cert. dismissed, 492 U.S. 939, 110 S. Ct. 30, 106 L. Ed. 2d 639 (1989). Moreover, according to the majority, Larson implicitly has rejected the reasoning in *Wixom*. Whether Larson agrees with the reasoning in *Wixom*, however, has no bearing on his express conclusion that some cases continue to fall outside the "twilight zone." As for the fact that *Wixom* has been questioned, the point of view expressed in *Wixom* also was expressed in other cases cited in the treatise. See, e.g., A. Larson & L. Larson, supra, § 145.05D [3], p. D145-34 n.12 (digest to chapter 145), citing *Flowers* v. *Travelers Ins. Co.*, supra, 258 F.2d 220. Finally, the fact that *Hernandez* was governed by a state law precluding state compensation when coverage is afforded under the longshore act does not undermine Larson's conclusion as to exclusive federal jurisdiction because a law of this nature would cover such cases, among others. Insofar as *Lane* continues to govern in New Jersey, I simply note that other jurisdictions disagree with the analysis in *Lane*; see, e.g., *Flowers* v. *Travelers Ins. Co.*, supra, 258 F.2d 227–28; and the case has been cited only once in New Jersey and by one other jurisdiction during the thirty-four years since it was decided. See *Duong* v. *Workers' Compensation Appeals Board*, supra, 169 Cal. App. 3d 983–84; *Lister* v. *J.B. Eurell Co.*, 234 N.J. Super. 64, 77, 560 A.2d 89 (App. Div. 1989).

[10] The majority's claim that perpetuating the concept of exclusive federal jurisdiction will not foster uniformity in the law because it will require the " 'handling [of] coverage questions on a case-by-case basis, with all the administrative burdensomeness and endless uncertainty that this entails,' " is without foundation. Footnote 22 of the majority opinion. Cases subject to exclusive federal jurisdiction, by definition, clearly fall within the federal sphere because of the nature of the worker's employment and the location of his injury on navigable waters. Retaining exclusive federal jurisdiction in such cases will ensure that ship owners who employ workers in different states are held liable under a single compensation scheme. The majority's rule, "under which all such injuries are treated the same"; id.; contains an inherent contradiction because treating such injuries "the same" does not refer to the substance of the law but to the fact that both state and federal law apply, which will lead to diversity, rather than foster uniformity, in maritime law. In addition, a system that permits concurrent jurisdiction for all injuries incurred on navigable waters is likely to increase the administrative burden on ship owners as well as their insurance costs because workers very likely will file dual claims under federal and state law, as in the present case. The majority's preoccupation with "practical concerns" does not appear to consider this potential problem. Footnote 9 of the majority opinion.