Counsel for the Plaintiff-Appellant, Virgilio T. Dieron, Jr.
Tatyana Cerullo, M.I. Adm. # 150
804 Kainoa Pl
Honolulu, Hawaii 96821
tc.law.lllc@gmail.com
808-722-6816

Melvin C. Narruhn
RMI Admission no. 161
PO Box 774
Majuro, MH 96960
Cell: 455-0304
Email: mallippen@yahoo.com

Richard J. Dodson
Kenneth Hooks, III
DODSON & HOOKS, LLC
112 Founders Drive
Baton Rouge, Louisiana 70810
Tel: +225-756-0222
Email: Jerry@dodsonhooks.com
Kenny@dodsonhooks.com

IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR., Plaintiff, v. STAR TRIDENT XII, LLC Defendant	S.Ct. Case No. 2018 - 015 H.Ct. Civil No. 2017 - 245 **REPLY**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Plaintiff-Appellant Virgilio T. Dieron ("Dieron") respectfully replies to the answering brief filed by Defendants-Appellees Star Bulk Shipmanagement Company (Cyprus) Limited ("SBSC") and Star Trident XII, LLC ("Trident").

I. The High Court erred in granting SBSC leave to intervene

Dieron invited SBSC to submit a case where a signatory to a POEA Contract, like SBSC, against whom no claims have been made, has been allowed to intervene and interpose the terms of its POEA contract into the litigation to compel arbitration. SBSC was not able to do so.

Instead, SBSC cited two non-maritime cases, also cited by the High Court, that are inapposite. In *Tech. & Intellectual Prop. Strategies Grp. PC v. Insperity, Inc.*, No. 12-CV-03163-LHK, 2012 WL 6001098, (N.D. Cal. Nov. 29, 2012) the plaintiff's claims were based on the terms of the contract and a parent/subsidiary relationship existed between the defendant and intervenor. Dieron's claims are not based on the terms of the POEA contract and Trident and SBSC are not parent and subsidiary. In *CBS Inc. v. Snyder,* 136 F.R.D. 364 (S.D.N.Y. 1991), the plaintiff's claims were based on the terms of a contract the intervenor had negotiated. Again, Dieron's claims are not based on the terms of the POEA contract and the Philippine government, not SBSC, negotiated the terms of the POEA contract. These cases do not support intervention by SBSC.

The High Court in its *Order Granting SBSC's Motion to Intervene* reasoned SBSC had a significant protectable interest in the litigation because SBSC was liable for all claims, as follows:

> Even if Dieron's assertions regarding the source of his claims are true (*i.e.*, general maritime law versus the POEA contract), SBSC still has a significant protectable interest in litigating the applicability of the arbitration clause set forth in Section 29 of the POEA Contact. This is so because under Section 20.J. of the POEA Contract, **SBSC's liability covers** not just claims arising under the contract, but "**all claims** in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country." Under Section 20.J., **SBSC, as the employer, is liable not just for claims arising under the POEA Contract but for all claims** arising under "contract, tort, fault or negligence." These claims

> include Dieron's claims under general maritime law for unseaworthiness, negligence and maintenance and cure, arising from a personal injury in [sic] suffered while serving as an employee on board the Vessel.[1]

The High Court's reasoning that SBSA had a significant protected interest in the litigation because of SBSA's liability was error. The POEA contract's terms do not provide that SBSC is liable for "all claims arising under 'contract, tort, fault or negligence'" against ***all persons***. Under the High Court's reasoning, SBSC, as employer, must take on responsibility for any and all persons who cause damage to Dieron while he is employed by SBSC and SBSC may therefore intervene. The High Court cited no authority for, nor did SBSC recognize such global liability. Instead, in its answering brief, SBSC stated "[] SBSC sought intervention in order to protect its contractual rights under Sections 20J, 29 and 30 its [sic] Contract with Dieron, which provide that the **compensation under the Contract** shall cover all Dieron's claims in relation to with or in the course of his employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of Philippines or any other country, and that any disputes shall be arbitrated in the Philippines under Philippine law."[2] The significant protected interest advanced by SBSC was not its own expanded liability, but its interest in limiting the compensation available to Dieron and the financial exposure to Trident, an affiliated corporation, which SBSC advanced as its "business model." Dieron submits permitting vessel owners to escape financial consequence for their unseaworthy vessels may be a significant interest, but it should not be protectable.

Under the High Court's ruling, the POEA contract provides an expanded workers' compensation scheme that covers all persons who cause injury to an employee, whether an employer or not, and even when no claims have been brought against the employer. As applied to

---

[1] *Defendants'-Appellees' Answering Brief,* p. 6, 7.
[2] *Defendants'-Appellees' Answering Brief,* p. 9.

Trident, discussed *infra,* this expanded workers' compensation scheme permits the contractual derogation of a vessel owner's obligations under the general maritime law.

The High Court erred in allowing SBSC to intervene and insert the POEA contract's arbitration clause, choice of law clause, and elaborate scheme of compensation into the litigation.

A. The High Court's errors are highlighted by its Order compelling Dieron to arbitrate his claims against SBSC

The High Court's errors in permitting SBSC to intervene and in its erroneous application of the doctrine of equitable estoppel are highlighted by the Court's order compelling Dieron to arbitrate non-existent claims against SBSC. Dieron maintains this order by the High Court demonstrates the true intervenor is not SBSC, but the POEA contract, which the High Court erroneously allowed to be used by Trident as a shield to its obligations to Dieron under the general maritime law.

Trident and SBSC have cited no jurisprudence that has ordered a plaintiff to arbitrate non-existent claims. In *SEC v. Ross,* 504 F.3d 1130, 1150-51 (9th Cir. 2007), the issue was whether an intervenor could assert the court's lack of personal jurisdiction over itself in the context of a disgorgement motion entered by a receiver against him. In *Barnes v. Harris,* 783 F.3d 1185, 1190-91 (10th Cir. 2015), citing *Alvarado v. J.C. Penney Co.* , 997 F.2d 803, 804-5 (10th Cir. 1993), an intervenor was allowed to reurge a previously filed motion for summary judgment, in the nature of a declaratory action, regarding prior claims voluntarily dismissed against it. In none of these cases was an intervenor allowed to assert an arbitration agreement solely on another defendant's behalf.

While the order is harmless, it demonstrates the flawed analysis the High Court used in its equitable estoppel analysis. As recognized by the *Mundi*[3] court, the *DuPont*[4] test, adopted by this Honorable Court in *Mongaya*[5] and applied in the case at bar by the High Court, is not applicable when a nonsignatory defendant seeks to compel arbitration. The court in *Mundi* stated as follows:

> Although *DuPont* addressed the issue of a nonsignatory seeking to enforce an arbitration agreement against a signatory, in that case, **it was a nonsignatory who brought claims against the signatory, rather than the signatory bringing claims against a nonsignatory.**
> *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1045–46 (9th Cir. 2009).

II. The High Court erred in compelling Dieron to arbitrate his claims against Trident

A. This case is distinguishable from *Mongaya*

As preliminary issue, *Mongaya* is not based on *Mundi,* as asserted by appellees. And, while *Mongaya* considered and discussed language from many cases, it ultimately adopted language from *DuPont* as the law of the RMI. The case at bar is distinguishable from *Mongaya,* as Mongaya brought claims against both his employer and the owner of the vessel upon which he was injured. Dieron brought no claims against his employer SBSC, only against vessel owner Trident. This is not simply artful pleading. Dieron brought no claims against SBSC, will bring no claims against SBSC, and cannot bring claims against SBSC as a vessel owner under the general maritime law as he did and can against Trident. The claims are distinguishable.

B. *Mongaya* should be reconsidered

---

[3] "Although *DuPont* addressed the issue of a nonsignatory seeking to enforce an arbitration agreement against a signatory, in that case, it was a nonsignatory who brought claims against the signatory, rather than the signatory bringing claims against a nonsignatory." *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1046 (9th Cir. 2009)("*Mundi*")(Emphasis added).

[4] *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates,* 269 F.3d 187, 199 (3d Cir.2001)("*DuPont*").

[5] *Mongaya v. AET MCV BETA LLC, et al.*, S.Ct. No. 2017-003 (Aug. 10, 2018)(slip opinion), reconsideration denied (Sep. 5, 2018)("*Mongaya*").

Mongaya should be reconsidered because it adopted a test for equitable estoppel that was not properly applicable to its circumstances. Trident has not cited to a single case where the "second test" for equitable estoppel explained in *DuPont,*[6] which was adopted by this Honorable Court in *Mongaya,* was used to evaluate a motion to compel arbitration by a nonsignatory to a POEA contract. Instead, all U.S. courts, including the court in *Aggarao*[7], use the test for equitable estoppel developed in *MS Dealer* and adopted by the Ninth Circuit in *Mundi.* The RMI is completely alone is using *DuPont* to evaluate equitable estoppel in POEA cases.

C. Dieron did not misconstrue *DuPont* or *Mundi*

The *DuPont* court discussed two theories of equitable estoppel. The *Mongaya* court adopted the second *DuPont* theory as the law of the RMI, although improperly attributing it to *Mundi. Mundi* expressly rejected both theories as inapplicable where a nonsignatory defendant seeks to compel a signatory plaintiff to arbitrate claims made against it. *DuPont* stated as follows:

> As the Second Circuit recently explained, there are two theories of equitable estoppel in this context. First, courts have held non-signatories to an arbitration clause when the non-signatory knowingly exploits the agreement containing the arbitration clause despite having never signed the agreement. *Thomson–CSF, S.A. v. American Arbitration Assoc.*, 64 F.3d 773, 778 (2d Cir.1995). Second, courts have bound a signatory to arbitrate with a non-signatory "at the nonsignatory's insistence because of 'the close relationship between the entities involved, as well as the relationship of the alleged wrongs to the nonsignatory's obligations and duties in the contract ... and[the fact that] the claims were intimately founded in and intertwined with the underlying contract obligations.' " *Id.* at 779 (quoting *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.*, 10 F.3d 753, 757 (11th Cir.1993)) (quoting *McBro Planning & Dev. Co. v. Triangle Elec. Const. Co.*, 741 F.2d 342, 344 (7th Cir.1984))(internal quotation marks omitted).
>
> * * *
>
> With reference to the second theory of equitable estoppel, appellants rely on a series of cases in which signatories were held to arbitrate related claims against parent companies who were not signatories to the arbitration clause. In each of these cases, a signatory was bound to arbitrate claims brought by a non-signatory because of the close relationship between the entities involved, as well as the relationship of

---

[6] *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates,* 269 F.3d 187, 199 (3d Cir.2001)("*DuPont*").

[7] *Aggarao v. MOL Ship Management Co.,* 675 F.3d 355, 373 (4th Cir. 2012)("*Aggarao*").

> the alleged wrongs to the non-signatory's obligations and duties in the contract and the fact that the claims were intertwined with the underlying contractual obligations. *Thomson–CSF, S.A.*, 64 F.3d at 779. In essence, a non-signatory voluntarily pierces its own veil to arbitrate claims against a signatory that are derivative of its corporate-subsidiary's claims against the same signatory.
> *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 199–201 (3d Cir. 2001).

Mundi expressly recognized, as did *DuPont,* that the second theory of equitable estoppel applied only when the non-signatory brings claims against a signatory and pierces its own corporate veil to use its parent or subsidiaries' arbitration clause with the defendant. *Mundi* explored *DuPont* and rejected both of its theories when, as in *Mongaya* and in the case at bar, a nonsignatory defendant seeks to compel a signatory plaintiff to arbitration:

> We have examined two types of equitable estoppel in the arbitration context. In the first, a nonsignatory may be held to an arbitration clause "where the nonsignatory 'knowingly exploits the agreement containing the arbitration clause despite having never signed the agreement.'" *Id.* (quoting *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates,* 269 F.3d 187, 199 (3d Cir.2001)). Under the second, a signatory may be required to arbitrate a claim brought by a nonsignatory "because of the close relationship between the entities involved, as well as the relationship of the alleged wrongs to the non-signatory's obligations and duties in the contract and the fact that the claims were intertwined with the underlying contractual obligations." *DuPont,* 269 F.3d at 201.
>
> Neither line of cases addresses the precise situation we face. Although *DuPont* addressed the issue of a nonsignatory seeking to enforce an arbitration agreement against a signatory, in that case, **it was a nonsignatory who brought claims against the signatory, rather than the signatory bringing claims against a nonsignatory.** *Comer* itself addressed whether a signatory to an arbitration agreement could enforce the agreement against a nonsignatory. And, in light of the general principle that only those who have agreed to arbitrate are obliged to do so, we see no basis for extending the concept of equitable estoppel of third parties in an arbitration context beyond the very narrow confines delineated in these two lines of cases.
> *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1045–46 (9th Cir. 2009).

Trident asserts "*Mundi* quoted this second theory, 555 F.3d at 1046, and this Court properly adopted it in *Mongaya.*"[8] Trident fails to note, however, that after quoting "this second theory," *Mundi* expressly rejected it. In any case, after rejecting both *DuPont* tests as inapplicable given the posture of the parties, the *Mundi* court adopted the two prongs of the *MS Dealer* test, which had been adopted in *Brantley:*

> Mundi's claim that USLIC breached the insurance policy is not "intertwined with the contract providing for arbitration"—the EquityLine Agreement. *Sokol,* 542 F.3d at 361; *see also Chastain v. Union Sec. Life Ins. Co.,* 502 F.Supp.2d 1072, 1079–81 (C.D.Cal.2007) (denying the insurer's motion to compel arbitration under equitable estoppel, reasoning that the plaintiff's claims regarding his insurance policies were not intertwined with the credit card agreements that the policies covered). **Nor does her claim "'arise[ ] out of' " or " 'relate[ ] directly to' " the EquityLine Agreement. *Brantley,* 424 F.3d at 396 (quoting *MS Dealer Serv. Corp. v. Franklin,* 177 F.3d 942, 947 (11th Cir.1999)) (alterations in original).** The resolution of her claim does not require the examination of any provisions of the EquityLine Agreement. The EquityLine Agreement does not mention the insurance certificate, let alone incorporate it by reference, as in *American Bankers.* **As in *Brantley,* Mundi's claim is based solely on USLIC's actions, and there are no allegations of collusion or of misconduct by Wells Fargo, the signatory to the arbitration agreement.** Given these circumstances, USLIC may not compel Mundi to arbitrate her claims against it. The order of the district court denying USLIC's motion to compel arbitration is AFFIRMED.
> *Mundi v. Union Sec. Life Ins. Co.,* 555 F.3d 1042, 1047 (9th Cir. 2009)(Emphasis added).

Brantley, which was relied on by *Mundi,* in turn had adopted the *MS Dealer* "intertwined claims" tests:

> The Eleventh Circuit has provided a clear statement of the intertwined claims test, which we apply here:
>
> > Existing case law demonstrates that equitable estoppel allows a nonsignatory to compel arbitration in two different circumstances. First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must "rely on the terms of the written agreement in asserting [its] claims" against the nonsignatory. When each of a signatory's claims against a nonsignatory "makes reference to" or "presumes the existence of" the written agreement, the signatory's claims "arise[ ] out of and

---

[8] *Defendants'-Appellees' Answering Brief,* p. 16.

> relate [ ] directly to the [written] agreement," and arbitration is appropriate. Second, "application of equitable estoppel is warranted ... when the signatory [to the contract containing the arbitration clause] raises allegations of ... substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Otherwise, "the arbitration proceedings [between the two signatories] would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted." *MS Dealer Serv. Corp. v. Franklin,* 177 F.3d 942, 947 (11th Cir.1999) (citations omitted).
>
> *Brantley v. Republic Mortg. Ins. Co.,* 424 F.3d 392, 395–96 (4th Cir. 2005).

The *Mundi* decision relied on *Brantley,* which in turn had adopted the *MS Dealer* test – thus, *Mundi* adopted the *MS Dealer* test and rejected the use of the *DuPont* test where a nonsignatory defendant seeks to compel a signatory plaintiff to arbitration, as in *Mongaya* and in the case at bar. The *Mongaya* decision improperly adopted the "relationship test" of *DuPont* expressly rejected by the Ninth Circuit in *Mundi,* and not used by any other U.S. court in cases involving seafarers and POEA contracts. *Mongaya* should be reconsidered.

D. Dieron did not misconstrue *Mongaya*

Trident's assertion that "Mongaya did not adopt the *DuPont* test quoted in Mundi to the exclusion of the tests for equitable estoppel articulated by other Courts,"[9] is simply inaccurate. Mongaya expressly adopted language from *DuPont* quoted in *Mundi* as the law of the RMI, as follows:

> After a careful review of these cases, we adopt the *Mundi* test -requiring (1) a "close relationship between the entities involved," (2) a relationship between "the alleged wrongs" and the nonsignatory's "obligations and duties in the contract," and (3) the claims be "intertwined with the underlying contractual obligations" -as the law in the RMI.[10]

---

[9] *Defendants'-Appellees' Answering Brief,* p. 17.
[10] *Mongaya,* p. 15.

Moreover, just to be clear, in its *Order Denying Reconsideration* in *Mongaya*, this Honorable Court recognized it adopted law from *DuPont*, not *Mundi,* and again expressly adopted *DuPont* as the law of the RMI:

> The "equitable estoppel" test quoted from *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042 (9th Cir. 2009), while attributable to *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187 (3rd Cir. 2001), is the law we adopt.[11]

Trident and SBSC's argument that *Mongaya* adopted any test other than *DuPont* or that the tests are "substantially similar"[12] is simply an effort to dilute the error made in *Mongaya* and continued in the case at bar and is without merit.

E. The *MS Dealer* test requires reliance on the terms of the written agreement or allegations of concerted misconduct between the signatories and non-signatories

Trident's assertion that "maritime courts have held that the requirement of 'concerted misconduct' can be satisfied either by overlapping factual allegations and claims, or by a close relationship between the signatories and the non-signatories" is likewise inaccurate. [13] While there is jurisprudence permitting overlapping factual allegations and claims, there is no jurisprudence holding a "close relationship" is a substitute for claims of concerted misconduct in an equitable estoppel analysis. Similar misstatements of the law are found throughout Trident's brief in this section.[14] As an example, in its discussion of *Francisco v. Stolt Nielsen,*[15] Trident cite the *Francisco* court as stating the following:

> The District Court compelled Francisco to arbitrate with the non-signatory Stolt entities by holding that the *MS Dealer* requirement of "allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract" was satisfied because the non-signatories were

---

[11] *Mongaya,* Order Denying Motion for Reconsideration, p. 2.
[12] *Defendants'-Appellees' Answering Brief,* p. 17.
[13] *Id.,* p. 21.
[14] *Id.,* p. 17 – 21.
[15] *Francisco v. Stolt Nielsen,* 2002 U.S. Dist. Lexis 23134, 2003 AMC 1065 (E.D.La. 2002) *2-4.

"closely related to another corporate entity that is a signatory to the arbitration agreement," i.e., SNTGI. *Id.* at 15-19, citing *J.J. Ryan*, 863 F.2d at 320-21 ("when the charges against a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement") (citations omitted).[16]

A lot more than citations were omitted. This is what the *Francisco* court said:

> Here, plaintiff seeks to recover from two corporate entities—Stolt–Nielsen, S.A. and Stolt Tankers Joint Services—that are closely related to another corporate entity that is a signatory to the arbitration agreement. Plaintiff already charged this signatory—Stolt Achievement, Inc.—with the very same allegations of Jones Act liability in a prior lawsuit that arises out of the same core of operative facts. In the lawsuit against the moving defendants, plaintiff alleges that the relationship among the non-signatory defendants and the signatory may render them a "single business entity." Under Louisiana law, the single business entity doctrine is invoked to render one corporation responsible for the liabilities of the other. *See Pine Tree Associates v. Doctors' Associates, Inc.*, 654 So.2d 735, 738 (La.Ct.App.1995); *Adams v. Associates Corporation of North America,* 390 SO.2d 539, 542 (La.Ct.App.1980). Implicit in the single business entity doctrine is the idea that seemingly distinct corporations are in fact acting in concert to achieve certain goals. The Court therefore concludes that plaintiff alleges substantially interdependent and concerted misconduct by non-signatories and signatories. *Hill,* 282 F.3d at 348–49; *see also J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.,* 863 F.2d 315, 320–21 (4th Cir.1988) (holding that "[w]hen the charges against a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement"). Importantly, the Court notes that plaintiff does not allege in the Petition for Damages that the third defendant in this lawsuit, the insurer, engaged in concerted misconduct with signatories to the arbitration agreement. Therefore, the Court only compels arbitration as to Stolt–Nielsen, S.A. and Stolt Tankers Joint Services.
>
> *Francisco v. Stolt-Nielsen, S.A.,* No. CIV.A. 02-2231, 2002 WL 31697700, at *5 (E.D. La. Dec. 3, 2002).

That is, in *Francisco,* the court determined there were allegations of substantially interdependent and concerted misconduct because the plaintiff had **expressly alleged** the signatory and nonsignatory were a "single business entity" and not simply because of their "close relationship." Trident's argument that a "close relationship" is a substitute for allegations of

---

[16] *Defendants'-Appellees' Answering Brief,* p. 19.

concerted misconduct between signatories and nonsignatories is simply an attempt to rewrite the *MS Dealer/Mundi* test for equitable estoppel to more closely resemble the *DuPont* "close relationship" test erroneously applied in *Mongaya* and in the case at bar by the High Court. As regards Trident's argument that "overlapping factual allegations" suffice, Dieron submits this is irrelevant as there are no allegations made against SBSC, the signatory, to "overlap" with those against Trident, the nonsignatory.

F. The *MS Dealer/Mundi* test is disjunctive

Dieron agrees the *MS Dealer/Mundi* test is disjunctive. Trident apparently misunderstood Dieron's position. However, neither disjunctive prong of the *MS Dealer/Mundi* test for equitable estoppel was met.

III. The High Court erred by permitting the application of the POEA contract's choice of law and compensation scheme in violation of RMI and U.S. general maritime law

A. Whether UMLICA expressly allows choice of venue and substantive law of arbitration is irrelevant

Whether UMLICA permits choice of venue and substantive law of arbitration is irrelevant to whether or not the High Court erred by allowing Trident to contractually derogate its obligations under the U.S. general maritime time by use of the POEA's choice of law and compensation scheme in violation of U.S. Supreme Court precedent.

B. An argument that a choice of law provision and contractual compensation scheme violates general maritime law is not a public policy defense to arbitration

Dieron has no objection to arbitration either in the RMI or in the Philippines under the general maritime law, except to the extent that Trident is subject to arbitration at all. There is no public policy defense to arbitration being launched. The objection is that Trident is being allowed to do indirectly what it cannot do directly -- contractually derogate its obligations as a vessel

owner. Trident could not enter into such a contract with a seafarer directly, at least not under the U.S. Supreme Court's rulings on the issue, as recognized in *Brown v. State,* 816 P.2d 1368, 1374–75 (Alaska 1991) and *Bodzai v. Arctic Fjord, Inc.,* 990 P.2d 616, 618–20 (Alaska 1999), where the court particularly noted it was bound only by decisions of the Supreme Court of the United States.[17]

Trident's assertion that *Lauritzen v. Larsen,* 354 U.S. 571 (1953)("*Lauritzen*") is inapplicable in the RMI in a choice of law analysis, because it involved the Jones Act and U.S. statutory law is inapplicable in the RMI, is incorrect. The U.S. Supreme Court rejected an argument that *Lauritzen* applied only in Jones Act cases in *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 382, 79 S. Ct. 468, 485, 3 L. Ed. 2d 368 (1959)("While *Lauritzen v. Larsen* involved claims asserted under the Jones Act, the principles on which it was decided did not derive from the terms of that statute...the similarity in purpose and function of the Jones Act and the general maritime principles of compensation for personal injury, admit of no rational differentiation of treatment for choice of law purposes.").

As noted in his original brief on appeal, in *Brown v. State,* 816 P. 2d 1368 (Alaska 1991), the Alaska Supreme Court explicitly rejected the imposition of a workers' compensation program very similar to the compensation scheme of the POEA Contract onto seafarers as being in violation of U.S. Supreme Court decisions interpreting the general maritime law. The High Court in the case at bar mistakenly cited and dismissed the *Brown* opinion as based on "Alaska State law," when *Brown* was based exclusively on decisions by the U.S. Supreme Court.

---

[17] See e.g. *Sieracki,* 328 U.S. at 94, 66 S.Ct. at 877. (A shipowner's liability for the seaworthiness of its vessel "is neither limited by conceptions of negligence nor contractual in character."); *Reed v. Steamship Yaka,* 373 U.S. 410, 414-15, 83 S.Ct. 1349, 1352-53, 10 L.Ed.2d 448 (1963)(The "obligation of seaworthiness cannot be shifted about, limited, or escaped by contracts or by the absence of contracts and that the shipowner's obligation is rooted, not in contracts, but in hazards of the work.").

For all the reasons given in its original brief, Dieron submits that the High Court's order permits Trident to contractually limit its obligations to provide a seaworthy vessel and maintenance and cure and runs afoul of RMI and U.S. general maritime law and U.S. Supreme Court precedent. Interestingly, Trident argues the RMI has carved out an exception to its adoption of the U.S. general maritime law under 47 MIRC §113, through approval by the Maritime Administrator of the Republic of the POEA Standard Terms for use on board the vessels flagged in the Republic, and thus there is no tort cause of action for unseaworthiness under the U.S. general maritime law applicable in the RMI (at least for Filipino seafarers).[18] If this is the case, a ruling from this Honorable Court to that effect, without its being clouded by the issue of arbitration, would be helpful.

CONCLUSION

The High Court erred in permitting SBSC to intervene and in compelling Dieron to arbitrate his claims against Trident by means of equitable estoppel. The High Court further erred in permitting Trident to contractually limit its obligations as a vessel owner under the general maritime law. Dieron respectfully requests the High Court's *Order Granting SBSC's Motion to Intervene* and *Order Granting Motions to Compel Arbitration* be reversed.

Respectfully submitted,

Tatyana Cerullo
Melvin C. Narruhn
Richard J. Dodson
Kenneth Hooks, III

Counsel for the Plaintiff-Appellant
Virgilio T. Dieron, Jr.

[18] *Defendants'-Appellees' Answering Brief,* p. 30, 31.

Respectfully submitted,

Tatyana Cerullo
Melvin C. Narruhn
Richard J. Dodson
Kenneth Hooks, III

Counsel for the Plaintiff-Appellant
Virgilio T. Dieron, Jr.

Tatyana Cerullo, M.I. Adm. #150
804 Kainoa Pl
Honolulu, Hawaii 96821
info@marshallislandslawyers.com
tc.law.llc@gmail.com
(808)722-6816

Attorney for Plaintiff-Appellant,
VIRGILIO T. DIERON, JR.

IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR., Plaintiff-Appellant, v. STAR TRIDENT XII, LLC Defendant-Appellee	S.Ct. Case No. 2018 - 015 H.Ct. Civil No. 2017 - 245 **CERTIFICATE OF SERVICE**

I hereby certify that on 21 December 2019, a true and correct copy of Plaintiff's **REPLY BRIEF** was served upon the following by email attachment in PDF format to:

Dennis J. Reeder and Nenad Krek, Attorney for Defendant
nkrek@amkhawaii.com; dreeder.rmi@gmail.com

Tatyana Cerullo

Tatyana Cerullo
Attorney for Plaintiff-Appellant