Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORFOLK SOUTHERN RAILWAY CO. *v.* JAMES N. KIRBY, PTY LTD., DBA KIRBY ENGINEERING, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 02–1028. Argued October 6, 2004—Decided November 9, 2004

Respondent James N. Kirby, Pty Ltd., an Australian manufacturer, hired International Cargo Control (ICC) to arrange for delivery of machinery from Australia to Huntsville, Ala., by "through" (*i.e.,* end-to-end) transportation. The bill of lading (essentially, contract) that ICC issued to Kirby (ICC bill) designated Savannah, Ga., as the discharge port and Huntsville as the ultimate destination, and set ICC's liability limitation lower than the cargo's true value, using the default liability rule in the Carriage of Goods by Sea Act (COGSA) ($500 per package) for the sea leg and a higher amount for the land leg. The bill also contained what is known as a "Himalaya Clause," which extends liability limitations to downstream parties, including, here, "any servant, agent, or other person (including any independent contractor)." Kirby separately insured the cargo for its true value with co-respondent, Allianz Australia Insurance Ltd. When ICC hired a German shipping company (hereinafter Hamburg Süd) to transport the containers, Hamburg Süd issued its own bill of lading to ICC (Hamburg Süd bill), designating Savannah as the discharge port and Huntsville as the ultimate destination. That bill also adopted COGSA's default rule, extended it to any land damages, and extended it in a Himalaya Clause to "all agents . . . (including inland) carriers . . . and all independent contractors." Hamburg Süd hired petitioner Norfolk Southern Railway (Norfolk) to transport the machinery from Savannah to Huntsville. The train derailed, causing an alleged $1.5 million in damages. Allianz reimbursed Kirby for the loss and then joined Kirby in suing Norfolk in a Georgia Federal District Court, asserting diversity jurisdiction and alleging tort and contract claims. Norfolk responded that, among other things, Kirby's po-

tential recovery could not exceed the liability limitations in the two bills of lading. The District Court granted Norfolk partial summary judgment, limiting Norfolk's liability to $500 per container, and certified the decision for interlocutory review. In reversing, the Eleventh Circuit held that Norfolk could not claim protection under the ICC bill's Himalaya Clause because it had not been in privity with ICC when that bill was issued and because linguistic specificity was required to extend the clause's benefits to an inland carrier. It also held that Kirby was not bound by the Hamburg Süd bill's liability limitation because ICC was not acting as Kirby's agent when it received that bill.

Held:

1. Federal law governs the interpretation of the ICC and Hamburg Süd bills. Pp. 5–13.

(a) When a contract is a maritime one, and the dispute is not inherently local, federal law controls the contract interpretation. *Kossick* v. *United Fruit Co.,* 365 U. S. 731, 735. Applying *Kossick*'s two-step analysis, federal law governs this dispute. Pp. 5–6.

(b) The bills at issue are maritime contracts. This Court has recognized that "[t]he boundaries of admiralty jurisdiction over contracts—as opposed to torts or crimes—being conceptual rather than spatial, have always been difficult to draw." 365 U. S., at 735. To ascertain a contract's maritime nature, this Court looks not to whether a ship or vessel was involved in the dispute, or to the place of the contract's formation or performance, but to "the nature and character of the contract." *North Pacific S. S. Co.* v. *Hall Brothers Marine Railway & Shipbuilding Co.,* 249 U. S. 119, 125. Here, the bills are maritime contracts because their primary objective is to accomplish the transportation of goods by sea from Australia to the United States' eastern coast. Under a conceptual rather than spatial approach, the fact that the bills call for the journey's final leg to be by land does not alter the contracts' essentially maritime nature. The "'fundamental interest giving rise to maritime jurisdiction is "the protection of maritime *commerce.*"'" *Exxon Corp.* v. *Central Gulf Lines, Inc.,* 500 U. S. 603, 608 (emphasis added). The conceptual approach vindicates that interest by focusing the Court's inquiry on whether the principal objective of a contract is maritime commerce. While it may once have seemed natural to think that only contracts embodying commercial obligations between the "tackles" (*i.e.*, from port to port) have maritime objectives, the shore is now an artificial place to draw a line. Maritime commerce has evolved along with the nature of transportation and is often inseparable from some land-based obligations. The international transportation industry has moved into a new era, in which cargo owners can contract for transportation across oceans and

to inland destinations in a single transaction. The popularity of an efficient choice, to assimilate land legs into international ocean bills of lading, should not render bills for ocean carriage nonmaritime contracts. Lower court cases that appear to have depended solely on geography in fashioning a rule for identifying maritime contracts are inconsistent with the conceptual approach required by this Court's precedent. Pp. 6–10.

(c) The case is not inherently local. A maritime contract's interpretation may so implicate local interests as to beckon interpretation by state law. See *Kossick,* 365 U. S., at 735. Though some state interests are surely implicated in this case, those interests cannot be accommodated without defeating a federal interest; thus, federal law governs. See *id.,* at 739. The touchstone here is a concern for the uniform meaning of maritime contracts. Applying state law to cases such as this one would undermine the uniformity of general maritime law. The same liability limitation in a single bill of lading for international intermodal transportation often applies both to sea and to land, as is true of the Hamburg Süd bill. Likewise, a single Himalaya Clause can cover both sea and land carriers downstream, as in the ICC bill. Confusion and inefficiency will inevitably result if more than one body of law governs a given contract's meaning. In protecting the uniformity of federal maritime law, this Court also reinforces the liability regime Congress established in COGSA. Pp. 10–13.

2. Norfolk is entitled to the protection of the liability limitations in both bills of lading. Pp. 13–19.

(a) The ICC bill's broadly written Himalaya Clause limits Norfolk's liability. This simple question of contract interpretation turns on whether the Eleventh Circuit correctly applied *Robert C. Herd & Co.* v. *Krawill Machinery Corp.,* 359 U. S. 297. Deriving a principle of narrow construction from *Herd*, the Court of Appeals concluded that the language of the ICC bill's Himalaya Clause is too vague to clearly include Norfolk. Moreover, it interpreted *Herd* to require privity between the carrier and the party seeking shelter under a Himalaya Clause. Nothing in *Herd* requires such linguistic specificity or privity rules. It simply says that contracts for carriage of goods by sea must be construed like any other contracts: by their terms and consistent with the intent of the parties. The Eleventh Circuit's ruling is not true to the contract language or the parties' intent. The plain language of the Himalaya Clause indicates an intent to extend the liability limitation broadly and corresponds to the fact that various modes of transportation would be involved in performing the contract. Since Huntsville is some 366 miles inland from the discharge port, the parties must have anticipated using a land carrier's services for the contract's performance. Because it is clear that a railroad was

an intended beneficiary of the ICC bill's broadly written clause, Norfolk's liability is limited by the clause's terms. Pp. 13–15.

(b) Norfolk also enjoys the benefits of the Hamburg Süd bill's liability limitation. The question arising from this bill requires the Court to set an efficient default rule for certain shipping contracts. To interpret the bill, the Court draws a rule from the common carriage decision of *Great Northern R. Co.* v. *O'Connor,* 232 U. S. 508: When an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier agreed. The intermediary is not the cargo owner's agent in every sense, but it can negotiate reliable and enforceable liability limitations with carriers it engages. Respondents' contention that traditional agency law rather than the *Great Northern* rule should govern here is rejected. It is of no moment that the traditional indicia of agency did not exist between Kirby and ICC, for the *Great Northern* principle only requires treating ICC as Kirby's agent for a *single, limited* purpose: when ICC contracts with subsequent carriers for liability limitations. Nor will a decision binding Kirby to the Hamburg Süd bill's liability limitation be disastrous for the international shipping industry. First, a limited agency rule tracks industry practices. Second, if liability limitations negotiated with cargo owners were reliable while those negotiated with intermediaries were not, carriers would likely want to charge the latter higher rates, resulting in discrimination in common carriage. Finally, this decision produces an equitable result, since Kirby retains the right to sue ICC, the carrier, for any loss exceeding the liability limitation to which they agreed. See *id.,* at 515. Pp. 16–19.

300 F. 3d 1300, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.