GRANTED

No. 99-1551

IN THE

Supreme Court of the United States

SEMTEK INTERNATIONAL INCORPORATED,
Petitioner,

v.

LOCKHEED MARTIN CORPORATION,
Respondent.

On Writ of Certiorari to the Court of Special Appeals of Maryland

BRIEF *AMICUS CURIAE* OF PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*

The Product Liability Advisory Council, Inc. ("PLAC"), is a non-profit corporation with 127 corporate members representing a broad cross-section of American industry. Its corporate members include manufacturers and sellers in a wide range of industries, from automobiles to electronics to pharmaceutical products. A list of PLAC's current corporate membership is attached as Appendix A. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (non-voting) members of PLAC.

PLAC's primary purpose is to file *amicus curiae* briefs in cases with issues that affect the development of product liability law and have potential impact on PLAC's members. PLAC has submitted numerous *amicus curiae* briefs in both state and federal courts, including this Court. PLAC members engage in substantial litigation in both state and federal courts. PLAC members, therefore, have a strong interest in uniform, predictable, and workable rules of preclusion and full faith and credit. Petitioner's proposed rule would undermine the predictability and rationality of preclusion principles. Accordingly, PLAC submits this brief in support of Respondent.[1]

SUMMARY OF ARGUMENT

This case turns on whether a state court should judge the preclusive effect of a prior federal-court diversity judgment based on the law of the rendering forum (Fed. R. Civ. P. 41(b)) or the law of the State where the federal court sits (in this case, California). Rule 41(b) clearly bars Petitioner's

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[1] Both Petitioner and Respondent have consented to the filing of this brief. No counsel representing a party in this case authored this brief in whole or in part, and no person or entity, other than *amicus curiae* and its counsel, made a monetary contribution to the preparation and submission of this brief.

attempt to relitigate its dismissed lawsuit in state court. Although Petitioner contends that a dismissal on statute of limitations grounds falls within Rule 41(b)'s exception for dismissals for lack of jurisdiction, this Court's cases are to the contrary. Under Rule 41(b), a dismissal of a claim as time-barred, no less than a dismissal for failure to state a claim, constitutes a preclusive adjudication "upon the merits."

Petitioner attempts to escape the reach of Rule 41(b) by suggesting that this Court's precedents direct a recognizing state court to apply the preclusion law of the State where the federal court sits, rather than Rule 41(b). However, federal full faith and credit law requires a recognizing court to apply the preclusion law of the rendering court. This Court's precedents do not support a contrary rule. Before the adoption of the Federal Rules, a federal court sitting in diversity applied the preclusion law of the State where it sat to determine the preclusive effect of its own judgments. Accordingly, this Court's direction to state courts to judge the preclusive effect of federal-court diversity judgments by applying state law was a direction to apply the law of the rendering court. Certainly, none of these cases suggests that the recognizing court should apply a body of law that conflicts with the preclusion rules of the rendering court. Yet that is the rule that Petitioner asks this Court to adopt.

This Court should reject Petitioner's proposed rule and adopt the federal full faith and credit rule that applies in every other context—namely, that a recognizing court must apply the preclusion law of the rendering forum. This simple rule protects successful plaintiffs and defendants alike and promotes judicial economy, predictability, and finality. It does not require overruling precedents or making the Federal Rules directly applicable in state court. This rule puts federal-court diversity judgments on the same footing as the judgments of every other court in the United States by giving

them the same preclusive effect in every court that they have in the rendering court.

ARGUMENT

I. RULE 41(b) BARS PETITIONER'S EFFORT TO RELITIGATE A DISMISSED FEDERAL LAWSUIT

A. The Perceived Difference Between Rule 41(b) and California Preclusion Law Is the Animating Force Behind This Dispute.

Petitioner contends that California law deems a dismissal on statute of limitations grounds "a technical or procedural, rather than a substantive, termination" that does not bar a subsequent suit invoking a cause of action subject to a longer limitations period. *See, e.g., Koch v. Rodlin Enters., Inc.*, 223 Cal. App. 3d 1591, 1597 (1990) (holding that the dismissal of the first action as time-barred under the statute of limitations for contract rescission did not preclude a second action "based on common law fraud which allegedly was discovered within the applicable limitations period"). According to Petitioner, had a California *state* court dismissed Petitioner's suit as time-barred and had Petitioner then filed a second suit in the same state court raising a claim with a longer limitations period, the first judgment would not bar the second suit under California law. By routine application of the Full Faith and Credit Act, 28 U.S.C. § 1738, the same result would obtain if the second suit were filed in federal court, because the federal court would apply the preclusion law of the rendering court.

In this case, of course, Petitioner's first suit was dismissed as time-barred by a *federal* court. If Petitioner had refiled in that same federal court (*i.e.*, the rendering court), the federal court would have applied Fed. R. Civ. P. 41(b) to determine the "[e]ffect" of its prior "[i]nvoluntary [d]ismissal."

Rule 41(b) provides that "[u]nless the court in its order for dismissal otherwise specifies, . . . any dismissal . . . other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates *as an adjudication upon the merits.*" None of these three exceptions applies, and the California district court, in dismissing Petitioner's first suit as time-barred, did not "specif[y]" that its order would not have preclusive effect. *Id.* To the contrary, the court went out of its way to specify that the case was dismissed "in its entirety on the merits and with prejudice." Pet. App. at 59a. Accordingly, had Petitioner refiled in federal court, the court would have held that its first dismissal constituted an "adjudication upon the merits," and dismissed the second suit. Fed. R. Civ. P. 41(b); *see, e.g., Federated Department Stores, Inc. v. Moitie,* 452 U.S. 394, 398 (1981). It was Petitioner's election to bring its second suit in a new forum and the question whether the recognizing court should look to the law of the rendering forum (Rule 41(b)) or California law that led to this Court's review on *certiorari.*

B. A Statute of Limitations Dismissal Is Not a "Dismissal for Lack of Jurisdiction."

Petitioner objects that even if Rule 41(b) applies, it would not have barred a second action in the rendering court because, *inter alia*, the dismissal of Petitioner's first action should be treated as a "dismissal for lack of jurisdiction." As such, the dismissal would fall within one of Rule 41(b)'s exceptions and would not constitute a dismissal "upon the merits."

The plain language of Rule 41(b) provides the most formidable obstacle to Petitioner's argument. *See, e.g., Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1180 (4th Cir. 1989) ("The plain language of [Rule 41(b)] indicates that the dismissal of plaintiffs' Pennsylvania action on statute of

limitations grounds is an adjudication on the merits."). Had the rule intended to except dismissals of time-barred cases, it would have said so explicitly. It does not, and dismissals on this ground have never been construed as jurisdictional. *See, e.g., Bowen v. City of New York*, 476 U.S. 467, 478 (1986) (holding that the statutory requirement that suit must be filed within 60 days of Secretary's denial of disability benefits "is not jurisdictional, but rather constitutes a period of limitations"); *Leavell v. Kieffer*, 189 F.3d 492, 494 (7th Cir. 1999) ("Neither does a statute of limitations affect the district court's jurisdiction."); *Elliot v. City of Union City*, 25 F.3d 800, 801 n.1 (9th Cir. 1994) ("The statute of limitations is not jurisdictional, however, but an affirmative defense.").

Indeed, this Court has labeled a dismissal on statute of limitations grounds as a judgment on the merits. In *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), this Court noted that "[t]he rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive liability, or for failure to prosecute: *as a judgment on the merits.*" *Id.* at 228 (emphasis added). *Plaut* cited Rule 41(b) and this Court's unanimous opinion in *United States v. Oppenheimer,* 242 U.S. 85 (1916), as support. *Oppenheimer* held that "a judgment for the defendant upon the ground that the prosecution is barred goes to his liability as a matter of substantive law, and one judgment that he is free as a matter of substantive law is as good as another." *Id.* at 87.

Undeterred by these precedents, Petitioner contends that *Costello v. United States,* 365 U.S. 265 (1961), supports treating a dismissal on statute of limitations grounds as jurisdictional. However, whatever elasticity *Costello* introduced into the term "jurisdiction," that term cannot be stretched to include a dismissal on statute of limitations grounds. In *Costello*, the first action was dismissed because

the government's complaint did not include an affidavit of good cause, which was a statutory "prerequisite to the initiation of denaturalization proceedings." 365 U.S. at 268. The lack of the required affidavit was apparent on the face of the complaint and barred the court's consideration of the merits of the case. *See id.* at 285 (observing that the filing of the affidavit was a "precondition requisite to the Court's going forward to determine the merits of [the] substantive claim"); *United States v. Zucca,* 351 U.S. 91, 100 (1956) (holding that "the District Attorney must, as a prerequisite to the initiation of such proceedings, file an affidavit showing good cause").

In contrast to the lack of an affidavit of good cause (which prevents the suit, *ab initio*, from going forward), the applicability of a statute of limitations is neither facially obvious nor inherently preliminary. Indeed, just the opposite is true. "When the applicability of the statute of limitations is in dispute, there are usually factual questions as to when a plaintiff discovered or should have discovered the elements of its cause of action." *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd.,* 181 F.3d 410, 425 (3d Cir. 1999). "[R]esolution of the statute of limitations issue is normally a question of fact." *65 Butterfield v. Chicago Title Ins. Co.,* 70 Cal. App. 4th 1047, 1054 (1999) (citation omitted). Courts often cannot resolve statute of limitations defenses until deep into the litigation (especially, for example, when fraudulent concealment or latent injury issues are raised). *See, e.g., DeBerry v. First Gov't Mortgage and Inv. Corp.,* 170 F.3d 1105, 1110-11 (D.C. Cir. 1999) ("we find that the district court erred in dismissing the claims before appropriate discovery could be conducted"); *Nevada Power Co. v. Monsanto Co.,* 955 F.2d 1304, 1307-10 (9th Cir. 1992) (reversing summary judgment based on statute of limitations).

As the issue of accrual "may be decided as a matter of law only when uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered the fraudulent conduct," *id.* at 1307 (quotation omitted), the statute of limitations cannot be analogized to "a precondition requisite to the Court's going forward to determine the merits of [the] substantive claim." *Costello,* 365 U.S. at 285. Nor does the statute of limitations spare the defendant "the inconvenience of preparing to meet the merits." *Id.* at 286. Indeed, in many cases a statute of limitations defense cannot be resolved before or apart from the substantive merits of the case. *See, e.g., Bohus v. Beloff,* 950 F.2d 919, 924-30 (3d Cir. 1991) (reversing judgment n.o.v. and reinstating jury's verdict that found no limitations bar); *Santiago Hodge v. Parke Davis & Co.,* 909 F.2d 628, 633 (1st Cir. 1990) (holding that the limitations issue was "for the jury" and affirming jury's verdict).

Petitioner's suggestion that this Court extend *Costello* to adopt a per se rule that dismissals on statute of limitations grounds always are jurisdictional makes no sense, in light of the fact that such dismissals often occur deep into the litigation. To be sure, in some cases (like Petitioner's first suit) the statute of limitations defect will be clear from the outset, and the court will dismiss the complaint early in the litigation. But the same is true of any legal defect, including defects such as the failure to state a claim, which indisputably result in a judgment on the merits. *Moitie,* 452 U.S. at 399; *Plaut,* 514 U.S. at 228. In any event, Rule 41(b) gives judges discretion to avoid rendering a dismissal on the merits with preclusive effect where appropriate. In contrast, under Petitioner's strained reading of Rule 41(b), a dismissal on statute of limitations grounds would *never* have preclusive effect, even if entered after the defendant had incurred the expense and inconvenience of presenting a full defense.

Accordingly, if Rule 41(b) applies in this case, it clearly bars Petitioner's effort to relitigate its previously dismissed federal claims in state court. When Petitioner opted to file its successor suit in a Maryland state court, that court had to decide what law determined the preclusive effect, if any, of the dismissal of Petitioner's first suit. If Rule 41(b) applies, then the Maryland court correctly dismissed Petitioner's suit.[2]

The Maryland courts held that Rule 41(b) requires giving *res judicata* effect to the federal-court dismissal. There is, however, more than one route to that conclusion. Respondent argues that Rule 41(b) has "the force of a federal statute," *Sibbach v. Wilson & Co.*, 312 U.S. 1, 13 (1941), and "cover[s] the point in dispute," *Hanna v. Plumer*, 380 U.S. 460, 470 (1965). Consequently, Respondent submits that Rule 41(b) itself directs the Maryland courts to afford *res judicata* effect to the federal-court dismissal.

Petitioner's argument that this Court should begin its analysis with full faith and credit principles leads to the same conclusion. As demonstrated *infra*, applicable federal full faith and credit principles direct the Maryland courts to apply the law of the rendering court. The rendering federal court would judge the preclusive effect of its own prior judgment by applying Rule 41(b) and would give *res judicata* effect to the dismissal of a time-barred claim as "an adjudication upon

[2] The outcome is less clear if California law applies. Petitioner contends that California law permits a plaintiff to refile dismissed claims in a jurisdiction that applies a longer statute of limitations to those claims. Respondent suggests that the result under the law of California is unclear. If (contrary to our submission) Petitioner is correct that California law applies, sorting out the exact content of California law presumably is a task for the Maryland state courts on remand. However, the fact that the parties disagree as to the content of California's preclusion law underscores the uncertainty and unpredictability fostered by Petitioner's proposed rule.

the merits." Fed. R. Civ. P. 41(b). A Maryland court, applying the law of the rendering court, should do likewise.

II. FEDERAL FULL FAITH AND CREDIT PRINCIPLES DIRECT STATE COURTS TO APPLY THE PRECLUSION LAW OF THE RENDERING COURT, NAMELY RULE 41(B)

A. Federal Law Dictates Which Body of Preclusion Law a Recognizing State Court Should Apply.

Neither the Full Faith and Credit Clause of the Constitution, the Full Faith and Credit Act, 28 U.S.C. § 1738, nor Rule 41(b) directly addresses the question here: what law should a state court apply to determine the preclusive effect of an earlier federal-court judgment. The Full Faith and Credit Clause, by its terms, addresses a state court's consideration of the preclusive effect of the "judicial proceedings" of another State. Art. IV, § 1. The Full Faith and Credit Act, enacted pursuant to Congress' power under the Full Faith and Credit Clause, addresses both a state court's consideration of the preclusive effect of a prior decision of another State and a federal court's consideration of a prior state-court decision. In addition, Rule 41(b) appears to address the preclusive effect of a prior federal-court judgment in a second federal court.[3]

Federal law, therefore, squarely addresses three of the four full faith and credit scenarios possible in the federal system of concurrent jurisdiction. The Constitution deals with the state court-then-state court scenario; the statute covers the state

[3] There is, however, some confusion on this point in the lower courts. *Compare Kern v. Hettinger*, 303 F.2d 333, 339-40 & n.7 (2d Cir. 1962) (applying Rule 41(b)) *with Follette v. Wal-Mart Stores, Inc.*, 41 F.3d 1234, 1237 (8th Cir. 1994) (applying state law).

court-then-federal court scenario; Rule 41(b) directly addresses the federal court-then-federal court situation. However, neither the Constitution, statute, nor rule expressly covers the scenario presented here: a state court's consideration of the preclusive effect of a prior federal-court judgment.

Despite this gap, federal law must provide a uniform answer. There is a clear federal interest in having the courts of every State give a uniform answer to the initial question of what body of preclusion law governs the effect of a prior federal-court decision. Were this initial question a matter of state law, then state courts would be free to apply their own preclusion principles to ignore the preclusive effect of the previous judgment. For example, Maryland could take the position that any federal judgment adverse to a citizen of Maryland lacks preclusive effect in the Maryland courts. The same federal interests that animate the Full Faith and Credit Clause and statute surely prevent this result. A constitutional structure that features federal and state courts with concurrent jurisdiction demands a uniform rule. *See, e.g., Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935). Respectfully, States should not be allowed free rein to determine the effect, if any, of a prior federal judgment. *See* P. Bator, D. Meltzer, P. Mishkin & D. Shapiro, *Hart and Wechsler's The Federal Courts and the Federal System* 1603 (3d ed. 1988) ("There is no explicit constitutional or legislative text providing that the preclusive effect of federal judgments in state courts should be measured by federal law. But such a rule is indispensible to federalism. . . .") (quotation omitted).[4]

[4] The need for a uniform federal answer is particularly acute because the same gap in full faith and credit principles that exists for federal-court diversity judgments also exists for federal-court judgments on federal questions. Although neither the Constitution nor the Full Faith and Credit Act expressly addresses what effect a state court should give a prior federal-court judgment on a federal question, this Court has indicated that federal law provides the answer. *See, e.g., Heck v. Humphrey*, 512 U.S. 477, 488 n.9 (1994). The same result should apply in diversity cases.

Diversity jurisdiction could not long co-exist with a regime in which States were free to choose whether to apply their own state-law preclusion principles, the preclusion principles of the rendering court, or those of the State where the federal court is located. Such a regime would yield a patchwork of conflicting rules. Strong federal interests demand that federal law supply a uniform answer to the question of what law applies to determine the preclusive effect of a prior federal-court judgment.[5]

By asserting authority to review state-court decisions that allegedly failed to give full effect to federal-court judgments, this Court declined to leave state courts to their own devices in determining the preclusive effect of such judgments. In *Dupasseur v. Rochereau*, 88 U.S. 130 (1874), for example, this Court rejected the suggestion that it lacked jurisdiction to review the Louisiana Supreme Court's decision concerning the preclusive effect of the prior federal-court judgment. *See id.* at 134-35 ("We cannot hesitate, therefore, as to our jurisdiction to hear the case."). Likewise, in *West Side Belt R.R. Co. v. Pittsburgh Construction Co.*, 219 U.S. 92, 102 (1911), this Court classified "the question whether due faith and credit were given [by the state court] to the judgment of the [federal] circuit court," as "a Federal question." *Accord Deposit Bank of Frankfort v. Board of Councilmen of the City*

[5] Although the federal law that supplies this answer might be described most accurately as federal common law, it also could be considered a gloss on the Full Faith and Credit Act, *see, e.g., Stoll v. Gottlieb*, 305 U.S. 165, 167 (1938), or as arising from "[p]rovisions declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grants effective," *id.*; *accord Metcalf v. City of Watertown*, 153 U.S. 671, 676 (1894).

of Frankfort, 191 U.S. 499, 515 (1903) (holding that "whether a Federal judgment has been given due force and effect in the state court is a Federal question").

In *Dupasseur* and a host of subsequent cases, this Court based its jurisdiction on a party's claim that, by denying the asserted effect of a prior federal-court judgment, the state court denied a "right, privilege, or immunity [that] is specially set up or claimed under the Constitution or the treaties or statutes of . . . the United States." 28 U.S.C. § 1257. *Accord Hancock Nat'l Bank v. Farnum*, 176 U.S. 640, 641 (1900) (noting that for the Court to have jurisdiction there must be "some alleged denial of a right or immunity secured by [the] Constitution"); *Crescent City Live-Stock Landing & Slaughter-House Co. v. Butchers' Union Slaughter House & Live-Stock Landing Co.*, 120 U.S. 141, 146 (1887).

These cases mark a clear path. Federal law should control the Maryland court's choice of preclusion law. The only remaining question is whether federal law dictates the application of the preclusion principles of the rendering court, or some other body of law.

B. *Dupasseur* and Other Cases Decided Before the Adoption of the Federal Rules Do Not Dictate the Application of California Preclusion Law.

Petitioner suggests that *Dupasseur* definitively answered the question before the Court and requires the application of California preclusion law. However, *Dupasseur* did not pose, let alone answer, the question presented here. *Dupasseur* and its progeny simply did not confront situations, like this, where the federal court applies a different rule of preclusive effect than that of the State where the federal court sits.

Instead, the disputes in those earlier cases fell into two categories. First, many cases involved efforts by state courts to give federal-court diversity judgments *less* effect than

equivalent state-court judgments. This Court repeatedly rejected such efforts to "discriminat[e] between judgments rendered in the courts of a state and those rendered in the federal courts held in the same state" by giving the federal judgments less weight. *Metcalf*, 153 U.S. at 677 (reversing Wisconsin Supreme Court's decision subjecting actions to enforce federal-court judgments to a more stringent statute of limitations than actions to enforce Wisconsin judgments); *see also Stoll*, 305 U.S. at 177 (reversing Illinois Supreme Court's refusal to give *res judicata* effect to federal-court judgment in a bankruptcy proceeding); *Hancock National Bank*, *supra* (reversing Rhode Island Supreme Court for failing to give judgment of federal court in Kansas the same preclusive effect as Kansas court's judgment); *Embry v. Palmer*, 107 U.S. 3, 19 (1883) (reversing Connecticut Supreme Court for failing to give *res judicata* effect to a judgment of a District of Columbia court); *cf. Deposit Bank of Frankfort*, *supra* (reversing Kentucky court's refusal to give preclusive effect to a prior federal-court judgment on a federal question). These cases reflect the long-established principle that federal courts "are all of limited jurisdiction; but they are not, on that account, inferior Courts, in the technical sense of those words, whose judgments, taken alone, are to be disregarded." *McCormick v. Sullivant*, 23 U.S. (10 Wheat.) 192, 199 (1825).[6]

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[6] *McCormick v. Sullivant* appears to undermine Petitioner's theory of this case. In this early case, the Court reviewed a state-court determination of the preclusive effect of a prior federal-court diversity judgment. The plaintiff-in-error argued that the prior federal judgment lacked preclusive effect because the pleadings in that case failed to show diversity of citizenship. The Court considered this contention (presumably a question of federal law because state courts do not impose diversity requirements) and rejected it on the merits. However, under Petitioner's theory, the Court should have dismissed this attack as irrelevant on the ground that the federal-court judgment had the same

The second category of these early cases involved disputes over the content of the law of the State where the federal court sat. In these cases, the parties took it for granted that state law provided the relevant preclusion law. Their dispute was over the content and effect of that state law—*i.e.*, whether state law afforded preclusive effect to a particular prior judgment. In *Dupasseur*, for example, the principal question before the Court was whether the prior federal-court action was *in rem* or *in personam*. The plaintiff in the subsequent state-court proceeding was not a party to the federal-court action. Accordingly, under Louisiana law, the federal-court action provided a defense in the second action only if the first action was *in rem*. The parties disputed whether Louisiana law treated the first action as *in rem*, but no one suggested that a different preclusion rule would apply because a federal court issued the judgment. *See also Crescent City Live-Stock*, *supra* (determining that prior federal-court judgment precluded a subsequent claim under Louisiana law for malicious prosecution); *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111, 130 (1912) (discussing, in dictum, a question of New York preclusion law).

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preclusive effect as a judgment of an Ohio state court, and lack of diversity provides no basis to attack an Ohio state-court judgment. The Court's willingness to consider this issue on the merits is instructive because, in the Conformity Act era, this jurisdictional issue represented one of the few issues of federal law that could have affected the preclusive effect of a federal-court diversity judgment. Likewise, in other contexts where federal law provided a distinct rule, this Court did not hesitate to ensure that state courts did not impute collateral consequences to federal-court judgments that were inconsistent with federal law. *See, e.g., Tullock v. Mulvane*, 184 U.S. 497 (1902) (refusing to permit the recovery of attorneys' fees in a state-law action arising out of an earlier federal-court injunction because the Conformity Act did not cover a federal court's equitable orders and federal law prohibited an award of attorneys' fees).

None of those cases answers the question of whether a recognizing court should apply the law of the rendering court or the law of the State where the federal court sits when the two bodies of law would provide different answers. Indeed, such a situation did not arise in these cases because there was no federal law of preclusion akin to Rule 41. The Court issued these decisions against a background assumption (no longer true in light of the Federal Rules) that federal courts sitting in diversity functioned in all relevant respects like state courts and applied the preclusion rules of the State where they sat. *See, e.g., Metcalf*, 153 U.S. at 680. This assumption was critical to the Court's statements that federal-court judgments were to be treated no differently than state-court judgments. For example, in *Dupasseur*, this Court observed that the federal court's "proceedings were had in accordance with the forms and course of proceedings in the State courts. It is apparent, *therefore*, that no higher sanctity or effect can be claimed for the judgment of the Circuit Court of the United States rendered in such a case under such circumstances than is due to the judgments of the State courts in a like case and under similar circumstances." 88 U.S. at 135 (emphasis added).

Petitioner relies on *Dupasseur* for the proposition that the Maryland court should have applied a body of preclusion law (California's) *different than that applied by the rendering court* (Rule 41(b)). Yet *Dupasseur* and the cases that followed *all applied the preclusion law of the rendering court*. Not one of the decisions supports the application of a law other than the law of the rendering court. It is only that, before the promulgation of Rule 41, the law of the rendering federal court *was* the law of the State where the federal court sat. Indeed, at the time of *Dupasseur*, had a plaintiff refiled the same action in the same federal court that had just dismissed it, the *federal* court would have evaluated the preclusive effect of its first decision under the law of the *State* where it sat. *See, e.g., Antoncic v. Baltimore & Ohio R. Co.*,

47 F.2d 97 (3d Cir. 1931) (applying Pennsylvania law); *Bohenik v. Delaware & Hudson Co.*, 49 F.2d 722 (2d Cir. 1931) (A. Hand, J.) (applying New York law); *see generally* Restatement (Second) Judgments § 87 cmt. a. As a result, the pre-Rule 41(b) cases could not have looked to any other law but state law.

Rule 41(b) changed all this. With the advent of the Federal Rules in general and Rule 41(b) in particular, federal courts sitting in diversity apply different "forms and . . . proceedings," *Dupasseur*, 88 U.S. at 135, and different preclusion law. A federal court sitting in diversity applies federal law (Rule 41(b)) that dictates a different result when considering the preclusive effect of its prior judgment. Accordingly, *Dupasseur*, which is premised on a functional equivalence between a federal court sitting in diversity and a state court, cannot be read to dictate the result in a case, like this, where the federal courts employ different "forms and . . . proceedings" and different preclusion rules.[7]

[7] *Deposit Bank of Frankfort* supports this conclusion. That decision distinguished *Dupasseur* as not applying to a federal-court judgment on a federal question and applied federal law to determine the effect of a prior federal-court judgment on a federal question. The Court had no occasion to consider a situation in which a federal diversity court would have applied a different preclusion rule than that applied by the state courts. However, even though the Conformity Act covered federal courts considering federal questions, the Court perceived a special rule of federal law (presumably, federal common law) that entitled a federal-court decision on a federal question to greater weight than a state-court decision. Accordingly, where federal law applied a specific preclusion rule, this Court did not hesitate to apply federal law, rather than the conflicting state law. *See* 191 U.S. at 514-17; *see also supra* n.6. The same principle should control this case. To be sure, *Deposit Bank of Frankfort* can be read to suggest that the federal interests in a federal-court diversity judgment, as opposed to a judgment on a federal question, do not justify *creating* a federal-common-law rule of preclusion. However, that does not justify *ignoring* existing positive federal preclusion law, like Rule 41(b). To the contrary, *Deposit Bank of Frankfort* supports the application of federal preclusion law when there is federal preclusion law to apply.

In sum, the authorities on which Petitioner relies never framed, let alone answered, the critical question in this case—should a state court confronted with a federal-court judgment decide the preclusive effect of that judgment based on the rules of the rendering forum or the different rules applied in the State where the federal court sits. *Dupasseur* does not answer this question for the Court. This Court must confront and answer this question as a matter of first impression.

C. The Law of Full Faith and Credit, Common Sense, and Sound Policy All Support Applying the Preclusion Law of the Rendering Court, Namely Rule 41(b).

Although the question before this Court is one of first impression, once the question is properly framed, discerning the correct answer is not terribly difficult. In a choice between deciding the preclusive effect of a prior judgment based on the law of the court that rendered it or the different law of a forum that did not render the decision, the latter option has little to recommend it. On the other hand, applying the law of the rendering court, *i.e.*, the law that would have applied had plaintiff refiled in the same court rather than in a state court on the other side of the country, is eminently reasonable. It comports with full faith and credit principles. It makes common sense. It serves sound policy.

First, the principles of full faith and credit support applying the law of the rendering court. The basic thrust of those principles is to give judicial and legislative acts the full faith and credit—no more, no less—that they would have in the rendering forum. As Justice Story emphasized, the framers "intended to give, not only faith and credit to the public acts,

records, and judicial proceedings of each of the States . . . ; but to give to them *full* faith and credit; that is, to attribute to them positive and absolute verity, so that they cannot be contradicted, or the truth of them be denied, any more than in the State where they originated." 2 J. Story, *Commentaries on the Constitution* § 1310 at 191 (M. Bigelow, ed., 5th ed. 1891) (emphasis in original) (footnote omitted).

This principle protects a successful plaintiff by ensuring that it can enforce a judgment even in a different jurisdiction. The principle also protects a successful defendant by denying the plaintiff an advantage from refiling an unsuccessful action in a different forum. "It was the purpose of the Full Faith and Credit Clause to preclude dissatisfied litigants from taking advantage of the federal character of the Nation by relitigating in one State issues that had been duly decided in another. The clause was thus designed to promote a major policy of the law: that there be certainty and finality and an end to harassing litigation." *Kovacs v. Brewer*, 356 U.S. 604, 611 (1958) (Frankfurter, J., dissenting).

Full faith and credit principles protect against the risk "that questions and titles, once deliberately tried and decided in one State, should be open to litigation again and again, as often as either of the parties, or their privies, should choose to remove from one jurisdiction to another." Story, *supra*, at § 1309 at 190. As this Court observed in *Riley v. New York Trust Co.*, 315 U.S. 343, 348 (1942): "This clause of the Constitution brings to our Union a useful means for ending litigation." It prevents litigants from renewing "their legal battles whenever they m[e]et in other jurisdictions," and "compels that controversies be stilled." *Id.* at 349.

When a court is confronted with a judgment rendered by another court, full faith and credit principles make the law of the rendering court the logical reference point. The second

court should judge the validity and preclusive effect of the first judgment based on the law of the rendering court.[8] As Justice Wilson concluded in one of the Nation's first full faith and credit cases, "the record shall have the same effect in this Court, as in the Court from which it was taken." *Armstrong v. Carson's Executors*, 1 Fed. Cas. 1140, 1140 (C.C.D. Pa. 1794).[9] This is true in the state-then-state context, *see, e.g., Green v. Van Buskirk*, 72 U.S. 307, 310-11 (1866), in the state-then-federal context, *see, e.g., Mills*, 11 U.S. (7 Cranch) at 485, and the federal-then-federal context, *see, e.g., Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 41-42 (2d Cir. 1986). It should be no less true in the federal-then-state context presented in this case. Accordingly, when a state court is confronted with a prior federal judgment, it should look to Rule 41(b), which provides the governing law in the rendering forum.

Petitioner's proposed alternative, requiring the second court to look to the state law of California, makes no sense as a practical matter. This would force the second court to

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[8] It bears emphasis that just because a state court applies the *law of the rendering forum* to judge the preclusive effect of a federal-court diversity judgment, it does not follow that *federal law* will control every aspect of the preclusion analysis. On some questions, such as the effect of a judgment "upon the merits" on attempts to relitigate the same claim, federal law provides a definitive answer. On other questions, the law of the rendering federal court in diversity remains the law of the State where the federal court sits, just as it was on *almost* every question under the Conformity Act. *Cf. supra* n.6.

[9] Justice Story made a similar point in *Mills v. Duryee*, 11 U.S. (7 Cranch) 481, 484 (1813). He noted that "when congress gave the *effect of a record to the judgment it gave all the collateral consequences.* There is no difficulty in the proof. It may be proved in the manner prescribed by the act, and *such proof is of as high a nature as an inspection, by the Court, of its own record,* or as an exemplification would be in any other Court of the same state." *Id.* (emphasis added).

construct a completely artificial scenario. The court would need to ask how a hypothetical California state court would have treated a hypothetical second suit if, *contrary to fact*, the first suit had been adjudicated in California state court. The law of preclusion is difficult enough. There is no justification for substituting this strained, counterfactual inquiry for the question normally asked by the full faith and credit analysis–what preclusive effect does the rendering court give to its own judgment.[10]

Applying the law of the rendering forum respects the policies of the rendering forum and avoids unintended results. For example, if a State had two parallel court systems with concurrent jurisdiction over certain disputes but different preclusion rules (for example, where a juvenile court and a court of general jurisdiction shared jurisdiction over a statute, but the juvenile court permitted reopening judgments as a matter of course), what preclusion rule should a recognizing court use to judge the preclusive effect of a judgment by one of these courts? Should the subsequent court apply the preclusion rule of the court that actually rendered the decision? Or should it apply the rule of the other court that did not adjudicate the first dispute, but adjudicates similar questions under different circumstances? It would make absolutely no sense to hold a juvenile forever bound by a

[10] The logic of Petitioner's position suggests that state law should determine the preclusive effect of a federal-court diversity judgment, whether the recognizing forum is a state court or another federal court. This produces the anomaly of forcing the federal courts to ignore Rule 41(b), even though both the rendering and recognizing courts are federal courts bound by Rule 41(b). On the other hand, if the applicable preclusion rule depends on whether the second action is filed in state or federal court, then Petitioner's rule encourages forum shopping and further undermines predictability. A proper analysis avoids these anomalies by looking to the law of the rendering court (Rule 41(b)), no matter where the second case is filed.

juvenile-court judgment or an adult free to reopen a prior judgment from the court of general jurisdiction. It makes no more sense to ignore Rule 41(b) and deny preclusive effect to a federal-court judgment based on the preclusion law applicable in California state courts, but that is precisely the rule that Petitioner proposes.[11]

Applying the law of the rendering forum also promotes important federal policies. First and foremost, applying the law of the rendering forum provides much-needed certainty. Rule 41(b) dictates a clear answer to the preclusive effect of a federal-court judgment by outlining clear default rules. In the context of dismissals on statute of limitations grounds, Rule 41(b) makes clear that such dismissals are presumptively dismissals on the merits that preclude further litigation. To be sure, a district court can deviate from the default rules by clearly stating that a judgment will not have preclusive effect. But that also provides certainty. Rule 41(b) guarantees certainty as to the preclusive effect of the first litigation at the end of the first litigation. Petitioner's proposed rule creates uncertainty by making the preclusive effect of federal-court judgments turn on a Maryland court's resolution of unsettled principles of California law. *See supra* n.2.

Rule 41(b) furthers the goal of certainty by encouraging the rendering court to address expressly the preclusive effect of

[11] A uniform federal-law rule also would avoid awkward results when a federal court adjudicates a federal-question claim together with a supplemental state-law claim. For example, many plaintiffs bring related state-law claims in addition to claims under 42 U.S.C. § 1983, and because state law supplies the statute of limitations for § 1983 claims, the § 1983 claim and the state-law claims often are subject to the same statute of limitations. Where a federal-law claim and a state-law claim arise out of the same facts and are dismissed in the same judgment as barred by the same statute of limitations, it would make no sense to hold that the preclusive effect of that federal-court judgment was governed by two different laws.

its judgment. The district court in California took advantage of that opportunity and made it unmistakably clear that it dismissed the case "in its entirety on the merits and with prejudice." Pet. App. 59a.

Petitioner's proposed rule would undermine the predictability provided by Rule 41(b). No matter how clearly a federal court indicated that a judgment disposed of the case "upon the merits," the ultimate preclusive effect would turn on often-murky questions of state law. Rather than allowing the rendering court to address the preclusive effect of its judgment, Petitioner would judge the decision's preclusive effect on the basis of the law of a different court (law that the federal court would not even have jurisdiction to apply).

Applying the law of the rendering court also promotes the legitimate federal interest in preventing the relitigation of cases that have consumed scarce federal judicial resources. Federal courts ration the scarce resource of diversity jurisdiction by enforcing amount-in-controversy, 28 U.S.C. § 1332(a), and complete diversity requirements, *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). Rule 41(b) likewise recognizes that federal-court jurisdiction is a scarce resource that should not be squandered. If a case satisfies the requirements for diversity jurisdiction and a federal court adjudicates the case "on the merits," that should be conclusive.

Finally, it bears emphasis that affirming the Maryland court's decision to look to the law of rendering court requires neither a finding that Rule 41(b) applies in state court proceedings, nor the overruling of *Dupasseur*. As noted, the federal law of full faith and credit requires a state court to look to the law of the rendering court to determine a judgment's preclusive effect. It was clear long before the promulgation of Rule 41(b) that federal full faith and credit principles apply to limit a state court's treatment of prior federal-court judgments. *See, e.g., West Side Belt R.R. Co.*,

219 U.S. at 102; *McCormick*, 23 U.S. (10 Wheat.) at 199. Federal full faith and credit principles require state courts to apply the law of the rendering forum, which is Rule 41(b). But Rule 41(b) is not operating directly in state court, any more than California preclusion law is operating directly in Maryland court under Petitioner's proposed rule.

Equally important, applying Rule 41(b) where it supplies the preclusion law of the rendering court in no way requires the Court to overrule *Dupasseur*. *Dupasseur* and the cases following it all applied the law of the rendering court (then, state law) to judge the preclusive effect of a prior federal-court judgment. That underlying principle has not changed. What has changed is the preclusion law applied by the rendering federal court. While federal courts formerly applied state preclusion principles, they now apply Rule 41(b).

Requiring state courts to apply Rule 41(b) to judge the preclusive effect of federal-court diversity judgments respects rather than undermines the basic teaching of *Dupasseur*. The central theme of *Dupasseur* is that a federal-court diversity judgment is entitled to the same respect as other decisions. This Court repeatedly invoked its jurisdiction to ensure this equality of treatment. The law of the rendering court determines the preclusive effect of the judgments of every other court in the United States. Applying that same rule to federal-court diversity judgments ensures that they do not receive less weight than other judgments, but rather *full* faith and credit.

CONCLUSION

For the foregoing reasons, and those expressed in Respondent's Brief, this Court should affirm the judgment below.

Respectfully submitted,

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October 10, 2000

APPENDIX

APPENDIX A

CORPORATE MEMBERS, PRODUCT LIABILITY ADVISORY COUNCIL, INC.

3M

Allegiance Healthcare Corporation

American Home Products Corporation

American Medical Systems, Inc.

American Suzuki Motor Corporation

Andersen Corporation

Andrx Corporation

Anheuser-Busch Companies, Inc.

Appleton Papers, Inc.

Aventis Pharmaceuticals

BASF Corporation

Baxter International, Inc.

Bayer Corporation

BIC Corporation

Biomet, Inc.

Biro Manufacturing Company Inc.

Black & Decker (U.S.) Inc.

BMW of North America, Inc.

Boeing Company, The

Bombardier Inc., Recreational Products

Bridgestone/Firestone, Inc.

Briggs & Stratton

Brown and Williamson Tobacco Company
Brown-Forman Corporation
Budd Company, The
C. R. Bard, Inc.
Caterpillar, Inc.
Chevron Corporation
CLARK Material Handling Company
Coleman Company, Inc., The
Compaq
Continental General Tire, Inc.
Coors Brewing Company
DaimlerChrysler Corporation
Dana Corporation
Deere & Company
Dow Chemical Company, The
DuPont
E. & J. Gallo Winery
Eaton Corporation
Eli Lilly and Company
Emerson Electric Co.
Estee Lauder Companies
Euclid Hitachi Heavy Equipment, Inc.
Exxon Mobil Corporation
FMC Corporation
Ford Motor Company

Freightliner Corporation
Gates Corporation, The; Stant Corporation
General Electric Company
General Motors Corporation
Georgia-Pacific Corporation
Glaxo Wellcome Inc.
Global Industrial Technologies, Inc.
Goodyear Tire & Rubber Company, The
Great Dane Limited Partnership
Guidant Corporation
Harley-Davidson Motor Company
Harsco Corporation, Gas & Fluid Control Group
Heil Company, The
Henkel Corporation
Honda North America, Inc.
Hyundai Motor America
International Paper Company
International Truck and Engine Corporation
Isuzu Motors America, Inc.
Johnson & Johnson
Johnson Controls, Inc.
Joseph E. Seagram & Sons, Inc.
Kawasaki Motors Corp., U.S.A.
Kolcraft Enterprises, Inc.
Kraft Foods, Inc.

Lucent Technologies Inc.
Makita USA, Inc.
Mack Trucks, Inc.
Mazda (North America), Inc.
Medtronic, Inc.
Melroe Company
Mercedes-Benz of North America, Inc.
Michelin North America, Inc.
Miller Brewing Company
Mitsubishi Motors R. & D. of America, Inc.
Motor Coach Industries International, Inc.
Navistar International Transportation Corp.
Niro Inc.
Nissan North America, Inc.
O. F. Mossberg & Sons, Inc.
Otis Elevator Co.
PACCAR Inc
Panasonic Company
Pentair, Inc.
Pfizer Inc.
Philip Morris Companies, Inc.
Polaris
Porsche Cars North America, Inc.
Procter & Gamble Co., The
Raymond Corporation, The

Raytheon Aircraft Company
Rheem Manufacturing
RJ Reynolds Tobacco Company
Rover Group, Ltd.
Schindler Elevator Corp.
SCM Group USA, Inc.
Sears, Roebuck and Company
Shell Oil Company
Sherwin-Williams Company, The
Siemens Corporation
Smith & Nephew, Inc.
Snap-on Incorporated
Solutia Inc.
Sturm, Ruger & Co., Inc.
Subaru of America
Synthes (U.S.A.)
Textron Inc.
Thomas Built Buses, Inc.
Toro Company, The
Toshiba America Incorporated
Toyota Motor Sales, USA, Inc.
TRW Inc.
UST (U.S. Tobacco)
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.

Vulcan Materials Company

Whirlpool Corporation

Wilbur-Ellis Company

Wilson Trailer Company

Yamaha Motor Corporation, U.S.A.