No. __-____

IN THE
Supreme Court of the United States

FISHING VESSEL CHLOE Z,
Petitioner,

v.

ROBERT MATOS AND SLOBODAN PRANJIC,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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December 29, 2006

QUESTION PRESENTED

Whether the three-year statute of limitations for maritime tort actions bars a suit filed more than three years after the claim arose, when the plaintiff filed a prior, timely suit asserting the same claim but failed to pursue the claim in that prior suit.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Fishing Vessel CHLOE Z was the defendant in the district court proceedings and the appellee in the court of appeals proceedings.

Respondents Robert Matos and Slobodan Pranjic were plaintiffs-intervenors in the district court proceedings and appellants in the court of appeals proceedings.

TCW Special Credits was a plaintiff in the district court proceedings, but did not participate in the court of appeals proceedings and thus is not a respondent in this Court.

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Fishing Vessel CHLOE Z respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

INTRODUCTION

This petition involves whether a judicially created exception should be engrafted onto the three-year federal statute of limitations for maritime personal-injury actions. In 1991 and 1992, Slobodan Pranjic and Robert Matos, who are respondents here, were injured while working aboard the Fishing Vessel CHLOE Z, which is the petitioner in this case. In 1996, respondents sought to intervene in this case, which is a mortgage-foreclosure action against the CHLOE Z brought by a lender completely unrelated to respondents. The CHLOE Z opposed respondents' intervention, on the ground that, because more than three years had passed since respondents' injuries, their claims were barred by the three-year statute of limitations for maritime tort actions. The district court agreed. But the Ninth Circuit reversed, over a strong dissent. It held that respondents' claims were not untimely, although more than three years had passed since their injuries, relying on the fact that respondents had filed timely claims against the CHLOE Z in 1994 – claims that respondents had failed to pursue.

The Ninth Circuit's holding that the filing of a timely maritime tort claim against a defendant in one case tolls the running of the statute of limitations for the purposes of a separate, untimely suit against that defendant conflicts with decisions of the First, Third, Fifth, and Eighth Circuits. Those courts, interpreting the general statute of limitations for maritime torts and the functionally identical statute of limitations that applies to maritime personal-injury claims under the Jones Act, all have held that an untimely suit is not made timely by the plaintiff's filing of a prior, timely suit. The Ninth Circuit's departure from the rule prevailing in the Fifth Circuit is of particular concern because it creates a conflict between the

two courts of appeals that handle most of the country's maritime personal-injury litigation.

Furthermore, the Ninth Circuit's interpretation of the maritime statute of limitations is erroneous. Under the plain language of that provision, respondents' claims in this case are clearly untimely because they were brought more than three years after respondents' injuries. Although this Court has permitted statutes of limitations to be tolled in certain circumstances, respondents cannot claim the benefits of that doctrine. Respondents were not diligent because they failed to pursue their original claims against the CHLOE Z. In addition, because respondents failed to cause the arrest of the CHLOE Z in the original suits, they neither put interested third parties on notice of their claims against the CHLOE Z nor took the necessary first step in pursuing their claims against the CHLOE Z. Under those circumstances, the statute of limitations must be enforced as written. As this Court has explained in summarily reversing a court of appeals' failure to enforce a statute of limitations, "[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984) (per curiam).

Finally, the disuniformity fostered by the decision below undermines Congress's purpose in enacting the statute of limitations at issue here – namely, "to establish a *uniform* national statute of limitations for maritime torts." H.R. Rep. No. 96-737, at 1 (1980) (emphasis added). In addition, the issue presented is of everyday importance in the administration of maritime personal-injury suits. Few issues are more fundamental to litigation than when a statute of limitations applies. The Ninth Circuit's decision also encourages plaintiffs to shop for a favorable forum in which to file untimely claims.

OPINIONS BELOW

The memorandum order of the court of appeals (Pet. App. 1a-6a) is not reported (but is available at 185 F. App'x 569). The district court's findings of fact and conclusions of law (*id.* at 7a-15a) and its judgment (*id.* at 16a) are not reported.

JURISDICTION

The court of appeals entered its judgment on June 5, 2006. A petition for rehearing was denied on August 3, 2006. *See* Pet. App. 60a-61a. On October 26, 2006, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including December 1, 2006, and on November 27, 2006, further extended the time within which to file a petition to and including December 29, 2006. *See id.* at 68a, 69a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are set forth at Pet. App. 62a-67a.

STATEMENT OF THE CASE

A. Legal Background

1. The general maritime law doctrine of unseaworthiness, under which respondents brought claims in this case, imposes on ship owners a duty "to furnish a vessel and appurtenances reasonably fit for their intended use." *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 550 (1960); *see also Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441 (2001). A seaman injured by an unseaworthy condition may bring an action *in personam* against the owner of the vessel. *See*, *e.g.*, *Lewis*, 531 U.S. at 441. In addition, a seaman's unseaworthiness claim, like most maritime torts, gives rise to a maritime lien, which may be enforced in an action *in rem* against the vessel. *See* Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* 35-37, 622-24, 628-29 (2d ed. 1975) ("Gilmore & Black").

As this Court has explained, in an admiralty "'proceeding[] *in rem*,'" the vessel "'is itself treated as the offender and made the defendant by name or description in order to enforce a lien.'" *California v. Deep Sea Research, Inc.*, 523 U.S. 491, 501 (1998) (quoting *Madruga v. Superior Court*, 346 U.S. 556, 560 (1954)). In an action *in rem*, the vessel in which the plaintiff claims a lien is arrested at the outset of the litigation. *See* Gilmore & Black 36-37; Fed. R. Civ. P. Supp. R. C(3)(a)(ii)(A) (When an *in rem* action is filed, "the court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action."); *see also Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303, 306 (1915) (a "proceeding *in rem* . . . is one essentially against the vessel itself as the debtor or offending thing, . . . in which the vessel is itself *seized* and impleaded as the defendant") (internal quotation marks omitted; emphasis added); *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 427 (1867) (same).

2. This case involves the proper interpretation of the three-year statute of limitations for maritime personal-injury tort claims. *See* Act of Oct. 6, 1980, Pub. L. No. 96-382, § 1, 94 Stat. 1525, 1525; 46 U.S.C. app. § 763a (2000). Congress enacted that statute "to establish a uniform national statute of limitations for maritime torts." H.R. Rep. No. 96-737, at 1 (1980). In particular, Congress sought to remedy disuniformity in the time for filing unseaworthiness claims, which had been governed by the equitable doctrine of laches. *See id.* at 1-2. In addition, Congress intended to conform the general statute of limitations for maritime tort claims to the three-year statute of limitations for claims under the Jones Act, *see id.*, which provides seamen a cause of action for injuries caused by employers' negligence, *see Lewis*, 531 U.S. at 441. To those ends, Public Law No. 96-382 provided that, in pertinent part, "[u]nless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both,

arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued." § 1, 94 Stat. 1525. The statute was reproduced in the Appendix to Title 46 of the U.S. Code, 46 U.S.C. app. § 763a (2000).

In October 2006, Congress enacted a statute to "reorganiz[e] and restat[e] the laws currently in the appendix to title 46." Act of Oct. 6, 2006, Pub. L. No. 109-304, § 2(a), 120 Stat. 1485, 1485 ("2006 Act"). That legislation restated the statute of limitations for maritime torts in § 763a as follows: "Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose." *Id.* § 6(c), 120 Stat. 1511 (to be codified as positive law at 46 U.S.C. § 30106).

Although the wording of new § 30106 differs from former § 763a in minor respects, the Act makes clear that Congress intended no change in meaning. *See id.* § 2(b), 120 Stat. 1485 ("[i]n the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections"); *see also* 2 U.S.C. § 285b(1) (explaining that the function of the Office of the Law Revision Counsel, which participated in drafting Public Law No. 109-304, is to restate laws in a way that conforms to the intent of the original drafters). Further, the Act's legislative history shows that no substantive changes were intended. *See* H.R. Rep. No. 109-170, at 40 (2005) (explaining that the changes in wording were for clarity and consistency); *see also id.* at 2 (the bill "codifies existing law rather than creating new law"); *id.* at 23-24 ("changes are not intended . . . to lead to changes in result, and therefore they should not impair the precedent[ial] value of earlier judicial decisions or other interpretations"; "anyone interpreting the law should assume that no change in result was intended by this bill"). Thus, the statute of limitations for maritime tort claims in effect

today is substantively identical to the statute in force when respondents were injured.

3. Public Law No. 109-304 also restated the Jones Act, which was originally enacted as § 33 of the Merchant Marine Act of 1920, ch. 250, 41 Stat. 988, 1007. *See* Gilmore & Black 325-27. The Jones Act had been located at 46 U.S.C. app. § 688 (2000), and it now will be codified as positive law at 46 U.S.C. §§ 30104-30105. *See* 2006 Act, § 6(c), 120 Stat. 1510. The Jones Act incorporates the provisions of the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60, including the three-year statute of limitations in 45 U.S.C. § 56. *See* 2006 Act, § 6(c), 120 Stat. 1510 ("Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.") (to be codified as positive law at 46 U.S.C. § 30104(a)); 46 U.S.C. app. § 688(a) (2000) ("in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply"); *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221, 225 & n.6 (1958) (three-year limitations period in 45 U.S.C. § 56 applies to Jones Act claims); *see also* Gilmore & Black 351-53. There is no material difference between the language of § 56, which provides in pertinent part that "[n]o action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued," and either the present or the former version of the statute of limitations for maritime torts. *See supra* pp. 4-5.

B. Factual and Procedural Background

1. In 1991 and 1992, respondents were injured while working aboard petitioner Fishing Vessel CHLOE Z ("the CHLOE Z"). *See* Pet. App. 8a. At the time of their injuries, they were employed by Chloe Z Fishing Co., Inc. ("Fishing Company"), which owned the CHLOE Z.

In 1994, respondents each filed suits asserting unseaworthiness claims *in personam* against Fishing Company. *See id.* Each respondent also pleaded claims *in rem*

against the CHLOE Z. *See id.* But neither respondent ever caused the arrest of the CHLOE Z or otherwise pursued the claims against the vessel. *See id.* at 8a & n.4, 12a-13a. In addition, each respondent agreed to the dismissal of his claims against the CHLOE Z. *See id.* 17a, 25a (pretrial orders stipulating that all parties named in the pleadings other than Fishing Company and two other corporations "are now dismissed"); *see also* Fed. R. Civ. P. 41(a)(1)(ii) ("an action may be dismissed by the plaintiff without order of court . . . by filing a stipulation of dismissal signed by all parties who have appeared in the action").[1]

Respondents' claims against Fishing Company were tried to juries, and respondents prevailed in both cases. *See id.* at 9a, 12a-13a, 14a-15a. The district court entered judgments *in personam* against Fishing Company only. *See id.* at 33a-36a. The Ninth Circuit affirmed those judgments. *See Pranjic v. Chloe Z Fishing Co.*, No. 96-17279, 1997 WL 697384 (9th Cir. Nov. 6, 1997) (judgment noted at 129 F.3d 127 (table)); *Matos v. Chloe Z Fishing Co.*, No. 96-17278, 1997 WL 702919 (9th Cir. Nov. 7, 1997) (judgment noted at 129 F.3d 126 (table)). Fishing Company was insolvent and unable to pay the judgments against it. *See* Pet. App. 9a.[2]

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[1] Fishing Company initially failed to answer, and defaults were entered against it in both cases. *See* Docket Entry 13, *Pranjic v. Chloe Z Fishing Co.*, No. 94-00014 (D. Guam July 26, 1994); Docket Entry 12, *Matos v. Chloe Z Fishing Co.*, No. 94-00013 (D. Guam July 26, 1994). Subsequently, Fishing Company appeared, and the district court set aside the defaults. *See* Docket Entry 40, *Pranjic v. Chloe Z Fishing Co.*, No. 94-00014 (D. Guam Dec. 13, 1994); Docket Entry 41, *Matos v. Chloe Z Fishing Co.*, No. 94-00013 (D. Guam Dec. 13, 1994). Because the CHLOE Z was never arrested, however, it never appeared or had a default entered against it in either case.

[2] The district court found that, while respondents' suits against Fishing Company were pending, respondents "should have been or were in fact *well aware* of [Fishing Company]'s financial difficulties" and still "chose to only pursue their *in personam* cases" against Fishing Company. Pet. App. 12a-13a (emphasis added).

2. In August 1996, TCW Special Credits brought this action *in rem* to enforce its preferred ship mortgage on the CHLOE Z. *See* Pet. App. 38a.[3] In December of that year, respondents moved to intervene in this case as plaintiffs, so that they could assert unseaworthiness claims *in rem* against the CHLOE Z – the same type of claim that they had pleaded but failed to pursue in their prior suits. *See id.* at 9a.[4] Because more than three years had elapsed since respondents' injuries in 1991 and 1992, the CHLOE Z asserted that the three-year statute of limitations for maritime tort claims in 46 U.S.C. app. § 763a (2000) barred respondents' attempts to intervene and to assert claims against it in this case. *Id.*

a. The district court initially rejected the CHLOE Z's statute-of-limitations defense on the ground that the CHLOE Z was equitably estopped from asserting the statute of limitations. Respondents subsequently prevailed at trial on their unseaworthiness claims against the CHLOE Z. *See* Pet. App. 7a n.1.

On appeal, the Ninth Circuit reversed the district court's judgment in favor of respondents, holding that the district court had erred in failing to conduct a hearing on disputed issues of fact involving the equitable-estoppel issue. *See id.* at 54a, 58a. The court of appeals remanded

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[3] Like a maritime tort claim, a preferred ship mortgage gives rise to a maritime lien that can be enforced in an action *in rem* against the vessel. *See* Gilmore & Black 630.

[4] Before filing their motions to intervene in this mortgage-foreclosure case, but months after the final judgments were entered in their suits against Fishing Company, respondents moved the district court to consolidate their completed cases against Fishing Company with this case. The court denied those motions because, among other reasons, there was insufficient commonality between those actions *in personam* and this action *in rem*. *See* Pet. App. 40a ("The fact that the Matos case [against Fishing Company] was brought in personam and the Chloe Z foreclosure case [*i.e.*, this case] is in rem cannot be disregarded. This jurisdictional distinction makes the argument that there exists a commonality of any issues between these cases somewhat dubious."), 47a (same for Pranjic).

this case to the district court for an evidentiary hearing. *See id.*

b. On remand, the district court concluded that equitable estoppel did not preclude the CHLOE Z from asserting the statute of limitations as a defense to respondents' attempts to intervene in this case. *See* Pet. App. 9a-15a. The court also found that the three-year statute of limitations had expired when respondents sought to intervene in this proceeding. *See id.* at 13a, 14a, 15a.[5] Accordingly, the court held that respondents' "*in rem* causes of action are in fact time barred by the statute of limitations," *id.* at 15a, and it entered judgment in favor of the CHLOE Z, *see id.*

c. The Ninth Circuit reversed. *See* Pet. App. 1a-6a. The entire panel agreed with the district court's rejection of respondents' equitable-estoppel claim. *See id.* at 2a (majority), 3a (Reed, J., dissenting). The court determined that the district court had "correctly found no misrepresentations and no equitable estoppel." *Id.* at 2a.

The court then addressed whether the statute of limitations had expired before respondents moved to intervene in this case. It observed that "[t]he defendant vessel argues, with some plausibility, that implicit in our remand on the equitable estoppel was a holding that, absent such estoppel, the statute of limitations was a bar." *Id.* Even though the parties had not briefed to the Ninth Circuit the statute-of-limitations issue, the panel majority reasoned that, "[n]ow that the equitable estoppel issue has disappeared, we address, for the first time, whether the *in rem* proceeding was barred by the statute of limitations." *Id.* The court held that the statute of limitations did not run before respondents intervened in this case, relying on the fact that respondents had filed suits in 1994, "well

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[5] The district court's fourth conclusion of law contains a typographical error; it states that respondents were injured in 1991 and 1996. *See* Pet. App. 13a. As the district court found in its first finding of fact, *see id.* at 8a, it is undisputed that respondents were injured in 1991 and 1992.

within the three-year period" of the statute of limitations. *Id.*[6]

Judge Reed dissented. He stated that the Ninth Circuit's prior "remand on the issue of equitable estoppel implicitly held that, absent such estoppel, the statue [*sic*] of limitations was a bar." *Id.* at 3a. On the merits, he could "see no basis for tolling [respondents'] claims against the Chloe Z." *Id.* at 4a. In explaining his view that tolling was inappropriate, Judge Reed noted that "the court here accepts the district court's finding that [respondents'] failure to pursue their 1994 *in rem* complaint against the Chloe Z was the product of poor judgment, not a defective pleading or any misconduct by the Chloe Z. This is tantamount to a finding that the decision not to try the 1994 *in rem* claims was 'garden variety excusable neglect,' which precludes equitable tolling." *Id.* (quoting *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990)). Judge Reed also explained at length that the majority had erroneously failed to give effect to respondents' voluntary dismissals of their original *in rem* claims against the CHLOE Z and appeared to have misunderstood pertinent record facts. *See id.* at 4a-6a.

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[6] The court also stated that respondents' voluntary dismissals of their claims *in rem* against the CHLOE Z in the 1994 suits were ineffective because the district judge did not sign the pretrial orders, as required by a Guam local court rule. *See* Pet. App. 2a-3a.

REASONS FOR GRANTING THE PETITION

THE NINTH CIRCUIT CREATED A CONFLICT WITH FOUR OTHER CIRCUITS ON AN IMPORTANT QUESTION OF MARITIME LAW

A. The Decision Below Conflicts With Decisions Of Other Courts Of Appeals

The Ninth Circuit decided in this case that the filing of a timely maritime tort claim against a defendant in one case tolls the running of the statute of limitations for the purposes of a separate, untimely action against that defendant. That conclusion conflicts with the decisions of the First, Third, Fifth, and Eighth Circuits interpreting the general statute of limitations for maritime torts and the functionally identical statute of limitations that applies to Jones Act claims. Those courts all have held that an untimely suit is not made timely by the plaintiff's filing of a prior, timely suit.[7]

1. Fifth Circuit

In *Basco v. American General Insurance Co.*, 43 F.3d 964 (5th Cir. 1994), the plaintiff was injured by a piece of equipment while working on an offshore oil platform. *Id.* at 964-65. He brought a timely suit against the platform operator. *Id.* at 965. Before the expiration of the statute of limitations, he joined the equipment maker as a defendant in that action, but later voluntarily dismissed the

[7] The dissent below was correct that (1) implicit in the 2000 remand was the holding that the statute of limitations barred respondents' claims in this case unless the district court found that the CHLOE Z was equitably estopped from asserting that defense, and (2) the majority further erred in not giving effect to the voluntary dismissals. Nonetheless, those issues do not affect the question presented. This petition assumes that the panel properly reached and decided the question whether the statute of limitations had run. In addition, if the CHLOE Z is correct that respondents' filing of timely claims against it does not, without more, justify tolling the statute of limitations for purposes of their present untimely claims, then reversal is required regardless of whether the 1994 *in rem* claims were voluntarily dismissed. It is enough that those claims were neither pursued nor perfected through arrest of the vessel.

equipment maker. *Id.* Meanwhile, he filed a completely separate (and also timely) action against yet a third defendant, his employer. *Id.* He subsequently attempted to join the equipment maker as a defendant in the suit against his employer. *Id.* At that time, he had not yet dismissed the equipment maker from the suit against the platform operator. *Id.* But, critically, the statute of limitations had expired. *Id.*

The equipment maker asserted that the three-year statute of limitations in 46 U.S.C. app. § 763a (2000) barred the plaintiff's attempt to join it in the suit against the employer. *Id.* The plaintiff responded that the statute of limitations had not run because his first claim against the equipment maker was still pending when he sought to join the equipment maker as a defendant in the suit against the employer. *Id.*

The Fifth Circuit held that the maritime statute of limitations barred the plaintiff's claim against the equipment maker. *Id.* at 965-66. The court rejected the plaintiff's contention that, "for purposes of satisfying the statute of limitations for federal maritime torts, the filing of the first suit tolled the statute of limitations as to the filing of the second suit." *Id.* at 966. That conclusion squarely conflicts with the Ninth Circuit's reliance on respondents' pleading of *in rem* claims in earlier 1994 suits as the basis for finding that their intervention in this case was timely.

2. First Circuit

In *McKinney v. Waterman Steamship Corp.*, 925 F.2d 1 (1st Cir. 1991), the plaintiff, McKinney, was injured while working on a vessel owned by his employer, Waterman. *Id.* at 2. Two years after McKinney was injured, Waterman filed for bankruptcy. *Id.* Within three years of his injury, but after Waterman had filed for bankruptcy, McKinney sued Waterman, asserting unseaworthiness and Jones Act claims. *Id.* McKinney voluntarily dismissed that action after learning of Waterman's bankruptcy, and the parties engaged in settlement discussions. *Id.* In 1989, two years after the bankruptcy stay was

lifted, McKinney filed another suit against Waterman, again asserting unseaworthiness and Jones Act claims. *Id.* "Not counting the time during which the bankruptcy stay prevented McKinney from suing, more than four years passed between McKinney's injury and the filing of the present complaint." *Id.* Accordingly, the district court dismissed the suit as time barred. *Id.*

McKinney argued on appeal that "he should receive an equitable extension of the statute of limitations" because, among other things, his initial suit and the parties' settlement activity apprised Waterman of his intent to pursue his claims. *Id.* at 3. The First Circuit rejected that contention and affirmed the district court's dismissal of McKinney's second suit. *Id.* at 6. The court observed that McKinney's position, if accepted, would have led to the absurd result that "a plaintiff who provided notice of his claim within the period could then wait an indefinite time to reinitiate the prosecution of his case." *Id.* (internal quotation marks omitted).

3. Third Circuit

In *Claussen v. Mene Grande Oil Co.*, 275 F.2d 108 (3d Cir. 1960), the Third Circuit held that a seaman's claim under the Jones Act was time barred because it was filed more than three years after the date of the injury. *See id.* at 110. The court squarely rejected the plaintiff's contention that "an earlier suit filed on these claims" – which was discontinued for failure of process, *see id.* at 112 – "somehow tolled the statute of limitations for the present entirely distinct action." *Id.* at 110. The Third Circuit deemed that argument – which the Ninth Circuit found persuasive in this case – to be "wholly without merit." *Id.*

4. Eighth Circuit

In *Mamer v. Apex R.E. & T.*, 59 F.3d 780 (8th Cir. 1995), the plaintiff filed a timely suit against his employer to recover for injuries suffered while working on his employer's vessel. *Id.* at 781. While that suit was pending, the employer filed for bankruptcy. *Id.* The plaintiff filed a claim in the bankruptcy proceeding, entered into

mediation with the employer, and voluntarily dismissed his suit against the employer (which he could not have pursued then in any event because of the bankruptcy stay). *Id.* A year and a half after the employer emerged from bankruptcy, the plaintiff again filed suit against it. *Id.* The district court granted the employer's motion for summary judgment on the ground that the plaintiff's unseaworthiness and Jones Act claims were barred by the three-year statute of limitations applicable to those claims. *Id.*

The plaintiff appealed, contending that the district court erred in failing to toll the statute of limitations. *Id.* The court of appeals rejected that contention, and in so doing it explained that the plaintiff's prior timely suit did not justify tolling the statute of limitations. *Id.* at 782.

* * *

In sum, the Ninth Circuit's decision in this case creates a clear conflict with four other circuits over whether an untimely suit is rendered timely by the plaintiff's filing of a prior, timely suit.[8]

B. The Ninth Circuit Erroneously Interpreted The Statute Of Limitations For Maritime Torts

The Ninth Circuit's decision to embark on a new course is especially problematic because its reasoning and result are flatly contrary to the legislative judgment Congress has made in enacting a three-year time period for plaintiffs to pursue maritime claims of the type at issue here.

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[8] The court of appeals' refusal to publish its decision in this case presents no obstacle to this Court's review. *See*, *e.g.*, *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 126-27 (1995) (reviewing unpublished court of appeals decision regarding applicability of general removal statute's bar against review of remand orders); *see also Smith v. United States*, 502 U.S. 1017, 1020 n.* (1991) ("The fact that the Court of Appeals' opinion is unpublished is irrelevant. Nonpublication must not be a convenient means to prevent review. An unpublished opinion may have a lingering effect in the Circuit[.]") (Blackmun, J., dissenting from denial of certiorari); *cf. Stutson v. United States*, 516 U.S. 193, 196 (1996) (per curiam) ("[a] contrary approach would risk effectively immunizing summary dispositions by courts of appeals from our review").

The court below should have affirmed the district court's judgment dismissing respondents' claims against the CHLOE Z as time barred.

1. By its plain terms, the statute of limitations for maritime torts bars respondents' claims in this case. At the time of the events at issue here, the statute provided that "a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued." 46 U.S.C. app. § 763a (2000). It is undisputed that respondents seek "recovery of damages for personal injury . . . arising out of a maritime tort," namely, unseaworthiness. And it is undisputed, as the district court found, that respondents' claims against the CHLOE Z accrued in 1991 and 1992 and that respondents did not attempt to intervene in this action until 1996. *See* Pet. App. 8a, 9a. Therefore, under the clear language of the statute of limitations, respondents' claims in this case were untimely because they were not commenced "within three years from the date the cause[s] of action accrued."

The conclusion is the same under the statute as restated by Public Law No. 109-304. Under that Act, "a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose." 2006 Act, § 6(c), 120 Stat. 1511 (to be codified as positive law at 46 U.S.C. § 30106). Thus, because respondents' claims against the CHLOE Z in this case were not "brought within 3 years after the cause[s] of action arose," they are time barred.

2. In accordance with that straightforward textual analysis, the district court concluded that respondents' "*in rem* causes of action are in fact time barred by the statute of limitations." Pet. App. 15a. But the Ninth Circuit reversed, implicitly concluding that the statute of limitations was tolled by respondents' filing of timely claims against the CHLOE Z in their 1994 suits. *See id.* at 2a-3a. The court of appeals offered no support for that

conclusion, and an examination of this Court's cases shows that it was unjustified.

Although this Court has indicated that equitable principles of tolling, estoppel, and waiver ordinarily can be applied to excuse untimeliness where Congress has not expressed a contrary intent, *see*, *e.g.*, *Young v. United States*, 535 U.S. 43, 50 (2002), the Court has cautioned that those principles "are to be applied sparingly," *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002). That is because "[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984) (per curiam).[9]

A comparison of the decision below to this Court's decision in *Burnett v. New York Central Railroad Co.*, 380 U.S. 424 (1965), shows that the Ninth Circuit erroneously disregarded the procedural requirements established by Congress in the maritime statute of limitations. In *Burnett*, the Court held that, when a plaintiff begins a timely suit under the Federal Employers' Liability Act in a state court that has jurisdiction and serves the defendant with process and the plaintiff's case is dismissed for improper venue, the statute of limitations in the Act is tolled during the pendency of the state suit. *Id.* at 434-35. The rationale for that decision was twofold: the plaintiff did not sleep on its rights, and the original suit put the defendant on notice that it would be expected to defend a suit arising from the incident at issue. *See id.* at 427-30.

Like the plaintiff in *Burnett*, respondents filed initial timely suits, followed by subsequent untimely suits. But, critically, the plaintiffs in *Burnett* acted diligently in

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[9] Thus, in *Baldwin County Welcome Center*, the Court summarily reversed an unpublished court of appeals decision that had held that the filing of a right-to-sue letter in a federal court tolled the statute of limitations under Title VII of the Civil Rights Act of 1964. *See* 466 U.S. at 149.

pursuing their claims. Here, however, the district court explicitly found that respondents knew during the pendency of the prior suits that Fishing Company was in financial trouble and that they nevertheless chose *not* to pursue their claims *in rem* against the CHLOE Z in those cases. *See* Pet. App. 12a-13a, 14a-15a. Thus, in contrast to the plaintiff in *Burnett*, respondents *did* sleep on their rights. That lack of diligence precludes any reliance by them on the doctrine of tolling. *See Baldwin County Welcome Ctr.*, 466 U.S. at 151 (refusing to apply tolling because "[o]ne who fails to act diligently cannot invoke equitable principles [such as tolling] to excuse that lack of diligence"); *see also Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) ("Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way."). At best, respondents' failure to recognize the consequences of not pursuing their claims *in rem* against petitioner in the earlier cases was "garden variety . . . excusable neglect." *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990). This Court has held that such neglect does not support equitable tolling, *see id.*, and the dissenting judge below recognized that that principle should control respondents' attempt to evade the time bar, Pet. App. 4a.

More fundamentally, the Court in *Burnett* emphasized that the defendant was timely served with process in the first suit, meaning that it was on notice of the plaintiff's intent to pursue a claim against it. *See* 380 U.S. at 428-29, 434-35, 436. Here, by contrast, respondents failed to cause the arrest of petitioner in their original suits. *See* Pet. App. 8a. That failure is critical because arrest of the vessel in an action *in rem*, like service of process in an action *in personam*, is necessary to provide notice of the plaintiff's claim and of its intent to pursue that claim to judgment. The vessel must be arrested to provide proper notice because judgments *in rem* are good against the world. *See Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303, 306 (1915) ("By virtue of dominion over the

thing all persons interested in it are deemed to be parties to the suit; the decree binds all the world, and under it the property itself passes, and not merely the title or interest of a personal defendant."); *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 427 (1867) (same); Gilmore & Black 787. When, as here, the plaintiff has failed to cause the arrest of the vessel, persons with claims on the vessel – like third-party lienholders – receive no notice of the pending proceeding in which their interests could be extinguished. *See The Mary*, 13 U.S. (9 Cranch) 126, 144 (1815) (arrest of the vessel provides "constructive notice" to all interested parties). For that reason, courts ordinarily will not give effect to a purported judgment *in rem* when the vessel was not arrested. *See Thorsteinsson v. M/V Drangur*, 891 F.2d 1547, 1553 (11th Cir. 1990) ("No foreign judgment regarding admiralty and maritime issues . . . has been given effect by American courts absent arrest in rem of the vessel."). Respondents' failure to cause the arrest of the CHLOE Z in the original suits precludes any attempt by them to rely on those suits as fulfilling the notice function of the statute of limitations.

* * *

Contrary to the apparent belief of the panel majority below, no basis exists for tolling the statute of limitations in this case, and respondents' claims are time barred. As the Court recognized in *Baldwin County Welcome Center*, "[i]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." 466 U.S. at 152 (internal quotation marks omitted; alteration in original).

C. The Court's Review Is Warranted To Restore Uniformity In The Interpretation Of The Statute Of Limitations For Maritime Torts

The conflict created by the Ninth Circuit's decision in this case warrants this Court's review because it undermines congressionally intended uniformity in the time for

filing maritime tort claims, impairs predictability for litigants, and encourages forum shopping.

1. This Court repeatedly has recognized that the transitory nature of maritime commerce requires uniformity in the legal rules applicable to maritime actors. *See*, *e.g.*, *Norfolk S. Ry. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 28-29 (2004) (recognizing the need for uniformity in maritime law). Regarding the question presented in this case, the demand for uniformity is even greater, because Congress's express purpose in enacting the statute at issue here was "to establish a *uniform* national statute of limitations for maritime torts." H.R. Rep. No. 96-737, at 1 (1980) (emphasis added); *accord Mink v. Genmar Indus., Inc.*, 29 F.3d 1543, 1547 (11th Cir. 1994) ("Congress intended to provide a uniform statute of limitations for all maritime personal injury and death torts."). By fostering disuniformity where Congress specifically intended uniformity, the decision below undermines Congress's purpose in enacting the statute, necessitating this Court's review.[10]

2. The Ninth Circuit's decision in this case also hampers litigants' ability to predict the appropriate time for filing maritime tort claims. Such unpredictability defeats a statute of limitations' primary purpose, which is to require a plaintiff "to put the adversary on notice to defend within the period of limitation." *Burnett*, 380 U.S. at 428 (internal quotation marks omitted). When a plaintiff fails to pursue or voluntarily dismisses a claim within the limitations period, he has not put the defendant on notice that it should be prepared to defend a possible later untimely claim. Furthermore, the Ninth Circuit's unprincipled extension of the tolling doctrine in this case infringes the

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[10] *See generally* Michael F. Sturley, *Observations on the Supreme Court's Certiorari Jurisdiction in Intercircuit Conflict Cases*, 67 Tex. L. Rev. 1251, 1271-72 (1989) (when Congress's purpose in enacting a maritime statute is to establish uniformity, inconsistent interpretations of the legislation "undermine the essential purpose of the statute in a way that only the Supreme Court can correct").

defendant's "right to be free of stale claims" and permits "surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* (internal quotation marks omitted).

In addition, the unpredictability engendered by the decision below will affect a substantial number of cases. According to statistics from the Administrative Office of the United States Courts, more than 1,750 "marine" personal injury cases were commenced during the 12-month period ending June 30, 2005. *See Statistical Tables for the Federal Judiciary*, Table C-2 (June 30, 2005), *available at* http://www.uscourts.gov/stats/june05/C02jun05.pdf.

Moreover, those data understate the number of filings because they are derived from a form that permits a plaintiff to select only one "nature of suit" label to describe its case. *See* Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences Between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 Stan. L. Rev. 1275, 1286 & n.37 (2005).

3. Finally, by departing from the prevailing approach in other circuits, the Ninth Circuit's decision in this case encourages forum shopping. A plaintiff can bring an unseaworthiness claim against the vessel *in rem* in any judicial district in which the vessel is (or will be during the pendency of the suit) located, regardless of whether the forum has any other connection to the case. *See* Fed. R. Civ. P. Supp. R. C(2)(c). Similarly, under the broad venue provisions applicable in Jones Act cases, a plaintiff can bring suit in any judicial district in which its corporate employer is subject to personal jurisdiction. *See* 28 U.S.C. § 1391(b)-(c); *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In light of those liberal venue rules, maritime personal-injury plaintiffs can exploit any disuniformity in the interpretation of the statute of limitations at issue here. Thus, it is all the more important for this Court to grant certiorari and restore the uniformity that Congress

intended when it enacted the statute of limitations for maritime tort actions.

* * *

The Ninth Circuit's decision in this case opens up an enormous loophole in the maritime statute of limitations. Left uncorrected, persons sustaining maritime injuries will be able to game the system in the circuit with the largest maritime workforce, as respondents were authorized to do, to evade the three-year limitations period. Because the proper rule to apply for the limitations period is of paramount importance in the sound and uniform administration of maritime personal-injury law, this Court's review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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