No. 06-899

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

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF THE INTERNATIONAL GROUP OF P&I CLUBS, LLOYD'S MARKET ASSOCIATION, AND THE CHAMBER OF SHIPPING OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

The International Group of P&I Clubs, Lloyd's Market Association (LMA), and the Chamber of Shipping of America (CSA) move under Rule 37.2(b) of the Rules of this Court for leave to file the accompanying brief as *amici curiae* in support of the petition for writ of certiorari. Counsel for petitioner has consented to the filing of this brief. Counsel for respondent has withheld consent, thus necessitating this motion.

The central issue in this case is whether a judicially created exception should be engrafted onto the three-year statute of limitations that Congress enacted for maritime personal-injury actions. *See* 46 U.S.C. § 30106. Although the uniform recognition and enforcement of statutes of limitation would be important in virtually any context, the issue is particularly important in the maritime industry. In view of the unique significance of statutes of limitation in maritime law, *amici curiae* believe that this Court may benefit from the perspective of some of the central players in the maritime industry.

Amicus International Group of P&I Clubs is an association comprising thirteen mutual insurance associations that insure nearly 90% of the world's ocean-going ship tonnage. The members of those thirteen P&I clubs are owners, operators, and charterers of ships of practically all maritime nations.

Amicus Lloyd's Market Association is the recognized representative voice of the Lloyd's underwriting market. It thus presents the views of the world's leading insurance market, popularly known as "Lloyd's of London" – the preeminent market for marine insurance in particular.

Amicus Chamber of Shipping of America is an organization of U.S.-based companies that own, operate, or charter ocean-going tankers, container ships, and dry-bulk vessels engaged in both the domestic and international trades, and companies that maintain a commercial interest in the operation of such ocean-going vessels.

None of these amici has any direct exposure for the risks incurred by petitioner as a result of the injuries suffered by respondents. Amici nonetheless have a vital interest in the proper interpretation of the legal standards under which liability may be imposed and, in particular, the circumstances under which statutes of limitation may be avoided.

The misguided and erroneous rule announced by the Ninth Circuit in the decision below will not only impose an unfair burden on the petitioner in this case, it will also adversely affect the entire maritime industry. Moreover, the uncertainty created by the conflict between the Ninth Circuit and the other courts of appeals to have addressed the issue will itself adversely affect the maritime industry. Whether or not this Court accepts a judicially created exception to the three-year statute of limitations, at a minimum the industry should have the benefit of a uniform rule.

Amici curiae can assist this Court to better understand the serious consequences of leaving the error below uncorrected and the conflict in the courts of appeals unresolved. Amici therefore request leave to file the attached brief.

Respectfully submitted,

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INTEREST OF THE *AMICI CURIAE*[1]

Amicus International Group of P&I Clubs is an association comprising thirteen mutual insurance associations known as "protection and indemnity clubs" (often abbreviated "P&I clubs.").[2] P&I clubs are "associations of shipowners banded together to spread and absorb liabilities falling on their members." GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY § 2-10, at 76 (2d ed. 1975); *see also* 2 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 19-12 (4th ed. 2004); LESLIE J. BUGLASS, MARINE INSURANCE AND GENERAL AVERAGE IN THE UNITED STATES 386-418 (3d ed. 1991); T.G. Coghlin, *Protection & Indemnity Clubs*, 1984 LLOYD'S MAR. & COM. L.Q. 403, 405-11; Mark Tilley, *The Origin and Development of the Mutual Shipowners Protection & Indemnity Association*, 17 J. MAR. L. & COM. 261 (1986); Norman J. Ronneberg, Jr., *An Introduction to the Protection & Indemnity Clubs*

[1] Under Rule 37.6, *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

[2] The thirteen members of the International Group are the American Steamship Owners Mutual Protection and Indemnity Association, Inc.; Assuranceforeningen Gard (Gjensidig); Assuranceforeningen Skuld (Gjensidig); The Britannia Steam Ship Insurance Association Ltd.; The Japan Ship Owners' Mutual Protection & Indemnity Association; The London Steam-Ship Owners' Mutual Insurance Association Ltd.; The North of England Protecting and Indemnity Association Ltd.; The Shipowners' Mutual Protection and Indemnity Association (Luxembourg); The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd.; The Steamship Mutual Underwriting Association (Bermuda) Ltd.; Sveriges Ångfartygs Assurans Förening (the Swedish Club); United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd.; and The West of England Ship Owners' Mutual Insurance Association (Luxembourg).

and the Marine Insurance They Provide, 3 U.S.F. MAR. L.J. 1 (1991).

The members of the thirteen P&I clubs are owners, operators, and charterers of ships of practically all maritime nations. The P&I clubs themselves are non-profit mutual organizations, insofar as member shipowners insure one another on an indemnity basis against a variety of third-party liabilities relating to the use and operation of ships, particularly those risks not otherwise covered by a vessel's hull policy. The thirteen clubs in the International Group insure nearly 90% of the world's ocean-going ship tonnage. Amici protect their members in respect of most of the liability risks that arise from the operation of vessels in international maritime commerce.

"Lloyd's of London," as it is popularly known, is the world's leading insurance market providing specialist insurance services to businesses in over 200 countries and territories. The history and structure of the Lloyd's market has been discussed in many sources and in great detail. *See*, *e.g.*, MALCOLM A. CLARKE, THE LAW OF INSURANCE CONTRACTS § 11-3 (4th ed. 2002); D.S. HANSELL, INTRODUCTION TO INSURANCE 113-22 (2d ed. 1999); Jeremy A. Herschaft, *Not Your Average Coffee Shop: Lloyd's of London – A Twenty-First-Century Primer on the History, Structure, and Future of the Backbone of Marine Insurance*, 29 TUL. MAR. L.J. 169 (2005).

Lloyd's is not an insurance company but a society of members, both corporate and individual, who provide the financial capital that serves as security for Lloyd's policies. Members form syndicates that commonly specialize in different types of insurance, including marine insurance –

the oldest line of business at Lloyd's. At last count, 66 syndicates were underwriting insurance at Lloyd's.

Amicus Lloyd's Market Association (LMA) is the recognized representative voice of the Lloyd's underwriting market. It was formed in 2001 by the merger of five associations that had served various specialized interests in the market.[3] The oldest of these predecessor organizations was Lloyd's Underwriters' Association (Marine), which was founded in 1909. The LMA is owned and funded by its members. All Lloyd's managing agents and members' agents are members of the LMA and nearly all are actively involved in the Association's work.

The Chamber of Shipping of America is an organization of vessel owners, operators, and charterers founded in 1917. It represents 28 U.S.-based companies that own, operate, or charter ocean-going tankers, container ships, and dry-bulk vessels engaged in both the domestic and international trades, and companies that maintain a commercial interest in the operation of such ocean-going vessels.

None of these amici has any direct exposure for the risks incurred by petitioner as a result of the injuries suffered by respondents. Amici nonetheless have a vital interest in the proper interpretation of the legal standards under which liability may be imposed and, in particular, the circumstances under which statutes of limitation may be avoided.

[3] In January 2005, the LMA merged with a sixth such association – the Lloyd's Motor Underwriters' Association (LMUA).

STATEMENT

In November 1991, respondent Pranjic was injured while working aboard the *Fishing Vessel Chloe Z*, the petitioner here. In July and August 1992, respondent Matos was similarly injured. In May 1994 (less than three years after the earliest injury), respondents filed suit against both the *Chloe Z in rem* and their employer (which owned the *Chloe Z*) *in personam*. The respondents did not pursue their *in rem* claims, however, but instead obtained *in personam* judgments that ultimately proved to be uncollectible.

In the meantime, a lender unrelated to respondents brought a mortgage-foreclosure action against the *Chloe Z*. That action was completely independent of respondents' earlier personal injury action. But in December 1996, more than four years after respondents' latest injury (and thus more than a year after the expiration of the three-year statute of limitations), they sought to intervene in the foreclosure action to assert the same *in rem* claims against the *Chloe Z* that they had previously failed to pursue.

The question presented here is whether respondents can avoid the three-year statute of limitations in the second action solely because they had previously filed a timely suit that they failed to pursue. The First, Third, Fifth, and Eighth Circuits would have enforced the statute of limitations. *See* Pet. 11-14. But a divided panel of the Ninth Circuit, reversing the district court, held that the filing of a timely maritime tort claim against a defendant

in one case tolls the running of the statute of limitations in a separate action against that defendant.[4]

INTRODUCTION AND SUMMARY OF ARGUMENT

The uniform recognition and enforcement of statutes of limitation would be important in virtually any context, but in the maritime industry both statutes of limitation and their uniform application are particularly important.

Maritime industries generally have greater need for statutes of limitations than land-based business simply because the logistical problems are greater. The structure of marine insurance transactions also makes statutes of limitations particularly important. Both P&I insurance and insurance purchased at Lloyd's are characterized by associations of members that change over time and seek to close their books after three years. The efficient operation of these essential markets requires that claims be identified within three years, before the expiration of the statute of limitations. This Court should grant certiorari to enforce the statute.

Maritime transactions typically have connections with multiple jurisdictions. Moreover, liberal venue rules in admiralty cases commonly give plaintiffs many choices for bringing their actions. It is thus particularly important to maintain uniformity in the substantive maritime law so

[4] As petitioner observes, the court of appeals' failure to publish its decision in this case is no obstacle to this Court's review. *See* Pet. 14 n.8. Indeed, this Court has in the past summarily reversed erroneous but unpublished procedural rulings in maritime cases. *See*, *e.g.*, *Buchanan v. Stanships, Inc.*, 485 U.S. 265 (1988) (per curiam).

that parties will not have an incentive to achieve a better result through forum shopping. This Court should grant certiorari to resolve the inter-circuit conflict.

ARGUMENT

I. The Well-Established Structure of Marine Insurance Arrangements Makes the Enforcement of Statutes of Limitation Particularly Important in the Maritime Industry

Every potential defendant appreciates the certainty and predictability of an enforceable statute of limitations. Once the statutory period has passed, a potential defendant will know, for example, that it need no longer retain records that might be necessary to defend an action or maintain reserves to meet a potential liability. If the law allows statutes of limitations to be avoided for "'garden variety excusable neglect,'" Pet. App. 4a (Reed, J., dissenting) (quoting *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990)), however, potential defendants can no longer rely on a statute of limitations and the benefits of certainty and predictability are lost.

The well-known policy reasons that favor enforcement of statutes of limitations in general apply with equal force in the maritime context. In addition, certain aspects of the maritime industry make the enforcement of statutes of limitations particularly important in this context. Some of the unique aspects of the industry should be self-evident. For example, with ships constantly on the move and foreign crew members difficult to track, it is often harder for maritime parties to maintain evidence than it is for stable, land-based businesses.

Other unusual aspects of the maritime industry are not intuitively obvious, but are nevertheless important. One such aspect is the way that many marine insurance transactions are structured. Some marine insurance is underwritten by typical corporate insurers that operate in much the same way as the well-known companies that sell land-based policies. Two of the most significant segments of the industry, however, are characterized by associations of members that both change over time and try to close their books after three years.[5]

The overwhelming majority of "protection and indemnity" (P&I) coverage, which protects shipowners against third-party claims, is provided through one of the members of amicus International Group. As noted above, this is "mutual" insurance, which means that all of the members of a particular P&I club contribute to a fund that covers the losses of each member. If losses exceed the contributions, a supplemental "call" replenishes the fund; in an unexpectedly good year, excess contributions could be returned to the members. Each year, on the "renewal" date, shipowners either renew their membership in their P&I club or switch to a new club. Each year, therefore, the membership in each P&I club is somewhat different, and

[5] The three-year period after which books are closed corresponds not only to the U.S. statute of limitations for maritime personal-injury actions, *see* 46 U.S.C. § 30106, but also to comparable statutes of limitations in other major maritime countries, such as England, Australia, Hong Kong, Singapore, India, the Philippines, Panama, Spain, and Italy. Limitation periods for other common maritime claims are typically less than three years. Cargo claims, for example, must generally be brought within one year. *See*, *e.g.*, Carriage of Goods by Sea Act § 3(6), Ch. 229, 49 Stat. 1207 (1936), *reprinted in* note following 46 U.S.C. § 30701 (previously codified at 46 U.S.C. app. § 1303(6) (2000)).

the books must accordingly be separately maintained for each year. After three years, the P&I clubs seek to close their books (making due allowance for pending claims that have not yet been settled). For the system to work efficiently, however, claims must at least be identified during the three-year period. Enforcing a three-year statute of limitations ensures that this will happen. Allowing statutes of limitations to be avoided for "'garden variety excusable neglect,'" on the other hand, undermines the entire system.

Insurance obtained from Lloyd's is very different from the mutual coverage available through the International Group, but the annual cycle exhibits some similarities. Members at Lloyd's form "syndicates" to accept risks, each syndicate operating for a single calendar year. (Many syndicates form again for another year, but changes in membership are inevitable over time.) At the end of that year, the syndicate takes no new business but remains open for another two years simply to receive claims. *See generally*, *e.g.*, HANSELL, *supra*, §§ 12.8-12.10. At the end of three years, the syndicate seeks to close its books, arrange reinsurance for any outstanding claims, and distribute any profit. Once again, the system works efficiently only when claims can be confidently identified during the three-year period. Allowing statutes of limitations to be avoided for "'garden variety excusable neglect'" undermines the entire system.

Professors Gilmore and Black have described "the all-pervading 'insurance angle'" in maritime law. GILMORE & BLACK, *supra*, § 2-1, at 53. It is undoubtedly true that most significant maritime risks are covered by some sort of insurance, and thus the efficient operation of the maritime industry depends heavily on the efficient operation of the

marine insurance industry. Any liability insurer will rely on statutes of limitations, but the reliable enforcement of statutes of limitations is even more important in the maritime industry.

II. The Inherent Nature of Maritime Transactions, Coupled With Liberal Venue Rules Under Maritime Law, Make the Uniform Enforcement of Statutes of Limitation Particularly Important to the Maritime Industry

The inherently peripatetic nature of maritime transactions ensures that maritime cases commonly involve more than one jurisdiction. Most ocean voyages involve at least two different countries, and many ships call at ports in several countries on a single voyage. The ship itself is likely to be registered in yet another country, while the vessel's owner, the officers, and the crew are likely to come from yet other nations. Charterers that operate the vessel, banks and other institutions that finance the venture, and liability insurers that secure everyone's obligations may well introduce yet more countries into the transaction. As this Court has recognized in a similar context, a lack of uniformity imposes real costs on the maritime industry. *See*, *e.g.*, *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 537 (1995).

The existence of multiple jurisdictions having a connection to a particular transaction creates incentives for plaintiffs to shop for favorable forums that will be more sympathetic to their claims. That problem is compounded by the existence of liberal venue rules in maritime law that enable plaintiffs to bring their actions in practically any court in which personal jurisdiction over the defendant can be established. For vessels, such as petitioner,

that typically means any jurisdiction in which the vessel can be found.

Even within the United States, plaintiffs typically have a wide range of possible venues, thus creating an incentive for forum shopping among the states and federal circuits. In an *in rem* action, for example – the type of action that happens to be before the Court here – Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure permits an action to enforce a maritime lien in any federal district in which the vessel can be found. *See* FED. R. CIV. P., Supp. Rule C(2)(c).

The respondents' original actions in this matter were brought under the general maritime law and the Jones Act, 46 U.S.C. § 30104 (Pet. App. 65a-66a) (codified at the time at 46 U.S.C. app. § 688(a) (1988) (Pet. App. 62a-63a)). Venue under the general maritime law is proper in any district within which process can be served or in which the defendant's property or credits can be attached. *See In re Louisville Underwriters*, 134 U.S. 488, 493 (1890); FED. R. CIV. P. 82. A plaintiff under the Jones Act has the same broad option and, in addition, the option of filing the case in state court under state venue rules.[6]

[6] A Jones Act plaintiff has the option of filing suit (1) in federal court "at law," (2) in federal court in admiralty, or (3) in state court. Federal cases on the "law side" are controlled by the venue rules of 28 U.S.C. §§ 1391-1393 (the normal venue rules for civil cases). *See, e.g., Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966); *see also* 46 U.S.C. § 30104(b). Cases in admiralty, however, are subject to admiralty's wide-open venue rule under *Louisville Underwriters*, 134 U.S. at 493, which has been implicitly confirmed by Rule 82 of the Federal Rules of Civil Procedure. *See*, *e.g.*, *Brown v. C.D. Mallory & Co.*, 122 F.2d 98 (CA3 1941). Finally, Jones Act cases in state courts are controlled by the

(Continued on following page)

Under the decision below, plaintiffs who have missed their deadlines in the First, Third, Fifth, and Eighth Circuits would have every incentive to take their cases to the Ninth Circuit. In view of the structure of the maritime industry and the maritime law's liberal venue rules, such forum-shopping will typically be possible. As a result, it is particularly important that this Court resolve the inter-circuit conflict to restore uniformity on the key question presented here.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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venue rules of the forum state. *See*, *e.g.*, *American Dredging Co. v. Miller*, 510 U.S. 443, 457 (1994); *Bainbridge v. Merchants & Miners Transportation Co.*, 287 U.S. 278, 280-281 (1932). The liberality of the venue rules in some states has become notorious. *See*, *e.g.*, Nathan Koppel, *A Lawyer's Speech Opens a New Venue in Ongoing Debate*, THE WALL STREET JOURNAL, Feb. 27, 2007, at B1 (noting "a surge in the Rio Grande Valley of lawsuits on behalf of seamen alleging injuries on dredging vessels from Florida to New Jersey to Bahrain").