

No. 16-26

In The
Supreme Court of the United States

BULK JULIANA LTD. and M/V BULK JULIANA,
her engines, tackle, apparel, etc., *in rem*,

Petitioners,

versus

WORLD FUEL SERVICES (SINGAPORE) PTE LTD.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

**RESPONDENT'S OBJECTION TO MOTION FOR LEAVE TO FILE
BRIEF OF *AMICI CURIAE* STAR TRIDENT II, LLC, STARBULK S.A.,
STAR BULK CARRIERS CORP., CHARTLEY WORLD, INC., AND
V&V SHIPPING & TRANSPORT CO.**

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MAY IT PLEASE THE COURT:

This objection is submitted on behalf of Respondent, World Fuel Services (Singapore) Pte Ltd., opposing the motion of *amici curiae* for leave to file their brief in support of the Petition for Writ of *Certiorari*. Respondent avers that *amici curiae*'s motion should be denied because it does not satisfy this Court's standard for briefs submitted by "friends of the Court", in that it does not bring to the Court's attention relevant matter not already before the Court by virtue of the presentations of the parties. In addition, *amici curiae*'s proposed brief contains a notable citation omission, which, if included, would have informed the Court that the Robert's Court previously denied *certiorari* in a virtually identical case involving the very issue now before the Court. For these reasons, Respondent avers that the proposed brief of *amici curiae* would be of no assistance to the Court in deciding whether to grant *certiorari* in this case. Accordingly, Respondent respectfully moves for the entry of an order denying *amici curiae*'s motion for leave to file its proposed brief.

REASONS FOR DENYING THE MOTION**I. THE PROPOSED BRIEF FAILS TO PROVIDE RELEVANT MATTER NOT ALREADY BROUGHT TO THE COURT'S ATTENTION BY ONE OF THE PARTIES. THEREFORE, THE BRIEF WOULD BURDEN THE COURT, AND ITS FILING IS NOT FAVORED.**

The rules of this Court provide that a brief of *amicus curiae* will assist the Court only if it brings to the Court's attention relevant matter not already presented by the parties. An *amicus curiae* brief that fails to satisfy this standard "burdens the Court, and its filing is not favored". Rule 37.1, Rules of the Supreme Court of the United States.

In circumstances where a party to the case withholds consent to the filing of an *amicus curiae* brief, which is the circumstance in this case, motions for leave to file the *amicus curiae*

brief anyway, are not favored by the Court. Rule 37.2(b), Rules of the Supreme Court of the United States.

The motion of *amici curiae* for leave to file their brief does not present any discussion as to how the brief provides the Court with relevant information not already provided by the parties that will assist the Court in reaching a decision on whether to grant *certiorari* in this case. Instead, the motion simply asserts several summary-type, unsupported arguments, most of which are discussed in the Petition for Writ of *Certiorari*. As discussed below, the two arguments advanced in the proposed brief of *amici curiae* do not offer the Court any relevant matter not already presented by the Petition for Writ of *Certiorari*, and therefore, the motion for leave to file should be denied. Moreover, *amici curiae*'s omission of a relevant citation to this Court's denial of *certiorari* in a case virtually identical to the case now before the Court on Petition for Writ of *Certiorari*, raises a question as to the value of the proposed brief in aiding the Court's decision of whether to accept *certiorari*.

II. AMICI CURIAE OMITTED A RELEVANT CASE CITATION, WHICH WOULD HAVE INFORMED THE COURT THAT IT PREVIOUSLY DENIED CERTIORARI ON PRECISELY THE ISSUE IN THE PRESENT CASE.

Amici curiae's first argument in support of granting the petition is that there is a split in the circuits on the issue decided below. In presenting this argument, *amici curiae* cite to *Trans-Tec Asia v. M/V HARMONY CONTAINER*, 518 F.3d 1120 (9th Cir.), *cert. denied in Splendid Shipping Sendirian Berhard v. Trans-Tec Asia*, 555 U.S. 1062, 129 S. Ct. 628, 172 L. Ed. 2d 639 (2008), as a decision representative of those issued by circuits upholding the maritime lien rights of foreign suppliers of necessities. Proposed Brief of *Amici Curiae*, p. 2. However, *amici curiae*'s citation failed to indicate that this Court denied *certiorari* in the case, as reported at

Splendid Shipping Sendirian Berhard v. Trans-Tec Asia, 555 U.S. 1062, 129 S. Ct. 628, 172 L. Ed. 2d 639 (2008). Because of the identity of issues in *HARMONY CONTAINER* and the present case, this Court’s denial of *certiorari* in *HARMONY CONTAINER* is most relevant, and the full case citation should have been properly noted in the proposed brief.¹

According to the long-recognized authority for legal citation, *The Bluebook*, a party should cite to a court’s denial of *certiorari* if the denial is particularly relevant. The applicable *Bluebook* rule states, “Whenever a decision is cited in full, give the entire subsequent history of the case, but omit denials of *certiorari* or denials of similar discretionary appeals, **unless** the decision is less than two years old or **the denial is particularly relevant.**” *The Bluebook: A Uniform System of Citation* R. 10.7, at 101 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015) (*emphasis added*).

This Court’s denial of *certiorari* in *HARMONY CONTAINER* is particularly relevant to the pending Petition for Writ of *Certiorari*. The issue presented in *HARMONY CONTAINER* was whether a foreign supplier of fuel to a foreign-flag vessel in a foreign port pursuant to an agreement that United States’ law applied to the transaction, may obtain a maritime lien against the vessel under the Commercial Instruments and Maritime Liens Act, 46 U.S.C.S. § 31301 et seq. (commonly referred to as the Federal Maritime Lien Act). This issue, and most of the sub-issues, are precisely the same as the issues raised in the Petition for Writ of *Certiorari* now pending before the Court. For example, in seeking to deny Respondent’s maritime lien in the present case, Petitioner argues that the lien was improperly created by contract. Petition for Writ of *Certiorari*, p. 8. The Petitioner in *HARMONY CONTAINER* raised this same issue in its

¹ Petitioners, Bulk Juliana, Ltd. and M/V BULK JULIANA also failed to include the citation to this Court’s denial of *certiorari* in *HARMONY CONTAINER*. See Petition for Writ of *Certiorari*, p. viii (Table of Authorities), and p. 13.

petition for *certiorari*. See Petition for Writ of *Certiorari* in *Splendid Shipping*, p. 15, reprinted at App. 001, 025. A second example is Petitioner’s argument in the present case that there is a split in the circuits on the issue of whether a lien arises in the circumstances of the fuel provided to the M/V BULK JULIANA. Petition for Writ of *Certiorari*, p. 13. The same “conflict among the circuits” argument was advanced by the petitioner in *Splendid Shipping*. Petition for Writ of *Certiorari* in *Splendid Shipping*, p. 10, reprinted at App. 020. A third example is that the petitions for *certiorari* in both cases argued that the maritime lien issue is one of widespread or exceptional commercial importance. Compare the Petition for Writ of *Certiorari*, p. 27, with the Petition for Writ of *Certiorari* in *Splendid Shipping*, p. 27, reprinted at App. 037.

Of the eight current sitting Justices on the Court, six Justices (Justices Roberts, Kennedy, Thomas, Ginsburg, Breyer and Alito) were members of the Court when it denied the Petition for Writ of *Certiorari* in *Splendid Shipping*. Only two Justices of the current Court (Justices Sotomayor and Kagan) did not participate in the Court’s denial of *Splendid Shipping*’s *certiorari* petition concerning the existence of a maritime lien in favor of foreign suppliers of necessities.

It would be difficult to imagine a denial of *certiorari* more relevant to the currently pending petition, than the one rendered in *HARMONY CONTAINER*. The penultimate issue and most of the sub-issues in that case are identical to the ones in the petition currently under consideration, and a substantial majority of the current Justices on the Court participated in the denial of *certiorari* in the *HARMONY CONTAINER* case. In these circumstances *amici curiae* should have cited to the denial of *certiorari* in *HARMONY CONTAINER*.

III. *AMICI CURIAE'S* FIRST ARGUMENT THAT THERE IS A SPLIT IN THE CIRCUITS, IS THE SAME ARGUMENT RAISED IN THE PETITION FOR WRIT OF *CERTIORARI*. THEREFORE, THE *AMICI CURIAE* BRIEF DOES NOT CONTRIBUTE ANY RELEVANT MATTER NOT ALREADY BEFORE THE COURT.

Amici curiae's proposed brief presents as its first argument that the Court should grant *certiorari* to resolve an alleged conflict in the circuits. Proposed Brief of *Amici Curiae*, p. 2. This argument was advanced and discussed at length by Petitioner. Petition for Writ of *Certiorari*, p. 13. Because the proposed brief of *amici curiae* simply repeats matter already before the Court in the petition, it fails to provide relevant matter not already before the Court as advanced by one of the parties. Because this aspect of *amici curiae's* proposed brief adds nothing to the argument already before the Court, it fails to assist the Court in its determination.

IV. *AMICI CURIAE'S* SECOND ARGUMENT REGARDING THE NUMBER OF RECENTLY FILED VESSEL SEIZURE SUITS IS NOT RELEVANT, AND THEREFORE, WILL NOT ASSIST THE COURT IN DECIDING WHETHER TO GRANT *CERTIORARI* IN THIS CASE.

Amici curiae's second argument in support of the Petition for Writ of *Certiorari* is that the mere number of cases filed by fuel suppliers to enforce their maritime lien rights should be cause for disregarding the plain words of the Federal Maritime Lien Act and this Court's longstanding recognition and enforcement of the right of contracting parties' to an international transaction, to designate the law they choose to govern their relationship. The number of claims filed to enforce a legal right is not a relevant factor. The relevant factors are the applicable law and governing facts under which the law is interpreted.

Moreover, *amici curiae* advance their irrelevant argument without any support whatsoever. *Amici curiae* seek to persuade the Court that filings of foreign suppliers of

necessaries is a recent phenomenon. However, as pointed out by the Ninth Circuit in *HARMONY CONTAINER*, this Court has recognized the right of a foreign supplier to a maritime lien dating back to the early 19th century. The Ninth Circuit sated:

“The United States, through common law and statute, has long recognized and enforced maritime liens. *Id.* As reflected in the earliest Supreme Court cases on maritime liens, this remedy was premised on concern for the vessel. Throughout the nineteenth century, the Court recognized that maritime liens could arise for the provision of necessaries in ‘foreign ports,’ or ports that were not the vessel's home port, in order to keep the vessel fit for sail. *See, e.g., The St. Jago de Cuba*, 22 U.S. (9 Wheat.) 409, 416-18, 6 L. Ed. 122 (1824) (stating that the ‘consideration that controls every other’ is that ‘[t]he vessel must get on’); *The Gen. Smith*, 17 U.S. (4 Wheat.) 438, 443, 4 L. Ed. 609 (1819). Conferring a lien on the vessel to ‘material-men’ ensured the continued maintenance of vessels by encouraging suppliers to provide necessaries in foreign ports. *See The J.E. Rumbell*, 148 U.S. 1, 9, 13 S. Ct. 498, 37 L. Ed. 345 (1893) (observing that maritime liens for necessaries furnished ‘to keep a vessel fit for sea’ took precedence over all other claims except seamen's wages or salvage).”

HARMONY CONTAINER, 518 F.3d 1120, 1128.

Amici curiae's own data is unreliable in addition to being irrelevant. The listing in Appendix III to the proposed *amici curiae* brief contains names of 13 cases filed in 2014, 43 cases filed in 2015, and 15 cases filed in 2016. By contrast, according to Federal Judicial Caseload Statistics for 2013, which is the latest year available online, 271,950 civil actions were filed in United States district courts in 2013. The Federal Courts statistics are found at <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2013>. Using the 2013 statistics for illustrative purposes, in the highest of the three years relied on by *amici curiae*, 2015, the 43 maritime lien cases constitute less than two one hundredths of one percent (0.0158%) of the civil actions filed in United States district courts. Even if it were a relevant consideration, which it is not, the numbers presented by *amici curiae* hardly support their hyperbole that maritime lien claims “have clogged U.S. courts with collection actions...” *See*

Proposed Brief of *Amici Curiae*, p. 5.

The proffer of unsupported irrelevant argument will not assist the Court, and therefore, the filing of the proposed *amici curiae* brief should be denied.

CONCLUSION

Following the guidance contained within the rules of this Court, a brief proffered by *amicus curiae* should be accepted for filing only if it provides relevant matter not already before the Court. The brief offered by *amici curiae* merely reiterates the argument contained in the Petition for Writ of Certiorari, or offers irrelevant, unsupported argument. For these reasons, Respondent respectfully avers the motion of *amici curiae* should be denied.

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