No. 15-305

In The Supreme Court of the United States

LITO MARTINEZ ASIGNACION,

Petitioner,

v.

RICKMERS GENOA SCHIFFAHRTSGESELLSCHAFT mbH & CIE KG,

Respondent.

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

BRIEF OF THE SEAMEN'S CHURCH INSTITUTE OF NY & NJ AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES *(cont'd)*

TABLE OF AUTHORITIES *(cont'd)*

STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST OF THE *AMICUS*

The Seamen's Church Institute of NY & NJ ("SCI" or the "Institute"),[1] founded in 1834, cares for the personal, professional, and spiritual needs of seafarers around the world. It is the largest, most comprehensive seafarers' service agency in North America. SCI's Center for Seafarers' Rights is the world's only free legal-aid service devoted exclusively to the needs of merchant mariners. On a daily basis, it assists seafarers with concerns regarding working conditions, compensation, and rights in various circumstances. Through education, SCI's Center for Seafarers' Rights empowers seafarers, global port chaplains, and others with information and training they need on current issues affecting seafarers' rights. Attorneys for the Center for Seafarers' Rights teach and write materials for chaplains' schools, seafarers' ministries, and international conferences. On a global scale, SCI monitors and works towards legislation to improve seafarers' legal protections. Over the years, SCI has helped pass important laws to ensure safety in the maritime workplace and the fair treatment of seafarers. SCI attorneys regularly

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[1] The parties were timely notified of *amicus curiae*'s intention to file this brief. The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

participate in International Maritime Organization, International Labour Organization, United States Congressional and other countries' legislative deliberations relating to seafarers' issues.

This case is important to SCI because it involves the Institute's longstanding belief that seafarers, shipowners, and the United States all benefit from according seafarers their basic right to maintenance and cure created under the general maritime law. Protecting seafarers' rights under the general maritime law is a critically important public policy of the United States.

SUMMARY OF THE FACTS

Petitioner Lito Martinez Asignacion ("Asignacion"), a Filipino seafarer, was grievously injured when working aboard the Respondent's[2] vessel M/V RICKMERS DALIAN while it was docked at New Orleans, Louisiana, in 2010. Asignacion commenced an action in a Louisiana state court to recover damages for his injuries. That action was stayed, and he was directed to arbitrate his claims in the Philippines pursuant to an arbitration clause in a standard-form written seafarer's contract that the

[2] Respondent is the vessel owner, Rickmers Genoa Schifffahrtsgesellschaft mbH & Cie KG ("Rickmers"). (It is acknowledged that the compound German word in the company's name is properly spelled with the letter "f" repeated three times consecutively as shown above, but that the case caption omits one "f" consistently with English spelling norms.)

Philippines Overseas Employment Administration ("POEA"), an agency of the Philippine government, forces all Filipino seafarers to sign as a condition of employment on a foreign-flagged ship. The Standard Terms of that adhesive agreement required disputes for all claims arising out of the seafarers' employment, wherever they arose, to be arbitrated exclusively by the Philippines' National Labor Relations Commission ("NLRC") and required waiver of all claims whatsoever under any foreign law arising out of that employment, including damages for injuries, as well as maintenance and cure.

Asignacion submitted his claim to the NLRC seeking damages under the general maritime law of the United States and/or the Marshall Islands (law of the vessel's flag.) The arbitral tribunal foreclosed any possible consideration of Asignacion's claim by ruling that Section 20(G) of the POEA agreement prevented it from considering the application of any law other than Philippine law.[3] Under that section, the tribunal was required to award only the POEA scheduled damage award at the level determined by Asignacion's adversary, i.e., the employer's designated physician. The employer's physician determined that Asignacion's damages should be considered "Grade 14" damages, i.e., 3.74% of a maximum award of $50,000. Thus, the tribunal awarded Asignacion only $1,870 for his injuries, incapacity, disability, lost wages, past and future maintenance and cure, moral, compensatory and

[3] Appendix to Petition at App. 57.

punitive damages.

Before the award, the Philippine Supreme Court had approved the POEA practice of requiring the NLRC arbitrator to award only the scheduled benefit in the POEA, as determined by the company-designated physician, and to preclude any other remedy, award or payment to injured seafarers under any country's law. Thus, the POEA, Philippine law, the Philippine Supreme Court, and the NLRC arbitrators are all aligned to deny an injured seafarer the minimum level of maintenance and cure, and to award only a fraction of damages traditionally recognized under the general maritime law of the United States and of many other nations (including that of the Marshall Islands, the vessel's flag state). Moreover, the maximum award of damages is set by the seafarer's adversary, i.e., the company-designated physician, and adopted by the arbitration panel as a matter of Philippine law.

Following the NLRC's award of $1,870, Asignacion brought a motion in Louisiana state court to void the arbitral award as violative of the public policy of the United States. Rickmers removed the case to the United States District Court for the Eastern District of Louisiana and counterclaimed, asking the District Court to recognize and enforce the arbitral award. The District Court declined to enforce the arbitral award, finding that it violated the strong, well-defined and dominant public policy of providing seafarers a minimum remedy under the general maritime law of the United States (which protects the rights of seafarers regardless of

nationality) to maintenance and cure. The Fifth Circuit reversed, in a decision that runs counter to the established public policy of the United States in favor of a legalistic analysis of the Philippine system imposed on injured seafarers, even while tacitly recognizing that the system was one-sided, rigged against injured seafarers by design.

SUMMARY OF THE ARGUMENT

The availability of maintenance and cure, an ancient doctrine that requires shipowners to care for seafarers injured in the course of their employment, has been the public policy of the Unites States since the earliest years of the Republic, for reasons that are as applicable today as they were in the Eighteenth Century. Petitioner's award completely denied him the benefit of this doctrine and thus, consistently with the U. N. Convention for the Enforcement of Foreign Arbitral Awards, should not be recognized and enforced in the Courts of the United States.

The denial of this basic right by means of a system that forecloses it at the outset and eschews any meaningful adjudicative process—deferring to the findings of a company-appointed physician to determine an award based on a "scale" that does not even consider the prospective costs of the seafarer's recovery—amounts to nothing less than a denial of due process.

REASONS FOR GRANTING THE PETITION

A. The Petition for *Certiorari* Should Be Granted Because the Philippine Arbitration Scheme Violates the Public Policy of the United States.

Article V(2)(b) of the U. N. Convention for the Enforcement of Foreign Arbitral Awards (the "Convention") allows a signatory country to refuse to recognize a foreign arbitral award if "recognition or enforcement of the award would be contrary to the public policy of [the forum] country."[4] Although the "public policy" defense is narrowly construed, the enforcement of a foreign arbitral award may be denied where enforcement would violate the forum state's most basic notions of morality and justice. *See, e.g., Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Gefara*, 364 F.3d 274, 306 (5th Cir. 2004). Here, the arbitral award was contrary to the public policy of the Unites States because it deprived the seafarer of the minimum maintenance and cure remedy under the general maritime law, as well as denying the seafarer fundamental due process of law as recognized in the United States.

The United States long has had an "explicit public policy that is well defined and dominant" with respect to seafarers. The general maritime law is

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[4] Under the Federal Arbitration Act, the district court shall confirm foreign arbitral awards "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207.

said to provide a "special solicitude to seamen."[5] Seafarers have long been treated as the "wards of admiralty" with special causes of action and remedies available only to them to reflect this special status.[6] The Fifth Circuit abrogated its duty to seafarers under these established principles, and erred in finding that this public policy did not require refusal to recognize the award in the United States.

The obligation of the vessel owner to provide maintenance and cure to a seafarer who falls ill or is injured while in the service of the ship can be found in ancient codes.[7] Indeed, the right to maintenance and cure for seafarers was recognized by seafaring nations long before the United States came into existence.[8]

The general maritime law of the United States has similarly fashioned special remedies for those

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[5] This was recognized, albeit without practical effect, by the court below. Appendix to Petition at App. 11 (quoting *Miles v. Melrose*, 882 F.2d 976, 987 (5th Cir. 1989)).

[6] Appendix to Petition at App. 11-12.

[7] The earliest codifications of the law of the sea provided for medical treatment and wages for mariners injured or falling ill in the ship's service. Article VI of The Roll d'Oleron, the first code addressing maintenance and cure, was most likely written in the late 1100s. *See* 30 Fed. Cas. 1171, 1174 (reprinting same in English translation with commentary).

[8] *The Osceola*, 189 U.S. 158, 168-69 (1903) (examining the many ancient codes as well as legal codes of various nations).

who face the unique perils of life at sea. *Harden v. Gordon*[9] was the first case to recognize formally the right to maintenance and cure in the United States. "Maintenance" is the right of a sick or injured seafarer, wherever located in the world, to receive a sum of money from his employer to provide meals and lodging comparable to the kind and quality he would receive aboard the ship. *See Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 528 (1938). "Cure" is the seafarer's right to payment for medical treatment until he has reached the point of "maximum cure" or has been diagnosed as incurable, as determined by a physician. *See Vella v. Ford Motor Co.*, 421 U.S. 1, 4-5 (1975).

Justice Story noted the venerable history and the necessity of providing for maintenance and cure based on the seafarer's unique circumstances:

> Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils,[10]

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[9] 11 F. Cas. 480 (2 Mason 541), 2000 A.M.C. 893 (C.C.D. Me. 1823); *see also Reed v. Canfield*, 20 F. Cas. 426 (C.C.D. Mass. 1832).

[10] As this *amicus* brief was being finalized, an American-flag container vessel had recently sunk during Hurricane Joaquin, and the hope of finding any survivors had become untenable. On October 7, 2015, after the Coast Guard ceased its search efforts, the President issued a statement noting that "[t]his tragedy also reminds us that most of the goods and products we rely on every day still move by sea. As Americans, our economic prosperity and

> and exhausting labour. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment . . . .

Gordon, *supra*, 11 F. Cas. at 483, 2000 A.M.C. at 899.

Indeed, seafarers have been held to be wards of the admiralty court entitled to protection against deprivation of minimum remedies:

> Every court should watch with jealousy an encroachment upon the rights of seamen, because they are unprotected and need counsel . . . courts of maritime law have been in the constant habit of extending towards them a peculiar, protecting favor and guardianship. They are emphatically the wards of the admiralty . . . .

11 F. Cas. at 485, 2000 A.M.C. at 903; *see also*

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quality of life depend upon men and women who serve aboard ships like the El Faro." The full statement is at https://www.whitehouse.gov/the-press-office/2015/10/07/statement-president-el-faro-cargo-ship. The "exposure to perils" faced by today's seafarers remains as real and immediate as it was two or more centuries ago.

Calmar, supra, 303 U.S. at 529.

This special status of seafarers as admiralty wards has continued to be recognized in the United States since the concept was first introduced. It is well settled that the right to maintenance and cure cannot be contracted away. *Vaughan v. Atkinson*, 369 U.S. 527, 532-33 (1962) (quoting *Cortes v. Baltimore Insular Lines*, 287 U.S. 367, 371 (1932)); *DeZon v. American President Lines, Ltd.*, 318 U.S. 660, 667 (1943). These principles of wardship and solicitude provided to mariners have been confirmed by this Court as recently as 2009. *Atlantic Sounding Co., Inc. v. Townsend*, 557 U.S. 404, 413-15 (2009).

Seafarers have merited this special status because of (among other reasons) the historical importance of the shipping industry in promoting important U.S. policy interests:

> [I]t appears to me so consonant with humanity, with sound policy, and with national interests, that it commends itself to my mind quite as much by its intrinsic equity, as by the sanction of its general authority . . . . Beyond this, is the ***great public policy*** of preserving this important class of citizens for the commercial service and maritime defence of the nation. Every act of legislation which secures their healths, increases their comforts, and administers to their infirmities, binds them more strongly to their country;

> and the parental law, which relieves them in sickness by fastening their interests to the ship, is as wise in policy, as it is just in obligation.

11 F. Cas. at 483, 2000 A.M.C. 898-99 (emphasis added).

Beyond ensuring the well-being of seamen aboard ships and in foreign ports, meeting these basic human needs encourages maritime commerce by ensuring a capable merchant marine, as well as the economic and military security of the nation. *See Aguilar v. Standard Oil Co. of New Jersey*, 318 U.S. 724, 727-28 (1943).

These concerns remain equally relevant today. *N.L.R.B. v. Sea-Land Service, Inc.*, 837 F.2d 1387, 1393 (5th Cir. 1988) (explaining that seafarers and their welfare were a predominant interest of Congress in the earliest years of the Republic, and still are). It is vitally important to American interests that all seafarers, from whatever nation they may originate, be accorded their rights to maintenance and cure. The economic well-being of the United States depends heavily upon international maritime commerce.[11] Merchant ships carry more than 90% of global trade, and almost all merchant

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[11] *See, e.g.*, The National Strategy for Maritime Security https://www.ise.gov/sites/default/files/0509%20National%20Strategy%20for%20Maritime%20Security.pdf (September 2005). That document further notes that "[t]he maritime domain for the United States includes . . . all navigable inland waterways such as the Mississippi River," page 1 at note 1.

shipping to and from United States ports is via foreign-flag ships with foreign crews.[12] Today, the United States depends upon foreign-flag merchant vessels and foreign seafarers for its security and for its continuing prosperity. We must treat foreign seafarers serving these vital needs with no less respect for human dignity than we have historically afforded to our own citizens-seafarers in the past.

Consistently with the obligation to treat foreign seafarers equitably, it is unsurprising that the longstanding public policy of the United States favoring the welfare of seafarers of any nationality through the doctrine of maintenance and cure (notwithstanding any adverse terms contained in their employment contracts) is "well defined and dominant."[13] This established public policy must not be disturbed, for the humanitarian concerns relating to the well-being of seafarers, together with the synergistic benefit of promotion of healthy global maritime commerce that inevitably results from such a policy, continue to be as relevant today as they were in 1823 when Justice Story considered these same timeless factors in rendering his decision in

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[12] According to the U.S. Maritime Administration, at the end of 2013 there were only 89 U.S. flag merchant vessels in international trade, making up less than one percent of the world's merchant fleet. United States Department of Transportation, Maritime Administration 2013 Annual Report, http://www.marad.dot.gov/wp-content/uploads/pdf/2013_ANNUAL_REPORT_-_Final.pdf, at 8.

[13] Opinion below, Appendix to Petition at App. 11.

Harden v. Gordon.

Although the Fifth Circuit acknowledged the importance of these policies, it erroneously over-valued what it identified as a countervailing public policy: that favoring arbitration over litigation in international commerce. Balancing that modern case-dispostive public policy consideration (suitable for purely commercial disputes) against the more ancient and vital one aimed at achieving justice for human beings harmed through no fault of their own in the service of maritime commerce, it becomes clear that this Court has a duty to ensure that the remedy of maintenance and cure is available to ***all*** injured seafarers in the courts of the United States. *See Aggarao v. MOL Ship Management Co., Ltd.*, Civ. No. 09-3106, 2015 A.M.C. 444, 2014 WL 3894079 (D. Md. Aug. 7, 2014). Simply put, when an arbitral award is rendered that deprives a seafarer of the minimum remedy of maintenance and cure for grievous injuries received in maritime service aboard a vessel, it should not be recognized in the United States.

Relatedly, the method for determining the amount of the award ($1,870) to Asignacion in the Philippines is wholly at odds with that which can be viewed as "moral and just" in the United States. "[A] foreign judgment cannot be enforced if it was obtained in a manner that did not accord with the basics of due process." *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1410 (9th Cir. 1995) (*citing Hilton v.*

Guyot, 159 U.S. 113, 205-06 (1895).[14] It has long been the public policy of this nation to vacate (or deny recognition of) any arbitration award in which the arbitral proceedings were fundamentally unfair.[15]

Under the Convention, foreign arbitral awards should be denied or vacated if the party challenging the award was not afforded the basic requirements of due process under American jurisprudence.[16] It is well recognized that arbitrators must provide a fundamentally fair hearing, "one that meets minimal requirements of fairness—adequate notice, a hearing on evidence, and an impartial decision by the arbitrator."[17]

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[14] The *Bank Melli Iran* court further noted that this principle has been expressly incorporated into the Uniform Foreign Money-Judgment Act adopted by the majority of U.S. states. *Id*. at 1410.

[15] *See* 9 U.S.C. §10(a)(2)& (3); *see also Commonwealth Coasting Corp. v. Continental Cas. Co.*, 393 U.S. 145 (1968) (invalidating an arbitration award because the commercial dealings between the arbitrator and the prevailing party presented an inherent conflict that was not disclosed to other party); *NYK Cool A.B. v. Pacific Fruit, Inc.*, 507 Fed. Appx. 83, 88 (2d Cir. 2013) (holding that an arbitration award may be vacated when under 9 U.S.C. 10(a)(3) when one of the parties was not afforded an adequate opportunity to present its evidence and arguments).

[16] *Generica Ltd. v. Pharmaceutical Basics, Inc.*, 125 F.3d 1123 (7th Cir. 1997).

[17] *Generica*, 125 F.3d at 1130 (*citing and quoting Sunshine Mining Co. v. United Steelworkers*, 823 F.2d 1289,

Simply put, the system under which the award was rendered is fundamentally unfair from the perspective of affording basic rights. The POEA employment agreement is imposed on Filipino seafarers by the Philippine government. The Philippine Supreme Court has recognized that the system has evolved to favor the employer, ***not*** the seafarer.[18] In order to obtain an exit visa to join a ship, a Filipino seafarer must sign the POEA and waive his rights to any contract and tort claims for injuries that occur while in the service of the vessel. This forced waiver (absolutely required for the seafarer to make a living at his or her trade) is applied uniformly by the Filipino arbitrators to include relinquishment of any and all rights to maintenance and cure. Thus, the only remedies available to the injured Filipino seafarer are those prescribed by the POEA employment agreement, and the only tribunal available to the Filipino seafarer to pursue his remedies is arbitration before the NLRC, and the lack of any maintenance-and-cure remedy is predetermined by the system itself.

1295 (9th Cir. 1987) (internal quotation marks omitted).

[18] Appendix to Petition at App. 58-59 (opinion below, noting that the Philippine Supreme Court had recognized that "[b]ecause of the tort claims, our seafarers were perceived as 'Filipinos who complain too much'" and that " foreign employers were no longer willing to hire Filipino seafarers in large scale unless the [POEA-approved Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels] is amended in order that better terms and conditions in favor of employers' sector are inserted . . . .").

The sole remedy available under the POEA employment agreement is based on the grade of injury the Filipino seafarer suffers, as determined by the company-designated physician.[19] Under the POEA, the "grade" of the seafarer's injury ranges from 1 (the most severe) to 14 (the least severe).[20] Thus, under Philippine law, the arbitration panel can award a seafarer damages only on a "scale" set forth in the POEA, with the rating on that scale being determined by the company-designated physician. Under American notions of due process, neither a court nor an arbitral panel could delegate its fact-finding and decision-making power to one party to the detriment of the other. Doing so violates the fundamental policy of the United States and of the Convention.[21]

The Philippine arbitral system intentionally and unabashedly stacks the deck against the injured seafarer. In upholding this POEA-based system, the Philippine Supreme Court explained that the very purpose of the POEA is to prevent Filipino seafarers who have become aware of their rights in other jurisdictions from filing cases for damages in those

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[19] Appendix to Petition at App. 60-61 (opinion below, "tak[ing] into consideration only the evidence [consisting of] the medical certificate issued by the company physician, Dr. Natalio C. Alegre").

[20] *See id.*

[21] *See* Convention at Article V(1)(b).

jurisdictions.[22] The arbitral awards rendered under the POEA system are thus inherently suspect, and offend our most basic notions of morality and justice and our basic principles of due process. Relatedly, the Philippine POEA-based system flies in the face of this nation's established public policy of protecting seafarers by affording them the minimum recovery of maintenance and cure after sustaining injuries in the service of their ships.

In this case, the company-designated doctor determined that the Petitioner had a grade 14 disability, the lowest grade, even though Petitioner's own physician determined that he needed further surgery.[23] The arbitral panel did not engage in any fact finding regarding the severity of the Petitioner's injuries or his need for additional medical care to reach "maximum cure." This amounts to a denial of the basic right of maintenance and cure under the general maritime law. Petitioner had no real opportunity under the POEA system to present his case. Rather, the arbitral panel blindly applied the lowest grade to the scheduled amount to set the damages award.[24]

Further, Section 20(G) of the POEA prevents the Petitioner from pursuing any claims arising from

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[22] *See* Appendix to Petition at App. 58 and note 18, *supra.*

[23] Appendix to Petition at App. 54.

[24] Appendix to Petition at App. 61.

or in relation to his employment, including any claims arising from tort, fault, or negligence.[25] Therefore, by design and by practice, the entire extent of remedies available to the Petitioner were determined unilaterally by the shipowner's doctor.

The Fifth Circuit found that the District Court did not make findings sufficient to support the conclusion that the public policy of the Unites States requires refusing the enforcement of the Award.[26] In particular, the Fifth Circuit based its decision on the lack of findings with regard to "the adequacy of the award vis-a-vis the [Petitioner's] lasting injuries or unmet medical expenses."[27] By itself, this would have required only a remand to the District Court. But the Fifth Circuit erred by evaluating only whether the net result would differ had the award been calculated on different facts, rather than evaluating whether the award violated public policy on the bases that the POEA scheme under which the award was rendered (1) failed to comport with the basic principles of due process and fairness, and/or (2) deprived the seafarer of the minimum remedy of maintenance and cure for grievous injuries received in maritime service for a vessel.

Thus, the Fifth Circuit erred in reversing the District Court and remanding with instructions for

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[25] Appendix to Petition at App. 57.

[26] Appendix to Petition at App. 18-19.

[27] *Id.*

the District Court to enforce the award, and in doing so created precedent that is at odds both with established public policy and with recognition and application of basic due-process rights.

B. The Prospective-Waiver Doctrine Is Applicable in the Context of Non-Statutory Rights.

The public-policy and due-process concerns discussed above are intertwined conceptually with another doctrine to which this Court has alluded. The District Court based its decision to deny the shipowner's motion to recognize the award in part on the "prospective-waiver" doctrine, which has its roots in dicta from this Court's decisions in *Mitsubishi*[28] and *Vimar*,[29] in which this Court noted that foreign arbitration awards may violate public policy when the choice-of-forum and choice-of-law clauses operate in tandem as a prospective waiver of a party's right to pursue remedies to which he or she is entitled under law. Applying the prospective-waiver defense here, the District Court found that the arbitral proceedings and the award did not address the Petitioners' legitimate interest in the enforcement of United States general maritime law,[30] and that the

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[28] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629 (1985).

[29] *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528 (1995).

[30] Appendix to Petition at App. 42.

Philippine law applied by the arbitral panel precluded the enforcement of the remedies to which the Petitioner was entitled under United States general maritime law.[31]

The Fifth Circuit held the District Court erred by relying on the prospective-waiver defense, finding that the defense was limited to statutory rights and remedies and did not apply to the general maritime law.[32] The Fifth Circuit reasoned that, from *Mitsubishi* onwards, this Court has referred only to statutory rights and remedies when discussing the doctrine,[33] although it acknowledged that this Court has never explicitly held that the prospective-waiver defense is limited to the protection of statutory rights. There is no policy-based reason to do so. As

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[31] The District Court aptly observed:

> The Fifth Circuit has stated [in the past] that public policy is not offended simply because the body of foreign law upon which the judgment is based is different from the law of the forum or less favorable to plaintiff than the law of the forum would have been. However, in this case, the Philippine law applied by the arbitral panel did not simply provide less favorable remedies than United States general maritime law would have. Instead, the Philippine law provided ***no such*** remedies. Accordingly, the remedies available under Philippine law were not less favorable, but rather were nonexistent.

Appendix to Petition at App. 45 (internal citations omitted) (emphasis in the original).

[32] Appendix to Petition at 21-22.

[33] *Id*. at note 61 (citation omitted).

noted by the District Court after it recognized the strong public policy in favor of seafarers, there is no reason why "the substantive rights provided by United States general maritime law should be categorically precluded from the prospective waiver defense created by the Supreme Court in *Mitsubishi* and *Vimar*."[34]

Statutory rights clearly reflect public policy, but this truism does not in any way support the conclusion that common-law rights do not.

[34] Appendix to Petition at App. 48.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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October 12, 2015