No. 91-1950

IN THE

Supreme Court of the United States

OCTOBER TERM 1991

AMERICAN DREDGING COMPANY,

Petitioner,

—v.—

WILLIAM ROBERT MILLER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION OF LAW PRESENTED

Whether the doctrine of *forum non conveniens* as applied by the federal courts in admiralty cases must be applied to maritime claims filed in state courts.

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BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Maritime Law Association of the United States ("MLA") respectfully submits this brief as *amicus curiae* in support of the Petition for Certiorari by American Dredging Company ("Petitioner"). Both Petitioner and Respondent have consented to the MLA's participation, and copies of the letters conveying such consent are being filed with the Clerk of the Court simultaneously with the submission of this brief.

INTEREST OF *AMICUS CURIAE*

MLA has a very strong interest in the disposition of this case. MLA is a nationwide bar association founded in 1899. It has a membership of about 3600 attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association and is represented in that Association's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and other maritime claimants and defendants.

MLA's purposes are stated in its Articles of Association:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, *to promote uniformity in its enactment and interpretation*, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

(Emphasis added.)

In furtherance of these objectives MLA, during the ninety-three years of its existence, has sponsored a wide range of legislation dealing with maritime matters, including the Carriage of Goods by Sea Act[1] and the Federal Arbitration Act.[2] The MLA has also cooperated with congressional committees in the formulation of other maritime legislation.[3]

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1 46 U.S.C. §§ 1300-1315.

2 9 U.S.C. §§ 1-15.

3 *E.g.*, 1972 Water Pollution Control Act Amendments, 33 U.S.C §§ 1251-1376; implementation of the 1972 Convention for Preventing

MLA is also participating in several projects of a maritime legal nature undertaken by agencies of the United Nations, including its Commissions on Trade Law ("UNCITRAL") and Trade and Development ("UNCTAD"). It works closely with the International Maritime Organization ("IMO").

MLA has actively participated, as one of some forty-nine national maritime law associations constituting the Comité Maritime International,[4] in the movement to achieve maximum international uniformity in maritime law through the medium of international conventions.[5]

MLA believes uniformity in maritime law, both national and international, is of great importance. This concern has been repeatedly expressed by our membership and standing committees. For example, in 1975 the MLA Standing Committee on Uniformity of U.S. Maritime Law recommended that steps be

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Collisions at Sea, 28 U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as amended, T.I.A.S. 10672, *reprinted in* 6 M. M. COHEN, BENEDICT ON ADMIRALTY, Doc. No. 3-4 at 3-35 to 3-78.2 (7th rev'd ed. 1990) (hereinafter "BENEDICT"), *see* 33 C.F.R. ch. 1, subch. D, Special Note, at 160 (1987); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

4 These now include the national associations of Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany, German Democratic Republic, Greece, Hong Kong, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Mexico, Morocco, The Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Senegal, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Union of Soviet Socialist Republics, Venezuela and Yugoslavia.

5 *E.g.*, Assistance and Salvage (1910), 37 Stat. 1658 (1913), *reprinted in* 6 BENEDICT, Doc. No. 4-1 at 4-2 to 4-10; Ocean Bills of Lading (The Hague Rules) (1924), 120 L.N.T.S. 155, *reprinted in* 6 BENEDICT, Doc. No. 1-1 at 1-2 to 1-19; Collision (1910), *reprinted in* 6 BENEDICT, Doc. No. 3-2 at 3-11 to 3-19; Limitation of Liability of Owners of Sea-Going Ships (1957), *reprinted in* 6 BENEDICT, Doc. No. 5-2 at 5-11 to 5-28; Maritime Liens and Mortgages (1967), *reprinted in* 6A BENEDICT, Doc. No. 8-3 at 8-25 to 8-32; Civil Liability for Oil Pollution Damages (1969), U.N.T.S. 1409, *reprinted in* 6 BENEDICT, Doc. No. 6-3 at 6-62.133 to 6-76.3; and Limitation of Liability for Maritime Claims (1976), *reprinted in* 6 BENEDICT, Doc. No. 5-4 at 5-32.2 to 5-44.4.

taken to persuade congressional committees "that nationwide and, in fact, world-wide uniformity in the Maritime Law is highly desirable, not only from the standpoint of those involved with maritime commerce but from that of the public as well." A resolution to that effect was unanimously adopted at the MLA Annual Spring Meeting on April 25, 1975.[6] A substantially identical resolution was adopted by the American Bar Association in 1976. This policy has been reaffirmed by the MLA on several occasions, most recently in a 1986 resolution.[7]

MLA has, in furtherance of the uniformity policy and resolutions, filed *amicus* briefs in a number of cases, including a number of briefs accepted by this Court.[8]

It is also the policy of MLA to file briefs as *amicus curiae* only when important issues of maritime law are involved and the Court's decision may substantially affect the uniformity of maritime law.

Such a situation exists in this case. Application of state open-forum statutes to maritime cases not only destroys uniformity of U.S. maritime law but also invites and endorses forum shopping and unpredictability in an area in which consistency is essential. The Louisiana court's holding also perpetuates the now chronic conflict between Louisiana and Texas State Courts and the United States Court of Appeals for the Fifth Circuit.

Apart from the inherent problems arising from uncertainty in the application of a federal door-closing measure, there is the risk that state courts will neglect other elements of admiralty law. *See, e.g., Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992) (applying state strict liability statute to mar-

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6 MLA Minutes, MLA Doc. No. 588 at 6397-98 (1975).

7 MLA Minutes, MLA Doc. No. 669 at 8769 (1986).

8 *E.g., Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). For a more comprehensive listing, see MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

itime tort). Allowing a proliferation of chaotically different results in the same factual settings adversely affects the general viability of the doctrine of uniformity and thus the practices of MLA's membership and the wide variety of interests represented.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The problem of disparate treatment of *forum non conveniens* motions by state and federal courts is chronic and vexing. Forum shopping is encouraged by the difference between the law applied by federal and state courts, and produces a burden on the federal courts because remand to the state courts may sometimes, in the federal court's view, result in injustice. Lack of uniform treatment of this issue is an impediment to interstate and international commerce.

Congress has granted state courts only limited jurisdiction to hear maritime cases. Maritime cases are governed by federal law which applies uniformly, as a constitutional requirement, in federal and state courts alike. Characterization of a maritime law doctrine as "procedural" cannot avert its application, especially when a characteristic maritime doctrine is at issue.

The federal doctrine of *forum non conveniens* is a door-closing measure which must be enforced by state courts in maritime cases regardless whether an analogous measure exists under state law.

REASONS FOR GRANTING THE WRIT

I

THE CONFLICT BETWEEN THE FEDERAL AND STATE COURTS IS PERSISTENT AND VEXING.

The Fifth Circuit and Texas and Louisiana State Courts have been in conflict for years on precisely this issue.[9] *See, e.g., Exxon Corp. v. Chick Kam Choo*, 817 F.2d 307 (5th Cir. 1987), *rev'd on other grounds*, 486 U.S. 140 (1988), *appeal after remand*, 821 S.W.2d 190 (Tex. App. 14th Dist. 1991), *writ granted*, 35 Tex. Sup. Ct. J. 684 (1992). *Compare, e.g., Markzannes v. Bermuda Star Line, Inc.*, 545 So.2d 537 (La. 1989), *cert. denied sub nom. Bermuda Star Line, Inc. v. Markozannes*, 493 U.S. 1043 (1990), *and Kassapas v. Arkon Shipping Agency*, 485 So.2d 565 (La. Ct. App. 5th Cir.), *writ denied*, 488 So.2d 203 (La.), *cert. denied*, 479 U.S. 940 (1986), *with Ikospentakis v. Thelassic Steamship Agency*, 915 F.2d 176 (5th Cir. 1990), *and Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374, 1382 (5th Cir. 1988). *See also* Petition n.4, at 11-12 (tracing history of *Chick Kam Choo v. Exxon Corp.*).

This distressing disharmony has already led to a burden on the federal courts in at least one case in which the Fifth Circuit felt compelled to refuse to allow a voluntary dismissal of a federal action because the plaintiff would have then proceeded in

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9 For example, in *Ikospentakis*, the Fifth Circuit observed:

> That the [*forum non conveniens*] defense is available to [defendants] and that it would be "stripped" from them in Louisiana state court, albeit in violation of the constitution's supremacy clause, are equally certain propositions. . . .
>
> . . . At some point, Louisiana must bend to the federal courts' construction of federal law. However, to insist that these foreign appellants become guinea pigs in an effort to overturn Louisiana's erroneous rule would blink at reality and would needlessly subject them to considerable expense as well as legal prejudice for the sake of vindicating principle. We need not reach such an unjust result.

915 F.2d at 178, 180.

a state court in which, as a practical matter, the doctrine of *forum non conveniens* would not be applied, thus prejudicing the foreign defendants. *Ikospentakis*, 915 F.2d at 180. Particularly in view of the burdens now placed on the federal courts, their dockets should not be further clogged by cases which could be entrusted to the state courts if those courts would apply governing federal doctrines.

Conflict on the applicability of *forum non conveniens* will continue to be a significant burden on the federal courts because of the variety of contexts in which the doctrine is raised. *See, e.g., Black Diamond Steamship Corp. v. Robert Stewart & Sons, Ltd.*, 336 U.S. 386 (1949) (salvage); *Tramp Oil v. MERMAID I*, 743 F.2d 48, 1985 AMC 459 (1st Cir. 1984) (maritime lien); *Calavo Growers of California v. Generali Belgium*, 632 F.2d 963, 1980 AMC 1993 (2d Cir. 1980), *cert. denied*, 449 U.S. 1084 (1981) (breach of marine insurance contract); *The WILJA*, 113 F.2d 646 (2d. Cir.), *cert. denied sub nom. O/Y Wipu v. Dreyfus*, 311 U.S. 687 (1940) (breach of charter party); *Ocean Shelf Trading v. Flota Mercante Grancolumbiana*, 638 F. Supp. 249, 1986 AMC 2482 (S.D.N.Y. 1986) (collision); *Matson Navigation Co. v. Stal-Laval Turbin AB*, 609 F. Supp. 579, 1985 AMC 2381 (N.D. Cal. 1985) (products liability for negligent design of ship's engine); *Red Sea Insurance v. S.S. LUCIA DEL MAR*, 1983 AMC 1630 (S.D.N.Y. 1982), *aff'd*, 1983 AMC 1631 (2d Cir. 1983) (cargo loss); *Argyll Shipping Co. v. Hanover Insurance Co.*, 297 F. Supp. 125 (S.D.N.Y. 1968) (general average); *Wall Street Traders Inc. v. Sociedad Espanola de Construccion Naval*, 245 F. Supp. 344 (S.D.N.Y. 1964) (breach of ship conversion contract); *Galban Lobo Trading Co. v. Canadian Leader Ltd.*, 1963 AMC 988 (S.D.N.Y. 1958) (breach of contract of carriage). While the courts in some of these cases decided to retain jurisdiction, each applied the doctrine of *forum non conveniens* to the maritime causes of action before it, thus illustrating the breadth of the range of commercial interests affected by the doctrine and the frequency with which it arises.

II

THE CONFLICT IS AN IMPEDIMENT TO INTERSTATE AND INTERNATIONAL COMMERCE.

The principle mandating uniform treatment of maritime cases is not a vacant theoretical requirement, but rather was designed to afford fairness to all maritime litigants by having their conduct and rights governed by the same rules, regardless of where their cases were tried. In 1874, the Supreme Court stated in *The LOTTAWANNA*:

> [T]he convenience of the commercial world, bound together, as it is, by mutual relations of trade and intercourse, demands that, in all essential things wherein those relations bring them in contact, there should be a uniform law founded on natural reason and justice. . . .
>
> One thing, however is unquestionable: The Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intent to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.

88 U.S. (21 Wall.) 558, 575 (1875).[10]

In 1920, the Court in *Knickerbocker Ice Co. v. Stewart*, referring to the approval and adoption of the general maritime law as part of the laws of the United States, held:

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10 The Court of Appeals for the Second Circuit observed, there is "another policy reason for adhering to a uniform standard [of *forum non conveniens*], namely, not to run afoul of the treaty obligations of the United States." *Alcoa Steamship Co. v. M/V NORDIC REGENT*, 654 F.2d 147, 152 (2d Cir.), *cert. denied*, 449 U.S. 890 (1980).

> The Constitution itself adopted and established as part of the laws of the United States, approved rules of the general maritime law . . . . Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose . . . .

253 U.S. 149, 160 (1920).

Because maritime commerce almost always involves international or interstate activities or at least sufficient contact with any number of fora to satisfy minimum due process requirements, operators and other defendants can be drawn into court almost anywhere, and since removal is not available simply because the claim is maritime, without application of the doctrine of *forum non conveniens*, defendants can be forced to test their rights and liabilities in an oppressive and vexatious location, even if neither the events nor the plaintiff has any meaningful contact whatsoever with the jurisdiction, as is the situation here. Thus, without uniformity, a litigant's rights would be subject to the vagaries of plaintiff's choice of forum, and commerce would suffer. *See Exxon*, 817 F.2d at 318 ("Applying state law inconsistent with 'characteristic features' would defeat the reasonably settled expectations of maritime actors.").

Uniformity is essential for predictability, and both tort and contract litigants are entitled to predictability in their legal relations. While the value of predictability is more often considered in connection with contracting parties who take account of the potential application of certain bodies of law in formulating their agreements, predictability is also of consequence in tort, where the parties are guided by their attorneys' perceptions of the law most likely to be applied and the rights and liabilities arising from those bodies of law. If attorneys cannot

make educated guesses about where an action will be tried and what rules will be applied, their ability to counsel their clients as to outcome, settlement value and every other aspect of the legal process will be greatly impaired. Litigation will be prolonged, as has happened here, as the series of appeals and reconsiderations multiply.[11]

If state courts are free to reject the doctrine of *forum non conveniens*, the uncertainties of litigation are vastly increased. Moreover, a state court which feels free to avoid application of one general maritime rule will be encouraged to overlook other admiralty principles. *See, e.g., Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992) (applying state strict liability statute to maritime tort).

III

THIS COURT SHOULD UPHOLD THE PRINCIPLE OF UNIFORMITY OF MARITIME LAW.

A. The Intent to Maintain National Uniformity Was Confirmed in the Constitution.

Article I, Section 8, Clause 3 (the Commerce Clause) states:

> The Congress shall have power . . . To regulate commerce with foreign Nations, and among the several States . . . .

Article I, Section 8, Clause 18 (the Necessary and Proper Clause) states:

> The Congress shall have power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . . .

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11 *See* Appendices A, B and C of Petitioner's Petition (showing the progress of this case through successive appeals and reversal in the state court); Petition at 5-7. The history of *Exxon v. Chick Kam Choo* also illustrates this tortuous pattern. *See* Petition n.4, at 11-12.

Article III, Section 2, Clause 3 (the Admiralty Clause) states:

> The judicial power shall extend . . . to all Cases of admiralty and maritime Jurisdiction . . . .

Article VI, Section 2 (the Supremacy Clause) states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Admiralty, and Necessary and Proper Clauses, and decisions interpreting them, confirm that, except in areas of purely local concern, the general maritime law is to apply in all admiralty and maritime cases in the United States. The Supremacy Clause requires state courts to follow established maritime law.

B. Although Congress Has Delegated a Portion of Admiralty Law Jurisdiction to the State Courts, They Are Required to Apply Federal Admiralty Law.

Congress, in implementing constitutional provisions by statute, recognized from the first that it might not be convenient to bring every maritime case to one of the few federal courts. It therefore delegated to the state courts an alternative limited jurisdiction to hear ordinary *in personam* maritime causes of action not involving the special procedures and remedies of admiralty, such as arrests, perfection of liens, etc. This was done by the "saving to suitors" clause in the Judiciary Act of 1789, now reworded in section 1333 of Title 28 of the U.S. Code. This purpose, however, cannot be served if, because of uncertainty of the state court's application of maritime law, the federal courts become chary of permitting cases to proceed in state court.

C. Application of the *Forum Non Conveniens* Doctrine Cannot Be Avoided by Characterizing It as "Procedural."

To say that the principle of uniformity ought to be limited to "substance" and denied to "procedure" does not resolve the question here.

In *Panama Railroad Co. v. Johnson*, the Court pointed out in discussing "admiralty and maritime jurisdiction":

> The framers of the Constitution were familiar with that [admiralty] system and proceeded with it in mind. Their purpose was not to strike down or abrogate the system, but to place the entire subject—its substantive as well as its *procedural* features—under national control . . . .

264 U.S. 375, 386 (1924) (emphasis added). In many maritime cases, procedure is as important as substantive law.

The United States Supreme Court has rejected the use of the epithet "procedural" as a means of deciding cases. In *Guaranty Trust Co. v. York*, 326 U.S. 99, 108 (1945), the Court clearly recognized the infirmity of such analysis:

> Matters of "substance" and matters of "procedure" are much talked about in the books as though they defined a great divide cutting across the whole domain of law. But, of course, "substance" and "procedure" are the same key words to very different problems. Neither "substance" nor "procedure" represents the same invariants. Each implies different variables depending upon the particular problem for which is used.

One of the cases with which the Court illustrated the point was *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248-49 (1942), a maritime case which had come up through the state courts. The Court held that a burden of proof, however it might be thought to be procedural, had such consequences that the federal rule must be used by the state court.

In *Hanna v. Plumer*, 380 U.S. 460 (1965), the Court reaffirmed its view that the dichotomy between "substance" and "procedure" was not adequate for deciding cases, while making clear that the criterion of "outcome-determination" is also not a universal rule. In both *Guaranty Trust* and *Hanna*, the Court stressed the discouragement of forum-shopping as a ground for looking beyond the common epithets in deciding whether federal or state standards should be applied.

The *Guaranty Trust* and *Hanna* cases indicate that the disparaging adjective "procedural" should not be used to reject a doctrine that is characteristic of the maritime law which governs this case.

D. The Doctrine of *Forum Non Conveniens* Is a "Characteristic Feature" of the Maritime Law which Must Be Applied in Maritime Cases Such as the One Before this Court.

As stated in *Exxon*:

> Applying state law inconsistent with "characteristic features" would defeat the reasonably settled expectations of maritime actors. . . .
>
> . . . The doctrine of *forum non conveniens* is the heart and soul of the federal policy of judicial self-restraint in the day-to-day workings of the maritime law. Texas cannot be allowed to thwart that policy in a maritime case brought to its courts. . . .
>
> . . . State law inconsistent with that doctrine [of *forum non conveniens*] cannot be applied in a maritime case.

817 F.2d at 318, 323-24 (footnote omitted). *Accord*, *Ikospentakis*, 915 F.2d at 178 ("This court has recognized that *forum non conveniens* is a "characteristic feature" of maritime law, tracing its history back to the earliest decisions of the federal courts."). The general maritime law has embraced the doctrine for over 190 years, *see Willendson v. Forsoket*, 29 F. Cas. 1283 (D. Pa. 1801) (No. 17,682), and actually is its source.

Alcoa Steamship, 654 F.2d at 154 (reviewing cases). See cases cited *supra*, at 7, for examples of the maritime contexts in which *forum non conveniens* has been applied.

IV

UNIFORMITY REQUIRES THAT IN MARITIME CASES, FEDERAL DOOR-CLOSING MEASURES, SUCH AS *FORUM NON CONVENIENS*, ARE BINDING ON THE STATE COURTS.

Although the federal government has limited powers, when it exercises those powers, under the Supremacy Clause the states are bound thereby, even to the extent of giving exclusive jurisdiction to federal courts in such matters. *See, e.g.*, 15 U.S.C. § 1346(b) (tort claims against the United States). This constitutional principle has been applied on many occasions in the form of federal door-closing measures which bind state courts. This is especially true in admiralty cases where Congress has consistently pursued uniformity and given federal courts "exclusive" jurisdiction, except for delegating a limited jurisdiction to state courts by "saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1).

For example, in an admiralty case, the United States Supreme Court described the criteria for enforcing a foreign forum clause, thereby closing all courts here to certain disputes arising under international maritime contracts. *The BREMEN v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972). Congress has mandated that *all* American courts must stay their proceedings whenever a party invokes a valid arbitration clause in a suit involving maritime, international or interstate commerce, regardless whether the underlying claims arise under federal or state law. 9 U.S.C. § 3. *See Southland v. Keating*, 465 U.S. 1 (1984); *Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc.*, 473 U.S. 614 (1985).

The doctrine of *forum non conveniens* is another type of door-closing measure first enunciated by this Court in an admiralty suit. *Canada Malting Co. v. Paterson Co.*, 285 U.S. 413 (1932). The question here is not when state courts may close their own doors to federal claims, *Missouri v. Mayfield*, 340 U.S. 1 (1950), but rather when state courts *must* apply a doctrine characteristic of the general maritime law, even when application of the doctrine may result in the state court closing its doors to a maritime suit.

It would be an abuse of discretion for *any* district court to decline to enforce the doctrine of *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), and *Piper v. Reyno*, 454 U.S. 235 (1981), when applicable. These cases mandate that some cases simply not be tried in the forum selected by plaintiff if the stated factors require adjudication elsewhere.

In *Testa v. Katt*, 330 U.S. 386 (1947), the United States Supreme Court held that state courts which lacked jurisdiction under state law to hear federal claims could be required by federal law to hear them nonetheless. The converse is equally true. In a maritime case where under *Gulf Oil* and *Piper* a federal court sitting in a given district could not hear the case, a state court likewise should be required to apply the doctrine and dismiss.

The existence of a state open-forum statute does not alter the result. A state legislature lacks power to keep state courts open to hear claims for which they have been deprived of jurisdiction by federal law. *See The MOSES TAYLOR*, 71 U.S. (4 Wall.) 411 (1867); *The HINE v. Trevor*, 71 U.S. (4 Wall.) 555 (1867); *Lindgren v. United States*, 281 U.S. 38, 47 (1930); *Southland*, 465 U.S. at 15-16. In enacting the "saving to suitors" clause, Congress granted state courts "partially concurrent" jurisdiction to hear some admiralty suits. *Knickerbocker Ice*, 253 U.S. at 161. But, Congress quite clearly never intended that state courts should exercise greater jurisdiction in maritime cases than the federal courts sitting in the state.

CONCLUSION

We most respectfully urge this Honorable Court to grant the Petition for Certiorari.

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Respectfully submitted,

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