No. 96-1496

IN THE

Supreme Court of the United States

October Term, 1996

TIDEWATER MARINE SERVICES, INC., ZAPATA GULF PACIFIC, INC., OFFSHORE MARINE SERVICE ASSOCIATION, and METSON MARINE INC.,
Petitioners,
vs.
LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA, and ALVIN ALLEN et al.,
Respondents.

On Writ of Certiorari to the
Supreme Court of the State of California

MOTION BY THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO FILE *AMICUS CURIAE* BRIEF AND BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Movant, The Maritime Law Association of the United States (hereinafter "MLA"), moves the Court for permission to file an amicus curiae brief in support of the Petition for Writ of Certiorari filed by Tidewater Marine Service, Inc., Zapata Gulf Pacific, Inc., Offshore Marine Service Association, and Metson

Marine Inc. (collectively "Petitioners"). Petitioners have given consent to the MLA to file an amicus brief. Respondents have refused to consent. Accordingly, leave to file must be sought pursuant to Rule 37.2(b) of the Court.

NATURE OF MOVANT'S INTEREST

The MLA is a nationwide bar association founded in 1899, with a membership of about 3600 attorneys, law professors, and others interested in maritime law. Its attorney members, most of whom are specialists in admiralty law, represent all maritime interests - ship owners, charterers, cargo interests, port authorities, seamen, longshoremen, passengers, underwriters, and other maritime claimants and defendants.

The objectives of the MLA, as stated in Article 4 of its present Articles of Incorporation, are to:

> 4. ...advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation...and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

In furtherance of its objectives, the MLA has sponsored a wide range of legislation dealing with maritime matters

during the ninety-seven years its existence, including the Carriage of Goods by Sea Act,[1] the Federal Arbitration Act,[2] and the Foreign Sovereign Immunities Act.[3] The MLA has also cooperated with congressional committees in the formulation of other maritime legislation.[4]

The MLA works closely with the International Maritime Organization ("IMO"), and participates 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"). The MLA is also one of some fifty-five national maritime law associations constituting the Comite Maritime International

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[1] 46 U.S.C. §§ 1300-1315.

[2] 9 U.S.C. §§ 1-15.

[3] 28 U.S.C. §§1330, 1602-11.

[4] E.g., Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§1251-1376; Convention on the International Regulations For Preventing Collisions at Sea, 28 U.S.T. 3459, as amended, T.I.A.S. 10672, reprinted in 6 Benedict on Admiralty, Doc. No. 3-4 (Frank L. Wiswall, Jr. ed. 7th ed. rev. 1996); see 33 C.F.R. Ch. 1, Subch. D., Special Note, at 176 (1995); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

(CMI),[5] and participates actively in the efforts of the CMI to achieve maximum international uniformity in maritime law through the medium of international conventions.[6]

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[5] 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.

[6] 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 5-29; 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 6-62.103 to 6-76.3; and Limitation of Liability for Maritime Claims (1976), reprinted in 6 BENEDICT, Doc. No. 5-4 at 5-32.1 to 5-44.3.

V

The MLA has also filed amicus briefs in a number of cases, including briefs accepted by this Court.[7] However, it is the policy of the MLA to participate as amicus curiae only when important issues of maritime law or practice are involved, and only when the impact of the Court's decision may be substantial. The Bylaws of the MLA require that its participation as amicus curiae must be approved by the President, in consultation with the First and Second Vice-Presidents, and then submitted to the Executive Committee. The Bylaws require that such approval must be given sparingly, and only when certain criteria are met. Among the criteria set forth in the By-laws are whether or not the outcome would adversely affect the uniformity of maritime law or traditional admiralty practice.

The MLA is interested in this case because it believes that the rights and remedies between seamen and their employers must be governed by a harmonious national system which does not depend upon the vagaries of local law. The

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[7] E.g. *Vimar Seguros y Reaseguros, S.A. v. M/V SKY REEFER*, ____U.S.____, 115 S.Ct. 2322 (1995); *Jerome B. Grumart, Inc. v. Great Lakes Dredge & Dock Co.*,513 U.S. 527, 115 S.Ct. 1043 (1995); *McDermott, Inc. v. Air Clyde and River Don Castings Ltd.*, 511 U.S. 202, 114 S.Ct. 1461 (1994). For a listing of other cases, see The MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

application of state overtime compensation laws to seamen would constitute a destructive and unprecedented encroachment by state law into that area. Moreover, it would be just the beginning. If this Court allows the California overtime compensation laws to apply to seamen, other courts and other state legislatures will see no reason why other aspects of state wage and hour laws cannot apply as well.

The MLA has sought to intervene as *amicus curiae* in other cases where it has perceived that a harmonious national system of law is desirable for maritime matters. Thus, in Offshore Logistics, Inc. v. Tallentire,[8] the MLA argued as *amicus curiae* that local remedies should not be permitted to supplement the uniform federal remedy created by Congress[9] for deaths occurring on the high seas.[10] Likewise in Tidewater Marine Service, Inc. v. Aubry, Jr., No. 91-142, and Pacific

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[8] 477 U.S. 207, 106 S.Ct. 2485 (1986).

[9] The Death on the High Seas Act (DOHSA), 46 U.S.C. §§761 et seq.

[10] 477 U.S. at 231-34. The Court agreed with the MLA that Section 7 of DOHSA, 46 U.S.C. §767, which states that "[t]he provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected," was intended only to preserve the states' ability to provide remedies for deaths in territorial waters, for which Congress had not legislated. 477 U.S. at 223-24.

Merchant Shipping Assn. v. Aubry, No. 91-349, which involved the same statutory scheme and many of the same parties as the present case, the MLA was granted leave to file a brief as *amicus curiae* in support of the position that seamen's employment contracts should be governed by a harmonious system of federal laws rather than divergent and potentially conflicting local laws.

The MLA's perspective is necessarily different from that of the parties to this suit, who are most interested in its outcome as it affects their particular interests. The MLA does not represent any particular segment of the maritime industry. It has no interest in the outcome of this lawsuit apart from its interest in the integrity and uniformity of maritime law. While the present case involves a petition filed by employers and shipowners, the MLA would just as quickly support a petition filed by seamen or other employees if it perceived the same concerns for the proper application of maritime law. Moreover, the interests of the MLA are national rather than local. While the present petition involves laws enacted in the State of California, it could just as easily involve the laws of any other state involved in maritime commerce. The MLA's position is to comment objectively on the needs of the maritime legal system, wholly apart from the interests of the parties involved

in the litigation or the particular segments of the maritime industry which they represent.

DATED April 15, 1997.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES:

STATUTES

Miscellaneous:

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BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, *AMICUS CURIAE*, IN SUPPORT OF A 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 Tidewater Marine Services, Inc. and Western Boat Operators, Inc. ("Petitioners").

QUESTION OF LAW PRESENTED

Whether contracts of employment between seamen and their employers can be altered by diverse and conflicting state compensation statutes.

INTEREST OF AMICUS CURIAE

This is stated in the Motion which precedes this brief.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The Writ should be granted in order to protect the harmonious national system of laws applicable to the relationships between seamen and their employers which Congress and this Court have worked so hard to develop.

REASONS FOR GRANTING THE WRIT

I. THE SUPREME COURT AND CONGRESS HAVE LONG ENDEAVORED TO FASHION A HARMONIOUS NATIONAL SYSTEM OF LAWS FOR THE RELATIONSHIP BETWEEN SEAMEN, THEIR VESSELS, AND THEIR EMPLOYERS.

It has been recognized from the founding of this country that matters relating to maritime commerce must sometimes be governed by a system of federal laws which operate harmoniously throughout the nation. Article III of the Constitution contains a special grant of federal subject matter

jurisdiction for "all Cases of admiralty and maritime Jurisdiction...." Art.III, §2, Cl.1. The framers of the Constitution acted immediately to implement that jurisdiction with the Judiciary Act of 1789.[11] The "fundamental interest giving rise to maritime jurisdiction is 'the protection of maritime commerce.'" Exxon Corporation v. Central Gulf Lines, 500 U.S. 603, 608, 111 S.Ct. 2071, 2074-75 (1991), quoting Sisson v. Ruby, 497 U.S. 358, 362 (1990), and Foremost Insurance Co. v. Richardson, 457 U.S. 668, 674 (1982). See also Romero v. International Terminal Operating Co., 358 U.S. 354, 360-61 (1959).

The relationship between seamen, their vessels and their employers is one of the areas where this Court and Congress have endeavored to create a harmonious system of national law. In 1920, Congress enacted the Jones Act to provide a remedy for seamen injured or killed as a result of their employer's negligence. This Court subsequently held that the remedies under the Jones Act must apply uniformly, without supplementation by remedies available under state law. Lindgren v. United States, 281 U.S. 38, 50 S. Ct. 207 (1930); Gillespie v. United States Steel Corp., 379 U.S. 148, 155, 85 S. Ct. 308 (1964).

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[11] 1 Stat. 96, now codified at 28 U.S.C. §1333(1).

Also in 1920, Congress enacted the Death on the High Seas Act (DOHSA) to provide recovery for wrongful death on the high seas. As in Lindgren and Gillespie, this Court held in Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986), that the remedies provided by DOHSA must apply uniformly without modification by state wrongful death statutes.

In cases where DOHSA and the Jones Act did not apply, there was no maritime cause of action for wrongful death. The Harrisburg, 119 U.S. 199 (1886). As a result, a number of anomalies existed with respect to seamen who were killed in the course of their employment. The Supreme Court therefore overruled The Harrisburg and created a maritime wrongful death action. Moragne v. States Marine Lines, 398 U.S. 375, 90 S. Ct. 1772 (1970). A principal reason for that decision was to:

> [G]ive effect to the constitutionally based principle that federal admiralty law should be a system of law coextensive with, and operating uniformly in, the whole country. 398 U.S. at 402 (citations omitted).

Then in Miles v. Apex Marine, 498 U.S. 19, 111 S.Ct. 317 (1990), the Court held that the need for a harmonious national system required limitation of the remedies under Moragne to those available under the Jones Act and DOHSA:

> Today we restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.

498 U.S. at 34.

In Yamaha Motors Corporation v. Calhoun, ___U.S.__ , 116 S.Ct. 619 (1996), which upheld the application of state wrongful death remedies to certain maritime claims, the Court limited its holding to claims which did not arise on the high seas, did not involve seamen, and were therefore outside the scope of the harmonious national scheme which it has endeavored to enforce for seamen. 116 S.Ct. at 627-28. The Court distinguished Moragne on the ground that it related to "ships and the workers who serve them." 116 S.Ct. at 627. The "relationship of vessels, plying the high seas and our navigable waters, and to their crews" is one where the interest in uniformity of maritime law has retained its greatest force. See Askew v. American Waterways, 411 U.S. 325, 344 (1973).

In the specific area of compensation, Congress has placed seamen among the most carefully protected groups in our society. See, for example, U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351, 91 S. Ct. 409 (1971), which held that Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (1986), does not preclude seamen from suing the shipowner for overtime wages and penalty wages under the appropriate sections of the seamen's wage statutes.[12] Seamen

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[12] 46 U.S.C. §§10301(b), 10303(e)-(i), 10501(b), 10504(a)-(e), and 2101(12).

have been wards of Congress and the courts for over 200 years. Arguelles, supra, 400 U.S. at 355. Subtitle II of 46 U.S.C. is devoted exclusively to vessels and their crew. Parts E-H of Subtitle II, 46 U.S.C. §§7101-11507, are dedicated to the manning of vessels, the documentation of seamen, and the rights of seamen under their employment contracts. Those sections derive from statutes dating back to 1790. Arguelles, supra, 400 U.S. at 353-354.

The fact is that seamen's employment differs from land-based employment in many respects which affect the manner in which it must be regulated. For example, seamen are required to work on vessels in locations where they cannot leave the workplace at the end of an eight-hour shift. The spaces on the vessel are confined, so that there is not enough room to staff three eight-hour shifts. Despite the extensive body of federal legislation pertaining to seamen, Congress has chosen because of these circumstances to exempt seamen from the very kind of maximum hour and overtime provisions that California now seeks to impose. 29 U.S.C. §213(b)(6). Seamen's working conditions on offshore vessels are instead regulated by the Coast Guard. The Coast Guard has established a customary and widely accepted twelve-hour workday throughout the offshore maritime industry.

The exclusion of seamen from the overtime provisions of federal law should apply to state law as well. Because Congress has legislated extensively with respect to seamen:

> We may supplement the statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress.

Miles v. Apex Marine, supra, 498 U.S. at 27 (emphasis added). See also Ray v. Atlantic Richfield Co., 435 U.S. 151, 178 (1978); Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 774 (1947); Napier v. Atlantic Coast Line, 272 U.S. 605 (1926); Norfolk & Western Ry. v. Public Utilities Comm., 926 F.2d 567, 570 (6th Cir. 1991).

II. THE LOCALIZED NATURE OF INDIVIDUAL WORKERS' EMPLOYMENT HAS NEVER JUSTIFIED DEPARTURE FROM A UNIFORM NATIONAL STANDARD.

In Southern Pacific Company v. Jensen, 244 U.S. 205, 37 S. Ct. 524 (1916), this Court held that the New York State workers' compensation statute could not constitutionally be applied to a longshoreman who was killed while unloading a steamship on a pier in New York City, because:

> [N]o such legislation is valid if it . . . works material prejudice to the characteristic features of general maritime law, or interferes with the

> proper harmony and uniformity of that law in its international and interstate relations. . . .

244 U.S. at 216-217. Likewise in Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S. Ct. 202 (1953), the Court held that a lawsuit by carpenter who resided and worked in Pennsylvania, and was injured while working on a ship which his employer had agreed to repair in Pennsylvania, was governed by the maritime rule of comparative fault rather than the Pennsylvania rule of contributory negligence.

There is no exception in these cases for workers who reside and work solely within the state whose laws are at issue. In fact, the work of longshoremen and ship repairers is typically limited to the locations in which they reside. Their employment is every bit as localized as that of the workers in the present case. Moreover, the operations of companies such as the present Petitioners are fully as interstate as the operations of the employers in Jensen and Hawn.

A similar result was reached in Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S.Ct. 406 (1959), in which the guest of a crewman sued the shipowner for injuries received on the vessel while it was moored in New York City. The Court held that the shipowner's duty of care was governed by maritime rather than state law even though the

guest was not involved with the business of the vessel and did not travel with it.

In Lord v. Goodall, 102 U.S. 541 (1881), the Court held that maritime rather than state law applied to cargo claims against the owners of a vessel which operated exclusively between ports within the State of California. See also Union Fish Co. v. Erickson, 248 U.S. 308 (1919), which held that the application of California's statute of frauds to a seaman's oral employment contract made within the state was preempted by the need to have a uniform rule for maritime employment contracts.

In summary, the need for harmony in the law pertaining to seamen applies with equal force to seamen who reside and work locally. If seamen's contracts are to be supplemented by overtime compensation laws, the laws must be enacted by Congress rather than state legislatures. This Court has stated that even Congress may be forbidden from supplementing maritime employment contracts by diverse state compensation statutes. Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 229, 106 S. Ct. 2485 (1986).

III. THE APPLICATION OF STATE OVERTIME COMPENSATION LAWS TO SEAMEN WOULD BE EXTREMELY DETRIMENTAL TO MARITIME COMMERCE.

In Kossick v. United Fruit Company, 365 U.S. 731, 81 S.Ct. 886 (1961), reh. denied, 366 U.S. 941, 81 S.Ct. 1657 (1961), this Court held that maritime law applied instead of the state statute of frauds in an action by a seaman against his employer to recover for improper treatment at a Public Health Service hospital. The court reasoned that:

> [T]his is such a contract as may well have been made anywhere in the world, and . . . the validity of it should be judged by one law wherever it was made. 365 U.S. at 741 (citations omitted).

The same concerns apply in the present case. It is common for seamen to be hired in one state for work in another state or throughout the United States. For example, Petitioner Tidewater is headquartered in Louisiana and employs seamen throughout the United States. The seamen's wages should be governed by the same laws regardless of where their contracts are made or the work is performed.

The decision of the California Supreme Court would interfere with the ability of the Coast Guard to implement its manning requirements uniformly. The application of differing state laws to crewmembers' compensation would produce

significant differences among states as to the cost of complying with those requirements. Moreover, many seamen are employed under collective bargaining agreements which are intended to apply uniformly throughout the nation. The application of state overtime compensation laws to such workers would destroy the uniform application of those agreements and interfere with the ability of unions to represent their members nationally.

It is not realistic to distinguish between vessels which work locally and those which travel between different jurisdictions, because almost every vessel in maritime commerce has the potential for interstate operation at any time. The vessels and employees of companies like Petitioners are likely to work in several different states and travel between jobs in different states. Moreover, there are many navigable waterways on which vessels operate routinely among several states. Examples are the Columbia River between Washington and Oregon; the Delaware River between New Jersey, Delaware and Pennsylvania; the Mississippi River, the Gulf of Mexico, the Great Lakes, and Chesapeake Bay, on which vessel operations routinely involve several states; and the Hudson River and New York harbor between New York and New Jersey.

It is common for vessels operating on such waterways to employ crews comprised of residents from several states. On

the Columbia River, for example, the Panel's decision would permit the states of Washington and Oregon to apply their own laws to their own residents. Crewmen who occupy the same rank and do the same work on the same vessel at the same place and time could then receive substantially different amounts of pay because of differences in state laws.

The decision of the California Supreme Court would also expose maritime employers to conflicting state standards, because the overtime laws in the states where they operate might not be uniform. For example, a fleet of vessels operating between New York and New Jersey might well hire both New York and New Jersey residents. The New Jersey legislature might make its overtime laws applicable to New Jersey residents, while the New York legislature might make its overtime laws applicable to services performed in New York waters. The New York employees would be victimized during New Jersey operations, because only the New Jersey residents would be entitled to overtime. The employer would victimized during New York operations, because it would be subject to conflicting standards. At all times the employer would face the ruinous burden of keeping track of the dates, locations and amounts of overtime for its employees. The same problems would be faced by fleets of tug boats and/or barges operating on the Columbia, Delaware and Mississippi Rivers, hiring

employees from two or more states for work in two or more states.

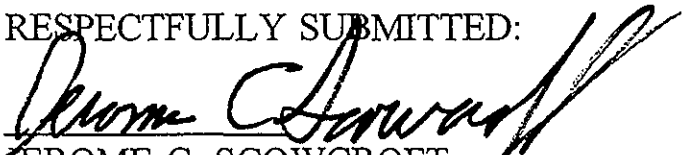
There are also important state interests which weigh against the application of California law. The expertise and resources needed for maritime operations are scarce and unevenly distributed within the United States. It is in the interests of individual states and the nation as a whole to avoid barriers which would hinder the free flow of maritime commerce among the states.

CONCLUSION

To protect the harmony, consistency and fairness of maritime law relating to seamen, this Court should grant the Writ and decide whether the rights and obligations under seamen's employment contracts can be altered by diverse and conflicting state compensation statutes.

DATED April 15, 1997.

RESPECTFULLY SUBMITTED:



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