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IN THE SUPREME COURT OF THE UNITED STATES

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JAMES F. LEWIS, :
Petitioner :
v. : No. 99-1331
LEWIS & CLARK MARINE, INC., :
ETC. :
- - - - -X

Washington, D.C.
Wednesday, November 29, 2000

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:05 a.m.

APPEARANCES:

ROY C. DRIPPS, III, ESQ., Wood River, Illinois; on behalf
of the Petitioner.
JAMES V. O'BRIEN, ESQ., St. Louis, Missouri; on behalf of
the Respondent.

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CHIEF JUSTICE REHNQUIST: We'll hear argument next in Number 1999 -- correction, 1331, James Lewis v. Lewis & Clark Marine.

Mr. Dripps.

ORAL ARGUMENT OF ROY C. DRIPPS, III

ON BEHALF OF THE PETITIONER

MR. DRIPPS: Mr. Chief Justice, and may it please the Court:

Both the Jones Act and the Limited Liability Act can and should be given effect in this single-claimant case, yet respondent seeks to use the Limited Liability Act to destroy rights conferred by Congress on Lewis as a seaman. The Jones Act incorporates the provisions of the Federal Employers Liability Act guaranteeing the employee a choice of a State or Federal forum. In addition, it guarantees him the freedom from removal to Federal court in the event he chooses a State court forum.

QUESTION: That's true of both the Jones Act and FELA, is it?

MR. DRIPPS: Yes, sir, and that statutory remedy is saved to Lewis by the saving to suitors clause, yet it can only be preserved in this case by dissolving the injunction against State court proceedings. This Court's

1 decision in the 1931 Langnes case held that the
2 injunction, even without stipulations, should be dissolved
3 to allow the State court suit to proceed, and that the
4 admiralty court would resume jurisdiction only in the
5 event that the State court judgment exceeded the amount of
6 the limitation fund.

7 QUESTION: Well, under what circumstances could
8 the district court exercise its discretion and not
9 dissolve the injunction and require litigation of
10 liability in Federal court?

11 MR. DRIPPS: Justice O'Connor, it would be only
12 in a multiple-claimant excess fund situation, and even
13 then under the Jones Act there might be a question with
14 regard to preserving multiple suitors claims under the
15 Jones Act, but generally in a non-Jones Act multiple-
16 claimant excess fund situation the vessel owner does have
17 the right to maintain the exclusive jurisdiction of the
18 admiralty court.

19 QUESTION: Well, what if you have excess funds,
20 multiple, and the Jones Act? Are you saying that the
21 Jones Act would prevent a liability determination in all
22 of those situations?

23 MR. DRIPPS: Not necessarily. I'm saying that
24 it's a question that potentially could be raised, but it
25 hasn't been. That's, of course, not this case. This is a

1 single-claimant case, and part of the court's discretion
2 at the district court level certainly was finding that it
3 could be a single-claimant case, which the district court
4 order did note in footnote 3.

5 QUESTION: Do you think that the courts and rule
6 (f) preclude a single-claimant exception?

7 MR. DRIPPS: Oh, absolutely not, Justice
8 O'Connor. I think that was made clear in the Langnes
9 case, because in the Langnes case the district court in
10 fact exonerated the vessel owner, and were that -- were
11 rule (f) to preclude dissolution of the injunction,
12 certainly the court would have simply relied on the
13 exoneration finding.

14 QUESTION: But you think that rule (f) is
15 invalid?

16 MR. DRIPPS: I do. However, and I want to make
17 this clear, the Court need not reach that issue if it
18 simply follows the Langnes analysis. The Rules Enabling
19 Act analysis only comes into play in this case if the
20 respondent's position is adopted, in that they say that we
21 have no right to go to State court. At that point, I am
22 forced to attack the rule which gives them the right to
23 have a liability and damage determination made in the
24 Federal court, which I do say is invalid as violation of
25 the rulemaking powers of this Court.

1 QUESTION: But it's possible to rule for you
2 here without holding that rule (f) is invalid just as a
3 matter of interpretation, isn't it?

4 MR. DRIPPS: Mr. Chief Justice, I agree
5 completely that if the Court simply follows the Langnes
6 case and says that the Jones Act allows this case to be
7 brought in State court, and that that statutory remedy is
8 preserved by the saving to suitors clause, and that the
9 injunction should be dissolved on that basis, the Court
10 need not reach the issue of the invalidity of rule (f) in
11 this case.

12 QUESTION: But it might not -- but it might not
13 go that far if you had a mass disaster and there were many
14 sailors injured and the vessel wasn't worth enough to
15 cover all the claims.

16 MR. DRIPPS: Justice Ginsburg, I think that in
17 that case the plain language of the limitation statute in
18 anything other than fire requires the vessel owner to
19 admit liability and cannot use the limitation statute as a
20 method to shift the forum and then contest liability. The
21 shipowner has a choice of one or the other in that
22 circumstance.

23 QUESTION: How does it work in practice? You
24 have a single claimant, and there's adequate, adequate
25 funds to cover the claim and it goes to the State court.

1 Then 6 weeks later somebody else has a slip and fall, and
2 then there's another suit. Does that make everything
3 start all over again? How does this work in -- it seems
4 to me that there's great merit to your position, but that
5 on the other hand there's going to be problems down the
6 line when you have subsequent claims, or is that maybe not
7 a problem?

8 MR. DRIPPS: Justice Kennedy, I don't believe
9 that's a problem, because normally when you have a case
10 like this you have separate or serial funds. Each time
11 the vessel owner wishes to file a limitation case there's
12 a separate valuation made, and it's a separate proceeding.

13 Now, the seaman's claims will become liens in
14 priority of the time they arise, but that's a separate
15 issue, and I --

16 QUESTION: Okay, so the priority is what solves
17 the problem, then.

18 MR. DRIPPS: Exactly. There's a priority based
19 on chronology.

20 QUESTION: And also --

21 QUESTION: A chronology of when the claim was
22 filed, or when the injury occurred?

23 MR. DRIPPS: I believe that it is of the time of
24 the judgment, except for wages, when it's a -- wages are a
25 lien that accrue as of the time --

1 QUESTION: Well, then I think there might be a
2 problem with successive claims. We need not get into it.
3 It's in the background, it seems to me, of the rule we
4 must make, because if we ship it all off to the State
5 court, and then there are going to be subsequent claims,
6 you might have to start the -- stop the State proceeding
7 midway.

8 MR. DRIPPS: Well, Justice Kennedy, I believe
9 that would only be a problem if the vessel owner tenders
10 the vessel to a trustee rather than posting security for
11 value, which is what was done in this case.

12 If, in fact, the vessel is turned over to a
13 trustee, though, the likelihood is that it's not going to
14 be employed by the owner, and so that owner won't be
15 allowed to have a subsequent claim, and if they post
16 security for value, I think that solves the problem,
17 because there is a fund posted, and we won't be in a
18 situation where we have competing claims for the same
19 fund. In other words, they will be different funds.

20 QUESTION: Do I understand the limitation
21 correctly? I mean, the typical use would be if you have a
22 collision and lots of people are hurt, but this is a
23 single -- this is a tripping on wire, so we know it
24 isn't -- it isn't disputed in this case, is it, that we're
25 dealing with a single-sailor accident? There was -- he

1 tripped over a wire on the deck.

2 MR. DRIPPS: There is no dispute concerning
3 that, Justice Ginsburg. In the motion to dissolve the
4 restraining order, which is in the joint appendix on page
5 70, and I believe it's at page 71, paragraph 6, Lewis made
6 the specific claim that this was a single-claimant
7 accident. That claim has never been rebutted or
8 contradicted by the opposing side, by the vessel owner, so
9 this is clearly a single-claimant case.

10 Now, what your question suggests then, is why
11 was this case filed, and it was filed simply as a forum-
12 shifting device.

13 QUESTION: But you sued later. Oh, you think
14 that they came in precipitously so that the forum would be
15 where they wanted it, rather than where you chose to sue?

16 MR. DRIPPS: Well, Justice Ginsburg, I wouldn't
17 use the term precipitously, but the complaint was filed on
18 March 24 of 1998. Normally, in the case of a mass
19 disaster, for example, there would be immediately a motion
20 for an injunction and a notice to potential claimants that
21 goes out. That was not done in this case until May 11, 6
22 weeks or so after the initial complaint, and it was not
23 done until after the State court case had been filed.

24 What they did was, they filed a limitation case
25 in the Federal court and then sat on it, waited to see if

1 Lewis was going to institute suit or not. When he did,
2 they obtained the injunction restraining prosecution of
3 the suit, and --

4 QUESTION: And their limitation proceeding was
5 filed in which court?

6 MR. DRIPPS: It was filed in the Eastern
7 District of Missouri, United States District Court for the
8 Eastern District of Missouri, across the river from
9 Madison County, Illinois.

10 QUESTION: And --

11 MR. DRIPPS: Rather than filing it in the
12 Southern District of Illinois.

13 QUESTION: There was -- seemed to be a
14 concession that if only you had asked for a jury trial
15 you'd be home free, because you can't get a jury trial in
16 admiralty and that's what the savings to suitors clause
17 saved.

18 MR. DRIPPS: And I think the Linton case from
19 the Fifth Circuit in 1992 addresses that point
20 specifically, Justice Ginsburg, and they say that the
21 saving clause saves a nonjury Jones Act case because
22 that's part of the seaman's remedy under the Jones Act.
23 The Jones Act's election language says the seaman has the
24 right to maintain an action at law or -- with or without a
25 jury and, by incorporating the Federal Employees Liability

1 Act, he can do it in State or Federal court.

2 QUESTION: The defendant cannot ask for a jury
3 trial in that situation?

4 MR. DRIPPS: That's true, Chief Justice. The --
5 and I think the Linton case goes on at great length to
6 discuss that, and the significance of that I think is
7 perhaps made more clear by the antiremoval provision in 28
8 U.S.C. 1445(a). The defendant cannot remove that case to
9 Federal court where he would be able to trigger the
10 Seventh Amendment and get a jury trial.

11 QUESTION: Yes, but it's one thing to say, for
12 Congress to say it can't be removed, but it seems to me
13 it's quite another, a separate thing for Congress to say
14 that the plaintiff can have a nonjury trial and the
15 defendant cannot move for a jury.

16 MR. DRIPPS: That is what the Linton case said,
17 and that point wasn't specifically brought up in the
18 briefs, although I believe this Court has addressed that
19 issue. I'd have to go outside the briefs to give you a
20 case cite.

21 QUESTION: Yes, well, it certainly isn't
22 directly involved here, is it?

23 MR. DRIPPS: No, sir. No, sir, but this Court
24 has addressed it.

25 QUESTION: Well, we said in Singer, that Singer

1 case, in the criminal case that the Government can move
2 for a jury trial even though the defendant doesn't want
3 one.

4 MR. DRIPPS: And in this case Congress has
5 specifically said that the injured employee has the option
6 of determining whether or not it should be a jury or
7 nonjury trial. That's what this Court said in the Panama
8 Railroad case v. Johnson, from 1920. The Linton case
9 simply followed that, and said that the fact that the
10 seaman chooses the nonjury remedy in State court does not
11 transform the case into something that is now removable
12 because it's outside the scope of the saving to suitors
13 clause.

14 And that ties in with this Court's decision in
15 the Red Cross Lines case, where it concluded that
16 statutory remedies are saved remedies, and in this case
17 Mr. Lewis is a seaman invoking his rights under the Jones
18 Act, which is a Federal statute. Accordingly, that remedy
19 is saved to him by the saving to suitors clause, and
20 Congress' decision to confer the right to select the forum
21 and the form of trial on the seaman is also saved by the
22 saving to suitors clause.

23 In contrast, the vessel-owner's rights in this
24 case have been fully protected by Lewis' stipulations.
25 We've guaranteed their right to seek the exclusive

1 jurisdiction of the Federal admiralty court, and in that
2 case their Federal statutory rights are fully protected,
3 but by precluding us from being able to preclude in State
4 court, they are destroying the rights that Congress has
5 conferred upon us in the Jones Act and preserved from the
6 exclusive Federal jurisdiction through the savings clause.

7 QUESTION: Well, what have you conceded with
8 respect to the limitation forum, because there'll be
9 nothing -- there'll be nothing -- the only -- this is the
10 only lawsuit, this Jones -- this is the only claim, so
11 they have a shell of an action, but there's nothing to
12 fill the shell because this case will go on in the State
13 court, there'll be a decision, there's more than enough
14 money in the till to pay the judgment, so what have you
15 conceded by letting them keep the limitation action?

16 MR. DRIPPS: Justice Ginsburg, what we've done
17 is guaranteed that their limitation action will be
18 successful. They have limited their liability. They've
19 capped their liability.

20 QUESTION: That your -- that's your concession,
21 that your claim is for less than the --

22 MR. DRIPPS: Absolutely, although -- and I don't
23 think that's necessary, though, to a resolution of the
24 case. If we look back at the Langnes case, which was a
25 Jones Act case, the Court's decision simply hinged on

1 applying the saving to suitors clause so that both
2 statutory doctrines could be implemented, which is what
3 I'm asking this Court to do now, rather than to pick one
4 in an effort to destroy the other, and that is the goal, I
5 think, of this case.

6 QUESTION: Well, your -- what's left of the --
7 what's in the shell, I guess, is a kind of interrum
8 jurisdiction to, in effect to guarantee the concessions,
9 and it may never have to be -- presumably it will never
10 have to be exercised, but you're conceding that it could
11 be.

12 MR. DRIPPS: Justice Souter, that's right.
13 The -- in the event that a State court judgment would be
14 entered in excess of the limitation fund I think they have
15 an absolute right to go back into the Federal court and
16 say, wait a minute, Lewis agreed that in order to get to
17 State court his -- our liability would be capped, and at
18 that point the Federal judge would have the right to enter
19 an order limiting their liability. I don't think there's
20 any dispute about that.

21 QUESTION: All right. To keep it simple, on res
22 judicata they could simply enjoin collection beyond the
23 conceded limitation.

24 MR. DRIPPS: Sure.

25 QUESTION: Yes.

1 MR. DRIPPS: But they don't have the right to go
2 beyond capping their liability, which is what they're
3 seeking to do. They're seeking to shift the forum from
4 the State court, which has been guaranteed to us by
5 Congress, into the Federal court so that the liability and
6 damage determination can be made there, and that's what we
7 say is improper.

8 QUESTION: Do I correctly understand the picture
9 on this exoneration that would go on if you -- say you did
10 have a collision, would go on in the admiralty forum, that
11 the function is served by the defense that the shipowner
12 can put into the Jones Act claim that is, there was no
13 negligence here, and that is effectively what the
14 exoneration plea would do?

15 MR. DRIPPS: In some ways, Justice Ginsburg.
16 Now, if I understand the question correctly, I don't
17 believe that the exoneration rule is an incorporation of
18 Congress' allowing them a defense under the Jones Act. I
19 think that defense has to be taken in the context of the
20 statute, and they can choose to defend and require us to
21 put on our proof of negligence, but only in the context of
22 the forum grant that is given to the employee by Congress.

23 QUESTION: From the shipowner's point of view,
24 it's one thing to say the shipowner itself had no
25 involvement in the negligence, it was the other deck

1 hands. It's a respondeat superior situation. That's one
2 thing.

3 Another thing is, there was no negligence by
4 anybody at all, and I thought that that was the equivalent
5 of the exoneration plea, that nobody was negligent at all,
6 as distinguished from, maybe we have respondeat superior
7 liability, but we should be allowed to limit that.

8 MR. DRIPPS: That's true, that is the essence of
9 the exoneration claim, and that's what they want the
10 Federal court to decide. The two responses to that are,
11 first of all, the Langnes case from this Court essentially
12 held that the exoneration claim was not sufficient to
13 preclude dissolution of the injunction because, as I noted
14 earlier, in Langnes the district court had, in fact,
15 exonerated the vessel owner. This Court nonetheless
16 required the injunction to be dissolved and the case to go
17 back to State court.

18 QUESTION: Well, that I don't follow, because if
19 there was a determination of exoneration, that is, no
20 liability at all, not limited but no liability at all, why
21 wouldn't that have been preclusive in State court?

22 MR. DRIPPS: If it had not been reversed by this
23 Court it would have been preclusive.

24 QUESTION: Ah.

25 MR. DRIPPS: But this Court said that

1 determination has to be made in State court and not in
2 Federal court.

3 QUESTION: What determination?

4 MR. DRIPPS: The determination of liability and
5 damage, and once it's made in State court, it is
6 preclusive of the exoneration claim in Federal court under
7 the rule of the Benefactor, which this Court decided in
8 1880.

9 QUESTION: But if the Federal court had made the
10 determination first, and that -- and hadn't been reversed,
11 then that would be preclusive.

12 MR. DRIPPS: Yes, it would, but the Court
13 reversed it because the determination should have been
14 made by the State court in the first instance rather than
15 the Federal court, and that's the essence of the Langnes
16 holding, that we're implementing the Jones Act's grant to
17 the seamen, preserved through the saving to suitors
18 clause, of the right to proceed in State court, rather
19 than be forced into Federal court by the shipowner, and
20 that holding was made without the presence of any
21 stipulations regarding res judicata, and this Court said
22 that the case will go back to State court for that
23 determination.

24 The other --

25 QUESTION: Well, that sounds like, entirely in

1 sync with my suggestion that the defense of no negligence
2 at all, which can be put into the Jones Act proceeding, is
3 the equivalent of getting, in the Federal court,
4 exoneration.

5 MR. DRIPPS: That's absolutely true, Justice
6 Ginsburg. They have the right in State court to defend,
7 require the plaintiff to prove negligence, causation, and
8 damage. They will be getting in the State court the
9 benefit of that defense that they seek to assert in
10 Federal court.

11 They are not being deprived of any rights by
12 proceeding in State court, and their Federal right of
13 limitation will be guaranteed to them by the stipulations
14 that we filed waiving res judicata with regard to the
15 issue of limited liability and stipulating to the
16 exclusive jurisdiction of the district court to decide the
17 limitation issues. Those protect their Federal rights,
18 and their right to defend and require proof of negligence
19 and the other elements of the plaintiff's case are all
20 things they can assert in the State court.

21 The other reason that the exoneration rule
22 should not be permitted to control disposition of this
23 case and we're required to be brought into Federal court
24 is because at that point we do get into the rules enabling
25 analysis and I simply wanted to mention the Henderson case

1 that this Court decided in 1996, which set forth four
2 factors that the Court considers in determining whether or
3 not a provision is substantive or procedural. Rule (f)
4 meets each and every one of those.

5 The Henderson Court indicated that the factors
6 are, who may sue, which is answered by rule (f)(1), which
7 says any vessel owner, on what claims, the amount of all
8 demands in conflict, tort or otherwise, rule (f)(2), for
9 what relief, exoneration, or limitation from liability
10 under rule (f)(2), and within what limitations period, not
11 later than 6 months after receipt of a written notice
12 of --

13 QUESTION: When you say it meets every test. It
14 meets every test for being procedural, is that what you're
15 saying?

16 MR. DRIPPS: For being substantive.

17 QUESTION: For being substantive?

18 MR. DRIPPS: Yes, Your Honor, and that's why I
19 say that if the Court adopts the analysis that the
20 respondent has offered, then we need to grapple with the
21 Rules Enabling Act analysis, and in that case the
22 provision of conferring a substantive right to sue by rule
23 violates the Rules Enabling Act because it conflicts with
24 the congressional statutory scheme of the Jones Act by
25 abridging or modifying Lewis' right to sue in State court

1 and enlarges the vessel owner's right to seek limited
2 liability in Federal court.

3 QUESTION: I'm not following your argument to
4 this extent. I thought all this came up originally not
5 because of statutes, but because of court-made doctrine in
6 admiralty, and then that doctrine gets reflected
7 eventually into rule (f). It's not a like a rule in place
8 of a statute, where I would follow your argument very
9 well, but it is taking what was, indeed, substantive law,
10 but substantive law originally made up by courts.

11 MR. DRIPPS: Well, normally, Justice Ginsburg, I
12 would agree with you that that is what the rules do. In
13 this particular case, however, this Court's decision in
14 the Benefactor specifically said that the fifty-sixth rule
15 in admiralty, which was the predecessor of current rule
16 (f), was designed to circumvent the prevailing English
17 rule requiring the vessel owner to admit liability.

18 So in fact the rule has done the opposite of
19 what you suggest. It has created a substantive right to
20 sue for a determination of liability and damage, where in
21 fact the common law, or the prevailing admiralty law,
22 required the opposite, that the vessel owner admit
23 liability, and that was the decision specifically of this
24 Court.

25 If there are no further questions, Mr. Chief

1 Justice, I'd like to reserve the balance of my time.

2 QUESTION: Very well, Mr. Dripps.

3 Mr. O'Brien, we'll hear from you.

4 ORAL ARGUMENT OF JAMES V. O'BRIEN

5 ON BEHALF OF THE RESPONDENT

6 MR. O'BRIEN: Mr. Chief Justice, and may it
7 please the Court:

8 The issue that is presented on certiorari grant
9 from this Court in this case is whether the district court
10 in this case abused its discretion in lifting the
11 injunction that was imposed upon the filing of the
12 limitation of liability case and allowing the claimant to
13 proceed with a nonjury case in Illinois State court, where
14 he was a single claimant in the limitation and where the
15 fund was, at least after the initial filing, deemed
16 adequate.

17 The Eighth Circuit answered this question in the
18 affirmative, and held that since the remedy sought by the
19 claimant, a nonjury trial, was already available in the
20 limitation of liability court, that there was no saved
21 remedy. In other words, there was no statutory right of
22 the claimant implicated, and therefore the Federal
23 district court in the limitation case was bound by its
24 grant of jurisdiction under Article 3, section 2 --

25 QUESTION: Well, do you think the district

1 court's view would have been different had the right to
2 jury trial not been given up?

3 MR. O'BRIEN: Mr. Chief Justice, our position in
4 the case, and I believe the position of the Eighth Circuit
5 was that if a jury trial had been requested, then a remedy
6 that was not available in the district court would have
7 been sought and therefore a saved remedy would have been
8 sought, and therefore the stay, assuming the single
9 claimant exception and the adequate fund exceptions were
10 met, would have been allowed to proceed in Illinois State
11 court.

12 QUESTION: So this case hinges, in your view at
13 any rate, on the fact that the plaintiff had waived the
14 right to a jury trial.

15 MR. O'BRIEN: To a large extent it does. If I
16 may --

17 QUESTION: You say that because you say, well
18 then he doesn't need the State forum because he can get a
19 nonjury trial in admiralty, but wouldn't one say equally,
20 once the Jones Act plaintiff stipulates that he's not
21 going to seek more than X amount of damages, you don't
22 need the limitation proceeding?

23 MR. O'BRIEN: Our position takes a step back,
24 and our position looks back at the original origin of the
25 single claimant exception that was set forth by this Court

1 in Langnes v. Green, and what we say is that we know a
2 number of things about what this Court -- what the
3 district courts have to do under the Limitation of
4 Liability Act.

5 Unlike some of the cases cited by the
6 petitioner, where there is no limitation case, we know
7 that when there's a limitation case on file there is
8 exclusive Federal jurisdiction, and we know that the
9 district courts are therefore bound to -- exclusively to
10 administer the rights of the limitation claimant and
11 all -- the limitation petitioner, excuse me, and all those
12 claimants who make claim.

13 The only way for any given claimant to exit from
14 the limitation case is if they can, for lack of a better
15 word, trump the limitation petitioner's rights to an
16 exclusive determination in the Federal court with some
17 statutory right, and in this case that would be -- the
18 source of that right would be 28 U.S.C. section 1333, the
19 saving to suitors clause.

20 Now --

21 QUESTION: I'd like to back up a little bit,
22 because I don't think I followed you that far down the
23 trail. That is, as I understand it, the whole reason for
24 being of a limitation action is so that the shipowner will
25 be able to limit the extent of his economic loss to the

1 value of the ship.

2 Now, once it is certain that that will in fact
3 be the case, that there is no exposure beyond the value of
4 the ship, what function does a limitation proceeding
5 save -- serve, other than to block what would ordinarily
6 be a garden-variety Jones Act case from proceeding in
7 whatever forum the sailor chooses to sue in?

8 MR. O'BRIEN: Because the Limitation of
9 Liability Act has more than just to limit liability. It
10 also has the purpose of allowing an exoneration to be
11 pursued by the shipowner and, indeed, in Langnes v. Green,
12 the seminal case that started this exception, the Court
13 was very clear, this Court was very clear that the
14 limitation court had both the power to decide exoneration
15 and limitation.

16 Now --

17 QUESTION: What provision of the limitation act
18 gives you the right to have an exoneration proceeding?

19 MR. O'BRIEN: Mr. Chief Justice, we believe that
20 the entire act construed by this Court in the Norwich v.
21 Wright case provides that right. Specifically, section
22 183, but also read in conjunction with section 185 and the
23 entire statute.

24 QUESTION: And where is that in the appendix?

25 MR. O'BRIEN: Well, the --

1 QUESTION: I see it's at pages 1 and 2 of the
2 petition for certiorari.

3 MR. O'BRIEN: Yes, Your Honor. Well, the
4 statute itself, of course, is in the United States Code,
5 and under section 183 of title 46 the vessel owner is
6 entitled to pursue the limitation of liability, and is --

7 QUESTION: But pursuing the limitation of
8 liability is one thing. Getting an exoneration
9 determination is another.

10 MR. O'BRIEN: Yes, sir.

11 Your Honor, going back to Norwich v. Wright,
12 this Court on at least a dozen occasions since 1871 has
13 decided that exoneration is a fundamental right under the
14 statute and is part and parcel of the limitation
15 proceeding.

16 QUESTION: Were any of those cases single-
17 claimant cases where the fund was adequate to cover the
18 injury, or were they all what one thinks of as limitation
19 case, a rather larger disaster?

20 MR. O'BRIEN: The early cases, Justice Ginsburg,
21 typically involved a petition to limit after a judgment
22 had already been obtained in a district court. Indeed,
23 the Norwich case that is the case cited in both briefs,
24 and the original seminal case in limitation liability,
25 involved such a proceeding, and the Benefactor, the second

1 case after Norwich, also involved a shipowner that came in
2 after a finding of liability in the district court.

3 But when those early decisions came out
4 construing the Limitation of Liability Act, for the first
5 time -- it had been passed in 1851 -- they had to decide
6 what it meant, and there is an extended discussion in
7 Norwich v. Wright about it, and in that case this Court
8 stated that the American Limitation of Liability Act
9 represented a departure from English law, because the
10 English chancery courts, which had earlier heard
11 limitation cases in England, lacked the power to
12 investigate claims in admiralty, and therefore under
13 English admiralty law the shipowner was required to admit
14 liability.

15 In the American courts, and under the limitation
16 act as construed by this Court in Norwich v. Wright, a
17 determination not only of limitation was undertaken, but
18 also exoneration, and from that time forward --

19 QUESTION: But wasn't that only on the
20 assumption that there was jurisdiction under -- just to
21 seek limitation? As part of the proceeding they could
22 seek exoneration, but was there any case where the only
23 issue was exoneration versus liability?

24 MR. O'BRIEN: Not per se, Your Honor. Not per
25 se.

1 QUESTION: And the word exoneration is not in
2 the statute itself, is it?

3 MR. O'BRIEN: It is not found in the statute,
4 although it does state -- the statute does state that the
5 vessel owner's liability shall not exceed the value of the
6 vessel --

7 QUESTION: Right, but that's quite different
8 from saying it shall not exist.

9 MR. O'BRIEN: Well, it also does not deny the
10 district court -- the same statute that gives the
11 jurisdiction to decide limitation of liability does not
12 deny to the district court the ability to decide
13 exoneration.

14 QUESTION: But wouldn't all these cases fit
15 together if we simply held that in an appropriate case
16 where the limitation of liability proceeding involves
17 multiple claimants and an original intent to get more
18 than the gross value of the ship, that in such a case,
19 the -- among the things the shipowner can do is seek a
20 complete defense of a nonliability? Wouldn't all the
21 cases fit together if we just held that's where the
22 exoneration is appropriate?

23 MR. O'BRIEN: Well, certainly that's one option.

24 QUESTION: Yes.

25 MR. O'BRIEN: And I -- we would certainly urge

1 that on the Court, and I believe it's part of the
2 limitation act that the shipowner should be entitled to
3 seek exoneration in any case in which it seeks a
4 limitation as well.

5 QUESTION: The Norwich, for example, under the
6 Norwich was decided long before the Jones act was passed.

7 MR. O'BRIEN: Yes, Your Honor.

8 QUESTION: Do you think the Jones Act affects
9 the holding in Norwich in any way?

10 MR. O'BRIEN: We do not. It's clear that the
11 rights that the seaman has under the Jones Act are
12 subordinate to -- in general to the rights of the
13 shipowner to limit liability. In other words --

14 QUESTION: Now, why do you say that?

15 MR. O'BRIEN: Because -- for the reason that
16 it's clear that if it had been a limitation proceeding
17 with multiple claimants in a case where the claims
18 asserted exceeded the value of the vessel --

19 QUESTION: Yes, but Langnes says the single
20 claimant is different, does it not?

21 MR. O'BRIEN: Well, what -- Langnes really rests
22 upon three distinct factors. Langnes says, first you have
23 to have a limitation of liability case. Langnes says
24 second, you have to have a single claimant, and third you
25 have to have a request for a jury trial. Those, in our

1 view, are the three pillars upon which that case was
2 decided, and --

3 QUESTION: Do you think the request for a jury
4 trial was essential to the holding in Langnes?

5 MR. O'BRIEN: Your Honor, I do, and the reason
6 is because it's the request for a jury trial that
7 implicates a saved remedy. The request for a jury trial
8 is what implicates a right under the saving to suitors
9 clause, which in that situation exceeds the interest of
10 the vessel owner in staying in Federal court.

11 QUESTION: As I read it, you're trying -- you
12 seem to be trying to make the tail wag the dog. These
13 early cases say, well, you know, if you're in Federal
14 court, shipowner, trying to limit your liability, because
15 we've had a collision and there are 42,000 plaintiffs and
16 you've got to deal with this and just limit it to the
17 vessel, well, as long as you're there, we'll try out
18 whether you're liable at all. We'll try out exoneration.

19 The only reason we're doing that -- they didn't
20 do it in England, but the Court says -- we say, from time
21 immemorial it was done in every other country, right?
22 So --

23 MR. O'BRIEN: Yes.

24 QUESTION: So we'll do it. But if you're not
25 here, what's the point of doing it, and you're not here if

1 there's a single plaintiff or if there's an adequate fund.
2 I mean, the reasoning of it would seem to me to be, if
3 you're not here, and you can't get here because there's an
4 adequate fund, for example, there's no reason for us to
5 snatch the issue of liability away from the State court.

6 MR. O'BRIEN: Justice Breyer, I think it's key
7 to look at Langnes v. Green and see in that case that this
8 Court stated emphatically that the procedure under the
9 Limitation of Liability Act was to first look at
10 exoneration and then, if liability was found, to look at
11 limitation issues.

12 QUESTION: Of course that's true, provided that
13 you are properly in the Federal court limiting your
14 liability. My point is, suppose you're not, as is true
15 here, for the reason that you already have an adequate
16 fund. You have no basis to get into the Federal court if
17 there's an adequate fund. Your only basis could be that
18 we want to exonerate, but exoneration is there in case
19 you're in anyway.

20 MR. O'BRIEN: Well, let me state that
21 initially -- the initial claim filed in this case did
22 exceed the limitation fund, and so that at the time the
23 vessel owner instituted the proceeding, that was certainly
24 in play and, indeed, when the initial claim was filed --

25 QUESTION: How did you know that, because the

1 Federal suit was filed second. You had your limitation --
2 if I remember the chronology right, you sought limitation,
3 and then a week later the Jones Act case was started.

4 MR. O'BRIEN: The short answer is that we know
5 in this jurisdiction, where the State court suit could
6 have been brought, that tripping over a wire could lead to
7 a judgment in excess of the value of the vessel, and so
8 therefore the --

9 QUESTION: But this plaintiff --

10 MR. O'BRIEN: -- vessel owner had a good faith
11 reason for pursuing limitation.

12 QUESTION: This plaintiff hadn't made any such
13 claim then. You're basing it on other claims that were
14 made against this shipowner?

15 MR. O'BRIEN: No. I believe the vessel owner,
16 based on its experience, and based on its knowledge of the
17 situation, felt that an accident had occurred during this
18 voyage which might make its vindication under the
19 Limitation of Liability Act a realistic legal possibility,
20 and so a petition was filed.

21 There's no rule that prevents a vessel owner
22 from coming in before the claims are filed, just as
23 there's no rule that prevents a vessel owner from coming
24 in while claims are being filed or after they're filed, so
25 the timing of the filing of the limitation of liability

1 proceeding is really --

2 QUESTION: I brought it up in answer to your
3 assertion, we knew that he originally had a claim in
4 excess of the value of the vessel. You didn't know that
5 specifically with respect to this plaintiff.

6 MR. O'BRIEN: Well, knowing, I think, and having
7 a good faith belief that the proceeding might be in the
8 vessel owner's interest are too different things. I don't
9 think there was any way to predict the future at the time
10 the petition was filed, but certainly --

11 QUESTION: But you didn't have to make any
12 prediction a week later.

13 MR. O'BRIEN: That's true, because we shortly
14 thereafter had a claim in excess of the value of the
15 vessel.

16 QUESTION: And the prayer for relief was for in
17 excess of \$450,000?

18 MR. O'BRIEN: Yes. By stipulation, I think in
19 the joint appendix at 69 the record reflects that the
20 initial claim was in excess of the value of the vessel,
21 and by stipulation --

22 QUESTION: The question really is whether that
23 did not satisfy the purposes of the limitation of
24 liability proceeding.

25 MR. O'BRIEN: Well, Justice Stevens, our

1 position is that once the jurisdiction of the limitation
2 code is validly invoked, which it was in this case, that
3 jurisdiction attaches, and under the Constitution and laws
4 the district court is obligated to decide all those
5 issues, and the only way to escape -- for the claimant in
6 this case to escape that jurisdiction is to point to a
7 definite statutory right that allows him to defeat Federal
8 jurisdiction.

9 Now, in this case it would be --

10 QUESTION: But the statutory right that he's
11 talking about, there's two ways to define it. One is the
12 savings to suitors clause itself is a statutory right.
13 He's entitled to invoke that, and it doesn't really say,
14 only if he's seeking a jury trial.

15 MR. O'BRIEN: That's true, and -- but we know a
16 number of things about the saving to suitors clause. We
17 know that the rights under it are not absolute, and we
18 know that because, number 1, a Jones Act claimant can have
19 his case -- excuse me. A limitation claimant, not a Jones
20 Act claimant, can have his case removed to Federal court.
21 We know that the saving to suitors clause doesn't protect
22 the right of a bank, say, to sue a lender or a debtor on a
23 first preferred ship mortgage. We know those kinds of
24 cases are committed to the Federal court and can't be
25 brought in a State court.

1 QUESTION: Well, what about the practical
2 advantage of a plaintiff who thinks he's going to get a
3 better verdict in Madison County, Illinois, than he will
4 in the Federal District Court for the Eastern District of
5 Missouri?

6 MR. O'BRIEN: Well, that is his right, to sue
7 where he thinks he can obtain the best verdict, unless
8 there's some kind of illegal forum-shopping going on, but
9 that really is what this case is all about.

10 QUESTION: I thought so.

11 MR. O'BRIEN: The vessel owner is entitled to
12 pursue limitation where it believes the purposes of the
13 act will be furthered, in other words, where it sees that
14 it has an opportunity to invoke exclusive Federal
15 jurisdiction to adjudicate the rights from some accident
16 occurring -- occurring during some voyage.

17 And if I may address a point from --

18 QUESTION: Do I understand you, then, that the
19 vessel owner in every case where the sailor chooses to sue
20 in State court and not ask for a jury trial the vessel
21 owner can always pick the forum instead by filing a
22 limitation proceeding?

23 MR. O'BRIEN: Unless he pursues a right, the
24 claimant pursues a right that is preserved under the
25 saving to suitors clause I would agree with that.

1 QUESTION: Well, what -- you told me that the
2 only thing that's preserved is jury trial, not the Jones
3 Act claim, which is what I would have thought that -- I
4 would have thought, apart from entertaining your position
5 that it's not the Jones Act claim, and the choice of forum
6 that Congress has provided, but it's only the device of
7 jury trial.

8 MR. O'BRIEN: Well, it's really -- what it is
9 is -- let me refine my comment. What I'm really saying is
10 that if the remedy is already available in the Federal
11 court, and what the Eighth Circuit decided was that if the
12 remedy's already available in the Federal court in the
13 limitation proceeding, there is no saved remedy to pursue
14 elsewhere, and so the -- I think the issue for this Court
15 is not so much jury versus nonjury in the abstract sense.
16 The question is whether or not the specific remedy
17 requested is available in the Federal court where
18 exclusive jurisdiction is found.

19 QUESTION: Well, why isn't the remedy the
20 courthouse that's closest to my home that's most
21 convenient for me? Why isn't that the remedy that is
22 saved, the ability to choose, irremovably, the venue?

23 MR. O'BRIEN: Well, the answer to that is that
24 the rights under the saving to suitors clause are not
25 absolute, and they never have been by this -- held so by

1 this Court or by any other Federal court. They're always
2 going to be subject --

3 QUESTION: But your position was that that
4 wasn't saved at all, because you could get a nonjury trial
5 in the admiralty forum.

6 MR. O'BRIEN: Well, I don't think the decision
7 whether or not the nonjury trial is saved or not is
8 necessary to this Court's decision, nor was it addressed
9 specifically -- in fact, it was reserved specifically by
10 the Eighth Circuit. You don't need to get that far, and
11 the reason is because under the rubric adopted by the
12 Eighth Circuit, if the remedy sought is available already
13 in the limitation court, the claimant's not allowed to go
14 back, and it was already available, i.e. a nonjury trial,
15 so the court below never needed to address whether a
16 nonjury trial was specifically a saved remedy or not, nor
17 does this Court need to decide that for --

18 QUESTION: So practically what the position
19 you're urging on us comes down to is that the Jones Act
20 plaintiff can get his choice of forum as long as he
21 insists on having a trial by jury. If he doesn't insist
22 on having a trial by jury, he doesn't preserve his right
23 to choose the forum.

24 MR. O'BRIEN: That's correct.

25 QUESTION: That's your position?

1 MR. O'BRIEN: That's correct.

2 QUESTION: Why would that be? I mean, let's
3 suppose that a Jones Act plaintiff does -- could go -- he
4 could get into Federal admiralty court. He could get in,
5 or he could do what he'd prefer to do, which is to file in
6 the State. Why shouldn't he be able to file in the State
7 unless there's some Federal reason that prefers the
8 Federal tribunal?

9 MR. O'BRIEN: Well, the Federal reason that
10 prefers the Federal --

11 QUESTION: No, no, I mean, you're making both
12 arguments. One argument is that there is a Federal reason
13 and the Federal reason is the exoneration, and that's
14 countered with the argument that there is no Federal
15 reason where there isn't an independent reason for being
16 in the limitation action, all right, so I'm taking the
17 other part. Let's assume there is no Federal reason. If
18 there is no Federal reason -- he has the right come in the
19 door, but there's no Federal preference. Why shouldn't he
20 be able to go to the State court?

21 MR. O'BRIEN: Well, Justice Breyer, I -- number
22 1 -- my first response is, I don't believe that's our
23 case.

24 QUESTION: All right, yes.

25 MR. O'BRIEN: We do have a Federal reason for

1 being here.

2 QUESTION: Okay.

3 MR. O'BRIEN: And the second response --

4 QUESTION: But if you didn't, if there were no
5 reason favoring the Federal court, then would you say,
6 give him his choice?

7 MR. O'BRIEN: Well, I suppose that would be
8 true, except that Congress has spoken to the situation
9 when they've committed limitation of liability acts to the
10 exclusive jurisdiction of the Federal courts.

11 QUESTION: Okay, but if you're prepared to go
12 that far, then the case turns on whether there is a
13 Federal reason, and the Federal reason you say is
14 exoneration, so I understand that.

15 And then I'm back to the question I had before,
16 which I'm not sure I had a satisfactory answer to totally,
17 that really what this exoneration is is the tail and it
18 follows the dog into the Federal court, and the only
19 reason it's ever there was, historically in England they
20 did this, what the courts thought were absurd, to force
21 the shipowner to give up his right to exoneration in order
22 to get in Federal court, and our court years ago said
23 that's silly, no other country does that and we're not
24 going to do it.

25 MR. O'BRIEN: Well, I would prefer to think of

1 exoneration not as the tail, perhaps the other set of legs
2 of the same dog. I think that the right to exonerate is
3 half of what you have under the statute. The right to
4 limit is the other half of what you have under the
5 statute, and one can't be divorced from the other. You've
6 got --

7 QUESTION: You have the statute, but it doesn't
8 appear in the statute, and what is your response to the
9 fact that if the only reference to it is in the Federal
10 rules, that's ultra vires?

11 MR. O'BRIEN: Well, my response, Justice Scalia,
12 is 130 years of decisions from this Court and others, at
13 least a half-dozen cases from this Court holding that in a
14 proceeding under the Limitation of Liability Act itself
15 now the court determines exoneration as well as
16 limitation. It would be almost impossible for this Court
17 to write exoneration out unless it were prepared to
18 overrule all those cases.

19 QUESTION: Well now, are you saying that in the
20 single-claimant, stipulated claim less than the value of
21 the vessel, we would have to overrule cases in order to
22 rule against you here?

23 MR. O'BRIEN: No.

24 QUESTION: Well, I thought that's what you just
25 did say.

1 MR. O'BRIEN: No. No. What I'm saying is, what
2 Langnes v. Green tells us, and what Lake -- which is the
3 single claimant exception case, and what Lake Tankers v.
4 Henn tells us, which is the multiple-claimant case, or,
5 excuse me, the adequate fund case, what those cases tell
6 us is that when the claimant seeks a jury trial that it
7 has been deprived of him in the limitation court, that
8 under those circumstances there is enough of a -- there's
9 enough rights there for that claimant to trump the
10 shipowner's right to be in Federal court, and they will
11 then allow him to go back to State court assuming that on
12 the one hand there's a single claimant, or on the other
13 hand there's an adequate fund.

14 But you can't look back at Lake Tankers v. Henn
15 or at Langnes v. Green and write out of the Court's
16 decisions the references to a jury trial being requested
17 by the plaintiff. That is what in my view was the, really
18 the moving force in those decisions that allowed those
19 plaintiffs to go back.

20 QUESTION: Well, of course, can't you just read
21 that as the -- this is a particularly strong reason for
22 vindicating the plaintiff's right to choose his own forum,
23 that in one forum he gets a jury and in the other he
24 doesn't? That makes it a very appealing case, but I don't
25 think you can necessarily deduce from that the conclusion

1 that he wouldn't also have a right to pick the forum of
2 his own choice without that feature.

3 MR. O'BRIEN: Justice Stevens, I don't think
4 we'd be here if the courts had routinely held that you got
5 a right to a forum. They haven't. What the courts have
6 held, this Court and the Federal courts, and what the
7 commentators have talked about for decades, is the right
8 to a remedy, and the right to a remedy does not
9 necessarily entitle him to go to a State court. It
10 entitles him to a remedy.

11 QUESTION: Well, he gets the same remedy whether
12 it's a jury trial or a bench trial. He's seeking damages.
13 That's the remedy.

14 MR. O'BRIEN: Well, the remedy, as the Court
15 stated in *Shilendez v. Luckenbach*, the remedy is the means
16 employed to seek the redress and in our view, and I think
17 the cases bear this out, a jury trial is a specific form
18 of remedy, a nonjury trial is another form of remedy.
19 It's the means employed, and I think that there's really
20 no question under the case law that a jury trial is in a
21 class separate from a nonjury trial as far as the saving
22 to suitors clause goes. They're different remedies. Now,
23 they both seek judgments, but in a different way.

24 If I may briefly address the rule (f) argument,
25 the position urged by petitioner that rule (f) should be

1 declared invalid is in our view extreme and not warranted
2 by the case law. This Court in the Henderson case did not
3 announce a general test for the determination of when a
4 Rules Enabling Act rule would be ultra vires. It instead
5 decided that rule 4 trumped the Suits in Admiralty Act
6 provision requiring forthwith service of process on the
7 basis that the rule was purely procedural.

8 But if I may, under rule (f), three of the four
9 items that petitioner urges are contained in rule (f) and
10 that mandate that it's a substantive rule are found in the
11 limitations statute itself, namely, who may sue, when they
12 may sue, and the object of the suit and so therefore, even
13 under the test that petitioner cites, rule (f) clearly
14 does not meet the standard of a substantive rule that
15 would be struck down under the Rules Enabling Act.
16 Indeed, the limitation act addresses those items.

17 And I turn again back to the original decisions
18 by this Court in the Benefactor, in the Norwich v. Wright
19 case, in which this Court had occasion to construe the act
20 and, if you follow the language closely of those decisions
21 the Court was not construing rules that it promulgated.
22 The Court was construing rules that it promulgated. The
23 Court was construing the act itself, and the original
24 admiralty rules that were promulgated by this Court in the
25 Norwich case, the original 50-some admiralty rules from

1 1871, were rules, but they were in themselves
2 interpretations of the act as seen by this Court, and they
3 included the right to exoneration.

4 Now, if the limitation petitioner can come into
5 court, and if he can pursue a limit -- exoneration as well
6 as limitation, then by definition the Court has exclusive
7 jurisdiction over both of those subject matters and the
8 limitation claimant, in this case the Jones Act seaman,
9 can return to State court only if he demonstrates that the
10 remedy he wants is not available in the Federal court.

11 If there are no further questions --

12 QUESTION: Thank you, Mr. O'Brien.

13 MR. O'BRIEN: Thank you, Your Honor.

14 QUESTION: Mr. Dripps, you have 6 minutes
15 remaining.

16 REBUTTAL ARGUMENT OF ROY C. DRIPPS, III

17 ON BEHALF OF THE PETITIONER

18 MR. DRIPPS: Thank you, Mr. Chief Justice.

19 Mr. O'Brien indicated that three of the four
20 items that are in rule (f) are in the statute. What he
21 neglected to mention is, as what Justice Scalia asked
22 earlier, the one that's not in the statute is the one
23 that's critical to his analysis, which is the exoneration
24 provision, and that's not in the statute.

25 Mr. O'Brien relies heavily on the Benefactor,

1 and I would simply refer the Court to the quote from the
2 Benefactor. It's at 103 U.S. 241. It's at page 16 of the
3 reply brief, and the Court said that hence, this Court, in
4 preparing the rules of procedure for a limitation of
5 liability, deemed it proper to allow a party seeking such
6 limitation to contest any liability whatever.

7 That is not the statement of statutory
8 construction. That is a statement of legislative intent.
9 We're adopting these rules so that the party can contest
10 the liability. Now, that is exactly what is forbidden by
11 the Rules Enabling Act, yet that is what this Court said
12 it was doing in 1880.

13 Justice Stevens and Justice Breyer both asked
14 about, in essence, whether there would be a right to a
15 pure exoneration claim in Federal court, and I do want to
16 point out that both the Fifth Circuit in the Fect v.
17 Murkowski case and the Seventh Circuit in the Joyce v.
18 Joyce case have said no, that unless there is a viable
19 claim for limitation you cannot come in and ask for
20 exoneration, and I think that is the rule that this Court
21 should adopt.

22 The Langnes decision, as Justice Stevens
23 noted --

24 QUESTION: Well, I -- go ahead. That's all
25 right.

1 MR. DRIPPS: -- as Justice Stevens noted does
2 not require a jury trial, but it simply said that a jury
3 trial is one aspect that makes the State court forum
4 desirable, and that's part of the Jones Act remedy to
5 allow the injured employee that option of choosing either
6 State or Federal court, and whether or not to have a jury
7 trial in either forum.

8 To get to the respondent's not-otherwise-
9 available test, this Court is going to have to say that
10 the saving clause does not protect statutory remedies,
11 particularly the statutory remedy afforded by the Jones
12 Act, which allows the employee to choose the forum that
13 the case will be tried in. That, however, is exactly what
14 the saving clause was designed to do, and that is why this
15 Court should reverse the Eighth Circuit's decision and
16 reinstate the decision of the district court dissolving
17 the injunction.

18 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Dripps.

19 The case is submitted.

20 (Whereupon, at 11:58 a.m., the case in the
21 above-entitled matter was submitted.)

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23
24
25