

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2018

CITGO ASPHALT REFINING COMPANY; CITGO PETROLEUM CORPORATION;
CITGO EAST COAST OIL CORPORATION,
Applicants,

v.

FRESCATI SHIPPING COMPANY, LTD.; TSAKOS SHIPPING & TRADING, S.A.;
AND UNITED STATES,
Respondents.

**Application for a Second Extension of Time
To File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit**

**APPLICATION TO THE HONORABLE JUSTICE SAMUEL A. ALITO, JR.
AS CIRCUIT JUSTICE**

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August 31, 2018

PARTIES TO THE PROCEEDINGS

Applicants Citgo Asphalt Refining Company, Citgo Petroleum Corporation, and Citgo East Coast Oil Corporation were appellants/cross-appellees in the court of appeals proceedings.

Respondents Frescati Shipping Company, Ltd., Tsakos Shipping & Trading, S.A., and United States of America were appellees/cross-appellants in the court of appeals proceedings.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Supreme Court Rule 29.6, applicants Citgo Asphalt Refining Company, Citgo Petroleum Corporation, and Citgo East Coast Oil Corporation state as follows:

CITGO Asphalt Refining Company is not a corporation and has no parent corporations. It is a privately held General Partnership whose general partners are CITGO Petroleum Corporation and CITGO East Coast Oil Corporation, both of which are private, non-publicly held entities.

CITGO Petroleum Corporation's parent is CITGO Holding, Inc., which is a wholly owned subsidiary of PDV Holding, Inc., which is a wholly owned subsidiary of Petróleos de Venezuela, S.A. ("PDVSA"). No publicly held company owns 10% or more of CITGO Petroleum Corporation's stock.

CITGO East Coast Oil Corporation's parent is CITGO Investment Company, a private, non-publicly held entity. No publicly held company owns 10% or more of CITGO East Coast Oil Corporation's stock.

APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rules 13.5, 22, and 30.3, applicants Citgo Asphalt Refining Company, Citgo Petroleum Corporation, and Citgo East Coast Oil Corporation (collectively, "CARCO") hereby request a 30-day extension of time, to and including October 29, 2018, within which to file a petition for a writ of certiorari in this case (a 30-day extension of the current September 27, 2018 deadline would extend the deadline to October 27, which is a Saturday, so the petition would be due on Monday, October 29). This is applicants' second application for a 30-day extension. Applicants' previous application, No. 18A113, was granted on July 31, 2018.

JUDGMENTS FOR WHICH REVIEW IS SOUGHT

The judgments sought to be reviewed are the decisions of the United States Court of Appeals for the Third Circuit in *In Re: Petition of Frescati Shipping Co.*, 886 F.3d 291 (3d Cir. 2018), and *In Re: Petition of Frescati Shipping Co.*, 718 F.3d 184 (3d Cir. 2013). These were attached as Exhibits A and B, respectively, to Application No. 18A113.

JURISDICTION

The Third Circuit issued its most recent decision on March 29, 2018. On May 30, 2018, the Third Circuit denied a petition for *en banc* and panel rehearing (attached as Exhibit C to Application No. 18A113). Pursuant to this Court's Rules 13.1, 13.3, and 30.1, the original deadline for filing a petition for a writ of certiorari was August 28, 2018. Pursuant to the order granting Application No. 18A113, the

current deadline is September 27, 2018. This application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicants respectfully request a 30-day extension of time, to and including October 29, 2018, within which to file a petition for a writ of certiorari seeking review of the decisions of the United States Court of Appeals for the Third Circuit in this case.

1. This case involves claims for contract damages against CARCO arising from an oil spill caused when the oil tanker *Athos I* struck a submerged and uncharted anchor abandoned by an unknown party in a portion of the Delaware River that was exclusively maintained and controlled by the United States. CARCO neither knew, nor had any reason to know, that the anchor was in the river.

2. On January 31, 2005, Frescati Shipping Company, Ltd. ("*Frescati*") and Tsakos Shipping & Trading, S.A. ("*Tsakos*") filed a lawsuit in the United States District Court for the Eastern District of Pennsylvania raising contract and tort claims against CARCO arising from the oil spill. As partial subrogee to Frescati's claims, the United States later filed a separate action against CARCO. The two actions were consolidated for trial. The district court ruled on April 12, 2011, that CARCO was not liable. On May 16, 2013, the United States Court of Appeals for the Third Circuit vacated most of the district court's opinion and remanded the case for further proceedings in the district court. As relevant here, the Third Circuit ruled that Frescati, the vessel owner, was a third-party beneficiary of a voyage

charter contract between CARCO and the chartering agent. It further ruled that a safe berth provision in the voyage charter contract guaranteed the ship's safety rather than imposed a duty of due diligence on CARCO. CARCO's petition for certiorari to this Court, No. 13-462, was denied on February 24, 2014.

3. On remand, the district court found CARCO liable to Frescati (and the United States as subrogee) on the contract claims. CARCO, Frescati, and the United States appealed various aspects of the court's rulings. The Third Circuit affirmed the contract rulings that are relevant here. CARCO's petition for *en banc* and panel rehearing was denied on May 30, 2018.

4. The Third Circuit's ruling that a safe berth provision in a voyage charter contract is a guarantee of the ship's safety unquestionably conflicts with the Fifth Circuit's ruling in *Orduna S.A. v. Zen-Noh Grain Corp.*, 913 F.2d 1149, 1156-57 (5th Cir. 1990), that safe berth provisions merely impose a duty of due diligence on the charterer. The Second Circuit has long adhered to the view (adopted by the Third Circuit here) that such provisions guarantee the safety of the ship. *Cities Serv. Transp. Co. v. Gulf Ref. Co.*, 79 F.2d 521, 521 (2d Cir. 1935) (per curiam); *Park S.S. Co. v. Cities Serv. Oil Co.*, 188 F.2d 804, 806 (2d Cir. 1951); *Paragon Oil Co. v. Republic Tankers, S.A.*, 310 F.2d 169, 173 (2d Cir. 1962); *Venore Transp. Co. v. Oswego Shipping Corp.*, 498 F.2d 469, 472-73 (2d Cir. 1974). The decision below merits review because of this outcome determinative conflict.

5. The court of appeals' holding also presents a recurring and important issue of federal maritime law that warrants this Court's review, particularly in light

of this Court’s vital role in shaping uniform rules of admiralty and safeguarding maritime commerce. See *Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16, 20 (1963) (“Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law.”); *Wilburn Boat Co. v. Fireman’s Fund Ins. Co.*, 348 U.S. 310, 314 (1955) (“[T]his Court has fashioned a large part of the existing rules that govern admiralty.”); *Exxon Corp. v. Cent. Gulf Lines, Inc.*, 500 U.S. 603, 608 (1991) (“[T]he ‘fundamental interest giving rise to maritime jurisdiction is ‘the protection of maritime commerce.’”); *Black Diamond S.S. Corp. v. Robert Stewart & Sons, Ltd.*, 336 U.S. 386, 388 (1949) (granting certiorari to “determin[e] important issues in the administration of admiralty law”).

6. Undersigned counsel of record has a variety of obligations before various courts in September and October that would make it difficult to complete a petition for certiorari by the current deadline. These matters include *Brundle v. Wilmington Trust, N.A.*, No. 17-1873 (4th Cir.) (response/reply brief); *Underwriting Members of Lloyd’s Syndicate 2 v. Al Rajhi Bank*, No. 18-1201 (2d Cir.) (opening brief); *Sturgeon v. Frost*, No. 17-949 (S. Ct.) (amicus brief); *Gary B., et al. v. Richard Snyder, et al.*, No. 18-1855 (6th Cir.) (opening brief); *Ashford University, LLC v. Secretary of Veterans Affairs*, No. 18-1213 (Fed. Cir.) (opening brief); and *Koninklijke KPN N.V. v. Gemalto M2M GmbH*, No. 18-1863 (Fed. Cir.) (intervenor brief). In addition, undersigned counsel of record will be presenting oral argument to the United States Court of Appeals for the D.C. Circuit on September 28, 2018, in *In re: Rail Freight Fuel Surcharge*, No. 18-7010 (D.C. Cir.).

CONCLUSION

For the foregoing reasons, applicants respectfully request that this Court grant them a 30-day extension of time, to and including October 29, 2018, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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August 31, 2018

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CERTIFICATE OF SERVICE

Pursuant to Rules 23.2, 29, and 33.2 of the this Court, I hereby certify that, on this thirty-first day of August, 2018, I caused a copy of the foregoing application to be served via first-class mail and via electronic mail on the following persons:

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