No. 20-1779

In The
Supreme Court of the United States

CARLOS A. MORALES-VÁZQUEZ,

Petitioner,

v.

ÓPTIMA SEGUROS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Respondent's efforts to sow confusion with its brief in opposition do not obscure the parties' fundamental agreement on almost all the factors supporting a grant of certiorari. Respondent does not dispute that the courts of appeals have long been in conflict on the proper role of the doctrine of *uberrimae fidei* (Pet. 10-19; Op. 15-23, 26-28); that the decision below conflicts with the rule currently applied in England, the leading international insurance market (Pet. 19-21; Op. 28-33); that the strict version of the *uberrimae fidei* doctrine applied below is inconsistent with the rule currently followed in insurance law generally (Pet. 21-24; Op. 13); that this Court has the authority to develop the rules of marine insurance in the manner of a common-law court (Pet. 24; Op. 33); that the relevant facts in this case are straightforward and undisputed (Pet. 6-8, 30; Op. 1-5, 33-34); that the court below decided the case solely under the *uberrimae fidei* doctrine (Pet. 9, 30; Op. 5, 8-9), which is now the sole issue before this Court (Pet. i, 30; Op. 9-10); and that the issue is fundamentally important not only in marine insurance but also in maritime law more generally (Pet. 31; Op. 11).

Respondent opposes certiorari primarily on a flawed argument that this case would be a poor vehicle to resolve the question presented. That argument rests on an erroneous interpretation of the procedural posture of the case (Op. 6-11). Of course, respondent also disagrees with petitioner on the merits, but that disagreement should be resolved after full briefing and oral argument.

I. The decision below conflicts with the decisions of other courts of appeals, with the rule applied in the leading international insurance market, and with the modern trend in general insurance law.

The petition for certiorari details (at 10-19) the long-standing 4-2-1 circuit conflict on the proper role of the doctrine of *uberrimae fidei*. Respondent does not dispute the conflict. It instead seeks to disparage the Fifth Circuit's decision in *Albany Insurance Co. v. Anh Thi Kieu*, 927 F.2d 882 (5th Cir. 1991),[1] which held that the doctrine is no longer entrenched federal law, *see* Op. 15-23, and the Eighth Circuit's decision in *St. Paul Fire & Marine Insurance Co. v. Abhe & Svoboda, Inc.*, 798 F.3d 715 (8th Cir. 2015), which upheld a reliance requirement under the doctrine, *see* Op. 26-28.[2] In the process, respondent recognizes that both are in conflict with decisions of other circuits.

The petition (at 19-21) also details the conflict between the decision below and the rule that currently

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[1] Respondent (at 18) quotes a law review article by petitioner's counsel "wonder[ing] whether [the Fifth Circuit] will overrule *Anh Thi Kieu*," which would presumably resolve one of the four conflicts documented in the petition. In the six years since that article was written, the Fifth Circuit has made no move in that direction. But the Fifth Circuit has explicitly declined invitations to overrule *Anh Thi Kieu*. *See* Pet. 19.

[2] Respondent does not even cite, let alone attempt to distinguish, any of the Second Circuit decisions that similarly impose a reliance requirement. *See* Pet. 15-17 (discussing *Puritan Insurance Co. v. Eagle Steamship Co., S.A.*, 779 F.2d 866, 870-872 (2d Cir. 1985), and subsequent cases).

applies in England. Once again, respondent does not dispute the conflict. It instead argues that this Court is not bound to follow English law. The petition already admitted as much. Pet. 21 ("U.S. courts are not bound by British law."). But if U.S. law is to follow a fundamentally different rule of marine insurance than the leading international market, this Court should be the one to make that decision.

Finally, the petition explains (at 21-24) how the decision below conflicts with the rule currently followed in insurance law generally. Once again, respondent does not dispute the conflict. It instead emphasizes the conflict, noting (at 13) that "maritime law establishes a standard that goes above and beyond, through the principle of *uberrimae fidei*," and arguing (at 11) that "marine insurance law warrants special treatment when compared with general insurance law."

In sum, the circuit conflict has persisted for decades; courts, commentators, and both parties in the present case acknowledge it; and it will not be resolved without action by this Court. The conflicts with international standards and with principles of general insurance law exacerbate the problem.

II. This Court should reverse the judgment below.

Respondent recognizes (at 33) that "this Court has the authority to develop admiralty and maritime law pursuant to the Admiralty Clause." The parties accordingly agree that this Court *could* exercise that authority here to bring the *uberrimae fidei* doctrine into the 21st century. Pet. 24. Respondent makes no effort to rebut the arguments outlined in the petition (at 25-29) for why this Court *should* do so. It simply cites lower-court decisions that are part of the conflict; nineteenth-century decisions of this Court applying outdated general insurance principles; and secondary commentary relying on those decisions.[3] Respondent will have the opportunity at the merits stage to develop its arguments more fully if this Court grants plenary review. In the meantime, it is sufficient to note that petitioner has powerful, unrebutted arguments for why this Court should exercise its undoubted authority under the Admiralty Clause to modify the *uberrimae fidei* doctrine to better serve the current needs of modern marine insurance law.

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[3] Respondent relies heavily on Professor Schoenbaum's scholarship, describing him (at 9) as "a renowned maritime law commentator" and (at 21) as "[o]ne of the leading admiralty law commentators." But Professor Schoenbaum — in the same treatise that respondent cites (at 9) — expressly endorses the reliance requirement that the Second and Eighth Circuits have adopted and the court below rejected. *See* Pet. 28-29 (quoting 2 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 19:14 at 480 (6th ed. 2018) (Practitioner Treatise Series)). Professor Schoenbaum's standard would require reversal in this case.

III. This case provides an ideal vehicle to resolve a question of fundamental national importance.

The petition explains (at 31) the fundamental importance of the *uberrimae fidei* doctrine in the law of marine insurance and in maritime law generally, and respondent does not disagree. On the contrary, respondent itself emphasizes the importance of marine insurance in maritime law. *See* Op. 11 (marine insurance "'pervades every single sphere of maritime activities,'" its "'importance in maritime affairs cannot be overemphasized,'" and without it "'maritime commerce could come to stand still'") (quoting 1 ALEX L. PARKS, THE LAW AND PRACTICE OF MARINE INSURANCE AND AVERAGE 3 (1987)).

Respondent contends that this case would be a poor vehicle to resolve the important question presented because "'[p]etitioner admits that he failed to disclose certain facts in his insurance application.'" Op. 34 (quoting Pet. 25).[4] But that admission does not make this case a poor vehicle. On the contrary, it

[4] Respondent, in an apparent effort to cast doubt on petitioner's good faith, accuses him (at 34) of "play[ing] the system." It claims (at 35) that he is "us[ing] 'the same playbook'" — respondent's lawyer's words (Opp. App. 3a), not petitioner's — that he did in a prior case. Cutting through the pejorative characterization, however, respondent accuses petitioner simply of asking to be paid in full for the fire damage to his insured vessel. If anyone is "playing the system," it is respondent, which seeks to avoid its payment obligation on the basis of petitioner's breach of an archaic rule that has no connection to either respondent's decision to issue the policy (in the absence of reliance) or the loss that petitioner suffered.

means that the relevant facts are undisputed, thus ensuring that this Court will be able to address the question presented without the distraction of any factual disagreements. *See* Pet. 30.

The fact that the court of appeals decided the case solely on the basis of *uberrimae fidei* and that the petition raises only the *uberrimae fidei* issue also means that this case provides a clean vehicle for the Court to address that single issue. Respondent's attempt to twist the well-defined focus of the case into a vehicle problem demonstrates a fundamental misunderstanding of the current procedural posture. As both parties recognize, the district court addressed a number of different arguments and petitioner appealed multiple issues to the First Circuit. *See* Op. 8 ("Petitioner appealed all of these issues [to] the First Circuit."). The court of appeals resolved the case solely on the *uberrimae fidei* issue and declined to address the other issues that petitioner appealed. *See* Pet. 9; Op. 8-9.

Petitioner now seeks review in this Court on the only issue that the court below decided; he did not expand the question presented to include issues that were not addressed below. But that does not mean that he waived the issues on which he has not yet received the appellate review to which he is entitled. If this Court reverses on the *uberrimae fidei* issue, the typical result would be to remand the case to permit the court of appeals to address the issues that it did not decide initially. *See*, *e.g.*, *Minerva Surgical, Inc. v. Hologic, Inc.*, 141 S. Ct. 2298, 2311 (2021) ("We remand this

case to the Federal Circuit to now address what it thought irrelevant . . . .”). If petitioner prevails in this Court on the *uberrimae fidei* issue, he could very well prevail below on remand on the breach of warranty issue, which turns on the same omissions in the application for insurance. Pet. 8.

In any event, this Court’s decision on the merits would not be “an exercise in futility” (Op. 6) because — regardless of the outcome — it will resolve the circuit conflict and clarify a fundamental rule of marine insurance law for the country.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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