No. 00-1056

In the Supreme Court of the United States

SOUTHWEST MARINE, INC., PETITIONER

v.

ROBERT B. PIRIE, JR.,
ACTING SECRETARY OF THE NAVY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court had jurisdiction to decide a government appeal from a decision of the Armed Services Board of Contract Appeals regarding a maritime contract.

2. Whether the court of appeals correctly held that the Navy may recoup overpayments from a contractor due to a reduction in contract costs that occurred two years after the contractor's bankruptcy discharge.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit (Pet. App. 1a-30a) is reported at 217 F.3d 1128. An opinion of the district court (Pet. App. 33a-49a) dated October 7, 1998 and titled "Third Amended Order" is unreported. The "Second Amended Order," dated October 1, 1998, from which the appeal was taken to the Ninth Circuit, is unreported.[1] The order of the United States Court of Appeals for the

[1] The two decisions differ in that the final two sentences (and footnote 14) of the Second Amended Order, determining the amount of money to which the Navy is entitled, were deleted in the Third Amended Order.

Federal Circuit transferring the case to the district court (Pet. App. 50a-59a) is reported at 120 F.3d 1249.

JURISDICTION

The judgment of the Ninth Circuit was filed on July 10, 2000. A petition for rehearing was denied on September 25, 2000 (Pet. App. 31a-32a). The petition for a writ of certiorari was filed on December 20, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601 *et seq.*, governs disputes between the federal government and private contractors. Unless otherwise specified, the CDA applies to any government procurement contract. 41 U.S.C. 602(a). However, the CDA provides that appeals arising out of maritime contracts are governed by the Suits in Admiralty Act (SAA), 46 U.S.C. app. 741 *et seq.*, and the Public Vessels Act (PVA), 46 U.S.C. app. 781 *et seq.*, "to the extent that those [acts] are not inconsistent with [the CDA]." 41 U.S.C. 603, 607(g)(1).

2. In 1985, Northwest Marine Iron Works (NMIW) entered into a contract with the Navy to repair the *U.S.S. Duluth*. The work was completed and the ship delivered to the Navy in 1986. The contract contained a cost-plus arrangement under which the Navy reimbursed NMIW for its actual allowable costs, adjusted under a contractually defined formula limited by a ceiling price. Under such an arrangement, the price for the repair work is not determined at the time the contract is entered into, but rather is calculated once the final cost is known. Pet. App. 8a-9a.

Before computation of the final price, progress payments were made to NMIW, subject to standard

clauses allowing for adjustment for overpayments and a Credits Provision Clause that reduced the amounts chargeable to the Navy in the event of a reduction in contractor costs.[2] After delivery of the *U.S.S. Duluth* to the Navy in June 1986, the contract remained open to resolve several outstanding matters including determination of the final contract price. Pet. App. 9a.

3. On October 29, 1986, NMIW filed a Chapter 11 petition in federal bankruptcy court, which approved a reorganization plan for NMIW on March 20, 1987.[3] In April 1987, NMIW submitted forms to the Navy identifying final costs of $25,093,862 on the *U.S.S. Duluth* contract. On December 21, 1988, the Navy agreed to settle NMIW's claims; on April 3, 1989, the Navy's contracting officer executed a contract modification increasing the ceiling price to $23,295,752.[4] Subsequently, NMIW submitted a bill to the Navy for $2,811,077—the difference between the new ceiling price and all prior progress payments. Pet. App. 10a. On April 6, 1989, the Navy's contracting officer approved the invoice, and the bill was paid shortly thereafter. *Id.* at 37a.

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[2] The Credits Provision Clause provides:

> The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund.

Pet. App. 9a.

[3] Petitioner inadvertently misstates this date as March 1997. Pet. 5.

[4] The initial contract had a ceiling price of $15,966,613. Over the course of the work, the parties executed over 200 change orders, many of which altered the ceiling price. Pet. App. 9a n.4.

4. On February 23, 1989, after the NMIW submitted its final costs but before the Navy contracting officer's approval, petitioner conditionally agreed to purchase NMIW, dependent upon NMIW's receiving specific debt concessions from its creditors. At this time, the Navy was not aware of these terms. Pet. App. 37a. Petitioner's purchase of NMIW was completed on April 17, 1989. Three days later, the bankruptcy court issued a Chapter 11 Final Report memorializing the concessions that the creditors agreed to. *Id.* at 10a-11a, 37a.

The following day, April 21, the Navy informed NMIW that it had learned that at least one of NMIW's creditors had agreed to forgive some indebtedness. The Navy indicated that, as a result, it was considering a recoupment action for amounts it had paid to NMIW for which the contractor was no longer obliged to pay. Pet. App. 11a. On April 26, NMIW responded that it was unaware of any contract provision that would allow recovery of the Navy's prior payments. *Id.* at 37a. Over the next five years, as the parties disputed these issues, additional Navy audits showed that NMIW's costs under the *U.S.S. Duluth* contract had decreased due to debt concessions by NMIW's creditors. The Navy's contracting officer issued a final decision, finding that the Navy had overpaid NMIW $2,161,287 and demanding repayment under three contract provisions: the Progress Payments Clause, the Incentive Price Revision Clause, and the Credits Provision Clause. *Id.* at 11a, 38a.

5. Pursuant to the CDA, petitioner appealed the decision to the Armed Services Board of Contract Appeals (ASBCA). On October 11, 1996, the ASBCA ruled in favor of petitioner, holding that the Navy was not entitled to recover contract costs based on

forgiveness of debts by NMIW's creditors subsequent to NMIW's bankruptcy discharge. Pet. App. 11a-12a, 38a-39a.

6. On June 19, 1998, the Navy appealed the ASBCA decision to the United States Court of Appeals for the Federal Circuit. That court ruled that it lacked jurisdiction over the appeal since "there is no dispute that this contract is wholly maritime." Pet. App. 52a (citing *Southwest Marine of San Francisco, Inc.* v. *United States* (*San Francisco*), 896 F.2d 532 (Fed Cir. 1990)). Rather, the court held that the suit should have been filed in district court. Pet. App. 58a.

The Federal Circuit also rejected petitioner's contention that any suit filed in district court would have been time-barred under the SAA, and that transfer therefore would be inappropriate. Pet. App. 53a-58a. Because the CDA states that appeals arising out of maritime contracts are governed by the SAA only to the extent that the SAA is not inconsistent with the CDA, the court held that the SAA's two-year statute of limitations was inconsistent with the CDA's provision that an aggrieved party must present its claim to the contracting officer within six years of the accrual of its claim. *Id.* at 56a-58a. Citing *Crown Coat Front Co.* v. *United States*, 386 U.S. 503 (1967), the court rejected petitioner's reliance on *McMahon* v. *United States*, 342 U.S. 25 (1951), in which this Court held that the SAA's limitations period is not tolled while a claimant pursues available administrative remedies:

> In [*Crown Coat*], the Court distinguished *McMahon* from cases that involve the application of a contract disputes clause. Discussing the application of the Tucker Act, the Court stated that "in disputes clause cases, however, final administrative action,

> which the claimant must await, may occur more than six years after the completion of a contract. When it does, the claimant would be time-barred if the six-year period is measured from the date of final performance." *Id.* at 517-18. The Court held that when a claim arises under a contract and is subject to an administrative determination pursuant to a disputes clause, the right to bring a civil action does not accrue until an administrative determination is rendered.

Pet. App. 57a. The court noted that petitioner and the Navy had engaged in negotiations for several years before a claim was submitted to the contracting officer, who subsequently decided in favor of the Navy. The court observed that, as a prevailing party, the Navy obviously would not have filed a civil action at that time. Noting that the appeal to the ASBCA took over two years to resolve, the court concluded that

> [i]f * * * the Suits in Admiralty Act's two-year statute of limitations accrues at the time a dispute arises, a party receiving an adverse decision would almost always lose the opportunity to file a civil action while the case was wending its way through the required administrative process. Application of the limitations period in this manner would clearly be inconsistent with the Contract Disputes Act and its procedures allowing for and governing review of ASBCA decisions.

Id. at 57a-58a.

Accordingly, The Federal Circuit transferred the case, pursuant to 28 U.S.C. 1631, to the court in which it should have been filed, the United States District Court for the Southern District of California. Pet. App. 58a-59a.

7. The district court ruled that it did possess jurisdiction under the CDA. The court rejected petitioner's argument that, because the *San Francisco* court noted that, in enacting the CDA, Congress "assured that no change was made in the existing appellate path of disputes involving maritime contracts," 896 F.2d at 534, the pre-CDA rule that agencies could not appeal adverse board decisions remains valid with respect to maritime matters. Rather, the district court held, the CDA does grant the government the right to appeal board decisions even in maritime cases. Pet. App. 41a-43a.

Turning to the merits, the district court concluded that the ASBCA erred in determining that the Navy's right to recover was barred by operation of bankruptcy law. The court concluded that the ASBCA failed to note that the Navy's effort to recover costs related to the voluntary post-petition activities of NMIW's creditors, rather than NMIW's pre-petition debts that were discharged in bankruptcy. Because "the Navy's recovery efforts are not directed to the involuntary bar on debt collection raised by operation of bankruptcy law," the court held that "as a matter of law, the ASBCA erred when it determined that the bankruptcy discharge precluded the Navy from seeking reimbursement for overpayment." Pet. App. 47a. The court further held that the Navy was entitled to reimbursement under the contract's Incentive Price Revision Clause and Credits Provision Clause. *Id.* at 48a. Accordingly, the court reversed the decision of the ASBCA, and remanded the matter to the ASBCA[5] for a determination on the merits of quantum. *Ibid.*

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[5] The October 1, 1998 Order (the Second Amended Order) from the district court had ordered the remand but also had determined

8. The Ninth Circuit affirmed the judgment of the district court. Because the *San Francisco* court's "use of the phrase 'appellate path' was a reference to jurisdiction, not the substantive question of whether a party enjoys the right of appeal," the court of appeals agreed with the district court that the Navy may appeal ASBCA decisions on maritime contracts. Pet. App. 19a-20a. Noting that the CDA trumps the SAA where the two conflict, the court concluded that because the CDA granted the Navy the right to appeal adverse decisions, it was "irrelevant that pre-CDA law did not provide for appeals by the government" in maritime matters. *Id.* at 22a.

Regarding the merits, the Ninth Circuit determined that

> [t]he record clearly showed that the claimed reduction in Duluth contract costs was based not on NMIW's bankruptcy discharge or the debenture holders' inability to collect their pre-confirmation claims, but rather on the debenture holders' subsequent decisions, some two years after the plan confirmation, to compromise their post-confirmation claims—the debentures—as part of the NMIW/Southwest merger. Thus, the proper analysis must focus upon what effect, if any, bankruptcy law provisions have upon post-confirmation acts which compromise post-confirmation claims.

Pet. App. 27a-28a. The court observed that a bankruptcy plan binds pre-confirmation creditors but not

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the sum for which petitioner was liable. The October 7, 1998 Order (the Third Amended Order) deleted the determination of the sum from the court's decision. The notice of appeal to the Ninth Circuit by petitioner was filed on October 7, 1998 and was from the October 1, 1998 Order.

post-confirmation creditors. Therefore, because the Navy's claim for recoupment of overpayment "arose out of the debenture holder's post-confirmation decisions to compromise their post-confirmation claims, it was error for the ASBCA to equate the debentures with the debenture holder's pre-confirmation claims." *Id.* at 29a. Rather, "the correct focus should have been upon how the debenture holders' voluntary relinquishment of their rights affected NMIW's claim for costs on the Duluth project, a question wholly distinct from the operation of the bankruptcy discharge." *Ibid.* As an application of "straightforward government contracting law," the court concluded, the Navy's right to recoupment was "clear" under the Credits Provision Clause. *Ibid.* Accordingly, the court affirmed. *Id.* at 29a-30a.

ARGUMENT

The decisions of the Ninth Circuit and Federal Circuit in this case are correct and do not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. Petitioner contends (Pet. 9-18) that jurisdiction did not properly lie in the district court. Petitioner presents two alternative arguments: first (Pet. 16-18), that the Federal Circuit should have accepted the appeal pursuant to Section 607(g)(1) of the CDA; and second (Pet. 18), if the case was properly in district court, then a governmental appeal was doubly barred by the pre-CDA rule that the government could not appeal a decision of its own administrative board and by the SAA's two-year statute of limitations. These arguments are without merit. The courts below correctly interpreted the law governing appeals from ASBCA decisions involving maritime contracts. The courts correctly concluded that the CDA modified appellate

rights without disturbing the traditional jurisdictional allocation of maritime disputes to the district courts. The courts' holdings are consistent with precedent and do not conflict with any other decisions.

(a) Although the CDA and the Federal Courts Improvement Act of 1982 (FCIA), which created the Federal Circuit, generally provide for appeals to the Federal Circuit from decisions by agency boards of contract appeals, see 41 U.S.C. 607(g)(1); 28 U.S.C. 1295(a)(10), the CDA itself provides for a different appeals process in maritime cases. Section 603 of the CDA provides as follows:

> Appeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 [the SAA] or 22 [the PVA] of title 46, Appendix, as applicable, to the extent that those chapters are not inconsistent with this chapter.

41 U.S.C. 603.

Section 607(g)(1), in turn, provides:

> (1) The decision of an agency board of contract appeals shall be final, except that—
>
> (A) a contractor may appeal such a decision to the United States Court of Appeals for the Federal Circuit within one hundred twenty days after the date of receipt of a copy of such decision, or
>
> (B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within one hundred

> and twenty days from the date of the agency's receipt of a copy of the board's decision.

41 U.S.C. 607(g)(1).

Finally, the SAA provides that a proceeding in admiralty involving the United States must be brought in a district court, 46 U.S.C. app. 742 (1994 & Supp. IV 1998); 46 U.S.C. app. 782, and "may be brought only within two years after the cause of action arises," 46 U.S.C. app. 745.

Any ambiguity regarding the proper court to hear appeals from ASBCA decisions is resolved by the history of maritime jurisdiction and by the legislative history of both the CDA and the FCIA. "Jurisdiction over matters arising in admiralty, including maritime contracts, has traditionally been with the federal district courts." *San Francisco*, 896 F.2d at 534; see also *Matson Navigation Co.* v. *United States*, 284 U.S. 352, 356 (1932) ("[J]urisdiction of maritime causes of action against the United States, arising out of the operation of merchant vessels for it, is vested exclusively in the district courts."). The Senate Report that accompanied the CDA stated that "the current sole jurisdiction over all admiralty cases should remain in the district courts where great expertise has been developed over the years on such cases." S. Rep. No. 1118, 95th Cong., 2d Sess. 8 (1978).

> Jurisdiction over matters arising in admiralty including maritime contracts has vested exclusively with the Federal district courts since 1920 (See: Suits in Admiralty Act, 46 U.S.C. 741-752, *Matson Navigation Co.* v. *United States* * * *). As a result, the district courts have developed an expertise in admiralty matters, which has resulted in a common body of procedural and substantive law,

> applicable to private litigants and the United States alike. Inclusion of maritime contracts within the bill would have created an exception to the district courts' otherwise exclusive admiralty jurisdiction and divided maritime contract disputes between the Court of Claims and district courts depending upon whether the United States was a party plaintiff or defendant. Admiralty matters sounding in contract involve issues and procedural questions considered sufficiently unique so as to warrant the continued maintenance of these actions within the exclusive jurisdiction of the district courts.

Id. at 18.[6]

Similarly, the Senate Report that accompanied the FCIA reiterated Congress's intention not to tamper with the district courts' jurisdiction over maritime appeals:

> Subsection (a)(10) of section 1295 of title 28 gives the Court of Appeals for the Federal Circuit jurisdiction of an appeal from a final decision of an agency board of contract appeals pursuant to section 8(g)(1) of the Contract Disputes Act of 1978. No change is intended in the exclusive jurisdiction of the federal district courts to hear appeals in

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[6] The sponsor of the CDA, Senator Byrd, emphasized the import of the Senate Report:

> The legislative report defined very precisely that the current jurisdictions for Maritime Contract claims is to be maintained and not changed by S. 3178. Concern has been expressed by the Department of Defense that this position should be included in the statute, thus [Section 603] has been added.

124 Cong. Rec. 36,267 (1978).

> government maritime contract disputes, as provided in [41 U.S.C. 603].

S. Rep. No. 275, 97th Cong., 1st Sess. 21-22 (1982).

Therefore, the Federal Circuit correctly held, in accordance with its decision in *San Francisco*, 896 F.2d at 534-535, that it lacked jurisdiction and that the case should be transferred to the district court. Pet. App. 58a.

(b) Petitioner incorrectly alleges that if the CDA does not change the jurisdiction of maritime appeals, then it must not change either (1) the rule prohibiting the government from appealing decisions of its own administrative board or (2) the applicable statute of limitations. In fact, the text, legislative history and purposes of the CDA indicate that Congress intended those rules to govern *all* contract disputes, including disputes over maritime contracts. It is not surprising that Congress wanted the CDA to supersede the SAA in some respects but not in others, given the CDA's intention both to "provide alternate forums suitable to handle the different types of disputes" *and* to "insure fair and equitable treatment to contractors and Government agencies." S. Rep. No. 1118, *supra*, at 1. Petitioner offers no explanation for why Congress would have wanted these SAA provisions to remain in force, and indeed such a decision would have been illogical given the purposes of the CDA.

Because the CDA significantly revised procedural aspects of government contract law, Section 603 provides that appeals arising out of maritime contracts are governed by the SAA and PVA *only* "to the extent that those [acts] are not inconsistent with" the CDA. The legislative history quoted above clearly indicates that Congress intended to preserve the pre-CDA appellate

path for reasons of efficiency and because the district courts had developed expertise in admiralty matters. These concerns, while relevant to rules that govern which court has jurisdiction, are not implicated by rules governing (1) which parties may bring an appeal, or (2) how much time such parties have in which to do so. Indeed, although Congress preserved the maritime jurisdiction of the district courts, there is no indication that Congress intended to exempt maritime matters from potentially outcome-determinative changes wrought by the CDA and by subsequent amendments to the Act. Section 607(g)(1)(B), permitting the government to appeal the decision of an agency board of contract appeals, marked a watershed change in government contract law. Neither the text, the legislative history, nor the purpose of the statute provide any reason to suspect that Congress did not want to apply this provision to maritime contracts. As the Senate Report stated:

> The agency boards of contract appeals as they exist today, and as they would be strengthened by this bill, function as quasi-judicial bodies. Their members serve as administrative judges in an adversary-type proceeding, make findings of fact, and interpret the law. Their decisions set the bulk of legal precedents in Government contract law, and often involve substantial sums of money. In performing this function they do not act as a representative of the agency, since the agency is contesting the contractor's entitlement to relief. In this context, the Government should have an equal right of judicial review, since it would be an anomaly in the American judicial system for such a trial tri-

> bunals [*sic*] to have the final authority on decisions that set important precedents in procurement law.

S. Rep. No. 1118, *supra*, at 26. There is no indication either in the statutory text or in the legislative history that Congress desired a different rule to apply to appeals of maritime contract disputes. Indeed, such a change would clearly have been "inconsistent with" the CDA. 41 U.S.C. 603. Accordingly, the Ninth Circuit correctly held that "[t]he Federal Circuit's conclusion, that passage of the CDA did not change the way in which maritime contract cases are to be brought, does not establish that the substantive provisions of CDA, granting the Navy the right to appeal adverse decisions, do not apply to maritime contract cases." Pet. App. 20a-21a.

Petitioner's view of the effect of the CDA on the government's right to appeal is difficult to square with the CDA's text. Section 603 of the CDA, which contains the cross-reference to the SAA that petitioner claims forbids the government to appeal maritime decisions, applies to "[a]ppeals under paragraph (g) of section 607." Yet Section 607(g) is the precise provision of the CDA that *creates* the government's appellate rights. Thus, petitioner's theory is that the cross-reference to the SAA in a section that addresses "appeals under paragraph (g) of Section 607" destroys the appellate rights enacted in that same paragraph. Petitioner's argument is both illogical and implausible, especially because Congress could have accomplished the result petitioner envisions simply by including the phrase "except in maritime cases" within Section 607(g)(1)(B) of the CDA.

Nor is there any indication that Congress intended to exempt maritime contracts when it passed the 1994

amendment to the CDA, Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, § 2351, 108 Stat. 3322, that set a six-year statute of limitations. The text provides no such exemption, and the Federal Circuit correctly concluded (Pet. App. 58a) that the legislative history provides no indication that Congress wanted the amended CDA's statute of limitation to be trumped by the SAA's shorter statute of limitations. Furthermore, the purposes of the Act would not be served by creating such an illogical distinction.[7]

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[7] Even if the two-year statute of limitations were to apply to this case, it would run, as the Federal Circuit determined, not from the inception of the dispute but from the date of the ASBCA decision. Pet. App. 56a-58a. In reaching this conclusion, the Federal Circuit correctly relied on *Crown Coat Front Co.* v. *United States*, 386 U.S. 503 (1967), in which this Court held that when a claim arises under a contract and is subject to an administrative determination, the right to bring a civil action does not accrue until the administrative determination is rendered. Pet. App. 57a. As the Federal Circuit noted, a contrary conclusion would be illogical:

> [T]he parties were in negotiations for several years before a claim was submitted to the contracting officer. The contracting officer took additional time to render a decision. It is worth reiterating that the contracting officer sided with the secretary. Thus, the secretary could not have filed a civil action at that juncture. Thereafter, the case was pending at the ASBCA for over two years. If the court were to hold that the Suits in Admiralty Act's two-year statute of limitations accrues at the time a dispute arises, a party receiving an adverse decision would almost always lose the opportunity to file a civil action while the case was wending its way through the required administrative process. Application of the limitations period in this manner would clearly be inconsistent with the Contract Disputes Act and its procedures allowing for and governing review of ASBCA decisions.

Id. at 57a-58a.

2. Petitioner argues (Pet. 18-20) that the decision of the court of appeals to allow the Navy to recoup its overpayments contravenes bankruptcy law. However, as the district court and the Ninth Circuit concluded, this case is a straightforward government contract law case to which bankruptcy law does not apply. Accordingly, petitioner's claim does not warrant further review.

As the court of appeals held, the record clearly showed that the reduction in the *U.S.S. Duluth*'s contract costs was based not on NMIW's bankruptcy discharge in 1987, but on its creditors' subsequent decisions, in 1989, to forgive some of NMIW's indebtedness to induce petitioner to purchase NMIW. Pet. App. 27a-28a. Since the creditors' 1989 forgiveness of NMIW's debt was a question wholly distinct from the operation of the bankruptcy discharge, petitioners err in arguing that this case affects bankruptcy law at all.[8]

Under the Credits Provision Clause of the contract, NMIW was required to credit back to the Navy any rebate, allowance or other credit related to an allowable cost. Pet. App. 29a. The construction of this contract clause by the court of appeals does not raise any question meriting this Court's review. Moreover, the decision below correctly construed the contract. The court of appeals properly found that the creditors' 1989 agreement to forgo collection of certain claims against NMIW was such a rebate, allowance or other credit.

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[8] Additionally, during NMIW's bankruptcy, the Navy was NMIW's debtor, not a creditor, because the Navy owed money to NMIW for work on the *U.S.S. Duluth*. Thus, its rights as a creditor could not have been affected by decisions of the bankruptcy court in 1987. The Navy's only claim against NMIW arose in 1989, when it paid NMIW $2.8 million, more than $2.2 million more than the sum to which NMIW was entitled.

Ibid. Under the contract's cost-plus arrangement, the amount paid the contractor by the government was determined by the contractor's incurred costs. When debt concessions decreased those costs, the government's obligation to the contractor decreased correspondingly. Therefore, the court of appeals correctly held that the Navy was entitled to reimbursement.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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