S282264

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRIAN RANGER,
Plaintiff and Appellant,

V.

ALAMITOS BAY YACHT CLUB,
Defendant and Respondent.

AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION EIGHT, CASE NO B315302
OPINION BY HON. J. WILEY, PRESIDING JUDGE HON. M.
STRATTON AND HON. E. GRIMES CONCURRING

APPEAL FROM THE SUPERIOR COURT CASE NO. 19STCV22806
HON. M. KIM, JUDGE PRESIDING
LOS ANGELES COUNTY SUPERIOR COURT

RESPONDENT'S ANSWERING BRIEF ON THE MERITS

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S282264

-<CERTIFICATION OF >-
INTERESTED ENTITIES OR PERSONS

S282264 - RANGER v. ALAMITOS BAY YACHT CLUB

Full Name of Interested Entity/Person	Party	Non-Party	Nature of Interest
Alamitos Bay Yacht Club	X		Respondent and Prevailing Party at trial and Court of Appeal
Chubb Insurance		X	Insurer of Alamitos Bay Yacht Club

Submitted by: Neil S. Lerner

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Defendant and Respondent Alamitos Bay Yacht Club ("ABYC") submits this Answering Brief on the Merits in Opposition to the Opening Brief ("POB") submitted by Plaintiff and Appellant Brian Ranger ("the Plaintiff").

I. ISSUE PRESENTED

ABYC disagrees with the Plaintiff's characterization of the issue presented on review. ABYC's disagreement with the Plaintiff goes to the heart of this matter, as discussed below. ABYC contends that the issue is:

May a worker, whose employment was excluded by Congress from coverage under the Longshore and Harbor Workers' Compensation Act ("LHWCA")(33 U.S.C. §§901-950), based upon Congress's determination that the worker's job does not constitute maritime employment and the worker's work-place injury claim is therefore "more aptly covered under appropriate state compensation laws," nevertheless assert judge-made general maritime law tort causes of action against the worker's employer that are recognized exclusively as being for the benefit of maritime workers?

II. SUMMARY OF ABYC'S RESPONSE

The Court of Appeal correctly concluded that, in passing 33 U.S.C. §902 in 1984, the United States Congress directed that the liability of a club (and/or "camp, recreational operation, restaurant, museum, or retail outlet" – see Section 902(3)(B)) to an employee injured on-the-job, be governed by state workers' compensation law in states in which those employees are "subject to coverage under a State workers' compensation law." ABYC is a club that employed the Plaintiff in the State of California, where he is subject to coverage under California workers' compensation law in connection with his alleged on-the-job injury.

Under the facts pled in the Plaintiff's operative Complaint (his Second Amended Complaint), ABYC's responsibility to pay workers' compensation to the Plaintiff under California workers' compensation law is "in lieu of any other liability whatsoever …" California Labor Code Section 3600(a). Therefore, 33 U.S.C. §902(3)(B), a federal statute, dictates that a club employee such as the Plaintiff is to receive no-fault California workers' compensation benefits from ABYC, which is "in lieu of any other liability whatsoever" of ABYC to the Plaintiff, including judge-made general maritime law tort remedies, like the

negligence and unseaworthiness claims he seeks to assert against ABYC in this case.

The extensive discussion in the POB concerning the Supremacy Clause, the reverse-Erie doctrine, federal preemption and the need for national uniformity in general maritime law, is an attempt to reframe the issue on review as a "choice of law" question. The Court of Appeal's decision was not based upon a choice law. The Court of Appeal simply recognized that Congress has spoken on this subject and has taken this relatively narrow issue, concerning specific and limited categories of workers, out of the realm of judge-made general maritime law. The Court of Appeal applied federal statutory law, which dictates that the Plaintiff's remedy against ABYC is governed by California's workers' compensation law.

Congress has repeatedly amended the LHWCA, limiting the application of general maritime remedies for certain categories of workers, as it did when it amended the LHWCA in 1984, adding Section 902(3)(B), among other changes. That Section of the LHWCA excluded club workers like the Plaintiff from coverage under the LHWCA. Where Congress has spoken, there is no place for choice of law issues

concerning judge-made general maritime remedies versus state law remedies.

Initially, the Superior Court dismissed this personal injury lawsuit on demurrer, applying the test set out in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), discussed in Section V., *infra.* The Superior Court correctly concluded that, under the *Grubart* test, the accident as alleged in the Plaintiff's Complaint simply did not come within maritime jurisdiction because it had no "potentially disruptive impact on maritime commerce" and did not "pose more than a fanciful risk to maritime commerce." *Grubart*, 513 U.S. at 538-39. With no maritime jurisdiction over the injury accident alleged by the Plaintiff, the Plaintiff could not pursue general maritime negligence and unseaworthiness claims against his employer, whether or not such claims were available to a worker employed by a club such as ABYC. As a consequence, under the Superior Court's ruling, the Plaintiff's sole remedy in connection with the accident alleged in his Complaint is the receipt of California workers' compensation benefits, pursuant to California Labor Code Section 3600 *et seq*.

The Court of Appeal reached the same conclusion, but for a different reason. The Court of Appeal held that it need not decide the

issue of whether the accident as alleged in the Plaintiff's Complaint fell within maritime jurisdiction, because Congress determined in 1984 that workers employed by clubs, "are more aptly covered under appropriate state compensation laws," specifically because such workers' activities were determined by Congress to "lack a sufficient nexus to maritime navigation and commerce," to constitute maritime employment. *Ranger v. Alamitos Bay Yacht Club* (2023) 95 Cal.App.5th 240, 244 (quoting Sen.Rep. No. 98-81, 1st Sess., p. 25). This determination by Congress included its recognition that club (and/or "camp, recreational operation, restaurant, museum, or retail outlet") employees, like the Plaintiff, may "by circumstance happen to work on or adjacent to navigable waters." Sen.Rep. No. 98-81, 1st Sess., pg. 25.

The Court of Appeal's analysis, giving effect to Congress's reasons for passing 33 U.S.C. Section 902(3)(B), was not undertaken by the First Appellate District when it decided *Freeze v. Lost Isle Partners* (2002) 96 Cal.App.4th 45. *Freeze* involved an injury to an employee of a waterfront bar and restaurant who, like the Plaintiff, came within the scope of 33 U.S.C. Section 902(3)(B) and was therefore excluded from LHWCA coverage. The First Appellate District nevertheless allowed the *Freeze* plaintiff to pursue general maritime

negligence and unseaworthiness claims against her employer arising from an on-the-job injury.

Though *Freeze* is in conflict with the Court of Appeal's holding in this case, in *Freeze*, the First Appellate District did not consider or recognize that the activities of workers employed by a "club, camp, recreational operation, restaurant, museum, or retail outlet" (33 U.S.C. §902(3)(B)) had, in 1984, been determined by Congress to "lack a sufficient nexus to maritime navigation and commerce," to be considered maritime employment and, consequently, such workers "are more aptly covered under appropriate state compensation laws." Sen.Rep. No. 98-81, 1st Sess., pg. 25. Similarly, the Congressional history and intent behind the adoption of Section 902(3)(B) was not considered by the Federal Fifth Circuit Court of Appeals (the federal appellate circuit encompassing the federal courts in Texas, Louisiana, Mississippi and the Canal Zone), whose case law the *Freeze* Court relied upon, while rejecting the law from the Federal Ninth Circuit Court of Appeals (encompassing all federal courts in California).

Though the Court of Appeal quoted and analyzed Congress's purpose for passing 33 U.S.C. §902(3)(B), discussion of that Congressional intent and purpose is nearly absent from the POB.

Instead, the Plaintiff has invited the Court to undertake a study of the origins of general maritime law rights and remedies and the tension that sometimes exists between general maritime law and state law. But the issue presented is much simpler. In passing 33 U.S.C. Section 902(3)(B), did Congress intend to foreclose a club employee like the Plaintiff from pursuing a maritime tort action for negligence and unseaworthiness against his or her employer? As the Court of Appeal concluded upon review of the Congressional Record, an affirmative answer to that question is inescapable.

This is not a question of a conflict between general maritime law and California state law. The Court of Appeal applied federal statutory law to reach its conclusion. The Plaintiff's rights against ABYC are defined by the California Labor Code because Congress directed that result when it passed 33 U.S.C. §902(3)(B).

ABYC continues to maintain that the facts as alleged in the Plaintiff's Complaint do not even give rise to maritime jurisdiction under *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.* (1995) 513 U.S. 527 and its progeny. As noted, the Superior Court agreed with that conclusion and dismissed the case on that basis. The Court of Appeal did not reach that issue, affirming the dismissal of the

Plaintiff's Complaint on the wholly separate grounds that are the subject of this review.

III. 33 U.S.C. SECTION 902(3)(B) PROHIBITS A CLUB EMPLOYEE FROM PURSUING OTHER THAN AN AVAILABLE STATE WORKERS' COMPENSATION ACTION AGAINST HIS OR HER EMPLOYER

A. The Basis for the Court of Appeal's Holding

Focusing on the issue of national uniformity in maritime law and supremacy of federal law over state law, the POB largely dodges the basis for the Court of Appeal's holding:

> To summarize our analysis, Congress in 1984 specified employees covered by state workers' compensation law working at a 'club' are covered by state workers compensation law and not federal law if they are eligible for state workers compensation (33 U.S.C. Section 902(3), (3)(B).) … Federal law thus makes California state workers' compensation law paramount, which means that [the Plaintiff's] exclusive remedy is workers' compensation. (Lab. Code §3602, subd. (a) [workers compensation is exclusive].)

Ranger v. Alamitos Bay Yacht Club (2023) 95 Cal.App.5th 240, (citing Sen.Rep. No. 98-81, 1st Sess., p. 25).

33 U.S.C. § 902(3)(B) was one of several amendments made to the LHWCA by Congress in 1984. In relevant part, Section 902 excludes from the definition of "employee," as used in the LHWCA, and thus from coverage of the LHWCA, which covers those engaged in maritime employment, certain categories of workers, including

"individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet" (Section 902(3)(B)) "if such individuals are subject to coverage under a State workers' compensation law." 33 U.S.C. §902(3). There is no dispute that the Plaintiff is a "club" employee and that he is "subject to coverage under" California's state workers' compensation laws. In passing Section 902, Congress specifically determined that the remedy best suited to a club employee injured on-the-job is the receipt of no-fault state workers' compensation, because such employees are, pursuant to the findings of Congress, not considered to be engaged in maritime employment.[1]

As noted by the Court of Appeal, "Congress enacted the [LHWCA], which established a workers' compensation program for 'any person engaged in maritime employment.'" *Ranger v. Alamitos Yacht Club*, *supra*, 95 Cal.App.5th at 243 (citations omitted). Before amending

[1] As discussed below, maritime workers who are "seamen," may sue their vessel-owning employers under the Jones Act; 33 U.S.C. §30104. Seamen may also bring a general maritime law claim for unseaworthiness against their employers. There has never been a contention in this matter that the Plaintiff is a "seaman," entitled to bring a claim against ABYC under the Jones Act or general maritime law applicable to seamen.

the LHWCA in 1984, Congress held hearings, triggered primarily by a prior set of amendments to the LHWCA, passed in 1972. The 1972 amendments included provisions intended to promote "systemic uniformity" among the courts and the federal Benefits Review Board as to what constitutes "maritime employment." See Sen.Rep. No. 98-81, 1st Sess., pgs. 24-25. However, the Congressional hearings revealed that "a decade of experience under the 1972 amendments" had shown that more changes were needed to the LHWCA to assist legal tribunals in determining what should be considered "maritime employment." *Id.* at pgs. 24-25. See also *Ranger v. Alamitos Yacht Club*, *supra*, 95 Cal.App.5th at 243-246.

Rather than attempting a complete overhaul of the LHWCA in 1984, Congress:

> narrowed its focus to certain fairly identifiable employers and employees who, although by circumstance happened to work on or adjacent to navigable waters, lack a sufficient nexus to maritime navigation and commerce. … Under this case specific approach, the [Congressional] committee has determined that certain activities do not merit coverage under the [LHWCA] and that the employees involved are more aptly covered under appropriate state compensation laws.

Sen.Rep. No. 98-81, 1st Sess., pg. 25. See also *Ranger v. Alamitos Bay Yacht Club*, *supra*, 95 Cal.App.5th at 243-44.

The work of club employees like the Plaintiff was identified by Congress as one of the employment categories that lacked a sufficient nexus to maritime navigation and commerce to constitute maritime employment. Congress made this determination while also recognizing that club workers may "by circumstance happen to work on or adjacent to navigable waters." Sen.Rep. No. 98-81, 1st Sess., pg. 25.

33 U.S.C. §902(3) lists several occupations that constitute maritime employment but does not provide a strict definition of "maritime employment." In cases where maritime employment is in question, a worker's entitlement to benefits under the LHWCA is determined under a test that considers both the "situs" and "status" of the worker's employment. See *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40 (1989). With the passage of Section 902(3)(B), Congress statutorily determined that, despite the "situs" of club workers' employment, the "status" of their work does not constitute maritime employment, because their employment "lack[s] a sufficient nexus to maritime navigation and commerce."

Thus, Section 902(3)(B) excludes club employees like the Plaintiff from the coverage of the LHWCA, with Congress having determined

that on-the-job injury claims involving such workers "are more aptly covered under appropriate state compensation laws."

The POB does not attempt to confront Congress's findings upon which the Court of Appeal relied, brushing the Court of Appeal's analysis off as a "misread[ing of] the statutory language and history of the LHWCA." POB at 53-54. The POB includes no counter-analysis of Congress's findings and intent because it is impossible to reconcile the Plaintiff's claim that he can sue his employer in tort for general maritime causes of action recognized only where maritime jurisdiction exists and only available to workers engaged in maritime employment, with Congress' determination that his work activities, regardless of their situs, "lack a sufficient nexus to maritime navigation and commerce" to be considered maritime employment, and that his claim is "more aptly covered under appropriate state compensation laws."

B. Congress Has the Power to Regulate Rights and Remedies Within Maritime Jurisdiction

The Plaintiff asserts that the issue on review concerns the supremacy of judge-made general maritime law, largely ignoring that the Court of Appeal's decision was based upon a "Federal law [that] makes California state workers' compensation law paramount." *Ranger v. Alamitos Bay Yacht Club*, *supra*, 95 Cal.App.5th at 243.

Congress has complete authority to regulate the rights and remedies available to workers employed on and around navigable waters. As the U.S. Supreme Court explained in *Detroit Trust Co. v. The Thomas Barlum*, 293 U.S. 21, 43-44 (1934):

> The framers of the Constitution did not contemplate that the maritime law should remain unalterable. The purpose was to place the entire subject, including its substantive as well as its procedural features, under national control. From the beginning the grant was regarded as implicitly investing legislative power for that purpose in the United States. When the Constitution was adopted, the existing maritime law became the law of the United States 'subject to power in Congress to modify or supplement it as experience or changing conditions might require.' *Panama Railroad Co. v. Johnson*, 264 U.S. 375, 385-387. The Congress thus has paramount power to determine the maritime law which shall prevail throughout the country. *The Lottawanna*, *supra*, p. 577; *Butler v. Boston & Savannah S. S. Co.*, 130 U.S. 527, 557; *In re Garnett*, 141 U.S. 1, 13; *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 215; *Crowell v. Benson*, 285 U.S. 22, 39; *United States v. Flores,* 289 U.S. 137, 148, 149.

While the Plaintiff seeks to minimize the role of Congress, alleging that "Congress rarely disagrees with the judicial result" (POB at p. 25) in maritime tort matters, there is no question but that Congress has the final say. Though the judiciary may decide maritime matters in the "manner of a common law court" the courts are "subject to the authority of Congress to legislate otherwise if it disagrees with the judicial result." *Exxon Shipping Co., v. Baker*, 554 U.S. 471, 489-

490 (2008). Indeed, it has long been held that "… the court cannot make the law, it can only declare it. If, within its proper scope, any change is desired … it must be made by the legislative department." *The Lottawanna*, 88 U.S. 558, 576–577 (1874). That is what Congress did in passing the 1984 amendments to the LHWCA adding, among other things, the "club exclusion" at issue here.

Contrary to the Plaintiff's suggestion that maritime law is primarily judge-made, Congress has often exercised its power to regulate rights and remedies related to maritime jurisdiction and employment. In *Detroit Trust Co. v. The Thomas Barlum*, 293 U.S. 21 (1934), the U.S. Supreme Court outlined the history of Congress's active role in regulating maritime matters:

> The Congress began the exertion of this authority at an early date. In the Judiciary Act of 1789, the Congress conferred upon the district courts of the United States exclusive jurisdiction of all seizures under the laws of impost, navigation, or trade of the United States, where the seizures were made on navigable waters within the respective districts. § 9, 1 Stat. 76, 77. By the Act of June 19, 1813, 3 Stat. 2, the Congress declared that a vessel employed in a fishing voyage should be answerable for the fishermen's share of the fish caught, upon a contract made on land, in the same form and to the same effect as any other vessel is liable to be proceeded against for the wages of seamen. Important illustrations of the exercise of congressional power are found in the Limitation of Liability Act of 1851, 9 Stat. 635, enacted for the purpose

> of encouraging investment in shipbuilding, by limiting the venture of shipowners to the loss of the ship itself, or her freight then pending, in cases of damage occasioned without the owner's privity or knowledge; the extension, by the Act of June 26, 1884, § 18, 23 Stat. 57, 58, of the admiralty jurisdiction to proceedings for the limitation of liability, so as to include damages by a vessel to a land structure; the Act of 1910, 36 Stat. 604, providing for a maritime lien for repairs or supplies furnished to a vessel in her home port, to be enforced by a proceeding in rem; the Act of March 30, 1920, 41 Stat. 537, providing for jurisdiction in admiralty of suits for damages from death caused by wrongful act and occurring on the high seas; the Seamen's Act of 1915, § 20, 38 Stat. 118; the Merchant Marine Act of 1920, 41 Stat. 1007, amending § 20 of the Act of 1915, thus bringing, in relation to seamen, into the maritime law, rules drawn from the Federal Employers' Liability Act; and the Longshoremen's and Harbor Workers' Compensation Act of 1927.

Id. at 44-45.

As the U.S. Supreme Court said in *Miles v. Apex Marine Corp*., 498 U.S. 19 (1990):

> In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Id. at 27.

More recently, in *Dutra v. Batterton*, 588 U.S. __, 139 S.Ct. 2275 (2019), the U.S Supreme Court reiterated this guiding principle:

> By granting federal courts jurisdiction over maritime and admiralty cases, the Constitution implicitly directs federal courts sitting in admiralty to proceed 'in the manner of a common law court.' *Exxon Shipping Co. v. Baker*, 554 U. S. 471, 489-490, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008). Thus, where Congress has not prescribed specific rules, federal courts must develop the 'amalgam of traditional common-law rules, modifications of those rules, and newly created rules' that forms the general maritime law. *East River S. S. Corp. v. Transamerica Delaval Inc.,* 476 U. S. 858, 864-865, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986). But maritime law is no longer solely the province of the Federal Judiciary. 'Congress and the States have legislated extensively in these areas.' *Miles v. Apex Marine Corp*., 498 U. S. 19, 27, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990). When exercising its inherent common-law authority, 'an admiralty court should look primarily to these legislative enactments for policy guidance.'

Id., 139 S.Ct. 2275, 2278, 2286.

In order to stay within this framework, the U.S. Supreme Court regularly reviews the legislative history and intent of the LHWCA found in the Congressional record, as did the Court of Appeal in this case. *See generally*, *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 264-69 (1979); *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156, 165-66 (1981); *Jones v. Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523, 531-32, 547 (1983); *Southwest Marine v. Gizoni*,

502 U.S. 81, 88-89 (1991); *Chandris Inc. v. Latsis*, 515 U.S. 347, 387 (1995).

The Plaintiff's attempt to minimize the Supreme Court's above-quoted statement in *Batterton*, on the basis that the *Batterton* Court cited *Miles v. Apex Marine Corp.*, 498 U.S. 19, 27 (1990), does not bear scrutiny. Not only do both U.S. Supreme Court cases remain good law, the foundational analysis articulated in *Miles* in 1990, discussed in *Batterton* in 2019, and applied by the Court of Appeal in *Ranger*, had its genesis in an even earlier analysis by the U.S. Supreme Court in *Moragne v. States Marine Lines*, 398 U.S. 375, 392 (1970), which noted that "[t]he legislature does not, of course, merely enact general policies. By the terms of a statute, it also indicates its conception of the sphere within which the policy is to have effect."

Though the Plaintiff contends that the words of the *Miles* Court should be discounted because they have been criticized in a few legal journals selectively chosen by the Plaintiff (POB at 43), the *Batterton* Court relied on *Miles* twenty-nine years later, in 2019. The Court of Appeal's analysis of the issue under review was consistent with its role as defined by the United States Supreme Court.

C. Congress Has Repeatedly and Broadly Exercised its Power to Regulate Maritime Rights and Remedies Available to Injured Workers

The POB suggests that the rights and remedies of maritime workers primarily find their origins in judge-made general maritime law. Much to the contrary, what the POB characterizes as an "isolated archipelago" of "six narrow and specialized statutes addressing the subject of maritime tort law" (POB at pg. 25), includes a set of federal statutes that trace a global map of employee/employer rights and remedies available to maritime workers and non-maritime workers whose employment places them on or near navigable waters.

Starting with the workers whose employment is the most easily identified as maritime employment, the Jones Act is a Congressional enactment providing workers who are the masters and crewmembers of vessels with a cause of action for negligence against their employers. See 33 U.S.C. §30104.

Moving ashore, the LHWCA (33 U.S.C. §901 *et seq.*) provides workers at the water's edge, whose occupations are specifically named in the Act, (Section 902(3)), and those who satisfy both the "situs" and "status" elements of maritime employment, with no-fault workers' compensation benefits. Section 902(3)(G) excludes from coverage of the

LHWCA "a master or member of a crew of any vessel," to whom Congress has statutorily conferred a negligence remedy under the Jones Act, as noted above.

> The Longshore Act … effectively divides most maritime workers into two mutually exclusive categories: seaman and longshoremen.

1 Schoenbaum, Admiralty and Maritime Law, (6th ed. 2018), §6:27, pg.572.

Moving to drier employment, Congress excluded from coverage under the LHWCA workers whose employment Congress determined "lack[s] a sufficient nexus to maritime navigation and commerce," despite the fact that they may work on or near navigable waters. Congress has determined that such worker's injury claims against their employers "are more aptly covered under appropriate state compensation laws." Sen.Rep. No. 98-81, 1st Sess., pg. 25.

Thus, between the Jones Act, the LHWCA and the exclusions set out in Section 902(3), Congress has created a nearly seamless remedial system for workers whose employment is on or near navigable waters.[2]

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[2] Longshore and harbor workers employed by the United States are excluded from coverage under the LHWCA. See 33 U.S.C. §903(b). But they too are covered under a Congressionally-created workers' compensation system; the Federal Employees Compensation Act, 5 U.S.C. §§8101, *et seq*.

Within this broad system, Congress has also legislated on a more focused basis, regulating specific remedies that are and are not available to different categories of workers. The 1972 amendments to the LHWCA included such a focused regulation. In *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946), the U.S. Supreme Court had extended to workers covered under the LHWCA the ability to sue vessel owners based upon a claim of vessel unseaworthiness. Prior to 1946, such a cause of action was only available to Jones Act seaman under general maritime law. With the passage of 33 U.S.C. §905(b) in 1972, Congress abolished the availability of the unseaworthiness cause of action for workers covered under the LHWCA that the Supreme Court had extended to such workers in 1946 with the *Sieracki* decision. Congress's passage of Section 902(3)(B) in 1984 was a similar act of legislation, regulating the remedies to which certain categories of workers are entitled.

D. The Court of Appeal's Decision is Neither Contrary to Principles of Uniformity nor Federal Supremacy

While the Plaintiff devotes substantial energy to framing the issue as one involving national uniformity in the application of general maritime law, federal supremacy and preemption of state law, the Court of Appeal's decision does not tread on any of those principles.

"California workers' compensation law is [the Plaintiff's] exclusive remedy [because] Congress in 1984 decreed this state law aptly covers his situation." *Ranger v. Alamitos Bay Yacht Club*, *supra*, 95 Cal.App.5th at 250. The Court of Appeal simply applied a federal statute that Congress intended be applied to all club workers in the United States.

33 U.S.C. §902 dictates that a club worker who is injured on the job does not qualify for benefits under the LHWCA, "if [such] individual [is] subject to coverage under a State workers' compensation law." By its terms, Section 902 also provides a safety net that: "if [such] individual [is not] subject to coverage under a State workers' compensation law," he or she is eligible to receive LHWCA benefits. See clause following Section 902(3)(H). Therefore, the language of the statute itself contemplates the possibility of club employees in different states being subject to coverage under different workers' compensation systems.

Nevertheless, the Plaintiff contends that "uniformity" in maritime law requires a uniform set of remedies for all club employees in the United States, in place of the uniform application of Section 902(3)(B), which itself contemplates a lack of strict "uniformity" in the

no-fault workers' compensation benefits that club workers might receive in various states. The Plaintiff contends that the strict uniformity he seeks is dictated under *Freeze v. Lost Island Partners* (2002) 96 Cal.App.4th 45 and *Green v. Vermillion Corp.*, 144 F.3d 332 (5th Cir. 1998), upon which the *Freeze* Court relied, as well as other Federal Fifth Circuit Court of Appeals cases that have followed *Green*.

In *Green*, the Federal Fifth Circuit Court of Appeals held that an injured employee of a Louisiana duck club could sue his vessel-owning employer for general maritime law negligence and unseaworthiness. The employee was excluded from LHWCA coverage by Section 902(3)(B).

The Court of Appeal in this case, temporarily setting aside Congress's intent in adopting Section 902(3)(B), engaged with the Plaintiff on his call for "uniformity," noting that the *Green* Court "emphasized uniformity" of the same kind (95 Cal.App.5th at 247) in reaching its decision and:

> like [the Plaintiff in this case] the *Green* opinion conceived of 'uniformity' as meaning national power, *as defined by judges*, must displace the works of national legislatures.

95 Cal.App. 5th at 247 (emphasis in original). The Court of Appeal continued that:

> [t]his kind of uniformity is a one-way street, not a useful method of analysis; it always insists on national uniformity regardless of context, and it disfavors state power, which can be sound and richly diverse. … [it also] clashes with our deep national strain of federalism that celebrates states as laboratories of experimentation … [and] also collides with the kind of uniformity praised in modern Supreme Court admiralty decisions like *Batterton* [*Dutra Group v. Batterton*, 588 U.S. ___, 139 S.Ct. 2275 (2019)] where the 'uniformity' sought is with policies enacted by democratically-elected representatives … This kind of uniformity is sensible, as it seeks to anchor the law of admiralty in the legitimacy of the electoral process.

95 Cal.App. 5th at 247 (internal citations omitted).

ABYC will not repeat the Court of Appeal's analysis of the historical development of the kind of "uniformity" promoted by the *Green* Court, which the Court of Appeal traced to Lochner-era decisions like *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917) and *Robins Dry Dock & Repair Co. v. Dahl*, 266 U.S. 449 (1925). The Court of Appeal's analysis concluded that the Lochner-era cases upon which *Green* relied were no longer reliable precedent and, therefore, "*Green*'s mistaken conception of 'uniformity' is reason enough to depart from it … " 95 Cal.App.5th at 247-249.

Additionally, even among the Courts that have not considered the Congressional history and intent behind the passage of Section 902(3)(B), there is no "uniformity" in the holdings deciding whether

workers who do not satisfy the "status" requirement to qualify for benefits under the LHWCA and are covered by "exclusive remedy" state workers' compensation laws, can assert general maritime law claims against their employers. See *Brockington v Certified Electric, Inc*., 902 F.3d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991)(Balancing comparative federal and state interests, Georgia workers' compensation exclusive remedy provision bars a worker not qualifying for LHWCA benefits from bringing general maritime law causes of action against his employer).

Though the POB paints the *Brockington* decision as a "widely criticized" outlier (POB at pg. 19), as the Court of Appeal noted, a respected maritime treatise (Schoenbaum, Admiralty and Maritime Law), "praised *Brockington* as 'an excellent example of admiralty preemption analysis.'" *Ranger v. Alamitos Bay Yacht Club*, *supra*, 95 Cal.App.5th at 246-47. Additionally, *Brockington* has been cited and followed by courts outside of the Federal Eleventh Circuit.

See *In re Complaint of Verplanck Fire Dist*., 2023 Dist. LEXIS 143914, *15-18 (S.D.N.Y. 2023); *Durando v. City of New York* (Supr. Ct. N.Y. 2011) 33 Misc. 3d 1231(A); 942 N.Y.S.2d 537.

With regard to the POB's attempt to frame the issue as one involving the Supremacy Clause, other than the Fifth Circuit cases relied upon by the *Freeze* Court (96 Cal.App.4th at 51-52), none of the cases cited in the POB (POB at pgs. 36-40) involved workers like the Plaintiff, whom Congress has statutorily separated from those engaged in maritime employment, based upon the finding that they "lack a sufficient nexus to maritime navigation and commerce." Sen.Rep. No. 98-81, 1st Sess., p. 25.

Turning its focus back to Congress's stated reason for excluding club workers from coverage under the LHWCA, the Court of Appeal pointed out that, "*Green* failed to grapple with the governing statute [33 U.S.C. §902(3)(B)]." 95 Cal.App.5th at 249. The *Green* Court, like the First Appellate District in *Freeze*, completely overlooked Congress's conclusions and reason for adopting Section 902(3)(B) in 1984; that the work of club employees like the Plaintiff, and the employees in *Green* and *Freeze*, "lack a sufficient nexus to navigation and commerce," to constitute maritime employment, and are "more aptly covered under appropriate state compensation laws." Sen.Rep 98-81, *supra*, at pg. 25.

Indeed, none of the courts that have followed *Green* have considered Congress's reason for adopting Section 902(3)(B) and have thus ignored the directive of the United States Supreme court:

> But maritime law is no longer solely the province of the Federal Judiciary. 'Congress and the States have legislated extensively in these areas.' *Miles v. Apex Marine Corp*., 498 U. S. 19, 27, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990). When exercising its inherent common-law authority, 'an admiralty court should look primarily to these legislative enactments for policy guidance.'

Dutra v. Batterton, 139 S.Ct. 2275, 2278. See also *Id*. at 2286.

The Court of Appeal's decision in this matter is wholly consistent with federal statutory law and the directives of the U.S. Supreme Court. The decision does not infringe upon the kind of "uniformity" in the maritime law contemplated by the U.S. Supreme Court or upon federal supremacy.

IV. THE PLAINTIFF SEEKS TO ASSERT GREATER RIGHTS AGAINST HIS EMPLOYER UNDER GENERAL MARITIME LAW THAN THE RIGHTS AVAILABLE TO WORKERS WHOM CONGRESS HAS RECOGNIZED AS BEING ENGAGED IN MARITIME EMPLOYMENT

A. The General Maritime Negligence and Unseaworthiness Claims Asserted by the Plaintiff Should Not be Available to Workers Who Are, By Statute, Not Engaged in Maritime Employment

The Plaintiff seeks to pursue general maritime law negligence and unseaworthiness claims against his employer arising from an on-

the-job accident. However, he does not qualify for benefits under the LHWCA by virtue of Congress' determination that the activities of club employees like the Plaintiff "lack a sufficient nexus to maritime navigation and commerce." *Ranger v. Alamitos Bay Yacht Club* 95 Cal.App.5th at 244 (quoting Sen.Rep. No. 98-81, 1st Sess., pg. 25). But workers who are statutorily recognized as being engaged in maritime employment, and who therefore qualify for LHWCA benefits, cannot assert the maritime claims that the Plaintiff seeks to assert against his employer. The plaintiff is, plainly and simply, seeking to assert greater rights under general maritime law against his employer than the rights provided to workers who are statutorily considered to be performing maritime employment.

With the 1972 amendments to the LHWCA, Congress eliminated the ability of workers covered under the LHWCA to sue a vessel owner for unseaworthiness, whether the vessel owner is the worker's employer or a third-party. 33 U.S.C. Section 905; POB at pgs. 19, 29, 52. See also *Johnson v. Canadian Transportation Co.* (1976) 54 Cal.App.3d 827, 838. As discussed below, the majority view, including in the Federal Ninth Circuit Court of Appeals (encompassing California) is that, with the 1972 amendments to the LHWCA,

Congress eliminated an unseaworthiness remedy for all workers, whether covered by the LHWCA or not, other than Jones Act seamen.

Additionally, pursuant to 33 U.S.C. §905(b), workers who qualify for benefits under the LHWCA are prevented from pursuing general maritime negligence claims against their vessel-owning employers if they are employed to provide repair services on their employer's vessels:

> If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no [negligence] action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer)….

33 U.S.C. §905(b).

The Plaintiff has alleged that his job with ABYC involved "painting, cleaning, maintaining, repairing, unloading and mooring (ABYC's) vessels." *Ranger*, *supra*, 95 Cal.App.5th at 242. If the Plaintiff was covered under the LHWCA, the quoted portion of Section 905(b) would likely prevent him from asserting a negligence action against ABYC.

In sum, though Congress has found that club employees "lack a sufficient nexus to maritime commerce and navigation" to be

considered to be engaged in "maritime employment," the Plaintiff contends that he can sue his vessel-owning employer for general maritime negligence, as well unseaworthiness; claims that a vessel repair worker whose employment is recognized as maritime employment under the LHWCA is statutorily barred from bringing.

While eliminating the availability of a general maritime unseaworthiness remedy from workers covered under the LHWCA, Congress has also specified that some workers covered by the LHWCA may bring an action for general maritime negligence against a vessel owner. See U.S.C. Section 905(b). When a worker covered by the LHWCA is directly employed by the vessel owner, the worker may recover civil damages for injuries caused by his or her employer's negligence, if the worker can prove that the negligence of the employer was committed by the employer "in its capacity as vessel owner," and not "in its capacity as employer." See *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 263-66, *reh'g denied*, 444 U.S. 889 (1979).

> [S]ection 905(b) 'does make it clear that a vessel owner acting as its own stevedore is liable only for negligence in its 'owner' capacity, not for negligence in its 'stevedore' capacity.'

Gravatt v. City of New York, 226 F.3d 108, 120 (2d Cir. 2000) (citing *Jones & Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523, 531, n.6 (1983)).

Divining when an LHWCA-covered worker's injury was caused by the vessel-owning employer "in its capacity as vessel owner" and not "in its capacity as stevedore employer," has been the subject of much litigation. But that litigation is not relevant to this analysis. What is relevant is that Section 905(b) sets out several exceptions to the ability of workers covered by the LHWCA to bring a negligence claim against their vessel-owning employers for negligence committed "in their capacity as vessel owner." Among those exceptions are workers providing their vessel-owning employers with vessel repair services. As quoted above, Section 905(b) blocks workers who provide their vessel-owning employers with vessel repair services from bringing negligence claims against their employers "directly or indirectly … in any capacity, including as the vessel's owner …" See also *Heise v. Fishing Co.*, 79 F.3d 903 (9th Cir. 1996). This is true even where a ship repair employee was not strictly engaged in repairing his or her employer's vessel at the moment of the injury:

> [W]hen classifying an employee for purposes of determining whether a suit under § 905(b) is barred, we look not only at what the employee was doing at the moment he was injured. We also look at whether the employee 'regularly performs some portion of what is indisputably [ship-repair] work,' or has been assigned for an appreciable period of time to do 'substantial [ship-

> repair] work . . . even though his assignment to it is not 'permanent."

Gay v. Barge 266, 915 F.2d 1007, 1010 (5th Cir. 1990). See also; *Heise v. Fishing Co.*, 79 F.3d 907-08, (9th Cir. 1996); *Ducrepont v. Baton Rouge Marine Enters.*, 666 F. Supp. 882, 887-88, (E.D. La. 1987), *aff'd*, 877 F.2d 393 (5th Cir. 1989), *reh'g denied* 885 F.2d 870 (5th Cir. 1989).

Congress prohibited vessel repair workers from bringing negligence claims against their vessel-owning employers "in their capacity as vessel owner" because such workers' very job is to provide services to their employers in the employers' "capacity as a vessel owner." As the Court in *Pichoff v. Bisso Towboat Company*, 748 F.2d 300 (5th Cir. 1984), lamented: "[t]he line between owner and repairer is dull and elusive, at best." *Id.* at 303. Prior to the adoption of Section 905(b):

> courts undertook the difficult and sometimes chimeric task of characterizing negligence in terms of that occasioned by an employee in his capacity as a shipbuilder or repairer, and that caused by an employee acting as agent of the vessel.

Ducrepont v. Baton Rouge Marine Enters., *supra*, 666 F. Supp. at 886.

Section 905(b) prohibits vessel repair employees from asserting a negligence action against their vessel-owning employers because allowing a vessel repair worker to sue his or her employer in tort for

an injury caused by the employer "in its capacity as vessel owner" would effectively eliminate the exclusive remedy provision of the LHWCA with regard to such workers.[3] Vessel-owning employers would be exposed to a negligence claim from their vessel repair employees in every case of on-the-job injury, because every on-the-job injury sustained by a such a worker can be characterized as having been caused by the employer "in its capacity as vessel owner."

Similarly, the Plaintiff's job with ABYC, as described in his Complaint, is "painting, cleaning, maintaining, repairing, unloading and mooring (ABYC's) vessels." He claims that an accident he sustained on-the-job allows him to pursue a negligence claim against ABYC "in its capacity as vessel owner." Nearly every element of his job description is performed for ABYC "in its capacity as vessel owner." But vessel repair workers who qualify for benefits under LHWCA are barred from bringing a negligence under Section 905(b). Therefore, the Plaintiff is asserting that, by virtue of being excluded from coverage under the LHWCA, with Congress having found that the Plaintiff's work "lack[s] a sufficient nexus to maritime navigation and commerce,"

[3] "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee …" 33 U.S.C. Section 905(a).

he can bring a general maritime negligence claim against ABYC that Congress has denied to vessel repair workers who are statutorily recognized as being engaged in maritime employment. Put another way, if the Plaintiff had a "sufficient nexus to maritime navigation and commerce" to qualify for LHWCA benefits, he would be prohibited from asserting a negligence cause of action against ABYC.

In the remedial system created by Congress for workers whose employment takes them on or near navigable waters, Congress has determined that club employees like the Plaintiff are on one end of the scale; not engaged in maritime employment because they "lack a sufficient nexus to maritime navigation and commerce." Yet the Plaintiff seeks to leap from one end of the scale to the other, vaulting over the remedies available to maritime workers covered by the LHWCA, and land in the same boat with Jones Act seamen, able to assert a negligence and unseaworthiness cause of action against his employer.

The Plaintiff may argue that the language of 33 U.S.C. §902(3)(B) does not include a specific prohibition against a club employee (or the other occupations excluded under Section 902(3)(B)) bringing general maritime negligence and unseaworthiness claims against their

employers and, therefore, such actions were not prohibited by Congress. But that argument requires a rewrite of the Congressional Record. That rewrite would require the following italicized addition to the Congressional Record, stating that club work does not qualify as maritime employment because it:

> Lack[s] a sufficient nexus to maritime navigation and commerce [and such workers' claims] are more aptly covered under appropriate state compensation laws … *but the courts may, nevertheless, give these workers whose employment does not constitute maritime employment, the same rights and remedies against their employers that Congress has given to seamen (negligence under the Jones Act 33 U.S.C. §30104) and provided to seamen under the general maritime law (unseaworthiness).*

The Plaintiff's contention that a club employee's distance from maritime employment as determined by Congress, allows him greater rights under maritime law than the rights enjoyed by statutorily recognized maritime workers, and gives him the same rights as seamen, ignores the history and Congressional intent surrounding the development of the Jones Act and the LHWCA.

B. <u>The Majority View is that "*Sieracki* Unseaworthiness" No Longer Exists and Even if it Did, the Plaintiff Would Have No Right to Assert Such a Claim</u>

The POB asserts that the Plaintiff's purported right to bring an unseaworthiness cause of action against his employer finds its source

in *Seas Shipping Co v. Sieracki*, 328 U.S. 85 (1946). See POB at pgs. 27-30. As discussed above, the Court of Appeal correctly found that with the adoption of 33 U.S.C. §902(3)(B), Congress foreclosed club employees like the Plaintiff from bringing tort claims of any kind against their employers, regardless of the purported source of such claims. Additionally, as discussed above, allowing the Plaintiff to bring an unseaworthiness claim against his employer would grant him greater rights than workers whose occupations are statutorily recognized as maritime employment.

Nevertheless, the Plaintiff's claim that *Sieracki* gives him the right to sue ABYC for unseaworthiness suffers from other infirmities, not the least of which is that there is a serious question whether a "*Sieracki* unseaworthiness" claim still exists in favor of any kind of worker following the 1972 amendments to the LHWCA. But even if such a cause of action did still exist, it certainly would not be available to the Plaintiff, whose job has been deemed by Congress to "lack a sufficient nexus to maritime commerce and navigation." Other than purported "*Sieracki* unseaworthiness," there is no separate general

maritime law unseaworthiness cause of action available to any worker other than a Jones Act seaman.[4]

The POB acknowledges, but gives short shrift, to the split in authority on the issue of whether "*Sieracki* seamen," or "*Sieracki* unseaworthiness" even exists following the 1972 amendments to the LHWCA. See POB at pg. 30, citing *Normile v. Maritime Co. of the Philippines*, 643 F.2d 1380, 1383 (9th Cir. 1981) (holding that with the 1972 amendments to the LHWCA, Congress eliminated for all workers, other than Jones Act seamen, the availability of an unseaworthiness cause of action, including workers not covered by the LHWCA). *Normile,* from the Federal Ninth Circuit Court of Appeals which encompasses California, as well as the cases concurring with *Normile* from other Federal Circuits, merit more than the passing "but see" mention given them in the POB, since the Plaintiff claims the right to a cause of action based upon *Sieracki*.

[4] As noted, "seamen," may bring negligence claims against their vessel-owning employers pursuant to the Jones Act (33 U.S.C. §30104 *et seq*.), as well as unseaworthiness claims against their employers pursuant to the general maritime law. Who qualifies as a "seaman" is a question determined pursuant to case law developed by the U.S. Supreme Court. See *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995). The Plaintiff has not claimed to be a "seaman."

In *Sieracki*, *supra*, 328 U.S. 85, a longshoreman covered by the LHWCA was injured while working on a third-party's vessel. As stated by the Supreme Court: "[t]he principal question is whether the obligation of seaworthiness, traditionally owed by an owner of a ship to seamen, extends to a stevedore injured while working aboard the ship." *Id*. at 87. The Court held that the longshoreman plaintiff could maintain a claim for unseaworthiness against the vessel owner, thus extending to him the judge-made general maritime law remedy of unseaworthiness that had previously only been available to Jones Act seamen. As discussed in Section III.d., above, as part of the 1972 amendments to the LHWCA, with the adoption of 33 U.S.C. Section 905(b), Congress exercised its power to dictate what remedies are available to maritime workers and abolished the availability of a *Sieracki* unseaworthiness cause of action to workers covered under the LHWCA.

Subsequently, in *Normile v. Maritime Co. of the Philippines*, 643 F.2d 1380 (9th Cir. 1981), the Federal Ninth Circuit Court of Appeals ruled that "*Sieracki* seamen," who can bring a "*Sieracki* unseaworthiness" cause of action against a vessel owner, despite not qualifying for status as Jones Act seamen, no longer existed, whether

the worker was covered by the LHWCA or not.[5] The *Normile* Court reasoned that, in 1946, the *Sieracki* holding extended an unseaworthiness cause of action to longshoremen covered under the LHWCA that had previously only been available to Jones Act seamen. Congress abolished that cause of action in 1972. Thus, workers not covered by the LHWCA did not gain anything from the *Sieracki* holding and lost nothing with the 1972 abolition of the cause of action created by *Sieracki*. As the *Normile* Court concluded in dismissing the unseaworthiness claim of the plaintiff, who was neither a Jones Act seaman, nor covered under the LHWCA:

> All that the Supreme Court gave [in 1946 with the *Sieracki* decision], Congress took away [in 1972 with the adoption of Section 905(b)]. There remains no viable precedent to which plaintiff can analogize. He has no cause of action.

Id., 643 F.3d at 1382.

The *Normile* Court found further support for its holding in the Congressional Record concerning the passage of Section 905(B). After citing and quoting from that Record (H.R.Rep.No.1441 92d Cong., 2d

[5] The Plaintiff in *Normile* was a longshoreman employed by the United States and, therefore, excluded from LHWCA coverage by 33 U.S.C. §903(b). He was nevertheless entitled to workers' compensation benefits under the Federal Employees Compensation Act, 5 U.S.C. §§8101 *et seq*. 643 F.2d at 1381, 1383 fn.2.

Sess. (1972), reproduced in 3 U.S. Code Cong. & Admin.News 4698, 4703-05 (1972)), the *Normile* Court concluded:

> It appears from [the cited portion of the Congressional Record] that Congress intended to eliminate the longshoremen's action for unseaworthiness not only with respect to those longshoremen covered by the Act, but for other longshoremen whose rights were judicially created. Further, the tenor of the report evidences a desire for uniformity in the treatment of all longshoremen which plaintiff's position [that a *Sieracki* unseaworthiness cause of action still existed for him by virtue of his exclusion from the LHWCA] herein could only defeat.

643 F.3d at 1382-83.

Other federal courts, in holdings before and after *Normile*, have agreed that "*Sieracki* seamen" and the "*Sieracki* unseaworthiness" cause of action were abolished by Congress with the 1972 amendments to the LHWCA. On the opposite side of that conclusion, and exclusively relied upon by the Plaintiff in the POB, are the federal courts within the Fifth Circuit. But even they have recognized that they are in the minority on this issue:

> As to those workers not covered by the LHWCA, but performing work aboard vessels, the weight of authority indicates that the exception created in *Sieracki* … , allowing such workers to bring unseaworthiness claims, was abolished through passage of the 1972 Amendments to the Act. See Schoenbaum, supra, at § 6-27 (citing, inter alia, *Normile v. Maritime Co. of the Philippines*, 643 F.2d 1380, 1981 A.M.C. 2470 (9th Cir. 1981); *Lynn v. Heyl and Patterson, Inc.*, 483 F. Supp. 1247, 1980 A.M.C. 2170 (W.D. Pa. 1980), *aff'd*, 636 F.2d 1209 (3d Cir. 1980); *United States*

> *Lines, Inc. v. United States*, 593 F.2d 570, 1979 A.M.C. 1008 (4th Cir. 1979)).

Willis v. McDonough Marine Service, 2015 U.S. Dist. LEXIS 79788, *11 (E.D. La. 2015).

> The weight of authority has concluded that the doctrine of '*Sieracki* seaman' has been abolished, not only for workers subject to the [LHWCA] but for other longshore and harbor workers as well.

1 Schoenbaum, Admiralty and Maritime Law (6th ed. 2018) §6:27, pg.573 (citations omitted). See also *Belcher v. Sundad, Inc.*, 2008 U.S. Dist. LEXIS 56607, *8-9 (D. Ore. 2008); *Grice v. A/S J. Ludwig Mowinckels*, 477 F..Supp. 365, 370-71 (S.D. Ala. 1979)("Since the legislature overruling [*Sieracki*] is recognized by the Supreme Court, the lower courts need no longer follow *Sieracki* in any circumstance"); *Quinn v. Central Gulf SS Corp.*, 1977 AMC 204, 211 (D. Md. 1977)("To do other than abandon *Sieracki* in light of the changed circumstances brought about by the 1972 amendments would amount to holding that the '*Sieracki* seaman' survives 'by sheer inertia rather than by reason of any intrinsic merit").

Though *Normile* would clearly control if this case had been filed in any federal district court in California, the First Appellate District in *Freeze v. Lost Island Partner* (2002) 96 Cal.App.45, chose to reject

Ninth Circuit law and "the weight of authority" on the subject and follow the view of the minority Fifth Circuit. The Plaintiff entreats this Court to do the same, since following the Fifth Circuit would serve his purposes. The conclusion of the *Normile* Court, and the other courts that have adopted the majority position, that Congress abolished "*Sieracki* unseaworthiness," is the far better reasoned view.

But even adopting the Fifth Circuit view that in 1972 Congress foreclosed "*Sieracki* unseaworthiness" claims only for workers covered under the LHWCA, the Plaintiff would still not be eligible to bring such a claim. In 1946, the *Sieracki* Court extended an unseaworthiness cause of action to workers covered under the LHWCA because it found that such workers performed work that had, in historical times, been performed by ship's crewpersons:

> It is that for injuries incurred while working on board the ship in navigable waters the stevedore is entitled to the seaman's traditional and statutory protections, … For these purposes he is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards.

Seas Shipping Co. v. Sieracki, 328 U.S. 85, 99 (1946)

Thus in 1984, Congress abolished a cause of action that had been given to maritime workers "doing a seaman's work and incurring a seaman's hazards." There is no reasonable basis upon which to contend

that workers excluded from LHWCA coverage by 33 U.S.C. §902(3)(B), because their work activities "lack a sufficient nexus to maritime navigation and commerce," can assert a claim that was created, but then eliminated, for workers "doing a seaman's work and incurring a seaman's hazards." The work of club employees is not considered maritime employment precisely because of its distance from a seaman's work and a seaman's hazards.

Without *Sieracki* unseaworthiness, which the Ninth Circuit and the majority of courts have concluded no longer exists and would not be available to a club employee in any case, the Plaintiff has no right to bring an unseaworthiness claim against ABYC.

C. The Plaintiff Seeks to Preserve the Non-Uniformity in the Application of Maritime Law Created by *Freeze*

The Court of Appeal applied a federal statute, 33 U.S.C.§902(3)(B), to reach its conclusion that California workers' compensation law is paramount with regard to the Plaintiff's rights and remedies against his employer. That federal statute applies uniformly to club employees in all fifty states. The Court of Appeal's ruling in no way contravenes "the uniform application of maritime law," as that phrase is intended by the federal courts. On the other hand, the Plaintiff's reliance on *Freeze v. Lost Island Partners, supra,* 96

Cal.App.45, *Green v. Vermillion Corp.*, *supra*, 144 F.3d 332, and "*Sieracki* unseaworthiness," directly involves the issue of "uniformity in the application of maritime law"; it seeks to maintain the pronounced lack of uniformity in that law created by *Freeze*.

As noted, had the Plaintiff filed this lawsuit in the United States District Court for the Central District of California in downtown Los Angeles, the federal court would be bound to apply *Normile v. Maritime Co. of the Philippines*, 643 F.2d 1380 (9th Cir. 1981), and the Plaintiff would not be able to state a cause of action for unseaworthiness against ABYC, regardless of whether Congress had ever passed 33 U.S.C.§902(3)(B). Instead, the Plaintiff filed his lawsuit in Los Angeles Superior Court, which has a courthouse approximately two blocks from the federal courthouse where *Normile* is the law. But in the Superior Court of California, pursuant to the *Freeze* case, the Plaintiff was free to plead a cause of action for unseaworthiness against his employer.

It is difficult to imagine a more non-uniform application of maritime law than a state court and a federal court in the same state and city (indeed, the same neighborhood) applying diametrically opposite rules with regard to the availability to a club employee of an unseaworthiness cause of action. The "uniform application of maritime

law" described by the United States Supreme Court and enforced by the lower federal courts is intended to eliminate precisely this kind of non-uniformity, not the kind of "uniformity" promoted in the POB and rejected by the Court of Appeal. This Court has long recognized that the phrase "uniform application of maritime law" contemplates the kind of uniformity that *Freeze* violates:

> A state court having the same jurisdiction over a case that a federal court would have if the suit had been brought there, must determine the rights of the parties under the maritime law as a 'system of law coextensive with, and operating uniformly in, the whole country.'

Intagliata v. Shipowners & Merchants Towboat Co. (1945) 26 Cal.2d 365, 371.

The *Freeze* Court allowed a club employee to sue her employer for unseaworthiness, thereby rejecting the majority rule in the United States and the rule that governs the federal courts throughout California and the Federal Ninth Circuit. As demonstrated by this case, a by-product of the *Freeze* Court's rejection of the "uniform application of maritime law" is forum shopping in Los Angeles and, likely, elsewhere in the State of California for the past 20 years. Any non-seaman in California, hoping to recover damages for unseaworthiness from a vessel owner/employer, will avoid federal court

and thereby avoid the majority rule and the law governing all federal courts in California.

But the POB insists that "uniformity" in maritime law demands reversal of Court of Appeal's decision. ABYC submits that the Plaintiff's position indeed concerns the issue of "uniformity" in the maritime law, but only in its attempt to maintain the non-uniformity created by *Freeze*.

V. THE PLAINTIFF'S CLAIM DOES NOT FALL WITHIN MARITIME JURISDICTION

The POB presents as a given that the accident alleged in the Plaintiff's Second Amended Complaint comes within maritime jurisdiction. Citing *Taghdomi v United States*, 401 F.3d 1080 (9th Cir. 2005)(POB at pg. 22), among other cases, the Plaintiff implies that maritime jurisdiction attaches to every accident involving a vessel on navigable waters. While the Court of Appeal made no ruling on that issue, ABYC is compelled to point out that the existence of maritime jurisdiction is not only far from given under the alleged facts, the Superior Court's ruling that such jurisdiction is absent was well-founded in the law.

The Plaintiff's Complaint, to which ABYC demurred twice before it was dismissed, revealed that the Plaintiff is a land-based repair and

maintenance worker whose accident had no "potentially disruptive impact on maritime commerce." The Superior Court therefore correctly concluded that the accident does not come within maritime jurisdiction under the test established by the United States Supreme Court. See *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

The Plaintiff's Second Amended Complaint alleges that he fell on the deck of ABYC's vessel that was sitting next to ABYC's dock, with the vessel attached to the land-based hoist that had just been used to lower it into the water. See *Ranger v. Alamitos Yacht Club*, *supra*, 95 Cal.App.4th at 242. As the Superior Court recognized, the allegations set out in the Second Amended Complaint did not present an accident that had a potentially disruptive impact on maritime commerce and, therefore, did not allege an incident within maritime jurisdiction.

The United States Supreme Court established the operative test for admiralty jurisdiction over torts *in Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, *supra*, 513 U.S. 527.

> A party seeking to invoke federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) over a tort claim must satisfy conditions both of location and of connection with maritime activity. A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on

> navigable water. The connection test raises two issues. A court, first, must "assess the general features of the type of incident involved," to determine whether the incident has "a potentially disruptive impact on maritime commerce." Second, a court must determine whether "the general character" of the "activity giving rise to the incident" shows a "substantial relationship to traditional maritime activity."

Id. at 534 (citations omitted).

These two prongs are known as (1) the location test and (2) the connection or nexus test. See *Sisson v. Ruby*, 497 U.S. 358, 362-65 (1990). See also *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 246 (2d Cir. 2014).

The Superior Court's decision was based upon the first part of the "connection test." The Superior Court dismissed the case because it "assess(ed) the general features of the type of incident involved" and determined that the incident did not have "a potentially disruptive impact on maritime commerce." *Grubart*, 513 U.S. at 534. In doing so, the Superior Court followed the *Grubart* Court's guidance that the type of incident before the Court should not be considered to be within federal admiralty jurisdiction if it posed no more than "a fanciful risk to commercial shipping." *Id.* at 539

There is virtually no way, other than imaging some "fanciful risk," that a slip-and-fall on a boat attached to a hoist on a dock at a club could have had a disruptive impact on maritime commerce.

In *Grubart*, a pile-driving barge in the Chicago River caused damage to an underwater pipeline. The Court concluded that the incident had the potential to disrupt maritime commerce, noting that "as it actually happened, damaging a structure so situated could lead to restrictions on the navigational use of the waterway during required repairs." 513 U.S. at 539. In concluding that the barge/pipeline incident had a potential to disrupt maritime commerce, the *Grubart* Court referred to its earlier decision in *Sisson v. Ruby*, 497 U.S. 358 (1990), which involved a recreational craft that caught on fire while docked in a marina. In *Sisson*, the Court had concluded that the general features of that incident posed a potential for disruption to maritime commerce.

> In *Sisson*, we described the features of the incident in general terms as "a fire on a vessel docked at a marina on navigable waters," … and determined that such an incident "plainly satisfied" the first maritime connection requirement, … because the fire could have "spread to nearby commercial vessels or made the marina inaccessible to such vessels" and therefore "certainly" had a "potentially disruptive impact on maritime commerce.

513 U.S. at 538.

The *Grubart* Court emphasized that whether an actual disruption of maritime commerce had occurred in *Sisson* was not its focus; a court should focus on the potential for such a disruption, posed by the general features of the incident:

> this first prong [of the connection test] went to potential effects, not to the "particular facts of the incident," noting that in both *Executive Jet* [Aviation, Inc. *v. City of Cleveland*, 409 U.S. 249 (1972)] and *Foremost* [*Insurance Co. v. Richardson*, 457 U.S. 668(1982)] we had focused not on the specific facts at hand but on whether the "general features" of the incident were "likely to disrupt commercial activity."

513 U.S. at 538.

After describing the general features of the *Sisson* incident as "a fire on a vessel docked at a marina on navigable waters," (513 U.S. at 538), the Court explained what it meant by the "general features" of an incident:

> The first *Sisson* test turns … on a description of the incident at an intermediate level of possible generality. To speak of the [*Sisson*] incident as "fire" would have been too general to differentiate cases; at the other extreme, to have described the fire as damaging nothing but pleasure boats and their tie-up facilities would have ignored, among other things, the capacity of pleasure boats to endanger commercial shipping that happened to be nearby. We rejected both extremes and instead asked whether the incident could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping.

513 U.S. at 538-39.

The *Grubart* Court then concluded its application of the first part of the connection test to the barge/pipeline incident, determining that:

> Following *Sisson*, the "general features" of the incident at issue here may be described as damage by a vessel in navigable water to an underwater structure. So characterized, there is little question that this is the kind of incident that has a 'potentially disruptive impact on maritime commerce.'

513 U.S. at 539.

Mirroring the United States Supreme Court's general description of the vessel fire in *Sisson*, the accident in this case was a slip-and-fall on a vessel attached to a club dock hoist in navigable waters. To describe it with any more generality would omit the primary features of the incident and would "be too general to differentiate it" (513 U.S. at 538) from other accidents that are fundamentally different in nature. Only under some "fanciful risk" scenario could a slip-and-fall on a vessel attached to a club dock hoist possibly be connected to a disruption of maritime commerce.

Contrary to the Plaintiff's suggestion that a vessel on navigable waters automatically creates maritime jurisdiction, in analyzing the existence of maritime jurisdiction, courts logically analyze the features

of an incident that are relevant to whether it could potentially disrupt maritime commerce. A few relevant examples are:

- A fist fight at a marina where passengers fell from a dock and into the water was characterized by the court as a "physical altercation among recreational visitors on and around a permanent dock surrounded by navigable water," which the court found did not have a potentially disruptive effect on maritime commerce because it (1) "does not create any obstruction to the free passage of commercial ships along navigable waterways," (2) could not "immediately damage nearby commercial vessels," (3) did not have the potential to distract crew from their duties, and (4) did not involve persons employed in maritime commerce. *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 249-50 (2d Cir. 2014).

- A person injured on a vessel anchored in shallow waters when hit by a thrown coffee cup characterized as "throwing a small inert object from land at an individual onboard an anchored vessel" did not invoke federal admiralty jurisdiction "because it does not have the potential of disrupting navigation, damaging nearby commercial vessels, or causing a commercial vessel to divert from its course."

Hargus v. Ferocious & Impetuous, LLC, 840 F.3d 133, 138 (3d Cir. 2016).

- A family injured by carbon monoxide poisoning on a houseboat anchored to shore had no potential to disrupt maritime commerce. *H2O Houseboat Vacations v. Hernandez*, 103 F.3d 914, 916-17 (9th Cir. 1996) (rejecting an argument that the houseboat could have disrupted maritime commerce if it had slipped its shore anchor, or that the poisoning could have occurred while the operator piloted the houseboat in a shipping lane).

- An injury occurring after securing a stern line to a docking cleat at a yacht club did not have the potential to disrupt maritime commerce because it would be pure speculation that the secured vessel could have been set adrift and enter a shipping lane as a result of the incident. *Endrody v. M/Y Anomaly*, 2006 U.S. Dist. LEXIS 106265, at *4 (W.D.Wa 2006).

- A person falls through an open hatch on a vessel docked at a private yacht club ("the injury was isolated to a single pleasure boat docked at a yacht club. No other boats were involved, nor could they have been affected by a single passenger on a docked vessel falling through an open hatch"), could not potentially disrupt maritime

commerce. *Boudwin v. Hastings Bay Marina, Inc.*, 2008 U.S. Dist. LEXIS 53078, at *9 (E.D. Ark. 2008), *aff'd*, 614 F.3d 780 (8th Cir. 2010).

This matter is similar to *Hargus*, *Hernandez*, *Endrody* and *Boudwin*. Each case involved injuries on anchored or docked vessels, where the courts all found the "connection" prong for admiralty jurisdiction lacking because there was no potential to disrupt maritime commerce.

The Plaintiff cannot reasonably explain how his alleged slip-and-fall on ABYC's vessel, while it was attached to ABYC's dock hoist, could have possibly inhibited the maritime commerce of any vessel. There is no support for the foundational assertion in the POB that maritime jurisdiction over his alleged accident is a given.[6]

VI. CONCLUSION

Congress has determined that the work of club employees like the Plaintiff "lack[s] a sufficient nexus to maritime navigation and commerce" to constitute maritime employment and, therefore, club

[6] The Plaintiff has also erroneously suggested that any case involving a vessel owner's duty to provide a "safe means of access" to the owner's vessel automatically comes within maritime jurisdiction (POB at pgs. 26-28). Maritime jurisdiction is governed by the test outlined in *Grubart*. Cases involving safe access to vessels may or may not come within maritime jurisdiction, depending upon application of that test to their facts. The Superior Court did just that and found that the claim did not fall within maritime jurisdiction.

employees are "more aptly covered under [applicable] state compensation laws." California's applicable compensation laws provide that the receipt of California workers' compensation is the Plaintiff's exclusive remedy against ABYC.

The Court of Appeal did not engage in a choice of law analysis in reaching its decision and the issue presented requires no such analysis. The Plaintiff's exclusive remedy under the California Labor Code applies in this case because Congress made that law paramount for club employees like the Plaintiff when it passed 33 U.S.C.§902(3)(B).

Respectfully submitted,

DATED: April 1, 2024

COX, WOOTTON, LERNER,
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By:_____
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YACHT CLUB

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.520(c)(1))

In compliance with the provisions of California Rules of Court, rule 8.520(c)(1), I hereby certify in my capacity as counsel on behalf of Defendant and Respondent, Alamitos Bay Yacht Club, that this Respondent's Answering Brief on the merits has been produced on a computer with the Microsoft Word program. According to the word count of said Microsoft Word program, there are 11,411 words in this document, not counting the items excluded under California Rules of Court, rule 8.520(c)(3).

Dated: April 1, 2024

Neil S. Lerner

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 12011 San Vicente Boulevard, Suite 600, Los Angeles, California, 90049.

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☒ (STATE) I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Executed on **April 1, 2024,** at Los Angeles, California.

/s/Robin Sanders

Robin Sanders

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Brian Ranger v. Alamitos Bay Yacht Club

Supreme Court of State of California Case No.: S282264

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Date

/s/Robin Sanders

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