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 OPPOSITION TO THE BRIEF OF THE AMICI CURIAE CALIFORNIA RULE OF COURT 8.520

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Defendant and Respondent Alamitos Bay Yacht Club ("ABYC") submits this Opposition to the Amicus Brief of Susan J. Garner, Susan M. Geerlings and Melissa G. Tatman ("the Amici Curiae") in Support of Appellant, pursuant to California Rule of Court 8.520.

I. SUMMARY OF THIS OPPOSITION

The Amicus Brief, arguing that the unique factual allegations regarding the Appellant's on-the-job accident, set out in the Appellant's Second Amended Complaint, fall within maritime jurisdiction, adds nothing to the issue under review. The Court of Appeal determined that analysis of whether those facts fell within maritime jurisdiction was unnecessary, because:

> (t)o 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. § 902 (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).

The Court of Appeal did not decide whether the facts alleged in the Appellant's Second Amended Complaint fell within maritime

jurisdiction, nor did the Court of Appeal reject the reverse-*Erie* Doctrine or the supremacy of maritime law over state law. It held that, by virtue of federal congressional dictate, California law provides the sole remedy in connection with on-the-job injuries sustained by workers in the narrow employment categories listed in 33 U.S.C. § 902(3)(B).[1] Either that federal statute limits the remedies available to "club" employees like the Appellant against their employers to the receipt of available state workers' compensation, or it does not. Maritime jurisdiction over the factual allegations set out in the Appellant's Second Amended Complaint is a separate issue, not addressed in the Court of Appeal decision under review.

The Appellant petitioned for review on the basis that: "(t)he (Opinion below) creates a split between (the) First and Second Appellate District in answering the issues presented." Appellant's Petition for Review at Page 8 (citing *Freeze v. Lost Isle Partners* (2002) 96 Cal.App.4th 45 ("*Freeze*")). This split, upon which review was granted, has nothing to do with whether there was or is maritime jurisdiction over the facts alleged in the Appellant's Second Amended Complaint, or the highly dissimilar facts involved in *Freeze*. In *Freeze*

[1] 33 U.S.C. §902 is part of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901, *et seq*. ("LHWCA")

the First Appellate District decided that a "camp" employee who, like the Appellant, was excluded from coverage under the LHWCA by virtue of 33 U.S.C. § 902(3)(B), could bring general maritime law tort claims for negligence and unseaworthiness against her employer in connection with an on-the-job injury. In this case, the Court of Appeal held that 33 U.S.C. § 902(3)(B) forecloses such employees from bringing general maritime law tort claims against their employers, regardless of whether the facts do or do not fall within maritime jurisdiction. That is why the Appellant, in his Opening Brief (at page 15), posed the "Issue Presented" as:

> May a maritime worker who is excluded from coverage under the federal Longshore and Harbor Workers' Compensation Act ("LHWCA") (33 U.S.C. §§ 901-950) by operation of LHWCA § 2(3)(B), 33 U.S.C. § 902(3)(B), bring an action to recover for a workplace injury under the general maritime law, or does California's workers' compensation scheme provide the worker's exclusive remedy?

The Amici Curiae, however, entreat the Court to engage in an analysis that has nothing to do with that conflict between this case and *Freeze*. The Amici Curiae would have the Court look past the Appellant's "Issue Presented" and analyze whether the facts alleged in

the Appellant's Second Amended Complaint[2] fall within maritime jurisdiction, employing the test outlined by the United States Supreme Court. See *Sisson v. Ruby*, 497 U.S. 358 (1990); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995). If the issue decided by the Court of Appeal in this case had been that, under the United States Supreme Court test, the unique facts alleged in the Appellant's Second Amended Complaint did, or did not, fall within maritime jurisdiction, there would be no conflict for this Court to resolve between this case and *Freeze*.

For that reason, the Appellant, in both his Opening Brief and Reply Brief, concluded by asking this Court to reverse and remand to the Court of Appeal for further proceedings, in keeping with his "Issue Presented" and this Court's practice. See *Snukel v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 772-73.

There is no conflict among the California Courts of Appeal regarding how maritime jurisdiction is determined, which is necessarily decided on a factual case-by-case basis. But that is the

[2] The Appellant's Second Amended Complaint is not, to ABYC's knowledge, in the record submitted to the Supreme Court in connection with this review.

issue that the Amici Curiae urge this Court to focus upon. The Brief of the Amici Curiae barely touches upon the issue under review.[3]

II. ARGUMENT

A. The Amicus Brief Largely Ignores the Issue Under Review

The Amicus Brief, like the Briefs of the Appellant, gives short shrift to the basis for the decision by the Court of Appeal; the stated intent of Congress in adopting 33 U.S.C. § 902(3)(B), under which 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.

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[3] It does not appear that the decedents involved in the tragic incident described in the Amicus Brief, which is apparently the subject of pending claims by the Amici Curiae, were engaged in employment excluded from LHWCA coverage by virtue of 33 U.S.C. § 902(3)(B). There is no suggestion in the Amicus Brief that the decedents were "club" employees like the Appellant, or "camp" employees like the Plaintiff in *Freeze*, or that they were engaged in any of the other employment categories excluded from LHWCA coverage under 33 U.S.C. §902(3)(B). Whether the crash of an aircraft on navigable waters, carrying workers whose employment is not listed in 33 U.S.C.§ 902(3)(B), gives rise to maritime tort claims against the decedents' employer has little to do with this case, much less the issue under review.

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, and "camp" employees like the plaintiff in *Freeze*, were identified by Congress as employment categories that lacked a sufficient nexus to maritime navigation and commerce to constitute maritime employment, and for that reason, concluded that such workers' remedy against their employers for on-the-job injuries would be the receipt of state workers' compensation.[4]

Both the Amici Curiae and the Appellant avoid Congress' unequivocal finding that on-the-job injury claims involving workers engaged in the categories included in § 902(3)(B) "are more aptly covered under appropriate state compensation laws." Under

[4] The Amicus Brief, at page 45, points out that "a master or member of a crew of any vessel," who are clearly maritime employees, are also excluded from the definition of "employee" under 33 U.S.C. § 902, arguing that this means that the employment categories listed in Section 902(3)(B) (including "club" and "camp" employees) can also be considered maritime employees, involved in maritime navigation and commerce. This argument completely ignores: (1) the fact that masters and members of the crews of vessels are excluded from LHWCA coverage under subsection (3)(G), not subsection (3)(B), and have their own Congressionally created remedial statute providing for a tort remedy against their employers – part of the Jones Act, 46 U.S.C.§ 30104; (2) Congress' specific finding, quoted above, that the narrow employment categories included in § 902(3)(B) "lack a sufficient nexus to maritime navigation and commerce."

California's "state compensation law," the receipt of workers' compensation is the employee's exclusive remedy against his or her employer in connection with an on-the-job injury. California Labor Code Section 3602(a). That is precisely why the Court of Appeal did not undertake an analysis of whether the Appellant's accident fell within maritime jurisdiction. The Court of Appeal concluded that Congress obviated the need for such an analysis with regard to the narrow categories of workers listed in Section 902(3)(B), determining that their employment injury claims should be resolved under applicable state workers' compensation laws.

Further, as ABYC noted in its Opposition to the Appellant's Opening Brief, the argument of the Amici Curiae, that the Appellant can assert general maritime law tort claims against his employer, is difficult to reconcile with Congress' determination that a "club" worker's activities "lack a sufficient nexus to maritime navigation and commerce." Sen.Rep. No. 98-81, 1st Sess., pg. 25. See *Ranger v. Alamitos Bay Yacht Club*, *supra*, 95 Cal.App.5th at 243-44.[5]

[5] The Amicus Brief, also at page 45, notes that the "proviso at the end of (§ 902(3))" provides that LHWCA coverage is available to "club" employees for whom state workers' compensation is not available, again arguing that this indicates Congress' recognition that the workers whose employment is listed in § 902(3)(B) could be considered maritime employees. To the contrary, Congress specifically found that

The Court of Appeal determined that, regarding workers whose employment is listed in 33 U.S.C. § 902(3)(B), "Federal law 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 and did so with regard to "club" workers like the Appellant. See *Detroit Trust Co. v. The Thomas Barlum*, 293 U.S. 21, 43-44 (1934); Respondent's Answering Brief on the Merits, pages 23-31.

The Court of Appeal applied a federal statute pursuant to Congress' stated intent. Maritime jurisdiction over the Appellant's alleged accident, or lack of such jurisdiction, is not the issue under review. The Court of Appeal held that "California workers' compensation law is [the Plaintiff's] exclusive remedy [because]

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such workers "lack a sufficient nexus to maritime navigation and commerce," but obviously also had to include the proviso at the end of Section 902(3) as a safety net. Without that proviso/safety net, §902(3)(B) could have the effect of completely blocking a worker from any remedy against his or her employer, in a state that had no workers' compensation system. However, ABYC has been unable to identify any state in the United States that has not adopted a no-fault workers' compensation system. Further, based upon ABYC's review, it appears that all states except Texas make it mandatory for employers to carry no-fault workers' compensation insurance.

Congress in 1984 decreed this state law aptly covers his situation." *Ranger v. Alamitos Bay Yacht Club*, *supra*, 95 Cal.App.5th at 250.

B. <u>The Amicus Brief's Jurisdictional Analysis is Unsound</u>

While the issue primarily discussed in the Amicus Brief, maritime jurisdiction, is not the issue presented for review, ABYC cannot allow the contentions of the Amici Curiae to go unanswered. For that reason, ABYC will, for the sake of argument, set the holding of the Court of Appeal aside and briefly address maritime jurisdiction.

The Amicus Brief sets out two main arguments in support of the contention that the accident as alleged in the Appellant's Complaint falls within maritime jurisdiction: (1) the mere fact that the Plaintiff claims to have injured himself on the deck of a vessel on navigable waters alone confers maritime jurisdiction pursuant to the Admiralty Extension Act (46 U.S.C. § 30101) and; (2) the accident as alleged in the Appellant's Second Amended Complaint falls within maritime jurisdiction applying the jurisdictional test developed by the United States Supreme Court. ABYC will address these arguments in order.

1. The Admiralty Extension Act Does Not Confer Maritime Jurisdiction Over This Accident

Relying solely on the federal Seventh Circuit Court of Appeals' decision in *Tagliere v. Harrah's Illinois Corp*., 445 F.3d 1012 (7th Cir. 2006), the Amicus Brief pronounces that any accident caused by a vessel on navigable waters falls within maritime jurisdiction by virtue of the Admiralty Extension Act and no further analysis is necessary. As the *Tagliere* Court itself recognized, however, the other federal Circuit Courts of Appeal that had (and have) ruled on that question have reached the opposite conclusion: the Admiralty Extension Act does not provide an independent basis for maritime jurisdiction over an accident. *Tagliere*, 445 F.3d at 1014, citing *Sohyde Drilling & Marine Co. v. Coastal States Gas Producing Co*., 644 F.2d 1132, 1135-36 (5th Cir. 1981); *Crotwell v. Hockman-Lewis, Ltd*., 734 F.2d 767, 768 (11th Cir. 1984. As the *Tagliere* Court conceded:

> (the other federal courts) have done this on the basis of legislative history. That history indicates that the (Admiralty Extension) Act's purpose was merely to make clear that accidents caused by boats on navigable waters are within the admiralty jurisdiction even if the damage caused by the accident was to something on the land. H.R. Rep. No. 1523, 80th Cong., 2d Sess. (1948); S. Rep. No. 1593, 80th Cong., 2d Sess. (1948).

In cases decided in 1990 and 1995, the United States Supreme Court formulated a two-part test for determining whether an accident

falls within maritime jurisdiction (known as the "location" and "connection" or "nexus" tests). See *Sisson v. Ruby*, 497 U.S. 358 (1990); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995). Both the *Sisson* and *Grubart* cases involved accidents caused by vessels on navigable waters. The Admiralty Extension Act was passed in 1948, 42 years before the first of those two Supreme Court decisions. Therefore, the *Tagliere* Court's holding begs the question; if the mere involvement of a vessel on navigable waters by itself (the "location" of the incident) has, since 1948, automatically conferred maritime jurisdiction over accidents by virtue of the Admiralty Extension Act, why did the United States Supreme Court subsequently create and refine a two-part test to determine whether an accident involving a vessel on navigable waters falls within maritime jurisdiction?

Indeed, there are literally dozens, if not hundreds, of cases involving accidents caused by vessels on navigable waters in which the Supreme Court's 1995 *Grubart* test has been applied. But under *Tagliere*, the *Grubart* test is unnecessary in any accident caused by a vessel on navigable waters, rendering volumes of jurisprudence irrelevant and unnecessary – including the *Sisson* and *Grubart*

decisions themselves, since both of those cases involved accidents caused by vessels on navigable waters.

It is no mystery, therefore, why no other federal appellate court has followed *Tagliere*. In fact, recognizing the incompatibility between the United States Supreme Court's holdings and *Tagliere's* automatic-maritime-jurisdiction-based-on-location-alone rule, at least one District Court within the Seventh Circuit itself has tacitly ignored *Tagliere* and applied *Grubart*:

> The Seventh Circuit has held that the 'location' test remains the only jurisdictional test when the tort in question occurs on a boat. See *Tagliere v. Harrah's Ill. Corp*., 445 F.3d 1012, 1014-15 (7th Cir. 2006) …Even if the Seventh Circuit had not effectively eliminated the 'connection' test under certain circumstances, the facts of this case would still satisfy *Grubart's* 'connection' test, and thus confer admiralty jurisdiction in this matter.

In re RQM, LLC, 2011 U.S. Dist. LEXIS 81552, *10-12 (N.D. Ill. 2011).

The Admiralty Extension Act does not confer maritime jurisdiction upon the facts alleged in the Appellant's Second Amended Complaint, or upon any other accident.

2. <u>The Claim Does Not Fall Within Maritime Jurisdiction</u>

In Respondent's Answering Brief on the Merits, ABYC included a discussion of maritime jurisdiction over the Appellant's claim for the sole reason that the Appellant had implied, in his Opening Brief on the

Merits, that maritime jurisdiction was a given under the facts alleged in his Second Amended Complaint. See Respondent's Answering Brief on the Merits, pages 56-64. That discussion included an analysis of the facts alleged by the Appellant under the Supreme Court's test for maritime jurisdiction.

ABYC will not repeat that analysis here because, as discussed above, the Court of Appeal made no ruling on that issue and the Appellant did not seek review of whether his accident did or did not fall within maritime jurisdiction. Nevertheless, as discussed in ABYC's Answering Brief on the Merits, the Appellant (and the Amici Curiae) cannot reasonably explain how the Appellant's alleged slip-and-fall on ABYC's vessel, while it was attached to ABYC's dock hoist, at a private yacht club, could have possibly inhibited the maritime commerce of any vessel, which is required under the "connection" or "nexus" prong of the Supreme Court's maritime jurisdiction test. See *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

III. CONCLUSION

The Appellant's Petition for Review was based upon the conflict between this case and *Freeze v. Lost Isle Partners* (2002) 96 Cal.App.4th 45; both the Appellant and the Plaintiff in *Freeze* were employed in jobs excluded from LHWCA coverage under 33 U.S.C. § 902(3)(B) and,

unlike the Appellant here, the First Appellate District permitted the *Freeze* plaintiff to pursue general maritime law tort claims against her employer.

If the issue presented to this Court had, instead, been whether there is maritime jurisdiction over the unique facts set out in the Appellant's Second Amended Complaint, there would be no conflict to resolve between this case and *Freeze*, and nothing to set this case apart from any other case in which maritime jurisdiction does or does not attach by virtue of its case-specific facts.

ABYC respectfully submits that the Amicus Brief provides little, if any, value in answering the issue presented.

DATED: June 11, 2024

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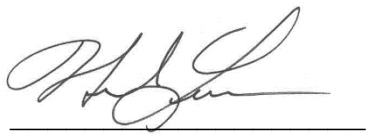

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