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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIAN RANGER,
Plaintiff and Appellant,

vs.

ALAMITOS BAY YACHT CLUB
Defendant and Respondent

After A Decision By The Court of Appeal,
Second Appellate District, Division Eight, Case No. B315302

Appeal From The Superior Court Of The State of California For The County Of Los Angeles
The Honorable Mark C. Kim, Judge Presiding
Case No. 19STCV22806

PETITION FOR REVIEW

Jarod Krissman, Esq. – CA SBN 266557
Kathie Sierra, Esq. – CA SBN 320042
KRISSMAN & SILVER LLP
444 West Ocean Boulevard, Suite 940
Long Beach, CA 90802-4632
Tel. (562) 548-7515 / Fax. (562) 912-2657
E-mail: jak@krissmansilver.com
E-mail: ksierra@krissmansilver.com

Attorneys for Plaintiff and Appellant,
BRIAN RANGER

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ISSUES PRESENTED

1. Did the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 901 et seq.) (hereinafter, the "Longshore Act" or the "Act") abrogate the federal common law rights of maritime workers, such as Plaintiff and Appellant Brian Ranger (hereinafter, "Ranger"), who are not covered under the statute, to bring federal actions for negligence and

unseaworthiness under the General Maritime Law for a workplace injury.

2. Does the exclusive remedy provision of California's Workers' Compensation statute operate to deprive a party of a cause of action afforded by federal maritime law. (See Article VI, Paragraph 2 of the U.S. Constitution; Labor Code §§ 3351, 3600, subd. (a).)

INTRODUCTION: WHY REVIEW SHOULD BE GRANTED

Ranger respectfully petitions the Court for review of the Court of Appeal Opinion filed on September 6, 2023 (the "Opinion"), certified for publication, which affirms the Los Angeles Superior Court's grant of demurrer in favor of Defendant and Respondent, Alamitos Bay Yacht Club (hereinafter, "ABYC").

This Court should grant review because:

(1) The Opinion's holding creates a split between First and Second Appellate District in answering the issues presented. In *Freeze v. Lost Isle Partners* (2002) 96 Cal.App.4th 45 (*Freeze*), the First Appellate District upheld the right of injured maritime workers excluded from the Longshore Act's coverage to sue a vessel owner/operator employer in tort for damages notwithstanding receipt of state workers compensation benefits. *Freeze,* a decision this Court declined to review, specifically held that the exclusive remedy provisions of California's Workers' Compensation Act did not bar general maritime claims brought by workers such as Mary Freeze (and Ranger) who were explicitly excluded from the Longshore Act's coverage, but who were

otherwise embraced by Admiralty jurisdiction while injured at work. (*Ibid.*)

Conversely, the Court of Appeal, Second Appellate District, Division Eight now parts with *Freeze* by holding that the Longshore Act abrogated the federal common law rights of waterfront workers who are excluded from the statute's coverage to bring actions in tort against an employer vessel owner/operator that pays state compensation benefits for a work-related injury. (Opn., 2-3.)

Ranger respectfully submits that the Court of Appeal erred in its interpretation of the Longshore Act. The Act's plain language only modified the federal common law rights of an "employee," a term defined by the statute, that fell within its coverage. (33 U.S.C. §§ 902(3)(B), and 905(b).) The Court of Appeal did not rely on the Act's plain language, and in fact offered no analysis of Section 905(b) which modifies the common law rights of covered "employees." Instead, its Opinion advances an erroneous interpretation of Congressional intent that is not supported by the Congressional Reports that it references. In fact, neither Ranger nor ABYC ever argued, either before the Superior Court or the Second Appellate District, that the Longshore Act somehow governed the rights and liabilities of the parties.

Ranger did not bring a Longshore Act claim, and his causes of action against ABYC are not predicated on, or otherwise affected by, the Longshore Act. Ranger brought actions against ABYC for negligence and unseaworthiness, which actions involve

rights and liabilities determined by General Maritime Law under Admiralty's modern jurisdiction test set forth by the Supreme Court in a series of decisions starting with *Executive Jet Aviation, Inc. v. Cleveland* (1972) 409 U.S. 249 (*Executive Jet*), which the Court most recently refined in the case of *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.* (1995) 513 U.S. 527 (*Grubart*) [1].

(2) The Appellate District split created by the Opinion will undoubtedly foster jurisdictional uncertainty and proliferate unnecessary litigation, two outcomes that Congress sought to prevent when Congress amended the Longshore Act of 1972 in 1984 (the "1984 Amendment").

The 1984 Amendment withdraw coverage *under the statute* from specific groups of waterfront workers, including employees of a club, camp, recreational operation, restaurant, museum, or retail outlet, if such workers were otherwise covered by a state compensation statute. (33 U.S.C. § 902(3)(B).) The 1984 Amendment's purpose was to clarify for waterfront employers and employees, who was covered under the Longshore Act. (Sen. Com. on Labor and Human Resources, Rep. on Bill S. 38 (Rep. No. 98-81), 1st Sess. (1983) ("Sen. Rep. 98-81"), pp. 20, 25, 29.) Businesses would know if they needed to purchase Longshore Act coverage, and injured workers would know if they had a federal

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[1] *Grubart's* two-part jurisdictional test (i.e., locality and connection) was a subject of ABYC's demurrers, the basis of the Superior Court's grant of demurrer, and the subject which predominated Ranger's briefing for the Second Appellate District.

claim arising from the Longshore Act.

The Longshore Act did *not*, as the *Second Appellate District* erroneously held, explicitly or implicitly withdraw from workers excluded from the Act's coverage, *other* federal rights and protections rooted in the common law that pre-existed the 1984 Amendment. This error is seen in the Opinion which states:

> "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. § 902, subds. 3, 3(B).) Ranger concedes the yacht club is a "club." Federal law thus makes California state workers' compensation law paramount, which means Ranger's exclusive remedy is workers' compensation. (Labor Code, § 3602, subd. (a) [workers' compensation is exclusive].) (Opn., 2-3.)

In sharp contrast, the *Freeze* Court, which heavily relied on Fifth Circuit cases that closely examined the Longshore Act, reached the opposite conclusion, which is stated in part below:

> "While the LHWCA expressly 'provides scheduled compensation (and the exclusive remedy) for injury to a broad range of landbased maritime workers,' it 'explicitly excludes from its coverage' certain workers, including Freeze. (*Chandris, Inc. v. Latsis*, supra, 515 U.S. at p. 355, 115 S.Ct. 2172; 33 U.S.C. § 902(3)(B) [excluding 'individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet,' if individuals are subject to coverage under a state worker's compensation law].) Thus, workers 'who are not entitled to LHWCA benefits may still pursue their general maritime claims against the vessel owner.' " (*Freeze, supra*, 96 Cal.App.4th at pp. 51-52.)

By declining to follow *Freeze*, the Second Appellate

District's decision had the immediate effect of depriving Ranger of long venerated federal rights to seek redress against a vessel owner/operator employer for serious personal injuries through general maritime law actions for negligence and unseaworthiness.

Just as important, the Opinion materially prejudices and undermines federal uniformity of the general maritime law. (*Green v. Vermilion Corp.* (5th Cir. 1998) 144 F.3d 332, 340-342 (*Green*), cert. denied, 526 U.S. 1017.) At an individual level, "while states may sometimes supplement federal maritime policies, a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretive decisions of this [U.S. Supreme] Court." (*Pope & Talbot v. Hawn* (1953) 346 U.S. 406, 409-410 (*Pope*).) More broadly, "[t]he federal interest in protecting maritime commerce can only be protected if *all* operators of vessels on navigable waters are subject to uniform rules of conduct." (*Foremost Ins. Co. v. Richardson* (1982) 457 U.S. 668, 674-675 (*Foremost*).) Permitting a state to redress a maritime tort through no-fault compensation payments impermissibly removes federal oversight over those uniform rules of conduct and the protection of federal rights.

Now over two decades since the *Freeze* decision, the Opinion creates an appellate circuit split that injects the kind of jurisdictional uncertainty and confusion into the administration and adjudication of federal maritime rights which the 1984 Amendment sought to resolve.

COMBINED PROCEDURAL AND FACTUAL STATEMENT OF THE CASE

Ranger brought this action against ABYC, his employer and vessel owner, for personal injuries arising out of an incident that occurred on ABYC's vessel in navigable waters on August 24, 2018. (I Clerk's Transcript ("CT") 237-239.) Ranger alleges causes of action in Admiralty for negligence and unseaworthiness under the General Maritime Law, a source of federal common law. (I CT 234-239.)

Ranger appealed the Superior Court's Judgment entered in favor of ABYC on July 22, 2021 (II CT 362-364), after it sustained a demurrer without leave to amend on July 16, 2021 (II CT 349-357). The Superior Court erroneously sustained ABYC's demurrer for lack of admiralty jurisdiction, ruling that Ranger's incident and the torts alleged in his Second Amended Complaint (the "SAC"), lacked "a connection with maritime activity," a required jurisdictional element under United States Supreme Court precedent. (II CT 356.)

Ranger's central contentions are: (1) the SAC alleges a maritime tort embraced by federal admiralty jurisdiction; (2) the rights and duties of the parties are therefore governed by the general maritime law; (3) General Maritime Law gives Ranger the right to sue ABYC for negligence and unseaworthiness; (4) these federal rights cannot be displaced by the exclusive remedy provision of California's Workers' Compensation Act; (5) workers like Ranger, injured by a maritime tort, can seek redress under

both federal and state rights since the federal government and the State of California have concurrent jurisdiction over such injuries; (6) Ranger's receipt of state compensation benefits does not constitute an election of remedies; and (7) ABYC is protected against double payment by taking a credit against any civil judgment under federal law for state compensation benefits paid to Ranger. (II CR 315-316.)

ABYC contends that Ranger's incident, and the torts alleged in the SAC, lack "a connection with maritime activity," as required for admiralty jurisdiction under United States Supreme Court precedent. (I CR 255-259, 270.) ABYC further contends that Ranger is subject to the exclusive remedy of California's Workers' Compensation Act, and unseaworthiness claims require a person to be exposed to the "perils of the sea." (I CR 259-266, 270.)

The Second Appellate District's Opinion was filed and certified for publication on September 6, 2023, and affirmed the Los Angeles Superior Court's grant of demurrer in favor of ABYC. It held that the Longshore Act relegated Ranger, who was a worker excluded from the statute's coverage, to state workers' compensation benefits as a matter of federal law.

On September 21, 2023, Ranger petitioned the Second Appellate District for rehearing because the Opinion affirmed the Superior Court's grant of demurrer on a basis that was never advanced by ABYC and that was never considered by the Superior Court in its ruling. As Ranger never claimed Longshore Act benefits, he requested the Appellate Court to reconsider its

holding that the Longshore Act determined the rights and liabilities of the parties.

On September 26, 2023, the Second Appellate District denied Ranger's Petition for Rehearing.

LEGAL DISCUSSION

I. THE PARTIES AGREE THAT GENERAL MARITIME LAW, NOT THE LONGSHORE ACT, GOVERNS RANGER'S RIGHTS.

The Opinion below explicitly declined to evaluate admiralty jurisdiction pursuant to *Grubart*. Its holding, that the Longshore Act abrogated Ranger's common law rights, is premised upon an erroneous interpretation of the 1984 Amendment, and unsurprisingly, the Opinion fails to cite any other case that also held that the Longshore Act abrogated the rights of maritime workers not subject to its coverage.

That dearth of authority explains why the parties' legal briefing in this case, both at the trial and appellate levels, were guided by *Grubart*. That foundational agreement is stated in Section 4(d) of the Superior Court's tentative ruling, which the Court adopted in granting demurrer to Ranger's SAC:

> "The parties agree that the threshold issue is whether federal admiralty jurisdiction is implicated under the facts of the case. If it is not, then Plaintiff's claim is governed entirely by the workers' compensation system, and does not survive in state court. The parties also agree that there is a two-step test to determine whether or not federal admiralty jurisdiction is implicated. First, the party invoking jurisdiction must satisfy a locality test. Second, the party

> invoking jurisdiction must describe a tort that bears a nexus to traditional maritime activity. Jerome B. Grubart, Inc., supra." (II CT 350-357.)

On appeal, Ranger argued the Superior Court misapplied the connection test [2], which requires a Court, in part, to determine whether the general features of an incident causing harm, if described at an intermediate level of possible generality, is the type or class of incident that could pose more than a fanciful risk to commercial shipping. (*Grubart, supra,* 513 U.S. at p. 539.)

II. THE LONGSHORE ACT ONLY MODIFIED THE COMMON LAW RIGHTS FOR MARITIME WORKERS THAT WERE COVERED UNDER THE STATUTE.

In finding that a California restaurant worker could sue her vessel-owning employer in admiralty, the *Freeze* Court relied heavily on Fifth Circuit decisions, which circuit has most closely examined the relationship between the Longshore Acts and the general maritime rights of workers excluded from coverage. *Aparicio v. Swan Lake* (1981) 643 F.2d 1109 (*Aparicio*) [3], one such case, looked at whether the Longshore Act of 1972 withdrew the common law *Sieracki* (unseaworthiness) remedy from a public

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[2] The "connection test" requires a party to show that an alleged tort has a nexus to traditional maritime activity.

[3] *Aparicio* was decided before the 1984 Amendment. However, the case deals with a public employee excluded from the Longshore Act of 1972, and was analytically foundational to post-1984 opinions including *Green*.

employee excluded from the statute's coverage. (*Aparicio v. Swan Lake* (1981) 643 F.2d 1109, 1110; see also *Seas Shipping Co. v. Sieracki* (1946) 328 U.S. 85 (*Sieracki*).) In holding that the public maritime worker retained a common law unseaworthiness cause of action against employing vessel owners, the court explained:

> "Both the express language of Section 905(b) and the legislative history of the 1972 amendments support the proposition that the congressional action was aimed at longshoremen and harbor workers covered by the LHWCA. The statute itself must be our polestar, for it is black letter law that we do not search for latent intention if a legislative act is clear. Literally read, Section 905(b), which Congress enacted to abolish the Sieracki remedy, does not apply to maritime workers who are not within the coverage of the LHWCA. The statute manifests no intention to expand the abolition of the Sieracki-Ryan construct beyond the coverage of the LHWCA. We refuse to read into it the abolition of judicially-built remedies as they apply to maritime workers not covered by the LHWCA, including not only FECA covered employees but those amphibious workers who may be covered only by a state compensation law or who may have no compensation law coverage at all. Had Congress intended to affect the substantive rights of persons not covered by the LHWCA, it could readily have manifested that intention."

(*Aparicio, supra*, 643 F.2d at p. 116.)

While the 1984 Amendment added Ranger to the list of employees excluded from the Act's coverage, its plain language only abrogates and/or modifies the general maritime rights of *covered* employees. (See 33 U.S.C. Section 905 (a) and (b).) As the court in *Aparicio* noted, the Longshore Act was, like most legislation, a compromise. Covered workers relinquished

common law rights in favor of more generous no-fault compensation. (*Aparicio, supra*, 643 F.2d at p. 117.)

The legislative compromise cited by *Aparicio* is plainly seen in the1984 Amendment's Senate Report:

> "Witnesses on behalf of shipyards testified that since 1972 experience under section 5(b) has not been satisfactory. They expressed the view that the [Longshore Act] should adhere more closely to the principle that employers should be responsible for workers' compensation exclusive of any other recovery against the employer, such as that available under the theory of negligence under section 5(b). The committee, after examining the matter closely, believes that the shipbuilders have made a valid point. The 1972 amendments have provided generous compensation benefits to covered employees, and to allow in addition liability predicated on negligence is burdensome on the shipyard employer." (Sen. Rep. 98-81, *supra*, at p. 31.)

In its Opinion, the Second Appellate District used the same Senate Report to try to read into the Longshore Act a latent legislative intent to withdraw Ranger's common law rights. The Opinion cites Senate Committee language which described clubs, camps and restaurants as "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*." (Sen. Rep. 98-81, *supra*, at p. 25, italics added.) (Opn., 6.) However, the Senate Committee's language had nothing to do with the "Nexus Test" announced by *Grubart*, for an individual to invoke Admiralty jurisdiction. Read in context, the Senate Committee was merely making a policy judgment that the nature of those professions, *in general,* did not

warrant saddling employers with the extra cost of Longshore Act insurance coverage [4]. This is clarified later in the Senate Report, which explicitly stated that "certain establishments, and their employees, such as clubs, camps, restaurants, museums, retail outlets and marinas are exempt from *coverage* regardless of their location….The committee believes that these employers lack the necessary nexus to maritime employment and commerce and therefore are properly *excepted from the jurisdiction of the act*." (Sen. Rep. 98-81, *supra*, at p. 29, emphasis added.)

III. THE SECOND APPELLATE DISTRICT IMPROPERLY SUBORDINATES RANGER'S FEDERAL RIGHTS TO CALIFORNIA'S WORKERS' COMPENSATION ACT AND PREJUDICES THE UNIFORMITY OF MARITIME LAW.

The Opinion below departs from California precedent announced in *Freeze*, and impermissibly subordinates Ranger's federal rights to California's Labor Code. California law under *Freeze* rests on sound precedent, including the Fifth Circuit decision of *Green*. *Green* was decided after *Brockington v.*

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[4] The paragraph of the Senate Committee Report from which the Opinion quotes, starts with, "The committee, after examining the problem and proposed solutions…." The "problem" the Longshore Act addressed is discussed two paragraphs earlier, which states, "Uncertainty of coverage fosters continued litigation, with attendant expense and delay that is a burden to employers, their insurance companies and claimants. Further, it was repeatedly voiced at the hearings that employers were often unsure whether to obtain LHWCA insurance coverage." (Sen. Rep. 98-81, supra, at p. 25.)

Certified Elec., Inc. (11th Cir. 1990) 903 F.2d 1523 (*Brockington*), the 11th Circuit case relied on by the Opinion below, and squarely confronts its contrary holding. (*Green*, *supra*, at pp. 336-337.)

Like *Freeze,* the court in *Green* upheld the right of a worker excluded from Longshore Act coverage, to sue a vessel owner employer in admiralty for unseaworthiness and negligence notwithstanding the worker's qualification for state compensation benefits. (*Green*, *supra*, at p. 334.) *Green* reasoned that federal law did not permit a state to deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court, or prejudice the uniformity of the general maritime law. (*Id.* at pp. 337, 340.)

In the Opinion, the Second Appellate District's decision to employ a choice of law analysis following the *Brockington,* is not without irony. *Brockington* **also** found admiralty jurisdiction to be present by applying a common law nexus test without regard to the fact that Joseph Brockington did not qualify for Longshore Act coverage after the 1984 Amendment. (*Brockington*, *supra*, 903 F.2d at pp. 1527-1529.) *Brockington* simply declined to exercise admiralty jurisdiction after balancing federal and state interests. (*Id.* at p. 1533.) Additionally, the court in *Brockington* strongly implied that it's holding would have been different if Joseph Brockington, like Ranger, had also sued for unseaworthiness because a claim for unseaworthiness is "a right peculiar to the law of admiralty." (*Brockington, supra*, 903 F.2d at p. 1531, citing *Sieracki, supra*, 328 U.S. at pp. 90-95, 100.)

While *Green* acknowledged that a negligence claim was not as unique to admiralty as unseaworthiness, it noted that a general maritime negligence action also "has a Supreme Court heritage." (*Green, supra*, 144 F.3d at p. 338.) For the court in *Green*, which drew on other 5th Circuit cases including *Thibodaux v. Atlantic Richfield Company* (5th Cir. 1978) 580 F.2d 841 (*Thibodaux*) and *King v. Universal Electric Construction* (5th Cir. 1986) 799 F.2d 1073 (*King*), it was imperative that the supremacy of federal admiralty rights and concerns for uniformity of law not be subordinated to state law mandates. (*Green, supra*, 144 F.3d at p. 341.) While *Brockington* sought to distinguish its facts from *Thibodaux* and *King* by noting that those cases involved wrongful death claims rooted in Supreme Court precedent (see *Moragne v. States Marine Lines* (1970) 398 U.S. 375), *Green* saw:

> "no principled basis for distinguishing between an employee's negligence claim against his employer for wrongful death and an employee's negligence claim against his employer where the injury stops short of a fatality. The key factor is maintaining uniformity in admiralty law and preserving the rights granted to maritime workers, not the degree of harm the worker suffers. An action for negligence has long been a vestige of general maritime law; subjecting it to the ebbs and flows of state legislation would disrupt the essential features of admiralty law."

(*Green, supra*, 144 F.3d at p. 341.)

Green's conception of uniformity of law is not, as the Opinion suggests, a one-way street promoting some nebulous notion of national power. (Opn., 9.) To the extent that it may "clash with our deep national strain of federalism that celebrates

states as laboratories of experimentation," the clash is not merely theoretical or academic. The United States Supreme Court made clear that admiralty's interest in protecting maritime commerce can be "fully vindicated only if all operators of vessels on navigable waters are subject to uniform rules of conduct." (*Foremost*, *supra*, 457 U.S. at p. 674-675.) That fundamental interest, which this Court recognized and followed in *Fahey v. Gledhill* (1983) 33 Cal.3d 885, 887-890, ensures that the rights and liabilities attendant to vessel operation do not vary based on location or circumstance. A vessel owner's duty to provide a seaworthy vessel with safe means of ingress and egress should not turn on whether the vessel is docked at the Alamitos Bay Yacht Club or Honolulu Harbor. Nor should that duty depend on who is boarding the vessel. Hiding that duty behind California's no-fault Workers' Compensation curtain blocks admiralty's ability to adjudicate and delineate what it means for a vessel to provide safe access. Moreover, as the court in *Foremost* emphasized, the "smooth flow of maritime commerce is promoted when all vessel operators are subject to the same duties and liabilities." (*Foremost*, *supra*, 457 U.S. at p. 676.)

The Opinion endorses a uniformity of law that "seeks to anchor the law of admiralty in the legitimacy of the democratic process." (Opn., 9.) *Green's* interpretation of uniformity does not lift that anchor. The United States Supreme Court has recognized the "importance that Congress has attached to the federal interest in having all vessels operating on navigable waters governed by uniform rules and obligations, which is

furthered by consistent application of federal maritime legislation under federal admiralty jurisdiction." (*Foremost*, *supra*, 457 U.S. at fn. 6.)

The Opinion also misconstrues *Green*'s concept of uniformity of law as being guided by *Southern Pacific Co. v. Jensen* (1917) 244 U.S. 205 (*Jensen*). *Jensen* is indeed infamous [5] and was decided decades before the Supreme Court's decision in *Calbeck v. Travelers Ins. Co.* (1962) 370 U.S. 114 (*Calbeck*) and the Longshore Shore Act of 1972, both of which conferred concurrent federal and state jurisdiction for waterfront injuries. A worker's ability to make concurrent federal and state compensation claims prevents *Jensen*-like outcomes. (*Calbeck*, *supra*, 370 U.S. at pp. 131-132.)

In fact, the modern development of admiralty law has been one of expanding coverage and more generous compensation for maritime workers. This modern jurisprudence, which appreciates concurrent federal and state jurisdiction, shines through in *Green*. (*Green, supra*, 144 F.3d at pp. 337-338 ["Though Green is entitled to seek relief under the Louisiana Workers' Compensation Act, that option is not exclusive…Where the LHWCA does not apply we refuse to expose maritime workers to the variegated state workers' compensation schemes, especially where Congress has expressly found that "most State

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[5] *Jensen* left the family of a decedent without a remedy after striking down a New York workers' compensation award. Whereas *Jensen* constricted the available remedies for waterfront workers, *Green* expanded them.

Workmen's Compensation laws provide benefits which are inadequate."].) It is the Second Appellate District, which now confines Ranger's remedy to state compensation and that lacks modern force.

Finally, this Court should rest assured that extending Admiralty's protections to Ranger in no way subjects ABYC to double payment. California law already allows ABYC to seek a credit against any civil judgment for workers' compensation paid. (*Hamilton v. County of Los Angeles* (1982) 131 Cal.App.3d 982, 997.)

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Court should grant Ranger's Petition for Review.

DATED: October 16, 2023

Respectfully submitted,

KRISSMAN & SILVER LLP

By: _____

Jarod Krissman
Kathie Sierra

Attorneys for Plaintiff and Appellant BRIAN RANGER

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1))

In compliance with the provisions of California Rules of Court, rule 8.504(d)(1), I hereby certify in my capacity as counsel on behalf of Plaintiff, Appellant, and Petitioner, Brian Ranger, that this Petition for Rehearing has been produced on a computer with the Microsoft Word program. According to the word count of said Microsoft Word program, there are 4,099 words in this document, not counting the items excluded under California Rules of Court, rule 8.504(d)(3).

DATED: October 16, 2023

Kathie Sierra, Declarant

ATTACHMENT: COURT OF APPEAL OPINION

Filed 9/6/23

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

BRIAN RANGER, Plaintiff and Appellant, v. ALAMITOS BAY YACHT CLUB, Defendant and Respondent.	B315302 Los Angeles County Super. Ct. No. 19STCV22806

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark C. Kim, Judge. Affirmed.

Krissman & Silver LLP, Jarod Krissman and Kathie Sierra for Plaintiff and Appellant.

Cox, Wootton, Lerner, Griffin & Hansen, LLP, Neil S. Lerner and Mitchell S. Griffin for Defendant and Respondent.

Brian Ranger fell while stepping from a dock to a boat. He sued his employer—a yacht club in Long Beach—under federal admiralty law. The state trial court correctly sustained the club's

demurrer. Congress's 1984 legislation remitted Ranger to the exclusivity of workers' compensation.

The Alamitos Bay Yacht Club hired Ranger as a maintenance worker. He helped the club with its fleet by painting, cleaning, maintaining, repairing, unloading, and mooring vessels. One day, Ranger used a hoist to lower a club boat into navigable waters. He stepped from the dock onto its bow, fell, was hurt, and applied for workers' compensation. Then he sued the club in state court on federal claims of negligence and unseaworthiness. The trial court sustained the club's final demurrer to the second amended complaint. The court ruled there was no admiralty jurisdiction.

We independently review pleading challenges.

We affirm the court's ruling without deciding about admiralty jurisdiction. That issue is supernumerary, for state court jurisdiction is assured in every event, and irrelevant given our holding. (See *Madruga v. Superior Court* (1954) 346 U.S. 556, 560–561 [state courts may adjudicate in personam maritime claims]; *Gault v. Mod. Cont'l/Roadway Constr. Co., Joint Venture* (2002) 100 Cal.App.4th 991, 997 [state and federal courts have concurrent jurisdiction in Jones Act, Longshore Act, and general maritime law cases].)

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. § 902, subds. 3, 3(B).) Ranger concedes the yacht club is a "club." Federal law thus makes California state workers' compensation law paramount, which means

Ranger's exclusive remedy is workers' compensation. (Labor Code, § 3602, subd. (a) [workers' compensation is exclusive].)

To set out our analysis in more detail, we begin by defining admiralty law. The Constitution implicitly directed courts sitting in admiralty to proceed as common law courts. Where Congress has not prescribed specific rules, these courts developed an amalgam of traditional, modified, and new common law rules. That amalgam is the general maritime law, which is no longer the exclusive province of federal judges. Congress and the states legislate extensively in these areas. When exercising their common law authority, *admiralty courts look primarily to legislative enactments for policy guidance.* (*Dutra Group v. Batterton* (2019) 139 S.Ct. 2275, 2278 (*Batterton*).)

That last point is vital. "In contemporary maritime law, our overriding objective is to pursue the policy expressed in *congressional enactments* . . . ." (*Batterton*, *supra*, 139 S.Ct. at pp. 2285–2286, italics added.)

A *congressional enactment* does guide our decision. Congress enacted the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (Longshore Act), which established a workers' compensation program for "any person engaged in maritime employment." (See *Swanson v. Marra Brothers* (1946) 328 U.S. 1, 5–6; 33 U.S.C. §§ 902, 905.)

Congress amended the Longshore Act in 1972 and again in 1984. The 1972 amendments extended the coverage of the Longshore Act but created uncertainty about the boundaries of that extension. (E.g., *Director v. Perini North River Associates* (1983) 459 U.S. 297, 305–325 (*Perini*).)

Congress later learned the 1972 law had created "a general confusion as to whether or not the Longshore Act applies." (Sen.Rep. No. 98-81, 1st. Sess., p. 29 (1983) (Sen.Rep. 98-81).)

"[T]he decade of experience under the 1972 Amendments has vividly demonstrated that the effort to eliminate benefit disparity and to promote systemic uniformity has exacted a price . . . . The rules of coverage . . . have been a . . . prolific generator of litigation. . . . ¶ This situation presents an unsatisfactory state of affairs. Uncertainty of coverage fosters continued litigation, with attendant expense and delay that is a burden to employers, their insurance carriers, and claimants. Further, it was repeatedly voiced at the hearings that employers were often unsure whether to obtain [Longshore Act] insurance coverage. Even when they opted for such insurance, they generally found that the premiums were inordinately expensive. Or, in many instances, employers were unable to buy insurance coverage, because the insurance companies did not want to be faced with vagaries of coverage." (Sen.Rep. 98-81, *supra*, pp. 24–25, internal quotation marks and footnotes omitted.)

In 1984, Congress responded by introducing a degree of clarity: Congress sharpened the Longshore Act's focus to exclude employees who, although they happened to work on or next to navigable waters, *lacked a sufficient nexus to maritime navigation and commerce*. In response to the experiences of many witnesses, Congress adopted what it called a "case-specific approach." (Sen.Rep. 98-81, *supra*, at p. 25.) Congress determined certain categories of activities identified by witnesses did not merit coverage under the Longshore Act and "the employees involved *are more aptly covered under appropriate state compensation laws*." (*Ibid.*, italics added.)

The 1984 statute thus carved out specific employee categories, placed them beyond the coverage of the Longshore Act, and assigned these employees to the "appropriate state compensation laws." (Sen.Rep. 98-81, *supra*, at p. 25.)

Among the carveouts were employees working for *clubs*. (Sen.Rep. 98-81, *supra*, at pp. 25–26.)

Which clubs? *All* clubs. Initially there was disagreement between the Senate and the House of Representatives about whether the Longshore Act should exclude only employees working at *nonprofit* clubs. (H.R.Rep. No. 98-570, 1st Sess., p. 4 (1983) (H.R.Rep. 98-570).) The Senate wanted a broader approach but the House initially favored the narrower one. The Senate's view prevailed: the exclusion applies to all club employees and is not limited to nonprofits. (H.R.Rep. No. 98-1027, 2d Sess., p. 23 (1983) (H.R.Rep. 98-1027).)

We now quote the textual result: the pertinent provision—subsection three of section 902 of the Longshore Act—as it stands after the 1984 amendments. Our italics highlight key words.

"The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, . . . *but such term does not includ*e—

"(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

"(B) *individuals employed by a club*, camp, recreational operation, restaurant, museum, or retail outlet;

"(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

"(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;

"(E) aquaculture workers;

"(F) individuals employed to build any recreational vessel under sixty-five feet in length . . . ;

"(G) a master or member of a crew of any vessel; or

"(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

"*if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law*." (33 U.S.C. § 902, subd. (3), italics added.)

Paring this statute to its relevant essence shows the Longshore Act does not cover club employees subject to state workers' compensation coverage. (33 U.S.C. § 902, subd. (3)(B).) Congress determined in 1984 club employees "*are more aptly covered under appropriate state compensation laws*" because these employees lack "*a sufficient nexus to maritime navigation and commerce*." (Sen.Rep. 98-81, *supra*, at p. 25, italics added.) Under California's workers' compensation law, employees may not sue their employers in tort. (See Labor Code §§ 3351, 3600, subd. (a).)

This analysis of statutory language and history demonstrates Ranger cannot sue his employer in tort. The trial court correctly sustained the demurrer against Ranger.

This result makes good sense. Ranger asserts federal law preempts state law in this case, but national and state interests do not clash here. Federal and state law are in accord. For

employees like Ranger, both Congress and the California legislature have replaced the fault-based regime of tort with the no-fault alternative of workers' compensation. Both bodies have preferred the virtues of speedy, predictable, and efficient compensation for occupational accident victims like Ranger. The "underlying philosophy [is] social protection rather than righting a wrong." (1 Larson, Workers' Compensation Law (2023) chapter 1, syn.) The Longshore Act, its 1984 amendments, and California workers' compensation law all share this philosophy. This federalism is harmonious, not discordant. (Cf. *Sprietsma v. Mercury Marine* (2002) 537 U.S. 51, 70 [a federal concern with uniformity does not justify displacing state law remedies that compensate accident victims and also serve prominent federal objectives].)

Ranger counters this analysis by repeatedly stressing the importance of "uniformity" of the general maritime law. In this quest, Ranger relies on *Green v. Vermilion Corp.* (5th Cir. 1998) 144 F.3d 332, 334–341 (*Green*).

We respectfully but profoundly differ with *Green*. We therefore also part ways with *Freeze v. Lost Isle Partners* (2002) 96 Cal.App.4th 45, 51-52 (*Freeze*), which relied on *Green* without adding to its analysis.

We begin with *Green*'s facts. Sam Green worked as a cook and watchman at a Louisiana duck hunting camp. He traveled by boat to the camp, which was in a marshy area. Green also assisted with mooring and unloading supply boats at the camp. Green boarded a boat, slipped, fell, and was hurt. He sued his employer, the Vermilion Corporation, under the Longshore Act and for general maritime claims of negligence and unseaworthiness. The trial court granted the defense motion for

summary judgment. The Fifth Circuit reversed and permitted Green to prosecute his maritime claims for unseaworthiness and negligence. This appellate decision preempted the state law. (*Green*, *supra*, 144 F.3d at pp. 333–341.)

Green has encountered a mixed reception. Some later courts apply it. (E.g., *Moore v. Capital Finishes, Inc.* (2010) 699 F.Supp.2d 772, 780–783.) Others reject it. (E.g., *Valcan v. Harvey's Casino* (S.D.Iowa 2000) 2000 WL 33673727, p. *1.)

In particular, we join with the contrary result in *Brockington v. Certified Electric, Inc.* (11th Cir. 1990) 903 F.2d 1523, 1527–1533 (*Brockington*). *Green* criticized *Brockington*. (*Green*, *supra*, 144 F.3d at pp. 336–341.) A respected maritime treatise praised *Brockington* as "an excellent example of admiralty preemption analysis." (1 Schoenbaum, Admiralty and Maritime Law (6th ed. 2022 supp) § 4:5, Preemption in admiralty, fn. 12.) *Brockington* balanced the comparative federal and state interests to conclude admiralty law did not preempt a state workers' compensation statute. (*Brockington, supra*, 903 F.2d at pp. 1529–1533.) We submit *Brockington*'s result is valid and *Green*'s is not.

Like Ranger, the *Green* court emphasized "uniformity." The *Green* opinion used this word six times. (*Green*, *supra*, 144 F.3d at pp. 337, 341.) And like Ranger, the *Green* opinion conceived of "uniformity" as meaning that national power, *as defined by judges*, must displace the works of state legislatures.

We reject *Green*'s and Ranger's conception of uniformity, which lacks the ability logically to discriminate. This 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 always disfavors state power, which can be sound and richly

diverse. (Cf. *Exxon Corp. v. Chick Kam Choo* (5th Cir.1987) 817 F.2d 307, 317–18, rev'd on other grounds, (1988) 486 U.S. 140 [uniformity is not an end in itself, for otherwise state law would always be preempted].)

Green's approach clashes with our deep national strain of federalism that celebrates states as laboratories of experimentation. (E.g., *National Pork Producers Council v. Ross* (2023) 143 S.Ct. 1142, 1160 [citing *New State Ice Co. v. Liebmann* (1932) 285 U.S. 262, 311 (dis. opn. of Brandeis, J.)]; *Fisher v. University of Texas* (2016) 579 U.S. 365, 388 [same].)

Green's notion of uniformity also collides with the kind of uniformity praised in modern Supreme Court admiralty decisions like *Batterton*, where the "uniformity" sought is with policies enacted by democratically-elected representatives. (See *Batterton*, *supra*, 139 S.Ct. at p. 2284.) This kind of uniformity is sensible, as it seeks to anchor the law of admiralty in the legitimacy of the electoral process.

To be sure, *Green*'s and Ranger's conception of "uniformity" has antique support, but age has rotted some of those old timbers. *Green* sought guidance from many Supreme Court decisions around the *Lochner* era. (*Green*, *supra*, 144 F.3d at pp. 339–340 [citing over a dozen opinions dating from 1916 to 1936].) From this survey *Green* concluded "the constant theme of these Supreme Court opinions is that the *uniformity* of admiralty law must be preserved and that state law may be applied only where it works no material prejudice to the essential features of the general maritime law." (*Green*, *supra*, 144 F.3d at pp. 340–341, italics added and internal quotation marks omitted.)

These *Lochner*-era decisions lack modern force. Their exemplar is *Southern Pacific Co. v. Jensen* (1917) 244 U.S. 205

(*Jensen*), an infamous 5-4 holding in favor of a steamship owner against a worker who was killed unloading that ship. The state of New York awarded state workers' compensation to Jensen's widow and children. The railroad protested these awards were unconstitutional. (*Id.* at pp. 209–210.) The *Jensen* majority agreed and struck New York's law as unconstitutional. (*Id.* at pp. 217–218.)

The *Jensen* decision is infamous by virtue of Holmes's "celebrated" dissent. (Gilmore & Black, The Law of Admiralty (2d ed. 1975) p. 406.) Holmes wrote that the "*common law is not a brooding omnipresence in the sky*, but the articulate voice of some sovereign or quasi sovereign that can be identified . . . ." (*Jensen*, *supra*, 244 U.S. at p. 222, italics added.) Holmes dismissed "the specter of a lack of uniformity." (*Id.* at p. 223.) Instead, he posed the crucial question and gave the crucial answer: "Taking it as established that a state has constitutional power to pass laws giving rights and imposing liabilities for acts done upon the high seas when there were no such rights or liabilities before, what is there to hinder its doing so in the case of a maritime tort? Not the existence of an inconsistent law emanating from a superior source, that is, from the United States. *There is no such law*." (*Id.* at p. 220, italics added.) Holmes acknowledged the common law power of judges but accused the majority of exceeding that power: "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions." (*Id.* at p. 221.)

The *Jensen* majority resorted to more than molecular judicial motion. It engaged in wholesale judicial arrogation, as the dissenting Holmes demonstrated in this and other cases of

the era. (E.g., *Lochner v. New York* (1905) 198 U.S. 45, 75 (dis. opn. of Holmes, J.) ["This case is decided upon an economic theory which a large part of the country does not entertain"]; *Knickerbocker Ice Co. v. Stewart* (1920) 253 U.S. 149, 166-170 (dis. opn. of Holmes, J.).) As elsewhere, Holmes's dissents are a better guide to modern law than the *Lochner*-era majority opinions that sparked them. (E.g., *Abrams v. United States* (1919) 250 U.S. 616, 624-631 (dis. opn. of Holmes, J.) [proposing the clear-and-present-danger test for the First Amendment]; *Adkins v. Children's Hospital* (1923) 261 U.S. 525, 567–570 (dis. opn. of Holmes, J.) ["The question in this case is the broad one, whether Congress can establish minimum rates of wages for women"].)

Another *Lochner*-era decision *Green* cited is *Robins Dry Dock & Repair Co. v. Dahl* (1925) 266 U.S. 449, 457 (*Dahl*). (See *Green*, *supra*, 144 F.3d at p. 339.) In *Dahl*, the Supreme Court barred states from enlarging or impairing rights and remedies arising from general maritime law. "However, *Dahl* was decided in 1925, when the Supreme Court's concept of tort jurisdiction did not permit state law to apply seaward beyond the ship's gangplank, a border known as the *Jensen* line. . . . This limited view of state jurisdiction was discredited almost as soon as it was established, but nevertheless spawned many complex, contradictory and inconsistent decisions that have been described as one of the most depressing branches of federal jurisprudence. Given the developments in admiralty jurisdiction over the past 80 years, *Dahl* is no longer reliable precedent. As the Supreme Court itself stated . . . , the decisions between 1917 and 1926 produced no reliable determinant of valid state law coverage."

(*Gravatt v. City of New York* (S.D.N.Y. 1998) 1998 WL 171491, p. *11, internal quotation marks and citations omitted.)

Green's mistaken conception of "uniformity" is reason enough to depart from it, but other flaws also corrode its appeal.

Green failed to grapple with the governing statute: the 1984 amendments to the Longshore Act. *Green* cited those amendments but did not appreciate their significance. (See *Green*, *supra*, 144 F.3d at pp. 334-335.) To recap, the 1984 amendments excluded camp (and club) employees from the Longshore Act's workers' compensation system and relegated them to coverage under state workers' compensation laws, which are exclusive of tort. (33 U.S.C. § 902, subd. (3).) *Green* did not consider this directive from Congress.

Nor did *Green* mention the statements in the 1984 legislative history that club and camp workers like Green "*are more aptly covered under appropriate state compensation laws*." (E.g., Sen.Rep. 98-81, *supra*, at p. 25, italics added.) That appropriate Louisiana state law directed that workers' compensation was exclusive. (See *Green*, *supra*, 144 F.3d at pp. 337, 338.) This authoritative legislative history contradicted *Green*'s conclusion.

Green also relied, incorrectly, on legislative history pertaining to the *1972* amendments, not the 1984 amendments. (*Green*, *supra*, 144 F.3d at p. 338 [quoting "H.R.Doc. 92–1441, 92th Cong., 2nd Sess. *1972* U.S.C.C.A.N. 4698, 4707," italics added].) The proper guides to the 1984 amendments are the 1984 Senate and conference reports. The 1972 amendments were the problem, not the solution.

Apart from *Green* and *Freeze*, Ranger cites cases predating 1984. These authorities deal with old superseded law, not the

new governing law. (E.g., *Perini*, *supra*, 459 U.S. at pp. 305–325; *Foremost Insurance Co. v. Richardson* (1982) 457 U.S. 668; *Seas Shipping Co. v. Sieracki* (1946) 328 U.S. 85; *Davis v. Dept. of Labor and Industries of Washington* (1942) 317 U.S. 249; *Calbeck v. Travelers Insurance Co.* (1962) 370 U.S. 114; *Aparicio v. Swan Lake* (5th Cir. 1981) 643 F.2d 1109, 1113–1118; *Thibodaux v. Atlantic Richfield Co.* (5th Cir. 1978) 580 F.2d 841, 843–848; *Hamilton v. County of Los Angeles* (1982) 131 Cal.App.3d 982, 996–997.)

In sum, California's workers' compensation law is Ranger's exclusive remedy. Congress in 1984 decreed this state law aptly covers his situation. A core part of the state workers' compensation bargain is that injured workers get speedy and predictable relief irrespective of fault. In return, workers are barred from suing their employers in tort. The trial court correctly dismissed Ranger's tort suit against his employer.

DISPOSITION

We affirm and award costs to the respondent.

WILEY, J.

We concur:

STRATTON, P. J.

GRIMES, J.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am a resident of the State of California. I am over the age of eighteen years and am not a party to the within action. My business address is 444 West Ocean Boulevard, Suite # 940, Long Beach, California 90802.

On October 16, 2023, I e-filed and served:

PETITION FOR REVIEW

on all interested parties in this action, by electronically serving a copy of the document identified above or by placing one true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mailbox at Long Beach, California, addressed as follows:

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San Francisco, CA 94102-4797

The Honorable Presiding Justice and (Via True Filing)
The Honorable Associate Justices
California Court of Appeal
Second Appellate District, Division 8
Ronald Reagan State Building
300 South Spring Street, North Tower
Los Angeles, California 90013

Neil S. Lerner, Esq. — Counsel for Respondent
Mitchell S. Griffin, Esq. — (Via True Filing & E-Mail)
COX, WOOTTON, LERNER,
GRIFFIN & HANSEN LLP
12011 San Vicente Blvd., Suite 600
Los Angeles, CA 90049
Telephone: (310) 440-0020
Facsimile: (310) 440-0015
E-Mail: nsl@cwlfirm.com
E-Mail: mgriffin@cwlfirm.com

Hon. Mark C. Kim — (Via U.S. Mail only)
Los Angeles Superior Court
Governor George Deukmejian Courthouse
275 Magnolia Ave., Dept. S27
Long Beach, CA 90802

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I declare under penalty of perjury, pursuant to the laws of the State of California, that the above is true and correct.

Executed this 16th day of October, 2023 at Long Beach, California.

Donna M. Vizcarrondo

Donna M. Vizcarrondo, Declarant

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

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Case Number: **TEMP-L2Q0NYPS**
Lower Court Case Number:

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