

NO. 72925-0-1

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SHANNON C. ADAMSON and NICHOLAS ADAMSON,
Husband and Wife,

Plaintiffs,

v.

PORT OF BELLINGHAM, a Washington Municipal Corporation,

Defendant / Third-Party Plaintiff / Appellant,

v.

STATE OF ALASKA/DEPARTMENT OF TRANSPORTATION AND
PUBLIC FACILITIES – ALASKA MARINE HIGHWAY SYSTEM,

Third-Party Defendant / Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. INTRODUCTION

The State of Alaska (“Alaska”) submits this supplemental brief pursuant to RAP 10.1(h) and the Court’s letter of June 3, 2015 to address Appellant’s new argument that a seaman’s injury on a passenger ramp that fell onto a commercial passenger vessel does not require application of general maritime law (“GML”). While Appellant’s argument that GML does not apply here is incorrect, whether the Court applies GML, Washington and/or Alaska law, the result will be the dismissal of Appellant’s remaining claims in this case.¹

II. SUPPLEMENTAL STATEMENT OF THE CASE

Appellant alleges that Ms. Adamson was a crewmember (CP 21) lacking adequate training from the M/V COLUMBIA to operate the ramp (CP 23). Appellant also alleges that Ms. Adamson’s actions and those attributable to Alaska caused the ramp to fail (CP 23-25). The particular locations of the numerous wrongful acts alleged by Appellant are not identified (CP 21-27). Appellant concedes that the ramp hit the M/V COLUMBIA when it collapsed and injured Ms. Adamson. Reply brief at 2.²

¹ By disavowing GML, Appellant is in the unusual position of conceding that most of its causes of action, which are based on GML, should be dismissed.

² Appellant’s characterization of a “glancing” blow is a gross understatement - the apron of the ramp fell with enough force to dent the M/V COLUMBIA’s steel hull. Alaska does not deem this issue dispositive and will confine its disagreement to this footnote.

III. SUPPLEMENTAL ARGUMENT

A. **GML Applies to a Seaman's Injury While Operating a Land-Based Passenger Ramp That Strikes a Commercial Vessel.**

The application of GML is important to ensure the uniform treatment of vessels involved in interstate commerce. *See Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 207 (1996) (considering availability of state remedies in wrongful death action). Factually, GML applies here because (1) Appellant, which operates a commercial port, signed a Lease with Alaska allowing Alaska's commercial passenger vessels to moor at Appellant's pier facility (CP 37-82); (2) the Lease provided Alaska priority use of the passenger ramp at Appellant's port facility (CP 42); (3) Appellant had every expectation that a seaman like Ms. Adamson would operate the ramp (CP 23-25); (4) at the time of Ms. Adamson's injury, the passenger ramp struck the M/V COLUMBIA as it fell (Reply Brief at 2); and (5) Appellant alleges wrongful acts or omissions occurred on M/V COLUMBIA (CP 23-25).

GML applies because Appellant's claims lie within admiralty jurisdiction, which requires that the claims satisfy conditions both of (1) locality and (2) connection with maritime activity.³ *Jerome B. Grubart, Inc. v. Great Lakes Dredge and Dock Co.*, 513 U.S. 527, 531-42 (1995).

³ We focus on the location element only as the connection test is easily met in this injury involving a seaman moving a passenger ramp in place on a commercial passenger vessel.

The locality test is flexible when a seaman (as opposed to land-based workers) is involved. *Forrester v. Ocean Marine Indem. Co.*, 11 F.3d 1213, 1214-15 (5th Cir. 1993) (applying GML when crewmember injured when landing on pier after jumping from launch); *Jeter v. Star Fish & Oyster Co.*, 482 F.2d 457, 458 (5th Cir. 1973) (GML applied to crewmember slip on pier due to fish slime); *White v. Sabatino*, 526 F. Supp. 2d 1143, 1153-54 (D. Haw. 2007) (failure to enforce liquor regulation on vessel supported application of GML in drunk driving case); *Hardesty v. Rossi*, 1995 WL 688416 (D. Md. 1995) (injury when crewmember jumped onto pier); *Dixon v. Grace Lines, Inc.*, 27 Cal. App. 3d 278, 285-86, 103 Cal. Rptr. 595, 601 (Ct. App. 1972) (seaman injured on a pier while boarding a transport boat to return him to his vessel); *Ugarte v. U.S. Lines, Inc.*, 105 A.D.2d 606, 606-07, 481 N.Y.S.2d 84, 85 (1984) *aff'd*, 64 N.Y.2d 836, 476 N.E.2d 333 (1985) (considering shipowner's duty under GML to seaman while he was off vessel while returning from leave).⁴ Here, Ms. Adamson was performing a function for the vessel – putting the ramp in place to board commercial passengers.

⁴ There are also numerous cases involving land-based injuries to land-based workers that were also decided based on GML. *See, e.g., Ashland Oil, Inc. v. Third Nat. Bank of Ashland, Ky.*, 557 F. Supp. 862, 869 (E.D. Ky. 1983) (GML applied to gasoline explosion 300 feet from water's edge); *Complaint of Cook Transp. Sys., Inc.*, 431 F. Supp. 437, 442 (W.D. Tenn. 1976) (noting that "loading and unloading" of vessels is "traditionally considered as 'work of the sea'" and injury on land at point adjacent to dock fell within scope of GML); *Brisco v. Am. President Lines, Ltd.*, 325 F. Supp. 1259, 1260 (N.D. Cal. 1970) (longshoremen fell to death from pier while trying to open side door on vessel).

Whether the ramp was touching the vessel (it certainly landed on the vessel) or not, Ms. Adamson's location mere feet from the vessel while performing the vessel's work meets the location requirement.

In order to determine location, courts look to both the place where the accident took place and the place(s) that initiated or gave rise to the cause of action. *Oppen v. Aetna Ins. Co.*, 485 F.2d 252 (9th Cir. 1973) ("The locus of a tort is the place where injury takes effect."); *White v. U.S.*, 53 F.3d 43, 47 (4th Cir. 1995) (describing as "fortuitous" fact that crewmember was injured on pier rather than gangway); *Duluth Superior Excursions, Inc. v. Makela*, 623 F.2d 1251, 1252 (8th Cir. 1980) (drunk driver case in which "wrongs allegedly committed by crew took place on navigable waters"); *Gillmor v. Caribbean Cruise Line, Ltd.*, 789 F. Supp. 488, 490 (D.P.R. 1992) (GML applied to failure to warn passenger of crime problem in area of pier); *Donnelly v. Sung Shot Sports, LLC*, 605 F. Supp.2d 613, 616 (D. Delaware 2009) (GML applies if the "substance and consummation" of the tort takes place on navigable waters); *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1236 (S.D. Fla. 2006) (applying GML to injury during cruise excursion because "this case arises from torts accruing on navigable waters."). Here, Appellant's allegations of improper training and assignment of an untrained seaman to operate the ramp are allegations of wrongful conduct on the commercial vessel, which call for

the application of GML to resolve.

The difference in the application of the locality test between longshoreman/land-based employees and seamen is significant. *See Kinsella v. Zim Israel Navigation Co.*, 513 F.2d 701, 705 (1st Cir. 1975) (noting standard applying to longshoreman cases requires injury by vessel or appurtenance); *Garrett v. Gutzeit*, 491 F.2d 228, 232-33 (4th Cir. 1974) (“Admiralty jurisdiction extends to shorebased workers who are injured by an appurtenance of the ship at a time and place not remote from the wrongful act of the shipowner.”). Appellant’s reliance on the appurtenance issue ignores Ms. Adamson’s status as a seaman serving on a vessel whom Appellant had every expectation would be operating the ramp.⁵

Congress has extended the application of GML to those injuries on land “caused by a vessel on the navigable waters.” *See* 46 U.S.C. § 30101 (Admiralty Extension Act). The Supreme Court has held that to support such an application of GML, the impact of the tort alleged to have been committed on the vessel must be “felt ashore at a time and place not remote from the wrongful act.” *Gutierrez v. Waterman S. S. Corp.*, 373 U.S. 206, 210 (1963). Here, the vessel allegedly failed to train or assigned

⁵ Pier-based ramps are appurtenances when they are equipment vital to the vessel’s mission. *Romero Reyes v. Marine Enterprises, Inc.*, 1974 A.M.C. 2336, 2339-2341, 494 F.2d 866 (1st Cir. 1974); *Kearney v. Savannah Foods & Indus., Inc.*, 350 F. Supp. 85 (S.D. Ga. 1972) (applying GML re fall from shore-based catwalk); *see also Scheuring v. Traylor Bros.*, 476 F.3d 781, 788 (9th Cir. 2007) (analyzing tort involving pier-based ramp under GML but not reaching issue of owner’s duty to seaman/longshoreman).

an untrained seaman at a time not remote from the wrongful injury.

The required causation does not have to involve physical impact by the vessel or an appurtenance. *See Lakes of Gum Cove Hunting & Fishing, L.L.C. v. Weeks Marine, Inc.*, 182 F. Supp. 2d 537, 542 (W.D. La. 2001) (GML applied to trespass action for dredge spoils dumped on land); *Nissan Motor Corp. in U.S.A. v. Maryland Shipbuilding & Drydock Co.*, 544 F. Supp. 1104, 1111 (D. Md. 1982) (GML applies to pollution damage to vehicles on dock). Here, Appellant's allegations are based on a causative nexus between acts (or omissions) on the vessel and the subsequent injury.

Finally, this incident involves a land-based object (the ramp) both striking a commercial vessel and injuring a vessel crewmember. GML applies when a land-based object malfunctions and strikes a vessel. *N. Ins. Co. of New York v. Chatham Cnty., Ga.*, 547 U.S. 189, 191-92 (2006) (drawbridge striking vessel); *Steel All Welded Boat Co. v. City of Boston*, 18 F. Supp. 421, 422 (D. Mass. 1937) (same). Alaska has found no case that did not apply GML to a situation involving physical damage to a commercial vessel and injury to a vessel crewmember.⁶

⁶ While Alaska has made no claim against Appellant for the hull damage, it is axiomatic that a shipowner whose vessel sustains hull damage as a result of a pier owner's negligence has a claim cognizable under GML. *See The Plymouth*, 70 U.S. 20, 36 (1865) (Every species of tort, however occurring ... on board a vessel ..., if upon the high seas or navigable waters, is of admiralty cognizance.”).

After having pleaded the application of GML, Appellant now does a complete about-face and argues that the Court should not apply GML, apparently realizing that applying GML would ensure that the exclusive remedy provisions of either Washington or Alaska law would be respected and the Appellant's claims would be dismissed. As explained in the other sections of this brief, Appellant cannot hide from the nature of its case⁷ – that is, seeking an end run around workers' compensation exclusive remedy protections. Application of GML is sufficient but unnecessary for Alaska to obtain those protections.

B. If GML Does Not Apply, the Argument to Apply the Washington IIA's Exclusive Remedy Provision Is Stronger.

Appellant's argument that Ms. Adamson's injury was a land-based incident to which GML does not apply supports Alaska's argument that Ms. Adamson's injury falls within the scope of the Washington Industrial Insurance Act ("IIA"). Ms. Adamson was a workers' compensation eligible employee (in Alaska) who was injured in the course of her employment while temporarily working in Washington. Given the intended scope and stated purpose of the IIA "to embrace all employments which are within the legislative jurisdiction of the state" (RCW 51.12.010), Appellant takes the untenable position that this land-based

⁷ See *Genereux v. Raytheon Co.*, 754 F.3d 51, 59 (1st Cir. 2014) (noting plaintiff's failed attempt to "change horses midstream").

injury does not fall within Washington's legislative jurisdiction.

Washington's interest in affording a remedy to an employee suffering an employment-related injury in Washington is significant:

This court is committed to the doctrine that our Workmen's Compensation Act should be liberally construed in favor of its beneficiaries. It is a humane law and founded on sound public policy, and is the result of thoughtful, painstaking, and humane considerations, and its beneficent provisions should not be limited or curtailed by a narrow construction.

Hilding v. Dep't of Labor & Indus., 162 Wash. 168, 175, 298 P. 321, 324 (1931) (finding in favor of extra-territorial application of IIA before it was statutorily required); *see also Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 757, 153 P.3d 839 (2007) ("where reasonable minds can differ over what [IIA] provisions mean, in keeping with the legislation's fundamental purpose, the benefit of the doubt belongs to the injured worker...."). By arguing for coverage of this injury under the IIA, Alaska, as the employer, is in the same position as an employee seeking coverage. *See Thompson v. Dep't of Labor & Indus.*, 192 Wash. 501, 506, 73 P.2d 1320 (1937) (siding with employer and employee urging coverage and against Department). Alaska has found no case involving a worker eligible for compensation in another state who was injured while temporarily working in Washington but who was found to be ineligible for compensation under Washington law. Under the unique circumstances of

this matter, Ms. Adamson's status as an employee (and thus Alaska as an employer) does not fall within the IIA exclusions limiting its application. Accordingly, because of the IIA exclusive remedy provision, the dismissal of Appellant's claims against Alaska must be affirmed.

C. If Washington Law Applies to This Matter, then This Court Should Still Honor the Alaska Exclusive Remedy Provision.

Recently, this Court addressed a situation involving a workplace injury in Washington that did not fit squarely within the IIA. In *Esparza v. Skyreach Equip., Inc.*, 103 Wn. App. 916, 936-41, 15 P.3d 188, 199-202 (2000), as a matter of first impression, this Court relied on a federal exclusive remedy provision to preempt allocation of liability to an employer. The preemption issue involved RCW 4.22.070, and specifically, that part of the statute that recognizes employer immunity under the IIA. *Id.* at 937. Recognizing that a longshoreman did not fall within the scope of the IIA, this Court nevertheless preserved the employer's immunity based on the supremacy of the federal law. *Id.* at 941. The Court's decision saved the Legislature from an "absurd result." *Id.*

In this case, the Court is again faced with the possibility of an absurd result. While the doctrine of supremacy does not apply, the doctrine of comity does. "Comity allows the courts of one jurisdiction to give effect to laws of another jurisdiction out of deference and respect,

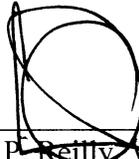
considering the interests of each state.” *Glover v. State of Alaska, Dep't of Transp.*, 142 Wn. App. 442, 446-47, 174 P.3d 1246 (2008) quoting *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 160-161, 744 P.2d 1032 (1987) *amended*, 109 Wn.2d 107, 750 P.2d 254 (1988). Application of comity here is appropriate to recognize the shared interests of Alaska and Washington in providing coverage for injured workers and the concurrent responsibilities and protections to employers. *See* Alaska Stat. (“AS”) 23.30.001 (purpose of statute to “ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers ...”); RCW 51.12.010 (“purpose of [IIA to reduce] to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment”). Application of Alaska’s exclusive remedy provision (AS 23.30.055) would require dismissal of Appellant’s claims. Appellant must be prevented from imposing fault-based remedies on an employer complying with applicable workers’ compensation laws.

IV. CONCLUSION

No facts, real or hypothetical, would entitle Appellant to maintain its claims against Alaska in this matter. The result is the same under GML, Washington, or Alaska law. The trial court’s dismissal of Appellant’s claims must be affirmed.

Respectfully submitted this 15th day of June, 2015.

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A handwritten signature in black ink, appearing to be "Chris P. Kelly", written over a horizontal line.

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Attorneys for Respondent State of Alaska,
by and through its Department of
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CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 2015, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

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