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Supreme Court of the United States

In the Matter of:

HELLENIC LINES LIMITED, et al.,

Petitioners

vs.

ZACHARIAS RHODITIS,

Respondent

Docket No. 661

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969

HELLENIC LINES LIMITED et al.,

Petitioners

vs. No. 661

ZACHARIAS RHODITIS,

Respondent

Washington, D. C.
April 21, 1970

The above-entitled matter came on for argument at 10:12 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

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Attorney for Respondent

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: The first case is No. 661, Hellenic Lines against Rhoditis. Mr. Estabrook, you may proceed whenever you are ready.

ARGUMENT OF JAMES M. ESTABROOK

ON BEHALF OF PETITIONER

MR. ESTABROOK: Thank you, Your Honor. Mr. Chief Justice; may it please the Court:

I represent the petitioner herein, and I petitioned for certiorari from the Fifth Circuit. George Wood, the original counsel of record who tried this case in Mobile and who argued the case in the Fifth Circuit, is very sorry he is unable to be here. He called me about two weeks ago and said that he had a recurrence of a heart condition, asked me if I could possibly argue; I agreed. I was hoping to see him here, but, unfortunately, his brother passed away on Saturday right after a golf game, and George was unable to attend.

I represent not only the peitioners herein, but I also submitted a brief amicus for the Royal Greek Government. As I said before, this is a petition for certiorari by Hellinic Lines Limited and Universal Cargo Carriers from the decision of the Fifth Circuit affirming an admiralty decree in the Southern District of Alabama, Southern Division, in favor of the respondent here.

The accident occurred August 3, 1965, and the libel,

in rem and in personam, was filed August 13, 1965. So the case came up under the old admiralty rule.

Briefly, the facts which are pertinent are: That Rhoditis, the libelant below and the respondent here, was a Greek seaman with a wife and two children in Greece. He was a resident of Greece. He joined the Greek flag ship, Hellenic Hero, in Herakleion, Crete. He signed the standard Greek articles.

While the opinion of the District Court, contained in the findings and conclusions, state that he is illiterate, he is practically illiterate in English, the records disclosing that he can read and write only figures and write only his address in English. But he can read and write Greek, since he can write letters to his wife, and he can read Greek.

The Hellenic Hero, a Greek flag vessel, was sailing in the United States, India, Pakistan trade. At the time the depositions herein were taken, the Suez Canal was either open or had just been closed. Now this trade through Suez no longer exists.

The practical difference, however, is this; that, whereas when the depositions were taken and on the record, it appears that Hellenic Lines had 24 ships sailing out of New York and U. S. ports and only 12 ships out of European ports, based in Piraeus at present, the American-based ships are down to 20 and the European-based ships are up to 19.

Q Is this not a situation which fluctuates from time to time, depending on the demands for shipping?

A Yes, of course, it does. The demands in this case happened to be away from the American trade and in favor of a foreign trade. Also, while the facts stated by the trial judge stated there was no intermediate traffic, at the present time there is a considerable amount of trade between intermediate ports, particularly between the India, Pakistan ports and South Africa.

Briefly the action occurred in this manner: As the Hellenic Hero was tying up -- and the purpose of this is to show how the accident involves only the people of the ship -- she was tying up in New Orleans. They had the lines open, and the spring line -- or a line leading from the bow aft to keep the ship from surging ahead -- was being secured. Rhoditis was working up on the bow.

This spring line was secured around her winch. They had been taking a strain on it, and, when they were going to tie the ship up, they had to take this line, which is a heavy wire rope, off the winch drum and bent it around bollards -- which are two iron columns about three feet high and about three feet apart, like two fire plugs -- and you bend this wire around the bollards, making about eight figure-eights. And that is how you secure the ship.

When you take the wire off the winch drum, it is

necessary to secure it by a small piece of chain, which the interpreter in the record referred to as a "keeper". Actually, the correct term is its stopper. You take this light chain, and you wind it around the wire, tying some knots on it, and that will take the strain off the wire on the drum. Because the end of the chain is secured through the bits.

Then, with the strain off the wire on the drum, you can loosen the wire on the drum and put it on the bits. They did that. The stopper or "keeper" looked new; it looked to be in good condition. They put it on. They took the wire off the drum, and they were putting it on the bits.

As they were putting it the second turn, the chain suddenly broke, as the engines of the ship went ahead. That is the testimony. Why they went ahead, nobody knows. But, of course, that would put extra strain on the line leading aft, extra strain on the chain. The chain broke, and a piece of the chain struck Rhoditis in the leg.

Rhoditis was then taken to a hospital in New Orleans. After his first cast was removed, as soon as he was able to travel, he was removed to Greece. He was able to return to work, according to the trial court, the next March.

Hellenic Lines, the employer, is a Greek corporation. It had in its employ some 1100 seaman. It paid taxes last year of over $5 million in Greece. Similar repair bills were paid in Greece of about the same amount.

It did, however, have a New York office. In the New York office the record shows it employed between 75 to 100 people; it appeared in the testimony. It has a New Orleans office, 10 to 15 people, and a Piraeus office of 70 to 75.

If you disregard the seamen, then you do have more people employed in the offices in New York than in Greece. But if you take the seamen into account, and they are all Greeks, then you have a pronounced Greek flavor to the company.

There are also some longshoremen employed in New York, stevedores. But we also have longshoremen abroad. Actually, you employ more longshoremen abroad than you do in this country, because you have better machinery in this country. So, on any international run, you end to have more longshoremen on the other side.

However, there are some American features to the operation. The substantial part of the Hellenic Hero's trade is to and from the United States. While the Hellenic Lines is a Greek corporation, the majority stockholder and the principal executive officer or the general manager of the company is a resident of the United States, although a citizen of Greece.

In our brief for the petitioner and the record indicates, he received several honors from the kingdom of Greece. We are not claiming sovereign immunity, diplomatic immunity or anything like that.

Mr. Callimanopulos has been of assistance to the Greek Mission. He has received an official Greek passport from time to time. The purpose of this proof in the record is to show his allegiance to Greece. He is a bona fide Greek citizen; he performs duties to the Greek government.

We believe this case comes squarely under the doctrine of Larsen against Lauritzen, because both these case emphasize two things: the primacy of the flag. That is very important. The flag of a ship should determine the law applicable to the ship. And, also the fact is important that there be an available forum.

There is an available forum in this case. Mr. Rhoditis can pursue his claim for compensation in Greece. And there we must pay him under Greek law and under the collective bargaining agreement. In fact, the collective bargaining agreement specifies, particularly, the adoption of Greek law.

And this is very similar to the collective bargaining agreement that was followed by this Court in Larsen against Lauritzen, which provided for determination of disputes in Denmark.

In Larsen against Lauritzen we have an accident in Havana with a ship sailing between the United States and the west coast of South America. That ship never did go to Denmark on the regular trade. Both ships substantially had crews of the citizenship of the flag. Granted they did have a few

Chileans, but all of the officers and most of the crew were Danes.

In both cases we claim the place of the accident is unimportant. The man was injured in Havana, yet he was brought to the United States for medical treatment. And Larsen actually remained in the United States until he was ready to sail again. So the medical testimony was readily available here, yet the Court held the Jones Act did not apply.

In both case the Court was faced with a seaman who was engaged under the terms of a collective bargaining agreement negotiated with the assistance of the National Union and the National Association of Shipowners.

We, the petitioner here and the Greek Government, are both very much opposed to the "runaway flag." Insofar as the respondent and his amicae argue against the runaway flag, we are wholly in accord. We believe that argument is sound. But we say it does not apply to this case.

Our position is -- as stated in the Larsen Case and quoted in my brief amicus -- that: "Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it."

We believe that the phrase, "accepting responsibility" is important. If a nation does not accept responsibility for

its merchant ships, then you have a runaway flag situation.

Q Mr. Estabrook, does his remedy that you referred to under Greek law still subsist?

A Yes.

Q The statute of limitations is not involved?

A It still subsists. We have the same thing in Tsakonites, Your Honor. Tsakonites brought his case up to the Second Circuit. This Court denied certiorari, and, thereupon, Tsakonites commenced proceedings in the Greek court. That is exibit A in the Greek Government's brief.

If you don't accept responsibility for a ship, then you have a true runaway flag. For instance, you may have a ship under the same Panamanian-Liberain registry with a cayman island crew, Norwegian officers, and Spanish engineers.

You don't have the regular inspection that we have. The Greek Government insists on regular inspections of the ships, regular surveys. It insists on Greek ownership. If you have a foreign corporation owning a Greek ship -- and that does exists here in that technical ownership was in Universal Cargo Carriers, a Panamanian corporation; but the ship was, in fact, operated by Hellenic who hired the crew -- then you must, under Greek law, have an agent in Greece to make the necessary reports. You must have the ship under the Greek flag. You must also have a Greek crew; you must have Greek officers. You have a pension plan in Greece, known as NAT to which all Greek

seamen must contribute.

This doctrine of recognizing responsible flags has been followed by this Court, not only Larsen against Lauritzen in 1953, but again in 1959 in the Romero Case, where a Spanish seaman was injured on a Spanish ship in the port of New York. The Court held that Spanish law should apply and not the Jones Act.

A similar case is in McCulloch against the Honduran Union, quoted in the petitioner's brief, where this Court held that the National Labor Relations Act would not apply to Honduran flag ships, with Honduran crews,operated by Honduran corporations between New York and Honduras, even though the Honduran corporations were subsidiaries of an American corporation.

They recognized the law of the flag as being a responsible flag for the reason that these Honduran ships were actually manned by Hondurans, and they had Honduran officers. The background being, of course, that these ships were carrying bananas. And one of the conditions for granting banana concessions to the fruit company would be that bona fide Honduran ships would be used to transport the bananas.

While the ultimate direction of these ships is in the United States, the allegiance of the owner, a Honduran corporation, was to the Republic of Honduras. For that reason, the Court declined to apply the National Labor Relations Act.

Q May I ask you whether your problem is based on a statute or the Constitution?

A Our problem, Your Honor, is based on the statute, the Jones Act, and possibly on the general maritime law.

Q Do you think the Jones Act has some provision in it that would prevent this trial in this country?

A No, the Jones Act, Your Honor, has been interpreted as applying, not to the rights of foreign crews on foreign ships, but to the rights of American seamen on American ships; that the Jones Act in this Court was held not to apply to the rights of a Danish seaman on a Danish ship in Lauritzen against Larsen or the rights of a Spanish seaman on a Spanish ship in Romero against International Terminal Operating Corporation.

Q Is your question one of jurisdiction?

A No, sir. There is no question of jurisdiction here.

Q Do you think the courts had jurisdiction?

A They had jurisdiction in rem and in personam, yes, Your Honor. This is in admiralty.

Q But you are saying that some statute ---

A Yes, the Jones Act.

Q Can you find something in that statute that shows that the case couldn't be tried here?

A The Jones Act, Your Honor, has been interpreted

by this Court. There is nothing specific in the statute. I have briefed this point thoroughly -- in the Lauritzen against Larsen Case. The Jones Act is Section 20 of the Merchant Marine Act of 1920. Certain sections of that act specifically apply to foreign ships. I am talking primarily about the provision against advances. That applies for foreign ships as well as to American ships and so states in the statute.

There is also another section, the so-called Penalty Wage Statute that specifically applies to foreign vessels. That requires a shipowner to pay half earned wages in an intermediate port and all of the earned wages within four days after arriving from a foreign voyage at the port of destination.

Now the history is fairly interesting. When those two sections were originally enacted -- I believe it was a shipping act of 1916 or maybe a little earlier -- they were in general terms such as the Jones Act. The courts construed both those sections, in the first instance, as not applying either to advances made in a foreign port or to foreign ships.

At that point both sections were amended specifically to apply to foreign vessels. Consequently, cases like Strathern against Dillon read that the Congress had the power to apply a statute to foreign vessels.

Q What has the power?

A To apply statutes as to pay and forbidding advances to foreign vessels. But, unless it specifically applies

to foreign vessels, then they shouldn't be construed so as to apply to foreign vessels. The reason for that is this: Other sections of the Shipping Act refer to the rights of any shipowner to call on an American consul in a foreign port or submit disputes in a foreign port. Well, obviously, you wouldn't expect a British or a Japanese or a Greek ship to see an American consul in London. He would go to his own consul if he had trouble.

So the statute, the Jones Act, has been construed as not applying to foreign crews, despite the broadness of the terms. This construction of the Jones Act, in the Larsen Case in 1953, was followed by the Romero Case in 1959. And yet, Congress did nothing to amend the Act.

Q Are you relying on decisions of this Court or statutes?

A By decisions of this Court, Your Honor.

Q You are not relying on a statute?

A I am relying on the decisions of this Court construing the statute.

Q You mean construe it; that is different. You are relying basically on a statute?

A No, I am relying basically on the decisions of this Court in construing the statute. I am saying the statute does not apply.

Q You wouldn't say the construction by this Court

was different than the statute, would you? You seem to draw a distinction between the decisions of this Court.

A I was afraid you might ask me for the words of the statute I was relying on, and there are not any.

Q Well, I was thinking about it.

A There aren't any words, Mr. Justice. The words I rely on are the decisions of this Court.

Q Now, you say the Court does have jurisdiction?

A Yes, Your Honor.

Q Our courts have jurisdiction?

A Yes; there is no question.

Q Suppose they try the case. Would they be governed by Greek law or by American law?

A They should be governed by Greek law.

Q Altogether?

A Yes, Your Honor.

Q Why?

A Because this is an act of internal management of a Greek ship. I think the Court would be better advised to decline jurisdiction. Most of our courts in the Second Circuit, in a situation like this, actually decline jurisdiction on the condition that the shipowner appear in the forum of its native country.

Q Suppose the man lived here?

A We have had that in O'Neill against Cunard, Your

Honor, where, I believe, a resident of the United States was injured on a British ship, and the court declined jurisdiction. He was not permitted to sue under the Jones Act.

Q It declined to exercise it or said they didn't have it?

A My recollection is they said the Jones Act did not apply, and since the man was insisting on a jury trial ----

Q Was the complaint in this case based wholly on the Jones Act?

A No, it was not, Your Honor.

Q What other law?

A General maritime law of the United States.

Q Maritime law of the United States?

A Yes, Your Honor.

Q Your argument is not based on a statute then?

A On that point my argument is based on the comity of nations and the application of the Greek law. I say that neither the general maritime law of the United States, as applied to the internal management of the ships, or the Jones Act is applicable. This man's rights should be found under the Greek law.

Q Suppose all the evidence and everything connected with the case showed it was thoroughly inconvenient to try anywhere except in this country?

A In that case, Your Honor, the courts have tried

the cases. That is the old case, I think, of Gambera against Bergoty. I believe that is a correct decision. If we don't have a convenient forum, I agree with Mr. Justice Clark on television on Sunday, one of the big injustices is delay. And if we do not have a convenient forum and the man cannot get a prompt decision in one place, he should get it in another.

Q You agree that in this case the court might not merely have jurisdiction but might have power to try and should try it?

A I think so, but I think it should also apply the Greek law. I think they have applied the wrong law. They applied the general maritime law of the United States and the Jones Act.

Q What injury would it do to the defendant to try it here?

A In our particular case it does this injury: If the seaman is repatriated to Greece, under Greek law he gets his remedy right away. If he goes into the office with a medical certificate, he gets his money. The existence of a suit in this country is not a defense.

Q Then why isn't the defense based on the fact that he made a mistake; he could have gotten a better remedy in Greece.

A In this case, he very likely could, because his remedy in this country is rather small when you consider the

seriousness of the injuries. When you consider that he got $6,000 in this country and that is all he gets; he can't go back.

Q Where is he now?

A He is sailing on Greek ships out of Greece. He returned to Greece about a month after the accident. He was repatriated to Greece. And at any time after September, I believe, he could have started a proceeding in Greece. In fact, he got some money in Greece when he first got there.

Q If the statute does not provide, automatically, that he cannot possibly have a remedy in this country ---

A No, it does not.

Q --- then why isn't it a question of discretion in each case?

A Because, first of all, you have the question of congestion in the courts. In the second place, the Greek remedy is similar to Workmen's Compensation.

Q You are arguing that the Greek remedy is better, but maybe the man who is hurt doesn't think so.

A I am arguing that -- Greeks think the Greek remedy is better, and the Greeks have provided a Greek remedy for Greek seamen similar to Workmen's Compensation with punitive damages, in the event there is a violation of a safety law or safety regulation.

Q Does your adversary agree with you that it would

better for his client to have his case tried in Greece?

A I doubt it very much. But I am saying that he has, by Greek rights, an adequate remedy in Greece as provided for by Greek Law. And in accordance with the collective bargaining agreement, in accordance with Larsen against Lauritzen, in accordance with the Romero Case, the correct law to be applied is the Greek law, and under the Greek law, he would get ---

Q That is sometimes, you mean; you don't mean under all circumstances.

A I believe in circumstances where you have a seaman injured on a ship, which is a bona fide, foreign-flag operator -- in other words, the country of the flag has responsibility for the ship; it crews the ship; it supervises the ship -- and where there is a forum readily available, then I believe it would be better for our courts to decline jurisdiction. And, in any event, this decision below ---

Q You mean for them to decline it as a matter of discretion?

A Yes. But I say this decision is wrong, because they did apply United States law, not Greek law.

Q Could we have recovery here and also have recovery under the Greek law? Is there any danger of double liability?

A Actually, there is not too serious a danger. There

is a danger of some double liability, because, I believe, he collected $140 in Greece before Piraeus was advised of the existence of a suit in this country.

Q Did they stop paying?

A Then they stopped paying, yes. Because this was a technical violation of the articles.

Q Let's assume that the Jones Act expressly applied to accidents on foreign-flag ships sailing in American waters, but the parties -- as in this case -- contracted out, attempted to contract out. The parties here expressly agreed to the application of Greek law I take it.

A Yes, they did. If the Jones Act expressly applied to foreign-flag vessels sailing in American waters, then another section of the Jones Act would specifically invalidate any contractual exemption from the act. There is a section of the Railway Labor Act, which is incorporated by reference in the Jones Act, which makes an attempt to avoid the act by contract invalid.

Q What about contracting out of the application of the general maritime law?

A That would be valid.

Q That is another basis for your argument, I take it?

A Yes.

Q That the parties here have agreed to the

application of the foreign law.

A Yes; that is correct. That is one basis. But the principal basis of my argument is this case comes squarely under Lauritzen against Larsen and Romero.

Q But it certainly is fortified by the parties expressed agreement.

A That is right; it is. And Lauritzen against Larsen so states.

Q I understand that part of your argument is based on the fact that it would be better for this man to sue in Greece. How do you explain his sueing here in this country?

A You can get more money quicker.

Q Well, that would probably be better, wouldn't it? I would think that would be a decisive advantage of a law suit, to be able to get more money quicker.

A But sometimes you have an accident like this that is apt to flare up later. You get mootness in the long run. Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Stahl.

ARGUMENT OF JOSEPH B. STAHL

ON BEHALF OF RESPONDENT

MR. STAHL: Mr. Chief Justice and may it please this Honorable Court:

According to this Court in the Lauritzen Case, there are two justifications for disregarding the law of the nation

of a vessel's foreign flag, in order to apply American law in a suit such as this. The first justification is if the flag is merely one of convenience and not bona fide. The other is if there exists some heavy counterweight to even a bona fide foreign flag. We contend in this case that this Greek flag is a flag merely of convenience by virtue of the following facts, which I shall attempt to state as briefly as possible.

The shipowner in this case, Mr. Callimanopoulos, a Greek citizen, concededly,and the owner of petitioner's corporations, started a shipping business in Greece in 1935. This Greek operation operated from Greece and was reduced to absolutely nothing in World War II by sinkings in enemy action.

At the end of World War II -- during which, incidentally, the Greek government had confiscated his ships for military defense purposes -- in 1945 he came to the United States and started over, completely anew, in the shipping business such that there was no continuum of Greek operation and Greek flag use. He started over here as if he had never been in any shipping business anywhere else.

The fact is that now he has been a domiciliary of this country for 25 years, during the last 19 of which he has enjoyed permanent resident alien status.

Q That is the individual, you mean, that owns the ship?

A Yes, Your Honor.

Q Where were the ships built?

A Some of them in Japan, some of them in Germany, some of them, I believe, in this country. The record does not develop that extensively, although there is indication the first five ships ---

Q Are any of them American-built ships?

A Yes, the first five ships he bought were American "Liberty" ships, which, incidentally, he bought from the United States Government.

Q I didn't think an individual owned the ships; I thought it was a corporation owned 90 or 95 percent by this resident of Greenwich, Connecticut.

A That is correct.

Q So an individual doesn't own the ship; a corporation owns the ship.

A The registered owner is a Panamanian corporation.

Q Hellenic Lines Limited is the owner of the ship, is that correct?

A Not the registered owner, no, Your Honor.

Q Universal Cargo Carriers?

A Yes; it is Petitioner Universal Cargo Carriers corporation, which is a Panamanian corporation, all the stock in which is owned by Petitioner Hellenic, 99 percent of the stock in which is owned by Mr. Pericles Callimanopoulos.

Q How much? 99 and what?

A Just 99 percent.

Q He only owns 99 percent?

A That is all.

Q What did Panama have to do with it?

A Absolutely nothing, except that it is a symbol of convenience for this man, because, apparently, of its lax shipping laws.

Q He was an American citizen that organized a corporation of 99 percent of the stock. What did he get from Panama?

A He registered the ownership of 19 of 22 of his United States liner service vessels to a Panamanian corporation.

Q How long has he been a resident of this country?

A 25 years. He has been a domiciliary for that long. And for the last 19 he has had permanent resident alien status.

Q Who is supposed to own this other 1 percent of the stock?

A His son, who also lives here ---

Q Where does his son live?

A Also in New York.

Q He is not an American citizen, is he?

A I don't believe his son is either, although ---

Q Neither one is?

A Neither one are American citizens, that is correct.

Q They are both Greek nationals, aren't they?

A I would not call them nationals. I would call them nominal citizens, Your Honor.

Q Where do they get a passport if they want to travel?

A I am not familiar with the regulations for travel.

Q Well, they are Greek nationals, who are domiciled in the United States; that is the factual and legal situation, isn't it?

A Well, it is, but I argue that the domicile in the United States, in this case ---

Q You may argue the significance of the domicile, but that doesn't change the fact that he is a Greek national.

A No, Your Honor, I am sorry.

Q He is a Greek national who chooses to live in this country with his family?

A Yes, Your Honor.

Continuing on, factually: He finances his entire operation with money borrowed from New York banks and always has. The claims manager of Petitioner Hellenic is a United States citizen and domiciliary. His treasurer, who collects freight rates charged all over the world, is a United States citizen and domiciliary. And one of its directors is a United States citizen and domiciliary.

His ships are operated from the United States in 5 regular liner services; that is the operating instructions emanate from offices in New York City. All the voyages of which liner services originate and terminate in the United States, with all cargoes thereon originating and terminating in the United States.

He is charging freight rates fixed by United States Liner Conference Systems, of which his corporation is a member. He handles, virtually, no trade with the nation from which he came, Greece, but trades actively with 15 other nations.

He owns his own docks in New York. He employs regularly in this country approximately 215 people, and employs, at most, a total of 75 in Greece.

But more significant -- and I am getting to what I think establishes the breadth of the connection with the United States -- it is the policy of his company that all cargoes, including European cargoes, are solicited only by his New York office. Even in situations where the Greek office learns of their movement first in Greece, they are required by the rules of the company to relay this information to petitioner's U. S. office, so that the latter -- not the Greek office -- may solicit such cargo.

And most significant -- getting to this Panamanian corporation -- in 1956 Mr. Callimanopoulos registered the ownership of most of his U. S. liner vessels to two Panamanian

corporations created by him especially for this purpose: Transpacific Cargo Carriers and Petitioner Universal.

Q Supposing this action had occurred in a foreign port, would it be your view that -- subject to getting personal jurisdiction or in rem jurisdiction in the United States -- that this action could have been brought under the Jones Act here?

A Your Honor, I think that that inquiry emphasizes the importance of the place of the wrongful act. I would have to say that, because of the overwhelming preponderance of his contacts with the United States, if the seaman were able to perfect his suit by a process in the United States -- even for injury in a foreign port -- the Jones Act would be applicable.

I think that the 7 factors emphasized by Lauritzen when weighed here under these circumstances -- even changing the place of the wrongful act -- would indicate that the Jones Act would apply.

Q What are his contacts with the Greek Government?

A To my way of thinking, the only contacts are really convenient economic ones. He buys the flags that he flies on his ships in Greece, and he hires his crews in Greece. Now, he is obliged by Greek law to deduct from the wages he pays his seamen certain money for taxes, which he pays in Greece. And before the Suez Canal closed, some of the vessels he perated exclusively between Europe and Turkey were repaired in Greece. But none of these U. S. liner service vessels, to

which the Jones Act was applied in this case. Those are his only contacts.

Q What are his contacts with Panama?

A Nothing but a paper corporation.

Q You mean this corporation was organized in Panama?

A It was really organized in New York City, and the papers were mailed to Panama according to a routine that they have for establishing ---

Q A Panamanian corporation owned by the man -- 99 percent and his son the other 1 percent -- that does business between here and Greece, is that it?

A No. He does practically no shipping of cargo to Greece.

Q Well, what does he do?

A He ships cargo between the United States and 15 other nations, besides Greece: India, Pakistan, Burma.

Q He doesn't ship any from Greece?

A He testified himself -- and so did his claims manager -- that only occasionally do they handle cargo to and from Greece.

Q He has a nice paper relationship with Greece, doesn't he?

A I feel that is all that he has with Greece, Your Honor.

Q Was there any American workman or citizen, an American contact, involved in the occurrence of this accident?

A The only contact with American workmen that could have been had -- and this was developed by counsel for petitioners when the deposition of the respondent was taken -- was that the ship was towed by an American tug. But there was never any attempt, either on the part of my side of the case or on the part of my opponents, to show that the tug was responsible for the parting of the line.

Q What public policy would you bring to bear on your view that in enacting the Jones Act there was an American interest to be served in the interests of this case?

A Absolutely none, Your Honor. But I don't think that this Court need justify its affirmation of the Fifth Circuit in this case on those kinds of considerations. The considerations that I have urged for an affirmance are technical, legal ones based on the rules laid down by this Court in the Lauritzen Case.

Amici curiae, who have taken my side in this case, have argued that it would help to equalize competition between American and foreign shipping if the Jones Act were applied to foreign operators that come into our ports.

But, Mr. Justice Jackson, in the Lauritzen Case, indicated that an argument of that type was misaddressed to this Court; that it should have been taken over to Congress;

that, if it was in the interests of the United States, it was not for this Court to legislate it, but for Congress to do so.

I don't think that that is necessary to justify an affirmation of the Fifth Circuit's decision in this case.

Q It would equalize competition if this Court could order all foreign-flag ships to pay the same rates of pay to their seamen as we do, wouldn't it?

A Certainly.

Q But, we haven't any power to do that.

A I don't think you do. But I don't think that that is fatal to my cause here.

Q Mr. Stahl, what about the union contract that applies Greek law?

A First, let me say that this Court in the Lauritzen Case specifically ruled out the law provided for by the contract as a factor that could determine, or even affect, the application of the Jones Act. Many readers of the decision have been misled into thinking so. But what the case actually says is that the place of the contract -- while it has some weak significance -- the law of the contract has none. And this is evidenced ---

Q But that isn't how I understood your adversary to argue. His argument was that once the court took jurisdiction, it was bound by Greek law. That is his point, so give me your answer to that specific point: once the court takes

jurisdiction, it should apply Greek law.

A Our argument is that what law applies is a question the answer to which must be arrived at through the course of testing the 7 factors enunciated in Lauritzen.

Q Why do you put aside the expressed agreement to apply Greek law? Because of the provisions of the Jones Act?

A No; I will explain that fully. Well, that is the heart of it, yes.

Q I thought that was Mr. Justice Marshall's question. How do you get around the agreement of the parties to apply Greek law?

A That is part of it, yes. The Jones Act, of course, itself says, "Any contract, rule, regulation or device whatsoever, the purpose and intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void."

This Court in Lauritzen recognized, and the specific language was, "We think another result would follow if the contract attempted to avoid applicable law." Now the significance of that can only be that something besides the contract must determine, in the first place, what law is applicable.

Q In the absence of such a provision in the contract maybe you would inquire, on general principles, what law is applicable, but once --- You have to dispose of the

agreement somehow, don't you?

A Lauritzen does. It says you must find the answer through the 7 factors that this Court listed. Once that determination is reached, the contract cannot shake it.

Q Did you sue here under general maritime law, too?

A We did, Your Honor.

Q How about that?

A That is an alternative argument of mine; that, even if Your Honors don't apply the Jones Act, the District Court was well within its discretion to take jurisdiction and apply our law.

Q What about the agreement of the parties in that respect? They say the Greek laws apply.

A I am glad Your Honor asked me that, because I do have a succinct answer to it. It has been held in general maritime law cases, which I have cited in my brief -- notably the Blanco v. Phoenix Compania de Navegacion, S.A. out of the Fourth Circuit -- that two things must concur when a seaman signs a restrictive provision in an employment contract. The first is that regardless of his literacy, the restrictive provision be explained to him. The second is that he be paid extra compensation for his agreement to so restrict his rights.

The evidence in this case indicated that neither was the provision explained to him; he was completely unaware of its existence ---

Q But that is a matter for the lower court. It wasn't even decided by the lower court, was it? Those facts?

A They are in evidence, and they sustained the judgment.

Q I know, but we wouldn't decide those facts here, would we?

A I don't know if Your Honor would see fit to, but they are on the record.

Q Is that your only answer on the general maritime law? That yes, you would apply the agreement of the parties if those conditions were complied with?

A I would say that not as between respondent and Petitioner Universal. Petitioner Universal is a Panamanian corporation. And a contract between a Greek citizen and a Panamanian corporation for the application of Greek law, I don't think would be entitled to any greater weight. There is no exclusive ruling out of the contract in the Jones Act.

Q Well, what is the general rule when parties contract with respect to a particular body of law; when they know that they are going to be operating within the ambit of several nations? Then they pick one out, and they want to arrange their affairs in accordance with that?

A This Court said in the Lauritzen Case that, in contract matters, in a suit for breach of contract, then they would be bound by the law chosen in the contract. But the

Court pointed to the obvious; that a Jones Act suit is for tort. And such a contract cannot control what law applies in a tort case.

Q Was there any finding in the courts below that the registry of this ship was simply one of a flag of convenience?

A That was, in effect, the decision of the Fifth Circuit and of the District Court. I am not certain in what sense -- I am arguing that this is a flag of convenience.

Q Yes, I know that is your argument, but I was wondering whether it was based on any findings of fact that would support that conclusion.

A Specifically, I don't recall that language in the District Court, but I do in the Fifth Circuit's opinion. That was their exact language. But let me say this ---

Q What is the theory that causes this to be called a Greek ship?

A I beg your pardon, Your Honor.

Q On what theory is this called a Greek ship?

A Merely because of the flag which it flies. It has a Greek flag.

Q It could fly a Panamanian flag, couldn't it?

A If the owner saw fit to purchase a flag in Panama, I am sure he could.

Q Do you rule out the significance of the fact that

the owners of the stock are Greek nationals?

A Yes, Your Honor.

Q It would have no significance at all?

A Yes, Your Honor. I would not only say that, but I would say that, if these were American citizens, there is no significance at all. When you are dealing with the national allegiance of a corporation -- which is what we are dealing with here -- and the law to which it is subject, the U. S. citizenship of its stockholders could not render American law applicable to it. If this were so, American citizens would have the power to taint and stigmatize bona fide foreign enterprises by buying their stock and, thereby, subjecting them to more stringent American laws.

When it comes to a corporation -- it is my understanding of basic corporation law -- that presence of principal actors and parties in a forum state of the corporation and conduct in the forum of the corporation's principal business, including all managerial and operational functions, far outweigh the naked fact of the incorporation elsewhere, as far as determining that the law of the forum is applicable to such a corporation. And this has been the decision of many of our district and circuit courts in cases specifically involving the application of the Jones Act of foreign-registered corporations.

What they have looked to is, not the citizenship

of the stockholders, but to the place where the corporation makes its money. Any other result would result in chaos. If corporations were held subject to the laws of the place where they paid dividends to their stockholders or to the law of the place where they borrow the money to finance their operations, this would indeed result in chaos and do more to blight international commerce than the application of the Jones Act to this case.

Q When you are dealing with a company that ships in and out of 15 nations, you can hardly say it makes its money in any one of those places, can you?

A Well, I would say ---

Q It makes its money on the high seas, doesn't it?

A Well, that is, of course, a legitimate and valid way of looking at it. But the money is paid in New York City. That is where the checks or the credits are forwarded.

Q Suppose he had arranged, to meet your point, to have all payments made to a bank in Zurich, Switzerland. Would that undermine your argument?

A I would clarify, in order to maintain, and say that it is the base of operations or the commercial domicile, the place where the corporation carries on its principal business. And when I said the place that it makes money, I meant the place where it does what it has to do to make the money. He is running ships from New York.

Q Does the record show how many of these "Liberty" ships he bought from the Government?

A He started off buying 5. But then he is, apparently, a very intelligent operator, and he made enough money to build up to a fleet of what now totals approximately 40 ships, which have been built all over the world.

Q Suppose this gentleman had determined, instead of organizing a corporation on paper somewhere in Panama ambulating around the world, just to run it himself -- like he is actually doing with his son -- what would have been the law?

A It would depend on the place from which he ran it to my way of thinking. If we are to look at the corporations and ask -- in other words, if we were only to look at this corporate facade and ask what is the allegiance of these corporations, I would say it is the place where the corporations do their business.

If, on the other hand, we are to look at the individual, I think we should do what this Court did in the Lauritzen Case; and that is look to the national allegiance of this individual shipowner. And I have cited a body of law, of what I think is impressive universality and maturity, going back 150 years according to which, in the eyes of the law of nations, a man's national allegiance is deemed to be to that nation where he has his domicile. Because domicile is

prima facie evidence of national character, susceptible, of course, at all times to explanation.

If it be for special purpose and transient in its nature, then it does not derogate from or destroy the prior or original national character. But if it be taken up with the intention of remaining, as here, then it substitutes for the original or prior national character the disabilities and penalities as well as the privileges and immunities of a United States citizen.

Your Honor, Mr. Justice Black, held that in the case of Kwong Hai Chow vs. Colding, in which the Justice Department attempted to deport without a hearing a resident alien. He claimed that the constitutional privileges were available to him. I see -- if I may say so -- that the honorable Mr. Davis here represented the government in that case. And Your Honor held that, even though Congress had never said it and the Constitutional Convention didn't put it in the Constitution, Your Honor held that the constitutional protections were available to resident aliens.

These cases, which I have cited, have held further that resident aliens are subject to our draft laws. They must peril their lives for the honor of this country's defense even though they are not citizens.

Q I take it there is no legislative history, with reference to the Jones Act, pointing either direction as

to the coverage of the Jones Act in situations?

A There is none in the legislative history.

Q Were there any bills introduced in the Congress following Lauritzen or Romero?

A No; there were not. Let me say this: that I think there is a good reason based on the language of Mr. Justice Jackson in the Lauritzen Case. He pointed out that the shipping laws of this country, which are contained in Title 46, are many, and, of those, very few are specific in their language, in their application, either to American or foreign shipping operations.

This is what he said about that: "Many give no evidence that Congress addressed itself to their foreign application and are in general terms, which leave their application to be judicially determined from context and circumstance."

He decided that, where Congress has been silent, the courts, not only may, but they must speak on what they mean. And then, with reference specifically to the Jones Act, he said that, "Congress could not have been unaware of the necessity of construction imposed upon courts by such generality of language and was well-warned that, in the absence of more definite directions than are contained in the Jones Act, it would be applied by the courts to foreign events, ships and foreign seamen in accordance with the usual doctrines and

practices of maritime law."

So, apparently, Congress felt that the courts must and are able to determine in each case whether there are sufficient contacts with the United States, as weighed by the 7-factor Lauritzen test, to warrant or justify the application to foreign transactions or not.

In effect, it has not been necessary for Congress to legislate on that. I think it would even be dangerous for Congress to legislate on that. Because these shipping operators -- the national symbols with which they surround themselves are but part and parcel of the paraphernalia that is dictated by the exigencies and convenience of their economic commerce.

The scrambled types of transactions -- of which we have a wonderful example here -- are just typical. It would be very difficult for Congress to comprehend in one act something that would slice the law in between a bona fide foreign operator, like Mr. J. Lauritzen of Denmark -- who has always, incidentally, been a Danish domiciliary -- and an operator like Mr. Pericles Callimanopoulos, who is enjoying the privileges and immunities of an American citizen while living here.

Q Do you have any statistics on the number of ships bought from the American government that operate under Panamanian registry, although they do all their business, practically, in this country?

A I do not, Your Honor, and they certainly were not made a matter of proof in this case.

Let me, if I may, dwell on the Tsakonites decision. As Your Honors, I believe, have been made aware, this case comes to you on a conflict between the circuits. The Tsakonites Court decided, on identical facts, that the Jones Act did not apply.

Incidentally, with regard to what I contend is a flag of convenience: I would be the first to say that, if Mr. Callimanopoulos had just recently come over here and then, only temporarily, to get started a United States office as merely a small branch to a Greek office and there were a continued and uninterrupted use of Greek flags as part of a principal business in Greece -- which is not the case -- then even I would say that a court of the United States would be stretching matters rather far to brand his flags as flags of convenience.

But, whereas here, there is an overwhelming preponderance of contact with the United States, as I have outlined, and corporate registry in Panama, it is obvious that what this man is doing is dictated by convenience.

If the Court is prepared to say that, even under these circumstances, such a flag is a bona fide flag, then I would conclude that the United States has become fair game, to a certain extent, for economic parasites to incrust themselves

like barnacles in the hull of our maritime commerce.

But getting to Tsakonites: In Tsakonites the basis of the decision was -- I beg your pardon; I meant to say that no case has really set forth guide lines as to what determines whether a flag is one of convenience or not. Our courts have had no difficulty, for instance, in saying that, where American citizens domiciled here and operating ships from here have gone shopping abroad in the foreign market place of flags and gotten a foreign flag, that such a flag is obviously not a good faith flag.

On the other hand, where it is foreign citizens with a bona fide foreign operation and a foreign flag of the same nation, then that is obviously a bona fide flag.

But these facts are in between. I would think that the Court would be doing a favor -- at least to the Circuit Courts of Appeal -- to tell us what is a flag of convenience, so that never again shall two Circuit Courts of Appeal look at identical facts and come up with opposite conclusions as the Fifth and the Second have done here.

This was the reason for the Second Circuit's decision in Tsakonites: It was the law of the contract. They conceded their own confusion as a result of the facts. They said, "We must concede that this constellation of facts -- and I am only paraphrasing -- presents a combination never before seen in any other case." And they took the easy, but the wrong way

out and decided the case on the law of the contract, which -- as I believe has been well dealt with -- cannot wag the dog; that is only the tail. The applicable law must be determined on the basis of the 7 Lauritzen factors.

I believe I have also indicated that it is not necessary for Your Honors to decide if this flag is one of convenience in order to uphold the Fifth Circuit. Even if it is a bona fide flag, in accordance with Lauritzen, there exists to it that heavy counterweight of the domicile and national allegiance of the shipowner.

I have an alternative argument that the general maritime law would be applicable here as not being repugnant to the law of Greece under two theories, two cases which I have not cited in my brief. One from this Court, the Scotland, and the other, Heredia vs. Davies, held that in matters of this type where foreign law is not proved, it may be presumed the same as the law of the United States. That being the case, then there is nothing repugnant to the law of Greece in applying the general maritime law of the United States.

Q What was the amount of the judgment that your man recovered?

A $6,000.

Q Have you any idea what he would get under Greek law?

A Approximately one-thirtieth of that.

Q One-thirtieth?

A One-thirtieth. There was testimony in the District Court -- I beg your pardon -- he would have been able to get 4,800 drachmas, I think it was, and that is $160, which they did pay him. Incidentally, that payment was made to my client after the petitioners were all noticed that he was represented by counsel.

This was an attempt to label money as part of a foreign remedy, in order to try to determine applicable law. It was a payment made to a known represented claimant.

Q He was repatriated to Greece at the expense of the shipowner, wasn't he?

A That is correct. Yes, Your Honor.

Q What about medical care?

A He received most of that in Greece, although he was hospitalized in the United States for approximately 2 weeks. But that is a fact which -- if I may say -- has never been given any weight in the American courts.

Q What were the nature and extent of his injuries?

A His injuries were merely two puncture fractures of the small bone of his lower leg. When I say puncture fractures; it was made by a broken chain and there were 2 prongs. And they just punctured about a half an inch deep.

Q Did the line part or something.

A Yes.

Q I notice in the Lauritzen vs. Larsen Case the last footnote, 29, just before the judgment is rendered made this quote: "In cases such as that now in judgment, we administer the public law of nations and are not at liberty to inquire what is for the particular advantage or disadvantage for our own or another country." Do you know what the law of nations would require here?

A A long time ago this Court, I believe in the Osceola, decided that the maritime law of nations -- at least as far as it applies to seamen -- is that they have a right of action for damages for unseaworthiness. Since that time the general maritime law has come to be viewed as the general maritime law of the United States as distinguished from whatever the international maritime law, the law of nations, is.

I think that that quotation taken in connection with his dispensing or giving short shrift to the argument that the interest of the seaman in that case was the interest of the United States, because if he were granted recovery, it would equalize competition. This, I believe, was Mr. Justice Jackson's way of saying that we cannot consider the interest of the United States in this kind of a context in order to oust some applicable law of another foreign nation.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Stahl.

Mr. Estabrook.

REBUTTAL ARGUMENT OF JAMES M. ESTABROOK

ON BEHALF OF RESPONDENT

MR. ESTABROOK. I think I have a couple of minutes, Your Honor. I would just like to point out that none of the courts below considered at all the number of Greek seamen on these ships; there are over 1100 seamen, to back up our point that this is a bona fide Greek operation.

We also have an interesting opinion from Judge Hoffman in Virginia, which he has annexed as a supplemental brief, in which he goes in great detail to the point raised by Mr. Justice White on the application of the contract restrictions to determine the law to be applied.

Finally, we have the fact that Mr. Callimanopoulos may be a barnacle, but he is a fair-paying barnacle. As a domiciliary he is required to pay income tax here. He isn't trying to avoid any of his American obligations. He has obligations to America and to Greece.

As far as his allegiance to Greece is concerned: He is a citizen of Greece. And the Lauritzen Case definitely stated it was the allegiance of the shipowner that should be considered as one of the primary points. His allegiance was to Greece.

Q Is part of the reason for the large number of Greek seamen the fact that they are cheaper labor?

A One of the points, Your Honor, there are over

100,000 Greek seamen. They are one of the largest groups of seamen in the world. And I think the principal point ----

Q Are the standard wages for a Greek seaman equal to that of the Unites States? The answer is no.

A Of course not. It is higher than say Spanish seamen.

Q We are dealing with the United States, here.

A It is lower; I admit that.

Q Does he pay taxes in Greece?

A Yes, he does, Your Honor.

Q Does he pay on these insurance policies over there? The workmen's compensation policies? Or does the shipowner do that?

A He pays that there.

Q I thought you said the seamen paid it.

A No; the seamen contribute. And he contributes to a seamen's pension fund, NAT.

Q That is not involved here.

A No, that is not involved here. This man will get his NAT when he retires.

Q Do you agree he would end up with the $160 he got when he went back to Greece?

A He would get more than that, Your Honor.

Q How much?

A I don't know.

Q $165?

A No. He was disabled for, I think, 7 months. He got 40 pounds a month. He would probably get $500 or $600 as wages; he would get medical. But the most important thing he would get in Greece would be -- if this should reactivate itself -- he would then get further medical attention and further payment along the lines of workmen's compensation. The Greek law is actually designed to be similar to the New York State Workmen's Compensation.

Q He gets paid while he is working?

A He gets paid while he is disabled.

Q But he is working now.

A He is working now; he won't get paid. But if the thing ---

Q What would he get now? $160?

A No, he would get more than that?

Q You don't know how much more?

A I don't know how much more. This court found no disability, so he would get ---

Q Couldn't I assume from the fact that your defending this case, that it would be more?

A We are defending this case because as a matter of principle he would get more. I can assure you that, if it were not for the principle involved, this case would never be here.

Q You would be making the same argument whether this individual was a Greek or an American, wouldn't you?

A On this ship, yes.

Q So it is really irrelevant about the allegiance of the majority stockholder of this corporation. Your argument would be the same?

A That is right. In fact, the McCulloch Case says it is the same.

Q The owner of the ship anyway is a Panamanian corporation?

A All of the stock of which is owned by a Greek corporation.

Q By a Greek corporation and 99 percent of which is owned by ---

A A Greek citizen, domiciled in this country.

Q But those things are really irrelevant, aren't they? As long as the ship is registered in Greece, carrying a foreign flag and a Greek crew, it is irrelevant to your argument who the owner is.

A Yes; that follows the argument in the McCulloch Case. Now in Lauritzen against Larsen the allegiance of the owner -- the fact the owner is a Greek citizen -- is important. And the same way in the Romero Case which followed.

Q You say there are no such things as flags of convenience?

A There are many flags of convenience, but this isn't one of them.

Q This isn't one of them because ---

A Because the Greek Government is responsible for the good order and maintenance of the ship; they had a Greek crew on board this ship; they have Greek licensed officers; they have Greek inspections. This is a bona fide Greek operation.

Q And that anybody from anywhere around the world can get their ships that are maybe built abroad, owned abroad, licensed in Greece?

A No, Your Honor. Greek law -- as set forth in my brief -- requires over 50 percent of the stock ownership of a corporation with a Greek flag ship to be Greek.

Q That is not true here though, is it?

A Yes it is.

Q I thought you said 99 percent was owned by one man, who lives in this country, and 1 percent by his son.

A I will say that 99 percent was owned by one man, a Greek citizen with allegiance to Greece.

Q But he lives in this country?

A Yes, he does.

Q And does his business in this country?

A Yes; but he is a Greek citizen.

Q He has been living here many years?

A Yes, Your Honor.

Q May I ask you just one other question about the contract? Suppose the federal law did govern our law. And when this man went in to make his contract, they had said, "Well now, you have got to sign this contract, which agrees that we will not owe you any money under American law." Would that have been valid in America?

A Under the Jones Act it would not be valid. There is a specific provision of the Jones Act.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Estabrook. Thank you, Mr. Stahl. The case is submitted.

(Whereupon at 11:15 a.m. the argument in the above-entitled matter was concluded.)