

III.

Even when construed in a light most favorable to him, Starnes's complaint reveals no basis for concluding that the state implicated itself in the newspaper's publication of Cuetto's letters. Consequently, the district court's dismissal of the case for failure to state a claim is

AFFIRMED.



Benny CHAN; Victoria Chan, individually and as husband and wife, a marital community; Victoria Chan, as Guardian Ad Litem of Samantha Alexis Chan, Zachary Alex Chan, and Amanda Elizabeth Chan, minor children, Plaintiffs-Appellants,

v.

**SOCIETY EXPEDITIONS, INC.,
a Washington Corporation,
Defendant,**

and

**Discoverer, a West German corporation;
Heiko Klein, a West German citizen,
Defendants-Appellees.**

No. 92-36868.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Feb. 1, 1994.

Decided July 27, 1994.

As Amended on Denial of Rehearing;
Suggestion For Rehearing En Banc
Rejected Oct. 14, 1994.

Husband, wife, and their children sued husband's employer, cruise ship operator, and sole owner and president of both employer and operator, asserting claims under general maritime law for injuries sustained by husband and child while on cruise. The United States District Court for the Western District of Washington, Thomas S. Zilly, J., dismissed. Plaintiffs appealed. The Court of Appeals, Goodwin, Circuit Judge, held that: (1) exclusive remedy provision of Washington state Workers' Compensation

Act did not bar recovery under federal maritime law; (2) service of process was effective against ship operator, a foreign corporation; (3) further fact findings were required as to whether ship operator had requisite minimum contacts to support personal jurisdiction; (4) loss of consortium and loss of society damages were not available under general maritime law; and (5) children who were absent from cruise had no claim for emotional distress, but child involved in same accident as father was in zone of danger and thus stated emotional distress claim.

Affirmed in part, reversed in part and remanded; petitions for rehearing denied; suggestion for rehearing en banc rejected.

1. Workers' Compensation ⇌2084, 2088

Worker who accepts state workers' compensation benefits is ordinarily barred from suing his employer in tort for same injuries, but this bar does not apply under Washington law to worker who has right under federal maritime law. West's RCWA 51.12.100.

2. Workers' Compensation ⇌2088

Under Washington law, worker who accepts workers' compensation benefits may nonetheless sue for his injuries under federal maritime law. West's RCWA 51.12.100.

3. Workers' Compensation ⇌2251

Under Washington law, worker must repay state workers' compensation benefits if worker recovers damages under federal law. West's RCWA 51.12.100(4).

4. Workers' Compensation ⇌2088

Recovery under Jones Act, a fault-based system, falls within Washington's statutory exemption of federal maritime claims from exclusive remedy provision of state workers' compensation law. Jones Act, 46 App. U.S.C.A. § 688; West's RCWA 51.12.100.

5. Workers' Compensation ⇌2088

Application of Washington's statutory exemption of federal maritime claims from exclusive remedy provision of state workers' compensation law is not limited to cases involving conflict between federal and state no-fault compensation remedies. West's RCWA 51.12.100.

Discoverer Reederei for lack of personal jurisdiction. Discoverer Reederei contends: (1) that the Chans failed to serve the company properly, thereby failing to establish jurisdiction over it, and (2) that assertion of personal jurisdiction would not comport with due process.

1. *Service of Process*

[9] Discoverer Reederei first claims that it was never served at all. The corporation argues that although the Chans personally served Heiko Klein, owner and president of Discoverer Reederei, that service was in Klein's individual capacity only and thus could not effect service against his corporation. The district court denied Discoverer's motion for summary judgment for want of service. We affirm that ruling.

Under the federal rules, foreign corporations may be served either (1) in accordance with the law of the state in which the district court is located, Fed.R.Civ.P. 4(d)(7), or (2) by delivering a copy of the summons and the complaint "to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed.R.Civ.Pro. 4(d)(3).

The Chans personally served Heiko Klein while he was in Washington state. Klein was the president and controlling shareholder of Discoverer Reederei at the time of service. The Chans' affidavits of service indicated that Klein was served "individually and in his corporate capacity as owner of Society Expeditions." Klein's ownership or status as a corporate officer of Discoverer Reederei could have been, but were not mentioned in the affidavit of service. Discoverer Reederei contends that this failure to name Klein as president of Discoverer Reederei renders defective the service against that entity. We find this argument unpersuasive on the narrow facts of this case.

8. Discoverer Reederei argues that the rule allowing transient or "tag" jurisdiction was never adopted in the context of a corporation. It contends that because Heiko Klein was temporarily in Washington at the time he was served, and was not conducting any business on behalf of Discoverer Reederei, service of process therefore was ineffectual. While it is true that a corporate defendant does not submit to jurisdiction by one

[10, 11] Rule 4 is a flexible rule that should be liberally construed to uphold service so long as a party receives sufficient notice of the complaint. *United Food & Commercial Workers Union, Locals 197, et al. v. Alpha Beta Co.*, 736 F.2d 1371, 1382 (9th Cir.1984). Technical defects in a summons do not justify dismissal unless a party is able to demonstrate actual prejudice. *FDIC v. Swager*, 773 F.Supp. 1244, 1249 (D.Minn.1991); *United Food*, 736 F.2d at 1382.

[12-14] The complaint served on Heiko Klein named Discoverer on its face and in the caption on the summons. Heiko Klein was the president and sole shareholder of Discoverer Reederei as well as of Society Expeditions. Discoverer Reederei has offered no evidence that it was prejudiced by the failure of the summons to describe Heiko Klein in all of his numerous capacities.⁸ Thus, we hold that the Chans have complied with Rule 4(d)(3) by serving an officer of Discoverer Reederei. As discussed further below, the Chans also contend that Society Expeditions was the general agent of Discoverer Reederei in the state of Washington. If true, then service of process on Society would also have been effective against Discoverer Reederei. *See Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 424 n. 20 (9th Cir.1977). The district court correctly denied Discoverer's motion to dismiss for insufficiency of process.

2. *Personal Jurisdiction*

Discoverer Reederei also contends that even if service was sufficient, the Washington courts lacked personal jurisdiction over the German corporation on due process grounds.

[15] Personal jurisdiction over a nonresident defendant is tested by a two-part analysis. First, the exercise of jurisdiction must satisfy the requirements of the applicable state long-arm statute. Second, the exercise

of its officers voluntarily entering a state, *Wright & Miller*, 4 *Federal Practice & Procedure*, Civil 2d § 1066-67 (1987), this situation is not what is at issue here. We hold only that service of process on Heiko Klein is effective in this instance, not that plaintiffs generally can acquire *personal jurisdiction* over corporate defendants by serving the persons who happen to own the corporation.