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Extension of the Unseaworthiness Remedy to Longshoremen—Triumph of Doctrine over Statutes

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service and commuter traffic; and even if it lasted for only thirty days, it would result in the layoff of some 6,000,000 non-railroad workers in addition to the 700,000 idled railroad employees. The combined effect, he said, would create a 15 per cent rise in unemployment, and cause a drastic decline in our production and competitive position in foreign and domestic markets. Hence, in cases such as a potential rail strike, the national interest in maintenance of operations is clear. Although the national significance is not as great, the effect of a business shutdown in individual communities may also have the same effect insofar as the residents of those communities are concerned.

The thrust of this note has not been to show that voluntary arbitration is a proper substitute for free collective bargaining, but to indicate that it may be the alternative to a work stoppage on both a national and local scale. Voluntary arbitration is what Dr. George Taylor has called the “least worst” solution to industrial strife. The risks involved in its use are substantially reduced by the fact that it is a voluntary procedure which the parties can shape to be responsive to their own particular problems and values. After mediation and conciliation fail, voluntary arbitration offers at least a last resort to the prevention of work stoppages. In this respect, it is preferable to the government’s playing a larger role in determining the substantive aspects of labor contracts through the institution of compulsory bargaining.

ALAN V. FRIEDMAN

Extension of the Unseaworthiness Remedy to Longshoremen—Triumph of Doctrine Over Statute

INTRODUCTION

Every court should watch with jealousy an encroachment upon the rights of seamen, because they are unprotected and need counsel. . . . They are emphatically the wards of admiralty.¹

This paternalistic expression of Justice Storey established a principle under which federal courts have extended the protection available to maritime workers. Admiralty courts have enlarged the scope as well as the amount of awards granted to seamen and longshoremen who have been injured in the course of their employment. This concern for the

¹ Harden v. Gordon, 11 Fed. Cas. 480 (No. 6047) (C.C.D. Me. 1823). Justice Storey’s devotion to the principle that seamen are entitled to special consideration was further expressed in his statement that “I am not bold enough to desert the steady light of maritime jurisprudence for the more doubtful light of general reasoning.” Id. at 485.
welfare of maritime workers parallels the social philosophy underlying workmen's compensation legislation. The philosophy is that the burden of industrial injuries is properly shouldered by employers, for they are in a position to shift the cost of such injuries to the consuming public by the use of insurance and price adjustments.²

The traditional (now absolute) obligation of a shipowner to furnish a seaworthy ship to seamen has been extended to benefit longshoremen and harbor workers who are in the ship's service. Today, injured longshoremen have three remedies: a right to compensation under the Longshoremen's and Harbor Workers Act,³ a cause of action based on the unseaworthiness doctrine, and a common law action for negligence.

The purpose of this note is to outline the development of the unseaworthiness doctrine and extension of its protection to longshoremen. This extension has been imposed in fact situations where it seemed to some observers to be in direct conflict with express provisions of the Longshoremen's Act. In such cases the Supreme Court has resolved the conflict in favor of the longshoremen. In so doing, the Court has declared that the humanitarian doctrine which attaches liability on a vessel and its owner for anything less than a seaworthy ship, is superior to the literal phraseology of the act.

An interpretative problem has also been presented when the "exclusiveness of employer liability" provisions of the Longshoremen's Act have collided with the doctrine of unseaworthiness.⁴ Stevedore-employers⁵ have contended that the act limits their liability to compensation payments, but the Court has been unreceptive to such a position which would operate to minimize the protection afforded by the unseaworthiness doctrine and other admiralty remedies available to injured longshoremen.⁶ The resultant judicial construction of the act has been attacked as a "severe shock"⁷ and "a studied effort to circumvent the unequivocal language . . . of Congress."⁸

² See Prosser, TORTS 317 (2d ed. 1955).
⁴ Two important cases in which the collision has led to the Court's overriding the literal phraseology of the Longshoremen's Act are cited in notes 86, 105 infra and accompanying texts.
⁵ The term "stevedore" will be used in this discussion to describe those who employ longshoremen.
⁶ See, e.g., Voris v. Eikel, 346 U.S. 328, 333 (1953), where the Court said that the Longshoremen's Act "must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results." Also, in Reed v. The Yaka, 373 U.S. 410, 414 (1963) the Court stated that "we cannot now consider the wording of the statute alone. We must view it in the light of our prior cases in this area" as a prelude to rejecting "blind adherence to the superficial meaning of a statute. . . ."
The conflict between the unseaworthiness doctrine and the provisions of the Longshoremen's Act is a classic example of collision between doctrine and statute. This note will present a discussion of the conflict and its resolution in favor of the doctrine in the hope of aiding parties in future disputes in achieving "reckonability of result." Attention will be directed to "what was bothering and what was helping the court as it decided" that the Longshoremen's Act is legislation which increases the relief available to longshoremen rather than providing a device whereby employers can deny liability arising from an unseaworthy ship. The Court has announced that neither contractual schemes between shipowners and stevedores, nor technical applications of the "exclusive" provisions of the Longshoremen's Act, can deprive longshoremen of the full benefit of the unseaworthiness doctrine.

The Unseaworthiness Doctrine

Historical Development

In addition to a common law action for negligence, longshoremen have only those rights which have been created by statute or extended to them by judicial decision. Seamen, on the other hand, have long had three common law actions, i.e., negligence, maintenance and cure, and unseaworthiness. Specific legislation has enlarged one of the remedies. Because of developments in the law of admiralty during the twentieth century, however, the claim of unseaworthiness has become the principal device for recovery in personal injury actions for both seamen and longshoremen.

The duty of a shipowner to furnish seamen a seaworthy ship, in addition to his liability for maintenance and cure, was first mentioned in the Cyrus case. Later, in the Osceola case, the Court added dicta

10. Ibid.
11. The term "seamen" will be used in this note to describe those who serve a ship under articles.
12. These include medical costs, living expenses, and lost wages of sick or injured seamen whose injuries or illness occur during the time they are under shipping articles. GILMORE & BLACK, ADMIRALTY 253-71 (1957).
13. "Unseaworthiness" has been defined as a condition of a vessel arising from failure to furnish a ship, including its gear, appurtenances, and manning so as to be reasonably fit for its intended purpose. NORRIS, MARITIME PERSONAL INJURIES § 27, at 63 (1959), citing Amador v. A/S J. Ludwig Mowinckels Rederi, 224 F.2d 437 (2d Cir. 1955).
14. In 1920, before the unseaworthiness doctrine had been fully developed, Congress enacted the Jones Act, 41 Stat. 1007 (1920), 46 U.S.C. 688 (1958), which gave seamen the right to institute actions against negligent employers and abolished the defense of contributory negligence.
15. GILMORE & BLACK, ADMIRALTY 315 (1957).
that failure to satisfy this duty gives rise to a claim for damages. Justice Brown's opinion declared that the law was "settled" as to the liability of vessel and owner. Both English and American law, he continued, consider the vessel and its owner liable for injuries suffered by seamen in consequence of the unseaworthiness of the ship, or for failure to supply and keep in order the proper appliances appurtenant to the ship.\textsuperscript{18}

While the \textit{Osceola} case imposed liability on a shipowner for unseaworthiness, it protected him if injury to a seaman resulted from the negligence of another member of the crew. This holding was merely a re-statement of the fellow servant rule\textsuperscript{19} which, until the passage of the Jones Act, barred most negligence actions.

The Jones Act granted "any seaman who shall suffer personal injury in the course of his employment" the right to maintain an action at law for damages regardless of whether the negligence was that of the owner, master, or a fellow crew member. For a quarter of a century, actions for negligence under the Jones Act displaced the remedy afforded by the unseaworthiness doctrine.\textsuperscript{20}

In \textit{Mahnich v. Southern S.S. Co.},\textsuperscript{21} the unseaworthiness doctrine emerged to dispel any uncertainty as to the absolute duty imposed on shipowners to furnish a seaworthy ship. The plaintiff in \textit{Mahnich}, whose injury was caused by a fall from a collapsed staging which had

\textit{\footnotesize{[Vol. 15:753}}
resulted from the parting of a defective rope, failed to bring his suit within the limitation period prescribed by the Jones Act. Thus, since a negligence complaint under the Jones Act was not available to the plaintiff, the Supreme Court took the opportunity to restate, in absolute terms, the obligation of a shipowner to furnish a seaworthy ship. The great development and extension of the unseaworthiness doctrine which followed the Mahnich case was based on the following language of Chief Justice Stone.

We have often had occasion to emphasize the conditions of the seaman's employment ... which have been deemed to make him a ward of the admiralty and to place large responsibility for his safety on the owner. He is subject to the rigorous discipline of the sea, and all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers. These conditions, which have generated the exacting requirement that the vessel or the owner must provide the seaman with seaworthy appliances with which to do his work, likewise require that safe appliances be furnished when and where the work is to be done.

Two years later in *Seas Shipping Co. v. Sieracki*, the same doctrine was extended to longshoremen and others "within the range of its humanitarian policy." This extension led to large personal injury awards the payment of which often fell upon stevedores as a result of their contractual duty to indemnify the shipowner. The disputes engendered by such results center around the exclusive liability provisions of the Longshoremen's Act. Since the disputed cases involve circumstances in which both the act and the unseaworthiness doctrine are substantial factors, it is necessary to review the scope and nature of both in terms of their interrelation.

**Scope of the Unseaworthiness Doctrine**

Unseaworthiness can be caused by a defect or inadequacy in the ship, its appliances, or its machinery. Defective appliances brought on board by an independent contractor have also sustained the claim, as has an assault by an unusually violent crew member.

22. *Id.* at 103-04.
25. The nondelegable nature of a shipowner's duty to provide a seaworthy ship was demonstrated in *Petterson v. Alaska S.S. Co.*, 205 F.2d 478 (9th Cir. 1953), *aff'd* *per curiam*, 347 U.S. 396 (1954). In *Petterson*, the longshoreman's injury was caused by a snatch block which, according to the evidence, was probably brought aboard by the stevedore. In spite of the fact that the shipowner was never connected with the snatch block, he was held liable to the worker.
26. In *Boudoin v. Lykes Bros. S.S. Co.*, 348 U.S. 336 (1955), the plaintiff-seaman was asleep in his bunk when Gonzales, an inebriated crew member, came into the room to steal a bottle of brandy. The plaintiff awakened only to be severely beaten by Gonzales. Eight men
The essence of the seaworthiness doctrine was recently summarized in Gutierrez v. Waterman S.S. Corp.\textsuperscript{27} as "things about a ship, whether the hull, the decks, the machinery, the tools furnished, the stowage, or the cargo containers, must be reasonably fit for the purpose for which they are to be used."\textsuperscript{28}

The Gutierrez case also states that unseaworthiness can have an effect on land as well as aboard ship. Citing the Extension of Admiralty Jurisdiction Act,\textsuperscript{29} the Court stated that "there is no distinction in admiralty between torts committed by the ship itself and by the ship's personnel while operating it, any more than there is between torts 'committed' by a corporation and by its employees."\textsuperscript{30}

The duty to furnish a seaworthy ship is essentially a liability without fault, imposed on a humanitarian basis to protect seamen. Since the Mahnich case it is clear that the duty is independent of negligence — it is imposed by law and is absolute.

\textbf{Absolute and Nondelegable Duty}

The absolute duty of a shipowner to furnish a seaworthy ship as expressed in the Sieracki and Mahnich cases is nondelegable.\textsuperscript{31} This concept is found in other areas of the law. For example, when injuries result from the use of purchased commodities, strict liability has been imposed on the manufacturer in many cases on the theory of implied warranty of merchantibility.\textsuperscript{32} In the past, however, in order to recover on the theory of implied warranty, the plaintiff had to show privity of contract.\textsuperscript{33} The law then took a forward step by extending liability in of the Supreme Court allowed recovery from the owner on the basis of unseaworthiness which they said was caused by Gonzales' presence aboard the ship. The Court explained:

A seaman with a proclivity for assaulting people may, indeed, be a more deadly risk than a rope with a weak strand or a hull with a latent defect. The problem, as with many aspects of the law, is one of degree. . . . A vessel bursting at the seams might be a safer place than one with a homicidal maniac as a crew member. \textit{Id.} at 339-40.

28. \textit{Id.} at 213.
30. 373 U.S. 206, 210 (1964). Justice Stewart carried the analogy landward in Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959), by describing the obligation of a shipowner as akin to that of owners and occupiers of land. In awarding damages to a \textit{visitor} who fell on a defective stairway he said: "We hold that the owner of a ship in navigable waters owes to \textit{all who are on board} for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case." \textit{Id.} at 632. (Emphasis added.)
31. See, e.g., Thorson v. Inland Nav. Co., 270 F.2d 432 (9th Cir. 1959); Crawford v. Pope & Talbot, Inc., 206 F.2d 784 (3d Cir. 1953).
32. \textsc{Uniform Commercial Code} § 2-315.
favor of those who could not plead privity. A major study of the law of

Warranties may be imposed or annexed to a transaction by law, because
one party to a transaction is in a better position than another (1) "to
know the antecedents of a thing . . ." dealt with; (2) to control those
antecedents; (3) and to distribute losses which occur because the thing
has a dangerous quality; (4) when that danger is not ordinarily to be
expected; (5) so that other parties will be likely to assume its absence
and therefore refrain from taking self-protective care.

Absence of fault has been rejected as a bar to liability where the
public welfare requires imposition of liability. Legal writers have also
recognized a need to impose liability without fault. This doctrine is
now found in codified law.

The absolute liability which the law of admiralty imposes on ship-
owners for unseaworthiness is similar to that imposed on manufacturers
of goods. In fact, an authority in the field of products liability cites
the Sieracki decision as an example of the extension of strict liability.
The decisions in both areas favor those whose injuries have been caused by
factors which the manufacturer or shipowner should have controlled. Even
when component parts obtained from third parties are the cause of the
injury, liability is imposed on the basis of implied warranty.

The nondelegable nature of such duties is best described in the Restatement of Torts.

One who employs an independent contractor to do work, which the
employer should recognize as necessarily requiring the creation during
its progress of a condition involving a peculiar risk of bodily harm to
others unless special precautions are taken, is subject to liability for
bodily harm caused to them by the failure of the contractor to exercise
reasonable care to take such precautions.

The hazardous conditions existing in the maritime industry and the duty of a
shipowner to furnish a seaworthy ship have demanded that this duty
become absolute and nondelegable.

34. See, e.g., McPherson v. Buick Motor Co., 217 N. Y. 382, 111 N.E. 1050 (1916); Kett-
35. 2 HARPER & JAMES, TORTS 1516 (1956).
36. See, e.g., 4 POUND, JURISPRUDENCE 507 (1959), in which the author states: "It had
to be recognized that the social interest in the general security had to be looked to as the basis
of the legal theory of liability rather than the interest in the general morals." See also HOLMES,
THE COMMON LAW 140 (1881), wherein Justice Holmes states that "imposition of an un-
reasonable risk of injury upon others resulting in harm to them was legally blameworthy
even if no moral element was involved."
37. UNIFORM COMMERCIAL CODE § 2-315.
39. See, e.g., Boeing Airplane Co. v. Brown, 291 F.2d 310 (9th Cir. 1961); Henningsen v.
40. RESTATEMENT, TORTS § 416 (1934).
UNSEAWORTHINESS AND LONGSHOREMEN

Two years after the Mahnich decision, a longshoreman was injured during a loading operation by a defective boom on a ship. His action against the shipowner, Seas Shipping Co. v. Sieracki, was brought before the Supreme Court to determine whether "the obligation of seaworthiness, traditionally owed by an owner of a ship to seamen, extends to a stevedore injured while working aboard the ship." Justice Rutledge, writing for the majority, described the basis for holding ships and their owners liable to longshoremen.

It is essentially a species of liability without fault, analogous to other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, the liability is neither limited by conceptions of negligence nor contractual in character . . . . It is a form of absolute duty owing to all within the range of its humanitarian policy.

The broad language of this decision extended protection not only to longshoremen, but to all workers who are exposed to shipboard hazards by reason of their employment. It appears that the right of longshoremen and others to recover for unseaworthiness arises from the owner's consent rather than from the contract of employment.

Does History Support the Sieracki Decision?

Chief Justice Stone, writing the dissent in Sieracki, stated that there was no precedent or warrant in history to support the majority's position. Some writers soon echoed this opinion, stating that "the courts have either misread, or have not read, the facts of history." One authority accused the Supreme Court of "making harbor workers amphibious." These criticisms may be summarized as follows: (1) there is no precedent for the extension of the unseaworthiness doctrine to longshoremen; (2) the Supreme Court is accomplishing by "judicial legislation" what has not previously existed in law or history; and (3) the Court was not justified in creating a new right for land-based workers.

The generic classification of longshoremen with seamen is not new to the law. While nineteenth century admiralty decisions disclose a division of opinion, opinions are found which belie the charge that history has been misread by the Court. One jurist wrote that "formerly, the labor of unloading was usually performed by seamen . . . ," and a

41. 328 U.S. 85 (1946).
42. Id. at 87.
43. Id. at 94-95.
44. Id. at 91.
45. Shields & Byrne, supra note 7, at 1152.
46. GILMORE & BLACK, ADMIRALTY 359 (1957).
contemporary court stated that "these . . . [longshoremen] are mere substitutes for seamen. . . ."48

The rationale that longshoremen perform a maritime service formerly rendered by the ship's crew was the basis for a unanimous decision as long ago as 1913 which held that a longshoreman could sue in admiralty after he was injured aboard ship.49 Justice Hughes said:

We entertain no doubt that the service in loading and stowing a ship's cargo is of this [maritime] character. Upon its proper performance depend in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a service absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class "as clearly identified with maritime affairs as are the mariners."50

Twelve years later, Justice Holmes spoke for another unanimous Court which held that there was an identity of rights between seamen and longshoremen. In *International Stevedoring Co. v. Haverty*,51 the Court held that a longshoreman was entitled to sue his employer under the Jones Act for negligence which resulted in injury. Although that act had given a cause of action to seamen, Justice Holmes again held that since longshoremen are engaged in the same maritime service, they are entitled to the same type of protection. The opinion is of current significance, for it is a guide to the "collision" between doctrine and statute which appeared in later decisions. On this matter, Justice Holmes stated:

We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship.52

A definitive treatise on maritime injuries53 defends the Court's reasoning in spite of the author's reluctance to approve the extension of the unseaworthiness claim to longshoremen.54 After consultation with veteran masters, engineers, and deck officers, Norris concluded that during the early years of steam navigation much of the maintenance and stevedore

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50. *Id.* at 61-62.
51. 272 U.S. 50 (1926). Justice Holmes saw no reason to differentiate between seamen and longshoremen in view of the historical fact that the work of longshoremen is a maritime service formerly performed by the crew. This was also the conclusion of the Court in *Sierachí* twenty years later.
52. *Id.* at 52.
54. *Id.* at § 15.
work was indeed performed by crews. This well-supported conclusion lends credence to the argument that history supports the Court.

After longshoremen were guaranteed a seaworthy ship in Sieracki, the Court extended the protection to a carpenter in Pope & Talbot, Inc. v. Hawn, stating:

His need for protection from unseaworthiness was neither more nor less than that of the stevedores then working with him on the ship or of seamen who had been or were about to go on a voyage. All were subjected to the same danger. All were entitled to like treatment under law.

It is no longer speculative whether longshoremen and other land workers have a remedy for unseaworthiness — it is a settled matter of law. Employment by shipowner or stevedore is not the ratio decidendi — the performance of a function essential to maritime service is the decisive factor.

Was the Extension "Judicial Legislation?"

"The favorite way of criticizing the Supreme Court is to say it is another example of judicial legislation." One critic describes a recent admiralty decision of the Court "as one of the most vivid examples of judicial legislation to emanate from that body in recent years. . . ." Such a charge is to be expected from observers who do not agree with the philosophy of judicial activism, especially when they do not agree with the result in a specific case.

On the other hand, Justice Holmes has said that "in substance the growth of the law is legislative." Considerations of what is expedient for the community are as important, he said, as syllogistic manipulation of precedent. Professor Leon Green adds that "it is no longer venture-some to assume that the judgment of courts . . . are only to be understood in the light of the results which the judges thought the social order of the times required." This is especially true in admiralty.

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55. Id. at § 48A. Norris lists the present-day division of labor which corresponds to tasks formerly performed by the crew. The list includes longshoremen, shipcleaners, port watchmen, tank cleaners, painters, riggers, carpenters, ship ceilers, checkers and tallyers, marine equipment specialists, plumbers, electricians, repairmen, and pipe fitters. But see Pilot's Ass'n v. Halecki, 358 U.S. 613 (1959), where a harbor worker who was injured by inhaling carbon tetrachloride while cleaning electrical equipment was held not entitled to the warranty of unseaworthiness "because his work was not traditionally performed by seamen."


57. Id. at 413.


59. Bue, op. cit. supra note 8, at 97.


61. Ibid.

Frankfurter reinforced this point, stating that "no area of federal law is judge-made at its source to such an extent as is the law of admiralty."

Those who have studied the trend conclude that the principle of strict liability is being extended by both statute and common-law development. The extension of the unseaworthiness doctrine to longshoremen, however, represents a specific societal attitude that the burden of industrial accidents should fall first on those who have the capacity to shift the cost to the general public. Since all states have workmen's compensation acts embodying that philosophy, it cannot be doubted that the Court is properly expressing American social policy in its disposition of cases involving maritime personal injuries.

THE LONGSHOREMEN'S COMPENSATION ACT

Today there is no question about the statement that "longshoremen, engaged in the service of a ship are entitled to the same protection against unseaworthiness which members of the ship's crew would enjoy." Half a century ago, this remedy would not have been available to longshoremen. The fellow-servant rule defeated recovery in many cases, and it will be remembered that maintenance and cure was never available to longshoremen.

Growing concern for industrial accidents led to enactment of state workmen's compensation laws. In Southern Pac. Co. v. Jensen, however, such statutes were held inapplicable to longshoremen performing maritime services. The constitutional mandate that all matters of admiralty and maritime jurisdiction are federal questions was invoked by the Court to strike down successive efforts by Congress to authorize state coverage of longshoremen. The Court advised Congress that only it had the power to legislate in the areas of maritime and admiralty jurisdiction. Congress took the indicated path, and in 1927 enacted the Longshoremen's Act.

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64. FROST, TORTS 344 (2d ed. 1955).
65. 1 LARSON, WORKMEN'S COMPENSATION LAW § 5.30 (1952).
68. NORRIS, op. cit. supra note 53, at § 13.
69. 242 U.S. 205 (1917). In the Jensen case, a land based worker died as a result of an injury incurred while working on board a vessel. The attempt of his heirs to recover compensation under the state compensation act was denied by the Court on the basis that the right to recover for such injury and death on navigable waters was created by admiralty and cognizable only by such law. In denying state compensation the Court concluded that uniformity in admiralty is of the essence.
General Provisions of the Act

The Longshoremen's Act is modeled after the New York workmen's compensation statute. It contains the usual quid pro quo found in all compensation acts, i.e., the employer is bound to pay set sums to workers who are injured in the course of their employment, and the workers in turn are denied the right to seek large awards through negligence actions. The liability placed on the employer is absolute and cannot be avoided by the defense of contributory negligence or assumption of the risk. The act is the employee's exclusive remedy against his employer. The exclusion applies to the employee's legal representatives, spouse, parents, dependents, next of kin, or anyone else entitled to recovery from the employer at law or in admiralty on account of such injury or death.

Shipmasters and crew members are not covered by the Longshoremen's Act since they have either an action under the unseaworthiness doctrine, the Jones Act, or an action for maintenance and cure. Also excepted are those engaged in work or repair of small vessels (defined as those under eighteen tons net), and any officer or employee of state, federal, or foreign governments.

Four presumptions are set forth in the Longshoremen's Act, all of which tend to encourage its liberal purpose of granting awards. These presumptions are (1) validity of claims, (2) adequate notice, (3) sobriety, and (4) absence of willful injury on the part of the employee. Furthermore, the burden of rebutting these presumptions is on the employer. Thus, it can be seen that Congress was quite explicit in ensuring that awards would not be easily denied.

Third Party Tortfeasor Provisions

A major area of dispute has evolved from the act's preservation of a cause of action against a tortfeasor who is not part of the compensation system. The underlying social policy is that where a stranger causes an injury (either by overt act or breach of a nondelegable duty) the compensation law should not bar attempts to recover from him. Congressional draftsmen foresaw these situations involving third party tortfeasors. Hence, procedures are outlined for assignment to the employer.

73. 1 Larson, op. cit. supra note 65, at 89.10.
76. Ibid.
78. Ibid.
81. 1 Larson, op. cit. supra note 65, at § 71.10.
of the right to proceed against third parties in connection with an injury for which an award has been made.\textsuperscript{82} Also, if the employee chooses to proceed against the stranger in an action at law instead of accepting an award, the employer must still guarantee the amount of the unclaimed award in the event that the judgment at law fails to equal the award amount.\textsuperscript{83} Conversely, if the employer successfully proceeds in subrogation against the third party, he may retain only that amount which will reimburse him for award payments already made or provided for, in addition to legal expenses incurred in the suit.\textsuperscript{84}

**Judicial Construction of the Act — Literal or Liberal?**

It is a well-established rule that remedial legislation should be liberally construed.\textsuperscript{85} Since the Longshoremen's Compensation Act purports to govern relations between longshoremen and their employers, the question frequently arises as to its position in admiralty law in general. This problem has been particularly vexatious when the literal words of the act have been in apparent conflict with results in specific cases.

*Czaplicki v. The S.S. Hoegh Silvercloud*,\textsuperscript{86} for example, was the first instance in which the Supreme Court found it necessary to ignore the literal words of the act. There, the plaintiff-longshoreman was injured when wooden steps gave way. The cause of the failure was traced to the manufacturer, but an award was made under the act. The right of recovery was assigned by law to the stevedore-employer who could have recovered damages in excess of the award. But, the employer failed to proceed against the manufacturer and the longshoreman libeled the vessel for unseaworthiness. The libel was attacked as being without right, for under the act the employer had become the proper libelant. Ironically, the same insurance company carried the liability coverage for both the plaintiff's employer and the manufacturer of the stairs. Recovery for negligent construction which exceeded the compensation award would go to the employee,\textsuperscript{87} but the same insurance company would pay both amounts. The identity of interest had created a stalemate.

Justice Harlan, speaking for a unanimous Court, said that the literal words of the act meant that the plaintiff's right to further recovery was in the hands of the party most likely to suffer were that right to be enforced.

\[G\]iven the conflict of interests and inaction by the assignee, the em-

\textsuperscript{82} 33 U.S.C. §933(c) (1959).
\textsuperscript{84} 33 U.S.C. § 933(e) (1959).
\textsuperscript{86} 351 U.S. 525 (1956).
\textsuperscript{87} 33 U.S.C. §933(e) (1959).
ployee should not be relegated to any rights he may have against the assignee, but can maintain the third-party action himself.88

The longshoreman was allowed to bring the action in his own name. The Court held that under such circumstances, the literal wording of the statute must be ignored in order to achieve a proper result.89

Although the situation in the Czaplicki case is rarely encountered, the Court has solved similar cases by merely ignoring the literal words of the act.

THE INDEMNITY DISPUTE

The provisions of the Longshoremen's Act which preserved actions against third party tortfeasors90 made certain that either the longshoreman or the stevedore could seek recovery against the shipowner whenever unseaworthiness was a factor in the injury. In addition, it will be remembered that the shipowner has been held to an absolute duty to furnish a seaworthy ship even in cases where the stevedore or his employee have caused the unseaworthiness.91

The Court found it necessary to consider relief for shipowners who were forced to pay judgments for injuries caused by unseaworthiness in spite of the fact that they were innocent of wrongdoing. This was doubly unfair where the stevedore had caused the unseaworthiness but was protected from further judgment by the exclusive provisions of the Longshoremen's Act.92 The rationale was found in a similar experience under state compensation acts which provide that

if the employer can be said to have breached an independent duty toward the third party, or if there is a basis for finding an implied promise of indemnity, recovery in the form of indemnity may be allowed.93

Such indemnity was first enforced in Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.,94 where the injured longshoreman accepted voluntary compensation payments from his employer, then instituted an action against the shipowner. The stevedore was impleaded and held liable to indemnify the shipowner. The stevedore contended that the Longshoremen's Act insulated him from liability for injury to his employees after compensa-

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88. 352 U.S. 525, 532 (1956).
89. Id. at 531. Amendments to §933 of the Longshoremen's Act made in 1959 give longshoremen six months after an award has been made in which to proceed independently against the third party tortfeasor. This provision alleviates situations such as that found in the Czaplicki case where an employer "sits" on the claim. There is no longer a complete assignment of the claim to the employer at the time of an award.
90. 33 U.S.C. § 933 (a), (b), (c) (1959).
93. 2 LARSEN, WORKMEN'S COMPENSATION LAW § 76.00 (1952).
tion had been paid. The Court stated, however, that “the act prescribed no quid pro quo for a shipowner that is compelled to pay a judgment against it for the full amount of a longshoreman’s damages.”

The argument of the stevedore was very persuasive in that the facts in the Ryan case did not present a clear case requiring a negligent contractor to bear the ultimate loss of the longshoreman’s injury for there was no evidence that the stevedore was negligent. In reviewing the case, the Supreme Court decided two issues: (1) whether the Longshoremen’s Act precludes a shipowner from asserting that a stevedore is liable to indemnify him for damages paid to an injured longshoreman who happens to be employed by the stevedore; and (2) whether there is, absent an express agreement, any liability of the stevedore for damages to workmen caused by improper performance of the stevedoring contract. The Court answered both questions in the negative. First, the Court declared that the Longshoremen’s Act does stand as a bar to further liability on the part of the stevedore to longshoremen after awards are determined under the act. Second, the provisions in the act which allow actions against third parties specifically allow a longshoreman to proceed against a shipowner. Furthermore, it is equally permissible for a shipowner to raise any claim it has against a stevedore which arises from a breach of contract or warranty.

With respect to breach of warranty, the Court held that the action was based on the implied contractual obligation of the stevedore to the shipowner to perform the stevedoring contract in a proper manner. In this respect, the warranty is akin to a manufacturer’s warranty that a product is sound. The Ryan case, therefore, set forth the relations between shipowner and stevedore in terms of contract, rather than tort. A stevedore is liable to shipowners if his services are not performed in a reasonable and safe manner. This is true even in cases where the shipowner is himself negligent. The strength of the implied warranty theory is great enough to impose liability even where the contractor is not negligent. The indemnity may arise from an express contract, in which case the agreement has removed any bar to the intended result.

95. Id. at 128.
96. Id. at 130. See also RESTATEMENT, RESTITUTION § 76 (1937), which states that a person who, in whole or in part, has discharged a duty which is owed by him but which as between himself and another should have been discharged by the other, is entitled to indemnity from the other, unless the payor is barred by the wrongful nature of his conduct.
98. See Weyerhaeuser S.S. Co. v. Nacirema Operating Co., 355 U.S. 563 (1958), where the shipowner was allowed indemnity from the stevedore although the original award to the longshoreman was based on the negligence of the owner.
Section five of the Longshoremen's Act represents a *quid pro quo* between longshoremen and stevedores, but the doctrine of implied warranty allows shipowners to recover from stevedores independent of the act. The Court might have read the act in the *Ryan* case so as to exonerate the stevedore. But the Court held Ryan Stevedoring Company liable to the shipowner, Pan-Atlantic, not the longshoreman. Breach of its implied warranty to the shipowner made Ryan responsible for the unseaworthy ship, and thus it was ordered to indemnify Pan-Atlantic.

**The Longshoremen's Act Collides With a Lien**

*The Maritime Lien*

The maritime lien is peculiar to admiralty. It is a long-accepted device whereby a party whose claim is based on a maritime contract or tort achieves a possessory interest in the ship or cargo concerned. Liens arise from the furnishing of supplies, seaman's wages, tortious conduct, or a claim for freight.

Maritime liens may be enforced by a libel in rem, a concept virtually unknown outside of the law of admiralty. The prosecution of such an action consists of taking the vessel into the custody of the court (arrest) until the owner appears as "claimant" to conduct a defense. If the owner does not appear, or his defense fails, the vessel may be sold by the court to satisfy the claim. The in rem action is superior to all other claims and "good against the world." Justice Holmes summarized this procedure as follows:

A collision takes place between two vessels, the Ticonderoga and the Melampus, through the fault of the Ticonderoga alone. That ship is under a lease at the time, the lessee has his own master in charge, and the owner of the vessel has no manner of control over it. The owner, therefore, is not to blame, and he cannot even be charged on the ground that the damage was done by his servants. He is free from personal liability on elementary principles. Yet it is perfectly settled that there is a lien on his vessel for the amount of the damage done, and this means that that vessel may be arrested and sold to pay the loss in any admiralty court whose process will reach her.

This language proved prophetic in *Reed v. The Yaka,* decided eighty-two years later, in which the legal relations were almost identical to those described in Justice Holmes' imaginary collision situation. In the *Yaka* case, the defendant-stevedore contended that application of the

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101. GILMORE & BLACK, ADMIRALTY 31-32 (1957).
102. Ibid.
103. Id. at 33.
104. HOLMES, THE COMMON LAW 27 (1881). This concept is usually cited from The Barnstable, 181 U.S. 464 (1901), and it appears regularly in current opinions. See, e.g., Reed v. The Yaka, 373 U.S. 410 (1963).
105. Supra note 104. The *Yaka* was indeed out of possession of its owner and "under lease" to the Pan-Atlantic Steamship Co.
long-established admiralty principle of libel for unseaworthiness was foreclosed by the provisions of the Longshoremen's Act. The petitioner's injury occurred when a wooden pallet on which he was standing gave way due to a latent defect; his sudden outcry was misconstrued by the winch operator as a signal to lower heavy cases of chocolate syrup thereby trapping the longshoreman. The latent defect in the pallet was enough to support a claim of unseaworthiness since it was basically the same as the collapsed staging in Sieracki; and even if it had been brought aboard during the loading operations by the stevedore, it would have been, according to the Petterson rationale, no less the responsibility of the shipowner. The primary question before the Court involved the ownership of the ship. The Waterman Steamship Corporation was the owner of record, but the Pan-Atlantic Company, under a bareboat charter, was the owner pro hac vice. Pan-Atlantic, a stevedoring company for which the longshoreman was working at the time of the accident, was also operating the S.S. Yaka under a demise charter. When the case came to the courts, it was necessary to untangle an employer liable only under the Longshoremen's Act from an employer who was, for all legal purposes, the owner of a ship and thus also liable for unseaworthiness. The Court concluded that the injured longshoreman was more deserving than an employer who chose to wear two hats. More specifically, the trial court held: (1) the latent defect in the pallet rendered the ship unseaworthy; (2) the ship was subject to a libel in rem; (3) the shipowner, Waterman, was liable for unseaworthiness; (4) Pan-Atlantic was liable to the owner on the basis of indemnity; and (5) the Longshoremen's Act was not a bar to the action or to the indemnity. The Supreme Court eventually restored this holding after a reversal in the court of appeals.

The in rem liability of a ship was decisive in the Yaka case, for the plaintiff's attorneys were required to counter the defendant's defense that its liability as an employer was clearly limited in section five of the Longshoremen's Act. That section provides:

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106. [T]he Court of Appeals held, and Pan-Atlantic would have us hold, that petitioner must be completely denied the traditional and basic protection of the warranty of seaworthiness simply because Pan-Atlantic was not only the owner pro hac vice of the ship but was also petitioner's employer. 373 U.S. 410, 418 (1963).

107. See note 26 supra and accompanying text.

108. A bareboat charter is a contract under which the "Charterer" takes over an entire ship and mans her with his own people. The owner relinquishes complete control for the period covered by the "charter party," and the charterer becomes the owner pro hac vice (for this turn).

109. Demise charter is synonymous with bareboat charter.


The liability of an employer . . . shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parent, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. . . .

As noted previously, Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp. was the first case to achieve the result of placing responsibility on a stevedore in spite of section five of the Longshoremen's Act; however, this was limited to cases where it could be shown that a duty to indemnify a shipowner existed. In the Yaka case, however, the Waterman Steamship Company could be reached only through a libel in rem which forced Waterman to appear as claimant after which Waterman could seek indemnification from Pan-Atlantic. Pan-Atlantic was, by virtue of the bareboat charter, the owner pro hac vice; but plaintiff's attorneys might have risked dismissal had they sought to proceed against the employer since such a step is expressly forbidden by the Longshoremen's Act. The strategy of Pan-Atlantic and Waterman was clear. A bareboat charter could immunize a stevedore as employer from unseaworthy actions as easily as it transferred ownership of the vessel pro hac vice to him.

Counsel for the plaintiff, however, devised what one critic has called "a unique and ingenious theory." Recognizing the difficulty in naming an employer who, as defendant, could plead section five of the Longshoremen's Act, counsel for the plaintiff libeled the ship in the best tradition of admiralty. As previously described, a maritime lien and libel in rem to enforce such a lien is based on the plaintiff's possessory interest in the ship which it is expected that the owner will appear to contest. The trial court approved this approach stating that "to hold otherwise would be to invite contracted-for situations such as we have here, for the sole purpose of destroying a longshoreman's in rem remedy which the law of admiralty had traditionally recognized." Justice Black, who supported this position on appeal, stated:

In particular, we pointed out several times in the Sieracki case, which has been consistently followed since, that a shipowner's obligation of seaworthiness cannot be shifted about, limited, or escaped by contracts and that the shipowner's obligation is rooted, not in contracts, but in the hazards of the work.

In Yaka, the Supreme Court applied the established principles of admiralty rather than the literal words of the Longshoremen's Act. To do otherwise, Justice Black argued, would be to defeat the remedial purpose

114. See note 95 supra and accompanying text.
of the statute. He recalled that under the *Ryan* doctrine of indemnity, a longshoreman whose employer was not also the owner *pro hac vice* would experience no difficulty in prosecuting his unseaworthiness claim. It would be out of keeping, he said,

> to distinguish between liability to longshoremen injured under precisely the same circumstances because some draw their pay directly from a shipowner and others from a stevedoring company doing the ship's service.  

As to the statute, Justice Black stated that “only blind adherence to the superficial meaning of a statute” could defeat the action. The stevedore had voluntarily become the owner of a ship and thus assumed the nondelegable duties which went with such status.

The circle of protection for longshoremen is now complete. The right to a seaworthy ship is firmly rooted in admiralty law, and extends to all within the range of the humanitarian doctrine of unseaworthiness. The *quid pro quo* of the Longshoremen’s Act will not be allowed to negate the established doctrine of unseaworthiness. The rationale may be summarized as follows: (1) A shipowner is absolutely liable for the seaworthiness of his ship; (2) The liability of a shipowner extends to longshoremen employed aboard the vessel; and (3) The Longshoremen’s Act will not be allowed to shelter a stevedore from breaches of his implied warranty to shipowners, even when such breach is expressed in indemnity for damages paid to longshoremen.

Although the dramatis personae is the same in cases where seaworthiness and indemnity are involved, two distinct areas of law are involved. The liability for unseaworthiness sounds in tort, and its humanitarian quality reflects the contemporary social attitude toward industrial injuries. On the other hand, the theory of implied indemnity gives rise to an action in contract. The relationship between stevedore and shipowner can be varied by the parties concerned. The liability of stevedore to shipowner is found in the contract between the parties. The liability of shipowner to longshoreman is found in a latter day “social contract.”

**CONCLUSION**

The extension of the unseaworthiness doctrine reflects the growth of concern for those who suffer industrial injuries. This development has also taken place in many other areas of the law; but the course of admiralty decisions may well provoke an even greater development in other areas.

Although it has been charged that the Court’s decisions in the cases extending the unseaworthiness doctrine are judicial legislation, one

118. Id. at 415.
119. Ibid.