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Maritime Jurisdiction and Longshoremen's Remedies

NOTES

MARITIME JURISDICTION AND LONGSHOREMEN'S REMEDIES

The attempts by courts to recognize, and legislatures to provide, remedies for longshoremen injured at work have a complex history. Longshoremen's work necessitates repeated crossings of the shoreline between land and navigable waters, which was the traditional boundary between federal and state jurisdiction, thus complicating the search for a judicial or legislative solution to the problem of longshoremen's remedies. The courts initially wavered on the remedies available, but eventually expanded a seaworthiness warranty from the shipowner to the longshoreman into a form of absolute liability, at least for longshoremen injured on board ship or by the ship's gear. Furthermore, courts allowed the shipowner to pass the liability on to the stevedore[1] by third-party indemnity actions against the stevedore, despite language in the Longshoremen's and Harbor Workers' Compensation Act[2] which, if read literally, would have prohibited such indemnity.

The disparity between the recoveries allowed by juries or courts under seaworthiness and indemnity actions and what were thought to be low benefits under the Longshoremen's Act and state workmen's compensation acts resulted in injured longshoremen bypassing the compensation acts in favor of seaworthiness suits. Congress responded to the practical problems which resulted from the bypassing of the compensation acts by enacting Public Law Number 92-576.[3]

Public Law Number 92-576 amended the Longshoremen's and Harbor Workers' Compensation Act to extend coverage and increase benefits to more employees while eliminating the seaworthiness warranty for longshoremen and third-party indemnity actions against the stevedore. Part I of this Note will examine the pre-amendment law by discussing

1. The term "longshoremen" "refers to the laborers who do the actual physical work, whereas the stevedore is the contractor or boss who employs longshoremen." R. DE KERCHOVE, INTERNATIONAL MARITIME DICTIONARY 432 (1948).

2. 33 U.S.C. §§ 901-49 (1970, Supp. II, 1972), *formerly* ch. 509, §§ 1-48, 44 Stat. 1424 (1927).

3. Act of Oct. 27, 1972, 86 Stat. 1251, *amending* 33 U.S.C. §§ 901-48 (1970) (codified at 33 U.S.C. §§ 901-49 (Supp. II, 1972)).

(A) the seaworthiness warranty, (B) third-party indemnity actions, (C) the remedies of longshoremen employed by vessels, and (D) the benefits and practical problems of the pre-amendment law. Part II will examine the amended Longshoremen's Act by concentrating on (A) the extension of coverage, (B) the elimination of the seaworthiness warranty for longshoremen, (C) negligence actions by longshoremen, and (D) the elimination of third-party indemnity actions.

I. PRE-AMENDMENT LAW

A. *The Seaworthiness Warranty*

Congress recently eliminated the judicially fashioned seaworthiness warranty as extended to longshoremen. This remedy had an interesting if not tortuous development. Although initially available only to seamen, the courts had gradually extended the limits of the warranty's coverage to longshoremen under certain conditions. The warranty extended to equipment which was part of the ship or which was brought aboard ship even if the equipment were owned, controlled, and used exclusively by a stevedore company temporarily employed by the shipowner. In 1963 the Supreme Court held the remedy available to a longshoreman injured on a pier when his injuries were caused by cargo that had spilled from unloaded defective cargo containers. In a subsequent case, however, the Court refused to permit further expansion to cover a longshoreman injured on a pier by equipment being used to bring cargo to a loading point alongside the ship.

Continued expansion of the seaworthiness warranty had been controlled by three factors. The first was the boundary of admiralty jurisdiction, for a claim based on the seaworthiness warranty could be heard only in an admiralty court. The second was the substantive limits of the seaworthiness warranty. The third was the influence of a "humanitarian doctrine" which the courts developed into an enterprise liability.

1. *Admiralty Jurisdiction and Seaworthiness*

Historically, the boundary of admiralty jurisdiction was shaped by competition between admiralty and common law courts for cognizance of maritime cases.[4] As a result, in some cases either an admiralty or a

4. *See* De Lovio v. Boit, 7 F. Cas. 418 (No. 3,776) (C.C.D. Mass. 1815); E. BENEDICT, THE AMERICAN ADMIRALTY § 6 (1870); G. GILMORE & C. BLACK, THE

common law remedy could be sought to redress an injury.[5] The American colonies inherited this jurisdictional dispute, but rather than resolve it, the founding fathers drafted the Constitution,[6] and later the Judiciary Act,[7] in a manner that permitted the dispute to continue. These laws retained the choice of remedies for those categories of cases which had traditionally permitted it,[8] but a suitor who chose an admiralty remedy had to bring his suit in a court of admiralty jurisdiction.[9] The federal courts were given exclusive jurisdiction over admiralty law.[10]

Following the enactment of the Judiciary Act, the federal courts undertook the task of delineating the scope of admiralty jurisdiction. In a famous dictum Justice Story announced that the limit of admiralty jurisdiction over tort claims for injuries is necessarily fixed by locality. Claims for injuries that occurred at sea were cognizable, but claims for injuries suffered on land were not.[11] In attempting to employ Story's dictum, the Supreme Court later laid down the "*Jensen* line" as the presumptive boundary between federal and state jurisdiction over tort claims. In *Jensen* the Court drew the jurisdictional line at the point where the gangplank touches the pier, with injuries seaward of the line

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LAW OF ADMIRALTY § 1-4 (1957) [hereinafter cited as GILMORE & BLACK]; Laing, *Historic Origins of Admiralty Jurisdiction in England*, 45 MICH. L. REV. 163 (1946).

5. *See* Laing, *supra* note 4.

6. U.S. CONST. art. III, § 2. Article III has been held to contain three grants of maritime power. First, it empowers Congress to give maritime jurisdiction to lower federal courts. Secondly, it impliedly empowers the courts to draw on the substantive law inherent in admiralty and maritime jurisdiction. Thirdly, it impliedly empowers Congress to revise and supplement the substantive maritime law. Romero v. International Terminal Operating Co., 358 U.S. 354, 360-61 (1959).

7. Act of Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76: "[T]he district courts . . . shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of common law remedy, where the common law is competent to give it . . . ." The present law, 28 U.S.C. § 1333 (1970), reads:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
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> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

8. Romero v. International Terminal Operating Co., 358 U.S. 354, 362 (1959).

9. The "savings to suitors" clause, *see* note 7 *supra*, permits civil actions to be brought in state courts or on the civil side of the federal district courts, given the jurisdictional requirements, that might also be brought by libel in personam in admiralty. An in rem admiralty action must be brought on the admiralty side of federal district court since it is not "a common law remedy." GILMORE & BLACK § 1-13.

10. *See* note 7 *supra*.

11. De Lovio v. Boit, 7 F. Cas. 418, 444 (No. 3,776) (C.C.D. Mass. 1815).

being under admiralty jurisdiction.[12] Although the mechanical test of *Jensen* was later blurred by the courts into a "twilight zone" to the seaward to allow some state remedies for injuries on navigable waters,[13] the courts maintained the line on the shoreside to prevent recovery in admiralty for injuries on land caused by ships.[14]

Dissatisfied with the limits of this test, Congress in 1948 extended admiralty jurisdiction by directing admiralty courts to hear cases involving injuries caused by vessels to persons or property on land.[15] The impact of this act was considered at length in *Gutierrez v. Waterman S.S. Corp.*[16] In *Gutierrez* a longshoreman unloading a ship was injured when he slipped on beans which had spilled from defective unloaded cargo bags onto the dock. The Court held that the longshoreman had a seaworthiness claim for his injury against the vessel from which the bags had been unloaded. The Court held that the Admiralty Extension Act[17] clearly extended admiralty jurisdiction to the long-

12. Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917). Jensen, a longshoreman, was killed on the gangplank of a ship. The Supreme Court held that his widow could not obtain state workmen's compensation payments because the gangplank was subject to federal jurisdiction.

13. Davis v. Department of Labor & Indus., 317 U.S. 249 (1942). Rejecting the ambiguous test developed in Western Fuel Co. v. Garcia, 257 U.S. 233 (1921), that local laws could be applied on ships if the laws were "maritime and local in character," *id.* at 242, Justice Black in *Davis* held that "there is . . . clearly a twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements." 317 U.S. at 256. For the development of these tests, see Calbeck v. Travelers Ins. Co., 370 U.S. 114 (1962); Parker v. Motor Boat Sales, Inc., 314 U.S. 244 (1941); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469 (1922).

14. Victory Carriers, Inc. v. Law, 404 U.S. 202, 208-09 (1971); Nacirema Operating Co. v. Johnson, 396 U.S. 212, 220-21 (1969). For the historical basis for denying admiralty remedies even when a ship on navigable waters caused damage to persons ashore or shore-based structures, see Martin v. West, 222 U.S. 191 (1911); Cleveland Terminal & Valley R.R. v. Cleveland S.S. Co., 208 U.S. 316 (1908); The Troy, 208 U.S. 321 (1908); The Plymouth, 70 U.S. (3 Wall.) 20 (1805).

15. Admiralty Extension Act of 1948, 46 U.S.C. § 740 (1970). The Act provides:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to persons or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

Id. The House Report stated that the Act was passed to remedy the "inequities" of cases like Cleveland Terminal & Valley R.R. v. Cleveland S.S. Co., 208 U.S. 316 (1908), and Martin v. West, 222 U.S. 191 (1911), which denied admiralty jurisdiction for damages to land structures by ships on navigable waters. H.R. REP. No. 1523, 80th Cong., 2d Sess. 2 (1948).

16. 373 U.S. 206 (1963).

17. 46 U.S.C. § 740 (1970).

shoreman's injury and to all torts that the shipowner commits before or after unloading, "the impact of which is felt ashore at a time and place not remote from the wrongful act."[18]

The Supreme Court subsequently refused to expand *Gutierrez*. In *Victory Carriers, Inc. v. Law*[19] a longshoreman, while positioning cargo on a pier for loading onto defendant's ship, was injured by a defective rack on the forklift he was operating. The Supreme Court held that admiralty jurisdiction did not extend to a claim based on this injury. The Court accepted the gangplank division of the *Jensen* line as the rough dividing line between state and admiralty jurisdiction, but acknowledged that in passing the Admiralty Extension Act Congress had extended the line to cover accidents caused by ships to persons or property on land.[20] The Act was strictly construed to require physical causation by something which was part of the ship, and the Court rejected the "status" test developed by some of the circuits, which granted coverage to anyone performing a seaman's traditional tasks.[21] The majority opinion distinguished *Gutierrez*, stating that the injury there was clearly within the Admiralty Extension Act.[22]

In *Victory Carriers*, for the first time since the Court began develop-

18. 373 U.S. at 210.

19. 404 U.S. 202 (1971).

20. *Id.* at 209.

21. *See* note 42 *infra* and accompanying text.

22. 404 U.S. at 210. Justice White in *Gutierrez* stated:

> [W]e think it sufficient for the needs of this occasion to hold that the case is within the maritime jurisdiction under 46 U.S.C. § 740 [The Admiralty Extension Act] when, as here, it is alleged that the shipowner commits a tort while or before the ship is being unloaded, and the impact of which is felt ashore at a time and place not remote from the wrongful act.

373 U.S. at 210 (footnote omitted). White went on to "hold that the duty to provide a seaworthy ship and gear, including cargo containers, applies to longshoremen unloading the ship whether they are standing aboard ship or on the pier." *Id.* at 213. In *Victory Carriers*, however, Justice White wrote for the majority that:

> [I]n *Gutierrez* . . . federal admiralty jurisdiction was clearly present since the Admiralty Extension Act on its face reached the injury there involved. The decision in *Gutierrez* turned, not on the "function" the stevedore was performing at the time of his injury, but, rather, upon the fact that his injury was caused by an appurtenance of a ship, the defective cargo containers, which the Court held to be an "injury to person . . . caused by a vessel on navigable water" which was consummated ashore under 46 U.S.C. § 740. The Court has never approved an unseaworthiness recovery for an injury sustained on land merely because the injured longshoreman was engaged in the process of "loading" or "unloading."

404 U.S. at 210-11 (footnote omitted). Several of the circuit courts had previously decided that the loading and unloading test had been adopted in *Gutierrez*, although they disagreed on the limits and focus of that test. *See* notes 42 & 43 *infra*.

ing the longshoremen's remedy for seaworthiness, it clearly indicated that the boundary of admiralty jurisdiction controlled the substantive limits of seaworthiness and the expansion of the federal policy of enterprise liability in admiralty torts.[23]

In refusing to extend the coverage of the seaworthiness warranty to the longshoremen injured on the pier by pier-based equipment, the Court declared that state law had traditionally governed such accidents.[24] Finding that the extension of admiralty jurisdiction would displace state law, the Court held that any additional expansion of federal jurisdiction should come from Congress[25] and not from the federal courts which are required to follow strictly the jurisdictional limits set down in federal statutes.[26] In so holding, the Court ignored the legislative history of the Admiralty Extension Act which directed the courts to extend admiralty jurisdiction by setting aside previous narrow interpretations of the jurisdiction given to federal courts by the Constitution and the judiciary acts.[27]

2. *Substantive Limits of the Seaworthiness Warranty*

Recovery of damages for unseaworthiness was first recognized as a possibility in 1902 in the second proposition of *The Osceola.*[28] An obscure dictum separated negligence from seaworthiness in 1922,[29] but it was not until 1944, in *Mahnich v. Southern S.S. Co.*,[30] that the warranty achieved importance.[31] *Mahnich* made the duty to pro-

23. 404 U.S. at 215.

24. *Id.* at 212.

25. *Id.* at 216.

26. *Id.* at 212.

27. H.R. REP. No. 1523, 80th Cong., 2d Sess. 3 (1948). The Senate Committee adopted most of the House Report. S. REP. No. 1593, 80th Cong., 2d Sess. 1 (1948).

28. 189 U.S. 158 (1902). *See* note 57 *infra.* Dixon v. The Cyrus, 7 F. Cas. 755 (No. 3,930) (D. Pa. 1789), first recognized a duty to seamen to provide a seaworthy ship but did not recognize a right to recover for injuries.

29. Carlisle Packing Co. v. Sandanger, 259 U.S. 255, 259 (1922).

30. 321 U.S. 96 (1944). Mahnich, a seaman, was injured when a staging upon which he was standing fell because of defective rope. The rope had been selected by the ship's mate. The shipowner was held liable for breach of the seaworthiness warranty even though sufficient good rope was available.

31. Before *Mahnich,* it had been assumed that the seaman had to elect to sue under the Jones Act, 46 U.S.C. § 688 (1970), or on unseaworthiness. Since the Jones Act eliminated contributory negligence as a defense and allowed a jury trial on the maritime side of the district court, it was usually elected over the unseaworthiness remedy. *Mahnich* had the effect of no longer requiring the injured seaman to elect

vide a seaworthy ship absolute.[32] Since *Mahnich*, courts have found liability under the warranty of seaworthiness for such conditions as defects in cargo containers,[33] improper stowage of cargo,[34] the presence of extraordinarily hostile or aggressive seamen,[35] the requiring of two men to do the work of four,[36] faulty ship's structure[37] and equipment,[38] defective equipment brought aboard by the stevedore,[39] and incompetent personnel.[40]

Lower federal courts had applied two different tests to determine whether particular claims—especially claims involving longshoremen injured on the pier—fell within the substantive limits of the seaworthiness warranty. The variance in these tests arose from a difference in factual focus. Some courts had limited seaworthiness claims to those injuries caused by a defect in the ship, its appurtenances, machinery, gear, or equipment. For purposes of liability under this "defect" test, the shipowner was responsible for all equipment aboard the vessel regardless of who owned the equipment, and, in some courts, for pier-based equipment which was either touching the ship or physically loading or unloading cargo from the ship.[41]

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to sue under either the Jones Act or on unseaworthiness but allowed both to be pleaded and proved together. GILMORE & BLACK §§ 6-3, 6-39.

32. 321 U.S. at 100. The Court held that the duty to provide a seaworthy ship was not based on negligence and "that the exercise of due diligence does not relieve the owner of his obligation to the seaman to furnish adequate appliances." *Id.*

33. Gutierrez v. Waterman S.S. Corp., 373 U.S. 206 (1963); Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355 (1962).

34. Gindville v. American-Hawaiian S.S. Co., 224 F.2d 746 (3d Cir. 1955); Amador v. A/S J. Ludwig Mowinckels Rederi, 224 F.2d 437 (2d Cir.), *cert. denied*, 350 U.S. 901 (1955); Palazzolo v. Pan-Atlantic S.S. Corp., 211 F.2d 277 (2d Cir. 1954), *aff'd sub nom.* Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124 (1956).

35. Boudoin v. Lykes Bros. S.S. Co., 348 U.S. 336 (1955).

36. Waldron v. Moore-McCormack Lines, Inc., 386 U.S. 724 (1967).

37. Crumady v. The Joachim Hendrik Fisser, 358 U.S. 423 (1959).

38. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).

39. Alaska S.S. Co. v. Petterson, 347 U.S. 396 (1954), *aff'g per curiam* 205 F.2d 478 (9th Cir. 1953). The Ninth Circuit had "assumed" that the equipment causing the longshoreman's injury had been brought aboard by the stevedore contractor, had said that no proof existed that the equipment was defective, had conceded that the stevedore had control of the ship at the time of the injury, and then had held that the shipowner's duty is "one he cannot delegate." 205 F.2d at 480.

40. Keen v. Overseas Tankship Corp., 194 F.2d 515 (2d Cir. 1952).

41. *See* Forkin v. Furness Withy & Co., 323 F.2d 638 (2d Cir. 1963) (longshoreman denied recovery against shipowner for unseaworthiness after being injured when a conveyor being positioned against the ship fell on him); McKnight v. N.M. Paterson & Sons, Ltd., 286 F.2d 250 (6th Cir.), *cert. denied*, 368 U.S. 913 (1960) (summary

Other courts, in considering the substantive limits of the seaworthiness warranty, had focused on the character of the work which the injured person was performing when the injury occurred.[42] Generally, anyone performing a seaman's traditional task[43] was covered by the seaworthiness warranty under this "status" test. Courts applying this test had criticized the defect requirement on the basis that it implied an

judgment on seaworthiness granted shipowner against longshoreman injured in the hold of the ship by a shore-based crane); Snydor v. Villain Fassio et Compania Int'l, 323 F. Supp. 850 (D. Md. 1971) (summary judgment on unseaworthiness granted shipowner against longshoreman run over by a forklift truck on the pier); Drumgold v. Plovba, 260 F. Supp. 983 (E.D. Va. 1966) (seaworthiness doctrine does not extend to longshoreman injured while positioning a truck hoist on a pier for use in loading a ship, or to a longshoreman run over on a pier after unhooking cargo from the ship's gear); Henry v. Steamship Mount Evans, 227 F. Supp. 408 (D. Md. 1964) (seaworthiness doctrine does not extend to seaman standing in ship chandler's truck preparing to put vegetables aboard ship).

42. Chagois v. Lykes Bros. S.S. Co., 432 F.2d 388 (5th Cir. 1970), *vacated*, 404 U.S. 1009 (1971) (longshoreman, hurt when his leg was caught in an auger being used to unload a boxcar on a pier, allowed to recover for unseaworthiness against shipowner); Deffes v. Federal Barge Lines, Inc., 361 F.2d 422 (5th Cir.), *cert. denied*, 385 U.S. 969 (1966) (defect in unloading equipment attached to a pier held to make a barge unseaworthy); Spann v. Lauritzen, 344 F.2d 204 (2d Cir.), *cert. denied*, 382 U.S. 938 (1965) (summary judgment denied shipowner on unseaworthiness claim by longshoreman injured by a defective hopper on the pier into which the ship's cargo was being unloaded); Thompson v. Calmar S.S. Corp., 331 F.2d 657 (3d Cir. 1964) (longshoreman injured on railroad car on pier allowed to recover against shipowner for unseaworthiness when a ship's line pulling other rail cars bumped the car longshoreman was on); Hagans v. Ellerman & Bucknall S.S. Co., 318 F.2d 563 (3d Cir. 1963) (judgment affirmed against shipowner for breach of seaworthiness warranty when the longshoreman was injured by slipping on the pier while unloading a cargo of bagged sand); McNeil v. A/S Havtor, 326 F. Supp. 226 (E.D. Pa. 1971), *vacated*, 339 F. Supp. 1264 (summary judgment denied shipowner sued on unseaworthiness after longshoreman broke his wrist when "squeeze lift" truck he was driving hit an object on the pier); Olvera v. Michalos, 307 F. Supp. 9 (S.D. Tex. 1968) (summary judgment denied shipowner against longshoreman suing on unseaworthiness after longshoreman injured his leg using power shovel in pier warehouse).

43. *See, e.g.*, Hagans v. Ellerman & Bucknall S.S. Co., 318 F.2d 563 (3d Cir. 1963). Justice Holmes in 1926 found longshoremen to be doing a "seaman's" task in order to allow an injured longshoreman to recover under the Jones Act. International Stevedoring Co. v. Haverty, 272 U.S. 50, 52 (1926). Holmes' conclusion was based on the arguably inaccurate historical statement that longshoremen performed duties once performed by seamen. *See* Shields & Byrne, *Application of the "Unseaworthiness" Doctrine to Longshoremen*, 111 U. PA. L. REV. 1137 (1963); Tetreault, *Seamen, Seaworthiness, and Rights of Harbor Workers*, 39 CORNELL L. REV. 381 (1954). Although the specific holding of *Haverty* was made obsolete in 1927 by the enactment of the Longshoremen's Act, which removed longshoremen from Jones Act coverage, the passage equating longshoremen with seamen has been relied on repeatedly to expand maritime jurisdiction for longshoremen.

element of control and therefore negligence by the shipowner.[44] The Supreme Court had earlier removed the negligence requirement from the seaworthiness warranty.[45]

Although the Supreme Court in *Gutierrez*[46] did not resolve the conflict in factual focus, the Court seemed to signal the answer to two questions. First, the Court held that the longshoreman injured on the pier was covered by the seaworthiness warranty since he was performing a seaman's task and the tort arose from a maritime status.[47] Secondly, the Court held that the defective cargo containers were part of the ship for purposes of the seaworthiness warranty even though they had been unloaded.[48]

In *Victory Carriers*[49] the Court distinguished *Gutierrez* as being governed by the Admiralty Extension Act,[50] and said it had never allowed a seaworthiness claim on facts similar to those of *Victory Carriers*, in which:

> [R]espondent [longshoreman] . . . was not injured by equipment that was part of the ship's usual gear or that was stored on board, the equipment that injured him was in no way attached to the ship, the forklift was not under the control of the ship or its crew, and the accident did not occur aboard ship or on the gangplank.[51]

Earlier cases that allowed a longshoreman successfully to assert a seaworthiness claim were distinguished by noting that one group of these claims involved shipboard injuries which always have been under maritime jurisdiction while another set concerned claims brought under maritime jurisdiction by the Admiralty Extension Act.[52]

Victory Carriers made clear that any further expansion of the seaworthiness warranty must occur within the settled boundaries of admiralty jurisdiction.[53]

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44. *See, e.g.,* Chagois v. Lykes Bros. S.S. Co., 432 F.2d 388, 395 (5th Cir. 1970), *vacated,* 404 U.S. 1009 (1971).

45. Carlisle Packing Co. v. Sandanger, 259 U.S. 255, 259 (1922).

46. Gutierrez v. Waterman S.S. Corp., 373 U.S. 206 (1963).

47. *Id.* at 214.

48. *Id.* at 213.

49. Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971).

50. *Id.* at 210. *See* note 22 *supra.*

51. 404 U.S. at 213-14.

52. *Id.* at 210.

53. In cases in which admiralty jurisdiction for longshoremen injured on a pier by pier-based equipment was asserted after *Victory Carriers,* and before passage of Public Law Number 92-576, the lower federal courts generally either decided the

3. *Enterprise Liability*

The third factor influencing the expansion of the seaworthiness warranty was the development of a "humanitarian doctrine"[54] into an enterprise liability. The ancient sea codes recognized the special responsibility of shipowners for members of their ships' crews by requiring the owners to provide for the "maintenance and cure" of crew members who were injured or became ill while serving on ship.[55] In 1832 Justice Story maintained that this remedy was adopted in the United States for humanitarian and economic reasons.[56]

Justice Brown in *The Osceola* suggested that an additional remedy be adopted in this country when he stated in dictum:

> [T]he vessel and her owners are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.[57]

Forty years later a case allowing a seaman to recover for an injury suffered aboard ship elevated the dictum of *The Osceola* to holding

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issue "without attempting to determine which of the factors discussed by the Supreme Court in [*Victory Carriers*] are necessary or sufficient to give a longshoreman a maritime cause of action," Chagois v. Lykes Bros. S.S. Co., 457 F.2d 343, 345 (5th Cir. 1972); *see* Cannida v. Central Gulf S.S. Corp., 452 F.2d 949 (3d Cir. 1971), or have adopted part of one paragraph from the *Victory Carriers* opinion, *see* text accompanying note 51 *supra*, into a four-pronged test. Courts applying the four-pronged test generally have concluded their analysis by finding all four elements present in the case being decided. Snydor v. Villian & Fassio et Compania Int'l, 459 F.2d 365 (4th Cir. 1972); Jones v. United States, 342 F. Supp. 392 (E.D. Pa. 1972); McNeil v. A/S Havbor, 339 F. Supp. 1264 (E.D. Pa. 1972). Tucker v. Calmar S.S. Corp., 457 F.2d 440 (4th Cir. 1972), shows the confusion as to jurisdiction after *Victory Carriers*. The court found admiralty jurisdiction by physical connection with the ship when a cable fastened to the ship caused cargo in a railroad car on the pier to shift and injure a longshoreman working in the car. One of the court's suggestions for removing the unseaworthy condition was to use a *shore-based* hoist to perform the same task. Presumably, this also would have eliminated admiralty jurisdiction over the same task.

54. Seas Shipping Co. v. Sieracki, 328 U.S. 85, 94-95 (1946).

55. "Maintenance and cure" entitled a seaman to medical expenses, a living allowance, and unearned wages for any injury or illness suffered during the employment period whether or not the injury or illness was connected with the ship, so long as it was not caused by the seaman's own wilful misconduct. GILMORE & BLACK §§ 6-8, 6-9.

56. Reed v. Canfield, 20 F. Cas. 426 (No. 11,641) (C.C.D. Mass. 1832); Harden v. Gordon, 11 F. Cas. 480 (No. 6,047) (C.C.D. Me. 1823).

57 The Osceola, 189 U.S. 158 (1902). The statement was dictum since the Court denied recovery to a seaman for injuries caused by negligence.

and severed the duty to provide a seaworthy ship from negligence by making the duty absolute.[58]

During the period in which courts expanded the seaworthiness warranty for seamen, the Supreme Court vacillated on the remedies available to injured longshoremen while Congress attempted to provide a statutory solution. The establishment of the *Jensen* line prevented longshoremen injured on ship from recovering under state workmen's compensation.[59] In later developments the Court struck down as unconstitutional two attempts by Congress to bring longshoremen injured on navigable waters within state workmen's compensation laws.[60] In attempting to provide longshoremen injured on ships with a means of recovery, the Court developed exceptions to the *Jensen* line to allow state laws to govern some injuries to longshoremen[61] on ships and, later, held longshoremen to be "seamen" in order to allow longshoremen injured aboard ship to recover under the Jones Act.[62] A year later, in 1927, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act, giving longshoremen injured on ships an "exclusive remedy"[63] against their employer.[64] Congress thus passed the Longshoremen's Act to fill the gap between state workmen's compensation acts and the remedies available to seamen.

The expansion of the seaworthiness doctrine into an absolute duty intersected the attempts by the Supreme Court and Congress to provide a remedy for longshoremen in *Seas Shipping Co. v. Sieracki.*[65] Sieracki, a longshoreman employed by an independent stevedoring company,

58. Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944); *see* notes 30-32 *supra.*

59. *See* note 12 *supra.*

60. Washington v. W.C. Dawson & Co., 264 U.S. 219 (1924), *declaring unconstitutional* The Act of June 10, 1922, ch. 216, 42 Stat. 634; Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920), *declaring unconstitutional* The Act of Oct. 6, 1917, ch. 97, 40 Stat. 395.

61. *See* note 13 *supra.*

62. International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926); *see* note 43 *supra.*

63. 33 U.S.C. § 903 (1970). With the passage of the Longshoremen's Act, the Supreme Court refused to apply the Jones Act to allow a longshoreman injured on shore to recover against his employer. The employee's relief was held to be under state law. Swanson v. Marra Bros., 328 U.S. 1 (1946).

64. *See* notes 77-81 *infra.*

65. 328 U.S. 85 (1946). Justice Stone, in words to be echoed by the House Committee in amending the Longshoremen's Act, *see* notes 131 & 132 *infra,* found longshoremen to be in a different class than seamen since

> they do not go to sea; they are not subject to the rigid discipline of the sea; they are not prevented by law or ship's discipline from leaving the vessel on

was injured aboard ship by a falling boom set loose by a defective shackle. In allowing the longshoreman to recover for the unseaworthiness of the ship, the Supreme Court undertook a two-part analysis to determine (1) if the duty of seaworthiness extended to longshoremen injured aboard ship, and (2) if the Longshoremen's Act had replaced any remedy previously allowed.

The Court answered the first question in the affirmative and found that previous cases of unseaworthiness were not based on the incidental contract between seamen and the shipowner, but instead on the hazards of maritime service which shipowners are best able to lessen.[66] The Court, in addition, recognized enterprise liability, although not using that term, by finding that the shipowner was in the best position to spread the cost of liability over the industry even if the longshoremen were employed by someone other than the shipowner.[67] From these two strands the Court concluded that:

> [R]unning through all of these cases, therefore, to sustain the stevedore's recovery is a common core of policy which has been controlling, although the specific issue has varied from a question of admiralty jurisdiction to one of coverage under statutory liability within the admiralty field. It is that for injuries incurred while working on board the ship in navigable waters the stevedore is entitled to the seaman's traditional and statutory protections, regardless of the fact that he is employed immediately by another than the owner.[68]

The Court expressly reserved the question whether the same policy extended the seaworthiness warranty to injuries incurred ashore by stevedores engaged in the same work.[69]

In answering the second question the *Sieracki* Court rejected the argument that the longshoreman was precluded from recovery against the shipowner because of the Longshoremen's Act. The Court reasoned

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> which they may be employed; they have the same recourse as land workers to avoid the hazards to which they are exposed . . . .

328 U.S. at 105 (Stone, J., dissenting).

66. 328 U.S. at 93-94.

67. *Id.* at 96. Justice Stone, in dissent, disagreed:

> Nor is the rule now announced to be justified as a modern and preferred mode of distributing losses inflicted without fault. Congress, in adopting the Longshoremen's Act, has chosen the mode of distribution in the case of longshoremen and harbor workers.

Id. at 107.

68. *Id.* at 99.

69. *Id.* at 99 n.17.

that in giving the longshoreman an exclusive remedy against his employer, Congress did not purport to limit his right to recover against others and, thus, the previous remedy continued to exist.[70]

In *Victory Carriers*[71] the Court answered the question reserved in *Sieracki* and held that the policy considerations underlying the expansion of seaworthiness into enterprise liability did not extend the seaworthiness warranty to injuries incurred ashore by longshoremen engaged in a work project with their fellow longshoremen on ship who were covered by the seaworthiness warranty. As with the substantive limits of the seaworthiness warranty, the limits of admiralty jurisdiction considered separately became the limiting criteria of enterprise liability. Noting that the longshoreman injured ashore already had a remedy under state workmen's compensation, the Court found that only the amount of recovery was in issue.[72] The Court stated that this issue did not warrant the intrusion of the federal courts into state jurisdiction.[73] Pointing out that maritime law is "honeycombed" with differing recoveries for longshoremen and seamen on and off ship, Justice White, writing for the majority, did not feel "inclined at this juncture . . . to extend shoreward the reach of maritime law further than Congress has approved."[74]

In the appendix to his dissent, Justice Douglas stated that the majority was ignoring the underlying factor in the previous cases, especially *Sieracki*, by concentrating on a few facts and employing them in mechanical fashion.[75] The underlying factor, according to Douglas, was

> the principle that because loading and unloading of vessels are abnormally dangerous such risks ought to be placed initially upon the shipowners and ultimately passed on through higher prices to the customers of the shipping industry.[76]

Justice Douglas thus felt that the enterprise liability developed in previous cases should control over the mechanical jurisdictional test posited in the majority opinion.

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70. *Id.* at 101; *see* note 79 *infra* and accompanying text.
71. Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971).
72. *Id.* at 215.
73. *See* notes 24-26 *supra* and accompanying text.
74. 404 U.S. at 212-13.
75. *Id.* at 218 (Appendix, Douglas, J., dissenting).
76. *Id.* (footnote omitted).

B. *Third-Party Indemnity Actions*

Adding to the problems surrounding the extensions of the seaworthiness warranty had been the issue of whether the shipowner was entitled to indemnity from the stevedore when acts of the stevedore caused the unseaworthy condition and consequent injury to the longshoreman. The usual procedure was for the longshoreman injured at work to sue the shipowner for breach of the warranty of seaworthiness. The shipowner would then sue the stevedore for indemnity if the shipowner was held liable to the longshoreman. Two questions arose when shipowners brought actions against stevedores for indemnity: the first was whether the indemnity was barred by statute since before the Longshoremen's Act was amended it provided that the liability of the employer under the Act "shall be exclusive and in place of all other liability of such employer to the employee;"[77] and the second was whether indemnity should be allowed on the facts of the individual case under consideration.

In *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*[78] the Court answered the first question by allowing a shipowner to recover in a third-party indemnity action against the stevedore after the longshoreman had recovered from the shipowner for breach of the seaworthiness warranty. The stevedore had already paid compensation to the longshoreman under the Longshoremen's Act for the injury which occurred when improperly stowed cargo shifted in the hold of the ship.

The Supreme Court in *Ryan* reasoned that the limitation in the Longshoremen's Act on the liability of the employer to the employee or anyone claiming through the employee was in return for a *quid pro quo* in the form of assured compensation to the longshoreman from the stevedore regardless of fault. The Act provided, however, no *quid pro quo* for the shipowner who was compelled to pay the longshoreman under third-party remedies preserved under the Act. Thus, the shipowner's liability was not limited.[79] Even though the liability of the shipowner was not restricted, the Court found that:

> The Act nowhere expressly excludes or limits a shipowner's right, as a third person, to insure itself against such a liability either by a bond of indemnity, or the contractor's own agreement to save the shipowner harmless.[80]

77. 33 U.S.C. § 905 (1970), *as amended*, 33 U.S.C. § 905(a) (Supp. II, 1972).
78. 350 U.S. 124 (1956).
79. *Id.* at 129.
80. *Id.* at 130.

The Court then reasoned that since the Act would not cut off the right of the shipowner to recover under a contract for bonded indemnity, it did not cut off any other contract for indemnity even if by "coincidence" the contractor happened to be the employer of the longshoreman.[81]

The second question was whether indemnity should be allowed. After rejecting an attempt to employ a theory of contribution between joint tort-feasors to allow a shipowner to recover against a negligent contractor for injuries to a maritime worker,[82] the Court in *Ryan* held that indemnity would be allowed based on the stevedore's breaching of a contractual obligation to perform the work in a reasonably safe manner.[83] An express agreement for contractual indemnity was not necessary since:

> Competency and safety of stowage are inescapable elements of the service undertaken. . . . It is of the essence of petitioner's stevedoring contract. It is petitioner's warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product.[84]

Although the Supreme Court wavered in its enthusiasm,[85] the third-party indemnity action constituted the usual response of shipowners to longshoremen's seaworthiness actions until the passage of the amendments to the Longshoremen's Act.[86]

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81. *Id.* at 131.

82. Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282 (1952).

83. 350 U.S. at 132-33.

84. *Id.* at 133-34. *See also* Weyerhaeuser S.S. Co. v. Nacirema Operating Co., 355 U.S. 563 (1957).

85. *See, e.g.*, Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971); Italia Societa per Axioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315 (1964). In *Italia Societa* Justice White wrote for the majority:

> [W]e do not think it unfair or unwise to require the stevedore to indemnify the shipowner for damages sustained as a result of injury-producing defective equipment supplied by a stevedore in furtherance of its contractual obligations.

376 U.S. at 324. In contrast, in *Victory Carriers* Justice White, in denying the seaworthiness recovery to the longshoreman, wrote:

> [T]he shipowner's liability . . . would merely be shifted, with attendant transaction costs, to the stevedore by way of a third-party action for indemnity. . . . The State's own arrangements for compensating industrial accidents would be effectively circumvented.

404 U.S. at 215. The cases can perhaps be reconciled on the unexpressed thought that no damage is done to federal-state relations by federal courts "circumventing" federal laws as in *Italia Societa,* but damage would be done to the federal system by federal courts circumventing state laws like those at issue in *Victory Carriers.*

86. *See* Turner v. Transportacion Maritima Mexicana S.A., 44 F.R.D. 412 (E.D. Pa. 1968); Close v. Calmar S.S. Corp., 44 F.R.D. 398 (E.D. Pa. 1968).

C. *Remedies of Longshoremen Employed by Vessels*

After the development of the seaworthiness remedy against the vessel and its owner and the recovery under the Longshoremen's Act against the stevedore, the Court in *Reed v. S.S. Yaka*[87] held that an injured longshoreman could bring an action for breach of the seaworthiness warranty against the vessel where the vessel was also the stevedore.

In *Reed* the injured longshoreman was employed directly by the bareboat charterer who had the same status as the owner of the vessel for recovery purposes. This employment meant that the charterer was not only liable as the "employer" under the Longshoremen's Act, but also was liable for the unseaworthiness of the vessel. The Supreme Court allowed the longshoreman to bring the seaworthiness action even though the Longshoremen's Act provided for the "exclusive" liability of the employer. Although admitting that the literal wording of the statute would prevent the seaworthiness action, the Court said that the holdings of *Sieracki* and *Ryan* made it clear that the shipowner's obligation to provide a seaworthy ship could not be shifted by contract since the obligation arose from the hazards of the longshoremen's work.[88] The Court stated that it would be "harsh and incongruous" to distinguish between liability to longshoremen injured under the same circumstances on the basis of whether they were employed by a stevedore or the shipowner.[89]

D. *Benefits and Practical Problems*

The controversies over both the jurisdictional limits and coverage of the seaworthiness remedy achieved importance because of the disparities in recoveries by injured longshoremen depending on whether the longshoremen could recover under the seaworthiness warranty or were limited to recoveries under state workmen's compensation acts or the Longshoremen's Act.

The fixed maximum compensation under state laws was generally

87. 373 U.S. 410 (1963).

88. *Id.* at 414-15.

89. *Id.* at 415. In Jackson v. Lykes Bros. Co., 386 U.S. 731 (1967), a longshoreman employed by the steamship company died after inhaling noxious gases in the hold of the ship. Although the steamship company was liable to the widow under the Longshoremen's Act, the widow was allowed to bring an action for unseaworthiness.

much lower than the recoveries juries would award under the same circumstances for seaworthiness claims.[90] Since compensation limits under the Longshoremen's Act had not been raised for twelve years, these maximum benefits were also thought to be less than those probably recoverable by suit.[91]

The resort by longshoremen to seaworthiness suits instead of administrative actions[92] in efforts to gain larger recoveries led to two practical problems. The first was a burden on the courts. Although the exact dimensions of that burden are subject to debate,[93] the United States

90. Justice White, writing for the majority in *Victory Carriers,* recognized that that case was brought to increase the recovery over what was available under the state workmen's compensation law by stating:

> What is at issue is the *amount* of the recovery, not against the shipowner, but against the stevedore employer. . . . The State's own arrangements for compensating industrial activities would be effectively circumvented.

404 U.S. at 215 (emphasis original).

91. The party entitled to sue could lose nothing by suing, except the attorney fees if the suit was not on a contingency basis, for § 33(f) of the Longshoremen's Act provides that if the net recovery under the third-party suit is less than the compensation provided under the Act, compensation under the Act will make up the difference. 33 U.S.C. § 933(f) (1970). Shields and Byrne question the accuracy of the belief that the injured longshoreman benefited from the third-party suits, citing Caulfield v. Calmar S.S. Corp., Civil No. 25,890 (E.D. Pa., May 18, 1962); Holley v. The Manfred Stansfield, 186 F. Supp. 805 (E.D. Va. 1960); Olson Estate, 25 Pa. D. & C. 2d 622 (Orphans' Ct. 1961), as examples of cases in which, after attorney fees, the third-party suits produced less than the compensation under the Act. Shields & Byrne, *Application of the "Unseaworthiness" Doctrine to Longshoremen,* 111 U. PA. L. REV. 1137, 1147-48 (1963).

92. The court in Flowers v. Travelers Ins. Co., 258 F.2d 220, 225 (5th Cir. 1958), *cert. denied,* 359 U.S. 920 (1959), described the administrative procedures of the pre-amendment Longshoremen's Act:

> Unlike some State compensation acts, the Longshoremen's Act is almost self-executing. Compensation benefits are payable and paid, medical care and attention furnished, generally without even the necessity of filing a formal claim, as such, almost universally without a formal hearing by the Deputy Commissioner, only in a few cases does the matter proceed to formal hearing and award and even more rare is the resort to the limited judicial review. The heart of any such system is the mandatory report of an injury by an employer within 10 days under § 930(a). . . . With this the Act moves swiftly to require affirmative action by the employer. If disability persists for the statutory minimum, payments of compensation must be commenced within 14 days, § 914(b). The only thing which excuses this is a form controversion filed by the employer, § 914(b). Failure to commence and continue payment of compensation benefits and to furnish requisite medical aid, care and attention where no controversion is filed subjects the employer again to substantial sanctions, §§ 914(e) and (f). [Footnote omitted.]

93. The AFL-CIO and the National Maritime Compensation Committee differed in their testimony at the Senate Hearings both as to the number of suits and the impact these suits had on the courts. *Hearings on S. 2138, S. 525, & S. 1547 Before*

District Court for the Eastern District of Pennsylvania, where such suits were concentrated,[94] reported that the incidence of seaworthiness cases rose 344% in five years.[95] The Pennsylvania court became so bogged down due, in part, to this burden that the judges instituted emergency procedures for the handling of seaworthiness cases and pleaded to Congress for reform of longshoremen's remedies.[96]

The second practical problem concerned the rates paid by stevedores for insurance covering injuries to longshoremen. At a time when recoveries under the Longshoremen's Act were stable and the accident rate was decreasing, insurance rates tripled.[97] Reports to the Senate stated that this rise was due to the increase in unseaworthiness and third-party indemnity actions.[98] Evidence suggested that the additional expenditures for insurance were to a large extent lost in the transactional costs of litigating these actions.[99]

II. THE AMENDED LONGSHOREMEN'S ACT

Congress responded to the confused jurisdiction over, and liabilities and remedies for, injuries to longshoremen, and to the resultant problems of numerous court suits, disparities in recoveries, and high insurance costs, by passing Public Law Number 92-576.[100]

Public Law Number 92-576 altered both the policy and structure of existing longshoremen's remedies. The Longshoremen's Act was changed from a fill-in between state workmen's compensation laws and seamen's remedies to a measure providing uniform recoveries for all longshoremen. In line with the new uniform and comprehensive benefits, the amended Act extends coverage to some injuries occurring on land and to new groups of employees. In return for increased compensation

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the Subcomm. on Labor of the Senate Comm. on Labor & Public Welfare, 92 Cong., 2d Sess. 65-67, 90-91, 258-59, 283-87 (1972) [hereinafter cited as *1972 Hearings*].

94. Turner v. Transportacion Maritima Mexicana S.A., 44 F.R.D. 412, 417 (E.D. Pa. 1968).

95. *Hearings Before the Subcomm. on Improvement in Judicial Machinery of the Senate Comm. on the Judiciary, "Crisis in the Federal Courts—1967"*, 90th Cong., 1st Sess. 460 (1967).

96. Turner v. Transportacion Maritima Mexicana S.A., 44 F.R.D. 412, 420 (E.D. Pa. 1968). *See also* Close v. Calmar S.S. Corp., 44 F.R.D. 398 (E.D. Pa. 1968).

97. *1972 Hearings* 656-63; *see* H.R. REP. No. 1441, 92d Cong., 2d Sess. 5 (1972).

98. *1972 Hearings* 632-35, 640-43.

99. *Id.* at 632, 641-42. *See* note 91 *supra*.

100. Act of Oct. 27, 1972, 86 Stat. 1251, *amending* 33 U.S.C. §§ 901-48 (1970) (codified at 33 U.S.C. §§ 901-49 (Supp. II, 1972)).

benefits, the longshoreman loses his action for breach of the seaworthiness warranty. An action against the shipowner for negligence is retained, but third-party indemnity actions by the shipowner against the stevedore are prohibited.[101]

A. *Extension of Coverage*

Prior to the recent amendment, coverage under the Longshoremen's Act was allowed only to an "employee"[102] injured on navigable waters of the United States and only then "if recovery for the disability or death through workmen's compensation proceedings may not be validly provided by state law."[103] This restricted coverage was in accord

101. In addition to changes examined in this Note, Public Law Number 92-576 amended the Longshoremen's Act to add benefits to "students," 33 U.S.C. § 902(18) (Supp. II, 1972); to allow the longshoreman to select his own physician from those selected by the Secretary of Labor, 33 U.S.C. § 907(c) (Supp. II, 1972), *formerly* ch. 509, § 7(c), 44 Stat. 1427 (1927); to limit the burden on employers employing handicapped workers, 33 U.S.C. § 908(f) (Supp. II, 1972), *formerly* ch. 509, § 8(f), 44 Stat. 1429 (1927); to automatically increase compensation as the average national weekly wage increases, 33 U.S.C. § 910(f) (Supp. II, 1972); to provide for an extension of the time for giving notice of injury or death until the claimant is aware or by reasonable diligence should have been aware of the relationship between injury or death and employment, 33 U.S.C. § 912(a) (Supp. II, 1972), *formerly* ch. 509, § 12(a), 44 Stat. 1431 (1927), and to extend in the same manner the time for filing a claim, 33 U.S.C. § 913(a) (Supp. II, 1972), *formerly* ch. 509, § 13(a), 44 Stat. 1432 (1927); to eliminate the previous maximum payment limit, 33 U.S.C. § 914(m) (Supp. II, 1972), *formerly* ch. 509, § 14(m), 44 Stat. 1434 (1927); to provide for a lien on the employee's compensation payments if he has already been paid from a trust fund pursuant to a collective bargaining agreement, 33 U.S.C. § 917(b) (Supp. II, 1972), *formerly* ch. 509, § 17, 44 Stat. 1434 (1927); to require hearings under the Act to conform to Administrative Procedure Act § 5, 5 U.S.C. § 554 (1970), 33 U.S.C. § 919(d) (Supp. II, 1972), *formerly* ch. 509, § 19(d), 44 Stat. 1435 (1927); to establish a Benefits Review Board, 33 U.S.C. § 921(b) (Supp. II, 1972), *formerly* ch. 509, § 21(b), 44 Stat. 1436 (1927); to change the method of providing for the employee's legal fees, 33 U.S.C. § 928 (Supp. II, 1972), *formerly* ch. 509, § 28, 44 Stat. 1438 (1927); to change the method for the employer to give written approval of compromise settlements between the employee and third parties, 33 U.S.C. § 933(g) (Supp. II, 1972), *formerly* ch. 509, § 33(g), 44 Stat. 1441 (1927); to change the method and amount of payments to the "Special Fund" used to increase benefits to workers injured prior to the amendment of the Act, 33 U.S.C. § 944 (Supp. II, 1972), *formerly* ch. 509, § 44, 44 Stat. 1444 (1927); and to add a section prohibiting discrimination against employees who have claimed compensation or testified at compensation proceedings under the Act, 33 U.S.C. § 948(a) (Supp. II, 1972).

102. *See* note 107 *infra.*

103. Longshoremen's Act § 3(a), ch. 509, § 3(a), 44 Stat. 1426 (1927), *as amended*, 33 U.S.C. § 903(a) (Supp. II, 1972).

with historical precedent holding piers, docks, and wharfs to be extensions of land and thus subject to state rather than federal jurisdiction.[104] Public Law Number 92-576 rejected these precedents and extended coverage to any "employee"[105] injured on the navigable waters of the United States "including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel."[106] To implement the extended coverage of the amended Act, the definition of "employee" was expanded to include "any longshoreman or other person engaged in longshoring operations,"[107] and "employer" was redefined to include any person employing "employees" in whole or part upon the navigable waters of the United States including any of the locations specified in the coverage section.[108]

An impetus for extension of coverage was a desire to reduce the dis-

104. *See* Nacirema Operating Co. v. Johnson, 396 U.S. 212, 214-15 (1969); Swanson v. Marra Bros., 328 U.S. 1, 6 (1946); Minnie v. Port Huron Terminal Co., 295 U.S. 647, 648 (1935); T. Smith & Son, Inc. v. Taylor, 276 U.S. 179, 182 (1928); State Indus. Comm'n v. Nordenholt Corp., 259 U.S. 263, 275 (1922); Cleveland Terminal & Valley R.R. v. Cleveland S.S. Co., 208 U.S. 316, 321 (1908); The Plymouth, 70 U.S. (3 Wall.) 20, 34-35 (1865).

105. *See* note 107 *infra* and accompanying text.

106. Longshoremen's Act § 3(a), 33 U.S.C. § 903(a) (Supp. II, 1972), *formerly* ch. 509, § 3(a), 44 Stat. 1426 (1927).

107. *Id.* § 2(3), 33 U.S.C. § 902(3) (Supp. II, 1972), *formerly* ch. 509, § 2(3), 44 Stat. 1425 (1927). The definition now reads:

> The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

33 U.S.C. § 902(3) (Supp. II, 1972). The definition formerly read:

> The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

Ch. 509, § 2(3), 44 Stat. 1425 (1927).

108. Longshoremen's Act § 2(4), 33 U.S.C. § 902(4) (Supp. II, 1972), *formerly* ch. 509, § 2(4), 44 Stat. 1425 (1927). The definition now reads:

> The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

33 U.S.C. § 902(4) (Supp. II, 1972). The definition formerly read:

> The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock).

Ch. 509, § 2(4), 44 Stat. 1425 (1927).

parity of the benefits received by longshoremen injured on the same job depending on whether they were injured to the shore or seaward side of the court-erected *Jensen* line.[109] With the increased benefits under the amended Act, the disparity in recoveries would have been increased had the coverage section not been expanded. The House Report stressed that the new law, with its expanded coverage, would provide for a uniform system of compensation.[110]

This new definition of coverage is based on a functional analysis dependent on whether a "longshoreman" or other person engaged in "longshoring operations" was working in one of the specified areas or any "other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel" when he was injured. Although a definition based on a functional analysis avoids the disparities of the mechanical court-developed jurisdictional rules, it presents other problems.

The first problem is definitional. Neither the term "longshoreman" nor "loading and unloading" is defined in the Act. Although the terms "longshoreman" and "longshoring operations" are new to the Longshoremen's Act, the definitions of these terms have been the subject of litigation in previous cases when injured workers attempted to recover under the Jones Act. These cases have made the status of the worker a factual question.[111] The cases have determined that a "seaman" for Jones Act purposes is one who (1) serves on navigable waters (2) to perform services in the navigation or well-being of the vessel with (3) some permanent connection with the vessel.[112] With this definition

109. *See* note 12 *supra* and accompanying text.

110. H.R. REP. No. 1441, 92d Cong., 2d Sess. 10-11 (1972). The Report stated:

> The Committee believes that the compensation payable to a longshoreman . . . should not depend on the fortuitous circumstance of whether the injury occurred on land or over water. . . . The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity.

Id.

111. *See* Gianfala v. Texas Co., 350 U.S. 879, *rev'g per curiam* 222 F.2d 382 (5th Cir. 1955); Desper v. Starved Rock Ferry Co., 342 U.S. 187, 190 (1952); South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251, 257-58 (1940); McKie v. Diamond Marine Co., 204 F.2d 132, 136 (5th Cir. 1953); Lukos v. Chesapeake & O. Ry., 120 F. Supp. 296, 299 (W.D. Mich. 1954); Early v. American Dredging Co., 101 F. Supp. 393, 396 (E.D. Pa. 1951).

112. Wilkes v. Mississippi River Sand & Gravel Co., 202 F.2d 383, 388 (6th Cir. 1953); Carmubo v. Cape Cod S.S. Co., 123 F.2d 991, 995-96 (1st Cir. 1941); Rackus v. Moore-McCormack Lines, Inc., 85 F. Supp. 185, 187 (E.D. Pa. 1949). *See also* McKie v. Diamond Marine Co., 204 F.2d 132, 136 (5th Cir. 1953); Lukos v. Chesapeake

providing one limit on who is a "longshoreman," the Longshoremen's Act may provide other limits. First, the definition of "employer" may require that at least some of the employees of the employer work on navigable waters. The House Report states that "an individual employed by a person none of whose employees work, in whole or in part, on navigable waters, is not covered even if injured on a pier adjoining navigable waters."[113] This restriction, however, does not necessarily follow from the definition of "employer" in the Act, for the language can be read merely to redefine "navigable waters" as "including" the listed areas and not as positing two separate requirements.[114] Secondly, coverage is limited to areas customarily used for "loading, unloading, repairing, or building." The terms "loading" and "unloading" have been defined in two conflicting lines of decisions. A number of circuits prior to *Victory Carriers* defined "loading" and "unloading" in pragmatic terms.[115] Giving weight to the status rather than the location test, these courts found a longshoreman to be engaged in "loading" or "unloading" if he "was part of a group of longshoremen who were engaged in the total operation of moving cargo from the dock to the vessel" or vice versa.[116] Other circuits defined "loading" and "unloading" in mechanical terms.[117] Loading was held to begin when the cargo left its final resting spot on shore to be hoisted aboard ship. Unloading stopped when cargo was taken from the ship and placed on the pier. With the expanded coverage of the amended Act, the latter line of cases is inapplicable.[118] If the former line of cases is accepted as stating the correct

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& O. Ry., 120 F. Supp. 296, 300 (W.D. Mich. 1954); Early v. American Dredging Co., 101 F. Supp. 393, 395 (E.D. Pa. 1951). *But see* Perez v. Marine Transport Lines, Inc., 160 F. Supp. 853, 855 (E.D. La. 1958).

113. H.R. REP. No. 1441, 92d Cong., 2d Sess. 11 (1972).

114. *See* note 108 *supra*. The House Committee reads the language in the definition of "employer" to require first that some employees be working on navigable waters and then extends coverage to all other employees of the employer. H.R. REP. No. 1441, 92d Cong., 2d Sess. 11 (1972). If the parenthetical language in 33 U.S.C. § 902(4) (Supp. II, 1972) is read as redefining "navigable waters," then only one requirement, that an employee be working in one of the enumerated areas, rather than two, is found in the section.

115. *See* note 41 *supra*.

116. Law v. Victory Carriers, Inc., 432 F.2d 376, 384 (5th Cir. 1970), *rev'd*, 404 U.S. 202 (1971).

117. *See* note 42 *supra*.

118. The cases in note 41 *supra* requiring that the equipment be aboard ship, in physical contact with the ship, or physically unloading the ship too narrowly define "loading" to conform to the new statutory language of coverage.

definition of "loading and unloading," then another parameter of the term "longshoreman" is established.

The second problem with the new functional definition of coverage is constitutional. Jurisdiction over torts occurring on land has traditionally been reserved to the states, with federal maritime jurisdiction stopping at the water's edge.[119] Although the issue might be raised whether Congress has the power to supersede state jurisdiction over the piers, wharfs, dry docks, building ways, marine railways, and other adjoining areas, it is virtually settled that Congress does have that power. In dicta in *Victory Carriers* the Court stated that "if denying federal remedies to longshoremen injured on land is intolerable, Congress has ample power under Articles I and III of the Constitution to enact a suitable solution."[120] The Senate Hearings noted the Court's statement.[121] Moreover, the statement is amply supported by cases under the Jones Act in which the Supreme Court found constitutional, based on Congress' power to expand substantive maritime law, federal maritime remedies for seamen injured ashore,[122] and cases under the Admiralty Extension Act allowing recovery for injuries on land caused by vessels on navigable waters.[123]

B. *Elimination of the Seaworthiness Warranty for Longshoremen*

For the employee covered by the Longshoremen's Act, Public Law Number 92-576 eliminates the warranty of seaworthiness from the vessel to the employee.[124] The remedies provided by the amended Act are deemed "exclusive of all other remedies against the vessel"[125] in the

119. *See* notes 14 & 24 *supra* and accompanying text.

120. 404 U.S. at 216.

121. *1972 Hearings* 177.

122. *See* O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943). In *O'Donnell* a deckhand was ordered to go ashore and repair a gasket on a land pipe used for discharging cargo. The negligence of a fellow employee caused a counterweight to fall on the deckhand. The Supreme Court noted that federal maritime law had not generally allowed recovery for injuries on land, *id.* at 41, but found an exception to the general rule for maintenance and cure. *Id.* at 41-42. The Court then found that the Jones Act only enlarged the remedy of maintenance and cure. *Id.* at 43. This expansion was found constitutional since Congress has the ability to modify the substantive rules of admiralty. *Id.*

123. *See* notes 16 & 21 *supra.*

124. Longshoremen's Act § 5(b), 33 U.S.C. § 905(b) (Supp. II, 1972), *formerly* ch. 509, § 905, 44 Stat. 1426 (1927), provides in part:

> The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or breach thereof at the time the injury occurred.

125. *Id.*

same way that the liability of the employer is made exclusive.[126]

The elimination of the seaworthiness remedy in return for increased benefits under the Act was based on political, practical, and policy considerations. The amendments became politically feasible when most of the employee lobbies supported a bill eliminating the seaworthiness warranty in return for the improved structure of benefits.[127] Previous attempts to eliminate the seaworthiness warranty through legislation without increasing benefits under the Longshoremen's Act had not been successful.[128]

As previously noted,[129] the practical problems arising from the seaworthiness warranty were increased insurance costs and disparities in recoveries leading to a burdensome number of court suits. The extension of coverage under the amended Act, plus the elimination of the seaworthiness warranty, coupled with a provision for new procedures for administrative review of compensation awards, is expected to reduce insurance rates and relieve the burden on courts by reducing disparities in recoveries.[130]

A discussion of the policy behind eliminating the seaworthiness remedy for longshoremen appears in the House Committee Report which rejected the "thesis that a vessel should be liable without regard to its fault for injuries sustained by employees under this Act."[131] The Committee based its conclusion on a decision that the rationale which made the vessel absolutely liable to seamen did not apply to longshoremen. This rationale was that absolute liability in the form of seaworthiness had been developed "to protect seamen from the ex-

126. *Id.* § 5(a), 33 U.S.C. § 905(a) (Supp. II, 1972), *formerly* ch. 509, § 5(a), 44 Stat. 1426 (1927).

127. *See* 118 CONG. REC. H 10,043 (daily ed. Oct. 14, 1972); *1972 Hearings* 60-67, 130-34.

128. *See 1972 Hearings* 133. The Nixon Administration bill, S. 525, 92d Cong., 2d Sess. (1972), which was not passed, would have eliminated the seaworthiness warranty by making the "vessel" a co-employer with liability only under the Act. S. 525 was opposed by organized labor. *1972 Hearings* 60-67, 130-34. The House Committee took note of the political problems of amending the Act by stating:

> [T]he Committee also has taken note of the inescapable fact that the controversy over third party claims by longshoremen has had political ramifications which have resulted in forestalling any improvements in the present Act for over twelve years.

H.R. REP. No. 1441, 92d Cong., 2d Sess. 5 (1972).

129. *See* notes 90-99 *supra.*

130. H.R. REP. No. 1441, 92d Cong., 2d Sess. 10 (1972).

131. *Id.* at 4.

treme hazards incident to their employment which frequently requires long sea voyages and duties of obedience to orders not generally required of other workers."[132] It is interesting to note that the Supreme Court had extended coverage under the seaworthiness warranty to longshoremen on the premise that longshoremen are faced with special hazards.[133]

Perhaps a better policy argument for the elimination of the seaworthiness warranty can be constructed from the theory of the workmen's compensation statutes. The theory of the compensation statutes is that in exchange for absolute liability for work-related injuries the employee agrees to accept a statutorily fixed recovery.[134] The seaworthiness warranty and the aborted development of enterprise liability under the warranty only provided one-half of the equation. The injured longshoreman received absolute liability on the part of the shipowner but did not subject himself to limited recovery. The total cost of the remedy was increased by the transactional costs of third-party indemnity suits. If this analysis is accepted, the elimination of the seaworthiness warranty for a strengthened Longshoremen's Act fits the policies of a compensation statute, since unlimited recovery is exchanged for assured benefits.

With the elimination of federal seaworthiness claims by longshoremen, the question may be raised whether the states may provide a seaworthiness remedy. In cases prior to the amendment of the Longshoremen's Act, courts had rejected a state remedy.[135] The Supreme Court has held that in suits involving longshoremen or seamen, federal maritime law must govern all substantive matters whether the suit is brought in state or federal court.[136] For the state courts now to permit recovery for seaworthiness claims would thus involve an extension of state court jurisdiction into a substantive area which belongs solely to federal law.[137]

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132. *Id.* at 6.

133. *See* note 47 *supra.*

134. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 1.10, 2.50 (1972).

135. Howard v. Kawasaki Kisen K.K., 341 F. Supp. 801, 803 (E.D. Pa. 1972); Cooper v. Australian Coastal Shipping Comm'n, 338 F. Supp. 1056, 1058 (E.D. Pa. 1972).

136. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953); Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942); Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918).

137. The "savings to suitors clause" of the Judiciary Act giving federal district courts admiralty jurisdiction, *see* note 7 *supra,* will not allow a state seaworthiness

C. *Negligence*

The amended Longshoremen's Act preserves the injured longshoreman's right to sue the shipowner for injuries caused by the shipowner's negligence.[138] The House Committee rejected proposals that the vessels be treated as joint employers with the stevedores under the Act and thus be liable only for recoveries under the Act.[139] Although strong policy arguments can be advanced for the opposite result,[140] the Act now provides that vessels are liable for negligence just as any other third party.

One prerequisite for a negligence action against the vessel is that "vessel" be defined. The amended Act introduces a definition of "vessel" as "any vessel . . . and said vessel's owner, owner pro hac vice, agent, operator, charterer, bareboat charterer, master, officer, or crew member."[141] Although new to the Longshoremen's Act, a definition of the term "vessel" has been developed under the Jones Act. Under the Jones Act what constitutes a "vessel" is a factual question, but may include any floating object which can be made navigable[142] or

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claim. In Chelentis v. Luckenbach S.S. Co., 247 U.S. 372, 384 (1918), the Supreme Court stated the difference between "rights" and "remedies":

> A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. . . . Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of maritime law.

Since the elimination of the seaworthiness warranty is the elimination of the "right" and not the "remedy," the "savings to suitors" clause preserves nothing in the state courts if the state courts were ever, in fact, capable of giving the relief.

138. Longshoremen's Act § 5(b), 33 U.S.C. § 905(b) (Supp. II, 1972), *formerly* ch. 509, § 5, 44 Stat. 1426 (1927), provides:

> In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel . . . .

139. H.R. REP. No. 1441, 92d Cong., 2d Sess. 4 (1972). This was the proposal of the Nixon Administration. *See* note 128 *supra* and accompanying text.

140. In testifying at the Senate hearings, Secretary of Labor James D. Hodgson stated that the normal third party whose negligence causes injuries to employees is a stranger to the "employment relationship." Secretary Hodgson further testified that a "shipowner, however, will always be a party to the longshore employment relationship because he furnishes the workplace and sometimes the tools and machinery." *1972 Hearings* 30-31.

141. Longshoremen's Act § 2(2), 33 U.S.C. § 902(2) (Supp. II, 1972).

142. Gianfala v. Texas Co., 350 U.S. 879, *rev'g per curiam* 222 F.2d 382 (5th Cir. 1955).

any floating object capable of being floated from one location to another to accomplish its mission.[143]

The inclusion of the owner and the ship's personnel in the Longshoremen's Act's definition of "vessel" makes it possible for the vessel to be found negligent even though the injury occurs off the physical vessel. This result may prevent the need for the mechanical determinations of causation which developed in connection with the seaworthiness warranty.

A longshoreman suing in negligence faces several obstacles, the first of which is the problem of proof. Since most ships calling at American ports are foreign ships only in port for a few hours, the injured longshoreman's opportunity to secure the necessary witnesses and factual data may be limited.[144]

The second problem with negligence actions is that they reintroduce the requirement of control in order for the shipowner to be held liable.[145] Under the seaworthiness warranty this requirement had been eliminated.[146] The control requirement and the duties arising therefrom present a potential for weakening the Longshoremen's Act. Several cases decided before the full development of the seaworthiness warranty stated in dicta that a vessel could be held liable in negligence for the stevedore's actions in causing a longshoreman's injury where the "vessel" had not determined that the stevedore's methods were correct.[147] The continuing validity of this line of cases should be questioned. If the duty is interpreted as pervasive, then the shipowner becomes negligent whenever the stevedore is negligent. This would again circumvent the exclusive recovery under the Longshoremen's Act by the longshoreman for the stevedore's ac-

143. Perez v. Marine Transport Lines, Inc., 160 F. Supp. 853, 855 (E.D. La. 1958); *see* Bernado v. Bethlehem Steel Co., 169 F. Supp. 914, 917 (S.D.N.Y. 1959).

144. M. NORRIS, MARITIME PERSONAL INJURIES § 14 (2d ed. 1966); *see* 118 CONG. REC. H 10,043 (daily ed. Oct. 14, 1972) (remarks of Cong. Dent).

145. Pioneer S.S. Co. v. Hill, 227 F.2d 262 (6th Cir. 1955); Mollica v. Compania Sud-Americana De Vapores, 202 F.2d 25 (2d Cir.), *cert. denied,* 345 U.S. 965 (1953); Lyons v. United Fruit Co., 170 F. Supp. 261 (S.D.N.Y. 1959); Latus v. United States, 170 F. Supp. 837 (E.D.N.Y. 1959); Frenyear v. United States, 137 F. Supp. 524 (E.D.N.Y. 1956).

146. Alaska S.S. Co. v. Petterson, 347 U.S. 396 (1954); Rogers v. United States Lines, 205 F.2d 57 (3d Cir. 1953), *cert. denied,* 347 U.S. 984 (1954).

147. Phipps v. Nederlandsche Amerikaansche S.M., 259 F.2d 143, 146 (9th Cir. 1958); O'Connell v. Naess, 176 F.2d 138, 139-40 (2d Cir. 1949); Harrell v. Lykes Bros. S.S. Co., 165 F. Supp. 125, 126 (E.D. La. 1958).

tions. With indemnity actions between the stevedore and the vessel now prohibited,[148] the burden would fall exclusively on the shipowner. Given the history of the development of the Longshoremen's Act, the duty of the vessel to police the negligence of the stevedore perhaps should be limited to instances where the stevedore is using the ship's equipment, is subject to the actions of the ship's crew or officers, or is acting so recklessly as to impose a duty of affirmative action on the vessel. The policy arguments used to expand vessel liability in the past should be rejected in considering liability for control over stevedore actions. The House Committee rejected the idea that longshoremen were subject to the special hazards of maritime employment, an idea which had been the basis for the previous expansion of liability.[149] In addition, a concentration on policy would lead to increased duties and liability for the shipowner, an alternative which the House Committee rejected.

A third problem for longshoremen bringing negligence actions is that if the injury is caused by the condition of the ship, the longshoreman will have to prove that the "vessel" knew or should have known about the injury-causing condition.[150] Thus, there would be no recovery in negligence for latent defects in the vessel which the "vessel" could not have known about. Seaworthiness actions allowed recoveries for latent defects, since knowledge was not a factor in the seaworthiness warranty.

Suits claiming negligence of the vessel will be governed by maritime tort law whether the actions are brought in federal or state courts.[151] Under admiralty rules of law, the doctrine of contributory negligence is not followed.[152] The doctrine of comparative negligence applies in-

148. *See* text accompanying note 158 *infra.*

149. *See* text accompanying notes 131-33 *supra.*

150. Fillipek v. Moore-McCormack Lines, Inc., 258 F.2d 734, 737 (2d Cir. 1958), *cert. denied,* 359 U.S. 927 (1959); Pedersen v. The Bulklube, 170 F. Supp. 462, 465-66 (E.D.N.Y. 1959); Harrell v. Lykes Bros. S.S. Co., 165 F. Supp. 125, 126 (E.D. La. 1958); Lewis v. Maritime Overseas Corp., 163 F. Supp. 453, 457-58 (D. Ore. 1958).

151. Substantive federal maritime law governs regardless of what court the suit is brought in. *See* note 136 *supra* and accompanying text. The House Committee stated:

> [T]he Committee does not intend that the negligence remedy authorized in the bill shall be applied differently in different ports depending on the law of the State in which the port may be located. The Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of Federal law.

H.R. REP. No. 1441, 92d Cong., 2d Sess. 8 (1972).

152. Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939); The Max Morris, 137

stead of contributory negligence, with the burden of proving comparative negligence resting on the defendant.[153] Admiralty rules also provide that the doctrine of assumption of risk will not be used except as it might be employed to show comparative negligence.[154]

The amended Longshoremen's Act by implication continues the court-developed idea that the stevedore and the "vessel" can be the same entity. The vessel which directly employs a longshoreman will fit both the definition of an "employer"[155] and a "vessel"[156] under the amended Act. As a "vessel," the vessel could be sued for negligence. To prevent the provisions of the Longshoremen's Act from being circumvented when a vessel is acting as an "employer," the amended Act provides that the employee cannot bring a negligence action "if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel."[157] Presumably, the factual question of who was providing stevedoring services to the vessel can be answered by a factual determination of whether the negligent person was an "employee" or "employer" under the Act.

D. *Elimination of Third-Party Indemnity Actions*

While allowing negligence actions against the shipowner, the amended Longshoremen's Act prohibits indemnity actions by the shipowner against the stevedore. The Act provides that "the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void."[158] The House Report stated that it was the Committee's intention to prohibit the indemnity actions under any theory.[159] Since tort theories have already been eliminated by the Supreme Court as a basis for indemnity[160] and since the language of the statute is inclusive of contract actions, the Committee's intent appears to have been effectuated.

U.S. 1 (1890); Santomarco v. United States, 277 F.2d 255 (2d Cir. 1960); Ahlgren v. Red Star Towing & Transp. Co., 214 F.2d 618 (2d Cir. 1954).

153. La Guerra v. Brasileiro, 124 F.2d 553 (2d Cir. 1942).

154. Palmero v. Luckenbach S.S. Co., 355 U.S. 20 (1957); Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939).

155. *See* note 108 *supra.*

156. *See* note 141 *supra* and accompanying text.

157. Longshoremen's Act § 5(b), 33 U.S.C. § 905(b) (Supp. II, 1972), *formerly* ch. 509, 44 Stat. 1426 (1927).

158. *Id.*

159. H.R. REP. No. 1441, 92d Cong., 2d Sess. 7 (1972).

160. *See* note 82 *supra* and accompanying text.

Eliminating the indemnity action helps to carry out the new policies of the Act. The shipowner is liable only for his own negligence and the costs of his negligence may not be forced upon the stevedore.[161] Since the amendments to the Longshoremen's Act were a rejection of the court-created seaworthiness and indemnity actions, the courts should interpret the statute to ensure that these doctrines are not resurrected.

161. The House Committee expressed the fear that "unless such hold-harmless, indemnity or contribution agreements are prohibited as a matter of public policy, vessels by their superior economic strength could circumvent and nullify the provisions of Section 5 of the Act [33 U.S.C. § 905 (Supp. II, 1972)] by requiring indemnification from a covered employer for employee injuries." H.R. REP. No. 1441, 92d Cong., 2d Sess. 7 (1972).