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Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256 (1979)

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Edmonds v. Compagnie Generale Transatlantique,
443 U.S. 256, 99 S. Ct. 2753, 61 L. Ed. 2d 521 (1979).

The U.S. Supreme Court decision in *Edmonds v. Compagnie Generale Transatlantique*[1] marks another episode in the long Supreme Court — Congressional struggle over the bases and division of liability for injuries to longshoremen employed by stevedores and hired by shipowners.[2] In *Edmonds*,

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1. *Edmonds* was a five to three decision; Justice Powell did not vote.

2. In 1927 Congress enacted the Longshoremen's and Harbor Workers' Compensation Act, Pub. L. No. 92-576, 86 Stat. 1251 (amending 33 U.S.C. §§ 901-950 (1970), (codified in scattered sections of 33 U.S.C. (1976)), to provide a compensation scheme between longshoremen or harbor workers and their employers. The Act provided for strict liability but limited the benefits which could be received for work-related injuries. A long line of decisions which followed served to undermine the Act's purpose, thus necessitating the 1972 amendments. In Seas Shipping Co. v. Sieracki, 328 U.S. 85, 95-99 (1946), the Court applied the warranty of seaworthiness previously reserved for seamen to longshoremen. The doctrine of seaworthiness, created by the Court in The Osceola, 189 U.S. 158, 175 (1903), provided for the absolute liability of shipowners for seamen's injuries. *See generally* G. GILMORE AND C. BLACK, THE LAW OF ADMIRALTY §§ 1-10, 6-2, 6-38 (2d ed. 1975); Cohen and Dougherty, *The 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act: An Opportunity for Equitable Uniformity in Tripartite Industrial Accident Litigation*, 19 N.Y.L.F. 587-89 (1974). The *Sieracki* Court extended the warranty of seaworthiness to longshoremen, thus permitting the longshoreman to recover both from his employer, pursuant to the Act, and from the shipowner under the doctrine of seaworthiness. The Court reasoned that the

the Court reaffirmed the judicially-created admiralty rule that the shipowner can be ordered to pay all damages not due to the longshoreman's own negligence. Significantly, the Court found that Congress in enacting the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act[3], [hereinafter referred to as the Act] did not intend to impose a proportionate fault rule. The amendments eliminated the circuitous route by which shipowners had circumvented the stevedore-employers' limited liability under the Act.[4] As a result, where a longshoreman's injury is caused by

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liability arose from the performance of the ship's services, and because longshoremen performed the same type of services as the ship's crew, they should have the same rights against the shipowner. *See* G. GILMORE AND C. BLACK, *supra* at §§ 6–21, 6–31, 6–41, 6–53, 6–58; Cohen and Dougherty, *supra* at 589.

In the years following *Sieracki*, shipowners sought contribution or indemnification from land-based employers. By 1953, however, the Court established that the employers were protected by the 1927 Act from any action for contribution. Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953) (independent contractor engaged in carpentry work aboard vessel; contractor-employer held not liable for contribution to shipowner); Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 406 (1953) (independent contractor performing repairs aboard vessel; contractor-employer held not liable for contribution to shipowner). *See also* G. GILMORE AND C. BLACK, *supra* at §§ 6–14, 6–27a, 6–55, 6–61; Cohen and Dougherty, *supra* at 589, 591 n. 22.

Then, in Ryan Stevedoring Co. v. Pan Atlantic Steamship Corp., 350 U.S. 124 (1956), the Court held that a warranty of workmanlike service existed between stevedore-employers and shipowners. Through this doctrine, the shipowner could be fully indemnified for his liability to the longshoremen in cases where the longshoreman or another employee of the stevedore was negligent. It was possible for a stevedore-employer to be ninety-nine percent liable for injuries to a longshoreman, himself one percent at fault, even if the shipowner was ninety-nine percent at fault. If the longshoreman was at all negligent, the warranty of workmanlike service had not been met and the shipowner was entitled to indemnification for the full ninety-nine percent liability recovered from him by the longshoreman under the seaworthiness doctrine. In essence, the stevedore's statutorily limited liability provided for by the Act was circumvented by *Sieracki* and *Ryan*. *See generally* G. GILMORE AND C. BLACK, *supra*, §§ 6–14, 6–53, 6–55; Cohen and Dougherty, *supra* at 591–92.

3. Pub. L. No. 92–576, 86 Stat. 1251 (amending 33 U.S.C. §§ 901–950 (1970)) (codified in scattered sections of 33 U.S.C. (1976)). *See supra* note 2.

4. In effect, Congress overruled *Sieracki* — thereby eliminating the shipowner's liability to the longshoreman for unseaworthiness — and *Ryan* — thereby eliminating the stevedore's liability to the shipowner for unworkmanlike service resulting in injury to the longshoreman. S. Rep. No. 1125, 92d Cong., 2d Sess. 9 (1972), *reprinted in* [1972] U.S. CODE CONG. & AD. NEWS 4701. *See also* G. GILMORE AND C. BLACK, *supra* note 2, at §§ 6–1a, 6–46, 6–50. In addition, compensation benefits were increased, the Act's geographic coverage was expanded, and a new means of adjudicating compensation cases was instituted. Robertson, *Jurisdiction, Shipowner Negligence, and Stevedore Immunities Under the 1972 Amendments to the Longshoremen's Act*, 28 MERCER L. REV. 515, 516 (1977).

the combined negligence of shipowners, stevedore and injured longshoreman, the shipowner's liability is not restricted to that proportion of total damages equal to his proportion of fault. Rather, the shipowner is liable for all damages not due to the longshoreman's negligence.

This suit was initiated by Stanley Edmonds, a longshoreman employed by Nacirema Operating Company,[5] for injuries sustained in 1974 while unloading rolling cargo containers from the *S.S. Atlantic Cognac*, a vessel owned by the defendant, Compagnie Generale Transatlantique. At the time the action was brought, Edmonds was receiving benefits for his injury from his employer under the Act.[6] Since the Act preserved the longshoreman's maritime negligence action against the shipowner, Edmonds sought additional relief from the defendant.[7]

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5. The stevedore-employer, Nacirema Operating Co., is not a party to this case.

6. 443 U.S. at 258.

7. *Id.* at 263 n. 12; S. Rep. No. 1125, *supra* note 4, at 9–10. The Senate Report explained the situation and the changes being made in the following manner:

> One of the most controversial and difficult issues which the committee has been required to resolve in connection with this bill concerns the liability of vessels, as third parties, to pay damages to longshoremen who are injured while engaged in stevedoring operations. The Committee rejected the proposal, originally advanced by the industry, that vessels should be treated as joint employers of longshoremen or other persons covered under this Act working on board such vessels. This would result in restricting the vessel's liability in all cases to the compensation and other benefits payable under the Act. The Committee believes that where a longshoreman or other worker covered under this Act is injured through the fault of the vessel, the vessel should be liable for damages as a third party, just as land-based third parties in non-maritime pursuits are liable for damages when, through their fault, a worker is injured.
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> The Committee also rejected the thesis that a vessel should be liable without regard to its fault for injuries sustained by employees covered under this Act while working on board the vessel.
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> [The report then traces the judicial imposition of absolute liability in *Sieracki* and the creation of the shipowner's right of indemnification in *Ryan* resulting in the circumvention of the stevedore-employer's limited liability under the Act].
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> Accordingly, the Committee has concluded that, given the improvement in compensation benefits which this bill would provide, it would be fairer to all concerned and fully consistent with the objective of protecting the health and safety of employees who work on board vessels for the liability of vessels as third parties to be predicated on negligence, rather than the no-fault concept of seaworthiness. This would place vessels in the same position, insofar as third party liability is concerned, as land-based third parties in non-maritime pursuits.
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> Persons to whom compensation is payable under the Act retain the right to recover damages for negligence against the vessel, but under these amendments they cannot bring a damage action under the judicially-enacted doctrine of seaworthiness. Thus a vessel shall not be liable in damages for acts or omissions of stevedores or employees of stevedores subject to this Act, (citations omitted); for

In December 1975, a jury trial resulted in a general verdict for Edmonds in the amount of $100,000.[8] A special verdict found that Edmonds was ten percent negligent, defendant was twenty percent negligent, and the stevedore-employer was seventy percent negligent.[9] Accordingly, the District Court entered judgment against the shipowner for $90,000; the award was reduced by that proportion of negligence contributed by the longshoreman.

On the shipowner's appeal, the Fourth Circuit held that where the longshoreman's injury was due to the combined negligence of shipowner, stevedore and longshoreman, the shipowner could be required to pay only that proportion of the total damages equal to his proportion of fault.[10] The Fourth Circuit based its decision on its understanding of the wording of the 1972 amendment of § 905(b) of the Act which reads:

> *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 as a third party in accordance with the provisions of Section 933 of this title and 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. *If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel.*[11] (emphasis added).

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the manner of method in which stevedores or employees of stevedores subject to this Act perform their work, (citations omitted); for gear or equipment of stevedores or employees of stevedores subject to this Act whether used aboard ship, or ashore, (citations omitted); or for other categories of unseaworthiness which have been judicially established. This listing of cases is not intended to reflect a judgment as to whether recovery on a particular actual setting could be predicated on a vessel's negligence. . . .

Since the vessel's liability is to be based on its own negligence, and the vessel will no longer be liable under the seaworthiness doctrine for injuries which are really the fault of the stevedore, there is no longer any necessity for permitting the vessel to recover the damages for which it is liable to the injured worker from the stevedore or other employer of the worker.

The House submitted a virtually identical report which is *reprinted in* [1972] U.S. Code Cong. & Ad. News 4698.

8. The first jury trial resulted in a verdict for Edmonds for $97,000. The district court judge, however, granted the defendant's motion for a new trial, based on errors committed by the court in charging the jury. 558 F.2d 186, 189 (4th Cir. 1976).

9. 443 U.S. at 258.

10. Edmonds v. Compagnie Generale Transatlantique, 577 F.2d 1153, 1154 (4th Cir. 1978).

11. 33 U.S.C. § 905(b)(1976); *see* G. GILMORE AND C. BLACK, *supra* note 2, at § 6–57.

The Fourth Circuit considered the above two italicized sentences to be in conflict.[12]

Interpreting the first sentence to mean that any negligence on the part of the shipowner would warrant recovery while any negligence on the part of the stevedore would defeat recovery, the Fourth Circuit found the two sentences irreconcilable. Therefore, to harmonize the two, the Court determined that it was necessary to read the two sentences in apportioned terms.[13] Other courts of appeals have reached the opposite conclusion.[14]

On writ of certiorari, the Supreme Court reversed and remanded the Fourth Circuit decision.[15] Writing the opinion for the Supreme Court, Mr. Justice White initially discussed the 1972 amendment of § 905(b) as understood by the Fourth Circuit.[16] Stating that "the conflict seen by the Court of Appeals is largely one of its own creation," the Court explained the two sentences of § 905(b).[17] The first sentence refers to longshoremen, employed by a stevedoring concern, injured by the negligence of the shipowner. Such a longshoreman receives statutory benefits from the stevedore-employer under the Act and may sue the shipowner as a third party. In addition, the shipowner is prevented from recouping from the stevedore any of the damages for which he is liable to the injured longshoreman.[18]

The second sentence refers to injured longshoremen employed directly by shipowners to provide stevedoring services. If such a longshoreman's injury is caused by the negligence of others providing stevedoring services, there are

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12. 577 F.2d at 1155.

13. *Id.*

14. Zapico v. Bucyrus-Erie Co., 579 F.2d 714, 725 (2d Cir. 1978) (manufacturer of defective crane denied indemnification by concurrently negligent stevedore); Samuels v. Empressa Lineas Maritimas Argentinas, 573 F.2d 884, 887–99 (5th Cir. 1978), *cert. denied*, 99 S. Ct. 3106 (1979) (vessel owner denied indemnification by stevedore-employer); Dodge v. Mitsui Shintaku Ginko K.K. Tokyo, 529 F.2d 669, 671–73 (9th Cir. 1975) *cert. denied*, 425 U.S. 944 (1976); Shellman v. United States Lines, Inc., 528 F.2d 675, 679–80 (9th Cir. 1975), *cert. denied*, 425 U.S. 936 (1976), (shipowner denied defense of contributory negligence of stevedore-employer and stevedore-employer's statutory lien unaffected by same).

15. 443 U.S. at 273.

16. *Id.* at 263. Joining in the opinion were Chief Justice Burger, and Justices Black, Rehnquist and Brennan.

17. *Id.; see also* S. Rep. No. 1125, *supra* note 4, at 9–11, [1972] U.S. CODE CONG & AD. NEWS, 4701, 4719.

18. 443 U.S. at 264. In effect, "the first sentence overrules *Ryan*," preventing the shipowner from seeking retribution from the stevedore for damages that the longshoreman may recover. *See supra* note 2. *See also* S. Rep. No. 1125, *supra* note 4, at 9–11, [1972] U.S. CODE CONG. & AD. NEWS 4703–4.

limitations on his bringing suit against the shipowner. "The second sentence means no more than that all longshoremen are to be treated the same."[19] Thus, a longshoreman hired directly by the shipowner is treated the same as a longshoreman employed by a stevedore hired by a shipowner. Similarly, stevedores are treated the same whether they are independent stevedores, or shipowners providing their own stevedoring services.

Having reconciled the two sentences of § 905(b), the Court then considered whether the section indicated Congressional modification of the rule that a longshoreman injured by the concurrent negligence of the stevedore and the shipowner can recover in full from the shipowner. Recognizing that the section is awkwardly worded, the Court emphasized that the reports preceding the enactment of the amendments reiterated the retention of the longshoreman's negligence action against the shipowner.[20] In effect, the shipowner is to be treated like a land-based third party tortfeasor.[21] Therefore, the longshoreman, "to whom compensation is payable under the Act [retains] the right to recover damages for negligence against the vessel."[22] Under the traditional admiralty rule, such recovery is for the full amount of damages less that proportion attributed to the longshoreman's negligence.[23]

Finally, the Court rejected the Fourth Circuit determination that the proportionate-fault rule was intended by Congress. Such a rule would reduce the shipowner's liability to the court's assessment of his negligence. Furthermore, the Fourth Circuit rule would also result in additional burdens on the longshoreman. One such burden would be the inability of the longshoreman to recover full damages; this could occur in three ways. First, the longshoreman will not be fully compensated when the stevedore's negligence exceeds the proportion of damages under the Act if the shipowner's liability is limited by the proportionate-fault rule; the stevedore's liability is already limited by statute.[24] Second, there also exists a judicially-created lien in favor of the stevedore-employer when the longshoreman brings the suit himself.[25] This lien serves to decrease the longshoreman's

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19. 443 U.S. at 266; *see also* S. Rep. No. 1125, *supra* note 4, at 9–11, [1972] U.S. CODE CONG. & AD. NEWS 4705.

20. 443 U.S. at 266–67; *see also* S. Rep. No. 1125, *supra* note 4, at 9–11, [1972] U.S. CODE CONG. & AD. NEWS 4703–4.

21. 443 U.S. 260 n. 8, 271 n. 30; *see also* S. Rep. No. 1125, *supra* note 4, at 10–11, [1972] U.S. CODE CONG. & AD. NEWS 4703.

22. S. Rep. No. 1125, *supra* note 4, at 11, [1972] U.S. CODE CONG. & AD. NEWS 4703.

23. 443 U.S. at 259; *see supra* note 2 G. GILMORE AND C. BLACK, *supra* note 2, at § 6–27a.

24. 443 U.S. at 269.

25. *Id.*

recovery by allowing the stevedore to recoup the compensation paid the longshoreman from the latter's recovery in his suit against the shipowner. If the shipowner's liability is limited to his proportionate fault, the possibility exists that the longshoreman will be left with nothing after the stevedore recoups the compensation he has paid.[26] Third, § 933(b) allows assignment to the stevedore-employer of the longshoreman's rights against the third party shipowner unless he sues within six months of the injury. If such a suit is brought by the stevedore-employer, he may retain from any recovery the expenses of bringing the suit, the medical services and compensation paid the longshoreman, the present value of the benefits to be paid, and one-fifth of the remainder of the recovery.[27] Under a proportionate-fault rule, when the stevedore brings the suit pursuant to § 933(c) of the Act, the longshoreman will get "little, if any, of the diminished recovery obtained by his employer."[28] The Court concluded that while inequity exists in the present statutory scheme, nothing indicates that Congress intended a shift of the inequity from the shipowner to the longshoreman which would occur with a proportionate fault rule.

The Court rejected the suggestion that it alter the division of liability despite the lack of Congressional intent. Although it had supported a division of damages between parties based on their comparative fault in the past,[29] the Court had done so in a particular situation, distinguishable from this case.[30] Since *Edmonds* involved a melange of judge-made and statutory law, to alter the former without regard to the latter could have a drastic effect on both. The Court therefore explained that "[o]nce Congress has relied upon conditions that the courts have created, we are not as free as we would otherwise be to change them. A change in the conditions would effectively alter the statute by causing it to reach different results than Congress envisioned."[31]

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26. In the past, this lien has been for the benefits paid by the stevedore, up to the amount of the longshoreman's recovery from the shipowner. Thus, if the shipowner's share of fault is less than the benefits paid by the stevedore under the Act, the proportionate fault rule would deny the longshoreman any recovery from the shipowner.

27. 33 U.S.C. § 933 (c) (1976); 443 U.S. at 270.

28. *Id.* In *Edmonds*, because of the division of fault, such a result would not diminish the longshoreman's recovery any more than if he himself had sued; *see supra* note 26.

29. United States v. Reliable Transfer Co., 421 U.S. 397 (1975) (a collision case in which both joint tortfeasors were parties). Because the stevedore is not a party in *Edmonds*, its fault cannot be comparatively allocated. *See also* Cohen and Dougherty, *supra* note 2, at 605–07.

30. 443 U.S. at 271 n. 30.

31. *Id.* at 273.

The dissent, written by Mr. Justice Blackmun, attacks the Court's opinion for its lack of fairness.[32] Since the shipowner is held ninety percent liable for Edmonds' damages, and the stevedore recoups the statutory benefits therefrom, the defendant-shipowner is effectively held vicariously liable for the stevedore-employer's negligence.[33] The dissent argued that this result is neither compelled by the language nor the legislative history of § 905(b) of the Act and that it reduces the incentives for the stevedore to provide a safe work place for his longshoremen-employees. Justice Blackmun saw the Court as offering two justifications for this result: a) "[P]rinciples of comparative negligence did not apply under the traditional law of admiralty, and Congress intended to preclude judicial modification of that law when it enacted the 1972 Amendments to the [Act]"; and b) "[A] rule of comparative negligence would be unfair to injured longshoremen."[34]

Blackmun disagreed with two of the Court's statements: the first, that admiralty law in 1972 did not permit reduction of a shipowner's liability by the stevedore-employer's comparative negligence; and the second, that Congress did not impose a comparative fault rule with the 1972 amendment of § 905(b) to the Act.[35] As to the former, Justice Blackmun pointed out that the cases cited by the Court deal with the issue of the right of contribution among joint tortfeasors, not with the issue of proportionate liability for comparative negligence. As to the latter, he argued that the "tension" between the two sentences of § 905(b) is more plausibly harmonized if one understands Congress to imply comparative negligence,[36] Furthermore, Justice Blackmun rejected the Court's assertion that Congress intended to prohibit the Court from fashioning a rule of comparative negligence.

Justice Blackmun further argued that the Judiciary has traditionally played a large role in the formulation of admiralty law and should continue to do so. As recently as 1975, the Court stated that "the Judiciary has traditionally taken the lead in formulating flexible and fair remedies in the law maritime, and 'Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law.' "[37] In addition, nothing indicated an intention on the part of Congress to discontinue this role of the Judiciary. Rather, Congress intended to overrule *Sea Shipping Co. v.*

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32. *Id.* at 274. Mr. Justice Blackmun's dissent was joined by Justices Marshall and Stevens.

33. *Id.*

34. *Id.*

35. *Id.* at 275.

36. *Id.* at 275–76.

37. *Id.* at 276, *quoting* United States v. Reliable Transfer Co., 421 U.S. 397, 409 (1975).

Sieracki[38] and *Ryan Stevedoring Co. v. Pan Atlantic Steamship Corp.*[39] through the enactment of the § 905(b) amendment in 1972.[40] The legislative history demonstrates that Congress specifically reaffirmed the Court's traditional role in resolving' " 'legal questions which may arise in actions brought under this provision.' "[41] In conclusion, Blackmun stated that "[n]o statutory or judicial precept precludes a change in the rule [that the shipowner is fully liable for the concurrent negligence of the stevedore], and indeed a proportional fault rule would simply bring recovery [as between the stevedore and shipowner] into line with the rule of admiralty law long since established [as between the longshoreman and the shipowner]".[42]

Justice Blackmun next examined the injustice to the longshoreman resulting from the application of a proportionate-fault rule. He perceived that the longshoreman's total award would not be affected by such a rule; rather, the division of the award between the stevedore and shipowner would be affected.[43] The reduction of the longshoreman's total potential award is not unfair because such a result is consistent with the policies of the statute, as made clear by the differing purposes of the statutory compensation scheme and the third party action for negligence.[44] The statutory scheme is based on a compromise whereby the longshoreman accepts less than full damages in exchange for a guarantee, regardless of his and the stevedore-employer's fault in causing the injury. It is just and reasonable that a stevedore who is 100% negligent is limited in his liability to sixty-seven percent of the damages by the Act.[45] The third party action for negligence, on the other hand, involves an element of risk: while the longshoreman may get an award for full damages, he risks getting nothing in the event that the shipowner is found not to be negligent. Thus, a shipowner found 100% negligent is considered justly liable for 100% of the damages.[46] The difficulty arises from the interface of the compensation scheme with the tort scheme, as in *Edmonds*.[47] To award

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38. 328 U.S. 85 (1946). *See supra* note 2.
39. 350 U.S. 124 (1956). *See supra* note 2.
40. 443 U.S. at 277.
41. *Id.*, quoting from S. Rep. No. 1125, *supra* note 4, at 12.
42. 443 U.S. at 278.
43. *Id.* Justice Blackmun points out, for example, that such a rule applied to Edmonds would result in his recovering twenty percent from the shipowner and eighty percent from the stevedore's statutory benefits, rather than the ninety percent-ten percent division required by the majority's decision.
44. *Id.*
45. *Id.*
46. *Id.* at 280.
47. *Id.*

the longshoreman ninety percent damages when the shipowner is only twenty percent negligent is characterized by Justice Blackmun as a windfall to the longshoreman.[48] In effect, the longshoreman has received the guaranteed statutory benefits from the stevedore and a

> risk-free chance to obtain full damages if the shipowner is found negligent in even the slightest degree. A more even-handed equity . . . would be for the longshoreman to recover damages for that portion of the injury for which the shipowner's negligence is responsible and to recover the balance in statutory compensation, representing that portion of the injury for which the longshoreman is guaranteed an award regardless of fault.[49]

Although Justice Blackmun recognized that the statute is open to two interpretations, he stressed that the Court's duty "is to adopt the interpretation most consonant with reason, equity, and the underlying purposes Congress sought to achieve."[50] If that interpretation is not what Congress intended, Congress can legislate to correct the situation. To express doubts about the equity of the result and leave any change to Congress, may bring no change, thus leaving the law with an unjust and unfair result.[51]

At the policy level, there is justification for the Court's holding in *Edmonds*. The purpose of the Act is to provide longshoremen a means of recovering for their work-related injuries. *Edmonds* adheres to this purpose by safeguarding the longshoreman's right to recover for injuries caused in part by shipowner negligence.

The Court's holding also works, however, against the purpose of the Act as a safeguard for longshoremen by reducing stevedore-employer's incentives to provide a safe working environment for their longshoremen-employees.[52] By not holding the stevedore liable for his proportion of the fault and, in fact, making the shipowner wholly liable for the longshoreman's injuries, the stevedore has nothing to gain by providing a safe work place and nothing to lose by disregarding the hazards of the work place.

Furthermore, the *Edmonds* decision puts an undue burden on the shipowner, much like that which resulted from the Court's holding in

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48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at 277.

Sieracki,[53] which was subsequently undermined by *Ryan* and overruled by the 1972 amendments to the Act.[54]

Given these considerations, the real questions faced by the Court were to defer the issue to Congress; and if not how to determine the recovery.

Given these considerations, the real questions faced by the Court were: whether to defer the issue to Congress; and if not, how to determine the recovery.[55]

As to the first question, admiralty law has traditionally been, in large part, court-made law. Beginning in 1927 with the original enactment of the Act, however, Congress has periodically made an effort to cure deficiencies in the law regarding longshoremen's recoveries for injuries. Since that time, the efforts of the Court and Congress have resulted in progress combined with confusion. This is again exemplified by the result brought about by the Congress' 1972 Amendments to the Act and the Court's application and interpretation thereof in *Edmonds*. It is too simplistic to leave the solution to Congress and have the Court discontinue its traditional role in maritime law-making. The solution, rather, is for everyone concerned to recognize more fully the complications of the employee-employer-third party maritime suit and to deal with them realistically.[56] Only by recognizing this complexity and accepting the conflicting interests of each party can an acceptable overall scheme balancing equities and liabilities be developed to deal with the recovery of longshoremen from their employers and third party tortfeasors for work- related injuries.

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53. *See supra* note 2.

54. *See supra* note 4.

55. *See generally* Cohen and Dougherty, *supra* note 2; Coleman, *The 1972 Amendments to the Longshoremen's and Harbor Workers' Act; Life Expectancy of Equitable Credit*, 12 THE FORUM 683 (1977); Coleman and Daly, *Equitable Credit: Apportionment of Damages According to Fault in Tripartite Litigation Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Act*, 35 MD. L. REV. 351 (1976).

56. *See* Cohen and Dougherty, *supra* note 2, at 605–07.