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Ii. Admiralty

the regulations were unenforceable for want of proper publication.[29] The Fourth Circuit decision is in keeping with numerous opinions which have held that failure to satisfy Federal Register publication requirements invalidates a regulation.[30] Indeed, the Fourth Circuit noted that *Appalachian Power Co. v. Train* was the second time the EPA had been chastised for failing to observe APA publication requirements.[31] The court affirmed that an interested party's cognizance of a regulation, but not of the regulation's specific contents and applicability, does not constitute effective notice.[32] The holding reaffirmed a well-established maxim of administrative law that persons supplying goods and services to the government are entitled to notice of the standards and procedures which regulate these relationships.[33]

GRETCHEN CECILIA FRANCES SHAPPERT

II. ADMIRALTY

A. Shipowner's Duty of Care to Longshoremen

In 1972, Congress added several amendments to the Longshoremen's and Harborworker's Compensation Act (LHWCA)[1] in an attempt to alleviate the vast amount of litigation instituted by injured longshoremen

[29] *Id. See generally* 5 U.S.C. § 552(a)(1) (1976).

[30] *See* Anderson v. Butz, 550 F.2d 459 (9th Cir. 1977) (food stamp instructions requiring that certain housing subsidies paid by the Department of Housing and Urban Development be treated as income were invalid for failure to publish in the Federal Register because they affected more than internal proceedings and had a significant impact on food stamp recipients); Lewis v. Weinberger, 415 F. Supp. 652, 659 (D.N.M. 1976) (Indian Health Service memorandum making off-reservation Indians ineligible for contract care policies held void for lack of publication); Piercy v. Tarr, 343 F. Supp. 1120, 1127-29 (N.D. Cal. 1972) (directives of the Selective Service System in the form of letters to state directors were "regulations" void for failure to publish); *In re* Pacific Far East Line, Inc., 314 F. Supp. 1339, 1348 (N.D. Cal. 1970), *aff'd*, 472 F.2d 1382 (1973) (unpublished Navy regulation did not bind parties unaware of its existence); Federal Nat'l Mortgage Assoc. v. Ricks, 83 Misc. 2d 814, 820-21, 372 N.Y.S.2d 485, 592-93 (1975) (departmental handbook of the Department of Housing and Urban Development held invalid for failure to publish). *See also* Pinkus v. Reilly, 157 F. Supp. 548, 551 (D.N.J. 1957); United States v. Morelock, 124 F. Supp. 932 (D. Md. 1954); note 18 *supra*.

[31] 566 F.2d at 457; *see* Maryland v. EPA, 530 F.2d 215, 221-22 (4th Cir. 1975), *remanded for consideration of mootness*, 431 U.S. 99 (1977). The Fourth Circuit held that EPA regulation of automobile traffic in Maryland, pursuant to the Clean Air Act, was invalid due to lack of notice and publication in accordance with the rulemaking provisions of 5 U.S.C. § 553(b)(3) (1976). 530 F.2d at 221-22.

[32] 566 F.2d at 457.

[33] Gonzalez v. Freeman, 334 F.2d 570, 578 (D.C. Cir. 1964). *See also* Cuneo v. Schlesinger, 484 F.2d 1086, 1090-91 (D.C. Cir. 1973); W. G. Cosby Transfer & Storage Co. v. Froehlke, 480 F.2d 498, 502-03 (4th Cir. 1973).

[1] Act of October 27, 1972, Pub. L. No. 92-576, 86 Stat. 1251, *amending* 33 U.S.C. §§ 901-950 (1970) (codified at 33 U.S.C. §§ 901-950 (1976)).

against shipowners.[2] In furtherance of this intent, Congress abolished the doctrine of unseaworthiness as the basis for a longshoremen's action against a shipowner under the LHWCA.[3] Congress did not intend, however, that a shipowner should be relieved of all responsibility for longshoreman injuries.[4] Therefore, the 1972 Amendments preserved the right of action against a shipowner by a longshoreman who is injured as a result of a shipowner's negligence.[5] Although Congress indicated that a longshoreman's right of action, as well as the determination of a shipowner's liabil-

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[2] In Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946), the Supreme Court held that a shipowner owes to a longshoreman the nondelegable duty of maintaining his vessel in a seaworthy condition. When any condition or act caused injury to a longshoreman while aboard a vessel, the vessel was deemed unseaworthy, and therefore in violation of the shipowner's duty of care. *Id.* at 99-100. By breaching this duty of care, the shipowner became liable for the full amount of an injured longshoreman's damages. *Id.; see* G. GILMORE & C. BLACK, JR., THE LAW OF ADMIRALTY §§ 6-38 to 6-44, 6-53 to 6-54 (2d ed. 1975) [hereinafter cited as GILMORE & BLACK].

Since the unseaworthiness doctrine, in effect, placed no fault liability on a shipowner, suits by injured longshoremen against shipowners soon proliferated. H. R. REP. No. 92-1441, 92d Cong., 2d Sess. (1972), *reprinted in* [1972] U. S. CODE CONG. & AD. NEWS 4698, 4702-03 [hereinafter cited as HOUSE REPORT]. During the Congressional hearings on the 1972 Amendments, a House Committee discovered that such suits were a primary device for injured longshoremen to supplement the inadequate statutory compensation received from stevedore-employers. HOUSE REPORT, *supra* at 4702. Although shipowners initially bore the cost of longshoremen's recoveries, the shipowners could seek indemnity from the longshoremen's stevedores for any awards paid to longshoremen. *Id.* In effect, the full cost of adequate compensation for longshoreman injuries, the goal of the LHWCA, was borne by stevedores despite an exclusivity provision in the LHWCA which made compensation payments a stevedore's sole obligation to an injured longshoreman. *Id.; see* 33 U.S.C. § 905 (1970) (amended 1972). Because of the substantial litigation expenses necessary to adequately compensate longshoremen for their injures, the House Committee decided that relief for injured workers would be effectuated best by eliminating the costs of litigation and using these savings to increase statutory compensation paid to longshoremen. HOUSE REPORT, *supra* at 4702-03; *see* note 3 *infra.*

[3] HOUSE REPORT, *supra* note 2, at 4703. The House Committee determined that a major reason for the application of the unseaworthiness doctrine to longshoremen was to supplement the inadequate compensation payments under the 1927 LHWCA. *Id.* Since the 1972 Amendments increased compensation payments for longshoremen, the Committee reasoned that there was no longer a financial need for the doctrine of unseaworthiness. *Id.*; *see* note 2 *supra.* In addition, the Committee concluded that the unseaworthiness doctrine was developed originally to protect seamen who were exposed to the many hazards of long sea voyages. HOUSE REPORT, *supra* note 2, at 4703. In contrast, a longshoreman who works on board a vessel for a short time is not exposed to a seaman's hazardous employment conditions, and therefore, has no need for the protection of the unseaworthiness doctrine. *Id.*

[4] HOUSE REPORT, *supra* note 2, at 4703.

[5] 33 U.S.C. § 905(b) (1976). Under § 905(b), a shipowner remains liable for his own negligent acts or omissions which cause injury to longshoremen. *Id.* The shipowner, however, is not liable for injuries caused by a stevedore's negligence. *Id.* In addition, a longshoreman cannot base his negligence action against the shipowner on the doctrine of unseaworthiness or a nondelegable duty. *Id.; see* HOUSE REPORT, *supra* note 2, at 4701-04; GILMORE & BLACK, *supra* note 2, at § 6-57; Robertson, *Negligence Actions by Longshoremen Against Shipowners under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act,* 7 J. OF MAR. L. & COM. 447 (1976) [hereinafter cited as Robertson].

ity, is to be governed by land based negligence principles.[6] Congress did not specify which land based principles of negligence govern the shipowner's duty of care.[7] Instead, Congress decided that the courts are the appropriate forum for ascertaining which land based principles should be applied to a longshoreman's action under the amended LHWCA.[8] In *Chavis v. Finnlines, Ltd.*,[9] the Fourth Circuit considered the applicability of several land based principles of negligence,[10] port custom[11] and federal regulations[12] in establishing the shipowner's duty of care to a longshoreman under the 1972 Amendments.

The plaintiff, Augustus Chavis, was a longshoreman employee of the Tidewater Stevedoring Company.[13] In February, 1975, the defendant shipowner, Finnlines, Ltd., contracted with Tidewater to load a cargo of logs and herb bales aboard a Finnlines ship. After Finnlines relinquished control of the cargo operations to Tidewater, Chavis and other members of a longshoring gang supervised by Tidewater proceeded to load the logs into the ship's hold.[14] Sometime during the loading operation, a rainstorm made a clay coating on the logs extremely slippery. Despite this hazardous condition, the gang finished loading the logs without a mishap.[15] Disregarding the port custom of placing wooden planks, called dunnage, between different types of cargo to prevent slippery conditions from causing injury, the longshoring gang then loaded the bales of herbs directly on the slippery logs. While loading these bales, Chavis injured his back.[16] As a result of this injury, Chavis received statutory compensation payments from Tidewater.[17] Chavis then instituted a suit against Finnlines alleging

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[6] HOUSE REPORT, *supra* note 2, at 4703-05.

[7] *Id.*

[8] *Id.* The House Committee realized that its failure to specify which land based negligence principles are appropriate in longshoreman actions would cause uncertainty regarding whether a shipowner acted negligently in a particular situation. *Id.* The Committee decided, however, that this uncertainty should be resolved through the ordinary process of litigation. *Id.* at 4704. Despite the discretion granted to the courts in ascertaining the applicable land based principles, the Committee indicated that the principles adopted by the courts should be nationally uniform. *Id.* at 4705.

[9] 576 F.2d 1072 (4th Cir. 1978).

[10] *See* text accompanying notes 22-48 *infra.*

[11] *See* note 23 *infra.*

[12] *See id.*

[13] 576 F.2d at 1074.

[14] *Id.* at 1074-75.

[15] *Id.*

[16] *Id.* at 1075. At trial, Chavis claimed that his injury occurred when he slipped while pushing a bale of herbs into place. *Id.* However, a supervisory employee, not present at the accident, testified that Chavis did not mention the fall or injury on the day of the accident. Furthermore, Chavis did not mention the fall on his LHWCA compensation form. *Id.* Indeed, there was testimony that after the accident Chavis claimed that his injury was caused simply by attempting to lift a heavy load. *Id.* at 1075-76.

[17] Under § 903 of the LHWCA, a longshoreman injured in the course of his employment may receive statutory payments. 33 U.S.C. § 903 (1976). To receive compensation payments, a longshoreman must submit an application to the deputy commissioner of the LHWCA or a LHWCA board. *Id.* § 919. Thereafter, the commissioner or board determines the validity of

that Finnlines failed to provide Chavis with a safe place to work. After a jury verdict in Finnline's favor, Chavis appealed.[18]

On appeal, Chavis asserted that the trial judge had given erroneous instructions to the jury and had failed to give instructions that he had requested.[19] The trial judge had instructed the jury that a shipowner owes the same duty of ordinary care to a longshoreman which a possessor of land owes to a business invitee.[20] Chavis claimed, however, that the jury should have been instructed that a shipowner and a stevedore owe a longshoreman the joint duty of maintaining the ship as a safe place to work.[21] In addition, Chavis claimed that under certain circumstances a special limitation should be placed on a shipowner's usual immunity from liability for injuries caused by open and obvious dangers.[22] Moreover, Chavis contended

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the longshoreman's application, whether the longshoreman's injury was covered by the LHWCA and, if the application is approved, makes a formal award of compensation to the longshoreman. *See id.* Once a formal compensation award is granted, the longshoreman is entitled to a statutorily determined schedule of payments based on the severity of the injury and the duration of his absence from work. *Id.* § 908.

[18] 576 F.2d at 1074.

[19] *Id.* at 1074, 1076; *see* text accompanying notes 22-48 *infra.*

[20] 576 F.2d at 1076 n.2. The trial judge instructed the jury that a shipowner owes to any business invitee the duty to exercise ordinary care under the circumstance to maintain the ship in a reasonably safe condition for the invitee's use. *Id.* The judge further instructed the jury that if a shipowner should find a latent defect while exercising due care, the shipowner has a duty to warn the invitee of the defect, but has no duty to correct open and obvious dangers. *Id.*

[21] *Id.* at 1077. Chavis asserted the reason for retaining the longshoreman's right of action against a shipowner under the 1972 amendments was Congress' desire for shipowners to have a duty to take any reasonable precautions to prevent the possibility of injury to longshoremen. *Id., citing* HOUSE REPORT, *supra* note 2, at 4704. Chavis also relied on Marant v. Farrell Lines, Inc., 1976 A.M.C. 504 (E.D. Pa. 1976), *rev'd,* 550 F.2d 142 (3d Cir. 1977), in which the district court concluded that under the 1972 Amendments, Congress intended shipowners and stevedores to share the responsibility for longshoreman safety. 576 F.2d at 1077.

[22] 576 F.2d at 1078-79. Chavis contended that the land based negligence principles contained in § 343A of the Restatement (Second) of Torts should have been included in the trial court's jury instructions. *Id.* Under § 343A, a possessor of land does not normally have a duty to correct open and obvious dangers. RESTATEMENT (SECOND) OF TORTS § 343A (1965). However, if the possessor of land should anticipate that an entrant will not be able to avoid an open and obvious danger, or may be injured despite the open and obvious nature of the condition, the possessor's duty of care changes. *Id.; see* Napoli v. Hellenic Lines, Ltd., 536 F.2d 505 (2d Cir. 1976). Under these circumstances, if the possessor of land fails to correct such an open and obvious danger, he is liable for injuries caused by the danger. RESTATEMENT (SECOND) OF TORTS § 343A (1965). Chavis, citing Napoli v. Hellenic Lines, Ltd., 536 F.2d 505 (2d Cir. 1976), contended that § 343A is applicable to longshoreman actions against shipowners and that a shipowner has the legal duties of a possessor of land as set out in the Restatement. 576 F.2d at 1079; *see* note 36 *infra.* Chavis also asserted that the court should have determined whether the shipowner was in a better position to discover and correct the dangerous condition than the longshoreman's stevedore. If the shipowner were in a better position, then his failure to correct the situation constituted a violation of the § 343A standard of care. 576 F.2d at 1079.

In addition, Chavis claimed that an instruction based on § 343A was necessary to place the longshoreman plaintiff in the same legal position as the plaintiff in a land based negligence suit. *Id.; see* text accompanying notes 6-7 *supra.* The trial judge's refusal to admit a §

that the trial judge should have instructed the jury that a shipowner owes a special duty of care to a longshoreman when the shipowner, or a stevedore employed by the shipowner, engages in a dangerous activity.[23] The

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343A instruction to the jury thus gave Finnlines an advantage not had by land based defendants. 576 F.2d at 1079.

[23] 576 F.2d at 1080-81. Chavis contended that §§ 413 and 416 of the Restatement (Second) of Torts set forth appropriate standards of care for a shipowner who hires an independent stevedore to conduct stevedoring operations. *Id.* Section 413 of the Restatement (Second) of Torts provides:

> One who employes an independent contractor to do work which the employer should recognize as likely to create, during its progress, a peculiar unreasonable risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm, caused to them by the absence of such precautions if the employer (a) fails to provide in the contract that the contractor shall take such precautions, or (b) fails to exercise reasonable care to provide in some other manner for the taking of such precautions.

RESTATEMENT (SECOND) OF TORTS, § 413 (1965). Similarly, § 416 of the Restatement provides:

> One who employs an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care to take such precautions, even though the employer has provided for such precautions in the contract or otherwise.

RESTATEMENT (SECOND) OF TORTS § 416 (1965). Chavis contended that although these two sections still place the primary responsibility for longshoreman safety on the stevedore, a shipowner should have a duty to protect longshoreman from the risks of extrahazardous activities. 576 F.2d at 1081.

In addition, Chavis claimed that the jury should have been allowed to evaluate the shipowner's conduct in light of relevant regulations of the Occupational Safety and Health Administration (OSHA). 576 F.2d at 1081. In particular, these regulations require ships to be maintained free of hazards that may cause slips or falls. 29 C.F.R. § 1918.91 (1978). In addition, OSHA regulations require that slippery conditions should be eliminated as the conditions occur. *Id.* Chavis claimed violations of OSHA regulations by a stevedore should render a shipowner liable to a longshoreman for negligence. 576 F.2d at 1081; *see* Venable v. A/S Det Forenede Dampskibsselskab, 399 F.2d 347 (4th Cir. 1968); Provenza v. American Export Lines, Inc., 324 F.2d 660 (4th Cir. 1963), *cert. denied,* 376 U.S. 952 (1964). Since the precedent relied on by Chavis arose under the doctrine of unseaworthiness, which was abolished by the 1972 Amendments, 576 F.2d at 1082; *see* text accompanying note 2-3 *supra,* the Fourth Circuit held that the relevant regulations do not impose a duty on shipowners since the regulations only apply to a longshoreman's employer. 576 F.2d at 1082; *accord,* Brown v. Mitsubishi Shintaku Ginko, 550 F.2d 331 (5th Cir. 1977); Gallardo v. Westfal-Larsen & Co., 435 F. Supp. 484 (N.D. Cal. 1977); *see* OSHA, 29 C.F.R. § 1918.2 (1978).

Chavis also claimed that the trial court erred in submitting an instruction to the jury on contributory negligence. 576 F.2d at 1082. Chavis, citing Smith v. Whitehall Terminal Corp., 336 F.2d 165, 168 (4th Cir. 1964), claimed that only evidence of a plaintiff's deliberate use of an unsafe work method, despite the availability of a safer alternative, would establish plaintiff's contributory negligence. 576 F.2d at 1082-83. Chavis contended that because Finnlines failed to prove that Chavis deliberately had chosen to use an unsafe work method, Finnlines was not entitled to a contributory negligence instruction. *Id.* at 1083. Without elaborating, the Fourth Circuit held that there was sufficient evidence from which a jury might have concluded that an alternative safe work method could have been used to load the herb bales. *Id.; see* text accompanying note 15-16 *supra.* Finally, Chavis contended that the jury should have been instructed that a shipowner's failure to supply dunnage, in violation of port custom, constituted negligence. 576 F.2d at 1084, *citing* Bess v. Agromar Lines, 518 F.2d 738 (4th

Fourth Circuit rejected Chavis's assertions, holding that a shipowner needs only to exercise reasonable care to keep the vessel in a reasonably safe condition for longshoremen working on board.[24]

In rejecting Chavis's claim that a shipowner and a stevedore have a joint responsibility for longshoremen safety,[25] the court agreed with the district court's instruction that a shipowner owes only the duty of ordinary care to a longshoreman.[26] The court reasoned that an instruction which, taken as a whole, embodies appropriate principles of law should not be overturned lightly on appeal.[27] The Fourth Circuit reasoned that the 1972 Amendments relieve shipowners of the nondelegable duty to provide for longshoreman safety.[28] Instead, the primary responsibility for longshoreman safety rests on a longshoreman's stevedore employer.[29] The court further reasoned that a negligence action against a shipowner must be decided according to land based principles.[30] Therefore, since the trial court's instruction did not place responsibility for longshoreman safety on shipowners[31] and embodied land based negligence principles which did not conflict with any precedent, the Fourth Circuit upheld the instruction.[32] The *Chavis* court recognized, however, that a disagreement exists concerning the exact delineation of responsibility for longshoremen safety between shipowners and stevedores.[33] The court suggested that the Fourth Circuit, in appropriate circumstances, might hold the shipowner, rather than the stevedore, responsible for providing a longshoreman with a safe place to work.[34]

The Fourth Circuit also rejected Chavis's claim that the facts of his

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Cir. 1975). The Fourth Circuit rejected Chavis's contention, holding that under *Bess*, a shipowner does not have an absolute legal duty to supply dunnage and that port custom did not create such a duty. 576 F.2d at 1084.

[24] *Id.* at 1076-81.

[25] *See* text accompanying note 21 *supra.*

[26] 576 F.2d at 1078; *see* text accompanying note 20 *supra.*

[27] 576 F.2d at 1076.

[28] *Id.* at 1077; *see* Anuszewski v. Dynamic Mariners Corp., 540 F.2d 757 (4th Cir. 1976), *cert. denied*, 429 U.S. 1098 (1977); text accompanying notes 2-3 *supra.*

[29] 576 F.2d at 1078, *citing* HOUSE REPORT, *supra* note 2, at 4702-04; George, *The Content of the Negligence Action by Longshoremen Against Shipowners Under the 1972 Amendments to the Longshoremen and Harbor Workers Act*, 2 MAR. LAW. 15, 34 (1977) [hereinafter cited as George]. The Fourth Circuit discounted Chavis's reliance on Marant v. Farrell Lines, Inc., 1976 A.M.C. 504 (E.D. Pa. 1976) since that opinion was reversed. *See* 576 F.2d at 1078; Marant v. Farrell Lines, Inc., 550 F.2d 142 (3d Cir. 1977). The Third Circuit in *Marant* held that the imposition of a joint duty of a shipowner and stevedore to provide for longshoreman safety contravened the congressional intent to place primary responsibility for longshoreman safety on stevedores. 550 F.2d at 144.

[30] 576 F.2d at 1078; *see* text accompanying notes 7-9 *supra.*

[31] *See* note 20 *supra.*

[32] 576 F.2d at 1078.

[33] *Id.; see* George, *supra* note 29, at 34.

[34] 576 F.2d at 1078. The Fourth Circuit suggested that in a factual setting different from *Chavis*, it might be inclined to place a higher duty of care on a shipowner for longshoreman safety. *Id.* However, where, as in *Chavis*, the stevedore and not the shipowner was negligent, the stevedore alone bears the responsibility for a longshoreman's injury. *Id.*

case required the imposition of a special limitation on a shipowner's usual immunity from liability for injures caused by open and obvious dangers.[35] In denying the claim, the *Chavis* court suggested that in other circumstances,[36] a shipowner might have a duty to correct open and obvious dangers which pose extraordinary[37] risks of harm.[38] However, the court decided that *Chavis* was not an appropriate case for the imposition of such a duty because the stevedore, not the shipowner, allowed the open and obvious danger to occur.[39] Since Congress intended to hold shipowners responsible only for their own negligence,[40] the court reasoned that Finnlines should not be held liable for this particular open and obvious danger.[41] Therefore, as a general rule, whenever a stevedore or its employees create any dangerous condition, whether open and obvious or not, the shipowner is exempt from liability for injuries caused by that condition.[42]

The *Chavis* court also affirmed the trial court's rejection of Chavis's requested instruction that a shipowner has a special responsibility for the safety of a longshoreman when the shipowner or his hired stevedore engages in a dangerous activity.[43] The court determined that giving the instruction would impose vicarious liability on a shipowner for the negligent actions of persons providing longshoring services to the vessel. The court equated this vicarious liability with the nondelegable duty abolished by the 1972 Amendments.[44] Moreover, the court reasoned that the standard[45]

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[35] 576 F.2d at 1079; *see* text accompanying note 22 *supra.*

[36] Chavis relied on Napoli v. Hellenic Lines, Ltd., 536 F.2d 505 (2d Cir. 1976), to support the imposition of a special limitation on a shipowner's nonliability for open and obvious dangers. 576 F.2d at 1079. In *Napoli,* a longshoreman plaintiff was injuryed by an open and obvious danger that arose after the commencement of cargo operations. 536 F.2d at 506. Contrary to ordinary practice, the shipowner had acted as a stevedore and thus was Napoli's immediate employer. *Id.* At trial, the shipowner attempted to escape liability for Napoli's injuries by claiming immunity from negligence actions under the LHWCA. *Id.* at 507-08. Alternatively, the shipowner claimed that in his capacity as shipowner, he did not owe Napoli the stevedore's duty to provide a safe place to work. *Id.* The Second Circuit rejected both of these theories, concluding that the shipowner should not escape liability merely because of the unusual employment relationship. *Id.* Since the plaintiff was injured by an open and obvious danger, the *Napoli* court concluded that § 343A of the Restatement (Second) of Torts reflected the appropriate standard of care. 536 F.2d at 508. The *Chavis* court agreed with the *Napoli* court's holding that when a shipowner is a direct employer of a longshoreman, then § 343A sets forth the shipowner's duty of care regarding open and obvious dangers. 576 F.2d at 1079-80. However, because *Napoli* involved a special employment relationship, the *Chavis* court limited *Napoli* to its unique factual situation. *Id.; accord,* Munoz v. Flota Merchante Grancolombiana, 553 F.2d 837 (2d Cir. 1977) (limiting *Napoli* to its facts).

[37] *See* note 22 *supra.*

[38] 576 F.2d at 1079.

[39] *Id.* The court noted that at the time of Chavis's injury, Tidewater controlled loading operations aboard Finnline's ship. *Id.* Moreover, the slippery condition which supposedly caused Chavis's fall occurred after Tidewater assumed control of the cargo operations. *Id.*

[40] *Id.* at 1079-80,, *citing* Riddle v. Exxon Trans. Co., 563 F.2d 1103, 1112 (4th Cir. 1977); *see* Robertson, *supra* note 5, at 473.

[41] 576 F.2d at 1080.

[42] *Id., citing* Riddle v. Exxon Transp. Co., 563 F.2d 1103, 1112 (4th Cir. 1977).

[43] *Id.* at 1081; *see* text accompanying note 23 *supra.*

[44] 576 F.2d at 1081, *citing* Brown v. Ivarans Rederi A/S, 545 F.2d 854 (3d Cir. 1976), *cert.*

which Chavis relied on to impose vicarious liability on the shipowner for a stevedore's negligent acts benefits only "other" third parties injured by the stevedore's negligence.[46] Since the prevailing authority defined "other" as excluding a stevedore's longshoremen employees,[47] the Fourth Circuit adopted this definition of "other", thereby excluding Chavis from the benefits of this type of vicarious liability.[48]

In many respects, *Chavis* is in accordance with the principles of negligence applied by the Fourth Circuit to a longshoreman's action against a shipowner under the 1972 Amendments and is consistent with the position of other circuits.[49] In recognition that the 1972 Amendments abolished the doctrine of unseaworthiness[50] as a basis for longshoreman actions against shipowners,[51] the Fourth Circuit has denied recovery in longshoreman actions which were based on the theory that a shipowner has a nondelegable duty of care for longshoreman safety.[52] In addition, the Fourth Circuit has placed the responsibility for longshoreman safety on the stevedore because of apparent congressional intent[53] and practical considerations.[54] With re-

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denied, 430 U.S. 969 (1977).

[45] *See* text accompanying note 23 *supra*.

[46] 576 F.2d at 1081; *see* RESTATEMENT (SECOND) OF TORTS §§ 413, 416 (1965).

[47] 576 F.2d at 1081, *citing* Hess v. Upper Miss. Towing Corp., 559 F.2d 1030, 1033 (5th Cir. 1977), *cert. denied*, 435 U.S. 924 (1978).

[48] 576 F.2d at 1081.

[49] *See* notes 51-57 *infra*.

[50] *See* note 2 *supra*.

[51] Anuszewski v. Dynamic Mariners Corp., 540 F.2d 757, 758 (4th Cir. 1976), *cert. denied*, 429 U.S. 1098 (1977); Bess v. Agromar Line, 518 F.2d 738, 740-41 (4th Cir. 1976); *accord*, Hickman v. Jugoslovenska Linijska Plovidba Rijeska "Zvir", 570 F.2d 449, 451 (2d Cir. 1978); Brown v. Mitsubishi Shintaku Ginko, 550 F.2d 331, 332 n.1 (5th Cir. 1977); Ramirez v. Toko Kaiun K.K., 385 F. Supp. 644, 650 (N.D. Cal. 1974); *see* text accompanying note 28 *supra*.

[52] Bess v. Agromar Line, 518 F.2d 738, 742 (4th Cir. 1975); *see* text accompanying note 28 *supra*. In *Bess*, the Fourth Circuit reasoned that the concept of a nondelegable duty of care to provide for the safety of a longshoreman is a corollary of the unseaworthiness doctrine. 518 F.2d at 742. The *Bess* court concluded that any nondelegable duty which holds a shipowner liable for another's actions frustrates the intent of the 1972 Amendments. *Id.* Thus, the *Bess* court held that requiring a shipowner to provide a safe place to work for a longshoreman constitutes a nondelegable duty. *Id.; see* text accompanying notes 21, 25-30 *supra*. In Riddle v. Exxon Trans. Co., 563 F.2d 1103 (4th Cir. 1977), the Fourth Circuit held that requiring a shipowner to share with the stevedore the responsibility for longshoreman safety also imposes a nondelegable duty on the shipowner. *Id.* at 1110; *accord*, Marant v. Farrell Lines, Inc., 550 F.2d 142 (3d Cir. 1977); *see* text accompanying notes 28-29 *supra*. The *Riddle* court also held that an instruction based on §§ 343 and 343A of the Restatement (Second) of Torts is improper where a party other than the shipowner negligently injures a longshoreman. 563 F.2d at 1112-13; *accord*, Munoz v. Flota Merchante Grancolombiana 553 F.2d 837, 841 (2d Cir. 1977); Gay v. Ocean Transp. & Trading, Ltd., 546 F.2d 1233, 1239-40 (5th Cir. 1977); Gallardo v. Westfal-Larsen & Co., 435 F. Supp. 484, 496 (N.D. Cal. 1977); *see* text accompanying notes 35-42, *supra*. In addition, the *Riddle* court quoted with approval the decision in Hurst v. Triad Shipping Co., 554 F.2d 1237, 1251 (3d Cir.), *cert. denied*, 434 U.S. 861 (1977), in which the court rejected the use of §§ 413 and 416 of the Restatement (Second) of Torts to hold a shipowner vicariously liable for the acts of a stevedore during hazardous activities. 563 F.2d at 1112-13; *accord*, Hess v. Upper Miss. Towing Corp., 559 F.2d 1030, 1034 (5th Cir. 1977), *cert. denied*, 435 U.S. 924 (1978); *see* text accompanying notes 43-44 *supra*.

[53] Riddle v. Exxon Trans. Co., 563 F.2d 1103, 1109 (4th Cir. 1977); *accord*, Marant v.

spect to the shipowner's duty of care to longshoremen, the Fourth Circuit has recognized that land based negligence principles should govern actions by longshoremen under the 1972 Amendments.[55] Thus, the Fourth Circuit has adopted the position that a shipowner owes the same duty of care to longshoremen which a landowner owes to business invitees.[56] Moreover, the Fourth Circuit has found that Congress did not intend a shipowner to bear any liability for the negligence of a stevedore or the stevedore's employees.[57]

In enacting the 1972 Amendments to the LHWCA, Congress intended to change longshoreman actions against shipowners in three respects: to abolish the doctrine of unseaworthiness and any other nondelegable shipowner duties for longshoreman safety,[58] to place longshoremen in the same legal position as land based plaintiffs with respect to actions against negligent employers,[59] and to achieve national uniformity in the application of negligence principles to longshoreman actions.[60] The court in *Chavis* has continued the Fourth Circuit's efforts to implement these changes by reaffirming the rejection of the unseaworthiness doctrine,[61] by refusing to impose the nondelegable duties of joint responsibility[62] for longshoreman safety and vicarious liability for stevedore negligence on shipowners,[63] and

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Farrell Lines, Inc., 550 F.2d 142, 144 (3d Cir. 1977); *see* text accompanying note 29 *supra.*

[54] The Fourth Circuit reasoned that because a stevedore normally directly supervises longshoremen during cargo operations, a stevedore is in a better position than a shipowner to discover and correct dangerous conditions which arise during those loading operations. Riddle v. Exxon Transp. Co., 563 F.2d 1103, 1112 (4th Cir. 1977); *accord,* Munoz v. Flota Merchante Grancolombiana, S.A., 553 F.2d 837, 840-41 (2d Cir. 1977).

[55] Riddle v. Exxon Trans. Co., 563 F.2d 1103, 1110 (4th Cir. 1977); Anuszewski v. Dynamic Mariners Corp., 540 F.2d 757, 758 (4th Cir. 1976), *cert. denied,* 429 U.S. 1098 (1977); *accord,* Hurst v. Triad Shipping Co., 554 F.2d 1237, 1246 (3d Cir.), *cert. denied,* 434 U.S. 861 (1977); Gay v. Ocean Transp. & Trading, Ltd., 546 F.2d 1233, 1238 (5th Cir. 1977); *see* text accompanying note 30 *supra.*

[56] Anuszewski v. Dynamic Mariners Corp., 540 F.2d 757, 759 (4th Cir. 1976); *accord,* Gay v. Ocean Transp. & Trading, Ltd., 546 F.2d 1233, 1238 (5th Cir. 1977); Ramirez v. Toko Kaiun, 385 F. Supp. 644, 651 (N.D. Cal. 1974); *see* text accompanying notes 20 & 26 *supra.* A shipowner must make a reasonable inspection of the ship and inform a longshoreman of latent or hidden defects. Riddle v. Exxon Transp. Co., 563 F.2d 1103, 1110-11 (4th Cir. 1977); *accord,* Hurst v. Triad Shipping Co., 554 F.2d 1237, 1248 (3d Cir.), *cert. denied,* 434 U.S. 861 (1977); Ramirez v. Toko Kaiun, 385 F. Supp. 644, 652 (N.D. Cal. 1974); *see* text accompanying note 37 *supra.* However, a shipowner is under no duty to correct open and obvious dangers. Riddle v. Exxon Transp. Co., 563 F.2d 1103, 1111 (4th Cir. 1977); *accord,* Hurst v. Triad Shipping Co., 554 F.2d 1237, 1248 (3d Cir.), *cert. denied,* 434 U.S. 861 (1977); Ramirez v. Toko Kaiun, 385 F. Supp. 644, 651 (N.D. Cal. 1974); *see* text accompanying notes 35-42 *supra.*

[57] Riddle v. Exxon Transp. Co., 563 F.2d 1103, 1111-12 (4th Cir. 1977); *accord,* Gay v. Ocean Transp. & Trading Co., Ltd., 546 F.2d 1233, 1239-40 (5th Cir. 1977); *see* text accompanying notes 40-42 *supra.*

[58] HOUSE REPORT, *supra* note 2, at 4703-04.

[59] *Id.* at 4703.

[60] *Id.* at 4705.

[61] *See* text accompanying notes 28 & 50-52 *supra.*

[62] *See* text accompanying notes 28-29 *supra.*

[63] *See* text accompanying notes 43-44 *supra.*

by adopting a standard of care for shipowners predicated on land based negligence principles.[64]

B. Apportionment of Damages

The Longshoremen's and Harbor Workers' Compensation Act (LHWCA)[1] gives a longshoreman injured on the job two methods by which to obtain compensation for his injuries. If the longshoreman is injured by a negligent act of a shipowner, the longshoreman may sue the shipowner for the full amount of damages resulting from his injury.[2] Alternatively, regardless of a shipowner's fault, an injured longshoreman is entitled to statutory compensation payments from the longshoreman's stevedore employer.[3] In return for these payments, the stevedore gains statutory immunity from a longshoreman's negligence suit.[4] Although Congress in-

[64] *See* text accompanying notes 30-31 *supra.*

[1] 33 U.S.C. §§ 901-950 (1970) (amended 1972).

[2] *See* 33 U.S.C. § 933 (1970) (amended 1972); G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 6-46 (2d ed. 1975) [hereinafter cited as GILMORE & BLACK].

[3] 33 U.S.C. §§ 903-04 (1970) (amended 1972). Under the 1927 LHWCA, a longshoreman has three possible methods of gaining compensation for his injuries. A longshoreman can obtain statutory compensation payments under the LHWCA by presenting a claim to the LHWCA deputy commissioner. 33 U.S.C. § 919 (1976). Thereafter, the commissioner determines the validity of the longshoreman's application, whether the longshoreman's injury is covered by the LHWCA, and if the application is approved, makes a formal award of compensation to the longshoreman. *Id.* Once a formal compensation award is made, the longshoreman is entitled to a statutorily determined schedule of payments based on the severity of the injury and the duration of his absence from work. *Id.* §§ 908-09. If the longshoreman accepts the formal award, he assigns his cause of action against a third party to his stevedore. *Id.* § 933(b). If the stevedore successfully sues the third party, the stevedore can retain a portion of the award to cover court costs, compensation payments made to the longshoreman and a statutory one fifth share of the total damage award. *Id.* §§ 933 (b)-(e). The stevedore is then required to return any excess recovery to the longshoreman. *Id.* § 933(e). Even though a longshoreman might accept a formal compensation award, he has a six month statutory period in which he can bring his own third party action. *Id.* § 933(b). If the longshoreman does not recover any damages, or does not recover enough to equal the appropriate compensation award, the stevedore is obligated to pay only the difference between the amount of the longshoreman's third party recovery and the amount of the appropriate formal award. *Id.* § 933(f). Under the third alternative, a longshoreman does not have to accept a formal award of compensation. *Id.* § 933(f). Instead, he can forego the award and institute a third party suit on his own and retain all of his recovery. *Id.* These provisions were not altered by the 1972 Amendments. *See* 33 U.S.C. § 933 (1976).

Prior to the 1972 Amendments, a stevedore often made voluntary compensation payments to the longshoreman. In such a situation, a longshoreman could sue a third party on his own, but courts recognized that a stevedore possessed an "equitable lien" on the longshoreman's third-party recovery in an amount equal to the voluntary compensation payments. *See, e.g.,* The Etna, 138 F.2d 37, 41 (3d Cir. 1943). Since the 1972 Amendments, courts have recognized the continuing validity of the "equitable lien". *See, e.g.,* Allen v. Texaco, Inc., 510 F.2d 977, 979-81 (5th Cir. 1975).

[4] 33 U.S.C. § 905 (1970) (amended 1972) (compensation payments are longshoreman's

tended the statutory payments to be the stevedore's sole liability for a longshoreman's injury,[5] judicial construction of the LHWCA permitted the shipowner to bring an indemnity action against the longshoreman's employer stevedore in order to recover any award paid by the shipowner to the longshoreman as a result of a negligence suit.[6] In effect, the indemnity suit placed full financial responsibility for a longshoreman's injury on the stevedore despite the LHWCA's grant of statutory immunity.[7] In 1972 Congress restored the prejudicial construction status quo by amending the LHWCA[8] to eliminate the shipowner's indemnity action against a longshoreman's stevedore.[9] In addition, the 1972 Amendments reaffirmed the stevedore's immunity from a longshoreman's negligence suit.[10] The Amendments also retained the right of an injured longshoreman to sue a shipowner who negligently caused the longshoreman's injury.[11] Any award

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exclusive remedy against stevedore); GILMORE & BLACK, *supra* note 2, at § 6-53.

[5] *See* 33 U.S.C. § 905 (1970) (amended 1972); GILMORE & BLACK, *supra* note 2, at § 6-53.

[6] In Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946), the Supreme Court held that a shipowner had an absolute, nondelegable duty to provide for a longshoreman's safety while the longshoreman was on the shipowner's vessel. As a result, the shipowner was liable for any injury to a longshoreman regardless of the cause of the injury or the shipowner's negligence. *Id.* at 89-100. In Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282 (1952), the Court held that a negligent shipowner was not entitled to contribution from a concurrently negligent stevedore. Subsequently, in Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953), the Court rejected a shipowner's attempt to reduce a longshoreman's recovery by the amount of the stevedore's lien, *see* note 3 *supra,* because of the stevedore's concuurent negligence. The *Pope* Court noted that since the LHWCA guarantees a stevedore's lien, withholding the lien was tantamount to stevedore contribution, a concept rejected in *Halcyon. Id.* at 411-12.

The Supreme Court reversed the effect of these cases in Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124 (1956). The *Ryan* Court construed § 905 of the LHWCA, which made compensation payments a longshoreman's exclusive remedy against a stevedore, as granting immunity to a stevedore only for longshoreman tort suits. *Id.* at 128-30. The Court found, however, that § 905 did not grant a stevedore immunity from contractual agreements to indemnify shipowners who are liable to longshoremen for injuries under *Sieracki. Id.* at 130-32. The *Ryan* Court also held that every stevedoring contract contained an implied agreement for the stevedore to indemnify the shipowner for damages recovered by injured longshoremen. *Id.* at 132-33.

[7] H. R. REP. No. 92-1441, 92d Cong., 2d Sess. (1972), *reprinted in* [1972] U.S CODE CONG. & AD. NEWS 4698, 4702 [hereinafter cited as HOUSE REPORT]; GILMORE & BLACK, *supra* note 2, at § 6-53.

[8] Act of October 27, 1972, Pub. L. No. 92-576, Stat. 1251 (amending 33 U.S.C. §§ 901-950 (1970). *See generally* George, *The Content of the Negligence Action by Longshoreman Against Shipowners Under the 1972 Amendments to the Longshoremen and Harbor Workers Act,* 2 MAR. LAW. 15 (1977); Robertson, *Negligence Actions by Longshoremen Against Shipowners Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act,* 7 MAR. L. & COM. 447 (1976).

[9] 33 U.S.C. § 905(b) (1976); HOUSE REPORT, *supra* note 7, at 4701-04.

[10] 33 U.S.C. § 905(a) (1976); HOUSE REPORT, *supra* note 7, at 4704.

[11] 33 U.S.C. § 905(b) (1976); HOUSE REPORT, *supra* note 7, at 4703-04. Under § 905(b) (1976) a longshoreman may sue a shipowner for an injury caused by the shipowner's negligence. 33 U.S.C. § 905(b) (1976). A shipowner's liability is now predicated on land based negligence principles rather than the concept of a shipowner's nondelegable duty to provide for longshoreman's safety. HOUSE REPORT, *supra* note 7, at 4703-04. In addition, a shipowner

accruing to a longshoreman as a result of a negligence action, however, is reduced by an amount proportional to the longshoreman's contributory negligence.[12] In the recent case *Edmonds v. Compagnie Generale Transatlantique,*[13] the Fourth Circuit granted a shipowner a similar reduction in liability according to the stevedore's contributing fault.

Edmonds, a longshoreman employee of an independent stevedore, was removing chains and jacks used to secure movable cargo containers aboard a ship owned by Compagnie Generale Transatlantique.[14] At the direction of a member of the vessel's crew, Edmonds walked behind a container to remove a jack.[15] While Edmonds was behind the container, another longshoreman tried to pick up the container with a fork lift, causing it to move backwards and to pin Edmonds against the ship's hull. After receiving compensation payments from his stevedore for his resulting injuries,[16] Edmonds filed suit against the shipowner, Compagnie Generale, alleging that Compagnie Generale negligently caused his injury.[17] At trial,[18] the judge submitted a special verdict form[19] to the jury in order to determine the proportional degrees of negligence of the stevedore, Edmonds, and Compagnie Generale.[20] In response to the special verdict, the jury found that Edmonds's contributory negligence accounted for ten per cent of the total fault. The jury also found that Compagnie Generale's share of fault amounted to twenty per cent and the stevedore's share of fault amounted to seventy per cent.[21] Nevertheless, the trial judge reduced Edmonds' award only by the amount of his contributory negligence in accordance with LHWCA provisions. Although Compagnie Generale requested a further award reduction proportional to the stevedore's amount of negligence, the trial judge refused on the ground that the LHWCA does not allow such

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may not shift his liability for an injury to the stevedore through an indemnification or contribution agreement. 33 U.S.C. § 905(b) (1976); HOUSE REPORT, *supra* note 7, at 4704. Moreover, a shipowner is not liable for injuries caused by the negligence of another. HOUSE REPORT, *supra* note 7, at 4703.

[12] HOUSE REPORT, *supra* note 7, at 4705. The House Committee decided that the admiralty concept of comparative negligence should be retained where an injured longshoreman's negligence contributes to his own injury. *Id.; see* GILMORE & BLACK, *supra* note 2, at § 6-27a.

[13] 558 F.2d 186 (4th Cir. 1976), *modified* 577 F.2d 1153 (4th Cir.); *cert. granted,* 99 S. Ct. 348 (1978).

[14] 558 F.2d at 189-90.

[15] *Id.*

[16] *See* note 3 *supra.*

[17] 558 F.2d at 189.

[18] *Edmonds* was tried twice in the district court. *Id.* at 189. The first trial resulted in a verdict for Edmonds. The judge ordered a new trial, however, because of errors in instructing the jury. *Id.*

[19] Federal district court judges may use the special verdict form which requires a jury to return both a general verdict and the jury's answers to specific questions. FED. R. CIV. P. 49.

[20] 558 F.2d at 189.

[21] *Id.* The jury found Edmonds's total damages to be $100,000. As a result of Edmonds's contributory negligence, the trial judge reduced the award to $90,000. *Id.* Compagnie Generale claimed an additional reduction of $70,000 because of the stevedore's contributing negligence. *Id.*

a reduction. Compagnie Generale appealed, claiming that a further reduction in damages was warranted because it was only twenty per cent responsible for Edmonds's injury.[22]

On appeal, a Fourth Circuit panel held that Compagnie Generale would be liable only for an amount equal to its proportional share of Edmonds's damages plus the amount of the stevedore's lien.[23] The panel reasoned that the 1972 Amendments make a shipowner liable only for injury caused by the shipowner's negligence.[24] In addition, the panel determined that the 1972 Amendments grant a stevedore a statutory right to repayment of compensation payments made to the longshoreman if the longshoreman wins a damage award from the shipowner.[25] The panel reasoned that the stevedore's statutory right to a lien on a recovery might conflict with a shipowner's right to freedom from liability for the negligence of others if the shipowner were allowed to reduce damages because of the stevedore's contributing negligence.[26] The Fourth Circuit panel concluded, however, that such a conflict was not irreconcilable.[27] Since Congress intended a trade-off between the interests of shipowners and stevedores under the 1972 Amendments, the panel reasoned that a comparative negligence formula which reduces a damage award by an amount proportional to the stevedore's contributing fault would preserve a shipowner's interest under the 1972 Amendments.[28] Moreover, requiring a shipowner to pay the stevedore's lien would preserve the stevedore's interest in the longshoreman's recovery without significantly harming the shipowner's interests.[29] The panel also noted that its utilization of the comparative negli-

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[22] *Id.*

[23] *Id.* at 193-94. The panel awarded Edmonds $20,000, Compagnie Generale's proportional share of the damages, as well as an amount equal to the stevedore's lien. *Id.*

[24] *Id.* at 191; *see* note 11 *supra.*

[25] 558 F.2d at 192-93; *see* note 3 *supra.*

[26] 558 F.2d at 191; *see* note 28 *infra.*

[27] *Id.* at 192.

[28] *Id.* at 192-93. The panel reasoned that Congress intended both a shipowner and a stevedore to benefit from the 1972 Amendments. *Id.* at 191-92. The stevedore benefits from the Amendments through the abolition of the shipowner's indemnity action. *Id.* at 191; HOUSE REPORT, *supra* note 7, at 4701-04. The shipowner also benefits since Congress abolished the doctrine of unseaworthiness and insulated the shipowner from liability for the negligent acts of others. 558 F.2d at 191; HOUSE REPORT, *supra* note 7, at 4705; *see* notes 6 & 11 *supra.*

[29] Although the shipowner is forced to pay the stevedore's lien, in apparent contravention of congressional intent, *see* text accompanying note 26 *supra;* note 28 *supra,* the panel decided that the payment was necessary to preserve the stevedore's right to a lien under the 1972 Amendments. 558 F.2d at 193. The panel noted that the 1972 Amendments not only preserve the statutory lien, but preserve the equitable lien as well. *Id.* at 193; *see* note 3 *supra.* The panel was concerned that the statutory lien might not be preserved in all situations if a shipowner were liable only for its own proportional negligence. 558 F.2d at 192. For example, if the award resulting from a shipowner's proportional negligence were less than the amount of the stevedore's lien, the stevedore would not receive full reimbursement because a longshoreman is only obligated to return the amount of the award if the award is less than the compensation payments. *Id.* The panel reasoned that failure to reimburse the stevedore fully in this situation constitutes contribution by the stevedore, a concept rejected by the 1972 Amendments and Supreme Court precedent. *Id.* at 192-93; *see* note 6 *supra.* Therefore, the

gence concept was justified in light of the Supreme Court decisions decided subsequent to the 1972 Amendments.[30]

On rehearing, the Fourth Circuit en banc adopted the panel's reduction of Edmonds's award according to the degree of the stevedore's concurrent negligence.[31] However, the court reversed the panel's decision to award Edmonds an additional amount equal to the stevedore's lien.[32] The court concurred with the panel's interpretation of the shipowner's and stevedore's rights under the 1972 Amendments,[33] but did not agree with the panel's determination that a judicially created reduction of damages, according to the degree of a stevedore's fault, is necessary to prevent a conflict between stevedore and shipowner interests under the 1972 Amendments.[34]

Rather than adopting the panel's analysis that the resolution of the case rested on a judicially constructed formula, the court reasoned that such a reduction of damages can be based on an interpretation of the language of section 905(b) of the LHWCA.[35] The first sentence of section 905(b) provides that a longshoreman may bring an action against a shipowner whose negligence caused the longshoreman's injury.[36] The court interpreted this sentence as imposing full liability for a longshoreman's injury on a shipowner if the shipowner's negligence contributed in any way to the injury.[37] In contrast, the second sentence of section 905(b) provides that if the injured longshoreman were injured by the negligence of his stevedore or his fellow longshoremen, the longshoreman may not bring a negligence action against the shipowner.[38] The court concluded that if the second sentence were interpreted to bar any recovery from a shipowner by a longshoreman if his stevedore or fellow longshoremen contributed in any way to his injury, then the two sentences would be irreconcilable when

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panel concluded that a stevedore's interests would be preserved in all situations by increasing a longshoreman's award by the amount of the stevedore's lien. 558 F.2d at 192-93.

[30] *Id.* at 193. The panel cited Cooper Stevedoring Co. v. Fritz Kopke, Inc., 417 U.S. 106 (1974), for the proposition that the Supreme Court recognizes great flexibility in the allocation of damages between concurrently negligent parties in admiralty law. 558 F.2d at 193. The panel also cited United States Lines v. Reliable Transfer Co., 421 U.S. 397 (1975), for the proposition that allocation of damages between comparatively negligent parties is an accepted practice in admiralty law. 558 F.2d at 193.

[31] 577 F.2d 1153, 1154 (4th Cir. 1978).

[32] *Id.* at 1154-55.

[33] *Id.; see* text accompanying notes 24-28 *supra.*

[34] 577 F.2d at 1154-55.

[35] *Id.* at 1155. Section 905(b) of the LHWCA provides in part:

> In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person . . . may bring an action against such vessel. . . . 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.

33 U.S.C. § 905(b) (1976).

[36] *See* note 35 *supra.*

[37] 577 F.2d at 1155.

[38] *See* note 35 *supra.*

applied to a longshoreman injury caused by the stevedore's and shipowner's concurring negligence.[39] Deciding that Congress had not intended such a conflict in section 905(b), the court determined that the inconsistency could be reconciled only if section 905(b) were interpreted to authorize apportionment of damages.[40] Such an interpretation allows a reduction of a longshoreman's award based on his stevedore's contributing negligence, but does not allow an award of money solely for the purpose of satisfying the stevedore's lien.[41] Thus, the court held that Compagnie Generale was liable only for twenty per cent of Edmonds' total damages.[42]

The Fourth Circuit's reconciliation of section 905(b) is consistent with a generally accepted rule of statutory construction. If a statute, which appears to have only one interpretation produces either an inequitable or absurd result in the situation which the statute's drafters were attempting to control, a court may interpret the statute according to the perceived intent of the drafters.[43] In the context of a longshoreman's action against a shipowner, Congress has attempted to control the allocation of damages among the responsible parties.[44] Where one party is solely at fault, section 905(b) allocates full responsibility for the longshoreman's damages to that party.[45] Thus, when the shipowner is solely at fault, the longshoreman may recover full damages from the shipowner.[46] However, when a shipowner and a stevedore both contribute to a longshoreman's injury, reading the statute as holding only one party totally responsible for the longshoreman's dam-

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[39] 577 F.2d at 1155.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 1156. Besides arguing that § 905(b) does not allow apportionment of damages, Edmonds claimed that the common law principle of full recovery of damages from a single joint tortfeasor is subsumed into a longshoreman's action by the 1972 Amendments. Edmonds supported this assertion by arguing that land based negligence principles should be used in a longshoreman's suit against a shipowner. *Id.* at 1155; *see* note 11 *supra.* The court rejected this claim on the ground that many states have changed the common law rules for recovery from a single joint tortfeasor. 577 F.2d at 1155. The court also reasoned that Congress would not have abolished the shipowner's indemnity action against a stevedore if Congress had intended to hold a shipowner fully liable for a longshoreman's damages. *Id.* Moreover, the court noted that the language of § 905(b) suggests that a shipowner would not be required to pay for the stevedore's share of the total fault. *Id.* The court did not decide whether a stevedore may recover its statutory lien from a longshoreman's reduced damage award because the stevedore was not made a party to the action in *Edmonds. Id.* at 1156. The court suggested, however, that a stevedore should be made a party in subsequent cases similar to *Edmonds* so that the rights of all concerned parties might be litigated in a single hearing. *Id.*

[43] United States v. Campos-Serrano, 404 U.S. 293, 298 (1971); Reed v. The Yaka, 373 U.S. 410, 415 (1963); Lynch v. Overholser, 369 U.S. 705, 710-11 (1962); 2A C. SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 45.12 (4th ed. 1973) [hereinafter cited as SANDS].

[44] *See* HOUSE REPORT, *supra* note 7, at 4702-04.

[45] *See* Coleman, *The 1972 Amendments to the LHWCA: Life Expectancy of an Equitable Credit,* 12 FORUM 683, 684-85 (1977) [hereinafter cited as Coleman, *Life Expectancy*]; Coleman & Daly, *Equitable Credit: Apportionment of Damages According to Fault in Tripartite Litigation Under the 1972 Amendments to the Longshoreman's and Harbor Workers' Compensation Act,* 35 MD. L. REV. 351, 368-69 (1976) [hereinafter cited as Coleman & Daly].

[46] *See* Coleman, *Life Expectancy, supra* note 45, at 685-86; Coleman & Daly, *supra* note 45, at 368-69.

ages will contravene Congress's intent that a shipowner is to be liable only for his own negligence.[47] Thus, if the shipowner is only one per cent at fault, while the stevedore is ninety-nine per cent at fault, the shipowner would pay all the damages despite Congress' intent to the contrary.[48] Since a statute is presumed to be internally consistent,[49] a court should be free to interpret section 905(b) to harmonize the statutory language with congressional intent.[50] Interpreting section 905(b) to allow a reduction of a longshoreman's damages according to the degree of a stevedore's contributing negligence effectuates congressional intent to insulate a shipowner from liability for another party's negligence.[51] In addition, nor is congressional intent to allow a longshoreman some recovery from a negligent shipowner frustrated by shifting full liability for the longshoreman's injury to the statutorily immune stevedore who contributed to the longshoreman's injury.[52]

In *Edmonds,* the Fourth Circuit departed from the position of other circuits that a shipowner is not entitled to a reduction of damages proportional to the stevedore's contributing negligence.[53] In contrast to the Fourth Circuit's focus on statutory interpretation, the other circuits have refused to reduce a shipowner's liability on public policy grounds.[54] These courts do not interpret section 905(b) to allow a reduction in damages, because to do so would unjustifiably take a recovery for damages away from an injured longshoreman who may not have contributed to his own injury in any way.[55] In addition, these circuits reason that requiring a partially negligent shipowner to bear the whole burden of a longshoreman's damages

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[47] *See* Coleman, *Life Expectancy, supra* note 45, at 684-85; Coleman & Daly, *supra* note 45, at 368-69; text accompanying note 26 *supra.* Since a longshoreman is limited to recovery of compensation payments from his stevedore, the longshoreman will lose any benefit of a third party action if the shipowner's negligence is imputed to the stevedore. Coleman & Daly, *supra* note 45, at 368-69.

[48] Coleman & Daly, *supra* note 45, at 368-69.

[49] SANDS, *supra* note 43, at § 46.06.

[50] *See* text accompanying note 43 *supra.*

[51] Coleman & Daly, *supra* note 45, at 368-69.

[52] *Id.*

[53] In Shellman v. United States Lines, Inc., 528 F.2d 675 (9th Cir. 1975), *cert. denied,* 425 U.S. 936 (1976), the Ninth Circuit reversed a district court decision to grant a shipowner a reduction in its liability to a longshoreman based upon a stevedore's contributing negligence. The court held that when a shipowner and a stevedore both contribute to a longshoreman's injury, the shipowner and a stevedore become joint tortfeasors. *See id.* at 680. As a joint tortfeasor, a shipowner may be liable to an injured longshoreman for all of the longshoreman's damages. *Id.* Although a longshoreman could theoretically sue the stevedore as a joint tortfeasor for full damages, the LHWCA's grant of immunity prohibits a longshoreman from suing a negligent stevedore. *Id.; accord,* Samuels v. Empresa Lineas Maritimas Argentinas, 573 F.2d 884 (5th Cir. 1978); Dodge v. Mitsui Shintaku Ginko, 528 F.2d 669 (9th Cir. 1975), *cert. denied,* 425 U.S. 944 (1976).

[54] *See* Samuels v. Empresa Lineas Maritimas Argentinas, 573 F.2d 884, 888 (5th Cir. 1978); Shellman v. United States Lines, Inc., 528 F.2d 675, 680-81 (9th Cir. 1975), *cert. denied,* 425 U.S. 936 (1976).

[55] Samuels v. Empresa Lineas Maritimas Argentinas, 573 F.2d 884, 889 (5th Cir. 1978); Shellman v. United States Lines, Inc., 528 F.2d 675, 680 (9th Cir. 1975).