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The Longshoremen'S And Harbor Workers' Compensation Act: Jurisdiction Forced Ashore

CASE COMMENTS

THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT: JURISDICTION FORCED ASHORE

The scope of the Longshoremen's and Harbor Workers' Compensation Act[1] passed by Congress in 1927[2] was limited in one respect by its extension of coverage to only those injuries which occurred upon the navigable waters of the United States.[3] This jurisdictional requirement precluded recovery by a claimant injured on land (excepting dry docks) even though his employment was maritime in nature.[4] Thus, longshoremen, whose duties of loading and unloading vessels moored upon navigable waters necessitated constant passage over the boundary line between land and sea, were subjected to uncertainty of coverage when injuries occurred near this line.[5] There has been less ambiguity as to coverage, however, where the injury took place either upon a type of vessel on navigable waters, wherein the Longshoremen's Act

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[1]33 U.S.C. §§ 901-950 (1964).

[2]For a thorough historical analysis of the events leading up to the passage of the Longshoremen's Act see H. BAER, ADMIRALITY LAW OF THE SUPREME COURT 70-74 (1963); G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 333-37 (1957) [hereinafter cited as GILMORE & BLACK]; 3 A. LARSON, WORKMEN'S COMPENSATION LAW §§ 89.20-.22 (1968) [hereinafter cited as LARSON].

[3]Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C § 903(a) (1964), reads in part as follows:

> Compensation shall be payable under this chapter ... only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

[4]3 LARSON § 89.23(a) (1968). This exclusion possibly reflected either congressional uncertainty as to the bounds of the admiralty jurisdiction under the Constitution, or a policy decision to allow the utmost effect to the various state compensation laws. GILMORE & BLACK 339 (1957).

[5]*See* Michigan Mut. Liab. Co. v. Arrien, 344 F.2d 640, 647 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965) (dissenting opinion). For a classical illustration of the judicial handling of this problem see Minnie v. Port Huron Terminal Co., 295 U.S. 647 (1935); T. Smith & Son v. Taylor, 276 U.S. 179 (1928). The scope of this comment precludes any historical discussion of the judicial treatment of this problem subsequent to the passage of the Longshoremen's Act. For a comprehensive view of both the plethora of litigation it provoked and the evanescent doctrines which emerged, see generally H. BAER, ADMIRALTY LAW OF THE SUPREME COURT 74-91 (1963); GILMORE & BLACK 340-58 (1957); 3 LARSON §§ 89.23(b)-.60 (1968).

applied,[6] or wholly upon a pier, dock or wharf, in which case the particular state compensation act has been uniformly held to afford exclusive relief.[7]

Nevertheless, where longshoremen have suffered pierside injuries, frequent attempts have been undertaken to secure compensation under the federal statute as it generally affords more liberal benefits than those available under the respective state acts.[8] Yet, uniformity as to state jurisdiction over dockside accidents has been maintained by the courts even in the face of the temptation to allow an injured claimant the more generous awards available under the Longshoremen's Act.[9]

This relative certainty concerning state jurisdiction over injuries to longshoremen occurring solely on docks or piers has been cast aside, however, by the recent decision of the United States Court of Appeals for the Fourth Circuit in *Marine Stevedoring Corp. v. Oosting*.[10] A consolidation of three cases on appeal,[11] *Marine Stevedoring*

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[6]*E.g.*, Pennsylvania R.R. v. O'Rourke, 344 U.S. 334 (1953) (situs and work on a railroad car float upon navigable waters determinative even though injured employee was not a longshoreman); Nogueira v. New York, N.H. & H.R.R., 281 U.S. 128 (1930); West v. Erie R.R., 163 F. Supp. 879 (S.D.N.Y. 1958) (injury on gangplank extending from barge afloat on navigable waters).

[7]The theory here is that a dock or any other sufficiently permanent structure of like nature projecting into navigable waters is an extension of land, and, as such, any injury occurring thereon could not come within the jurisdictional requirement "upon navigable waters." Swanson v. Marra Bros., 328 U.S. 1 (1946); State Indus. Comm'n v. Nordenholt Corp., 259 U.S. 263 (1922); Travelers Ins. Co. v. Shea, 382 F.2d 344 (5th Cir. 1967), *cert. denied*, 389 U.S. 1050 (1968); Stansbury v. Atlantic & Gulf Stevedores, Inc., 159 So. 2d 728 (La. Ct. App. 1964); O'Neil's Case, 293 Mass. 41, 199 N.E. 323 (1935).

[8]*Compare* Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 908-09 (1964) *with* VA. CODE ANN. §§ 65.1-54, -55, -56, -65 (Repl. Vol. 1968). For a bird's-eye view of a comparison between the various provisions and benefits of the Longshoremen's Act and the state acts see generally 3 LARSON 509-61 (apps. A-C) (1968). *See also* 36 TUL. L. REV. 134, 137 n.16 (1961). Note further that the statutes of limitations under the federal and state acts may vary. For a good discussion of the possible effects of this problem see Comment, *The Longshoremen's and Harbor Workers' Compensation Act of 1927: Half-Way Protection for the Stevedore and the Longshoreman*, 64 MICH. L. REV. 1553, 1562-63 (1966).

[9]*See* Comment, *The Longshoremen's and Harbor Workers' Compensation Act of 1927: Half-Way Protection for the Stevedore and the Longshoreman*, 64 MICH. L. REV. 1553 (1966). But, it has been suggested that this temptation "should not be underestimated." *Id.* at 1563.

[10]398 F.2d 900 (4th Cir. 1968), *cert. granted*, 37 U.S.L.W. 3205 (U.S. Dec. 10, 1968) (Nos. 528, 663).

[11]The cases are as follows: (1) Marine Stevedoring Corp. v. Oosting, 238 F. Supp. 78 (E.D. Va. 1965) in which a longshoreman was propelled from the edge of the pier (by the straightening of a mooring line cable) into the adjacent navigable river where he drowned. The district court upheld an award under the Longshoremen's Act, and the employer along with his insurer appealed; (2) Johnson v.

concerned separate situations where longshoremen sustained injuries while working on piers of sufficient height to allow the passage of small craft under them.[12]

After framing the controversy as being basically an inquiry into whether an injury on a pier was within the jurisdictional strictures of "upon navigable waters" and thus within the coverage of the Longshoremen's Act,[13] the court apparently lost sight of this narrow issue as it pursued the following alternative routes in implementing its decision: (1) jurisdiction was congressionally intended to be grounded upon status of employment rather than upon situs of injury;[14] (2) the Extension of Admiralty Act of 1948[15] impliedly expanded the coverage of the Longshoremen's Act to encompass dockside injuries;[16] and (3) since the waters below the piers concerned were navigable in fact and jurisdiction extended to accidents occurring in the airspace above such waters, then injuries on these docks above such waters must also have been "upon navigable waters."[17]

Implying that each approach in and of itself was dispositive, the court stated that "[r]egardless of the route traveled, we arrive at the conclusion that the injuries of all four longshoremen are embraced by the Act."[18] The court was able to reach this result even though its effect necessarily contravened a firmly established line of precedent and authority concerning accidents sustained by longshoremen solely on piers or docks.[19]

Traynor, 243 F. Supp. 184 (D. Md. 1965) in which two longshoremen, Johnson and Klosek, sustained injuries (Klosek's were fatal) while working on a pier inside a gondola car attaching loads of cargo to the ship's crane. Johnson along with Klosek's widow appealed the district court's affirmance of a denial of their claims under the Longshoremen's Act; (3) East v. Oosting, 245 F. Supp. 51 (E.D. Va. 1965) where one Avery was injured by a swinging load of cargo from the ship's crane while working on a pier. Avery appealed a denial of relief under the Act as affirmed by the district court.

[12]Marine Stevedoring Corp. v. Oosting, 398 F.2d 900, 902 (4th Cir. 1968).

[13]*Id.* at 902.

[14]*Id.* at 904.

[15]The Extension of Admiralty Act, 46 U.S.C. § 740 (1964) provides in part:

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

[16]398 F.2d at 906.

[17]*Id.* at 908.

[18]*Id.* Accordingly, the court affirmed the judgment in *Marine Stevedoring*, and reversed the judgment in *Johnson* (as to both longshoremen) and in *East* (as to Avery).

[19]See cases cited note 7 *supra*, as well as the imposing list of cases and authorities cited by Chief Judge Haynsworth in his dissent in *Marine Stevedoring*. 398 F.2d at 913 n.23 (dissenting opinion). The doctrine that a dock is an extension of

The court's primary approach, to the effect that jurisdiction under the Longshoremen's Act was grounded upon the status of the employees as longshoremen or harbor workers, and not upon the situs of the accident, has seen near uniform rejection where considered by other tribunals.[20] It was perhaps with this realization in mind that the court resorted to reliance upon selected excerpts from the legislative history behind the Act[21] which, coupled with recent judicial interpretations,[22] purportedly furnished a conclusive resolution of the issue.[23]

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land has been referred to as established by a "settled line of precedent...." Houser v. O'Leary, 383 F.2d 730, 731 (9th Cir. 1967), *cert. denied*, 390 U.S. 954 (1968). Another court stated that it could safely follow this doctrine because "the plethora of cases safely navigates us...." Travelers Ins. Co. v. Shea, 382 F.2d 344, 349 (5th Cir. 1967), *cert. denied*, 389 U.S. 1050 (1968). It has been said that this doctrine has existed "[f]rom time immemorial...." East v. Oosting, 245 F. Supp. 51, 53 (E.D. Va. 1965).

[20]Houser v. O'Leary, 383 F.2d 730 (9th Cir. 1967), *cert. denied*, 390 U.S. 954 (1968); Travelers Ins. Co. v. Shea, 382 F.2d 344 (5th Cir. 1967), *cert. denied*, 389 U.S. 1050 (1968); O'Keeffe v. Atlantic Stevedoring Co., 354 F.2d 48 (5th Cir. 1965). *See* Pennsylvania R.R. v. O'Rourke, 344 U.S. 334 (1953) where in response to an argument that a railroad employee injured on a car float upon navigable waters could not be within the coverage of the Longshoremen's Act, the Court stated that "the emphasis on the nature of [claimant's] duties here misses the mark. The statute applies, by its own terms, to accidents on navigable waters...." *Id.* at 339.

[21]398 F.2d at 904-05 n. 7.

[22]The court relied principally on certain language in Calbeck v. Travelers Ins. Co., 370 U.S. 114 (1962), to the effect that Congress had originally meant the Longshoremen's Act to cover all those injured harbor workers to which its authority could be extended. As the court itself allowed, however, the Supreme Court in *Calbeck* was not concerned with the meaning of "upon navigable waters," but was only concerned with interpreting the second limitation as expressed in section 3(a) of the Longshoremen's Act. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 903(a) (1964). *Calbeck* has been understood as affirming the established principle that situs of the injury remains as the determinative factor in situations where coverage under the Act is questionable. Houser v. O'Leary, 383 F.2d 730 (9th Cir. 1967) *cert. denied*, 390 U.S. 954 (1968). One commentator noted that in *Calbeck* the Supreme Court provided a simplified yardstick of jurisdictional power to extend coverage under the Longshoremen's Act based purely on location. H. BAER, ADMIRALTY LAW OF THE SUPREME COURT 87-88 (1963). Others have also agreed that *Calbeck* retains the situs test. *See* 1963 DUKE L.J. 327, 333; 48 CORNELL L.Q. 532, 541 (1963). In answering these arguments, the court could do no more than repeat the contention of Judge Palmieri in Michigan Mut. Liab. Co. v. Arrien, 233 F. Supp. 496, 501 (S.D.N.Y. 1964), *aff'd on other grounds*, 344 F.2d 640 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965), that the importance of the holding in *Calbeck* could be found in the approach taken by the Supreme Court to the effect that the Act was to be viewed as an intentional exercise of the admiralty jurisdiction. 398 F.2d at 905. By thus qualifying the applicability of *Calbeck* solely through the use of an unsupported interpretation of a district court judge, the court revealed its apparent inability to develop any substantial basis for its rejection of the usual view that *Calbeck* has no bearing in determining the meaning of "upon navigable waters."

[23]398 F.2d at 905.

From the standpoint of congressional intent as revealed by the legislative history behind the Longshoremen's Act, the court structured its theory by admitting the credibility of the following statement extracted from a report by the Senate Judiciary Committee concerning the purpose of the proposed Act.[24]

> [I]t should be remarked that injuries occurring in loading or unloading are not covered unless they occur on the ship or between the wharf and the ship so as to bring them within the maritime jurisdiction of the United States.[25]

Clearly this statement is expressive of congressional intention to exclude coverage from dockside injuries,[26] yet the court suggested that it would be "no less reasonable" to read the passage as indicative of an inclusive approach whereby the Longshoremen's Act would cover all longshoremen injured within the maritime jurisdiction.[27] This interpretation, to the effect that Congress was concerned with status as opposed to situs, seems to be less reasonable, however, in that its ultimate effect would be to allow recovery for pierside accidents even though by the express limitations of the statement itself such coverage would be precluded.

Seemingly unconvinced as to the strength of the status theory as grounds for its decision, the court proceeded upon an alternative route to the effect that the Extension of Admiralty Act[28] impliedly amended the coverage provisions of the Longshoremen's Act so as

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[24]*Id.* at 904-05 n.7.

[25]S. REP. NO. 973, 69th Cong. 1st Sess. 16 (1926).

[26]*See* Swanson v. Marra Bros., 328 U.S. 1, 7 (1946), where the Court construed this statement from the Senate Judiciary Committee as an expression of doubt as to the constitutional power of Congress to grant recovery to employees injured on shore, thus evidencing the concern with situs as opposed to status.

[27]398 F.2d at 904-05 n.7. In arriving at this conclusion, the court relied on selected passages from congressional reports wherein references to longshoremen included statements as to the "character of their employment," their "occupation," and their situation as a "class of maritime workers ... placed under [the] jurisdiction" of Congress. *Id.* The court allowed that such language indicated "that Congress was *primarily* concerned with the *status* of the [longshoremen]." *Id.* (emphasis added). Admittedly, the status of the potential claimants must necessarily have been of some concern to those committees considering a proposal which would extend compensation benefits to a specified class of workers alone. Congress, however, was seemingly more preoccupied with insuring conformance with the constitutional limitations on federal jurisdiction which existed at that time, and most probably would not have adopted the inclusive approach that the court here suggests. See text accompanying notes 42-44 *infra*. Furthermore, it appears as if the Supreme Court itself has not agreed with the court's conclusion. *See* Pennsylvania R.R. v. O'Rourke, 344 U.S. 334 (1953); Swanson v. Marra Bros., 328 U.S. 1 (1946).

[28]The Extension of Admiralty Act, 46 U.S.C. § 740 (1964).

to include pierside injuries.[29] This proposition, even though the strongest of the three,[30] has been firmly rejected,[31] and, as it is necessarily based upon a situs approach, only detracts from the plausibility of the status theory.

The court's ultimate reliance upon a situs approach is further evidenced by the rationale of its third theory based upon the following conclusions: (1) that the waters beneath the piers in question were "navigable in fact;"[32] (2) that "the jurisdictional scope of the phrase 'upon navigable waters' extends to injuries occurring 'above' such waters;"[33] and (3) that consequently, injuries suffered on piers which

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[29]398 F.2d at 906. The theory of the court here again necessitates reliance upon *Calbeck*, which, as has been noted, was not concerned with the meaning of "upon navigable waters." See note 22 *supra*. The court reasons, however, that in the light of *Calbeck*, "upon navigable waters" must be construed to include the full range of the expanded maritime jurisdiction. Thus when the Extension of Admiralty Act stretched this jurisdiction to shore-based injuries caused by vessels, the Longshoremen's Act was correspondingly expanded to include coverage for dockside injuries. Even if this theory were acceptable, however, it affords no panacea since longshoremen who were injured on piers could not successfully claim compensation under the Act unless their accident were occasioned by a vessel, or in some manner by its gear.

[30]There is some support for this theory. *See* Michigan Mut. Liab. Co. v. Arrien, 233 F. Supp. 496, 501 (S.D.N.Y. 1964), *aff'd on other grounds*, 344 F.2d 640 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965). Note, however, that the issue of the applicability of this theory was not reached on appeal. 344 F.2d at 646 n.4. Of course recoveries for damages by longshoremen for dockside injuries have been sustained upon findings of unseaworthiness or negligence. *See* Gutierrez v. Waterman S.S. Corp., 373 U.S. 206 (1963). The scope of this comment precludes concern with remedies available to the injured longshoreman other than that of compensation under the Act. For an exhaustive analysis of these remedies including the interaction between them, see Comment, *Overlapping Remedies for Injured Harborworkers: Interaction on the Waterfront*, 67 YALE L.J. 1205 (1958). But for an excellent argument that the compensation remedy affords the most practical and effective system of relief for an injured longshoreman, see Shields & Byrne, *Application of the "Unseaworthiness" Doctrine to Longshoremen*, 111 U. PA. L. REV. 1137 (1963).

[31]*E.g.*, Houser v. O'Leary, 383 F.2d 730 (9th Cir. 1967), *cert. denied*, 390 U.S. 954 (1968); Travelers Ins. Co. v. Shea, 382 F.2d 344 (5th Cir. 1967), *cert. denied*, 389 U.S. 1050 (1968); *see*, Interlake S.S. Co. v. Nielsen, 338 F.2d 879 (6th Cir. 1964), *cert. denied*, 381 U.S. 934 (1965). See particularly Johnson v. Traynor, 243 F. Supp. 184, 188-97 (D. Md. 1965), one of the opinions from which the appeals in *Marine Stevedoring* come, in which there appears an exhaustive refutation of this theory.

[32]398 F.2d at 908.

[33]*Id.* The court cited as authority D'Aleman v. Pan Am. World Airways, 259 F.2d 493 (2d Cir. 1958). *D'Aleman* involved a wrongful death action with the alleged cause of death occurring in an airplane flying over the ocean. There the occupation of airspace by a plane and its passengers was equated with the jurisdictional requirement "on high seas." Through its somewhat strained analogy between the occupation of airspace and the situation of longshoremen working upon a pier the court in *Marine Stevedoring* reveals its apparent failure to overcome the "dock as an extension of land" doctrine. See Note 7 *supra*.

are "above" navigable waters could be held to have been sustained "upon" such waters, thereby allowing coverage under the Longshoremen's Act.[34]

As the court again addressed itself to situs, the validity of its conclusion that coverage under the Act was grounded upon employee status was further weakened. Yet an added inconsistency in the court's overall reasoning is also apparent. The proposition advanced that an expansion of coverage under the Longshoremen's Act may be based by implication upon the Extension of Admiralty Act necessarily requires adherence to the principle that a dock is an extension of land.[35] If a dock, the common situs of the injuries complained of in *Marine Stevedoring*, can not be equated to land, then the Extension Act has no application and the entire theory is superfluous. Assuming, then, for the benefit of the relevancy of the second approach, that a dock is an extension of land, the third theory to the effect that a pier is equivalent to airspace above navigable waters cannot stand without an appreciable distortion of reason and logic.

Thus the second and third "routes" taken by the court appear to be mutually exclusive from the standpoint of consistency of application. Even if the alternatively dispositive nature[36] of the theories can be validly advanced, the total effect which remains to be examined reveals the following improbabilities: (1) status is controlling, so all longshoremen are brought within the coverage of the Act; (2) situs is determinative where a dock is an extension of land; and (3) situs is controlling where a dock is not an extension of land, i.e., it is airspace over navigable waters. These fundamental inconsistencies not only reflect the frailties inherent in a "shotgun" approach where established precedent is sought to be overcome, but also seem to substantially weaken the result itself from the standpoint of a strict legal analysis.[37]

Because the Longshoremen's Act was designed "to assure to injured waterfront employees the *simple, prompt,* and *certain* pro-

[34]398 F.2d at 908.

[35]The Extension of Admiralty Act relates to an expansion of jurisdiction to occurrences on land. 46 U.S.C. § 740 (1964).

[36]398 F.2d at 908.

[37]These inconsistencies were also noted in the dissenting opinion of Chief Judge Haynsworth, wherein it was suggested that the three theories must be read together "[s]ince the [status] theory would bring all longshoremen within the coverage of the Act, reference to the other theories suggests that coverage would exist only if the circumstances satisfied all three of them." 398 F.2d at 913 (dissenting opinion).

tection of workmen's compensation...."[38] the multitude of litigation concerning the situs principle and its nebulous boundaries suggest that this goal has not been achieved.[39] It was perhaps with an apprehension of this ultimate failure that most interested parties favored a status approach from the very beginning.[40]

Noting this common desire, the court suggested that it was "reasonable to infer" that the corresponding language of the Act represented an assent to the requested broader coverage, i.e., that the status of the injured longshoremen was determinative.[41] Certainly it is logical to assume that Congress would have attempted to satisfy the desires of the very parties to be affected. Yet a closer look reveals that prior to the proposal of the bill which became the current Longshoremen's Act, the Supreme Court in separate decisions[42] had declared two congressional enactments extending state compensation law to maritime workers unconstitutional as invalid attempts to delegate federal power to states.[43] Undoubtedly well aware of the unconstitutionality of its earlier efforts in this area, Congress, it seems much more "reasonable to infer," would have wanted to avoid the almost certain constitutional questions which would have arisen had jurisdiction under the Act been grounded upon status, thus allowing measurable federal infringement in matters of local concern.[44]

However, if both the desires of the parties affected by the compensation statute and the remedial goals sought to be attained by its passage are better satisfied by the ingrafting of the status theory, there *should* be congressional action extending coverage under the Longshoremen's Act to include all longshoremen and harbor workers who

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[38]Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272, 274 (1959) (dissenting opinion) (emphasis added); *see* Davis v. Department of Labor, 317 U.S. 249, 254 (1942).

[39]See Comment, *The Longshoremen's and Harbor Workers' Compensation Act of 1927: Half-Way Protection for the Stevedore and the Longshoreman,* 64 MICH. L. REV. 1553, 1569 (1966).

[40]398 F.2d at 903. At the time the proposed legislation which eventually became the Longshoremen's Act was under consideration by Congress, representatives of both the union and the shipping industry urged that status of employment be the appropriate jurisdictional measure.

[41]398 F.2d at 903.

[42]Washington v. W. C. Dawson & Co., 264 U.S. 219 (1924); Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920).

[43]*See* GILMORE & BLACK 336-37 (1957); 3 LARSON § 89.21 (1968).

[44]The Supreme Court has noted that at the time the proposed act was being considered, there was congressional doubt as to the constitutional power of Congress to extend federal jurisdiction to injuries occurring on shore. Swanson v. Marra Bros., 328 U.S. 1 (1946).

are injured while performing tasks incidental to their employment.[45] Furthermore, the comprehensive nature of such coverage would be sustainable from the standpoint of both legal[46] and practical[47] considerations.

Ostensibly, the apparent effect of the decision in *Marine Stevedoring,* in fact, seems to afford the desired improvement in the situation of the injured longshoreman whose compensation remedy is uncertain. Acceptance of the status theory as being determinative would remove the multitude of jurisdictional ambiguities ingrained in the situs approach,[48] since injuries sustained by harbor workers in the scope of their employment would be compensable under the federal act regardless of the locus of their occurrence.[49]

Unfortunately, further examination of the alternative conclusions reached by the court does not seem to allow the ameliorative result

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[45]*See generally* 3 LARSON §§ 91.71-.73 (1968) where, in a situation analogous to the status theory type coverage proposed for the Longshoremen's Act, the author suggests that *all* employees of interstate rail carriers be brought under a system of work-related injury coverage so as to eliminate the problems of jurisdictional litigation and uncertainty as exists under the Federal Employers Liability Act. As an alternative proposal it is suggested that a federal workmen's compensation act could be substituted for the FELA, and that the jurisdictional problems as have arisen under the Longshoremen's Act could be avoided if federal coverage were extended to *all* employees of interstate rail carriers. To leave these employees totally within the various state acts (another possibility), the author notes, would "produce some of the most complex tangles in all of compensation law." *Id.* at § 91.73. These same principles would also apply to an all-inclusive longshoremen's act. *See* Gardner, *Remedies for Personal Injuries to Seamen, Railroadmen, and Longshoremen,* 71 HARV. L. REV. 438 (1958); Comment, *The Longshoremen's and Harbor Workers' Compensation Act of 1927: Half-Way Protection for the Stevedore and the Longshoreman,* 64 MICH. L. REV. 1553 (1966); Comment, *Overlapping Remedies for Injured Harborworkers: Interaction on the Waterfront,* 67 YALE L.J. 1205 (1958).

[46]Any doubts as to the constitutionality of such comprehensive legislation would today be erased by the application of the commerce clause. Johnson v. Traynor, 243 F. Supp. 184, 189 (D. Md. 1965); Atlantic Stevedoring Co. v. O'Keefe, 220 F. Supp. 881, 883 (S.D. Ga. 1963), *rev'd on other grounds,* 354 F.2d 48 (5th Cir. 1965). *See also* 3 LARSON § 91.71 (1968) where it is stated that the inclusive type coverage would be constitutional in light of the commerce power.

[47]There most certainly would be a desirable reduction in litigation owing to the avoidance of the jurisdictional uncertainty inherent in the situs approach. Such a reduction would mean a decrease in trial expenses and consequently lower insurance rates for employers. The savings could be applied not only to effect safer working conditions for longshoremen, but also to bolster the economic status of employer and employee alike.

[48]The corresponding reduction of litigation would be desirable to all the interested parties. See note 47 *supra.*

[49]Such inclusive coverage would apparently be constitutionally unobjectionable. *See* note 46 *supra.*

which an application of the status approach alone would provide. The problematic boundary line between federal and state jurisdiction may still persist in that it has been merely extended to the shoreward edge of the pier. Also there may be no coverage under the Longshoremen's Act if the dock itself is not located over navigable waters, or if a pier-side injury is not occasioned by a ship or its instrumentalities.[50] Ultimately, the overall effect of *Marine Stevedoring* appears rather to create further incongruity[51] in the application of the Act itself as well as to insure a continued hinderance to the prompt administration of federal compensation to injured longshoremen.

These deficiencies stem from a judicial attempt to cure statutory ills which are simply not amenable to comprehensive correction on an ad hoc basis. The inherent incongruities of the Longshoremen's Act have been recognized, but the curative process should be exercised through legislative amendment, not by adjudication.[52]

Considering the continued congressional inaction in this area, the decision in *Marine Stevedoring* seems less impeachable. Avoiding the temptation of treating the matter of dockside injuries to longshoremen in mere summary fashion owing to the strong line of precedent it faced, the court at least attempted a reasonable resolution of

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[50]See note 29 *supra*.

[51]*See* 398 F.2d at 913 (dissenting opinion), wherein Chief Judge Haynsworth delineates the "barrel of incongruities" created by the majority opinion.

[52]*See* Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282, 286 (1952); Bue, *In the Wake of Reed v. The S.S. Yaka*, 18 HASTINGS L.J. 795, 807 (1967). In Davis v. Department of Labor, 317 U.S. 249 (1942) (concurring opinion), Mr. Justice Frankfurter delineated the general nature of the problem:

> Federal and state enactments have so accommodated themselves to the complexity and confusion introduced by . . . [pre-Longshoremen's Act Supreme Court rulings] that the resources of adjudication can no longer bring relief from the difficulties which the judicial process itself brought into being. Therefore, until Congress sees fit to attempt another comprehensive solution of the problem, this Court can do no more than bring some order out of the remaining judicial chaos as marginal situations come before us.

Id. at 259.

In his dissent in *Marine Stevedoring*, Chief Judge Haynsworth noted that "Congress, if it wishes, may amend the [Longshoremen's Act] to extend its coverage in a rational way to some point of reasonable certainty." 398 F.2d at 913 (dissenting opinion). The inconsistencies of coverage between longshoremen on a vessel moored upon navigable waters doing essentially the same type of work as others on an adjacent pier are obviously undesirable, yet "any recourse is through legislative action by way of amendment to the [Longshoremen's Act]." East v. Oosting, 245 F. Supp. 51, 54 (E.D. Va. 1965).