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George K. Fuiaxis

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Cover Page Footnote

This Note is the product of the many ideals that have been instilled within me from my father, Konstantinos G. Fuiaxis, who shines down on me from heaven above; and my mother, Anna Fuiaxis, who stands by my side and helps me through life's struggles. I would like to take this moment to share one of my ideals with my readers: Justice can only be maintained when the divine element remains within us and we are not influenced by aggression, violence, or greed.

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NOTES

INDEMNIFICATION OR COMPARATIVE FAULT: SHOULD A TORTFEASOR'S RIGHT TO RECEIVE "RYAN INDEMNITY" IN MARITIME LAW SINK OR SWIM IN THE PRESENCE OF COMPARATIVE FAULT?

*George K. Fuiaxis**

INTRODUCTION

Maritime law, like any other body of law, requires uniformity to function most effectively. This concept of uniformity is especially significant when defining the relationship between shipowners,[1] stevedore-contractors,[2] longshoremen,[3] and seamen.[4] Difficulty arises, however, when seamen raise claims against shipowners under the doctrines of unseaworthiness and Jones Act negligence. In such instances, different circuits are treating similar cases in a disparate manner.

Traditionally, maritime law recognized two claims by seamen who were injured during the course of their employment: (1) maintenance and cure; and (2) unseaworthiness.[5] Under maintenance and cure, owners or operators are absolutely liable for seamen's personal injury or death in the service of the ship.[6] Seamen may recover food, lodging, medical care, and unearned wages from their employers while recuperating, either aboard ship or ashore, from a sickness or injury incurred upon a vessel or even ashore on liberty.[7] Under the unseaworthiness doctrine, shipowners are absolutely liable for any breach of the nondelegable duty to maintain a seaworthy vessel.[8] Seamen may recover compensation for past and future loss of income, pain

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1. A shipowner, within the context of this Note, is a person or corporation that owns or operates a vessel.
2. A stevedore-contractor, who hires longshoremen, enters into contracts with shipowners to perform various services.
3. A longshoreman is a maritime employee who loads and unloads cargo ships and is covered by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950 (1994 & Supp. II 1996).
4. A seaman is a person who works on a ship and is employed by a shipowner.
5. *See* California Home Brands, Inc. v. Ferreira, 871 F.2d 830, 832 (9th Cir. 1989).
6. *See* Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 527 (1938).
7. *See* Farrell v. United States, 336 U.S. 511, 517-18 (1949); *Calmar*, 303 U.S. at 528; Alier v. Sea Land Serv., Inc., 465 F. Supp. 1106, 1109 (D.P.R. 1979); Warren v. United States, 75 F. Supp. 836, 838 (D. Mass. 1948).
8. *See* Knight v. Alaska Trawl Fisheries, Inc., 154 F.3d 1042, 1044 (9th Cir. 1998).

and suffering, disability, expenses of medical care, and loss of enjoyment of activities of normal life if their death or personal injury was caused by the unseaworthiness of the ship.[9] The Supreme Court extended the unseaworthiness cause of action to longshoremen in *Seas Shipping Co. v. Sieracki.*[10]

Congress changed this traditional framework, with respect to seamen only, by enacting the Jones Act in 1920.[11] The Jones Act expanded seamen's rights by giving them a cause of action against shipowners in negligence.[12] The Act, however, limited recovery to pecuniary losses suffered during the seamen's lifetime.[13]

When stevedore-contractors negligently perform their duties aboard a vessel, they may create unseaworthy conditions on that vessel.[14] Nonetheless, prior to 1956, shipowners continued to be held absolutely liable to seamen and longshoremen for injuries that arose from these conditions. Shipowners could not receive contribution or indemnity from stevedore-contractors because a shipowner's duty to provide a seaworthy ship was absolute and nondelegable. Therefore, under these circumstances, shipowners bore the costs of the negligent acts of third parties. The Supreme Court corrected this inequity in *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*[15] The Court held that stevedore-contractors impliedly warrant the workmanlike performance of their employees in every contract between maritime contractors and shipowners.[16] If the stevedore-contractor breaches this warranty, then the shipowner may seek indemnification from the stevedore-contractor for the amount paid in damages to longshoremen.[17] This doctrine is known as "Ryan indemnity." In 1972, however, Congress eliminated the unseaworthiness cause of action for longshoremen and the ability of shipowners to receive indemnification from stevedore-contractors in longshoremen lawsuits.[18] Thus, *Ryan* was partially superseded by statute.

Although Ryan indemnity is no longer available to shipowners in longshoremen suits, many federal courts continue to apply it in

9. *See* Andrew Hoang Do, *Seaman Remedies and Maritime Releases: A Practical Consideration*, 7 U.S.F. Mar. L.J. 379, 390 (1995).

10. 328 U.S. 85, 95 (1946).

11. The Jones Act, ch. 250, § 32, 41 Stat. 1007 (1920) (codified as amended at 46 U.S.C. § 688 (1994)).

12. *See id.*

13. *See* Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990).

14. *See infra* notes 152-55 and accompanying text (discussing the duties of a stevedore-contractor).

15. 350 U.S. 124 (1956).

16. *See id.* at 133-34.

17. *See id.* at 131-32.

18. The Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. 92-576, § 18(a), 86 Stat. 1251, 1263 (codified at 33 U.S.C. § 905(b) (1994)).

seamen unseaworthiness actions.[19] Nevertheless, courts doing so have prevented shipowners from receiving Ryan indemnity when seamen raise claims solely under the Jones Act.[20] These courts reason that a Jones Act cause of action is based in negligence, which is distinct from a shipowner's absolute duty to provide a seaworthy ship.[21] On the other hand, courts generally allow a shipowner to recover Ryan indemnity from a negligent stevedore-contractor when a seaman succeeds on a claim of unseaworthiness against a shipowner, because the stevedore-contractor's warranty of workmanlike performance is still present under this cause of action.[22]

The circuit courts disagree on whether a shipowner who is liable to a seaman for both unseaworthiness and Jones Act negligence may receive indemnification from a negligent stevedore-contractor.[23] Courts that continue to apply Ryan indemnity in this situation justify their reasoning on the theory that the stevedore-contractor still has an implied contractual duty to perform its obligations in a workmanlike manner despite the negligence claim, as well as the fact that he is better situated than the shipowner to avoid the danger aboard vessels.[24] On the other hand, the circuit courts that reject Ryan indemnity have approved of a comparative fault system, where damages are allocated between the stevedore-contractor and shipowner according to their relative degree of fault.[25]

This Note looks at the development of this circuit split and proposes a solution to it. Part I of this Note discusses relevant admiralty remedies. Part II examines *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*,[26] whereby the Supreme Court attempted to eliminate the inequity that existed for shipowners who were held absolutely liable to longshoremen for injuries that arose from unseaworthy conditions created by stevedore-contractors. Part II also explains the statutory repeal of *Ryan* as applied to longshoremen, and the revision of the Longshoremen's and Harbor Workers' Compensation Act of 1972 ("LHWCA").[27] Part III discusses the effect of the 1972 LHWCA amendments on seamen's personal injury cases. Further, part III investigates the current circuit split, and it queries whether a shipowner who is liable to a seaman for unseaworthiness and Jones Act negligence should be indemnified by a negligent stevedore-contractor. Fi-

19. *See infra* note 246 (noting that several circuit courts recognize the continued vitality of Ryan indemnity for shipowners in seamen cases).
20. *See* Knight v. Alaska Trawl Fisheries, Inc., 154 F.3d 1042, 1044-45 (9th Cir. 1998).
21. *See* California Home Brands, Inc. v. Ferreira, 871 F.2d 830, 836 (9th Cir. 1989).
22. *See Knight*, 154 F.3d at 1045-46.
23. *See id.*
24. *See* Oglebay Norton Co. v. CSX Corp., 788 F.2d 361, 365 (6th Cir. 1986).
25. *See Knight*, 154 F.3d at 1046-47.
26. 350 U.S. 124 (1956).
27. *See* 33 U.S.C. § 905(b) (1994).

nally, this part concludes that maritime law can continue to maintain the doctrine of Ryan indemnity in certain circumstances while further expanding comparative fault principles to maritime personal injury actions by proportioning fault between shipowner and stevedore-contractor.

I. Remedies Available for Personal Injuries in Maritime Law

To analyze the proper role of Ryan indemnity and comparative fault in maritime personal injury actions, it is necessary to review the remedies available to longshoremen and seamen. This part examines four remedies for personal injury in maritime law: the traditional claim of maintenance and cure by seamen against the shipowner, the traditional and modern forms of unseaworthiness, seamen's negligence cause of action under the Jones Act, and longshoremen's compensation recovery under the LHWCA.

A. *Maintenance and Cure*

Maintenance and cure has been applied in United States maritime law for over 200 years, and it remains relatively unchanged from its medieval origins.[28] According to the doctrine of maintenance and

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28. *See* Arthur Browne, A Compendious View of the Civil Law and of the Law of the Admiralty 182-84 (1803). In *Harden v. Gordon*, 11 F. Cas. 480, 482-83 (C.C.D. Me. 1823) (No. 6047), Justice Story, sitting as Circuit Judge, was the first to formally acknowledge the right to maintenance and cure. As one commentator analyzing the case observed:

> Justice Story saw seamen as "wards of the admiralty," depicting them as poor and friendless individuals who suffered under harsh and dangerous living conditions. As a consequence of the severe conditions of the seafaring life, Justice Story declared that seamen needed the protection of maintenance and cure. Fearing that shipowners would try to take advantage of seamen's inexperience and coerce them to sign unfavorable contracts, Justice Story reasoned that seamen needed courts to act as their guardians against shipowners. Justice Story supported the granting of maintenance and cure by explaining that a seaman's pay alone was usually insufficient to meet the expenses of illness. Without monetary aid from shipowners, Justice Story suggested, seamen faced hardship or even death, particularly when their illness caused them to be discharged in a foreign port.
>
> Justice Story found that certain benefits arose to both shipowners and seamen from holding shipowners liable for their employees' welfare. First, requiring shipowners to bear the expenses of maintenance and cure would encourage them to provide safer working environments, thereby reducing the number of accidents. The diminished number of accidents would decrease the number of seamen requesting maintenance and cure, and the shipowner would therefore expend less money on maintenance and cure payments. Second, providing maintenance and cure constitutes good public policy because, if seamen know that the shipowner will pay for work-related injuries, the seamen may more willingly enter the profession and face the dangerous tasks inherent in seafaring.

Virginia A. McDaniel, Note, *Recognizing Modern Maintenance and Cure as an Admiralty Right*, 14 Fordham Int'l L.J. 669, 673-74 (1990-91) (footnotes omitted).

cure, an owner or operator of a vessel is absolutely liable for a seaman's injury or illness;[29] proof of any negligence on the part of the shipowner is unnecessary.[30] Specifically, the doctrine requires that an employer pay for a seaman's food, lodging, medical care,[31] and unearned wages[32] while the seaman is recovering aboard ship or ashore from a sickness or injury incurred while in the service of the vessel.[33] "Maintenance" is the sick or injured seaman's right to receive an adequate amount of money to purchase food and lodging, which is equivalent to what he would have received aboard the ship.[34] The amount that the seaman may recover is a question of fact.[35] A seaman may use the value of comparable meals and lodging expenses in the area he lives or works as evidence of the appropriate amount he should receive.[36] If a seaman fails to present evidence of his expenses, most jurisdictions will provide him with a pre-ordained amount.[37] Further, the seaman must actually suffer expenses to recover mainte-

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29. *See* Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 527 (1938); Richard Brett Kelly, Note, *Maintenance and Cure: The Courts as Thy Brother's Keeper:* Barnes v. Andover Co., 16 Tul. Mar. L.J. 225, 226 (1991) ("Under most circumstances, a shipowner is strictly liable to seamen in his employ for maintenance and cure." (footnote omitted)). There are, of course, exceptions to this rule of strict liability:

> The duty of the seaman's employer to pay maintenance and cure is almost absolute. Only an act of wanton or willful misconduct will bar the seaman from recovering. Basically, the acts that bar recovery are ones of which society disapproves: intoxication, contraction of venereal diseases, or injury incurred while negotiating for sexual services.

Gary Michael Haugen, Comment, *Maintenance and Cure: Contract Right or Legal Obligation?*, 62 Tul. L. Rev. 625, 628 (1988) (footnotes omitted).

30. *See Harden*, 11 F. Cas. at 482-83; *see also* The Osceola, 189 U.S. 158, 175 (1903) (stating that "the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued"); John B. Shields, *Seamen's Rights to Recover Maintenance and Cure Benefits*, 55 Tul. L. Rev. 1046, 1046 (1981) ("Maintenance and cure is a time-honored right granted by the general maritime law to seamen who become ill or injured in the service of the ship.").

31. When a seaman refuses an offer for free medical care, he may lose his right to maintenance and cure. *See* Kossick v. United Fruit Co., 365 U.S. 731, 737 (1961).

32. *See* Do, *supra* note 9, at 386 ("Unearned wages are those wages the seaman would have received until the end of the voyage, or the end of the period or season for which he was employed had he not become sick or injured."); Haugen, *supra* note 29, at 627 ("[A] seaman may recover lost wages until the completion of the voyage during which he was injured or until attaining maximum medical recovery." (footnotes omitted)).

33. *See* Haugen, *supra* note 29, at 625.

34. *See Calmar*, 303 U.S. at 527-28.

35. *See* Caulfield v. AC & D Marine, Inc., 633 F.2d 1129, 1132 (5th Cir. Unit A 1981).

36. *See id.*; *see also* Gardiner v. Sea-Land Serv., Inc., 786 F.2d 943, 946 (9th Cir. 1986) (stating that seamen are traditionally provided with their actual out-of-pocket expenses); Rutherford v. Sea-Land Serv., Inc., 575 F. Supp. 1365, 1369-70 (N.D. Cal. 1983) (observing that United States courts, using the traditional method, award maintenance and cure on the basis of actual costs to seamen).

37. *See* Grant Gilmore & Charles L. Black, Jr., The Law of Admiralty § 6-12, at 307 (2d ed. 1975).

nance.[38] For example, a seaman will not receive maintenance if he is hospitalized[39] or living with his family.[40] "Cure," on the other hand, is the sick or injured seaman's right to receive medical care until he has reached maximum medical recovery.[41] The employer must pay for medical care from the date of sickness or injury until the seaman has been cured or, alternatively, until he is diagnosed incurable.[42]

A shipowner's obligation to furnish maintenance and cure extends to injuries a seaman suffers while that seaman is in the service of the ship.[43] The term "in the service of the ship" includes the time that a seaman is working aboard the ship and any time that he is "subject to the call of duty."[44] For example, when the ship docks and the seaman is granted shore leave, he must answer to the call of the shipowner, and, therefore, he is still in the service of the ship and entitled to maintenance and cure.[45] This is true even if a seaman seeks relaxation when the ship docks, because courts recognize the long hours that a seaman is confined to his ship.[46] When a seaman leaves

38. *See* Spanos v. The Lily, 261 F.2d 214, 215 (4th Cir. 1958).

39. *See* Johnson v. United States, 333 U.S. 46, 50 (1948).

40. *See* Nichols v. Barwick, 792 F.2d 1520, 1524 (11th Cir. 1986) (stating that a seaman does not receive maintenance when he lives with his parents); Harper v. Zapata Off-Shore Co., 741 F.2d 87, 91 (5th Cir. 1984) (finding that a seaman is not entitled to maintenance when he lives at home with his wife and children).

41. *See* Vella v. Ford Motor Co., 421 U.S. 1, 4-6 (1975); Farrell v. United States, 336 U.S. 511, 517-18 (1949); Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 531-32 (1938); Cox v. Dravo Corp., 517 F.2d 620, 627 (3d Cir. 1975).

42. *See Vella*, 421 U.S. at 4-6; Shields, *supra* note 30, at 1047-48.

43. *See Farrell*, 336 U.S. at 516.

44. Aguilar v. Standard Oil Co., 318 U.S. 724, 726, 732 (1943). "[T]he seaman, when he finishes his day's work, is neither relieved of obligations to his employer nor wholly free to dispose of his leisure as he sees fit.... [M]aintenance and cure extends beyond injuries sustained [by a seaman]... while engaged in activities required by his employment." *Id.* at 731-32. For two other Supreme Court decisions in which maintenance and cure was awarded to a seaman although he was not carrying out any activities connected to his employment at the time of the injury, see *Warren v. United States*, 340 U.S. 523, 529 (1951) (holding that "maintenance and cure extends to injuries occurring while the seaman is departing on or returning from shore leave though he has at the time no duty to perform for the ship"), and *Farrell v. United States*, 336 U.S. 511, 516 (1949) (stating that the seaman could recover maintenance and cure even though he was ashore because he was "in the service of the ship" and "answerable to its call to duty").

45. *See* Barnes v. Andover Co., 900 F.2d 630, 633 (3d Cir. 1990).

46. In *Aguilar*, the Court made the following observation:

> To relieve the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage. The assumption is hardly sound that the normal uses and purposes of shore leave are "exclusively personal" and have no relation to the vessel's business. Men cannot live for long cooped up aboard ship, without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, "the superfluous is the necessary ... to make life livable" and to

the ship against orders, however, the shipowner's duty terminates.[47]

Maintenance and cure is justified because the ship serves as the seaman's home, entitling the seaman to receive food and lodging, even during illness.[48] The seaman has the burden of proving that his injury or illness occurred during his service to the vessel.[49] This burden, however, is not difficult to satisfy.[50] In fact, a seaman's testimony alone may be sufficient to support a claim for maintenance and cure.[51] The maintenance and cure doctrine, therefore, addresses the seaman's unique isolation and vulnerability to his employer as well as his environment. In this context, then, it is no surprise that this remedy favors seamen.

B. *The Traditional Form of Unseaworthiness*

Unlike maintenance and cure, courts did not recognize the doctrine of unseaworthiness until the late 1800s. After several lower courts held that the unseaworthiness of a vessel was a possible cause of action for injured seamen,[52] the Supreme Court recognized the doctrine in 1903. In *The Osceola*,[53] a seaman brought an action against his employer, who owned the vessel, to recover damages for an injury sustained while aboard the vessel.[54] The master of the vessel had ordered the crew to raise the gangway by using the derrick.[55] Members of the crew began to execute the master's order, but the gangway, by the force of the wind, upturned the derrick and injured the plaintiff.[56] Without very much elaboration, the Court stated that a shipowner could be held liable to a seaman for injuries that resulted from

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> get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.

318 U.S. at 733-34 (footnote omitted).

47. *See id.* at 733; *see also* Haugen, *supra* note 29, at 628 (setting forth exceptions to a seaman's recovery under maintenance and cure); *supra* note 31 (stating that a seaman may lose his right to maintenance and cure when he refuses an offer for free medical care).

48. *See* McDaniel, *supra* note 28, at 669; *see also* Kelly, *supra* note 29, at 225 (observing that maintenance and cure "provides an injured seaman the same sustenance he would have received aboard ship").

49. *See* Miller v. Lykes Bros.-Ripley S.S. Co., 98 F.2d 185, 186 (5th Cir. 1938).

50. *See* Ferguson v. Moore-McCormack Lines, Inc., 352 U.S. 521, 523 (1957).

51. *See* Yelverton v. Mobile Labs., Inc., 782 F.2d 555, 558 (5th Cir. 1986).

52. *See, e.g.*, City of Alexandria, 17 F. 390, 392-93 (S.D.N.Y. 1883) (finding that a vessel owner is liable for negligence when the ship or the ship's appliances are unseaworthy).

53. 189 U.S. 158 (1903).

54. *See id.* at 159.

55. *See id.* A derrick is a "hoisting apparatus consisting of a boom carrying a tackle at its outer end and pivoted at the other, often to the foot of a central mast, used [aboard ship] for unloading." Webster's Dictionary 259 (Int'l ed. 1995).

56. *See The Osceola*, 189 U.S. at 159.

the unseaworthiness of the ship.[57] The Court, however, required that the seaman show negligence on the part of the shipowner to recover on an unseaworthiness theory.[58] The Court drew no distinction between injuries arising from unseaworthiness and negligence.[59] While the Court was unclear on the details of an unseaworthiness cause of action and offered little guidance on how it should be applied, decisions subsequent to the enactment of the Jones Act eventually altered and refined the doctrine.[60]

C. *Jones Act Negligence*

Under traditional maritime law, seamen could not bring a negligence cause of action against their employer or their fellow employees.[61] In response to this concern, Congress passed the Jones Act in 1920,[62] which gave seamen a cause of action against their employers based in negligence.[63] The Jones Act superseded *The Osceola*, which held that seamen could recover damages for injuries that resulted from unseaworthiness, but not negligence.[64] Congress created a uniform system of seamen's tort law by incorporating the exact language of the Federal Employer's Liability Act[65] ("FELA") of interstate railway carriers into the Jones Act.[66] Although the Jones Act did not specify the amount of damages seamen could recover, it provided seamen with the substantive recovery provisions of FELA.[67] Because courts have interpreted FELA to allow recovery only for pecuniary

57. *See id.* at 175; *see also infra* notes 82-114 and accompanying text (discussing the modern form of unseaworthiness as applied to seamen and then to longshoremen).

58. *See The Osceola*, 189 U.S. at 173-74 (stating that "if there were any negligence on the part of the [shipowner], it appears to have been not providing proper appliances, so that the case was one really of unseaworthiness"). At the time of *The Osceola*, seamen were not afforded a separate negligence remedy. *See id.*

59. *See id.* at 174.

60. *See infra* notes 82-114 and accompanying text.

61. *See* Do, *supra* note 9, at 387.

62. The Jones Act, ch. 250, § 32, 41 Stat. 988, 1006-07 (1920) (codified as amended at 46 U.S.C. § 688 (1994)).

63. The Jones Act states, in pertinent part:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply.... Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

46 U.S.C. § 688 (1994).

64. *See* Miles v. Apex Marine Corp., 498 U.S. 19, 29 (1990); *see also supra* notes 57-59 and accompanying text (discussing that a shipowner could be held liable to a seaman for injuries resulting from unseaworthiness).

65. 45 U.S.C. §§ 51, 53, 54, 56, 59 (1994). FELA created a uniform national law applicable to injuries and accidents suffered by railway employees.

66. *See Miles*, 498 U.S. at 29.

67. *See id.* at 32.

loss,[68] maritime courts, in turn, have applied this limitation to Jones Act negligence claims.[69] Further, the Jones Act/FELA survival provision limits a seaman's recovery to losses suffered during the seaman's lifetime.[70] Under these provisions, the federal courts have provided seamen with numerous damages claims, including compensation for past and future loss of income, pain and suffering, disability, expenses of medical care, and loss of enjoyment of normal life activities.[71] As discussed below, however, longshoremen were not permitted to share in these benefits; they were limited to their compensation recovery under the LHWCA.

D. *The Longshoremen's and Harbor Workers' Compensation Act*

Prior to the creation of the LHWCA, states attempted to apply their workers' compensation laws to longshoremen.[72] The Supreme Court, however, held that application of these statutes to longshoremen was unconstitutional,[73] because the power to amend maritime law rests with Congress, not the states.[74] In response, Congress established the LHWCA to ensure uniformity in longshoremen compensation recovery.[75] As originally enacted by Congress in 1927, the LHWCA provided that the stevedore-contractor's liability for compensation was "exclusive and in place of all other liability" to the injured longshoreman.[76] While Congress modeled the LHWCA on New York's Workmen's Compensation Act,[77] recovery for longshore-

68. *See* Michigan Cent. R.R. v. Vreeland, 227 U.S. 59, 69-71 (1913).

69. *See Miles*, 498 U.S. at 32 ("The Jones Act applies when a seaman has been killed as a result of negligence, and it limits recovery to pecuniary loss.").

70. *See id.* at 36 (citing 45 U.S.C. § 59).

71. *See* Do, *supra* note 9, at 388.

72. *See* Gordon K. Wright et al., *The Ship, Stevedore, and Longshore Worker Triangle 1917-1995*, 26 J. Mar. L. & Com. 503, 504 (1995).

73. *See* Southern Pac. Co. v. Jensen, 244 U.S. 205, 217-18 (1917).

74. *See* Washington v. W.C. Dawson & Co., 264 U.S. 219, 225-26 (1924).

75. *See* 33 U.S.C. §§ 901–950 (1994 & Supp. II 1996).

76. *Id.* § 905(a). While the LHWCA claimed that the remedies it afforded were "exclusive," *see id.*, it also expressly provided a right of election to proceed against any person other than the employer who is liable for damages. According to section 933(a) of the Act:

> If on account of a disability or death for which compensation is payable under this [Act] the person entitled to such compensation determines that some person other than the employer . . . is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

Id. § 933(a).

The LHWCA was amended in 1972 to provide longshoremen with increased compensation benefits and a negligence cause of action against shipowners. *See infra* notes 198-211 and accompanying text.

77. *See* Wright, *supra* note 72, at 505.

men under the LHWCA differed extensively from New York's act.[78] The LHWCA placed a fixed limit—seventy dollars per week—on the recovery longshoremen could receive from workers' compensation.[79] Longshoremen's ability to recover damages under the LHWCA, however, dramatically expanded with the creation of the modern form of unseaworthiness developed in *Carlisle Packing Co. v. Sandanger*[80] and its progeny.

E. *The Modern Form of Unseaworthiness*

As traditionally constituted, the unseaworthiness cause of action in maritime law required a showing of negligence for seamen to recover damages.[81] The Supreme Court altered the unseaworthiness doctrine after Congress enacted the Jones Act in 1920, most likely because the traditional concept of unseaworthiness was no longer necessary as it, too, was based in negligence. In *Carlisle*, the Supreme Court made its first effort to detach the concept of negligence from a remedy of unseaworthiness.[82] In that case, the plaintiff seaman was injured by an explosion while on the defendant's motorboat.[83] The injury occurred when the plaintiff poured a can of gasoline, which he believed to be coal oil (a relatively innocuous liquid), upon the firewood in a small stove that was used to cook meals and heat water.[84] He applied a match to the firewood, which ignited the gasoline and caused an explosion that seriously burned his body.[85] He alleged that the defendant or the defendant's agents negligently substituted the gasoline for the coal oil without the plaintiff's knowledge.[86] The trial court held that "the basis of the action [was] negligence" and entered judgment for the plaintiff.[87] The Washington Supreme Court affirmed the trial court's decision.[88] On appeal, the United States Supreme Court affirmed the judgment.[89] The Court acknowledged, however, that it may be possible for the unseaworthiness doctrine to apply without

78. *See* Donald S. Morton, Comment, *The Longshoremen's and Harbor Workers' Compensation Act: Coverage After the 1972 Amendments*, 55 Tex. L. Rev. 99, 100 (1976).

79. *See* James R. Thompson, *Duty Owed by Shipowner Under 1972 Amendments to Longshoremen's Act Is That of Land Based Premises Owner to Business Invitee*, 6 J. Mar. L. & Com. 643, 647 (1975).

80. 259 U.S. 255 (1922).

81. *See supra* notes 57-59 and accompanying text (discussing the traditional form of unseaworthiness, which required a showing of negligence on the part of the shipowner to recover).

82. *See Carlisle*, 259 U.S. at 259.

83. *See id.* at 257.

84. *See id.*

85. *See id.*

86. *See id.*

87. *Id.* at 258 (internal quotation omitted).

88. *See id.* at 257.

89. *See id.* at 260.

showing that the shipowner was negligent.[90] As the Court observed, "we think the trial court might have told the jury that without regard to negligence the vessel was unseaworthy when she left the dock . . . and that if thus unseaworthy and one of the crew received damage as the direct result thereof, he was entitled to recover compensatory damages."[91]

In *Mahnich v. Southern Steamship Co.*[92] the Court took a step further and explicitly recognized that negligence is not an element of a seaman's unseaworthiness claim.[93] In *Mahnich*, the mate had ordered the plaintiff seaman to paint the bridge.[94] To do so, the plaintiff had to use the staging, which was composed of a wooden board held aloft at both ends by rope.[95] The rope that supported the board was rotten, and it could not sustain the weight of the plaintiff.[96] The rope broke, and the plaintiff was injured when he fell.[97] The Court held that the vessel was "unseaworthy in the sense that it was inadequate for the purpose for which it was ordinarily used . . . . Its inadequacy rendered it unseaworthy, whether the mate's failure to observe the defect was negligent or unavoidable."[98] Thus, negligence was no longer an issue in a seaworthiness analysis.[99] In 1946, the Court affirmed this principle in *Seas Shipping Co. v. Sieracki*,[100] and it cited both *Carlisle Packing* and *Mahnich* in the process.[101]

Under the modern unseaworthiness doctrine, the owner of a ship is held absolutely liable for breach of its nondelegable duty to provide a seaworthy vessel.[102] A seaman may recover lost wages, medical ex-

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90. *See id.* at 259-60.

91. *Id.* at 259.

92. 321 U.S. 96 (1944). The Court stated that unseaworthiness is unaffected by the negligence of the shipowner. *See id.* at 100.

93. *See id.*

94. *See id.* at 97.

95. *See id.*

96. *See id.*

97. *See id.*

98. *Id.* at 103.

99. *See id.*

100. 328 U.S. 85 (1946).

101. *See id.* at 94-95 & n.11 (stating that unseaworthiness is not founded in negligence and therefore may not be defeated by the common law defenses of contributory negligence, assumption of risk, and the fellow servant rule); *see also* Joseph C. Savino, *Personal Injury/Negligence: Standard of Care Owed by Shipowners to Longshoremen Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 13 J. Mar. L. & Com. 111, 111 n.9 (1981) ("Unseaworthiness, a type of strict liability, does not necessarily mean that the defective condition be of such a quality as to render the entire vessel unfit for the purpose for which it was intended.").

102. *See* Knight v. Alaska Trawl Fisheries, Inc., 154 F.3d 1042, 1044 (9th Cir. 1998). In *Marshall v. Manese*, 85 F.2d 944 (4th Cir. 1936), the Fourth Circuit observed:

> Seamen are the wards of admiralty, and the policy of the maritime law has ever been to see that they are accorded proper protection by the vessels on which they serve. In early days, this protection was sufficiently accorded by the enforcement of the right of "maintenance and cure." Vessels and their appliances were of comparatively simple construction, and seamen were in

penses, pain and suffering, and compensation for disability when his death or personal injury is based on the unseaworthiness of the ship.[103] The shipowner is not obligated to provide an accident-free ship that will withstand all the perils at sea,[104] nor is he required to "furnish the very latest, best or most modern equipment."[105] The owner of the vessel must, however, provide seamen with safe, seaworthy appliances so that the seamen may perform their work free from avoidable dangers.[106] A vessel and its appliances are seaworthy when they are reasonably fit for their intended service.[107] The term "reasonably fit" is determined by the standards that would be applied by a reasonable shipowner.[108] The shipowner's adherence to the customs and practices of the industry, however, by itself, will not discharge his duty to provide a seaworthy ship.[109] In addition, the nondelegable, absolute obligation of a shipowner to provide a seaworthy ship has been applied beyond the vessel itself to impose liability for unsuitable clothing,[110] an unfit crew,[111] improper loading or stowage of cargo,[112]

> quite as good position ordinarily to judge of the seaworthiness of a vessel as were her owners.
>
> With the advent of steam navigation, however, it was realized, at least in this country, that "maintenance and cure" did not afford to injured seamen adequate compensation in all cases for injuries sustained. Vessels were no longer the simple sailing ships, of whose seaworthiness the sailor was an adequate judge, but were full of complicated and dangerous machinery, the operation of which required the use of many and varied appliances and a high degree of technical knowledge. The seaworthiness of the vessel could be ascertained only upon an examination of this machinery and appliances by skilled experts. It was accordingly held that the duty of the vessel and her owners to the seaman, in this new age of navigation, extended beyond mere "maintenance and cure," which had been sufficient in the simple age of sailing ships; that the owners owed to the seamen the duty of furnishing a seaworthy vessel and safe and proper appliances in good order and condition; and that for failure to discharge such duty there was liability on the part of the vessel and her owners to a seaman suffering injury as a result thereof.

Id. at 945-46.

103. *See* Do, *supra* note 9, at 390.

104. *See* Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 550 (1960).

105. Moomey v. Little Boy, Inc., 333 F. Supp. 4, 8 (S.D. Tex. 1970).

106. *See* Mahnich v. Southern S.S. Co., 321 U.S. 96, 104 (1944).

107. *See Mitchell*, 362 U.S. at 550.

108. *See* Allen v. Seacoast Prods., Inc., 623 F.2d 355, 359-60 (5th Cir. 1980).

109. *See* Schlichter v. Port Arthur Towing Co., 288 F.2d 801, 804 (5th Cir. 1961). The Fifth Circuit, in *Walker v. Harris*, 335 F.2d 185 (5th Cir. 1964), set the following guidelines to determine when a vessel is unseaworthy:

> [W]hat is the vessel to do? What are the hazards, the perils, the forces likely to be incurred? Is the vessel or the particular fitting under scrutiny, sufficient to withstand those anticipated forces? If the answer is in the affirmative, the vessel (or its fitting) is seaworthy. If the answer is in the negative, then the vessel (or the fitting) is unseaworthy no matter how diligent, careful, or prudent the owner might have been.

Id. at 191 (citation omitted).

110. *See* Webb v. Dresser Indus., 536 F.2d 603, 606-07 (5th Cir. 1976).

111. *See* Boudoin v. Lykes Bros. S.S. Co., 348 U.S. 336, 339-40 (1955).

poor transitory conditions,[113] and defective equipment and appliances brought aboard by others.[114]

The difference between negligence and unseaworthiness theories is that negligence requires proof of fault,[115] while unseaworthiness requires proof of a defective condition on the vessel.[116] Under an unseaworthiness theory, seamen are not required to prove who was specifically at fault for the creation of the defect.[117] The shipowner's obligation to provide a seaworthy vessel is independent of the obligation to exercise reasonable care.[118] While the seaworthiness of a vessel is determined by a reasonable shipowner standard, and not by the strict standards of the Jones Act,[119] the types of claims that succeed under unseaworthiness and negligence theories are nonetheless similar. Examples of Jones Act negligence include the failure to provide safety rules or to require the use of safety gear,[120] the failure to make inspections,[121] the failure to provide and maintain reasonably safe equipment and appliances,[122] and the issuance of negligent orders, instructions, or suggestions by supervisors.[123] Examples of unseaworthiness include an improper or unreasonably dangerous method of operation,[124] an undermanned and incompetent crew,[125] the failure to provide sufficient safety equipment,[126] and a crewmember creating an unsafe condition by making safe equipment unsafe.[127]

F. *Application of the Unseaworthiness Doctrine to Longshoremen*

The Supreme Court's decision in *Seas Shipping Co. v. Sieracki*[128] gave longshoremen the right to bring unseaworthiness actions against shipowners.[129] Sieracki, an employee of an independent stevedoring firm that was under contract to load Seas Shipping Company's vessel,

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112. *See* Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 215 (1963); Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355, 363-64 (1962).
113. *See* Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 549-50 (1960).
114. *See* Seas Shipping Co. v. Sieracki, 328 U.S. 85, 87 (1946).
115. *See* Cox v. Esso Shipping Co., 247 F.2d 629, 637 (5th Cir. 1957).
116. *See Sieracki*, 328 U.S. at 94-95; Mahnich v. Southern S.S. Co., 321 U.S. 96, 103 (1944).
117. *See Sieracki*, 328 U.S. at 94.
118. *See Mitchell*, 362 U.S. at 549; Joyce v. Atlantic Ritchfield Co., 651 F.2d 676, 681 (10th Cir. 1981).
119. *See* Allen v. Seacoast Prods., Inc., 623 F.2d 355, 359-60 (5th Cir. 1980).
120. *See* Schlichter v. Port Arthur Towing Co., 288 F.2d 801, 806 (5th Cir. 1961) (finding that the shipowner was not negligent because he provided safe gear).
121. *See* Michalic v. Cleveland Tankers, Inc., 364 U.S. 325, 328-30 (1960).
122. *See* Puamier v. Barge BT 1793, 395 F. Supp. 1019, 1031-32 (E.D. Va. 1974).
123. *See* Ives v. United States, 58 F.2d 201, 202 (2d Cir. 1932).
124. *See* Morales v. City of Galveston, 370 U.S. 165, 170 (1962).
125. *See* American President Lines, Ltd. v. Welch, 377 F.2d 501, 504 (9th Cir. 1967).
126. *See* Carlisle Packing Co. v. Sandanger, 259 U.S. 255, 258 (1922).
127. *See* Allen v. Seacoast Prods., Inc., 623 F.2d 355, 364 (5th Cir. 1980).
128. 328 U.S. 85 (1946).
129. *See id.* at 97.

was injured by defective equipment on board.[130] The Court held that a longshoreman-employee who worked on a ship is entitled to the benefit of the shipowner's warranty of seaworthiness.[131] Under these circumstances, the Court reasoned that longshoremen, like seamen, were exposed to the dangers of unseaworthy conditions, and that they should therefore be equally entitled to the unseaworthiness cause of action.[132] The Court found that the shipowner's duty to provide a seaworthy vessel was not "confined to seamen who perform the ship's service under immediate hire to the owner, but extends to those who render it with his consent or by his arrangement."[133] Further, the Court rejected the argument that, by giving longshoremen compensation that was "exclusive,"[134] the LHWCA barred longshoremen from invoking an unseaworthiness cause of action as well.[135] As the Court observed, the LHWCA specifically provided that a longshoreman could bring suit against anyone other than his employer if such person was liable to him for damages, and therefore, the LHWCA does not "nullify any right of the longshoreman against the owner of the ship."[136] The Court also observed that, "liability arises as an incident, not merely of the seaman's contract, but of performing the ship's service with the owner's consent."[137] Therefore, under *Sieracki*, longshoremen could recover full damages from the owner of the ship if their injuries were caused by an unseaworthy condition of the vessel.[138]

The grant of an unseaworthiness cause of action to longshoremen, in conjunction with the removal of negligence as an element of the unseaworthiness cause of action, made it much easier for plaintiffs to recover damages. At the same time, however, it resulted in a disproportionate increase in the liability of shipowners, who were held responsible for the negligence of stevedore-contractors. In *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*,[139] the Supreme Court held that a shipowner could not obtain contribution from a stevedore-contractor who was also a concurrent tortfeasor.[140] The plaintiff, a

130. *See id.* at 87.

131. *See id.* at 95. Longshoremen had to prove only that the shipowner breached the strict duty to provide workers with a seaworthy ship free of any hazards. *See* Gilmore & Black, *supra* note 37, § 6-44(a), at 401-04.

132. *See Sieracki*, 328 U.S. at 93-95.

133. *Id.* at 95.

134. 33 U.S.C. § 905(a) (1994).

135. *See Sieracki*, 328 U.S. at 101.

136. *Id.* at 102.

137. *Id.* at 97.

138. *See* David D. Kammer, *Is the Turnover Duty Real, or Just Unseaworthiness in Disguise?*, 61 Def. Couns. J. 260, 260 (1994). Longshoremen received the remedies of seamen, while maintaining their own LHWCA benefits. *See* Wright et al., *supra* note 72, at 506.

139. 342 U.S. 282 (1952).

140. *See id.* at 285-87.

longshoreman, brought suit against the shipowner, Halcyon Lines ("Halcyon"), for injuries sustained while the plaintiff was performing repairs aboard the defendant's ship.[141] Halcyon, in turn, sued Haenn Ship Ceiling & Refitting Corporation, the stevedore-contractor, as a third-party defendant and concurrent tortfeasor.[142] Halcyon alleged that Haenn's negligence contributed to the longshoreman's injuries.[143] The Court refused Halcyon's invitation to apply comparative fault in maritime personal injury cases,[144] concluding that such a decision rested in the hands of Congress.[145]

Sieracki and *Halcyon Lines* dramatically increased the scope of liability for shipowners in maritime cases. Consequently, these decisions also led to an increase in the number of damage suits brought by longshoremen against shipowners.[146] The Supreme Court faced increased pressure from shipowners to rectify this inequity and change the shipowners' role as insurers of the conduct of stevedore-contractors.[147] Part II discusses the Court's response to this pressure, namely, the development of the doctrine known as "Ryan indemnity."

II. Ryan Indemnity

This part examines the Supreme Court's decision in *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*[148] It discusses the ascent of *Ryan* and the application of Ryan indemnity to express disclaimers, defenses to Ryan indemnity, and the connection between Ryan indemnity and the LHWCA. Further, this part explains the statutory repeal of Ryan indemnity as applied to longshoremen resulting from Congress's revision of the LHWCA in 1972.

A. *The Rise of* Ryan

Ryan addressed the perceived inequity that shipowners faced when held absolutely liable to longshoremen for injuries that arose from an unseaworthy condition created by stevedore-contractors. In *Ryan*, the plaintiff longshoreman sued the shipowner after being injured aboard a vessel while unloading it.[149] The injury occurred when a 3200-pound roll of pulpboard broke loose because the loading stevedore did not secure it properly.[150] The district court found the shipowner liable for

141. *See id.* at 283.
142. *See id.*
143. *See id.*
144. *See id.* at 284-85.
145. *See id.* at 285.
146. *See* Graydon S. Staring, *Meting Out Misfortune: How the Courts Are Allotting the Costs of Maritime Injury in the Eighties*, 45 La. L. Rev. 907, 909 (1985).
147. *See id.* at 909-10.
148. 350 U.S. 124 (1956).
149. *See id.* at 125-26.
150. *See id.*

the longshoreman's injuries.[151] The Supreme Court affirmed the Second Circuit's reversal of the district court, holding that a stevedore-contractor impliedly warrants the workmanlike performance of his employees in every contract between a maritime contractor and a shipowner.[152] According to the Court, if a stevedore-contractor breaches this implied warranty to perform the work in a reasonably safe or workmanlike manner, the shipowner could recover indemnification from the stevedore-contractor.[153] A finding of stevedore-contractor negligence, therefore, triggers his obligation to indemnify[154] the shipowner for any amount paid to a longshoreman.[155] The Court compared the indemnification to "a manufacturer's warranty of the soundness of its manufactured product."[156] Additionally, the Court

151. *See id.* at 128.

152. *See id.* at 133-34. Justice Black dissented because, the majority implied an obligation to indemnify without "a shred of evidence" that the stevedore agreed to do so. *See id.* at 141-44 (Black, J., dissenting).

153. *See id.* at 132; *see also* Francis J. Gorman, *The Choice Between Proportionate Fault or Ryan Indemnity in Maritime Property Damage Cases*, 10 J. Mar. L. & Com. 325, 325 (1979) (stating that "[a] breach of the warranty entitled a shipowner to full indemnity for any judgment or reasonable settlement amount paid to a third party, including reimbursement of fees and expenses incurred in defending the third party's claim"). As one commentator has observed:

> By virtue of working cargo on ships daily, stevedores develop expertise in cargo handling. Stevedores know much better than ships' officers what is necessary to make the cargo areas and working conditions reasonably safe for their longshore worker employees. Only the stevedore knows the competency and skill of his employees and what might be hazardous to them.

Wright et al., *supra* note 72, at 512-13.

154. Indemnity allows the shipowner-indemnitee to shift all of his loss onto the stevedore-contractor/indemnitor, eliminating the need for contribution. The shipowner receives an all-or-nothing recovery from the stevedore. Therefore, the more powerful party in an indemnity agreement is the shipowner. A shipowner could cause injuries to a longshoreman or a seaman by his own negligence and then shift the negligence to the stevedore. In most situations, the stevedore has no opportunity to bargain with the shipowner in regards to the conditions of the indemnity agreement. Indemnity agreements, however, are not always express in nature. A stevedore's obligation to perform his work in a competent and safe manner is the basis of the maritime service contract and it implies indemnity for the breach of the warranty of workmanlike performance. *See* Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 130 (1956).

155. *See id.* at 130. An attractive feature of *Ryan* was that the shipowner could recover counsel fees and litigation expenses as part of his full recoverable damages caused by a stevedore's breach of contract. *See* Gorman, *supra* note 153, at 331-32. Ryan indemnity was based on the following reasoning:

> A "warranty" is an assurance by one party to a contract of the existence of a fact upon which the other party may rely. It is intended to relieve the promisee of any duty to ascertain the fact for himself, and amounts to a promise to indemnify the promisee for any loss if the fact warranted proves untrue.

17A C.J.S. *Contracts* § 342, at 325 (1963) (footnotes omitted); *see also* Restatement of Contracts § 334 (1932) ("If a breach of contract is the cause of litigation between the plaintiff and third parties that the defendant had reason to foresee when the contract was made, the plaintiff's reasonable expenditures in such litigation are included in estimating his damages.").

156. *Ryan*, 350 U.S. at 133-34.

held that no express oral or written agreement is necessary for a shipowner to recover indemnity.[157] Finally, the Court observed that the shipowner's cause of action against the stevedore-contractor was grounded in contract rather than tort, even though the duty of reasonable care in the warranty is similar to that in negligence.[158] *Ryan* awarded consequential damages for breach of contract, obligating the stevedore-contractor to discharge "foreseeable damages resulting to the shipowner from the contractor's improper performance."[159]

Further, as decisions subsequent to *Ryan* have observed, the presence of shipowner negligence, if any, does not necessarily preclude Ryan indemnity, and the non-negligence of the stevedore-contractor does not protect him as a matter of law from shipowner indemnification.[160] Undoubtedly, the rule that held shipowners absolutely liable to longshoremen under *Sieracki* became less onerous under *Ryan*.

1. *Ryan's* Application Despite Express Disclaimers

After *Ryan*, some lower courts held that a shipowner could expressly waive its right to Ryan indemnity through a disclaimer.[161] These disclaimers were seldom enforced, however, because courts generally required them to be sufficiently "clear and explicit."[162] For example, one court concluded that the following disclaimer was not enforceable: "This contract constitutes the full agreement between the parties hereto, and no warranty of any nature is to be implied from any of the wording of this agreement."[163] Other courts have rejected express disclaimers on the grounds that they "are not favored

157. *See id.* at 132.

158. *See id.* at 131-32. "The shipowner's action is not changed from one for a breach of contract to one for a tort simply because recovery may turn upon the standard of the performance of petitioner's stevedoring service." *Id.* at 134 (footnote omitted). The right of indemnification was founded upon a breach of the contractual obligation to perform the contract in a reasonably safe manner. *See id.* at 131-32. As the Court later observed in a subsequent case, "Although in *Ryan* the stevedore was negligent, he was not found liable for negligence as such but because he failed to perform safely, a basis for liability including negligent and nonnegligent conduct alike." Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 319 (1964).

159. *Ryan*, 350 U.S. at 129 n.3.

160. *See Italia Societa*, 376 U.S. at 320; Reed v. The Yaka, 373 U.S. 410, 414-15 (1963).

161. *See* Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 336 F.2d 124, 127 (9th Cir.), *rev'd*, 376 U.S. 315 (1964); United States v. Northern Metal Co., 379 F. Supp. 1131, 1139-40 (E.D. Pa. 1974).

162. Brattoli v. Kheel, 302 F. Supp. 745, 752 (E.D.N.Y. 1969). While courts have upheld agreements where the stevedore promised to hold the shipowner harmless against the shipowner's own negligence, the language of the contract must be plain and unambiguous and the contract must indicate the stevedore's intent to indemnify the shipowner against the shipowner's own fault. *See* Porche v. Gulf Miss. Marine Corp., 390 F. Supp. 624, 628 (E.D. La. 1975); Jurisich v. United Gas Pipe Line Co., 349 F. Supp. 1227, 1229 (E.D. La. 1972).

163. *Brattoli*, 302 F. Supp. at 752 (internal quotation marks omitted).

by the courts and must be strictly construed,"[164] and that stevedore-contractors are best situated to adopt protective measures.[165]

On the other hand, in *United States v. Northern Metal Co.*[166] the court enforced a disclaimer that waived a shipowner's right to Ryan indemnity. The shipowner had brought a suit that sought indemnification from a stevedore-contractor for damages incurred by the shipowner after the shipowner paid the longshoreman's claim.[167] The longshoreman received fatal injuries while he was loading cargo when the port shackle parted and the connecting parts recoiled and dropped to the after port deck onto the longshoreman.[168] The Eastern District of Pennsylvania denied the shipowner's claim for Ryan indemnification because the parties' agreement contained an express disclaimer.[169] Under the terms of the disclaimer, if the unseaworthiness of the vessel contributed jointly with the stevedore-contractor's negligence to cause the longshoreman's injury, the shipowner waived indemnity unless it was shown that the stevedore-contractor could have avoided the injury through the exercise of due diligence.[170] According to the court, because the stevedore-contractor had no such opportunity here, the disclaimer was enforced.[171]

2. Defenses to Ryan Indemnity

In *Weyerhaeuser Steamship Co. v. Nacirema Operating Co.*[172] the Supreme Court established a defense to Ryan indemnity for stevedore-contractors. In that case, the plaintiff longshoreman was injured when a piece of wood struck him after it fell from the top of a temporary winch shelter.[173] The longshoreman sued the shipowner on claims of negligence and unseaworthiness, and he recovered damages.[174] The shipowner, in turn, claimed a right to indemnification

164. David Crystal, Inc. v. Cunard S.S. Co., 339 F.2d 295, 300 (2d Cir. 1964).
165. *See id.*
166. 379 F. Supp. 1131 (E.D. Pa. 1974).
167. *See id.* at 1132.
168. *See id.* at 1134.
169. *See id.* at 1142.
170. *See id.* at 1139. The express disclaimer stated:

> The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from ... bodily injury to or death of persons: (1) If the unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing ... injury or death, and the Contractor, its officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

Id.

171. *See id.* at 1140-41.
172. 355 U.S. 563 (1958).
173. *See id.* at 565-66.
174. *See id.* at 564.

from the stevedore-contractor for the damages the shipowner paid to the longshoreman.[175] The district court directed a verdict for the stevedore-contractor;[176] the Second Circuit affirmed.[177] On appeal, the Supreme Court created an ambiguous standard under which stevedore-contractors could defend themselves against shipowners' claims of Ryan indemnification.[178] According to the Court, if the stevedore-contractor's performance led to the foreseeable liability of the shipowner, the shipowner was entitled to Ryan indemnity "absent conduct on its part sufficient to preclude recovery."[179] The Court held that, in this particular case, the standard was not met, and that the stevedore-contractor had to indemnify the shipowner.[180]

While the Court did not clearly define the standard of conduct that would be required to defend against Ryan indemnity, subsequent decisions attempted to fill this gap. In *Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co.*,[181] the shipowner sued the stevedore-contractor for indemnification of damages awarded to a longshoreman who was injured on the job.[182] The court held that for indemnification to be properly applied, the shipowner must affirmatively demonstrate that the stevedore-contractor breached its implied warranty of workmanlike performance, and that the breach caused the longshoreman's injuries.[183] According to the court, if the shipowner's conduct prevented or actively hindered the stevedore-contractor's performance, the stevedore-contractor's breach of the warranty is excused as a matter of law.[184]

3. The Connection Between the LHWCA and Ryan Indemnity

Longshoremen were not forced by the LHWCA to select between an unseaworthiness action against shipowners and the right to workers' compensation from stevedore-contractors.[185] The existence of an unseaworthiness claim resulted in many more longshoremen recoveries against shipowners—"third-party tortfeasors"—than land-based negligence law would have provided.[186] Longshoremen had no tort action against stevedore-contractors because LHWCA remedies were exclusive;[187] however, they did not pressure stevedore-contractors to increase workers' compensation benefits because they could still re-

175. *See id.*
176. *See id.* at 564-65.
177. *See id.* at 565.
178. *See id.* at 567.
179. *Id.*
180. *See id.*
181. 444 F.2d 727 (3d Cir. 1971).
182. *See id.* at 727.
183. *See id.*
184. *See id.* at 733.
185. *See* Morton, *supra* note 78, at 100.
186. *See id.*
187. *See* 33 U.S.C. § 905(a) (1994).

cover substantial judgments under unseaworthiness claims against the shipowners.[188] In addition, under *Ryan*, shipowners received indemnification from negligent stevedore-contractors for the judgments placed against shipowners by longshoremen.[189] Therefore, longshoremen eventually recovered their damages from stevedore-contractors, but the recovery process involved two courts and three parties.[190] Further, even though stevedore-contractors' liability for compensation under the LHWCA was supposed to be "exclusive and in place of all other liability,"[191] the Supreme Court refused to interpret that provision to prevent shipowners from receiving Ryan indemnity from stevedore-contractors who breached their implied warranties of workmanlike performance.[192] Thus, the stevedore-contractors were not only liable to the shipowner for breach of an implied warranty when at fault, but they were also liable to the longshoremen for workers' compensation regardless of fault.[193] Commentators criticized this "indemnity triangle" because it created superfluous litigation and unnecessarily consumed the resources of the courts.[194] Additionally, the injured workers received a low proportionate recovery when compared with the total costs of litigation.[195]

After studying the problems created by *Sieracki* and *Ryan*, Congress decided that the money spent on third-party litigation between shipowners and stevedore-contractors could be better used to com-

188. *See* Robert M. Steeg, *The Exclusivity of Federal Longshoremen's Compensation After the LHWCA Amendments of 1972*, 10 J. Mar. L. & Com. 395, 400 (1979).

189. *See* Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 134-35 (1956).

190. *See* Kammer, *supra* note 138, at 260; *see also* Kakavas v. Flota Oceanica Brasileira, S.A., 789 F.2d 112, 117 (2d Cir. 1986) (observing that the liability scheme resulted in "an anomalous and intolerable situation" where a large portion of a longshoreman's award ended up in the hands of not only his lawyer, but also the stevedore's insurer as repayment of the compensation benefits already received).

191. 33 U.S.C. § 905(a).

192. *See Ryan*, 350 U.S. at 135 (Black, J., dissenting).

193. *See* Morton, *supra* note 78, at 100-01; *see also* Derr v. Kawasaki Kisen K.K., 835 F.2d 490, 492 (3d Cir. 1987) (stating that because of the circuitous scheme, the stevedore not only paid the longshoreman's compensation award, but he also paid the award made against the shipowner in the form of indemnity).

194. *See* Samuel A. Keesal, Jr. et al., *Shipowners' Liability for Longshoremen Personal Injuries: The Supreme Court Blocks the "Importation" of Unseaworthiness*, 7 U.S.F. Mar. L.J. 67, 72-73 (1994); Roy A. Perrin III, Note, *The Return of Section 905(b) Vessel Negligence Claims to the Realm of Traditional Maritime Torts:* Richendollar v. Diamond M. Drilling Company, Inc., 12 Tul. Mar. L.J. 405, 407-08 (1988); *see also* David W. Robertson, *Current Problems in Seamen's Remedies: Seaman Status, Relationship Between Jones Act and LHWCA, and Unseaworthiness Actions by Workers Not Covered by LHWCA*, 45 La. L. Rev. 875, 900 (1985) (noting that the result of *Sieracki* and *Ryan* "was to expose the employer of workers covered by LHWCA to full tort liability in most cases in which unseaworthiness could be shown, despite the Act's provision for workers' compensation as the employer's exclusive liability").

195. *See* H.R. Rep. No. 92-1441, at 5 (1972), *reprinted in* 1972 U.S.C.C.A.N. 4698, 4702.

pensate injured workers.[196] Congress believed that the stevedore-contractor's warranty of workmanlike performance and the shipowner's warranty of seaworthiness "did not offer the compensating factors [of] a legislatively established workmen's compensation system."[197]

B. *The Repeal of* Ryan *for Longshoremen*

In 1972, Congress ended this triangular liability. Congress, through amendment of the LHWCA, eliminated the doctrine of unseaworthiness to longshoremen and the remedy of indemnification to shipowners.[198] The amendments created a compromise between the competing interests of shipowners, stevedore-contractors, and longshoremen. Under the amendments, longshoremen and shipowners could no longer invoke the remedies available to them under *Sieracki* and *Ryan*, namely, unseaworthiness and indemnification.[199] Further, the amendments gave longshoremen a negligence cause of action against shipowners, and increased longshoremen's workers' compensation benefits.[200]

According to the House committee reports, the purpose of the 1972 amendments was to create an effective workers' compensation pro-

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196. *See id., reprinted in* 1972 U.S.C.C.A.N. 4698, 4702.

197. James M. Hazen & John M. Toriello, *Longshoremen's Personal Injury Actions Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 53 St. John's L. Rev. 1, 6-7 (1978).

198. *See* 33 U.S.C. § 905(b) (1994). The amended LHWCA states:

> In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner *pro hac vice*, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner *pro hac vice*, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

Id.

199. *See* Grice v. A/S J. Ludwig Mowinckles, 477 F. Supp. 365, 368 (S.D. Ala. 1979) (observing that the 1972 amendments were not only a compromise enacted to eliminate the unseaworthiness remedy in exchange for increased compensation benefits, but they also attempted to "overrule . . . the whole judicially-built *Sieracki/Ryan* complex which had so effectively nullified the Congressional intent as set out in the exclusivity portions of the Longshoremen's Act").

200. *See* H.R. Rep. No. 92-1441, at 3, 6 (1972), *reprinted in* 1972 U.S.C.C.A.N. 4698, 4700, 4703.

gram.[201] The amendments provided injured longshoremen with sufficient compensation, while inducing stevedore-contractors to provide the greatest measure of worker safety.[202] The committee acknowledged that longshoremen had a dangerous job:

> It is important to note that adequate workmen's compensation benefits are not only essential to meeting the needs of the injured employee and his family, but, by assuring that the employer bears the cost of unsafe conditions, serve to strengthen the employer's incentive to provide the fullest measure of on-the-job safety.[203]

The amendments were also designed to eliminate third-party litigation between the shipowner and stevedore-contractor. Thus, the monetary resources of stevedore-contractors, instead of being wasted on litigation costs, could be more efficiently used to pay higher compensation benefits.[204] For example, the maximum LHWCA recovery for disability or death was changed from seventy dollars per week to 200% of the applicable national average weekly wage of the injured worker's occupation.[205]

While increasing the amount of workers compensation that longshoremen could receive, Congress also decided that a claim of unseaworthiness was no longer an appropriate remedy for longshoremen. As the House Report noted:

> [T]he seaworthiness concept was developed by the courts to protect seamen from the extreme hazards incident to their employment which frequently requires long sea voyages and duties of obedience to orders not generally required of other workers. The rationale which justifies holding the vessel absolutely liable to seamen if the vessel is unseaworthy does not apply with equal force to longshoremen and other non-seamen working on board a vessel while it is in port.[206]

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201. *See id.* at 1, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4698-99.
202. *See id.*, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4699.
203. *Id.*, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4699.
204. *See* Keesal et al., *supra* note 194, at 73. The House committee report stated:

> The Committee heard testimony that the number of third-party actions brought under the *Sieracki* and *Ryan* line of decisions has increased substantially in recent years and that much of the financial resources which could better be utilized to pay improved compensation benefits were now being spent to defray litigation costs.

H.R. Rep. No. 92-1141, at 5, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4702.

205. *See* 33 U.S.C. § 906(b) (1994). This average is determined annually by the Secretary of Labor. *See id.*

206. H.R. Rep. No. 92-1141, at 6, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4703. In the Committee Report that recommended the 1972 Amendments to the LHWCA, the House Committee on Education and Labor noted:

> [We] also reject[ ] the thesis that a vessel should be liable without regard to its fault for injuries sustained by employees covered under this Act while working on board the vessel. Vessels have been held to what amounts to such absolute liability by decisions of the Supreme Court, . . . which held that the traditional seamen's remedy based on the breach of the vessel's absolute, nondelegable duty to provide a seaworthy vessel was also available to long-

In establishing § 905(b),[207] Congress intended to provide longshoremen with a cause of action against shipowners under the "traditional principles of land-based tort law."[208] Congress aimed to eliminate the uniqueness of certain longshoremen claims, such as the strict liability included in the unseaworthiness cause of action.[209] Under the amendments, then, a shipowner's liability is limited to his actual negligence.[210] Congress did not, however, define negligence in the

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> shoremen and others who performed work on the vessel which by tradition has been performed by seamen. Under the *Sieracki* case, vessels are liable, as third parties, for injuries suffered by longshoremen as a result of "unseaworthy" conditions even though the unseaworthiness was caused, created, or brought into play by the stevedore (or an employee of the stevedore) rather than the vessel or any member of its crew. For example, under present law, if a member of a longshore gang spills grease on the deck of a vessel and a longshoreman slips and falls on the grease a few moments later, the vessel is liable to pay damages for the resulting injuries, even though no member of the crew was responsible for creating the unseaworthy condition or was even aware of it. Furthermore, . . . under the Supreme Court's decision in *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.*, . . . the vessel may recover the damages for which it is liable to the injured longshoreman from the stevedore which employed the longshoreman on the theory that the stevedore has breached an express or implied warranty of workmanlike performance to the vessel. The end result is that, despite the provision in the [LHWCA] which limits an employer's liability to the compensation and medical benefits provided in the [LHWCA], a stevedore-employer is indirectly liable for damages to an injured longshoreman who utilizes the technique of suing the vessel under the unseaworthiness doctrine.

Id. at 4-5, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4702 (citations omitted).

207. *See supra* notes 198-201 and accompanying text (discussing the purpose of the 1972 amendments to the LHWCA).

208. Kaye A. Pfister, *A Review of Shipowners' Statutory Duty Under Section 905(b) of the Longshoremen's and Harborworkers' Compensation Act: Does* Scindia *Require a Change in Course?*, 1983 Duke L.J. 153, 159. As one commentator observed:

> The legislative history of the 1972 Amendments stresses the need for encouraging safety procedures on the part of both the vessel owner and the stevedore. The objective of safety was given as a reason for establishing a negligence standard on the part of the vessel's interest and for increasing the compensation benefits to the injured worker. Additionally, the legislative history of the statute categorically states that the vessel shall not be responsible for the conduct, acts, omissions, or equipment of the stevedore or the method in which the stevedoring operations are conducted.

Gus A. Schill, Jr., *Recent Developments Regarding Maritime Contribution and Indemnity*, 51 La. L. Rev. 975, 992 (1991).

209. The House Report stated:

> The purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as "unseaworthiness", "non-delegable duty", or the like.

H.R. Rep. No. 92-1441, at 6, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4703.

210. One commentator explained why the unseaworthiness cause of action was eliminated for longshoremen:

> Application of the concept of strict statutory liability to LHWCA cases is inconsistent not only with the relevant case law, but also with the clear intent

LHWCA, nor did it provide a guideline regarding the acts or omissions of the vessel owner that constituted negligence.[211]

The amendments even provided for the unusual situation in which a shipowner performs as his own stevedore rather than hiring one. In these instances, the shipowner is responsible for the safety and welfare of its longshoremen employees.[212] As Congress observed, "the rights of an injured longshoreman . . . should not depend on whether he was employed directly by the vessel or by an independent contractor."[213] The shipowner-stevedore is charged with actual knowledge of any unreasonably dangerous condition or unreasonable risk of damage to longshoremen.[214] A shipowner-stevedore cannot claim to have relied on the stevedore's warranty of workmanlike performance.[215] Under these circumstances, the shipowner is held to a higher standard of care for the longshoreman's safety.[216]

Subsequent to the amendments, the Supreme Court recognized the legislative overruling of *Ryan* and *Sieracki* as applied to longshoremen.[217] In *Edmonds v. Compagnie Generale Transatlantique*,[218] the

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> of Congress in enacting section 905(b) to predicate vessel liability on the shipowner's actual negligence. Such an application would upset the delicate balance between vessel liability and the stevedore's duty of care under section 905(b), and frustrate the compromise effected by Congress in enacting the 1972 amendments to the LHWCA. The section 905(b) denial of the shipowners' right to indemnity from stevedores was balanced by limiting the shipowners' liability for negligence. Because the courts have strictly interpreted section 905(b) in refusing shipowners indemnity from partially negligent stevedores, fairness requires that the courts be equally strict in requiring that vessels be liable only for their own negligence.

Pfister, *supra* note 208, at 173-74 (footnotes omitted).

211. *See* Wright et al., *supra* note 72, at 507.

212. *See* Canizzo v. Farrell Lines, Inc., 579 F.2d 682, 689 (2d Cir. 1978) (Friendly, J., dissenting) ("Where . . . there is no independent contractor, it *is* part of the ship's duty to exercise reasonable care to inspect its own workers' workplace, to remove grease spills, etc. In such a case there is no 'independent contractor' with primary responsibility upon whom the ship may properly rely.").

213. H.R. Rep. No. 92-1441, at 7, *reprinted in* 1972 U.S.C.C.A.N. 4698, 4705.

214. *See* Pfister, *supra* note 208, at 169 ("Because [in this situation the defendant] *is* both owner and employer, any knowledge chargeable to it as employer must also be attributed to it as owner." (quoting Robertson v. Jeffboat, Inc., 651 F.2d 434, 436 (6th Cir. 1981))).

215. *See* Napoli v. Hellenic Lines, Ltd., 536 F.2d 505, 508 (2d Cir. 1976) (finding that "a charge which relieves a shipowner of liability for a dangerous condition which was 'known to the stevedore or to any of its employees' is clearly inappropriate where the shipowner, itself, is the stevedore").

216. *See, e.g.*, Fanetti v. Hellenic Lines Ltd., 678 F.2d 424, 428 (2d Cir. 1982). In some instances, longshoremen are employed directly by shipowners, rather than being employed by independent stevedoring contractors. The Supreme Court, in *Reed v. The Yaka*, 373 U.S. 410, 415-16 (1963), held that a longshoreman could bring an action against the shipowner under the LHWCA, even if the longshoreman was directly employed by the shipowner.

217. *See* Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256, 262 (1979) (stating that the 1972 amendment eliminated a longshoremen's claim for unseaworthiness and a shipowner's claim for indemnity against the stevedore); Schill, *supra* note 208, at 977 ("The result of the statutory prohibition was that the vessel

plaintiff longshoreman was injured while he unloaded cargo from a vessel.[219] In determining causation, the district court allocated twenty percent of the fault to the shipowner, seventy percent of the fault to the stevedore-contractor, and ten percent of the fault to the longshoreman.[220] The LHWCA, however, precluded the longshoreman and shipowner from recovering any damages from the negligent stevedore-contractor.[221] The district court reduced the longshoreman's award by the ten percent attributable to his own negligence, but refused to lower the award by the seventy percent attributable to the stevedore-contractor's negligence.[222] The district court, therefore, held the shipowner liable for ninety percent[223] of the damages.[224] On appeal, the Fourth Circuit reversed, holding that as a result of the 1972 amendments to the LHWCA, the shipowner was liable only for his share of the total damages.[225] The Supreme Court, however, reversed the circuit court and permitted the longshoreman to recover ninety percent of his damages from the shipowner.[226] The Court reasoned that Congress, through its amendments to the LHWCA, did not intend to adopt a proportionate fault rule,[227] because such a rule "place[d] the burden of the inequity on the longshoreman whom the [LHWCA] seeks to protect."[228] According to the Court, a shipowner's liability is not limited to his proportion of fault; he is liable for all damages that were not caused by the longshoreman's own negligence.[229]

The amendments to the LHWCA contained no specific or definite standard regarding how negligence would be determined. In *Scindia Steam Navigation Co. v. De Los Santos*,[230] the Court responded and set forth the appropriate standard. In *Scindia*, the plaintiff longshoreman sued the shipowner for injuries the plaintiff received while loading the ship.[231] The plaintiff was struck by cargo that fell from a

owner could make no recovery from the injured longshoreman's employer based upon either the Ryan implied contractual duty, an express contractual undertaking, or contribution predicated upon tort concepts." (footnote omitted)).

218. 443 U.S. 256 (1979).

219. *See id.* at 258.

220. *See id.*

221. *See id.* at 262-63.

222. *See id.* at 258.

223. The 90% represented the 20% the longshoreman could recover from the shipowner plus the 70% the longshoreman could not recover from the stevedore-contractor. *See id.*

224. *See id.*

225. *See id.* at 258-59.

226. *See id.* at 268.

227. *See id.* at 269.

228. *Id.* at 270 (footnote omitted).

229. *See id.* at 271.

230. 451 U.S. 156 (1981).

231. *See id.* at 158.

pallet, which was held in suspension by a winch[232] that malfunctioned.[233] The plaintiff claimed that the shipowner knew or should have known about the malfunctioning winch and that it did not intervene to prevent the plaintiff's injuries.[234] First, the Court acknowledged that the legislative history of the 1972 amendments failed to provide "sure guidance" for their construction.[235] The Court then held that the shipowner's and the stevedore's duties fell into several categories. First, the shipowner must exercise ordinary care under the circumstances.[236] For example, the shipowner must have the ship and its equipment in such condition that an experienced stevedore-contractor, through the use of reasonable care, would be able to conduct its cargo operations with reasonable safety to all persons and property.[237] Second, the shipowner has a duty to warn the stevedore of the dangers existing on the vessel or its equipment that should be known by the shipowner through the exercise of reasonable care,[238] that would likely be encountered by the stevedore during his cargo operations, and that are not known by the stevedore.[239] Third, the shipowner is liable if he actively involves himself with the cargo operations and thereby negligently harms a longshoreman.[240] Fourth, the shipowner is liable if he fails to exercise due care to protect the longshoreman from any dangers they may confront in areas or from equipment under the active control of the shipowner during the stevedore-contractors' operation.[241] Fifth, if the shipowner has knowledge of a danger or defect that exists during the loading or unloading of the vessel that the stevedore-contractor cannot or will not correct, then the vessel owner has a duty to intervene by either stopping the operation or repairing the defect.[242]

Scindia also held that if the shipowner retains no control over the vessel, then he has no general duty to supervise or inspect the work of the stevedoring employees.[243] Further, according to the Court, the shipowner has no duty to prevent the development of hazardous conditions that occur within the area of cargo operations that are assigned to the stevedore-contractor, "absent contract provision, positive law

232. *See id.* at 161-62. A winch is a "large wheel turned by a handle or motor and having attached to its axle a cable or chain, by means of which a load may be raised or lowered." Webster's Dictionary 1126 (Int'l ed. 1995).
233. *See Scindia*, 451 U.S. at 160.
234. *See id.* at 161-62.
235. *Id.* at 165.
236. *See id.* at 167.
237. *See id.*
238. *See id.*
239. *See id.*
240. *See id.*
241. *See id.*
242. *See id.* at 175-76.
243. *See id.* at 167.

or custom to the contrary."[244] The Court reasoned that the imposition of such a duty "would repeatedly result in holding the shipowner solely liable for conditions that are attributable to the stevedore, rather than the ship."[245]

The enactment of the 1972 amendments to the LHWCA, and the Supreme Court's decisions in *Edmonds* and *Scindia*, signaled the fall of Ryan indemnity in longshoremen cases. The problems faced by stevedore-contractors under *Ryan* were eliminated. Nevertheless, Ryan indemnity has survived in cases where seamen, rather than longshoremen, are injured. As discussed in part III, the application of Ryan indemnity to seamen is a matter of continuing controversy.

III. The Continued Application of Ryan Indemnity in Seamen Personal Injury Cases

When a seaman raises only an unseaworthiness claim against a shipowner, there is general agreement among circuit courts that the shipowner may receive indemnification from the stevedore-contractor.[246]

244. *Id.* at 172.

245. *Id.* at 169. The Court supported its reasoning by citing to *Hurst v. Triad Shipping Co.*, 554 F.2d 1237 (3d Cir. 1977). In *Hurst*, the Third Circuit observed that the "creation of a shipowner's duty to oversee the stevedore's activity and ensure the safety of longshoremen would . . . saddle the shipowner with precisely the sort of nondelegable duty that Congress sought to eliminate by amending section 905(b)." *Id.* at 1249-50 n.35.

Justice Brennan offered his own opinion in *Scindia* regarding the duties that should be imposed on the vessel owner:

> My views are that under the 1972 Amendments: (1) a shipowner has a general duty to exercise reasonable care under the circumstances; (2) in exercising reasonable care, the shipowner must take reasonable steps to determine whether the ship's equipment is safe before turning that equipment over to the stevedore; (3) the shipowner has a duty to inspect the equipment turned over to the stevedore or to supervise the stevedore if a custom, contract provision, law or regulation creates either of those duties; and (4) if the shipowner has actual knowledge that equipment in the control of the stevedore is in an unsafe condition, and a reasonable belief that the stevedore will not remedy that condition, the shipowner has a duty either to halt the stevedoring operation, to make the stevedore eliminate the unsafe condition, or to eliminate the unsafe condition itself.

Scindia Steam Navigation Co. v. De Los Santos, 451 U.S. 156, 179 (1981) (Brennan, J., concurring).

246. *See* Knight v. Alaska Trawl Fisheries, Inc., 154 F.3d 1042, 1045 (9th Cir. 1998) ("This and other circuits . . . have recognized the continued vitality of Ryan indemnity in seamen cases."); Fairmont Shipping Corp. v. Chevron Int'l Oil Co., 511 F.2d 1252, 1259 (2d Cir. 1975) ("[I]n our view *Ryan*, by necessary implication, confirmed the applicability to maritime service contracts of the hornbook rule of contract law that one who contracts to provide services impliedly agrees to perform in a diligent and workmanlike manner."); *see also* David Ashley Bagwell, *Continuing Problems After the Supposed Demise of Ryan Indemnity in U.S. Admiralty Law*, 1982 Lloyd's Mar. & Com. L.Q. 556, 558 (suggesting that a litigant must satisfy six requirements to be entitled to Ryan indemnity. A litigant must be (1) a shipowner, (2) that depended on the expertise of the stevedore-contractor, who (3) entered into a contract, (4) where the stevedore-contractor agreed to perform services without supervised control by the

Additionally, courts agree that if a seaman raises a claim solely under Jones Act negligence, a negligent shipowner cannot receive Ryan indemnity from a stevedore-contractor.[247] The circuit courts are divided, however, on whether a shipowner who is liable to a seaman for both unseaworthiness and Jones Act negligence should be indemnified by a negligent stevedore-contractor.[248] The Third,[249] Fourth,[250] and Sixth[251] Circuits apply Ryan indemnity in these circumstances, even if the shipowner's fault can be determined proportionately to the stevedore-contractor's fault. These courts base their reasoning on *Ryan*'s implied warranty of workmanlike performance that stevedore-contractors owe to the shipowner, thus negating any concepts of negligence.[252] On the other hand, the Second,[253] Fifth,[254] Ninth,[255] and Eleventh[256] Circuits have rejected Ryan indemnity and have applied comparative fault in seamen personal injury cases. This part examines the split and suggests a solution.

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shipowner, and (5) the stevedore-contractor's improper performance of services foreseeably renders the ship unseaworthy, or brings into play a pre-existing unseaworthy condition, (6) which subjects the shipowner to liability regardless of fault); W. Robins Brice, *Solidarity and Contribution in Maritime Claims*, 55 La. L. Rev. 799, 806 (1995) ("[T]he unseaworthiness remedy is . . . still available for seamen . . . . In these circumstances, Ryan indemnity is also . . . still available . . . . [Ryan indemnity] remains a contractual concept, however, based on an implied warranty of workmanlike performance, and is therefore not a contribution or joint and several liability theory."); Schill, *supra* note 208, at 993 (arguing that Ryan indemnity is not "'withered,' as the Supreme Court has given no indication that *Ryan* has lost vitality in situations which do not involve an injury within the scope of the Longshore Act"); Marie R. Yeates et al., *Contribution and Indemnity in Maritime Litigation*, 30 S. Tex. L. Rev. 215, 231 (1989) (noting that the warranty of workmanlike performance still exists under certain circumstances); Lisa Brener Cusimano, Note, *Contractual Indemnity Under Maritime and Louisiana Law*, 43 La. L. Rev. 189, 207 (1982) ("Where the third party is a non-vessel or the plaintiff is not covered by the act, both express and implied contractual indemnity are allowed. The general disposition of the courts to allow indemnification against one's own negligence in maritime contracts remains.").

247. *See Knight*, 154 F.3d at 1045; *see also supra* notes 158-60 and accompanying text (discussing shipowner liability under *Ryan*).

248. *See Knight*, 154 F.3d at 1045-46.

249. *See* Cooper v. Loper, 923 F.2d 1045, 1050-51 (3d Cir. 1991).

250. In *Knight*, 154 F.3d at 1045, the court cites *Farrell Lines, Inc. v. Carolina Shipping Co.*, 509 F.2d 53 (4th Cir. 1975). *Farrell Lines*, however, is inapposite as it involves a longshoreman, not a seaman. *See id.* at 54. Nevertheless, the Fourth Circuit has applied Ryan indemnity in seamen cases even when the shipowner is concurrently negligent. *See Heyman v. ITO Corp.*, 1992 A.M.C. 2654, 2656 (4th Cir. 1992).

251. *See* Oglebay Norton Co. v. CSX Corp., 788 F.2d 361, 367 (6th Cir. 1986).

252. *See Knight*, 154 F.3d at 1044-45; *see also supra* notes 152-55, 158-60 and accompanying text (discussing Ryan indemnity and the implied warranty of workmanlike performance).

253. *See* Black v. Red Star Towing & Transp. Co., 860 F.2d 30, 34 (2d Cir. 1988).

254. *See* Loose v. Offshore Navigation, Inc., 670 F.2d 493, 501-02 (5th Cir. 1982).

255. *See Knight*, 154 F.3d at 1046.

256. *See* Smith & Kelly Co. v. S/S Concordia TADJ, 718 F.2d 1022, 1028 (11th Cir. 1983).

A. *Arguments for Preserving Ryan Indemnity*

The purpose of Ryan indemnity is to place liability upon the party who is in the best position to prevent accidents and reduce the risk of harm.[257] This policy "serves to allocate risks among those segments of the enterprise best able to minimize the particular risk involved."[258] The justification for the policy is straightforward: shipowners should not be liable for harm they could not have prevented through the exercise of reasonable care.[259] Further, the doctrine assures that stevedore-contractors will feel the sting of their conduct; otherwise, they would have no legal incentive to mend their negligent behavior. Indeed, seamen's work is no longer what it used to be.[260] In early times, shipowners and seamen could be expected to fully master every aspect of the ship.[261] Stevedoring, however, has become its own specialty area of practice, with concerns and problems unique to its field.[262] What may be special to the seaman or shipowner is ordinary to the stevedore-contractor. Therefore, the stevedore-contractor, while reaping the benefits of his specialty skills, could also reasonably be expected to shoulder the costs of any accidents he causes.

In addition, principles of comparative negligence are arguably inapposite to the contract relationship between the stevedore-contractor and the shipowner. Ryan indemnity is not based on tort principles of contribution, but instead rests on the theory that the stevedore-contractor has an implied contractual duty to render a workmanlike performance.[263] Therefore, even if fault could be proportioned between a shipowner and a stevedore-contractor, liability stems from the breach of the implied warranty, rather than the failure to exercise due care. Comparing fault is inappropriate in a contract-based action under Ryan indemnity, because indemnification is based upon "an

257. *See* Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 323-24 (1964); Heyman v. ITO Corp., 1992 A.M.C. 2654, 2657 (4th Cir. 1992); Oglebay Norton Co. v. CSX Corp., 788 F.2d 361, 367 (6th Cir. 1986).

258. *Oglebay*, 788 F.2d at 365 (quoting Henry v. A/S Ocean, 512 F.2d 401, 406 (2d Cir. 1975)).

259. *See generally* Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 134-35 (1956) ("[T]he contractor, as the warrantor of its own services, cannot use the shipowner's failure to discover and correct the contractor's own breach of warranty as a defense.").

260. *See* Marshall v. Manese, 85 F.2d 944, 945-46 (4th Cir. 1936).

261. *See id.*

262. *See id.*

263. *See Ryan*, 350 U.S. at 133-34; *see also* Heyman v. ITO Corp., 1992 A.M.C. 2654, 2657 (4th Cir. 1992) (finding that a shipowner was entitled to Ryan indemnity when the ship's officer was injured because the loading stevedore negligently operated its equipment); Cooper v. Loper, 923 F.2d 1045, 1051 (3d Cir. 1991) (concluding that a shipowner should receive full indemnity because the stevedore-contractor breached its duty of workmanlike performance through the conduct of its employees); *Oglebay*, 788 F.2d at 367 (holding that the shipowner was entitled to Ryan indemnity because the stevedore-contractor breached its warranty of workmanlike performance).

agreement between the shipowner and stevedore and is not necessarily affected or defeated by the shipowner's negligence, whether active or passive, primary or secondary."[264] Thus, proponents of Ryan indemnity suggest, if the stevedore-contractor breaches its warranty, a shipowner is entitled to full indemnity from the stevedore-contractor.[265]

Ryan indemnity is not impenetrable. Courts that continue to recognize Ryan indemnity refuse to apply it if the shipowner's negligent conduct prevented or actively hindered the stevedore-contractor from performing his duties in a workmanlike manner.[266] In such instances, the shipowner was the cause in fact of the accident, and should bear

264. Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 321 (1964).

265. *See Heyman*, 1992 A.M.C. at 2657; *Cooper*, 923 F.2d at 1051 ("Because Ryan indemnity rests on the theory that the stevedore has an implied contractual duty to render workmanlike service, tort principles of contribution do not apply."); *Oglebay*, 788 F.2d at 365-68 (rejecting the magistrate judge's application of comparative fault); Dobbins v. Crain Bros., 567 F.2d 559, 568-69 (3d Cir. 1977) (reversing a lower court's 75% to 25% apportionment of damages); Gilchrist v. Mitsui Sempaku K.K., 405 F.2d 763, 768 (3d Cir. 1968) ("The law of indemnity is not concerned with the comparison or degree of fault of the shipowner and the stevedor[e]."). As the Third Circuit observed:

> The *Ryan* doctrine is not, however, a precision instrument for allocating the burden according to the relative amounts of fault, but a rough all-or-nothing device. Even where the shipowner and the contractor are both at fault, under the *Ryan* warranty doctrine indemnity will be allowed wholly or not at all.

Cooper, 923 F.2d at 1051 (quoting Parfait v. Jahncke Serv., Inc., 484 F.2d 296, 302 (5th Cir. 1973)).

266. *See Heyman*, 1992 A.M.C. at 2657; *Cooper*, 923 F.2d at 1050-51 ("A stevedore does not impliedly contract to provide indemnity under all circumstances, however. If a stevedore can prove that the shipowner's conduct prevented or seriously impeded the stevedore from performing in a workmanlike manner, then indemnity will be denied."); Turner v. Global Seas, Inc., 505 F.2d 751, 753 (6th Cir. 1974) (finding that conduct sufficient to preclude recovery is "conduct which prevented or seriously hampered [a contractor's] performance of its duty in accordance with its warranty"). Other circuits have similarly defined shipowner conduct that is sufficient to preclude recovery. *See* Hanseatische Reederei Emil Offen & Co. v. Marine Terminals Corp., 590 F.2d 778, 782 (9th Cir. 1979) (stating that shipowner indemnification is denied when the shipowner's conduct "effectively prevents the stevedore from satisfying its implied warranty of workmanlike service"); LeBlanc v. Two-R Drilling Co., 527 F.2d 1316, 1321 (5th Cir. 1976) (asserting that to deny recovery for indemnification one must focus on "whether conduct or circumstances of the condition for which Shipowner has a legal responsibility seriously impeded or prevented Contractor from performing the job in a safe and workmanlike manner"); Henry v. A/S Ocean, 512 F.2d 401, 407 (2d Cir. 1975) (declaring that indemnification is precluded "only where [the shipowner] prevented or seriously handicapped the stevedore in his effort to perform his duties"). *But see* Western Tankers Corp. v. United States, 387 F. Supp. 487, 491 (S.D.N.Y. 1975) (finding that a shipowner's negligence is enough to preclude indemnity if he is the "best situated to adopt preventive measures and thereby reduce the likelihood of injury . . . from the dangers caused by the unsafe berth"); *see also supra* notes 179, 184 and accompanying text (discussing defenses to Ryan indemnity).

the costs of its misconduct.[267] The court must weigh the fault with respect to the stevedore-contractor's breach of the warranty of workmanlike performance, instead of weighing fault with respect to the seaman's personal injury.[268] If the court finds that the shipowner's conduct prevented the stevedore-contractor from performing its duties in a workmanlike manner, then the shipowner's right to indemnification may be revoked. Thus, Ryan indemnity, which may at first appear to be an unyielding rule, does bend to serve admiralty interests. One of the fundamental tenets of admiralty law is the protection of seamen. The Ryan indemnity rule is flexible enough to extract damages from the party that caused the harm, while firm enough to encourage all parties to exercise reasonable care.

B. *Arguments for Rejecting Ryan Indemnity*

On the other hand, some circuits have rejected Ryan indemnity and stevedore-contractors' implied warranty of workmanlike performance when the shipowner is liable under negligence and unseaworthiness theories.[269] Instead, these courts believe, the best way to advance *Ryan*'s goal of placing liability where it truly belongs is by allocating damages between the stevedore-contractor and shipowner based on their relative degrees of fault.[270] One of the justifications of *Ryan* was "to place ultimate liability on the party who was truly at fault and who should mend his negligent ways to prevent future injury."[271] A party, however, has little incentive to take affirmative protective steps when it is clothed with all-or-nothing indemnity.[272] A stevedore-contractor should not have to pay a shipowner for the injuries the shipowner helped to create.[273] The principles of comparative fault result in "the just and equitable allocation of damages";[274] holding a non-negligent indemnitor liable would adversely affect this allocation.[275] Under this reasoning, *Ryan*'s rule is an unnecessary limit on the power of courts to administer justice in seamen personal injury cases. While seamen

267. *See Cooper*, 923 F.2d at 1051 (finding that although the vessel's deck was slippery, a condition that contributed to the accident, this did not prevent the stevedore-contractor from fulfilling his warranty, because the slippery deck did not prevent or actively hinder the stevedore's performance).

268. *See Oglebay*, 788 F.2d at 366.

269. *See* Knight v. Alaska Trawl Fisheries, Inc., 154 F.3d 1042, 1046 (9th Cir. 1998); Black v. Red Star Towing & Transp. Co., 860 F.2d 30, 34 (2d Cir. 1988); Smith & Kelly Co. v. S/S Concordia TADJ, 718 F.2d 1022, 1028 (11th Cir. 1983); Loose v. Offshore Navigation, Inc., 670 F.2d 493, 501-02 (5th Cir. 1982).

270. *See* sources cited *supra* note 269.

271. *Knight*, 154 F.3d at 1046 (quoting Flunker v. United States, 528 F.2d 239, 243 (9th Cir. 1975)).

272. *See id.*

273. *See Smith*, 718 F.2d at 1025.

274. *Knight*, 154 F.3d at 1046.

275. *See id.* at 1047 (quoting United States v. Reliable Transfer Co., 421 U.S. 397, 411 (1975)).

will always be protected, this protection should not come at the expense of innocent or nominally negligent parties.

Courts that reject Ryan indemnity in seamen cases have also found that the type or degree of negligence is irrelevant when proportioning fault. *Ryan* served as a "precursor of modern systems of comparative fault because it attempted to transfer ultimate legal liability to the defendant truly in the wrong."[276] The rule required an actively negligent tortfeasor, the stevedore-contractor, to indemnify a passively negligent tortfeasor, the shipowner.[277] Its purpose was to mitigate the rule that disallowed apportionment of damages among tortfeasors.[278] Nevertheless, while the principles of "active" and "passive" negligence were more impartial than the rule of nonapportionment, "active" negligence and "passive" negligence have never been adequately distinguished.[279] Comparative fault, on the other hand, obtains the same objective more precisely and effectively.[280] It is better to determine the tortfeasors' fault according to the facts presented at trial and apportion damages accordingly, rather than to completely exempt passively negligent parties.[281]

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276. Loose v. Offshore Navigation, Inc., 670 F.2d 493, 501 (5th Cir. 1982).

277. *See id.* The Court provided the following jury instructions to describe the difference between active and passive negligence:

> In order for someone's negligence to be active, it must be characterized by some affirmative act. A person is only passively negligent if he fails to do something he should have done. When two or more Defendants are found to be liable to a Plaintiff, and one Defendant was only passively negligent and the other Defendants were actively negligent, that Defendant who is only passively negligent is entitled to indemnification.
>
> If indemnity does not apply, you must consider the question of contribution. Where two or more Defendants are negligent or otherwise at fault, and this fault contributes to causing an injury, each of the Defendants becomes responsible for paying a portion of the damages.

Id. at 499.

278. *See id.* at 501.

279. *See id.* at 502.

280. As the Second Circuit observed:

> When a contributorily negligent seaman is paid maintenance and cure by a non-negligent shipowner, equity dictates that a third-party tortfeasor should not bear liability in excess of its proportionate share of fault . . . . We think that equity, as well as good sense, should serve to limit the liability of a third-party tortfeasor to its proportionate share of fault in *all* cases where reimbursement is sought for maintenance and cure. This sort of claim for reimbursement is nothing more than a claim for contribution under well-settled admiralty principles. Of course, *total contribution*, often called *indemnity*, is owed to the shipowner-employer where a third-party tortfeasor is entirely at fault.

Black v. Red Star Towing & Transp. Co., 860 F.2d 30, 34 (2d Cir. 1988) (citation omitted).

281. *See Loose*, 670 F.2d at 502 ("[T]he concepts of active and passive negligence have no place in a liability system that considers the facts of each case and assesses and apportions damages among joint tortfeasors according to the degree of responsibility of each party.").

Ryan indemnity was established by the Supreme Court "'to correct a particular inequity.'"[282] The Court's intent was to permit a non-negligent shipowner to recover any damages from a negligent stevedore-contractor that the shipowner had to pay to the injured party.[283] As one court has observed, however, "'the more [that a given] case deviates from the original *Ryan* scenario, . . . the less justification there is to apply the warranty.'"[284] Therefore, some circuits reason, Ryan indemnity should not be available to a shipowner who is at fault for a seaman's injury.[285] Indeed, the Supreme Court has never held that Ryan indemnity applies to seamen cases;[286] only lower courts have done so.[287] Further, seamen cases regularly involve fact situations that are different than those originally contemplated by the Court in *Ryan*.[288] For example, seamen are employed by shipowners, while longshoremen are usually employed by stevedore-contractors. It could be reasoned that *Ryan*'s proposition that "the stevedore is better positioned to avoid . . . injuries [to longshoremen] during cargo operations. . . . does not apply to [the] protection of seamen."[289] In such situations, it is arguably more likely that the "apportionment of liability on the basis of comparative fault best advances the goals *Ryan* attempted to achieve"[290] and provides "the fairest solution."[291]

Finally, circuits rejecting Ryan indemnity in seamen cases point out that the general trend in maritime cases is the rejection of an all-or-nothing approach in favor of a comparative fault system, and that the application of comparative fault in seamen personal injury cases simply accompanies this trend.[292] Indeed, the Supreme Court, in *United*

282. Knight v. Alaska Trawl Fisheries, Inc., 154 F.3d 1042, 1046 (9th Cir. 1998) (quoting United States v. C-Way Constr. Co., 909 F.2d 259, 264 (7th Cir. 1990)).

283. *See id.*

284. *Id.* (quoting United States v. C-Way Constr. Co., 909 F.2d 259, 264 (7th Cir. 1990)).

285. *See id.* The court went on to state that "[t]he term 'fault' includes both the shipowner's negligence as well as breach of the seaworthiness warranty. We do not mean to include, however, fault derived from the acts of third parties." *Id.* at 1046 n.5.

286. *See* Smith & Kelly Co. v. S/S Concordia TADJ, 718 F.2d 1022, 1027 (11th Cir. 1983).

287. *See* Heyman v. ITO Corp., 1992 A.M.C. 2654, 2656-57 (4th Cir. 1992); Cooper v. Loper, 923 F.2d 1045, 1050-51 (3d Cir. 1991); Oglebay Norton Co. v. CSX Corp., 788 F.2d 361, 364 (6th Cir. 1986).

288. *See Knight*, 154 F.3d 1042, 1046 (9th Cir. 1998).

289. *Smith & Kelly*, 718 F.2d at 1028.

290. *Id.*

291. *Id.* at 1029.

292. *See id.* at 1030; *see also* McDermott, Inc. v. AmClyde, 511 U.S. 202, 212-21 (1994) (holding that a nonsettling defendant's liability in a maritime case should be calculated according to the jury's allotment of proportionate fault); United States v. Reliable Transfer Co., 421 U.S. 397, 406 (1975) (stating that a vessel owner who is "primarily negligent does not justify its shouldering all responsibility, nor excuse the slightly negligent vessel from bearing any liability at all"); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 408-09 (1953) (utilizing the rule of comparative fault in a seaman's unseaworthiness action against a vessel owner).

States v. Reliable Transfer Co.,[293] held that the allocation of liability for damages in maritime collision cases should be in proportion to the relative degree of fault of each party.[294] The Court observed that in maritime law, comparative fault principles have long been applied without any difficulties in personal injury actions.[295]

C. *Maintaining Ryan Indemnity and Comparative Fault in Seamen Personal Injury Cases When Shipowners Are Held Liable for Unseaworthiness and Jones Act Negligence*

The best solution to this circuit split is to arrive at the middle ground: eliminate Ryan indemnity not only when a shipowner interferes with the stevedore-contractor's performance of his duties, but even when the shipowner becomes actively involved in those duties. If a seaman successfully raises claims of both unseaworthiness and Jones Act negligence, then a shipowner should still receive indemnification from the stevedore-contractor if the stevedore-contractor carried out his operations without the restraint, regulation, or management of the shipowner. Shipowners hire stevedore-contractors to perform their services in a workmanlike manner, and the stevedore-contractor's failure to do so might lead to the shipowner being held liable to seamen. For example, if the stevedore-contractor performs his services in an unworkmanlike manner by bringing unsafe equipment onto the vessel or producing an unsafe condition such as a slippery deck, and a seaman is injured as a result, then the shipowner should be indemnified for any payments made to a seaman as a result. On the other hand, when the shipowner takes on an active involvement in the stevedore-contractor's operations, and the seaman is injured as a result of both the shipowner's and stevedore-contractor's negligence, then indemnification is not proper because it is unfair to the stevedore-contractor. Under these circumstances, the apportionment of damages between shipowner and stevedore-contractor under the doctrine of comparative fault is more appropriate.

A shipowner could be considered actively involved in a stevedore-contractor's operations when: (1) a shipowner, through his own independent acts, places restraints, manages, or regulates the stevedore-contractor's operations, and a seaman is injured because the shipowner did not apply reasonable care to avoid exposing the seaman to dangers and hazards; or (2) the ship or its equipment is unfit for the performance of the stevedore-contractor's operations in a safe and reasonable manner, and the shipowner knows and could have avoided such defects or hazards existing on the ship at the time of the steve-

293. 421 U.S. 397 (1975).

294. *See id.* at 411.

295. *See id.* at 407 ("[I]n our own admiralty law a rule of comparative negligence has long been applied with no untoward difficulties in personal injury actions." (citing Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409 (1953))).

dore-contractor's performance. Further, in defining the term "active involvement," courts could make reference to the standard of negligence that *Scindia Steam Navigation Co. v. De Los Santos*[296] made applicable to shipowners.

Certainly, the application of comparative fault in maritime personal injury cases has been met with skepticism. The Third, Fourth, and Sixth Circuits continue to apply Ryan indemnity because shipowners that sue under the warranty of workmanlike performance pursue a course of action in contract law. Because *Ryan*'s claim is based in contract and not tort law, these courts reason, the concepts of negligence are inapposite.[297] Ryan indemnity, though, was created in 1956. At that time, comparative fault principles were not applied by circuit courts to proportion damages between shipowner and stevedore-contractor in the field of maritime law because the Supreme Court had held that only Congress could enact legislation to determine whether damages should be proportioned according to fault in maritime personal injury cases.[298] In 1974, however, the Court, in *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*,[299] held that contribution between parties who are at fault can no longer be refused in noncollision cases, including personal injury.[300] Moreover, in *Reliable Transfer*, the Supreme Court approved the use of comparative fault principles for maritime collision cases.[301] The Court reasoned that comparative fault should apply to maritime collision cases because it has been applied to seamen personal injury actions for years.[302] The Court stated that Congress does not necessarily have the final determination on whether comparative fault principles apply to maritime collision cases.[303] In the Court's opinion, the Court is far ahead of Congress in

296. 451 U.S. 156 (1981); *see also supra* notes 236-42 and accompanying text (discussing the duties owed by shipowners and stevedore-contractors to longshoremen).

297. *See* Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 132-33 (1956).

298. *See* Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282, 285 (1952).

299. 417 U.S. 106 (1974).

300. *See id.* at 110-15. The Court stated that:

> [The longshoreman] was not an employee of [the petitioner] and could have proceeded against either the Vessel or [the petitioner] or both of them to recover full damages for his injury. Had [the longshoreman] done so, either or both of the defendants could have been held responsible for all or part of the damages. Since [the longshoreman] could have elected to make [the petitioner] bear its share of the damages caused by its negligence, we see no reason why the Vessel should not be accorded the same right. On the facts ... no countervailing considerations detract from the well-established maritime rule allowing contribution between joint tortfeasors.

Id. at 113.

301. *See* United States v. Reliable Transfer Co., 421 U.S. 397, 401-11 (1975).

302. *See id.* at 407 (stating that an employee's award in damages from the shipowner, employer, will be reduced according to the employee's proportionate degree of fault (citing Pope & Talbot Inc., v. Hawn, 346 U.S. 406, 408-09 (1953))).

303. *See id.* at 409.

creating adaptable and fair remedies in maritime law.[304] Congress has left the responsibility of "fashioning the controlling rules of admiralty law" to the Supreme Court.[305]

It was undoubtedly appropriate for the Supreme Court to create Ryan indemnity in 1956. *Ryan* attempted to eliminate the inequity that a shipowner faced when straddled with the burden of having to respond to a personal injury claim for unseaworthiness. The reasoning in *Ryan* was that a stevedore-contractor should indemnify the shipowner because the stevedore-contractor supervised and controlled the operations, and was thus in a better situation to adopt preventive measures and reduce the likelihood of injury.[306] Nevertheless, when both the stevedore-contractor and shipowner are in control of the operations and the fault can be proportioned between both parties, then application of Ryan indemnity's all-or-nothing approach benefits one party and creates inequity for the other. Because both the stevedore-contractor and shipowner retain control, each could have taken preventive measures to prevent the injury to the seaman. Therefore, in these situations, comparative fault is the more appropriate standard to apply.

CONCLUSION

When a shipowner is liable to a seaman for both unseaworthiness and Jones Act negligence, circuit courts are split on whether the application of Ryan indemnity or comparative fault is more appropriate. As this Note has proposed, both remedies can still survive and be applied without conflict. First, the court must determine whether the shipowner maintained any form of active involvement over the stevedore-contractor's operations. If no such involvement existed, then the shipowner should be able to recover indemnity under *Ryan*'s warranty of workmanlike performance. If, however, the shipowner was actively involved in the stevedore-contractor's operations and a negligent condition arose during the course of operations, then fault should be proportioned accordingly between shipowner and stevedore-contractor under comparative fault principles. This solution synthesizes the merits of both sides of the debate and helps maritime law reach its goal of uniformity.

304. *See id.*

305. Fitzgerald v. United States Lines Co., 374 U.S. 16, 20 (1963).

306. *See* Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 324 (1964); Heyman v. ITO Corp., 1992 A.M.C. 2654, 2656 (4th Cir. 1992); Oglebay Norton Co. v. CSX Corp., 788 F.2d 361, 367 (6th Cir. 1986).