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In the Wake of Reed v. The S.S. Yaka

By CARL O. BUE, JR.

Introduction

The Supreme Court decision of Reed v. The S.S. Yaka, has been described as one of the most vivid examples of "judicial legislation" to emanate from the Court in recent years. In an opinion in which seven justices supported the majority view, it was held that the exclusiveness of liability provisions of the Longshoremen's and Harbor Workers' Compensation Act were subordinated to the warranty of seaworthiness and that a longshoreman-employee could sue his employer when a shipowner pro hac vice for unlimited damages after obtaining compensation and medical benefits under the act. Only Mr. Justice Harlan joined by Mr. Justice Stewart, dissenting, observed that Yaka exceeds the outer limits beyond which judicial construction of the language of a statute should go. The significance of the prophecy implicit in Mr. Justice Harlan's observations has become increasingly apparent, as the shadow of this monumental decision has lengthened and its impact has been more fully recognized.

With full appreciation that the interpretive process is far from over and that the passage of time during which this Supreme Court decision will be subjected to further judicial interpretation will not necessarily resolve the fundamental issues involved, it is appropriate to revisit Reed v. The S.S. Yaka and to examine what has transpired since this landmark case appeared in May, 1963. During this period of more than three years a number of district court cases and at least three circuit court opinions as of this writing have made their appearance. To suggest that they reflect unanimity and a complete understanding of what the Supreme Court meant would be presumptive and inaccurate, since they do not. However, such opinions can be appropriately characterized as the pronouncements of well meaning courts that, faced with a legal dilemma of Gordian knot proportions, have struggled as best they could to apply the law as enunciated by the Court in Yaka.

No analysis of the cases interpreting Yaka can acquire significant

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3 Rehearing was denied in October, 1963.

[795]
meaning without an intelligent appreciation of the background of the case itself. This is true because the parties to the lawsuit could scarcely have foreseen the result which the Supreme Court ultimately reached in this case. As the dissenting opinion points out, counsel for Reed did not urge the theories which the majority of the Court eventually decided to rely upon to support its position. Much earlier in the litigation, Reed’s counsel had actually sued the vessel owner in personam, but this theory had been abandoned and the action dismissed. Without belaboring the details of the litigation leading to the Supreme Court’s holding, it is important nevertheless, that the problem be visualized in its full factual context. Only then can the subsequent lower court opinions be examined to discern, not only how Yaka has been interpreted to date, but also where its rationale can conceivably lead in the future.

The Background of Reed v. The S.S. Yaka

The Facts of the Accident and the Course of the Ensuing Litigation

The case was precipitated by an accident which occurred to a longshoreman, Elijah Reed, while he was working as a member of a longshore gang on board the S.S. Yaka moored at Pier A, Port Richmond, Philadelphia, Pennsylvania on March 23, 1956. A cargo of chocolate syrup in cans was being lowered on pallets into one of the ‘tween decks of the ship through the use of the ship’s winches where Reed and three other members of the gang were stowing the cargo. A staging of unused pallets had been fashioned into a landing platform in order to facilitate the proper placement of the remainder of the stow. In some manner Reed’s right foot went through one of the facing boards of the top pallet, as he was assisting the others in maneuvering the incoming load onto the staging. With his foot entrapped, Reed cried out in pain. The winchman, hearing the cry and assuming that it was the signal to lower the pallet onto the staging, did so in accordance with the usual practice. As a result of the loaded pallet landing on Reed and knocking him down, he sustained injuries to his right foot. The pallet in question was later examined, and it was determined that a latent defect in one of the boards was the sole proximate cause of the accident.

Waterman Steamship Corporation was the owner of the S.S. Yaka, but shortly before Reed’s accident it had been delivered to Pan-

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4 373 U.S. at 411 n.1, 1963 A.M.C. at 1375 n.1.
Atlantic Steamship Corporation which was to operate the vessel under the terms of a written bareboat charter. The charter agreement provided that Pan-Atlantic would indemnify and hold harmless Waterman against liens of any nature and against any claims resulting from the operation of the vessel by Pan-Atlantic including any act or neglect on its part in connection with such operation. Pan-Atlantic was also engaged in stevedore operations which included the employing of longshoreman Reed and the furnishing of the necessary pallets to conduct loading operations.

As a result of the accident to longshoreman Reed, a libel in rem, an action in admiralty solely against the ship, was filed against the S.S. Yaka alleging that the unseaworthiness of the vessel was the proximate cause of the injuries sustained. The owner of the S.S. Yaka, Waterman Steamship Corporation, answered the libel and filed the usual claim of ownership. Pan-Atlantic Steamship Corporation, the bareboat charterer, was impleaded by Waterman, it being alleged that Pan-Atlantic was obligated to indemnify the ship and its owner under the terms of the charter for any loss suffered as a result of the principal claim. The trial court determined that the defect in the pallet on which Reed was standing rendered the S.S. Yaka unseaworthy. It further held the S.S. Yaka liable in rem and the impleaded respondent, Pan-Atlantic, liable over to Waterman under the written indemnity provisions of the bareboat charter, despite the fact that Pan-Atlantic was also longshoreman Reed's employer and presumably insulated by the exclusiveness of liability provisions contained in the Longshoremen's and Harbor Workers' Compensation Act. Both Waterman and Pan-Atlantic appealed.

The Court of Appeals for the Third Circuit reversed the trial court. In doing so, the court held that the S.S. Yaka which had been demised by its owner, Waterman, to Pan-Atlantic, could not be subjected to a libel for personal injuries in the absence of personal liability of one possessing an interest in the vessel. The Longshoremen's Act was held to be the sole remedy open to Reed for recovery for personal injuries under the circumstances. Since the existing unseaworthiness at the time of the accident resulted solely from the conduct of the charterer's employees in bringing a defective pallet on board the S.S. Yaka, the court concluded that there was no liability as to Waterman. Inasmuch as Pan-Atlantic, the bareboat charterer, was also Reed's employer,

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7 Reed v. S.S. Yaka, 307 F.2d 203 (3d Cir. 1962).
Pan-Atlantic was given the benefit of the immunity from any action for unseaworthiness because of the provisions of the Longshoremen's and Harbor Workers' Act pertaining to the exclusiveness of liability of the employer. A motion for rehearing was denied per curiam with two judges dissenting. One was of the opinion that the decision removed from the longshoreman the right to the protective warranty of seaworthiness; the other was of the opinion that liability would be denied only in instances in which the employer was also the shipowner as opposed to the bareboat charterer.

Certiorari to the United States Supreme Court was applied for by counsel for Reed. Ostensibly it was granted by the Court so that the question of whether personal liability is essential to the affixing of liability against a vessel as an entity could be resolved. However, whereas the Court of Appeals for the Third Circuit had rested its opinion on the impropriety of a libel in rem against the vessel itself, the Supreme Court found it unnecessary to decide whether a ship might be held liable for its unseaworthiness where no personal liability could be asserted. It simply concluded that the court of appeals was in error in holding that Pan-Atlantic could not be held personally liable for the unseaworthiness of the vessel which had caused Reed's injuries, and that the provisions of the Longshoremen's Act relating to the exclusiveness of liability of the employer did not prevent a recovery by Reed under the circumstances. Mr. Justice Black wrote the majority opinion and was joined by six other members of the Court. Mr. Justice Harlan was joined by Mr. Justice Stewart, and the former wrote a strong dissent, observing that the decision went further than anything yet done by the Court in FELA and admiralty cases and that the impact of the opinion was to effectively repeal a basic aspect of the Longshoremen's Act.

The Legal Issues and the Basis of the Supreme Court Decision

Reduced to its lowest legal common denominator, the decision is of much more far reaching significance than is initially assumed. Indeed, it is somewhat difficult upon initial consideration of the problem to understand how two presumably separate and independent bodies of law, the warranty of seaworthiness and the very nature of the legal compromise implicit in workmen's compensation acts, would

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8 Id. at 206.
9 373 U.S. at 412, 1963 A.M.C. at 1375.
10 Id. at 416, 1963 A.M.C. at 1378.
ever be maneuvered into such a posture that they would bear down on each other on such a collision course. Yet, that is exactly what happened, and the Supreme Court rested its conclusion that liability should be imposed on the stevedore-employer, Pan-Atlantic, on two closely interrelated and basic propositions:

1. The warranty of seaworthiness which is traditionally owed by a shipowner to a seaman, and which through *Seas Shipping Co. v. Sieracki*\(^{11}\) was judicially interpreted to extend to longshoremen, is paramount, even in the face of specific congressional legislation.

2. The literal wording of the Longshoremen's and Harbor Workers' Compensation Act must submit to, and thereby undergo judicial repeal or amendment when its provisions conflict with, the application of the doctrine of seaworthiness, since it was the intent of Congress to help longshoremen, and to conclude otherwise would produce harsh and incongruous economic results.

Despite the fact that over three years have passed since the *Yaka* decision without any intimation of action by the Congress to clarify the situation, it would be presumptuous to assume that the arguments in opposition to the decision are now moot and purely academic. Too much is involved which extends far beyond the facts of this particular accident, and, as some of the recent lower court decisions will reflect, there is too much that conceivably is yet to come.

When certiorari was granted, none of the parties could reasonably have anticipated the direction which would be ultimately taken by the Court in resolving the dispute. Counsel for Reed was fully aware at the outset that a suit in personam against Waterman as owner or against Pan-Atlantic as bareboat charterer was in all probability destined to fail, and there were good reasons for thinking so. There is established case law that a vessel owner, once it has demised or bareboat chartered the vessel in a seaworthy condition, is no longer personally liable for incidents arising out of its subsequent operation.\(^{12}\) Similarly, an action against Pan-Atlantic would presumably be held to do violence to the exclusiveness of liability provisions of the Longshoremen's and Harbor Workers' Compensation Act, since Pan-Atlantic was the employer of Reed at the time of the accident.

\(^{11}\) *328 U.S. 85 (1946).*

\(^{12}\) *Cannella v. United States, 179 F.2d 491 (2d Cir. 1950).* See, e.g., *Cannella v. Lykes Bros. S.S. Co., 174 F.2d 794 (2d Cir. 1949); Vitozi v. Balboa Shipping Co., 163 F.2d 286 (1st Cir. 1947).*
This latter theory had actually been tried before without success in the same circuit. Reed's counsel, who had also participated in the Smith case, therefore theorized in other directions and fashioned an argument based on the fact that in Yaka there was a charter and that the results in Smith protected the employer only when he was a shipowner, not a bareboat charterer. Thus it was decided to bring an in rem action against the S.S. Yaka which brought into play its companion concept, the maritime lien. On the basis of the maritime lien theory, Reed's counsel urged that the lien arose in favor of the injured longshoreman when he sustained his injury and that it supported a libel in rem against the vessel proper, even though the unseaworthiness arose after the ship was transferred by the owner to the bareboat charterer. It was further contended that this lien existed irrespective of the absence of either the personal liability of the owner, Waterman, or the stevedore-employer, Pan-Atlantic, although it was conceded by all parties that the question had not been decided in the Third Circuit. Indeed it was recognized that there was a conflict between the holding of the Second Circuit in Grillea v. United States and the First Circuit in Pichirillo v. Guzman as to the necessity for personal liability to exist for a breach of warranty of seaworthiness to support a recovery against the S.S. Yaka in rem. It was this conflict which the parties believed was before the Supreme Court when certiorari was granted. The Supreme Court, however, found it unnecessary to pass upon this question when it stated as follows:

We find it unnecessary to decide whether a ship may ever be held liable for its unseaworthiness where no personal liability can be asserted because, in our view, the Court of Appeals erred in holding that Pan-Atlantic could not be held personally liable for the unseaworthiness of the ship which caused petitioner's injury. Instead, the seven justices proceeded along a dual line of reasoning in holding (1) the bareboat charterer is personally liable for the unseaworthiness of a chartered vessel, absent explicit statutory exemption, and such liability will support a libel in rem against the vessel, and (2) the exclusiveness of liability provisions of the Longshoremen's Act did not insulate Pan-Atlantic from liability for breach of its warranty of seaworthiness.

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14 232 F.2d 919 (2d Cir. 1956).
15 290 F.2d 812 (1st Cir. 1961), rev'd on other grounds, 369 U.S. 698 (1962).
In justifying its first conclusion, the Court cited "the broad range of the 'humanitarian policy'," as motivating the extension of a warranty to longshoremen which was separate and independent from any kind of contract. The Court then referred to its holding in Sieracki, saying "The Longshoremen’s Act was not intended to take away from longshoremen the traditional remedies of the sea, so that recovery for unseaworthiness could be had notwithstanding the availability of compensation."

Another landmark case, *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, was then used to support the result by reasoning that, if Reed had been employed by someone other than Pan-Atlantic to load the S.S. Yaka, he could have sued the shipowner. The shipowner on a *Ryan* indemnity theory could then have shifted the burden of the longshoremen’s recovery to the stevedore-employer. Since the defective pallet had been brought on board the vessel by Pan-Atlantic, it was responsible for the warranty of seaworthiness of the vessel. Inasmuch as the economic burden rightfully should be shifted to Pan-Atlantic, the fact that it employed Reed was of no moment. Stressing the need to consider economic equality of recovery to the employee, whether or not the employer was the owner or bareboat charterer of the vessel (sometimes referred to as the owner *pro hac vice*) the Court stated:

Pan-Atlantic would have us hold that petitioner must be completely denied the traditional and basic protection of the warranty of seaworthiness simply because Pan-Atlantic was not only the owner *pro hac vice* of the ship but was also petitioner’s employer. In making this argument, Pan-Atlantic has not pointed and could not point to any economic difference between giving relief in this case, where the owner acted as his own stevedore, and in one in which the owner hires an independent company. In either case, under *Ryan*, the burden ultimately falls on the company whose fault caused the injury.

The second point on which the Court rested its decision was that the Longshoremen’s Act did not insulate the employer-charterer from liability because of its breach of its warranty of seaworthiness. The Exclusiveness of Liability Section of the Longshoremen’s Act was recognized by the Court when it stated “Pan-Atlantic relies simply

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18 Id. at 413, 1963 A.M.C. at 1376.
19 Ibid.
21 373 U.S. at 414, 1963 A.M.C. at 1377.
on the literal wording of the statute, and it must be admitted that the statute on its face lends support to Pan-Atlantic's construction.”

Yet the Court indicated that the wording of the statute alone would not suffice. The resolution of the problem required the statute to be viewed in the light of the prior Supreme Court decisions such as Sieracki, Ryan and others. The Court observed that these holdings had been left unchanged by Congress. The point was then summarized by the Court in the following language:

In the light of this whole body of law, statutory and decisional, only blind adherence to the superficial meaning of a statute could prompt us to ignore the fact that Pan-Atlantic was not only an employer of longshoremen but was also a bareboat charterer and operator of a ship and, as such, was charged with the traditional, absolute, and non-delegable obligation of seaworthiness which it should not be permitted to avoid.24

The majority opinion was concluded by a reiteration that the Longshoremen's Act must be liberally construed in conformance with its purpose to help longshoremen and in a way which avoids harsh and incongruous results. This required viewing the matter in the light of the potential recovery for damages a longshoreman would obtain in a situation in which his employer is an independent contractor compared with the instance in which the employer is a shipowner or bareboat charterer. The desired objective was that the economic burden in either case should be the same. The Exclusiveness of Liability Section of the Longshoremen's Act was held to have no application in such a situation, the warranty of seaworthiness owed to a longshoreman by a shipowner or owner pro hac vice as developed by the case law being superior to and overriding the specific provisions of the statute passed by Congress.

An Analysis of the Bases on Which the Decision Rests

The Background of the Longshoremen's and Harbor Workers' Compensation Act

As can be readily seen from the reasoning of the Supreme Court, the immediate result of this controversial decision is the issue of the propriety of any act of Congress being overridden by the doctrine of seaworthiness which is a part of the general maritime law in this country. The history of the growth and ultimate constitutionality of state workmen's compensation statutes is a stormy one. It was argued

23 373 U.S. at 414, 1963 A.M.C. at 1378.
24 Id. at 415, 1963 A.M.C. at 1378.
with some validity that such statutes which imposed liability without fault on employers for injuries sustained by employees in industrial accidents violated the due process clause of the Federal Constitution. However, their constitutionality was finally upheld in *New York Central Railroad v. White*[^25] which involved the New York act, and shortly thereafter other states passed similar legislation. The decision in favor of constitutionality was rested on the theory of compromise. The employer gave up his right to be free from claims in non-fault cases, and the employee gave up his right to recover large damage verdicts in cases where fault could be shown and, in exchange, accepted benefits in all work-connected cases which were limited in amount. In short, there resulted a basic compromise, and this is the theory on which all compensation acts subsequently enacted have been based.

Insofar as the maritime worker is concerned, complications arose shortly after the 1917 decision upholding the constitutionality of the New York Workmen’s Compensation Act. In *Southern Pacific Co. v. Jensen*,[^26] the New York act was held to be unconstitutional when applied to a longshoreman injured aboard a vessel on navigable waters as opposed to an injury on land. It was reasoned that the shipboard injury came within the admiralty jurisdiction of the United States and that the constitutional grant of admiralty jurisdiction necessitated a uniform application of federal maritime law with the power to modify it resting solely with the Congress and not with the individual state. After abortive efforts by Congress to correct the situation which again resulted in a statute being held unconstitutional,[^27] the Supreme Court held in *International Stevedoring Co. v. Haverty*[^28] that longshoremen were to be considered as “seamen” within the provisions of the Jones Act,[^29] which had been passed in 1920 for members of crews of vessels, giving them a cause of action for negligence against their stevedore employer. It was less than a year after *Haverty* that Congress passed the Longshoremen’s and Harbor Workers’ Compensation Act[^30] which specifically provided an exclusive remedy for longshoremen against their employers, thereby eliminating *Haverty* which had applied the Jones Act to longshore injuries. In *Crowell v. Benson*[^31] the Supreme Court

[^25]: 243 U.S. 188 (1917).
[^26]: 244 U.S. 205 (1917).
[^31]: 285 U.S. 22 (1932).
Court upheld the constitutionality of the Longshoremen's and Harbor Workers' Compensation Act.

It can be seen that within a relatively short period of time a number of legislative and judicial actions of significance had taken place. The constitutionality of state workmen's compensation acts was established. The states had been put on notice through Jensen that the constitutional grant of admiralty jurisdiction was to be modified solely by Congress. Congress by negativing Haverty and passing the Longshoremen's and Harbor Workers' Compensation Act had made it perfectly clear that there was a sharp distinction between the remedies afforded to members of crews of vessels and those available to longshoremen and maritime workers. The Longshoremen's and Harbor Workers' Compensation Act had satisfied the congressional purpose which was to give maritime workers rights and remedies similar to those enjoyed under state compensation acts. The basic quid pro quo was preserved in the exclusiveness of liability provisions contained in section 5\(^2\) of the act along with the attendant penalties to be incurred by the employer if he failed to comply. Of special significance was the explicit statutory language employed by the Congress which took into account the causes of action in the unique maritime world to which it was to apply, thereby differentiating it from the more common state compensation act to which admiralty law is at best only infrequently a consideration.

Section 5. The liability of an employer prescribed in Section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.\(^3\)

The liability prescribed in section 4\(^2\) which is exclusive and in place of all other liability of such employer to the employee should be noted. In return for such limited liability the employer in section 4(a)


\(^3\) Ibid. (Emphasis added.)

is liable for and obligated to secure payment of compensation to his employees and in section 4(b) the employer is obligated to pay compensation irrespective of fault as a cause for the injury.

The Background of the Doctrine of Unseaworthiness and the Effect of Statutory Law on the General Maritime Law

The nature of the development of the doctrine of unseaworthiness under the general maritime law is of great significance, since the Supreme Court in *Yaka* has held that, as judicially interpreted, it is paramount to the Longshoremen’s and Harbor Workers’ Compensation Act, a specific statute enacted by the Congress of the United States. It is not the purpose here to trace in detail the doctrine’s development, but it is of importance to understand how such a legal remedy which on its face would seem to be solely applicable to members of the crews of vessels ultimately was held to be extended to longshoremen and certain other maritime workers.

The landmark case of *The Osceola*, set forth that “the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.” Although it is true that there was significant litigation over indemnity for unseaworthiness, prior to 1920, passage of the Jones Act in that year based on negligence resulted in the doctrine of unseaworthiness falling into substantial disuse. Nevertheless, the shipowner’s obligation for furnishing of a seaworthy vessel was assumed to be limited to members of the vessel’s crew, and this point of view was to continue for the next forty-three years. However, in 1946 *Seas Shipping Co. v. Sieracki* was announced by the Supreme Court, and by this decision the warranty of seaworthiness was extended to longshoremen. The rationale of the case was based upon the conclusion that a longshoreman working aboard ship performing a seaman’s work and incurring a seaman’s hazards should be entitled to a seaman’s protection. In that case, Sieracki sustained injuries while operating a winch on a vessel when a shackle supporting the boom broke causing certain of the ship’s gear to fall and injure him.

The term “seaman” was further broadened in *Pope & Talbot, Inc. v.

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35 189 U.S. 158 (1903).
36 *Id.* at 175.
38 328 U.S. 85 (1946).
Hawn\textsuperscript{39} to apply to a carpenter-employee of a repairman who was found to satisfy the test of performing work traditionally done by seamen when injured on board the vessel. Inasmuch as longshoremen had traditionally possessed a cause of action for negligence in rem against the vessel itself,\textsuperscript{40} and Hawn had recognized the status of longshoremen as business invitees aboard ship for the right to sue the shipowner for negligence, it appeared that longshoremen had achieved essential equality with members of crews of vessels. Not only did they have their absolute right to compensation from the employer under the provisions of the Longshoremen's Act, they possessed a cause of action for unseaworthiness as well as for negligence against the third party-vessel owner. The problem which was to arise in Yaka was to stem from a situation in which the employer and the vessel owner were one and the same.

It is of interest to note the attitude of the Supreme Court in other cases in which congressional power to shape the general maritime law has been a subject of discussion. Perhaps one of the most cogent expressions of congressional power to shape maritime law is found in Washington v. W C. Dawson & Co.,\textsuperscript{41} which was recently cited with approval by the Supreme Court in Calbeck v. Travelers Ins. Co.\textsuperscript{42} In Washington the Court stated as follows:

Without doubt Congress has power to alter, amend or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employer's liability law or general provisions for compensating injured employees; but it may not be delegated to the several states. \textit{The grant of admiralty and maritime jurisdiction looks to uniformity; otherwise wide discretion is left to Congress.}\textsuperscript{43}

Examples of other instances in which the Supreme Court has recognized its role and has confined its efforts within proper bounds include Pillsbury v. United Engineering Co.\textsuperscript{44} wherein statutory construction as well as humanitarian policy of the Longshoremen's Act were weighed by Mr. Justice Minton:

We are not free, under the guise of construction, to amend the statute by inserting therein before the word "injury" the word "comp-

\textsuperscript{39} 346 U.S. 406 (1953).
\textsuperscript{40} The General DeSoms, 179 Fed. 123 (W.D. Wash. 1910); The Anaces, 93 Fed. 240 (4th Cir. 1899).
\textsuperscript{41} 264 U.S. 219 (1924).
\textsuperscript{42} 370 U.S. 114, 118 (1962).
\textsuperscript{43} 264 U.S. 219, 227-28 (1924). (Emphasis added.)
\textsuperscript{44} 342 U.S. 197 (1958).
pensable” so as to make “injury” read as if it were “disability.” Congress meant what it said when it limited recovery to one year from date of injury, and “injury” does not mean “disability.”

We are aware that this is a humanitarian act, and that it should be construed liberally to effectuate its purposes; but that does not give us the power to rewrite the statute of limitations at will, and make what was intended to be a limitation no limitation at all. While it might be desirable for the statute to provide as petitioners contend, the power to change the statute is with Congress, not us.45

Or, consider Thompson v. Lawson46 in which the same court reaffirmed the principle in an opinion written by Mr. Justice Frankfurter:

Our concern is with the proper interpretation of the Federal Longshoremen’s Act. Congress might have provided in that act that a woman is entitled to compensation so long as she is still deemed to be the lawful wife of the decedent under State law, as, for example, where a foreign divorce obtained by her is without constitutional validity in the forum State. But Congress did not do so. It defined the requirements which every claimant for compensation must meet 47

There would thus seem to be no question but that a congressional statute would be paramount to the general maritime law. Yet, in Yaka the line of reasoning previously followed by the Supreme Court was abandoned in favor of other considerations.

The Nature of the Arguments Advanced in Support of and in Opposition to the Decision

It is impossible in a limited space to review all aspects of the arguments for and against the Yaka result. Yet, examination of a few of these issues will serve to illustrate the nature of the Pandora’s box which the decision already has opened up for courts to cope with.

It is clear that there is a basic and genuine desire on the part of any court to see that an equitable result is reached in a given case. On the surface there is great visceral appeal to the argument in Yaka that an injured longshoreman who is employed by the shipowner should have the same right of recovery when injured as the longshoreman-employee of an independent contractor. This is the basic argument of the supporters of the decision. Yet, this proposition is not the vice of Yaka. What is contested by the practitioner is the manner in which it was accomplished. Persuasive arguments are ad-

45 Id. at 199-200. (Emphasis added.)
47 Id. at 336. (Emphasis added.)
vanced that the impact of Yaka flouts the will of Congress, overrides a specific congressional statute, renders the remainder of the Longshoremen's and Harbor Workers' Compensation Act suspect by casting doubt as to the linguistic meaning and workability of other sections of the act, destroys the traditional quid pro quo which is an integral part of all compensation acts and, at least, poses the question as to whether or not the act as so interpreted is constitutional.

The counter-arguments are to the effect that such objections are basically related to form and ignore substance. The supporters castigate those who oppose the Yaka result as engaging in legal technicalities and cries of judicial legislation which Yaka has seen fit to slice through in order to achieve an equitable result. Certain aspects of the Yaka decision are therefore worthy of consideration in this respect.

Apart from the statutory language with respect to the exclusiveness of liability of the employer contained in section 5 of the Longshoremen's and Harbor Workers' Compensation Act, it is important to note the obvious congressional intent that this provision of the act applied to all liability of the employer to the employee who attempts to recover damages from such employer at law or in admiralty on account of such injury or death. Inasmuch as state workmen's compensation acts are based on the employer gaining a benefit by giving up his right to be free from claims in non-fault cases, and the employee giving up his right to recover large damage verdicts in cases where fault could be shown, these acts have basically related to negligence situations.

With the doctrine of unseaworthiness being a species of absolute liability and therefore not predicated on fault, the theory has been advanced that the Supreme Court opinion in Yaka can be justified on the grounds that section 5 of the act did not pertain to unseaworthiness, but only to negligence. It is submitted that there are several reasons why such a conclusion is unsound. The legislative history of the Longshoremen's and Harbor Workers' Compensation Act has made it abundantly clear that Congress was fully aware of what it was doing when it fashioned the statutory language of Section 5. At the 1956 hearings on bills relating to the Longshoremen's and Harbor Workers' Compensation Act, Arthur Larsen, Under Secretary of Labor, testified that:

It is a very well balanced and common sense arrangement.

The other major portion of the Act which is involved in some of

48 Hearings on Bills Relating to the Longshoremen's and Harbor Workers' Compensation Act Before a Special Subcommittee of the House Committee on Education and Labor, 84th Cong., 2d Sess. (March 23, 24, and June 11, 1956).
these bills is the exclusiveness of liability clause. The idea of that clause, of course, is that in the institution of workmen's compensation, there is a quid pro quo between the employer and the employee. The employer gave up his right to be immune from nonfault liability. He assumed liability for many accidents for which he was in no sense, morally or legally, liable. At the same time, as a sort of exchange for this, he was given immunity from damage suits at common law or otherwise. And so, from the employee's point of view, the employee acquired an assured payment of medical expenses plus a portion of his lost wages, regardless of the employer's fault, and at the same time he gave up the right to sue his employer and acquire a large damage verdict.49

Bearing in mind that these hearings took place some eleven years after Seas Shipping Co. v. Sieracki,50 it scarcely behooves those who defend the decision in Yaka to attempt to justify it on the grounds the basic quid pro quo between employee and employer did not include the warranty of seaworthiness. It goes without saying that such an arrangement under today's maritime decisions would constitute no compromise at all. The real issue concerns the employer's status. Is his liability to the employee now to be measured in determinable amounts under the provisions of the act, or is he to be subject to suits for unlimited damages, despite the language of the act?

In considering the 1959 amendment to the Longshoremen's and Harbor Workers' Compensation Act to increase benefits for disabling injuries, the following language was stressed.

This deflects from the principle of quid pro quo, which basically supports all workmen's compensation legislation as a system to supplant or substitute for the employees' former right of action for damages against his (sic) employer.

This enabled the employee to receive compensation in every instance of work connected injury, but at the same time he relinquished his right to sue his employer and perhaps receive considerably greater damages. In return, the employer's potential liability was reduced in accordance with the provisions of the law51

Lastly, it was quite apparent that Congress was well aware that a Yaka fact situation could easily arise. Before the hearings of the subcommittee which heard Secretary Larsen, Mr. Albert E. Rice, counsel for American Merchant Marine Institute, testified as follows:

Shipowners are vitally interested in these bills. In some cases shipowners are actually the direct employers of longshoremen and other harbor workers. In other cases the work of these men is performed.

49 Hearings, supra note 48, at 16. (Emphasis added.)
50 328 U.S. 85 (1946).
51 H.R. REP. No. 2067, 84th Cong., 2d Sess. 3 (1956).
through independent contractors. In all cases, however, the ultimate economic cost is borne by the shipowners.\textsuperscript{52}

In no compensation act other than the Longshoremen's and Harbor Workers' Compensation Act is the language "at law or in admiralty"\textsuperscript{53} to be found in the comparable exclusiveness of liability provisions. There can be no question but that such specific statutory language was meant to encompass maritime theories of recovery employed in admiralty actions as well as in civil actions which until the recent amendment to the Federal Rules of Civil Procedure\textsuperscript{54} were carried on separate dockets. Any other conclusion would vitiate the \textit{quid pro quo} compromise without which no compensation act could survive or gain support from employee or employer.

As has been pointed out previously, the Supreme Court stressed the fact that its result in \textit{Yaka} was clearly supported by the decisions in \textit{Seas Shipping Co. v. Sieracki}\textsuperscript{55} and \textit{Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.}\textsuperscript{56} It is submitted, however, that these decisions do not support the \textit{Yaka} result. The Court in \textit{Sieracki} stated as follows:

We may take it therefore that Congress intended the remedy of compensation to be exclusively against the employer. See \textit{Swanson v. Marra Bros.}, \textbf{328} U.S. 1. But we cannot assume, in the face of the Act's explicit provisions, that it intended this remedy to nullify or affect others against third persons. Exactly the opposite is true. The legislation therefore did not nullify any right of the longshoreman against the owner of the ship, except possibly in the instance, presumably rare, where he may be hired by the owner. The statute had no purpose or effect to alter the stevedore's rights as against any but his employer alone.\textsuperscript{57}

The Supreme Court further reiterated its clear understanding of the act's explicit provisions when set forth in \textit{Ryan}, the landmark case relating to the shipowner's right of indemnity against the stevedore as a result of the stevedore's breach of its implied warranty of workmanlike service, when it stated as follows:

\textit{The obvious purpose of this provision\textsuperscript{58} is to make the statutory liability of an employer to contribute to its employee's compensation the exclusive liability of such employer to its employee, or to anyone

\begin{itemize}
\item \textsuperscript{52} \textit{Hearings, supra} note 48, at 23. (Emphasis added.)
\item \textsuperscript{54} \textit{FED. R. CIV. P.} § 1.
\item \textsuperscript{55} 328 U.S. 85 (1946).
\item \textsuperscript{56} 350 U.S. 124 (1956).
\item \textsuperscript{57} 328 U.S. at 102. (Emphasis added.)
\item \textsuperscript{58} 44 Stat. 1426 (1927), 33 U.S.C. § 905 (1964). (Footnote not in original.)
\end{itemize}
claiming under or through such employee, on account of his injury or death arising out of that employment. In return, the employee, and those claiming under or through him, are given a substantial *quid pro quo* in the form of an assured compensation, regardless of fault, as a substitute for their excluded claim. On the other hand, the Act prescribes no *quid pro quo* for a shipowner that is compelled to pay a judgment obtained against it for the full amount of a longshoreman's damages.

*Section 5 of the Act expressly excludes the liability of the employer “to the employee,” or others entitled to recover “on account of such [employee’s] injury or death.” Therefore, in the instant case, it excludes the liability of the stevedoring contractor to its longshoremen, and to his kin, for damages on account of the longshoreman’s injures. At the same time, however, § 5 expressly preserves to each employee a right to recover damages against third persons.*

In addition, Mr. Justice Black who wrote the majority opinion in *Yaka* observed in a vigorous dissent in *Ryan*:

That Act was revolutionary in its field. It took away from longshoremen the right to sue their employers for negligence and substituted a fixed schedule of compensation for injuries regardless of fault. Congress weighed the conflicting interests of employers and employees and struck what was considered to be a fair and constitutional balance. Injured employees thereby lost their chance to get large tort verdicts against their employers, but gained the right to get a sure though frequently a more modest recovery. However, § 33 did leave employees a chance to recover extra tort damages from third persons who negligently injured them. And while Congress imposed absolute liability on employers, they were also accorded counterbalancing advantages. They were no longer to be subjected to the hazards of large tort verdicts. Under no circumstances were they to be held liable to their own employees for more than the compensation clearly fixed by the Act. Thus employers were given every reason to believe that they could buy their insurance and make other business arrangements on the basis of the limited Compensation Act liability.

The language of Mr. Justice Black referring solely to negligence to the exclusion of unseaworthiness has been advanced as a basis for supporting the *Yaka* result. This is not a proper interpretation when considered in the full light of his dissent and a majority opinion in *Ryan*, nor could it be reconciled with *Sierackz* or the legislative history of section 5 of the act. More particularly, such an argument summarily fails in view of section 5's explicit provisions to govern the employer's liability to the employee for damages recoverable from such employer “at law or in admiralty.”

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59 350 U.S. at 129-30. (Emphasis added in part.)
60 Id. at 140. (Emphasis added.)
The argument has also been advanced that Ryan actually constituted as flagrant a violation of section 5 of the act as did Yaka, and that, masmuch as Congress did nothing subsequent to the Ryan decision in 1956, such an action constituted tacit approval of the Court's interpretation of the exclusiveness of liability provisions of the Longshoremen's Act. It is submitted that this is not accurate, since the point of law decided in Ryan has no application to the employer-employee relationship under the act. The issue in that case was whether or not the exclusiveness of liability provisions of the Longshoremen's Act would preclude an action for indemnity by the shipowner against the stevedore-employer, the stevedore having urged section 5 as a defense to the shipowner's action over. The Supreme Court then drew a very clear cut distinction and held that section 5 related solely to the limitation of liability as between employee and employer which did not extend to the relationship between the employer and the shipowner. Ryan did not present a situation prohibited by section 5. Rather, it presented a situation permitted by section 33. The opinion bears out this point:

While the Compensation Act protects a stevedoring contractor from actions brought against it by its employee on account of the contractor's tortious conduct causing injury to the employee, the contractor has no logical ground for relief from the full consequences of his independent contractual obligation, voluntarily assumed to the shipowner, to load the cargo properly 61

Yaka, on the other hand, presented a situation expressly proscribed by the act. Reed, in actuality, sued his employer to impose liability beyond the provisions of the Longshoreman's Act, and but for the Court holding that the doctrine of seaworthiness was paramount to the specific provisions of the act on equitable grounds, would have found no support, either in Ryan, Sieracki or any other reported decision.

Space does not permit an examination of all of the provisions of the Longshoremen's and Harbor Workers' Compensation Act as affected by Yaka. Inasmuch as the objective of the decision was to achieve economic equality in terms of monetary recovery by an injured longshoreman working for a shipowner-employer when compared to his potential recovery in a true third party action while working for an independent contractor, the decision's effect upon certain provisions of the act, is worthy of examination.

The foremost indication of the motivating force behind Yaka is to

61 Id. at 131.
be found in the dissent of Mr. Justice Harlan who states that "the Court is frank to admit the real reason for its position is that a contrary result would make little economic sense after the decision in Ryan ."62 It is submitted that for the reasons previously stated Ryan does not support Yaka, and the consideration of what constitutes "economic sense" actually is one of social policy. The majority opinion touches upon economics in two instances, the first relating to Ryan's placement of the burden on a stevedore employer in an indemnity action by the shipowner, and the second when it stated, "Pan-Atlantic has not pointed and could not point to any economic difference between giving relief in this case, where the owner acted as his own stevedore, and in one in which the owner hires an independent company. In either case, under Ryan, the burden ultimately falls on the company whose default causes the injury."63

The economic equality argument on the surface is understandable, and, as has been stated, the quarrel is not with the Court's objective to achieve equal monetary recovery for the injured longshoreman when his employer is a shipowner. The dispute is over the manner in which it has been done. If the economic equality argument is to be the basis on which Yaka is to be justified, then in all fairness it ought to be applied to all of the litigants, both plaintiff and defendant. The injustice to the employer who is also a party to this quid pro quo can best be seen upon an examination of selective provisions of the Longshoremen's Act which reveals that the decision in Yaka has actually resulted in economic superiority of the Yaka claimant when compared with the position of the longshoreman-employee of the independent contractor who is suing a third party shipowner. This situation is most sharply illustrated in sections 33(f) and 33(g) of the act.

(f) If the person entitled to compensation institutes proceedings within the period prescribed in section 33(b) the employer shall be required to pay as compensation under this Act a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the amount recovered against such third person.64

(g) If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this Act, the employer shall be liable for compen-

63 Id. at 414, 1963 A.M.C. at 1377.
sation as determined in subdivision (f) only if such compromise is made with his written approval.\textsuperscript{65}

The provisions of section 33(f) pertain to a situation in which the employee files a damage suit against the third party and pursues it to judgment. If his recovery in the damage suit is less than he would have obtained in compensation, he is entitled to obtain the difference in amount from his employer in the form of additional compensation. The provisions of section 33(g) refer to a settlement or compromise which an employee may voluntarily make with the third party. As frequently happens, the employee, following receipt of compensation, or while receiving compensation under the provisions of the act, effects a compromise or settlement of the third party claim with the third party who under section 33(a) is defined as "some person other than the employer." Under the provisions of 33(g) a third party settlement exposes the employer to the payment of further compensation "only if such compromise is made with his written approval."

The purposes of these provisos of sections 33(f) and 33(g) are to achieve a basically fair result to both employee and employer by balancing the equities. If the employee chooses to sue the third party, he can do so, and he is protected to the extent of the compensation to which he might demonstrate that he is entitled, if his damage suit does not match expectations. By the same token if the employee is able to effect a compromise and settle his third party action to his satisfaction, the employer is protected from paying additional compensation, unless he participates directly in the settlement by giving his written approval.

What obviously can occur is that, if pursuant to section 33(g) a settlement with the Yaka employer-shipowner is effected by the employee in an amount less than the compensation to which such person or representative would possibly be entitled to under the act, the employer can be accused of extending written consent by participating in the entry of a final judgment based on the settlement. By invoking the specific language of the statute, the employee can contend, and it conceivably can be held, that additional compensation and medical benefits are owed, despite the fact that bona fide efforts were made to agree to a settlement which was viewed as equitable to all concerned and which was intended to terminate both the compensation claim and the litigation once and for all. It is a paradox that this situation can arise through the application of the specific statu-

tory language of section 33(g) of the Longshoremen's and Harbor Workers' Compensation Act, the very procedure the Supreme Court refused to be bound by in Yaka in order to reach its economic equality result. Thus the decision possesses greater ramifications than are apparent from the narrow confines of the issues considered by the Supreme Court. The result is that the Yaka employer has no statutory protection which is present in true third party settlements. The viability and workability of a congressional compensation statute which also serves as the compensation act for the District of Columbia is cast in doubt. Furthermore, the basic *quid pro quo* on which all compensation acts have been based and justified as a sound compromise for employee and employer alike is jeopardized by the employment of reasoning which encourages the ignoring of statutory language when it fails to comport with the desired result in a given case.

It is perhaps premature at this stage in the development of the Yaka doctrine to do more than pose the question as to whether or not the Longshoremen's and Harbor Workers' Compensation Act as judicially interpreted by the Supreme Court has, in truth, so undermined the basic *quid pro quo* between employer and employee that it is thereby rendered unconstitutional. If it has not, what compensating advantage is there for the shipowner-employer to continue to subscribe to workmen's compensation coverage in such situations when it will be sued for damages anyway? If there is to be no limit of liability as to the employer when a shipowner, is the employer-shipowner not as well off defending each claim on its merits? If the employer fails to take out workmen's compensation coverage in Yaka situations, thereby resulting in the employer being stripped of its legal defenses pursuant to the Longshoremen's and Harbor Workers' Compensation Act, is the employer, when a shipowner, being accorded the benefit of the equal protection clause of the Constitution?

In *Crowell v. Benson*, the Supreme Court faced the issue of the constitutionality of the Longshoremen's and Harbor Workers' Compensation Act. In holding the statute constitutional, the Court pointed out that there were two limitations in the act that were fundamental. The first pertained to the payment of compensation for disability or death occurring on navigable waters. The second fundamental limita-

68 285 U.S. 22 (1932).
tion related to the application of the act only when the employer-
employee relationship existed in which case liability would be ex-
clusive unless the employer failed to secure payment of compensation.
If this second limitation pertaining to exclusiveness of liability was
viewed at that time as fundamental and utilized as a basis for con-
cluding that the Longshoremen's and Harbor Workers' Compensation
Act was constitutional, what occurs if the exclusiveness of liability
provision no longer serves to insulate the employer-shipowner in the
light of Reed v. Yaka? No court to date has concerned itself with this
aspect of the problem, but it would seem inevitable that such a con-
sideration will ultimately make its appearance.

Selective Cases Interpreting Reed v. S.S. Yaka

Decisions Pertaining to the Nature of the Action

Entirely apart from the correctness or incorrectness of the Yaka
decision, it remains a Supreme Court pronouncement which courts
must strive to interpret and apply. That judges have proceeded with
cautión is not altogether unanticipated when it is considered that
while they long have been accustomed to dealing with basic principles
of compensation law, such considerations have been separate and
apart from any joint application of the doctrine of unseaworthiness
under the general maritime law. With the advent of Yaka, this is no
longer the case.

The earliest cases subsequent to this controversial opinion by the
Supreme Court dealt basically with the form which the action would
take. A number of variables were in need of clarification, masmuch as
Yaka had been a proceeding in rem against a vessel operated by an
owner pro hac vice solely on the theory of unseaworthiness. The
problem of what would happen if one or more of these ingredients
were missing or altered remained.

The question of the in personam liability of the employer in the
Yaka context has been at issue in several cases. In Kanton v. Grace
Line, Inc.69 a personal injury suit was initially urged by the injured
longshoreman against the employer-shipowner in the form of an
action in personam and was dismissed on motion, the district court
refusing to "anticipate the reaction of the Supreme Court."70 There-
after the suit was brought as a libel in rem, and following the entry

69 234 F Supp. 409 (W.D. Wash. 1964), aff'd per curiam, 366 F.2d 510 (9th Cir.
1966), cert. denied, 366 F.2d 510 (9th Cir. 1966).
70 Id. at 411.
of judgment in favor of the longshoreman, the Ninth Circuit affirmed the action as being indistinguishable from *Yaka*. In *Hertel v. American Export Lines, Inc.*, however, the action was brought on the civil side in personam, and the defendant urged that *Yaka* was to be distinguished because it was an in rem action. The court concluded that the distinction was invalid, inasmuch as *Yaka* imposed personal liability upon the stevedore-employer when a bareboat charterer or owner pro hac vice of the vessel. Further litigation on the same point has included *Miculka v. American Mail Line* in which the plaintiff filed one suit in personam against the stevedore-employer who was also bareboat charterer of the vessel, which suit was ultimately removed from state to federal court, and a second suit in admiralty in rem against the vessel. Both actions were urged solely on the theory of unseaworthiness. The court initially dismissed the in personam suit and permitted the in rem action to remain, concluding that it alone fell within the ambit of *Yaka*. Later in *Course v. Pacific Inland Nav. Co.*, however, the same district court revised its previous opinion in *Miculka* and held that an in personam action could be pursued against the employer-shipowner for unseaworthiness, but not for negligence under the Jones Act.

The argument that *Yaka* applies only to an owner pro hac vice has been advanced in a bona fide effort to hold the line rigidly on the *Yaka* facts. Actually an attempt had been made in a pre-*Yaka* suit to hold the true vessel owner in *Smith v. Mormacdale*. Reed’s counsel had sought to avoid *Smith* by advancing the charter theory as a controlling distinction, but the Supreme Court decision in *Yaka* rests on other grounds. The recent case of *Peros v. Grace Line, Inc.* casts aside the argument that *Yaka* applies only to the owner pro hac vice and not to the true vessel owner. Again, the broad reaches of the economic equality argument as pronounced in *Yaka* have overridden such attempts to delimit the application of the decision.

With *Yaka* proclaiming that the injured longshoreman was to be placed in a position so that he was economically equal with a similar employee who was suing a true third party, the inquiry inevitably arose as to whether such equality included an action for negligence as well as one for unseaworthiness. The district court in *Course v.*

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71 366 F.2d at 511.
74 234 F Supp. 676 (D. Ore. 1964), aff’d, 368 F.2d 540 (9th Cir. 1966).
75 198 F.2d 849 (3d Cir. 1952), cert. denied, 345 U.S. 908 (1953).
Pacific Inland Nav. Co. observed in its opinion that the owner must always answer for its “common-law or maritime negligent hurt to persons rightfully transacting business on his ship,” but the validity of an ordinary negligence count in a Yaka suit was not passed upon, since it had not been urged. The circuit court opinion casts little additional light on the point, preferring to rely upon the affirmation of the libelant’s unseaworthiness claim. However, the case of Biggs v. Norfolk Dredging Co. seems to view favorably a Yaka suit which incorporates a count for negligence as well as one for unseaworthiness. In so concluding, the court stated what is basically consistent with the Yaka thesis, “that a seaman-employee, actual or Sieracki, injured aboard his employer’s vessel is to be put in the same position as one injured aboard a ship owned by a third party, and in the latter situation, the employee could recover compensation from his employer and still sue the third party for negligence or unseaworthiness.”

This language is somewhat misleading, however, in suggesting that an “actual” seaman can sue his employer for ordinary negligence under the Yaka doctrine. The “actual” seaman referred to is presumably a member of the crew, and as such the normal remedy that he would assert for the negligence of his employer is under the Jones Act. Assuming that there is no question as to his status, such a person does not possess rights under the Longshoremen’s Act and hence cannot be a Yaka plaintiff. Despite the difficulties encountered in dissecting certain aspects of Biggs, which was discussed above in another context, it would appear to be the sounder view that the remedies available to a Yaka candidate do not include the Jones Act which has been consistently interpreted as available only to members of the crews of vessels. This was early held by the Supreme Court in Swanson v. Marra, and was reaffirmed in a Yaka context in Hertel v. American Export Lines. This position is consistent with the provisions of the Longshoremen’s and Harbor Workers’ Compensation Act as well as with those of

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78 Id. at 679 n.5.
79 368 F.2d 540 (9th Cir. 1966).
80 360 F.2d 360 (4th Cir. 1966).
81 Id. at 365.
83 Ibid.
84 328 U.S. 1 (1946).
compensation acts in general which make the benefits of such an act mutually exclusive from those available to a Master or members of the crew of vessels.\textsuperscript{87}

The state courts have also not escaped the reverberations of Yaka. Such a case is Jackson v. Lykes Bros. S.S. Co.\textsuperscript{88} Jackson involved an action by the widow of a deceased longshoreman who sustained fatal injuries when he inhaled noxious fumes in the hold of a vessel owned by his employer. Suit was filed in the Civil District Court for the Parish of Orleans, State of Louisiana, seeking recovery, in the alternative, under the Jones Act,\textsuperscript{89} the Louisiana Workmen's Compensation Act,\textsuperscript{90} the Longshoremen's and Harbor Workers' Compensation Act,\textsuperscript{91} the Louisiana Civil Code\textsuperscript{92} and the general maritime law. The shipowner pleaded exceptions of no cause of action on several theories: (1) the Jones Act provides a remedy only for seamen who are either Masters or members of the crew and not longshoremen; (2) the Louisiana Workmen's Compensation Act does not apply to a longshoreman injured or killed aboard a vessel in navigable waters; (3) since the Longshoremen's and Harbor Workers' Compensation Act provides the exclusive remedy under such circumstances the plaintiff possessed no cause of action under the Louisiana Civil Code; and (4) there exists no cause of action for wrongful death under the general maritime law. Additionally, the jurisdiction of the state court was challenged by the shipowner, who contended that Louisiana courts possess no jurisdiction under the Longshoremen's and Harbor Workers' Compensation Act.

The trial court sustained the defendant's exceptions and dismissed the plaintiff's suit.\textsuperscript{93} On appeal to the Court of Appeal, Fourth Circuit, State of Louisiana, the court wrote extensively. Commencing with the observation that the basic question to be resolved was whether the plaintiff's exclusive remedy was under the Longshoremen's and Harbor Workers' Compensation Act or whether she might litigate in the state court under the other legal theories urged, the court concluded that the exclusiveness of liability provisions\textsuperscript{94} of the Longshoremen's and Harbor Workers' Compensation Act governed. Inasmuch as the fatal

\textsuperscript{88} 185 So. 2d 342 (La. App.), writ refused, 187 So. 2d 441 (La. 1966).
\textsuperscript{92} Arts. 667, 670, 2315, 2317, 2320, 2322.
\textsuperscript{93} 185 So. 2d at 343.
injuries were sustained on navigable waters, the "twilight zone" doctrine\(^6\) whereby an injured employee might choose between a federal or state compensation remedy was denied application. In analyzing \textit{Yaka}, the court concluded that the act had been "taken upon the judicial anvil and hammered into an unexpected shape"\(^7\) and that the Supreme Court decision is authority only for the proposition that an injured longshoreman may bring an admiralty action in rem under the general maritime law in federal court. The court concluded: "In any event, we are of the opinion that it exemplifies more judicial integrity to conclude that the rationale emanating from Yaka merely permits a longshoreman to bring an action in rem against his employer in the federal court."\(^8\)

Application for rehearing was denied\(^9\) and thereafter the Supreme Court of Louisiana in a five to two decision denied an application for writ of certiorari, finding no error of law in the prior judgment.\(^9\) The two dissenting judges in supporting their opinion\(^10\) that a writ should be granted relied upon \textit{Robinson v. Lykes Bros. S.S. Co.}\(^11\) \textit{Robinson} in a longshoreman's personal injury suit had similarly held that the exclusiveness of liability provisions of the Longshoremen's and Harbor Workers' Compensation Act precluded an in personam action against the employer and had construed \textit{Yaka} as permitting only an in rem action against the vessel owned by the employer. The dissenting judge in \textit{Robinson},\(^12\) recognizing that the court's holding was contrary to \textit{Yaka} and the then recent case of \textit{Hertel v. American Export Lines},\(^13\) felt that the writ should be granted to resolve the issue, but without success. Petition for certiorari to the United States Supreme Court to review the decisions of the Louisiana courts has now been granted in \textit{Jackson},\(^14\) thereby giving the court an opportunity to reappraise its holding in \textit{Yaka}.

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\(^7\) 185 So. 2d at 345.
\(^8\) \textit{Ibid.}
\(^9\) \textit{Id.} at 342.
\(^10\) 187 So. 2d 441 (La. 1966).
\(^11\) \textit{Ibid.}
\(^12\) 170 So. 2d 243 (La. App.), \textit{writ refused}, 247 La. 481, 172 So. 2d 292 (1965).
\(^13\) 247 La. at 481, 172 So. 2d at 292.
A Closer Analysis of the Decision in Biggs v. Norfolk Dredging Company

In an area of the law which admittedly is fraught with multiple hazards and confusion, the most all encompassing, and in some ways the most perplexing, case from a circuit court to date is Biggs v. Norfolk Dredging Co.105 The opinion relates to two suits resulting from similar incidents involving shoreside employees injured on vessels. After obtaining compensation benefits, both brought damage suits based on the alternative theories of recovery that they were either Jones Act seamen or Yaka candidates. In Biggs, a dredging employee had received state workmen’s compensation and had thereafter applied for and obtained additional benefits. In Clowers, the second suit, a general laborer filed a claim under the Longshoremen’s and Harbor Workers’ Compensation Act which ultimately proceeded to a formal hearing and resulted in a formal award of compensation. On motions for summary judgment, the suits were dismissed by the federal district court. The district court concluded in Biggs that the action of the Virginia Industrial Commission in approving Biggs’ claim on three separate occasions was res judicata and that the state commissioner’s findings that Biggs’ regular employment was shipyard work were sufficient to constitute a finding of jurisdiction. Additionally, the court concluded that Yaka as a remedy was available only to longshoremen, which automatically excluded this dredging employee. The court reasoned in Clowers that the formal hearing and subsequent award under the Longshoremen’s and Harbor Workers’ Compensation Act which was fully paid carried with it a presumption of jurisdiction under such act which could not be collaterally attacked by asserting a subsequent Jones Act suit.

On appeal both cases were reversed, and the opinion’s full significance may not be fully discernible for some time. Some confusion is initially apparent from the court’s interpretation of the Yaka holding as one permitting the employee to sue the shipowner or owner pro hac vice for maintenance and cure as well as for damages under the general maritime law, notwithstanding the fact that neither employee was a member of a crew and both had previously received workmen’s compensation benefits.106 Of greater overall significance, perhaps, is the fact that the res judicata theory urged in Biggs and the election or estoppel theory relied upon in Clowers appear to give way to

105 360 F.2d 360 (4th Cir. 1966).
106 Id. at 363.
the principle that *Yaka* will not permit a compensation act with its exclusiveness of liability provisions for the protection of the employer to deprive an employee of his historical maritime rights.

This principle is qualified in the opinion to some extent when the employee is attempting to characterize his status as a member of the crew of a vessel. In such instances estoppel by judgment to assert a Jones Act suit is not ruled out if there is an election by the employee during the compensation proceedings to sue under the Jones Act and the issue is litigated. Indeed, *Hagens v. United Fruit Co.* and *Smith v. Service Contracting, Inc.* are cited in the footnote, presumably to point up the instances in which the doctrine would apply. *Hagens* had held that a formal order issued by a deputy commissioner following a formal hearing was sufficient to preclude a subsequent suit by the claimant under the Jones Act. *Smith*, on the other hand, held that voluntary acceptance of a federal compensation award did not constitute res judicata or estoppel to a Jones Act suit when a deputy commissioner held no hearing and there was indeed no adversary proceeding. Had the question of jurisdiction been raised and litigated, the opinion is clear that such final determination by a deputy commissioner would have been res judicata. However, the court reasons in *Biggs* that the true *Yaka* employee cannot be barred ipso facto from his damage suit remedy by any administrative finding or award, the rationale again being the economic equality thesis analogizing the recovery in a *Yaka* fact situation to that obtainable against a true third party shipowner. Although the opinion is admittedly somewhat difficult to dissect due to the intermingling of discussion of the Jones Act, the *Sieracki* and *Yaka* opinions, it does appear that the court proceeds throughout on the basis that both negligence and unseaworthiness are available remedies to a *Yaka* claimant.

Whether suit is brought by the employee in the capacity of a Jones Act seaman or as a *Sieracki* seaman, the court makes it clear that the burden is one for the employee to support such entitlement by proving his true character of employment. The court viewed the two remedies, compensation benefits and the damage suit, as complementary, but under no circumstances is there to be a double recovery. The court further concludes that whether the employee's suit precedes or is filed after the compensation claim is immaterial, as the spirit of

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107 135 F.2d 842 (2d Cir. 1943).
109 360 F.2d at 365.
110 328 U.S. 85 (1948).
Yaka requires that the legal remedy and recovery be equated with that which would be available if a third party actually owned the vessel.

As for settlement of Yaka type suits, the specific language of the Longshoremen's and Harbor Workers' Compensation Act obviously never contemplated the Yaka problem. Consequently, the precise means of terminating third party litigation and the legal consequences that have been construed to flow from such termination under the language of the act, particularly section 33(g), cannot be squared with the situation of a direct employee suing his employer-shipowner for unlimited damages. The court in Biggs touches on the question of settlement by observing that the employee "may settle and relinquish his claim by a release surviving the exacting scrutiny of admiralty" and cites Garrett v. Moore-McCormack Co. as supporting authority.

Garrett was a maintenance case and dealt with the relationship of a seaman to a shipowner and the necessity that the seaman receive adequate consideration and fully understand his legal rights at the time that the release was executed. The test of the validity of a release, irrespective of the form involved, would be that utilized in the maritime law of releases which has been applied, not only to members of the crews of vessels, but also to longshoremen injured on a vessel. It would therefore appear that Biggs, utilizing the principle of economic equality contained in Yaka, subscribes to some procedure which will permit litigation to be terminated once and for all. This relates to the problem originally raised concerning settlement pursuant to section 33(g) of the Longshoremen's Act which, if literally read and interpreted, would completely deprive the employer-shipowner of any possibility of settlement of such a suit, since he would be determined to have given written approval to such a settlement by the entry of the agreed judgment. A settlement pursuant to Garrett would appear to be one which is reasonable, alerts the shoreside employee to his legal rights and carries no taint of overreaching. Such settlement would also serve to bring to an end all litigation including the compensation claim, despite the absence of specific statutory language in the Longshoremen's and Harbor Workers' Compensation Act to spell out and thereby implement such a result in a Yaka suit.

111 360 F.2d at 365.
113 See Panama Agencies Co. v. Franco, 111 F.2d 263 (5th Cir. 1940) (a pre-Yaka opinion).
The Hazards Inherent in the Reed v. S.S. Yaka Decision

It is indeed noteworthy that a decision such as Yaka, reached by an overriding of the specific language of a congressional statute in order to achieve an ostensibly equitable result, could create such reverberations in other factual and statutory contexts. An example is Antero Perez Rodriguez v. Alcoa S.S. Co., an unreported case from the United States District Court in Puerto Rico which is presently under submission to the United States Court of Appeals for the First Circuit as Alcoa S.S. Co. v. Antero Perez Rodriguez.114 In this case the longshoreman, a direct employee of Alcoa, was injured on board the S.S. Alcoa Roamer on navigable waters within the territorial limits of Puerto Rico. Compensation pursuant to the provisions of the Puerto Rico Workmen’s Accident Compensation Act115 was awarded following which Rodriguez filed an in rem action against the vessel claiming that it was unseaworthy. The vessel owner filed exceptions to the libel alleging that the longshoreman’s only remedy was in the form of compensation, but these were denied by the district court.

On rehearing the district court reaffirmed its position in Rodriguez as well as in two other cases considered concurrently in which the same points of law were involved.116 The case was ultimately submitted for decision on stipulated facts, and the district court entered a decree in favor of the injured longshoreman, holding that the vessel was unseaworthy and that the in rem action was not barred by the exclusiveness of remedy provision of the Puerto Rico Workmen’s Compensation Act.117

The basis of the shipowner’s exceptions was that the case fell solely under the exclusive provisions of the Puerto Rico Workmen’s Accident Compensation Act which is not identical in language to the Longshoremen’s and Harbor Workers’ Compensation Act. Carrying the argument a step further, the shipowner pointed out that Congress pursuant to the Second Puerto Rican Organic Act of 1917118 gave Puerto Rico general legislative power over its own waters and that the legislature was entitled to enact its own workmen’s compensation act for maritime employees to the exclusion of the maritime law

114 No. 6787 in the United States Court of Appeals for the First Circuit.
115 P.R. LAWS ANN. tit. 11, §§ 1-140 (1962).
116 These three cases were placed on the admiralty docket of the United States District Court in San Juan, Puerto Rico as Adm. Nos. 32-63, 14-64, and 28-64.
117 P.R. LAWS ANN. tit. 11, §§ 1-140 (1962).
of the United States and the Longshoremen's and Harbor Workers' Compensation Act. The longshoreman's position was that the Yaka decision had altered this interpretation of the exclusiveness of a Puerto Rican statute, and uniformity in the application of the maritime law compelled conformity with the decision. This facet of the case is of considerable interest, since the view had prevailed under prior circuit decisions that the maritime law of the United States did not apply in the territorial waters of Puerto Rico. Additionally, it was urged that the Workmen's Accident Compensation Act of Puerto Rico contains no exception as to the coverage of crew members comparable to that contained in the Longshoremen's and Harbor Workers' Compensation Act. Therefore, the two acts were not comparable in scope and the avoidance of "harsh and incongruous results" relied upon in reaching the decision in Yaka had no application.

The same district court has recently written on this point in Santiago v. Hermanos. Unlike the Rodriguez case, Santiago was an in personam action against the vessel owners, much as the vessel on which the occurrence took place had sunk so that no lawful seizure could be made. Although the court decided that the Constitution made the general maritime law applicable to all of the United States, it could ascertain no principle which prevented Congress from granting to Puerto Rico the power to legislate as to its own waters. Finding nothing affirmative which compelled the conclusion that the maritime laws of the United States were applicable or inapplicable, the court turned to an examination of the legislation of Puerto Rico. The Puerto Rican Workmen's Accident Compensation Act was found to contain an exclusiveness of liability clause as to the employer as well as a separate section permitting recovery from a third party. However, the court concluded in Santiago that the employer and third party responsible were one and the same person, and, resorting to Yaka and the possibility of producing harsh and incongruous results out of keeping with the legislature's intent to protect workmen, it concluded that Puerto Rican law was not in conflict with the general maritime law of the United States and denied the shipowner's motion to dismiss. It further observed that the vessel owner could be sued directly in personam or indirectly in rem and in that case the remedies were alternative. It remains to be seen whether the First Circuit in

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120 373 U.S. at 415.
considering Rodriguez will agree that the compensation act of Puerto Rico has also succumbed to the influence of Yaka.\textsuperscript{122}

Compounding the confusion resulting from an application of the Yaka rationale to another compensation act is the interpretation that courts have consistently given the exclusiveness of liability provision of the Federal Employees' Compensation Act.\textsuperscript{123} This statute pertains to government employees, and its vitality has been preserved, despite assorted efforts of such employees to sue the government for damages in tort as well. The Supreme Court had no difficulty in denying claims brought against the government under the Suits in Admirality Act\textsuperscript{124} in Patterson v. United States\textsuperscript{125} and the Public Vessels Act\textsuperscript{126} in Johansen v. United States.\textsuperscript{127} In both decisions it was stressed that if such employees are to be accorded greater rights than those which they enjoy under the Federal Employees' Compensation Act, it is for Congress and not the federal courts to provide them. More recently, in United States v. Demko,\textsuperscript{128} the injured seaman employee was denied the right to sue the government under the Federal Tort Claims Act.\textsuperscript{129}

Moving closer to the Yaka problem is Aho v. United States,\textsuperscript{130} in which the injured employee brought suit against the government under the Public Vessels Act\textsuperscript{131} and urged Yaka as a basis to avoid the exclusiveness of liability section of the F.E.C.A.\textsuperscript{132} The court stated that, despite the fact that Yaka had rejected literal application of the exclusive liability section as to private shipowners under the Longshoremen's and Harbor Workers' Compensation Act, this statutory provision of the Federal Employees' Compensation Act would be upheld, thereby relegating such employee solely to his compensation remedy.\textsuperscript{133} With the inconsistencies as to application of such a provision continuing to increase, the probabilities would seem to favor an application for a writ of certiorari to the Supreme Court in Aho

\textsuperscript{122} The First Circuit held that it has not. Alcoa S.S. Co. v. Rodriguez, Civil No. 6787, 1st Cir., April 20, 1967, — F.2d — (1967). [Ed.]
\textsuperscript{125} 359 U.S. 485 (1959).
\textsuperscript{127} 343 U.S. 427 (1952).
\textsuperscript{128} 374 F.2d 885 (5th Cir. 1967).
\textsuperscript{130} 374 F.2d 885 (5th Cir. 1967).
\textsuperscript{133} 374 F.2d at 886.
or a similar case to resolve another facet of this contradictory area of the law.

That the impact of this Supreme Court pronouncement can be felt in more remote areas of the law is readily seen in *White v. United States Lines Co.* In this instance the doctrine of laches was at issue and posed a time quandary as to whether old pre-*Yaka* compensation claims for injuries occurring on vessels had to be re-examined and reinvestigated as potential damage suits. White was injured on two occasions in 1960 and filed admiralty actions against his employer who was also the vessel owner in December, 1964, a year and seven months after the *Yaka* decision. In holding the libelant guilty of laches, the court observed: that prior to *Yaka*, section 5 of the Longshoremen's and Harbor Workers' Compensation Act meant what it said; that although it was not until the advent of this decision that a longshoreman could sue his employer when a shipowner, it likewise was not until *Yaka* that an employer has reason to treat White's injuries except as a compensation case; that different procedures were followed in handling unseaworthiness cases from routine compensation claims; and that White had given no reasonable notice to his employer of his intentions, all of which were prejudicial to the employer-shipowner.

Another instance which points up how such reasoning precipitates new applications is seen in *Watson v. Gulf Stevedore Corp.*, which was recently affirmed by the Fifth Circuit. In that case the independent contracting stevedore-employer was sued directly, even though it had no connection whatsoever with the ownership or operation of the vessel involved which had been dismantled and the corporation dissolved prior to the institution of suit. It was urged in that case that the injured longshoreman was a third party beneficiary of the loading contract between the stevedore and the vessel's space charterer, that the vessel and its owners were no longer available to be sued and that, if suit were instituted, it would result in indemnity being imposed on the stevedore employer. Thus, it was argued that a direct suit against the employer which had no connection or interest in the vessel was warranted. The *Yaka* thesis was urged with vigor, it being contended the economic equality of recovery by a longshoreman injured under such circumstances justified a direct suit against the party which would ultimately bear the loss anyway.

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136 374 F.2d 946 (5th Cir. 1967).
Both the district and circuit courts stressed the importance of the exclusiveness of liability provisions of the Longshoremen's and Harbor Workers' Compensation Act under these circumstances, as much as the stevedore which was strictly a shore based independent contractor owed no warranty of seaworthiness to the injured longshoreman. The Fifth Circuit, citing *Ferrigno v. Ocean Transport Ltd.*\(^{137}\) and *Sanderlin v. Old Dominion Stevedoring Corp.*\(^{138}\) pointed out that a longshoreman was not to be regarded as a third party beneficiary of the stevedore loading contract, a status which the vessel and its owner clearly occupy under the case law.

*Watson* is potentially of far reaching significance. If by chance such a suit against an employer when not a shipowner should succeed, the demise of section 5 of the act as to the exclusiveness of liability of the employer to its employee would indeed be virtually complete. If such a result became law, the basic *quid pro quo* of the compensation act would no longer survive, even in remnant form, and the entire philosophical base of compromise on which all compensation law is bottomed would necessarily be undermined and the balance of interests destroyed.

**Conclusion**

Whatever the direction and magnitude of the wake of *Yaka* at this time, over three years after the Supreme Court's historic pronouncement, it seems reasonably safe to assume that it will increase substantially in future years. Contrary to many decisions of significance in the law, this holding contains within it two highly flexible and interrelated ingredients, the direct flouting of the explicit provisions of a congressional statute and the ostensible presence of equitable reasons for doing so. Yet the drastic method employed in *Yaka* to cure the legal malaise excises the very bedrock of compromise on which all compensation acts are based and runs directly counter to the time tested recognition by the courts that the power to alter, amend or revise the maritime law rests with the Congress whose will is paramount. To court and practitioner alike, *Yaka* is an enigma which casts an ever lengthening shadow of legal uncertainty and doubt over the meaning and scope of application of a statute, and, as the cases suggest, the rationale of this decision has no limit as to what measures are countenanced to avoid harsh and incongruous results.

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137 309 F.2d 445 (2d Cir. 1962).
In a profession which relies so heavily upon precision in the use of language in order to avoid a multitude of legal pitfalls, the importance of the decision cannot be minimized. Without definitive guidelines on which maritime practitioners can rely, there is no reason to assume that other sections of the Longshoremen's and Harbor Workers' Compensation Act as well as other statutes will not be the subject of further piecemeal judicial amendment. Absent timely action by the Congress to clarify its intent so that all parties will know their legal standing before the courts, time alone must gauge the decision's impact on the law.