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involved."[81] This need for protection is no less when modern shore-based equipment is used to carry out the ship's service. There is no just reason for distinguishing between a longshoreman injured by a ship's boom and one injured by shore-based equipment when the function of the equipment and plaintiff's duties in each case are the same. Longshoremen who are performing the ship's service in carrying out the loading and unloading operations should not be penalized by loss of the protection given by the application of the warranty of seaworthiness by utilization of more modern equipment. For in this way, the shipowner would be reaping the benefits of modern labor-saving devices and avoiding the consequences of the risks the longshoremen must face as a result.

Therefore, due to the high risk of injury within the longshoreman industry caused by the hazards of the ship's service and the unfairness of placing on the longshoremen the whole burden of loss arising from the utilization of modern equipment the loss should be put upon the shipowner by application of the warranty of seaworthiness whenever an injury arises in the performance of the ship's service. If the plaintiff is directly engaged in the ship's service and he is injured by equipment used in carrying out this service, whether it is modern or traditional equipment, whether it is located on the ship or on the shore, whether it is furnished by the stevedore or by the shipowner, and whether it is attached to the ship or not, the warranty of seaworthiness should apply. The next reasonable step[82] for the Supreme Court to take should be to adopt this position and extend seaworthiness to all shore-based equipment used in the ship's service.

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[81] Italia Societa v. Oregon Stevedoring Co., 376 U.S. 315, 323, n.10, 1964 A.M.C. 1075, 1082 n.10 (1964).

[82] Justice Harlan in his dissenting opinion in Gutierrez v. Waterman S.S. Co., 373 U.S. 206, 216, 1963 A.M.C. 1649, 1658 (1963), shows the importance of that case in the trend of seaworthiness recovery:

> The decision in this case has importance in admiralty law beyond what might appear on the surface. It marks another substantial stride toward the development by this Court of a doctrine that a shipowner is an insurer for those who perform any work on or around a ship subject to maritime jurisdiction.

Accord, NORRIS, MARITIME PERSONAL INJURIES 58 (2d ed. 1966).

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CAN THE SUITS IN ADMIRALTY ACT LIMITATION PERIOD BE TOLLED OR EXTENDED?

The United States Government, through its several agencies, carries on a large share of the maritime activity of this country. Besides owning and operating military and merchant vessels, it is an active charterer, maritime employer, and a maritime insurer, to name but a few of its maritime activities. In short, the Government's operations encompass the entire maritime field, and it is easy to see why the federal government is a frequent admiralty litigant.

In order to permit the United States to be sued in admiralty as any other maritime defendant, Congress, in 1920, passed the Suits in Admiralty Act,[1] and later, in 1925, enacted the Public Vessels Act,[2] which removed the bar of governmental immunity. These two acts provide the exclusive remedy for any claim brought in admiralty against the United States,[3] and the procedural requirements of either act under which a libel is filed must be complied with in order to invoke the jurisdiction of a federal district court sitting in admiralty.[4]

The Suits in Admiralty Act sets forth a two year limitation period within which suits against the United States must be brought,[5] and this limitation period is incorporated by reference into the Public Vessels Act.[6] Generally, this limitation has been strictly enforced by the federal courts. For example, the Government cannot waive the defense of the statutory period,[7] and it has been held non-extendable and non-tollable because of infancy[8] or insanity.[9]

This strict enforcement of the limitation period creates problems, however, when the substantive admiralty law or other conditions precedent to suit beyond the claimant's control prevent him from availing himself of the full two year period within which to bring suit under these two acts. This note will discuss these problems and suggest a solution.

One problem faced by the courts in this area is the conflict which may arise because the procedural requirements of another federal statute must be complied with before suit can be brought under either act. For example, in *Liberty Mut. Ins. Co. v. United States*,[10] a provision of the Longshoremen's and Harbor Workers' Act and the two year limitation period operated to defeat a subrogation claim of the insurer of an injured longshoreman against the United States,[11] even though

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[1] 41 Stat. 525 (1920), 46 U.S.C. §§ 741-52 (1964).

[2] 43 Stat. 1112 (1925), 46 U.S.C. §§ 781-90 (1964). The Suits in Admiralty Act provides that a libel in rem may not be brought against the United States. 41 Stat. 525 (1920), 46 U.S.C. § 741 (1964).

[3] Johnson v. United States Shipping Bd. Emergency Fleet Corp., 280 U.S. 320 (1930); United States Shipping Bd. Emergency Fleet Corp. v. Rosenberg Bros., 276 U.S. 202 (1928); Thomason v. United States, 184 F.2d 105 (9th Cir. 1950); McKenna v. United States, 91 F Supp. 556 (S.D.N.Y. 1950).

[4] Glover v. United States, 109 F Supp. 701 (S.D.N.Y. 1952), construed the procedural requirement of the Suits in Admiralty Act, 41 Stat. 525 (1920), 46 U.S.C. § 742 (1964).

[5] 41 Stat. 525 (1920), 46 U.S.C. § 745 (1964).

[6] 43 Stat. 1112 (1925), 46 U.S.C. § 782 (1964), provides that suits under the Public Vessels Act shall be subject to the same provisions of the Suits in Admiralty Act so long as they are not inconsistent.

[7] Isthmian S.S. Co. v. United States, 302 F.2d 69 (2d Cir. 1962).

[8] Sgambati v. United States, 172 F.2d 297, 1949 A.M.C. 47 (2d Cir.), *cert. denied*, 337 U.S. 938 (1949).

[9] Williams v. United States, 228 F.2d 129, 1956 A.M.C. 80 (4th Cir. 1955), *cert. denied*, 351 U.S. 986 (1956).

[10] 290 F.2d 257, 1961 A.M.C. 2020 (2d Cir. 1961).

[11] 44 Stat. 1424 (1927), 33 U.S.C. § 933(b), (h) (1964), provides that acceptance by a longshoreman of a compensation award from his employer or his employer's insurance company operates as an assignment to the employer or insurer of all the employee's rights to recover damages against a third party causing the injury.

it was impossible for the insurer to sue earlier. The court held that a suit brought by the insurer before the termination of the six month period following acceptance of a compensation award during which the longshoreman could have sued the third party was premature.[12] The provision for suit after acceptance of compensation was construed as giving the longshoreman the exclusive right to sue within that period. The insurer, thus could not bring suit until twenty six months after the cause of action arose because the longshoreman delayed twenty months before accepting compensation, and the later filed suit was held to be barred by the Suits in Admiralty Act limitation period, leaving the insurer without any remedy.[13]

The admiralty litigant may also find himself time-barred because of mandatory administrative remedies. The federal government has, in most situations, provided for administrative determination of maritime claims against its agencies. Often these remedies are mandatory and must be exhausted before the claimant can proceed in admiralty with his cause of action. For example, the administrative remedy may be required by statute as is the case under the Admiralty Extension Act which provides for a six month period of administrative determination of claims against the United States brought under the act.[14] The exclusive judicial remedy for such a claim is under the Suits in Admiralty Act or the Public Vessels Act.[15] In *Hahn v. United States*,[16] the elapse of the six month period was held to be a condition precedent to the jurisdiction of the district court, and the limitation period was not tolled during the mandatory period of administrative determination.

The administrative remedy may also be made mandatory by contract. Generally a maritime contract made with an agency of the United States Government contains a dispute clause which requires that the complaining party must first proceed administratively,[17] and appeal may be taken only after the required administrative procedures have been exhausted.[18] In *States Marine Corp. v. United*

[12] 44 Stat. 1424 (1927), 33 U.S.C. § 933(b), (h) (1964), further provides that within six months after the compensation award is made, the longshoreman may sue the third party. If the longshoreman does bring suit within six months, the statutory assignment of his claim to his employer or employer's insurer is non-operative.

[13] In another Longshoremen's Act case, Hartford Acc. & Indem. Co. v. United States, 130 F Supp. 839, 1955 A.M.C. 1245 (S.D.N.Y. 1955), the insurer was again left without a remedy. A Deputy United States Employee's Compensation Commissioner, whose duty it is to determine the amount of the compensation award under the Longshoremen's Act, did not make a determination as to the insurer's liability or to whom the compensation was to be paid until some two years after the accident in which the longshoreman had been killed. In the insurer's suit against the United States, the district court disagreed with the insurer's contention that the statute should be tolled during the determination by the commissioner.

[14] 62 Stat. 496 (1948), 46 U.S.C. § 740 (1964), which extends the jurisdiction of admiralty courts to include injuries done or consummated on land caused by a vessel on navigable waters, provides for a six month mandatory period of administrative determination of a claim under the act brought against the United States.

[15] 62 Stat. 496 (1948), 46 U.S.C. § 740 (1964).

[16] 218 F Supp. 562 (E.D. Va. 1963).

[17] 32 C.F.R. § 7.103-12 (1966), establishes and requires dispute clauses in government contracts in general.

[18] 32 C.F.R. § 7.103-12 (1966).

States,[19] a claim arose against the United States,[20] but States Marine did not file a formal claim until sixteen months after the damage was consummated. This administrative procedure took fifteen months, and the court would not allow the period of administrative determination to toll the Suits in Admiralty Act limitation period.

It is clearly evident from the foregoing discussion that the operation of a mandatory statutory procedure when coupled with the Suits in Admiralty Act limitation period may bar a claimant who has in fact been diligent in pursuing his claim. It would seem more logical to toll the limitation period while the claimant is precluded from bringing suit by circumstances beyond his control, so that the claimant will have the full two year period in which to file his action.

The reason most often given for holding the limitation period set forth in the Suits in Admiralty Act non-tollable is that this type of limitation is a "substantive" as opposed to a "procedural" statute of limitation which limits a common law remedy.[21] The argument is that the Suits in Admiralty Act created a new right, the right to sue the United States in admiralty, and with that right, the act prescribed the period within which suit must be brought. It therefore follows that not only does the cause of action become judicially unenforceable, but the right is extinguished by the running of the statutory period.[22]

This artificial "substantive-procedural" distinction should not be determinative, however, of whether the Suits in Admiralty Act limitation period can be tolled. First, there is doubt whether the reasons underlying the creation of the distinction are properly applicable to the problem under discussion. The distinction had its origin in *The Harrisburg*,[23] which involved a conflict of laws question, namely, which statutory period of limitation controls, that set forth in a foreign statute or that of the forum? The Supreme Court determined that since the limitation period was part of the statute creating the right, it qualified the right itself.[24] Hence, it was "substantive" and controlled the timeliness of the foreign suit.

It is arguable that the Suits in Admiralty Act does not, strictly speaking, create any new causes of action, and therefore the limitation period cannot be considered "substantive." With respect to causes of action which can exist against private maritime defendants, a new remedy is given, namely the ability to assert a similar cause of action against the United States in admiralty.[25] The Suits in

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[19] 283 F.2d 776, 1961 A.M.C. 254 (2d Cir. 1960).

[20] States Marine was a time charterer under contract with the government. The contract contained a dispute clause and provided that the United States would be liable for damage caused by its stevedore contractor. 283 F.2d at 776, 777, 1961 A.M.C. at 255.

[21] Sgambati v. United States, 172 F.2d 297, 1949 A.M.C. 47 (2d Cir.), *cert. denied*, 337 U.S. 938 (1949); Osbourne v. United States, 164 F.2d 767, 1947 A.M.C. 930 (2d Cir. 1947); The Isonomia, 285 Fed. 516 (2d Cir. 1922); Abbattista v. United States, 95 F Supp. 679 (N.J. 1951); Kruhmin v. United States War Shipping Administration, 81 F Supp. 689 (E.D. Pa. 1949).

[22] States Marine Corp. v. United States, 283 F.2d 776, 1961 A.M.C. 254 (2d Cir. 1960); Osbourne v. United States, *supra* note 21, at 768.

[23] 119 U.S. 199 (1886).

[24] *Id.* at 214.

[25] Crescitelli v. United States, 66 F Supp. 894, 896, 1946 A.M.C. 261, 264 (E.D. Pa. 1946); Burkholder v. United States, 56 F Supp. 106, 108, 1945 A.M.C. 759, 762 (E.D. Pa. 1944).

Admiralty Act and the Public Vessels Act were not enacted to create new bases of maritime liability, but rather to remove the defense of governmental immunity and permit suit against the United States in admiralty.[26] This is clear from the language of the Suits in Admiralty Act: "In cases where if such vessel were privately owned or operated a proceeding in admiralty could be maintained any appropriate nonjury proceeding in personam may be brought against the United States. "[27]

Secondly, the reasoning of the Supreme Court in the recent case of *Burnett v. New York Cent. R.R.*,[28] casts further doubt on the validity of the "substantive-procedural" argument. *Burnett* considered the question of the tolling of the limitation period contained in the Federal Employers' Liability Act.[29] The Court put little stock in the distinction in determining whether a statutory limitation period could be tolled[30] and said it is rather a question of the legislative intent in enacting the statutory rights and remedies.[31] The Court further stated: "In order to determine congressional intent, we must examine the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme developed for the enforcement of the rights given by the Act."[32] After examining the legislative intent in enacting the Federal Employers' Liability Act, the Court held that tolling the limitation period would in this situation effectuate the humane purposes of the act.

The Suits in Admiralty Act and the Public Vessels Act, however, only provide the admiralty litigant with a judicial remedy against the United States. The acts enable the litigant to enforce against the United States only existing rights under maritime law. On the other hand, in *Burnett* the Court, in determining whether to toll the limitation period contained in the FELA, evaluated a statute which was

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[26] Allen v. United States, 338 F.2d 160, 162, 1965 A.M.C. 1229, 1231 (9th Cir. 1964); Maine v. United States, 134 F.2d 574, 575, 1942 A.M.C. 1075, 1076 (1st Cir.), *cert. denied*, 319 U.S. 772 (1943).

[27] 41 Stat. 525 (1920), 46 U.S.C. § 742 (1964). Forgione v. United States, 202 F.2d 249 (3d Cir.), *cert. denied*, 345 U.S. 966 (1953), is illustrative of the judicial interpretation of the Suits in Admiralty Act, 41 Stat. 525 (1920), 46 U.S.C. § 742 (1964), to wit, a suit can only be maintained in admiralty against the United States if such action could be maintained in admiralty against a private party. In *Forgione*, a libel was filed alleging false arrest and imprisonment. However, it is well settled that in order to invoke admiralty jurisdiction for a tort action the tort must be maritime in nature; to be maritime it must occur on navigable waters, the situs of the tort controlling. The Plymouth, 70 U.S. 20 (1865). The alleged tort occured on land, therefore no cause of action could be maintained in admiralty and the United States could not be sued under the Suits in Admiralty Act.

[28] 380 U.S. 424 (1965).

[29] 35 Stat. 66 (1908), 45 U.S.C. § 56 (1964), provides: "No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

[30] 380 U.S. at 427.

[31] *Id.* at 426. The Court also indicated that the right and limitation being written in the same statute does not indicate this legislative intent. 380 U.S. at 427 n.2.

[32] 380 U.S. at 427. See Glus v. Brooklyn E. Terminal, 359 U.S. 231 (1959), where claimant was misled by defendant's agents into believing he had more than three years to bring an action on a Federal Employers' Liability Act claim. The Court held the defendant could be estopped from asserting the statute of limitations as a defense.

not only intended to provide new remedies, but also to alter the common law rights of an employee against his employer and in the case of wrongful death to create a new cause of action.[33] Therefore, in applying the theory of *Burnett* to determine whether the Suits in Admiralty Act limitation period should be tolled, the intent of Congress in enacting the statute which creates the admiralty rights must be examined, e.g., the Longshoremen's and Harbor Workers' Compensation Act,[34] the Admiralty Extension Act,[35] or the Clarification Act,[36] rather than the intent in enacting the Suits in Admiralty Act which only provides the procedural vehicle for the enforcement of those rights.

The approach in *Burnett* was foreshadowed by a district court decision in *Kinman v. United States*[37] where the district court sitting in admiralty evaluated the congressional intent in enacting the Clarification Act[38] and held the Suits in Admiralty Act limitation period tollable. The Clarification Act gave seamen on government vessels the same rights as those on private vessels, but provided for a period of administrative determination before a seaman could resort to the admiralty courts.[39] The issue of whether this period of required administrative determination would toll the Suits in Admiralty Act limitation period had been discussed, but not decided, prior to *Kinman*. The Supreme Court in *McMahon v. United States*,[40] resolved a conflict between the circuits as to whether the limitation period began to run from the date the cause of action arose or from the date of administrative disallowance.[41] The Court resolved the conflict by deciding the period ran from the date of injury,[42] but failed to decide whether the mandatory period of administrative determination would toll the limitation period.[43]

The district court in *Kinman* was faced with two conflicting rules of construction: (1) that legislation for the benefit of seamen is to be construed in their favor; and (2) that statutes waiving governmental immunity are to be construed strictly in favor of the government.[44] The court therefore looked to the intent of Con-

[33] 35 Stat. 65 (1908), 45 U.S.C. §§ 51-60 (1964).

[34] 44 Stat. 1424 (1927), 33 U.S.C. §§ 901-50 (1964).

[35] 62 Stat. 496 (1948), 46 U.S.C. § 740 (1964).

[36] 57 Stat. 45 (1943), 50 U.S.C. § 1291 (Supp. 1964).

[37] 139 F Supp. 925 (N.D. Cal. 1956).

[38] 57 Stat. 45 (1943), 50 U.S.C. § 1291 (Supp. 1964).

[39] The War Shipping Administration, the agency employing the seamen, provided that as a condition precedent to any suit against the United States by a seaman or surviving dependent, the claim must be administratively disallowed and provided for a sixty-day period after the claim was presumptively disallowed. General Order 32, 8 Fed. Reg. 5414, § 304.23 (1943). This requirement of administrative disallowance was jurisdictional, and therefore a district court could not entertain a suit until the claim was disallowed. Rodiniuc v. United States, 175 F.2d 479, 1950 A.M.C. 1604 (3d Cir. 1949), *cert. denied*, 338 U.S. 895 (1949).

[40] 342 U.S. 25, 1951 A.M.C. 1913 (1951).

[41] Thurston v. United States, 179 F.2d 514, 1950 A.M.C. 456 (9th Cir. 1950), held the limitation period ran from the date of administrative disallowance. Both MacInnes v. United States, 189 F.2d 733, 1951 A.M.C. 140 (1st Cir. 1951) and Gregory v. United States, 187 F.2d 101, 1951 A.M.C. 339 (2d Cir. 1951) held the limitation ran from the date of injury.

[42] 342 U.S. at 28, 1951 A.M.C. at 1915.

[43] *Ibid.*

[44] 139 F Supp. at 928.

gress in enacting the Clarification Act and found that the object of the legislation was to give the government seaman the same rights as a private seaman.[45] The court reasoned that since private seamen have a full two years within which to file suit, the Government seamen should also have a full two years. The court therefore concluded that the limitation period was tolled for a period of sixty days during administrative proceedings.

The Court of Appeals for the Third Circuit has applied the principles of *Burnett* to admiralty, when it held the Suits in Admiralty Act limitation period was tolled while the claimant exhausted mandatory administrative remedies. The case, *Northern Metal Co. v. United States*,[46] involved a contract dispute between Northern Metal, a stevedoring company, and the United States Army. The stevedoring contract contained a dispute clause.[47] Northern Metal complied with the provisions of the dispute clause, but found that after the Armed Services Board of Contract Appeals had disallowed its claim, the two year limitation period of the Suits in Admiralty Act had run. Northern Metal argued that the limitation period was tolled during the period of administrative action and, therefore, it should be allowed to proceed in admiralty. The court agreed, finding that the intent of Congress in providing a statutory scheme of administrative relief for contract disputes was, in part, to provide a system whereby litigation could be avoided when a claim could be administratively decided. Although Congress limited the number of instances where appeal could be taken to the courts,[48] it did not intend to deny all rights to appeal. Therefore, the court reasoned that to hold that the statute had run while administrative proceedings were pending and subsequently deny judicial review would be out of harmony with the intent of Congress in providing for limited judicial review.[49]

Some federal courts which have held that the limitation period cannot be tolled while the claimant is prevented from bringing suit have not discriminated carefully in choosing authority upon which to rely. In arguing that the limitation period should be tolled the claimant is often met by *Sgambati v. United States*[50] and *Williams v. United States*,[51] which basically stand for the proposition that the time limitation of the Suits in Admiralty Act will not be tolled because of infancy or insanity, respectively In neither case, however, was the claimant totally precluded from bringing suit. In *Sgambati*, the court pointed out the distinction in saying "the plaintiff could have sued by a next friend within the two years."[52] Likewise, in *Williams* the claimant could have brought suit by having a guardian appointed.[53] These cases clearly do not rule out the conclusion that the

[45] *Ibid.*

[46] 350 F.2d 833 (3d Cir. 1965).

[47] 32 C.F.R. § 7.103-12 (1966).

[48] 68 Stat. 81 (1954), 41 U.S.C. § 321 (1964), the so-called "Wunderlich Act," enacted after the Supreme Court had limited judicial review of departmental decisions under dispute clauses to cases of fraud. United States v. Wunderlich, 342 U.S. 98 (1951).

[49] 350 F.2d at 839.

[50] 172 F.2d 297, 1949 A.M.C. 47 (2d Cir.), *cert. denied*, 337 U.S. 938 (1949).

[51] 228 F.2d 129, 1956 A.M.C. 80 (4th Cir. 1955), *cert. denied*, 351 U.S. 986 (1956). Both Hahn v. United States, 218 F Supp. 562, 566 (E.D. Va. 1963), and Burch v. United States, 163 F Supp. 476, 480 (E.D. Va. 1958), seem to misapply *Williams*.

[52] 172 F.2d at 298, 1949 A.M.C. at 48.

[53] 228 F.2d 129, 1956 A.M.C. 80 (4th Cir. 1955), *cert. denied*, 351 U.S. 986 (1956).

limitation period can be tolled where the claimant is prevented from bringing suit by circumstances beyond his control.

In support of this proposition is the decision of the Court of Appeals for the Second Circuit in *Osbourne v. United States*,[54] where the limitation period of the Suits in Admiralty Act was tolled. *Osbourne* involved an unusual factual situation in which a civilian seaman on a United States merchant vessel had been injured by the negligence of the United States. The vessel was torpedoed, and the seaman was taken prisoner and interned by the enemy for the remainder of the war. Within a year of his release, but well beyond the two year limitation period, the seaman filed suit. The court allowed the period to be tolled during the time of imprisonment, since the enemy had made the courts unavailable to the seaman.

On its face, *Osbourne* stands for the proposition that a limitation period "will toll for one who is a prisoner in the hands of the enemy in time of war."[55] Federal courts reluctant to toll the Suits in Admiralty Act statutory period have so construed *Osbourne*, narrowly limiting its application to exactly those circumstances.[56] The decision should not be so restrictively interpreted however, rather it should apply whenever the claimant has been denied access to the courts because of circumstances beyond his control. Once the claimant shows he has in no way prevented the bringing of suit, the factual distinctions giving rise to the delay should not govern. The results are the same judicially: the admiralty court cannot hear the claim.

To illustrate this compare *Osbourne* with *Liberty Mut. Ins. Co. v. United States*[57] and *Hartford Acc. & Indem. Co. v. United States*,[58] previously discussed.[59] In all three cases the claimant was precluded from bringing suit within the two year limitation period. The reasons being respectively, imprisonment by the enemy, inaction of a Deputy United States Compensation Commissioner, and a delay caused by a longshoreman's failure to accept a compensation award. The limitation period was tolled only in *Osbourne*. Admittedly, the facts vary greatly and the insurance companies probably have extra-judicial possibilities for rectifying the situation not available to a seaman in a German prison camp;[60] however, the effect is the same judicially: no jurisdiction and no judicial determination. There is no reason why the Suits in Admiralty Act limitation period should be tolled in one instance and not the others.

The argument for tolling the Suits in Admiralty Act limitation period is further strengthened when the general purposes of statutes of limitations are examined. Statutes of limitations are designed to insure fairness to defendants and

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[54] 164 F.2d 767, 1947 A.M.C. 930 (2d Cir. 1947).

[55] *Id.* at 769, 1947 A.M.C. at 933.

[56] Hartford Acc. & Indem. Co. v. United States, 130 F Supp. 839, 843, 1955 A.M.C. 1245, 1250 (S.D.N.Y. 1955).

[57] 290 F.2d 257, 1961 A.M.C. 2020 (2d Cir. 1961).

[58] 130 F Supp. 839, 1955 A.M.C. 1245 (S.D.N.Y. 1955).

[59] See notes 10, 13 *supra* and accompanying text.

[60] The court in *Liberty Mutual* stated that relief from the statute should be gotten from Congress. 290 F.2d at 259, 1961 A.M.C. at 2023. Also, the insurer or employer, aware of the possible time-bar, could influence the longshoreman into making a timely acceptance of the compensation award.

to prevent surprise by stale claims.[61] Surely, the Government cannot complain of unfairness or surprise, when the claim is, in fact, pending before one of its administrative agencies. Also, a claim can hardly be considered stale when it is being administratively decided or it is being determined according to statutory provisions.

Conclusion

When the United States, as an admiralty defendant, pleads the running of the limitation period as a defense, this defense, if allowed, will as effectively bar the maritime claimant as if he had failed to show grounds for recovery under substantive admiralty law. The claimant may find himself precluded from recovery, not because he does not have a good claim under admiralty law, nor because he has failed to be diligent in pursuing his claim, but because of the operation of the administrative or judicial machinery, which was, in fact, established to allow him to recover.

When, because of a procedural aspect of a substantive statute or the pendency of a mandatory administrative remedy, the admiralty claimant is prevented from having the full statutory period within which to pursue his claim judicially, the Suits in Admiralty Act limitation period should be tolled or extended during the period in which the claimant is so precluded.

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[61] Burnett v. New York Cent. R.R., 380 U.S. 424, 428 (1964).

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