Stre(a)tching the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act

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By Edward Francis Cotter, Jr.*

In 1972, Congress enacted amendments to the Longshoremen's and Harbor Workers' Compensation Act (LHWCA). The LHWCA is a statutory compensation scheme similar to the workers' compensation systems available to land based workers. A major purpose of the 1972 amendments was to increase the benefits available to longshoremen under the LHWCA. During the congressional hearings on the 1972 amendments, an increase in compensation benefits was resisted by employers who claimed that they not only were compelled to make LHWCA payments but also were forced on occasion to indemnify vessel owners who were held liable to injured longshoremen under the maritime absolute liability doctrine of unseaworthiness. Thus the stevedore employer had to pay twice for the same injury. To eliminate this potential for double payment and gain employer support for the amendments, Congress enacted section 18(a) of the LHWCA, codified at section 905(b) of Title 33 of the United States Code, which eliminated the unseaworthiness remedy for injured longshoremen and provided that negligence would be the longshoremen's exclusive remedy.

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2. A longshoreman is generally defined as "[a] laborer, such as a stevedore or loader, who works about wharves of a seaport." BLACK'S LAW DICTIONARY 1093 (4th ed. rev. 1968).
against vessel owners.\(^6\)

Despite this apparent express congressional intent to limit the remedy against vessel owners to a negligence action, in the 1975 decision in \textit{Streatch v. Associated Container Transporation, Ltd.}\(^7\) a district court concluded that section 905(b) did not preclude recovery under a common law strict products liability theory in an action by an injured longshoreman against the owner of the vessel upon which the longshoreman was working. This Note discusses the \textit{Streatch} decision and its novel approach to the question of whether injured longshoremen should be restricted to the exclusive negligence action against a vessel owner provided in section 905(b). The Note first describes the inception of the longshoremen’s compensation system in 1927 and the effect of a series of Supreme Court decisions on that system. The need for amendment of the original statute is shown and a sketch of the issues raised by the 1972 amendments is presented. The Note next focuses on the \textit{Streatch} decision, with primary emphasis on Judge Hill’s imaginative treatment of the exclusivity provision of section 905(b). Subsequent cases that have dealt with this issue and have refused to follow the reasoning of the \textit{Streatch} court are discussed and contrasted. The Note then concludes that \textit{Streatch}’s imposition of strict products liability is not at variance with the purpose of the 1972 amendments to the LHWCA—elimination of the danger of double payments by stevedores—as that danger is not present in a strict products liability action.

To clarify the following discussion, a few basic terms need to be defined. The parties involved in the longshoremen’s compensation system are the longshoreman, the stevedore, and the vessel owner. The terms longshoreman and stevedore, although synonymous historically, have changed through common usage to the point that the term stevedore is now used to indicate the longshoreman’s employer.\(^8\) The vessel owner is the person or corporate entity who hires the stevedoring company to perform loading and off-loading services for the vessel owner. In disputes between these parties, an admiralty plaintiff may sue not only the vessel owner for injuries suffered on a vessel, but also may assert property interests in the vessel.\(^9\) Although jurisdictional differences exist in these two types of suits, both are within the admiralty


\(^7\) 388 F. Supp. 935 (C.D. Cal. 1975).


\(^9\) The admiralty courts allow actions asserting personal liability by claimants \textit{in personam} against a named natural or corporate person and asserting a property interest in a tangible thing \textit{in rem} against the tangible thing (normally a ship). \textit{Gilmore & Black, supra} note 8, at 35-37.
jurisdiction of the federal courts.¹⁰

**Historical Development**

Longshoremen have not always had access to the admiralty jurisdiction of the federal courts. The extension of admiralty jurisdiction to longshoremen occurred in 1914 when the Supreme Court held that admiralty jurisdiction was proper in a suit by an injured longshoreman against his employer, a stevedore, for injuries which occurred on a vessel in navigable waters.¹¹ Twelve years later, in *International Stevedoring Co. v. Haverty*,¹² the Court expanded the Jones Act,¹³ which had allowed suits by seamen against negligent employers for employment related injuries,¹⁴ to include not only traditional seamen but longshoremen as well.¹⁵ As a result of *Haverty*, longshoremen could bring negligence actions under the liberalized provisions of the Jones Act and avoid the hazards of the common law doctrines of fellow servant,¹⁶ contributory negligence, and assumption of risk.¹⁷ Shortly after the *Haverty* decision, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act of 1927¹⁸ which, although severely restricting the usefulness of *Haverty* to longshoremen, did establish a longshoremen's compensation system. The LHWCA provided, among other things, that the statutory compensation paid by the stevedore would be the exclusive remedy against an employer for personal injuries suffered by longshoremen in the course of employment.¹⁹ The

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¹⁰. The admiralty jurisdiction of the federal courts, a complex and interesting subject, is beyond the scope of this Note. Unless otherwise noted federal jurisdiction will be presumed throughout the remainder of the Note. For an excellent discussion of admiralty jurisdiction, see GILMORE & BLACK, supra note 8, at 18-50.


¹². 272 U.S. 50 (1926).


¹⁴. GILMORE & BLACK, supra note 8, at 328-29, 335.

¹⁵. International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926). Justice Holmes gave an interesting lesson in statutory analysis when he stated: “It is true that for most purposes, as the word is commonly used, stevedores are not ‘seamen.’ But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship’s crew. . . . [W]e are of the opinion . . . that in this statute ‘seamen’ is to be taken to include stevedores employed in maritime work on navigable waters . . . .” Id. at 52.

¹⁶. The fellow servant rule provided that “the employer was not liable for injuries caused solely by the negligence of a fellow servant.” W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 80, at 528 (4th ed. 1971).

¹⁷. GILMORE & BLACK, supra note 8, at 354-57.


LHWCA also contained a provision which was to become the avenue for judicial circumvention of the exclusive liability provision. This section allowed the longshoreman to bring a third party suit if "some person other than the employer [was] liable in damages."20

The potential for circumvention of the exclusive liability provision by the use of third party suits developed through a series of decisions which expanded the remedy of unseaworthiness. In early admiralty law, the unseaworthiness of a vessel could be used by a seaman as a defense to the charge of desertion.22 The unseaworthiness doctrine gradually expanded to become a cause of action for seamen's personal injuries and in time became so potent that it placed an absolute and nondelegable duty on a ship owner to provide a seaworthy ship.24 The scope of this duty was defined succinctly by the Supreme Court in 1960: "The duty is absolute, but it is a duty only to furnish a vessel and appurtenances reasonably fit for their intended use."25 As the scope of the duty grew so did the number of parties covered by its protection. The remedy was extended to cover longshoremen in 194626 and thereafter to other groups of maritime workers such as carpenters,27 repairmen,28 electricians,29 ship cleaners,30 and riggers.31 It even grew to

1426 (1927) (current version at 33 U.S.C. § 905(a) (1976)). The Act was designed to provide absolute recovery for injuries as prescribed in the compensation rate structure. The longshoreman traded the right to bring suit, with a lawsuit's uncertain outcome, for the security of compensation. The stevedore, on the other hand, traded the right to defend the suit, and escape liability, for the same certain outcome. Savings in administrative costs were to accrue to both parties.

20. The term "third party suit" refers to a suit by a person covered by a compensation system against a party who is not part of the compensation system where the suit stems from an injury that occurs during the course of employment. A suit by a longshoreman against a vessel or vessel owner that stems from an injury which occurred on the vessel in the course of employment would be a third party suit. See GILMORE & BLACK, supra note 8, at 410.


22. Dixon v. The Cyrus, 7 F. Cas. 755 (D. Pa. 1789) (No. 3,930). According to Gilmore and Black, The Cyrus was the first American case holding that the shipowner owed a duty to the seaman to provide a seaworthy ship. GILMORE & BLACK, supra note 8, at 384.

23. The Osceola, 189 U.S. 158 (1903). The Court stated in dictum the well established principle that "the vessel and her owners are . . . 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 appurtenances appurtenant to the ship." Id. at 175.


28. Read v. United States, 201 F.2d 758 (3d Cir. 1953).


31. Amerocean S.S. Co. v. Copp, 245 F.2d 291 (9th Cir. 1957).
cover an unsafe condition introduced by the stevedore.\textsuperscript{32} The remedy thus had become a "species of liability without fault"\textsuperscript{33} and "a form of absolute duty owing to all within the range of its humanitarian policy."\textsuperscript{34}

The burden of providing a seaworthy vessel lay solely upon the vessel owner even though the unseaworthiness might have been caused by the stevedore.\textsuperscript{35} The Court in \textit{Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.},\textsuperscript{36} however, limited the impact of this liability by allowing the vessel owner to obtain indemnity from a negligent stevedore. In \textit{Ryan}, a stevedore had negligently stowed cargo which broke free during off-loading operations and injured a longshoreman. At issue was whether the stevedore must indemnify the vessel owner absent an express agreement to that effect. The Court held that the stevedore had breached an implied "warranty of workmanlike service" and thereby had become liable to reimburse the vessel owner for any damages which the longshoreman might recover from the owner under the unseaworthiness doctrine.\textsuperscript{37} The warranty of workmanlike service quickly grew beyond the facts of \textit{Ryan} to encompass situations in which the warranty was breached when the stevedore failed to correct an unseaworthy condition within the responsibility of the vessel owner, when the stevedore's employees caused the vessel's unseaworthy condition, and even when the stevedore had not been negligent.\textsuperscript{38}

The \textit{Ryan} decision seemed equitable because it allowed the vessel owner to shift the burden of its seaworthiness liability to the negligent stevedore. The decision, however, amounted to a judicial dismantling of the legislative compensation system. Compensation under the LHWCA was intended to be the exclusive remedy of the injured longshoreman against the stevedore.\textsuperscript{39} Under the line of decisions culminating in \textit{Ryan}, however, the longshoreman could recover from the vessel owner under the seaworthiness remedy and the vessel owner could implead the stevedore for indemnification if the stevedore had breached the implied warranty of workmanlike service. The result, de-
scribed as circular liability for obvious reasons, is the same as a direct suit by the longshoreman against the stevedore, which was not permitted under the LHWCA.

The Supreme Court further weakened the exclusive remedy provision of the LHWCA in Reed v. Steamship Yaka, allowing a longshoreman hired directly by the charterer of a vessel to bring a suit directly against his employer using the unseaworthiness remedy. The plaintiff was injured when a defective plank of a pallet upon which he was standing broke. The court could find no economic difference between granting relief “in this case, where the owner acted as his own stevedore, and in one in which the owner hires an independent company.” Nonetheless, Yaka violated the statutory mandate that compensation would be the exclusive remedy between an injured longshoreman and his employer. Yaka has been criticized for flouting the exclusive remedy provision of the LHWCA but, despite the criticism, the decision stood unaltered until 1972. Thus, when Congress began to consider amendments to the LHWCA, the compensation system had been circumvented and the exclusive remedy provision effectively rendered useless by the combined effects of Ryan and Yaka.

40. This alignment of parties became the blueprint for actions by injured longshoremen following the Ryan decision and this type of suit became known as a “circular liability suit.” Hearings Before the Select Subcomm. on Labor of the House Comm. on Education and Labor on the Longshoreman's and Harbor Workers' Compensation Act Amendments of 1972, 92d Cong., 2d Sess. 47-48 (1972) (statement of James D. Hodgson).

One result of this “circular liability” was that the employer often in effect made double payments, by making LHWCA payments and by indemnifying vessel owners. See H.R. Rep. No. 92-1441, 92d Cong. 2d Sess. 1-2, reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4698, 4698-99. However, the statutes and even the unseaworthiness doctrine itself did not require such a result. Indeed, former section 933(a) of Title 33 required a longshoreman to elect between accepting compensation under the LHWCA and seeking damages in a third party suit. See Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 33(a), 44 Stat. 1424, 1440 (1927). This section was amended in 1959 to eliminate the requirement of election. Such an amendment did not endorse double recovery, however; the legislative history for the 1959 amendment clearly contemplates that double recovery would not be permitted. See S. Rep. No. 428, 86th Cong., 1st Sess. 1 (1959), reprinted in [1959] U.S. CODE CONG. & AD. NEWS 2134, 2135; see also Liberty Mut. Ins. Co. v. United States, 290 F.2d 257, 258 (2d Cir. 1961). Nonetheless, in practice such double payments did occur.

42. Id. at 414. The rule in Yaka was extended to an actual owner in Jackson v. Lykes Brothers Steamship Co., 386 U.S. 731 (1967).
43. See note 39 supra.
44. See, e.g., Bue, In the Wake of Reed v. The S.S. Yaka, 18 HASTINGS L.J. 795 (1967).
The 1972 Amendments to the LHWCA

The need for a wholesale revision of the LHWCA was the subject of a twelve year debate culminating in the enactment of the LHWCA amendments in 1972. The debate stemmed from the longshoremen’s desire to increase benefits under the LHWCA and the stevedores’ desire to revitalize the exclusive remedy provisions of the compensation system. The 1972 amendments were a political compromise designed to achieve both goals.

The original exclusive liability section of the LHWCA was retained virtually intact by the amendments and is now codified at section 905(a) of Title 33 of the United States Code. To revitalize the original exclusive liability provision, however, Congress enacted the detailed section 905(b) which provides:

In the event of injury to a person covered under this chapter caused by the negligence of a vessel then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party... and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

Section 905(b) has three important features. First, it removed the unseaworthiness remedy in actions by injured longshoremen against vessels or vessel owners. Courts interpreting section 905(b) have

49. See note 39 supra for the pertinent text.
51. Although other parties are covered by the chapter, this Note will deal only with the amendments’ impact on longshoremen.
52. 33 U.S.C. § 902(21) (1976) provides: “The term ‘vessel’ means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel’s owner, owner pro hac vice, agent, operator, charter [sic] or bare boat charterer, master, officer, or crew member.”
54. In Davison v. Pacific Inland Navigation Co., 569 F.2d 507 (9th Cir. 1978), the court, in applying a negligence standard to an action by a longshoreman injured on a vessel, concluded that the facts supporting the plaintiff’s claim were so weak that “[t]o hold [the defendant] liable in this case would be a return to the strict liability unseaworthiness doctrine which Congress has eliminated.” Id. at 514.
enforced this aspect of the amendment effectively in actions by longshoremen, although the remedy remains available to seamen, its original beneficiaries. Second, the section overruled the implied warranty of workmanlike service which ran from stevedores to vessel owners and declared void any indemnification agreement between a stevedore and a vessel owner. Although the language of section 905(b) appears clear enough in this respect, the statutory term "vessel" has presented some difficulty for the courts. Despite this difficulty, this feature

55. See, e.g., Boncich v. M.P. Howlett, Inc. 421 F. Supp. 1300 (E.D.N.Y. 1976): "Since the allegedly defective cable . . . [which caused the injury] constituted gear, appliances, or appurtenances once covered by the seaworthiness doctrine, and the 1972 amendments expressly eliminated claims based on unseaworthiness, a claim based on the 'defective' cable cannot be . . . cognizable under the [LHWCA] . . . ." Id. at 1303. The statutory language has overruled the Sieracki decision, cited at note 26 supra.

56. The second feature was in recognition of the superior economic power of the vessel owner who had the ability to exact an indemnification provision from the stevedore.

57. For a statutory definition of the term vessel see note 52 supra. Under section 905(b) if the party seeking indemnification is within the definition of the term "vessel," indemnification will be denied, and the court must view any "hold harmless" indemnification agreement as void. St. Julien v. Diamond M Drilling, 403 F. Supp. 1256 (E.D. La. 1975), offers a pristine example of the 1972 amendments in operation. There the court applied the provisions to preclude an indemnification suit by a vessel owner against a stevedore where a longshoreman's negligence action against the vessel owner had been settled. The court stated the obvious statutory construction when it said that "[t]he 1972 Amendments wiped out the liability of LHWCA employers for contractual indemnity, express or implicit." Id. at 1259.

58. The courts have split on whether to give the term vessel a narrow or expansive definition. In Gould v. General Mills, Inc., 411 F. Supp. 1181 (W.D.N.Y. 1976), for example, a longshoreman brought an action against the owner of a grain elevator who then filed a third party complaint against the stevedore for indemnification. The court read the statutory definition of "vessel" and found that § 905(b) was wholly inapplicable to the case. On the stevedore's motion to dismiss the third party claim, the court held that, since § 905(b) did not apply, § 905(a) was the only other provision which could preclude the stevedore's liability. Because § 905(a) is not a shield to the stevedore, the court went on to hold that the stevedore had "breached its warranty to provide qualified personnel and its independently implied obligations . . . to perform the job in a good, safe and workmanlike manner." Id. at 1184. Gould shows that not all the vestiges of Ryan are gone even though the Supreme Court has indicated in dictum that it views the 1972 amendments as reviving the exclusive liability provisions of § 905(a). Cooper Stevedoring Co. v. Fritz Kopke, Inc., 417 U.S. 106, 112-13 (1974). On the other hand, the court in Spadola v. Viking Yacht Co., 441 F. Supp. 798 (S.D.N.Y. 1977), held true to the Supreme Court's dictum in a case where a longshoreman was injured on the dock when a truck rolled over his foot during a loading operation. The stevedore paid the longshoreman benefits under the LHWCA. The longshoreman brought suit against the owner of the truck for concurrent negligence and the truck owner sought contribution or indemnification from the stevedore. The court held that there could be no contribution by joint tortfeasors where one of the tortfeasors had paid benefits under the LHWCA, that § 905(b) precluded indemnity agreements, and that § 905(a) made the stevedore's compensation liability exclusive. This court was not as concerned as the Gould court in giving a strict construction to the term "vessel," and it found a broad construction proper in light of the substantive evil (indemnification agreements between stevedores and
largely has been implemented. The third feature of section 905(b), creation of a negligence action for use by injured longshoremen as an exclusive remedy against the “vessel,” has proved the most difficult of the three to effectuate. First, the statute states that negligence determines a vessel’s liability but is silent, as is the legislative history, as to the applicable standard of care. Congressional guidance indicates only that injured longshoremen should be treated as land-based employees and that the negligence remedy should be a matter of uniform federal law. Due to this lack of guidance, the courts have been unable to agree on the appropriate standard of care. Second, and more importantly, the exclusivity of the negligence action, enacted to eliminate the problem of double payments by stevedores, was the focus of the controversy in Streatch v. Associated Container Transportation, Ltd.

Streatch

The plaintiff in Streatch was a longshoreman injured on board the defendant’s vessel when the brakes and steering on the vehicle he was driving failed, causing the vehicle to crash against a bulkhead. The plaintiff was acting in the course of his employment, using the vehicle to unload cargo. The vehicle was maintained and controlled by the

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vessel owner and was carried on board the vessel from port to port for use in cargo handling. The vehicle had been provided, "for consideration," by the vessel owner to the employer stevedoring company on the day of the accident. Plaintiff brought an action against the vessel owner based on strict products liability. The defendant moved to dismiss, contending that a strict liability claim by a longshoreman against a vessel owner was barred by the 1972 amendments to the LHWCA. In ruling on the motion, the court felt it necessary to decide three issues:

(1) [W]hether, even absent the 1972 amendments affecting a longshoreman's rights, a strict liability claim is cognizable by a federal court under federal maritime law; (2) whether the 1972 amendments bar Plaintiff's strict liability cause of action; and (3) whether the vessel owner in this case has the requisite status with regard to the allegedly defective vehicle and the injured longshoreman to render the owner suingable on a strict liability theory. 64 65

Each will be treated separately in the following discussion with emphasis on the court's imaginative treatment of the second issue.

The court first addressed the issue of whether strict products liability has a place in federal maritime law which, the court noted, stems primarily from historic admiralty principles and federal statutory and case law. 65 Widely accepted common law principles of the states, however, when not inconsistent with existing admiralty rules, also may be used in federal maritime law. 66 The practice of absorbing attractive common law rules from the states keeps admiralty law contemporary and capable of addressing new issues. The Streatch court mentioned three district court cases in admiralty which in using this absorption practice had held manufacturers strictly liable for defective products. 67 These cases allowed recovery based upon implied warranty, a contract theory. The two earlier cases cited by the court involved crashes of aircraft into navigable waters. 68 The Streatch court, through an analysis of admiralty jurisdiction requirements, concluded that strict products liability theory had been recognized by these cases in admiralty. The court noted the jurisdictional impossibility of a recovery on a non-maritime contract in an admiralty court, 69 as the admiralty jurisdiction

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64. Id. at 937.
69. 388 F. Supp. at 938. For a good discussion of the jurisdictional problem of implied warranty recoveries in admiralty see Annot., 7 A.L.R. Fed. 502, 510-12 (1971). See also McCune, Maritime Products Liability, 18 Hastings L.J. 831 (1967) (arguing that "warranty" cases of this type are really actions in tort).
of the federal courts can be invoked only when "maritime" causes of action are involved. For a contract cause of action to lie in admiralty, the contract must relate to the navigation, business, or commerce of the sea. Although the two aircraft crash cases did not involve maritime contracts, the courts rationalized their holdings under the contract theory of implied warranty. If these recoveries actually were in contract, the courts could not have exercised their admiralty jurisdiction. On the other hand, for a tort cause of action to lie in admiralty the tort must have occurred upon navigable waters. Thus, unless the cases were viewed as tort claims stemming from the crashes into navigable waters, a jurisdictional defect was created. Accordingly, the Streatch court viewed these cases as recognizing strict products liability in admiralty under the misnomer of implied warranty.

The third case cited by the Streatch court, Sears, Roebuck & Co. v. American President Lines, Ltd., was given the same analysis as the two aircraft crash cases, although it involved a defectively designed hatch system which malfunctioned and damaged cargo. The Streatch court treated this case as one of implied warranty, but the Sears court also placed its holding on the ground of strict products liability. Although the Streatch court categorized the holding of the Sears decision with the two aircraft crash cases and applied the same analysis to all three, the fact that the Sears decision was based in part upon strict products liability provides even greater support to the Streatch court's ultimate conclusion that strict products liability is cognizable in admiralty.

The second issue before the court, whether a longshoreman's strict liability claim against a vessel could stand in the face of the exclusive

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70. GILMORE & BLACK, supra note 8, at 21. The jurisdiction of the admiralty courts is a fascinating and intricate subject which is beyond the scope of this Note. For a good discussion of admiralty jurisdiction see GILMORE & BLACK, supra note 8, at 18-50.

71. The Supreme Court modified the "locality" rule of maritime torts in aircraft cases by requiring that "the wrong bear a significant relationship to traditional maritime activity." Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 268 (1972).

72. McCune, Maritime Products Liability, 18 HASTINGS L.J. 831 (1967). See also RESTATEMENT (SECOND) OF TORTS § 402(A), Comment m, at 355-56 (1965).

73. 388 F. Supp. at 938.


75. Id. at 402.

negligence remedy provision of section 905(b) of the LHWCA, presented a question of first impression. Looking to the legislative history of section 905(b), the court noted that "[t]he purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be [sic] if he were injured in non-maritime employment ashore." To place the longshoreman in the "same position" as a land-based employee the court felt that the longshoreman should have the remedy of strict products liability.

The language of section 905(b), however, stated that "[t]he negligence remedy provided in this subsection shall be exclusive of all other remedies against the vessel." To overcome this apparent stumbling block, the court construed the language to apply to a negligence action against vessel owners only as vessel owners and attributed to vessel owners a split personality: vessel owner for the purposes of section 905(b) and provider of a defective product for the purposes of strict products liability. The court's recognition of this dual function of a vessel owner allows longshoremen "to sue a vessel for strict liability in the same situations in which a non-maritime worker could sue for strict liability." The longshoreman therefore is not placed in a lesser position than a shoreside worker with respect to third party rights. Practically speaking, this rationale would allow longshoremen, if they were shoreside workers, in almost every state to sue vessel owners despite stevedores' contributions under the LHWCA, as presently, in forty-eight states, shoreside workers may bring products liability actions against equipment manufacturers even though the workers' employer is paying workers' compensation benefits.

The distinction between the unseaworthiness remedy, abolished for longshoremen by section 905(b), and strict products liability, authorized in Streatch, is important in an evaluation of the court's con-

78. 388 F. Supp. at 940.
80. 388 F. Supp. at 940. The Supreme Court has given theoretical support to this analysis in Edmonds v. Compagnie Generale Transatlantique, 99 S. Ct. 2753 (1979), where, in a different context, the Court stated "it is necessary only to construe the second sentence [of § 905(b)] to permit a third-party suit against the vessel providing its own loading and unloading services where negligence in its nonstevedoring capacity contributes to the injury." Id. at 2759. The Court recognized that even when a vessel directly hires longshoremen it retains its capacity as a vessel and will not be treated strictly as a stevedore. Thus, the Court attributed to the vessel a dual capacity, or personality, as a vessel for the purposes of the negligence remedy and as a stevedore for the purposes of the employment relation.
81. 388 F. Supp. at 940.
clusion. 83 As mentioned earlier, the unseaworthiness remedy placed an absolute and nondelegable duty on the vessel owner to provide a ship which was reasonably fit for its intended use. 84 This broad and absolute duty stands in contrast to the narrower common law remedy of strict products liability.

Strict liability has been defined as liability for the sale of a "product in a defective condition unreasonably dangerous to the user or consumer," when that product causes harm to the user or consumer. 85 The seller must be engaged in the business of selling the product and the product must reach the user or consumer without substantial change. 86 Further, as the name implies, liability exists even though the seller has exercised all possible care. 87 The public policy behind imposing strict liability is that the economic burden of injuries caused by defective products should be borne by the parties who market those products as a cost of production. 88

In contrast to the economic policy underlying strict products liability, the policy underlying unseaworthiness is the humanitarian one that a seaman who is totally dependent upon a vessel for safety has a right to a vessel which is reasonably fit for its intended use. 89 Thus, proof of unseaworthiness requires that the plaintiff show that the vessel on which the injury occurred was not reasonably fit. Under this doctrine any defective condition on board the vessel which proximately caused personal injury would be unreasonable, thereby making the vessel unseaworthy. 90 In contrast, strict products liability requires that a product be shown to be unreasonably dangerous. 91

The distinction between the two concepts is a fine one, but the practical effect of this distinction is to make the plaintiff's burden in an unseaworthiness action much less than in a strict products liability action. The additional requirement in strict products liability actions of proof that the defective product was unreasonably dangerous demonstrates that unseaworthiness and strict liability are discrete legal concepts which should not be equated in an analysis of whether strict

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83. Some courts have used the term "strict liability unseaworthiness" loosely when describing the longshoreman's remedy that was abolished by the 1972 amendments. See, e.g., Davison v. Pacific Inland Navigation Co., 569 F.2d 507, 514 (9th Cir. 1978).
84. See notes 24-25 & accompanying text supra.
85. RESTATEMENT (SECOND) OF TORTS § 402(A) (1965).
86. Id.
87. Id.
88. Id., Comment c, at 349-50.
89. See text accompanying note 34 supra.
90. See GILMORE & BLACK, supra note 8 at 383-404.
91. The California Supreme Court has rejected the requirement of unreasonable dangerousness in Cronin v. J.B.E. Olson Corp., 8 Cal. 3d 121, 501 P.2d 1153, 104 Cal. Rptr. 433 (1972).
liability should apply in an action by an injured longshoreman against a vessel owner.

In light of this distinction between the concepts, specific congressional guidance as to the viability of strict products liability after the 1972 amendments would have been significant, if not determinative, of the issue. Unfortunately, although the unseaworthiness remedy was addressed in section 905(b), neither that section nor the House Report\(^{92}\) accompanying the 1972 amendments addressed the applicability of strict products liability. The Report did discuss two extreme proposals considered and rejected by Congress,\(^{93}\) but Congress chose a more moderate approach and fashioned the negligence remedy of section 905(b). In deliberations prior to the passage of section 905(b), Congress addressed the third party products liability action based on negligence,\(^{94}\) but the pure strict products liability action, not involving negligence, apparently was not considered in drafting the 1972 amendments.

Absent indications of congressional intent, application of the theory of the dual functions of a vessel owner, as vessel owner and as supplier of products, provides an opportunity to examine whether strict products liability should apply in the face of the exclusive remedy provision of section 905(b). If the action is by a longshoreman against a vessel owner, the exclusive remedy provision dictates that the vessel owner’s liability must be based on negligence. But, if the action is by a longshoreman against the supplier of a defective product, section 905(b) would not apply. For example, a longshoreman would not be precluded from suing the manufacturer of a defective component of the vessel if that manufacturer was not the vessel owner.\(^{95}\) In that situation, the legal relationship arising from the longshoreman’s injury caused by a defective product is outside section 905(b) because the longshoreman is not suing for injuries caused by the negligence of the “vessel.”\(^{96}\) Furthermore, the action is not foreclosed by the provision

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93. One proposal was to include the vessels in the compensation system, and the other was to hold the vessels liable for any injury to longshoremen which occurred on board a vessel without regard to the vessel’s fault. **H.R. Rep. No. 92-1441, 92d Cong., 2d Sess. 4 (1972), reprinted in [1972] U.S. Code Cong. & Ad. News 4698, 4702.** The Streatch court felt that this congressional reference to liability without fault was merely an “imprecise synonym” for unseaworthiness. 388 F. Supp. at 940.


95. **Cf. Sevits v. McKiernan-Terry Corp., 264 F. Supp. 810 (S.D.N.Y. 1966) (plaintiff permitted to sue manufacturer of a component of an aircraft carrier because he was precluded from suing the United States government, the manufacturer of the ship).**

that the negligence remedy is the exclusive remedy against the "vessel" because the suit would be against the component manufacturer and not the "vessel." Similarly, the longshoreman who brings a products liability action is not suing the "vessel" but is suing the vessel owner in its capacity as supplier of a defective product. Therefore, section 905(b) should not be interpreted to preclude a suit by a longshoreman injured by a defective product against the vessel owner as supplier of the defective product.

An additional reason for permitting a strict products liability action against a vessel owner is that allowing such an action will not revive a harm which the 1972 amendments sought to eliminate. As discussed earlier, the doctrine of unseaworthiness led to circular liability, the end result of which was that a stevedore in effect made double payments to a longshoreman by paying LHWCA benefits and by indemnifying the vessel owner. This was one harm at which the 1972 amendments were aimed. The imposition of strict products liability, however, creates no danger of resurrecting that problem because the vessel owner, as the manufacturer or supplier of a defective product, cannot transfer the burden of compensating damages caused by that product to an outside source, i.e., the stevedore. Thus, the rationale behind the elimination of the unseaworthiness remedy carries no force when a strict products liability action is urged.

Other courts which have dealt with the issue of whether the negligence remedy provided by section 905(b) is the longshoreman’s exclusive remedy against the vessel owner have been less searching in their analyses. Two courts have concluded summarily that the 1972 amendments mandate that a negligence action is the only theory upon which an injured longshoreman can recover against a vessel owner.97 One other court analyzed the issue more thoroughly, but nonetheless reached a conclusion contrary to the Streatch holding. In Boncich v. M.P. Howlett, Inc.,98 the court considered a set of facts which represented a typical unseaworthiness claim. The plaintiff longshoreman was injured by the boom of a crane which fell after a topping lift cable holding the boom had parted. The court found Streatch unpersuasive on the issue of whether the 1972 amendments limited a longshoreman to a negligence remedy against the vessel owner.99 The court, disagree-

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99. Id. at 1302.
ing with the reasoning of Streatch, stated that strict tort liability was addressed and precluded by the prohibition against the unseaworthiness remedy and that allowing strict tort liability would not serve the legislative goal of promoting vessel owner responsibility.\textsuperscript{100} Further, the court held that Streatch was inapplicable to the facts before it because the defendant owner in the case "was neither a manufacturer, distributor, bailor, nor lessor engaged in putting an allegedly defective product into the stream of commerce."\textsuperscript{101} Thus, three of the four courts addressing the issue have held that the longshoreman should be limited to a negligence remedy against the vessel owner although one of the courts distinguished the Streatch holding from the facts it faced.\textsuperscript{102}

The third issue of the Streatch case, "whether . . . the relationship of the vessel owner to the Plaintiff with respect to the vehicle in question makes the vesselowner a proper defendant within the definitional limits of strict liability in tort,"\textsuperscript{103} also presented a question of first impression.\textsuperscript{104} The matter was before the court on a motion to dismiss the claim for failure to state a claim upon which relief could be granted.\textsuperscript{105} The parties, however, had not briefed this particular issue and hence the court did not have a complete statement of the relevant facts bearing on the ultimate liability of the vessel owner. These missing facts included the vessel owner's involvement in the designing or building of the vehicle, the nature of the agreement under which the stevedore was allowed to use the vehicle, and whether the vessel owner was engaged in an organized and continuing business relating to cargo vehicles.\textsuperscript{106} Despite this lack of facts, the court was forced to rule on the motion to dismiss.

The court, although finding that products liability is recognized in federal maritime law, noted that all previous cases involved suits against the manufacturer or retailer of the allegedly defective product. Because of the unseaworthiness doctrine, no such suits had been brought in admiralty against a vessel owner. Accordingly, the court turned to the common law of California for guidance.\textsuperscript{107}

The court reviewed the development of products liability in California and noted that such liability, originally imposed on manufacturers and retailers, had been extended to include lessors, bailors, and licensors under certain circumstances. This expansion was warranted,

\textsuperscript{100} Id. at 1302-03.
\textsuperscript{101} Id. at 1304 (paraphrasing the test used in Streatch). Whether this court would apply the Streatch strict liability formulation to applicable facts is an open question.
\textsuperscript{103} 388 F. Supp. at 941.
\textsuperscript{104} Id. at 941 n.4.
\textsuperscript{105} Id. at 936.
\textsuperscript{106} Id. at 937.
\textsuperscript{107} Id. at 941-42.
the court noted, because "the underlying public policy and social justification for imposing strict liability . . . pertain only to those people engaged in the business of providing a product to the public for use by the public." Thus, under California law the application of the strict products liability action to vessel owners is limited to those vessel owners who both are in the business of providing a product, presumably related to the shipping industry, and are providing it to the public for use by the public. The limits of the applicability of the action remain unclear, however, as there has been little refinement of the phrases "engaged in the business" or "providing a product to the public."

As the issue appeared to the court in Streatch, the defendant could have been a licensor and, as such, may be said to have placed the defective vehicle in the stream of commerce. The defendant received a consideration and permitted the vehicle to be used for its business benefit. Similarly, the defendant might be said to have distributed a product "to the public for use by the public." The court concluded, however, that without the relevant facts mentioned earlier, it could not make a decision. Accordingly, the court denied the defendant's motion to dismiss. Refinement of the scope of vessel owners' potential liability thus awaits further attention by the courts.

Conclusion

The 1972 amendments to the LHWCA were a reaction to judicial interpretation of the LHWCA of 1927. A series of Supreme Court decisions had rendered ineffective the workers' compensation system between longshoremen and stevedores by permitting the longshoreman to sue the vessel owner under the unseaworthiness remedy and by then permitting the vessel owner to obtain indemnification from the stevedore. Restoring the integrity of the compensation system by cutting off this "circular liability" and raising the amount of compensation available to longshoremen were two important aims of the 1972 amendments. To maintain the viability of longshoremen's actions outside of the compensation system, however, Congress enacted section 905(b) which provides an "exclusive" negligence action against the vessel owner.

Despite the supposed exclusivity of this negligence action, the conclusion of this Note is that allowing a strict products liability action against a vessel owner would not offend the spirit or the letter of the 1972 amendments, as the reasoning behind permitting only a negligence action was the elimination of the danger of circular liability, a

108. Id. at 942 (emphasis by the court).
109. Id. at 943.
danger not present in a strict products liability action. Further, as the Streatch court correctly concludes, a strict products liability action by an injured longshoreman against a vessel owner who supplies a defective product should be outside the statute, because the action is not against the "vessel" but is against the supplier of a defective product. Recognition of the dual capacity of the vessel owner simply allows a longshoreman to be treated as a land-based employee with respect to third party strict products liability actions.\[111\]