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Judicial Review of Shipowner and Stevedore Liability Under the Longshoremen's and Harbor Workers' Compensation Act *Edmonds v. Compagnie Generale Transatlantique* 99 S. Ct. 2753 (1978)

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RECENT CASE

JUDICIAL REVIEW OF SHIPOWNER AND STEVEDORE LIABILITY UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

Edmonds v. Compagnie Generale Transatlantique
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The apportionment of liability in cases of tripartite litigation arising from an injury to a longshoreman produced by the concurrent negligence of the shipowner and the stevedore-employer has been in dispute ever since the common law norms were partially displaced by the enactment of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) of 1927,[1] its 1972 Amendments,[2] and the growing acceptance of comparative negligence standards in the fields of admiralty, workmen's compensation, and tort law. The majority interpretation of the LHWCA, prevalent since 1972, is the object of the dispute in *Edmonds*. This interpretation suggests that the Act compels the stevedore to compensate its injured employee to the extent of statutorily-set schedules, allows the longshoreman to bring an action for damages against the shipowner, and grants the stevedore or its insurance carrier a lien against any recovery by the longshoreman from the shipowner up to the amount of the compensation payments. Under this analysis, the shipowner has no right to indemnity, contribution, offset, or credit from the concurrently negligent stevedore-employer. The Fourth Circuit rejected this majority rule in its *Edmonds* opinion in favor of a comparative negligence standard.[3] Confronted with a division in the lower courts, the Supreme Court of the United States reversed the Fourth Circuit and reestablished the validity of the majority rule in *Edmonds v. Compagnie Generale Transatlantique*.[4]

The litigation arose from an injury suffered on March 3, 1974, by longshoreman Stanley Edmonds, an employee of Nacirema Operating

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1. 33 U.S.C. §§ 901-950 (Supp. 1979) (original version at 44 Stat. 1245 (1927)).

2. Pub. L. No. 92-576, 86 Stat. 1263 (1972) (*amending* 33 U.S.C. §§ 901-950 (1970)).

3. Edmonds v. Compagnie Generale Transatlantique, 577 F.2d 1153 (4th Cir. 1978) [hereinafter cited as Edmonds].

4. 99 S. Ct. 2753 (1978) (5-3 decision, J.J. Marshall, Blackmun, and Stevens, dissenting; Powell, J. did not participate in the decision).

Co. (a stevedore), while unloading cargo from a vessel owned by the Compagnie Generale Transatlantique (CGT). Edmonds received the LHWCA statutory compensation benefits from the stevedore-employer and alleging negligence, instituted an action for damages in the U.S. District Court for the Eastern District of Virginia against the shipowner (CGT) as a third party. A jury trial resulted in a verdict in favor of Edmonds in the amount of $100,000 and a finding that the stevedore was seventy percent negligent in causing the accident, the shipowner twenty percent negligent, and Edmonds ten percent contributorily negligent. Despite the finding of preponderant fault on the part of the stevedore, the Court entered judgment against the shipowner in the amount of $90,000, discounting the award only by the extent of the longshoreman's comparative negligence.[5] This holding conformed to the traditional interpretation of liability apportionment under the LHWCA.

CGT appealed to the Fourth Circuit Court of Appeals on the ground, *inter alia,* that its liability should have been limited to that proportion of total damages equivalent to the degree of its own comparative negligence. The Court, partially agreeing, vacated and remanded. A shipowner's liability, it held, should be limited to its degree of comparative negligence plus "any valid lien the stevedore may have on the recovery by the longshoreman, but . . . not to exceed the whole amount of the possible award against the vessel. . . ." On rehearing, this decision was reversed and remanded by the Court *en banc.* Reasoning that the 1972 amendments to the LHWCA had altered the traditional maritime rule embodied in the District Court's holding, the Court's new holding conformed to CGT's proposed rule: a shipowner's liability for a longshoreman's injury is proportionate to the vessel's own comparative negligence in causing that injury.

The Fourth Circuit's opinion did not establish a particularly powerful argument for this holding. Principally, the Court's reasoning was that the new first and second sentences of the LHWCA's amended Section 905(b), the controlling damage-apportionment statute, conflicted with each other and ". . . [were] irreconcilable if read to mean that any negligence on the part of the stevedore [would] defeat it. They may be harmonized only if read in apportioned terms."[6] The Court also remarked that ". . . it is hardly rational to suppose that, without any right of indemnification, the Congress intended to impose

5. Edmonds, 577 F.2d at 1154.
6. *Id.* at 1155.

a liability upon the ship for all damages suffered when the ship may have been only slightly at fault and the stevedore very greatly so,"[7] and noted that the decision was consistent with the expansion of comparative negligence and the policy underlying that expansion.

Two judges dissented from the majority's opinion. Judge Hall noted that the other judicial circuits remained united behind the traditional maritime rule and stressed the disadvantages of inconsistent law. He denied that a conflict existed between the first and second sentences of Section 905(b), as the majority claimed. Faced with a "constitutional act of congress," he felt that a change in the law such as the majority envisaged should not come from the courts, but from Congress.[8] In a separate dissent, Judge Weidner favored the Circuit Court's first opinion on the matter.

It is noteworthy that the Court chose not to enter the relatively extensive field of legal precedent and scholarly commentary on the issue. First, the Court's opinion was unsupported by any cited case. Second, the opinion failed to raise the more telling arguments for its position that are found in the literature, notably the *pro tanto, pro rata,* or equitable credit schemes advanced to circumvent the LHWCA's prohibition of contribution. Third, the Court accorded no weight to (indeed, it did not even comment upon) the mass of legal precedent arrayed against it. Prior to the Fourth Circuit's decision in *Edmonds,* all circuit courts considering the issue after the enactment of the 1972 LHWCA amendments had rejected the notion of stevedore liability to the shipowner under any theory. Such was the position of the First, Second, Third, Fifth, and Ninth Circuit Courts.

Upon a writ of certiorari granted to resolve the conflict below, the Supreme Court *held,* reversed and remanded: (1) in enacting the 1972 amendments to the LHWCA, Congress did not intend to substitute a proportionate-fault rule in place of the established maritime tort rule allowing an injured longshoreman-employee to recover all damages not caused by his own negligence from the negligent shipowner, notwithstanding the stevedore-employer's own concurrent negligence; and (2) Supreme Court changes in this established maritime rule are precluded given preemptive Congressional action in balancing the rights and liabilities of longshoremen, stevedores, and shipowners.

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7. *Id.*
8. *Id.* at 1158.

The Court's opinion followed five lines of reasoning and was prefaced by a short general exposition of the legal background of tripartite litigation in cases of longshoreman injury. This opening section noted the pertinent LHWCA provisions and cited the leading Supreme Court cases, including *Seas Shipping Co. v. Sieracki*,[9] *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*,[10] *Pope & Talbot, Inc. v. Hawn*,[11] *Ryan Stevedoring Co. v. Pan-Atlantic S. S. Corp.*,[12] and *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*[13] A review of this background is important in order to understand the Court's holding, for as the Court commented, part of the difficulty which the courts have had with this issue is due to the problem of squaring admiralty and common law concepts with statutory provisions.

In 1876, admiralty law incorporated the common law rule which permitted an injured party to sue concurrent, indivisibly responsible tortfeasors, either jointly or severally, and to recover total damages from one or all, with another common law rule which prohibited contribution between concurrent tortfeasors. This enabled an injured longshoreman to bring an action against both negligent parties—the shipowner and the stevedore. The right of recovery, however, was curtailed in 1927 by enactment of the LHWCA. With its enactment, the stevedores were obligated to pay an injured longshoreman-employee compensation tailored to the longshoreman's medical injury and earning level, regardless of where the fault for the injury lay. In return for participating in this compensation scheme, a negligent stevedore was shielded from damage suits brought by the injured employee. This shield was created by the LHWCA's so-called "exclusivity clause"—still in effect today—which provides that a stevedore-employer's obligation to pay the statutory compensation benefits to an injured longshoreman was to ". . . be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death."[14] Seemingly, this clause also protected the negligent stevedore from liability for contribution to any other concurrently negligent party, notably shipowners.

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9. 328 U.S. 85 (1946).
10. 342 U.S. 282 (1952).
11. 346 U.S. 406 (1953).
12. 350 U.S. 124 (1956).
13. 412 U.S. 106 (1974).
14. *See* LHWCA, *supra* note 1, at § 905(a).

The balance of the various parties' rights and liabilities effectuated by Congress via the LHWCA was altered by the Supreme Court in 1946 with *Seas Shipping Co. v. Sieracki*, which vastly expanded the shipowner's liability to an injured longshoreman. *Sieracki* replaced the shipowner's traditional standard of care with an absolute, nondelegable obligation to provide the longshoreman with a seaworthy vessel. This duty amounted to liability without fault for most onboard injuries. Its severity was illustrated by a case in which a shipowner was held liable for a longshoreman's injury which was produced by the failure of equipment owned and in the sole control of the stevedore.

Awash in a flood of damage actions, shipowners attempted to shift all or part of the costs of these actions to the stevedores when these employers were wholly or partially responsible for the injuries. The issue of stevedore contribution was raised before the Supreme Court in *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, in 1952, and *Pope & Talbot, Inc. v. Hawn*, in 1953. In *Halcyon* (although the issue of contribution was not actually reached), the Court denied contribution on the grounds that "the solution of this problem should await Congressional action" [15] in view of Congress' extensive involvement in the field of maritime personal injury, the comparative preferability of a legislative, as opposed to a judicial, solution of such an intricate problem, and the fact that Congress had ". . . stopped short of approving the rule of contribution here urged." [16] In *Pope & Talbot*, the shipowner did not seek contribution from the concurrently negligent stevedore since the damages awarded the injured longshoreman had not yet been paid. Rather, the shipowner asked for a reduction in the award in proportion to the stevedore's negligence on the basis that, although the LHWCA allowed a stevedore-employer to recover the amount paid an employee in compensation, such recovery ". . . would give an unconscionable reward to an employer whose negligence contributed to the injury." [17] The Court rejected this argument, ruling that this reduction at the expense of the stevedore ". . . would be the substantial equivalent of contribution which we declined to require in the *Halcyon* case." [18]

In 1956, a fourth Supreme Court case concerning longshoreman personal injury threw the Congressional balance into further disarray

15. 342 U.S. at 285.
16. *Id.* at 287.
17. 346 U.S. at 412.
18. *Id.*

by effectively nullifying (although not reversing) *Sieracki, Halcyon,* and *Pope & Talbot.* The case was *Ryan Stevedoring Co. v. Pan-Atlantic* S. S. *Corp.*, which held that as a matter of contract law, shipowners may obtain from stevedores an implied or express warranty of workmanlike service that may result in the indemnification of the shipowner for its liability to the longshoreman. The Court found that the LHWCA exclusivity clause only regulated the relationship between employer and employee or anyone claiming through the employee. At a stroke, the stevedore-employers shouldered virtually total liability for damages recovered by their injured employees from shipowners. In one case, a longshoreman's one percent contributory negligence in producing his own injury was held to be a sufficient breach of implied warranty to require his stevedore-employer, who was not at all negligent, to indemnify the shipowner for total damages. The *Ryan* decision, in addition, produced two unforeseen results. One was an explosion of circular personal injury litigation that came to be characterized by the Fifth Circuit as "Donnybrook Fairs." The second was extensive criticism of the Court for having supplanted legislatively-determined policy with notions of its own design, a transgression of judicial limits found shocking by some observers.

In 1972, Congress regained its primacy over the balancing of longshoremen's workers' compensation with the passage of the LHWCA amendments. As the Supreme Court acknowledged in *Edmonds,* one of the Congressional objectives was "to overrule *Sieracki* and *Ryan.*" This was explicitly stated in the legislative history. As a result, shipowners were no longer to be held absolutely liable under the seaworthiness doctrine for injury to longshoremen, nor were stevedores to be held liable to the shipowner under indemnity, hold-harmless, contribution, or any other theory of damages for which the shipowner would be held liable to the injured employee. Unfortunately, awkward statutory language and a laconic legislative history perpetuated the question of the Congressional intent with regard to the comparative negligence standard in longshoreman tripartite litigation.

As noted, the *Edmonds* Court used five lines of analysis to resolve this issue; the first three coalesced in the first holding and the fourth produced the second holding. First, the Court analyzed the text of Section 905(b) to determine if the first and second sentences were as irreconcilable as the Court of Appeals maintained and whether the Section altered the traditional maritime rule that the longshoreman may recover the total of his damages from the negligent shipowner even if the stevedore's negligence also contributed to the injury. The

Court decided in the negative on both counts. The first sentence overrules *Ryan*, and "the second sentence means no more than that all longshoremen are to be treated the same whether their employer is a [sic] independent stevedore or a shipowner-stevedore and that all stevedores are to be treated the same whether they are independent or an arm of the shipowner itself." [19] This clarification of the second sentence's function resolves a major point of confusion in the interpretation of the LHWCA.

Second, the Court turned to the legislative history, again to probe Congressional intent regarding the traditional maritime rule under consideration. The Court found "not a word" concerning the abolition of the rule and commented that "this silence is most eloquent, for such reticence while contemplating an important and controversial change in existing law is unlikely." [20] However, the Court did remark that the Committee report stressed that employers shall not be liable to vessels "directly or indirectly," and it indicated that this reaffirmed the no-contribution rule of *Pope & Talbot*.

Third, the Court noted that a reduction of the shipowner's tort liability under the Court of Appeals' proportional fault system would not equitably shift the shipowner's financial burden to the stevedore in ratio to his negligence, but rather would shift the "burden of inequity" to the longshoreman. This is so because even though the longshoreman's total recovery is decreased, the stevedore retains an undiminished Section 933(b) equitable lien on that recovery. Thus, the difference between the total recovery and the reduced recovery would come out of the longshoreman's pocket. The Court rejected this result: "Some inequity appears inevitable in the present statutory scheme, but we find nothing to indicate and should not presume that Congress intended to place the burden of the inequity on the longshoreman whom the Act seeks to protect." [21]

Fourth, the Court faced the argument that even if Congress did not change the traditional rule, the Court should. This was rejected in language strongly reaffirming the validity of *Halcyon*. The Court recognized the "delicate balance" which Congress was attempting to maintain between the rights and liabilities of the numerous parties involved in longshoremen's workers' compensation. A court-produced change in this balance, via the *Edmonds* ruling, "would effectively

19. Edmonds, 99 S. Ct. at 2759.
20. *Id.* at 2760.
21. *Id.* at 2762.

alter the statute by causing it to reach different results than Congress envisioned. . . .[22] [W]e should stay our hand in these circumstances."[23] In considering this point, the Court cited *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*,[24] the last of the five key cases cited in the opinion's opening exposition. In *Cooper*, a longshoreman was injured through the concurrent negligence of the shipowner and a stevedore who was *not* the longshoreman's employer. The Court held that shipowners may recover tort contribution from stevedores who are not shielded by the exclusivity provision of the LHWCA by virtue of employer status. The seeming converse of this holding, of course, was that stevedore-employers *are* shielded from liability for contribution by the LHWCA exclusivity provision.

Fifth and last, the Court commented in dicta on the "sound arguments supporting division of damages between parties before the court on the basis of their comparative fault."[25] This statement, though not central to the issues in *Edmonds*, is important because it signals the Court's continuing support for comparative fault. Cited with approval in this section was *United States v. Reliable Transfer Co., Inc.*,[26] the case which virtually completed the conversion of U.S. admiralty law to the comparative law standard by abolishing the rule of divided damages in maritime collision cases and replacing it with a pure comparative fault rule. In *Reliable Transfer*, the Court also noted the strong equitable considerations justifying the rule and its support for the rule in general. In this regard, it should be noted that the Court's two holdings in *Edmonds* were pointedly limited on maritime law: "Our decision does not necessarily have an effect on situations where the Act provided the workers' compensation scheme but the third-party action is not governed by the principles of maritime law."[27]

In dissent, Justice Blackmun summarized the majority opinion into what he judged were its four basis components: (1) the principle of comparative negligence does not apply under the traditional law of admiralty; (2) in enacting the 1972 LHWCA amendments, Congress did not impose a comparative negligence standard; (3) Congress intended to preclude judicial modification of the traditional

22. *Id.* at 2763.
23. *Id.* at 2762.
24. *See* note 13, *supra.*
25. 99 S. Ct. at 2762.
26. 421 U.S. 397 (1975).
27. 99 S. Ct. at 2763 n.31.

maritime rule; and (4) comparative negligence would be unfair to injured longshoremen.

Blackmun rejected each of these four conclusions. On the first two points, he noted that each of the cases cited by the majority did not address the comparative negligence issue, but instead addressed the prohibition of contribution. Furthermore, he noted that Section 905(b) did embody textual discrepancies which, as the Fourth Circuit maintained, could best be integrated by means of comparative negligence. On the fourth point, he asserted that the limitation of an injured longshoreman's potential recovery from a shipowner would not result in "unfairness" to the longshoreman since he would still be entitled to the statutory compensation benefits. He accepted each of the three majority conclusions, however, "for the sake of the argument;" it was in opposition to the third majority conclusion that Justice Blackmun based his argument. "Courts exercising jurisdiction in maritime affairs have broad powers of interstitial rulemaking," he commented, and "Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law." [28] In addition, the enactment of Section 905(b) had the narrow purpose of overruling *Ryan* and *Sieracki:* "Congress intended to preserve the role of the Federal Courts in filling in the contours of Section 905(b)." [29]

In conclusion, the *Edmonds* decision was a predictable one which closely followed the precedents set by *Halcyon, Pope & Talbot,* and *Cooper.* Essentially, this line of cases sought to define the boundary separating the powers of the judicial and legislative branches in the area of longshoreman tripartite injury litigation. *Cooper,* the last of the cases, merely acknowledged what *Halcyon* had at an earlier time determined, namely, that Congress' intent to assume its Constitutional prerogative to act as arbiter in balancing the rights and liabilities of longshoremen, stevedores, and shipowners in cases of longshoreman injury was not to be displaced by the courts. Although Justice Blackmun may contest this, it is submitted that this intent is sufficiently manifest in the legislative history of the 1972 amendments.

This holding is significant in that it: (1) clearly delineates the rights of the parties involved, thus abating excessive litigation; (2) it precludes future judicial tampering with the apportionment standard in favor of Congressional action; and (3) reaffirms the Supreme

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28. *Id.* at 2765 (quoting United States v. Reliable Transfer, note 26 *supra*).
29. *Id.*

Court's support for the comparative negligence standard to the extent that discernible Congressional intent is not contravened. This last point would seem also to be the most important for foreign observers, reinforcing as it does the belated, but secure, U.S. conversion to the comparative negligence standard in the field of maritime law, a position more in conformity with that taken by the rest of the world.

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