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**Longshoremen's and Harbor Workers' Compensation Act -
Benefits Extend Only to Those Working on the Seaward Side
between the Ship and the First and Last Points of Rest of the
Cargo.**

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differential, before taking any action on default. This may not be a difficult task, but the requirement should be dictated by statute rather than by the rationale of this case.³⁵

The *Moore* construction of the term "charging" obviously adheres to the strong public policy against usury evidenced in the Texas Constitution.³⁶ The case will, however, be difficult to harmonize with the rule of strict construction followed in Texas and recently enunciated in *Dorfman v. Smith*.³⁷

[T]he intent to charge a usurious rate of interest must be 'clearly and positively' shown and that the evidence must 'leave no room for a reasonable hypothesis by which the imputation of usury may be avoided.'³⁸

The *Moore* decision failed to show the necessary intention to charge a usurious rate of time price differential, but succeeded in leaving room for a reasonable hypothesis that usury did not exist.

Peter L. Bloodworth

**WORKMEN'S COMPENSATION—Longshoremen's and Harbor
Workers' Compensation Act—Benefits Extend Only to Those
Working on the Seaward Side Between the Ship
and the First and Last Points
of Rest of the Cargo**

I.T.O. Corp. v. Benefits Review Board,
529 F.2d 1080 (4th Cir. 1975).

Plaintiffs Adkins, Brown, and Harris were injured while performing functions in the general loading of cargo aboard a ship. Adkins and Brown were operating forklifts in warehouse sheds while Harris was moving containers with a "hustler" from the storage area to a place near the pier. They sought recovery under Section 3(a) of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act,¹ which extends bene-

35. TEX. CONST. art. XVI, § 11. The interpretive commentary reads in part: The ethical nature of the concept of usury renders it impossible to formulate permanent and definite criteria of what constitutes a usurious transaction. As long as freedom of contract remains the cornerstone of economic organization it is up to the legislature to decide at what point a voluntary economic transaction constitutes an abuse of economic freedom and thus an act of usury.

36. TEX. CONST. art. XVI, § 11 (interpretive commentary).

37. 517 S.W.2d 562 (Tex. Civ. App.—Houston [1st Dist.] 1974, no writ).

38. *Id.* at 566.

1. 33 U.S.C. § 903(a) (Supp. 1974), *amending* 33 U.S.C. § 903(a) (1927).

fits to employees injured on an adjoining land area customarily used by an employer in loading and unloading a vessel. Both the Administrative Law Judge and the Benefits Review Board allowed recovery on the basis that benefits under the Act were extended to all persons handling cargo or performing related functions in the terminal area. Held—*Reversed*. The Act's benefits extend only to those employees engaged in loading and unloading on the seaward side between the ship and the first and last points of rest of the cargo.²

The Longshoremen's and Harbor Workers' Compensation Act of 1927³ was a necessary response to the continuous refusal by the Supreme Court to allow such land based workers injured on navigable waters to recover under state workmen's compensation acts, because of the federal courts' grant of exclusive jurisdiction over admiralty actions. The catalyst for the Act was the 1917 decision in *Southern Pacific Co. v. Jensen*.⁴ Jensen, a longshoreman, was killed while driving a small freight truck onto the gangway of a ship, anchored in New York harbor. His widow's action was one in admiralty and litigable in the state courts under the "saving to suitors" clause of the Judiciary Act of 1789.⁵ The Court determined that Jensen's employment was maritime and consequently his survivors were denied recovery under the New York Compensation Laws.⁶ The rationale for the decision was that the state imposed rights and liabilities involving admiralty jurisdiction, a jurisdiction within the scope of the federal courts, and that application of a state act would interfere with the uniformity of the maritime law.⁷ As a result, thousands of harbor workers were denied state workmen's compensation benefits.⁸

In the same year, Congress responded to this decision by adding to the saving clause of the Judiciary Act, the phrase "and saving . . . to claimants the rights and remedies under the workmen's compensation laws of any State."⁹ This Act was held unconstitutional for the reason that Congress may not delegate to the states the legislative power which has been given to Congress by the Constitution.¹⁰ Congress again attempted to remedy the plight of the workman in 1922 by amending the saving clause to provide for compensation under the law of any state, district or territory, which was also

2. *I.T.O. Corp. v. Benefits Review Bd.*, 529 F.2d 1080 (4th Cir. 1975).

3. 33 U.S.C. §§ 901-950 (1927), *as amended*, 33 U.S.C. §§ 901-952 (Supp. 1974).

4. 244 U.S. 205 (1917).

5. Judiciary Act of 1789, ch. 20, § 9(a), 1 Stat. 76.

6. *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 217 (1917). Jensen was involved in the work of a stevedore which is maritime in nature as were his occupation and injuries.

7. *Id.* at 215, 217.

8. 1 E. JHIRAD, *BENEDICT ON ADMIRALTY* § 2, 1-5 (7th ed. 1975).

9. Act of October 6, 1917, ch. 97, 40 Stat. 395. This statute amended the exclusive admiralty jurisdiction of the district courts to give claimants the rights and remedies of each state's compensation law.

10. *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 164 (1920).

held unconstitutional.¹¹ Finally, Congress had no choice but to enact a federal compensation system and three years later, the Longshoremen's and Harbor Workers' Compensation Act was enacted.¹²

In the interim, the Supreme Court promulgated a "maritime but local" doctrine providing recovery under state law for actions of mere local concern having no direct relation to navigation or commerce. In an action involving a longshoreman killed while unloading a ship, brought in an admiralty court under a state wrongful death action, the Court found that although the subject was "maritime," the action was "local" in nature and thus, application of state laws would not harm or interfere with the general maritime law and the federal desire to preserve its uniformity.¹³ The problem with this doctrine was that the claimant, injured upon navigable waters, did not know in advance whether he was to recover under state or federal law since the activities were categorized "maritime but local" on a case-by-case basis.¹⁴ This "maritime but local" doctrine was incorporated in the Act to provide coverage for injuries occurring on the navigable waters "if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law."¹⁵

The Supreme Court's attempts to remedy the "maritime but local" situation resulted in the formation of a more confusing physical zone of recovery. In *Davis v. Department of Labor & Industries*,¹⁶ the Court reasoned that harbor workers and longshoremen working on navigable waters are protected by the Act, but such employees as the decedent in that case "occupy that shadowy area within which, at some undefined and undefinable point, state laws can validly provide compensation."¹⁷ Thus the Court created a "twilight zone"¹⁸ where rights would be determined on a case-by-case basis.¹⁹ In

11. The Act of June 10, 1922, ch. 216, 42 Stat. 634 was held unconstitutional in *Washington v. W.C. Dawson & Co.*, 264 U.S. 219, 227-28 (1924). The Court recognized that Congress has the power to amend or alter maritime law, but this power may not be delegated to the states, and emphasized that "the subject is national." *Id.* at 228.

12. 33 U.S.C. §§ 901-50 (1927), *as amended*, 33 U.S.C. §§ 901-52 (Supp. 1974).

13. *Western Fuel Co. v. Garcia*, 257 U.S. 233, 242 (1921).

14. The same principle in *Garcia* was followed in *Grant Smith Porter Co. v. Rohde*, 257 U.S. 469 (1922), where the action was deemed local even though the employee was employed in the construction of a ship lying in navigable waters. *See generally* *Thames Towboat Co. v. The Schooner Francis McDonald*, 254 U.S. 242, 243 (1920) holding contracts for construction of ships to be non-maritime.

15. 33 U.S.C. § 903(a) (1970), *as amended*, 33 U.S.C. § 903(a) (Supp. 1974).

16. 317 U.S. 249 (1942) (construction worker working on barge dismantling bridge fell into river and drowned).

17. *Id.* at 253.

18. *Id.* at 256.

19. In *Bethlehem Steel v. Moores*, 335 U.S. 874 (1938) (per curiam) an employee who usually worked on land was injured while working on a floating drydock and was allowed recovery under state compensation, his case falling into the "twilight zone." *See Hahn v. Ross Island Sand & Gravel*, 358 U.S. 272 (1959). Hahn, injured on a floating

1962, the Supreme Court clarified the "twilight zone" by construing the Act to apply to any injury occurring on navigable waters, whether or not state compensation was also available.²⁰ Four cases were consolidated upon appeal which are illustrative of the disparity of coverage under the Act. In one, an employee was thrown off a pier into the water and was allowed to recover, while the other longshoremen, employed in similar jobs, were injured on the pier itself and thus denied recovery.²¹ In *Cacirema Operating Co. v. Johnson*²² the Court left to Congress the decision to extend the scope of the Act's compensation landward from the water's edge as defined in *Jensen*, in order to provide compensation for those longshoremen injured on piers while in the process of loading and unloading ships.²³

Forty-five years after passage of the Act, Congress expanded the scope of coverage by enacting the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act.²⁴ The amendments provided compensation benefits for longshoremen and harbor workers and others in maritime employment whether injured on waters or adjoining shore areas.²⁵ The intent of Congress was to extend the Act's coverage landward in order to provide a uniform compensation system for those employees engaged in loading, unloading, repairing, and constructing vessels.²⁶ The amendments retained the "situs" requirement, but extended it to adjoining piers, wharves, drydocks, terminals, building ways, marine railways, and any other adjoining area usually used by an employer in loading, unloading, repairing, or building a vessel.²⁷ The original Act did not distinguish employees by the function they performed; the amendments however restricted the category of persons who could recover in maritime employment to include only harbor workers and longshoremen and others performing longshoring operations.²⁸ Therefore the new amendments contained three limitations to recovery: (1)

barge, elected to sue for state compensation, even though his employer had chosen to be covered by the federal compensation act and succeeded because his case also came within the "twilight zone."

20. *Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 119 (1962).

21. *Marine Stevedoring v. Oosting*, 398 F.2d 900 (4th Cir. 1968) (though the employee injured in the water was allowed recovery, the appellate court denied recovery to all).

22. 396 U.S. 212 (1969).

23. *Id.* at 224.

24. 33 U.S.C. §§ 901-52 (Supp. 1974), amending 33 U.S.C. §§ 901-50 (1927).

25. 33 U.S.C. § 902(3), (4) (Supp. 1974), amending 33 U.S.C. § 902(3), (4) (1927).

26. See generally Gorman, *The Longshoremen's Act After the 1972 Amendments*, 20B PRAC. LAW. 13, 15 (1974); Comment, *The Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972: An End to Circular Liability and Seaworthiness in Return for Modern Benefits*, 27 U. MIAMI L. REV. 94, 106 (1972); Note, *Admiralty—Maritime Personal Injury and Death—Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972*, 47 TUL. L. REV. 1151, 1157 (1973).

27. 33 U.S.C. § 903(a) (Supp. 1974), amending 33 U.S.C. § 903(a) (1927).

28. 33 U.S.C. § 902(3) (Supp. 1974), amending 33 U.S.C. § 902(3) (1927).

the area on the shore must be adjacent to navigable waters, (2) the employee must be engaged in longshoring operations—the loading, unloading, repairing or constructing of a vessel, and (3) the employer must have an employee involved in “maritime employment.”²⁹

In *I.T.O. Corp. v. Benefits Review Board*,³⁰ the Court of Appeals for the Fourth Circuit concluded that the claimants satisfied the “situs” requirement because they were injured at a terminal, adjoining navigable waters, which was used in the overall process of loading and unloading a vessel. The remaining issue was whether they also satisfied the “status” requirement, that is, whether they were engaged in “maritime employment,” or were engaged in “longshoring operations” within the meaning of the Act. The problem is one of interpretation since neither term is defined in the statute. The court referred to several cases and decided that loading and unloading is “maritime employment,” but these opinions shed no light on how far shoreward the nature of this work extended.³¹ The court looked to only one case to find the meaning of “longshoremen” and “longshoring operations,”³² and relied on the Secretary of Labor’s definition of “longshoring operations” even though the regulation was adopted prior to the amendments.³³ There is authority to the contrary, however, indicating the longshoremen’s work may be performed entirely on the pier, using machinery in loading the cargo, storing, moving and loading goods on the dock, and throwing or catching lines in mooring and unmooring the vessel,³⁴ the principal activity being loading and unloading the ship’s cargo. The term maritime employment has not been defined by the courts and a variety of jobs which are not involved with the direct loading and unloading from the pier to the vessel and from the vessel to the pier have been held to be maritime employment.³⁵ Nevertheless, the court concluded that “maritime employment,” “longshore-

29. See Gorman, *The Longshoremen's Act After the 1972 Amendments*, 20B PRAC. LAW. 13, 15 (1974).

30. 529 F.2d 1080 (4th Cir. 1975).

31. *Pennsylvania R.R. v. O'Rourke*, 344 U.S. 334, 339 (1953) (loading railroad cars from float is maritime); *Parker v. Motor Boat Sales, Inc.*, 314 U.S. 244, 247 (1941) (unloading ship is directly related to commerce and navigation); *Atlantic Transp. Co. v. Imbrovek*, 234 U.S. 52, 61 (1914) (loading and stowing ship's cargo is maritime in nature); *Law v. Victory Carriers, Inc.*, 432 F.2d 376, 384 (5th Cir. 1970), *rev'd*, 404 U.S. 202 (1971) (if longshoreman was part of group engaged in total process of moving cargo from dock to ship he was deemed to be loading).

32. *Intercontinental Container Transp. Corp. v. New York Shipping Ass'n*, 426 F.2d 884 (2d Cir. 1970).

33. 29 C.F.R. § 1918.3(i) (1974). This statute defined longshoring operations as “loading, unloading, moving, or handling of, cargo, ship's stores, gear, etc., into, in, on, or out of any vessel on the navigable waters of the United States. *Id.*”

34. 1 M. NORRIS, *THE LAW OF MARITIME INJURIES* § 3, at 6-9 (3d ed. 1975).

35. See generally *Nogueria v. New York, N.H. & H.R. Co.*, 32 F.2d 179, 181 (2d Cir. 1929).

man" and "longshoring operations" are not such words of art that the court may decide their meaning without resorting to the Act's legislative history.³⁶

There is a valid argument supporting the view that the terms of the Act should be liberally construed in light of its remedial nature and humanitarian purposes.³⁷ The doctrine that a statute must be liberally construed to promote its purpose is well founded in early cases establishing the meaning of the language of various statutes.³⁸ It is applied to insure that the purpose of an act is not defeated by a narrow interpretation or by unnecessary technical limitations on the meaning of its terms.³⁹ One of the earliest cases involving the meaning of a phrase in the Longshoremen's and Harbor Workers' Compensation Act reasoned that it should be liberally construed because it is an Act in the public interest.⁴⁰ This reasoning was subsequently followed by other courts in construing the Act's provisions indicating that a narrow and impractical construction was not favored.⁴¹

The dissent suggests another approach to the interpretation of the Act by deferring construction of the statute to the agency charged with its enforcement,⁴² a policy well recognized in decisions of the Fourth Circuit.⁴³ Section 921 of the Act establishes a Benefits Review Board,⁴⁴ to hear and determine appeals from the Administrative Law Judge's decisions concerning claims of employees under the Act.⁴⁵ In the present case, the board held that the Act extended to all persons handling cargo or performing related functions in the terminal area, thus covering the employees in question.⁴⁶ The board's review

36. The court cited as authority *United States v. Oregon*, 366 U.S. 643, 648 (1961) which held that since the court found that provisions of the statute to be clear and unequivocal on their face, there was no need to resort to the Act's legislative history. *See Caminetti v. United States*, 242 U.S. 470 (1917).

37. *Accord*, *Reed v. The Yaka*, 373 U.S. 410, 415 (1963), where the Court advised that the Act must be liberally construed in conformance with its purpose and in order to avoid harsh and incongruous results.

38. *See French v. Weeks*, 259 U.S. 326 (1922) (construing the Army Reorganization Act of June 4, 1920).

39. *See Jamison v. Encarcion*, 281 U.S. 635, 640 (1930) (interpreting "negligence" in Federal Employers Liability Act to include ordinary meaning of the word).

40. *B & P Steamboat Co. v. Norton*, 284 U.S. 408, 414 (1932).

41. *Voris v. Gikel*, 346 U.S. 328, 333 (1953) (involving § 12 of the Act); *Old Dominion Stevedoring Corp. v. O'Hearne*, 218 F.2d 651 (4th Cir. 1955); *Luckenbach S.S. Co. v. Norton*, 106 F.2d 137, 138 (3d Cir. 1939); *Page Communications Eng'rs, Inc. v. Arrien*, 315 F. Supp. 569 (E.D. Pa. 1970).

42. *See NLRB v. Boeing*, 412 U.S. 67, 75 (1973) (construction of statute by agency charged with its enforcement is entitled to great deference); *Briggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971); *Zemel v. Rusk*, 381 U.S. 1, 11 (1965); *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Brennan v. Owensboro-Daviess County Hosp.*, 523 F.2d 1013, 1028 (6th Cir. 1975).

43. *Brennan v. Prince William Hosp.*, 503 F.2d 282, 287 n.5 (4th Cir. 1974); *Tenneco, Inc. v. Public Serv. Comm'n*, 489 F.2d 334 (4th Cir. 1973); *Nacirema Operating Co. v. Oosting*, 456 F.2d 956, 960 (4th Cir. 1972).

44. 33 U.S.C. § 921(b)(1) (Supp. 1974), *amending* 33 U.S.C. § 921 (1927).

45. The three board members are appointed by the Secretary of Labor.

46. This position reflects the guidelines proposed by the Secretary of Labor as to the

is defined as conclusive if supported by substantial evidence in the record,⁴⁷ yet its decision is subject to a limited review by the court of appeals for the circuit in which the injury occurred.⁴⁸ The dissent states that the Administrative Law Judge's decision in favor of coverage was affirmed by the Benefits Review Board, bound by the test of substantial evidence and that the Court of Appeals for the Fourth Circuit failed to conform to the standard of a restricted scope of review.

The court, in its review of the legislative history and intent, depends upon a single source—the congressional committee report dealing with the “Extension of Coverage to Shoreside Areas.”⁴⁹ The report recognized that although more of the longshoreman's work is performed on land than ever before, the 1927 Act limited recovery to injuries seaward of the water's edge, and compensation was dependent on the “fortuitous circumstance” of whether the injury occurred on land or over water.⁵⁰ The intent of the committee was to provide benefits to employees who would otherwise be covered by the Act because of their activity.⁵¹ These persons included those who unload cargo from a ship and transport it “immediately” to a storage area, and are injured over navigable waters or on the adjoining land area. The committee stressed that they did not intend to cover those not engaged in loading, unloading, repairing, or building vessels and unequivocally stated that those whose only responsibility was to pick up stored cargo for transshipment were not to be covered.⁵² One commentator expresses the view that the test then is whether the employee is “directly” involved in loading, unloading, building, or repairing a ship.⁵³ Another analysis concurring with this interpreta-

scope of the Act's coverage in 20 C.F.R. Part 710 § 710.4(b).

[Terminal] Activities which may be covered include employees engaged in *stuffing and stripping of containers*, employees working in and about marine railways, and all other employees engaged in *processing waterborne cargo* (emphasis added) (proposed).

These provisions definitely cover the employees in question.

47. 33 U.S.C. § 921(b)(3) (Supp. 1974), amending 33 U.S.C. § 921(b) (1927).

48. Prior to the amendments, § 921(b) provided that the review of the compensation order by the Deputy Commissioner was to be held in the federal district courts. The court's review was strictly limited. *Accord*, O'Leary v. Brown-Pacific Maxon, 340 U.S. 504, 508 (1951), holding that review was applicable only when the findings of fact by the Deputy Commissioner were unsupported by substantial evidence. *See* O'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359, 361 (1965); *Mid Gulf Stevedores, Inc. v. Newman*, 462 F.2d 185 (5th Cir. 1972). The district court's decision could be appealed to the circuit court of appeals, but this review was also strictly limited. *Accord* O'Loughlin v. Parker, 163 F.2d 1011, 1013 (4th Cir. 1947). Since the amendments do not define the scope of review, the dissent in the instant case argues that the narrow review exercised prior to 1972 remains the proper standard.

49. S. Rep. No. 92-1125, 92d Cong., 2d Sess. (1972); H.R. Rep. No. 92-1441, 92d Cong., 2d Sess. (1972).

50. H.R. Rep. No. 92-1441, 92d Cong., 2d Sess. (1972).

51. *Id.*

52. *Id.*

53. Gorman, *The Longshoremen's Act After the 1972 Amendments*, 20B PRAC. LAW. 13 (1974).

tion of the report suggests that the line is drawn between those who participate directly or physically in these activities, and those whose jobs require them to be in the same area, but are only indirectly involved in the maritime portions of the activity, further noting that “[a]s essays in statutory construction they do not commend themselves.”⁵⁴ The Fourth Circuit adopted this view and interpreted the committee’s comments to limit the application of the Act to longshoremen and those engaged in longshoring operations between the ship and the “first point of rest” of the cargo on the pier, wharf, terminal, etc. and between the ship and the “last point of rest” on the pier and the specified shoreside areas.⁵⁵ Since Adkins was injured landward of the “first point of rest” and Brown and Harris were injured landward of the “last point of rest,” none were covered under the amended Act.

Judge Craven, dissenting in *I.T.O.*, criticized the majority’s reliance on the legislative history, reasoning that the term “maritime employment” is not ambiguous and is sufficiently broad in meaning to cover the plaintiffs’ claims.⁵⁶ This opinion reflects the attitude that where the terms of a statute are clear and unambiguous, the legislative intent must be derived from the statute itself, disregarding any conflict that may arise with the purpose of the statute as set forth in the congressional committee reports.⁵⁷ The court is also criticized for reading the “point of rest” theory into the statute, since it has no basis in either the language of the statute nor the legislative history.⁵⁸ Insertion of words to effectuate the legislative intent of a statute is an accepted practice in statutory construction,⁵⁹ however, if the act is clear and

54. C. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY*, § 6-51, 430 (2d ed. 1975).

55. Fed. Maritime Comm’n Regs., 46 C.F.R. § 533.6(c) (1974). This statute states: That area on the terminal facility which is assigned for the receipt of inbound cargo . . . may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading. Norfolk Terminal Ass’n Tariff (Item 290). This definition states that:

The term “point of rest” means a point within a Terminal where the Terminal operator designates that cargo or equipment be placed for movement to or from a vessel.

56. *I.T.O. Corp. v. Benefits Review Board*, 529 F.2d 1080, 1096 (4th Cir. 1975), citing *Abell v. Spencer*, 225 F.2d 568, 570 (D.C. Cir. 1955) (no need to look at the legislative history if the words of the act are unambiguous); *Wodehouse v. CIR*, 166 F.2d 986, 992 (1948) (no authority known for substituting language in committee report for language of statute to which it relates). See also *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (plain meaning of words cannot be changed by congressional committee report); *Omaha & Council Bluffs St. Ry. v. ICC*, 230 U.S. 324, 333-34 (1913) (act must be interpreted by its own terms and not from statements made in Congress); *Inland Waterways Corp. v. Atlantic Coast Liner R.R.*, 112 F.2d 753, 755 (4th Cir. 1940) (congressional debates can throw no light on meaning based on words of statute).

57. 2a J. SUTHERLAND, *STATUTES AND STATUTORY CONSTRUCTION* § 48.06, at 203 (4th ed. 1973).

58. See Vickery, *Some Impacts of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 41 *INS. COUNSEL J.* 63, 67 (1974).

59. 2a J. SUTHERLAND, *STATUTES AND STATUTORY CONSTRUCTION* § 47.38, at 172-73 (4th ed. 1973).

unambiguous and the history clearly indicates the intention of Congress, it is not permitted.⁶⁰ There is authority contrary to the "point of rest" limitation where plaintiffs, like the employees in question, working beyond the first and last points of rest were deemed to be loading and unloading which is recognized as "maritime employment" and thus can be argued to be "employees" within the meaning of the Act.⁶¹

Although under the rule of *Southern Pacific Co. v. Jensen*⁶² federal jurisdiction once ended at the water's edge and actions for injuries on land were under the jurisdiction of the states, no constitutional problem arises from the court's extension of federal statutory coverage to the first and last points of rest, since Congress has the power to extend the federal jurisdiction to piers, wharves, and other adjoining areas.⁶³ Neither does this decision preclude the longshoreman from the state remedy if he is injured upon the land. What is objectionable is that the point of rest theory is neither found in the Act nor in the case law. The absence of any common use of the term in admiralty law renders the viability of such a standard questionable inasmuch as the source and authority from which it originates is illusory.

This "point of rest" seems to create another situs test. Once the first situs test is satisfied, which requires that the injury occur on a pier, wharf, terminal, or adjoining land area, then the status test must be satisfied which requires the employee to be engaged in longshoring operations or in maritime employment. The status test, however, is further complicated by its dual requisites of determining not only the nature of the work performed, but also the location of such performance. Irrespective of how the Court of Appeals for the Fourth Circuit attempts to follow the legislative intent, the court is defeating that intent by reintroducing the confusing distinctions of the "maritime but local" and "twilight zone" doctrines. The function of a longshoreman cannot be divided by distinguishing who is loading or unloading beyond the first and last points of rest. As a matter of law, it is highly

60. *United States v. Smoler Bros., Inc.*, 187 F.2d 29, 32 (7th Cir. 1951).

61. *Garrett v. Gutzeit*, 491 F.2d 228, 232-33 (4th Cir. 1974); *Law v. Victory Carriers, Inc.*, 432 F.2d 376, 384 (5th Cir. 1970), *rev'd on other grounds*, 404 U.S. 202 (1971); *Byrd v. American Export Isbrandtsen Lines, Inc.*, 300 F. Supp. 1207, 1208 (E.D. Pa. 1969). These cases are discussed more fully in *I.T.O. Corp. v. Benefits Review Bd.*, 529 F.2d 1080, 1097-1101 (4th Cir. 1975) (dissenting opinion). Though these cases involved attempts by longshoremen to assert a cause of action in admiralty against a shipowner for injuries sustained in the ship's service prior to 1972, they are still useful in determining who is covered by the amendments. *Id.* at 49 n.13 (dissenting opinion). In each of these cases, plaintiffs were deemed to be loading or unloading though they were not injured between the first and last "points of rest" and the ship.

62. 244 U.S. 205 (1917).

63. U.S. CONST. art. I § 8, cl. 18 (Congress has power to make all laws necessary to fulfill powers vested in federal government); U.S. CONST. art. 3 § 2 (granting exclusive jurisdiction of admiralty to federal courts); *see O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 40-42 (1943) (Congress has power to modify substantive rules of admiralty).