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Shipowner Has No Duty to Supervise or Inspect Cargo Operation Area Once Stevedore Has Begun Cargo Operations, Absent Knowledge of Defects, Contract Provision, Positive Law, or Custom.

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CASENOTES

ADMIRALTY—Personal Injuries—Shipowner Has No Duty to Supervise or Inspect Cargo Operation Area Once Stevedore Has Begun Cargo Operations, Absent Knowledge of Defects, Contract Provision, Positive Law, or Custom.

Scindia Steam Navigation Co. v. De Los Santos,
___U.S.___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981).

Lauro De Los Santos, a longshoreman employed by Seattle Stevedore Company, was injured while helping load a ship owned by Scindia Steam Navigation Company.¹ He was struck by several fifty-pound sacks of wheat which fell from a pallet held in the air by one of the ship's winches. Although the winch's braking mechanism had been malfunctioning for two days prior to the accident, there was disagreement as to whether this defect, or the pallet's swinging, caused the sacks to fall.² De Los Santos brought suit against Scindia pursuant to section 905(b) of the Longshoremen's and Harbor Workers' Compensation Act.³ The district court granted summary judgment for Scindia.⁴ The United States Court of Appeals for the Ninth Circuit reversed and remanded, holding the shipowner's duty to inspect and correct defects continues after the ship is turned over to the stevedore.⁵ The Supreme Court granted certiorari to determine the intent and application of 33 U.S.C. § 905(b).⁶ Held—Af-

1. *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S.___, ___, 101 S. Ct. 1614, 1616, 68 L. Ed. 2d 1, 7 (1981).

2. *Id.* at ___, 101 S. Ct. at 1616, 68 L. Ed. 2d at 8.

3. *Id.* at ___, 101 S. Ct. at 1616, 68 L. Ed. 2d at 8. See 33 U.S.C. § 905(b) (1976). The statute provides that any individual covered under this Act who is injured by the negligence of a shipowner may bring an action against the shipowner as a third party. Further, the liability of the shipowner shall not be based upon a warranty of seaworthiness. *Id.*

4. See *De Los Santos v. Scindia Steam Navigation Co.*, 1976 A.M.C. 2583, 2587 (W.D. Wash. 1976) (shipowner not liable for dangerous conditions arising while stevedore in exclusive control or for any obvious defects), *rev'd and remanded*, 598 F.2d 480 (9th Cir. 1979), *aff'd and remanded*, ___U.S.___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981).

5. See *De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 489 (9th Cir. 1979), *aff'd and remanded*, ___U.S.___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981).

6. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S.___, ___, 101 S. Ct. 1614,

*firmed and remanded.*⁷ A shipowner has no duty to supervise or inspect cargo operation area once the stevedore has begun cargo operations, absent knowledge of defects, contract provision, positive law, or custom.⁸

Admiralty law has traditionally afforded injured longshoremen a remedy against negligent third parties, including the shipowner.⁹ While the Longshoremen's and Harbor Workers' Compensation Act of 1927¹⁰ provided a workers' compensation program for longshoremen, the right to bring an action in negligence against a shipowner was maintained.¹¹ Longshoremen were given additional protection when the United States Supreme Court in *Seas Shipping Co. v. Sieracki*¹² held an injured longshoreman could sue a shipowner for breach of an implied warranty of seaworthiness.¹³ Moreover, this right to sue was held not dependent on a showing that the shipowner was negligent.¹⁴ Consequently, the shipowner could be held liable without fault even though the negligent act was caused by the stevedore or its employees.¹⁵ Thus, the duty of the ship-

1618, 68 L. Ed. 2d 1, 7 (1981).

7. *Id.* at ___, 101 S. Ct. at 1628, 68 L. Ed. 2d at 20.

8. *Id.* at ___, 101 S. Ct. at 1624-26, 68 L. Ed. 2d at 15-18.

9. See *Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 341 (1st Cir. 1980), *cert. dismissed*, ___U.S.___, 101 S. Ct. 959, 67 L. Ed. 2d 325 (1981). See generally Robertson, *Negligence Actions by Longshoremen Against Shipowners Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 7 J. MAR. L. & COM. 447, 451 (1976).

10. Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 1, 44 Stat. 1424 (1927) (current version at 33 U.S.C. §§ 901-950 (1976)).

11. See *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 100-02 (1946); *Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 341 (1st Cir. 1980), *cert. dismissed*, ___U.S.___, 101 S.Ct. 959, 67 L. Ed. 2d 325 (1981); Comment, *The Longshoremen's And Harbor Workers' Compensation Act and the Invitee Standard: Maritime Law Gone Aground?*, 53 WASH. L. REV. 663 (1978).

12. 328 U.S. 85 (1946).

13. *Id.* at 89-100. The concept of seaworthiness was originally applied in cases of damage to cargo, where the test was whether the ship was reasonably fit for its intended purpose. See, e.g., *The Southwark*, 191 U.S. 1, 9 (1903) (vessel unseaworthy if there is deficiency in required refrigerating apparatus); *International Navigation Co. v. Farr & Bailey Mfg. Co.*, 181 U.S. 218, 222-23 (1901) (whether vessel is reasonably fit determined by facts and circumstances of particular case); *The Silvia*, 171 U.S. 462, 464 (1898) (reasonable fitness determined at time of sailing). Basically, a shipowner's warranty of seaworthiness guarantees that the ship's hull, gear, appliances, and appurtenances will be reasonably fit for its intended purpose. See 2 M. NORRIS, *THE LAW OF MARITIME PERSONAL INJURIES* § 298 (3d ed. 1975).

14. See *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 93-94 (1946); *De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 483 (9th Cir. 1979), *aff'd and remanded*, ___U.S.___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981); H. BAER, *ADMIRALTY LAW OF THE SUPREME COURT* § 6-17 (3d ed. 1979).

15. See, e.g., *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 549-50 (1960) (shipowner liable though dangerous condition created by stevedore during unloading operation); *Crumady v. The J. H. Fisser*, 358 U.S. 423, 429 (1959) (shipowner liable although negligence

owner to provide a seaworthy vessel was determined to be non-delegable.¹⁶ The Supreme Court, in *Ryan Stevedoring Co. v. Pan Atlantic S. S. Corp.*,¹⁷ subsequently allowed shipowners the right to indemnification from negligent stevedores on the basis of an implied warranty of workmanlike service.¹⁸ In 1972, amendments were made to the Longshoremen's and Harbor Workers' Compensation Act which altered the rights of injured longshoremen and non-negligent shipowners.¹⁹ Although the longshoremen's right to recover from a negligent shipowner was retained in section 905(b),²⁰ the implied warranty of seaworthiness was abolished,²¹ as was the shipowner's right to indemnification under the implied warranty of workmanlike service.²²

Since the passage of the 1972 amendments, lower federal courts have disagreed on the general standard of care owed by shipowners to longshoremen.²³ Some courts have applied the standards found in sections

of stevedore brought unseaworthiness into play); *Skibinski v. Waterman S.S. Corp.*, 360 F.2d 539, 541 (2d Cir. 1966) (stevedore's improper use of otherwise sound equipment may give rise to condition of unseaworthiness).

16. See, e.g., *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 100 (1946) (seaworthiness of vessel exclusive responsibility of shipowner); *Marshall v. Ove Skou Rederi A/S*, 378 F.2d 193, 196 (5th Cir. 1967) (seaworthiness is absolute duty of shipowner); *Billeci v. United States*, 298 F.2d 703, 705 (9th Cir. 1962) (non-delegable duty of shipowner to supply seaworthy vessel is established rule).

17. 350 U.S. 124 (1956).

18. See *id.* at 132-34.

19. See *Munoz v. Flota Merchante Grancolumbiana, S.A.*, 553 F.2d 837, 838 (2d Cir. 1977); *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233, 1236 (5th Cir. 1977); Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. No. 92-576, § 1, 86 Stat. 1251 (amending 33 U.S.C., §§ 901-950 (1927)); Robertson, *Negligence Actions by Longshoremen Against Shipowners Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 7 J. MAR. L. & COM. 447 (1976).

20. See 33 U.S.C. § 905(b) (1976). The statute provides that any person covered under the Act who is injured due to the negligence of a shipowner can recover damages from the shipowner. *Id.*

21. See *id.*; Hazen & Toriello, *Longshoremen's Personal Injury Actions Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 53 ST. JOHN'S L. REV. 1, 7 (1978).

22. See 33 U.S.C. § 905(b) (1976). Since the injured longshoremen can only recover from the shipowner on the basis of negligence and not any form of strict liability, there is no need to permit the shipowner to seek indemnification from the stevedore. See H.R. REP. NO. 92-1441, 92d Cong., 2nd Sess., reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4698, 4704.

23. Compare *Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 338-39 (1st Cir. 1980) (Restatement standard not applicable), *cert. dismissed*, ___U.S. ___, 101 S. Ct. 959, 67 L. Ed. 2d 325 (1981) and *De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 485-86 (9th Cir. 1979) (adopting "reasonable care under the circumstances" standard), *aff'd and remanded*, ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981) with *Canizzo v. Farrell Lines, Inc.*, 579 F.2d 682, 684-85 (2d Cir.) (applied standard in §§ 343 and 343A of the Restatement), *cert. denied*, 439 U.S. 929 (1978).

343 and 343A of the Restatement (Second) of Torts²⁴ which relate to premises liability.²⁵ The Restatement provides that a possessor of land is liable only if he knows or should know of the dangerous condition and can expect that his invitees will not discover the danger.²⁶ The possessor, however, is not liable for a dangerous condition which is known or obvious to the invitees, unless he can anticipate harm despite such obviousness.²⁷ Federal court application of the Restatement has been based on the legislative history of the 1972 amendments.²⁸ For example, the house committee's report states that the purpose of the amendments is to place injured longshoremen in the same position as non-maritime land-based employees, and to place shipowners in the same position as non-maritime, land-based employers.²⁹ Other courts, however, have rejected the Restatement standards as conflicting with the abolition of the defenses of assumption of risk and contributory negligence in maritime negligence actions.³⁰ These courts have adopted the "reasonable care under

24. See, e.g., *Canizzo v. Farrell Lines, Inc.*, 579 F.2d 682, 685 (2d Cir.) (shipowner liable for obviously dangerous conditions unlikely to be avoided by longshoremen), *cert. denied*, 439 U.S. 929 (1978); *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233, 1240-42 (5th Cir. 1977) (shipowner liable even though danger is open and obvious because longshoremen not in position to fully appreciate risk of danger); *Anuszewski v. Dynamic Mariners Corp.*, 540 F.2d 757, 759 (4th Cir. 1976) (under § 343 shipowner not liable for open and obvious danger), *cert. denied*, 429 U.S. 1098 (1977).

25. See RESTATEMENT (SECOND) OF TORTS § 343 (1965). Section 343 provides:

- A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
 - (b) could expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
 - (c) fails to exercise reasonable care to protect them against the danger.

Id. Section 343A, in pertinent part, continues: "A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." *Id.* § 343A.

26. *Id.* § 343.

27. *Id.* § 343A.

28. See *Hurst v. Triad Shipping Co.*, 554 F.2d 1237, 1246-47 (3d Cir.), *cert. denied*, 434 U.S. 861 (1977); *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233, 1236-38 (5th Cir. 1977); *Anuszewski v. Dynamic Mariners Corp.*, 540 F.2d 757, 758 (4th Cir. 1976), *cert. denied*, 429 U.S. 1098 (1977); Comment, *The Longshoremen's and Harbor Workers' Compensation Act and the Invitee Standard: Maritime Law Gone Aground?*, 53 WASH. L. REV. 663, 666 (1978).

29. See H.R. REP. NO. 92-1441, 92d Cong., 2nd Sess., reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4698, 4703-04.

30. See, e.g., *Saraw v. Oceanic Navigation Corp.*, 622 F.2d 1168, 1174 (3d Cir. 1980) (application of Restatement standard relieves shipowner of responsibility on theory that negligent invitee assumed risk of injury); *Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 347

the circumstances" standard³¹ enunciated by the Supreme Court.³²

Due to the differing standards of negligence used in section 905(b) suits,³³ there has been a divergence of opinion among the circuits as to the duties of the shipowner once the ship is under the control of the stevedore.³⁴ In *Crumady v. The J. H. Fisser*,³⁵ the Supreme Court held that the shipowner is not absolved from his duties by turning over control of the cargo loading area to a stevedoring company.³⁶ Some courts have consistently followed this view, placing a continuing duty to supervise and inspect on the shipowner³⁷ by applying a "reasonable care under the cir-

(1st Cir. 1980) (defenses of assumption of risk and contributory negligence readily apparent in §§ 343 and 343A), *cert. dismissed*, ___U.S. ___, 101 S. Ct. 959, 67 L. Ed. 2d 325 (1981); *De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 486 (9th Cir. 1979) (Congress explicitly directed rejection of common law defenses of assumption of risk and contributory negligence), *aff'd and remanded*, ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981).

31. *See, e.g., Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 348 (1st Cir. 1980), *cert. dismissed*, ___U.S. ___, 101 S. Ct. 959, 67 L. Ed. 2d 325 (1981); *Griffith v. Wheeling-Pittsburgh Steel Corp.*, 610 F.2d 116, 125-26 (3d Cir. 1979); *Gallardo v. Westfal-Larsen & Co. A/S*, 435 F. Supp. 484, 496-98 (N.D. Cal. 1977). The "reasonable care under the circumstances" standard differs from the Restatement standard in that it does not specifically provide that the foreseeability of the invitee's actions be considered in determining whether the shipowner used reasonable care. Furthermore, the "reasonable care under the circumstances" test extends the shipowner's duty to dangers other than those caused by conditions on the ship, so that the shipowner could conceivably be held liable for injuries caused by the negligence of the stevedore. *See Comment, The Longshoremen's and Harbor Workers' Compensation Act and the Invitee Standard: Maritime Law Gone Aground?*, 53 WASH. L. REV. 663, 671 n.37 (1978).

32. *See Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 415 (1969) (duty of due care extends to stevedores as well as others lawfully on ship); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959) (shipowner owed reasonable care even to plaintiff who came aboard to pay social visit to crew member).

33. *Compare De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 485-86 (9th Cir. 1979) ("reasonable care under the circumstances" standard), *aff'd and remanded*, ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981) *with Canizzo v. Farrell Lines, Inc.*, 579 F.2d 682, 684-85 (2d Cir.) (standard found in §§ 343 and 343A of the Restatement), *cert. denied*, 439 U.S. 929 (1978).

34. *Compare De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 489-90 (9th Cir. 1979) (shipowner's duty to inspect does not automatically cease once stevedores have come aboard), *aff'd and remanded*, ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981) *and Lopez v. A/S D/S Svendborg*, 581 F.2d 319, 328 (2d Cir. 1978) (independent contractor's control over work done on ship is irrelevant in determining shipowner's negligence) *with Cox v. Flota Merchante Grancolumbiana, S.A.* 577 F.2d 798, 804 (2d Cir.) (shipowner has no duty to supervise operation entrusted to stevedore alone), *cert. denied*, 439 U.S. 881 (1978) *and Hurst v. Triad Shipping Co.*, 554 F.2d 1237, 1251 (3d Cir.) (nondelegable duty established if shipowner's control used to create duty of supervision), *cert. denied*, 434 U.S. 861 (1977).

35. 358 U.S. 423 (1959).

36. *See id.* at 427.

37. *See De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 489-90 (9th Cir.

cumstances" approach.³⁸ Other courts, however, have taken the position that the shipowner has no duty to inspect after the stevedore assumes control of the ship, and no duty to intervene if a defect arises which is open and obvious.³⁹ This view is premised on the stevedore's superior knowledge of dangers which might arise after the ship is under its control.⁴⁰

The Supreme Court in *Scindia Steam Navigation Co. v. De Los Santos*⁴¹ considered a shipowner's duty to supervise or inspect the cargo area once cargo operations have begun and when he learns of a dangerous condition in the cargo area.⁴² Rejecting the court of appeals' determination that the shipowner's duty to inspect continues after the ship is turned over to the stevedore,⁴³ the Supreme Court held a shipowner has no general duty to supervise or inspect once cargo operations have begun, unless there is a contract provision, positive law, or custom to the contrary.⁴⁴ Since the stevedore is in the best position to avoid accidents upon taking

1979), *aff'd and remanded*, ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981); *Bess v. Agromar Line*, 518 F.2d 738, 741-42 (4th Cir. 1975); *cf. Gallardo v. Westfal-Larsen & Co. A/S*, 435 F. Supp. 484, 495-96 (N.D. Cal. 1977) (courts should avoid references to relinquishment of control and look to reasonableness of conduct under given circumstances).

38. *See Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 348 (1st Cir. 1980), *cert. dismissed*, ___U.S. ___, 101 S. Ct. 959, 67 L. Ed. 2d 325 (1981). In *Johnson*, the plaintiff longshoreman was injured after falling through an open hatch near the loading area. The open hatch, however, was not being loaded with cargo. Using the "reasonable care under the circumstances" approach, the court held that it was unreasonable for the hatch cover to be open since there was no loading going on at the time. *See id.* at 348. Under other circumstances, however, a different result might follow. If cargo was being loaded or about to be loaded into the hatch then the very same condition would not be unreasonable since an open hatch is necessary in the loading and unloading of a ship. *See id.* at 348.

39. *See, e.g., Hurst v. Triad Shipping Co.*, 554 F.2d 1237, 1248-50 (3d Cir.) (creation of continuing duty to supervise would establish non-delegable duty), *cert. denied*, 434 U.S. 861 (1977); *Munoz v. Flota Merchante Grancolumbiana, S.A.* 553 F.2d 837, 840-41 (2d Cir. 1977) (rule requiring non-expert to supervise work of stevedore in conflict with commercial practicality and union regulations); *Brown v. Mitsubishi Shintaku Ginko*, 550 F.2d 331, 334-35 (5th Cir. 1977) (shipowner had no duty to inspect because stevedore had control of cargo area and knowledge of hazard).

40. *See, e.g., Italia Societa v. Oregon Stevedoring Co.*, 376 U.S. 315, 322-23 (1964) (shipowner defers to qualification and competency of stevedore); *Cox v. Flota Merchante Grancolumbiana, S.A.*, 577 F.2d 798, 802 (2d Cir.) (operation entirely in the hands of the stevedore), *cert. denied*, 439 U.S. 881 (1978); *Hickman v. Jugoslavenska Linijska Plovidba Rijeka, Zvir*, 570 F.2d 449, 451-52 (2d Cir. 1978) (shipowner had right to rely on expertise of stevedore).

41. ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981).

42. *Id.* at ___, 101 S. Ct. at 1622-26, 68 L. Ed. 2d at 13-18.

43. *See De Los Santos v. Scindia Steam Navigation Co.*, 598 F.2d 480, 489 (9th Cir. 1979), *aff'd and remanded*, ___U.S. ___, 101 S. Ct. 1614, 68 L. Ed. 2d 1 (1981).

44. *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S. ___, ___, 101 S. Ct. 1614, 1624, 68 L. Ed. 2d 1, 15 (1981).

control of the cargo operations, the Court concluded the shipowner should be able to rely on the stevedore to protect longshoremen from any unreasonable hazards.⁴⁵ In the Court's view, if the shipowner had a duty to oversee the stevedore's work, he would be burdened with the same type of non-delegable duty that Congress had intended to abrogate by amending section 905(b).⁴⁶ The shipowner, nevertheless, has a duty to inspect or repair when he learns of a dangerous condition or defect arising during cargo operations and the stevedore's decision to continue operating is so unwise as to pose an unreasonable risk of harm to the longshoremen.⁴⁷

In a concurring opinion, Justice Powell dealt with the problems of the "reasonable care under the circumstances" approach followed by some lower federal courts.⁴⁸ He argued that this standard does not identify the responsibilities of the shipowner and the stevedore, thereby reducing the stevedore's motivation toward taking safety precautions.⁴⁹ Powell also noted the reasoning in the majority opinion appeared to be consistent with the Restatement standard.⁵⁰

In *Scindia*, the Supreme Court set a standard of negligence which resembles the test found in the Restatement (Second) of Torts.⁵¹ Although the Court explicitly states that sections 343 and 343A of the Restatement do not apply in section 905(b) cases,⁵² its reasoning is similar to appellate court decisions that have followed the Restatement view.⁵³ The Court's

45. *Id.* at ___, 101 S. Ct. at 1623-24, 68 L. Ed. 2d at 14-15.

46. *Id.* at ___, 101 S. Ct. at 1623, 68 L. Ed. 2d at 13-14. The Court adopted the language of the Third Circuit Court of Appeals which found the duty to oversee the stevedore's activity would saddle the shipowner with the same sort of duty Congress sought to eliminate by amending section 905(b). *See id.* at ___, 101 S. Ct. at 1623, 68 L. Ed. 2d at 13-14. *Hurst v. Triad Shipping Co.*, 554 F.2d 1237, 1249-50 n.35 (3d Cir.), *cert. denied*, 434 U.S. 861 (1977).

47. *See Scindia Steam Navigation Co. v. De Los Santos*, ___ U.S. ___, ___, 101 S. Ct. 1614, 1626, 68 L. Ed. 2d 1, 17 (1981). The Court remanded the case to the trial court for a determination of a factual dispute as to whether *Scindia* knew of the defective winch. *See id.* at ___, 101 S. Ct. at 1627-28, 68 L. Ed. 2d at 19-20.

48. *See id.* at ___, 101 S. Ct. at 1628-29, 68 L. Ed. 2d at 20-21 (Powell, J., concurring).

49. *See id.* at ___, 101 S. Ct. at 1628-29, 68 L. Ed. 2d at 21 (Powell, J., concurring).

50. *Id.* at ___, 101 S. Ct. at 1628 n.1, 68 L. Ed. 2d at 20-21 n.1 (Powell, J., concurring).

51. *See id.* at ___, 101 S. Ct. at 1628 n.1, 68 L. Ed. 2d at 20-21 n.1 (Powell, J., concurring). Justice Powell believes the majority opinion in *Scindia* to be consistent with the Restatement standard of negligence. *See id.* at ___, 101 S. Ct. at 1628 n.1, 68 L. Ed. 2d at 20-21 n.1 (Powell, J., concurring). *Compare id.* at ___, 101 S. Ct. at 1626, 68 L. Ed. 2d at 17-18 (shipowner may have duty to act if stevedore exercises obviously improper judgment) *with* RESTATEMENT (SECOND) OF TORTS § 343A (1965) (possessor of land not liable for obvious defects unless he can anticipate harm, despite the obviousness).

52. *See Scindia Steam Navigation Co. v. De Los Santos*, ___ U.S. ___, ___, 101 S. Ct. 1614, 1622 n.14, 68 L. Ed. 2d 1, 13 n.14.

53. *Compare id.* at ___, 101 S. Ct. at 1624-26, 68 L. Ed. 2d at 15-18 (shipowner has no duty to intervene and inspect cargo area controlled by stevedore except where stevedore's reaction to dangerous condition is obviously improper) *with* *Wiles v. Delta Steamship Lines*,

statement that the shipowner may have a duty to act if the stevedore exercises obviously improper judgment in dealing with the dangerous condition or defect⁵⁴ parallels section 343A of the Restatement (Second) of Torts, in that the shipowner is not liable for obvious defects, unless he can anticipate harm despite the obviousness.⁵⁵

By holding the shipowner liable only for his own negligence, the *Scindia* Court conforms to the congressional intent as reflected in the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act.⁵⁶ Since the shipowner, under *Scindia*, must have actual knowledge of a defect to be held liable, and has no duty to inspect, he is effectively absolved from any liability once he relinquishes control.⁵⁷ The main burden, therefore, is on the stevedore to avoid injuries caused by obvious defects.⁵⁸ Placing this primary responsibility on the stevedore is equitable, due to the stevedore's expertise about matters relating to the cargo area.⁵⁹

Although *Scindia* places the primary burden on the stevedore to avoid injuries in the cargo operations area, the opinion limits the stevedore's responsibility in certain circumstances.⁶⁰ For example, the shipowner is

Inc., 574 F.2d 1338, 1339 (5th Cir. 1978) (shipowner may be liable for open and obvious danger if longshoreman not in position to fully appreciate risk or avoid danger even if aware of it) and *Napoli v. Hellenic Lines, Ltd.*, 536 F.2d 505, 508-09 (2d Cir. 1976) (shipowner liable for obvious danger since only alternative for longshoreman would be to leave dangerous area and face reprisals for delaying the work).

54. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S. ___, ___, 101 S. Ct. 1614, 1626, 68 L. Ed. 2d 1, 17-18 (1981).

55. Compare *id.* at ___, 101 S. Ct. at 1626, 68 L. Ed. 2d at 17-18 (shipowner may have duty to act if stevedore exercises obviously improper judgment) with RESTATEMENT (SECOND) OF TORTS § 343A (1965) (possessor of land not liable for obvious defects unless he can anticipate harm, despite the obviousness).

56. See H.R. REP. NO. 92-1441, 92d Cong., 2nd Sess., reprinted in [1972] U.S. CODE CONG. & AD. NEWS 4698, 4703.

57. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S. ___, ___, 101 S. Ct. 1614, 1628-29, 68 L. Ed. 2d 1, 20-21 (1981) (Powell, J., concurring).

58. See, e.g., *Hickman v. Jugoslavenska Linijska Plovidba Rijeka, Zvir*, 570 F.2d 449, 452 (2d Cir. 1978); *Munoz v. Flota Merchante Grancolumbiana, S.A.*, 553 F.2d 837, 839 (2d Cir. 1977); *Marant v. Farrell Lines, Inc.*, 550 F.2d 142, 144 (3d Cir. 1977).

59. See *Munoz v. Flota Merchante Grancolumbiana, S.A.*, 553 F.2d 837, 838 (2d Cir. 1977) (work of loading and unloading ship requires unusual expertise). See also *Lubrano v. Royal Netherlands S.S. Co.*, 572 F.2d 364, 371 (2d Cir. 1978) (Moore, J., dissenting) (stevedore's primary responsibility for safety of longshoremen consistent with promotion of safe working conditions and economic efficiency).

60. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S. ___, ___, 101 S. Ct. 1614, 1624, 68 L. Ed. 2d 1, 15 (1981); cf. *Munoz v. Flota Merchante Grancolumbiana, S.A.*, 553 F.2d 837, 839 (2d Cir. 1977) (duty of care on stevedore to prevent accidents on board); *Brown v. Mitsubishi Shintaku Ginko*, 550 F.2d 331, 334 (5th Cir. 1977) (stevedore in best position to remedy dangers).

responsible for safety in the cargo area if there is a safety regulation or shipping custom which places the primary burden on him.⁶¹ Such a limitation on the stevedore's liability reduces the incentives for the stevedore to be cautious because the shipowner, and not the stevedore, is the party primarily responsible.⁶² Furthermore, this limitation is incompatible with Congress' desire to hold the stevedore liable for safety in the area under its control.⁶³

Scindia provided a timely vehicle for the Supreme Court to conform longshoremen personal injury law to the original intent of the drafters of the Longshoremen's and Harbor Workers' Compensation Act,⁶⁴ and, thereby, provide much needed uniformity to this area of law.⁶⁵ Recog-

61. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S.____, ___, 101 S. Ct. 1614, 1627 n.25, 68 L. Ed. 2d, 1, 18-19 n.25 (citing *Irizarry v. Compania Maritime Navegacion Netumar, S.A.*, No. 79-7876 (2d Cir. April 22, 1980)) (relying on safety code delegating responsibility to shipowner to maintain safe working area for stevedores); *Cox v. Flota Merchante Grancolumbiana, S.A.* 577 F.2d 798, 803 (2d Cir.) (safety and health regulations placed sole responsibility on stevedore to remedy the dangerous condition), *cert. denied*, 439 U.S. 881 (1978).

62. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S.____, ___, 101 S. Ct. 1614, 1628-29, 68 L. Ed. 2d 1, 20-21 (1981) (Powell, J., concurring) ("reasonable care under the circumstances" standard fails to allocate responsibilities of shipowners and stevedores); Comment, *The Longshoremen's and Harbor Workers' Compensation Act and the Invitee Standard: Maritime Law Gone Aground?*, 53 WASH. L. REV. 663, 672 (1978) ("reasonable care under the circumstances" standard would not provide incentives for safe behavior). One study of industrial accidents suggests that relieving workers of economic liability for their own accidents may increase the accident rate. See Chelius, *The Control of Industrial Accidents: Economic Theory and Empirical Evidence*, 38 LAW & CONTEMP. PROB. 700, 710-14 (1974).

63. See *Munoz v. Flota Merchante Grancolumbiana, S.A.*, 553 F.2d 837, 839 (2d Cir. 1977); *Marant v. Farrell Lines, Inc.*, 550 F.2d 142, 144 (3d Cir. 1977).

64. See *Scindia Steam Navigation Co. v. De Los Santos*, ___U.S.____, ___, 101 S. Ct. 1614, 1623, 68 L. Ed. 2d 1, 14 (1981) (shipowner may rely on stevedore to avoid exposing longshoreman to dangerous conditions); *Lubrano v. Royal Netherlands S.S. Co.*, 572 F.2d 364, 371 n.7 (2d Cir. 1978) (Moore, J., dissenting) (stevedore has major responsibility to avoid accidents in loading area of ship); *Hickman v. Jugoslavenska Linijska Plovidba Rijeka, Zvir*, 570 F.2d 449, 451-52 (2d Cir. 1978) (stevedore in best position to remedy any dangerous conditions); *Munoz v. Flota Merchante Grancolumbiana, S.A.*, 553 F.2d 837, 839 (2d Cir. 1977) (duty of care on stevedore to prevent accidents on board).

65. Compare *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233, 1242 (5th Cir. 1977) (adopting Restatement to provide uniformity in Fifth Circuit and throughout federal system) and *Anuszewski v. Dynamic Mariners Corp.*, 391 F. Supp. 1143, 1146-47 (D. Md. 1975) (cites legislative history in stating need for uniformity among federal courts), *aff'd*, 540 F.2d 757 (4th Cir. 1976), *cert. denied*, 429 U.S. 1098 (1977) with *Canizzo v. Farrell Lines, Inc.*, 579 F.2d 682, 688-89 (2d Cir.) (Friendly, J., dissenting) (§§ 343 and 343A of Restatement awkwardly written and not intended to apply in admiralty contexts), *cert. denied*, 439 U.S. 929 (1978) and *Hazen & Toriello, Longshoremen's Personal Injury Actions Under the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act*, 53 ST. JOHN'S L. REV. 1, 35 (1978) (§§ 343 and 343A of Restatement not meant by

nized exceptions to the stevedore's liability, however, limit the protection necessary in the dangerous longshoring industry.⁶⁶ Returning the primary burden to the shipowner under such exceptions will inevitably create the very same hazards the Court in *Scindia* sought to prevent.

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drafters to apply to longshoring industry).

66. See *Johnson v. A/S Ivarans Rederi*, 613 F.2d 334, 339 (1st Cir. 1980) (at time of 1972 amendments, longshoring was nation's second most dangerous occupation behind coal mining), *cert. dismissed*, ___U.S.___, 101 S. Ct. 959, 67 L. Ed. 2d 325 (1981); *Brown v. Ivarans Rederi A/S*, 545 F.2d 854, 861 (3d Cir. 1976) (longshoring injury frequency rate over four times national average for manufacturing operations).