NOTES

ADMIRALTY LAW—THE RYAN DOCTRINE—EVERYBODY WANTS TO GET ABOARD

Admiralty encompasses a number of highly attractive legal concepts not generally found in shore-based law. Naturally, there are regular attempts in the courts to make some of these maritime legal doctrines amphibious. The problem with such efforts is that many of the peculiar facets of admiralty law developed from dilemmas which are intrinsically maritime in nature. Such is the case with the *Ryan* Doctrine,[1] which in its inception was designed to cure a particularly maritime problem. In a recent decision, *Hobart v. Sohio Petroleum Co.*,[2] which involved an attempt by a shipper to collect indemnification from a shipowner for legal fees and court costs expended by the shipper in defending against a wrongful death action brought by the estate of the shipowner's employee, the Fifth Circuit has reiterated its refusal to extend the *Ryan* Doctrine outside its original ambit.

This article will not attempt to explain the most-litigated and controversial questions involved in the current debate over the duty of seaworthiness[3] owed to longshoremen.[4] Starting in 1946 with the *Sieracki* rule,[5] the Supreme Court opened a Pandora's box of litigation over the relationship of longshoremen and other temporary shipboard workers to the ship itself.[6] In a series of decisions, the late Justice Hugo Black espoused a "humanitarian" ideal of providing the best possible recovery for the injured longshoreman.[7] The result, in so far as its effect on maritime law is concerned, is perhaps living proof of the old adage that

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1. Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124 (1956).
2. 445 F.2d 435 (5th Cir. 1971).
3. Justice Brown in THE OSCEOLA, 189 U.S. 158, 175 (1903) said:
   That the vessel and her owner, are both by English and American law, liable for 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 appliances appurtenant to the ship.
4. For an appraisal of the states of the unseaworthiness controversy as of the recent case of Usner v. Luckenback Overseas Corp., 400 U.S. 494 (1971), *see* George, *Ship's Liability to Longshoremen Based on Unseaworthiness—Sieracki Through Usner*, 32 LA. L. REV. 19 (1971).
5. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946).
6. In Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944), the Supreme Court first found that the obligation of seaworthiness is absolute and is not satisfied by the exercise of due diligence.
7. Justice Black for the majority: Reed v. THE YAKA, 373 U.S. 410 (1963); Pope & Talbot Inc. v. Hawn, 346 U.S. 406 (1953); Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282 (1952). Justice Black in dissent: Italia Societa v. Oregon Stevedoring Co., 376 U.S. 315, 325 (1964); Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 135 (1956).

the road to Hell is paved with good intentions.

The Supreme Court has stated in a recent decision that the duty of seaworthiness requires that a vessel must be "reasonably fit for her intended service."[8] In essence, the ship owes an absolute[9] obligation of seaworthiness to members of her crew. To invoke seaworthiness, the crew member must meet two requirements: (1) his employment must be in service of the ship, and (2) he must be doing work traditionally done by seamen.[10] It is generally recognized that the occupation of seaman is a dangerous one.[11] The theory of seaworthiness is to place the burden on the shipowner of seeing that the ship is "reasonably fit for her intended service."[12]

In the *Sieracki* decision, the Supreme Court found that longshoremen were doing work traditionally done by seamen so they were entitled to the protection of the obligation of seaworthiness.[13] The problem with this decision is that the longshoremen is a unique creature in the law. He is covered by a special federal workmen's compensation statute,[14] which purports to make the employer's compensation liability under the Act "exclusive and in place of all other liability"[15] to the employee, his representatives, dependents, and anyone else entitled to recover damages from the employer "at law or in admiralty" on account of the accident.[16] As an exclusive remedy,[17] the injured longshoreman could no longer sue the stevedore (his employer) for damages. The *Sieracki* decision had the effect of placing the burden of insurer on the hapless shipowner.[18] The obvious problem with this ruling is that the accident

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8. 400 U.S. at 494.

9. 321 U.S. 96.

10. George, *Ship's Liability to Longshoremen Based on Unseaworthiness—Sieracki Through Usner*, 32 LA. L. REV. 19, 25-27 (1971).

11. Woods, *The Law's Concern for Those That Go Down to the Sea in Ships: Brinegar v. San Ore Construction Co.*, 23 ARK. L. REV. 567, 599 (1970).

12. 400 U.S. at 494.

13. 328 U.S. 85.

14. Longshoremen's and Harbor Worker's Compensation Act of 1927, 33 U.S.C. §§ 901-50 (1971 ed.).

15. 33 U.S.C. § 905 (1971 ed.).

16. G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 337 (1957) [hereinafter referred to as GILMORE & BLACK].

17. 33 U.S.C. § 933(a) (1971 ed.) provides:

> If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

18. *See* Stover, *Longshoreman—Shipowner—Stevedore: The Circle of Liability*, 61 MICH. L. REV. 539, 562 (1963).

could have been entirely caused by negligence brought on the ship by the stevedore yet the shipowner would be held liable for the resulting injury.[19] Justice Black believed that this would serve as an incentive for the stevedore to aid his employee in collecting from the shipowner.[20]

Naturally, the shipowners desired to blunt the effect of this decision. The obvious answer lay in the ancient maritime rule of comparative negligence. However, in the 1952 case of *Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp.*,[21] Justice Black succeeded in maintaining the basic principle of the harsh *Sieracki* rule. The case was tried and decided on tort principles. Justice Black simply reiterated the common law rule that there is no contribution between joint tort-feasors.[22] Perhaps in the spirit of judicial restraint, Justice Black noted that "[w]e have concluded that it would be unwise to attempt to fashion new judicial rules of contribution and that the solution of this problem should await congressional action."[23] In effect, as the jury had found, the 25 per cent responsible shipowner ended by paying the full damages, and the 75 per cent responsible stevedore paid nothing.[24] This decision is important in consideration of later decisions because it paved the way for the *Ryan* Doctrine as a contractual, not tortious, concept.

In *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*,[25] a narrow conservative majority on the Supreme Court sought to undermine the effect of the *Sieracki* rule. Speaking through Justice Burton, the Supreme Court answered two questions. First, as to whether the Longshoremen's and Harbor Worker's Compensation Act precludes assertion by a shipowner of the stevedore's liability to it, the court found that the "exclusive liability"[26] provision of the Act did not protect the stevedore-employer, on the ground that the shipowner's claim against the employer was not "on account of" the injury but was based on a contractual right to indemnity.[27] The second question was whether, in the absence of an express agreement of indemnity, a stevedoring contractor was obligated to reimburse a shipowner for damages caused it by the contractor's improper stowage of cargo. The Court first noted

19. Congress is currently considering legislation which would eliminate the longshoreman's action against the vessel while increasing his benefits under the Compensation Act. S. 525, 92d Cong., 1st Sess. (1971): H.R. 247, 92d. Cong., 1st Sess. (1971).

20. Justice Black in his dissent in *Ryan*.

21. 342 U.S. 282.

22. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 305 (3d ed. 1971).

23. 342 U.S. at 285.

24. GILMORE & BLACK at 366.

25. 350 U.S. 124.

26. 33 U.S.C. § 905 (1971 ed.).

27. GILMORE & BLACK at 368-69.

that this was a contractual problem and not an action for contribution between joint tort-feasors. Justice Burton pointed out that the "agreement necessarily includes petitioner's obligation not only to stow the pulp rolls, but to stow them properly and safely."[28] The Court saw this as "of the essence of petitioner's stevedoring contract. It is petitioner's warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product."[29] The Court explicitly found that the considerations of the *Halcyon* decision were not applicable.[30] So, under the *Ryan* Doctrine, the shipowner could now collect from the stevedore, on the basis of the warranty of workmanlike service, as indemnification, what the shipowner had to pay to the longshoreman for the obligation of seaworthiness. Justice Black, in his dissent, bitterly protested this decision on policy grounds, stating that "[i]n effect the *Sieracki* case is rejected."[31]

In the subsequent *Italia Societa* case,[32] the Supreme Court further eroded the importance of negligence concepts in the *Ryan* situation. The Court found that "the absence of negligence on the part of a stevedore who furnishes defective equipment is not fatal to the shipowner's claim of indemnity based on the stevedore's implied warranty of workmanlike service."[33]

Various commentators have expressed the view that the proper solution to the problem would have been to overrule *Halcyon* and adopt a middle ground between it and *Ryan*.[34] This would involve application of the comparative negligence rule, with division of damages. If this had been done, it might have prevented the kind of legal gymnastics which has occurred in later cases.[35]

The purpose of the foregoing review of the creation of the *Ryan* Doctrine is to give the reader the *raison d'etre* of the rule, for it is this writer's opinion that the subsequent decisions of the Fifth Circuit adopting a narrow conception of the *Ryan* Doctrine, as a strict maritime rule, can only be understood by tracing the reasons for its original adoption. The understanding of its narrow origin serves as a prerequisite for

28. 350 U.S. at 133.
29. *Id.* at 133-34.
30. *Id.* at 133.
31. *Id.* at 147.
32. 376 U.S. 315.
33. *Id.* at 318.
34. GILMORE & BLACK at 374; White, *A New Look at the Shipowner: Right-Over for Shipboard Injuries*, 12 STAN. L. REV. 717, 730 (1960).
35. *Sieracki* and its descendants gave the longshoreman a position in the law superior to that of the true seaman. "In short, the progeny have now surpassed the parent." Bue, *Admiralty Law in the Fifth Circuit—A Compendium for Practitioners:* I," 4 HOUSTON L. REV. 347, 409 (1966).

grasping the subsequent decisions of the Fifth Circuit.

So, in essence, the *Ryan* Doctrine encompasses the tripartite relationship of shipowner (who owes the absolute duty of seaworthiness), longshoreman or other worker (to whom the obligation of seaworthiness is owed as a seaman), and stevedore-contractor (who owes an implied warranty of workmanlike service to the ship). The later attempts to broaden the *Ryan* Doctrine basically involve attempts to reshuffle these categories and to replace one or more of these paarties with other parties who do not have these particular obligations. Inevitably, litigants have seen the *Ryan* Doctrine as a convenient way to get around the rule against contribution between joint tort-feasors.

In a series of decisions involving the *Ryan* Doctrine, the Fifth Circuit has laid a foundation for the criteria established in *Hobart*. These cases show that the Fifth Circuit remains committed to a strict interpretation of the *Ryan* Doctrine as a concept to be applied only in the maritime unseaworthiness context.[36]

In the case of *Delta Engineering Corp. v. Scott*,[37] the Fifth Circuit dealt with an attempt to extend the warranty of workmanlike service, previously limited to stevedore-shipowner and ship repairer-shipowner, to the relationship of time charterer-shipowner. In rejecting this attempt to extend the *Ryan* Doctrine, the court made a statement which is particularly applicable to *Hobart*.

> While the maritime jurisprudence affords a fresh example that from little acorns big oaks may grow, we would doubt very much that the Ryan notion is to carry over to every conceivable relationship which might exist between a ship and a third party.[38]

In *Ocean Drilling & Exploration Co. v. Berry Brothers Oilfield Service, Inc.*[39] the injuries involved occurred on a "fixed unmanned structure" located on the water. Such a device is not a vessel and consequently owes no obligation of seaworthiness, and those who work on it

36. It is interesting that the Supreme Court in *Ryan* repeatedly used the term "stevedoring contractor" rather than the simple word "stevedore." In a recent Fifth Circuit decision, Whisenant v. Brewster-Bartle Offshore Co., 446 F.2d 394 (1971), the court, in describing the *Ryan* case, used the single word "contractor" without "stevedoring," thus making language yield to the subsequent extension of the *Ryan* Doctrine to workers who are not longshoremen. Smith v. Brown & Root Marine Operations, Inc., 243 F. Supp. 130 (W.D. La. 1965), *aff'd sub nom.*, Underwater Services, Inc. v. Brown & Root Marine Operators, Inc., 376 F.2d 852 (5th Cir. 1967); Allen v. Union Barge Line Corp., 239 F. Supp. 1004 (E.D. La. 1965), *aff'd per curiam* 361 F.2d 217 (5th Cir. 1966), *cert. denied*, 385 U.S. 1006 (1967).

37. 322 F.2d 11 (5th Cir. 1963), *cert. denied*, 377 U.S. 905 (1964).

38. *Id.* at 18.

39. 377 F.2d 511 (5th Cir. 1967), *cert. denied*, 389 U.S. 849 (1967).

cannot fall within the definition of seaman. The court found no "compelling reason to justify extension of that [*Ryan*] shipowner-stevedore-originated rule to the facts"[40] in this particular case. There was no breach of any implied warranty of workmanlike service.

Another case, *Central Stikof Verkoopkanter, N.V. v. Walsh Stevedoring Co.*,[41] saw an attempt to fasten the warranty of workmanlike service on a stevedore in a strictly shore-based situation. A cargo of fertilizer was damaged after it had already been placed in a warehouse at the docks.[42] The shipper sought to assert the warranty of workmanlike service against the stevedore. Referring to the *Ryan* Doctrine as "a severe and harsh rule which imposes a substantial and heavy burden on the stevedore or one similarly situated,"[43] the court found that it "is a product of the admiralty courts and a creature of admiralty law"[44] and consequently they were "hesitant to apply the doctrine to this . . . non-maritime diversity case . . . ."[45]

Loffland Brothers Co. v. Roberts[46] involved another fixed offshore drilling platform.[47] The drilling contractor operating the structure was found liable for injuries suffered by an employee of a casing contractor, who was doing temporary work on the platform. The court found that the drilling contractor was not entitled to seek indemnity from the casing contractor on the theory that the casing contractor impliedly warranted under its contract to perform the casing operation in a workmanlike manner. The court refused to extend the "burdensome *Ryan* Doctrine to situations not substantially similar to those which gave birth to the doctrine."[48]

Another strictly land-based case, *Smith Petroleum Service, Inc. v. Monsanto Chemical Co.*,[49] demonstrated the determination of the court to keep the *Ryan* Doctrine out of non-maritime situations. This was an action against the owner of an oil well for the death of an employee of an outside contractor as the result of a fire on the oil well. The oil well operator filed a third party complaint against the oil well contractor for

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40. *Id.* at 513.

41. 380 F.2d 523 (5th Cir. 1967).

42. *Compare* David Crystal, Inc. v. Cunard S.S. Co., 339 F. 2d 295 (2d Cir. 1964), *cert. denied*, 380 U. S. 976 (1965).

43. 380 F.2d at 529.

44. *Id.*

45. *Id.*

46. 386 F.2d 540 (5th Cir. 1967), *cert. denied*, 389 U. S. 1040 (1968).

47. Floating drydock held not a vessel. Atkins v. Greenville Shipbuilding Corp., 411 F.2d 279 (5th Cir. 1969), *cert. denied*, 396 U. S. 846 (1969).

48. 386 F.2d at 549.

49. 420 F.2d 1103 (5th Cir. 1970).

indemnity. The court stated that it had "held on numerous occasions that *Ryan* stops at the water's edge"[50] and "[w]e find nothing in the wake of *Ryan* to lead us to apply its principles to landlubbers."[51]

In *Transcontinental Gas Pipe Line Corp. v. Mobile Drilling Barge [or vessel known as* MR. CHARLIE],[52] the drilling barge submerged and struck an underwater gas pipeline. The owner of the pipeline sued the barge *in rem*. The barge owner impleaded Signal Oil, the oil lease operator for whom the barge owner had been performing the drilling operation. The barge owner attempted to sustain the district court's order requiring Signal Oil to pay the barge owner any sums that the barge owner had to pay to the pipeline company, arguing that this case is analagous to *Ryan*. The court declined, stating that "we refuse to extend *Ryan* beyond the circumstances in which it arose for the reason that the doctrine is closely tied to the obligation a shipowner owes to those employed on the vessel."[53]

The factual situation in *Hobart* again involves the relationship between three parties but in this case it is the shipowner, Greenville Towing Company (who was the subcontractor of another party, Oil Transport Company), the representatives of some deceased crewmen aboard the vessel, and the shipper of the cargo, Sohio Petroleum Company. Under traditional maritime concepts, only the shipowner owed an obligation of seaworthiness.

Sohio had contracted with Oil Transport to ship crude oil from Wyoming to its refinery in Kentucky. Oil Transport in turn subcontracted part of the shipment to Greenville Towing. This particular shipment was picked up by Greenville Towing's vessel, the M/V WALTER WILLIAMSON, along with its tow, the barges GTC-3, -4, and -5, from a terminal at Hartford, Illinois, and moved to Sohio's terminal at Mayersville, Mississippi, where they docked on September 7, 1961. Some members of the crew of the vessal entered the hold of one of the barges where they died as a result of highly toxic hydrogen sulfide gas fumes from the cargo.[54]

The administrators of the two men killed, Hobart and Jones, reached a settlement with Greenville Towing for the deaths, in exchange for which Greenville Towing secured a release from them and an indemnity agreement where under they agreed to hold Greenville Towing harmless

50. *Id.* at 1110.
51. *Id.* at 1111.
52. 424 F.2d 684 (5th Cir. 1970), *cert. denied*, 400 U. S. 832 (1970).
53. *Id.* at 693.
54. Hobart v. Sohio Petroleum Co., 255 F. Supp. 972 (N.D. Miss. 1966).

should it be impleaded by Sohio in any proceedings instituted by the administrators against Sohio.[55]

The administrators sued Sohio for wrongful death under the Mississippi statute.[56] They alleged that Sohio knew or should have known of the inherently dangerous characteristics of this particular type of crude oil but failed to give any warning to the crew. Sohio answered and filed a third party complaint against Oil Transport and Greenville Towing. Sohio alleged that it had entered into a contract with Oil Transport which provided that Oil Transport would load and discharge the cargo at its sole risk and expense, including the risk of injury to crew members. The court found that

> [n]o other, greater and special precautions would be required in the barge line industry to protect against injury from hydrogen sulfide gas, if any at all would be necessary, than would be required to protect against other known dangers. The carriers and their employees could not be reasonably expected to conduct themselves any differently in handling crude oils in absence of such a warning. Sohio therefore had no duty to warn plaintiff's decedents in the circumstances established here.[57]

Thus, there was a judgment in favor of Sohio, affirmed by the Fifth Circuit in 1967.[58]

In this revived action, the question was whether Sohio could recover its attorneys' fees and litigation expenses, incurred in the successful defense against the wrongful death action, from Greenville Towing. Sohio based its claim for indemnity on the theory that Greenville Towing and Oil Transport owed a duty of workmanlike performance arising from their contractual obligations which would allow Sohio to assert a claim against them under the principles of the *Ryan* Doctrine. The trial court found that the *Ryan* Doctrine was applicable and it based its decision primarily on a much-distinguished[59] Fourth Circuit case, *General Electric Co. v. Moretz*.[60]

In the *Moretz* case, Mason & Dixon Lines, a truck line which ob-

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55. *Id.* at 974.

56. MISS. CODE ANN. § 1453 (Supp. 1971).

57. 255 F. Supp. at 979.

58. 376 F.2d at 1011.

59. *Distinguished:* Casella v. Norfolk & W. Ry., 381 F.2d 473, 478 (4th Cir. 1967); Norfolk & W. Ry. v. Anderson's—Black Rock, Inc., 350 F.2d 917, 919 (4th Cir. 1965); New Amsterdam Cas. Co. v. Novick Transfer Co., 274 F.2d 916, 925 (4th Cir. 1959). *Accord:* McCross v. Ratnakar Shipping Co., 265 F. Supp. 827, 841 (D. Md. 1967).

60. 270 F.2d 780 (4th Cir. 1959), *cert. denied sub nom.*, Mason & Dixon Lines, Inc. v. General Electric Co., 361 U. S. 964 (1960).

viously owed no duty of seaworthiness for injuries aboard its trucks, was held liable to indemnify General Electric, the shipper, for damages the shipper was held liable to pay to Moretz, the driver of the vehicle, for injuries suffered by him when the load, because of improper stowage, suddenly shifted in rounding a turn in the road, causing the vehicle to overturn. The trucking company was held liable to indemnify the shipper because the evidence showed that the carrier took over the vehicle and operated it with knowledge that the load had been improperly secured. The court based its decision, that the carrier was liable to indemnify the shipper, on the *Ryan* Doctrine cases. In reaching the decision on this basis, the court apparently chose to ignore the unique problems existing in admiralty which gave rise to this doctrine and which find no exact equivalent in ICC regulations concerning interstate truck carriers.

The *Moretz* decision had broad implications for non-admiralty areas of the law involving joint tort-feasors and implied indemnification agreements in contracts. As such, it has not found great favor with the courts.[62] As one writer noted, "the new pattern is a dubious one."[63]

The trial court in the present case, even though finding that the *Moretz* case was applicable, held that the *Ryan* Doctrine could not be applied because the complaint by the administrators against Sohio "is not bottomed on an act of negligence, or failure to perform a duty, on the part of the carriers, or either of them, but rather on alleged acts of negligence committed by the shipper, the owner of the cargo . . . ."[64]

The Fifth Circuit first found that "this is not a *Ryan* case at all."[65] The court thus decided to affirm the decision of the trial court but for different reasons.

In this case, Sohio bases its claim upon the "control" factor implicit in the *Ryan* situation. It stresses that Greenville Towing had exclusive supervision and control of the cargo at the time the accident occurred, and was thus "best situated to adopt preventive measures and thereby to reduce the likelihood of injury."[66]

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61. "Perhaps the leading case expanding the *Ryan* doctrine's application to nonmaritime situations is General Electric Company v. Moretz. . ." General Electric Co. v. Cuban Am. Nickel Co., 396 F.2d 89, 92 (5th Cir. 1968).

62. *See Hobart* case.

63. Dykes, *Contractual Indemnity*, 27 INS. COUNS. J. 327, 328 (1960).

64. 445 F.2d at 438, *quoting* Hill v. City of El Paso, 437 F.2d 352, 354 (5th Cir. 1971).

65. *Id.*

66. 376 U.S. at 324.

The idea of "control"[67] as a part of the obligation of seaworthiness found expression in a leading case, *West v. United States*.[68] In that case, a former "Liberty" ship, which had been deactivated and placed in "mothballs," had been towed to a shipyard in Philadelphia for the specific purpose of making her seaworthy. A shore-based worker had been injured while working on the vessel. The worker instituted a claim for unseaworthiness against the United States. The Supreme Court rejected this claim on the ground that the United States had no control over this vessel in its position in the shipyard and therefore it did not hold out to any worker who came on board the ship that it was seaworthy.[69] Thus, in the absence of control, there could be no absolute obligation of seaworthiness.[70]

Sohio's argument seems to have been based on the notion of control shifting from one party to the other which was expressed in the *Italia Societa* case.[71] There, the agreement between the shipowner and the stevedore placed "control" of the operations in the hands of the stevedore. The Supreme Court found that the stevedore was in a far better position than the shipowner to avoid the accident. The various considerations involved in the case, such as the stevedore's knowledge of the equipment which it brought on the ship

> illustrate that liability should fall upon the party best situated to adopt preventive measures and thereby to reduce the likelihood of injury. Where, as here, injury-producing and defective equipment is under supervision and control of the stevedore, the shipowner is powerless to minimize the risk; the stevedore is not.[72]

The Supreme Court had pointed out, however, that the obligation of seaworthiness was still present here and these considerations, in effect,

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67. Lykes makes much of the fact that it had no authority or control over the loading method adopted by Stevedores on the equipment furnished by them. It is clear, however, that the shipowner's lack of control over shore-based loading equipment is irrelevant to his liability for unseaworthiness . . . . Unseaworthiness liability is "essentially a species of liability without fault" imposed on the shipowner because of his greater ability to distribute the loss throughout the shipping community that receives the benefits of the longshoreman's work and that should bear the cost of his injury. Chagois v. Lykes Bros. S.S. Co., 432 F.2d 388, 395 (5th Cir. 1970).

68. West v. United States, 361 U.S. 118 (1959).

69. "It appears manifestly unfair to apply the requirement of a safe place to work to the shipowner when he has no control over the ship or the repairs, and the work of repair in effect creates the danger which makes the place unsafe." *Id.* at 123.

70. *See* Moye v. Sioux City & New Orleans Barge Lines, Inc., 402 F.2d 238 (5th Cir. 1968).

71. 376 U.S. at 324.

72. *Id.*

involved a shifting of the ultimate burden of that obligation.[73]

In relying on *Italia Societa*, Sohio sees itself in the same position as the shipowner in that case. The problem with this contention is that the shipowner in *Italia Societa* owed an absolute obligation of seaworthiness while Sohio in this case owed no more than an ordinary duty to act as would a reasonably prudent person. Therefore, the justification for the complex theory of "control" as a means to shift the harsh burden of seaworthiness simply does not exist in Sohio's situation. The Fifth Circuit expresses this view in this case by saying:

> Even if one party has "control" of the situation at the time that the injury occurs, it does not always follow that he will be absolutely liable to indemnify all other persons who might be causally connected with the injury. In other words, we do not think that the "control" element alone is sufficient to justify invocation of the *Ryan* doctrine. Our reading of the many cases decided in this Circuit involving the *Ryan* doctrine convinces us that the predicate of the doctrine is the shipowner's absolute nondelegable liability under the seaworthiness guaranty.[74]

Thus, *Hobart* is a reiteration of the principles which originally brought the *Ryan* Doctrine into being. The doctrine was created to alleviate the harsh burden imposed on shipowners by the Supreme Court in the *Sieracki* case. It was created for the sole benefit of the ship and its owners. It was never intended to provide a remedy for whatever complaints fourth parties have (as Sohio is, in effect, here) against the ship. Only the shipowner has this right of indemnification, based on the implied warranty of workmanlike service, and he has it only in those situations where the obligation of seaworthiness is invoked against him by injured workmen employed temporarily in connection with the ship. Thus, the Fifth Circuit has commendably resisted attempts to convert the *Ryan* Doctrine into an all-purpose cure-all for problems based on both sea and land.

The real problem here is the failure of the Supreme Court to lay down clear guidelines as to the outer boundaries of the *Ryan* Doctrine. The series of recent cases in the Fifth Circuit described previously in this article, which have attempted, without success, to take advantage of the

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73. The function of the doctrine of unseaworthiness and the corollary doctrine of indemnification is allocation of the losses caused by shipboard injuries to the enterprise, and within the several segments of the enterprise, to the institution or institutions most able to minimize the particular risk involved. DeGioia v. United States Lines Co., 304 F.2d 421, 426 (2d Cir. 1962).

74. 445 F.2d at 439.

Ryan Doctrine, indicate that there is considerable confusion in this area which will continue to result in needless and wasteful litigation until the Supreme Court sees fit to act. This dilemma was created by the Supreme Court through its complex peregrinations in the field of admiralty law and only the Supreme Court can bring it to a halt.[75] One obvious answer would be a clear statement by the Supreme Court that the party seeking to apply the *Ryan* Doctrine must owe an obligation of seaworthiness. Until the Supreme Court clarifies the *Ryan* Doctrine in a case such as *Hobart*, this problem is going to continue to plague the federal courts as more nonmaritime parties seek to take advantage of the *Ryan* Doctrine.

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75. *See* Davis, *Tugs, Stevedores and the Warranty of Workmanlike Performance*, 44 IND. L. J. 135 (1969) for a criticism of the extension of the *Ryan* Doctrine and warranty of workmanlike service to the tug-tow relationship.