ADMIRALTY—LONGSHOREMAN INJURED BY DEFECTIVE MACHINERY ON PIER WHILE UNLOADING VESSEL IS PROTECTED BY WARRANTY OF SEAWORTHINESS. *Spann v. Lauritzen* (3d Cir. 1965).

The plaintiff, a longshoreman, was employed by a stevedoring company engaged in transferring a cargo of nitrate of soda from a vessel owned by the defendant to a fleet of trucks. The transfer was accomplished by a large shore-based crane which would lower its bucket into the ship's hold, pick up a load of nitrate, swing it around and deposit it into a funnel-shaped hopper located on the pier. The hopper, which was owned by Lavino Shipping Company, was not attached to the vessel in any way. The hopper was constructed so that trucks could drive under it and be loaded. It was the plaintiff's job to pull down a heavy bar so connected as to cause the floor of the hopper to open, thereby allowing the nitrate to pour into a waiting truck below. The capacity of the hopper was eight buckets. Five buckets of nitrate made a truckload. When a truck was filled the plaintiff would close the floor of the hopper. The plaintiff was injured when a load of nitrate was dropped into the emptied hopper and the floor prematurely opened, causing the horizontal bar to descend and strike him. The plaintiff brought an action in federal district court against the defendant shipowner to recover damages for injuries sustained due to the alleged unseaworthiness of the vessel and the negligence of the defendant. The federal district court granted the defendant's motion for summary judgment and the plaintiff appealed. The Third Circuit Court of Appeals reversed, holding that the plaintiff was in the service of unloading the vessel and the hopper had sufficient connection with the vessel to be within the subject matter of the shipowner's warranty of seaworthiness. *Spann v. Lauritzen*, 344 F.2d 204 (3d Cir. 1965).

The warranty of seaworthiness is an implied warranty that the ship's gear, hull, appliances, manning and appurtenances are reasonably fit for their intended purposes.[1] Accordingly, seaworthiness is a relative[2] standard which varies with the nature of the voyage and whether the ship is in port or at sea.[3] For example, a condition which

[1] Mesle v. Kea S.S. Corp., 260 F.2d 747 (3d Cir. 1958); Crumady v. The Joachim Hendrik Fisser, 249 F.2d 818 (3d Cir. 1957); Lester v. United States, 234 F.2d 625 (2d Cir. 1956); NORRIS, MARITIME PERSONAL INJURIES, §§ 27-48 (1959).

[2] Pederson v. Morris & Cummings Dredging Co., 274 F.2d 606 (2d Cir. 1960); Lester v. United States, *supra* note 1.

[3] *Ibid.*; Hanrahan v. Pacific Transp. Co., 262 F. 951 (2d Cir. 1919).

would amount to unseaworthiness if the vessel were on a cruise in the North Atlantic might not render it unseaworthy at all while in port.[4]

The shipowner's duty has been said to be an absolute and nondelegable one.[5] Diligence on the part of the shipowner to maintain a seaworthy ship will not relieve his liability if the injury is in fact proximately caused by an unseaworthy condition.[6] Also, in an action based on unseaworthiness, neither assumption of the risk[7] nor contributory negligence[8] is a bar to the plaintiff's recovery although the latter may operate in mitigation of damages under the maritime doctrine of comparative negligence.[9]

The duty of a shipowner to provide a seaworthy vessel was originally a duty owed only to members of the crew as incident to the contract of service, express or implied, between the owner of the ship and the master or any seaman thereof.[10] In 1946 this duty was extended to cover longshoremen doing the work of seamen by the Supreme Court in the landmark case of *Seas Shipping Co. v. Sieracki*.[11] *Sieracki* involved a stevedore who was injured while operating a winch aboard the defendant's ship. While cargo was being lowered into a hold, the shackle supporting the boom controlled by the plaintiff's winch broke, allowing the boom and tackle to fall and injure the plaintiff. Liability for unseaworthiness was held to arise not merely from the seaman's contract but from performance of the ship's service with the owner's consent.[12] The Court in *Sieracki* said that the warranty of seaworthiness was essentially a species of liability without fault and that the plaintiff longshoreman was al-

4 See Hanrahan v. Pacific Transp. Co., *supra* note 3; *Cf.* M'lanahan v. Universal Ins. Co., 26 U.S. (1 Pet.) 170 (1828).

5 Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944); Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1922); Dixon v. United States, 219 F.2d 10 (2d Cir. 1955).

6 *Ibid.*

7 Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939); Ballwanz v. Ithmian Lines, Inc., 319 F.2d 457 (4th Cir. 1963); Klimaszewski v. Pacific-Atlantic S.S. Co., 246 F.2d 875 (3d Cir. 1957).

8 United Pilots Ass'n v. Halecki, 358 U.S. 613 (1959); Palermo v. Luckenback S.S., Inc., 355 U.S. 20 (1957); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953); Socony-Vacuum Oil Co. v. Smith, *supra* note 7.

9 "The harsh rule of the common law under which contributory negligence wholly barred an injured person from recovery is completely incompatible with modern admiralty policy and practice. Exercising its traditional discretion, admiralty has developed and now follows its own fairer and more flexible rule which allows such consideration of contributory negligence in mitigation of damages as justice requires." Pope & Talbot, Inc. v. Hawn, *supra* note 8, at 408-09.

10 The Osceola, 189 U.S. 158 (1903).

11 328 U.S. 85 (1946).

12 *Id.* at 97.

lowed to recover "because he is doing a seaman's work and incurring a seaman's hazards."[13]

Since *Sieracki,* the Supreme Court has held that labels such as "longshoreman" and "stevedore" are not the criteria for protection under the warranty of seaworthiness. The Court has focused on the type of work performed by the individual and his relation to the ship.[14] The fact that defective gear was supplied by a stevedore does not relieve the shipowner from liability,[15] and it is immaterial whether the injury occurred on the ship or on land.[16] However, recovery has been denied where the plaintiff was injured while performing work not traditionally done by the ship's crew[17] and where the ship involved was not in maritime service at the time of the injury.[18]

In ascertaining the scope of the seaworthiness doctrine, a definite conflict among the circuit courts is evident. The Sixth Circuit, in *McKnight v. N. M. Patterson & Sons,*[19] denied recovery to a longshoreman injured by a shore-based crane while working in one of the ship's holds, stating that the longshoreman was doing a seaman's work but not incurring a seaman's hazards. In *McKnight* the court held that since none of the traditional unloading gear of the ship was involved in the plaintiff's work, his injury was not within the shipowner's warranty of seaworthiness.[20]

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[13] *Id.* at 99.

[14] Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953).

[15] Alaska S.S. Co. v. Petterson, 347 U.S. 396 (1954); Rogers v. United States Lines, 347 U.S. 984 (1954).

[16] Gutierrez v. Waterman S.S. Corp., 373 U.S. 206 (1963).

[17] United Pilots Ass'n v. Halecki, 358 U.S. 613 (1959). The plaintiff here was an electrician hired to clean the ship's generators with carbon tetrachloride during the vessel's annual overhaul. The plaintiff's employer was a subcontractor for the electrical work. The plaintiff became sick and died two weeks later of carbon tetrachloride poisoning. *But see* Shields and Byrne, *Application of the Unseaworthiness Doctrine to Longshoremen,* 111 U. PA. L. REV. 1137 (1963); Tetreault, *Seamen, Seaworthiness and the Rights of Harbor Workers,* 39 CORNELL L.Q. 381 (1954), which voiced doubt that loading and unloading operations are the traditional work of seamen.

[18] West v. United States, 361 U.S. 118 (1959). The plaintiff here was an employee of a contractor which was engaged in activating a ship which had been in the "mothball fleet" for several years. The plaintiff was injured when struck by an end plug from a water pipe which was propelled through a cylinder of the main engine. The plug had been loosely fitted on an overhead pipe and was forced off when one of the plaintiff's fellow employees turned on the water without warning. The Court held that the sole purpose of the work aboard the vessel was to make her seaworthy and that it would thus be a contradiction to say that the defendant warranted her seaworthiness at the time of the plaintiff's injury.

[19] 286 F.2d 250 (6th Cir. 1960).

[20] *Id.* at 251. Due to the size and purpose of the crane, the federal district court refused to rule that the ship might adopt or integrate the crane as part of its gear. This holding was affirmed on appeal.

The Second Circuit, in *Forkin v. Furness-Withy & Co.*,[21] denied recovery to a longshoreman injured while attaching a portable conveyor to the ship. The court ruled that the conveyor was not an appurtenance of the ship and not within the shipowner's warranty of seaworthiness because the conveyor was not attached to the ship in any manner when the plaintiff sustained his injury.[22]

Conversely, the Ninth Circuit, in *Huff v. Matson Nav. Co.*[23] (cited with approval in the principal case),[24] allowed recovery to a longshoreman injured in the hold of a vessel by a scraper device which was part of the stevedore's shore-based crane. Although the scraper device was attached in a manner[25] to the hold, the court declined to base its holding on this point. The decision in *Huff* made no distinction as to whether the equipment causing the injury was or was not physically annexed to the ship.

The factual situation presented in *Spann* differs from those previously considered by the courts. Here, neither the longshoreman nor the alleged unseaworthy equipment was aboard the ship at the time of the injury. In *Spann* the injury was caused by an alleged unseaworthy condition which both originated and terminated on the pier. Nevertheless, the Court of Appeals held that the plaintiff was engaged in unloading the vessel, an activity which is considered to be typical seamen's work sufficient to bring the activity within the warranty of seaworthiness.[26] The trial court had held that the plaintiff was engaged in loading the trucks because the unloading of the ship ended when the nitrate was deposited in the hopper. Consequently, the plaintiff was not engaged in a seaman's activity and was not protected by the warranty. The court of appeals, however, noted that the hopper had to be emptied repeatedly in order to make room for the crane to dump subsequent loads which it had removed from the vessel. It remarked, further, that had longshoremen been engaged in removing the loads from the crane and moving them to another position on the pier, they would clearly have been within the protec-

21 323 F.2d 638 (2d Cir. 1963).
22 *Id.* at 641.
23 338 F.2d 205 (9th Cir. 1965).
24 344 F.2d at 209.
25 The scraper device was attached to falls which were in turn run through blocks attached to the sides of the cargo hold. The scraper device was used to drag the cargo, sugar in this case, to a conveyor located in a leg of the shore-based crane. "The scrapers, falls and blocks are component parts of and attached to the crane." *Id.* at 207.
26 Thompson v. Calmar S.S. Corp., 331 F.2d 657 (3d Cir. 1964); Hagans v. Ellerman Bucknall S.S. Co., 318 F.2d 563 (3d Cir. 1963); Litwinowicz v. Weyerhaeuser S.S. Co., 179 F. Supp. 812 (E.D. Pa. 1959).

tion of the warranty of seaworthiness. Thus, the court stated that a longshoreman is no less within the warranty:

> [B]ecause modern ingenuity suggested the desirability of combining the unloading of the vessel with the loading of the trucks. . . . The labor saving method here used which facilitated the removal of the cargo by motor vehicles may not be held to eliminate the unloading of the cargo from the area of traditional work of the seamen in the service of the vessel. . . . It has frequently been said that the doctrine of unseaworthiness is not to be rigidly construed so as to exclude from its scope modern labor saving methods and the use of modern machinery to do the work traditionally done in loading or unloading vessels.[27]

The court was not persuaded by the argument that the size and nature of the hopper prevented it from being included as an appurtenance of the vessel. The court found that the hopper was as much an essential part of the unloading process as was the crane since, under the circumstances, the cargo could not have been unloaded without it. Furthermore, the court stated: "That some other method might have been used does not eliminate the means used for the unloading of the cargo as a part of the appurtenances of the vessel."[28]

Although there have been prior cases extending the scope of the doctrine to injuries occurring off the vessel, they are distinguishable from *Spann*. In *Gutierrez v. Waterman S.S. Corp.*[29] the injury to the plaintiff was due to defective cargo containers which had been stored on board the vessel. The longshoreman was injured when he slipped on beans which had spilled onto the pier from the defective containers. The Court held that under the Admiralty Extension Act of 1948,[30] the shipowner's warranty of seaworthiness extended to cargo containers and applied to longshoremen while unloading the ship, whether they were aboard ship or on the pier.[31] Similarly, *Hagans v. Ellerman & Bucknall S.S. Co.*[32] involved an injury to a longshoreman who slipped and fell on sand which had spilled from burst bags unloaded from the vessel. The court held that the plaintiff, though

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27 344 F.2d at 206.

28 *Id.* at 209.

29 373 U.S. 206 (1963).

30 62 Stat. 496 (1948), 46 U.S.C. § 740. "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

31 373 U.S. at 215.

32 318 F.2d 563 (3d Cir. 1963).

working on the pier, was within the coverage of the warranty of seaworthiness because he was engaged in unloading the bags from the vessel and was injured by a condition created by the defective bags.[33] These cases are distinguishable from *Spann* because the unseaworthy conditions in *Gutierrez* and *Hagans* emanated from the vessel. This distinction appears to be within the limits of the Admiralty Extension Act that the damage or injury be "caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."[34]

In aiding the harbor worker to join the seaman as a favored ward[35] of admiralty law, *Spann* states that the purpose of the seaworthiness doctrine is to protect those "in the service of the vessel."[36] The test applied is whether the risk incurred in the particular case falls within the hazard of such service.[37] As the test is applied in *Spann*, once the plaintiff's activities can be placed within the service of the vessel, then it need only be determined that the equipment was "essential" to his job in order to establish it as an appurtenance of the vessel.[38] Practically any equipment can in some way be considered

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33 *Id.* at 571.

34 62 Stat. 496 (1948), 46 U.S.C. § 740.

35 It is interesting to note that the plaintiff in *Spann* had three means of recovery available for the redress of his injuries. First, he had a statutory cause of action against his employer for compensation under the Longshoremen's and Harbor Workers' Act. 44 Stat. 1424 (1927), 33 U.S.C. §§ 901-50. Second, since the allegedly defective hopper was owned by a third party to the action, plaintiff had and has brought an action against Lavino Shipping Co. Spann v. Lavino Shipping Co., No. 5994, C.P., Phila., March term 1965. Remaining is the action for unseaworthiness against the shipowner. Under the Longshoremen's and Harbor Workers' Act the employee may bring an action against an allegedly liable third person notwithstanding the fact that the employee has accepted compensation if said action is brought within six months. 73 Stat. 391 (1959), 33 U.S.C. §§ 933(a),(b). After six months the employee is said to have assigned whatever rights he possessed against a third party to his employer. 73 Stat. 391 (1959), 33 U.S.C. § 933(b). If the employer then recovers from the third party he must pass this recovery on to the employee less certain authorized deductions. 73 Stat. 391 (1959), 33 U.S.C. § 933(e). Furthermore, if the employee proceeds against the third party and receives less than he would have been allowed under the statute, his employer is then obligated to make up this difference through compensation. 73 Stat. 391 (1959), 33 U.S.C. § 933(f). The Longshoremen's and Harbor Workers' Act thus is designed to provide the employee with compensation or damages, whichever is greater. In addition, some courts have held that under certain circumstances the employee may still bring action against a third party despite the fact that the six month statutory period has passed and compensation has been received. Castro v. United States, 230 F. Supp. 967 (D.P.R. 1964); Wynn v. Kelley, 233 F. Supp. 875 (D.D.C. 1963). Thus, it becomes apparent that the plaintiff in *Spann* would not be forced to bear the burden of his injuries alone even if deprived of his action for unseaworthiness against the shipowner.

36 344 F.2d at 207.

37 *Ibid.*

38 *Id.* at 208.

"essential" to a workman utilizing it in the service of a vessel regardless of its individual function or duty. Thus, the test set forth in *Spann* would seem to establish the shipowner as an insurer of all equipment utilized by individuals considered to be in the service of the vessel.

JOHN D. DUNBAR