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NOTES

SHORESIDE LIMITS OF THE LONGSHOREMEN'S AND HARBORWORKERS' COMPENSATION ACT

In 1972, Congress amended the Longshoremen's and Harborworkers' Compensation Act¹ (LHWCA) to extend coverage to some injuries occurring on land.² Claimant Ralph Caputo was injured in 1973 in a terminal area while transferring a load of cheese, which had been previously off-loaded, into a consignee's truck. In 1974, claimant Carmelo Blundo was injured on a pier while checking and marking cargo as it was stripped from a container.³ Both the Benefits Review Board⁴ and the Second Circuit Court of Appeals⁵ found coverage. Noting a conflict among the circuits, the United States Supreme Court granted certiorari and *held* that both Caputo and Blundo were covered by the 1972 Amendments to the LHWCA. *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977).⁶

1. 33 U.S.C. §§ 901-948a (Supp. V 1975). The Longshoremen's and Harborworkers' Compensation Act provides coverage generally for those workers who are injured "on navigable waters" while moving cargo or while building, repairing, or breaking down ships.

2. See G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 408 (2d ed. 1975); Stocker, *An Overview of the Longshoremen's and Harborworkers' Compensation Act*, 12 *THE FORUM* 674 (1977); Comment, 33 *LA. L. REV.* 683 (1973); Note, 23 *LOY. L. REV.* 284 (1977); Note, 23 *LOY. L. REV.* 276 (1977).

The fascinating history of the enactment of LHWCA in 1927 and of subsequent judicial interpretations has been fully charted by previous writers and need not be repeated here. See G. GILMORE & C. BLACK, *supra*, at 408; Comment, 33 *LA. L. REV.* 683 (1973). Just as an example, however, it may be noted that the economic motivation for the 1972 amendments came from earlier Supreme Court decisions, primarily *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946), which allowed at least some harborworkers (who came to be called "Sieracki seamen") to sue shipowners under the unseaworthiness doctrine, and *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124 (1956), which allowed shipowners indemnity from maritime employers under an implied "warranty of workmanlike performance" theory. G. GILMORE & C. BLACK, *supra*, at 410, 443; Comment, 33 *LA. L. REV.* 683 (1973).

3. The container had previously been off-loaded and transported to an adjacent pier.

4. 2 Benefits Rev. Bd. Serv. 376 (Blundo); 3 Benefits Rev. Bd. Serv. 13 (Caputo).

5. *Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35 (2d Cir. 1976).

6. The scope of this Note is limited to the shoreside extension of coverage

The LHWCA provides workmen's-compensation-type benefits for non-seamen maritime workers who are injured on the job. Prior to 1972, coverage under the Act was determined primarily by looking to where the injury occurred (the "situs" of the injury). Coverage ended at the water's edge,⁷ so maritime employees literally walked in and out of coverage as they moved from ship to shore. The potential for inequity is obvious: in one pre-1972 case, workers who were injured on the shore by a ship's crane were denied coverage⁸ while in another case a worker who was knocked into the water was covered.⁹ In addition, modern technology has moved much of the longshoremen's traditional work to the shore, thus providing another incentive for the amendment of the Act to provide shoreside coverage.¹⁰ In sum, the 1972 shoreside extension was enacted to provide uniform coverage for workers on land who were exposed to the same risks as those who worked on navigable waters.¹¹

under the 1972 amendments. A "seaside" extension, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1343 (1953), was not involved in the instant case. *See, e.g.*, *Smith v. Chevron*, 517 F.2d 1154 (5th Cir. 1975); *Nations v. Morris*, 483 F.2d 577 (5th Cir.), *cert. denied*, 414 U.S. 1071 (1973). Changes in the longshoreman's action against the shipowner and the shipowner's indemnity action are also beyond the scope of this Note. *See* 33 U.S.C. § 905 (Supp. V 1975); G. GILMORE & C. BLACK, *supra* note 2, at 431; George, *The Content of the Negligence Action By Longshoremen Against Shipowners*, 25 LA. B.J. 15 (1977). Finally, the relationship with state workmen's compensation remedies is considered only incidentally.

7. 33 U.S.C. § 903(a) (1970), prior to the 1972 amendments, provided in part: Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

See Comment, 33 LA. L. REV. 683, 689 (1973).

The term "employee" was defined in negative terms in the previous version of 33 U.S.C. § 902(3) (1970), which provided,

The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

33 U.S.C. § 902(4) (1970), prior to amendment, defined an "employer" as "an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock)."

8. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212 (1969).

9. *Marine Stevedoring Corp. v. Oosting*, 398 F.2d 900 (4th Cir. 1968).

10. S. Rep. No. 1125, 92d Cong., 2d Sess. 12-13 (1972); H.R. Rep. No. 1441, 92d Cong., 2d Sess. 10-11; *see* *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249 (1977).

11. S. Rep. No. 1125, 92d Cong., 2d Sess. 13 (1972) and H.R. Rep. No. 1441, 92d Cong., 2d Sess. 10 (1972) both state:

The amendments expanded the geographical area within which an employee would be covered,¹² but also explicitly limited the class of employees entitled to benefits.¹³ Thus two requirements for coverage were contemplated: the injury must occur within a limited geographical area (the *situs* requirement),¹⁴ and the claimant must fall within a limited class of persons (the *status* requirement).

The Situs Requirement

The geographical expansion of coverage was achieved by redefining "navigable waters" for the purposes of the LHWCA.¹⁵ Six structures were specifically included in the definition, and an omnibus clause was adopted to provide coverage to other innominate areas.¹⁶ Because the language of the amendment does not clearly delineate the boundaries of coverage, the courts soon had an opportunity to interpret and apply it.

The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water.

12. 33 U.S.C. § 903(a) (Supp. V 1975) now provides in part,

Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

Compare with the language of the previous provision, *supra* note 7.

13. See note 7, *supra*, for the text of the prior statute, which defined "employee" only in negative terms. Compare 33 U.S.C. § 902(3) (Supp. V 1975), as amended in 1972, which now defines an employee as

any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

33 U.S.C. § 902(4) was also amended, and now defines an "employer" as

an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

Compare with the previous provision, *supra* note 7.

14. *But see* *Sea Land Services, Inc. v. Director, Office of Workers' Compensation Program*, 540 F.2d 629 (3d Cir. 1976); text at note 22, *infra*.

15. 33 U.S.C. § 903(a) (Supp. V 1975). See note 12, *supra*.

16. 33 U.S.C. § 903(a) (Supp. V 1975).

In *Jacksonville Shipyards, Inc. v. Perdue*,¹⁷ a dispute arose over whether the situs of the injury must be a place used for maritime activity. The source of the controversy was the statutory language, and the precise issue was whether the words "customarily used" in the statute applied to the six named structures as well as "other adjoining areas."¹⁸ The Fifth Circuit held that the usage requirement applied to all areas and that past or merely contemplated future use was inadequate.¹⁹ Another dispute arose over whether coverage was affected by the movement of containerized cargo away from the berth of the specific vessel being unloaded before the container was stripped. In *Stockman v. John T. Clark & Son of Boston, Inc.*,²⁰ claimant Stockman was injured while stripping a container which had been unloaded from a vessel and then hauled to the terminal in which the injury occurred. Reasoning that Congress did not intend to limit "adjoining" to only those areas directly adjoining the berth of the specific vessel being unloaded, the First Circuit held that Stockman was injured in a covered situs. The proximity requirement, under this decision, is not dependent on the site of the vessel, but only on the nearness to navigable waters.²¹

The Third Circuit has taken the position that a consideration of the

17. 539 F.2d 533 (5th Cir. 1976). Five separate actions were consolidated in this case. Claimant Perdue was injured while stepping from a bus at the company office. Claimant Skipper was injured while tearing down an abandoned building which had formerly housed a fabrication shop. Claimant Ford was injured while helping to secure a military vehicle to a railway flat car. Claimant Nulty was injured while building a piece of woodwork in a fabrication shop about 300 feet away from the ship for which the woodwork was intended. Claimant Bryant was injured while moving cotton in a pierside warehouse. The Fifth Circuit held that Bryant, Nulty and Ford satisfied the situs requirement. Skipper did not because at the time of his injury, the building in which he was injured was not customarily used for maritime activity. Perdue did not meet the situs requirement either, since the company office was not customarily used for maritime activity, and because it did not adjoin navigable waters. The Supreme Court denied writs in the Nulty case, *sub nom. Halter Marine Fabricators, Inc. v. Nulty*, 97 S. Ct. 2973 (1977). Writs were granted in the Perdue and Ford cases, *sub nom. Director, Office of Workers' Compensation Programs v. Jacksonville Shipyards*, 97 S. Ct. 2967 (1977) and *P. C. Pfeiffer Co. v. Ford*, 97 S. Ct. 2966 (1977), but the cases were vacated and remanded for consideration in light of the instant case.

18. See note 12, *supra*.

19. See *Texports Stevedore Co. v. Winchester*, 554 F.2d 245 (5th Cir. 1977); *Alabama Dry Dock & Shipbuilding Co. v. Kininess*, 554 F.2d 176 (5th Cir. 1977); *Ingalls Shipbuilding Corp. v. Morgan*, 551 F.2d 61 (5th Cir. 1977).

20. 539 F.2d 264 (1st Cir. 1976), *cert. denied*, 97 S. Ct. 2972 (1977).

21. See *Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35 (2d Cir. 1976), *aff'd sub nom. Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977).

situs of the injury is irrelevant,²² In *Sea Land Services, Inc. v. Director, Office of Workers' Compensation Program*,²³ the court reasoned that since the purpose of the amendments was to eliminate shifting coverage, the only way to fulfill that objective was to eliminate the situs requirement.²⁴

In the instant case, the Supreme Court was squarely presented with the *Stockman* issue by the facts of the *Blundo* case and had no trouble in finding coverage. Thus, so long as the situs of the injury adjoins navigable waters, prior movement of the cargo away from the vessel does not affect the fulfillment of the situs requirement. The usage requirement issue was also raised but the court did not feel compelled to settle it, since the area in which *Blundo* was injured was customarily used for maritime activity. The ambiguity in the statute was noted, however, and in view of the court's characterization of the amendments as "remedial legislation" which should be "liberally construed,"²⁵ it is doubtful whether the Fifth Circuit's narrow construction will be approved should the Supreme Court face the issue again.

Finally, the Supreme Court did not expressly disapprove the Third Circuit's elimination of the situs requirement. However, after stating the

22. *Sea Land Serv., Inc. v. Director, Office of Workers' Compensation Program*, 540 F.2d 629, 638 (3d Cir. 1976). *See also* *Sea Land Serv., Inc. v. Director, Office of Workers' Compensation Program*, 552 F.2d 985 (3d Cir. 1977); *Maher Terminals, Inc. v. Farrell*, 548 F.2d 476 (3d Cir. 1977); *Dravo Corp. v. Maxin*, 545 F.2d 374 (3d Cir. 1976), *cert. denied*, 97 S. Ct. 2973 (1977).

23. 540 F.2d 629 (3d Cir. 1976).

24. *Id.* at 638. For loading and unloading cases, this approach will usually yield the correct result, since such activity normally takes place near navigable waters and at one of the sites listed in the statute. However, containers are often unloaded directly onto land transportation and transported inland prior to stripping. Retaining the separate situs requirement would preclude coverage for persons unloading those containers, while its elimination might not.

Problems may also arise in the shipbuilding cases. For instance, if the situs requirement is eliminated, it could plausibly be argued that a fabricator working in Phoenix would be covered under the LHWCA, since he would be performing a task normally done near navigable waters. Coverage would depend, under the Third Circuit test, on whether "the functional relationship of [the claimant's] activities to [the employer's] ship building operations was maritime in character." *Dravo Corp. v. Maxin*, 545 F.2d 374, 380 (3d Cir. 1976), *cert. denied*, 97 S. Ct. 2973 (1977) (claimant injured in structural steel shop while burning steel plates which would become bottoms and decks of barges held to satisfy the "functional relationship" test). Perhaps the Phoenix fabricator should be covered, but it is submitted that such a result is not dictated by words of the statute or by congressional intent. The sites enumerated in the statute are those in close proximity to navigable waters, and the use of the word "adjoining" clearly seems to tie coverage to areas and structures near the water.

25. 432 U.S. at 268.

Third Circuit's position in a footnote,²⁶ the Supreme Court gave separate consideration to the situs requirement. It is submitted that the court has thus implicitly disapproved of that position and by doing so has retained the situs requirement as a requisite of coverage.²⁷

The Status Requirement

The status requirement for coverage under the LHWCA became an important consideration under the 1972 amendments because the class of persons entitled to benefits was explicitly limited.²⁸ Title 33, section 903(a) of the United States Code, as amended,²⁹ states that only disability or death of an "employee" is compensable under the LHWCA, and to be an "employee" under the Act, the claimant must be "engaged in maritime employment."³⁰ The amendment names four maritime occupations for which coverage is available: longshoreman, shipbuilder, ship repairman, and shipbreaker. In addition, coverage is extended to persons "engaged in longshoring operations."³¹

Because of the Act's failure to define "longshoreman" and "engaged in longshoring operations," disputes have arisen over the scope of these concepts.³² One dispute concerned whether longshoremen and per-

26. *Id.* at 277 n.40.

27. Assuming the Supreme Court will not apply the usage requirement to the six named structures, the rule appears to be that a claimant will satisfy the situs requirement if the injury occurred in an area near navigable waters which is either one of the six named structures or is an area customarily used for loading, unloading, building, repairing, or breaking a vessel. For the loading and unloading cases, prior movement of the cargo from the berth adjoining the vessel to another area near navigable waters does not affect coverage.

28. Compare 33 U.S.C. § 902(3) (Supp. V 1975), quoted in note 13, *supra*, with the provisions of the previous statute, *id.* § 902(3) (1970), quoted in note 7, *supra*.

29. See note 12, *supra*.

30. 33 U.S.C. § 902(3) (Supp. V 1975), quoted in note 13, *supra*. Two threshold aspects of the status requirement were not at issue in the instant case. The first is whether the person injured is employed by a maritime employer. 33 U.S.C. § 902(4) (Supp. V 1975), quoted in note 13, *supra*. The second is whether the injury resulted from an accident in the course and scope of the person's employment. This standard limit on workmen's compensation benefits is found in the act's definition of "injury." 33 U.S.C. § 902(2) (1970).

31. The classes of persons covered may be divided into two broad categories, as the title of the Act indicates. The first is longshoremen and persons engaged in longshoring operations. These employees are generally engaged in the loading and unloading process. The second class of employees is harborworkers, including shipbuilders, ship repairmen, and shipbreakers. The instant case deals only with the former category, so the scope of this Note is accordingly limited.

32. The courts have unanimously rejected the "union test," which would have

sons engaged in longshoring operations should be treated as one class of employees or two. In *Pittston Stevedoring Corp. v. Dellaventura*,³³ the Second Circuit held that two distinct classes of employees were contemplated and that each should be treated differently.³⁴ A longshoreman, according to dictum in the case, may be covered even when he is not engaged in traditional longshoring activity.³⁵ In contrast, the Fifth Circuit in *Jacksonville Shipyards Inc. v. Perdue*³⁶ decided that occupational classifications should not control and that an employee would satisfy the status requirement only if he was engaged in or directly involved with loading, unloading, repairing, building, or breaking a vessel at the time of his injury.³⁷ The court thus specifically rejected the argument that classifying a claimant as a longshoreman had any special consequences.³⁸

The realities of loading and unloading cargo make it difficult to determine when the process begins and ends. When a vessel is unloaded, some cargo is transferred directly onto land transportation, while other cargo is stored prior to such transfer. The advent of containerization has further complicated the process. Some containers are transferred directly onto land transportation, others are stored first, and still others are unpacked (stripped) prior to such transfer. In addition, if cargo is stored, there may be an intermediate transfer prior to transshipment. The same problems in reverse occur in the loading process. The first attempt to cope with these problems came in *I.T.O. Corp. of Baltimore v. Benefits Review Board*,³⁹ where Judge Winter, writing for the Fourth Circuit, applied the "point of

categorized claimants according to union membership. See, e.g., *Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35, 52 (2d Cir. 1976), *aff'd sub nom.* *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977); *Jacksonville Shipyards, Inc. v. Perdue*, 539 F.2d 533, 539 (5th Cir. 1976); *Stockman v. John T. Clark & Son of Boston, Inc.*, 539 F.2d 264, 272 (1st Cir. 1976).

33. 544 F.2d 35 (2d Cir. 1976). This is the court of appeals decision from which the instant case arose.

34. *Id.* at 52.

35. *Id.*

36. 539 F.2d 533 (5th Cir. 1976).

37. *Id.* at 539-40.

38. *Id.* at 539. The Fifth Circuit has, however, interpreted "directly involved" quite broadly. For example, in *Texports Stevedore Co. v. Winchester*, 554 F.2d 245 (5th Cir. 1977), the court affirmed a Benefits Review Board decision which held that coverage should be afforded to a "gear man," whose duties included "supplying and repairing gear (i.e. tools and machinery) used by the stevedores in loading and unloading ships." *Id.* at 246.

39. 529 F.2d 1080 (4th Cir. 1975), *rehearing en banc*, 542 F.2d 903 (1976), *vacated and remanded sub nom.* *Adkins v. I.T.O. Corp. of Baltimore*, 97 S. Ct. 2967, *on remand*, 563 F.2d 646 (4th Cir. 1977). See Note, 23 LOY. L. REV. 276 (1977).

rest" theory. Coverage for unloading under this test ends at the first storage or holding area, and coverage for loading begins at the last storage or holding area, before the cargo was loaded onto the ship.⁴⁰

Judge Craven, dissenting in *I.T.O.*,⁴¹ was dissatisfied with the point of rest test. He contended that the test was not indicated by the words of the statute;⁴² that it was not being used by the Benefits Review Board, whose decisions were entitled to great deference;⁴³ that it was not contemplated by the legislative history;⁴⁴ that it was inequitable and contradicted the purposes of the act;⁴⁵ and that it did not allow sufficient coverage for "the risks inherent in moving and handling cargo and in operating the potentially dangerous machinery of the trade."⁴⁶ Judge Craven's position, rather than that of the majority in *I.T.O.*, has been accepted by all of the other circuits faced with the issue.⁴⁷

Of the circuits considering the question, only the Third Circuit attempted to establish a test for the limits of the loading-unloading proc-

40. 529 F.2d at 1087.

41. *Id.* at 1089 (Craven, J., dissenting).

42. *Id.* at 1095.

43. Judge Craven studied 32 decisions of the Benefits Review Board and summarized the holdings as follows:

1. Outright rejection of the "point of rest" theory as a determinative factor in cases where coverage is disputed.
2. Waterborne cargo remains in maritime commerce until such time as it is delivered to a trucker or other carrier to be taken from the terminal for further transshipment.
3. Cargo first enters maritime commerce when it is unloaded from a truck or other carrier and is handled by terminal employees working upon the "navigable waters" of the United States as defined in the Act.
4. The "loading and unloading" of ships is a continuous process involving many different employees working at various places within the terminal area and performing different tasks, but included the handling of cargo during all times it is in maritime commerce.
5. It is sufficient to bring an employee within the scope of maritime employment that his duties at the time of injury involve handling cargo that is in maritime commerce.
6. The Act does not require that one actually be engaged in loading or unloading vessels to be an "employee" within the meaning of the Act.

529 F.2d at 1092-93.

44. *Id.* at 1095, 1101.

45. *Id.* at 1097, 1101.

46. *Id.* at 1101.

47. *Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35, 52 (2d Cir. 1976); *Sea Land Serv., Inc. v. Director, Office of Workers' Compensation Programs*, 540 F.2d 629, 639 (3d Cir. 1976); *Jacksonville Shipyards, Inc. v. Perdue*, 539 F.2d 533, 540 (5th Cir. 1976); *Stockman v. John T. Clark & Son of Boston, Inc.*, 539 F.2d 264, 275 (1st Cir. 1976).

ess. In *Sea Land Services, Inc. v. Director, Office of Workers' Compensation Programs*,⁴⁸ Judge Gibbons articulated what might be called the "mode of commerce" test. He stated that "the key is the functional relationship of the employee's activity to maritime transportation," and that "the limits of federal coverage [are] defined . . . by the location of the interface between the air-land and the water modes of transportation."⁴⁹

In the instant case, the Supreme Court held that the 1972 amendments contemplated two covered classes of employees engaged in the loading and unloading process. The Supreme Court also indicated, but did not expressly hold, that coverage for the loading and unloading process would extend to the interface between land and sea transportation.

Claimant Blundo was a "checker" whose job was to check and mark cargo as it was stripped from a container. He was injured while engaged in this activity. After noting Congress's intent to adapt the LHWCA to modern cargo-handling techniques,⁵⁰ the Supreme Court held that Blundo was engaged in an activity which was "an integral part of the unloading process as altered by the advent of containerization and was intended to be reached by the Amendments."⁵¹ Blundo represents the class of employees "engaged in longshoring operations," and the court specifically held that his activity was included in the category of "longshoring operations."⁵²

As for Caputo, the court said that it was "readily apparent" that he was a longshoreman⁵³ and indicated in dictum that longshoremen would be covered "whether or not their particular task at the moment of injury is clearly a 'longshoring operation.'"⁵⁴ Justice Marshall, writing for a unanimous court, explained,

The Act focuses primarily on occupations—longshoreman, harbor worker, ship repairman, shipbuilder, shipbreaker. Both the text and the history demonstrate a desire to provide continuous coverage throughout their employment to these amphibious workers who, without the amendments, would be covered only for part of their activity.⁵⁵

48. 540 F.2d 629 (3d Cir. 1976).

49. *Id.* at 638. In this case the claimant was injured while transporting a container from a berth to a storage area. The case was remanded to determine whether the claimant was engaged in maritime employment.

50. 432 U.S. at 269-70.

51. *Id.* at 271.

52. *Id.*

53. *Id.* at 273.

54. *Id.* at 276.

55. *Id.* at 273.

By finding that Blundo and Caputo were members of two different classes of maritime employees, the Supreme Court has thus rejected the Fifth Circuit's position in *Jacksonville Shipyards* and adopted that of the Second Circuit in *Pittston*.⁵⁶

Because Caputo was classified as a longshoreman and Blundo was handling cargo before it was to be transferred to land transportation, the Supreme Court was not required to determine the conceptual limits of the loading and unloading process. It did specifically reject the "point of rest" theory. This theory, said Justice Marshall, was not mentioned in the Act or the legislative history;⁵⁷ it failed to accommodate either the language or intent of the amendment;⁵⁸ and it restricted the coverage of a remedial act designed to expand coverage.⁵⁹ The reasons given for the rejection of the point of rest theory, however, suggest that a test allowing broad coverage, perhaps as broad as the "mode of commerce" theory,⁶⁰ will be approved. As the court notes, the broad language and remedial nature of the 1972 Amendments make liberal construction appropriate.⁶¹ In addition, according to the court, Congress wanted a "'uniform compensation system'"⁶² which does not depend on the "'fortuitous circumstance of whether the injury . . . occurred on land or over water.'"⁶³

The question of where the line should be drawn is fundamentally economic. To the extent that state workmen's compensation benefits are inadequate, taxpayers may make up the difference in the form of welfare and disability payments. Thus, the more restrictive the coverage, the greater the tax bite. On the other hand, the maritime employers, and thus ultimately the consumers of goods shipped by sea, bear the cost if injured workers are covered by the LHWCA. Thus expanded coverage places the risk of loss on those who benefit from maritime services.

For the future, the task of the courts appears to be providing definitions. Limits for key terms like "longshoreman" and "longshoring activities" will have to be set. Nevertheless, the decision in *Caputo* provides a great deal of clarification and defines the parameters for future decisions. Judging from the importance of the subject matter and the number of

56. See text following note 32, *supra*.

57. 432 U.S. at 275.

58. *Id.* at 276.

59. *Id.* at 275-79.

60. See note 43, *supra*, and text at note 48, *supra*.

61. 432 U.S. at 268.

62. *Id.* at 272.

63. *Id.*

claims filed, answers to at least some of the remaining questions should be forthcoming.

Albert M. Hand, Jr.

CONTINUING JURISDICTION FOR CHILD CUSTODY

Defendant was granted a divorce in Louisiana and was awarded the permanent care and custody of his and plaintiff's minor children. Defendant later moved to Texas and took the two minor children with him, whereupon plaintiff filed a rule for contempt and a change of custody. The district court refused to grant the rule, because it believed that it lacked jurisdiction to modify the previous decree. The Fourth Circuit Court of Appeal issued a writ of mandamus and ordered the lower court to hear the matter. The Louisiana Supreme Court *held* that, absent some compelling reason for exercising continuing jurisdiction, the Louisiana court has no jurisdiction to determine custody matters if the children were neither domiciled nor physically present in the state. *Odom v. Odom*, 345 So. 2d 1154 (La. 1977).

As society has become increasingly mobile, the problem of determining which courts may properly exercise jurisdiction to determine custody matters concerning children who have moved out of the state¹ has become more complex. In *Samsell v. Superior Court*,² the California Supreme Court enumerated the three basic theories which have been used by various states³ to exercise jurisdiction in custody matters: the child's domicile in the state; or his physical presence in the state; or, if neither of these factors is present, the parents' amenability to the jurisdiction of the state court. Once such jurisdiction has attached, the problem arises whether it continues once the child has left the state. Some states have

1. See generally Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969); Hudak, *The Plight of the Interstate Child in the American Courts*, 9 AKRON L. REV. 257 (1975).

2. 32 Cal. 2d 763, 197 P.2d 739 (Cal. 1948).

3. *Id.* at 777, 197 P.2d at 748. This is the test adopted by the Restatement (Second) of Conflict of Laws section 79.