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Of Ladders and Longshoremen

By Marilyn Raia

Longshoremen routinely use ladders when working aboard vessels. Usually the ladders belong to the vessel owner who has them aboard for use by the vessel's crew, but knows the longshoremen will use them. If a longshoreman is using a vessel's ladder and it breaks causing an injury, is the vessel owner liable? Not necessarily.

The Longshore and Harbor Worker's Compensation Act

In 1927, Congress enacted the Longshore and Harbor Worker's Compensation Act [LHWCA]. It provides a system of compensation and medical benefits for maritime workers who are not members of a vessel's crew but injured on the navigable waters of the United States. The compensation and benefits under the LHWCA come, in the first instance, from the longshoreman's employer and its insurer. The LHWCA also allows an injured longshoreman to sue the owner of the vessel on which he was injured for damages.

Under the original terms of the LHWCA, a vessel owner owed a duty of seaworthiness to longshoremen working aboard its vessel. If a part of the vessel's equipment was not seaworthy, that is, not reasonably fit for its intended purpose, the vessel owner was liable for injuries caused by that unseaworthiness. It was a form of "no-fault" liability. Indeed, the vessel owner could be held liable for injuries suffered by the longshoreman even if the unseaworthy condition was created by the longshoreman or the longshoreman's stevedore employer. In that case, the vessel owner might obtain indemnity from the longshoreman's stevedore employer.

In 1972, Congress amended the LHWCA to significantly reduce the duty owed by a vessel owner to a longshoreman. The liability of a vessel owner to an injured longshoreman based on unseaworthiness was eliminated. Instead, the vessel owner's liability to an injured longshoreman was to be based solely on the vessel owner's negligence. The vessel owner's right to obtain indemnity from the stevedore employer was also eliminated. The LHWCA did not define what would be considered culpable negligence by the vessel owner.

Congress shifted the primary responsibility for the safety of a longshoreman to the longshoreman's stevedore employer. It reasoned the longshoreman's employer was in the best position to prevent any dangerous conditions or situations from arising. The presumed competence of the longshoreman's employer was expected to help avoid workplace injuries.

Scindia Duties

In Scindia Steam Nav. Co. Ltd, v. De Los Santos, 451 U.S. 156 (1981), the United States Supreme Court explained the types of duties owed by a vessel owner to a longshoreman under the 1972 amendments to the LHWCA. The vessel owner owes three different types of duties. They are characterized as limited duties.

First, the vessel owner must "exercise ordinary care under the circumstances to have the vessel and its equipment in such condition that an expert and experienced stevedore will be able by the exercise of reasonable care to carry on its cargo operations with reasonable safety to persons and property." The vessel owner must also "warn the stevedore of any hazards on the ship or with respect to its equipment that are known to the vessel owner or should be known to it in the exercise of reasonable care, that would likely be encountered by the stevedore in the course of his cargo operations and that are not known by the stevedore and would not be obvious or anticipated by him if reasonably competent." These duties are known as the

"turnover duty" and the "turnover duty to warn." A vessel owner is not, however, obligated to warn the stevedore about an unknown hazardous condition or a condition it had no reason to know about.

Second, if the vessel owner is actively involved in or retains control over the cargo operations, it has a duty to not negligently injure the longshoremen and "to exercise reasonable care to avoid exposing longshoremen to harm from hazards encountered in areas or from equipment under the active control of the vessel."

Third, the vessel owner does not have a duty to supervise the cargo operations performed by the longshoremen. Nor does it have a duty to prevent hazardous conditions from developing during cargo operations. However, if it has knowledge of a hazardous condition that develops and of the longshoremen's failure to correct such condition, it has a duty to intervene and stop cargo operations or remedy the condition.

The Injured Longshoreman's Burden

A ladder supplied by the vessel owner that breaks or fails causing a longshoreman's injury invariably leads to a claim and lawsuit against the vessel owner. Under the 1972 amendments to the LHWCA, to recover from the vessel owner, the injured longshoreman must prove the vessel owner was negligent and that such negligence proximately caused the injury. Such suit usually implicates a breach of the turnover duty. That is, the injured longshoreman alleges the vessel owner did not exercise ordinary care to have the ship and its equipment, i.e. the ladder, in such condition when turned over to the stevedore for cargo operations that an expert and experienced longshoreman could carry out those operations in reasonable safety. To meet the required burden of proof, the injured longshoreman must prove there was a defect in the ladder and that such defect was known or should have been known to the vessel owner.

Proof that a ladder supplied by the vessel owner broke and caused an injury to a longshoreman is not sufficient to sustain the longshoreman's burden. Such holding would be tantamount to imposing a warranty of seaworthiness on the vessel owner toward the longshoreman which warranty was eliminated by the 1972 amendments to the LHWCA.

Some vessel owners are proactive about trying to prevent injuries to crew members as well as to longshoremen when ladders are used aboard ship. They implement periodic ladder inspection protocols. Many vessel owners are not so diligent. Nonetheless, the mere failure to inspect a ladder or have a ladder inspection policy is not a sufficient basis for the imposition of liability on the vessel owner. The injured longshoreman must prove a reasonable inspection would have revealed the defect causing the injury.

The doctrine of comparative fault applies in an action by an injured longshoreman against a vessel owner. Under that doctrine, any award given to the injured longshoreman is reduced by the percentage of fault attributed to the longshoreman. Longshoremen have a duty to exercise reasonable care for their own safety.

Worn Ladder Feet

In Morris v. Compagnie Maritime Des Chargeurs, 832 F.2d 67 (5th Cir 1987), a vessel owner was held not liable for a longshoreman's injury resulting from the slippage of a ladder with worn feet.

Morris was part of a longshore crew working on a containership. His job was to set the twist locks on the containers. As the job moved to the second tier of containers, the longshoremen noticed twist locks missing on a container in the first tier. Morris leaned a shipboard ladder against the side of a container. He climbed the ladder to insert the twist locks. As he was descending the ladder, the ladder slipped on the metal deck because it was unsecured and not being held by anyone. Morris suffered an injury for which he sued the vessel owner.

The district court held the vessel owner liable, finding it had provided a ladder that was "unfit for its reasonably foreseeable and careful use." It found the ladder's rubber feet were worn but also found such condition was not known to the vessel owner or the vessel's crew.

The Fifth Circuit disagreed. It held Morris failed to establish the exercise of ordinary care by the vessel owner would have resulted in its discovering the ladder's worn feet. Among other things, the Fifth Circuit said it is "contradictory to suggest a careful shipowner should discover an apparent defect but that a careful stevedore may miss it with impunity." The court considered there were other ladders readily accessible on the vessel and therefore there was no pressure on the longshoreman to use a defective one. Moreover, the court noted the time needed to obtain a safer ladder would not have significantly delayed cargo operations.

Broken Ladder Rung

In Vadas v. J Lauritzen Holdings, 2001 AMC 498 (D.Conn. 2000) the vessel owner was found not liable when the rung of a steel ladder broke causing longshoreman Vadas to fall and injure himself. Vadas sued the vessel owner alleging it failed to provide a safe ladder, failed to properly inspect the ladder, and failed to warn of defects in the ladder when the vessel was turned over to the stevedore for cargo operations. He also argued the ladder had been welded before the incident near where the rung broke.

The district court granted Lauritzen's motion for summary judgment. It held even assuming the ladder were defective, Vadas could not recover because he failed to present any evidence of Lauritzen's negligence. That is, Vadas did not establish Lauritzen breached its "turnover" duty under Scindia because he did not present any evidence that its employees knew the ladder was welded near where it broke. Moreover, even if the employees knew of the weld, there was no evidence they knew it was a defective weld.

Vadas also asked the court to infer Lauritzen never maintained or repaired the ladder because it did not produce maintenance or repair records in discovery. The court rejected the request. It held even if it were reasonable to infer from the absence of records that the ladder was never maintained or repaired, Vadas did not present evidence that the failure to maintain such records was negligence.

During the course of cargo operations, a ladder provided by a vessel owner to a longshoreman may break and cause an injury. The vessel owner can be held liable to the injured longshoreman only if the injured longshoreman can prove the vessel owner was negligent. The injured longshoreman cannot rely on a warranty of seaworthiness to establish liability.