

TULANE MARITIME LAW JOURNAL ONLINE

VOLUME 44

MAY 2020

Dukes v. Millennium Ocean Shipping Co.: The United States District Court for the Southern District of Georgia Dismisses a Case Without Fully Analyzing the Turnover Duty Due to a Lack of Clarity in the Standard for the Ship’s Liability

I. OVERVIEW	11
II. BACKGROUND	12
III. COURT’S DECISION.....	16
IV. ANALYSIS	19
V. CONCLUSION	22

I. OVERVIEW

Plaintiff Antonio Dukes was working as a longshoreman onboard a vessel when he fell off a ten-foot ladder and sprained his ankle.¹ Dukes was a member of the International Longshoreman’s Association Local 1441 and was employed by Marine Terminals Corporation-East d/b/a Ports America Stevedores (Ports America).² Ports America was hired to load cargo onto vessels in the Port of Savannah.³ Dukes was working on the *M/V Atlantic Pendant* (the Vessel), which was owned by defendant Millennium Ocean Shipping Co. LTD (Millennium) and managed by defendant Mastermind Ship Management, LTD (Mastermind).⁴ On January 3, 2015, Dukes was to stow Kraft Liner Board paper rolls in the Vessel’s cargo hold, which required the use of a ladder.⁵ Dukes did not know who owned the ladder, and he did not inspect the ladder prior to use.⁶ While stowing the paper rolls, the ladder moved, and Dukes fell to the ground.⁷ He then noticed that the ladder did not have skid-resistant feet, yet he continued his work with a coworker, Eugene Miller, holding the bottom of the ladder.⁸ Dukes did not inform his supervisors of his fall or of the condition of the ladder.⁹ Two days later, a doctor diagnosed Dukes

1. *Dukes v. Millennium Ocean Shipping Co.*, 2019 AMC 1749, 1750-51 (S.D. Ga. 2019).

2. *Id.* at 1749.

3. *Id.* at 1750.

4. *Id.* at 1749.

5. *Id.* at 1750.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

with a sprained ankle, which kept him from working until March of 2015.¹⁰

On July 13, 2017, Dukes sought recovery for his injury and brought suit in the State Court of Chatham County in Georgia.¹¹ He asserted that defendants Millennium and Mastermind were both negligent in providing a defective ladder and sought medical expenses, lost wages, pain and suffering, consequential damages, and permanent impairment.¹² On January 12, 2018, the defendants removed this action to the United States District Court for the Southern District of Georgia and filed a motion for summary judgment.¹³ Seeking dismissal of Dukes' claims, the defendants maintained that Dukes had "failed to (1) demonstrate that the ladder in question belonged to Defendants; (2) provide any evidence that the ladder was actually defective or a hazard; or (3) establish that Defendants were actually negligent."¹⁴ The United States District Court for the Southern District of Georgia *held* that summary judgment for the defendants was appropriate based on Dukes' failure to establish a basis for his claim that the defendants were negligent under the Longshore and Harbor Workers' Compensation Act (LHWCA). *Dukes v. Millennium Ocean Shipping Co.*, 2019 AMC 1749, 1751 (S.D. Ga. 2019).

II. BACKGROUND

The LHWCA is a federal law that determines compensation for rehabilitation and medical expenses caused by workplace injuries and disabilities "that occur on the navigable waters of the United States, or in adjoining areas customarily used in the loading, unloading, repairing, or building of a vessel."¹⁵ The LHWCA covers "longshore workers, ship-repairers, shipbuilders or ship-breakers, and harbor construction workers."¹⁶ When the LHWCA was enacted in 1927, shipowners could be found strictly liable for the injuries of longshoremen if unseaworthiness, caused by the existence of an unsafe condition, was responsible for the

10. *Id.* at 1750-51.

11. *Id.* at 1751.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Longshore and Harbor Workers' Compensation Act Frequently Asked Questions*, U.S. DEP'T LABOR, OFF. WORKERS' COMPENSATION PROGRAMS, <https://www.dol.gov/owcp/dlhwc/FAQ/lfsaqs.htm#OVERVIEW> (last visited May 7, 2020).

16. *Id.*

injury.¹⁷ Longshoremen were not required to prove unseaworthiness or fault, and a shipowner could be held liable even if the condition was caused by the stevedoring company.¹⁸

However, in 1972, Congress fundamentally modified the LHWCA and implemented § 905(b), which substantially changed the law.¹⁹ Stevedores were required to pay increased compensation to longshoremen who were injured through the course of employment.²⁰ In exchange, a longshoreman's right to recover from a shipowner for general unseaworthiness was abolished, and he or she could only recover for more narrowly defined instances of negligence.²¹ Under "[o]rdinary negligence principles,"²² the shipowner owes a duty of reasonable care under the circumstances to the stevedore and its employees.²³ The shipowner is "entitled to rely on the stevedore 'to avoid exposing the longshoremen to unreasonable hazards,' and may otherwise expect the stevedore to 'perform his task properly without supervision.'"²⁴ Most importantly, "absent contract provision, positive law, or custom to the contrary . . . the shipowner has no general duty by way of supervision or inspection to exercise reasonable care to discover dangerous conditions that develop within the confines of the cargo operations that are assigned to the stevedore."²⁵

Although the 1972 Amendments to the LHWCA narrowed the liability of shipowners for injuries sustained by longshoremen, three distinct duties remained.²⁶ As established in *Scindia Steam Navigation Co. v. De Los Santos*,²⁷ these three duties are referred to as the turnover duty, the active control duty, and the duty to intervene.²⁸ The turnover duty

17. *Miller v. Navalmar (UK) Ltd.*, 685 F. App'x 751, 754, 2017 AMC 954, 957 (11th Cir. 2017); *see also Scindia Steam Nav. Co. v. De Los Santos*, 451 U.S. 156, 164-65, 1981 AMC 601, 607-08 (1981); *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 90 (1946).

18. *Scindia*, 451 U.S. at 164-65, 1981 AMC at 607-08.

19. *Id.* at 165, 1981 AMC at 608.

20. *Id.* at 164-65, 1981 AMC at 607-08.

21. *Id.* at 165, 1981 AMC at 608; *see also* 33 U.S.C. § 905(b) (2012).

22. *Scindia*, 451 U.S. at 165, 1981 AMC at 608.

23. *Id.* at 166-67 (quoting *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 415, 1969 AMC 745, 754 (1969)).

24. *Miller v. Navalmar (UK) Ltd.*, 685 F. App'x 751, 754, 2017 AMC 954, 957 (11th Cir. 2017) (quoting *Scindia*, 451 U.S. at 170, 1981 AMC at 613).

25. *Scindia*, 451 U.S. at 172, 1981 AMC at 615.

26. *Id.* at 164-67, 1981 AMC 607-10.

27. *Id.*

28. *Howlett v. Birkdale Shipping Co., S.A.*, 512 U.S. 92, 98, 1994 AMC 1817, 1821 (1994).

concerns the condition of the ship once stevedoring operations begin.²⁹ The active control duty, which applies upon the commencement of stevedoring operations, imposes upon the shipowner the duty to “exercise reasonable care to prevent injuries to longshoremen in areas that remain under the ‘active control of the vessel.’”³⁰ The duty to intervene “concerns the vessel’s obligations with regard to cargo operations in areas under the principal control of the independent stevedore.”³¹

Under the turnover duty, the shipowner has several obligations to the stevedoring contractor. The shipowner is required to:

“exercise ordinary care under the circumstances” to turn over the ship and its equipment and appliances “in such condition that an expert and experienced stevedoring contractor, mindful of the dangers he should reasonably expect to encounter, arising from the hazards of the ship’s service or otherwise, will be able by the exercise of ordinary care” to carry on cargo operations “with reasonable safety to persons and property.”³²

The shipowner must also inform the stevedore of potential dangers that affect the ship and its equipment if “the hazards ‘are known to the vessel or should be known to it in the exercise of reasonable care’ and ‘would likely be encountered by the stevedore in the course of his cargo operations.’”³³ However, the duty to warn is narrow and excludes dangers that are either “open and obvious” or “which a reasonable[y] competent contractor should anticipate encountering.”³⁴

A vessel owner is not always absolved of the turnover duty because a defect is open or obvious.³⁵ Because of this, “courts have rejected a bright line rule that a shipowner can never be liable for injuries caused by obvious hazards.”³⁶ Shipowners cannot expect a stevedore or longshoreman to avoid an open and obvious hazard that is practically unavoidable.³⁷ A

29. *Id.*

30. *Id.* (quoting *Scindia*, 451 U.S. at 167, 1981 AMC at 610).

31. *Id.*

32. *Id.* (citing *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 416-17 n.18, 1969 AMC 745, 754 n.18 (1969)).

33. *Id.* (quoting *Scindia*, 451 U.S. at 167, 1981 AMC at 610).

34. *In re Knudsen*, 710 F. Supp. 2d 1252, 1274, 2012 AMC 259, 289 (S.D. Ala. 2010).

35. *Martinez v. Kor. Shipping Corp.*, 903 F.2d 606, 610 (9th Cir. 1990).

36. 1 ROBERT FORCE & MARTIN J. NORRIS, *THE LAW OF MARITIME PERSONAL INJURIES* § 8:32 (5th ed. 2019).

37. *Id.*; see also *Morris v. Campagnie Mar. Des Chargeurs Reunis, S.A.*, 832 F.2d 67, 71, 1988 AMC 969, 975 (5th Cir. 1987) (“[The longshoreman] need show only that the circumstances made safer alternatives unduly impractical or time-consuming.”); *Treadaway v. Societe Anonyme Louis-Dreyfus*, 894 F.2d 161, 167, 1990 AMC 2465, 2473 (5th Cir. 1990) (ruling in favor of the plaintiff because although the hazardous condition was openly and obviously visible, no alternative option was available).

longshoreman may be faced with an “openly dangerous shipboard condition,” and the only alternative “would be to leave his job or face trouble for delaying the work.”³⁸ In *Pluyer v. Mitsui O.S.K. Lines*, the plaintiff was injured when using a metal ladder lacking non-skid devices.³⁹ The court found that although the defect was considered open and obvious to a reasonably competent stevedore, the vessel could be held liable for the plaintiff’s injuries given that “use of the unsafe ladder was unavoidable” and other alternatives were “not realistic.”⁴⁰ The suggestion that one longshoreman hold the bottom of the ladder while another climbs to complete the required work “ignores the realities of the stevedore work environment.”⁴¹ An injured plaintiff is not required to show that there were no possible alternatives but rather that it would be “unduly impractical or time-consuming” to pursue a safer alternative.⁴² Thus, when the use of dangerous equipment is unavoidable and a longshoreman is faced with the choice to either use it or to walk off the job, a vessel may be held liable for any injuries he sustains.⁴³

Nonetheless, if an open and obvious danger is easily avoidable and a longshoreman chooses not to avoid the hazard, the owner of a vessel will not be found liable for negligence.⁴⁴ In *Greenwood v. Societe Francaise De Transportes Maritime*, the plaintiff was injured while using the vessel’s malfunctioning crane.⁴⁵ The crane’s operator “noticed the defect in the slewing brake as soon as he began operating the crane” and “another longshoreman experienced in crane operation testified that he was able to visually observe this defect in the crane’s functioning.”⁴⁶ Even though the plaintiff failed to recognize the defect himself, the court did not hold the vessel liable because the defect was open and obvious.⁴⁷ Although the

38. *Stass v. Am. Commercial Lines, Inc.*, 720 F.2d 879, 882, 1984 AMC 2808, 2812 (9th Cir. 1983) (quoting *Napoli v. Hellenic Lines, Ltd.*, 536 F.2d 505, 509, 1976 AMC 551, 555 (2d Cir. 1976)).

39. *Pluyer v. Mitsui O.S.K. Lines*, 664 F.2d 1243, 1245, 1984 AMC 534, 535 (5th Cir. 1982); see also *Jackson v. Gearbulk, Inc.*, 761 F. Supp. 2d 411, 424 (W.D. La. 2011) (“[T]he absence of a footing on a ladder is at best an obvious defect to a reasonably competent stevedore.”).

40. *Pluyer*, 664 F.2d 1243 at 1247-48, 1984 AMC at 559.

41. *Id.* at 1247 (citing *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233, 1242 (5th Cir. 1977)) (if a longshoreman is required to be “faced notwithstanding knowledge” with an open and obvious danger, then the vessel may be held liable if harm results from his work).

42. 1 *FORCE & NORRIS*, *supra* note 36, § 8:32.

43. *Pluyer*, 664 F.2d at 1277-78, 1984 AMC at 572.

44. *Kirsch v. Plovdba*, 971 F.2d 1026, 1030, 1992 AMC 2747, 2752 (3d Cir. 1992).

45. *Greenwood v. Societe Francaise De Transportes Mar.*, 111 F.3d 1239, 1242, 1997 AMC 2141, 2143 (5th Cir. 1997).

46. *Id.* at 1246, 1997 AMC at 2149.

47. *Id.* at 1246-48, 1997 AMC at 2149-52.

plaintiff argued that there was “no alternative but to continue to use the crane because when machinery [broke] down . . . the longshoremen [were] normally told to ‘milk it along,’”⁴⁸ the court relied on the expertise of the stevedore and its presumption that the equipment’s dangerous condition was “safe enough.”⁴⁹ The court stated that the longshoreman could have notified the shipowner of the problem so operations could be ceased until an adequate repair had been made; under these circumstances, longshoremen are required to be paid for downtime while repairs are made.⁵⁰ Thus, the court found no violation of the turnover duty.⁵¹ Additionally, in *Bjaranson v. Botelho Shipping Corp., Manila*, the Ninth Circuit determined that the shipowner did not breach the turnover duty when a longshoreman was injured because he could have avoided his use of the defective and hazardous ladder which caused his injury.⁵² Similarly, in *Morris v. Compagnie Maritime des Chargeurs Reunis, S.A.*, the Fifth Circuit did not hold the shipowner liable for the plaintiff’s injuries caused by an openly defective ladder because there were other means of descent that could have been used by the longshoreman.⁵³ Taken together, the case law indicates that the turnover duty can be subject to a variety of conditions and interpretations that may or may not result in shipowner liability.

III. COURT’S DECISION

In the noted case, the United States District Court for the Southern District of Georgia found that Dukes failed to establish a basis for his claim that the defendants were negligent under the LHWCA.⁵⁴ Although the court had doubts, it found that Dukes identified sufficient evidence that the ladder may have belonged to the defendants to survive a motion for summary judgment.⁵⁵ However, the court contended that even if the defendants did own the ladder, Dukes failed to establish that the

48. *Id.* at 1248, 1997 AMC at 2151.

49. *Id.* at 1249, 1997 AMC at 2151 (quoting *Helaire v. Mobil Oil Co.*, 709 F.2d 1031, 1039 n.12, 1984 AMC 820, 830 n.12 (5th Cir. 1983)).

50. *Id.* at 1248, 1997 AMC at 2152 (AMC reporter summarizing case) (“Ship owners are not liable for obvious dangers that injure contractors aboard their vessels unless the contractors, in order to avoid the danger, would be forced either to leave the job or to face penalties for causing delay.” (citing *Teply v. Mobil Oil Corp.*, 859 F.2d 375, 378, 1993 AMC 1810 (5th Cir. 1988))).

51. *Id.*

52. 873 F.2d 1204, 1208-09, 1989 AMC 381, 387-89 (9th Cir. 1989).

53. *Morris v. Compagnie Mar. des Chargeurs Reunis, S.A.*, 832 F.2d 67, 70-71, 1988 AMC 969, 974 (5th Cir. 1987).

54. *Dukes v. Millennium Ocean Shipping Co.*, 2019 AMC 1749, 1758 (S.D. Ga. 2019).

55. *Id.* at 1753-54.

defendants were actually negligent.⁵⁶ Additionally, there was a lack of evidence to prove that the ladder was defective or presented a hazard.⁵⁷

First, the court determined whether either of the defendants owned the ladder that caused Dukes' ankle injury.⁵⁸ Because both the accident and the sale of the ladder occurred months before Dukes' suit, the court was unable to know with certainty who owned the ladder.⁵⁹ The defendants contended that there were no records or evidence to suggest either of them owned the ladder, especially since it was unmarked.⁶⁰

Dukes argued that although there were no markings to indicate ownership of the ladder, several inferences from relevant evidence could be made through a "systematic process of elimination" to determine that one of the defendants was the true owner.⁶¹ Dukes relied on his prior testimony that since he did not bring the ladder onto the Vessel and Ports America barely brought any equipment onto the Vessel, then the defendants "must have brought the ladder."⁶² However, the court reasoned that merely because Ports America barely brought any equipment onto the Vessel did not mean that it did not bring the ladder.⁶³ Additionally, there was a possibility that a third party brought the ladder onto the Vessel.⁶⁴ Thus, the court rejected Dukes' claim that the defendants owned the ladder solely through a one-sided process of elimination.⁶⁵ However, a court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."⁶⁶ Thus, in view of the inferences drawn from the key facts in the light most favorable to the nonmoving party, the court determined that Miller's testimony that he witnessed the ladder loaded into the hold

56. *Id.* at 1754-56.

57. *Id.* at 1756-57.

58. *Id.* at 1752-53.

59. *Id.* at 1753; *see also* Jackson v. Gearbulk, Inc., 761 F. Supp. 2d 411, 421-22 (W.D. La. 2011) (finding that the plaintiff could not prove that the defendant owned the ladder in question based on the record's insufficient evidence and "[b]ecause of the requirement that the verdict must be supported by *substantial* evidence, a verdict may not rest on speculation and conjecture. Similarly, the jury's freedom to draw inferences from the evidence does not extend so far as to allow a wholly unreasonable inference or one which amounts to mere speculation or conjecture" (quoting Nichols Constr. Corp. v. Cessna Aircraft Co., 808 F.2d 340, 346-47 (5th Cir.1985))).

60. *Dukes*, 2019 AMC at 1753.

61. *Id.*

62. *Id.* at 1753-54.

63. *Id.* at 1754.

64. *Id.*

65. *Id.*

66. FED. R. CIV. P. 56.

by one of the Vessel's crew members was sufficient to show that the ladder may have in fact belonged to the defendants.⁶⁷

The court then considered whether the defendants' negligence caused Dukes' injury and whether the ladder was actually defective or hazardous.⁶⁸ Under the LHWCA duties, injured longshoremen may sue a shipowner if it is negligent.⁶⁹ The court relied on the Supreme Court's decision in *Scindia*, which provides three distinct duties shipowners generally owe to longshoremen during cargo operations⁷⁰: the turnover duty, the active control duty, and the duty to intervene.⁷¹ Dukes rested his claims on the allegation that the defendants violated the turnover duty; he did not allege a violation of the active control duty or the duty to intervene. He argued that the defendants violated the turnover duty because no stevedore supervisor inspected the ladder before it was provided to him, thus causing him to rely on a "presumed inspection by his supervisor when using the ladder and, therefore, had no personal obligation to ensure that the ladder was not defective."⁷² The court found that this contention relied on a fundamental misunderstanding of the turnover duty and lacked legal support because "[t]here is no legal requirement that a supervisor of a stevedoring company must inspect equipment before its use in cargo loading operations."⁷³

Furthermore, Dukes did not prove that a ladder lacking skid-resistant feet constituted an unreasonable safety hazard.⁷⁴ A vessel merely has a duty to "turnover a ship to a stevedoring company so that an experienced stevedore 'will be able by the exercise of ordinary care to carry on cargo operations with reasonable safety to persons and property.'"⁷⁵ The defendants' expert testified that "the Occupational Safety and Health Administration regulations do not even require that ladders have skid-resistant feet."⁷⁶ Rather, "these regulations provide that ladders can be used

67. *Dukes*, 2019 AMC at 1754; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

68. *Dukes*, 2019 AMC at 1754-57.

69. *Id.*; see also 33 U.S.C. §§ 901-950 (2012).

70. *Dukes*, 2019 AMC at 1755.

71. *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156, 164-72, 1981 AMC 601, 607-14 (1981); see also *Howlett v. Birkdale Shipping Co.*, 512 U.S. 92, 98, 1994 AMC 1817, 1821 (1994).

72. *Dukes*, 2019 AMC at 1755-56.

73. *Id.* at 1756.

74. *Id.*

75. *Id.* (quoting *Howlett*, 512 U.S. at 98, 1994 AMC at 1821).

76. *Id.* at 1756-57.

without skid-resistant feet as long as [they are] held by another person.”⁷⁷ Dukes’ fellow longshoreman, Miller, was working less than ten feet away from the ladder when Dukes fell and could have ensured the stability of the ladder by holding onto the bottom.⁷⁸ Additionally, the court noted that “[e]ven if Plaintiff could establish that the ladder in this case was a hazard simply because it did not have any skid-resistant feet, Plaintiff’s claim would still fail because the hazard was one that Plaintiff should have recognized as an experienced stevedore.”⁷⁹ Had Dukes properly inspected the ladder, he would have noticed the lack of skid-resistant feet as an open and obvious condition.⁸⁰

In an attempt to “save his claims,” Dukes argued that his fall occurred because the ladder was “only one part of a normally two-part extension ladder.”⁸¹ Dukes did not allege that a partial ladder consisting of “one part of a typically two-part ladder” is a hazard that is “unsafe or prevents the stevedoring company from carrying on cargo operations with reasonable safety to persons and property.”⁸² Without stating that the condition was not open and obvious or that he used the ladder at his own risk, Dukes merely “made a last-minute attempt to shift the focus of his claim,” and, in the court’s view, still failed to provide any evidence of a violation of the turnover duty.⁸³ Overall, the court found that Dukes failed to prove that the defendants’ negligence caused his injury and that the lack of skid-resistant feet on the bottom of the ladder constituted a hazard.⁸⁴ Thus, Dukes’ argument that the defendants were negligent under the LHWCA failed.⁸⁵ The defendants’ motion for summary judgment was granted, and Dukes’ claims were dismissed.⁸⁶

IV. ANALYSIS

The 1972 changes to the LHWCA shifted the relative risk and liability allocation from the shipowner to the stevedore when a longshoreman is injured by hazardous equipment.⁸⁷ However, courts have

77. *Id.*

78. *Id.*

79. *Id.* at 1757.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 1758.

84. *Id.*

85. *Id.* at 1756-58.

86. *Id.* at 1758.

87. *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156, 172, 1981 AMC 601, 607-08 (1981).

not adopted a consistent or uniform approach when dealing with these types of cases. Accordingly, the court in *Dukes* failed to adequately analyze the turnover duty. The court took the position that a vessel is absolved of the turnover duty merely because a defect is open or obvious. However, this is not always accurate.⁸⁸ While some courts have taken the position that a vessel should not be held liable for an open and obvious danger because a longshoreman can report the hazard and wait for new equipment, others have concluded that this is an unrealistic expectation of longshoremen given the reality of the workplace.⁸⁹ It is one thing to say what a longshoreman *should* have done on the job. It is another to understand the work conditions and vulnerability of a longshoreman's employment. Increasing mechanization and other technological changes have resulted in fewer longshoremen jobs. Longshoremen may be hesitant to notify their supervisors of hazardous conditions or to make requests for new equipment as their employment is precarious, and they are under pressure to maintain their productivity.

The court in *Dukes* did not consider that there were no other ladders available for him to use and that there were no safer alternatives other than to use the ladder. Additionally, it was not realistic to rely on a fellow longshoreman to hold the ladder while Dukes used it.⁹⁰ Thus, the court did not appreciate the stevedore work environment in which Dukes was forced to either walk off the job or use faulty equipment.⁹¹ In *Pluyer*, the court found in favor of the injured plaintiff who had no safer or reasonable alternative other than to use a metal ladder lacking non-skid devices.⁹² However, under *Greenwood*, Dukes could have notified the shipowner of the faulty ladder and then ceased operations until the ladder was repaired or replaced.⁹³ The decision in *Dukes* required a more detailed analysis of the work environment, specifically with respect to reasonable alternatives

88. *Martinez v. Kor. Shipping Corp.*, 903 F.2d 606, 610, 1990 AMC 2997, 3002 (9th Cir. 1990).

89. *See Pluyer v. Mitsui O.S.K. Lines, Ltd.*, 664 F.2d 1243, 1984 AMC 534 (5th Cir. 1982); *see also Greenwood v. Societe Francaise De Transportes Mar.*, 111 F.3d 1239, 1997 AMC 2141 (5th Cir. 1997).

90. *Dukes*, 2019 AMC at 1756; *see also Pluyer*, 664 F.2d at 1247-48, 1984 AMC at 539 (finding that the suggestion that a fellow longshoreman hold the bottom of the ladder is not realistic and "ignores the realities of the stevedore work environment").

91. *Pluyer*, 664 F.2d at 1248, 1984 AMC at 539 (AMC reporter summarizing case) ("Ship owners are not liable for obvious dangers that injure contractors aboard their vessels unless the contractors, in order to avoid the danger, would be forced either to leave the job or to face penalties for causing delay." (citing *Teply v. Mobil Oil Corp.*, 859 F.2d 375, 378 (5th Cir. 1988))).

92. *Pluyer*, 664 F.2d at 1247-48, 1984 AMC at 541.

93. *Greenwood*, 111 F.3d at 1248, 1997 AMC at 2151 (stating that "even if the repairs required some time, the longshoremen would be paid for the resulting down time").

available to Dukes, in order to determine the defendants' liability under the turnover duty.

With respect to procedure, a court should either cite precedent as the basis for summary judgment, or if it does not, an issue of fact should be left to a jury. The court in *Dukes* failed to cite precedent to show that a ladder lacking skid-resistant feet constituted an open and obvious hazard. Rather, the court leapt to that conclusion. Several courts have found that a ladder lacking skid-resistant feet is an open and obvious defect.⁹⁴ Therefore, it appears that summary judgment was appropriate in *Dukes*, even if determined haphazardly, because a reasonable jury would likely not be able to conclude otherwise.⁹⁵ As a policy matter, the court should not create precedent in which a finding of fact is taken away from a jury without proper analysis based on past court decisions.

Court rulings have been inconsistent when determining what risk the vessel maintains and what risk the stevedore assumes upon turnover. The courts have yet to define a specific and consistent standard to determine when a longshoreman can stop working because equipment is sufficiently dangerous and reasonable alternatives do not exist. On the one hand, if only the shipowner can fix a problem on the vessel, then maybe the owner shall be found liable if there is nothing the stevedore can do. On the other hand, when the dangerous condition is fact specific, it is necessary to consider how feasible it would be for the longshoreman to find an alternative, how realistic the alternative is, and what the shipowner's policy is for delayed work. Accordingly, due to a lack of clarity in the law, longshoremen are required to make potentially dangerous decisions that can impact their safety, their job security, and their financial future.

In balancing the duties owed to the longshoreman, the stevedore is in a better position than the owner of the vessel to keep longshoremen safe and to avoid accidents.⁹⁶ The "creation of a shipowner's duty to oversee the stevedore's activity and insure the safety of the longshoremen would . . . saddle the shipowner with precisely the sort of nondelegable duty that Congress sought to eliminate by amending section 905(b)."⁹⁷

94. *Phyer*, 664 F.2d at 1247-48, 1984 AMC 538-40 (noting that a ladder missing rubber feet is an obvious defect to a reasonably competent stevedore); see also *Jackson v. Gearbulk, Inc.*, 761 F. Supp. 2d 411, 424 (W.D. La. 2011) ("[T]he absence of a footing on a ladder is at best an obvious defect to a reasonably competent stevedore.").

95. *Id.*

96. *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156, 171, 1981 AMC 601, 614 (1981).

97. *Hurst v. Triad Shipping Co.*, 554 F.2d 1237, 1249 n.35, 1977 AMC 1625, 1642 n.35 (3d Cir. 1977).

With that said, there are occasions where the vessel must take responsibility. Dismissing a case without fully analyzing the turnover duty and its requirements could create dangerous precedent. The stakes might be higher the next time a longshoreman gets injured, and the court's decision in *Dukes* will not provide adequate guidance with respect to liability.

V. CONCLUSION

Overall, the court in *Dukes* failed to thoroughly analyze the turnover duty. The precedent is inconsistent, and courts have struggled to employ a standard to determine when hazardous equipment is unduly impractical with a lack of reasonable alternatives. Without specific parameters, there is no way to determine whether *Dukes* was correctly decided. A well-defined standard that delineates the turnover duty with respect to the liability of the shipowner and that of the stevedore would provide a basis for greater clarity in determining negligence and improving safety. This case is up for appeal in the Eleventh Circuit.

Elizabeth Barras*

* © 2020 Elizabeth Barras. J.D. candidate 2021, Tulane University Law School; B.A., Political Science, 2018, Brandeis University. The author would like to thank the staff and fellow students of the *Tulane Maritime Law Journal* for their support.