

## **INTRODUCTION TO ADMIRALTY MARITIME LAW**

**(Luke 13:24)**

**“Go in through the narrow gate, because the gate is wide and the road is spacious that leads to destruction, and many people are entering by it. 14How narrow is the gate and how constricted is the road that leads to life, and there aren’t many people who find it!”**

**Matthew 7:14;**

**Because strait is the gate, and narrow is the way, which leadeth unto life, and few there be that find it.**

**“All the perplexities, confusion and distress in America arise, not from defects in their Constitution or Confederation, not from want of honor or virtue, so much as from the downright ignorance of the nature of coin, credit and circulation.” John Adams.**

**This is a Treatise on Admiralty Maritime Law and its application to the Certificate of Live Birth in the Public domain. This writer has been teaching and studying Admiralty Maritime Law for over 50 years and knows Francis Gorman the author who wrote VOLUME 55 PAGES 1165-1199 OF THE TULANE LAW REVIEW ON INDEMNITY AND CONTRIBUTION UNDER MARITIME LAW.**

**The Certificate of Live Birth is in reality a CERTIFICATE OF DOCUMENTATION under Title 46 § 12101 (1) Registry endorsement of a PUBLIC and COMMERCIAL VESSEL AS THE ALL CAPITAL LETTER NAME under Title 1 § 3 of the USCA with a registry endorsement issued and signed by the REGISTRAR at the Hospital. Have you ever wondered why they use your Mothers Maiden Name on your Certificate of Live Birth ? instead of Her married name, under the LEX RHODIA out of GREECE WHICH WAS WRITTEN BY WOMEN and is the oldest Known Text on Admiralty Maritime Law, try to find this Book anywhere, it is hidden in the VATICAN LIBRARY IN ROME ITALY where all of the above is being orchestrated. All Vessels and Ships in Admiralty Maritime Law have a Female Name this is why. The Vessel or Ship your Mother delivered you the Cargo at the Hospital at the Port of Entry, through Water out of The Birth Canal. *If you want further documentation of the above the Maritime Commission has been renamed the Secretary of Commerce, where the Long Form Certificate of Life Birth has been filed and recorded after the Birth with the Department of Commerce. See below;***

## **MALTA MERCHANT SHIPPING ACT CHAPTER 234**

***"register" means the record to be kept by the registrar under article 365;***

***"registered" means registered under this Act;***

***"registrar" means a person appointed as registrar under article 364 and includes any person acting under his authority with the permission of the Registrar General;***

***"Registrar General" means the Registrar General of Shipping and Seamen as provided in article 363, and includes any person acting under his authority;***

### ***A Short History of the Maritime Administration;***

***Established in 1950 under the auspices of President Harry S Truman's Reorganization Plan No. 21, the Maritime Administration (MARAD) traces its origins to the Shipping Act of 1916, which established the U.S. Shipping Board, the first Federal agency tasked with promoting a U.S. merchant marine and regulating U.S. commercial shipping. Congress enacted the 1916 law in part because of the severe disruptions in shipping caused by World War I. Specifically, Congress established the Shipping Board "...for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a Merchant Marine, to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States.***

***The U.S. remained neutral for nearly three years after Austria-Hungary declared war on Serbia in 1914, plunging Europe into what came to be known as the "Great War." The first loss of an American merchant ship in World War I occurred on January 28, 1915, when a German cruiser destroyed the William P. Frye, which was transporting wheat to Great Britain. Germany quickly apologized for the incident but Americans were outraged. Tensions grew when a German submarine sank the British ocean-liner Lusitania in May 1915, taking 1,195 of its 1,959 passengers and crew down with it, including 128 Americans. America's oceans could no longer isolate the country from European hostilities as they had for more than a century. After more shipping losses, the Shipping Board's focus of meeting peacetime shipping requirements was eventually overshadowed when the U.S. declared war on Germany on April 6, 1917.***

***Shipbuilders at the Gray's Harbor Yards of the Grant-Smith-Porter Co., Aberdeen, Washington circa 1917-1920. Records of the United States Shipping Board (32-PN-5). Shipbuilders at the Gray's Harbor Yards of the Grant-Smith-Porter Co., Aberdeen, Washington circa 1917-1920. Records of the United States Shipping Board (32-PN-5).***

***Under the provisions of the Shipping Act, the Shipping Board created the Emergency Fleet Corporation (EFC). The EFC organized a massive ship and shipyard construction program and acquired, managed and operated ships on behalf of the Shipping Board. The war ended before the construction program reached full capacity; however, ships continued to be built until 1921 by which time nearly 2,300 had been completed. This vast program resulted in a postwar surplus of vessels, which spurred a lengthy depression in the industry. In response, Congress passed the Merchant Marine Act of 1920, which had varying degrees of success. In 1928 the EFC was renamed the Merchant Fleet Corporation and in 1930 both it and the Shipping Board were absorbed into the Department of Commerce as the United States Shipping Board Bureau.***

***Six years later Congress passed the Merchant Marine Act of 1936, creating the U.S. Maritime Commission, which assumed the duties, functions, and property of the Shipping Board Bureau. This seminal legislation governs many of the programs that support the American maritime industry to this day. President Franklin Delano Roosevelt appointed Joseph P. Kennedy, Sr. (father of President John F. Kennedy) as the Commission's first chairman. Like its predecessors, the U.S. Maritime Commission was charged with advancing and maintaining a strong merchant marine to support U.S. commerce and defense. The Commission regulated ocean commerce, supervised freight and terminal facilities, and administered construction and operational subsidy funds for private commercial ships. The Act also authorized the Commission to design and construct 500 modern merchant ships over a 10-year period, beginning with the transatlantic liner America. This construction program was well underway when war broke out again and the Commission found its peacetime purpose transformed just as the Shipping Board's had been in 1917.***



***In 1942 President Franklin Delano Roosevelt established the War Shipping Administration (WSA) in response to America's entrance into World War II. Executive Order 9054 effectively separated the Maritime Commission into two parts; the Commission to design and construct ships and the WSA to acquire and operate them. Although administratively separated, the two agencies worked closely together. The Chairman of the Maritime Commission, Admiral Emory S. Land, also served as WSA's administrator. Between 1941 and 1946, the Maritime Commission and WSA managed the greatest industrial shipbuilding and ship operations effort ever seen. Nearly 6,000 merchant vessels and naval auxiliaries were constructed, with the WSA routinely managing the simultaneous operations, repair and maintenance of thousands of ships. With the war's end, the government dissolved the WSA and transferred its functions back to the Maritime Commission in 1946. Under the Merchant Ship Sales Act, several thousand ships were sold or disposed of, while retaining a nucleus of reserve shipping known as the National Defense Reserve Fleet.***

***In 1950, acting on President Truman's recommendations in Reorganization Plan No. 21, Congress eliminated the U.S. Maritime Commission and divided its functions between the newly-established Maritime Administration and the Federal Maritime Board (FMB), both placed within the U.S. Department of Commerce. ;The Maritime Commission's subsidy and ocean shipping regulatory functions were transferred to the FMB, while the Commission's remaining promotional and government-owned shipping interests were vested***

***In MARAD. In 1961, as part of Reorganization Plan No. 7, the FMB became an independent regulatory agency and was renamed the Federal Maritime Commission; a title it retains to this day. The subsidy functions returned to MARAD in the form of the Maritime Subsidy Board, which reported independently to the MARAD Administrator. The 1961 reforms are the basis of MARAD's current organizational structure.***

***In 1981, MARAD was transferred to the Department of Transportation, completing the consolidation of all Federal transportation programs into one cabinet-level department. MARAD is still charged with promoting the development and maintenance of a strong merchant marine for the national defense and development of its foreign and domestic commerce. To that end, MARAD operates the United States Merchant Marine Academy at Kings Point, New York, and provides and maintains training ships and funding for the six state maritime academies that include: the State University of New York (SUNY) Maritime College, Massachusetts Maritime Academy; California Maritime Academy; Maine Maritime Academy; Texas Maritime Academy; and Great Lakes Maritime Academy. MARAD also continues to own and operate a fleet of government-owned cargo vessels to support national security requirements. These gray-colored ships of the Ready Reserve Force are strategically positioned in ports around the nation and are readily identifiable by their distinctive red, white and blue stack bands.***

#### ***Select Bibliography***

***Albion, Robert G., and Jennie B. Pope. Sea Lanes in Wartime: The American Experience, 1775-1945. New York: Norton, 1942. (Reprinted 1968 by Archon).***

***De la Pedraja, René. The Rise & Decline of U.S. Merchant Shipping in the Twentieth Century. New York: Twayne Publishers, 1992.***

***A Historical Dictionary of the U.S. Merchant Marine & Shipping Industry. Westport, CT: Greenwood Press, 1994.***

***Goldberg, Mark H. The "Hog Islanders." (The American Merchant Marine History Series, Volume I). Kings Point, NY: American Merchant Marine Museum 1991.***

***"Caviar & Cargo," The C3 Passenger Ships. (The American Merchant Marine History Series, Volume II). Kings Point, NY: American Merchant Marine Museum, 1992.***

***“Going Bananas,” 100 Years of American Fruit Ships in the Caribbean. (The American Merchant Marine History Series, Volume III). Kings Point, NY: American Merchant Marine Museum, 1993.***

***The Shipping Board’s “Agency Ships’, Part I, the “Sub Boats.” (The American Merchant Marine History Series, Volume IV). Kings Point, NY: American Merchant Marine Museum, 1994.***

***“Stately President” Liners, American Passenger Liners of the Interwar Years. (The American Merchant Marine History Series, Volume V). Kings Point, NY: American Merchant Marine Museum, 1996.***

***Kelly, Roy W., and Frederick J. Allen. The Shipbuilding Industry. Boston and New York: Houghton Mifflin, 1918.***

***Lane, Frederic C. Ships for Victory. A History of Shipbuilding under the U.S. Maritime Commission in World War II. Baltimore: The John’s Hopkins University Press, 1951, 2011.***

***“Shipping Act of 1916.” 39 Stat. 728, chapter 451, approved September 7, 1916.***

***United States. President (1945-1953: Truman); United States. Congress. House. Committee on Expenditures in the Executive Departments.; United States. Commission on Organization of the Executive Branch of the Government (1947-1949). Reorganization Plan No. 21 of 1950: Message from the President of the United States Transmitting Reorganization Plan No. 21 of 1950, Which Effects a Basic Reorganization of the Functions of the United States Maritime Commission Along the Lines Recommended by the Commission on Organization of the Executive Branch of the Government. [http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/pdf/USCODE-2010-title5-app-reorganiz-other-dup39.pdf] Washington, DC: U.S. Government Printing Office, 1950.***

***THE WHITE HOUSE, March 13, 1950. REORGANIZATION PLAN NO. 21 OF 1950***

***Eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, as amended Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Oct. 21, 1970, Pub. CL. 91-469, §37, 84 Stat. 1036; Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710 Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].***

## **PART I. FEDERAL MARITIME BOARD**

**SECS. 101–106.** *[Superseded. Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840. Section 101 established the Federal Maritime Board. Section 102 provided for the composition of the Federal Maritime Board. Section 103 transferred certain functions from the Chairman of the United States Maritime Commission to the Chairman of the Federal Maritime Board.*

*Section 104 transferred regulatory functions of the United States Maritime Commission to the Federal Maritime Board. Section 105 transferred subsidy award and other functions of the United States Maritime Commission to the Federal Maritime Board. Section 106 provided that the Board was to be an agency within the Department of Commerce, but would be independent of the Secretary of Commerce with respect to functions transferred to it under section 104.]*

## **PART II. MARITIME ADMINISTRATION**

**SEC. 201.** *[Repealed. Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710. Section related to the creation of Maritime Administration in the Department of Commerce. See section 109 of Title 49, Transportation.]* **SEC. 202.** *[Superseded. Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840. Section provided for a Maritime Administrator to be at the head of the Maritime Administration, and that the Chairman of the Federal Maritime Board would be such Administrator and would perform duties prescribed by the Secretary of Commerce.]*

**SECS. 203, 204.** *[Repealed. Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710. Section 203 related to the Deputy Maritime Administrator. Section 204 related to transfer of functions of the United States Maritime Commission to the Secretary of Commerce. See section 109 of Title 49.]*

## **PART III. GENERAL PROVISIONS**

### **SEC. 301. UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION**

*There shall be in the Department of Commerce an additional office of Under Secretary with the title “Under Secretary of Commerce for Transportation.” The Under Secretary of Commerce for Transportation shall be appointed by the President, by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and shall perform such duties as the Secretary of Commerce shall prescribe.*

**SECS. 302-307. [Superseded. Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840. Section 302 provided that person who was both Administrator and Chairman was to make joint use of the personnel under his supervision. Section 303 made conflict of interest provisions of the Merchant Marine Act, 1936, applicable to members of the Federal Maritime Board and officers and employees of the Board or of the Maritime Administration. Section 304 allowed the President to make interim appointments to the Federal Maritime Board from officers of the Executive Branch. Section 305 transferred to the Department of Commerce all property, personnel, records, and funds of the United States Maritime Commission. Section 306 abolished the United States Maritime Commission. Section 307 provided that the functions transferred by this reorganization plan would not be subject to Reorg. Plan No. 5 of 1950.]**

#### **MESSAGE OF THE PRESIDENT**

**To the Congress of the United States:**

**I, transmit herewith Reorganization Plan No. 21 of 1950, prepared in accordance with the provisions of the Reorganization Act of 1949. This plan effects a basic reorganization of the functions of the United States Maritime Commission along the lines recommended by the Commission on Organization of the Executive Branch of the Government. Within the last 3 years three different bodies have studied the administration of the Maritime Commission. All have concluded that the operating deficiencies of the agency arise from inappropriate and unsound organization and that a fundamental reorganization is essential. The first of these bodies, the President's Advisory Committee on the Merchant Marine, in 1947, stated: It appears to the Committee that the organization structure of the Maritime Commission as set up in the Merchant Marine Act of 1936 is wholly inadequate for the efficient conduct of the multitude of diverse activities for which the Maritime Commission is now responsible. The deficiencies of the statutory organization for administrative action are regarded by the Committee to be the most serious obstacle standing in the way of the development of the Merchant Marine of this country. Similarly, the survey of the Maritime Commission in 1948 for the Senate Committee on Expenditures in the Executive Departments concluded that—The fundamental weakness of the Maritime Commission, as it is now constituted, lies in its proscribed organization. On the basis of investigations of the Maritime Commission by two of its task forces, the Commission on Organization of the Executive Branch stated: It is an anomaly that a regulatory**

***commission should also conduct the executive function of managing a huge business; that executive functions should be carried on by an agency that is not subject to Presidential directions; that executive functions should be carried on by a full-time board \* \* \*.While the recommendations of the various studies differ in some details, they agree on principles and on the main features of reorganization. Basically, the administrative difficulties of the Maritime Commission have arisen, as all these studies***

**TITLE 5, APPENDIX—REORGANIZATION PLAN NO. 21 OF 1950 Page 134**

***agree, from the fact that the Commission is responsible for performing two fundamentally different types of functions which call for different types of organization. These two classes of functions are (a) regulatory and (b) operating and promotional. Under various acts the Commission regulates rates and services of water carriers; passes on agreements among carriers; and protects shippers against unfair and discriminatory practices. This type of activity requires the deliberation and independence of judgment which a board or commission is especially well designed to provide. But at the same time the Commission is charged with the conduct of a variety of large and costly promotional and business-type programs demanding the prompt and vigorous administration for which experience both in Government and in private enterprise has demonstrated that a single executive is essential. The Maritime Commission has charge of the construction of merchant vessels for subsidized operators and for Government account. It owns and maintains the largest merchant fleet in the world, consisting of 2,200 vessels aggregating more than 22,000,000 deadweight tons. It charters and sells ships and, in time of war or national emergency, requisitions and operates vessels for the Government. It grants construction and operating differential subsidies to private shipping companies to maintain an active privately operated American merchant marine. It makes loans and insures mortgages to assist carriers in acquiring new vessels, and it conducts programs for training officers and seamen for the merchant marine. For the present fiscal year the performance of these functions will involve the expenditure of approximately \$162,000,000 and the direction of an organization of 5,500 employees. In short, the administration of the Maritime Commission is a vast business undertaking. Moreover, the work of the Commission affects significantly the interests of both business and labor in the maintenance of a sound maritime industry. Further than this, many of the activities of the Maritime Commission are closely related to other programs of the Government and have to be coordinated with them. In the***

***construction of a subsidized ship the Commission must cooperate with the Coast Guard on those features of design, materials, and equipment which affect the safety of the vessel and with the Navy on those which especially affect the use of the ship for national defense. Furthermore, the whole program of subsidized ship construction needs to be adjusted to the plans and requirements for national defense. At the same time the Commission's programs for the development of the merchant marine must be coordinated with our foreign policy and with Federal programs with respect to other branches of transportation. While an independent commission is an appropriate instrument for the performance of the regulatory functions of the Maritime Commission, such an agency obviously is not the type required to provide strong and efficient administration of the large operating programs now entrusted to the Commission or to obtain the needed coordination with other activities of the executive branch. This fact is amply demonstrated by the administrative difficulties and the complicated problems of coordination encountered in the operation of the Commission since the war and by the necessity of transferring a large part of its functions to the War Shipping Administration, headed by a single executive, during the war. Briefly, this reorganization plan provides for a small Federal Maritime Board and a Maritime Administration in the Department of Commerce to perform the functions of the Maritime Commission, and abolishes the existing Commission. It transfers to the Board the regulatory functions of the Commission and definitely guarantees the independence of the Board in the performance of these functions. In addition, it vests directly in the Board the determination and award of construction and operating differential subsidies. In the performance of its subsidy functions the Board will be subject to general policy guidance by the Secretary of Commerce. The Board, however, and it alone, will determine to whom subsidies shall be granted and will make and award the subsidy contracts. Its actions therein will be conclusive and will not be subject to modification by any other agency or officer of the Department of Commerce. The other functions of the Maritime Commission, including carrying out the subsidy agreements made by the Board and administering the various operating programs, are transferred to the Secretary of Commerce for administration through the Maritime Administration. Thus, the plan provides for each of the two types of functions now vested in the Maritime Commission the type of organization best suited to its performance. At the same time, the plan will facilitate coordination of maritime policies and programs with other related policies and programs. The division of functions under this plan***

***conforms directly to the recommendations of the Commission on Organization of the Executive Branch of the Government. While the award of subsidies is a promotional rather than a regulatory function and might logically be assigned to the Maritime Administration instead of the Board, its impact on the shipping industry and on individual carriers is such as to make desirable the deliberation and combined judgment of a board. Accordingly, I have adhered to the recommendation of the Commission on Organization that this function be vested in a multiple body rather than a single official. Likewise, in line with the recommendations of the Commission, the plan assigns the determination of the over-all route pattern to the Secretary of Commerce. The Maritime Board will consist of three members appointed by the President with the consent of the Senate for overlapping terms of 4 years. Not more than two of the members can be of the same political party. The Board, therefore, will be a smaller and more wieldy body which can function with greater expedition and efficiency than the existing five-member Commission. The Chairman will be designated by the President from the members of the Board and will be, ex officio, the Maritime Administrator and as such the head of the Maritime Administration. The plan also provides for a Deputy Maritime Administrator appointed by the Secretary of Commerce under the classified civil service. After investigation I have found, and hereby declare, that by reason of the reorganizations made by this plan, it is necessary to include in the plan provisions for the appointment and compensation of the members of the Federal Maritime Board and for the appointment of the Deputy Maritime Administrator. In making the Chairman of the Federal Maritime Board the Maritime Administrator, the plan adopts an arrangement substantially similar to that which prevailed during the war, when the same individual served as Chairman of the Maritime Commission and head of the War Shipping Administration. This arrangement will have important advantages. It will facilitate cooperation between the Board and the Administration on matters of concern to both. Also, it will avoid dividing the personnel of the Maritime Commission, since the Chairman of the Board will supervise the personnel assisting it in the performance of its functions, as is now the case in the Maritime Commission, and in his capacity as Administrator he will have charge of the personnel carrying on the work of the Maritime Administration. The plan provides for the joint operation of the officers and employees under the Administrator and Chairman as a single body of personnel. The maintenance of a unified staff is essential for efficient and economical administration because many of the technical and professional personnel, such as ship designers and attorneys, now assist the Maritime***

***Commission on problems of subsidy determination and also participate in the subsequent administration of subsidy agreements and in performing nonsubsidy functions. The inclusion of the new Board in the Department of Commerce will permit the use of the administrative services of the Department. More important, it will eliminate the necessity of splitting the personnel of the Maritime Commission between the Department and an***

***Page 135 TITLE 5, APPENDIX—REORGANIZATION PLAN NO. 22 OF 1950***

***outside agency. In addition, it will relieve the President of having to handle relations with a separate maritime agency. In establishing the Department of Commerce the Congress provided in the organic act of the Department that—It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce,\* \* \* shipping,\* \* \* and the transportation facilities of the United States. Over the years, however, transportation functions have become widely scattered throughout the executive branch. As a result, intelligent planning and budgeting of Federal transportation activities and the necessary coordination of transportation programs have become extremely difficult or impossible. The transfer of the functions of the Maritime Commission to the Department of Commerce will constitute a major step in correcting this condition. Without question the Department of Commerce is now the appropriate center for transportation programs. It contains the Civil Aeronautics Administration—the major operating and promotional agency of the Government in the field of air transportation—and the Weather Bureau, and the Coast and Geodetic Survey, which provide vital services to transportation. As a result of Reorganization Plan No. 7 of 1949, it now also includes the Bureau of Public Roads, the leading promotional agency dealing with land transportation. Also, it has the Inland Waterways Corporation in the field of water transportation. The transfer of the functions of the Maritime Commission will bring into the Department the principal water-transportation agency of the Government. These actions will go a long way toward the establishment of a sound and effective organization for the operating and promotional programs of the Government relating to transportation. It is my purpose to look to the Secretary of Commerce for leadership with respect to transportation problems and for the development of over-all transportation policy within the executive branch. Because of the magnitude and importance of the transportation functions transferred to the Department of Commerce by this reorganization plan, I have found and hereby declare that it is necessary to strengthen the top administrative structure of***

***the Department by providing for the appointment and compensation of a new Under Secretary of Commerce for Transportation. This will make available an officer of the highest rank to assist the Secretary in supervising the varied and complex transportation programs of the Department and providing central leadership in transportation matters. With the many responsibilities of the Secretary of Commerce in other areas, the creation of this office is essential to enable him properly to fulfill his obligations with respect to transportation. After careful investigation I have found and I hereby declare that each of the reorganizations contained in this reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949. The rates of compensation fixed by the provisions of the reorganization plan for the Under Secretary of Commerce for Transportation, the Chairman, and the other two members of the Federal Maritime Board are, respectively, those which I have found to prevail in respect of comparable officers in the executive branch of the Government. In summary, the reorganizations provided by this plan will have the following principal advantages: They will provide an efficient organization headed by a single responsible official to administer the large operating and business-type programs of the Maritime Commission. At the same time, they will preserve the benefits of a bipartisan board for the performance of the regulatory functions of the Commission and the determination of subsidies. They will reduce the number of agencies reporting directly to the President and simplify the over-all management of the executive branch. In doing so, they will provide more adequate machinery for supervising the administration of the maritime programs and will facilitate their coordination with related policies and programs of the executive branch. Finally, they will accomplish a major advance in the development of an effective organization of Federal transportation programs in accord with the recommendations of the Commission on Organization of the Executive Branch of the Government. While it is impossible to estimate in advance the savings which will be brought about by this plan, the improvements in administrative efficiency resulting from it should produce substantial reductions in expenditures for the programs transferred by the plan.***

***HARRY S. TRUMAN.***

***THE WHITE HOUSE, March 13, 1950. REORGANIZATION PLAN NO. 22 OF 1950  
Eff. Sept. 7, 1950, 15 F.R. 4365, 64 Stat. 1277 Prepared by the President and  
transmitted to the Senate and the House of Representatives in Congress***

***assembled, May 9, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].***

**FEDERAL NATIONAL MORTGAGE ASSOCIATION SECTION 1. TRANSFER OF ASSOCIATION AND ITS FUNCTIONS**

***The Federal National Mortgage Association, together with its functions, is hereby transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Agency and shall be administered subject to the direction and control of the Housing and Home Finance Administrator.***

**SEC. 2. TRANSFERS TO THE HOUSING ADMINISTRATOR**

***There are hereby transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Administrator—***

***(1) the notes of the Federal National Mortgage Association payable to the Reconstruction Finance Corporation;***

***(2) the capital stock of the Federal National Mortgage Association;***

***(3) the function of the Reconstruction Finance Corporation of making payments on its notes issued to the Secretary of the Treasury in an amount equal to (a) the unpaid principal of, and accrued interest on, the notes of the Federal National Mortgage Association transferred under (1) above, (b) any funds of the Reconstruction Finance Corporation transferred under the provisions of section 5 hereof, (c) the book value of any office furniture and equipment of the Reconstruction Finance Corporation transferred under the provisions of section 5 hereof, and (d) the par value of the capital stock of the Federal National Mortgage Association plus the amount of its surplus paid in by the Reconstruction Finance Corporation;***

***(4) the function of issuing notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended [15 U.S.C. 606], in an amount not in excess of that necessary to finance at any one time the outstanding balances of the investments, loans, and purchases held by the Federal National Mortgage Association, taking into consideration other balance-sheet items;***

***(5) except as otherwise provided in this reorganization plan, all other functions of the Reconstruction Finance Corporation (including functions of the Board of***

***Directors of such Corporation and functions of the Chairman of the Board of Directors of such Corporation) with respect to the Federal National Mortgage Association; and***

***(6) all functions of the Federal Housing Commissioner with respect to the Federal National Mortgage Association.***

### **SEC. 3. BOARD OF DIRECTORS AND OFFICERS**

***Functions with respect to serving, including eligibility to serve, as members of the Board of Directors of***

**Effective: December 20, 2012**

#### **49 U.S.C.A. § 109**

**Formerly cited as 46 App. USCA § 1111; 46 App. USCA § 1117; 46 App. USCA § 1119; 46 App. USCA § 1213; 46 App. USCA § 1295c-1; 46 App. USCA § 1601; 46 App. USCA § 1602; 46 App. USCA § 1603; 46 App. USCA § 1609**

#### **§ 109. Maritime Administration**

**(a) Organization and mission.--The Maritime Administration is an administration in the Department of Transportation. The mission of the Maritime Administration is to foster, promote, and develop the merchant maritime industry of the United States.**

**(b) Maritime Administrator.--The head of the Maritime Administration is the Maritime Administrator, who is appointed by the President by and with the advice and consent of the Senate. The Administrator shall report directly to the Secretary of Transportation and carry out the duties prescribed by the Secretary.**

**(c) Deputy Maritime Administrator.--The Maritime Administration shall have a Deputy Maritime Administrator, who is appointed in the competitive service by the Secretary, after consultation with the Administrator. The Deputy Administrator shall carry out the duties prescribed by the Administrator. The Deputy Administrator shall be Acting Administrator during the absence or disability of the Administrator and, unless the Secretary designates another individual, during a vacancy in the office of Administrator.**

**(d) Duties and powers vested in Secretary.--All duties and powers of the Maritime Administration are vested in the Secretary.**

**(e) Regional offices.--The Maritime Administration shall have regional offices for the Atlantic, Gulf, Great Lakes, and Pacific port ranges, and may have other regional offices as necessary. The Secretary shall appoint a qualified individual as Director of each regional office. The Secretary shall carry out appropriate activities and programs of the Maritime Administration through the regional offices.**

**(f) Interagency and industry relations.--The Secretary shall establish and maintain liaison with other agencies, and with representative trade organizations throughout the United States, concerned with the transportation of commodities by water in the export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States for the transportation of those commodities.**

**(g) Detailing officers from armed forces.--To assist the Secretary in carrying out duties and powers relating to the Maritime Administration, not more than five officers of the armed forces may be detailed to the Secretary at any one time, in addition to details authorized by any other law. During the period of a detail, the Secretary shall pay the officer an amount that, when added to the officer's pay and allowances as an officer in the armed forces, makes the officer's total pay and allowances equal to the amount that would be paid to an individual performing work the Secretary considers to be of similar importance, difficulty, and responsibility as that performed by the officer during the detail.**

**(h) Contracts, cooperative agreements, and audits.--**

**(1) Contracts and cooperative agreements.--In the same manner that a private corporation may make a contract within the scope of its authority under its charter, the Secretary may make contracts and cooperative agreements for the United States Government and disburse amounts to--**

**(A) carry out the Secretary's duties and powers under this section, subtitle V of title 46, and all other Maritime Administration programs; and**

**(B) protect, preserve, and improve collateral held by the Secretary to secure indebtedness.**

**(2) Audits.--The financial transactions of the Secretary under paragraph (1) shall be audited by the Comptroller General. The Comptroller General shall allow credit for an expenditure shown to be necessary because of the nature of the business activities authorized by this section or subtitle V of title 46. At least once a year, the Comptroller General shall report to Congress any departure by the Secretary from this section or subtitle V of title 46.**

**(i) Grant administrative expenses.--Except as otherwise provided by law, the administrative and related expenses for the administration of any grant programs by the Maritime Administrator may not exceed 3 percent.**

**(j) Authorization of appropriations.--**

**(1) In general.--Except as otherwise provided in this subsection, there are authorized to be appropriated such amounts as may be necessary to carry out the duties and powers of the Secretary relating to the Maritime Administration.**

**(2) Limitations.--Only those amounts specifically authorized by law may be appropriated for the use of the Maritime Administration for--**

**(A) acquisition, construction, or reconstruction of vessels;**

**(B) construction-differential subsidies incident to the construction, reconstruction, or reconditioning of vessels;**

**(C) costs of national defense features;**

- (D) payments of obligations incurred for operating-differential subsidies;**
  - (E) expenses necessary for research and development activities, including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental vessel operations;**
  - (F) the Vessel Operations Revolving Fund;**
  - (G) National Defense Reserve Fleet expenses;**
  - (H) expenses necessary to carry out part B of subtitle V of title 46; and**
  - (I) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, and general administration.**
- (3) Training vessels.--Amounts may not be appropriated for the purchase or construction of training vessels for State maritime academies unless the Secretary has approved a plan for sharing training vessels between State maritime academies.**

#### **CREDIT(S)**

**(Added [Pub.L. 97-449](#), § 1(b), Jan. 12, 1983, 96 Stat. 2417; amended [Pub.L. 103-272](#), § 5(m)(5), July 5, 1994, 108 Stat. 1375; [Pub.L. 109-304](#), § 12, Oct. 6, 2006, 120 Stat. 1698; [Pub.L. 111-84](#), Div. C, Title XXXV, § 3508, Oct. 28, 2009, 123 Stat. 2721; [Pub.L. 111-383](#), Div. A, Title X, § 1075(d)(26), Jan. 7, 2011, 124 Stat. 4374; [Pub.L. 112-213](#), Title IV, § 409, Dec. 20, 2012, 126 Stat. 1572.)**

#### **Notes of Decisions (1)**

**49 U.S.C.A. § 109, 49 USCA § 109**

**Current through P.L. 114-254. Also includes P.L. 114-256 to 114-277, and 114-284 to 114-286.**

#### **TITLE VII. ON THE LEX RHODIA.**

**(1) It is provided by the Lex Rhodia that if merchandise is thrown overboard for the purpose of lightening a ship, the loss is made good by the assessment of all which is made for the benefit of all.**

**1/12/2017 Julius Paulus: Opinions: Book II <http://www.constitution.org.htm> 5/14.**

**(2) If after a ship has been lightened by throwing the merchandise overboard, it should be lost, and the merchandise of others should be recovered by divers, it has been settled that he who threw his property overboard for the purpose of saving the ship will be entitled to an account of the same.**

**(3) Where either the ship, or a mast is lost in a storm the passengers are not liable to contribution, unless the vessel was saved through the passengers themselves cutting down the mast to insure their own preservation.**

**(4) Where, for the purpose of lightening a ship, merchandise is thrown into a boat and lost, it is established that the loss shall be made good by the assessment of the property which remained safe in the ship. If, however, the ship should be lost, no account should be taken of the boat which was saved, or of the merchandise it may have contained. (5) Contribution by assessment should be made where property has been thrown into the sea, and the ship has been saved.<sup>1</sup>**

**1 The meager extracts set forth in this Title practically comprise all that survives of the maritime code of one of the most famous nations of antiquity, whose naval exploits are referred to by Homer as well known in his day, and whose wealth and power caused it to be feared and respected for a period of almost twelve hundred years. Its origin has, on plausible grounds, been attributed to the Phoenicians, who colonized so much territory belonging to the Mediterranean, and from that enterprising people, the commercial pioneers of the ancient world, no doubt came many of the rules of the sea which were accepted en masse by Augustus, in so far as they did not contravene the existing laws of the Empire. It will be noticed that these provisions relate almost wholly to contribution, or what is now known as "general average". Two things were requisite to render this principle applicable, some portions of the vessel or the cargo must have been voluntarily thrown overboard in order to save the remainder, or the passengers; and this object must have been accomplished. Hence contribution could not be exacted if force was employed, or the vessel, despite the sacrifice made, was lost. Everything was liable to contribution but provisions and articles of this description; even the personal effects of the passengers such as clothing, ornaments, and jewels were not exempt. The liability was estimated by using the ordinary market value of the property as a standard, and then making a comparison of what was saved with what was lost. Each person could only be assessed pro rata for his own share, except where one or more of the parties was insolvent, when his burden was assumed**

**by the others. The rule also applied to the ransom of the ship from pirates. Nothing could be collected for the loss of life except in the case of a slave, as a freeman was not subject to nappraisement; "corporum liberorum æstimationem nullam fieri potest". In addition to contribution, the maritime law of Rhodes prescribed rules for the guidance of the officers and crews of vessels, and their passengers; penalties for misconduct of those in authority and their responsibility in case of negligence; and the forms of bills of lading, charter parties, loans on bottomry and other contracts growing out of the prosecution of commercial transactions.**

**This equitable principle formulated by the greatest sailors and traders of antiquity; inherited by the Rhodians, a people scarcely inferior to them in maritime skill and enterprise; and transmitted to posterity by Roman authority and example survives in localities where one would least expect to encounter it. The Lex Rhodia de jactu, which the Romans borrowed from the Phoenicians, is now in great observance among the tribes of the Sahara as the customary mode of distributing the losses incurred by caravans crossing the desert between the company owning the camels, or what in railway language would be called the plant, and the passengers or owners of goods. The Khodja or scribe acts as a supercargo, and is said to be quite conversant with the distinction between general and special average. Whether the indigenous races of North Africa derived this custom from the Carthaginians and other Phoenician colonists directly, or whether it came to them indirectly through the Romans, is a point which it would probably be impossible to determine, and on which they themselves certainly could throw no light. (Lorimer, The Institutes of the Law of Nations, Vol. I, Page 30.) — ED.**

**The above extract from LEX RHODIA is the reason all states have adopted the Contribution Among Joint Tortfeasors Act a Form of General Average Contribution as described above in the LEX RHODIA which is based on the Primary Active Degree of Fault as opposed to Secondary Degree of Fault. Which is why everybody has a Social Security Number or Federal Insurance Contributions Act Number called F.I.C.A. Which is a National Contributory Social Insurance Program which underwrites all the Banks Bailouts. This is referred to in Admiralty Maritime as a Peril of Sea, Jetsam, Flotsam, Lagan and Derelict In maritime law are specific kinds of shipwreck. The words have specific nautical meanings, with legal consequences in the law of admiralty and marine salvage:[1], the above was engineered by Franklin Delano Rosenfelt a LINEAL DESCENDANT OF CAIN, who abandoned Gold and Silver**

**as Money and as the Money of account under H.J.R. 192 AT 48 STAT.,PG. 113  
JUNE 05, 1933.**

**Flotsam is floating wreckage of a ship or its cargo.[2]**

**Jetsam is part of a ship, its equipment, or its cargo that is purposely cast overboard or jettisoned to lighten the load in time of distress and is washed ashore.[3]**

**Lagan (also called ligan) [4] is goods or wreckage that is lying on the bottom of the ocean, sometimes marked by a buoy, which can be reclaimed.**

**Derelict is cargo that is also on the bottom of the ocean, but which no one has any hope of reclaiming (in other maritime contexts, derelict may also refer to a drifting abandoned ship).**

#### **INDEMNITY AND CONTRIBUTION-ORIGINS AS CONCEPTS;**

**The origins of indemnity' and contribution can be traced to the concepts of contract and restitution. Indemnity, and contribution, as concepts based upon contract, simply reflect the recognition that a competent person may agree to indemnify an- other just as contracting parties might agree on many other terms. Indemnity and contribution, as concepts based upon restitution, stem from the desire to avoid the unjust enrichment of one wrongdoer at the expense of another. Indemnity is an all-or-nothing remedy that shifts the entire loss from one tortfeasor to another• and, thus, is "an extreme form of contribution." There are two bases for indemnity: Contract indemnity is granted where parties in a contractual relationship have expressly agreed that one should indemnify the other or where a court finds that the contractual relationship be- tween the parties implies the existence, in fact. of an agreement by one to indemnify the other.• Restitution- indemnity is granted where the law bestows a right upon one party to be in-**

**4. "Indemnity" is defined as: "A collateral contract or usurance, by which one per- son engages to secure another against an anticipated loss or to prevent him from being damnified by the legal consequences of an act or forbearance on the part of one of the parties or of some third person." Black's Law Dictionary 692 (5th ed. 1979). The origin of the word "indemnify" is the conjunction of the Latin words in (not), damn loss), and ficere (make), i.e., not make loss. J. Shipley, Dictionary of Word Origins (1967).**

**5. "Contribution" is defined as: "[T]he sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share." Black's Law**

**Dictionary 297 (5th ed. 1979). The origin of the word "CONTRIBUTION" is "TRIBULATION."**

**The Romana ground out com-with a heavy roller mentioned in Virgil's Geor-  
llics among agricultural instruments . . . . Being ground under and pressed out  
made an excellent metaphor to express the trials and tribulations of the early  
Christians . . . . Hence, the protector of the "commons" group was the Latin  
tribunis, whence the English tribune and tribuna. The money assigned (to the tribe  
or for the tribe to pay) wu tribute; hence tributary. Hence also attribute, to assign  
to; contribute, to pay together (from the Latin con (together) and tribute (pay)).**

**J. Shipley, Dictionary of Word Origins (1967).**

**6. Ingham v. Eastem Air Lines, Inc., 373 F.2d 227, 240 n.12 (2d Cir. 1967).**

**7. Slattery v. Mana Bros., 186 F.2d 184, 138 (2d Cir.) (Learned Hand, C.J.), cert.  
denied, 341 U.S. 915 (1951).**

**8. See 15 Williston On Contracts §§ 1750A, 1751 (3d ed. 1972); Restatement  
of Restitution H 76-80 (1937); Furnish, Distributing Tort Liability: Contribution and  
Indemnity in Iowa, 52 Iowa L. Rev. 31, 84-35 (1977) (hereinafter cited as  
Distributing, Tort Liability].**

#### **MATTHEW 24:21**

**"For there shall be great TRIBULATION, such as was not since the beginning of  
the world to this time, no, nor ever shall be."**

**demnified by another. • This kind of indemnity is also referred to as "equitable  
indemnity." "common law indemnity," "tort indemnity," "non-contractual  
indemnity" or "quasi-contractual indemnity."<sup>10</sup> Contribution is a doctrine whereby  
loss is distributed by requiring one tortfeasor<sup>11</sup> to pay a portion of the loss to  
another.<sup>11</sup> The contribution, or loss sharing, among tortfeasors can be pro rata or  
according to degrees of fault. Law, not a contractual agreement, is the source of  
a right to contribution. Like restitution indemnity, it is based on equitable  
concepts and the avoidance of unjust enrichment. The development of  
contribution in the common law was impeded by the clash between the concept  
of restitution on the one hand and the desirability of punishment of intentional or  
negligent wrongdoers on the other. For the same reason that contributory  
negligence barred a plaintiff's suit, the courts were reluctant to entertain a suit  
by one wrong- doer against another.<sup>18</sup>**

**Merryweather v. Nixan, 14 decided in 1799, is generally regarded as the landmark  
English case establishing the rule that there is no contribution among tortfeasors.  
Actually, the case stands only for the proposition that there is no contribution  
among intentional wrongdoers. Although not fully discussed by the court, the facts  
indicate that Starkey had sued both Merryweather and Nixan for conversion of  
machinery belonging to a mill in which Starkey had a reversionary interest.**

Starkey recovered judgment of 840 pounds that was satisfied by levying only against Merryweather's assets. Merryweather then proceeded against Nixan for contribution of a "moiety"<sup>15</sup> arguing that

9. Restatement of Restitution § 86 (1937).

10. Distributing Tort Liability, *supra* note 8, at 36; Leflar, Contribution and Indemnity Between Tortfeasors, 81 U. Pa. L. Rev. 130, 146-47 (1932) (hereinafter cited as Leflar); Werner, Contribution and Indemnity in California, 57 Calif. L. Rev. 490, 493 (1969) [hereinafter cited as Werner].

11. The Uniform Contribution Among Tortfeasors Act defines joint tortfeasors as "two or more persons jointly or severally liable in tort for the same injury . . ." See, e.g., Md. Ann. Code art. 50, § 16(a).

12. W. Prosser, The Law of Torts §§ 50-51 (4th ed. 1971) [hereinafter cited as Prosser].

13. Leflar, *supra* note 10, at 131-32. See also Prosser, *supra* note 12. At § 65, at 417. 14. 101 Eng. Rep. 1387 (KB. 1799).

15. "Moiety" means "[t]he half of anything." Black's Law Dictionary 906 (5th ed. 1979).

Merryweather had in fact paid Starkey money on behalf of Nixan. The court noted:

At the trial, before Mr. Baron Thomson, at the last York Assizes, the plaintiff was nonsuited, the learned Judge being of opinion that no contribution could by law be claimed as between joint wrong-doers; and, consequently, this action, upon an implied assumpsit, could not be maintained on the mere ground that the plaintiff had alone paid the money which had been recovered against him and the other defendant in that action.

Chambre now moved to set aside the nonsuit; contending, that as the former plaintiff had recovered against both these parties, both of them ought to contribute to pay the damages: but Lord Kenyon, Ch. J. said, there could be no doubt but that the nonsuit was proper: that he had never before heard of such an action having been brought, where the former recovery was for a tort: that the distinction was clear between this case and that of a joint judgment against several defendants in an action of assumpsit: and that this decision would not affect cases of indemnity, where one man employed another to do acts, not unlawful in themselves, for the purpose of asserting a right.<sup>16</sup> The rule prohibiting contribution between intentional wrongdoers is further illustrated by the Highwayman's case<sup>17</sup> in which two eighteenth-century highway robbers had joined in a successful endeavor and one, having entrusted the other with selling the loot, had not received his share. The first thief, no longer trusting his cohort, brought suit for contribution, seeking his half of the booty. Dean Prosser described the outcome: "The bill was dismissed with costs to be paid by the defendant; the plaintiff's solicitors were attached and fined fifty pounds each for contempt. Both

plaintiff and defendant were subsequently hanged. In short, contribution was not allowed."<sup>111</sup>

In England, the rule of *Merryweather v. Nixan* was not extended to claims for contribution among negligent wrongdoers.<sup>19</sup> However, American courts extended the rule<sup>20</sup> Thus, by the

16. 101 Eng. Rep. 1337 (K.B. 1799).

17. *Everet v. Williams*, 9 L.Q. Rev. 197 (decided in 1725 but reported in 1893).

18. Prosser, *supra* note 12, at § 50, at 305-06 n.40.

19. *Id.* at 306.

20. Werner, *supra* note 10, at 493-94.

early twentieth century, most American states recognized the rule that there was no contribution among negligent tortfeasors.<sup>21</sup> However, the American courts, inexplicably, began to make exceptions permitting restitution indemnity.<sup>22</sup> The courts granted indemnity where one party's negligence was "active," as compared to the "passive" negligence of the other,<sup>23</sup> or where one party's liability was "secondary" as opposed to "primary,"<sup>24</sup> or where the parties were not "in *pari delicto*."<sup>25</sup> Thus, the common law in America prohibited contribution among tortfeasors while permitting restitution indemnity where, through a comparison of the faults, indemnity was deemed proper.

The results arising from these distinctions were inequitable. One of two equally negligent tortfeasors could not force the other to share the loss, yet the total loss could be shifted from one tortfeasor to the other. Dean Prosser underscores the confusion and uncertainty that pervaded the area by noting that no one explanation could be found to cover all the cases.<sup>26</sup>

Over the years, the common law rule against contribution has eroded.<sup>27</sup> Initially, nine states judicially refused to adopt the

21. *Id.*

22. *Id.* at 494.

23. See, e.g., *Banks v. Central Hudson Gas & Elec. Corp.*, 224 F.2d 631, 634 (2d Cir. 1955); *Slattery v. Marra Bros.*, 186 F.2d 134, 138 (2d Cir.), cert. denied, 341 U.S. 915 (1951).

24. *Wallenius Bremen G. m. b. H. v. United States*, 409 F.2d 994, 1969 A.M.C. 768 (4th Cir.), cert. denied, 398 U.S. 958 (1969); *United States Fidelity & Guar. Co. v. Virginia Eng'r Co.*, 213 F.2d 109 (4th Cir. 1954).

25. *Washington Gas Light Co. v. District of Columbia*, 161 U.S. 316, 327 (1896). See also Leflar, *supra* note 10, at 1116; H. Woods, *Comparative Fault* 287 (1978).

26. Prosser, *supra* note 12, at § 51. Dean Prosser wrote:

Out of all this, it is extremely difficult to state any general rule or principle as to when indemnity will be allowed and when it will not. It has been said that it is permitted only where the indemnitor has owed duty of his own to the indemnitee;

that it is based on a "great difference" in the gravity of the fault of the two tortfeasors; or that it rests upon a disproportion or difference in character of the duties owed by the two to the injured plaintiff. Probably none of these is the complete answer, and, as is so often the case in the law of torts, no one explanation can be found which will cover all of the cases. Indemnity is a shifting of responsibility from the shoulders of one person to another; and the duty to indemnify will be recognized in cases where community opinion would consider that in justice the responsibility should rest upon one rather than the other.

*Id.* at § 51, at 313 (footnote omitted).

27. Not everyone thought this a good idea. See James, *Contribution Among Joint*

1170 *TULANE LAW REVIEW* (Vol. 55

rule against contribution and twenty-three states have enacted statutes that permit contribution to some extent among tortfeasors.<sup>28</sup> The Commissioners on Uniform State Laws proposed two versions of a Uniform Contribution Among Tortfeasors Act, one in 1939 and another in 1955. The second version provides for an equal division of liability among tortfeasors, not according to degrees of fault.<sup>29</sup> England has provided (by statute) for contribution in proportion to each wrongdoer's fault.<sup>30</sup>

American courts have consistently barred contribution in favor of intentional wrongdoers.<sup>31</sup> Another recognized bar to contribution or restitution indemnity is the exclusive liability of an employer to an employee under workmen's compensation statutes. Thus, the employer is not considered a tortfeasor with respect to the injuries to an employee<sup>32</sup>.

#### **THERE ARE FOUR KINDS OF INDEMNITY AND TWO KINDS OF CONTRIBUTION**

There are four kinds of indemnity and two kinds of contribution. The four kinds of indemnity are express agreement (contract), implied agreement (contract), restitution indemnity, and statutory indemnity. Contribution is either pro rata or according to degrees of fault.

Indemnity by express agreement is straightforward. An express agreement to indemnify is a promise or an assurance by the indemnitor to compensate the indemnitee for any anticipated loss or liability.<sup>33</sup> Where the parties have agreed to express indemnity provisions in a contract, whether written or oral, the legal issues usually involve contract interpretation<sup>34</sup> or

*Tortfeasors: A Pragmatic Criticism*, 54 *Harv. L. Rev.* 1156 (1941).

28. H. Woods, *Comparative Fault* 227 (1978). See also Note, 45 *Harv. L. Rev.* 369 (1931).

29. **Uniform Contribution Among Tortfeasors Act, 12 Uniform Laws Annotated 57, at 87, § 2. In Maryland, contribution for compensatory damages is equal and pro rata among tortfeasors, but punitive damages may be apportioned based on degrees of fault. *Cheek v. J.B.G. Properties, Inc.*, 28 Md. App. 29, 344 A.2d 180 (1975).**
30. **Prosser, supra note 12, at § 50, at 306 n.43.**
31. n. **See, e.g., *Hathaway v. Sioux City*, 244 Iowa 508, 57 N.W.2d 228 (1953).**
32. **Prosser, supra note 12, at § 50, at 309.**
33. **42 C.J.S. Indemnity § 1 (1944).**
34. **See, e.g., *United States v. Seckinger*, 397 U.S. 203 (1970); *Becker v. Black & Veatch Consulting Eng'rs*, 509 F.2d 42 (8th Cir. 1974).**

### **1981] INDEMNITY & CONTRIBUTION 1171**

**the enforceability of provisions as a matter of public policy. 35 It is not against public policy to agree to indemnify a person against his own negligence,<sup>36</sup> but such an intention must be expressed in clear and unequivocal terms.<sup>37</sup> Thus, an indemnity provision in a contract will be strictly construed.<sup>38</sup> The common law consistently recognized and enforced these express indemnity agreements that typically were included in insurance agreements and surety bonds.<sup>39</sup>**

**Indemnity implied in an agreement is based upon a contract theory, although research has revealed little in the common law about this concept. The theory is that parties, who have made an agreement without an express indemnity promise, nevertheless, intended indemnity. The court finds as a fact that the contract carried with it an implied agreement by one party to indemnify the other. The usual situation involves a contract in which one party agreed to be responsible for all damages occurring on the job.<sup>40</sup> In construing such a provision to include indemnity, the court would hold that, as a factual matter, the parties intended one to indemnify the other.**

**The third kind of indemnity may be called "restitution indemnity." This form of indemnity is not based upon contract, but is based upon equitable considerations of restitution and the avoidance of unjust enrichment. It requires a comparison of the negligence of each tortfeasor. The active/passive or primary/secondary analysis is regularly used by the courts when the parties**

35. **15 Williston On Contracts § 1750A, at 143 (3d ed. 1972); 41 Am. Jur. 2d Indemnity § 10 (1968). See also *Bisso v. Inland Waterways Corp.*, 349 U.S. 85, 1955 A.M.C. 899 (1955).**
36. **Prosser, supra note 12, at § 51, at 310 n.90; 14 Williston On Contracts § 1630 (3d ed. 1972).**
37. ***Naveros Oceanikos, S.A. v. S.T. Mobile Trader*, 554 F.2d 43 (2d Cir. 1977); *Fidelity & Cas. Co. v. J. A. Jones Constr. Co.*, 325 F.2d 605 (8th Cir. 1963).**
38. ***M.O.N.T. Boat Rental Servs., Inc. v. Union Oil Co.*, 613 F.2d 576 (5th Cir. 1980).**

39. See Leflar, *supra* note 10, at 146.

40. For example, during the time the author was writing this article, he reviewed contract proposals for telephone equipment. One of the proposals stated: "All work is performed by our own installation crews. Contractor assumes all liability for our installation crews." If the postman delivering mail tripped over a telephone cable during installation and sued the firm, a question might arise as to whether the contract between the firm and the telephone vendor carried with it an implied indemnity agreement, even though the words do not expressly state that the telephone vendor will indemnify the firm for injuries to third persons.

#### 1172 TULANE LAW REVIEW [Vol. 55

are not in *pari de licto*.<sup>41</sup> In this situation, the court compares the fault of each tortfeasor in relation to the injured person. If the fault of one tortfeasor was passive in comparison to the active fault of the other tortfeasor, then the court grants full indemnity to the passively negligent tortfeasor.<sup>42</sup>

Restitution indemnity is exemplified by a situation in which a person injured on land sues the landowner who might have liabilities to the injured person simply by virtue of his status as a landowner. The landowner would be entitled to indemnity as a passive tortfeasor in relationship to the active negligence of the lessors in actual possession of the land.<sup>43</sup> Additionally, a master, who is held vicariously liable under *respondeat superior* for the negligent acts of his servant, would be entitled to indemnity from the servant.<sup>44</sup>

There is a fundamental difference between the contract forms of indemnity and restitution indemnity and contribution. Contract indemnity focuses upon the relationship between the indemnitor and the indemnitee as contracting parties. Their relationship to the injured person is not controlling as to whether indemnity is granted. Restitution indemnity and contribution focus on the fault of each of the wrongdoers *vis-a-vis* the injured person. The direct relationship between the wrongdoers, or lack thereof, is of little significance. A fourth and final kind of indemnity is created by statute whereby the law requires one entity to indemnify another<sup>45</sup> or authorizes the government to enter into indemnity agreements.<sup>46</sup>

41. Meaning "in equal fault." Black's Law Dictionary 711 (5th ed. 1979). See also 42 C.J.S. indemnity § 27 (1944); Leflar, *supra* note 10, at 155-56.

42. Prosser, *supra* note 12, at § 51, at 312. Courts often use the terms "primary and secondary negligence" in lieu of "active and passive fault."

43. See, e.g., Maryland Cas. Co. v. Frederick Co., 142 Ohio 60.5, 53 N.E.2d 795 (1944).

44. Restatement of Restitution § 87 (1937); Prosser, *supra* note 12, at § 51, at 311.

45. See, e.g., 30 U.S.C. § 185 (1973) (holders of oil and gas pipelines over public lands required by regulation to indemnify the United States); 42 U.S.C. § 5173

(1974) (no federal debris removal from private property after disaster unless state or local government indemnifies the United States).

46. See, e.g., 20 U.S.C. § 974 (1975) (Council on the Arts and Humanities may indemnify national interest exhibitors up to \$50,000,000); 42 U.S.C. § 2210 (1975) (Nuclear Regulatory Commission shall indemnify licensees from liability which is in excess of the level of financial protection required of the licensee).

## **1981\_INDEMNITY & CONTRIBUTION 1173**

### **PROCEDURAL FEATURES AN ACTION FOR INDEMNITY OR CONTRIBUTION**

In an indemnity or contribution action, the indemnitee usually must prove his own liability to the injured person and the liability of the indemnitor to the indemnitee. The indemnity or contribution action is distinguishable from the underlying claim of the injured person against one or more of the tortfeasors although, in modern practice, both claims are usually consolidated in one action by virtue of federal and state procedural rules. If the indemnitee and the indemnitor are both sued as defendants by the injured party, then the indemnitee may file a cross claim for indemnity: 47 If the indemnitor is not sued by the injured party, the indemnitee may file and serve a third-party complaint against the indemnitor.48"

In order to recover, one seeking indemnity or contribution must establish his loss or an actual or potential liability to the injured person. A literal or strict indemnity agreement requires that the indemnitee show actual loss, such as payment to the injured party.49 An agreement to indemnify against liability permits recovery by the indemnitee as soon as judgment has been entered against him whether or not it has actually been paid.50 Restitution indemnity and contribution, however, require the demonstration of an actual loss by the indemnitee's payment. Proof of liability alone will not suffice to support a claim for indemnification 51, although the claim may be made in a third party pleading or a separate suit before the indemnitee has paid 52, These rules apply whether or not the injured party has brought suit against the payor, and have been codified in the Restatement of the Law of Restitution.53 If an injured party has

47, See, e.g., Fed. R. Civ. P. 13(g); Md. R. of Pro. 314.

48. See, e.g., Fed. R. Civ. P. 14; Md. R. of Pro. 315.

49. 42 C.J.S. Indemnity § 14(c) (1944); 41 Am. Jm. 2d Indemnity § 29 (1968). See also C & L Rural Elec. Coop. Corp. v. American Cas. Co., 199 F. Supp. 220 (E.D. Ark. 1961).

50. 42 C.J.S. Indemnity § 14(b) (1944); 41 Am. Jur. 2d Indemnity § 31 (1968).

51. See, e.g., Wolverine Ins. Co. v. Tower Iron Works, Inc., 370 F.2d 700 (1st Cir. 1966); Southern Md. Oil Co. v. Texas Co., 203 F. Supp. 449 (D. Md. 1962).

52. Chamberlain v. McCleary, 217 F. Supp. 591 (E.D. Tenn. 1963).

**53. Restatement of Restitution § 76, Comment (f), § 86, Comment (d) (1937). The Restatement provides:**

**1174 TULANE LAW REVIEW [Vol. 55**

**obtained a valid judgment in a separate action against the indemnitee, both the indemnitee and the indemnitor are bound as to the existence and extent of the liability of the indemnitee, if the indemnitee gave the indemnitor reasonable notice of the action and requested him to defend it or participate in the defense<sup>54</sup> An indemnitor who refuses the opportunity to defend accepts some startling risks concerning the handling and outcome of the underlying claim:**

**If the indemnitor has knowledge of the proceeding and has seasonable notice to defend, the indemnitee is under no duty to make a defense, except where the relation between them is such that the indemnitee has a duty to protect the indemnitor's interests, as it may be in the case of principal and agent. The rule stated in this Section applies, therefore, even though the judgment against the indemnitee is by default or although the indemnitee does not carefully defend the action.<sup>55</sup>**

**It is good practice for the indemnitee to give the indemnitor notice of a claim and suit by an injured person, but it is not a condition precedent to an indemnity action, unless required by a statute or a contract of indemnity.<sup>56</sup> Giving notice avoids the added burden of establishing the indemnitee's actual liability to the injured party as part of the indemnitee's claim against the indemnitor.<sup>57</sup> Notice is usually accompanied by the indemnitee's tender to the indemnitor to defend against the claim. In the absence of a contract requirement, tendering the defense is not necessary, but a rejection of a tender usually relieves the indemnitee of later proving his actual liability.<sup>58</sup> A tender strengthens**

**-----''''-----  
If however, suit is not brought against the payor and he seeks restitution from the principal obligor, it is necessary for him to prove . . . that his payment terminated or reduced a valid claim against such person....If, however, after suit is brought against the payor, the principal obligor is notified and given an opportunity to defend, hut fails to conduct the defense and the claim is proved to be due, its validity as to the payor and its amount are res judicata between the payor and the principal obligor.**

**Restatement of Restitution § 76, Comment (f) (1937). "It is also necessary for him to prove that the settlement made with the injured person was reasonable under the circumstances. Id. § 86, Comment (d).**

**54. Restatement of the Law of Judgments § 107 (1942).**

**55. Id., Comment (0).**

**56. 42 C.J.S. Indemnity § 15 (1944). See Boston & Me. R.R. v. Bethlehem Steel Co., 311 F.2d 847 (1st Cir. 1963); Ambrose v. Standard Oil Co., 214 F. Supp. 872 (D. Or. 1963).**

**57. See, e.g., Burke v. Ripp, 619 F.2d 354 (5th Cir. 1980).**

58. 42 C.J.S. Indemnity § 32 (1944). See, e.g., *Miller & Co. v. Louisville & Nash-*

#### **1981] INDEMNITY & CONTRIBUTION 1175**

the indemnitee's claim for reasonable attorney's fees and expenses in the event the indemnitor refuses to assume the defense.<sup>59</sup>

Difficulties can arise, however, in situations where the underlying claim of the injured person was settled or resolved by some form of consent judgment. A settlement with the injured party by the indemnitee complicates, but does not negate, the right of indemnity against the indemnitor. To be indemnified after a voluntary payment, the indemnitee must establish his right to indemnity, his liability to the injured party, and the reasonableness of the amount of the settlement payment. <sup>60</sup>

In the case of settlement, one who pays under the settlement or consent judgment runs the risk of being accused by an indemnitor of making a voluntary payment to the injured person. The indemnitee should protect his rights against the indemnitor by giving the indemnitor prior notice of any proposed settlement. When notice of the claim, tender of defense, and notice of the proposed settlement have all been effected, the indemnitee is in a far better position to prosecute his indemnity or contribution claim. The courts will usually hold that the indemnitee's liability to the injured person is *res judicata* as to the indemnitor <sup>61</sup> or at least that the indemnitor bears the burden of showing that the indemnitee was not liable to the injured person. In such situations, the courts often accept the indemnitee's liability to the injured person, leaving the reasonableness of the payment to the injured person as the central inquiry in the indemnity or contribution suit.

In *Wisconsin Barge Line, Inc. v. Barge Chem* 300, <sup>62</sup> a seaman sued his employer who subsequently sought indemnity from a bargeowner. The seaman was injured while working on a barge owned by his employer. The injury occurred when another barge nearby broke loose from its moorings and collided with the barge on which the seaman was working. The seaman sued *Nashville R.R.*, 828 F.2d 78 (5th Cir.), cert. denied, 377 U.S. 966 (1964).

59. 42 C.J.S. Indemnity § 32 (1944). See, e.g., *Miller & Co. v. Louisville & Nashville R.R.*, 328 F.2d 73 (5th Cir.), cert. denied, 377 U.S. 966 (1964).

60. 42 C.J.S. Indemnity § 14(c)(2) (1944). A similar result occurs where the indemnitee agrees to a consent judgment in favor of the injured party.

61. *Jennings v. United States*, 374 F.2d 983 (4th Cir. 1967). 62. 546 F.2d 1125, 1980 A.M.C. 1514 (5th Cir. 1977).

#### **1176 TULANE LAW REVIEW [Vol. 55**

under the Jones Act in an Illinois state court. His employer gave notice of the suit and tendered the defense to the owner of the runaway barge, who refused the tender. Without giving prior notice of the settlement to the bargeowner, the employer settled with the seaman. The employer then instituted an indemnity

suit in federal district court. The court held that the settlement was a voluntary payment by the employer because it found no evidence of the employer's negligence in causing the seaman's injury. The district court limited the employer's recovery against the bargeowner to maintenance and cure payments, court costs, and attorney's fees.<sup>63</sup>

On appeal, the Fifth Circuit reversed and emphasized that the employer had given notice of the casualty and the suit and tendered control of the defense to the barge owner. The court held:

Thus, under the facts of this case, the appellant [employer] does not have to show that it was negligent or otherwise liable to the crewman and the burden shifts to the appellee [indemnitor) to show that the amount of the settlement was unreasonable <sup>64</sup> Setting forth the elements of the underlying claim which must be considered in the indemnity claim, the court stated: At the outset in the usual case of an indemnity claim, the trial court would concern itself with several questions about the underlying claim including whether or not there had been notice of the accident, notice of the claim and notice of the .filing of a lawsuit; whether or not there existed jurisdiction over the potential indemnitor; whether or not control of the claim and defense had been tendered; whether or not the claimant raised serious substantive issues that might have resulted in liability; the existence of fraud or collusion; entry of a final judgment by actual trial or by consent; the terms of any written indemnity agreement; and the surrounding circumstances of the payment of any settlement along with the reasonableness thereof <sup>65</sup>

63. Wisconsin Barge Line, Inc. v. Barge Chem 300, 390 F. Supp. 1388, 1393, 1976 A.M.C. 2305, 2315 (M.D. La. 1975), reversed, 546 F.2d 1125, 1980 A.M.C. 1514 (5th Cir. 1977).

64. 546 F.2d at 1129-30, 1980 A.M.C. at 1520-21 (emphasis added).

65. Id. at 1129, 1980 A.M.C. at 1520.

## **1981) INDEMNITY & CONTRIBUTION 1177**

### **Accrual of the Cause of Action**

Generally, the rule is that a cause of action for indemnity accrues upon payment by or judgment against the indemnitee.<sup>66</sup> The language of an express indemnity agreement governs. For example, if the agreement contains a clause protecting against "liability," then the cause of action accrues when the indemnitee's liability is established or upon the entry of judgment.<sup>67</sup> On the other hand, if the agreement indemnifies against "loss," the cause of action does not accrue until payment.<sup>68</sup> A cause of action for restitution indemnity or contribution accrues only after one tortfeasor has paid more than his share of the loss.<sup>69</sup>

### **Limitations and Laches**

The indemnitee must bring his action within the time set by the applicable statute of limitations for contract actions or within the time required under an express

contract of indemnity.<sup>70</sup> Additionally, laches applies to indemnity actions based upon maritime contracts.<sup>71</sup> Thus, prompt notice of the casualty and suit and a prompt tender of the defense is well-advised.<sup>72</sup> Laches also applies to restitution indemnity and contribution actions, but the new three-year statute of limitations <sup>73</sup> for maritime personal injury and death actions arguably might apply to restitution indemnity and contribution actions. Indemnity or contribution actions against the United States are governed by the two-year statute of limitations in the Suits in Admiralty Act.

66. 42 C.J.S. Indemnity § 14(b) (1944). See also *United N.Y. Sandy Hook Pilots' Ass'n v. Rodermond Indus., Inc.*, 394 F.2d 65 (3d Cir. 1968).

67. See, e.g., *Spurr v. LaSalle Constr. Co.*, 385 F.2d 322 (7th Cir. 1967).

68. 42 C.J.S. Indemnity § 14(c) (1944). See also *Mack Trucks, Inc. v. Bendix-Westinghouse Automotive Air Brake Co.*, 372 F.2d 18 (3d Cir. 1966), cert. denied, 387 U.S. 930 (1967).

69. *Harris v. Standard Accident & Ina. Co.*, 297 F.2d 627 (2d Cir. 1961), cert. denied, 369 U.S. 843 (1962); *Wessel v. Eglowsky*, 399 F. Supp. 1330 (D. Md. 1975), aff'd, 542 F.2d 1235 (4th Cir. 1976); *Southern Md. Oil Co. v. Texas Co.*, 203 F. Supp. 449 (D. Md. 1962).

70. 42 C.J.S. Indemnity § 33 (1944). See also *Thermo King Corp. v. Strick Corp.*, 467 F. Supp. 75 (W.D. Pa.), aff'd, 609 F.2d 503 (3rd Cir. 1979). The time begins to run from the accrual of liability.

71. *United N.Y. Sandy Hook Pilots' Assoc. v. Rodermond Indus., Inc.*, 394 F.2d 65 (3d Cir. 1968); G. Gilmore & C. Black, *The Law of Admiralty* §§ 9-80 to -81 at 771-76 (2d ed. 1975) [hereinafter cited as *Gilmore & Black*].

72. See *Avondale Shipyards, Inc. v. Thomaas E. Cuffe*, 434 F. Supp. 920 (E.D. La. 1977).

73. 46 u.s.c. § 763a (1980).

#### 1178 TULANE LAW REVIEW [Vol. 55

Act.<sup>74</sup> Cases dealing with the time to bring indemnity and contribution actions in cargo damage cases have generally held that COGSA's <sup>75</sup> one-year limitation does not apply.<sup>76</sup>

#### INDEMNITY AND CONTRIBUTION UNDER MARITIME LAW

Despite the increase in maritime personal injury and death litigation, there was little development of restitution indemnity and contribution under the maritime law from 1952 to 1974. Prior to 1950, the maritime law provided fertile ground in which fairer allocations and distributions of loss could have developed.<sup>77</sup> The reign of *Halcyon*<sup>78</sup> and *Ryan*,<sup>79</sup> however, precluded contribution and exalted implied indemnity. To discuss the development of indemnity and contribution in maritime law, it is best to treat the pre-1972 period separately.

**At the outset, two points should be made. First, maritime law is free to develop apart from the common law.<sup>80</sup> Second, under both the common law and maritime law, one of several tortfeasors is liable in full to the injured person under the rule of "joint and several liability" for the damages sustained by that**

**74. 46 u.s.c. § 745 (1920).**

**75. Carriage of Goods by Sea Act, 46 U.S.C. §§ 1303-1315 (1980).**

**76. ITT Rayonier, Inc. v. Southeastern Maritime Co., 620 F.2d 512 (5th Cir. 1980); States S.S. Co. v. American Smelting & Ref. Co., 339 F.2d 66 (9th Cir. 1964), cert denied, 380 U.S. 964 (1965); Francosteel Corp. v. S.S. Tien Cheung, 375 F. Supp. 794 (S.D.N.Y. 1973).**

**77. Leflar, supra note 10, points out:**

**In admiralty, the courts have felt free to develop their own rules uncontrolled by the common law decisions, with the result that they never accepted either the doctrine of contributory negligence or the rule of no contribution between negligent tortfeasors. Instead of the doctrine of contributory negligence they adopted a system under which the injured party and the injuring party, both negligent, are required to divide the total loss between themselves equally. Consistently, the admiralty courts have also refused to follow the no contribution rule in negligence cases. It has never been suggested that the rule in admiralty operates to induce more collisions or other negligent injuries than occur under the common law rules of contributory negligence and no contribution, or that it is substantially more difficult to administer.**

**Id. at 138-39 (footnotes omitted).**

**78. Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282, 1952**

**A.M.C. 1 (1952).**

**79. Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 1956 A.M.C. 9 (1956).**

**80. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 1959 A.M.C. 597 (1959); Hust v. Moore-McCormack Lines, Inc., 328 U.S. 707, 1946 A.M.C. 727 (1946). See also Gilmore & Black, supra note 71, at §§ 6-58, 6-61.**

## **1981] INDEMNITY & CONTRIBUTION 1179**

### **Person 81**

**Express indemnity agreements have been recognized consistently in maritime law. The leading case in support of this position is American Stevedores, Inc. v. Porello,<sup>82</sup> decided by the Supreme Court in 1947, one year after the Court's landmark decision in Seas Shipping Co. v. Sieracki.<sup>83</sup> In Porello, a longshoreman sued the United States in its capacity as shipowner. The United States impleaded the stevedore employer seeking indemnity under an express indemnity agreement. The district court granted contribution from American Stevedores to the extent of one half of the damages. The court of appeals held that the**

stevedore was required by the indemnity provision of the contract to completely indemnify the United States. The Supreme Court acknowledged the validity of express indemnity agreements in maritime contracts and held that such a clause was normal in stevedoring contracts. 84 In remanding for evidence as to the intentions of the parties, the Court discussed the range of possible loss allocation agreements:

It may be that the parties only meant American to indemnify the United States should the Government be held liable for damages solely caused by American's negligence. It may be that the intention was that American should fully reimburse the United States for all damages caused in any part by Ameri-

81. H. Woods, *Comparative Fault* § 1a.4 (1978); Prosser, *supra* note 12, § 47; *The Alabama & The Gamecock*, 92 U.S. 695 (1876); *The Chattahoochee*, 173 U.S. 540 (1899); *Edmonds v. Compagnie Generale Transatlantique*, 433 U.S. 256, 1979 A.M.C. 1167 (1979).

82. 330 U.S. 446, 1947 A.M.C. 349 (1947).

83. 328 U.S. 8 (1946). In *Sieracki*, the Court established that a shipowner owed a longshoreman, working on his vessel but employed by an independent stevedoring contractor, a warranty of seaworthiness.

84. 330 U.S. at 456, 1947 A.M.C. at 356. The Court concluded:

American further argues that the court below, as an admiralty court, did not have jurisdiction of the indemnity provision of the stevedoring contract, and that therefore the decree granting full indemnity to the United States from American was beyond its power. A stevedoring contract is maritime. And although admiralty jurisdiction over contracts partly maritime and partly nonmaritime in nature is doubtful, the cases raising such doubts are concerned only with contracts for the performance of partly non-maritime activities. To sever a contract provision for indemnity for damages arising out of the performance of wholly maritime activities would only needlessly multiply litigation. Such a provision is a normal clause in contracts to act for others and no more determines the nature of a contract than do conditions on the time and place of payment.

*Id.*, 1947 A.M.C. at 356 (citations omitted).

#### 1180 TULANE LAW REVIEW [Vol. 55

can's negligence. Finally, the parties may have intended that American, in case of the joint negligence of the parties, should be responsible for that proportion of the damages which its fault bore to the total fault. Although the usual rule in admiralty, in the absence of contract, is for each joint tortfeasor to pay the injured party a moiety of the damages, we do not believe that the last alternative, which provides for a measure of comparative negligence, is necessarily beyond the intent of the parties. Comparative negligence is not unknown to our maritime law.<sup>85</sup>

**Express indemnity agreements in stevedoring contracts became rare after the Ryan decision in 1956, because they were no longer needed for the shipowners to obtain indemnity. However, a common express indemnity provision in the maritime industry is the "red letter clause"<sup>86</sup> which requires the shipowner to indemnify the shipyard for liability for personal injury or death. The validity of the red letter clause has been before the courts on several occasions <sup>87</sup>**

**Restitution indemnity was also recognized in the maritime law prior to 1972. In Seaboard Stevedoring Corp. v. Sagadahoc S.S. Co., <sup>88</sup> the Ninth Circuit awarded indemnity to a ship against a stevedoring employer on restitution principles of active/passive negligence, although the basis for indemnity was not clearly articulated. In TriState Oil Tools Industries, Inc. v.**

**85. Id. at 458, 1947 A.M.C. at 357 (citations omitted).**

**86. A typical "red letter clause" reads in pertinent part as follows:**

**Work will be performed by us only upon the following terms and conditions, which shall be deemed to have been accepted by the Customer upon arrival of the vessel at our yard, or upon commencement of the work by us at any other location . . .**

**Our aggregate liability, directly or indirectly, to all parties in interest for any claims and respective personal injury, death, loss or damage to the vessel or any other property or timeliness of completion of the work, howsoever caused, shall not exceed the total sum of \$300,000 with respect to any one vessel. The customer agrees to indemnify, defend and hold harmless with respect to all liabilities to all parties in interest exceeding the amount herein stated.**

**87. Norfolk Shipbuilding & Drydock Corp. v. MN LaBelle Simone, 537 F.2d 1201, 1976 A.M.C. 2062 (4th Cir. 1976) (effect of clause avoided); Alcoa S.S. Co. v. Charles Ferran & Co., 443 F.2d 250, 1971 A.M.C. 1116 (5th Cir. 1971) (clause upheld and available to shipyard's underwriters); Alcoa S.S. Co. v. Charles Farrant & Co., 383 F.2d 46, 1967 A.M.C. 2578 (5th Cir. 1967) (clause upheld); California Tanker Co. v. Todd Ship-yards Corp., 339 F.2d 426, 1965 A.M.C. 589 (2d Cir. 1964) (clause held ineffective); Hawaiian Educator, 1967 A.M.C. 1788 (N.D. CaL 1967) (recognized as long established).**

**88. 32 F.2d 886, 1929 A.M.C. 865 (9th Cir. 1929). See also Marine Terminal v. Burnside Shipping Co., 394 U.S. 404, 416 n.23 (1969) and cases cited therein.**

#### **1981] INDEMNITY & CONTRIBUTION 1181**

**Delta Marine Drilling Co.,<sup>89</sup> the Fifth Circuit reviewed the pre- Ryan state of the maritime law on indemnity and concluded that "tort indemnity" was recognized under maritime law.**

**Contribution has had a checkered development in American maritime law. In collision cases, maritime law had long recognized the rule of divided damages whereby two negligent tortfeasors in a collision would be required to split the total damages equally.<sup>90</sup> In 1952, Halcyon Lines v. Haenn Ship Ceiling & Refitting Cor p.<sup>91</sup> presented the Supreme Court with the contribution issue in a non-**

collision context. In *Halcyon*, an injured longshoreman sued a shipper which in turn impleaded the stevedore. The contract contained no express agreement of any kind concerning indemnity or contribution. The jury, the district court, and the court of appeals articulated three different versions of contribution. The jury awarded contribution based upon degrees of fault-seventy-five percent against the stevedore and twenty-five percent against the ship.<sup>92</sup> The district court vacated the jury verdict and entered contribution on a pro rata basis, believing that to be the applicable contribution rule.<sup>93</sup> The court of appeals concluded that the shipowner was entitled to contribution from the stevedore, but only to the extent of compensation the stevedore-employer would have had to pay the injured worker under the Longshoremen's Act.<sup>94</sup> The Supreme Court reversed.<sup>95</sup> While the Court recognized that the maritime rule of divided damages was of ancient origin and well established in many American maritime decisions, the Court rather naively stated that it had never expressly applied the contribution rule

89. 410 F.2d 178, 1969 A.M.C. 767 (5th Cir. 1969). Cases cited by the court included *Newport News Shipbuilding & Drydock Co. v. United States*, 226 F.2d 137, 1955 A.M.C. 1973 (4th Cir. 1955) and *Barber S.S. Lines v. Quinn Bros.*, 94 F. Supp. 212 (D. Mass. 1950). See also *Simpson Timber Co. v. Parks*, 390 F.2d 353, 1968 A.M.C. 566 (9th Cir.), cert. denied, 393 U.S. 858 (1968); *Lawlor v. Socony-Vacuum Oil Co.*, 275 F.2d 599, 1960 A.M.C. 716 (2d Cir.), cert. denied, 363 U.S. 844 (1960); 41 Am. Jur. 2d *Indemnity* § 19-27 (1968).

90. See *The City of New York*, 147 U.S. 72, 82 (1893); *The Margeret*, 30 F.2d 923 (3d Cir. 1928), cert. denied, 279 U.S. 862 (1929); *Owen*, *The Origins and Development of Marine Collision Law*, 51 *Tulane L. Rev.* 759 (1977). See also *Sprague*, *Divided Damages*, 6 *N.Y.U. L. Rev.* 15 (1928).

91. 342 U.S. 282, 1952 A.M.C. 1 (1952).

92. *Baccile v. Halcyon Lines*, 89 F. Supp. 765, 766 (E.D. Pa. 1950).

93. *Id.* at 768.

94. *Baccile v. Halcyon Lines*, 187 F.2d 403 (3rd Cir. 1951). 95. 342 U.S. at 287, 1952 A.M.C. at 5.

#### 1182 TULANE LAW REVIEW [Vol. 55

to non-collision cases.<sup>96</sup> The Court believed it would be unwise to fashion a new judicial rule of contribution for longshoreman-ship-stevedore litigation in view of the fact that Congress had enacted comprehensive legislation in the area of maritime personal injuries.<sup>97</sup> The Court emphasized that:

Should a legislative inquiry convince Congress that a right to contribution among joint tortfeasors is desirable, there would still be much doubt as to whether application of the rule or the amount of contribution should be limited by the Harbor Workers' Act, or should be based on equal division of damages, or should be relatively apportioned in accordance with the degree of fault of the parties.<sup>98</sup>

Implied indemnity was established in maritime law by the Supreme Court's 1956 decision in *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.* 99 In 1946, the Supreme Court had held in *Sieracki* that longshoremen were owed the warranty of seaworthiness by shipowners. Shipowners, therefore, became liable to longshoremen on a liability without fault basis, a result which greatly expanded the grounds for suits by longshoremen. The *Halcyon* decision precluded a shipowner from recovering any form of contribution from a negligent stevedore. Thus, shipowners were in an unfair position.<sup>100</sup> In *Ryan*, the Supreme Court adopted the theory of implied indemnity in an effort to correct the situation. The case involved a longshoreman's suit against a shipowner, who impleaded the stevedore. There was no written stevedoring contract or express indemnity agreement, but there were some letters between the shipowner and the stevedore.<sup>101</sup> The district court dismissed the indemnity claim.<sup>102</sup> The court of appeals granted restitution in-

96. *Id.* at 284, 1952 A.M.C. at 4-5.

97. *Id.* at 285-87, 1952 A.M.C. at 5. The Court was, of course, referring to the Longshoremen's and Harbor Workers' Compensation Act (current version at 33 U.S.C. §§ 901-950 (1978)).

98. 342 U.S. at 286-87, 1952 A.M.C. at 4-5. Justices Read and Burton dissented and stated that they would reverse and require the district court to allow contribution on a pro rata basis. *Id.* at 287, 1952 A.M.C. at 5.

99. 350 U.S. 124, 1956 A.M.C. 9 (1956). Justice Burton, who had dissented in *Halcyon*, wrote the majority opinion in a five-to-four decision.

100. For a discussion of the resulting "multi-party Donnybrook Fair," see Proudfoot, *The Tar Baby: Maritime Personal Injury Indemnity Actions*, 20 *Stan. L. Rev.* 423 (1968).

101. 350 U.S. at 136, 1956 A.M.C. at 19 (dissent).

102. *Palazzolo v. Pan-Atlantic S.S. Corp.*, 111 F. Supp. 505 (E.D.N.Y. 1953).

#### **1981] INDEMNITY & CONTRIBUTION 1183**

demnity on the basis of the active negligence of the stevedore as compared to the passive negligence of the shipowner.<sup>103</sup> The Supreme Court granted indemnity on the basis of a "finding<sup>104</sup> that a warranty of workmanlike performance existed in the contract between the stevedore and the shipowner.<sup>105</sup> This warranty carried with it the obligation to indemnify in the event the warranty was breached by the stevedore.<sup>106</sup> After *Ryan*, the maritime bar had little reason to bother with restitution indemnity or contribution. The *Ryan* warranty of workmanlike performance was so automatic and functional that express indemnity, restitution indemnity and contribution were usually unnecessary.

**THE EXPANSION OF Ryan's WARRANTY OF WORKMANLIKE PERFORMANCE-1956-1972** Chief Judge Brown of the Fifth Circuit aptly commented on the Ryan decision when he wrote "from little acorns big oaks may grow."<sup>107</sup> The warranty did grow. Indemnity was granted based upon a breach of the warranty even though the stevedore was not negligent.<sup>108</sup> It was expanded to situations where there was no direct contractual relationship between the indemnitee and the indemnitor.<sup>109</sup> The Second, Fourth and Ninth Circuits held that the plaintiff-longshoreman's contributory negligence could be, in and of itself, a breach by the stevedore-employer of the Ryan warranty.<sup>110</sup> The Supreme Court made clear that an express oral or writ-

**103. Palazzolo v. Pan-Atlantic S.S. Corp., 211 F.2d 277 (2d Cir. 1964).**

**104. 350 U.S. at 141, 1956 A.M.C. at 22 (Black, J., dissenting). Justice Black emphasized that there was no basis in the record for the Supreme Court to "find" as a fact a contract warranty carrying with it the promise to indemnify. Id, at 143-44.**

**105. Id. at 133-34, 1956 A.M.C. at 16-17.**

**106. Id. at 134-35, 1956 A.M.C. at 16-18.**

**107. Delta Eng'r Corp. v. Scott, 322 F.2d 11, 18 (5th Cir.), cert. denied, 377 U.S. 905 (1963).**

**108. Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 1964 A.M.C. 1075 (1964).**

**109. Waterman S.S. Corp. v. Dugan & McNamara, Inc., 364 U.S. 421, 1960 A.M.C. 2260 (1960).**

**110. United States Lines, Inc. v. Jarka Corp., 444 F.2d 26, 1971 A.M.C. 1351 (4th Cir. 1971); McLaughlin v. Trellehorgs Angfartygs A/B, 408 F.2d 1334, 1969 A.M.C. 1387 (2d Cir.), cert. denied, 395 U.S. 946 (1969); Arista Cia. DeVapores, S.A. v. Howard Terminal, 372 F.2d 152, 1967 A.M.C. 312 (9th Cir. 1967). See also Gilmore & Black, supra note 71, at § 6-55 at 446.**

#### **1184 TULANE LAW REVIEW[Vol. 55**

**ten agreement was not a prerequisite for Ryan indemnity. Justice Black's criticism of the majority for implying that the stevedore was under an obligation to indemnify even without "a shred of evidence" that an agreement to indemnify existed,<sup>111</sup> probably prompted lower courts to hold, as a general proposition, that a clear and express disclaimer would prevent Ryan indemnity. Yet few contracts were found sufficiently clear and express, and written provisions purporting to limit a stevedore's indemnity liability to a shipowner were seldom successful. In Pettus v. Grace Line, Inc.,<sup>112</sup> an express contractual provision setting out the stevedore's liability for negligence did not avoid the Ryan warranty. Additionally, in David Crystal, Inc. v. Cunard Steam-Ship Co.,<sup>113</sup> the Court of Appeals for the Second Circuit held that an express disclaimer of liability for "losses resulting from possible theft or errors in delivery"<sup>114</sup> did not prevent the imposition of Ryan**

indemnity against a stevedore for misdelivery of cargo pursuant to a forged delivery order. The court observed that "such disclaimers are not favored by the courts and must be strictly construed."<sup>115</sup> Even the following disclaimer was not enough for the Eastern District of New York: "This contract constitutes the full agreement between the parties hereto, and no warranty of any nature is to be implied from any of the wording of this agreement."<sup>116</sup> The Second Circuit implied a Ryan warranty in favor of a shipowner even though the stevedoring contract with the con- signee contained an express warranty running only to the con- signee.<sup>117</sup> The Ninth Circuit held that an express assumption of liability for negligence in a stevedoring contract did not negate the implied Ryan warranty of workmanlike performance.<sup>118</sup> As a final example, a clause placing responsibility on the shipowner

111. 350 U.S. at 141-44, 1956 A.M.C. at 22-25.

112. 305 F.2d 151, 1962 A.M.C. 2329 (2d Cir. 1962). See also, *McCross v. Ratnaker Shipping Co.*, 265 F. Supp. 827, 1967 A.M.C. 291 (D. Md. 1967).

113. 339 F.2d 295, 1965 A.M.C. 39 (2d Cir, 1964), cert. denied, 380 U.S. 976 (1965).

114. 339 F.2d at 299-300, 1965 A.M.C. at 46.

115. *Id.* at 300, 1965 A.M.C. at 46.

116. *Brattoli v. Kheel*, 302 F. Supp. 745, 752, 1969 A.M.C. 427, 437 (E.D.N.Y. 1969).

117. *Drago v. A/S Inger*, 305 F.2d 139, 1963 A.M.C. 98 (2d Cir.), cert. denied, 371 U.S. 925 (1962).

118. *Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co.*, 336 F.2d 124, 1964 A.M.C. 1927 (9th Cir. 1964), cert. denied, 379 U.S. 973 (1965).

and charterer for damages as a result of the vessel's failure to comply with the Safety and Health Regulations for Longshoring was not "clear and explicit" contract language precluding Ryan indemnity. <sup>119</sup> Because the courts strictly construed these disclaimers, there was little opportunity for the freedom of contract. Many commentators wondered how a stevedore might avoid Ryan indemnity and concluded that although federal law did not preclude the express contractual disclaimer of any duty to indemnify in the absence of negligence, the disclaimer must be specified in clear, unequivocal language.<sup>120</sup> A breach of the warranty granted the shipowner full indemnity for any sums paid to the longshoremen, as well as for attorney's fees and costs.<sup>121</sup> In *American Export Lines v. Norfolk Shipbuilding & Drydock Corp.*,<sup>122</sup> the Fourth Circuit held that the shipowner was entitled to indemnity for attorney's fees even where the shipowner had defeated the longshoreman's claim. In *Weyerhaeuser Steamship Co. v. Nacirema Operating Co.*,<sup>123</sup> however, the Supreme Court stated that indemnity would not be granted where the shipowner's active conduct had somehow hindered or interfered with the stevedore's operation, thereby con-

119. *Sanchez v. Lubeck Linie, A.G.*, 318 F. Supp. 821, 1971 A.M.C. 687 (S.D.N.Y. 1970).

120. Kurland, *The Supreme Court 1963 Term*, 78 Harv. L. Rev. 143, 191 (1964) (footnotes omitted). Professor Kurland concluded:

*Italia* [see note 118 supra] prompts inquiry as to how stevedoring companies may escape from this form of liability. Since federal maritime law governs the interpretation of the implied warranties, stevedores may not expect relief from state legislatures. However, federal law does not prohibit express disclaimers of strict liability and courts are bound to respect an express contractual disclaimer of any duty to indemnify in the absence of negligence. No public policy, such as the unequal bargaining power of the contracting parties, militates against such an arrangement between stevedore and shipowner. Such a disclaimer must be clear, however, for the Court's decision calls into question holdings that the recitation of a limited express warranty precludes the finding of an implied warranty. The decision suggests as well that the stipulation in the *Italia* contract imposing liability upon the shipowner for injuries caused "by reason of the failure of the ship's gear and/or equipment" might not be sufficient to bar indemnification.

*Id.* (footnotes omitted).

121. See *General Elec. Co. v. Mason & Dixon Lines, Inc.*, 186 F. Supp. 761 (W.D. Va. 1960); *Holley v. The Manfred Stansfield*, 186 F. Supp. 805, 811, 1960 A.M.C. 2307, 2316 (E.D. Va. 1960).

122. 336 F.2d 525, 1965 A.M.C. 167 (4th Cir. 1964).

123. 355 U.S. 563, 1958 A.M.C. 501 (1958).

#### 1186 TULANE LAW REVIEW [Vol. 55

stituting "conduct ... sufficient to preclude indemnity." 124

Several circuit courts resisted the expansion of the Ryan warranty in personal injury and death litigation. The Fifth Circuit, in *Lofff, and Brothers v. Roberts*,<sup>125</sup> refused to find as a fact that the Ryan warranty was an implied part of the relationship between an oil rig drilling operator and a casing contractor. In *Lofff* and a member of a casing/pipe crew sued the drilling operator who, in turn, sought indemnity from the casing contractor, the injured plaintiff's employer. The owner of the oil platform, however, not the drilling operator, had contracted with the casing contractor. The Fifth Circuit refused to expand the Ryan warranty, noting that the oil drilling platform involved was stipulated not to be a vessel, consequently the plaintiff was not a seaman, and no duty of seaworthiness was owed to him.<sup>126</sup> The factual pattern would not support an application of the Ryan doctrine. The court further concluded that the drilling operator was not a third-party beneficiary to the contract between the casing contractor and the owner of the oil platform because one independent contractor cannot be the beneficiary of a contract of another independent contractor.<sup>127</sup> Finally, the court emphasized that the plaintiff's own contributory negligence would not be imputed to his employer.<sup>128</sup>

## **THE 1972 AMENDMENTS TO THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT- Sieracki AND Ryan OVERRULED**

The 1972 amendments<sup>129</sup> to the Longshoremen's Act were the result of a three-party trade-off.<sup>130</sup> The shipowners wanted to eliminate the Sieracki warranty of seaworthiness owed to longshoremen. The stevedores/employers and their insurance

124. *Id.* at 567, 1958 A.M.C. at 505.

125. 386 F.2d 540, 1968 A.M.C. 1463 (5th Cir. 1967), cert. denied, 389 U.S. 1040 (1968).

126. 386 F.2d at 549, 1968 A.M.C. at 1473-74.

127. *Id.* See also *Davis v. Chas. Kurz & Co.*, 483 F.2d 184 (9th Cir. 1973) in which the Ninth Circuit refused to extend the Ryan warranty because of the absence of any corresponding duty owed to the plaintiff.

128. 386 F.2d at 549, 1968 A.M.C. at 1474-75.

129. Act of October 27, 1972, Pub. L. No. 92-576 §§ 1-22, 86 Stat. 1251 (amending 33 U.S.C. §§ 901-950 (1970)); see Gorman, *The Longshoremen's and Harbor Workers' Compensation Act-After the 1972 Amendments*, 6 J. of Mar. L. & Com. 1 (1974).

130. See *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 1979 A.M.C. 2319 (1979); *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 1977 A.M.C. 1037 (1977).

## **1981] INDEMNITY & CONTRIBUTION 1187**

carriers wanted to eliminate the Ryan warranty of workmanlike performance and restore their exclusive liability under the Longshoremen's Act.<sup>131</sup> The longshoremen/employees wanted expanded coverage and increased compensation and medical benefits. With respect to indemnity, a new section was added to the Longshoremen's Act designed to overrule the Sieracki and Ryan decisions. Section 905(b) states as follows:

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or any one otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel. The liability of the vessel under this

subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.<sup>132</sup>

The operative language with respect to indemnity and contribution rights is "and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void."<sup>133</sup> Although this language gives covered employers a partial immunity to indemnity or contribution claims, it is broad enough to cover claims of indemnity or contribution. The section applies, however, only to covered employers and, therefore, does not grant

131. Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 5, 44 Stat. 1426 (1927) (current version at 33 U.S.C. § 905(a) (1972)).

132. 33 U.S.C. § 905(b) (1972). This new language might have fit better as part of

§ 933 which has always dealt with third-party actions. 33 U.S.C. § 905(b) (1978) (emphasis added).

#### 1188 TULANE LAW REVIEW [Vol. 55

an immunity from indemnity or contribution to anyone other than those specified in the amendment. It should be emphasized that the statutory immunity granted by section 905(b) to covered employers is only partial and applies only when indemnity or contribution is sought by a "vessel."<sup>134</sup> Moreover, other than section 905(b), there is no statutory restraint on indemnity or contribution claims in maritime law.

The amendment's legislative history does not add much to an already clear statutory statement. The Committee reports clearly indicate that Congress coupled the problems of Ryan and Sieracki and tied the elimination of Ryan indemnity to the elimination of the Sieracki seaworthiness duty to longshoremen. The statutory elimination of any recovery against the covered employer by the vessel is clearly discussed:

The Committee also believes that the doctrine of the Ryan case, which permits the vessel to recover the damages for which it is liable to an injured worker where it can show that the stevedore breaches an express or implied warranty of workman like performance is no longer appropriate if the vessel's liability is no longer to be absolute, as it essentially is under the seaworthiness doctrine. Since the vessel's liability is to be based on its own negligence, and the vessel will no longer be liable under the seaworthiness doctrine for injuries which are really the fault of the stevedore, there is no longer any necessity for permitting the vessel to recover the damages for which it is liable to the injured worker from the stevedore or other employer of the worker.

Furthermore, unless such hold-harmless, indemnity or contribution agreements are prohibited as a matter of public policy, vessels by their superior economic strength could circumvent and nullify the provisions of Section 5 of the Act by requiring indemnification from a covered employer for employee injuries.

Accordingly, the bill expressly prohibits such recovery, whether based on an implied or express warranty. It is the Committee's intentions to prohibit such recovery under any theory including, without limitation, theories based on contract or tort.<sup>135</sup>

134. *Id.*

135. H.R. Rep. No. 1441, 92d Cong., 2d Sess. 4-8 (1972); S. Rep. No. 1125, 92d Cong., 2d Sess. 8-12 (1972).

## **1981] INDEMNITY & CONTRIBUTION 1189**

### **SIGNIFICANT JUDICIAL DECISIONS AFFECTING INDEMNITY AND CONTRIBUTION**

While the 1972 amendments had a dramatic impact upon maritime indemnity, the Supreme Court decisions in the 1970's portend an equally significant impact on indemnity and contribution under maritime law. The first of these decisions is a non-maritime case, *United States v. Seckinger*,<sup>136</sup> involving an express indemnity agreement<sup>137</sup> contained in a contract between the United States and a private contractor. In *Seckinger*, the Government was seeking indemnification from the private contractor for damages awarded to an injured employee who sued the Government under the Federal Tort Claims Act. The Court construed the clause to allow liability "promised on the basis of comparative negligence."<sup>138</sup> Thus, although the Government was denied full indemnity, it could seek indemnity for any damages which were the result of the contractor's negligence.

A second significant decision is *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*,<sup>139</sup> in which the Supreme Court distinguished its decision in *Halycon* and upheld the award of contribution between the joint tortfeasors. The Court stated that under maritime law contribution between tortfeasors in noncollision cases was recognized, except where one of the tortfeasors was immune from tort liability by statute. Thus, the Cooper Court reaffirmed *Halycon*, but stated that *Halycon* "stands for a more limited rule than the absolute bar against contribution in noncollision cases."<sup>140</sup> The Court did not decide whether such contribu-

136. 397 U.S. 203 (1970). For a discussion of the impact of this decision on maritime indemnity, see Acomb, *Maritime Indemnity: A Monograph*, 48 Tul. L Rev. 524 (1974). The language in the contract must establish an indemnity agreement. See, e.g., *Morris v. UHL & Lopez Eng'rs, Inc.*, 442 F.2d 1247 (10th Cir. 1971) (provision that contractor "shall take all reasonable precautions . . . to protect the health and safety of employees and of members of the public" held not to be an indemnity agreement). When the United States is sued under the Federal Tort Claims Act, state law applies if there is no express or implied contractual

obligation to indemnify, *United States v. Yellow Cab Co.*, 340 U.S. 543 (1951), but federal law applies if there is an express or implied contract between the United States and the indemnitor. See *United States v. Seckinger*, 397 U.S. 203 (1970).

137. The contract clause at issue provided that the private contractor "shall be responsible for all damages to persons or property as a result of his fault or negligence."

97 U.S. at 204.

138. *Id.* at 215.

139. 417 U.S. 106, 1974 A.M.C. 537 (1974).

140. *Id.* at 111, 1974 A.M.C. at 538.

#### 1190 TULANE LAW REVIEW [Vol. 55

tion should be pro rata or should be based on the comparative fault of the tortfeasors<sup>141</sup>. Because the comparative fault of the parties could not be further refined, the Cooper Court affirmed the district court's decision granting pro rata contribution.<sup>142</sup>

The most significant development in this area occurred in the 1975 landmark decision in *United States v. Reliable Transfer Co.*,<sup>143</sup> a standing<sup>144</sup> case in which the Supreme Court abandoned the divided damages rules for collision cases. The Court held that comparative negligence principles, generally accepted among other maritime nations, would apply henceforth to maritime collision cases. This indicates that contribution among tortfeasors under maritime law should be based upon comparative negligence principles rather than pro rata as is customary where contribution is permitted under state statute. Thus, these developments have significantly changed the indemnity and contribution situation in contemporary maritime law. Furthermore, in 1981 the Supreme Court, in *Scindia Steam Navigation v. Santos*<sup>145</sup> acknowledged the elimination of Ryan indemnity but also appeared to recognize the right of the vessel and the stevedore to allocate their responsibilities by contract. Absent contractual provisions or custom specifying the respective undertakings of the parties, the vessel is generally entitled to a workmanlike job from the stevedore.

#### Post-1972 INDEMNITY AND CONTRIBUTION

The effects of the latest developments are just beginning to become evident. Since 1976, the courts have rendered an increasing number of decisions interpreting the scope of section 906(b) immunity from indemnity and contribution and applying the rules of the Cooper and Reliable Transfer decisions. These cases have addressed only covered employers and vessel owners because section 906(b) immunity only extends to covered employers, and then only when a "vessel" seeks indemnity or con-

141. *Id.* at 108-09 n.3, 1974 A.M.C. at 539 n.3.

142. *Id.* at 108-09, 1974 A.M.C. at 539.

**143. 421 U.S. 397, 1975 A.M.C. 541 (1975).**

**144. "Stranding" means the "drifting, driving, or running aground of a ship on a shore or strand." Black's Law Dictionary 1590 (4th ed. 1968).**

**145. 101 S. Ct. 1614 (1981).**

#### **1981] INDEMNITY & CONTRIBUTION 1191**

**tribution.<sup>146</sup> While it is clear that covered employers are not liable to vessels for indemnity or contribution arising out of injury or death to one of their employees, the resultant liability is less clear when indemnity or contribution is sought from a covered employer by a "non-vessel" Several courts to date have been wrestling with the problem of interpreting section 905(b)'s applicability to these situations. For example, in *Oman v. JohnsManville Corp.*,<sup>147</sup> an asbestos manufacturer (a "non-vessel") sued by shipyard employees sought indemnity and contribution from the shipyard/employer. The court denied indemnity and contribution based on a perceived congressional intent to keep covered employers out of third-party litigation. Similarly, in *Spadola v. Viking Yacht Co.*,<sup>148</sup> the court for the Southern District of New York held that a covered employer was not liable for indemnity to a non-vessel. An injured employee of a shipper sued a stevedore which in turn impleaded the employer/shipper. The employee was attending the loading of a vessel when he was injured by the negligence of the stevedore. These decisions denying indemnity constitute an extension of section 906(b) immunity to covered employers for claims brought by non-vessels<sup>149</sup> Several courts have reached an opposite result, however, ruling that a covered employer can be held liable for indemnity to non-vessels.<sup>150</sup> In *Olsen v. Shell Oil Company*<sup>151</sup>, the Fifth Circuit**

**146. 33 U.S.C. § 905(b) (1978). Since 1946, vessel owners have been the most persistent party to press for reallocation of loss in maritime personal injury and death litigation.**

**147. 482 F. Supp. 1060 (E.D. Va. 1980).**

**148. 441 F. Supp. 798, 1978 A.M.C. 253 (S.D.N.Y. 1977).**

**149. See also *Kane v. Firestone Steel Proda. Co.*, 463 F. Supp. 473 (E.D. Pa. 1978) (covered employer was not liable for indemnity in a suit brought by a non-vessel); *IT Corp. v. Superior Court*, 83 Cal. App. 3d 443, 147 Cal Rptr. 828 (1978) (covered employer not liable for indemnity to a non-vessel).**

**150. In addition to the cases discussed in the text with respect to express agreements see *Nieves v. Douglas S.S., Ltd.*, 451 F. Supp. 407 (S.D.N.Y. 1978); *Myers v. J.A. McCarthy, Inc.*, 428 F. Supp. 656 (E.D. Pa. 1977); *S.S. Seatrain La. v. California Stevedore & Ballast Co.*, 424 F. Supp. 180 (N.D. Cal. 1976); *Crutchfield v. Atlas Offshore Boat Serv., Inc.*, 403 F. Supp. 920 (E.D. La. 1975); *Fitzgerald v. Compania Naviera La Molinera*, 1980 A.M.C. (Sup.Ct. N.Y. 1981); *Gibson v. Port of Seattle*, No. 8096-2-1 (Wash., filed Mar. 2, 1981). With respect to whether a non-vessel can recover indemnity from an employer in the absence of an express agreement:**

compare *Travis v. International Multifoods Corp.*, 464 F. Supp. 503 (W.D.N.Y. 1978) and *S.S. Seatrain La. v. California Stevedore & Ballast Co.*, 424 F. Supp. 180 (N.D. Cal. 1976) (denying recovery), with *Gould v. General Mills, Inc.*, 411 F. Supp. 1181 (W.D.N.Y. 1976) and *Cargill v. United States*, 1977 A.M.C. 50 (E.D. Va. 1976) and *Brkaric v. Star Iron & Steel Co.*, 409 F. Supp. 516 (E.D.N.Y. 1976) (generally approving recovery). There appears to be a

#### 1192 TULANE LAW REVIEW [Vol. 55

held that a covered employer who entered into an express indemnity agreement would be bound by the indemnity arrangement. In *Olsen*, the covered employer had contracted to indemnify the owner of a fixed oil drilling platform, which is not considered a "vessel" under the Longshoremen's Act. In *Holden v. Placid Oil Co.*,<sup>152</sup> the Eastern District of Louisiana stated that a covered employer could contract to indemnify a non-vessel and that such an indemnification by the covered employer could arise out of a sale contract for goods supplied to the indemnitee. The most interesting discussion of this situation to date is Judge Friendly's opinion in *Zapico v. Bucyrus-Erie Co.*<sup>153</sup> In that case, a longshoreman was injured when a crane being loaded on a ship ran free. The longshoreman sued the manufacturer of the crane, which in turn impleaded the employer/stevedore. The court held that there could be no indemnity because there was no express indemnity agreement and because there was no contractual relationship between the crane manufacturer and the employer/stevedore from which the court could imply an indemnity agreement. Judge Friendly maintained that only contract-based indemnity could avoid the exclusive liability provision of section 905(a)<sup>154</sup>.<sup>64</sup> He implied that if a contractual relationship could be established between the indemnitee and the covered employer, then the covered employer would be responsible under an implied indemnity theory.<sup>155</sup>

The *Olsen*, *Holden* and *Zapico* decisions demonstrate that section 905(b) immunity is partial. The decisions also demonstrate that where a contractual basis exists for finding an agreement to indemnify between a non-vessel and a covered employer, such immunity will not be extended to protect the covered employer. Judge Friendly's willingness to find implied indemnity agreements, however, seems unnecessary in view of the availability of contribution based on relative degrees of fault. Because section 905(b) is a limited immunity from indem-

trend against granting Ryan-type indemnity recovery to non-vessels against covered employers.

151. 595 F.2d 1099, 1980 A.M.C. 1217 (5th Cir. 1979).

152. 473 F. Supp. 1097, 1980 A.M.C. 273 (E.D. La. 1979).

153. 579 F.2d 714, 1978 A.M.C. 1629 (2d Cir. 1978). See also Annot., 47 A.L.R. Fed. 399 (1980).

154. 579 F.2d at 722, 1978 A.M.C. at 1640.

155. *Id.* at 722, 1978 A.M.C. at 1640.

## **1981] INDEMNITY & CONTRIBUTION 1193**

nity or contribution, a wide range of indemnity and contribution possibilities remain available to vessels. A number of cases decided since the 1972 amendments have granted indemnity or contribution to a vessel against a non-employing stevedore.<sup>156</sup> In *Rindone v. Arya National Shipping Co.*,<sup>157</sup> the Southern District of New York permitted an indemnity recovery by a ship-owner against a non-employing stevedore on the basis of a Ryan warranty of performance. In another case, *Doca v. Marina Mercante Nicaraguense*,<sup>158</sup> the Second Circuit affirmed a lower court's ninety/ten apportionment of fault in a suit by a ship-owner against a non-employing stevedore. The district court, doubting that Ryan indemnity survived where the stevedore was not the injured party's employer, had concluded:

[I]t is not at all clear that Ryan-type indemnity survives even where the stevedore is not the injured party's employer. Certainly there is reason to believe that Congress did not intend that the deliberate allocation of financial responsibilities established by the 1972 Amendments should be contingent upon such fortuities as the identity of the plaintiff's employer. Moreover, decisions in this Circuit have suggested that the ship-owner's right to Ryan type indemnity is compensation for and co-extensive with its absolute liability for shipboard safety under the seaworthiness doctrine.<sup>159</sup> In *Doca*, the Second Circuit affirmed the ninety/ten comparative fault contribution with little discussion. The court stated simply that the evidence of the omissions by both defendants justified the allocation as a proper reflection of the relative responsibilities of the two tortfeasors.<sup>160</sup> Shipowners' counsel will hardly lose sight of the many situa-

156. The legislative history implies that non-employing stevedore<sup>ti</sup> were not to receive immunity from a vessel's indemnity or contribution claim:

Since the vessel's liability [after the passage of the amendments] is to be based on its own negligence, and the vessel will no longer be liable under the seaworthiness doctrine for injuries which are really the fault of the stevedore, there is no longer any necessity for permitting the vessel to recover damages for which it is liable to the injured worker from the stevedore or other employer of the worker. H. R. Rep. No. 1441, 92d Cong., 2d Sess. 4-8 and S. Rep. No. 1125, 92d Cong., 2d Sess. 8-

12, reprinted in [1972] U.S. Code Cong. & Ad. News 4698, 4704 (emphasis added).

157. 1980 A.M.C. 196 (S.D.N.Y. 1979).

158. 684 F.2d 30 (2d Cir. 1980).

159. 474 F. Supp. 751, 756, 1980 A.M.C. 41, 47 (S.D.N.Y. 1979).

160. 684 F.2d at 34.

tions not affected by the Longshoremen's Act in which shipowners have been successful in obtaining indemnity. For example, shipowners have obtained indemnity from manufacturers of ships' equipment,<sup>161</sup> other vessels<sup>162</sup> a United States Public Health Service Hospital for negligence,<sup>163</sup> a violent seaman who injured another seaman in a fight,<sup>164</sup> and a tortfeasor for maintenance and cure necessitated by his wrongdoing.<sup>165</sup> A recent and interesting shipowner indemnity case is *Walsh v. Zusei Kaiun*,<sup>166</sup> in which the Ninth Circuit used comparative negligence principles in a maritime wrongful death action. In *Walsh*, a pilot drowned while attempting to board a vessel and the decedent's widow sued the vessel for failure to attempt a rescue. The shipowner impleaded the pilots' association. The court held that Ryan indemnity did not apply and found no agreement from which an implied warranty of workmanlike performance could be inferred<sup>167</sup>. The decedent's recovery was reduced by two-thirds, one-third for the decedent's contributory negligence and one-third for the negligence of the pilots' association..

Some miscellaneous situations deserve mention. In *Aparicio v. Swan Lake*,<sup>168</sup> the Fifth Circuit held that the principles governing the 1972 amendments do not apply to suits by employees covered by the Federal Employees Compensation Act.<sup>16</sup> The court held that a ship could still seek Ryan indemnity from the Panama Canal Commission, the employer of the injured employee. Suits against covered employers who are also vessel owners present an interesting situation. The leading decision on this point is *Griffith v. Wheeling-Pittsburgh Steel Corp.*,<sup>170</sup> in which

161. *Williams v. Brasea, Inc.*, 497 F.2d 67, 1976 A.M.C. 708 (5th Cir. 1974).

162. *Norris v. Great Lakes Towing*, 1979 A.M.C. 1080 (W.D.N.Y. 1979).

163. *Penn Tanker Co. v. United States*, 409 F.2d 514, 1969 A.M.C. 706 (5th Cir. 1969).

164. *Descendia v. American Export Ishandsten Line*, 1975 A.M.C. 1403 (S.D.N.Y. 1975).

165. *Jones v. Waterman S.S. Corp.*, 155 F.2d 992, 1946 A.M.C. 859 (3d Cir. 1946). *But Bee Federal No. 2*, 21 F.2d 318, 1927 A.M.C. 1471 (2d Cir. 1927); *Gilmore & Black*,

*supra* note 71, §§ 6-14 to -18.

166. 606 F.2d 259, 1980 A.M.C. 2788 (9th Cir. 1979). For a discussion of this case, see 5 Mar. Law. 81 (1980).

167. 606 F.2d at 263, 1980 A.M.C. at 2798-94.

168. 479 F. Supp. 1088 (D.C.Z. 1979), reversed, 643 F.2d 1109 (5th Cir. 1981).

169. 5 U.S.C.A. §§ 8101-8193 (1976).

170. 610 F.2d 116, 1980 A.M.C. 833 (3d Cir. 1979). This holding follows the precedent established in *Reed v. Steamship Yaka*, 373 U.S. 410, 1963 A.M.C. 1373 (1963).

## **1981] INDEMNITY & CONTRIBUTION 1195**

the Third Circuit interpreted section 905(b) as permitting a negligence suit by an employee against his covered employer for an injury which resulted from the covered employer's conduct and actions as a vessel owner. In *Griffith*, an employee had been assigned to load a barge and was injured during the course of the loading operation. He sued the owner of the barge for negligence and also sued his employer, Wheeling-Pittsburgh, alleging that it was the owner of the barge *pro hac vice*<sup>171</sup>. The Third Circuit articulated sensible principles to govern the allocation of loss among tortfeasors in light of the 1972 amendments, *Reliable Transfer*, and *Cooper*. The *Griffith* court rejected "equitable credit" in view of the Supreme Court's decision in *Edmonds v. Compagnie Generale Transatlantique*,<sup>172</sup> while emphasizing that rules of contribution and indemnity are dictated by federal maritime law, not state law. A restitution-based indemnity claim pressed by Wheeling-Pittsburgh Corp. was also rejected in *Griffith* where the court concluded that such a rule would exonerate a tortfeasor guilty of "passive" negligence from liability, a result inconsistent with the comparative fault doctrine expressed in *Reliable Transfer*.<sup>173</sup> Instead, the Third Circuit stated its preference for a rule of contribution based on comparative degrees of fault: "In *Griffith I*

. . . we suggested that the preferable approach would be to apply the comparative fault principles endorsed in *Reliable Transfer* to achieve an equitable apportionment of liability between the two alleged joint tortfeasors. The district court applied those principles here, and we affirm that application."<sup>174</sup>

## **SOME REFLECTIONS ON THE FUTURE OF INDEMNITY AND CONTRIBUTION UNDER MARITIME LAW;**

The future development of maritime indemnity and contribution could be enhanced and clarified through adoption of the following suggestions.

171. Meaning "for this term" or "for this one particular occasion." *Black's Law Dictionary* 1363 (4th ed. 1951). See *Leary v. United States*, 81 U.S. (14 Wall.) 607, 610 (1872).

172. 443 U.S. 256, 1979 A.M.C. 1167 (1979).

173. 610 F.2d at 129, 1980 A.M.C. at 851.

174. *Id.* at 130, 1980 A.M.C. at 851.

## **1196 TULANE LAW REVIEW [Vol. 55**

(1) Indemnity rights should be limited to situations where an express agreement so provides.

(2) Contribution should be based upon principles of comparative fault. If one party is 100% at fault, then 100% of the damages should fall on that party. Otherwise, loss should be based upon the relative degrees of fault. Two authors

on the subject, writing almost fifty years apart, have called for expansion of the right of contribution rather than "all-or-nothing" restitution indemnity. In 1932, Professor Leflar wrote:

The area within which the law grants indemnity between tortfeasors is not great. There seems to be no particular reason why it should be broadened. Indemnity between tortfeasors serves a good purpose when as between them substantially the whole of the fault was in the one against whom indemnity was given. Roughly, that is the area within which it is now permitted. As between others jointly liable for torts, it is submitted that contribution should be allowed. This result is admittedly inconsistent with the doctrine of contributory negligence and related rules; it causes the law to settle between litigants disputes arising out of their own misconduct. But the reasons given against adjudication of such disputes, at least as between joint tortfeasors, are of doubtful validity, and are completely offset by the social evils which accrue from refusal to adjudicate the disputes. The deciding factor, then, should be fairness as between the parties. That calls for the allowance of contribution.<sup>175</sup>

In 1978, Henry Woods of the Arkansas Bar wrote:

In the cases where negligence of one defendant is denominated as active and the other passive, or where the defendants are not in *pari delicto*, it is submitted that contribution and not indemnity should be the rule. This is particularly true in those comparative negligence jurisdictions where there is a proportionate assessment of fault among the defendants. "Depending on the circumstances, passive negligence may be more reprehensible than active negligence, and although parties are not in *pari delicto*, the one guilty of the lesser offense may be chargeable with conduct meriting judicial censure." The adoption of comparative negligence has already pointed the law in this direction. The Wisconsin cases are illustrative. Indemnity will not be granted to a joint tortfeasor guilty of ordinary negli-

175. Leflar, *supra* note 10, at 159.

#### 1981] INDEMNITY & CONTRIBUTION 1197

gence against one guilty of gross negligence or willful, wanton or intentional conduct. Contribution is the remedy and not indemnity where a defendant claimed indemnity based on the passive-active negligence concept. Contribution in this instance was properly based on proportionate degrees of negligence between the joint tortfeasors.<sup>176</sup>

(3) Implied indemnity agreements should only be found where there is clear evidence establishing an intention that the parties bargained for one party to bear the entire loss.

(4) In order to put the Ryan toothpaste back in the tube, as difficult as that may be, the rules of contribution and apportionment of damages should be given general application in maritime property damage cases. There is little doubt that

property damage claims based on tort will be subject to proportionate fault. The difficulty, largely conceptual, lies with contractual property damage claims that are in reality based upon negligence.

(5) The loss allocation scheme established by Congress in the Longshoremen's Act should be accepted because it provides certainty. Fairness is not the issue.<sup>177</sup> Commercial interests can work with almost any loss-allocation scheme that provides certainty,<sup>178</sup> and the Longshoremen's Act largely achieves that purpose.

176. H. Woods, *Comparative Fault* 238 (1978) (footnotes and citations omitted).

177. All three groups in the negotiations on the 1972 amendments could point to elements of unfairness in the statutory scheme. The claimants/longshoremen point to the difficult burden of proof they have in pressing third-party negligence claims against shipowners, at least as the law stands now in the majority of the circuits. See *Scindia Steam Navigation Co. v. De Los Santos*, 101 S. Ct. 1614 (1981), The claimants/longshoremen also complain of the unfairness inherent in the Court's *Bloomer v. Liberty Mut. Ins. Co.*, 445 U.S. 74 (1979), decision, whereby the stevedore's lien is taken in full from any third party recovery without contributing toward or being reduced on account of the claimants'/longshoreman's attorney's fee. The employers insurance carriers complain of the unfairness of the indexing provisions which escalate the benefits each year. The Longshoreman's Act is now a form of social insurance. The employers/insurance carriers also point to the unfairness of such provisions as having to pay death benefits to widows of longshoremen on permanent total disability who die of unrelated causes. The shipowners complain of the unfairness of the joint and several liability doctrine whereby a shipowner must respond in full for the damages of a claimant/longshoreman despite the fact that the stevedore/employer's negligence also contributed to the injury.

178. Certainty is a primary goal of the maritime law and a key objective of the commercial interests in the maritime and marine insurance industries. N. Healy & D. Sharpe, *Cases and Materials on Admiralty* 1 (1974). Shipowners agree to indemnify stevedores in England, South America and Australia. With the shipowners taking the full

1198 TULANE LAW REVIEW [Vol. 55

(6) Modifications of the statutory loss-allocation scheme in the Longshoremen's Act should be the province of Congress alone. As Judge Friendly stated in *Evans v. Transportacion Maritima Mexicana*<sup>179</sup> previous; judicial tinkering with the statutory schemes had not been fruitful.<sup>180</sup>

## CONCLUSION

The Longshoremen's Act has fixed the loss-allocation relationship between vessel owners and maritime employers with respect to personal injury and death claims

of maritime employees working on or around a vessel. Essentially, covered employers have a statutory immunity from indemnity or contribution claims by vessel owners. Aside from the changes embodied in the Act, maritime indemnity and contribution are more flexible today than they have been at any time in the last thirty years. An express indemnity agreement is the better and more certain risk of longshoremen's personal injury and death claims, the stevedore need not secure and pass on the premium charges for liability insurance because these risks are assumed by the shipowner. This has the advantage of preventing litigation or other disputes between the shipowner and the stevedore arising out of claims by longshoremen for personal injury and death. In other words, given a loss allocation and distribution scheme with certainty, the commercial interests adjust to it.

179. 639 F.2d 848 (2d Cir. 1981).

180. We recognize that the LHWCA has not been a generally fruitful area for judicial intervention, and we have no reason to believe that the subject matter of appellant's argument, complicated as it is by the overlap of Joss-allocating mechanisms that are guided by somewhat inconsistent principles ... would be an exception.

Id. at 863 (2d Cir. 1981). Judge Friendly concluded:

A solution preferable ... would be to allow the longshoreman to recover in full from the negligent third party but to allow the latter to recover from the negligent stevedore the amount of the judgment representing the stevedore's percentage of fault up to but not exceeding the statutory level of compensation payments. When compensation payments have been made, § 933, 33 U.S.C. § 933 would then operate as usual. Under this scheme the employee gets his full damages, the stevedore pays his percentage of the liability but not above the level of the compensation payment, which he has bargained for in exchange for his willingness to pay without fault, and the third party is relieved of the obligation to pay the full judgment.

[I]f the Supreme Court were convinced of the justice of this solution, I am not sure it could not find a legally defensible way to achieve it. Alternatively, and perhaps preferably, removal of the injustice should be the subject of remedial legislation by Congress.

Id. at 864 (citations and footnotes omitted). Judge Friendly's solution is similar to the court of appeals' version of contribution in *Halcyon. Baccile v. Halcyon Lines*, 187 F.2d 403 (3d Cir. 1951), rev'd 342 U.S. 282 (1952).

#### **1981] INDEMNITY & CONTRIBUTION 1199**

method by which the maritime industry can allocate risk and loss for personal injury and death claims. Where the parties have not expressly agreed on how to allocate the loss, the courts should apply contribution among tortfeasors based upon principles of comparative fault.

**46 U.S.C.A. § 12101**  
**Formerly cited as 46 App. USCA § 883**  
**§ 12101. Definitions**

**(1) Registry endorsement.--The terms “certificate of registry”, “register”, and “registry” mean a certificate of documentation with a registry endorsement issued under this chapter.**

**1 U.S.C.A. § 3**

**§ 3. “Vessel” as including all means of water transportation**

**The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.**

**19 U.S.C.A. § 1706**

**§ 1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise.**

**CREDIT(S)**

**(Aug. 5, 1935, c. 438, Title I, § 6, 49 Stat. 519.)**

**19 U.S.C.A. § 1706, 19 USCA § 1706**

**Current through P.L. 114-254. Also includes P.L. 114-256 to 114-277, and 114-284 to 114-286.**

**19 U.S.C.A. § 1706a**

Formerly cited as 46 App. USCA § 319

**§ 1706a. Civil penalties for trading without required certificate of documentation;**

Whenever a vessel, entitled to be documented and not so documented, is employed in a trade for which certificates of documentation are issued under the vessel documentation laws, other than a trade covered by a registry, the vessel is liable to a civil penalty of \$500 for each port at which it arrives without the proper certificate of documentation, and if it has on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, the vessel, together with its equipment and cargo, is liable to seizure and forfeiture. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evidence of the foreign origin of such merchandise.

**CREDIT(S)**

(June 19, 1886, c. 421, § 7, 24 Stat. 81; Aug. 5, 1935, c. 438, Title III, § 314, 49 Stat. 529; [Pub.L. 96-594, Title I, § 126\(e\)](#), Dec. 24, 1980, 94 Stat. 3459.)

**Notes of Decisions (5)** Effective: September 25, 2009

**46 C.F.R. § 67.15**

**§ 67.15 Form of document—all endorsements;**

(a) The form of document is a Certificate of Documentation, form CG-1270.

(b) Upon application in accordance with subpart K of this part and determination of qualification by the Director, National Vessel Documentation Center, a Certificate of Documentation may be issued with a registry, coastwise, fishery, or recreational endorsement.

(c) A Certificate of Documentation may bear simultaneous endorsements for recreation and more than one trade, including operation under 46 CFR part 68.

**Note:** Where a vessel possesses a Certificate of Documentation bearing more than one endorsement, the actual use of the vessel determines the endorsement under which it is operating.

**Credits**

[CGD 95-014, [60 FR 31604](#), June 15, 1995; USCG-1999-6216, [64 FR 53225](#), Oct. 1, 1999; USCG-2009-0702, [74 FR 49230](#), Sept. 25, 2009]

**SOURCE:** CGD 89-007, CGD 89-007a, [58 FR 60266](#), Nov. 15, 1993; CGD 94-008, [59 FR 49846](#), Sept. 30, 1994; CGD 94-040, [61 FR 17815](#), April 22, 1996; [68 FR 16953](#),

April 8, 2003; USCG–2001–8825, [69 FR 5399](#), Feb. 4, 2004; USCG–2004–18884, [69 FR 58346](#), Sept. 30, 2004, unless otherwise noted.

**AUTHORITY:** [14 U.S.C. 664](#); [31 U.S.C. 9701](#); [42 U.S.C. 9118](#); [46 U.S.C. 2103](#), [2107](#), [2110](#), [12106](#), [12120](#), [12122](#); [46 U.S.C. app. 841a](#), [876](#); Department of Homeland Security Delegation No. 0170.1.

### **[Notes of Decisions \(4\)](#)**

Current through January 5, 2017; 82 FR 1591.

#### **46 C.F.R. § 67.17**

**§ 67.17 Registry endorsement.**

**Effective: September 25, 2009**

- (a) **A registry endorsement entitles a vessel to employment in the foreign trade; trade with Guam, American Samoa, Wake, Midway, or Kingman Reef; and any other employment for which a coastwise or fishery endorsement is not required.**
- (b) **Any vessel eligible for documentation under [§ 67.5](#) is eligible for a registry endorsement.**
- (c) **A vessel otherwise eligible for a registry endorsement for which the Maritime Administration has not given approval for unrestricted transfer pursuant to 46 CFR part 221 loses that eligibility during any period in which it is mortgaged to a person not identified in [§ 67.233\(b\)](#).**

#### **Credits**

[USCG–2009–0702, [74 FR 49230](#), Sept. 25, 2009]

**SOURCE:** CGD 89–007, CGD 89–007a, [58 FR 60266](#), Nov. 15, 1993; CGD 94–008, [59 FR 49846](#), Sept. 30, 1994; CGD 94–040, [61 FR 17815](#), April 22, 1996; [68 FR 16953](#), April 8, 2003; USCG–2001–8825, [69 FR 5399](#), Feb. 4, 2004; USCG–2004–18884, [69 FR 58346](#), Sept. 30, 2004, unless otherwise noted.

**AUTHORITY:** [14 U.S.C. 664](#); [31 U.S.C. 9701](#); [42 U.S.C. 9118](#); [46 U.S.C. 2103](#), [2107](#), [2110](#), [12106](#), [12120](#), [12122](#); [46 U.S.C. app. 841a](#), [876](#); Department of Homeland Security Delegation No. 0170.1.

### **[Notes of Decisions \(2\)](#)**

Current through January 5, 2017; 82 FR 1591, with the exception of Titles 10 and 17.

**DEPOSITORS ARE UNSECURED CREDITORS;**

**Confiscating the customer deposits in Cyprus banks, it seems, was not a one-off, desperate idea of a few eurozone troika officials scrambling to salvage their balance sheets. A joint paper by the U.S. Federal Deposit Insurance Corporation (FDIC) and the Bank of England dated December 10, 2012, shows that these plans have been long in the making; that they originated with the G20 Financial Stability Board in Basel, Switzerland (discussed earlier here); and that the result will be to deliver clear title to the banks of depositor funds. New Zealand has a similar directive, discussed earlier here.**

**Few depositors realize that legally, the bank owns the depositor's funds as soon as they are put in the bank. Our money becomes the bank's, and we become unsecured creditors holding IOUs. (See here and here.) But until now, the bank has been obligated to pay the money back as cash on demand. Under the FDIC-BOE plan, our IOUs will be converted into "bank equity." The bank will get the money and we will get stock in the bank. With any luck we may be able to sell the stock to someone else, but when and at what price? Most people keep a deposit account so they can have ready cash to pay the bills.**

### **Reading the Fine Print**

**The 15-page FDIC-BOE document is called "Resolving Globally Active, Systemically Important, Financial Institutions." It begins by explaining that since the 2008 banking crisis, it has become clear that some other way besides taxpayer bailouts are needed to maintain "financial stability." Evidently anticipating that the next financial collapse will be on a grander scale than either the taxpayers or Congress is willing to underwrite, the authors present this alternative:**

**An efficient path for returning the sound operations of the G-SIFI to the private sector would be provided by exchanging or converting a sufficient amount of the unsecured debt from the original creditors of the failed company [meaning the depositors] into equity [or stock]. In the U.S., the new equity would become capital in one or more newly formed operating entities. In the U.K., the same approach could be used, or the equity could be used to recapitalize the failing financial company itself—thus, the highest layer of surviving bailed-in creditors would become the owners of the resolved firm. In either country, the new equity holders would take on the corresponding risk of being shareholders in a financial institution. [Emphasis added.]**

**No exception is indicated for "insured deposits" in the U.S., meaning those under \$250,000, the deposits we thought were protected by FDIC insurance. This can hardly be an oversight, since it is the FDIC that is issuing the directive. The FDIC is an insurance company funded by premiums paid by private banks. The directive is called a "resolution process," defined elsewhere as a plan that "would be**

**triggered in the event of the failure of an insurer and would facilitate [the failed bank's] resolution in a controlled manner, avoiding systemic disruption and use of public funds.” The only mention of “insured deposits” is in connection with existing UK legislation, which the FDIC-BOE directive goes on to say is inadequate, implying that it needs to be modified or overridden.**

### **An Imminent Risk**

**If our IOUs are converted to bank stock, they will no longer be subject to insurance protection but will be “at risk” and vulnerable to being wiped out, just as the Lehman Brothers shareholders were in 2008. That this dire scenario could actually materialize was underscored by Yves Smith in a March 19 post titled When You Weren’t Looking, Democrat Bank Stooges Launch Bills to Permit Bailouts, Deregulate Derivatives. She writes:**

**In the U.S., depositors have actually been put in a worse position than Cyprus deposit-holders, at least if they are at the big banks that play in the derivatives casino. The regulators have turned a blind eye as banks use their depositaries to fund derivatives exposures. And as bad as that is, the depositors, unlike their Cypriot confreres, aren’t even senior creditors. Remember Lehman? When the investment bank failed, unsecured creditors (and remember, depositors are unsecured creditors) got eight cents on the dollar. One big reason was that derivatives counterparties require collateral for any exposures, meaning they are secured creditors. The 2005 bankruptcy reforms made derivatives counterparties senior to unsecured lenders. [Emphasis added.]**

**One might wonder why the posting of collateral by a derivative counterparty, at some percentage of full exposure, makes the creditor “secured,” while the depositor who posted collateral at 100 cents on the dollar is “unsecured.” But moving on — Smith writes:**

**Lehman had only two itty bitty banking subsidiaries, and to my knowledge, was not gathering retail deposits. But as readers may recall, Bank of America moved most of its derivatives from its Merrill Lynch operation [to] its depositary in late 2011.**

**Its “depositary” is the arm of the bank that takes deposits. At B of A, that means lots and lots of deposits. The deposits are now subject to being wiped out by a major derivatives loss. How bad could that be? Smith quotes Bloomberg:**

**... Bank of America’s holding company... held almost \$75 trillion of derivatives at the end of June...**

**That compares with JPMorgan's deposit-taking entity, JPMorgan Chase Bank NA, which contained 99 percent of the New York-based firm's \$79 trillion of notional derivatives, the OCC data show.**

**\$75 trillion and \$79 trillion in derivatives! These two mega-banks alone hold more in derivatives each than the entire global GDP (at \$70 trillion).**

**Smith goes on:**

**... Remember the effect of the 2005 bankruptcy law revisions: derivatives counterparties are first in line, they get to grab assets first and leave everyone else to scramble for crumbs... Lehman failed over a weekend after JP Morgan grabbed collateral.**

**But it's even worse than that. During the Savings & Loan crisis, the FDIC did not have enough in deposit insurance receipts to pay for the Resolution Trust Corporation wind-down vehicle. It had to get more funding from Congress. This move paves the way for another TARP-style shakedown of taxpayers, this time to save depositors.**

**Perhaps, but Congress has already been burned and is liable to balk a second time. Hence the need for the FDIC-BOE resolution. When it is implemented, the FDIC will no longer need to protect depositor funds; it can just confiscate them.**

**Note that an FDIC confiscation of deposits to recapitalize the banks is far different from a simple tax on taxpayers to pay government expenses. The government's debt is at least arguably the people's debt, since the government is there to provide services for the people. But when the banks get into trouble with their derivative schemes, they are not serving depositors, who are not getting a cut of the profits; and by no stretch of the imagination are the depositors liable for the losses. Taking depositor funds is simply theft. What should be done is to raise FDIC insurance premiums and make the banks pay to keep their depositors whole, but premiums are already high. The FDIC is a government agency, but like other regulatory agencies it is subject to regulatory capture. Deposit insurance has failed, and so has the private banking system that has depended on it for the trust that makes banking work.**

**Note too that imposing losses on depositors is not a "wealth tax" but is a tax on the poor, since wealthy people don't keep most of their money in bank accounts. They keep it in the stock market, in real estate, in over-the-counter derivatives, in gold and silver, and so forth.**

**Are you safe, then, if your money is in gold and silver? Apparently not — if it's stored in a safety deposit box in the bank. Homeland Security has reportedly told banks that it has authority to seize the contents of safety deposit boxes without a warrant when it's a matter of "national security," which a major bank crisis no doubt will be.**

### **The Swedish Alternative: Nationalize the Banks**

**Another alternative was considered by President Obama in 2009 but was rejected: nationalize failed banks. In a February 2009 article titled "Are Uninsured Bank Depositors in Danger?," Felix Salmon discussed a newsletter by Asia-based investment strategist Christopher Wood, in which Wood wrote:**

**It is... amazing that Obama does not understand the political appeal of the nationalization option... [D]espite this latest setback nationalization of the banks is coming sooner or later because the realities of the situation will demand it. The result will be shareholders wiped out and bondholders forced to take debt-for-equity swaps, if not hopefully depositors.**

**On whether depositors could be forced to become equity holders, Salmon commented:**

**It's worth remembering that depositors are unsecured creditors of any bank; usually, indeed, they're by far the largest class of unsecured creditors.**

**President Obama acknowledged that bank nationalization had worked in Sweden, and that the course pursued by the U.S. Fed had not worked in Japan, which wound up instead in a "lost decade." But Obama opted for the Japanese approach because, according to Ed Harrison, "Americans will not tolerate nationalization."**

**That was four years ago. When Americans realize that the alternative is to have their ready cash transformed into "bank stock" of questionable marketability, moving failed mega-banks into the public sector may start to have more appeal.**

**Follow Ellen Brown on Twitter: [www.twitter.com/ellenhbrown](http://www.twitter.com/ellenhbrown)**

***Buried on page 83 of the 89-page Report on Financial Regulatory Reform issued by the U.S. Administration on June 17 is a recommendation that the new Financial Stability Board strengthen and institutionalize its mandate to promote global financial stability. Financial stability is a worthy goal, but the devil is in the details. The new global Big Brother is based in the Bank for International Settlements, a controversial institution that raises red flags among the wary . . . .***

**“Big Brother” is the term used by George Orwell in his classic novel *1984* for the totalitarian state that would lock into place in the year of his title. Why he chose that particular year is unclear, but one theory is that he was echoing Jack London’s *The Iron Heel*, which chronicled the rise of an oligarchic tyranny in the United States. In London’s book, the oligarchy’s fictional wonder-city, fueled by oppressed workers, was to be completed by 1984. Orwell also echoed London’s imagery when he described the future under Big Brother as “a boot stamping on a human face – forever.” In *Secret Records Revealed: The Men, the Money, and the Methods Behind the New World Order* (1999), Dr. Dennis Cuddy asked:**

**“Could the ‘boot’ be the new eighteen-story Bank for International Settlements (BIS) which was completed in Basel, Switzerland, in 1977 in the shape of a boot, and became known as the ‘Tower of Basel’?”**

**The boot-like shape of the building is strange enough to be thought-provoking (see photo), but more disturbing is the description by Dr. Carroll Quigley of the pivotal role assigned to the BIS in consolidating financial power into a few private hands. Professor Quigley, who was Bill Clinton’s mentor at Georgetown University, claimed to be an insider and evidently knew his subject. He wrote in *Tragedy and Hope* (1966):**

**“[T]he powers of financial capitalism had another far-reaching aim, nothing less than to create a world system of financial control in private hands able to dominate the political system of each country and the economy of the world as a whole. This system was to be controlled in a feudalist fashion by the central banks of the world acting in concert, by secret agreements arrived at in frequent private meetings and conferences. *The apex of the system was to be the Bank for International Settlements in Basel, Switzerland, a private bank owned and controlled by the world’s central banks which were themselves private corporations.*”**

**That helps explain the alarm bells that went off among BIS-watchers when the Bank was linked to the new Financial Stability Board (FSB) President Obama signed onto in April. When the G20 leaders met in London on April 2, 2009, they agreed to expand the powers of the old Financial Stability Forum (FSF) into this new Board. The FSF was set up in 1999 to serve in a merely advisory capacity by the G7 (a group of finance ministers formed from the seven major industrialized nations). The chair of the FSF was the [General Manager of the BIS](#). The new FSB has been expanded to include all **G20** members (19 nations plus the EU). The G20, formally called the “Group of Twenty Finance Ministers and Central Bank Governors,” was, like the G7, originally set up as a forum merely for cooperation and consultation on matters pertaining to the international financial system. But its new Financial Stability Board has real teeth, imposing “obligations” and “commitments” on its members.**

## The Shadowy Financial Stability Board

The [Report on Financial Regulatory Reform](#) issued by the Obama Administration on June 17 includes a recommendation that the FSB “strengthen” and “institutionalize” its mandate. What is the FSB’s mandate, what are its expanded powers, and who is in charge? An article in [The London Guardian](#) addresses those issues in question and answer format:

**“Who runs the regulator? The Financial Stability Forum is chaired by Mario Draghi, governor of the Bank of Italy. The secretariat is based at the Bank for International Settlements’ headquarters in Basel, Switzerland.”**

[Draghi](#) was director general of the Italian treasury from 1991 to 2001, where he was responsible for widespread privatization (sell-off of government holdings to private investors). From January 2002 to January 2006, however, he was a partner at Goldman Sachs on Wall Street, another controversial player. As already noted, “basing” the FSB at the BIS is not a comforting sign, considering the dark and controversial history of the BIS. Dr. Cuddy, writing in 1999, quoted media sources describing the BIS and its behind-the-scenes leaders as “this economic cabal . . . this secretive group . . . the financial barons who control the world’s supply of money” (Washington Post, June 28, 1998); “some of the world’s most powerful and least visible men . . . officials able to shift billions of dollars and alter the course of economies at the stroke of a pen” (New York Times, August 5, 1995); men who can “move huge amounts of money into and out of markets in a nanosecond” and “topple politicians with the click of a mouse” (ABC’s “Nightline,” July 1, 1998).

**“What will the new regulator do? The regulator will monitor potential risks to the economy . . . It will cooperate with the IMF, the Washington-based body that monitors countries’ financial health, lending funds if needed. . . .”**

The IMF is an international banking organization that is also controversial. [Joseph Stiglitz](#), former chief economist for the World Bank, charges it with ensnaring Third World countries in a debt trap from which they cannot escape. Debtors unable to pay are bound by “conditionalities” that include a forced sell-off of national assets to private investors in order to service their loans.

**“What will the regulator oversee? All ‘systemically important’ financial institutions, instruments and markets.”**

The term “systemically important” is not defined. Will it include such systemically important institutions as national treasuries, and such systemically important markets as gold, oil and food?

**“How will it work? The body will establish a supervisory college to monitor each of the largest international financial services firms. . . . It will act as a clearing house for information-sharing and contingency planning for the benefit of its members.”**

**In some contexts, information-sharing is called illegal collusion. Would the information-sharing here include such things as secret agreements among central banks to buy or sell particular currencies, with the concomitant power to support or collapse targeted local economies? Consider the short-selling of the [Mexican peso](#) by collusive action in 1995, the short-selling of Southeast Asian currencies in 1998, and the [collusion among central banks](#) to support the U.S. dollar in July of last year – good for the dollar and the big players with inside information perhaps, but not so good for the small investors who reasonably bet on “market forces,” bought gold or foreign currencies, and lost their shirts.**

**“What will the new regulator do about debt and loans? To prevent another debt bubble, the new body will recommend financial companies maintain provisions against credit losses and may impose constraints on borrowing.”**

**What sort of constraints? The Basel Accords imposed by the BIS have not generally worked out well. The first Basel Accord, issued in 1998, was blamed for inducing a [depression in Japan](#) from which that country has yet to recover; and the Second Basel Accord and its associated mark-to-market rule have been blamed for bringing on the current credit crisis, from which the U.S. and the world have yet to recover. These charges have been explored at length [elsewhere](#). The suspicious might see these failures as intentional. The warnings come to mind of Congressman Louis MacFadden, head of the House Banking and Currency Committee during the Great Depression: “It was a carefully contrived occurrence. International bankers sought to bring about a condition of despair, so that they might emerge the rulers of us all.” [David Rockefeller](#), a key player in international finance, echoed this thinking in 1994, when he said at a UN dinner, “We are on the verge of a global transformation. All we need is the right major crisis and the nations will accept the New World Order.”**

## **The Amorphous 12 International Standards and Codes**

**Most troubling, perhaps, is this vague parenthetical reference in a [press release](#) issued by the BIS, titled “Financial Stability Forum Re-established as the Financial Stability Board”:**

***“As obligations of membership, member countries and territories commit to . . . implement international financial standards (including the 12 key International Standards and Codes) . . . .”***

**This is not just friendly advice from an advisory board. It is a *commitment* to comply, so you would expect some detailed discussion concerning what those standards entail. However, a search of the major media reveals virtually nothing. The 12 key International Standards and Codes are left undefined and undiscussed. The FSB website lists them, but it is vague. The Standards and Codes cover broad areas that are apparently subject to modification as the overseeing committees see fit. They include:**

- **Money and financial policy transparency**
- **Fiscal policy transparency**
- **Data dissemination**
- **Insolvency**
- **Corporate governance**
- **Accounting**
- **Auditing**
- **Payment and settlement**
- **Market integrity**
- **Banking supervision**
- **Securities regulation**
- **Insurance supervision**

**Take “fiscal policy transparency” as an example. The “Code of Good Practices on Fiscal Transparency” was adopted by the IMF Interim Committee in 1998. The “synoptic description” says:**

**“The code contains transparency requirements to provide assurances to the public and to capital markets that a sufficiently complete picture of the structure and finances of government is available so as to allow the soundness of fiscal policy to be reliably assessed.”**

**We learn that members are required to provide a “picture of the structure and finances of government” that is complete enough for an assessment of its “soundness” -- but an assessment by whom, and what if a government fails the test? Is an unelected private committee based in the BIS allowed to evaluate the “structure and function” of particular national governments and, if they are determined to have fiscal policies that are not “sound,” to impose “conditionalities” and “austerity measures” of the sort that the IMF is notorious for imposing on Third World countries? The wary might wonder if that is how the mighty United States is to be brought under the heel of Big Brother at last.**

**For three centuries, private international banking interests have brought governments in line by blocking them from issuing their own currencies and requiring them to borrow banker-issued “banknotes” instead. “Allow me to issue and control a nation’s currency,” Mayer Amschel Bauer Rothschild famously said in 1791, “and I care not**

who makes its laws.” The real rebellion of the American colonists in 1776, according to Benjamin Franklin, was against a foreign master who forbade the colonists from issuing their own money and required that taxes be paid in gold. The colonists, not having gold, had to borrow gold-backed banknotes from the British bankers. The catch was that the notes were created on the “fractional reserve” system, allowing the bankers to issue up to ten times as many notes as they actually had gold, essentially creating them out of thin air just as the colonists were doing. The result was not only to lock the colonists into debt to foreign bankers but to propel the nation into a crippling depression. The colonists finally rebelled and reverted to issuing their own currency. Funding a revolution against a major world power with money they printed themselves, they succeeded in defeating their oppressors and winning their independence.

Political colonialism is now a thing of the past, but under the new FSB guidelines, nations can still be held in feudalistic subservience to foreign masters. Consider this scenario: XYZ country, which has been getting along very well financially, discloses that its national currency is being printed by the government directly. The FSB determines that this practice represents an impermissible “merging of the public and private sectors” and is an unsound banking practice forbidden under the “12 Key International Standards and Codes.” Banker-created national currency is declared to be the standard “good practice” all governments must follow. XYZ is compelled to abandon the “anachronistic” notion that creating its own national currency is a proper “function of government.” It must now borrow from the international bankers, trapping it in the bankers’ compound-interest debt web.

Consider another scenario: Like in the American colonies, the new FSB rules precipitate a global depression the likes of which have never before been seen. XYZ country wakes up to the fact that all of this is unnecessary – that [it could be creating its own money](#), freeing itself from the debt trap, rather than borrowing from bankers who create money on computer screens and charge interest for the privilege of borrowing it. But this realization comes too late: the boot descends and XYZ is crushed into line. National sovereignty has been abdicated to a private committee, with no say by the voters.

## Was Orwell Just 25 Years Too Early?

Suspicious observers might say that this is how you pull off a private global dictatorship: (1) create a global crisis; (2) appoint an “advisory body” to retain and maintain “stability”; and then (3) “formalize” the advisory body as global regulator. By the time the people wake up to what has happened, it’s too late. Marilyn Barnewall, who was dubbed by *Forbes Magazine* the “dean of American private banking,” writes in an April 2009 article titled [“What Happened to American Sovereignty at G-20?”](#):

“It seems the world’s bankers have executed a bloodless coup and now represent all of the people in the world. . . . President Obama

**agreed at the G20 meeting in London to create an international board with authority to intervene in U.S. corporations by dictating executive compensation and approving or disapproving business management decisions. Under the new Financial Stability Board, the United States has only one vote. In other words, the group will be largely controlled by European central bankers. My guess is, they will represent themselves, not you and not me and certainly not America.”**

**A bloodless coup . . . Again one is reminded of the admissions of David Rockefeller, who wrote in his Memoirs (Random House 2002):**

**“Some even believe we are part of a secret cabal working against the best interests of the United States, characterizing my family and me as ‘internationalists’ and of conspiring with others around the world to build a more integrated global political and economic structure – one world, if you will. If that’s the charge, I stand guilty, and I am proud of it.”**

### **The Commitments Mandated by the Financial Stability Board Constitute a Commercial Treaty Requiring a 2/3 Vote of the Senate.**

**Adoption of the FSB was never voted on by the public, either individually or through their legislators. The G20 Summit has been called “a New Bretton Woods,” referring to agreements entered into in 1944 establishing new rules for international trade. But Bretton Woods was put in place by Congressional Executive Agreement, requiring a majority vote of the legislature; and it more properly should have been done by treaty, requiring a two-thirds vote of the Senate, since it was an international agreement binding on the nation. The same should be mandated before imposing the will of the BIS-based Financial Stability Board on the U.S., its banks and its businesses. Here is a quick review of the [law](#):**

**Article II, Section 2 of the United States Constitution grants power to the President to make treaties only with the “advice and consent” of two-thirds of the Senate. The Constitution does not expressly provide for any alternative to the Article II treaty procedure. However, historically the President has also made international “agreements” through congressional-executive agreements that are ratified with only a majority from both houses of Congress, or sole-executive agreements made by the President alone. A congressional-executive agreement can cover only those matters which the Constitution explicitly places within the powers of Congress and the President; while a sole-executive agreement can cover only those matters within the President’s authority or matters in which Congress has delegated authority to the President. A sole-executive agreement can be negotiated and entered into only through the President’s authority (1) in foreign policy, (2) as commander-in-chief of the armed forces, (3) from a prior act of Congress, or (4) from a prior treaty. Agreements**

beyond these competencies must have the approval of Congress (for congressional-executive agreements) or the Senate (for treaties). *If an international commercial accord contains binding “treaty” commitments, then a two-thirds vote of the Senate may be required.*

Even with a two-thirds Senate vote, before Congress gives its approval it should draft legislation ensuring that the checks and balances imposed by our Constitution are built into the agreement. This could be done by implementing a legislative counterpart to the FSB with full oversight and corrective powers. The legislatures of the member nations could be required to elect a representative body to provide oversight and take corrective measures as needed, with that body’s representatives answerable to their national electorates.

Orwell’s *1984* made the news again in April 2009, when Queen Elizabeth chose the book as her ceremonial gift for visiting President Felipe Calderon of Mexico. Calderon, who crushed riots with boot-like severity after he was accused of vote-rigging to steal the election from his populist opponent, was said to be an admirer of Orwell’s work. The event provoked suspicions that *1984* had been covertly chosen by a modern-day financial oligarchy as the inspirational [model](#) for implementing Big Brother globally. The book ends with the protagonist Winston tortured and brainwashed into accepting the party line. We need to act quickly and decisively to ensure that its historical counterpart has a happier ending.

*Posted on GlobalResearch.Ca June 23, 2009.*

---

Ellen Brown developed her research skills as an attorney practicing civil litigation in Los Angeles. In [Web of Debt](#), her latest book, she turns those skills to an analysis of the Federal Reserve and “the money trust.” She shows how this private cartel has usurped the power to create money from the people themselves, and how we the people can get it back. Her earlier books focused on the pharmaceutical cartel that gets its power from “the money trust.” Her eleven books include [Forbidden Medicine](#), [Nature’s Pharmacy](#) (co-authored with Dr. Lynne Walker), and [The Key to Ultimate Health](#) (co-authored with Dr. Richard Hansen). Her websites are [www.webofdebt.com](http://www.webofdebt.com) and [www.ellenbrown.com](http://www.ellenbrown.com).