NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOWLETT *v.* BIRKDALE SHIPPING CO., S. A.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 93–670. Argued April 20, 1994—Decided June 13, 1994

Petitioner Howlett, a longshoreman employed by stevedore Northern Shipping Co., was injured when he slipped and fell on a sheet of clear plastic that had been placed under bags he was discharging from a cargo hold on a ship owned and operated by respondent Birkdale Shipping Co. He filed suit against Birkdale under §5(b) of the Longshore and Harbor Workers' Compensation Act, which requires shipowners to exercise ordinary care to maintain a ship and its equipment in a condition so that an expert and experienced stevedore can load and unload cargo with reasonable safety. As a corollary to this ``turnover duty,'' a shipowner must warn the stevedore of latent hazards that are known or should be known to the shipowner. Here, the evidence showed that the vessel had supplied the plastic to the loading stevedore in Guayaquil, Ecuador, and that that stevedore had placed it under the bags, even though this was improper. Howlett charged that Birkdale was negligent in failing to warn Northern and its employees of this dangerous condition. The District Court granted Birkdale summary judgment, finding that Howlett had not demonstrated that Birkdale had actual knowledge of the hazardous condition, and that the condition was not open and obvious. It declined to infer such knowledge from the fact that the vessel had supplied the Guayaquil stevedore with the plastic or that the vessel's crew was present during the loading operation. Even if the plastic's improper use was apparent to the crew in Guayaquil, the court added, then it was also an open and obvious condition for which Howlett could not recover. The Court of Appeals affirmed.

Held:

1. A vessel's turnover duty to warn of latent defects in the

cargo stow is narrow. As a general rule, the duty to warn attaches only to hazards that are not known to the stevedore and that would be neither obvious to nor anticipated by a skilled stevedore in the competent performance of its work. *Scindia Steam Navigation Co.* v. *De los Santos,* 541 U. S. 156, 167. Subjecting vessels to suit for injuries that could be so anticipated would upset the balance Congress was careful to strike when it amended the Act in 1972 to shift more of the responsibility for compensating injured longshoremen to stevedores, who are best able to avoid accidents during cargo operations. In addition, absent a vessel's actual knowledge of a hazard, the turnover duty attaches only if the exercise of reasonable care would place upon the vessel an obligation to inspect for or discover the hazard's existence. Contrary to Howlett's submission, however, the exercise of reasonable care does not require a vessel to supervise the ongoing operations of the loading stevedore or other stevedores handling the cargo before it arrives in port, or to inspect the completed stow, to discover hazards in the cargo stow. Pp. 3–13.

Syllabus

2. The District Court erred in resting summary judgment on the ground that the vessel had no actual knowledge of the hazard leading to Howlett's injury. Some crew members, who might have held positions such that their knowledge should be attributed to the vessel, might have observed the plastic being placed under the bags during the loading process. The court's additional theory that the condition would have been open and obvious to the stevedore during unloading had it been obvious to the crew may also prove faulty, being premised on the vessel's state of affairs during loading, not discharge. Of course, the vessel may be entitled to summary judgment, since there is evidence that the plastic was visible during unloading, and since Howlett must demonstrate that the alleged hazard would not have been obvious to, or anticipated by, a skilled and competent stevedore at the discharge port. Pp. 13–14.

998 F. 2d 1003, vacated and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.