

### C.K. Greenwood v. Societe Francis De, 111 F.3d 1239 (5th Cir. 1997) (Decided April 28, 1997)

Edward Stueck, Class of 1999

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Craddock for PMSA's lost cargo. The Court of Appeals held "each assured would have liability coverage for the loss of another's cargo, including another insured, but would not have coverage for the loss of its own cargo."

The Court of Appeals also had to decide what amount of damages Craddock was entitled to receive from Wilson, who had negligently canceled his P&I policy. Under the canceled policy Craddock was entitled to receive \$250 per package, or in case of goods not shipped in packages, per customary freight unit. The district court found the fish meal processing plant was not shipped in packages, which was not disputed upon appeal. Therefore, the computation of damages centered upon the parties' meaning of customary freight unit. 'Customary freight unit' is a term of art found in the Carriage of Goods by Sea Act (COGSA) §§ 1 et seq., 1(c), 46 U.S.C.A. §§ 1300 et seq., 1301 (c). In *General Motors Corp. v. Moore-McCormack Lines*, 451 F.2d 24, 25 (2d Cir. 1971), the court held that the customary freight unit represents not the shipping unit, but the unit of cargo "customarily used as the basis for the calculation of the freight rate to be charged." Thus, the court herein held that in order to ascertain the meaning of the customary freight unit in the shipping contract, it must look to the intentions of the parties as evidenced in the bills of lading, applicable tariffs, and the freight rates charged.

Wilson argued that the freight rate that Craddock charged PMSA was based upon the transportation of the entire plant as one unit under a flat rate. Therefore, the plant itself was the customary freight unit. Craddock and PMSA argued that the freight rate was based upon 4% of the plant's value, therefore, making the customary freight unit the U.S. dollar. The court examined the bills of lading under which the plant was shipped and noted each bill listed various parts of the plant. However, the bills consistently stated a lump sum freight charge and were not computed on a percentage of the value of the plant shipped. As a result, the court held that the entire plant was the customary freight unit and that Wilson's liability to Craddock was limited to \$250 for the entire \$1.7 million dollar plant.

William J. Foley, Class of 1999

## **VESSEL OWNERS, STEVEDORES AND LONGSHOREMEN MUST BEWARE OF DEFECTS SURROUNDING THE WORK ZONE**

**When a vessel owner provides equipment for use by longshoremen, obvious defects must be reported and be of sufficient cause to cease operations. Otherwise, continued use by longshoremen will result in release of vessel owner liability for the existing defects.**

*C.K. Greenwood, v. Societe Francis De*, 111 F.3d 1239 (5th Cir. 1997)  
(Decided April 28, 1997)

On April 1, 1986, Societe Francaise De and Indian Ocean Boat Carriers, defendants and shipowners of the M/V PENAVAL, turned their vessel over to a stevedore whose responsibility it was to employ longshoremen to unload the vessel. The operation of unloading the vessel, which

occurred over a three day period, was carried out with no input from the ship's crew. On the first day of unloading, a crane operated by one of the longshoremen, malfunctioned due to an obvious problem with the crane's slewing brake. The malfunction in the crane resulted in its moving too far in a horizontal direction, causing one of the cargo hooks to strike a longshoreman in the face. No report of this injury was made to the vessel owner and the longshoremen continued to use the crane. Later in the day the same crane developed a problem with the boom brake, which controls vertical movement. Once this problem was discovered, the crew shut down the crane for repairs. After the repairs were made, the crew used the crane throughout the duration of the unloading process. Soon after, this action was brought by the longshoreman to recover damages from the vessel owner.

The United States District Court for the Southern District of Texas entered judgment for the longshoreman. On appeal, however, the decision was reversed. The Court of Appeals considered the issue of when it should become obvious to a shipowner that a stevedore's judgment, based on its specialized knowledge, is obviously improvident or dangerous. The court considered the fact that even though the shipowner knew of the defect, it was also obvious to the stevedore, who allowed the crane to be used, as well as to the longshoremen.

The court herein applied §5(b) of the Longshore and Harbor Workers' Compensation Act which states, "the primary responsibility for the safety of the longshoremen rests upon the stevedore." However, vessel owner liability may still arise in three instances:

- 1) if the vessel owner fails to warn on turning over the ship of hidden defects of which he should have known.
- 2) for injury caused by hazards under the control of the ship.
- 3) if the vessel owner fails to intervene in the stevedore's operations when he has actual knowledge both of the hazard and that the stevedore, in the exercise of 'obviously improvident' judgement, intends to continue working despite the hazard and therefore cannot be relied on to remedy it.

Regardless of the above, however, if the defect is open and obvious to the longshoreman, then there is no breach of duty on the vessel owner's behalf. However, if the longshoremen's only alternative proved to be impracticable or time-consuming then the vessel owner can still be held liable. In this instance, any necessary repairs to the crane only required the longshoremen to shut it down, during which time they would still have received compensation. This alternative was not deemed to be impracticable by the Court of Appeals. Therefore, because the stevedore failed to show that the shipowner had both actual knowledge of the existing defect and that the stevedore intended to continue using the item with the defect, which if left unremedied posed a substantial risk of harm, the Court of Appeals reversed the lower court decision and found in favor of the vessel owner.