Admiralty Practicum

Volume 1997
Issue 1 *Winter 1997*

Article 9

February 2018

Craddock Intern. Inc. v. W.K.P. Wilson & Son, Inc., 116 F.3d 1095 (5th Cir. 1997) (Decided June 26, 1997)

William J. Foley, Class of 1999

In the present case, the Court of Appeals concluded that it had proper jurisdiction under the collateral order doctrine as a result of an erroneous application of the law and not merely as a result of an exercise of the court's discretion. The court, therefore, applied the facts to the standard.

The Court of Appeals determined from the limited record that the district court believed that the "pending arbitration proceedings stood as an impediment to its authority to order counter-security." The Court of Appeals held that pending arbitration proceedings did not preclude the district court from granting security and that the district court erred by not exercising its discretion over an order requesting counter-security. Thus, the Court of Appeals for the Fifth Circuit remanded the case to the district court for it to consider the request for counter-security "after weighing all competing concerns" and to "exercise its discretion in deciding whether and to what extent, if any, that request should be granted."

Kerry A. McGrath, Class of 1998

CUSTOMARY FREIGHT UNIT

Determination of the customary freight unit in a shipping contract is a question of fact to be ascertained from the intention of the parties to the contract. Courts will seek evidence of the parties intentions by examining the shipping contract, bills of lading, applicable tariffs or any relevant documents between the parties.

Craddock Intern. Inc. v. W.K.P. Wilson & Son, Inc., 116 F.3d 1095 (5th Cir. 1997)
(Decided June 26, 1997)

Plaintiffs-appellees, foreign vessel and cargo owners "Craddock" and "PMSA" respectively, sued defendant-appellant, marine insurance broker "Wilson," for negligently canceling their protection and indemnity ("P&I") policy after Craddock's ship carrying PMSA's cargo sank. The off-shore supply vessel sank off the Venezuela coast en route to Peru. The cargo, a fish meal processing plant, was valued at $1.7 million dollars. Wilson obtained for Craddock a hull insurance policy for $350,000 which covered the ship and its equipment, and a P&I policy for $1 million dollars which covered Craddock's liability to third parties arising out of the operation of the vessel. Wilson also added PMSA as an assured to Craddock's P&I policy. PMSA never obtained first party insurance coverage. After Craddock's ship sank, Wilson canceled his P&I policy.

One of several issues decided in this case was whether PMSA could recover under Craddock's P&I policy even though Wilson added PMSA as an assured under the same policy in error. The district court held that PMSA would be unable to recover its losses because under this standard P&I policy, the assurer is absolved from paying claims to an assured for its own losses. The court reasoned that since PMSA was listed under Craddock's P&I policy as an assured it could not recover for the loss of its own cargo.

However, the Court of Appeals held that even though PMSA was listed as an assured on Craddock's P&I policy it was still entitled to recover its loses under a claim submitted by

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