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Jennifer Crump

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Hodges v. Evisea Maritime Co.: DUTY TO CORRECT OR WARN OF CONDITIONS IN LONGSHOREMAN'S ACT

In *Hodges v. Evisea Maritime Co.*, 801 F.2d 678 1986), the U.S. Court of Appeals for the Fourth Circuit has held that under the Longshore and Harbor Workers' Compensation Act (the "Act"), 33 U.S.C. § 905(b) (1982), before a shipowner can be said to have a duty to correct or warn of a condition arising during cargo operations, the shipowner must be chargeable both with knowledge of the condition and with knowledge that despite the danger, the stevedore is continuing its operations.

On July 26, 1977, the M/V Concordia Sky, owned by Evisea, was engaged in cargo operations in Virginia when an unidentified and semiconscious man was discovered in the No. 3 tween deck. The man, unable to communicate and initially mistaken for a stowaway, was eventually taken to a hospital. Several days later he was identified as Gary Hodges, a longshoreman who had worked on the Concordia Sky during its loading in Baltimore on July 25th.

An investigation was subsequently conducted by Liberty Mutual, the compensation carrier for the stevedore employing Hodges, Robert C. Herd & Co. No eyewitnesses to Hodges' injury were found. Hodges had suffered serious head injuries, leading him to claim a retrograde memory loss and an inability to recall anything immediately prior to or following his apparent accident. Because Liberty Mutual could not satisfy its statutory burden to show that Hodges' injury was not work related, Hodges was awarded disability benefits paid by Liberty Mutual pursuant to the Act.

Hodges subsequently sued Evisea and the charterer of the Concordia Sky, Concordia Line, alleging that the ship's negligence caused his injuries. Liberty Mutual intervened as a plaintiff to protect its interest. A directed verdict was subsequently entered in favor of Concordia Line.

Hodges' theory of negligence turned primarily on his assertion that prior to his injuries he was working in the ship's No. 2 hold, that he returned to the previously loaded No. 3 hold to obtain additional dunnage, and fell through an open hatch on the No. 3 upper tween deck. Hodges claimed that the vessel's owners were negligent both in leaving the hatch open and in failing to provide adequate lighting or other safety measures that would have prevented the fall.

The 1972 amendments to the Act eliminated the right of longshoremen to recover from a shipowner for acts caused by unseaworthiness, and further limited the right to recover to those injuries caused by the shipowner's negligence. *Id.* at 683. Under the amendments, the determination of the applicable standard of negligence was left to the courts.

In *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156 (1981), the Supreme Court clarified the relative duties of shipowners and stevedores, under the Longshore and Harbor Workers' Compensation Act. The *Scindia* Court concluded:

> Section 905(b) of the LHWCA does not impose upon the shipowner a continuing duty to inspect the cargo operations once the stevedore has begun work. Rather, prior to the commencement of stevedoring operations, the shipowner must "at least" exercise ordinary care under the circumstances to have the ship in such a condition that an experienced stevedore, with the exercise of reasonable care, can carry out its operations. The shipowner must warn the stevedore of hazards that are or should be known to the vessel, if the hazards are not known or should be known to the stevedore. The vessel is also liable, after the stevedoring work has begun, if it actively involves itself in the cargo operations and its negligence causes an injury, or if it fails to exercise due care to intervene to protect longshoremen from hazards under the active control of the vessel during the stevedoring operation.

Id. at 166-168.

The *Hodges* court determined that there was evidence from which the jury could conclude that under *Scindia*, the owner's or crew of the vessel had a duty to intervene and exercise their control over the No. 3 hold to eliminate the dangerous conditions of the open hatch and poor lighting. The court also concluded that there was sufficient evidence of a breach of this duty by the vessel.

Having held that the jury instructions relating to the allocation of duties of care with respect to dangerous conditions between the vessel and stevedore during ongoing stevedoring operations were inadequate under *Scindia*, the *Hodges* court found it necessary to reverse and remand the case for a new trial. The sole jury instruction given by the trial court addressing the relative duties of stevedores and shipowners once stevedoring operations are under way was the following: "It is not contended by the plaintiffs that the shipowner had a duty to superintend or oversee the operations of the stevedoring company or its employees, and the shipowner in fact had no such duty under the facts of this case." *Hodges* 801 F.2d at 686. The court stated that the evidence required a more detailed instruction delineating the limits of the shipowner's duty to intervene during cargo operations with respect to the dangers posed by the open hatch and unlit hold.

Prior to the *Hodges* decision, the Fourth Circuit had yet to give effect to the 1972 amendments to the Act. The *Hodges* court adopted the holding of the Supreme Court in *Scindia* with respect to the standard of negligence applicable to shipowners under the Act.

This decision places a heavy burden on stevedores to avoid injuries caused by obvious hazards. The high standard of care now placed on stevedores is apparent from the fact that the duty of shipowners exists only as a supplement to the duty of stevedores in supervising its longshoremen so that injuries will not result from obvious or warned of defects of the vessel. Thus, under the Longshore and Harbor Workers' Compensation Act., 33 U.S.C. § 905 (1982), the duties of the shipowner are now limited, and the primary burden to avoid injuries is now placed upon the stevedore.

—Jennifer Crump

The May Dep't Stores Company v. Harryman: "BUSINESS PREMISES" UNDER WORKMEN'S COMPENSATION EXTENDED

The Court of Appeals of Maryland in *May Dep't Stores Co. v. Harryman*, 307 Md. 692, 517 A.2d 71 (1986), has concluded that an employee who was injured on an assigned parking lot, while she was proceeding directly to her workplace, is entitled to an award under the Workers' Compensation Act, Md. Ann. Code art. 101, §§ 15 and 67(6), (the Act). The decision extends, under certain circumstances, to situations where the lot is not directly owned by the employer.

The employee, Muriel Harryman, was employed by The May Department Stores Company, T/A The Hecht Company (Hecht's). The store in question was one of many tenants at a county mall, which is surrounded by a parking lot. On November 28, 1983, Ms. Harryman parked her car in the designated parking area, pursuant to a lease agreement between the employer and the owner of the lot. As she approached the mall entrance (about two car lengths from her vehicle), a person came