

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3605
Summary Calendar

MORRIS PETERSON and
JEANETTE S. PETERSON,

Plaintiffs-Appellees,

NATIONAL UNION FIRE INSURANCE COMPANY
and RYAN-WALSH STEVEDORING CO., INC.,

Intervenors-Plaintiffs-
Appellees,

versus

BUCK KREIHS CO., INC.,
a/k/a Buck Kreihs Industrial Co., Inc.,

Defendant-Appellant,

versus

STONEWALL JACKSON MV and
WATERMAN STEAMSHIP CORPORATION,

Defendants-Appellees.

* * * * *

WATERMAN STEAMSHIP CORPORATION and
AMSOUTH BANK,

Cross-Claimants-
Appellees,

versus

BUCK KREIHS CO., INC.,

Cross-Defendant-
Appellant.

Appeal from the United States District Court for
the Eastern District of Louisiana
(CA-88-1754(I))

March 22, 1994

Before REAVLEY, JOLLY, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Morris Peterson, a longshoreman, tripped over some welding hoses as he followed a barge-loading crane on the S/S STONEWALL JACKSON. The hoses belonged to Buck-Kreihs Company, Inc., whose crew was welding on the opposite side of the ship. Peterson sued Buck-Kreihs and Waterman Steamship Corp., the owner of the ship. After a bench trial, the court apportioned liability as follows: Peterson 25%, Buck-Kreihs 75%, and Waterman 0%. Buck-Kreihs appeals.

Buck-Kreihs' Liability

We will not set aside the district court's judgment unless it is clearly erroneous. FED. R. CIV. P. 52(a). To conclude that a finding is clearly erroneous, we must be left with a firm conviction, after a review of the entire evidence, that the district court erred. *Cupid v. McClanahan Contractors, Inc.*, 1

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

F.3d 346, 348 (5th Cir. 1993), *cert. denied*, 1993 WL 531401 (1994).

Buck-Kreihs does not dispute that it owed Mr. Peterson a duty of reasonable care. See *Melerine v. Avondale Shipyards, Inc.*, 659 F.2d 706, 708 (5th Cir. 1981). Waterman instructed Buck-Kreihs that all welding hoses crossing the longshoremen's walkway should lay flat. By finding that Buck-Kreihs was 75% responsible for the accident, the district court implicitly found that Peterson tripped over a coiled hose. The testimony of Peterson¹, Weeks, Deffes, and Frosch, support this conclusion; they all testified to the presence of welding hoses strewn in the longshoremen's walkway on the night of the accident. This circumstantial evidence supports the district court's finding, and therefore it will stand.

Allocation of Fault

¹ Buck-Kreihs cites the following testimony to support its position that Peterson unequivocally testified that he tripped over hoses laying flat on the walkway:

- Q. Now, in terms of when your accident happened, Mr. Peterson, what actually happened is that as you were walking along the deck you slipped and as you slipped you caught your right foot, apparently, under those two hoses that were lying across your path, didn't you?
- A. No, sir.
- Q. That's not what happened?
- A. I hooked them two hoses, then I slipped.

Here, Peterson is responding to whether he slipped before or after his foot became entangled in the welding hoses. While this leading question does give some support to Buck-Kreihs position, the rest of Peterson's testimony shows that he is unsure about which set of hoses actually caused him to trip. Therefore, we conclude that the district court did not clearly err.

Buck-Kreihs argues that if Peterson tripped over a coiled hose, the district court erred when it found that Peterson was only 25% responsible for the accident. We review the district court's allocation of fault for clear error. *Randall v. Chevron USA, Inc.*, 13 F.2d 888, 900 (5th Cir. 1994).

Peterson's primary duty was making sure nothing obstructed the crane as it loaded barges onto the ship. While Peterson may have been able to move the welding hoses, there were considerations militating against such action. Weeks, the stevedore supervisor, testified that because the hoses belonged to Buck-Kreihs, they were not under the longshoreman's control. And, Peterson stated that he was reluctant to move the hoses for fear that he could seriously injure a welder working on the other side of the ship. Peterson's proper course of action would have been to notify his supervisor. But, given that Buck-Kreihs created the dangerous situation by leaving the coiled hoses in Peterson's path, we cannot say that the court clearly erred by allocating 75% of the fault to Buck-Kreihs.

Waterman's Liability

The district court found that Waterman was not responsible for the accident because it ceded control over the ship to the stevedore. See *Manister v. Tenneco Oil Co.*, 867 F.2d 892, 896 (5th Cir. 1989). Buck-Kreihs argues that Waterman is, nevertheless, liable because it made the decision to allow the welding and cargo operations to occur contemporaneously. If

Peterson had tripped over a welding hose laying flat on the walkway, this argument could have merit. But Peterson tripped over a coiled hose, and Buck-Kreihs did not offer any evidence showing that Waterman had actual knowledge of the coiled hoses in Peterson's path. See *Pimental v. Ltd. Canadian Pac. Bul*, 965 F.2d 13, 17 (5th Cir. 1992). Therefore, the responsibility rests on Buck-Kreihs' shoulders.

AFFIRMED.