10-1978

Edmonds v. Compagnie Generale Transatlantique

Lewis F. Powell Jr.

Discuss
Probably Grant
on direct Conflict

Involves Longshoremen &
Harbor Workers Compensation Act
& Q whether shipowner's liability
for negligent injury of a longshoreman
must be reduced by the amount
of the negligence (concurrent) of
the stevedore co. that employed
the longshoremen.

PRELIMINARY MEMORANDUM

November 3, 1978 Conference
List 1, Sheet 4

No. 78-479

EDMONDS (injured longshoreman)
v.
COMPAGNIE GENERALE TRANSATLANTIQUE (ship owner)

Cert to CA4 (Haynsworth, Winter Butzner & Russell; Widener, dissent; Hall, dissent; en banc)

Federal/Civil

Timely

1. SUMMARY: Both petr and resp seek review of the CA's decision that a shipowner's liability for its negligence to an injured longshoreman under 33 U.S.C. §905(b) may be reduced by the amount of any concurrent negligence on the part of the longshoreman's stevedore-employer. Both petr, resp and amici point out that the CA's decision below directly conflicts with decisions of two other CAs and arguably is inconsistent with several of this Ct's decisions.

2. FACTS: Petr, employed as a longshoreman by a stevedoring company, was seriously injured while unloading the

Although I am reluctant to embark on an analysis of the LHWCA, this seems an important question over which there is a conflict. I would incline toward a grant. David

vessel SS ATLANTIC COGNAC, owned by resp. As compensation for his injuries, petr has received in excess of $45,000 and is currently receiving $184.07 per week in benefits from the stevedore's insurer under the Longshoremen's and Harbor Workers' Compensation Act (LHWCA).

Because the resp-shipowner was allegedly negligent, petr filed suit against it. After two trials a jury found resp guilty of negligence and awarded petr $100,000. The jury, however, found petr guilty of 10% contributory negligence and thus the ct reduced petr's award to $90,000. The jury also found that petr's stevedore-employer's negligence contributed 70% of the fault, but the d.ct held that that fact was legally irrelevant.

The CA revd. It held that the LHWCA, 33 U.S.C. §905(b),[1] only made sense if read to provide for liability of a shipowner only "to the extent its fault contributed to the injury." The CA thus limited resp's liability to $20,000. The ct concluded that this result was not only consistent with the language of the statute, but also was the fairest way to deal with the problem of concurrent liability. The CA, however, did not decide what rights the stevedore had in the $20,000 fund owed by the shipowner. ?

1/ Section 905(b) provides in relevant part:

> In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, ...may bring an action against such vessel as a third party in accordance with...§933 of this title....If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel.

Judge Hall agreed with the majority that its decision was fair, but he concluded that it did violence to the language and legislative history of §905(b). He also questioned the wisdom of the majority's decision not to follow the consistent line of cases in the other CAs that had held the shipowner fully liable regardless of its degree of fault.

Judge Widener had written the majority opinion of the original panel. In that opinion the ct held that the shipowner's liability should be limited to $20,000 plus any valid lien the stevedore had on the recovery by the longshoreman, not to exceed $90,000. In his dissent to the en banc decision, he merely adopted his previous view of the case.

3. CONTENTIONS & DISCUSSION: Both parties agree that this is a certworthy case. They point out that the decision below directly conflicts with Shellman v. U.S. Lines, Inc., 528 F.2d 675 (CA9 1975); Dodge v. Mitsui Shintaku Ginko K.K., 528 F.2d 669 (CA9 1975) and Samuels v. Empresa Lineas Martimas Argentinas, 573 F.2d 884 (CA5 1978). In fact, the CA4 majority itself acknowledged this clear conflict.

Both parties also agree that the decision below has the practical effect of permitting a shipowner to obtain contribution from the concurrently negligent stevedore-employer. This Ct, however, has several times rejected contribution between stevedore and shipowner as being inconsistent with the LHWCA. See Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282; Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, and most recently in dicta, Cooper Stevedoring Co. v. Fritz Kopke, Inc., 417 U.S. 106. But see

United States v. Reliable Transfer Co., 421 U.S. 397. Thus, the parties request the Ct to determine how this apparant conflict should be resolved.

It is clear that this case is certworthy for the reasons relied upon by the parties. While my present feeling is that the CA4's decision cannot be squared with the statute, the certworthiness of this issue is not dependent on whether the ct below was right or wrong. Thus, nothing will be served by a lengthy discussion of the merits. I recommend granting cert.

There is a response and amici briefs in support of the petn from 23 American steamship companies and from petr's stevedore's insurer.

10/22/78 Phillips CA opn in petn

November 3, 1978

Court .....
Argued ....., *19*...
Submitted ....., *19*...

Voted on ....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 78-479

EDMONDS

vs.

COMPAGNIE GENERALE TRANS.

conflict

G.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓											
Brennan, J.			✓										
Stewart, J.		✓											
White, J.		✓											
Marshall, J.		✓											
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.		✓											
.....													

CHAMBERS OF
JUSTICE POTTER STEWART

April 27, 1978

No. 76-479 - Rhoads v. Compagnie Generale Transat'l

Dear Byron:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1979

RE: No. 78-479 Edmonds v. Compagnie Generale Transatlantique

Dear Byron:

I agree.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

May 1, 1979

78-479 Edmonds v. Compagnie Generale Transatlantique

Dear Byron:

Please show at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

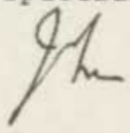
May 3, 1979

Re: 78-479 - Edmonds v. Compagnie Generale Transatlantique

Dear Byron:

Frankly, I find your opinion persuasive notwithstanding my strong feeling that Judge Haynsworth's position makes a great deal of sense. Before coming to rest, I await to see what may be written in dissent.

Respectfully,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1979

Re: No. 78-479 - Edmonds v. Compagnie Generale Transatlantique

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Mr. Justice Blackmun

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
			4/2/79					
Join BRW 6/11/79	Agree 4/30/79	Join BRW 4/27/79	1st Draft 4/26/79	Join HAB 6/21/79	dictated typed Draft 4/21/79	out letter 4/26/78	Join BRW 5/5/79	
			2nd Draft 5/2/79 3rd Draft 6/11/79	Join HAB 6/27/79	1st draft 6/25/79			

78-479 Edmonds v. Campagnie Generale