

# The Burger Court Opinion Writing Database

## *United States v. Seckinger*

397 U.S. 203 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

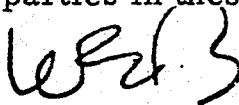
CHAMBERS OF  
THE CHIEF JUSTICE

February 19, 1970

Re: No. 395 - U. S. v. Seckinger

MEMORANDUM TO THE CONFERENCE:

I join in the result reached by the Court; I do so in part on an assumption that the Government will now revise its contract forms to express more clearly the obligations of the contracting parties in these situations.



W.E.B.

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


CHAMBERS OF  
THE CHIEF JUSTICE

March 5, 1970

Re: No. 395 - U. S. v. Seckinger

MEMORANDUM TO THE CONFERENCE:

After reviewing Justice Stewart's dissent,  
I am persuaded to his view and join him. I had previously  
"concurred in the result" of Justice Brennan.

  
W. E. B.

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No. 395

4:30 p.m.  
April 30

The Chief Justice called and proposes the following change in the fatal sentence at the top of page 10 of the Rowan opinion:

"Nor should the householder be at risk that offensive material comes into the hands of his children before it can be stopped."

He says that he will incorporate the foregoing whether or not you withdraw your concurrence.

DAP

Supreme Court of the United States  
Memorandum

-----, 19-----

Thought you'd be interested in

this, - now you have :

HLB, JMH BW & Whatever on WEB

*Since TM is out, that gives  
us four so to h  
with it (him)*

cc: Members of the Conference

Mr. Justice Brennan

H. L. B.



Sincerely,

I agree.

Re: No. 395 - United States v. Seckinger

Dear Bill,

February 25, 1970

CHAMBERS OF  
JUSTICE HUGO L. BLACK

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

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

February 24, 1970

Re: No. 395 - United States v. Seckinger

Dear Bill:

I agree with your opinion, and think you have handled the matter very well indeed. Although I understand that Brother Stewart is writing in dissent, I doubt whether I shall be persuaded to another direction.

Sincerely,

  
J. M. H.

Mr. Justice Brennan

CC: The Conference

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SUPREME COURT OF THE UNITED STATES

No. 395.—OCTOBER TERM, 1969

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
M. O. Seckinger, Jr., Etc. } Appeals for the Fifth  
Circuit.

[February —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case concerns the construction of a provision common to fixed-price government construction contracts which provides that the private contractor "shall be responsible for all damages to persons or property that occur as a result of his fault or negligence . . . ." The Court of Appeals for the Fifth Circuit held that the provision could not be construed to allow the Government to recover from the contractor damages suffered by the Government on account of its own negligence. 408 F. 2d 146 (1969). We granted certiorari because of the large amount of litigation which this contract clause has produced<sup>1</sup> and because of the divergent results which the lower courts have reached in construing the same or similar provisions.<sup>2</sup> 396 U. S. 815 (1969). We reverse.

<sup>1</sup> In the petition for certiorari, the Solicitor General advised that there are presently pending 200 government suits involving the same or similar clauses.

<sup>2</sup> Compare, e. g., *Fisher v. United States*, 299 F. Supp. 1 (D. C. E. D. Pa. 1969), and *United States v. Accrocco*, 297 F. Supp. 966 (D. C. D. C. 1969), with, e. g., *Percivill v. United States*. — F. Supp. — (D. C. S. D. Tex. 1969) and *Troy S. Morris v. United States*, — F. Supp. — (D. C. N. Mex. 1968).

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SUPREME COURT OF THE UNITED STATES

No. 395.—OCTOBER TERM, 1969

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
M. O. Seckinger, Jr., Etc. } Appeals for the Fifth  
Circuit.

[March —, 1970]

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<sup>1</sup> In the petition for certiorari, the Solicitor General advised that there are presently pending 200 government suits involving the same or similar clauses.

<sup>2</sup> Compare, *e. g.*, *Fisher v. United States*, 299 F. Supp. 1 (D. C. E. D. Pa. 1969), and *United States v. Accrocco*, 297 F. Supp. 966 (D. C. D. C. 1969), with, *e. g.*, the decision of the Court of Appeals in the instant case.



Stylistic Changes

**SUPREME COURT OF THE UNITED STATES**

No. 395.—OCTOBER TERM, 1969

United States, Petitioner,	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
v.	
M. O. Seckinger, Jr., Etc.	

[March 9, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case concerns the construction of a provision common to fixed-price government construction contracts which provides that the private contractor "shall be responsible for all damages to persons or property that occur as a result of his fault or negligence . . . ." The Court of Appeals for the Fifth Circuit held that the provision could not be construed to allow the Government to recover from the contractor damages suffered by the Government on account of its own negligence. 408 F. 2d 146 (1969). We granted certiorari because of the large amount of litigation which this contract clause has produced<sup>1</sup> and because of the divergent results which the lower courts have reached in construing the same or similar provisions.<sup>2</sup> 396 U. S. 815 (1969). We reverse.

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<sup>2</sup> Compare, *e. g.*, *Fisher v. United States*, 299 F. Supp. 1 (D. C. E. D. Pa. 1969), and *United States v. Accrocco*, 297 F. Supp. 966 (D. C. D. C. 1969), with, *e. g.*, the decision of the Court of Appeals in the instant case.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 20, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 395 -- U. S. v. Seckinger

In due course I expect to write a dissenting opinion in this case.

*P.S.*

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

The Chief Justice  
Mr. Justice Black  
Mr. Justice White  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Goldberg  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Burger

SUPREME COURT OF THE UNITED STATES

No. 395.—OCTOBER TERM, 1969

From: Stewart, J.

Circulated: FEB

Stewart  
Dana (as)

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Appeals for the Fifth  
M. O. Seekinger, Jr., Etc. } Circuit.

[March —, 1970]

MR. JUSTICE STEWART, dissenting.

The standard form that the Government uses for its fixed-price construction contracts has long contained a single sentence saying that the contractor "shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work."<sup>1</sup> For more than 30 years it has evidently been understood that these words mean what they rather clearly say—that the contractor may not look to the Government for reimbursement of amounts the contractor has had to pay on account of his negligent damage to persons or property while on the government job.<sup>2</sup> The provision, in short, is what the Court of Appeals called "a simple responsibility clause." 408 F. 2d, at 148. But today this innocuous boilerplate language is turned inside out. For the Court says that what the provision really means is that the Government can hold the contractor for reimbursement of amounts the Government has had to pay on account of the Government's negligent damage to persons or property.

To be sure, the Court does not go quite so far as to hold that this obscure clause operates as a complete

<sup>1</sup>This sentence is contained in a paragraph entitled "Permits and Responsibility for Work, etc." See *ante*, p. —, n. 9.

<sup>2</sup>I have found no previous reported decision construing this clause as the Court construes it today.

p. 1

The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 395.—OCTOBER TERM, 1969

From: Stewart, J.

Circulated: \_\_\_\_\_

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Appeals for the Fifth  
M. O. Seckinger, Jr., Etc. } Circuit.

FEB 26 1970

[March —, 1970]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The standard form that the Government uses for its fixed-price construction contracts has long contained a single sentence saying that the contractor "shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work."<sup>1</sup> For more than 30 years it has evidently been understood that these words mean what they rather clearly say—that the contractor cannot hold the Government for losses he incurs resulting from his own negligence.<sup>2</sup> The provision, in short, is what the Court of Appeals called "a simple responsibility clause." 408 F. 2d, at 148. But today this innocuous boilerplate language is turned inside out. For the Court says that the provision really is a promise by the contractor to reimburse the Government for losses *it* incurs resulting from *its* negligence.

To be sure, the Court does not go quite so far as to hold that this obscure clause operates as a complete

<sup>1</sup> This sentence is contained in a paragraph entitled "Permits and Responsibility for Work, etc." See *ante*, p. —, n. 9.

<sup>2</sup> I have found no previous reported decision construing this clause as the Court construes it today.

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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

p. 1

SUPREME COURT OF THE UNITED STATES

No. 395.—OCTOBER TERM, 1969

From: Stewart, J.

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United States, Petitioner, }  
v. } On Writ of Certiorari to the  
M. O. Seckinger, Jr., Etc. } United States Court of  
Appeals for the Fifth  
Circuit.

MAR 2 1970

[March —, 1970]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS joins, dissenting.

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<sup>1</sup> This sentence is contained in a paragraph entitled "Permits and Responsibility for Work, etc." See *ante*, p. —, n. 9.

<sup>2</sup> I have found no previous reported decision construing this clause as the Court construes it today.

<sup>3</sup> It will not do to say, as the Court says today, that this construction of the clause makes its purpose "totally unclear" or "would drain this clause of any significant meaning or protection for the Government . . ." For without such a clause, there would surely be room for the contractor to claim reimbursement from the Government for unforeseen increased costs incurred on account of his negligence, particularly where the Government was jointly negligent. With respect to contracts *not* containing such a clause—cost-plus

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 17, 1970

Re: No. 395 - U.S. v. Seckinger

Dear Bill:

Please join me.

Sincerely,

  
B.R.W.

Mr. Justice Brennan

cc: The Conference

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