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McClanahan v. Morauer & Hartzell, Inc.

404 U.S. 16 (1971)

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

November 1, 1971

No. 70-5097 - Alexander McClanahan v. Morauer & Hartzell

Dear Bill:

I memo you personally rather than the Conference to suggest you consider the addition of something along the following lines to precede the final sentence:

> "The action of the District Judge was in no sense a judicial determination of contested issues of fact or law but an evaluation of what would be a reasonable compromise settlement, eliminating the risks attending a trial on the merits in which the recovery might be more than $5000, less than $5000, or nothing. This record discloses a classic compromise arrived at with the approval of an experienced trial judge."

With or without this idea, you have my concurrence.

Regards,

WEB

Mr. Justice Brennan

Wm Brennan
2771

FP

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Douglas, J.

10/29/71

SUPREME COURT OF THE UNITED STATES

No. 70–5097

Alexander McClanahan, Petitioner, *v.* Morauer & Hartzell, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

I am unable to agree that the circumstances of this case fail to pose the question whether a consent judgment pursuant to a federal pretrial conference constitutes a "compromise" within the meaning of 33 U. S. C. § 933 (g), which reads:

> "If compromise with such third person is made by the person entitled to compensation . . . of an amount less than the compensation to which such person . . . would be entitled . . . the employer shall be liable for compensation as determined in subdivision (f) of this section only if such compromise is made with his written approval."

Petitioner McClanahan was employed by the respondent when a steel bar struck his head. On August 24, 1964, the Bureau of Employees' Compensation found that the injury had caused temporary total disability and ordered the respondent to compensate McClanahan in the amount of $3,780.00. While these proceedings were pending, the petitioner instituted a civil action in the District Court against a third party, alleging that its employees had contributed to his injury. Before the civil action came to trial, the judge conducted a pretrial conference dur-

2nd DRAFT

From: Douglas, J.

Circulated:

Recirculated: 11-2

SUPREME COURT OF THE UNITED STATES

No. 70-5097

Alexander McClanahan, Petitioner, *v.* Morauer & Hartzell, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

I am unable to agree that the circumstances of this case fail to pose the question whether a consent judgment pursuant to a federal pre-trial conference constitutes a "compromise" within the meaning of 33 U. S. C. § 933 (g), which reads:

> "If compromise with such third person is made by the person entitled to compensation . . . of an amount less than the compensation to which such person . . . would be entitled . . . the employer shall be liable for compensation as determined in subdivision (f) of this section only if such compromise is made with his written approval."

Petitioner McClanahan was employed by the respondent when a steel bar struck his head. On August 24, 1964, the Bureau of Employees' Compensation found that the injury had caused temporary total disability and ordered the respondent to compensate McClanahan in the amount of $3,780.00. While these proceedings were pending, the petitioner instituted a civil action in the District Court against a third party, alleging that its employees had contributed to his injury. Before the civil action came to trial, the judge conducted a pre-trial conference dur-

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5097

Alexander McClanahan, Petitioner, *v.* Morauer & Hartzell, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November 8, 1971]

MR. JUSTICE DOUGLAS, dissenting.

I am unable to agree that the circumstances of this case fail to pose the question whether a consent judgment pursuant to a federal pre-trial conference constitutes a "compromise" within the meaning of 33 U. S. C. § 933 (g), which reads:

> "If compromise with such third person is made by the person entitled to compensation . . . of an amount less than the compensation to which such person . . . would be entitled . . . the employer shall be liable for compensation as determined in subdivision (f) of this section only if such compromise is made with his written approval."

Petitioner McClanahan was employed by the respondent when a steel bar struck his head. On August 24, 1964, the Bureau of Employees' Compensation found that the injury had caused temporary total disability and ordered the respondent to compensate McClanahan in the amount of $3,780.00. While these proceedings were pending, the petitioner instituted a civil action in the District Court against a third party, alleging that its employees had contributed to his injury. Before the civil action came to trial, the judge conducted a pre-trial conference dur-

Mr. Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

Circulated: 10/27/71

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 70–5097

Alexander McClanahan, Petitioner, *v.* Morauer & Hartzell, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November —, 1971]

PER CURIAM.

Under § 33 (g) of the Longshoremen's and Harbor Workers' Compensation Act, an employer is not obligated to pay compensation to an employee who, without the employer's written approval, settles a claim against a third person for an amount less than the compensation to which the employee is entitled under the Act. 33 U. S. C. § 933 (g) (Supp. V 1970). Certiorari was granted in this case. 402 U. S. 1008 (1971), in the view that it presented the question whether the consent judgment entered by the District Judge awarding petitioner damages against a third person evidenced a "compromise" subject to § 33 (g), or an award of damages "determined . . . by the independent evaluation of a trial judge," not subject to § 33 (g) under *Banks* v. *Chicago Grain Trimmers Assn.*, 390 U. S. 459, 467 (1968). Fuller examination of the case on oral argument discloses that the record does not adequately present that question. The writ of certiorari is therefore dismissed as improvidently granted.

It is so ordered.

November 2, 1971

RE: No. 70-5097 - McClanahan v. Morauer & Hartzell

Dear Chief:

Thank you for your note in the above. Since the conference vote was to dismiss the case as improvidently granted we cannot decide the merits under that approach. If we were to discuss the problem of judicial determination versus compromise and decide it was not the former but the latter,(which I understand is your suggestion) I think a dismissal as improvidently granted would be inappropriate. This is why I wrote the per curiam simply to say that the record was not adequate to confront that decision.

Sincerely,

WJB

The Chief Justice

Wm Brennan 10/71

(approved 5/ WJB)

GP
1/4

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

CHAMBERS OF
JUSTICE POTTER STEWART

October 28, 1971

No. 70-5097, McClanahan v. Morauer & Hartzell

Dear Bill,

I am glad to join the Per Curiam you have prepared in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 29, 1971

Re: No. 70-5097 - McClanahan v.
Morauer & Hartzell

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Brennan

Nothing from Chief

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 28, 1971

Re: No. 70-5097 - McClanahan v. Morauer & Hartzell

Dear Bill:

I agree with your per curiam.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 29, 1971

Re: No. 70-5097 - McClanahan v. Morauer & Hartzell

Dear Bill:

Although I join you in your proposed Per Curiam for this case, I would actually prefer a simple dismissal as improvidently granted without any explanatory material.

Sincerely,

H.A.B.

Mr. Justice Brennan

cc: The Conference