

# The Burger Court Opinion Writing Database

## *Victory Carriers, Inc. v. Law*

404 U.S. 202 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



9/11

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 3, 1971

Re: No. 70-54 - Victory Carriers v. Law

Dear Byron:

Please join me.

Regards,

WBB

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Memorandum

11-27-71, 19

Mr. Justice Brennan:

This is the case that Justice  
Douglas talked to you about on  
Thursday.

FA

Wm Brennan  
6/17/71

I think this is  
WD's Secretary.

The attached memo. etc  
Draft went along with me

*Justice Brennan*  
*only -*

*not a*  
*11-29*

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-54

Victory Carriers, Inc., et al., Petitioners, v. Bill Law.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[December —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

*Gutierrez v. Waterman Steamship Co.*, 373 U. S. 206, involved an injury to a longshoreman while he was on the dock unloading the ship. The injury was not inflicted by a defective appliance of the ship. He merely slipped on loose beans spilled on the deck from defective cargo containers belonging to the ship. Here the longshoreman was engaged in a phase of a loading operation; he was on the dock stacking cargo for loading and the appliance causing the injury belonged to the stevedore company.

The Court of Appeals properly concluded that that work was part of the loading process and that therefore the longshoreman was in the service of the ship. That gives pragmatic, realistic meaning to the concept of loading and avoids the narrow, grudging, hypertechnical definition.

Loading is activity that involves work on the ship and on the dock. Longshoremen are both ship-side workers and shore-side workers and move back and forth from deck to dock. At times an individual worker may be using the ship's appliances and a moment later the stevedore's appliance. But the work does not change in character. Respondent was subject to all the risks and hazards of loading the ship; and the humanitarian policy of the admiralty law has been to allow those who so

*W. Brennan*  
*Dec 17/71*

*(a Hockett b*  
*11/29/71*  
*FA memo)*

2/

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES, J.

No. 70-54

11/30/71

Victory Carriers, Inc., et al., } On Writ of Certiorari to  
Petitioners, } the United States Court  
v. } of Appeals for the Fifth  
Bill Law. } Circuit.

[December —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

*Gutierrez v. Waterman Steamship Co.*, 373 U. S. 206, involved an injury to a longshoreman while he was on the dock unloading the ship. The injury was not inflicted by a defective appliance of the ship. He merely slipped on loose beans spilled on the dock from defective cargo containers belonging to the ship. Here the longshoreman was engaged in a phase of a loading operation; he was on the dock stacking cargo for loading and the appliance causing the injury belonged to the stevedore company.

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To: The Chief Justice

~~Mr. Justice Black~~

~~Mr. Justice Brennan~~

Mr. Justice Douglas

Mr. Justice Harlan

Mr. Justice Marshall

Mr. Justice White

Mr. Justice Blackmun

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-54

From: Douglas

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

Recirculated: 12-1

Victory Carriers, Inc., et al., } On Writ of Certiorari to  
Petitioners, } the United States Court  
v. } of Appeals for the Fifth  
Bill Law. } Circuit.

[December —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

*Gutierrez v. Waterman Steamship Co.*, 373 U. S. 206, involved an injury to a longshoreman while he was on the dock unloading the ship. The injury was not inflicted by a defective appliance of the ship. He merely slipped on loose beans spilled on the dock from defective cargo containers belonging to the ship. Here the longshoreman was engaged in a phase of a loading operation; he was on the dock stacking cargo for loading and the appliance causing the injury belonged to the stevedore company.

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B/M

12-78

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Brennan  
Mr. Justice Burger  
Mr. Justice Douglas  
Mr. Justice Marshall  
Mr. Justice Rehnquist  
Mr. Justice Stevens  
Mr. Justice Sutherland  
Mr. Justice Taney  
Mr. Justice White  
Mr. Justice Brandeis  
Mr. Justice Harlan  
Mr. Justice McReynolds  
Mr. Justice Rutledge  
Mr. Justice Tamm  
Mr. Justice Traynor  
Mr. Justice Washington  
Mr. Justice Woodbury  
Mr. Justice Woodward  
Mr. Justice Yates  
Mr. Justice Ziegler

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-54

From: Department of Justice

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

Recirculated: 12-3

Victory Carriers, Inc., et al., } On Writ of Certiorari to  
Petitioners. } the United States Court  
v. } of Appeals for the Fifth  
Bill Law. } Circuit.

[December —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

*Gutierrez v. Waterman Steamship Co.*, 373 U. S. 206, involved an injury to a longshoreman while he was on the dock unloading the ship. The injury was not inflicted by a defective appliance of the ship. He merely slipped on loose beans spilled on the dock from defective cargo containers belonging to the ship. Here the longshoreman was engaged in a phase of a loading operation; he was on the dock stacking cargo for loading and the appliance causing the injury belonged to the stevedore company.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 1, 1971

RE: No. 70-54 - Victory Carriers, Inc.  
v. Law

Dear Bill:

Please join me in your dissent in  
the above.

Sincerely,

*Bill*

Mr. Justice Douglas

cc: The Conference



3  
14  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 24, 1971

70-54, Victory Carriers v. Law

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

3  
1

*Please join me*

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

1st DRAFT

From: White, J. NOV 24 1971

SUPREME COURT OF THE UNITED STATES

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

Recirculated: \_\_\_\_\_

No. 70-54

Victory Carriers, Inc., et al., } On Writ of Certiorari to  
Petitioners. } the United States Court  
v. } of Appeals for the Fifth  
Bill Law. } Circuit.

[December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question presented here is whether state law or federal maritime law governs the suit of a longshoreman injured on a pier while driving a forklift truck which was moving cargo that would ultimately be loaded aboard ship.

The facts are undisputed.

When the accident happened, respondent Bill Law, a longshoreman employed by Gulf Stevedore Corporation in Mobile, Alabama, was on the pier driving a forklift loaded with cargo destined for the SS *Sagamore Hill*, a vessel owned by petitioner Victory Carriers, Inc., which was tied up at the pier. Law had picked up the load on the dock and was transferring it to a point alongside the vessel where it was to be subsequently hoisted aboard by the ship's own gear. The forklift was owned and under the direction of his stevedore employer. As Law proceeded toward the pickup point, the overhead protection rack of the forklift came loose and fell on him. He subsequently brought an action in a federal District Court against the ship and Victory Carriers, Inc., claiming that the unseaworthiness of the vessel and the negligence of

CO / M

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Filed: \_\_\_\_\_

No. 70-54

Recirculated: 12-4-71

Victory Carriers, Inc., et al., } On Writ of Certiorari to  
Petitioners, } the United States Court  
v. } of Appeals for the Fifth  
Bill Law. } Circuit.

[December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

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The facts are undisputed. When the accident happened, respondent Bill Law, a longshoreman employed by Gulf Stevedore Corporation in Mobile, Alabama, was on the pier driving a forklift loaded with cargo destined for the SS *Sagamore Hill*, a vessel owned by petitioner Victory Carriers, Inc., which was tied up at the pier. Law had picked up the load on the dock and was transferring it to a point alongside the vessel where it was to be subsequently hoisted aboard by the ship's own gear. The forklift was owned and under the direction of his stevedore employer. As Law returned toward the pickup point, the overhead protection rack of the forklift came loose and fell on him. He subsequently brought an action in a federal District Court against the ship and Victory Carriers, Inc., claiming that the unseaworthiness

To: The Chief Justice  
~~Mr. Justice Black~~  
Mr. Justice Douglas  
~~Mr. Justice Harlan~~  
Mr. Justice Brennan  
Mr. Justice Stewart  
☒ Mr. Justice Marshall  
Mr. Justice Blackmun

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 70-54

Scalated: ---  
Re-circulated: 12-10-71

Victory Carriers, Inc., et al., } On Writ of Certiorari to  
Petitioners. } the United States Court  
v. } of Appeals for the Fifth  
Bill Law. } Circuit.

[December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

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The facts are undisputed. When the accident happened, respondent Bill Law, a longshoreman employed by Gulf Stevedore Corporation in Mobile, Alabama, was on the pier driving a forklift loaded with cargo destined for the SS *Sagamore Hill*, a vessel owned by petitioner Victory Carriers, Inc., which was tied up at the pier. Law had picked up the load on the dock and was transferring it to a point alongside the vessel where it was to be subsequently hoisted aboard by the ship's own gear. The forklift was owned and under the direction of his stevedore employer. As Law returned toward the pickup point, the overhead protection rack of the forklift came loose and fell on him. He subsequently brought an action in a federal District Court against the ship and Victory Carriers, Inc., claiming that the unseaworthiness

December 23, 1971

70-54, 70-19

MEMORANDUM TO THE CONFERENCE

No. 70-64, Isken Bros. & Co., Inc. v. Chagnols, was held for No. 70-34, Victory Carriers, Inc. v. Law. I would vacate and remand for reconsideration in the light of No. 70-34.

The following cases were held for No. 70-19, Marion v. United States:

- No. 70-199 - Deutch v. United States
- 70-193 - Mass v. United States
- 70-508 - Mass v. United States
- 70-5319 - Polak v. New Mexico
- 70-5397 - Keefer v. Winter
- 71-601 - De La Parra v. United States

I would deny all but No. 70-5397, Keefer v. Winter, for failure to show prejudice at all or to show it with insufficient concreteness.

No. 70-5397 is another matter. The Iowa Supreme Court affirmed the conviction four to four after Pickens v. Florida but, of course, before Marion v. United States. The issue is a 5-year delay in trying petitioner after he was certified as having recovered competence to stand trial. The State urges that petitioner's failure to come to invade his habeas corpus remedy excuses the State's delay. Smith v. Keeney, Pickens v. Florida and Marion v. United States are relevant but do not appear squarely to reach this case. Nevertheless, I would not insist that demand for trial or a habeas corpus petition is a prerequisite to a speedy trial claim made at the outset of the trial. I could reverse per curiam.

B.N.W.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL


November 29, 1971

Re: No. 70-54 - Victory Carriers, Inc. v. Law

Dear Byron:

Please join me.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference

34  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 29, 1971

Re: No. 70-54 - Victory Carriers, Inc. v. Law

Dear Byron:

Please join me in your opinion proposed  
for this case.

I personally would feel a little more com-  
fortable if the last paragraph of the opinion and its  
accompanying footnote were eliminated. However, I  
am content to leave this to you.

Sincerely,

*H.A.B.*

Mr. Justice White

cc: The Conference