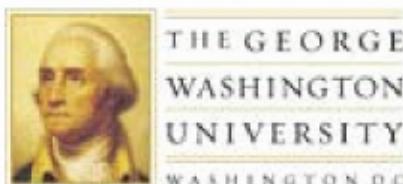


# The Burger Court Opinion Writing Database

*Sea-Land Services, Inc. v. Gaudet*  
414 U.S. 573 (1974)

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. 20530

CHAMBERS OF  
THE CHIEF JUSTICE

January 17, 1974

Re: 72-1019 - Sea-Land Services v. Gaudet

Dear Lewis:

Please join me in your dissenting opinion.

Regards,

Regards,  
C. E. O.

Mr. Justice Powell

**Copies to the Conference**

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 9, 1973

Dear Chief:

In 72-1019, Sea-Land Services, Inc. v.  
Gaudet I'll ask Bill Brennan to write for  
the Court.

*CD*  
WILLIAM O. DOUGLAS

The Chief Justice  
cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 28, 1973

Dear Bill:

Please join me in your opinion  
in 72-1019, Sea-Land Services v. Gaudet.

WILLIAM O. DOUGLAS

Mr. Justice Brennan

cc: The Conference

*Circulated*

12-27-73

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1019

Sea-Land Services, Inc.,  
Petitioner,  
v.  
Helen Stein Gaudet, Administratrix of the Estate of  
Awtrey C. Gaudet, Sr. } On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Fifth Circuit.

[January —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

*Moragne v. State Marine Lines*, 398 U. S. 375 (1970), overruling *The Harrisburg*, 119 U. S. 199 (1886), held that an action for wrongful death based on unseaworthiness is maintainable under federal maritime law, but left the shaping of the new nonstatutory action to future cases. The question in this case is whether the widow of a longshoreman may maintain such an action for the wrongful death of her husband—alleged to have resulted from injuries suffered by him while aboard a vessel in navigable waters—after the decedent recovered damages in his lifetime for his injuries.

Respondent's husband suffered severe injuries while working as a longshoreman aboard petitioner's vessel, the S. S. *Claiborne*, in Louisiana navigable waters. He recovered \$140,000 for his permanent disability, physical agony, and loss of earnings in an action based on unseaworthiness,<sup>1</sup> but died shortly after the action was termi-

<sup>1</sup> The jury reduced a verdict of \$175,000 by 20% because of decedent's contributory negligence.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

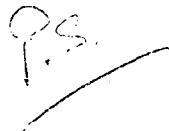
January 7, 1973

No. 72-1019 - Sea-Land Services, Inc. v. Gaudet

Dear Lewis,

As I indicated to you in our telephone conversation today, I am in general agreement with your dissenting opinion in this case.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 14, 1974

No. 72-1019 - Sea-Land Serv. Inc. v. Gaudet

Dear Lewis,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

PS,  
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 2, 1974

Re: No. 72-1019 - Sea-Land Services Inc. v.  
Gaudet

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 3, 1974

Re: No. 72-1019 -- Sea-Land Services, Inc., v. Gaudet

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

  
T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

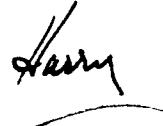
December 28, 1973

Dear Bill:

Re: No. 72-1019 - Sea-Land Services, Inc. v. Gaudet

I shall await the dissent in this case before casting my vote.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20542

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 10, 1974

Re: No. 72-1019 - Sea-Land Services, Inc. v.  
Gaudet, Administratrix

Dear Lewis:

I know my vote in this case will disappoint you. I have carefully studied this one and remain where I was at the time of the conference. You have written a strong dissent. I feel that the real breach was made in Moragne and that what follows now flows naturally from John's opinion. We, of course, could have let the matter percolate in the lower courts for a while rather than draw definite guidelines at this time. Perhaps in this one we save trouble in the long run by doing what Bill Brennan has chosen to do.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 10, 1974

Re: No. 72-1019 - Sea-Land Services, Inc. v.  
Gaudet, Administratrix

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

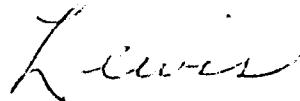
December 27, 1973

No. 72-1019 Sea-Land Services, Inc. v. Gaudet

MEMORANDUM TO THE CONFERENCE

In accord with my vote at the Conference, I will circulate promptly a dissenting opinion in the above case.

Sincerely,



LFP/gg

1st DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 72-1019

Printed in U. S. A.

Circulated: JAN 2 1974

Sea-Land Services, Inc.,  
Petitioner,  
v.  
Helen Stein Gaudet, Adminis-  
tratrix of the Estate of  
Awtrey C. Gaudet, Sr.

On Writ of Certiorari:  
to the United States  
Court of Appeals for  
the Fifth Circuit.

[December —, 1973]

MR. JUSTICE POWELL, dissenting.

The Court today rewrites several areas of the admiralty law of wrongful death. In holding that a wrongful death action may be brought although the decedent has previously recovered in his own suit based on the same transaction, the Court disregards a major body of admiralty and state law. The majority opinion also opens up an area of sentimental damages that has not been allowed under traditional admiralty doctrine. It hopes to prevent double recovery through a novel application of collateral estoppel principles, which rests in turn on the unprecedented concept that a seriously injured person acts as a fiduciary for an undefined class of potential beneficiaries with regard to his *own* recovery in his *own* personal injury action. Given the sweep of the majority's approach, the upshot in many areas will be a nearly total nullification of the congressional enactments previously governing maritime wrongful death. Except for a technical joinder of counts to obtain a jury and thus to maximize the benefits promised by the Court's opinion, no one entitled to rely on the admiralty doctrine of unseaworthiness will, after today, seek relief under the federal maritime wrongful death statutes. Several limita-

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

pp.  
5  
1, 2, 8, 9, 11, 12  
13, 14, 17, 19

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1019

Recirculated: 1/2/74

Sea-Land Services, Inc.,  
Petitioner,  
*v.*  
Helen Stein Gaudet, Administratrix of the Estate of  
Awtrey C. Gaudet, Sr. } On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Fifth Circuit.

[December —, 1973]

MR. JUSTICE POWELL, dissenting.

The Court today rewrites several areas of the admiralty law of wrongful death. In holding that a wrongful death action may be brought although the decedent has previously recovered in his own suit based on the same wrongful act, the Court disregards a major body of maritime and state law. The majority opinion also opens up an area of sentimental damages that has not been allowed under traditional admiralty doctrine. It hopes to prevent double recovery through a novel application of collateral estoppel principles, which rests in turn on the unprecedented concept that a seriously injured person acts as a fiduciary for an undefined class of potential beneficiaries with regard to his *own* recovery in his *own* personal injury action. Given the sweep of the majority's approach, the upshot in many areas will be a nearly total nullification of the congressional enactments previously governing maritime wrongful death. Except for a technical joinder of counts to obtain a jury and thus to maximize the benefits promised by the Court's opinion, no one entitled to rely on the admiralty doctrine of unseaworthiness will, after today, seek relief under the federal maritime wrongful death statutes. Several limita-

59  
MP 1, 2, 8, 11, 12,  
13, 14, 17, 19

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES ~~From~~ Powell, J.

No. 72-1019

Circulated:

Recirculated ~~MAN~~ 10 1974

Sea-Land Services, Inc.,  
Petitioner,  
*v.*  
Helen Stein Gaudet, Adminis-  
tratrix of the Estate of  
Awtrey C. Gaudet, Sr.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Fifth Circuit.

[December —, 1973]

MR. JUSTICE POWELL, dissenting.

The Court today rewrites several areas of the admiralty law of wrongful death. In holding that a wrongful death action may be brought although the decedent has previously recovered in his own suit based on the same wrongful act, the Court disregards a major body of maritime and state law. The majority opinion also opens up an area of sentimental damages that has not been allowed under traditional admiralty doctrine. It hopes to prevent double recovery through a novel application of collateral estoppel principles, which rests in turn on the unprecedented concept that a seriously injured person acts as a fiduciary for an undefined class of potential beneficiaries with regard to his *own* recovery in his *own* personal injury action. Given the sweep of the majority's approach, the upshot in many areas will be a nearly total nullification of the congressional enactments previously governing maritime wrongful death. Except for a technical joinder of counts to obtain a jury and thus to maximize the benefits promised by the Court's opinion, no one entitled to rely on the admiralty doctrine of unseaworthiness will, after today, seek relief under the federal maritime wrongful death statutes. Several limita-

Changes 1, 15, 16

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 72-1019

Circulated:

Sea-Land Services, Inc.,  
Petitioner,  
*v.*  
Helen Stein Gaudet, Administratrix of the Estate of  
Awtrey C. Gaudet, Sr.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Fifth Circuit.

Recirculated JAN 15 1973

[December —, 1973]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

The Court today rewrites several areas of the admiralty law of wrongful death. In holding that a wrongful death action may be brought although the decedent has previously recovered in his own suit based on the same wrongful act, the Court disregards a major body of maritime and state law. The majority opinion also opens up an area of sentimental damages that has not been allowed under traditional admiralty doctrine. It hopes to prevent double recovery through a novel application of collateral estoppel principles, which rests in turn on the unprecedented concept that a seriously injured person acts as a fiduciary for an undefined class of potential beneficiaries with regard to his *own* recovery in his *own* personal injury action. Given the sweep of the majority's approach, the upshot in many areas will be a nearly total nullification of the congressional enactments previously governing maritime wrongful death. Except for a technical joinder of counts to obtain a jury and thus to maximize the benefits promised by the Court's opinion, no one entitled to rely on the admiralty doctrine of unseaworthiness will, after today, seek relief under the federal maritime wrongful death statutes. Several limita-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 10, 1974

Re: No. 72-1019 - Sea-Land v. Gaudet

Dear Lewis:

Please join me in your dissenting opinion in this case.

sincerely,

W.W.

Mr. Justice Powell

Copies to the Conference



P.S. Lewis: I think your opinion is excellent. I have a slight concern with the language on page 15 of your second draft, in the sentence dealing with jury sympathy making up for inability to recover for intangibles; the way it is presently worded, is there any possibility that it could be cited as approving such jury awards from a legal point of view? If you think not, that is good enough for me. WHR

Attached to WHR 1-10-1974  
72-1019