

The Burger Court Opinion Writing Database

Mobil Oil Corp. v. Higginbotham
436 U.S. 618 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1978

Dear John:

Re: 76-1726 Mobil Oil Corp. v. Higginbotham

I join.

Regards,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 2, 1978

Re: No. 76-1726 - Mobil Oil Corporation
v. Higginbotham

Dear John,

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

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1978

Re: 76-1726 - Mobil Oil Corporation v.
Higginbotham

Dear John:

Please join me.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1726, Mobil Oil Company v. Higginbotham

I vote to affirm the judgment of the Court of Appeals. I think that our opinion in Sealand Service v. Gaudet dictates this result. The interest in providing uniformity in maritime remedies and the well-established principle of maritime law that remedies are to be liberally granted preclude a determination that damages for loss of society are not recoverable.

JM
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 4, 1978

Re: No. 76-1726 - Mobil Oil Corp. v. Higginbotham

Dear John:

In due course I shall circulate a dissent in
this case. Gaudet is too young to die.

Sincerely,

JM
T.M.

Mr. Justice Stevens

cc: The Conference

30 MAY 1978

No. 76-1726, Mobil Oil Corp. v. Higginbotham

MR. JUSTICE MARSHALL, dissenting.

Just a few years ago, in Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573 (1974), this Court held that, "under the maritime wrongful-death remedy, the decedent's dependents may recover damages for their loss of . . . society . . ." Id. at 584. The fact that the injury there occurred within three miles of shore, in the territorial waters of a State, had no bearing on the decision at the time it was rendered, as the majority today recognizes, ante, at 5. Nor did we place any emphasis on the situs of injury when we first upheld the maritime wrongful-death remedy, as a matter of "general maritime law,"

31 MAY 1978

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1726

Mobil Oil Corporation, Petitioner,
v.
Frances Nell Higginbotham, Administratrix of the Estate of Marshall K. Higginbotham, et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1978]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BLACKMUN joins, dissenting.

Just a few years ago, in *Sea-Land Services, Inc. v. Gaudet*, 414 U. S. 573 (1974), this Court held that, "under the maritime wrongful-death remedy, [a] decedent's dependents may recover damages for their loss of . . . society . . ." *Id.*, at 584. The fact that the injury there occurred within three miles of shore, in the territorial waters of a State, had no bearing on the decision at the time it was rendered, as the majority today recognizes, *ante*, at 5. Nor did we place any emphasis on the situs of injury when we first upheld the maritime wrongful-death remedy, as a matter of "general maritime law," in *Moragne v. States Marine Lines, Inc.*, 398 U. S. 375, 409 (1970). Today the Court takes a narrow and unwarranted view of these cases, limiting them to their facts and making the availability of recovery for loss of society turn solely on a ship's distance from shore at the time of the injury causing death.

A unanimous Court concluded in *Moragne* that the distance of a ship from shore is a fortuity unrelated to the reasons for allowing a seaman's family to recover damages upon his death. See *id.*, at 395-396, 405. These reasons are rooted in the traditions of maritime law, which has always shown "a special solicitude for the welfare of those men who undert[ake] to venture upon hazardous and unpredictable sea voyages." *Id.*,

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

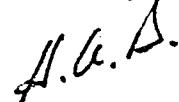
May 4, 1978

Re: No. 76-1726 - Mobil Oil Corp. v. Higginbotham

Dear John:

I shall await Thurgood's dissent in this case.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 30, 1978

Re: No. 76-1726 - Mobil Oil Corp. v. Higginbotham

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 2, 1978

No. 76-1726 Mobil Oil Corp. v. Higginbotham

Dear John:

Please join me.

Sincerely,

Lewin

Mr. Justice Stevens

lfp/ss ..

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1978

Re: No. 76-1726 - Mobil Oil Corp. v. Higginbotham

Dear John:

Please join me.

Sincerely,

WR

Mr. Justice Stevens

Copies to the Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stevens
 MAY 2 1978

Circulated:

No. 76-1726

Recirculated:

Mobil Oil Corporation, Petitioner,
 v.

Frances Nell Higginbotham, Admin-
 istratrix of the Estate of Marshall K.
 Higginbotham, et al.

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

[May 2, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

This case involves death on the high seas. The question is whether, in addition to the damages authorized by federal statute, a decedent's survivors may also recover damages under general maritime law. The United States Court of Appeals for the Fifth Circuit, disagreeing with the First Circuit, held that survivors may recover for their "loss of society," as well as for their pecuniary loss.¹ We reverse.

Petitioner used a helicopter in connection with its oil drilling operations in the Gulf of Mexico about 100 miles from the Louisiana shore. On August 15, 1967, the helicopter crashed outside Louisiana's territorial waters, killing the pilot and three passengers. In a suit brought by the passengers' widows, in their representative capacities, the District Court accepted

¹ Compare *Barbe v. Drummond*, 507 F. 2d 794, 800-802 (CA1 1974), with *Higginbotham v. Mobil Oil Corp.*, 545 F. 2d 422 (CA5 1977). The members of the *Higginbotham* panel expressed their agreement with *Barbe, supra*, but considered the issue foreclosed in their circuit by *Law v. Sea Drilling Corp.*, 510 F. 2d 242, on rehearing, 523 F. 2d 793 (CA5 1975). In that case, another Fifth Circuit panel stated that the statutory remedy provided by the Death on the High Seas Act was no longer needed. *Id.*, at 798. See also n. 16, *infra*.

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P2
10. The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: MAY 3 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1726

Mobil Oil Corporation, Petitioner,
v.
Frances Nell Higginbotham, Administratrix of the Estate of Marshall K. Higginbotham, et al.

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

[May —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

This case involves death on the high seas. The question is whether, in addition to the damages authorized by federal statute, a decedent's survivors may also recover damages under general maritime law. The United States Court of Appeals for the Fifth Circuit, disagreeing with the First Circuit, held that survivors may recover for their "loss of society," as well as for their pecuniary loss.¹ We reverse.

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