

The Burger Court Opinion Writing Database

Bloomer v. Liberty Mutual Insurance Co.
445 U.S. 74 (1980)

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

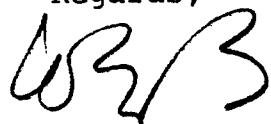
February 28, 1980

Re: 78-1418 - Bloomer v. Liberty Mutual Ins. Co.

Dear Thurgood:

I join.

Regards,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 29, 1980

RE: No. 78-1418 Bloomer v. Liberty Mutual Ins. Co.

Dear Thurgood:

I agree.

Sincerely,

Bil

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 6, 1980

Re: 78-1418, Bloomer v. Liberty Mutual Ins. Co.

Dear Thurgood,

I am glad to join your opinion for the
Court.

Sincerely yours,

C.S.
-/-

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 1, 1980

Re: 78-1418 - Bloomer v. Liberty Mutual
Insurance Company, etc.

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

p. 12

31 JAN 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1418

William E. Bloomer, Jr.,
Petitioner,
v.
Liberty Mutual Insurance
Company, etc. } On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit.

[February —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.* (1976), a longshoreman is entitled to receive compensation payments from his stevedore for disability or death resulting from an injury occurring on the navigable waters of the United States. If the longshoreman believes that his injuries warrant a recovery in excess of the compensation provided under the Act, he may also bring a negligence action against the owner of the vessel on which the injury occurred. The longshoreman's recovery from the shipowner is subject to the stevedore's lien in the amount of the compensation payment. The question for decision is whether the stevedore's lien must be reduced by a proportionate share of the longshoreman's expenses in obtaining recovery from the shipowner, or whether the stevedore is instead entitled to be reimbursed for the full amount of the compensation payment.

I

Petitioner William E. Bloomer, Jr. was injured during the course of his employment on board the vessel *S. S. Pacific Breeze*. He received \$17,152.83 in compensation from respondent Liberty Mutual Insurance Company, the designated

p.8,10,12,13

footnotes abs
remembered

28 FEB 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1418

William E. Bloomer, Jr.,
Petitioner,
v.
Liberty Mutual Insurance
Company, etc. } On Writ of Certiorari to the
United States Court of Appeals
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Citation
Corrections
9-8 p.4

29 FEB 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1418

William E. Bloomer, Jr.,
Petitioner,
v.
Liberty Mutual Insurance
Company, etc. } On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit.

[February —, 1980]

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 10, 19

Dear Bill:

Re: No. 78-1418 Bloomer v. Liberty Mutual Ins. Co.

I shall be glad to undertake a dissent in this case.
I appreciate the fact that your vote at conference was
only tentative.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 1, 1980

Re: No. 78-1418 - Bloomer v. Liberty Mutual Ins. Co.

Dear Thurgood:

I shall try my hand at a dissent in this case.

Sincerely,

H. A. B.)
by us

Mr. Justice Marshall

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: FEB 21 1980

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 78-1418

William E. Bloomer, Jr.,
Petitioner,
v.
Liberty Mutual Insurance
Company, etc. } On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit.

[February —, 1980]

MR. JUSTICE BLACKMUN, dissenting.

The Court's approach in this case strikes me as somewhat crabbed. By tilting with the specter of "double recovery," the Court adopts a construction of the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.*, that relegates the injured longshoreman's welfare to secondary status, well behind the interest of his stevedore-employer in conserving resources.

Under the Court's rule, the stevedore has everything to gain and nothing to lose. The longshoreman takes the risk and the worry of the litigation and, if he gains enough, the stevedore is home free. This result does not seem to me to square with the Court's recent recognition that the Act should be construed with the beneficent purpose of work protection foremost in mind. *Northeast Marine Terminal Co. v. Caputo*, 432 U. S. 249, 268 (1977). Nor does it entirely square with the modern concept that the costs of industrial accidents are expenses to be borne by the industrial enterprise and not by the injured workman.⁴ It also fails to do equity where equity is due. Since I cannot agree that Congress has required us so to deviate from the principles of equity and the governing purposes of the Act, I respectfully dissent.

¹ See J. Boyd, *The Law of Compensation for Injuries to Workmen* 10 (1913); H. Somers & A. Somers, *Workmen's Compensation* 26 (1954).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 4, 1980

78-1418 Bloomer v. Liberty Mutual

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 1, 1980

Re: No. 78-1418 - Bloomer v. Liberty Mutual Insurance
Co.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 5, 1980

Re: 78-1418 - Bloomer v. Liberty Mutual
Insurance Co.

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference