

# The Burger Court Opinion Writing Database

## *Sun Ship, Inc. v. Pennsylvania*

447 U.S. 715 (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

June 4, 1980

RE: 79-343 - Sun Ship, Inc. v. Pennsylvania

Dear Bill:

I join.

Regards,

W.B.

Mr. Justice Brennan

Copies to the Conference

WB  
Draft

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

From: Mr. Justice Brennan

Circulated: 5/31/80

1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 79-343

Sun Ship, Inc., Appellant,  
v.  
Commonwealth of Pennsylvania  
et al. } On Appeal from the Com-  
monwealth Court of Penn-  
sylvania.

[June —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The single question presented by these consolidated cases is whether a State may apply its workers' compensation scheme to land-based injuries that fall within the coverage of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended in 1972. 33 U. S. C. 901-950. We hold that it may.

I

Respondents are five employees of petitioner Sun Ship, Inc., a shipbuilding and ship repair enterprise located on the Delaware River, a navigable water of the United States in Pennsylvania. Each employee was injured after the effective date of the 1972 amendments to the LHWCA while involved in shipbuilding or ship repair activities. Although the LHWCA applied to the injuries sustained, each respondent filed claims for benefits under the Pennsylvania Workmen's Compensation Act (PWCA) with state authorities. Petitioner contended that the federal compensation statute was the employees' exclusive remedy. In upholding awards to each respondent,<sup>1</sup> the Pennsylvania Workmen's Compensation

<sup>1</sup>Initially, referees heard each of the claims. Four referees granted compensation, rejecting petitioner's pre-emption argument. The referee in respondent Fields' case determined that a compensable injury had been

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

May 28, 1980

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

Re: Sun Ship, Inc. v. Commonwealth of Pennsylvania, No. 79-343

Dear Lewis,

I share your concern that we not prematurely reach any question concerning the preclusive effect upon the LHWCA of any state workmen's compensation exclusivity clauses. I can't see, however, how we can omit all reference to that issue by deletion of the last three sentences of note 6. I feel strongly that to do so is to fail to address an argument heavily relied upon by the appellant, and deemed by the Solicitor General to be pivotal.

As you know, one of appellant's principal arguments against concurrent jurisdiction for the LHWCA and state compensation laws has been the danger of conflict between the two schemes. In this connection, appellant's initial brief specifically refers to the danger that supplementation of prior state awards by LHWCA recoveries might be barred under principles of res judicata if state law treated compensation thereunder as final

and exclusive. Brief at 56-57. Appellant's reply brief expands upon this argument at considerable length. Recognizing the significance of this contention, the Solicitor General's amicus brief argues that concurrent jurisdiction is compatible with the LHWCA because supplemental recoveries under the federal statute will be available even where the worker has proceeded for state benefits in the first instance. Brief at 24-27.\*

For that reason, I see no way to postpone a response to the problem of a state compensation law finality clause that explicitly bars any subsequent supplementation. Moreover, I think the answer reached in note 6 follows from our decision that the LHWCA may coexist side-by-side with state compensation laws.

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\* "[A] state statute that provides smaller benefits also does not conflict with . . . the LHWCA so long as the employee is not barred by receipt of a state award from recovering a supplemental award under the LHWCA. . . . [But] a state award that provides less favorable benefits than those provided under the LHWCA would conflict with the LHWCA because it would prevent the employee from receiving the level of benefits guaranteed to him by the federal statute. . . . Thus, concurrent jurisdiction between state law and the LHWCA depends upon the continuing validity of the principle of supplemental awards under the LHWCA. If supplemental awards under the LHWCA were to be barred, state coverage must be held to be preempted when it overlaps with the LHWCA. . . ."

Would it allēviate your concern if I revise the three sentences as follows:

"Admittedly, if a particular state compensation law provision does indisputably declare its awards final, a conflict with the LHWCA may possibly arise where a claimant seeks inferior state benefits in the first instance. But the consequences to the claimant of this error would be less drastic than those of a mistake under the rule appellant contemplates -- under which a misstep could result in no benefits. ~~At any rate,~~ if federal preclusion ever need be implied to cope with this remote contingency, a less disruptive approach would be to preempt the state compensation exclusivity clause, rather than to preempt the entire state compensation statute as appellant suggests."

Sincerely,

Bill

Mr. Justice Powell

R  
"Although the question is not before us, we observe that."

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 28, 1980

Re: Sun Ship, Inc. v. Commonwealth of Pennsylvania, No. 343

Dear Bill:

Since Washington Gas Light has not yet circulated, I have written note 6 with an eye to currently controlling law. My plan is to hold up issuing Sun Ship until Washington Gas Light is ready to come down, so as not to foreshadow John's opinion. And of course I shall make whatever changes are necessary in note 6 to conform to our decision in Washington Gas Light.

Sincerely,

*Bill*

Mr Justice Rehnquist  
cc: The Conference

P. 9;  
petitioner changed  
to appellant

To: The President  
The Vice President  
The Chief Justice  
The Justices  
The Clerk  
The Secretary  
The Treasurer  
The Comptroller  
The Auditor  
The Inspector General  
The Director of the FBI  
The Director of the CIA  
The Director of the NSA  
The Director of the DOD  
The Director of the DOE  
The Director of the EPA  
The Director of the HHS  
The Director of the HUD  
The Director of the ICA  
The Director of the NRC  
The Director of the SEC  
The Director of the FTC  
The Director of the NLRB  
The Director of the OSHA  
The Director of the EPA  
The Director of the HHS  
The Director of the HUD  
The Director of the ICA  
The Director of the NRC  
The Director of the SEC  
The Director of the FTC  
The Director of the NLRB  
The Director of the OSHA

From: Mr. Justice Brennan

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

Revised: MAY 30

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-343

Sun Ship, Inc., Appellant, v. Commonwealth of Pennsylvania et al,	}	On Appeal from the Commonwealth Court of Pennsylvania.
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[June —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The single question presented by these consolidated cases is whether a State may apply its workers' compensation scheme to land-based injuries that fall within the coverage of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended in 1972. 33 U. S. C. 901-950. We hold that it may.

I

Appellees are five employees of petitioner Sun Ship, Inc., a shipbuilding and ship repair enterprise located on the Delaware River, a navigable water of the United States in Pennsylvania. Each employee was injured after the effective date of the 1972 amendments to the LHWCA while involved in shipbuilding or ship repair activities. Although the LHWCA applied to the injuries sustained, each appellee filed claims for benefits under the Pennsylvania Workmen's Compensation Act with state authorities. Appellant contended that the federal compensation statute was the employees' exclusive remedy. In upholding awards to each respondent,<sup>1</sup> the

<sup>1</sup> Initially referees heard each of the claims. Four referees granted compensation, rejecting appellant's pre-emption argument. The referee in appellee Fields' case determined that a compensable injury had been

m.6

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

From: Mr. Justice Brennan

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

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 79-343

Sun Ship, Inc., Appellant,	} On Appeal from the Com-	
v.		monwealth Court of Penn-
Commonwealth of Pennsylvania		sylvania.
et al.		

[June —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The single question presented by these consolidated cases is whether a State may apply its workers' compensation scheme to land-based injuries that fall within the coverage of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended in 1972. 33 U. S. C. 901-950. We hold that it may.

## I

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 28, 1980

Re: No. 79-343, Sun Ship v. Pennsylvania

Dear Bill,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.  
/

Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 28, 1980

Re: 79-343 - Sun Ship, Inc. v. PA

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Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

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cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 27, 1980

Re: No. 79-343 - Sun Ship, Inc. v. Commonwealth  
of Pennsylvania, et al.

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
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

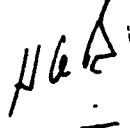
June 6, 1980

Re: No. 79-343 - Sun Ship, Inc. v. Pennsylvania

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan  
cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1980

79-343 Sun Ship v. Pennsylvania

Dear Bill:

In view of the change in the wording of the next to the last sentence in note 6 that we have discussed, I am glad to join you.

It does occur to me that it may be appropriate to change the last sentence in footnote 6 by adding the language I have underscored as follows:

"Although the question is not before us, we observe that if federal preclusion ever need be implied to cope with this remote contingency, a less disruptive approach would be to preempt the state compensation exclusivity clause, rather than to preempt the entire state compensation statute as appellant suggests."

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 28, 1980

Re: No. 79-343 Sun Ship, Inc. v. Pennsylvania

Dear Bill:

I agree with your opinion and plan to join it. I would much prefer to see your footnote 6 modified, so as to leave for decision in Thomas v. Washington Gas Light Co., which I believe is presently assigned to John, the McCartin-Magnolia Petroleum issue.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 19, 1980

Re: No. 79-343 Sun Ship, Inc. v. Pennsylvania

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 28, 1980

Re: 79-343 - Sun Ship v. Pennsylvania

Dear Bill:

While I will have no problem joining your opinion, I believe that the opinion I expect to circulate in the next few days in Thomas v. Washington Gas Light may lead you to make some minor changes in your footnote 11 on page 9. I am inclined to think the two cases should come down on the same day. Will you therefore bear with me until I get my draft in final form?

Respectfully,



Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 18, 1980

Re: 79-343 - Sun Ship v. Commonwealth of  
Pennsylvania

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

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