The Burger Court Opinion Writing Database

Texas Industries, Inc. v. Radcliff Materials, Inc.

451 U.S. 630 (1981)

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

No. 79-1144

TEXAS INDUSTRIES, INC.

v.

RADCLIFF MATERIALS, INC. et al.

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

From: The Chief Justice

Circulated: MAY 14 1981

Recirculated: _____

CHIEF JUSTICE BURGER delivered the opinion of the Court.

This case presents the question whether the federal antitrust laws allow a defendant, against whom civil damages, costs, and attorneys fees have been assessed, a right to contribution from other participants in the unlawful conspiracy on which recovery was based. We granted certiorari to resolve a conflict in the circuits. ___ U.S. ___ (1980).[1] We affirm.

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[1]Compare Wilson P. Abraham Construction Corp. v. Texas Industries, Inc., 604 F.2d 897 (CA5 1979), and Olson Farms, Inc. v. Safeway Stores, Inc., 1979-2 Trade Cases (CCH) ¶62,995 (CA10 1979), rehearing en banc pending (Dec. 27, 1979), with Professional Beauty Supply, Inc. v. National Beauty Supply, Inc., 594 F.2d 1179 (CA8 1979).

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

CHAMBERS OF
THE CHIEF JUSTICE

May 19, 1981

RE: No. 79-1144, Texas Industries, Inc. v. Radcliff Materials, Inc., et al.

Dear Lewis:

My purpose in listing the "pro" and "con" amici was twofold: (1) to remind ourselves of the split and (2) to underscore the policy aspects rendering disposition one for Congress to make.

I had not reached a final conclusion about leaving it in the final draft. Of course all the amici will be listed by the Reporter in the final, and it is important to show they are divided (9 for and 23 against contribution). Perhaps that is accomplished by stating in a footnote that they are so divided. I'll work on it.

As to your first observation, I am quite content to omit "perhaps stronger."

Regards,

WEB

Mr. Justice Powell

Chief agreed in telephone talk to do as requested 5/20

STYLISTIC CHANGES
5, 6, 9, 13, 14

Please join me

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

From: The Chief Justice

Circulated: _____

1st PRINTED DRAFT Recirculated: MAY 19 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1144

Texas Industries, Inc., Petitioner, *v.* Radcliff Materials, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1981]

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Petitioner and the three respondents manufacture and sell ready-mix concrete in the New Orleans, La., area. In 1975, the Wilson P. Abraham Construction Corp., which had purchased concrete from the petitioner, filed a civil action in the United States District Court for the Eastern District of Louisiana naming petitioner as defendant;[2] the complaint alleged that petitioner and certain unnamed concrete firms

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[2] The complaint also named one of petitioner's former employees as a codefendant; this employee has never been served.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 21, 1981

No. 79-1144 - Texas Industries, Inc. v.
Radcliff Materials, Inc.

Dear Harry,

I like "Russian Roulette" as an appropriate metaphor, and unlike you I would not at all mind an opinion with "Mexican Standoff," if it was an accurate analog. We need not always be formal. It strikes me as in the same ball park as "For Whom the Bell Tolls"!

Regards,

WEB

Justice Blackmun

Copies to the Conference

P.S. At noon I learned that I am a rank plagiarist on "Russian Roulette." See 372 U.S. 391, 440 (1963).

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

From: The Chief Justice

Circulated: _____

Recirculated: MAY 22 1981

MINOR STYLISTIC CHANGES ONLY
THROUGHOUT -- AS MARKED

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1144

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

CHAMBERS OF
THE CHIEF JUSTICE

May 26, 1981

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 79-1144, Texas Industries, Inc. v. Radcliff Materials, Inc., et al.

We have been holding one case for Texas Industries: No. 79-1214, Iowa Beef Processors, Inc. et al. v. Meat Price Investigators Assn. et al. This case arises out of MDL No. 248, In re Beef Industry Antitrust Litigation (Packer Cases), now pending in the Northern District of Texas. Three separate actions, including one class action, were filed by cattlemen against the same four beef packers, including two of the petitioners here (Iowa Beef Processors, Inc. and MBPXL Corp.). The complaints alleged that the packers had conspired to suppress the price at which they would purchase beef from the cattlemen and to monopsonize the beef market, in violation of §§ 1 and 2 of the Sherman Act. The case comes to us following resolution by the Court of Appeals for the Fifth Circuit of three consolidated appeals regarding various orders of the District Court.

Prior to certification of the class, one of the defendants (Spencer Foods, Inc.) reached a settlement with the named plaintiffs in the class action. The trial judge entered an order creating a temporary class for the purpose of settlement and ordered a hearing and notice to class members. Two potentional class members (the remaining petitioners here, Farr Farms Co. and Farr Feeders, Inc.) and the nonsettling defendants objected. Following the hearing, the judge certified a permanent settlement class and approved the agreement. Iowa Beef Processors and the Farr plaintiffs appealed. The Court of Appeals affirmed. It held that Iowa Beef Processors, as a nonsettling defendant, lacked standing to challenge

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 19, 1981

RE: No. 79-1144 Texas Industries, Inc. v. Radcliff Materials, Inc., et al.

Dear Chief:

I agree.

Sincerely,

WJB

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1981

Re: 79-1144 - Texas Industries, Inc. v.
Radcliff Materials, Inc.

Dear Chief:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

The Chief Justice

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1981

Re: No. 79-1144 -- Texas Industries, Inc. v. Radcliff Materials, Inc., et al.

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1981

Re: No. 79-1144 - Texas Industries, Inc. v. Radcliff Materials, Inc.

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 21, 1981

Re: No. 79-1144 - Texas Industries, Inc. v. Radcliff Materials, Inc.

Dear Chief:

Please join me.

I must confess that I am mildly bothered by the presence (see page 6 of the opinion) of the term "Russian roulette" in an opinion coming from this Court. In the political atmosphere that exists today, some might regard this as an ethnic slur of sorts. Could you replace it with something else? I would feel the same way about other phrases such as "Mexican standoff," and the like.

Sincerely,

Harry

The Chief Justice

cc: The Conference

May 18, 1981

79-1144 Texas Industries v. Radcliff Materials, Inc.

Dear Chief:

On the basis of a first reading over the weekend, I think your opinion (circulation of May 14) in this case is excellent and I expect to join you.

I do have a couple of suggestions. As you know, I have circulated an opinion in No. 79-1711 Sea Clammers, where - as in this case - the question is whether a private cause of action may be implied where the statute itself provides specific remedies. On page 22 of your draft, you state:

> "That presumption [against implying a remedy not specified in a statute] is strong, perhaps stronger in the context of antitrust violations".

I think it undesirable to suggest varying degrees in the strength of the presumption. Specifically, in view of the comprehensive remedies provided in the Clean Water Acts involved in Sea Clammers, I think the presumption there is equally strong. You and I have tried to identify principles that can be applied generally in these "implied cause of action" cases that now come here so frequently. The sentence quoted above could create future problems. It can be ommitted without diluting the force of your opinion.

Note 6 troubles me for a different reason. It lists businesses that have evidenced an interest in the outcome of this case in a rather large number of amici briefs. Our practice generally is not to list the names of amici. Apart from the precedent, listing a score of corporations may prompt friends in the media to check to see whether any of us who own securities have conflicts of interest. I know of none that we have, but I have understood ever since I came to this Court that a Justice need not disqualify because of an amicus brief. Any other

rule would leave us quite vulnerable to being knocked out of cases.

In sum, I see no purpose in naming amici in a Court opinion, and think it raises implications for the future that could be unfortunate.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1981

79-1144 Texas Industries v. Radcliff Materials

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1981

Re: No. 79-1144 Texas Industries, Inc. v. Radcliff Materials, Inc., Et Al.

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 15, 1981

Re: 79-1144 - Texas Inds., v. Radcliff
Materials

Dear Chief:

Please join me.

Respectfully,

The Chief Justice

Copies to the Conference