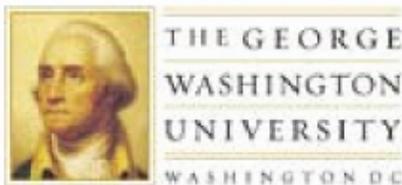


The Burger Court Opinion Writing Database

Gulf Offshore Co. v. Mobil Oil Corp.
453 U.S. 473 (1981)

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 9, 1981

RE: No. 80-590, Gulf Offshore Co. v. Mobil
Oil Corp., et al.

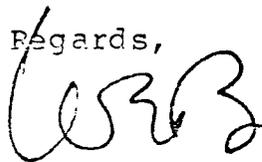
Dear Lewis:

I have reviewed your memorandum and could join an opinion along those lines with regard to the jurisdictional issue. However, I have serious problems with the question of the jury instruction. It seems to me that the parties have missed the boat in approaching this question. Because this is a federal action brought in a state court, we have the "flip side" of the Erie problem of which decisions are "substantive" and which are "procedural" when a state action is brought in federal court.

The first question that must be asked is whether the jury instruction is a procedural matter. If it is, Texas courts are free to apply whatever rule they like. However, if it is substantive--and I believe it is--the question becomes whether Louisiana law applies under the Act's provisions incorporating the law of the adjacent state. The parties indicate that Louisiana law is the same as Texas law--i.e., no instruction. Thus, the issue would boil down to whether Louisiana law is "inconsistent" with the federal policy expressed in Liepelt. Because Liepelt arose under FELA, where the rules of decision are federal, that case does not resolve the question of how important this policy is.

Rather than resolve these questions in the first instance, would it not be worth considering a remand to the Texas Court of Civil Appeals for it to tackle them first?

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1981

RE: 80-590 Gulf Offshore Co. v. Mobil Oil Corp.

Dear Lewis:

Over the weekend I refocused on this case - including the strong statement in the Liepelt opinion that "it was error to refuse the requested /tax/ instruction . . . /and that/ it would not be prejudicial to either party, but would merely eliminate an area of doubt or speculation that might have an improper impact on the computation of the amount of damages."

It is clear that Liepelt, although a FELA case, did not limit itself to such cases. I am now persuaded that it would border on a due process denial to refuse to give that instruction in any case, although you have not elected to go that route in this case.

Accordingly, I fall back to my original position and join your memorandum of May 29.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1981

Ré: No. 80-590, Gulf Offshore, Inc. v. Mobil Oil Corp.

Dear Lewis:

I agree that fundamental fairness is served by the "tax instruction" but I am willing to subscribe to your "option II" to make a Court.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

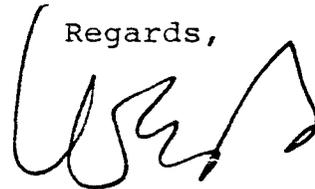
June 29, 1981

RE: 80-590 - Gulf Offshore Co. v. Mobil Oil Corp.

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written over the typed word 'Regards,'.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1981

RE: No. 80-590 Gulf Offshore Co. v. Mobil Oil

Dear Lewis:

I fully agree with your opinion affirming the concurrent jurisdiction of the state courts but I have problems with your disposition of the Liepelt issue. My notes show that we were 4-4 at conference. If we are to reach it, I presently feel that I would also affirm. I'll await further reactions.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 11, 1981

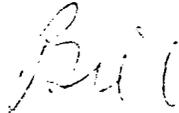
Re: No. 80-590, Gulf Offshore Co. v. Mobil Oil Corp.

Dear Lewis:

I am in substantial agreement with the Chief's memorandum in the above. As I see it, the Liepelt rule applies only in cases where the question of the measure of damages is governed by federal law. 444 U.S., at 493. Since the FELA was intended to impose a uniform rule on all FELA actions, but did not explicitly address the question of jury instructions as to income tax liability, this Court had to decide that question for itself in Liepelt. In contrast, the Outer Continental Shelf Lands Act, which governs this case, expressly adopts the civil laws of adjacent States, to the extent they are "not inconsistent" with the Act or some other federal law or regulation. Thus, unless there is such an inconsistency, the Louisiana rule must govern. In my view, Liepelt, which merely held in the context of the FELA that the requested instruction "can do no harm, and ... can certainly help," 444 U.S., at 498, creates no such inconsistency. It would be contrary to Congress's express decision to leave such issues of civil law to the adjacent States for us to impose our own judicially-crafted federal rule.

From the opinion of the Court below, it is impossible to tell whether the Court applied Louisiana law, much less whether it did so correctly. The sole authority cited is a Jones Act case, which leads me to suspect that the Court did not decide the question under Louisiana law. App. to Pet. for Cert., at A-17. Rather than decide for ourselves what the Louisiana rule is, I agree with the Chief that we should remand to the Texas Court of Civil Appeals for decision on this question.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 19, 1981

RE: No. 80-590 Gulf Offshore v. Mobil

Dear Lewis:

I would prefer the second option, namely to remand the case to the Texas Court of Civil Appeals to determine the Louisiana rule and whether it should be applied in this case.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1981

Re: No. 80-590, Gulf Offshore Co.
v. Mobil Oil Corp.

Dear Lewis,

I took no part in the consideration
or decision of this case.

Sincerely yours,

P.S.
/

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1981

Re: 80-590 - Gulf Offshore Company
v. Mobil Oil Company

Dear Lewis,

I agree with your Memorandum.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 19, 1981

Re: 80-590 - Gulf Offshore v. Mobil

Dear Lewis,

I would prefer the first option but
will follow your lead in the matter.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1981

Re: No. 80-590 - Gulf Offshore v. Mobil

Dear Lewis:

I would prefer the second option outlined
in your letter of June 19.

Sincerely,

J.M.

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 26, 1981

Re: No. 80-590 - Gulf Offshore v. Mobil

Dear Harry:

Please join me.

Sincerely,

J.M.
T.M.

Justice Blackmun

cc; The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1981

Re: No. 80-590 - Gulf Oil Co. v. Mobil Oil Corp.

Dear Lewis:

I would join parts I and II of your memorandum. As for part III, I am willing to go along with the suggestion of the Chief Justice, now seconded by Bill Brennan and John. Otherwise, in light of the evidence as to Gaedecke's injuries, I would affirm on the Liepelt issue, too.

I might add that I find the Atex print out increasingly difficult to read and a harsh strain on the eyes. I hope that we do not have any further circulations in that form.

Sincerely,



A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1981

Re: No. 80-590 - Gulf Offshore v. Mobil

Dear Lewis:

I would prefer the second option outlined in your letter of June 19.

Sincerely,



Mr. Justice Powell

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: JUN 25 1981

Recirculated: _____

No. 80-590, Gulf Offshore Co. v. Mobil Oil Corp.

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN joins,
concurring in part and concurring in the result.

I join the Court's opinion as to Parts I and II, and I
concur in the decision to remand this case for further
proceedings as to the applicability of the rule adopted in
Norfolk & Western R. Co. v. Liepelt, 444 U.S. 490. I write
separately because I have reservations about the Court's
expressed intention to apply the Liepelt rule expansively, a
ruling I consider unwise and unnecessary to this case in its
present posture.

As the Court makes clear, ante, at ____, the Texas Court of
Civil Appeals on remand must determine, first, what Louisiana law
requires as to this form of instruction, and, second, whether

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: _____

Recirculated: JUN 26 1981

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-590

Gulf Offshore Company, a Division of the Pool Company,
Petitioner,
v.
Mobil Oil Corporation et al.) On Writ of Certiorari to the Court of Civil Appeals of Texas for the Fourteenth Supreme Judicial District.

[June —, 1981]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN joins, concurring in part and concurring in the result.

I join the Court's opinion as to Parts I and II, and I concur in the decision to remand this case for further proceedings as to the applicability of the rule adopted in *Norfolk & Western R. Co. v. Liepelt*, 444 U. S. 490. I write separately because I have reservations about the Court's expressed intention to apply the *Liepelt* rule expansively, a ruling I consider unwise and unnecessary to this case in its present posture.

As the Court makes clear, *ante*, at —, the Texas Court of Civil Appeals on remand must determine, first, what Louisiana law requires as to this form of instruction, and, second, whether that state rule is "inconsistent" with OCSLA or "other federal law." The Court acknowledges, and I agree, that the choice of law provision contained in the OCSLA creates "[d]oubt," *ante*, at —, as to whether Congress intended state law or federal law to govern the grant of this instruction. As I understand the OCSLA, the purpose of incorporating state law was to permit actions arising on these federal lands to be determined by rules essentially the same as those applicable to actions arising on the bordering state lands. Congress apparently intended to provide a kind of local uniformity of result, regardless whether the action arose on shelf lands or on neighboring state lands. I would read

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The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: MAY 29 1981

1st DRAFT

Revised: _____

SUPREME COURT OF THE UNITED STATES

No. 80-590

GULF OFFSHORE COMPANY, A DIVISION OF
THE POOL COMPANY, PETITIONER *v.*
MOBIL OIL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS
OF TEXAS, FOURTEENTH SUPREME JUDICIAL DISTRICT

[May —, 1981]

MEMORANDUM OF JUSTICE POWELL.

This case requires us to determine whether federal courts have exclusive jurisdiction over personal injury and indemnity cases arising under the Outer Continental Shelf Lands Act, 43 U. S. C. § 1331 *et seq.* We also consider whether the rule of *Norfolk & Western Ry. Co. v. Liepelt*, 444 U. S. 490 (1980), that the jury be instructed that personal injury damages awards are not subject to federal income taxation, is applicable to such a case.

I

Respondent, Mobil Oil Corporation, contracted with petitioner, Gulf Offshore Company, for the latter to perform certain completion operations on oil drilling platforms offshore of Louisiana. As part of the agreement, petitioner promised to indemnify Mobil for all claims resulting directly or indirectly from the work. While the work was in progress in September, 1975, the advent of Hurricane Eloise required that workers be evacuated from oil platforms in the Gulf of Mexico.

Steven Gaedecke was an employee of petitioner working on an oil drilling platform above the seabed of the Outer Continental Shelf. As the storm approached, a boat char-

W. J. Powell
Mr. Justice Powell

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

June 9, 1981

PERSONAL

80-590 Gulf Offshore v. Mobil

Dear Chief:

This is the case in which you asked me to write a memorandum.

It presents two questions: (i) whether the Texas state courts had jurisdiction under the Outer Continental Shelf Lands Act, and (ii) whether our decision in N&W Railway Co. v. Liepelt, requires reversal.

My memorandum answers both of these questions in the affirmative. I now have a Court with respect to the first question (WJB, BRW, WHR and JPS). Bill Brennan will dissent, and is writing on the second question, and TM and HAB voted with Bill on this question at Conference. Potter is out.

I now have join votes from BRW, WHR and JPS on the second question (Liepelt), and so I only need your vote to have a Court on both issues. As you and I voted together at Conference, I think you will agree with what I wrote.

At this season of the year, I would appreciate your vote when you've had an opportunity to read the memorandum. I will need a little time to convert the memorandum into a Court opinion.

Sincerely,

The Chief Justice

lfp/ss

June 10, 1981

80-590, Gulf Offshore v. Mobil

Dear Chief,

Thank you for your comments on my opinion. The relationship of state and federal law in this case is complex.

No one has argued that an instruction as to the proper measure of damages is a question of procedure, governed by state law. Liepelt, which came to us from a state court, forecloses any such argument. This is so because state courts apply their own procedural rules in an FELA case. Chesapeake & Ohio R. Co. v. Kelly, 241 U.S. 485, 491. I do not understand you to disagree with this. Thus, there is no "flip-side" Erie question in this case.

The question before us, as you point out, is whether Liepelt is "inconsistent" with the state rule. The answer to this question turns on whether the tax instruction rule is federal law of general applicability. This is one of the questions I understood we were to answer here.

My memorandum holds that Liepelt provides a rule of general applicability for litigation of federal personal injury damage claims. As we have stated in a case dealing with trial of federal claims in state court, "the question of the proper measure of damages is inseparably connected with right of action ... and must be settled according to general principles of law as administered in the Federal courts." Ibid. I feel strongly, as you do, that the instruction is necessary to prevent tax conscious juries from awarding windfalls to plaintiffs - as may well have happened.

This was the rationale for Liepelt, not some policy peculiar to FELA. As the instruction is required in all

federal personal injury claims, the state rule is flatly "inconsistent" in this federal personal injury case.

We should decide this federal law issue here, and not leave it to a Texas state court to decide. I understand from our talk earlier today that you agree.

As BRW, WHR and JPS already have joined, your vote will give us a Court.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1981

80-590 Gulf Offshore Co. v. Mobil Oil Corp.

Dear Bill:

I would agree with your letter of June 11 if the Liepelt rule were limited to FELA cases, or if - as you suggest - the rule were merely discretionary. But I do not think Liepelt fairly can be read as so limited in either respect.

First, I find no support whatever - if I construe your letter correctly - for the view that in Liepelt we "merely held in the context of the FELA that the requested instruction 'can do no harm, and . . . can certainly help.'" The language you quote is from Judge Ely's opinion in the Ninth Circuit decision that was quoted with approval in Liepelt. Yet, immediately following the Ely quote, John - speaking for the Court - wrote:

"We hold that it was error to refuse the requested instruction in this case. That instruction was brief and could be easily understood. It would not complicate the trial by making additional qualifying or supplemental instructions necessary. It would not be prejudicial to either party, but would merely eliminate an area of doubt or speculation that might have an improper impact on the computation of the amount of damages. The judgment is reversed. . . 444 U.S. 490, at 498." (underscoring added)

We required the instruction, not merely suggested it.

Second, in Liepelt, the Court announced a rule of general applicability. The Court quoted also from Judge Aldisert's opinion for a unanimous CA3 panel (Aldisert, Hastie and Seitz), as follows:

"There is always danger that today's tax conscious juries may assume (mistakenly of course) that the judgment will be taxable and therefore make their verdict big enough so that plaintiff would get what they think he deserves after the imaginary tax is taken out of it." Domeracki v. Humble Oil & Refinery Co., 443 F.2d 1248, 1251, cited in Liepelt, supra, at 497.

The Third Circuit, in laying down what it characterized as the future rule of the Circuit, held: "in personal injury actions trial courts in this Circuit must ... upon request by counsel, instruct the jury that any award will be subject to federal income taxes and that the jury should not, therefore, add or subtract taxes in fixing the amount of any award." Id., at 1251.

It will be noted that CA3, as I think our Court did in Liepelt, not only made a "holding", but it did so generally with respect to personal injury actions. Domeracki was a longshoremen's suit and not one under the FELA.

Finally, the secondary authorities cited in n. 13 of our opinion in Liepelt did not limit their views to FELA cases.

In sum, unless we are to abandon Liepelt's unqualified holding so soon, it applies in this case. As you state, the Outer Continental Shelf Lands Act provides that the civil laws of the adjacent state apply unless they are "inconsistent" with federal law, and it does not distinguish between judge-made and statutory federal law. Although I have found no clear indication as to the law of Louisiana, if it were contrary to Liepelt it would be inconsistent and therefore not controlling.

As all of this seemed clear to me, perhaps I did not write it out as fully as I should. This may have caused some misunderstanding, and I may elaborate somewhat on what I have circulated.

I add, Bill, only this: what we are talking about is a rule of fairness. There is no rational basis for limiting it to FELA cases. As the Court said in Liepelt the instruction does not "complicate" a trial nor is it "prejudicial to either party". Its purpose is only to

assure that defendants not pay windfall awards in addition to damages to which the plaintiff is justly entitled. Fairness is an abiding concern in civil as well as criminal litigation.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

Re: 80-590 Gulf Offshore
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

6/15/81

Dear Chief,

As Harry letter of
this date notes, you
are receiving "credit"
for the view that
hipelt does not apply
in this case.

For the reasons
stated in my letter
of the 12th to WJB, I
think you can say
now that after my
further elaboration
you will join.

If we leave it to
a Texas court to decide
this federal question, we
know well what will happen.
.....

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 19, 1981

80-590 Gulf Offshore v. Mobil

MEMORANDUM TO THE CONFERENCE:

It now appears, to my embarrassment, that our examination of Louisiana law was incomplete.

Apparently Louisiana courts have sometimes given, and sometimes denied, a Liepelt type instruction. The Louisiana cases are not at all clear in this respect, and there may even be a conflict. Compare Guerra v. Young Construction Corp., 165 So. 2d 882 (1964) with DuBose v. Trapani, 295 So. 2d 72 (1974) and Francis v. Government Employers Insurance Co., 376 So. 609 (1979). Confronted with state court decisions that had both approved the giving and denial of this type instruction, the Court of Appeals for the Fifth Circuit concluded essentially that the giving of the instruction in Louisiana is a matter of discretion. See Croce v. Bromley Corp., 623 F.2d 1084 (1980). I am not fully persuaded the Fifth Circuit is correct, given the strong language in favor of the instruction in Guerra.

The Liepelt rule is one of federal common law. It applies in any federal personal injury action where Congress has been silent, but I now am not certain that it applies where OCSLA expressly provides that state law shall govern unless it is inconsistent with federal law. In Chevron Oil Co. v. Huson, 404 U.S. 97, 104-105, the Court held that Louisiana rather than federal common law provided the statute of limitations for personal damage actions under OCSLA. I do not view Chevron as controlling because here the Liepelt rule protects the integrity of jury trials of damage suits. This is an important federal policy. There is, however, a good deal more doubt than I had previously thought about both Louisiana law and whether it applies - questions not addressed by the Texas court below. Therefore, as I am now informed, I could accept either of two options:

(i) Adhere to Part III of my circulated memorandum of 5/29. This holds that the Liepelt instruction, being the federal rule, should have been given in this case.

(ii) Alternatively, we could accept the view previously expressed by both the Chief and Bill Brennan. We would remand the case to the Texas Court of Civil Appeals for it to determine the Louisiana rule and whether it should be applied in this case.

I feel strongly that principles of fairness require a Liepelt type instruction in a federal personal damage suit. I therefore would prefer the first option. I now recognize, however, that a strong argument can be made for a remand on whether Louisiana law is "inconsistent" and whether under OCSLA it gives way to Liepelt.

Therefore, following the good example set by Bill Rehnquist in J. Truett Payne v. Chrysler, I will join four to make a Court on either option. As Potter is out of this case, I hope we can avoid a 4-4 division. Either option seems legitimate.

I add that I am indebted to the Chief and Bill Brennan for contributing to my education, and I regret not having focused more sharply at an earlier time. After I hear from you, I will - in the light of the prevailing option - make appropriate revisions in Part III, and recirculate promptly.

L.F.P.
L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 22, 1981

80-590 Gulf Offshore v. Mobil

MEMORANDUM TO THE CONFERENCE:

This refers to my memorandum of June 19, in which I outlined two "options".

On the basis of "returns" now received, there are four preferences for Option No. 2, and the three preferences for Option No. 1 are willing to do along with No. 2. I agreed to "join four" for either option.

Accordingly, I have revised Part III, and now circulate it in Atex typed form together with a slightly revised Parts I and II of my printed second draft.

L.F.P.
L.F.P., Jr.

SS

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No. 80-590, Gulf Offshore

III.

The Court of Civil Appeals held that petitioner was not entitled to an instruction cautioning the jury that personal injury damages awards are not subject to federal income taxation, § 104(a)(2) of the Internal Revenue Code of 1954, 26 U.S.C. § 104(a)(2). In so ruling the court relied on Johnson v. Penrod Drilling Co., 510 F.2d 234, 236-237 (CA5) (en banc) (per curiam), cert. denied, 423 U.S. 839 (1975), a Jones Act case where the Court of Appeals prohibited presenting evidence or instructing the jury as to the impact of taxes on damages awards based on lost wages. This Court subsequently held that a defendant in a suit brought under the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51 et seq., is entitled to an instruction that damages for lost future wages are not subject to federal income taxation. Norfolk & Western R. Co. v. Liepelt, 444 U.S. 490 (1980).¹⁴

Footnote(s) ¹⁴appear on following page(s).

PP 5-8, Part III

4

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

6-18-81

Justice Powell
Circulated:
Re-circulated: ATLOR 23 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-590

Gulf Offshore Company, a Division of the Pool Company,
Petitioner,
v.
Mobil Oil Corporation et al.

On Writ of Certiorari to the Court of Civil Appeals of Texas for the Fourteenth Supreme Judicial District,

[June —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

This case requires us to determine whether federal courts have exclusive jurisdiction over personal injury and indemnity cases arising under the Outer Continental Shelf Lands Act, 43 U. S. C. § 1331 *et seq.* We also consider whether the rule of *Norfolk & Western R. Co. v. Liepelt*, 444 U. S. 490 (1980), that the jury be instructed that personal injury damages awards are not subject to federal income taxation, is applicable to such a case.

I

Respondent, Mobil Oil Corporation, contracted with petitioner, Gulf Offshore Company, for the latter to perform certain completion operations on oil drilling platforms offshore of Louisiana. As part of the agreement, petitioner promised to indemnify Mobil for all claims resulting directly or indirectly from the work. While the work was in progress in September 1975, the advent of Hurricane Eloise required that workers be evacuated from oil platforms in the Gulf of Mexico.

Steven Gaedecke was an employee of petitioner working on an oil drilling platform above the seabed of the Outer Continental Shelf. As the storm approached, a boat char-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 29, 1981

80-590 Gulf Offshore Company v. Mobil Oil Corp.

MEMORANDUM TO THE CONFERENCE:

I am making no changes in my opinion for the Court (second draft, circulated June 23) in response to Harry's opinion, concurring and dissenting, in which Bill Brennan and Thurgood have joined.

Accordingly, I will be ready - as tentatively scheduled - to bring this case down on Wednesday.

L. F. P.

L.F.P., Jr.

SS

- 10. The Chief Justice
- Mr. Justice Brennan
- Mr. Justice Stewart
- Mr. Justice White
- Mr. Justice Marshall ✓
- Mr. Justice Blackmun
- Mr. Justice Rehnquist
- Mr. Justice Stevens

6-29-81

From: Mr. Justice Powell

Circulated: _____

3rd DRAFT

Recirculated: JUN 29 1981

SUPREME COURT OF THE UNITED STATES

No. 80-590

<p>Gulf Offshore Company, a Division of the Pool Company, Petitioner, <i>v.</i> Mobil Oil Corporation et al.</p>	}	<p>On Writ of Certiorari to the Court of Civil Appeals of Texas for the Fourteenth Supreme Judicial District.</p>
---	---	---

[June —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

This case requires us to determine whether federal courts have exclusive jurisdiction over personal injury and indemnity cases arising under the Outer Continental Shelf Lands Act, 43 U. S. C. § 1331 *et seq.* We also consider whether the rule of *Norfolk & Western R. Co. v. Liepelt*, 444 U. S. 490 (1980), that the jury be instructed that personal injury damages awards are not subject to federal income taxation, is applicable to such a case.

I

Respondent, Mobil Oil Corporation, contracted with petitioner, Gulf Offshore Company, for the latter to perform certain completion operations on oil drilling platforms offshore of Louisiana. As part of the agreement, petitioner promised to indemnify Mobil for all claims resulting directly or indirectly from the work. While the work was in progress in September 1975, the advent of Hurricane Eloise required that workers be evacuated from oil platforms in the Gulf of Mexico.

Steven Gaedecke was an employee of petitioner working on an oil drilling platform above the seabed of the Outer Continental Shelf. As the storm approached, a boat char-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1981

Re: No. 80-590 Gulf Offshore Co. v. Mobil Oil Corp.

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 22, 1981

Re: No. 80-590 Gulf Offshore v. Mobil

Dear Lewis:

I would prefer the first option but will follow your lead in the matter.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

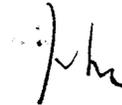
May 29, 1981

Re: 80-590 - Gulf Offshore Co. v. Mobil
Oil Corp.

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 10, 1981

Re: 80-590 - Gulf Offshore Co. v. Mobil
Oil Corp.

Dear Lewis:

Although I have joined you, I think the Chief Justice's suggestion that we remand on the instruction issue makes a good deal of sense.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 19, 1981

Re: 80-590 - Gulf Offshore v. Mobil

Dear Lewis:

Although I share your view about the desirability of the Liepelt instruction, I would prefer the second option suggested in your memorandum of June 19.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

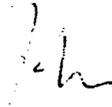
June 25, 1981

Re: 80-590 - Gulf Offshore v. Mobil

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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