

The Burger Court Opinion Writing Database

Washington Metropolitan Area Transit Authority v. Johnson

467 U.S. 925 (1984)

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 19, 1984

Re: 83-747 - Washington Metropolitan Area Transit Authority
Johnson

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1984

No. 83-747

WMATA v. Johnson

Dear Bill,

John, you and I are in dissent in
the above. Would you undertake the
dissent?

Sincerely,



Justice Rehnquist

Copy to Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 18 P1:0

June 18, 1984

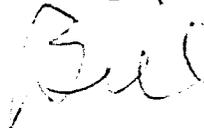
No. 83-747

Washington Metropolitan Area
Transit Authority v. Johnson,
et al.

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1984

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN -5 P2:01

Re: 83-747 and 83-822 -

Washington Metropolitan Area Transit Authority v. Johnson
Williams v. Washington Metropolitan Area Transit Authority

Dear Thurgood,

Join me, please.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: JUN 4 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-747 AND 83-822

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY, PETITIONER
83-747
v.
PAUL D. JOHNSON ET AL.

GLENWOOD WILLIAMS, PETITIONER
83-822
v.
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

Petitioner Washington Metropolitan Area Transit Authority ("WMATA") purchased workers' compensation insurance for the employees of its subcontractors, and thereby "secured compensation" for these workers under §4(a) of the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA" or "Act"), 33 U. S. C. §904(a). The question presented by this case is whether by securing compensation for its subcontractors' employees, WMATA earned the immunity from tort liability provided in §5(a) of the Act, 33 U. S. C. §905(a).

I

WMATA is a government agency created in 1966 by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia with the consent of the United States

STYLISTIC CHANGES THROUGHOUT.

changes: 1, 6-10

substantial changes: 11-15

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshal

Circulated: ~~JUN 11 1984~~

Recirculated: JUN 12 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-747

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY, PETITIONER *v.*
PAUL D. JOHNSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

Section § 4(a) of the Longshoremen's and Harbor Worker's Compensation Act ("LHWCA" or "Act"), 33 U. S. C. § 904(a), makes general contractors responsible for obtaining workers' compensation coverage for the employees of subcontractors under certain circumstances. The question presented by this case is when, if ever, these general contractors are entitled to the immunity from tort liability provided in § 5(a) of the Act, 33 U. S. C. § 905(a).

I

Petitioner Washington Metropolitan Area Transit Authority ("WMATA") is a government agency created in 1966 by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia with the consent of the United States Congress.¹ WMATA is charged with the construction and operation of a rapid transit system ("Metro") for the District of Columbia and the surrounding metropolitan region. Under the interstate compact that governs its exist-

¹ See Washington Metropolitan Transit Authority Interstate Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966); D. C. Code Ann. § 1-2431 (1981); Ch. 869, Acts of Maryland General Assembly 1965; Ch. 2, 1966 Va. Acts of Assembly.

P.P. 6, 9

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-747

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY, PETITIONER *v.* PAUL D.
JOHNSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

Section § 4(a) of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA or Act), 44 Stat. (part 2) 1426, 33 U. S. C. § 904(a), makes general contractors responsible for obtaining workers' compensation coverage for the employees of subcontractors under certain circumstances. The question presented by this case is when, if ever, these general contractors are entitled to the immunity from tort liability provided in § 5(a) of the Act, 33 U. S. C. § 905(a).

I

Petitioner Washington Metropolitan Area Transit Authority (WMATA) is a government agency created in 1966 by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia with the consent of the United States Congress.¹ WMATA is charged with the construction and operation of a rapid transit system (Metro) for the District of Columbia and the surrounding metropolitan region. Under the interstate compact that governs its existence, WMATA is authorized to hire construction subcontractors to work on

¹ See Washington Metropolitan Area Transit Authority Interstate Compact, Pub. L. 89-774, 80 Stat. 1324; D. C. Code § 1-2431 (1981); ch. 869, 1965 Md. Laws; ch. 2, 1966 Va. Acts.



Supreme Court of the United States
Washington, D.C. 20543
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

94 JUN 15 12:51

June 15, 1984

Re: No. 83-747, Washington Metropolitan Area
Transit Authority v. Johnson

Dear Thurgood:

Please join me.

Sincerely

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1984

83-747 WMATA v. Johnson

Dear Thurgood:

Because of my concern that your opinion (that otherwise I think is excellent) may leave subcontractors open to liability, I am circulating a concurring opinion that states my reason for believing that under the wrap-up plan involved here, subcontractors as well as WMATA have fulfilled their responsibilities under the Act. If, on further consideration, you should share my view, I would happily join your opinion in full.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

1st Typewritten Draft

No. 83-747

Washington Metro. Transit Auth. v. Johnson

JUSTICE POWELL, concurring in part and concurring in the result.

I agree with the Court that WMATA has secured compensation within the meaning of §4 of the LHWCA, and therefore is entitled to immunity. The Court strongly suggests that the subcontractors who participate in the wrap-up plan also are entitled to immunity, see ante, at 11, n. 11, even though the Court concludes that they failed in their duty to "secure the payment . . . of compensation". See ante, at 11, 15. I agree that the subcontractors should have immunity, but only because I conclude that by participation in the wrap-up plan they do discharge their obligation to secure payment of compensation.

06/06

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

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JUSTICE MARSHALL

84 JUN -7 12:03

From: Justice Powell
JUN 7 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-747 AND 83-822

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY, PETITIONER

83-747

v.

PAUL D. JOHNSON ET AL.

GLENWOOD WILLIAMS, PETITIONER

83-822

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE POWELL, concurring in part and concurring in the
result.

I agree with the Court that WMATA has secured compensation within the meaning of §4 of the LHWCA, and therefore is entitled to immunity. The Court strongly suggests that the subcontractors who participate in the wrap-up plan also are entitled to immunity, see *ante*, at 11, n. 11, even though the Court concludes that they failed in their duty to "secure the payment . . . of compensation." See *ante*, at 11, 15. I agree that the subcontractors should have immunity, but only because I conclude that by participation in the wrap-up plan they *do* discharge their obligation to secure payment of compensation.

Under a fair reading of §5(a), it seems to me that a subcontractor who has failed to secure compensation, for whatever reason, loses its immunity from tort suits. Section 5(a) provides that the liability of an employer to secure payment of compensation is exclusive of tort liability, but goes on to say

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Supreme Court of the United States
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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 14 09:40

June 14, 1984

83-747 and 83-822 Washington Metropolitan Area
Transit Authority v. Johnson

Dear Thurgood:

Please join me in the excellent second draft of
your opinion.

As your revisions meet the concerns expressed in
my concurring opinion circulated June 7, I will be happy to
withdraw it.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

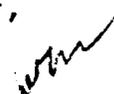
May 4, 1984

Re: No. 83-747 WMATA v. Johnson

Dear Bill,

I would be happy to undertake the dissent in this case.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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JUSTICE MARSHALL

74 JUN -5 11:14

June 5, 1984

Re: Nos. 83-747 & 83-822 Washington Metropolitan Area
Transit Authority v. Johnson

Dear Thurgood:

In due course I will circulate a dissent.

Sincerely,



Justice Marshall

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: JUN 18 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-747

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, PETITIONER *v.* PAUL D. JOHNSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE REHNQUIST, dissenting.

The Court today takes a 1927 statute and reads into it the "modern view" of workers' compensation, whereby both the contractor and the subcontractor receive immunity from tort suits provided somebody secures compensation for injured employees of the subcontractor.¹ In practical terms, the result is undoubtedly good both for the construction industry and for our already congested district courts. The result may even make overall economic sense. See 2A A. Larson, *The Law of Workmen's Compensation* § 72.31(b) (1982). But one can hardly pretend that it "adhere[s] closely to what Con-

¹The Court appears to qualify the "modern view" in one respect. The Court implies that an affirmative default by the subcontractor would strip the subcontractor of its statutory immunity even if the contractor fulfilled its backup obligation to secure compensation. *Ante*, at 14, n. 14. In that case the contractor, but not the subcontractor, would receive immunity. Aside from the fact that this view requires precisely the difficult factual inquiry which the Court, in another portion of its opinion, *ante*, at 13, says Congress could not have intended, the result is paradoxical. Contractors will receive greater protection from suit than subcontractors under the statute even though, as the Court admits, it requires "a slightly strained reading of the word 'employer'" to grant immunity to contractors at all. Under the Court's reading, as long as anyone secures compensation for the employees of the subcontractor, the contractor is immune from a third-party tort suit. But the subcontractor receives immunity only if it itself secures the compensation, whether directly or, as here, indirectly.

P.1

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JUSTICE MARSHALL

84 JAN 19 AM 1:19

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-747

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY, PETITIONER *v.* PAUL D.
JOHNSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE REHNQUIST, with whom JUSTICE BRENNAN and
JUSTICE STEVENS join, dissenting.

The Court today takes a 1927 statute and reads into it the
“modern view” of workers’ compensation, whereby both the
contractor and the subcontractor receive immunity from tort
suits provided somebody secures compensation for injured
employees of the subcontractor.¹ In practical terms, the re-
sult is undoubtedly good both for the construction industry
and for our already congested district courts. The result
may even make overall economic sense. See 2A A. Larson,

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Court implies that an affirmative default by the subcontractor would strip
the subcontractor of its statutory immunity even if the contractor fulfilled
its backup obligation to secure compensation. *Ante*, at 14, n. 14. In that
case the contractor, but not the subcontractor, would receive immunity.
Aside from the fact that this view requires precisely the difficult factual
inquiry which the Court, in another portion of its opinion, *ante*, at 13, says
Congress could not have intended, the result is paradoxical. Contractors
will receive greater protection from suit than subcontractors under the
statute even though, as the Court admits, it requires “a slightly strained
reading of the word ‘employer’” to grant immunity to contractors at all.
Under the Court’s reading, as long as anyone secures compensation for the
employees of the subcontractor, the contractor is immune from a third-
party tort suit. But the subcontractor receives immunity only if it itself
secures the compensation, whether directly or, as here, indirectly.

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Washington, D. C. 20543

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JUSTICE MARSHALL

84 JUN -5 11:14

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1984

Re: 83-747 & 83-822 - Washington Metropolitan
Area Transit Authority v. Johnson

Dear Thurgood:

I shall await Bill's dissent.

Respectfully,



Justice Marshall

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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JUSTICE MARSHALL

84 JUN 18 P1:0

June 18, 1984

Re: 83-747 & 83-822 - Washington Metropolitan
Area Transit Authority v. Johnson

Dear Bill:

Please join me in your dissent.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 5, 1984

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JUSTICE MARSHALL

'84 JUN -5 P3:08

No. 83-747 WMATA v. Johnson
No. 83-822 Williams v. WMATA

Dear Thurgood,

Please join me in your opinion. You may
want to check the caption. I understood we granted
certiorari only in No. 83-747.

Sincerely,

Sandra

Justice Marshall

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