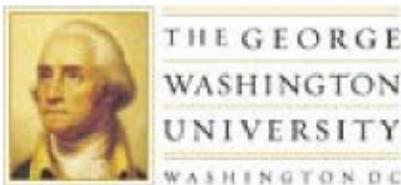


The Burger Court Opinion Writing Database

*East River Steamship Corp. v.
Transamerica Delaval Inc.*
476 U.S. 858 (1986)

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



8

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

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1986

84-1726 - East River Steamship v. Transamerica Delaval

Dear Harry:

I join.

Regards,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 5, 1986

No. 84-1726

East River Steamship Corp.,
et al. v. Transamerica Delaval Inc.

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1986

84-1726 - East River Steamship Corp.
v. Transamerica Delaval, Inc.

Dear Harry,

Please join me in your very good
opinion.

Sincerely yours,



Justice Blackmun

Copies to the Conference

5

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1986

Re: No. 84-1726 - East River Steamship v. Transamerica

Dear Harry:

Please join me.

Sincerely,

Jm.
T.M.

Justice Blackmun

cc: The Conference

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

From: Justice Blackmun

Circulated: JUN 04 1986

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HAB
Please forward me
W

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1726

EAST RIVER STEAMSHIP CORP., ET AL., PETITIONERS *v.* TRANSAMERICA DELAVAL INC.

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

[June —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this admiralty case, we must decide whether a cause of action in tort is stated when a defective product purchased in a commercial transaction malfunctions, injuring only the product itself and causing purely economic loss. The case requires us to consider preliminarily whether admiralty law, which already recognizes a general theory of liability for negligence, also incorporates principles of products liability, including strict liability. Then, charting a course between products liability and contract law, we must determine whether injury to a product itself is the kind of harm that should be protected by products liability or left entirely to the law of contracts.

I

In 1969, Seatrain Shipbuilding Corp. (Shipbuilding), a wholly owned subsidiary of Seatrain Lines, Inc. (Seatrain), announced it would build the four oil-transporting supertankers in issue—the T. T. Stuyvesant, T. T. Williamsburgh, T. T. Brooklyn, and T. T. Bay Ridge. Each tanker was constructed pursuant to a contract in which a separate wholly owned subsidiary of Seatrain engaged Shipbuilding. Shipbuilding in turn contracted with respondent, now known as Transamerica Delaval, Inc. (Delaval), to design, manufacture, and supervise the installation of turbines (costing \$1.4 million each, see App. 163) that would be the main propulsion

Down

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STYLISTIC CHANGES

4 AP. 10, 13-14

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 14 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1726

EAST RIVER STEAMSHIP CORP., ET AL., PETITIONERS
v. TRANSAMERICA DELAVAL INC.

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

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 16, 1986

Memorandum to the Conference

Re: Holds for No. 84-1726, East River Steamship Corp.
v. Transamerica Delaval, Inc.

There are two holds for East River:

1. No. 84-1808, White v. M/V Testbank. Two ships collided, spilling 12 tons of pentachlorophenol, PCP, into the water. Forty-one lawsuits were filed and consolidated. Respondents moved for summary judgment with respect to all claims for economic loss that did not result from or were not connected with actual physical damage to a proprietary interest. The DC granted summary judgment for respondents with respect to all such claims except for those brought by commercial fishermen, relying on Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927), and CA5 precedent interpreting Robins.

Robins denied recovery to a charterer of a ship when the ship was damaged while it was in dry dock being repaired. The charter agreement, between the charterer and the owner, provided that every six months the ship would be docked for repairs. On the relevant occasion, during the repairs (which were the subject of a contract between the shipowner and the dry dock), the dry dock negligently damaged the propeller and caused the charterers to lose income because of additional delay. The charterer sought these lost profits under a third-party beneficiary theory. The Court appeared to reject the claims under both that theory and a tort theory, although the latter is not entirely clear.

CA5 en banc affirmed, refusing to allow recovery for economic loss absent physical damage to a proprietary interest. 752 F.2d 1019, 1024. The majority rejected the idea that Robins applied only to negligent interference with contract rights and found it an effective bright-line rule for determining when claims were too remote to be allowed. If claims based on a contract were too remote under Robins, claims not based on a contract were clearly so. The majority rejected petitioners' contention that Kinsman Transit Co., 388 F.2d 821 (CA2 1968), which used an individualized approach of foreseeability and proximity to limiting too-remote damages, conflicted with CA5's bright-line approach. The majority also rejected petitioners' contention that Union Oil Co. v. Oppen, 501 F.2d 558 (CA9 1974),

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1986

84-1726 East River Steamship Corp. v. TransAmerica Delaval

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

June 10, 1986

Re: 84-1726 - East River Steamship Corp. v.
Transamerica Delaval Inc.

Dear Harry:

Please join me.

Sincerely,

Wm

Justice Blackmun

cc: The Conference

1

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1986

Re: 84-1726 - East River Steamship Corp.
v. Transamerica Delaval Inc.

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 5, 1986

No. 84-1726 East River Steamship Corp. v.
Transamerica Delaval Inc.

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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