

# The Burger Court Opinion Writing Database

## *Offshore Logistics, Inc. v. Tallentire*

477 U.S. 207 (1986)

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

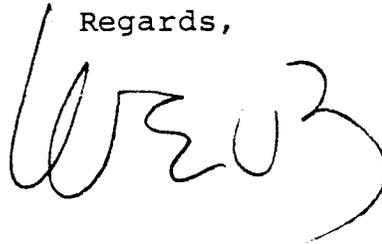
May 3, 1986

85-202 - Offshore Logistics v. Tallentire

Dear Sandra:

I join.

Regards,

A handwritten signature in cursive script, appearing to read "WEO3", written in dark ink.

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 11, 1986

No. 85-202

Offshore Logistics v. Tallentire

Dear Thurgood, Lewis and John,

We four are in dissent. Would you,  
Lewis, take it on?

Sincerely,



Justice Marshall

Justice Powell

Justice Stevens

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 13, 1986

No. 85-202  
Offshore Logistics  
v. Tallentire

Dear Lewis,

Please join me in your dissent in  
the above.

Sincerely,

*Bill*

Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 2, 1986

85-202 -

Offshore Logistics, Inc. v. Tallentire

Dear Sandra,

I join your very persuasive and  
informative opinion.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 9, 1986

Re: No. 85-202-Offshore Logistics v. Tallentire

Dear Sandra:

I await the dissent.

Sincerely,

*T.M.*  
T.M.

Justice O'Connor

cc: The Conference

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

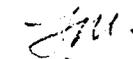
June 13, 1986

Re: No. 85-0202-Offshore Logistics v. Tallentire

Dear Lewis:

Please join me in your opinion concurring in  
Part III and dissenting.

Sincerely,



T.M.

Justice Powell

cc: The Conference

4  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 5, 1986

Re: No. 85-202, Offshore Logistics, Inc. v. Tallentire

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 11, 1986

85-202 Offshore Logistics v. Tallentire

Dear Bill:

I'll be glad to write the dissent.

Sincerely,



Justice Brennan

lfp/ss

cc: Justice Marshall  
Justice Stevens

82 11 11

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 3, 1986

85-202 Offshore Logistics v. Tallentire

Dear Sandra:

Although you have written a persuasive opinion, I remain inclined to think that in view of the legislative history, CA5 was right.

I therefore plan to write a brief dissent.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

06/10

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

From: Justice Powell

Circulated: JUN 11 1986

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*LFP*  
*Revised from note on page*  
*open circuit re state and admiralty*  
*MM*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-0202

OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS *v.*  
BETH A. TALLENTIRE ET AL.

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

[June —, 1986]

JUSTICE POWELL, concurring in Part III, and dissenting.

The Court today holds that § 7 of the Death on the High Seas Act (DOHSA), 41 Stat. 537, 46 U. S. C. § 761 *et seq.*, forecloses application of state remedies for wrongful deaths on the high seas. Thus, the Court confines state courts to the adjudication of causes of action brought under DOHSA. Because I believe that the Court's reading of § 7 is at odds with the language of the statute and its legislative history, I dissent.<sup>1</sup>

I

In the early judicial history of the United States, a few courts of admiralty, moved by humanitarian considerations, found in general maritime law a right of action for wrongful death. As Chief Justice Chase noted in an often-quoted passage: "[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *THE SEA GULL*, 21 F. Cas. 909, 910 (C. C. Md. 1865). See *THE HIGHLAND LIGHT*, 12 Fed.Cas. 138 (C. C. Md. 1867) ("the admiralty may be styled, not improperly, the human providence which watches

<sup>1</sup>I agree with the Court's conclusion that the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.*, does not govern this action, and therefore join Part III of the Court's opinion.

*6/12*  
*Low*  
*quaint!*

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06/12

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

pp. 1, 6, 7, 8

From: Justice Powell

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

Recirculated: June 13, 1986

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-202

OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS *v.*  
BETH A. TALLENTIRE ET AL.

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

[June —, 1986]

JUSTICE POWELL, with whom JUSTICE STEVENS joins,  
concurring in Part III, and dissenting.

The Court today holds that § 7 of the Death on the High Seas Act (DOHSA), 41 Stat. 537, 46 U. S. C. § 761 *et seq.*, forecloses application of state remedies for wrongful deaths on the high seas. Thus, the Court confines state courts to the adjudication of causes of action brought under DOHSA. Because I believe that the Court's reading of § 7 is at odds with the language of the statute and its legislative history, I dissent.<sup>1</sup>

### I

In the early judicial history of the United States, a few courts of admiralty, moved by humanitarian considerations, found in general maritime law a right of action for wrongful death. As Chief Justice Chase noted in an often-quoted passage: "[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *THE SEA GULL*, 21 F. Cas. 909, 910 (C. C. Md. 1865). See *THE HIGHLAND LIGHT*, 12 Fed. Cas. 138 (C. C. Md. 1867) ("the admiralty may be

<sup>1</sup>I agree with the Court's conclusion that the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.*, does not govern this action, and therefore join Part III of the Court's opinion.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 17, 1986

85-202 Offshore Logistics v. Tallentire

Dear Sandra:

I am now ready for this case to come down whenever  
it is convenient for you and the Court.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

06/17

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

Typistic Changes Throughout.

From: **Justice Powell**

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JUN 17 1986

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-202

**OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS v.  
BETH A. TALLENTIRE ET AL.**

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

[June —, 1986]

JUSTICE POWELL, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS join, concurring in Part III, and dissenting.

The Court today holds that § 7 of the Death on the High Seas Act (DOHSA), 41 Stat. 538, 46 U. S. C. § 767 forecloses application of state remedies for wrongful deaths on the high seas. Thus, the Court confines state courts to the adjudication of causes of action brought under DOHSA. Because I believe that the Court's reading of § 7 is at odds with the language of the statute and its legislative history, I dissent.<sup>1</sup>

I

In the early judicial history of the United States, a few courts of admiralty, moved by humanitarian considerations, found in general maritime law a right of action for wrongful death. As Chief Justice Chase noted in an often-quoted passage: "[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *The Sea Gull*, 21 F. Cas. 909, 910 (No. 12, 578) (CC Md. 1865). See *The Highland Light*,

<sup>1</sup>I agree with the Court's conclusion that the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.*, does not govern this action, and therefore join Part III of the Court's opinion.

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For The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Stevens  
Justice O'Connor

Attorney General Powell

JUN 26 1986

pp-7.8

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## SUPREME COURT OF THE UNITED STATES

No. 85-202

OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS *v.*  
BETH A. TALLENTIRE ET AL.

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

[June 23, 1986]

JUSTICE POWELL, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS join, concurring in Part III, and dissenting.

The Court today holds that §7 of the Death on the High Seas Act (DOHSA), 41 Stat. 538, 46 U. S. C. §767, forecloses application of state remedies for wrongful deaths on the high seas. Thus, the Court confines state courts to the adjudication of causes of action brought under DOHSA. Because I believe that the Court's reading of §7 is at odds with the language of the statute and its legislative history, I dissent.<sup>1</sup>

### I

In the early judicial history of the United States, a few courts of admiralty, moved by humanitarian considerations, found in general maritime law a right of action for wrongful death. As Chief Justice Chase noted in an often-quoted passage: "[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *The Sea Gull*, 21 F. Cas. 909,

<sup>1</sup>I agree with the Court's conclusion that the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. §1331 *et seq.*, does not govern this action, and therefore join Part III of the Court's opinion.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 2, 1986

Re: No. 85-202 Offshore Logistics, Inc. v. Tallentire

Dear Sandra,

Please join me.

Sincerely,  
*W.H.R.*

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 5, 1986

Re: 85-202 - Offshore Logistics v. Tallentire

Dear Sandra:

I shall wait to see what Lewis has to say.

Respectfully,



Justice O'Connor

Copies to the Conference



CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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

June 11, 1986

Re: 85-0202 - Offshore Logistics, Inc., et al  
v. Tallentire, et al.

Dear Lewis:

Please join me.

Respectfully,

Justice Powell

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 85-202

OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS *v.*  
BETH A. TALLENTIRE ET AL.

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

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Respondents' husbands were killed when petitioner's helicopter, in which the decedents were travelling, crashed into the high seas. The issue presented is whether the Death on the High Seas Act (DOHSA), 41 Stat. 537, 46 U. S. C. § 761 *et seq.*, provides the exclusive remedy by which respondents may recover against petitioner for the wrongful death of their husbands, or whether they may also recover the measure of damages provided by the Louisiana wrongful death statute, La. Civ. Code Ann. art. 2315 (West Supp. 1986), applying either of its own force or as surrogate federal law under the Outer Continental Shelf Lands Act (OCSLA), 67 Stat. 462, 43 U. S. C. § 1331 *et seq.*

### I

The husbands of respondents Corrine Taylor and Beth Tallentire worked on drilling platforms in the Gulf of Mexico, off the coast of Louisiana. On August 6, 1980, respondents' husbands were killed while being transported in a helicopter owned and operated by petitioner Air Logistics, a Division of Offshore Logistics, Inc., from a drilling platform to Houma, Louisiana. The crash occurred approximately 35 miles off the coast of Louisiana, well over the three mile limit that separates Louisiana's territorial waters from the high seas for purposes of DOHSA.

*Stylistic changes throughout*  
*B P 21*

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-202

OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS *v.*  
BETH A. TALLENTIRE ET AL.

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

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Respondents' husbands were killed when petitioner's helicopter, in which the decedents were traveling, crashed into the high seas. The issue presented is whether the Death on the High Seas Act (DOHSA), 41 Stat. 537, 46 U. S. C. § 761 *et seq.*, provides the exclusive remedy by which respondents may recover against petitioner for the wrongful death of their husbands, or whether they may also recover the measure of damages provided by the Louisiana wrongful death statute, La. Civ. Code Ann., Art. 2315 (West Supp. 1986), applying either of its own force or as surrogate federal law under the Outer Continental Shelf Lands Act (OCSLA), 67 Stat. 462, 43 U. S. C. § 1331 *et seq.*

I

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Stylistic Changes Throughout

pp. 22

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-202

OFFSHORE LOGISTICS, INC., ET AL., PETITIONERS *v.*  
BETH A. TALLENTIRE ET AL.

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

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Respondents' husbands were killed when petitioner's helicopter, in which the decedents were traveling, crashed into the high seas. The issue presented is whether the Death on the High Seas Act (DOHSA), 41 Stat. 537, 46 U. S. C. § 761 *et seq.*, provides the exclusive remedy by which respondents may recover against petitioner for the wrongful death of their husbands, or whether they may also recover the measure of damages provided by the Louisiana wrongful death statute, La. Civ. Code Ann., Art. 2315 (West Supp. 1986), applying either of its own force or as surrogate federal law under the Outer Continental Shelf Lands Act (OCSLA), 67 Stat. 462, 43 U. S. C. § 1331 *et seq.*

I

The husbands of respondents Corrine Taylor and Beth Tallentire worked on drilling platforms in the Gulf of Mexico, off the coast of Louisiana. On August 6, 1980, respondents' husbands were killed while being transported in a helicopter owned and operated by petitioner Air Logistics, a Division of Offshore Logistics, Inc., from a drilling platform to Houma, Louisiana. The crash occurred approximately 35 miles off the coast of Louisiana, well over the three mile limit that separates Louisiana's territorial waters from the high seas for purposes of DOHSA.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 24, 1986

MEMORANDUM TO THE CONFERENCE:

Re: Petroleum Helicopters, Inc. v. Sincox, No. 85-97  
(Hold for: Offshore Logistics v. Tallentire, No. 85-202)

GVR

Respondent's husband was killed when petitioner's helicopter, in which the deceased was travelling, crashed on the high seas in the Gulf of Mexico. Respondent brought a wrongful death suit against petitioner. Upon petitioner's motion, the District Court dismissed respondent's claims under OCSLA and the Louisiana wrongful death statute, finding that DOHSA provided the exclusive remedy for respondent's husband's wrongful death. Respondent then filed an interlocutory appeal to the Fifth Circuit pursuant to 28 U.S.C. §1292(a)(3) (Courts of Appeals have jurisdiction of "[i]nterlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed"). While the appeal was pending, the Fifth Circuit decided Tallentire v. Offshore Logistics, in which it held that a remedy under DOHSA could be supplemented by a state's wrongful death statute. Accordingly, the court remanded this case to the District Court for reconsideration in light of Tallentire. Petitioner then filed this petition for cert, which was held for Offshore Logistics. In Offshore Logistics, of course, we reversed the Fifth Circuit.

Respondent argues in her brief in opposition to cert that the petition should be dismissed because the Fifth Circuit never had jurisdiction over the case under §1292(a)(3). Respondent is incorrect. "In general, it may be said that whenever an order dismisses a claim for relief on the merits it is appealable under §1293(a)(3)." 9 Moore's Federal Practice ¶110.19[3], at 210. See also Aparicio v. Swan Lake, 643 F.2d 1109, 1113 n.6 (CA5 1981) (citing authorities).

This case raises precisely the same issues that were decided in Offshore Logistics. I therefore recommend that we GVR in light of that decision.

Sincerely,

*Sandra*