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# Supreme Court of the United States

Office of the Supreme Court, U.S.  
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JOHN F. DAVIS, CLERK

In the Matter of:

----- X  
PAULETTE BOUDREAUX RODRIGUE, et al. :  
Petitioners, :  
V. :  
AETNA CASUALTY AND SURETY COMPANY, :  
et al. :  
Respondents. :  
----- X

Docket No. 436

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Place Washington, D. C.  
Date February 25, 1969

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on behalf of Petitioners

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- - -

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 - - - - - x  
4 Paulette Boudreaux Rodrigue, et al., :

5 Petitioners, :

6 v. :

No. 436

7 Aetna Casualty and Surety Company, et al., :

8 Respondents. :  
9 - - - - - x

10 Washington, D. C.

Tuesday, February 25, 1969.

11 The above-entitled matter came on for argument at  
12 11:35 a.m.

13 BEFORE:

14 EARL WARREN, Chief Justice  
15 HUGO L. BLACK, Associate Justice  
16 WILLIAM O. DOUGLAS, Associate Justice  
17 JOHN M. HARLAN, Associate Justice  
18 WILLIAM J. BRENNAN, JR., Associate Justice  
19 POTTER STEWART, Associate Justice  
20 BYRON R. WHITE, Associate Justice  
21 ABE FORTAS, Associate Justice  
22 THURGOOD MARSHALL, Associate Justice

23 APPEARANCES:

24 PHILIP E. HENDERSON, Esq.  
25 P.O. Box 590, O'Neal Building,  
Houma, Louisiana  
Counsel for Petitioners

JAMES E. DIAZ, Esq.  
201 West Main Street  
LaFayette, Louisiana  
Counsel for Respondents

\* \* \*

1                                   P R O C E E D I N G S

2                   MR. CHIEF JUSTICE WARREN: No. 436, Paulette  
3 Boudreaux Rodrigue, et al., Petitioners, versus Aetna Casualty  
4 and Surety Company, et al.

5                   THE CLERK: Counsel are present.

6                   MR. CHIEF JUSTICE WARREN: Mr. Henderson.

7                   ORAL ARGUMENT OF PHILIP E. HENDERSON, ESQ.

8                                   ON BEHALF OF PETITIONERS

9                   MR. HENDERSON: Thank you.

10                  Mr. Chief Justice and may it please the Court.

11                  I am Philip Henderson from Houma, Louisiana.

12                  In this case, there is presented the issue of whether  
13 the Death on the High Seas Act is the exclusive remedy for  
14 wrongful death occurring to one of the workers on the artificial  
15 islands, the fixed platform, in the Outer Continental Shelf off  
16 the coast of Louisiana in this case.

17                  Actually before the Court today are two cases that  
18 came here on a joint petition for writ of certiorari. The two  
19 cases present exactly the same issue.

20                  In the Paulette Boudreaux Rodrigue case she is suing,  
21 she and her children are suing for the death of her husband.  
22 Butley Rodrigue fell from the top of a derrick to his death on  
23 the drilling platform floor.

24                  It is alleged that the death was caused by the neg-  
25 ligence of the operator of the platform and the drilling company.



1 In the Dore case, let me continue and bring the  
2 Rodrigue case up to the Court.

3 For the death, Mrs. Rodrigue brought actually three  
4 suits. She brought one suit under the Death on the High Seas  
5 Act. This suit was broad in admiralty. (?)

6 She brought two civil actions claiming that the  
7 Louisiana Death Act which was the adjacent state in this case,  
8 the Rodrigue death occurred on a platform which was 28 miles  
9 seaward of the coast of Louisiana.

10 In the civil actions, Mrs. Rodrigue contended that  
11 the Louisiana Death Act was extended to these artificial islands  
12 by the Outer Continental Shelf Lands Act which specifically  
13 provides that the law of the adjacent State shall be extended  
14 to the artificial islands in the Outer Continental Shelf and  
15 shall be applied when not inconsistent with Federal law.

16 The cases were consolidated. Motions were filed by  
17 the defendant to dismiss all of the claims actually contending  
18 that one or the other was an exclusive remedy. The Trial Judge  
19 denied all motions. The case was fixed for trial with the jury  
20 to hear the civil actions, the judge to hear the admiralty  
21 action concurrently.

22 On the morning of the trial after the jury was im-  
23 paneled, the Judge changed his mind and granted a motion to  
24 dismiss the civil actions.

25 Q Mr. Henderson, may I ask, who were we given ---

1 A Not me, your Honor.

2 Q By the Respondent?

3 MR. DIAZ: Yes, your Honor.

4 Q What was the question?

5 Q Who supplied this?

6 Q Do you know about this?

7 A I was given a copy, yes.

8 Q This talks about the Submerged Lands Act. That  
9 is not involved in this case, is it?

10 A Well, the Outer Continental Shelf Lands Act  
11 actually is a part of the Submerged Lands Act.

12 Q I thought it came earlier.

13 A I beg your pardon.

14 Q I thought the Outer Continental Shelf Act came  
15 earlier?

16 A Well ---

17 Q The Submerged Lands Act is something else, isn't  
18 it?

19 A I always refer to that Act as the Outer  
20 Continental Shelf Lands Act. I have heard it referred to by  
21 other persons as the Submerged Lands Act.

22 Q They are two quite different statutes, are they  
23 not?

24 A Your Honor, please, I don't know. I am dealing  
25 here with the Outer Continental Shelf Lands Act.

1 Q That is what I thought.

2 A And this is not my doctrine.

3 Q You are not responsible for this then --  
4 indicating -- well, I will ask the man who is.

5 A Now, when the trial judge dismissed the two  
6 civil actions he held that the exclusive remedy for death on  
7 the artificial islands was the Outer Continental Shelf Lands  
8 Act. Excuse me. Was the Death on the High Seas Act.

9 Q Is there any question -- is there any issue  
10 between the parties here as a matter of fact that as to whether  
11 or not this artificial island was within the contours of the  
12 Outer Continental Shelf geographically?

13 A None whatsoever.

14 Q No dispute?

15 A No dispute about that as to either the Boudreaux  
16 Rodrigue case or the Dubois Dore case.

17 Now, both platforms were within the Continental Shelf  
18 and both were adjacent to the State of Louisiana. An appeal  
19 was taken for the dismissal of the civil actions to the Fifth  
20 Circuit.

21 In the Dubois Dore case, Mr. Dore was a crane operator  
22 on one of these artificial islands or platforms, the crane  
23 collapsed, Mr. Dore fell to his death.

24 For his death, his widow and children brought suit,  
25 a single action, claiming as one cause of action a right under

1 the Death on the High Seas Act and also claimed rights under  
2 the Louisiana Death Act.

3 The Louisiana Death Act allows recompense for not  
4 only the pecuniary losses but also recompense for loss of love,  
5 affection and companionship.

6 The Death on the High Seas Act only allows a recom-  
7 pense for pecuniary losses.

8 In the Dubois Dore case the defendant at the District  
9 Court level filed a motion to strike the Louisiana cause of  
10 action and to strike all claims for non-pecuniary damages.

11 The District Judge granted this motion and then  
12 certified the questions raised in the motion to the Fifth  
13 Circuit so that actually the Dore case reached the Fifth  
14 Circuit before the Rodrigue case though both involved exactly  
15 the same issue.

16 In the Fifth Circuit, the Court held that the ex-  
17 clusive remedy for death was the Death on the High Seas Act.  
18 This Court has granted certiorari. The Rodrigue case actually  
19 followed the Dore case very promptly. Accordingly, the  
20 Rodrigue case issued a procuring opinion and said simply refer  
21 to our decision in the Dore case.

22 It is our contention that the Fifth Circuit erred  
23 in holding that the Death on the High Seas Act is the exclusive  
24 remedy. The Outer Continental Shelf Lands Act specifically  
25 extends the law of the adjacent State to the particular islands

1 and it is to be applied where not inconsistent with Federal  
2 law.

3 Now, the holding that the Death on the High Seas Act  
4 was an exclusive remedy is clearly in error because the Death  
5 on the High Seas Act specifically provides that it is not an  
6 exclusive remedy.

7 Section 7 of the Death on the High Seas Act reads,  
8 "The provisions of any State statute giving or regulating  
9 rights of action or remedies for death shall not be affected by  
10 this chapter."

11 Now, it is hard to see how anything could be clearer  
12 than that.

13 Now, at the time of the adoption of the Death on  
14 the High Seas Act there were state statutes which were con-  
15 strued as giving rights of action for death on the high seas.  
16 The most famous of these cases was the Hamilton. Also, there  
17 happened to be a case, the E. B. Ward, Jr., which was a Fifth  
18 Circuit Court of Appeals case applying the very same Louisiana  
19 Death Act that is at issue here to a death which occurred in  
20 a collision between two vessels in the Gulf of Mexico.

21 Both of these cases were on the books at the time of  
22 the adoption of the Death on the High Seas Act. The clarity of  
23 this specific statement in the Death on the High Seas Act that  
24 it shall not affect the rights given by State statutes is  
25 highlighted by legislative history.



1           At the time of this bill, it was a Senate bill when  
2 it was in the House just before passage, at that time there  
3 was debate as to whether the Act should be an exclusive remedy.

4           At that point, Section 7, which I have just read to  
5 you, provided that the provisions of any State statute giving  
6 or regulating rights of action or remedies for death shall not  
7 be affected by this act as to causes of action accruing within  
8 the territorial limits of any State.

9           Now, that made it clear that there was a limitation  
10 upon this, what the Act was going to affect. However, those  
11 last words as to causes of action accruing within the limits  
12 of any State were deleted after arguing and after debate. They  
13 were deleted so that the Act would read that the provisions of  
14 any State statute giving or regulating rights of action or  
15 remedies for death shall not be affected by this act, without  
16 any limiting feature.

17           Now, it is true that during that debate some of the  
18 people who debated said that this Act should be exclusive.  
19 Some said that it shouldn't. Actually, the final vote on the  
20 amendment was 201 in favor of the amendment to 75 against it.

21           Counsel for Respondent seemed to take comfort from  
22 the fact that some of the persons who debated gave some reasons  
23 why they thought the amendment shouldn't be passed or if it  
24 passed, it didn't make any difference, but the fact is that  
25 there were 201 as opposed to 75 of the legislators who voted

1 for this amendment so that the Act would plainly read that the  
2 provisions of any State statute giving or regulating rights of  
3 action or remedies for death shall not be affected by this Act.  
4 It couldn't be plainer.

5 Q I wonder how far you carry that. Suppose 20  
6 miles out at sea from the Coast of Louisiana, but on a direct  
7 line, say disaster occurred and there was a death on the high  
8 seas at that point.

9 A On one of the islands?

10 Q No, no, no. Not an island at all, just collision  
11 or ship or something of this sort. It had nothing to do with  
12 the Continental Shelf, way outside of the Continental Shelf.

13 Would you say that Death on the High Seas Act had the  
14 effect of giving cause of action also under Louisiana law?

15 A Well, now, the Death on the High Seas Act, of  
16 course, gives its own cause of action.

17 Q I understand that.

18 A The Outer Continental Shelf Lands Act would not  
19 give a cause of action because the Outer Continental Shelf Lands  
20 Act applies only to these islands.

21 Q I am talking only about the argument you have been  
22 making here with respect to the Death on the High Seas Act.

23 A To the old cases that were in existence?

24 Q No, no. Death on the High Seas Act. You say  
25 that Death on the High Seas Act expressly reserves State causes

1 of action.

2 A Yes.

3 Q Now, I am asking you whether that would apply in  
4 a situation I put to you, say far beyond the Outer Continental  
5 Shelf there was death on the high seas and somebody claims a  
6 remedy under Louisiana Law saying that Death on the High Seas  
7 Act saves remedies under the State law and this death occurred  
8 on direct projected line from the middle of the State of  
9 Louisiana.

10 And, therefore, the contention is that we have a  
11 cause of action under Louisiana law.

12 A Oh, I don't think in that circumstance, your  
13 Honor, that the direct line from the State of Louisiana really  
14 has any bearing. I would think that the only time in which the  
15 direct line from the State of Louisiana has any bearing is  
16 under the Outer Continental Shelf Lands Act because ---

17 Q All right. So it is essential for you to  
18 demonstrate not only that there is a possibility under the Death  
19 on the High Seas Act but also that the Outer Continental Shelf  
20 Act does provide for the alternative inapplicability of  
21 Louisiana law?

22 A I call it supplementary, your Honor.

23 Q All right. I don't care what you call it. Is  
24 that right?

25 A Not necessarily.

1           Q     You have got to show that this, that Louisiana  
2 has jurisdiction by reason of the place where this death  
3 occurred.

4           A     In the instant cases, your Honor, that point is  
5 clearly met because the Outer Continental Shelf Act does  
6 specifically say that as to these platforms involved, because  
7 they are adjacent to the State, that the Louisiana law does  
8 apply there now.

9           Q     Yes, but that is only as Federal law?

10          A     As an adopted Federal law, yes, sir.

11          Q     It does not involve Louisiana law?

12          A     Correct, sir.

13          Q     It does not give Louisiana any jurisdiction over  
14 the Outer Continental Shelf?

15          A     That is correct. Jurisdiction, it is Federal  
16 jurisdiction,

17          Q     Nor does it, as Louisiana law is relevant only  
18 as part of the Federal law?

19          A     Yes, sir, it is adopted Federal law, Federal  
20 jurisdiction. It is adopted to be applied where not inconsistent  
21 with Federal law, but, Mr. Justice Fortas, to get back to your  
22 original question, your question could be phrased to be whether  
23 the State Death Acts in a situation in which the Outer  
24 Continental Shelf is not involved might still be applied  
25 according to my argument. That is the question.

1 Q Correct.

2 A Now, I point out first that that is not particu-  
3 larly at issue here but my question -- but the answer is, I  
4 think, yes. I think that that is the clear intent of the  
5 legislators. They discussed that in the legislative history.  
6 They discussed ---

7 Q Wasn't that of the Death on the High Seas Act?

8 A No, sir. The Death on the High Seas Act, they  
9 discussed the case of the Hamilton and they noted that because  
10 here was a Delaware ship involved, the defendant was a Delaware  
11 corporation, and I believe that the plaintiffs were citizens of  
12 Delaware, that with those facts, that the Delaware law could  
13 apply. The law of Delaware would have to be looked to, the  
14 Conflicts of Laws Rules of the State of Delaware would have to  
15 be looked to and if they gave a remedy in those circumstances the  
16 remedy would be available.

17 Now, it was also pointed out in that debate that the  
18 State of Massachusetts had different Conflicts of Law Rules and  
19 they discussed one of the men from Massachusetts got up and said  
20 in such and such a case there was a collision, but the ship was  
21 owned by a Massachusetts corporation but the other ship was not,  
22 was owned by a different State and that the rules were hope-  
23 lessly in conflict and they gave no remedy.

24 And so, to answer your question I would think that if  
25 a Delaware ship, if the Delaware law had not changed, if a



1 Delaware ship with a Delaware corporation with a Delaware  
2 plaintiff were involved, yes, Delaware could give its citizens  
3 a cause of action under its laws for a Death on the High Seas  
4 in addition to or supplementary to what would be available to  
5 that person under the Death on the High Seas Act.

6 Q But that would be in a Delaware court, perhaps  
7 in diversity of citizenship, would it not?

8 That would not be as a matter of Federal law?

9 A That is true.

10 Q It would be a matter of additional Delaware law?

11 A That is right. I think that that is certainly  
12 what these legislators were discussing when they amended this  
13 provision so that the provision would read, that the Death on  
14 the High Seas Act shall not affect State remedies.

15 Q State remedies.

16 A That is precisely what they had in mind and they  
17 went through that discussion just exactly as I related it to  
18 you.

19 Now, in the instant cases we really don't have to  
20 see whether Louisiana in this day and time would apply its  
21 Conflict of Laws Rules so as to in a given situation allow a  
22 cause of action, out there, because the Louisiana law as adopted  
23 Federal law is specifically extended to these islands.

24 But the crucial and important point is that the Death  
25 on the High Seas Act does say in plain terms that it is not an

1 exclusive remedy. That is different than the Jones Act which  
2 doesn't say. The Jones Act -- I am certain the Lindgren and  
3 Gillespie decisions -- the statement of this court was that  
4 Congress in enacting the Jones Act intended to make a uniform  
5 remedy.

6 However, the Death on the High Seas Act is different  
7 from the Jones Act in that the Death on the High Seas Act  
8 specifically provides that the remedy is not exclusive.

9 Now, actually ---

10 Q Not exclusive but the legislative history also  
11 shows that the intent was to make a uniform remedy?

12 A Uniform basic remedy.

13 Q Yes.

14 A Actually they used the word basic in this  
15 discussion.

16 Q Yes.

17 A That is true. The man from Massachusetts says,  
18 "I want to be sure I get something." So, all right you have the  
19 Death on the High Seas Act but the man from Delaware says, "I  
20 don't want you taking away what might be available in addition  
21 under my law."

22 Of course, there is nothing unusual whatsoever in  
23 allowing cumulative remedies for the same wrong. Suppose that  
24 a man has a chattel or suppose that a man is using someone else's  
25 chattel in damages, why the man who has suffered the damage,

1 if he can come within the terms of the contract he can collect  
2 under contract.

3 If not, he can collect under tort.

4 But, does the fact that he may have a remedy under  
5 contract preclude him from having a remedy under tort?

6 Q Does the 'Longshoremen's Act apply here?

7 A Not in these cases.

8 Q Why?

9 A The Longshoremen's Act ---

10 Q Doesn't the Continental Shelf Act say specifically  
11 -- refer specifically to the Longshoremen's Act?

12 A Yes, it does. The Longshoremen's Act is strictly  
13 an employer/employee act. The Workmen's Compensation Act, in  
14 both of these cases are not being employed.

15 Q What would be the situation if these people had  
16 not been killed but only injured?

17 A Every law available to them except, of course,  
18 the Jones Act.

19 Q What about the Continental Shelf Act?

20 A No, sir, they don't. The Continental Shelf Lands  
21 Act really doesn't say anything about ---

22 Q Well, it says for purposes on these artificial  
23 islands the Federal law is the State law.

24 A Yes. Well, the State law, actually the State  
25 law is extended. That is correct.

1 Q I see. But the Continental Shelf Act says that  
2 a matter, that as a matter of Federal law, the State law  
3 will apply.

4 A The state law will apply; that is correct.

5 Q On these artificial islands.

6 A The State law will apply, yes. That is correct.

7 Q Except where there is some other Federal law  
8 that is applicable?

9 A No, it does not say that. It says where there  
10 is conflict. Now that is the bone, if your Honor please.

11 Q Well, all right. Except where there is con-  
12 flicting Federal law?

13 A Conflicting; yes, sir.

14 Q Are you suggesting that the High Seas Act is not  
15 in conflict with the Louisiana law?

16 A Yes. That is it precisely. I am saying that  
17 there is nothing ---

18 Q You mean either one of them applies that would  
19 permit recovery, isn't that -- whether or not in conflict?

20 A I didn't hear you, your Honor.

21 Q Either any law, you can apply any part of any  
22 law as long as it allows you recovery?

23 A No, I am saying conflicting does not mean, is not  
24 identical.

25 Q Does Louisiana law bar for contributory negligence?

1 A Yes, sir, it does.

2 Q Does the High Seas Act?

3 A No. Comparative as a rule.

4 Q Is that not a conflict or not?

5 A No, sir.

6 Q You mean you apply the High Seas Act in that  
7 respect but you want the recovery for suffering under Louisiana  
8 law?

9 A What I am saying, your Honor, is that perhaps  
10 and this is the meat of the matter right here. The word  
11 conflict does not mean --

12 Q Different.

13 A Different. Exactly. In other words, your Honor,  
14 if conflict meant different -- in other words, if the only  
15 Louisiana law that could apply out there was law that was  
16 exactly and precisely the same as the Federal law that was  
17 already in existence out there, what were the legislators doing  
18 in saying that the Louisiana law has to be applied out there.  
19 They were doing a vain and useless thing.

20 Q You would say that in this death case that if  
21 contributory negligence were proven ---

22 A Yes, sir.

23 I have lost my cause of action under Louisiana law.

24 Q In this case. And you would say that if you  
25 proved pain and suffering you should be able to recover under



1 Louisiana law?

2 A If I can come within the terms of Louisiana law,  
3 I can get the benefit of the Louisiana law. If I can prove  
4 in this case, in a death case, I am contributory negligent, I  
5 cannot bring myself within the terms of the Louisiana law and  
6 thus that cause of action is out.

7 Yet, and, of course, goes with it my claim for loss  
8 of love and affection. Now if I can't come within the terms of  
9 Louisiana law I don't get it just as though there were a man  
10 with a chattel who were using it, and it was damaged, if the  
11 plaintiff can come within the terms of the contract he can have  
12 the benefits of the contract even though the remedies might be  
13 different, the statute of limitations might be different, he  
14 can bring himself within that contract, he can obtain the  
15 rights of the contract. If he can't bring himself within it,  
16 he can't.

17 (Whereupon, at 12:00 noon the Court recessed, to  
18 reconvene at 12:30 p.m. the same day.)  
19  
20  
21  
22  
23  
24  
25

1 AFTERNOON SESSION

2 (The oral argument in the above-entitled matter  
3 resumed at 12:30 p.m.)

4 MR. CHIEF JUSTICE WARREN: Mr. Henderson, you may  
5 continue your argument.

6 ORAL ARGUMENT OF PHILIP E. HENDERSON, ESQ.

7 ON BEHALF OF PETITIONERS

8 Q Mr. Henderson, may I ask before you start?

9 A Yes, sir.

10 Q Do I understand, are you claiming the right of  
11 recovery under both statutes?

12 A Of course, I am claiming no double recovery. I  
13 am saying that I could have a right under either statute just  
14 like a seaman has a right under Seaworthiness and the Jones Act.

15 Q In other words, I take it that on the basic  
16 issue of negligence there would have to be a determination of  
17 the issue of negligence under both statutes?

18 Right?

19 A Yes.

20 Q And one by the Judge and Admiralty, is that it?

21 A It could be, yes.

22 The Death on the High Seas Act would definitely have  
23 to be by the Judge and Admiralty.

24 Q And the other would be by a jury?

25 A If requested. In other words, if I could bring

1 myself within the terms of that law.

2 Q Now, which comes first, are you concluded that  
3 if there is a finding against you on negligence say by the judge  
4 of the High Seas Act, does that throw you out of court on the  
5 second one, too?

6 A Yes, it would.

7 Q Yes.

8 A In other words, if I can bring myself within the  
9 terms of the other I can come and have its benefits. To  
10 answer Justice White's argument ---

11 Q Is that Dore case the Higa case?

12 A Yes, your Honor.

13 Q The Higa case, is that what you call the Dore  
14 case?

15 A No, sir. The Dore case is one of the cases at  
16 issue here. There are two cases which have come before this  
17 Court now in a joint petition.

18 Q But there was an earlier decision?

19 A Yes, the Higa case I say is in my favor. Yes,  
20 that is true.

21 Q How do you visualize that case being tried. Are  
22 there some issues that will be tried before a Judge Admiralty  
23 and other issues before a jury?

24 A No, I think the whole matter could be tried  
25 jointly. If the party wants a jury trial under the Louisiana

1 federally adopted law it could all be tried with the judge  
2 sitting in admiralty. And if the jury finds contributory  
3 negligence, why, of course, there is no cause of action under  
4 Louisiana law.

5 There would, of course, be special interrogatories  
6 to the jury, with the plaintiff negligent. If they answer yes  
7 to that, why then the jury case is out. But if they say yes,  
8 why then it would go on to answer quantum and everything is as  
9 ordinary as in a jury trial.

10 But there would be interrogatories to the jury. It  
11 would pose no procedural problem. There are cases in which  
12 that is done. I tried to summon in my brief a case was tried  
13 under both the Death on the High Seas Act and under Japanese  
14 law as a matter of fact, as one cited on my brief, District  
15 Court case.

16 I say in response to Justice White's question that the  
17 Jones Act is not in conflict with or inconsistent with unsea-  
18 worthiness or damages under the Jones Act for unseaworthiness  
19 are not in conflict with or inconsistent with Maintenson Cure (?)  
20 They are overlapping and supplementary remedies, just as my  
21 analogy in a man that might have a remedy for both contract  
22 and tort.

23 They are not inconsistent. It is just the rule rather  
24 than the exception to have the possibility of two or three.

25 Q Your action in either case would be for

1 negligence which is your privilege and is different than between  
2 the Jones Act and Seaworthiness. It is a completely different  
3 situation. You have a different cause of action.

4 Here you are claiming that you have to have a cause  
5 of action for negligence in Admiralty and you have a cause of  
6 action for negligence under the Louisiana law.

7 Now, would you say that if we decided contrary to  
8 your view that under the Continental -- within the meaning of  
9 the Continental Shelf Act the Louisiana law is in conflict with  
10 Federal law, namely the High Seas Act that you have lost your  
11 case?

12 A No, I would say that as to the issue at issue  
13 here, narrow issue here in this case, there is not even a  
14 second remedy. There is no Federal remedy, no yea or nay as to  
15 loss of love and affection. The Death on the High Seas Act only  
16 treats pecuniary. It does not even treat loss of love and  
17 affection. It doesn't say yea or nay.

18 Q I understand that. You are just again arguing  
19 that it isn't in conflict.

20 A Yes.

21 Yes, if you would say that the two laws are in  
22 conflict, yes, your Honor, I have lost.

23 Q You have lost your case, in spite of the reser-  
24 vation of the High Seas Act?

25 A No, I would say that then the case which I



1 mentioned to Justice Fortas that the Louisiana laws would under  
2 this Conflict Rules allow recovery here, but yes, there could  
3 be recovery here. We couldn't use the Outer Continental Shelf  
4 vehicle.

5 I see I am running out of time and I did want to  
6 save time for rebuttal.

7 MR. CHIEF JUSTICE WARREN: You have five minutes while  
8 the white light is on. The red light will come on.

9 MR. HENDERSON: But I did want to save some time for  
10 rebuttal.

11 MR. CHIEF JUSTICE WARREN: Oh, I see. Very well.  
12 You may reserve it.

13 MR. HENDERSON: Thank you.

14 MR. CHIEF JUSTICE WARREN: Mr. Diaz.

15 ORAL ARGUMENT OF JAMES E. DIAZ, ESQ.

16 ON BEHALF OF RESPONDENTS

17 MR. DIAZ: Mr. Chief Justice, and may it please the  
18 Court.

19 I am Jim Diaz of Lafayette, Louisiana, representing  
20 one of the Respondents in these two consolidated cases. I  
21 Represent Link Belt Company and Boat Equipment Company. Messrs.  
22 Richard Baldwin seated and Mr. Jim Blazek seated at counsel  
23 table with me represent the Respondents in the Boudreaux  
24 Rodrigue case, while Rubin Mayronne, a citizen of Louisiana,  
25 doing business as Mayronne Drilling Company, its insurer and

1 Humble Oil Company.

2 I also feel a sense of responsibility of representing  
3 the two Federal District Court judges, Judge Ainsworth as the  
4 organ of the Fifth Circuit Court of Appeals in both of these  
5 cases whose decisions are here for review and who do not have  
6 an opportunity here today of defending their views.

7 These Louisiana trained ---

8 Q Will you tell us why you presented this document  
9 to us?

10 A Yes, your Honor.

11 I prepared my argument here today in a little different  
12 perspective than I had argued it in my brief and I wanted to  
13 present this to you as a visual aid in following the argument  
14 which I am making here today.

15 It is merely as a visual aid for whatever benefit it  
16 may be to you.

17 Q Is there anything new in this that isn't in your  
18 brief?

19 A No, your Honor, it merely is an outline of my  
20 argument here today which varies in perspective from the argument  
21 I presented in my written brief.

22 Q Did you argue in your briefs the Submerged Lands  
23 Act?

24 A Yes, your Honor.

25 Now, your Honor, in connection with the Submerged

1 Lands Act ----

2 Q It isn't our practice to have documents like  
3 this served on us at this time.

4 A I apologize if I was out of order, your Honor.  
5 I merely meant it as a visual aid as a benefit to the Court.

6 Q You did argue the Submerged Lands issue?

7 A Yes, your Honor.

8 Q Very well, proceed.

9 A Thank you, Mr. Chief Justice.

10 I may point out at this time, sir, that I use the  
11 term Submerged Lands Act because that is the title which the  
12 United States Code annotated has on top of Section 1333 which  
13 I understood it to be the popular name as the Outer Continental  
14 Shelf Lands Act.

15 I may be in error on that, Mr. Justice Stewart, and I  
16 wish to state here though that my argument here is with  
17 reference to the Outer Continental Shelf Lands Act.

18 Q When was that enacted?

19 A Your Honor, I believe in 1948.

20 Q Yes. And the statute which we know of as the  
21 Submerged Lands Act was enacted in 1953, if I am not mistaken.  
22 However, we are talking about the Outer Continental Shelf?

23 A That is correct.

24 One of these Louisiana trained judges, they held that  
25 on deaths occurring on stationary platforms, that Death on the

1 High Seas Act is the applicable law, is the Federal dispositive  
2 law. That where there is Federal dispositive law the State law  
3 cannot apply and is superseded.

4 And, thirdly, that the State law, the elements of the  
5 cause of action provided by the wrongful death action of the  
6 State of Louisiana, these elements are inconsistent with the  
7 elements of the cause of action provided under the Death on  
8 the High Seas Act.

9 The issue here before us is narrowed down to the  
10 question as to whether the Death on the High Seas Act which  
11 restricts recovery to pecuniary loss can be supplemented by the  
12 law of the adjacent State.

13 Before proceeding to give a little more detail ---

14 Q Isn't there also a question as to whether it is  
15 exclusive or not?

16 A Yes, your Honor, that is the correlative issue  
17 involved.

18 I would like to mention in the Rodrigue case, there  
19 were two civil actions filed and there was an Admiralty action  
20 filed. The two civil actions were dismissed by a motion to  
21 dismiss by Judge West and those are the only two decisions  
22 which are here before the Court today.

23 The Admiralty action was tried on the merits and  
24 judgment was rendered in favor of the plaintiff on pecuniary  
25 loss and that action is not before the Court here today.

1 Now the Fifth Circuit Court of Appeals affirmed the  
2 Boudreaux Rodrigue case as it affirmed the Dore cases. These  
3 two cases have in common the fact that both occurred on the  
4 Outer Continental Shelf more than a marine league from shore  
5 and the actions of both against third parties, nonemployers.

6 The plaintiff's attorney has attempted to use two  
7 avenues by which to incorporate the State law. Those two  
8 avenues are the Outer Continental Shelf Lands Act and the Death  
9 on the High Seas Act.

10 The Outer Continental Shelf Lands Act provides as  
11 set forth on page 7 and 8 of our brief: In Division (a)(1)  
12 that the laws applicable to these artificial islands are the  
13 Federal Constitution and the Federal law.

14 It then provides that to the extent that the State law  
15 is applicable and to the extent that the State law is not in-  
16 consistent, then, these State laws may be applied.

17 And it also provides that the Executive Department  
18 of the United States is to define by extending theoretical  
19 boundaries into the ocean what adjacent laws are to be applied.

20 To my knowledge the Executive Department has not  
21 projected these State boundaries out into the ocean and out  
22 into the Gulf of Mexico.

23 Insofar as the Submerged Lands Act which unquestion-  
24 ably applies here, the Plaintiff's attorney in order to have  
25 the State law adopted as a Federal law, must meet these three

1 requirements. The first requirement is, does the State law  
2 apply.

3 One of the first things I learned in Constitution  
4 law is that where there is Federal legislation in a field that  
5 the Federal legislature is competent to legislate upon, it  
6 supersedes those State laws which have been previously incorpo-  
7 rated by Federal law in order to provide a remedy.

8 This court in limiting, in the Lindgren case and also  
9 in the Gillespie versus the United States Steel Corporation  
10 case in which Justice Black was the organ of the Court, there  
11 reiterated the precedent that where the Federal legislature has  
12 pre-empted the field previously occupied by State law and can  
13 competently do so, than the State law is superseded.

14 Now the Lindgren case is very apropos to this case.  
15 Because in that case a seaman was killed as a result of an  
16 accident which occurred in Virginia waters and he was survived  
17 only by a niece and a nephew who were not dependent upon the  
18 seaman.

19 The plaintiff's attorney stated that he had the right  
20 to recover for general damages under the Virginia Wrongful Death  
21 Act as a supplementary law to the Jones Act which is exactly  
22 what is being argued here.

23 And the Lindgren decision, the United States Supreme  
24 Court held that the Jones Act had been legislated in order to  
25 provide this field of law previously covered by State law.



1 And, therefore, that the Jones Act superseded the Wrongful  
2 Death Act even to the extent of ruling out general damages.

3 Thirty-four years later this Court in the Gillespie  
4 case again affirmed the Lindgren decision.

5 But separate and apart from the general field of  
6 Federal pre-emption is the question that there are three de-  
7 cisions by the Fifth Circuit Court of Appeals which are the  
8 Loffland Brothers versus Roberts, Ocean Drilling and Exploration  
9 Company versus Berry Brothers and Pure Oil Company versus Snipes  
10 cited on page 9 of our brief in which the Fifth Circuit has held  
11 and this court has approved since writs of certiorari were  
12 denied in each one of these cases has held that on the Outer  
13 Continental Shelf under Section (a)(1) of Title 1333, it is a  
14 Federal Maritime law that is to apply to personal injury  
15 litigation and that the State law has no application whatsoever.

16 So that a personal injury litigation, insofar as the  
17 stationary platforms, the Outer Continental Shelf Lands Act  
18 as adopting Federal Maritime law governs.

19 There, this State law applied. The State law does not  
20 apply because it has been superseded by the Federal Death on the  
21 High Seas Act.

22 Even if this court were to hold that State law is to  
23 apply.

24 The second requirement written into the Outer Con-  
25 tinental Shelf Lands Act is that the State law, before it could

1 be adopted has to be consistent with Federal laws then existing.

2 Now, I have set forth in this visual aid as I did in  
3 my memorandum, as to a comparison of the various elements of  
4 the causes of action provided under Louisiana law and under the  
5 Death on the High Seas Act.

6 The beneficiaries are different. The damages are  
7 different.

8 Now, the Plaintiff's attorney says that there is a  
9 hiatus in this particular field of law because no general  
10 advantages are provided by the Death on the High Seas Act. I  
11 submit to you that the Legislature in 1920, that the Legis-  
12 lature that enacted the Death on the High Seas Act specifically  
13 contemplated the granting of general damages.

14 Judge Putnam, Chief Judge Putnam of New York, author  
15 of the bill, provided in his original letter to Congress that  
16 the damages were for fair and just compensation. In 1914 the  
17 Legislative Judicial Committee modified and qualified that  
18 language by saying that it was restricted to pecuniary loss  
19 and this concept of restricting damages to pecuniary loss is  
20 not only applicable in the Death on the High Seas Act but in  
21 the companion case of the Jones Act which was enacted by the  
22 same Legislature in 1920.

23 I, therefore, submit to you, that the Death on the  
24 High Seas Act does not provide an incomplete remedy for damages,  
25 it provides for the complete remedy as intended by the

1 Legislature, so that there is no hiatus.

2 Therefore, the two principal requirements of the  
3 Outer Continental Shelf Lands Act for the adoption of State  
4 law, first its application of State law and secondly the fact  
5 that the State law could not be inconsistent, have not been  
6 complied with in this case, and, therefore, the State law has no  
7 application whatsoever.

8 Q What do you do with the savings clause in the  
9 Death of the High Seas Act?

10 A Yes, your Honor, I am coming to that.

11 That is the second avenue that the Plaintiff's attorney  
12 has sought to use the wrongful death action of Louisiana. The  
13 Death on the High Seas Act legislative history shows that they  
14 intended, at least Judge Putnam did, intended for the Death on  
15 the High Seas Act to be the exclusive remedy.

16 Then, Mr. Mann of Illinois, in 1920, made an amendment  
17 because he was concerned with this. He says, "What about an  
18 Illinois constituent in Illinois. Does he have to go to  
19 New York to a Federal District Court to assert her remedy?"

20 He says, "I want to preserve to the State courts their  
21 jurisdiction under their own laws, for my own constituents  
22 to proceed under a State law."

23 I think that the legislative history and the arguments  
24 that were presented by the legislature in pages 20 through 23  
25 of our brief, your Honors, show that their intention was not

1 to give concurrent jurisdiction, not to give concurrent remedies,  
2 but to give alternate remedies. They wanted to preserve to  
3 suers their right to proceed in State court under a State court  
4 remedy.

5 Q Which came first, the Death on the High Seas Act  
6 or the Continental Shelf Act?

7 A The Death on the High Seas was in 1920, your  
8 Honor, and the Submerged Lands Act was ---

9 Q Well, under the High Seas Act and before the  
10 Continental Shelf Act there was limited applicability of State  
11 law, wasn't there? With the coming of the Continental Shelf  
12 Act certainly that Act said Federal law should apply on the  
13 High Seas, or on these islands, artificial islands, right?

14 A That is correct.

15 Q No State law, no State law as State law.

16 A That is correct.

17 Q Only State law as Federal law.

18 A Only State law as adopted by the Federal law.

19 Q So the State law was put aside and that Act  
20 said that if there is a Federal Act that is in conflict with  
21 State law, why it will be the Federal statute that will apply?

22 A That is correct.

23 Q Are you arguing that the savings clause then in  
24 the High Seas Act is in effect repealed or set aside by the  
25 Continental Shelf Act insofar as these artificial islands are

1 concerned? That is the effect of your argument, isn't it?

2 A That is correct; that is why I say that you need  
3 not decide whether the Death on the High Seas Act is the ex-  
4 clusive remedy because the specific legislative point is the  
5 Outer Continental Shelf Lands Act.

6 So that even if the State law could be supplemented,  
7 which we deny, but even assuming it could be supplemented under  
8 the Death on the High Seas Act, the specific act in question,  
9 the Outer Continental Shelf Lands Act would not permit it  
10 because the State law would inconsistent with the applicable  
11 Federal law.

12 Q Would you mind repeating to me precisely what  
13 you believe to be the remedy of people bringing suits like this  
14 for death at this place?

15 A The idea, your Honor, is that the survivors of  
16 a decedent have a right to proceed in a Federal form under  
17 Federal law.

18 Q Complete.

19 A Complete.

20 Q No state law at all.

21 A No state law at all, your Honor. That is correct.  
22 Now, I believe that is the case on the Outer Continental Shelf.

23 Q What about the Louisiana law which permits  
24 suits against insurance companies?

25 A In a direct action statute?

1 Q Yes.

2 A Your Honor, I don't believe the direct action  
3 statute first of all is at issue here but to answer your  
4 question ---

5 Q Well, it is involved in it because some things  
6 we could hold would affect it.

7 A That is correct, your Honor. Of course, I believe  
8 that the direct action statute is inimical to maritime law,  
9 inimical to the limitation of liability concept and should not  
10 be applied in maritime cases at all. And these cases ---

11 Q Well, it does, doesn't it?

12 A Your Honor?

13 Q It does, doesn't it in some maritime instances?  
14 It has not been?

15 A It has been applied, your Honor. What I am  
16 saying here is that it should not be applied.

17 Q Well, has it been applied?

18 A Yes.

19 Q Well, why should that be taken away from them?  
20 What reason is there to take that law away from them? A person  
21 to have a suit in Louisiana, simply because they live in  
22 Louisiana, why should they not get the advantage of a suit like  
23 that which might permit them to recover something, that without  
24 it they could never recover a penny?

25 A Your Honor, the only way I can answer that is



1 this: I was trained as a lawyer in law school in practice to  
2 confine myself within the legislative provisions and I am saying  
3 that the legislative provisions here are clear. That the only  
4 remedy for deaths occurring under the intent of the Outer  
5 Continental Shelf Lands Act, the only remedy is under the Death  
6 on the High Seas Act exclusive of State law.

7 Q But you have to depend on both Acts for that,  
8 the High Seas Act and the -- what do you call it -- the  
9 Submerged Land Act?

10 A Yes, sir, the Outer Continental Shelf.

11 Q The Outer Continental Shelf?

12 A Yes, sir.

13 Q You have to go to both of them for that?

14 A You have to go to the fact which is the Outer  
15 Continental Shelf Lands Act and the parent adopts the Death on  
16 the High Seas Act. What I am saying is, you could not then  
17 incorporate under the Death on the High Seas Act the State law  
18 which you could not do under the adopted provision of the  
19 Outer Continental Shelf.

20 You cannot do indirectly what you cannot do directly  
21 because the parent act is the Outer Continental Shelf Lands Act  
22 and you have to look at that primarily.

23 If you cannot incorporate State law under that Act  
24 you certainly cannot incorporate it under the Death on the High  
25 Seas Act which in itself is incorporated in the Outer

1 Continental Shelf Lands Act.

2 Q Do you think a suit can be filed in the State  
3 court?

4 A Your Honor, I believe that the intention of  
5 Mr. Mann and Mr. Sanders who were part of the Legislature in  
6 1920 was to allow suitors their ability to sue in the State  
7 form with State laws wherever State laws had been held to be  
8 competent, as in the Hamilton.

9 I think a very strong argument against ---

10 Q Just exactly what would be the consequences?

11 A As I see the consequences, your Honor, the  
12 survivors of the decedent would have an alternate or elective  
13 course. They could either go into Federal form, with Federal  
14 laws, substantive laws or they could go into a State form with  
15 State laws at their election.

16 Q You mean the same person would have two kinds  
17 of injuries depending on whether he went into the State court  
18 or the Federal court?

19 A I am of the opinion that the Death on the High  
20 Seas Act should be given as exclusive remedy, but if we are to  
21 give any effect to Section 7 of the Death on the High Seas Act,  
22 let us apply as Mr. Mann intended to preserve to his con-  
23 stituent, his right to go into a State court with a State  
24 court remedy.

25 Q Yes, but Mr. Mann wasn't dealing -- he wasn't

1 also dealing with the Continental Shelf Act. He was dealing  
2 only with Section 7 of the Act he was promoting, and the  
3 Continental Shelf Act says expressly and plainly that the  
4 laws and Constitutions of the United States shall govern these  
5 artificial islands.

6 A That is correct, your Honor.

7 Q And I thought your argument was but I am not sure  
8 now, that the Continental Shelf Act made the Federal law the  
9 exclusive source of cause of action for injury on those islands.

10 A Where there is dispositive Federal law covering  
11 the subject matter.

12 Q No. It is Federal law all the way. They may  
13 borrow some State law but it is still Federal law.

14 A I see what you mean. Yes.

15 Q I understand the opinion of the Court of Appeals  
16 on the analysis that Justice White has just suggested the  
17 Court of Appeals held to answer Mr. Justice Black's question,  
18 the only remedy is the Federal remedy, the Death on the High  
19 Seas Act. There is no State remedy under Section 7 or otherwise  
20 of the High Seas Act. The only remedy is the Federal remedy.

21 Isn't that what the Court of Appeals held?

22 A Yes, your Honor.

23 Q I am surprised to hear you suggest that neverthe-  
24 less there may be a State remedy if the proceeding is brought  
25 into a State court.

1           A     I am sorry, your Honor, I didn't mean ----

2           Q     Oh, I thought that is what you answered

3     Mr. Justice Black.

4           A     I had understood his question as to the inter-  
5     pretation of Section 7 as to Death on the High Seas Act outside  
6     of the contents of the Outer Continental Shelf and

7           Q     Oh.

8           A     And that is what I was arguing there. Those are  
9     my -- my position is that the application of State law in this  
10    insofar as injuries occurring on a stationary platform that  
11    the application of State law is inimical to the Outer Continental  
12    Shelf Lands Act and, therefore, could not be applied.

13          Q     Well, there just isn't any recovery under State  
14    law.

15          A     That is correct.

16          Q     Now that there is a Federal statute, the Death  
17    on the High Seas Act.

18          A     Yes.

19          Q     May I direct your attention a bit more specifi-  
20    cally to the Outer Continental Shelf Lands Act, Section  
21    1331(a)(2). Now, merely reading that, I suppose it is at least  
22    arguable that after the enactment of that provision, Federal  
23    law applicable to a tort or committed on one of these artificial  
24    islands on the Outer Continental Shelf, the Federal law would  
25    include not only the Death on the High Seas Act but also such

1 legislation in the State of Louisiana relating to this tort  
2 as is not inconsistent with the Death on the High Seas Act.

3 Isn't that right?

4 A That is correct.

5 Q And so you get down to the question of whether  
6 the Louisiana law as in question here, that is to say, Louisiana  
7 law providing for recovery in the case of wrongful death, not  
8 only for pecuniary loss but also for loss of affection,  
9 consortium or whatever it may be, whether those Louisiana laws  
10 are inconsistent with the Death on the High Seas Act, is that  
11 right?

12 A Yes, your Honor.

13 Q And that I take it is the issue before us,  
14 because if we find -- if we should conclude that the Louisiana  
15 tort law in respect that I stated is not inconsistent with the  
16 Death on the High Seas Act, then by virtue of 1331(a)(2),  
17 that Louisiana law is incorporated into the Federal law and  
18 becomes a Federal law available to these petitioners.

19 Is that right?

20 A Mr. Justice Fortas, I agree with you in part.  
21 But I think that Section (a)(2) has two conditions preceding.  
22 One is that there is no Federal dispositive law on the subject  
23 matter, and secondly, that if there is no Federal dispositive  
24 law, the State law may be used provided it is not inconsistent  
25 with other Federal laws.

1 Q Well, that is your argument in this, that is  
2 your submission and your adversary says the opposite, 1331(a)(2)  
3 does not specifically refer to those two pre-conditions as you  
4 would have us construe them to be?

5 A Yes. That is correct, your Honor, and I am  
6 saying that the Fifth Circuit also held that on the basis of  
7 the Berry Brothers and the Pure Oil versus Snipes.

8 That there were two conditions preceding the death.

9 As an alternative argument, your Honors, my principal  
10 position is that the State law cannot be applied whatsoever  
11 under the Outer Continental Shelf Lands Act. But as an alternate  
12 argument, if the Death on the High Seas Act does allow a  
13 supplemental remedy, I submit to you that the case cited by  
14 opposing counsel, Higa versus Trans-Ocean which he says is in  
15 his favor supports our proposition because in Higa the Court  
16 held, the Ninth Circuit Court of Appeals held, as affirmed by  
17 this Court in a writ of certiorari that the State law may be  
18 applied only where its wrongful Death Act provisions give it  
19 extraterritorial effect.

20 If that is the case, and that is the case we follow  
21 here, I submit to your Honors, that there has been no showing  
22 nor can there be any that the Louisiana Wrongful Death Act  
23 does not have extraterritorial effect.

24 Opposing counsel has cited E. B. Ward, Jr. Let me  
25 say this to you in connection with that.



1           The E. B. Ward, Jr. does not hold that Louisiana  
2 Wrongful Death Act has extraterritorial effect. It held at  
3 the time of the Death on the High Seas Act was not in effect,  
4 that because of the fact that the ship, the E. B. WARD was a  
5 Louisiana ship, it was Louisiana territory so that it could  
6 be governed by the laws of the State of Louisiana.

7           In conclusion, your Honors, I respectfully request  
8 that the decision of the Fifth Circuit Court of Appeals be  
9 affirmed because the controlling statute is the Outer  
10 Continental Shelf Lands Act. That there are patent inconsis-  
11 tencies in the State law and in the Federal law.

12           As to beneficiaries, statute of limitations, contri-  
13 bution among joint tort fees and as was held by this Court in  
14 the Tungus, you have to take the State law in its entirety  
15 and not just those parts of it which benefit you.

16           So if we are going to take this cause of action pro-  
17 vided under Article 2315, each and every one of those elements  
18 is inconsistent and contradictory to the elements of the cause  
19 of action provided by the Death on the High Seas Act.

20           MR. CHIEF JUSTICE WARREN: Mr. Henderson.

21           REBUTTAL ARGUMENT OF PHILIP E. HENDERSON, ESQ.

22           ON BEHALF OF PETITIONERS

23           MR. HENDERSON: May it please the Court, I will take  
24 the discussion of the Higa case first.

25           In the Higa case, Mr. Higa died on an airplane enroute

1 to California to Hawaii. He died when the plane crashed in  
2 the middle of the ocean. His dependents, survivors filed suit  
3 under Death on the High Seas Act and also claimed a civil  
4 action as we are here.

5 The Court, the Ninth Circuit Court of Appeals in the  
6 Higa case first said, "We are looking to see whether the  
7 Conflicts of Laws Rules of Hawaii apply."

8 And it says, they took special note that the airplane  
9 was owned by a California company.

10 Said "No."

11 They then said, "There is no statute that would apply  
12 the Hawaii Death Act to this area and there is no decisional  
13 law that would apply under Conflicts of Laws Rules, the Hawaii  
14 Death Act to this death.

15 Now, in our case we have both. We have a statute.  
16 We have the Outer Continental Shelf Lands Act and we also have  
17 our Death on the High Seas Act.

18 Snipes in Loffland Brothers cited as Fifth Circuit  
19 holdings did not hold that Federal law is an exclusive remedy.  
20 They only held that State law was not exclusive remedy.

21 In both of those cases the defendant said, "The  
22 man's action must be dismissed under State law because he was  
23 contributory negligent in one case and the State Statute of  
24 Limitation had run in the other."

25 The Court said, "No, that is not true, that the State

1 remedy is not his exclusive remedy; he does have a Federal  
2 remedy."

3 Q What other factors would you suggest, Mr.  
4 Henderson, would it take in order to make these two conflicting  
5 -- you have quite a number of things here -- statute of  
6 limitation, different parties, and the amount and everything  
7 else. Now, what other factors would it take in order to make  
8 those conflict at a minimum?

9 A I think that the word conflict, the approach is  
10 wrong in trying to see where they are not identical. I don't  
11 think that the word 'consistent' meant not identical. Otherwise  
12 nothing could have been extended by that Act.

13 I think conflict means opposed to one another. For  
14 instance, if the Federal rule was that the minerals extracted  
15 from these artificial islands are the property of the Federal  
16 Government and the State law said that the minerals extracted  
17 are the property of private citizens, they are in conflict.

18 So, obviously, the State statute would have to give  
19 way, but as to a tort action or death action, why these are  
20 cumulative supplementary remedies. Cumulative remedies for the  
21 same incident is the rule rather than the exception in law, as  
22 my example where a man may have a right of contract or quasi  
23 contract or tort for the same incident.

24 They are not in conflict with one another.

25 Q Sir, I know your time is up, but I want to

1 follow the Chief Justice's question to you by this question.

2 A Yes, sir.

3 Q Please assume with me for the moment that the  
4 Death on the High Seas Act provided a remedy for all of these  
5 factors, that is to say, not only for loss, pecuniary loss,  
6 direct pecuniary loss but also for loss of consortium, love,  
7 affection and whatnot, just as the Louisiana law does.

8 Please make that assumption.

9 But let us suppose that the Louisiana law fixed a  
10 higher limit on the aggregate recovery. Now, would you say  
11 that the Louisiana law was still available to you or in those  
12 circumstances would you agree that the Federal law and that the  
13 Death on the High Seas Act and the Louisiana State law are  
14 inconsistent within the meaning of the Continental Shelf Act?

15 A I would say there is no inconsistency. I would  
16 say that the Louisiana Act would still be available if I could  
17 bring myself ---

18 Q Why?

19 A --- within its terms.

20 Q Now how would you explain that?

21 A I think -- I say that the rule of law is that  
22 it does not follow that if there is one avenue by which a  
23 destination can be reached, that there can be no other avenue.  
24 I say that for a man whose chattel is damaged, if he has an  
25 avenue to get recovery under tort that does not mean he cannot

1 get in under contract and get something better.

2 Q Well, let me ask you this. Suppose the Death  
3 on the High Seas Act said expressly there shall be no recovery  
4 for any damages whatsoever of any kind or nature as the result  
5 of wrongful death and let us suppose the Louisiana statute did  
6 provide a remedy.

7 Would you say that those two are inconsistent?

8 A If they are diametrically opposed. If one says  
9 that it is the policy of the United States that you can't do  
10 this, then you can't do it. The State law must give way; yes,  
11 sir.

12 Q Well, wouldn't that be true of contributory  
13 negligence, between the two laws?

14 A No, I don't think that there is a diametric  
15 opposition. It is just one route to recovery. There can be  
16 another route to recovery if you can bring yourself to terms.

17 Q How about the Statute of Limitations?

18 A The two laws are not identical. There are many  
19 differences.

20 Q Well, I know. But let us assume there is a  
21 suit brought and it is beyond the two years ---

22 A Beyond the two years. All right. Actually, as  
23 a matter of fact the Louisiana Act has a one-year statute but  
24 if we assume that the Louisiana has a three-year statute, then  
25 if the person can bring himself within the terms of the



1 Louisiana Act as adopted Federal law he can have a recovery.  
2 In other words, if he brings it within three years he can do  
3 it. In the instant case if a man brings his suit within one  
4 year and if he is not contributory negligent then he is entitled  
5 to his Louisiana recovery.

6 If he can't come within the terms of the statute, if  
7 he is contributory negligent as I say, he cannot have his  
8 recovery under Louisiana Law. He just can't bring himself  
9 within the terms of that Act, just like within the terms of  
10 a contract situation. He can't come within the terms of the  
11 contract.

12 Q Your approach is destroying the Continental  
13 Shelf Act, word by word, line by line conflict?

14 A No, sir, the only real, the only question is  
15 the word inconsistent. If inconsistent with means opposed,  
16 why then that is one thing. If it means not identical, why  
17 then, of course, that is another thing, but I say that the word  
18 inconsistent cannot mean identical or there could be no law  
19 whatsoever extended out there.

20 Q Why can't you say that inconsistent means this  
21 much -- that if you would get different results under the two  
22 regimes there is ---

23 A Because, then the Legislature was wasting its  
24 breath and ink in extending the law and saying that the  
25 Louisiana law shall be extended out there, because it has got



1 to have a different result or what is the good of extending it  
2 out there. If it has no different result in extending the  
3 Louisiana law out there, then why in the world extend it out  
4 there?

5 The Legislature had to mean something in saying that  
6 law is extended.

7 Q Because there was a lot of causes of action  
8 which weren't covered by a Federal law.

9 A Yes, but then you would have a different result  
10 by the Louisiana law that is out there. It would be not  
11 identical with the Federal law that is out there. You would  
12 have a different result.

13 I say the cumulative remedy or the ruling law rather  
14 than a single avenue at recovery.

15 Thank you very much.

16 (Whereupon, at 1:20 p.m. the oral argument in the  
17 above-entitled matter was concluded.)  
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