In the

Supreme Court of the United States

FREDERICO RODRIGUEZ, LUIS PEREZ, AND SPECKO BARULEC, Petitioners,	:	
v.	:	No. 79-1977
COMPASS SHIPPING CO., LTD., ET AL., Respondents.	:	

Washington, D.C.
January 12, 1981

Pages 1 through 27

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FREDERICO RODRIGUEZ, LUIS PEREZ, AND SRECKO BARULEC, Petitioners,	:	
v.	:	No. 79-1977
COMPASS SHIPPING CO., LTD., ET AL., Respondents.	:	

Washington, D. C.

Monday, January 12, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 2:10 o'clock p.m.

APPEARANCES:

MARTIN LASSOFF, ESQ., Zimmerman & Zimmerman, 160 Broadway, New York, N.Y. 10038; on behalf of the Petitioners.

JOSEPH T. STEARNS, ESQ., 40 Wall Street, New York, N.Y. 10005; on behalf of the Respondents, Compass Shipping Co., Ltd., and Djakarta Lloyd P.N. & Arya National Shipping Line, Ltd.

FRANCIS X. BYRN, ESQ., One State Street Plaza, New York, N.Y. 10004; on behalf of the Respondent Ove Skou, R.A.

C O N T E N T S

ORAL ARGUMENT OF	PAGE
MARTIN LASSOFF, ESQ., on behalf of the Petitioners	3
JOSEPH T. STEARNS, ESQ., on behalf of the Respondents, Compass Shipping Co., Ltd., Djakarta Lloyd P.N. & Arya National Shipping Line, Ltd.	12
FRANCIS X. BYRN, ESQ., on behalf of the Respondent Ove Skou, R.A.	22
MARTIN LASSOFF, ESQ., on behalf of the Petitioners -- Rebuttal	26

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Rodriguez et al. v. Compass Shipping Company.

Mr. Lassoff, you may proceed whenever you are ready.

ORAL ARGUMENT OF MARTIN LASSOFF, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. LASSOFF: Mr. Chief Justice, and may it please the Court:

This is an appeal brought as a result of a conflict in the interpretation of part of a federal statute. The conflict arises in the application of Section 933(b) of an act known as the Longshoremen's and Harbor Workers' Act. This Act was last amended by Congress in 1972, at which time Section 933(b) was not amended. Section 933(b) was last amended in 1959 at which time it was amended to give the longshoremen an additional six months' period to sue from the date of a formal award in compensation.

QUESTION: Mr. Lassoff, might I interrupt you preliminarily there? I notice that there are three cases consolidated here, and that in the Rodriguez case as opposed to the other two, there was an order filed, and in the other two there were not. Does that have any bearing on the outcome in your view?

MR. LASSOFF: It does, but this was not one of the points I was given certiorari on. It is our view, in all

three of these cases there was never an order which triggered this mechanism, but that was not one of the points that we were given certiorari on. The American Association of Trial Lawyers have raised that in their brief, but we didn't raise it in our brief for today.

QUESTION: So it's not before us?

MR. LASSOFF: It's not before you. The point involved is, who was this statute designed to protect? Going back to the original basis in law, at one point a longshoreman had to elect before the first payment of compensation whether or not he could sue a third party because if he accepted one payment of compensation his rights to sue were assigned absolutely to his employer. That changed, until he was given the right to accept compensation short of an award if he -- other words, if there was voluntary payment of compensation for a man who was out for six months and the employer voluntarily paid that money, that would not give the case to his employer. But if there was a hearing at which permanency was decided, and an order was entered, that order gave the case to the man's employer.

In 1957, I believe, this Court decided the Blazey Czaplicki case which said that conflict of interest -- and Blazey Czaplicki was a very strong conflict of interest case and the insurance carrier represented both parties to the litigation -- therefore, in 1959 Congress amended this Act and

said, you can keep your Act case, Mr. Longshoreman, until such a point as six months after a formal award, because we have several interests here. All of this is based on a quid pro quo between the longshoreman and the employer. Nowhere are the shipping company or the shipping corporations mentioned. They do not belong in the statute and they have never been mentioned until 1972 when an additional part of the statute was added called Section 905(b).

What was the intent? All right. After the enactment of this Act, by judicial law certain things applied. Prior, there was the Sieracki case. The Court gave longshoremen the right to sue vessels for a violation of the doctrine of seaworthiness. Subsequent, the Ryan case gave the ship companies the right to sue the employer on a contract basis for actual or implied warranties of workmanlike performance. So the issue was sort of dead, because any employer of maritime labor obviously had a conflict of interest between the employee and the fact that they would immediately be brought into the action by the shipowner.

Notwithstanding that, there were several cases in that period, the Potomac Electric Power Company case and McClendon v. Charente which interpreted the meaning of Section 933(b). Both of these cases say -- and certainly Pepco in clear language -- say that anytime there is a failure by the employer or the person subrogated to the employee's rights to

sue, then that case should go back to the employee and that it is not up to the employee to prove a conflict of interest with his employer. In 1972, as stated, there was sort of a political arrangement made between the stevedoring companies and the labor suppliers. The political arrangement was that in exchange for a substantial increase in benefits the longshoremen would have certain judicially created rights taken away from them. They would have the right of the doctrine of seaworthiness taken away from them. The shipowner in exchange for that benefit would have taken away from it the traditionally created application of Ryan.

QUESTION: Well, this political compromise that you refer to that took place in 1972 had the full participation of the longshoremen workers' union, did it not?

MR. LASSOFF: It had participation of the maritime unions' non-sea unions, and of the stevedores. The shipping companies had no part in this arrangement at all. It was strictly the longshoremen, the ship repairers, the stevedoring companies; this was not really a bill that was participated in or abetted by shipping interests. This was strictly stevedoring interests. And I'm not sure that the longshore unions were aware of what was happening. Because in 1972 there was no application of a six-month assignment because, quite clearly, Congress being in this circuit and Pepco, which is a D.C. case, and District of Columbia workers, which are covered

by this very Act, since the Act is silent about the intent of this section, it must be assumed that Congress believed the law to be as it was in Potomac Electric Power, and that is, there was no assignment, or if there was it would revest if for any reason the right to bring this action was not undertaken properly. In Czaplicki, the Court talks about the trustee situation which they didn't feel necessary. Mr. Justice Frankfurter did think it necessary but it wasn't done.

We have certain equitable proceedings here. The only interest that the shipowner has in this litigation at all is that he be sued by the real party in interest, one lawsuit. There has not been more than one lawsuit brought since 1972, since the decisions in Rodriguez, since the decisions in Caldwell v. Ogden Steamship Company, since the Bandy cases. No stevedoring company has brought a lawsuit to enforce its statutory lien. We have been successful under the decision in Rodriguez which indicated that ratification was a measure that companies were willing to cooperate to get certain insurance companies, not stevedoring companies but insurance companies of stevedores, to ratify the longshoremen's cause of action. The one time we tried the suggestion in Caldwell, which was involuntary joinder, that was against the company called International Terminal Operating Company, their attorneys opposed the involuntary joinder and it was denied.

But the fact is that no stevedoring company that I know of anywhere has ever sued a ship to assert the claims of the injured employee, and the decision that a longshoreman can prove a conflict of interest, which is so apparent on the face, never happened without means of extra protection. It doesn't make sense to me.

QUESTION: Well, the -- of course, it could be that logically, it could be that the injured longshoreman has always sued.

MR. LASSOFF: Not quite, Your Honor, as --

QUESTION: Well, logically, it could be, but here's one case where it didn't happen.

MR. LASSOFF: There are at least ten cases here, Your Honor. There are five in Virginia and five here, all in this one here.

QUESTION: But I would suppose in the vast majority of the cases the longshoreman himself would sue.

MR. LASSOFF: Yes; yes. But there are hundreds of cases affected by this particular -- there are hundreds of cases in the district court now which are on a so-called suspense calendar because of this particular case.

QUESTION: Why, as a matter of practical fact, doesn't the longshoreman sue in the six-month period given to him?

MR. LASSOFF: Ordinarily, he does. There are

problems when you are dealing with foreign flag steamship companies, as 92 percent of the ships coming to the United States are. They are a difficulty in locating the company. We can start an action by mail, but if we do not perfect service the courts dismiss these actions. So that to say that it is easy to start these actions within six months of an award is usually so, but not always so.

QUESTION: Congress could -- or, I'll put it this way, could Congress correct that and make some other form of service possible so that it would eliminate the problem?

MR. LASSOFF: Congress could do many things. Congress could compel the shipowners to post bond of insurance on their coming here.

QUESTION: Or designate an agent for service.

MR. LASSOFF: Yes. Or an agent for service. None of these things --

QUESTION: Or it could enlarge the time beyond six months; make it a year, 18 months, two years.

MR. LASSOFF: The question is not a period of time. The question is, what is the intent of Congress? Every bill --

QUESTION: Well, Congress could do that.

MR. LASSOFF: Every bill says, safety; this is a hazardous occupation, eight times the national rate, four times the national rate. Every bill says that. How is it protecting the rights of these longshoremen by saying that if

the employer does not sue, a party not intended to be benefited, the negligent tortfeasor has an absolute indemnity from suit, the stevedoring company is wasting its assets which are intended to be used for the protection of longshoremen, and we are --

QUESTION: The stevedoring company's assets are intended to be used for the benefit of longshoremen? I would have thought, if it were a corporation, its assets were probably to be used for the benefit of the stockholders.

MR. LASSOFF: That is true, but the statute says that since this is such a hazardous occupation the only way we know of is to make the employer responsible. We want these benefits to be substantially increased, and we don't want the employer to waste its benefits by not collecting them. That is what would happen here. If the employer does not sue because of a business reason, and I've got some that they've never sued, they are wasting assets that properly belong to the longshoreman, who has an 80 percent interest in the remainder of the case.

QUESTION: And who has six months in which to assert it.

MR. LASSOFF: He has six months in which to assert it, but the question is equitably, equitably, does the purpose of a statute -- is it perfected by giving a negligent tortfeasor a right that it was never intended to have?

QUESTION: Well, what do you say to any statute of limitations argument in a situation like this?

MR. LASSOFF: I say --

QUESTION: There must come a period of repose where past things that have not been litigated can no longer be litigated.

MR. LASSOFF: I have no objection to a statute of limitations. There is a statute of limitations. This is not the statute of limitations.

QUESTION: But it's the same type of principle.

MR. LASSOFF: It isn't, because every lawyer practising in this field knew of the various statutes of limitations. As Your Honor pointed out to me, yourself, nobody knew that this act could be triggered by an informal agreement of a claims examiner when the statute specifically said that it had to be the Deputy Commissioner or the Board. This is the problem. We are making a statute of limitations out of an assignment. The assignment wasn't intended to hurt the employee. It was intended, according to law, to give the cause of action to the employer who had better assets to pursue it. I don't believe that. But that was what Congress specifically stated.

Now, what is the actual fact? The actual fact is that employers may not choose to do this. One, for fear of antagonizing their customers -- bad business; or, two, their

lawyers do not work the way plaintiffs' lawyers do, on a contingency basis. They would expect to be paid whether they won or lost. And I say to you that the best person to have these rights is the plaintiff's lawyer. The plaintiff, the injured worker, if he has a right, let him have the right that he always had, the statute of limitations. If an employer refuses to sue, and we can give the employer the right to sue -- we can send him a registered letter: if you don't sue, we're going to sue, that protects the employer, does it not? But why should this injured man who gets nothing for pain and suffering, who gets nothing except two-thirds of his pay -- and unless it's permanent, that two-thirds does not go up if the union pay scale goes up.

In other words, the best that a longshoreman can get here is two-thirds of his pay at the time of the accident, regardless of whether the pay scale goes up. Nothing for pain and suffering. And while you will hear argument that the pay scale went up a great deal, in certain instances it went down a great deal. I will save that for rebuttal, if I may. Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Stearns.

ORAL ARGUMENT OF JOSEPH T. STEARNS, ESQ.,

ON BEHALF OF THE RESPONDENTS COMPASS SHIPPING CO. LTD., DJAKARTA LLOYD P.N. & ARYA NATIONAL SHIPPING LINE, LTD.

MR. STEARNS: Mr. Chief Justice, and may it please

the Court:

My name is Stearns. I represent the first two respondents named, Compass Shipping Company, Djakarta Lloyd and Arya National Shipping line in this case, which involves a question of Section 33 and also Section 5(b) of the Longshoremen's and Harbor Workers' Compensation Act.

There has been a brief reference to some part of the history of the Act. As I understand it, the Longshoremen's and Harbor Workers' Compensation Act was adopted in 1927 in response to a decision of this Court making longshoremen Jones Act seamen. At that time there was a Section 33. It provided that longshoremen have an election of either compensation or a suit for damages. In response apparently to the concern for the possibility that someone who would unwittingly lose his right to a third party damage suit, Congress in 1938 amended Section 33 to expand the rights in a way which this Court in 1947 in the American Stevedores v. Porello case held to extend to longshoremen the dual right to accept voluntary compensation and thereafter sue for damages.

After Ryan, and perhaps before that, perhaps in the contribution cases, the existence of the right to accept voluntary compensation and sue for damages created a conflict of interest. Unquestionably, there was a conflict of interest which was raised by the Ryan indemnity right, which in instances where there was common insurance between a defendant

and a third party defendant, as in the Czaplicki case, it was held by this Court that it was inappropriate to give effect to the Section 33(b) assignment. In response to that, Congress in 1959 in an attempt to overcome the conflict of interest gave longshoremen an additional six months to sue following receipt of compensation pursuant to an award.

As a result of this Court's efforts on behalf of longshoremen, in part demonstrated by the Porello case, the extension of the dual remedy of compensation and a right to sue for damages, as a result of this Court's Ryan decision, as a result of this Court's Sieracki decision, the situation existed -- a situation existed whereby longshoremen were of course by statute guaranteed compensation and in effect to guaranteed a virtually certain right to recover damages. As a result of these facts, and as a result directly of this Court's efforts on behalf of longshoremen, there followed an explosion of litigation in the years, according to the congressional documents, between 1961 and 1972, to the point where in ports such as New York virtually every longshoreman's reported accident resulted in a third-party suit. By virtue of Sieracki it was virtually necessary only for the longshoreman to show that he was hurt aboard the ship. As a result of the contest between the shipowner and the stevedore as to who should pay the damages, the ultimate recovery of the plaintiff was further guaranteed.

Congress in 1972 was therefore confronted with a situation where this Court's efforts had resulted in a situation where longshoremen had a free access to suit and a free access to recovery in their third party cases where, as a result of those facts, there had been a tremendous increase in litigation and took steps by enacting the 1972 amendments in order to reduce the volume of litigation in exchange for vastly increased compensation benefits.

As Mr. Lassoff has indicated, Congress in 1972 took away from longshoremen certain things and this represents the first instance since 1927 where either by this Court or any other court or by Congress something was taken away. What was taken away was two things, we submit. The first one, obviously, being the right to recover for seaworthiness, and the second thing, we believe, is that there was an additional restriction placed on the third party right in order to serve the first purpose of the 1972 amendments, which was to reduce litigation and relieve shipowners and the courts from the enormous burden of case after case after case of personal injuries involving longshoremen, some of which were of the kind or the type or the apparent lack of seriousness of the cases involved in this appeal. The additional step taken by Congress, we submit, was to make the right of the longshoreman to sue depend upon that suit being in accordance with Section 33, which we read as indicating that suit can be maintained only

if authorized by the six months provision in Section 33(b), which means, we submit, that no suit brought by a longshoreman after six months can be maintained, since the six months provision is a constituent element of this cause of action.

In the congressional documents there is an indication in the Port of Philadelphia that the compensation insurance rate for these accidents, including the cost of compensation and the stevedores' third party Ryan indemnity liability, was approximately $40 a payroll hundred. According to the New York State Rating Board, in New York today, for workmen's compensation alone, in the category, "stevedoring-not otherwise classified," the annual rate for stevedores is $87 and change per payroll hundred. That is to say that the cost to the stevedore both for compensation and third party Ryan indemnity liability in 1972 was approximately half what it is today. And these figures are not figures that are the product of inflation. It's $40 per $100 and $87 per hundred, and it represents a doubling of cost in real terms, as a direct result of the vast increase in benefits achieved by the 1972 amendments. It means in effect that the maritime industry -- and since the stevedore has one customer, the shipowner -- since the stevedore is in effect an agency of the shipowner, that the shipowner pays these costs directly, usually as soon as the ship sails. It means the cost of these claims before the first complaint is filed has doubled.

It also means that if there is not relief from litigation, that the purposes of the Act to achieve a reduction of litigtion will not be achieved and that in effect there will be no so-called quid pro quo extended to the maritime industry in exchange for a benefit structure which is of unprecedented generosity. It is vital to the interests of the maritime community that there be in one appropriate form or other a curb on litigation involving cases like these, involving contusion abrasions, abrasions and puncture wounds resulting in six and seven weeks of alleged period of disability, where compensation benefits of three, four, five, six, and seven thousand are routinely paid based on the earnings and benefit structure existing in 1973, which have been vastly increased.

It is essential to the vitality of the maritime industry that cases of these kind where and whenever appropriate be handled as compensation matters.

As a result of this Court's recent decision in Bloomer, a longshoreman who receives, for example, $5,000 in workmen's compensation, benefits as a result of his third party suit only when his verdict exceeds $7,500. As a result of this Court's recent decision in the Norfolk & Western v. -- the Liepelt case, the compensation liability, or rather, the tax liability, of the injured employee must be reduced in calculating his lost wages and loss of future wages.

As a typical matter, in longshoremen's personal

injury cases the total cause of action that is presented in the guise of a longshoreman's suit against the stevedore is the claim of the stevedore to recover its so-called lien. In one case after another --

QUESTION: Say that again?

MR. STEARNS: That the entire cause of action which is presented to a jury as a claim by a longshoreman against a shipowner --

QUESTION: Shipowner? Third party. You said "stevedore."

MR. STEARNS: I'm sorry. -- is in effect, that case, in that form, is in effect a claim by the stevedore to recover its compensation expenses. There's a case in New York, a case in which Judge Meskill and Judge Friendly dissented -- Canizzo v. Farrell Lines -- reported in 579 F.2d, which is an excellent illustration of the point I'm attempting to make. The case involved a man in his 50s who had sustained a knee injury. As a result of the knee injury he'd had surgery; he had a heart condition; and he was found to be by a district court judge permanently disabled. There was a dispute about a reduction in the award to him after the bench trial on the basis of whether or not he was just industrially disabled, or whether in fact he was totally disabled. In any event, there was a calculation of damages with this reduction, which the Court of Appeals found to be inappropriate, of damages in the range

of $110,000. And the case, after a clear clash between Judge Friendly and Judge Meskill with respect to when and in what circumstances a shipowner should be liable to a longshoreman, the case was remanded for retrial on damages. The case was settled. It was settled a little bit less than seven years after the injury, at which point the lien was $63,900. It was settled for $90,000 so-called fresh money in addition to the lien. The stevedore waived his lien and $90,000 was advanced by the shipowner to be disposed of to settle this case. It makes the gross settlement $153,000. From that $153,000, as a result of Bloomer, the attorney for plaintiff takes, according to what we assume to be or what I assume to be a third contingency retainer fee in the sum of $51,000. For a trial and an appeal to the Court of Appeals to assume that $2,000 was consumed in litigation expenses I think is reasonable, reducing the recovery to $100,000, from which, of course, must come the $63,900 lien. In round figures, the recovery by the plaintiff is $36,000. But of course, that's not his recovery, because he's entitled under Section 33(f) and (g) to so-called deficiency compensation, and he goes back on compensation when the net to him is exhausted. If he was receiving workmen's compensation at the rate of $9,000 a year, the net of $36,000 would mean that the stevedore's compensation exposure would be suspended for a period of four years. It means that the benefit of a third party suit where

a lawyer got a fee of $51,000 is interest on $36,000 figured on the declining balance of $9,000 a year at bank interest rates, a figure which might be in a range of $2,500 or $3,000. That interest is a double recovery because he's entitled to his damages or his compensation, whichever is larger.

QUESTION: But counsel, I think that all of us here know of negligence cases that are just the same. But you wouldn't throw the whole negligence law out, would you?

MR. STEARNS: Judge, it's not a question --

QUESTION: I'm trying to say, what has it got to do with this case?

MR. STEARNS: Well, what I'm trying to show is --

QUESTION: Is this lawyer really going to get $51,000?

MR. STEARNS: No, sir, he's not. What I'm trying to get to is --

QUESTION: You're arguing before us.

MR. STEARNS: What I'm trying to do with the background is to --

QUESTION: Could that case be brought here?

MR. STEARNS: It can't now, no.

QUESTION: Well, it wasn't, was it?

MR. STEARNS: It was not. That's correct.

QUESTION: So what good is it to us?

MR. STEARNS: Well, it's good for an illustration of

what the value of a third party case to a longshoreman is, and in view of the fact that it is the position of the respondents in this case that there is, as we have said, a constituent element of suit within six months and since that may involve policy decisions --

QUESTION: Well, under the Jones Act there was a case where a man fell through a bar up in Times Square and they found that the ship was unseaworthy and we didn't throw out the whole unseaworthy statute, did we?

MR. STEARNS: No. That's true. What I was trying to illustrate is some point about the value of the third party case to a longshoreman and to suggest that the "accordance with" provision of Section 5 be interpreted literally and be a basis for barring a longshoreman's suit after six months from the time that they receive their award. And there's an additional point made with respect to the safety of longshoremen which is not by any means certainly guaranteed or even advanced by the bringing in of longshoremen personal injury cases. It is basically our position that this matter of six months to sue is not a matter of Rule 17, it's a matter of Section 33 and Section 5(b), it's a time bar, it prevents absolutely the bringing of a suit by a longshoreman unless there is compliance with the statute which authorizes his suit.

QUESTION: Mr. Stearns, do you agree with

Mr. Lassoff that the Rodriguez case is precisely on the same footing as the other two for purposes of our decision here?

MR. STEARNS: Judge, it's the Perez case where a formal order is involved, and there were four questions posed in the application for a writ. One of them had to do with whether or not there had been a sufficient procedural step taken by the Office of Workmen's Compensation Programs in order to trigger the Section 33 assignment. Now, that was not that question, the procedural sufficiency question was not the subject of the writ. So it's irrelevant, I think, for this case. Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Byrn.

ORAL ARGUMENT OF FRANCIS X. BYRN, ESQ.,

ON BEHALF OF THE RESPONDENT OVE SKOU, R. A.

MR. BYRN: Mr. Chief Justice, and may it please the Court:

Twenty-five years ago I was admitted to the Bar of this Court to work on the brief in the Czaplicki case, and I find it rather fascinating that I have returned here now 25 years later to talk to the Court about the interpretation of Czaplicki. Which makes me, I think, the historian on this particular argument.

And if we could return for the moment to 1956 when the Congress decided to respond to the Ryan decision -- and they did so very expeditiously, following the decision of

this Court in early 1956, there were extensive hearings held, the conflict of interest argument was explored fully, the Czaplicki was discussed. And at that time, while the hearings were going on, it was between the argument and the decision in the Czaplicki case. And the attorneys for Mr. Czaplicki testified in 1956, and they testified rather optimistically --

QUESTION: That is they testified before the congressional committees?

MR. BYRN: That's correct. In 1956, in May and June. And in June this Court decided Czaplicki. And as I said, they were optimistic about the result, and it was warranted from their point of view.

The Congress then responded and began drafting this six-month provision rule from the time of the award. Now, we've talked about six months here, but frequently, as in these cases before us, the time ends anywhere from a year and a half to two years that the man himself has the right to sue. He has the full opportunity to bring suit anytime during that period. And that's the thrust of the Rodriguez case.

Now, in those hearings, the comment by, I think, the representative of the Association of the Bar of the City of New York, who said that these congressional adjustments were the complete answer to Mr. Justice Black's objections in his dissent in the Ryan case, that the stevedore would in effect be suing himself. So this was all hashed over, way back when,

in 1956. And then we moved forward. Mr. Stearns has covered the '72 amendments, but we move forward to a number of the cases that this Court has had.

And in two recent decisions of this Court, Edmonds and Bloomer, the Court itself has read this particular section, 933(b), in accordance with its plain meaning. That is, that the cause of action is assigned after six months to the employer. And in the 1972 amendments, when they added Section 905, the Court incorporated Section 933 into that section and said he may sue in accordance with the provisions of 933(b).

Then we run into a consistent line of cases in recent years by this Court where the Court follows the plain language of the Act. I cite the Caputo case, I cite the Rasmussen case where they discuss the plain language and legislative history, the examination of the Congressional Record, and reports of Congress. The Edmonds case also discusses that point. We go on to the Pfifer case v. Ford, where the point of rest question was considered, and the Court said it was inconsistent with the congressional intent.

So, all throughout these cases, right down to the Bloomer case and the most recent case, on December 15, the Potomac Electric case, there again the Court defers to Congress, to the plain language of the Act, to the unambiguous provisions even where they may reach an anomalous result. And I think that case involved a question of whether schedule awards

apply where the man could take his wages. And the Court said, we might have done otherwise, perhaps, but Congress has said this, and this is the way we have to rule.

QUESTION: But you think the result was anomalous?

MR. BYRN: I think the Court of Appeals said so, and I think perhaps this Court and yourself said so.

I return again to the Czaplicki case. And there the Court in discussing the conflict said, under the peculiar circumstances, the peculiar facts of this case, we find a conflict. Now, as opposed to that, we have the Caldwell case, which I think misinterprets Czaplicki and says, on page 1046, "The fundamental point in Czaplicki is that notwithstanding a statutory assignment of the longshoreman's right of action the right of action may be revested in the longshoreman when it becomes manifest that the assignee, with knowledge of its exclusive right to control and prosecute the claim, nevertheless declines to do so for any reason." Not because of a conflict, but for any reason.

And then it goes on to legislate certain procedures that are followed, again taking over the congressional role there. I think Congress has spoken, and the man has his season in which to sue. Thereafter Congress clearly intended, I think, that the cause of action would then be assigned and if the assignee didn't do anything about it, that's the end of the case: two intentions not to sue, one manifested by the

man himself, and one by the employer. Thank you very much.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Byrn. Do you have anything more, Mr. Lassoff?

MR. LASSOFF: Just a couple more minutes, Mr. Chief Justice.

ORAL ARGUMENT OF MARTIN LASSOFF, ESQ.,

ON BEHALF OF THE PETITIONERS -- REBUTTAL

MR. LASSOFF: May I point out to the Court that in Edmonds, which is a decision of this Court in March, 1979, the Court cautioned that this change in the statute was striking a delicate balance between the law as it was as created by the judiciary and Congress, and as amended by Congress taking away certain rights. Nowhere in the 1972 bill does it mention the six-month statute as being intended to take anything away from the rights of the longshoreman. And Mr. Justice White who wrote the opinion said, very clearly, that "where Congress has been silent in this delicate balance it is not up to us to act." Congress said not one word, in either the Senate or House, about this section, and this section was not changed in the '72 amendments.

One thing that isn't too vital but as Mr. Justice Marshall noted, Mr. Stearns likes to roam far afield. I had a recent situation with Mr. Stearns in New York before a federal judge, Judge Pierce --

QUESTION: Now, you're going to wander further than

he did?

MR. LASSOFF: No. In fact, I just want --

QUESTION: I was just wondering.

MR. LASSOFF: I'll stop, Your Honors.

QUESTION: I was just wondering.

MR. LASSOFF: Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 2:50 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1977

FREDERICO RODRIGUEZ, LUIS PEREZ,
AND SRECKO BARULEC

V.

COMPASS SHIPPING CO., LTD., ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: William J. Wilson

William J. Wilson