

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-838

TITLE UNITED STATES, Petitioner v. PAUL B. LORENZETTI

PLACE Washington, D. C.

DATE April 23, 1984

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C O N T E N T S

ORAL ARGUMENT OF

PAGE

MS. CAROLYN CORWIN, ESQ.,  
on behalf of the Petitioner

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CHARLES SOVEL, ESQ.,  
on behalf of the Respondent

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MS. CAROLYN CORWIN, ESQ.,  
on behalf of the Petitioner -- rebuttal

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

2                    CHIEF JUSTICE BURGER:   Ms. Corwin, you may  
3   proceed whenever you're ready.

4                    ORAL ARGUMENT OF MS. CAROLYN CORWIN, ESQ.,  
5                    ON BEHALF OF THE PETITIONER

6                    MS. CORWIN:   Thank you, Mr. Chief Justice, and  
7   may it please the Court:

8                    The question raised in this case concerns the  
9   interpretation of 5 U.S.C. 8132, the reimbursement  
10   provision of the Federal Employees' Compensation Act.

11                   Under Section 8132, a federal employee who has  
12   suffered a work-related injury, who has received FICA  
13   benefits on account of that injury, and who sues and  
14   recovers from a third party in connection with that  
15   injury, must reimburse the federal government out of his  
16   third party recovery.

17                   The question here is whether that statutory  
18   duty to reimburse exists when state law provides that  
19   the third party recovery may not include damages for  
20   medical expenses and lost wages.

21                   Respondent is a government employee who was  
22   injured in a work-related automobile accident.   He  
23   received FICA benefits in the amount of approximately  
24   \$2,000 which allowed him to pay for his medical expenses  
25   and made up for his lost wages.



1 Respondent then sued the driver of the other  
2 car and eventually settled for \$8,500. The Secretary of  
3 Labor sought reimbursement for the FICA benefits that  
4 had been paid out in the amount of approximately \$1,600,  
5 which represented the FICA benefits less a reasonable  
6 attorney's fee.

7 Even though Respondent's recovery was more  
8 than five times the amount that the Secretary of Labor  
9 was seeking to be reimbursed, Respondent took the  
10 position that he did not have a duty to reimburse  
11 because his settlement did not include amounts that  
12 represented medical expenses and lost wages.

13 That is because the Pennsylvania no-fault  
14 insurance statute abolishes tort liability for economic  
15 losses, including medical expenses and lost wages, that  
16 fall below the ceiling set by the Pennsylvania statute  
17 for no-fault coverage.

18 The district court held nevertheless that the  
19 statute Section 8132 did require Respondent to  
20 reimburse, citing the Ostrowski case from the Sixth  
21 Circuit. The Third Circuit reversed and explicitly  
22 rejected the Ostrowski case. In the Third Circuit's  
23 view, the federal government was to be a model employer  
24 and that that was Congress' intent underlying the  
25 statute.

1           For that reason the Third Circuit thought that  
2   Section 8132 ought to be interpreted so that a federal  
3   employee would be at least as well off as an employee  
4   covered by the state workers' compensation system.  
5   Because the Pennsylvania courts had held that under the  
6   state workers' compensation law a compensation carrier  
7   would not be subrogated to the rights of an employee in  
8   a situation like that of respondent, the court concluded  
9   that the Section 8132 of the federal statute should not  
10  -- should be read in an analogous manner to the  
11  Pennsylvania law.

12           Our position in this case is a straightforward  
13  one. First, we think that the language of Section 8132  
14  on its face requires reimbursement from Respondent to  
15  the federal government. Second, we think that contrary  
16  to what the court of appeals believed, the result is  
17  consistent with the purposes that underlie the  
18  reimbursement provision.

19           Now, the language of Section 8132 seems  
20  clearly to require reimbursement from anything that an  
21  employee recovers from a third party on account of his  
22  work-related injury. That is how the Secretary of Labor  
23  has always read this statute.

24           Section 8132 refers to money or other property  
25  an employee recovers --

1 QUESTION: What part of 8132 are you reading  
2 from?

3 MS. CORWIN: Well, I'm referring to the  
4 language that -- that talks about money or other  
5 property, and that -- that comes within the first  
6 sentence. You have to go down several lines.

7 QUESTION: That's quite a sentence.

8 MS. CORWIN: It is a long sentence.

9 QUESTION: Okay. It's six lines. I guess on  
10 page 2A of the brief.

11 MS. CORWIN: Right. The money or other  
12 property which an employee recovers in satisfaction of  
13 the third party's liability. And there's a reference to  
14 legal liability in that liability in --

15 QUESTION: But it says "in satisfaction of  
16 that liability." And, of course, that language may  
17 refer back to just to the FICA liability, which is  
18 limited in nature to lost wages and medical benefits.

19 MS. CORWIN: Well, I think the legal liability  
20 to which it refers is the liability of the third party.  
21 Now, you can go back to the injury or death for which  
22 compensation is payable, but I think in terms of the  
23 damages or the money or other property, that refers to  
24 the liability of the third party.

25 QUESTION: Well, it's not clear, in any

1 event.

2 MS. CORWIN: Well, I -- I --

3 QUESTION: I think you have to look at  
4 something else to determine the meaning of it, don't you?

5 MS. CORWIN: Well, I -- I think that certainly  
6 on its face the statute does not in any way distinguish  
7 among the different sorts of damages you could have. It  
8 -- it refers to the liability. It refers to injury or  
9 death for which compensation is payable, but it doesn't  
10 --

11 QUESTION: Well, I guess you wouldn't say that  
12 recovery from a third party of property damage is going  
13 to be payable over to the United States.

14 MS. CORWIN: No. And we've said in our reply  
15 brief that's never been the position of the Secretary.  
16 And I think if you look at the statute, it refers to  
17 this injury or death for which compensation is payable.  
18 Under the FICA system, FICA benefits take the place of  
19 damages for personal injury and not for property  
20 injury. If someone -- if someone's damages -- property  
21 is damaged in a work-related situation, there is a  
22 separate provision in Title 31, Section 3721, I believe,  
23 that allows you to present a claim for your property  
24 damage.

25 But in terms of the compensation scheme we're



1 talking about here, which is the Federal Employees'  
2 Compensation Act, those benefits are designed to take  
3 the place of what you would ordinarily get for your  
4 personal injury as a result of a work-related accident.

5 QUESTION: Well, lost wages and medical  
6 expenses.

7 MS. CORWIN: Well, that -- that is how the  
8 benefits are measured, but in terms of what they are  
9 designed to replace or -- or represent, that is the  
10 employee's exclusive remedy under the statutory scheme;  
11 that is, those benefits are designed to -- to compensate  
12 the employee for any sort of personal injury. That is  
13 -- that is typical of a statutory compensation scheme in  
14 that respect.

15 QUESTION: FICA doesn't include pain and  
16 suffering.

17 MS. CORWIN: Well -- well, under FICA you --  
18 you receive benefits in place of any other damages you  
19 might get. If -- if you are injured and there is no  
20 third party tort fees around, you get your FICA benefits  
21 and that's all. They take the place of anything that  
22 you would otherwise get in -- if you were allowed to  
23 bring a tort suit against the United States, for  
24 example. So in that sense, they really -- they take the  
25 place of any sort of damages within the statutory

1 compensation scheme.

2 QUESTION: But is FICA set up so that it  
3 includes not only elements for lost wages and medical  
4 expenses, but also some sort of element for what would  
5 be pain and suffering in a jury negligence trial?

6 MS. CORWIN: There -- no, there is no amount  
7 that you receive that is denominated pain and suffering;  
8 but when you look to the entire statutory scheme, the  
9 FICA benefits that -- that are received by an employee  
10 in effect take the place of any sort of damages you  
11 might otherwise recover against your employer.

12 QUESTION: Well, I realize that's the case. I  
13 was trying to find out whether the FICA statute is like  
14 I understand many state workmen's compensation statutes  
15 to be, kind of giving payment for things other than --  
16 than pain and suffering, or whether FICA is -- if you  
17 took a FICA, the average actuarial value of a FICA,  
18 would it look very much like the actuarial value of a  
19 jury award in favor of a plaintiff?

20 MS. CORWIN: Well, no. I don't think so. And  
21 I think if you're comparing it to state schemes, it  
22 would be similar in the respect you've suggested; that  
23 when you're measuring the amount an employee gets, you  
24 generally look to the medical expenses incurred; you  
25 look to perhaps a payment on a schedule for disability;

1 you look to some percentage of lost wages.

2 But -- but in terms of the balance that's been  
3 struck by Congress, you have this -- this lower amount  
4 of -- of benefits compared to what you might recover in  
5 a tort situation. On the other hand, you get it -- you  
6 get it quickly; you get it without regard to fault; you  
7 get it without the need for litigation. So you strike  
8 the same sort of balance that you do in the state  
9 systems to which you refer.

10 Now, there's --

11 QUESTION: Well, nothing is recovered for pain  
12 and suffering. I mean that's clear, isn't it?

13 MS. CORWIN: There is no amount of FICA  
14 benefits that is measured according to someone's  
15 recovery for pain and suffering.

16 There is also -- there is no indication in the  
17 language of either differentiation among different types  
18 of damages or any suggestion that the right of  
19 reimbursement, the federal governments' right as against  
20 the third party recovery of the employee, no suggestion  
21 that that depends in any way on the substance or the  
22 nature of the employee's cause of action.

23 The bottom line is when we read 8131 is that  
24 anything you recover is then subject to this federal  
25 right of reimbursement.

1           Now, Respondent has suggested that 8132 is  
2 merely an adjunct to Section 8131 which provides that  
3 the Secretary may require the employee to assign his  
4 right of action to the Secretary to the United States.  
5 In fact, we think the two sections create somewhat  
6 different kinds of rights. But even if you do look to  
7 Section 8131 for guidance, we think our interpretation  
8 ought to prevail.

9           The Secretary may require an assignment of the  
10 right of action, not just the employee's right to  
11 recover for medical expenses and lost wages. The way  
12 assignment would work is that the Secretary, if he  
13 received an assignment, would recover any available  
14 damages, and that would include not only medical  
15 expenses and lost wages, but pain and suffering or  
16 punitive damages or anything else the employee himself  
17 might recover.

18           Then at that point the Secretary would take  
19 away from the recovery the amount that was necessary to  
20 compensate the -- the fund for all the FICA benefits  
21 that had been paid out. And only after that if there  
22 were some excess left over would that amount be paid to  
23 the employee.

24           Now, that's -- that's qualified by the  
25 one-fifth provision that came in in 1966, but really the



1 principle behind it is that the -- really the -- the  
2 reimbursement of the compensation fund comes first under  
3 either 8131 or 8132.

4 Now, the court skipped over the language of  
5 the statute and moved directly to the legislative  
6 purposes. We don't think the court should have  
7 dismissed the language so summarily, but again, even if  
8 you do look at Congress' purposes, I think again they  
9 support our reading of the statute.

10 I don't think there can be any question that  
11 the primary purpose of the provisions for third party  
12 actions and for reimbursement under FICA are to shift a  
13 part of the cost of the program to negligent third party  
14 tortfeasors; that is, Congress made the judgment that  
15 if there was a negligent third party in the scene  
16 whenever there was a work-related accident, it was that  
17 tortfeasor that ought to bear the costs of those  
18 particular compensation benefits as opposed to the  
19 taxpayers.

20 Now, various members of Congress expressed  
21 concern about the expense of the program back in 1916.

22 QUESTION: May I ask a question right there?  
23 As I understand the way this works out, the injured  
24 employee bears at least four-fifths of the cost of the  
25 lost wages and medical benefits, and the third party

1 just bears the expense of the pain and suffering.

2 MS. CORWIN: Well, the -- the employee always  
3 gets the FICA benefits. I mean that is a given within  
4 the system.

5 QUESTION: Right. But he, in effect, has had  
6 to pay four-fifths of those benefits to the government  
7 out of the recovery he got for pain and suffering, is  
8 that right?

9 MS. CORWIN: Well, depending on the situation,  
10 depending on how the numbers worked out --

11 QUESTION: Well -- well, in this case.

12 MS. CORWIN: No. Here the employee got more  
13 than four-fifths of his own recovery.

14 QUESTION: No. But the \$8,500 was for pain  
15 and suffering, wasn't it?

16 MS. CORWIN: That's correct.

17 QUESTION: And out of that amount he had to  
18 reimburse the government for the wages and medical  
19 expense.

20 MS. CORWIN: That's correct.

21 QUESTION: So that he is the one who  
22 ultimately bore the cost of the wages and medical  
23 expense in this case.

24 MS. CORWIN: Well, of course -- of course, he  
25 had received the FICA benefits before and was merely

1 paying them back. I mean the bottom line is he always  
2 gets an amount that's equal to the FICA benefits. He  
3 may or may not --

4 QUESTION: Well, but --

5 MS. CORWIN: He may or may not get the bonus  
6 on top of that. But as to the statutory compensation  
7 scheme, he always receives the FICA benefits.

8 QUESTION: Well, somebody had to pay the  
9 hospital bill to start with, and I assume he did.

10 MS. CORWIN: Well, I think he may have and the  
11 government reimbursed him through the FICA benefits.

12 QUESTION: Right. And then he reimbursed the  
13 government. So at the bottom line is that he paid them  
14 out of his own assets, and one of those assets was his  
15 recovery for pain and suffering, isn't that correct? I  
16 just want to be sure I understand it. I'm not trying to  
17 debate whether it's just or fair or anything. But  
18 that's what happened, isn't it?

19 MS. CORWIN: Well, in that that \$8,500 was  
20 denominated pain and suffering and yes, part of that  
21 went to recompense the FICA benefits. That still left  
22 him with quite a bit left over.

23 QUESTION: Does it also include loss of wages  
24 and special damages, other special damages -- the third  
25 party --

1 MS. CORWIN: The third party recovery in this  
2 case we have agreed represents pain and suffering, and  
3 that is because of the unusual situation that's created  
4 by the Pennsylvania no-fault statute.

5 QUESTION: Well, my question was addressed to  
6 the general proposition. When the recovery is had  
7 against the third person, it is for the special damages;  
8 that is, medical expenses, loss of wages, pain and  
9 suffering. It's a whole range of things making up his  
10 total injury, is it not?

11 MS. CORWIN: In many cases that would be so.

12 Now, the "unfairness" or anomaly that comes in  
13 here is created because on top of the federal scheme,  
14 the federal statutory compensation scheme, there is  
15 overlaid the state no-fault insurance scheme, and within  
16 that scheme the state has chosen to abolish tort  
17 liability for these medical expenses and lost wages  
18 below a certain amount.

19 For that reason the settlement or a third  
20 party recovery in -- in the Pennsylvania situation would  
21 not include elements like medical expenses and lost  
22 wages. But -- but to the extent that there is something  
23 unusual or anomalous about that, I think it -- it's  
24 attributable to what the state has come along and done  
25 in the face of the established federal program.



1 QUESTION: Well, as I said, I wasn't debating  
2 the fairness of it; but the net result of it is that he  
3 pays his own hospital bill.

4 MS. CORWIN: Well, I -- it depends on -- on --

5 QUESTION: If he had one.

6 MS. CORWIN: I mean you can -- you can shift  
7 around the money however you want.

8 QUESTION: Well, but it isn't shifting around,  
9 because the \$8,500 I thought you stipulated none of that  
10 is attributable to either wages or -- or medical  
11 expense. I mean do we accept that or don't we?

12 MS. CORWIN: Well, we have accepted that.

13 QUESTION: And if we accept it, doesn't it  
14 follow he paid his own hospital bill?

15 MS. CORWIN: One could regard it that way.  
16 One could also say --

17 QUESTION: Well, one must regard it, don't we?

18 MS. CORWIN: One could also say he came out  
19 with -- with the medical expenses and the lost wages  
20 plus something on top of that as a result of the third  
21 party recovery.

22 QUESTION: Well, but only if you say the  
23 \$8,500 includes medical expenses and lost wages. You're  
24 assuming there's an element of profit in recovering on  
25 pain and suffering.

1 MS. CORWIN: Well, I suggest that -- that  
2 Congress when it was structuring the federal  
3 compensation scheme was focusing on what was necessary  
4 to be fair to the employee to give him a recovery for a  
5 work-related injury, and that amount is measured by the  
6 FICA benefits.

7 Now, if there's a third party tortfeasor in  
8 the picture, you may also get something, but the  
9 condition within the statutory scheme is that you first  
10 apply that to compensate the government.

11 QUESTION: Well, Ms. Corwin, what would be the  
12 case if instead of \$8,500 it was \$1,500?

13 MS. CORWIN: Then --

14 QUESTION: Then what's his obligation to  
15 reimburse?

16 MS. CORWIN: His obligation under the plain  
17 language of the statute is to reimburse the federal  
18 government for the FICA benefits.

19 QUESTION: Well, the whole \$1,500 --

20 MS. CORWIN: The whole \$1,600.

21 QUESTION: All right. The FICA benefits were  
22 \$1,800 or \$1,600, was it?

23 MS. CORWIN: Sixteen hundred was the FICA  
24 benefits.

25 QUESTION: Well, then, let me change that from

1 \$1,500 to \$1,600. So if it had been -- if he'd got --  
2 if the \$8,500 was \$1,600, he'd have to pay it back.  
3 Then Justice Stevens' question would have to be answered  
4 yes, he paid his own hospital bills, wouldn't it?

5 MS. CORWIN: Well, I don't think so. I think  
6 the government initially --

7 QUESTION: Well, if he gave it back, he  
8 wouldn't have anything, would he?

9 MS. CORWIN: He -- well, he would come out  
10 with one-fifth, because in 1966 Congress provided that  
11 the employee would always get at least one-fifth of some  
12 third party recovery.

13 QUESTION: I see.

14 MS. CORWIN: So the bottom line is --

15 QUESTION: So -- so he'd get \$300 odd dollars  
16 or something.

17 MS. CORWIN: Well, yes. He -- he would get at  
18 least one-fifth. Now, here he got plenty more than  
19 one-fifth.

20 QUESTION: He's paid the \$1,600 hospital bill.

21 MS. CORWIN: Well, the government initially  
22 paid it.

23 QUESTION: Yes. And then he got \$1,600 from  
24 the government. Now he's giving back \$1,300, so he ends  
25 up with a net of \$300. And he certainly pays the

1 difference, \$1,300 of the hospital bill, doesn't he?

2 MS. CORWIN: Well, I think it's a matter of  
3 characterization, and I think that one has to start out  
4 from the premise that when Congress was setting up this  
5 federal compensation scheme that it felt that the -- the  
6 proper result was that the employee should get FICA  
7 benefits. Those were benefits that took the place of a  
8 tort liability system. He got them quickly, he got them  
9 without regard to fault, he got them without litigation.

10 Now, to the extent that there was a third  
11 party in the picture, Congress concluded that that third  
12 party as opposed to the taxpayer to be bearing the cost  
13 of the compensation benefits paid out. And I think you  
14 have to assume that that is -- that is the primary  
15 purpose; that is the purpose reflected in the debates on  
16 this measure.

17 QUESTION: Well, if I were the injured  
18 employee, I'd still feel I was \$1,300 out of pocket.

19 MS. CORWIN: Well, I think that --

20 QUESTION: Well, he has the compensation  
21 payments. He doesn't have to disgorge those.

22 MS. CORWIN: Well, that's right, and that  
23 really is the basis of the scheme. The assumption is  
24 that if you're in a work-related injury situation that  
25 you get the compensation payments, you get the FICA



1 benefits, and that in itself is the solution under the  
2 statutory compensation scheme.

3 Now -- now, as I say, if there's this third  
4 party, you may have something on top of that, but that's  
5 not necessarily so.

6 QUESTION: Ms. Corwin, perhaps your opponent  
7 can speak with more authority than you can on this, but  
8 under the Pennsylvania statute, granted you can only sue  
9 for basically pain and suffering, but isn't there some  
10 administrative provision or some provision for your own  
11 carrier, your own insurance carrier to pay lost wages  
12 and specials?

13 MS. CORWIN: There -- the way the Pennsylvania  
14 scheme works would prevent in this situation no-fault  
15 being -- benefits being paid. The way it works is that  
16 the -- any obligation of the no-fault, the first party  
17 no-fault insurer, Respondent's own insurer, is reduced  
18 by the amount of workers' compensation or other  
19 government benefits that the employee receives.

20 QUESTION: So an employee of a private  
21 employer here who couldn't claim workmen's compensation  
22 could have claimed something from the first insurer, but  
23 because he was covered, this guy was covered by FICA,  
24 this person couldn't.

25 MS. CORWIN: No. I don't think there's --

1 there's not a difference in the two situations you  
2 suggest. The individual who's employed in the private  
3 system would -- would be forced first to get his  
4 workers' compensation, and the no-fault carrier wouldn't  
5 have to pay anything to the extent the workers'  
6 compensation carrier had done so under the state system.

7 QUESTION: But if it's an injury not arising  
8 out of in the course of employment and there is no  
9 workmen's compensation, no FICA, then under Pennsylvania  
10 law the first liability carrier has to pay specials?

11 MS. CORWIN: That is correct. Then -- then  
12 you would recover it from your first party insurer,  
13 that's correct.

14 QUESTION: Ms. Corwin, in a -- in a state  
15 without no-fault or without some system like  
16 Pennsylvania's and you sue the third party, you can  
17 recover anything you can get out of them. And if in  
18 Justice Brennan's example, if you recovered from a third  
19 party only \$1,500, and you'd only been paid \$1,500,  
20 you're going to have to refund the whole thing.

21 MS. CORWIN: Well, that -- that's correct.

22 QUESTION: I mean whether that's -- whatever  
23 the recovery is. And so this case, just because it  
24 involved recovery of pain and suffering, doesn't present  
25 any unique problem.

1 MS. CORWIN: Well, it's not unique in that you  
2 may always end up having to pay everything back.

3 QUESTION: Yes.

4 MS. CORWIN: That's a condition of -- of being  
5 in the compensation system. You may also have  
6 situations like settling for less than you had claimed.

7 QUESTION: Yes.

8 MS. CORWIN: Or being in a comparative  
9 negligence state and having your recovery reduced in  
10 which you -- you would have the reimbursement really go  
11 into the other parts of your damages award. And that's  
12 something I think that Congress was -- was clearly aware  
13 of. I mean you didn't have no-fault back in 1916, but  
14 you had things like there -- there was a specific  
15 reference to settlement in the statute, so Congress was  
16 clearly aware that you might end up with -- with less  
17 than -- than all of your damages on each element.

18 There were -- in the Senate debates there were  
19 references to comparative negligence on several  
20 occasions, so they again recognized that that sort of  
21 principle might be at work. But there was -- there was  
22 no expression of concern about protecting those elements  
23 of damages like pain and suffering from this federal  
24 right to reimbursement.

25 Now, there -- there was some concern about

1 protecting the damages from any credit against  
2 compensation for some future injury. Congress said  
3 well, we don't -- we don't want a sword of Damocles, is  
4 what they call it, hanging over the employee so that he  
5 would have to apply all of his recovery sometime in the  
6 future; but he didn't -- he didn't know it -- it would  
7 possibly happen to him some day.

8 So they -- they put in some language that said  
9 this right of reimbursement doesn't extend beyond that  
10 same injury; but there was no effort to -- to protect  
11 any of these elements of damages from this -- what  
12 appears to be an absolute right of recovery.

13 Now, I'd just like to briefly mention another  
14 consideration we think underlies the statute, and that  
15 is, Congress' intent to create a -- a uniform and  
16 manageable system that can be administered on a  
17 nationwide basis.

18 We've pointed out in our brief the  
19 administrative difficulties we think the sort of test  
20 fashioned by the court of appeals would present. I  
21 don't think that Congress has indicated anywhere that --  
22 that it anticipated that the Secretary would be making  
23 this sort of state-by-state adjustment of federal  
24 rights. And in the absence of that indication, I don't  
25 think it's appropriate to read it into the statute.

1           Now, the court of appeals thought it was  
2 significant that reimbursement was not necessary here in  
3 order to prevent double recovery. I don't dispute that  
4 -- that Congress may have had this prevention of double  
5 recovery in mind as an effect of this reimbursement  
6 provision. That was not the only purpose of the  
7 provision, and I don't -- it was certainly not the  
8 decisive provision.

9           I think the point was to put the -- the loss  
10 of the compensation benefits on the tortfeasor, not on  
11 the compensation system, whenever it was possible. If  
12 Congress had wanted to focus on this double recovery  
13 rationale, I think it could have drafted the statute in  
14 a much more limited manner.

15           Now, ultimately the court of appeals and  
16 Respondent fall back on their own conceptions of  
17 fairness to federal employees and on the -- the ideas  
18 about parity between federal employees and others. I  
19 think I've pointed out that in our view it is  
20 Pennsylvania that has come along and imposed upon the  
21 FICA system a different set of adjustments of rights and  
22 has created this sort of situation.

23           It's within Pennsylvania's power to remedy  
24 this if they perceive it as unfair. Their legislature  
25 can do it. We think they could do it by construing



1 their statute in the courts. But to the extent that  
2 Pennsylvania doesn't take care of this, I think that it  
3 is the burden of Congress to adjust any rights if it  
4 perceives that this is an unfair situation.

5 QUESTION: Ms. Corwin, may I just ask -- I'm  
6 not clear in my own mind. Supposing the injured person  
7 here had worked for a Pennsylvania employer and received  
8 benefits under their workmen's compensation program  
9 precisely equal to this. What would have happened? And  
10 then later sued and got the same recovery.

11 MS. CORWIN: Pennsylvania has construed its  
12 own workers' compensation system in the light of the  
13 no-fault scheme and has said in that case there --  
14 there's only a right of subrogation under the  
15 Pennsylvania scheme, not this right of reimbursement as  
16 defined in Section 8132.

17 But as to the subrogation right, the  
18 Pennsylvania courts have held that that -- construing  
19 the two statutes together, the workers' comp and the  
20 no-fault, that the workers' compensation carrier is not  
21 subrogated to the right, so the employee would get to  
22 keep the recovery for pain and suffering.

23 But here I'd point out you're not in a  
24 situation in which you're construing two statutes that  
25 have been passed by Congress together in trying to

1 reconcile them in the way that --

2 QUESTION: You get a federal statute and a  
3 state statute.

4 MS. CORWIN: Yeah. The way the Pennsylvania  
5 court was trying to reconcile its two state statutes.  
6 Here you have an existing federal system. You have  
7 something changing from the outside. I think it's  
8 similar to the Morrison-Knudsen situation. Here the  
9 change from the outside is the Pennsylvania no-fault  
10 statute; but I think it's up to Congress to readjust  
11 rights within the federal system if it chooses to do so.

12 I'll reserve the remainder of my time.

13 CHIEF JUSTICE BURGER: Very well.

14 Mr. Sovel.

15 ORAL ARGUMENT OF CHARLES SOVEL, ESQ.,

16 ON BEHALF OF THE RESPONDENT

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

19 Under the Pennsylvania no-fault system when a  
20 person is injured, he's entitled to collect his basic  
21 benefits from his own insurance carrier. Those basic  
22 benefits are medical expenses and a portion of wage  
23 loss. It goes up to 80 percent of the wage loss up to  
24 \$1,000 a month. If the person is entitled to workmen's  
25 compensation benefits, then he must take those workmen's

1 compensation benefits, and the amount paid by the  
2 no-fault carrier is reduced by the amount that the  
3 workmen's compensation carrier pays. In most instances  
4 the effect of that is to reduce the figure to zero so  
5 that the man receives his workmen's compensation wage  
6 loss and his medical expenses from his employer.

7 The statute specifically provides and the  
8 courts of Pennsylvania have so held that the workmen's  
9 compensation carrier cannot assert a right of  
10 subrogation in the third party action. The third party  
11 action, therefore, is limited to items of damages not  
12 covered by the no-fault benefit, and the no-fault  
13 benefit in turn is the workmen's compensation benefit.

14 Now, in effect, you have a new type of  
15 recovery for an injured person. Instead of what  
16 formerly was a single right to sue a third party to  
17 recover what damages you were entitled to as medical  
18 losses, wage losses and pain and suffering, you have a  
19 two-pronged recovery: one of no-fault recovery and a  
20 separate one for amounts not covered by no-fault against  
21 the third party if you can prove it.

22 The effect of the government's position here  
23 is to deny the person that single recovery which is  
24 contemplated by state law. The single recovery  
25 contemplated by state law is a no-fault benefit plus a

1 right to sue a third party. The government is saying  
2 out of that single right we're going to reduce that  
3 single right of recovery by making you pay back the  
4 medical expenses that you have received.

5 Now, when Congress enacted --

6 QUESTION: Well, that's what the statute seems  
7 to say.

8 MR. SOVEL: Well, it says that, if Your Honor  
9 please, only if you interpret the word "damages" to mean  
10 damages for pain -- for pain and suffering only.

11 QUESTION: Well, isn't that what this usually  
12 refers to in a tort suit?

13 MR. SOVEL: No.

14 QUESTION: What do you usually refer to  
15 recoveries for pain and suffering?

16 MR. SOVEL: I interpret the word "damages" in  
17 the statute. The statute reads, "If an injury of death  
18 for which compensation is payable under this subchapter  
19 is caused under circumstances creating a legal liability  
20 in a person other than the United States to pay damages."

21 Now, that can mean a whole panoply of damages  
22 arising from that incident.

23 QUESTION: Including damages for pain and  
24 suffering.

25 MR. SOVEL: And including property damage.

1 But no one would suggest that that would be the -- a  
2 reasonable interpretation of the statute. And that's  
3 why the plain meaning of the language -- the language  
4 has no plain meaning. "Damages" could mean any other  
5 types of damages that a -- the tort of one automobile  
6 hitting another might create. It would include property  
7 damage. And they admit that that would not be a  
8 reasonable interpretation of the statute.

9 QUESTION: Well, but you say the reason why  
10 it's not reasonable is a reference to injury and death  
11 necessarily limits it to the kinds of injuries or  
12 damages you associate with personal injury rather than  
13 property damage.

14 MR. SOVEL: I would suggest, Your Honor, that  
15 that's not exactly how the statute reads. It says if  
16 the circumstances under which compensation is payable --  
17 if an injury or death occurs under circumstances where  
18 there's an obligation to pay damages, one could say  
19 damages for injury or death; but the statute doesn't say  
20 that. The statute just says damages. And it could mean  
21 damages, any damages recoverable under that particular  
22 incident.

23 But I -- I think more important is to try to  
24 get a plain meaning for a statute that has been enacted  
25 and reenacted over the years when a no-fault program and



1 the changes in no-fault were not contemplated. To try  
2 to read a plain meaning into that type of a statute  
3 would be unreasonable in terms of what Congress might  
4 have intended in this situation or did intend.

5 Congress certainly, in enacting the statute,  
6 did not attempt to prescribe the circumstances under  
7 which a third party recovery would be made.

8 QUESTION: Well, suppose this had come -- come  
9 in a state without a no-fault, and he sued the third  
10 party, and he sued him for lost wages, medical expenses,  
11 pain and suffering. He had a special verdict, and the  
12 jury came back and said nothing for -- no specials, no  
13 wages, no nothing except pain and suffering, and \$10,000  
14 for pain and suffering.

15 Now, would you be making the same argument  
16 here?

17 MR. SOVEL: I would be making the same point I  
18 made in my brief, Your Honor, in that his third party  
19 recovery, whatever the jury found, that was his third  
20 party recovery, and that's his single recovery that he's  
21 entitled to the benefit of. He's not -- he wouldn't  
22 have -- his third party recovery reduced by what he has  
23 to pay back would still be the same amount for the third  
24 party recovery. It does -- there's no saying that a  
25 jury has to award a lot for pain and -- for pain and

1 suffering, or it might find that a different amount of --

2 QUESTION: Well, what's the answer to my  
3 question? Would you be making the same argument here  
4 today if -- if this had come up in a -- in a -- not --  
5 in another state without no-fault and the jury --

6 MR. SOVEL: No.

7 QUESTION: -- Just happened to award --

8 MR. SOVEL: No. I would --

9 QUESTION: -- Damages only for pain and  
10 suffering.

11 MR. SOVEL: I would not be making the same  
12 argument.

13 QUESTION: Why not?

14 MR. SOVEL: He would be obligated to pay.

15 QUESTION: Why would he?

16 MR. SOVEL: Because his third party recovery  
17 for damages included the right to prove in that third  
18 party action his medical expenses and wage loss.

19 QUESTION: Yes.

20 MR. SOVEL: The fact that the jury didn't  
21 award --

22 QUESTION: The only thing is -- the only thing  
23 is he didn't prove any.

24 MR. SOVEL: Well, the jury didn't find --  
25 might have found other reasons why not. We don't -- you

1 never know what goes on in the jury's mind in awarding  
2 it. But nonetheless, you're not going to start  
3 impeaching a jury's verdict and trying to find out what  
4 they consider.

5 QUESTION: You're not impeaching it at all.  
6 You're just -- you're just -- he just says well, look,  
7 all you ever reimbursed me for was for my loss of wages  
8 and medical expenses. Why should I have to repay you  
9 out of my damages for pain and suffering?

10 MR. SOVEL: Your Honor, I think that the  
11 purpose of the right of action that is brought which  
12 results in a man receiving a third party recovery --

13 QUESTION: So you think these -- these cases  
14 ought to come out completely differently if they come  
15 out of Pennsylvania or other states with no-fault and  
16 states that don't have no-fault.

17 MR. SOVEL: Well, Your Honor, I think that  
18 Congress decided to rest on state law, and we're not  
19 going to prohibit the states from experimenting with  
20 different types of recovery. If one states wants to  
21 have comparative negligence and another wants to have  
22 contributory negligence, the result may well be  
23 different.

24 There might be a -- if a state had contributed  
25 --

1 QUESTION: Well, not in terms of the  
2 obligation to repay the government.

3 MR. SOVEL: Well, there might be no recovery  
4 in a given case because --

5 QUESTION: Well, maybe -- that may well be,  
6 but -- but in terms of his obligation to pay, I don't  
7 know -- I don't see why you wouldn't --

8 MR. SOVEL: Because it results in him getting  
9 less than whatever the single recovery was that the  
10 state law contemplated that he would receive. There's  
11 no indication that Congress intended to treat the  
12 federal employee any different than any other state  
13 employee injured under the same circumstances. If that  
14 was his third party recovery, that's what he's supposed  
15 to receive. It's not to be reduced by a benefit that he  
16 did not receive in terms of having to pay back the  
17 medical expenses or the wage losses.

18 In the third party action a man may recover a  
19 given amount for pain and suffering. He may recover  
20 less. He may recover his medical expenses, and he may  
21 not. But he was allowed to prove them, and they were  
22 part of his third party damage action.

23 In this case he was barred from proving his  
24 medical expenses in the third party action. He was  
25 barred from proving his wage losses. And it is on that

1 basis that he shouldn't have to pay back something that  
2 he was barred from being entitled to recover under the  
3 law.

4 It was the Pennsylvania legislature's  
5 intention that he get those benefits as a matter of  
6 right; that they not be covered by his third party  
7 action. The government doesn't want to follow state law  
8 in this area, although it seems to be satisfied to  
9 follow state law in every other area.

10 QUESTION: Mr. Sovel, can I ask you a question  
11 I just don't quite understand?

12 Supposing the -- your client had been  
13 unemployed, say, and he had a \$1,500 hospital bill.

14 MR. SOVEL: Right.

15 QUESTION: And he -- I take it he would have  
16 had that paid out by the no-fault insurance carrier.

17 MR. SOVEL: Correct.

18 QUESTION: Because he was not paid by any  
19 compensation program.

20 Why can't your client now get that hospital  
21 paid in that manner because the government is not paying  
22 it?

23 MR. SOVEL: I didn't follow your last part.  
24 He can't bring the third party action for it.

25 QUESTION: He brings the third party action



1 and gets the \$8,500 for pain and suffering.

2 MR. SOVEL: Right.

3 QUESTION: And he goes to his no-fault carrier  
4 and says I had to give part of that money back to the  
5 government, so I did not have it paid by the  
6 government. They gave me the money and took it back.  
7 So why can't I get it from my no-fault carrier?

8 MR. SOVEL: Because in this situation there is  
9 no no-fault carrier. It's all the government.

10 QUESTION: There is no no-fault carrier?

11 MR. SOVEL: He was driving a government  
12 vehicle.

13 Now, you see, in this situation his no-fault  
14 carrier -- let's suppose he had a vehicle, and under  
15 Pennsylvania law, if he had his own automobile and he --  
16 he would go to his own carrier for coverage, in that  
17 situation the employer -- the carrier would not be  
18 subrogated. They'd have to pay it, and he'd have no  
19 right --

20 QUESTION: The no-fault insurance is paid by  
21 the driver himself.

22 MR. SOVEL: Yes.

23 QUESTION: He pays his own premium.

24 MR. SOVEL: Right.

25 QUESTION: What if he was from Maryland? I

1 just -- I'm --

2 MR. SCVEL: Well, I'm not so sure I follow you  
3 question.

4 QUESTION: Well, supposing he was not -- not  
5 -- does -- say an out-of-state person, must he carry his  
6 own no-fault insurance, or he just has no right at all,  
7 is that it?

8 MR. SOVEL: Well, he would have his rights  
9 under what his policy would be, and if he received no  
10 no-fault benefits --

11 QUESTION: He's just out of luck.

12 MR. SOVEL: Then no. Then he's not barred  
13 from suing it in the third party action under  
14 Pennsylvania law.

15 QUESTION: Well, then, why can't he now say I  
16 did not get any no-fault -- I'm not getting -- the net  
17 result of my arrangement with the government is I get  
18 nothing for my hospital bill, so I want to sue the third  
19 party.

20 MR. SOVEL: Because the no-fault carrier is  
21 entitled to say to him, in turn, you received  
22 compensation benefits, and we're entitled to the credit  
23 for that under Pennsylvania law.

24 QUESTION: But I received them, but I couldn't  
25 keep them.

1 MR. SOVEL: Well, but that --

2 QUESTION: I just wonder. I must say I'm  
3 puzzled.

4 MR. SOVEL: Well, that -- that would really  
5 put you right around in a circle. The Pennsylvania  
6 legislature made a judgment as to what elements it was  
7 going to include in the fund that insurance premiums  
8 were to pay for.

9 QUESTION: Well, as I understand your  
10 explanation of Pennsylvania law, it says that the third  
11 party has to pay the hospital bill when the plaintiff  
12 has to pay it himself. And the net result of your  
13 analysis is he's paying his own hospital bill.

14 MR. SOVEL: That's right.

15 QUESTION: So I would think he ought to be  
16 able to get it from the third party. In other words, I  
17 think that maybe there was a mistake of state law  
18 created -- well, that's out of this.

19 MR. SOVEL: Well, I -- I think that for him to  
20 go back to his own carrier now, I don't see how he could  
21 do it in these circumstances, because the carrier would  
22 also have the right to say we're entitled to get the  
23 benefit of workmen's compensation, and therefore, there  
24 is no no-fault liability, and the state court would turn  
25 around and say that's a correct interpretation of cur

1 statute.

2 It really comes down to, I think, the -- the  
3 government -- the federal government always would seem  
4 to be satisfied to accept state law in this area. It's  
5 not intending to define the circumstances under which a  
6 third party recovery may be made.

7 Pennsylvania theoretically could totally  
8 abolish third party recovery and say we're not going to  
9 allow any third party recovery. You're only right is to  
10 receive workmen's compensation. The government would be  
11 out its compensation benefits, but under this statute it  
12 couldn't complain of that.

13 Now, that would be a different rule for one  
14 state than in another state. But it seems that you're  
15 dealing with a state -- a federal statute that is  
16 incorporating by state law -- incorporating state law  
17 and should be bound by the rights that that state law  
18 creates for the individual. This is essentially a  
19 subrogation provision. I do not accept the argument  
20 that there's some sort of separate right against the  
21 employee. 8132 just is another element of interpreting  
22 the right of subrogation that is started 8131. It says  
23 if the man makes recovery, he has to pay it back. And I  
24 think that that would be the proper interpretation. It  
25 treats all employees fairly and equally within the state

1 and treats all federal employees equally as compared to  
2 the various states in which they are employed.

3 Thank you.

4 CHIEF JUSTICE BURGER: Do you have anything  
5 further, Ms. Corwin?

6 ORAL ARGUMENT OF MS. CAROLYN CORWIN, ESQ.,

7 ON BEHALF OF THE PETITIONER -- REBUTTAL

8 MS. CORWIN: Just one brief point. I'd like  
9 to follow up with Justice Stevens' question.

10 This is -- this is something that can be  
11 solved through a construction of state law. The Court  
12 hasn't done it. Now it's open to them to do it. We've  
13 suggested in our brief at page 39, note 25, that there  
14 are ways that the courts could do this in Pennsylvania  
15 if they're not willing to do it now, and they can solve  
16 this problem if they perceive it to be one.

17 CHIEF JUSTICE BURGER: Thank you, counsel.

18 The case is submitted.

19 (Whereupon, at 2:20 p.m., the case in the  
20 above-entitled matter was submitted.)  
21  
22  
23  
24  
25



# CERTIFICATION

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#83-838-UNITED STATES, Petitioner v. PAUL B. LORENZETTI

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