

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
**THE SUPREME COURT**  
**OF THE**  
**UNITED STATES**

CAPTION: AMERICAN DREDGING COMPANY, Petitioners v.

WILLIAM ROBERT MILLER

CASE NO: 91-1950

PLACE: Washington, D.C.

DATE: Tuesday, November 9, 1993

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AMERICAN DREDGING COMPANY :

Petitioners :

v. : No. 91-1950

WILLIAM ROBERT MILLER :

- - - - -X

Washington, D.C.

On behalf of the United Tuesday, November 9, 1993

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States at  
11:08 a.m.

APPEARANCES:

THOMAS J. WAGNER, ESQ., New Orleans, Louisiana; on behalf  
of the Petitioner.

TIMOTHY J. FALCON, ESQ., New Orleans, Louisiana; on behalf  
of the Respondent.

JOHN F. MANNING, ESQ., Assistant to the Solicitor General,  
Department of Justice, Washington, D.C.; on behalf of  
the United States, as amicus curiae, supporting the  
Respondent.

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1 PROCEEDINGS

2 (11:08 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in Number 91-1950, American Dredging Company v.  
5 William Robert Miller.

6 Spectators are admonished not to talk until you  
7 leave the courtroom. The Court remains in session.

8 Mr. Wagner.

9 ORAL ARGUMENT OF THOMAS J. WAGNER

10 ON BEHALF OF THE PETITIONER

11 MR. WAGNER: Mr. Chief Justice, may it please  
12 the Court:

13 The question presented in this case is whether  
14 or not the doctrine of forum non conveniens, as that  
15 doctrine has been articulated in the admiralty courts, is  
16 applicable to maritime claims when filed in State court  
17 pursuant to the "saving to suitors" clause of 28 U.S.C.  
18 section 1333.

19 American Dredging, the petitioner, asks that you  
20 answer that question in the affirmative for two strong  
21 reasons. First, we respectfully submit that this doctrine  
22 is a fundamental and an important feature of the admiralty  
23 law which should be respected and applied uniformly by all  
24 courts in all situations, regardless of whether filed in  
25 State or Federal court, regardless of the citizenship,



1      nationality, or residence of the parties.

2                    QUESTION:    Wasn't the first time that this Court  
3      enunciated that doctrine and recognized it was not in  
4      admiralty, it was in a diversity case -- Gulf Oil?

5                    MR. WAGNER:    Your Honor, I would suggest that  
6      the first time this Court officially recognized that  
7      doctrine was in the Belgenland case in 1885, where it  
8      recognized that the Court could dismiss a claim in dicta  
9      for the same reasons as forum non conveniens, although  
10     they did not articulate the Latin phrase, forum non  
11     conveniens.

12                   QUESTION:    My concern is that you're constantly  
13     associating this with admiralty, and yet as far as I know  
14     it was part of equity, and it was also -- in Gulf Oil it  
15     was a straight law case for damages, so forum non  
16     conveniens seems to me across-the-board doctrine that  
17     applies in cases at law, equity, and in admiralty.

18                   MR. WAGNER:    Your Honor, the first articulation  
19     of the doctrine using the term, forum non conveniens, did  
20     appear in a nonadmiralty case, but that case draws its  
21     roots, or has its roots exclusively in the admiralty. In  
22     the older cases of 1804, where Chief Justice Story  
23     referred to the convenience of the parties as being able  
24     to be considered, and whether a court would retain  
25     jurisdiction in an admiralty salvage case.

1           In 1885, in a collision case, an admiralty  
2 collision case, the court recognized the discretion of the  
3 trial court in weighing the various factors of  
4 convenience, of nationality, of citizenship, in  
5 determining whether to retain jurisdiction.

6           QUESTION: What about in England --

7           QUESTION: Mr. Wagner -- Mr. Wagner, the fact  
8 that the doctrine may have come up and been applied in  
9 some admiralty cases I don't think negates the suggestion  
10 from Justice Ginsburg that it was applied across the  
11 board.

12          MR. WAGNER: Right.

13          QUESTION: It was applied in admiralty cases and  
14 in other kinds of cases.

15          MR. WAGNER: Your Honor, I -- Mr. Chief Justice,  
16 we agree that -- with that principle, that is now a  
17 doctrine, whose efficacy, whose utility has been  
18 recognized in many other areas of law.

19          QUESTION: Mr. Wagner, even if you're correct  
20 that it was first enunciated in dictum in admiralty cases  
21 in this country, was it first enunciated in the common law  
22 in admiralty cases? My impression was that in the English  
23 cases it first came up not in admiralty cases at all.

24          MR. WAGNER: I think, Justice Scalia, that the  
25 first consideration of it that I'm aware of was in cases

1 in Scotland which were not --

2 QUESTION: Scottish trust cases, right.

3 MR. WAGNER: -- maritime cases, that's correct,  
4 but my argument, or our principle here is that the  
5 admiralty law has a respected position by virtue of the  
6 Constitution, and that this particular doctrine, albeit  
7 with some roots in nonadmiralty, is a fundamental part of  
8 admiralty jurisdiction.

9 QUESTION: May I ask you what you meant when you  
10 said earlier that it's important that this doctrine be  
11 applied uniformly? Does that mean that you would say that  
12 a State court could not be neither more restrictive nor  
13 less restrictive in its doctrine of forum non conveniens?

14 MR. WAGNER: My --

15 QUESTION: Neither way.

16 MR. WAGNER: My reference is that the rule  
17 should be uniform, but the interpretation of the rule is  
18 always subject to this discretionary input of the trial  
19 judge. I do not think --

20 QUESTION: Well, of course, but I'm -- you would  
21 say that a State, even if it wants to exclude on the basis  
22 of forum non conveniens more cases than the Federal courts  
23 would exclude, it cannot do that.

24 MR. WAGNER: Your Honor, that's our position.  
25 That's our position.

1 QUESTION: But then you're saying that this  
2 doctrine must mean something different in admiralty than  
3 it does in other areas, because what do you do with  
4 Mayfield, where the Court made it clear that a State  
5 doesn't have to copy the Federal position on forum non  
6 conveniens? It can keep the case if it wants it, and it  
7 can dismiss if it wants it.

8 MR. WAGNER: Justice Ginsburg, my response with  
9 reference to the Mayfield decision, which was the 1950  
10 decision of this Court, was that it did not involve any of  
11 the constitutional or supremacy issues associated with the  
12 general maritime law, which has --

13 QUESTION: But you just said that the doctrine  
14 is the same, the forum non conveniens doctrine is a  
15 doctrine that cuts across the law. Now you seem to be  
16 saying that it's different in admiralty than it is in  
17 other areas.

18 MR. WAGNER: Your Honor I may be misstating  
19 myself. I may not be making myself clear. What I'm  
20 saying is, the admiralty doctrine has been adopted by  
21 several other areas of law, and those other areas of law  
22 are free, because they are not constricted, by the  
23 uniformity of the general maritime law, to change and  
24 apply that doctrine in different fashions, but in  
25 admiralty, the Federal courts, and this Court in



1 particular, is the ultimate arbiter of what the uniform  
2 rule should be.

3 QUESTION: I'm not following your argument.  
4 You've already recognized, in response to Justice Scalia's  
5 question, that forum non conveniens does not emerge in the  
6 common law world for the first time in the context of  
7 admiralty, and it is a doctrine that is now applied across  
8 the board to cases that were once in equity at law in  
9 admiralty, but now you seem to be saying that this  
10 doctrine has some special character in admiralty cases  
11 that differs it from its shape in other cases.

12 MR. WAGNER: I believe that it does, and it has  
13 that in two fashions, 1) because it is a part of the  
14 uniform admiralty law, which has a precedence, it has a  
15 supremacy that common law doesn't necessarily have, and  
16 secondly, the admiralty jurisdiction is by its nature  
17 extremely broad, extremely vast. It touches all sorts of  
18 areas of law.

19 QUESTION: Why should it have a different  
20 application in admiralty than, say, under the FELA, which  
21 is a Federal statute?

22 MR. WAGNER: Well, I would argue that the first  
23 reason is because of Article 3, section 2, clause 1 of the  
24 Constitution, which vests this Court, and vests the  
25 national courts with jurisdiction over all admiralty and

1 maritime cases, and the cases that are interpreted that  
2 have all recognized that it is the function of this Court  
3 and the function of all courts to apply a uniform general  
4 maritime law, and that has a standing that the FELA does  
5 not have.

6 QUESTION: The FELA's a Federal statute --

7 MR. WAGNER: That's correct.

8 QUESTION: -- and it has to be interpreted  
9 uniformly by the Federal and State courts that apply it,  
10 is that not so?

11 MR. WAGNER: But forum non conveniens is not  
12 part of the FELA, whereas forum non conveniens is an  
13 integral part of the general maritime law, and I might  
14 assert one other thing. I think it's very important to  
15 focus on the language of the Jones Act in adopting -- in  
16 adopting the standard of the FELA.

17 I'm referring to the -- just quoting from the  
18 Jones Act as quoted in the appendix of the Solicitor's  
19 brief. It says, "Any seaman who shall suffer personal  
20 injury in the course of his employment may, at his  
21 election, maintain an action for damages at law with a  
22 right of trial by jury, and in such action, all statutes  
23 of the United States modifying, or extending, the common  
24 law right or remedy in cases of personal injury to railway  
25 employees shall apply."

1           One of those statutes which extends and modifies  
2 the right of railway workers is section 1404 of the  
3 Judicial Code, which is a Federal transfer statute, which  
4 was passed explicitly by Congress to provide that FELA  
5 cases would be transferable under the same standards that  
6 had been judicially established under forum non  
7 conveniens.

8           Missouri v. Mayfield did not address that issue,  
9 it did not need to address that issue, because it was not  
10 a Jones Act case. The Jones Act is a part of the  
11 admiralty law, and forum non conveniens as a part of the  
12 admiralty law are fused and form part of the uniform law.  
13 It should be applicable --

14           QUESTION: I don't understand the point you're  
15 making about 1404(a). If this case were brought in --  
16 let's say it were brought in the Federal district court in  
17 Louisiana, it's admiralty but the transfer mechanism would  
18 be 1404(a), right?

19           MR. WAGNER: Unless it was to be transferred  
20 internationally, Your Honor, in which event forum non  
21 conveniens --

22           QUESTION: In that respect it's not different  
23 from the FELA.

24           MR. WAGNER: Well, it -- what I'm trying to  
25 express is that there is a dual basis for the uniform

1 application of this doctrine. One is as a part of the  
2 general maritime law, and the second is through the  
3 express -- express text of Congress in the Jones Act in  
4 applying all statutes that modify FELA remedies, and  
5 indeed, that is exactly --

6 QUESTION: To that extent, it's the same as the  
7 FELA, and it doesn't take you any further than Mayfield.

8 MR. WAGNER: Except that Mayfield did not  
9 concern itself 1) with the Jones Act, and 2) with the  
10 general maritime law of the United States. That --

11 QUESTION: As I understand one part of what the  
12 Jones Act takes from the FELA, if a plaintiff brings a  
13 Jones Act case in the State court, Congress has declared  
14 that nonremovable, right? You can't remove it to Federal  
15 court.

16 MR. WAGNER: The interpretation of this Court in  
17 the Romero decision is that such a claim is nonremovable.

18 QUESTION: All right, so doesn't that cut  
19 against your argument that the Congress wanted to say,  
20 "Plaintiff, you have a right to stay in the State court,  
21 but State court, we're going to make you conform your  
22 forum non conveniens doctrine to ours?" It's something  
23 that seems to me an inconsistency with a claim that's not  
24 removable from the State court, Congress has made the  
25 judgment that the suitor should be able to choose the



1 forum, and then say to the forum, State forum, but you  
2 have to make yourself over to look more like what a  
3 Federal court would --

4 MR. WAGNER: Yes, Your Honor, we think that's a  
5 very important distinction, is that the nonremovability of  
6 the Jones Act is something that is recognized, but this is  
7 not affected by the ability to transfer this action from  
8 one jurisdiction to another, and in fact Romero makes very  
9 explicit that while causes of action in State court may be  
10 maintained under the "savings to suitors" clause, there is  
11 an overriding obligation of the State court to do the work  
12 of admiralty, to be in admiralty court, to apply the  
13 uniform general maritime law even though the defendant  
14 cannot remove that -- cannot otherwise remove the action  
15 that is otherwise removable.

16 QUESTION: But isn't that --

17 QUESTION: The Louisiana courts can't transfer  
18 this case to Pennsylvania, can they? Wouldn't they simply  
19 have to dismiss it and let the plaintiff start anew in  
20 Pennsylvania?

21 MR. WAGNER: They would dismiss it, Mr. Chief  
22 Justice, subject to certain guarantees protecting the  
23 plaintiff's right to proceed, and that's in fact what the  
24 district court did do after finding that Louisiana was a  
25 patently inconvenient forum, and was forum-shopping of the

1     worst sort.

2                 QUESTION:  So really, your procedures in State  
3     court, you say the forum non conveniens doctrine has to be  
4     applied uniformly, but whereas a Federal district court  
5     can transfer it to another Federal district, a State trial  
6     court can't transfer it to a court in another State.  It  
7     has to go by a quite different procedure.

8                 MR. WAGNER:  Well, Your Honor, by analogy, and  
9     that's all I can answer, Mr. Chief Justice, is by analogy,  
10    is that between the jurisdictions within the State of  
11    Louisiana, the State court could transfer.

12                QUESTION:  That's not what we have here.

13                MR. WAGNER:  That's correct.

14                QUESTION:  No one is suggesting that it belonged  
15    in Western Louisiana rather than Eastern Louisiana.  The  
16    argument is it belonged in Pennsylvania, as I understand  
17    it.

18                MR. WAGNER:  That's right, Mr. Chief --

19                QUESTION:  Mr. Wagner, do you acknowledge that  
20    there were sufficient minimum contacts here to meet the  
21    due process clause requirements to sue in Louisiana?

22                MR. WAGNER:  Your Honor, I do at this juncture.  
23    We disputed that at the trial court and lost it.  I have  
24    personal views about that, but we have conceded that  
25    point, and in fact, as a matter of general maritime law,

1 forum non conveniens does not arise unless there is the  
2 existence of personal jurisdiction, the very minimum  
3 contacts Justice O'Connor referred to, and proper venue.

4 We concede those points for the sake of this  
5 argument.

6 QUESTION: You're converting discretionary  
7 doctrine -- you just said that in order to get to the  
8 forum non conveniens point, you must have personal  
9 jurisdiction, there must be a place of proper venue, so  
10 the Court is vested with authority to proceed, and I  
11 thought that the whole idea of forum non conveniens was,  
12 but there are -- but it isn't a compulsory doctrine.

13 That is, although we have authority to proceed,  
14 we ought not, because there's some place better where this  
15 can go forward, but the whole doctrine seems to be just  
16 infused with discretion rather than compulsion, which is  
17 what you seem to be making of it.

18 MR. WAGNER: Your Honor, I -- I want its  
19 application. We request that its application be  
20 compulsory, but the doctrine itself, the heart and soul of  
21 the doctrine, the issue, the aspect of the doctrine that  
22 makes it so valuable, is its discretionary function in the  
23 trial judge.

24 The trial judge is able to weigh the various  
25 factors articulated by this Court and determine what is a

1 fair forum for these litigants to try the cases, and the  
2 aspect of its discretionary function is why it serves the  
3 admiralty, and by that I mean, plaintiffs and defendants.

4 QUESTION: But Justice Ginsburg's point is that  
5 when you have discretion that broad, different trial  
6 judges are going to come to different results, widely  
7 different results on the basis of the same facts, exactly  
8 what discretion is all about.

9 You can't pretend that you're going to get  
10 uniformity of result. Once you -- it's just contradictory  
11 to argue that in the interest of uniformity we must have  
12 everybody adopt this discretionary doctrine. You're not  
13 going to get uniformity.

14 MR. WAGNER: Justice Scalia, I agree with your  
15 point, and I think it demonstrates I'm not being clear.  
16 I'm not -- we are not requesting uniformity of result.  
17 That can't be done. What --

18 QUESTION: Then it isn't worth anything to the  
19 general maritime law, if you can't be sure you're going to  
20 get the same results anyway.

21 MR. WAGNER: You can never be sure you get the  
22 same results in any trial. What we're asking is  
23 uniformity of the rule. We're asking for the uniform  
24 application of the doctrine, just like we take a set of  
25 facts and we give them to one trier of fact and ask, is



1     there fault, is there causation?     I cannot be sure what  
2     the answer will be, but what I can be sure of is the  
3     doctrine that defines what fault is, and that's what we're  
4     asking.

5             QUESTION:   The uniform rule which says that a  
6     court can do anything it wants is a uniform rule, but it's  
7     not very helpful.

8             QUESTION:   Well, as I understand you, you're not  
9     saying that the court can do anything it wants, you're  
10    saying that if the facts are so extreme, as perhaps they  
11    are in this case, that it would always be an abuse of  
12    discretion to deny the motion, you ought to be entitled to  
13    it in those extreme cases.

14            MR. WAGNER:   That's right.

15            QUESTION:   And to that extent, it's a uniform  
16    rule.

17            MR. WAGNER:   That's right.   We're asking for a  
18    rule that is subject to the discretion of the trial court,  
19    overturnable by abuse of discretion.

20            QUESTION:   And that'll be very rare.   Let me ask  
21    you why you think uniformity is helpful, or needful in  
22    this area.   As I understand it, maritime law proceeds from  
23    the assumption that international commerce has to have  
24    stable rules and uniform rules, but I thought that was so  
25    that people could rely upon those rules in formulating

1     their conduct, but this has nothing to do with conduct.  
2     It's not something that one relies on.

3             MR. WAGNER: Your Honor, I --

4             QUESTION: You know, how you keep your ship, how  
5     you execute your contracts, all of those things are not  
6     affected by the doctrine of forum non conveniens.  
7     Presumably the same law is going to apply no matter where  
8     the suit is brought.

9             MR. WAGNER: I respectfully disagree that it  
10    doesn't shape the conduct of the parties. Once you have  
11    infused the admiralty law with this type of disunity, this  
12    type of dissonance, then you invite litigants to race to  
13    the favorable courthouse, which may or may not have this  
14    rule, which may or may not have other State rules, which  
15    may be friendly or may not be friendly, without regard to  
16    what is a fair forum, and so what -- and I've cited it in  
17    our petition asking for cert --

18            QUESTION: Well, it's fair in the sense that  
19    there's a basis for personal jurisdiction over your client  
20    that meets the due process requirement, so you can't say  
21    that there's something fundamentally unfair about being  
22    subject to suit in Louisiana when you have in effect  
23    consented to suit by filing in that State by registering.

24            MR. WAGNER: We agree that it satisfies due  
25    process requirements for the sake of personal

1 jurisdiction.

2 Our point here is that if you don't have uniform  
3 rule in admiralty that invites the court, that directs the  
4 court to consider what is a fair forum, while one  
5 plaintiff is resorting to filing in Louisiana, one insurer  
6 is filing a direct action statute in Pennsylvania, one  
7 employer is filing a direct -- I'm sorry, a declaratory  
8 judgment in Pennsylvania and the employer is filing an  
9 action here.

10 You're asking for the parties to race for the  
11 courthouse which will give it the best deal because you  
12 have not instilled in the trier of fact the ability to  
13 say, the fair forum for the case is, in this instance,  
14 Pennsylvania, without regard to who's got the best law,  
15 without regard to whether it's an American or non-American  
16 who has filed the claim.

17 It's a fundamental rule of fairness that where  
18 should these maritime litigants -- I think that the point  
19 made by Justice Jackson in the Lauritsen case speaks well  
20 to this. If we let every jurisdiction which has any  
21 contact, or sufficient constitutional contact with a  
22 maritime litigant to exercise its full breadth of  
23 authority, the overlapping, duplicative burdens that will  
24 exist upon maritime actors will totally, totally surround  
25 and disrupt the ability to have effective maritime

1 commerce.

2 It is for this reason, I -- we respectfully  
3 submit, that the admiralty law, admiralty and maritime  
4 jurisdiction, is the one substantive area of jurisdiction  
5 recognized in Article III of the Constitution.

6 QUESTION: Mr. Wagner, let me take you off in a  
7 different direction. You've been speaking of uniformity  
8 all along. This case is between domestic parties, isn't  
9 it?

10 MR. WAGNER: That's correct.

11 QUESTION: Suppose there were some foreign  
12 persons involved here. Would you have different  
13 considerations that enter into your calculus?

14 MR. WAGNER: I think different considerations  
15 enter into the trial judge's weighing of its discretion  
16 depending upon the nationality of the parties, their  
17 residence, but I think the formula's the same. In fact,  
18 the Louisiana rule is not restricted in its focus on  
19 American or non-American claimants, and it's not  
20 restricted to personal injury claimants.

21 Forum non conveniens has been a part of the  
22 admiralty law in every area -- salvage, collision,  
23 personal injury, product liability, marine insurance,  
24 maritime leads. The Louisiana rule would discard all of  
25 that. Get jurisdiction, and let the State exercise its



1 jurisdiction to the full breadth of its authority without  
2 regard to its impact on maritime commerce.

3 We respectfully submit that that is detrimental  
4 to the constitutional underpinnings of a system --

5 QUESTION: Not all of maritime law. I think in  
6 Louisiana now under their statute it's only Jones Act  
7 claims that are --

8 MR. WAGNER: No, Your Honor, it applies to --

9 QUESTION: Jones Act and maritime.

10 MR. WAGNER: Jones Act and maritime law. Texas  
11 has recently amended its statute, but it's unclear whether  
12 it's affecting maritime law or not. Our ultimate position  
13 is, the unfettered extension of jurisdiction without this  
14 discretionary authority on the part of the trial court,  
15 expressed I think most ably by Judge Federoff, by the  
16 trial judge, this forum is totally inconvenient, and  
17 represents forum shopping of the worst sort. It was only  
18 through his ability to decide the case, an admiralty case,  
19 that he could direct this case into a fair forum.

20 QUESTION: Well, it's inconvenient for the  
21 defendant, not for the plaintiff.

22 MR. WAGNER: Ah, but the plaintiff took the  
23 position -- the plaintiff took the position that I could  
24 have filed in the Fourth Circuit Court of Appeals. I  
25 could have filed in Mississippi, but I have an unfettered

1 right to go where I want to go. The plaintiff, the  
2 Mississippi resident, files in Louisiana.

3 So it's hard to argue that this is a decision  
4 based upon convenience, and the plaintiff never challenged  
5 in the trial court, never challenged at that level at  
6 least, the fact that this was patently inconvenient.

7 QUESTION: But the plaintiff is totally  
8 disabled, do you concede that?

9 MR. WAGNER: No, Your Honor, we do not concede  
10 that. The plaintiff has said that in a footnote in his  
11 brief. That was not raised at the trial court level,  
12 and --

13 QUESTION: Well, in Mississippi, true, but he's  
14 not very far from New Orleans, is he?

15 MR. WAGNER: That's correct, Your Honor. That's  
16 correct.

17 If I might, I'd like to reserve the balance of  
18 my time for rebuttal.

19 QUESTION: Very well, Mr. Wagner. Mr. Falcon,  
20 we'll hear from you.

21 ORAL ARGUMENT OF TIMOTHY J. FALCON

22 ON BEHALF OF THE RESPONDENT

23 MR. FALCON: Mr. Chief Justice, and may it  
24 please the Court:

25 The policy of the State of Louisiana, which is

1 articulated in Article 123 C of our Code of Civil  
2 Procedure, is not barred by, nor is it inconsistent with,  
3 congressional policies that underlie the Jones Act. In  
4 fact, this law furthers those policies by ensuring that  
5 State courts of Louisiana will effectuate the Jones Act's  
6 broad liberal venue provisions.

7 American Dredging Company has not come before  
8 this Court and demonstrated that Article 123 C, as it  
9 applies in this case, is unconstitutional, and that is  
10 really the --

11 QUESTION: Mr. Falcon, one puzzling piece of  
12 this is that Louisiana now has a general forum non  
13 conveniens provision, and it exempts Jones Act and  
14 maritime. You would think if the concern was the one that  
15 you just mentioned they'd put the FELA in the same  
16 category, because that, too, is a nonremovable Federal  
17 claim. What is the explanation for exempting Jones Act  
18 and maritime law claims from the general forum non  
19 conveniens statute?

20 MR. FALCON: If I can clarify, the Louisiana  
21 statute is not now a broad forum non conveniens  
22 application. It only actually was enacted to allow a  
23 transfer between one district court in the State of  
24 Louisiana to another one.

25 There was a problem that was recognized in the

1 Trahan case in Louisiana, that because of our civilian  
2 tradition which the forum non conveniens doctrine is  
3 foreign to, not a part of, Louisiana passed this article  
4 to allow a transfer on the forum non conveniens grounds  
5 from one district court to another, and at the same time  
6 they did allow a transfer out of State --

7 QUESTION: Not a transfer --

8 MR. FALCON: I'm sorry, a dismissal on forum non  
9 conveniens to an out-of-State court if it was premised on  
10 a Federal statute only, and at the same time, they decided  
11 to exempt the Jones Act from that type of dismissal.

12 QUESTION: But not the FELA.

13 MR. FALCON: Well, in fact, as the statute  
14 operates, the FELA claim can be transferred -- I'm sorry,  
15 dismissed on forum non conveniens.

16 QUESTION: So what was the reason for  
17 distinguishing these two claims that are so close in  
18 substance, FELA and Jones Act?

19 MR. FALCON: Yes, ma'am. I believe that the  
20 real reason is, if you dismiss a FELA case on forum non  
21 conveniens, the case will be transferred most likely to  
22 another American jurisdiction. The railroads only run  
23 across our land. If you get dismissed from Louisiana,  
24 more than likely you'll be in Missouri, or you'll go to  
25 Montana, or you'll go to some other State.



1           A dismissal under the Jones Act on forum non  
2   conveniens, especially today with the multinational  
3   corporations and the broad reach of where these people are  
4   being sent to, especially Louisiana and other people that  
5   work on these ships, they're sent all around the world.

6           What happens when you go around the world, if  
7   your cause of action arises in Singapore and you come back  
8   to Louisiana and you get dismissed on forum non  
9   conveniens, you've got to go back to Singapore.

10          QUESTION: Well, what about the situation of a  
11   case where one of the parties is foreign and the operative  
12   events occur beyond the borders of the United States? Do  
13   you think Louisiana's rule should be upheld in that  
14   situation?

15          MR. FALCON: The first thing you'd have to look  
16   at in that situation is whether or not the Jones Act  
17   applies. You do the Lauritzen-Rhoditis analysis. After  
18   you do that analysis, if the Jones Act applies, the Jones  
19   Act as a congressional announcement says the plaintiff has  
20   the right to file suit where the defendant is doing  
21   business.

22          So in that case, Louisiana, if they're doing  
23   business in Louisiana, we meet the constitutional minimum  
24   requirements of substantial justice and fair play, then  
25   they can be sued there in furtherance of the congressional

1 policy.

2 If it's foreign litigants and the Jones Act does  
3 not apply, the traditions of admiralty have actually been  
4 that the Admiralty Court of the United States will hear  
5 those cases. The -- it's talked about --

6 QUESTION: Well, the Louisiana statute doesn't  
7 require that it be -- that the corporation -- the  
8 defendant be doing business there, does it? It's just  
9 minimum contacts.

10 MR. FALCON: The Louisiana statute is the same  
11 requirements as this Court's constitutional requirements.

12 QUESTION: All right, but that's minimum  
13 contacts, not doing business.

14 MR. FALCON: Right. The doing business that I'm  
15 referring to is the section 6 of the FELA Act itself,  
16 which says the employer can be sued wherever he's doing  
17 business, and that's incorporated into the Jones Act.

18 Congress gives the worker --

19 QUESTION: But that's not -- is that a  
20 limitation on the jurisdictions in which the defendant may  
21 be sued?

22 MR. FALCON: No. That's a venue provision.  
23 That's allowed venue provision. It's not a limitation.  
24 The only limitations on the jurisdiction are this Court's  
25 pronouncements in International Shoe and the other

1 jurisdiction cases.

2 QUESTION: But you have to meet a venue  
3 requirement in order to bring a Jones Act case.

4 MR. FALCON: Yes, but if this case -- if we did  
5 not meet the jurisdiction requirements, American Dredging  
6 could have got out. If we did not meet the venue  
7 requirements of FELA as enacted through Jones Act, they  
8 would also have gotten out.

9 QUESTION: Was American Dredging doing business  
10 in Louisiana?

11 MR. FALCON: Yes, ma'am, they were doing  
12 business. They had an agent for service of process. In  
13 fact, they were using Louisiana courts themselves at the  
14 time as a plaintiff.

15 QUESTION: Anything other than having an agent?

16 MR. FALCON: They were soliciting business  
17 through the American -- I'm sorry, through the Corps of  
18 Engineers in order to get more work.

19 To answer -- American Dredging Company puts  
20 major emphasis that the doctrine of forum non conveniens  
21 is a uniform and characteristic feature of the admiralty  
22 law. If we look at the history of the admiralty law, in  
23 footnote 5 of the Moran case, which was decided by this  
24 Court, it's actually -- the admiralty law itself is traced  
25 to civilian doctrine.

1           The admiralty law rose through civilian law such  
2 as France and Louisiana, and as the supreme court of  
3 Louisiana said in the Miller case, the doctrine of forum  
4 non conveniens is actually foreign to our traditions, so  
5 it's not fair to say that forum non conveniens came from  
6 admiralty, because the doctrine itself was foreign to the  
7 actual origin of admiralty, and to trace -- and as Justice  
8 Ginsburg has pointed out, it was first recognized in a  
9 nonmaritime case.

10           American Dredging Company has also tried to  
11 state that section 1404(a), which allows the transfer of a  
12 FELA case, is applicable to this case and is the reason  
13 why we should -- why the supreme court should be  
14 overruled.

15           The case they're referring to is In Re Coal Air,  
16 which is a railroad case, that distinguished between  
17 section 6 of the FELA action dealing with the broad venue  
18 provision and 1404(a), which allowed only a Federal court  
19 to transfer a case. That case was further clarified in  
20 Pope v. Atlantic Coast Railroads, where the court said  
21 that the FELA claim that's filed in State court still  
22 cannot be dismissed under forum non conveniens if the  
23 State decided not to.

24           Unless the Court has any further questions --

25           QUESTION: Thank you, Mr. Falcon. Mr. Manning,



1 we'll hear from you.

2 ORAL ARGUMENT OF JOHN F. MANNING

3 ON BEHALF OF THE UNITED STATES,

4 AS AMICUS CURIAE, SUPPORTING THE RESPONDENT

5 MR. MANNING: Thank you, Mr. Chief Justice, and  
6 may it please the Court:

7 I just wish to emphasize three points very  
8 briefly. First, as this Court recognized in *Miles v. Apex*  
9 *Marine*, maritime tort law is now a field dominated by  
10 Federal statute, and this Court has looked repeatedly to  
11 the Jones Act in defining the tort remedies available to a  
12 maritime employee like respondent.

13 The Jones Act, in turn, incorporates by  
14 reference the rights and remedies given to railway workers  
15 under the FELA, and this Court has repeatedly looked to  
16 FELA precedents in defining the scope of remedies  
17 available under the Jones Act. Thus, the *Mayfield* case is  
18 highly relevant in this context, because there the Court  
19 held that under the FELA State courts are free to apply  
20 their own doctrine of *forum non conveniens* in FELA cases.

21 That -- the Court said that the State courts are  
22 free to accept or reject the doctrine of *forum non*  
23 *conveniens* in those cases. Thus, *Mayfield* is highly  
24 relevant here, and we believe that it disposes of the case  
25 both as to the Jones act claim and as to the

1 unseaworthiness and maintenance and cure claims.

2 QUESTION: Mr. Manning, would you address the  
3 forum party situation, please?

4 MR. MANNING: Yes, Your Honor. The United  
5 States does not take a position on whether the doctrine of  
6 forum non conveniens would be available -- would be a  
7 preemptive doctrine of Federal law in State courts, where  
8 foreign parties and events are involved. I would note,  
9 however, that the United States urges this Court to leave  
10 that question open.

11 We believe that the considerations in such cases  
12 may well be different, for two reasons. First, where  
13 foreign parties and events are involved, there may be, in  
14 addition to the considerations relied on by petitioner,  
15 considerations involving comity and reciprocity that  
16 implicate greater Federal interests.

17 Secondly, in the admiralty cases that have  
18 defined the doctrine of forum non conveniens going back to  
19 Willendson v. Forsoket in 1801 and the Ship Lerow in 1804,  
20 the doctrine was traditionally articulated in terms of its  
21 effect on foreign parties. The Court would typically say,  
22 we have jurisdiction over this case. However, we have --  
23 the trial court has discretion to decline to hear the case  
24 because foreign parties are involved.

25 QUESTION: So there are two different doctrines?

1 The source of the forum non conveniens argument being  
2 presented in this case has a different source than the  
3 forum non conveniens doctrine as applied to foreigners?

4 MR. MANNING: Well, Justice Kennedy, the  
5 question is whether -- is the Federal interest in the  
6 case, and we believe that there is a difference in the  
7 Federal interest that's implicated when foreign parties  
8 are involved.

9 QUESTION: Is it fair to say -- you're saying  
10 that there are two different forum non conveniens  
11 doctrines, one for foreign parties and the other for  
12 domestic parties?

13 MR. MANNING: Your Honor, we're saying that  
14 there might be, and that the Court should reserve the  
15 question in this case.

16 QUESTION: You're talking about admiralty  
17 peculiarly? You can have foreign parties in a diversity  
18 case, too.

19 MR. MANNING: That's true, Justice Ginsburg, but  
20 in the admiralty cases traditionally the doctrine was  
21 applied most strongly wherein foreign parties are  
22 involved.

23 But again, I would like to emphasize that the  
24 United States is not taking a position on the foreign  
25 party situation, but simply urging the Court to reserve

1     that question.

2                 QUESTION:  You reserve two questions, one is  
3     whether, when you're in a State court but the defendants  
4     are from abroad, that forum non conveniens might have a  
5     Federal flavor?

6                 MR. MANNING:  That's correct.

7                 QUESTION:  For -- no matter what the character  
8     of the case, equity law, or admiralty?

9                 MR. MANNING:  Well, Your Honor, it might be  
10    different in admiralty cases, because there is a tradition  
11    of admiralty preemption that emanates from Article III.  
12    That tradition might not be available when you deal with  
13    other forms of civil litigation.

14                There's a tradition, Jensen v. Southern Pacific  
15    and so forth, of this Court's finding preemptive force of  
16    admiralty law and admiralty cases in State court, so it  
17    may be a different answer for admiralty cases.  Again,  
18    we're simply asking the Court to leave that --

19                QUESTION:  What do you make of the  
20    nonremovability of these claims, because if the Federal --  
21    if Congress wanted to give effect to the Federal policy,  
22    it could do that very easily simply by making these cases  
23    removable and then the Federal court could apply Federal  
24    forum non conveniens.

25                MR. MANNING:  We do find that highly



1 significant, and in the domestic context we would note  
2 that the Jones Act has a venue provision that applies, as  
3 this Court has held, only in Federal court.

4 In fact, this Court has said that under the  
5 Jones Act the presumption that State courts are entitled  
6 to control -- that States are entitled to control the  
7 dockets of their own courts was left undisturbed by  
8 Congress, and we think that is also highly relevant in  
9 addressing the forum non conveniens question, because it  
10 shows that Congress believed that matters of State court  
11 forum selection were matters for the court -- were matters  
12 for the States when it enacted the Jones Act.

13 If there are no further questions --

14 QUESTION: I have a question on what you meant  
15 by reciprocity. You said considerations of reciprocity,  
16 comity. Those are not always clear words that would  
17 figure when we're dealing with a foreign party.

18 MR. MANNING: Your Honor, traditionally in the  
19 doctrine -- in the application of the doctrine of forum  
20 non conveniens in Federal admiralty cases, this Court has  
21 considered whether there was an interest on the part of a  
22 foreign party in whether this dispute should be resolved.

23 For example, if there was a dispute between a  
24 foreign seaman and the ship, and a foreign ship over  
25 wages, there was typically a question whether that was the

1 kind of dispute that a foreign -- that the foreign country  
2 would want resolved by the question -- by the courts of  
3 this Nation.

4 Sometimes what would happen is the court would  
5 consult the consul of that foreign country and get in a  
6 sense approval before it would proceed with the case, and  
7 so questions of comity and reciprocity of treatment --

8 QUESTION: But if it's a Jones Act case, then  
9 we're talking about U.S. substantive law applying.

10 MR. MANNING: That's right, Your Honor, and that  
11 goes to the question of choice of law, which as counsel  
12 for respondent indicated depends in part on the flag of  
13 the vessel, the nationality of the seaman, the nationality  
14 of the shipowner --

15 QUESTION: If it weren't in the U.S. interest,  
16 if this were a totally foreign situation, the Jones Act  
17 wouldn't apply.

18 MR. MANNING: It's very likely that the Jones  
19 Act would not apply, and the cases which would suggest  
20 that are Romero and Lauritsen v. Larson, which are cited  
21 in our brief.

22 If there are no further questions --

23 QUESTION: Thank you, Mr. Manning.

24 Mr. Wagner, you have 6 minutes remaining.

25 REBUTTAL ARGUMENT OF THOMAS J. WAGNER

1 ON BEHALF OF THE PETITIONER

2 MR. WAGNER: Thank you, Mr. Chief Justice.

3 I'd like to address a number of the points that  
4 were raised, but I don't think any one is more important  
5 than the question whether or not there should be a  
6 different rule for one set of litigants as for another  
7 set.

8 I think the whole concept of a uniform general  
9 maritime law grows out of the recognition that in order to  
10 promote maritime commerce a single, expected system should  
11 be identified. To take this rule of forum non conveniens  
12 that the lower courts have consistently applied to both  
13 national claimants and local claimants and international  
14 claimants and fragment it, and say, well, Mr. Plaintiff  
15 from Bermuda, you can have a forum non conveniens  
16 doctrine, or Mr. Defendant from America, you can or you  
17 cannot, is to harken back to the very kind of dichotomy,  
18 the very kind of local protectionism, that I submit was  
19 the reason the admiralty law was recognized --

20 QUESTION: Mr. Wagner, you would have no case,  
21 would you, if this plaintiff came from Mississippi instead  
22 of Louisiana?

23 MR. WAGNER: If he came from Louisiana instead  
24 of Mississippi? Yes, Your Honor.

25 QUESTION: Louisiana -- I'm sorry.

1 MR. WAGNER: Yes, Your Honor, I would have no  
2 case whatsoever, and that's exactly my point.

3 QUESTION: This is all about the distance that  
4 this man lives, and he lives inside Mississippi instead of  
5 Louisiana. If he lived across the border you would have  
6 no case.

7 MR. WAGNER: I would have no case, but I  
8 respectfully disagree that it's just about that. It's  
9 about what's a fundamentally fair way to try a dispute  
10 between the parties without inviting the parties to  
11 have --

12 QUESTION: All that changes if he moved -- how  
13 many miles would he have to move to be inside the  
14 Louisiana borders?

15 MR. WAGNER: Maybe 60 miles, Your Honor, but the  
16 whole point -- what changes, Your Honor, is we have taken  
17 away the power of the trial judge to decide what's fair  
18 and what's not fair.

19 In this very same court, the Civil District  
20 Court for the Parish of Orleans, in Markozannes v. Bermuda  
21 Starline, applying this very same statute, the Louisiana  
22 supreme court held that the trial court must hear a case,  
23 a Jones Act case, by a Greek seaman sailing a Panamanian  
24 vessel between Bermuda and Boston.

25 So it's not merely the distance, Your Honor. I



1 respectfully submit it is the power of the trial judge to  
2 decide what's fair, what's proper. Once you take away  
3 that power, you create all sorts of possibilities of  
4 extensive forum shopping and vexatious litigation.

5 QUESTION: The Government suggests that the last  
6 situation you describe could be handled by leaving open  
7 the possibility of a separate rule for cases where you  
8 have foreign defendants or plaintiffs. What do you think?  
9 Would you like half a loaf rather than none? Is there  
10 something wrong with that proposal?

11 MR. WAGNER: There's something terribly wrong in  
12 principle with that, and that is, it's the anathema of the  
13 general maritime law, and how do we divide that? Does the  
14 American defendant get the nod over the foreign plaintiff?  
15 Does the American plaintiff get the nod over the foreign  
16 defendant, and how foreign? Do we then dissect this?

17 The whole beauty -- beauty, the mastery of forum  
18 non conveniens is, is that it is discretionary. It puts  
19 in the power of the trial judge, the person who will have  
20 to decide what's convenient.

21 In Markozannes we had doctors testifying from  
22 Greece by phone. The whole point of this is, that trial  
23 judge who faces these very critical issues of what's fair  
24 and is not fair is able to say, this case is in a patently  
25 inconvenient forum, and like the Federal system I will

1 dismiss this conditioned upon, Mr. Defendant, you not  
2 raising procedural or limitation objections and going  
3 forward in the proper forum of Pennsylvania.

4 That's the mastery, that is the effectiveness of  
5 this tool. It complements this broad, broad breadth of  
6 admiralty jurisdiction, whether it be obtained in rem,  
7 whether it be by writ of foreign attachment, whether it's  
8 salvage or personal injury, it puts in the hands of the  
9 trial judge the ability, discretionary, to say, this is a  
10 fair forum.

11 It accords the plaintiff an appropriate  
12 deference to his or her original selection. That is  
13 entitled to great weight, and it ensures -- it ensures  
14 that the alternate forum will have a suitable remedy, and  
15 then it weighs the questions of what's a convenient way to  
16 try this case, the convenience of the parties, the  
17 witnesses.

18 In fact, I need to make this fundamental point  
19 clear. In admiralty, this has never been a question of  
20 what the Solicitor General has called judicial  
21 housekeeping, or docket control. That's handy in a  
22 nonmarine setting, but in admiralty, it services the broad  
23 breadth of that jurisdiction, makes it effective, and  
24 makes it fair, and I respectfully submit that on that  
25 basis the decision of the Louisiana supreme court should

1 be reversed.

2 Thank you very much.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Wagner.

4 The case is submitted.

5 (Whereupon, at 11:53 a.m., the case in the  
6 above-entitled matter was submitted.)

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## CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

American Dredging Company, Petitioners v. William Robert Miller

CASE NO: 91-1950

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Am Mani Federico

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