

SUPREME COURT OF PENNSYLVANIA

McElheney v. Workers' Compensation Appeal Board (Kvaerner Philadelphia Shipyard)

596 Pa. 48 (Pa. 2008) (Pa. 2008) · Decided February 19, 2008

SUMMARY

The Supreme Court of Pennsylvania held that a graven dry dock is a land-based site within the scope of the 1972 amendments to the Longshore and Harbor Workers' Compensation Act. Accordingly, an injured worker performing a traditional maritime function in a graven dry dock may recover concurrently under both the federal LHWCA and the Pennsylvania Workers' Compensation Act. The court affirmed the Commonwealth Court's decision.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Pennsylvania                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Chief Justice Castille; Chief Justice Cappy; Justice Castille; Justice Saylor; Justice Eakin; Justice Baer; Justice Baldwin; Justice Fitzgerald                                                                                                                                                                                                |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | February 19, 2008                                                                                                                                                                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Employer appealed from the Commonwealth Court's published decision reversing the Workers' Compensation Appeal Board and holding that concurrent recovery under the Longshore and Harbor Workers' Compensation Act and the Pennsylvania Workers' Compensation Act was available. The Supreme Court of Pennsylvania granted allowance of appeal. |
| STANDARD OF REVIEW    | In workers' compensation appeals, the Court affirms unless it finds an error of law, a violation of constitutional rights, a failure to follow a Commonwealth agency practice or procedure, or that a necessary finding of fact is unsupported by substantial evidence of record.                                                              |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Pennsylvania.                                                                                                                                                                                                                                                                           |
| PARTIES               | Kvaerner Philadelphia Shipyard, Inc. v. Daniel McElheney                                                                                                                                                                                                                                                                                       |

TOPICS

longshore and harbor workers compensation

workers compensation

admiralty

statutory interpretation

administrative law

## PRACTICE AREAS

workers compensation

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## QUESTIONS PRESENTED

1. Whether an injury sustained while performing a traditional maritime function on a vessel located in a graving dry dock occurs upon the navigable waters of the United States under the LHWCA.
2. Whether the LHWCA provides the exclusive remedy for an injury occurring in a graving dry dock or whether the LHWCA and PWCA provide concurrent workers' compensation jurisdiction.
3. Whether the graving dry dock is a land-based site within the scope of the 1972 amendments to the LHWCA.

## HOLDINGS

1. A graving dry dock is a land-based site within the scope of the 1972 land-based amendments to the LHWCA because it is cut and dug out of the land; periodic and artificial flooding does not transform it into navigable waters for purposes of exclusive LHWCA jurisdiction.
2. The LHWCA and PWCA share concurrent jurisdiction over injuries occurring in a graving dry dock, including injuries occurring on the dry-docked vessel or on the dry dock apparatus.
3. The precise location of the injury within the graving dry dock is not dispositive; concurrent LHWCA and PWCA jurisdiction exists whether the injury occurs on the dry-docked vessel or on the dry dock apparatus itself.

## KEY QUOTATIONS

*"We hold that a graven dry dock is a land-based site within the scope of the 1972 land-based amendments to the LHWCA."* (359)

*"Therefore, we hold that the LHWCA and the PWCA share concurrent jurisdiction over graven dry docks."* (359-60)

*"For the foregoing reasons, we hold that a graven dry dock is a land-based site within the jurisdiction of both the federal Longshore and Harbor Workers' Compensation Act and the Pennsylvania Workers' Compensation Act."* (360)

## FACTUAL BACKGROUND

Daniel McElheney, a pipe fitter welder employed by Kvaerner Philadelphia Shipyard, injured his shoulder and ankle when he tripped over an electric wire while working on a ship in a graving dry dock. The employer initially paid him benefits under the LHWCA but stopped payments after determining that he had sufficiently

recovered and could return to work. McElheney then sought benefits under the PWCA, asserting that the LHWCA did not preempt state workers' compensation law.

#### PROCEDURAL HISTORY

McElheney was injured while working as a pipe fitter welder on a vessel located in a graving dry dock. His employer initially paid benefits under the LHWCA, then stopped payments, after which McElheney sought benefits under the PWCA. The workers' compensation judge ruled that LHWCA jurisdiction was exclusive, and the Workers' Compensation Appeal Board affirmed. The Commonwealth Court reversed, and the Supreme Court affirmed the Commonwealth Court.

#### DISPOSITION

affirmed

#### CASES CITED

- Wellsville Terminals Co. v. Workmen's Compensation Appeal Board (Zacharias), 534 Pa. 333, 632 A.2d 1305 (1993)
- Sun Ship, Inc. v. Pennsylvania, 447 U.S. 715, 100 S. Ct. 2432, 65 L. Ed. 2d 458 (1980)
- Hannaberry v. Workmen's Compensation Appeal Board (Snyder, Jr.), 575 Pa. 66, 834 A.2d 524 (2003)
- Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917)
- Western Fuel Co. v. Garcia, 257 U.S. 233, 42 S. Ct. 89, 66 L. Ed. 210 (1921)
- Davis v. Department of Labor and Industries of Washington, 317 U.S. 249, 63 S. Ct. 225, 87 L. Ed. 246 (1942)
- Calbeck v. Travelers Insurance Co., 370 U.S. 114, 82 S. Ct. 1196, 8 L. Ed. 2d 368 (1962)
- Flowers v. Travelers Insurance Co., 258 F.2d 220 (5th Cir. 1958)
- Avondale Marine Ways, Inc. v. Henderson, 346 U.S. 366, 74 S. Ct. 100, 98 L. Ed. 77 (1953)
- Brown & Root, Inc. v. Joyner, 607 F.2d 1087 (4th Cir. 1979)