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**Weade Vs. Dichmann, Wright and Pugh, Inc.**

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**Court** : US Supreme Court

**Decided On :** Jun-27-1949

**Appeal No.** : 337 U.S. 801

**Appellant** : Weade

**Respondent** : Dichmann, Wright and Pugh, Inc.

**Judgement** :

Weade v. Dichmann, Wright & Pugh, Inc. - 337 U.S. 801 (1949)
U.S. Supreme Court Weade v. Dichmann, Wright & Pugh, Inc., 337 U.S. 801 (1949)

**Weade v. Dichmann, Wright & Pugh, Inc.**

**No. 179**

**Argued February 1, 1949**

**Decided June 27, 1949**

**337 U.S. 801**

*CERTIORARI TO THE UNITED STATES COURT OF APPEALS*

*FOR THE FOURTH CIRCUIT*

## SYLLABUS

1. Respondent was employed by the United States as a general agent under the terms of the war-time standard form of general agency agreement to manage certain phases of the business of a ship owned by the United States and operated by the War Shipping Administration. By an addendum to the agreement, it was also required to arrange for the transportation of passengers as agent of the United States. Certain women passengers and the husband of one of them sued respondent for damages sustained through injuries to the women resulting from the wrongful act of a member of the ship's crew.

*Held:* Respondent was not liable as the owner *pro hac vice,* or as a common carrier operating the vessel, or as the employer of the master or crew. *Cosmopolitan Shipping Co. v. McAllister, ante,* p. 337 U. S. 783 . Pp. 337 U. S. 802 -809.

2. Performance of such shoreside duties as issuing tickets, maintaining the vessel in the service directed by the United States, maintaining terminals and offices, arranging for loading and unloading passengers, arranging for advertising, provisioning the ship, and procuring officers and crew for hire by the master, all as agent of the United States, did not make the general agent liable as a common carrier to the public or anyone. Pp. 337 U. S. 805 -808.

3. Petitioners argued here that respondent as an agent is independently liable for its negligence in procuring unsuitable crew members,

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but this theory of liability was not relied upon at the trial, instructions upon the point were not given or requested, and no exceptions were taken by petitioner to the instructions given.

*Held:* In these circumstances, error cannot be urged here as to this point. P. 337 U. S. 808 .

4. There being suggestions in the complaint and evidence of alleged liability of respondent to petitioners for respondent's own negligence while acting s general agent, the Court of Appeals, which reversed the trial court's judgment for petitioners, erred in directing the trial court to enter a judgment for respondent. Pp. 337 U. S. 808 -809.

5. No opinion is expressed as to the circumstances in which respondent might be liable for its own actions as general agent. P. 337 U. S. 809 .

168 F.2d 914 modified and affirmed.

A Federal District Court gave a judgment to certain passengers and the husband of one of them against a general agent employed by the United States to manage certain phases of the business of a ship owned by the United States and operated by the War Shipping Administration, for injuries sustained as a result of the wrongful conduct of a member of the ship's crew. The Court of Appeals reversed. 168 F.2d 914. This Court granted certiorari. 335 U.S. 810. *Modified and affirmed,* p. 337 U. S. 809 .

MR. JUSTICE REED delivered the opinion of the Court.

On August 3, 1945 at Old Point Comfort, Virginia, petitioners, Mrs. Lillian A. Weade and Mrs. Roberta L. Stinemeyer, purchased tickets and embarked as passengers



on the *Meteor,* a steamboat owned by the United States through the War Shipping Administration and operating between Norfolk, Virginia, and Washington, D.C. The ladies retired to their stateroom about 11:00 p.m., and, because of the warm weather, opened both the glass and the shutter of the window which faced onto the boat deck. During the night, the second cook of the *Meteor* entered the stateroom through the open window and raped Mrs. Weade, who was sleeping upon the lower berth. Mrs. Stinemeyer suffered fright and shock from witnessing this atrocity. The perpetrator of the crime was subsequently tried, convicted, and

executed.

This case involves the liability of a general agent to passengers under a contract similar to that discussed in *Cosmopolitan Shipping Co. v. McAllister, ante,* p. 337 U. S. 783 , decided this day. The agency agreement covered passenger boats through an addendum to the contract providing for additional services by the general agent. [ Footnote 1 ]

Petitioners Lillian A. Weade and her husband, instituted a civil action for damages against respondent in the United States District Court for the Eastern District of Virginia. The husband alleged as his damages loss of consortium and the expenses of the hospitalization of his wife. Petitioner Mrs. Stinemeyer brought a separate civil action for her damages in the same court. Jurisdiction in both actions was based on diversity of citizenship, and the two civil actions were consolidated for trial. In addition, Mrs. Weade filed a libel in admiralty against the United States, which action has been continuing pending the final determination of the present proceedings.

The complaint of Mr. and Mrs. Weade, alleged, so far as now important, that the steamboat was operated as a common carrier by respondent, and that petitioners

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were injured through the failure of respondent to provide adequate protection for its passengers from the personal misconduct of its employees, and through the failure to use due care in the selection of reliable, careful, and competent employees. The complaint of Mrs. Stinemeyer is substantially the same as to the specifications of negligence, though it did not assert that respondent itself was a common carrier, but did allege that the injury occurred through the act of respondent's employees. The respondent's answer denied that the vessel was operated by it as a common carrier and that the master and crew of the vessel were its employees. The answer further alleged that the vessel was operated by the War Shipping Administration, and that respondent only performed certain services for the owner of the ship as general agent in accordance with the

standard service agreement.

The jury, as triers of fact in this civil proceeding, were instructed as a matter of law that, by virtue of the contract, respondent was the actual operator of the vessel as a common carrier owing the highest degree of care to its passengers. The trial judge further charged that, as a common carrier, this duty to exercise the highest degree of care extended to all acts of the carrier, and included the providing of safe accommodations and protection for passengers, the providing of a suitable number of watchmen, and the selection of competent, careful, and sober employees. The jury returned verdicts for petitioners, and the trial judge denied the motion of the respondent for judgment notwithstanding the verdict, stating as his reason therefor:

"While the case of *Hust v. Moore-McCormack Lines, Inc.,* 328 U. S. 707 , is not precisely in point, it is my view that it is controlling so far as the liability of the defendant is concerned."

On appeal, the Court of Appeals for the Fourth Circuit reversed, and held that, under *Caldarola v. Eckert,* 332 U. S. 155 ,

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respondent was not the owner *pro hac vice* in possession and control of the vessel, and thus could not be liable as a common carrier for the safety of the passengers. *Dichmann, Wright & Pugh & Weade,* 168 F.2d 914.

Under our holding today in No. 351, *Cosmopolitan Shipping Co. v. McAllister,* the instructions referred to above were erroneous. Respondent was not the owner *pro hac vice,* was not a common carrier operating the vessel, and was not the employer of the master or crew. The trial of the present proceeding revolved around these questions, and did not concern the problem of negligence on the part of respondent or of its own agents in handling the ship or crew on voyage as an agent of the United States, as distinguished from an employer of the master and crew or owner *pro hac vice.*

Petitioners urge in point 3 of their brief, as a ground for upholding the decision of the trial court, that respondent, because of the duties imposed upon it by the General Agency Agreement, was liable as a common carrier as far as the public was concerned. In support of this contention, they point to the duties of the general agent to issue tickets, maintain the vessel in the service directed by the United States, maintain terminals and offices, arrange for the loading and unloading of passengers, arrange for advertising, provisioning of the ship, and the procuring of officers and crew for hire by the master. The performance of such shoreside duties, however, does not make the agent liable as a common carrier to the public or anyone. [ Footnote 2 ]

At the insistence of the Navy, the War Shipping Administration in 1945 instituted a nightly service of two steamboats between Norfolk and Washington. The name given to this service was the Washington-Hampton Roads Line, and the *Meteor* was one of the two vessels employed

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therein. These two vessels were assigned to respondent as general agent by a passenger addendum to the standard GAA 4-4-42 agreement, [ Footnote 3 ] under which respondent had been general agent for some twenty cargo vessels. It will be noted that, under Article 3A(f) of the addendum, the general agent was to arrange for the transportation of passengers and to issue tickets for this purpose. The

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ticket, which is set out in the margin, [ Footnote 4 ] bears the express notation that the steamboat line was "Operated by United States of America, War Shipping Administration," and that respondent was serving in the capacity of an agent.

Respondent's duties were to service the ships and "to arrange for the transportation" of passengers on them. The duty of a common carrier, on the other hand, is to transport for hire whoever employs it. [ Footnote 5 ] Here, the contract called for the actual transportation to be carried out by the War Shipping

Administration. The respondent's duties ended at the shore line. *Cosmopolitan Shipping Co. v. McAllister, supra.* The cases cited by petitioner holding a transportation agent liable as a common carrier

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involve situations where the actual movement of goods or passengers was carried out by the agent. [ Footnote 6 ] Under the contract, respondent here was not in any way engaged in the carriage of passengers between Norfolk and Washington, and had never held itself out to the public as ready to engage in such traffic. As a mere arranger of transportation, it does not incur the liability of a common carrier.

Apart from their reliance upon respondent's control of the vessel on voyage under the agency contract, petitioners further argue that respondent, as an agent, is independently liable for its negligence in procuring unsuitable crew members. This theory of liability was not relied upon at the trial. Instructions upon the point were not given or requested. The court did charge that as principal and operator of the vessel the respondent was responsible for any tort committed by the steamship personnel and as a common carrier was under the duty to exercise the highest degree of care for the safety of the passengers, including the selection of personnel. It was upon the basis of respondent's liability as common carrier that petitioners developed their causes of action, and, upon that theory the jury under the instructions discussed above, returned a verdict in their favor. At the conclusion of the trial judge's charge, counsel for petitioners stated, "If your Honor please, we have no exceptions." Under these circumstances, error cannot be urged as to this point. *See* Rule 8(1), Supreme Court of the United States; Rule 51 of the Federal Rules of Civil Procedure; *United States v. Atkinson,* 297 U. S. 157 .

By the decision below, the trial court was directed to enter a judgment for respondent, which had filed a

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motion for judgment notwithstanding the verdict. As there were suggestions in the complaint and evidence of alleged liability of respondent to petitioners for respondent's own negligence while acting as general agent, this direction should not have been given. *See Brady v. Roosevelt S.S. Co.,* 317 U. S. 575 . [ Footnote 7 ] The decision is modified so as to eliminate the direction to enter judgment. [ Footnote 8 ]

We express no opinion as to what circumstances might fix liability upon the respondent for its own actions as general agent.

*Affirmed as modified.*

MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, MR. JUSTICE MURPHY, and MR. JUSTICE RUTLEDGE dissent.

[ Footnote 1 ]

*See* note 3 *infra* and 46 C.F.R.Cum.Supp. 306.44.

[ Footnote 2 ]

*See Cosmopolitan Shipping Co. v. McAllister, ante,* p. 337 U. S. 783 .

[ Footnote 3 ]

"Whereas, the United States of America (Herein called the 'United States'), acting by and through the Administrator, War Shipping Administration, and Dichmann, Wright & Pugh, Inc. (herein called the 'General Agent') entered into an Agreement (Contract WSA-4098) dated January 9, 1943 (herein called the 'Service Agreement') whereby the United States appointed the General Agent as its agent to manage and conduct the business of cargo vessels assigned to it by the United States; and"

"Whereas, it is desirable to have as far as practicable both cargo vessels and passenger vessels operated under the uniform provisions of one agreement."

"Now, Therefore: "

"The United States and the General Agent agree that passenger vessels heretofore or hereafter allocated to the General Agent to conduct the business of the vessels as agent of the United States shall be governed by the provisions of the Service Agreement modified as follows: "

"Section 1. Article 3A of the Service Agreement is hereby amended by adding a provision following subsection (e) thereof as follows: "

" (f) Shall arrange for the transportation of passengers when so directed, and issue or cause to be issued to such passengers customary passenger tickets. After a uniform passenger ticket shall have been adopted by the United States, such passenger ticket shall be used in all cases as soon as practicable after receipt thereof by the General Agent. Pending the issuance of such uniform passenger ticket, the General Agent may continue to use its customary form of passenger ticket."

"Section 2. The vessels to which the Service Agreement will apply be operation of this Part II, are as listed on Exhibit B attached hereto and made a part hereof, and such additional vessels as may from time to time be assigned to the General Agent by letter agreement."

"In witness whereof. . . ."

[ Footnote 4 ]

" I ssued by"

" *Washington-Hampton Roads Line"*

" *Operated by United States of America, War Shipping Administration"*

" *One First Class Passage"*

" *Norfolk, or Old Point Comfort Va. to Washington, D.C."*

" *Subject to the Following contract: "*

"This ticket is void unless officially stamped and dated."

"Baggage valuation is limited to $100 for and adult and $50 for a child, unless purchaser hereof declares a greater valuation at time baggage is presented for transportation and pays excess valuation charges according to tariff rates, rules and regulations."

"The company will under no circumstances be responsible for any moneys or valuables unless deposited with the Purser on Steamer, nor will they be responsible for any baggage unless properly checked."

"This ticket is limited for passage within in thirty days from date of sale stamped on back."

"Dichmann, Wright & Pugh, Inc., Agent."

"I. S. Walker, Gen. Passenger Agent."

[ Footnote 5 ]

*Niagara v. Cordes,* 21 How. 7, 62 U. S. 22 ; *Washington ex rel. Stimson Lumber Co. v. Kuykendall,* 275 U. S. 207 , 275 U. S. 211 ; *United States v. Brooklyn Eastern District Terminal,* 249 U. S. 296 , 249 U. S. 305 -306; *cf. Lehigh Valley R. Co. v. United States,* 243 U. S. 444 ; *ICC v. Delaware, Lackawanna & Western R. Co.,* 220 U. S. 235 .

[ Footnote 6 ]

*United States v. Brooklyn Terminal,* 249 U. S. 296 ; *Union Stock Yard & Transit Co. v. United States,* 308 U. S. 213 .

[ Footnote 7 ]

*See* Restatement, Agency 358.

[ Footnote 8 ]

*Globe Liquor Co. v. San Roman,* 332 U. S. 571 ; *Cone v. West Virginia Paper Co.,* 330 U. S. 212 .

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