DEEN *v.* HICKMAN, CHIEF JUSTICE, SUPREME COURT OF TEXAS, ET AL.

ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS.

No. 133, Misc. Decided October 27, 1958.

In a case arising under the Federal Employers' Liability Act, the Texas Supreme Court entered a judgment which was foreclosed by an earlier decision of this Court in the same case. *Held:* Leave to file a petition for writ of mandamus to require the Texas Supreme Court to conform its decision to the mandate of this Court is granted; but the writ is not issued, because it is assumed that the Texas Supreme Court will conform to this decision.

Reported below: See —— Tex. ——, 312 S. W. 2d 933.

David C. McCord and *Robert Lee Guthrie* for petitioner.

Luther Hudson for the Gulf, Colorado & Santa Fe Railway Co., respondent.

PER CURIAM.

In *Deen* v. *Gulf, Colorado & Santa Fe R. Co.*, 353 U. S. 925, this Court, having held "that the proofs justified with reason the jury's conclusion that employer negligence played a part in producing the petitioner's injury," reversed the judgment of the Texas Court of Civil Appeals. On remand, that court held that the question of negligence was foreclosed by this Court's decision and affirmed a judgment in favor of the petitioner on condition that petitioner accept a remittitur. On review, the Texas Supreme Court remanded the case to the Court of Civil Appeals "with directions . . . to adjudicate, upon its own independent evaluation of the evidence and wholly apart from the judgment of the Supreme Court of the United States, whether or not the jury finding of negligence of

the defendant . . . is so against the weight and preponderance of the evidence as to require a new trial in the interest of justice, and, upon the basis of its said adjudication, to either affirm the judgment of the trial court or grant a new trial." The determination of that issue was foreclosed by *Deen* v. *Gulf, Colorado & Santa Fe R. Co., supra.* The motion for leave to file a petition requesting this Court to mandamus the Texas Supreme Court to conform its decision to our mandate in that case is granted. Assuming as we do that the Supreme Court of Texas will of course conform to the disposition we now make, we do not issue the writ of mandamus.

MR. JUSTICE STEWART took no part in the consideration or decision of this case.

FONK ET AL. *v.* TOWN OF YORKVILLE.

APPEAL FROM THE SUPREME COURT OF WISCONSIN.

No. 332. Decided October 27, 1958.

Appeal dismissed for want of a substantial federal question. Reported below: 3 Wis. 2d 371, 88 N. W. 2d 319.

Wm. J. P. Aberg for appellants.

PER CURIAM.

The appeal is dismissed for want of a substantial federal question.