

# The Burger Court Opinion Writing Database

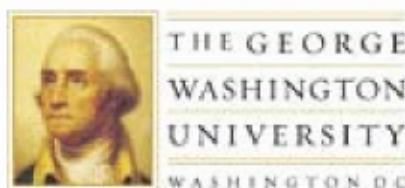
*United States v. Mississippi Chemical Corp.*

405 U.S. 298 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

February 29, 1972

PERSONAL

Re: No 70-52 -- United States v. Mississippi Chemical Corp, et al.

Dear Thurgood:

Although I am in general agreement with your opinion in the above case, there are certain problems which give me real trouble in its present form.

In Part I you state that this case turns solely on the intent of Congress in enacting the Farm Credit Acts and not on tax law concepts. I agree that the unique capital structure of the banks for cooperatives and the long-term benefits for the member cooperatives are both highly relevant to the proper characterization of the amounts paid for the Class C stock. But absent some indication by Congress as to the proper tax treatment for these expenditures, the question remains whether capital assets were acquired through the expenditures, or whether some portion of the expenditures was in fact paid for the use of money. The precise meanings of the terms "asset", "expense" and "interest" are used in the Internal Revenue Code, and as explicated in the cases thereunder, are, I think, relevant to the disposition of this case.

Moreover, I think it very doubtful that we are "not called upon . . . to determine whether the form in which the taxpayer cast his transaction accurately reflects its substance for tax purposes." (Draft opinion, at page 3). Respondents and Amici lean heavily on the 'substance over form' approach, specifically arguing that where by contract or statute a borrower is compelled to purchase some asset as a condition to borrowing money, the excess of the purchase price over fair market value is a deductible interest expense. Although I do not accept that contention, at least in the present context, I simply cannot read this and the other tax questions out of the case.

I am also troubled by the idea expressed in the last page and a half of the opinion that the tax treatment respondents seek is somehow at cross-purposes with the "cooperative" nature of the banks for cooperatives system. The tax treatment in no way affects the obligations of the member cooperatives to the bank, and it is not clear to me why the additional interest deduction would diminish their concern with the future of the bank. The member cooperatives would still have a long-term interest in keeping the bank healthy so that they could take advantage of its low-cost credit in the future. They would also be interested in getting back the par value of the Class C shares credited to their accounts, even if it would be taxed

as ordinary income. In the tax years in question respondents accumulated Class C shares with a par value exceeding \$800,000; I can't believe they would turn their backs on this potential return. Furthermore, I don't really understand how this diminished concern would express itself. As the system is presently structured, Government capital will be revolved out and the banks will thrive as long as member cooperatives continue to borrow. Continued borrowing rather than some emotional commitment is the key to success. It seems to me that if the borrowers could take an immediate write-off of 99% of the purchase price of the Class C shares, they would have added reason to avail themselves of the banks' credit.

In lieu of the argument made in the last part of the opinion I think we would be in a stronger position to place emphasis on the fact that the payments for Class C stock give the member cooperatives economic long-term <sup>A</sup>benefits which are not reflected in the fair market value of the stock. These benefits, along with the less tangible benefits referred to in Judge Godbold's dissenting opinion below, persuade me that it is improper to view any part of the expenditures as mere payment for the use of money. I think the statutory form of the transactions must control

Regards,



Mr. Justice Marshall

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 3, 1972

No. 70 - 52 -- United States v. Mississippi Chemical  
Corporation et al.

Dear Thurgood:

Please join me in the above.

Regards,

WB

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 16, 1972

*Steve*  
*Judge has*  
*not seen*

Dear Thurgood:

In No. 70-52 - U. S. v.

Mississippi Chemical Corp., please  
join me.

*W. O. D.*

Mr. Justice Marshall

cc: The Conference

*B*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. February 17, 1972

RE: No. 70-52 - United States v. Mississippi  
Chemical Corporation

Dear Thurgood:

I agree.

Sincerely,

*Brennan*

Mr. Justice Marshall

cc: The Conference

Q.S.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1972

No. 70-52, U.S. v. Mississippi Chem. Corp.

Dear Thurgood,

I am glad to join your opinion for the Court  
in this case.

Sincerely yours,

Q.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 17, 1972

Re: No. 70-52 - United States v.  
Mississippi Chemical Corp.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

MM  
2/16

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
No. 70-52  
\_\_\_\_\_

United States, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Mississippi Chemical Cor- } of Appeals for the Fifth  
poration et al. } Circuit.

[February —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Mississippi Chemical Corporation and Coastal Chemical Corporation (hereinafter "taxpayers") instituted this action for a tax refund in the United States District Court for the Southern District of Mississippi. Both taxpayers are "cooperative associations" within the meaning of the Agricultural Marketing Act, 46 Stat. 11, as amended, 12 U. S. C. § 1141j, and thus qualify for membership in one of the 12 "Banks for Cooperatives" (hereinafter "Bank(s)") established by the Farm Credit Act of 1933, 48 Stat. 257, as amended, 12 U. S. C. § 1134 *et seq.* Since their principal places of business are located in Mississippi, their regional Bank is located in New Orleans.

The Farm Credit Act of 1933 provides that members may borrow money from their Banks, and soon after securing membership in the New Orleans Bank, the taxpayers elected to borrow.<sup>1</sup> Thereafter, they were required by the Farm Credit Act of 1955, 69 Stat. 655-656, 12 U. S. C. § 1134d (a)(3), which partially amended

<sup>1</sup> Mississippi Chemical Corp. acquired the share of stock qualifying it as a borrower in 1956; Coastal Chemical Corp. acquired its qualifying share in 1957.

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 70-52

United States, Petitioner, | On Writ of Certiorari to  
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[February —, 1972]

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

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No. 70-52  
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United States, Petitioner, | On Writ of Certiorari to  
v. | the United States Court  
Mississippi Chemical Cor- | of Appeals for the Fifth  
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[March —, 1972]

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

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No. 70-52  
\_\_\_\_\_

United States, Petitioner, *v.* On Writ of Certiorari to  
Mississippi Chemical Corporation et al. the United States Court  
of Appeals for the Fifth Circuit.

[March —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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## Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 16, 1972

Re: No. 70-52 - U.S. v. Mississippi Chemical Corp.

Dear Thurgood:

Will you please add at the conclusion of your opinion:

"Mr. Justice Blackmun took no part in the consideration or decision of this case."

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 2, 1972

Re: 70-52 U. S. v. Mississippi Chemical Corp.

Dear Thurgood:

Please join me in your opinion (4th draft) in the above  
case.

Sincerely,

Lewis

Mr. Justice Marshall

cc: The Conference

Thurgood - Thank you  
for considering my suggestions -  
minor as they were. I like  
your 4<sup>th</sup> draft.

L

B  
M

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 22, 1972

Re: 70-52 - U. S. v. Mississippi Chemical Corp.

Dear Thurgood:

Please join me in your opinion for the  
Court in this case.

Sincerely,

Wm

Mr. Justice Marshall

Copies to the Conference