

# The Burger Court Opinion Writing Database

## *F.D. Rich Co. v. United States ex rel. Industrial Lumber Co.*

417 U.S. 116 (1974)

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

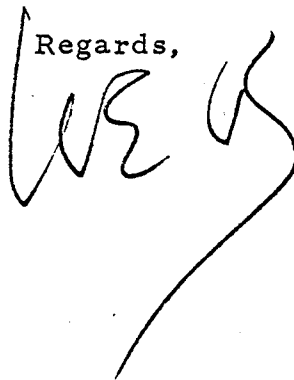
May 23, 1974

Re: 72-1382 - F. D. Rich Co. v. U. S. for the Use of  
Industrial Lumber Co.

Dear Thurgood:

Please join me.

Regards,



Mr. Justice Marshall

Copies to the Conference

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To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1382

Circulate

5-17

Recirculated:

F. D. Rich Co., Inc., and  
Transamerica Insurance  
Co., Petitioners,  
v.  
United States for the Use of  
Industrial Lumber Com-  
pany, Inc.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Ninth  
Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

The Court, dealing with the Miller Act's predecessor, held in *Illinois Surety Co. v. John Davis Co.*, 244 U. S. 376, 380, that the Heard Act "must be construed liberally." That same principle applies to the Miller Act. *Fleisher Co. v. United States*, 311 U. S. 15, 17-18. The Act is silent as to attorneys' fees, saying only that the payment bond shall allow the supplier "to prosecute said action to final execution and judgment for the sum or sums justly due him." 40 U. S. C. § 270b.

This Miller Act is unlike the Lanham Act involved in *Fleischmann Corp. v. Maier Brewing*, 386 U. S. 714. That Act itemized the components of the remedy which the Act afforded: injunctive relief, treble damages, and "costs" (which by federal statute did not include attorney's fees). *Id.*, 719-720. Moreover, attempts to amend the Lanham Act to include attorneys' fees had never succeeded, *id.*, 721. Here there is no such legislative history; nor does the Miller Act itemize the components of the "sum or sums justly due."

The Court says that dependence on state law is inappropriate, for we deal with a federal standard that should

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


CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. May 16, 1974

RE: No. 72-1382 Rich Co. v. U.S. for  
Use of Industrial Lumber Co., Inc.

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 15, 1974

72-1382 - F. D. Rich Co. v. Ind. Lumber Co.

Dear Thurgood,

I am glad to join the opinion you have  
written for the Court in this case.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 17, 1974

Re: No. 72-1382 - F. D. Rich Co., Inc. v.  
Industrial Lumber Co., Inc.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: MAY 13 1974

No. 72-1382

Recirculated: \_\_\_\_\_

F. D. Rich Co., Inc., and  
Transamerica Insurance  
Co., Petitioners,  
v.  
United States for the Use of  
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On Writ of Certiorari to the  
United States Court of  
Appeals for the Ninth  
Circuit.

[May —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The Miller Act, 40 U. S. C. § 270 *et seq.*, requires a government contractor<sup>1</sup> to post a surety bond "for the protection of all persons supplying labor and material in the prosecution of the work provided for" in the contract. The Act further provides that any person who has so furnished labor or material and who has not been paid in full within 90 days after the last labor was performed or material supplied may bring suit on the payment bond for the unpaid balance. 40 U. S. C. § 270 (a). This case presents several unresolved issues of importance in the administration of the Act.

1

Between 1961 and 1968, petitioner F. D. Rich Co. was the prime contractor on numerous federal housing projects. During the years 1963-1966, much if not all of the plywood and millwork for these projects was supplied by

<sup>1</sup> Government contracts of less than \$2,000 in value are excepted from the statute's coverage.

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Consulated: \_\_\_\_\_

No. 72-1382

Recirculated: MAY 28

F. D. Rich Co., Inc., and  
Transamerica Insurance  
Co., Petitioners,  
v.  
United States for the Use of  
Industrial Lumber Com-  
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On Writ of Certiorari to the  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 15, 1974

Dear Thurgood:

Re: No. 72-1382 - F. D. Rich Co., Inc. v.  
U. S. for Use of Industrial Lumber  
Company, Inc.

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Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

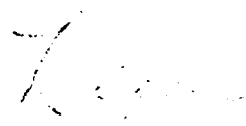
May 15, 1974

No. 72-1382 Rich v. United States

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 17, 1974

Re: No. 72-1382 - F. D. Rich Co. v. U. S. for Use  
of Industrial Lumber Co.

Dear Thurgood:

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

Sincerely,



Mr. Justice Marshall

Copies to the Conference