

The Burger Court Opinion Writing Database

United States v. General Dynamics Corp.

415 U.S. 486 (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

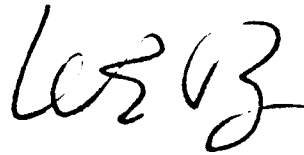
March 4, 1974

Re: No. 72-402 - United States v. General Dynamics

Dear Potter:

Please join me.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 15, 1974

MEMORANDUM TO THE CONFERENCE:

As agreed at Conference today, the following opinions
will be announced next week:

Tuesday, March 19, 1974

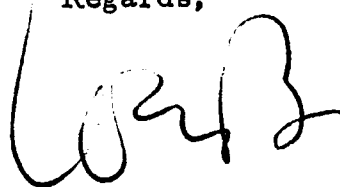
MR. JUSTICE STEWART

72-402 - U. S. v. General Dynamics Corp.

MR. JUSTICE BRENNAN

72-5581 - Steffel v. Thompson

Regards,



cc: Mr. Cornio

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 12, 1974

MEMO TO THE CONFERENCE:

In 72-402, U.S. v. General Dynamics Corp. I am writing a dissent which should be around before too long.

W O D
William O. Douglas

The Conference

To : The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Black
 Mr. Justice Marshall
 Mr. Justice Harlan
 Mr. Justice Burger
 Mr. Justice Goldwater

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-402

From: J.
 Circulate: 2-14-74
 Recirculated:

United States, Appellant, } On Appeal from the United
 v. } States District Court for
 General Dynamics } the Northern District of
 Corporation et al. } Illinois.

[January --, 1974]

MR. JUSTICE DOUGLAS, dissenting

In this case the United States appeals from a district court decision¹ upholding the acquisition of stock in United Electric Coal Companies by Material Service Corporation and its successor, General Dynamics Corporation, against a challenge that the acquisition violated § 7 of the Clayton Act.² The United States instituted this civil antitrust action on the claim that the acquisition may substantially lessen competition in the Illinois and Eastern Interior Coal Province sales area coal markets. After trial on the merits the District Court rejected the Government's proposed product and geographic markets and dismissed the action, concluding that the Government had failed to show a substantial

¹ 341 F. Supp. 534 (N.D. Ill. 1972).

² 15 U.S.C. § 18.

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

To The Chief Justice
Mr. Justice Brandeis
Mr. Justice Burger
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Rehnquist
Mr. Justice Stewart
Mr. Justice Souter
Mr. Justice Thomas

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-402

United States, Appellant, } On Appeal from the United
v. } States District Court for
General Dynamics } the Northern District of
Corporation et al. } Illinois.

[January —, 1974]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE concur, dissenting

In this case the United States appeals from a district court decision¹ upholding the acquisition of stock in United Electric Coal Companies by Material Service Corporation and its successor, General Dynamics Corporation, against a challenge that the acquisition violated § 7 of the Clayton Act.² The United States instituted this civil antitrust action on the claim that the acquisition may substantially lessen competition in the Illinois and Eastern Interior Coal Province sales area coal markets. After trial on the merits the District Court rejected the Government's proposed product and geographic markets and dismissed the action, concluding that the Government had failed to show a substantial

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2-21

and Mr. Justice Brandeis

March 18, 1974

Dear Potter:

When you announce 72-402, U.S. v. General

Dynamics would you say:

(1) I have filed a dissent in which
Brennan, White, and Marshall join and

(2) the dissent thinks the District
Court did not make the necessary findings
on which a §7 violation could be based and
that the case should be remanded so that
these findings can be made.

William O. Douglas

Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 14, 1974

RE: No. 72-402 United States v. General
Dynamics Corporation, et al.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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To: The Clerk of the
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Black
Mr. Justice Stewart
Mr. Justice Goldberg
Mr. Justice Souter
Mr. Justice Breyer
Mr. Justice Kagan

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-402

FEB 9 1974

United States, Appellant, } On Appeal from the United
v. } States District Court for
General Dynamics } the Northern District of
Corporation et al } Illinois

[February --, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

On September 22, 1967, the Government commenced this suit in the United States District Court for the Northern District of Illinois, challenging as violative of § 7 of the Clayton Act, 15 U. S. C. § 18, the acquisition of the stock of United Electric Coal Companies by Material Service Corp. and its successor, General Dynamics Corp. After lengthy discovery proceedings, a trial was held from March 30 to April 22, 1970, and on April 13, 1972, the District Court issued an opinion and judgment finding no violation of the Clayton Act, 341 F. Supp. 534. The Government appealed directly to this Court pursuant to the Expediting Act, 15 U. S. C. § 29, and we noted probable jurisdiction, 409 U. S. 1058.

I

At the time of the acquisition involved here, Material Service Corp. was a large midwest producer and supplier of building materials, concrete, limestone, and coal. All of its coal production was from deep-shaft mines operated by it or its affiliate respondent Freeman Coal Mining Corp., and production from these operations amounted to 6.9 million tons of coal in 1959 and 8.4 million tons in 1967. In 1954, Material Service began

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 19, 1974

Re: No. 72-402 - United States v. General
Dynamics Corp.

Dear Bill:

Join me in your dissent, please.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1974

Re: No. 72-402 -- United States v. General Dynamics
Corporation

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1974

Re: No. 72-402 - U. S. v. General Dynamics Corp.

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 13, 1974

No. 72-402 United States v. General Dynamics

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 20, 1974

Re: No. 72-402 - United States v. General Dynamics

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference