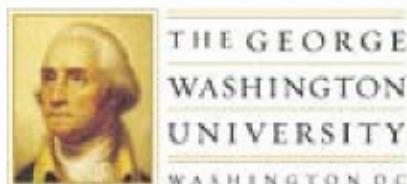


The Burger Court Opinion Writing Database

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,

les v3

Mr. Justice Stewart

Copies to the Conference

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

1. Regards,

WFB

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 Marshall
 Mr. Justice Black
 Mr. Justice White
 Mr. Justice Powell
 Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-402

Circulate: 2-14-74

Recirculate:

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

[January 1, 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 (ND 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 BRENNAN
Mr. Justice BURGER
Mr. Justice POWELL
Mr. Justice REHNQUIST
Mr. Justice BLACKMUN
Mr. Justice MARSHALL
Mr. Justice STONE

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-402

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

¹ 341 F. Supp. 534 (ND 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."

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 § 1985 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.

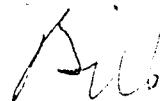
February 14, 1974

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

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

To: The Clerk and cc
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice White
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice Thurgood Marshall

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-402

FEB 9 1974

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

2

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

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

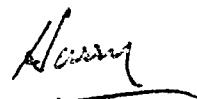
March 5, 1974

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.

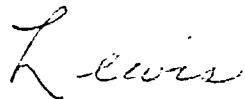
February 13, 1974

No. 72-402 United States v. General Dynamics

Dear Potter:

Please join me.

Sincerely,



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,

WM

Mr. Justice Stewart

Copies to the Conference