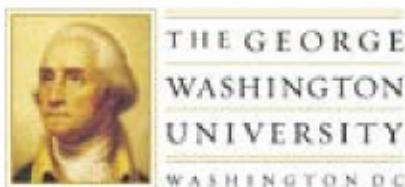


The Burger Court Opinion Writing Database

*United States v. Consumer Life Insurance
Co.*
430 U.S. 725 (1977)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

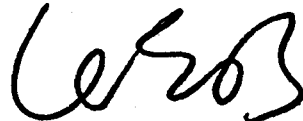
April 21, 1977

Re: 75:1221;60;85 U.S. v. Consumer Life Ins. Co.; First RR
& Banking Co. of Ga. v. U.S.; U.S. v.
Penn Security Life Ins. Co.

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 21, 1977

RE: Nos. 75-1221, 75-1260 and 75-1285 United States v.
Consumer Life Insurance Co.
First Railroad & Banking Co. of Ga. v. United States
United States v. Penn Security Life Insurance Co.

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 22, 1977

Re: Nos. 75-1221, 75-1260, and 75-1285
U. S. v. Consumer Life Ins. Co.

Dear Lewis,

I am glad to join your opinion for
the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 4-14-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1221, 75-1260 AND 75-1285

United States, Petitioner, 75-1221 v. Consumer Life Insurance Company.	} On Writ of Certiorari to the United States Court of Claims.
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First Railroad & Banking Company of Georgia, Petitioner, 75-1260 v. United States.	} On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
--	--

United States, Petitioner, 75-1285 v. Penn Security Life Insurance Company.	} On Writ of Certiorari to the United States Court of Claims.
--	---

[April —, 1977]

MR. JUSTICE WHITE, dissenting.

Congress has chosen to give life insurance companies extremely favorable federal income tax treatment. The reason for this preferential tax treatment is the nature of life insurance risks. They are long term risks that increase over the period of coverage and that will ultimately require the payment of a claim. Companies that assume life insurance risks therefore must accumulate substantial reserve funds to meet future claims; these reserve funds are invested, and a large portion of the investment income is then added to the funds already accumulated. In recognition of the special characteristics of life insurance risks, Congress has allowed

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 3

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 4-22-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1221, 75-1260 AND 75-1285

United States, Petitioner, 75-1221 v. Consumer Life Insurance Company.	}	On Writ of Certiorari to the United States Court of Claims.
--	---	---

First Railroad & Banking Company of Georgia, Petitioner, 75-1260 v. United States.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
---	---	--

United States, Petitioner, 75-1285 v. Penn Security Life Insurance Company.	}	On Writ of Certiorari to the United States Court of Claims.
---	---	---

[April —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, dissenting.

The Court today makes it possible for insurance companies doing almost no life insurance business to qualify for major tax advantages Congress meant to give only to companies doing mostly life insurance business. I cannot join in the creation of this truckhole in the law of insurance taxation.

I

Congress has chosen to give life insurance companies extremely favorable federal income tax treatment. The reason for this preferential tax treatment is the nature of life insurance risks. They are long term risks that increase over the period of coverage and that will ultimately require the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 18, 1977

Re: Nos. 75-1221, 75-1260 and 75-1285, United States v.
Consumer Life Ins. Co.

Dear Byron:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

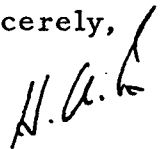
March 22, 1977

Re: No. 75-1221 - U.S. v. Consumer Life Ins. Co.
No. 75-1260 - First RR & Banking Co. of Georgia v. U.S.
No. 75-1285 - U.S. v. Penn Security Life Ins. Co.

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: MAR 18 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1221, 75-1260 AND 75-1285

United States, Petitioner, 75-1221 v. Consumer Life Insurance Company.	}	On Writ of Certiorari to the United States Court of Claims.
First Railroad & Banking Company of Georgia, Petitioner, 75-1260 v. United States.		On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
United States, Petitioner, 75-1285 v. Penn Security Life Insurance Company.	}	On Writ of Certiorari to the United States Court of Claims.

[March —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court,

The question for decision is how unearned premium reserves for accident and health (A&H) insurance policies should be allocated between a primary insurer and a reinsurer for federal tax purposes. We granted certiorari in these three cases to resolve a conflict between the circuits and the Court of Claims. 425 U. S. 990 (1976).

I

An insurance company is considered a life insurance company for federal tax purposes if its life insurance reserves constitute more than 50% of its total reserves, Int. Rev. Code of

4-5, 12, 17, 26
and stylistic changes

✓ To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
- Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: APR 5 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1221, 75-1260 AND 75-1285

United States, Petitioner, 75-1221 v. Consumer Life Insurance Company.	}	On Writ of Certiorari to the United States Court of Claims.
First Railroad & Banking Company of Georgia, Petitioner, 75-1260 v. United States.		On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
United States, Petitioner, 75-1285 v. Penn Security Life Insurance Company.	}	On Writ of Certiorari to the United States Court of Claims.

*Writ by
B.R.*

[March —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question for decision is how unearned premium reserves for accident and health (A&H) insurance policies should be allocated between a primary insurer and a reinsurer for federal tax purposes. We granted certiorari in these three cases to resolve a conflict between the circuits and the Court of Claims. 425 U. S. 990 (1976).

I

An insurance company is considered a life insurance company under the Internal Revenue Code if its life insurance reserves constitute more than 50% of its total reserves, Int.

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

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TO FILE

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1977

MEMORANDUM TO THE CONFERENCE:

Re: Case Held for No. 75-1221, U.S. v. Consumer Life Insurance Co.:

No. 74-701, Economy Finance Corp. v. United States.

Petitioner, a finance company, has filed a second and untimely petition for rehearing. One of its subsidiaries served as reinsurer of the credit life and credit A & H insurance policies issued to petitioner's customers. The reinsurance agreement between petitioner's subsidiary and the unrelated primary insurance company was quite similar to Treaty I in the Consumer Life case, with an exception to be noted later. The issues before CA 7 were the same as those involved in the Consumer Life case.

CA 7 held for the government, adopting a "reserves follow the risk" rule. 501 F.2d 466 (1974). This decision was the first one at the circuit court level involving the Consumer Life issues, and at the time we considered petitioner's cert petition there was no conflict. We denied cert on February 24, 1975, and a timely petition for rehearing on April 14, 1975. Within a year, a conflict had developed and on May 24, 1976, we granted cert in Consumer Life and its companion cases. Thereupon petitioners filed this second petition for rehearing. At the June 10, 1976, conference, we voted to hold the motion pending decision in Consumer Life.

Our Rule 58(4) seems to preclude motions of this type: "Consecutive petitions for rehearings, and petitions for rehearing that are out of time under this rule, will not be received." But the Court has not always enforced this rule. See United States v. Ohio Power Company, 353 U.S. 98 (1957); Gondeck v. Pan American

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 25, 1977

Re: No. 75-1221 - United States v. Consumer Life Insurance
Company

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 21, 1977

Re: 75-1221, 75-1260 and 75-1285 - United
States v. Consumer Life Ins. Co.

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference