

# The Burger Court Opinion Writing Database

*Stencel Aero Engineering Corp. v. United States*  
431 U.S. 666 (1977)

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



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

From: The Chief Justice

Circulated: MAY 25 1977

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-321

Stencel Aero Engineering Corporation, Petitioner, } On Writ of Certiorari to the  
 v. United States Court of Ap-  
 United States. peals for the Eighth Circuit.

[May —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to decide whether the United States is liable under the Federal Tort Claims Act, 28 U. S. C. § 2674, to indemnify a third party for damages paid by it to a member of the Armed Forces injured in the course of military service.

(1)

On June 9, 1973, Captain John Donham was permanently injured when the egress life-support system of his F-100 fighter aircraft malfunctioned during a mid-air emergency.<sup>1</sup> Petitioner, Stencel Aero Engineering Corp., manufactured the ejection system pursuant to the specifications of, and by use of certain components provided by, the United States.<sup>2</sup> Pursuant to the Veterans' Benefits Act, 38 U. S. C. § 321 *et seq.*, made applicable to National Guardsmen by 32 U. S. C. § 318, Captain Donham was awarded a life-time pension of approximately \$1,500 per month. He nonetheless brought suit for

<sup>1</sup> Captain Donham was at the time assigned for training to the 131st Tactical Fighter Group, Missouri National Guard.

<sup>2</sup> There is no contractual relationship between the United States and Stencel. Stencel contracted with North American Rockwell, the prime government contractor, to provide the F-100's pilot eject system.

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 26, 1977

Re: 76-321 - Stencel Aero v. United States

Dear Potter:

The question you raise persuades me that, as often happens, the discussion goes beyond the needs of the case. The paragraph is not necessary and should either be explicated more fully or omitted, and I lean to the latter.

I will be back to you soon.

Regards,



Mr. Justice Stewart

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 31, 1977

Re: 76-321 - Stencel Aero v. United States

MEMORANDUM TO THE CONFERENCE:

The problem Potter raised is one that would take  
enlargement of the section to clarify and qualify.  
However, since it was one of those areas of "rounding  
out the contours" rather than essential to the holding,  
I conclude the simple solution is to drop the paragraph  
beginning 6th line at end of page 6 and continuing to  
mid-page 7.

The next paragraph following will begin:

"A compensation scheme such as the Veterans . . ."

Regards,

WBB

P 6

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

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: MAY 31 1977

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-321

Stencel Aero Engineering Corporation, Petitioner,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit.

[May —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

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On June 9, 1973, Captain John Donham was permanently injured when the egress life-support system of his F-100 fighter aircraft malfunctioned during a mid-air emergency.<sup>1</sup> Petitioner, Stencel Aero Engineering Corp., manufactured the ejection system pursuant to the specifications of, and by use of certain components provided by, the United States.<sup>2</sup> Pursuant to the Veterans' Benefits Act, 38 U. S. C. § 321 *et seq.*, made applicable to National Guardsmen by 32 U. S. C. § 318, Captain Donham was awarded a life-time pension of approximately \$1,500 per month. He nonetheless brought suit for

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<sup>2</sup> There is no contractual relationship between the United States and Stencel. Stencel contracted with North American Rockwell, the prime government contractor, to provide the F-100's pilot eject system.

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 14, 1977

Re: 76-220 - General Dynamics Corp. v. United States  
(Heretofore held for decision in  
No. 76-321 - Stencel Aero Engineering  
Corp. v. United States)

MEMORANDUM TO THE CONFERENCE:

The only case held for No. 76-321, Stencel Aero Engineering v. United States, is No. 76-220, General Dynamics Corp. v. United States (C.A. 9). This case involves a suit by military personnel injured due to the crash of an Air Force plane. Petitioner is the manufacturer of the plane which had been delivered to the United States 16 years prior to the accident. The District Court granted the government's motion to dismiss petitioner's third party claim against the United States. The CA affirmed on the basis of its earlier ruling in United Airlines, Inc. v. Wiener, 335 F.2d 369 (1964). The only issue raised by petitioner is that which we resolved in Stencel, namely, whether a private party may bring a third party claim against the United States for injuries sustained by a serviceman. The judgment below is in accord with our disposition in Stencel.

I WILL VOTE TO DENY THE PETITION FOR CERTIORARI.

Regards,

WB B

HAB

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

June 1, 1977

RE: NO. 76-321 Stencel Aero Engineering Corporation  
v. United States

Dear Thurgood:

Please join me in the dissenting opinion you  
have prepared in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 25, 1977

No. 76-321, Stencel Aero Eng. Corp.  
v. United States

Dear Chief,

I agree with the result you reach and expect ultimately to join your opinion. As presently written, however, the paragraph beginning at the bottom of page 6 and running through the first half of page 7 causes me some concern.

Do we really know for certain that "to the extent that the serviceman receives a substantial government pension while he is disabled, the amount of general damages awarded him will be reduced pro tanto, . . ."? While I am now more than a quarter of a century removed from day-to-day exposure to tort law, my recollection is that a good many jurisdictions do not permit a jury to know of a plaintiff's compensation from other sources, e.g., private insurance or workmen's compensation, and do not provide for a pro tanto reduction of the damages awarded.

Sincerely yours,

*P.S.*

The Chief Justice

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1977

No. 76-321, Stencel Aero Eng. Corp. v. U. S.

Dear Chief,

I am glad to join your opinion for the Court, as recirculated yesterday.

Sincerely yours,

The Chief Justice

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 25, 1977

Re: No. 76-321 - Stencel Aero Engineering Corp.  
v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

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MAY 31 1977

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 76-321**

Stencel Aero Engineering  
Corporation, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
United States. } peals for the Eighth Circuit.

[June —, 1977]

**MR. JUSTICE MARSHALL, dissenting.**

The opinion of the Court appears to be premised on the theory that in any case involving a member of the military on active duty, *Feres v. United States*, 340 U. S. 135 (1950), displaces the plain language of the Tort Claims Act. I cannot agree that that narrow, judicially created exception to the waiver of sovereign immunity contained in the Act should be extended to any category of litigation other than suits against the Government by active duty servicemen based on injuries incurred while on duty.

Even if *Feres* is not to be strictly limited, I do not agree that its extension to cover this case is justified. The Court's explanation simply does not differentiate this suit by a corporation against the Government from similar suits that the Tort Claims Act does allow. See, e. g., *United States v. Yellow Cab Co.*, 340 U. S. 543 (1951).

The first factor relied upon by the Court is the "distinctively federal" relationship between the Government and "its suppliers of ordnance." *Ante*, at 6. It is true, of course, that the military performs "a unique, nationwide function," *ibid.*, but so do the Bureau of the Census, the Immigration and Naturalization Service, and many other agencies of the Federal Government. These agencies, like the military, may have personnel and equipment in all parts of the country. Nevertheless, Congress has made private rights against the Gov-

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 27, 1977

Re: No. 76-321 - Stencel Aero Engineering Corp.  
v. United States

Dear Chief:

I, also, am troubled by the paragraph mentioned in Potter's letter to you of May 25. If this problem could be resolved, I could join your opinion.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1977

Re: No. 76-321 - Stencel Aero Engineering Corp.  
v. United States

Dear Chief:

I join your opinion as revised in accordance with  
your memorandum of today.

Sincerely,

*HAB.*

The Chief Justice

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

May 25, 1977

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

No. 76-321 Stencel Aero v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 25, 1977

Re: No. 76-321 - Stencel Aero Engineering Corp.  
v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 25, 1977

Re: 76-321 - Stencel Aero Engineering Corp. v.  
United States

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference