

# The Burger Court Opinion Writing Database

*Coopers & Lybrand v. Livesay*  
437 U.S. 463 (1978)

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

June 13, 1978

Dear John:

Re: 76-1836 Coopers & Lybrand v. Livesay

I join.

Regards,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

June 12, 1978

RE: No. 76-1836 Coopers & Lybrand v. Livesay

Dear John:

Please join me. Within the next day or two I'll have circulated a short concurring statement captioned in both this case and Gardner.

Sincerely,

*Bill*

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

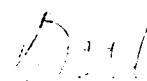
June 14, 1978

RE: No. 76-1836 Coopers & Lybrand v. Livesay

Dear John:

I have decided not to write separately in the  
above.

Sincerely,



Mr. Justice Stevens

cc: The Conference

✓ ✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 3, 1978

No. 76-1836, Coopers & Lybrand v. Livesay

Dear John,

For the reasons stated in Mr. Walsh's letter of April 29, I do not believe this case is moot.

Sincerely yours,

P. S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 12, 1978

Re: No. 76-1836, Coopers & Lybrand v.  
Livesay

Dear John,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 12, 1978

Re: 76-1836 - Coopers & Lybrand v. Livesay

Dear John,

I agree.

Sincerely yours,



Mr. Justice Stevens  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 12, 1978

Re: No. 76-1836 - Coopers & Lybrand v. Livesay

Dear John:

Please join me.

Sincerely,

*JM*

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 15, 1978

Re: No. 76-1836 - Coopers & Lybrand v. Livesay

Dear John:

Please join me.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 12, 1978

No. 76-1836 Coopers & Lybrand v. Livesay

Dear John:

Please join me.

Sincerely,

*L Lewis*

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 12, 1978

Re: No. 76-1836 - Coopers & Lybrand v. Livesay

Dear John:

Please join me in your opinion. I have one small suggestion with respect to the text and the footnote on page 6 relating to the "Cohen" doctrine. In the text, the first full sentence gives the impression that only the three factors therein set out need be complied with in order that a decision be appealable under the Cohen rule. In footnote 10, at the bottom of the same page, where you state the Court's summary of the rule in Cohen, the summary contains the additional factor that the order must be "too important to be denied review"; I think this is an important facet of the Cohen rule and would think it helpful to either bring that aspect of the rule up into the text, or by a very clear reference in the text to indicate that the fuootnote, too, since it is a direct quote from Cohen, is a definitive statement of the rule.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

✓ JPS  
PL 1/14  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

76-1836 - Coopers & Lybrand v. Livesay

From: Mr. Justice Stevens  
JW 9 78  
Circulated:

Resubmitted:

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question in this case is whether a district court's determination that an action may not be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure is a "final decision" within the meaning of 28 U.S.C. § 1291<sup>1/</sup> and therefore appealable as a matter of right. Because there is a conflict in the circuits over this issue,<sup>2/</sup> we granted certiorari and now hold that such an order is not appealable under § 1291.

Petitioner, Coopers & Lybrand, is an accounting firm that certified the financial statements in a prospectus issued in connection with a 1972 public offering of securities in Punta Gorda Isles for an aggregate price of over \$18 million.

1/"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court. "

2/Compare Hackett v. General Host Corp., 455 F.2d 618 (CA3 1972); King v. Kansas City Southern Industries, Inc., 479 F.2d 1259 (CA7 1973) (holding that such an order is not immediately appealable under § 1291) with Hartman v. Scott, 488 F.2d 1215 (CA8 1973); Ott v. Speedwriting Pub. Co., 518 F.2d 1143 (CA6 1973); Eisen v. Carlisle & Jacquelin, 370 F.2d 119 (CA2), cert. denied, 386 U.S. 1035 (1966) (holding that such an order is immediately appealable under § 1291).

pp. 5-8, 10-14, 16, 17

Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

76-1836 - Coopers & Lybrand v. Livesay

Clerk's Office

JUN 12 1978  
[Signature]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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Petitioner, Coopers & Lybrand, is an accounting firm that certified the financial statements in a prospectus issued in connection with a 1972 public offering of securities in Punta Gorda Isles for an aggregate price of over \$18 million.

<sup>1/</sup>"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court."

<sup>2/</sup>Compare Hackett v. General Host Corp., 455 F.2d 618 (CA3 1972); King v. Kansas City Southern Industries, Inc., 479 F.2d 1259 (CA7 1973) (holding that such an order is not immediately appealable under § 1291) with Hartman v. Scott, 488 F.2d 1215 (CA8 1973); Ott v. Speedwriting Pub. Co., 518 F.2d 1143 (CA6 1973); Eisen v. Carlisle & Jacquelin, 370 F.2d 112 (CA2), cert. denied, 386 U.S. 1035 (1966) (holding that such an order is immediately appealable under § 1291).

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

From: Mr. Justice Stevens

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

Recirculated: JUN 15 '78

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1836

Coopers & Lybrand, Petitioner,  
 v.  
 Cecil Livesay and Dorothy Livesay, Etc., et al. } On Writ of Certiorari to the  
 } United States Court of Appeals for the Eighth Circuit.

[June —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question in this case is whether a district court's determination that an action may not be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure is a "final decision" within the meaning of 28 U. S. C. § 1291<sup>1</sup> and therefore appealable as a matter of right. Because there is a conflict in the circuits over this issue,<sup>2</sup> we granted certiorari and now hold that such an order is not appealable under § 1291.

Petitioner, Coopers & Lybrand, is an accounting firm that certified the financial statements in a prospectus issued in connection with a 1972 public offering of securities in Punta Gorda Isles for an aggregate price of over \$18 million. Respondents purchased securities in reliance on that prospectus.

<sup>1</sup> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court."

<sup>2</sup> Compare *Hackett v. General Host Corp.*, 455 F. 2d 618 (CA3 1972); *King v. Kansas City Southern Industries, Inc.*, 479 F. 2d 1259 (CA7 1973) (holding that such an order is not immediately appealable under § 1291) with *Hartman v. Scott*, 488 F. 2d 1215 (CA8 1973); *Ott v. Speedwriting Pub. Co.*, 518 F. 2d 1143 (CA6 1973); *Eisen v. Carlisle & Jacqueline*, 870 F. 2d 119 (CA2); cert. denied, 386 U. S. 1035 (1966) (holding that such an order is immediately appealable under § 1291).