

# The Burger Court Opinion Writing Database

*Hatzlachh Supply Co. v. United States*  
445 U.S. 480 (1980)

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

January 11, 1980

Re: 78-1175 - Hatzlachh Supply Co., Inc. v. United States

Dear Byron:

I join.

Regards,

WBQ

Mr. Justice White  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 4, 1980

RE: No. 78-1175 Hatzlachh Supply Co. v. United States

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 4, 1980

Re: 78-1175 - Hatzlachh Supply Co. v. United States

Dear Byron:

I agree with your proposed per curiam.

Sincerely yours,

P.S.  
P.

Mr. Justice White  
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

1st DRAFT

Circulated: 3 JAN 1980

SUPREME COURT OF THE UNITED STATES

No. 78-1175

Hatzlachh Supply Co., Inc.,  
Petitioner,  
*v.*  
United States. } On Writ of Certiorari to the  
United States Court of Claims.

[January —, 1980]

PER CURIAM.

We granted certiorari in this case to consider whether the United States may be held liable for breach of an implied contract of bailment when goods are lost while held by the United States Customs Service (USCS) following their seizure for customs violations. 44 U. S. — (1979). The Court of Claims granted the Government's motion for summary judgment, finding that petitioner had failed to state a claim upon which the court could grant relief. 579 F. 2d 617 (1978). We vacate the Court of Claims' judgment and remand the case for further proceedings.

Petitioner imported camera supplies and other items which USCS seized upon their arrival in port and declared forfeited for customs violations. On petitioner's appropriate procedure for relief, USCS agreed to return the forfeited materials upon petitioner's payment of a \$40,000 penalty. When the shipment was returned to petitioner, however, merchandise valued in <sup>in</sup> \$165,000 was missing. Petitioner brought suit under the Tucker Act, 28 U. S. C. § 1491, for the value of the missing merchandise,<sup>1</sup> alleging breach of an implied contract of bailment.<sup>2</sup>

<sup>1</sup> Petitioner also sought damages, no longer in issue, for loss of "face and good will."

<sup>2</sup> As a second cause of action, petitioner alleged a capricious and arbit-

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

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES: 1, 5

From: Mr. Justice White

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8 JAN 1980

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

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 78-1175

Hatzlachh Supply Co., Inc.,  
 Petitioner,  
 v.  
 United States. | On Writ of Certiorari to the  
 | United States Court of Claims.

[January —, 1980]

**PER CURIAM.**

We granted certiorari in this case to consider whether the United States may be held liable for breach of an implied contract of bailment when goods are lost while held by the United States Customs Service (USCS) following their seizure for customs violations. 44 U. S. — (1979). The Court of Claims granted the Government's motion for summary judgment, finding that petitioner had failed to state a claim upon which the court could grant relief. 579 F. 2d 617 (1978). We vacate the Court of Claims' judgment and remand the case for further proceedings.

Petitioner imported camera supplies and other items which USCS seized upon their arrival in port and declared forfeited for customs violations. On petitioner's appropriate procedure for relief, USCS agreed to return the forfeited materials upon petitioner's payment of a \$40,000 penalty. When the shipment was returned to petitioner, however, merchandise valued in excess of \$165,000 was missing. Petitioner brought suit under the Tucker Act, 28 U. S. C. § 1491, for the value of the missing merchandise,<sup>1</sup> alleging breach of an implied contract of bailment.<sup>2</sup>

<sup>1</sup> Petitioner also sought damages, no longer in issue, for loss of "face and good will."

<sup>2</sup> As a second cause of action, petitioner alleged a capricious and arbi-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 17, 1980

Re: No. 78-1175 - Hatzlachh Supply Co. v. U.S.

Dear Byron:

I agree with your Per Curiam.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun  
7 JAN 1980

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No. 78-1175 - Hatzlachh Supply Co. v. United States

MR. JUSTICE BLACKMUN, dissenting.

I do not disagree with the legal principles pronounced by the Court in its per curiam opinion to the effect that 28 U.S.C. § 2680(c) is not an obstacle to the awarding of judgment against the Government on an implied contract, ante, at 2; or that, in exempting from the Tort Claims Act those claims described in § 2680(c), Congress did not also intend to disturb other existing statutory remedies, ante, at 3; or that Stencel Aero Engineering Corp. v. United States, 431 U.S. 666 (1977), does not control this case, ante, at 4-5; or that the absence of governmental tort liability does not bar contractual remedies on implied-in-fact contracts, ante, at 5; or that there is no inconsistency between a contractual remedy against the

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

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 From: Mr. Justice Blackmun

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8 JAN 1980

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1175

Hatzlachh Supply Co., Inc.,  
 Petitioner,  
 v.  
 United States. } On Writ of Certiorari to the  
 } United States Court of Claims.

[January —, 1980]

MR. JUSTICE BLACKMUN, dissenting.

I do not disagree with the legal principles pronounced by the Court in its *per curiam* opinion to the effect that 28 U. S. C. § 2680(c) is not an obstacle to the awarding of judgment against the Government on an implied contract, *ante*, at 2; or that, in exempting from the Tort Claims Act those claims described in § 2680 (c), Congress did not also intend to disturb other existing statutory remedies, *ante*, at 3; or that *Stencel Aero Engineering Corp. v. United States*, 431 U. S. 666 (1977), does not control this case, *ante*, at 4-5; or that the absence of governmental tort liability does not bar contractual remedies on implied-in-fact contracts, *ante*, at 5; or that there is no inconsistency between a contractual remedy against the Government and a tort remedy against Customs officers, *ante*, 6. But I dissent from the Court's vacating the judgment of the Court of Claims and its remanding the case to that court for further proceedings.

I dissent because I am persuaded that an implied-in-fact contract is not to be found on the record in this case, and because I believe the remand is, or should be, a useless exercise leading to an inevitable result.

It is clear that jurisdiction of the Court of Claims extends to contracts implied-in-fact but not to those implied-in-law. See *United States v. Minnesota Mutual Investment Co.*, 271 U. S. 212, 217-218 (1926); *Merritt v. United States*, 267 U. S. 338, 341 (1925). Here, the Customs Service seized the goods

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 4, 1980

No. 78-1175 Hatzlachh Supply Co. v. U. S.

Dear Byron:

I agree with your Per Curiam.

Sincerely,



Mr. Justice White

Copies to the Conference

LFP/lab

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 7, 1980

Re: No. 78-1175 Hatzlachh Supply Co., Inc. v. United States

Dear Byron:

Please join me.

Sincerely,

*WR*

Mr. Justice White

Copy to the Conference.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 7, 1980

Re: 78-1175 - Hatzlachh Supply Co. v.  
United States

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference