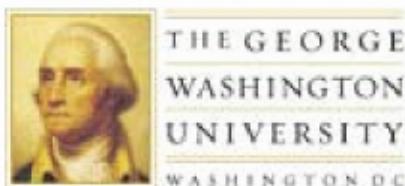


# The Burger Court Opinion Writing Database

*Boeing Co. v. Van Gemert*

444 U.S. 472 (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 29, 1980

RE: No. 78-1327 - Boeing Co. v. Van Gemert

Dear Lewis:

I join.

Regards,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

January 8, 1980

RE: No. 78-1327 The Boeing Co. v. William Van Gemert

Dear Lewis:

I agree.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 7, 1980

Re: No. 78-1327, Boeing Co. v. Van Gemert

Dear Lewis,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 8, 1980

Re: 78-1327 - The Boeing Company v.  
Van Gemert, et al.

---

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

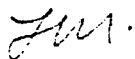
January 17, 1980

Re: No. 78-1327 - Boeing Co. v. Van Gemert

Dear Lewis:

Please join me.

Sincerely,



T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 9, 1980

Re: No. 78-1327 - Boeing Co. v. Van Gemert

Dear Lewis:

Please join me.

Sincerely,

*HAB.*

cc: Justice Powell

cc: The Conference

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

1-7-80

From Mr. Justice Powell

1st DRAFT Circulated. JAN 7 1980

**SUPREME COURT OF THE UNITED STATES**

No. 78-1327

The Boeing Company, Petitioner, *v.* William R. Van Gemert et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question presented in this class action is whether a proportionate share of the fees awarded to lawyers who represented the successful class may be assessed against the unclaimed portion of the fund created by a judgment.

I

In March 1966, The Boeing Company called for the redemption of certain convertible debentures. Boeing announced the call through newspaper notices and mailings to investors who had registered their debentures. The notices, given in accordance with the indenture agreement, recited that each \$100 amount of principal could be redeemed for \$103.25 or converted into two shares of the Company's common stock. They set March 29 as the deadline for the exercise of conversion rights. Two shares of the Company's common stock on that date were worth \$316.25. When the deadline expired, the holders of debentures with a face value of \$1,544,300 had not answered the call. These investors were left with the right to redeem their debentures for slightly more than face value.

Van Gemert and several other nonconverting debenture holders brought a class action against Boeing in the United States District Court for the Southern District of New York. They claimed that Boeing had violated federal securities stat-

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

1-31-80

From: Mr. Justice Powell

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

**2nd DRAFT**

Recirculated: JAN 31 1980

## SUPREME COURT OF THE UNITED STATES

No. 78-1327

The Boeing Company, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
William R. Van Gemert et al. } of Appeals for the Second  
Circuit.

[January —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question presented in this class action is whether a proportionate share of the fees awarded to lawyers who represented the successful class may be assessed against the unclaimed portion of the fund created by a judgment.

### I

In March 1966, The Boeing Company called for the redemption of certain convertible debentures. Boeing announced the call through newspaper notices and mailings to investors who had registered their debentures. The notices, given in accordance with the indenture agreement, recited that each \$100 amount of principal could be redeemed for \$103.25 or converted into two shares of the Company's common stock. They set March 29 as the deadline for the exercise of conversion rights. Two shares of the Company's common stock on that date were worth \$316.25. When the deadline expired, the holders of debentures with a face value of \$1,544,300 had not answered the call. These investors were left with the right to redeem their debentures for slightly more than face value.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 8, 1980

Re: No. 78-1327 - The Boeing Co. v. Van Gemert

Dear Lewis:

In due course I will circulate a dissent, based on  
appealability of the District Court's order.

Sincerely,

*WR*

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Rehnquist

1st DRAFT Circulated: 24 JAN 1980

Reproduced: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 78-1327

The Boeing Company, Petitioner, } On Writ of Certiorari to  
 v. } the United States Court  
 William R. Van Gemert et al. } of Appeals for the Second  
 Circuit.

[February —, 1980]

MR. JUSTICE REHNQUIST, dissenting.

In disposing of this case on the merits, the Court gives short shrift to the question of appealability, a threshold issue by no means free from doubt even under the most generous view of our decided cases. I have concluded from these cases, viewed in light of the longstanding policy of the federal judicial system against piecemeal appeals, that the judgment now before us lacks the finality required by 28 U. S. C. § 1291, and I would therefore remand this case to the Court of Appeals with instructions to dismiss Boeing's appeal. Exhibit "A" of the shortsightedness of the Court's sloughing off the issue of appealability as it does is the fact that the parties are obliged to refer to the present case not merely as "Van Gemert," but as "Van Gemert III." This case, which began in March 1966, has been appealed to the Court of Appeals for the Second Circuit three times, and now, <sup>14 years later</sup> this Court affirms the third decision of the Court of Appeals. <sup>after</sup> <sup>of 14</sup>

There is no doubt as to the appealability of the first of the three decisions of the District Court, since it dismissed respondent's complaint with prejudice. The second appeal was also by respondents from a determination by the District Court that respondents were not entitled to any prejudgment interest; this decision was also reversed by the Court of Appeals. Following this second remand, the District Court entered a "Judgment and Order" stating that Boeing was

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

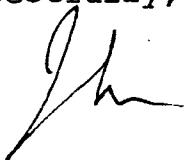
January 8, 1980

Re: 78-1327 - The Boeing Co. v. Van Gemert

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference