

# The Burger Court Opinion Writing Database

## *Nachman Corp. v. Pension Benefit Guaranty Corporation*

446 U.S. 359 (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

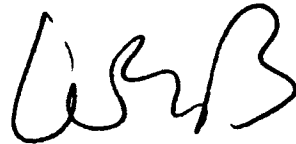
April 24, 1980

Re: 78-1557 - Nachman Corp. v. Pension Benefit  
Guaranty Corp.

Dear John:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WB', written in a cursive, stylized script.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 9, 1980

RE: No. 78-1557 Nachman Corporation v. Pension Benefit

Dear John:

I agree.

Sincerely,

*Bill*

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 13, 1980

Memorandum to: Mr. Justice White  
Mr. Justice Powell  
Mr. Justice Rehnquist

Re: 78-1557 - Nachman Corp. v. Pens. Benefit  
Guaranty Corp.

My Conference notes indicate that we four were the tentative dissenters in this case. I shall be glad to undertake the task of producing a dissenting opinion.

P.S.  
1.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 9, 1980

Re: No. 78-1557, Nachman Corp. v.  
Pension Benefit

Dear John,

I shall in due course circulate a  
dissenting opinion.

Sincerely yours,

P.S.  
/

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: 17 APR 1980

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Pension Benefit Guaranty } of Appeals for the Sev-  
Corporation et al. } enth Circuit.

[April —, 1980]

MR. JUSTICE STEWART, dissenting.

Title IV of the Employee Retirement Security Income Act of 1974 (ERISA), 29 U. S. C. §§ 1301-1381, establishes a system of insurance to cover the termination of private pension plans. Under that Title, the Pension Benefit Guaranty Corporation (PBGC) must "guarantee the payment of all nonforfeitable benefits . . . under the terms of a [covered] plan which terminates."<sup>1</sup> In turn, the PBGC may sue the company that maintained the plan for such part of the "guaranteed" payment as exceeded on the date of termination the value of the plan's assets.<sup>2</sup>

<sup>1</sup> Title 29 U. S. C. § 1322 (a) more fully provides:

"[The PBGC] shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 1321 of this title applies to it."

Section 1322 (b) limits the amounts which the PBGC must so guarantee in respects not at issue here.

<sup>2</sup> 29 U. S. C. § 1362 (b) (1):

"(b) Any employer [who maintained a plan at the time it was terminated, see § 1362 (a) and the exceptions provided therein] shall be liable to the corporation, in an amount equal to . . . —

"(1) the excess of—

"(A) the current value of the plan's benefits guaranteed under the subchapter on the date of termination over

"(B) the current value of the plan's assets allocable to such benefits on the date of termination. . . ."

A company's liability under § 1362 (b) (1) may not, however, exceed "30 percent of the net worth of the employer determined as of a day, chosen

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8 OF PAGES: 1, 4-5

For The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Stevens  
Mr. Justice O'Connor  
Mr. Justice Scalia

From: Mr. Justice Stewart

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

Recirculated: 23 APR 1980

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Pension Benefit Guaranty } of Appeals for the Sev-  
Corporation et al. } enth Circuit.

[April —, 1980]

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

Title IV of the Employee Retirement Security Income Act of 1974 (ERISA), 29 U. S. C. §§ 1301-1381, establishes a system of insurance to cover the termination of private pension plans. Under that Title, the Pension Benefit Guaranty Corporation (PBGC) must "guarantee the payment of all nonforfeitable benefits . . . under the terms of a [covered] plan which terminates."<sup>1</sup> In turn, the PBGC may sue the company that maintained the plan for such part of the "guaranteed" payment as exceeded on the date of termination the value of the plan's assets.<sup>2</sup>

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"(B) the current value of the plan's assets allocable to such benefits on the date of termination. . . ."

A company's liability under § 1362 (b) (1) may not, however, exceed "30

— 1, 5, 6

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

From: Mr. Justice Stewart

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Pension Benefit Guaranty } of Appeals for the Sev-  
Corporation et al. } enth Circuit.

[April —, 1980]

MR. JUSTICE STEWART, with whom MR. JUSTICE WHITE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST join, dissenting.

Title IV of the Employee Retirement Security Income Act of 1974 (ERISA), 29 U. S. C. §§ 1301-1381, establishes a system of insurance to cover the termination of private pension plans. Under that Title, the Pension Benefit Guaranty Corporation (PBGC) must "guarantee the payment of all nonforfeitable benefits . . . under the terms of a [covered] plan which terminates."<sup>1</sup> In turn, the PBGC may sue the company that maintained the plan for such part of the "guaranteed" payment as exceeded on the date of termination the value of the plan's assets.<sup>2</sup>

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

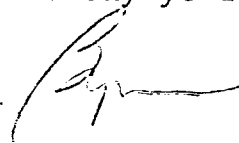
April 9, 1980

Re: No. 78-1557 - Nachman Corporation  
v. Pension Benefit Guaranty Corp.

Dear John,

I shall await the dissent.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 17, 1980

Re: No. 78-1557 - Nachman Corporation v.  
Pension Benefit Guaranty Corporation

Dear Potter,

Please add my name to your dissent  
in this case.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 10, 1980

Re: No. 78-1557 - Nachman Corporation v. Pension  
Benefit Guaranty Corporation et al.

Dear John:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 21, 1980

Re: No. 78-1557 - Nachman Corp. v. Pension Benefit  
Guaranty Corp.

Dear John:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 9, 1980

78-1557-Nachman-Corp.-v.-PBGC

Dear John:

I have been on the "fence" in this puzzling case,  
and think I will remain there until the dissent in  
circulated.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

April 29, 1980

78-1557 Nachman v. Pension Benefit Guaranty

Dear John:

After sitting on the fence for altogether too long, I have finally tumbled off on the side that I thought was probably right at the time of our Conference discussion.

The verbal duel (in your opinions) between you and Potter intrigued me, and it seems to me that each of you did extremely well. In any event you "hung me up" for quite a while.

I particularly appreciate your generous attempts to accommodate me even though you had your Court. As always, you are a tough but courteous and thoughtful adversary.

I enclose a copy of a simplistic type dissent that I am sending to the printer.

Sincerely,

Mr. Justice Stevens

lfp/ss

✓  
To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall 2  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

4-29-80

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## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner,	}	On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
v.		
Pension Genefit Guaranty Corporation et al.		

[May —, 1980]

MR. JUSTICE POWELL, dissenting.

I join MR. JUSTICE STEWART's dissenting opinion and add only a brief word. The difference between the majority and dissenting opinions in this case turns almost entirely upon the construction of language in petitioner's pension plan. This plan is a bargain negotiated in good faith by the petitioner and the union representing employees covered by the plan. Everyone concedes that the plan is a valid contract enforceable according to its terms, except to the extent that ERISA provides otherwise. The petitioner lawfully terminated the plan on December 31, 1975.

It is perfectly clear, at least to me, that the plain language of the plan conditioned the employees' benefits in the event of termination upon the adequacy of the assets then remaining in the fund. If ERISA had not been enacted, the respondent acknowledges, the employees' benefits would have been limited by this condition. The respondent contends, however, that ERISA—and the respondent's own regulatory definition of "nonforfeitable"—require a construction of the plan that neither the petitioner nor its employees intended. I assume for present purposes that Congress could mandate this result. But in the absence of a clear expression of congressional intent, I would not conclude that Congress meant to alter contractual arrangements between private parties. For the reasons stated in the dissenting opinion, I find no such

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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

5-8-80

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2nd DRAFT

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# SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner, On Writ of Certiorari to  
 v. the United States Court  
 Pension Benefit Guaranty of Appeals for the Sev-  
 Corporation et al. enth Circuit.

[May —, 1980]

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST


May 6, 1980

Re: No. 78-1557 - Nachman Corp. v. Pension Benefit  
Guaranty Corp.

Dear Potter:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

175  
100  
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

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner,	}	On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
v.		
Pension Benefit Guaranty Corporation et al.		

[April —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

On September 2, 1974, following almost a decade of studying the Nation's private pension plans, Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, 29 U. S. C. § 1001 *et seq.* As a predicate for this comprehensive and reticulated statute,<sup>1</sup> Congress made detailed findings which recited, in part, "that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; . . . [and] that owing to the termination of plans before requisite funds

<sup>1</sup> Title I of ERISA §§ 2-514, 29 U. S. C. §§ 1001-1144, requires administrators of all covered pension plans to file periodic reports with the Secretary of Labor, mandates minimum participation, vesting and funding schedules, establishes standards of fiduciary conduct for plan administrators, and provides for civil and criminal enforcement of the Act. Title II, ERISA § 1001-2008, amended various provisions of the Internal Revenue Code of 1954 pertaining to qualification of pension plans for special tax treatment, in order, among other things, to conform to the standards set forth in Title I. Title III, ERISA §§ 3001-3043, 29 U. S. C. §§ 1201-1242, contains provisions designed to coordinate enforcement efforts of different federal departments, and provides for further study of the field. And, most relevant in this case, Title IV, ERISA §§ 3001-4082, 29 U. S. C. §§ 1301-1381, created the Pension Benefit Guaranty Corporation (PBGC) and a termination insurance program to protect employees against the loss of "nonforfeitable" benefits upon termination of pension plans that lack sufficient funds to pay such benefits in full.

✓  
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

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Revised: APR 17 1980

4, 5, 8, 11, 12, 14, 16

7ms remain here

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner,	} On Writ of Certiorari to	
v.		the United States Court
Pension Benefit Guaranty Corporation et al.		of Appeals for the Seventh Circuit.

[April —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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4, 9, 12, 13, 16

Mr. 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: \_\_\_\_\_

3rd DRAFT

Recirculated: MAY 1 '80

## SUPREME COURT OF THE UNITED STATES

No. 78-1557

Nachman Corporation, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
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