

# The Burger Court Opinion Writing Database

## *Consolidated Freightways Corp. of Delaware v. Kassel*

455 U.S. 329 (1982)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

November 27, 1981

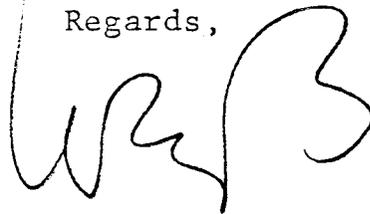
Re: No. 79-1618 - Consolidated Freightways Corp. of Del.  
v. Kassel

MEMORANDUM TO THE CONFERENCE:

There are five votes to DIG. Byron would affirm.

We await other votes.

Regards,

A handwritten signature in black ink, appearing to be 'WRB' with a large flourish at the end.

Copy to Al Stevas

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

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

Recirculated: FEB 18 1982

2nd PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-1618

CONSOLIDATED FREIGHTWAYS CORPORATION OF  
DELAWARE *v.* RAYMOND KASSEL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[February —, 1982]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

JUSTICE O'CONNOR took no part in the consideration or decision of this case.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1982

RE: No. 79-1618 Consolidated Freightways v. Kassel

Dear Chief:

I agree with your Per Curiam.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 24, 1981

79-1618 - CONSOLIDATED FREIGHTWAYS  
CORPORATION OF DELAWARE v.  
RAYMOND KASSELL, ET AL.

Dear Chief,

My vote remains as it was: to  
affirm on the single issue presented.

Sincerely yours,



The Chief Justice

cc: To Conference

dag

To: The Chief Justice  
Justice Brennan  
~~Justice Marshall~~  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice White

Circulated: 2/8/82

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No. 79-1618 - Consolidated Freightways Corp. v. Kassel

Justice White dissenting:

We granted certiorari in this case to decide one very narrow question: "May a court, without articulating its rationale, summarily deny an application for attorneys' fees under 42 U.S.C. §1988?" Petitioner concedes that "not ... all cases require opinions," Brief for Petitioner 6, but argues that with respect to an application for fees under §1988 "[t]he combination of discretion and a standard for the exercise of that discretion necessitates a statement of reasons to determine whether the decision is proper." Id., at 12. In my view, such an application is not sufficiently distinguishable from numerous other motions and applications that a court may concedely decide without opinion. Whether this is a good or bad method of exercising

discretion in a particular case, or even in general, is not at issue in this case. Because I do not believe that there is any per se rule that a court may never summarily deny an application for fees, I would affirm the decision below.

Accordingly, I dissent from the majority's disposition of this case.

For: The Chief Justice  
Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice White

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

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1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

CONSOLIDATED FREIGHTWAYS CORPORATION OF  
DELAWARE *v.* RAYMOND KASSEL ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 79-1618. Decided February —, 1982

JUSTICE WHITE dissenting:

We granted certiorari in this case to decide one very narrow question: "May a court, without articulating its rationale, summarily deny an application for attorneys' fees under 42 U. S. C. § 1988?" Petitioner concedes that "not . . . all cases require opinions," Brief for Petitioner 6, but argues that with respect to an application for fees under § 1988 "[t]he combination of discretion and a standard for the exercise of that discretion necessitates a statement of reasons to determine whether the decision is proper." *Id.*, at 12. In my view, such an application is not sufficiently distinguishable from numerous other motions and applications that a court may concededly decide without opinion. Whether this is a good or bad method of exercising discretion in a particular case, or even in general, is not at issue in this case. Because I do not believe that there is any *per se* rule that a court may never summarily deny an application for fees, I would affirm the decision below.

Accordingly, I dissent from the majority's disposition of this case.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 23, 1981

Re: No. 79-1618 - Consolidated Freightways Corp.  
of Delaware v. Kassel, et al.

Dear Chief:

I agree with your Per Curiam.

Sincerely,

*J.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 23, 1981

Re: No. 79-1618 - Consolidated Freightways Corp.  
of Delaware v. Kassel

Dear Chief:

I join the proposed per curiam. My notes, however, indicate that Sandra was out of this case. Of course, she will advise you accordingly.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 22, 1982

79-1618 Consolidated Freightways v. Kassel

Dear Chief:

I do not have a copy of your Per Curiam in my file, but I do have your letter of November 27 stating that there were five votes to DIG and that you were awaiting other votes.

As DIG was my alternative vote, I am now willing to join in this disposition.

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

November 24, 1981

Re: No. 79-1618 Consolidated Freightways Corp. v.  
Kassel

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Dear Chief:

I agree with your Per Curiam.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 23, 1981

Re: 79-1618 - Consolidated Freightways  
Corp. of Delaware v. Raymond Kassell

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 7, 1981

No. 79-1618 Consolidated Freightways Corp.  
of Delaware v. Kassel

Dear Chief:

Please mark me out of the referenced case  
which is scheduled to be argued on November 9, 1981.

Sincerely,

*Sandra*

The Chief Justice

Copies to the Conference  
cc: Alexander L. Stevas

*Brennan 81*

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 23, 1981

No. 79-1618 Consolidated Freightways Corp. of  
Delaware v. Raymond Kassell, et al.

Dear Chief,

Please show in the Per Curiam that I took  
no part in the consideration or decision of this  
case.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 2, 1981

No. 79-1618 Consolidated Freightways v. Kassel

Dear Chief:

I did not participate in this case.

Sincerely,



The Chief Justice

Copies to the Conference