

# The Burger Court Opinion Writing Database

*Foremost Insurance Co. v. Richardson*

457 U.S. 668 (1982)

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 17, 1982

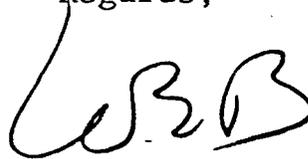
Re: No. 80-2134 - Foremost Insurance Co. v.  
Richardson

Dear Lewis:

At conference I voted to affirm if it were done "narrowly." Thurgood has tried to do it "narrowly" but I now conclude the disposition just can't be so quantified.

I therefore join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'WBP', written in a cursive style.

Justice Powell

Copies to the Conference

1  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 30, 1982

RE: No. 80-2134 Foremost Insurance Co. v. Richardson

Dear Thurgood:

I agree.

Sincerely,



Justice Marshall

cc: The Conference

85 96.30 61.13

W

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 30, 1982

Re: 80-2134 - Foremost Insurance Co. v.  
Richardson

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

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

From: **Justice Marshall**

Circulated: APR 29 1982

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2134

FOREMOST INSURANCE COMPANY ET AL., PETITIONERS, *v.* PANSY F. RICHARDSON ET AL

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

[May —, 1982]

JUSTICE MARSHALL<sup>1</sup> delivered the opinion of the Court.

The issue presented in this case is whether the collision of two pleasure boats on navigable waters falls within the admiralty jurisdiction of the federal courts. See 28 U. S. C. § 1333. We granted certiorari to resolve the confusion in the lower courts respecting the impact of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U. S. 249 (1972) (*Executive Jet*), on traditional rules for determining federal admiralty jurisdiction. The United States Court of Appeals for the Fifth Circuit held that an accident between two vessels in navigable waters bears a sufficient relationship to traditional maritime activity to fall within federal admiralty jurisdiction. We affirm.

### I

Two pleasure boats collided on the Amite River in Louisiana, resulting in the death of Clyde Richardson. The wife and children of the decedent brought this action in the United States District Court for the Middle District of Louisiana, alleging *inter alia* that petitioner Shirley Eliser had negligently operated the boat that collided with the vessel occupied by the decedent.<sup>1</sup> Respondents also named petitioner

<sup>1</sup>The wife and children of the decedent also named respondent June Al-

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

STYLISTIC CHANGES THROUGHOUT.

From: **Justice Marshall**

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Recirculated: **MAY 4 1982**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2134

FOREMOST INSURANCE COMPANY ET AL., PETITIONERS, *v.* PANSY F. RICHARDSON ET AL

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

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<sup>1</sup>The wife and children of the decedent also named respondent June Allen as a defendant. They alleged that Allen was operating the vessel at

STYLISTIC CHANGES THROUGHOUT.

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

From: **Justice Marshall**

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

Recirculated: JUN 21 1982

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2134

FOREMOST INSURANCE COMPANY ET AL., PETITIONERS, *v.* PANSY F. RICHARDSON ET AL

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

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 23, 1982

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 80-2134, Foremost Insurance Co. v. Richardson

No. 81-585, Hondo Boats, Inc. v. McCraine

In this case plaintiff McCraine brought suit in state court to recover damages for personal injuries sustained while a passenger in a pleasure boat. Plaintiff alleged that she was seated in the boat when it accelerated and struck the wake of another vessel causing plaintiff to slide against the exposed engine of the boat. Plaintiff alleged that the exposed engine was unreasonably dangerous, and sought recovery against the manufacturer, the retailer, and the owner of the boat. The claim was alleged to be within the admiralty and maritime jurisdiction of the United States, and jurisdiction was sought pursuant to the "saving to suitors" clause of 28 U.S.C. §1333. The trial court found that the suit was not within the admiralty and maritime jurisdiction. It therefore concluded that the plaintiff was not entitled to the benefit of the admiralty doctrine of laches, whereby suit may be brought within any reasonable period that does not prejudice the defendant's ability to defend. The suit was therefore dismissed as untimely under Louisiana's one year statute of limitation.

The Louisiana Supreme Court reversed. After surveying the post Executive Jet decisions of the courts of appeals, the Louisiana court concluded that the question whether a vessel was properly designed and manufactured for safe use on navigable waters bears a sufficient relationship with traditional maritime activity to support admiralty jurisdiction.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 3, 1982

Re: No. 80-2134 - Foremost Insurance Co. v. Richardson

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

88

April 30, 1982

80-2134 Foremost Insurance v. Richardson

Dear Thurgood:

In due course, I will circulate a dissent.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Powell ✓  
Justice Rehnquist  
Justice Stevens  
Justice Souter

06/15/82

JUN 15 1982

80-2134: Foremost Ins. Co. v. Richardson

JUSTICE POWELL, dissenting.

No trend of decisions by this Court has been stronger -- for two decades or more -- than that toward expanding federal jurisdiction at the expense of state interests and state court jurisdiction. Of course, Congress also has moved steadily and expansively to exercise its Commerce Clause and preemptive power to displace state and local authority. Often decisions of this Court and congressional enactments have been necessary in the national interest. The effect, nevertheless, has been the erosion of federalism -- a basic principle of the Constitution and our federal union.

Today's Court decision, an example of this

2700

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Powell**

Circulated: JUN 16 1982

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

PRINTED  
 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2134

FOREMOST INSURANCE COMPANY, ET AL., PETITIONERS *v.* PANSY F. RICHARDSON, ET AL.

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

[June —, 1982]

JUSTICE POWELL, dissenting.

No trend of decisions by this Court has been stronger—for two decades or more—than that toward expanding federal jurisdiction at the expense of state interests and state court jurisdiction. Of course, Congress also has moved steadily and expansively to exercise its Commerce Clause and preemptive power to displace state and local authority. Often decisions of this Court and congressional enactments have been necessary in the national interest. The effect, nevertheless, has been the erosion of federalism—a basic principle of the Constitution and our federal union.

Today's Court decision, an example of this trend, is not necessary to further any federal interest. On its face, it is inexplicable. The issue is whether the federal law of admiralty, rather than traditional state tort law, should apply to an accident on the Amite river in Louisiana between two small boats. "One was an eighteen foot pleasure boat powered by a 185 h.p. Johnson outboard motor that was being used for water skiing purposes at the time of the accident. The other was a 16-foot 'bass boat' powered by an outboard motor that was used exclusively for pleasure fishing." *Richardson v. Foremost Ins. Co.*, 470 F.Supp. 699, 700 (MD La 1979). It also is undisputed that both boats were used "exclusively for pleasure;" that neither had ever been used in

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Powell**

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## SUPREME COURT OF THE UNITED STATES

No. 80-2134

FOREMOST INSURANCE COMPANY, ET AL., PETITIONERS *v.* PANSY F. RICHARDSON, ET AL.

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

[June —, 1982]

JUSTICE POWELL, with whom THE CHIEF JUSTICE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join, dissenting.

No trend of decisions by this Court has been stronger—for two decades or more—than that toward expanding federal jurisdiction at the expense of state interests and state court jurisdiction. Of course, Congress also has moved steadily and expansively to exercise its Commerce Clause and preemptive power to displace state and local authority. Often decisions of this Court and congressional enactments have been necessary in the national interest. The effect, nevertheless, has been the erosion of federalism—a basic principle of the Constitution and our federal union.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 17, 1982

Re: No. 80-2134 Foremost Insurance Co. v. Richardson

Dear Lewis:

Please join me in your dissent.

Sincerely,

WHR/JS

Justice Powell

cc: The Conference

13

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 29, 1982

Re: 80-2134 - Foremost Insurance Co.  
v. Richardson

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference

85 166 50 60 52

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 29, 1982

Re: 80-2134 Foremost Insurance Co. v. Richardson

Dear Thurgood,

I will await the dissent in this case.

Sincerely,



Justice Marshall

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 16, 1982

No. 80-2134 Foremost Ins. Co. v. Richardson

Dear Lewis,

Please join me in your dissent.

Sincerely,



Justice Powell

Copies to the Conference