

# The Burger Court Opinion Writing Database

## *Piper Aircraft Co. v. Reyno*

454 U.S. 235 (1981)

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

PERSONAL

November 9, 1981

Re: No. 80-848, Piper Aircraft v. Reyno  
No. 80-883, Hartzell Propeller v. Reyno

Dear Thurgood:

I am in general agreement with your November 5 draft opinion. I suggest, however, you consider two changes, each of which is quite small:

(1) The sentence on pp. 19-20, ("Courts arguably owe local plaintiffs a special duty because residents and citizens support the courts by paying taxes"), may be misunderstood to imply that courts do not impartially decide cases involving "outsiders."

(2) On p. 15 you characterize the doctrine of forum non conveniens as "a tool for docket protection; it should be applied to combat rather than foster such congestion." This too, might be twisted by someone to mean that a crowded docket is a special factor in whether and how to apply forum non conveniens doctrine, when in reality it is but one and not dispositive. Can't that be "muted" a bit?

Regards,

*WRB*

Justice Marshall

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 19, 1981

Re: No. 80-848 - Piper Aircraft Co. v. Reyno  
80-883 - Hartzell Propeller, Inc. v. Reyno

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 13, 1981

RE: Nos. 80-848 and 883 Piper Aircraft & Hartzell  
Propeller v. Reyno

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 23, 1981

Re: Nos. 80-848 & 80-883 -- Piper Aircraft Cases

Dear Thurgood,

My vote on these cases at Conference, like John's, was to answer the single question in the limited grant and remand for further proceedings. I still prefer that approach and hence can join only your Parts I and II. I am not sure whether this means that I should dissent from the judgment, dissent in part, or vacate and remand.

Sincerely yours,



Justice Marshall

Copies to the Conference



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

From: Justice White

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

Recirculated: 11/25/81

Re: 80-848 - Piper Aircraft Co. v. Reyno  
80-883 - Hartzell Propeller, Inc. v. Reyno

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JUSTICE WHITE, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion. However, like JUSTICE BRENNAN and JUSTICE STEVENS, I would not proceed to deal with the issues addressed in Part III. To that extent, I am in dissent.

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

From: Justice White

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

Recirculated: 11/27/81

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1st PRINTED DRAFT )

~~1st DRAFT~~

## SUPREME COURT OF THE UNITED STATES

Nos. 80-848 AND 80-883

PIPER AIRCRAFT COMPANY, PETITIONER  
 80-848 *v.*  
 GAYNELL REYNO, PERSONAL REPRESENTATIVE  
 OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

HARTZELL PROPELLER, INC., PETITIONER  
 80-883 *v.*  
 GAYNELL REYNO, PERSONAL REPRESENTATIVE  
 OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[November —, 1981]

JUSTICE WHITE, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion. However, like JUSTICE BRENNAN and JUSTICE STEVENS, I would not proceed to deal with the issues addressed in Part III. To that extent, I am in dissent.

P. 9

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5 NOV 1981

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 80-848 AND 80-883

PIPER AIRCRAFT COMPANY, PETITIONER  
 80-848 v.  
 GAYNELL REYNO, PERSONAL REPRESENTATIVE  
 OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

HARTZELL PROPELLER, INC., PETITIONER  
 80-883 v.  
 GAYNELL REYNO, PERSONAL REPRESENTATIVE  
 OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[November —, 1981]

JUSTICE MARSHALL delivered the opinion of the court.

This case arises out of an air crash that took place in Scotland. Respondent, acting as representative of the estates of several Scottish citizens killed in the accident, brought wrongful death actions against petitioners in the United States District Court for the Middle District of Pennsylvania. Petitioners moved to dismiss on the ground of *forum non conveniens*. After noting that an alternative forum existed in Scotland, the District Court granted their motions. *Reyno v. Piper Aircraft Co.*, 479 F. Supp. 727 (MD Pa. 1979). The United States Court of Appeals for the Third Circuit reversed. *Reyno v. Piper Aircraft Co.*, 630 F. 2d 149 (CA3 1980). The Court of Appeals based its decision, at least in part, on the ground that dismissal is automatically barred where the law of the alternative forum is less favor

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 12, 1981

Re: No. 80-848 - Piper Aircraft v. Reyno  
No. 80-883 - Hartzell Propeller v. Reyno

Dear Bill:

I understand the concern you expressed in your memorandum of November 6 regarding the language at the end of Part II; there is some danger that parties opposing motions to dismiss on grounds of forum non conveniens will attempt to introduce choice of law problems in every case by arguing that the remedy offered in the alternative forum is inadequate. I hope that the slight change in wording I have offered--from "approaches no remedy at all" to "is no remedy at all"--will signal to the lower courts and to litigants that the remedy must be totally inadequate before dismissal would be barred for this reason. I recognize that even with the change in wording, the paragraph suggests that plaintiffs may ask the courts to conduct at least a limited exercise in comparative law. My answer to this is that such exercises are necessary. If it really is true that the remedy in the alternative forum is completely inadequate, dismissal should be barred. Requiring the court to make this determination should not be unduly burdensome; it should be able to decide fairly quickly whether the alternative remedy is wholly inadequate.

You suggest that the opinion might be interpreted to mean that dismissal would be barred where the statute of limitations had run in the alternative forum. In my view, motions to dismiss ordinarily should not be granted in this circumstance. Where the forum chosen by the plaintiff was plainly inconvenient, and where it appears

- 2 -

that he purposely delayed filing suit until the limitations period had run in the alternative forum, a decision to dismiss might be warranted. In the typical case, however, dismissal would not be appropriate. In fact, the district courts routinely refuse to grant motions to dismiss on grounds of forum non conveniens unless the moving party agrees to waive any jurisdictional defenses (including statute of limitations defenses) he or she might have in the alternative forum. Such a waiver was made here.

Sincerely,

*Jm.*

T.M.

Justice Rehnquist

CC: The Conference

PP. 10, 15, 18, 19, 20, 23, 24

STYLISTIC CHANGES THROUGHOUT.

0\$0848E, 11/11/81—DICK-rev.

12 Nov. 1981

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 80-848 AND 80-883

PIPER AIRCRAFT COMPANY, PETITIONER  
80-848  
v.  
GAYNELL REYNO, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

HARTZELL PROPELLER, INC., PETITIONER  
80-883  
v.  
GAYNELL REYNO, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[November —, 1981]

JUSTICE MARSHALL delivered the opinion of the court.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 23, 1981

Re: No. 80-848 - Piper Aircraft Co. v. Reyno  
No. 80-883 - Hartzell Propeller, Inc. v. Reyno

Dear Bill:

How about the following as a replacement for footnote 21?

At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum. Ordinarily, this requirement will be satisfied when the defendant is "amenable to process" in the other jurisdiction. Gilbert, supra, at 506-507. In rare circumstances, however, where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied. Thus, for example, dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute. Cf. Phoenix Canada Oil Co. Ltd. v. Texaco, Inc., 78 F.R.D. 445 (DC Del. 1978) (court refuses to dismiss, where alternative forum is Ecuador, it is unclear whether Ecuadorian tribunal will hear the case, and there is no generally codified Ecuadorian legal remedy for the unjust enrichment and tort claims asserted).

Sincerely,

*JM*

T.M.

Justice Rehnquist

pp. 18, 24

0\$0848E, 11/11/81—DICK-rev.

27 NOV 1981

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 80-848 AND 80-883

PIPER AIRCRAFT COMPANY, PETITIONER  
80-848  
v.  
GAYNELL REYNO, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

HARTZELL PROPELLER, INC., PETITIONER  
80-883  
v.  
GAYNELL REYNO, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[November —, 1981]

JUSTICE MARSHALL delivered the opinion of the court.

This case arises out of an air crash that took place in Scotland. Respondent, acting as representative of the estates of several Scottish citizens killed in the accident, brought wrongful death actions against petitioners in the United States District Court for the Middle District of Pennsylvania. Petitioners moved to dismiss on the ground of *forum non conveniens*. After noting that an alternative forum existed in Scotland, the District Court granted their motions. *Reyno v. Piper Aircraft Co.*, 479 F. Supp. 727 (MD Pa. 1979). The United States Court of Appeals for the Third Circuit reversed. *Reyno v. Piper Aircraft Co.*, 630 F. 2d 149 (CA3 1980). The Court of Appeals based its decision, at least in part, on the ground that dismissal is automatically barred where the law of the alternative forum is less favor-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 3, 1981

Re: Case being held for No. 80-848, Piper Aircraft  
Co. v. Reyno, and No. 80-883, Hartzell Propeller  
Co. v. Reyno

MEMORANDUM TO THE CONFERENCE

No. 80-1592, Pain v. United Technologies Corp. -- This case is very similar to Piper Aircraft. The action arises out of a helicopter accident that occurred in Norway. The helicopter was manufactured by respondent, but was owned and operated by a Norwegian company. Most of the victims of the crash were foreign citizens. After the crash, the Norwegian Civil Aviation Administration conducted an official investigation of the action. The records of that investigation, as well as the wreckage of the helicopter and the witnesses to the accident, are all currently located in Norway. Petitioners, who are the survivors of several persons killed in the crash, filed a wrongful death action against respondent in United States District Court for the District of Columbia. With a single exception all of the petitioners reside abroad. The sole American petitioner, the mother of an American killed in the crash, resides in New Hampshire.

Respondents moved to dismiss on grounds of forum non conveniens. The District Court granted the motion after respondent agreed that it would not contest liability, and would waive any foreign statute of limitations. In an excellent opinion, the D.C. Circuit affirmed. The Court of Appeals found that the District Court had not abused its discretion in concluding that the private interest factors relating to the convenience of the parties, and the public interest factors relating to the convenience of the court

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 12, 1981

Re: No. 80-848 - Piper Aircraft Co. v. Reyno  
No. 80-883 - Hartzell Propeller, Inc. v. Reyno

Dear Thurgood:

Please join me. I feel there is some force in what Bill Rehnquist says in his letter of November 6 concerning the last paragraph of part II, but I am confident that the two of you will be able to work the matter out. It seems to me that the statute of limitations/remedy feature can be controlled by the court receiving the motion; in fact, the Middle District of Pennsylvania resolved it in this very case by requiring waiver.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 15, 1981

80-848 Piper Aircraft v. Reyno  
80-883 Hartzell Propeller v. Reyno

Dear Chief:

It came to my attention today that I may have a recusal problem in the above cases.

Some weeks after we granted these cases, we held for them a cert petition in 80-1592 Pain, et al v. United Technologies Corp., a case in which CADC affirmed dismissal for forum non conveniens of a suit involving a helicopter crash in the North Sea (our Conference May 14, 1981). My former law firm is counsel for the respondent in the case we are now holding.

I enclose a memorandum, prepared by one of my clerks, that addresses the question whether our decision in Piper/Hartzell - however it may go - could affect Pain v. United Technologies Corp. I think it is reasonably clear that the cases are sufficiently different so that whether we affirm or reverse Piper/Hartzell, our judgment will have no effect on United Technologies Corp. The facts that liability has been conceded in the latter case, and that the witnesses on damages presumably live overseas, distinguish the cases. I suppose the possibility remains, however, that something written in Piper/Hartzell may be thought relevant to United Technologies Corp.

I would like the judgment of the Conference as to whether I should disqualify. I regret posing this question late in the afternoon before Conference, especially since I had put a reminder memorandum in my file last May when we agreed to hold United Technologies Corp. I simply overlooked my memo.

Sincerely,

*Lewis*

The Chief Justice  
lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 5, 1981

80-848 Piper Aircraft Company v. Reyno

Dear Thurgood:

Please show at the end of the next draft of your opinion that I took no part in the decision of this case.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 2, 1981

80-848 Piper Aircraft v. Reyno

Dear Thurgood:

I note, on page 24 of your opinion in the above case that you state I "took no part in the consideration of this case".

As stated in my letter to you of November 5, this should read:

"Justice Powell took no part in the decision of this case."

I would appreciate you making this change.

Sincerely,



Justice Marshall

lfp/ss

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 6, 1981

Re: No. 80-848 Piper Aircraft Co. v. Reyno  
No. 80-883 Hartzell Propeller, Inc. v. Reyno

Dear Thurgood:

On the whole, I agree with your analysis of the forum non conveniens issue in these cases. I am troubled, however, by the last paragraph of Section II. In my mind, the paragraph gives too much latitude for the domestic forum to evaluate the legal system of the alternate forum. As written, a district court here could examine the sufficiency of the causes of action permitted by the alternate forum. This paragraph thus undercuts the point that a district court should have to engage in "complex exercises in comparative law." We should not permit a plaintiff to defeat a forum non conveniens motion by arguing that the foreign forum's substantive law is "unsatisfactory" by American standards. Rather, the district court's analysis of the law to be applied by the foreign forum should be limited to determining whether that forum would permit litigation on the subject matter in dispute. In addition, by focusing on whether the remedies provided by the alternative forum is inadequate or unsatisfactory, the paragraph implies that a plaintiff could defeat a motion by demonstrating that the statute of limitations has run in the alternate forum. Because it would have no remedy at all in the alternate forum, the plaintiff could argue that the district court may not dismiss the action on forum non conveniens grounds.

I am not wedded to any particular language in this regard, but I do think the language of that paragraph undercuts much of the excellent analysis that precedes it.

Sincerely,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 19, 1981

Re: Nos. 848 & 80-883 Piper Aircraft Company v. Reyno

Dear Thurgood:

Your second draft is much more palatable to me than your first one, and if we could come to some agreement as to footnote 22 on page 18 I would cheerfully join. The third sentence of that footnote now reads:

"Where the remedy offered by the other forum is clearly unsatisfactory, however, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied."

I have no magic language to suggest to substitute for that sentence, but to me it is too vague and ambiguous as it presently stands: the term "clearly unsatisfactory" is subject to a multitude of definitions. If you could strengthen the language by providing some other definition of a forum which is not an adequate alternative, I will gladly join the second draft changed in this relatively minor fashion. I certainly agree that the Ecuadorian tribunal which you describe in the footnote would not be an "adequate alternative", for the reasons you state, but the term "clearly unsatisfactory" seems to me to be a way by which astute attorneys could get the camel's nose under the tent.

Sincerely,



Justice Marshall

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 24, 1981

Re: No. 80-848 Piper Aircraft Co. v. Reyno  
No. 80-883 Hartzell Propeller, Inc. v. Reyno

Dear Thurgood:

Subject to the minor revisions in footnote 21 which we have discussed being made, I now join your opinion.

Sincerely,



Justice Marshall

Copies to the Conference

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

80-848 - Piper Aircraft Co. v. Gaynell Reyno

80-883 - Hartzell Propeller, Inc. v. Gaynell Reyno

From: Justice Stevens

Circulated: Nov 12 '81

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

JUSTICE STEVENS, concurring in part and dissenting in part.

In No. 80-848, only one question is presented for review to this Court:

"Whether, in an action in federal district court brought by foreign plaintiffs against American defendants, the plaintiffs may defeat a motion to dismiss on the ground of forum non conveniens merely by showing that the substantive law that would be applied if the case were litigated in the district court is more favorable to them than the law that would be applied by the courts of their own nation." Pet. for Cert. in No. 80-848, p. i.

In No. 80-883, the Court limited its grant of certiorari, see \_\_\_\_\_ U.S. \_\_\_\_\_, to the same question:

"Must a motion to dismiss on grounds of forum non conveniens be denied whenever the law of the alternate forum is less favorable to recovery than that which would be applied by the district court?" Pet. for Cert. in No. 80-883, p. i.

I agree that this question should be answered in the negative. Having decided that question, I would simply remand the case to the Court of Appeals for further consideration of the question whether the District Court correctly decided that Pennsylvania was not a convenient forum in which to litigate a claim against a Pennsylvania company that a plane manufactured in Pennsylvania was defective.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall

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Recirculated:                     

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 80-848 AND 80-883

PIPER AIRCRAFT COMPANY, PETITIONER  
80-848 *v.*  
GAYNELL REYNO, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

HARTZELL PROPELLER, INC., PETITIONER  
80-883 *v.*  
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OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[November —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
concurring in part and dissenting in part.

In No. 80-848, only one question is presented for review to  
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“Whether, in an action in federal district court brought  
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P. 1

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

0\$0848I, rev. 11/23/81 Drb

From: Justice Stevens

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

Recirculated: NOV 24 81

2nd PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 80-848 AND 80-883

PIPER AIRCRAFT COMPANY, PETITIONER  
 80-848 *v.*  
 GAYNELL REYNO, PERSONAL REPRESENTATIVE  
 OF THE ESTATE OF WILLIAM FEHILLY, ET AL.

HARTZELL PROPELLER, INC., PETITIONER  
 80-883 *v.*  
 GAYNELL REYNO, PERSONAL REPRESENTATIVE  
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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[November —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
 dissenting.

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“Whether, in an action in federal district court brought  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 5, 1981

No. 80-848 Piper Aircraft Co. v. Reyno  
No. 80-883 Hartzell Propeller v. Reyno

Dear Thurgood,

Please show at the end of the next draft of  
your opinion that I took no part in the decision of this  
case.

Sincerely,



Justice Marshall

Copies to the Conference