

The Burger Court Opinion Writing Database

Lockheed Aircraft Corp. v. United States
460 U.S. 190 (1983)

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

December 30, 1982

Re: No. 81-1181 - Lockheed Aircraft Corporation v.
United States

Dear Lewis:

When an eight-page opinion comes around, I have
a terrible urge to join it forthwith!

However, I overcame the temptation and will
await the dissent.

Regards,

WRB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 6, 1983

Re: No. 81-1181, Lockheed Aircraft Corp. v. United States

Dear Lewis:

I remain of the view that Weyerhaeuser is distinguishable and therefore will await the dissent.

Regards,

A handwritten signature in black ink, appearing to be 'JP', written over the typed word 'Regards,'.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

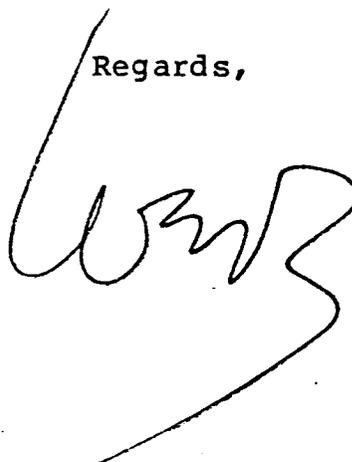
February 17, 1983

RE: 81-1181 - Lockheed Aircraft Corp. v. United States

Dear Bill:

I join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'WR', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 16, 1982

Mike

RE: No. 81-1181 Lockheed Aircraft v. United States

Dear Chief:

Lewis has agreed to try his hand at the opinion
for the Court in the above case.

Sincerely,

The Chief Justice

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1983

'82 DEC 35 P1:35

RE: No. 81-1181 Lockheed Aircraft Corporation v.
United States

Dear Lewis:

I agree.

Sincerely,

Bill

Justice Powell

Copies to the Conference

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

January 21, 1983

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: 81-1181 - Lockheed Aircraft Corp.
v. United States

Dear Lewis,

Please join me in your latest
circulation.

Sincerely,

Byrn

Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1983

Re: 81-1181-Lockheed Aircraft Corp. v. United States

Dear Lewis:

Please join me.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 3, 1983

Re: No. 81-1181 - Lockheed Aircraft Corp. v. United States

Dear Lewis:

While I am generally with you in this case, and shall probably join your opinion eventually, there are arguments on the other side, particularly as regards Cooper and Stencel, neither of which you cite. I am inclined to believe that those cases should be met head-on, and explained.

I therefore shall wait for the dissent and your response to it. If you do not respond to these cases, I may write separately.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 24, 1983

Re: No. 81-1181, Lockheed Aircraft Corp. v. United States

Dear Lewis:

Please join me in your recirculation of January 20.

Sincerely,



Justice Powell

cc: The Conference

DEC 29 1982

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

From: Justice Powell

Circulated: DEC 30 1982

Recirculated: _____

LFP
Done for me

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1181

**LOCKHEED AIRCRAFT CORPORATION, PETI-
TIONER v. UNITED STATES ET AL.**

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

[January —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

Under the Federal Employees' Compensation Act, a federal employee may not bring a tort suit against the Government on the basis of a work-related injury, but the employee may seek recovery from a third party. The issue here is whether such a third party may seek indemnity from the Government for its tort liability to the employee.

I

On April 4, 1975, a C-5A aircraft operated by the United States Air Force and manufactured by petitioner Lockheed Aircraft Corporation crashed near Saigon, South Vietnam.¹ Almost 150 people died in the crash, including Ann Nash Bottorff, a civilian employee of the United States Navy. The United States paid death benefits to Bottorff's survivors under the Federal Employees' Compensation Act ("FECA"), 5 U. S. C. § 8101 *et seq.*

Thereafter Bottorff's administrator filed suit against Lock-

¹The crash occurred during a mission to evacuate over 250 orphans from Vietnam shortly before the fall of Saigon. The incident is discussed in greater detail in *Schneider v. Lockheed Aircraft Corp.*, 212 U. S. App. D.C. 87, 90-91, 658 F. 2d 835, 838-839 (1981) (*per curiam*), *cert. denied*, — U. S. — (1982).

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JAN 29 1983
MAJ

stylistic changes: 1, 3, 4, 5, 6, 7, 8
substantive changes: 5, 7

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

From: Justice Powell

Circulated: Dec 30 1982

Recirculated: Jan 20 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1181

LOCKHEED AIRCRAFT CORPORATION, PETITIONER v. UNITED STATES ET AL.

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

[January —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

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I

On April 4, 1975, a C-5A aircraft operated by the United States Air Force and manufactured by petitioner Lockheed Aircraft Corporation crashed near Saigon, South Vietnam.¹ Almost 150 people died in the crash, including Ann Nash Bottorff, a civilian employee of the United States Navy. The United States paid death benefits to Bottorff's survivors under the Federal Employees' Compensation Act (FECA), 5 U. S. C. §8101 *et seq.*

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

From: Justice Powell

Circulated: _____

Recirculated ~~JAN~~ 25 1983

JAN 24 1983

changes on pp. 7, 8

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1181

LOCKHEED AIRCRAFT CORPORATION, PETITIONER *v.* UNITED STATES ET AL.

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

[January —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

Under the Federal Employees' Compensation Act, a federal employee may not bring a tort suit against the Government on the basis of a work-related injury, but may seek recovery from a third party. The issue here is whether such a third party may seek indemnity from the Government for its tort liability to the employee.

I

On April 4, 1975, a C-5A aircraft operated by the United States Air Force and manufactured by petitioner Lockheed Aircraft Corporation crashed near Saigon, South Vietnam.¹ Almost 150 people died in the crash, including Ann Nash Bottorff, a civilian employee of the United States Navy. The United States paid death benefits to Bottorff's survivors under the Federal Employees' Compensation Act (FECA), 5 U. S. C. § 8101 *et seq.*

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¹The crash occurred during a mission to evacuate over 250 orphans from Vietnam shortly before the fall of Saigon. The incident is discussed in greater detail in *Schneider v. Lockheed Aircraft Corp.*, 212 U. S. App. D.C. 87, 90-91, 658 F. 2d 835, 838-839 (1981) (*per curiam*), cert. denied, — U. S. — (1982).

Join??

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HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 28, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for No. 81-1181, Lockheed v. United States

No. 81-2355, United States v. Ionian Glow Marine, Inc.

In this case, a navy vessel collided with resp's vessel. In addition to other injuries and damages, two Navy officers and a crewman were injured. The Government would compensate these three, if at all, under the Veterans Benefits Act, 38 U.S.C. §321 et seq., rather than the Federal Employees' Compensation Act (the statute at issue in Lockheed). They were able to recover damages, however, from resp.

Resp sought apportionment of all damages under the established admiralty rule for divided damages in mutual fault collision cases. The parties agreed that resp was 65% liable and the Government was 35% liable. Resp included the amount it paid to the injured servicemen in its claim for damages. The DC, relying on Feres v. United States, 340 U.S. 135 (1950), and Stencel Aero Engineering Corp. v. United States, 431 U.S. 666 (1977), and distinguishing Weyerhaeuser S.S. Co. v. United States, 372 U.S. 597 (1962), rejected this claim. CA4, relying on Weyerhaeuser and The Chattahoochee, 173 U.S. 540 (1899), reversed.

Lockheed does not control the case. It was primarily concerned with the proper construction of FECA's exclusive liability provision, which is not at issue here. To the extent that Lockheed is relevant, it supports CA4's judgment. The factors discussed in Feres and Stencel are of little relevance, since the parties have stipulated as to liability.

CA4 correctly applied settled admiralty law in a manner consistent with our cases. I see no reason for further review. I will vote to deny.

shall

L.F.P.

LFP:vde

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9.3

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

From: **Justice Rehnquist**

Circulated: JAN 17 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1181

LOCKHEED AIRCRAFT CORPORATION, PETITIONER v. UNITED STATES ET AL.

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

[January —, 1983]

JUSTICE REHNQUIST, dissenting.

The Court's opinion, and especially its unquestioning application of *Weyerhauser Steamship Co. v. United States*, 372 U. S. 597 (1963), do not show why this case presents "the most evenly balanced controversy in all of workers' compensation law." *Ante*, at 3, n. 3. Because I believe the balance tips in the opposite direction, I respectfully dissent.

In *Weyerhauser*, the Court found that the plaintiff's right to recover outweighed the limitation of liability provision of the statute. This is not surprising, since the plaintiff's right to recover was based on the ancient¹ admiralty rule of divided damages. The divided damages rule is basic to admiralty and to the relationships of vessels at sea. Under this rule, *Weyerhauser* had a direct right of action against the United States for the injuries it sustained in the collision. Thus the only issue was whether one item of damage, the recovery of the federal employee against *Weyerhauser*, could be included in *Weyerhauser's* action against the government. The Court stated that it had long since "held that the full

¹"In *The North Star*, 106 U. S. 17 (1882), Mr. Justice Bradley traced the doctrine back to the Law of Oleron which date from the 12th century, and its roots no doubt go much deeper." *Cooper Stevedoring Co. v. Kopke, Inc.*, 417 U. S. 106, 110 (1974).

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STYLISTIC CHANGES THROUGHOUT

Pa 4-5

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JAN 24 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1181

LOCKHEED AIRCRAFT CORPORATION, PETITIONER v. UNITED STATES ET AL.

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

[January —, 1983]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1982

Re: 81-1181 - Lockheed Aircraft Corp. v.
United States

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

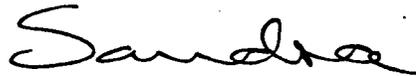
January 4, 1983

No. 81-1181 Lockheed Aircraft Corporation v.
United States

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

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