

The Burger Court Opinion Writing Database

United States v. S.A. Empresa De Viacao Aerea Rio Grandense

467 U.S. 797 (1984)

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



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

From: **The Chief Justice**

Circulated: MAY 22 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1349 AND 82-1350

82-1349 ✓ UNITED STATES, PETITIONER
v.
S. A. EMPRESA DE VIACAO AEREA RIO
GRANDENSE (VARIG AIRLINES)

82-1350 UNITED STATES, PETITIONER
v.
UNITED SCOTTISH INSURANCE CO. ET AL.

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

[May —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari in these two cases to determine
whether the United States may be held liable under the Fed-
eral Tort Claims Act, 28 U. S. C. § 2671 *et seq.*, for the negli-
gence of the Federal Aviation Administration in certificating
certain aircraft for use in commercial aviation.

I

A. No. 82-1349

On July 11, 1973, a commercial jet aircraft owned by re-
spondent S. A. Empresa De Viacao Aerea Rio Grandense
(Varig Airlines) was flying from Rio de Janeiro to Paris when
a fire broke out in one of the aft lavatories. The fire pro-
duced a thick black smoke, which quickly filled the cabin and
cockpit. Despite the pilots' successful effort to land the
plane, 124 of the 135 persons on board died from asphyxiation

HAB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for 82-1349, United States v. Varig Airlines

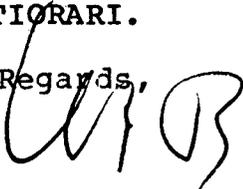
Sellfors v. United States, No. 82-1778, is the only case held for United States v. Varig Airlines, No. 82-1349, and its companion case, United States v. United Scottish Ins. Co., No. 82-1350.

Sellfors involved the crash of a private jet at DeKalb-Peachtree Airport in Chamblee, Ga. As a condition of a grant of federal funds for the development of the airport's runways, the county operating the airport promised to remove any safety hazards that might exist. As it happened, the county owned a garbage dump adjacent to the airport, which attracted hungry birds. FAA officials insisted that the county rectify the bird hazard created by the garbage dump, but the county failed to do so. Petitioner's husband, a pilot, was killed when birds were sucked into the engine of his Lear jet, causing his plane to crash on takeoff. Petitioner sued the United States under the Federal Tort Claims Act. The District Court denied relief.

✓ The Eleventh Circuit affirmed, finding that Ga. law would not impose liability on private persons in the same position as the United States. The Court of Appeals also upheld the District Court's finding that the air traffic controllers were not negligent in failing to warn petitioner's husband of the presence of birds on the runway. Finally, the Court of Appeals briefly stated that any actions or inactions by the FAA in this case were protected by the discretionary function exception of the FTCA.

The Court of Appeals concluded that the acts or omissions complained of in this case would not constitute a common law tort cognizable under Ga. state law. This determination effectively disposes of the case, for the FTCA imposes liability upon the United States only "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. §1346(b). Moreover, the Eleventh Circuit's discussion of the discretionary function exception to the FTCA comports with the analysis in Varig Airlines.

I WILL VOTE TO DENY CERTIORARI.

Regards,


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

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SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

84 JUN 14 A9 57

June 14, 1984

No. 82-1349) United States
) v. S. A. Empresa
) De Viacao Aerea
) Rio Grandense
) (Varig Airlines)
)
) United States
) v. United
) Scottish Ins.
No. 82-1350) Co.

Dear Chief,

Please join me.

Sincerely,

Bull

The Chief Justice

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CHAMBERS OF
JUSTICE BYRON R. WHITE

Supreme Court of the United States
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JUSTICE MARSHALL

84 MAY 25 11 34

May 23, 1984

Re: 82-1349 and 82-1350 -

United States v. Varig Airlines
United States v. Scottish Insurance Co.

Dear Chief,

I agree.

Sincerely yours,

The Chief Justice

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cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 30, 1984

Re: Nos. 82-1349 and 1350-U.S. v. S.A. Empresa de
Viacao Aerea Rio Grandense and United Scottish
Insurance Co.

Dear Chief:

Please join me.

Sincerely,

J.M.

T.M.

The Chief Justice

cc: The Conference

6

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 5, 1984

Re: No. 82-1349) United States v. S.A. Empresa de Viacao
Aerea Rio Grandense
No. 82-1350) United States v. United Scottish Ins. Co.

Dear Chief:

Please join me.

Sincerely,



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The Chief Justice

cc: The Conference

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 23, 1984

82-1349 U.S. v. S.A. Empresa

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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JUSTICE MARSHALL

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May 23, 1984

Re: No. 82-1349) United States v. Varig Airlines
82-1350) United States v. United Scottish Ins. Co.

Dear Chief:

Please join me.

Sincerely,
WM

The Chief Justice

cc: The Conference

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

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 23, 1984

Re: 82-1349 - United States v. Varig Airlines
82-1350 - United States v. United Scottish
Insurance Co.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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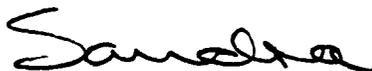
May 22, 1984

No. 82-1349 United States v. S. A. Empresa do
Viacao Aerea Rio Grandense (Varig Airlines)
No. 82-1350 United States v. United Scottish
Insurance Company

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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