

The Burger Court Opinion Writing Database

United States v. Arthur Young & Co.

465 U.S. 805 (1984)

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



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CHAMBERS OF THE
CHIEF JUSTICE

'84 FEB 27 A9:04

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

From: **The Chief Justice**

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-687

UNITED STATES, PETITIONER *v.* ARTHUR YOUNG
& COMPANY ET AL.

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

[February —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to consider whether tax accrual
workpapers prepared by a corporation's independent certi-
fied public accountant in the course of regular financial audits
are protected from disclosure in response to an Internal Re-
venue Service summons issued under §7602 of the Internal
Revenue Code of 1954 (Code), 26 U. S. C. §7602.

I

A

Respondent Arthur Young & Co. is a firm of certified pub-
lic accountants. As the independent auditor for respondent
Amerada Hess Corp., Young is responsible for reviewing the
financial statements prepared by Amerada as required by the
federal securities laws.¹ In the course of its review of these
financial statements, Young verified Amerada's statement of
its contingent tax liabilities, and, in so doing, prepared the
tax accrual workpapers at issue in this case. Tax accrual
workpapers are documents and memoranda relating to
Young's evaluation of Amerada's reserves for contingent tax

¹See, *e. g.*, Securities Exchange Act of 1934, §12(b)(1)(J)-(L), 48 Stat.
892, 15 U. S. C. §78l(b)(1)(J)-(L); Regulation S-X, 17 CFR §210 *et seq.*
(1983). See also n. 5, *infra*.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1984

Re: No. 82-687 United States v. Arthur Young

Dear Lewis:

I'm adding this new footnote 14 after the end of the first sentence on page 13.

The inclusion in an audited financial statement of anything less than an unqualified opinion could send signals to stockholders, creditors, potential investors, and others that the independent auditor has been unable to give the corporation an unqualified bill of financial health. Such a public auditor's opinion could well have serious consequences for the corporation and its shareholders.

Regards,

WBO

Justice Powell

*This is what
I suggested*

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

From: **The Chief Justice**

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Recirculated: 3/5/84

Changes at: 5,13

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'84 MAR 5 AM 10:21
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-687

UNITED STATES, PETITIONER *v.* ARTHUR YOUNG
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(1983). See also n. 5, *infra*.

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HAB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1984

MEMORANDUM TO THE CONFERENCE

Re: 82-687 - United States v. Arthur Young & Company

Two cases have been held for No. 82-687, United States v. Arthur Young & Co.:

1. No. 82-837, Arthur Young & Co. v. United States. This is the cross-petition to No. 82-687. The IRS issued a summons under 26 U.S.C. §7602, seeking all of Young's documents regarding the tax liability of its client, Amerada Hess Corp. The District Court enforced the summons with regard to two types of documents: audit workpapers and tax accrual workpapers. The Second Circuit affirmed the District Court insofar as it ordered production of the audit workpapers. The Court of Appeals concluded that the audit workpapers were relevant to the IRS investigation and that the document request was not overly broad. In its cross-petition for certiorari, Young again challenges the enforcement of the IRS summons with respect to the audit workpapers.

The question presented in Young's cross-petition does not warrant review. The Second Circuit's evaluation of the relevance of the audit workpapers is entirely consistent with our opinion in United States v. Arthur Young & Co. And the Court of Appeals' conclusion regarding the overbreadth of the IRS summons involves little more than a factbound application of the courts' duty to ensure that an IRS summons is not issued for purposes of harassment. See United States v. Bisceglia, 420 U.S. 141 (1975). Because the cross-petition involves no novel questions of law,

I WILL VOTE TO DENY.

2. No. 82-716, El Paso Co. v. United States. In this case the IRS issued a summons to the El Paso Co., a large holding company, covering any documents that identified potential tax liabilities or tax problems for a particular period of time. This request was interpreted to include tax accrual workpapers prepared in-house by El Paso's own tax compliance personnel. When El Paso refused to comply with the summons, the District Court enforced the summons. The Fifth Circuit affirmed, holding that the tax accrual workpapers were relevant to the IRS inquiry because they might have thrown light upon the correctness of the taxpayer's return. The Court of Appeals rejected El Paso's arguments that the papers were protected by the attorney-client privilege and the attorney work-product doctrine, as

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 28, 1984

No. 82-687

United States v. Arthur Young
& Company, et al.

Dear Chief,

I agree.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 29, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE BYRON R. WHITE

'84 FEB 29 A9:55

Re: 82-687 -

United States v. Arthur Young & Co.

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 12, 1984

Re: No. 82-687-United States v. Young

Dear Chief:

Please join me.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1984

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SUPREME COURT U.S.
JUSTICE MARSHALL

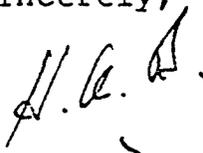
'84 MAR -2 A10:16

Re: No. 82-687 - United States v. Arthur Young & Co.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1984

Re: 82-687 United States v. Arthur Young & Com-
pany, et al.

Dear Chief:

Please join me.

Sincerely,



Chief Justice Burger

cc: The Conference

lfp/cvh

March 1, 1984

Re: 82-687 United States v. Arthur Young & Company, et al.

Dear Chief:

Please join me.

Sincerely,

Chief Justice Burger

cc: The Conference

lfp/cvh

ps: Your opinion is excellent. Perhaps it would do well to add a footnote pointing out the adverse effect on a public company if its independent certified public accountants gave a qualified or adverse opinion. Such a note -- if you think it meritorious -- could be keyed to the first sentence on page 13.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

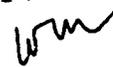
March 1, 1984

Re: No. 82-687 United States v. Arthur Young & Co.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 28, 1984

Re: 82-687 - United States v. Arthur Young & Co.

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

March 1, 1984

No. 82-687 United States v. Arthur Young
& Company

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference