

The Burger Court Opinion Writing Database

Eastern Air Lines, Inc. v. Mahfoud

474 U.S. 213 (1985)

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

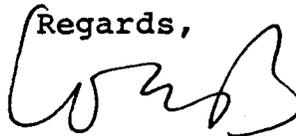
May 24, 1985

No. 83-1807 - Eastern Air Lines v. Mahfoud

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 22, 1985

No. 83-1807

Eastern Air Lines v. Mahfoud

Dear Harry and John,

We three are in dissent in the
above. I'll be happy to try my hand at
the dissent.

Sincerely,



Justice Blackmun

Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 22, 1985

No. 83-1807

Eastern Air Lines v. Mahfoud

Dear Sandra,

I'll be circulating a dissent in
due course.

Sincerely,



Justice O'Connor

Copies to the Conference

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

From: **Justice Brennan**

MAY 23 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1807

**EASTERN AIR LINES, INC., PETITIONER v. ROBERT
F. MAHFOUD ETC.**

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

[May —, 1985]

JUSTICE BRENNAN, dissenting.

Seven years passed before Eastern Airlines deposited into the registry of the district court the \$150,000 it indisputably owed the bereft children of Bernard and Odile Mahfoud. The Court today holds that the Warsaw Convention limits the amount of prejudgment interest that these children may obtain. Neither the language of the Warsaw Convention nor the policies behind it justify such an unjust result.

Although the wording of the Warsaw Convention does not clearly resolve the issue in this case, the Convention is susceptible of a natural reading that permits the award of prejudgment interest beyond the ceiling of \$75,000. Articles 17 and 22(1) of the Warsaw Convention as supplemented by the Montreal Agreement place a \$75,000 ceiling on liability "for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the *accident which caused the damage* so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (emphasis added) Because damages under Article 22(1) must result from an "accident" (*e. g.*, the plane crash), the \$75,000 limitation can certainly be read as applying exclusively to compensation for injuries caused by the underlying tort and not costs caused by the defendant's decision to delay paying money owed.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 19, 1985

83-1807 - Eastern Air Lines, Inc. v. Mahfoud

Dear Sandra,

Please join me.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 22, 1985

Re: No. 83-1807-Eastern Air Lines v. Mahfoud

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1985

Re: No. 83-1807, Eastern Air Lines v. Mahfoud

Dear Sandra:

I shall await the dissent in this case.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1985

Re: No. 83-1807, Eastern Air Lines v. Mahfoud

Dear Bill:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

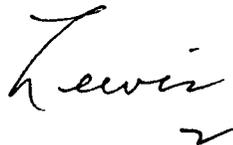
March 19, 1985

83-1807 Eastern Air Lines v. Mahfoud

Dear Sandra:

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

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

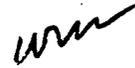
March 21, 1985

Re: No. 83-1807 Eastern Airlines v. Mahfoud

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 22, 1985

RE: Eastern Air lines v. Mahfoud, 83-1807

Dear Sandra:

I shall await the dissent.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1985

Re: 84-1807 Eastern Air Lines, Inc. v.
Robert F. Mahfoud

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1807

**EASTERN AIR LINES, INC., PETITIONER v. ROBERT
F. MAHFOUD, ETC.**

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

[March —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Warsaw Convention as supplemented by the Montreal Agreement¹ limits an airline's liability for wrongful death and personal injuries to \$75,000 per passenger. The Courts of Appeals have disagreed as to whether prejudgment interest falls within the category of damages that are subject to this liability ceiling. See *O'Rourke v. Eastern Air Lines, Inc.*, 730 F. 2d 842 (CA2 1984) (denying prejudgment interest because to do so would raise award above \$75,000); *Domangue v. Eastern Air Lines, Inc.*, 722 F. 2d 256 (CA5 1984) (permitting award of prejudgment interest which raised judgment above \$75,000). In this case, the Court of Appeals for the Fifth Circuit awarded prejudgment interest above the liability ceiling. We granted certiorari to resolve the circuit conflict. — U. S. — (1984).

¹The official title of the Warsaw Convention, an international treaty, is "Convention for the Unification of Certain Rules Relating to International Transportation by Air," Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934), note following 49 U. S. C. App. § 1502. The official title of the Montreal Agreement, an agreement among airlines approved by the United States Government, is "Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol," Agreement CAB 18900, 31 Fed. Reg. 7302 (1966), note following 49 U. S. C. App. § 1502.

Stylistic Changes Throughout

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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5/24/85

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1807

EASTERN AIR LINES, INC., PETITIONER *v.* ROBERT
F. MAHFOUD ETC.

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

[May —, 1985]

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¹The official title of the Warsaw Convention, an international treaty, is "Convention for the Unification of Certain Rules Relating to International Transportation by Air," Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934), note following 49 U. S. C. App. § 1502. The official title of the Montreal Agreement, an agreement among airlines approved by the United States Government, is "Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol," Agreement CAB 18900, 31 Fed. Reg. 7302 (1966), note following 49 U. S. C. App. § 1502. The full text of the Agreement and supporting documents are reprinted in L. Kreindler, 1 Aviation Accident Law §§ 12A.03-12A.07 (1984).

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