

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

November 25, 1985

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

Dear Sandra,

As last year, I am with you. I join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'LWB' or similar, written in a cursive style.

Justice O'Conner

Copies to the Conference

FROM: **The Chief Justice**

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

1st Draft

DATE: **DEC 9 1985**

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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**

[December 10, 1985]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE BRENNAN took no part in the decision of this case.

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

From: Justice Brennan

Circulated: 11-10-85

Recirculated: _____

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

[November —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

On June 24, 1975, Eastern Air Lines Flight 66 from New Orleans crashed at John F. Kennedy Airport in New York City. More than 100 people, including Bernard and Odile Mahfoud, were killed in the accident. Because the Mahfouds' ultimate destination was Paris, the wrongful death actions brought by their estates were governed by the Warsaw Convention as supplemented by the Montreal Agreement,¹ which, among other things, imposes absolute liability on airlines in wrongful death and personal injury actions brought by or on behalf of passengers in international travel and limits that liability to \$75,000 per passenger. The question presented by this case, and one over which the courts of appeals have differed,² is whether prejudgment interest may be assessed against the airline over and above the \$75,000

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.

²See *O'Rourke v. Eastern Air Lines, Inc.*, 730 F. 2d 842 (CA2 1984) (denying prejudgment interest); *Domangue v. Eastern Air Lines, Inc.*, 722 F. 2d 256 (CA5 1984) (permitting award of prejudgment interest).

STYLISTIC CHANGES THROUGHOUT
SEE PAGES 5, 7, 8, 9, 13, 17.

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

From: Justice Brennan

Circulated: _____

Recirculated: NOV 27 1985

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
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²See *O'Rourke v. Eastern Air Lines, Inc.*, 730 F. 2d 842 (CA2 1984) (denying prejudgment interest); *Domangue v. Eastern Air Lines, Inc.*, 722 F. 2d 256 (CA5 1984) (permitting award of prejudgment interest).

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 2, 1985

MEMORANDUM TO THE CONFERENCE

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

I deeply regret that I must ask cancellation of my announcement of the decision of this case scheduled for Wednesday, December 4. The reason is that I learned from my son, Bill, at his home in Princeton on Thanksgiving Day that he has been representing petitioner, Eastern Air Lines, in defending various kinds of claims -- a representation which I regard as sufficient reason why I must recuse myself from this case.

Some of the claims Bill defends for Eastern are insured against by aviation insurance companies that Bill has represented for some time. The Eastern policies give Eastern an option to select counsel, and Eastern has appointed Bill New Jersey counsel to succeed a former selection. In those cases, the insurance companies pay Bill's fees.

But Eastern has also retained Bill to defend some non-insured New Jersey claims against it. A more recent one was a suit in Federal District Court for New Jersey under the Railway Labor Act. Bill obtained a summary judgment and successfully defended that judgment in the Court of Appeals for the Third Circuit. His fees in such cases are paid by Eastern.

It may be that 28 U.S.C. §455 (b)(5)'s requirement of recusal applies in terms only when Bill is "acting as a lawyer in the proceeding" before the Court, and, of course, Bill has not been in any way involved in the Mahfoud case. Section 455 (a)'s provision that any Justice "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" may not require my recusal. But even if the statute may not require my recusal, I have made it a practice to recuse myself in any case involving a client of Bill's or of his firm's. I, therefore, recuse myself from this case, with apologies to all of you that I did not apprehend the necessity to do so before this.

W.J.B., Jr.

P.S. There is one hold for Mahfoud, but it's another Eastern Air Lines case -- No. 84-750, Eastern Air Lines, Inc. v. Winbourne.

cc: Henry C. Lind, Reporter

Joseph F. Spaniol, Jr., Clerk

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 15, 1985

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

Dear Bill,

I await the dissent.

Sincerely yours,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 25, 1985

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

Dear Sandra,

Please join me.

Sincerely yours,

*Byron
cmm*

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1985

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

Dear Bill:

Please join me.

Sincerely,

Jm.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 18, 1985

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

Dear Bill:

Please join me.

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.

November 18, 1985

83-1807 Eastern Air Lines v. Mahfoud

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

*Bill - your opinion is
excellent and very well
written. Lewis*

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 18, 1985

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

Dear Sandra,

Please join me in your dissent in this case.

Sincerely,

wm

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 14, 1985

Re: 83-1807 - Eastern Air Lines v.
Mahfoud

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 13, 1985

No. 83-1807 Eastern Airlines v. Mahfoud

Dear Bill,

As you know, I will be circulating a dissent
in this case.

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**

Circulated: _____

Recirculated: _____

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

[November —, 1985]

JUSTICE O'CONNOR, dissenting.

The Warsaw Convention as supplemented by the Montreal Agreement limits an airline's liability for wrongful death and personal injuries to \$75,000 per passenger. In this case, the Court of Appeals for the Fifth Circuit awarded prejudgment interest above the liability ceiling. I would reverse that judgment as inconsistent with the central purpose of the Convention and Agreement.

I

As this Court has recently noted, the European jurists who drafted the Warsaw Convention in 1929 viewed it as a short-term treaty governing certain principles of international air carrier liability. See *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U. S. —, — (1984). The drafters left many legal issues to disposition on the basis of local law, see, *e. g.*, Articles 24(2) (capacity to sue), 28(2) (questions of procedure), and they expected that their "first effort to codify aeronautical law,"¹ would be subject to frequent amplification and revision. Nevertheless, with only limited modifications, the Warsaw Convention has been applied by American

¹International Conference on Air Law Affecting Air Questions, Minutes, Second International Conference on Private Aeronautical Law, October 4-12, 1929, Warsaw 32 (R. Horner & D. Legrez trans. 1975) (hereinafter cited as Warsaw Minutes).

Stylistic Changes Throughout

P.P. 1

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

From: Justice O'Connor

Circulated: _____

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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

[November —, 1985]

JUSTICE O'CONNOR, ~~dissenting.~~

with whom Justice
Rehnquist
Join

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~~AP-1~~
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**

Circulated: _____

Recirculated: NOV 26 1985

3rd 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

[November —, 1985]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE REHNQUIST join, dissenting.

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¹International Conference on Air Law Affecting Air Questions, Minutes, Second International Conference on Private Aeronautical Law, October 4-12, 1929, Warsaw 32 (R. Horner & D. Legrez trans. 1975) (hereinafter cited as Warsaw Minutes).

✓
1 P. 8

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: 27 _____

4th 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**

[December —, 1985]

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