

The Burger Court Opinion Writing Database

FDIC v. Philadelphia Gear Corp.

476 U.S. 426 (1986)

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 21, 1986

84-1972 - F.D.I.C. v. Philadelphia Gear Corp.

Dear Sandra:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. O'Connor', written in a cursive style.

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 8, 1986

No. 84-1972

Federal Deposit Insurance Corp.
v. Philadelphia Gear Corp.

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

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2
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 2, 1986

84-1972 -

FDIC v. Philadelphia Gear Corporation

Dear Sandra,

Please join me.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 12, 1986

Re: No. 84-1972-FDIC v. Philadelphia Gear Corp.

Dear Harry, Lewis and Bill:

We four are in dissent in this one. Absent objection, I will try my hand at it.

Sincerely,



T.M.

Justice Blackmun
Justice Powell
Justice Rehnquist

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 1, 1986

Re: No. 84-1972-Federal Deposit Insurance Corp. v.
Philadelphia Gear Corporation

Dear Sandra:

In due course I shall circulate a dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

From: **Justice Marshall**

Circulated: MAY 15 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1972

FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER *v.* PHILADELPHIA GEAR
CORPORATION

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

[May —, 1986]

JUSTICE MARSHALL, dissenting.

There is considerable common sense backing the Court's opinion. The standby letter of credit in this case differs considerably from the savings and checking accounts that come most readily to mind when one speaks of an insured deposit. Nevertheless, to reach this common-sense result, the Court must read qualifications into the statute that do not appear there. We recently recognized that even when the ingenuity of businessmen creates transactions and corporate forms that were perhaps not contemplated by Congress, the courts must enforce the statutes that Congress has enacted. See *Board of Governors of the Federal Reserve System v. Dimension Financial Corp.*, — U. S. —, — (1986) (slip op. 11-13). Congress unmistakably provided that letters of credit backed by promissory notes constitute "deposits" for purposes of the federal deposit insurance program, and the Court's attempt to draw distinctions between different types of letter of credit transactions forces it to ignore both the statute and some settled principles of commercial law. Here, as in *Dimension*, the inflexibility of the statute as applied to modern financial transactions is a matter for Congress, not the FDIC or this Court, to remedy.

It cannot be doubted that the standby letter of credit in this case meets the literal definition of a "deposit" contained

STYLISTIC CHANGES THROUGHOUT

4 P. 1

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

From: Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1972

FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER *v.* PHILADELPHIA GEAR
CORPORATION

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

[May —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BLACKMUN and
JUSTICE REHNQUIST join, dissenting.

There is considerable common sense backing the Court's opinion. The standby letter of credit in this case differs considerably from the savings and checking accounts that come most readily to mind when one speaks of an insured deposit. Nevertheless, to reach this common-sense result, the Court must read qualifications into the statute that do not appear there. We recently recognized that even when the ingenuity of businessmen creates transactions and corporate forms that were perhaps not contemplated by Congress, the courts must enforce the statutes that Congress has enacted. See *Board of Governors, FRS v. Dimension Financial Corp.*, 474 U. S. —, — (1986) (slip op. 11-13). Congress unmistakably provided that letters of credit backed by promissory notes constitute "deposits" for purposes of the federal deposit insurance program, and the Court's attempt to draw distinctions between different types of letter of credit transactions forces it to ignore both the statute and some settled principles of commercial law. Here, as in *Dimension*, the inflexibility of the statute as applied to modern financial transactions is a matter for Congress, not the FDIC or this Court, to remedy.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

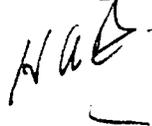
May 19, 1986

Re: No. 84-1972, FDIC v. Philadelphia Gear

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Justice Marshall

cc: The Conference

177
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 2, 1986

84-1972 FDIC Corp. v. Philadelphia Gear

Dear Sandra:

At Conference my tentative vote was to affirm, but in view of the purpose of the FDIC I indicated that I probably would not dissent.

Your opinion has persuaded me to Join you.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 20, 1986

Re: No. 84-1972 Federal Deposit Insurance Corp. v.
Philadelphia Gear

Dear Thurgood,

Please join me in your dissent in this case.

Sincerely,

Wm

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 1, 1986

Re: 84-1972 - Federal Deposit Insurance
Corp. v. Philadelphia Gear Corp.

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

PP. 6, 11

DA

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. 84-1972

FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER *v.* PHILADELPHIA GEAR
CORPORATION

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

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

We granted certiorari to consider whether a standby letter of credit backed by a contingent promissory note is insured as a "deposit" under the federal deposit insurance program. We hold that, in light of the longstanding interpretation of petitioner Federal Deposit Insurance Corporation (FDIC) that such a letter does not create a deposit and in light of the fact that such a letter does not entrust any noncontingent assets to the bank, a standby letter of credit backed by a contingent promissory note does not give rise to an insured deposit.

I

Orion Manufacturing Corporation (Orion) was, at the time of the relevant transactions, a customer of respondent Philadelphia Gear Corporation (Philadelphia Gear). On Orion's application, the Penn Square Bank, N. A. (Penn Square) issued a letter of credit for the benefit of Philadelphia Gear in the amount of \$145,200. The letter of credit provided that a draft drawn upon the letter of credit would be honored by Penn Square only if accompanied by Philadelphia Gear's "signed statement that [it had] invoiced Orion Manufacturing Corporation and that said invoices have remained unpaid for at least fifteen (15) days." App. 25. Because the letter of credit was intended to provide payment to the seller only if

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Stylistic Changes Throughout

pp. 5, 9

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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1972

FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER *v.* PHILADELPHIA GEAR
CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: MAY 22 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1972

FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER *v.* PHILADELPHIA GEAR
CORPORATION

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

[May —, 1986]

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