Supreme Court of the United States

PIPER AIRCRAFT COMPANY,

Petitioner

v.) No. 80-848

GAYNELL REYNO, PERSONAL REPRESENTATIVE)
OF THE ESTATE OF WILLIAM FEHILLY,)
ET AL.;

and

HARTZELL PROPELLER, INC.,

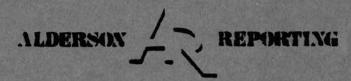
Petitioners

v.) No. 80-883

GAYNELL REYNO, PERSONAL REPRESENTATIVE)
OF THE ESTATE OF WILLIAM FEHILLY,)
ET AL.

Washington, D. C. October 14, 1981

Pages 1 thru 46



400 Virginia Avenue, S.W., Washington, D. C. 20024

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1	IN THE SUPREME COURT OF THE UNITED STATES							
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3	PIPER AIRCRAFT COMPANY,							
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5	v. No. 80-848							
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8	AND							
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	GAYNELL REYNO, PERSONAL REPRESENTATIVE :							
13	ET AL,							
14	Washington, D.C.							
15	Wednesday, October 14, 1981							
16	The above-entitled matter came on for oral argument							
18	before the Supreme Court of the United States at 11:00							
19	o'clock a.m.							
20	APPEAR ANCES:							
21	JAMES M. FITZSIMONS, ESQ., 3 Park Avenue,							
22	WARNER W. GARDNER, ESQ., 1800 Massachusetts							
23	Avenue, N.W., Washington, D.C. 20036; on behalf of the Petitioner, Hartzell Propeller, Inc.							
24								
25								

1	DANIEL C. CATHCART, ESQ., 1801 Avenue of the Stars, Suite 810, Los Angeles, California, 90067; on
2	behalf of the Respondent.
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PROCEEDINGS

- 2 CHIEF JUSTICE BURGER: We will hear arguments next 3 in Piper Aircraft against Reyno and the related case. Mr.
- 4 Fitzsimons, I think you may proceed whenever you're ready.
- 5 ORAL ARGUMENT OF JAMES M. FITZSIMONS, ESQ.

1

- 6 ON BEHALF OF THE PETITIONER, PIPER AIRCRAFT COMPANY
- MR. FITZSIMONS: Thank you. Chief Justice Burger,
 8 and may it please the Court, the order which permits us to
 9 come before this Court today restricts the appeal to the
 10 sole question of whether a federal court action brought by a
 11 non-resident foreign plaintiff against an American
 12 defendant, whether in that type of action the plaintiff may
 13 defeat a motion to dismiss brought on the ground of foreign
- 14 non-convenience merely by showing that the substantive law 15 that would be applied if the case were litigated in that 16 plaintiff's own court would be different or less favorable 17 than it would be if it were tried here in America.
- The factual background of this case is quite
 19 significant. In 1976 there was a small six-seat aircraft
 20 that crashed into the mountains of Scotland. It was on a
 21 charter flight from England to Scotland, and the crash
 22 resulted in the deaths of all six people onboard; five
 23 passengers and the pilot. All of these people were Scottish
 24 citizens.
- The aircraft had been owned, operated and

- 1 maintained for several years prior to the accident by
 2 Scottish interests, and the pilot was employed by a Scottish
 3 company. The aircraft was registered with the British
 4 authorities, and the pilot was licensed by the Scottish
 5 authorities, and the accident was investigated by the
 6 British Department of Trade.
- The Department's proposed report was the subject

 8 of an evidentiary hearing which was conducted by a review

 9 board headed by Mr. and later Lord Jauncey, who was

 10 assisted, again, by two technical advisors from Scotland.

 Substantial documentary evidence went before this
- Substantial documentary evidence went before this 12 hearing, and some 13 witnesses testified, most of whom were 13 technicians from Great Britian.
- The hearing took place in Edinburgh, Scotland, and 15 as I say, it lasted for nine days. In addition, Lord 16 Jauncey spent a day in Farnsborough, England, inspecting the 17 wreckage of the aircraft. Presently, what remains of the 18 wreckage is still at Farnsborough.
- As a result of the accident, a California
 20 resident, Gaynell Reyno, has brought this action to recover
 21 for the heirs and next of kin of the decedents, that is, the
 22 passenger decedents, and her complaint alleges negligence
 23 and also strict liability.
- 24 Although she sues as the personal representatives 25 of the estates of these passengers, she is in no way related

- 1 to them. At the time of bringing this action, all of the 2 heirs and survivors of the deceased passengers were 3 Scottish. Gaynell Reyno was a resident of the state of 4 California, and a secretary in the office of the attorney 5 for the plaintiffs.
- The only connection which the United States has

 7 with this accident at all was the fact that some seven years

 8 or so prior to the time that the accident occurred, the

 9 aircraft had been manufactured in the United States by Piper

 10 Aircraft Company, and at the time of its manufacture, it was

 11 equipped with a propeller that was manufactured by Hartzell

 12 in Ohio.
- Almost immediately after its manufacture, the

 14 aircraft was sold to an interest in Ohio, and by some chain

 15 of events not known to defendants, found its way over to

 16 Scotland.
- On the motion of the defendants, the United States
 18 District Court for the Middle District of Pennsylvania
 19 granted an order dismissing this action on the ground of
 20 foreign non-convenience, and it conditioned that dismissal,
 21 as courts generally do, on the defendants waiving any
 22 statute of limitations defense they might have and agreeing
 23 to submit to the jurisdiction of the courts in Scotland.
- It might be well to point out here at this

 25 particular time that these same plaintiffs have brought

- 1 actions in Scotland against the operating company, against
 2 the owner of the aircraft (two Scottish interests), against
 3 the pilot, pilot's estate, a Scottish interest, and indeed,
 4 against the British Civil Aviation Authority.
- And the pilot's estate himself has also started an 6 action over in Great Britain.
- In the memorandum opinion which accompanied the 8 order, the district court considered the factors set forth 9 by this court in the seminal foreign non-convenience case of 10 Gulf Oil against Gilbert and its progeny. And it concluded 11 that the defendants had shown overwhelming reasons for a 12 foreign non-convenience dismissal. And that court also said 13 that it would be no less than an abuse of discretion on its 14 part if it did not dismiss on the ground of foreign 15 non-convenience, as the Gilbert criteria, quote, 16 "overwhelmingly point to dismissal."
- The district court weighed all the private
 18 interest factors set forth in Gilbert, and found that they
 19 all clearly pointed to trial in Scotland. The district
 20 court also weighed the public interest factors laid down in
 21 Gilbert, and similarly concluded that all of these, too,
 22 favored the trial in Scotland. And in considering these
 23 public interests, the district court said that uppermost in
 24 its mind was the fact that a trial could be complex and
 25 confusing to a jury because it would have to apply the rule

- 1 of law of Scotland to Hartzell and the rules of liability
 2 law of Pennsylvania to Piper.
- QUESTION: Mr. Fitzsimons, let me get a little
 4 more background. This suit was instituted in California,
 5 was it not?
- 6 MR. FITZSIMONS: Was instituted in California and 7 sent to Pennsylvania on a 1404 transfer.
- 8 QUESTION: By whose motion?
- 9 MR. FITZSIMONS: By the motion of the defendant,
 10 defendant Piper. Hartzell, at that time, made a motion to
 11 dismiss because it was not subject to the jurisdiction of
 12 the court.
- 13 QUESTION: Is your client a Pennsylvania 14 corporation?
- MR. FITZSIMONS: They are a Delaware corporation, 16 I believe, Your Honor.
- 17 QUESTION: Is Hartzell a Pennsylvania corporation?
- MR. FITZSIMONS: They are. But the principal 19 place of business of Piper is in Pennsylvania, and that's 20 where this aircraft was manufactured.
- QUESTION: So that in effect, you accomplished one 22 transfer, and then sought a second.
- MR. FITZSIMONS: Yes, Your Honor, and I believe
 that that was required because the court over in California
 back had no jurisdiction to pass upon the situation with respect

- 1 to Hartzell where jurisdiction did not lie. And the
 2 district court found that this did not constitute any reason
 3 why it should not be heard.
- In any event, the circuit court also found that
 the product liability law of Scotland would not apply to
 Hartzell, but that indeed, the law of Pennsylvania would
 apply to both. And what the court said was this: the court
 held that if the case were transferred over to Scotland,
 that the Scottish law would apply, and the plaintiffs would
 lose their cause of action for strict liability and that
 this was impermissible.
- The Third Circuit cited DeMateos against Texaco,

 13 Inc. as authority, and it held that a dismissal for foreign

 14 non-convenience, like a statutory transfer under 1404(a),

 15 should not, despite its convenience, result in a change in

 16 the applicable law.
- 17 QUESTION: Would you also say that in Scotland
 18 there would be no trial by jury?
- MR. FITZSIMONS: I'm not certain that there would 20 not be a trial by jury in Scotland, Your Honor. I know that 21 there would not be in England, but I'm not certain about 22 that subject in Scotland.
- QUESTION: Where do you -- where is the critical 24 passage where you claim the court of appeals said that the 25 change of law would -- is the crux of their decision?

- MR. FITZSIMONS: Oh, they did not say in so many words that it is the crux of their decision, but they started right up front, Your Honor, by discussing the question of law and what they said, in effect, was, that was the only public factor that they considered, and then at the end of their opinion they said, we don't have to consider any others.
- 8 And I refer the Court to A 139.
- 9 QUESTION: As I read the court of appeals opinion,
 10 it started right out and reviewed all of the factors that
 11 the district court had considered in dismissing, and
 12 differed with the district court on every single factor. Is
 13 that right or not?
- MR. FITZSIMONS: Not the way I read the decision.

 15 The way I read the --
- QUESTION: You say you think that if they hadn't thought what they did about the change of the law, that they sould have approved the dismissal?
- 19 MR. FITZSIMONS: I believe that they should have, 20 Your Honor.
- QUESTION: Well, I know, but you think they would 22 have? I thought they disagreed with the district court on 23 every single factor.
- 24 MR. FITZSIMONS: Mr. Justice White, the way I read 25 that decision is that they considered three private factors;

- 1 convenience of witnesses, compulsory processes interpleader
- 2 and view of the premises. And then one public --
- 3 QUESTION: And found that none of them would
- 4 warrant the dismissal.
- 5 MR. FITZSIMONS: That's right. And then one
- 6 public -- well, that's in view of the fact that there would
- 7 be the change of the law, Your Honor. That's inherent in
- 8 the decision.
- 9 And on the public side, they just took the 10 applicable law only, just that one. So they did not go
- 11 through every one that the district court had gone through.
- 12 In any event, Your Honor, the decision --
- 13 QUESTION: I had the same problem Justice White
- 14 did, frankly. I thought they were saying that the district
- 15 court was wrong in thinking the jury would be confused by
- 16 the foreign law and the differences in law, things of that
- 17 nature. Rather than relying entirely on this point.
- 18 MR. FITZSIMONS: The circuit court clearly held
- 19 that the law which would be applied to both defendants would
- 20 be the Pennsylvania law.
- 21 QUESTION: I understand that.
- 22 MR. FITZSIMONS: And the court did say in so many
- 23 terms, so many words rather, that you cannot have a
- 24 dismissal where that would work a change in the law.
- 25 QUESTION: Where do they say that?

- QUESTION: Where is that?
- MR. FITZSIMONS: They say that, Your Honor, and I

 will show it to you, at -- it's starting on 139 of the

 Appendix. "Even under the district court's choice of law

 analysis requiring a mixture of American and Scottish law,

 it is apparent that the dismissal would work a change in the

 applicable law so that the plaintiff's strict liability

 claim would be eliminated from the case. But this Court has

 held that a dismissal for foreign non-convenience, like a

 statutory transfer, should not, despite its convenience,

 result in a change of the applicable law. Only when the

 American law is not applicable or when that foreign

 jurisdiction would, as a matter of its choice of law, give

 the plaintiff the benefit of the claim to which she is
- QUESTION: But the court held that the district
 17 court was wrong on this. It says, "Even under the district
 18 court's choice of law analysis..." Then it went on to say
 19 what you said. But the court of appeals said the district
 20 court was quite wrong in its choice of law analysis.
- QUESTION: I understand that that's what the 22 circuit court says, but they nevertheless --
- QUESTION: Well, they went ahead and nevertheless
 24 said what you say, but what if they were right that it's the
 25 American law that governs here?

- 1 MR. FITZSIMONS: Your Honor, even if that were
- 2 true, the inequities that would be involved that the
- 3 district court did not treat with or treated with
- 4 improperly, certainly should have called for a dismissal.
- 5 QUESTION: That may be so, but that's a different
- 6 point, that's a different point. Where does the court of
- 7 appeals say that if there was a transfer or if there was a
- 8 dismissal, that the Scottish law would apply if the case
- 9 were tried in Scotland, even though under their analysis the
- 10 law of Pennsylvania would apply?
- 11 MR. FITZSIMONS: Your Honor, I cannot point to
- 12 that exactly but I know that that was a finding on the part
- 13 of the district court where the district court said --
- 14 QUESTION: I know, but how about the court of
- 15 appeals --
- 16 MR. FITZSIMONS: I don't think the circuit court
- 17 -- let me see.
- 18 QUESTION: Let's assume that the Scottish courts
- 19 would apply the American law, like the court of appeals held
- 20 should be applicable.
- 21 MR. FITZSIMONS: If Scotland would do that?
- 22 QUESTION: Yes. Then there should be a transfer,
- 23 there should be a dismissal, shouldn't there?
- 24 MR. FITZSIMONS: If they were going to apply that
- 25 law. In any event there should be, Your Honor, because the

- 1 basic fairness of this rule the way it is right now is
- 2 briefly as follows. It requires the Scottish plaintiff to
- 3 come over here to America to prosecute the case. It
- 4 handicaps the defendant in that the defendant cannot add the
- 5 parties that it needs, the parties that the district court
- 6 found to be necessary parties to be impleaded, such as the
- 7 owner, the operator and the estate of the pilot.
- 8 Should the defendant, so handicapped, lose, it now
- 9 -- an American defendant has to go all the way over to
- 10 Scotland.
- 11 QUESTION: That's right, and --
- 12 MR. FITZSIMONS: To press his action, and that is
- 13 just basically unfair, Your Honor.
- 14 QUESTION: Well, the court of appeals didn't think
- 15 it was.
- 16 MR. FITZSIMONS: Not in light of the fact that
- 17 their basis, that the Pennsylvania law -- that there could
- 18 not be a change in the law, and I say that's the hingepin of
- 19 their decision.
- 20 CHIEF JUSTICE BURGER: Mr. Gardner?
- 21 ORAL STATEMENT OF WARNER W. GARDNER, ESQ.
- 22 ON BEHALF OF THE PETITIONER, HARTZELL PROPELLER, INC.
- 23 MR. GARDNER: Mr. Chief Justice, and may it please
- 24 the Court, if I may continue where my Brother Fitzsimons
- 25 half left off in terms of the decision below, I believe it

- 1 should be pointed out first that the opinion of the court
 2 below was very loosely structured. It is difficult to
 3 follow. But if one reads what it said and reads as it
 4 decided, it is comparatively clear.
- It went first to the so-called private factors

 6 discussed by the district court. As to three of them, it

 7 found the district court in error in relying upon them for

 8 grounds for transfer. It did not say that they were grounds

 9 for retaining the case in Pennsylvania. They had a weight

 10 of zero.
- One of them, the inability of the defendants to
 implead those in Scotland, whom we believe were responsible
 for the accident, the court said the district court erred in
 the assigning it great weight. It was entitled to weight, the
 scourt said, but not so much.
- We're left then, on the private factors, with all 17 being given the weight of zero and one being given a lesser 18 weight but still weight toward dismissal. We turn to the 19 public factors enumerated in the Gilbert case. The court 20 undertook to examine them all. It got, if I may say so, 21 bewitched by the intricacies of the choice of law problem, 22 and ended up with the belief that the Pennsylvania law could 23 be applied by the Pennsylvania court --
- QUESTION: Mr. Gardner, this may be as appropriate 25 a place as any for me to ask you questions on my mind in its

- 1 language from Gulf Oil Corporation v. Gilbert on page 508
 2 where the court says, "Factors of public interest also have
 3 a place in applying the doctrine. Administrative
 4 difficulties follow for courts where litigation is piled up
 5 in congested centers instead of being handled at its
 6 origin. Jury duty is a burden that ought not be imposed
 7 upon the people of a community which has no relation to the
 8 litigation."
- Isn't foreign non-convenience not just a doctrine
 to be fought out between the plaintiffs and the defendants,
 the doesn't the federal judicial administration have a stake
 in it?
- MR. GARDNER: It obviously has, sir. The common 14 formulation, the shorthand formulation, for the many factors 15 enumerated by Justice Jackson is the convenience to parties 16 and the interests of justice. All those factors, which you 17 have just enumerated, Your Honor, are a part of the complex 18 collection of factors that should be balanced. All were 19 forgotten by the Third Circuit. It reached the conclusion 20 that there would be an adverse change in law if the case 21 were filed in Scotland, and categorically said at pages 139 22 and 140 that that was sufficient to prevent grant of the 23 motion.
- 24 QUESTION: Adverse to the plaintiff.
- 25 MR. GARDNER: Adverse to the plaintiff. At page

- 1 156 of the Joint Appendix, in its concluding paragraph, it
 2 said, as the policy interests of Pennsylvania and Ohio, upon
 3 which it relied to determine that Pennsylvania law would be
 4 applied, point to trial here, all other factors will point
 5 similarly. In short, it considered none but the choice of
 6 law problem.
- The only place in the whole 38 pages below where 8 the decision is explained, is the one paragraph on 139 and 9 140. After the review of private factors, just drifted off, 10 no conclusion was drawn. As I've said, the only conclusion 11 that could be drawn from the private factors was a weak, in 12 the view of the court below, factor pointing toward 13 dismissal.
- 14 QUESTION: Was that entirely clear? Are there
 15 processes --
- MR. GARDNER: Nothing in this opinion is entirely 17 clear, sir.
- QUESTION: I'm just wondering in this body of law,

 19 are there cases in which a manufacturer has been sued for

 20 product defect in his home office where the product is

 21 manufactured, where he has ever gotten dismissal on the

 22 foreign non-convenience ground?
- 23 MR. GARDNER: Yes, sir.
- QUESTION: There are not very many, are there?
- 25 MR. GARDNER: There haven't been all that many

- 1 product liability cases. The --
- QUESTION: I could imagine this motion being made

 3 by the defendants that could have been brought in Scotland,

 4 on the ground that there are witnesses and relevant records

 5 and so forth at the home office.
- MR. GARDNER: The difference between a suit in

 7 Scotland and a suit in Pennsylvania is that in Scotland both

 8 parties can try their case. The defendant will, and has no

 9 objection to having the dismissal so conditioned, transport

 10 to Scotland all of its witnesses, all of its records if they

 11 wish to try out product liability on an aircraft seven years

 12 old.
- QUESTION: Well, the age of the case is partly
 14 because it was originally filed in California and
 15 transferred.
- MR. GARDNER: Hartzell was not sued in California,
 17 were not served properly.
- The defendants cannot try out negligence of the 19 air taxi, of the pilot, of the owner and maintenance in the 20 United Kingdom and in Scotland.
- 21 QUESTION: Is that all a defense if the product 22 was defective?
- MR. GARDNER: We can assume so, I believe, that if 24 the product were defective, it surely was joined, or such is 25 our position, by negligence on the part of those who were

- 1 maintaining and operating the aircraft. We cannot assume
- 2 and say therefore, the defendants cannot try their case,
- 3 that there was no negligence. And we cannot try our case
- 4 without the compulsory process. None of the Scottish
- 5 witnesses would willingly testify.
- QUESTION: Mr. Gardner, I take it that one of the questions here is not whether the court of appeals was right 8 in its choice of law conclusions.
- 9 MR. GARDNER: It adheres in the question --
- 10 QUESTION: Well, certainly you didn't expressly
 11 raise the question.
- MR. GARDNER: It's discussed in our brief. In the 13 event the Court wished to examine the premise.--
- 14 QUESTION: If we wish to. I don't know that we 15 particularly wish to.
- 16 MR. GARDNER: In that case, it's not here.
- QUESTION: Well, let me ask -- if it isn't here,

 18 if we judge this case on the basis that the court of appeals

 19 was correct in saying that if the case were tried in America

 20 that the state law, the American law would apply. If we

 21 judge it on that basis, then what evidence is there, or -
 22 I'll put it this way. Are you in agreement, or all the

 23 parties in agreement that if the case shifted to Scotland

 24 that the American law would not apply?
- 25 MR. GARDNER: That is my belief, sir.

- 1 QUESTION: That's your belief, but did the court 2 of appeals say so?
- MR. GARDNER: The court of appeals so stated.
- 4 QUESTION: And are the --
- 5 MR. GARDNER: You're asking me to --
- QUESTION: No, I can ask the other side and I 7 certainly shall.
- 8 MR. GARDNER: Yes, I qualified my answer.
- 9 QUESTION: But your view is that the courts there
 10 would not -- would apply Scottish law rather than American.
- MR. GARDNER: We agree -- that's one of the few 12 points in those 38 pages that we agree with. The --
- 13 QUESTION: And where do they say that?
- MR. GARDNER: At page 137, 139 and 147. The

 15 discussion is not connected; these are isolated sentences.

 16 But you will find between those three references the

 17 statement that the Scottish courts would apply lex loci

 18 delicto to choose the law and that under Scottish law there
- QUESTION: I think everybody agrees with that, but 21 the question is whether they would apply the Scottish law.

19 would be no strict liability, but rather negligence.

MR. GARDNER: I go back, then, to the earlier
23 statement that the Court said, I believe correctly, that the
24 Scottish courts apply the doctrine lex loci delicto, would
25 apply the law of the place of the accident, and if they're

- 1 like any court, if they were captured to apply another law,
- 2 they would look at the place of residence of the plaintiffs
- 3 and find that, too, to be Scotland. There is no possible
- 4 doubt --
- 5 QUESTION: Not like any other court because the
- 6 court of appeals of the third circuit doesn't do that.
- 7 MR. GARDNER: I will amend my statement, sir, to
- 8 say --
- 9 QUESTION: All except the court of appeals of the 10 third circuit.
- MR. GARDNER: Like most courts is perhaps the 12 kindest way to phrase it.
- 13 QUESTION: I don't find the statement of the court
- 14 of appeals that you referred to very categorically, Mr.
- 15 Gardner.
- MR. GARDNER: It's not categorical, sir, but if
- 17 you've read those three sentences --
- 18 QUESTION: Well, I have to read three pages first
- 19 before I find the sentences.
- 20 MR. GARDNER: I wonder if I may help.
- 21 QUESTION: You may.
- 22 QUESTION: One particular sentence, if you'll take
- 23 page 137 and help us focus on that. I read it and --
- 24 MR. GARDNER: Start at the beginning of the
- 25 paragraph on the bottom which states that under the

- 1 applicable choice of law rules, the American or Scottish law 2 would apply.
- QUESTION: Well, but they're reciting the

 4 arguments rather than stating their view. At least, so it

 5 seems to me, although somewhat ambiguous.
- 6 MR. GARDNER: If you look at page 139, I must have 7 thrown in 137 as the introductory part of it. Page 139, the 8 beginning of the last paragraph is reasonably categorical, 9 relating the affidavit of Scottish counsel, to the effect 10 that the Scottish --
- QUESTION: You take it as a conclusion of the 12 court beginning, "And therefore, Scotland probably would 13 apply its own law to all claims." You suggest we read that 14 as their holding.
- MR. GARDNER: I think so. When you come to page
 16 147, which is my third reference, you'll find that the court
 17 assumes that there would be a conflict between American
 18 strict liability and the Scottish negligence law if it had
 19 not been for its application of the so-called governmental
 20 interests.
- I have not been able to remove my feet from the 22 quagmire of the decision below, and I would like to save a 23 few minutes for rebuttal, if the Court permits, I will save 24 my remaining time for rebuttal. I refer the Court, please, 25 to our briefs for our position on the law.

- 1 CHIEF JUSTICE BURGER: Mr. Cathcart?
- ORAL ARGUMENT OF DANIEL C. CATHCART, ESQ.
- 3 ON BEHALF OF THE RESPONDENT
- MR. CATHCART: Mr. Chief Justice, and may it 5 please the Court, the --
- QUESTION: I take it you don't have the same

 7 difficulties that your friends have with understanding this
 8 opinion.
- 9 MR. CATHCART: No, sir, I find it to be a very, 10 very fine and well-written and well-reasoned opinon.
- 11 QUESTION: I'm sure.
- (General laughter.)
- QUESTION: Fine. But let's address the clarity of 14 it, and tell us where they hold what you say they hold.
- MR. CATHCART: I say they hold that when applying 16 the factors of Gulf Oil versus Gilbert, which have been 17 applied since 1947 in cases of this nature, they have no 18 trouble finding an abuse of discretion on the part of the 19 district court judge, and this carefully-written opinion 20 examines each one of those factors and makes it very clear 21 that the case turns on an abuse of discretion; it does not 22 turn on the question of foreign law.
- If we look at page 4 of the decision, -- I'm sorry

 24 I don't have it referenced as to the index which accompanied

 25 our briefs. But the court language on page 4 makes it very

- 1 clear --
- 2 QUESTION: Where will we find it? Is that in your
- 3 --
- 4 MR. CATHCART: It's in the appellate decision, and
- 5 I can quickly find it because it's very early.
- 6 QUESTION: In the joint appendix?
- 7 MR. CATHCART: In the joint appendix, yes.
- 8 QUESTION: And where will we find the
- 9 carefully-written opinion of the Third Circuit?
- 10 MR. CATHCART: That's a matter of qualitative
- 11 judgment which I find it to be a very thorough analysis.
- 12 QUESTION: You claim it begins at page 118 of the
- 13 appendix? That's where the opinion begins?
- 14 MR. CATHCART: It's just a little bit farther into
- 15 the opinion, if I can find the exact language wherein the
- 16 court indicated that the trial judge abused his discretion
- 17 in dismissing the action. And the court went on to say, in
- 18 quotes, "Subsidiary but arguably crucial to this second
- 19 point is the claim ... " --
- 20 QUESTION: I wish I knew where you are reading.
- 21 MR. CATHCART: All right, let me see if I can
- 22 quickly find that for you in the appendix.
- 23 (Pause.)
- QUESTION: I see, at page A-120, I guess in the
- 25 Consolidated Joint Appendix. Page A-120, the last paragraph

- 1 before you get to Roman Numeral I. "The trial judge abuses
 2 discretion in dismissing the action."
- QUESTION: That's just reciting what the claim
 4 is. That's just a contention.
- MR. CATHCART: That is correct. There is, I believe, on the fourth page, -- and if I could just count it 7 -- a copy of the decision.
- 8 QUESTION: Maybe the subsidiary sentence is not 9 part of the contention. It's hard to tell.
- MR. CATHCART: It is on page A-120 of the decision 11 in the second complete paragraph.
- QUESTION: Starting, "In this court, Reyno raises 13 two major contentions..."?
- MR. CATHCART: Yes, sir, that is where I find it.

 15 And those are --
- QUESTION: That merely describes the contention;
 17 it doesn't describe the holding.
- MR. CATHCART: Yes, sir, that is correct. But the 19 holding of the court, as we go through the decision, was 20 based upon a careful examination of every one of the Gulf 21 Oil v. Gilbert factors and a weighing of these in concluding 22 that we have in this case an abuse of discretion on the part 23 of the district court judge. And based upon that, the case 24 turned.
- Now, the court went on to indicate that where

- 1 American law applies, a forum non-convenience dismissal
- 2 should not be granted. And in that instance, in looking
- 3 through the cases cited by the petitioners here, --
- 4 QUESTION: Well, on page 131 it says, "The
- 5 standard of review is one of abuse of discretion, but if the
- 6 trial court has not held the defendants to their proper
- 7 burden or has clearly erred in weighing the factors, the
- 8 equivalent of an abuse of discretion has been demonstrated.
- 9 Discretion must be exercised within the applicable
- 10 standards." And then the court goes on to the applicable
- 11 factors and disagrees with the district court.
- MR. CATHCART: That is correct in every instance.
- 13 QUESTION: What law do you say applies to the
- 14 claims of the negligence of the pilot?
- MR. CATHCART: The law as to the negligence of the 16 pilot may very well be governed by Scottish law, but the
- 17 negligence of the pilot in a products liability action is
- 18 not a defense. And therefore, we may not need to have the
- 19 trier of the fact judge by any standard his negligence. The
- 20 plaintiff in this case has the burden of proof under the
- 21 law, the domestic American law of products liability, of
- 22 establishing fault, either under restor or sui statement of
- 23 tort 2nd 402 2nd, or under a variation thereof.
- 24 QUESTION: How old was this aircraft?
- MR. CATHCART: The aircraft was several years

- 1 old. I can't tell the Court exactly how old it is, but I
 2 believe five or six years old.
- 3 QUESTION: Six years old.
- MR. CATHCART: But the distinction I'd like to

 5 draw for you, Mr. Chief Justice, is that this is a design

 6 defect case. The plaintiffs are alleging that the design of

 7 the aircraft was a proximate cause of the accident, and that

 8 that design was defective. So we're going beyond attacking

 9 one item; that is, that there was a defect in the

 10 manufacture.
- 11 QUESTION: Is there anything in this record that
 12 shows how many air hours were logged in this aircraft?
 13 MR. CATHCART: There is nothing in the record as
 14 of this moment because we have been dealing with procedural
 15 matters and not with discovery matters.
- QUESTION: I see. I raise that because whether
 this is or would turn out to be a product liability case or
 a negligence case in terms of the pilot error, is not very
 selear now, is it?
- MR. CATHCART: It's clear what our burden must be 21 in order to prevail against the manufacturer, since we 22 represent the estates of passengers onboard the airplane.
- QUESTION: What's the connection of Reyno with the 24 passengers onboard the airplane?
- 25 MR. CATHCART: Gaynell Reyno is the nominal party

- 1 plaintiff who was appointed by the Los Angeles County
- 2 Superior Court as personal representative of the estate.
- 3 She, at the time, was a secretary within my law firm and she
- 4 is not a real party in interest. She was appointed because
- 5 under California procedural law, an action for wrongful
- 6 death can be brought in the names of the heirs; it also can
- 7 be brought on behalf of the heirs by the personal
- 8 representative of an estate.
- Since we do have choice of law issues here as to 10 what wrongful death statute does apply, or at least had to 11 at the time that this case began, we had to choose or elect 12 in which form to bring the action.
- QUESTION: But don't you run up there, when you 14 get into the federal court, that there are public factors 15 involved, too, where perhaps the federal courts could be 16 better utilized for matters of more directly federal concern 17 than a secretary in a law office acting as the executor for 18 parties in a private damage action.
- MR. CATHCART: She certainly is only a nominal 20 plaintiff, and therefore, her interest is only that of 21 occupying a title in discharging a court-appointed 22 responsibility. But the real parties in interest are people 23 who have lost their breadwinners, and it's a matter which 24 should be of great concern to a federal court, and this case 25 --

- QUESTION: But they're all in Scotland, aren't
- 2 they?
- 3 MR. CATHCART: They're all in Scotland.
- 4 QUESTION: And they could sue in Scotland.
- MR. CATHCART: They could sue in Scotland. They
 6 may or may not get jurisdiction, but the defendants, as they
 7 typically do in cases of this nature, have agreed to waive
 8 statutes of limitations and to make themselves subject to
 9 the jurisdiction of a foreign court because of the obvious
 10 advantages which inure to them under different law,
 11 different standards and lack of a trial by jury. And
 12 there's no question, one of the attractive features besides
 13 the location of a substantial quantum of proof as to a
 14 design defect being right at the manufacturer's place of
 15 business is the fact that, I still believe and I think my
 16 clients belief, our system of justice is without equal in
 17 our system of determining what is just and adequate
 18 compensation for real losses.
- QUESTION: So what you want to -- you wanted to
 20 establish a principle that anybody injured in any nation on
 21 the face of this earth, injured by a product made in the
 22 United States, can sue in the United States.
- 23 MR. CATHCART: I'm not asking -- no, sir, I am not 24 asking --
- 25 QUESTION: Our justice isn't that broad now, is it?

- MR. CATHCART: I don't think it should be that 2 broad and that's what I am not seeking here.
- QUESTION: Well, aren't you trying? You're going 4 to carry it at least to the United Kingdom.
- MR. CATHCART: No, sir, I'm not trying to do that, 6 Justice Marshall. I'm trying, under the facts of this case, 7 to demonstrate the right of people who indeed are aliens to 8 sue a U.S. manufacturer, in this case, two U.S.
- 9 manufacturers, for claimed defects in their products which,
 10 by happenstance, because of an airplane being what it is, an
 11 object which can and can be anticipated to --
- 12 QUESTION: Wouldn't that apply to a toy cart in 13 Russia if it was made in the United States?
- MR. CATHCART: It might, if we went through all 15 the Gulf Oil v. Gilbert factors and concluded that this was 16 an appropriate place to sue, and that the defendant, under 17 the facts situation, did not meet its burden. I'm certainly 18 not trying to ask this Court, as I believe the petitioners 19 are, to come up with new law, a new doctrine, that aliens 20 should not be allowed to bring actions for products 21 liability in this country.
- And I think that's the way -- even though the
 23 issue was quite limited under which certiorari was granted,
 24 the briefs have been expanded to encourage this Court to
 25 make such a finding. I don't believe we should close the

- 1 doors --
- 2 QUESTION: Wouldn't the Third Circuit, in Justice
- 3 Marshall's example, the Third Circuit come to the same
- 4 conclusion that it did with respect to the applicable law?
- 5 It may not with respect to the transfer factors, but with
- 6 respect to the applicable law, it would hold that the
- 7 American law applies in Justice Marshall's example, the toy
- 8 in Russia made in the United States.
- 9 MR. CATHCART: Yes, the Third Circuit might very 10 well find --
- 11 QUESTION: Might? Would, wouldn't they?
- MR. CATHCART: Well, if we read DeMateos and the 13 Reyno decision, I think the probabilities are that they 14 would. But if we look at DeMateos, we see a case which had 15 no American connection whatsoever that was of significance.
- QUESTION: But here we have a case in which it is 17 not yet clear whether it's pilot error or negligence of the 18 pilot, or whether it's a product liability case. I take it 19 you'd concede that.
- MR. CATHCART: I concede that defendants have a 21 contention and to that extent that they've urged it, it is 22 not clear.
- QUESTION: In the Russian cart case, there is no 24 such complication.
- MR. CATHCART: Perhaps there is not such a

- 1 complication, Mr. Chief Justice.
- 2 One of the things that I think is important is
- 3 that the question of -- from the cases that I've examined
- 4 and been able to find is the question of foreign law has
- 5 never been the determining factor. It certainly wasn't in
- 6 DeMateos. DeMateos they found had no connection to the
- 7 United States other than by happenstance. It happened it
- 8 just barely crossed the line into our territorial waters.
- 9 But if we go through the various decisions, ones
- 10 in the Dover Straits, most of them are from Admiralty, we
- 11 don't have a clearcut case where American law has been the
- 12 determining factor.
- 13 QUESTION: But let me -- under the common law
- 14 foreign non-convenience rule, the change of law didn't
- 15 prevent a dismissal, did it?
- 16 MR. CATHCART: I don't think it did and I don't
- 17 know that it should. I think it's a factor, it's a Gulf Oil
- 18 v. Gilbert factor that the Court should consider.
- 19 QUESTION: Well, the court of appeals here thought
- 20 it was a rather substantial factor.
- 21 MR. CATHCART: They did, indeed.
- 22 QUESTION: And so do you.
- 23 MR. CATHCART: I do believe it's a significant
- 24 factor from a --
- 25 QUESTION: But you say you haven't seen any old

- 1 cases like that. I thought that the -- did you find any old 2 common law cases on foreign non-convenience that makes the 3 change of law a substantial factor?
- 4 MR. CATHCART: I don't know of a case that makes 5 it a determining factor.
- QUESTION: No. And you do have cases where there

 7 would be a change of law if it was tried in another forum

 8 and the case was nevertheless dismissed.
- 9 MR. CATHCART: I do not know of any recent cases, 10 and none --
- 11 QUESTION: I didn't ask that.
- 12 MR. CATHCART: All right.
- QUESTION: There are hardly any, I suppose, under 14 the federal rules. It would just be international cases.
- MR. CATHCART: Perhaps that is correct, and I know 16 of none and I can cite none to the Court.
- QUESTION: Let me come back to an earlier point

 18 that was discussed somewhat. What's to prevent the Scottish

 19 case if the case goes there from applying American law?
- MR. CATHCART: The only information that we have
 1 on Scottish law is in the affidavits of counsel that are
 2 included in the Joint Appendix. And they strongly suggest
 3 that the Scottish courts would apply the law of Scotland.
- QUESTION: Well, they suggest that. But on the 25 other hand, isn't the possibility of the Scottish court

- 1 applying American law precisely what Justice Brandeis said
 2 in Canada Malting?
- MR. CATHCART: Yes. And the -- but we cannot, 4 from this record, determine --
- 5 QUESTION: You don't want to take that risk.
- MR. CATHCART: I don't want to take that risk at

 7 this stage of the proceedings when it was not raised that

 8 strongly in the lower court. We have another factor in this

 9 case, because as I understand the limited issue, we're

 10 talking about whether it can be denied merely because

 11 foreign law will apply. And I submit, and it is the

 12 position of the respondents, that it is merely an element

 13 that must be considered and should be considered.
- But we go to another factor which I think is a

 15 very important factor in this case, and that is the

 16 defendant in this case has moved this case already, and

 17 moved this case upon the representation to the courts

 18 involved by way of affidavits that Pennsylvania is

 19 overwhelmingly fair to all parties. In addition, by way of

 20 affidavit, Piper has said in the affidavit of November 22,

 21 1977, judicial temporaral and geographical interests are

 22 best served by a transfer to Pennsylvania, though propriety

 23 of transferring the within action to Pennsylvania for the

 24 convenience of witnesses overwhelms other factors.
- Now, that defendant should be estopped from now

- 1 coming into court and saying now that we have moved you to 2 our own backyard, --
- 3 QUESTION: But you can't -- they were comparing
- 5 MR. CATHCART: They were comparing the --

4 California with Pennsylvania, weren't they?

- 6 QUESTION: There was no issue at that time as to 7 whether the case should be tried in Scotland.
- 8 MR. CATHCART: That is correct, they did not raise
- 9 it at this time. But they pointed out, using Gulf Oil v.
- 10 Gilbert criteria, why it should be transferred to
- 11 Pennsylvania and transferred to the place of manufacture.
- 12 QUESTION: Is there anything that would prevent
- 13 you from refiling your case in the Pennsylvania state court?
- MR. CATHCART: I perhaps could refile it but I
- 15 suspect I'd be removed on diversity.
- 16 QUESTION: You would have to know what
- 17 Pennsylvania law is on dead people filing lawsuits.
- 18 MR. CATHCART: I know I'm reasonably familiar with
 19 the wrongful death statute of Pennsylvania.
- 20 QUESTION: You are?
- 21 MR. CATHCART: Reasonably certain.
- QUESTION: I was trying to save you from answering 23 the question.
- 24 (General laughter.)
- 25 Go right ahead and answer.

- 1 MR. CATHCART: I, under the pressure of the 2 moment, did not appreciate that or seem able to take 3 advantage of that.
- 4 QUESTION: Well, what's your answer? Could you 5 file?
- 6 MR. CATHCART: The answer to the question is 7 basically, I'm not clear what the question is.
- QUESTION: The question was whether they could 9 file in Pennsylvania. I think you started to say if you 10 did, they'd transfer it to the federal court which would 11 then dismiss it.
- MR. CATHCART: The federal court, unless guided by 13 the Third Circuit opinion, which hopefully will remain the 14 law of this case, would have to leave the case, I assume, 15 intact here on the basis that certainly, it's an important 16 element here under Gulf Oil, that the very wrong of which 17 the plaintiffs complain, the defective design of the 18 airplane, took place in Pennsylvania right at the place 19 where this trial is going to be held. And presumably, the 20 manufacturer and all of his employees and people who were 21 instrumental are located there, as is a substantial amount 22 of proof concerning the manufacturing process, the role of 23 the Federal Aviation Administration in that process, and so 24 on.
- 25 QUESTION: Are you so sure that the state action

- 1 in Pennsylvania would automatically be removable? One of
- 2 your defendants has principal place of business in
- 3 Pennsylvania, I was told.
- 4 MR. CATHCART: Yes, Piper does have a principal
- 5 place of business in -- we have a principal place of
- 6 business in Pennsylvania, and also in the state of Florida.
- 7 And although I believe them to be nominally a Delaware
- 8 corporation, --
- 9 QUESTION: Well, is there diversity? Oh, you're a 10 California plaintiff, aren't you?
- 11 MR. CATHCART: Yes, sir. For Scottish people.
- QUESTION: There may still be no diversity in view 13 of the principal place of business.
- One last question. Do I understand an action is pending in the courts of Scotland?
- MR. CATHCART: Yes, there is an action pending not 17 against the manufacturers, but there is an action pending in 18 the courts of Scotland, which was filed after the procedural 19 issues arose as to whether these people would be allowed to 20 go forward or would not be allowed to go forward in the 21 United States of America.
- QUESTION: You said not against the manufacturer.

 23 Against whom, then?
- MR. CATHCART: It would be against the operator of 25 the aircraft, the owner and perhaps against the deceased

1 pilot's estate. On that I do not know for sure.

What we have here, or what is solicited by the defendants in this case as manufacturers, and urged by major airplane manufacturers in their amicus curiae briefs is an effort to cause this Court to adopt a policy to close the door in products liability cases on accidents which involve products defectively made in the United States but which are sold abroad, and which the manufacturer can be expected to be involved in accidents in anyplace of the globe because of the ubiquitous nature of aircraft, and large aircraft in particular. And the law of the United States has not gone 12 that far.

As a matter of fact, the law of the United States

14 so far has, where there is a U.S. connection and a reason

15 particularly to apply American law, the courts of the United

16 States have been open to the victims of aviation accidents

17 around the world. And in a design case, it's particularly

18 important that they be open because design involves not just

19 one defective article, but involves perhaps a fleet of

20 articles; articles operating in this country and elsewhere

21 in which the United States has a significant interest.

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- We have, then, the manufacturers trying to use a procedural rule to bring about a substantive result, a procedural rule which would under given circumstances deny causes of action and deny in some circumstances the right of recovery against U. S. manufacturers for defectively made products here.
- That, in my opinion, is a policy which should not 8 be encouraged and should not be sanctioned by the highest 9 Court of this land. The dismissal process should not be 10 used as a protective shield to determine the outcome of 11 litigation, but to the contrary, it should be used only when 12 there is no real nexus to the United States of America and 13 no conceivable basis upon which the manufacturer could play 14 a role in -- the U. S. base manufacturer could play a role 15 in the manufacturing process.
- I think our position is that based on the limited 17 issue to which certiorari has been granted, that no matter 18 how this Court decides that issue, it should not be 19 determinative or result in a reversal of the Third Circuit 20 Court opinion, because of the very detailed and elaborate 21 weighing of all of the Gulf Oil versus Gilbert factors, and 22 as urged in our brief, because the decision clearly, from 23 the depth of that decision and the detail in the decision in 24 examining those factors, the decision turns not on foreign 25 law or whether it does or does not apply, although it was a

1 significant factor by the Court.

10 is somehow vexing or harassing a --

- It is clear that all of the other Gulf Oil versus

 3 Gilbert factors also were found by the Appellate Court to

 4 cause this court, the Appellate Court to believe that there

 5 was an abuse of discretion by the trial judge and a failure

 6 to meet the burden of proof which the forum non-convenience

 7 cases impose upon a moving party, and there was no evidence

 8 presented which shows that suing a manufacturer in his own

 9 back yard, where the alleged wrongful conduct was conducted,
- QUESTION: May I ask, do you interpret our limited
 12 grant as indicating that this Court has already read the
 13 Court of Appeals opinion to have turned exclusively on the
 14 possibility that the law might change if the case were
 15 dismissed?
- MR. CATHCART: I don't read it on that alone. I

 17 read it --
- QUESTION: Well, we limited the grant to this
 single question, didn't we?
- MR. CATHCART: Yes, it was limited to a single
 21 question when many others were raised, and that is why,
 22 although the Petitioners have sought a review of this Court
 23 ab initio, whether the Third Circuit acted properly or did
 24 not act properly on all issues, the granting of the writ,
 25 which is limited to the issue of must a motion to dismiss on

- 1 grounds of forum non-convenience be denied whenever the law
 2 of the alternate forum is less favorable to recovery than
 3 that which would be applied by the District Court, if we
 4 answered that question yes or no, because of the word
 5 "whenever" or as used by counsel in argument and in their
 6 briefs, merely by showing, we are not expanding this to be a
 7 broad issue --
- QUESTION: Well, part of your argument, I take it,
 9 is that even if the law weren't going to change, that the
 10 Court of Appeals nevertheless found no basis for the
 11 transfer.
- MR. CATHCART: That is correct. Even if foreign 12 13 law were to be applied, and because we are applying in 14 1404(A) transfers, foreign law frequently, when we take the 15 conflict of laws principles involved, and it may require the 16 use of foreign law, i. e., the law of a foreign state, in 17 deciding a case, and according to Van Dusen versus Barrack, 18 the law of the transferor state accompanies the transfer of 19 the file, including its conflict of laws, and accordingly a 20 transferee court can apply a foreign law, albeit a foreign 21 state, but there is no distinction of any great significance 22 to whether or not it is foreign state or foreign country. OUESTION: Yes, but the Third Circuit seems to 23 24 have said unequivocally that if there is a difference, 25 dismissal would not be justified. They say that at Page 140.

- MR. CATHCART: It certainly did, and it adopted
- 2 its own language out of DeMateos, but if we --

)

- QUESTION: And that is apparently the rule that
 they apply in the Third Circuit, so that if we do not agree
 that that rule, don't we have a duty to vacate the judgment
- 6 and say, take a look at the case without the benefit of that 7 rule?
- MR. CATHCART: I don't believe so, because I don't 9 think the decision in that lower court turned on that one 10 statement. It turned on a myriad of factors, and that one 11 statement, although important and of significance, was not 12 determinative. It was not determinative in De Mateos, 13 because in De Mateos the court found that there was no nexus 14 to American law whatsoever, and therefore the Court did not 15 have to answer that question. It said, this case does not 16 belong in the United States under the factual context. It 17 is all foreign.
- QUESTION: Do you think that statement is a 19 correct statement of the law?
- 20 MR. CATHCART: I think that it is a correct
 21 statement to say --
- 22 QUESTION: You defend that rationale.
- 23 MR. CATHCART: I defend that rationale.
- QUESTION: You really haven't. You have pretty 25 much argued, well, they really didn't mean what they said.

2 extend that far to justify the opinion of the Third
3 Circuit. The opinion can stand even if this Court should
4 disagree with that statement. I do not find that statement
5 in any opinions other than those by the Third Circuit and by
6 some of the text writers on the subject, who have suggested
7 strongly that the as in the Fifth Circuit, in the Fisher
8 versus Ajios Nicolaos V, 628 F 2nd, 308, which is cited in
9 our brief, that says where U. S. law is applicable,
10 jurisdiction is retained, and I think that is one side of
11 the coin, but what do we do if U. S. law is not applicable,
12 and that is something that is not before us at this time.
CHIEF JUSTICE BURGER: Your time has expired.
We will take up your rebuttal at 1:00 o'clock.
(Whereupon, at 12:00 o'clock noon, the Court was
16 recessed, to reconven at 1:00 o'clock p.m. of the same day.)
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AFTERNOON SESSION

- 2 CHIEF JUSTICE BURGER: Mr. Gardner, we have a
- 3 pretty narrow question here, and we hope for some
- 4 enlightenment on that narrow question.

16 the Michell and the Harrison cases.

- 5 ORAL ARGUMENT OF WARNER W. GARDNER, ESQ.,
- 6 ON BEHALF OF THE PETITIONERS -- rebuttal
- 7 MR. GARDNER: Yes, sir. I have two minutes and 56
- 8 seconds in which I hope to make six categorical propositions
- 9 which I hope further will add some enlightenment to this 10 narrow question.
- One, I was not able to answer the question of

 12 Justice Stevens as to product liability cases. At Page 9 of

 13 our reply brief, we list seven or eight product liability

 14 cases dismissed for forum non-convenience. Two others cited

 15 in our briefs -- I will not give the citations here -- are
- The case of Canada Malting was mentioned here. We
 18 are of the view there is no way the court below can be
 19 affirmed without overruling Canada Malting, which very
 20 clearly dismissed a case despite seriously adverse changes
 21 in the law. I don't wish to resume my quarrel with the
 22 court below, but in 38 pages they never mentioned Canada
 23 Malting.
- Mr. Cathcart explained correctly that the suit in 25 Scotland does not -- was not brought against the

- 1 manufacturers. His statement should be supplemented by the 2 fact that in the United Kingdom there is a suit brought by 3 the Pyrex estate against the American manufacturers over 4 whom jurisdiction has been asserted.
- The estoppel point, which has figured here and there because of statements made in the District Court of California, decided adversely to the Respondent by two 8 courts below. There was no petition for certiorari based 9 upon that nor any statement in the brief in opposition 10 relying upon it. We think it is a little late to bring it 11 up at this point.
- What to me was a critical sentence in the opinion

 13 of the Court below lay just one sentence beyond the extracts

 14 which Justice White read from Page 131. The last sentence

 15 of the paragraph on that page is, "The District Court's wide

 16 discretion may not serve the defendants as a burden-shifting

 17 device on appeal from an order in their favor." In short,

 18 discretion of the District Court is given great weight if it

 19 be exercised in favor of the plaintiff, not otherwise.
- The last and brief sentence is that the statements 21 that the court below considered all factors under Gilbert is 22 flatly wrong. If you read the public factors enumerated by 23 the District Court, you will find them ignored by the Court 24 of Appeals, except for the one factor which is categorically 25 described on Page 139.

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1 CHIEF JUSTICE BURGER: Thank you, gentlemen. The
2 case is submitted.
    (Whereupon, at 2:05 o'clock p.m., the case in the
4 above-entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of: Piper Aircraft Co., Pet. v. Gaynell Reyno Personal Representative of the Est. of William Fehilly, et al., and Hartzell Propellor, Inc., Pet. v. Gaynell Reyno Personal Representative of the Estate of William Fehilly, Et Al. and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Sharm Agan Connelly

SUPREME COURT. U.S.