

SUPREME COURT OF THE UNITED STATES

No. 93-489

O'MELVENY & MYERS, PETITIONER v. FEDERAL
DEPOSIT INSURANCE CORPORATION AS RE-
CEIVER FOR AMERICAN DIVERSIFIED
SAVINGS BANK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT
[June 13, 1994]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN, JUSTICE O'CONNOR and JUSTICE SOUTER join, concurring.

While I join the Court's opinion, I add this comment to emphasize an important difference between federal courts and state courts. It would be entirely proper for a state court of general jurisdiction to fashion a rule of agency law that would protect creditors of an insolvent corporation from the consequences of wrongdoing by corporate officers even if the corporation itself, or its shareholders, would be bound by the acts of its agents. Indeed, a state court might well attach special significance to the fact that the interests of taxpayers as well as ordinary creditors will be affected by the rule at issue in this case. Federal courts, however, "unlike their state counterparts, are courts of limited jurisdiction that have not been vested with open-ended lawmaking powers." *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77, 95 (1981). Because state law provides the basis for respondent's claim, that law also governs both the elements of the cause of action and its defenses. Unless Congress has otherwise directed, the federal court's task is merely to interpret and apply the relevant rules of state law.

Cases like this one, however, present a special problem. They raise issues, such as the imputation question here, that may not have been definitively settled in the state jurisdiction in which the case is

brought, but that nevertheless must be resolved by federal courts. The task of the federal judges who confront such issues would surely be simplified if Congress had provided them with a uniform federal rule to apply. As matters stand, however, federal judges must do their best to estimate how the relevant state courts would perform their lawmaking task, and then emulate that sometimes purely hypothetical model. The Court correctly avoids any suggestion about how the merits of the imputation issue should be resolved on remand or in similar cases that may arise elsewhere. "The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues." *Butner v. United States*, 440 U. S. 48, 58 (1979).