

The Burger Court Opinion Writing Database

Zahn v. International Paper Co.

414 U.S. 291 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

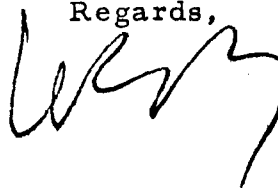
December 14, 1973

Re: No. 72-888 - H. Keith Zahn, et al v. International
Paper Company

Dear Byron:

Please join me.

Regards,



Mr. Justice White

Copies to the Conference

✓

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

CHAMBERS OF
JUSTICE WILLIAM O DOUGLAS

December 13, 1973

Dear Bill:

Please join me in your dissent in
72-888, Zahn v. International Paper Co.

WUD
~~William O. Douglas~~

Mr. Justice Brennan

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 6, 1973

MEMORANDUM TO THE CONFERENCE

RE: No. 72-888 Zahn v. International Paper Co.

In due course I shall circulate a dissent in
the above.

W.J.B.Jr.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Brandeis
Mr. Justice Harlan
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-888

Circulation: DEC 13 1973

H. Keith Zahn et al.,
Petitioners,
v.
International Paper Company.

On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

Reargued: _____

[December —, 1973]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that, in a diversity suit, a class action under Rule 23 (b)(3) of the Federal Rules of Civil Procedure is maintainable only when every member of the class, whether an appearing party or not, meets the \$10,000 jurisdictional amount requirement of 28 U. S. C. § 1332 (a). It finds this ruling compelled by the "rationale of this Court's prior cases construing the statutes defining the jurisdiction of the District Court." I disagree and respectfully dissent.

The jurisdictional amount provision of § 1332 (a) tersely states that "the matter in controversy [must exceed] the sum or value of \$10,000" Those words, substantially unchanged since the passage of the Judiciary Act of 1789,¹ apply to "civil actions," and say nothing about the requirements applicable to individual claimants and individual claims. Although Congress has several times altered the amount required,² generally

¹ Section 1, 1 Stat. 78. The First Judiciary Act used the term "matter in dispute," *ibid.*, and that phrase was retained until 1911, when the jurisdictional amount was increased from \$2,000 to \$3,000, Act of March 3, 1911, § 24, c. 231, 36 Stat. 1091, and the words "matter in controversy" were substituted.

² The amendments are catalogued in n. 1 of the Court's opinion.

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 12, 1973

Re: No. 72-888, Zahn v. International
Paper Co.

Dear Byron,

I am glad to join your opinion for the
Court in this case.

Sincerely,

P.S.

Mr. Justice White

Copies to the Conference

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11-9-73

Recirculated: _____

No. 72-888

H. Keith Zahn et al.,
Petitioners.
v.
International Paper Company. } On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[November —, 1973]

MR. JUSTICE WHITE delivered the opinion for the Court.

Petitioners, asserting that they were owners of property fronting on Lake Champlain in Orwell, Vermont, brought this action in the District Court on behalf of a class consisting of themselves and 200 lake-front property owners and lessors around the lake. They sought damages from International Paper Company, a New York corporation, for allegedly having permitted discharges from its pulp and paper-making plant, located in New York, to flow into Ticonderoga Creek and to be carried by that stream into Lake Champlain, thereby polluting the waters of the lake and damaging the value and utility of the surrounding properties. The suit was brought as a diversity action, jurisdiction assertedly resting on 28 U. S. C. § 1332 (a). The claim of each of the named plaintiffs was found to satisfy the \$10,000 jurisdictional amount, but the District Court was convinced "to a legal certainty" that not every individual owner in the class had suffered pollution damages in excess of \$10,000. Reading *Snyder v. Harris*, 394 U. S. 332 (1969), as precluding maintenance of the action by any member of the class whose separate and distinct claim did not individually satisfy the jurisdictional

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 3

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____
Recirculated: 11-12-73

No. 72-888

H. Keith Zahn et al.,
Petitioners,
v.
International Paper Company. } On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[November —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Petitioners, asserting that they were owners of property fronting on Lake Champlain in Orwell, Vermont, brought this action in the District Court on behalf of a class consisting of themselves and 200 lake-front property owners and lessees around the lake. They sought damages from International Paper Company, a New York corporation, for allegedly having permitted discharges from its pulp and paper-making plant, located in New York, to flow into Ticonderoga Creek and to be carried by that stream into Lake Champlain, thereby polluting the waters of the lake and damaging the value and utility of the surrounding properties. The suit was brought as a diversity action, jurisdiction assertedly resting on 28 U. S. C. § 1332 (a). The claim of each of the named plaintiffs was found to satisfy the \$10,000 jurisdictional amount, but the District Court was convinced "to a legal certainty" that not every individual owner in the class had suffered pollution damages in excess of \$10,000. Reading *Snyder v. Harris*, 394 U. S. 332 (1969), as precluding maintenance of the action by any member of the class whose separate and distinct claim did not individually satisfy the jurisdictional

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

pp 5, 10, 12

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 72-888

Recirculated: 12-13-73

H. Keith Zahn et al.,
Petitioners,
" } On Writ of Certiorari
International Paper Company. } to the United States
Court of Appeals for
the Second Circuit.

[November —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court

Petitioners, asserting that they were owners of property fronting on Lake Champlain in Orwell, Vermont, brought this action in the District Court on behalf of a class consisting of themselves and 200 lake-front property owners and lessees around the lake. They sought damages from International Paper Company, a New York corporation, for allegedly having permitted discharges from its pulp and paper-making plant, located in New York, to flow into Ticonderoga Creek and to be carried by that stream into Lake Champlain, thereby polluting the waters of the lake and damaging the value and utility of the surrounding properties. The suit was brought as a diversity action, jurisdiction assertedly resting on 28 U. S. C. § 1332 (a). The claim of each of the named plaintiffs was found to satisfy the \$10,000 jurisdictional amount, but the District Court was convinced "to a legal certainty" that not every individual owner in the class had suffered pollution damages in excess of \$10,000. Reading *Snyder v. Harris*, 394 U. S. 332 (1969), as precluding maintenance of the action by any member of the class whose separate and distinct claim did not individually satisfy the jurisdictional

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1973

Re: No. 72-888 -- Zahn v. International Paper Co.

Dear Byron:

I shall await Bill Brennan's dissent in this
one.



Sincerely,

T. M.

Mr. Justice White

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 12, 1973

Re: No. 72-888 - Zahn v. International Paper Co.

Dear Byron:

Please join me.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 10, 1973

No. 72-888 Zahn v. International Paper Co.

Dear Byron:

Please join me.

Sincerely,

L. F. Powell

Mr. Justice White

lfp/ss

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 12, 1973

Re: No. 72-888 - Zahn v. International Paper

Dear Byron:

Please join me.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference