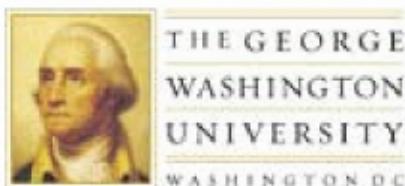


# The Burger Court Opinion Writing Database

*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



✓  
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.

WWD  
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 Fortas  
 Mr. Justice White  
 Mr. Justice Harlan  
 Mr. Justice Black  
 Mr. Justice Stewart  
 Mr. Justice Powell

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 72-888

Circled in DEC 13

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

[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,<sup>1</sup> 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,<sup>2</sup> generally

<sup>1</sup> 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.

<sup>2</sup> The amendments are catalogued in n. 1 of the Court's opinion.

✓  
✓  
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

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.

Circulatel: 11-9-73

### Footnote 1:

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

✓ —  
N  
STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 1, 3

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

From: White, J.

2nd DRAFT

Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

Recirculated: 11-12-73

No. 72-888

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

✓  
pp 5, 10, 12

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 72-888

Recirculated: 11-13-73

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

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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

November 10, 1973

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

Dear Byron:

Please join me.

Sincerely,

*L. C. -e*

Mr. Justice White

lfp/ss

cc: The Conference

✓  
CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

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

November 12, 1973

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

Dear Byron:

Please join me.

Sincerely,

W.W.

Mr. Justice White

Copies to the Conference