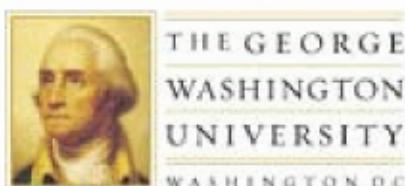


# The Burger Court Opinion Writing Database

*Thermtron Products, Inc. v.  
Hermansdorfer*

423 U.S. 336 (1976)

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



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

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 1-28-75

THERMTRON PRODUCTS, INC. AND LARRY  
DEAN NEWHARD v. H. DAVID HERMANS- Recirculated:  
DORFER, JUDGE, UNITED STATES DIS-  
TRICT COURT FOR THE EASTERN  
DISTRICT OF KENTUCKY

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

No. 74-206. Decided February —, 1975

MR. JUSTICE WHITE, dissenting.

Petitioners, citizens of Indiana, were named as defendants in a tort action brought against them by two citizens of Kentucky in a Kentucky state court seeking damages in excess of \$10,000. In strict compliance with 28 U. S. C. § 1446, petitioners removed the case to the District Court. Some 11 months after the case had been removed, the District Court, after giving petitioners the opportunity to object to his contemplated action, *sua sponte* remanded the case to the state court in an order which assumed that the case had been properly removed and that the court had jurisdiction over the case under 28 U. S. C. § 1332. Not purporting to act under any express statutory authority, the District Court based its order on a purported power to protect the state court plaintiffs' "right to a speedy decision on the merits of their cause of action . . . , " a right that assertedly could not be satisfied in the District Court because of the large number of cases then pending on its docket and the low priority assigned to diversity cases such as this one.

Petitioners sought a writ of mandamus and/or prohibition in the Court of Appeals, 28 U. S. C. § 1651, to correct the action taken by the District Court. Relying, *inter alia*, on 28 U. S. C. § 1447 (d) and three prior de-

D.C. assumed  
that case  
was "properly  
removed"  
actually

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 28, 1975

Re: No. 74-206 -- Thermtron Products, Inc. and  
Larry Dean Newhard v. H. David Hermansdorfer

Dear Byron:

Please join me in your dissent.

Sincerely,

*T.M.*  
T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 30, 1975

Re: No. 74-206 - Thermtron Products, Inc.  
v. Hermansdorfer

Dear Byron:

I voted with you before and I am still with you.  
Please join me in your proposed dissent to the denial of  
certiorari.

Sincerely,

Harry

Mr. Justice White

cc: The Conference