

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-
DORFER, JUDGE, UNITED STATES DIS-
TRICT COURT FOR THE EASTERN
DISTRICT OF KENTUCKY

Recirculated: _____

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-

*DC assumed
that case
was "properly
removed"
initially*

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.

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,



Mr. Justice White

cc: The Conference