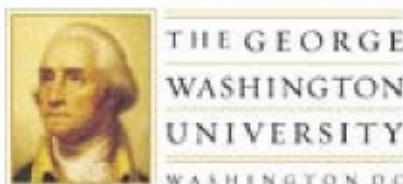


The Burger Court Opinion Writing Database

*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



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

CHAMBERS OF
THE CHIEF JUSTICE

January 15, 1976

Re: 74-206 - Thermtron Products, Inc. v. Hermansdorfer, USDJ

MEMORANDUM TO THE CONFERENCE:

From the outset I have been convinced the district judge action was "wrong" in broad terms. If we could reverse for an abuse of discretion, I would be for that, but that route is not feasible.

The line drawn by Congress is a harsh one, no doubt capable of producing some odd results, but the line is there and Bill Rehnquist's opinion persuades me that, arbitrary as the statute may be, the power conferred by Congress is to be read as he has set it out.

I therefore join his dissent.

Regards,

WB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 3, 1975

RE: No. 74-206 Thermtron Products, et al. v. Hermansdorfer

Dear Byron:

I agree.

Sincerely,

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 11, 1975

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

Dear Bill,

Please add my name to your
dissenting opinion in this case.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

Circulated: 12-2

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-206

Thermtron Products, Inc., and
Larry Dean Newhard,
Petitioners,
v.
H. David Hermansdorfer, Judge.
United States District Court
for the Eastern District
of Kentucky.

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

[December —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

The questions in this case are whether a Federal District Judge may remand a properly removed diversity case for reasons not authorized by statute, and, if not, whether such remand order may be remedied by writ of mandamus.

I

On April 9, 1973, two citizens and residents of Kentucky filed an action in a Kentucky state court against Thermtron Products, Inc., an Indiana corporation without office or place of business in Kentucky, and one Larry Dean Newhard, an employee of Thermtron and a citizen and resident of Indiana, seeking damages for injuries arising out of an automobile accident between plaintiffs' automobile and a vehicle driven by Newhard. Service on the defendants, who are petitioners here, was by substituted service on the Secretary of State of the Commonwealth, pursuant to Kentucky law. Later that month, petitioners removed the cause to the United

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 4, 1975

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

Dear Byron:

Please join me.

Sincerely,

JM

T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 4, 1975

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

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1975

No. 74-206 Thermtron Products v.
Hermansdorfer

Dear Byron:

Please join me.

Sincerely,

Yours
Robert C. Keeler

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 2, 1975

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

Dear Byron:

In due course I plan to circulate a dissenting opinion in this case.

Sincerely,

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice ~~Marshall~~
Mr. Justice ~~Brennan~~
Mr. Justice ~~Stevens~~
Mr. Justice ~~White~~
Mr. Justice ~~Mansfield~~
Mr. Justice ~~Brennan~~
Mr. Justice ~~Black~~

PP 1, 2, 4, 5, 6+7

From: Rehnquist

RECORDED 12/1/75

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-206

Thermtron Products, Inc., and
Larry Dean Newhard,
Petitioners,
v.
H. David Hermansdorfer, Judge,
United States District Court
for the Eastern District
of Kentucky.

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

[December —, 1975]

MR. JUSTICE REHNQUIST, dissenting.

The Court begins its discussion in this case by asking the wrong questions, and compounds its error by arriving at the wrong answer to at least one of the questions thus posed. The principal, and in my view only, issue presented for review is whether the Court of Appeals was correct in concluding that it was without jurisdiction to review the order of remand entered by the District Court for the Eastern District of Kentucky. If no jurisdiction existed, it of course follows that there was no power in the Court of Appeals to examine the merits of petitioners' contentions that the order of remand exceeded respondent's authority, and that its order denying relief must be affirmed. *Mansfield, Coldwater & Lake Michigan Ry. v. Swan*, 111 U. S. 379 (1884). As I think it plain that Congress, which has unquestioned authority to do so, *Sheldon v. Sill*, 8 How. 440 (1850), has expressly prohibited the review sought by petitioners, I dissent. *f to.*

✓
P. 142

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 12-10-

Recirculated: 1-8-7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-206

Thermtron Products, Inc., and
Larry Dean Newhard,

Petitioners

H. David Hermansdorfer, Judge,
United States District Court
for the Eastern District
of Kentucky.

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

1976

[RECORDED 1975]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE STEWART joins, dissenting.

The Court begins its discussion in this case by asking the wrong questions, and compounds its error by arriving at the wrong answer to at least one of the questions thus posed. The principal, and in my view only, issue presented for review is whether the Court of Appeals was correct in concluding that it was without jurisdiction to review the order of remand entered by the District Court for the Eastern District of Kentucky. If no jurisdiction existed, it of course follows that there was no power in the Court of Appeals to examine the merits of petitioners' contentions that the order of remand exceeded respondent's authority, and that its order denying relief must be affirmed. *Mansfield, Coldwater & Lake Michigan Ry. v. Swan*, 111 U. S. 379 (1884). As I think it plain that Congress, which has unquestioned authority to do so, *Sheldon v. Sill*, 8 How. 440 (1850), has expressly prohibited the review sought by petitioners, I dissent.