

# The Burger Court Opinion Writing Database

## *Santa Fe Industries, Inc. v. Green*

430 U.S. 462 (1977)

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

March 14, 1977

Re: 75-1753 Santa Fe Industries v. Green et al

Dear Byron:

I join.

Regards,

Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 16, 1977

RE: No. 75-1753 Santa Fe Industries v. Green

Dear Byron:

Would you please add the following at the foot of  
your opinion:

"Mr. Justice Brennan dissents and would  
affirm for substantially the reasons stated  
in the majority and concurring opinions in  
the Court of Appeals, 533 F. 2d 1283 (1976)."

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 10, 1977

Re: No. 75-1753, Santa Fe Industries  
v. Green

Dear Byron,

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

Sincerely yours,

P.S.  
1.

Mr. Justice White

Copies to the Conference



✓  
✓

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

From: Mr. Justice White

Circulated: 3-10-77

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1753

Santa Fe Industries, Inc., et al., Petitioners, v. S. William Green et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
---	---	---

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case involves the reach and coverage of § 10 (b) of the Securities Exchange Act of 1934 and Rule 10b-5<sup>1</sup> thereunder in the context of a Delaware short-form

<sup>1</sup> Section 10 of the Securities Exchange Act of 1934, 15 U. S. C. § 78j, provides in relevant part:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

"(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule 10b-5, 17 CFR § 240.10b-5, provides:

"Employment of manipulative and deceptive devices.

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

"(a) To employ any device, scheme, or artifice to defraud,

"(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) To engage in any act, practice, or course of business which operates



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 11, 1977

Re: No. 75-1753 - Santa Fe Industries, Inc. v.  
Green

Dear Thurgood:

You have a good point. I am adding the  
following sentence to footnote 12:

"Because we are concerned here only  
with § 10(b), we intimate no view as  
to the Commission's authority to  
promulgate such rules under other  
sections of the Act."

Sincerely,



Mr. Justice Marshall

Copies to Conference



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

✓  
 STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 3, 5, 6, 8, 10, 13-15

From: Mr. Justice White

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

Recirculated: 3-15-77

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1753

Santa Fe Industries, Inc., et al., Petitioners, v. S. William Green et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
---	---	---

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case involves the reach and coverage of § 10 (b) of the Securities Exchange Act of 1934 and Rule 10b-5<sup>1</sup> thereunder in the context of a Delaware short-form

<sup>1</sup>Section 10 of the Securities Exchange Act of 1934, 15 U. S. C. § 78j, provides in relevant part:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

"...  
 "(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule 10b-5, 17 CFR § 240.10b-5, provides:

"Employment of manipulative and deceptive devices.

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

"(a) To employ any device, scheme, or artifice to defraud,

"(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) To engage in any act, practice, or course of business which operates



WEB, WHA, LFP, PS join

WJB, MARSHALL dissents  
HAB, JPS join all but Part IV

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 4, 14, 17

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

From: Mr. Justice White

Circulated \_\_\_\_\_

Recirculated: 3-17-77

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1753

Santa Fe Industries, Inc.,  
 et al., Petitioners,  
 v.  
 S. William Green et al.

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

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case involves the reach and coverage of § 10 (b) of the Securities Exchange Act of 1934 and Rule 10b-5<sup>1</sup> thereunder in the context of a Delaware short-form

<sup>1</sup> Section 10 of the Securities Exchange Act of 1934, 15 U. S. C. § 78j, provides in relevant part:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

"...  
 "(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

Rule 10b-5, 17 CFR § 240.10b-5, provides:

"Employment of manipulative and deceptive devices.

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

"(a) To employ any device, scheme, or artifice to defraud,

"(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) To engage in any act, practice, or course of business which operates



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 11, 1977

Re: No. 75-1753, Santa Fe Industries, Inc. v. Green

Dear Byron:

Although I voted the other way at Conference, I am very close to joining your opinion. I am concerned, however, that Part IV of the opinion could be read to say that the SEC has no authority under existing law to deal with the kind of practices alleged in the complaint. Since at least one of the provisions on which the SEC's proposed rules are based, § 13(e), appears to be broader than § 10(b), I do not think we should express a view on the extent of the SEC's power. Could you see your way clear to amending footnote 12 so that it explicitly reserves the question of the Commission's authority to regulate "going private" under provisions other than § 10(b)?

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 18, 1977

Re: No. 75-1753 - Sante Fe Industries, Inc. v. Green

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference



To: The Chief Justice

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 3/14/77

Recirculated: \_\_\_\_\_

No. 75-1753 - Santa Fe Industries, Inc. v. Green

MR. JUSTICE BLACKMUN, concurring in part.

Like Mr. Justice Stevens, I refrain from joining Part IV of the Court's opinion. I, too, regard that part as unnecessary for the decision in the instant case and, indeed, as exacerbating the concerns I expressed in my dissents in Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 761 (1975), and in Ernst & Ernst v. Hochfelder, 425 U.S. 185, 215 (1976). I, however, join the remainder of the Court's opinion and its judgment.



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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1753

From: Mr. Justice Blackmun

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

Santa Fe Industries, Inc.,  
 et al., Petitioners,  
 v.  
 S. William Green et al.

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

Recirculated: 3/16/77

[March —, 1977]

MR. JUSTICE BLACKMUN, concurring in part.

Like MR. JUSTICE STEVENS, I refrain from joining Part IV of the Court's opinion. I, too, regard that part as unnecessary for the decision in the instant case and, indeed, as exacerbating the concerns I expressed in my dissents in *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 761 (1975), and in *Ernst & Ernst v. Hochfelder*, 425 U. S. 185, 215 (1976). I, however, join the remainder of the Court's opinion and its judgment.



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 11, 1977

No. 75-1753 Santa Fe Industries v. Green

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

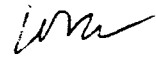
March 15, 1977

Re: No. 75-1753 - Santa Fe Industries v. Green

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference



✓

✓

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

75-1753 - Santa Fe Industries v. Green  
 et al.

From: Mr. Justice Stevens

Circulated: 3/11/77

Recirculated: \_\_\_\_\_

MR. JUSTICE STEVENS, concurring in part.

For the reasons stated by Mr. Justice Blackmun in his dissenting opinion in Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 761,<sup>1/</sup> and those stated in my dissent in Piper v. Chris-Craft Industries, 45 U.S.L.W. 4182, 4196 (U.S. Feb. 23, 1977), I believe both of those cases were incorrectly decided. I foresee some danger that Part IV of the Court's opinion in this case may incorrectly be read as extending the holdings of those cases. Moreover, the entire discussion in Part IV is unnecessary to the decision of this case. Accordingly, I join only Parts I, II, and III of the Court's opinion. I would also add further emphasis to the fact that the controlling stockholders in this case did not breach any duty owed to the minority shareholders because (a) there was complete disclosure of the relevant facts, and (b) the minority are entitled to receive the fair value of their shares.<sup>2/</sup> The facts alleged in the complaint do not constitute "fraud" within the meaning of Rule 10b-5.

<sup>1/</sup> See also Eason v. General Motors Acceptance Corp., 490 F.2d 564 (CA7 1973), cert. denied, 416 U.S. 960.

<sup>2/</sup> The motivation for the merger is a matter of indifference to the minority stockholders because they retain no interest in the corporation after the merger is consummated.



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

From: Mr. Justice Stevens

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

Recirculated: 3/4/77

*Printed*  
 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1753

Santa Fe Industries, Inc.,	} On Writ of Certiorari to the
et al., Petitioners,	
v.	
S. William Green et al.	United States Court of Appeals for the Second Circuit.

[March —, 1977]

MR. JUSTICE STEVENS, concurring in part.

For the reasons stated by MR. JUSTICE BLACKMUN in his dissenting opinion in *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 761,<sup>1</sup> and those stated in my dissent in *Piper v. Chris-Craft Industries*, 45 U. S. L. W. 4182, 4196 (U. S. Feb. 23, 1977), I believe both of those cases were incorrectly decided. I foresee some danger that Part IV of the Court's opinion in this case may incorrectly be read as extending the holdings of those cases. Moreover, the entire discussion in Part IV is unnecessary to the decision of this case. Accordingly, I join only Parts I, II, and III of the Court's opinion. I would also add further emphasis to the fact that the controlling stockholders in this case did not breach any duty owed to the minority shareholders because (a) there was complete disclosure of the relevant facts, and (b) the minority are entitled to receive the fair value of their shares.<sup>2</sup> The facts alleged in the complaint do not constitute "fraud" within the meaning of Rule 10b-5.

<sup>1</sup> See also *Eason v. General Motors Acceptance Corp.*, 490 F. 2d 564 (CA7 1973), cert. denied, 416 U. S. 960.

<sup>2</sup> The motivation for the merger is a matter of indifference to the minority stockholders because they retain no interest in the corporation after the merger is consummated.