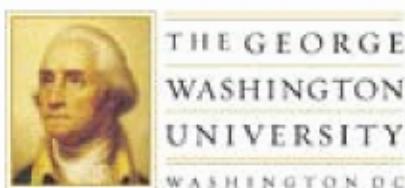


# The Burger Court Opinion Writing Database

*E.I. du Pont de Nemours & Co. v. Collins*  
432 U.S. 46 (1977)

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



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

From: The Chief Justice

MAY 31 1977

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

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

No. 75-1870 Du Pont v. Collins

No. 75-1872 Securities and Exchange Commission v. Collins

MR. CHIEF JUSTICE BURGER announced the opinion of the Court.

1/

We granted certiorari<sup>1/</sup> in this case to determine whether the Securities and Exchange Commission, in approving the merger of a closed-end investment company into an affiliate company, reasonably exercised its discretion under the Investment Company Act of 1940, 54 STAT 789, as amended, 15 U.S.C. §80a-1 et seq. The Commission valued the investment company essentially on the basis of the market value of the securities which constituted substantially all of its assets rather than on the lower basis of its own outstanding stock.

The statutory scheme here is relatively straightforward. Section 17 of the Investment Company Act of 1940, 15 U.S.C. 80(a)-17, forbids an "affiliated person," as defined in the

1/

429 U.S. 815 (1976)

1st PRINTED DRAFT

Circulated \_\_\_\_\_

Recirculated: JUN 2 1977

## 1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 75-1870 AND 75-1872

E. I. du Pont de Nemours and Company et al., Petitioners, 75-1870 <i>v.</i> Richard J. Collins, Jr., et al. Securities and Exchange Com- mission, Petitioner, 75-1872 <i>v.</i> Richard J. Collins, Jr., et al.	On Writs of Certiorari to the United States Court of Ap- peals for the Eighth Circuit.
--	--

[June —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari<sup>1</sup> in this case to determine whether the Securities and Exchange Commission, in approving the merger of a closed end investment company into an affiliate company, reasonably exercised its discretion under the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U. S. C. § 80a-1 *et seq.* The Commission valued the investment company essentially on the basis of the market value of the securities which constituted substantially all of its assets rather than on the lower basis of its own outstanding stock.

The statutory scheme here is relatively straightforward. Section 17 of the Investment Company Act of 1940, 15 U. S. C. 80 (a)-17, forbids an "affiliated person," as defined in the Act,<sup>2</sup>

<sup>1</sup> 429 U. S. 815 (1976).

<sup>2</sup> Title 15 U. S. C. 80a-2 (a)(3) defines an "affiliated person" as follows:

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 9, 1977

Re: 75-1870 DuPont v. Collins

MEMORANDUM TO THE CONFERENCE

At John's request I have amended the opinion as shown by the attached. Even though not substantive at this "rush" period, I send it to you.

Regards,

WBDB

To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice O'Connor

✓ 11  
 From: The Chief Justice

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

Recirculated: 6/1/77 6/1/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1870 AND 75-1872

E. I. du Pont de Nemours and  
 Company et al., Petitioners,  
 75-1870      *v.*  
 Richard J. Collins, Jr., et al.  
 Securities and Exchange Com-  
 mission, Petitioner,  
 75-1872      *v.*  
 Richard J. Collins, Jr., et al.

On Writs of Certiorari to the  
 United States Court of Ap-  
 peals for the Eighth Circuit.

[June —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the  
 Court.

We granted certiorari<sup>1</sup> in this case to determine whether the Securities and Exchange Commission, in approving the merger of a closed end investment company into an affiliate company, reasonably exercised its discretion under the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U. S. C. § 80a-1 *et seq.* The Commission valued the investment company essentially on the basis of the market value of the securities which constituted substantially all of its assets rather than on the lower basis of its own outstanding stock.

The statutory scheme here is relatively straightforward. Section 17 of the Investment Company Act of 1940, 15 U. S. C. 80 (a)-17, forbids an "affiliated person," as defined in the Act,<sup>2</sup>

<sup>1</sup> 429 U. S. 815 (1976).

<sup>2</sup> Title 15 U. S. C. 80a-2 (a)(3) defines an "affiliated person" as follows:  
 (3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per

SUPREME COURT OF THE UNITED STATES

Nos. 75-1870 & 75-1872

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

From: Mr. Justice Brennan

Circulated: ~~6/2/77~~

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

E. I. duPont de Nemours )  
and Company, et al. )  
Petitioners )  
v. ) On Writ of Certiorari to the  
Richard J. Collins, Jr., ) United States Court of Appeals  
et al. ) for the Eighth Circuit.  
 )  
 )  
 )

[June \_\_\_\_\_ 1977]

MR. JUSTICE BRENNAN, dissenting.

Section 17 of the Investment Company Act of 1940, 15

U.S.C. §80a-17, prohibits transactions between registered

investment companies and "affiliated persons," except as the

Securities and Exchange Commission approves such transactions

on application, if, inter alia, "the terms of the proposed

transaction, including the consideration to be paid or received,

are reasonable and fair and do not involve overreaching on the

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Frankfurter

✓  
1st DRAFT

6/9/74

## SUPREME COURT OF THE UNITED STATES

Nos. 75-1870 AND 75-1872

E. I. du Pont de Nemours and  
Company et al., Petitioners,  
75-1870      *v.*  
Richard J. Collins, Jr., et al.      }  
Securities and Exchange Com-  
mission, Petitioner,  
75-1872      *v.*  
Richard J. Collins, Jr., et al.      }  
On Writs of Certiorari to the  
United States Court of Ap-  
peals for the Eighth Circuit,

[June —, 1977]

MR. JUSTICE BRENNAN, dissenting.

Section 17 of the Investment Company Act of 1940, 15 U. S. C. § 80a-17, prohibits transactions between registered investment companies and "affiliated persons," except as the Securities and Exchange Commission approves such transactions on application, if, *inter alia*, "the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned." 15 U. S. C. § 80a-17 (b). The SEC approved the application of *Christiana Securities Company* (*Christiana*) to merge into *E. I. du Pont de Nemours & Company* (*Du Pont*), finding that the proposed transaction met the statutory standard.

*Christiana* was created in 1915 to concentrate the *Du Pont* family's holdings of *Du Pont* stock. Its assets consist almost entirely of *Du Pont* common stock, of which it holds 28.3% of the total outstanding. It is thus an investment company within the meaning of the Act, and an affiliate of *Du Pont* subject to the prohibitions of § 17. Although ownership of *Christiana* stock is essentially indirect ownership of *Du Pont*

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 2, 1977

Re: No. 75-1870, du Pont v. Collins

Dear Chief,

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

Sincerely yours,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 1, 1977

Re: Nos. 75-1870 & 75-1872, DuPont v. Collins

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 7, 1977

Re: No. 75-1870, Du Pont v. Coll. s  
No. 75-1872, Securities and Exchange Commission v. Collins

Dear Chief:

Please join me.

Sincerely,



T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 9, 1977

Re: No. 75-1870 - du Pont v. Collins  
No. 75-1872 - S. E. C. v. Collins

Dear Chief:

Please join me.

Sincerely,

*HAB.*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

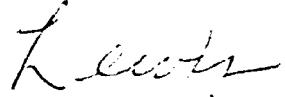
June 1, 1977

No. 75-1870 DuPont v. Collins  
No. 75-1872 SEC v. Collins

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

1fp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 9, 1977

RE: 75-1870 - DuPont v. Collins

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference