No. 24-724

In the Supreme Court of the United States

THE HAIN CELESTIAL GROUP, INC., ET AL.,

Petitioners,

v.

SARAH PALMQUIST, INDIVIDUALLY AND AS NEXT FRIEND OF E.P., A MINOR, ET AL.

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

BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* SUPPORTING PETITIONERS

NICOLE SAHARSKY
Counsel of Record
MINH NGUYEN-DANG
NATASHA HARNWELL-DAVIS
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
nsaharsky@mayerbrown.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

Cases (continued) **Page(s)**

Statutes and Rules

TABLE OF AUTHORITIES (continued)

TABLE OF AUTHORITIES (continued)

Other Authorities (continued) **Page(s)**

INTEREST OF THE *AMICUS CURIAE*

The Product Liability Advisory Council (PLAC) is a non-profit association of corporate members that constitute a broad cross-section of product manufacturers.[1] These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of products manufacturers and those in the supply chain. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in many facets of the manufacturing sector.[2] In addition, several hundred of the leading product litigation defense attorneys are sustaining (non-voting) members of PLAC.

Since 1983, PLAC has filed more than 1,200 *amicus curiae* briefs on behalf of its members in both state and federal courts, including this Court. Those briefs have presented the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management. For example, PLAC recently filed *amicus* briefs in *Labcorp* v. *Davis* (No. 24-304), and *Medical Marijuana, Inc.* v. *Horn* (No. 23-365).

The question presented is whether a district court's judgment in favor of a diverse defendant must be vacated, and the entire case remanded to state court, if an appellate court determines that the district court incorrectly dismissed a non-diverse

---

[1] Pursuant to Rule 37.6, PLAC affirms that no counsel for a party authored this brief in whole or in part and that no person other than PLAC, its members, and its counsel made a monetary contribution to its preparation or submission.

[2] PLAC's corporate members are identified on its website. See https://perma.cc/3B3X-6N93.

defendant at the time of removal. The Fifth Circuit held that the judgment must be vacated and the entire case must be remanded. In PLAC's view, that is incorrect; instead, the district court should preserve the final judgment against the diverse defendant and remand only the claims against the non-diverse defendant.

PLAC submits this brief to illustrate the real-world harms that would come from requiring a remand on all claims, particularly in products-liability cases. The Fifth Circuit's rule gives plaintiffs the opportunity to press the same claim in state court against a diverse defendant when that defendant already prevailed in federal court, which would be both wasteful and unfair. Accordingly, this Court should reverse.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is what should happen when an appellate court determines that the district court incorrectly dismissed a non-diverse defendant at the time of removal, and then the case proceeded through the merits to a final judgment against a diverse defendant. The Fifth Circuit held that, because the district court would have lacked subject-matter jurisdiction over the case if the non-diverse defendant had not been dismissed, the district court must vacate its judgment and remand the entire case to state court, including the claims against the diverse defendant that had been tried to judgment. Then, back in state court, the plaintiffs would be allowed to litigate their claims against both the diverse and non-diverse defendants from scratch.

This Court should reverse that nonsensical holding. What matters is the federal court's jurisdiction "at the time judgment is entered." *Caterpillar Inc.* v. *Lewis,* 519 U.S. 61, 64 (1996). Accordingly, if the parties that actually were before the district court were diverse when the court entered judgment, then the court had jurisdiction to enter the judgment. The court of appeals does not need to reimagine the case as though the non-diverse defendant had not been dismissed.

This Court explained that subject-matter jurisdiction is assessed at the time of final judgment because once a district court adjudicates a case through final judgment, "considerations of finality, efficiency, and economy become overwhelming." *Caterpillar*, 519 U.S. at 75. The Fifth Circuit's decision does not account for those important considerations; indeed, remanding on all claims would be very wasteful. The plaintiffs and the diverse defendant already fully litigated the claims against the diverse defendant in federal court, from discovery through to trial. There is no argument that the plaintiffs lacked a full and fair opportunity to litigate their claims. All of that work would need to be redone in state court, resulting in an enormous and unjustified duplication of party and judicial resources. Remanding on all claims also would be unfair, because it would give plaintiffs two opportunities to litigate the merits of their claims. If the plaintiffs lose in federal court on the merits of their claims against the diverse defendant, they can start over on those same claims in state court. In fact, that is exactly what respondents seek in this case.

Those concerns are particularly acute in products-liability cases. The number of products-liability cases is large and increasing. Products-liability litigation

can be very expensive, with attorneys' fees reaching hundreds of millions of dollars. And juries, particularly in state court, have been awarding increasingly large verdicts, often exceeding $100 million in a single case. As a result, defendants in products-liability cases face immense pressure to settle even weak claims.

Affirming the Fifth Circuit's rule would only add to that pressure. The plaintiffs in a products-liability case often argue that any company involved at any point in the manufacture or distribution of the product at issue contributed to the plaintiffs' injury, including the suppliers, manufacturers, distributors, and retailers of the product. Having that many possible defendants makes it more likely that the plaintiffs can identify at least one non-diverse defendant to act as a jurisdictional spoiler.

That is exactly what happened in this case. Respondents allege that the baby food they purchased is harmful. In addition to the manufacturer of the food, they sued a retailer from which they purchased the food – which happened to be non-diverse from respondents. Solely because they added that retailer, the Fifth Circuit allowed them to have two opportunities to litigate against the manufacturer.

This Court should reverse.

ARGUMENT

THE DISTRICT COURT'S JUDGMENT IS VALID BECAUSE THE REQUIREMENTS FOR DIVERSITY JURISDICTION WERE MET AT THE TIME OF FINAL JUDGMENT

A. The District Court Had Jurisdiction At The Time Of Judgment, Even If It Had Erred In Not Remanding The Case

1. Respondents in this products-liability case allege that baby food manufactured by petitioner Hain Celestial Group, Inc. (Hain) contributed to causing their son's autism. Pet. App. 4a. Respondents sued Hain and Whole Foods Market Rocky Mountain/Southwest, L.P. (Whole Foods), a retailer from which they allegedly bought Hain's baby food, in Texas state court. *Ibid.* Hain is diverse from respondents; Whole Foods is not. *Ibid.* Hain removed the case to federal court on the basis of diversity jurisdiction. *Ibid.*; see 28 U.S.C. 1332(a), 1441, 1446. Hain argued that Whole Foods should be dismissed because it had been "improperly joined to defeat diversity jurisdiction." Pet. App. 4a.

The district court agreed, explaining that under state law, retailers like Whole Foods generally are not liable for harm caused by the products they sell. Pet. App. 26a. Respondents and Hain then litigated the claims against Hain. *Id.* at 6a. After more than one year of discovery, the district court held a seven-day jury trial. Pet. 7. Following the close of respondents' case, the district court entered judgment as a matter of law in Hain's favor on all claims because respondents had not presented sufficient evidence of causation. Pet. App. 6a, 30a.

The Fifth Circuit vacated the judgment. Pet. App. 23a. It determined that the district court should not have dismissed Whole Foods because respondents' claims against Whole Foods, although novel, were not wholly groundless. *Id.* at 17a-21a (citing Tex. Civ. Prac. & Rem. Code Ann. § 82.003(a)(5)). As a result, the court of appeals explained, the district court lacked subject-matter jurisdiction over the case under 28 U.S.C. 1332(a) because the parties would not have been fully diverse had Whole Foods remained in the case. *Id*. at 22a-23a.

The appropriate remedy, the Fifth Circuit concluded, was to remand the entire case to state court so that all claims against both Hain and Whole Foods could be relitigated there. Pet. App. 22a-23a. The court recognized that the "interests of judicial efficiency and finality" favored preserving the judgment, but in its view, the judgment could not be preserved because the "jurisdictional defect" from the incorrect dismissal of Whole Foods "linger[ed] through judgment." *Id.* at 21a-22a. The court of appeals was wrong to say that the case had to start over from scratch.

2. In *Caterpillar Inc.* v. *Lewis,* 519 U.S. 61 (1996), this Court explained that a district court's judgment is valid if the court had jurisdiction over the parties "at the time judgment is entered." *Id.* at 64. That case is remarkably similar to this case. The plaintiff there sued a diverse and a non-diverse defendant in state court following a work-related injury. *Id.* at 64-65. The plaintiff's employer's insurer intervened and filed subrogation claims against both defendants. *Id.* at 65. After the plaintiff settled his claims against the non-diverse defendant, the diverse defendant removed the case to federal court on the basis of diversity

jurisdiction, arguing that the non-diverse defendant no longer was in the case due to the settlement. *Ibid.* The plaintiff moved to remand the case, arguing that the non-diverse defendant still was in the case because the insurer's subrogation claim against it had not yet been resolved. *Id.* at 65-66.

The district court denied the motion to remand and the case proceeded in federal court. *Caterpillar*, 519 U.S. at 66. The insurer and the non-diverse defendant settled the subrogation claim, and the court dismissed the non-diverse defendant. *Ibid.* The court then held a jury trial on the plaintiff's claims against the diverse defendant, which resulted in a judgment in the defendant's favor. *Id.* at 67.

On appeal, the court of appeals determined that the district court erred in failing to remand the case at the time of removal, because the non-diverse defendant still was in the case at that time. *Caterpillar*, 519 U.S. at 67. As here, the court of appeals concluded that the remedy was to vacate the judgment in favor of the diverse defendant and remand the claims back to state court. *Ibid.*

This Court reversed, holding that the district court's initial error in failing to remand the case did not "burden and run with the case." *Caterpillar,* 519 U.S. at 70. The Court first explained that there was no constitutional jurisdictional defect in the judgment, because Article III requires only minimal diversity. *Id.* at 68 n.3 (citing *State Farm Fire & Cas. Co.* v. *Tashire,* 386 U.S. 523, 530-531 (1967)).

The Court next determined that there also was no statutory jurisdictional defect in the judgment. *Caterpillar*, 519 U.S. at 68-73. The Court noted that it had long interpreted the diversity-jurisdiction statute

to require complete diversity between the parties. See *id.* at 68-69 (citing *Strawbridge* v. *Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806)). But, the Court explained, its precedents made clear that a district court's judgment is valid if the complete-diversity requirement is satisfied "at the time the judgment is entered." *Id.* at 70-73 (citing *American Fire & Casualty Co.* v. *Finn*, 341 U.S. 6, 16 (1951), and *Grubbs* v. *General Elec. Credit Corp.*, 405 U.S. 699, 700 (1972)). Because it was undisputed that the remaining parties before the court were completely diverse at the time the district court entered judgment, the Court concluded that the district court had "federal subject-matter jurisdiction" to enter the judgment. *Id.* at 73.

The Court further determined that the removal statute, 28 U.S.C. 1441, did not require the vacatur of the judgment. *Caterpillar*, 519 U.S. at 73-78. The Court acknowledged that the district court had erred because the parties were not completely diverse at the time of removal, and so the district court should have remanded the case at that point. *Id.* at 74. But, the Court held, that error did not warrant remanding the case after judgment. *Id.* at 74-78.

The Court explained that "[o]nce a diversity case has been tried in federal court," and the district court has entered judgment, "considerations of finality, efficiency, and economy become overwhelming." *Caterpillar*, 519 U.S. at 75. To "wipe out the adjudication postjudgment," when the district court had subject-matter jurisdiction, "would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice." *Id.* at 77.

3. *Caterpillar* resolves this case. Here, as there, the parties assume that the district court erred in

failing to remand the case after removal. See Pet. 12 n.1. Also here, as there, the parties before the district court were diverse at the time the court entered judgment. Pet. App. 4a. The district court thus had subject-matter jurisdiction at the time it entered judgment. See *Caterpillar*, 519 U.S. at 73. And given the "overriding" interests in "finality, efficiency, and economy," *id.* at 75, the district court's error in failing to remand the case at the time of removal does not warrant the "destruction of [that] final judgment," *id.* at 73.

The Fifth Circuit apparently viewed *Caterpillar* as distinguishable because in that case, the jurisdictional defect at the time of removal had been cured before final judgment, whereas in this case (in the court's view) the jurisdictional defect had not been cured. Pet. App. 21a-22a. In *Caterpillar*, the non-diverse defendant settled with the insurer and was dismissed before trial. *Ibid.* (citing *Caterpillar*, 519 U.S. at 73). The court of appeals took the view that there was no similar "cure" in this case, and thus the "jurisdictional defect" "linger[ed]" through to the judgment. *Id.* at 23a.

The court of appeals was mistaken for two reasons. To begin with, any jurisdictional defect in this case was cured when the district court dismissed Whole Foods at the time of removal; the court never presided over a case lacking complete diversity. Pet. App. 4a. Although the court of appeals later concluded that the district court should not have dismissed Whole Foods, *id.* at 21a, that determination does not retroactively create a jurisdictional defect. As a matter of historical fact, Whole Foods was not a party in the district court and the district court did not exercise jurisdiction over it.

Second, even if there had been an uncured jurisdictional defect, the court of appeals could have cured that defect by dismissing Whole Foods as a dispensable party under Federal Rule of Civil Procedure 21. This Court endorsed that approach in *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826 (1989). There, the parties litigated the case to final judgment without realizing that one defendant was not fully diverse from the plaintiff. *Id.* at 828. That jurisdictional defect was not discovered until oral argument in the court of appeals. *Ibid.* Rather than vacate the judgment against all defendants, the court of appeals determined that the non-diverse defendant was dispensable and dismissed that defendant, preserving the judgment with respect to the diverse defendants. *Ibid.*

This Court affirmed. *Newman-Green*, 490 U.S. at 837-838. The Court held that it is "appropriate" for a district court or a court of appeals to dismiss a dispensable non-diverse defendant if doing so would preserve an otherwise valid judgment between completely diverse parties. *Id.* at 836-838. As with *Caterpillar*, the Court's decision was based on "practical[]" considerations; the Court explained that a rule requiring courts to vacate valid judgments procured "after years of litigation" would "impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Id.* at 836-837. "Nothing but a waste of time and resources," the Court concluded, would be gained by "forcing" the parties to "begin anew" in state court. *Id.* at 838.

As petitioners explain, Whole Foods is a dispensable party in this case because it is a joint tortfeasor that would be jointly and severally liable along with Hain. See Pet'rs Br. 23-32. Thus, under *Newman-*

Green, the court of appeals should have dismissed Whole Foods from the case to preserve the otherwise valid judgment in Hain's favor, particularly when no court has identified any substantive defect in that judgment.

B. Requiring A Remand On Fully Litigated Claims Would Be Wasteful And Unfair

The Court's decisions in both *Caterpillar* and *Newman-Green* were animated by "practical[]" concerns about waste and potential unfairness. *Newman-Green*, 490 U.S. at 836; see *Caterpillar*, 519 U.S. at 75 (explaining that the practical problems with requiring vacatur of a fully litigated judgment "overrid[e]" any countervailing considerations). The Fifth Circuit's rule – requiring a remand to state court of the fully litigated claims against the diverse defendant – raises the same concerns.

1. First, remanding the claims would be inefficient and wasteful. As this Court recognized in *Caterpillar*, "wip[ing] out" a valid federal-court judgment and requiring the parties to relitigate the same claims in state court "would impose an exorbitant cost on our dual court system." 519 U.S. at 77. That cost, the Court explained, would be "incompatible with the fair and unprotracted administration of justice." *Ibid.*

This case demonstrates the potential waste of party and judicial resources if the parties are required to restart the case from the beginning in state court. Respondents and Hain spent two years litigating the claims against Hain. Pet. App. 4a, 6a. That included engaging in more than one year of discovery, litigating a number of discovery motions and motions *in limine*, taking nearly twenty depositions, and briefing cross-motions for summary judgment. Pet. 26. The district

court then empaneled a jury and held a seven-day jury trial. Pet. App. 6a. At the close of respondents' case-in-chief, the district court granted judgment as a matter of law to Hain on all claims, because respondents "had presented 'no evidence of general causation.'" *Ibid.* (quoting *id.* at 30a). Notably, the Fifth Circuit did not determine that the district court had committed any error on the merits or that the proceedings otherwise were unfair. *Id.* at 23a.

If the case is remanded to the state court, then all of that work must be redone. See Pet. 10 (noting that since the case has been remanded to state court, the parties have commenced discovery). Although the parties may be able to reuse some of the discovery developed in the district court, the parties and the state court are not bound by any of the district court's rulings, because under the Fifth Circuit's view, the district court lacked jurisdiction to make those rulings in the first place. See *Engelman Irrigation Dist.* v. *Shields Bros.*, 514 S.W.3d 746, 750 (Tex. 2017) (explaining that under Texas law, a court decision lacks preclusive effect if the court lacked jurisdiction).

Further, the district court's pre-trial rulings would have been based on the federal rules of procedure and evidence, which may differ from the rules that apply in state court. See *Aguayo* v. *AMCO Ins.*, 59 F. Supp. 3d 1225, 1272 n.18 (D.N.M. 2014). So, although the state court may be able to look to some of the district court's pre-trial rulings for guidance, it still must independently adjudicate any pre-trial disputes the parties raise.

Duplicating all that work in state court would waste judicial resources. The federal courts face considerable backlogs for both civil and criminal cases, despite district court judges' best efforts. See Admin.

Off. of the U.S. Courts, *The Need for Additional Judgeships: Litigants Suffer When Cases Linger* (Nov. 18, 2024), https://perma.cc/BP79-KH9D. Many state courts face similar backlogs. For example, in 2024, the Chief Judge of the District of Columbia Superior Court explained that the D.C. court system did not have enough judges to "make the court function." Ted Oberg, *DC Judges Say Senate Must Act Within Weeks to Ease Court System Backlog*, NBC Wash. (Nov. 21, 2024), https://perma.cc/F93T-38W3. That same year, the New York state courts reported that there were over 120,000 pending cases, leading to widespread delays in criminal, civil, and family law cases. See Amanda Hernández, *Shortage of Prosecutors, Judges Leads to Widespread Court Backlogs*, Stateline (Jan. 25, 2024), https://perma.cc/V73A-8TSR. Requiring parties to relitigate claims would just add to the burdens of both federal and state courts.

2. Second, requiring a remand on all claims would also unfairly benefit plaintiffs, because it would potentially give them two opportunities to litigate the same claims. If a district court dismissed a non-diverse defendant when the case was removed, plaintiffs could continue to litigate the claims in federal court, hoping to secure a judgment in their favor. But if the plaintiffs ultimately were unsuccessful in federal court, plaintiffs could argue on appeal that the judgment should be ignored because the district court should not have dismissed the non-diverse defendant. If the appellate court agreed, the case would be remanded to state court for the plaintiffs to press the same claims against the diverse and non-diverse defendants – including the claims that already were litigated in the federal court. Indeed, that is what is happening in this case. See Pet. 10.

Notably, nothing requires plaintiffs on remand to litigate any claims against the non-diverse defendant. Back in the state court, plaintiffs could dismiss their claims against the non-diverse defendant and instead focus solely on relitigating the claims that they already lost in federal court against the diverse defendant. See *In re Zoloft (Sertraline Hydrochloride) Prods. Liab. Litig.*, 257 F. Supp. 3d 717, 720 (E.D. Pa. 2017) (noting trend of plaintiffs ultimately dismissing claims against non-diverse defendants). "[O]ften," once the case is in state court, plaintiffs "will drop the local defendant from the case or not pursue a judgment against the local defendant at trial." Victor E. Schwartz & Cary Silverman, *Protecting the Victims of Fraudulent Joinder: How Congress and Federal Judges Can Help*, 45 Rutgers L. Rec. 89, 95 (2018).

In short, adopting a rule that requires the district court to vacate the final judgment and remand all claims to state court would be wasteful and would serve only to encourage plaintiffs to add non-diverse defendants, regardless of the strength of their claims, to get two chances to prove their claims against diverse defendants. This Court should not adopt that rule.

C. Requiring Remand On All Claims Would Be Particularly Harmful In Products-Liability Cases

The problems with requiring a remand on all claims – inefficiency and unfairness – would be particularly acute in products-liability cases. There is a large and increasing number of costly products-liability cases, and plaintiffs in those cases often can find a non-diverse defendant to sue for strategic jurisdictional purposes.

1. There Is A Large And Increasing Amount Of Products-Liability Cases

Many products-liability cases have been filed in recent years, and the number keeps growing. Products-liability cases comprise more than 40 percent of all civil cases in federal court (excluding Social Security and prisoner cases). Lawyers for Civil Justice, *Rules 4 MDLs: Calculating the Case* 12 (Oct. 4, 2018), https://perma.cc/DG49-86PL. Most of these cases are consolidated into multi-district litigations (MDLs); 90 percent of all MDLs are products-liability cases, and each MDL can encompass thousands of individual actions. *Id.* at 7, 10. For example, as of October 1, 2024, the ten largest MDLs (by number of pending cases) all were products-liability cases, and together they included more than 367,000 pending individual actions. U.S. Jud. Panel on Multidistrict Litig., *MDL Statistics Report – Distribution of Pending MDL Dockets by Actions Pending* 1 (Oct. 1, 2024), https://perma.cc/WK3Y-6YM9 (*MDL Statistics*).

Many thousands more products-liability cases are filed in federal courts outside of MDLs, as well as in state courts. In 2022, 5,826 non-MDL products-liability cases were filed in federal court – up 74 percent from 2013. *Product Liability Cases on the Rise*, Ins. J. (Sept. 19, 2023), https://perma.cc/4AGT-ZB6L. Although statistics are not available for all States, the 15 States for which statistics are available reported that there were 3,398 products-liability cases filed in 2024 alone. Nat'l Ctr. for State Courts, *Trial Court Caseload Overview* (June 28, 2025), https://perma.cc/7VCS-FZAM (select "Data Table," select "Civil," filter by 2024, and tally the "Products Liability" column).

Products-liability cases span industries and geographies. The largest products-liability MDL,

involving 3M's combat earplugs, encompassed at its peak over 390,000 individual actions all consolidated in the Northern District of Florida. *MDL Statistics* 1. Other major products-liability MDLs currently pending include litigation against Johnson & Johnson involving talcum powder in the District of New Jersey (over 59,000 individual actions); litigations against manufacturers of surgical mesh products in the Southern District of Ohio, the District of Massachusetts, the District of New Hampshire, and the Northern District of Georgia (over 34,000 individual actions); litigation against manufacturers of hair relaxer products in the Northern District of Illinois (over 10,000 individual actions); and litigation against Juul involving e-cigarettes in the Northern District of California (over 7,000 individual actions). *Ibid.*

These cases are very expensive to litigate. The Insurance Information Institute – which represents many of the insurers that ultimately pay the costs of defending products-liability litigation – estimated that for 2023, the total defense costs of products-liability litigation exceeded $869 million. Ins. Info. Inst., *Facts + Statistics: Product Liability*, https://perma.cc/9EZ5-M33P (accessed June 29, 2025) (*Facts + Statistics*). 3M alone spent over $4.7 million a week in defense costs in the combat earplugs cases. Jef Feeley, *3M Spends More Than $450 Million in Legal Costs on Earplug Cases*, Bloomberg L. (Jan. 6, 2023), https://perma.cc/4KUG-B8KE.

Products-liability cases also can result in large jury awards. In 2020, the median jury award in products-liability cases was $3.9 million. *Facts + Statistics*. Many awards are far larger – between 2013 and 2022, there were 300 "nuclear" verdicts (meaning verdicts that exceeded $10 million) in products-liability

cases. Cary Silverman & Christopher E. Appel, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions*, U.S. Chamber of Com. Inst. for Legal Reform 8 (May 30, 2024), https://perma.cc/ZHS9-V6VZ (*Nuclear Verdicts*). In 2022, the median nuclear verdict size in products-liability cases was $36.1 million – an increase of over 50 percent from 2013. *Id.* at 66.

Jury verdicts are typically larger in state courts than in federal courts. Between 2013 and 2022, 89% of all nuclear verdicts were awarded in state court, including 87% of the verdicts over $100 million. *Nuclear Verdicts* 14. Last year, half of the ten largest verdicts nationwide were awarded in products-liability cases, and all were awarded in state court. Marathon Strategies, *Corporate Verdicts Go Thermonuclear: 2025 Edition* 11-12 (May 2025), https://perma.cc/5V4W-TVDG. Those included a $5.2 billion and a $3.1 billion verdict against AffinityLifestyles.com relating to its Real Water product awarded by Nevada state juries, and a $2.25 billion verdict against Bayer relating to its Roundup weedkiller awarded by a Pennsylvania state jury. *Ibid.*

The larger verdicts in state courts may reflect a bias against out-of-state defendants. Indeed, this Court has recognized that the Constitution provides for diversity jurisdiction precisely so that federal courts can serve as "a neutral forum for parties from different States." *Home Depot U.S.A., Inc.* v. *Jackson*, 587 U.S. 435, 438 (2019) (internal quotation marks omitted); see The Federalist No. 80 (Alexander Hamilton). Some state courts lack the procedural protections of federal courts. For example, federal courts require a plaintiff to allege facts that show a plausible claim for relief, whereas many states require the plaintiff only to plead that relief is possible. *Aguayo*,

59 F. Supp. 3d at 1272 n.18 (citing *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544 (2007)).

In light of the high costs of litigation and the risks of large verdicts, it is unsurprising that many defendants feel "pressure[]" to settle even "questionable claims." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011). "Defendants may choose to settle wholly illegitimate claims simply because the costs of litigation exceeded the settlement payments." Frank B. Cross, *Tort Law and the American Economy*, 96 Minn. L. Rev. 28, 37 (2011).

Small businesses are most likely to be bullied into settling meritless claims, simply because they have fewer resources to defend themselves and are more vulnerable to an excessive verdict. *Fraudulent Joinder Prevention Act of 2015: Hearing Before the Subcomm. on the Constitution and Civil Justice of the H. Comm. on the Judiciary*, 114th Cong. 11 (2015) (*Fraudulent Joinder* Hearing) (statement of Elizabeth Milito, Nat'l Fed'n Indep. Bus. Small Bus. Legal Ctr.). But when faced with the prospect of multimillion dollar defense costs and multibillion dollar verdicts, companies of all sizes will feel compelled to consider settlement, no matter how strong their defenses.

The Fifth Circuit's rule, if adopted, would exacerbate all these concerns. It would encourage plaintiffs to bring claims against additional, non-diverse defendants. It would add to litigation costs, by requiring some claims that were fully litigated in federal court to be relitigated in state court. And it would increase the risk of adverse judgments, because it could give plaintiffs two opportunities to prevail on the merits of their claims in two different forums. These dynamics would push defendants to settle more claims, no matter how questionable the claims.

2. Products-Liability Lawsuits Are Particularly Vulnerable To Manipulation Over Diversity Jurisdiction

The Fifth Circuit's rule would disproportionately affect products-liability cases. The Fifth Circuit's rule encourages plaintiffs to add a non-diverse defendant even when there is little prospect of obtaining relief from that defendant in order to defeat removal. If the district court errs in allowing removal, that error would wipe out any adverse judgment in favor of the diverse defendants.

Plaintiffs in products-liability cases are more likely to be able to identify a non-diverse defendant to sue. Plaintiffs in those cases potentially can allege that any company involved in the manufacture, distribution, or retail of the product at issue contributed to causing their harm. See, *e.g.*, *Eberhart* v. *Amazon.com, Inc.*, 325 F. Supp. 3d 393, 397 (S.D.N.Y. 2018) (explaining that under New York products-liability law, any company "within the distribution chain" can be held strictly liable for injuries caused by the product); *In re Fluoroquinolone Prods. Liab. Litig.*, 517 F. Supp. 3d 806, 822 (D. Minn. 2021) (same under Illinois law). Plaintiffs in products-liability cases often have sued distributors and retailers despite state laws that shield non-manufacturers from liability. *Fraudulent Joinder* Hearing 43 (statement of Cary Silverman, U.S. Chamber of Com.). As a result, there often are many potential defendants in products-liability cases.

For example, in a defective airbag case, the potential defendants could include the company that manufactured the allegedly defective sensor in the airbag; the airbag manufacturer; the automaker; the dealership that sold the car; and any company that serviced

or modified the airbag system. In contrast, the plaintiffs in other types of personal-injury cases typically are limited in the number of potential defendants – the plaintiff in a medical malpractice suit, for example, typically can sue only the allegedly negligent physician.

Because of the large number of potential defendants, plaintiffs in products-liability cases are more likely to be able to identify a non-diverse defendant to sue solely for the purpose of defeating diversity jurisdiction. The plaintiffs merely need to articulate a non-frivolous theory of liability with respect to that defendant. See *Wilson* v. *Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921) (non-diverse defendant defeats diversity jurisdiction unless the defendant has "no real connection with the controversy"); *Smallwood* v. *Illinois Cent. R.R.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc) ("[T]he test for fraudulent joinder is whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant."). Plaintiffs do not need to have a realistic chance of recovery.

There are many examples of products-liability lawsuits in which the plaintiffs took advantage of the large number of potential defendants and sued a non-diverse defendant seemingly solely to defeat diversity jurisdiction.

First, the plaintiffs in *In re Ethicon, Inc. Pelvic Repair Systems Products Liability Litigation*, No. 13-cv-26024, 2013 WL 6710345 (S.D.W. Va. Dec. 19, 2013), sued Johnson & Johnson and Ethicon Inc., which manufactured and sold pelvic mesh products, and one parts supplier, Secant Medical, Inc., in Pennsylvania state court *Id.* at *1. The manufacturers were diverse, but the supplier was not. *Ibid.* The manufact-

urers removed the case to federal court, arguing that the supplier had been fraudulently joined. *Ibid.* The district court observed that a federal statute, the Biomaterials Access Assurance Act, 21 U.S.C. 1601, likely barred plaintiffs' claims against Secant, because the statute protects biomedical suppliers of implant component parts from liability. *Id.* at *2. Nevertheless, the district court remanded the case to state court because it could not definitively determine that the federal statute barred the claims against Secant. *Id.* at *3.

On remand, the state court dismissed the claims against Secant with prejudice on the basis of the federal statute. *In re Pelvic Mesh Litig.*, No. 1402829, 2014 WL 4188104, at *1 (Pa. Com. Pleas Phila. Cnty., Aug. 22, 2014). But at that point, the litigation against the diverse defendants could no longer be removed to federal court, so it remained in Pennsylvania state court. See *Stewart* v. *Ethicon, Inc.*, No. 19-cv-4776, 2020 WL 1330713, at *3 (E.D. Pa. Mar. 19, 2020). When similar claims involving the same product went to trial in state court in Pennsylvania, the juries awarded verdicts of $120 million, $57.1 million, and $41 million[3] – far higher than the sole verdict in federal court, $3.27 million.[4]

Second, the plaintiffs in *Mike-Price* v. *Toshiba Lifestyle Products & Services Corp.*, No. 23-cv-02214,

---

[3] Max Mitchell, *Philadelphia Jury Slams J&J With $120M Pelvic Mesh Verdict*, Law.com (Apr. 25, 2019), https://perma.cc/87CD-W2M6; Sydney Musser, *York County Woman to Receive $57.1M after Implants 'Eroded'*, York Daily Rec. (Sept. 7, 2017), https://perma.cc/D23V-RR2V; Matt Fair, *J&J's Ethicon Slammed with $41M Verdict in Philly Mesh Case*, Law360 (Jan. 31, 2019), https://perma.cc/BTF5-GUJ7.

[4] *Huskey* v. *Ethicon, Inc.*, 848 F.3d 151, 155 (4th Cir. 2017).

2023 WL 3737811, at *1 (C.D. Cal. May 31, 2023), alleged that the remote control for an air conditioner was defective because their child could swallow the battery used to power it. They sued eight different companies involved in designing, manufacturing, distributing, and selling the remote in California state court. *Ibid.* Only one of those defendants was non-diverse – a company that plaintiffs alleged had distributed the remote. *Id.* at *6. The remaining defendants removed the case to federal court, arguing that the non-diverse defendant "had nothing to do with the [remote's] chain of distribution." *Id.* at *7. The district court found the defendants' evidence on this point "compelling," but nonetheless remanded the case to state court because it could not weigh the parties' conflicting evidence. *Ibid.*

Third, the plaintiff in *King* v. *Ink's of Concordia Street, Inc.*, No. 13-cv-2043, 2014 WL 1689932 (W.D. La. Apr. 28, 2014), alleged that a defective tire caused an automobile accident. *Id.* at *1. The plaintiff sued both the diverse tire manufacturer and the non-diverse automobile repair shop from which the plaintiff claimed to have purchased the tire. *Ibid.* The non-diverse repair shop had no record of selling the tire to the plaintiff, and state law protected non-manufacturing sellers from liability except in narrow circumstances. *Id.* at *1, *4. Nonetheless, the district court held that it could not resolve those disputed facts or legal issues on removal, and accordingly was required to remand the case back to state court. *Id.* at *1.

These examples illustrate how plaintiffs in products-liability cases often find a non-diverse defendant somewhere in the supply chain to sue to defeat diversity jurisdiction and keep the case in state court, even though their chances of recovering against the non-

diverse defendant are slim at best. The Fifth Circuit's rule, if adopted, would intensify this dynamic, because it would give plaintiffs an additional incentive to add weak claims against non-diverse defendants – if the diverse defendants were able to persuade the district court to dismiss the non-diverse defendant as fraudulently joined, the diverse defendants still would face the risk of having to start over from scratch if the appellate court later disagrees with the district court about the dismissal.

Indeed, that is what happened in this case. Respondents were able to identify one non-diverse defendant within the manufacturing, distribution, and retail chain of Hain's baby food to sue – Whole Foods. Notably, although Whole Foods is just one of five retailers from which respondents allegedly purchased Hain's baby food, it was the only retailer respondents sued. Pet. App. 4a. Their claims against Whole Foods are remarkably weak – as the district court noted, under Texas law, "[g]enerally, retail sellers such as Whole Foods are not liable for the harm caused by the products they sell." *Id.* at 26a. Respondents instead rely on a novel interpretation of a Texas statute that was enacted to *restrict* retailer liability. *Id.* at 16a-17a (citing Tex. Civ. Prac. & Rem. Code Ann. § 82.003(a)(5)). Nonetheless, the Fifth Circuit held that because respondents' claims against Whole Foods are not wholly groundless, the district court should not have dismissed Whole Foods when the case was removed to federal court. *Id.* at 21a. And in the court of appeals' view, that error means that the district court must vacate the fully litigated claims against Hain and remand the claims to state court to be relitigated.

Adopting the Fifth Circuit's rule would likely lead to this wasteful and unfair dynamic playing out in many other products-liability cases across the country. For that reason, as well, the Court should reject that rule.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

NICOLE SAHARSKY
Counsel of Record
MINH NGUYEN-DANG
NATASHA HARNWELL-DAVIS
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
nsaharsky@mayerbrown.com

JULY 2025