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.*,

Respondents.

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

BRIEF FOR RESPONDENTS

DAVID C. FREDERICK
DENNIS D. HOWE
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

RUSSELL S. POST
Counsel of Record
OWEN J. MCGOVERN
BECK REDDEN LLP
1221 McKinney Street
Suite 4500
Houston, Texas 77010
(713) 951-3700
rpost@beckredden.com

Counsel for Respondents

August 11, 2025

QUESTION PRESENTED

Whether a district court's final judgment must be vacated when an appellate court later determines that the district court erred by dismissing the sole nondiverse party at the time of removal, and that dismissal ruling remained interlocutory and subject to revision until it merged into the final judgment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTION, STATUTES, AND RULES

ADMINISTRATIVE MATERIALS

OTHER MATERIALS

INTRODUCTION

This case concerns a district court that exceeded its jurisdiction and a final judgment that must be vacated as a result. The district court lacked any basis for subject-matter jurisdiction at the time of its final judgment: respondents asserted (and still assert) only state-law claims, and Texas citizens were present (and remain) on both sides of the case. The judgment was therefore *ultra vires* and cannot stand.

Petitioners insist that the district court's *erroneous* interlocutory dismissal of the Texas defendant—which the Fifth Circuit correctly reversed on appeal—successfully created complete diversity to support its own judgment. That contention offends black-letter principles of federal jurisdiction and multiple lines of this Court's precedents. The Fifth Circuit rightly followed its reversal of the district court's error by vacating the final judgment and ordering the case remanded to state court.

The nature of the lawsuit is straightforward. Respondents Sarah and Grant Palmquist sued petitioners Hain's Celestial Group, Inc. ("Hain") and Whole Foods Market, Inc. ("Whole Foods") in Texas state court after their son suffered severe heavy-metal poisoning from Hain's baby food that the Palmquists purchased at Whole Foods. Both defendants were entirely appropriate: Hain manufactured the tainted baby food, and Whole Foods expressly warranted to its safety and quality. Because the Palmquists asserted only state-law claims and both they and Whole Foods are Texas citizens, the Palmquists properly brought suit in state court.

But the litigation then promptly ran off the rails. Rather than defending the lawsuit in state court, petitioners opted to forum shop and removed it to federal court. Then, rather than remanding the case, the district court misunderstood respondents' claims and misapplied the law, dismissing Whole Foods on a fraudulent-joinder theory and retaining control of the case against Hain. The Fifth Circuit reversed that fraudulent-joinder ruling, and this Court did not grant review of that garden-variety, factbound ruling, which is not before the Court.

Before the Court is the appropriate consequence of the district court's error. Because neither Hain nor Whole Foods sought a partial final judgment from the district court's erroneous fraudulent-joinder ruling, that ruling was interlocutory and Whole Foods remained in the case as the Palmquists proceeded to trial with Hain as the lone defendant. After the trial, the district court's judgment for Hain merged with its interlocutory dismissal of Whole Foods. The case has lacked complete diversity at every minute from the moment of its filing.

The Fifth Circuit correctly concluded that the district court's lack of subject-matter jurisdiction required vacatur of its final judgment. Federal courts are courts of limited jurisdiction, and proceedings and judgments that exceed that limited jurisdiction are null and void. This Court has never paused at the harsh consequences or purported inefficiencies of enforcing those limits, and it should not do so here. The Fifth Circuit's judgment should be affirmed.

STATEMENT

A. Legal Background

1. The Framers created a federal government of limited powers, reserving most powers to the States. As the Federalist Papers explained, "the rule that all authorities of which the States are not explicitly divested in favour of the Union remain with them in full vigour, is not only a theoretical consequence of that division, but is clearly admitted by the whole tenor of the instrument." The Federalist No. 32 (Hamilton). That division of authority extends to the relationship between federal and state courts, *see id.*, No. 82, and, with respect to the latter, "the fitness and competency of those courts should be allowed in the utmost latitude," *id.*, No. 81.

Article III specifies the categories of cases in which federal courts may exercise jurisdiction, leaving all other matters to the state courts—the only courts of general jurisdiction in the United States. This limited jurisdiction of the federal courts must be honored "regardless of the costs it imposes." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 571 (2004). Indeed, in a variety of contexts, this Court has ordered cases to be dismissed from federal court on this basis, even when doing so entails seemingly harsh outcomes. *See*, *e.g.*, *id.* at 569-70 (dismissal after jury trial); *Louisville & N.R.R. Co. v. Mottley*, 211 U.S. 149 (1908) (dismissal after final judgment); *Anderson v. Watts*, 138 U.S. 694 (1891) (dismissal after performance of final judgment). Just last Term, the Court reiterated that "federal courts are courts of limited jurisdiction: When they do not have (or no longer have) authorization to resolve a suit, they must hand it over." *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 28 (2025).

2. One category of this limited federal jurisdiction is controversies "between Citizens of different States." U.S. Const. art. III, § 2, cl. 1. The Framers authorized "diversity jurisdiction" because they concluded that "the national judiciary ought to preside in all cases in which one state or its citizens are opposed to another state or its citizens," reasoning that the federal court, "having no local attachments, will be likely to be impartial between the different states and their citizens" and "will never be likely to feel any bias" in favor of residents of the forum State. The Federalist No. 80 (Hamilton).

Congress has authorized federal courts to exercise diversity jurisdiction through a statute, now codified at 28 U.S.C. § 1332(a), that always has required "complete diversity," *i.e.*, the citizenship of each plaintiff must be diverse from that of each defendant. *See Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

This Court adheres to the complete-diversity rule because it satisfies the Framers' original concern that "state courts might favor, or be perceived as favoring, home-state litigants. The presence of parties from the same State on both sides of a case dispels this concern, eliminating a principal reason for conferring § 1332 jurisdiction over any of the claims in the action." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553-54 (2005). Thus, a lack of complete diversity "contaminates every claim in the action." *Id.* at 564.

When a lack of complete diversity persists through the time of judgment, the court lacks subject-matter jurisdiction and "the judgment must be vacated." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 76-77 (1996).

B. Factual And Procedural Background

1. Respondents Sarah and Grant Palmquist are the parents of a son, E.P., who in his first two years "almost exclusively consumed Hain's Earth's Best Organic Products, which the Palmquists purchased from Whole Foods." App.2a-3a. But in his third year, E.P. "rapidly regressed" and he "suffer[s] from several physical and mental disorders." App.3a. He has been diagnosed with "heavy-metal poisoning." *Id.*

In 2021, a congressional staff report revealed that Hain's baby food products "contained elevated levels of toxic heavy metals." *Id.* Respondents inferred a connection to "the high levels of toxic metals appearing in [E.P.'s] blood tests," so they filed this lawsuit against Hain and Whole Foods. App.4a.

2. E.P.'s mother is a doctor at the internationally renowned MD Anderson Cancer Center in Houston. The Palmquists are Texas citizens. Record.38, 53-54. They were well-informed parents who thoroughly researched the baby food they fed to E.P. Record.258. They chose Hain's baby food because they believed it offered the highest quality and safest nutrition. *Id.* Like many informed consumers, respondents relied on Whole Foods' representations that its products are safe and of the highest quality, and it vets its products (including Hain's baby food) to assure that they are free from harmful ingredients. Record.258, 271-74.

For that reason, E.P. ate Hain's baby food almost exclusively for more than two years. Record.21305-21. And he often consumed multiple servings at a time. Record.21308, 21314, 21318-19, 21519.

3. Until E.P. was 2½ years old, he experienced no developmental issues. Record. 21211, 21215, 20817. But then he showed signs of autism spectrum disorder and both his mental and physical health deteriorated. Record.21214-17, 21556-59, 26654-64. He had become nonverbal and extremely low-functioning by the time of trial, Record.20652-53, 21229-30, and a neurologist described E.P.'s neurocognitive disorder as "one of the most severe" he had ever encountered, Record.20807.

Genetic testing revealed no causes for concern. Record.20551-63. Additional tests ruled out several other potential causes. Record.20827-30. Eventually, heavy-metals tests revealed dangerously high levels of arsenic, lead, and mercury, Record.21013-14, leading to a diagnosis of heavy-metal toxicity, Record.20822, 21011, 26068. Although the precise threshold of hazardous exposure is unknown because it cannot readily be tested, exposure to heavy metals is a widely accepted cause of neurocognitive injuries—especially in children. Record.20754-55, 20852-53, 20994-95, 21014, 21580-81, 21673.

In 2021, Congress issued a committee staff report disclosing that certain baby foods manufactured by Hain Celestial, Inc. (among others) were tainted with high levels of toxic heavy metals such as arsenic, lead, cadmium, and mercury—many of which had appeared in E.P.'s tests. Record.22846-904. This development was a revelation to the Palmquists, Record.21329-30, who selected Hain's baby food because they believed (as Whole Foods had represented to them) it was safe, of highest quality, and free from harmful ingredients, Record.258, 271-74.

4. Respondents sued petitioners in state court. App.4a. Respondents sued Whole Foods Market, Inc., a citizen of Texas, Record.39, 53-54, for negligence and breach of warranty. App.4a. They pled their claims generally as allowed by Texas notice pleading rules. *See* Tex. R. Civ. P. 47(a) (requiring "a short statement of the cause of action sufficient to give fair notice of the claim involved"). Hain removed to federal court on the basis that Whole Foods was "improperly joined to defeat diversity jurisdiction." App.4a.

Respondents filed an amended complaint "'clarif[ying] their allegations against Whole Foods under the federal pleading standard'" and explaining "that their breach-of-warranties cause of action included claims that Whole Foods expressly represented to the public and to the Palmquists that Hain's baby food was safe." App.5a.[1]

Specifically, they alleged "Whole Foods markets Earth's Best Organic baby food products as safe," "highest quality," and free of "harmful ingredients." Record.272-73. Whole Foods also represents that it "carefully vet[s] our products to make sure they meet our high standards by researching ingredients, reading labels and auditing sourcing practices." Record.272. "Whole [F]oods made these express factual representations about Hain's Earth's Best Baby Food." *Id.*[2]

---

[1] In Texas, a non-manufacturing seller is liable if it made express factual misrepresentations about a defective product. *See* Tex. Civ. Prac. & Rem. Code § 82.003(a)(5).

[2] The claim that respondents bought Hain's baby food from other retailers, Pet. Br. 3, is unsupported by the complaint. Hain's products are sold elsewhere, but respondents only alleged they purchased the baby food at Whole Foods. Record.257-58.

5. Relying on the allegations clarifying their claim against Whole Foods, respondents moved to remand. App.5a. But the district court refused to consider the amended complaint and ruled, alternatively, that it did not state a claim against Whole Foods because the representations were too generalized to be actionable. App.5a-6a; Record.781-82. Thus, the court ruled that respondents "had improperly joined Whole Foods and dismissed their claims against it." App.6a. It did so "with prejudice." Record.783.

No party sought a partial final judgment under Federal Rule of Civil Procedure 54(b). Accordingly, the ruling dismissing Whole Foods was interlocutory and could be "revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." *Id.*

6. The case proceeded on the merits against Hain. After discovery was complete, the district court denied motions to exclude respondents' experts on causation, Record.14809-17, and also denied summary judgment because "[c]onsuming heavy metals is widely known to lead to cognitive impairment, severe illness, and—at high levels—death," Record.16998.

At trial, respondents proved that Hain's products contained dangerously high levels of heavy metals. Record.20071-78, 22127, 22131, 22452. By ruling out other possible causes, doctors from several specialties performed a "differential diagnosis," which provided a reliable basis to conclude that E.P.'s severe injuries were caused by the heavy metals in Hain's baby food—the only known source of exposure to heavy metals. Record.20760, 20836, 21324-25.

Scientific literature does not establish the precise threshold of exposure at which heavy metals cause such neurological injuries. But a scientific consensus agrees that exposure to heavy metals, at some level, causes neurocognitive injuries—especially to children. Record.22134, 22283, 22373, 22460, 22518. Thus, Hain's own experts agreed that the causal link between heavy-metal toxicity and neurological injury is undisputed. Record.18307, 21580-81, 21673, 21782.

At the close of evidence, Hain moved for judgment as a matter of law. Although it had overruled Hain's *Daubert* objections and denied summary judgment, the district court granted the motion, believing that respondents did not "present any expert evidence on general causation." App.30a; Record.22105.

7. On appeal, respondents challenged both the ruling denying their motion to remand and the ruling granting judgment as a matter of law in favor of Hain. The Fifth Circuit concluded that respondents had pleaded a viable state-law claim against Whole Foods, so it vacated the final judgment and ordered the case remanded to state court. App.7a-23a.

First, the Fifth Circuit held the language in the "as-removed complaint" included a claim for breach of express warranty. App.10a. The court then based its improper-joinder analysis on that claim. App.10a-21a.

Second, the Fifth Circuit held state-court plaintiffs whose cases are removed to federal court may clarify the factual basis of their allegations to comply with federal pleading standards. App.10a-14a. It did so because "removed state-court petitions are evaluated under the federal pleading standard," App.10a-11a, and "a plaintiff should not be penalized" for following state-court pleading standards, App.12a.

Third, the Fifth Circuit held that respondents had "clarified their existing breach-of-warranties claim with supporting jurisdictional facts," App.13a-14a, stating a claim against Whole Foods. App.16a-21a. Under well-settled Texas law, statements about the quality of a product may be "actionable even though they are broad descriptions." *Pennington v. Singleton*, 606 S.W.2d 682, 687 (Tex. 1980). Furthermore, generalized statements may be actionable when the speaker purports to have "superior knowledge." *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co.*, 341 S.W.3d 323, 338 (Tex. 2011).

As set forth above, Whole Foods purported to have special knowledge about the ingredients in Hain's baby food that was not available to the buying public. Customers pay premium prices based on assurances that Whole Foods' products are safe and high quality. The Fifth Circuit held such statements are actionable under Texas law. App.20a-21a.

Finally, the Fifth Circuit concluded that the defect in subject-matter jurisdiction at the time of judgment required the judgment to be vacated. App.21a-23a. Citing *Caterpillar*, petitioners had sought affirmance in the name of "judicial efficiency and finality." App.21a. But the court disagreed, holding that, "[u]nlike *Caterpillar*, complete diversity did not exist at the time judgment was entered because the Palmquists alleged non-fraudulent claims against a non-diverse defendant, Whole Foods." App.22a. Because the jurisdictional defect remained in the case "through judgment in the district court," the court concluded "the case must be remanded because the federal court lacked jurisdiction." App.22a-23a.

SUMMARY OF ARGUMENT

I. The Fifth Circuit correctly held that complete diversity was lacking at the time of final judgment, and it correctly vacated the judgment and remanded the entire case to state court.

A. Federal courts are courts of limited jurisdiction, and those jurisdictional limits must be enforced at all stages of the case. One such limit is the requirement of complete diversity, the absence of which deprives the district court of jurisdiction over the entire action. If it appears that complete diversity is lacking at any time before a final judgment, the court must dismiss the action. Enforcing this limit in removed cases is required by 28 U.S.C. § 1447(c) and is essential to the constitutional balance of our federal scheme.

B. Plaintiff is the master of the complaint and may structure the claims and the party configuration to bring the case within or without federal jurisdiction.

C. When jurisdiction is lacking, any judicial action on the merits is *ultra vires*. Concerns about efficiency cannot override this settled jurisprudence.

D. When a lack of complete diversity is not cured before final judgment, the judgment must be vacated. Respondents maintained a claim against Whole Foods through final judgment. Because the dismissal ruling was interlocutory and subject to revision at any time prior to final judgment, the lack of complete diversity was never cured but persisted through final judgment. This conclusion tracks the voluntary-involuntary rule, which holds a case that is not removable when filed may become removable only by the voluntary action of the plaintiff. Any other ruling would enlarge the limited jurisdiction of the federal courts and reward the uncorrected defiance of a jurisdictional limit.

II. No decision of this Court or relevant principle supports affirming the district court's judgment.

A. A lack of complete diversity may be cured if the plaintiff voluntarily settles or abandons its claims against a nondiverse defendant before final judgment, but that did not happen here. A plaintiff's voluntary decision to dismiss a nondiverse defendant is akin to an amended complaint dropping such a defendant and creating complete diversity, but involuntary dismissal is subject to revision or reversal on appeal so it does not create complete diversity. This Court's rationale in *Caterpillar* and the decisions that have applied it confirm that the erroneous involuntary dismissal of Whole Foods did not cure the jurisdictional defect. Accordingly, vacatur and dismissal from federal court for lack of jurisdiction is the only option.

B. The values of finality, efficiency, and economy are not a basis for affirmance in these circumstances. Such prudential considerations are immaterial when subject-matter jurisdiction is lacking.

In addition, faithful adherence to the limits of federal jurisdiction will not invite meaningful waste and inefficiency—in this case or as a systemic matter. Any alleged waste in this specific case is self-inflicted, avoidable, and exaggerated. On a systemic level, respondents' rule minimizes waste and inefficiency in the long run by encouraging district courts to exercise caution when they adjudicate motions to remand—getting the jurisdictional ruling right on the front end and aligning the incentives of appellate review with the limited jurisdiction of federal courts. And it has institutional benefits because allowing state courts to adjudicate cases that Congress has determined belong in state court is an essential feature of federalism.

III. Petitioners' fallback request that Whole Foods be dropped from the case at this late date is neither properly before the Court nor meritorious.

A. The question whether Whole Foods should be dropped under Rule 21 *now*, on the facts of this case, is outside the scope of the broadly relevant question this Court granted certiorari to resolve. In addition, it requests relief that petitioners did not seek below, so the fallback request is not properly presented here. Because the Fifth Circuit correctly decided the issues presented to it, its case-specific disposition should not be disturbed.

B. The fallback argument mistakenly assumes an appellate court may dismiss a nondiverse defendant on appeal over the plaintiff's well-founded objection. This Court has never done so, and the idea is offensive to the plaintiff's right to select the forum of suit and the congressional requirement of complete diversity.

C. The fallback argument seeks relief that would be prejudicial on its face and in this particular case. Dismissing a nondiverse defendant on appeal over the objection of a plaintiff that properly sued in state court would prejudice the plaintiff's right to select the forum of suit and subject plaintiffs and defendants to the burdens of piecemeal litigation. That prospect is especially prejudicial in a case like this one in which defendants are not jointly and severally liable but are subject to a statutory scheme of comparative fault. Moreover, dismissing Whole Foods to save a judgment entered by a federal district court without jurisdiction would expose respondents to Whole Foods' argument that the final judgment should have preclusive effect in state court—the most severe form of prejudice.

The Fifth Circuit's judgment should be affirmed.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY VACATED THE FINAL JUDGMENT

A. By Design, Federal Courts Possess Only Limited Jurisdiction

1. It is axiomatic that "[f]ederal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* (citations omitted).

As such, both district courts and appellate courts must evaluate subject-matter jurisdiction at all stages of the case. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998). "The requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Id.* at 94-95 (citation omitted; cleaned up). This obligation exists "by whatever route a case arrives in federal court." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 593 (2004).

2. Federal-court jurisdiction is "[l]imited first by the Constitution, to only the kinds of 'Cases' and 'Controversies' listed in Article III." *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 26 (2025). And for the lower courts, "Congress determines through its grants of jurisdiction, which suits those courts can resolve." *Id.*; *see also Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (same).

The Constitution provides that federal jurisdiction "shall extend . . . to Controversies . . . between Citizens of different States." U.S. Const. art. III, § 2, cl. 1.

Ever since the Judiciary Act of 1789, "Congress has constantly authorized the federal courts to exercise jurisdiction based on the diverse citizenship of parties." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Today, it confers "original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1).

Statutory diversity jurisdiction ordinarily applies only to cases involving "complete diversity," which are "cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant." *Caterpillar*, 519 U.S. at 68.

With this statute, Congress has determined that, in cases subject to state law, federal judicial resources are reserved for cases where complete diversity exists. Because the absence of complete diversity eliminates the constitutional justification for federal jurisdiction "over *any* of the claims in the action," this Court holds that "the presence in the action of a single plaintiff from the same State as a single defendant deprives the district court of original diversity jurisdiction over *the entire action*." *Allapattah*, 545 U.S. at 553-54 (emphases added). The lack of complete diversity "contaminates every claim in the action." *Id.* at 564. Congress thus has provided that, if complete diversity is lacking, plaintiffs are not required to litigate their cases piecemeal; rather, they are entitled to litigate the entire case in state court.

3. Removal jurisdiction follows the same limits. As a general matter, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction," such as an action in which complete diversity exists, "may be removed by the defendant or defendants" to federal district court. 28 U.S.C. § 1441(a).

The plaintiff may move to remand to state court on the ground that jurisdiction does not exist because, *inter alia*, there is a lack of complete diversity between the parties. *See id.* § 1447(c).

When adjudicating such a motion, a district court may disregard parties who were fraudulently joined, *i.e.*, against whom the plaintiff lacks any valid claim. *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921). This test is not met if the plaintiff "state[s] a good cause of action against the resident defendants." *Chesapeake & O. Ry. Co. v. Cockrell*, 232 U.S. 146, 152 (1914).

This power to inquire into the validity of a claim against a nondiverse defendant assures that plaintiffs cannot distort the limited jurisdiction of federal courts to defeat removal. But as Justice Holmes explained on behalf of the Court, where a plaintiff has stated a valid claim against a nondiverse defendant, "he has an absolute right to enforce it, whatever the reason that makes him wish to assert the right." *Chicago, R.I. & P. Ry. Co. v. Schwyhart*, 227 U.S. 184, 193 (1913). In such a case, "the motive of the plaintiff, taken by itself, does not affect the right to remove." *Id.*; *accord Chicago, R.I. & P. Ry. Co. v. Whiteaker*, 239 U.S. 421, 424-25 (1915); *Illinois Cent. R.R. Co. v. Sheegog*, 215 U.S. 308, 316, 318 (1909).

4. Because the obligation of a federal district court to determine its subject-matter jurisdiction is ongoing, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c); *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Courts are bound to faithfully follow "the text of the jurisdictional statutes and the bedrock principle that federal courts have no jurisdiction without statutory authorization." *Allapattah*, 545 U.S. at 553.

5. This mandatory command is essential because "[s]ubject-matter limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

Allowing state courts to decide cases that belong in state court is an essential feature of federalism. Thus, this Court respects "the power of the States 'to provide for the determination of controversies in their courts'" and construes jurisdictional statutes to "maintain the constitutional balance between state and federal judiciaries." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 389-90 (2016) (citations omitted).

"Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Healy v. Ratta*, 292 U.S. 263, 270 (1934); *accord Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002).

B. Plaintiff Is The Master Of The Complaint And Ordinarily May Choose Whether To Sue In State Or Federal Court

"The plaintiff is 'the master of the complaint,' and therefore controls much about her suit." *Royal Canin*, 604 U.S. at 35 (citation omitted). "She gets to determine which substantive claims to bring against which defendants. And in so doing, she can establish —or not—the basis for a federal court's subject-matter jurisdiction." *Id.*

As master of the complaint, the plaintiff may avoid federal jurisdiction by relying exclusively on state law. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The plaintiff also chooses which parties to sue. "She may, for example, name only defendants who come from a different State, or instead add one from her own State and thereby destroy diversity of citizenship." *Royal Canin*, 604 U.S. at 35; *see also Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 90-91 (2005).

As explained previously, the latter principle is subject to a limitation for fraudulent-joinder cases. But the Fifth Circuit expressly held that Whole Foods was not fraudulently joined, and that holding is not before the Court.

The plaintiff can take actions during the course of the litigation that have jurisdictional consequences. *See Royal Canin*, 604 U.S. at 34-39 (amendment to complaint can create or destroy federal jurisdiction); *Caterpillar*, 519 U.S. at 73 (settlement and voluntary dismissal mid-litigation created complete diversity). But the plaintiff remains the master of the complaint, as "jurisdiction follows the operative pleading" and "ensures that the case, as it will actually be litigated, merits a federal forum." *Royal Canin*, 604 U.S. at 39.

C. Efficiency Concerns Cannot Overcome A Lack Of Jurisdiction

Compliance with the jurisdictional limitations of the federal courts is mandatory "regardless of the costs it imposes." *Grupo Dataflux*, 541 U.S. at 571. Allowing a court to act on the merits "when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Steel*, 523 U.S. at 101-02. Thus, when jurisdiction is lacking, federal courts ordinarily are powerless to do anything except dismiss the case.

This conclusion is both theoretically inescapable and necessary to give effect to the will of Congress. Overlooking a district court's exercise of jurisdiction under circumstances in which the complaining party justifiably objected to the exercise of jurisdiction, simply because it would be "inefficient" or "wasteful" to enforce the jurisdictional limits fixed by Congress, "would be to allow uncorrected defiance of a categorical congressional judgment to become its own justification." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 42 (1998). This Court unanimously reached that conclusion in *Lexecon*—despite any waste and inefficiency that would result after a trial on the merits—based on the lower court's error in failing to follow a mandatory venue statute. The explicit command of § 1447(c)—that, whenever jurisdiction is lacking, "the case shall be remanded"—is no less mandatory. And the jurisdictional character of the rule makes it even more compelling to hold that "no discretion is to be left to a court faced with an objection to a statutory violation." *Id.* In such a case, "dismissal for lack of subject-matter jurisdiction is the only option." *Grupo Dataflux*, 541 U.S. at 574-75.

D. The Erroneous Dismissal Of Whole Foods And Lack Of Complete Diversity Persisted Through Judgment, Requiring Vacatur

Faithfully following these controlling principles, the Fifth Circuit held that Whole Foods had not been fraudulently joined, correctly vacated the judgment for Hain, and remanded the entire case to state court.

1. If the erroneous denial of a motion to remand is not cured before final judgment, vacatur is required: "Despite a federal trial court's threshold denial of a motion to remand, if, at the end of the day and case, a *jurisdictional* defect remains uncured, the judgment must be vacated." *Caterpillar*, 519 U.S. at 76-77. Rather than *curing* the absence of complete diversity, a threshold denial of a motion to remand, if erroneous, *masks* the jurisdictional defect. It persists in the case, subject to correction in accordance with § 1447(c).

2. Here, the jurisdictional defect never was cured; it remained in the case subject to appellate correction. In *Caterpillar*, the nondiverse defendant settled and was appropriately "dismissed as a party to the action," 519 U.S. at 64, through an order specifically stating "[t]here being no just cause for delay, this is a final appealable order." Appendix A.[3] Here, by contrast, Whole Foods never ceased to be a party to this case. The dismissal ruling remained interlocutory. It did "not end the action as to any of the claims or parties," but could "be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b).

---

[3] This Court may take judicial notice of the *Caterpillar* order. *See* 1 Joseph M. McLaughlin, *Weinstein's Federal Evidence* § 201.12[3] (2d ed. 2014).

Interlocutory orders like the dismissal of one party in a multi-defendant case "are but steps towards [the] final judgment in which they will merge." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). Thus, as a general rule, interlocutory rulings "merge into the final judgment." *Dupree v. Younger*, 598 U.S. 729, 735 (2023). *Caterpillar* itself recognized that an order denying a motion to remand is not final and appealable as of right. *See* 519 U.S. at 74; *accord Royal Canin*, 604 U.S. at 29 n.2.

For this reason, the ruling dismissing Whole Foods persisted until it became part of the final judgment. *See Catlin v. United States*, 324 U.S. 229, 233 (1945) ("A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."); *accord Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996). A judgment is not final until the district court "disassociates itself from a case." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995); *accord Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408 (2015). Thus, Whole Foods remained a party to this case through the entry of final judgment.

Because respondents never dropped Whole Foods from the litigation, the "jurisdictional defect lingered through judgment in the District Court," *Caterpillar*, 519 U.S. at 77, and the district court erred by failing to realize that it lacked subject-matter jurisdiction—which would have required it to remand the case to state court. *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

In other words, "[t]he posture of this case even at the time of judgment also barred federal jurisdiction. A Texas citizen was and remained a party defendant." *American Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17 (1951). To uphold such a judgment would "work a wrongful extension of federal jurisdiction." *Id*. at 18. That is why *Caterpillar* contemplated a scenario in which "a *jurisdictional* defect remains uncured" and "the judgment must be vacated." 519 U.S. at 76-77 (citing Rule 12(h)(3)). That statement is incompatible with petitioners' contention that an erroneous refusal to remand itself "cures" the defect. On the contrary, *Caterpillar* anticipated the rule that should control: "uncorrected defiance of a categorical congressional judgment" like the command of § 1447(c) cannot be "its own justification." *Lexecon*, 523 U.S. at 42.

3. Traditionally, the "voluntary-involuntary rule" governs the jurisdictional effect of party dismissals during the course of litigation. It holds an action that is not removable when filed becomes removable only as a result of "the voluntary dismissal or nonsuit by [the plaintiff] of a party or of parties defendant." *Great N. Ry. Co. v. Alexander*, 246 U.S. 276, 281 (1918); *see also American Car & Foundry Co. v. Kettelhake*, 236 U.S. 311, 316 (1915); *Powers v. Chesapeake & O. Ry. Co.*, 169 U.S. 92, 101 (1898). Defendants cannot remove a case after a ruling by a state court disposing of a plaintiff's claim against a nondiverse defendant. *See id.*; *Whitcomb v. Smithson*, 175 U.S. 635, 637-38 (1900). This rule is now codified in 28 U.S.C. § 1446(b)(3), as Congress incorporated its understanding of how a case may "become removable." *See Caribe Chem Distribs., Corp. v. Southern Agric. Insecticides, Inc.*, 96 F.4th 25, 30-31 (1st Cir. 2024); *Poulos v. Naas Foods, Inc.*, 959 F.2d 69, 72 (7th Cir. 1992).

Respected federal commentators endorse this rule. *See* 16 *Moore's Federal Practice* § 107.140[3][a][ii][B] (3d ed. 2025) ("[a] case that is not removable based on the plaintiff's initial pleading may become removable if the plaintiff takes some voluntary action that affects the jurisdictional facts," *i.e.*, "if the plaintiff dismisses a nondiverse defendant"); *see also id.* §§ 107.57[1], 107.151[2][e] (same).

By contrast, a case that is not removable initially does not become removable by an involuntary action, such as the opposed dismissal of a nondiverse party. *See id.* § 107.140[3][a][ii][C] ("Generally, involuntary changes in a case do not create removability if the case as stated in the plaintiff's initial pleading was not removable. . . . [I]nvoluntary dismissal of a nondiverse defendant, by court-ordered dismissal or directed verdict, does not ordinarily create diversity."); *see also* 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3723 (rev. 4th ed. 2024) (discussing this rule). In short, voluntary dismissal of a nondiverse defendant cures a jurisdictional defect; involuntary dismissal does not.

Respondents opposed the dismissal of Whole Foods and never voluntarily abandoned their viable claims against this nondiverse defendant. The ruling that respondents had no viable claim against Whole Foods was entered "adverse to plaintiff[s], and without [their] assent," so it "did not operate to make the cause then removable." *Whitcomb*, 175 U.S. at 638. In sum, unlike a voluntary dismissal pursuant to a settlement, this case falls squarely into the involuntary category. Holding that the erroneous dismissal of Whole Foods did not cure the lack of complete diversity will align this case with this Court's traditional jurisprudence.

4. Given these principles, the decision rule for an appeal involving the erroneous involuntary dismissal of a nondiverse defendant is simple and inescapable: uncorrected defiance of the categorical rule set forth in § 1447(c) requires the judgment to be vacated and the case to be remanded. *See Lexecon*, 523 U.S. at 42. That statutory "mandate would lose all meaning if a party who continuously objected to an uncorrected categorical violation of the mandate could obtain no relief at the end of the day." *Id.* at 43.

II. PETITIONERS' ARGUMENTS TO SAVE THE FINAL JUDGMENT ARE UNSOUND

A. *Caterpillar* Does Not Hold That Erroneous Dismissal Of A Nondiverse Defendant Cures A Lack Of Complete Diversity

Petitioners argue that vacatur was inappropriate because the dismissal of Whole Foods, even if wrong, "cured" the lack of complete diversity and meant that the district court had diversity jurisdiction at the time of judgment in favor of Hain. They are mistaken.

Caterpillar held only that a final judgment need not be vacated when a jurisdictional defect is "cured" prior to judgment. *See* 519 U.S. at 77. It did *not* hold that an erroneous refusal to remand and interlocutory dismissal of a nondiverse defendant, on its own, effects such a "cure." On the contrary, the dismissal that effected a "cure" in *Caterpillar* was a final order under Rule 54(b), not merely an interlocutory ruling. *See* Appendix A. Petitioners are asking this Court to extend the rule of *Caterpillar* in a manner that is incompatible with the core rationale of that decision, longstanding rules governing the jurisdictional effects of amended pleadings, and this Court's later decisions limiting *Caterpillar*.

1. The lack of complete diversity was cured in *Caterpillar* when "all claims involving the nondiverse defendant were settled." 519 U.S. at 64. A voluntary settlement moots any case or controversy between the settling parties. *See Buck's Stove & Range Co. v. American Fed'n of Labor*, 219 U.S. 581, 581 (1911). Obviously, when a party's "substantive claims become moot in the Art. III sense, by settlement of all personal claims for example, the court retains no jurisdiction over the controversy of the individual plaintiffs." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 332 (1980). Going forward, the settling parties cease to have any jurisdictional significance.

When the claims against the nondiverse defendant in *Caterpillar* were settled, moreover, "that defendant was dismissed as a party to the action" by an order entering a partial final judgment under Rule 54(b). 519 U.S. at 64; *see* Appendix A. The case then became "a two-party lawsuit." 519 U.S. at 73. On that basis, the Court decided that there was "complete diversity, and therefore federal subject-matter jurisdiction, at the time of trial and judgment." *Id*. *Caterpillar* thus fits neatly within both the voluntary-involuntary rule and the orthodox rules governing final judgments.

By contrast, respondents opposed the dismissal of Whole Foods and never voluntarily abandoned their claims against this proper and nondiverse defendant. The flawed dismissal ruling did not "cure" the defect because Whole Foods remained a party to the case—as evidenced by its participation in the appeal after final judgment and its ongoing presence in this Court. This case, therefore, is materially different from the procedural history of *Caterpillar*.

2. A voluntary dismissal pursuant to settlement reconfigures the case, akin to an amended complaint. When a plaintiff amends the complaint after removal, "a federal court's jurisdiction depends on what the new complaint says." *Royal Canin*, 604 U.S. at 30. "So changes in parties . . . effectively remake the suit. And that includes its jurisdictional basis: The reconfiguration accomplished by an amendment may bring the suit either newly within or newly outside a federal court's jurisdiction." *Id.* at 35-36.[4]

Of particular relevance here, "the elimination of a non-diverse defendant by way of amendment ensures that a case can proceed in federal court, though it could not have done so before." *Id.* at 37. In essence, the voluntary dismissal of a settling defendant is the equivalent of an amended complaint dropping a party; the elimination of any justiciable controversy with the settling defendant makes that defendant disappear for jurisdictional purposes. Thus, it is unsurprising that *Caterpillar* held such a voluntary action cured the jurisdictional defect.

But there is a substantial difference between a voluntary dismissal and an involuntary dismissal. The former situation means the abandoned claims are "gone for good," *id.* at 33, while in the latter situation they remain part of the case and could be revived. When claims are dismissed by a federal district court, "an appellate court may yet revive them; but that cannot happen when the plaintiff has excised them through a proper amendment." *Id.* Thus, the "cure" to the jurisdictional defect that saved the judgment in *Caterpillar* did not occur in this case.

---

[4] These principles apply equally in removed cases. *See Royal Canin*, 604 U.S. at 39.

The only cases cited by petitioners as support for their reading of *Caterpillar* confirm this conclusion. In *Connolly v. Taylor*, 27 U.S. (2 Pet.) 556, 557 (1829) (statement), a change in party alignment was made "on motion on the part of the complainants." And in *Horn v. Lockhart*, 84 U.S. (17 Wall.) 570, 579 (1873), it appears that the plaintiffs did not oppose dismissal of the nondiverse defendants. *See also id.* at 574 (statement). Neither was a case in which the plaintiff opposed dismissal of the nondiverse defendant.

3. *Caterpillar* itself rejects petitioners' theory that an erroneous dismissal cures a jurisdictional defect. *Caterpillar* emphasized that the "threshold denial of a motion to remand," if erroneous, will require vacatur "if, at the end of the day and case, a *jurisdictional* defect remains uncured." 519 U.S. at 76-77. Thus, *Caterpillar* itself recognized that the error at issue here ordinarily will require vacatur; it is not "cured" by the erroneous denial of remand.

Other aspects of *Caterpillar* confirm this reading. For example, the Court's preservation analysis shows that opposing the dismissal of a nondiverse defendant prevents the defect from being cured. Specifically, this Court emphasized that *Caterpillar* involved a "plaintiff who moved promptly, but unsuccessfully, to remand a case improperly removed from state court to federal court, and then challenged on appeal a judgment entered by the federal court." *Id.* at 70-71; *accord id.* at 72. It took pains to stress that prior cases touching on similar questions had been removed "without objection," *id.* at 73, so they did not resolve "the question whether a plaintiff, who timely objects to removal, may later successfully challenge an adverse judgment on the ground that the removal did not comply with statutory prescriptions," *id.*

As a predicate to reaching that question, the Court held that the plaintiff, "by timely moving for remand, did all that was required to preserve his objection to removal." *Id*. at 74. A plaintiff is not "required to seek permission to take an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) in order to avoid waiving whatever ultimate appeal right he may have." *Id*. (footnote omitted).

There would have been no reason for the Court to draw this distinction if the erroneous dismissal of a nondiverse defendant "cured" a jurisdictional defect (which would make preservation irrelevant). Instead, the Court's holding that it is unnecessary to request permission to appeal the jurisdictional ruling prior to entry of final judgment signals that ordinarily such an error will require vacatur of the final judgment and remand to state court.

Likewise, *Caterpillar* made this conclusion explicit in the course of dismissing predictions that its holding would encourage abusive removals. That prediction, the Court explained, "assumes defendants' readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection [and] then disappear prior to judgment." 519 U.S. at 77. It necessarily follows that an erroneous denial of a motion to remand does not, by itself, make "the absence of complete diversity . . . disappear prior to judgment." The defect does not "disappear prior to judgment," but remains in the case subject to appellate correction. And once it is noticed, the lack of complete diversity requires the judgment to be vacated because it "contaminates every claim in the action." *Allapattah*, 545 U.S. at 564.

Thus, not only does *Caterpillar* provide no support to petitioners, it confirms respondents' position.

4. The Court has confirmed this limited reading of *Caterpillar* and rejected the sort of expansive reading urged by petitioners.

First, the Court faced a similar issue in *Lexecon*, which raised the question whether a district court to which an action had been transferred for coordinated pretrial proceedings in multi-district litigation could retain the case for trial, despite a statutory command that each transferred action "shall be remanded by the [MDL] panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred" for trial. 28 U.S.C. § 1407(a).

Because the statute used "the mandatory 'shall,' which normally creates an obligation impervious to judicial discretion," the Court held that it must "give effect to this plain command." *Lexecon*, 523 U.S. at 35. If another rule was preferable to "preserving a plaintiff's choice," "the proper venue for resolving that issue remains the floor of Congress." *Id*. at 40.

Rejecting a harmless-error contention that courts could freely ignore the "congressional judgment that . . . no discretion is to be left to a court faced with an objection to a statutory violation," *id*. at 42, the Court unanimously distinguished *Caterpillar*. It explained that the defect in *Caterpillar* had been cured prior to judgment by the voluntary dismissal of the nondiverse defendant so "there was no continuing defiance of the congressional condition in *Caterpillar,* but merely an untimely compliance." *Id.* at 43. The holding that "considerations of 'finality, efficiency and economy' trumped the error" turned "on this understanding." *Id*. Therefore, under *Lexecon*'s reading of *Caterpillar*, a curative action must eliminate "continuing defiance of the congressional condition." *Id*.

Here, of course, there was "continuing defiance of the congressional condition" through final judgment. Respondents never abandoned their claims against Whole Foods, but continued to press those claims and maintained their objection to the denial of remand. Meanwhile, Whole Foods remained a party to the case as a defendant; the district court neither dropped Whole Foods under Federal Rule of Civil Procedure 21 nor severed it from the main case (as in *Caterpillar*). The text of § 1447(c) ("the case shall be remanded") uses the same "plain command" as § 1407(a), *id.* at 35, and that command "would lose all meaning if a party who continuously objected to an uncorrected categorical violation of the mandate could obtain no relief at the end of the day," *id.* at 43.

Second, while *Lexecon* distinguished *Caterpillar*, *Grupo Dataflux* definitively limited its holding. *Grupo Dataflux* raised the question whether a party's post-filing change in citizenship cured a defect in diversity jurisdiction that existed at the time of filing. Holding that it did not and reiterating the rule that "'the jurisdiction of the court depends upon the state of things at the time of the action brought,'" *Grupo Dataflux*, 541 U.S. at 570 (quoting *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824)), the Court made clear that *Caterpillar*'s emphasis on judicial economy "did not augur a new approach to deciding whether a jurisdictional defect has been cured." *Id.* at 572.

The Court explained that "*Caterpillar* broke no new ground, because the jurisdictional defect it addressed had been cured by the dismissal of the party that had destroyed diversity. That method of curing a jurisdictional defect had long been an exception to the time-of-filing rule." *Id.*

Citing cases in which dispensable parties had been dropped in order to achieve complete diversity without an adjudication of the merits (and apparently without objection by the plaintiffs), the Court explained that "*Caterpillar* involved an unremarkable application of this established exception." *Id.* at 573. It cited the settlement and dismissal of the nondiverse defendant in *Caterpillar* and reasoned that "[t]he postsettlement dismissal of the diversity-destroying defendant cured the jurisdictional defect" because the party alignment "had been converted to complete diversity between the remaining parties to the final judgment." *Id.*

Importantly, *Grupo Dataflux* rejected the idea that "'considerations of finality, efficiency, and economy'" were relevant to the "cure of the *jurisdictional* defect." *Id.* at 574 (quoting *Caterpillar*, 519 U.S. at 75). Rather, that discussion "took as its *starting point* that subject-matter jurisdiction had been satisfied." *Id.* Thus, "[t]he resulting holding of *Caterpillar*," and its only lingering significance following *Grupo Dataflux*, is that a lack of complete diversity at the time of removal does not require dismissal "once there [i]s no longer any jurisdictional defect." *Id.* Accordingly, *Grupo Dataflux* made clear that *Caterpillar* does not alter the rule that a lack of complete diversity at the time of final judgment requires vacatur.

In short, *Lexecon* and *Grupo Dataflux* establish that the rule of *Caterpillar* is limited to cases in which complete diversity—and subject-matter jurisdiction—is *properly* secured prior to judgment, as opposed to *erroneously* or *illusorily*. In the former class of cases, the jurisdictional defect is cured. In the latter class, the jurisdictional defect is uncured and "dismissal for lack of subject-matter jurisdiction is the only option." *Id.* at 574-75.

B. Finality, Efficiency, And Economy Are Not Grounds To Save The Final Judgment

1. Petitioners and their *amici* place great weight on the values of "finality, efficiency, and economy." But these prudential considerations matter only if a jurisdictional defect has been cured prior to judgment; if not, "the judgment must be vacated." *Caterpillar*, 519 U.S. at 76-77.

As a thoughtful commentary on *Caterpillar* puts it, "sometimes efficiency must stand aside in the name of higher principles," *i.e.*, "the background separation of powers principles that govern the relationship between Congress and the courts on which the very legitimacy of the federal courts is thought to rest." Amanda L. Tyler, *After Justice Ginsburg's First Decade: Some Thoughts About Her Contributions in the Fields of Procedure and Jurisdiction*, 90 Geo. Wash. L. Rev. 1572, 1590, 1590-91 (2022).

This rule has deep roots. From its earliest days, this Court has held "[c]ourts created by statute can have no jurisdiction but such as the statute confers," whatever the cost. *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850); *see also Anderson v. Watts*, 138 U.S. 694, 708 (1891) (reversing for diversity defect years after judgment and satisfaction of the judgment); *Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804) (reversing for diversity defect after trial). *Grupo Dataflux* dismissed the case from federal court based on a lack of diversity jurisdiction even though the case had "consumed almost three years" and after "a 6-day trial." 541 U.S. at 569. This Court held that the complete-diversity requirement must be enforced "regardless of the costs it imposes," so dismissal was "the only option available." *Id.* at 571, 574-75.

In short, the exercise of federal jurisdiction is not usually a discretionary matter. "[F]ederal courts are courts of limited jurisdiction: When they do not have (or no longer have) authorization to resolve a suit, they must hand it over." *Royal Canin*, 604 U.S. at 28. Respect for these jurisdictional limits is not wasteful, but a demonstration of loyalty to our federal scheme. A dissent that was later vindicated by *Grupo Dataflux* memorably captured this core principle: "the so-called 'waste' of judicial resources that occurs when we dismiss a case for lack of jurisdiction is the price that we pay for federalism." *Atlas Glob. Grp., L.P. v. Grupo Dataflux*, 312 F.3d 168, 178 (5th Cir. 2002) (Garza, J., dissenting), *rev'd*, 541 U.S. 567 (2004).

2. In any event, it is ironic for petitioners to worry about wasted resources and any supposed unfairness, when they invited the alleged waste and inefficiency.

First, if petitioners had not improperly removed the case and resisted respondents' meritorious motion to remand it to state court, there would be no occasion for any complaints about waste and inefficiency.

Second, petitioners failed to take the obvious step to confirm or correct the jurisdictional ruling at a time when any supposed waste could have been avoided. While respondents were under no obligation to seek permission to appeal, *see Caterpillar*, 519 U.S. at 74, petitioners were free to seek a partial final judgment as to Whole Foods on the basis that there was "no just reason for delay." Fed. R. Civ. P. 54(b). The rule exists "specifically to avoid the possible injustice of delaying judgment on a distinctly separate claim pending adjudication of the entire case." *Gelboim*, 574 U.S. at 409-10 (cleaned up). It was used for that very purpose to achieve finality in *Caterpillar*. *See* Appendix A.

If petitioners had secured a partial final judgment, Whole Foods would have been removed from the case and respondents would have been required to appeal the jurisdictional ruling at that time. But petitioners did not invoke Rule 54(b)—presumably because they did not want to risk reversal and remand while the case was pending on the merits in their chosen forum. They knowingly accepted the risk that reversal of the jurisdictional ruling in an appeal after final judgment would require a judgment on the merits to be vacated; they should not be rewarded for that failed gamble in the name of "finality, efficiency, and economy."

In short, forum-shopping and strategic behavior by petitioners—not the rules of federal jurisdiction—have caused any waste and inefficiency in this case. Petitioners have only themselves to blame.

3. Further, any assertion of waste and inefficiency in this case is greatly exaggerated because discovery from the federal proceeding can be used in state court. As this Court has noted, the investment of resources in complex civil litigation occurs long before the trial, in discovery and motion practice. *See Grupo Dataflux*, 541 U.S. at 577. Those resources are not wasted after remand to state court, as the discovery can be used in state court and the parties are better informed about the strengths and weaknesses of their case. Thus, "the 'waste' will not be great. Having been through three years of discovery and pretrial motions in the current case, the parties would most likely proceed promptly to trial." *Id.* at 581. In fact, that is precisely what has occurred, as the case is currently set for trial in state court in the relatively near future. In the end, therefore, the only truly "wasted" time is the few days the parties spent in trial in federal court.

What is left, then, of petitioners' stated desire for "finality, efficiency, and economy"? It is nothing more than their desire to preserve the untested ruling on Hain's Rule 50(a) motion—a ruling the district court never should have entered after a trial it never should have held. That contested ruling cannot "become its own justification." *Lexecon*, 523 U.S. at 42.

4. Suggestions of systemic waste and inefficiency are also exaggerated. There is no reason to assume "that district courts generally will not comprehend, or will balk at applying, the rules on removal Congress has prescribed." *Caterpillar*, 519 U.S. at 77. Thus, there is no reason to expect this problem to recur with any frequency. Instead, the presumption of regularity compels the conclusion that federal district courts will correctly assess their subject-matter jurisdiction in most circumstances.

Moreover, among those relatively infrequent cases where the original denial of remand was erroneous, only a tiny fraction will result in a trial on the merits against the remaining defendant(s). During the most recent 12-month period, 321,948 diversity actions were filed, but only 497 reached trial (0.2%).[5] As such, the risk that a case will be afflicted by an uncured jurisdictional defect, proceed to a trial on the merits, then be reversed and vacated for lack of jurisdiction is vanishingly small.

---

[5] *See* Admin. Off. of the U.S. Courts, Civil Federal Judicial Caseload Statistics Table C-4 (U.S. District Courts—Civil Cases Terminated, by Nature of Suit and Action Taken—During the 12-Month Period Ending March 31, 2025), https://www.uscourts.gov/data-news/data-tables/2025/03/31/federal-judicial-caseload-statistics/c-4 (viewed July 19, 2025); *see also Grupo Dataflux*, 541 U.S. at 576-77 (citing prior version of this report).

Exaggerated concerns about waste and inefficiency do not justify compromising jurisdictional principles for such a handful of cases. Indeed, empirical research suggests that this problem arises only once or twice each year (almost invariably after a final judgment based on a dispositive motion, not trial on the merits). To our knowledge, in the 29 years since *Caterpillar*, every circuit except one vacates and remands in this scenario without expressing any concern about waste. *See Junk v. Terminix Int'l Co.*, 628 F.3d 439, 447 (8th Cir. 2010); *Wilkinson v. Shackelford*, 478 F.3d 957, 964 n.4 (8th Cir. 2007). This consensus approach belies any real concern about waste and inefficiency.

5. In truth, far from being wasteful and inefficient on a systemic level, upholding the decision below will conserve party and judicial resources by deterring illegitimate removals and incentivizing district courts to exercise caution when considering remand motions. As Professor Tyler has observed, requiring vacatur will have "a powerful effect on federal district judges, encouraging them to police their removal jurisdiction more carefully rather than risk an embarrassing and wasteful reversal on appeal." Tyler, 90 Geo. Wash. L. Rev. at 1590. In the long run, respondents' rule will not cause waste and inefficiency, but will minimize it by encouraging district courts to resolve any doubts in favor of remand, consistent with the removal scheme.

This structural incentive aligns with the principle that federal courts should "presume[] that a cause lies outside [their] limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen*, 511 U.S. at 377 (citation omitted). And it protects "the constitutional balance between state and federal judiciaries." *Merrill Lynch*, 578 U.S. at 390.

By contrast, petitioners' rule would eliminate any incentive for courts to resolve doubts against removal and in favor of remand. A harmless-error rule would invite federal courts to enlarge their own jurisdiction by adjudicating cases that belong in state court and would reward inadvertent but "uncorrected defiance" of the complete-diversity requirement. *Lexecon*, 523 U.S. at 42. The structural incentive created by that rule would be incompatible with our federal scheme.

6. Finally, the forum-manipulation objections of petitioners' *amici* are unfounded. The Fifth Circuit held that respondents alleged a viable claim against a nondiverse defendant, and that ruling is not before the Court. Thus, this case presents no occasion for complaints regarding improper forum-shopping.

In a case like this one, the plaintiff's right to choose the forum of suit is a key feature of our federal system. Plaintiff is "the master of the complaint" and is free to configure the lawsuit to "establish—or not—the basis for a federal court's subject-matter jurisdiction." *Royal Canin*, 604 U.S. at 35; *see also id.* at 42 n.9 (rejecting "forum-manipulation concerns" regarding the application of neutral jurisdictional rules). Petitioners and their *amici* may not like the outcome, but "those policy-based concerns, even if significant, cannot trump a federal statute." *Id.*

This is not simply a matter of private preferences. This Court has noted that "federal and state courts are complementary systems for administering justice in our Nation. Cooperation and comity, not competition and conflict, are essential to the federal design." *Ruhrgas*, 526 U.S. at 586. Thus, complaints about the selection of a state forum in a case properly brought in state court are entitled to no weight.

III. PETITIONERS' FALLBACK ARGUMENT LACKS MERIT

A. The Fallback Argument Is Not Properly Presented Here

1. Petitioners' question presented asks whether the judgment below "must be vacated" (based on the erroneous premise that the decision represented a "final judgment as to completely diverse parties"). Pet. Br. i. Their alternative argument that the Court should dismiss Whole Foods *now* by invoking Rule 21 does not answer that question but poses an entirely different one: whether, under the circumstances of this particular case, Rule 21 permits dismissal of a nondiverse defendant over the plaintiffs' objection and without a lower court ruling on the Rule 21 analysis. A brief "may not raise additional questions or change the substance of the questions already presented," Sup. Ct. R. 24.1(a), so this Court should not reach the arguments based on *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989), which present neither an important legal question nor a circuit split.

At best, petitioners' fallback theory that the Court should dismiss Whole Foods *now*—even if it holds that the district court's erroneous dismissal did not result in a final judgment as to completely diverse parties—is "complementary" or "related" to the question upon which certiorari was granted. As such, the argument is not "fairly included" in the Question Presented. Sup. Ct. R. 14.1(a); *see Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 31-32 (1993); *Yee v. City of Escondido*, 503 U.S. 519, 537 (1992).

Moreover, there is nothing exceptional or urgent about the fallback argument. *See Yee*, 503 U.S. at 535. On the contrary, it is a fact-bound argument based on a discretionary power that the Fifth Circuit was never even asked to exercise, and as a result there is no ruling from the lower courts addressing the argument. It does not warrant this Court's attention. *See Stanley v. City of Sanford*, 145 S. Ct. 2058, 2075-76 (2025) (Thomas, J., concurring in part and in judgment).

2. Petitioners did not request the dismissal of Whole Foods under Rule 21 in the proceedings below, so this argument is not properly before the Court.

First, the district court did not drop Whole Foods under Rule 21, and was never asked to do so. Second, in the Fifth Circuit, neither petitioner addressed the test set forth by *Newman-Green* and neither sought dismissal of Whole Foods on appeal. They argued only that the district court should be affirmed—not that Whole Foods should be dropped on appeal to cure a jurisdictional error that required reversal.[6]

Specifically, Hain cited *Newman-Green* in support of its contention that the district court had jurisdiction over the parties at the time it entered final judgment: "*Caterpillar* makes particular sense given that this Court has authority to dismiss Whole Foods under Federal Rule of Procedure 21 on its own motion to preserve jurisdiction."[7] That was the only argument based on *Newman-Green* or Rule 21 in the brief.

---

[6] Whole Foods C.A. Br. 27; Hain C.A. Br. 62.

[7] Hain C.A. Br. 28. Whole Foods also cited *Newman-Green* for the principle that the district court could have dropped it pursuant to Rule 21, but did not ask the Fifth Circuit to do so. Whole Foods C.A. Br. 16.

In other words, instead of asking the Fifth Circuit to cure the error on appeal by dismissing Whole Foods under Rule 21, Hain argued (incorrectly) that the error had been cured previously by the district court's dismissal order.[8]

Moreover, *Newman-Green* derived its holding that appellate courts may dismiss nondiverse defendants on appeal from the principles that animate Rule 21. *See* 490 U.S. at 832-36. Rule 21 provides that a court "may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." Fed. R. Civ. P. 21. It is informed by joinder principles from Rule 19 and "vests great discretion in the court." 4 *Moore's Federal Practice* § 21.02[4]. In this case, because petitioners never requested Rule 21 relief in the lower courts, they cannot contend that either the district court or the Fifth Circuit abused its discretion by failing to drop Whole Foods.

In short, none of the arguments featured in Part II of petitioners' brief was presented to the Fifth Circuit. There is no reason for this Court to vary from its ordinary role as "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Petitioners' failure to seek this relief previously is a "legally fatal problem" for their fallback argument. *Rivers v. Guerrero*, 605 U.S. 443, 458 (2025).

---

[8] Petitioners contend respondents "conceded" (at 18) and "acknowledged" (at 23) that Hain "invited" the Fifth Circuit to dismiss Whole Foods under Rule 21. That is incorrect. Respondents acknowledged only that the Fifth Circuit had been "invited to consider the discretionary power extended by *Newman-Green*," BIO 24, to affirm Hain's reading of *Caterpillar*. Respondents did *not* concede that Hain had asked the court to exercise that power and dismiss Whole Foods because no such request was ever made.

3. For similar reasons, it would not be appropriate to remand this case for the lower courts to consider a new request for Rule 21 relief. Remand ordinarily is appropriate only if the decision below is reversed and only if "the relevant arguments have been preserved." *Waetzig v. Halliburton Energy Servs., Inc.*, 145 S. Ct. 690, 701 (2025).

Here, because the judgment of the Fifth Circuit should be affirmed, there is no basis for any remand. Petitioners had a full and fair opportunity to present their case to the lower courts and could have asked those courts to dismiss Whole Foods based on Rule 21. They did not do so, and the lower courts did not err by failing to consider relief that was not even requested. Under "the principle of party presentation," courts "rely on the parties to frame the issues for decision." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *accord United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). Petitioners' new request that Whole Foods be dropped under Rule 21 "was never presented to any lower court and is therefore forfeited." *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 37 (2015). Petitioners are not entitled to remand simply because their original strategy proved unsuccessful.

B. *Newman-Green* And Rule 21 Do Not Allow Appellate Courts To Dismiss Nondiverse Defendants Over A Plaintiff's Objection

1. Contrary to petitioners' assertions (at 2, 9, 22), *Newman-Green* does not hold that appellate courts "should" dismiss a jurisdictional spoiler whenever one is identified, but simply that they "may" do so if that party is dispensable and no party will be prejudiced. 490 U.S. at 827, 837-38. This is not such a case.

This Court never has held that *Newman-Green* or Rule 21 permit severance of a proper defendant over a plaintiff's objection solely for the purpose of creating federal jurisdiction on appeal. A general rule allowing federal appellate courts to reshape cases to maintain jurisdiction over the plaintiff's objection would distort the limited jurisdiction of the federal courts. Instead, this power must be "exercised sparingly," *id*. at 837, only if the party to be dropped is "dispensable," *id*., and never if it would cause "prejudice," *id*. at 838.

In *Newman-Green*, the nondiverse defendant was dropped on appeal at the plaintiff's behest. *Id*. at 829. That voluntary action was akin to the settlement and voluntary dismissal in *Caterpillar*, as both cases held that a plaintiff's voluntary dismissal of a party could save federal jurisdiction. Exercising that power to ratify the erroneous and involuntary dismissal of a nondiverse defendant, over the plaintiff's objection, would be both unprecedented and unwarranted.

Judicial authority to allow amendments on appeal has always required "an exercise of sound discretion, in which the court will take care, that no unfair advantage shall be taken by one party, and no oppression practiced by the other." *Anonymous*, 1 F. Cas. 996, 998 (Story, Circuit Justice, C.C.D. Mass. 1812) (No. 444). This power is not a "general rule" that amendments will be permitted "as of course." *Id*.

For example, in *Horn v. Lockhart*, it appears that the two nondiverse defendants were dismissed at the time of judgment without objection by the plaintiffs. 84 U.S. (17 Wall.) at 574 (statement). In that context, the Court held "the jurisdiction of the court should be retained and the suit dismissed" as to the admittedly dispensable defendants. *Id*. at 579.

From these and other cases, this Court concluded that "appellate courts possess[] the authority to grant motions to dismiss dispensable nondiverse parties." *Newman-Green*, 490 U.S. at 836. But the Court also emphasized that this "authority" is not an obligation and should be "exercised sparingly." *Id.* at 837.

As these cases illustrate, the *Newman-Green* rule is best used to cure harmless jurisdictional defects and to maintain the jurisdiction selected by the plaintiff. This Court never has held that an appellate court should dismiss a nondiverse defendant on appeal over the plaintiff's objection and in a way that would defeat the plaintiff's right to select the forum of suit, and it should not do so now.

2. Petitioners assert (at 29) that courts of appeals have "appl[ied] *Newman-Green* in removed cases." But the cited cases are all inapposite.

In three cases, the plaintiffs either actively sought to dismiss a nondiverse defendant or acquiesced in it by conceding the lack of prejudice. *See Grice v. CVR Energy, Inc.*, 921 F.3d 966, 969-70 (10th Cir. 2019); *Weber v. GE Grp. Life Assur. Co.*, 541 F.3d 1002, 1009 & n.8 (10th Cir. 2008); *Martinez v. Duke Energy Corp.*, 130 F. App'x 629, 635-36 (4th Cir. 2005). Those cases conform to respondents' reading of *Newman-Green*.

In the other three cases, the removal was proper but the plaintiffs later joined nondiverse defendants. When the jurisdictional defect eventually was noticed on appeal, the nondiverse defendants were dismissed. *See Highland Cap. Mgmt. LP v. Schneider*, 198 F. App'x 41, 43-44 (2d Cir. 2006); *Gorfinkle v. U.S. Airways, Inc.*, 431 F.3d 19, 21 (1st Cir. 2005); *Ingram v. CSX Transp., Inc.*, 146 F.3d 858, 861 (11th Cir. 1998). Those cases were very different from this one.

In all three cases, the appellate courts simply restored the cases to the jurisdictional posture they were in at the time of removal, when the parties were completely diverse. Having sued diverse defendants, those plaintiffs configured their cases in terms that made removal proper and forfeited the right to insist on a state forum. Indeed, the district courts in those cases could have denied the post-removal joinders of the nondiverse defendants under § 1447(e), and they should have done so if they wanted to retain the cases. That situation is entirely different from a case like this one in which the plaintiffs pleaded valid claims against a nondiverse defendant from the beginning and always insisted on their right to a state forum.

In short, petitioners do not cite any removed case in which a district court erroneously denied a motion to remand and an appellate court later used Rule 21 and *Newman-Green* to veto the plaintiff's choice of a state forum and retain jurisdiction despite the error.

3. Limiting the use of Rule 21 on appeal to protect the plaintiff's choice of a federal forum conforms to the plaintiff's prerogative as the master of the complaint. *See Royal Canin*, 604 U.S. at 35. By contrast, the idea that an appellate court should dismiss a nondiverse defendant against the wishes of a plaintiff—to uphold a judgment entered by a court without jurisdiction—contradicts the congressional complete-diversity rule. The authority recognized by *Newman-Green* may be defensible when deployed with the plaintiff's consent to preserve the plaintiff's selection of a federal forum, but not over the plaintiff's insistence on its rights under § 1447(c). That rule "is unambiguous and it is not amenable to judicial enlargement." *Lincoln Prop.*, 546 U.S. at 94.

C. Dismissal Of Whole Foods By This Court In The First Instance Would Be Prejudicial

Because petitioners cannot claim the Fifth Circuit abused its discretion by failing to drop Whole Foods, they request such relief for the first time in this Court. But even if *Newman-Green* permitted appellate courts to dismiss nondiverse defendants against the will of the plaintiff—a dubious proposition for the reasons explained above—such relief would be improper here.

Assuming, *arguendo*, that Whole Foods is actually a dispensable party, courts must "carefully consider whether the dismissal of a nondiverse party will prejudice any of the parties in the litigation." *Newman-Green*, 490 U.S. at 838. This includes cases where "the presence of the nondiverse party produced a tactical advantage for one party or another." *Id.* Petitioners' request is barred by that principle.

1. As master of the complaint, if a plaintiff wishes to proceed in state court and has a valid basis to do so, that preference is a "tactical advantage" within the meaning of *Newman-Green*. That conclusion follows from a plaintiff's right to configure the case and select the forum of suit. *See Royal Canin*, 604 U.S. at 35.

It will not do to disparage a plaintiff's preference for state court as self-interested, for the right to choose state court is inherent in the complete-diversity rule. This Court has held for more than a century that a plaintiff with a claim against a nondiverse defendant "has an absolute right to enforce it, whatever the reason that makes him wish to assert the right." *Schwyhart*, 227 U.S. at 193. A rule that would deprive the plaintiff of the right to configure the litigation and select the forum of suit would be *per se* prejudicial and could be justified only in rare circumstances.

2. The notion that "every relevant consideration" supports dismissing Whole Foods now, Pet. Br. 26, badly miscasts the proceedings below. Doing so would prejudice respondents in multiple ways.

First, petitioners mistakenly contend (at 26-27) that Whole Foods is not a necessary party because Hain and Whole Foods are jointly and severally liable. Texas has modified the background rules this Court cited in *Temple v. Synthes Corp.*, 498 U.S. 5, 7 (1990), with a statute that requires the fact-finder to assign percentages of fault to each defendant (among others), Tex. Civ. Prac. & Rem. Code § 33.003(a). That statute limits each defendant's liability to its own percentage. *Id.* § 33.013(a). And it explicitly covers injuries caused by "any defective or unreasonably dangerous product." *Id.* § 33.003(a).

Petitioners' Texas cases are not to the contrary. They deal with very rare cases where it is impossible to apportion responsibility with reasonable certainty. *See Lakes of Rosehill Homeowners Ass'n, Inc. v. Jones*, 552 S.W.3d 414, 418-21 (Tex. App. 2018). That rule survives only "where the inextricable combination of joint tortfeasors combines to cause harm in a manner where individual responsibility cannot be fixed." *Kramer v. Lewisville Mem'l Hosp.*, 858 S.W.2d 397, 405 (Tex. 1993). In most cases, specifically including products-liability cases, the statute imposes only several liability. *See F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 690-92 (Tex. 2007).

Thus, if the case was reinstated on the merits after Whole Foods was dropped, the district court could no longer "accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A). Such a federal judgment would be inadequate. *See* Fed. R. Civ. P. 19(b)(3)-(4).

In other words, even if a retailer like Whole Foods is not technically a required party, respondents would be prejudiced if they had to try their cases piecemeal—risking conflicting jury findings on comparative fault and distortions from the presence of an "empty chair" (which allows the in-court defendant to blame the absent one). Because all of the parties can be joined in state court, dismissal of the entire case is superior. *See* 4 *Moore's Federal Practice* § 19.05[4]-[5]. Such a "tactical advantage," *Newman-Green*, 490 U.S. at 838, precludes dismissal of Whole Foods on appeal.

Second, petitioners erroneously assume (at 29) that there is no "substantive error in the judgment." There is a meaningful dispute in the court of appeals briefing over the correctness of the causation ruling on this record. Respondents contend the combination of a generally accepted causal link between exposure to heavy metals and neurocognitive injuries in children and several reliable differential diagnoses ruling out other potential causes is sufficient to prove causation, and no Fifth Circuit case forecloses that argument.[9] Hain disputes that theory of causation, but its validity under Fifth Circuit law remains an open question.

Third, this case vividly exposes the prejudice that could result from utilizing Rule 21 to save a judgment the district court lacked jurisdiction to enter in the first place. If this Court "cured" the jurisdictional flaw by dropping Whole Foods and upholding the judgment as to Hain, petitioners would argue that Whole Foods is protected from liability in the state-court case by the supposed "preclusive effect of the judgment for Hain." Pet. Br. 22; *see also id.* at 20 (same).

---

[9] Palmquists C.A. Br. 38-50; Palmquists Reply Br. 19-28.

Allowing an improper use of federal judicial power to give rise to a preclusion defense in state court would furnish the ultimate example of prejudice. There is no longer any dispute that complete diversity is lacking, meaning that the district court never had jurisdiction over this case in the first place. In any other scenario, the lack of jurisdiction would deprive a federal court of any "power to declare the law." *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869); *accord Steel*, 523 U.S. at 94. Yet petitioners openly seek to breathe life into an otherwise void judgment so they can use it as a defense in state court. This request does not follow *Newman-Green*, where the court of appeals dismissed a nondiverse defendant "with prejudice" to avoid the possibility of an adverse judgment. 490 U.S. at 838. Instead, it turns *Newman-Green* upside down.

Joinder law turns on "equity and good conscience." *Shields v. Barrow*, 58 U.S. (17 How.) 130, 139 (1855); *accord* Fed. R. Civ. P. 19(b). A federal appellate court should not veto a plaintiff's legitimate choice of a state forum and "cure" a jurisdictional defect by dismissing a proper defendant that has announced its intention to use the resulting judgment to dictate the outcome of the state-court case. Such a notion is inequitable on its face and an insult to "the constitutional balance between state and federal judiciaries." *Merrill Lynch*, 578 U.S. at 390.

CONCLUSION

The Fifth Circuit's judgment should be affirmed.

Respectfully submitted,

RUSSELL S. POST
Counsel of Record
OWEN J. MCGOVERN
BECK REDDEN LLP
1221 McKinney Street
Suite 4500
Houston, Texas 77010
(713) 951-3700
rpost@beckredden.com

DAVID C. FREDERICK
DENNIS D. HOWE
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK,
P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

Counsel for Respondents

August 11, 2025

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
ASHLAND DIVISION

JAMES DAVID LEWIS AND LIBERTY MUTUAL INSURANCE GROUP PLAINTIFFS	)	
v.	)	CIVIL ACTION NO. 90-84
CATERPILLAR, INC. ET AL. DEFENDANTS	)	

AGREED ORDER DISMISSING CLAIMS AGAINST WHAYNE SUPPLY COMPANY

The court being sufficiently advised that the intervening plaintiff, Liberty Mutual Insurance Group, has compromised and settled a disputed claim against defendant Whayne Supply Company only,

IT IS HEREBY ORDERED that plaintiffs' intervening complaint against Whayne Supply Company shall be and hereby is DISMISSED, with prejudice, with each party to pay its own costs.

There being no just cause for delay, this is a final and appealable order.

Henry R. Wilhoit, Jr.
JUDGE
United States District Court,
Eastern District of Kentucky,
Ashland Division

DATE: June 8, 1993

112

HAVE SEEN AND AGREED:

John L. Tate
Catharine Crawford Young
STITES & HARBISON
600 West Main Street
Louisville, Kentucky 40202
(502) 587-3400

COUNSEL FOR DEFENDANT,
WHAYNE SUPPLY COMPANY

Phillip M. Moloney
STURGILL, TURNER & TRUITT
155 East Main Street
Lexington, Kentucky 40507
(606) 255-8581

COUNSEL FOR LIBERTY MUTUAL INSURANCE GROUP

B:DE072:00DE2
012793:1:CCY
AGREED.ORD

Leonard Stayton
Leslie Morris
John Tate
6-9-93 SMT