



University of Baltimore Law Forum

Volume 27
Number 2 *Spring 1997*

Article 8

1997

Recent Developments: Caterpillar, Inc. v. Lewis: Proper Federal Court Jurisdiction at Time of Judgment Cures an Earlier Erroneous Denial of Motion to Remand an Improperly Removed Case

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Recommended Citation

Lyons, Donna L. (1997) "Recent Developments: Caterpillar, Inc. v. Lewis: Proper Federal Court Jurisdiction at Time of Judgment Cures an Earlier Erroneous Denial of Motion to Remand an Improperly Removed Case," *University of Baltimore Law Forum*: Vol. 27 : No. 2, Article 8.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol27/iss2/8>

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Caterpillar, Inc. v. Lewis

In a unanimous decision, the United States Supreme Court held in *Caterpillar, Inc. v. Lewis*, 117 S. Ct. 467 (1996), that a district court's error in failing to remand an improperly removed case was not fatal to the adjudication when jurisdiction was proper at the time of judgment. The Court so held despite its finding that the plaintiff did not waive his objection to removal by failing to seek an immediate appeal of the district court's denial of his motion to remand. In reversing the United States Court of Appeals for the Sixth Circuit, the Court extended its prior holdings to instances where the plaintiff has moved timely, yet unsuccessfully, to remand a case for improper removal.

On June 22, 1989, James David Lewis ("Lewis") filed a products liability suit in a Kentucky state court after sustaining injuries while operating a bulldozer at work. Lewis, a citizen of Kentucky, asserted state law claims against both the bulldozer's manufacturer, Caterpillar, Inc. ("Caterpillar"), a Delaware corporation, and Whayne Supply Company ("Whayne"), the Kentucky corporation that serviced the bulldozer. Liberty Mutual Insurance Group ("Liberty Mutual"), a Massachusetts corporation and Lewis' employer's insurance carrier, intervened as plaintiff by asserting subrogation claims against Caterpillar and Whayne for workers' compensa-

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tion paid to Lewis by his employer.

Within a year of initiating the suit, Lewis settled his claims with Whayne. On June 21, 1990, Caterpillar filed a notice of removal in the United States District Court for the Eastern District of Kentucky, claiming that complete diversity among the parties had been reached as a result of Lewis' settlement with Whayne. After the removal was granted, Lewis objected to the removal and moved to remand the case back to state court, urging that Liberty Mutual's remaining action against Whayne prevented completed diversity jurisdiction. His motion, however, was rejected by the district court, which erroneously held that diversity was complete.

In 1993, prior to trial, Liberty Mutual and Whayne reached a settlement. Whayne was dismissed as a party to the suit, thereby completing diversity between the parties prior to the district court's subsequent judgment for Caterpillar. Following

the district court's denial of Lewis' motion for a new trial, Lewis appealed to the Court of Appeals for the Sixth Circuit. Finding that complete diversity did not exist at the time of removal, the court of appeals vacated the district court's judgment and Caterpillar appealed to the United States Supreme Court.

In beginning its analysis, the Court first stated two "givens": (1) the district court had erred in denying Lewis' motion to remand; and (2) the court of appeals was correct in concluding that complete diversity did not exist at the time of removal. *Caterpillar Inc. v. Lewis*, 117 S. Ct. at 473.

The Court then analyzed Caterpillar's assertion that vacation of judgment would be improper in light of the Supreme Court's decisions in *American Fire & Gas. Co. v. Finn*, 341 U.S. 6 (1951), and *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699 (1972). *Caterpillar* at 473-74. In *Finn*, the Court held that vacation of judgment is proper when federal jurisdiction is lacking at the time judgment is entered. *Caterpillar* at 473-74 (citing *Finn*, 341 U.S. at 17-18). The Court subsequently limited the ability of plaintiffs to appeal removals in *Grubbs* when it held "the validity of the removal procedure followed, may not be raised for the first time on appeal." *Caterpillar* at 474-75 (quoting *Grubbs*, 405 U.S. at 700). In response to Caterpillar's arguments, the Court countered that

their prior decisions in *Finn* and *Grubbs* did not resolve the issue in *Caterpillar*, namely, whether a plaintiff may appeal a judgment when the district court has erroneously denied a removal. *Id.* at 474.

Furthermore, the Court found that Lewis had preserved his objection to removal since the denial of a motion to remand is not final and is therefore not immediately appealable as of right. *Id.* at 475. Thus, Lewis' failure to pursue an interlocutory appeal did not waive his right to appeal. *Id.* The Court reasoned that if failure to pursue interlocutory appeals waived diversity jurisdiction objections, the purpose of providing interlocutory review for "exceptional" cases would be destroyed by routine requests for review. *Id.*

The Court next considered Lewis' argument that, having timely preserved his objection, "[the] ultimate satisfaction of the subject-matter jurisdiction requirement ought not swallow up antecedent statutory violations," because such a course would prejudice plaintiffs who timely, but unsuccessfully, move to remand. *Id.* at 475-76. In addition, Lewis claimed *Caterpillar* circumvented the procedural limitations of 28 U.S.C. § 1446(b), because they avoided the one-year limitation to file for removal by removing before subject-matter jurisdiction existed. *Id.* at 476. The Supreme Court, however, wholly rejected Lewis' arguments in favor of policy considerations of

"finality, efficiency, and economy. . . ." *Id.* The Court relied, in part, on its decision in *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989), in which it posited that, "requiring dismissal after years of litigation would impose unnecessary and wasteful burdens. . . ." *Caterpillar* at 476 (quoting *Newman-Green* at 836). The Court maintained that economical adjudication outweighed the need to vacate an improperly removed case in which subject-matter jurisdiction was ultimately satisfied. *Id.* The Court emphasized, however, that judgments may still be vacated in cases lacking subject-matter jurisdiction at the time of judgment. *Id.* at 477.

In addition, the Court also disagreed with Lewis' remaining arguments, stating that it did not believe its ruling would encourage wrongful or premature removals by defendants desiring to either bypass the one-year removal requirement or gamble on future events to create proper subject-matter jurisdiction. *Id.* at 477. The Court reasoned that it was unlikely that defendants would take a chance on the jurisdictional defect escaping detection and subsequently being cured prior to judgment. *Id.* Such an attempt would result in a quick remand and raise the ire of the court. *Id.*

The United States Supreme Court in *Caterpillar Inc. v. Lewis* held that despite an erroneous refusal to remand, the resolution of a jurisdictional subject-matter defect before judgment will prevent a vacated judgment upon

appeal. *Caterpillar* is an example of the Court's unanimous promotion of judicial economy over procedural rights. Unfortunately, under *Caterpillar*, plaintiffs denied their requests for remand will have to immediately appeal the decision in order to preserve their forum choice. Thus, the interlocutory appeal the Court said should be used for "exceptional" cases, will have to be utilized for plaintiffs who want to preserve their forum choice in light of a refusal to remand. Whether the Court has drawn a line in the sand, protecting the vestiges of subject-matter jurisdiction by asserting that complete diversity must exist at judgment remains to be seen. Based on the trend of judicial economy, one is unsure when the newly established line will move yet again.

