

EXXON MOBIL CORP. v.
ALLAPATTAH SERVICES, INC.: (5-4)
IN DIVERSITY CASES, ONLY ONE
PLAINTIFF OR CLASS MEMBER
MUST SATISFY THE AMOUNT IN
CONTROVERSY REQUIREMENT

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In two cases consolidated as *Exxon Mobil Corp. v. Allapattah Services, Inc.*, the Supreme Court explored the amount in controversy requirement in cases with multiple plaintiffs.¹ These cases resolved a division between the Courts of Appeals over the proper interpretation of 28 U.S.C § 1367.²

In 1991, a group of approximately 10,000 fuel dealers invoked 28 U.S.C. § 1332(a) diversity jurisdiction of the United States District Court for the Northern District of Florida to file a class-action suit against Exxon Corporation.³ The dealers alleged that Exxon had intentionally overcharged them for fuel.⁴ After a unanimous jury verdict for the dealers, “the District Court certified the case for interlocutory review asking if it had properly exercised § 1367 supplemental jurisdiction over claims of class members who did not meet the jurisdictional minimum.”⁵ The Eleventh Circuit upheld supplemental jurisdiction, holding that § 1367 authorized supplemental jurisdiction over claims of class members who do not meet the amount in controversy, provided that the district court had

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1. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611 (2005) (consolidated with *Ortega v. Star-Kist Foods, Inc.*)

2. *Id.* at 2615.

3. *Id.*

4. *Id.*

5. *Id.*

original jurisdiction over the claims of at least one class member.⁶ This view was consistent with those taken by the Fourth,⁷ the Sixth,⁸ and the Seventh Circuits.⁹ The Fifth¹⁰ and the Ninth Circuits¹¹ decided similarly that unnamed class members need not meet the amount-in-controversy requirement, though those courts took no clear view on named members.¹²

The First Circuit came to a different conclusion about the interpretation of § 1367 in *Ortega v. Star-Kist Foods, Inc.*¹³ In 1999, nine-year-old Beatriz Blanco-Ortega suffered severe injuries after slicing her right pinky finger on a Star-Kist tuna can.¹⁴ She brought a diversity action in the United States District Court for Puerto Rico.¹⁵ Her family members later joined under Federal Rules of Civil Procedure Rule 20, suing for medical expenses and emotional distress damages.¹⁶ The District Court granted summary judgment to Star-Kist after determining that no plaintiff could meet the amount-in-controversy requirement.¹⁷ On appeal, the First Circuit reversed with respect to the girl, but affirmed as to the family members.¹⁸ It stated that § 1367 authorizes supplemental jurisdiction only when the district court has original jurisdiction and when every plaintiff meets the amount-in-controversy requirement—if a single plaintiff fails to satisfy this requirement, the court would not have supplemental

6. *Allapattah Servs., Inc. v. Exxon Mobil Corp.*, 333 F.3d 1248, 1256 (11th Cir. 2003).

7. *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 112 (4th Cir. 2001) (holding that “the plain text of § 1367 authorizes supplemental jurisdiction in diversity class actions”).

8. *See Olden v. LaFarge Corp.*, 383 F.3d 495, 507 (6th Cir. 2004) (overruling *Zahn* and holding that each class member need not meet the amount in controversy requirement).

9. *See Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 931 (7th Cir. 1996) (concluding that “Section 1367(a) has changed the basic rule by authorizing pendent-party jurisdiction, and that change affects *Clark* and *Zahn* equally”).

10. *See Free v. Abbott Labs (In re Abbott Labs. Inc.)*, 51 F.3d 524, 529 (5th Cir. 1995) (holding that the district court had supplemental jurisdiction over class members that did not meet the amount-in-controversy requirement).

11. *See Gibson v. Chrysler Corp.*, 261 F.3d 927, 943 (9th Cir. 2001) (concluding that 28 U.S.C § 1367 “provides supplemental jurisdiction over the jurisdictionally insufficient claims of unnamed class members if the named plaintiffs in the action have claims that satisfy the amount-in-controversy requirement”).

12. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611, 2616 (2005).

13. *See Ortega v. Star-Kist Foods, Inc.*, 370 F.3d 124, 133 (1st Cir. 2004) (holding, in joinder cases, that each plaintiff must meet the amount in controversy requirement).

14. *Id.* at 126.

15. *Exxon*, 125 S. Ct. at 2616.

16. *Id.*

17. *Id.*

18. *Ortega v. Star-Kist Foods, Inc.*, 370 F.3d 124, 144 (1st Cir. 2004)

jurisdiction.¹⁹ This view was shared by the Third,²⁰ the Eighth,²¹ and the Tenth Circuits.²² The Eighth and Tenth Circuits had further applied this rule to class actions.²³

The Supreme Court attempted to resolve this conflict previously in *Free v. Abbott Laboratories*, but due to O'Connor's absence the Court divided 4-4 without opinion.²⁴ This time, in a 5-4 opinion authored by Justice Kennedy, the Court held that “where the other elements of jurisdiction are present and at least one named plaintiff in the action satisfies the amount-in-controversy requirement, § 1367 does authorize supplemental jurisdiction over the claims of other plaintiffs in the same Article III case or controversy”—regardless of whether each individual plaintiff meets the jurisdictional-amount requirement.²⁵ As a result, the Eleventh Circuit's *Exxon* decision was affirmed, and the First Circuit's *Ortega* decision was reversed and remanded.²⁶

In *Clark v. Paul Gray Inc.*, a federal-question case decided prior to the enactment of 28 U.S.C. § 1367, the Supreme Court held that each plaintiff must meet the amount-in-controversy requirement and the claims of those who do not meet the requirement must be dismissed.²⁷ In *Zahn v. International Paper Co.*, this requirement was extended to class-action suits in which 18 U.S.C. § 1332(a) diversity jurisdiction was invoked.²⁸ In 1989, the Court held in *Finley v. United States* that a district court could not exercise supplemental jurisdiction when a plaintiff added related claims against other defendants, prohibiting so-

19. *Exxon*, 125 S. Ct. at 2616.

20. *See Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999) (concluding “that a plaintiff with claims less than the jurisdictional amount may not invoke supplemental jurisdiction under 28 U.S.C. § 1367”).

21. *See Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000) (requiring “each plaintiff in a class action diversity case to satisfy the Zahn definition of ‘matter in controversy’ and to individually meet the \$75,000 requirement”).

22. *See Leonhardt v. Western Sugar Co.*, 160 F.3d 631, 632 (10th Cir. 1998) (finding “that plaintiffs in a diversity class action must each satisfy that jurisdictional amount”).

23. *Exxon*, 125 S. Ct. at 2616.

24. *Free v. Abbott Labs.*, 529 U.S. 333 (2000); Posting of Brian Fletcher, to SCOTUSblog, http://www.scotusblog.com/movabletype/archives/2005/06/todays_opinion_2.html (June 23, 2005, 13:01 EST).

25. *Exxon*, 125 S. Ct. at 2615.

26. *Id.*

27. *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 590 (1939).

28. *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 301 (1973).

called “pendent-party” jurisdiction.²⁹ Just months later, Congress enacted 28 U.S.C. § 1367(a):

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.³⁰

All parties in the consolidated cases agreed that § 1367 overruled *Finley*; yet the debate in these cases centered on whether Congress, when enacting this statute, also overruled *Clark* and *Zahn*.³¹ Because § 1367 clearly allows supplemental jurisdiction once the court has original jurisdiction over a civil action, the critical question was “whether a diversity case in which the claims of some plaintiffs satisfy the amount-in-controversy requirement, but the claims of others plaintiffs do not, presents a ‘civil action of which the district courts have original jurisdiction.’”³²

The majority answered this question in the affirmative by first asserting that, assuming all other requirements were met, if one claim were to satisfy the amount-in-controversy, the district court would have original jurisdiction over that claim.³³ Under § 1367(a), original jurisdiction over a single claim leads to original jurisdiction over the civil action. Once a court has original jurisdiction over the action, it can exercise supplementary jurisdiction over additional claims, including those involving joinder or intervention of additional parties. Because nothing in § 1367(b) specifically withheld supplemental jurisdiction over claims of plaintiffs joined by Rule 20 (as in *Ortega*) or by Rule 23 (as in *Exxon*) of the Federal Rules of Civil Procedure, both district courts could have exercised supplemental jurisdiction.³⁴ The majority agreed with Allapattah,³⁵ *Ortega*,³⁶ and the

29. *Finley v. United States*, 490 U.S. 545, 556 (1989).

30. 28 U.S.C. § 1367(a) (2000).

31. *Exxon*, 125 S. Ct. at 2631 (5-4 decision) (Ginsburg, J., dissenting).

32. *Id.* at 2620 (majority opinion).

33. *Id.* at 2620–21.

34. *Id.* at 2621.

35. Brief of Respondents at 17, *Exxon*, 125 S. Ct. 2611 (No. 04-70).

Government.³⁷ The majority contended that the plain language of the statute required this result.³⁸ It could not accept the alternative view, held by the other parties, that original jurisdiction over a civil action required original jurisdiction over every claim in a complaint.³⁹

The majority dismissed the indivisibility theory, which holds that all claims “must stand or fall as a single, indivisible ‘civil action,’”⁴⁰ by asserting that the theory conflicts with supplemental jurisdiction.⁴¹ According to the majority, the indivisibility theory is also inconsistent with the practice of allowing courts to dismiss only the parties that do not meet the jurisdiction requirements, rather than requiring them to dismiss the entire action. If the claims were indivisible, all would have to be dismissed.⁴² Additionally, this would require assigning a different meaning to the same language, “original jurisdiction” and “civil actions,” in 18 U.S.C. § 1331 federal question jurisdiction and 18 U.S.C. § 1332 diversity jurisdiction.⁴³

The majority also rejected the contamination theory, under which the inclusion of a claim or a party outside of original jurisdiction deprives the court of original jurisdiction over all other claims.⁴⁴ This theory is compatible with the complete diversity requirement because the potential state bias for all claims is eliminated by the presence of a non-diverse party, and hence the need for federal jurisdiction disappears.⁴⁵ However, the majority maintained that it is incompatible with the amount-in-controversy requirement, which exists to assure that a dispute is sufficiently important to be heard in a federal venue; the presence of another party does not eliminate the importance of the dispute.⁴⁶ Thus, the mere fact that both requirements are found in § 1332 does not preclude the contamination theory from applying to both.⁴⁷

36. Brief for Petitioners at 19, *Exxon*, 125 S. Ct. 2611 (No. 04-79).

37. Brief for the United States as Amicus Curiae Supporting Respondents at 7, *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611 (No. 04-70).

38. *Exxon*, 125 S. Ct. at 2625.

39. *Id.* at 2621.

40. *Id.*

41. *Id.* at 2621–22.

42. *Id.* at 2622.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

Justice Ginsburg, in a dissent joined by Justices Stevens, O'Connor, and Breyer, argued that the statute was open to a “less disruptive” and more compelling interpretation.⁴⁸ The dissent argued that the phrase in § 1367(a), “any civil action of which the district courts have original jurisdiction,”⁴⁹ should be read, in diversity cases, “to incorporate the rules on joinder and aggregation tightly tied to § 1332 at time of § 1367’s enactment.”⁵⁰ Thus, original jurisdiction can only be present if the complaint first meets the requirements of § 1332, which incorporates the complete diversity rule and the decisions in *Clark* and *Zahn*.⁵¹ This interpretation, the dissent asserted, would explain why § 1367(b), which excluded certain claims from the grant of supplemental jurisdiction found in § 1367(a), did not include Rule 20 plaintiffs or Rule 23 class actions. Congress did not need to *exclude* them because they were never *included* in § 1367(a).⁵² An additional virtue of this interpretation, in the dissent’s view, was that it preserved the judicially developed distinctions between pendent and ancillary jurisdiction.⁵³ The dissent argued further that its interpretation accorded better “with the historical and legal context of Congress’[s] enactment”⁵⁴ of § 1367, and it asserted that close questions of statutory construction should be resolved against change.⁵⁵

The majority, however, found no need to consult such interpretive tools as the legislative history of the statute because, in its view, § 1367 was not ambiguous.⁵⁶ Furthermore, the majority argued, if it were appropriate to examine the legislative history, such evidence would not alter its view because, in this case and often in general, the legislative history was both murky and contentious.⁵⁷ This assertion fueled Justice Stevens’s dissent, in which he contended that the legislative history explicitly stated that § 1367 was intended merely to overrule *Finley*, and specifically to avoid overruling *Zahn*.⁵⁸ Justice Stevens found the majority’s reasons for not consulting the

48. *Id.* at 2632 (Ginsburg, J., dissenting).

49. 28 U.S.C. § 1367(a) (2000).

50. *Exxon*, 125 S. Ct at 2638 (Ginsburg, J., dissenting).

51. *Id.*

52. *Id.* at 2639.

53. *Id.* at 2638–39.

54. *Id.* at 2640–41.

55. *Id.* at 2641.

56. *Id.* at 2626–27 (majority opinion)

57. *Id.*

58. *Id.* at 2629 (Stevens, J., dissenting).

“uncommonly clear” legislative history unpersuasive.⁵⁹ Justice Stevens further warned that it was “unwise to treat the ambiguity *vel non* of a statute as determinative of whether legislative history is consulted,”⁶⁰ because, as Justice Ginsburg’s dissent showed, ambiguity is “in the eye of the beholder.”⁶¹

Both Exxon and Allapattah claimed that the 2005 enactment of the Class Action Fairness Act (CAFA)⁶² should alter the Court’s analysis. Subject to certain requirements, CAFA granted district courts original jurisdiction over any class action in which the aggregate amount-in-controversy exceeded five million dollars and in which at least partial diversity existed.⁶³ CAFA, according to Exxon, demonstrated that if Congress were to amend § 1332, it would do so explicitly.⁶⁴ Allapattah claimed that the passage of CAFA undermined Exxon’s appeal because the CAFA contradicted Exxon’s claim that Congress was opposed to diversity jurisdiction in class-action suits.⁶⁵ Further, Allapattah claimed that even if jurisdiction was found to be improper, the case could merely be refiled under CAFA.⁶⁶ Despite these arguments, the majority concluded the opinion by asserting that CAFA in no way impacted the Court’s analysis.⁶⁷

Although the extent of jurisdiction allowed under § 1367 has been in controversy since its enactment,⁶⁸ Allapattah may be correct in asserting that, in light of CAFA, the practical impact of this ruling is limited in the class action context: “Congress found that the determination of six of the courts of appeal that § 1367 had overruled *Zahn* had not materially impacted the filing or removal of diversity class actions in federal court.”⁶⁹ The expansion of federal diversity

59. *Id.* at 2630–31.

60. *Id.* at 2628.

61. *Id.*

62. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.).

63. 28 U.S.C. § 1332(d) (2005).

64. See Supplemental Brief of Exxon Corp. at 3, *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611 (2005) (No. 04-70) (noting that “[w]hen Congress wants to alter dramatically the scope of diversity jurisdiction, it does so directly and unequivocally”).

65. Respondents’ Supplemental Merits Brief at 1, *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611 (2005) (No. 04-70).

66. *Id.* at 2

67. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611, 2627–28 (2005).

68. See generally Mark Hutcheson, Comment, *Unintended Consequences: 28 U.S.C. 1367’s Effect on Diversity’s Amount in Controversy Requirement*, 48 BAYLOR L. REV. 247 (1996).

69. Respondents’ Supplemental Merits Brief, *supra* note 65, at 3 (citing S. Rep. No. 108-123, at n.22–40 (2003)).

jurisdiction is seen as beneficial primarily to corporations, which often prefer federal courts over state courts because of the perceived state bias.⁷⁰ However, the cases of particular concern to corporations—class actions with large damages—would already be covered by CAFA. Even if caseloads were to increase slightly, it may be worth it, as the overruling of *Clark* and *Zahn* can be seen as fostering “the efficient resolution of complex litigation.”⁷¹

Nonetheless, given the split among the Courts of Appeals and the longstanding debate, the majority may have reached the wrong interpretation. If this result were truly outside of Congress’s intent, a *Finley*-type congressional fix would be expected. Given the enactment of CAFA, demonstrating Congress’s willingness to expand diversity jurisdiction, and the limited effect that the overruling of *Zahn* is seen to have, this fix appears unlikely.

70. See generally Victor E. Flango, *Litigant Choice Between State and Federal Courts*, 46 S.C. L. REV. 961, 967 (1995).

71. Mark C. Cawley, Note, *The Right Result for the Wrong Reasons: Permitting Aggregation of Claims Under 28 U.S.C. 1367 in Multi-Plaintiff Diversity Litigation*, 73 NOTRE DAME L. REV. 1045, 1076 (1998).