Products Liability Law Daily Wrap Up, JURISDICTION—BABY PRODUCTS—5th Cir.: Lack of complete diversity leads to remand of heavy-metal poisoning case, (May 29, 2024)

Products Liability Law Daily Wrap Up

Click to open document in a browser

By Susan L. Smith, J.D., M.A.

The parents of a child who suffered from physical and mental decline successfully appealed a federal district court's denial of their motion to remand their suit against a baby food manufacturer and a supermarket.

The U.S. Court of Appeals for the Fifth Circuit reversed a district court's judgment denying a motion to remand brought by the parents of a child diagnosed with heavy-metal poisoning, vacated the lower court's final judgment, and instructed the court to remand the case to state court. In 2021, the parents sued Hain Celestial Group, Incorporated (Hain) and Whole Foods Market in Texas state court, bringing claims of strict products liability and negligence against Hain and breach of warranties and negligence claims against Whole Foods. The parents alleged that heavy-metal exposure causes heavy-metal poisoning and that their son's consumption of heavy metals in Hain's baby food products caused his heavy-metal poisoning and resultant cognitive decline. The appellate court concluded that the district court should have remanded the case to state court because federal courts are courts of limited jurisdiction and because without complete diversity, federal courts do not have subject matter jurisdiction over a case that does not concern a federal question (*Palmquist v. The Hain Celestial Group, Inc.*, No. 23-40197 (5th Cir. May 28, 2014)).

Background. During the first two years of the child's life, he almost exclusively consumed Hain's Earth's Best Organic Products, which the parents purchased from Whole Foods. The child exceeded developmental milestones for the first two years of his life; however, his social, language, and behavioral skills rapidly regressed at about thirty months. The parents visited numerous physicians and specialists for a diagnosis. Some physicians attributed the child's symptoms to autism spectrum disorder or neurocognitive disorder, while others diagnosed him with heavy-metal poisoning. In 2021, a House Oversight and Reform Committee report found that certain baby foods, including Hain's, contained elevated levels of toxic heavy metals. The parents attributed the high levels of toxic metals that appeared in their son's blood tests to his consumption of Earth's Best Organic Products, and sued Hain and Whole Foods in state court.

District court's opinion. Hain removed the case to a federal district court, contending that Whole Foods was improperly joined to defeat diversity jurisdiction. The parents filed an amended complaint to clarify their allegations against Whole Foods under the federal pleading standard and moved to remand the suit. The parents argued that they had viable claims against Whole Foods under the Texas Product Liability Act and the Deceptive Trade Practices Act. After determining that the parents failed to present evidence of general causation, as there was no testimony from a qualified expert regarding the ingestion of heavy metals, the district court dismissed Whole Foods as improperly joined and granted judgment as a matter of law in favor of Hain during the trial. The parents appealed the district court's (1) dismissal of Whole Foods on improper grounds, (2) denial of their motion to remand, and (3) grant of Hain's motion for judgment as a matter of law. The parents appealed.

Appellate court's analysis. The parents contended that their second amended complaint detailed viable claims alleged in their original state court petition against Whole Foods, thus defeating diversity jurisdiction; specifically, their state-court petition alleged a breach of warranties claim against Whole Foods before the case was removed to federal court, and their amended federal court complaint merely contained new allegations clarifying how those claims satisfied the newly applicable federal pleading standards. Thus, the parents argued that they stated a claim against Whole Foods, which defeated diversity jurisdiction.

© 2025 CCH Incorporated and its affiliates and licensors. All rights reserved.

Breach of warranty. The parties disputed whether the parents' breach of warranties claim pleaded in state court was broad enough to encompass a claim for breach of express and implied warranties. The appellate court explained that it conducts an improper-joinder analysis on the basis of claims in the state court complaint as it existed at the time of removal. The court does not entertain new theories not raised in state court; however, the appellate court did examine the parents' state-court pleadings and the viability of the claims against Whole Foods to resolve any doubt or ambiguities in favor of remand. The appellate court found that the language in the parents' as-removed complaint was broad enough to encompass both breach of express and implied warranties claims. Although that language generally discussed Whole Foods' implied warranties, it also discussed Whole Foods' express representations regarding Hain's products. Thus, the appellate court concluded that the district court erred in concluding that the parents added a new breach of express warranty claim in their second amended complaint.

Improper joinder analysis. The appellate court conducted a Rule 12(b)(6)-type analysis, a federal pleading standard, initially looking at the allegations in the complaint to determine whether it stated a claim under state law against the in-state defendant. This appellate court has held that where defendants challenge the pleadings on the merits after a case has been removed to federal court, plaintiffs should be permitted leave to amend their complaint to conform to the federal pleading standard. The appellate court noted that a plaintiff should not be penalized for adhering to the pleading standards of the jurisdiction in which the case was originally brought. Although Hain contended that previous cases foreclosed the district court's examination of the post-removal second amended complaint, the appellate court disagreed, stating that post-removal filings may be considered to the extent they clarify or amplify the claims actually alleged in the removed pleading. The appellate court found that the parents clarified their existing breach of warranties claim with supporting jurisdictional facts.

The appellate court then turned to the substance of its improper-joinder analysis, stating that it must accept all well-pleaded facts as true and view them in the light most favorable to the nonmoving party. When considering whether a plaintiff has stated a claim against a nondiverse party in state court, the test is whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant. The appellate court explained that this meant that there must be a reasonable possibility of recovery, not merely a theoretical one. Further, any contested issues of facts and ambiguities must be resolved in favor of remand.

Nonmanufacturing seller liability. Section 82.003(a)(5) of the Texas Products Liability Act governed whether Whole Foods was potentially liable in this action. Section 82.003(a)(5) provides that a nonmanufacturing reseller may not be held liable unless (1) the seller made an express factual representation about an aspect of the product; (2) the representation was incorrect; (3) the claimant relied on the representation in obtaining or using the product; and (4) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm. The parents contended that they pleaded sufficient facts to establish that the exception to Section 82.003(a)(5) applied. Hain contended that the parents could not satisfy the first element of Section 82.003(a)(5) because the only allegations set forth in the operative complaint were generalized, positive statements, which are not actionable under Texas law. Hain argued that the statements must be about its baby food products specifically. Whole Foods made similar arguments, asserting that generalized, positive statements are not actionable under Section 82.003(a)(5). The appellate court noted that the district court adopted this reasoning in denying the parents' motion to remand.

The appellate court stated that Hain, Whole Foods, and the district court all relied on decisions from federal courts for the proposition that alleged misrepresentations may be too general to be actionable. The court noted that this was a problem because federal courts sitting in diversity apply state substantive law. Further, the appellate court stated that any ambiguities of state law must be resolved in favor of remand. Neither Hain nor Whole Foods pointed to any Texas cases to support the argument that Whole Foods' representations about the quality of Hain's food were too generalized.

The parents alleged that Whole Foods represented that it carefully vets its products to make sure they meet high standards by researching ingredients, reading labels, and auditing sourcing practices. Further, the Whole Foods business model depends on this reputation and customers' willingness to pay a premium for products

© 2025 CCH Incorporated and its affiliates and licensors. All rights reserved.

that Whole Foods advertises as healthy and high quality. Thus, the appellate court accepted these facts as true and interpreted ambiguities of state law in favor of the parents. The appellate court, therefore, concluded that the district court erred in (1) determining that there was no possibility of recovery under Section 82.003(a)(5), (2) concluding that Whole Foods was improperly joined, and (3) denying the parents' motion to remand.

Caterpillar exception to remand. Hain and Whole Foods relied on *Caterpillar, Inc. v. Lewis*, 519 U.S. 61 (1996), to argue against remand. The issue as to whether the district court's refusal to remand required the appellate court to vacate the take-nothing judgment. Hain argued that vacatur of the final judgment was not the correct remedy because there was complete diversity jurisdiction at the time judgment was entered; remand should have been granted at the beginning of the case. The parents argued that, unlike *Caterpillar*, the jurisdictional defect here was not cured prior to judgment. The appellate court agreed with the parents and concluded that remand was proper in the instant case because the jurisdictional defect was never cured. Further, unlike *Caterpillar*, complete diversity did not exist at the time judgment was entered because the parents alleged nonfraudulent claims against a nondiverse defendant, Whole Foods.

The case is No. 23-40197.

Judge: Stewart, C.

Attorneys: Russell S. Post (Beck Redden, L.L.P.) for Sarah Palmquist and Grant Palmquist. Michael Xavier Imbroscio (Covington & Burling, L.L.P.) for Hain Celestial Group, Inc. Bradley Eugene Chambers (Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.) for Whole Foods Market, Inc. a/k/a Whole Foods Market Rocky Mountain/Southwest, L.P.

Companies: Hain Celestial Group, Inc.; Whole Foods Market, Inc. a/k/a Whole Foods Market Rocky Mountain/Southwest, L.P.

MainStory: TopStory JurisdictionNews BabyProductsNews FoodBeveragesNews SCLIssuesNews LouisianaNews MississippiNews TexasNews

© 2025 CCH Incorporated and its affiliates and licensors. All rights reserved.