



Original Image of 603 F.3d 290 (PDF)

603 F.3d 290
United States Court of Appeals,
Fifth Circuit.

Stephen J. HALMEKANGAS, Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY, Defendant.

Stephen J. Halmekangas, Plaintiff–Appellant,

v.

ANPAC Louisiana Insurance Company; Stephen Marshall Harelson; American National Property & Casualty Company, Defendants–Appellees.

No. 09–31060 | Summary Calendar. | April 9, 2010.

Synopsis

Background: Insured homeowner brought action against homeowner’s insurer and insurance agent, after his home was damaged by hurricane and fire. Action was removed to federal court. The United States District Court for the Eastern District of Louisiana, [Carl J. Barbier, J., 2008 WL 5110711](#), denied insured’s motion to remand and granted summary judgment in favor of insurer, and subsequently, [2009 WL 982628](#), denied motion for relief from judgment. Insured appealed.

[Holding:] The Court of Appeals, [Patrick E. Higginbotham](#), Circuit Judge, held that removal was not proper.

Vacated and remanded with instructions.

West Headnotes (7)

^[1] **Federal Courts** 🔑 Limited jurisdiction; jurisdiction as dependent on constitution or statutes

170BFederal Courts

170BIIJurisdiction, Powers, and Authority in General

170BII(A)In General

170Bk2012Judicial Power of United States; Power of Congress

170Bk2015Limited jurisdiction; jurisdiction as dependent on constitution or statutes

(Formerly 170Bk5)

Federal courts are courts of limited jurisdiction, having only the authority endowed by the Constitution and that conferred by Congress.

[31 Cases that cite this headnote](#)

^[2] **Removal of Cases** 🔑 Removal of whole suit

334 Removal of Cases

334 III A Separate and Independent Claims; Separable Controversies

334 k 58 Removal of whole suit

If a plaintiff files suit in state court alleging both federal and state claims arising out of the same controversy, the entire action may be removed to federal court. 28 U.S.C.A. §§ 1367, 1441.

[5 Cases that cite this headnote](#)

^[3] **Removal of Cases** 🔑 Original jurisdiction of United States court

334 Removal of Cases

334 I Power to Remove and Right of Removal in General

334 k 11 Original jurisdiction of United States court

When the plaintiff files an action in state court with no federal question or complete diversity, the original jurisdiction necessary for removal to federal court does not exist. 28 U.S.C.A. §§ 1331, 1332, 1441.

[21 Cases that cite this headnote](#)

^[4] **Federal Courts** 🔑 Particular Claims or Causes of Action

170 B Federal Courts

170 B VIII Jurisdiction of Entire Controversy; Pendent and Supplemental Jurisdiction

170 B k 2543 Particular Claims or Causes of Action

170 B k 2544 In general

(Formerly 170 B k 14.1)

Removal of action brought by insured homeowner, whose home was damaged in hurricane and destroyed by fire, against homeowner's insurer and insurance agent, alleging state law claims for negligence, and detrimental reliance, was not warranted, on basis of supplemental jurisdiction, in connection with insured's federal court action against flood insurer, where the parties in the state court suit were not diverse and no federal question was presented, so that original jurisdiction in federal court did not exist. 28 U.S.C.A. §§ 1331, 1332, 1367, 1441.

[15 Cases that cite this headnote](#)

^[5] **Removal of Cases** 🔑 Original jurisdiction of United States court

334 Removal of Cases

334I Power to Remove and Right of Removal in General

334k11 Original jurisdiction of United States court

Where there is improper removal, a court must ask whether the removed action could have been filed originally in federal court. 28 U.S.C.A. § 1441.

[7 Cases that cite this headnote](#)

^[6] **Federal Courts** 🔑 Determination of question of jurisdiction

170B Federal Courts

170BXVII Courts of Appeals

170BXVII(B) Appellate Jurisdiction and Procedure in General

170Bk3252 Determination of question of jurisdiction

(Formerly 170Bk542)

Every federal appellate court has a special obligation to satisfy itself not only of its own subject matter jurisdiction, but also that of the lower courts in a cause under review.

^[7] **Federal Courts** 🔑 Jurisdiction of Entire Controversy; Pendent and Supplemental Jurisdiction

170B Federal Courts

170BVIII Jurisdiction of Entire Controversy; Pendent and Supplemental Jurisdiction

170Bk2541 In general

(Formerly 170Bk14.1)

Supplemental jurisdiction on its own does not give federal courts the power to remove a state case that does not arise from a federal question or offer complete diversity of citizenship. 28 U.S.C.A. §§ 1331, 1332, 1367, 1441.

[3 Cases that cite this headnote](#)

*291 Appeal from the United States District Court for the Eastern District of Louisiana.

Attorneys and Law Firms

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[Jay M. Lonero](#), [Angie Arceneaux Akers](#), Larzelere, Picou, Wells, Simpson, Lonero, L.L.C., Metairie, LA, for ANPAC Louisiana Ins. Co.

[Peirce A. Hammond, II](#), Hammond Law Firm, L.L.C., New Orleans, LA, for Harelson and American Nat. Property & Cas. Co.

Before [HIGGINBOTHAM](#), [CLEMENT](#) and [SOUTHWICK](#), Circuit Judges.

Opinion

[PATRICK E. HIGGINBOTHAM](#), Circuit Judge:

Stephen Halmekangas sued ANPAC Louisiana Insurance Company and its agent Stephen Harelson in Louisiana state court. All parties were Louisiana domiciliaries, and no federal question was presented. Facing the hurdle that the district court would not have had original jurisdiction had the suit been first filed there, defendants removed to federal court, asserting supplemental jurisdiction under [28 U.S.C. § 1367\(a\)](#)—on the idea that the state case related to an action pending in federal court. The federal district court denied Halmekangas’s efforts to remand and granted summary judgment to ANPAC and Harelson. Halmekangas appealed. Because there was no authority to remove the ANPAC action, we vacate the summary judgment and remand to the district court with instructions to remand the ANPAC suit to the originating Louisiana state court.

I.

Stephen Halmekangas lived in a three-story, 5,400–square–foot home in New Orleans. *292 Hurricane Katrina flooded his first floor; five days later, a fire burned the house to the ground.

Seeking to recover from his homeowner’s policy—written by ANPAC—Halmekangas learned he was underinsured. ANPAC’s agent, Stephen Harelson, had covered the house as a two-floor, 3,400–square–foot dwelling. ANPAC paid policy limits, \$346,700 for the top two floors. Halmekangas sued ANPAC and Harelson in Louisiana state court, urging two claims: (1) “Harelson and/or ANPAC were negligent in not properly issuing the policy providing coverage for the entire structure of 5,400 sq. ft.”; and (2) “Plaintiff relied to his detriment upon the representations” of Harelson advising that he was fully covered. The parties agree that there was no federal question or diversity jurisdiction.

A month after filing the state action, Halmekangas sued State Farm, his flood insurer, in federal district court, asserting federal question jurisdiction under the National Flood Insurance Program.¹ He claimed that State Farm had arbitrarily and capriciously paid out only \$83,399.57 for the flood in his 2,000–square–foot ground floor, well under the coverage limit.

When ANPAC learned of the federal suit, it removed to federal court, asserting jurisdiction supplemental to the State Farm case under [28 U.S.C. § 1367](#). Halmekangas protested, arguing in part that the state action against ANPAC did not arise from the same nucleus of common fact as the State Farm action. The federal district court disagreed, explaining: “the object of the litigation in the two matters was the same: Plaintiff’s home.”² The damages alleged in the two suits comprised the common nucleus of operative fact. The parties and the district court glided past the predicate question of Congressionally conferred power to remove.

The cases progressed together in the Eastern District of Louisiana. The court granted ANPAC's summary judgment motion, Halmekangas and State Farm settled out of court, and Halmekangas appealed the adverse summary judgment. He now moves for dismissal—arguing that the district court never had subject-matter jurisdiction to hear the ANPAC litigation. Indeed, it did not.

II.

^[1] “There should be little need for a reminder that federal courts are courts of limited jurisdiction, having ‘only the authority endowed by the Constitution and that conferred by Congress.’ ”³ In an effort to establish jurisdiction, ANPAC points to two Congressional grants—[28 U.S.C. §§ 1367 & 1441](#).⁴

***293** We begin by rehearsing how these two statutes work in isolation, then describe how they can operate in tandem, and conclude by explaining why they do not in this case confer subject-matter jurisdiction. [Section 1367](#) allows federal courts to hear state claims that travel with federal claims in the same lawsuit. “It grants supplemental jurisdiction over [state] claims that do not independently come within the jurisdiction of the district court but form part of the same Article III ‘case or controversy.’ ”⁵ “The question under [section 1367\(a\)](#) is whether the supplemental claims are so related to the original claims ... that they ‘derive from a common nucleus of operative fact.’ ”⁶

While [§ 1367](#) permits a federal court to regard state claims outside of its ken, [§ 1441](#) allows parties to pull federal cases out of state court. “A [federal] district court has removal jurisdiction in any case where it has original jurisdiction.”⁷ “Original jurisdiction, in non-maritime claims, lies where the conditions of [28 U.S.C. §§ 1331](#) [federal question] or [1332](#) [diversity] are satisfied.”⁸ If a plaintiff files suit in state court and asserts a federal cause of action or sues completely diverse defendants, the defendants might invoke [§ 1441](#) to remove the case to federal court.

^[2] With the right ingredients, [§ 1367](#) and [§ 1441](#) can combine to bring into federal court a state claim originally filed in state court. Indeed, if a plaintiff files suit in state court alleging both federal and state claims arising out of the same controversy, the entire action may be removed to federal court.⁹ Suppose a young professor asserts that the public university for which she works has wrongfully denied her tenure. She sues in state court, alleging [42 U.S.C. § 1983](#) violations alongside state breach of contract claims. The university can remove the whole case to federal court.¹⁰

Although this permitted removal of state and federal claims is simultaneous, it is useful to view it in steps: first, a party will use [§ 1441](#) to remove the civil action over which federal courts have original jurisdiction; and second, the party will invoke [§ 1367](#) to allow the state claims to piggyback the federal claims. In our rebuffed ***294** professor's example, the federal question presented under [§ 1983](#) provides the necessary original jurisdiction to remove, and the common nucleus shared by the federal and state claims allows the district court to exercise supplemental jurisdiction over the contract claims. [Sections 1367](#) and [1441](#) are bound together because the professor filed the federal and state claims in a single civil action.

^[3] Where, as here, the plaintiff files an action in state court with no federal question or complete diversity, the original jurisdiction necessary for removal under [§ 1441](#) does not exist. Congress specified that federal courts have removal jurisdiction under [§ 1441](#) only if the district court otherwise has “original jurisdiction” over the “civil action.”¹¹ No federal court had original jurisdiction over the ANPAC action, and [§ 1367](#), by its own terms, cannot fill the void. [Section 1367](#) grants “supplemental jurisdiction” over state claims, not original jurisdiction.¹² Without original jurisdiction, ANPAC has no jurisdictional hook for removal. [Section 1441\(e\)\(1\)](#) in providing removal in the narrow circumstances of that statute which are inapplicable here (single accident with 75 deaths

of natural persons) accents this principle.

^[4] This is so even if we assume that the district court would have had supplemental jurisdiction over ANPAC had Halmekangas filed a single lawsuit in federal court asserting claims against both State Farm and ANPAC. ¹³ Because the state-filed suit could not meet the demands of original jurisdiction, § 1441 did not allow for removal. The district court should have remanded to state court. ¹⁴

Our holding is both axiomatic¹⁵ and in line with the Sixth and Eighth Circuits. The Sixth has explained:

The supplemental-jurisdiction statute is not a source of original subject-matter jurisdiction, and a removal petition therefore may not base subject-matter *295 jurisdiction on the supplemental-jurisdiction statute, even if the action which a defendant seeks to remove is related to another action over which the federal district court already has subject-matter jurisdiction, and even if removal would be efficient. ¹⁶

And the Eighth has admonished:

Section 1367(a) does not mention removal at all While this statute does allow factually related state law claims to be joined with the claim over which the federal district court has original jurisdiction, it plainly does not provide a separate basis for removal of independent state law actions [It] is not original jurisdiction ¹⁷

III.

^[5] ^[6] ^[7] “[E]very federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review”¹⁸ Supplemental jurisdiction on its own does not give federal courts the power to remove a state case that does not arise from a federal question or offer complete diversity of citizenship.¹⁹ Halmekangas’s action against ANPAC and Harelson never had federal subject-matter jurisdiction, so—responsive to our constitutional duty—we VACATE and REMAND to the district court with instructions to remand to Louisiana’s court.²⁰ Any other outstanding motion is DENIED as moot.

Footnotes

¹ See 42 U.S.C. § 4053 (granting “original exclusive jurisdiction” in National Flood Insurance Program adjustment cases to the “United States district court for the district in which the insured property ... shall have been situated”); see also *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 172 (5th Cir.2009).

² See *Perret v. Am. Nat’l Prop. & Cas.*, Nos. 06–4618 and 06–6867, 2006 WL 3412267, at *2, 2006 U.S. Dist. LEXIS 85760, at *6 (E.D.La. Nov. 27, 2006).

³ *Epps v. Bexar–Medina–Atascosa Counties Water Improvement Dist. No. 1*, 665 F.2d 594, 595 (5th Cir.1982) (quoting *Save The Bay, Inc. v. United States Army*, 639 F.2d 1100, 1102 (5th Cir.1981)).

⁴ Section 1367(a) provides in relevant part:

[I]n 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.

Section 1441(a) provides in relevant part:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the

district and division embracing the place where such action is pending.

⁵ *State Nat'l Ins. Co. v. Yates*, 391 F.3d 577, 579 (5th Cir.2004).

⁶ *Mendoza v. Murphy*, 532 F.3d 342, 346 (5th Cir.2008) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966)).

⁷ *Gutierrez v. Flores*, 543 F.3d 248, 251 (5th Cir.2008) (citing 28 U.S.C. § 1441(a)).

⁸ *Avitts v. Amoco Prod. Co.*, 53 F.3d 690, 693 (5th Cir.1995). Section 1331 provides: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Section 1332(a) provides: “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 ... and is between—(1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state ... as plaintiff and citizens of a State or of different States.”

⁹ See *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164–65, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997).

¹⁰ See *Whiting v. Univ. of S. Miss.*, 451 F.3d 339, 342–43 (5th Cir.2006).

¹¹ See 28 U.S.C. § 1441(a); see also *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 34, 123 S.Ct. 366, 154 L.Ed.2d 368 (2002) (“Section 1441 requires that a federal court have original jurisdiction over an action in order for it to be removed from a state court.”); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 349, 4 L.Ed. 97 (1816) (“The power of removal ... presupposes an exercise of original jurisdiction to have attached elsewhere.”).

¹² See 28 U.S.C. § 1367(a).

¹³ Which we do not decide.

¹⁴ See *Avitts v. Amoco Prod. Co.*, 53 F.3d 690, 693 (5th Cir.1995) (“No federal cause of action [was] asserted, and it is plain that removal jurisdiction under 28 U.S.C. § 1441 simply did not exist. The district court had no jurisdiction over the subject matter of the complaint, and the action should have been immediately remanded to state court.”).

¹⁵ See 14B CHARLES A. WRIGHT ARTHUR R. MILLER, EDWARD H. COOPER AND JOAN E. STEINMAN, *FEDERAL PRACTICE & PROCEDURE* § 3722 (4th ed.2009) (“It should be noted that a defendant may not base a Section 1441(a) removal on the supplemental jurisdiction statute, 28 U.S.C.A. § 1367. That is, supplemental jurisdiction under Section 1367 is not a source of subject-matter jurisdiction for federal question purposes. Defendants sometimes will assert that a pending federal action that shares a common nucleus of operative fact with the state lawsuit that defendants seek to remove can furnish an anchor claim under Section 1367(a), and thus enable removal of a separate suit under Sections 1441(a) and (b). This is a misreading of Section 1367, which authorizes supplemental jurisdiction over claims that are within the same civil action as a federal question claim (or over claims that are within the same civil action as a claim satisfying 28 U.S.C.A. § 1332, the statute conferring diversity jurisdiction), and those claims alone.” (footnote omitted)); 16 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* 107.14 (3d ed.) (“The supplemental jurisdiction statute is not itself a source of original jurisdiction and therefore is not a proper basis for removal.” (footnotes omitted)).

¹⁶ *Ahearn v. Charter Twp. of Bloomfield*, 100 F.3d 451, 456 (6th Cir.1996) (citations omitted).

¹⁷ *Motion Control Corp. v. SICK, Inc.*, 354 F.3d 702, 705–06 (8th Cir.2003) (citations omitted).

¹⁸ *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986) (citation and quotation marks omitted). Contrary to ANPAC's assertion, Halmekangas urges a jurisdictional—not procedural or statutory—defect. “[A] procedural defect is any defect that does not go to the question of whether the case originally could have been brought in federal district court.” *Williams v. AC Spark Plugs Div. of Gen'l Motors Corp.*, 985 F.2d 783, 787 (5th Cir.1993) (citations, quotation marks, and alterations omitted). Where, as here, “there is improper

removal,” we must ask “whether the removed action could have been filed originally in federal court.” *In re 1994 Exxon Chem. Fire*, 558 F.3d 378, 395 (5th Cir.2009). If the answer is no, then the problem is jurisdictional.

¹⁹ See *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987) (“Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant. Absent diversity of citizenship, federal-question jurisdiction is required.” (footnote omitted)).

²⁰ *Roark v. Humana, Inc.*, 307 F.3d 298, 304 (5th Cir.2002) (“If, before final judgment, it appears the case was not properly removed because it was not within the federal courts’ original jurisdiction, the district court must remand.”).