

**In The
Supreme Court of the United States**

SOUTHERN ELECTRONICS SUPPLY, INC., et al.,

Petitioners,

v.

CAMSOFT DATA SYSTEMS, INC.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

**BRIEF FOR RESPONDENT
CAMSOFT DATA SYSTEMS, INC.
IN OPPOSITION**

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Should this Court grant interlocutory review of a remand order where the Federal Circuit and Fifth Circuit both reviewed the issue of patent jurisdiction and equally concluded that the district court lacked a legal basis for federal jurisdiction, especially where the sole basis for removal (i.e., plaintiff's ownership claim) arose under state contract and statutory law, as opposed to the patent laws?
2. Should this Court grant interlocutory review of a remand order where the Fifth Circuit thoroughly reviewed the entire procedural record, denied an *en banc* rehearing request, and denied a stay of mandate, after a unanimous panel concluded that considerations of finality, efficiency, and economy did not override plaintiff's right to appeal an otherwise meritorious motion for remand considering the following: (1) that subsequently pled federal claims were never tried on the merits, but were dismissed on a fact-pleading based Rule 12(b)(6) standard of review; (2) that the partial summary judgment dismissal of a single state law claim (i.e., joint venture) never resulted in a final judgment; and (3) that the district court ordered a stay on discovery throughout the entire case after two defendants were federally indicted shortly after the suit was removed to federal court?

CORPORATE DISCLOSURE

CamSoft Data Systems, Inc., which has no parent corporation, is neither a public company nor owned by a public company.

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COUNTER-STATEMENT OF THE CASE

The instant dispute derives from this brief summary of events: Respondent CamSoft Data Systems, Inc. (“CamSoft”) and two defendant companies verbally agreed to partner (1) on the design of a wireless surveillance system for crime fighting purposes, and (2) on the marketing and sale of said system to state and local governments. CamSoft’s two partners surreptitiously breached their confidentiality agreement and shared the technical details with other technology companies, who were interested in selling the system internationally. Eventually, New Orleans public officials involved in the project wanted a share of the revenue and entered into a series of secret bribery deals for kickback contracts. The conspirators eventually sold CamSoft’s crime camera system to various state and local governments throughout the country, which certain sales included the extensive use of public bribes and illegal, no-bid government contracts.

Before learning the entirety of these factual events, in September 2009 CamSoft filed its original *Petition for Declaratory Judgment and Damages* before the district court for the Parish of East Baton Rouge, State of Louisiana. CamSoft’s original state court petition alleged three basis claims against prior partner companies: breach of confidential relations and contract, breach of joint venture and fiduciary duty, and state law *ownership* rights over the underlying intellectual property and fruits derived therefrom. CamSoft alleged statutory ownership rights

arising under Louisiana's Civil Code articles 477, 479, 480, 482, 507, 513, 514, 526, 797, 798, 803, and 818.

Thereafter, defendants removed the matter from state court to the United States District Court for the Middle District of Louisiana. Defendants solely based the removal on CamSoft's state law ownership claim. CamSoft cited prevailing Federal Circuit jurisprudence holding that a corporation's ownership claim lies independent of a natural person's inventorship claim; therefore, the ownership claim did not arise under the patent laws. The magistrate judge rejected this governing jurisprudence and recommended a remand denial. The district judge accepted the recommendation and denied CamSoft's motion for remand.

Thereafter, CamSoft filed two motions to alter or to amend the incorrectly decided remand denial. CamSoft also filed a motion to make the remand denial order final for interlocutory appeal purposes pursuant to 28 U.S.C. § 1292(b). The district court denied all motions, thereby forcing the parties to move towards an ultimate trial sure to result in an absolutely null judgment for lack of subject matter jurisdiction.

While the parties litigated federal jurisdiction, the Federal Bureau of Investigation ("FBI") and the United States Attorney's Office for the Eastern District of Louisiana ("USAO") announced indictments against two named defendants. The indictments listed numerous charges related to tax evasion and public

bribery. The charges stemmed, in part, from monies received by a New Orleans public official stemming from the sale of CamSoft's crime camera system. The district court issued a stay on discovery pending the outcome of the criminal proceedings, except for a limited documentary exchange. This stay of discovery remained pending throughout the entire case.

Based upon the information contained within the public indictments, and after the district court denied CamSoft's motion to file an interlocutory appeal, CamSoft amended its complaint in protest with a federal antitrust claim and federal RICO claim. As a small technology company, CamSoft could not afford to pay for a future, expensive trial most surely resulting in an absolutely null judgment. The district court granted CamSoft's motion to amend the complaint in December 2010. Defendants challenged CamSoft's standing under Rule 12(b)(1) and Rule 12(b)(6) grounds.

Almost one and one-half years later, in April 2012 the district court eventually rendered its ruling on defendants' Rule 12 motions. The district court dismissed CamSoft's federal antitrust and RICO claims on standing grounds. The district court granted defendants' Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction.

In response, CamSoft presented a second motion to file an interlocutory appeal of its remand denial and patent jurisdiction. Once again, the district court denied CamSoft's motion to resolve the

patent jurisdiction issue. Notwithstanding, the district court soon thereafter ordered the parties to outline all remaining legal claims. All parties outlined state law claims, only, which CamSoft repeatedly asserted in its attempt to appeal the remand denial. In response, in October 2012 the district court *sua sponte* entered a discretionary remand order pursuant to 28 U.S.C. § 1367(c).

The parties filed cross-appeals before the United States Court of Appeals for the Federal Circuit given the district court's initial finding of patent jurisdiction. Pursuant to 28 U.S.C. § 1295(a), the Federal Circuit dismissed the entire appeal for lack of appellate jurisdiction and cited *HIF Bio, Inc. v. Yung Shin Pharmaceuticals Indus. Co., Ltd.*, 600 F.3d 1347, 1356 (Fed. Cir. 2010) in support. In *HIF Bio*, the Federal Circuit held that a state law ownership claim does not invoke patent jurisdiction where a contractual or other basis supports the ownership claim. Where CamSoft's corporate ownership claim did not depend upon inventorship, the Federal Circuit lacked appellate jurisdiction because there never existed patent jurisdiction. The Federal Circuit transferred the appeals to the Fifth Circuit for further proceedings.

Upon transfer, a unanimous Fifth Circuit panel affirmed the district court's remand to state court, but on other grounds. The panel held that the district court legally erred in denying CamSoft's timely filed and meritorious motion for remand. Rather than examining patent jurisdiction vis-à-vis the Federal Circuit's ownership versus inventorship analysis, the

Fifth Circuit reasoned that the district court lacked subject matter jurisdiction because the petition merely mentioned the defendants possibly filing a patent application. The Fifth Circuit reasoned that 35 U.S.C. § 116 vested the Director of the Patent and Trademark Office with exclusive jurisdiction over any potential inventorship dispute involving a patent application; therefore, the district court lacked subject matter jurisdiction regardless of whether the ownership claim involved inventorship.

After concluding that the district court wrongly decided the remand denial, the Fifth Circuit panel further held that considerations of finality, efficiency, and economy did not override plaintiff's meritorious motion for remand. The Fifth Circuit reasoned that the district court dismissed CamSoft's subsequently pled federal claims on statutory standing grounds, a fact-pleading based standard arising under Rule 12(b)(6) as opposed to Rule 12(b)(1). The Fifth Circuit correctly reasoned that the Rule 12(b)(6) dismissals did not constitute a "trial on the merits." Moreover, the Fifth Circuit noted that the underlying order on appeal did not constitute a final judgment, but rather constituted interlocutory order. Finally, the Fifth Circuit noted the unique procedural stance stemming from the extended stay of discovery and ongoing criminal indictments.

In response to the unanimous panel ruling, defendants filed a petition for *en banc* rehearing before the Fifth Circuit. Defendants cited these same overreaching procedural arguments regarding

a detrimental impact on federal jurisdiction principles. The Fifth Circuit unanimously denied Respondents' petition for *en banc* rehearing and furthermore denied their requested stay of mandate.

Thereafter, defendants filed before Justice Scalia a motion to stay the issuance of mandate pending the filing and disposition of a writ of certiorari. After hearing defendants' same arguments, on October 15, 2014, the Office of the Clerk for the Supreme Court of the United States advised that Justice Scalia denied the stay of mandate. CamSoft prays for the same denial of the instant petition for writ of certiorari.



REASONS FOR DENYING THE PETITION

I. The Federal Circuit and Fifth Circuit Both Reasoned that the District Court Lacked Patent Jurisdiction at the Time of Removal, Albeit on Different Jurisdictional Grounds

A. The Federal Circuit Dismissed the Cross-Appeals for Lack of Appellate Jurisdiction Under 28 U.S.C. § 1295(a) Where CamSoft's Corporate Ownership Claim Did Not Arise Under the Patent Laws

In dismissing the parties' cross-appeals for lack of appellate jurisdiction pursuant to 28 U.S.C. § 1295(a), the Federal Circuit properly concluded that CamSoft's state law ownership claim did not arise under the patent laws.

In 1929, this Honorable Court in *Becher v. Contoure Laboratories*, 279 U.S. 388, 49 S.Ct. 356, 73 L.Ed. 752 (1929), explained that a plaintiff's ownership claim over a patent does not negate a state court's jurisdiction, where the ownership claim sounds in contract law. In *Becher*, a company owner brought suit against a former employee in state court. The owner alleged an improper taking of intellectual property, which ultimately resulted in a subsequent patent filed by the employee. The owner obtained a declaratory and money judgment against the employee in state court. The employee brought forth a subsequent suit in federal court seeking an injunction against the owner enforcing the judgment. The employee argued that the state court lacked jurisdiction to grant ownership over the patent and its monetary fruits. The district court denied the employee's sought after injunction.

On appeal, this Honorable Court in *Becher* held that the state court retained jurisdiction to determine ownership over the patent. The court explained that the owner's action "had for its cause of action the breach of a contract or wrongful disregard of confidential relations, both matters independent of patent law. . . ." *Becher, Id.* at 391. Moreover, the owner's ownership "right was independent of and prior to any arising out of the patent law, and it seems a strange suggestion that the assertion of that right can be removed from [state court] by its opponent going into the patent office for a later title." Accordingly, the Supreme Court affirmed the district court's denial of

an injunction against the state court judgment for lack of jurisdiction over the initial dispute.

In 1993, the Federal Circuit further explained that a corporation's state law ownership claim also lies entirely independent of a natural person's federal inventorship claim ("It is elementary that inventorship and ownership are separate issues. . . . Thus, inventorship is a question of who actually invented the subject matter claimed in a patent. Ownership, however, is a question of who owns legal title to the subject matter claimed in a patent. . . ."). See *Beech Aircraft Corp. v. EDO Corp.*, 990 F.2d 1237, 1248 (Fed. Cir. 1993). "However, who ultimately possesses ownership rights in that subject matter has no bearing whatsoever on the question of who actually invented that subject matter." *Beech, Id.* See also *Uroplasty, Inc. v. Advanced Uroscience, Inc.*, 239 F.3d 1277 (Fed. Cir. 2001); *AT&T Co. v. Integrated Network Corp.*, 972 F.2d 1321 (Fed. Cir. 1992); and *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1357 (Fed. Cir. 2004).

In a more recent patent jurisdiction decision, *HIF Bio, Inc. v. Yung Shin Pharmaceuticals Indus. Co., Ltd.*, 600 F.3d 1347, 1356 (Fed. Cir. 2010), the Federal Circuit further explained: "Inventorship is likewise not essential to the causes of action for . . . ownership." The court reasoned: "[T]he ownership dispute could be resolved without a determination of who invented the INVENTION." *Id.* The Federal Circuit held that the allegation of an implied contract

between the parties could form the basis for resolving the underlying ownership dispute.

In the instant action, CamSoft filed suit to declare its ownership rights over all intellectual property stemming from the proprietary crime camera system it designed. CamSoft based its ownership right on contract law and other statutory rights arising under Louisiana's Civil Code articles. As a legal entity, CamSoft could also not present a cause of action for inventorship where that right belongs exclusively to natural persons. Accordingly, CamSoft's ownership claim necessarily arose by operation of Louisiana's contract and statutory ownership rights arising under Louisiana's Civil Code.

Where CamSoft's state law ownership claim sounded in contract law and statutory rights, the ownership claim never depended upon a determination of inventorship. The magistrate judge grossly erred in his legal analysis in recommending denial of the meritorious motion or remand. The Federal Circuit correctly relied upon its own ruling in *HIF Bio* in dismissing the parties' cross-appeals for lack of appellate jurisdiction under 28 U.S.C. § 1295(a). Quite simply, CamSoft's ownership claim never arose under the patent laws; therefore, there was no patent jurisdiction supporting the Federal Circuit's appellate jurisdiction pursuant to 28 U.S.C. § 1295(a).

B. The Fifth Circuit Equally Concluded that the District Court Lacked Patent Jurisdiction at the Time of Removal, Albeit After Finding that Exclusive Jurisdiction Belonged Before the Director of the Patent and Trademark Office Pursuant to 35 U.S.C. § 116

After dismissing the cross-appeals for lack of appellate jurisdiction, the Federal Circuit transferred the appeals to the Fifth Circuit. Along with a host of other courts,¹ the Fifth Circuit held that 35 U.S.C. § 116 provides exclusive jurisdiction to the Director of the PTO over all potential inventorship disputes relating to a pending patent application. Accordingly, the Fifth Circuit reasoned that the district court lacked subject matter jurisdiction, regardless of whether the ownership claim depended upon a finding of inventorship (“Regardless of whether the removed complaint included an inventorship dispute, that dispute was inadequate to establish the district court’s jurisdiction because the allegations indicated that no patent had issued.”) Petitioners’ Brief at 4a.

¹ See *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1357 (Fed. Cir. 2004); *Branimir Simic-Glavaski v. Lifeware Technologies, Inc.*, 2008 WL 423414 (N.D. Ohio); *E.I. Du Pont de Nemours & Co. v. Okuley*, 344 F.3d 578, 583-84 (6th Cir. 2003); *Sagoma Plastics, Inc. v. Gelardi*, 366 F.Supp.2d 185, 188 (D.Me. 2005); *Airport Surface Technologies L.L.C. v. FieldTurf, Inc.*, 268 F.Supp.2d 999 (N.D. Ill. 2003); *Display Research Labs., Inc. v. Telegen Corp.*, 133 F.Supp.2d 1170, 1173-74 (N.D. Cal. 2001); *Chambers v. Cooney*, 535 F.Supp.2d 1255 (S.D. Ala. 2008).

Defendants' seek the extraordinary grant of *certiorari* because the Fifth Circuit called for remand on different jurisdictional grounds. Although other federal courts have concluded that district courts have initial jurisdiction over an inventorship claim involving patent application, nevertheless, those courts have equally dismissed the action from federal court and remanded to state court for failure to state a federal cause of action arising under the patent laws.²

For example, in *HIF Bio, supra*, the Federal Circuit concluded that plaintiff's slander of title claim involving a patent application arose under the patent laws because it depended upon a finding of inventorship. Relying upon 35 U.S.C. § 116, the Federal Circuit concluded that the plaintiff lacked a cause of action, as opposed to the district court lacking jurisdiction ("Section 116 authorizes the Director of the Patent and Trademark Office to take certain actions concerning pending patent applications, but 'plainly does not create a cause of action in the district courts to modify inventorship on pending patent applications.'") *HIF Bio*, 600 F.3d at 1353. Although the

² See *Saint-Gobain Ceramics & Plastics, Inc. v. Wang*, No. 07-40129-FDS, 2008 WL 2756873, at *4 (D.Mass. June 27, 2008); *Simonton Bldg. Prods., Inc. v. Johnson*, 553 F.Supp.2d 642, 647-649 (N.D.W.Va. 2008); *Duke Univ. v. Elan Corp.*, No. 1:04CV532, 2006 WL 267185, at *3 (M.D.N.C. Jan. 30, 2006); *Concrete Washout Sys., Inc. v. Minegar Envtl.*, No. CIVS041005, 2005 WL 1683930, at *3 (E.D.Cal. July 12, 2005); see also *Stevens v. Broad Reach Cos., L.L.C.*, No. 05-647-CV-W-GAF, 2006 WL 1556313, at *8 (W.D.Mo. May 31, 2006)

Federal Circuit found jurisdiction, the court dismissed the slander of title claim on Rule 12(b)(6) for failure to state a federal cause of action and remanded the matter back to state court.

Thus, while federal courts examine jurisdiction involving an inventorship claim over a pending patent application from different legal perspectives, all courts examining the issue ultimately reach the same result: the courts remand the matter back to state court because either (1) the district court lacked subject matter jurisdiction under 35 U.S.C. § 116 or (2) the plaintiff failed to state a federal cause of action arising under the patent laws pursuant to Rule 12(b)(6).

Notwithstanding, the differing legal perspectives of the Federal Circuit and Fifth Circuit are of no actual relevance to the instant action, where CamSoft's ownership claim never depended upon inventorship in the first place. In other words, whether the district court actually possessed jurisdiction first depends upon whether the CamSoft alleged an ownership claim depending upon inventorship. If there exists no inventorship claim involving a patent application, then there exists no ground for exerting federal jurisdiction, regardless of which legal analysis the appellate court chooses to examine.

As correctly decided by the Federal Circuit, CamSoft's ownership claim never arose under the patent laws because it sounded in contract and statutory law, not inventorship. If CamSoft's ownership claim depended upon inventorship over a pending

patent application, then under its own *HIF Bio* decision, the Federal Circuit would have accepted appellate jurisdiction, rendered judgment on the merits, and never transferred the matter to the Fifth Circuit for further proceedings. Yet, contrary to the procedural history in *HIF Bio*, the Federal Circuit dismissed the parties' cross-appeals for lack of appellate jurisdiction pursuant to 28 U.S.C. § 1295(a).

Before every level of federal court, defendants erroneously twisted patent jurisdiction to suit their ultimate goal: to improperly remove the matter from state court. Although their misleading legal arguments worked before the magistrate judge, both the Federal Circuit and Fifth Circuit equally rejected their flawed and misleading legal arguments, albeit on different jurisdictional grounds. The unique procedural posture of this particular case necessitated the same ultimate result: remand was warranted where CamSoft's ownership claim never depended upon a finding of inventorship.

II. The Fifth Circuit Thoroughly Reviewed the Entire Procedural Record and Properly Concluded that Considerations of Finality, Efficiency, and Economy Did Not Override CamSoft's Right to Appeal the Erroneous Remand Denial, Where the District Court Neither Tried the Case on Its Merits, Nor Entered a Final Judgment, and the District Court Stayed All Discovery During the Entire Case Pending Two Defendants' Criminal Indictments

Defendants further erroneously insist that appellate courts lose the ability to reverse an erroneously decided remand denial should the plaintiff ever subsequently amend the complaint with a federal claim. In distorting prevailing jurisprudence, defendants conveniently fail to discuss the overriding factor: whether the federal court possessed subject matter jurisdiction at the time it tried the case on the merits, and reached a final judgment.

Moreover, defendants create a fictitious split in the circuits in the hopes of justifying the rare invocation of the Supreme Court's *certiorari* standard. Petitioners argue that the courts of appeals disagree on whether a plaintiff "waives" the right to appeal an improperly decided remand denial by subsequently alleging a federal claim. Yet, no actual split in the circuits exists, as every appellate court uniformly follows this Honorable Court's general rule: federal jurisdiction depends upon whether subject matter

jurisdiction exists at the time the case is tried on the merits and results in a final judgment:

[W]here after removal a case is tried on the merits and without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court.

Grubbs v. General Elec. Credit Corp., 405 U.S. 699, 700, 92 S.Ct. 1344, 1346-47, 31 L.Ed.2d 612 (1972). In each “waiver” case cited by defendants, the appellate court ultimately upheld federal jurisdiction because the district court tried the case on the merits and reached a final judgment.

This Honorable Court reaffirmed this general rule under different procedural circumstances in *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 117 S.Ct. 467, 136 L.Ed.2d 437 (1996). In *Caterpillar*, *supra*, this Court stated that the plaintiff “by timely moving for remand, did all that was required to preserve his objection to removal.” *Caterpillar*, 519 U.S. at 74. Notwithstanding the plaintiff’s timely and meritorious challenge to removal, the Court held that considerations of finality, efficiency, and economy overrode the prior improperly decided remand denial, where the case was tried on the merits, and the district court possessed diversity jurisdiction at the time of trial. *Id.*

All courts of appeals, including the Fifth Circuit, follow this Honorable Court's guiding principals established in *Grubbs* and *Caterpillar*. The Fifth Circuit's instant decision provides no exception to the general rule: considerations of finality, efficiency, and economy override an improperly decided remand denial if the case was tried on the merits and results in a final judgment. Yet, in the instant action, defendants seek the extraordinary grant of *certiorari* over an interlocutory order that merely resulted in a Rule 12(b)(6) dismissal of CamSoft's subsequently pled federal claims and certainly never resulted in a final judgment.

See King v. Marriot Intern. Inc., 337 F.3d 421, 426 (4th Cir. 2003) ("Hence, a plaintiff's claim that the removal of his case was improper under 28 U.S.C. § 1441 is preserved when the plaintiff timely moves for remand."); *Briarpatch, Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296 (2d Cir. 2004) ("Mindful that a district court's erroneous failure to remand does not, by itself, necessitate reversal, we view the critical issue to be whether the district court had subject matter jurisdiction at any time before it rendered judgment."); *Green v. Harsco Corp.*, 215 F.3d 1336, (10th Cir. 2000); *Barbara v. N.Y. Stock Exch., Inc.*, 99 F.3d 49, 56 (2d Cir. 1996) ("A federal appellate court will not remand a case to state court, however, if the federal district court would have had subject matter jurisdiction if the suit has been filed in federal court in the posture it had at the time of entry of final judgment."); *Kidd v. Southwest Airlines*, 891 F.2d 540,

546-47 (5th Cir. 1990); *In re: Cmty. Bank of N. Virginia*, 418 F.3d 277, 297 (3d Cir. 2005) (appellate court found jurisdiction given amendment with federal claims after final judgment entered approving class action settlement); *Pegram v. Herdrich*, 530 U.S. 211, 215, 120 S.Ct. 2143, 147 L.Ed.2d 164 (2000) (amendment with federal claim invoked jurisdiction in light of final judgment dismissing claim); and *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1280 (11th Cir. 2005) (amendment of ERISA claim invoked jurisdiction where case was tried on the merits to the bench).

As it relates to the district court's Rule 12(b)(6) dismissals, the unanimous Fifth Circuit panel rejected the novel argument that a fact-pleading based analysis constituted a "trial on the merits." ("We therefore hold that because there has been no trial on the merits, any interests in economy or finality is not sufficient to override CamSoft's timely and meritorious challenge to removal.") *CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.*, 756 F.3d 327, 340 (5th Cir. 2014). The Fifth Circuit further rejected defendants' attempt to create a new basis for federal jurisdiction, in light of this Court's pronouncements to narrowly construe federal jurisdiction:

Appellants propose a new rule whereby Rule 12(b)(6) adjudication sometimes constitutes "trial on the merits" such that remand is precluded by *Caterpillar* and *Grubbs*. Given that the Supreme Court has expressly discouraged

this court from creating new jurisdictional exceptions, and given that jurisdictional rules “of indeterminate scope” are disfavored, we decline the invitation.

Petitioners’ Brief at 27a.

The Fifth Circuit’s refusal to recognize a Rule 12(b)(6) dismissal as a “trial on the merits” is supported by *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 507, 126 S.Ct. 1235 (2006). Therein, this Honorable Court expressly recognized that a Rule 12(b)(6) “objection endures up to, but not beyond, trial on the merits. . . .”; therefore, a Rule 12(b)(6) dismissal cannot constitute a “trial on the merits” where the objection endures only up to the “trial on the merits.” The Fifth Circuit has similarly concluded that a Rule 12(b)(6) dismissal does not constitute a “trial on the merits” because the dismissal is based on alleged facts and not submitted evidence. *Waste Control Specialists, LLC v. Envirocare of Tex., Inc.*, 199 F.3d 781, 786 (5th Cir. 2000).

Moreover, a partial summary judgment on but one of CamSoft’s many state law claims (i.e., joint venture) does not constitute the all important “trial on the merits” of jurisdictionally based federal claim, nor did the summary judgment result in a “final judgment.” Rather, the partial summary judgment constitutes an interlocutory ruling relative to one state law claim. As recognized by the panel decision, “In fact, the heart of this dispute – CamSoft’s original breach of contract claim against Southern Electronics and

Active Solutions – has not been adjudicated at all. . . . Consequently, relatively little progress has been made on the merits, and the potential loss of economy is not as significant as the timeline alone might suggest.”

The Fifth Circuit further considered finality, efficiency, and economy in light of the stay on discovery given the two pending criminal indictments. In fact, the stay on discovery was never lifted prior to the district court’s own remand pursuant to 28 U.S.C. § 1367(c). The parties never fully engaged in liability discovery; never exchanged damages discovery; never engaged in any expert discovery; and never even faced a discovery deadline. Rather, the three years spent in district court resulted from unusually extended delays spent waiting on the district court’s Rule 12 rulings.

Upon review of the entire record, the unanimous panel noted: “Consequently, relatively little progress has been made on the merits, and the potential loss of economy is not as significant as the timeline alone might suggest.” Moreover, the panel noted that given this case’s unique procedural posture, “[T]he state court may be better positioned to efficiently discern the merits of CamSoft’s allegations. . . . Indeed, the intensely local nature of this litigation only underscores the propriety of remand.”

In fact, even if this Honorable Court were to reverse the Fifth Circuit’s remand, the intermediate court would nonetheless be called upon to then

determine whether the district court abused its wide discretion in remanding the matter back to state court pursuant to 28 U.S.C. § 1367(c). Accordingly, a reversal simply puts the case back into a position of deciding whether a remand on other grounds was proper.

In summary, the Fifth Circuit thoroughly reviewed the entire procedural record, denied an *en banc* rehearing request, and denied a requested stay of mandate. The unanimous panel properly concluded that considerations of finality, efficiency, and economy did not override plaintiff's right to appeal an otherwise meritorious motion for remand considering the following: (1) that subsequently pled federal claims were never tried on the merits, but were dismissed on a fact-pleading based Rule 12(b)(6) standard of review; (2) that the partial summary judgment dismissal of a single state law claim (i.e., joint venture) never resulted in a final judgment; and (3) that the district court ordered a stay on discovery throughout the entire case after two defendants were subject to federal indictments shortly after the suit was removed to federal court.



CONCLUSION

This Petition for Writ of Certiorari raises no legal grounds not otherwise thoroughly examined by the Federal Circuit and Fifth Circuit, respectively. The instant action involves the simple remand of a unique

case with a convoluted procedural history, which resulted from an otherwise improper removal. A careful review of the cited jurisprudence further reveals no actual split in the circuit court decisions necessitating any differing result than the one reached by either appellate court. Considering that the parties must still engage in extensive discovery when returning to state court, considerations of finality, efficiency, and economy do not justify the exercise of federal jurisdiction over a case that was wrongly removed from state court in the first place. Respondents respectfully contend that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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