

**HIF Bio, Inc. v. Yung Shin Pharms. Indus. Co.**

No. 06-1522, Federal Circuit (Michel, Gajarsa,\* Holderman)

***“[W]hen declining supplemental jurisdiction over state claims, a district court strips the claims of the only basis on which they are within the jurisdiction of the court [and] a remand based on declining supplemental jurisdiction [is] barred from appellate review . . . .”***

On November 13, 2007, the Federal Circuit dismissed the appeal by defendant Carlsbad Technology, Inc. (CTI) of the district court’s remand of the case to state court. The technology at issue related to a chemical compound YC-1, which had purported anti-angiogenic, anti-cancer properties. The Federal Circuit stated:

Defendant CTI asserts on appeal that the district court’s remand order was improper because the plaintiffs’ remanded claims raise a substantial question of federal patent law—inventorship. The plaintiffs assert that the district court’s remand order was proper because their claims are based solely on state law and do not arise under the federal patent laws. We dispose of this appeal, however, on a threshold issue—whether this court has appellate jurisdiction to review the district court’s remand order. [B]ecause Defendant CTI appeals from a remand order, we must determine whether 28 U.S.C. § 1447(d) bars this court’s appellate jurisdiction. [W]e find that 28 U.S.C. § 1447(d) bars this court’s review of the remand order.

Title 28 U.S.C. § 1447(d) provides (with an exception for civil rights cases removed from state court pursuant to § 1443) that “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.” While the language of this statute on its face appears to preclude review, the Supreme Court has “interpreted § 1447(d) to cover less than its words alone suggest.” [T]he jurisdictional bar of § 1447(d) should be read in pari materia with, and thus limited to, the grounds enumerated in § 1447(c), which [now] bars review of remand orders based either on a lack of subject matter jurisdiction or on “any defect other than a lack of subject matter jurisdiction.”

In this case, the district court’s remand order is based on declining supplemental jurisdiction. The district court held that “the inventorship and ownership of inventions are valid state law claims,” over which it lacked original (i.e. federal question or diversity) jurisdiction. Despite holding that it lacked an independent basis of subject matter jurisdiction over the inventorship and ownership claims (Counts 1 and 2), the district court did have federal question jurisdiction over the plaintiffs’ alleged RICO claim. The alleged federal RICO claim was the basis for the district court’s § 1367(a) supplemental jurisdiction over the inventorship and ownership claims, as well as the remaining nine state claims (Counts 4-12). Pursuant to § 1367(c), the district court “decline[d] to exercise supplemental jurisdiction over the state claims in the FAC” because the “preponderance of state law issues means that a state court is the proper venue to try the state law

claims.” The district court thus remanded all of the non-RICO causes of action (Counts 1, 2, and 4-12) based on declining supplemental jurisdiction.

If the district court had not had supplemental jurisdiction over the state claims, the remand would have been based on a lack of federal question or diversity jurisdiction. In such case, deciding whether § 1447(d) bars review would be straightforward. A remand for lack of federal question or diversity jurisdiction is clearly a remand for lack of subject matter jurisdiction under § 1447(c) and thus barred from appellate review by 1447(d). However, in this case, because the remand order was based on declining supplemental jurisdiction pursuant to § 1367(c), we are faced with an issue of first impression for this court: whether a remand based on declining supplemental jurisdiction under § 1367(c) is within the class of remands described in § 1447(c), and thus barred from appellate review by § 1447(d).

[W]hen a court declines supplemental jurisdiction, it is declining to extend its jurisdiction to claims over which it has no independent basis of subject matter jurisdiction, i.e., state claims. Simply put, when declining supplemental jurisdiction over state claims, a district court strips the claims of the only basis on which they are within the jurisdiction of the court. . . . The text of § 1367(a) indicates § 1367(c) constitutes an express statutory exception to the authorization of jurisdiction granted by § 1367(a).”). Without the cloak of supplemental jurisdiction, state claims must be remanded for lack of subject matter jurisdiction.

In short, because every § 1367(c) remand necessarily involves a predicate finding that the claims at issue lack an independent basis of subject matter jurisdiction, a remand based on declining supplemental jurisdiction can be colorably characterized as a remand based on lack of subject matter jurisdiction. Accordingly, a remand based on declining supplemental jurisdiction must be considered within the class of remands described in § 1447(c) and thus barred from appellate review by § 1447(d).

For these reasons, we conclude that we lack jurisdiction over Defendant CTI’s appeal.

*The previous statements are for information purposes only, and do not constitute legal advice. Questions regarding the matters discussed above, and any requests to be subscribed to the free electronic distribution of this publication, may be directed to Lawrence M. Sung, Ph.D., at +1 202.862.1025 or [lsung@dl.com](mailto:lsung@dl.com), or to any other Dewey & LeBoeuf LLP attorney with whom you regularly consult.*

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