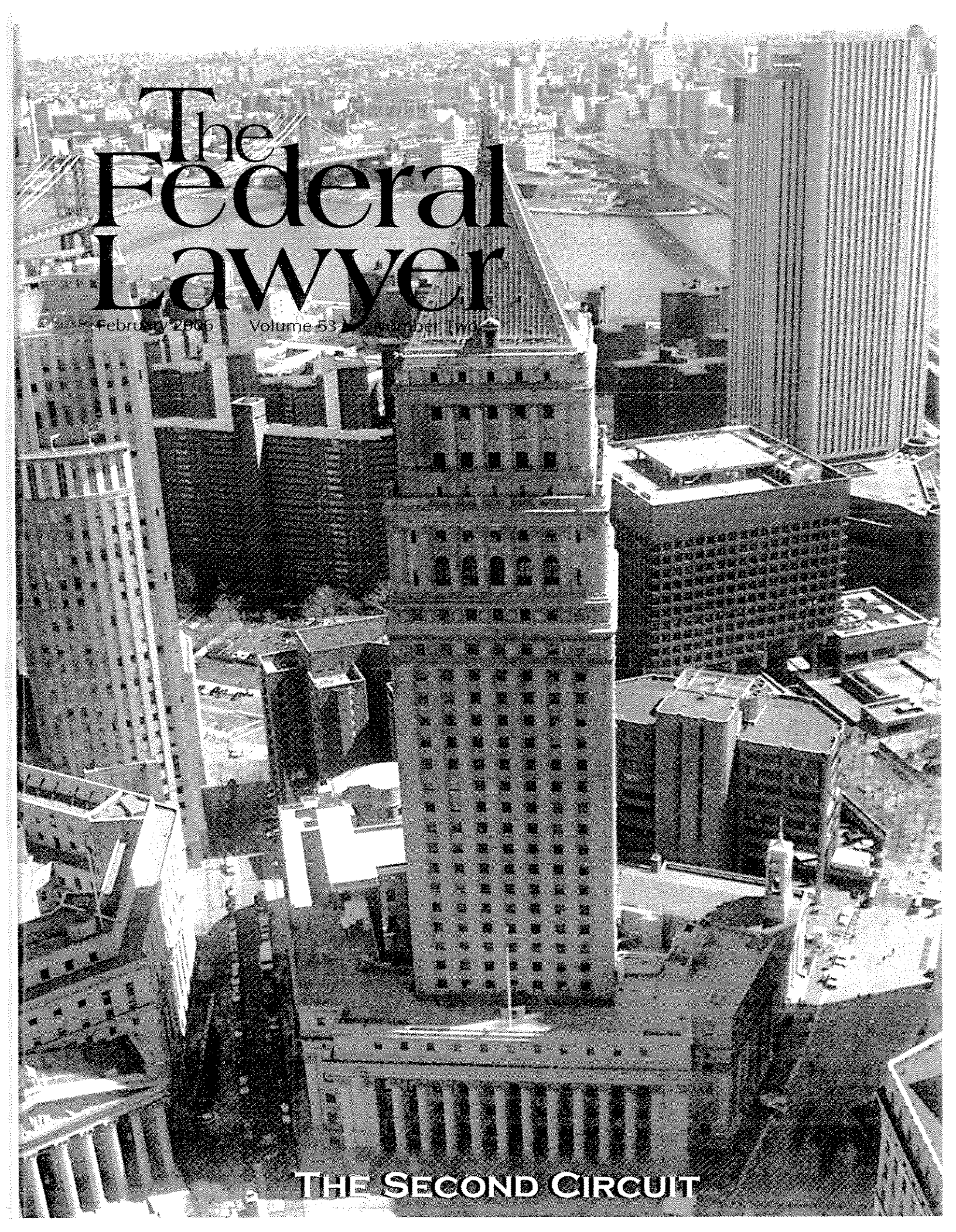

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A 5-4 Supreme Court Expands Federal Court Jurisdiction in Role Reversal

WE ARE LED to believe that the conservative majority of the U.S. Supreme Court perceives the Court's role as advancing three goals: limiting the jurisdiction of the federal courts, strictly construing statutes, and following precedent. The last year of the Rehnquist Court had a few surprises for that conventional wisdom. *Exxon Mobil Corp. v. Allapattah Servs*[1] represents a departure from this role in its application in Puerto Rico.

This decision is the result of two consolidated cases that worked their way up through different circuits to reach the Supreme Court. The "*Exxon*" part of the case came from the Eleventh Circuit. The other half of the case, *Maria del Rosario Ortega v. Star-Kist Foods Inc.*, emerged from the First Circuit on appeal from the U.S. District Court for the District of Puerto Rico. In one sense, this was classic Supreme Court material: the circuits were split, between the Fourth, Sixth, Seventh, and Eleventh and the First, Third, Eighth, and Tenth.

The facts of the two cases that prompted this Supreme Court action stand in stark contrast. The *Exxon* case involved big oil and a class action litigation by 10,000 Exxon dealers for millions of dollars in damages. The *Ortega* case involved a 9-year-old girl who cut her finger while opening a can of tuna at lunch — hardly the stuff of which Supreme Court dreams are made.

At issue was a law Congress passed in 1990: 28 U.S.C. § 1367. That statute deals with the supplemental jurisdiction of federal courts. The majority opinion, delivered by Justice Kennedy, succinctly states the issue in the first sentence:

> These consolidated cases present the question whether a federal court in a diversity action may exercise supplemental jurisdiction over additional plaintiffs whose claims do not satisfy the minimum amount-in-controversy requirement, provided the claims are part of the same case or controversy as the claims of plaintiffs who allege a sufficient amount in controversy.[2]

The Eleventh Circuit said yes; the First Circuit said no. The Supreme Court sided with the Eleventh.

Conservatives who perceive class action litigation as antibusiness generally prefer to see these cases in federal court. In federal court, both Congress and the courts can exercise a certain degree of control over such class actions. To the extent the *Exxon Mobil* case allowed claims not satisfying the jurisdictional minimum to be included in class action cases in federal court, the opinion cleared the way for the federal courts entertaining these cases. In conjunction with recent legislation passed by Congress concerning class action suits, that move leaves the federal courts as the prime venue for such litigation. In this sense, *Exxon Mobil* was a victory for conservatives.

But the case takes on a whole new look when its application to Puerto Rico is considered. Throughout the 50 states, most plaintiffs prefer state court. After all, they have a right to a jury there, and many perceive the state court systems as more plaintiff-friendly.

That, however, is not the case in Puerto Rico. In its state court system, there is no right to a jury trial for civil cases. For that reason, those plaintiffs who seek a jury trial in Puerto Rico can do so only in the U.S. District Court for the District of Puerto Rico.[3]

By allowing the joinder of diverse parties who fail to meet the jurisdictional minimum of $75,000 in *Exxon Mobil*, the Supreme Court has greatly expanded the magnitude and number of claims that district courts will now have to try. Although this may be an unintended result of that decision, it amounts to a role reversal for a majority on the Court known for seeking to limit the jurisdiction of the federal courts.

Puerto Rico is an island with nearly 4 million residents. Its primary tort statute, Article 1802 of its Civil Code, has been described as "the broadest basis for tort liability in any jurisdiction of the United States."[4] The breadth of this statute entitles nearly anyone affected by an injury, physically or emotionally, to file a claim.

Thus, if one person can file a marginally arguable claim of $75,000, and a federal court cannot reasonably conclude "to a legal certainty" that a jury would not return a verdict of less than $75,000 for that claim, then the federal court's doors are open for every member of that family, or a friend of the in-

jured party, to join the lawsuit, provided he or she has been affected by the injury to any degree. There is no authority for a district court or a court of appeals to carve out those plaintiffs who would clearly not meet the $75,000 minimum "to a legal certainty" as the First Circuit and the U.S. District Court for the District of Puerto Rico had done in *Ortega*. Although the conservative-majority Supreme Court may have intended its ruling to encourage the federalization of certain types of lawsuits, its unintended result in Puerto Rico was to greatly expand the jurisdiction of the federal court in Puerto Rico by expanding the pool of potential plaintiffs in any particular federal court litigation.

How the Supreme Court got to its holding also reveals something about the majority's judicial philosophy. The majority writes that there is no need to look at the legislative history of the statute because it can conclude "at the very outset [that] section 1367 is not ambiguous."[5] One can certainly argue that if four of nine Supreme Court justices can read a statute, disagree on its meaning, and find sufficient ambiguity to merit reference to the statute's legislative history, then reasonable, mere humans can find such language ambiguous as well. Indeed, one dissenting justice's frustration with the majority's professed clarity on this point prompted a rephrasing of an old cliché: " ... ambiguity is apparently in the eye of the beholder. ..."[6] And of course, the First, Third, Eighth, and Tenth Circuits had already decided the other way. One must wonder how clear and unambiguous language is when four courts of appeals and four U.S. Supreme Court justices view the language differently from the majority in this case.

There was certainly room for debate as to what Congress was thinking when it passed § 1367. Although subsection (a) granted supplemental jurisdiction, subsection (b) of 28 U.S.C. § 1367 carved out exceptions for supplemental jurisdiction when certain Federal Rules of Civil Procedure were involved, under certain circumstances, stating specifically that

> [T]he district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20 or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.[7]

The majority dissects subsection (b) and recognizes that Congress made certain distinctions under the Federal Rules. With respect to Rule 20, the majority concludes that this exemption applies only to defendants joined under Rule 20, not plaintiffs (as in the *Ortega* case). Further, since Rule 23 (class actions) is not even mentioned in this subsection, the majority concludes that supplemental jurisdiction covers plaintiffs certified under that rule (as in the *Exxon* case). This is, arguably, a strict construction of the statute.

Ultimately, however, the majority acknowledges the dissent's point that an anomaly is created by the majority's interpretation of Rule 20 but deals with it in this fashion:

> The omission of Rule 20 plaintiffs from the list of exceptions in section 1367 (b) may have been an "unintentional drafting gap." ... If that is the case, it is up to Congress rather than the courts to fix it.[8]

So, we now know that if something that can be identified as an "unintentional drafting gap," it is not an ambiguity in the eyes of five of the nine members of the Supreme Court. It is a mess to be cleaned up by those elected under Article I of the Constitution.

Is this strict statutory construction? In her dissent, Justice Ginsburg argued that "while section 1367's enigmatic text defies flawless interpretation, ... the precedent-preservative reading, I am persuaded, better accords with historical and legal context of Congress' enactment of the supplemental jurisdiction statute ... and the established limits on pendent and ancillary jurisdiction. ..."[9] Regardless of whether the statute can be strictly construed, given its language, Justice Ginsburg counseled that "close questions of [statutory] construction should be resolved in favor of continuity and against change."[10] In effect, the majority's decision had overturned previous Supreme Court precedents. Justice Stevens' dissent posits that the "Court's reasons for ignoring this virtual billboard of congressional intent are unpersuasive."[11] The majority had set forth two philosophical reasons for its reticence in looking at legislative history:

> First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in "looking over a crowd and picking out your friends."... Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members — or, worse yet, unselected staffers and lobbyists — both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.[12]

JURISDICTION *continued on page 52*

JURISDICTION *continued from page 21*

The majority's fear of finding Waldo in a crowd and its mistrust for anyone working in Congress without a "senator" or "representative" label was addressed in the dissent. Although acknowledging the difficulties of using legislative intent in interpreting statutes, Justice Stevens concludes that "there is little reason to fear that an unholy conspiracy of 'unrepresentative committee members,' law professors, and 'unelected staffers and lobbyists,' ibid., endeavored to torpedo Congress' attempt to overrule (without discussion) two longstanding features of this Court's diversity jurisprudence."[13]

In some ways, the consolidation of these two cases leads to two different analyses of the Supreme Court's actions. Although the *Exxon* class action side of the case fits more comfortably into the conservative camp's goal of having class action cases litigated in federal courts, it still must be recognized as an expansion of federal court jurisdiction, albeit with that full intent in mind.

Ortega, however, is another matter. Here, conventional wisdom would fail to predict the outcome of this case had it not been linked with *Exxon*. In so doing, the conservative majority expanded federal court jurisdiction and overturned case precedent — two hallmarks inconsistent with traditional conservative decision-making. Arguably, it did so applying a strict construction of the statute. As Meatloaf once crooned, "Two out of three ain't bad." **TFL**

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Endnotes

[1]125 S. Ct. 2611 (2005).

[2]*Id.* at 2615.

[3]Defendants litigating in Puerto Rico should not be overly concerned about Puerto Rico law being too pro-plaintiff as there are no punitive damages available under Puerto Rico law.

[4]*Burke v. Compagnie Nationale Air France*, 699 F. Supp. 1016, 1019 (D.P.R. 1988) (citing *Clemente v. United States*, 426 F. Supp. 1, 2 (D.P.R. 1977) and other cases).

[5]*Exxon Mobil* at 2625.

[6]*Id.* at 2628 (Stevens, J., dissenting).

[7]28 U.S.C. § 1367(b).

[8]*Exxon Mobil* at 2624 (citations omitted).

[9]*Id.* at 2640–2641.

[10]*Id.* (citations omitted).

[11]*Id.* at 2630.

[12]*Id.* at 2626 (citation omitted).

[13]*Id.*