Litigation Insights

JUNE 2025

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Moore's Federal Practice®

—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

DEFAULT JUDGMENT

Relief Demanded

AirDoctor, LLC v. Xiamen Qichuang Trade Co.

134 F.4th 552, 2025 U.S. App. LEXIS 8612 (9th Cir. Apr. 11, 2025) (per curiam)

The Ninth Circuit holds that Civil Rule 54(c) does not prohibit awarding actual damages in a default judgment to a plaintiff that did not include a specific amount sought as damages in its complaint, but instead claimed damages in an amount to be determined at trial.

JUMP TO SUMMARY

ERIE DOCTRINE

Certification of Question to State Court

Del Rio v. Amazon.com.dedc, LLC

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The Second Circuit has held that unresolved questions of state wage laws required certification of a question to the state's highest court before a federal court could decide whether those laws required that warehouse employees be compensated for time spent going through mandatory security screenings.

JUMP TO SUMMARY

REMOVAL

Review of Remand Order

Fu Jing Wu v. Chun Liu

131 F.4th 1295, 2025 U.S. App. LEXIS 6437 (11th Cir. Mar. 19, 2025)

The Eleventh Circuit holds that the Federal Arbitration Act does not give it jurisdiction to review an order denying a motion to compel arbitration if the order also remands the action to state court for lack of subject-matter jurisdiction.

JUMP TO SUMMARY

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Utilizing Protégé™ AI Features within your Traditional Lexis+® Legal Research

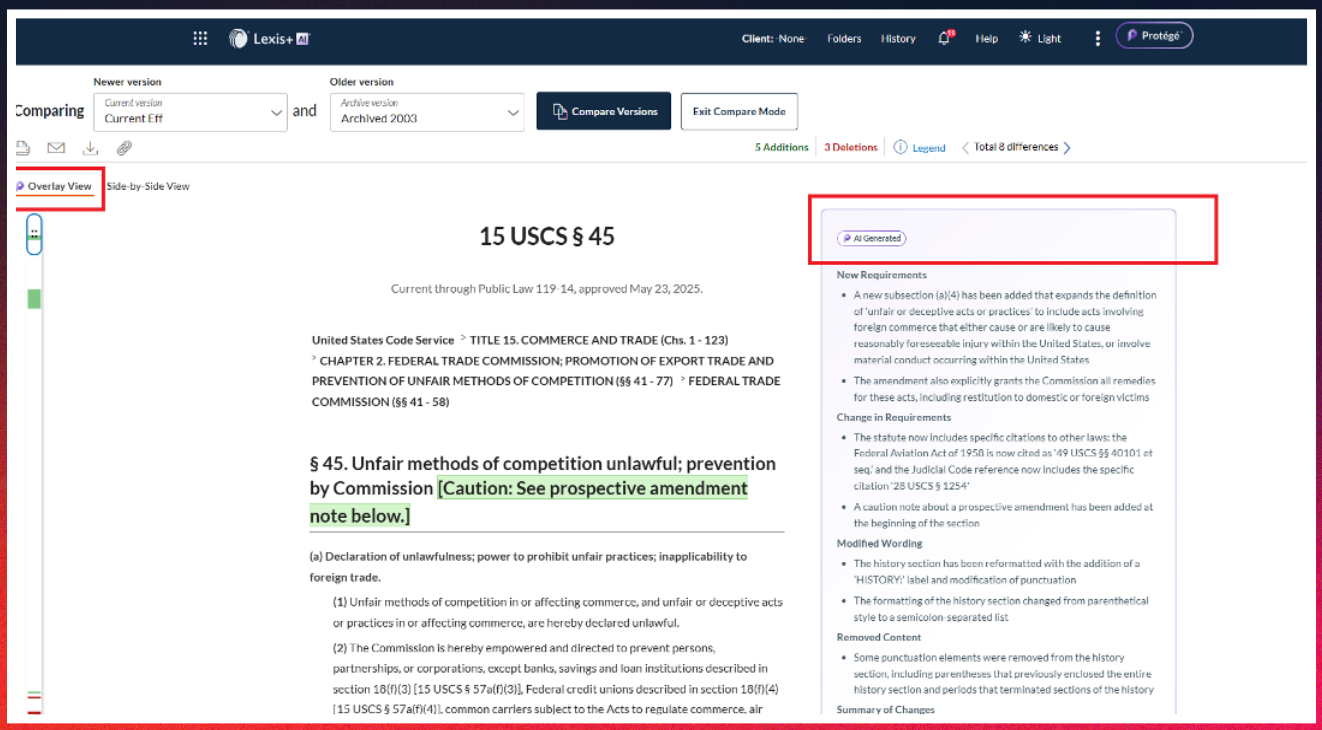
By Marisa Beirne

US Courts end users who have Protégé™ enabled on their IDs will also benefit from new enhancements within Lexis+ AI™. See below for two of those enhancements that will make your legal research easier and more efficient.

1. Lexis+ AI™ Generated Code Compare Summaries

These concise summaries will provide end users with the differences between the compared statutes, addressing a key user need for quick and insightful analysis.
Traditionally, users would see the redlined differences between the different versions of the statute. However, the process of summarizing and analyzing these changes was manual and time-consuming. **With the introduction of AI-generated summaries, users can now quickly and easily gain greater insight into the key changes between documents.**

These summaries are currently only available for statutes. This feature will expand to administrative code, legislation, and court rules in the future. When you utilize Code Compare, make sure you are in Overlay View (as shown below) to view the AI generated Code Compare Summary.



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AI Generated

New Requirements

- A new subsection (a)(4) has been added that expands the definition of 'unfair or deceptive acts or practices' to include acts involving foreign commerce that either cause or are likely to cause reasonably foreseeable injury within the United States, or involve material conduct occurring within the United States
- The amendment also explicitly grants the Commission all remedies for these acts, including restitution to domestic or foreign victims

Change in Requirements

- The statute now includes specific citations to other laws: the Federal Aviation Act of 1958 is now cited as '49 USCS §§ 40101 et seq.' and the Judicial Code reference now includes the specific citation '28 USCS § 1254'
- A caution note about a prospective amendment has been added at the beginning of the section

Modified Wording

- The history section has been reformatted with the addition of a 'HISTORY:' label and modification of punctuation
- The formatting of the history section changed from parenthetical style to a semicolon-separated list

Removed Content

- Some punctuation elements were removed from the history section, including parentheses that previously enclosed the entire history section and periods that terminated sections of the history

Summary of Changes

- The statute has been substantively expanded to include a new subsection (a)(4) that extends the FTC's jurisdiction over unfair or deceptive acts or practices to foreign commerce when such acts cause foreseeable injury in the U.S. or involve material conduct within the U.S., explicitly authorizing remedies including restitution to domestic or foreign victims
- Technical amendments include adding specific statutory citations to referenced laws and reformatting the history section with updated punctuation and the addition of the December 22, 2006 amendment

AI-generated content should be reviewed for accuracy.

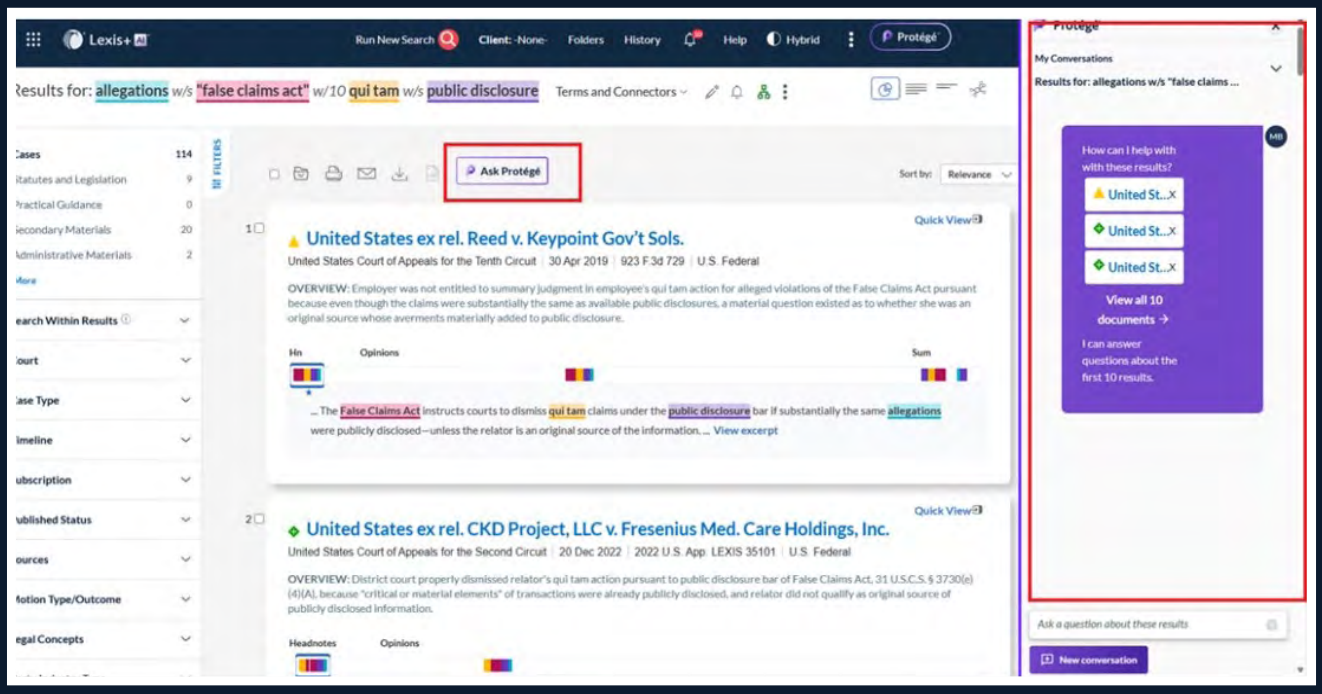
Copy

2. ASK Protégé™ within Lexis+

The **"Ask Protégé"** feature is now available for case results in the Legal Research experience. This allows users to seamlessly integrate AI into their traditional legal research workflow by enabling them to ask contextual questions about their case search results on individual cases. By bridging the gap between conventional research methods and AI, users can now save time and gain deeper insights, enhancing their overall research efficiency.

When you run a Boolean or natural language search in Legal Research, you will see the Ask Protégé button at the top. Next, click on Ask Protégé and a Protégé panel will appear to the right. It will include the **Top 10 results** from your search. End users can enter a prompt to ask a legal question against those 10 cases or they can also select individual cases (up to 10) to use Ask Protégé instead of just the top 10 results.

This is a huge enhancement for end users as it streamlines their workflow and allows them to use Protégé right within their traditional legal research workflow. This makes it easier to get their direct legal question answered.

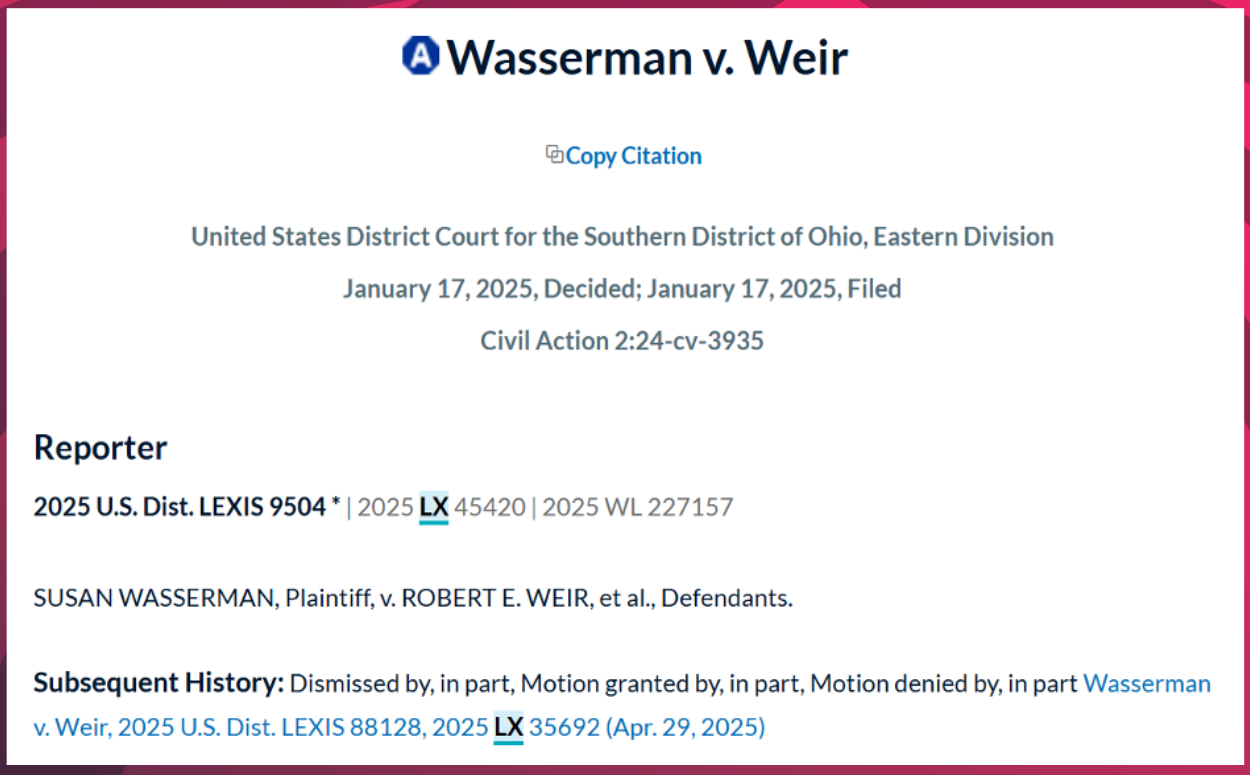


As a reminder, both of the above enhancements will only be seen by end users who have Protégé enabled on their IDs. If you have any Protégé or LexisNexis product questions, do not hesitate to reach out to your Dedicated Practice Area Consultant, Marisa Beirne (*Marisa.Beirne@lexisnexis.com*).

LexisNexis® has started rolling out new short form citations. This change will affect only the LexisNexis citation, not the official or any other parallel citations. It will streamline legal referencing and address user concerns about lengthy citations.

Here are the details you need to know:

- The new shortened form will not replace our longer citations but rather can be used interchangeably. We have worked with the Blue Book editorial team to ensure that the two Lexis formats are included as valid formats when citing to Lexis cases. Here is an example of a citation string including both cites. Note that the new short form includes the year, the LX designation, and a string of numbers denoting the case:
- 658 F. Supp. 3d 604 | 2023 U.S. Dist. LEXIS 32890 | 2023 LX 21359
- New cases will receive the new short form automatically. Existing cases will receive the new form retroactively on a rolling base. This process started in April and should conclude in Q2 2025.
- This change affects how cases are cited within Reporter and History sections at the top of a case. Existing citations found in the full text of a decision will not be changed retroactively. New decisions released after this rollout will display the form of the citation used by the court. See below for a screenshot example of the citation locations.
- Copy With Cite currently uses the long form of the LexisNexis citation. Users will have the option to choose their preferred long or short form later in Q2 2025, in those situations where the Lexis cite is the primary one.



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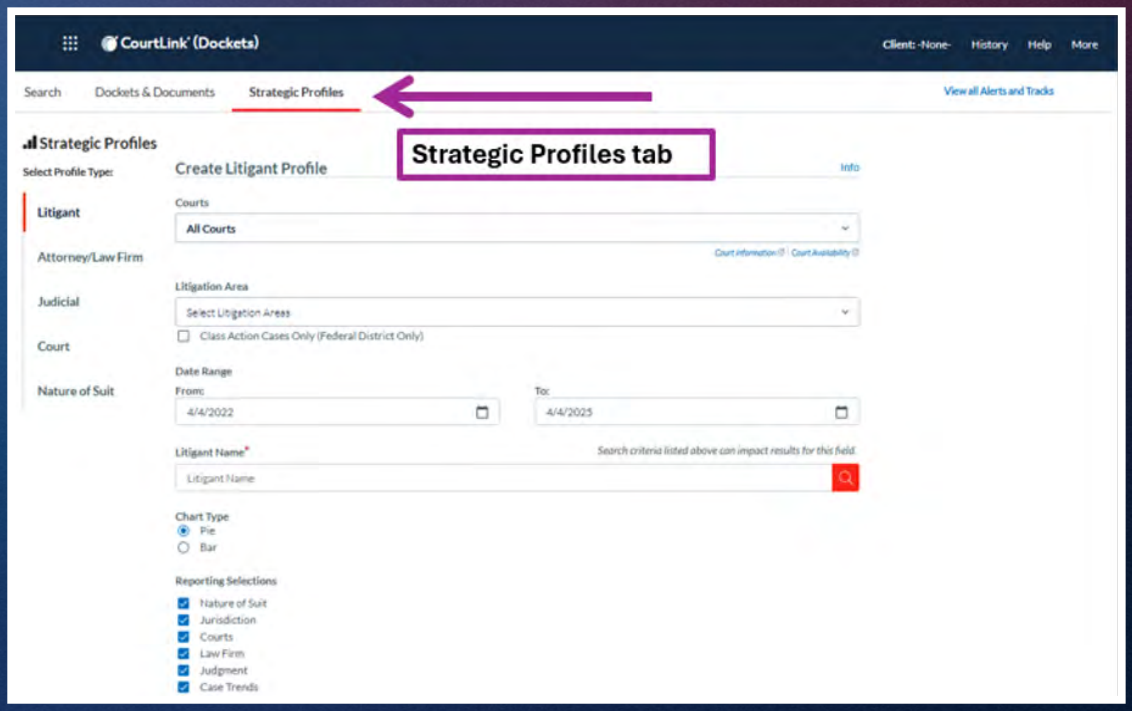

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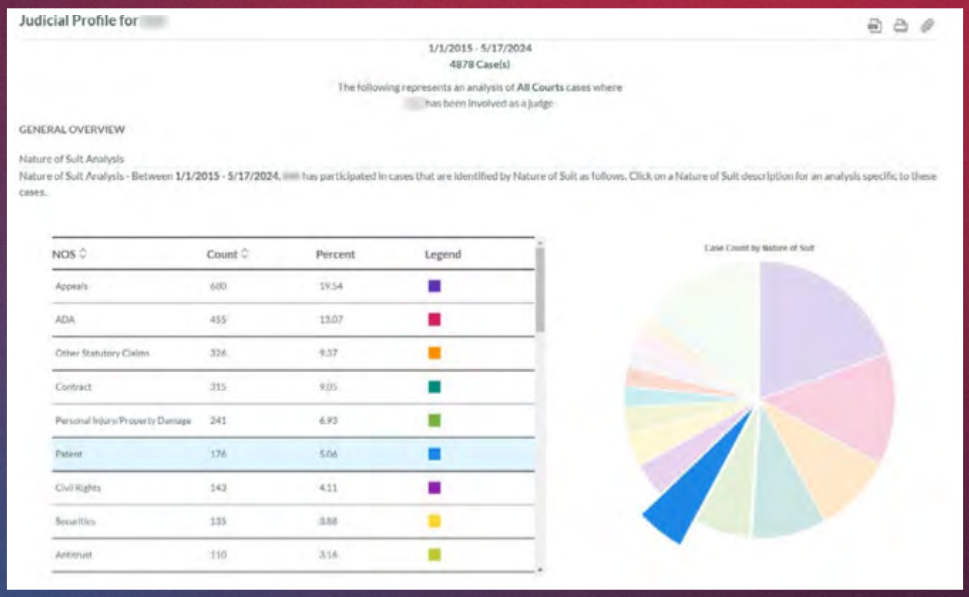
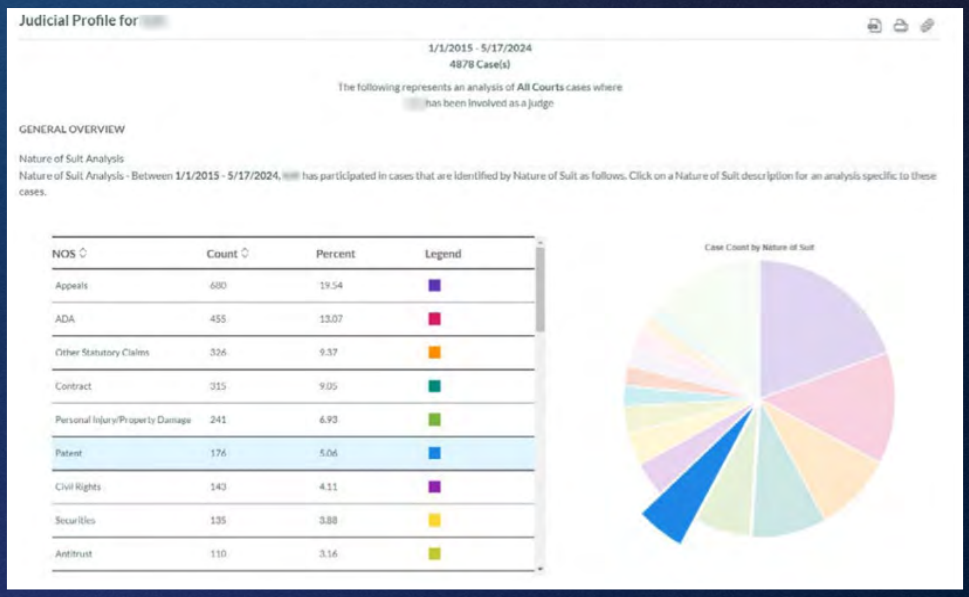
Strategic Profiles compiles all the available civil docket information on a persona, such as a judge, law firm, attorney, or Court. The screenshot below shows an example of an Attorney Strategic Profile. See a sampling of an attorney's experience in a specific nature of suit or in front of a particular judge. View associated dockets to see patterns in legal tactics employed and to identify case resolution history.



Similarly, CourtLink can pull Judicial Strategic Profiles. Uncover a Judge's experience in a case type, drill down into attorneys who have argued the case type in front of the Judge in the past. Additionally, you can view dockets and order motions, pleadings, etc. to see the legal tactics the judge found compelling. You can even pull all of the dockets a particular Judge has presided over and view that Judge's appeal history.



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DEFAULT JUDGMENT

Relief Demanded

AirDoctor, LLC v. Xiamen Qichuang Trade Co.

134 F.4th 552, 2025 U.S. App. LEXIS 8612 (9th Cir. Apr. 11, 2025) (per curiam)

The Ninth Circuit holds that Civil Rule 54(c) does not prohibit awarding actual damages in a default judgment to a plaintiff that did not include a specific amount sought as damages in its complaint, but instead claimed damages in an amount to be determined at trial.

Facts and Procedural Background. The plaintiff sued the defendant in the Central District of California, alleging false advertising under the Lanham Act and asserting related claims under state law. The complaint sought an injunction against the illegal conduct, attorney's fees and costs, and "actual, compensatory, consequential, statutory, special, and/or punitive damages in an amount to be proven at trial." Notably, however, no specific dollar figure was stated as to any of those categories of damages. The defendant never appeared in the action, so the plaintiff moved for a default judgment, requesting both the injunction and an award of actual damages of approximately $2.5 million. The district court entered a default judgment that awarded injunctive relief, but the court denied any damages because the complaint had not quantified the damages sought. The plaintiff appealed to the Ninth Circuit.

Relief Sought and Available. A pleading containing a claim for relief must contain three elements: (1) a short and plain statement of the grounds for the court's jurisdiction; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief [Fed. R. Civ. P. 8(a)]. As to the final element, nothing in federal law requires the pleader to quantify any claim for damages. Moreover, if the pleader voluntarily includes a quantification, it is not binding, because a federal court should grant whatever relief to which the pleader proves to be entitled, even if not demanded in the pleadings [Fed. R. Civ. P. 54(c)]. But Civil Rule 54(c) provides one notable exception to this rule: a default judgment may not "differ in kind from, or exceed in amount, what is demanded in the pleadings" [Fed. R. Civ. P. 54(c)]. This exception was the basis of the district court's decision denying damages, the court reasoning that the recovery of any damages would "exceed in amount" what the plaintiff demanded in the complaint. In essence, the court treated the plaintiff's complaint as equivalent to a request for $0 in damages, so that amount limited the relief available in a default judgment. The issue for the Ninth Circuit was whether that equivalence was proper.

De Novo Review. The Ninth Circuit first noted that because this case turned on the interpretation of the federal rules, its review of the district court's decision was de novo.

Ninth Circuit Precedent. The Ninth Circuit then noted that it had addressed the application of Rule 54(c) in prior published opinions. In the first case, the complaint was expressly limited to liquidated damages, so when the plaintiff later sought actual damages in a default judgment, the court agreed that they were barred under the rule because recovery of a separate category of damages would make the judgment different "in kind" from that sought in the complaint [Fong v. United States, 300 F.2d 400, 412–414 (9th Cir. 1962)]. But that precedent was plainly inapplicable to the instant case, because both the complaint and the motion for a default judgment sought actual damages, so there was no difference "in kind" to address.

In the second case, the complaint sought a stated amount of actual damages of $71,243.68, but it also included language demanding "additional amounts not yet fully determined . . . to be proved at trial." When the district

court entered a default judgment in excess of the stated amount, the Ninth Circuit affirmed. Pointing to the "additional amounts" language of the complaint, the court rejected the defendant's argument that the $71,243.68 figure capped the amount that could be awarded in a default judgment [Henry v. Sneiders, 490 F.2d 315, 317 (9th Cir. 1974)].

The Ninth Circuit then noted that the latter case "instructs that Rule 54(c) presents no bar to awarding actual damages in a default judgment where the complaint sought those damages in an amount to be proven at trial." The only question to be answered was whether there was any meaningful distinction between a complaint that specifies an amount of actual damages and one that omits a quantification, when the damages are ultimately to be proved at trial. The Ninth Circuit concluded that was a distinction without a difference, noting that this approach had already been adopted by the Seventh Circuit [see Appleton Elec. Co. v. Graves Truck Line, Inc., 635 F.2d 603, 610–612 (7th Cir. 1980) (because complaint requested damages in unstated amount, it contained no damage ceiling for purposes of Fed. R. Civ. P. 54(c))]. The Ninth Circuit declined to create a split of authority on the issue.

Disposition. The Ninth Circuit vacated the decision of the district court and remanded for further proceedings consistent with its opinion. It also noted that whether the plaintiff had offered adequate proof of damages or any other form of monetary relief was an issue to be addressed on remand.

ERIE DOCTRINE

Certification of Question to State Court

Del Rio v. Amazon.com.dedc, LLC

132 F.4th 172, 2025 U.S. App. LEXIS 6166 (2d Cir. Mar. 17, 2025)

The Second Circuit has held that unresolved questions of state wage laws required certification of a question to the state's highest court before a federal court could decide whether those laws required that warehouse employees be compensated for time spent going through mandatory security screenings.

Background. IJavier Del Rio, Colin Meunier, and Aaron Delaroche, former Amazon warehouse employees in Connecticut, filed a class action in state court against Amazon for alleged violations of state wage laws for failing to compensate the employees for time they spent undergoing mandatory security screenings while they were at work. Amazon removed the case to the U.S. District Court for the District of Connecticut.

Amazon moved for summary judgment and argued that its employees' time spent undergoing mandatory security screenings was not compensable under the Supreme Court's 2014 decision in Integrity Staffing Sols., Inc. v. Busk. In Busk, the Court held that similar security screenings required of Amazon warehouse employees provided by an independent employer were noncompensable postliminary activities under the federal Fair Labor Standards Act [see Integrity Staffing Sols., Inc. v. Busk, 574 U.S. 27, 135 S. Ct. 513, 190 L. Ed. 2d 410 (2014)].

The district court granted summary judgment for Amazon, and the employees appealed. While the appeal was pending, the employees filed a motion to certify to the Connecticut Supreme Court the question whether time spent in an employer's mandatory security screenings was compensable under Connecticut wage laws. A motions panel of the Second Circuit referred the motion to the merits panel deciding the employees' appeal.

The Second Circuit acknowledged that at the core of the dispute was the question whether Connecticut wage laws and regulations require employees to be compensated for the time spent going through mandatory security screenings at their place of employment. The court also found that this was an unsettled question of Connecticut law that warranted certification to the Connecticut Supreme Court instead of predicting for itself how the state's highest court would resolve the state-law question.

Certification Is Discretionary and Exceptional. The court reviewed the standards for exercising its discretionary authority to certify a state-law question to the state's highest court. It also noted that certification is an "exceptional procedure" to which it will resort "only in appropriate circumstances" and only when state law permits it.

Traditional Factors. The Second Circuit traditionally considers three factors when deciding whether to certify a question of state law: (1) whether a state-court decision has provided an authoritative answer, (2) whether the question implicates the weighing of policy concerns of particular importance, and (3) whether an answer from the state's highest court will be determinative of the appeal.

Lack of Authoritative Answer. The Second Circuit acknowledged several instructive Connecticut appellate court decisions, the plain meaning of the definition of "hours worked," the legislative history of Connecticut's overtime statutes, and federal law that is sometimes considered in state-court decisions and sometimes not. However,

it could cite no Connecticut state-court decision providing an authoritative answer to the state-law question at issue. Thus, the court concluded that it was without "either clear authority to decide the issue before it or sufficient information to make a prediction as to how Connecticut's courts would decide."

Policy Concerns. The court cited three policy concerns to support its decision to employ certification. First, the court noted the far-reaching implications that its decision could have on pending cases in the district that also hinged on the interpretation of "hours worked" as defined under Connecticut's wage laws—one of which was stayed pending the court's decision in this case.

Second, the court noted the potential that its decision could encroach on the province of the Connecticut legislature if it were to decide that time spent in mandatory security screenings is not compensable even though it may satisfy the definition of "hours worked."

Finally, noting the split in post-Busk state-court decisions deciding whether time spent undergoing mandatory security screenings is compensable under state law, the Second Circuit concluded that if it were to decide the case without guidance from the Connecticut Supreme Court, this would deprive the state's highest court of the unique opportunity to assess the applicability of federal law in light of its own state laws. Because such a decision could "effectively place Connecticut on a side of the split that its legislature may not have intended it to be on," the court found that these policy concerns favored certification.

Answer Would Control Outcome. If the Connecticut Supreme Court decides that the Connecticut legislature intended for its wage laws to emulate federal law, then the Second Circuit would affirm the district court. But if the Connecticut Supreme Court decides that Connecticut's wage laws require that employees be paid for undergoing mandatory security screenings, then the Second Circuit would determine the outcome of this appeal differently. Thus, it was undisputed that the Connecticut Supreme Court's answer would determine the outcome of the appeal.

Because the employees' testimony reflected a range of different amounts of time spent undergoing the mandatory security screenings, ranging from ten seconds to ten minutes, the Second Circuit found that it would also be helpful to understand if the Connecticut Supreme Court would apply a de minimis exception in the context of time spent in mandatory security screenings, and the parameters of any such exception. Therefore, the court concluded that because its decision on the merits in this case depended entirely upon the Connecticut Supreme Court's response to its certified questions, the third factor for certification also favored certification.

Conclusion. The Second Circuit reserved its decision and certified two questions to the Connecticut Supreme Court:

- Whether under Connecticut's wage laws and regulations, employees must be compensated for the time spent going through mandatory security screenings at their place of employment?
- Whether a de minimis exception applies, and if so, what amount of time is considered de minimis?

REMOVAL

Review of Remand Order

Fu Jing Wu v. Chun Liu

131 F.4th 1295, 2025 U.S. App. LEXIS 6437 (11th Cir. Mar. 19, 2025)

The Eleventh Circuit holds that the Federal Arbitration Act does not give it jurisdiction to review an order denying a motion to compel arbitration if the order also remands the action to state court for lack of subject-matter jurisdiction.

Background. JFu Jing Wu and his business partner sought to convert a government building into a mixed-use building with condominiums and a hotel. They pitched their vision to investors who were Chinese nationals hoping to immigrate to the United States. The investors sought to use the EB-5 visa program to establish permanent residency, which requires them to invest $500,000 or $1,000,000 in a commercial enterprise that creates at least 10 full-time qualifying jobs.

After receiving the approval of Immigration Services, Wu and his partner began their promotion tour. To fund the project, investors like Chun Liu paid $500,000 in capital plus $50,000 in administrative and legal fees in exchange for one membership unit and interest in a building funding entity founded by Wu. A purchase agreement with an arbitration clause provided the terms of the offering.

Liu claimed that he and others sank approximately $72 million into the project, and that most of the funds never found their way into the project. Instead, Wu and his partner allegedly diverted tens of millions of dollars over several years into "a web of offshore entities and personal bank accounts." From 2013 to 2017, Wu "offered Chinese investors a path to American residency with one hand and looted their investments with the other."

In 2019 the scheme unraveled. The building still stood as vacant and unimproved as it had been in 2013, and the project created few jobs.

In 2020, Liu filed suit in a Florida court against Wu and the building funding entity for breach of fiduciary duty and equitable relief. The state court appointed a receiver for the funding entity, and the receiver commenced an ancillary action against Wu, his partner, and their companies.

Wu settled with the receiver in 2022, agreeing to transfer various properties to the receiver. In exchange, Wu would receive up to $5 million from the properties' sale, with the rest of the proceeds returned to investors.

Angered that Wu would benefit from his alleged fraud and that investors would likely recover less than the value of their investment, Liu filed a class action in a Florida court, alleging fraud, violations of the Florida Securities and Investor Protection Act, and violations of the Florida RICO Act. Liu also asked the court for a prejudgment writ of attachment on Wu's settlement funds.

At first, Wu contented himself with litigating in the state court. He filed responses to Liu's emergency motion, moved for a protective order, filed objections to discovery requests, filed discovery requests of his own, and scheduled depositions.

Wu invoked the purchase agreement and its arbitration clause, which applied to any dispute, controversy, or claim arising out of or relating to the agreement, and moved to compel arbitration. Liu argued that, under Florida

law, Wu had waived his contractual right to arbitrate by actively participating in the lawsuit and taking actions inconsistent with that right.

On the same day that Liu responded to the motion to compel arbitration in state court, Wu filed a notice of removal that also moved to compel arbitration and sought a stay in the district court. Wu asserted that removal jurisdiction was based on section 205 of the Federal Arbitration Act (FAA), which empowers district courts to hear a suit removed from state court that relates to an arbitration agreement falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [see 9 U.S.C. § 205]. His motion to compel arbitration asserted that the purchase agreement qualified as a "written agreement" within the meaning of the Convention.

Liu moved to remand.

In a single order, the district court denied the motion to compel arbitration and remanded the action to state court. It ruled that Wu failed to meet the jurisdictional prerequisites for the arbitration agreement to fall under the Convention, finding that Wu was not a signatory to the purchase agreement. The district court further ruled that Wu failed to provide any additional basis for jurisdiction.

Section 1447(d) Bars Appellate Review of Remand and Denial of Motion to Compel Arbitration. The Eleventh Circuit noted that under 28 U.S.C. § 1447(d), remand orders are generally unreviewable on appeal. This bar applies equally to suits removed under the general removal statute and those removed under other provisions.

The court further noted that § 1447(d) established a policy that favored resolution in state courts over prolonged litigation of questions of jurisdiction in federal courts. The policy comes at a cost, as the court of appeals cannot review remand orders premised on a lack of subject-matter jurisdiction or procedural defect even when there is clearly legal error.

The Eleventh Circuit observed that under the FAA, federal courts possess original subject-matter jurisdiction over actions arising under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. When a plaintiff files an action in state court that relates to an arbitration agreement or award falling under the Convention, the defendant may remove the action to federal district court. The district court may then enter an order to compel arbitration [9 U.S.C. §§ 205, 206].

The court noted that there is a tension between the FAA's provision for appealing a denial of a motion to compel arbitration and § 1447(d)'s preclusion of jurisdiction to review a remand order, at least when the remand order includes a denial of a motion to compel arbitration. The FAA provides, in 9 U.S.C. § 16(a)(1)(C), that if the district court denies the motion to compel arbitration, the defendant may appeal the denial to the court of appeals. But the Eleventh Circuit emphasized that § 16(a)(1)(C) applies to denials of motions to compel arbitration filed in federal district court as an original matter. Moreover, the FAA provides, in 9 U.S.C. § 205, that the procedure for removal of causes "otherwise provided by law" shall apply to suits removed from state court.

The Eleventh Circuit noted that Congress always expressly states when it intends to make § 1447(d) inapplicable to new grounds for removal. The court gave the Federal Deposit Insurance Corporation as one example [see 12 U.S.C. § 1819(b)(2)(C) ("The Corporation may appeal any order of remand entered by any United States district court")], and § 1447(d) itself as another example [see 28 U.S.C. § 1447(d) (excepting orders remanding cases removed pursuant to 28 U.S.C. §§ 1442 (federal officer removal), 1443 (removal of civil rights cases))].

However, § 205 has no such clear statutory command, and if Congress "had wanted section 205 to operate outside of section 1447(d), it would have said so expressly." To underscore this conclusion, the court noted that the FAA expressly excepts removal petitions filed under § 205 from the requirement that a federal question must be presented on the face of the complaint, and instead provides that the ground for removal may be shown in the petition for removal [see 9 U.S.C. § 205].

The Eleventh Circuit concluded that § 16(a)(1)(C) does not except from § 1447(d) orders that both deny a motion to compel arbitration and remand the suit for lack of jurisdiction. Such a reading renders the two statutes as compatible, not contradictory, as it honors the grant of appellate jurisdiction for denials of motions to compel arbitration filed in district courts as an original matter, and also pays heed to the FAA's direction that removal procedures otherwise provided by law shall apply.

To reinforce its holding, the court cited the Fifth Circuit, which concluded that review of remand orders under section 16 would "circumvent section 1447(d) by affording review of remand orders issued in nearly every case removed under section 205," and § 205 expressly forecloses such a result by "expressly invoking the procedure for removal of causes otherwise provided by law" [see Dahiya v. Talmidge Int'l, Ltd. 371 F.3d 207, 210 (5th Cir. 2004)].

The Eleventh Circuit rejected Wu's argument that the "matter-of-substantive-law exception" allowed review of the district court's order. The exception allows a court of appeal to review a remand when the remand determines the substantive issues of the case and is unreviewable by the state court. The court emphasized that the exception does not apply to remands based on district courts' jurisdictional findings, as such findings have no conclusive effect on state-court actions. In the instant case, the district court conducted its arbitration analysis as an assessment of jurisdictional prerequisites, and therefore its conclusion that Wu could not enforce the arbitration clause was a federal jurisdictional finding that had no effect on the state action.

The court next rejected Wu's assertion that the Waco exception gives the court appellate jurisdiction to review the district court's order. The exception applies when a district court does something in addition to the remand, such as a dismissal of a claim or a party, and the order "changes the contours of the state-court action after remand in a way that could not be reviewed on appeal in state court" [see Waco v. U.S. Fid. & Guar. Co., 293 U.S. 140, 142–143, 55 S. Ct. 6, 79 L. Ed. 244 (1934)]. The Eleventh Circuit concluded that this exception would not supply jurisdiction even if the court were to cast the denial of the motion to compel arbitration as a separate order. Collateral estoppel would not bar the state court from revisiting the arbitration question, both because state courts could reconsider jurisdictional findings and because § 1447(d) prevented Wu from appealing the district court's decision. At most, the remand order had preclusive potential only for the issue of removal jurisdiction.

The Eleventh Circuit concluded that it could not "disaggregate" the district court's refusal to compel arbitration from its remand, because the substantive issue was intrinsic to its decision to remand for lack of subject-matter jurisdiction. On remand, the state court remained free to reject the ruling by the district court that Wu could not enforce the arbitration agreement.

Finally, the court rejected Wu's contention that the order was based on a forum-selection clause, not lack of subject-matter jurisdiction. "Although we have jurisdiction to review some remand orders that turn on forum-selection clauses, we lack jurisdiction to review those orders where enforceability of the clause serves as a predicate for our subject-matter jurisdiction. This appeal falls into the latter category."