UIC Law Review

Volume 22 | Issue 2 Article 7

Winter 1988

Carnegie-Mellon University v. Cohill: The United States Supreme Court Upholds the Authority of Federal Courts to Remand Properly Removed Pendent Jurisdiction Claims, 22 J. Marshall L. Rev. 389 (1988)

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CASENOTES

*CARNEGIE-MELLON UNIVERSITY v. COHILL**: THE UNITED STATES SUPREME COURT UPHOLDS THE AUTHORITY OF FEDERAL COURTS TO REMAND PROPERLY REMOVED PENDENT JURISDICTION CLAIMS

Over the last twenty-five years, the United States Supreme Court has attempted to clarify the scope of pendent jurisdiction.[1]

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* 108 S. Ct. 614 (1988).

1. Judge Learned Hand first coined the term "pendent jurisdiction" in Pure Oil Co. v. Purtain Oil Co., 127 F.2d 6, 7 (1942) (plaintiff joined a state unfair competition law claim and a federal trademark infringement claim). *See* Note, *Unraveling The "Pendent Party" Controversy: a Revisionist Approach to Pendent and Ancillary Jurisdiction*, 64 B.U.L. REV. 895, 898, n. 10 (1985) [hereinafter, Note, *Pendent Party*] (brief history of pendent jurisdiction). Pendent jurisdiction is a discretionary matter where court may allow the assertion of a non-federal claim for which no independent jurisdictional ground exists along with a recognized federal claim between the same parties who are properly before the court, provided the relationship between the federal and state claims permit both of them to comprise a single constitutional case. 3A J. MOORE, MOORE'S FEDERAL PRACTICE ¶ 18.07 at 18-35, 18-36 (1987) (listing the elements of pendent jurisdiction); 13 C. WRIGHT, A MILLER, & E. COPPER, FEDERAL PRACTICE AND PROCEDURE §§ 3567, 3567.2 (1975) [hereinafter WRIGHT & MILLER] (defining pendent jurisdiction). Distilled down, pendent jurisdiction arises when a federal district court allows a non federal claim to be adjudicated with a federal claim. *See, e.g*, Comment, *Ensuring Access to Federal Courts: A Revised Rationale for Pendent Jurisdiction*, 75 NW. U.L REV. 245, 245 (1980) (suggests a definition of pendent jurisdiction).

The corollary to pendent jurisdiction is ancillary jurisdiction. Ancillary jurisdiction is not directly addressed in this note; however, there are authors who feel that ancillary and pendent jurisdiction are one in the same, and refer to them as incidental jurisdiction. *See, e.g.*, Note, *Pendent Party, supra* at 899 (Supreme Court has refused to distinguish between pendent and ancillary jurisdiction); Note, *A Closer Look at Pendent and Ancillary Jurisdiction: Toward a Theory of Incidental Jurisdiction*, 95 HARV. L. REV. 1935 (1982) (suggests that pendent and ancillary jurisdiction have become one); Note, *Developing a Unified Approach to Pendent and Ancillary Jurisdiction: A Merger Made in Heaven*, 11 VT. L. REV. 505 (1986) [hereinafter Note, *Unified Approach*] (proposes that doctrines of pendent and ancillary jurisdiction have merged). For those who wish to distinguish the two, the plaintiff usually asserts pendent jurisdiction prior to trial, while ancillary jurisdiction may arise any time after the plaintiff has filed the complaint. *See, e.g.*, Miller, *Ancillary and Pendent Jurisdiction*, 26 S. TEX. L.J. 1 (1985) [hereinafter Miller, *Jurisdiction*] (provides a basis for delineating between pendent and ancillary jurisdiction); 13 WRIGHT & MILLER,

The modern doctrine of pendent jurisdiction[2] grants the federal court, when sitting in federal question jurisdiction,[3] broad discretionary power over whether or not to adjudicate state law claims[4] that are incidental[5] to the federal claims.[6] In *Carnegie-Mellon Uni-*

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supra at § 3567 (separates pendent and ancillary jurisdiction).

2. The Supreme Court's decision in Osburn v. Bank of the United States, 22 U.S. (9 Wheat.) 738 (1824), gave birth to the doctrine of pendent jurisdiction. Chief Justice Marshall, writing for the majority, held that when a state law claim is an ingredient of the original federal cause of action the federal courts have jurisdiction of that cause, despite the other questions of fact or of law that might be involved. *Id.* at 823. In Hurn v. Oursler, 289 U.S. 238 (1933), the Court held that federal courts should adjudicate state and federal claims together when they comprise a single cause of action. The *Hurn Court* relied on the doctrine of *res judicata* and the doctrine's fundamental policies of judicial economy and fairness to the parties. *Id.*

The Supreme Court reexamined the *Hurn* single cause of action test in United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966), where it held that the *Hurn* test was "unnecessarily grudging." *Id.* at 725. The *Gibbs* Court found the judicial power for pendent jurisdiction in U.S. CONST. art. III, § 2, and reasoned that when a state and federal claim are so closely related, they comprise one constitutional case. *Id.* The Court then set forth a two tier test. First, the federal claim must confer subject matter jurisdiction and second the "claim must derive from a common nucleus of operative fact." *Id.* The *Gibbs* Court further noted that "pendent jurisdiction is a doctrine of discretion, not of plaintiff's right." *Id.* For a more detailed discussion of the history of pendent jurisdiction, *see generally* Miller, *Jurisdictions*, *supra* note 1, at 2-5; Note, *Aldinger v. Howard: At the Crossroads of Pendent Party Jurisdiction and Section 1983 Limits on Suable "Persons"*, 11 J. MARSHALL J. PRAC. & PROC. 231, 239-41 (1977) (discussion of the synthesis of pendent jurisdiction); Note, Aldinger v. Howard, *Title VII and Pendent Jurisdiction: Has the Tail Been Cut From the Dog?* 63 U. DET. L. REV. 723, 725-27 (1986) (detailed history of pendent jurisdiction); Note, *Unified Approach*, *supra* note 1 at 510-12 (historical development of pendent jurisdiction).

3. Federal courts have original jurisdiction over "[c]ases, in law and equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under this authority." U.S. CONST. art. III, § 2. Federal questions are causes of action that pertain to the Constitution, laws or treaties of the United States. *See* 23 WRIGHT & MILLER, *supra* note 1, § 3561 (detailed discussion of federal question jurisdiction statute and quoting 28 U.S.C. § 1331 (1982)).

4. The Supreme Court developed the doctrine of abstention to help federal courts avoid unnecessary constitutional decisions. Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941). Currently, the Supreme Court recognizes four abstention doctrines. For a detailed explanation of the four abstention doctrines see Note, *Pullman Abstention: Reconsidering The Boundaries*, 59 TEMP. L.Q. 1243, 1246-49 (1986). The four abstention doctrines developed as a result of the following Supreme Court cases: 1) *Pullman*, 312 U.S. 496 (allows a federal court to postpone jurisdiction while awaiting a state ruling on unclear state law); 2) Buford v. Sun Oil Co., 319 U.S. 315 (1943) (allows a federal court to abandon jurisdiction when a difficult question of state law bearing on an important state policy is involved); 3) Younger v. Harris, 401 U.S. 37 (1971) (federal court should not enjoin a state criminal prosecution); 4) Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) (allows a federal court to dismiss a case when there is a concurrent state proceeding). For a detailed discussion of the *Pullman* and *Buford* abstention doctrines see Davies, *Pullman and Buford Abstention: Clarifying the Roles of State and Federal Courts in Constitutional Cases*, 20 U.C. DAVIS L. REV. 1 (1986).

5. One commentator has referred to pendent jurisdiction as "tag-along jurisdiction," meaning the ability of the federal court to adjudicate state law claims as part of the entire case despite lacking the independent authority to hear the state law claim alone. Shaprio, *Jurisdiction and Discretion*, 60 N.Y.U.L. REV. 543, 560 (1985).

6. Federal questions, however, must be substantial. *See* 13 WRIGHT & MILLER,

versity v. Cohill,[7] the Supreme Court addressed the issue of whether a federal court, under pendent jurisdiction,[8] can remand state law claims to state court if the basis for federal jurisdiction has been eliminated.[9] The Court held that the power to remand or dismiss a pendent state law claim is an appropriate component of the overall discretionary authority vested in a federal court.[10] In so holding, the Court expanded the options available to a federal court for dealing with pendent state law claims once its basis for jurisdiction has been extinguished.[11]

In September 1983, Carnegie-Mellon University[12] ("University") discharged one of its employees,[13] William Boyle.[14] Boyle alleged that the University had unfairly terminated[15] him and filed a four count complaint against the University.[16] The complaint, filed

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supra note 1, at § 3564. The Supreme Court has defined insubstantial questions as those claims that are "obviously without merit" and "essentially fictitious." *See, e.g.*, Hagans v. Lavine, 415 U.S. 528, 537 (1974) (discusses the development of the terms "obviously without merit" and "essentially fictitious").

7. 108 S. Ct. 614 (1988).

8. Congress has explicitly provided for pendent jurisdiction in cases involving "unfair competition when joined with a substantial and related claim under copyright, patent, plant variety protection, or trade-mark laws." 28 U.S.C. § 1338(b) (1982).

9. In *Carnegie-Mellon*, the plaintiffs allegedly realized after discovery that their federal cause of action was not valid and moved to amend their complaint. *Carnegie-Mellon*, 108 S. Ct. at 616. Additionally, the plaintiff's attorney stated he sought a remand to state court because the state court's docket was very crowded, and that this delay would enhance the likelihood of the defendants settling the claim earlier. *Id.* at 623 (White, J., dissenting).

10. *Carnegie-Mellon*, 108 S. Ct. at 622. For an interesting discussion and history of the scope of federal courts' discretionary power, see Shaprio, *Jurisdiction and Discretion*, *supra* note 5, at 574-88.

11. Several circuit courts have held that a federal district court must dismiss the pendent state law claims once the district court's basis for federal jurisdiction has been eliminated. For a discussion of these cases, see *infra* note 32.

12. Carnegie-Mellon University is a corporation with its principal place of business in Pennsylvania. Brief for Plaintiff at 17, Carnegie-Mellon v. Cohill, 108 S. Ct. 614 (1988) (No. 86-1021).

13. William Boyle, at the time of his discharge, was a Pennsylvania resident. *Id.* The University had employed Boyle from June 1967 to September 1983. *Id.*

14. William Boyle alleged that the University's discharge was in violation of a contractual obligation. *Id.* As a general rule, employment contracts are terminable at will. Numerous jurisdictions, however, have adopted exceptions. *See* Note, *Herbster v. North American Company For Life And Health: Attorney's Retaliatory Discharge Action Unjustly Dismissed*, 21 J. MARSHALL L. REV. 215 (1987) (discussing recent developments in the common law tort of retaliatory discharge). Interestingly, Pennsylvania is one of the jurisdictions that has adopted an exception to the employment at will doctrine. *Id.* at 215 n.3.

15. Carrie Boyle was a resident of Pennsylvania and was married to William Boyle at the time of his discharge. Brief for Plaintiff at 17, Carnegie-Mellon v. Cohill, 108 S. Ct. 614 (1988) (No. 86-1021). She sought damages for loss of consortium, companionship, and her husband's household services. *Carnegie-Mellon*, 108 S. Ct. at 616.

16. The complaint also included John Kordesich as a defendant. *Carnegie-Mellon*, 108 S. Ct. at 616. The University employed John Kordesich as William Boyle's

in a Pennsylvania state court,[17] alleged numerous state law causes of action.[18] In addition, the complaint alleged a violation of the federal Age Discrimination in Employment Act.[19]

Based on the federal cause of action,[20] the University removed[21] the case to federal district court[22] pursuant to the federal removal statute.[23] After months of pretrial preparations,[24] Chief Judge Cohill allowed the Boyles to amend their complaint to eliminate their federal law claim, and granted their motion to remand the case to the state court.[25] As a result, the University petitioned the United States Court of Appeals for the Third Circuit, for a writ of mandamus ordering[26] the federal court to dismiss the state law claims. The

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supervisor. *Id.* William Boyle sued John Kordesich for tortious interference with a contractual relationship. *Id.*

17. William Boyle filed the complaint in the Court of Common Pleas of Allegheny County, Pennsylvania. *Id.*

18. The complaint alleged breach of contract, wrongful discharge, defamation, misrepresentation, intentional infliction of emotional distress, and violation of state age discrimination laws. *Id.*

19. The sole federal cause of action was based on an alleged violation of the federal Age Discrimination in Employment Act ("Act"), 29 U.S.C. § 621-34 (1976 & Supp. I 1981). The Act provides the following:

> Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided*, that the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

29 U.S.C. § 626 (c)(1) (1976 & Supp. I 1981).

20. 29 U.S.C. § 626 (c)(i) (1976 & Supp. I 1981). William Boyle, however, failed to file a timely unlawful discrimination charge with the Equal Employment Opportunity Commission as required in 29 U.S.C. § 626 (d)(1976 & Supp. I 1981). *Carnegie-Mellon*, 108 S. Ct. at 623. (White, J., dissenting). Under the Act a party is required to file within one year of the alleged unlawful action. 29 U.S.C. § 626 (e)(2) (1976 & Supp. I 1981).

21. The removal statute allows a defendant to remove, from state court, a cause of action over which the federal court has original jurisdiction. *Carnegie-Mellon*, 108 S. Ct. at 616.

22. *Id.*

23. Section 1441(a) of the federal removal statute states:

> Except as otherwise expressly provided by Act of Congress, any 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.

28 U.S.C. § 1441(a) (1982).

24. There had been approximately six months of discovery prior to the plaintiffs' request to amend their complaint. *Carnegie-Mellon*, 108 S. Ct. at 623 (White, J., dissenting). During discovery, the Boyles' attorney realized that he had failed to file a timely age discrimination complaint with the appropriate agency and was now barred from asserting such a claim. *Id.*

25. Plaintiffs' motion to remand the case to state court was conditioned upon the court accepting their amended complaint. *Carnegie-Mellon*, 108 S. Ct. at 616.

26. One authority defines mandamus as an, "[e]xtraordinary writ which lies to compel performance of a ministerial act or mandatory duty where there is a clear legal right in plaintiff, a corresponding duty in defendant, and a want of any other

University contended that under the federal removal statute,[27] the lower court judge had no authority to remand the case to state court.[28] Nevertheless, the Third Circuit denied the writ of mandamus and remanded the case to state court.[29] The University then petitioned the United States Supreme Court for a writ of certiorari.[30]

The Supreme Court granted certiorari[31] to resolve the polarization of the circuit courts[32] over the issue of whether a federal district court has the authority to remand a properly removed pendent state

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appropriate and adequate remedy. BLACK'S LAW DICTIONARY 866 (5th ed. 1979).

27. The federal removal statute contains two sections that directly address remand. Section 1447(c) states: "If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order payment of just costs. . . ." 28 U.S.C. § 1447(c) (1982). Section 1441(c) states:

> Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

28 U.S.C. § 1441-(c)(1982).

28. *Carnegie-Mellon*, 108 S. Ct. at 620.

29. *Id.* at 617. The court of appeals' denial of the writ of mandamus effectively let stand the lower court's decision to remand the case to state court. *Id.*

30. *Id.* at 618. The University contended that there existed an intercircuit split over the issue of whether a federal court, under pendent jurisdiction, can remand state law claims to state court if the basis for federal jurisdiction has been eliminated. *Id.* at 617.

31. Carnegie-Mellon Univ. v. Cohill, 107 S. Ct. 1283 (1987). The Supreme Court agreed with the University that there was a split in the circuit courts over the issue of whether a federal court, under pendent jurisdiction, can remand state law claims to state court if the basis for federal jurisdiction has been eliminated. *Carnegie-Mellon*, 108 S. Ct. at 618.

32. Apparently, the split in the circuit courts was a result of the lower courts' interpretations of the Supreme Court's statement in United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966) that "[c]ertainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." *Id.* at 726. This statement, strictly construed, would require mandatory dismissal of the pendent state law claims in *Carnegie-Mellon*. However, the circuit courts have not uniformly read this statement as a restriction on the authority of the federal district courts. Several circuit courts have read the *Gibbs* statement to give the federal district court discretionary authority to remand claims to the state court if the basis for federal jurisdiction has been eliminated. *See, e.g., In Re* Romulus Community Schools, 729 F.2d 431 (6th Cir. 1984) (state law claims properly remanded after federal claims were withdrawn); Fox v. Custis, 712 F.2d 84 (4th Cir. 1983) (once federal law claims were dismissed on the merits the state law claims should have been remanded to state court). Alternatively, some courts have viewed the statement in *Gibbs* as a restriction. *See, e.g.*, Cook v. Weber, 698 F.2d 907 (7th Cir. 1983) (court dismissed pendent state law claims once federal law claims had been dismissed; Levy v. Weisiman, 671 F.2d 766 (3rd Cir. 1982) (case cannot be remanded because of attorney's failure to comply with local rules of civil procedure); *In Re* Shell Oil Co. 631 F.2d 1156 (5th Cir. 1980) (court held improper to remand to state law claims based on plaintiff's motion that the state law claims were separate and independent); Naylor v. Case & McGrath, 585 F.2d 557 (2d Cir. 1978) (abuse of discretion to retain pendent claims after federal cause of action was dropped).

law claim once the basis for federal jurisdiction has been eliminated.[33] The Court stated that federal district courts have always had discretionary authority under the doctrine of pendent jurisdiction, and that this discretionary authority extends to remanding a case to state court. Accordingly, the Court affirmed the Third Circuit's denial of the writ of mandamus.[34]

The Court began its analysis with the *United Mine Workers of America v. Gibbs*[35] test, which defined when federal courts may exercise pendent jurisdiction over state claims. Under the *Gibbs* test, a federal court has jurisdiction over both state and federal claims when the state and federal claims result from a common set of critical facts[36] and the claims would normally be tried in one case.[37] The *Carnegie-Mellon* Court pointed out that even if the claim meets the *Gibbs* test, the federal court has discretionary power[38] to determine whether to adjudicate the state law claim.[39]

Next, the *Carnegie-Mellon* Court cited *Gibbs* for the standard

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33. The doctrine of pendent jurisdiction has its roots firmly planted in the concept of judicial economy. Hurn v. Oursler, 289 U.S. 238 243-47 (1933).

34. *Carnegie-Mellon*, 108 S. Ct. at 618.

35. 383 U.S. 715 (1966). In *Gibbs*, the plaintiff alleged that the United Mine Workers violated both state and federal law. *Id.* at 720. The case arose out of a labor dispute between two rival unions, the United Mine Workers and the Southern Labor Union. *Id.* at 718. These unions fought for control of jobs and management at the local mine. *Id.* The local mine employed Gibbs as a superintendent and also employed numerous members of the Southern Labor Union. *Id.* at 718. Armed members of the United Mine Workers, however, forcibly prevented the mine from operating and physically beat members of the Southern Labor Union. *Id.* at 718. The United Mine Workers, through the continued use of violence and picketing, eventually gained control of the jobs at the mine and allegedly had Gibbs fired. *Id.* at 719. As a result of United Mine Workers' actions, Gibbs brought suit against United Mine Workers for the alleged violation of the National Labor Management Relations Act and contract common law of Tennessee. *Id.* at 720.

Gibbs brought suit in the United States District Court for the Eastern District of Tennessee. *Id.* The district court found for Gibbs and awarded damages. United Mine Workers of Am. v. Gibbs, 220 F. Supp. 871 (E.D. Tenn. 1963). Both parties appealed. United Mine Workers of Am. v. Gibbs, 343 F.2d 609 (1965). The Court of Appeals for the Sixth Circuit affirmed. *Id.* The Supreme Court granted certiorari. 382 U.S. 809 (1965). For an analysis of the Supreme Court's reasoning and holding in *Gibbs* see *supra* note 2. *See generally* Note, *UMW v. Gibbs and Pendent Jurisdiction*, 81 HARV. L. REV. 657 (1968) (detailed presentation of the facts of *Gibbs*).

36. *Gibbs*, 383 U.S. at 725. The *Gibbs* Court noted the relationship between the state and federal claim must permit the court to conclude that the entire controversy is one constitutional case. *Id.* Additionally, the Court stated that the state and federal claims must exist as the result of the same core facts. *Id.*

37. *Id.* at 725. The Court stated that the plaintiff's claims must be such that he would ordinarily be expected to try them all in one judicial proceeding. *Id.*

38. *Id.* at 726. Some jurisdictions have held that a loose factual connection between the federal and state claim is sufficient to satisfy the *Gibbs'* test. *See, e.g.*, Ritter v. Colorado Interstate Gas Co., 593 F. Supp. 1279, 1281 (D. Colo. 1984) (facts giving rise to the state and federal claim need not be identical); Frye v. Pioneer Logging Machinery, Inc., 555 F. Supp. 730, 732 (D.S.C. 1983) (only when state claim is totally different from the federal claim does pendent jurisdiction not exist).

39. *Carnegie-Mellon*, 108 S. Ct. at 618.

that a district court should use when exercising its discretionary authority.[40] The Court noted that, under *Gibbs*, the federal court should balance several factors to determine if pendent jurisdiction is appropriate. These factors include: 1) waste of judicial energy; 2) convenience and fairness to the parties; and 3) comity to the states.[41] Moreover, the *Carnegie-Mellon* Court stated that judicial flexibility is a fundamental principle of the doctrine of pendent jurisdiction.[42]

With these factors in mind, the Court analyzed the facts of the case. Initially, the Court noted that after the Boyles amended their complaint they sought to have Pennsylvania state court adjudicate the remaining state law claims.[43] The Court noted that if the federal court dismissed the plaintiffs' remaining claims, they would have to refile their case in state court.[44] Alternatively, a remand to state court would not require refiling of the case, saving time and money for all parties involved.[45] Therefore, the Court stated that a dismissal rather than a remand was contrary to the basic principle of judicial economy.[46] The Court added that the possible negative economic impact of a dismissal was sufficient justification to allow the remand of the plaintiffs' case.[47]

After analyzing the economic impact of a dismissal versus a remand, the Court focused on the University's argument that, under the federal removal statute,[48] the district court had no authority to remand the case to state court.[49] The Court, upon reviewing the removal statute, stated that Congress was silent on the issue of the power of a federal court to remand pendent claims.[50] Further, the Court noted that Congress did not intend for the federal removal statute to address pendent jurisdiction.[51] If Congress had decided to address the remand of pendent claims, the Court reasoned Congress would have given the federal courts power similar[52] to that given in

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40. *Id.*
41. *Carnegie-Mellon*, 108 S. Ct. at 619.
42. *See generally* Note, *Pendent Party*, *supra* note 1 (addresses the flexibility of the doctrine of pendent jurisdiction).
43. *See supra* notes 17-18, 25 and accompanying text for the facts of the case.
44. *Carnegie-Mellon*, 108 S. Ct. at 620.
45. *Id.* The Supreme Court, however, did not note the amount of time or money the parties would have saved if the federal court had remanded the case.
46. *See, e.g.*, Comment, *supra* note 1 (provides the factors a court considers in determining judicial economy).
47. *Carnegie-Mellon*, 108 S. Ct. at 620.
48. See *supra* note 23 for the complete statute outlining when a party can remove a case to federal court. See *supra* note 27 for the statutes addressing the remand of removed cases.
49. *Carnegie-Mellon*, 108 S. Ct. at 620-21.
50. *Id.*
51. *Id.*
52. The Court noted that the federal removal statute pertained to separate and

the federal removal statute.[53] Therefore, the Court held that the University's argument was without merit.[54]

Having determined that the federal removal statute does not prohibit a remand of pendent claims, the Court addressed the University's second argument.[55] The University cited *Thermtron Products Inc. v. Hermansdorfer*[56] as precedent for the proposition that a federal court cannot remand properly removed pendent claims.[57] The Court, however, distinguished *Thermtron* from the present case.[58] In *Thermtron*,[59] the defendant removed the case from state to federal court based on diversity of citizenship.[60] The federal court's docket, however, was overcrowded, and it remanded the case to state court.[61] The *Thermtron* Court held that the district court lacked statutory authority to dismiss or remand a case properly removed under diversity jurisdiction.[62] The *Carnegie-Mellon* Court noted that the present case did not deal with diversity jurisdiction but with pendent jurisdiction, and held that *Thermtron* was not controlling.[63]

After distinguishing *Thermtron* from the present case, the Court dealt with the University's final argument that the Court's holding would result in forum shopping.[64] The Court resolved this potential problem by requiring the district courts, prior to remanding or dismissing pendent claims, to determine whether the parties have attempted to manipulate the forum and balance that behavior against judicial economy.[65] The Court concluded that forum shop-

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independent claims, and therefore, did not apply to pendent claims. *Id.*

53. Under the federal removal statute, a court may either adjudicate all claims in the suit or remand the independently non-removable claims. See *supra* note 23 for the complete statutory provisions of the federal removal statute.

54. *Carnegie-Mellon*, 108 S. Ct. at 621.

55. *Id.*

56. 423 U.S. 336 (1976).

57. *Carnegie-Mellon*, 108 S. Ct. at 621.

58. *Id.*

59. The plaintiffs in *Thermtron* were Kentucky residents, who sought damages for injuries that resulted from an automobile accident with one of Thermtron's employees. *Thermtron*, 423 U.S. at 338.

60. *Id.* Thermtron and its employee were residents of Indiana. *Id.* The plaintiffs brought suit in Kentucky state court and the defendants removed the case to the United States District Court for the Eastern District of Kentucky. *Id.* at 339.

61. *Id.* at 339. The district court's docket had approximately 4,000 backlogged cases due to an influx of Black Lung related actions. *Id.* at 340.

62. *Id.* at 340. Thermtron appealed the remand order and the Court of Appeals for the Sixth Circuit affirmed the district court's order. *Id.* at 341. The Supreme Court overturned the court of appeals and held that the district court lacked statutory authority, under 28 U.S.C. § 1441(c) or 1447(c). *Id.* at 342.

63. *Carnegie-Mellon*, 108 S. Ct. at 621-22.

64. *Id.* at 622. The courts rarely disturb the plaintiff's choice of forum, unless the balance of private and public factors strongly favor the defendant. Broadcasting Rights Int'l. Corp. v. Societe du Tour de France, 675 F. Supp. 1439 (S.D.N.Y. 1987).

65. *Carnegie-Mellon*, 108 S. Ct. at 622. The *Carnegie-Mellon* Court stated:

ping is an additional factor for the federal district court to consider prior to remanding pendent claims.[66]

The Court in *Carnegie-Mellon* justifiably concluded that the power to remand pendent state claims is within the discretionary authority of the federal court. The Court's decision was correct for three reasons. First, case law related to diversity jurisdiction does not control the law of pendent jurisdiction. Second, the legislative history indicates that Congress did not intend the federal removal statute to prohibit the remand of state law claims once the basis for federal jurisdiction had been eliminated. Third, the Supreme Court has consistently held that a federal court has broad discretionary authority over state law claims when exercising pendent jurisdiction.

The Supreme Court was justified in not allowing case law related to diversity jurisdiction to control the law of pendent jurisdiction.[67] Although diversity and pendent jurisdiction have a common basis in article III of the United States Constitution,[68] they derive their power from different statutes.[69] Pendent jurisdiction is noted in 28 U.S.C. section 1338.[70] This statute encourages the joining of

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"[t]he discretion to remand enables district courts to deal with cases involving pendent claims in the manner that best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine." *Id.*

66. *Id.*

67. Diversity of citizenship and federal question pendent jurisdiction, are included among the nine classes of cases that empower the federal court with original jurisdiction. U.S. CONST. art. III, § 2.

68. Article III of the United States Constitution, cites the classes of cases over which the federal court has original jurisdiction. U.S. CONST. art. III, § 2. Section two sets forth nine classes of cases: 1) all cases affecting Ambassadors; 2) all cases of Admiralty; 3) controversies to which the United States is a party; 4) controversies between two or more States; 5) controversies between a State and a citizen of another State; 6) between citizens of different States; 7) between citizens claiming land grants in another State; 8) between a State or citizens thereof, and foreign parties; and 9) constitution questions. *Id. See generally* Shaprio, *supra* note 5 which provides a detailed history of the development of federal jurisdiction in America.

69. Pendent jurisdiction is a specialized form of federal question jurisdiction, WRIGHT & MILLER, *supra* note 1, § 3567, at 112, and is codified in 28 U.S.C. § 1338(b) (1982). *See, e.g.*, Jenn Air Products v. Penn Ventilator, Inc., 283 F. Supp. 591 (E.D. Penn. 1968) (state unfair competition law claim joined with a federal trademark infringement claim). Diversity jurisdiction was codified in 28 U.S.C. § 1332 (1982). *See* WRIGHT & MILLER, *supra* note 1, §§ 3601, 3642 (explanation of diversity jurisdiction). For a case discussing diversity jurisdiction, see Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978).

70. The pertinent sections of the patent and trademark statute state:

> (a) The district court shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patents, plant variety protection and copyright cases.
>
> (b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under copyright, patent, plant variety protection or trade-mark laws.

28 U.S.C. 1338 (1982). *Cf.* Jenn Air Products v. Penn Ventilator, Inc., 283 F. Supp.

non-federal claims with substantially related federal claims.[71] Alternatively, diversity jurisdiction arises out of 28 U.S.C. section 1332.[72] This statute requires complete diversity of state citizenship between plaintiff and defendant.[73] Federal courts have discretion as to whether or not to hear pendent state law claims under Section 1338.[74] Federal courts, however, must hear all claims meeting the requirements of Section 1332.[75] Therefore, because federal jurisdiction under the diversity statute is mandatory, while under the pendent jurisdiction statute it is purely permissive, the *Carnegie-Mellon* Court correctly held that the law of diversity jurisdiction does not govern the law of pendent jurisdiction.[76]

The fact that the federal removal statute authorizes a remand in the present case is further justification for the Court's decision in *Carnegie-Mellon.* The Court, however, stated that Congress had failed to address the authority of federal courts to remand pendent state law claims once the basis for federal jurisdiction was eliminated.[77] This reading was much too narrow and ignored the legislative history[78] of the statute. In fact, Congress did deal with the remand of pendent state law claims in the original removal statute.[79]

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591 (E.D. Penn. 1968) (one of the first cases to cite the codification of pendent jurisdiction).

71. In United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966), the Court stated, in referring to the Federal Rules of Civil Procedure, "the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *Gibbs*, 383 U.S. at 724.

72. This statute states in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, 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, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C. § 1332 (1982).

73. *See* Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978) (must be complete diversity between parties).

74. The *Gibbs* Court stated "[i]t has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right." *Gibbs*, 383 U.S. at 726.

75. *See* Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336 (1976) (Court held that diversity jurisdiction was not discretionary); St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938) (reduction of the amount in controversy below the statutory limit cannot defeat federal jurisdiction).

76. *Carnegie-Mellon*, 108 S. Ct. at 622. The Supreme Court, however, did not note that diversity and pendent jurisdiction have a different statutory basis. *Id.*

77. *See supra* note 52 and accompanying text for the Court's reasoning.

78. For an overview of the legislative history see *Thermtron Products*, 423 U.S. 334, 346-351 (1976) (general review of the history of the removal statute); IMFC Professional Services of Fla., Inc. v. Latin American Home Health, Inc., 676 F.2d 152, 157 (5th Cir. 1982) (brief review of the history of the removal statute).

79. The first removal statute was contained in section 5 of the Judiciary Act of

In the first removal statute, the Judiciary Act of 1875,[80] Congress stated that if it appeared that the removed case does not involve a dispute or controversy within the jurisdiction of the federal court, the case should be dismissed or remanded to the state court. For over seventy years, the removal statute clearly allowed for a post-removal remand to state court.[81] In 1946, Congress revised the statute but included essentially identical language.[82] The new statute stated that the federal court may remand the state law claims to the court from which the case was removed.[83] This revision indicated that Congress intended to allow federal courts to remand cases to state court when the federal court deemed the remand was in the best interests of justice.[84]

Two years later, Congress again revised the federal removal statute and adopted the current law.[85] Congress did not intend to materially change the removal statute of 1946.[86] The Supreme Court has said that Congress simply restated the prior law.[87] Hence, under

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1875, 18 Stat. 472 and provided:

> That if any suit is commenced in a circuit court or removed from a State court to a circuit court of the United States, it shall appear to the satisfaction of said court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed as justice may require, and shall make such order as to costs as shall be just . . . .

JUDICIARY ACT § 5 (1875).

80. *Id.*

81. *Id.* Congress did not change the language of the first removal statute until 1946.

82. Title 28 U.S.C. § 80 provided:

> If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.

28 U.S.C. § 80 (1946).

83. See *supra* note 82 for the complete statutory provisions of the removal statute.

84. The actual language of the 1046 federal removal statute contained the phrase, "as justice may require." 28 U.S.C. 80 (1946).

85. See *supra* note 27 for the current federal removal statute.

86. *See* IMFC Professional Servs. of Fla., Inc. v. Latin American Home Health, Inc., 676 F.2d 152, 157 (5th Cir. 1982) (noting that the language of the 1946 and 1948 federal removal statutes was identical).

87. In Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336 (1976) the Supreme Court stated that "[s]ections 1447(c) and (d) represent the 1948 recodification

the modern statute,[88] Congressional intent as to when a removed case can be properly remanded to state court must be equivalent to that expressed in Congress' 1946 removal statute.[89] The legislative history of the federal removal statute therefore indicates that Congress intended it not to prohibit the remand of pendent state law claims, but rather to allow a remand when it is in the best interest of justice.[90]

In addition to following the legislative intent of the federal removal statute, the *Carnegie-Mellon* decision was correct because it affirmed the well established position that a federal court, when exercising pendent jurisdiction, has broad discretionary authority over state law claims.[91] The *Carnegie-Mellon* Court correctly interpreted *United Mine Workers of America v. Gibbs*[92] as granting broad authority to the federal court when exercising pendent jurisdiction over state law claims. The *Gibbs* Court not only clarified the previous test[93] for pendent jurisdiction, but also broadened the authority a federal court has in exercising pendent jurisdiction.[94] The Court created this broader authority when it stated that the federal court can adjudicate state law claims that arise from the same set of operative facts as the federal law claims.[95] Since *Gibbs*, the Supreme Court has consistently encouraged federal courts to adjudicate pendent state law claims.[96]

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of [sections] 71 and 80. They were intended to restate the prior law with respect to remand orders and their reviewability." *Id.* at 348. In *IMFC Professional Servs.*, the court said, "we think that [section] 1447(c) continues in effect the unitary standard of old [section] 80. *IMFC Professional Servs.*, 676 F.2d at 157.

88. See *supra* note 27 for the complete 1948 federal removal statute.

89. See *supra* note 82 for the complete 1946 federal removal statute.

90. In *Carnegie-Mellon*, the Boyles amended their complaint to eliminate their claim that Carnegie-Mellon had violated the federal age discrimination statute when it fired Boyle. Carnegie-Mellon Univ. v. Cohill, 108 S. Ct. 614 616 (1988). Therefore, the federal district court no longer had a federal question to adjudicate; however, some courts have stated that the state law claims should not be dismissed if the statute of limitations would bar the suit. *See, e.g.*, Cook v. Weber, 698 F.2d 907 (7th Cir. 1983) (court dismissed pendent state law claims once federal law claims had been dismissed); WRIGHT & MILLER, *supra* note 1, at 132-33, n.17 (list of related cases).

For a discussion of the federal district courts which have held that remand of pendent state law claims is appropriate if the basis for their removal to federal district court has been eliminated, see *supra* note 32.

91. *See, e.g.*, Miller, *Jurisdiction*, *supra* note 1, at 4-5 (interpreting the *Gibbs* holding to grant the federal district courts broad discretion).

92. 383 U.S. 715 (1966).

93. The *Gibbs* Court stated that the Court, in Hurn v. Oursler, 289 U.S. 238 (1933), developed an approach that was "unnecessarily grudging." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725 (1966).

94. The *Gibbs* Court, however, noted that the federal district courts should separate state and federal law claims when they deal with divergent legal theories that might confuse the jury. Gibbs, 383 U.S. at 727.

95. See *supra* note 71 for the *Gibbs* Court's interpretation of the Federal Rules of Civil Procedure.

96. Since *Gibbs*, the Supreme Court has twice encouraged the federal courts to

The Court exemplified this consistency four years after *Gibbs* in *Rosado v. Wyman*,[97] when it again held that the federal court has broad discretionary authority under pendent jurisdiction.[98] In *Rosado*, the plaintiff's complaint alleged both a state and federal law claim.[99] Prior to trial, the federal claim was rendered moot and the federal court remanded the state law claim to state court.[100] The *Rosado* Court held that it was proper for the federal district court to remand the case to state court after the federal law claim was rendered moot.[101] It naturally follows from *Rosado* that if the federal court has the discretionary authority to remand state law claims once the federal law claim is moot, then the federal court has the similar power to remand state law claims if the plaintiff has eliminated his federal law claim. Accordingly, the *Carnegie-Mellon* Court correctly extended this reasoning by allowing the federal courts to remand the case to state court once a plaintiff has eliminated his federal law claim.

By extending the reasoning behind *United Mine Workers of America v. Gibbs*[102] and *Rosado v. Wyman*,[103] the *Carnegie-Mellon*

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adjudicate pendent state law claims. First, in King v. Smith, 392 U.S. 309 (1968), the plaintiff alleged that Alabama's "substitute father" regulation violated the Social Security Act and the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 311. Alabama's substitute father regulation disqualified otherwise eligible children from public aid if the child's mother lived with a man who was not the child's parent. *Id.* The district court adjudicated the merits of the controversy without requiring the plaintiff to exhaust state administrative remedies. *Id.* at 312. The Supreme Court affirmed and held that Alabama's regulation defined the term parent in a manner inconsistent with the Social Security Act, and therefore stated that the Court did not have to address the equal protection claim. *Id.* at 333.

After allowing federal courts to adjudicate the merits of the controversy without requiring the plaintiffs to exhaust their state administrative remedies, the Supreme Court then encouraged the federal courts to adjudicate pendent state law claims first. Hagans v. Lavine, 415 U.S. 528 (1974). In *Hagans*, the Court reasoned that state law claims should be adjudicated first, because they may be dispositive and therefore adjudication of the federal constitutional question could be avoided. *Id.* at 547.

97. 397 U.S. 397 (1970).

98. In Rosado v. Wyman, 397 U.S. 397 (1970), the plaintiff's complaint alleged that New York's social security law conflicted with the federal Social Security Act and joined this claim with a federal claim of violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 399-400.

99. The plaintiff's equal protection claim was based on a New York statute regulating the Aid to Families with Dependent Children program which provided for greater payments to New York City residents than for residents of Nassau County. *Rosado*, 397 U.S. at 399-400.

100. The State Commissioner of Social Services amended the regulation and provided for equal payments to all recipients. *Id.* The federal district court then held that the federal question was rendered moot, and remanded to state court the pendent state law claims to state court. *Id.*

101. The plaintiff appealed to the Supreme Court when the appellate court reversed the district court's decision. *Id.* at 401. The Supreme Court granted certiorari, reversed the court of appeals, and upheld the federal district court remand. *Id.*

102. *See* Note, *supra* note 35 (explaining the reasoning behind the *Gibbs* holding).

103. The *Rosado* Court stated: "We are not willing to defeat the common sense

Court resolved the intercircuit conflict[104] over the issue of whether a federal district court can remand a properly removed pendent claim. The Court held that it is within the discretionary authority of a federal court to remand a properly removed case, once its basis for federal jurisdiction has been eliminated. In so holding, the *Carnegie-Mellon* Court has made available to the federal courts, under pendent jurisdiction, an additional tool to help achieve judicial economy and fairness for all parties. Moreover, the Court's holding will allow federal courts to help litigants avoid the unnecessary delays and increased costs associated with having their pendent state law claims adjudicated in state court.[105]

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policy of pendent jurisdiction — the conservation of judicial energy and the avoidance of multiplicity of litigation — by a conceptual approach that would require jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim." *Rosado*, 397 U.S. at 405.

104. See *supra* note 32 and accompanying text for a discussion of the intercircuit conflict.

105. In dissent, Justice White wrote, "[t]he Court today discovers an inherent power in the federal judiciary to remand properly removed cases to state court for reasons of economy, convenience, fairness, and comity." *Carnegie-Mellon*, 108 S. Ct. at 622-23 (White, J., dissenting). One commentator has noted that economy, convenience, and comity are a weak rationale for pendent jurisdiction. Comment, *supra* note 1. Alternatively, the rationale behind pendent jurisdiction may be viewed as ensuring the plaintiff the choice between state and federal courts for the adjudication of their federal claims. *Id.* at 248.