



According to the Fourth Circuit, Common Law Ancillary Jurisdiction Remains Alive

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Before 1990, federal courts asserted jurisdiction over related claims and parties through two doctrines developed by the federal common law: ancillary and pendant jurisdiction. Pendant jurisdiction allowed federal courts to assert jurisdiction over state law claims having a sufficient nexus to the federal claim. Ancillary jurisdiction, on the other hand, allowed courts in diversity cases to assert jurisdiction over non-diverse parties joined after the filing of the original suit. Ancillary jurisdiction was often used in cases where courts appointed receivers to maintain property of a party before the court. The receiver could file suit against a third-party to recover property or assets that had once belonged to an original party. In 1990, Congress enacted 28 U.S.C. § 1367, which purported to merge pendant and ancillary jurisdiction under the rubric of supplemental jurisdiction. In *Evans v. Holibaugh* (No. 09-1429), the Fourth Circuit found that § 1367 did not codify the whole of the common law ancillary jurisdiction.

The case arose after Andris Pukke and the FTC entered into a stipulation of judgment to settle claims of fraud brought against Pukke. The receiver sought to enforce a Note executed by Jeffrey Holibaugh in favor of one of Pukke's companies by filing a recovery action in federal court. Holibaugh argued that the federal court lacked subject matter jurisdiction. The Fourth Circuit rejected this argument, concluding that because the federal district court had jurisdiction over the original FTC action, it possessed ancillary jurisdiction over an action brought by a receiver in furtherance of its appointment. The court further explained that while § 1367 governs ancillary jurisdiction over *claims* asserted in a case over which the district court has federal subject matter jurisdiction, it does not affect common law ancillary jurisdiction over related *proceedings* that are technically separate from the initial case that invoked federal subject matter jurisdiction, which remains governed by case law.

Judge Gregory dissented and argued that the majority relied on a line of authority that did not survive the enactment of § 1367 or more recent Supreme Court precedent. He relied heavily on *Finley v. United States*, 490 U.S. 545 (1989), where the Court said that, absent congressional legislation, a court with jurisdiction over claims involving particular parties does not [have] jurisdiction over additional claims by or against different parties. Thus, according to the dissent, in light of *Finley* and § 1367, a receiver may not invoke federal subject matter jurisdiction to bring new claims against a new defendant if that claim lacks any connection to the underlying suit that the district court is competent to hear.

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