SUPREME COURT OF THE UNITED STATES

No. 02–1689

GRUPO DATAFLUX, PETITIONER *v.* ATLAS GLOBAL GROUP, L. P., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May 17, 2004]

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

When this lawsuit was filed in the United States District Court for the Southern District of Texas in 1997, diversity of citizenship was incomplete among the adverse parties: The plaintiff partnership, Atlas Global Group (Atlas), had five members, including a general partner of Delaware citizenship and two limited partners of Mexican citizenship, App. 98a; the defendant, Grupo Dataflux (Dataflux), was a Mexican corporation with its principal place of business in Mexico, *id.*, at 18a. In a transaction completed in September 2000 unrelated to this lawsuit, all Mexican-citizen partners withdrew from Atlas. *Id.*, at 98a, 122a–123a. Thus, before trial commenced in October 2000, complete diversity existed. Only after the jury returned a verdict favorable to Atlas did Dataflux, by moving to dismiss the case, draw the initial jurisdictional flaw to the District Court's attention. The Court today holds that the initial flaw "still burden[s] and run[s] with the case," *Caterpillar Inc.* v. *Lewis,* 519 U. S. 61, 70 (1996); see *ante*, at 6–10; consequently, the entire trial and jury verdict must be nullified. In my view, the initial defect here—the original absence of complete diversity—"is not fatal to the ensuing adjudication." *Caterpillar,* 519 U. S., at 64. In accord with the Court of Appeals for the Fifth Cir-

cuit, I would leave intact the results of the six-day trial between completely diverse citizens, and would not expose Atlas and the courts to the "exorbitant cost" of relitigation, *id.*, at 77.

I

Chief Justice Marshall, in a pathmarking 1824 opinion, *Mollan* v. *Torrance,* 9 Wheat. 537, 539, instructed "that the jurisdiction of the Court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events." He did not extract this practical time-of-filing rule from any constitutional or statutory text. In contrast, 18 years earlier, Marshall had derived the complete-diversity rule from the text of the 1789 Judiciary Act, and so stated in *Strawbridge* v. *Curtiss,* 3 Cranch 267 (1806). Compare *State Farm Fire & Casualty Co.* v. *Tashire,* 386 U. S. 523, 530–531 (1967) (complete diversity rule is statutory), with 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §3608, p. 452 (2d ed. 1984) (time-of-filing rule "represents a policy decision").

The Court has long applied Marshall's time-of-filing rule categorically to post-filing changes that otherwise would *destroy* diversity jurisdiction. See, *e.g.*, *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.,* 484 U. S. 49, 69 (1987) (SCALIA, J., concurring in part and concurring in judgment); *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.,* 303 U. S. 283, 289–290 (1938); *Mollan*, 9 Wheat., at 539–540. I do not question this consistently applied, altogether sensible refusal to allow a losing party, after summary judgment or an adverse verdict, to assert that all bets are off on the ground that jurisdiction, originally present, was thereafter divested.

In contrast, the Court has not adhered to a similarly steady rule for post-filing party line-up alterations that *perfect* previously defective statutory subject-matter juris-

diction. Compare *Keene Corp.* v. *United States,* 508 U. S. 200, 207–208 (1993) (dismissing suit); *Minneapolis & St. Louis R. Co.* v. *Peoria & Pekin Union R. Co.,* 270 U. S. 580, 586 (1926) (same); *Anderson* v. *Watt,* 138 U. S. 694, 707–708 (1891) (same), with *Caterpillar*, 519 U. S., at 64 (not dismissing suit); *Newman-Green, Inc.* v. *Alfonzo-Larrain,* 490 U. S. 826, 837–838 (1989) (same); *Mullaney* v. *Anderson,* 342 U. S. 415, 416–417 (1952) (same); *Horn* v. *Lockhart,* 17 Wall. 570, 579 (1873) (same); *Conolly* v. *Taylor,* 2 Pet. 556, 565 (1829) (same). Instead, the Court has recognized that "untimely compliance," *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach,* 523 U. S. 26, 43 (1998), with the complete-diversity rule announced in *Strawbridge* can operate to preserve an adjudication where (1) neither the parties nor the court raised the time-of-filing flaw until after resolution of the case by jury verdict or dispositive court ruling, and (2) prior to that resolution, the jurisdictional defect was cured. See *Caterpillar*, 519 U. S., at 64.

II

A

To state the background of this case in fuller detail, in November 1997, respondent Atlas, a limited partnership, which then included two Mexican-citizen limited partners and a Delaware-citizen general partner,[1] commenced a

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[1]At the time of filing, Atlas comprised (1) general partner Bahia Management, L. L. C., a Texas limited liability company (LLC), which included Mexican-citizen members; (2) general partner Capital Financial Partner, Inc., a Delaware corporation; (3) limited partner HIL Financial Holdings, L. P., a limited partnership with Texas and Delaware citizenship; (4) limited partner Francisco Llamosa, a Mexican citizen; and (5) limited partner Oscar Robles, another Mexican citizen. Brief for Petitioner 3; App. 98a. At least arguably, the general partner Bahia Management, like the two limited partners of Mexican citizenship, initially spoiled diversity. Although the Court has never ruled on

federal-court action against Dataflux, a Mexican corporation with its principal place of business in Mexico. 312 F. 3d 168, 169–170 (CA5 2002); App. 18a–19a, 98a; Brief for Petitioner 3. Seeking recovery on contract and *quantum meruit* claims, Atlas erroneously asserted diversity jurisdiction under 28 U. S. C. §1332(a). 312 F. 3d, at 169–170; App. 18a–19a.[2] Dataflux's answer admitted diversity jurisdiction even though, in fact, complete diversity did not exist given the altogether evident Mexican citizenship of both Dataflux and two of Atlas' limited partners. 312 F. 3d, at 170; App. 35a; see *Carden* v. *Arkoma Associates,* 494 U. S. 185, 195–196 (1990) (federal court must look to citizenship of partnership's limited, as well as its general, partners to determine whether there is complete diversity). In addition, one of Atlas' general partners at least arguably ranked as a Mexican citizen. See *supra*, at 3–4, n. 1.

In September 2000, several weeks before trial, and unrelated to the claims in suit, Atlas completed a transac-

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the issue, Courts of Appeals have held the citizenship of each member of an LLC counts for diversity purposes. See, *e.g.*, *GMAC Commercial Credit LLC* v. *Dillard Dept. Stores*, 357 F. 3d 827, 829 (CA8 2004); *Cosgrove* v. *Bartolotta*, 150 F. 3d 729, 731 (CA7 1998). Bahia withdrew from Atlas at the same time as the two Mexican-citizen limited partners withdrew. App. 98a.

[2] Section 1332(a) provides:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, 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.

"For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled."

tion in which all Mexican-citizen partners withdrew from the partnership. App. 14a, 122a–123a, 126a–128a; Brief for Appellants in No. 01–20245 (CA5), p. 7. After that reorganization, it is not disputed, complete diversity existed between the adverse parties. Brief for Petitioner 2; Brief for Respondents 2.

Prevailing at a six-day trial, Atlas gained a jury verdict of $750,000. 312 F. 3d, at 170. Dataflux then promptly moved to dismiss the action for lack of subject-matter jurisdiction, raising, for the first time, the original, but pretrial-cured, absence of complete diversity. App. 42a–49a. The District Court, which had not yet entered judgment on the jury's verdict, granted Dataflux's motion; simultaneously, the court "ordered that the statute of limitations for the claims alleged in this case [be] stayed from November 18, 1997, the date this case was filed, until ten days after the entry of this order [December 6, 2000], to allow plaintiff to refile this case in the appropriate forum." App. to Pet. for Cert. 20a–22a (capitalization in original omitted). The Court of Appeals for the Fifth Circuit reversed the District Court's judgment and remanded the case to that court. 312 F. 3d, at 173–174. Viewing *Newman-Green, Inc.* v. *Alfonzo-Larrain,* 490 U. S. 826 (1989), as "instructive," and *Caterpillar Inc.* v. *Lewis,* 519 U. S. 61 (1996), as "compel[ling]," the Court of Appeals found it unnecessary and inappropriate to "erase the result of [the trial and verdict] by requiring [the parties] to relitigate their claims." 312 F. 3d, at 171–174.

Caterpillar and *Newman-Green* are indeed the decisions most closely on point. In *Caterpillar*, plaintiff Lewis, a Kentucky citizen, filed a civil action in state court against two corporate defendants—Caterpillar Inc., a citizen of both Delaware and Illinois, and Whayne Supply Company, a Kentucky citizen. 519 U. S., at 64–65. Several months later, Liberty Mutual, a Massachusetts corporation, intervened as a plaintiff, asserting claims against both defen-

dants. *Id.*, at 65. After Lewis settled with Whayne Supply, Caterpillar filed a notice of removal. *Ibid.* Lewis moved to remand the case to the state court on the ground that Liberty Mutual had not settled its claim against Whayne Supply, and that Whayne Supply's continuing presence as a defendant in the lawsuit defeated complete diversity. *Id.*, at 65–66. The District Court denied Lewis' motion to remand. *Id.*, at 66. Liberty Mutual and Whayne Supply subsequently settled, and the District Court dismissed Whayne Supply from the suit. *Ibid.*

The case proceeded to a jury trial, which yielded a verdict and corresponding judgment for Caterpillar. *Id.*, at 66–67. On appeal to the Court of Appeals for the Sixth Circuit, Lewis prevailed. *Id.*, at 67. Observing that, at the time of removal, diversity was incomplete, the appellate court accepted Lewis' argument that dismissal of the case for want of subject-matter jurisdiction was obligatory. *Ibid.* In turn, this Court reversed the Court of Appeals' judgment: "[A] district court's error in failing to remand a case improperly removed," this Court held unanimously, "is not fatal to the ensuing adjudication if federal jurisdictional requirements are met at the time judgment is entered." *Id.*, at 64.

Newman-Green concerned a state-law action filed in Federal District Court by an Illinois corporation against a Venezuelan corporation, four Venezuelan citizens, and a United States citizen domiciled in Venezuela. 490 U. S., at 828. After the District Court granted partial summary judgment for the defendants, the plaintiff appealed. *Ibid.* *Sua sponte*, the Court of Appeals for the Seventh Circuit inquired into the basis for federal jurisdiction over the case, and concluded that the presence of the Venezuela-domiciled United States citizen spoiled complete diversity.

Id., at 828–829.[3] To cure the defect, the three-judge panel granted the plaintiff's motion to drop the nondiverse party, citing Federal Rule of Civil Procedure 21. *Newman-Green*, 490 U. S., at 829.[4] But the full Circuit Court, empaneled en banc, concluded that an appellate court lacks such authority. *Id.*, at 830–831. This Court reversed that determination. Federal appellate courts, the Court held, "posses[s] the authority to grant motions to dismiss dispensable nondiverse parties." *Id.*, at 836.[5]

As in *Caterpillar* and *Newman-Green*, minimal diversity within Article III's compass existed in this case from the start. See U. S. Const., Art. III, §2, cl. 1 ("The judicial Power shall extend to all Cases . . . between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."); *State Farm Fire & Casualty Co.,* 386 U. S., at 531 ("Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens."). The jurisdictional flaw—in *Caterpillar*, *Newman-Green*, and this case—was the absence of complete diversity, required by the governing statute, §1332(a), when the action commenced, a flaw eliminated at a later stage of the proceedings. Cf. *ante*, at 6–7 (describing *Caterpillar* and *Newman-Green* as

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[3] A United States citizen with no domicil in any State ranks as a stateless person for purposes of 28 U. S. C. §1332(a)(3), providing for suits between "citizens of different States and in which citizens or subjects of a foreign state are additional parties," and §1332(a)(2), authorizing federal suit when "citizens of a State" sue "citizens or subjects of a foreign state." See *Newman-Green,* 490 U. S., at 828.

[4] Rule 21, governing proceedings in district courts, provides in relevant part: "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just."

[5] After our decision, the Seventh Circuit dismissed the nondiverse defendant and remanded the case to the District Court. *Newman-Green, Inc.* v. *Alfonzo-Larrain,* 734 F. Supp. 1470, 1472 (ND Ill. 1990).

cases in which "the less-than-complete diversity which had subsisted throughout the action had been converted to complete diversity between the remaining parties to the final judgment").

It bears clarification why this case, in common with *Caterpillar* and *Newman-Green*, met the constitutional requirement of minimal diversity at the onset of the litigation. True, Atlas' case involves a partnership, while the diversity spoiler in *Caterpillar* was a corporation and in *Newman-Green*, an individual. See *supra*, at 5–7. In *Carden* v. *Arkoma Associates*, this Court held that, in determining a partnership's qualification to sue or be sued under §1332, the citizenship of each partner, whether general or limited, must be attributed to the partnership. See 494 U. S., at 195–196.

Notably, however, the Court did not suggest in *Carden* that minimal diversity, which is adequate for Article III purposes, would be absent when some, but not all, partners composing the "single artificial entity," *id.,* at 188, n. 1, share the opposing party's citizenship. To the contrary, the Court emphasized in *Carden* that Congress could, "by legislation," determine which of the "wide assortment of artificial entities possessing different powers and characteristics . . . is entitled to be considered a 'citizen' for diversity purposes, and which of their members' citizenship is to be consulted." *Id.,* at 197. Congress would be disarmed from making such determinations—for example, from legislating that only the citizenship of general partners counts for §1332 purposes—if Article III itself commanded that each partner's citizenship, limited and general partner's alike, inescapably adheres to the partnership entity. See *ibid.;* cf. *Steelworkers* v. *R. H. Bouligny, Inc.,* 382 U. S. 145, 153 (1965) (assimilating unincorporated labor unions to the status of corporations for diversity purposes, instead of counting each member's citizenship, is a matter "suited to the legislative and not

the judicial branch"). Just as Article III did not dictate the *Carden* decision, so the question here is plainly subconstitutional in character.

B

Petitioner Dataflux maintains, and the Court agrees, see *ante*, at 6–7, that this case is not properly bracketed with *Caterpillar*, where the subtraction of a party yielded complete diversity; instead, according to Dataflux, this case should be aligned with those in which an individual plaintiff initially shared citizenship with a defendant, and then, post-commencement of the litigation, moved to another State. See Brief for Petitioner 12–14, and n. 9, 23–24; Tr. of Oral Arg. 8–11. In my view, this case ranks with *Caterpillar* and is not equivalent to the case of a plaintiff who moves to another State to create diversity not even minimally present when the complaint was filed.

It has long been clear that "if a citizen sue[d] a citizen of the same state, he [could not] give jurisdiction by removing himself, and becoming a citizen of a different state." *Conolly*, 2 Pet., at 565.[6] When that sole plaintiff files suit in federal court, there is no semblance of Article III diversity; his move to another State manufactures diversity of citizenship that did not exist even minimally at the outset. *Caterpillar* and *Newman-Green*, by contrast, involved parties who were minimally, but not completely, diverse at the time

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[6] In *Conolly*, a party "was struck out of the bill before the cause was brought before the court." 2 Pet., at 564. Since *Conolly*, the Court has addressed the time-of-filing rule in a variety of cases in which the party line-up changed during the pendency of the litigation. See *supra*, at 3; *ante*, at 8, n. 5. The Court, however, has not previously ruled on a case resembling the controversy at hand, *i.e.*, one involving an association whose citizenship, for diversity purposes, is determined by aggregating the citizenships of each of its members. With equal plausibility, such an association could be characterized as an "aggregation" composed of its members, or an "entity" comprising its members.

federal-court proceedings began. *Caterpillar*, 519 U. S., at 64–65; *Newman-Green*, 490 U. S., at 828; *supra*, at 5–7. The post-commencement party line-up changes in *Caterpillar* and *Newman-Green* simply trimmed the litigation down to an ever present core that met the statutory requirement.[7]

The same holds true for Atlas. No partner moved. Instead, those that spoiled statutory diversity dropped out of the case as did the nondiverse parties in *Caterpillar* and *Newman-Green*. See *supra*, at 5–7. In essence, then, this case seems to me indistinguishable from one in which there is "a change in the parties to the action." *Ante*, at 8.[8] As the Court correctly states, the crux of our disagreement lies in whether to "treat a change in the composition of a partnership like a change in the parties to the action." *Ante,* at 11–12. In common with Dataflux, the Court draws no distinction between an individual plaintiff who changes her citizenship and an enterprise composed of

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[7] *Anderson* v. *Watt,* 138 U. S. 694 (1891), see *ante*, at 4–5, is not altogether in tune with *Caterpillar* and *Newman-Green*. In *Anderson*, coexecutors sued for the benefit of an estate. 138 U. S., at 703. One of the coexecutors, it turned out, shared common citizenship with two of the defendants. To salvage the adjudication, the nondiverse coexecutor sought to withdraw both as executor and as plaintiff, but the Court declined to give effect to the post-filing change in the party line-up. *Id.*, at 708. The Court would harmonize *Anderson* with *Caterpillar* and *Newman-Green* by attributing entity, rather than aggregate, status to the *Anderson* coexecutors. *Ante*, at 5, n. 3. But that characterization is hardly preordained. If, as it seems to me, either characterization would be plausible, *Caterpillar* and *Newman-Green* suggest that the one preserving the adjudication ought to hold sway.

[8] While a partnership may be characterized as a "single artificial entity," *Carden* v. *Arkoma Associates,* 494 U. S. 185, 188, n. 1 (1990), a district court determining whether diversity jurisdiction exists looks "to the citizenship of the several persons composing [the entity]," *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U. S. 449, 456 (1900). *I.e.*, the district court looks to the citizenship of each general and limited partner, just as in multiparty litigation the court looks to the citizenship of each litigant joined on the same side. See *supra*, at 4.

diverse persons, like Atlas, from which one or more original members exit. See *ante,* at 8 ("The purported cure [in this case] arose not from a change in the parties to the action, but from a change in the citizenship of a continuing party."). Resisting that far-from-inevitable alignment, I would bracket the multimember enterprise with partially changed membership together with multiparty litigation from which some of the originally joined parties drop. I would do so on the ground that in procedural rulings generally, even on questions of a court's adjudicatory authority in particular, salvage operations are ordinarily preferable to the wrecking ball.

C

Petitioner Dataflux sees *Caterpillar* as a ruling limited to removal cases, and *Newman-Green* as limited to court-ordered dismissals of nondiverse parties. See 312 F. 3d, at 173–174; Brief for Petitioner 23, 26–27; Reply Brief for Petitioner 11; Tr. of Oral Arg. 15–16. True, the court's attention may be attracted to the jurisdictional question by a motion to remand a removed case or a motion to drop a party. But, as the Fifth Circuit observed, "the principle of these cases is [not] limited to only the exact same procedural scenarios." 312 F. 3d, at 173. It would be odd, indeed, to hold, as Dataflux's argument suggests, that jurisdictional flaws fatal to original jurisdiction are nonetheless tolerable when removal jurisdiction is exercised. Removal jurisdiction, after all, is totally dependent on satisfaction of the requirements for original jurisdiction. See 28 U. S. C. §1441(a) ("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 [a] district court of the United States"). The "considerations of finality, efficiency, and economy" central to the *Caterpillar* Court's treatment of a failure to satisfy "the [complete diversity] requirement

of the removal statute, 28 U. S. C. §1441(a)," *ante,* at 7 (internal quotation marks omitted), have equal force in appraising the "*statutory* defect" here, *ibid.* (emphasis in original), *i.e.*, Atlas' failure initially to satisfy the complete-diversity requirement of §1332(a).

Moreover, by whatever route a case arrives in federal court, it is the obligation of both district court and counsel to be alert to jurisdictional requirements. See, *e.g.*, *Bender* v. *Williamsport Area School Dist.,* 475 U. S. 534, 541 (1986) ("every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it" (quoting *Mitchell* v. *Maurer,* 293 U. S. 237, 244 (1934))); *United Republic Ins. Co. in Receivership* v. *Chase Manhattan Bank*, 315 F. 3d 168, 170–171 (CA2 2003) ("We have . . . urged counsel and district courts to treat subject matter jurisdiction as a threshold issue for resolution . . . ."); *United States* v. *Southern California Edison Co.*, 300 F. Supp. 2d 964, 972 (ED Cal. 2004) (district courts have an "independent obligation to address [subject-matter jurisdiction] *sua sponte*" (internal quotation marks omitted)); *Trawick* v. *Asbury MS Gray-Daniels, LLC*, 244 F. Supp. 2d 697, 699 (SD Miss. 2003) (criticizing counsel for failing to do the "minimal amount of research" that would have revealed the absence of subject-matter jurisdiction). But cf. *ante*, at 13 (time-of-filing rule should be rigidly applied when "no judicial action . . . was necessary to get the jurisdictional spoilers out of the case"). That obligation is equally applicable to cases initially filed in federal court and cases removed from state court to federal court.

In short, the Fifth Circuit correctly comprehended the essential teaching of *Caterpillar* and *Newman-Green:* The generally applicable time-of-filing rule is displaced when (1) a "jurisdictional requiremen[t] [is] not met, (2) neither the parties nor the judge raise the error until after a jury

verdict has been rendered, or a dispositive ruling [typically, a grant of summary judgment] has been made by the court, and (3) before the verdict is rendered, or [the dispositive] ruling is issued, the jurisdictional defect is cured." 312 F. 3d, at 174.[9]

D

The "considerations of finality, efficiency, and economy" the Court found "overwhelming" in *Caterpillar* and *Newman-Green* have undiluted application here. *Caterpillar*, 519 U. S., at 75; see *Newman-Green*, 490 U. S., at 836–837. See also *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.,* 528 U. S. 167, 191–192 (2000) (noting

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[9]According to the majority, it would be "unsound in principle and certain to be ignored in practice" to decline to apply the time-of-filing rule only in those cases where the flaw is drawn to a court's attention after a full adjudication of the case, whether through trial or by a dispositive court ruling. *Ante*, at 9–10. Declining to apply the time-of-filing rule only in those cases, the Court suggests, can be justified only on the theory that "the party who failed to object before the end of trial [or dispositive court ruling] forfeited his objection." *Ibid.* (citing *Kontrick* v. *Ryan,* 540 U. S. ___, ___ (2004) (slip op., at 11)). The time-of-filing rule, however, is a court-created rule, see *supra*, at 2; it is therefore incumbent on the Court to define the contours of that rule's application. The Fifth Circuit's decision rested not on a forfeiture theory; rather, the decision accurately reflected the judicial economy underpinnings of the time-of-filing rule. True, as the Court observes, judicial economy concerns might be pressing even when a case is not fully adjudicated through trial or summary pretrial disposition. See *ante*, at 10. When a district court has so fully adjudicated the case, however, there can be no doubt that the "sunk costs to the judicial system," *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.,* 528 U. S. 167, 192, n. 5 (2000), have become "overwhelming," *Caterpillar Inc.* v. *Lewis,* 519 U. S. 61, 75 (1996). That the rule advanced by the Court of Appeals is underinclusive does not make it "illogic[al]," *ante*, at 9; instead, the limitation makes the rule readily manageable. To hold the time-of-filing rule developed by this Court inapplicable here merely abjures mechanical extension of the rule in favor of responding sensibly to the rule's underlying justifications when those justifications are indisputably present.

stricter approach to standing than to mootness in view of "sunk costs" once a "case has been brought and litigated"). In *Newman-Green*, this Court observed that rigid insistence on the time-of-filing rule, rather than allowing elimination of the jurisdictional defect by dropping a dispensable party, would mean an almost certain replay of the case, with, in all likelihood, the same ultimate outcome. 490 U. S., at 837.[10] Similarly here, given the October 2000 jury verdict of $750,000 and the unquestioned current existence of complete diversity, Atlas can be expected "simply [to] refile in the District Court" and rerun the proceedings. See *ibid.*[11] No legislative prescription, nothing other than this Court's

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[10] In stark contrast to today's decision, see *ante*, at 14–16, the *Newman-Green* Court said: "If the entire suit were dismissed, Newman-Green would simply refile in the District Court . . . and submit the discovery materials already in hand. . . . Newman-Green should not be compelled to jump through [such] judicial hoops merely for the sake of hypertechnical jurisdictional purity." 490 U. S., at 837.

[11] The statute of limitations is unlikely to bar the repeat performance given the representation of counsel for both Atlas and Dataflux that "a [Texas] savings statute, assuming Texas law applies, . . . would allow Atlas to refile suit." Tr. of Oral Arg. 22; see *id.*, at 31. See also App. to Pet. for Cert. 22a (District Court order staying "the statute of limitations for the claims alleged in this case"); *supra*, at 5. Although counsel did not provide a citation to the Texas saving statute, I note a provision of that State's law, Tex. Civ. Prac. & Rem. Code Ann. §16.064 (1997), covering cases originally filed in the wrong forum: "The period between the date of filing an action in a trial court and the date of a second filing of the same action in a different court suspends the running of the applicable statute of limitations for the period if" the first action is dismissed for "lack of jurisdiction." This prescription, described as "remedial in nature," has been "liberally construed." *Vale* v. *Ryan*, 809 S. W. 2d 324, 326 (Tex. App. 1991). Counsel for both Atlas and Dataflux also suggested New York law may apply. See Tr. of Oral Arg. 22, 31. New York has a saving provision that appears to allow refiling just as Texas law would. See N. Y. Civ. Prac. Law §205(a) (West 2003) ("If an action is timely commenced and is terminated," *e.g.*, for lack of jurisdiction, "the plaintiff . . . may commence a new action . . . within six months . . . .").

readiness to cut loose a court-made rule from common sense, accounts for waste of this large order.

The Court hypothesizes that Atlas and Dataflux will now settle to avoid fresh litigation costs. *Ante*, at 15. The majority's forecast, however, ignores the procedural history of this case. Knowing full well the first jury verdict, the parties on two occasions missed clear opportunities to settle: after the District Court's dismissal and after the Court of Appeals' reversal. Instead, the parties "waste[d] time and resources," including 3½ years on a jurisdictional question. *Ante*, at 15–16. Even with the jurisdictional question resolved in its favor, Dataflux would now weigh against settlement the possibility that a new panel of jurors, and tactical knowledge gleaned from the first trial, could yield a different outcome the second time around. Atlas, too, might decline to settle: It prevailed once in a jury trial, and committed 6½ years to litigation, see *ante*, at 16, a cost that is rational to ignore, but, in practice, hard to sideline. In short, settlement, which depends on the parties' shared estimate of likely litigation outcomes, is hardly guaranteed.

In two respects, there is stronger cause for departure from the time-of-filing rule in Atlas' case than there was in *Caterpillar*. See *supra*, at 5–6 (discussing *Caterpillar*). First, the *Caterpillar* plaintiff, judgment loser in the federal trial court, had timely but fruitlessly objected to the defendant's improper removal. 519 U. S., at 74. The plaintiff in *Caterpillar*, this Court acknowledged, had done "all that was required to preserve his objection to removal." *Ibid.* Though mindful of the "antecedent statutory violatio[n]," the Court declined to disturb the District Court's final judgment on the merits. *Id.*, at 74–75. The defendant in this case, Dataflux, in seeking to erase the trial and verdict here, resembles the plaintiff in *Caterpillar*, except that Dataflux raised its subject-matter jurisdiction objection only *after* the parties had become completely

diverse. Cf. 312 F. 3d, at 170. It is one thing to preserve jurisdictional objections so long as the jurisdictional flaw persists, see *Kontrick* v. *Ryan,* 540 U. S. ___, ___ (2004) (slip op., at 11); *Capron* v. *Van Noorden,* 2 Cranch 126 (1804)), quite another to tolerate such an objection after the initial flaw has disappeared from the case.

The Court sustains these outcomes: The *Caterpillar* plaintiff, whose prompt resistance to removal would generally have garnered a remand to the state forum plaintiff had originally selected, is nevertheless bound to an adverse federal-court judgment; the defendant, Dataflux here, after incorrectly conceding federal subject-matter jurisdiction in its answer, see App. 35a, and leaving the record uncorrected until the jury favored the plaintiff, is allowed to return to square one, unburdened by the adverse judgment. There is no little irony in that juxtaposition, all the more so given the absence of any charge of manipulation in this case.

Nor would affirmance of the Fifth Circuit judgment entail a significant risk of manipulation in other cases. Rarely, if ever, will a plaintiff bring suit in federal district court, invoking diversity jurisdiction under §1332(a), with the knowledge that complete diversity does not exist, but in the hope of a post-filing jurisdiction-perfecting event. Such a plaintiff's anticipation is likely to be thwarted by the court's or the defendant's swift detection of the jurisdictional impediment. Furthermore, a plaintiff who ignores threshold jurisdictional requirements risks sanctions and "the displeasure of a district court whose authority has been improperly invoked." *Caterpillar*, 519 U. S., at 77–78. The Court's fears about the "litigation-fostering effect" of exceptions to the time-of-filing rule, *ante*, at 14, thus appear more imaginary than real. No wave of new jurisdictional litigation is likely, as the federal courts' experience after *Caterpillar* and *Newman-Green* shows.

Also distinguishing the two cases, in *Caterpillar*, the removing defendant "satisfied with only a day to spare the statutory requirement that a diversity-based removal take place within one year of a lawsuit's commencement." *Id.*, at 65 (citing 28 U. S. C. §1446(b)). Had that defendant remained in state court pending the settlement that left only completely diverse parties in the litigation, the one-year limitation on removal would have barred the way to federal court. Nothing in the record or briefing here, however, suggests that Atlas filed precipitously in federal court in the hope of outpacing a fast-running limitations period; on the contrary, Atlas' complaint rested on events that occurred only ten months prior to the commencement of the action, see App. 18a, 22a–23a, and therefore fell comfortably within any applicable time bar.[12] This case thus presents no risk that refusal to treat an initial jurisdictional flaw as determinative will *de facto* extend a limitations period. Cf. 13B Wright, Miller, & Cooper, Fed-

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[12] At oral argument, counsel for Atlas and Dataflux indicated that either New York or Texas law would supply the governing limitations period. See Tr. of Oral Arg. 22, 31. The Texas limitations period for contract and *quantum meruit* actions is four years. See *W. W. Laubach Trust/The Georgetown Corp.* v. *The Georgetown Corp./W. W. Laubach Trust*, 80 S. W. 3d 149, 160 (Tex. App. 2002) ("Breach of contract claims are generally governed by a four year statute of limitations." (citing Tex. Civ. Prac. & Rem. Code Ann. §16.004 (1986))); *Mann* v. *Jack Roach Bissonnet, Inc.*, 623 S. W. 2d 716, 718 (Tex. Civ. App. 1981) ("[The] suit to recover on quantum meruit . . . is a species of a suit for debt," subject to the limitations period for debt actions contained in §16.004.). New York allows six years for contract and *quantum meruit* actions. See *In re R. M. Kliment & Frances Halsband, Architects*, 3 App. Div. 3d 143, 147, 770 N. Y. S. 2d 329, 332 (1st Dept., 2004) ("Breach of contract actions are subject generally to a six-year statute of limitations." (internal quotation marks omitted)); *Eisen* v. *Feder*, 307 App. Div. 2d 817, 818, 763 N. Y. S. 2d 279, 280 (1st Dept., 2003) (a six-year statute of limitations applies to *quantum meruit* actions, citing N. Y. Civ. Prac. Law §213.2 (West 2003)).

eral Practice and Procedure §3608, p. 459.

In sum, the Court's judgment effectively returns this case for relitigation in the very same District Court in which it was first filed in 1997. Having lost once, Dataflux now gets an unmerited second chance, never mind "just how much time will be lost along the way." *Newman-Green*, 490 U. S., at 837, n. 12 (internal quotation marks omitted). Nothing is gained by burdening our district courts with the task of replaying diversity actions of this kind once they have been fully and fairly tried. Neither the Constitution nor federal statute demands a time-of-filing rule as rigid as the one the Court today installs.

The Court invokes "175 years" of precedent, *ante*, at 8–9, endorsing a time-of-filing rule that, generally, is altogether sound. On that point, the Court is united. See *supra*, at 2–3. For the class of cases over which we divide—cases involving a post-filing change in the composition of a multimember association such as a partnership—the Court presents no authority impelling the waste today's judgment approves. Even if precedent could provide a basis for the Court's disposition, rules fashioned by this Court for "the just, speedy, and inexpensive determination [of cases]," Fed. Rule Civ. Proc. 1, should not become immutable at the instant of their initial articulation. Rather, they should remain adjustable in light of experience courts constantly gain in handling the cases that troop before them. See *Great-West Life & Annuity Ins. Co.* v. *Knudson,* 534 U. S. 204, 233 (2002) (GINSBURG, J., dissenting); *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.,* 527 U. S. 308, 336–337, and n. 4 (1999) (GINSBURG, J., concurring in part and dissenting in part) (recognizing, in line with contemporary English decisions, dynamic quality of equity jurisprudence in response to evolving social and commercial needs). I would affirm the judgment of the Fifth Circuit, which faithfully and sensibly followed the path the Court marked in *Newman-Green* and *Caterpillar*.