

# The Benefits Of New 4th Circ. Case Law On Appeals

By **Matthew Houston and Camryn Keeter** (October 25, 2022)

Practitioners within the geographical reaches of the U.S. Court of Appeals for the Fourth Circuit now have clear direction as to the effects of court-ordered dismissals of cases without prejudice: They are final and immediately appealable unless the court expressly grants leave to amend.

This rule ensures that, going forward, practitioners will be able to promptly determine the appealability of dismissals, calculate appeal deadlines and proceed with appellate practice with considerably more clarity than under the Fourth Circuit's prior case law.

On Aug. 17, the Fourth Circuit issued an opinion in *Britt v. Dejoy*[1] adopting a new rule regarding the court's jurisdiction over appeals from the U.S. District Court for the District of Maryland's dismissal of a case without prejudice.

The court held that, when a district court dismisses an entire complaint or all of a plaintiff's then-remaining claims without prejudice and does not expressly provide leave to amend the complaint, the dismissal order is a final and appealable order. This rule largely eliminates the court's prior multicomponent jurisdictional analysis in favor of a more streamlined approach providing a clear path to appellate review.

## Determining the Finality of a District Court Order

Pursuant to Title 28 of the U.S. Code, Section 1291, an appellate court has jurisdiction over appeals arising "from all final decisions of the district courts."

It is well established that an order dismissing a complaint and granting leave to amend the complaint is generally not a final order for appeal purposes. In *Britt*, the Fourth Circuit analyzed its jurisdiction over an appeal from a district court order dismissing the plaintiff's remaining claim without prejudice. However, the district court's order was silent as to the plaintiff's right to amend her pleading.

Prior to the *Britt* decision, in *Domino Sugar Corp. v. Sugar Workers Local Union 392*,[2] the court held that a dismissal without prejudice was not appealable unless the grounds for dismissal clearly indicated that no amendment in the complaint could cure the defects in the plaintiff's case.

The *Domino Sugar* ruling resulted in a test requiring a case-by-case determination as to the finality of a district court's order dismissing a complaint without prejudice.

Following *Domino Sugar*, when there was a question regarding the finality of a district court order and a party sought appellate review, the appellate court was tasked with determining whether it was possible for the plaintiff to cure the defects under the specific circumstances of the case. This approach ultimately led to inconsistent determinations regarding whether a court decision was final for the purposes of appellate jurisdiction.

In the *Britt* decision, citing the confusion and uncertainty caused by a case-by-case



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approach in attempting to discern a district court's intention to enter a final and appealable order, the court instead elected to adopt a bright-line rule.

The court held that, "when a district court dismisses a complaint or all claims without providing leave to amend, we need not evaluate the grounds for dismissal or do anything more — the order dismissing the complaint is final and appealable." In such a case, because the order will be considered a final judgment, the plaintiff will have an immediate right to appeal regardless of the fact that the court dismissed the plaintiff's claims without prejudice.

The court continued on to give guidance to district courts. If a district court determines that a plaintiff's claims are deficient as pleaded but can be cured, the Britt decision dictates that the district court should indicate that fact in its ruling and grant the plaintiff leave to amend its pleading.

If amendment would not cure a complaint or the district court does not otherwise intend to grant leave to amend the pleading, the district court should issue a separate final judgment dismissing the claims in compliance with Rule 58 of the Federal Rules of Civil Procedure.

### **Practical Implications**

The Britt decision does not affect the Federal Rules of Civil Procedure establishing that the court-ordered dismissal of a case with prejudice is immediately appealable and that an order dismissing a case without prejudice, but with leave to amend, is interlocutory.

Rather, the Britt rule applies primarily to circumstances when a district court dismisses a complaint without prejudice but remains silent as to the plaintiff's right to amend its complaint. In that case, a plaintiff now generally lacks an immediate right to file an amended complaint — absent clarification from the court — but may appeal the decision as final.

The court identified some novel issues that might arise from application of the new rule established in Britt. For example, in instances when the district court enters an order dismissing the plaintiff's claims and expressly grants leave to amend, the order would not be an appealable final judgment. In those instances, a plaintiff may elect to stand on its complaint, waiving its right to amend and request that the district court finalize its order to give the plaintiff the ability to seek immediate appellate review.

Alternatively, if the district court does not expressly grant leave to amend and the plaintiff would prefer to cure the deficiencies of its complaint by amendment, rather than seek appellate review, the plaintiff may move the district court to reopen the action or vacate the judgment.

Another issue that may arise following the Britt decision is a determination as to what happens when the district court grants the plaintiff leave to amend, but the plaintiff does not amend the pleading. The Britt decision clarifies that an order permitting a plaintiff to amend is not final and when amendment is permitted by court order, there is no right to appellate review. When the district court grants leave to amend, the district court may set a deadline for amendment or provide no deadline at all.

The Britt court set a clear parameter for courts establishing a deadline by which party must amend its pleading: the district court may not preemptively avoid issuing a final decision by ordering that a decision will become final after the expiration of time without amendment.

Therefore, even when the time for amending a pleading has expired, the district court must subsequently enter a final order, sua sponte or at the request of a party, for a party to seek appellate review. When the district court grants leave to amend but does not set a deadline for amendment, a plaintiff may seek appellate review only after waiving its right to amend and requesting the entry of a final decision.

Overall, however, this new standard eliminates much of the guesswork and analysis previously required under Domino Sugar's case-by-case approach to interpreting whether the district court intended to enter a final and immediately appealable order or intended to allow a plaintiff to amend the complaint. No longer will appellate practitioners need to undertake laborious briefing regarding multiple factors, including the intent of the trial court with respect to whether deficiencies in the complaint could have been cured by amendment.

Rather, such determinations now remain relevant, if at all, primarily for purposes of the merits of the appeal — i.e., whether the claims were properly dismissed — and have little bearing on whether the appeals court has jurisdiction to hear an appeal of the dismissal as a final decision under Title 28 of the U.S. Code, Section 1291. Moreover, for the most part, practitioners need no longer fear the inconsistent rulings that often resulted from the case-by-case Domino Sugar standards.

While Britt's new bright-line standards may create some confusion in the immediate future as attorneys, their clients and district courts begin to cope with the implications of the decision, the ruling provides much needed clarity for distinguishing between interlocutory and final orders of dismissal.

While bright-line rules often limit the gray area arguments and rulings that form a substantial part of law practice and limit courts' discretion in certain instances, they give parties, their attorneys and courts alike a clear standard by which all cases and rulings must be judged.

For appellate practitioners and their clients, the new rule articulated in Britt is precisely such a clear, easy-to-follow guidepost for determining the interlocutory or final status of a district court's dismissal order.

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[1] Britt v. Dejoy, No. 20-1620 (4th Cir. Aug. 17, 2022).

[2] Domino Sugar Corp v. Sugar Workers Local Union 392, 10 F.3d 1064 (4th Cir. 1994).