

Civil Procedure

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Fall 2017

Room 206

Mondays, Wednesdays, & Fridays, 1:30 – 3:15 pm

Subject Matter Jurisdiction & Joinder

Waverly Hotels, Inc. is incorporated in Delaware with its principal place of business in North Carolina. Slate Construction is a business partnership (unincorporated association) based in Maryland, owned by partners who are domiciled in Delaware, Pennsylvania, and Maryland. Modern Interiors, Inc. is incorporated and has its principal place of business in North Carolina.

Waverly contracted with Slate for the construction of a new hotel in Greensboro, North Carolina. Under the contract, Slate was to receive a total of \$800,000 for the job: an initial \$400,000 payment at the start of the project, and another \$400,000 upon completion. The contract provided that Waverly would reimburse Slate for any additional expenses attributable to delays caused by Waverly. Waverly also agreed to indemnify Slate for any claims against Slate by its subcontractors resulting from Waverly's acts or omissions.

Slate hired Modern Interiors as a subcontractor to design the hotel interior and to supply the furniture and fixtures (lighting, bathrooms, etc.). Under that contract, Modern Interiors was to receive a total of \$200,000 for its work: an initial \$100,000 payment at the start of the job, and another \$100,000 upon completion. In addition, Waverly agreed to guarantee payment under the subcontract.

About halfway through the project, work was delayed for several days because of a problem with the power supply at the site. As a result of the changes and delay, Slate incurred an additional \$60,000 in expenses. When the job was complete, Waverly paid Slate the remaining \$400,000 as agreed in the contract. But Waverly refused to pay the additional \$60,000 attributed to the delay, asserting that the power supply was Slate's responsibility.

Slate in turn did not make the final \$100,000 to Modern Interiors under their subcontract. Modern Interiors sues Slate in the U.S. District Court for the Middle District of North Car-

olina, seeking \$100,000 in damages for breach of contract.

- 1) Does the federal court have subject matter jurisdiction?

Regardless of your answer, assume that the federal court does have subject matter jurisdiction. For each of the following additional claims, explain (i) whether joinder is proper under the FRCP, and (ii) whether the federal court would have subject matter jurisdiction over the claim:

- 2) A claim by Slate against Modern Interiors for breach of contract, alleging that the fixtures Modern Interiors installed did not conform to the contract specifications and that Slate incurred \$50,000 in additional costs to replace them.
- 3) A claim by Slate against Waverly, alleging that Waverly owes a contractual duty to indemnify Slate for the breach of contract claim by Modern Interiors.
- 4) A claim by Slate against Waverly for breach of contract, seeking payment of the additional \$60,000 incurred as a result of changes and delays in the project.
- 5) A claim by Modern Interiors against Waverly for the \$100,000 due on the subcontract between Slate and Modern Interiors, alleging that Waverly guaranteed payment in the event that Slate did not pay.

Model Answer Outlines

- 1) The federal court has diversity jurisdiction over Modern's claim
 - Suit between citizens of different states
 - Modern is a citizen of NC, where it is both incorporated and has its principal place of business
 - Slate is a citizen of DE, MD, and PA, where its partners are domiciled.
 - * The principal place of business is irrelevant to the citizenship of an unincorporated association like a business partnership. Here, Slate has its principal place of business in (MD), where one of its partners is also domiciled, but that doesn't really matter.
 - Amount in controversy exceeds \$75,000
 - On the stated facts, there's nothing to suggest that Modern could not legally recover the \$100,000 it seeks for breach of contract.
 - Notes
 - Supplemental Jurisdiction doesn't apply unless there is at least one other claim in the suit over which the court has SMJ (i.e. based on federal question, diversity, or some other ground). Since the first question asks about a single claim between one plaintiff and one defendant, there's no reason to mention supplemental jurisdiction.
- 2) A claim by Slate against Modern Interiors for breach of contract, alleging that the fixtures Modern Interiors installed did not conform to the contract specifications and that Slate incurred \$50,000 in additional costs to replace them.
 - Joinder
 - This is a compulsory counterclaim under Rule 13(a)
 - * Arises out of the same t/o as Modern's claim against Slate
 - * You should explain what "compulsory" means: if the defendant doesn't assert

- it in this suit, they will waive the right to assert it in any future action.
- Rule 18 is not applicable here, since at this point Slate is asserting only one claim against Modern.
 - SMJ
 - The requirements for diversity jurisdiction are not satisfied
 - * Although the parties are citizens of different states, the amount in controversy on Slate's counterclaim is less than \$50,000
 - * You may not aggregate counterclaims with the underlying plaintiff's claims to satisfy the amount in controversy. The amount in controversy requirement must be satisfied separately in each direction.
 - But the court may assert supplemental jurisdiction
 - * The counterclaim shares a common nucleus of operative fact with Modern's initial claim, i.e. they both arise out of the contract between Modern & Slate for the Waverly Hotel job. This satisfies the "same case or controversy" requirement under sec. 1367(a)
 - * Diversity is the sole underlying basis for SMJ, so you should look to sec. 1367(b) and explain that a counterclaim by an original defendant is not among the "yellow flag" claims.
 - * Note that the congruence between the "same t/o" test for compulsory counterclaim and the "same case/CNOF" test for supplemental jurisdiction means that a court will *always* have supplemental jurisdiction over a compulsory counterclaim, but will *never* have supplemental jurisdiction over a permissive counterclaim.
- 3) A claim by Slate against Waverly, alleging that Waverly owes a contractual duty to indemnify Slate for the breach of contract claim by Modern Interiors.
- Joinder
 - This is an impleader claim under Rule 14(a)(1)
 - * Slate is claiming a right of indemnification/contribution against Waverly, i.e. that, in the event Slate is held liable to Modern, Waverly would in turn be liable to Slate for all or part of Slate's liability to modern.
 - * Absent an indemnification/contribution claim, Slate could not join Waverly under Rule 14 (nor any other rule) to assert a claim against Waverly based on Slate's own loss or injury caused by Waverly.
 - This is not joinder of a co-defendant under Rule 20(a)(2)
 - * That rule applies where a plaintiff asserts claims against multiple defendants, either in the initial complaint, or by joining the additional defendant(s) in an amended complaint.
 - Note that Rule 20(a)(2) would have permitted Modern to join Waverly as a co-defendant in Modern's original complaint. But the court wouldn't have SMJ in that case, because Modern and Waverly are both NC citizens.
 - * Here, Slate (the defendant) is joining Waverly as a third-party defendant, which is governed by Rule 14(a)(1)
 - Rule 20(a)(2) might apply in conjunction with Rule 14(a)(1), if a defendant asserts indemnification/contribution claims against multiple third-party defendants. Those claims would, by definition, arise out of the same t/o,

and they would also involve at least one (probably more than one) common question of law or fact (i.e. pertaining to the defendant's underlying liability to the plaintiff, since the third-party claims derive from that liability).

- SMJ
 - The requirements for diversity jurisdiction are not satisfied
 - * Slate is a citizen of DE, MD, and PA (see above)
 - * Waverly is a citizen of DE (where it is incorporated) *and* NC (where it has its principal place of business).
 - * Since both are citizens of DE, there's no diversity
 - But supplemental jurisdiction is satisfied
 - * By definition, the same case/CNOF requirement under 1367(a) is always satisfied by a valid Rule 14(a)(1) impleader claim
 - * Again, since diversity is the sole underlying basis for SMJ, you should look to 1367(b). But since Slate is a defendant, this is not one of the "yellow flag" claims. So the lack of diversity between Slate and Waverly doesn't preclude the exercise of supplemental jurisdiction.
 - There is some potential ambiguity here. Rule 14(a)(1) permits "a defending party" to implead a third-party defendant. The Rule then refers to the "defending party" as a "third-party plaintiff".
 - By referring to a "defending party" (instead of "defendant"), Rule 14(a) implicitly applies where a "plaintiff" faces a counterclaim (asserted by a defendant) or crossclaim (asserted by a co-plaintiff). The plaintiff would then be a "defending party" on that counterclaim/crossclaim, and may implead a third-party defendant for indemnification/contribution.
 - But, for purposes of the limitation on supplemental jurisdiction under sec. 1367(b), "plaintiffs" means parties who first enter the case in the posture of a plaintiff. It does not include a defendant who becomes a "third-party plaintiff". But it does include a plaintiff who becomes a "defending party" to a counterclaim/crossclaim.
- 4) A claim by Slate against Waverly for breach of contract, seeking payment of the additional \$60,000 incurred as a result of changes and delays in the project.
- Joinder
 - Slate could not join Waverly under Rule 14(a)(1) to assert only this breach of contract claim, because that claim is not derivative of Slate's liability to Modern.
 - But since Slate has properly impleaded Waverly under Rule 14(a)(1) to seek indemnification/contribution on Modern's underlying claim, Slate may also use Rule 18 to join any other claim(s) it has against Waverly. For purposes of Rule 18 joinder, it doesn't matter whether the additional claims arise from the same t/o. But that will matter for SMJ.
- SMJ
 - Once again, diversity jurisdiction isn't satisfied, since Slate and Waverly are both citizens of DE
 - But supplemental jurisdiction will work, because the breach of contract claim also shares a CNOF with both Slate's initial indemnification/contribution claim and

Modern's underlying claim against Slate. Again, the lack of diversity between Slate and Waverly doesn't preclude supplemental jurisdiction, since this is still a claim by a "defendant", and thus not covered by 1367(b)

- 5) A claim by Modern Interiors against Waverly for the \$100,000 due on the subcontract between Slate and Modern Interiors, alleging that Waverly guaranteed payment in the event that Slate did not pay.
- Joinder
 - Rule 14(a)(3) permits a plaintiff to assert a claim against a third-party defendant, provided the claim arises out of the same t/o as the plaintiff's underlying claim against the (original) defendant/third-party plaintiff.
 - Modern's claim satisfies this condition – it's based on the same transaction (the hotel construction job).
 - * Note that, once Modern asserts this claim, Waverly would then have to assert any compulsory counterclaims (under Rule 13(a)), and it could assert any permissive counterclaims (under Rule 13(b)) against Modern.
 - SMJ
 - The requirements for diversity jurisdiction are not satisfied, because Modern and Waverly are both citizens of NC.
 - The court may not exercise supplemental jurisdiction over this claim
 - * The same case/CNOF requirement for supplemental jurisdiction under 1367(a) is satisfied.
 - * But this is a claim by a plaintiff against a party joined under Rule 14, which is one of the "yellow flags" under 1367(b). Since Modern and Waverly are both citizens of NC, the exercise of supplemental jurisdiction would be inconsistent with the complete diversity requirement for jurisdiction under sec. 1332.
 - Note that Rule 14(a)(2)(D) permits a third-party defendant to assert claims against the (original) plaintiff arising out of the same t/o as the plaintiff's underlying claim against the (original) defendant. So Waverly could assert such a claim against Modern (assuming it had one). And since Waverly is not a "plaintiff" within the meaning of sec. 1367(b), the court could exercise supplemental jurisdiction over that claim, despite the lack of diversity between Waverly and Modern. This is arguably unfair to Modern. The response to that is basically "it sucks to be you". Modern put itself in this position by filing in federal court to begin with (though Modern would have the same problem if it had filed in state court and Slate had removed).