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Civil Procedure:*How to Apply Diversity Jurisdiction in a Multiparty Case*Scott Dodson¹

Compliance with the diversity requirements in multiparty cases can be difficult to determine. Diversity actions make up more than a third of the federal docket, and multiparty and multiclaim diversity suits are common, yet many of these cases in fact lack complete diversity.²

One nettlesome but unsettled complication of the requirement of complete diversity (that all plaintiffs must be diverse in citizenship from all defendants) can be illustrated simply. Consider a suit in federal court in which a single plaintiff from Texas asserts separate \$1 million state-law claims against each of two defendants—one from California and the other from Texas. Obviously, the federal court lacks diversity jurisdiction over the plaintiff's claim against the nondiverse Texas defendant, and thus lacks diversity jurisdiction over the action as a whole. But does the court nevertheless have jurisdiction over the plaintiff's claim against the diverse California defendant? If no, then the court must dismiss the entire case. If yes, the court could dismiss the nondiverse claim and proceed with the diverse claim.

The Theories of Joint Jurisdiction and Several Jurisdiction

The answer to the question requires consideration of two seemingly irreconcilable theories of subject-matter jurisdiction. The first—"joint jurisdiction"—holds that diversity is determined jointly, such that the presence of a jurisdictional spoiler contaminates other claims in the action, depriving the federal court of diversity jurisdiction over any diverse claims as well. Opinions from the U.S. Supreme Court dating from as far back as 1824 seem to support this

1. Summarized and excerpted from Scott Dodson & Philip A. Pucillo, *Joint and Several Jurisdiction*, 65 DUKE L.J. 1323 (2016).

2. See, e.g., *United Republic Ins. Co. v. Chase Manhattan Bank*, 315 F.3d 168, 171 (2d Cir. 2003) ("We have previously expressed a concern that cases brought in federal courts in which diversity of citizenship is not properly alleged and/or does not exist are far too common.").

theory: *Strawbridge v. Curtiss*,³ *Owen Equipment & Erection Co. v. Kroger*,⁴ and *Exxon Mobil Corp. v. Allapattah Services, Inc.*⁵ all assume that the presence of a nondiverse jurisdictional spoiler contaminates the whole case under the complete-diversity rule.

The second—“several jurisdiction”—is that although the court cannot proceed with the case as long as the jurisdictional spoiler remains, the court always had, and continues to have, jurisdiction over the diverse claim. In other words, the jurisdictional status of the claims is determined severally, on a claim-by-claim basis. A separate tradition of Supreme Court decisions dating back at least to 1825 seems to support this theory: *Carneal v. Banks*,⁶ *Conolly v. Taylor*,⁷ *Horn v. Lockhart*,⁸ and *Newman-Green, Inc. v. Alfonzo-Larrain*⁹ all suggest that spoiling claims may be individually dismissed to allow a court to exercise jurisdiction over claims between remaining diverse parties.

The tension resulting from the Supreme Court’s longstanding endorsement of both joint jurisdiction and several jurisdiction in conjunction with the complete-diversity rule invites resolution. But because each tradition boasts substantial support in the caselaw, merely picking one over the other—as has been the typical response in the literature—proves unappealing.

The Way Out: The Time-of-Filing Rule

The way out of this conundrum is by employing the ability to shift the time of jurisdictional assessment from the time of filing to a later point in the litigation. With slight tweaking, this approach largely preserves both traditions.

The usual timing rule—the so-called “time-of-filing rule”—requires federal subject-matter jurisdiction to be assessed as of the time of filing (or removal).¹⁰ In other words, if complete diversity exists at the time of filing, then the court has subject-matter

3. 7 U.S. (3 Cranch) 267 (1806).

4. 437 U.S. 365 (1978).

5. 545 U.S. 546 (2005).

6. 23 U.S. (10 Wheat.) 181 (1825).

7. 27 U.S. (2 Pet.) 556 (1829).

8. 84 U.S. (17 Wall.) 570 (1873).

9. 490 U.S. 826 (1989).

10. *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824).

jurisdiction even if subsequent events cause diversity to be lacking later in the case.

But this timing rule, unlike more rigid jurisdictional rules, is amenable to modifications and exceptions.¹¹ The time of jurisdictional assessment can be shifted away from the time of filing to a later stage of the litigation, such as the moment after the dismissal of a nondiverse party. This approach allows for a shift from the time of filing to the time of *cure* of the jurisdictional defect, thereby transforming several jurisdiction into joint jurisdiction at a different time. Evaluating complete diversity as of that later time is consistent with joint jurisdiction because, as of the time any nondiverse party has been dropped, the case as a whole fulfills the complete-diversity requirement.

The upshot of this use of the time-of-jurisdictional-assessment rule is that it makes the joint-jurisdiction cases' theory of diversity consistent with outcomes in the several-jurisdiction cases. Although the several-jurisdiction cases do not expressly rely upon manipulation of the time-of-filing rule to account for their holdings, they could be understood to have done so implicitly.

Some limitations on facile manipulation of the time-of-jurisdictional-assessment rule should exist. For example, a court should not recognize incomplete diversity and yet continue to adjudicate the case on the possibility that, later, a cure will occur. A known, clear jurisdictional defect without immediate cure requires dismissal of the entire case under joint jurisdiction.

But while a defect remains unknown or uncertain, a court can proceed. And when the court is forced to reassess its jurisdiction, the court has the authority to dismiss the spoiling parties (if possible) and assess complete diversity at the time of dismissal, thereby preserving jurisdiction over the remaining diverse parties.

Conclusion

By shifting the time of jurisdictional assessment from the time of filing to the time of cure of the jurisdictional defect, a federal court can remain faithful to the established tradition of joint jurisdiction while securing the finality, efficiency, and other good outcomes that would be available under several jurisdiction.

11. *Caterpillar v. Lewis, Inc.*, 519 U.S. 61 (1996).