Lect 11

Last time

* + Dred Scott v. Sandford, 60 U.S. 393 (1857) was (in part) about diversity jurisdiction
    - Held that African-Americans, even if free, are not citizens of a state for the purposes of diversity
    - Obviously not good law anymore...
* I misremembered the answer for dual citizens
  + A German sues a New Yorker who has dual U.S./Irish citizenship
    - Is this an alienage case within the meaning of 1332(a)(2)?
    - Not much case law, but the majority view is to treat this as a suit by a German against a New Yorker (with complete alienage) not as a suit by a German against a New Yorker and Irishman (which would lack complete alienage)
    - In other words, for US citizens who have dual citizenship with another nation and are domiciled in a US State – treat them only as a citizen of that state

Because of the requirement of complete diversity, a plaintiff who wishes to keep a case in state court can do so by joining a diversity destroying defendant (that is, a defendant from the same state as he is).

Sometimes however a court concludes that the diversity destroying defendant is not properly joined

Fraudulent joinder  
Rose v Giamatti

- Rose sued Bart Giamatti (the Commissioner of Baseball) and Major League Baseball Ass’n and the Cincinnati Reds in Ohio state ct for an injunction against a hearing concerning Rose’s gambling

- Rose’s domicile is Ohio, Giamatti’s is NY, the Reds in Ohio, and MLB has the domicile of all of its members, because it is an unincorporated association (and thus is an Ohioan)

- Ds removed

- Rose moved for remand

- Dist Ct denied the motion for a remand

- held that the Red and MLB can be ignored for the purposes of determining diversity jurisdiction:

In fraudulent joinder cases the underlying reason for removal is that there is no factual basis upon which it can be claimed that the resident defendant is jointly liable or where there is such liability there is no purpose to prosecute the action against the resident defendant in good faith….  
Other courts have held that the party opposing remand has the burden of establishing either that there is no possibility that the plaintiff can establish a valid cause of action under state law against the non-diverse defendant, or that there has been an outright fraud in the plaintiff's pleading of jurisdictional facts.

- the main reason was that the Reds and MLB could not provide the relief that Rose requested, because of the independence of the commissioner

- other grounds for fraudulent joinder are: the finding that there was fraud in the pleading of jurisdictional facts (e.g. lying about a party’s domicile); or that the plaintiff has no possible cause of action against the diversity destroying defendant

- notice that in identifying whether the plaintiff has no possible cause of action, the court applies a standard that is more deferential to the plaintiff that it would if, after having determined it had jurisdiction of the case, it attempted to decide whether the plaintiff states a claim.

- to decide whether the plaintiff states a claim the court must have already asserted jurisdiction

- but the question in fraudulent joinder is whether the court has jurisdiction at all

- thus, if there are colorable arguments that the plaintiff states a claim, even if those arguments might in the end fail, the court should not find that there was fraudulent joinder

* Green: Rose have made things easier for himself if he had added a request for damages from the Reds and MLB
* You should not conclude that most joinder to defeat diversity fails
* findings of fraudulent joinder are rare
* P (NJ) wishes to sue the D Corp. for fraud
* D Corp. has is incorporated in NY with PPB in NY
* P does not want the action removed by the D Corp. to federal court
* Therefore P joins X (NJ), an accountant who was in part responsible for the D Corp.’s misrepresentations, as a defendant

Can the D Corp. successfully remove? No – in this case joinder to defeat diversity worked, even though P is not really interested in going after X.

**REMOVAL**

* with an exception, a defendant can remove an action in state court to federal court if there would have been smj in fed ct if the plaintiff had sued there originally
* 1441(a) Except as otherwise expressly provided by Act of Congress, 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 the district court of the United States for the district and division embracing the place where such action is pending.
* distinguish removal from transfer within fed ct system
  + Removal involves the case going from state court to the Federal District where the state court is located
  + Transfer involves moving a case from one Federal District to another
    - We will discuss it later
  + Note that no transfer from one state ct system to another

A (Cal.) sues B (NY) and C (Cal) for battery in state court in Nevada  
Can B and C remove

* No – there is no complete diversity, so the action could not have been brought originally by the plaintiff in Federal Court
* Can only B remove? No – unless B can show that C was fraudulently joined, the case cannot be broken apart. The plaintiff is the master of his claim and can join the defendants he wishes.

A (Cal.) sues B (NY) and C (NJ) for battery  
A suing for B for more than 75K but C for only 20K  
  
May the case be successfully removed by B and C?

* + - * no - can defeat removal even if there is complete diversity if the amt in controversy against a defendant is below the jurisdictional minimum
        + NOTE: with multiple plaintiffs against a single defendant, there is an exception to the rule that the jurisdictional minimum must be satisfied with respect to all parties
        + We will discuss this exception later – in connection with Allapattah
        + It is not relevant in this case, where there is a P suing multiple Ds
      * note however, it must really be the case that the amount in controversy in A’s action against C is below the jurisdictional minimum. As we shall later see, simply because A asks for 20K from C does not mean that the amount in controversy is not for more than 75K.
* A (Nev.) sues B (Cal.) and C(Oreg.) in California state court for battery
* A asks for $80k each from B and C
* May B and C remove?

- NO – B is an in-state defendant

1441(b)(2)  
  
A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought. WHY have this?

- makes sense - such a D cannot claim a need to protect himself from state ct bias

A (Nev.) sues B (France) and C (Oreg.) in Nevada state court for battery. A asks for $80k each from B and C. B wants to remove but C refuses. May the case be successfully removed to the D. Nev.?

1446(b)(2)(A)   
When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

All Ds must agree to removal

* Green thinks this doesn’t make sense
* A (Cal.) sues B (Cal.) in California state court for battery
* B counterclaims against A for violation of federal civil rights law
* May A remove?
* No – under 1441 only Ds may remove, not P’s

- Shamrock Oil

Can – B remove –

* No – Mottley
* One must look to the plaintiff’s well pleaded complaint to determine whether the court has original jurisdiction
  + One does not look to federal defenses (or federal counterclaims)

Green: this is a bad rule

* Imagine an officer knows that he will be sued by someone he arrested under federal civil rights law
* He wants the action to be litigated in state court
* So what does he do? Sues the person he arrested in state court for a state law action associated with the arrest
* If the state court system has a compulsory counterclaim rule (as many do) the person arrested will have to bring as counterclaims against the officer all causes of action he has concerning the arrest – which would include the federal civil rights action
* And (per the bad rule) the arrested person will not be able to remove to federal court

1441(f) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim

What’s that there for?

- assume P files fed *antitrust* action against D in state ct, D removes

- before 1441(f) the Federal Court would have to dismiss the action because there was no jurisdiction before the state court (because fed antitrust actions have *exclusive* federal subject matter jurisdiction)

- now removal is possible

P (Mass.) sues D (NY) in Mass. state court under state law battery. D removes and then makes a motion to dismiss for lack of PJ. Permissible? Waiver?  
  
no waiver of defense of lack of PJ

* Can remove and then get the action dismissed entirely
* **Procedure for Removal**

Must remove within 30 days of receipt or service of complaint, assuming that removability is evident from the complaint

* If it is evident only later, must remove 30 days from receipt of whatever paper (eg amended complaint) that made it evident

- but if a year has passed after filing before it becomes evident that it is removable, then cannot be removed, unless there is a finding that the P acted in bad faith to prevent the D from removing (includes bad faith concealment of amount in controversy)

To remove one files a Notice of removal with Fed Ct setting forth grounds

Gives P and state ct notification of filing

It is removed – although the Federal Court may conclude that removal was improper and therefore should be remanded

**Jurisd Amt. for diversity**

* P brings a diversity suit in federal court against D alleging $100k for personal injuries in negligence
* P recovers only $3k from the jury.
* Should the court dismiss for want of diversity rather than enter a judgment for $3k?
* would be crazy, P could never lose the case!

- the question is the amount in controversy, not the amount actually recovered

One could imagine a system in which the plaintiff could satisfy the amount in controversy simply by asking for +75K in damages – take the amount requested at face value

* after all, P’s allegations are subject to R 11  
  - also subject to

1332(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000…and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

But there is more scrutiny – although it is still very generous to the plaintiff

St. Paul Mercury standard – applies to a plaintiff claiming diversity jurisdiction in Federal Court – does not apply to a defendant seeking to remove

“It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.”

- easier way of putting it – must be legally possible to get above jur min

- hard not to satisfy this standard when the plaintiff asks for compensation due to physical or emotional injuries - generally will always be legally possible that the plaintiff will get more than $75K

- the standard is usually found to have been violated in connection with financial cases, where the amount a possible damages is clear

- Glannon wrongly suggests in deciding whether the jur min is satisfied a court looks only to the pleadings

- that’s not so, courts sometimes look to the evidence available at the beginning of the case

- but again remember that the court is trying to determine whether it has jurisdiction; it cannot engage in the sort of searching inquiry that it might undertake once it has jurisdiction