The plaintiff is the master of the complaint

He determines the defendants

* With exceptions
  + Fraudulent joinder – will get to
    - A party has been joined by the P to defeat diversity against whom the P has no colorable claim
* So…
  + P (NY) sues D1 (Cal.) & D2 (NY) in state court in Illinois under state law  
    D1 may not break apart the lawsuit and remove it  
    a federal court should not either
* In addition
  + P (NY) sues D1 (Cal.) & D2 (NY) in federal court under state law
  + the district court cannot dismiss P’s action against D2, *without P’s consent*, in order to retain jurisdiction
* but doesn’t Glannon say the following…?
* Glannon: The court cannot hear the case as originally framed because there is not complete diversity. However, it need not dismiss the entire suit; it can order Delta dropped as a defendant, thus “perfecting diversity,” and continue with the case against the two individual defendants.
* This makes it sound as if the court could do it without the P’s consent
  + That does not happen
  + So Glannon is talking about something the court can do if the P accepts (because he wants to stay in federal court even with certain defendants gone)
* Now, a more difficult problem –
  + P (NY) sues D1 (Cal.) & D2 (NY) in federal court under state law  
    the case comes to judgment
  + No one noticed no SMJ
  + what can the federal court do?
  + It must vacate the judgment (because it had no SMJ) but it may be able to issue a new judgment with only the diverse parties, as long as the dismissal of the nondiverse party *would not prejudice  other parties to the action*
    - If it would the whole case will have to be relitigated
  + Because so much effort has been put into creating the judgment, which is worthless unless diversity is perfected, there is good reason to perfect diversity, but there cannot be prejudice to a party
  + So if it is important to the P that a judgment in his favor is against all the original Ds no new judgment will be able to be issued
  + One last note – in a highly contested case Newman-Green, Inc. v. Alfonso-Larrain, 490 U.S. 826 (1989) the SCt said an appellate court can perfect diversity as well

But remember it still cannot be done if a party would be prejudiced  
  
Devices to create diversity/alienage

* + Ps change domicile/state of incorporation/principal place of business
  + Changing plaintiffs to create diversity (assign lawsuit to someone else)
  + Limit defendants
  + You can often assign your contract over to someone else – that will mean that they now own any contractual rights and can sue on them
  + You cannot improperly or collusively assign to create smj though
    - That would be the case if you “assigned” the contract, but actually kept an interest in the lawsuit – eg by getting money back if the person you assigned it to won
* Amount in controversy requirement
  + St. Paul Mercury test
    - When a plaintiff is invoking diversity/alienage jurisdiction NOT when defendant is seeking to remove
    - “It must appear to a legal certainty that the claim is really for less than the jurisdiction amount to justify the dismissal” (it has to be legally possible for you to get more than 75k)
    - Green likes to say it must be **legally possible** to get above $75K to satisfy amt in controversy requirement
* Diefenthal v CAB (5th Cir. 1982)
  + Bought smoking section ticket in first class but then not allowed to smoke because smoking section was full
  + Apparently treated rudely by flight attendant
  + Action brought in federal court
  + Eastern airlines moves to dismiss for failure to state a claim
  + Court dismisses for lack of SMJ - diversity amt in controversy requirement not satisfied
  + Allowed to amend
  + Plaintiffs changed complaint to make it clear that they were alleging intentional infliction of emotional distress in order to state some type of compensable claim
  + But the reason for dismissal wasn’t failure to state a claim but rather failure to meet the amt in controversy requirement
  + They never alleged any damages that could satisfy the St Paul Mercury standard
    - All they spoke about was the harm of not being allowed to smoke and the way that they were treated on the plane
    - Not legally possibly to get +10K for that
  + What should the Diefenthals have said in their complaint to satisfy the amt in controversy requirement?
    - Green: it would have been easy
    - Could have alleged reputational damage that would occur elsewhere

Should have gone beyond the bad stuff that happened on the plane.

How much can you inflate in your complaint to get above the jurisdictional minimum…?

Well Rule 11 (which requires evidentiary support for factual allegations) puts a limit on plaintiffs

But there is also this interesting provision…

28 USC § 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, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

Costs are small (NOT atty’s fees) bit usually the winner gets his costs paid by the other side. Here if the P wins and gets less than the jurisdictional minimum (think of the Mas case) he doesn’t get his costs paid and may have to pay the costs of the other side…

* + Aggregation to meet the amt in controversy
  + An individual P can aggregate claims (even unrelated claims) against a single defendant to get above the AIC, but:
  + Multiple plaintiffs can’t aggregate claims against a single or multiple defendants
  + A single plaintiff can’t aggregate claims against multiple defendants
* alternative theories of liability (only one of which can be successful) cannot be aggregated
* - P and D had an agreement for P to do work for D for $50,000  
  - P does the work but D doesn't pay  
  - in P's (NY) complaint against D (NJ), P asks for $50,000 under a theory of breach of contract  
  - alternatively - if it is found that there is no contract - he asks for $40,000 in quantum meruit (the fair market value of the labor he performed)
  + No aggregation
* P is beaten up by D1 & D2; damages are $80,000 in total, $40K caused by D1 and $40K by D2
  + if they are **jointly liable**, amount-in-controversy is satisfied
  + D1 can be sued for the entirety of 80K and D2 can likewise can be sued for the entirety of 80K
  + Here you don’t need aggregation
  + When a plaintiff sues multiple co-defendants using diversity, the AIC must be satisfied with respect to each defendant
  + BUT when co-plaintiff sues a defendant the AIC requirement does not have to be satisfied with concerning all plaintiffs if it is satisfied concerning one
    - this is due to the SUPPLEMENTAL JURISDICTION STATUTE: If you have multiple plaintiffs and one meets the AIC but the other does not, you may be able to still litigate together in federal court (provided that the complete diversity requirement is satisfied)
    - e.g.
    - D (CA) beats up P1 (NY) and P2 (NY) in a barroom brawl  
        
      P1 asks for $80K damages and P2 asks for $40K damages  
      diversity case? - YES
    - This doesn’t work for a plaintiff and multiple defendants
    - We will discuss this later when doing suppl jur
  + **Common & undivided right exception to the no-aggregation rule**–
    - if theplaintiffs necessarily recover only if they all recover together, then aggregation is possible
    - this is rare
    - usually one plaintiff can win even if the other loses
    - there must be some sort of legal quality/financial arrangement that would prevent a plaintiff from recovering damages unless the other did so too
  + Injunctions and AIC
    - how do you determine the AIC concerning injunctions?
      * disagreements out there among fed cts
        + value to P
        + cost to D
        + either, whichever is larger
        + cost to D if D is removing and value to P if P is suing in federal court?
    - what about aggregation?
      * if an injunction cannot be tailored and, by the nature of its grant, benefits all plaintiffs equally, then aggregation *may* be possible
      * it may be able to be understood as a common and undivided right