

A consumer from State A filed a \$100,000 products liability action in federal court against a manufacturer incorporated and with its principal place of business in State B. The consumer claimed that a flaw in the manufacturer's product had resulted in severe injuries to the consumer. In its answer, the manufacturer asserted a third-party complaint against the product designer, also incorporated and with its principal place of business in State B. Believing that the consumer had sued the wrong defendant, the manufacturer claimed both that the designer was solely responsible for the flaw that had led to the consumer's injuries and that the manufacturer was not at fault.

The designer is aware that the manufacturer did not follow all of the designer's specifications when making the product.

Which of the following arguments is most likely to achieve the designer's goal of dismissal of the third-party complaint?

- A. The court does not have subject-matter jurisdiction over the third-party complaint, because both the manufacturer and the designer are citizens of State B.
- B. The manufacturer failed to obtain the court's leave to file the third-party complaint.
- C. The manufacturer's failure to follow the designer's specifications caused the flaw that resulted in the consumer's injuries.
- D. The manufacturer's third-party complaint failed to state a proper third-party claim.

Explanation:

A defendant may **add a nonparty** to a suit through third-party practice (ie, impleader). However, the **third-party complaint** must be **based on derivative liability**—ie, it must assert that the **nonparty is liable to the defendant** for all (ie, indemnity) or part (ie, contribution) of the plaintiff's claim. A third-party complaint should therefore be dismissed if it asserts that the nonparty is *directly* liable to the plaintiff or liable to the defendant for another claim.

Here, the defendant-manufacturer's third-party complaint against the nonparty-designer asserts that the plaintiff-consumer sued the wrong party. Since the manufacturer is claiming that the designer is solely responsible for the consumer's injuries—ie, *directly* liable to the consumer—the best argument to dismiss the third-party complaint is that it fails to state a proper third-party claim.

(Choice A) The court *has* subject-matter jurisdiction over the third-party complaint through [supplemental jurisdiction](#) because it (1) shares the same facts as the consumer's claim, (2) does not destroy diversity between the *consumer* and *manufacturer*, and (3) is made by a defendant.

(Choice B) A defendant must obtain the court's leave (ie, permission) to file a third-party complaint if more than 14 days have passed since the defendant served his/her original answer. But since this third-party complaint was asserted *within* the manufacturer's answer, leave of court was not required.

(Choice C) An argument that the manufacturer failed to follow the designer's specifications is a factual allegation. But the truth of this allegation is irrelevant because the court will accept a *complaint's* factual allegations as true and ignore the opposing party's (designer's) allegations when assessing if the complaint states a proper claim.

Educational objective:

Third-party practice (ie, impleader) allows a defendant to add a nonparty who may be liable to the defendant for all or part of the plaintiff's claim (ie, derivative liability).

References

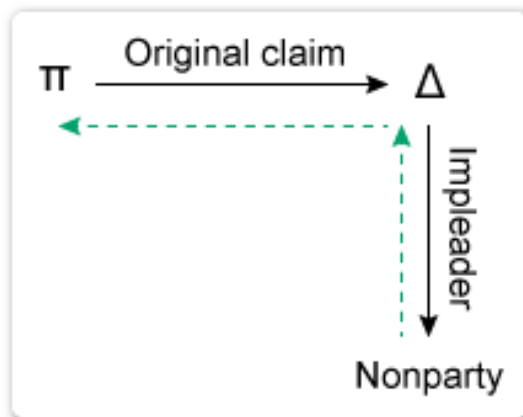
- Fed. R. Civ. P. 14 (third-party practice).

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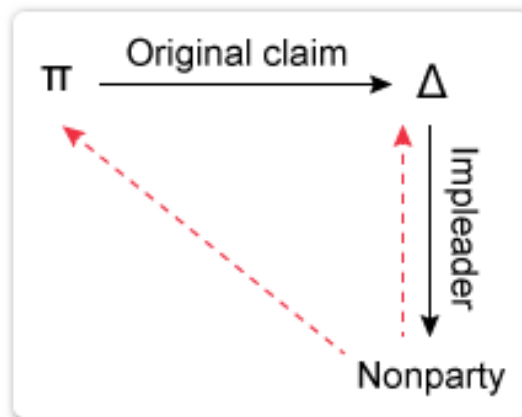
Third-party practice (impleader)

Proper
(derivative liability)



π = plaintiff, Δ = defendant

Improper
(direct or alternative liability)



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