

A corporation that was having a factory built filed a federal diversity action against the general contractor and an electrical subcontractor for the project. The complaint alleged breach of contract claims arising from construction delays and deficient electrical work that had caused the corporation significant financial losses.

The general contractor filed a crossclaim against the subcontractor, asserting only the defense that the general contractor was not liable to the corporation because the subcontractor's deficient work was the sole cause of the construction delays and the corporation's losses. After discovery, the corporation settled with the general contractor and dismissed the claims against it.

The subcontractor has moved to dismiss the general contractor's crossclaim.

Which of the following arguments best supports the motion?

- A. The crossclaim is improper, because it asserts a defense, not a claim for relief.
- B. The crossclaim is improper, because the general contractor and the subcontractor are opposing parties, not co-parties.
- C. The crossclaim is invalid, because the general contractor is no longer a party to the underlying action.
- D. The crossclaim is premature, because it is contingent on a finding that the defendants breached the construction contract.

Correct

Collecting Statistics

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Explanation:

A **crossclaim** is a **claim for relief** asserted **against a coparty** (eg, a defendant against a codefendant) that arises from the same transaction or occurrence as another claim in the lawsuit. A crossclaim that does not assert a **claim** for relief against a coparty (eg, contribution) but merely **asserts a defense against the opposing party's claim** (eg, contributory negligence) is **improper**.*

Here, the general contractor (defendant) filed a crossclaim against the subcontractor (codefendant). But the crossclaim only asserted that the general contractor was not liable to the corporation (plaintiff) because the subcontractor was the sole cause of the corporation's harm. Since the crossclaim asserted a *defense* against the corporation's claim and not a claim for relief against the subcontractor, the crossclaim is improper. Therefore, this is the argument that best supports the subcontractor's motion to dismiss the general contractor's crossclaim.

*Once a party files a valid crossclaim, the coparty may then assert defenses in response.

(Choice B) The general contractor and the subcontractor are coparties (not opposing parties) because they were both joined (ie, added) to the suit by the corporation as defendants. Therefore, the general contractor and the subcontractor can assert crossclaims against each other.

(Choice C) The general contractor is no longer a party to the underlying action because the corporation settled with the general contractor and dismissed the claims against it. However, a valid crossclaim by the general contractor (not seen here) would have allowed it to remain part of the action for purposes of that crossclaim. Therefore, the crossclaim is not invalid for this reason.

(Choice D) The general contractor's crossclaim is *not* premature. That is because a crossclaim may assert that a coparty is liable for all or part of the opposing party's underlying claim—regardless of whether there are findings regarding that claim (eg, the defendants breached the contract).

Educational objective:

A crossclaim is a claim for relief asserted against a coparty that arises from the same transaction or occurrence as another claim in the lawsuit. A crossclaim that does not assert a claim for relief against a coparty but merely asserts a defense against the opposing party's claim is improper.

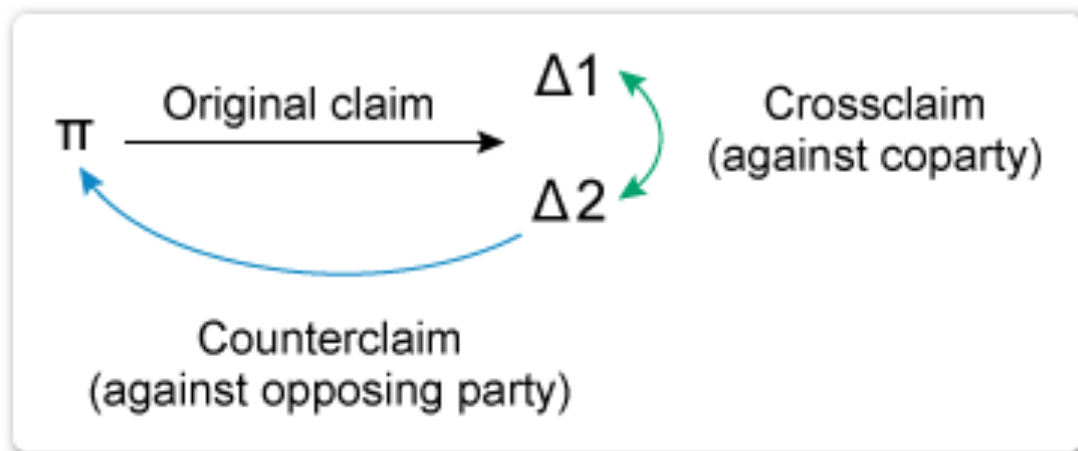
References

Fed. R. Civ. P. 13(g) (explaining the requirements to assert a crossclaim).

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Claims for relief



π = plaintiff, Δ = defendant

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