

DISCUSSION FOR QUESTION 8

I. Subject matter jurisdiction.

Subject matter jurisdiction refers to a court's power to decide a particular kind of controversy. *See* Gene R. Shreve & Peter Raven-Hansen, *Understanding Civil Procedure* 107 (3d ed. 2002). Article III of the United States Constitution provides that the jurisdictional power of the United States extends to "[c]ontroversies between citizens of different states . . . and between a State, or the citizens thereof, and foreign States, citizens, or subjects." U.S. Const. Art. III, § 2. The Supreme Court has construed the diversity provision of the Judiciary Act of 1789 to require that no two parties on opposite sides of an action could be citizens of the same state. Thus, federal diversity jurisdiction is lacking if there are any litigants from the same state on opposing sides. *See Prakash v. Am. Univ.*, 727 F.2d 1174, 1178, n.25 (D.C. Cir. 1984).

A. Diversity

Diversity of citizenship jurisdiction requires that there be complete diversity of citizenship between the plaintiffs on one side and defendants on the other and that the amount in controversy exceed \$75,000 (exclusive of setoffs, interest, or costs). 28 U.S.C. § 1332(a).

"In determining whether diversity of citizenship exists, the critical moment is the time at which the suit is commenced; under the Federal Rules, this refers to when the complaint is filed in the district court." Jack H. Friedenthal et al., *Civil Procedure* 27 (3d ed. 1999). *See Saadeh v. Farouki*, 107 F.3d 52, 57 (D.C. Cir. 1997); *see generally* Shreve and Raven-Hansen, *supra* at 122.

There was diversity of citizenship between the plaintiff and defendant at the time the action is commenced. In general, to be a citizen of a state under the statute, a natural person must be both a citizen of the United States and be domiciled in a state. *Wolfe v. Hartford Life & Annuity Ins. Co.*, 148 U.S. 389, 389 (1893)(holding averment of state residence insufficient); *see generally* Friedenthal et al., *supra* at 29; Shreve & Raven-Hansen, *supra* at 123. The test for state citizenship under the statute is domicile, and domicile is defined as one's "true, fixed, and permanent home. . .to which he has the intention of returning. . ." *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954). Under these rules Plaintiff is a citizen of Colorado because she is a United States citizen domiciled in Colorado where she lives and works.

An alien admitted to permanent residence "is deemed a citizen of the State in which such alien is domiciled." 28 U.S.C. § 1332(a). Accordingly, Defendant's place of citizenship at the time the action was commenced was Nevada. His subsequent change of domicile and naturalization do not change the result. *Saadeh*, 107 F.3d at 57.

Because the plaintiffs and defendant were citizens of different states at the time the action was commenced, there is diversity.

B. Amount in controversy

The second part regarding subject matter jurisdiction relates to the amount in controversy. 28 U.S.C. § 1332 (a) provides that district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs. The amount-in-controversy requirement is normally governed by the monetary value of the relief claimed by the plaintiff in good faith. "[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify a dismissal." *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938). Although the statute excludes interest and costs, a party may add together different kinds of damages, to satisfy the statutory amount. Punitive or exemplary damages can be added to the amount in controversy unless under applicable substantive law, a party is not legally entitled to such damages. *See Friedenthal, supra* at 45; *Shreve & Raven-Hansen, supra* at 126-27. Under Colorado law, a plaintiff may recover reasonable exemplary (punitive) damages, not exceeding the amount of actual damages recovered for willful and wanton misconduct. *See Colo. Rev. Stat. § 13-21-102(1)(a); White v. Hansen*, 837 P.2d 1229, 1236 (Colo. 1992).

Accordingly, the amount of damages demanded by Plaintiff is sufficient because the compensatory and punitive damages demanded in the complaint exceed \$75,000.

II. Did the U.S. District Court have personal jurisdiction?

The court would have personal jurisdiction if process was served properly. A federal court has territorial jurisdiction coextensive with the "jurisdiction of a court of general jurisdiction in the state in which the district court is located." Fed. R. Civ. P. 4(k)(1). The Colorado courts have specific personal jurisdiction over persons who enter the state and cause torts in the state for claims arising from their tortious conduct in the state. *See Colo. Rev. Stat. § 13-1-124(1)(b)*(extending personal jurisdiction over causes of action against any person, resident or nonresident, who commits a tortious act within the state); *Jenner & Block v. District Court*, 590 P.2d 964, 965 (Colo. 1979)(extending long-arm statute to constitutional limits).

Due process provides limits to the territorial reach of federal and state courts. U.S. Const. amends. V & XIV; *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Pennoyer v. Neff*, 95 U.S. (5 Otto) 714, 733 (1877). But long-arm jurisdiction over nonresident motorists for torts in the state does not violate due process. *Hess v. Pawloski*, 274 U.S. 352, 356-57 (1927), *Zerr v. Norwood*, 250 F. Supp. 1021, 1021 (D. Colo. 1966)(holding long-arm statute constitutionally applies to nonresident motorist who causes tort in Colorado).

III. Was there proper service of process?

In federal court, process may be served pursuant to federal rule or pursuant to the methods authorized by the state law either of the place where the federal court is sitting or where

process is served. Fed. R. Civ. P. 4(e)&(h). *See generally*, Charles Alan Wright, *Law of Federal Courts* § 64 at 445-46 (5th ed. 1994).

Service of the summons and complaint was insufficient under both federal and Colorado state rules because Plaintiff personally delivered them, and the rules require service by a nonparty. Fed. R. Civ. P. 4(c)(2); Colo. R. Civ. P. 4(d). *Accord* Nev. R. Civ. P. 4(c). Accordingly, service of process is insufficient.

IV. Was venue proper?

Venue is proper. At the time of the commencement of the action, the defendant was an alien admitted to permanent residence. “An alien may be sued in any district.” 28 U.S.C. § 1391(d). Venue is also proper in an action based on diversity of citizenship in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(a)(2). Because the accident occurred in Colorado, the district of Colorado is proper.

V. Was the counterclaim proper and within the court’s jurisdiction?

The counterclaim is proper. The Federal Rules permit certain counterclaims and require as a “compulsory counterclaim” a claim if it: “(A) arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim; and (B) does not require adding another party over whom the court cannot acquire jurisdiction.” Fed. R. Civ. P. 13(a). **(Note: Rule amended 12/01/07)** Because Defendant’s damages were the result of the same accident, they arose from the occurrence that is the subject matter of the plaintiff’s claim, the counterclaim is authorized by federal rules. Moreover, a compulsory counterclaim is within the court’s subject matter jurisdiction. Although the amount of damages demanded by the counterclaim does not independently satisfy the amount in controversy for diversity of citizenship jurisdiction, the federal court is authorized to exercise supplemental jurisdiction over a counterclaim in a case where the court- has original jurisdiction over the plaintiff’s claim, and the counterclaim arises from a common nucleus of operative facts. 28 U.S.C. § 1367(a); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (supplemental jurisdiction authorizes federal court to hear federal and state claims which share a common nucleus of operative fact such that all claims would ordinarily be expected to be tried in one judicial proceeding); *Shreve & Raven-Hansen, supra* at 147.

Conclusion

The requirements for diversity of citizenship jurisdiction were met at the time the action was commenced, and the court was authorized to exercise jurisdiction over the person of the defendant provided he was served properly. Venue was also proper. Nevertheless, service of process was insufficient.

If the action is dismissed, subject matter jurisdiction will be lacking when it is

recommenced, because Defendant will be deemed a citizen of the same state as Plaintiff as the time of commencement, and there will no longer be diversity of citizenship jurisdiction.