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## 1. Denial of Motion to Dismiss for Failure to Join Maurice as a Defendant

### **Joinder**

#### *Compulsory joinder*

A court must join a party in an initial action if the party involved is 1) necessary to resolve the case, 2) adequate relief will not be possible without the joinder of the necessary party, 3) there will be inadequate damages award, 4) defendant will be unfairly prejudiced without the joinder. Even if a party is not necessary, courts may allow joinder in the interest of fairness as in if the importance of joinder outweighs the interest in denial of joinder.

Here, Pam (P) purchased four specially coated tires from DuraTires (D) and had them installed by M, a mechanic. P filed a claim against D for breach of warranty and negligent installation and manufacture of the tires. D sought to join M as a defendant but the court denied its motion.

#### *Necessary*

A party is necessary if it is part of the same transaction or occurrence as the original action, or shares the same common law or facts as the original action.

Here, M is a necessary party because P's claim of negligent installation and manufacture of D's tires specifically involves M since he is the one who installed the tires. Her accident involves possible negligence in installing the tires, and severs a potential chain of causation for D to be liable. And, P is aware of M's presence making the lack of joinder of M an unavoidable mistake on P's part.

#### *Inadequate relief and damages*

Further, there will be both inadequate relief and inadequate award of damages if M is liable for the action through his negligence, after the tires left D's exclusive control. Although D can assert a claim against M to seek further damages after the result of this case, that will be an inefficient use of the court's resources, instead of just handling the case all at once.

#### *Unfair prejudice against D*

There will likely be unfair prejudice against D because the negligent installation claim specifically involves M.

### **Supplemental Jurisdiction**

Alternatively, a motion to dismiss was not the right process to seek joinder of M. D could have sought joinder of M through supplemental jurisdiction if there was no diversity jx violation.

Here, the federal court had proper jurisdiction over P's tort law claim, which means that the federal court accepted the case through diversity jx and not federal question jx.

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Supplemental jurisdiction allows joinder of party involved in the same transaction or occurrence and or disputing same law or facts. If the case is accepted based on diversity jx, then the additional party must not destroy diversity. Diversity jx means that M and P must not be of the same domicile (permanent place of residence with intent to stay there). If they are not of the same domicile, then the court could have sought supplementary jurisdiction

Thus, the court likely properly denied D's request to dismiss the case; however, the court should have sought to exercise supplementary jurisdiction over M, if possible.

### **Cross claim**

If there was a lack of diversity jx, D could have sought a cross-claim against M, in order to ensure M's presence as a party in the claim.

If seeking this course of action, D would be jointly and severally liable and could seek for damages from M based on M's contributory negligence.

### **Conclusion**

Thus, the court likely improperly denied the motion to dismiss for lack of joinder.

### **2a) Production of Statement**

#### **Relevant Interrogatories**

All information that tends to prove a specific fact of consequence in a case is relevant and may be inquired to in interrogatories.

Here, D seeks P to produce W's statement, the other driver, who suffered a minor injury. This statement is apparently favorable to P's case.

Thus, this information is clearly relevant to the case.

#### **Work Product Privilege**

All work product prepared in anticipation of litigation by an attorney or attorney's agent is privileged information unless the party seeking the evidence can show a 1) substantial need for the information and 2) the party is unable to procure the information itself without undue hardship.

#### *Anticipation of litigation*

Here, it is unclear if P is an attorney or defending herself as pro se. Nonetheless, it is clear P obtained the information in anticipation of litigation, whether at the scene of the crime or afterwards. This information is privileged unless W can show a substantial need for the information and undue hardship.

#### *Substantial need*

A substantial need for the information means that D needs this information to ensure proper justice.

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Here, D certainly could benefit from W's statement but there are no facts indicating that this substantial need can not be resolved by D interviewing W on it's own. And, if there are any contradictions between P and D's interviews then W could likely be impeached at trial.

*Undue hardship*

Undue harship means that D will not be able to obtain this information through it's own investigation due to unavailability of the client or lack of resources.

Here, there are no facts indicating that D is unable to reach W and interview W on it's own, or that D, a company that is not insolvent does not have enough resources or funds to obtain a statement from W.

Thus, the court improperly granted D's motion to compel D to produce W's statement because W is likely to obtain this information by itself.

**2b) Physical examination**

A court can order a physical examination of an original party to the case if her mental or physical health is an issue in determining outcome of the case.

Here, D asked P to submit to to a physical examination in a motion to compel. During P's car crash, P was not physically injured and alleges property damages and emotional distress as a result of the accident, neither of which require proof of damages to the physical body. The property damage requires proof of damage to the car, and emotional distress claim requires P to prove P have suffered emotionally, not physically.

Thus, the court improperly granted D's motion because there is no issue of P's physical health at issue in the case.

**3) Production of scientific report**

**Work Product privilege**

See rule above.

Here, D created a scientific report at the direction of its legal counsel and contained researched on flat tire incidents involving D's tires.

*Relevance*

This information is relevant because it goes to corroborate D;s advertised claim that a scientific report declared that it's tires will not go flat for the first 7,000 miles. P was injured in under 7000 miles (100 miles specifically) so evidence that contains research as to D's flat tire incidents is relevant to show the truth of D's claims.

*Anticipation of litigation*

The legal counsel likely advised D to prepare these documents for its own safety as well as in anticipation of possible future litigation. However, since there was no imminent legal suit and there is no confidential attorney-client privileged information, confidential information in the course of obtaining legal advise for legal purposes, such information can be obtained by a court

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order. Further, D itself relied on this scientific report in an advertisement that claimed safety of its tires.

Thus, the court properly ordered D to produce its scientific report.

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**END OF EXAM**