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Federal Rules of Civl Procedure, Rule 23: Aggregation of Claims to Meet the Jurisdictional Amount

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interrelationship with other problem areas. This is especially true of compulsory or permissive joinder. Whether the decision will prove to be a blessing or a curse will depend greatly on its subsequent interpretation by the courts.

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FEDERAL RULES OF CIVIL PROCEDURE, RULE 23: AGGREGATION OF CLAIMS TO MEET THE JURISDICTIONAL AMOUNT

Snyder v. Harris, 89 S. Ct. 1053 (1969)

The United States Supreme Court granted certiorari to resolve a conflict of decision between the courts of appeals for the Eighth[1] and Tenth Circuits.[2] The common issue was whether separate and distinct claims presented by and for claimants in class actions might be aggregated to meet the 10,000 dollar "amount in controversy" requirement for federal diversity jurisdiction.[3] Shareholder Snyder brought a class action against a corporate board of directors alleging a sale of shares in excess of the fair market value designed to obtain complete control of the company. Suit was brought in a federal district court on the basis of diversity of citizenship. Snyder alleged 8,740 dollars in damages for herself and approximately 1,200,000 dollars in damages for others similarly situated. The district court held that the claims could not be aggregated to meet the jurisdictional amount, and the Court of Appeals for the Eighth Circuit affirmed.[4] Coburn brought a class action against Gas Service Co. alleging the company had illegally collected a city franchise tax. Diversity of citizenship was the basis for federal jurisdiction. Coburn alleged personal damages of only eight dollars, but also alleged similar amounts for each of 18,000 other customers. The district court held the claims could be aggregated to meet the jurisdictional amount, and the Court of Appeals for the Tenth Circuit affirmed.[5] The United States Supreme Court, Justice Black writing for the majority, affirmed the holding of the Eighth Circuit, reversed that of the Tenth Circuit, and HELD, amended rule 23 of the Federal Rules of Civil Procedure did not and could not change the traditional judicial interpretation of "matter in controversy" that separate and distinct claims of two or more plaintiffs may not be aggregated to satisfy the 10,000 dollar jurisdictional requirement. Justices Fortas and Douglas dissenting.

1. Snyder v. Harris, 390 F.2d 205 (8th Cir. 1968).
2. Gas Service Co. v. Coburn, 389 F.2d 831 (10th Cir. 1968).
3. 28 U.S.C. §1332 (1964).
4. Snyder v. Harris, 390 F.2d 205 (8th Cir. 1968) (following a similar Fifth Circuit decision in Alvarez v. Pan Am. Life Ins. Co., 375 F.2d 992 (5th Cir. 1967), *cert. denied,* 389 U.S. 827 (1967).
5. Gas Service Co. v. Coburn, 389 F.2d 831 (10th Cir. 1968).

Exercising its constitutional power,[6] Congress by the Judiciary Act of 1789[7] granted jurisdiction to the federal district courts in diversity of citizenship cases. The sole purpose of this grant was to alleviate apprehension of prejudicial conduct on the part of state courts.[8] Opposition to federal power is credited as the main reason for limiting federal diversity jurisdiction to cases where the matter in controversy exceeded 500 dollars.[9] Congress has consistently increased this jurisdictional requirement, and it now stands at 10,000 dollars.[10] The primary purpose of the most recent increase was to reduce the workload of the district courts.[11] A secondary congressional motive was to avoid federal adjudication of issues normally calling for the application of state law, and thus more appropriately tried in state courts.[12]

The Judiciary Act of 1789 did not define "matter in controversy," thus leaving interpretation to the courts. The problem of aggregating the claims of joined plaintiffs to meet the jurisdictional amount first presented itself in 1832. The Supreme Court held that such claims could not be aggregated if they were *several* and *distinct* even though there was a question of law common to all plaintiffs.[13] The Court based its reasoning on the finding that none of the plaintiffs had any interest in the claims of the others, nor could any one of them be aggrieved by an adverse decree against the other plaintiffs.[14] In 1911, the Court held that each plaintiff in joinder cases must individually meet the jurisdictional amount if the claims were separate and distinct, but if plaintiffs were seeking to enforce a single title or right in which they had a *common* and *undivided* interest, claims could be aggregated to meet the jurisdictional amount.[15] This became the general rule and was considered settled doctrine by 1916.[16]

While the Federal Rules of Civil Procedure eliminated many of the restrictive provisions surrounding joinder of parties,[17] no change was made with respect to the general aggregation doctrine developed by the Court. The Federal Rules provided for a class action.[18] This proceeding developed

6. U.S. CONST. art. III, §2.

7. Judiciary Act of 1789, ch. 20, §11, 1 Stat. 78.

8. Bank of United States v. Deveaux, 9 U.S. (5 Cranch) 61, 87 (1809); C. WRIGHT, FEDERAL COURTS §23, at 64 (1963). For a discussion on the matter of prejudice and its presence or absence, *see* Note, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 492-93 (1928).

9. Note, *supra* note 8, at 499.

10. 28 U.S.C. §1332 (1964). The jurisdictional amount requirement was increased to $2,000 by the Act of March 3, 1877, ch. 373, 24 Stat. 552; increased to $3,000 by the Act of March 3, 1911, ch. 231, 36 Stat. 1091; increased to the present amount of $10,000 by the act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415.

11. *Hearings Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 85th Cong., 1st Sess., ser. 5 (1957) [hereinafter cited as 1957 *Hearings*].

12. *Id.*

13. Oliver v. Alexander, 31 U.S. (6 Pet.) 143 (1832).

14. *Id.* at 146.

15. Troy Bank v. Whitehead, 222 U.S. 39, 40-41 (1911).

16. Pinel v. Pinel, 240 U.S. 594, 596 (1916).

17. FED. R. CIV. P. 20; *see* F. JAMES, CIVIL PROCEDURE §10.12, at 466 (1965).

18. FED. R. CIV. P. 23.

from a felt need to avoid the inherent difficulties of bringing before the court all necessary and indispensable parties.[19] Nonetheless, the aggregation doctrine developed in earlier joinder cases was applied to plaintiffs in class actions.[20] Rule 23 originally provided for class actions where it was impracticable to bring all members of the class before the court, and the character of the class rights were:[21]

> (1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;
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> (2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or
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> (3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

Such actions were respectively dubbed "true," "hybrid," and "spurious."[22] These categories were attended by important consequences with respect to the binding effect of judgments upon the members of the class as well as aggregation of claims to meet the jurisdictional amount. A judgment in the "true" class suit bound all members of the class regardless of whether named and before the court.[23] In "hybrid" class actions, however, judgments were binding for all members only if the action was in rem as opposed to in personam.[24] And in "spurious" class actions, judgments were binding upon only those members of the class who were before the court.[25] Aggregation of the members' claims to meet the amount in controversy requirement was permitted only in "true" class actions since claims in that category emanated from *joint* or *common* rights, whereas "hybrid" and "spurious" actions presented claims *several* by definition.[26]

After the 1940 decision of *Hansberry v. Lee*,[27] which held that due process permitted binding judgments on absent members of a class where procedure adequately insured their protection, commentators became disenchanted with rule 23 and its tripartite classification.[28] Complaints stemmed from the ob-

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19. F. JAMES, *supra* note 17, §10.18, at 494.

20. *E.g.*, Thomson v. Gaskill, 315 U.S. 442 (1942); Buck v. Gallagher, 307 U.S. 95 (1939); Clark v. Paul Gray, Inc., 306 U.S. 583 (1939).

21. FED. R. CIV. P. 23 (a).

22. *See* 3A J. MOORE, FEDERAL PRACTICE ¶¶23.08-.11 (2d ed. 1968); C. WRIGHT, FEDERAL COURTS §72 (1963).

23. 3A J. MOORE, *supra* note 22, at ¶23.11 (2).

24. *Id.* at ¶23.11 (4).

25. *Id.* at ¶23.11 (3); *see, e.g.*, All Am. Airways, Inc. v. Eldred, 209 F.2d 247 (2d Cir. 1954). The "spurious" class action was in actuality nothing more than a permissive joinder. Comment, *Attacking the Party Problem*, 38 S. CAL. L. REV. 80, 93 (1965).

26. 2 W. BARRON & A. HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE §569 (Supp. 1968).

27. 311 U.S. 32 (1940).

28. *See* C. WRIGHT, *supra* note 22, §72; Kalven & Rosenfield, *The Contemporary Function of the Class Suit*, 8 U. CHI. L. REV. 684 (1941); Simeone, *Procedural Problems of Class Suits*, 60 MICH. L. REV. 905 (1962); VanDercreek, *The "Is" and "Ought" of Class Actions*

scurity of such terms as "joint" and "common" rights or claims, and their effect upon the binding nature of the judgment.[29] Application of the aggregation doctrine to class actions, however, was not considered an inherent difficulty with rule 23.[30]

Rule 23 was completely rewritten in 1966. The amended rule sets out more practicable guidelines for determining when class actions may be maintained and provides for binding judgments upon all whom the courts find to be class members regardless of whether the judgment is favorable to the class.[31] It also describes measures to assure fair conduct of class actions.[32]

It is readily apparent that the amended rule did not change the traditional judicial interpretation of "matter in controversy." Nowhere does the amended rule mention the aggregation doctrine, and examination of the advisory committee's note reveals an absence of any intent to change it.[33] The fact that the judgment in a class action now binds all class members does not support the inference that the Judicial Conference intended the aggregated amount of the claims to be the amount in controversy. As the majority opinion in the principal case pointed out, the aggregation doctrine predates the original rule 23 or, for that matter, any federal rule of procedure.[34] The Court further maintained that for two reasons it should not reexamine its settled judicial interpretation of "matter in controversy." First, because Congress had consistently increased and reenacted the jurisdictional amount requirement, yet had remained silent on the matter of aggregation of plaintiffs' claims, the Court viewed the congressional silence as implied adoption of the judicial interpretation.[35] The dissent stressed the hazards of this implication. It appears, however, that Congress would surely be adverse to allowing additional cases before the federal courts when the latest jurisdictional amount requirement had as its main purpose reduction of the workload of federal courts.[36]

Second, the Court found that overturning the aggregation doctrine would transfer to the federal courts local problems totally dependent upon state law, and more appropriately tried in the state courts. The Court also held that the amended rule could not change the aggregation doctrine since that would be an impermissible judicial expansion of jurisdiction contrary to the mandate of rule 82: "These rules shall not be construed to extend or limit the jurisdiction of the United States district courts . . . ."[37] While the mandate

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Under Federal Rule 23, 48 IOWA L. REV. 273 (1963).

29. *Proposed Amendments to Rules of Civil Procedure for United States District Courts*, 39 F.R.D. 69, 98-99 (1966) (advisory committee note on rule 23).

30. *Id.*

31. FED. R. CIV. P. 23.

32. *Id.*

33. *Proposed Amendments*, note 29 *supra*.

34. 89 S. Ct. 1053, 1057 (1969). The aggregation doctrine was enunciated in 1832, but the federal rules first became effective in 1938. Oliver v. Alexander, 31 U.S. (6 Pet.) 143 (1832).

35. 89 S. Ct. 1053, 1058 (1969).

36. 1957 *Hearings*, *supra* note 11.

37. FED. R. CIV. P. 82.

of rule 82 is firmly established,[38] the Court can, in making and construing procedural rules, nonetheless affect the occasions upon which jurisdiction is exercised as long as the jurisdiction does not conflict with statutory law.[39] Also, the majority opinion overlooks the fact that amendments to the rules are approved by Congress.[40]

The vigorous dissent by Justice Fortas, joined by Justice Douglas, charged the majority with a stubborn refusal to conform judge-made law to the reform sought by the amended rule.[41] The dissenters found the unworkable distinctions of joint, common, and several rights or claims reestablished contrary to the purpose of the amendment.[42] They also saw a defeat of the intent to give district courts wider discretion in the type of actions that might be tried as class actions.[43] The dissent further found the majority guilty of violating rule 82 by construing a federal rule to limit the jurisdiction of the district courts,[44] and argued that it was just as likely that congressional reenactment of the jurisdictional amount requirement signified an intent for the Court to continue to develop the interpretation of matter in controversy as it signified adoption of present and past interpretations.[45]

Since amended rule 23 makes no reference to aggregation of class members' claims to meet the jurisdictional requirement, the principal decision is not startling. The amended rule might make it *convenient* to treat the aggregated amount as the amount in controversy[46] because all members of the class are bound. This, however, would go beyond the plain meaning of the amended rule's wording. If the Judicial Conference intended to permit aggregation of distinct claims, as the dissent argues, why did the conference not expressly provide for the same in the new rule?

A better case could be made for aggregation if it could be shown that nonaggregation will work a hardship on class suits. But such is not the case. The principal litigants have only been denied federal jurisdiction, and they may still seek their remedy in the state courts. Snyder has already filed suit in the Missouri state court and Coburn may do likewise in Kansas.[47] Most, if

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38. *See, e.g.*, Sibbach v. Wilson & Co., 312 U.S. 1, 9 (1941); Venner v. Great N. Ry., 209 U.S. 24, 35 (1908); Lesnik v. Public Indus. Corp., 144 F.2d 968, 973 (2d Cir. 1944).

39. *See* Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 445-46 (1946); Venner v. Great N. Ry., 209 U.S. 24, 35 (1908); Lesnik v. Public Indus. Corp., 144 F.2d 968, 973 (2d Cir. 1944); Fraser, *Ancillary Jurisdiction and the Joinder of Claims in the Federal Courts*, 33 F.R.D. 27, 28 (1964); Kaplan, *Continuing Work of the Civil Committee: 1966 Amendment of the Federal Rules of Civil Procedure (I)*, 81 HARV. L. REV. 356, 399-400 (1967).

40. Kellman v. Stoltz, 1 F.R.D. 726, 729 (N.D. Iowa 1941).

41. 89 S. Ct. 1053, 1059-60 (1969) (Fortas & Douglas, JJ., dissenting).

42. *Id.* at 1060.

43. *Id.*

44. *Id.* at 1067.

45. *Id.* at 1063.

46. 2 W. BARRON & A. HOLTZOFF, *supra* note 26, §461, n.15.1 (this was the only authority cited by the appellant in the instant case).

47. 89 S. Ct. 1053, 1059 (1969).