

## Laws Relating to Inclusion and Exclusion of Parties in a Civil Suit: A Comparative Analysis of Indian and Federal Procedural Laws

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### Abstract

This paper aims to draw the distinction between necessary and non necessary parties; give a brief introduction to the concepts of misjoinder and non-joinder of parties; provide a summary of the legal provisions relating to mis-joinder and non-joinder of parties and present the legal consequences and effect of mis-joinder and non-joinder of parties along with appropriate judicial interpretation. Procedural misjoinder has emerged as a new and distinct type of fraudulent joinder in the federal jurisdiction of USA and other nations.

**Introduction:** Civil Law represents an individual's private right of action for redress. A civil suit (also referred to as a 'civil proceeding' or simply 'suit') is a process for recovery of an individual right or redress of an individual wrong. The essential requirements of any civil suit, according to the decision of the Bombay High Court in *Krishnappa v. Shivappa*<sup>1</sup> are the opposing parties, the subject matter in dispute, the cause of action and the relief claimed by the plaintiff. For the purposes of the paper, we shall be concerned only with the opposing parties.

The opposing parties quite logically would refer to the plaintiff and the defendant. The **Code of Civil Procedure**, the procedural law relating to civil suits can be classified into two parts, "**Body of the Code**" and "**Rules**". The latter deals with non-joinder of parties. **Order 1** of the **Code of Civil Procedure, 1908** deals with the parties to the suit and also contains provisions for addition,

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<sup>1</sup> (1907) 5 Cal. L. J. 564

deletion and substitution of parties, joinder, non-joinder and misjoinder of parties and objections to misjoinder and non-joinder<sup>2</sup>.

### **When Can Joinder Of Parties Take Place?**

‘*Joinder of Parties*’ means joining several parties as plaintiffs or defendants in the same suit. ***All or any of those persons can be joined to a suit as plaintiffs or defendants in whom the right to any relief is alleged to exist, or who is alleged to possess any interest in the subject-matter of litigation, or in the opinion of the court is a proper or a necessary party.***

The question of joinder of parties may arise either as regards the plaintiffs or as regards the defendants.

**Joinder of Plaintiffs:** All persons may be joined in one suit as **plaintiffs** according to the conditions required under **Rule 1 of Order 1**. The conditions which are required to be fulfilled are that the ***right to relief alleged to exist in each plaintiff arises out of the same act of transaction; and the case is such of a character that, if such person brought separate suits, any common question of law or fact would arise.***

**Joinder of Defendants:** On the other hand, a person can be joined as a defendant according to the provisions of **Rule 3 of Order 1**. The conditions to be required to be satisfied in the case of defendant are that the ***right to relief alleged to exist against them arises out of the same act of transaction; and the case is of such a character that, if separate suits were brought against such person, any common question of law or fact would arise.***

In ***Mosley v. General Motors Corp. Ltd***<sup>3</sup>, the plaintiff (Nathaniel Mosley) along with 9 other persons joined in bringing an action individually and as class representatives alleging their rights under a statute were denied by General Motors, Local 25, United Automobile, Aerospace and Agriculture Implement Workers of America (Union), simply by reason of their colour and race. The plaintiffs intended to bring about a joinder of defendants. On this point, the district court held that there could not be a joinder of defendants since *there is no right of relief out of the same transaction, and issues of fact/law involved are common to all the plaintiffs*. In ***Watergate Landmark Condominium Unit Owners' Association v. Wiss, Janey, Elestner Associates***<sup>4</sup>, the

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<sup>2</sup>Law-In-Perspective: Necessary and Proper Parties-the Law Revisited  
<http://legalperspectives.blogspot.in/2010/07/necessary-and-proper-parties-law.html>

<sup>3</sup> 417 F.2d 1122

<sup>4</sup> 117 F R D 576 [1987]

limits of the plaintiffs to join additional parties were laid down and it was held that there must be a balance of convenience between the right to speedy trial of the plaintiff and the right to fair trial of the defendant.

## **Necessary Parties**

**A. Who Are The Necessary Parties To A Civil Suit?:** A necessary party is a party without impleading whom a claim cannot be legally settled by court. In other words, in the absence of a necessary party, no effective and complete decree can be passed by the court.

**B. Test for Determining The Necessary Parties To A Civil Suit:** In *Benares Bank Ltd. v. Bhagwandas*<sup>5</sup>, the full bench of the High Court of Allahabad laid down two tests for determining the questions whether a particular party is necessary party to the proceedings:

- There has to be a right of relief against such a party in respect of the matters involved in the suit.
- The court must not be in a position to pass an effective decree in the absence of such a party.

The above tests were described as true tests by Supreme Court in *Deputy Commr., Hardoi v. Rama Krishna*<sup>6</sup>.

Generally, a party from whom no relief is sought is not a necessary party. In *Pravin v. State of Maharashtra*<sup>7</sup>, the government bought a plot of land under a statute, and afterwards, sold it to the appellant. The sale was declared invalid by the Supreme Court. The original owner sought relief. It was held that the party which had purchased the plot of land from the government was not a necessary party, because no relief was claimed from it. In *Gujarat SRTC v. Saroj*<sup>8</sup>, the legal representatives of the deceased driver of a car which collided with a SRTC bus, claimed compensation from the SRTC. In the present suit, it was held that the owner of the car and its insurer were not necessary parties since no relief had been claimed from them. Thus, the nature of relief claimed is important in deciding who is a necessary party.

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<sup>5</sup> A.I.R. 1947 All. 18

<sup>6</sup> AIR 1953 SC 521

<sup>7</sup> 2001 CriLJ 3417

<sup>8</sup> 2001 (2) SCC 9

In relation to companies, and similar entities that exist independently of their members, a suit against the entity does not amount to a suit against its members. The principle of "*lifting the corporate veil*" is inapplicable in such cases, because the wrong being complained of is civil in nature. However, this legal principle shall not apply to partnership firms and trust, since they do not enjoy a legal existence independent of their members. The government enjoys no immunity in so far as civil suits are concerned. If the government issues a notification, against which the plaintiff chooses to file a suit, the government shall also be a necessary party. In suits that are filed against a public officer, for damages or for any other relief, in respect of an act done by him in official capacity, the government will also be a necessary party.

In ***General Manager, South Central Railway, Secunderabad v. AVR Siddhanti***<sup>9</sup>, there was a non-joinder of parties. The plaintiff claimed relief against the Railways by impleading it through its representatives. The appellants contended that the employees who were likely to be affected by the decision had not been impleaded. Further, it was contended that since they were necessary parties, their non-joinder was fatal to the petition. However, the Supreme Court turned down this preliminary objection, holding that the relief was being claimed against the Railways only and it had been impleaded through its representative. Employees who were likely to be affected by the decision were at best proper parties. Their non-joinder could not be said to be fatal to the petition. This supports the proposition that a necessary party is one against whom relief is claimed.

In ***K Kamaraja Nadar v. Kunju Thevar***<sup>10</sup>, the question of who are the necessary parties to an election petition was decided upon. An election petition can call into question any election, challenging the fairness of the election, and may be presented by any candidate or elector. A petitioner may further pray for a declaration that he or any other candidate has been duly elected. In such a situation, he must implead all contesting candidates other than the petitioner, and also anyone against whom he has alleged use of unfair practices. Such contesting candidates will have to be joined as respondents to such a petition. Any failure to do so will amount to non-joinder of necessary parties. This defect cannot be cured by way of an amendment of the petition, since the Election Tribunal does not enjoy the authority to amend the petition after it has been presented.

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<sup>9</sup> 1974 SCC (4) 335

<sup>10</sup> (1958) 1 MLJ 139

In *Praveen Bhatia v. Dr. M Ghosh*<sup>11</sup>, the plaintiff filed a suit against a doctor due to whose negligence his wife had died. The doctor was held to be a necessary party (since relief has been claimed from him). But the insurance company with whom the insurance has been obtained is neither a necessary nor a proper party, since no relief has been claimed from it.

**Rule 9 of Order 1** lays down that *no suit shall be defeated by reason of misjoinder or non-joinder of parties*. In such cases, the court may deal with the matter in controversy as regards the rights and interests of the parties actually before it. However, this Rule *does not apply to cases where there is a non-joinder of necessary party*.

If two or more persons are joined as plaintiffs or defendants in one suit in contravention of **Order 1, Rules 1 and 3** respectively and they are neither necessary nor proper parties, it is a case of misjoinder of parties. On the other hand, where a person, who is necessary or proper party to a suit has not been joined as a party to the suit, it is a case of non-joinder.

The scope of this Rule was elaborately discussed by Allahbad High Court in *Maqsood Ali v. Zahid Ali*<sup>12</sup> that except where there is a legal bar to the maintainability of a suit by reason, non-joinder of a party, or where in his absence, the decree that may be passed might become infructuous or inexecutable, the court cannot dismiss a suit for non-joinder of a person.

**Section 99** of the **Code of Civil Procedure** provides that *no decree shall be reversed or substantially valid, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court and, however, nothing in this section shall apply to non-joinder of a necessary party*.

**Misjoinder of Parties and its Effect:** The joinder or inclusion of any person as a party to a suit contrary to the provisions of the code is called misjoinder<sup>13</sup>. Reasons for a court ruling that there is misjoinder include:

- a) the parties do not have the same rights to a judgment;
- b) they have conflicting interests;
- c) the situations in each claim (cause of action) are different or contradictory; or

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<sup>11</sup> (1999) 2 MLJ 690

<sup>12</sup> AIR 1954 All 385

<sup>13</sup> <http://legal-dictionary.thefreedictionary.com/misjoinder>

- d) the defendants are not involved (even slightly) in the same transaction. In a criminal prosecution the most common cause for misjoinder is that the defendants were involved in different alleged crimes, or the charges are based on different transactions<sup>14</sup>.

Misjoinder may be misjoinder of plaintiffs; misjoinder of defendants and misjoinder of cause of actions.

**A. Misjoinder of Plaintiffs:** Where two or more persons may have been joined as plaintiffs in one suit but the right to relief alleged to exist in each plaintiff does not arise out of the same act or transaction (or series of acts or transaction) and if separate suits were brought by each plaintiff no common question of fact or law would have been arisen, there is misjoinder of plaintiffs<sup>15</sup>.

**B. Misjoinder of Defendants:** Likewise, where two or more persons have been joined as defendants in one suit but the right to relief alleged to exist against each defendant does not arise out of the same act or transaction (or series of acts or transactions) and if separate suits were brought against each defendant, no common question of fact or law would have arisen, there is misjoinder of defendants<sup>16</sup>.

**C. Misjoinder of Cause of Action:** Misjoinder of causes of action may be coupled with the misjoinder of plaintiffs or misjoinder of defendants. Thus, the subject may be considered under the following three heads-

**C.1 Misjoinder of Plaintiffs and Cause of Action:** Where in a suit there are two or more plaintiffs and two or more causes of action, the plaintiffs should be jointly interested in all the causes of action. If the plaintiffs are not jointly interest in all the cause of action, the case is one of misjoinder of plaintiffs and cause of action.

**C.2 Misjoinder of Defendant and Causes of Action: Multifariousness:** Where in a suit, there are two or more defendants and two or more cause of action, the suit will be bad for misjoinder of defendants and causes of action, if different causes of action are joined against different defendants separately. Such a misjoinder is technically called multifariousness<sup>17</sup>.

**C.3 Misjoinder of Claims Founded on Several Causes of Actions: Order 2 of the Code of Civil Procedure Code** deals with the misjoinder of claims founded on several

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<sup>14</sup> The State Of Punjab vs Nathu Ram 1962 AIR 89

<sup>15</sup> Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy, [1958] S.C.R. 101

<sup>16</sup> State Of Orissa vs Shyam Sundar Patnaik 1966 AIR 1271

<sup>17</sup> Ramesh Hiranand Kundanmal Vs. Municipal Corporation, Greater Bombay, (1992) 2 SCC 524

claims. According to the Rule, *every suit must include the whole claim which the plaintiff is entitled to make in respect of that cause of action.*

In *Patasibai v. Ratanlal*<sup>18</sup>, an application for the correction of misdescription of the defendant (in the plaint) was allowed, the correction could not be incorporated in the plaint. But, the misdescription did not mislead any party. In fact, the written statement and the documents in appeal carried the correct name. It was held that decree was valid.

**Non-Joinder of the Parties and its Effect:** When a person who is a necessary party to a suit has not been joined as a party to the suit, it is a case of non-joinder. Thus non joinder can be defined as an omission to join some person as a party to a suit, whether as plaintiff or as defendant, who ought to have been joined according to the law<sup>19</sup>. The Code does not define non-joinder, but lays down "*No suit shall be defeated by reason of ... non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.*" The proviso to this Rule however **excludes its applicability to cases of non-joinder of necessary parties.** ‘

Where a suit for possession was filed, and the defendant derived his title from the auction-purchaser in liquidations proceedings of a company, but the plaintiff sued for declaration that the auction proceedings and the subsequent conveyance by auction purchaser to defendant were void in law under a certain Act, it was held by the Supreme Court in *Vishnu v. Rajan Textile Mills*<sup>20</sup>, that the liquidator was a necessary party and in his absence the suit for declaration must fail.

**Difference between Non - Joinder And Misjoinder:** ‘*Misjoinder*’ of parties means a joinder of a party who ought not to have been joined either as a plaintiff or as a defendant. In other words, it refers to impleading an unnecessary party. It may also refer to a situation in which a plaintiff is impleaded as a defendant and vice-versa (party wrongfully impleaded)<sup>21</sup>. However, ‘*Non-joinder*’ refers to a situation when a party who ought to have been impleaded according to the law is not impleaded. As opposed to presence of the wrong party, it refers to absence of a party.

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<sup>18</sup> 1990 SCC (2) 42

<sup>19</sup> Non-joinder of Parties in Civil Suits <http://www.legalserviceindia.com/articles/cpc.htm>

<sup>20</sup> AIR 1975 SC 2079

<sup>21</sup> (2001) 1 J & K Law Reporter 342

In case of non-joinder of necessary parties, the suit may be dismissed, but this is not so in case of misjoinder<sup>22</sup>r.

**Consequences of Non - Joinder of Necessary Parties:** Non-joinder of parties is not fatal to a suit. However, a distinction between non-joinder of *someone who ought to have been joined* and *someone whose joinder is only necessary for convenience is necessary*. The former are *necessary parties*, while the latter are only *proper parties*. Order 1, Rule 9 of the Code deals with non-joinder of parties, but is only a procedural provision, which does not affect the substantive rights and duties of parties.

The absence of necessary parties means those parties from whom relief is being claimed are not present, due to which the court cannot pass any effective decree. In such circumstances, the suit can but does not have to be dismissed. If found legally justifiable, the court should grant the relief being claimed by the plaintiff by passing a decree between the parties actually before it, so long as that can be done legally and effectively. In **Laxmishankar Hairshankar Bhatt v. Yashram Vasta**<sup>23</sup> court also upheld an important legal principle - in a suit claiming property, until and unless all the other co-owners are not impleaded, the suit shall not be maintainable.

The general principle of law is that the plea of non-joinder should be raised at the earliest available opportunity. However, an exception is partition suits, in which the plea of non-joinder of parties can be raised at any point of time. The reason for this, as laid down in **Shanmugham v. Saraswati**<sup>24</sup> is that this materially affects the subject - matter involved in the suit.

Holding that joinder or non-joinder of parties is too technical, it was held that this shall not operate to deny a person any benefit under any enactment. In **Narendra Singh v. Oriental Fire and General Insurance Co. Ltd.**<sup>25</sup>, Delhi, the benefit of Section 39 of the Motor Vehicles Act was extended to the plaintiff even though the suit suffered from a non-joinder of parties. At the same time, non-joinder should not be construed too liberally; otherwise the parties shall stand to lose. If a partnership firm against another firm files a suit, all the partners have to be impleaded as plaintiffs but not their legal representatives. For this reason, in **Brij Kishore Sharma v. Ram Singh**<sup>26</sup>, the Supreme Court, reversing the decision of the trial court, held that the suit is not maintainable. Pending the suit, one of the parties died and his legal representatives were not

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<sup>22</sup> Razia Begum Vs. Sahebzadi Anwar Begum & Others, AIR 1958 SC 886

<sup>23</sup> AIR 1993 SC 1587

<sup>24</sup> 2008 (2) CTC 573

<sup>25</sup> AIR 1987 Raj 77

<sup>26</sup> Civil Appeal No. 1562 of 1980



brought on record. In the opinion of the court, the legal representatives should have been brought on record.

**D. Compulsory Joinder, and Addition of Parties:** *Compulsory joinder* of parties obviously brings one to the question of whether certain persons not joined as parties actually have sufficient interests in the suit, to the extent that they must be joined. Also, if they cannot be joined, will the suit be allowed to proceed, or will it have to be dismissed<sup>27</sup>. The history of the law governing compulsory joinder of parties is rather complicated. With reference to the American law on this point, some of the applicable principles, also recognized in India are:

- All those who are interested in a controversy are necessary parties to a suit involving that controversy, so that a complete disposition of the dispute may be made.
- Joinder of necessary parties is not necessary when it is impossible, impractical or involves undue complications.
- A party unless represented by one who is a party is not bound by the decree. The rule of indispensable party was based on the premise that a court should do “*complete justice or none at all.*”

Therefore, if a party in the absence of whom a suit cannot be decided is not impleaded, the suit shall be dismissed. However, there was an inherent fallacy that the court could only deal with those parties actually before it. In *Shields v. Barrow*, the US Supreme Court held that parties to a suit can be classified into “*necessary*” and “*indispensable*”, according to the nature of their rights. In *Pulitzer Polster v. Pulitzer*<sup>28</sup>, the plaintiff sought damages from her uncle, because of the alleged improprieties while he was acting as the sole voting trustee of Wembley Industries Inc. Prior to the suit, her mother and sister had brought a suit in Louisiana state court, out of the same dispute, wherein the suit was dismissed for non-joinder of necessary parties. The US Supreme Court held that the relevant federal rules intend to bring all those having an interest in the subject of an action together in one forum so that the suit may be disposed off fairly and completely. However, sometimes it is not feasible

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<sup>27</sup> Savitri Devi Vs. District Judge, Gorakhpur and Others, AIR 1999 SC 976

<sup>28</sup> 784 F.2d 1305

to join a party needed for adjudication. In such circumstances, it is for the judge to decide whether in equity or good conscience the judgment should stand.

As has already been noted, addition of necessary parties may be ordered by the court, in the interest of justice. In *Raja Ram v. Anant Ram*<sup>29</sup>, a suit had been filed for the dissolution of partnership and accounts in which one partner was the head of a joint Hindu family business. The son of such a partner was held to be a necessary party who could be impleaded to the suit. However, the court would not be adjudicating upon his rights so as to grant relief to the plaintiff.

The question of addition of parties is essentially a judicial discretion that shall have to be exercised in the light of the facts and circumstances of each case. This was held in *Setabi Devi v. Ramadhani Shaw*<sup>30</sup>. The purpose of this provision is to give an opportunity to all parties to be heard. Thus, those parties from whom no relief has been claimed may also be added, since they may be affected as a consequence of the decree.

**Consequences of Non - Joinder of Parties That Are Not Necessary Parties:** Non-joinder is not sufficient reason to dismiss the suit if the parties not impleaded are not necessary parties. The court shall in such a situation first call upon the plaintiff to choose that he wants to proceed against with the suit. The plaintiff has to decide who he would like to claim relief from. If he does not implead a particular party that party shall not be bound by the decree passed<sup>31</sup>.

The researcher would like to contend that while a misjoinder can be solved simply by adding or deleting the names of parties, this cannot be done as far as non-joinder is concerned. Thus, there is an anomaly since both have the same consequence - the plaintiff is unable to effectively claim relief from the defendant. In case of a misjoinder, the suit shall have to be returned for the plaintiff to decide from whom he wants to claim relief, whereas in cases of non-joinder, the suit shall ordinarily be dismissed if there is a non-joinder of necessary parties.

**Objections as to Misjoinder and Non-Joinder of Parties:** As per **Rule 13 of Order 1** of the **Code of Civil Procedure**, *all objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at*

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<sup>29</sup> 1970 CriLJ 303

<sup>30</sup> AIR 1996 Guj 107

<sup>31</sup> Sumtibai and Ors. v. Paras Finance Co. Regd. partnership Firm, AIR 2007 SC 3166

*or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.*

An objection as to non-impleadment of a party, in a writ petition has to be taken at the stage of counter-affidavit or second appeal and not at the belated stage of hearing<sup>32</sup>.

### **Fraudulent Misjoinder: A Spin-Off of Federal Procedural Jurisdiction**

Over the past decade, procedural misjoinder has emerged as a new and distinct type of fraudulent joinder<sup>33</sup> and has given rise to removal jurisdiction in numerous complex civil cases, including many mass tort and multi-district litigation cases.<sup>34</sup>

Traditional fraudulent joinder occurs when a plaintiff sues a diverse defendant in state court and joins a non-diverse or in-state defendant, the jurisdictional spoiler,<sup>35</sup> even though the plaintiff has no reasonable basis for the claim against the spoiler.<sup>36</sup> The diverse defendant may then remove the

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<sup>32</sup> Ram. Al. Visalakshi Achi (Died) vs Rm. Seenivasan 1999 (3) CTC 57

<sup>33</sup> See John S. Clark Co. v. Travelers Indem. Co. of Ill., 359 F. Supp. 2d 429, 436 (M.D.N.C. 2004) (“Procedural misjoinder of parties is a relatively new concept that has emerged from the Eleventh Circuit and appears to be part of the doctrine of fraudulent joinder at least in that circuit.”); 14B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3723 & n.97 (3d ed. 1998) (“A new concept that appears to be part of the doctrine of fraudulent joinder has begun to emerge in the case law procedural misjoinder.”). Given that many jurisdictions have recognized this emerging concept, this Article will refer to it as the fraudulent misjoinder doctrine.

<sup>34</sup> See, e.g., Greene v. Wyeth, 344 F. Supp. 2d 674, 68385 (D. Nev. 2004) (finding that plaintiffs who brought claims against a diverse drug manufacturer, a non-diverse physician, and a non-diverse drug sales representative were fraudulently misjoined with plaintiffs who brought claims solely against the diverse drug manufacturer); Reed v. Am. Med. Sec. Group, Inc., 324 F. Supp. 2d 798, 80305 (S.D. Miss. 2004) (finding removal jurisdiction based on the fraudulent misjoinder of plaintiffs in a case involving allegations that numerous plaintiffs were fraudulently induced to buy insurance policies); Grennell v. W.S. Life Ins. Co., 298 F. Supp. 2d 390, 399400 (S.D. W. Va. 2004) (finding removal jurisdiction based on the fraudulent misjoinder of plaintiffs in a case involving claims of more than 1,800 purchasers of vanishing premium life insurance policies); In re Baycol Prods. Liab. Litig., No. MDL 1431 (MJD), No. 03-2931, 2003 WL 22341303, at \*4 (D. Minn. 2003) (finding removal jurisdiction based on the fraudulent misjoinder of a non-diverse plaintiff in the Baycol multi-district litigation (MDL)); In re Diet Drugs Prods. Liab. Litig., 294 F. Supp. 2d 667, 67778 (E.D. Pa. 2003) (finding removal jurisdiction based on the fraudulent misjoinder of non-diverse plaintiffs in the Fen-Phen MDL); In re Rezulin Prods. Liab. Litig., 168 F. Supp. 2d 136, 14748 (S.D.N.Y. 2001) (finding removal jurisdiction based on the fraudulent misjoinder of a non-diverse plaintiff in the Rezulin MDL). Pursuant to 28 U.S.C. § 1407, numerous related civil cases filed throughout the United States can be consolidated in one court by the judicial panel on multidistrict litigation for pretrial purposes if the cases involve at least one common question of fact. 28 U.S.C. § 1407(a) (2000). Once the pretrial procedures are complete, the cases that have not been resolved are returned to the transferor court for trial. *Id.* Exhibiting a common pattern, the MDL cases cited above were originally filed in state court, removed to federal court, and then transferred to the MDL court. In MDL litigation and other mass tort cases, removal and remand litigation has increased dramatically in recent years. See E. Farish Percy, Making a Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder, 91 IOWA L. REV. 189, 192–93 & nn.8–14 (2005) (discussing the increase in removal and remand litigation, particularly fraudulent joinder litigation).

<sup>35</sup> “Jurisdictional spoiler” refers to a party whose joinder defeats complete diversity. See Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 580 (2004) (referring to the non-diverse defendants as “jurisdictional spoilers”).

<sup>36</sup> See Chesapeake & Ohio Ry. Co. v. Cockrell, 232 U.S. 146, 153 (1914) (holding that joinder was not a fraudulent device to prevent removal “unless it was with-out any reasonable basis”); Wecker v. Nat’l Enameling & Stamping Co., 204 U.S. 176, 185 (1907) (finding traditional fraudulent joinder based on the “want of basis for the allegations” against

e case to federal court even though the case lacks complete diversity. The federal court will ignore the citizenship of the fraudulently joined defendant, assume jurisdiction over the case, and dismiss the claims against the spoiler.<sup>37</sup>

Fraudulent misjoinder occurs when a plaintiff sues a diverse defendant in state court and joins a non-diverse or in-state defendant even though the plaintiff has no reasonable procedural basis to join such defendants in one action.<sup>38</sup> While the traditional fraudulent joinder doctrine inquires into the substantive factual or legal basis for the plaintiff's claim against the jurisdictional spoiler, the fraudulent misjoinder doctrine inquires into the procedural basis for the plaintiff's joinder of the spoiler.<sup>39</sup>

**Conclusion:** As explained above, non-joinder or mis-joinder of parties is not fatal to the suit. **Order 1, Rule 9** of the Code of Civil Procedure lays down that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matters of controversy so far as it regards the rights and interests of the parties actually before it<sup>40</sup>. The only exception provided to this Rule is furnished by the general Rule that a court will refrain from passing a decree which would be ineffective and infructuous. To sum up, in the case of non-joinder of necessary parties the Court cannot pass an effective decree in their absence. In such a case, the suit cannot proceed and is liable to be dismissed if the plaintiff on being provided with an opportunity to amend the plaintiff refuses to do so. The two principals have been incorporated under the Code of Civil Procedure rightly in Order to provide justice and protect the rights of the individuals.

However an attempt needs to be made to diversify the doctrines of misjoinder and non-joinder as defined in the common legal jurisprudence and incorporate the expounding concept of fraudulent misjoinder as enunciated in the federal jurisdiction of USA, Canada and other nations.

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against the jurisdictional spoiler); see also *infra* Part II for a more detailed discussion of the traditional fraudulent joinder doctrine

<sup>37</sup>See, e.g., *17th Street Assocs. v. Markel Int'l Ins. Co.*, 373 F. Supp. 2d 584, 606 (E.D. Va. 2005); *West v. Visteon Corp.*, 367 F. Supp. 2d 1160, 1163–65 (N.D. Ohio 2005).

<sup>38</sup>*Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996) (finding fraudulent misjoinder in a case where the controversy involving the in-state defendants “[had] no real connection with the controversy involving [the diverse defendant]”), overruled on other grounds by *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1072–73 (11th Cir. 2000).

<sup>39</sup>Defining The Contours Of The Emerging Fraudulent Misjoinder Doctrine, E. Farish Percy, *Harvard Journal of Law & Public Policy* [Vol. 29]

<sup>40</sup>*Y.G. Chavan v. Parvatibai*, 74 Bom.L.R. 845

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