Fraudulent Misjoinder

Combating Artful Pleadings Designed Destroy Diversity

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Fraudulent misjoinder doctrine helps protect defendants' statutory rights, and defense counsel should acquaint themselves with this procedural weapon to protect their clients.

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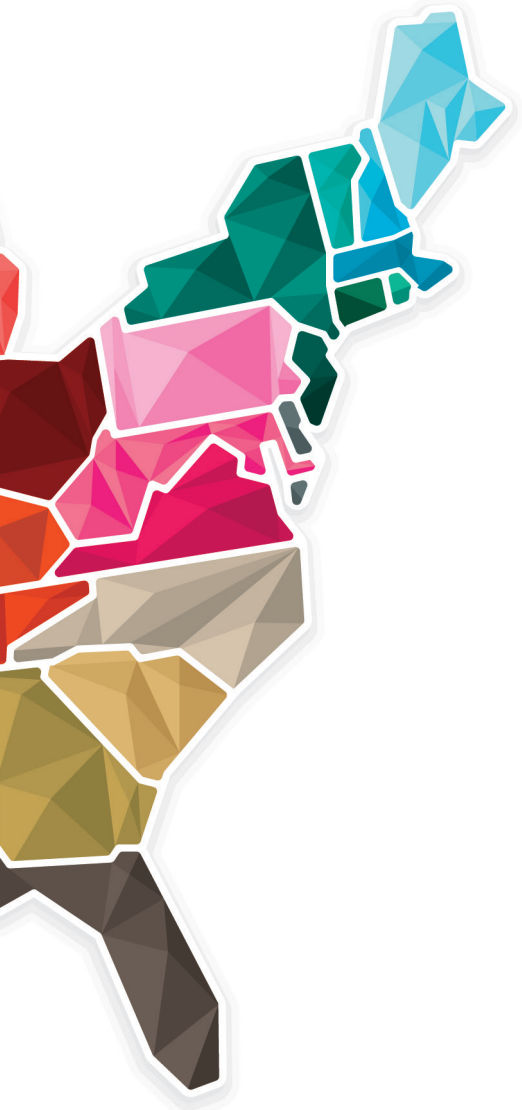

Litigation does not reward the meek. In the evolving world of complex litigation, plaintiffs and their attorneys aggressively use endless schemes to gain a competitive advantage, including undertaking abusive pleading practices to hunt for favorable forums in state courts and to eviscerate the defendants' rights to federal diversity jurisdiction. Plaintiffs invariably attempt to defeat removal by misjoining the unrelated claims of non-diverse party plaintiffs or defendants to circumvent diversity jurisdiction. The fraudulent joinder and fraudulent misjoinder doctrines exist to protect a defendant's statutory right of removal and to guard against abusive pleading practices.

As defendants in litigation know all too well, the struggle about where a suit is venued can have a profound effect on the ultimate outcome of an action. To legitimize their gamesmanship, plaintiffs' attorneys invariably claim that the procedural rules of civil law and the case law interpreting them generally give plaintiffs free rein to choose their own forum. But defense counsel is not bereft of arrows in their quivers. Indeed, for well over a century the United States Supreme Court has charged that "[f]ederal courts may and should take such action as will defeat attempts to wrongfully deprive parties entitled to sue in the Federal courts of the protection of their rights in those tribunals." *Alabama Great S. Ry. Co. v. Thompson*, 200 U.S. 206, 218 (1906). *Cf. Federated Dep't Stores v. Moitie*, 452 U.S. 394, 397 n.2 (1981) (noting the "settled principle" that when assessing federal question jurisdiction courts "will not permit plaintiff to use artful pleading to close off defendant's right to a federal forum"). In this article, we focus on the doctrine of fraudulent or procedural misjoinder as a potentially effective tool to counter plaintiffs' attorneys who seek to destroy federal diversity jurisdiction.

While the doctrine can apply in any type of action, it proves extremely useful in product liability and mass-tort actions. In one scenario, to avoid federal jurisdiction and deprive defendants of their right to removal, clever attorneys will carefully group plaintiffs from multiple states with no connection with the forum state and sue a defendant or several defendants, always ensuring that at least one plaintiff resides in the same state as the defendant or defendants, thereby eviscerating diversity jurisdiction.

In 1996, the United States Court of Appeals for the Eleventh Circuit created the fraudulent misjoinder doctrine to counter the procedural chicanery sometimes used by plaintiffs' attorneys. *See Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996), *abrogated on other grounds by Cohen v. Office Depot*, 204 F.3d 1069 (11th Cir. 2000). While the courts have not universally adopted this controversial doctrine, that should not dissuade defense counsel from using it when appropriate. In this article, we will explore the doctrine and the issues that defense counsel must tackle to apply it.

Fraudulent Misjoinder's Protection of Defendants' Statutory Right of Removal

The federal removal statute provides that "any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed by the defendant or defendants, to the district court." 28 U.S.C. §1441(a). Federal district courts have original jurisdiction over all civil actions between citizens of different states if the amount in controversy exceeds $75,000, exclusive of interest and costs. 28 U.S.C. §1332(a)(1). Complete diversity is required. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978). If an action originally instituted in a state court could have been brought in federal court under diversity jurisdiction, the defendant or defendants may remove it to federal court provided that certain procedures are followed and certain conditions are met. 28 U.S.C. §§1441 and 1446. There-

fore, a defendant's ability to remove a case to federal court is a statutory right.

A strong reason for the right of removal "exists in the supreme importance of" giving a party a "fair trial unbiased and unaffected by local interest, prejudice, or parties." *Chicago, M. & St. P.R. Co. v. Drainage Dist.*, 253 F. 491, 497 (S.D. Iowa 1917). But a more fundamental basis can be found in having every party feel that they had "a fair trial before a tribunal unbiased and unaffected by anything except the merits of the case." *Id.* Therefore, Congress "provided that, in cases involving substantial amounts, a citizen of one state should, when his rights were brought before the court of another state, have the privilege of transferring the subject matter of litigation into the courts of the United States for trial." *Id.*

Indeed, the courts need not delve into the motives and the machinations of plaintiffs' counsel to enforce a defendant's statutory right of removal.

This right cannot be taken away through procedural gimmicks, and the Eleventh Circuit in *Tapscott v. MS Dealer Serv. Corp.* created the doctrine of fraudulent misjoinder to counter such conduct. While similar sounding, the doctrines of fraudulent misjoinder and fraudulent joinder are not identical. Fraudulent joinder, a widely recognized doctrine, usually occurs when a plaintiff tries to defeat federal jurisdiction and a defendant's right of removal by joining as defendants parties that have no real connection with the matter. *See Dodd v. Fawcett Pubs., Inc.*, 329 F.2d 82, 85 (10th Cir. 1964).

In fraudulent *mis*joinder, by contrast, a plaintiff has either added claims by other non-diverse plaintiffs or claims against other non-diverse defendants that may be valid but are nevertheless not properly joined under applicable permissive joinder rules. Fraudulent misjoinder typically occurs when diversity is lacking on its face, but a defendant has asked the court to sever the claims involving the non-diverse parties and remand them to state court while retaining jurisdiction over only the claims for which diversity jurisdiction exists. *See In re Propecia (Finasteride) Prods. Liab. Litig.*, 2013 U.S. Dist. Lexis 117375, at *42 (E.D.N.Y. May 17, 2013). In other words, fraudulent joinder tests the viability of the claims against a defendant; fraudulent misjoinder tests the procedural basis of a party's joinder.

The fraudulent misjoinder doctrine is designed to strike a "reasonable balance" between competing policy interests. *See* 14B Wright & Miller, Federal Practice & Procedure §3723, at 788–93 (3d ed. 1998). On one side of the scale is a plaintiff's right to select the forum and the defendants, as well as the general interest in confining federal jurisdiction to its appropriate limits. *Id.* On the other side is a defendant's statutory right of removal and associated interest in guarding the removal right against abusive pleading practices. *Id.* It is well settled that a defendant's "right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy." *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921).

In *Tapscott*, the plaintiff was an Alabama resident who originally filed his state law-based, class action suit in Alabama state court against four defendants, one of which was an Alabama resident. The plaintiff alleged violations of the Alabama Code, common law and statutory fraud, and civil conspiracy arising from the sale of "service contracts" on automobiles sold and financed in Alabama. The first amended complaint alleged identical claims and added 16 named plaintiffs and 22 named defendants.

A second amended complaint named four additional plaintiffs, including Jessie Davis and Sharon West—Alabama residents—and three more named defendants, including Lowe's Home Centers—a North Carolina resident. Unlike the original and first amended complaints, the second amended complaint alleged violations arising from the sale of "extended service contracts" in connection with the sale of retail products. Lowe's filed a notice of removal to the United States District Court for the Northern District of Alabama.

Addressing the issue of diversity of citizenship, the Eleventh Circuit ruled that while 28 U.S.C. §1332 requires complete diversity, a lawsuit "may nevertheless be removable if the joinder of non-diverse parties is fraudulent." *Tapscott*, 77 F.3d at 1359 (citations omitted). According to the court, "(m)isjoinder may be just as fraudulent as the joinder of a resident defendant against whom a plaintiff has no possibility of a cause of action." *Id.* at 1360. Relying on the Supreme Court's decision in *Wilson v. Republic Iron & Steel Co.*, the court held that a defendant's "right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy." *Id.*

Plaintiffs in mass-tort and product liability litigation frequently engage in procedural gamesmanship and engineer their pleadings for the sole purpose of frustrating the defendants' statutory right of removal. While only the Eleventh Circuit has adopted the fraudulent misjoinder doctrine, other circuit courts have indicated at least tacit agreement with it. For instance, while not giving its judicial imprimatur, the Tenth Circuit considered the doctrine with approval. *See Lafalier v. State Farm Fire & Cas. Co.*, 391 Fed. Appx. 732, 739 (10th Cir. 2010) ("we need not decide [whether to adopt procedural misjoinder] today, because the record before us does not show that adopting the doctrine would change the result in this case"). The Fifth Circuit has "not directly applied the fraudulent misjoinder theory, but it has cited *Tapscott* with approval and acknowledged that fraudulent misjoinder of either defendants or plaintiffs is not permissible to circumvent diversity jurisdiction." *Centaurus Unity v. Lexington Ins. Co.*, 766 F. Supp. 2d 780, 789 (S.D. Tex. 2011) (citing *In re Benjamin Moore & Co.*, 318 F.3d 626, 630–31 (5th Cir. 2002) ("Thus, without detracting from the force of the *Tapscott* principle that fraudulent misjoinder of plaintiffs is no more permissible than fraudulent misjoinder of defendants to circumvent diversity jurisdiction, we do not reach its application in this case."). Likewise, the court in *Crockett v. R.J. Reynolds Tobacco*

Co., 436 F.3d 529, 533 (5th Cir. 2006), cited *Tapscott* for the proposition that joinder can be improper even if there is no fraud in pleadings and the plaintiff has the ability to recover against each defendant. And the Ninth Circuit recognized the doctrine and "assume[d], without deciding, that [it] would accept the doctrines of fraudulent and egregious joinder as applied to plaintiffs." *California Dump Truck Owners Ass'n v. Cummins Engine Co., Inc.*, 24 Fed. Appx. 727, 729 (9th Cir. 2001).

A number of district courts in other circuits have applied the doctrine as well. *See, e.g.*, *Reed v. American Med. Sec. Group, Inc.*, 324 F. Supp. 2d 798, 805 (S.D. Miss. 2004) (in a suit involving a "collection of unrelated plaintiffs suing over unconnected events" the court applied the fraudulent misjoinder doctrine because "diverse defendants ought not be deprived of their right to a federal forum by such a contrivance as this"); *Greene v. Wyeth*, 344 F. Supp. 2d 674, 685 (D. Nev. 2004) (finding that the improper joinder of the plaintiffs "frustrated" the defendants' statutory right to removal); *In re Rezulin Prods. Liab. Litig.*, 168 F. Supp. 2d 136, 144–48 (S.D.N.Y. 2001) (applying the doctrine and remanding only non-diverse plaintiffs).

The trend shows that district courts seem to apply the fraudulent misjoinder doctrine when plaintiffs have improperly joined unrelated claims in one action to defeat diversity jurisdiction. In applying the doctrine, the courts sever the claims of the improperly joined plaintiffs under Fed. R. Civ. P. 21, without prejudice, and the complaints of the remaining plaintiffs are removed to federal court. Once severed, the state plaintiffs can freely commence their actions in the appropriate forum. Such a Solomonic ruling upholds the statutory right of removal for all the defendants and also preserves the state plaintiffs' ability to pursue their claims against the defendants.

Does There Need to Be a Finding of Egregiousness to Support a Finding of Fraudulent Misjoinder?

One of the issues raised by fraudulent misjoinder is inherent in its name, which implies that the defendant seeking to have the doctrine applied should make some proffer of egregious conduct. Indeed, one supporter charges that the doctrine should be called "procedural misjoinder" and distances it from fraudulent joinder. *See* Hines and Gensler, *Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction*, 57 Ala. L. Rev. 779, 819–21 (Spring 2006).

Regardless of the name ascribed to the doctrine, courts do not have to find egregiousness to apply the doctrine. As the Tenth Circuit held in *Smoot v. Chicago Rock Isl. & Pac. R.R. Co.*, 378 F.2d 879, 881–82 (10th Cir. 1967), "federal courts may look beyond the pleadings to determine if" claims have been joined as "a sham or fraudulent device to prevent removal." The lack of a fraud or a bad-faith finding comports with the jurisprudence when a court considers whether to apply fraudulent joinder, which "need not involve actual fraud in the technical sense." *See Anderson v. Lehman Bros. Bank, FSB*, 528 Fed. Appx. 793, 795 (10th Cir. 2013); *Brazell v. Waite*, 525 Fed. Appx. 878, 881 (10th Cir. 2013).

Indeed, the courts need not delve into the motives and the machinations of plaintiffs' counsel to enforce a defendant's statutory right of removal. On the face of the pleadings, the doctrine will or will not apply. *See Crockett*, 436 F.3d at 533 ("A party… can be improperly joined without being fraudulently joined."); *Greene*, 344 F. Supp. 2d at 685 (applying fraudulent misjoinder to sever claims but holding that "the Court rejects the notion that Plaintiffs have committed an egregious act or a fraud upon the Court"); *Burns v. Western S. Life Ins. Co.*, 298 F. Supp. 2d 401, 403 (S.D. W.Va. 2004) ("In this district, the 'egregious' nature of the misjoinder is not relevant to the analysis."); *Rezulin*, 168 F. Supp. 2d at 147–48 ("While aware that several courts have applied *Tapscott's* egregiousness standard when considering misjoinder of plaintiffs in the context of remand petitions, … this Court respectfully takes another path."). *See also Asher v. Minnesota Mining & Mfg. Co.*, No. 04-CV-522, 2005 U.S. Dist. Lexis 42266 (E.D. Ky. June 30, 2005) (requiring "something more than 'mere misjoinder'" but disagreeing with those courts requiring a showing of a "'bad faith' attempt to defeat diversity on the part of the plaintiffs"). This approach is consistent with the fraudulent joinder analysis, which does not require a finding of "fraud in the common law sense of that term." *See Katz v. Costa Armatori, S.p.A.*, 718 F. Supp. 1508, 1513 (S.D. Fla. 1989). Nor does the fraudulent joinder analysis require a court to examine the subjective intent behind the preparation or the structure of a plaintiff's pleading. *See Batoff v. State Farm Ins. Co.*, 977 F.2d 848, 851–52 (3d Cir. 1992).

The decision in the *In re Rezulin Prods. Liab. Litig.,* in the U.S. District Court for the Southern District of New York supports this position. The district court found that the non-diverse plaintiffs in a number of multi-plaintiff pharmaceutical actions before the court were fraudulently misjoined. *Rezulin*, 168 F. Supp. 2d at 146–48. Each of the actions had originally been commenced in state court and removed by the defendants on the basis of diversity jurisdiction. In one matter, originally filed in Mississippi state court, diverse plaintiffs alleging claims only against drug manufacturers were joined with a single non-diverse plaintiff who asserted claims against both the drug manufacturers and a home health-care provider. *Id.* at 141–42, 144. Relying on decisions in previous pharmaceutical cases, the court found that the non-diverse plaintiff's claims did not meet the transaction or occurrence requirement in Fed. R. Civ. P. 20. *Id.* at 145.

One of the cases discussed in *Rezulin* was *In re Diet Drugs*, in which the court found that 11 plaintiffs from seven different states were fraudulently misjoined because their only connection was that each had ingested one or more diet drugs

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sold by the defendants. *See In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 1999 U.S. Dist. Lexis 11414, at *15 (E.D. Pa. 1999). In this multidistrict litigation the facts showed that the plaintiffs never alleged that they received the drugs from the same source or any other similar connection; the complaint was originally filed in Montgomery

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County, Alabama, where only two plaintiffs actually resided; and the non-resident plaintiffs alleged no contact with Alabama or even the purchase of diet drugs in or near Alabama. *Id.* The court noted that there was no logical basis for the proposed joinder of the non-resident plaintiffs, "particularly… when most of the nonresident Plaintiffs reside in a jurisdiction in which at least one Defendant is a citizen." *Id.* According to the court, "the structure of this pleading [was] devoid of any redeeming feature as respects the underlying purposes of the joinder rules." *Id.* at *16. The court concluded that the "joinder of several plaintiffs who have no connection to each other in no way promote[d] trial convenience or expedite[d] the adjudication of the asserted claims," and the plaintiffs' complaint "wrongfully deprive[d the] Defendants of their right of removal." *Id.* at *16–17.

The district court in *Rezulin* echoed this decision and found that the misjoined plaintiffs' claims were not "egregious" in the same sense as the misjoined claims in *Tapscott* in that the *Rezulin* claims had "at least an empirical, if not a transactional, relationship to the claims of all the other plaintiffs." *Rezulin*, 168 F. Supp. 2d at 147. Nonetheless, the court found that when such a claim had the additional effect of destroying diversity, it was not necessary to find bad faith to conclude that the claims were fraudulently misjoined. *Id.* at 147–48. Any benefits flowing from the joinder of this plaintiff's claims, which destroyed diversity, were outweighed by the defendants' right of removal. *Id.* at 147. Thus, the court severed and remanded the claims of the non-diverse plaintiff and allowed the remaining plaintiffs' claims to proceed in the multidistrict litigation. *Id.* at 148, 153.

Should Courts Apply Federal or State Rules Regarding the Permissive Joinder of Parties When Conducting an Analysis Under the Doctrine of Fraudulent Misjoinder?

A thornier issue arises when the courts must decide whether to analyze fraudulent misjoinder with reference to the state or the federal procedural rule governing permissive joinder of parties. In *Tapscott*, the Eleventh Circuit analyzed the issue with reference to the federal rule, noting that the state procedural rule was identical to the federal one. *Tapscott*, 77 F.3d at 1355 n.1. In light of the importance of the statutory right of defendants to remove cases to federal court, the courts should rely on Federal Rule of Civil Procedure 20(a). But controversy swirls around this issue.

Even if a non-diverse plaintiff may have a valid cause of action against a defendant, that plaintiff may not prevent removal based on diversity of citizenship if there is no reasonable basis for the joinder of that non-diverse plaintiff with the other plaintiffs. This is because "[s]uch 'procedural misjoinder' would be a plaintiff's purposeful attempt to defeat removal by joining together claims against two or more defendants where the presence of one would defeat removal and where in reality there is no sufficient factual nexus among the claims to satisfy the permissive joinder standard." 14B Wright & Miller, Federal Practice & Procedure §3723, at 656–57 (3d ed. 1998).

Plaintiffs perpetually parrot the mantra that they are the masters of their complaints, where to bring them, and whom they can include as parties. This right is not unfettered, however, but must be balanced against the rights of defendants to defend against those complaints in an impartial and appropriate forum. Federal Rule 20(a) governs the "permissive joinder of parties," and it provides that plaintiffs may join any persons if their claims arise out of "the same transaction, occurrence, or series of transactions or occurrences" and if "common" questions of law or fact exist for all the persons. Specifically, the rule states:

> All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons… may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a). Defendants may be joined together only if there is an alleged claim against them "arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a). As explained by the U.S. Supreme Court, "Under the [Federal] Rules [of Civil Procedure], the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966) (citations omitted). *See also Alexander v. Fulton County, Ga.*, 207 F.3d 1303, 1323 (11th Cir. 2000) ("Plainly, the central purpose of Rule 20 is to promote trial convenience and expedite the resolution of disputes, thereby eliminating unnecessary lawsuits.") (citation omitted).

It is difficult to conclude, however, that plaintiffs who employ contrived schemes

can show a common "transaction." Under the federal rules, "transaction" is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much on the immediateness of their connection as on their logical relationship. Accordingly, all "logically related" events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence. *Moore v. New York Cotton Exch.*, 270 U.S. 593, 610 (1926). *Cf.*, *H.L. Peterson Co. v. Applewhite*, 383 F.2d 430, 433 n.4 (5th Cir. 1967) (the "same transaction or occurrence" language in Fed. R. Civ. P. 13(a)—governing compulsory counterclaims—"has been broadly interpreted not to require absolute identity of factual backgrounds for the two claims but only a logical relationship between them."). As explained elsewhere,

> Language in a number of decisions suggests that the courts are inclined to find that claims arise out of the same transaction or occurrence when the likelihood of overlapping proof and duplication in testimony indicates that separate trials would result in delay, inconvenience, and added expense to the parties and to the court.

7 Wright, Miller & Kane, Federal Practice and Procedure §1653 (citations omitted).

The purposes of the doctrine of fraudulent or procedural misjoinder are to prevent plaintiffs from improperly defeating diversity jurisdiction and protect removal. If plaintiffs can escape the federal jurisdiction by joining multiple, unconnected, and non-diverse parties in a state court of their choice, they impermissibly deny defendants their right to removal. *See In re Propecia (Finasteride)*, 2013 U.S. Dist. Lexis 117375, at *42, *53 (the application of fraudulent misjoinder in pharmaceutical actions with multiple plaintiffs cases "does not serve to improperly extend federal jurisdiction, but rather promotes judicial efficiency and prevents manipulation of the court system by" the misjoinder of plaintiffs in state courts).

This debate is not merely academic because some states' joinder rules are more permissive than the federal rule. *See*, *e.g.*, *Osborn v. Metro. Life Ins. Co.*, 341 F. Supp. 2d 1123, 1128–29 (E.D. Cal. 2004) ("California joinder rules have been construed liberally and there are situations where the State's joinder rules would allow for permissive joinder of defendants while the federal rules would not."); *Jamison v. Purdue Pharma Co.*, 251 F. Supp. 2d 1315, 1320 (S.D. Miss. 2003) ("This situation presents a dilemma for a district court confronted with a removed case consisting of parties who are properly joined under Mississippi's Rule 20, but misjoined under that rule's federal counterpart."). And no consensus has developed in the district courts' holdings. Several courts that have considered this issue have applied state rules. *See Lyons v. Lutheran Hosp. of Ind.*, 2004 U.S. Dist. Lexis 20255 (S.D. Ind. 2004) (unpublished); *Bridgestone/Firestone, Inc. v. Ford Motor Co.*, 260 F.Supp.2d 722, 728 (S.D. Ind. 2003); *Conk v. Richards & O'Neil, L.L.P*, 77 F.Supp.2d 956, 970–71 (S.D. Ind. 1999); *Sweeney v. Sherwin Williams, Co.*, 304 F.Supp.2d 868, 873 (S.D. Miss. 2004); *Jamison*, 251 F.Supp.2d at 1321 & n.6; *Osborn*, 341 F. Supp.2d at 1128 ("Most courts looking at this issue have applied the state rule. This seems the better choice since the question is whether the parties were misjoined in state court."); *Welsh v. Merck Sharpe & Dohme Corp. (In re Fosamax)*, 2012 U.S. Dist. Lexis 48114, at *10 (D. N.J. 2012) (applying Missouri state law); *Tex. Instruments Inc. v. Citigroup Global Mkts., Inc.*, 266 F.R.D. 143, 149 (N.D. Tex. 2010) (applying Texas rules of joinder). Others have applied federal rules. *See, e.g., In re Silica Prods. Liab. Litig.,* No. MDL 1553, 398 F. Supp. 2d 563, 649–52 (S.D. Tex. June 30, 2005); *Burns v. W.S. Life Ins. Co.*, 298 F. Supp. 2d 401, 40203 (S.D. W. Va. 2004) (finding fraudulent misjoinder manifest because federal joinder rule was not satisfied); *Brooks v. Paulk & Cope, Inc.*, 176 F. Supp. 2d 1270, 1274 (M.D. Ala. 2001) (the court ruled its analysis of fraudulent misjoinder began with the text of the federal rule); *Koch v. PLM Int'l, Inc.*, No. Civ. A. 97-0177-BH-C, 1997 U.S. Dist. Lexis 20111, at *8–10 (S.D. Ala. 1997); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 294 F. Supp. 2d 667, 679 (E.D. Pa. 2003) ("we find that under [Federal Rule 20(a)], the claims of the pharmaceutical plaintiffs who had drugs prescribed by different doctors for different time periods do not arise out of the same transaction, occurrence, or series of transactions or occurrences."). But given the facts and legal issues involved and the importance of defendants' right of removal, federal law should govern. *See Edwards v. E.I. Du Pont De Nemours & Co.*, 183 F.2d 165, 168 (5th Cir. 1950) ("In procedural matters we are controlled by the Federal Rules of Civil Procedure, 28 U.S.C.A.… We look to the federal statutes as construed by… federal decisions to determine whether the case is removable in whole or in part, all questions of joinder, non-joinder, and misjoinder being for the federal court.") (citations omitted).

Fraudulent misjoinder doctrine helps protect defendants' statutory rights, and defense counsel should acquaint themselves of this underused, albeit controversial, procedural weapon to protect their clients.

The pleadings in many product liability and mass-tort actions confront the courts with unquestionable cases of forum shopping and manipulation. Under Federal Rule 20(a), joinder among plaintiffs is proper only if they allege a claim "arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." Fraudulent misjoinder doctrine helps protect defendants' statutory rights, and defense counsel should acquaint themselves with this underused, albeit controversial, procedural weapon to protect their clients.