

## A Primer on 28 U.S.C. § 1367 Dealing with Supplemental Jurisdiction

FEDERAL DISTRICT COURTS frequently consider whether they have or should exercise supplemental jurisdiction over state law claims that are pendent or ancillary to federal claims pursuant to 28 U.S.C. § 1367. This article is meant as an overview of the relevant provisions of § 1367 and case law from the U.S. Supreme Court and various circuit courts of appeal that construe those provisions and apply to them.

As the Supreme Court recently noted, 28 U.S.C. § 1367 provides litigants an “opportunity ... to pursue complete relief in a federal-court lawsuit.” *Arbaugh v. Y & H Corp.*, 126 S. Ct. 1235, 1240 (2006). Section 1367 codified the concept of pendent or ancillary jurisdiction set forth in *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).<sup>1</sup> The section also provides the statutory basis upon which a federal district court can exercise subject matter jurisdiction over a state law claim that could not, by itself, be brought in federal court if such a claim arises from the same set of operative facts that form the basis of the underlying federal claim. Specifically, § 1367(a) provides, in relevant part, that “district courts *shall* have supplemental jurisdiction over all other claims that are so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a) (emphasis added).

In other words, the “case or controversy” formulation set forth in Article III of the Constitution confers supplemental jurisdiction over state law claims that arise out of a “common nucleus of operative facts” with substantive federal claims.<sup>2</sup> In determining whether multiple disputes arise from a “common nucleus of operative facts,” the Second Circuit asks whether the facts underlying the claims before it “substantially overlap” or whether the federal claim “necessarily brought the facts underlying the state claim before the court.” *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 335 (2d Cir. 2006).<sup>3</sup> Thus, the determination at the heart of the question of whether or not a district court

possesses supplemental jurisdiction is fact-based and is necessarily made on a case-by-case basis. A district court must therefore conduct a close examination of the facts in each case underlying the federal and state claims to ensure that the facts derive from a single occurrence or set of facts.

The doctrine of supplemental jurisdiction is traditionally “a doctrine of discretion, not of plaintiff’s right.” *Gibbs*, 383 U.S. at 726. Subsection 1367(c) “confirms the discretionary nature of supplemental jurisdiction by enumerating the circumstances in which district courts can refuse its exercise.” *City of Chicago v. Int’l College of Surgeons*, 522 U.S. 156, 173 (1997).<sup>4</sup> Subsection 1367(c) provides that a district court “may” decline to exercise jurisdiction over a claim under subsection (a) if (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim(s) over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction;<sup>5</sup> or (4) in “exceptional circumstances,” when there are other “compelling reasons” to decline jurisdiction. 28 U.S.C. § 1367(c); *Parker*, 468 F.3d at 743. “Whenever a federal court has supplemental jurisdiction under section 1367(a), that jurisdiction should be exercised *unless* section 1367(b)[<sup>6</sup>] or (c) applies.” *Id.* (emphasis added). Continuing, the Eleventh Circuit stated that “[a]ny one of the section 1367(c) factors is sufficient to give the district court discretion to dismiss a case’s supplemental state law claims.”

A district court’s decision to exercise or not exercise supplemental jurisdiction is reviewed for an abuse of discretion. *Austin v. City of Montgomery*, Case No. 05-16737, 2006 WL 2219726, \*6 (11th Cir. Aug. 2, 2006) (“We review the exercise of supplemental jurisdiction for abuse of discretion.”); *Parker*, 2006 WL 3007191, \*11 (holding that the district court abused its discretion by dismissing for lack of subject matter jurisdiction when it had the power to exercise supplemental jurisdiction over plaintiff’s state law claims and none of the subsection 1367(c) factors was “persuasively present”).

In cases heard by the Supreme Court and federal circuit courts, including the cases cited above, these courts have issued recent opinions applying § 1367. A review of these cases reflects that the courts making the determination as to the existence of supplementen-

tal jurisdiction and whether circumstances are such that they should decline to exercise that jurisdiction strive to apply the unambiguous statutory language chosen by Congress and the principles underlying the Supreme Court's seminal decision in *United Mine Workers of America v. Gibbs*. For example, in a number of these recent decisions, courts have considered whether to exercise that jurisdiction once the substantive federal claims are dismissed and only the state law claims remain.<sup>7</sup>

A review of the statutory provisions of § 1367—in conjunction with applicable case law, including case law from the Supreme Court—should prepare lawyers to be able to effectively litigate the issue of whether a federal district court can exercise supplemental jurisdiction over state law claims or should exercise such jurisdiction. **TFL**

---

*Paul A. Avron is an attorney with Berger Singerman PA in Miami, where his primary practice areas are business bankruptcy law and commercial and appellate litigation. He is a member of the FBA Bankruptcy Law Section.*

#### Endnotes

<sup>1</sup>*City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 165 (1997); *Palmer v. Hospital Authority of Randolph Cty*, 22 F.3d 1559, 1563 (11th Cir. 1994).

<sup>2</sup>*Parker v. Scrap Metals Processors Inc.*, 468 F.3d 733, 743 (11th Cir. 2006) (citing *Gibbs*, 383 U.S. at 725).

<sup>3</sup>*Accord Capital Park Ltd. Dividend Housing Ass'n v. Jackson*, Case No. 05-4303, 2006 WL 2992731, \*3 (6th Cir. Oct. 19, 2006) (“A claim ‘form[s] part of the same case or controversy when [it] derive[s] from a common nucleus of operative facts.’”) (quoting *Harper v. AutoAlliance Int'l Inc.*, 392 F.3d 195, 209 (6th Cir. 2004)).

<sup>4</sup>*Accord Parker*, 468 F.3d at 742 (“The statute reflects a dichotomy between a district court’s power to exercise supplemental jurisdiction, § 1367(a), and its discretion not to exercise such jurisdiction, § 1367(c).”) (citations omitted).

<sup>5</sup>As explained by the Seventh Circuit, “Once a district court’s discretion is triggered under § 1367(c), it balances the traditional ‘values of judicial economy, convenience, fairness, and comity,’” *Kolari v. New York Presbyterian Hosp.*, 455 F.3d 118, 122 (7th Cir. 2006) (quoting *Carnegie-Mellon Univ. v. Cobill*, 484 U.S. 343, 350 (1988)), “in deciding whether to exercise jurisdiction.” *Id.* (citing *Itar-Tass Russian News Agency v. Russian Kurier Inc.*, 140 F.3d 442, 446–47 (2d Cir. 1998)). Continuing, the Seventh Circuit referenced the Supreme Court’s “additional guidance in *Cobill* that ‘in the usual case in which all federal-law claims are eliminated before trial, the balance of factors ... will point toward declining to exercise jurisdiction over the remaining state law claims.’” *Id.* (quoting *Cobill*, 484 U.S. at 350 n.7). “When a court declines to

exercise supplemental jurisdiction under § 1367(c)(3) because only state claims remain, the proper action is a dismissal without prejudice so that the complaining party may pursue the claim in state court.” *Austin v. City of Montgomery*, Case No. 05-16737, 2006 WL 2219726, \*6 (11th Cir. Aug. 2, 2006) (citation omitted); see also *Kolari*, 455 F.3d at 124 (“We have repeatedly held that a district court particularly abuses its discretion when it retains jurisdiction over state-law claims raising unsettled questions of law following dismissal of all original-jurisdiction claims.”) (citations omitted).

“Subsection (b) provides that, in a civil suit where the district court’s original jurisdiction is based on 28 U.S.C. § 1332 (diversity jurisdiction), district courts “shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or claims over persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.” 28 U.S.C. § 1367(b).

<sup>7</sup>See, e.g., *Arbaugh*, 126 S. Ct. at 1244–45 (holding that dismissal of federal claims does not automatically deprive a district court of supplemental jurisdiction over nonfederal claims); *New Mexico v. General Elec. Co.*, 467 F.3d 1223 (10th Cir. 2006) (holding that the district court did not abuse its discretion in retaining supplemental jurisdiction over plaintiff’s state law claims notwithstanding dismissal of federal claims); *Urban Developers, LLC v. City of Jackson, Miss.*, 468 F.3d 281, n.16 (5th Cir. 2006) (holding that the plaintiffs “stated a minimally colorable federal claim of deprivation of property without due process, invoking this court’s federal question jurisdiction and providing an independent basis for the exercise of supplemental jurisdiction over the state takings claims.”); *Capital Park Ltd. Dividend Housing Ass’n*, Case No. 05-4303, 2006 WL 2992731, \*3 (holding that the plaintiff’s contract claims derived from the same “nucleus of operative fact” as its claims for injunctive relief and therefore the district court’s exercise of supplemental jurisdiction over state law claims was proper even though the claims for injunctive relief had been rendered moot); *Austin*, 2006 WL 2219726, \*6 (holding that the district court did not abuse its discretion in not exercising supplemental jurisdiction over state law claim because all of plaintiff’s federal claims were due to be dismissed, and finding unpersuasive argument that limitations period had run since claim was dismissed without prejudice, and the plaintiff was on notice as to her right to re-file the claim in state court. At issue in this case were the provisions of § 1367(d) that provide for a tolling of applicable state law limitations period for 30 days after dismissal of a claim under § 1367(a).).