SUPPLEMENTAL JURISDICTION OF THE UNITED STATES FEDERAL COURTS AND ITS PROCEDURAL FORBEARERS: PENDENT AND ANCILLARY JURISDICTION

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I. INTRODUCTION

Since its inception, the United States federal court system has had jurisdiction to hear and decide claims and controversies that were not exclusively federal in nature. Article III, § 2 of the United States Constitution in part provides that the judicial power of the United States shall extend to controversies between a state, or the citizens thereof, and foreign States, citizens or subjects. The statutory grant of this power was authorized by the First Congress of the United States under the Judiciary Act of 1789 which, *inter alia,* empowered the federal courts to consider non-federal claims if the requisite jurisdictional amount were satisfied and the plaintiff(s) and defendant(s) were from different states. This concept is commonly referred to as "diversity jurisdiction."[1]

In addition, the federal courts developed the doctrines of pendent jurisdiction and ancillary jurisdiction which allowed the federal courts to consider non-federal claims (i.e. state law claims) that arose out of the same case or controversy even though there was no independent jurisdictional basis for the court to consider the claims (i.e. the parties were not completely diverse and/or the claims did not meet the minimum jurisdictional amount)[2]. These two doctrines were codified when the U.S. Congress enacted Section 1367, Supplemental Jurisdiction, as part of the Judicial Improvement

[1] The current codification of the diversity jurisdiction of the U. S. federal courts is embodied in 28 U.S.C. § 1332.

[2] Today, the minimum jurisdictional amount is $75,000. 28 U.S.C § 1332.

Act of 1990.[3] This paper is intended to provide an overview of the supplemental jurisdiction statute. However to more fully appreciate why the section was codified, it is helpful to understand its procedural forebearers, i.e., pendent and ancillary jurisdiction. As one commentator noted: "although the statute abandons the former labels, the statute preserves, with certain exception, nearly all of the principles established under the doctrines of pendent and ancillary jurisdiction, and expands these principles to include the concept of pendent party jurisdiction."[4] While both doctrines had different origins, the general concept of both permitted a federal court to consider claims that the court would otherwise lack jurisdiction to hear. It is important to note that these doctrine were applicable in admiralty cases even before the enactment of the supplemental jurisdiction statute;[5] likewise, since the enactment of the supplemental jurisdiction statute, it too extends to admiralty cases.[6]

II. PENDENT JURISDICTION

A. Pendent Claim Jurisdiction

The doctrine of pendent jurisdiction allowed a federal court discretion to exercise jurisdiction over a state claim when there was no independent jurisdiction to consider such a claim. The justification for this discretionary doctrine was based upon judicial economy, convenience and fairness to the litigants. [7] The claim, however, must have

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[3] 28 U.S.C. § 1367, Pub. L. No. 101-650, § 310, 104 Stat. 5113 (1990).
[4] Dennis F. McLaughlin, *The Federal Supplemental Jurisdictional Statute-A Constitutional and Statutory Analysis*, 24 ARIZ. ST. L.J. 849 (1992).
[5] *See e.g., Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 1170 (8th Cir. 1971).
[6] *See e.g., Grubart, inc. v. Great L.D. &D. Co.*, 513 U.S. 527(1995) and *Insurance Co. of North America v. S/S Cape Charles*, 843 F.Supp. 893 (S.D. N.Y 1994).
[7] *United Mine Workers v. Gibbs*, 383 U.S. 715, 726.(1966).

derived from a common nucleus of operative facts.[8] Pendent jurisdiction was mainly associated with federal question jurisdiction and permitted a plaintiff to bring state law claims based on the same conduct that was also violative of federal claims.[9] Under pendent jurisdiction, if a plaintiff filed a claim for a civil rights violation under federal law, pendent jurisdiction also permitted the court to consider the state claim(s) arising out of the same set of facts such as, for example, invasion of privacy.

The origins of the pendent jurisdiction can be traced to the early Supreme Court decision that was rendered in Osborn v. Bank of the United States.[10] In Osborn, Chief Justice Marshall, on behalf of the Court, wrote:

> When a question to which the judicial power of the Union is extended by the constitution, forms an ingredient of the original cause, it is in the power of Congress to give the [federal courts]...jurisdiction of that cause, although other questions of fact or of law may be involved in it.[11]

It was not until 1909, however, that the Supreme Court in Siler v. Louisville & Nashville R.R.[12] exercised the first form of pendent claim jurisdiction.[13] In Siler, the issues involved whether or not rates which were established by a state court violated the state as well as being violative of the federal Constitution. The Supreme Court decided Siler based on the state constitution alone without considering the federal Constitutional issue.

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[8] *Id.* at 725.
[9] David D. Siegel, *Practice Commentary, The adoption of §1367, Codifying "Supplemental" Jurisdiction*, 28 U.S.C.A. § 1367.
[10] *Osborn v. Bank of the United States*, 22 U.S. (9Wheat.) 738 (1824).
[11] *Id.* at 823.
[12] *Siler v. Louisville & Nashville R.R.*, 213 U.S. 175 (1909).
[13] 16 MOORE'S FEDERAL PRACTICE, § 106.04. (Matthew Bender 3d Ed.).

In Hurn v. Oursler,[14] the Supreme Court again considered whether a federal court could exercise jurisdiction over a state law claim which had been filed together with a federal law claim. The federal claim was based upon copyright infringement and the state claim was based upon unfair competition under state law. The trial court, after having dismissed the federal claim on the merits, then dismissed the unfair competition claim asserting that it no longer had jurisdiction of the state claim. The Supreme Court reversed the dismissal of the state law claim holding that the federal court did in fact have jurisdiction to consider the state law claim. The Court reasoned that since the two claims rested upon identical facts and circumstances, the plaintiff was seeking redress of only one single wrong which constituted but one single cause of action.[15] Professor McLaughlin has noted that although the Court in Hurn permitted the exercise of jurisdiction over the state law claim:

> The Hurn test in requiring that the federal and state law claims comprise a "single cause of action," proved problematic in application because of the inherent difficulty in defining what constitutes a "single cause of action." The difficulty was further compounded with the adoption of the federal Rules of Civil Procedure in 1938, which abandon the "cause of action" terminology and provided for liberal joinder of claims and remedies.[16]

It was not until the United Mine Workers v. Gibbs[17] case, that the Supreme Court outlined the modern concept of pendent jurisdiction which was considered more generous[18] and/or liberal than the more restrictive view announced by the Court in

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[14] *Hurn v. Oursler,* 289 U.S. 238 (1933)
[15] *Id.* at 246-247.
[16] McLaughlin, *Supra,* at pp. 870-871. *See also, Gibbs*, 383 U.S. at 724.
[17] *Gibbs,* 383 U.S. 715.
[18] Siegal, *Supra,* at 829.

Hurn.[19] The Court in Gibbs, after recognizing that the limited approach announced in Hurn was "unnecessarily grudging," outlined the test for pendent claim jurisdiction which in essence was codified in the supplemental jurisdiction statute. The Court wrote in Gibbs:

> Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim "arising under [the] Constitution, the laws of the United States, and Treaties made, or which shall be made, under their Authority..." US Const, Art III, §2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitution "case." The federal claim must have substance sufficient to confer subject matter jurisdiction on the court...The state and federal claim must derive from a common nucleus of operative facts. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues there is power in federal courts to hear the whole.[20]

The Court further emphasized that pendent jurisdiction over a state claim is indeed discretionary and not a matter of a plaintiff's right and therefore need not be exercised in every instance.[21] Moreover, the Court noted that there may be reasons independent of jurisdictional considerations, such as the likelihood of jury confusion in treating divergent legal theories of relief, that would justify refusing to exercise pendent jurisdiction.[22] As will be discussed later, the supplemental jurisdiction statute codified the principles enunciated in Gibbs.

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[19] MOORE'S FEDERAL PRACTICE , *Supra,* at §106.04[2](Matthew Bender 3d ed.).
[20] *Gibbs, 383 U.S.* at 725.
[21] *Id.* at 726.
[22] *Id.* at 727.

B. Pendent Party Jurisdiction

As explained above, the doctrine of pendent jurisdiction permitted a federal court to exercise jurisdiction over a plaintiff's state law claims that otherwise could not be tried by a federal court. "Pendent claim jurisdiction presupposed one plaintiff and one defendant, with an independent jurisdictional basis existing for one of the claims but not for the other."[23] Although the Supreme Court in Gibbs did not address whether a federal court could exercise jurisdiction over *another party*, the language in Gibbs was used in some instances to extend pendent claim jurisdiction to also include additional or pendent parties.[24] Pendent party jurisdiction was thus an extension of pendent claim jurisdiction and permitted a plaintiff to not only assert a state claim together with a federal claim, but also permitted a plaintiff to sue another party who was not or was unable to be made a party to the federal claim (e.g. no diversity between Plaintiff and the additional party). Pendent party jurisdiction thus enabled the *Plaintiff* to bring, and the court to consider, the claim against a different party even though there was no independent jurisdiction over that party.[25]

However, in the case of Aldinger v. Howard,[26] the Supreme Court expressed its reservation concerning pendent party jurisdiction. In Finley v. United States[27], the Court completely rejected this concept and ruled that the decision in Gibbs did not permit a court to exercise pendent party jurisdiction. It was against this backdrop that

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[23] MOORE'S FEDERAL PRACTICE, *Supra*, at §106.03[3].
[24] *Id.*
[25] *E.g., Leather's Best, Inc. v. S.S.Mormaclynx,* 451 F.2d 800 (2d Cir. 1971).
[26] *Aldinger v. Howard,* 427 U.S. 1 (1976).
[27] *Finley v. United States,* 490 U.S. 545 (1989).

Congress enacted the supplemental jurisdiction statue, in part, to reverse the decision in Finley.

While settling the issue of pendent party jurisdiction, the Court's decision also ignited another controversy. The language the Court used appeared to challenge the efficacy of ancillary jurisdiction as well. The decision was construed by some "as undermining previously accepted and customary forms of ancillary jurisdiction, particularly as used in third-party actions. For example, prior to Finley, ancillary jurisdiction was routinely held to be sufficiently broad enough to encompass...a non-diverse third-party defendant...even if the claim against the third-party defendant claim was predicated on state law."[28]

Finley involved a plaintiff suing after her husband and two children were killed when an airplane struck electric transmission lines during the approach to a San Diego, California airfield. The initial action was filed in state court against a utility company and the City of San Diego. Subsequently, Finley filed a federal court action against the United States government after learning that the Federal Aviation Administration had a duty to illuminate the runway. On the theory of perident party jurisdiction, she moved to amend the federal complaint to add the original state defendants as to which no independent basis for federal jurisdiction existed. The facts were extremely compelling and were such that they clearly met the Gibbs test by arising from a common nucleus of operative facts. The district court granted her motion and added the new parties. This decision, however, was reversed by the court of appeals. The Supreme Court agreed

[28] Patrick D. Murphy, *A Federal Practitioner's Guide to Supplemental Jurisdiction under 28 U. S. C. §1367,* 78 MARQ. L. REV. 973, 988 (1995).

with the appeals court and ruled that Gibbs did not permit the court to exercise jurisdiction over pendent parties. In its ruling, the Court concluded that exercising pendent party jurisdiction was improper in the absence of expressed congressional authority.

The confusion surrounding pendent party jurisdiction before the decision in Finley was a by-product of another doctrine developed by the courts which in fact permitted a court to exercise jurisdiction over an additional party. The doctrine was that of ancillary jurisdiction. Unlike pendent jurisdiction, ancillary jurisdiction allowed for the addition of parties as well as claims and the courts did not differentiate between ancillary claim and ancillary party jurisdiction.[29]

III. ANCILLARY JURISDICTION

The doctrine of ancillary jurisdiction was similar in many respects to the doctrine of pendent jurisdiction. It, too, permitted a federal court to exercise jurisdiction over related state claims that otherwise were not subject to the jurisdiction of the court (e.g. no diversity or the jurisdictional amount lacking). One federal court explained that the concept of ancillary jurisdiction allowed a court, once it had acquired jurisdiction over a case or controversy, to decide matters incident to the main claim which otherwise could not be asserted independently; the federal court further explained its purpose as being to avoid piece-meal litigation.[30] Pendent jurisdiction primarily related to those additional state claims made by a *plaintiff* that were closely connected with a federal claim asserted by the plaintiff. By contrast, ancillary jurisdiction primarily related to those

[29] McLaughlin, *Supra,* at. 874.
[30] *Federman v. Empire Fire and Marine Insurance Co.,* 597 F.2d 798, 810 (2d Cir. 1979).

additional claims asserted by parties other than plaintiffs i.e., *defendant* or *additional parties*. Although used in cases involving federal claims, ancillary jurisdiction was employed mainly in diversity cases.[31]

As mentioned, ancillary jurisdiction was primarily a tool for a defendant in a court against their will to facilitate their assertion of claims against others. It permitted the court to consider those claims that arose out of the same transaction and occurrence as that of a plaintiff's original claim. If, for example, a plaintiff from Florida sued two defendants who both resided in the State of New York, in a diversity case, ancillary jurisdiction permitted the federal court to consider any cross-claim(s) that either or both of the defendants might have against each other, even though the two defendants were not diverse (i.e. both defendants resided in the same state).

Ancillary jurisdiction then not only permitted the court to consider any compulsory counter-claim that a defendant might have had against a plaintiff but also, this doctrine permitted a court to consider those claims that a defendant had against additional parties including cross-claim (claim against a co-defendant), a third-party (claim against a party who was not a party to the suit brought by the plaintiff) and claims asserted by or against intervenors as a matter of right.[32]

Although similar to pendent jurisdiction, by permitting a federal court to exercise jurisdiction over related claims even though the claim would not have otherwise been cognizable, ancillary jurisdiction developed separately.[33] The concept of ancillary

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[31] Siegal, *Supra, at* 830.
[32] McLaughlin, *Supra,* at 876.
[33] *Id.* at 870 and 874.

jurisdiction evolved in the case of Freeman v. Howe[34] where the U. S. Marshall had seized property in a federal court action and the mortgagees were permitted to assert their claims even though no independent basis existed for the court to consider the claims. The Supreme Court held that these claims were "not an original suit, but ancillary and dependent, supplementary merely to the original suit, out of which it had arisen, and is maintained without reference to the citizenship or residence of the parties."[35]

The initial expression of ancillary jurisdiction was limited to those claims arising from disputes over property of which a federal court had obtained jurisdiction.[36] However, in Moore v. New York Cotton Exchange,[37] the Supreme Court expanded the doctrine beyond those claims relating to property that was under the court's jurisdiction. The opinion in Moore provided the framework from which the modern concept of ancillary jurisdiction was developed. The plaintiff in Moore filed an antitrust action against a defendant who in turn filed a compulsory counterclaim based on state law. The Court, even though there was no independent basis to consider the state claim, held that the district court could exercise jurisdiction over the counterclaim because it arose from the same transaction as the original claim. The word "transaction," wrote the Court, is a "word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as

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[34] *Freeman v. Howe*, 65 U.S. (24 How.) 450 (1861)
[35] *Id. at 460.*
[36] McLaughlin, *Supra,* at 875 (citing to *Fulton National Bank v. Hozier*, **267 U.S. 276 (1925).**
[37] *Moore v. New York Cotton Exchange*, 270 U.S. 593 (1926).

upon their logical relationship."[38] The Court recognized, therefore, that the legal and factual issues supporting an original claim and counterclaim need not be identical but instead need only originate from the same transaction. With the decision in Moore, and with the change in the federal rules in 1938 that provided for liberal joinder of parties and of claims, ancillary jurisdiction encompassed cross-claims (claims between defendants), third-party claims (claims against parties not part of the original suit) and claims asserted by and against intervenors as of right.[39]

Although, the doctrine of ancillary jurisdiction was liberally construed and permitted a defendant or added party to assert claims against the original plaintiff(s), original defendant(s) and any additional party, it, however, had its limitations. The doctrine of ancillary jurisdiction did not permit an original plaintiff to assert a claim against an additional party (brought in by a third-party claim or otherwise) unless there was an independent basis for the court to exercise jurisdiction over the claim. The decision in Owen Equipment & Erection Co. v. Kroger[40] firmly established this limitation and resolved two decades of debate and conflict in the federal courts.[41] In Kroger, the Court refused to apply ancillary jurisdiction to the plaintiff's claims against a third-party in a suit based on diversity jurisdiction.

The rationale for the limitation was grounded upon the principle that in a diversity action, each plaintiff and defendant must be from different states. Accordingly, if a plaintiff was allowed to bring a claim against a non-diverse third-party, this would be a

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[38] *Id.* at 610.
[39] *Moore's Federal Practice, Supra,* at §106.04[1] and *McLaughlin, Supra,* at 876.
[40] *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365 (1978).
[41] McLaughlin, *Supra,* at 877.

circumvention of the rule that requires complete diversity. "By contrast, ancillary jurisdiction typically involves claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless he could assert them in an ongoing action in federal court"[42]

To illustrate, earlier the following scenario was given where a plaintiff from Florida sued, in diversity, two defendants who both resided in the State of New York. Ancillary jurisdiction permitted the federal court to consider any cross-claim(s) that either or both of the defendants might have against each other, even though the two defendants were not diverse (i.e. both defendants resided in the same state). With the limitation under ancillary jurisdiction, if either of the New York defendants were to file a claim against a third party residing in the same state as the plaintiff, i.e. Florida, the plaintiff would have been unable to assert a claim against the new Florida party due to lack of diversity of citizenship between the plaintiff and new party, unless, of course, the claim was a federal claim in nature.

The Court's rationale in Kroger that a plaintiff should not be allowed to do indirectly what the plaintiff could not do directly, thus becomes the true delineator of the limits of supplemental jurisdiction. It is this rational that is carried forward in §1367(b) of the supplemental jurisdiction statute."[43]

III. 28 U. S. C. § 1367, SUPPLEMENTAL JURISDICTION

The judge-made doctrines of ancillary and pendent jurisdiction which were firmly embedded in the federal court system were codified by the United States Congress as

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[42] *Kroger*, 437U.S. at 376.
[43] McLaughlin, *Supra*, at 881.

part of the Judicial Improvement Act of 1990. The passage of the supplemental jurisdiction statute was initiated as result of the Supreme Court's decision in Finley v. United States[44] wherein the Court firmly rejected the concept of pendent party jurisdiction.

Even though the holding in Finley struck down the concept of pendent party jurisdiction, and in so doing distinguished pendent party jurisdiction from that of ancillary jurisdiction, the decision nevertheless caused great consternation over the viability of ancillary jurisdiction since it too was judge made and without express congressional authorization. After the decision in Finley, one court noted that the decision was "premised on a hostility to non-statutory jurisdiction that may even eventually sweep into history's dustbin not only whatever pendent party jurisdiction survives the holding of Finley but also pendent claim jurisdiction and ancillary jurisdiction."[45]

Interestingly, at the conclusion of Justice Scalia's majority opinion in Finley, he wrote:

> Whatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress. What is of paramount importance is that Congress be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts."[46]

Conveniently, prior to the time that the Supreme Court announced its decision in Finley in 1989, a Federal Courts Study Committee had already been appointed to

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[44] *Finley, 490* U.S. 545 (1989).
[45] *Harbors Ins. Co. v. Continental Bank Corp.* 922 F.2d 357, 361 (7th Cir. 1990).
[46] *Finley*, 490 at 556.

analyze the federal court system and to recommend reforms.[47] With the invitation given by Justice Scalia in Finley, and the concern over the continued availability of pendent and ancillary jurisdiction, the Committee recommended that Congress expressly authorize the federal courts to hear claims arising out of the same transaction and occurrence by codifying the doctrines of pendent and ancillary jurisdiction. Further, the Committee recommended that Congress authorize pendent party jurisdiction in limited situations to reverse the holding in Finley. In response to the Committees recommendations, Congress enacted the supplemental jurisdiction statute as part of the Judicial Improvement Act of 1990 which was signed into law by President Bush on December 1, 1990. The supplemental jurisdiction statute thus was an attempt to codify much of the preexisting judicial doctrines with all of their ambiguities, inconsistencies and all.[48]

The statute reads:

> **§ 1367. Supplemental Jurisdiction**
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> **(a)** Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
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> **(b)** In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the 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 over claims by persons proposed to

[47] MOORES FEDERAL PRACTICE, *Supra,* at §106.04[5].
[48] MOORES FEDERAL PRACTICE, *Supra,* at §106.02.

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.

(c) The district courts may decline to exercise supplemental 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 or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

A. Subsection (a)-Overruling of Finley

Subsection (a) of the statute grants a federal court jurisdiction over all claims that are so related to claims in the action within the original jurisdiction that they form part of the same case or controversy. This language is a broad grant of supplemental jurisdiction and is intended to give the courts power to hear cases to the full extent of Article III of the United States Constitution.[49] This subsection is a clear expression of

[49] MOORES FEDERAL PRACTICE, *Supra,* at §106.05[2].

the breadth of a supplemental jurisdiction which was first articulated in Gibbs.[50] The last sentence in subsection (a), which permits jurisdiction over claims involving additional parties by either joinder or intervention, overrules the decision rendered in Finley.[51]

As subsection (a) restores the pre-Finley understanding of pendent and pendent party jurisdiction, it also expands the doctrine of ancillary jurisdiction.[52] Before enactment of the statute, ancillary jurisdiction only extended to claims of by intervenors as a matter of right. Under the statute, claims of permissive intervenors can be considered subject to the limitations of subsection (b).[53]

B. Subsection (b)-Restricting Jurisdiction

Although the grant of jurisdiction to hear claims in Subsection (a) is very broad, the supplemental jurisdiction statute in Subsection (b) prohibits a federal court from exercising supplemental jurisdiction over certain plaintiff's claims in cases based exclusively on diversity under 28 U.S.C. §1332. By restricting supplemental jurisdiction in this manner, the net effect of this subsection is to implement the principle rationale in Owens Equipment & Erection Co. v. Kroger.[54] In other words, the statute maintains the requirement of complete diversity. Even though the complete diversity requirement is not constitutionally mandated,[55] the statute does not permit a plaintiff to do indirectly

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[50] Murphy, *Supra, at* 973, 995.
[51] McLaughlin, *Supra*, at 925.
[52] Murphy, *Supra*, at 997-998.
[53] *Id.* at 998.
[54] H. Rep. No. 734, 101st Cong., 2d Sess. §114 (1990).
[55] Murghy, *Supra,* at 1009.

what he could not do directly, i.e. in diversity case, bring a claim against a non-diverse defendant unless there is an independent basis to invoke the court's jurisdiction.[56]

This subsection also corrects an anomaly that existed prior to its enactment. Ancillary jurisdiction, prior to the statute, in some instances was used to permitted an party to intervene as matter of right as a Plaintiff but did not permit the joinder of the same party as a Plaintiff by a defendant or the court. [57] Under this subsection, a person can neither intervene as a matter of right as a plaintiff nor be joined as a plaintiff by another party if so doing would be inconsistent with the diversity requirements of 28 U. S. C. §1332.[58]

C. Subsection(c)- Supplemental Jurisdiction is Discretionary

Subsection (c) outlines those instances when a court may decline to exercise supplemental jurisdiction. Although not identical to the factors indicated in Gibbs, the factors outlined in the statute reiterate the practice articulated in Gibbs that the exercise of supplemental jurisdiction is not a matter of right but instead is within the discretion of the court.[59]

D. Subsection (d)-The Tolling of Statue of Limitations

Subsection (d) is simply a recognition that in some instance if a claim is asserted in a federal action and later dismissed, there is a possibility that the claim would be later barred in a separate state action. It gives a litigant 30 (thirty) days from the date of dismissal to file a state action, unless the state law provides for a longer tolling period.

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[56] Subsection(b) also codifies the rationale in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973) by denying supplemental jurisdiction to evade the jurisdictional-amount requirement of the diversity statue. Murphy, *Supra,* at 1010-1011.
[57] Murphy, *Supra,* at 1012.
[58] *Id.*

IV. CONCLUSION

The remarkable dispatch with which the United States Congress passed the supplemental jurisdictional to overrule the decision in Finley by most accounts was indeed necessary, and to some maybe even extraordinary. The statute leaves no doubt that a federal court, in most instances, continues to enjoy the power to hear and decide claims derived from a common set of facts and circumstances. The statute not only codified the prior judicial doctrines of ancillary and pendent jurisdiction, but it also clarified anomalies that existed in the case law prior to its enactment. Thus, the enactment of §1367 can be viewed as a model of successful interaction between the judicial and legislative branches of the United States government and indeed is an effort that should be applauded.

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[59] *Gibbs*, 383 U.S. at 726.

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PROFESSIONAL WRITINGS AND ACTIVITIES:

A. Samples of publications, Articles or Seminars on Maritime Transportation and Insurance law are: Journal of Maritime Law and Commerce, Federation of Insurance Counsel Quarterly, Florida Bar Journal, and:

(1) Currently senior author with Honorable Harvey Schlesinger of treatise Pretrial Practice in the 11th U. S. Circuit (Florida, Georgia, and Alabama). Publication date 1997 by Lawyers Co-op.

(2) Chapter Co-Author on admiralty jurisdiction for current 29 Moore's Federal Practice, Chapter 703 (3rd ed. 1997), published by Matthew Bender.

(3) Defense of Admiralty Litigation: Rules and Procedure, 1987 Defense Research Institute 6.

(4) Pre Emption: The State/Federal Conflict - Association of Bar of City of New York - Marine Pollution Law.

(5) Defense of Railroad Employment Litigation 36 Federation of Insurance and Corporate Counsel Quarterly 407.

(6) International Association of Defense Counsel -Foreign Jurisdiction - Forum Selection.

(7) Indemnity, Contribution and Partial Settlement, Louisiana State University College of Law.

(8) The MAPLE LEAF Litigation - International Society for Historical Archaeology, Vancouver, Canada.

(9) Uniformity After Calhoun, Houston Marine Insurance Seminar, Houston, Texas.

(10) Overview on the Nature and Origin of Damages, Including a General Historical and a Philosophical Review of Damages Under the Tort System. Tulane Admiralty Law Institute 1997 to be published 1997-1998 Tulane L.Rev.

B. Presentations, at seminars on Admiralty: Tulane University Law School, University of Houston, Federal Practice Institute, Florida Bar, Southeastern Admiralty Law Institute, Maritime Law Association of the United States, Louisiana State University, Federal Judicial Center, Houston Marine Insurance Seminar.

C. Sims Admiralty Distinguished Practitioner in Residence - Tulane University Law School, April 1995.

EDUCATION: A. B., The Citadel, 1958 (Alumni Assn. Man of Year 1992),
J. D., University of Florida College of Law, 1961.

LISTED: In many sources, including Best Lawyers in America, Who's Who in America, 1980 to present, Who's Who in Finance and Industry, etc.

MILITARY: Legal Officer, U. S. Army Infantry School
Captain, U.S.A.R. (1961 - 1963, Active Duty; Reserve 1958-1961, and 1963-1966).

CHARITABLE:

1. United Way:

   (a) Member National Board of Governors, United Way of America.,
   (b) Current Chairman of Board of Trustees, United Way of Northeast Florida, 1995-1997.
   (c) Past Chairman of Board of Directors, United Way of Jacksonville,(1979-1980), previously most offices, Board and campaign positions.
   (d) Chairman, Board of Directors United Way of Florida, (1992-1993), other officer positions three years prior. Chairman of Strategic Plan I 90-95 and Strategic Plan II 95-2000.
   (e) Member Southeast Regional Council 1993 to present, United Way.
   (f) United Way of Northeast Florida, Above and Beyond Award 1990.

2. Other:

   (a) Trustee, several Foundation Boards, including Jacksonville Community Foundation.
   (b) Past Chairman, Jacksonville Human Services

Coalition. (Consisting of State of Florida Human Services, City of Jacksonville, Duval County School Board and United Way).

(c) Served as Chair of other Human Service and Medical Task Force groups.

(d) Served as President of numerous organizations in the Northeast Florida area.

3. GOVERNMENTAL APPOINTMENTS:

(a) Past Chairman, Library Board of Trustees, City of Jacksonville. (Two terms appointed by Mayor).

(b) Former Chairman Judicial Nominating Commission, Fourth Judicial Circuit (1978 - 1980) State of Florida.

PERSONAL: Married 36 years to Anne McGehee. Two sons: James F. Moseley, Jr., attorney, Jacksonville, Florida, and John M. Moseley, Greensboro, North Carolina.