

Civil Procedure II - Practice Question 2: SELECTED ANSWER A

Did the State Court Properly Grant Doctor's Motion to Dismiss?

Doctor filed a motion to dismiss based on lack of personal jurisdiction. A motion to dismiss on jurisdictional issues is proper when, viewing the facts in the most favorable light to the defendant, the plaintiff has failed to satisfy the elements of personal jurisdiction. Failure to object to personal jurisdiction before answering or in a party's first 12(b)(6) motion waives the issue. There is no indication that waiver occurred here. Thus, the issue is whether the court in State B had personal jurisdiction over the Doctor.

Traditional Basis for Jurisdiction

Personal jurisdiction refers to the power of a court to adjudicate claims involving a particular party. Traditionally, personal jurisdiction is based on three concepts: **consent, presence, and domicile**. Here, there is nothing in the facts indicating that the doctor consented to personal jurisdiction. Moreover, there is nothing in the facts indicating that he was served while he was in State B or that he is a resident of state B. The facts indicate Doctor is a resident of state A. Thus, the traditional bases for jurisdiction are not met.

Long-Arm Jurisdiction/Constitutional Limits of Jurisdiction

Many states have adopted long-arm statutes to obtain personal jurisdiction over non-residents. While long-arm statutes can differ by state, jurisdiction under a long-arm statute must satisfy the constitutional requirements for the exercise of jurisdiction. Many states, like California, have adopted long-arm statutes which extend personal jurisdiction to the constitutional limits. In order to satisfy the constitutional requirements for personal jurisdiction, the defendant must have such **minimum contacts** with the forum state as to **not offend traditional notions of fair play and substantial justice**. In determining whether such minimum contacts are present, courts look to

three things: 1) the level of contacts with the forum state, 2) the relatedness of those contacts to the cause of action, and 3) whether the exercise of jurisdiction would be fair, taking into account private and public considerations.

Contacts

To determine whether a defendant has minimum contacts with the forum state to justify an exercise of personal jurisdiction, the court looks: 1) whether the defendant **purposefully availed** himself to the forum state and 2) whether the exercise of jurisdiction by the forum state would be **foreseeable**. Here, there is nothing in the facts to indicate that Doctor purposefully availed himself of the benefits and protections of State B. He did not travel to state B and he did not do business with state B or a company in state B. While the valve by Valvco was designed in state B, Doctor (or the hospital with whom he associates) likely dealt with Valvco through its headquarters in State D and purchased the valve through Valvco in State D. Thus, doctor has done nothing to purposefully avail himself of the benefits and protections of state B. It is not foreseeable that Doctor could be sued in State B because doctor did not conduct surgery in state B or take any action in state B. Moreover, Doctor did not interact with any State B residents. Patient was not a citizen of state B when doctor operated on him. While patient collapsed while in state B, such a fact, if considered foreseeable, would make doctor amenable to jurisdiction in any state, as it could be assumed that his patients could travel to any state and then fall ill. This is too tenuous of a connection to be considered foreseeable under the constitutional analysis. Thus, Doctor did not have sufficient contacts with the forum to satisfy the constitutional limits of jurisdiction.

Even though Doctor did not have sufficient contacts to warrant jurisdiction, the remaining elements are discussed for completeness.

Relatedness of Contacts

General Jurisdiction

The court looks to see whether defendant's contacts with the forum state are so extensive, as to find that the defendant is essentially at home in the forum state. If so, the court has general jurisdiction over the defendant and the defendant is amenable to a wider range of lawsuits in the state. Here, as stated above, Doctor did not have sufficient contacts with the state to show minimum contacts. Thus, he is not at home in state B.

Specific Jurisdiction

If general jurisdiction does not exist, the court looks to see whether the defendant's particular contacts with the state relate to or give rise to the particular cause of action. If so, the court has specific jurisdiction over the defendant. Here, the cause of action arises out of doctor's negligence in implanting the valve. This took place in State A. There is nothing to indicate that doctor's negligence extended to state B, except that B collapsed there. Thus, there is no specific jurisdiction over Doctor in State B.

Fairness

To determine whether jurisdiction is fair, courts look to a variety of public and private factors. Courts look to several factors, including the Plaintiff's interest in the chosen forum, a state's interest in providing redress for its citizens or for harms that occur in its state, and whether the exercise of jurisdiction would be so unfair as to offend traditional notions of fair play and substantial justice. Here, the forum state does have an interest in providing redress for its citizens. Patient is currently domiciled in state B. Domicile is determined by someone's physical location combined with an intent to stay. Here, the facts state that Patient is physical in state B and wishes to remain there or the indefinite future. Thus, Patient is a domicile of State B. However, he was a citizen of state A

when the negligence occurred. While some of the witnesses concerning the design of the valve may be in State B, the action against the doctor is for negligence. Thus, most of the evidence and witnesses, such as medical records, surgery staff, and nurses would be in State A. Thus, on the balance it is not fair to exercise jurisdiction in State B.

Conclusion

Based on the above analysis, since Doctor does not have any basis for traditional jurisdiction and since Doctor does not have such minimum contacts with the forum, as to make the exercise of jurisdiction not offend traditional notions of fair play and substantial justice, jurisdiction over D was not proper. Thus, the court properly granted his motion to dismiss.

Did the State Court Properly Deny Valvco's Motion to Dismiss?

Valvco filed a motion to dismiss based on lack of personal jurisdiction. A motion to dismiss on jurisdictional issues is proper when, viewing the facts in the most favorable light to the defendant, the plaintiff has failed to satisfy the elements of personal jurisdiction. Failure to object to personal jurisdiction before answering or in a party's first 12(b)(6) motion waives the issue. There is no indication that waiver occurred here. Thus, the issue is whether the court in State B had personal jurisdiction over Valvco.

Traditional Basis for Jurisdiction

As stated above, personal jurisdiction refers to the power of a court to adjudicate claims involving a particular party. Traditionally, personal jurisdiction is based on three concepts: ***consent, presence, and domicile***. Here, there is nothing in the facts indicating that Valvco consented to personal jurisdiction. Moreover, there is nothing in the facts indicating that it was served while he was in State B. For jurisdiction purposes,

a corporation is domiciled in the state of incorporation and the state of its principal place of business. The corporation's principal place of business is where its headquarters are or where its officers are located. Here, Valvco is incorporated in State C and has its headquarters in state D. Thus, it is domiciled in State C and D. Since the lawsuit is brought in state B, there is no basis for personal jurisdiction based on Valvco's domicile. Thus, the traditional bases for jurisdiction are not met.

Long-Arm Jurisdiction/Constitutional Limits of Jurisdiction

The requirements for long-arm jurisdiction are described in detail above. In order to satisfy the constitutional requirements for personal jurisdiction, the defendant must have such **minimum contacts** with the forum state as to **not offend traditional notions of fair play and substantial justice**. In determining whether such minimum contacts are present, courts look to three things: 1) the level of contacts with the forum state, 2) the relatedness of those contacts to the cause of action, and 3) whether the exercise of jurisdiction would be fair, taking into account private and public considerations.

Contacts

To determine whether a defendant has minimum contacts with the forum state to justify an exercise of personal jurisdiction, the court looks to two things: 1) whether the defendant **purposefully availed** himself to the forum state and 2) whether the exercise of jurisdiction by the forum state would be **foreseeable**. Here, Valvco used state B to design its valve. Thus, it availed itself of the labor force in State B and the privileges and benefits of operating a business location in state B. Thus, Valvco purposefully availed himself of State B. Moreover, the exercise must be foreseeable. Since the valve was designed in State B, it is foreseeable that someone injured by design of the valve may bring a lawsuit in state B for negligent design. Thus, Valvco has sufficient contacts for constitutional jurisdiction purposes.

Relatedness of Contacts

General Jurisdiction

The court then looks to see whether defendant's contacts with the forum state are so extensive, as to find that the defendant is essentially at home in the forum state. If so, the court has general jurisdiction over the defendant and the defendant is amenable to a wider range of lawsuits in the state. Here, Valvco's only activity in state B from the facts was designing the valve. This is likely not continuous or systematic activity which rises to the level of Valvco being "at home" in the forum state. Thus, general jurisdiction does not exist.

Specific Jurisdiction

If general jurisdiction does not exist, the court looks to see whether the defendant's particular contacts with the state relate to or give rise to the particular cause of action. If so, the court has specific jurisdiction over the defendant. Here, the cause of action arises out of Valvco's negligent design of the valve. The design took place in State B. Thus, there is specific jurisdiction over Valvco.

Fairness

To determine whether jurisdiction is fair, courts look to a variety of public and private factors. Courts look to several factors including Plaintiff's interest in the chosen forum, a state's interest in providing redress for its citizens or for harms that occur in its state, whether the exercise of jurisdiction would be so unfair as to offend traditional notions of fair play and substantial justice. Here, the forum state does have an interest in providing redress for its citizens. As discussed above, Patient is currently domiciled in state B. Domicile is determined by someone's physical location combined with an intent to stay. Here, the facts state that Patient is physically in state B and wishes to remain there or the indefinite future. Thus, Patient is a domicile of State B. Moreover,

witnesses concerning the design of the valve are likely in State B. State B also has an interest in ensuring products developed in its state are not defective to protect its residents and other foreseeable plaintiffs. Thus, on the balance it is fair to exercise jurisdiction in State B.

Conclusion

Based on the above analysis, since Valvco has such minimum contacts with the forum, as to make the exercise of jurisdiction not offend traditional notions of fair play and substantial justice, jurisdiction over Valvco is proper. Thus, the court properly denied its motion to dismiss.

Did the Federal Court Properly Deny Patient's Motion for Remand

Removal refers to a defendant's ability to remove a case brought initially in state court to federal court for adjudication. In order to remove a case, the case must have been one that could have originally been brought in federal court. Removal is proper to the federal district encompassing the location where the original action was filed in state court. Moreover, removal has to be timely--it has to be within 30 days of the last pleading giving rise to a removal action and cannot in any cases be more than a year since the filing of the lawsuit. Removal is not proper when a defendant is a resident of the state in which the action is brought and all defendants must join in the removal for it to be proper. If removal is not proper, then the plaintiff can file a motion to remand the case back to state court. A motion to remand must be filed within 30 days of the notice of removal.

Was Timing of Removal Proper

First, as a preliminary matter, removal has to be timely--it has to be within 30 days of the last pleading giving rise to a removal action and cannot in any cases be more than a

year since the filing of the lawsuit. There is nothing in the facts to explicitly indicate that the timing issue here was violated. However, the motion for removal was filed after Doctor and Valvco moved the court to dismiss on an issue of personal jurisdiction and the decision on the motion was returned. This likely took more than 30 days. Thus, removal after the motions to dismiss for lack of personal jurisdiction may not be timely. On these grounds alone, the court could grant Patient's motion for remand.

Is Any Defendant a Citizen of the State in Which the Action was Filed?

Removal is not proper when a defendant is a resident of the state in which the action is brought. Here, as explained above with respect to personal jurisdiction, Doctor is a resident of State A and Valvco is a resident of States C and D. Thus, this is not a bar to removal.

Did all Defendants Join in Removal?

All defendants must join in the removal for it to be proper. Here, the facts indicate that V filed a notice of removal in federal court. The facts do not indicate that D joined in this motion. However, at the time, D had been dismissed from the case. Thus, Doctor was no longer a defendant and was not required to join in the motion for removal. This was not a bar to removal.

Could the Case Originally Be Brought in Federal Court?

For removal to be proper, the case must be one that could have initially been brought in federal court. Federal courts are courts of limited jurisdiction. A federal court must have subject matter jurisdiction over the claims, meaning the court must have the power to adjudicate the dispute. The two most common bases for federal jurisdiction are federal question jurisdiction and diversity jurisdiction.

Federal Question Jurisdiction

Federal question jurisdiction refers to claims that are brought to enforce or decide a federal right. Here, the case brought was a defective design case against Valvco and a negligence claim against Doctor. These are both state law tort claims and do not invoke federal question jurisdiction. Thus, the case could not have been brought in federal court on the basis of federal question jurisdiction.

Diversity Jurisdiction

For diversity jurisdiction to exist, there must be diversity between plaintiffs and defendants and the amount in controversy must exceed \$75,000.

Diversity of Citizenship

Complete diversity between all parties is not required for diversity jurisdiction. However, there must be complete diversity between all Plaintiffs and all Defendants -- that is all Plaintiffs must be of diverse citizenship of all Defendants. Citizenship is determined at the time of filing of the action. For individuals, an individual can only have one citizenship--his or her domicile. Domicile is where a person is physically present with intent to permanently remain.

Here, the facts indicate that Doctor lives in State A. Thus, since no facts indicate he does not intend to remain there indefinitely, he is a citizen of State A.

Patient was a citizen of state A when the surgery occurred, but after he was injured he remained in state B with intent to stay there indefinitely. Thus, Patient became a citizen of state B. Plaintiff was a citizen of State B upon the filing of the lawsuit.

Corporations are considered domiciled where they have their principal place of business and where they are incorporated. The corporation's principal place of business is where

his headquarters are or where his officers are located. Here, Valvco is incorporated in State C and has its headquarters in state D. Thus, it is domiciled in State C and D.

Looking at the parties, the case is Patient (B) v. Doctor (A) and Valvco (C and D). Thus, diversity exists for federal jurisdictional purposes because the Plaintiff is of diverse citizenship from all defendants.

Amount in Controversy

The amount in controversy for diversity jurisdiction requirements looks at the amount from Plaintiff's well-pleaded complaint, irrespective of costs and fees. Here, the facts indicate that Patient sued Doctor and Valvco in state court for \$100,000. Aggregation of amounts in controversy against more than one defendant is proper if each defendant is jointly and severally liable for the full amount. Thus, if Patient's case seeks joint and several liability from Doctor and Valvco, jurisdiction is proper. However, if Patient was seeking \$50,000 from Doctor and \$50,000 from Valvco individually, the amount in controversy would not be satisfied for jurisdiction. There are not enough facts to determine how the damages may be allocated.

Conclusion

Since there is diversity of citizenship and the amount in controversy requirement is met, assuming joint and several liability, this is a case that could initially be brought in federal court under diversity jurisdiction.

Ultimate Conclusion

Since this is a case that could have originally been brought in federal court, Defendant is not a resident of the state in which the action was filed, and all defendants at the time joined in the removal, removal is proper. Thus, the motion to remand was properly denied. However, based on the timing of the notice of removal, if it occurred after 30

days from the last pleading raising a removable issue, Patient's motion to remand may be granted.

Did the Federal Court Properly Grant Patient's Motion for Summary Judgment?

Summary judgment is granted when there is no issue of material fact and a party is entitled to judgment as a matter of law. Summary judgment often comes up along with issues of claim preclusion or issue preclusion.

Claim Preclusion

The first issue is whether summary judgment can be granted due to claim preclusion.

Claim preclusion occurs when an identical claim was already fully litigated on the merits to a final judgment, by a court with jurisdiction, between the same parties. This prevents subsequent actions deciding the same claim that was already decided.

Here, the facts indicate that another patient recently sued Valvco alleging defective design of the valve and obtained a final judgment on the merits after a trial. With respect to Valvco, assuming it is the same valve in question, this is the same issue that is at issue in the present case. Thus, the identity of issues was met. The facts indicate that there was a judgment in her favor after trial, so there is a final judgment on the merits. Federal courts do not require all appeals be exhausted before using claim preclusion. However, claim preclusion requires identity of parties. Here, the prior action involved another patient and Valvco, not this Patient and Valvco. Thus, the requirements for claim preclusion are not met.

Issue Preclusion

The second issue is whether summary judgment can be granted based on issue preclusion.

Issue preclusion prevents an issue that was already fully litigated on the merits from being re-litigated. The requirements for issue preclusion are 1) the same issue, 2) actually litigated and decided, 3) a final judgment on the merits, 4) the issue was essential to the judgment and 5) in the cases of non-mutual issue preclusion, fairness.

Same Issue

Here, the facts indicate that another patient recently sued Valvco alleging defective design of the valve and obtained a final judgment on the merits. With respect to Valvco, assuming it was the same valve, this is the same issue that is at issue in the present case. Thus, the identity of issues was met.

Actually Litigated and Decided

The facts indicate that there was a judgment in her favor after trial, so issue was actually litigated and decided.

Final Judgment on the Merits

The facts indicate that there was a judgment in her favor after trial, and it wasn't based on a lack of jurisdiction or other decisions not on the merits, so there is a final judgment on the merits. Federal courts do not require all appeals be exhausted before applying issue preclusion.

Essential to the Judgment

It appears the decision was essential to the judgment, as the other patient brought a defective design case and won. There are no other facts indicating there were separate or alternative grounds for the other patient's success in the suit. Thus, a finding of negligent design is essential to the judgment.

Fairness/Non-Mutual Issue Preclusion

Traditionally, issue preclusion required the same parties to the prior lawsuit assert issue preclusion or at least parties in privity with each other. If that was the case, then issue preclusion could not be used here for the reasons explained above with claim preclusion.

However, many courts now allow non-mutual issue preclusion to be used if it is fair. Here, Patient is trying to use non-mutual offensive issue preclusion--that is, a Plaintiff is using it as a sword against a Defendant in a later action. Courts typically allow this if Valvco had the same or similar motivations to defend the prior suit and if it would not be unfair or unjust. Here, both actions were for defective design. Thus, Valvco had a similar motive to defend this prior lawsuit. Therefore, it is not inequitable for Patient to use issue preclusion.

Since there is issue preclusion and Valvco is precluded from claiming it is not negligent, there is no issue of material fact with respect to Valvco's negligent design. Thus, summary judgment should be granted for Patient. The court was proper in granting the motion.

Civil Procedure II - Practice Question 2: SELECTED ANSWER B

1) State Court Properly grant Doctor's motion ("D") to dismiss?

The issue here is whether the State B court had personal jurisdiction ("PJ") over D. The plaintiff's place of residence or domicile is irrelevant to this issue.

Traditional Bases of PJ

Personal jurisdiction assesses whether the court has power over the defendant such that it may hear a case against him. There are three traditional bases that personal jurisdiction can be established over a defendant. If the defendant consents to the jurisdiction; is domiciled in the jurisdiction; or is served while present in the jurisdiction (although, not if served due to the fraud or deceit of the plaintiff, or, in federal court, if served while serving as a witness or party in a court case). For a person, domicile requires two elements be met: 1) presence in the forum state and 2) an intent to permanently remain in the forum state.

In this case, none of the traditional methods appear to be applicable. D was not served in State B nor did he consent to the jurisdiction of the court (if he did, he would not have brought the motion to dismiss). He also is not domiciled in State B. D lives in State A and is merely visiting State B for these court proceedings; he does not intend to stay permanently.

Long-arm Statute

If the traditional bases of PJ do not apply, we then must analyze the state's long-arm statute. A long-arm statute permits a state to have PJ over out-of-state defendants. There are two types of long-arm statutes--those that apply the minimum constitutional requirements of due process to establish personal jurisdiction and those that have

specific limitations beyond those prescribed by the Due Process clause. Here, we are not told of State B's long-arm statute; we are similarly not told of any restrictions the state has regarding PJ. Thus, it is likely (and will be assumed) that the state simply applies the constitutional analysis.

Constitutional Requirements

The Supreme Court has held that, for a state to have PJ over a defendant, the defendant must have sufficient minimum contacts with the state, such that traditional notions of fair play and justice are not offended by the use of jurisdiction over him. The Court has established a three-factor test to determine whether minimum contacts exist: 1) contact; 2) relatedness; 3) fairness.

Contact

Under the contact factor, courts ask whether the defendant purposely availed himself of the benefit and protections of the state's laws, and based on that availment, was a law suit foreseeable. Here, D has not purposely availed himself of the protections of State B's laws. He has not practiced medicine in State B, and there are no facts showing that he has even stepped foot in State B, other than for purposes of this lawsuit. As a result, a lawsuit against him in State B was not foreseeable. PJ would likely fail due to this factor.

Conclusion: Thus, the state court properly granted D's motion to dismiss for lack of personal jurisdiction.

2) State court Properly deny Valvco's ("V") motion to dismiss?

The issue here is whether the State B court had PJ over V.

Similarly to D, the traditional bases (domicile, consent, and personal service) of PJ will not work to acquire jurisdiction over V. A corporation's domicile includes both all of the states where it is incorporated as well as the location of its principal place of business--the place where the corporate's headquarters, officers, and main employees that operate the whole company are located. Here, V is incorporated in State C and its headquarters, which would likely comprise its principal place of business, is in State D. Thus, it is not domiciled in State B, it was not served in State B (based on the facts), and it clearly has not consented to PJ. None of the traditional bases works.

Additionally, the long-arm statute likely will apply the constitutional analysis. Thus, the three-factor test will be used here as well to determine if V had minimum contacts with State B to establish personal jurisdiction.

Contact

As mentioned above, under the contact factor, courts ask whether the defendant purposely availed himself of the benefit and protections of the state's laws, and based on that availment, was a lawsuit foreseeable in the state. Here, although the facts are somewhat unclear, it is likely that V has purposely availed itself of the benefits and protections of State B's laws. V designed the valve that purportedly injured Patient ("P") in State B. It likely has employees permanently located and working in the state. If so, it has purposely availed itself of the state's laws, and it was entirely likely that it could be sued in the state.

Relatedness

The relatedness factor identifies if one of two forms of jurisdiction exist--specific and general jurisdiction. Specific jurisdiction exists when the actions that the defendant took in the state are related/caused the cause of action to arise. Specific jurisdiction grants the court the PJ to hear only that case against the defendant. In contrast,

general jurisdiction asks whether the defendant has maintained a systematic and continuous presence in the forum state such that it is essentially at home. If so, a court can hear any case against the defendant.

Here, specific jurisdiction exists, and with additional facts, general jurisdiction could be shown to exist as well. V's conduct in the state, designing the valve, led directly to the cause of action at hand. As a result, the claim and its actions are related, and it establishes specific jurisdiction. General jurisdiction could also exist if the company has a factory or team of workers in the state that remain there consistently. However, specific jurisdiction is sufficient to establish PJ.

Fairness

The last factor simply asks whether exercising PJ in the forum state is fair. The court will look to both the defendant's and plaintiff's interests in having the proceedings in the state, as well as the state's interests in exercising jurisdiction. Here, it seems entirely fair that V will be subject to State B's jurisdiction. The employees that designed the valve are likely in State B, making it reasonable for the plaintiff to proceed in the state, and the plaintiff lives in the state. Thus, the plaintiff's interests are in favor of the proceeding. Additionally, State B has an interest in protecting its citizens from the potentially negligent acts of business in the state. Finally, the defendant's interests do not weigh so heavily in favor of the court not exercising PJ to justify dismissal. Only when the D's interest is gravely injured by the exercise of PJ should it be denied.

Conclusion: The state court properly denied V's motion to dismiss for lack of PJ.

3) Fed Court properly deny Patient's ("P") motion for remand

For the court's decision to be correct, it must have had subject matter jurisdiction, and V must have had the power to remove the case. If either of those elements were

not met, it should have remanded the case back to the state court. The first issue here is whether the federal court had subject matter jurisdiction ("SMJ") over P's claim, such that V could remove the case.

SMJ

Subject matter jurisdiction ("SMJ") determines whether a court has the ability to hear a case. SMJ can be established in one of three ways, although only two are relevant here--federal question jurisdiction and diversity jurisdiction. Federal question jurisdiction applies when the plaintiff, in its well-pleaded complaint, raises a federal right or claim of relief--the federal claim cannot arise in another pleading, but must be clear from the complaint. If federal question jurisdiction exists, removal to a federal court is always appropriate. Here, P's complaint does not raise a federal issue--it is a state law tort issue--and as a result, federal question jurisdiction does not exist.

Diversity jurisdiction requires that two elements be met. First, there must be complete diversity between the parties--the case must involve citizens of different states or a citizen of the US and a foreign citizen, and all plaintiffs must be from a different state than all defendants. Diversity is determined at the time the case is instituted. A person is a citizen of the state he or she is domiciled (present and intend to permanently remain), while a corporation is a citizen where it is domiciled (incorporation and principal place of business). Here, complete diversity does exist. P is likely a citizen of State B at this moment. He is present in State B and intends to remain there for the indefinite future (however, even if he is a citizen of State A, diversity will still exist). V, on the other hand, is a citizen of both State C (incorporated) and State D (principal place of business). Thus, complete diversity exists.

To have diversity jurisdiction, the second element required is that the suit be for greater than \$75,000. Unless it is clear to a legal certainty that the plaintiff's amount is below \$75,000, the plaintiff's claim for relief that is made in good faith and greater than the threshold will establish the amount for diversity purposes. Typically, the amount

sued for applies only to one defendant; however, in the case of joint tortfeasors, the amount applies to all defendants. In this case, P sued D and V for \$100,000. Although D is no longer a party to the case (as a result of the motion to dismiss), the \$100,000 claim is applicable to V. As a result, the amount in controversy requirement is met.

Removal appropriate

The second issue is whether V met the requirements for removal and whether it was appropriate.

Removal must be made within 30 days of being served the complaint in a matter. The notice of removal must be sent to the federal court encapsulating the state court in question, and it must join all defendants currently in the matter. In this case, these initial requirements appear to be met. Although we are not given facts regarding the 30-day timeline, it seems to be met. Additionally, V filed the notice in the appropriate federal court--the State B federal court. Lastly, because D had been dismissed as a defendant, the notice included all required defendants. Thus, at first glance, the elements were met.

In a diversity case, however, removal may not be had in two situations. First, if the defendant is a citizen of the state where the state court sits, it is not appropriate, and removal should be denied. Second, removal may only be had within one year after service, and any removal actions sought after one year should be denied.

Here, as mentioned, V is not a citizen of State D; therefore, that limitation does not apply here. Second, although the facts are ambiguous, it would appear that the motion was timely brought within the one-year period. As a result, removal was properly granted, and P's motion for remand was properly denied.

Conclusion: P's motion for remand was properly denied by the Federal Court.

4) Fed Court properly grant P's motion for summary adjudication?

The issue here is whether issue preclusion should apply.

Summary judgment is appropriate when there are no genuine material issues of fact in dispute and the moving party is entitled to judgment as a matter of law. It is at the court's discretion, however, as to whether it will grant the motion. The motion may be made any time prior to 30 days after the end of discovery. Both claim and issue preclusion can be used to establish that no genuine material issues of fact exist, such that summary judgment is appropriate. Additionally, if issue preclusion does not justify the granting of a total summary judgment, a court may grant a partial summary judgment as to that particular issue or permit additional time to prove up the other necessary facts.

Claim Preclusion (res judicata)

Claim preclusion is not applicable here. For claim preclusion to apply, the same two parties from a prior final judgment on the merits must be in a second proceeding, in which one party is seeking to relitigate a claim litigated at the first proceeding or one that should have been made at that proceeding. Here, P was not a party to the first proceeding, and as a result, the doctrine will not apply.

Issue Preclusion (collateral estoppel)

A party can be estopped from relitigating an issue that was litigated at an earlier proceeding if issue preclusion applies. Issue preclusion requires the following elements to be met: 1) a final judgment on the merits in a prior proceeding; 2) the issue sought to be estopped was actually litigated; 3) that issue was essential to the judgment; and 4) mutuality of parties. Here, the prior case involved V and another plaintiff. That plaintiff won the case based on the allegation that V had defectively designed the valve used in P's case. Thus, there was a final judgment on the merits of the case. Additionally, the

issue that P seeks to estop V from relitigating--the defective design--was actually litigated and essential to the court's judgment in the final proceeding.

The final determination is whether mutuality of the parties exists in this case. Although mutuality of parties used to require the same parties in both the prior and current proceeding, American courts have relaxed this requirement. Instead, defensive claim preclusion (used by a defendant) has been upheld in nearly all jurisdictions, and offensive claim preclusion (where the plaintiff seeks to estop the defendant) is gaining traction, and it has been used by the Supreme Court. Offensive issue preclusion is allowed if the party that will be estopped had a fair and equitable opportunity to litigate the issue at the prior proceeding. If that party had such an opportunity to litigate, then issue preclusion can apply notwithstanding the fact that the plaintiff was not a party in the prior proceeding.

Here, offensive claim preclusion should be allowed. V had a full and fair opportunity to litigate the defective design issue. It was in its best interest to put forth all of its efforts in winning that case. If not, and as seen here, other users of their products would likely start to sue them using the judgment to their advantage. It had the opportunity to call witnesses and cross-examine the other plaintiff's witnesses. It is fair and equitable that V should be estopped from relitigating the issue here.

Partial or total summary judgment

Although P may have shown a defectively designed product manufactured by V, he has not yet shown the other requirements of either a negligent design action (duty, causation, and damages) or a strict product liability action (causation, damages). As a result, total summary judgment is likely not appropriate in this matter. However, at the court's discretion, it could grant partial summary judgment as to the defective design issue, or give P additional time to prove up the additional elements, such that she could receive a total summary judgment. Thus, it should not have granted the total summary judgment as it did based on the facts at hand.

Conclusion: The state court erred in granting a total summary judgment; at best it should have granted a partial.