

**GREAT LAKES RUBBER CORPORATION
v. HERBERT COOPER CO.**

United States Court of Appeals Third Circuit, 1961.
286 F.2d 631.

Editor's Note: There is no principal case on counterclaims. *Great Lakes* is mentioned at p.589 n.4, in the ancillary SMJ context. As of June 18, 2006, *Great Lakes* had 1 negative reference (by a North Carolina federal trial court), and 677 positive citations in its 45-year existence.

Failure to plead a compulsory counterclaim can be a career-ending mistake. I have thus edited and assigned this case, so that you can better appreciate the importance of the compulsory counterclaim in the FRCP 13(a) versus 13(b) sense—which is a *critical* feature of state practice in most state jurisdictions. You will also be equipped to view this type of claim in the companion supplemental jurisdiction sense of 28 USC §1367.

Italics have been added to the court's opinion, without so indicating.

Court's Opinion: BIGGS, Chief Judge.

This is an appeal from an order of the court below dismissing a counterclaim of Great Lakes Rubber Corporation (Great Lakes), made against Herbert Cooper Co., Inc. (Cooper), on the ground that the court lacked jurisdiction of the subject matter of the counterclaim. Because the question presented on appeal is whether Great Lakes' counterclaim arises out of the transaction or occurrence that is the subject matter of a claim asserted by Cooper a detailed analysis of the pleadings is necessary.

* * * Great Lakes filed an amended complaint naming Cooper as defendant. Jurisdiction was allegedly based on diversity. The allegations fall roughly into three groups. First, it was alleged that Howard Cooper * * * had been employed by Great Lakes * * * and that [he] left Great Lakes' employ taking * * * certain information relating to the flexible rubber tubing manufactured by Great Lakes, and lists disclosing Great Lakes' customers; that shortly thereafter * * * with others, founded Cooper [Company]; that Cooper competed for and obtained customers that were, until then, customers of Great Lakes; and, that Cooper's 'offering to sell, and manufacturing and selling flexible tubing made and offered for sale with utilization of knowledge and information acquired (by Howard Cooper and Joseph Herbert) while these men were in a fiduciary relationship with plaintiff' constituted 'acts of unfair competition and unfair business practices.'

Second, it was alleged that * * * by reason of Cooper's operation as an 'unlicensed infringer' it 'is and has been in an unfair competitive position' relative to Great Lakes.

* * *

* * * Cooper filed an answer to the amended complaint and a counterclaim which asserted that Great Lakes * * * and various unnamed companies and individuals 'have been and still are * * * conspiring together and attempting both individually and in concert to restrain and monopolize interstate commerce' in violation of Sections 1 and 2 of the Sherman [federal antitrust] Act. The conspiracy [claimed by Cooper] was alleged to include, without limitation, the making of false representations to certain of Cooper's material suppliers that they were guilty of contributory infringement when the conspirators knew that the supplied items * * * could not be the basis of such liability.

The counterclaim also alleged, and this is of prime importance in the instant case, ‘the bringing of a series of unjustified lawsuits by [Great Lakes and] the [other] conspirators in bad faith and without color of right with the sole object of harassing and preventing defendant (Cooper) from competing in the manufacture and sale of flexible hose and thus eliminating defendant as a competitor, including this action * * * to prevent defendant from seeking the patronage of its principal customer, the United States * * * and a [separate] patent infringement suit brought against defendant in * * * to prevent defendant from manufacturing flexible hose * * * being in violation of 28 U.S.C.A. § 1498 which forbids infringement actions and injunctive restraints against government contractors * * * .

Cooper moved to dismiss Great Lakes’ amended *complaint* on the ground that there was no diversity of citizenship between the parties. * * * [T]he court granted Cooper’s motion to dismiss. Jurisdiction of Cooper’s *counterclaim* was retained on the ground that it had an independent basis of jurisdiction in that it asserted a claim arising under the laws of the United States. No appeal was taken from that order and no question regarding it has been raised on this appeal.

* * * *Great Lakes* filed an answer and a *counterclaim* to Cooper’s counterclaim [effectively, now the “complaint”]. *Great Lakes*’ counterclaim repeated in substance the allegations of its amended [but previously dismissed] complaint. The counterclaim is distinguishable from the [now defunct] amended complaint only in that it is more specific and in that it alleges further that Cooper * * * had induced ‘key’ employees of *Great Lakes* to leave it and to become employed by Cooper; and that Cooper’s charges in the court below were baseless and untrue and have resulted in damaging *Great Lakes* unfairly.

* * * Cooper moved to dismiss the *Great Lakes* counterclaim on the ground that the court below lacked jurisdiction of the subject matter. In opposition to this motion *Great Lakes* contended that the court had *ancillary jurisdiction* of its counterclaim as a *compulsory* counterclaim arising out of the same transaction and occurrences that were the subject matter of Cooper’s claim arising under the Federal antitrust laws. * * * [T]he court granted Cooper’s motion to dismiss on the ground that *Great Lakes*’ counterclaim was not a compulsory counterclaim. This appeal followed.

A federal court has ancillary jurisdiction of the subject matter of a counterclaim if it arises out of the *transaction or occurrence that is the subject matter of an opposing party’s claim* of which the court has jurisdiction.

Similarly, a counterclaim that arises out of the transaction or occurrence that is the subject matter of an opposing party’s claim is a ‘compulsory counterclaim’ within the meaning of Rule 13(a) of the Federal Rules of Civil Procedure. It is stated frequently that the determination of ancillary jurisdiction of a counterclaim in a federal court must turn on whether the counterclaim is compulsory within the meaning of Rule 13(a). Such a statement of the law relating to ancillary jurisdiction of counterclaims is not intended to suggest that Rule 13(a) extends the jurisdiction of the federal courts to entertain counterclaims for the Federal Rules of Civil Procedure cannot expand the jurisdiction of the United States courts. What is meant is that the issue of the existence of ancillary jurisdiction and the issue as to whether a counterclaim is compulsory are to be answered by the *same test*. It is not a coincidence that the same considerations that determine whether a counterclaim is compulsory decide also whether the court has ancillary jurisdiction to adjudicate it. The tests are the same because Rule 13(a) and the doctrine of ancillary jurisdiction are designed to abolish the same evil, viz., piecemeal litigation in the federal courts.

We have indicated that a counterclaim is compulsory if it bears a ‘logical relationship’ to an opposing party's claim. The phrase ‘logical relationship’ is given meaning by the purpose of the rule which it was designed to implement. Thus, a counterclaim is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts. Where multiple claims involve many of the same factual issues, or the same factual and legal issues, or where they are offshoots of the same basic controversy between the parties, fairness and considerations of convenience and of economy require that the counterclaimant be permitted to maintain his cause of action. * * *

Cooper alleges that the claims originally asserted in Great Lakes’ amended complaint, reiterated in substance in its counterclaim, are ‘unjustified’ and were brought in ‘bad faith and without color of right with the sole object of harassing and preventing defendant (Cooper) from competing in the manufacture and sale of flexible hose.’ These are the only allegations set out by Cooper's counterclaim which demonstrate a relationship within the purview of Rule 13(a) to Great Lakes’ amended complaint or counterclaim. But that they do demonstrate a relationship is unquestionable. It is clear that a determination that Cooper’s claims that the claims asserted in Great Lakes’ amended complaint and reiterated in substance in its counterclaim are harassing and entail an extensive airing of the facts and the law relating to Great Lakes’ counterclaim. It follows that the court below was in error in dismissing Great Lakes’ counterclaim on the ground that it was permissive. We hold that Great Lakes’ counterclaim was a compulsory one within the meaning of Rule 13(a).

* * *

The judgment will be reversed and the cause will be remanded with the direction to proceed in accordance with this opinion.

Notes & Questions

1. What is the test for determining whether a counterclaim is permissive or compulsory?
2. Are the terms “compulsory counterclaim” and “ancillary jurisdiction” synonymous?
3. Can a defendant who fails to plead a S¹ compulsory counterclaim be a S² plaintiff on that claim?
4. Did Great Lakes’ counterclaim differ from the diversity jurisdiction portion of its original complaint? If so, how? If not, how could Great Lakes be allowed to reassert the same claim? Would that not be authorizing it to assert a diversity claim against a non-diverse party?
5. Should Grate Lakes be sanctioned? Alternatively, was it *required* to bring the same claim twice in this lawsuit?