

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**MICHAEL WILLIAMSON,
et al.,**

Plaintiffs,

vs.

**Case No. C2-06-292
Judge Edmund A. Sargus, Jr.
Magistrate Judge Terence P. Kemp**

**RECOVERY LIMITED
PARTNERSHIP,
et al.,**

Defendants.

OPINION AND ORDER

On February 2, 2009, the Court ordered the parties to brief the following matters:

- (A) Whether the Court has subject-matter jurisdiction over the Dispatch Plaintiffs' claims as set forth in their December 23, 2008 Amended Complaint, and whether such claims should be severed from the Williamson Plaintiffs' case and remanded to state court;
- (B) Assuming that the Court has supplemental jurisdiction over the Dispatch Plaintiffs' claims, whether it should decline to exercise such jurisdiction.

After analyzing the authority and thoroughly reviewing the parties' briefs, the Court directs that the Dispatch Plaintiffs' supplemental state-law claims are remanded to the Franklin County Court of Common Pleas for all further disposition.

I.

Plaintiffs, the Dispatch Printing Company and Donald Fanta ("Dispatch Plaintiffs"), are investors in Recovery Limited Partnership ("RLP") and Columbus Exploration LLC ("CX").¹

¹ The Dispatch and Fanta are limited partners in RLP and members of CX.

These entities were formed to finance and facilitate the search, recovery, marketing and sale of gold, silver and other valuable artifacts recovered from the shipwreck of the SS. *Central America*, a United States Mail Steamship that sank off the coast of South Carolina in 1857. Defendant, Tommy Thompson, organized the expedition. He and his team, the Williamson Plaintiffs, described more fully below, discovered the SS. *Central America* in 1988 and subsequently recovered portions of the sunken treasure.

Upon discovering the SS. *Central America*, Thompson initiated an admiralty action in the federal district court in the Eastern District of Virginia to establish ownership of the shipwreck and all of its contents. After years of litigation, the district court held that RLP owned 92.5% of the salvage rights to the SS. *Central America* and awarded the remaining 7.5% of the salvage rights to a group of insurance companies whose predecessors insured portions of the gold lost when the ship sank in 1857. The Eastern District of Virginia retains continuing and exclusive jurisdiction over the salvage claims, any remaining-unrecovered treasure (“down treasure”) and the shipwreck site.

On April 13, 2005, the Dispatch Plaintiffs filed a complaint against RLP, CX, Econ Engineering Associates, Inc. (“Econ”), and Tommy Thompson in the Court of Common Pleas for Franklin County, Ohio, alleging breach of contract and breach of fiduciary duty arising from Defendants’ refusal to allow access to CX’s and RLP’s books and records. All of the claims arose under state, not federal law. The Dispatch Plaintiffs alleged that, from at least the year 2000, Defendants refused to provide the limited partners of RLP and members of CX with any meaningful information regarding the finances and operations of those entities. They demanded an accounting, an injunction requiring Plaintiffs to turn over all books and records related to CX

and RLP, and money damages. On October 25, 2005, the Dispatch Plaintiffs filed a second complaint in the state court against Defendants Gilman Kirk, Michael Ford, James Turner, and Arthur Cullman, asserting the same allegations as set forth in its previous case against CX, RLP and Thompson. The Dispatch Plaintiffs also alleged that these Defendants mismanaged the businesses and that such mismanagement rose to the level of corporate waste.

On March 31, 2006, Michael Williamson, the Estate of Don C. Craft, Kirk O'Donnell, John Lettow, Timothy McGinnis, Fred Newton, William Watson, Chris Hancock, Dale Schoeneman and International Deep Sea Survey, Inc. ("IDSS")(collectively the "Williamson Plaintiffs") filed a separate complaint in Franklin County Court of Common Pleas against the same Defendants that the Dispatch Plaintiffs had sued, as well as additional individuals who are not named by the Dispatch Plaintiffs. The individual Williamson Plaintiffs were workers hired by Thompson for the SS. *Central America* recovery project. In exchange for a fractional share of the proceeds from a potential recovery of the treasure found from the shipwreck, these Plaintiffs executed non-disclosure agreements, whereby the hired workers promised not to discuss the work they were doing on the ship in the Atlantic Ocean. IDSS is a company that leased sonar equipment to Defendant RLP for use during the recovery project. IDSS also agreed to be compensated, in part, based on a percentage of the net recovery from the operation.

The Williamson Plaintiffs allege that, for years, Defendants provided reassurances that payment was forthcoming, but none of the individual team members or IDSS has been paid. The Williamson Plaintiffs sued for breach of the non-disclosure agreements, conversion, constructive trust, breach of fiduciary duties, and, like the Dispatch Plaintiffs, also request an accounting.

On April 18, 2006, the common pleas court executed an agreed order consolidating the Williamson Plaintiffs' case with the two pre-existing cases brought by the Dispatch Plaintiffs.

This Agreed Order provides as follows:

The parties, by and through counsel, having agreed that consolidating the *Williamson et al.* action filed on March 31, 2006 with the two previously filed cases, each involving various claims arising out of the salvaging of the treasure and artifacts from the SS. *Central America*, would not prevent an expeditious resolution of these matters, that the *Williamson* Plaintiffs are so situated that, as a practical matter, disposition of those two previously filed cases may impair or impede their ability to protect their interests, and that all three cases involve similar questions of fact and law.

IT IS THEREFORE ORDERED for good cause shown that *Williamson, et al. v. Recovery Limited Partnership, et al.* . . . be, and the same hereby is, consolidated [*for all purposes*]² with . . . *The Dispatch Printing Co., et al. v. Recovery Limited Partnership, et al.*, and *The Dispatch Printing Co., et al., v. Gilman D. Kirk et al.*, that the *Williamson* Plaintiffs are hereby granted intervention of right in the two previously consolidated cases

(Notice of Removal, Doc. #2, Exh. 3.)

The claims asserted by the Williamson Plaintiffs were federal maritime claims and thus fell within this Court's original subject matter jurisdiction. On April 24, 2006, Defendants removed the entire action to federal court pursuant to 28 U.S.C. § 1441, contending that the maritime claims arose under federal law and created jurisdiction in this Court. Thus, at the time of the removal, the Court had federal-question jurisdiction over the Williamson Plaintiffs' claims, and supplemental jurisdiction over the Dispatch Plaintiffs' claims under 28 U.S.C. § 1367.³

² The italicized portion is a hand-written interlineation on an otherwise type-written document.

³ For reasons that will not be repeated here, the Court questioned its subject-matter jurisdiction with respect to the Williamson Plaintiffs' claims, and stayed matters related to their Amended Complaint until such time as the issue of whether the non-disclosure and lease agreements are maritime in nature was resolved through an appeal of an identical case pending in the Southern District

After removal, the Dispatch Plaintiffs moved for a preliminary injunction. Defendants, thereafter, filed a cross-motion for preliminary injunction. The Court set a hearing on the motions for preliminary injunction for July 10, 2006. On that date, the parties met and reached a tentative agreement which provided for an accounting.⁴ Ultimately, the parties agreed to judicial resolution of certain disputed terms related to their settlement agreement.

On July 20, 2006, the Court incorporated the parties' agreement, inserted language that resolved the parties' differences and entered a Consent Order. As set forth in the Consent Order, the Dispatch Plaintiffs agreed, in exchange for an accounting, that their "claims for an injunction to compel production of financial and business records were fully and finally resolved and adjudicated in accordance with the terms and conditions of this Order," and their remaining claims "including, without limitation Plaintiffs' claims for money damages for breach of fiduciary duty and breach of agreement," were dismissed without prejudice. (Consent Order, 7/2/06, Doc. 84.) The Court retained jurisdiction "to administer and enforce this Order, *and determine information to be available to the Accountant consistent with this Consent Order, and further to determine any issues of claimed attorney-client privilege.* (*Id.*, emphasis in original to reflect Court-inserted language.) At no time during this process did the Court address the merits of the Dispatch

of New York. The Court has now resolved that matter, finding that the parties entered into contracts in connection with and furtherance of a maritime commercial venture. Throughout the discussion of the issues related to subject-matter jurisdiction of the Williamson Plaintiffs claims, however, the Court emphasized that it was merely exercising its jurisdiction over the Dispatch Plaintiff's claims pursuant to its obligation under the Consent Order to monitor and enforce the settlement agreement between these parties.

⁴ The parties agreed on that date to all but three terms of a settlement agreement. The parties also agreed that the Court would resolve the three outstanding issues, which it did on July 20, 2006.

Plaintiffs' claims or the parties' motions for preliminary injunction.

Since that date, the Court has exercised its continuing jurisdiction to administer and enforce the parties' settlement agreement as set forth in the Consent Order. The Court has on numerous occasions taken up its obligation to determine the information that would be available to the Accountant, and to address matters related to confidentiality and attorney-client privilege.⁵ The Court's role in this case, with respect to the Dispatch Plaintiffs, has been circumscribed by the terms of the Consent Order. The Court has not at any time during the pendency of this case, throughout the Accountant's audit, passed on the merits or even mentioned the Dispatch Plaintiffs' supplemental state-law claims which were brought with the case when it was originally removed with the Williamson Plaintiffs' admiralty action. Moreover, because the parties entered into a settlement agreement soon after removal, before the Court rendered any substantive decisions, the Court has not undertaken an analysis of whether, in its discretion, it should retain supplemental jurisdiction with respect to the Dispatch Plaintiffs' state-law claims.

On December 22, 2008, the Dispatch Plaintiffs filed an Amended Complaint, as they were permitted to do by the terms of the Consent Order. In the Amended Complaint, the Dispatch Plaintiffs again alleged solely state-law claims, including breach of contract and breach of fiduciary duty. The Dispatch Plaintiffs also seek a dissolution of and receivership over both of these entities, all of which is controlled by state, not federal, law.

⁵ As discussed more fully below, the Court currently has Defendants' Motion for an Order of Satisfaction and the Dispatch Plaintiffs' Motion for Contempt under advisement. Because these matters relate to the Court's Consent Order, and fall within the purview of its continuing jurisdiction to monitor the settlement, the Court intends to rule on these Motions, notwithstanding the remand Order herein set forth.

Defendants then moved the Court to abstain with respect to matters related to dissolution of the companies and appointment of a receiver, relying, *inter alia*, on *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Defendants maintain that the Court should abstain from interfering with the development and administration of state statutes that are designed to regulate corporations created under state laws.⁶ Thereafter, the Court ordered the parties to brief matters related to continuing jurisdiction over the Dispatch Plaintiffs' state-law claims, and whether the claims should be remanded under any principle.⁷

II.

The first issue raised by all Plaintiffs, in both their opening and responsive memoranda, is whether the filing of an amended complaint following a proper removal of a case has no effect on the Court's jurisdiction. The Plaintiffs cite, *inter alia*, *Rockwell Int'l Corp. v. United States*, 549 U.S. 457 (2007), for the proposition that "when a defendant removes a case to federal court based upon the presence of a federal claim, an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction." *Id.* at 474 n.6; *see also Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 375 (6th Cir. 2007); *Ruff v. Wal-Mart Stores East, LP*, No. 2:07-cv-

⁶ Defendants also contend that several claims asserted by the Dispatch Plaintiffs are subject to binding arbitration. Given the Court's disposition as set forth in this Order, this matter should be resolved by the Court of Common Pleas.

⁷ As referenced in this Order directing the parties to brief these issues, a federal court has at its disposal several avenues by which it may remand state-law claims, including 28 U.S.C. § 1441(c) and 28 U.S.C. § 1367. In the event the parties would assert that continued jurisdiction of the state-law claims was proper under Section 1441(c), which authorizes the removal of jurisdictionally insufficient "separate and independent" claims when joined with federal-question claim, the Court noted its concern regarding the constitutional dilemma some courts have suggested that Section 1441 presents—namely that Article III requires federal courts to hear state-law claims that bear some substantial relationship to the federal claim, and that the exercise of jurisdiction over a wholly unrelated "separate and independent" state law claim brought pursuant to Section 1441(c) would violate the constitution.

292, 2007 WL 4246123 (S.D. Ohio Nov. 28, 2007) (Sargus, J.). This proposition is true as far as it goes, and does apply in the general case where a plaintiff, after removal, attempts to defeat the court's jurisdiction by amending the complaint, thus creating the possibility that the court's jurisdiction is subject to manipulation by a plaintiff who wishes to avoid litigating his or her claims in federal court. That, however, is not the situation presented here: the general rule cannot be read to authorize a plaintiff to plead any new claim, no matter how far removed, factually or legally, from the claim or claims over which a federal court has original jurisdiction, without the need to analyze whether there is some basis upon which the court can exercise jurisdiction over that new claim. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (“[A] federal court should consider and weigh in each case, and at every stage of the litigation,” whether to exercise jurisdiction over supplemental claims.)

It is important to focus here on the Court's removal jurisdiction over the claims which were pleaded in the Franklin County Court of Common Pleas, and why it was appropriate for this Court to exercise jurisdiction over the Dispatch Plaintiffs' claims in the first instance. As outlined more fully above, the Williamson and Dispatch Plaintiffs' cases were filed separately in the Common Pleas Court. That Court, by an agreed Order provided by the parties, consolidated the cases because of the overlapping issues presented by the contract claims of the Williamson Plaintiffs, a part of which involved measuring damages by the value of the treasure recovered from Defendants' salvage efforts, and the accounting claims presented by the Dispatch Plaintiffs, which also involved, among other things, a request for information as to the value of the salvaged treasure. Importantly, both sets of Plaintiffs requested an accounting of Defendants' books and records. Defendants removed the consolidated case under 28 U.S.C. § 1441 on the grounds that

some of the claims asserted raised questions of federal law over which this Court had jurisdiction under 28 U.S.C. § 1331. Of course, none of the questions raised by the Dispatch Plaintiffs were federal law questions; the claims in their cases arose purely under state law. Further, there is no diversity of citizenship between or among the Plaintiffs and Defendants in those cases.

This Court's jurisdiction is limited by Article III of the Constitution to cases arising under federal law, such as admiralty, or matters involving disputes between or among citizens from different states, neither of which includes the claims brought by the Dispatch Plaintiffs. The only federal law claims in the entire case were the claims of the Williamson Plaintiffs, which this Court subsequently determined arise under federal maritime law. While this Court has supplemental jurisdiction to hear state-law claims related to federal-law claims, this jurisdiction is not unlimited, as described *infra*.⁸

Notwithstanding the absence of any independent jurisdictional basis for hearing the state-law claims asserted by the Dispatch plaintiffs, the Court properly assumed jurisdiction over them under 28 U.S.C. § 1441. That statute provides that when a case is removed because of the presence of a claim over which the federal court has original jurisdiction, the court may exercise jurisdiction over the entire case— including any claims which are “separate and independent” from the federal law claims. *See* 28 U.S.C. 1441(c) (“Whenever a separate and independent claim ... within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise

⁸ The Williamson Plaintiffs contend that the newly-filed claims brought by the Dispatch Plaintiffs are admiralty claims, governed by federal law, and within this Court's original jurisdiction. (Williamson Plaintiffs' Initial Brief in Support of Subject Matter Jurisdiction and Supplemental Jurisdiction Over Claims of the Dispatch/Fanta Plaintiffs, at pp. 10-15.) No such claim has been made by the Dispatch Plaintiffs. While the expanse of admiralty jurisdiction is broad, *see Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14 (2004), such jurisdiction does not extend to claims in this case of corporate misfeasance or misgovernance. These claims arise exclusively under state law.

non-removable claims ... the district court may determine all issues therein”). In fact, because the accounting claims presented by both sets of Plaintiffs arose out of a common set of facts, the claims of the two groups were not separate and independent, but fell directly within the Court’s supplemental jurisdiction, which, under 28 U.S.C. § 1367(a), includes claims asserted by parties other than the ones who brought the claims over which original jurisdiction could be exercised. Thus, no significant jurisdictional issues would have been presented by the Court’s determination of the merits of the Dispatch Plaintiffs’ accounting claims, at least once it became clear that the Williamson Plaintiffs’ claims arose under federal maritime law.

Nonetheless, because of the agreement incorporated in the Consent Order, the Court did not reach the merits of the Dispatch Plaintiffs’ accounting claims. The Court monitored the agreement of the parties to an accounting process under its continuing jurisdiction granted by the Consent Order. Once the Dispatch Plaintiffs amended their complaint in December, 2008, they deleted any reference to the only common claim they shared with Williamson Plaintiffs for an accounting. The accounting case has, for the most part, been concluded, with remaining matters having to do with whether Defendants have satisfied their obligations under the Consent Order and the propriety of sanctions against Defendants for alleged non-compliance. As to these issues, the Court agrees that it can and should continue to exercise jurisdiction. Of course, it also must continue to exercise jurisdiction over the Williamson Plaintiffs’ maritime claims which arise under federal law. The question presented here, which the Court raised in response to the filing of the Dispatch Plaintiffs’ Amended Complaint, is whether the fact that the Court, having properly assumed jurisdiction over the claims in the case when it was removed, gives the Dispatch Plaintiffs the option to raise any and all other state-law claims they may wish to assert against the

Defendants without having to justify in any way that the Court can or should exercise jurisdiction over those claims. For the following reasons, the Court concludes that the operative jurisdictional statutes simply cannot be read in such an expansive fashion.

The cases cited by the Plaintiffs for the proposition that amendments to the complaint made after removal do not affect the Court's jurisdiction deal with not uncommon situations that arise after a plaintiff has been involuntarily dragged into federal court. Many plaintiffs have, thereafter, attempted to defeat a federal court's jurisdiction either by amending the complaint to eliminate the federal law claim upon which removal was based, if the removal was premised upon federal question jurisdiction, or in diversity of citizenship matters, by amending the complaint to reduce the amount in controversy below the jurisdictional limit of \$75,000. Such efforts to manipulate a court's jurisdiction by pleading claims in the state court which are within the jurisdiction of a federal court, hoping that the defendant will not remove the case, and then attempting to force a remand if that hope is not fulfilled, are disfavored and disallowed. That is not substantially different from what occurs in a case filed initially in the federal court. If the case was filed under 28 U.S.C. § 1331 based on the presence of a federal question, the dismissal of the federal law claim does not automatically require dismissal of the case; rather, a federal court has the discretion to retain or decline to exercise jurisdiction over the remaining state-law claims. *See, e.g., United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). The fact that the case was removed from state court does not alter that general principle. It has long been held that, in a diversity case removed because the amount in controversy requirement was satisfied at the time of removal, a subsequent amendment lowering the amount claimed has no impact on subject matter jurisdiction, because in such cases, the court's jurisdiction is determined with reference to the time of removal. *See*

Albright v. R.J. Reynolds Tobacco Co., 531 F.2d 132, 134-35 (3d Cir. 1976)(citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938)).

Neither of these situations, however, is present here. Initially, there is no absolute rule that once removal jurisdiction attaches, no subsequent event can affect it. For example, 28 U.S.C. § 1447(e) specifically requires a remand for want of jurisdiction if, after a case is properly removed on diversity grounds, the plaintiff is permitted to add a non-diverse defendant by way of amendment. In any event, the Court is not addressing the question of whether it continues to have jurisdiction over the removed case; clearly, it does. Rather, the question is whether it may apply the principles of 28 U.S.C. § 1367 to the amended claims of the Dispatch Plaintiffs. Amendments after removal are, of course permitted. But, “if an amendment eliminates all the federal claims, remand becomes a discretionary decision for the district court under 28 U.S.C. § 1367(c).” *Eastman v. Marine Mechanical Corp.*, 438 F.3d 544, 551 (6th Cir.2006).

Although not asserted directly, Plaintiffs arguably contend that any post-removal amended claims need not be addressed under 28 U.S.C. § 1367 because 28 U.S.C. § 1441 provides an independent and sufficient jurisdictional basis for such claims. Similar arguments have been rejected by other courts, and rightly so. At least since *Marbury v. Madison*, 1 Cranch 137 (1803), the federal courts have been required to test any statutory grant of jurisdiction against the limits on jurisdiction found in Article III. Indeed, 28 U.S.C. § 1441 is no exception. Several decisions (including one from this district) have concluded that to the extent Section 1441 is construed as a grant of jurisdiction to hear claims over which a federal court has no original jurisdiction, and which do not form part of the same constitutional case or controversy as a claim over which the court has original jurisdiction, that statute conflicts with Article III and is unconstitutional. *See*

Porter v. Roosa, 259 F. Supp.2d 638 (S.D. Ohio 2003) (Rice, J.); *see also Salei v. Boardwalk Regency Corp.*, 913 F. Supp. 993 (E.D. Mich. 1996). This observation applies equally to any argument that Section 1441 provides more extensive jurisdiction than does Article III of the Constitution over claims asserted in a case once it has been removed. Because the Court is required to construe Acts of Congress in a way that will avoid constitutional conflicts, however, *Clark v. Martinez*, 543 U.S. 371 (2005), the Court does not read any part of Section 1441 to provide an independent jurisdictional basis over claims introduced into an action by way of amendment after removal has occurred. Thus, some other basis must exist for deciding whether jurisdiction is proper over the Dispatch Plaintiffs' Amended Complaint. That basis can only be found in 28 U.S.C. § 1367. *See, e.g., Carnevale v. GE Aircraft Engines*, 492 F. Supp.2d 763 (S.D. Ohio 2003) (analyzing whether proposed amendment to add new claim fell within Court's supplemental jurisdiction under Section 1367).

Thus, three possibilities exist here: (1) jurisdiction is improper under Section 1367 because the new claims brought by the Dispatch Plaintiffs are insufficiently related to the only federal claims in the case to be part of the same Article III case or controversy; (2) jurisdiction is proper, but the Court, as a matter of discretion, declines to exercise it under Section 1367; or (3) jurisdiction exists, and the Court is inclined to exercise it, also for the reasons set forth in Section 1367.

III.

The district courts of the United States are “courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). Once a court has original jurisdiction over some claims in

the action, it may exercise supplemental jurisdiction over additional claims that are part of the same case or controversy. *Gibbs*, 383 U.S. 715 at 725. “That power need not be exercised in every case in which it is found to exist.” *Id.* at 726. Supplemental jurisdiction is a matter of judicial discretion, not an absolute right of a plaintiff. *Id.* The doctrine of supplemental jurisdiction is designed to enable courts to handle cases involving state-law claims “in a manner that best serves the principles of economy, convenience, fairness, and comity....” *Cohill*, 484 U.S. at 357.⁹

Congress codified the principles of supplemental jurisdiction and a district court’s discretion in this regard at 28 U.S.C. § 1367, which provides in pertinent part:

- (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action in 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.

* * *

- (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

⁹ In *Cohill*, the Supreme Court recognized that, in a removed case, the district court has discretion to remand the supplemental state claims to state court rather dismissing the action. 484 U.S. at 357.

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

A. Whether the Court has Supplemental Jurisdiction Over Dispatch Plaintiffs' State-Law Claims

Section 1367 provides that the Court shall have supplemental jurisdiction over claims that are “so related” to the claims in the that form the basis of the Court’s original jurisdiction that “they form part of the same case or controversy.” 28 U.S.C. § 1367.¹⁰ Claims form part of the same case or controversy for purposes of the Section 1367 when they “derive from a common nucleus of operative facts.” *Harper v. Auto Alliance Int’l, Inc.*, 392 F.3d 195, 209 (6th Cir. 2004) (quoting *Ahearn v. Charter Twp.*, 100 F.3d 451, 454-55 (6th Cir. 1996)). Hence, if the Dispatch Plaintiffs’ claims derive from a common nucleus of operative facts as the federal maritime claims asserted by the Williamson Plaintiffs, the Court has supplemental jurisdiction over the Dispatch Plaintiffs’ corporate governance claims.

This would be a fairly simple comparison if the Williamson Plaintiffs’ claim was simply the breach of contract claim. That claim would seem to have the following elements: proof of the existence of the contract, proof of its terms, proof of the Defendants’ breach, and proof of damages. The first two elements would seem to have nothing in common with the Dispatch Plaintiffs’ claims which would not require any proof either that Defendants entered into salvage and non-competition agreements with the Williamson Plaintiffs or what the terms of those

¹⁰ Subsection (a) of this statute also provides that supplemental jurisdiction extends to claims made by parties who have been joined or intervened in the case involving a claim with the federal court’s original jurisdiction. Because the Dispatch and Williamson Plaintiffs’ cases were consolidated, and the Williamson Plaintiffs were permitted by the state court to intervene as of right, the Court could find its authority to exercise supplemental jurisdiction under this provision. Nonetheless, the Court herein proceeds to determine whether the Dispatch and Williamson Plaintiffs’ claims are related so as to satisfy Article III.

contracts were.

The breach and damage claims made by the Williamson and the Dispatch Plaintiffs' claims present more of an overlap. In order to prove a breach, the Williamson Plaintiffs would have to show that they were not paid in accordance with the terms of the contract, which, as the Court reads the Complaint, means that RLP did not fulfill its promise to pay to them a set percentage of the total treasure recovery "without deduction for competing claims or recovery or other marketing expenses." Those claims would involve proof of how much treasure was recovered, and proof of the value of the treasure recovered, which would presumably be measured by how much it brought at auction. Those issues are interrelated with the accounting sought by the Dispatch Plaintiffs, at least to the extent that the accounting included a listing and valuation of the treasure recovered. It is less clear that even these elements of the contract claim, on their face, are related to the corporate and partnership-governance claims advanced by the Dispatch Plaintiffs.

The parties claims do overlap, however, in the charges made by the Williamson Plaintiffs that, first, they were owed fiduciary duties by one or more of the Defendants, and, second, that the Court should disregard corporate or other organizational formalities and hold CX and the individual defendants liable for breaches of contract committed by RLP. If the Court were to adjudicate either of these claims, and especially the alter ego claims, there would be overlapping evidence on the interrelationship of RLP and CX and the observance of corporate formalities by the latter. A common nucleus of operative facts sufficient for the exercise of supplemental jurisdiction exists, and need not be extensive, where the state and federal claims generally have a factual overlap and would involve many of the same witnesses. *Blakely v. United States*, 276 F.3d 853, 862 (6th Cir. 2002). For these reasons, the Court concludes that supplemental jurisdiction

over the Dispatch Plaintiffs' state-law claims does exist. The Court turns next to examine whether it should, in the exercise of its discretion, exercise that jurisdiction.

B. Whether the Court Should Exercise Supplemental Jurisdiction

Under subsection (c) of 28 U.S.C. § 1367, in deciding whether to exercise or decline supplemental jurisdiction, the Court must consider the following factors: (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) there are other “compelling reasons” for declining to exercise jurisdiction.

The first argument the Dispatch Plaintiffs advance in favor of exercising jurisdiction is that the Court has invested substantial time in the case, is familiar with the issues, and the case has been pending for a substantial period of time. That assertion, while true with respect to the parties' agreement and the audit, is not actually one of the factors set forth in Section 1367. It is a factor in deciding whether to remand the remaining state claims after a court has disposed of the federal claim upon which removal was predicated, or after the complaint has been amended to eliminate that claim. All of the cases cited by the Dispatch Plaintiffs involve this legal consideration rather than the question raised by the Court regarding discretionary supplemental jurisdiction.

Moreover, the Court emphasizes that it does not have any familiarity with the claims and issues raised in the Dispatch Plaintiffs' Amended Complaint. The Court has never addressed the merits of any of the parties' current claims, and has been involved only as to matters arising under

the Consent Order. This Court has not yet invested significant resources in the adjudication of the Dispatch Plaintiffs' amended claims; nor have these new claims been pending on the Court's docket for any length of time, the same having been filed on December 22, 2008.

The second argument advanced by the Plaintiffs is that the Court should retain jurisdiction in order to avoid inconsistent adjudications on common issues of fact and law. That consideration, too, is not a factor listed in Section 1367.

The Court finds that the Dispatch Plaintiffs' claims raise complex issues of state law. In addition to the factual complexities of the claim, the legal issues concerning when to appoint a receiver, to wind up a partnership or corporation, or to empower a receiver to dispose not only of tangible organizational assets but also such things as the technology and trade secrets of which the receiver would take ownership will be difficult and complex, and implicate issues purely of state law.

Perhaps more importantly, the Court finds that, under Section 1367(c)(2), state law issues substantially predominate over the federal admiralty claims brought by the Williamson Plaintiffs. Although there appears to be no definitive test to determine whether state law predominates over federal claims, courts have considered such factors as whether they outnumber the federal law claims; whether the claims are distinct; and whether the state-law claims involve proof that is not needed to establish the federal law claims. *See, e.g., Szendrey-Ramos v. First BanCorp*, 512 F. Supp. 2d 81, 86 (D.P.R. 2007)(collecting cases). Certainly, all of the proceedings to appoint a receiver will be governed exclusively by state law, because the Williamson Plaintiffs, whose claims will be controlled by federal common law, are not seeking an appointment of a receiver.

The Court also notes that the issue of whether the formalities of corporate governance were observed is also predominately a state law matter, since the alter ego claim advanced by the Williamson Plaintiffs does not necessarily require a finding that the corporate formalities have been disregarded to the extent that a dissolution of the corporation is required, but only to the extent that the corporation's form can be disregarded for purposes of holding the individual officers or shareholders liable for the debt owed on the maritime contract. Here, the scope of the Dispatch Plaintiffs' claims clearly exceeds that of the federal claims raised by the Williamson Plaintiffs.¹¹

As the Supreme Court of the United States held in *City of Chicago v. International College of Surgeons*:

[T]o say that the terms of § 1367(a) authorize the district courts to exercise supplemental jurisdiction over state law claims . . . does not mean that the jurisdiction *must* be exercised in all cases. Our decisions have established that pendent jurisdiction “is a doctrine of discretion, not of plaintiff’s right,” [*Gibbs*, 383 U.S. at 726], and that district courts can decline to exercise jurisdiction over pendent claims for a number of valid reasons, [*id.* at 726-27]. *See also* [*Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)] (“As articulated by *Gibbs*, the doctrine of pendent jurisdiction thus is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values”). Accordingly, we have indicated that “district courts [should] deal with cases involving pendent claims in the manner that best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine.” *Id.* at 357.

* * *

¹¹ Without ruling on Defendants' Motion to Abstain or Stay, the Court notes that, assuming jurisdiction over the Dispatch Plaintiffs' claims for dissolution, federal courts have held that they should abstain from interfering with the development and administration of such state statutory structures regarding corporate structure that are at issue here. *E.g.*, *Caudill v. Eubanks, Inc.*, 301 F.3d 658, 664-65 (6th Cir. 2002); *Friedman v. Revenue Mgmt. of N.Y., Inc.*, 38 F.3d 668, 671 (2d Cir. 1994).

Depending on a host of factors, then– including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims– district courts may decline to exercise jurisdiction over supplemental state law claims. The statute thereby reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, “a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.” *Cohill*, [484 U.S. at 350].

522 U.S. 156, 172-73 (1997).

In this case, litigating the Williamson Plaintiffs’ maritime claims together with the Dispatch Plaintiffs’ complex state-law claims would not serve judicial economy. Even if the federal admiralty and state claims in this action arise out of the same factual situation, litigating these claims together could not possibly serve judicial economy or trial convenience. The Williamson Plaintiffs’ claims for breach of their maritime contracts have a wholly different focus than the Dispatch Plaintiffs’ corporate governance and receivership claims. The two bodies of law as expressed in the parties’ claims have evolved in wholly different judicial systems. The hurdles presented by reconciling these distinct theories into one meaningful judicial proceeding would complicate the procedure.

Remanding the state claims also serves the interest of comity. The Court is cognizant of its obligation to avoid rendering needless decisions of state law as a matter of comity. Moreover, the Court recognizes the state’s interest and greater expertise in applying its own law. These concerns, too, counsel in favor of declining to exercise supplemental jurisdiction over state-law claims.

The factor of convenience balances equally for the parties between trying their case in this court as opposed to one located less than one mile away. Finally, the Court finds that remanding the Dispatch Plaintiffs' state-law claims is fair. Any discovery that the parties have taken since the Dispatch Plaintiffs filed their Amended Complaint may be used in the pursuit of their claims in state court.

C. Retention of Jurisdiction Over Enforcement of the Consent Order

As the U.S. Supreme Court held in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 381-82 (1994):

If the parties *wish* to provide for the court's enforcement of a dismissal-producing settlement agreement, they can seek to do so. When the dismissal is pursuant to Federal Rule of Civil Procedure 41(a)(2), which specifies that the action "shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper," the parties' compliance with the terms of the settlement contract (or the court's "retention of jurisdiction" over the settlement contract) may, in the court's discretion, be one of the terms set forth in the order. Even when, as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach conditions to the parties' stipulation of dismissal) we think the court is authorized to embody the settlement contract in its dismissal order (or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree.

Pursuant to Paragraph 19 of the Consent order, the Court retains continuing jurisdiction to administer and enforce its terms. To that end, the Court will continue to enforce the Consent Order in so far as collateral matters still remain for judicial resolution, including the Dispatch Plaintiffs' Motion for Sanctions, Defendants' Motion for an Order of Satisfaction. and, pursuant to Paragraph 16, any motions to modify confidentiality restrictions relating to the Accountant's review and Report, or other matters related to the release of its Work Papers.

IV.

For the foregoing reasons, the Court hereby **REMANDS** the Dispatch Plaintiffs' claims as set forth in their December 22, 2008 Amended Complaint to the Franklin County Court of Common Pleas. The Court retains jurisdiction under the terms of the Consent Order as to all outstanding matters governing the audit and settlement agreement between the Dispatch Plaintiffs and Defendants. The Court likewise retains jurisdiction over the claims brought by the Williamson Plaintiffs in their Amended Complaint. To that end, the Williamson Plaintiffs are **ORDERED** to provide a **STATUS REPORT** on each of the related cases set forth in Paragraph 24(a) - (c) of their Amended Complaint.¹²

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- ¹² The Williamson Plaintiffs report the following cases as related to the instant litigation:
- a. *Williamson, et al. v. Recovery Limited Partnership, et al.*, No. 06 Civ. 5724 (S.D.N.Y.) (filed July 28, 2006) (a supplemental proceeding in which the Williamson Plaintiffs are seeking security for their claims herein pursuant to Rule B of the Certain Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure) (the "New York Rule B Proceeding");
 - b. *Williamson, et al. v. Recovery Limited Partnership, et al.*, Case No. CV 06-5689 (C.D. Cal.) (filed September 11, 2006) (a supplemental proceeding in which the Williamson Plaintiffs are seeking security for their claims herein pursuant to Rule B of the Certain Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure) (the "Los Angeles Rule B Proceeding"); and
 - c. *ABC, plc. v. HIJ, Inc.*, No. 98 Civ. 5036 (S.D.N.Y.) (in which the Williamson Plaintiffs have filed a motion to intervene and unseal previously-closed and sealed matter filed on August 11, 2006) (the "Christie's Litigation").

If Plaintiffs are aware of any additional litigation that relates to this matter, they shall also include the status of such cases in their Report.

IT IS SO ORDERED.

3-11-2009

DATED



EDMUND A. SARGUS, JR.

UNITED STATES DISTRICT JUDGE