

**Picciotto** v. Continental Cas. Co.  
 C.A.1 (Mass.),2008.

United States Court of Appeals,First Circuit.  
 Stefano **PICCIOTTO**, Judith **Picciotto**, Melita  
**Picciotto**, Athena **Picciotto** , and Foreign Car Center,  
 Inc., Plaintiffs, Appellants,

v.

CONTINENTAL CASUALTY COMPANY, Great  
 Northern Insurance Company, Hartford Insurance  
 Company and Twin City Fire Insurance Company,  
 Defendants, Appellees.  
**No. 06-2685.**

Heard Sept. 11, 2007.  
 Decided Jan. 7, 2008.

**Background:** Plaintiffs filed suit against their attorney's malpractice insurers and against reinsurers for policy with insured against whom plaintiffs prevailed in toxic tort suit for which attorney represented plaintiffs during settlement negotiations, alleging that insurers and reinsurers engaged in civil conspiracy to interfere tortiously with contractual relations and asserting state law claims for negligence, fraud, and unfair trade practices. The United States District Court for the District Of Massachusetts, [Nancy Gertner, J.](#), granted defendants' motion to dismiss for failure to join indispensable party whose joinder would destroy diversity jurisdiction.

**Holdings:** The Court of Appeals, [Lipez](#), Circuit Judge, held that:

(1) attorney was necessary party;  
 (2) attorney was nondiverse indispensable party; and  
 (3) joinder of attorney was not feasible under supplemental jurisdiction statute.

Affirmed.

West Headnotes

**[1] Federal Courts 170B**  **817**

[170B](#) Federal Courts  
[170BVIII](#) Courts of Appeals

[170BVIII\(K\)](#) Scope, Standards, and Extent  
[170BVIII\(K\)4](#) Discretion of Lower Court  
[170Bk817](#) k. Parties; Pleading. [Most](#)

[Cited Cases](#)

District court's determination that a party is indispensable is reviewed for abuse of discretion. [Fed.Rules Civ.Proc.Rule 19\(b\)](#), 28 U.S.C.App.(2000 Ed.)

**[2] Federal Courts 170B**  **817**

[170B](#) Federal Courts  
[170BVIII](#) Courts of Appeals  
[170BVIII\(K\)](#) Scope, Standards, and Extent  
[170BVIII\(K\)4](#) Discretion of Lower Court  
[170Bk817](#) k. Parties; Pleading. [Most](#)

[Cited Cases](#)

District court's determination that a party is necessary is reviewed for abuse of discretion. [Fed.Rules Civ.Proc.Rule 19\(a\)](#), 28 U.S.C.App.(2000 Ed.)

**[3] Federal Civil Procedure 170A**  **201**

[170A](#) Federal Civil Procedure  
[170AII](#) Parties  
[170AII\(E\)](#) Necessary Joinder  
[170AII\(E\)1](#) In General  
[170Ak201](#) k. In General. [Most Cited](#)

[Cases](#)

Like rule governing indispensable parties, rule governing necessary parties requires the trial court to make pragmatic judgments and to decide whether considerations of efficiency and fairness, growing out of the particular circumstances of the case, require that a particular person be joined as a party. [Fed.Rules Civ.Proc.Rule 19\(a, b\)](#), 28 U.S.C.App.(2000 Ed.)

**[4] Federal Civil Procedure 170A**  **202**

[170A](#) Federal Civil Procedure  
[170AII](#) Parties  
[170AII\(E\)](#) Necessary Joinder  
[170AII\(E\)1](#) In General  
[170Ak202](#) k. Who Are Necessary Parties. [Most Cited Cases](#)  
 Settlement position is a valid consideration in the

practical inquiry required by rule governing joinder of necessary party, on ground that disposition of action could impair or impede absent party's ability to protect his interests, because even without a direct preclusive effect, an adverse judgment could be persuasive precedent in a subsequent proceeding, and would weaken the absent party's bargaining position for settlement purposes. [Fed.Rules Civ.Proc.Rule 19\(a\)\(2\)\(i\)](#), [28 U.S.C.App.\(2000 Ed.\)](#)

**[5] Federal Civil Procedure 170A 🔑202**

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(E\)](#) Necessary Joinder

[170AII\(E\)1](#) In General

[170Ak202](#) k. Who Are Necessary

Parties. [Most Cited Cases](#)

In making the highly practical determination under rule governing joinder of necessary party, on ground that disposition of action could impair or impede absent party's ability to protect his interests, reasonable, pragmatic inferences may be drawn from the particular circumstances in the case to protect the absent party. [Fed.Rules Civ.Proc.Rule 19\(a\)\(2\)\(i\)](#), [28 U.S.C.App.\(2000 Ed.\)](#)

**[6] Federal Civil Procedure 170A 🔑222**

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(E\)](#) Necessary Joinder

[170AII\(E\)2](#) Particular, Necessary or Indispensable Parties

[170Ak222](#) k. Insurers and Insureds.

[Most Cited Cases](#)

Attorney who had represented plaintiffs in toxic tort settlement negotiations was necessary party in plaintiffs' civil conspiracy suit against attorney's malpractice insurer and against reinsurers of policy with insured against whom plaintiffs won toxic tort judgment, under rule providing for joinder of necessary party whose absence may impair or impede ability to protect party's interest in suit, since adverse ruling in civil conspiracy suit could impair attorney's ability to settle plaintiffs' malpractice and various state law claims against her in state court and could impair her interest by causing her to lose malpractice coverage and insurance-paid defense in state case. [Fed.Rules Civ.Proc.Rule 19\(a\)\(2\)\(i\)](#), [28 U.S.C.App.\(2000 Ed.\)](#)

**[7] Federal Courts 170B 🔑286.1**

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

[170BIV\(B\)](#) Controversies Between Citizens of Different States

[170Bk286](#) Coplaintiffs and Codefendants

[170Bk286.1](#) k. In General. [Most Cited](#)

[Cases](#)

Generally, when the trial court's subject matter jurisdiction is grounded in diversity, the joinder of a nondiverse party is not feasible because such joinder destroys the court's subject matter jurisdiction. [28 U.S.C.A. § 1332\(a\)](#); [Fed.Rules Civ.Proc.Rule 19\(a\)](#), [28 U.S.C.App.\(2000 Ed.\)](#)

**[8] Federal Courts 170B 🔑5**

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk3](#) Jurisdiction in General; Nature and Source

[170Bk5](#) k. Limited Jurisdiction; Dependent on Constitution or Statutes. [Most Cited Cases](#)

Federal courts are courts of limited jurisdiction. [28 U.S.C.A. § 1332\(a\)](#).

**[9] Federal Courts 170B 🔑286.1**

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

[170BIV\(B\)](#) Controversies Between Citizens of Different States

[170Bk286](#) Coplaintiffs and Codefendants

[170Bk286.1](#) k. In General. [Most Cited](#)

[Cases](#)

The statutory grant of federal jurisdiction in diversity cases requires complete diversity between the plaintiffs and defendants in an action. [28 U.S.C.A. § 1332\(a\)](#).

**[10] Federal Courts 170B 🔑289**

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of

Parties, Jurisdiction Dependent on

[170BIV\(B\)](#) Controversies Between Citizens of Different States

[170Bk289](#) k. Necessary and Unnecessary Parties; Nominal or Formal Parties. [Most Cited Cases](#) Generally, if the matter in controversy involves a necessary, nondiverse absentee, the trial court must determine whether the litigation may continue in the absence of this person or whether she is so indispensable that the court should dismiss the case for want of subject matter jurisdiction. [28 U.S.C.A. § 1332\(a\)](#); [Fed.Rules Civ.Proc.Rule 19\(a\)](#), [28 U.S.C.App.\(2000](#) Ed.)

### [\[11\]](#) [Federal Civil Procedure 170A](#) 🔑1747

[170A](#) Federal Civil Procedure

[170AXI](#) Dismissal

[170AXI\(B\)](#) Involuntary Dismissal

[170AXI\(B\)2](#) Grounds in General

[170Ak1744](#) Parties, Defects as to

[170Ak1747](#) k. Nonjoinder in

General. [Most Cited Cases](#)

Attorney who had represented plaintiffs in toxic tort suit was nondiverse indispensable party in plaintiffs' civil conspiracy suit against attorney's malpractice insurer and against reinsurers of policy with insured against whom plaintiffs won toxic tort judgment, as required for dismissal of civil conspiracy suit under rule governing indispensable parties, since adverse judgment would prejudice attorney's interest in settling malpractice and various state law claims against her and in retaining her malpractice insurance in state court proceedings, shaping relief in federal judgment would not lessen or avoid prejudice resulting from potential outcome of litigation itself, similarity of claims against insurers in federal court and against attorney in state court showed availability of alternative forum and efficiency of litigating entire case in state court, and adequate remedy was available in state court. [Fed.Rules Civ.Proc.Rule 19\(b\)](#), [28 U.S.C.App.\(2000](#) Ed.)

### [\[12\]](#) [Federal Courts 170B](#) 🔑14.1

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk14](#) Jurisdiction of Entire Controversy; Pendent Jurisdiction

[170Bk14.1](#) k. In General. [Most Cited](#)

[Cases](#)

Joinder of attorney, who was nondiverse indispensable party in plaintiffs' civil conspiracy suit against attorney's malpractice insurer and against reinsurers of policy with insured against whom plaintiffs prevailed in toxic tort suit for which attorney represented plaintiffs during settlement negotiations, was not feasible without destroying diversity jurisdiction, under statute providing for jurisdiction over supplemental claims in any civil action of which district court had original jurisdiction, although plaintiffs would not assert claims against joined attorney, since without attorney there was no viable civil action over which district court could assert original jurisdiction. [28 U.S.C.A. § 1367](#); [Fed.Rules Civ.Proc.Rule 19\(a, b\)](#), [28 U.S.C.App.\(2000](#) Ed.)

### [\[13\]](#) [Federal Civil Procedure 170A](#) 🔑1747

[170A](#) Federal Civil Procedure

[170AXI](#) Dismissal

[170AXI\(B\)](#) Involuntary Dismissal

[170AXI\(B\)2](#) Grounds in General

[170Ak1744](#) Parties, Defects as to

[170Ak1747](#) k. Nonjoinder in

General. [Most Cited Cases](#)

By definition, the indispensability determination, under rule providing for dismissal of action if joinder of necessary party is not feasible but party is indispensable, means that there is no viable lawsuit without the missing party. [Fed.Rules Civ.Proc.Rule 19\(b\)](#), [28 U.S.C.App.\(2000](#) Ed.)

### [\[14\]](#) [Federal Courts 170B](#) 🔑289

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

[170BIV\(B\)](#) Controversies Between Citizens of Different States

[170Bk289](#) k. Necessary and Unnecessary Parties; Nominal or Formal Parties. [Most Cited Cases](#) Where jurisdiction depends solely on diversity of citizenship, the absence of a nondiverse, indispensable party is not a mere procedural defect, but rather, it destroys the district court's original subject matter jurisdiction. [Fed.Rules Civ.Proc.Rule 19\(a\)](#), [28 U.S.C.App.\(2000](#) Ed.)

### [\[15\]](#) [Federal Courts 170B](#) 🔑23

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk20](#) Ancillary and Incidental Jurisdiction

[170Bk23](#) k. Coparties and New Parties.

[Most Cited Cases](#)

Incomplete diversity destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere. [28 U.S.C.A. §§ 1332, 1367\(a\)](#).

[\[16\]](#) Federal Courts [170B](#)  [286.1](#)

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

[170BIV\(B\)](#) Controversies Between Citizens of Different States

[170Bk286](#) Coplaintiffs and Codefendants

[170Bk286.1](#) k. In General. [Most Cited](#)

[Cases](#)

In a case with multiple plaintiffs and multiple defendants, the presence in the action of a single plaintiff from the same state as a single defendant deprives the district court of original diversity jurisdiction over the entire action, under “contamination theory.” [28 U.S.C.A. §§ 1332, 1367\(a\)](#).

[\[17\]](#) Federal Courts [170B](#)  [289](#)

[170B](#) Federal Courts

[170BIV](#) Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

[170BIV\(B\)](#) Controversies Between Citizens of Different States

[170Bk289](#) k. Necessary and Unnecessary Parties; Nominal or Formal Parties. [Most Cited Cases](#)  
The inquiry into indispensability of a party is an equitable, not a jurisdictional, inquiry, but in the context of a suit where jurisdiction is founded solely on diversity of citizenship and where the indispensable party is nondiverse, the indispensability conclusion has the effect of destroying diversity and, thus, eliminating any basis for original jurisdiction. [28 U.S.C.A. §§ 1332, 1367\(a\)](#); [Fed.Rules Civ.Proc.Rule 19\(a\)](#), [28 U.S.C.App. \(2000 Ed.\)](#)

[\[18\]](#) Federal Civil Procedure [170A](#)  [384.1](#)

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(J\)](#) Defects, Objections and Amendments

[170Ak384](#) Nonjoinder

[170Ak384.1](#) k. In General. [Most Cited](#)

[Cases](#)

A district court may raise the issue of nonjoinder sua sponte. [Fed.Rules Civ.Proc.Rule 19\(a, b\)](#), [28 U.S.C.App.\(2000 Ed.\)](#)

[\[19\]](#) Federal Courts [170B](#)  [613](#)

[170B](#) Federal Courts

[170BVIII](#) Courts of Appeals

[170BVIII\(D\)](#) Presentation and Reservation in Lower Court of Grounds of Review

[170BVIII\(D\)1](#) Issues and Questions in Lower Court

[170Bk612](#) Nature or Subject-Matter of Issues or Questions

[170Bk613](#) k. Constitutional

Questions. [Most Cited Cases](#)

Plaintiffs' assertion that their due process rights were violated by trial court's failure to honor their request for oral arguments on their motion to dismiss for nonjoinder, pursuant to local rule, could not be considered on appeal, since plaintiffs did not request oral argument. [U.S.C.A. Const.Amend. 5](#); [U.S.Dist.Ct.Rules D.Mass., Rule 7.1\(D\)](#).

\*[12](#) George Richardson, with whom Stefano **Picciotto**, Judith **Picciotto**, Melita **Picciotto**, and Athena **Picciotto**, pro se, and [James M. Shannon](#), were on brief, for appellants.

Scott D. Burke and [Harvey Weiner](#), with whom [Timothy O. Egan](#), Peabody & Arnold LLP, Morrison Mahoney LLP, [Michael R. Byrne](#), and Melick, Porter & Shea LLP, were on brief, for appellees.

Before [LIPEZ](#), Circuit Judge, [SELYA](#), Senior Circuit Judge, and [HOWARD](#), Circuit Judge.

[LIPEZ](#), Circuit Judge.

This case requires us to consider the interrelationship of joinder and supplemental jurisdiction in a diversity case. The Picciotto family and their company,

Foreign Car Center, Inc., (“the Picciottos”), appeal the dismissal of their complaint for failure to join an indispensable party. The district court found that Dana Casher, a citizen of Massachusetts, is a necessary and indispensable party in the Picciottos' suit against Casher's malpractice insurers and others for civil conspiracy. Because the Picciottos are also Massachusetts citizens, the district court dismissed the complaint, concluding that joinder of Casher would destroy its diversity jurisdiction.

On appeal, the Picciottos challenge the district court's determination that Casher is both necessary and indispensable. Alternatively, they argue that [28 U.S.C. § 1367](#) grants supplemental jurisdiction to the district court, allowing Casher to be joined as a defendant under [Federal Rule of Civil Procedure 19](#) without destroying diversity, provided that the plaintiffs do not assert any claims against her. Finding no abuse of discretion in the district court's determination that Casher is a necessary and indispensable party, and rejecting the **Picciottos'** assertion that the supplemental jurisdiction statute permits joinder of nondiverse indispensable parties, we affirm the dismissal.

## I.

This appeal is the latest episode in a long series of cases involving the **Picciotto** family, stemming from a toxic tort action brought by the **Picciottos** against Salem Suede, Inc. in 1983.<sup>[FN1](#)</sup> Although the **Picciottos** prevailed in a jury trial against Salem Suede in 1993, winning a \$1.8 million judgment, Salem Suede subsequently filed for bankruptcy. In the bankruptcy proceedings and settlement negotiations with Salem Suede's insurer, Travelers, the **Picciottos** hired Dana Casher to represent them.

<sup>[FN1](#)</sup> In that suit, the **Picciotto** family, their company, and their employees sought recovery for injuries and property damage caused by exposure to toxic chemicals emitted by Salem Suede, a leather finishing company located adjacent to the Foreign Car Center in Peabody, Massachusetts. The factual history recounted in this section is drawn from the Picciottos' federal complaint and the district court's memorandum and order dismissing the case.

The Picciottos allege that, without their consent, Casher also agreed to represent Juan Nunez, a former Foreign Car Center employee with claims against Salem Suede, in the negotiations with Travelers. The Picciottos also criticize Casher's representation in the settlement talks with Travelers. They allege that, after allowing the negotiations to run late into the night, Casher refused to allow them to leave the conference to consider the settlement agreement overnight before signing. They further contend that she violated the Massachusetts Rules of Professional Conduct\***13** by failing to specify in the settlement agreement itself the allocation among the Picciottos, Nunez, and Casher of the \$9 million settlement Travelers had offered. They claim that Casher had agreed to be paid \$1 million from the settlement money, with the understanding that she would use part of this money to pay the other attorneys who had previously represented the Picciottos in their toxic tort case against Salem Suede.<sup>[FN2](#)</sup> However, when the Picciottos' former attorneys refused to sign releases discharging Travelers from additional liability for attorneys' fees, Travelers refused to turn over the settlement funds.

<sup>[FN2](#)</sup> There were five individual attorneys, as well as several law firms, that made claims against the settlement funds.

The Picciottos claim that when Casher realized her error in failing to obtain releases from the other attorneys, she and her firm notified Continental and Great Northern, her firm's malpractice insurers,<sup>[FN3](#)</sup> of potential malpractice claims. The Picciottos allege that “Continental and Great Northern took charge of the claim and, from that point on, directed the conduct of Casher.” They allege that Continental and Great Northern had also reinsured the Travelers policy issued to Salem Suede. They contend that these insurance companies joined forces with Twin City and Hartford,<sup>[FN4](#)</sup> two other reinsurers of the Travelers policy, and the Picciottos' former attorneys<sup>[FN5](#)</sup> to form “The Picciotto Defense Group.” They further allege that Continental and Great Northern, working in concert with Twin City and Hartford, directed Casher to coerce the Picciottos into agreeing to amend the settlement agreement with Travelers. They assert that this amendment allowed Travelers to escape its contractual obligation to pay out the settlement funds and instead to file an interpleader action, depositing the funds in a court-controlled

escrow account. The Picciottos further claim that Casher, acting under the direction of Continental and Great Northern, prevented the Picciottos from sending a timely demand letter to Travelers, as required by Massachusetts General Laws Chapter 93A,<sup>FN6</sup> and failed to file the appropriate crossclaims and counterclaims for the benefit of the Picciottos in the interpleader action.

[FN3](#). The Picciottos allege that Continental provided professional liability coverage for Casher and that her firm also purchased an “umbrella policy” from Great Northern. It appears that Casher's firm switched liability carriers from Continental to TIG, an affiliate of Twin City, in March 2000. However, the record contains little evidence related to insurance coverage apart from the Picciottos's allegations.

[FN4](#). The Picciottos' complaint also describes First State, which it identifies as a subsidiary of Twin City and Hartford, as a co-conspirator, but that company is not named as a defendant.

[FN5](#). The Picciottos allege that Twin City insured two of the former attorneys. They also aver that Continental insured some of their former attorneys, in addition to Casher and her firm.

[FN6](#). Massachusetts's unfair trade practices law requires that “[a]t least thirty days prior to the filing of [a claim], a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent.”[Mass. Gen. Laws ch. 93A, § 9](#).

In the interpleader action, the **Picciottos'** former attorneys filed claims for unpaid fees and the **Picciottos** counterclaimed for malpractice. The **Picciottos** lost. The litigation continued as the **Picciottos** next sued Casher for malpractice in state court. In another suit, they also asserted a variety of claims against Nunez, Casher, and another of their former attorneys, including breach of obligation under an attorney-\*14 client fee agreement,

negligence, civil conspiracy, interference with contract, fraud, and breach of fiduciary duty. Casher, in turn, has sued the Picciottos for unpaid fees. All of the state court cases involving the Picciottos have been consolidated into a single case with a state court judge specially assigned to preside over them.

In the case at bar, the Picciottos brought suit against Continental, Great Northern, Hartford, and Twin City, predicated on diversity jurisdiction under [28 U.S.C. § 1332](#). They claim that the defendant insurance companies engaged in a civil conspiracy to interfere tortiously with the contractual relations between the Picciottos, Casher, and Casher's law firm. They also assert claims for negligence, fraud, and violation of Chapter 93A against each of the defendants.

The defendants contend that the Picciottos have brought this suit largely to obtain discovery that they had been denied in the state court actions and to “pressure their state court opponents” and their opponents' insurers.<sup>FN7</sup> The defendants note that the claims asserted against the defendant insurers in this federal case are nearly identical to the claims asserted against Casher in the state case, and that Casher's conduct is central to this action. The defendants moved for dismissal on the ground that Casher is both a necessary and an indispensable party under [Federal Rule of Civil Procedure 19](#) (“[Rule 19](#)”) and that her joinder is not feasible because it would destroy the district court's diversity jurisdiction. The court granted the motion to dismiss and this appeal ensued.

[FN7](#). None of the defendant insurance companies are parties in the state court litigation. TIG, an affiliate of Twin City, is providing Casher's defense in the state court under a policy purchased by her firm in 2000, some time after the alleged conspiracy among the insurance companies began.

## II.

### A. Standard of Review

[\[1\]](#) In this circuit, we review a district court's determination that a party is “indispensable” under [Rule 19\(b\)](#) for abuse of discretion. [B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.](#), 440 F.3d 541, 547-

[548 \(1st Cir.2006\)](#); [Travelers Indem. Co. v. Dingwell](#), 884 F.2d 629, 635 (1st Cir.1989). This deference is warranted because “Rule 19(b) determinations ... are anything but pure legal conclusions.” [Travelers](#), 884 F.2d at 635. “Instead, they involve the balancing of competing interests and must be steeped in ‘pragmatic considerations.’ ”*Id.*

[2][3] We have not previously determined the correct standard to apply in reviewing a district court's determination that a party is “necessary” under [Rule 19\(a\)](#). [United States v. San Juan Bay Marina](#), 239 F.3d 400, 403 (1st Cir.2001) (citing [Tell v. Trustees of Dartmouth Coll.](#), 145 F.3d 417, 418-419 (1st Cir.1998) (noting “some difference among the circuits” regarding the appropriate standard of review)). Like [Rule 19\(b\)](#), [Rule 19\(a\)](#) requires the trial court to make pragmatic judgments<sup>FN8</sup> and to “decide whether considerations of efficiency and fairness, growing out of the particular circumstances of the case, require that a particular\*15 person be joined as a party.” [Pujol v. Shearson/American Express, Inc.](#), 877 F.2d 132, 134 (1st Cir.1989). Such pragmatic judgments generally warrant deference to the trial court because they “turn[ ] on specific facts, will not recur in identical form and the district judge is closer to the facts ... and has a comparative advantage over a reviewing court.” [Tell](#), 145 F.3d at 418 n. 1. The *Tell* panel indicated that “[i]f it mattered” in that case, it “would be inclined to apply an abuse of discretion standard to such application-of-law decisions under [Rule 19\(a\)](#).” *Id.* at 418-19. We share that inclination and now explicitly hold that the abuse of discretion standard applies in both the [Rule 19\(a\)](#) and [Rule 19\(b\)](#) contexts.

<sup>FN8</sup>. The text of [Rule 19\(a\)\(2\)\(i\)](#) emphasizes the pragmatic nature of this determination. It requires the court to determine “as a practical matter” whether the absent party's interests will be impaired or impeded by her absence. [Fed.R.Civ.P. 19\(a\)\(2\)\(i\)](#). A new version of [Rule 19](#) took effect on December 1, 2007, renumbering the subsections of [Rule 19\(a\)](#) and [\(b\)](#) and adding additional headings. The substance of the rule has not changed. We refer herein to the version of the rule in effect at the time the district court made its determinations in 2006.

Indeed, all of the circuits that have examined the question have applied an abuse of discretion standard to [Rule 19\(a\)](#) determinations. [Nat'l Union Fire Ins. Co. v. Rite Aid, Inc.](#), 210 F.3d 246, 250 n. 7 (4th Cir.2000) (collecting cases and holding that abuse of discretion standard applies to both [Rule 19\(a\)](#) and [19\(b\)](#) determinations); see [Keweenaw Bay Indian Cmty. v. Michigan](#), 11 F.3d 1341, 1346 (6th Cir.1993) (holding that [Rule 19\(a\)](#) determinations are subject to an abuse of discretion review, while [Rule 19\(b\)](#) determinations are to be reviewed de novo); see also [Am. Greyhound Racing, Inc. v. Hull](#), 305 F.3d 1015, 1022 (9th Cir.2002); [Davis v. United States](#), 192 F.3d 951, 957 (10th Cir.1999).<sup>FN9</sup> An abuse of discretion exists when the district court makes an error of law, [Rosario-Urdaz v. Rivera-Hernandez](#), 350 F.3d 219, 221 (1st Cir.2003), or “relies significantly on an improper factor, omits a significant factor, or makes a clear error of judgment in weighing the relevant factors,” [Smilow v. Southwestern Bell Mobile Sys., Inc.](#), 323 F.3d 32, 37 (1st Cir.2003).

<sup>FN9</sup>. The Ninth and Tenth Circuits review [Rule 19](#) determinations under an abuse of discretion standard, but review underlying legal conclusions supporting [Rule 19](#) determinations de novo. [Am. Greyhound Racing](#), 305 F.3d at 1022; [Davis](#), 192 F.3d at 957. Although this more nuanced formulation is easily misunderstood, see, e.g., [W. Md. Ry. Co. v. Harbor Ins. Co.](#), 910 F.2d 960, 963 n. 6 (D.C.Cir.1990) (stating that [Rule 19\(a\)\(2\)\(ii\)](#) determinations are reviewed de novo, but citing Ninth Circuit precedent for support), it is tantamount to an abuse of discretion review. Because a district court by definition abuses its discretion when it makes an error of law, [Rosario-Urdaz v. Rivera-Hernandez](#), 350 F.3d 219, 221 (1st Cir.2003), even under an abuse of discretion standard, we “review the district court's answers to abstract questions of law de novo,” [Charlesbank Equity Fund II v. Blinds To Go, Inc.](#), 370 F.3d 151, 158 (1st Cir.2004). The Third and Seventh Circuits have not explicitly determined whether the abuse of discretion standard would apply when an error of law is not alleged. See [Davis Cos. v. Emerald Casino, Inc.](#), 268 F.3d 477, 481 (7th Cir.2001); [Janney Montgomery Scott, Inc. v. Shepard Niles](#),

Inc., 11 F.3d 399, 404 (3rd Cir.1993).

## B. Rule 19 Analysis

Rule 19 addresses circumstances in which a lawsuit is proceeding without particular parties whose interests are central to the suit. It provides for the joinder of such “necessary” parties when feasible. Fed.R.Civ.P. 19(a). It then provides for the dismissal of suits when the court determines that the joinder of the “necessary” parties is not feasible, but that they are, nonetheless, so “indispensable” that the suit must not be litigated without them. Fed.R.Civ.P. 19(b).

In proceeding with its inquiry into both necessity and indispensability, a district court should keep in mind the policies that underlie Rule 19, “including the public interest in preventing multiple and repetitive litigation, the interest of the present parties in obtaining complete and effective relief in a single action, and the interest of absentees in avoiding the possible prejudicial\*16 effect of deciding the case without them.” Acton Co. v. Bachman Foods, Inc., 668 F.2d 76, 78 (1st Cir.1982). The Supreme Court has instructed that the decision whether to dismiss for nonjoinder is a practical determination that “must be based on factors varying with the different cases, some such factors being substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests.” Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 119, 88 S.Ct. 733, 19 L.Ed.2d 936 (1968).

### 1. Necessary Party

Against this policy backdrop, the district court must first determine whether the absent person is a necessary party. Pujol, 877 F.2d at 134. In other words, the court must decide whether the person “fits the definition of those who should ‘be joined if feasible’ under Rule 19(a).” <sup>FN10</sup>*Id.* Thus, as the district court explained, Casher “would be a necessary party if [the district court] found *either* that the litigation would ‘impair or impede’ her ability to protect her interests, Fed.R.Civ.P. 19(a)(2)(i) or if the case would leave defendants subject to multiple obligations as explained in Fed.R.Civ.P. 19(a)(2)(ii).” The court then went on to find Casher’s presence necessary under both aspects of the Rule 19(a)(2) test.<sup>FN11</sup>

FN10.Rule 19(a) provides that an absent party is necessary if (1) in the person’s absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Although Rule 19(a) no longer contains the word “necessary,” the term has been retained by courts as a convenient shorthand for the Rule 19(a) determination. See Janney, 11 F.3d at 404 n. 4 (citing Provident Tradesmens Bank, 390 U.S. at 116 n. 12, 88 S.Ct. 733).

FN11.Rule 19(a)(1) provides a third criterion by which an absent party could be deemed necessary. However, a party only has to meet one of the three criteria in Rule 19(a) to show necessity. The district court did not analyze the applicability of Rule 19(a)(1), which asks whether complete relief can be afforded among the parties to the suit without joining the absent party. Because we find that Rule 19(a)(2)(i) is sufficient to establish Casher’s necessary party status, we need not comment on the applicability of either Rule 19(a)(1) or Rule 19(a)(2)(ii).

[4] In analyzing Rule 19(a)(2)(i), the district court noted two ways in which the federal litigation could, as a practical matter, impair Casher’s ability to protect her interests in the state court proceeding. First, the court stated that “[w]hile the outcome of the federal litigation would not be binding on Casher as res judicata if she were not a party to the case,” an adverse ruling would nonetheless impair Casher’s ability to settle the state law claims against her. Settlement position is a valid consideration in the practical inquiry required by Rule 19(a)(2)(i) because, even without a direct preclusive effect, an adverse judgment could be “persuasive precedent in a subsequent proceeding, and would weaken [the absent party’s] bargaining position for settlement

purposes.” [Acton](#), 668 F.2d at 78; *see also* [Gonzalez v. Cruz](#), 926 F.2d 1, 6 (1st Cir.1991) (holding that although a ruling against the absent party would not be binding in the state court, it “could, as a practical matter, impair [the absent party’s] probability of success in a future proceeding and reduce its ability to reach a favorable settlement”).

[5][6] The Picciottos criticize this analysis by the district court because Casher’s \*17 affidavit opposing the litigation of the federal case in her absence did not assert that her ability to settle the state case could be impaired. However, in making the highly practical determination required by [Rule 19\(a\)\(2\)\(i\)](#), a court may draw reasonable, pragmatic inferences from the particular circumstances in the case to protect the absent party. The determination that Casher’s state settlement position would likely be impaired by her absence in the federal litigation is just such an inference.

The district court also concluded that Casher’s interests could be impaired because an adverse ruling in the federal litigation could cause her to lose her insurance coverage in the state case. In pursuing their conspiracy claim, the Picciottos allege that Casher gave Continental and Great Northern prompt notice of the Picciottos’ potential claims against her, allowing the insurance companies to “take charge” and direct Casher’s subsequent representation of the Picciottos. The Picciottos allege that the notice was provided to Continental and Great Northern before Casher and her firm acquired their current coverage from TIG. Such an allegation, if proven, would likely cause Casher and her firm to lose their TIG coverage and insurance-paid defense in the state court action. The Picciottos counter this argument by asserting that Continental would step in and provide coverage if TIG disclaims its coverage because Casher has “full prior acts” coverage with Continental. Even if that is so, we agree with the district court that Casher has a cognizable interest in maximizing her available coverage by protecting her *current* insurance coverage and insurance-paid defense. Thus, the court did not abuse its discretion with its necessary party determination.

## 2. Feasibility in the Diversity Context

[7][8][9][10] As we explained above, necessary parties should be joined “if [f]easible.” [Fed.R.Civ.P.](#)

19(a). In the traditional analysis, when the court’s subject matter jurisdiction is grounded in diversity, the joinder of a nondiverse party is not feasible because such joinder destroys the court’s subject matter jurisdiction. [In re Olympic Mills Corp.](#), 477 F.3d 1, 8 (1st Cir.2007); [Acton](#), 668 F.2d at 79. It is axiomatic that “[f]ederal courts are courts of limited jurisdiction.” [Kokkonen v. Guardian Life Ins. Co. of Am.](#), 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). The statutory grant of federal jurisdiction in diversity cases gives district courts “original jurisdiction of all civil actions where the matter in controversy ... is between ... citizens of different States.” [28 U.S.C. § 1332\(a\)](#). This statutory grant requires *complete* diversity between the plaintiffs and defendants in an action. [Strawbridge v. Curtiss](#), 7 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806); [Halleran v. Hoffman](#), 966 F.2d 45, 47 (1st Cir.1992). Thus, under the traditional analysis, if the “matter in controversy” involves a necessary, nondiverse absentee, the court must determine whether the litigation may continue in the absence of this person or whether she is so indispensable that the court should dismiss the case for want of subject matter jurisdiction. [Acton](#), 668 F.2d at 80.

As we discuss in Part III below, the Picciottos contend that this traditional analysis has been dramatically altered by the adoption of the supplemental jurisdiction statute, [28 U.S.C. § 1367](#), in 1990. They argue, in effect, that the supplemental jurisdiction statute means that, even in diversity cases, the joinder of nondiverse parties, when no claims are asserted against them, is now “feasible.” This novel contention would obviate the need to conduct an indispensability analysis because Casher’s joinder would be “feasible.” However, before we address that alternative\*18 approach, we first proceed with the indispensability analysis, premised on the traditional notion that Casher’s joinder as a defendant [FN12](#) would not be feasible because the Picciottos and Casher are both Massachusetts citizens.

[FN12](#). The Picciottos did argue to the district court that Casher should be joined as a plaintiff in order to preserve diversity. The court found that “this makes no sense in the present action, where Casher’s interests are contrary to those of the plaintiffs.” The point is not pressed on appeal.

### 3. Indispensable Party

Under [Rule 19\(b\)](#), the court must determine “whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed.” [Fed.R.Civ.P. 19\(b\)](#). The Rule specifies the four factors the court should consider.<sup>[FN13](#)</sup>

[FN13](#). The factors are:

[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

[Fed.R.Civ.P. 19\(b\)](#). These factors implicate many of the same practical judgments required by the [Rule 19\(a\)](#) determination.

[\[11\]](#) In this case, the district court carefully analyzed each factor before determining that Casher is an indispensable party and dismissing the suit. On the first factor (“to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties”), the court reiterated its [Rule 19\(a\)\(2\)\(i\)](#) finding that Casher's interest in settling the state law claims against her and retaining her insurance would be prejudiced by an adverse judgment in this case.<sup>[FN14](#)</sup>

[FN14](#). The district court also found that the defendant insurance companies would be prejudiced by the possibility of “facing multiple, overlapping and perhaps inconsistent judgments stemming from the same actions.” We find that the prejudice to Casher is sufficient for the indispensable party analysis. Accordingly, we need not reach the issue of prejudice to the defendant insurance companies to find that the district court did not abuse its discretion in finding Casher to be an indispensable party.

On the second factor (“the extent to which, by protective provisions in the judgment, by the shaping relief, or other measures, the prejudice can be

lessened or avoided”), the court found that “it would be difficult if not impossible ... to shape relief that would not implicate Casher's interests.” Given the prejudice that the court identified (the impact on a potential settlement of the state law claims and the potential loss of insurance coverage), we agree that there is no such protective approach possible because the prejudice to Casher would result from the potential outcome of the litigation itself, not the specific terms of any judgment.

On the third factor (“whether a judgment rendered in the person's absence will be adequate”), the court explained that this factor extends beyond the issue of whether relief could be shaped that would satisfy the parties. It also encompasses “the interest of the courts and the public in complete, consistent, and efficient settlement of controversies.” See [Provident Tradesmens Bank](#), 390 U.S. at 111, 88 S.Ct. 733 (“We read [[Rule 19](#)]'s] third criterion, whether the judgment issued in the absence of the nonjoined person will be ‘adequate,’ to refer to this public stake in settling disputes by wholes, whenever possible, for clearly the plaintiff, who himself chose both the forum and the parties defendant,\*19 will not be heard to complain about the sufficiency of the relief obtainable against them.”). Applying this broader view of the third factor, the district court concluded that the striking similarity between the claims in this case against the insurance companies and the claims against Casher and others in the state court litigation “demonstrates the availability of an alternative forum and the efficiency of litigating the entire case in state court.”

In discussing the fourth factor, the availability of an adequate remedy in the event of dismissal, the court reiterated this conclusion. The district court found that the remedy would be to join the insurance companies as defendants in the state court litigation and that nothing would prevent the Picciottos from doing so. The Picciottos protest that they will be barred from joining the insurance companies in the state suit by the statute of limitations or a state court injunction.<sup>[FN15](#)</sup> However, they undoubtedly could have named the insurance companies as defendants in their initial state court pleadings. We doubt that the statute of limitations poses a bar to refiling in state court. See [Mass. Gen. Laws ch. 260, § 32](#) (providing one year to file a new action following a dismissal “for any matter of form.”); [Corliss v. City of Fall](#)

[River](#), 397 F.Supp.2d 260, 266 (D.Mass.2005) (holding that a dismissal for want of subject matter jurisdiction is dismissal for a “matter of form”). Even if the Picciottos were, for some reason, unable to sue the insurance companies in state court, it is a result of their own litigation strategy and not a sufficient reason for them to remain in federal court on these claims.

[FN15](#). Several parties in the consolidated state action have moved for a preliminary injunction enjoining the Picciottos from filing “further lawsuits and/or motions relating to the facts, claims or issues in these consolidated cases without prior approval of the court.” There is no indication in the record that the request for such an injunction has been granted.

In sum, the district court's conclusion that Casher is an indispensable party was sufficiently supported by findings that satisfy each of the four factors in the [Rule 19\(b\)](#) analysis. Thus, we find no abuse of discretion in the determination that Casher is a necessary and indispensable party in this action.

### III.

[\[12\]](#) Alternatively, the Picciottos argue that, even if Casher is a necessary and indispensable party, her joinder is “feasible” under the supplemental jurisdiction statute, [28 U.S.C. § 1367](#), and thus the case should not have been dismissed. [Section 1367\(a\)](#), adopted in 1990, provides a grant of subject matter jurisdiction over supplemental claims:

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, *in any civil action of which the district courts have original jurisdiction*, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(Emphasis added.) [Section 1367\(b\)](#) then limits the applicability of this supplemental authority in cases brought under the diversity jurisdiction statute, [28 U.S.C. § 1332](#): In any civil action of which the

district courts have original jurisdiction founded solely on [section 1332](#) of this title, the \*20 district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under [Rule 14](#), [19](#), [20](#), or [24 of the Federal Rules of Civil Procedure](#), or over claims by persons proposed to be joined as plaintiffs under [Rule 19](#) of such rules, or seeking to intervene as plaintiffs under [Rule 24](#) of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of [section 1332](#).

Citing a law review article,<sup>[FN16](#)</sup> the Picciottos assert that [§ 1367\(b\)](#) altered the traditional analysis and now allows a nondiverse party to be joined as a defendant under [Rule 19](#) without destroying the diversity jurisdiction of the court, so long as the plaintiffs do not assert any claims against the joined defendant. However, this argument is fatally flawed. Without Casher, as we explain below, there is no viable civil action over which the district court may assert “original jurisdiction.” Thus, there is no “original” suit to which Casher may be added as a “supplemental” party.

[FN16](#). The Picciottos rely on Thomas D. Rowe, Jr., Stephen B. Burbank & Thomas M. Mengler, [Compounding or Creating Confusion about Supplemental Jurisdiction? A Reply to Professor Freer](#), 40 *Emory L.J.* 943, 955-959, 966-978 (1991).

Prior to the adoption of [§ 1367](#), we explicitly rejected an invitation to apply “ancillary jurisdiction,” the historical precursor to [§ 1367](#)'s grant of supplemental jurisdiction, to avoid dismissal in a case requiring the joinder of an indispensable, nondiverse party. [Acton](#), 668 F.2d at 79-80. Taking the same approach as the Picciottos, the appellant in *Acton* argued that, although the joinder of a nondiverse, indispensable party would appear to destroy diversity jurisdiction, that party could be joined under the doctrine of ancillary jurisdiction. *Id.* at 79. We rejected that argument, concluding that “ancillary jurisdiction ‘presupposes the existence of an action that a federal court can adjudicate and should not be used to breathe life into a lawsuit that is not otherwise viable.’” *Id.* at 80 n. 1 (quoting [7 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil § 1610](#), at 99-100 (1972)); see also [ZB](#)

Holdings, Inc. v. White, 144 F.R.D. 42, 47 (S.D.N.Y.1992) (concluding that “the term ‘original jurisdiction’ presupposes a viable lawsuit,” and thus rejecting the argument that § 1367 allows for supplemental jurisdiction over nondiverse indispensable parties).<sup>FN17</sup>

<sup>FN17</sup>. In *Acton*, the nondiverse indispensable party missing from the suit was a plaintiff rather than a defendant. However, for the purposes of our analysis, this distinction is not relevant. In *Acton*, as in the instant case, it was the plaintiff who was arguing that ancillary jurisdiction applied. As the *Acton* court explained, allowing a plaintiff to use ancillary jurisdiction in this manner would permit that plaintiff to “create diversity jurisdiction simply by omitting [the indispensable coplaintiff] from the original complaint and then waiting for [that coplaintiff] to be joined under Rule 19.” *Acton*, 668 F.2d at 79-80. This ruse must fail whether the nondiverse party to be joined would be aligned as a plaintiff *or* a defendant.

[13][14] By definition, the Rule 19(b) indispensability determination means that there is no viable lawsuit without the missing party. Where jurisdiction depends solely on diversity of citizenship, the absence of a nondiverse, indispensable party is not a mere procedural defect. Rather, it destroys the district court's original subject matter jurisdiction. *Calcote v. Texas Pac. Coal & Oil Co.*, 157 F.2d 216, 219, 221 (5th Cir.1946) (“[W]here jurisdiction depends solely upon diversity of citizenship ... the absence of indispensable parties absolutely defeats federal jurisdiction.”). \*21 Thus, ancillary jurisdiction was not available to cure the jurisdictional defect in a diversity case when the absence of an indispensable party meant that there was no case over which the district court could exercise original jurisdiction.

[15][16] The plain language of the supplemental jurisdiction statute incorporates this well established requirement that there be a viable action over which the district court has “original jurisdiction” before supplemental jurisdiction may be considered. Section 1367(a) grants supplemental jurisdiction over related claims in “any civil action of which the district courts

have original jurisdiction,” and § 1332 defines the requirements for “original jurisdiction” in diversity cases. In *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005), the Court explained how these two jurisdictional provisions interact: “Incomplete diversity destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere.” *Id.* at 554, 125 S.Ct. 2611. The complete diversity requirement is consistently imposed on a case-by-case, rather than a claim-by-claim, basis: “In a case with multiple plaintiffs and multiple defendants, the presence in the action of a single plaintiff from the same State as a single defendant deprives the district court of original diversity jurisdiction over the entire action.” *Id.* at 553, 125 S.Ct. 2611 (citing *Strawbridge, 3 Cranch 267, 7 U.S. 267, 2 L.Ed. 435; Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 375, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978)).

The Court in *Allapattah* dubbed this view of complete diversity the “contamination theory” because the inclusion of a nondiverse party “contaminates every other claim in the complaint, depriving the court of original jurisdiction over any of these claims.” *Id.* at 560, 125 S.Ct. 2611. The “contamination theory” makes sense in the context of the complete diversity requirement, the Court said, because “the presence of nondiverse parties on both sides of a lawsuit eliminates the justification for providing a federal forum.” *Id.* at 562, 125 S.Ct. 2611.<sup>FN18</sup> Additionally, the “contamination theory” prevents plaintiffs from creating diversity jurisdiction “simply by omitting [the nondiverse party] from the original complaint and then waiting for [that party] to be joined under Rule 19.” *Acton*, 668 F.2d at 79-80; accord *Allapattah*, 545 U.S. at 565, 125 S.Ct. 2611 (“The contamination theory ... means this ruse would fail...”).

<sup>FN18</sup>. The justification for diversity jurisdiction cited by the Court “is to provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants.” 545 U.S. at 553-54, 125 S.Ct. 2611. Although the *Allapattah* majority rejected the “contamination theory” with regard to the amount-in-controversy requirement, the Court distinguished that requirement from

the diversity requirement where the “contamination theory” remains applicable. *Id.* at 562, 125 S.Ct. 2611. The four dissenting justices in *Allapattah* agreed with the majority that the supplemental jurisdiction statute did not alter the “contamination theory” approach to complete diversity:

“ ‘[O]riginal jurisdiction’ in § 1367(a) has the same meaning in every case: [An] underlying statutory grant of original jurisdiction must be satisfied....Section 1332... predicates original jurisdiction on the identity of the parties (i.e., [their] complete diversity)....’ ”

*Id.* at 592-93, 125 S.Ct. 2611 (Ginsburg, J., dissenting) (quoting *Rosario Ortega v. Star-Kist Foods, Inc.*, 370 F.3d 124, 139-40 (1st Cir.2004)).

[17] Given the continuing vitality of the “contamination theory,” the Picciottos' argument fails at the § 1367(a) threshold. Casher *must* be joined because she is both necessary and indispensable. The conclusion\*22 that she is indispensable means that there is no viable suit without her presence, and thus no suit over which the district court has original jurisdiction. Yet, if she were joined, her presence would destroy the district court's original jurisdiction under § 1332. Thus no suit over which the district court has original jurisdiction exists here without Casher-because the district court ruled that her presence was indispensable-and no suit exists with Casher-because her presence will destroy diversity.<sup>FN19</sup> Thus, the supplemental jurisdiction statute does not apply because there is no civil action to which any additional claims may attach.

<sup>FN19</sup> We note that the *inquiry* into indispensability is an equitable, not a jurisdictional, inquiry. See Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *7 Federal Practice & Procedure: Civil 3d* § 1611, at 169. However, in the context of a suit where jurisdiction is founded solely on diversity of citizenship and where the indispensable party is nondiverse, the indispensability *conclusion* has the effect of destroying diversity and, thus, eliminating any basis for original jurisdiction.

Resisting the traditional analysis of the relationship

between joinder and diversity jurisdiction, the Picciottos emphatically assert that they will not raise any claims against Casher, and thus § 1367(b)'s prohibition on supplemental jurisdiction “over claims by plaintiffs against persons made parties under Rule ... 19...”, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332” does not apply. They contend that § 1367(b) dramatically alters the traditional analysis and permits nondiverse parties to be joined, so long as no claims are asserted against them.

In fact, § 1367(b)'s *restrictions* on supplemental jurisdiction offer no affirmative grant of jurisdiction and do not alter the traditional analysis with regard to the complete diversity requirement. See *Allapattah*, 545 U.S. at 554, 125 S.Ct. 2611 (“Incomplete diversity destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere.”). The plain language of § 1367(a) makes it clear that supplemental jurisdiction does not apply where, as here, the district court lacks original jurisdiction over any viable suit.<sup>FN20</sup>

<sup>FN20</sup> In cases involving the joinder of indispensable nondiverse parties, the incorporation of the “contamination theory” in § 1367(a)'s definition of original jurisdiction renders § 1367(b) “superfluous.” *Allapattah*, 545 U.S. at 564-65, 125 S.Ct. 2611. However, § 1367(b) *does* apply in cases involving the amount-in-controversy element of § 1332 diversity jurisdiction, and thus the statutory language is not, in fact, entirely superfluous. *Id.* at 560, 125 S.Ct. 2611.

[18][19] Even if the language of § 1367(b) were relevant, the Picciottos' assertion that their suit should survive because they would assert no claims against Casher is illogical. We fail to comprehend how Casher could be joined as a defendant here unless the Picciottos were ordered to amend their complaint to assert claims against her. As Professors Arthur and Freer explain:

There can be no defendant against whom no plaintiff asserts a claim for relief.

...

If the plaintiff ... really has no claim against the absentee, how under the Federal Rules can the absentee be joined as a defendant? How can it be included in the plaintiff's complaint? How can it file an answer asserting its defenses to the plaintiff's claims if there are none? What does it file? What does it say? Why does it say it?

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\*23 Thomas C. Arthur & Richard D. Freer, [Grasping at Burnt Straws: The Disaster of the Supplemental Jurisdiction Statute](#), 40 [Emory L.J.](#) 963, 970-71 (1991) (footnotes omitted). Moreover, we fail to see how supplemental jurisdiction, which supports the addition of related *claims*, could be helpful to the Picciottos in their argument for the joinder of a party against whom no claims would be asserted. Hence, the district court made no error in determining that it could not exercise supplemental jurisdiction to avoid the dismissal of the Picciottos' suit for nonjoinder of an indispensable party.<sup>FN21</sup>

<sup>FN21</sup>. The Picciottos also assert on appeal that the district court violated their due process rights by dismissing their complaint as to all defendants, even though only some defendants had moved for a [Rule 19](#) dismissal. The claim is without merit. “We have squarely held that a district court may raise the issue of nonjoinder *sua sponte*.” [Delgado v. Plaza Las Americas, Inc.](#), 139 [F.3d 1, 2 \(1st Cir.1998\)](#). The Picciottos also assert that their due process rights were violated by the court's failure to “honor [their] request for oral arguments pursuant to U.S. [District Court Local Rule 7.1\(D\)](#).” Even if a request for oral argument pursuant to a local rule could ever implicate due process concerns (an issue on which we intimate no opinion), the record on appeal reveals that the Picciottos did not request an oral argument on the motion to dismiss for nonjoinder. Thus, we need not even consider their assertion of a due process violation. See [North Bridge Assocs., Inc. v. Boldt](#), 274 [F.3d 38, 44 \(1st Cir.2001\)](#) (“It can hardly be error for the court to withhold an opportunity appellants did not request to add to their already substantial response to the motion.”).

*Affirmed.*