appears to a legal certainty that the plaintiff cannot recover the amount claimed. The court's role is not to determine whether the amount claimed is likely to be recovered—just that the amount was "in controversy." *See Schutte v. Ciox Health, LLC*, 28 F.4th 850, 855-56 (7th Cir. 2022) (if a statute specifically authorizes damages up to $25,000 per violation, that full amount is in controversy and may be counted).

In *State Farm Mut. Auto Ins. Co. v. Campbell*, 508 U.S. 408, 425 (2003), the U.S. Supreme Court held that an award of punitive damages that exceeds a single-digit ratio to compensatory damages in most cases violates the Due Process Clause of the Fourteenth Amendment. As a result, several states have enacted statutory caps on punitive damages, often expressed as a multiplier. Of course, when a cap exists, allegations seeking punitive damages above the cap will not be included in the calculation of the amount in controversy. However, even in some states without a cap, courts will limit the punitive damages included in the amount in controversy to a reasonable multiple of compensatory damages. Thus, a litigant should expect that courts will give a punitive damage claim "particularly close scrutiny" when it appears that the claim was asserted solely or primarily for purposes of conferring diversity jurisdiction. *See, e.g.*, *Coffin v. TGM Assocs. L.P.*, 2021 WL 1238560 *1, *7 (D. Md. 2021) (complaint asserting $150 in compensatory damages will not satisfy the amount-in-controversy requirement as a matter of law when it demands punitive damages in excess of $74,850, even if state law does not impose a rigid cap on the ratio of punitive damages to compensatory damages; in this instance, the plaintiff would need to recover about five hundred times the compensatory damages).

Section D. Judicial Exceptions to Federal Jurisdiction (Page 375)

Add the following Note before the Problems on p.377.

Note

The federal courts continue to face challenges to their jurisdiction based on the probate exception to diversity jurisdiction. *See, e.g.*, *Fisher v. PNC Bank, N.A.*, 2 F.4th 1352 (11th Cir. 2021) (probate exception held inapplicable to suit against bank by daughter who co-owned investment account with mother prior to her mother's death; plaintiff's claims involved harm caused prior to her mother's death that could be adjudicated without probating the mother's will, administering the estate, or disposing of the estate's property and noting that federal courts have virtually unflagging obligation to exercise jurisdiction given them).

A good example of the difficulty of determining whether a case properly falls within the probate exception is *Silk v. Bond*, 65 F.4th 445 (9th Cir. 2023). In *Silk*, a California financial advisor (Silk) who had provided extensive tax-and-estate-planning services over several years to a taxpayer client (Bond). To align the advisor's interest with the taxpayer's interest, the parties agreed on a fee arrangement that paid the advisor a percentage of the taxes saved. The fees were to be paid after the taxpayer's death. When the taxpayer died, the advisor filed a claim in a

Maryland probate court against the taxpayer's estate for $3.1 million the advisor contended was due under the parties' contract. *Id*. at 448-49.

After the estate denied the claim, the advisor brought a diversity action against the estate in a federal district court in California against the personal representatives of the estate, which was being probated in Maryland state court, for breach of contract and, alternatively, unjust enrichment and promissory estoppel. The advisor sought certain fees from the estate under the advisor's contracts with the client and an accounting sufficient to calculate those fees. The federal district court dismissed the action under the probate exception. The district court held that the claim could not be resolved without first determining the value of the estate, and the court would be required to take control of the appraisal process, which would amount to the administration of the estate. The court also held that because the contract required the estate to pay the cost of any appraisal, ordering the appraisal would "improperly interfere with the probate court's authority and dispose of estate assets in its control." *Id*. at 49-50.

The advisor appealed, and the Ninth Circuit Court of Appeals reversed. Relying on the Supreme Court's opinion in *Marshall v. Marshall*, 547 U.S. 293 (2006), the Ninth Circuit limited the probate exception to cases in which the federal court would need to (1) probate or annul a will; (2) administer a decedent's estate; or (3) assume in rem jurisdiction over property that is in the custody of the probate court. The Ninth Circuit found that the advisor's action did not involve any of those actions. The Ninth Circuit concluded that the advisor's complaint did not implicate the court's in-rem jurisdiction (which determines interest in the res as against the whole world). If an action simply seeks to determine personal rights and obligations of the parties, it is an in personam contract action which simply determined the estate's obligation to pay the fees to the advisor. The Ninth Circuit similarly rejected the argument that paying for an appraisal and paying the advisor's fees amounted to a disposition of estate assets, a function under the control of Maryland's Probate Court. If the federal district court's determination that fees were owed under the parties' contract was a prohibited disposition of estate assets by a federal court, such a finding would amount to a "sweeping extension" of the probate exception. 65 F.4th at 450-56.

Section F. Removal Jurisdiction (Page 402)

Add the following discussion at the end of the "Remand of Improperly Removed Actions" on p.410.

Section 1447(c) authorizes the district courts to enter "An order remanding the case [requiring] payment of just costs and any actual expenses, including attorney fees, incurred as a result of removal." The purpose of this provision is to deter removals sought for the purpose of prolonging the litigation or increasing expenses for the opposing party. *See, e.g*., *Koncept Props. Inc. v. Scopelliti*, 627 F. Supp. 3d 1282, 1287 (M.D. Fla. 2022) (holding that removal was objectively unreasonable and supported an award of attorney fees and costs to plaintiff); *Curators of Univ. v. Corizon Health, Inc.*, 627 F. Supp. 3d 1030, 1041 (W.D. Mo. 2022) (noting

that the reasonableness standard was ultimately the result of balancing the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied, and also noting even losing arguments must be supported and made in good faith).

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Chapter 5

Sources of Law

Section A. Overview of the *Erie* Doctrine (Page 413)

5. *Klaxon* and the Application of *Erie* to Conflict-of-Laws Issues (Page 424)

Add "not" in the following discussion which starts at the bottom of p.424 and continues on the top of p.425.

Conflict-of-laws rules define when the state will apply its own laws in deciding a case and when it will apply the laws of some other state or country that may also have a connection to the case. In this process, a forum state always applies its own conflict-of-laws rules, but this does **not** mean that the forum state will automatically apply its own substantive laws.

Section C. The Evolution of the Erie "Branches" and the Search for Standards (Page 454)

Add an additional Note at p.490.

3. Justice Scalia's "bright line" approach in *Shady Grove* was applied in *In re Vascepa Antitrust Litig. Indirect Purchaser Plaintiffs*, 2023 WL *4-*5 (D.N.J. 2023) to a requirement of Illinois law that limited standing to bring certain types of class action claims for antitrust violations in a nationwide class action by limiting standing for Illinois claims to actions commenced by the Illinois Attorney General. The Court held that Federal Rule 23 does not impose any claim-specific standing requirements, and the plaintiffs were permitted to pursue their antitrust claims because Federal Rule 23 controlled what claims could or could not be prosecuted as class actions in federal courts.

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Chapter 6

Pleading and Related Matters

Section E. Amendments (Page 556)

1. Amendments Pursuant to Rule 15(a) (Page 556)

Add the following at the end of the textual discussion of "Amendments as a Matter of Course" on p.557.

The U.S. Supreme Court has published an amendment of Federal Rules of Civil Procedure 15(a)(1), which will go into effect on December 1, 2023 (unless blocked by Congress). The amendment to Rule 15(a)(1) addresses an ambiguity regarding the time period during which an amendment to a pleading may be made as a matter of right. Rule 15(a)(1) currently appears to create two separate 14-day windows for amendments as a matter of right—one triggered by the filing of the original pleading and the other triggered by a responsive pleading or a Rule 12(b) motion. Arguably, if the first window has closed, but the second window has not opened, a party may not amend as a matter of right. As amended, Rule 15(a)(1) specifically authorizes a party to amend as a matter of right during this gap and at any time until the later of the two windows had closed.

3. Relation Back of Amendments: Rule 15(c) (Page 563)

Add the following Note before the Question on p.572.

Note

In *Rodriguez v. McCloughen*, 49 F.4th 1120 (7th Cir. 2022), a plaintiff/prisoner filed a civil rights action under 28 U.S.C. § 1983 and initially identified the federal agent/defendants by code names and then substituted the defendants' real names after the statute of limitations had run. The question arose whether the substitution of their real names met the "mistake" requirement of Federal Rule 15(c)(1)(C). The district court concluded that someone who names a defendant using a code cannot have made a "mistake" because the plaintiff knew that a code is not a name. *Id*. at 1121.

On appeal, the Seventh Circuit relied on *Krupski* and held that the operation of Rule 15(c)(1)(C) principally depends on what the putative defendant knew or should have known. Thus, the appropriate question is whether someone in the position of the newly added defendant knew or should have known that the defendant would have been a party, but for the occurrence

of some problem. This knowledge is enough to allow substitution of real names for the agents initially identified by code names. The Seventh Circuit also distinguished code names from the typical "John Doe" situation or an equivalent placeholder, which would not qualify under Rule 15(C)(1)(C). *Id*. at 1123-24 ("the world has a lot of people named 'John Smith'—and even some named 'John Q. Public'—while a unique identifier like a code name is specific").

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Chapter 7

Joinder of Claims and Parties

Section D. Basic Joinder of Claims by Defendants: Counterclaims and Crossclaims (Page 593)

1. Who Is an "Opposing Party"? (Page 596)

Change the date at the end of the first line to "1993" on p.597.

[Two actions are involved in this case. The first was commenced on July 22, **1993** (not 1983).]

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Chapter 11

Post-Trial Motions, Appellate Review, and Extraordinary Relief from Judgments

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Section A. Post-Trial Motions (Page 839)

1. Motions for Judgment Notwithstanding the Verdict (Judgment as a Matter of Law) (Page 839)

Add to the following discussion at the end of the text "Necessity of Preserving Record in Trial Court" on p.842 after the discussion of the *Unitherm* case.

In *Dupree v. Younger*, 143 S. Ct. 1382 (2023), a former pretrial detainee at Maryland state prison brought a civil rights action against a former lieutenant and other prison officials for damages under 42 U.S.C. § 1983. The detainee alleged that the lieutenant ordered three corrections officers to assault him using excessive force in violation of the Due Process Clause. The lieutenant moved for summary judgment arguing that the detainee failed to exhaust administrative remedies. The federal district court denied the motion. Following a jury trial, the court entered judgment against the lieutenant and four other officials and awarded detainee $700,000 in damages. The lieutenant, who had not renewed the exhaustion defense in a post-trial motion, appealed. Like several other courts of appeals, the Fourth Circuit held that Federal Rule 50(a) and (b) required motions for all issues, even purely legal ones, and dismissed appeal for failure to preserve the exhaustion defense for appellate review.

In a unanimous opinion authored by Justice Barrett, the U.S. Supreme Court held that the lieutenant was not required to renew in a post-trial motion purely legal arguments that were denied at summary judgment to preserve those arguments for appeal, resolving a conflict among the circuits. Justice Barrett pointed out that because the factual record developed at trial supersedes the record existing at the time of the summary-judgment motion, it follows that a party must raise in a post-trial motion a claim that the evidence is legally insufficient to support the verdict to preserve that argument for appeal. *Id*. at 1387-88. That motion allows the district court to take a "first crack" at the question that the appellate court will ultimately face: Was there sufficient evidence in the trial record to support the jury's verdict? On the other hand, Justice Barrett explained the same is not true for pure questions of law resolved in an order denying summary judgment. These conclusions are not superseded by later developments in the litigation, and thus such rulings merge into the final judgment, at which point they are reviewable on appeal. The reviewing court does not benefit from having a district court reexamine a purely legal pretrial ruling after trial because nothing at trial will have given the district court any reason to question its prior analysis. *Id*. at 1389-91.

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