

ESSAY QUESTION (60 points, 110 minutes)

[It is recommended that you use 20-30 minutes to read and organize your answer; then approximately 45-50 minutes on part (1), and 35-40 minutes on part (2) of this essay.]

Rachel Black and Georgia Green were best of friends. A few years ago they began making investment decisions together. Rachel lives in Brooklyn, N.Y. (Eastern District of New York), and until a few months ago, Georgia lived in Montclair, N.J. (District of New Jersey), just across the river from New York City. Then Georgia moved to Rachel's apartment while she looked for her own place. "I'm so glad to be out of Sopranoland [New Jersey] forever, and feel at home in New York," she told all her friends. Rachel and Georgia both worked at the law firm of Dewey, Cheatem, & Howe in Manhattan (Southern District of New York). On the recommendation of a friend, they started using a financial consultant, Ricky Fixer, who also has his office in Manhattan, to advise on their investments. He lives in Greenwich, Connecticut (District of Connecticut).

Following his advice, they each invested a substantial amount of money in a private real estate investment trust run by Futura, Inc. Fixer, who said it was a "guaranteed" 15% interest a year, pushed it very heavily. He presented them with very impressive written material provided by Futura. Fixer indicated that he had invested in a different Futura real estate trust a year ago, and was doing "great." Futura, Inc. is a Connecticut corporation (District of Connecticut), with offices in Princeton, New Jersey (District of New Jersey), and in Dallas, Texas (Middle District of Texas). The Chief Executive Officer works in New Jersey, and manages some overseas investment accounts from there. The real estate trust investments were exclusively in Texas real estate ventures, and were managed and supervised in the Dallas office. While approval to start a new real estate venture comes from Princeton, all the actual work, financing and control is set in Dallas.

Within a few months of investing, the economy hit the skids. Rachel and Georgia learned that Futura, Inc. was in real trouble with some of the Texas real estate investments, including those invested in by them. One day, Ricky Fixer informed both Rachel and Georgia that their portfolio was sinking fast. They were only worth 20% of their original value. The women had lost hundreds of thousands of dollars. "I've lost over \$100,000 too," Ricky whined. Rachel and Georgia's investments never recovered. Futura's overseas investments are doing fine, as were some other real estate funds paying much lower returns.

Georgia in particular was devastated, having lost her life savings, and a week later died of a heart attack. Her sister, Lorna Green, who lived in Houston, Texas (Eastern District of Texas), was appointed the administrator of her estate. Lorna and Rachel decided to sue Ricky Fixer and Futura, Inc.

(1) [35 points] Assume plaintiffs Rachel Black and Lorna Green, as administrator for the estate of Georgia Green, filed suit in the Texas state court in Dallas, against Ricky Fixer and Futura, Inc. Their suit alleges a series of state law claims based on fraud, breach of fiduciary relations, and other tort claims. [Do not discuss which state's law applies here. That will be determined later.] The defendants remove the case to federal court.

[a] Plaintiffs move to remand the case to the Texas state court arguing that removal was improper. Discuss fully.

[b] Defendant Fixer moves to dismiss the case against him for lack of personal jurisdiction. Futura makes no such motion. Since the issue of personal jurisdiction will need to be resolved in EITHER the federal court, if the case remains there, OR in the state court if it is remanded, discuss fully.

[c] Assume the case is properly in federal court. (1) What is the rule governing the venue to which the state court case will be removed? What venue would that be in this case? (2) If defendants wanted to transfer the venue, what rules govern? How would they apply in a request to transfer this case to the Eastern District of New York? the District of Connecticut?

(2) [25 points] Instead of the assumptions of number (1) of this essay question, assume instead that the plaintiffs file the case against Ricky Fixer and Futura, Inc., in the federal court in the Southern District of New York. The suit is based on the same state law claims discussed in number (1) of this essay question, AND on a new federal law, The Investor Protection Act (IPA), which creates a federal claim for certain investors against a business that intentionally misrepresents its financial status to the investor. Whether plaintiffs are "investors" within the meaning of the IPA is unsettled law.

Ricky Fixer then cross-claims against its co-defendant, Futura, on two grounds. **First**, he brings fraud claims, based solely on state law, for his own real estate investment losses with Futura. **Second**, he alleges that if he, as a financial consultant, is found liable to plaintiffs, Futura should indemnify him for all damages. This claim against Futura is also based solely on state law. Analyze federal court subject matter jurisdiction issues regarding (a) plaintiffs' federal law claim under the IPA, and (b) all Fixer's claims.

Futura moves to dismiss the federal law claims under the IPA for lack of subject matter jurisdiction. After arguments, the court rules that Green and Black are not "investors" within the meaning of the Investor Protection Act, and therefore all the IPA federal claims are dismissed. On the advice of their attorneys, Fixer and Futura settle the plaintiffs' state claims. This leaves only Fixer's state law claims against Futura remaining in the federal court. (c) Discuss the status of these Fixer's claims against Futura.