

Don't Put Too Much on Your Plate: Practical Advice for Thanksgiving (and Drafting a Complaint)

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It's that time of year again when we Americans stop and give thanks for all that has been provided to us by gathering with friends and family to gorge ourselves on food. The traditional Thanksgiving meal, at least where I am from, always includes certain core dishes: turkey, dressing, sweet potato casserole, and cranberry sauce. These staples are what Thanksgiving is all about, but there's always more: glazed ham, macaroni and cheese, green bean casserole, deviled eggs, and fruit salad. The temptation to have some of everything is irresistible. The result is often an overloaded plate that contains more food than you could possibly eat in one sitting. Instead of focusing on and enjoying the staple dishes you only get once a year, you fill up on the other stuff that isn't really that good or special.

The same thing happens in construction lawsuits. The core claim is usually for breach of contract. Instead of focusing on the core contractual claims, lawyers spend needless time and energy—devising and drafting and editing and alleging and developing and researching and prepping witnesses and defending—other claims that are not the main course. This can include other contract-*ish* claims like *quantum meruit* or breach of implied warranty, but it can also include tort claims: negligence, fraud, tortious interference, etc. Much like the buffet line on Thanksgiving, the temptation to load up your complaint with every claim imaginable is hard to resist.

Good lawyers give into this temptation all the time. Good lawyers also get to see their non-core claims poured out like leftover stuffing, as was the case last week in [*Bamboo 400 S. 18th St. LLC v. Centimark Corp.*](#), 2024 WL 4817269 (E.D. Mo). *Bamboo* involves a dispute over a leaky roof that allegedly failed less than two years into its 20-year warranty and service life. The owner filed suit seeking to recover not only for breach of contract and breach of express warranty but also for breach of implied warranty, negligence, negligent misrepresentation, and fraud. The contractor moved to dismiss all claims. While some of those non-core claims did manage to survive, others did not. This includes the claims for negligent misrepresentation and fraud that the court ruled were legally defective or not adequately pled. The result was time spent on claims that may have been better spent elsewhere.

There may be good reasons to include other claims in your complaint. For example, you may need to plead certain claims to trigger insurance coverage. The applicable jurisdiction may provide a statutory remedy that needs to be pled. You may be concerned about statute of limitations defenses to some claims that do not apply to others. Other claims may entitle your client to punitive, treble, or other levels of enhanced damages. If such is the case, one should, by all means, include claims other than your core claim. Still, one should give careful consideration to each and every claim to determine whether it is really worth the time and effort to include them all. You may just be better served saving your appetite for turkey and dressing.

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