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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

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Ex parte Advanced Disposal Services South, LLC; Advanced Disposal Services Alabama Holdings, LLC; Advanced Disposal Services, Inc.; Tallassee Waste Disposal Center, Inc.; and Stone's Throw Landfill, LLC

PETITION FOR WRIT OF MANDAMUS

(In re: Jerry Tarver, Sr.

v.

Advanced Disposal Services South, LLC, et al.)

(Macon Circuit Court, CV-17-900076)

BRYAN, Justice.

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Advanced Disposal Services South, LLC, Advanced Disposal Services Alabama Holdings, LLC, Advanced Disposal Services, Inc., Tallassee Waste Disposal Center, Inc., and Stone's Throw Landfill, LLC (hereinafter referred to collectively as "Advanced Disposal"),¹ petition this Court for a writ of mandamus ordering the Macon Circuit Court ("the trial court") to dismiss, pursuant to Rule 19(b), Ala. R. Civ. P., the action filed by Jerry Tarver, Sr., because, they say, the action cannot proceed in the absence of the City of Tallassee ("the City") as a party. We deny the petition.

Factual and Procedural Background

This is the second time these parties have appeared before this Court. In Ex parte Advanced Disposal Services South, LLC, 280 So. 3d 356 (Ala. 2018), Advanced Disposal sought a writ of mandamus based on the trial court's refusal to dismiss Tarver's action against Advanced Disposal on the ground that Tarver failed to join the City as a necessary and indispensable party pursuant to Rule 19, Ala. R. Civ. P. We

¹The materials before us on this petition for a writ of mandamus do not differentiate among these various entities or describe their respective roles, grouping them all together as "Advanced Disposal." We have done the same.

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summarized the allegations of fact in Tarver's original complaint and the pertinent procedural history as follows:

"The City owns and operates a sewer and stabilization pond ('the stabilization pond'), which, as of July 1, 2016, accepted and treated waste from 1,782 residential customers and 18 commercial customers. Advanced Disposal entered into an 'Agreement for Acceptance and Treatment of Leachate' with the City ('the agreement') in which the City agreed to accept and treat, for a fee, leachate from Advanced Disposal's landfill. The agreement defines leachate as 'any liquid, including any soluble, suspended or miscible components in the liquid, that has percolated through or emerged at the Landfill from solid waste other than construction/demolition waste and/or rubbish.' The agreement also states that '[t]itle to and risk of loss with respect to the leachate shall pass from [Advanced Disposal] to [the] City at such time as the leachate is delivered to the City's facility and accepted by the City.' Finally, the agreement includes indemnity clauses indemnifying both Advanced Disposal and the City. Specifically, the agreement provides that Advanced Disposal must 'defend, indemnify and hold the City harmless from any and all liens, claims, judgments, liability, causes of action of any type or nature, whether in contract or in tort and whether legal or equitable ... arising from, related to and/or concerning the execution of this Agreement.' The City agreed to indemnify Advanced Disposal only where the damage alleged is 'caused by the negligent acts of the City during the term of this Agreement or any misrepresentation by the City or breach of this Agreement.'

"After the City accepts title to the leachate, it treats the leachate with chlorine at its stabilization pond. The City then discharges the effluent into the Tallapoosa River ('the river') pursuant to a National Pollutant Discharge

Elimination System Permit ('the NPDES permit'). The effluent mixes with the river water, which flows several miles downstream to the intake point for the Utilities Board of Tuskegee ('the utilities board'), which treats the river water with chlorine and uses other methods to prepare the water for consumption by its consumers, including the plaintiff, Jerry Tarver, Sr.

"In May 2017, Tarver sued Advanced Disposal, the utilities board, and fictitiously named defendants in the Macon Circuit Court, seeking monetary damages as well as injunctive relief for exposure to allegedly contaminated water that had been illegally 'discharged' into the river and ultimately sold by the utilities board for consumption by its customers. The gist of the action can be gathered from the 'overview' portion of the complaint, which states, in relevant part:

"'2. As a result of the negligent, unauthorized, unpermitted, and illegal discharging of waste products and hazardous chemicals and compounds into the Tallapoosa River, the water treatment facilities in Tuskegee and Macon County have been providing polluted water to [Tarver] for drinking, cooking, bathing, and ... everyday use. Instead of properly treating the water from the Tallapoosa River, the water treatment facilities made the condition of the water worse.'

"(Emphasis added.) According to the complaint, both the City and the utilities board use chlorine to treat the leachate and the river water, respectively, and, when the chlorine interacts with leachate or polluted river water, it produces a number of harmful chemicals referred to as by-products with known short-term and long-term health effects -- the most prevalent of those by-products being haloacetic acids ('HAAs') and total trihalomethanes ('TTHMs'). As for Advanced

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Disposal, the complaint alleges that Advanced Disposal unlawfully discharges its leachate into the City's stabilization pond, knowing that the leachate cannot be properly treated before the resulting effluent is discharged into the river. Tarver also alleges that Advanced Disposal discharges 'pollutants' into various creeks and tributaries flowing into the river in violation of its storm-water discharge permit."

280 So. 3d at 358-59.

Advanced Disposal moved the trial court to dismiss the action pursuant to Rule 12(b)(7), Ala. R. Civ. P., arguing that the City was a necessary and indispensable party pursuant to Rule 19. The trial court denied the motion, and Advanced Disposal sought mandamus review of that decision. After recognizing that "'Rule 19 ... provides a two-step process for the trial court to follow in determining whether a party is necessary or indispensable,'" Advanced Disposal, 280 So. 3d at 360 (quoting Holland v. City of Alabaster, 566 So. 2d 224, 226 (Ala. 1990)), we first considered whether the City was a necessary party under Rule 19(a), Ala. R. Civ. P. -- the first step in the two-step process, which requires consideration of whether the absent party is a party "who should be joined if feasible." 280 So. 3d at 361. A majority of this Court agreed that the City was a necessary party under Rule 19(a). First, based on Tarver's request for an "injunction 'precluding the

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Defendants from further destruction of the [river] and [Tarver's] water supply,'" the Court held that "the City is a necessary party under Rule 19(a)(1) because, in its absence, Tarver cannot be accorded complete relief." 280 So. 3d at 362. The Court reasoned that, because the leachate constituted only a small portion of the total amount of waste treated in the stabilization pond, "enjoining the delivery of leachate to the pond will have little, if any, impact upon the nature or volume of the effluent the City ultimately discharges into the river." Id. Additionally, the Court

"further conclude[d] that the City is a necessary party under Rule 19(a)(2)[, Ala. R. Civ. P.,] because, the City, by entering into the agreement pursuant to which it takes title to the leachate and treats the leachate, has a legally protected interest relating to the subject matter of this case that will be affected by the outcome of Tarver's claims. See Liberty National Life Ins. Co. v. University of Alabama Health Servs. Found., P.C., 881 So. 2d 1013, 1023 (Ala. 2003) (noting that this Court has recognized that 'an interest created by a contract is a legally protected interest'). Accordingly, the City is included within those 'persons to be joined if feasible' under Rule 19(a)."

280 So. 3d at 363.

However, we did not determine whether joinder of the City, which is located in Elmore County, was feasible, nor did we apply the second step of the two-step process provided for

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by Rule 19. Specifically, we did not consider whether, if joinder of the City was not feasible, "in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the [City] being thus regarded as indispensable." Rule 19(b), Ala. R. Civ. P. We stated:

"[W]e cannot determine at this juncture whether [the City's] joinder is feasible, insofar as the City, once joined, might object to venue in Macon County. Accordingly, we issue the writ of mandamus and direct the trial court to join the City as a necessary party under Rule 19(a). If the City, once joined, objects to venue, Rule 19(a) requires the trial court to dismiss it from the action and then proceed under Rule 19(b) to determine, in accordance with the stated factors, 'whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the [City] being thus regarded as indispensable.'"

280 So. 3d at 363 (footnote omitted).

We issued an opinion denying Tarver's application for rehearing on December 14, 2018; while addressing several of Tarver's objections to the decision on original submission, the Court also reiterated that it "made no determination whether joinder would be feasible or whether the City was an indispensable party." 280 So. 3d at 366 (opinion on application for rehearing).

Proceedings in the Trial Court Following Advanced Disposal

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Following our decision in Advanced Disposal, the trial court entered an order joining the City as a necessary party to Tarver's action against Advanced Disposal. The City filed an objection to venue in Macon County and asked the trial court to dismiss the City from the action or, in the alternative, to transfer the action to Elmore County. In light of the City's objection to venue in Macon County, which objection all parties agreed was valid, Advanced Disposal filed a motion to declare the City an indispensable party and to dismiss the action pursuant to Rule 19(b) or, in the alternative, to transfer the action to Elmore County. The Utilities Board of Tuskegee ("the utilities board") joined Advanced Disposal's motion to dismiss or, alternatively, for a change of venue.

After the motions to dismiss were filed, Tarver filed a second amended complaint and a response to the pending motions.² Tarver's second amended complaint did not name the City as a party, despite this Court's decision in Advanced Disposal and the trial court's order joining the City as a

²Tarver's first amended complaint was filed on July 27, 2018, while Advanced Disposal's first petition for a writ of mandamus was pending in this Court.

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necessary party. In the second amended complaint, Tarver modified his allegations of fact, the claims he asserted, and the injunctive relief he sought against the defendants -- Advanced Disposal, the utilities board, and Macon County Water Authority ("MCWA")³ (hereinafter referred to collectively as "the defendants"). In relevant part, Tarver alleged that he had "consumed, or otherwise has been exposed to, water contaminated with carcinogens that have ... been released or discharged into the Tallapoosa River, which is the source of the water ultimately consumed by and affecting" him; that "the contamination of the Tallapoosa River complained of in this complaint is a result of the wrongful release and discharging by [Advanced Disposal] of industrial waste leachate generated by Stone's Throw landfill"; that the "[i]ndustrial leachate generated by [Advanced Disposal] is very different from the other waste and wastewater received by the Tallassee Sewer and Stabilization Pond [(referred to hereinafter as 'the City's stabilization pond')]; that [Advanced Disposal]'s industrial

³It appears that MCWA was first added as a defendant in this action in Tarver's first amended complaint, filed on July 27, 2018. Like the utilities board, MCWA treats water from the Tallapoosa River, after the water is first treated and discharged by the City, and then sells that water to consumers in Macon County.

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leachate contains "hazardous substances not present in the 'municipal waste deposited into the City's [stabilization] pond by its other customers"; that Advanced Disposal "has discharged into the City's [stabilization] pond leachate in such quantities and of such quality, including both concentration and constituents, incompatible with the known technology of the [City's stabilization] pond"; that Advanced Disposal knew that the City's stabilization pond was "incapable of treating or filtering [Advanced Disposal]'s leachate"; that Advanced Disposal "is the only source of leachate discharged into the City's [stabilization] pond"; that Advanced Disposal's "leachate, even as a small percentage of the total inflow into the City's [stabilization] pond, results in a pass through of known carcinogens into the Tallapoosa River"; that, "[d]ue to the concentration of [Advanced Disposal]'s leachate and the constituents contained therein, the only practical and viable way to prevent future contamination of the Tallapoosa River is to require [Advanced Disposal] to modify by pretreatment or otherwise the leachate it draws from its landfill." Petition, Exhibit D, at 2-4.

Tarver sought an injunction "requiring defendants to cease and desist any further pollution of [Tarver's] water

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supply, and to remove their chemicals and toxins from the water supply of [Tarver]." Specifically, Tarver sought, "[a]mong other things, ... an injunction requir[ing] [Advanced Disposal], by pretreatment or otherwise, to remedy the excessive quantities and hazardous quality of the leachate generated by its Stone's Throw landfill." Tarver included in his second amended complaint what appears to be a statement of his "reasons for nonjoinder" of the City pursuant to Rule 19(c), Ala. R. Civ. P.,⁴ stating:

"[Tarver] believes and alleges that the ... defendants named herein are responsible for the wrongs alleged, and that the City ... has done what it can to cope with the problems caused by [Advanced Disposal]'s dumping of its leachate into the City's [stabilization] pond. ... Tarver believes that [Advanced Disposal] and the other named defendants are the only parties who can remedy the wrongs alleged. ... Tarver therefore makes no claims against the City."

In his response to the motions to dismiss for failure to join an indispensable party, Tarver argued that the allegations in his second amended complaint should be considered for purposes of determining whether the City was an

⁴Rule 19(c) provides: "Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined."

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indispensable party under Rule 19(b) and that, since filing his original complaint, he had had the opportunity to conduct additional discovery and investigation, which allegedly confirmed that, "although [Advanced Disposal]'s leachate is indeed only a small percentage of the total volume of the [City's stabilization] pond's influent, it is responsible for 100% of the outgoing carcinogenic contaminants that pollute the Tallapoosa River." Thus, Tarver said, he amended his complaint to "clarify"

"(1) that the evidence is now clear that it is the quantity, composition and concentration of industrial leachate being dumped into the City's [stabilization] pond, and not any other waste from any other source, that is responsible for the contamination of the Tallapoosa River and ... Tarver's injuries; (2) that the evidence is now clear that the only source of leachate is [Advanced Disposal]; (3) that the only viable remedy for the contamination of the Tallapoosa River is for [Advanced Disposal] ... (by pretreatment or otherwise) to limit the quantity, composition and concentration of the leachate it generates for hauling to the City's [stabilization] pond, and (4) that ... Tarver seeks no relief as to any other portion of the City's [stabilization] pond's influent or effluent ... and therefore makes no claims against the City."

The trial court conducted a hearing on the pending motions on September 17, 2019. On October 8, 2019, the trial court entered an order (1) dismissing the City from the action

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based on improper venue as to the City; (2) denying Advanced Disposal's motion to dismiss Tarver's action, finding that the City was not an indispensable party under Rule 19(b); and (3) denying Advanced Disposal's request for alternative relief, holding that Tarver's action would proceed in the trial court. Advanced Disposal timely petitioned this Court for a writ of mandamus.

Standard of Review

It is well settled that a writ of mandamus is an extraordinary remedy and that it is due to be issued only when the party petitioning for the writ has demonstrated

"a clear legal right to the order sought, an imperative duty upon the respondent to perform, accompanied by a refusal to do so, a lack of another adequate remedy, and a proper invocation of the jurisdiction of the court. Martin v. Loeb & Company, Inc., 349 So. 2d 9, 10 (Ala. 1977). Mandamus is not a substitute for appeal. State v. Cannon, 369 So. 2d 32, 33 (Ala. 1979)."

Ross v. Luton, 456 So. 2d 249, 254 (Ala. 1984).

In determining whether Advanced Disposal has demonstrated a clear legal right to the relief it seeks -- an order determining that the City is an indispensable party to Tarver's action -- Advanced Disposal must demonstrate that the trial court exceeded its discretion in concluding that the

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City was not an indispensable party and that the action could proceed "in equity and good conscience" without the City. See Melton v. Harbor Pointe, LLC, 57 So. 3d 695, 700 (Ala. 2010). "There is no prescribed formula to be mechanically applied in every case to determine whether a party is an indispensable party or merely a proper or necessary one. This is a question to be decided in the context of the particular case." J.R. McClenney & Son, Inc. v. Reimer, 435 So. 2d 50, 52 (Ala. 1983) (citing Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102 (1968)).

Analysis

In Advanced Disposal, supra, a majority of this Court held that the City was a necessary party under Rule 19(a); although that determination was made based primarily on the allegations in Tarver's original complaint, and although Tarver's original complaint has been superseded and replaced by Tarver's second amended complaint,⁵ we will assume, as the

⁵"An amended complaint supersedes the previously filed complaint and becomes the operative pleading, unless it subsequently is modified." Ex parte Puccio, 923 So. 2d 1069, 1072 (Ala. 2005) (citing Grayson v. Hanson, 843 So. 2d 146 (Ala. 2002)). Advanced Disposal does not argue, and does not cite any authority indicating, that the trial court could not consider the allegations in Tarver's second amended complaint in determining whether the City is an indispensable party

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trial court appears to have done below, that the City is still a necessary party to this action under Rule 19(a).

"If the court determines that the absentee is a person who should be joined under Rule 19(a), '[r]ule 19(b) sets forth four factors to consider in determining whether an action should proceed in the absence of such a person.'" Ross, 456 So. 2d at 256 (quoting Mead Corp. v. City of Birmingham, 350 So. 2d 419, 421 (Ala. 1977)). Rule 19(b) provides:

"(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, 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."

Advanced Disposal argues that, despite Tarver's best effort to diminish the City's role in the underlying dispute,

pursuant to Rule 19(b).

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it is still undisputed that Advanced Disposal delivers its leachate to the City's stabilization pond where the leachate is treated and "chemically altered" before it is discharged into the Tallapoosa River ("the river") where it is then collected and treated again by the utilities board and MCWA and sold to individuals in Macon County, such as Tarver. Advanced Disposal further argues that, because the City's National Pollutant Discharge Elimination System Permit ("the NPDES permit") dictates the quality and quantity of effluent it can discharge into the river, the City is "directly in the center of the case [and is] the proximate cause of any alleged pollutant discharged into the river." Petition at 15. Advanced Disposal contends that each of the Rule 19(b) factors demonstrates that the City is an indispensable party to Tarver's action against Advanced Disposal and that the action cannot, in equity and good conscience, proceed without the City. We consider each Rule 19(b) factor in turn.

1. Prejudice

As to the first Rule 19(b) factor, which considers the extent to which a judgment rendered in the City's absence would be prejudicial to the City or to those already parties, Advanced Disposal contends that "both [it] and the City face

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significant risk of prejudice by allowing this case to proceed without the City." Petition at 21-22. Advanced Disposal contends that it will be prejudiced in the City's absence because, given that the City takes "title, risk of loss, and dominion" of the leachate once Advanced Disposal delivers the leachate to the City's stabilization pond, it "exposes Advanced Disposal to the risk of being found responsible for the ownership, treatment, and discharge of a waste stream that it does not own, treat, or discharge." Petition at 18. Advanced Disposal cites Whyham v. Piper Aircraft Corp., 96 F.R.D. 557 (M.D. Pa. 1982), in support of its position.

In Whyham, the plaintiff sued the defendant, a Pennsylvania company that designed and manufactured an aircraft, asserting strict-liability claims after an aircraft manufactured by the defendant crashed off the coast of Scotland. The defendant moved to dismiss the action based on the plaintiff's failure to join as indispensable parties a Scottish company that owned the aircraft at the time of the crash and another Scottish company that had maintained and inspected the aircraft. The United States District Court for the Middle District of Pennsylvania found that the Scottish companies were necessary parties, that the absent Scottish

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companies could not be joined to the action, and that the Scottish companies were indispensable parties under Rule 19, Fed. R. Civ. P., which is nearly identical to Alabama's Rule 19.⁶

Regarding the application of Rule 19(b), the Whyham court found that both the defendant and the Scottish companies would be prejudiced by the Scottish companies' absence from the litigation. Specifically with regard to the defendant, the court found that "a judgment entered absent [the Scottish companies'] presence subjects Defendant to being judged solely responsible for a liability it possibly shares"; that the defendant could not adequately present its defense in the absence of the Scottish companies; and that the defendant would be required to file a second action for indemnity or contribution against the Scottish companies if the defendant

⁶See Committee Comments to Rule 19, Ala. R. Civ. P. (noting that Alabama's Rule 19 "is identical to Federal Rule 19 except for elimination of language dealing with problems related to service of process and subject matter jurisdiction with which we are not concerned in state practice"). "We note that federal decisions construing the Federal Rules of Civil Procedure are persuasive authority in construing the Alabama Rules of Civil Procedure because the Alabama Rules were patterned after the Federal Rules." Ex parte Novus Utils., Inc., 85 So. 3d 988, 996 (Ala. 2011) (citing Borders v. City of Huntsville, 875 So. 2d 1168 (Ala. 2003)).

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was found liable, which would subject the defendant to "unnecessary waste of time, efforts, and costs of a second proceeding." Whyham, 96 F.R.D. at 562.

Although parts of Whyham have been discredited, see, e.g., Angst v. Royal Maccabees Life Ins. Co., 77 F.3d 701, 705 (3d Cir. 1996), and Incubadora Mexicana, SA de CV v. Zoetis, Inc., 310 F.R.D. 166, 171 (E.D. Pa. 2015), Whyham does raise important considerations for evaluating Rule 19(b) criteria. In Provident Tradesmens, supra, the United States Supreme Court held that "Rule 19(b) suggests four 'interests' that must be examined in each case to determine whether, in equity and good conscience, the court should proceed without a party whose absence from the litigation is compelled." 390 U.S. at 109. One of the "interests" is that "the defendant may properly wish to avoid multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another." 390 U.S. at 110. Although Advanced Disposal's interest in avoiding multiple litigation, inconsistent relief, and sole responsibility for liability it potentially shares with the City must be properly considered, we find Whyham's application limited in light of decisions by the United States Supreme Court and the United States Courts of Appeals.

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In Temple v. Synthes Corp., 498 U.S. 5, 7 (1990), the United States Supreme Court unequivocally held that it was error for a lower court to label a joint tortfeasor an indispensable party under Rule 19(b) based solely on considerations of judicial economy and protecting the defendant from the prejudice of multiple litigation. The Court acknowledged the interest in limiting multiple litigation, but it also noted that "[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." 498 U.S. at 7. Additionally, to the extent that Advanced Disposal argues that "[t]he risk in this case is not that Advanced Disposal will shoulder a liability it 'possibly shares' with the City, but that it will face a liability it simply doesn't have at all," Petition at 20, we are unpersuaded by this claim of "prejudice." Although we agree that, from a tactical standpoint, Advanced Disposal's interests might be better served if the City, as a potential joint tortfeasor, were present in the action, if Advanced Disposal finds itself facing a liability it purportedly does not have at all, it would be because of a failure of its defense, not the absence of the City from the litigation. Advanced Disposal has not

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demonstrated how the City's absence will hinder its ability to present its defense, which appears to be that the City itself is responsible for Tarver's injuries; Advanced Disposal has posited no argument as to why it will be unable to cast the blame entirely on the City if the City is not present in the action.

Additionally, although Advanced Disposal generally contends that the absence of the City "virtually guarantees multiple litigation and potentially inconsistent relief," it makes no effort to expound on that proposition. To the extent Advanced Disposal is referring to a potential action for indemnity against the City should it be found liable to Tarver, it is widely accepted that "potential indemnitors have never been considered indispensable parties, or even parties whose joinder is required if feasible." Pasco Int'l (London) Ltd. v. Stenograph Corp., 637 F.2d 496, 503 (7th Cir. 1980) (citing 3A Moore's Federal Practice § 19.07-1(2.-2), at n.32 (2d ed. 1979)).

Further, to the extent Advanced Disposal argues that it will be prejudiced by the City's absence because it could be found "responsible for the ownership, treatment, and discharge of a waste stream that it does not own, treat, or discharge,"

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Petition at 18, Tarver seeks damages from Advanced Disposal based on its knowing delivery of leachate to the City in quantities and quality that Advanced Disposal allegedly knew the City's stabilization pond could not properly treat and an injunction requiring Advanced Disposal to pretreat its leachate or to otherwise deliver the leachate to the City in a form that the City's stabilization pond could properly treat; these requests for relief look to remedy Advanced Disposal's actions before "title" of the leachate passes to the City.

Advanced Disposal also contends that the City will be prejudiced by the City's absence in the underlying action because, it says, the City's property -- i.e., the leachate -- and its contractual rights will be "implicated." Petition at 20. It argues that "Alabama courts have time and again held that parties claiming an interest in an action must be joined." Petition at 21. Our consideration of prejudice to the City under the first factor of Rule 19(b) is closely related to our conclusion in Advanced Disposal, supra, that the City was a necessary party under Rule 19(a) (2) because the City "has a legally protected interest relating to the subject matter of this case that will be affected by the outcome of

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Tarver's claims." 280 So. 3d at 363. Although the interests at stake are similar, and we see no need to revisit our conclusion in Advanced Disposal, our conclusion that the City has a legally protected interest in the subject matter of this case is not conclusive as to the question presented at this stage of the proceeding: Would the absence of the City from this action so prejudice its legally protected interest that, in equity and good conscience, this action simply cannot proceed without the City? Because a dismissal of Tarver's action is at stake, Rule 19(b) requires a closer examination of exactly what "interest" of the City is at stake and whether the interest is so jeopardized by the City's absence that this action cannot proceed in the City's absence. See 7 Charles Alan Wright et al., Federal Practice and Procedure § 1604 (4th ed. 2019) ("Although there is significant coincidence between the two provisions, it is important to note that the protection against prejudice accorded by Rule 19(a) is not the same as that provided by Rule 19(b). The two provisions have different purposes. Rule 19(a) reflects an affirmative policy of bringing all interested persons before the court, whereas the object of Rule 19(b) is to determine whether it is

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possible to go forward with an action despite the nonjoinder of someone whose presence is desirable but not feasible.").

However, in its petition, Advanced Disposal does not attempt to define the precise interest at stake or the ramifications for the City if it remains absent from this action in light of the particular allegations in Tarver's second amended complaint and the particular relief he seeks. The cases Advanced Disposal cites to support its argument that any party with an "interest" in litigation is indispensable to the action are distinguishable from the present case. For example, Albritton v. Dawkins, 19 So. 3d 241 (Ala. Civ. App. 2009), concerned a dispute over the plaintiffs' rights to a piece of real property, but the plaintiffs did not join in the action each individual who owned an interest in the real property; thus, because a determination of the issue presented to the trial court would impact the ownership interest of several absent parties, the Court of Civil Appeals held that those parties were "necessary and indispensable" to the action. Clearly, the present case is distinguishable because Tarver is not attempting to "jeopardize" or otherwise impact the City's "ownership interest" in the leachate.

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Regarding the City's contract rights that will be "implicated," Advanced Disposal relies on the mere existence of a contract between Advanced Disposal and the City in which the City agreed to accept and treat the leachate for a fee. Although Advanced Disposal satisfied this Court that the existence of that contract was sufficient to require the City's joinder if feasible, it has not met its burden of demonstrating that the rights of the City will be so unfairly prejudiced in its absence that, in equity and good conscience, this action cannot proceed without the City as a participant. Again, we find the cases Advanced Disposal cites to support its argument distinguishable. For example, Advanced Disposal cites Lomayaktewa v. Hathaway, 520 F.2d 1324, 1325 (9th Cir. 1975), for the proposition that "[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable." (Emphasis added.) We agree with that statement of law, but it is clearly inapplicable in this case because, unlike the circumstances in Lomayaktewa, Tarver, the plaintiff, is not attempting to set aside a contract between Advanced Disposal, the defendant, and an absent party, the

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City. See also National Union Fire Ins. Co. of Pittsburgh v. Rite Aid of South Carolina, Inc., 210 F.3d 246, 252 (4th Cir. 2000) (holding, in an action to determine an insurer's obligation to its insured, a subsidiary, under the terms of an insurance policy that was negotiated and entered into by the subsidiary's parent company and in which the parent company's conduct was at issue, that the parent company was an indispensable party to the action and stating that a "'contracting party is the paradigm of an indispensable party'" (quoting Travelers Indem. Co. v. Household Int'l, Inc., 775 F. Supp. 518, 527 (D. Conn. 1991))); and County Sanitation Dist. No. 2 of Los Angeles Cnty. v. Inland Container Corp., 803 F.2d 1074, 1075-76, 1078 (9th Cir. 1986) (holding, in an action to enjoin the defendant from acting in a manner inconsistent with the terms of a contract between the plaintiff and an absent party, which the absent party allegedly breached for the benefit of the defendant, that the absent party was indispensable). In both Rite Aid and Inland Container, the terms of the contract and the absent parties' obligations under the contract were at the center of the disputes.

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Advanced Disposal's bare assertion that the City would be prejudiced because its contract rights were implicated is insufficient to demonstrate that prejudice exists to the extent that it should weigh in favor of the dismissal of Tarver's action in the absence of the City. Even if we assume that the leachate had value and that the City's obtainment of title over the leachate was an interest the City wanted to protect, Tarver's request for relief from Advanced Disposal would not have an affect on the City's "interest" in the leachate. Tarver is not seeking to "deprive" the City of its interest in the leachate or to stop Advanced Disposal's delivery of leachate to the City; he is simply asking the trial court to order Advanced Disposal to pretreat the leachate before it is delivered to the City -- and, thus, before the City gains title to the leachate or any "rights" to it under the contract -- so that the City's stabilization pond can adequately treat the leachate before it is released into the river. At this juncture, there is nothing indicating that Tarver's requested injunction would affect the City's right to receive, or be paid for, the leachate.

Finally, we must give some weight to the City's failure to participate in the action when given the opportunity to do

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so. The City's decision not to participate weighs in favor of a conclusion that the City itself does not believe its absence from the proceeding would result in any prejudice to it. Cf. Dainippon Screen Mfg. Co. v. CFMT, Inc., 142 F.3d 1266, 1272 (Fed. Cir. 1998) ("Moreover, to the extent it would be prejudiced if the suit were to proceed in its absence, [the absent party] may intervene in the suit, and this 'opportunity to intervene may be considered in calculating [any] prejudicial effect.' Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d 815, 820 n.5 (9th Cir. 1985).").

Accordingly, considering the possibility of prejudice to both Advanced Disposal and the City, we cannot conclude that the potential for prejudice is so great or so certain that it weighs in favor of a finding that the action cannot proceed, in equity and good conscience, without the City.

2. Potential to Lessen Prejudice

The second Rule 19(b) factor requires consideration of "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." Advanced Disposal argues that it is "unaware of any protective measures by which 'prejudice can be lessened or avoided' in the City's absence"

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and that, therefore, the second Rule 19(b) factor weighs in favor of finding that the City is indispensable. See Republic of Philippines v. Pimentel, 553 U.S. 851, 865, 869, 870 (2008) (after finding the existence of "substantial prejudice" to the absent parties "if the action were to proceed in their absence," the Court stated that "[n]o alternative remedies or forms of relief have been proposed to us or appear to be available" and concluded that this factor weighed in favor of finding the absent parties indispensable under Rule 19(b)). Tarver, on the other hand, argues that, because there is no risk of prejudice to either Advanced Disposal or the City, there is no need for the Court to consider methods to lessen or avoid prejudice if the action were allowed to proceed in the City's absence.

However, because of the polarity of the parties' positions, they have overlooked some middle ground. As noted above, avoiding multiple litigation and being held responsible for a liability it potentially shares with the City are valid concerns on Advanced Disposal's part. However, the United States Courts of Appeals have held that impleader under Rule 14, Fed. R. Civ. P., provides an option to a defendant to lessen or avoid any potential for prejudice by a party's

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absence from a proceeding. For example, in Pasco, supra, the United States Court of Appeals for the Seventh Circuit considered whether an absent party, Croxford, who was the agent of the defendant, Stenograph, and a potential coconspirator of Stenograph's, was an indispensable party to the plaintiff's action against Stenograph alleging breach of contract and tort claims. In discussing the potential prejudice to Stenograph, the defendant, in the absence of Croxford, its agent, as a party to the action, the court stated:

"Quite apart from any prejudice to Croxford, Stenograph argues that it will be prejudiced in two ways by Croxford's absence from this suit. The first alleged source of prejudice concerns the possibility of an inconsistent result in any later litigation between Stenograph and Croxford. If Stenograph is found liable here, it may wish to assert a claim for contribution or indemnity against Croxford. But, potential indemnitors have never been considered indispensable parties, or even parties whose joinder is required if feasible. 3A Moore's Federal Practice P 19.07-1(2.-2), at n.32 (2d ed. 1979). The same situation as to indispensability and joinder applies to joint tort-feasors subject to a possible right of contribution. Id., at n.45. Since the liability of potential indemnitors or joint tort-feasors is 'several,' one of a number of joint tort-feasors or a tort-feasor with a potential indemnitor may be sued alone.

"The defendant, while he may be entitled to contribution or indemnity, cannot be subjected to double or multiple

obligations since his liability is several for the entire amount, and though a verdict against him in a later suit for contribution after a verdict against him in the tort suit may be logically inconsistent, it does not subject him to inconsistent obligations.... To dismiss the action on the ground that the absent person is indispensable ... would be to deny a principle (sic) aspect of several liability.'

"Id. Stenograph can always protect itself from the possibility of inconsistent verdicts by impleading Croxford under Rule 14 as a person 'who is or may be liable to (Stenograph) for all or a part of the plaintiff's claim.' Fed. R. Civ. P. 14(a). Contrary to defendant's assertion, this does not use Rule 14 to thwart Rule 19. Rather, the existence of the Rule 14 provisions demonstrates that parties such as Croxford who may be impleaded under Rule 14 are not indispensable parties within Rule 19(b). If persons subject to rights of indemnity or contribution were always indispensable parties, there would not be a need for the impleader provisions of Rule 14. See Willis v. Semmes, Bowen & Semmes, 441 F. Supp. 1235, 1246 (E.D. Va. 1972); 3A Moore's Federal Practice P 19.07-1(2.-2), at 19-145 (2d ed. 1979).

"The second factor under Rule 19(b) provides independent support for this conclusion. This factor requires that the district court evaluate

"'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'

"Fed. R. Civ. P. 19(b). The Advisory Committee's Note which was appended when Rule 19 was amended in 1966 indicates that the phrase 'other measures' includes measures open to the defendant to avoid any prejudice. 39 F.R.D. 88, 92 (1966). The opportunity

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of defendants to implead Croxford under Rule 14 avoids any potential for prejudice to Stenograph from the possibility of inconsistent judgments."

Pasco Int'l, 637 F.2d at 503-04 (footnotes omitted; emphasis added).

The Court of Appeals in Pasco also applied the defendant's ability to implead the absent party as a third-party defendant under Rule 14 to conclude that the defendant would not be prejudiced by the potential unavailability of the absent party's testimony if he was not made a party. The Court of Appeals stated:

"This repeated application of Rule 14 to this case means that all persons subject to impleader by the defendant are not indispensable parties. This is, however, merely an extension of the settled doctrine that Rule 19(b) was not intended to require the joinder of persons subject to impleader under Rule 14 such as potential indemnitors. Advisory Committee's Note to Rule 19, 39 F.R.D. 88, 91 (1966)."

Pasco, 637 F.2d at 505 n.20.

Like Rule 14(a), Fed. R. Civ. P., Rule 14(a), Ala. R. Civ. P., provides a procedure for a defending party, referred to as the "third-party plaintiff," to bring an action against "a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Further, as to

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whether venue in Macon County would be proper if Advanced Disposal filed an impleader action against the City, Rule 82(c), Ala. R. Civ. P., provides: "Whenever an action has been commenced in a proper county, additional claims and parties may be joined, pursuant to Rule[] 14 ..., as ancillary thereto, without regard to whether that county would be a proper venue for an independent action on such claims or against such parties." Thus, it appears that Advanced Disposal could use third-party practice under the Alabama Rules of Civil Procedure as a method of reducing any prejudice it might be subject to by the possibility of multiple litigation or inconsistent relief.

Although a majority of this Court held in Advanced Disposal that the possibility of Advanced Disposal's impleader of the City under Rule 14 had no bearing on its analysis of whether the City was a party to be joined if feasible under Rule 19(a), see Advanced Disposal, 280 So. 3d at 359 n.2, we conclude that proper analysis of the Rule 19(b) factors requires consideration of whether Rule 14 can be used to lessen any potential prejudice to absent or present parties. See 7 Charles Alan Wright et al., Federal Practice and Procedure § 1608 (4th ed. 2019) (stating that "absent persons

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or those who already are parties should be encouraged to take steps to avoid the possibility of prejudice," that the use of impleader is one method for doing so, and concluding: "In short, the Rule 19(b) notion of equity and good conscience contemplates that the parties actually before the court are obliged to pursue any avenues for eliminating the threat of prejudice."). Accordingly, we conclude that the second factor weighs in favor of concluding that the City is not an indispensable party.

3. Adequate Judgment

The third Rule 19(b) factor requires consideration of whether "a judgment rendered in [the City's] absence will be adequate." Regarding this factor, the United States Supreme Court, in Provident Tradesmens, stated:

"[T]here remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies. We read [Rule 19(b)'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, will not be heard to complain about the sufficiency of the relief obtainable against them."

390 U.S. at 111. See also Republic of Philippines v. Pimentel, 553 U.S. 851, 870-71 (2008) (noting, where two absent foreign

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sovereigns asserted a right to certain assets that were the subject of an interpleader action, that the absent sovereigns would not be bound by a judgment in favor of the individuals who were awarded the assets and that, therefore, proceeding in the absence of the foreign sovereigns "would not further the public interest in settling the dispute as a whole"); and Northern Arapaho Tribe v. Harnsberger, 697 F.3d 1272, 1283 (10th Cir. 2012) (holding, in an action by a tribe to determine whether part of its reservation was "Indian country" and, thus, not subject to taxation by the state, that the action could not proceed in the absence of another tribe that was a "cotenant" on the same reservation because relief would not be adequate; a judgment without the "cotenant tribe" would not completely settle the underlying dispute regarding the state's power to tax the land at issue because the absent tribe could force the state to relitigate the issue in a separate action, which could lead to inconsistent results).

Advanced Disposal argues that "Tarver's entire action seeks redress for alleged pollution in his water supply, and he cannot obtain that relief without the City." Petition at 23. It contends that our conclusion regarding the application of Rule 19(a)(1) in Advanced Disposal -- that, in the absence

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of the City, "complete relief [could not] be accorded among those already parties" -- essentially answers this question. We disagree. Although Rule 19(a)(1) and the third factor of Rule 19(b) overlap to some degree, they are not identical. A majority of this Court in Advanced Disposal held that complete relief could not be accorded among those already parties because it appeared, from the facts available at that time, that Advanced Disposal's contribution of leachate to the City's stabilization pond was so minimal that Tarver's requested injunction would not have prevented the contamination of his water supply. However, at this stage of the proceeding, and considering the second amended complaint, we must consider whether the judgment will be adequate -- i.e., whether it will settle the underlying dispute.

Our review of the second amended complaint convinces us that Tarver can obtain adequate relief in the City's absence. The controversy involved in this action is the alleged pollution of Tarver's water supply. The allegations in Tarver's second amended complaint indicate that Advanced Disposal is the sole source of leachate in the City's stabilization pond and that Advanced Disposal's leachate is the only reason the City's stabilization pond releases harmful

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by-products into the river. Thus, if Tarver is awarded his requested injunction against Advanced Disposal so that Advanced Disposal is required to pretreat the leachate before it is delivered to the City, which, according to Tarver, would allow the City to effectively treat the leachate before it is released into the river, we fail to see how the injunction would not settle the controversy at issue -- i.e., prevent Tarver from being further supplied allegedly polluted water from the river. Advanced Disposal does not set forth any argument specifically addressing Tarver's amended request for injunctive relief -- which would require Advanced Disposal to pretreat the leachate so that the City's stabilization pond could adequately treat the leachate -- explaining why such relief, in light of the above allegations of fact, would not serve as adequate relief for Tarver, even in the City's absence.

Advanced Disposal also contends that any judgment in this action without the City would be inadequate because, whether Tarver or Advanced Disposal prevails, "it will inevitably lead to further litigation over the City's liability, if any, for Tarver's alleged injury." Petition at 24. This subsequent litigation could involve Advanced Disposal if the City asks

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Advanced Disposal to indemnify the City on any claim brought by Tarver against the City. As noted above, however, the third factor considers the extent to which a judgment in the present action settles the controversy at issue, which, in this case, is Tarver's being provided allegedly polluted water from the river. Any conclusion that a judgment in this case would not be adequate based on the possibility that Tarver could sue the City would be based on speculation, especially considering that Tarver explicitly stated in his second amended complaint that he does not believe that any action on the part of the City can remedy the wrongs alleged in that complaint. To the extent Tarver could seek monetary damages from the City in a separate action to compensate him for past harms, Advanced Disposal has not demonstrated that such an action would prevent adequate relief in the present case. If the possibility of later litigation against an absent party was always an indication that "adequate relief" could not be provided in any particular case, then joint tortfeasors would almost always be indispensable parties under Rule 19(b). However, as discussed supra, that is not the case. See Pasco, 637 F.2d at 505 (holding that the possibility of subsequent litigation between either the plaintiff or the defendant and

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the absent party, the absent party being either a joint tortfeasor or a potential indemnitor, was not "an eventuality that Rule 19 was designed to avoid" and concluding that the possibility of further litigation was insufficient to make the absent party indispensable under Rule 19(b)). Accordingly, this factor weighs in favor of the City not being indispensable to the present action.

4. Adequate Remedy if Case Dismissed

The final factor we must consider under Rule 19(b) is whether Tarver "will have an adequate remedy if the action is dismissed for nonjoinder." Again citing Provident Tradesmens, supra, Advanced Disposal argues that Tarver's interest under the fourth Rule 19(b) factor is in having a forum in which to litigate his claims -- not necessarily the forum of his choice -- and it is undisputed that Tarver could have brought this action against the defendants and the City in Elmore County. See Provident Tradesmens, 390 U.S. at 109 ("[T]he plaintiff has an interest in having a forum. Before the trial, the strength of this interest obviously depends upon whether a satisfactory alternative forum exists.").

As he did before the trial court, Tarver argues that the fact that there exists an alternate forum where the defendants

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and the City could be sued should be given little weight in light of the fact that the other Rule 19(b) factors did not weigh in favor of finding the City to be an indispensable party to this action. He also argues, as he did below, that if this action is dismissed and he attempts to refile this action against the defendants and the City, he will surely be met with a statute-of-limitations defense asserted by those parties.⁷ However, we see no need to determine whether Tarver's claims would or would not be barred by the statute of limitations if this action was dismissed and he was forced to refile his claims in another forum.

Even assuming that Tarver had an alternate forum in which to file all of his claims, this fact, standing alone, does not require a conclusion that the City is indispensable. "Because Rule 19(b) does not state the weight to be given each factor, the district court in its discretion must determine the importance of each in the context of the particular case." Thunder Basin Coal Co. v. Southwestern Pub. Serv. Co., 104 F.3d 1205, 1211 (10th Cir. 1997) (citing Glenny v. American

⁷There is no indication in the materials before this Court that the defendants agreed to waive any applicable statute-of-limitations defenses that might be available if Tarver was required to refile this action in Elmore County.

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Metal Climax, Inc., 494 F.2d 651, 653 (10th Cir. 1974)). In Pasco, supra, the Seventh Circuit Court of Appeals held that "[t]he availability of an alternative forum is primarily of negative significance under Rule 19. The absence of an alternative forum would weigh heavily, if not conclusively[,] against dismissal while the existence of another forum would not have as significant an impact in favor of dismissal." 637 F.2d at 501 n.9. In that case, although an alternative forum was available, the court held that, "[w]hile the availability of the alternative ... forum renders a Rule 19(b) dismissal less onerous, 'we do not view the availability of an alternative remedy, standing alone, as a sufficient reason for deciding that the action should not proceed among the parties before the court.'" Pasco, 637 F.2d at 501 (quoting Bio-Analytical Servs., Inc. v. Edgewater Hosp., Inc., 565 F.2d 450, 453 (7th Cir. 1977) (citing Bonnet v. Trustees of Schools of Township 41 North, 563 F.2d 831, 833 (7th Cir. 1977))). The court stated that the plaintiff had an interest in the forum provided by federal law and chosen by him and that, "[t]o outweigh the plaintiff's choice some additional interest of the absent person, the other parties or the judicial system must be found." Pasco, 637 F.2d at 501. Despite the fact that

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the court in Pasco acknowledged that the absent party's "activities are the central focus of this litigation," 637 F.2d at 504, and that there was a possibility of later litigation between the parties present in the action and the absent party, it concluded that these were not sufficient reasons to "relegate this suit" to the alternate forum. 637 F.2d at 506.

We reach the same conclusion here. Tarver has an interest in proceeding in his chosen forum, and Advanced Disposal has not demonstrated that any of the other interests subject to consideration under Rule 19(b) weigh so heavily in favor of dismissal that the existence of an alternate forum should be controlling.

5. Final Considerations and Request for Alternate Relief

In its reply brief, Advanced Disposal argues that the City plays such a central role in this action that its presence is crucial. See B. Fernández & HNOS, Inc. v. Kellogg USA, Inc., 516 F.3d 18, 27 (1st Cir. 1989) (holding, where the complaint included 20 references to an absent affiliate that was alleged to have committed the violations of law at issue in the complaint, that, because the absent affiliate was "a central player -- perhaps even the primary actor -- in the

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alleged breach, the practical course" was to proceed in a forum where the absent affiliate could be joined). For the reasons stated herein, we disagree that this action cannot proceed in equity and good conscience without the City. The City's role in the underlying dispute potentially makes the City a joint tortfeasor with Advanced Disposal, the utilities board, and MCWA; it does not, however, make the City an indispensable party under the particular facts of this case.

Additionally, although the Court might prefer any potential claims related to this action to be addressed at one time in one forum, "judicial economy and convenience do not in themselves provide grounds for dismissal" under Rule 19. Boone v. General Motors Acceptance Corp., 682 F.2d 552, 554 (5th Cir. 1982). Advanced Disposal did not demonstrate that the trial court exceeded its discretion by concluding that Tarver's action could in equity and good conscience proceed without the City. Accordingly, Advanced Disposal has not demonstrated that it has a clear legal right to an order dismissing Tarver's action for failure to join an indispensable party pursuant to Rule 19(b).

Finally, we briefly address Advanced Disposal's request for alternate relief -- an order requiring the trial court to

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transfer this action to Elmore County where the City could be joined. Advanced Disposal has not cited any authority indicating that a change of venue to Elmore County would be appropriate in this case, especially in light of the fact that we have concluded that the City is not an indispensable party pursuant to Rule 19(b).⁸ Accordingly, Advanced Disposal's request for alternate relief is denied.

Conclusion

For the reasons stated above, Advanced Disposal's petition for a writ of mandamus is denied.

PETITION DENIED.

Parker, C.J., and Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., concurs in the result.

Bolin, J., dissents.

Wise, J., recuses herself.

⁸This Court has generally held that "[t]he absence of a necessary and indispensable party necessitates the dismissal of the cause without prejudice or a reversal with directions to allow the cause to stand over for amendment." Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., P.C., 81 So. 2d 1013, 1022 (Ala. 2003) (quoting J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834, 850-51 (Ala. 1981)).