

1960

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Recommended Citation

Charles Kimball, *Multi-Party Litigation—Venue Statutes and Their Application*, 39 Neb. L. Rev. 438 (1960)

Available at: <https://digitalcommons.unl.edu/nlr/vol39/iss2/18>

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Multi-Party Litigation—Venue Statutes and Their Application

An injured seaman sued his employer in the United States District Court for the Southern District of New York to recover damages for injuries suffered on board his employer's vessel. The court granted the employer's motion to implead the United States as a third party defendant. The employer claimed indemnity for any damages the seaman recovered for injuries aggravated by treatment in a United States hospital. The seaman then moved to amend his complaint to allege an action directly against the United States under the Federal Tort Claims Act. The United States objected that venue in the Southern District was improper under the act which provided that "Any civil action on a tort claim against the United States . . . may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred."¹ The seaman resided in New Jersey, and the alleged aggravation occurred in a hospital in the Eastern District of New York. *Held*: Motion to amend granted. The proposed amendment was not a "civil action" within the meaning of the language quoted above.²

The court was faced with another case³ presenting a conflict between the clear language of a venue statute and the desirable policy of settling all claims arising out of one transaction in a single lawsuit, thus preventing inconsistent results as well as saving time. In resolving that conflict in favor of consolidating all law suits arising out of a single transaction in one district, the

¹⁴ Where a truck is operated with permission such liability is probably valid. See *Moore v. Palmer*, 350 Mich. 363, 86 N.W.2d 585 (1957), where the lessor was driving his leased truck as an employee of the lessee. Noted in 11 VAND. L. REV. 911 (1958).

¹ 28 U.S.C. § 1402(b) (1948).

² *Ibid.*

³ *Abramovitch v. United States Lines*, 174 F. Supp. 587 (S.D. N.Y. 1959).

court refused to follow a prior decision by another judge in the same district,⁴ and applied a strained and unusual interpretation to the phrase "civil action." It is difficult to see why an ordinary tort action by a seaman against the United States for damages based upon the claim that hospital treatment aggravated injuries previously sustained is not a "civil action."

When an original defendant impleads a third party defendant a majority of courts hold that the third party action may proceed in the federal court without any allegation, or proof, that independent federal jurisdictional grounds exist.⁵ Also most have dispensed with the requirement that the third party action satisfy the venue statutes.⁶ The latter result has often been rested upon the doubtful logic that since no independent federal jurisdictional grounds must exist, the venue requirements are also not applicable.⁷ Without questioning the logic of the proposition that a third party action is ancillary for venue purpose if it is ancillary for jurisdiction, the proposition does not support the result in this case. Federal courts have generally held that the original plaintiff who seeks to amend his complaint to state a cause of action against the third party defendant, after he has been impleaded, must allege and prove independent federal jurisdictional grounds.⁸ Thus in the present case it is impossible to argue that independent venue is not necessary because the suit is ancillary for jurisdiction.

Existing authorities are about evenly divided over whether venue requirements must be met by a plaintiff who seeks to state a cause of action against the third party defendant. The issue has been decided differently by the district courts where it has been presented.⁹ The first edition of a leading treatise suggests that venue requirements must be met,¹⁰ whereas the second edition flatly states no objection to venue should be allowed.¹¹ An-

⁴ *Habina v. M. A. Henry Co.*, 8 F.R.D. 52 (S.D. N.Y. 1948).

⁵ The cases are collected in 37 A.L.R.2d 1411, 1420 (1954).

⁶ *Moncrief v. Pennsylvania R.R.*, 73 F. Supp. 815 (E.D. Pa. 1947); *Morrell v. United States Air Lines Transp. Corp.*, 29 F. Supp. 757 (S.D. N.Y. 1939); *United States v. Acord*, 209 F.2d 709,714 (10th Cir. 1954), *cert. denied*, 347 U.S. 975 (1954).

⁷ *Ibid.*

⁸ The cases are collected in 37 A.L.R.2d 1411, 1430 (1954).

⁹ In contrast with the case under discussion, see *Habina v. M. A. Henry Co.*, *supra* note 3.

¹⁰ 1 MOORE, FEDERAL PRACTICE § 14:02, at 748 (1st ed. 1938).

¹¹ 3 MOORE, FEDERAL PRACTICE § 1428.3, at 506 (2d ed. 1953).

other authority,¹² without citing any support, argues that since the plaintiff must show independent jurisdictional grounds to sue the third party defendant, the venue requirements apply also.

Probably Congress passed the venue provision of the Federal Tort Claims Act unaware of the issue presented by this case. Therefore, it seems permissible to base a decision upon the general purposes of venue provisions. Venue requirements are designed to select a forum which will not oppress the defendant, and which will not be unfair to the plaintiff. In the instant case the plaintiff chose the forum originally and does not object. The third party defendant is before the court upon the complaint of the third party plaintiff, and since the plaintiff's suit against the third party defendant must arise ". . . out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff,"¹³ allowance of the plaintiff's amended complaint cannot work a hardship upon the third party defendant. He is in court to litigate the impleaded action which will require proving the same facts which will be relevant in the suit against him by the original plaintiff.

It is true that if the plaintiff need not show proper venue for his suit against the third party defendant, the plaintiff is permitted to sue a person in a district which would have been improper venue for a lawsuit against that person without the impleader. If there is evidence to show that the plaintiff and the original defendant have colluded and used the impleader action to make possible the plaintiff's suit against the third party defendant which but for the impleader would have been dismissed for improper venue, then this should be grounds for requiring the plaintiff to meet venue requirements. In the absence of evidence of collusion between the plaintiff and the third party plaintiff, the result of the instant case seems justified.¹⁴

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¹² 71 HARV. L. REV. 877, 916 (1958).

¹³ FED. R. CIV. P. 14.

¹⁴ Exhaustive text material covering this area of the law may be found in 71 HARV. L. REV. 877 (1958), especially from pages 910 to 913; 139 A.L.R. 919 (1942); 37 A.L.R.2d 1411 (1954).