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Federal Interpleader - Availability of Interpleader to Liability Insurer Before Claims Have Been Reduced to Judgments, Underwriters at Lloyd's v. Nichols, 363 F.2d 357 (8th Cir. 1966)

F. Prince Butler

Federal Interpleader—Availability of Interpleader to Liability Insurer Before Claims Have Been Reduced to Judgments. In *Underwriters at Lloyd's* v. *Nichols*,[1] the insured, an Arkansas crop duster, damaged the crops of about eighteen Arkansas farmers with the aggregate damage totaling more than twice the liability policy coverage. After two farmers had begun actions against the insured in Arkansas courts for damages exceeding policy coverage, but before any judgments had been rendered, the British insurer brought this interpleader action in a federal district court to compel litigation of all claims against the insured in a single action, and to enjoin further prosecution of the two pending state court cases. The insurer stakeholder argued that if interpleader were not allowed it would "perhaps" be subject to liability greater than the insurance policy coverage because, after paying initial successful claimants and exhausting policy funds, the court might find they should have prorated the available funds among the claimants. Arkansas had no direct action statute; therefore, the claimant farmers and the insured argued that the stakeholder was in no immediate danger of facing multiple liability so as to make federal interpleader relief available.[2] The court allowed the interpleader action.

The problem with which the court was confronted in this case was that of construing paragraph 1 of Rule 22 of the Federal Rules of Civil Procedure,[3] which allows interpleader if plaintiff "may be exposed" [4] to multiple liability. The court reasoned that this phrase gave federal courts interpleader jurisdiction here because the stakeholder was in actual danger of facing multiple suits. The opposite view would be that state law must determine whether or not a stakeholder may be exposed to multiple liability; therefore, where the state does not have a direct

1. 363 F. 2d 357 (8th Cir. 1966).

2. There are two possibilities of obtaining federal interpleader relief. Statutory interpleader, embodied in Interpleader Act, 28 U.S.C. § 1335 (1948), is available if the controversy exceeds $500 and there are two or more claimants of diverse citizenship. Rule 22 of Federal Rules of Civil Procedure allows interpleader if there is complete diversity of citizenship between the stakeholder on one hand and all claimants on the other with more than $10,000 in controversy. Here, interpleader under Rule 22 is in issue because there is no diversity between claimants. The court points out, however, that the Interpleader Act and Rule 22 are so similar in construction that it is irrelevant which is used when deciding if the insurer can interplead an unliquidated claim.

3. Rule 22 provides: "(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability."

4. The counterpart phrase in 28 U.S.C. § 1335 is that interpleader can be obtained if two or more claimants, "may claim" to be entitled to benefits of any policy, see also *supra* note 2.

action statute, a stakeholder would not be in danger of facing multiple suits.[5]

The view that federal interpleader is not available to an insurer when the adverse tort claims against insurer are unliquidated originated with *Klaber* v. *Maryland Casualty Co.*[6] in 1934 and has been followed several times in recent years.[7] Practical reasons for such a view are that, where federal interpleader is allowed, the federal courts oust state court jurisdiction over a local matter and the insurer is thereby allowed to evade any contractual obligation it might have to defend claims against the insured.[8] The opposite view, which was accepted by the court here, dates from articles written by Professor Zechariah Chaffee, Jr., interpreting the Federal Interpleader Act of 1936.[9] This view was given support by *Pan American Fire & Casualty Co.* v. *Revere*,[10] which was decided under a state direct action statute, and has been followed in recent

5. Tashire v. State Farm Fire and Casualty Co., 363 F. 2d 7 (9th Cir. 1966). Here, insured had a collision with a bus. The potential claims against insured exceeded the liability policy coverage. There was no direct action statute available to claimants and the insurance policy contained a "no action" clause. There was diversity between insured and claimants so this case was decided under statutory interpleader, see also notes 2 and 4 *supra*. The court held that interpleader was not available to insurer since, under state law, the claimants "may not claim" to be entitled to benefits of any policy.

6. 69 F. 2d 934 (8th Cir. 1934). In Klaber the court refused to allow an interpleader proceeding arising out of an automobile accident, although the potential claims exceeded the limits of the policy. In the case at bar the court discredited Klaber as a precedent, by pointing out that it was decided under the 1926 Interpleader Act which did not contain a "may claim" clause.

7. *Accord*, National Casualty Co. v. Insurance Co. of North America, 230 F. Supp. 617 (N.D. Ohio, 1964); Tashire v. State Farm Fire and Casualty Co., 363 F. 2d 7 (9th Cir. 1966).

8. See American Indemnity Co. v. Hale, 71 F. Supp. 529, 531-532 (W.D. Mo. 1947), where these reasons for the rule are most aptly stated.

9. See 45 YALE L. J. 1161, 1163-67 (1936); 49 YALE L. J. 377, 420 (1940). Although Professor Chaffee advocated that foreign insurers be allowed to interplead in federal courts before claims against the insured became liquidated, this was part of a larger plan, and the rest of the plan was not adopted by the court in the case at bar. According to Professor Chaffee's interpretation of the interpleader act, the claimant should not be enjoined from suing the insured at law before a jury, but enforcement of judgments resulting therefrom against the insurer should be enjoined. The resulting judgments would be filed in equity until the date set for distribution, at which time the judgment creditors would be paid pro rata. In the case at bar the claimants were enjoined from suing at law before a jury. Had Professor Chaffee's plan been accepted in toto all obligations listed above to allowing federal interpleader would have been eliminated.

10. 188 F. Supp. 474 (E.D. La. 1960). There is a conflict whether the direct action statute was a critical factor in this case. In the case at bar the court argued that it was not.

years.[11] These authorities reason that the Federal Interpleader Act and Rule 22[12] were designed to protect stakeholders from multiple liability and the expense of multiple litigation, and it should be liberally construed to accomplish this. Such a construction of federal interpleader also provides equal treatment of claimants. Thus, one claimant could not fortuitously get the first judgment and exhaust the fund.

The conflict between the two above views appears to be complete. On the very same day this decision was rendered by the eighth circuit, the ninth circuit issued a decision with the opposite result.[13] The equities appear equal and both statutory constructions are reasonable. The possibility exists that, rather than rejecting either view, the courts will eventually compromise along the lines suggested by Professor Chaffee.[14]

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Taxation—DEDUCTION OF ATTORNEY'S FEES. In *Parker v. Commissioner*,[1] petitioner was the "prime functionary" of a religious organization known as the foundation for Divine Meditation (F.D.M.). He claimed the right to exclude from his income legal fees paid by F.D.M. for his defense in a criminal prosecution for contributing to the delinquency of a minor, and for fees used in bringing a civil suit for slander against those charging him with this crime. Relying on *Commissioner v. Tellier*,[2] the Court of Appeals refused to uphold the Tax Court and de-

11. *Accord*, Commercial Union Ins. Co. v. Adams, 231 F. Supp. 860 (S. D. Ind. 1964).

12. See *supra* note 2.

13. Tashire v. State Farm Fire and Casualty Co., 363 F. 2d 7 (9th Cir. 1966). See note 5 *supra*.

14. See *supra* note 9.

1. 365 F.2d 792 (8th Cir. 1966). The court also found that the foundation for Divine Meditation (F.D.M.) did not qualify under section 501 of the Internal Revenue Code as a tax-exempt organization based on religious purposes. Generally, where there are profit-making ventures, the Internal Revenue Service will look beyond the purposes of the organization to the substance of its transactions and tax the organization where such profits appear excessive. *Accord:* Marcella v. Commissioner, 222 F.2d 878 (8th Cir. 1955); Saint Germain Foundation v. Commissioner, 26 T.C. 648 (1956); Scripture Press Foundation v. United States, 285 F.2d 800 (Ct. Cl. 1964).

2. 383 U.S. 687 (1966). Held that where attorney's fees were paid in defending a criminal action arising out of one's trade or business, the expenses could be deducted in spite of the fact that taxpayer was convicted of the crime.