



1962

# Federal Courts--Diversity Jurisdiction--Amount in Controversy

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### Recommended Citation

Herbert, H. Jefferson Jr. (1962) "Federal Courts--Diversity Jurisdiction--Amount in Controversy," *Kentucky Law Journal*: Vol. 50 : Iss. 4 , Article 8.  
Available at: <https://uknowledge.uky.edu/klj/vol50/iss4/8>

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# Recent Cases

FEDERAL COURTS—DIVERSITY JURISDICTION—AMOUNT IN CONTROVERSY—Defendant filed a claim with the Texas Industrial Accident Board [hereinafter referred to as Board] against his employer and plaintiff, the employer's insurer.<sup>1</sup> Maximum recovery permitted for defendant's alleged injury was \$14,035;<sup>2</sup> defendant was awarded \$1,050. Plaintiff, alleging that defendant was claiming and would claim \$14,035, filed this diversity action in federal district court<sup>3</sup> asking that the \$1,050 award be set aside.<sup>4</sup> Defendant moved to dismiss on the grounds that the matter in controversy was \$1,050 and not \$14,035.<sup>5</sup> At the same time defendant filed a compulsory counterclaim for \$14,035.<sup>6</sup> The district court granted the motion to dismiss, but was reversed by the Court of Appeals.<sup>7</sup> *Held*: Affirmed. Once action is brought to set aside the Board's award, the award is binding on neither party; the amount in controversy is defendant's claim of \$14,035 regardless of the party initiating the action. *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348 (1961) (four Justices dissenting).

The generally accepted rule is that the amount in controversy required for federal diversity jurisdiction over plaintiff's claim cannot be satisfied by defendant's counterclaim.<sup>8</sup> Mr. Justice Clark, dissent-

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<sup>1</sup> The claim was filed pursuant to the Texas Workmen's Compensation Law, Tex. Ann. Stat. arts. 8306-09 (Vernon 1961).

<sup>2</sup> Tex. Ann. Stat. art. 8306, §10 (Vernon 1961).

<sup>3</sup> 28 U.S.C. §1332(a) (1958) provides that

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000 . . . and is between—

(1) citizens of different states. . . .

<sup>4</sup> Tex. Ann. Stat. art. 8307, §5 (Vernon 1961) authorizes a suit de novo by either party to set aside an award of the Board.

<sup>5</sup> Jurisdiction was also contested on two other grounds: (1) By amendment, 28 U.S.C. §1445 (1958), withdrew federal district court removal jurisdiction over suits arising under state workmen's compensation laws. Thus defendant argued that it was reasonable to presume that Congress intended to prevent workmen's compensation cases from being brought originally in federal courts, and (2) this case is an appeal from a state administrative hearing over which the federal courts cannot exercise jurisdiction. The first argument produces a stalemate: Congress could easily have completely withdrawn federal court jurisdiction over workmen's compensation cases at the same time removal jurisdiction was withdrawn. The second argument flies in the face of the statutory de novo designation of an action to set aside an award of the Board. This comment, then, is devoted to an analysis of the amount in controversy question.

<sup>6</sup> Fed. R. Civ. P. 13(a) requires the filing of a counterclaim arising out of the transaction or occurrence that is the subject of the adversary's claim.

<sup>7</sup> *Horton v. Liberty Mut. Ins. Co.*, 275 F.2d 148 (5th Cir. 1960).

<sup>8</sup> See, e.g., *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936);

(Continued on next page)

ing, believed the Court was departing from this rule.<sup>9</sup> While it may appear from a cursory examination of the Court's opinion that an exception to the rule was created, close analysis demonstrates that the rule remains intact.

The Texas Workmen's Compensation Law provides for an action de novo to set aside an award of the Board.<sup>10</sup> Such an action places before the court all issues involved in the controversy, and in effect cancels out the proceedings before the Board.<sup>11</sup> Thus disposition of the principal case by the federal court of necessity involved disposition of the entire controversy between the parties.

The principal case differs from the ordinary coercive action, in that plaintiff sought to be *freed* from a liability, while defendant would positively benefit from a judgment in his favor. Thus the action very closely resembled an action for a declaratory judgment of rights and liabilities under an insurance contract.<sup>12</sup> If the controversy over the validity of the \$1,050 award is disregarded momentarily, it is clear that federal jurisdiction extends to the controversy initiated by plaintiff over plaintiff's total potential liability under its insurance contract with defendant's employer.<sup>13</sup> When the two controversies are combined the case has the appearance of being an appeal from the Board's award; but, being an action de novo, it is not treated as such.<sup>14</sup>

By its nature the declaratory judgment action allows a party to accelerate a controversy. Thus it is not unusual for a declaratory judgment action to be brought to adjudicate a defense which plaintiff would normally assert in a coercive action brought by defendant.<sup>15</sup> But to sustain federal jurisdiction over such an action plaintiff must demonstrate an actual controversy and the risk of liability which the action will avoid.<sup>16</sup> To establish the controversy and risk of liability plaintiff must of necessity plead the claim which is being

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(Footnote continued from preceding page)

Barnes v. Parker, 126 F.Supp. 649 (W.D. Mo. 1954); 1 Moore's Fed. Practice §98(1) (1960); *contra*, Ginsberg v. Pacific Mut. Life Ins. Co., 69 F.2d 97 (2d Cir. 1934); Fins, Federal Jurisdiction & Procedure 16 (1960).

<sup>9</sup> Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 352, 354 (1961).

<sup>10</sup> Tex. Ann. Stat. art 8307, §5 (Vernon (1961)).

<sup>11</sup> Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 355, n.15 (1961).

<sup>12</sup> See, *e.g.*, Stephenson v. Equitable Life Assur. Soc., 92 F.2d 406 (4th Cir. 1937), holding that where the validity of an insurance policy is in question the value of the amount in controversy is the face amount of the policy.

<sup>13</sup> *Ibid.*

<sup>14</sup> Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 355 (1961).

<sup>15</sup> See Pub. Serv. Comm'n v. Wycoff Co., 344 U.S. 237, 242 (1952).

<sup>16</sup> Pub. Serv. Comm'n v. Wycoff Co., 344 U.S. 237 (1952). See also Jefferson v. Liverpool & London & Globe Ins. Co., 167 F.Supp. 389 (S.D. Cal. 1958), holding that even though the validity of an insurance policy is in question, in a declaratory judgment action the amount in controversy is the present claim against the insurer.

asserted against him. To sustain *federal question* jurisdiction over a declaratory judgment action, the courts normally look for a claim arising from a federal statute or the Constitution which could be coercively asserted by defendant.<sup>17</sup> It is even more reasonable for the court to determine the *amount in controversy* from the coercive claim which could be asserted by defendant,<sup>18</sup> *i.e.*, in the instant case, defendant's claim for \$14,035, liability from which plaintiff seeks to be free.

It is believed, then, that in determining the rule of law established by this case the facts that: (1) under state procedure it was a *de novo* action; and (2) that the position of the parties and the issues involved are the same as in a declaratory judgment action, indicate that jurisdictional amount was not established by counterclaim.

H. Jefferson Herbert, Jr.

TORTS—LAST CLEAR CHANCE—LEFT TURN DOCTRINE—Action for injuries sustained by plaintiff when her automobile was struck by defendant's oncoming vehicle as plaintiff was negotiating a left turn at an intersection. The two automobiles involved were proceeding in opposite directions on the same street. Plaintiff's car stopped for a traffic light at an intersection. When it changed to green plaintiff proceeded to turn left and into the path of defendant's car which was proceeding through the intersection. The two cars collided within the intersection. The jury found both parties negligent and denied recovery. Plaintiff appealed contending the court erred in refusing to give instructions regarding last clear chance and the defendant's duty to yield the right-of-way. *Held*: Affirmed. To merit an instruction on last clear chance the burden was upon plaintiff to prove that the collision was caused by defendant's negligent act or failure to act after plaintiff placed herself in a position of peril. Plaintiff failed to sustain this burden of proof. An instruction was denied that it was the duty of defendant to yield the right-of-way if plaintiff en-

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<sup>17</sup> See *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 242 (1952); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950).

<sup>18</sup> For federal question jurisdiction a claim must arise under the Constitution, laws or treaties of the United States. 28 U.S.C. §1331 (1958). This language restricts the jurisdictional determination to plaintiff's complaint more than 28 U.S.C. §1332(a) (1958), which requires that "the matter in controversy [exceed] . . . the sum or value of \$10,000. . . ." If, in a declaratory judgment action, the court will look for a federal question which could be asserted coercively by defendant, a fortiori the court may determine the amount in controversy from such prospective coercive action.