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IV. Conclusion

The difficulty in considering *Duple* is that the court is apparently attempting to establish its own due process standard for personal jurisdiction in an international trade situation. It has been held in *interstate* trade situations that an alleged tortious act will suffice as "contacts" for due process.[35] It has also been held that there must be sufficient minimum contacts *in addition to* the commission of the act, and some courts have viewed the *foreseeability* of injury in the forum state as sufficient to meet this additional requirement.[36] The court in *Duple* looked at the alleged tortious act and said it was not enough for due process. It is unclear, however, exactly how much more is required. In *Duple* actual knowledge of the product's destination was shown, and was held to be "sufficient contact." But the court, in reaching its conclusion, cited several cases where the mere showing of the foreseeability of the product's presence in the forum state was sufficient. The language of the opinion leaves it unclear whether this court would follow the foreseeability test in an international trade case where actual knowledge was lacking.

It is not clear why neither of the rules accepted in cases cited by the court was deemed sufficient in *Duple*. Although the court claimed it was not concerned with the likelihood of enforcement of the judgment in England, it would seem that attempting to enhance the possibility of such enforcement is the only justification for the court's holding. It does not appear to be at all practical in determining jurisdiction in general situations. But there is at least a possibility that a stronger basis for claiming jurisdiction will increase the likelihood of a decision on the merits being accepted by the foreign courts.

Richard D. Pullman

An Over-Extension of the Doctrine of Pendent Jurisdiction: Hatridge v. Aetna Casualty and Surety Company

Bryan and Hatridge were injured when the bus in which they were riding overturned. The owner of the bus, a construction company, carried a comprehensive liability insurance policy with Aetna Casualty & Surety Company. In a state court, Hatridge obtained a default judgment against the driver for $50,000, and his wife obtained a judgment for loss of consortium[1] in the amount of $10,000. Subsequently, Mrs. Hatridge instituted an action against Aetna in a state court to recover on her default judgment. Although her judgment was in the amount of $10,000, she expressly waived

[35] 2 J. Moore, Federal Practice ¶ 4.41-1[3], at 1291.57-.58 (2d ed. 1967); *see* Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957), cited in *Duple*, 417 F.2d at 234.

[36] *See* J. Moore, note 35 *supra*. *See also* notes 22-26 *supra*, and accompanying text.

[1] Consortium is the "[c]onjugal fellowship of husband and wife, and the right of each to the company, co-operation, affection, and aid of the other in every conjugal relation." Black's Law Dictionary 382 (4th ed. 1951).

all rights to recover any amount in excess of $9,999.99.[2] Aetna removed Mrs. Hatridge's action to federal district court and joined Mr. Hatridge as a third party defendant.[3] Thereafter, Aetna brought an action in the same federal court seeking a declaratory judgment of its rights under the insurance policy. This and the action of Mrs. Hatridge were, by consent, heard together. The court granted summary judgment to Aetna[4] after the Hatridges conceded that any decision by the federal district court would be controlled by an earlier federal court decision which denied recovery to Bryan and his wife against Aetna.[5] Desiring to have a state court pass on the substantive issues,[6] Mrs. Hatridge moved to remand the action which she had instituted. Her motion was denied. Appealing to the Court of Appeals for the Eighth Circuit, Mrs. Hatridge contended that her action should have been remanded to a state court because her claim did not satisfy the jurisdictional amount required for actions in federal court.[7] *Held, affirmed*: A claim which does not involve the "amount in controversy" required for actions in federal court, but which is derivative of a primary claim meeting that requirement, may be maintained under the doctrine of pendent jurisdiction, because, where two claims are intertwined and interdependent, federal jurisdiction of the primary claim will appropriately promote and support federal jurisdiction of the other. *Hatridge v. Aetna Casualty & Surety Co.*, 415 F.2d 809 (8th Cir. 1969).

I. The Doctrine of Pendent Jurisdiction

The doctrine of pendent jurisdiction is essentially a judicial response to problems created by the existence of parallel state and federal remedies for the violation of the same legal rights.[8] This concept was occasioned by a desire for judicial economy and the convenience of litigants, as well as by a consideration of potential res judicata problems.[9] The basis for the doctrine can be traced to the decision in *Osborn v. Bank of the United States*.[10]

[2] 28 U.S.C. § 1332 (1964) states that federal jurisdiction may be invoked "where the matter in controversy exceeds the sum or value of $10,000 . . . ."

[3] Mr. Reid, the bus driver, was also joined as a third-party defendant.

[4] Aetna Cas. & Sur. Co. v. Hatridge, 282 F. Supp. 604 (W.D. Ark. 1968).

[5] Bryan and his wife were denied recovery against Aetna by a federal district court in an action brought to recover the amount of a prior default judgment obtained against the driver in a state court. In affirming, the Court of Appeals for the Eighth Circuit determined that Bryan was in the course of employment with the construction company at the time of the accident, and therefore he fell within a definitional exclusion in the insurance policy applying to employees injured by other employees during the course of employment. Bryan v. Aetna Cas. & Sur. Co., 381 F.2d 872 (8th Cir. 1967).

[6] Presumably, Mr. Hatridge's relationship to the construction company at the time of the accident was the same as that of Mr. Bryan. Therefore, Mrs. Hatridge desired to stay away from the federal court where precedent had been established by the *Bryan* decision. *See* note 5 *supra*.

[7] *See* note 2 *supra*, and accompanying text.

[8] Note, *The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts*, 62 Colum. L. Rev. 1018 (1962).

[9] Musher Foundation Inc. v. Alba Trading Co., 127 F.2d 9, 12 (2d Cir.), *cert. denied*, 317 U.S. 641 (1942). The res judicata problems are those caused by the rule that the finality of a judgment extends to all issues that *could* have been litigated.

[10] 6 U.S. (9 Wheat.) 251 (1824). *Osborn* concerned the taxation of a national bank under an act passed by the state of Ohio. The bank brought suit to enjoin the state auditor, Osborn, from collecting the tax, alleging its unconstitutionality. The injunction was violated and in a separate action brought by the bank, Osborn argued that the state was the real party in interest and therefore the federal court lacked jurisdiction.

In that case Mr. Chief Justice Marshall observed that "when a question to which the judicial power is extended by the Constitution is an element of the original cause, Congress has the power to give the federal courts jurisdiction over the whole cause even though some non-federal questions of fact or law may be involved . . . ."[11] Chief Justice Marshall based his statement on the theory that the grant of federal jurisdiction "to all cases arising under the Constitution, treaties and laws of the United States"[12] contemplates and authorizes adjudication of any non-federal issues necessary to the resolution of a federal claim.[13] This theory presumes that a court of original jurisdiction could not function unless it has power to decide all of the issues present in the case.[14]

The Supreme Court in *Siler v. Louisville & Nashville Railroad*[15] relied heavily on the *Osborn* doctrine. In *Siler* the plaintiff was entitled to substantially the same relief under both state and federal laws. The Court found that both claims appropriately could be heard in federal court, observing that once a court properly obtains jurisdiction over federal questions, it has the right to decide all questions in the case. Significantly, the court determined that the case was to be controlled by local or state questions alone, and it was immaterial that the federal questions might be decided adversely to the party raising them, or that they might not be decided at all.[16]

In *Hurn v. Oursler*[17] the Court further relied on the *Osborn* decision, but extended it to situations where procedural convenience was the sole ground for justifying decisions of state issues.[18] In *Hurn* both a federal and non-federal claim were based on the same allegations of fact. Following *Siler*, the Court found that federal jurisdiction over the federal claim provided jurisdiction for the state claim. The Court held that the district court was not under a duty to grant jurisdiction over the non-federal claim, but it was within its discretion to do so.[19] However, the Court made clear that a federal court may not assume jurisdiction of a separate and non-federal cause of action simply because it is joined in the complaint. In doing so, the Court recognized the difference between "a case where two distinct grounds in support of a single cause of action are alleged, one only of which presents a federal question, and a case where two separate and distinct causes of action are alleged, one only of which is federal in character."[20]

The *Hurn* test was discarded by the Supreme Court in *United Mine*

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[11] *Id.* at 257.

[12] U.S. CONST. art. III, § 2.

[13] Note, *supra* note 8, at 1020.

[14] C. WRIGHT, FEDERAL COURTS 63 (2d ed. 1970).

[15] 213 U.S. 175 (1909). In *Siler* the plaintiff sought to enjoin the enforcement of a state railroad commission's rate order, asserting that the controlling statute violated the federal constitution because the rates were so low as to be confiscatory, and that the state commission had no power to make such an order under the proper construction of the controlling state statute.

[16] *Id.* at 191.

[17] 289 U.S. 238 (1933).

[18] C. WRIGHT, *supra* note 14, at 56.

[19] 289 U.S. at 246.

[20] *Id.*

Workers v. Gibbs.[21] There the Court held that pendent jurisdiction exists over a non-federal claim when a federal claim exists and the two have a relationship indicating that the entire action comprises one constitutional "case."[22] Pendent jurisdiction is present whenever the state and federal claims are derived from a "common nucleus of operative fact,"—*i.e.*, if the claims are such that the plaintiff would "ordinarily be expected to try them all in one judicial proceeding."[23] The *Hurn* test seemingly was discarded because of its dependence on the unclear "cause of action" terminology.[24] Hence, in pendent jurisdiction situations, the Supreme Court no longer emphasizes the similarity of facts alleged in two claims, but rather, under *Gibbs*, determines whether the two claims normally would be tried together.

Significantly, the cases discussed have involved only one plaintiff. However, the Third Circuit, in *Wilson v. American Chain & Cable Co.*,[25] extended the doctrine to a two-plaintiff situation. *Wilson* concerned an action for injuries to a child and for consequential damages sustained by the father due to the defendant's negligence toward the child. The court of appeals held that the father's claim was ancillary to the son's claim, and, under a Pennsylvania statute providing for the combination of actions of certain related claimants,[26] the two should be litigated together.[27] Citing *Gibbs*, the court extended the doctrine to the father's claim, which did not meet the requisite federal jurisdictional amount, because the two claims "ordinarily would be tried in one judicial proceeding."[28] Therefore, the Third Circuit found *Gibbs* applicable in a two-plaintiff situation. However, the Ninth Circuit, in *Hymer v. Chai*,[29] rejected the doctrine in a two-plaintiff situation.[30] The court found pendent jurisdiction applicable to joinder of claims, not to joinder of parties, and determined that "it was not designed to permit a party without a federally cognizable claim to invoke federal jurisdiction by joining a different party plaintiff asserting an independent federal claim growing out of the same operative facts."[31] The court's refusal to follow the Third Circuit's decision in *Wilson* was based on a pre-*Gibbs* case, *Kataoka v. May Department Stores*,[32] where the Ninth Circuit had held that juristiction could not be conferred over a consortium claim because both plaintiffs did not have an interest in both claims.[33]

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[21] 383 U.S. 715 (1966).
[22] *Id.* at 725.
[23] *Id.*
[24] Note, *U.M.W. v. Gibbs and Pendent Jurisdiction*, 81 HARV. L. REV. 657 (1968).
[25] 364 F.2d 558 (3d Cir. 1966).
[26] PA. STAT. ANN. tit. 12, §§ 1621, 1625 (1953). The Pennsylvania statute requires that where parent and child or husband and wife are claimants, "these two rights of action shall be redressed in only one suit . . . ." It should be noted that this statute may have colored other Third Circuit decisions concerning pendent jurisdiction because of its requirement that certain claims should be litigated together.
[27] 364 F.2d at 564.
[28] *Id.*
[29] 407 F.2d 136 (9th Cir. 1966).
[30] One of the claims was for loss of consortium. *Id.* at 137.
[31] *Id.*
[32] 115 F.2d 521 (9th Cir. 1940).
[33] *Id.* at 522.

II. HATRIDGE v. AETNA CASUALTY & SURETY CO.

Relying on the interdependent nature of the two claims involved, the court in *Hatridge* applied the doctrine of pendent jurisdiction in a two-plaintiff situation. The court held that where a wife's claim for loss of consortium was contingent upon the success of her husband's claim for personal injury,[34] and where the husband's claim exceeded the federal jurisdictional amount, a federal court has jurisdiction over the wife's claim. *Gibbs* was cited for general support of the pendent theory, but *Gibbs* involved only a single plaintiff. Therefore, the court was required to look to other circuits for support of the application of the doctrine of pendent jurisdiction in two-plaintiff situations.

In *Hatridge* the court declined to follow the Ninth Circuit decisions holding pendent jurisdiction inapplicable to joinder-of-plaintiff cases.[35] It found apposite, however, the Third Circuit's decision in *Wilson*. Significantly, it appears that *Hatridge* extends that decision. In *Wilson* the son's claim for negligence and the father's claim for consequential damages were brought in the same suit. The Third Circuit applied pendent jurisdiction because of the ancillary character of the father's claim to the son's. However, in *Hatridge* the wife's claim for loss of consortium was in effect brought independently of her husband's claim. Because of the prior *Bryan* decision in federal court, it was obvious that Mr. Hatridge's claim under the insurance policy would be denied. The court still felt the doctrine of pendent jurisdiction applicable to the wife's consortium claim. Yet theoretically, the husband was not even a claimant in federal court. The husband's appearance was because of his joinder by Aetna as a third-party defendant in Mrs. Hatridge's action, with Aetna additionally bringing a separate action for a declaratory judgment under the insurance policy. Therefore, it would seem that the Eighth Circuit has, in effect, taken the *Gibbs* test, which looks to see if the two claims would ordinarily be tried together, to mean that even if the claims are *not* brought together, the doctrine of pendent jurisdiction is applicable if they would usually be tried together.

It should be noted that the court considered whether the claim of Mrs. Hatridge could be said to meet the requisite "matter in controversy."[36] Aetna contended, presumably, that the court could look to the monetary risk of the defendant, and not merely to the amount claimed by the plaintiff, in order to determine whether the requisite jurisdictional amount was involved.[37] However, the court rejected this theory because the cases supporting this view emphasized "the contrasting values as they exist between the opposing parties in the lawsuit, rather than the overall conse-

[34] Under Arkansas law a spouse's claim for loss of consortium was derivative of the other spouse's claim for personal injuries. 415 F.2d at 816.

[35] The rejection was based on the Ninth Circuit's reliance in *Hymer* on a pre-*Gibbs* decision. *See* note 32 *supra*, and accompanying text.

[36] 28 U.S.C. § 1332(a) (1966).

[37] *See* Hedberg v. State Farm Mut. Auto Ins. Co., 350 F.2d 924 (8th Cir. 1965); Cowell v. City Water Supply Co., 121 F. 53 (8th Cir. 1903). In these cases the requisite jurisdictional amount was satisfied by looking to the risk between the opposing parties of the lawsuit, and not to what the defendant would lose to two claimants.