IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 16, Original

STATE OF ARIZONA, *Plaintiff,*

v.

STATE OF CALIFORNIA and CHARLES L. HARNEY, INC., A California Corporation, *Defendants.*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

Of Counsel:
RICHARD J. DANIELS
Chief Counsel, Industrial Commission of Arizona
FRANK EUGENE MURPHY
JAMES S. TEGART
ROBERT A. SLONAKER
EDGAR M. DELANEY
1616 West Adams
Phoenix, Arizona
Attorneys, Industrial Commission of Arizona
MAX O. TRUITT, JR.
WILMER, CUTLER & PICKERING
900 Farragut Building
900 – 17th Street, N.W.
Washington, D.C. 20006
JOSEPH E. SMITH
WM. SHANNON PARRISH
SMITH, PARRISH, PADUCK & CLANCY
315 Financial Center Building
Oakland 12, California
JAMES G. BOORNAZIAN
900 Financial Center Building
Oakland 12, California

JAMES B. SCHNAKE
315 Financial Center Building
Oakland 12, California
Special Counsel to the State of Arizona

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE COMPLAINT

The State of Arizona by its special counsel asks leave of this Court to file its Complaint submitted herewith against the State of California and Charles L. Harney, Inc., a citizen of the State of California.

JAMES B. SCHNAKE
Special Counsel to Plaintiff

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Arizona against the State of California and Charles L. Harney, Inc., a citizen of California, proposed to be instituted in this Court under the authority of Article III, Section 2 of the Constitution of the United States.

Plaintiff, through its agency, the Arizona Industrial Commission, is the insurance carrier for all employers within the State (except for self insurers) under Plaintiff's workmen's compensation laws. The insurance fund maintained by the Arizona Industrial Commission, is the property of Plaintiff, and except in the case of self-insured employers, workmen's compensation benefits are paid by Plaintiff.

As appears from the annexed Complaint, Plaintiff, in its capacity as insurer of Grand Canyon College, was required to and did pay workmen's compensation to an employee of Grand Canyon College because of injuries suffered by that employee in the course of her employment. The injuries are alleged to have been caused by negligence and wrongful nonfeasance of the State of California and one of its citizens.

By virtue of the accident, the employee's election to take compensation benefits, and the employee's assignment to Plaintiff of all her claims arising out of the accident, Plaintiff became vested as the sole and absolute owner of the employee's claim for general damages as well as its own claim for compensation benefits paid. Moreover, Plaintiff is now the absolute owner of the claim of Grand Canyon College for loss of services of its employee. See *City of Oakland* v. *Lynchberg,* 95 Cal. App. 71, 272 Pac. 606 (1928); *Fidelity & Cas. Co. of N.Y.* v. *McMurry,* 217 Adv. Cal. App. 828, 32 Cal. Rep. 243 (1963). *Cf. United States* v. *Standard Oil Co.,* 332 U.S. 301 (1947).

The Complaint thus alleges that Plaintiff itself, its insured employer and the injured employee have been damaged by the negligence of a sister state and one of its citizens. Even as to the assigned claims, Defendant State has, by the recent adoption of a governmental liability statute, waived any sovereign immunity it might have asserted.

Plaintiff recognizes that as to Defendant Harney this Court may accept or decline jurisdiction. 28 U.S.C. § 1251 (b)(3); *Massachusetts* v. *Missouri,* 308 U.S. 1 (1939). However, the claims against both Defendants having arisen from a single accident, and the claim against the State of California being justiciable only in this Court, sound judicial administration requires that the actions against both Defendants be heard together by this Court. Moreover, even should this Court decline to exercise jurisdiction as to Defendant Harney, Defendant State of California might well seek in this Court to implead Harney as a third party Defendant and seek indemnity.

Finally, even though resort to the Courts of California is permissible as to the individual Defendant, Plaintiff should not be compelled in the first instance to submit to the state forum, especially where questions of substantive law should be governed by federal rather than state law.* *United States* v. *Clearfield Trust,* 318

* Even if state choice of laws rulings are utilized, constitutional problems will arise. For example, the question whether the workman's claim for general damages survives the assignment effected by her election to accept compensation benefits may depend upon the choice between California and Arizona law. *Carroll* v. *Lanza,* 349 U.S. 408 (1955) determined that the forum state which was the place of injury might apply its own law to allow a third party action, although a statute of the state of employment barred such actions. However, *Carroll* did not settle the question whether such a forum could constitutionally choose the law of the state of employment to bar such a third party action. *Cf.* Restatement, Conflict of Laws, Supp. 1948 § 401.

U.S. 363 (1943); *Texas* v. *Florida,* 306 U.S. 398, 428-429 (1939); Traynor, *Is This Conflict Really Necessary?,* 36 Tex. L. Rev. 657, 666 (1959).

There is presented a justiciable controversy involving injury to property rights of Plaintiff by a sister state and one of its citizens. Accordingly, leave to file the annexed Complaint against both Defendants should be granted. *South Dakota* v. *North Carolina,* 192 U.S. 296 (1904); *Georgia* v. *Pennsylvania R. Co.,* 324 U.S. 429 (1945); *Texas* v. *White,* 7 Wall. 700 (1868).

Respectfully submitted,

JAMES B. SCHNAKE
315 Financial Center Building
Oakland 12, California
Special Counsel to the State of Arizona

Of Counsel:
RICHARD J. DANIELS
Chief Counsel, Industrial Commission of Arizona

FRANK EUGENE MURPHY
JAMES S. TEGART
ROBERT A. SLONAKER
EDGAR M. DELANEY
1616 West Adams
Phoenix, Arizona
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COMPLAINT

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1. Plaintiff is the State of Arizona. Defendants are (a) The State of California, and (b) Charles L. Harney, Inc., a citizen of California, in that it is a corporation organized and existing under the laws of, and has its principal place of business within, the State of California. Jurisdiction of this Court is invoked pursuant to Article III, Section 2 of the Constitution of the United States, and pursuant to 28 U.S.C. § 1251 (a)(1) and § 1251 (b)(3).

2. On March 4, 1962, Ellen Marie McIntosh, a citizen and resident of Arizona, was a passenger in an automobile being operated by Marlin Elliott on the upper level of the San Francisco-Oakland Bay Bridge, a public roadway and interstate highway in the City and County of San Francisco, State of California. Miss McIntosh, Elliott, and others in the automobile were engaged in an interstate journey from California to Arizona. At that time and place the Elliott automobile struck an obstruction on the public roadway of the bridge in an area of the tunnel of Yerba Buena Island. The obstruction, consisting of a temporary metal bridge used for construction work on the roadway, was commonly known as, and is hereinafter referred to as, "Harney's Hump." Miss McIntosh was proximately caused thereby to be thrown violently in and about the automobile and to suffer severe personal injuries to her neck, back and head, and severe mental shock.

3. The construction, maintenance, repair and sign-posting of the roadway area on and around Harney's Hump were under the control and supervision of agents, servants, and employees of both Defendants. The above described accident, and the injuries resulting therefrom, were proximately caused by

(a) the carelessness and negligence of both Defendants in the design, construction, maintenance, repair, operation and control and sign-posting of the aforesaid public roadway,

(b) the dangerous and defective condition of the roadway and Harney's Hump, which condition was created by the State of California and its contractor, Charles H. Harney, Inc., and of which

condition Defendant State had actual and constructive notice,

(c) Defendant State's failure to perform its nondelegable duty under the laws of California to maintain its public roadways in a reasonably safe condition, and

(d) both Defendants' unreasonable obstruction of and burden upon interstate commerce by the creation and maintenance of Harney's Hump on U.S. Highways 40 and 50.

4. At the time of the accident Miss McIntosh was acting in the course and scope of her employment as Dean of Women, an agent, servant, and employee of Grand Canyon College, Phoenix, Arizona. At that time Grand Canyon College was an employer under the workmen's compensation laws of Plaintiff (Ariz. Rev. Stat. § 23-901—§ 23-1087 (1956)) and was insured by the Arizona Industrial Commission, an agency of Plaintiff.

5. Subsequent to March 4, 1962, Miss McIntosh claimed compensation from Plaintiff under Plaintiff's workmen's compensation laws. During the period from March 1962, through January 1963, Plaintiff, as required by law, made payments to or on behalf of Miss McIntosh for temporary disability compensation benefits and for reasonably necessary medical care in the amount of $1,337.95, and Plaintiff may in the future be required to pay permanent disability benefits and to pay for future medical care for Miss McIntosh. Thereby, as a proximate result of the above described misfeasance and wrongful nonfeasance by both Defendants, Plaintiff suffered pecuniary loss and ac-

quired statutory and common law property rights against both Defendants.

6. As a proximate result of Defendants' above described misfeasance and wrongful nonfeasance, Miss McIntosh suffered loss of earnings and general damages in the sum of $10,000.

7. By operation of law and by written assignment executed on May 14, 1962, Miss McIntosh's claim for damages against Defendants became the sole property of Plaintiff, and Plaintiff is now the owner thereof.

8. As a proximate result of the Defendants' above described misfeasance and wrongful nonfeasance, Grand Canyon College lost the services of Miss McIntosh and was thereby damaged in the sum of $4,000. Heretofore, Grand Canyon College has assigned to Plaintiff all its claims for such damages, and Plaintiff is the absolute owner thereof.

9. On December 27 and December 30, 1963, Plaintiff, in accordance with the laws of California, filed claims with the State Board of Control of California for its special damage of $1,337.95 and for Miss McIntosh's general damages in the amount of $7,500. On February 4, 1964, those claims were denied by Defendant State.

WHEREFORE, Plaintiff prays that this Court enter judgment against the Defendants and each of them in the sum of $15,337.95, together with interest and the

costs of this action, and for such other and further relief as this Court may deem proper and necessary.

Respectfully submitted,

JAMES B. SCHNAKE
315 Financial Center Building
Oakland 12, California
Special Counsel to the State of Arizona

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RICHARD J. DANIELS
Chief Counsel, Industrial Commission of Arizona

FRANK EUGENE MURPHY
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ROBERT A. SLONAKER
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