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A Comparative Analysis of Procedural Third-Party Practice

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Notes

A Comparative Analysis of Procedural Third-Party Practice

This Note compares the three basic types of third-party practice found in American jurisdictions—first, the system requiring court permission before a third party can be impleaded; second, the system permitting impleader as a matter of right; and third, the hybrid system permitting impleader as of right before a set time, but requiring court permission in order to implead a third party after that time. The author concludes that the hybrid system best satisfies the standards of procedural efficiency and fairness to all parties.

THIRD-party practice, commonly referred to as "impleader," is a procedural device by which the defendant in a lawsuit may assert a claim against a third person who is or may be liable to him for all or part of the claim asserted against him by the plaintiff. Thus, where *A* sues *B*, *B* may implead *C* on the theory that *C* will be liable to *B if B* is found liable to *A*.[1] Unnecessary duplication of trials is avoided when the defendant's third-party claim and the plaintiff's claim are settled in the same lawsuit.[2] Perhaps the best known example of third-party practice is Rule 14(a) of the Federal Rules of Civil Procedure, which provides in part:

> Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him.

Procedural rules governing third-party practice in American jurisdictions fall into three classes—those requiring the permission of the court before a third party may be impleaded; those allowing impleader as a matter of right; and those allowing unrestricted im-

1. Under Texas and Missouri procedures, a defendant may also implead a third party on the ground that he may be directly liable to the plaintiff. See TEX. R. CIV. P. 38(a); MO. ANN. STAT. § 507.080(1) (Vernon's 1949).

2. See Lee's Inc. v. Transcontinental Underwriters, 9 F.R.D. 470, 472 (D. Md. 1949). The purpose of third-party practice has been summarized as follows: "The dominant object of this Rule is 'procedural economy.' It seeks to prevent the court from having to consider the same evidence at two hearings, and thus to save the time and cost of duplicating the evidence. It guarantees consistent results from the same or similar evidence, since any judgment recovered by the plaintiff against the original defendant binds the third-party defendant with respect to the disposition of any further claim between the latter parties. It also bridges the gap which would otherwise elapse between the entry of judgment against the defendant, and the defendant's obtaining a later judgment against the third-party defendant by independent action." 2 SCHNITZER & WILDSTEIN, NEW JERSEY RULES SERVICE A IV–346–47 (1954).

pleader at any time before a set time, but requiring permission of the court for impleader after that time. The purpose of this Note is to examine these three types of impleader in an attempt to determine which one best satisfies the standards of procedural efficiency and fairness to the parties involved in the action.

PERMISSIVE IMPLEADER

Federal Rule 14(a) is an example of what may be termed *permissive impleader*: the defendant can implead a third party only after obtaining permission of the court to do so.[3] Since this requirement represents an obvious procedural inconvenience to both the defendant and the court without affording them any compensating advantage,[4] it must be designed to protect the interests of either the third party or the plaintiff.

Whenever the court denies a defendant's motion for impleader, the third party is saved the time and expense of hiring an attorney to defend him. This protection might arguably justify the court-permission requirement. Although the third party has no greater qualitative interest in not being impleaded than does any person in not being sued, there is a greater likelihood that a defendant will seek to implead a third party on the basis of a doubtful or unwarranted claim than that a plaintiff will bring an original action based on such a claim. To the defendant already engaged in a lawsuit, the additional expense of impleading a third party is quite small when compared with the expense a plaintiff must incur in bringing an original action.

On closer analysis, however, this argument becomes less persuasive. So long as the defendant's claim has some legal merit—even though it may be of doubtful validity—the defendant should be entitled to assert that claim. Since courts generally do grant im-

3. The following states have adopted the same or substantially similar procedures:
Arizona: ARIZ. R. CIV. P. 14(a).
Colorado: COLO. R. CIV. P. 14(a).
Delaware: DEL. SUPER. CT. (CIV.) R. 14(a).
Iowa: IOWA R. CIV. P. 33(b).
Kentucky: KY. R. CIV. P. 14.01.
Minnesota: MINN. R. CIV. P. 14.01.
Missouri: MO. ANN. STAT. § 507.080 (Vernon's 1952).
Nevada: NEV. R. CIV. P. 14(a).
New Jersey: N.J. RULES 4:14–1(a).
Texas: TEX. R. CIV. P. 38(a).
Utah: UTAH R. CIV. P. 14(a).
Wisconsin: WIS. STAT. ANNOTATIONS § 260.19(3) (1957).
Virginia has expressly abolished third-party practice: see VA. R. CIV. P. 3:9.1.

4. The defendant is required to 1) prepare his motion and formulate supporting arguments; 2) give notice of his motion to the plaintiff when seeking the court's permission *after* the service of his answer; and 3) appear at the hearing on the motion to present his arguments. The court is required to conduct a hearing on defendant's motion in order to determine whether to grant defendant's request.

pleader in such a case,[5] the third party gains nothing. Only in those few cases where the third-party claim is *clearly unmeritorious* is the court likely to deny the defendant's motion. [6] Therefore, the permissive requirement affords potential third-party defendants very little protection. Furthermore, in actual practice, less than full protection is afforded third parties for courts occasionally do permit impleader even on the basis of unwarranted third-party claims.[7]

Consequently, the requirement must be primarily intended to protect the interests of the original plaintiff in the lawsuit. The plaintiff is primarily interested in successfully prosecuting his cause of action as rapidly as possible. Since the entrance of a third party into the lawsuit can seriously delay the original action,[8] the plaintiff has a legitimate objection to an unwarranted impleader.[9]

When the defendant requests permission to implead a third party *before* the service of his answer, Federal Rule 14(a) does not require notice to the plaintiff of the motion.[10] Thus, when the defendant acts promptly, the plaintiff has no opportunity to object to impleader until after the third party has already been impleaded. However, it is doubtful that impleader at such an early stage in the

5. See, *e.g.*, Young v. Atlantic Refining Co., 9 F.R.D. 491, 492 (N.D. Ohio 1949), in which the court refused to sustain plaintiff's objections to granting defendant permission to implead a third party on an alleged indemnity agreement because "the pleadings and the agreement do not show on their face that the agreement was *clearly inapplicable* . . . ." (Emphasis added.)

6. See, *e.g.*, Barnard-Curtiss Co. v. Maehl, 117 F.2d 7 (9th Cir. 1941); Murtagh v. Phillips Waste Oil Pick-Up & Road Oil Serv., 17 F.R.D. 495 (E.D. Mich. 1955).

7. In the following cases, although the defendant was granted permission to implead a third party, his third-party complaint was subsequently dismissed; in each case the court said, in effect, that the defendant completely failed in his attempt to state a claim upon which the third party might be liable to the defendant: Heitman v. Davis, 119 F.2d 975 (7th Cir. 1941); Fowler Industrial Service, Inc. v. John Mohr & Sons Co., 10 F.R.D. 271 (N.D. Ohio 1950); North Dakota *ex. rel.* Workmen's Compensation Bureau v. Przybylski, 98 F. Supp. 21 (D. Minn. 1951); Birdsong v. General Motors Corp., 99 F. Supp. 163 (E.D. Pa. 1951).

8. In Bernstein v. N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatsehappij, 6 F.R.D. 297, 301–02 (S.D.N.Y. 1946), the court summarized the conflicting considerations as follows: "The trial of defendant's claim together with plaintiff's claim will, of course, delay and prolong somewhat the trial of plaintiff's claim. But as against that result there must be weighed the saving in time of the court in trying one case instead of two, thus avoiding both circuity of action and a duplication of work."

9. When the defendant requests permission to implead a third party shortly before trial, the court will normally deny his request if impleader would require delaying trial of plaintiff's action. See, *e.g.*, Spaulding v. Parry Navigation Co., 10 F.R.D. 290 (S.D.N.Y. 1950) (request made when plaintiff's action was the third case on the calendar); Holstlaw v. Southern Ry., 9 F.R.D. 276 (E.D. Mo. 1949) (request made approximately thirty days before date set for trial); United States v. Shuman, 1 F.R.D. 251 (N.D. W. Va. 1940) (request made within a week of the date of the trial). See also, McPherrin v. Hartford Fire Ins. Co., 1 F.R.D. 88, 90 (D.C. Neb. 1940).

10. In the following states the defendent must notify the plaintiff of his motion for impleader in *all* cases:

Kentucky: KY. R. CIV. P. 14.01.

New Jersey: N.J. RULES 4:14–1(a).

Texas: TEX. R. CIV. P. 38(a).

lawsuit could seriously delay the trial of the plaintiff's action. Any time after the third party has been impleaded, the plaintiff can raise his objections [11] to joining the third-party action with his own action against the defendant. If the third-party action is likely to delay final determination of the lawsuit, the plaintiff has ample time to move either for a severance or a dismissal. Therefore, the plaintiff gains little if any protection from the requirement that the defendant who seeks impleader before answering the plaintiff's complaint must first obtain the permission of the court. Furthermore since there are no objecting parties to an ex parte motion, the likelihood that the court will grant the defendant's request is extremely great, and consequently the court-permission requirement is little more than a procedural inconvenience to the defendant and the court.

When the defendant moves to implead a third party *after* the service of his answer, Federal Rule 14(a) provides that he must notify the plaintiff of his motion. The plaintiff is thereby afforded an opportunity to raise his objections before the third party is impleaded. Being able to oppose the defendant's motion at this time on grounds other than potential delay of the trial is of no special advantage to the plaintiff, however, for other objections could be raised without any prejudice to him after the third party has been impleaded. If the defendant's motion is timely there will always be sufficient time remaining before the trial for the plaintiff to raise his objections on a motion to sever or dismiss. Thus, the primary reason for affording the plaintiff an opportunity to object before the third party is impleaded must be to protect the plaintiff's interest in preventing delay of his trial.

Courts have consistently held that the defendant's motion should be denied when made shortly before the trial if granting the motion at that time would result in delaying the plaintiff's action.[12] Since the plaintiff may object to impleader on grounds of delay after the third party has been impleaded, it is of no special benefit to the plaintiff to be able to raise this objection before that time except in cases when the defendant requests permission very shortly before the trial. Only in those cases could the hearing on the defendant's motion take time which would otherwise be used for trial on the merits of the plaintiff's claim.

Permissive impleader under Federal Rule 14(a) is subject to one basic criticism. The court is often called upon *twice* to determine the propriety of impleader; once when the defendant moves for

11. 1 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 427 at 868 (Rules ed. 1950), states: "The proper method to test the propriety of an order granting leave to file a third party complaint is to move to vacate the order and strike the complaint but a motion to dismiss has been treated as a motion to vacate."

12. See cases cited note 9 *supra*.

permission and again, after the third party has been impleaded, when either the plaintiff or the third party moves for a severance or dismissal of the third party action. Since the third party will not have notice of the defendant's motion, and therefore will have no opportunity to raise his objections to being impleaded at that time, the court's rulings in the first hearing cannot bind him. Once the third party has been impleaded he can demand a reconsideration of the objections which were previously raised by the plaintiff and dismissed.[13] The judge will not be in a good position to disregard these objections, for the third party may have new evidence which would influence the judge to change his ruling. Although there is nothing inherently wrong with holding two hearings on the propriety of impleader, very little is gained if the second hearing involves merely a reconsideration of the issues raised at the first one.

Before a defendant may implead a third party, "some substantive basis" for his claim must be "found to exist."[14] When the defendant moves to implead a third party the court has an opportunity to examine the sufficiency of the third-party claim, because the defendant is required to include with his motion a copy of the third-party summons and complaint.[15] The defendant's complaint must meet the test of "whether there is disclosed in the record . . . reasonable cause to believe that the defendant may be able to establish on the part of the proposed third party defendant, such liability as the Rule contemplates."[16] In a number of cases, however, courts have permitted a defendant to implead a third party and then have subsequently dismissed the action *on the ground that the defendant completely failed to state a valid claim against the third party.* One court, granting the third party's motion to dismiss, stated:

> It seems obvious that the third-party complaint . . . must be dismissed because (1) it fails to allege any grounds upon which the defendants . . . would be entitled to any relief as against this third-party defendant, and (2) the third-party complaint fails to come within the purview and scope of Rule 14(a) . . . .[18]

Presumably these courts determined the sufficiency of the third-party claim before granting the defendant's motion.[19] In these cases

13. See SCHNITZER & WILDSTEIN, 2 NEW JERSEY RULES SERVICE A IV–357 (1954).

14. Koenigs v. Travis, 246 Minn. 466, 469, 75 N.W.2d 478, 481 (1956).

15. See Form 22 of the FED. R. CIV. P. See also, Ivey v. Daus, 17 F.R.D. 319 (S.D.N.Y. 1955), where the court denied defendant's request for permission because he failed to include a copy of the third-party summons and complaint in his motion.

16. A B & C Motor Transp. Co. v. Moger, 10 F.R.D. 613, 615 (E.D.N.Y. 1950).

17. See cases cited notes 6 and 7 *supra.*

18. North Dakota *ex rel.* Workmen's Compensation Bureau v. Przybylski, 98 F. Supp. 21, 22 (D. Minn. 1951).

19. For examples of cases where the defendant's motion was denied because of the insufficiency of the third-party claim, see cases cited in note 6 *supra.*

both the court and the parties bore the inconvenience of two hearings on the identical issue.

Manley v. Standard Oil Co. of Texas[20] is further evidence that permissive impleader often results in a duplication of hearings on the same issue. In *Manley*, the plaintiff sued the defendant to gain a clear title to a tract of land. The defendant, claiming $600,000 in damages, obtained permission to implead an unincorporated association and an individual as third-party defendants. The third parties' motion to dismiss the defendant's complaint was sustained, principally because the trial of the third-party action together with the original action would have been highly prejudicial to the plaintiff.[21] In granting the motion, the Chief Judge stated:

> This Motion to Dismiss by the third party defendants leads me to doubt the wisdom of my original order. . . .
>
> The recovery sought against the third party by the defendant, is so out of line with any recovery sought by the plaintiffs as to challenge the wisdom of the order permitting such making of parties.[22]

Apparently the judge granted the defendant permission to implead the third parties and then subsequently changed his mind about the propriety of impleader and dismissed the third-party action. Since the judge had the third-party complaint (containing the $600,000 damage claim) before him when he granted the defendant's motion, he could have determined at that time that the impleader would be prejudicial to the plaintiff.

However, the objections raised on a motion to sever or dismiss may be different from those considered by the court in the first hearing. On the defendant's motion for impleader, the two primary considerations are whether the defendant has stated a claim against the third party which gives reasonable cause to believe that the third party might be secondarily liable to him, and whether impleader would prejudicially delay the trial of plaintiff's lawsuit. The second hearing, on the other hand, often involves new objections to the impleader raised by the third party. Nevertheless, little is gained by resolving the objections to the same third-party action in separate hearings.

The conclusion seems inescapable that whatever slight protection is afforded the plaintiff by the court-permission requirement is outweighed by the procedural inconveniences caused by the requirement. One authority has concluded:

> [I]t is silly for a judge to purport to exercise his discretion at the time of defendant's motion; a much better procedure would be for him to allow service of the third-party complaint, reserving a final decision on its pro-

20. 8 F.R.D. 354 (E.D. Tex. 1948).
21. See the discussion in court's opinion, *id.* at 356.
22. *Id.* at 355–56.

> priety until the third-party defendant has answered, or has raised his own objections to being brought into the suit.[23]

If this suggestion were followed, the permission requirement would be, for all practical purposes, a mere procedural technicality affording little, if any, protection to the parties.

IMPLEADER AS OF RIGHT

New York has attempted to avoid the shortcomings found in the permissive system by adopting a procedure which permits the defendant to implead a third party *as a matter of right*; he need not obtain the court's permission before doing so.[24] Therefore, under the New York system, a court is never called upon to rule on the propriety of impleader until after the third party has been impleaded, and consequently the possibility of two hearings on that issue is eliminated.[25] Furthermore, the defendant and the court are spared the inconveniences resulting from the court-permission requirement.[26]

To protect the interests of the plaintiff and the third party, New York expressly empowers a judge to make orders for the "prevention of delay and injustice":

> The court, in its discretion, may dismiss a third-party complaint without prejudice to the bringing of another action, order a separate trial of the third-party claim or of any separate issue thereof, or make such other orders concerning the proceedings as may be necessary to further justice or convenience. In exercising its discretion the court shall consider whether the controversy between the third-party plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice any party to the action. . . .[27]

As already pointed out, the plaintiff and the third party actually gain very little protection from the court-permission requirement, and therefore the New York procedure for protecting their interests will undoubtedly suffice in most cases. There are, however, at least two instances in which the New York procedure fails to protect the interests of the plaintiff or the third party as extensively as does the permissive system. The New York statute further provides:

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23. Wright, *Joinder of Claims and Parties Under Modern Pleading Rules*, 36 MINN. L. REV. 580, 612 (1952).

24. See N.Y. CIV. PRAC. ACT. § 193-a (1). The defendant can avail himself of the remedy under section 193-a only after interposing his answer. Booke v. Dime Sav. Bank, 204 Misc. 840, 127 N.Y.S.2d 59 (Sup. Ct. 1953).

25. North Dakota recently has adopted a similar procedure; see N.D.R. CIV. P. 14(a). A proposed amendment to the Minnesota Rules of Civil Procedure suggests that a similar procedure be adopted. See, DRAFT OF AMENDMENTS TO THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS RECOMMENDED (1958) TO THE [MINNESOTA] SUPREME COURT BY ITS ADVISORY COMMITTEE 2 (Comm. Print 1958).

26. See 12TH ANN. REP. OF THE N.Y. JUD. COUNCIL 199-202 (1946).

27. N.Y. CIV. PRAC. ACT § 193-a(4).

> . . . A motion to dismiss a third-party complaint pursuant to this subdivision may be made *after the third-party defendant has appeared in the action* by the plaintiff or the third-party defendant upon notice to all the parties who have appeared.[28]

Although the third party is permitted to move to dismiss the third-party complaint before answering,[29] the plaintiff must wait until after the third party has "appeared" before making a similar motion.[30] This requirement is designed to avoid any possibility of two separate hearings on objections to the impleader; if the plaintiff could move to dismiss before the third-party defendant appeared, objections might be raised that would also properly be raised later by the third party. As a result of this provision, however, the plaintiff may be unable to prevent some delay if the third party is impleaded shortly before the trial is to commence because the third party may not appear until after the trial has begun. In these cases consideration of the merits of the plaintiff's claim would have to be deferred until the judge determined the propriety of impleader. Even though the judge normally could rule on the plaintiff's objections within a short time, the interruption probably will cause some disruptive influence on the proceedings.

The second instance in which the New York procedure fails to afford complete protection to the parties is where the defendant impleads a third party on the basis of an unwarranted claim. Since the court has no opportunity to rule on the invalidity of the defendant's claim before the third party is impleaded, a defendant can conceivably implead a third party upon any theory of liability however spurious. Not only is this objectionable to the third party, but also to the plaintiff whose interests may be prejudiced if the defendant uses his right to implead as a tool for harrassment.

A modification of the permissive system, providing that the defendant must notify both the plaintiff and the third party in every case, would protect the third party against spurious impleader and yet, like the New York system, avoid the double hearings objection.[31] The benefit here offered the third party is illusory, however, since objecting to the defendant's motion for court permission to bring in a third party will be just as burdensome as seeking, on the same grounds, a dismissal or severance of the third-party action. The only practical difference between this modification of the permissive system and impleader as of right would be the time at which the third party becomes a formal party to the action. Under the modified permissive system, the third party would be notified of

28. *Ibid.* (Emphasis added.)

29. See Smith v. Brown, 72 N.Y.S.2d 867 (Sup. Ct. 1947).

30. "Appearance" has been defined as "voluntary submission to the court's jurisdiction." Pacilio v. Scarpati, 300 N.Y.S. 473, 478, 165 Misc. 586, 588 (N.Y. City Ct. 1937).

31. To date no jurisdiction has adopted this system of impleader.

the impleader long enough in advance of his becoming a party to the action so that he could easily remove his liquid assets from the jurisdiction before they could be attached by the defendant.[32] On the other hand, the New York system permits the defendant to tie up the third party's assets before the court has determined whether or not the third-party claim is warranted. Such action undoubtedly would present a heavy burden to most individuals and small businesses impleaded on the basis of unwarranted claims. The interests of the court and the defendant in having a simplified impleader system probably outweigh the third party's interest in preventing attachment of his assets on an unwarranted claim, however, especially since a permissive system requiring notice to the third party could pose a substantial barrier to the defendant's effectively prosecuting a good third-party claim.

HYBRID IMPLEADER

A third type of impleader is illustrated by the Illinois procedure:

> Within the time for filing his answer *or thereafter by leave of court*, a defendant may by third-party complaint bring in as a defendant a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. . . .[33]

This procedure is a hybrid of the permissive and New York impleader systems. Until the time for filing his answer has elapsed, a defendant may implead a third party as a matter of right, but after that time has elapsed he must obtain the court's permission to do so.[34]

The Illinois system seeks both to combine the advantages and to avoid the disadvantages of the permissive and New York procedures. By promptly exercising his right to implead, the defendant can spare himself and the court the procedural inconveniences inherent in the permissive system. The Illinois system encourages the defendant to implead a third party early in the proceedings and thereby gives all the parties more time in which to prepare their

32. Normally the third party's assets cannot be attached until he becomes a party to the action. See 7 C.J.S. *Attachment* § 181 (1937).

33. ILL. ANN. STAT. c. 110, § 25(2) (Smith-Hurd 1956). (Emphasis added.)

34. The following states have adopted the same or substantially similar procedures:
Maryland: MD. R. CIV. P. 315(a), (b).
Pennsylvania: PA. R. CIV. P. 2252, 2253. See 3 GOODRICH-AMRAM, STANDARD PENNSYLVANIA PRACTICE §§ 2252, 2253 (1953). See also, ADMIRALTY RULE 56.
Louisiana's procedure for impleading third parties is not entirely clear. LA. REV. STAT. ANN. §§ 13.3381–86 (Supp. 1957), permit a defendant to implead a third party by filing a petition, but contain no provisions as to when the petition may be filed, or whether it may be filed with or without the court's permission. See McMahon, *Courts and Judicial Procedure*, 15 LA. L. REV. 38, 49 (1954). As proposed, the Louisiana procedure would have been similar to Admiralty Rule 56. See Exposé Des Motifs No. 7, Code of Practice Revision, Louisiana State Law Institute, "Book II, Rules of Pleading and Practice in Ordinary Process, Title I Pleading" 82 (1953).

claims and defenses, and perhaps arrive at an out-of-court settlement. Also where the defendant seeks to implead a third party at a later stage in the lawsuit, the plaintiff's interests are protected by the court-permission requirement.[35]

However, this system is less successful in avoiding the disadvantages of the permissive and New York procedures than it is in retaining their respective advantages. When the defendant impleads a third party after the time for impleader as of right has elapsed, the procedural inconveniences of the permissive system still exist. Furthermore, to take advantage of the relatively short time in which impleader as of right is available, defendants are encouraged to assert third-party claims which they would otherwise discard after a more careful investigation of the facts.

The Pennsylvania procedure, also of the hybrid type, allows impleader as of right any time within sixty days "after the service upon the original defendant of the initial pleading of the plaintiff of any amendment thereof. . . ."[36] In all likelihood, the sixty day period would provide ample time for the attorneys to fully consider all the relevant questions of fact and law. It follows that by allowing the defendant sixty days to decide whether or not to implead a third party, rather than the much shorter "time for filing his answer," the Pennsylvania rule avoids encouraging third-party actions which on careful analysis are unwarranted. This procedure should also allow more defendants to take advantage of the simplified method of impleader without any prejudice to the plaintiff.

CONCLUSION

Upon close analysis of the three methods of impleader, the following conclusions seem warranted. First, the permissive method is procedurally inefficient; the small amount of protection afforded the plaintiff's interests by the court-permission requirement does not justify the resulting procedural inconvenience to the defendant and the court. Second, the New York system is undoubtedly the most

35. MD. R. CIV. 315(b) provides that after the time allowed for impleader as of right has elapsed, the defendant may implead a third party "only upon consent of the plaintiff or upon a showing that the delay was excusable or does not prejudice other parties to the action." Thus, where it is apparent that the plaintiff will not be prejudiced, the defendant probably will be able to obtain the plaintiff's consent and implead the third party without having to obtain the court's permission. Where the plaintiff consents, the defendant and the court will be saved the time and expense of a hearing on the defendant's request for permission.

3 GOODRICH-AMRAM, STANDARD PENNSYLVANIA PRACTICE § 2253–2 at 40 (1953), states: ". . . there must be some limitation in order to prevent unreasonable delay or the burdening of the action by the joinder of an unreasonable number of additional defendants."

36. PA. R. CIV. P. 2253; see 3 GOODRICH-AMRAM, STANDARD PENNSYLVANIA PRACTICE § 2253 (1953). In Maryland the defendant has thirty days after the action is at issue. MD. R. CIV. P. 315(b).

procedurally efficient of the three methods, but it fails to give complete protection to the plaintiff's interests. Third, the hybrid system, although less procedurally efficient than the New York system, provides the plaintiff's interests more adequate protection.

With the standards of procedural efficiency and fairness to the parties as guides, it must be concluded the New York and hybrid systems of impleader are almost satisfactory alternatives. One's preference depends upon which standard is emphasized. However, as a matter of fairness to the parties, the system which will encourage the defendant to implead the third party during the early stages of the lawsuit should be preferred. Since the New York procedure imposes no time limit on the exercise of defendant's right to implead, the defendant has no particular incentive to exercise his right promptly. Under the hybrid system, however, the defendant can escape the inconvenience of obtaining the court's permission only by promptly exercising his right to implead. This consideration leads to the conclusion that the hybrid system best satisfies both the standards of procedural efficiency and fairness to the parties involved in the action.