

ORIGINAL

COURT OF CLAIMS
OF OHIO

2014 MAY 28 PM 3: 35

IN THE COURT OF CLAIMS OF OHIO

YONG HUI SHEFFIELD, ET AL.,	:	
	:	
Plaintiffs	:	Case No. 2013-00013
	:	
v.	:	Judge Dale A. Crawford
	:	
THE OHIO STATE UNIVERSITY	:	
MEDICAL CENTER,	:	
	:	
Defendant	:	

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A THIRD-PARTY COMPLAINT, AND REQUEST FOR LEAVE

Defendant respectfully requests the Court's leave to file this short reply memorandum.

Plaintiffs have filed a memorandum contra to the defendant's motion for leave to file a third-party action against OHA solutions and MSO. The rationale behind the plaintiffs' memorandum contra seems to be twofold. First, plaintiffs argue that the third-party action "turns upon the interpretation of contract language that has no bearing on the merits of the instant case." *Memo Contra*, p. 1. Second, plaintiffs argue that if "OSU wished to add MSO, it should not have waited three months to seek leave, thereby jeopardizing an already modified case schedule." *Memo Contra*, p. 2.

As to the contracts, it is true that the plaintiffs are not signatories to the contract, but the signatories were all involved in the process that brought Nurse Gullett to Mr. Sheffield's hospital room on July 5, 2012, and MSO and OHA made certain promises to Ohio State about holding it harmless for claims that arise out of the performance of Nurse Gullett. And, the terms of those contracts directly affect the claims for indemnity, and the obligations of OHA Solutions and MSO with respect to the plaintiffs' claims. Ohio State clearly has certain contractual rights against both of

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these potential third-party defendants, and those claims stem from the same occurrence. If third-party joinder is denied in this Court, Ohio State will be forced to bring a separate legal action, and that will lead to duplication of effort and discovery. The third-party defendants will likely seek to depose the plaintiffs again as part of any new litigation. Other witnesses may need to go through multiple discovery depositions. That is not efficiency or judicial economy. The degree of inconvenience to plaintiffs' counsel should not be the sole measure of efficiency or economy. If there is a judgment against Ohio State, the third-party defendants will no doubt claim that they were prejudiced because they could not participate in the Court of Claims action. This cluster of litigation can be avoided by allowing the third-party action to proceed here, in one case, in this Court. Indeed, in a recent case, the Eighth District Court of Appeals held that it was reversible error for a trial court to deny leave to join a potential indemnitor to a pending action where the claim for indemnity arises out of the same transaction or occurrence as the underlying action. *Qualchoice, Inc. v. Elizabeth Paige-Thompson*, Eighth Dist. No. 88233, 2007-Ohio-1712, ¶ 45-48.

As for the timing, the Court's decision on the immunity of Paul Gullett was not rendered until early February. Ohio State demanded that OHA Solutions and MSO acknowledge their contractual responsibility in a letter sent on February 19, 2014. OHA responded with an equivocal response in mid-March, and MSO never responded. Ohio State could have sought leave immediately after the immunity decision, but because of the plain language of their contracts it believed that both of these potential third-party defendants should be given the opportunity to fulfill their contractual promises without resorting first to litigation. It is now apparent that they have chosen to litigate rather than perform under their contracts. If Ohio State's request for leave is denied because of this short delay, then the message for all litigants is that there is no point in

seeking to avoid litigation informally because there is a penalty for exercising restraint and caution.

Should the rule be: Better to shoot first, and ask questions later?

Ohio State appreciates that this Court has the discretion to grant leave, but the rules should be applied so that all parties with a stake in the outcome can participate in one case, in one court, with one judge presiding over all discovery. Both of these third-party defendants are well aware of the issues, and if the Court orders them to accelerate discovery they could certainly be ready to try this case on the Court's schedule. Accordingly, Ohio State respectfully requests that the Court grant its motion for leave to bring a third-party claim against OHA Solutions and MSO.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U.S. Mail, postage prepaid, this 20th day of May, 2014, to:

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