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INTERPLEADER IN VIRGINIA

I. HISTORY

Interpleader is a joinder device employed by a stakeholder (as the obligor is called) who does not know to which of several claimants he is or may be liable. It allows him to bring all of the claimants into a single proceeding, and to require them to litigate among themselves to determine who, if any, has a valid claim to the stake.¹

Although interpleader originated as a common law device whereby a defendant, in a limited number of circumstances, could protect himself from double vexation upon a single liability, it soon became an equitable rather than legal procedure.² Interpleader had tremendous potential as a device of judicial economy. Not only did it enable the stakeholder to avoid the expense of defending against several vexing claims in separate suits and the hardship of potentially inconsistent results arising therefrom, but also it afforded the court a simple method of avoiding two suits where one would suffice. However, this potential was soon thwarted by technical requirements of somewhat questionable historical authority and limited policy justifications.³ The unfortunate result was often a denial of the remedy in the situation where it would have worked so well. The classic statement of these restrictive rules, and the usual starting point for any discussion of interpleader, is that of Pomeroy:

[F]rom the whole of authorities, it is clear that the equitable remedy of interpleader, independent of recent statutory regulations, depends upon and requires the existence of the four following elements, which may be regarded as essential conditions:

1. The same thing, debt, or duty must be claimed by both or all of the parties against whom relief is demanded [identity of claims];
2. All their adverse titles or claims must be dependent upon or be derived from a common source [privity or common origin];
3. The person asking the relief—the plaintiff—must not have or claim any interest in the subject-matter [disinterestedness];
4. He must have incurred no independent liability to either of the claimants; that is, he must stand perfectly indifferent between them, in the position merely of a stakeholder [no independent liability].⁴

The Virginia Supreme Court endorsed Pomeroy's "essential conditions"

1. WRIGHT, FEDERAL COURTS § 74 (3rd ed. 1976).
2. See Chafee, *Modernizing Interpleader*, 30 YALE L. J. 814 (1921) [hereinafter cited as Chafee]; Rogers, *Historical Origins of Interpleader*, 51 YALE L. J. 925 (1942).
3. See Hazard and Moskovitz, *An Historical and Critical Analysis of Interpleader*, 52 CALIF. L. REV. 706 (1964) [hereinafter cited as Hazard and Moskovitz].
4. 4 POMEROY, EQUITY JURISPRUDENCE § 1322 (5th ed. 1941).

for a bill of interpleader ("strict" or "pure" interpleader as it has come to be called) in the case of *Runkle v. Runkle*.⁵ In that case Mr. Runkle had predeceased Mrs. Runkle. On her death bed, Mrs. Runkle gave money to her sister to hold for safekeeping. After Mrs. Runkle's death, the sister had a clerk of a bank count and deposit the funds as received from Mrs. Runkle's estate through her sister. A dispute ensued between the administrators of each decedent's estate with both claiming the fund held by the bank as property of his decedent. The bank, faced with the two adverse claims, sought to interplead both claimants. The Virginia Supreme Court held, in reversing the trial court, that interpleader should be denied. First, the claims were not dependent upon a common origin, the one deriving title from the husband, the other from his wife. Secondly, the bank had incurred independent liability either as the debtor to or bailee of Mrs. Runkle's estate when it undertook to hold the fund for that estate. It is difficult to find a case where interpleader was more appropriate,⁶ and yet denied because of the restrictive requirements which the equity courts had come to associate with such a beneficial remedy.

In part, at least, as a reaction to the very strict requirements of pure interpleader, the bill in the nature of interpleader was created by the equity courts.⁷ The only material difference between strict interpleader and a bill in the nature of interpleader is that the latter allowed the applicant to be an active claimant asserting claims, not merely a disinterested stakeholder.⁸ Thus, the stakeholder could deny liability in whole or in part

5. 112 Va. 788, 72 S.E. 695 (1911).

6. Again, in *Bell Storage Co. v. Harrison*, 164 Va. 278, 180 S.E. 320 (1935), the Virginia Supreme Court, following the *Runkle* case, reached an unsatisfactory result because of the court's strict adherence to the essential elements of pure interpleader. The bill of interpleader was denied for the following three reasons: first, the claims of defendants were not dependent upon or derived from a common source, one claiming the goods as her own while the creditors claimed that the goods belonged to her husband; second, the stakeholder had incurred independent liability to one claimant by wrongfully selling the goods after they were placed in his possession as bailee; and finally, because the stakeholder could not be wholly indifferent if he had incurred independent liability to one claimant.

7. Beckman, *Interpleader*, 16 U. CIN. L. REV. 117, 163 (1942).

8. *MFA Mut. Ins. Co. v. Lusby*, 295 F. Supp. 660 (W.D. Va. 1969). It was the general rule that a bill in the nature of interpleader would not lie unless supported by some special ground for equitable relief other than the fear of multiple vexation. 3A MOORE'S FEDERAL PRACTICE, 22.07, at 22-47 (2d ed. 1978) [hereinafter cited as 3A MOORE]. However, the rule was apparently "more honored in the breach than the observance . . ." *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474, 479 (E.D. La. 1960). This is probably because there had to be some equitable basis for bringing even a strict interpleader action or there would be no equity jurisdiction at all, and the stakeholder's remedy would be at law. See *John Hancock Mut. Life Ins. v. Kegan*, 22 F. Supp. 326 (D. Md. 1938); 3A MOORE, *supra*. Thus, the federal courts no longer make any distinction between the two remedies, and it is a sufficient equitable basis for interpleader actions brought by either interested or disinterested stakeholders if there is

to any or all of the claimants, as well as assert an adverse claim to the fund or property. An early Virginia case⁹ allowed a bill in the nature of interpleader to stand, but unfortunately, it did not discuss this interpleader hybrid, or the rationale behind its decision.¹⁰

As a further effort to ameliorate the equitable remedy of interpleader and to eliminate the technical and restrictive nature of the action which had destroyed much of its flexibility, the remedy was subjected to statutory modification.¹¹ Virginia, likewise, adopted a statutory interpleader provision,¹² but it did not affect, and was merely ancillary to, the equitable remedy.¹³ The statutory remedy was limited to a defendant in any action in which he was a disinterested stakeholder, and was ready to pay or dispose of the subject matter of the suit as the court directed. Also, the defendant was required to submit an affidavit that he had not colluded with any of the claimants. Unfortunately, the early ancillary statutory

a fear of multiple vexation on account of adverse claims. *Texas v. Florida*, 306 U.S. 398 (1939); *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (E.D. La. 1960). See also note 35 *infra*.

9. *First Nat'l. Bank v. Turnbull & Co.*, 73 Va. (32 Gratt.) 695 (1880). In this case a party with a security interest in the property of the debtor was entitled to interplead the debtor and a lien creditor who had levied on the same property to ascertain and establish his own rights thereto.

10. While there is no definitive reason for the infrequency of reported Virginia cases involving bills in the nature of interpleader, apparently the elimination of just one of the essential elements of strict interpleader was insufficient to make it a very useful joinder device in Virginia. Moreover, the sparse number of Virginia cases dealing with the equitable remedy of interpleader in general is a reflection of the effect the restrictive requirements for the remedy had on its utility. See generally 10B MICHIE'S JURISPRUDENCE *Interpleader* §§1-13 (Repl. Vol. 1977).

11. See Chafee, *supra* note 2.

12. VA. CODE ANN. § 8-226 (Repl. Vol. 1957) (originally enacted as VA. CODE ch. 152, §1 (1849), as it was taken from the English statute 1 & 2 Will. IV., ch. 58; repealed 1977). This early ancillary statutory interpleader at law provision read as follows:

Upon affidavit of a defendant in any action that he claims no interest in the subject matter of the action, but that some third party has a claim thereto, and that he does not collude with such third party, but is ready to pay or dispose of the subject matter of the action as the court may direct, the court may make an order requiring such third party to appear and state the nature of his claim, and maintain or relinquish it, and in the meantime stay the proceedings in such action. If such third party, on being served with such order, shall not appear, the court may, on proof of the plaintiff's right, render judgment for him, and declare such third party to be forever barred of any claim in respect of the subject matter, either against the plaintiff or the original defendant, or his personal representative. If such third party, on being so served, shall appear, the court shall allow him to make himself defendant in the action, and, either in said action or otherwise, cause such issue or issues to be tried as it may prescribe, and may direct which party shall be considered the plaintiff in the issues, and shall give judgment upon the verdict rendered on such trial, or, if a jury be waived by the parties interested, shall determine their claims in a summary way.

13. *Runkle v. Runkle*, 112 Va. 788, 72 S.E. 695 (1911).

interpleader at law provision provided little improvement due to the court's rigid interpretation of the statute. In *Nicholas v. Harrisonburg Building and Supply Co.*,¹⁴ the Virginia Supreme Court held that the statute impliedly required that claims be derived from a common source,¹⁵ and that there be no independent liability to any of the claimants.¹⁶ If there was independent liability present, the stakeholder, it was argued, could not be disinterested in the outcome of the case as required by the statute. Although the statute did occasionally provide for a satisfactory result,¹⁷ because of the equity court's influence on the legal remedy as evidenced by the *Nicholas* decision and the narrow scope of the statute, interpleader was still of little benefit as an equitable remedy or as a joinder device in Virginia.

As a response to the criticism of the equitable remedy and of the early ancillary statutory interpleader at law provision, the Virginia legislature has adopted a modern interpleader practice designed to give Virginia “. . .

14. 181 Va. 207, 24 S.E.2d 452 (1943). This case involved a claim at law by a materialman against the owners of the building based on an implied guaranty by the owners that they would retain from the amount due the contractor a sum sufficient to pay the materialman, and five other claims by mechanics' lienors against the building, which claims were only enforceable in a court of equity.

15. The early ancillary statutory interpleader at law provision did not require that claims be derived from a common source or be in privity. See § 8-226, *supra* note 12. However, the court, in *Nicholas v. Harrisonburg Building and Supply*, 181 Va. 207, 24 S.E.2d 452 (1943), dismissed the mechanics' lienors from the interpleader action because their claims were not personal against the owners and were only enforceable in a court of equity, whereas the claim asserted by the materialman was a personal demand enforceable at law. Thus, the claims had to be in privity for a statutory interpleader action to lie.

16. The early statutory provision also did not require that there be no independent liability. See § 8-226, *supra* note 12. However, the court in *Nicholas*, *supra* note 14, justified the denial of interpleader to the owners of the building by stating that the owners were “. . . not mere stakeholders of the fund, for the reason that, by agreement, they guaranteed the debt of [the materialman]. If [the owners] had not signed the supplemental contract, the [materialman] and other mechanics' lien creditors would have stood on the same plane.” *Id.*, at 454. Thus, but for the agreement (and the lack of privity, *supra* note 15), the owners could have interpleaded the claimants in a single suit to determine which had the valid claim, in whole or in part, to the stake. As it happened, the owners would be required to suffer a second suit by the mechanics' lienors to determine if any part of the judgment paid to the materialman was, in fact, owing to the mechanics' lien creditors.

17. See, e.g., *Parks v. Wiltbank*, 177 Va. 461, 14 S.E.2d 281 (1941); *Leftwich v. Wells*, 101 Va. 255, 43 S.E. 364 (1903). *Parks* involved a suit to distrain property, in which the defendant filed an affidavit in accordance with the statute, admitting that he owed rent, but alleging that another person also claimed the rent, both claimants claiming under the same grantor. The court, allowing the parties to be interpleaded, ordered the second claimant to appear and state the nature of his claim. In *Leftwich* the stakeholder of the decedent's benefit certificate was allowed to interplead two rival claimants, each claiming to be decedent's beneficiary, the one by the express language of the certificate, and the other by an alleged assignment.

a comprehensive interpleader remedy . . . in keeping with the modern trend in the vast majority of American jurisdictions . . ."¹⁸ The current Virginia statutory provision reads as follows:

A. Whenever any person is or may be exposed to multiple liability through the existence of claims by others to the same property or fund held by him or on his behalf, such person may file a pleading and require such parties to interplead their claims. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant in an action who is exposed to similar liability may likewise obtain such interpleader. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in § 8.01-5.

B. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by any other section of this Code.

C. In any action of interpleader, the court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of the Commonwealth affecting the property involved in the interpleader action until further order of the court.

Such court shall hear and determine the case and may discharge the appropriate party from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

D. A person interpleading may voluntarily pay or tender into court the property claimed, or may be ordered to do so by the court; and the court may thereupon order such party discharged from all or part of any liability as between the claimants of such property.¹⁹

The statute does not expressly abolish the equitable remedy, but as a practical matter, it will supersede the equity procedure "because of the greater availability, simplicity, and completeness of the remedy which the statute affords."²⁰ Furthermore, the new statute is not intended to be supplemental, or ancillary, to the equitable remedy.²¹

18. VA. CODE COMM'N. REPORT, REVISION OF TITLE 8 OF THE CODE OF VIRGINIA, at 234 (House Document No. 14, November 17, 1976) [hereinafter cited as H. Doc. No. 14].

19. VA. CODE ANN. § 8.01-364 (Cum. Supp. 1978). This section was enacted as part of Virginia's new civil procedure act, TITLE 8.01, becoming effective October 1, 1977 with the repeal of TITLE 8, including the early ancillary statutory interpleader at law remedy. *See also* note 12 *supra*.

20. VA. CODE ANN. §8.01-364 (Repl. Vol. 1977)(Reviser's note).

21. *See* H. DOC. NO. 14, *supra* note 18, at 236. *But cf.* *Runkle v. Runkle*, 112 Va. 788, 72 S.E. 695 (1911) (the court's holding that the early ancillary interpleader statute was merely supplemental to and did not enlarge or limit the equitable remedy does not apply to the current statute). *See also* VA. SUP. CT. R. 2:20. This rule has been added to implement section

This statute is patterned after the federal interpleader provisions found in 28 U.S.C. §1335²² and in Rule 22²³ of the Federal Rules of Civil Procedure.²⁴ It is frequently stated that these provisions provide for the broadest and most liberal means of obtaining interpleader to be found today.²⁵ Most authorities agree that they abolish all of the technical requirements of equitable interpleader.²⁶

Since the enactment of the new interpleader provision, it has not been

8.01-364, and "should not be interpreted as adding to the statute the restrictions of the traditional equity suit for interpleader which the statute itself does not require." VA. CODE ANN. §8.01-364 (Repl. Vol. 1977)(Reviser's note).

22. The federal statutory interpleader (28 U.S.C. § 1335 (1970) [hereinafter cited as § 1335] reads as follows:

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if

(2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

23. The federal rule interpleader (FED. R. Civ. P. 22 (1)) [hereinafter cited as Rule 22(1)] reads as follows:

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

24. H. Doc. No. 14, *supra* note 18, at 235.

25. 3A MOORE, *supra* note 8, ¶ 22.04[1], at 22-14; Beckman *supra* note 7.

26. See 3A MOORE, *supra* note 8, ¶ 22.11; 7 WRIGHT AND MILLER, FEDERAL PRACTICE AND PROCEDURE § 1704, at 368-69 (1972).

interpreted in any Virginia case. In light of this fact, and because the statute has borrowed heavily from the federal interpleader provisions, it is the purpose of this article to compare and contrast the Virginia statute with the federal provisions when it is appropriate; to flesh out the statute with federal case law where it is necessary; and to discuss any ambiguities and inconsistencies found within the interpleader section.

II. WHEN INTERPLEADER IS APPROPRIATE

In determining when interpleader is appropriate under the Virginia statute, it might be helpful first to consider the general purposes of interpleader as they have come to be viewed in the federal courts. Though its purposes are varied, interpleader primarily prevents the stakeholder from having to determine at his peril which claimant has the better claim to the stake,²⁷ and if the stakeholder is disinterested in the outcome, it forces the claimants to litigate the merits of their claims without embroiling the stakeholder in the controversy.²⁸ However, even if the stakeholder is interested in the outcome of the case, it prevents the threat of multiple liability arising because of inconsistent determinations in different courts.²⁹ The federal courts also have expanded this notion of a fear of exposure to multiple liability to include the situation where the stakeholder has only a limited fund or property, and thus, he is able to use interpleader to protect himself from the vexation of multiple suits.³⁰

But interpleader does not only benefit the stakeholder, it also benefits the judicial system and the claimants. It benefits the judicial system by consolidating several potential individual actions into a single comprehensive suit thereby saving court time and expense, as well as providing for consistency of results.³¹ The claimants are benefited by being able to bring all their claims in one action and having the court equitably divide a limited fund. This prevents the unfairness of a race to judgment by the claimants only to find that the first claimant there has exhausted the fund.

A. *Persons Entitled to Interplead*

Subsection A of the Virginia interpleader statute enables "any person," either as plaintiff or as defendant, to interplead claimants whose adverse

27. *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952 (2d Cir. 1953).

28. *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F.2d 141 (8th Cir.), *cert. denied*, 302 U.S. 739 (1937).

29. *Texas v. Florida*, 306 U.S. 398 (1939).

30. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523 (1967).

31. 7 WRIGHT AND MILLER, *supra* note 26, § 1702, at 364.

32. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523 (1967).

claims to the property may subject him to multiple liability.³³ The statute has expanded the availability of interpleader by wisely abrogating the requirement of the prior statute³⁴ that limited the remedy to defendants until they had submitted affidavits that they had not colluded with any of the claimants. While both plaintiffs and defendants may now interplead, they may do so even if they are interested stakeholders. Subsection A expressly abolishes the equitable requirement that the stakeholder be disinterested in the outcome of the case by stating: "[I]t is not ground for objection . . . that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants."³⁵ Although the current statute has abolished two major limitations on interpleader, it does require that for a person to interplead, the property or fund must be held "by him or on his behalf,"³⁶ and that he must be willing to "pay or tender" it into the court.³⁷

B. *Primary Test*

Under Subsection A of the Virginia interpleader statute, the primary test for determining the propriety of interpleading the adverse claimants

33. Subsection A is very similar to Rule 22(1), *supra* note 23, in its language and in its intent of extending interpleader to plaintiffs and defendants. The only significant changes found in subsection A are the substitution of "any person" for "plaintiff," and the deletion of the reference to defendant's crossclaim or counterclaim because they are intended to be included within the term "pleading" in the first sentence of subsection A. H. Doc. No. 14, *supra* note 18, at 235.

34. *See* note 12 *supra*.

35. H. Doc. No. 14, *supra* note 18, at 235. This is the precise language found in Rule 22(1), *supra* note 23. Although such language is absent from section 1335, *supra* note 22, the federal courts have successfully read it into the statutory provision. This result has been achieved, in part, because the statutory interpleader specifically applies to actions of interpleader or in the nature of interpleader, and also because there is no longer any practical reason to distinguish the two actions. *See* Standard Sur. & Cas. Co. v. Baker, 105 F.2d 578 (8th Cir. 1939); Pan Am. Fire & Cas. Co. v. Revere, 188 F. Supp. 474 (E.D. La. 1960); John Hancock Mut. Life Ins. Co. v. Kegan, 22 F. Supp. 326 (D. Md. 1938); 3A MOORE, *supra* note 8, ¶ 22.07 [1]; Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L. J. 377 (1940). *See also* note 8 *supra*. Although the Virginia statute does not expressly embrace both strict interpleader and bills in the nature of interpleader, as does § 1335, *supra* note 22, all distinctions between the two remedies should be laid to rest since the statute, like Rule 22(1), *supra* note 23, expressly avails itself to interested stakeholders. And it should be a sufficient equitable basis for interpleader under the statute if the stakeholder is threatened by exposure to multiple vexation, whether he is disinterested or not. *See* note 8 *supra*.

36. This requirement is borrowed from § 1335, *supra* note 22, which requires that the person filing the interpleader action must have "custody and possession." Oddly enough, the early Virginia statute, *supra* note 12, did not make such a requirement.

37. VA. CODE ANN. § 8.01-364(D) (1978 Supp.). *See generally* notes 94-95 *infra*, for a discussion of the deposit requirement in Virginia; *see also* Scott v. Aetna Life & Cas. Co., 48 F.R.D. 446 (W.D. Va. 1969).

(the so-called "first stage" of interpleader³⁸) is whether the applicant ". . . is or may be exposed to multiple liability through the existence of claims by others to the same property or fund . . ." ³⁹ In this initial phase of the action, the only appropriate requirement is that there be a good faith fear of exposure to double liability, and it should be irrelevant whether the applicant believes all the claims against the fund are meritorious.⁴⁰ Indeed, only one claimant will ultimately succeed to the fund. Nonetheless, the utility of making interpleader available should not be diminished so long as the stakeholder's bona fide purpose is to avoid the expense and potential vexation of litigating conflicting claims.⁴¹

To understand when the primary test for granting interpleader has been satisfied, it is necessary to clarify what is meant by the concepts, "exposed to multiple liability" and "same property or fund," as they are used in subsection A.

It is the exposure to multiple liability (or "double liability" as it is often referred to) that has been the traditional equitable grounds upon which an interpleader action will lie.⁴² It exists when several adverse parties are asserting mutually exclusive claims to a single outstanding obligation which might result in inconsistent adverse determinations in different courts.⁴³ But not everyone faced with the threat of a multiplicity of suits is entitled to interplead; if there is more than a single obligation owing, or a double recovery is justified by law, then interpleader is not appropriate.⁴⁴ Simply stated and stripped of its technicalities, the primary test for deter-

38. Interpleader actions in the federal courts, for practical reasons, generally involve two stages of litigation. The first stage is devoted to determining if the prerequisites for interpleader have been met. If the court determines that the applicant has satisfied the primary test and interpleader is available, then it will discharge the stakeholder if he is disinterested, and order the adverse claimants to interplead. The so-called "second stage" involves the actual litigation between the adverse claimants on the merits to determine who has the better claim to the stake. See *Westinghouse Elec. Corp. v. United Elec., Radio & Mach. Workers*, 99 F. Supp. 597 (W.D. Pa. 1951), *aff'd*, 194 F.2d 770 (3rd Cir. 1951), *cert. denied*, 343 U.S. 966 (1952). See generally 3A MOORE, *supra* note 8, ¶ 22.14 [1-2]; see also notes 89 and 95 *infra*, if stakeholder is interested, or may be independently liable.

39. Cf. § 1335, *supra* note 22, and Rule 22, *supra* note 23, for similarities in statement of primary test.

40. *Bierman v. Marcus*, 246 F.2d 200 (3d Cir. 1957), *cert. denied sub nom.*, *Milmar Estate, Inc. v. Marcus*, 356 U.S. 933 (1958); *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952 (2d Cir. 1953).

41. *Id.*

42. *Texas v. Florida*, 306 U.S. 398 (1939); *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (E.D. La. 1960).

43. *Id.* See generally 3A MOORE, *supra* note 8, ¶ 22.02 [1]; 7 WRIGHT AND MILLER, *supra* note 26, § 1704; Chafee, *supra* note 2.

44. *Trowbridge v. Prudential Ins. Co. of Am.*, 322 F. Supp. 190 (S.D.N.Y. 1971); *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (E.D. La. 1960); Chafee, *supra* note 2, at 819.

mining the propriety of granting the relief of interpleader is two-fold: first, there must be only a *single obligation owing*,⁴⁵ and second, the claims to it must be *mutually exclusive* in the sense that "they necessarily overlap," such that "if one claim is right, the rest must be wrong."⁴⁶ An illustration will make the concept clear:

For example, if *A* borrowed \$10 from *B* and also bought a \$10 book from *C* on credit, he could not interplead them when they each came around to collect their \$10. He would owe more than a single obligation, and the establishment of his liability to one party would not necessarily defeat his liability to the other. However, if *A* was holding a particular picture for *B* and *B* then disappeared leaving behind *C* and *D* each of whom claimed that *B* owed the picture to him, *A* could interplead *C* and *D* because a decision on the merits in favor of one of the claimants would necessarily dictate a determination that the other was not legally entitled to recovery of the picture from *A*.⁴⁷

The next consideration is what is meant by the concept "same property or fund" as it is used in subsection A of the Virginia interpleader section. Purportedly, the inclusion of this concept means that the old equitable requirement of "identity of claims"⁴⁸ has been retained, and that this is the major distinction between the Virginia section and the federal provisions.⁴⁹ If this is the case, then interpleader in Virginia will be denied "unless the claims coincide at every point like two superimposed triangles in plane geometry."⁵⁰ In its strictest terms, it will require that the claims must not deviate in the amount sought, the form of action, or the relief requested.⁵¹ Even at its best, the identity of claims rule is nothing more than "an unsuccessful attempt to phrase the principle of mutual exclusiveness."⁵²

Hence, it is very doubtful that the revisers intended to retain the requirement of identity of claims as that concept is traditionally used. Indeed, such a requirement would be inconsistent with the reviser's intent to create

45. *Id.*

46. Chafee, *supra* note 2, at 818-19 (concept was originated by Professor Chafee); *accord*, *Texas v. Florida*, 306 U.S. 398 (1939); *American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc.*, 407 F. Supp. 164 (D.V.I. 1975); *Trowbridge v. Prudential Ins. Co. of Am.*, 322 F. Supp. 190 (S.D.N.Y. 1971); *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (E.D. La. 1960); 3A MOORE, *supra* note 8, ¶ 22.02 [1], at 22-8.

47. *Trowbridge v. Prudential Ins. Co. of Am.*, 322 F. Supp. 190, 192 (S.D.N.Y. 1971). For another example, *see* Chafee, *supra* note 2, at 819.

48. *See generally* Chafee, *supra* note 2, at 823-28; Hazard and Moskovitz, *supra* note 3, at 724-35.

49. H. Doc. No. 14, *supra* note 16, at 235; 12 U. RICH. L. REV. 245, 264-65 (1977).

50. Chafee, *supra* note 2, at 824.

51. Chafee, *supra* note 2, at 823-28.

52. *Id.*, at 824.

“a modern interpleader practice . . . extended on practical grounds far beyond the traditional remedy in equity and the early ancillary statutory interpleader at law.”⁵³ A further indication of the reviser’s intent is their explanation of the so-called “identity of claims” concept in the Virginia statute as follows:

. . . while claims need not have a common origin and can be founded on different theories of recovery (i.e., one in contract, another in tort), such claims must relate to or affect the same property or fund.⁵⁴

This explanation clearly does not coincide with that of the early equity courts.⁵⁵ Furthermore, the requirement of identity of claims is inconsistent with the face of the Virginia interpleader statute which expressly abolishes the requirement as follows:

*It is not ground for objection to joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical . . .*⁵⁶(emphasis added)

Thus, the requirement that there be identity of claims as a prerequisite for interpleader under the new statute is inconsistent with the reviser’s intent; it is inconsistent with the language of the statute; and it is inconsistent with the modern trend from which the statute was patterned. To clear up these inconsistencies, the statute should be read as abolishing the identity of claims rule. And the concept “same property or fund,” included therein, should be read merely as facilitating an understanding of when interpleader is appropriate under the primary test, that is, mutually exclusive claims must be directed against the same property or fund.⁵⁷

With an understanding of the primary test to be used in determining whether interpleader should be granted, it is important now to consider whether that test is expansive enough to include the situation where the threat is exposure to “multiple vexation” rather than multiple liability.⁵⁸ In theory, the two are not the same. The former involves claims which are not mutually exclusive in the sense that if one claim is right, the rest are

53. H. Doc. No. 14, *supra* note 18, at 234.

54. H. Doc. No. 14, *supra* note 18, at 235.

55. *See* notes 50 and 51 *supra*.

56. This is the precise language found in Rule 22(1), *supra* note 23, and is similar to that found in § 1335(b), *supra* note 22. And it is the presence of this language in the federal provisions which abolish the first two of Pomeroy’s equitable requirements for interpleader, identity of claims and common origin. 3A MOORE, *supra* note 8, ¶ 22.11, at 22-101; Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L. J. 377, 408 (1940).

57. For cases in which interpleader was allowed under federal provisions, although identity of claims was absent, *see* 3A MOORE, *supra* note 8, ¶ 22.11, at 22-103, n.8.

58. *See generally* 3A MOORE, *supra* note 8, ¶ 22.08 [1], at 22-52, to 22-58; 7 WRIGHT AND MILLER, *supra* note 26, § 1705, at 377-81.

wrong,⁵⁹ potentially all the claims are valid. But the claims asserted, in the aggregate, are greater than the limited fund held by the stakeholder.⁶⁰ For this reason, interpleader has been allowed in the so-called "pie-slicing" cases,⁶¹ not to protect the stakeholder from multiple liability, but to protect him from the expense and harassment of multiple litigation, and to prevent a disproportionate "slicing" of the fund by one claimant ahead of the rest.⁶² The revisers of the Virginia interpleader section seemed to have had the "pie-slicing" situation in mind when they stated the purpose of interpleader, in part, as the ". . . avoidance of the vexation of multiple claims to disputed property and of possible multiple liability arising from those claims"⁶³ Though the statute does not expressly embrace the threat of multiple vexation in its test for determining whether interpleader is appropriate, there is no apparent reason why it does not do so by implication. The federal provisions, likewise, do not include any mention of multiple vexation. But federal courts have had little trouble realizing the practical utility interpleader has of assuring an equitable distribution of a fund in a single proceeding when several similarly situated claimants have a right to it, in whole or in part.⁶⁴ Principles of judicial economy support this position; judicial reasoning would seem to dictate it. A stakeholder who seeks a fair apportionment of his limited stake should not be turned away at the courthouse door because there is no such relief available. In this instance, interpleader is a sufficient and practical remedy; its benefits clearly justify its application.⁶⁵ If the case arises, Virginia should follow the

59. The stakeholder will also not run the risk of paying a single debt twice, for he is acquitted after the first payment of a judgment. 7 WRIGHT AND MILLER, *supra* note 26, § 1705 at 377.

60. State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523 (1967); American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc., 407 F. Supp. 164 (D.V.I. 1975).

61. American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc., 407 F. Supp. 164, 173 (D.V.I. 1975). "The typical examples are interpleader by the surety on a payment bond being subjected to claims by a string of subcontractors or materialmen, and interpleader by a liability insurer being subjected to claims of persons injured by the insured." 3A MOORE, *supra* note 8, ¶ 22.02 [1], at 22-9 (footnote omitted).

62. State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523 (1967); Underwriters at Lloyd's v. Nichols, 363 F. 2d 357 (8th Cir. 1966); Standard Sur. & Cas. Co. v. Baker, 105 F. 2d 578 (8th Cir. 1939); Fidelity & Deposit Co. v. A. S. Reid & Co., 16 F. 2d 502 (E.D. Pa. 1926); American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc., 407 F. Supp. 164 (D.V.I. 1975); Pan Am Fire & Cas. Co. v. Revere, 188 F. Supp. 474 (E.D. La. 1960).

63. H. Doc. No. 14, *supra* note 18, at 236.

64. The federal courts have relied heavily on their interpretation of the requirement of "adversity" (*see* note 75 *infra*), and on the fact that federal statutory and rule interpleader are prospective in nature (*see* note 78 *infra*).

65. Chafee, *The Federal Interpleader Act of 1936* (pt. 2), 45 YALE L. J. 1161, 1166 (1936); Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L. J. 377, 417-21 (1940); Hazard and Moskovitz, *supra* note 3, at 759.

trend in the federal courts of expanding the traditional role of interpleader to protect the applicant from vexatious litigation, as well as from multiple liability.

C. *Adverse and Prospective Claims*

Subsection A of the Virginia statute expressly requires, as a prerequisite of interpleader, that the claims be "adverse to and independent of one another."⁶⁶ But the requirement of adversity is nothing more than an indirect way of requiring that claims be mutually exclusive.⁶⁷ Furthermore, by the very nature of interpleader, adversity of claims would be required even without mention in the statute, otherwise, there would be no justifiable reason to protect either the stakeholder or the claimants.⁶⁸

Claims, however, are not adverse if there is more than a single obligation owing,⁶⁹ or the claims are asserted against different funds or property,⁷⁰ or the stakeholder does not have a bona fide fear of multiple liability.⁷¹ But if claims are adverse, it is not ground for objection to interpleader that they are not derived from a common source. This is because subsection A expressly abolished the equity requirement of privity of claims.⁷² The advantage of this welcomed improvement over the equitable remedy and the prior statute is that claims do not have to be dependent upon or derived from a common origin so long as they are adverse.⁷³ Interpleader also should not be denied for a lack of adversity in cases involving multiple vexation. Admittedly, the claimants would be indifferent toward each other, and their claims would not be adverse in the traditional sense of asserting mutually exclusive claims.⁷⁴ But because the claimants would be fighting over a fund insufficient to satisfy all of them, the requisite adversity can be found in each claimant's interest in reducing or defeating the claims of every other claimant.⁷⁵ By the same token, if the aggregate of the

66. This adversity provision is taken directly from Rule 22(1), *supra* note 23, and § 1335(a)(1), *supra* note 22.

67. *See* *Gaines v. Sunray Oil Co.*, 539 F.2d 1136 (8th Cir. 1976); 3A MOORE, *supra* note 8, ¶ 22.08 [1], at 22-53; 7 WRIGHT AND MILLER, *supra* note 26, § 1705, at 373.

68. 7 WRIGHT AND MILLER, *supra* note 26, § 1705, at 373, n. 72.

69. *Trowbridge v. Prudential Ins. Co. of America*, 322 F. Supp. 190 (S.D.N.Y. 1971).

70. *Id.*

71. *See* note 38 *supra*.

72. H. Doc. No. 14, *supra* note 18, at 235; *cf.* *Nicholas v. Harrisonburg Bldg. & Supply Co.*, 181 Va. 207, 21 S.E. 2d 452 (1943); *Bell Storage Co. v. Harrison*, 164 Va. 278, 180 S.E. 320 (1935); *Runkle v. Runkle*, 112 Va. 788, 72 S.E. 695 (1911).

73. For a thorough discussion of the rather nebulous requirement of common origin, *see* *Chafee, Modernizing Interpleader*, 30 YALE L. J. 814, 828-40 (1921); *Hazard and Moskovitz, supra* note 3, at 724-35.

74. *See* *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (E.D. La. 1960).

75. After a series of well reasoned cases, this seems to be the settled opinion of the federal

claims does not exceed the limited fund, then interpleader should properly be denied for lack of adversity.⁷⁶

An important inclusion in the Virginia interpleader section is the provision that interpleader is allowed "whenever any person is or may be exposed to multiple liability."⁷⁷ This acceleration clause makes it clear that an interpleader action should be permitted whether the claims vexing the stakeholder are actual or only prospective. Hence, it is inappropriate to deny interpleader where the claims have not yet been asserted or reduced to judgment so long as the primary test of mutual exclusiveness is met.⁷⁸

D. *Independent Liability Permitted*

The interpleader statute does not expressly abolish the fourth equitable requirement, that of no independent liability. Consequently, the status of

courts. See *Dugas v. American Sur. Co.*, 300 U.S. 414 (1937); *Underwriters at Lloyd's v. Nichols*, 363 F.2d 357 (8th Cir. 1966); *Standard Sur. & Cas. Co. v. Baker*, 105 F.2d 578 (8th Cir. 1939); *Fidelity & Deposit Co. v. A. S. Reid & Co.*, 16 F.2d 502 (E.D. Pa. 1926); *Commercial Union Ins. Co. v. Adams*, 231 F. Supp. 860 (S.D. Ind. 1964); *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474 (E.D. La. 1960). The court in *Commercial Union Ins. Co. v. Adams* summarized the opinion of the federal courts with this graphic illustration:

Finally, it has been urged that the action is not proper because the claimants do not have claims adverse to each other. It might, by the same reasoning, be said that 100 persons adrift in the ocean with but one small lifeboat in sight were not adverse to each other. We fear, however, that the concept of non-adversity would dwindle in direct proportion to the number of swimmers reaching the boat.***In a situation where the aggregate of the claims is far in excess of the liability of the insurer, each claimant is interested in reducing or defeating the claim of every other claimant, and the adversity of claim required by statute is satisfied. *** Further, interpleader may be resorted to by an insurance carrier when the adverse claims are unliquidated tort claims against its assured.

231 F. Supp. 860, 863 (S.D. Ind. 1964).

76. See *Fulton v. Kaiser Steel Corp.*, 397 F.2d 580 (5th Cir. 1968); *Joseph F. Hughes & Co. v. Harry S. Mickey, Inc.*, 211 F. Supp. 298 (D. Md. 1962).

77. The acceleration clause in Rule 22(1), *supra* note 23, is identical to the one in VA. CODE ANN. § 8.01-364(A) (Cum. Supp. 1978); similarly, § 1335, *supra* note 22, provides for prospective claims by the words "are claiming or may claim." For a discussion of the acceleration clauses in the federal provisions, and their interpretation by the federal courts, see 3A MOORE, *supra* note 8, ¶ 22.08 [2]; 7 WRIGHT AND MILLER, *supra* note 26, § 1707.

78. In *Pan Am. Fire & Cas. Co. v. Revere*, 188 F. Supp. 474, 480 (E.D. La. 1960), Judge Skelly Wright, when faced with the problem of whether the requirement of "exposure to multiple liability" in Rule 22 was expansive enough to encompass the "fear of multiple vexation," said: "The key to the clause requiring exposure to 'double or multiple liability' is in the words 'may be.' The danger need not be immediate; any possibility of having to pay more than is justly due, no matter how improbable or remote, will suffice. At least, it is settled that an insurer with limited contractual liability who faces claims in excess of his policy limits is 'exposed' within the intentment of Rule 22, and we need go no further to find the requirement satisfied." *Id.* (footnotes omitted).

this requirement is uncertain.⁷⁹ Before determining whether independent liability is permitted under the present statute, it is necessary to understand when independent liability occurs, and the reasons for the rule prohibiting it in interpleader actions. Independent liability may be incurred in two ways:⁸⁰ first, where an agent, or bailee or some other party seeking interpleader, has, in his dealings with one of the claimants, expressly acknowledged the latter's title, or has contractually bound himself to the claimant, such that he is liable on the undertaking independent of the interpleader action. In the second way, the independent liability arises out of the very nature of the relationship between the stakeholder and one of the claimants, without reference to an acknowledgment of title or contractual arrangement.

The justifications for the requirement can be broken down into two basic categories. There are those cases which state that the no independent liability rule is a necessary corollary to the requirements of privity and disinterestedness.⁸¹ If the stakeholder were independently liable to one claimant, the claims were not derived from a common source; also, the stakeholder could not be indifferent, for a recovery by the claimant to whom he was not independently liable would expose him to a double loss. The other category of cases based their justification for the rule on "relics of an antiquated procedure imposing unnecessary restrictions upon joinder of parties and claims and upon the trial of separate issues."⁸²

The recent trend, however, has been towards rejecting the no independent liability restriction, and allowing interpleader if there is a bona fide threat of mutually exclusive claims, apart from any independent claims against the stakeholder.⁸³ The reason for this trend is that the two basic justifications for the restrictions no longer exist. On the one hand, the

79. The federal provisions, from which VA. CODE ANN. § 8.01-364 (Cum. Supp. 1978) is patterned, do not expressly abolish the no independent liability requirement. This caused some problem in the federal courts, but it now seems to be uniformly resolved in favor of the rule's rejection. See generally 3A MOORE, *supra* note 8, ¶ 22.11, at 22-105; 7 WRIGHT AND MILLER, *supra* note 26, § 1706, at 381.

80. *Runkle v. Runkle*, 112 Va. 788, 72 S.E. 695 (1911) (citing 4 POMEROY'S EQUITY JURISPRUDENCE § 1326 (5th ed. 1941)).

81. Three Virginia cases cited this as the justification for the requirement: *Nicholas v. Harrisonburg Bldg. & Supply Co.*, 181 Va. 207, 21 S.E. 2d 452 (1943) (early ancillary statutory interpleader at law); *Bell Storage Co. v. Harrison*, 164 Va. 278, 180 S.E. 320 (1935) (equitable interpleader); *Runkle v. Runkle*, 112 Va. 788, 72 S.E. 695 (1911) (equitable interpleader).

82. 3A MOORE, *supra* note 8, ¶ 22.11 at 22-107. See also Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 YALE L. J. 715 (1956).

83. See *Dakota Livestock Co. v. Keim*, 552 F. 2d 1302 (8th Cir. 1977); *Hebel v. Ebersole*, 543 F.2d 14 (7th Cir. 1976); *Knoll v. Socony Mobil Oil Co.*, 369 F. 2d 425 (10th Cir. 1966); *Olivier v. Humble Oil & Refining Co.*, 225 F. Supp. 536 (E. D. La 1963).

federal provisions have expressly abolished the requirements of privity of claims and of disinterestedness of the stakeholder.⁸⁴ And on the other hand, "[c]ontemporary procedure, with its flexible provisions for wide joinder of parties and claims, [and] for separate trial of separate issues where necessary, . . . is well adapted to disposing of interpleader cases where independent liability is asserted."⁸⁵

The revisers of the Virginia interpleader statute have endorsed this recent trend with the statement that "the reasons underlying the interpleader remedy . . . continue to have merit when the person interpleading may be liable to one of the claimants on an independent basis."⁸⁶ In addition to the intent of the revisers, the reason for the trend in the federal courts towards vitiation of the restriction is directly applicable to Virginia. The current statute abolishes both the requirements of privity and disinterestedness,⁸⁷ and Virginia civil procedure provides for the same liberal joinder and severance of parties and claims.

The only question remaining is how should an interpleader trial be conducted when an independent claim is involved. While there is no definitive answer to this question, some commentators suggest that the second stage of the interpleader action is appropriate for litigating both the adverse claims and the independent claim.⁸⁸ The claims would be consolidated and tried in a single proceeding, thus promoting judicial economy. In a particular case, however, a better approach may be to try the independent claim, if necessary, in a third stage.⁸⁹ This would be especially true if the indepen-

84. Professor Chafee, a key figure in drafting the Federal Interpleader Act of 1936, stated that, although the Act did not mention the independent liability requirement, "it was hoped that the statutory abolition of privity would also dispose of this other rigid requirement." Chafee, *Federal Interpleader Since The Act of 1936*, 49 YALE L. J. 377, 412 (1940).

85. WRIGHT, *LAW OF FEDERAL COURTS* § 74, at 364 (3rd ed. 1976). See also Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 YALE L. J. 715 (1956).

86. H. Doc. No. 14, *supra* note 18, at 236.

87. See notes 35 and 72 *supra*.

88. See 3A MOORE, *supra* note 8, ¶ 22.14[3], at 22-130; 7 WRIGHT AND MILLER *supra* note 26, § 1714, at 443; Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 YALE L. J. 715, 720-22 (1956).

89. "Determination would be made at the second stage, as is usual, of the respective claims to title by the various claimants. If the claimant asserting the independent liability prevails at the second stage, there would be no need for a third, since he could not recover twice. If, however, some other claimant is awarded title to the fund after a trial at the second stage, the stakeholder in the third stage would confront the claimant asserting the independent liability." 3A MOORE, *supra* note 8, ¶ 22.14[3], at 22-131. The three-stage approach was originated by Professor Chafee in Chafee, *supra* note 2, at 843. For cases in which it has been applied, see *Hebel v. Ebersole*, 543 F.2d 14 (7th Cir. 1976); *Royal School Lab., Inc. v. Town of Watertown*, 358 F.2d 813 (2d Cir. 1966).

dent claim and the interpleader claims are not closely related. But if there is a "strong nexus" between the claims, the court has the discretion to try the claims together in the second stage, or to tailor the sequence of the trial to meet the particular needs of the case.⁹⁰

In short, there is no one way to conduct an interpleader trial involving an independent claim. The revisers recognized this and concluded that the trial court should have full discretion in tailoring the course of the interpleader action so as to fairly accommodate the claim of independent liability.⁹¹

III. RESTRAINING ORDER, DEPOSIT IN COURT, OTHER PROVISIONS

One of the major advantages of the interpleader remedy is that it substitutes "one comprehensive litigation for an extended series of individual actions."⁹² By doing so, the remedy promotes judicial economy and consistency of results. This advantage, of course, is possible only if the court has the power to settle all claims in a single proceeding, and to enjoin claimants from bringing separate actions in other courts. Subsection C of the Virginia statute makes it explicit that the courts have the power in an interpleader action to restrain all further proceedings in any court of the state affecting the property or fund involved in the interpleader action.⁹³ It is, however, entirely within the discretion of the court to grant or deny injunctive relief,⁹⁴ and the court may make the injunction permanent if necessary. Under the second paragraph of Subsection C, the court also has the discretion to discharge a disinterested stakeholder from any further liability, and to make all necessary orders to enforce its judgment.⁹⁵

Subsection D of the interpleader section affords the stakeholder the right to voluntarily deposit the disputed property or fund into the court, or he may be ordered to do so by the court.⁹⁶ In the typical case, the court may

90. 7 WRIGHT AND MILLER, *supra* note 24, § 1714, at 441.

91. H. Doc. No. 14, *supra* note 18, at 236. As a sort of guideline, the revisers suggest that "upon review of the facts and the pleadings, the court may choose to (1) dismiss the claim, (2) order severance or separate trials, or (3) require that the independent claim to the disputed property be tried in the interpleader action." *Id.*

92. *Id.*

93. Subsection C is patterned after 28 U.S.C. §2361 (1970), which grants the federal courts the power to restrain claimants from instituting other actions in state or federal courts in connection with the federal statutory interpleader remedy found in §1335, *supra* note 22; *cf.* VA. CODE ANN. §8-226, *supra* note 12.

94. H. Doc. No. 14, *supra* note 18, at 236.

95. Subsection C gives the court the discretionary power to tailor the course of the interpleader action to meet the needs of the case, for example, where claims of an interested stakeholder is involved, or claims of independent liability of stakeholder are asserted. *See id.*

96. VA. CODE ANN. §8.01-364(D) (Cum. Supp 1978), by making the deposit optional, strikes

find it beneficial to order the deposit of the property as "a means of safeguarding the property and of facilitating the execution of its judgment."⁹⁷ If a disinterested stakeholder is involved, he will find it to his advantage to make the voluntary deposit into the court so that he may be discharged under Subsection D from all or part of any further liability.⁹⁸ On the other hand, if an interested stakeholder is involved and the court determines that a deposit is necessary, he should be required to make a deposit equal to the largest claim.⁹⁹

Subsection B of the statute was included to make it clear that, although the new interpleader remedy would replace the early ancillary statutory interpleader at law and would displace the equitable remedy, the statute was merely supplemental to and did not supersede or limit other remedies provided for in the Virginia Code. The revisers had in mind¹⁰⁰ those sections following the interpleader remedy dealing with claims of third parties to property distrained or levied on,¹⁰¹ and also a provision of the Uniform Commercial Code which affords interpleader to a bailee of goods.¹⁰² And finally, the last sentence of subsection A was inserted to make it explicit that the interpleader section was only supplemental to and did not limit the joinder of parties provisions in the Virginia Code.¹⁰³

IV. CONCLUSION

The new interpleader statute should be welcomed by the Virginia Bar. In an appropriate case, it will save the stakeholder the expense and hardship of multiple liability and the vexation of multiple litigation; it will save court time and expense while providing for consistency of results; and if a limited fund is involved, it will benefit the claimants by permitting a fair distribution of the fund. These benefits are possible because the current statute has extended interpleader practice far beyond the equitable rem-

a balance between §1335(A)(2) and Rule 22(1). Under section 1335(A)(2), deposit of property into court is a condition precedent to obtaining jurisdiction of court. Rule 22(1) makes no requirement of deposit. However, a disinterested stakeholder can make a deposit into the court under FED. R. CIV. P. 67, and then will be discharged from further liability. See 3A MOORE, *supra* note 8, ¶ 22.10; cf. VA. CODE ANN. §8-226, *supra* note 12.

97. H. Doc. No. 14, *supra* note 18, at 237. Also, "a deposit is necessary to terminate a previously existing obligation to pay interest." *Id.*; see Frumer, *On Revising the New York Interpleader Statutes*, 25 N.Y.U.L. REV. 737, 768-770 (1950).

98. The 1978 amendment inserted "from all or part of any liability as" at the end of VA. CODE ANN. §8.01-364(D) (Cum. Supp. 1978) to make this point clear.

99. See *United Artists Corp. v. Fields Prod., Inc.*, 363 F. Supp. 903 (S.D.N.Y. 1973); *National Sur. Corp. v. Globe Indem. Co.*, 331 F. Supp. 298 (E.D. Pa. 1971).

100. See H. Doc. No. 14, *supra* note 18, at 236.

101. See VA. CODE ANN. §8.01-365 et seq. (Repl. Vol. 1977).

102. See VA. CODE ANN. §8.7-603 (added Vol. 1965).

103. See VA. CODE ANN. §8.01-5 (Repl. Vol. 1977).

edy and the early ancillary statutory interpleader at law. The remedy is available to both plaintiffs and defendants whether they are disinterested or not, and regardless of whether their claims are derived from a common source. However, the requirement that the claims must be directed toward the same property or fund should not be interpreted as a retention of the equitable requirement of identity of claims. Rather, it merely emphasizes that interpleader is permitted only when the stakeholder is exposed to multiple liability in respect to a single outstanding obligation. The test for determining whether the applicant is exposed to multiple liability, simply stated, is this: are the claims, which are asserted against a single obligation owing, mutually exclusive in the sense that they necessarily overlap? They overlap when the validity of one claim hinges on the invalidity of all the rest. This test should be liberally construed to include the threat of multiple vexation towards a limited fund where the necessary adversity between the claims is supplied by the efforts of each claimant to defeat or reduce the claims of every other claimant. If the claims are mutually exclusive, relief should not be denied because they are only prospective in nature. Finally, although the statute does not expressly abolish the fourth of the equity requirements, that of no independent liability, there is no good reason to deny relief just because a claim of independent liability of the stakeholder is asserted in the suit.

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