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Federal Courts--Appointment of Non-Resident as Administratrix to Obtain Diversity Jurisdiction

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Plaintiff was a Virginia resident appointed by a West Virginia county court as administratrix of the estate of her deceased husband, a Virginia resident killed in a West Virginia automobile accident. Plaintiff brought a wrongful death action against defendant, a West Virginia resident, in federal district court, basing jurisdiction on diversity of citizenship. Defendant made a motion to dismiss, alleging that the appointment of a non-resident administratrix was a collusive attempt to obtain diversity jurisdiction in violation of 28 U.S.C. section 1359 (1964). *Held,* motion denied. Action by a West Virginia county court, as a duly constituted forum of law, in appointing a non-resident as deceased's administratrix, who then filed a wrongful death action against a West Virginia resident, did not of itself constitute a secret or fraudulent occurrence in a collusive attempt to obtain diversity jurisdiction. *Silvious v. Helmick,* 291 F. Supp. 716 (N.D. W. Va. 1968)

To find collusion, the court said, there must be something improper or fraudulent involved in the attempt to obtain diversity jurisdiction.

In general, where an appointment itself is real and bona fide, the fact that the appointment was obtained for the specific purpose of obtaining diversity has been held immaterial in determining whether such appointment was improper or collusive under section 1359. Apparently, so long as the appointment is not colorable or feigned, or for the purpose of perpetrating a fraud, the motive for the appointment is irrelevant. *See,* Annot., 75 A.L.R. 2d 717 (1961).

Defendant also challenged the capacity of the administratrix to sue because by statute, a non-resident cannot be appointed administrator in West Virginia. The court disposed of this argument by saying that even though plaintiff was a resident of Virginia, a county court's determination of her capacity to serve as administratrix was not subject to collateral attack.

The court distinguished this case from *McSparren v. Weist,* 402 F. 2d 867 (3rd Cir. 1968), which decided that diversity "manufactured" by guardian appointment was no longer permissible. The *Silvious* court said that the facts before it did not indicate that diversity was manufactured.