

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

VALERIE DEGRENIER,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:01CV1012 (CFD)
RICHARD JOLY,	:	
Defendant/Apportionment Plaintiff	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	
Apportionment Defendant	:	

RULING ON MOTION TO DISMISS

The plaintiff, Valerie DeGrenier, originally brought this negligence action against Richard Joly (“Joly”) in state court, alleging that she fell on a stairway outside a United States Post Office facility in Dayville, Connecticut.¹ Joly then filed an apportionment complaint against the United States of America (“United States”), pursuant to Conn. Gen. Stat. § 52-572h *et seq.* The United States then removed the case to this Court and filed a motion to dismiss the apportionment complaint on the basis of sovereign immunity and Joly’s failure to exhaust his administrative remedies.² For the following reasons, the motion to dismiss [Doc. #12] is DENIED.

Joly may bring his claims for apportionment against the United States under the Federal Tort Claims Act (“FTCA”), 28 U.S. C. §§ 1346(b), 2671-2680, which allows for a waiver of the United States’ immunity where a federal employee has committed negligence while acting within

¹Joly owned the premises on which the postal facility was located.

²Thereafter, DeGrenier filed a separate suit against the United States under the Federal Tort Claims Act, 28 U.S. C. §§ 1346(b), 2671-2680. The United States has filed a motion to consolidate that case, DeGrenier v. United States, 3:01CV1890(CFD), with the instant case.

the scope of his employment. As state, rather than federal, law provides the source of substantive liability for Joly's claims under the FTCA, see FDIC v. Meyer, 510 U.S. 471, 487 (1994); Richards v. United States, 369 U.S. 1, 11 (1962), Joly's right to apportionment is governed by Connecticut law. See Estate of Nobile v. United States, 193 F.R.D. 58, 60 (D. Conn. 2000) (stating that third-party plaintiff's right to apportionment under the FTCA was governed by Connecticut's apportionment statute); Bethel Native Corp. v. Department of the Interior, 208 F.3d 1171 (9th Cir. 2000) (applying Alaska's apportionment statute to United States' apportionment claim against the State of Alaska). Moreover, courts have held that Federal Rule of Civil Procedure 14, which provides for the filing of a third-party complaint for indemnification or contribution, does not conflict with Connecticut's apportionment statute and thus does not preclude, under Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938), the filing of an apportionment complaint in an FTCA action. See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Queen Carpet Corp., 5 F. Supp. 2d 1246 (D. Utah 1998); Stingley v. Raskey, No.A95-0242CV(HRH), 1995 WL 696591, at *3-*4 (D. Alaska Nov.20, 1995).

While the United States correctly recognizes that 28 U.S.C. § 2675(a) requires the exhaustion of administrative remedies prior to bringing suit under the FTCA in federal court, section 2675(a) also specifically exempts third-party complaints from the exhaustion requirement. See 28 U.S.C. § 2675(a). Courts have treated complaints brought under apportionment statutes or other state law as "claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint," notwithstanding that such complaints were not literally brought pursuant to the Federal Rules of Civil Procedure. See Thompson v. Wheeler, 898 F.2d 406, 408 (3d Cir. 1990) (third-party complaint filed in state court); Hassan v. Louisiana Dep't of Trans. & Dev.,

923 F. Supp. 890, 893 (W.D. La. 1996) (same); Stingley, 1995 WL 696591, at *8 n.16 (apportionment complaint filed under Alaska apportionment statute) As the Court finds Joly's apportionment complaint to be a claim "asserted under the Federal Rules of Civil Procedure by third party complaint," Joly is exempt from exhausting the FTCA administrative remedies with regard to his claim.³

Accordingly, the United States' motion to dismiss the apportionment complaint [Doc. #12] is DENIED.

SO ORDERED this _____ day of August 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

³The parties do not dispute that the original plaintiff, DeGrenier, did exhaust her administrative remedies under the FTCA with regard to her claim against the United States asserted in DeGrenier v. United States, 3:01CV1890(CFD).