



MISSOURI SUPREME COURT CONFIRMS THAT A DEFENDANT NEED NOT PLEAD ITS LIABILITY TO PLAINTIFF IN A THIRD-PARTY CLAIM FOR CONTRIBUTION

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA v. THE MANITOWOC COMPANY, INC., ET AL.
--- S.W.3D ---, 2013 WL 331581 (MO.BANC., JANUARY 9, 2013)

For more than 35 years Missouri defendants have been filing third-party claims for contribution against other potentially liable persons or entities not sued directly by the plaintiff. *Missouri Pacific Railroad Co. v. Whitehead & Kales*, 566 S.W.2d 466 (Mo.banc. 1978). But for 33 of those years defendants have been required to walk a tightrope to state a third-party claim for contribution. *Stephenson v. McClure*, 606 S.W.2d 208 (Mo.App.S.D. 1980). In *Stephenson* the Southern District Court of Appeals interpreted *Whitehead and Kales* to require a defendant to assert its own liability to the plaintiff in order to state a third-party claim for contribution. For obvious reasons, a defendant would not want to plead its own liability to the plaintiff in order to proceed on a contribution claim. This left Missouri defendants in the precarious position of trying to assert contribution claims that were sufficient under *Stephenson* while not admitting liability to the plaintiff. Now, some 22 years after *Stephenson*, the Missouri Supreme Court has finally overruled it, declaring that a defendant need not plead its own liability to plaintiff in order to state a claim for contribution.

The decision that cleared up this difficult pleading issue arose out of a breach of contract claim filed by Travelers and its insured, Jacobsmeyer-Mauldin Construction Company. Travelers sued a crane manufacturer, Manitowoc, for failing to make agreed settlement payments regarding a property damage claim that allegedly arose out of a defective crane. The crane manufacturer filed an answer denying liability and then filed a third-party petition seeking contribution and/or indemnity against U.S. Steel for allegedly providing the faulty steel that made the crane defective. U.S. Steel filed a motion to dismiss the third-party petition, claiming that Manitowoc did not admit its own liability to plaintiff and therefore failed to state a claim. The trial court granted U.S. Steel's motion and dismissed Manitowoc's third-party petition with prejudice. The Eastern District Court of Appeals affirmed the trial court's decision finding that Manitowoc failed to admit or allege its own liability and therefore did not state a claim of relief based on contribution/indemnity. Thereafter, the Missouri Supreme Court granted transfer pursuant to Art. V, Sec. 10 of the Missouri Constitution.

The Supreme Court noted that neither Rule 55.10 nor Rule 52.11(a), which govern the third-party claim, require a party seeking contribution to admit its own fault. The Court discussed the rationale underlying the *Whitehead and Kales* opinion, namely, to promote efficiency by allowing a contribution claim to be brought in the underlying negligence action. It noted that nothing in *Whitehead and Kales* requires a third-party plaintiff to admit its own fault in a third-party petition beyond merely alleging that if it is liable to the plaintiff then the third-party defendant is liable to the third-party plaintiff. The Court declares that a third-party plaintiff can deny liability in its answer to the plaintiff's claim and then plead in its third-party petition that if it is liable to the plaintiff then the third-party defendant is liable to the third-party plaintiff. It overruled *Stephenson* and other similar cases to the extent they held to the contrary.

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