NJ Supreme Court Continues to Allocate Fault to Non-Monetarily Liable Co-Defendants

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This article briefly outlines the seminal opinions issued by the NJ Supreme Court and the Appellate Division, which have increasingly permitted co-defendants to be included on the jury verdict sheet under the Comparative Negligence Act and the Joint Tortfeasors Contribution Law.

Over the past few decades, New Jersey appellate jurisprudence has continually affirmed that trial courts should permit the allocation of fault to co-defendants in negligence and strict liability actions, even if those co-defendants retain no monetary liability due to settlement, bankruptcy or statutory immunity. This article briefly outlines the seminal opinions issued by the New Jersey Supreme Court and the Superior Court of New Jersey, Appellate Division, which have increasingly permitted co-defendants to be included on the jury verdict sheet under the New Jersey Comparative Negligence Act (CNA) and the Joint Tortfeasors Contribution Law (JTCL).

The CNA, codified at N.J.S.A. §2A:15-5.1, et seq., mandates that the trier of fact determine two findings of fact in all negligence and strict liability actions: (1) the "full value of the injured party's damages," N.J.S.A. §2A:15-5.2(a)(1); and (2) the percentage of each party's negligence, which, in sum, should add up to 100%, N.J.S.A. § 2A:15-5.2(a)(2). Once those percentages are properly determined, the trial judge "mold[s] the judgment from the findings of fact made by the trier of fact." N.J.S.A. §2A:15-5.2(d). If, however, a defendant's fault is determined to be 60% or more, the plaintiff may recover the full amount of the awarded damages from that defendant. N.J.S.A. §2A:15-5.3(a). This is key, because if, for example, a settling defendant is ultimately determined to be more than 40% liable in a negligence action, the plaintiff could be severely disadvantaged regarding his or her recovery options. The JTCL complements the CNA by providing culpable defendants contribution rights against other parties if those defendants are ultimately liable for more than their allotted percentage share of a damages award. N.J.S.A. §2A:53A-3. "When applied together, the [CNA and JTCL] implement New Jersey's approach to fair apportionment of damages among plaintiffs and defendants, and among joint defendants." *Town of Kearny v. Brandt*, 214 N.J. 76, 97 (2013) (quoting *Erny v. Estate of Merola*, 171 N.J. 86, 99 (2002)).

The critical question, then, is whether the fault allocation mechanisms driven by the CNA and JTCL permit the

apportionment of fault to a co-defendant who has been dismissed from the suit, for myriad reasons.

In *Ramos v. Browning Ferris Industries of South Jersey*—one of the earliest cases in which the New Jersey Supreme Court confronted this issue—the court concluded that if an injured worker elects benefits under New Jersey's Workers' Compensation Act (WCA), N.J.S.A. §34:15-1 to -127, a jury *cannot* later allocate fault to the absent employer in a negligence and/or strict liability suit. 103 N.J. 177, 193 (1986). In arriving at that conclusion, the court stressed the strict statutory language comprising the WCA and explained that when an employee accepts benefits under the WCA "the employee agrees to forsake a tort action against the employer." *Id.* at 183 (citing *Morris v. Hermann Forwarding Co.,* 18 N.J. 195, 197-98 (1955)). The WCA similarly "precludes a claim for contribution against an employer whose concurring negligence contributed to the injury of an employee." *Id*. at 185. *See also id*. at 184 ("At the time the Legislature enacted the Joint Tortfeasors Contribution Law, as at present, the Workers' Compensation Act provided that the agreement, express or implied, between employer and employee to accept the Workers' Compensation Act 'shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article.'" (quoting N.J.S.A. § 34:15-8)). The court therefore determined that "the [WCA] removes the employer from operation of the [JTCL] … [b]ecause the employer *cannot be a joint tortfeasor* …." *Id.* at 184 (emphasis added). And, once the employer was dismissed from the suit on WCA grounds, the court found that it "was *no longer a party to the suit,* and the trial court correctly decided not to submit [the employer's] negligence to the jury." *Id.* at 193 (emphasis added).