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A Settling Tortfeasor has the Statutory Right to Seek Contribution Under MCL §600.2925a

Gerling Konzern Allgemeine Versicherungs AG v Lawson

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The Michigan Supreme Court has just issued a decision holding that despite the abolition of joint and several liability as part of the 1995 tort reform legislation, the right to contribution still exists among responsible tortfeasors.

In *Gerling Konzern Allgemeine Versicherungs AG v Lawson*, Docket No. 122938 (2005), the underlying plaintiffs were involved in a three car accident. One of the defendants settled with the underlying plaintiffs and then sought contribution in a separate lawsuit against the driver and owner of the third vehicle. The defendants in the contribution lawsuit filed a motion for summary disposition arguing that the 1995 tort reform statutes, which eliminated joint and several liability, abrogated the plaintiff's cause of action in the contribution lawsuit. The trial court denied the defendant's motion for summary disposition, but the Michigan Court of Appeals reversed, holding that the 1995 tort reform statutes did abrogate the plaintiff's contribution action.

The Michigan Supreme Court reversed the Michigan Court of Appeals and held that the 1995 tort reform statutes did not abrogate the plaintiff's right to bring an action for contribution. In coming to this conclusion, the Supreme Court first recognized that the 1995 tort reform statutes eliminated joint and several liability in certain tort actions, thus negating the need for tortfeasors to seek contribution from other tortfeasors because each tortfeasor need only pay damages equal to his or her allocated percentage of fault. However, the Supreme Court explained that this did not preclude all contribution actions.

Rather, the Supreme Court recognized that even before the 1995 tort reform statutes were enacted, a tortfeasor had the statutory right to seek contribution in the settlement context and such contribution actions were directed towards obtaining contribution from other responsible tortfeasors after settlement. Thus, the Supreme Court explained that there has always been the statutory right to contribution in a settlement context where both the contribution plaintiff and the contribution defendant became severally liable in tort for the same injury and judgment was not recovered against any party. Because settlement is not a judgment, the Supreme Court explained that settlement was not a bar to a right of contribution.

The Supreme Court provided an in-depth analysis of the remaining applicable contribution statutes under the basic rules of statutory interpretation, and held that there is no basis in the 1995 tort reform statutes that supports a conclusion that the right to seek statutory contribution in a settlement context has been abrogated.

Accordingly, under the *Gerling* decision, a plaintiff has a statutory right to seek contribution from other responsible tortfeasors after settling with the underlying injured parties in an underlying tort action under the contribution statutes, and the 1995 tort reform statutes do not affect this right.

This decision is significant because most courts have held that the right to contribution among responsible tortfeasors, in most cases, was abolished with the passage of the 1995 tort reform legislation. The *Gerling* decision now provides a basis for seeking contribution from a responsible tortfeasor after a settlement has been reached with the primary plaintiff. However, it is important to remember that the statutory requirements contained in the statute dealing with contribution must be followed. Failure to do so could prejudice and/or otherwise destroy the subsequent right to seek contribution.

Another important point to note is that in order for the contribution plaintiff to pursue the statutory right to contribution under *Gerling*, the settlement reached with the primary plaintiff must also extinguish the liability of the person or entity from which contribution is sought. Again, failure to do so could prejudice and/or otherwise destroy the subsequent right to seek contribution.