Friday, March 25, 2022

In 2015, the West Virginia Legislature passed West Virginia Code Section 55-7-13d, which seeks to prevent defendants from paying in excess of their share of fault by requiring the trier of fact to consider the fault of all who contributed to a plaintiff’s injury, “regardless of whether the [nonparty] was or could have been named as a party to the suit.” Since the statute took effect in 2016, questions have arisen regarding whether nonparties that are immune from suit may be placed on a verdict form in West Virginia cases.

On March 21, 2022, the Supreme Court of Appeals of West Virginia resolved this
question in *State ex rel. March-Westin Company, Inc. v. Gaujot*. The case arose after a county employee was injured while assisting a general contractor. After resolving his workers’ compensation claim, the employee sued the general contractor. Believing that the county commission was wholly or partially at fault for the employee’s injuries, the general contractor filed a notice of nonparty fault. The circuit court granted the employee’s motion to strike, concluding that fault could not be assigned to the county commission and, even if such fault could be assigned, the general contractor had failed to allege deliberate intent on the part of the county commission. The general contractor petitioned the Supreme Court of Appeals of West Virginia for a writ prohibiting the circuit court from enforcing its order to strike and directing that the county commission be included on the verdict form as a nonparty to which the jury may assign fault.

The Supreme Court of Appeals of West Virginia first held that, under Section 55-7-13d, fault may be allocated to a nonparty employer even though the employer is immune from suit because the statute does not affect immunity. The Court explained that the statute expressly provides for the consideration of nonparties’ fault, even if the nonparty was not or could not be named as a party or if the plaintiff entered into a settlement agreement with the nonparty, because allocation of fault does not subject the nonparty to liability.

Next, the Court held that when a defendant seeks to have fault assessed to a nonparty employer, the defendant need not show that the nonparty employer’s fault would satisfy the “deliberate intention” standard. Repeating that fault does not equal liability, the Court found that a deliberate intent claim is irrelevant to the degree of fault to be allocated to a nonparty under Section 55-7-13d. To require otherwise, according to the Court, would defeat the purpose of the statute and lead to an absurd and unjust misuse of the workers’ compensation deliberate intent statute. The Court thus prohibited the circuit court from enforcing the order striking the general contractor’s notice of nonparty fault.

This decision clarifies the allocation of fault when a nonparty is or may be liable to the plaintiff and provides more certainty for parties in such circumstances.

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