



The Justices are Still Out on the Viability of Third-Party Claims Under West Virginia Code Sections 55-7-13a-d

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In the Winter Edition 2019 of *The DTCWV Defender*, I argued that in light of the 2015 sweeping changes to the State's law regarding comparative fault, third-party claims for contribution were typically impermissible. Since the passage of West Virginia Code Sections 55-7-13a-d, the defense bar appears to have collectively come to this same conclusion, and the Northern and Southern District Courts of West Virginia have agreed. However, the Supreme Court of Appeals of West Virginia has yet to make substantive rulings on these new statutes, leaving us without ironclad guidance on the applicability of these provisions.

West Virginia Code Sections 55-7-13a-d were all initially passed together, and all relate to the allocation of fault and damages to most civil cases (see the statutes for exceptions). As West Virginia Code Sections 55-7-13a-d are effective to all applicable cases arising or accruing on or after May 25, 2015, the new statutory scheme applies to the vast majority of newly filed cases, and some courts have had the opportunity to consider its serious implications.

Unfortunately, the Court with the ultimate authority to decide how third-party actions are affected by these statutory changes has not had the opportunity to rule on the matter. The only relevant guidance that the Supreme Court of Appeals of West Virginia has given on West Virginia Code Sections 55-7-13a-d comes from cases where the Court explicitly noted that the new statutory scheme did *not* apply because of the date of the incident. In *Modular Bldg. Consultants of W. Virginia, Inc. v. Poerio, Inc.* the Court stated that there is a series of new statutes which "purport to fully occupy the field of comparative fault and the consideration of 'the fault of parties and nonparties to a civil action.'" 235 W. Va. 474, 486, 774 S.E.2d 555, 567 n.12 (2015). And in *Jackson v. Brown*, the Court noted in a footnote that "W.Va. Code §§ 55-7-13a through -13d [2015] modified West Virginia's comparative fault law to bar recovery only where the plaintiff's fault is greater than the combined fault of all other persons responsible for the damages. The foregoing statutes apply to all causes of action arising or accruing on or after May 25, 2015." And thus, it did not apply to that case. 239 W. Va. 316, 321, 801 S.E.2d 194, 199 n.6 (2017).

While the Supreme Court of Appeals of West Virginia has not provided us guidance on the third-party issues associated with these statutes, the Northern and Southern District Courts have had the opportunity to weigh in.

In *Clovis v. J.B. Hunt Transport, Inc.*, Third-Party Plaintiff J.B. Hunt brought a claim for contribution against Ryder Truck Rental. No. 1:18-CV-147, 2019 WL 4580045, at *1-2 (N.D.W. Va. Sept. 20, 2019). The Third-Party Defendant filed a motion to dismiss the third-party complaint as the claim against it rested only in contribution, and thus was not permissible as the Defendants would be severally liable only. *Id* at *2. The Court agreed and dismissed the third-party complaint. The Honorable Judge Thomas S. Kleeh of the Northern District of West Virginia found that because West Virginia Code Sections 55-7-13a-13d mandated that this third-party defendant would be severally liable only, a claim in contribution did not arise. *Id* *3-5. The Court dismissed the third-party complaint noting that none of the limited exceptions to several liability applied.

The Southern District of West Virginia, applying *Clovis*, reached the same and even more explicit conclusion, and citing the limited Supreme Court of Appeals of West Virginia *dicta* on West Virginia Code Sections 55-7-13a-13d, wrote: "In effect, this broad rule amounts to 'the near total abolition of claims for contribution.'" *French v. XPO Logistics Freight, Inc.*, No. 2:18-CV-1544, 2020 WL 1879472, at *3 (S.D.W. Va. Apr. 15, 2020), citing *Bateman v. CMH Homes, Inc.*, No. 3:19-0449, 2020 WL 597564, at *2 (S.D. W. Va. Feb. 6, 2020). The Honorable Judge John T. Copenhagen, Jr. went on to note that the statute provides for certain exceptions to this rule, but the limitations found in the statutes are narrow and will apply only in limited situations.

The Supreme Court of Appeals of West Virginia will eventually rule on this issue. Until then, parties seeking to dismiss third-party claims for contribution may be met with good-faith opposition in the Circuit Courts. However, because of the clear decisions from the Northern and Southern District Courts, the parties seeking to dismiss third-party claims for contribution are armed with strong case law to support such a dismissal.