

Toxic Tort

Kelly M. Libbra

HeplerBroom LLC, Edwardsville

Illinois Supreme Court Holds that the Obligation of a Tortfeasor who Settles is Not “Uncollectable” within the Meaning of Section 3 of the Illinois Joint Tortfeasor Contribution Act

In *Roberts v. Alexandria Transportation*, 2021 IL 126249 (Ill. 2021), the Illinois Supreme Court addressed whether the obligation of a settling party is uncollectible pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/3.

Plaintiff, Thomas Roberts, was injured in an auto accident while driving a truck through a construction zone in Madison County, Illinois. *Id.* at ¶ 4. When Roberts slowed and then stopped as prompted by a flagger in the construction zone, his vehicle was struck in the rear by a tractor-trailer driven by Alexandre Solomakha. *Id.* at ¶ 5. Thomas Roberts and his wife, Diane Roberts, filed a lawsuit under Illinois law, in the United States District Court for the Southern District of Illinois against Solomakha, Alexandria Transportation, Inc. and Alex Express, LLC (collectively the “Alex Parties.” *Id.* at ¶ 6. The Alex Parties filed contribution claims against the general contractor for the construction project, Edwards-Kamalduski, LLC (“E-K”), and the subcontractor E-K retained to manage the site’s worker safety program. International, LLC (“Safety”). *Id.* at ¶ 7. The Alex Parties alleged that if they are liable to plaintiffs in negligence, then E-K and Safety are also liable as joint tortfeasors because they failed in their duty to maintain a safe construction site. *Id.*

Plaintiffs settled with E-K for \$50,000 in February 2017. *Id.* at ¶ 8. The Alex Parties settled with plaintiffs for \$1.85 million in late 2017, which included payment to plaintiffs for the collective tort liability of the Alex Parties and Safety. *Id.* at ¶ 9.

The district court held a jury trial on the Alex Parties’ third-party contribution claim against Safety. *Id.* at ¶ 10. Safety asked the district court to put all of the settling parties on the verdict form. *Id.* The district court denied Safety’s request as to plaintiff, but agreed that the Alex Parties, Safety and E-K must appear on the verdict form. *Id.* Even though E-K had been dismissed from the contribution claim, the district court held that it must appear on the verdict form so that the jury could evaluate the proportionate liability of the respective parties. *Id.*

Interpreting the Contribution Act, the district court held that any share of liability that the jury assigned to E-K should not be reallocated *pro rata* between the Alex Parties and Safety. *Id.* at ¶ 11. Instead, Safety would pay the Alex Parties only Safety’s portion of fault as determined by the jury. The district court ordered that the Alex Parties would pay E-K’s entire share along with its own share of liability. *Id.*

The jury allocated 75% of fault to E-K; 10% of fault to Safety; and 15% of fault to the Alex Parties. *Id.* at ¶ 12. The court held that the total common liability to plaintiff was \$1.9 million, which was calculated by adding E-K’s \$50,000 settlement and E-K’s \$1.85 million settlement. *Id.* at ¶¶ 12-13. The judgment required Safety to pay \$190,000, which represented Safety’s 10% portion of the *pro rata* share of the common liability. *Id.* at ¶¶ 12-13.

The Alex Parties appealed, and the appellate court certified to the Illinois Supreme Court the question of “whether the obligation of a settling party is uncollectable pursuant to section 3 of the Joint Tortfeasor Contribution Act, 740 ILCS

100/3 [(West 2018)]”. *Id.* at ¶¶ 2, 18-19. The Illinois Supreme Court addressed this question to settle the disagreement between the Alex Parties and Safety regarding the allocation of their pro rata shares of the common liability. *Id.*

In reaching its decision, the Illinois Supreme Court considered the nature and purpose of the Contribution Act. *Id.* at ¶ 31. Under Illinois law, defendants are jointly and severally liable to an injured party. *Id.* at ¶ 32. The Illinois Supreme Court established a contribution action that provides for a plaintiff’s injuries to be apportioned among joint tortfeasors based on their relative percentages of fault in *Skinner v. Reed-Prentice Division Package Machinery Co.*, 70 Ill.2d 1, 8-10 (Ill. 1977). *Roberts*, 2021 IL 126249, at ¶ 33. In 1979, the legislature codified the *Skinner* decision in by enacting the Joint Tortfeasor Contribution Act. *Id.* at ¶ 34.

Section 2 of the Joint Tortfeasor Contribution Act (740 ILCS 100/3 (West 2018)) provides as follows:

Right of Contribution.

(a) Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, of the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.

(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with the claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.

(e) A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement. *Id.* 2 § 2(a)-(e).

Section 3 of the Joint Tortfeasor Contribution Act (740 ILCS 100/3 (West 2018)) provides that “[t]he pro rata share of each tortfeasor shall be determined in accordance with his relative culpability” and that “no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share....” Section 3 of the Joint Tortfeasor Contribution Act includes an exception where “the obligation of one or more tortfeasors is uncollectible. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectible obligation in accordance with their pro rate liability.” *Id.* at ¶ 38.

In *Roberts*, the Illinois Supreme Court rejected the argument that section (2)(d) of the Joint Tortfeasor Contribution Act can be interpreted as rendering the obligation of a settling party as “uncollectable.” *Roberts*, 2021 IL 126249, at ¶ 39. Interpreting Section 2 and Section 3 of the Joint Tortfeasor Contribution Act, the court held that, “the ‘uncollectable’ obligation, which requires reallocation of proportionate shares of liability among joint tortfeasors, does not include the obligation of a settling joint tortfeasor.” *Roberts*, 2021 IL 126249 at ¶ 42 (citing 740 ILCS 100/2, 3 (West 2018)). The Supreme Court of Illinois reasoned that the legislative intent was that the “uncollectable” term was meant to refer to an insolvent or immune party and has been consistently interpreted in this manner by the court. *Id.* at ¶ 47.



In *Roberts*, the Alex Parties elected to settle with plaintiffs for \$1.85 million without any input from Safety. *Id.* at ¶¶ 55-56. The Illinois Supreme Court reasoned that it would be inequitable to require Safety to pay more than its *pro rata* share under these circumstances. *Id.* Further, the Alex Parties were aware at the time that they reached the settlement with plaintiff that E-K had settled with plaintiff and would not contribute to the common liability. *Id.*

Further, the Illinois Supreme Court noted that their interpretation of the Joint Tortfeasor Contribution Act is consistent with the public policy behind the Act. *Id.* at ¶ 54. First, this holding encourages settlement by providing that a tortfeasor who settles in good faith with plaintiff is discharged from any contribution liability to a non-settling tortfeasor. *Id.* (citing *BHI Corp. v. Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 365 (2005)). The Illinois Supreme Court's holding also furthers the public policy of equitable apportionment of damages among tortfeasors by creating the right of contribution among joint tortfeasors when one tortfeasor pays more than his *pro rata* share of the common liability. *Roberts*, 2021 IL 126249 at ¶¶ 55-65.

About the Author

Kelly M. Libbra is a partner in the Edwardsville, Illinois, office of *HeplerBroom LLC*. Ms. Libbra focuses her practice on trials involving complex business litigation matters, including toxic torts, premises liability, and product liability. She received her J.D. from St. Louis University School of Law and also holds an M.S. in Experimental Psychology from Western Illinois University.

About the IDC

The Illinois Defense Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.IDC.law or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, admin@IDC.law.