EMLF ENERGY & Mineral Law Foundation

CITE AS
35 *Energy & Min. L. Inst.* 19 (2014)

Chapter 19

Who Bears the Burden of Liability? The Law of Joint and Several Liability, Setoffs, Contribution, and Implied Indemnity in the Eastern Coal States

Dallas F. Kratzer III
David R. Stone Jr.
Al F. Sebok
Jackson Kelly, PLLC
Charleston, West Virginia[1]

Synopsis

---

1 Al F. Sebok is a member of Jackson Kelly's Industrial, Environmental, and Complex Litigation Practice Group. Dallas F. Kratzer III was an associate at Jackson Kelly from August 2013–August 2014. David Stone was a summer associate at Jackson Kelly in both 2013 and 2014; he is a rising third-year student at West Virginia University College of Law. The authors would like to thank Jackson Kelly summer associates David Long Jr., a rising third-year student at Washington & Lee University School of Law, and Katie McLay, a rising third-year student at University of Pittsburgh School of Law, for their assistance.

§ 19.01. Introduction.

As energy production continues to rise in certain regions, exposure to tort liability expands along with it. Even relatively simple tort actions can involve complex legal issues when multiple tortfeasors are involved. The law is further complicated by the subtle differences of each state. This chapter reviews those laws and provides guidance to practitioners involved in tort litigation in these states.

Systems of joint and several liability run the gamut from Alabama's pure joint and several liability to the modified joint and several liability systems adopted in states like Pennsylvania. States also vary in how they apportion fault. In some states, for example, strictly liable defendants cannot be apportioned fault. But in others, it is necessary for all parties to be apportioned a fixed percentage of fault. Likewise, states differ in whether

a jury can consider non-parties to be at fault. Settlement setoff systems vary as well, with some states adopting dollar-for-dollar setoffs and others calculating setoffs proportionate to the fault attributed to each party. Contribution and indemnity claims, while separate and distinct, are inherently linked to one another, and often arise together. States also treat these claims differently and recognize different scenarios in which parties may make such claims.

This chapter examines the tort systems in Alabama, Kentucky, Illinois, Indiana, Ohio, Pennsylvania, Virginia and West Virginia. This chapter describes each state's system of joint and several liability, apportionment of fault, setoffs, contribution, and implied indemnity.

§ 19.02. Alabama.

Alabama courts adhere to the rule of pure joint and several liability, allowing plaintiffs to recover damages where the actions of two or more tortfeasors combine to cause a single injury.[2] A party who is vicariously liable may be held jointly and severally liable as well.[3] Although an intervening tortfeasor's actions may cut off the liability of another party, the intervening cause must have been unforeseeable and able to cause the injury on its own.[4]

---

2 *See, e.g.*, Admiral Ins. Co. v. Price-Williams, 129 So. 3d 991, 1002–03 (Ala. 2013) ("If the separate acts of two or more tortfeasors combine to cause an indivisible injury, then all actors are jointly and severally liable for that entire injury."); Williams v. Woodman, 424 So. 2d 611, 613 (Ala. 1982) ("Where one is guilty of negligence and this negligence concurs or coalesces with the negligence of another, and the two combine to produce an injury, each is liable for the damages, and the negligence of each is considered the proximate cause of the injury producing the damages.").

3 Stapler v. Parler, 103 So. 573, 573 (Ala. 1925) ("The general rule is that all parties participating in a wrongful act, directly or indirectly, whether as principals or as agents, or both, are jointly and severally liable in damages for the wrong done, where injury results.").

4 Mobile City Lines, Inc. v. Proctor, 130 So. 2d 388, 394 (Ala. 1961) ("Where some independent agency has intervened and been the immediate cause of the injury, the party guilty of negligence in the first instance is not responsible."); *see also* Gen. Motors Corp. v. Edwards, 482 So. 2d 1176, 1195 (Ala. 1985), *overruled on other grounds by* Schwartz v. Volvo N. Am. Corp., 554 So. 2d 927 (Ala. 1989) ("In order to be an intervening cause, a subsequent cause also must have been unforeseeable and must have been sufficient in and of itself to have been the sole 'cause in fact' of the injury."); *cf. Williams*, 424 So. 2d 611, 613 ("Holding that the original tortfeasor may be held liable for the aggravation of the