

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Charleston Area Medical Center, Inc. v. Parke-Davis, 217 W. Va. 15

614 S.E.2d 15 (2005) · No. No. 31685 · Decided May 11, 2005

SUMMARY

The Supreme Court of Appeals of West Virginia answered a certified question concerning whether a tortfeasor that settled with an injured party before litigation could later seek contribution from an uninvolved alleged joint tortfeasor. The court held that West Virginia's inchoate right of contribution may be asserted only through third-party impleader in an action brought by the injured party. Because CAMC voluntarily settled without a lawsuit or participation by Parke-Davis and Pfizer, it could not pursue contribution from them.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Albright
JURISDICTION	West Virginia
DECIDED	May 11, 2005
DOCKET	No. 31685
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Appeals of West Virginia answered a certified question from the United States Court of Appeals for the Fourth Circuit concerning whether a settling tortfeasor could seek contribution from another alleged tortfeasor who was not involved in or notified of the settlement and was not sued by the injured party.
STANDARD OF REVIEW	De novo review applies because the certified issue is a question of law involving interpretation of a statute and the common law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia answering a certified question of state law.
PARTIES	Parke-Davis, a division of Warner Lambert, Pfizer, Incorporated v. Charleston Area Medical Center, Incorporated

TOPICS

torts third party practice civil procedure appellate procedure standard of review

PRACTICE AREAS

torts

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether West Virginia law permits a tortfeasor that settles with an injured party before any lawsuit is filed, without involving or notifying another alleged tortfeasor, to later seek contribution from that alleged tortfeasor.
2. Whether the inchoate right of contribution recognized in *Haynes v. City of Nitro* may be asserted through a separate action when the injured party never initiated an underlying action and there was no judgment imposing a common obligation to the injured party.

HOLDINGS

1. A tortfeasor that negotiates and consummates a settlement with an injured party on behalf of itself before any lawsuit is filed may not later bring an action for contribution against another tortfeasor that was not apprised of and was not a party to the settlement negotiations or agreement.
2. A later jury verdict allocating fault between the settling tortfeasor and another alleged tortfeasor does not substitute for the common legal obligation to the injured party required for contribution.

KEY QUOTATIONS

“We hold that the inchoate right of contribution recognized by this state can only be asserted by means of third-party impleader in an action brought by the injured party against a tortfeasor.” (at 24)

“Consequently, a tortfeasor who negotiates and consummates a settlement with an injured party on behalf of itself before any lawsuit is filed cannot subsequently bring an action seeking contribution from a tortfeasor who was not apprised of and not a party to the settlement negotiations and agreement.” (at 24)

FACTUAL BACKGROUND

A two-year-old child died after receiving ten times the intended dose of Cerebyx, allegedly because the drug vial had confusing labeling. Charleston Area Medical Center paid the child's estate \$2.5 million in a settlement that released CAMC but did not release Parke-Davis or Pfizer. Neither Parke-Davis nor Pfizer knew of or participated in the settlement negotiations, and the child's estate had never filed a lawsuit against any party.

PROCEDURAL HISTORY

After a child died following an alleged medication-labeling overdose, Charleston Area Medical Center settled with the child's estate for \$2.5 million before any lawsuit was filed by the estate. CAMC later sued Parke-Davis and Pfizer in state court for contribution; the defendants removed the case to federal district court. A jury found Parke-Davis 70% at fault and CAMC 30% at fault and awarded CAMC \$1.75 million. On appeal, the Fourth Circuit certified the contribution question to the West Virginia Supreme Court, which accepted and reformulated the question and answered it in the negative.

DISPOSITION

other

CASES CITED

- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Bluefield Sash and Door Co. v. Corte Construction Co., 158 W. Va. 802, 216 S.E.2d 216 (1975)
- Haynes v. City of Nitro, 161 W. Va. 230, 240 S.E.2d 544 (1977)
- Hutcherson v. Slate, 105 W. Va. 184, 142 S.E. 444 (1928)
- Board of Educ. v. Zando, Martin & Milstead, Inc., 182 W. Va. 597, 390 S.E.2d 796 (1990)
- Sydenstricker v. Unipunch Products, Inc., 169 W. Va. 440, 288 S.E.2d 511 (1982)
- Howell v. Luckey, 205 W. Va. 445, 518 S.E.2d 873 (1999)
- Sitzes v. Anchor Motor Freight, Inc., 169 W. Va. 698, 289 S.E.2d 679 (1982)
- Bradley v. Appalachian Power Co., 163 W. Va. 332, 256 S.E.2d 879 (1979)
- GAF Corp. v. Tolar Construction Co., 246 Ga. 411, 271 S.E.2d 811 (1980)
- Merchants Bank of New York v. Credit Suisse Bank, 585 F. Supp. 304 (S.D.N.Y. 1984)
- Sanders v. Roselawn Memorial Gardens, Inc., 152 W. Va. 91, 159 S.E.2d 784 (1968)
- G & P Trucking v. Parks Auto Sales, 357 S.C. 82, 591 S.E.2d 42 (Ct. App. 2003)
- Kincaid v. Mangum, 189 W. Va. 404, 432 S.E.2d 74 (1993)

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