



NEW ILLINOIS SUPREME COURT CASE

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A recent Illinois Supreme Court decision clarifies the rights of the defendant to present evidence at trial regarding the culpability of settling defendants. In *Ready v. United*, docket no. 108910 (October 21, 2010), the Illinois Supreme Court ruled that non-settling defendants may present evidence, argument and jury instruction to support a viable claim that the settled defendants were the sole proximate cause of the accident. Illinois does not allow the jury to apportion fault to settled defendants. The culpability of settling defendants, however, can now be presented to the jury.

The facts in *Ready v. United* are as follows:

Michael Ready was killed in a construction accident and his Estate sued the general contractor and a sub-contractor for negligence. Those defendants filed third-party contribution complaints against Michael's employer. The Estate settled with the general contractor and the employer and proceeded to trial against the sub-contractor. The Estate sought to exclude evidence regarding the conduct of the general contractor and the employer because, under the Illinois Contribution Among Joint Tortfeasors Act, the jury does not apportion fault among non-parties but rather, the remaining defendant is entitled to a judicial set-off of the amount of the settlement. The defendant opposed the motion to exclude evidence, arguing that it retains the affirmative defense that the settling defendants were the sole proximate cause of the accident so that such evidence is relevant and material to the case.

In a prior ruling, the Illinois Supreme Court ruled that a jury may not apportion fault among settling defendants. *Ready v. United*, 232 Ill.2d 369 (2008). However, it left open the issue of whether evidence of the settling defendants' conduct should be excluded, whether the remaining defendant may argue that the settling defendants' negligence were the sole proximate cause of the accident and whether a "sole proximate cause" jury instruction is warranted.

In its most recent ruling, the Illinois Supreme Court ruled that, provided there is some evidence in the record to justify an instruction, the remaining defendant is entitled to present evidence that the negligence of the settled defendants was the sole proximate cause of the accident and is entitled to a jury verdict to that effect. (Having thus ruled, the Illinois Supreme Court went on to find that any error in the trial court by failing to allow the remaining defendant to present evidence of the negligence of the settled defendants was harmless error because there was ample evidence to support a finding of negligence against the remaining defendant. Accordingly, this remaining defendant won the appeal but lost the case.

In a specially concurring opinion, Justice Garman points out that the ruling is inconsistent with the intent of the Illinois Code provision which provides joint and several liability against any defendant found to be 25% or



greater of “the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third-party defendants who could have been sued by the plaintiff...” 110 Ill.Rev.Stat. 2-1117 (2010). Justice Garman points out that the effect of this statute is nullified if the jury cannot apportion fault to the settling defendants and the result may be unfair to a “deep pocket” defendant which refuses to settle out. The jury will have no occasion to apportion fault as required by the statute and, unless that remaining defendant prevails in its argument that it was not negligent and that the settling defendants were the sole proximate cause of the accident, it may face joint and several liability (after set-off for the amount of the settlement) for the entire verdict.

Practice Pointer: Be aware that when the co-defendants settle out, the remaining defendant has the right to present evidence of the settling defendants’ culpability, based on the argument that their negligence was the sole proximate cause of the accident. At the same time, be aware that the remaining defendant runs the risk of joint and several liability if the jury apportions 25% or more of the fault to the remaining defendant.

**For more information on the details of this advisory contact
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