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57 F.3d 746

**PAM TRANSPORT, an Arkansas corporation; Andrew Mertyris,
Plaintiffs-Appellants,**

v.

**FREIGHTLINER CORPORATION, a Delaware corporation; TRW Ross
Gear, a division of TRW, Inc., an Ohio corporation; John
Does I through X; Black Corporations I through X; White
Partnerships I through X, Defendants-Appellees.**

No. 92-16059.

**United States Court of Appeals,
Ninth Circuit.**

Argued and Submitted Nov. 1, 1993.

Submission Withdrawn May 23, 1994.

Resubmitted May 8, 1995.

Decided June 9, 1995.

William G. Caravetta and Donald R. Wilson,
Struckmeyer & Wilson, Phoenix, AZ, for
plaintiffs-appellants.

Paul J. Mooney, E.J. Kotalik, Jr.,
Fennemore Craig and David C. Auther,
Bowman & Brooke, Phoenix, AZ, for
defendants-appellees.

Appeal from the United States District
Court for the District of Arizona.

Before: KOZINSKI and O'SCANNLAIN,
Circuit Judges, and KELLEHER, * District
Judge.

KELLEHER, District Judge:

PAM Transport and Andrew Mertyris
appeal from the district court's order granting
Freightliner Corporation's motion for judgment
on the pleadings. Based on the response of the
Arizona Supreme Court to our certified question,
we affirm.

I

On November 28, 1988, Plaintiff/Appellant
Andrew Mertyris was operating a 1989
Freightliner tractor truck in the scope of his
employment with Plaintiff/Appellant PAM
Transport when he was involved in a collision
with a vehicle owned by the Arizona

Department of Transportation. This collision
resulted in the death of the driver of that vehicle,
Grady Harold Ashcraft.

Litigation ensued between the survivors of
decedent Ashcraft and Appellants herein (the
"Ashcraft Litigation"). This litigation was filed
in September of 1989. Appellees were not
parties to the Ashcraft Litigation. In March of
1991, Appellants settled the Ashcraft Litigation
and paid to the survivors of decedent Ashcraft
the sum of \$985,000.

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Such sum extinguished the liability of
Appellants herein and all other firms or
corporations, including Appellees, to the
survivors of decedent Ashcraft. Appellants then
initiated the instant action seeking contribution
from Appellees pursuant to A.R.S. Sec. 12-2501.

II

The United States District Court granted
Appellees's motion for judgment on the
pleadings on the ground that A.R.S. Sec. 12-
2506, which abolished joint and several liability,
precluded contribution. We certified the
following question to the Arizona Supreme
Court:

Under Arizona law, has A.R.S. Sec. 12-2506 abolished the right of a tortfeasor to contribution from another tortfeasor under A.R.S. Sec. 12-2501 when, before any apportionment of fault by a trier of fact, that tortfeasor settles any and all claims arising out of an accident?

The Arizona Supreme Court accepted jurisdiction, pursuant to section 5(6) of Article VI of the Arizona Constitution, Arizona Revised Statute section 12-1861, and Arizona Rule of the Supreme Court 27, and answered. See PAM Transport v. Freightliner, 893 P.2d 1295 (Ariz.1995).

III

The Arizona Supreme Court set forth an extensive analysis deciding the question posed based on the facts as recited in our certification order. It is now apparent that under Arizona's statutory scheme, contribution may not be sought where the defendants' liability is several only. See PAM Transport, *supra* at 1296. Contribution is permitted to joint tortfeasors who have paid more than their pro rata shares of liability "as long as the settlement also extinguishes the liability of the others and is reasonable." See *id.* Arizona has abolished joint liability in almost all cases. See A.R.S. Sec. 12-2506(D) (preserving joint and several liability for hazardous waste disposal and for tortfeasors acting in concert or pursuant to agent relationship). Because neither of the exceptions in A.R.S. Sec. 12-2506(D) applies here, Appellants may not seek contribution against Appellees.

We affirm the order of the district court granting Freightliner's motion for judgment on the pleadings and remand for any further proceedings consistent with this opinion.

AFFIRMED.

* The Honorable Robert J. Kelleher, Senior United States District Judge for the Central District of California, sitting by designation.