

Summary of SC89734, Robert E. Fast, M.D., et al. v. F. James Marston, M.D.
Appeal from the Buchanan County circuit court, Judge Weldon C. Judah

Attorneys: Fast was represented by Paula Brown and Timothy S. Frets of Douthit Frets Rouse Gentile & Rhodes LLC in Kansas City, (816) 941-7600; and Marston was represented by Peter Maharry of Fisher, Patterson, Sayler & Smith LLP in Overland Park, Kan., (913) 339-6757.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A doctor seeking indemnification from a second doctor for a medical malpractice verdict appeals the trial court's summary judgment in favor of the second doctor. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the trial court's judgment. In her settlement agreement with the second doctor, the plaintiff specifically released him from any future liability. Under section 538.230.3, RSMo 2000, this settlement release specifically discharged the second doctor from any indemnification liability.

Facts: In 1997, Dr. James Marston and Dr. Robert Fast performed a surgical procedure on Kimberly Black. Six years later, another physician discovered that a surgical sponge had been left in the surgical site. Black filed a medical malpractice suit against Fast, Marston, a healthcare organization and the hospital. Before trial, Marston and the hospital settled with Black, who released Marston from further liability. Fast and the healthcare organization proceeded to trial, where a jury awarded Black \$223,000 in damages and apportioned 100 percent of the fault to Marston. Fast appealed and, while the appeal was pending, sued Marston for indemnity. The trial court entered summary judgment in Marston's favor, and Fast appeals.

AFFIRMED.

Court en banc holds: Although Fast's action for indemnity against Marston was properly before the circuit court because a judgment had been entered against him, even though that judgment was on appeal, Fast is not entitled to such indemnity in this case. The plain language of section 538.230.3, RSMo 2000, discharges Marston from liability for indemnification because it specifically provides that a settlement release, such as the one Marston and Black executed, discharges the settling party "from all liability for contribution or indemnity." Section 538.230.1, which allows defendants who go to trial to have a judgment against them reduced by the percentage of fault allocated to a party that settles before trial, does not affect the release on the indemnification liability of a settling party. Given that indemnity applies primarily in cases of vicarious liability such as this, it would be inconsistent to hold that a statute releasing settling parties from any and all liability for indemnity has no application in cases of vicarious liability.