

Summary of SC92429, *Travelers Property Casualty Company of America and Jacobsmeyer-Mauldin Construction Company v. The Manitowoc Company, Inc. v. United States Steel Corporation, as Successor-in-Interest to Lonestar Technologies, INC., a/k/a Lonestar Steel*

Proceeding originating in the St. Louis County circuit court, Judge Tom W. DePriest Jr.
Argued and submitted Oct. 23, 2012; opinion issued Jan. 29, 2013

Attorneys: Manitowoc was represented by James C. Morrow, M. Todd Moulder and Angela M. Witten of Morrow Willnauer Klosterman Church LLC in Kansas City, (816) 382-1382; and U.S. Steel was represented by Stephen L. Beimdiek and Sarah J. Hugg of Lashley & Baer PC in St. Louis, (314) 621-2939.

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: The defendant in this action filed a petition (called a “third-party petition”) to bring in another party (the “third-party defendant”), which the defendant thought was liable for all or part of the plaintiff’s damages. The third-party defendant moved to dismiss the petition, arguing that the third-party plaintiff must admit its own fault in its third-party petition. The trial court dismissed defendant’s third party petition with prejudice (meaning it could not be refiled). In a 5-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the dismissal and remands (sends back) the case, holding that a third-party plaintiff is not required to admit its own fault to proceed on a third-party claim. The defendant’s failure to admit its own fault in its third-party petition does not deprive the trial court of jurisdiction over the third-party petition, and the third-party petition should not have been dismissed with prejudice.

Facts: In 2006, Jacobsmeyer-Mauldin Construction Company owned and operated a boom on a construction crane that fell onto a building, causing property damage. The main lift cylinder of the crane had failed. Grove U.S. LLC designed, manufactured and sold the crane using steel or the steel cylinder provided by U.S. Steel. Jacobsmeyer was insured by Travelers Property Casualty Company of America, which paid the insurance claims. Jacobsmeyer then reached a settlement in which Grove agreed to pay the remaining losses associated with the accident. When Grove failed to do so, Jacobsmeyer sued Grove and its parent company, The Manitowoc Company Inc., for breach of the settlement agreement. Manitowoc denied liability and also filed a third-party petition for contribution and/or indemnity against U.S. Steel, claiming that if it was found liable to Jacobsmeyer on the breach of settlement claim, then U.S. Steel was liable to Manitowoc because the settlement was based on the failure of the crane, for which U.S. Steel was responsible. U.S. Steel filed a motion to dismiss the third-party petition, arguing that the petition failed to satisfy pleading requirements because Manitowoc did not admit its own fault. The trial court dismissed Manitowoc’s third-party petition with prejudice. Manitowoc appeals.

REVERSED AND REMANDED.

Count en banc holds: (1) A third-party plaintiff is not required to admit fault in a third-party petition for contribution or indemnity. Instead, a third-party plaintiff may deny liability in its

answer to the plaintiff's petition and assert in its third-party petition that if it is liable to the plaintiff, then the third-party defendant is liable to the third-party plaintiff. Rule 55.10 allows a party to plead in the alternative and does not expressly require an admission of fault by the defendant or third-party plaintiff. Similarly, Rule 52.11 does not require a third-party plaintiff to admit fault; it simply permits a third-party plaintiff to bring claims against a "person not a party to the action who is or may be liable to the defending party for all or part of the plaintiff's claim." To the extent that *Stephenson v. McClure*, 606 S.W.2d 208 (Mo. App. 1980), *Mid-Continent News Co. v. Ford Motor Co.*, 671 S.W.2d 796 (Mo. App. 1984), and other similar cases suggest that a third-party plaintiff is required to admit fault in its third-party petition, those cases are overruled. Those cases rely on this Court's decision in *Missouri Pacific Railroad v. Whitehead & Kales*, 566 S.W.2d 466 (Mo. banc 1978), but *Whitehead & Kales* did not so hold. *Whitehead & Kales* modified third-party practice by permitting third-party claims against all tortfeasors, regardless whether they were sued by the plaintiff, whether the tortfeasor was passively or actively negligent, or whether they were sued for indemnity or contribution. Nowhere in *Whitehead & Kales* did this Court require a third-party plaintiff to admit fault in its third-party petition. The purpose of third-party practice is to create efficiency in the courts by allowing all claims to be brought in a single action to avoid unnecessary separate actions and inconsistent outcomes. Requiring a third-party plaintiff to admit fault in its third-party petition does nothing to further the purpose behind third-party practice.

(2) The failure of a third-party plaintiff to admit fault in its third-party petition does not deprive the trial court of jurisdiction over the claims and does not warrant a dismissal on the merits. Rule 52.11, which governs third-party practice, provides the procedural mechanism for determining whether and how to try third-party claims; it does not add jurisdictional requirements, nor could it because "jurisdiction of Missouri's courts is governed directly by the state's constitution." *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009). Additionally, because the rule deals only with the procedures for filing third-party petitions, if dismissal for failure to comply with that rule had been called for, it should have been a dismissal without prejudice rather than with prejudice.