

## LITIGATION UPDATE! - IMPORTANT APPELLATE RULING

Appellate Law Practice Group

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### Legal Update Appeals court rules no contribution in Michigan after tort reform

Be advised that the Michigan Court of Appeals has held that there is no contribution after Tort Reform EVEN in the settlement context. *Gerling Konzern et al v Lawson*, Docket #: 237284, released 12/03/02.

We had in the past successfully argued (after settling a case and then defeating an application for leave to appeal) that the contribution bar did not apply when an entire case was settled by one defendant and all defendants were released. In fact, a later Federal District Court case so held. See *CSX Transportation v Union Tank Car*, Docket #: 01-70299, released 10/22/01.

That has changed! Do not settle any case and think that you can still get contribution (unless and until the Supreme Court takes this case and reverses).

**Caveat:** We have taken the position that this holding does not and should not apply in those cases remaining after Tort Reform where joint and several liability has been retained. For example, medical malpractice cases where the plaintiff is not at fault to any degree. MCLA 600.6304(6)(a). However, there is no case yet that so holds and there is a risk that if such a case is settled, a court may not permit the settling defendant to prove the absence of plaintiff fault. In short, caution is warranted even in this area.

Any questions concerning this issue can be directed to **Ernest Bazzana** in Plunkett & Cooney's appellate department – phone: (313) 983-4798, or e-mail: [ebazzana@plunkettcooney.com](mailto:ebazzana@plunkettcooney.com).

Below is a link to the State Bar of Michigan web site, which contains a copy of the opinion:

<http://www.michbar.org/opinions/home.html?/opinions/appeals/2002/120302/17173.pdf>