

IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA

RICHARD C. PETERS,

Plaintiff,

v.

DEBORAH LEE WADDELL and STATE  
FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Third-Party Plaintiff,

v.

MICHAEL PETERS,

Third-Party Defendant.

Case No. 07A77984-6

ORDER

This case came before the Court on Third-Party Defendant Michael Edward Peters's Motion to Dismiss State Farm Mutual Automobile Insurance Company's Third-Party Complaint. By his Motion, Peters contends that State Farm's Third-Party Complaint is not based upon secondary or derivative liability as required by O.C.G.A. § 9-11-14. State Farm responds that because it answered the complaint in its own name, it can raise any defense or issue of the named party. Therefore, it asserts that because the named defendant could have a derivative claim against Michael Edward

Peters, its claim is properly raised in its third-party complaint.

O.C.G.A. § 9-11-14 provides that a defendant may bring in a third party who is or may be liable to him for all or part of the plaintiff's claim against that defendant. In the present case, Plaintiff asserts in his complaint that as a direct result of Defendant Deborah Lee Waddell's negligence, Plaintiff sustained serious bodily injury and other damages when the car in which he was a passenger was struck by Waddell's car. In its third-party complaint, State Farm asserts that the collision between Waddell's car and Third-Party Defendant Michael Peters's car was caused by the negligence of Michael Peters.

Under Georgia law pre-tort reform, State Farm's claim properly sounds in contribution between Waddell and Peters *e.g.*, if any negligence is proven against Third-Party Defendant Peters, he would be liable to Defendant Waddell for contribution on any judgment obtained by Plaintiff Peters against Waddell. See Moss v. Cincinnati Ins. Co., 154 Ga. App. 165, 168, 268 S.E.2d 676 (1980) (insurance company allowed to file any pleading that could be filed by the owner or operator of the offending vehicle). See also Travelers Indemnity Co. v. Liberty Loan Corp., 140 Ga. App. 458, 460, 231 S.E.2d 399 (1976) ("where there are co-defendants one of whom would be entitled to contribution from the others on paying off the judgment, such contribution may be sought, as to an uninsured co-defendant, from the uninsured motorist carrier") citing Wages v. State Farm Mutual Automobile Ins. Co., 132 Ga. App. 79, 208 S.E.2d 1 (1974). However, ~~in 2005 the legislature amended O.C.G.A. § 51-12-33 to eliminate joint and several liability.~~

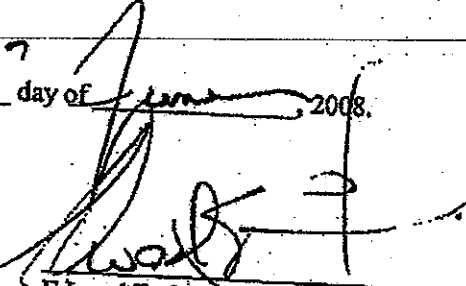
~~The elimination of joint and several liability results in substantial changes to Georgia's traditional third-party practice. O.C.G.A. § 51-12-33 (c) requires the apportionment of damages among parties and non-parties. This mandate takes away State Farm's right to contribution in the present case. The jury is required to assess the percentages of fault as to all parties and non-parties.~~

The assessment as to nonparties is used to determine the percentage of fault of the named parties.

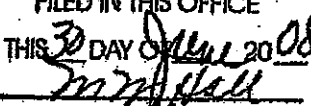
See O.C.G.A. § 51-12-33 (b) (1). Therefore, under the present statutory scheme Third-Party Defendant Peters cannot be liable for any portion of a judgment rendered against Defendant Waddell because any fault of Third-Party Defendant Peters will be factored out of the judgment regardless of whether he is a party. Because there can be no secondary or derivative liability between Waddell and Michael Peters, O.C.G.A. § 9-11-14 does not provide a mechanism to bring Michael Peters into the present case.

Based on the foregoing, Third-Party Defendant Peters' Motion to Dismiss is hereby GRANTED.

SO ORDERED, this 27<sup>th</sup> day of June, 2008.

  
Edward E. Carriere, Jr., Judge  
State Court of DeKalb County

cc: A. Jack Hinton, Esq.  
F. C. Schenck, Esq.  
J. Natalie Wilkes, Esq.  
Charles E. Johnson, III, Esq.

FILED IN THIS OFFICE  
THIS 30 DAY OF June 20 08  
  
Clerk, State Court, DeKalb County