

Case Brief

Civ Pro: basic joinder

1/28/15

Identity of Case

Erkins v. Case Power & Equipment Co, 164 F.R.D. 31 (D.N.J. 1995)

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Summary of Facts/Procedural History

Deceased plaintiff brings product liability complaint against Case, a manufacture of the backhoe in question. Plaintiff was an employee, riding in the backhoe when he fell out and under the wheels, causing death. Case impleads Eracom and Fitzpatrick - the contractors in charge of the job - for failure to properly instruct their opponents. This is the motion for leave to implead....

Statement of the Issue

Can a defendant who would be held strictly liable for failure to warn/instruct (products liability) implead employers for their contributory negligence in also failing to instruct (not strict liability standard?)

Holding

They can in New Jersey...

Reasoning

Impleader is allowed when the would be 3rd party defendant is likely to be liable to the 3rd party plaintiff for either indemnification or contribution. Therefore, where there is a contributory negligence suit in a jurisdiction that requires contribution when only one defendant is sued, impleader is allowed.

Note: plaintiff could also just sue them both. Impleader is a response to plaintiff's failure to sue them both.

Evaluation