

Docket No. 103474.

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

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TERRY E. READY, Special Adm'r of the Estate of Michael P. Ready, Deceased, Appellant, v. UNITED/GOEDECKE SERVICES, INC., *et al.* (United/Goedecke Services, Inc., Appellee).

*Opinion filed November 25, 2008.*

JUSTICE FREEMAN delivered the judgment of the court, with opinion.

Chief Justice Fitzgerald and Justice Burke concurred in the judgment and opinion.

Justice Kilbride specially concurred, with opinion.

Justice Garman dissented, with opinion, joined by Justice Karmeier.

Justice Thomas took no part in the decision.

**OPINION**

In 2003, following a jury trial, the circuit court of Cook County entered judgment in favor of plaintiff Terry Ready in a wrongful-death action stemming from the death of her husband, Michael, in a workplace accident. The appellate court affirmed in part and reversed in part and remanded for a new trial, directing that fault for the accident be reapportioned. 367 Ill. App. 3d 272. We allowed plaintiff's petition for leave to appeal. 210 Ill. 2d R. 315. For the

reasons set forth below, we affirm in part and reverse in part the judgment of the appellate court, and affirm the judgment of the circuit court.

#### BACKGROUND

In December 1999, a pipe-refitting project was under way at the Midwest Generation, L.L.C., power plant in Joliet, Illinois, where Michael Ready was employed as a maintenance mechanic. As part of this project, scaffolding material had to be raised from the ground to the level of the eighth floor. The general contractor of the project, BMW Constructors, Inc. (BMW), had subcontracted with United/Goedecke Services, Inc. (United<sup>1</sup>), to perform the scaffolding work, including the lifting of scaffolding materials.

On December 23, 1999, a United employee was supervising the lifting of wooden trusses. Another United employee was rigging the trusses for lifting, using a single sling. Ready was standing beneath the rigging so that he could give hand signals to the operator of the tugger that was being used to lift the trusses. The tugger was owned by Midwest and was being operated by a Midwest employee. Eight trusses were lifted without incident. As the ninth truss was being lifted, it slipped out of the sling, falling eight floors to the ground level where it struck and killed Ready.

Ready was survived by his wife, Terry, and two children. The wrongful-death suit brought by Terry, as administrator of Ready's estate, named two defendants: United and BMW. Both defendants filed third-party complaints against Midwest pursuant to the Joint Tortfeasor Contribution Act (Contribution Act) (740 ILCS 100/0.01 *et seq.* (West 1998)). Plaintiff thereafter amended her complaint, adding Midwest as a defendant. She reached settlement agreements totaling \$1.113 million with BMW and Midwest. United did not

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<sup>1</sup>We note that defendant United/Goedecke Services, Inc., refers to itself as "Goedecke." We acknowledge that, in general, a party should be addressed in the manner the party prefers. However, because the appellate court opinion below refers to this entity as "United," we elect to do the same for the sake of consistency.

object to the settlements and the trial court found that they were reached in good faith.

Prior to trial, the parties filed numerous motions *in limine*, some of which the trial court granted. As a result of these rulings, United was not allowed to present any evidence at trial regarding the conduct of the settling defendants. In addition, the trial court denied United's motion to list BMW and Midwest on the verdict form so that if the jury found United at fault, it could consider whether to allocate some portion of the fault not only to Ready, but also to his employer and the general contractor.

The case proceeded to trial with United as the sole defendant. The jury found United liable for negligence and awarded damages of \$14.23 million. Based on section 2-1117 of the Code of Civil Procedure (Code) (Ill. Rev. Stat. 1987, ch. 110, par. 2-1117), the trial court found United jointly and severally liable for the amount of the verdict remaining after offsets for Ready's comparative negligence (35%) and the settlement amounts paid by BMW and Midwest. United was held liable in the amount of \$8.137 million.

On appeal, United argued that the trial court erred by failing to include the settling defendants on the verdict form so that the jury could determine their share of fault, if any, for the fatal accident. If the jury had been asked to consider their relative fault, United argued, its share of fault might have been set at less than 25% and, under section 2-1117, United would have been only severally liable.

The appellate court affirmed in part and reversed in part and remanded the cause for a new trial as to liability only. 367 Ill. App. 3d 272. The appellate court concluded that, under section 2-1117, a nonsettling defendant's fault should be assessed relative to the fault of all defendants, including settling defendants. The court thus held that, in the case at bar, BMW and Midwest should have been included on the verdict form for purposes of fault apportionment. The court also concluded, contrary to the circuit court, that evidence relating to the culpability of these settled defendants was relevant and admissible. The appellate court affirmed the amount of the damages award, concluding that United had forfeited the right to challenge this amount.

We permitted the Illinois Trial Lawyers Association, the Illinois Association of Defense Trial Counsel, and the Illinois Chamber of Commerce to file *amicus curiae* briefs. 210 Ill. 2d R. 345.

#### ANALYSIS

The central issue in this appeal is whether settled tortfeasors are “defendants sued by the plaintiff” within the meaning of section 2–1117 of the Code. Plaintiff argues that the statute unambiguously excludes settling defendants from the apportionment of fault. United takes the opposite view, contending that the statute unambiguously requires a jury to allocate fault to settling and dismissed defendants.

United argues, in addition, that the appellate court erred in affirming the amount of the damages award.

Section 2–1117 was amended in 2003.<sup>2</sup> Before the appellate court below, the parties disagreed as to which version of section 2–1117 applied in the case at bar. The appellate court concluded that the preamendment version of the statute was applicable. The parties are no longer in dispute on this point. Our analysis, therefore, is limited to the version of section 2–1117 in effect at the time of plaintiff’s accident, *i.e.*, the 1986 version.

Section 2–1117 provides:

“Joint Liability. Except as provided in Section 2–1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff’s past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant who could have been sued by the plaintiff, shall be severally liable for all other

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<sup>2</sup>This amendment excluded the plaintiff’s employer from the third-party defendants subject to a finding of fault. 735 ILCS 5/2–1117 (West 2004) (limiting the allocation of fault to “the plaintiff, the defendants sued by the plaintiff, and any third party defendant[ ] *except the plaintiff’s employer*” (emphasis added)).

damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants who could have been sued by the plaintiff, shall be jointly and severally liable for all other damages.” Ill. Rev. Stat. 1987, ch. 110, par. 2–1117.

In construing the meaning of a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). The best evidence of the legislature’s intent is the language of the statute, which must be given its plain and ordinary meaning. *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 371 (2007); *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997). However, if the language of a statute is ambiguous, courts may look to tools of interpretation to ascertain the meaning of a provision. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 511 (2007); *DeLuna*, 223 Ill. 2d at 59. The construction of a statute is a question of law, which we review *de novo*. *Wade*, 226 Ill. 2d at 510-11; *DeLuna*, 223 Ill. 2d at 59.

The first sentence of section 2–1117 deals with liability for a plaintiff’s medical expenses. The sentence states, in pertinent part: “[A]ll defendants found liable are jointly and severally liable for plaintiff’s past and future medical and medically related expenses.” Ill. Rev. Stat. 1987, ch. 110, par. 2–1117. Liability for medical expenses is not at issue in the case at bar.

The second and third sentences of section 2–1117 deal with liability for all other damages. According to this portion of the statute, a defendant whose fault is 25% or greater is jointly and severally liable for these damages, while a defendant whose fault is less than 25% is only severally liable. In making this determination, the fault to be considered is that of “the plaintiff, the defendants sued by the plaintiff, and any third party defendants who could have been sued by the plaintiff.” Ill. Rev. Stat. 1987, ch. 110, par. 2–1117.

The relevant phrase, for purposes of our analysis, is “defendants sued by the plaintiff.” The question is whether settling defendants such as BMW and Midwest are “defendants sued by the plaintiff” within the meaning of section 2–1117. United answers this question in the affirmative, arguing that the statutory language plainly includes settling defendants within its scope. Noting that “sued” is in the past

tense, United asserts: “Defendants dismissed from an action prior to verdict based on settlement were ‘sued by the plaintiff.’ ” United thus contends, citing *Lannom v. Kosco*, 158 Ill. 2d 535 (1994), that all defendants, including settling defendants, must be included in the apportionment of fault.

Plaintiff takes the opposite view, arguing that the plain meaning of section 2–1117 “does not permit the apportionment of fault to dismissed defendants.” According to plaintiff, the phrase “defendants sued by the plaintiff” includes only those defendants who remain in the case when it is submitted to the fact finder. Necessarily excluded from this group are settling defendants such as BMW and Midwest who were dismissed from the action. Plaintiff states: “Dismissed or former defendants are not defendants.” Plaintiff cites *Lannom* in support of her view of section 2–1117.

Initially, we reject the parties’ simultaneous claims that *Lannom* supports their opposite viewpoints. Even disregarding the contradictory nature of these claims, we note that the relevant issue in *Lannom*, unlike the case at bar, was whether section 2–1117 prohibited the dismissal of a defendant or third party from an action where such dismissal was otherwise warranted. The instant appeal presents a different issue: whether section 2–1117 requires the inclusion of settled and otherwise dismissed defendants in the allocation of fault. *Lannom* did not interpret the statutory language to determine this question.

More important, we disagree with both plaintiff and United that section 2–1117 is unambiguous with regard to whether settled tortfeasors are to be included in the apportionment of fault. A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *Wade*, 226 Ill. 2d at 511.

The phrase “defendants sued by the plaintiff” is not defined in the statute. The standard dictionary definition of “sue” includes “to seek justice or right from (a person) by legal process: bring an action against : prosecute judicially,” as well as “to proceed with (a legal action) and follow up to proper termination : gain by legal process.” Webster’s Third New International Dictionary 2284 (2002). The first of these definitions appears to correspond with United’s view that any defendant who was sued by the plaintiff is included within the scope

of section 2–1117, regardless of whether that defendant may have settled with the plaintiff. The second definition, on the other hand, appears to comport with plaintiff’s view that section 2–1117 applies only to those defendants who remain in the case when it is submitted to the fact finder. These definitions thus provide no help in determining which of these contradictory views might have been intended by the legislature.

Nor is this matter clarified by an examination of the statute as a whole. We find no clear indication of a legislative preference for either of the parties’ asserted meanings over the other. Accordingly, based on a careful examination of the language of section 2–1117, we conclude that the statute is ambiguous with regard to whether it includes within its scope settling tortfeasors such as BMW and Midwest.

We disagree with the dissent that the phrase “defendants sued by the plaintiff” unambiguously includes settling defendants such as BMW and Midwest. We note that, in establishing this alleged “plain meaning,” the dissent, in addition to citing multiple dictionary definitions, engages in a rather complex discussion of grammatical principles, particularly those relating to participial verb forms. The need for such an extended discussion strongly belies the notion that the statute unambiguously speaks in terms that the ordinary person, exercising ordinary common sense, can understand.

Our determination that section 2–1117 is ambiguous finds support in the conflicting interpretations of the statute by our appellate court. In *Blake v. Hy Ho Restaurant, Inc.*, 273 Ill. App. 3d 372 (1995), for example, the court held that defendants who had settled were no longer defendants in the suit and were not to be included in the apportionment of fault under section 2–1117. *Blake*’s holding was noted in *Lombardo v. Reliance Elevator Co.*, 315 Ill. App. 3d 111, 125 (2000), which concluded that *Blake* “establish[ed] guidelines for using the attributions of fault for purposes of determining whether the defendants meet the 25% threshold of responsibility requisite for joint liability.” In remanding for a new trial, *Lombardo* instructed the circuit court to “consider the fault of only those parties specified in section 2–1117 for purposes of determining joint liability. *Following Blake*, the court should not subject the settling defendants to the expense of discovery \*\*\*.” (Emphasis added.) *Lombardo*, 315 Ill. App. 3d at

125. Accord *Yoder v. Ferguson*, 381 Ill. App. 3d 353, 374 (2008) (“In *Lombardo*, the First District of this court adopted the holding of the Fifth District in *Blake*”). In *Skaggs v. Senior Services of Central Illinois, Inc.*, 355 Ill. App. 3d 1120 (2005), on the other hand, the court held that a settling defendant does not lose its status as a defendant sued by the plaintiff, and settling defendants therefore are to be included in the apportionment of fault. See also *Yoder*, 381 Ill. App. 3d at 378-79 (following *Blake* in limiting fault allocation to “remaining defendants”); *Heupel v. Jenkins*, 379 Ill. App. 3d 893, 903 (2008) (concluding that section 2-1117 applies to all tortfeasors, including those who settled with the plaintiff). Indeed, individual members of this court disagree on this same point. Compare slip op. at 13 (Kilbride, J., specially concurring) (concluding that the language of section 2-1117, viewed in its entirety, clearly excludes settling tortfeasors from the allocation of fault) with slip op. at 17 (Garman, J., dissenting, joined by Karmeier, J.) (concluding that the plain language of the statute clearly *includes* settling tortfeasors in the allocation of fault).

Though the difference in appellate court interpretations of section 2-1117 is not dispositive as to whether the statute is ambiguous, it strongly suggests that it is. Once a court has concluded, through an examination of statutory language, that a statute is ambiguous, the existence of differing interpretations in the lower courts may be considered in support of the finding of ambiguity. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 184 (2005) (holding that “the wealth of competing interpretations of section 1(f) [of the Consumer Fraud Act] is a compelling indication of the statute’s ambiguity”).

Where a statute is ambiguous, “courts may look to tools of interpretation to ascertain the meaning of a provision.” *DeLuna*, 223 Ill. 2d at 59; *Wade*, 226 Ill. 2d at 511. One such aid to construction is the principle that, where the legislature chooses not to amend a statute after a judicial construction, it is presumed that the legislature has acquiesced in the court’s statement of the legislative intent. *Wakulich v. Mraz*, 203 Ill. 2d 223, 233 (2003); see also *Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 457-59 (1997) (applying this principle to prior judicial construction by appellate court). As previously noted, in 1995 our appellate court held that, under section

2-1117, settling defendants were not to be included in the apportionment of fault. *Blake*, 273 Ill. App. 3d at 376. The 2003 amendment to section 2-1117 did not deal with this prior holding in *Blake*. The legislature's failure to address *Blake*'s holding at that time is an indication of the legislature's acceptance, as of 2003, of this judicial interpretation of section 2-1117. *Yoder v. Ferguson*, 381 Ill. App. 3d 353, 377-78 (2008) (accepting argument, based on *Bruso*, that legislature's failure to alter relevant language of section 2-1117 in 2003 created presumption that legislature agreed with 1995 interpretation of statute in *Blake*).

Also applicable in this case is the rule that an amendment to a statute creates a presumption that the amendment was intended to change the law. *People v. Hicks*, 119 Ill. 2d 29, 34 (1987). Plaintiff cites this principle in arguing that the amendments included in Public Act 89-7, entitled "Tort Reform Act of 1995," indicate that settled tortfeasors were not to be included in the apportionment of fault under the original, 1986 statute. Plaintiff points, in particular, to the Public Act 89-7 amendments to section 2-1116 of the Code, which was titled, as amended: "Limitation on recovery in tort actions; fault." The amended section 2-1116(b) defined "Tortfeasor" as "any person, excluding the injured person, whose fault is a proximate cause of the [injury] for which recovery is sought, regardless of whether that person is the plaintiff's employer, regardless of whether that person is joined as a party to the action, and *regardless of whether that person may have settled with the plaintiff.*" (Emphasis added.) 735 ILCS 5/2-1116(b) (West 1996). Plaintiff asserts that, under this amendment, settling tortfeasors were to be *included* on the verdict form. According to plaintiff, this amendment constituted a recognition by the legislature that settling tortfeasors were *not* originally included in the apportionment of fault. Plaintiff cites *Hicks*, which stated:

"It is an elementary rule of statutory construction that '[t]he addition of a new provision in a statute by amendment is an indication of the absence of its implied or prior existence.' [Citation.] Absent substantial considerations to the contrary, 'an amendatory change in the language of a statute creates a presumption that it was intended to change the law as it theretofore existed.'" *Hicks*, 119 Ill. 2d at 34.

In *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), this court held Public Act 89–7 unconstitutional in its entirety. As a result, section 2–1116, as well as section 2–1117, which also was amended by Public Act 89–7, reverted to the original language of the 1986 version, *i.e.*, the language in effect prior to the adoption of Public Act 89–7. “The effect of enacting an unconstitutional amendment to a statute is to leave the law in force as it was before the adoption of the amendment.” *People v. Gersch*, 135 Ill. 2d 384, 390 (1990). According to plaintiff, the 1995 amendment to include settling defendants in the apportionment of fault is a strong indication that the 1986 version—the statute at issue in the case at bar—was not intended to include such defendants.

United responds that the 1995 amendments are irrelevant to the interpretation of section 2–1117. United notes that the amendments were declared void *ab initio* and without legal effect. According to United, these amendments therefore have no bearing on the analysis of section 2–1117. This argument misses the mark.

In contending that the 1995 amendments *are* relevant to the analysis, plaintiff does not argue that they are legally effective. Instead, plaintiff simply cites the amendments as record evidence that is indicative of the original intent of the 1986 statute. We agree with plaintiff that the 1995 amendments are a compelling indication that settling defendants were not meant to be included in the apportionment of fault under the 1986 statute.

Based on the well-established principles set forth above regarding (1) the legislature’s failure to amend a statute following a judicial construction and (2) the amendment of a statute to add a new provision, we conclude that section 2–1117, as enacted in 1986, was never intended to include settling tortfeasors in the apportionment of fault.

Although not necessary, additional support for this conclusion is found in statements made by Illinois Senator John Cullerton during floor debate on Senate Bill 1296, which is aimed at amending section 2–1117. Senate Bill 1296 was passed by the Senate on March 20, 2007, but remains pending in the House. While the statements of Senator Cullerton, a cosponsor of the bill, are nonbinding, they are nevertheless informative and serve to confirm our conclusion, reached above, regarding the meaning of section 2–1117.

