Indemnity Contracts

St. John's Law Review
the trial court will generally raise the issue sua sponte if the parties do not. 268

Indemnity Contracts

One area in which Dole has been held inapplicable is where an indemnity agreement exists between the parties. In Williams v. D. A. H. Construction Corp., 269 the Appellate Division, Second Department, reversed the trial court's direction of a verdict in favor of the plaintiff and third-party plaintiff, and remanded for a determination of whether the terms of the indemnity contract had been satisfied, i.e., whether the plaintiff's injury was caused by any act or omission by the third-party defendant. The court stated that Dole does not apply in this situation. 260 It is notable, however, that while the indemnity agreement controls the third-party plaintiff's claim here, Dole would have produced the same effect as the terms of the contract.

Court of Claims

The New York State Constitution establishes the Court of Claims as the exclusive forum for claims against the state. 261 As to claims against all other defendants, however, the court has no competence whatsoever. Because this truncated jurisdiction rules out third-party practice, 262 several actions may be necessary to finally resolve a controversy to which the state is a party. This shortcoming of Court of Claims practice has become all the more apparent since Dole. 263 When the

268 The Second Department requires the trial court to sua sponte charge the jury with respect to apportionment of fault even absent a crossclaim. Stein v. Whitehead, 40 App. Div. 2d 89, 337 N.Y.S.2d 821 (2d Dep't 1972). See also Lipson v. Gewirtz, 70 Misc. 2d 599, 602, 334 N.Y.S.2d 662, 665 (Dist. Ct. Nassau County 1972) ("The court on its own initiative is to instruct the jury to fix responsibility among the defendants and apportion damages among those found to be liable.").

269 42 App. Div. 2d 877, 346 N.Y.S.2d 862 (2d Dep't 1973) (mem.).

260 But see Schwab, supra note 232, at 160-61, where the author states:

If the intent of Dole, inter alia, is to broaden the basis of recovery and to induce otherwise reluctant litigants to contribute towards a settlement, surely the contractual indemnification case law of New York, as recent as it is, accomplishes a contrary result.

261 The court has jurisdiction over "claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide." N.Y. Const. art. 4, § 9. See generally McNamara, The Court of Claims: Its Development and Present Role in the Unified Court System, 40 St. John's L. Rev. 1 (1965); Jurisdiction of the Court of Claims, Consolidation into the Supreme Court, in Second Annual Report of the N.Y. Judicial Conference 94 (1957).


263 See Bartlett v. State, 40 App. Div. 2d 267, 340 N.Y.S.2d 66 (4th Dep't 1973) (state may not seek a Dole apportionment in the Court of Claims).