

Kansas Abolishes Assumption of the Risk Defense for Inherently Dangerous Workplaces

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Employers defending negligence lawsuits have lost a defense in cases involving inherently dangerous workplaces. In a recent decision, the Kansas Supreme Court overruled its prior case law permitting employers to assert the assumption of risk doctrine as a complete bar to recovery in cases involving inherently dangerous activities. The doctrine is based on the principle that employees accept the risk of known dangers and take responsibility for resulting injuries. Until now, the doctrine prevented recovery by plaintiffs for on-the-job injuries where the worker's compensation statute does not apply, and where plaintiff-employees understand the risks they undertake.

In *Simmons v. Porter*, plaintiff Adam Simmons worked as a truck and machine mechanic for Porter Farms. Simmons was seriously injured in a gas fire at work and sued his employer for his injuries. As an agricultural worker, Simmons' lawsuit was not barred by the Kansas Workers Compensation Act. He argued his employer owed him a duty of care to provide him a reasonably safe workplace. Porter Farms sought summary judgment against Simmons, arguing the assumption of risk doctrine barred Simmons' negligence claim because he voluntarily exposed himself to a known danger. The district court granted summary judgment to the employer and the court of appeals affirmed.

On appeal to the Supreme Court, Simmons argued the court should reconsider the continued viability of the assumption of risk doctrine. The Court evaluated the doctrine's origins and its prior case law. Critical to its analysis, the Court observed that the Kansas Legislature adopted the comparative fault system in 1974 for negligence cases. Under that system, a plaintiff may recover damages so long as the plaintiff's negligence is less than the negligence of the employer (and the plaintiff's award is reduced by his or her

own negligence). The Court concluded that continued application of the assumption of risk doctrine is incompatible with comparative fault. The Court overruled its prior case law and remanded Simmons' case to the district court for reconsideration in light of comparative fault principles.

With the *Simmons* decision, Kansas joined the majority of other states in abolishing assumption of risk as a complete defense. When defending a lawsuit brought by an injured employee in which worker's compensation does not apply, Kansas employers may still argue that a plaintiff's own negligence contributed to or caused his or her injuries, but they may no longer argue that the employee assumed the risk of injury and is therefore completely barred from recovery.