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**57 F.3d 746**

**PAM TRANSPORT, an Arkansas corporation; Andrew Mertyris,  
Plaintiffs-Appellants,**

**v.**

**FREIGHTLINER CORPORATION, a Delaware corporation; TRW Ross  
Gear, a division of TRW, Inc., an Ohio corporation; John  
Does I through X; Black Corporations I through X; White  
Partnerships I through X, Defendants-Appellees.**

**No. 92-16059.**

**United States Court of Appeals,  
Ninth Circuit.**

**Argued and Submitted Nov. 1, 1993.**

**Submission Withdrawn May 23, 1994.**

**Resubmitted May 8, 1995.**

**Decided June 9, 1995.**

William G. Caravetta and Donald R. Wilson,  
Struckmeyer & Wilson, Phoenix, AZ, for  
plaintiffs-appellants.

Paul J. Mooney, E.J. Kotalik, Jr.,  
Fennemore Craig and David C. Auther,  
Bowman & Brooke, Phoenix, AZ, for  
defendants-appellees.

Appeal from the United States District  
Court for the District of Arizona.

Before: KOZINSKI and O'SCANNLAIN,  
Circuit Judges, and KELLEHER, \* District  
Judge.

KELLEHER, District Judge:

PAM Transport and Andrew Mertyris  
appeal from the district court's order granting  
Freightliner Corporation's motion for judgment  
on the pleadings. Based on the response of the  
Arizona Supreme Court to our certified question,  
we affirm.

I

On November 28, 1988, Plaintiff/Appellant  
Andrew Mertyris was operating a 1989  
Freightliner tractor truck in the scope of his  
employment with Plaintiff/Appellant PAM  
Transport when he was involved in a collision  
with a vehicle owned by the Arizona

Department of Transportation. This collision  
resulted in the death of the driver of that vehicle,  
Grady Harold Ashcraft.

Litigation ensued between the survivors of  
decedent Ashcraft and Appellants herein (the  
"Ashcraft Litigation"). This litigation was filed  
in September of 1989. Appellees were not  
parties to the Ashcraft Litigation. In March of  
1991, Appellants settled the Ashcraft Litigation  
and paid to the survivors of decedent Ashcraft  
the sum of \$985,000.

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Such sum extinguished the liability of  
Appellants herein and all other firms or  
corporations, including Appellees, to the  
survivors of decedent Ashcraft. Appellants then  
initiated the instant action seeking contribution  
from Appellees pursuant to A.R.S. Sec. 12-2501.

II

The United States District Court granted  
Appellees's motion for judgment on the  
pleadings on the ground that A.R.S. Sec. 12-  
2506, which abolished joint and several liability,  
precluded contribution. We certified the  
following question to the Arizona Supreme  
Court:

Under Arizona law, has A.R.S. Sec. 12-2506 abolished the right of a tortfeasor to contribution from another tortfeasor under A.R.S. Sec. 12-2501 when, before any apportionment of fault by a trier of fact, that tortfeasor settles any and all claims arising out of an accident?

The Arizona Supreme Court accepted jurisdiction, pursuant to section 5(6) of Article VI of the Arizona Constitution, Arizona Revised Statute section 12-1861, and Arizona Rule of the Supreme Court 27, and answered. See PAM Transport v. Freightliner, 893 P.2d 1295 (Ariz.1995).

### III

The Arizona Supreme Court set forth an extensive analysis deciding the question posed based on the facts as recited in our certification order. It is now apparent that under Arizona's statutory scheme, contribution may not be sought where the defendants' liability is several only. See PAM Transport, *supra* at 1296. Contribution is permitted to joint tortfeasors who have paid more than their pro rata shares of liability "as long as the settlement also extinguishes the liability of the others and is reasonable." See *id.* Arizona has abolished joint liability in almost all cases. See A.R.S. Sec. 12-2506(D) (preserving joint and several liability for hazardous waste disposal and for tortfeasors acting in concert or pursuant to agent relationship). Because neither of the exceptions in A.R.S. Sec. 12-2506(D) applies here, Appellants may not seek contribution against Appellees.

We affirm the order of the district court granting Freightliner's motion for judgment on the pleadings and remand for any further proceedings consistent with this opinion.

AFFIRMED.

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\* The Honorable Robert J. Kelleher, Senior United States District Judge for the Central District of California, sitting by designation.