

# **Bond Case Briefs**

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## **INDEMNIFICATION - MISSOURI**

### **Kershaw v. City of Kansas City**

**Missouri Court of Appeals, Western District - May 6, 2014 - S.W.3d - 2014 WL 1782818**

City employee brought a declaratory judgment suit against city to recover money from the city legal expense fund on an underlying negligence judgment against a co-employee. Both parties filed motions for summary judgment. The Circuit Court granted city summary judgment, and denied employee summary judgment. Employee appealed.

The Court of Appeals held that:

- City legal expense fund ordinance required city to pay and indemnify co-employee on employee's negligence judgment, and
- Release that employee signed when he closed out his workers' compensation claim did not constitute a general release of city's liability to indemnify co-employee on employee's negligence judgment.

City legal expense fund ordinance established duty on city's part, wholly independent of its duty to injured employee under Workers' Compensation Act, to pay and indemnify co-employee tortfeasor on employee's negligence judgment, and ordinance did not improperly broaden city's liability; rather, fund was merely a voluntary assumption of defense and payment of judgments or claims against state employees sued for their conduct arising out of and performed in connection with official duties on behalf of the state.

Settlement release signed by injured employee to close out his workers' compensation claim did not constitute a general release of city's liability to indemnify co-employee tortfeasor on employee's negligence judgment, as required to bar employee, under doctrine of accord and satisfaction, from enforcing co-employee's right to indemnity. To extent release contained "general release" language, that language was used in subordination to language preceding it, i.e., that employee was forever closing out claim under Workers' Compensation Law, release was boiler-plate language, which indicated parties' intent not to enter into general release, and not broad enough to release any claim employee may have had against a third party such as co-employee.