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 SEE COURT OF APPEALS RULES 11 AND 12
 Court of Appeals of Tennessee, Western Section at Jackson.

Billy Roger **SUMMERS** and Thelma L. **Summers**,
 Plaintiffs-Appellees,

v.

COMMAND SYSTEMS, INC. and Robert Vestal, De-
 fendants-Third Party Plaintiffs-Appellants,

v.

Vicki Diane **BOLEY** and MTD Products, Inc., Third Party
 Defendants-Appellees.

No. 02A01-9104-CV0054.

Oct. 10, 1991.

From the Weakley County Circuit Court, [David G. Hayes](#),
 Judge.

[William L. Guy](#) of Jackson, [Mark S. Hendrix](#) of Jackson, for
 plaintiffs-appellees.

[James D. Kay, Jr.](#) of Nashville, for defendants-appellants.

[Floyd S. Flippin](#) of Humboldt, for third party defendants-ap-
 pellees.

[CRAWFORD](#), Judge.

*1 Defendants and third-party plaintiffs, Command Sys-
 tems, Inc., and Robert Vestal, appeal from the order of the
 trial court granting summary judgment to third-party de-
 fendants, Vicki Diane Boley and MTD Products, Inc.

There is no dispute concerning the material facts involved in
 the issue before the court. Defendants Command Systems
 and Vestal were sued by the original plaintiffs, Billy Roger
 Summers and Thelma L. Summers for damages resulting
 from personal injuries allegedly caused by the negligence of
 Vestal as a servant and employee of Command Systems.
 Summers, an employee of MTD, was injured in the course
 and scope of his employment and received workers com-
 pensation benefits from the workers compensation carrier
[FN1](#) for MTD. Diane Boley was also an employee of MTD.

Command Systems and Vestal, after responding to the Sum-
 mers complaint filed a third party complaint against MTD
 and Boley for indemnity and alleged that their negligence
 was the proximate cause of the injuries sustained by Sum-

mers.

MTD and Boley were granted summary judgment on the
 ground that the exclusive remedy provision of the workers
 compensation act bars the suit for indemnity by these de-
 fendants against the original plaintiffs' co-employee and em-
 ployer. We affirm.

The issue before the trial court was whether a third party in-
 demnity action against an employer for damages recovered
 by an injured employee against the third party is barred by
 the exclusive remedy provision of the workers compensa-
 tion act. [T.C.A. § 50-6-108 \(Supp.1990\)](#). On appeal, the ap-
 pellants argue that the action should be allowed to the extent
 of barring the employer's subrogation claim pursuant to
[T.C.A. § 50-6-112 \(Supp.1990\)](#) for the compensation bene-
 fits paid by the employer. [T.C.A. § 50-6-108 \(Supp.1990\)](#)
 provides:

50-6-108. Right to compensation exclusive.-The rights and
 remedies herein granted to an employee subject to the
 Workers' Compensation Law on account of personal injury
 or death by accident, including a minor whether lawfully or
 unlawfully employed, shall exclude all other rights and rem-
 edies of such employee, his personal representative, depend-
 ents, or next of kin, at common law or otherwise, on account
 of such injury or death. This section shall not be construed
 to preclude third party indemnity actions against an employ-
 er who has expressly contracted to indemnify such third
 party.

In [Rupe v. Durbin Durco, Inc., 557 S.W.2d 742
 \(Tenn.App.1976\)](#), the court considered the issue, *inter alia*,
 "whether the Tennessee Workman's Compensation Act will
 permit a third party, who has been found liable to a work-
 man for personal injuries, to seek indemnity against the
 workman's employer who has himself paid compensation
 benefits to the employee." [557 S.W.2d at 744](#). The Court
 held that in such situations there is no right of indemnity.
 Federal cases construing state law are in accord. [Dawn v.
 Essex Conveyors, Inc., 498 F.2d 921 \(6th Cir.1974\)](#); [McCoy
 v. Wean United, Inc., 67 F.R.D. 495 \(E.D.Tenn.1975\)](#).

*2 In [Easter v. Exxon Co., U.S.A., 699 S.W.2d 168
 \(Tenn.App.1985\)](#), the Court held that the ruling in [Rupe](#) was

Not Reported in S.W.2d
Not Reported in S.W.2d, 1991 WL 201622 (Tenn.Ct.App.)
(Cite as: **Not Reported in S.W.2d**)

not applicable to indemnity conferred by an agreement between the parties to the suit. We have no such contractual agreement in the instant case.

Legal writers have proposed diverse views as to the desirability of allowing indemnity actions in situations presented in the instant case. Arguments can be made for the allowance of unlimited indemnity, pro tanto indemnity to the extent of workers' compensation benefits paid, and no indemnity whatsoever. It would extend this opinion to an unreasonable length and consume valuable time for no useful purpose to review in detail all of the propositions advanced. See for example [The Exclusiveness of an Employee's Workers' Compensation Remedy Against His Employer, 55 Tenn.L.Rev. 405 \(1988\)](#) and Larson *Workman's Compensation Law*, Sec. 75.22 and 75.23.

We construe [T.C.A. § 50-6-108](#) to constitute a bar to non-contractual indemnity actions, such as the action in the instant case. We, like the court in *Rupe*, feel that if a change is to be made it should be made by the legislature.

Accordingly, the judgment of the trial court is affirmed and this case is remanded to the trial court for such further proceedings as may be necessary. Costs of the appeal are assessed against the appellant.

[HIGHERS](#) and [FARMER](#), JJ., concur.

[FNI](#). Fireman's Fund Insurance Company, the workers compensation carrier, has intervened in this action, but since the carrier stands in the same position as the employer, we will make no further reference to this party.

Tenn.App.,1991.
Summers v. Command System, Inc.
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