

CHAPTER 113.

UNIFORM JOINT OBLIGATIONS ACT.

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113.01 Definitions. In this chapter, unless otherwise expressly stated, "obligation" includes a liability in tort; "obligor" includes a person liable for a tort; "obligee" includes a person having a right based on a tort; "several obligors" means obligors severally bound for the same performance.

The driver of an automobile involved in a collision injuring another driver, and physicians charged with malpractice in treating the injured person, were not joint tort-feasors, but were consecutive or successive tort-feasors. Where independent torts result in separate injuries, each tort-feasor is separately liable for his own torts; but where independent torts concur to inflict a single injury, each tort-feasor is liable for the entire damage. *Bolick v. Gallagher*, 268 W 421, 67 NW (2d) 860.

113.02 Judgment, obligor not party, not discharged. A judgment against one or more of several obligors, or against one or more of joint, or of joint and several obligors shall not discharge a co-obligor who was not a party to the proceeding wherein the judgment was rendered.

113.03 Recoveries credited, limitation. The amount or value of any consideration received by the obligee from one or more of several obligors, or from one or more of joint, or of joint and several obligors, in whole or in partial satisfaction of their obligations, shall be credited to the extent of the amount received on the obligations of all co-obligors to whom the obligor or obligors giving the consideration did not stand in the relation of a surety.

The right of contribution in the instant case is limited to one half of the amount represented by deducting the amount paid to the injured party by the insurance carrier of the one joint tort-feasor, in consideration of the release, from the amount later paid to the injured party in settlement by the insurance carrier of the other joint tort-feasor, and now suing for contribution. *State Farm Mut. Auto. Ins. Co. v. Continental Cas. Co.* 264 W 493, 59 NW (2d) 425.

113.04 Release of some, effect. Subject to the provisions of section 113.03, the obligee's release or discharge of one or more of several obligors, or of one or more of joint, or of joint and several obligors shall not discharge co-obligors, against whom the obligee in writing and as part of the same transaction as the release or discharge, expressly reserves his rights; and in the absence of such reservation of such rights shall discharge co-obligors only to the extent provided in section 113.05.

The driver of an automobile injuring a person, and a physician charged with malpractice in treating the injuries, would not be joint tort-feasors, and there would be no right of contribution as between them, but the automobile driver, if settling with the injured person and obtaining a complete release, would have a claim by subrogation to the injured person's rights for that part of the damages primarily due to the physician's negligence. The presumption that a settlement with the injured person by the person causing the injury includes compensation for injury occasioned by malpractice prior to the settlement and release is conclusive unless, in releasing the primary tortfeasor, the injured person saves his cause of action against the physician by appropriate provision in the release, or by a covenant not to sue. *Greene v. Waters*, 260 W 40, 49 NW (2d) 919.

A document called a release may in fact be a covenant not to sue, and vice versa, the intention of the parties as revealed by the document itself, and not the name given to the document, being controlling. *Greene v. Waters*, 260 W 40, 49 NW (2d) 919.

The right to contribution between tort-feasors in Wisconsin is recognized as a common-law right, and it is a right based

on principles of equity. The right arises from common liability and ripens into a cause of action on payment by reason of a judgment, or pursuant to a reasonable settlement made with the injured party. The common liability is determined as of the time the accident occurs, and not as of the time the cause of action for contribution is later asserted, so that the fact, that the existing common liability has later been extinguished as to one of the joint tort-feasors, such as by a release, is immaterial so far as affecting the right to have contribution from such joint tort-feasor is concerned. *State Farm Mut. Auto. Ins. Co. v. Continental Cas. Co.* 264 W 493, 59 NW (2d) 425.

A release executed to one joint tort-feasor and his insurance carrier by the injured party, reserving rights against the other joint tort-feasor, is not a true release which operates to discharge both joint tort-feasors from liability but constitutes a covenant not to sue, which does not preclude and is not a defense to an action for contribution against the insurance carrier of the first joint tort-feasor by the insurance carrier of the other joint tort-feasor, who later has made a reasonable settlement with the injured person. In such release with reservation of rights against the other

joint tort-feasor, an indemnification agreement whereby the injured party agrees to indemnify the released tort-feasor and his insurance carrier against any liability for contribution, has no effect on the right of contribution against the insurance carrier of such joint tort-feasor by the insurance carrier of the other joint tort-feasor, neither of whom is a party to such agreement. *State Farm Mut. Auto. Ins. Co. v. Continental Cas. Co.*, 264 W 493, 59 NW (2d) 425.

Where a first joint tort-feasor and her insurer paid \$7,500 to plaintiff for a release and covenant not to sue, whereby the plaintiff released them from their direct liability to her, and agreed that her claims and causes of action would be credited and

satisfied on their behalf to the extent of one half thereof in case of her obtaining a judgment against the second tort-feasor, the second tort-feasor would not be entitled to any right of contribution even though damages of \$20,000 might be established by the plaintiff, since, by virtue of such release, the second tort-feasor would never become liable to the injured person for more than half the amount of such damages, and hence would never be required to pay more than her appropriate share of the damages. [*State v. Farm Mut. Automobile Ins. Co. v. Continental Casualty Co.*, 264 W 493, distinguished.] *Heimbach v. Hagen*, 1 W (2d) 294, 33 NW (2d) 710.

113.05 Release of some; co-obligors protected. (1) If an obligee releasing or discharging an obligor without express reservation of rights against a co-obligor, then knows or has reason to know that the obligor released or discharged did not pay so much of the claim as he was bound by his contract or relation with that co-obligor to pay, the obligee's claim against that co-obligor shall be satisfied to the amount which the obligee knew or had reason to know that the released or discharged obligor was bound to such co-obligor to pay.

(2) If an obligee so releasing or discharging an obligor has not then such knowledge or reason to know, the obligee's claim against the co-obligor shall be satisfied to the extent of the lesser of two amounts, namely (1) the amount of the fractional share of the obligor released or discharged, or (2) the amount that such obligor was bound by his contract or relation with the co-obligor to pay.

Cross Reference: See also 269.53 concerning release of joint debtor.

If one of 2 joint tort-feasors desires to effect a settlement with the injured party whereby one half of the total liability will be discharged, thereby preventing the other joint tort-feasor from ever maintaining an action for contribution against such first

joint tort-feasor, the release taken should be based on this section and should contain no express reservation of rights by the releasor against the other joint tort-feasor. *State Farm Mut. Auto Ins. Co. v. Continental Cas Co.*, 264 W 493, 59 NW (2d) 425.

113.06 Death of obligor, estate liable. On the death of a joint obligor in contract, his executor or administrator (or estate) shall be bound as such jointly and severally with the surviving obligor or obligors.

113.07 Not retroactive. This chapter shall not apply to obligations arising prior to June 17, 1927.

113.08 Interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

113.09 Short title. This chapter may be cited as the "Uniform Joint Obligations Act."

113.10 Repeals. All acts or parts of acts inconsistent with this chapter are repealed.