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☞ Details: AB11 and SB118, relating to comparative negligence and punitive damages

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

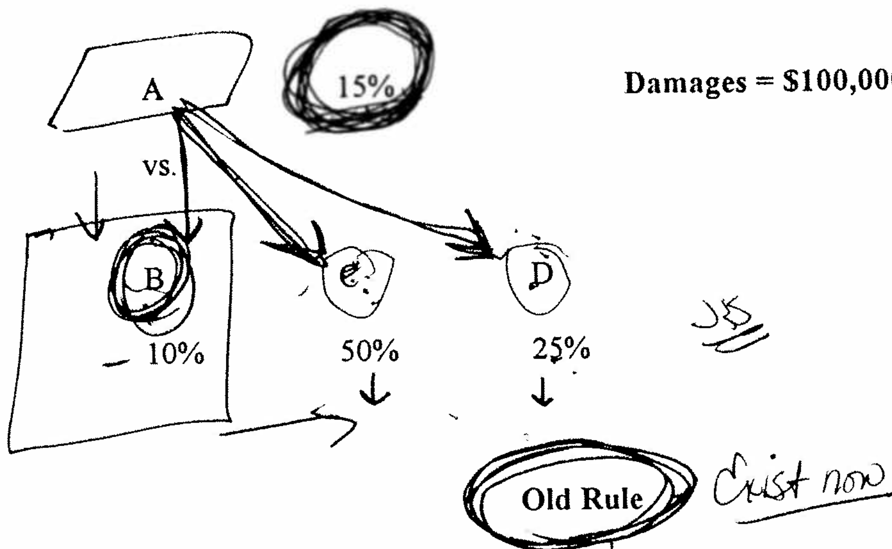
- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)

ASSUME

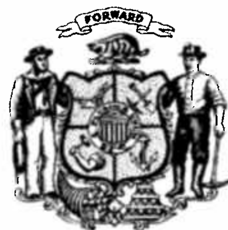


A	recovers $85,000 ($100,000 less 15%)	
B	pays $10,000 (10% of $100,000)	
C	pays $50,000 (50% of $100,000)	
D	pays $25,000 (25% of $100,000)	

New Rule

A	recovers	$63,750.00
B	pays	$ 0.00
C	pays	$42,500.00 (50% of 100,000 less 15%)
D	pays	$21,250.00 (25% of 100,000 less 15%)

WISCONSIN STATE LEGISLATURE



JOINT AND SEVERAL LIABILITY

Originally, joint and several liability meant that people who act with a common purpose, in concert, to commit an unlawful action against one party should have the actions of one considered as the actions of all. Juries were not allowed to apportion fault between tortfeasors, because it was considered impossible to divide what was seen as an indivisible wrong. Each was therefore liable for the entire damage, although one person may have contributed more or less than the other.

Today joint and several liability has been greatly expanded. Joint and several liability has been applied in the absence of concerted action to make all defendants who have had any part in an action -- jointly and severally liable. All that is required is that there be a tacit understanding that the action is or will be occurring. In some instances, statements of mere knowledge by each party of what the other is doing is sufficient "concert" to make each liable for the acts of the other.

Modern joint and several liability can be inequitable because a defendant with only a small or deminimus percentage of fault can become liable for 100% of the plaintiff's damages. Joint and several liability leads to a search for a "deep pocket" and has made governments, large corporations, and other insured entities bear the greatest burdens of liability when their involvement in an injury is minimal.

REFORM PROPOSAL

States should adopt pure several liability. Under pure several liability in any case involving unintentional torts, the trier of fact must apportion to each person or entity, whether or not a party to the action, the percentage for which he/she is responsible for the damages awarded. Each party to the suit will be liable only for the portion of damages assessed to them.

The only exception where joint liability should be retained shall be where the defendants acted in concert. Joint liability shall be imposed on all who pursue a common plan or design to commit a tortious act or actively take part in it. Any person held jointly liable for actions in concert shall have a right of contribution from his fellow defendants acting in concert. A defendant shall be held responsible only for the portion of fault assessed to those with whom he acted in concert.

JOINT AND SEVERAL LIABILITY

DEFINITION

When two or more defendants cause an injury to a single plaintiff, each defendant is liable -- separately and together -- for paying the plaintiff's damages. Thus, the plaintiff is entitled to seek full recovery from the defendant who is most able to satisfy the judgment, even if that defendant's fault was comparatively slight as against the fault of the other defendant.

RATIONALE

Originally joint and several liability meant that people who act with a common purpose, in concert, to commit an unlawful action against one party should have the actions of one considered as the action of all. Each is therefore liable for the entire damage, although one person may have contributed more or less than the other. The rule goes back to the days when the action of trespass was primarily a criminal action. Additionally, juries were originally not allowed to apportion fault between tortfeasors.

Today joint and several liability has been greatly expanded. Joint and several liability has been applied in the absence of concerted action to make all defendants who have had an action -- jointly and severally liable. Express agreement between the parties is not necessary. All that is required is that there be a tacit understanding that the action is or will be occurring. In some instances, statements of mere knowledge by each party of what the other is doing is sufficient "concert" to make each liable for the acts of the other.

EFFECT ON LIABILITY

Joint and several liability can be inequitable because a defendant with only a small or diminimus percentage of fault can become liable for 100% of the plaintiff's damages. Joint and several liability leads to a search for a "deep pocket" and has made governments, large corporations, and other insured entities the greatest burdens of liability when their involvement in an injury is minimal.

OPTIONS

1. Pure Several Liability

In any case involving a claim of negligence, the trier of fact will apportion to each person or entity, whether or not a party to the action, the percentage for which he/she is responsible for the damages awarded. Each party to the suit will be liable only for the portion of damages assessed to them.

Comment:

It has been said: "What pure comparative negligence does is hold a person fully responsible for his/her acts to the full extent to which they caused injury. That is justice."1/ The proposed option achieves such justice, yet also insures that tortfeasors will not be held responsible beyond the extent to which they caused injury, in other words, for the extent to which someone else has caused injury. A party's liability is determined by fault, rather than by the amount of his/her financial resources, the fact that another party is immune, or by the plaintiff's choice of defendants. The injustice of a 10% negligent defendant paying 100% of a damage award will be eliminated.

This approach has been criticized on the grounds that a court cannot divide causation for an indivisible injury.2/ However, 44 states currently have comparative negligence systems which require the trier of fact to assess the fault of each party, and in some jurisdictions non-parties. If fault can be apportioned, then certainly causation may be apportioned as well.3/ Essential to this proposal is the assessment of the negligence of non-parties. In order to accurately determine the fault attributable to a party, the trier of fact must be able to consider the extent to which non-parties were responsible for damage caused. Consider the situation where the negligence of a person who has settled, and is therefore not a named party, cannot be raised at trial. Any negligence attributable to that person will be assessed to the named defendant. The judgment, therefore, does not truly reflect the defendant's fault, resulting in his compensating the plaintiff for someone else's negligence.4/ It would be anomolous to institute pure several liability in order to achieve a fault based liability system, yet rely on an inaccurate measurement of fault. In order to accurately determine each party's degree of fault, a trier of fact must be able to examine the role of non-parties in bringing about the plaintiff's injuries.

Although a majority of jurisdictions still follow the common law of joint and several liability, many states recently have realized the inequities of such a system and the trend is toward a return to several liability. Five states have had pure several liability for a number of years,5/ and six states have traditionally had a slightly modified form.6/ In the 1985-1986 legislative session, three states have adopted pure several liability7/ and one other has adopted a modified form.8/

2. "Texas" System.

Those defendants who are less at fault than the plaintiff will be responsible only for the percentage of the judgment for which they were at fault. Those who are more negligent than the plaintiff are jointly liable for the entire damage award and

have a right of contribution from other tortfeasors.

Comment:

This method of modified several liability is aimed at guaranteeing the plaintiff speedy compensation. It does not focus on the goal of assessing liability in accordance with fault. Although it limits certain defendants' liability to their assessed portion of negligence, the possibility of gross injustice remains. In a situation where the plaintiff is not at fault this method is no different than common law joint and several liability. Despite a provision for contribution, a marginally responsible defendant can end up paying a huge portion of a judgment if the other tortfeasors are immune (e.g., a municipality claiming sovereign immunity).

This method is followed in Texas and 3 other jurisdictions.9/ Other variations exist in Iowa, which retains joint liability only for those defendants who are more than 50% at fault,10/ and Oklahoma, which uses joint and several liability whenever the plaintiff is not at fault.11/ These alternatives may be closer to pure several liability than the Texas method, but suffer from the same pitfall of damages far in excess of fault in many situations.

3. Reallocation of Uncollectible Judgments.

If after one year from the date of judgment a defendant's portion of the award is uncollectible due to insolvency, that amount will be reallocated to the remaining parties, including the plaintiff, based on the relation of their percentages of fault.

Comment:

This corollary to pure severable liability insures that the plaintiff will not bear the entire burden for uncollectible awards from insolvent defendants. Rather than having the loss born by the defendant, as in joint liability, or by the plaintiff, as in several liability, the loss is apportioned according to fault.

Rather than distributing the amount equally to all parties, it is done by comparing fault. Consider the situation where the percentages of fault are, plaintiff; 10%, defendant 1; 20%, and defendant 2; 70%. If defendant 2's portion is uncollectible it will be divided between plaintiff and defendant 1 on a 1/3 to 2/3 basis. This is because defendant 1 is twice as negligent as plaintiff (20%:10%). Plaintiff will get no recovery for 1/3 of defendant 2's portion and will recover 2/3 of it from defendant 1.

Advocates of this system argue that plaintiffs as well as defendants should not have to bear a burden beyond their

percentage of fault, and that since someone must suffer a loss, this is the fairest way to apportion it. However, an appellate court in New Mexico has pointed out, "between one plaintiff and one defendant, the plaintiff bears the risk of the defendant being insolvent; on what basis does the risk shift if there are two defendants and one is insolvent?"12/

Additionally, this Option does not serve the goal of fault-based liability since a defendant may eventually pay more than his portion of damages, but, it is offered as an alternative to lessen the possible harshness towards the plaintiff which may result from pure severable liability. This Option is only used in one jurisdiction, where it was only recently adopted.13/ It is also incorporated in the Uniform Comparative Fault Act.14/

Another variation of this Option is to apply it only to economic damages. This insures that the plaintiff receives full compensation for his out-of-pocket losses, but bears the risk of the defendant's insolvency for non-economic damages, for which no monetary loss has been suffered.

4. Retain joint and Several Liability Where the Defendants Acted in Concert.

All those who, in pursuance of a common plan or design to commit a tortious act, actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrong doer, or ratify and adopt the wrongdoer's acts done for their benefit, may be held jointly liable for the entire group's negligence. Mere knowledge of another party's actions will not be sufficient to impose joint liability.

Comment:

This option restricts the application of joint and several liability to its original domain; actions in concert. Pure several liability is inequitable when the defendants have acted together to injure the plaintiff. The plaintiff should not bear the responsibility of joining all the wrong doers, nor should he/she bear the risk of uncollectibility when the defendants have acted in concert.

The rationale for such rule is that here, the injury is truly "indivisible." It is difficult for a jury to assess the fault of each tortfeasor when they have all acted with a common purpose. Therefore, anyone of them should be held liable for the entire judgment. If, however, it can be proven that a defendant who has caused a portion of the plaintiff's injury did not act in concert with the other defendants, he will remain severally liable for his portion. Any one of the defendants who acted in concert may be held jointly liable for all negligence assessed to the group. The State of Washington recently made actions in concert an exception to its abolition of joint and several liability.15/

5. Limitation of Pure Several Liability to Non-economic Damages.

Pure several liability will be applied to all non-economic damages. Each defendant will remain jointly and severally liable for any award of economic losses. There will be a right of contribution among tortfeasors for economic damages.

Comment:

This Option insures that whenever a plaintiff has suffered an actual monetary loss he will be timely compensated. Any defendant may be held responsible for the entire economic award, and it will be his/her responsibility to seek contribution. The risk of one of the defendants being insolvent is born by the defendant seeking contribution. The rationale for this alternative is that the plaintiff has an out-of-pocket economic loss, and therefore has a need for speedy compensation. He should not be forced to seek payment from each individual defendant, or bear the risk of uncollectibility for this type of loss. Where the damage involves non-economic losses there is less need for timely compensation, and pure several liability applies.

Although this method may not totally meet the goal of liability based on fault, it may be used to lessen the sometimes harsh effect of pure several liability.

COMPARISON OF OPTIONS

If we are to achieve a true fault based system of responsibility, pure several liability is essential. The various modified systems are only a partial solution to the injustice inherent in joint and several liability. These alternatives will result in too many situations where marginally responsible defendants will pay judgments far in excess of their percentage of negligence. The advantage of these methods is that the plaintiff is guaranteed full recovery. To achieve this, however, defendants must act as insurers for the actions of others, over whom they exercise no control.

The option of reallocation or a limitation of pure several liability to non-economic damages will ease what may be perceived as inequitable treatment of the plaintiff. One must realize that in particular situations a guarantee of recovery for the plaintiff outweighs the need for strictly fault based liability. These options attempt to isolate those situations from the rule of pure several liability.

CRITERIA FOR ANALYSIS

The proposed principles compare quite favorably with common law joint and several liability, when analyzed in terms of appropriate criteria.

- Fair Compensation for Plaintiffs and Fair Treatment of Defendants

  Although joint and several liability is more favorable to the plaintiff, it results in highly unfair treatment to defendants, especially those with large financial resources. Pure several liability restores rational assessments of fault. Defendants are held responsible only for the damages they have caused, and plaintiffs may join all responsible parties in an attempt to get full compensation. The use of allocation or limitation to non-economic damages to remedy the troublesome problem of uncollectible judgments strikes the perfect balance between the rights of plaintiff and defendant.

- Deterrence of Wrongdoing

  Pure several liability, in holding each person responsible for their actions, leads to greater overall deterrence. No one can deter the actions of those over whom they exercise no control. A theory of joint liability, holding one party liable for the actions of all defendants, reduces deterrence because such liability will be imposed regardless of any measures taken to foresee and prevent accidents.

- Efficiency in Resolving Disputes

  The proposed options will result in greater judicial efficiency. Rather than a judgment against one defendant followed by contribution hearings, the negligence of all those responsible will be assessed in one proceeding. Subsequent contribution actions will be unnecessary, as each responsible person will be severally liable to the plaintiff.

- Effect on Innovation, Productivity, and the Availability of Goods and Services

  Pure several liability will restore a measure of predictability to damage awards. People and businesses can better judge their potential liability knowing that they are only responsible for their own negligence. This results in more efficient business planning and cost estimates, as well as proper assessments of the value of investments or new technologies, which can only be made when future costs can be predicted with accuracy.

FOOTNOTES

1/ Placek v. City of Sterling Heights, 405 Mich. 638, 275 N.W.2d 511, (1979).

2/ See, American Motorcycle Ass'n v. Superior Court, 20 Cal.3d, 578, 146 Cal. Rptr. 182, 578 P.2d 899 (1978).

3/ See discussion in Bartlett v. New Mexico Welding Supply, Inc., 98 N.M. 152, 646 P.2d 579 (N.M.App. 1982).

4/ Although some states allow a reduction in the damage award for amounts received in settlement or compromise of a claim, this amount is not always an accurate reflection of fault, as it is based on a pre-trial preduction of the special verdict. Additionally, it may include a premium due to the fact that there are no litigation costs.

5/ Kansas; Kan. Stat. Ann. Sec. 60-258a(d), New Hampshire; N.H. Rev. Stat. Ann. Sec. 507.7s: Ohio; Ohio Rev. Code Ann. Sec. 2315.19(A)(2). Indiana; Ind. Code Sec. 34-4-33-5 New Mexico; (abolished judicially), Bartlett v. New Mexico Welding Supply, Inc., 646 P.2d 579.

6/ Texas; Texas Civ. Code Ann. Sec. 33.013 (Vernon 1986). Nevada; Nev. Rev. Stat. Sec. 41.141(3)(a). Iowa; Iowa Code Ann. Sec. 668.4 Oregon; Ore. Rev. Stat. Sec. 18.485. Minnesota; (judicially) Kowalske v. Armour and Co., 300 Minn. 301, 220 N.W. 2d 268 (1974).

7/ Connecticut; Public Act. no. 86-338. Washington; Substitute Senate Bill No. 4630. Utah (statute unavailable).

8/ California voters recently passed proposition 51, which calls for the abolition of joint and several liability for all non-economic damages.

9/ See note 6.

10/ Iowa Code Ann. Sec. 668.4.

11/ Anderson v. O'Donough, 677 P.2d 648 (Okla. 1983); Laubach v. Morgan, 588 P.2d 1071 (Okla. 1978).

12/ Bartlett, 646 P.2d at 585.

13/ Connecticut incorporated this system into its 1986 tort reform legislation; Public Act No. 86-338.

14/ Sec. 2(c) (1979).

15/ Substitute Senate Bill No. 4630.

COMPARATIVE NEGLIGENCE

Originally, most states followed the doctrine of contributory negligence which held that a plaintiff who was in any degree at fault for his own injuries could not recover. Because plaintiffs who were only slightly negligent would be barred from recovering for their injuries, all but six states substituted comparative negligence for contributory negligence. Under pure comparative negligence, a plaintiff can recover at least some portion of his damages regardless of his own contribution to the injuries.

In contrast to contributory negligence, pure comparative negligence resulted in defendants who were only slightly at fault being held responsible for a plaintiff's injuries. This necessitated the development of the middle ground known as modified comparative negligence. This allowed a plaintiff to recover even when his fault exceeded that of the defendant's. As of 1985, sixteen states used pure comparative negligence and the remaining twenty-eight adopted the modified form. Pure comparative negligence can have inequitable results because a defendant may be forced to compensate a plaintiff who bears primary responsibility for his/her own injuries. Additionally, many states do not allow for the assessment of the negligence of non-parties. This results in named defendants being given a higher percentage of negligence that they truly deserve, increasing the plaintiff's recovery and detracting from a system of fault-based liability.

REFORM PROPOSAL

States should adopt a modified comparative negligence system which provides that in any case involving unintentional torts the trier of fact must assess the percentage of fault attributable to each person causing harm to the plaintiff. The plaintiff's recovery will be governed by the following elements:

- A plaintiff will receive no recovery where the comparable fault chargeable to him/her exceeds the aggregate fault of all defendants, and non-parties.

- Courts, in assessing the degree of fault of the parties, must also consider the fault of all other persons or entities regardless of whether they were, or could be, named as parties.

LIMITATION OF SCOPE

The following limitations on comparative negligence should apply:

- <u>Express Assumption of the Risk</u>. A plaintiff who has expressly, through written or oral agreement, assumed the

risk of injury will be completely barred from recovery. A plaintiff's implied assumption of the risk (actions or statements evidencing an assumption of risk or situations) will also bar recovery. Where a reasonable person would have perceived the risk, assumption of risk will be considered as a factor in computing the plaintiff's degree of fault.

- <u>Imputed Negligence</u>. The adoption of a comparative negligence system will not upset a state's current doctrine concerning imputed negligence.

- <u>Intentional Torts</u>. The doctrine of comparative negligence will not be applied to actions brought for intentional torts. An intentional tort is defined as any conduct inflicted with a wrongful purpose.

COMPARATIVE NEGLIGENCE

DEFINITION

The doctrine of comparative negligence or fault assures that each party, including the plaintiff, is liable for his or her own fault in a tort action. The "pure" form of comparative negligence requires that the trier of fact assess the percentage of negligence attributable to each party. The plaintiff's award is then reduced in proportion to his percentage of fault. Under this method the plaintiff's suit is never barred, therefore, an eighty percent negligent plaintiff could still recover twenty percent of his total damages from the defendant.

Under "modified" comparative negligence the plaintiff's recovery is also diminished by his percentage of fault. However, the plaintiff will get no recovery in cases where his fault exceeds the defendant's. Most systems compare the plaintiff's negligence to the aggregate negligence of all defendants, others compare the plaintiff to each individual defendant.

RATIONALE

Originally, most states followed the doctrine of contributory negligence which held that a plaintiff who was in any degree at fault for his own injuries could not recover. This system was viewed as too harsh and unjust toward the plaintiff. Plaintiffs who were only slightly negligent would get no recovery from the defendant who was primarily responsible for their injuries. This doctrine has been replaced by various forms of comparative negligence which allow a plaintiff to recover even when he is partly responsible for the damage. Today, only six states retain a system of contributory negligence.

EFFECT ON LIABILITY

Pure comparative negligence can have inequitable results because a defendant may be forced to compensate a plaintiff who bears primary responsibility for his or her own injuries. Additionally, in cases where both plaintiff and defendant are injured, but plaintiff is primarily responsible, the plaintiff may actually get a greater recovery where his or her damages are more severe. Similarly, where a defendant is primarily responsible, a plaintiff could get a greater recovery where his or her damages are greater.1/

OPTIONS

1. Greater Fault Bar

A plaintiff will receive no recovery where the comparable fault chargeable to him or her exceeds the aggregate fault of all defendants.

Comment:

This option insures that plaintiffs who bear primary responsibility for their own injuries will not receive damage awards from defendants who are lesser at fault. For example, a plaintiff who is thirty percent at fault will recover seventy percent of his total damages from the defendant. A plaintiff who is determined to be eighty percent at fault will be barred from any recovery. The proposal will eliminate counter-claims where the defendant is more at fault, which create complicated set-off problems.2/ The greater fault bar is used in eighteen of the twenty-eight states which have adopted modified comparative negligence.

In situations where the plaintiff and defendant(s) are found to be equally at fault the plaintiff will recover exactly one-half of the damage award. In situations where both plaintiff and defendant have suffered injuries and fault is assessed equally, the party with greater damages will collect the difference between one-half of their damages and one-half of the other party's damages. For example, if plaintiff suffers one hundred thousand dollars in damages, while defendant suffers fifty thousand dollars in damages, the plaintiff will recover twenty-five thousand dollars [fifty thousand dollars (one-half plaintiff's damages) minus twenty-five thousand dollars (one-half defendant's damages)]. A system which allowed only plaintiff to recover in equal fault situations would result in a race to the courthouse with each party trying to become "plaintiff."

An alternative to the greater fault bar is the equal fault bar, which provides that in cases where plaintiff and defendant are equally at fault neither gets a recovery. This alternative may appear attractive in situations where both plaintiff and defendant have suffered damage; each would be left responsible for their own injuries. However, the result is quite inequitable where only the plaintiff has been injured, because he is forced to bear the entire burden of damages for which the defendant was fifty percent responsible. It is also unjust in situations where one party's damages far exceeds the other's.

2. Aggregate Fault Comparison

As above, the plaintiff's fault is compared to the aggregate of all defendant's fault rather than each individual defendant's percentage of fault.

Comment:

Comparing the plaintiff's degree of fault to that of each individual defendant (often referred to as the Wisconsin method) leads to unjust results. Consider the plaintiff who is twenty-five percent negligent and has been injured by four tortfeasors, three of whom are twenty percent at fault and the other fifteen. The plaintiff will receive no recovery under the Wisconsin system because his negligence exceeds that of each individual, yet in the aggregate he is only one-quarter responsible for his injuries. This creates a system where recovery is not dependent on fault, but rather on whether the plaintiff had the good fortune of being wronged by one person rather than several.

It is important to note that the aggregate defendant comparison (referred to as the Arkansas system) can only be effective when coupled with an abolition of joint and several liability. If the Arkansas system were used in conjunction with joint liability a defendant that was less at fault than the plaintiff could end up paying the entire judgment. In other words, a defendant twenty percent at fault could be forced to pay a thirty percent negligent plaintiff seventy percent of his damages, truly an unjust result. However, if a fault based system is effectuated by instituting pure several liability, the Arkansas system is a necessary corollary to insure that those who deserve compensation will receive it. Of the twenty-eight states which have adopted modified comparative negligence twenty of them use the Arkansas system.

3. Pure Comparative Negligence for Economic Damages

A possible alternative to instituting modified comparative negligence for all damages is to apply it only to non-economic damages. Pure comparative negligence would be applied to economic damages. This allows a plaintiff who is eight percent at fault to collect twenty percent of his economic damages from the defendant. Although this seems inequitable, the plaintiff is much more negligent than the defendant, it is justified by the fact that the plaintiff has suffered actual out-of-pocket losses and should be compensated for defendant's portion. The plaintiff bears the entire burden for non-economic damages since he has no actual monetary loss. This method is not widely used, but it is offered as an alternative to lessen the hardship, perceived by some, in totally barring the plaintiff when he is at greater fault.

4. Non-Party Negligence

Courts, in assessing the degree of fault of the parties, will also consider the negligence of all other persons or entities regardless of whether they were or could be named as parties.

Comment:

This option is critical to the achievement of a fault based system of liability. The only way to properly assign fault to parties in a suit is to consider all of the causes of the plaintiff's injuries. Defendants will be awarded artificially high percentages of fault if juries are not allowed to be informed that non-parties contributed to the injuries. Consider the situation where an immune municipality, which could not be joined, was greatly at fault. If the plaintiff is not at fault then the joined defendants will be assessed the negligence attributable to the municipality, even though they were only marginally at fault. The only way to truly determine a defendant's negligence is to consider the actions of non-parties.3/

As with the aggregate defendant comparison this system must be coupled with a return to pure several liability. There is no point in assessing degrees of fault if the defendant will be held responsible for the entire damage award. Some states have tried to move toward this system while retaining joint liability. This has been done through contribution and a reduction of damages in the amount of settlement. These are steps in the right direction, but do not achieve a true fault based system. A settlement may be based on an inaccurate prediction of the degree of fault or may include a premium due to the fact that there are no litigation costs. A dollar for dollar reduction therefore bears no relation to the settling party's fault.

The proposed system lets a jury assess the percentage of negligence of each person or entity contributing to the injury. Each party is therefore liable only for the portion of damages for which the jury found him responsible. If a person has settled with the plaintiff, the amount of settlement may exceed or fall short of their actual amount of damages assessed at trial. This is a risk commonly taken and the plaintiff should be left with the benefit of his bargain, he should not be able to make up the shortfall from other defendants, nor should his award be offset by the amount of windfall.4/ In situations where an employer has paid worker's compensation benefits to a plaintiff, the employer's negligence will be assessed at trial but the results will be nonbinding and the employer will retain his immunity from payments above the worker's compensation award. This system has been followed for several years in four jurisdictions.5/ This is a rapidly developing area of the law, as evidenced by the fact that in 1986 Washington, Colorado, and Wyoming have adopted similar systems.

5. Retain Express Assumption of Risk

A plaintiff who has expressly, through written or oral agreement, assumed the risk of injury will be completely barred from recovery. A plaintiff's implied assumption of risk, either actions evidencing an assumption of risk or situations where a reasonable person would have perceived the risk, will be considered as factors in computing the plaintiff's degree of negligence.

Comment:

There has been much confusion concerning whether or not the implementation of a comparative negligence system eliminates the doctrine of assumption of risk. Under a system of contributory negligence there is little need for a distinction between the plaintiff's negligence and his assumption of risk because either bars his recovery. However, under a comparative negligence system the distinction becomes essential. Assumption of the risk will completely bar the plaintiff's claim, whereas negligence on the part of the plaintiff will merely reduce his claim. It is necessary then to distinguish assumption of the risk from mere negligence on the part of the plaintiff.

One attempt to make this distinction is that of the Restatement (2d) of Torts. In sections 496a - 496e the restatement attempts to draw the distinction based on the knowledge of the plaintiff. When the plaintiff has knowledge of the risk, yet continues the harmful activity, he has assumed the risk. Negligence, however, deals with an objective determination of what a reasonable person would have done, rather than what the plaintiff actually did.

Many commentators have separated assumption of the risk into three categories. First, express assumption of the risk, is where a plaintiff either in writing or orally agrees to assume all risks for a particular activity. There is no dispute as the plaintiff's knowledge of the risk.6/ Second, primary implied assumption of the risk, is where the plaintiff's non-verbal expressions indicate that he had knowledge of the risk, yet continued the harmful activity. Third, secondary implied assumption of the risk, involves a determination of whether a reasonably prudent person would have perceived the risk prior to engaging in the dangerous activity. A plaintiff will be barred when it is determined that the reasonable person would have perceived the risk and therefore not engaged in the activity.

Although these distinctions attempt to clearly separate the various types of assumption of the risk, it is often difficult to distinguish between primary implied assumption of the risk and secondary implied assumption of the risk. In many situations one cannot determine whether a plaintiff's actions indicated

that he knew of the risk, or if it was an activity in which the reasonably prudent person would have perceived the risk.

By implementing a system which retains assumption of the risk only in situations where the plaintiff has expressly assumed such risk, we insure that a plaintiff will only be totally barred from recovery in situations where it is absolutely clear that the risk was assumed. Both types of implied assumption of the risk will be merged into comparative negligence. The result is that the plaintiff may still be barred if the jury determines that he in fact did know of the risk and was therefore 100% responsible for his injuries, or the jury may similarly find that a reasonably prudent person would have known of the risk and the plaintiff was therefore negligent.

However, this system also allows the jury to find that although the plaintiff to some extent assumed the risk, other factors may have contributed to his injuries. This is less harsh to the plaintiff and realizes that there are cases where a plaintiff should not be totally barred because of an assumption of the risk. Many states follow the reasoning that a plaintiff's implied assumption of the risk should not totally bar his claim but should merely be a factor in comparative negligence.7/

6. Imputed Negligence

The adoption of a comparative negligence system will not upset a state's current doctrine concerning imputed negligence.

Comment:

Many states have struggled over the decision of when it is appropriate to impute one person's negligence to another. For example, should the negligence of a driver of an automobile be imputed to the owner, or, similarly, should the negligence of one spouse be imputed to the other? Many commentators have questioned whether imputed negligence will affect the implementation of a comparative negligence system.8/ For example, if a comparative negligence system is adopted using a greater fault bar, and the driver of an automobile is 30% negligent, while the owner was also 30% negligent for defectively maintaining the automobile, should we impute the negligence of the driver to the owner, thereby making the owner 60% negligent and barring any claim for damage to the automobile?

Victor Shwartz in his treatise Comparative Negligence, 2d Ed (1986), has suggested that comparative negligence should not disrupt a state's doctrine on imputed negligence. If a state was imputing negligence of one party to another prior to the implementation of comparative negligence, that state would continue to do so and the plaintiff's negligence would be determined after imputing another party's negligence to them.

If prior to the adoption of comparative negligence the state was not imputing one party's negligence to another, then that system would continue and each person's percentage of fault would be determined independently. Therefore, the implementation of a comparative negligence system should neither be aided nor hindered by the doctrine of imputed negligence. The implementation of a comparative negligence system may lead the state to question its doctrine of imputed negligence, but, the two continue to be independent doctrines.

It should be noted here that the implementation of a comparative negligence system should in no way upset vicarious liability. For example, under a comparative negligence system coupled with a return to pure several liability the negligence of an employer and his servant would be determined independently. The employer would be liable for both his negligence and the negligence of his servant, under the doctrine of respondeat superior, but would not be jointly liable for the negligence of any other parties.

7. Intentional Torts

The doctrine of comparative negligence will not be applied to actions brought for intentional torts. An intentional tort is defined as any conduct inflicted with a wrongful purpose.

Comment:

A system of comparative negligence should do exactly that, compare "negligence". Therefore, the actions of a plaintiff should not be compared to the defendant when the defendant has committed an intentional tort, rather than mere negligence. Although the plaintiff may be negligent, the fact that the defendant has acted intentionally eliminates the use of a comparative negligence doctrine. A plaintiff will be able to receive full recovery for intentional torts regardless of his degree of negligence in bringing about his own injuries. The standard "conduct inflicted with a wrongful purpose," is used in order to clearly differentiate between intentional and negligent conduct. One standard commonly used for intentional torts is "that a particular result was substantially certain to follow from the conduct." This does not draw a clear enough distinction between negligence and intentional conduct. A negligent tortfeasor could be said to know that a particular result was substantially certain to follow if he acts in a negligent manner. The use of this standard would lead to much confusion among jurors as to whether a person's conduct was negligent or intentional. Courts should refrain from using comparative negligence only in situations where it is obvious that the defendant has acted intentionally. This is achieved by using the "conduct inflicted with a wrongful purpose" standard.

COMPARISON OF OPTIONS

The proposed options are intended to return our tort system to one where liability is assessed in proportion to fault. Use of a greater fault bar provides compensation for plaintiffs who have been injured by the fault of others and protects defendants from having to compensate a plaintiff who primarily caused his own injuries. Using the aggregate defendant comparison will ensure that only plaintiffs who are greatly at fault will be barred. The possible harshness of totally barring a plaintiff may be lessened by adopting pure comparative negligence for economic damages, which allows a plaintiff to recover at least a portion of his out-of-pocket losses.

The assessment of negligence of non-parties guarantees that defendants will be responsible only for the damages related to their fault and will not become insurers for those who could not, or were not, joined as parties.

CRITERIA FOR ANALYSIS

The proposed principles compare quite favorably with systems in many states which allow for pure comparative negligence, joint liability, and consideration solely of party negligence, when analyzed in terms of appropriate criteria.

- Fair Compensation for Plaintiffs and Fair Treatment of Defendants

  Pure comparative negligence is, of course, more favorable to plaintiffs, however, it leads to unjust results. Modified comparative negligence is far more favorable to the plaintiff than common law contributory negligence and strikes a perfect balance between the goals of fairly compensating plaintiffs and fairly treating defendants. Deserving plaintiffs are compensated and marginally responsible defendants are not forced to pay damages to undeserving plaintiffs.

  The proposals on unintentional torts and assumption of risk give further protection to plaintiffs. A plaintiff is guaranteed a full recovery for his injuries when he or she has been intentionally wronged. Furthermore, a claim will only be barred by assumption of the risk when it is absolutely clear that the plaintiff intended to assume such a risk.

  The consideration of non-party negligence provides proper compensation to all plaintiffs and eliminates the possibility of an individual plaintiff receiving a windfall above his fair amount of compensation. Defendants are guaranteed that they will only be responsible for the damages which they caused.

- Deterrence of Wrongdoing

  The proposed options will lead to greater deterrence as regards plaintiffs. People will be extra cautious knowing that they will not be compensated when they have greatly contributed to their own injuries. Additionally, defendants will have a greater incentive to prevent accidents under the proposed fault based system. A system which allocates to defendants the liability for the actions of others, such as non-parties, reduces deterrence because such liability will be imposed regardless of any measures taken to foresee and prevent accidents.

- Efficiency in Resolving Disputes

  Modified comparative negligence bars certain claims by plaintiffs and will therefore reduce the number of lawsuits filed, lessening the burden on the court system. The negligence of all responsible parties is determined in one proceeding which is more efficient than a judgment against one tortfeasor and a subsequent contribution hearing.

- Impact on Productivity, Innovation, and Availability of Goods and Services

  The proposal's recommendation of a comparative negligence system, which makes parties liable only for their portion of fault, restores a sense of predictability to our tort system. Businesses will no longer have the fear of being held responsible for another entity's negligence. When a business can properly anticipate its liability, it can more accurately weigh costs and benefits as they apply to investment and development decisions. This results in more innovation as well as prices which properly reflect the cost of new technology.

FOOTNOTES

1. See W. Prosser and P. Keeton, Torts, 5th Ed. (1984), 67 p. 472.

2. As an example, under pure comparative negligence the 80% negligent defendant could counter claim and recover 20% of his damages from the plaintiff, which is taken off the plaintiff's recovery of 80% of his injuries from defendant. Under modified comparative negligence the defendant would be barred and the plaintiff would recover the full 80%.

3. Essential to this proposal is a change in the rules of the civil procedure to better facilitate the joining of multiple defendants. Plaintiffs must be allowed to join all parties who may be responsible for their injuries.

4. South Dakota reduces the plaintiff's award by any amount that a settlement exceeds the actual money damages attributed to the settling party. However, when the settlement falls short of the actual award the plaintiff is not allowed to make it up from other defendants. This result appears unjust to the plaintiff who must bear the brunt of his poor bargaining, but may not benefit from his superior bargains.

5. Kansas; Brown v. Neill, 224 Kan. 195, 180 P.2d 867 (1978) California; American Motorcycle Association v. Supreme Court of Los Angeles County, 20 Cal. 3d 578, 146 Cal Rptr. 182, 578 P.2d 899 (1978). Minnesota: Lines v. Ryan, 272 N.W, 2d 896 (Minn. 1978). Indiana: Ind. Code, 34-4-33-5.

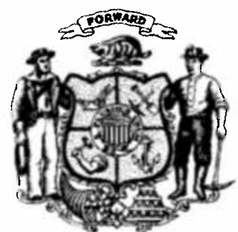
   Additionally, a federal district court in Hawaii allowed the negligence of an employer, who was immune due to worker's compensation, to be ascertained in a Federal Trot Claims Act suit against the United States government Barron v. U.S., 473 F.Supp. 1077, 1088 (D.Ha. 1979).

6. This is not to say that the plaintiff is necessarily barred from recovery, since he could challenge the exculpatory clause as unclear, see, e.g., Galligan v. Arovitch, 421 Pa. 301, 219 A.2d 463 (1966), inconspicuous, see, e.g., Klar v. H. & M. Parcel Room, Inc., 270 A.D. 538, 61 N.Y.S.2d 285, aff'd mem., 296 N.Y. 1044, 73 N.E. 2d 912, 63 N.Y.S.2d 830 (1947), against public policy, see, e.g., McCutcheon v. United Homes Corp., 79 Wash.2d 443, 486 P.2d 1093 (1971), unconscionable, see, e.g., U.C.C. 2-302 (1978 version), or invalid under a specific state statute, see, e.g., N.Y. Gen. Oblig. Law 5-32 (McKinney 1978).

7. e.g. Ariz. Rev. Stat. Ann. 12-2505(A); Ark. Stat. Ann. 27-1763; Conn. Gen. Stat. Ann. 52-572h(c); Mass. Gen. Laws Ann., ch. 231, 85; N.Y. CN. Prac. Law, 1411.

8. e.g. W. Prosser and P. Keeton Torts, 5th Ed. (1984); Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.J. (1932); Schwartz, Comparative Negligence, 2d Ed. (1986).

WISCONSIN STATE LEGISLATURE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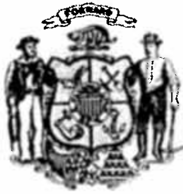


State of Wisconsin
1995 – 1996 LEGISLATURE

LRB–2561/1
RPN:kmg:ch

1995 ASSEMBLY BILL 118

February 8, 1995 – Introduced by Representatives GREEN, ALBERS, HUBLER, KELSO, JENSEN, FREESE, GARD, LEHMAN, GOETSCH, LADWIG, DUFF, MUSSER, BRANDEMUEHL, SILBAUGH, WILDER, URBAN, SCHNEIDERS, OWENS, WALKER, KREIBICH, AINSWORTH, VRAKAS, WARD, F. LASEE, OLSEN, POWERS, LAZICH, HANDRICK, HAHN, BRANCEL, GROTHMAN, GRONEMUS, KAUFERT, KLUSMAN, NASS, RYBA, SERATTI and DOBYNS, cosponsored by Senators HUELSMAN, DRZEWIECKI, DARLING, PETAK, ZIEN, ANDREA, BUETTNER, SCHULTZ, A. LASEE, PANZER, COWLES, LEEAN, FARROW, RUDE, WEEDEN, ROSENZWEIG, FITZGERALD and ELLIS. Referred to Committee on Judiciary.

1 AN ACT ***to renumber and amend*** 895.045; and ***to create*** 895.045 (2) and (3) and
2 895.85 of the statutes; **relating to:** comparative negligence and punitive dam-
3 ages.

Analysis by the Legislative Reference Bureau

This bill revises the standards and procedures for awarding punitive damages in certain civil cases. Under present law, the plaintiff sues for damages, including punitive damages, and submits evidence as to the defendant's behavior and ability to pay. If the defendant acted maliciously or in a wilful or wanton manner in reckless disregard of the rights or interests of the plaintiff, punitive damages may be awarded. The plaintiff uses the rule of joint and several liability to collect punitive damages against any defendant found liable for the plaintiff's loss.

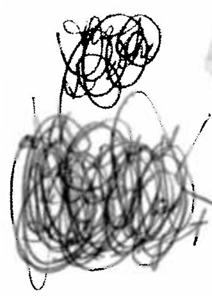
The following changes are made in civil actions covered by the bill:

1. The rule of joint and several liability is abolished as to punitive damages.
2. The reference to wanton or reckless action by the defendant is omitted from the standard of conduct necessary to prove punitive damages, allowing the plaintiff to receive punitive damages if the defendant acts maliciously or in a wilful disregard of the plaintiff's rights.
3. Evidence of the defendant's wealth, an indicator of ability to pay, is admissible only after the plaintiff has established a legally sufficient case for the allowance of punitive damages.
4. The judge is required to issue a special verdict for punitive damages if legally sufficient evidence is introduced to allow those damages.

Wisconsin has a modified system of comparative negligence. Contributory negligence does not bar recovery for an action unless the negligence of the person seeking recovery (plaintiff) is greater than the negligence of the person against whom recovery is sought (defendant). In the situation where more than one party contributes to an injury (joint tort–feasors), Wisconsin generally follows a rule of joint and sever-

al liability. That is, a plaintiff may collect the total damages against any of the joint tort–feasors whose negligence combines to cause the injury, as reduced by the plaintiff's percentage of the negligence. A joint tort–feasor who pays more than his or her proportionate share has a cause of action for contribution against the other joint tort–feasors.

This bill modifies the comparative negligence system in several ways. The bill requires that the negligence of the plaintiff be measured separately against each of the joint tort–feasors. Under this bill, a joint tort–feasor's liability is limited to the percentage of the total causal negligence attributed to that party.



The bill specifies that the changes in the rule of joint and several liability do not apply to parties whose concerted action results in damages or to causes of action resulting from environmental pollution, hazardous waste or substances or waste disposal sites.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.045 of the statutes is renumbered 895.045 (1) and amended to read:

895.045 **(1)** (title) COMPARATIVE NEGLIGENCE. Contributory negligence ~~shall~~ does not bar recovery in an action by any person or the ~~preson's~~ person's legal representative to recover damages for negligence resulting in death or in injury to person or property, if ~~such~~ that negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence ~~attributable~~ attributed to the person recovering. The negligence of the plaintiff shall be measured separately against the negligence of each party found to be causally negligent. The liability of each party found to be causally negligent is limited to the percentage of the total causal negligence attributed to that party. Less the percentage

Π's neg is reduced several times

SECTION 2. 895.045 (2) and (3) of the statutes are created to read:

1 895.045 **(2)** CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties
2 act in accordance with a common scheme or plan, those parties are jointly and sever-
3 ally liable for all damages resulting from that action, except as provided in s. 895.85
4 (5).

5 **(3)** JOINT AND SEVERAL LIABILITY. Except as provided in s. 895.85 (5), nothing in
6 this section prohibits the imposition of joint and several liability in a cause of action
7 for damages resulting from environmental pollution, hazardous waste or substances
8 or waste disposal sites.

9 **SECTION 3.** 895.85 of the statutes is created to read:

10 **895.85 Punitive damages. (1)** DEFINITIONS. In this section:

11 (a) "Defendant" means the party against whom punitive damages are sought.

12 (b) "Double damages" means those court awards made under a statute provid-
13 ing for twice, 2 times or double the amount of damages suffered by the injured party.

14 (c) "Plaintiff" means the party seeking to recover punitive damages.

15 (d) "Treble damages" means those court awards made under a statute provid-
16 ing for 3 times or treble the amount of damages suffered by the injured party.

17 **(2)** SCOPE. This section does not apply to awards of double damages or treble
18 damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9),
19 51.61 (7), 103.96 (2), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51
20 (2) and (3).

21 **(3)** STANDARD OF CONDUCT. The plaintiff may receive punitive damages if evi-
22 dence is submitted showing that the defendant acted maliciously toward the plaintiff
23 or in a wilful disregard of the rights of the plaintiff.

24 **(4)** PROCEDURE. If the plaintiff establishes a prima facie case for the allowance
25 of punitive damages:

1 (a) The plaintiff may introduce evidence of the wealth of a defendant; and

2 (b) The judge shall submit to the jury a special verdict as to punitive damages

3 or, if the case is tried to the court, the judge shall issue a special verdict as to punitive

4 damages.

5 (5) APPLICATION OF JOINT AND SEVERAL LIABILITY. The rule of joint and several

6 liability does not apply to punitive damages.

7 **SECTION 4. Initial applicability.**

8 (1) This act first applies to civil actions commenced on the effective date of this

9 subsection.

10 (END)

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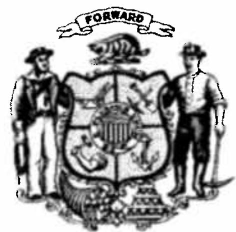

1/31/95

		STATUS OF APPLICATION OF JOINT & SEVERAL LIABILITY							APPLIES TO		EXCEPTIONS TO THE RULE					
		Total Elimination		Partial Elimination			Joint Applies		All	Non-Econ	Act In	Intentionl		Defect		
		Date	Except	Date	Formula	Except	Date	Except	Damages	Damages	Concert	Torts	Envirn	Product	Other(s)	NOTES
1	AL	????							XXXXX							
2	AK	1988							XXXXX							By state-wide ballot
3	IN	CASE							XXXXX						XXXXX	Except med mal & strict liability
4	KS	CASE							XXXXX							
5	KY	1988							XXXXX							
6	OK	CASE							XXXXX							
7	TN	CASE							XXXXX							
8	UT	1986							XXXXX							
9	WY	1986							XXXXX							
10	AZ	1987	YES						XXXXX		XXXXX		XXXXX			
11	CO	1986/87	YES						XXXXX		XXXXX					
12	FL	1986	YES						XXXXX			XXXXX	XXXXX		XXXXX	When Def. less at fault than Plaint.
			YES							XXXXX		XXXXX	XXXXX		XXXXX	Except if all dam less than $25,000
13	GA	1987	YES						XXXXX						XXXXX	Except if Plaint. is 0% negligent
14	ID	1987	YES						XXXXX		XXXXX		XXXXX	XXXXX		Applies to defective med & pharm prod
15	NV	1987	YES						XXXXX		XXXXX	XXXXX	XXXXX	XXXXX		
16	NM	1982/87	YES						XXXXX			XXXXX		XXXXX	XXXXX	Except vicarious liability
17	ND	1987	YES						XXXXX		XXXXX	XXXXX				
18	VT	????	YES						XXXXX						XXXXX	Except if Plaint. is 0% negligent
19	WA	1986	YES						XXXXX		XXXXX		XXXXX	XXXXX	XXXXX	Except if Plaint 0% and in business tort
20	CA	1986								XXXXX						By state-wide ballot
21	NE	1991	YES							XXXXX	XXXXX					
22	OH	1987	YES							XXXXX					XXXXX	Except if Plaint. is 0% negligent
23	LA	1987	YES						XXXXX			XXXXX				When Def. less at fault than Plaint.
				XXXXX		YES			XXXXX			XXXXX				Not respon for more than 50% of dam
24	NJ	1988	YES						XXXXX				XXXXX		XXXXX	Except if 21-100% negligent
				1988	21-59%	YES				XXXXX			XXXXX			Joint for economic damages only
							1988	YES	XXXXX				XXXXX			If 60-100% negligent, joint for all damag
25	OR	1987	YES							XXXXX			XXXXX			
				1987	0-14%	YES			XXXXX				XXXXX			
1	IA			1985	0-49 %				XXXXX							
2	MN			1988	0-15%				XXXXX							Max exposure is 4X % of negligence
3	MS			1989	0-100%				XXXXX							Plaint. recovers max of 50% of award
4	MT			1987	0-50%				XXXXX							
5	NH			1989	0-49%				XXXXX							
6	SD			1987	0-50%				XXXXX							Max exposure is 2X % of negligence
7	TX			1987	0-10%	YES			XXXXX				XXXXX			When Plaint. is 0% negligent
					0-20%	YES			XXXXX				XXXXX			
					21-100%	YES			XXXXX				XXXXX			When Plaint. is more at fault than Def.
8	MI			1986	0-100%	YES			XXXXX					XXXXX	XXXXX	Solv Def pay % uncoll exc if Plaint 0%
9	CT			1986/87	0-100%					XXXXX						Def(s). respon for its/their prop share
10	HI			1986	0-25%	YES				XXXXX			XXXXX	XXXXX	XXXXX	Except motor vehicle cases
11	IL			1986	0-24%	YES			See Note	XXXXX			XXXXX		XXXXX	Low fault Def. only respon for med expenses except in medical mal and environmental cases
12	NY			1986	0-50%	YES				XXXXX		XXXXX	XXXXX	XXXXX	XXXXX	Except in motor vehicle, contract & construction cases and reckless acts
13	MO			1987	0-100%				XXXXX							If less at fault than Plaint, then max=2X
							1987		XXXXX							When Plaint. is 0% negligent
13							XXXXX		XXXXX							AR, DE, DC, ME, MD, MA, NC, PA, RI, SC, VA, WV, WI
							XXXXX		XXXXX							

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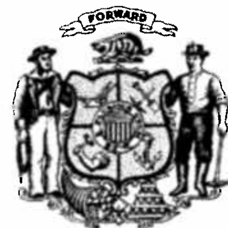

Death of Common Sense

Phillip Howard

Mtg w/ Harry Southoff

AB 118

Comp Neg -

- Define terms b/f get comp. neg.

- Way currently drafted leads to ambiguity

- When you eliminate J&S you wipe out contribution

Prob NOT

Pure Comparative Negligence

895(2) Concerted Action — Should take

"common scheme or plan" not in that ARENA

Scheme implies intentional

- conspiracy - 134.01
- conspiracy

C/A currently exist of conspiracy tort claim vs. all persons involved in C/A

- Uniformity → [This has gotta stop somewhere & I'm gonna draw the line]

Expert Witnesses

U.S. Sp Ct. under FRE - function of trial judge to determine reliability of expert testimony b/f admissible

Interpretation of the Rule for the trier of fact goes to Credibility of witness not

- Reliability thus admissibility

- Not that much law - qualification

[illegible] Rules of Evidence

- trial judge shall have the responsibility of determining the reliability and thus admissibility of the expert witness & enunciate standard

118 - Comparative Negligence

SB 11 Retains J&S for those tortfeasors > 50% neg.

Punitive Damages

- narrow scope
D must have acted maliciously -
change the standard

J&S does not apply (NEVER WAS)

Sen Hulsman SB 11

Opposition - Dave Hutchinson - Atty in Milwaukee
~~Talked about~~

Dykes - Law

for many years in WI

$\overline{\Pi}$ v Aggregate D neg.

∄ under the changes here he will pay 40%

$\overline{\Pi}$ will be owed 25%

"not when it exceeds that of the individual being sued - - that △

he wants to modify the present rules

as adopted by Ct

Ryan v Dyke in the

893 80 [illegible]

The point of the current system tho is that we dont believe it's good public policy to let a plaintiff who is more

neg. than the <u>ind.</u>

Sue Someone

- CTCW - Past President

- anecdotal evidence

Absolutely fabulous