The Florida Justice Reform Institute Supports CS/SB 236, Which Would Replace Pure Comparative Negligence with Modified Comparative Negligence in Most Cases

Florida's system of pure comparative negligence should be revised in favor of modified comparative negligence—the doctrine applicable in the majority of states which accounts for situations in which a plaintiff is predominantly at fault for his or her injuries. The Institute therefore supports the following amendments to section 768.81, Florida Statutes, proposed in CS/SB 236 ("SB 236"), Section 7:

> 768.81 Comparative fault.—
>
> (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery, subject to subsection (6).
>
> (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to which this section applies, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages. This subsection does not apply to an action for damages for personal injury or wrongful death arising out of medical negligence pursuant to chapter 766.

Introduction

There are several doctrines that concern how liability for a plaintiff's injury will be apportioned where the same injury was caused by the negligence of more than one tortfeasor. As provided below, these doctrines include contributory negligence, pure comparative negligence, and modified comparative negligence, each of which govern the effect of the plaintiff's own negligence in contributing to his or her injury on the plaintiff's ability to recover from a defendant whose negligence also contributed to the injury:

- Contributory Negligence: A plaintiff whose own negligence contributed to his or her injury in any proportion of fault is barred from recovery in a negligence action against another negligent person or party who contributed to the plaintiff's injury. Under this doctrine, as long as the plaintiff is at least 1% at fault for causing his or her own injury, he or she is completely barred from recovering in a negligence action, even where another party was 99% at fault for causing the injury.

- Pure Comparative Negligence: A plaintiff whose own negligence contributed to his or her injury is not barred from recovery of the proportion of fault attributable to a negligent person or party who contributed to the plaintiff's injury, regardless of the plaintiff's percentage of fault. For example, if the plaintiff is 80% at fault for causing his or her own injury, the plaintiff may still recover the remaining 20% from the defendant or defendants that are also found at fault for the plaintiff's damages.

- Modified Comparative Negligence:[1] A plaintiff whose own negligence contributed to his or her injury is only barred from recovery against another negligent person or party who contributed to the plaintiff's injury if the plaintiff's percentage of fault exceeds a certain threshold. Different jurisdictions adhering to this doctrine apply different threshold percentages of fault. For example, if the threshold is 50%, a plaintiff who is 50% or more at fault for causing his or her own injuries would be barred from recovery, but a plaintiff 49% or less at fault could still recover.

As discussed below, today Florida adheres to the doctrine of pure comparative negligence. This again means a plaintiff can recover that portion of their damages caused by a defendant's negligence no matter the degree of fault belonging to the plaintiff. Take the following examples:

- In *Bass v. Publix Super Markets*, Case No. 11-40881 CA 10 (Fla. 11th Cir. Ct. May 31, 2013), the plaintiff visited a store and injured herself after falling over a stock float, despite being told by a store associate to be careful of the stock float. The defendant store argued in response to the plaintiff's lawsuit that the stock float was open and obvious and therefore the plaintiff should have been aware of it. Ultimately, the jury determined that the store was negligent, but that the plaintiff was more so, and attributed 60% of the fault to the plaintiff and 40% to the defendant store. The jury returned a verdict of $182,369.42 in damages, meaning that the store had to pay 40%, or $72,947.77. A copy of the verdict form in *Bass* is attached as **Exhibit A**.

- In *Soler v. Publix Super Markets, Inc.*, Case No. 06-9387 CA 27 (Fla. 11th Cir. Ct. Aug. 18, 2009), another slip-and-fall case, the jury found the plaintiff predominantly negligent—75%—but found the grocery store defendant was 25% negligent. Thus, the grocery store was liable for 25% of the plaintiff's damages. A copy of the verdict form in *Soler* is attached as **Exhibit B**.

- In *Dominguez v. Publix Super Markets, Inc.*, Case No. 08-46176 CA 10 (Fla. 11th Cir. Ct. Nov. 18, 2013), the plaintiff slipped and fell on a patch of laundry detergent that had issued from the top of a bottle that had just fallen from a store shelf. The entire incident—from the time a grocery store employee heard the bottle fall and ran to tend to it, to the time when the plaintiff slipped—consumed only 13 seconds. A jury found the plaintiff 75% negligent and the defendant grocery store 25% negligent. Thus, under the jury's verdict the defendant was liable for 25% of the $234,000 in damages awarded to the plaintiff, or $58,500. A copy of the verdict form in *Dominguez* is attached as **Exhibit C**. Ultimately, however, the Third District Court of Appeal reversed the jury's verdict because the grocery store was not negligent and could not be held liable given the short time the spill existed. *Dominguez v. Publix Super Mkts., Inc.*, 187 So. 3d 892 (Fla. 3d DCA 2016).

[1] Note that the terms "modified comparative negligence" and "modified contributory negligence" are effectively synonymous. *See* David C. Sobelsohn, *"Pure" vs. "Modified" Comparative Fault: Notes on the Debate*, 34 Emory L.J. 65, 66-67 & n.8 (1985) ("Most states adopting comparative fault have partially retained the principle that plaintiff's contributory fault should absolutely bar recovery. Commentators generally call this approach 'modified' comparative negligence. . . .").

- In *Marshall v. Publix Super Markets, Inc.*, Case No. 2017-022895-CA-01 (Fla. 11th Cir. Ct. Dec. 15, 2022), the plaintiff alleged that they slipped and fell on oil in a grocery store. A jury found both the plaintiff and the grocery store negligent, attributing 70% of the fault to the plaintiff and 30% of the fault to the grocery store. Consequently, the grocery store still had to pay a portion of the plaintiff's damages. A copy of the verdict form in *Marshall* is attached as **Exhibit D**.

- In *Singletary v. American Multi-Cinema, Inc.*, Case No. 15-CA-935 (Fla. 2d Cir. Ct. Feb. 17, 2023), the plaintiff was found 83% at fault but still entitled to damages from the defendant who was found only 17% at fault. A copy of the verdict form in *Singletary* is attached as **Exhibit E.**

Like most other states, in the past, Florida applied the doctrine of contributory negligence in cases where the negligence of multiple tortfeasors contributed to the plaintiff's injury. Other states continue to apply these doctrines or variations or combinations of them. A Bloomberg Law chart providing the fault apportionment doctrine currently applied by each state in the United States is attached as an appendix.[2] The historical evolution of these doctrines in Florida jurisprudence demonstrates how courts and lawmakers have grappled with these complex issues and competing policy concerns over the years.

As shown in the attached chart, although almost all states have eliminated pure contributory negligence, the majority of states have chosen a modified comparative negligence system over one based on pure comparative negligence. Thus, Florida would be joining the majority of states in moving from pure comparative negligence to modified comparative negligence in most negligence actions.

The Evolution of Florida Law on Apportioning Fault and Liability Among Tortfeasors

Prior to 1973, Florida common law adhered to the doctrine of pure contributory negligence. Thus, as long as the plaintiff was at least 1% at fault for causing his own injuries, he or she would be barred from any recovery on his negligence claim, even where another party was 99% at fault. *See Fabre v. Marin*, 623 So. 2d 1182, 1184 (Fla. 1993) (citing *Smith v. Dep't of Ins.*, 507 So. 2d 1080 (Fla. 1887)), *receded from on other grounds by Wells v. Tallahassee Mem'l Reg'l Med. Ctr., Inc*., 659 So. 2d 249 (Fla. 1995). The policy rationale behind the adoption of this "all or nothing" rule was that only a plaintiff without fault was entitled to recover for his or her injuries: "one person being in fault will not dispense with another using ordinary care of himself." *See Louisville & Nashville R.R. Co. v. Yniestra*, 21 Fla. 700, 732 (1886).

In 1973, the Florida Supreme Court abolished contributory negligence and replaced it with comparative negligence due to the inequity of completely denying recovery to a plaintiff in cases in which the plaintiff is partially at fault for his or her injuries. *See Hoffman v. Jones*, 280 So. 2d

[2] Per that chart, 4 states or jurisdictions follow pure contributory negligence (Alabama, Maryland, North Carolina, and the District of Columbia); 34 states follow modified comparative negligence, with the typical threshold being 50% or 51% (Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming); and 13 states follow "pure" comparative negligence (Alaska, Arizona, California, Florida, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, New York, Rhode Island, Virginia, and Washington).

431, 438 (Fla. 1973). By enacting section 768.81, Florida Statutes, in 1986, the Legislature codified the Florida Supreme Court's elimination of contributory negligence from Florida common law in *Hoffman*: "In an action to which this section applies, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery." § 768.81(2), Fla. Stat. (1986). In addition, the Legislature also implemented a pure comparative negligence regime for apportioning fault and liability in negligence actions involving multiple tortfeasors: "the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability . . . ." § 768.81(3), Fla. Stat. (1986).

Thus, in enacting section 768.81, Florida Statutes, the Legislature went from the extreme of pure contributory negligence—where even the slightest negligence by the plaintiff would completely bar his recovery—to pure comparative fault. The current version of the statute states as follows, with the complete abolishment of contributory negligence set forth in subsection (2) and the adoption of pure comparative negligence in subsection (3):

> **(1) Definitions.--**As used in this section, the term:
>
> (a) "Accident" means the events and actions that relate to the incident as well as those events and actions that relate to the alleged defect or injuries, including enhanced injuries.
>
> (b) "Economic damages" means past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss that would not have occurred but for the injury giving rise to the cause of action.
>
> (c) "Negligence action" means, without limitation, a civil action for damages based upon a theory of negligence, strict liability, products liability, professional malpractice whether couched in terms of contract or tort, or breach of warranty and like theories. The substance of an action, not conclusory terms used by a party, determines whether an action is a negligence action.
>
> (d) "Products liability action" means a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. The term includes an action alleging that injuries received by a claimant in an accident were greater than the injuries the claimant would have received but for a defective product. The substance of an action, not the conclusory terms used by a party, determines whether an action is a products liability action.
>
> **(2) Effect of contributory fault.--**In a negligence action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

> **(3) Apportionment of damages.--**In a negligence action, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.
>
> (a) 1. In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented, subject to amendment any time before trial in accordance with the Florida Rules of Civil Procedure.
>
> 2. In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the verdict form for purposes of apportioning damages, a defendant must prove at trial, by a preponderance of the evidence, the fault of the nonparty in causing the plaintiff's injuries.
>
> (b) In a products liability action alleging that injuries received by a claimant in an accident were enhanced by a defective product, the trier of fact shall consider the fault of all persons who contributed to the accident when apportioning fault between or among them. The jury shall be appropriately instructed by the trial judge on the apportionment of fault in products liability actions where there are allegations that the injuries received by the claimant in an accident were enhanced by a defective product. The rules of evidence apply to these actions.
>
> **(4) Applicability.--**This section does not apply to any action brought by any person to recover actual economic damages resulting from pollution, to any action based upon an intentional tort, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895.
>
> **(5) Medical malpractice.--**Notwithstanding anything in law to the contrary, in an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, if an apportionment of damages pursuant to this section is attributed to a teaching hospital as defined in s. 408.07, the court shall enter judgment against the teaching hospital on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

Modified Comparative Negligence Strikes a Fair Balance Between Pure Contributory Negligence and Pure Comparative Negligence

A doctrine of modified comparative negligence would reduce the number of lawsuits by plaintiffs who are predominately responsible for their own injuries and thereby result in reduced litigation and insurance costs. Moreover, a modified comparative negligence approach strikes a fair balance between the harshness of pure contributory negligence as compared to pure comparative negligence. *See Mitchell v. Ross*, 470 N.E.2d 245, 248 (Ohio Ct. App. 1984) (explaining that modified comparative negligence "remove[s] the absolute bar to liability of the doctrines of contributory negligence and assumption of the risk, and [] substitute[s] instead a judgment of balance"). As an Ohio court observed, that state "has made the policy determination

that it can encourage safe conduct without denying a plaintiff recovery when a plaintiff is less than 50 percent negligent for his or her injuries. Thus, Ohio's [modified comparative negligence] statutory scheme reflects a compromise between (at least) two policies: requiring persons to act with reasonable care and compensating plaintiffs for their injuries." *Estate of Sample ex rel. Cornish v. Xenos Christian Fellowship, Inc.*, 139 N.E.3d 978, 988 (Ohio Ct. App. 2019). Florida should make the same compromise.

Consequently, the Institute supports SB 236, which would amend section 768.81, Florida Statutes, to revise Florida's existing negligence system and instead apply modified comparative negligence, the doctrine of comparative fault embraced by most states, in most negligence actions excepting those sounding in medical negligence.

EXHIBIT A

MARILYN BASS, Plaintiff, vs. PUBLIX SUPER MARKETS, INC., Florida corporation, Defendant.	IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA CIRCUIT CIVIL DIVISION CASE NO. 11-40881 CA 10

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of PUBLIX SUPER MARKETS, INC., which was a legal cause of damage to MARILYN BASS?

YES ✓ NO _____

If your answer to question 1 is NO, your verdict is for PUBLIX SUPER MARKETS, INC., and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of MARILYN BASS which was a legal cause of her damage?

YES ✓ NO _____

If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, please skip question 3 and answer questions 4 and 5.

3. State the percentage of any negligence, which was a legal cause of damage to MARILYN BASS that you charge to:

PUBLIX SUPER MARKETS, INC. 40 %

MARILYN BASS 60 %

Total must be 100%

In determining the amount of any damages, do not make any reduction because of the negligence, if any, of Plaintiff, MARILYN BASS. If you find Plaintiff, MARILYN BASS, negligent in any degree, the court, in entering judgment, will reduce MARILYN BASS' total amount of damages (100%) by the percentage of negligence that you find was caused by MARILYN BASS.

Please answer questions 4 and 5.

4. What is the amount of damages sustained by MARILYN BASS for medical expenses?

a. incurred in the past $ 45,869.42

b. to be incurred in the future $ 40,500.00

5. What is the amount of damages to MARILYN BASS for pain and suffering, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life?

a. incurred in the past $ 42,000.00

b. to be incurred in the future $ 54,000.00

TOTAL DAMAGES OF MARILYN BASS $ 182,369.42
(add lines 4a, 4b, 5a and 5b)

SO SAY WE ALL this 31 day of May, 2013.

Tranice Christian 05/31/13

Tranice Christian

Foreperson

EXHIBIT B

2
VERP

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 06-9387 CA 27

PILAR SOLER,

Plaintiff,

vs.

PUBLIX SUPERMARKETS, INC.,

Defendant.
_____/

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of PUBLIX SUPER MARKETS, INC., which was a legal cause of damage to PILAR SOLER?

_____✓_____ YES _____ NO

If your answer to question 1 is NO, your verdict is for PUBLIX SUPER MARKETS, INC., and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of PILAR SOLER which was a legal cause of her damage?

_____✓_____ YES _____ NO

If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, skip question 3 and answer question 4.

3. State the percentage of any negligence, which was a legal cause of damage to PILAR SOLER, that you charge to:

PILAR SOLER 75 %

PUBLIX SUPER MARKETS, INC. 25 %

Total 100%

Answer question 4.

4. What is the amount of any damages sustained by PILAR SOLER for medical expenses incurred in the past?

$ 11,785.50

Answer question 5.

5. What is the amount of any damages sustained by PILAR SOLER for lost earnings incurred in the past?

$ 0

Answer question 6.

6. What is the amount of any damages for pain and suffering, disability, physical impairment, mental anguish, aggravation of a pre-existing condition, inconvenience and loss of capacity for enjoyment of life to PILAR SOLER?

a. in the past $ 8,000

b. in the future $ 0

TOTAL DAMAGES OF PILAR SOLER (add lines 4, 5, 6a and 6b) $ 19,785.50

In determining the total amount of damages, do not make any reduction because the negligence, if any, of Plaintiff, PILAR SOLER. If you have found PILAR SOLER negligent in any degree, the court in entering judgment will reduce PILAR SOLER'S total amount of damages (100%) by the percentage of negligence, which you find is chargeable to PILAR SOLER.

SO SAY WE ALL this 18 day of August, 2009.

Foreperson

EXHIBIT C

3
CORP

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 08-46176 CA 10

CARIDAD MIYIRIAM DOMINGUEZ,

Plaintiff,

vs.

PUBLIX SUPER MARKETS, INC.,

Defendant.

_____/

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of PUBLIX SUPER MARKETS, INC. which was a legal cause of loss, injury or damage to CARIDAD MIYIRIAM DOMINGUEZ?

YES ✓ NO ____

If your answer to question 1 is NO, your verdict is for defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of CARIDAD MIYIRIAM DOMINGUEZ which was a legal cause of her loss, injury or damage?

YES ✓ NO ____

If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, skip question 3 and answer the remaining questions.

3. State the percentage of any negligence or fault, which was a legal cause of loss, injury or damage to CARIDAD MIYIRIAM DOMINGUEZ that you charge to:

PUBIX SUPER MAREKTS, INC.	25 %
CARIDAD MIYIRIAM DOMINGUEZ	75 %

Total must be 100%

In determining the amount of damages, do not make any reduction because of the negligence, if any, of CARIDAD MIYIRIAM DOMINGUEZ. If you find that CARIDAD MIYIRIAM DOMINGUEZ was negligent, the court in entering judgment will make an appropriate reduction in the damages awarded.

Please answer question 4.

4. What is the total amount of CARIDAD MIYIRIAM DOMINGUEZ'S damages for medical expenses incurred:

A. IN THE PAST: $ 79,000

B. IN THE FUTURE: $ 85,000

5. What is the total amount of CARIDAD MIYIRIAM DOMINGUEZ'S damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, and loss of capacity for the enjoyment of life sustained:

A. IN THE PAST: $ 30,000

B. IN THE FUTURE: $ 40,000

TOTAL DAMAGES OF CARIDAD MIYIRIAM DOMINGUEZ (add lines 4A, 4B, 5A, and 5B) $ 234,000

SO SAY WE ALL, this 18 day of November, 2013.

FOREPERSON

Itchel Munoz

EXHIBIT D

IN THE CIRCUIT COURT FOR THE ELEVEENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2017-022895-CA-01

LYDIA MARSHALL,

Plaintiff,

vs.

PUBLIX SUPER MARKETS, INC,

Defendant.

_____/

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of PUBLIX SUPER MARKETS, INC. which was a legal cause of loss, injury or damage to LYDIA MARSHALL?

   YES ✓ NO _____

[If your answer to Question 1 is NO, your verdict is for the Defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to Question 1 is YES, please answer Question 2.]

2. Was there negligence on the part of LYDIA MARSHALL which was a legal cause of her loss, injury, or damage?

   YES ✓ NO _____

[If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, skip question 3 and answer questions 4 and 5.]

3. State the percentage of any negligence, which was a legal cause of loss, injury or damage to LYDIA MARSHALL that you charge to:

   PUBLIX SUPER MARKETS, INC. 30 %
   LYDIA MARSHALL 70 %

   (Total Must Equal 100%)

[In determining the amount of damages, do not make any reduction because of the negligence, if any, of Plaintiff, LYDIA MARSHALL. If you find that Plaintiff, LYDIA MARSHALL was negligent in any degree, the court in entering judgment will make an appropriate reduction in the damages awarded. Please answer question 4.]

4. What is the total amount of Plaintiff, LYDIA MARSHALL's damages for medical expenses incurred in the past and medical expenses reasonably certain to be incurred in the future as a result of the accident of June 16, 2015?

   A. In the past? $ 13,648.00

   B. In the future? $ 0.00

[Please answer question 5.]

5. What is the total amount of LYDIA MARSHALL's damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life as a result of the accident sustained:

   A. In the past? $ 0.00
   B. In the future? $ 0.00

   Total Damages: $ 13,648.00
   (Add lines 4A, 4B, 5A, and 5B, if applicable)

SO SAY WE ALL, this 15 day of December, 2022.

FOREPERSON SIGNATURE

Yoelvis Valdes
FOREPERSON NAME

EXHIBIT E

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

FILED IN
OPEN COURT
DATE 2/17/2023

HARRY AND PAMELA SINGLETARY,

Plaintiffs,

v. CASE NO.: 15-CA-935

AMERICAN MULTI-CINEMA, INC.,

Defendant.

VERDICT FORM

We, the jury, return the following verdict:

1. Was there negligence on the part of Defendant, American Multi-Cinema, Inc., which was a legal cause of loss, injury, or damage to Plaintiff, Pamela Singletary?

YES ✓ NO _____

If your answer to question 1 is NO, your verdict is for the Defendant, and you should not proceed further, except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of Plaintiff, Pamela Singletary, which was a legal cause of loss, injury, or damage to Pamela Singletary?

YES ✓ NO _____

If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, please skip question 3, and answer questions 4 through 7.

3. State the percentage of negligence which was a legal cause of loss, injury, or damage to Plaintiff, Pamela Singletary, that you apportion to:

American Multi-Cinema, Inc. 17 %

Pamela Singletary 83 %

Total must be 100%

In determining the amount of any damages, do not make any reduction because of the negligence, if any, of Plaintiff, Singletary. If you find Plaintiff, Pamela Singletary, negligent in any degree, the court in entering judgment will make any appropriate reduction.

IN COMPUTER

Please answer questions 4 through 7.

4. What is the total amount of Pamela Singletary's damages for medical expenses incurred in the past, and medical expenses to be incurred in the future?

a. In the past? $ 37,502

b. In the future? $ 8,533

5. What is the total amount of Pamela Singletary's damages for lost earnings and work time in the past and loss of earning capacity in the future?

a. In the past? $ 0

b. In the future? $ 0

6. What is the total amount of Pamela Singletary's damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect or activation of a latent disease or physical defect, and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future?

a. In the past? $ 2,700

b. In the future? $ 1,500

7. What are the amount of damages sustained by Harry Singletary in the loss of his wife's services, comfort, society and attentions in the past and in the future as a result of his wife's injuries.

a. In the past? $ 0

b. In the future? $ 0

SO SAY WE ALL, this 17 day of February, 2023.

FOREPERSON

Apportionment of Fault Rules

States have varied approaches in how they apportion fault and liability in negligence cases. Some are based in common law and some have been codified. Many states have changed their approach over the years. This chart provides a starting point for researching these issues. Note that this chart covers fault and liability in claims based on negligence, and not other tort claims, such as strict liability or intentional torts.

In determining fault in negligence cases, states employ either **contributory negligence** or a pure or modified form of **comparative negligence**. States also have different approaches to **allocating liability among joint tortfeasors**—that is, whether defendants are jointly and severally liable for all damages, whether defendants are only severally liable, or whether the state follows a modified approach falling somewhere between the two. Finally, states differ in whether they allow, require, or forbid the **apportionment of fault to third parties**. This can impact the apportionment of fault to the parties and thus the amount of recovery.

The source materials for the rules listed in the chart are often found in a **Point of Law** (POL). The Points of Law tool identifies legal principles in court opinions that can then be filtered by jurisdiction. Other source materials are links to BCite Analyses. BCite links are used when the relevant legal principle is discussed in a seminal case. The link takes you to that case and other cases citing to it. For more information on Bloomberg Law litigation tools, click **here**.

State	Theory of Fault	Joint & Several Liability	Apportionment of Fault to Third Parties
Alabama	Pure contributory negligence; affirmative defense under **A.R.C.P. Rule 8(c)**. **POL**; **BCite Analysis**. But see **POL** (sudden emergency doctrine); **POL** (last clear chance or subsequent negligence doctrine). See **Overview – Contributory Negligence**.	Pure joint and several liability. Damages are not apportioned among joint tort-feasors; instead, joint tort-feasors are jointly and severally liable for the entire amount of damages awarded. **BCite Analysis**; **BCite Analysis** . Punitive damages are, however, apportioned, **Ala. Code § 6-11-21(e)**, except in cases of wrongful death. **Ala. Code § 6-11-21(j)**.	No. However, defendants may implead a third-party defendant who may be liable to them for all or part of the plaintiff's claim under **A.R.C.P. Rule 14**.
Alaska	Pure comparative negligence. **BCite Analysis**; **AS**	Several liability for all actions involving fault of more than one person. **AS 09.17.080**. This	Yes. Called “equitable apportionment” and codified by **Alaska R. Civ. P. 14(c)**. A

	09.17.060.	includes third party defendants and settling parties, but excludes those who could have been sued but were not. **BCite Analysis**.	defendant may add a third party defendant whose fault may have been a cause of the damages claimed by plaintiff.
Arizona	Pure comparative negligence. **A.R.S. § 12-2505**. However, a trier of fact may bar recovery if the claimant willfully or wantonly caused or contributed to the death or injury. **A.R.S. § 12-2505**.	Joint and several liability was abolished by **A.R.S. § 12-2506(A)**. Liability is several only.	Yes. Negligence/fault of nonparty to be considered if plaintiff entered a settlement agreement with the nonparty or if the defendant gives notice before trial that a nonparty was at fault. **A.R.S. § 12-2506(B)**.
Arkansas	Modified comparative negligence. If the plaintiff's fault is equal to or greater than the fault of the party or parties from whom they seek damages, they are not entitled to recover those damages. **A.C.A. § 16-64-122**.	Joint and several liability was modified by **A.C.A. § 16-55-201**. In most negligence cases, the liability shall be several only. Two exceptions are: 1) when another person was acting as an agent of the party; 2) when the party was acting in concert with the other person.	Yes. Under **Ark. R. Civ. P. 9(h)**, a defending party can seek allocation of nonparty fault in an answer or amended answer. Notice is required for the nonparty's fault to be considered by the trier of fact. The notice requirement does not apply if the nonparty has settled with the plaintiff.
California	Pure comparative negligence. **POL**. Liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault. Extended to include actions founded on strict products liability. **POL**; **BCite Analysis**.	Joint and several liability applies for economic damages in negligence claims (those with specific calculations, i.e. medical expenses, loss of earnings, costs of repair, etc.). Joint and several liability is barred for cases involving non-economic damages (i.e., pain, suffering, inconvenience). **POL**; **Cal. Civ. Code § 1431.2**.	Defendants may bring cross-claims against nonparties who might be liable on a comparative fault basis. **POL**; **POL**; **POL**.
Colorado	Modified comparative negligence. Plaintiff will be barred from recovery if their fault is equal to or greater than the fault of defendants and designated non-parties at fault. **C.R.S. § 13-21-111**;	Mostly several liability. Defendants generally cannot be held liable for an amount greater than the percentage of the judgment equal to the percentage of fault attributable to them. **C.R.S. § 13-21-111.5(1)**. An exception exists where defendants act in concert – there, defendants can be held	Statute provides that plaintiffs and defendants may designate nonparties as being wholly or partially at fault, and authorizes the fact finder to consider the percentage of the nonparty's negligence or fault in apportioning liability. **POL**; **C.R.S. § 13-21-111.5(3)(b)**.

	Smart Code®.	jointly liable. **C.R.S. § 13-21-111.5(4)**.	
Connecticut	Modified comparative negligence. Plaintiff is barred from recovery if their negligence is greater than that of the defendant(s). **C.G.S. § 52-572h(b)**; **Smart Code**. Note the term contributory negligence is retained in statutes and some court opinions.	Generally, liability is several. In a negligence action, each party against whom recovery is allowed shall be liable only for their proportionate share of economic and noneconomic damages. **C.G.S. § 52-572h(c)**; **Smart Code**. However, if plaintiff is unable to collect from a defendant, the court can order reallocation of the damages among the remaining defendants. **C.G.S. § 52-572h(g)** .	A defendant may add a person who may be liable for a proportionate share of the plaintiff's damages as a party to the action. **C.G.S. § 52-102b**. The apportionment complaint shall be filed within 120 days after the complaint. **POL**. An apportionment complaint may not be filed against an unidentified person. **POL**.
Delaware	Modified comparative negligence. Plaintiff is barred from recovery if their negligence is greater than that of the defendant(s). **10 Del. C. § 8132**; **Smart Code**.	Pure joint and several liability. Plaintiff can recover entire amount of damages from any defendant. **10 Del. C. § 6301** et seq.; **POL**.	No. However, a defendant may implead a third party if it is or may be liable to the defendant for at least part of the plaintiff's claim. **Del. Super. Ct. Civ. R. 14**. These contribution claims may be brought as derivative cross or third-party claims when the right to contribution is contingent upon the success of the plaintiff's direct claim against him, and the court may in such cases adjudicate all claims together. **BCite Analysis**. A party who pays more than their pro rata share can pursue joint tortfeasors separately. **10 Del. C. § 6302**; **Smart Code**.
District of Columbia	Pure contributory negligence. **POL**. But last clear chance doctrine is an exception where applicable. **POL**. See **Overview – Contributory Negligence**.	Pure joint and several liability by judicial doctrine. **POL**; **Court Opinions**.	Courts are silent on this issue. See this **Court Opinions Search** for possible future discussion of the issue. However, there may be contribution claims among joint tort-feasors. **POL**. Note that contribution claims against the District require notice. **BCite Analysis**.
Florida	Pure comparative	Mostly several liability. Joint and	Yes. To allocate fault to a

	negligence. **POL**; **Fla. Stat. § 768.81**.	several liability largely eliminated in 2006 by statute. **POL**; **Fla. Stat. § 768.81(3)**. Joint and several liability does still apply for intentional torts. **Fla. Stat. § 768.81(4)**.	nonparty, a defendant must affirmatively plead the fault of a nonparty and identify or describe the party as prescribed by **Fla. Stat. § 768.81(3)(a)**.
Georgia	Modified comparative negligence. Plaintiff may not recover if they are 50% or more at fault. Total liability reduced by plaintiff's percentage of fault so long as plaintiff 50% or less at fault. **Ga. Code § 51-12-33**; **Smart Code**. But see **Ga. Code § 51-11-7** (avoidance defense).	Joint and several liability eliminated by Georgia's Tort Reform Act of 2005. Liability is purely several. **Ga. Code § 51-12-33**.	Yes. Negligence/fault of a nonparty is considered if plaintiff entered into settlement agreement with nonparty or if a defending party gives notice not later than 120 days prior to date of trial that a nonparty was wholly or partially at fault. **Ga. Code § 51-12-33(c)**; **Smart Code**. Burden is on the defendant to establish a rational basis for apportioning fault to a nonparty. **POL**.
Hawaii	Modified comparative negligence. Plaintiff can recover as long as plaintiff's fault is not greater than combined defendants' fault. Recovery is reduced by the proportion of plaintiff's fault. **Haw. Rev. Stat. § 663-31**; **Smart Code**.	Modified joint and several liability. Several liability usually applies, except joint and several still applies for economic damages in the case of injury or death of a person, and for economic and noneconomic damages in cases of intentional torts, environmental torts, products liability, and other exceptions. **Haw. Rev. Stat. § 663-10.9**; **Smart Code**.	Yes, evidence of fault of third parties is admissible to determine degrees of negligence of the parties. **BCite Analysis**; **Court Opinions**.
Idaho	Modified comparative negligence. Plaintiff may not recover if they are 50% or more at fault. **Idaho Code § 6-801**. The "individual rule" applies, meaning each defendant's negligence is separately compared to that of the plaintiff, and the plaintiff cannot recover against that defendant if they are more negligent than the individual defendant. **Court**	Mostly several liability. Joint and several liability for tortfeasors acting in concert or as agents or servants of one another. Several only in all other instances (each party's liability equals his/her proportionate share of total damages). **Idaho Code § 6-803**; **Smart Code**.	Yes, when apportioning negligence, the jury should have the opportunity to consider fault of all parties to the transaction, regardless of whether they are parties to the lawsuit. **POL**.

	Opinions.		
Illinois	Modified comparative negligence. The plaintiff is barred from recovering damages if they are more than 50% at fault. **735 ILCS 5/2-1116**.	Modified. All defendants are jointly and severally liable for medical expenses. For other expenses, joint and several liability applies except when a defendant is less than 25% liable—in that case, liability is several. **735 ILCS 5/2-1117**.	A jury should consider the negligence of nonparties for the purpose of determining plaintiff's fault in cases where contributory negligence might bar recovery, **POL**, or when supporting a sole proximate cause defense. **POL**.
Indiana	Modified comparative negligence. Plaintiff is barred from recovery if they are 51% or more at fault. **I.C. § 34-51-2-5**; **I.C. § 34-51-2-6**; **POL**.	Several liability only (except in cases of medical malpractice). **I.C. § 34-51-2-8(b)(4)**; **Smart Code**.	Yes. A defendant may assert as a defense that the damages of the claimant were caused in full or in part by a nonparty. This is referred to as a “nonparty defense.” **I.C. § 34-51-2-14**. A nonparty defense should be pleaded as part of the first answer, or otherwise in compliance with **I.C. § 34-51-2-16**. The jury shall determine the percentage of fault of the claimant, the defendant, and any person who is a nonparty. **I.C. § 34-51-2-7**.
Iowa	Modified comparative negligence. Plaintiff may not recover if they bear a greater percentage of fault than the combined fault of defendants, third-party defendants, and any persons who have been released. **Iowa Code § 668.3**; **Smart Code**.	Modified. Defendants 50% or more at fault are jointly and severally liable for plaintiff's economic damages only. Otherwise, liability is several. **Iowa Code § 668.4**.	Some—third party defendants and those who have been released pursuant to settlement. **Iowa Code § 668.2**; **Iowa Code § 668.3**. However, allocation of fault is not permitted to unidentified nonparties or known parties to an occurrence from whom no relief was sought. **BCite Analysis**.
Kansas	Modified comparative negligence. Plaintiff may not recover if they are 50% or more at fault than the party or parties against whom a claim is made. **K.S.A. § 60-258a**.	No joint and several liability. Liability is several only, in proportion to each party's causal negligence. **K.S.A. § 60-258a(d)** .	Defendants are permitted to add parties to lawsuits when they argue that the additional parties are partially responsible for the harm they allegedly caused. **K.S.A. § 60-258a(c)**. Additionally, case law notes the fault of a nonparty can be considered, via jury instruction, when determining

			comparative fault. **POL**.
Kentucky	Pure comparative negligence. **BCite Analysis**; **Ky. Rev. Stat. § 411.182**.	Liability is several only. **Ky. Rev. Stat. § 411.182(3)**.	Apportionment to nonparties is limited to those who have settled by release or agreement. **Ky. Rev. Stat. § 411.182(1)(b)**, **§ 411.182(4)**; **POL**; **POL**.
Louisiana	Pure comparative negligence. Defendant's liability will be offset proportionally by plaintiff's liability. **La. Civ. Code Art. 2323**.	There is no joint and several liability, unless defendants conspired to commit an intentional tort. Otherwise tortfeasors are not liable for more than their degree of fault. **La. Civ. Code Art. 2324**.	Yes, by statute, the degree of fault of all persons contributing to the injury shall be determined, regardless of whether the person is a party to the action or a nonparty. **La. Civ. Code Art. 2323**.
Maine	Modified comparative negligence. If the claimant is equally or more at fault, they may not recover. **14 M.R.S. § 156**. If the plaintiff is entitled to recovery, the jury must first compute the total damages. Then, the jury is required to reduce the total damages as they think is “just and equitable” in light of the claimant's share in responsibility. Note that this does not mean the damage allocation must mirror the calculation of fault. **POL**.	Joint and several liability. In a case involving multi-party defendants, each defendant is jointly and severally liable for the full amount of the plaintiff's damages. **14 M.R.S. § 156**.	Question seems to be unresolved. **Court Opinions**. See this **Court Opinions Search** for possible future discussion of the issue.
Maryland	Pure contributory negligence. **POL**; **BCite Analysis**. See **Overview – Contributory Negligence**.	Joint and several liability; each defendant may be liable for the full amount of damages. **Md. Code, Cts. & Jud. Proc. § 3-1401**.	No apportionment to third parties. **BCite Analysis**; **Court Opinions**.
Massachusetts	Modified comparative negligence. Recovery is not barred unless plaintiff's fault is greater than total	Joint and several liability; defendants’ liability is divided equally regardless of comparative fault. **Gen. Laws Mass., G.L. c. 231B, § 1**; **POL**.	No apportionment to absent third parties. **BCite Analysis**.

	fault attributable to defendant(s). **Gen. Laws Mass., G.L. c. 231, § 85**.		
Michigan	Modified comparative negligence. Plaintiff's recovery is reduced to the extent their negligence contributed to the injury. **POL**; **MCL 600.2957** et. seq.; **MCL 600.6304**. If plaintiff is more than 50% at fault, they are barred from recovering non-economic damages. **MCL 600.2959**.	Pure several liability, **MCL 600.6304(4)**. Exception exists for cases of medical malpractice where the plaintiff is not at fault. **MCL 600.6304(6)**.	Yes, the fact-finder must allocate fault to all parties and non-parties involved in an action, subject to procedural requirements. **MCL 600.2957**; **MCL 600.6304**. A defendant must file notice of non-party fault within 91 days of its first responsive pleading and provide best identification possible. **MCR 2.112(K)(3)**. A proof of duty is required before fault can be apportioned and liability allocated under the comparative fault statutes. **POL**. Assessment of fault for nonparties is used only to accurately determine fault of named parties; it does not subject the nonparty to liability in that action and cannot be used as evidence of liability in another action. **MCL 600.2957** .
Minnesota	Modified comparative negligence. A plaintiff can recover from a defendant whose fault is equal to or greater than their own fault. **Minn. Stat. § 604.01**. Defendants' fault is not to be aggregated in applying the comparative fault statute. **Court Opinions**. That is, a plaintiff who is 50% at fault cannot recover from two defendants who are each less than 50% at fault. An exception exists	Modified. Liability is several; except joint and several liability applies when: 1) a person is more than 50% at fault; 2) defendants were acting in concert; 3) a person committed an intentional tort; or 4) in cases of certain environmental torts. **Minn. Stat. § 604.02**.	Yes, when apportioning negligence, the jury should have the opportunity to consider fault of all parties to the transaction, regardless of whether they are parties to the lawsuit. **POL**.

	where defendants were acting in a joint venture. **Court Opinions**.		
Mississippi	Pure comparative fault. Plaintiff's right to damages may be reduced by his own liability, but he will not be barred from recovering. **Miss. Code § 11-7-15**; **Smart Code**.	Modified. Each tortfeasor or wrongdoer is liable only for damages allocated to them in direct proportion to their percentage of fault. **Miss. Code Ann. § 85-5-7**. Joint and several liability exists for those "who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it." **Miss. Code Ann. § 85-5-7(4)**.	Apportionment to third parties: Yes. A jury can apportion a percentage of fault even to an immune nonparty. **BCite Analysis**; **Court Opinions**.
Missouri	Pure comparative fault. If plaintiff found negligent, defendant's liability will be proportionally reduced. **BCite Analysis**; **POL**.	Modified. A defendant found to bear 51% or more of fault is jointly and severally liable for amount of judgment rendered against defendants. If a defendant is found to bear less than 51% of fault, they are only responsible for the percentage of judgment for which they are determined to be responsible. **Mo. Rev. Stat. § 537.067**.	No apportionment to third parties. In Missouri, fault is only to be apportioned among those at trial. **POL**.
Montana	Modified comparative negligence—plaintiff's negligence will not bar recovery, if less than total fault of defendants and nonparties; but will proportionally reduce recovery. **Mont. Stat. § 27-1-702**.	Modified. Joint and several liability applies unless a defendant is less than 50% at fault – then they are only severally liable. **Mont. Code § 27-1-703**.	Some. On a defendant's motion, a third party who might be liable can be joined to the action. The trier of fact should consider the fault of the claimant, injured party, defendant(s), and third party defendant(s). The fault of any person released from liability by the claimant or who settled with the claimant should also be considered when apportioning fault. Except for those released or with whom the plaintiff settled, the fault of the following shall not be considered: a person immune from liability to the claimant; a person not subject to the jurisdiction of the court; a person who could have been named a third party but was not. **Mont. Code § 27-1-703**.

Nebraska	Modified comparative negligence. Claimant cannot recover if their percentage of fault is greater than or equal to the total negligence of all defendants. Award of damages is diminished by the percentage of negligence attributed to them. **Neb. R.S. § 25-21,185.09**; **Smart Code**. Assumption of risk is an affirmative defense. **Neb. R.S. § 25-21,185.12**.	Modified. Joint and several liability for defendants who act in concert. In any other action, the liability for economic damages is joint and several, and the liability for noneconomic damages is several only. **Neb. R.S. § 25-21, 185.10**.	Courts do allow evidence of third person fault. See, e.g., **POL**; **Court Opinions**. Settling non-party fault reduces the claim against other persons by the settling person's share of the obligation as determined by the trier of fact. **Neb. R.S. § 25-21,185.11**.
Nevada	Modified comparative negligence. Plaintiff may not recover if their negligence is greater than the negligence of the defendant or the combined negligence of multiple defendants. **NRS § 41.141**; **Smart Code**.	Generally, liability is several. Joint and several liability does apply in actions based on strict liability, intentional torts, actions in concert, and other exceptions listed in **NRS § 41.141(5)**; **Smart Code**.	No—a jury may not apportion fault to non-parties, but defendants may attempt to establish that the entire responsibility for a plaintiff's injuries rests with nonparties. **POL**.
New Hampshire	Modified comparative negligence. A plaintiff 51% or more at fault cannot recover. A plaintiff 50% or less at fault can recover in proportion to their amount of fault. **N.H. Rev. Stat. § 507:7-d**; **Smart Code**.	Modified. Several liability for defendants less than 50% at fault; otherwise joint and several liability applies. Parties found to have acted in concert resulting in harm are jointly and severally liable even if less than 50% at fault. **N.H. Rev. Stat. § 507:7-e**; **Smart Code**.	Yes. For apportionment purposes, the word party in the statute refers to all parties contributing to the occurrence giving rise to an action. **POL**. Evidence of a non-litigant tortfeasor's fault must be supported by adequate evidence before a jury or court may consider it. **POL**.
New Jersey	Modified comparative negligence. Damaged party cannot recover if their negligence exceeds the combined negligence of all defendants. **N.J.S.**	Modified. Several liability for defendants less than 60% at fault, otherwise defendants will be held jointly and severally liable. **N.J.S. § 2A:15-5.3**.	Yes. Courts allow that parties known to be at least in part liable should be allocated their share of the fault, even when unidentified. **BCite Analysis**. In some contexts a defendant can prove that a non-party was the sole proximate cause

	§ 2A:15-5.1. In other words, a plaintiff who is found to be 50% or less at fault is entitled to recovery, but any award of damages is diminished by the percentage of negligence attributed to them. **POL**.		of the plaintiff's harm. **POL**.
New Mexico	Pure comparative negligence. The claimant is entitled to recover from each defendant the percentage of fault assessed against them. **N.M. Stat. § 41-3A-1(B)**; **Smart Code**; **BCite Analysis**.	Liability is generally several between concurrent tortfeasors, except joint and several liability applies for: intentional torts, vicariously liable defendants, and products liability. **N.M. Stat. § 41-3A-1**; **Smart Code**.	Yes. All tortfeasors, including non-parties, are included in the apportionment question. The fact-finder must ascertain the percentage of negligence of all participants to an occurrence. **POL**.
New York	Pure comparative negligence. **N.Y. C.P.L.R. § 1411**.	Joint and several liability applies, except in cases of a personal injury defendant who is less than 50% liable—then liability is several only for non-economic damages. **N.Y. C.P.L.R. § 1601**.	A defendant may seek apportionment of fault to parties not appearing in the action. However, this is not permitted where the claimant proves that they were unable to obtain jurisdiction over such person in said action. **N.Y. C.P.L.R. § 1601**; **Smart Code**.
North Carolina	Pure contributory negligence (**POL**; **POL**; **BCite Analysis**), even in products liability cases. **N.C.G.S. § 99B-4**; **POL**. See **Overview – Contributory Negligence**.	Pure joint and several liability. **N.C.G.S. § 1B-2**; **POL**.	No. Under the statute, relative degrees of fault shall not be considered. **N.C.G.S. § 1B-2**.
North Dakota	Modified comparative negligence. Claimant's contributory fault does not bar recovery unless the fault was as great as the combined fault of all other persons who	Several liability only, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. **N.D.C.C. § 32-03.2-02**; **Smart**	Yes. The court may, and when requested by any party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury.

	contribute to the injury. Damages must be diminished in proportion to the amount of contributing fault. **N.D.C.C. § 32-03.2-02**; **Smart Code**.	**Code**.	**N.D.C.C. § 32-03.2-02**; **Smart Code**.
Ohio	Modified comparative negligence. Claimant's contributory fault is not a bar to recovery so long as claimant's fault is not greater than the combined fault of all persons from whom the claimant seeks recovery and all persons from whom the claimant does not seek recovery in the action. Damages shall be diminished in proportion to the percentage of claimant's fault. **Ohio Rev. Code § 2315.33** ; **Smart Code**.	Modified joint and several liability. Tort defendant that is found to be more than 51 percent responsible for the injury shall be jointly and severally liable for all economic damages. A defendant found to be 50 percent or less responsible for the injury is liable only for the proportionate share of the compensatory damages that represent economic loss, as determined under **Ohio Rev. Code § 2307.22**. Defendants are only severally liable for non-economic damages. Exceptions laid out in **Ohio Rev. Code § 2307.22**, such as for intentional torts, may apply. **Ohio Rev. Code § 2307.22**; **Smart Code**.	Yes, nonparty fault is considered in apportionment, whether or not the nonparty was or could have been a party to the tort action. **Ohio Rev. Code § 2315.33**; **Smart Code**; **Ohio Rev. Code § 2307.011**; **Smart Code**.
Oklahoma	Modified comparative negligence. Claimant's negligence is not a bar to recovery so long as the claimant's negligence is not greater than the combined negligence of those causing the damage. **Okla. Stat. Tit. 23, § 13**; **Smart Code**.	Mostly several liability. With a few exceptions (such as for strict products liability), liability is several for civil actions based on fault and not arising out of contract. **Okla. Stat. Tit. 23, § 15**; **Smart Code**; **Court Opinions**.	Yes. Any person, firm or corporation causing damage to the claimant, including nonparties, can be considered when determining the fault of the parties (sometimes referred to as “ghost tortfeasors”). **Okla. Stat. Tit. 23, § 13**; **Smart Code**; **BCite Analysis**.
Oregon	Modified comparative negligence. Claimant's negligence is not a bar to recovery so long as claimant's fault is not greater	Mostly several liability. With a few exceptions, joint tortfeasors are typically only severally liable for damages equal to their share of fault. **Or. Rev. Stat. § 31.610**. However, if a party's share of the obligation is deemed	No. A party may defend a claim by arguing that a nonparty exclusively caused the plaintiff's injury, **Or. Rev. Stat. § 31.600(5)**, but fault cannot be apportioned to nonparties. **Smart Code**.

	than the combined fault of (i) any party against whom recovery is sought, (ii) the fault of third party defendants who are liable in tort to the claimant, and (iii) the fault of any person with whom the claimant has settled. **Or. Rev. Stat. §§ 31.600(1), (2)**; **Smart Code**. The damages shall be diminished in proportion to the percentage of fault attributable to the claimant. **Or. Rev. Stat. § 31.600(1)**.	uncollectible, the court may reallocate the uncollectible share among the other parties in certain circumstances as described in **Or. Rev. Stat. § 31.610**. **Smart Code**.	
Pennsylvania	Modified comparative negligence. Plaintiff's negligence is not a bar to recovery so long as plaintiff's negligence is not greater than the negligence of the defendant(s). Any damages shall be diminished in proportion to the amount of the plaintiff's negligence. **42 Pa.C.S. § 7102**; **Smart Code**.	Modified joint and several liability. Liability is several for defendants found liable for less than 60 percent of the liability. Liability is joint and several for defendants held 60 percent or more liable for the injuries, for intentional torts, and for other circumstances laid out in **42 Pa.C.S. § 7102(a.1)(3)**. **42 Pa.C.S. § 7102(a.1)**; **Smart Code**.	For purposes of apportioning liability only, the question of liability of a non-party who has entered into a release with the plaintiff shall be transmitted to the trier of fact upon appropriate requests and proofs by any party. **42 Pa.C.S. § 7102(a.2)**; **Smart Code**. However, non-parties not established as joint tortfeasors through release or adjudication cannot be considered. **Court Opinions**.
Rhode Island	Pure comparative negligence. Plaintiff's negligence is not a bar to recovery, but damages are diminished in proportion to the amount of negligence attributable to the plaintiff. **R.I. Gen. Laws § 9-20-4**; **Smart Code**.	Pure joint and several liability. **R.I. Gen. Laws § 10-6-2**; **Smart Code**.	Probably no. Although no specific statute or opinion is directly on point, case law suggests that because Rhode Island imposes pure joint and several liability, claiming a non-party is liable is not a defense to plaintiff's claim that the defendant is also liable. **Smart Code**. See this **Court Opinions Search** for possible future discussion of the issue.
South Carolina	Modified comparative	Modified joint and several	A defendant may assert that a

	fault. A plaintiff in a negligence action may recover damages if the plaintiff's negligence is not greater than that of the defendant(s). **POL**; **BCite Analysis**. If more than one defendant, the comparison is to the combined negligence of all defendants. **POL**. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of its negligence. **POL**.	liability. A joint tortfeasor is not jointly and severally liable if they are found less than 50 percent at fault for the indivisible damages as compared with a total of the fault of all defendants and the fault, if any, of the plaintiff. Such a defendant is only liable for that percentage of the damages determined by the trier of fact. **S.C. Code § 15-38-15(A)**; **Smart Code**.	nonparty contributed to the injury. **BCite Analysis**; **S.C. Code § 15-38-15(D)**. However, typically only defendants may be listed on the jury form for inclusion in the allocation of fault. **BCite Analysis**; **S.C. Code § 15-38-15(C)**.
South Dakota	Modified comparative negligence. Plaintiff's contributory negligence does not bar a recovery when it was slight in comparison with the negligence of the defendant. **S.D. Codified Laws § 20-9-2**. “Slight” is defined as small of its kind or in amount; scanty; meager. **POL** ; **BCite Analysis**. In such cases, damages shall be reduced in proportion to the amount of plaintiff's contributory negligence. **S.D. Codified Laws § 20-9-2**.	Modified joint and several liability. Joint tort-feasors are subject to joint and several liability. **S.D. Codified Laws § 15-8-11**; **Smart Code**. However, if the court enters judgment against any party liable on the basis of joint and several liability, any party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party. **S.D. Codified Laws § 15-8-15.1**; **Smart Code**.	Courts are silent on this issue. See this **Court Opinions Search** for possible future discussion of the issue.
Tennessee	Modified comparative negligence. So long as a plaintiff's negligence remains less than the defendant's negligence, the plaintiff may recover. Plaintiff's damages	Pure several liability (**POL**; **POL**; **BCite Analysis**), with a few narrow exceptions when joint and several liability may apply. **BCite Analysis**.	Yes, if the nonparty is sufficiently identified. **Tenn. Code § 20-1-119(e)**; **POL**; **POL**. The nonparty may be joined to the suit as prescribed in **Tenn. Code § 20-1-119**. See also **Smart Code**.

	are to be reduced in proportion to the percentage of the total negligence attributable to the plaintiff. **POL**; **BCite Analysis**.		
Texas	Modified comparative negligence. Damaged party cannot recover if it is 51% or more at fault. Calls it “proportionate responsibility.” **Tex. Civ. Prac. & Rem. Code § 33.001**.	Modified joint and several liability. Defendant is only responsible for the full amount of damages if they are found to be more than 50% responsible for the accident. Otherwise they are only responsible for an amount equal to their percentage of fault. **Tex. Civ. Prac. & Rem. Code § 33.013**.	Yes, fault can be apportioned to third parties by filing leave to designate person as responsible third party on or before 60 day before trial date unless court finds good cause to allow later motion. **Tex. Civ. Prac. & Rem. Code § 33.004**. **Tex. Civ. Prac. & Rem. Code § 33.004**
Utah	Modified comparative negligence. Claimant may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the claimant prior to any reallocation of fault made under **Utah Code § 78B-5-819(2)**. **Utah Code § 78B-5-818(2)**; **Smart Code**.	Pure several liability. No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant under **Utah Code § 78B-5-819**. **Utah Code § 78B-5-818(3)**; **Smart Code**.	Yes, if a party files a description of the factual and legal basis on which fault can be allocated, and identifying information as described in **Utah Code § 78B-5-821(4)**. **Utah Code § 78B-5-818(4)(a)**; **Smart Code**.
Vermont	Modified comparative negligence. Claimant's contributory negligence shall not bar recovery if the negligence was not greater than the causal total negligence of the defendant(s), but the damage shall be diminished in proportion to the amount of negligence	Pure several liability. Each defendant is liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of its causal negligence to the amount of causal negligence attributed to all defendants. **12 Vt. Stat. § 1036**; **POL**.	No. Case law states that only those joined in the action should be considered in apportioning damages. **Smart Code**; **BCite Analysis**.

	attributed to the claimant. **12 Vt. Stat. § 1036**.		
Virginia	Pure contributory negligence. **POL**; **BCite Analysis**. But see **POL**; **POL** (last clear chance doctrine); **Va. Code § 8.01-58** (actions by employees against common carriers). See **Overview – Contributory Negligence**.	Pure joint and several liability. **Va. Code § 8.01-443**; **POL**; **POL** .	Court have been silent on this issue. See this **Court Opinions Search** for possible future discussion of the issue.
Washington	Pure comparative negligence. **Wash. Rev. Code § 4.22.005**; **POL**.	Modified joint and several liability. **Wash. Rev. Code § 4.22.070**. Typically several liability, except as laid out in **Wash. Rev. Code § 4.22.070(1)**, or if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm. **Wash. Rev. Code § 4.22.030**; **POL**.	Yes. **Wash. Rev. Code § 4.22.070**; **Smart Code**; **POL** .
West Virginia	Modified comparative negligence. **W. Va. Code § 55-7-13a**. Claimant's fault shall not bar recovery unless the claimant's fault is greater than the combined fault of all other persons responsible for the total amount of damages. Otherwise, claimant's recovery shall be reduced in proportion to the degree of fault. **W. Va. Code § 55-7-13c(c)**.	Modified joint and several liability. **W. Va. Code § 55-7-13c** . Typically several liability for compensatory damages, except in certain circumstances when a plaintiff is unable to collect from a liable defendant. **W. Va. Code §§ 55-7-13c(a), (d)**. However, joint liability may be imposed on two or more defendants who consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission, **W. Va. Code § 55-7-13c(a)**, or under the circumstances laid out in **W. Va. Code § 55-7-13c(h)**.	Yes. Fault of a nonparty who proximately caused the damages shall be considered if plaintiff entered a settlement agreement with the nonparty or a defendant gives proper notice within 180 days of service of process that nonparty was wholly or partially at fault. **W. Va. Code § 55-7-13(d)(a)(2)**; **Smart Code**; **W. Va. Code § 55-7-13a(b)**.
Wisconsin	Modified comparative negligence. Claimant's contributory negligence will bar	Modified joint and several liability. The liability of each person found to be less than 51 percent causally negligent is limited to the percentage of	Yes. Fault is apportioned to all parties to the transaction, whether or not they are parties to the lawsuit. **POL**; **BCite Analysis**.

	recovery if the claimant's negligence is greater than the negligence of the person against whom recovery is sought. When not barred, the claimant's recovery is diminished proportionately to the claimant's proportion of fault. **Wis. Stat. § 895.045(1)**; **Smart Code**. Special rules may apply in products liability cases (**Wis. Stat. § 895.045(3)**) and other case types (**Wis. Stat. § 895.01** et seq.).	causal negligence attributed to that person. A person found to be 51 percent or more causally negligent shall be jointly and severally liable for the damages allowed. **Wis. Stat. § 895.045(1)** . But, if two or more parties act in accordance with a common scheme or plan, they are jointly and severally liable for all damages, except punitive damages. **Wis. Stat. § 895.045(2)**; **Wis. Stat. § 895.043(5)**. Special rules may apply in products liability cases (**Wis. Stat. § 895.045(3)**) and other case types (**Wis. Stat. § 895.01** et seq.).	
Wyoming	Modified comparative negligence. Claimant's contributory fault will bar recovery if the claimant's negligence is more than 50 percent of the total fault. Where claimant's contributory negligence is not more than 50 percent, damages are diminished in proportion to the claimant's proportion of fault. **Wyo. Stat. Ann. § 1-1-109(b)**; **Smart Code**; **POL**.	Allocated several liability. A defendant is liable only to the extent of that defendant's proportion of the total fault. If the claimant's contributory fault is 50 percent or less of the total fault, the damages are first reduced proportionately to the fault attributed to the claimant and then attributed to each defendant. **Wyo. Stat. § 1-1-109(d), (e)**; **Smart Code**.	Yes. The trier of fact allocates the percentage of fault attributable to each actor determined to be the proximate cause of the injury, whether or not the actor is a party to the litigation. **Wyo. Stat. § 1-1-109(a)(i), (b), (c)**; **Smart Code**; **Court Opinions** .

General Information

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