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TORT LAW—The Application of the Rescue Doctrine Under Comparative Negligence Principles: *Govich v. North American Systems, Inc.*

I. INTRODUCTION

The primary purpose of the tort system is to ensure fair compensation to victims of negligent conduct.[1] Courts have utilized different approaches in accomplishing this goal. Prior to the adoption of comparative negligence in New Mexico, courts often placed limitations on the defense of contributory negligence. Such limitations included the doctrines of last clear chance, assumption of the risk, violation of a safety statute, and the rescue doctrine. Whereas these limitations formally precluded the use of contributory negligence as a defense, with the adoption of comparative negligence in New Mexico these once-settled issues of negligence law have become open questions. The New Mexico Supreme Court recently addressed whether comparative negligence abrogates the rescue doctrine.

In *Govich v. North American Systems, Inc.*,[2] the New Mexico Supreme Court held that the rescue doctrine, which imposes "an independent duty of care owed a rescuer by persons creating unreasonable risks of harm to others," is applicable under comparative negligence principles.[3] Justice Ransom reasoned that the rescue doctrine now serves only to establish the independent duty of care owed by the person creating the peril to the rescuer.[4]

This casenote will examine the *Govich* decision and compare the court's analysis of the application of the rescue doctrine to comparative negligence with other jurisdictions' interpretation of the issue. Further, this note will examine how the *Govich* decision is consistent with other New Mexico decisions which have not eliminated traditional negligence defenses, but have recognized them as "liability concepts based on or related to negligence of either plaintiff, defendant or both."[5]

II. HISTORICAL BACKGROUND

In *Scott v. Rizzo*,[6] the New Mexico Supreme Court adopted the decision of the court of appeals, establishing the "pure" form of comparative negligence in New Mexico. Under the "pure" form, a plaintiff's contributory negligence does not bar recovery, but damages are diminished in proportion to the amount of negligence attributed to him by the

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1. *See generally* WILLIAM L. PROSSER, THE LAW OF TORTS §§ 1, 42 (4th ed. 1971).
2. 112 N.M. 226, 814 P.2d 94 (1991).
3. *Id.* at 232, 814 P.2d at 100.
4. *Id.*
5. Scott v. Rizzo, 96 N.M. 682, 687, 634 P.2d 1234, 1239 (1981).
6. *Id.* at 689, 634 P.2d at 1239.

factfinder.[7] The court in *Scott* recognized that the adoption of comparative negligence would have ramifications on existing contributory negligence defenses designed to ameliorate the harshness of the rule of contributory negligence. The court stated that:

> [w]e are of the opinion that existing decisions, both in New Mexico and in thirty-five other jurisdictions in this country, provide sufficient guidelines to permit our New Mexico trial courts to adapt and apply the comparative negligence philosophy to actual controversies and specific factual circumstances, as they arise.[8]

The question of whether the rescue doctrine, a contributory negligence defense, still applies with the adoption of comparative negligence arose in *Govich*.

Generally, there is no duty under Anglo-American law to lend personal assistance to persons in distress, nor is there a duty to warn of imminent danger.[9] However, in order to prevent the harsh results of a defense of contributory negligence in a rescue attempt, and to encourage people to assist others in need, the courts developed the rescue doctrine. The rescue principle holds that, where a defendant has created a situation of peril for a victim, the defendant will be liable to a rescuer of the victim for any injury he may incur in the rescue.[10] The rescue doctrine allows a rescuer to maintain an action, which might otherwise be barred by the doctrine of contributory negligence, as long as the rescuer's behavior does not rise to the level of rash or reckless.[11] The tortfeasor's duty of care owed to the rescuer is independent of that owed to the victim because rescuers as a class are foreseeable.[12]

The paradigmatic case establishing the rescue doctrine was *Wagner v. International Railway Co.*[13] In *Wagner*, the plaintiff was seriously injured in an attempt to rescue his cousin who had been thrown from a moving train as a result of the defendant railway company's negligence. The plaintiff lost at trial and an intermediate appellate court directed a judgment on the verdict for the defendant. The court of appeals reversed an intermediate court's grant of summary judgment for the railway. In so doing, the *Wagner* court rejected the railway's principal arguments that: (1) the plaintiff's rescue attempt of his cousin was outside the causation chain; and (2) the plaintiff's rescue attempt was a "wanton

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7. *Id.*

8. *Id.* at 688-89, 634 P.2d at 1240-41.

9. Jay Silver, *The Duty to Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423 (1985). There are currently five situations in which the courts impose a duty to render aid. They include: (1) a duty imposed by statute; (2) a special relationship; (3) a contract; (4) one who injures or imperils another, who has a duty to render reasonable care; and (5) one who volunteers aid has a duty to exercise reasonable care. *Id.*

10. J. Tiley, *The Rescue Principle*, 30 MOD. L. REV. 25 (1967).

11. *See* 57 AM. JUR. 2D *Negligence* § 418 (1971).

12. W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 44, at 308 (5th ed. 1984).

13. 133 N.E. 437 (N.Y. 1921).

exposure to a danger that was useless" and was thus contributorily negligent.[14] In a frequently quoted passage, Justice Cardozo wrote:

> Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their efforts within the range of the natural and probable. The wrong that imperils life is a wrong to the imperilled victim; it is a wrong also to his rescuer.[15]

The *Wagner* rule has enjoyed universal acceptance.[16] A major exception to the rule, however, is that "professional rescuers [such as firemen and policemen] may not recover for injuries flowing from risks inherent in the act of rescue."[17] Even so, one commentator has observed that "*Wagner* and its progeny represent a transformation in the doctrine of contributory negligence through expansion of traditional notions of foreseeability and causation in order to reach a fair result on the ultimate question of recovery for rescuers."[18]

III. STATEMENT OF THE CASE

Roane Govich and her hearing-impaired adult son, Daniel, returned home one evening to find smoke emerging from their house.[19] Daniel's dog, an animal specially trained to alert Daniel to everyday routine sounds, was inside the burning house. Daniel called the dog from the outside of the house, but the dog did not come; consequently, he entered the house in an attempt to rescue the dog. Upon seeing Daniel enter the house, Roane made several entrances attempting to restrain Daniel. The dog died, and both Daniel and his mother sustained injuries as a result of the fire. Daniel testified that "at the time of the rescue attempt of my dog I was under severe emotional distress due to the possibility of losing my dog and not knowing if all my possessions in the house would be destroyed."[20]

The Goviches brought a personal injury action against the manufacturer of a coffee maker, which they claimed caused the fire through a defect. Based upon theories of negligence, strict products liability, and breach of express or implied warranties, the Goviches sought damages for personal injuries, emotional distress, and lost wages. Mr. Coffee, the manufacturer of the coffee maker, and Ark-Les, the maker of an electrical component of the appliance, moved for partial summary judgment to dismiss the personal injury claims. The Goviches claimed that the rescue doctrine

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14. *Id.* at 438.
15. *Id.* at 457.
16. *Govich*, 112 N.M. at 231, 814 P.2d at 99.
17. Ross A. Albert, *Restitutionary Recovery for Rescuers*, 74 CAL. L. REV. 85, 91-92 (1986).
18. *Id.*
19. *Govich*, 112 N.M. at 228, 814 P.2d at 96.
20. *Id.*

precluded the granting of summary judgment.[21] The district court granted the partial summary judgment and dismissed the Goviches' personal injury claims. The court determined that the injuries caused to the Goviches "resulted entirely from their entry into the burning house," and that Daniel's actions of entering a burning home to rescue a dog were "unreasonable conduct as a matter of law."[22] The court also concluded that Roane Govich's actions in entering the house were "plainly occasioned by the unreasonable conduct of her son and not any act, omission or conduct of defendants."[23]

The Goviches filed a notice of appeal from the district court's order dismissing their personal injury claims.[24] The New Mexico Supreme Court reversed the order holding that the rescue doctrine is applicable under comparative negligence.[25] The supreme court declined to hold that the rescue of property is unforeseeable as a matter of law.[26]

IV. DISCUSSION

Other jurisdictions have examined the effect of comparative negligence on the rescue doctrine. The general rule adopted in comparative fault jurisdictions with respect to rescue cases is that the factfinder should compare the fault of the rescuer (plaintiff) with that of the creator of the situation to which the rescue was a response (defendant).

The court in *Allison v. Sverdrup & Parcel & Assoc., Inc.*[27] reversed a judgment in which the jury found the decedent 100% at fault, holding that the trial judge committed prejudicial error in failing to instruct the jury on the rescue doctrine. The plaintiff's decedent had entered a gas-filled bin in an attempt to rescue a co-worker who had been asphyxiated.[28] The plaintiff's decedent also died from asphyxiation from carbon monoxide poisoning.[29] The issue was the applicability of comparative fault to the rescue doctrine. The defendant claimed that the deceased helped to create the situation and thus could not recover under the rescue doctrine. The Missouri Court of Appeals stated that:

> [w]e find no logical reason why, under our "pure" comparative fault system, a rescuer's negligence in contributing to create a situation of peril that summons him to the aid of one imperiled should not be compared to the negligence of the defendant in contributing to the creation of the peril. The law places a premium on the preservation of human life and one who attempts the laudable act of saving life,

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21. *Id.* The Goviches also responded that summary judgment was precluded by bystander recovery for negligent infliction of emotional distress, but that theory was abandoned on appeal. *Id.*
22. *Id.*
23. *Id.* at 229, 814 P.2d at 97.
24. *Id.*
25. *Id.* at 232, 814 P.2d at 100.
26. *Id.* at 233, 814 P.2d at 101.
27. 738 S.W.2d 440 (Mo. Ct. App. 1987).
28. *Id.* at 448.
29. *Id.*

> even though he is partly responsible for having endangered it, should not be denied recovery.[30]

The court then analyzed other decisions in other jurisdictions and determined that a rescuer will not be charged with negligence in a rescue unless he or she acts "recklessly or rashly."[31] If the trier of fact concludes that the rescuer has acted recklessly or rashly, the negligence of the rescuer is compared with that of the one whose negligence caused the predicament. The rescuer is then entitled only to the portion of damages attributable to the defendant's conduct in creating the situation.[32]

The rescue doctrine applies under Connecticut's comparative negligence statute, regardless of whether the plaintiff-rescuer contributed to the victim's peril. In *Zimny v. Cooper-Jarrett Inc.*,[33] the plaintiff's decedent was struck by a vehicle while attempting to help her mother out of the car after being involved in a multiple-car accident. The court examined the application of the rescue doctrine in view of comparative negligence and held that if a rescue attempt is unreasonable, the rescuer should not be barred from recovering, but the amount of recovery should be reduced "by the degree to which he is comparatively negligent."[34] The court noted that the effect of the rescue doctrine under comparative negligence principles is different than under contributory negligence in that the rescue doctrine no longer serves the purpose of eliminating the absolute defense of contributory negligence.

Holding it proper to apply comparative negligence principles to rescue cases, the court in *Sweetman v. State Highway Department*[35] stated that it perceived "no harsh result from the application of comparative negligence principles to rescue cases."[36] The case arose when the plaintiff was injured while attempting to aid a motorist that had skidded on ice and collided with a bridge guard rail. The plaintiff alleged that the defendant was negligent in the construction and improper design of the highway.

The *Sweetman* court described a two-step analysis in applying the rescue doctrine. The first step requires a determination of whether the rescue itself is reasonable.[37] This step requires the trier of fact to balance the utility of the rescuer's conduct against the magnitude of the increased risk of harm.[38] The second step requires a determination of whether the rescuer carried out the rescue attempt in a reasonable manner.[39] If the

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30. *Id.* at 451.
31. *Id.* at 454.
32. *Id.*
33. 513 A.2d 1235 (Conn. App. Ct.), *cert. denied*, 516 A.2d 887 (Conn. 1986).
34. *Id.* at 1243.
35. 357 N.W.2d 783 (Mich. Ct. App. 1984).
36. *Id.* at 789.
37. *Id.*
38. *Id.*
39. *Id.*

rescuer did not, then the rescuer's recovery is reduced by his comparative degree of fault. In light of the replacement of contributory negligence with comparative negligence, any negligence by the plaintiff in carrying out a rescue attempt will reduce his damages.[40]

The court in *Ryder Truck Rental, Inc. v. Korte*[41] concluded that, in spite of Florida's abolition of the rule of contributory negligence, there was no reason why comparative negligence should not apply in a rescue case.[42] The court described the rescue doctrine as previously serving a dual purpose. First, the doctrine established the "causal connection between the defendant's negligence and the plaintiff's injury."[43] Second, the doctrine eliminated the absolute defense of contributory negligence.[44]

Although the doctrine was no longer needed to eliminate the absolute defense of contributory negligence, the court stated that "the rescue doctrine is still applicable to establish that the defendant's negligence was the proximate cause of the plaintiff's injury."[45] However, the court held that if a plaintiff is negligent in performing a rescue, he should only recover "that portion of the entire damages sustained by him as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant."[46]

In *Govich*, the New Mexico Supreme Court examined the effect of comparative negligence on the rescue doctrine. The court held that the rescue doctrine is applicable under comparative negligence principles. The court first recognized that the doctrine has previously been utilized for three purposes:

> (1) to establish the duty owed the rescuer by the person creating the peril; (2) to relieve the plaintiff of the defenses of contributory negligence and assumption of the risk, otherwise available to the person creating the initial peril; and (3) to help establish the causal nexus between the defendant's negligence and the rescuer's injury.[47]

The court concluded that the doctrine in New Mexico "now serves only to establish and identify the duty owed the rescuer."[48] Unlike the courts in several other jurisdictions, the New Mexico Supreme Court declined to hold that the rescue doctrine establishes that the negligence precipitating the rescue is in law the proximate cause of the rescuer's injuries.[49] The court believed it is more "direct" to rely on the jury's allocation of fault under the traditional rules of proximate and independent intervening causation, and stated that "[we] are aware of no public policy that would

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40. *Id.*; *see also* Solomon v. Shuell, 457 N.W.2d 669 (Mich. 1990).
41. 357 So. 2d 228 (Fla. Dist. Ct. App. 1978).
42. *Id.* at 230.
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Govich*, 112 N.M. at 232, 814 P.2d at 100 (citations omitted).
48. *Id.*
49. *Id.*

compel us to remove from the jury questions of negligence and proximate cause."[50]

Instead of establishing the nexus between the defendant's negligence and the rescuer's injury, the doctrine in New Mexico now simply serves the purpose of "imposing an independent duty of care owed a rescuer by persons creating unreasonable risks of harm to others . . . ."[51] The independent duty is owed to any foreseeable rescuer by the tortfeasor regardless of whether the rescuer is an initial rescuer or a subsequent rescuer.[52]

The court held that the standard of rescuers is the same as the standard of care in all cases; that is, "ordinary care under the circumstances."[53] The court declined to adopt a "rash or reckless" standard of care, reasoning that New Mexico courts never have recognized degrees of negligence.[54] The jury is to consider all the facts and circumstances surrounding the case and to measure the rescuer's actions in accordance with the standards of reasonableness and ordinary care.[55]

Additionally, the court declined to hold that the rescue of property is unforeseeable as a matter of law.[56] Instead, the court determined that the issue was a question for the jury.[57] Although some courts hold that there is no causal connection between a defendant's negligence which endangers property and an injury incurred by a person who tries to save the property, many cases support the contrary view.[58]

V. ANALYSIS

The court's holding in *Govich* coincides with the reasoning in *Scott v. Rizzo*. In *Scott,* the supreme court recognized that the adoption of comparative negligence principles would have an effect on other existing doctrines. The court did not make an "effort to catalog or determine how various rules will be affected by the comparative negligence doctrine," but rather determined that adoptions would be made on a "case-by-case basis."[59] The *Scott* court stated that "[o]ur purpose is to emphasize that if negligence or negligence-related concepts are a basis for liability, the comparative negligence doctrine applies, and common sense will assist in its fair application."[60]

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50. *Id.* at 233-34, 814 P.2d at 101-02.
51. *Id.* at 232, 814 P.2d at 100.
52. *Id.* at 233, 814 P.2d at 101.
53. *Id.*
54. *Id.* The court also noted that the majority of comparative negligence jurisdictions have adopted a "reasonableness" standard. *Id.* n.4. *But see* Scott v. Rizzo, 96 N.M. 682, 634 P.2d 1234 (1981) (abolishing degrees of negligence).
55. *Govich*, 112 N.M. at 233, 814 P.2d at 101.
56. *Id.*
57. *Id.*
58. *See* 57 AM. JUR. 2D *Negligence* §§ 1083-84 (1971).
59. *Scott*, 96 N.M. at 688, 634 P.2d at 1240.
60. *Id.*

After examining the effect of comparative negligence on the rescue doctrine, the *Govich* court concluded that although the doctrine serves to establish causation in other jurisdictions, the doctrine's use in New Mexico will be limited to establishing the duty owed to the rescuer.[61] Specifically, Justice Ransom stated that:

> [s]o far as the rescue doctrine can be understood as shorthand for a public policy, reflected in the law, imposing an independent duty of care owed a rescuer by persons creating unreasonable risks of harm to others, we think that facet of the doctrine remains vital under New Mexico's comparative negligence regime.[62]

According to the court, the duty "arises from a policy, deeply imbedded in our social fabric, that fosters rescue attempts."[63] In holding that the rescue doctrine imposes a duty of independent care, the court recognized that a relationship exists between the rescuer and the tortfeasor by which the defendant was legally obliged to protect the interest of the plaintiff.

Although Justice Ransom cited *Calkins v. Cox Estates*[64] for the proposition stating that whether a duty is owed is a matter of law to be decided by the court, he diverged from the *Calkins* majority opinion in the analysis of whether a duty exists. Instead of examining whether the "injured party was a foreseeable plaintiff—that he was within the zone of danger created by respondent's actions . . .,"[65] as the *Calkins* duty analysis requires, Justice Ransom instead relied solely on a legal policy determination. Despite a similar outcome, his analysis was different.

By declining to establish that the "negligence precipitating the rescue is in law the proximate cause of the rescuer's injuries,"[66] the court reinforced the power of the jury to decide issues of causation rather than reassign it to itself. The jury must determine if the injury to the plaintiff "was a foreseeable result of respondent's breach."[67]

It is in the proximate cause analysis that the jury determines whether the actions of the rescuer were not a foreseeable result of an earlier act by the defendant; that is, if the event "interrupts and turns aside a course of events and produces that which was not foreseeable as a result of an earlier act or omission," then the later act is deemed an independent intervening cause and the defendant's action is not the proximate cause

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61. *Govich*, 112 N.M. at 232, 814 P.2d at 100.
62. *Id.*
63. *Id.*
64. 110 N.M. 59, 792 P.2d 36 (1990). In *Calkins*, the supreme court explored the duty of a landowner to maintain a common area. The supreme court held that:

> [a] plaintiff must show that defendant's actions constituted a wrong against him, not merely that defendant acted beneath a required standard of care and that plaintiff was injured thereby. He must show that a relationship existed by which the defendant was legally obliged to protect the interest of plaintiff. This concept limits liability for negligent conduct—a potential plaintiff must be reasonably foreseeable to the defendant because of defendant's actions.

Id. at 62, 792 P.2d at 39.
65. *Id.* at 61, 792 P.2d at 38.
66. *Govich*, 112 N.M. at 232, 814 P.2d at 100.
67. *Calkins*, 110 N.M. at 61, 792 P.2d at 38.

of the plaintiff's injuries.[68] Therefore, if the jury finds the rescuer's behavior to be so unreasonable as to preclude apportionment of fault to the original wrongdoer, the rescue attempt is an independent intervening cause, thus cutting off all of the defendant's liability at the proximate cause stage.

The decision in *Govich* is consistent with the supreme court's application of comparative negligence principles to suits sounding in negligence wherever possible. Several recent decisions illustrate the court's desire to do so. In *Klopp v. Wackenhut Corp.*,[69] the New Mexico Supreme Court overruled cases that "appear to have held the duty to avoid unreasonable risk of injury to others is satisfied by an adequate warning . . . ."[70] The court stated that "[a] risk is not made reasonable simply because it is made open and obvious to persons exercising ordinary care."[71]

The plaintiff in *Klopp* argued that the open and obvious danger rule set forth in Uniform Jury Instruction 13-1310[72] was, in essence, a contributory negligence bar to her cause of action and thus that the instruction was incompatible with the doctrine of comparative negligence. The court held that, under principles of comparative fault, it was not appropriate to submit the case to the jury under the current uniform jury instruction.[73] According to the court, it is the jury's position to determine in almost all cases "whether a dangerous condition on the premises involved 'an unreasonable risk of danger to a business visitor' and whether the occupier 'should reasonably anticipate that the business will not discover or realize the [obvious] danger.'"[74] The court cited other jurisdictions which had also abolished the open and obvious danger doctrine because of the adoption of comparative negligence.[75]

Similarly, in *Lopez v. Ski Apache Resort*,[76] the New Mexico Supreme Court held that the doctrine of comparative negligence applies to actions

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68. *Govich*, 112 N.M. at 232, 814 P.2d at 100 (quoting N.M. UNIF. JURY INSTRUCTION CIV. 13-306).

69. 113 N.M. 153, 824 P.2d 293 (1992).

70. *Id.* at 157, 824 P.2d at 297.

71. *Id.*

72. N.M. UNIF. JURY INSTRUCTION CIV. 13-1310 states:

An [owner] [occupant] owes a duty to a business visitor, with respect to known or obvious dangers, if and only if:

> (1) The [owner] [occupant] knows or has reason to know of a dangerous condition on his premises involving an unreasonable risk of danger to a business visitor; and
> (2) The [owner] [occupant] should reasonably anticipate that the business visitor will not discover or realize the danger [or that harm will result to the business visitor, even though the business visitor knows or has reason to know of the danger].

If both of these conditions are found to exist, then the [owner] [occupant] had a duty to use ordinary care to protect the business visitor from harm.

73. *Klopp* 113 N.M. at 159, 824 P.2d at 299.

74. *Id.* at 158, 824 P.2d at 298.

75. *Id.* (citing Harrison v. Taylor, 768 P.2d 1321 (Idaho 1989); Riddle v. McLouth Steel Prods. Corp., 451 N.W.2d 590 (Mich. App. 1990), *rev'd by* Riddle v. McLouth Steel Products Corp, 485 N.W.2d 676 (Mich. 1992); Cox v. J.C. Penny Co., 741 S.W.2d 28 (Mo. 1987); Woolston v. Wells, 687 P.2d 144 (Or. 1984); Parker v. Highland Park, Inc., 565 S.W.2d 512 (Tex. 1978); Donahue v. Durfee, 780 P.2d 1275 (Utah App. 1989); O'Donnell v. City of Casper, 696 P.2d 1278 (Wyo. 1985)).

76. ___ N.M. ___, 836 P.2d 648, *cert. denied*, 113 N.M. 815, 833 P.2d 1181 (1992).

brought under the Ski Safety Act.[77] The factfinder is entitled to determine the negligence, if any, of each of the parties.[78] In the event that both parties are found to have negligently violated a duty under the Act, contributing to the skier's injuries, fault and damages will be apportioned between the parties under comparative negligence principles.[79]

Another illustration of the court's desire to apply comparative negligence principles is the case of *Baxter v. Noce*.[80] The issue presented in *Baxter* was whether an intoxicated passenger of a vehicle has a cause of action against a tavern that served alcoholic beverages, allegedly in violation of section 41-11-1 of the Dramshop Act.[81] The supreme court held that, "[b]ecause contributory negligence no longer acts to absolutely extinguish a plaintiff's right of recovery," the doctrine of complicity would not be applied to bar completely an intoxicated person's recovery under the Dramshop Act.[82] The court stated that, in adopting comparative negligence, "we supplanted the all-or-nothing bar of contributory negligence and subjected the doctrine of assumption of risk and other concepts based on the claimant's negligence to a comparative negligence analysis."[83]

VI. CONCLUSION

The result reached in *Govich* is fair both to the plaintiff and to the defendant. Whereas a rescuer was formerly allowed to recover 100% of his or her damages as long as he or she did not act rashly or recklessly, a rescuer's damages may now be reduced by the amount of his or her own negligence. The result is fair and consistent with the principles of comparative negligence in that each party remains responsible for his or her own actions. Additionally, the court's recognition of an independent duty of care owed by the person creating the peril to the rescuer will help foster rescue attempts.

Clearly, the *Govich* decision has implications on other former defenses to contributory negligence. After an analysis of the court's decision, it is apparent that the court will find uses for existing doctrines if they are consistent with social goals. Through a policy of apportioning damages according to the relative fault of each party by applying comparative negligence principles, the court accommodates the policy of compensating victims of negligence while meeting the social need of encouraging members of society to accept accountability for their actions.

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77. N.M. STAT. ANN. §§ 24-15-1 to -14 (Repl. Pamp. 1991).
78. *Lopez*, 836 P.2d at 654.
79. *Id.*
80. 107 N.M. 48, 752 P.2d 240 (1988).
81. N.M. STAT. ANN. § 41-11-1 (Repl. Pamp. 1989).
82. *Baxter*, 107 N.M. at 51, 752 P.2d at 243.
83. *Id.*