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SYMPOSIUM COMPARATIVE NEGLIGENCE IN PENNSYLVANIA

INTRODUCTION

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IN JULY OF 1976, the Commonwealth of Pennsylvania joined the majority of the other states in declaring the doctrine of comparative negligence applicable to all negligence actions by adopting, effective September 7, 1976, the Pennsylvania Comparative Negligence Act (Act).¹ The Act provides:

(a) General rule. — In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

(b) Recovery against joint defendant; contribution. — Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom the plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.²

In a jurisdiction where for years the contributory negligence of the plaintiff, no matter how slight, barred recovery in a negligence

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1. 42 PA. CONS. STAT. § 7102 (1978).

2. *Id.*

action,³ this statute raises new issues and considerations for the Bench and the Bar as well as for litigants. Since the statute has been interpreted as being applicable only to causes of action which arose after its effective date,⁴ the cases to which it is applicable are only now entering into the litigation process and it is only now that the practicing Bar is faced with, in a very real and immediate way, the task of understanding and working with the statute. It is for this reason that the Board of Editors of the *Villanova Law Review* decided to conduct this symposium on the Pennsylvania Comparative Negligence Act. It is the hope of the Board of Editors that this symposium will prove to be a valuable aid to both the Bench and the Bar by presenting and analyzing the more troublesome and complex issues raised by the statute.

With this goal in mind, the Editors have assembled a distinguished panel of well-known and well-respected practicing lawyers whose collective experience and scholarship make them eminently qualified to address themselves to this subject. Each of the participants is an active trial lawyer who has a keen interest in and insight into the operation of the statute and its practical consequences.

Mr. Shrager is well known for his active interest in legislation which affects the rights of litigants in personal injury litigation and is therefore especially qualified, together with his associate, Carol Nelson Shepherd, to present the history and development of comparative negligence as a concept and as a law. Because of his own extensive trial experience in this area of litigation, Mr. Shrager is particularly qualified to present his views on practical trial tactics prompted by the statute.

Mr. Timby has lectured and written on this subject,⁵ and because of his study and knowledge of this statute and comparable statutes from other states, he is recognized by many as an authority on the subject. Mr. Plevyak has also worked extensively on the subject of comparative negligence. In their presentation in this symposium, Mr. Timby and Mr. Plevyak have concentrated on the application of the statute to traditional tort actions and claims by discussing what the statute says, what the statute means, and what the courts will probably say it means.

Mr. Griffith, who is deeply involved with complex multi-party litigation in his own practice, enters the very complex area of the

3. *E.g.*, *McCay v. Philadelphia Elec. Co.*, 447 Pa. 490, 495, 291 A.2d 759, 762 (1972); *Railroad Co. v. Aspell*, 23 Pa. 147, 149-50 (1854).

4. *Costa v. Lair*, 241 Pa. Super. Ct. 517, 519, 363 A.2d 1313, 1314 (1976) (per curiam).

5. Timby, *Comparative Negligence*, 48 Pa. B.A.Q. 219 (1977).

statute's application to, and implications for, the multi-defendant law suit. Together with his associate, Mr. Hemsley, they focus primarily on the very troublesome questions of the statute's effect on contribution and indemnity between and among defendants and on the factors to be considered by attorneys in making decisions on the corollary issues of whom to join, whether and when to settle, and what form of release to sign: decisions which are now being made in pretrial and trial matters before the courts have had the opportunity to interpret the statute's effect on these questions. Mr. Griffith and Mr. Hemsley also discuss, as do the other panelists, the possible application of the statute to the nonnegligence tort actions of strict liability, particularly in the area of product liability.

Mr. Beasley and Mr. Tunstall have addressed themselves to the intricate problems of what and how much to tell the jury in actions involving comparative negligence. Mr. Beasley, who is a member of the Supreme Court Committee for Proposed Standard Jury Instructions, brings to the symposium years of successful trial experience before juries and the resultant understanding of the working of juries. He presents and discusses proposed jury instructions for use in multi-defendant and strict liability cases, along with suggested interrogatories to be submitted to the jury.

By tracing the history and development of the statute, by discussing its intended and probable application to standard tort claims, by analyzing its application to multi-defendant cases, and by examining proposed jury instructions and interrogatories, the Editors hope to provide a publication that will serve the Bench and Bar in the days ahead when they will be facing and handling the questions raised and answered by this symposium.

I commend the Board of Editors for presenting this symposium because I believe that by virtue of its excellent content, it is a tremendously helpful and timely answer to a very troublesome need that exists today and will exist in the immediately foreseeable future.