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Tort Law: Joint and Several Liability Under Comparative Negligence

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TORT LAW: JOINT AND SEVERAL LIABILITY UNDER COMPARATIVE NEGLIGENCE — FORCING OLD DOCTRINES ON NEW CONCEPTS

Walt Disney World Co. v. Wood, 515 So. 2d 198 (Fla. 1987)

Respondent was injured on a ride at petitioner's amusement park.[1] Respondent sued petitioner and a jury found respondent fourteen percent at fault, respondent's fiance eighty-five percent at fault, and petitioner one percent at fault.[2] Applying the doctrine of joint and several liability, the trial court entered judgment against petitioner for the full eighty-six percent of damages.[3] The Fourth District Court of Appeal affirmed.[4] On certification,[5] the Florida Supreme Court affirmed, [6] and HELD, adopting comparative negligence did not necessitate eliminating joint and several liability.[7]

Florida judicially adopted the doctrines of contributory negligence[8] and joint and several liability.[9] Under contributory negligence, a negligent plaintiff was barred from any recovery.[10] Even a slightly negli-

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1. 515 So. 2d 198, 199 (Fla. 1987). Respondent's fiance rammed respondent's miniature race car from behind on a grand prix attraction. *Id.*

2. *Id.* The Florida Supreme Court abrogated the contributory negligence doctrine and adopted the pure comparative negligence standard. Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973). Thus, a negligent plaintiff is no longer barred from recovery and a jury is allowed to apportion fault between negligent parties. *Id.* at 438-39. *See* Lawrence v. Florida E. Coast Ry., 346 So. 2d 1012 (Fla. 1977) (juries are required to use special verdicts to allocate fault in all comparative negligence actions).

3. 515 So. 2d at 199. Petitioner could not seek contribution from the other defendant because of family immunity defense. W. PROSSER, LAW OF TORTS 339 (5th ed. 1984).

4. 515 So. 2d at 199. The district court cited Lincenberg v. Issen, 318 So. 2d 386 (Fla. 1975) as controlling. *Id.*

5. *Id.* (the court had jurisdiction pursuant to FLA. CONST. art. V, § 3(b)(4)). The question certified was "DOES THE HOLDING IN *LINCENBERG v. ISSEN* DICTATE AN AFFIRMANCE OF THE TRIAL COURT'S DECISION IN THIS CASE?" *Id.*

6. *Id.* at 202.

7. *Id.* Justice Grimes wrote for the majority. *Id.* at 199. Chief Justice McDonald filed a dissenting opinion in which Justices Overton and Shaw concurred. *Id.* at 202-06. Justice Overton also filed a separate dissenting opinion. *Id.* at 206.

8. Louisville & N.R.R. v. Yniestra, 21 Fla. 700 (1886). *See* 515 So. 2d at 202 (McDonald, C.J., dissenting). Joint and several liability ameliorated the harshness of contributory negligence. *Id.* at 205. Inherent inequities in the tort system required full compensation for innocent plaintiffs. *Id.*

9. Louisville & N.R.R. v. Allen, 67 Fla. 257, 65 So. 8 (1914). *See supra* note 8 and accompanying text.

10. *See* W. PROSSER, *supra* note 3, at 469. Thus the plaintiff bore the burden of an injury caused by at least two people. *Id.*

gent plaintiff had to bear all costs of an injury.[11] The doctrine of joint and several liability[12] evolved concurrently with the contributory negligence doctrine.[13] Under joint and several liability, a plaintiff may recover total damages from any jointly liable defendant. Courts reasoned that injuries are indivisible and fault cannot be apportioned. Therefore, between an innocent plaintiff and negligent defendants, the negligent parties should bear the costs.[14]

Recently, however, the Florida Supreme Court discarded contributory negligence and implemented pure comparative negligence.[15] The supreme court followed a policy-oriented approach and found comparative negligence was a more equitable and socially warranted method of fault and liability allocation.[16] While it did not address the continuing efficacy of joint and several liability, the court noted that problems encountered with comparative negligence should be handled with its purposes in mind.[17] Thus, Florida became the first state to judically adopt comparative negligence.[18]

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11. *Id.*

12. *Id.* at 475.

13. Smith v. Department of Ins., 507 So. 2d 1080, 1091 (Fla. 1987).

14. *Id.* The court stated defendants should bear the risk because they will spread the burden of compensating a plaintiff to all consumers through insurance. *Id.*

15. Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973). A plaintiff's damages are reduced by the proportion of fault attributable to the plaintiff. *Id.* at 436. The court asserted contributory negligence was inequitable to burden one party with the loss when more were at fault. *Id.* In a tort system based on fault, comparative negligence is more consistent because fault is apportioned among negligent parties. *Id.* For example, if a jury finds a plaintiff 20% at fault and two defendants are 70% and 10% at fault, the plaintiff's damages are reduced by 20%. Thus, the defendants are liable for 80% of the total damages. *Id.* at 439.

16. *Id.* at 437. In deciding to abolish the common law doctrine of contributory negligence, the court noted it could modify a rule in the absence of legislation when great social upheaval dictated. *Id.* at 435.

17. *Id.* at 439. The court recognized that adopting comparative negligence affects assumption of the risk and no contribution between joint tortfeasors concepts. However, the court declined to address these issues because the court may not consider unripe issues and a body of Florida case law already exists concerning comparative negligence. *Id.* Comparative negligence was adopted to allow a jury to apportion fault between negligent parties and to apportion total damages according to the percentage of fault of each party. *Id.*

18. Smith v. Department of Ins., 507 So. 2d 1081, 1091 (Fla. 1987). Seven states have judicially adopted the doctrine after Florida: Kaatz v. State, 540 P.2d 1037, *appeal after remand*, 572 P.2d 775 (Alaska 1975); Li v. Yellow Cab Co., 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1973); Alvis v. Ribar, 85 Ill. 2d 1, 421 N.E.2d 886 (1981); Goetzman v. Wichern, 327 N.W.2d 742 (Iowa 1982); Placek v. City of Sterling Heights, 405 Mich. 638, 275 N.W.2d 511 (1979); Scott v. Rizzo, 96 N.M. 682, 634 P.2d 1234 (1981); Bradley v. Appalachian Power Co., 256 S.E.2d 879 (W. Va. 1979). *See* W. PROSSER, *supra* note 3, at 471 n.28.

Shortly, after the change to comparative negligence, the Florida Supreme Court upheld the viability of joint and several liability.[19] In *Lincenberg v. Issen*,[20] two negligent defendents injured an innocent plaintiff.[21] The jury returned a verdict in plaintiff's favor and apportioned fault between the defendents at eighty-five percent and fifteen percent.[22] The court abolished the doctrine prohibiting contribution among joint tort-feasors[23] citing the purpose of comparative negligence[24] and the recently enacted Contribution Act.[25] In dictum, the court interpreted a section of the Contribution Act as fully retaining joint and several liability.[26] Although the court considered different methods of equitable apportionment of damages among tortfeasors,[27] it deferred to the legislature and held the Contribution Act retains

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19. Lincenberg v. Issen, 318 So. 2d 386, 392 (Fla, 1975).

20. *Id.* at 386. The question certified on appeal was

> WHERE THE PLAINTIFF, IN AN AUTOMOBILE INJURY ACCIDENT CASE SUES TWO DEFENDANTS, ALLEGING BOTH TO BE NEGLIGENT RESULTING IN INJURIES TO THE PLAINTIFF, IS IT PROPER FOR THE TRIAL JUDGE TO ALLOW THE JURY TO APPORTION FAULT AS IT SEES FIT BETWEEN THE NEGLIGENT DEFENDANTS, THEREFORE, WAS IT PROPER IN A CASE WHEREIN THE PLAINTIFF SUED TWO DEFENDANTS, ALLEGING EACH NEGLIGENTLY OPERATED TO INSTRUCT THE JURY TO APPORTION FAULT AND SUBMIT THE FOREGOING SPECIAL INTERROGATORIES TO THE JURY?

Id. at 388.

21. *Id.* at 387. Plaintiff was a passenger in a car involved in a collision with defendant's car. *Id.*

22. *Id.*

23. *See* W. PROSSER, *supra* note 3, at 336-41. This doctrine barred a defendant liable for damages from being reimbursed by a jointly liable tortfeasor. *Id.* at 337. Consequently, one defendant bears the entire burden of a judgment. *Id.* at 338. *See also* Note, *Modification of Joint and Several Liability: Who Bears the Risk?*, 11 NOVA L.J. 165 (1986).

24. 318 So. 2d at 390-91. *See supra* note 17 and accompanying text. *See also* Note, *The Modification of Joint and Several Liability: Consideration of the Uniform Comparative Fault Act*, 36 U. FLA. L. REV. 291, 292-94 (1984).

25. FLA. STAT. § 768.31 (1975) (Uniform Contribution Among Joint Tortfeasors Act). This statute abrogated the common law bar against contribution between joint tortfeasors. 318 So. 2d at 392.

26. 318 So. 2d at 392. FLA. STAT. § 768.31 (1975) provides in part, "where two or more persons become jointly or severally liable in tort for the same injury to person or property, or for the same wrongful death, there is a right of contribution among them." *Id.*

27. 318 So. 2d at 392 n.2. The court does not state why it rejected the other alternatives, but chose to uphold the doctrine of joint and several liability because the legislature included it in the Contribution Act. *Id.* The court considered pure apportionment whereby a defendant's apportioned percentage of fault is the defendant's total liability. *Id.* The court also considered retaining joint and several liability and allowing defendants to seek contribution from other defendants based upon their apportioned percentage of fault. *Id.*

joint and several liability. Several decisions affirming the new doctrine cited *Lincenberg* as controlling precedent.[28]

In *Coney v. J.L.G. Industries, Inc.*,[29] the Illinois Supreme Court analyzed the consistency between joint and several liability and comparative negligence.[30] In *Coney*, the defendant in a wrongful death action requested its total liability be limited to its apportioned percentage of fault. In effect, the defendant argued for abrogating joint and several liability.[31] The court refused to abolish the doctrine for policy reasons.[32]

The Illinois court voiced concerns of fairness to plaintiffs. Under comparative negligence, the plaintiff's recovery is reduced by the plaintiff's proportion of fault.[33] Consequently, plaintiffs would suffer an undue burden if their damages were further reduced because a defendant was immune or insolvent.[34] The court concluded wrongdoers should redress the injured party and seek contribution among themselves.[35]

The Kansas Supreme Court looked at fairness to plaintiffs and defendants, and to legislative intent in deciding to abolish joint and several liability in comparative negligence actions.[36] In *Brown v. Keill*,[37] the court found one defendant ten percent at fault and another ninety percent.[38] Under Kansas' comparative negligence statute,[39] the

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28. *See, e.g.*, Borden, Inc. v. Florida E. Coast Ry., 772 F.2d 750 (11th Cir. 1985); Woods v. Withrow, 413 So. 2d 1179 (Fla. 1982). Both courts summarily dismissed assertions that the doctrine of joint and several liability was inconsisent with comparative negligence.

29. 97 Ill. 2d 104, 454 N.E.2d 197 (1983).

30. *Id.* at 119-24, 454 N.E.2d at 204-06. The victim was killed while operating a work platform manufactured by the defendant. *Id.* at 109, 454 N.E.2d at 199. Defendant asserted the victim was negligent in operating the platform and the victim's employer was negligent for not providing sufficient training or a groundman. *Id.*

31. *Id.*

32. *Id.* at 121-24, 454 N.E.2d at 205-06. The court identified four reasons for retaining the doctrine which were first advanced in American Motorcycle Ass'n v. Superior Court, 20 Cal. 3d 578, 578 P.2d 899, 146 Cal. Rptr. 182 (1978). *Id. See* Arctic Structures, Inc. v. Wedmore, 605 P.2d 426 (Alaska 1979); Tucker v. Union Oil Co., 100 Idaho 590, 603 P.2d 156 (1979); Seattle First Nat'l Bank v. Shoreline Concrete Co., 91 Wash. 2d 230, 588 P.2d 1308 (1978).

33. *See supra* note 15 and accompanying text.

34. 97 Ill. 2d at 122-23, 454 N.E.2d at 205.

35. *Id.*

36. *See* Brown v. Keill, 224 Kan. 195, 203-04, 580 P.2d 867, 874 (1978) (Kansas statutorily adopted comparative negligence). The statute was designed to abolish contributory negligence and award damages based on the party's proportionate fault. *Id.* at 197, 580 P.2d at 870.

37. *Id.* at 203, 204, 580 P.2d at 873, 874.

38. *Id.* at 196, 580 P.2d at 869. Defendants were involved in an auto accident. Plaintiff is one defendant's father and seeks a judgment to recover car repair costs. *Id.*

39. KAN. STAT. ANN. § 60-258a (1974).

plaintiff recovered ten percent of the total damages.[40] Plaintiff appealed, contending the trial court failed to apply joint and several liability.[41] The supreme court stated the legislature intended to abolish the doctrine.[42] The court also stated that retaining the doctrine was inconsistent with the purposes of comparative negligence.[43] The unfairness of contributory negligence to plaintiffs had been abrogated.[44] Therefore, the court found no social policy required defendants to account for damages in excess of their percentage of fault.[45]

The instant case provided the Florida Supreme Court with an opportunity to review joint and several liability under comparative negligence.[46] In a four to three decision, the instant court affirmed the district court and upheld joint and several liability in a comparative tive negligence jurisdictions retained the doctrine[48] while others had it judicially or legislatively abolished.[49] Conceding that joint and several liability was judicially created,[50] the instant court nevertheless determined that public policy considerations required legislative resolution of the doctrine's continuing viability.[51] Furthermore, the Contribution

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40. 224 Kan. at 197, 580 P.2d at 869.

41. *Id.* at 200, 580 P.2d at 872.

42. *Id.* at 203-04, 580 P.2d at 873-74. The court cited numerous authorities, cases, and comments to show the legislature's intent. *Id.* The legislature intended to equate obligation to pay to proportion of fault. *Id.* Furthermore, since joint and several liability was no longer viable under comparative negligence, the doctrine of contribution among tortfeasors became unnecessary. *Id.* at 203-05, 580 P.2d at 874-75. Because each negligent party would be liable only for their apportioned percentage of fault, there was no need for contribution. *Id.*

43. *Id.* at 203, 580 P.2d at 874. *See supra* note 36 and accompanying text.

44. 224 Kan. at 203, 580 P.2d at 874. *See supra* note 10 and accompanying text.

45. 224 Kan. at 203, 580 P.2d at 874. The court stated it was inherently unfair to require a defendant who was 10% at fault to bear 100% of the damages. *Id.*

46. 515 So. 2d 198.

47. *Id.* at 198, 202.

48. *Id.* at 201. *See, e.g.*, Arctic Structures, Inc. v. Wedmore, 605 P.2d 426 (Alaska 1979); American Motorcycle Ass'n v. Superior Court, 20 Cal. 3d 578, 578 P.2d 899, 146 Cal. Rptr. 182 (1978); Tucker v. Union Oil Co., 100 Idaho 590, 603 P.2d 156 (1979); Coney v. J.L.G. Indus., Inc., 97 Ill. 2d 104, 454 N.E.2d 197 (1983); Kirby Bldg. Sys. v. Mineral Explorations, 704 P.2d 1266 (Wyo. 1985).

49. 515 So. 2d at 200-01. *See, e.g.*, Brown v. Keill, 224 Kan. 195, 580 P.2d 867 (1978); Bartlett v. New Mexico Welding Supply, Inc., 98 N.M. 152, 646 P.2d 579 (Ct. App.), *cert. denied*, 98 N.M. 336, 648 P.2d 794 (1982); Laubach v. Morgan, 588 P.2d 1071 (Okla. 1978).

50. 515 So. 2d at 200. Justice Overton's dissent stated that the court abdicated its responsibility by letting the legislature decide the fate of a judicially established doctrine. *Id.* at 206.

51. *Id.* at 202.

Act as amended, significantly restricted the doctrine's applicability.[52] The majority refused to abrogate joint and several liability because the legislature did not completely abolish it.[53]

The instant court echoed the *Coney* decision's policy arguments justifying retention of joint and several liability. First, although culpability under comparative negligence may be apportioned between plaintiffs and defendants, the injury remains indivisible.[54] Second, the plaintiff's contribution to personal injury is not tortious conduct, unlike the defendant's negligence.[55] Finally, eliminating the doctrine would seriously impair the plaintiff's opportunity for a remedy.[56] The instant court cited these[57] policy reasons and upheld joint and several liability. Thus, *Lincenberg* and its progeny are still controlling precedent in Florida.

In a vigorous dissent, Chief Justice McDonald criticized the majority for retaining joint and several liability.[58] Applying comparative negligence to plaintiffs while retaining joint and several liability responsibility for defendants constituted a "mismatch of legal concepts."[59] The chief justice advocated repudiating joint and several libility when the comparative negligence doctrine applied.[60] Additionally, the dissent

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52. FLA. STAT. § 768.81 (1987) (provides in part that the doctrine of joint and several liability only applies in actions of less than $25,000).

53. 515 So. 2d at 201-02.

54. *Id.* at 201. *But see* Bartlett v. New Mexico Welding Supply, Inc., 98 N.M. 152, 646 P.2d 579 (Ct. App.), *cert. denied*, 98 N.M. 336, 648 P.2d 794 (1982). The one divisible wrong concept arose from common law pleading and joinder technicalities which are now outdated; therefore, it should not be applied in comparative negligence actions. *Id.* at 158, 646 P.2d at 585.

55. 515 So. 2d at 201.

56. *Id. But see* 98 N.M. at 158, 646 P.2d at 585. The court was bewildered by the fact that an additional defendant would be liable for the fault of another defendant. *Id.* The court suggested if there were just one plaintiff and defendent, the plantiff would bear the burden of the defendant being insolvent or immune. *Id.* However, simply shifting the risk to the defendant with the "deep pocket" would be indefensible. *Id.*

57. 515 So. 2d at 201. Another policy argument made by the *Coney* court concerned the possibility an innocent plaintiff would have to bear some of the loss if the doctrine was abolished. Coney v. J.L.G. Indus., Inc., 97 Ill. 2d 104, 122, 454 N.E.2d 197, 205 (1983). This consideration is not applicable in the instant case since the comparative negligence doctrine only arises in the context of a negligent plaintiff. Moreover, joint and several liability could be retained for non-comparative negligence actions to ensure innocent plaintiffs receive a full recovery.

58. 515 So. 2d at 202-06 (McDonald, C.J., dissenting).

59. *Id.* at 202 (McDonald, C.J., dissenting). Under comparative negligence, the fault of the plaintiff is separated from the fault of the defendants. *Id.* However, in joint and several liability, all defendants are liable for the entire judgment. *Id.* Consequently, opposite theories apply to plaintiffs and defendants. *Id.*

60. *Id.* (McDonald, C.J., dissenting).

faulted the majority opinion for relying on *Lincenberg*.[61] The chief justice argued *Lincenberg* was not relevant and statements concerning the Contribution Act should not have been interpreted to codify joint and several liability.[62]

The dissent called the majority's policy arguments indefensible.[63] According to the chief justice, the common law theory of an indivisible wrong[64] was inapplicable because under comparative negligence, fault is routinely apportioned.[65] Moreover, the dissent disagreed with the majority's contention that joint and several liability be retained to ensure that plaintiffs collect entire judgments.[66] Plaintiffs should now bear the risk of defendants being judgment-proof or insolvent.[67]

The dissent also recognized that joint and several liabiltiy applies to all defendants, not just large corporate defendants which can absorb the costs of an adverse judgment.[68] Even if only slightly negligent, joint and several liability could bankrupt less solvent businesses or individuals.[69] Consequently, the dissent favored abrogating joint and several liability when the plaintiff is not fault-free.[70]

Although the instant court relied on *Lincenberg* as controlling and cited *Coney*'s policy arguments, weaknesses in the cases undermine their precedential value. *Lincenberg*[71] involved a fault-free plaintiff. Joint and several liability ensures that between an innocent victim and negligent tortfeasors, the defendants will bear the costs.[72] Since the *Lincenberg* plaintiff was not negligent, the court discussed retaining joint and several liability under comparative negligence in dictum.

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61. *Id.* at 202-03 (McDonald, C.J., dissenting).

62. *Id.* (McDonald, C.J., dissenting). The chief justice argued a literal reading of the Contributions Act results in application only when joint and several liability is found. *Id.* at 203. Moreover, this was the same interpretation given to the Act by the New Mexico Supreme Court in Bartlett v. New Mexico Welding Supply, Inc., 98 N.M. 152, 154, 646 P.2d 579, 581 (Ct. App.), *cert. denied*, 98 N.M. 336, 648 P.2d 794 (1982), *affirmed sub nom.*, Taylor v. Delgarno Transp., Inc., 100 N.M. 138, 667 P.2d 445 (1983).

63. 515 So. 2d at 204 (McDonald, C.J., dissenting). The chief justice asserted the majority opinion's fundamental justifications were indefensible as totally inconsistent with Florida's modern tort scheme. *Id.* The goal of comparative negligence is to create a tort system that equitably allocates damages. *Id.* at 206. A defendant's liability should be based on damages caused by the defendant, not the defendant's ability to pay. *Id.*

64. *Id.* at 204-05 (McDonald, C.J., dissenting). *See supra* notes 13-14 and accompanying text.

65. 515 So. 2d at 205 (McDonald, C.J., dissenting).

66. *Id.* (McDonald, C.J., dissenting).

67. *Id.* (McDonald, C.J., dissenting).

68. *Id.* (McDonald, C.J., dissenting).

69. *Id.* (McDonald, C.J., dissenting).

70. *Id.* at 206 (McDonald, C.J., dissenting).

71. Lincenberg v. Issen, 318 So. 2d 386 (Fla. 1975).

72. *See supra* notes 13-14 and accompanying text.

Thus the *Lincenberg* decision should not have controlled because the joint and several liability issue was not ripe.[73] The instant court also borrowed policy argument from the *Coney* decision. The *Coney*[74] court, however, failed to consider equity to defendants. By adopting joint and several liability, defendants became liable for all damages while only apportioned liability previously existed.[75] Retaining joint and several liability would thus be unfair to defendants.[76] Courts should also consider fairness to defendants when deciding the viability of joint and several liability in comparative negligence actions. The instant court misplaced reliance on *Lincenberg* and *Coney*, which may result in relitigation of the issue of joint and several liability under comparative negligence.

In contrast, the *Brown*[77] court reached a middle ground, balancing equities between plaintiffs and defendants. The court abolished joint and several liability in comparative negligence situations, but implicitly retained it in actions brought by fault-free plaintiffs. When a plaintiff is innocent, joint and several liability ensures the plaintiff collects the entire judgment. When a plaintiff is negligent, comparative negligence limits the defendants' liabilities to their apportioned percentage of fault. The *Brown* decision, therefore, supports the underlying principle of comparative negligence that each party is liable for their own proportion of fault.[78]

The instant court relied on policy to validate joint and several liability. However, the court may have implicitly sanctioned other policies. As the dissent cogently pointed out, not every defendant is a large corporation with the ability to absorb the loss.[79] Yet the instant decision encourages plaintiffs to sue everyone remotely connected to

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73. *See* Hoffman v. Jones, 280 So. 2d 431, 439 (Fla. 1973). The supreme court stated it was not a proper function of the court to decide unripe issues because of inadequate briefing, lack of an adversarial atmosphere, and lack of a specific factual situation. *Id.*

74. Coney v. J.L.G. Indus., Inc., 197 Ill. 2d 104, 454 N.E.2d 197 (1983).

75. *See supra* note 15 and accompanying text.

76. *See* Note, *supra* note 23, at 165. For example, if a negligent plaintiff and three negligent tortfeasors are each 25% at fault for plaintiff's injuries, and two of the defendants are insolvent, the one solvent defendant will have to pay 75% of the total damages to the negligent plaintiff because the defendants are jointly and severally liable for their cumulative damages. Furthermore, the responsible defendant must seek contribution from the insolvent defendants for reimbursement of 50% of the damages. Since this is highly unlikely, one defendant ends up paying 75% of the damages solely because the other defendants were insolvent.

77. Brown v. Keill, 224 Kan. 195, 580 P.2d 867 (1978).

78. *Id.* at 203, 580 P.2d at 873.

79. *Id.* at 205. *See supra* note 68 and accompanying text.

the injury in hope of finding a "deep pocket."[80] Thus, insurance and litigation costs will increase for both corporate and individual defendants.[81] The cost to society may be great as tort actions force less solvent corporations and individuals into financial turmoil to satisfy judgments.[82]

Second, retaining joint and several liability under comparative negligence will probably increase litigation. Already overburdened court dockets will have to accommodate lawsuits which will invariably arise between defendants seeking contribution from other defendants.[83] Finally, the instant decision may discourage industrial expansion into Florida. Companies may have reservations about expanding into Florida if their slight negligence could subject them to large tort awards. The impact of the instant decision may therefore have unforeseen and unintended ramifications.

The chief justice's dissent and the *Brown* decision offer an alternative analysis to the instant and *Coney* opinions. Under the former analysis, courts should retain the doctrine of joint and several liability for non-comparative negligence actions to ensure that innocent plaintiffs are fully compensated.[84] However, when a plaintiff is also negligent, the equitable principles behind comparative negligence[85] should govern.[86] Parties should only be liable for their apportioned percentage of fault.[87]

Tort liability sometimes results in inequities. Our judicial and legislative systems strive to limit the occasions upon which inequities arise. Thus, Florida became the first state to adopt comparative negligence judicially.[88] While preventing one inequity, the Florida Supreme Court has created another by retaining joint and several liability[89] in comparative negligence actions. No social policy can compel one party to pay for another's fault.[90] Yet, non-fault based compensation occurs because

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80. *See* Note, *supra* note 23, at 165.
81. *Id.* at 191.
82. 515 So. 2d at 205 (McDonald, C.J., dissenting).
83. *See* Note, *supra* note 23, at 165.
84. 515 So. 2d at 206 (McDonald, C.J., dissenting). *See also supra* note 25 and accompanying text.
85. *See supra* note 17 and accompanying text.
86. 515 So. 2d at 206 (McDonald, C.J., dissenting).
87. *Id.* at 202 (McDonald, C.J., dissenting).
88. *See supra* note 18 and accompanying text.
89. 515 So. 2d at 202 (McDonald, C.J., dissenting).
90. *See supra* note 45 and accompanying text.

of the instant decision. Perhaps the supreme court will one day return to their stated purpose for adopting comparative negligence and "apportion the total damages . . . according to the proportionate fault of each party."[91] Until then, however, inequitable judgments like the instant decision will occur.

Armando Garcia-Mendoza

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91. *See supra* note 17 and accompanying text.