Approved February 17, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~a.m.~~/p.m. on January 29, 1987 in room 313-S of the Capitol.

All members were present except:
Representatives Adam, Duncan, Peterson and Solbach, who were excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office

Conferees appearing before the committee:
David Litwin, Kansas Chamber of Commerce and Industry and Kansas Coalition on Tort Reform
Mike Sexton, President, Kansas Trial Lawyers Association, Kansas City
Bill Sneed, Kansas Association of Defense Counsel
Ron Smith, Kansas Bar Association
Mark Bennett, American Insurance Association
Glenn Cogswell, Alliance of American Insurers
Bill Sampson, Coleman Company

At the request of Representative Ben Foster, a motion as made by Representative O'Neal to introduce, as a committee bill, legislation concerning hospital liens upon damages received by a patient, or the patient's heirs, in case of the patient's death.

Hearing on H.B. 2024 - Application of comparative negligence and joint and several liability doctrines. Re Proposal No. 29.

David Litwin testified this bill would make it clear that comparative negligence principles apply to losses other than personal injury or property damage, otherwise referred to as economic loss or pure money damages. He urged enactment of the proposed language to assure that joint and several liability applies only to the specifically listed instances. The bill states that comparative negligence principles apply to any action based on negligence, whether or not the former defense of contributory negligence could have been a bar to recovery. The proposed amendments are intended as codification and clarification of existing law, (see Attachment I).

Mike Sexton testified he would recommend leaving in the bill death, personal injury or property damage, and to add other economic loss. He also recommended not adopting section (f).

Bill Sneed testified in favor of using the term "other economic loss". He also suggested making a separate bill out of joint and several liability.

Ron Smith recommended only the amendment in line 24, and 43-44 be adopted. He further recommended striking "death, personal injury or property damage and inserting "loss". He proposed the other amendments should be striken, (see Attachment II).

Mark Bennett testified the exception starting at line 57 needs to be eliminated because it is inconsistent with the intent, purpose and provision to eliminate joint and several liability, and is not applicable to this situation, (see Attachment III).

Glenn Cogswell testified he had no problem with changing the language in the bill to address the FSLIC v. Huff case.

Bill Sampson suggested it be public policy in Kansas that a person who is found to be intentionally in the wrong and causes injury to someone, is liable for the entire amount of that person's injury, but that someone that contributed to it would not be insulated from responsibility because there is a second person who committed an intentional act. There would be a case against two defendants, one who was merely negligent and one whose intentional conduct caused harm to the plaintiff. It would allow the jury to decide the degree to which each of them caused the harm. As to the merely negligent defendant, the rules of several liability would apply and the plaintiff could recover only that defendant's proportionate share of the damages. As to the intentional wrongdoer, if the plaintiff wanted to recover the entire damages from that person, if he were able to do so, the principles of several liability would be eliminated, and all of the damages could be obtained from that person. If the intentional wrongdoer was unable to respond to damages, for the entire amount, or even his own amount, the injured plaintiff would not be prejudiced as to the merely negligent defendant and could recover, at least, that person's proportionate share.

Hearing on H.B. 2025 - Punitive damage awards in civil actions-Re Proposal No. 29

Bill Sampson testified in support of the efforts of legislature to restrict the availability of punitive damages in Kansas. He spoke in in opposition of retaining wanton conduct as justifying punitive damages. He said retaining the concept of wantonness in Kansas is unclear and ambiguous and is a dangerous opportunity for the recovery of punitive damages in civil cases. He suggested punitive damages be available in only three circumstances, willful conduct, fraudulent conduct or malicious conduct.

Mike Sexton testified in support of H.B. 2025. He suggested deleting informing the jury of the awards to persons in situations similar to those of the claimant. He also suggested adding to subsection (c) the category of breach of fiduciary duty. He stated wanton conduct should be retained.

The Chairman announced the hearings on H.B. 2025 will be continued to a later date.

The meeting was adjourned at 5:20 p.m.

GUEST REGISTER

DATE January 29, 1987

HOUSE JUDICIARY

| NAME | ORGANIZATION | ADDRESS |
|---|---|---|
| Marj VanBuren | OJA | Topeka |
| Mike German | Kansas Railroad Association | Topeka |
| TED Fay | KID | Topeka |
| Ron Smith | KBA | Topeka |
| Bill Sneed | Ks Assn of Def Couns. | Topeka |
| MIKE SEXTON | Ks. TRIAL LAWYERS ASSN | KC, Ks |
| Bob Asbuthnot | K T L A | Topeka |
| T.C Anderson | KSCPA | Topeka |
| Bill Sampson | Coleman Co. | K.C., KS. |
| William L. Mitchell | Alliance / INS. Co's | Hutchinson |
| Mark Kennedy | Am Ins Assoc | Topeka |
| Lori Callahan | am. ins assoc | Topeka |
| Kevin Fowler | KSCPA | Topeka |
| Philip Davidson | K.T.L.A. | TOPEKA |
| Kevin M Hill | OJA | TOPEKA |
| PATRICIA HENSHALL | OJA | TOPEKA |
| Lee WRIGHT. | FARMERS INS. GROUP | MISSION |
| KEITH R LANDIS | CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS | TOPEKA |
| Glenn Cogswell | Alliance of Am. Insurers | Topeka |
| Richard Weston | KTLA | Topeka |

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council


HB 2024 January 27, 1987

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
House Judiciary Committee
by
David Litwin

Mr. Chairman, members of the committee. I am David Litwin, representing the Kansas Coalition for Tort Reform and the Kansas Chamber of Commerce and Industry, a member of the Coalition. We appreciate the chance to testify today in support of HB 2024.

The Kansas Coalition for Tort Reform is a federation of diverse groups that share the view that certain changes in our civil justice system are needed for two general purposes: 1) to make that system more efficient, more just, and less costly, and 2) to provide, over the long term, a more stable environment that would permit the writing of high quality liability insurance at affordable rates.

The Coalition's membership includes the following: Kansas Chamber of Commerce and Industry; Kansas Farm Bureau; Kansas Contractors Association; Independent Insurance Agents of Kansas; Kansas Railroad Association; Kansas Motor Carriers Association; Kansas Society of Architects; Kansas Medical Society; Associated General Contractors of Kansas; Kansas Association of Broadcasters; Kansas Grain and Feed Dealers Association; Kansas Association of Property and Casualty Insurance Cos., Inc.; Kansas Consulting Engineers; Kansas Motor Car Dealers Association; Kansas Lodging Association; Kansas Petroleum Council; Kansas Independent Oil and Gas Association; Kansas League of Savings Institutions; Wichita Independent Business Association; Western Retail Implement and Hardware Association; Alliance of American Insurers; Kansas Telecommunications Association; National Federation of Independent Business/Kansas; Merrell Dow Pharmaceuticals, Inc., Overland Park; Hutchinson Division, Lear Siegler, Inc., Clay Center; Becker Corporation, El Dorado; The Coleman Co., Inc., Wichita; FMC Corporation, Lawrence; Puritan-Bennett Corp., Overland Park; and Seaton Media Group, Manhattan.

Attachment I
House Judiciary 1/29/87

There are several distinct parts to this bill, the only common thread being that all concern the same statute, the comparative negligence statute.

First, the bill would make it clear that comparative negligence principles apply to losses other than personal injury or property damage, or what came to be known during the interim committee's proceedings as "economic loss". It is important to avoid confusion here by understanding clearly that the meaning of this phrase is not at all the same as it is when we speak of proposed limits to recovery for "noneconomic loss". In the present context, we mean simply any losses that do not fall within the concepts of personal injury or property damage, which is to say, pure money damages.

Where there is breach of duty, causing economic loss and resulting from the negligence of more than one party, it does seem good policy to hold each defendant responsible only for his or her proportionate share of the damages, depending on the degree of fault. The alternative is the application of the "deep pockets" theory under which the defendant that has the financial or insurance resources pays heavily, even though his or her contribution to the injury may have been slight. This flies in the face of fundamental principles of fairness and its injustice is one of the two primary policy reasons for the enactment of comparative fault, the other being the unfairness of the doctrine of contributory negligence.

We fail to see any reason, in terms of public policy, why business or economic losses should be treated differently in this respect than personal injury or property damage, and enactment of the bill would negate what the interim committee was advised is an intimation in a Kansas Supreme Court decision that this may not be the case under the statute as presently written.

The proposed amendment in subsection (e), formerly numbered (d), would make it clear that the doctrine of joint and several liability applies only where a loss resulted from intentional or reckless misconduct, or from the delegation of a nondelegable duty. The interim committee states in its report that this part of the bill "is intended as a codification and clarification of existing law and is intended

to insure against any erosion of this doctrine by future judicial interpretation." Report, p. 45.

No doctrine has caused more consternation in the business and professional community than that of joint and several liability, with its corollary, the "deep pockets" theory. The Kansas legislature wisely repealed this rule of law over ten years ago, and the current rule reflects basic, widely-shared views of what is just. We feel strongly that current judicial interpretations, as reflected in the proposed amendment, are fair and sound, and urge enactment of the proposed language to assure that joint and several liability applies only to the specifically listed instances. Where concerted action is intentional or grossly reckless, fairness does dictate application of joint and several liability. Let's make sure however that this doctrine is confined to its present sphere.

Finally, the bill would state expressly that comparative negligence principles apply to any action based on negligence, whether or not the former defense of contributory negligence could have been a bar to recovery. My recollection of the discussion before and by the interim committee last summer is that this proposal addresses strict liability theories of recovery. Current judicial decisions in Kansas hold that comparative fault does apply, so as with the joint liability section of the bill, this section too appears intended to simply codify current judicial law.

Thank you. If there are any questions, I will be happy to answer them.

KANSAS BAR ASSOCIATION

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601
(913) 234-5696

Tuesday,
January 27, 1987
HB 2024

Mr. Chairman. Members of the House Judiciary Committee. I am Ron Smith, KBA Legislative Counsel.

I. KBA believes HB 2024 changes, not simply codifies, our several liability rule in Kansas civil litigation.

II. KBA supports that portion of the bill that clarifies that negligence cases resulting solely in economic loss should have benefit of the several liability statute.

III. KBA supports our current judge made laws concerning the doctrine of several liability.

IV. KBA opposes attempts to codify the current several liability rule if the effect of the codification is to change our current case law concerning the imposition of several liability in Kansas, or make future application of such case law uncertain.

V. The last thing the Kansas insurance scene needs is legislation that effectively repeals or significantly modifies 13 years of case law construing KSA 60-258a, our comparative negligence statute.

Interim Committee Recommendations

As is sometimes the case, the interim committee report revealing intent of the Committee doesn't square with how the bill is written. The interim committee report states:

Attachment II

House Judiciary 1/29/87

> "HB 2024 clarifies that the comparative negligence statute applies in any civil action for damages for negligence resulting in loss regardless of whether the defense of contributory negligence applies. Further, the clarification is added that the doctrine of joint and several liability does not apply except where the loss resulted from an intentional tort, aggravated misconduct, or wanton or reckless misconduct or delegation of a nondelegable duty. The bill is intended as a codification and clarification of existing law and is intended to insure against any erosion of this doctrine by future judicial interpretation. (p. 594, 1986 interim committee report)

I submit rather than codification and clarification, this bill may toss out many the 50+ cases construing comparative negligence in Kansas, and the courts would have to begin again in building reliable case decisions.

HB 2024 changes, not clarifies, comparative negligence in Kansas -- at least as written. As such it would change our case law regarding several liability[1] in Kansas. It may not have been intended that way, but we think it does. We submit nothing could be worse for the instability of our current insurance environment in Kansas than to dramatically change case law holdings through amendments to KSA 60-258a.

In December, I sent copies of the interim bill to members of KBA with personal injury practices -- both plaintiff and defense counsel. Their nearly universal reaction was one of uncertainty over what this bill would do to a particular line of cases upon which Kansas lawyers rely.

Problems

It is difficult to list all potential problems with the bill as drawn. I shall be as brief as possible:

Comparative Negligence verses Comparative Fault

Comparative negligence is not the same as comparative fault. The use of Subsection (f) creates a brand new category of "comparative fault," but in HB 2024 it is called "comparative negligence." Fault is a broader concept than negligence. Fault connotes an act to which any type of blame, censure, impropriety, shortcoming or culpability attaches. Kersey Mgf. Co. v. Rozic, 215 A.2d 323, 325. Negligence, on the other hand, is a less far reaching type of culpability, and is founded on reasonable conduct or reasonable care under all circumstances of a particular case and rests on the duty every person owes to take due care in his or her conduct toward others from which injury may result. See Black's Law Dictionary, 5th Ed., p. 931.

"Fault" is thus a type of harm that goes well beyond mere personal injury cases. It can include intentional as well as negligent acts, acts which cause economic loss as well as that which causes personal injury or property damage. HB 2024 is more of a comparative "fault" bill. Note that the original language of subsection (a) discusses "comparative negligence."

Specific Problems:

I.

Lines 67-68 make the changes applicable to all lawsuits filed after July 1, 1987, rather than the more traditional system of applicability to all those causes of action accruing after the effective date. We suggest "actions filed" be changed to "actions accruing" in line 68.

II.

Note the last sentence of subsection (e) on page 2:

> "In any such action, the doctrine of joint and several liability between joint tortfeasors does not apply except in cases where the loss resulted from [1] an intentional tort, [2] aggravated misconduct, [3] wanton or reckless misconduct, or [4] delegation of a nondelegable duty." (Emphasis and brackets added.)

HB 2024, lines 55-59, says "several liability" applies in any "civil actions based on negligence" -- regardless of previous common law public policy -- except for the four enumerated instances in lines 58-59. There is no mention of cases based on a breach of a fiduciary duty. A breach of fiduciary duty can occur because of negligence. The common law holds joint tortfeasors in breach of fiduciary duty actions jointly and severally liable for economic loss. Subsection (e) by not including breach of fiduciary duty implies that such causes of action should have several liability only. This would change common law and

overrule FSLIC v. Huff, which is NOT a comparative negligence case, but does result in economic loss.

III.

It has been pointed out that everywhere in the bill that "death, personal injury or property damage" appears it has been stricken, and the phrase "loss" inserted. However, in lines 45-46, the phrase remains. We cannot determine why.

IV.

"Aggravated Misconduct" is listed as a type of activity for which joint and several liability would lie (line 58). KSA 38-120 imposes on parents the duty to pay for both the negligent personal or property damage caused by children (limited to $1,000) or actual unlimited medical expenses if the child willfully or intentionally injures a person and the child is found to be "neglected." This is a form of statutory strict liability.

There is no case cited under KSA 60-258a that discusses joint liability for aggravated misconduct under KSA 38-120. However, we believe 38-120 speaks for itself in imposing joint liability on the parents. By placing "aggravated misconduct" in subsection (e), however, anyplaintiff who can allege and prove aggravated misconduct can make the defendant jointly liable. Again, this is not a codification of existing law; HB 2024 is new law.

V.

Subsection (f) is significant change to the post-1974 comparative negligence. It tries to make several liability the rule in Kansas regardless of whether contributory negligence is a bar to recovery. One must imagine concentric circles representing all civil cases filed, a subset of cases that were based on negligence, and a third subset of cases where the common law defense of contributory negligence was available for use.

In 1980, the court held in Arrendondo v. Duckwall Stores Inc., 227 Kan. 842:

> "If contributory negligence or an analogous defense would not have been a defense to a claim, the comparative negligence statute [60-258a] would not apply; if contributory negligence would have been a defense, the statute is applicable." (p. 845)

There are several instances where contributory negligence cases would not be a defense, hence the current comparative negligence statute doesn't apply and the several liability rule does not apply:

1. intentional or wanton conduct (Bowman v. Doherty, 235 Kan. 870, 1984)

2. violations of exceptional statutes (See Arrendondo, above).

3. abnormally dangerous activities, at common law, the defendant conducting same is liable to the plaintiff regardless of contributory negligence. Currently that doctrine is recognized, meaning that the comparative negligence rule does not apply, hence there is joint liability. Rylands v. Fletcher, State Highway Comm. v. Empire Oil, 40 P.2d 355 (1935) But the rule is not absolute: there is Mills v. Smith, 9 Kan. App 2d 80 (1983), where wild animal owner is entitled to make comparison of fault of all parties even though at common law, owners of wild animals were strictly liable for damages caused by the animal, regardless of contributory negligence.

4. Employee assumption of risk cases. Under current comparative fault, assumption of risk is a complete bar to an employee's recovery, even though the employee is only slightly negligent. Jackson v. City of Kansas City, 235 Kan. 278 (a 1984 case construing our Kansas Tort Claims Act). The reason is the Court has held "assumption of risk" was different conduct than being contributorially negligent. If Subsection (f) applies, so that comparative negligence is allowed in all civil actions for damages for negligence REGARDLESS whether the doctrine of contributory negligence was a bar to recovery, then the employee assuming the risk of a job who has a claim against an employer will have a claim against the employer (city) and will collect something rather than nothing. Again, the bill changes current case law.

With HB 2024, subsection (f) says comparative negligence statute and several liability applies regardless whether the old contributory negligence statute would have been a defense. This is not codification of the current rule on joint and several liability; this abolishes joint and several liability where separate public policy has indicated joint liability was appropriate.

An example is FSLIC v. Huff, 237 Kan. 873 (1985). In that case, a director was sued for economic loss suffered when FLSIC paid off depositors of the director's failed S&L. The director breached his fiduciary duty to the bank's stockholders to manage the bank prudently by engaging in loans contrary to stated FSLIC policy. A breach of fiduciary duty is a civil wrong caused by "omission" of a legal or moral duty, or failure to fulfill the duties of an office. Such breaches, according to Black's Law Dictionary, can either be "willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness." The common law holds a person breaching a fiduciary duty jointly and severally liable to the person(s) injured by

the breach, regardless of "negligence." HB 2024 makes this person only severally liable regardless of negligence contrary to Huff.

Other statutes also impose joint liability:

> KSA 17-5812 provides civil and criminal liability for officers and directors of savings and loan associations by their unauthorized or ultra vires acts (which means an act beyond the corporate powers of an officer, director or corporation to perform). The statute infers that the director is jointly and severally liable for acts brought under this statute. Does HB 2024 change this statute by implication, if the director alleges his negligence caused the injury? See FSLIC v. Huff, supra. See also KSA 17-5412, 17-6420, 17-6424 where statutory liabilities of directors of certain corporations for impairment of capital impose joint and several liability on such directors unless they dissent from inappropriate declarations of dividends and have their dissent appropriately recorded.

VI.

There is concern among KBA members that subsection (f) overrules such cases a Broce-O'Dell Concrete Products Inc. v. Mel Jarvis Construction Company, 6 Kan. App. 2d 757 (1981). The Court decided not to apply comparative negligence principles in breach of warranty actions involving simple economic loss. This case held that simple warranty provisions of a contract should not be covered by comparative negligence (and several liability) without other evidence of wrong. Subsection (f) certainly puts a cloud on this case holding.

Suggested amendments:

We suggest only the amendment in lines 24, and 43-44 be adopted. Further in line 45-46, strike "death, personal injury or property dam-

age," and insert "loss". Other amendments should be stricken to return the bill to its otherwise original status.

Conclusion

Mr. Chairman, in summary, HB 2024 is a wonderful lawyer's bill. It will keep many of us employed litigating the new parameters of comparative fault under KSA 60-258a. However, that was not the intent of the interim committee.

Footnotes:

1. Generally, the doctrine of joint and several liability is the exception, not the general rule, in Kansas. "Joint" liability refers to when two or more negligent persons can be looked to individually to satisfy the entire judgment against all joint tortfeasors. "Several liability" is the Kansas rule, and means that each person is only responsible for his or her proportionate degree of negligence, not the whole verdict. Under several liability, the risk there might be uninsured or insolvent tortfeasors falls on the plaintiff. The Kansas several liability rule, which has been the general rule since 1974, is one of the four most restrictive statutes in the country governing when joint liability does, or does not, apply.

BEFORE THE HOUSE JUDICIARY COMMITTEE

January 29, 1987

Mr. Chairman and Members of the Committee:

I am Mark L. Bennett and I represent the American Insurance Association. House Bill 2024 has been assigned to me for discussion before this committee.

The adoption of K.S.A. 60-258a in 1974 and the entry of judgment in 1978 in the case of Brown v. Keill, 224 Kan. 195, 580 P.2d 867, provided a new approach for the recovery by a plaintiff of damages resulting from the people, one or more, whose negligence had caused the damage.

The alleged unfairness of the negligence--contributory negligence approach--was corrected. A negligent plaintiff, not more than 49% negligent, could recover from negligent defendants under the statute. The negligent defendants were required to pay on the basis their negligence bore to the 100% negligence causing the injury. Under (d) of that statute no defendant was required to pay more.

In the Brown case the court held that the statute meant what it said, i.e., "(d) Where the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party shall be liable for that portion of the total dollar amount awarded as damages to any claimant in the proportion that the amount of his causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed." The court in Brown then held the doctrine of "joint and several liability" was revoked by the statute. The doctrine of joint and several liability would require one of multiple defendants to pay more than "the amount of his or her causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed." contrary to the restrictions of the first part of (d). (It will be noted in H.B. 2024 (d) is now carried as (e).)

The intent of the Special Committee on Tort Reform in preparing and recommending this bill for passage in the 1987 session of the Kansas legislature is described in the Report on Kansas Legislative Interim Studies to the 1987 Legislature, dated December, 1986, in 7. thereof at page 594:

Attachment III
House Judiciary 1/29/87

"7. Comparative Negligence. H.B. 2024 clarifies that the comparative negligence statute applies in any civil action for damages for negligence resulting in a loss regardless of whether the defense of contributory negligence applies. Further, the clarification is added that the doctrine of joint and several liability does not apply except where the loss resulted from an intentional tort, aggravated misconduct, or wanton or reckless misconduct or delegation of a nondelegable duty.

"The bill is intended as a codification and clarification of existing law and is intended to insure against any erosion of this doctrine by future judicial interpretation." (Emphasis supplied)

At the start of its progress through the interim Special Committee on Tort Reform, H.B. 2024 was designated as 7RS0046. Its first typing included the sentence "In any such action the doctrine of joint and several liability between joint tortfeasors does not apply." Some objection was made to that language unless it be qualified, and subsequently the bill was retyped completely eliminating the foregoing sentence. Upon further consideration, however, the Special Committee on Tort Reform re-inserted the sentence in the following words: "In any such action the doctrine of joint and several liability between joint tortfeasors does not apply except in cases where the loss resulted from an intentional tort, aggravated misconduct, wanton or reckless misconduct or delegation of a nondelegable duty."

It was my understanding during all of these proceedings that it was the intention of the Special Committee on Tort Reform that the legislature in 1987 codify the proposition that the doctrine of joint and several liability between joint tortfeasors does not apply in negligence cases as held in Brown v. Keill.

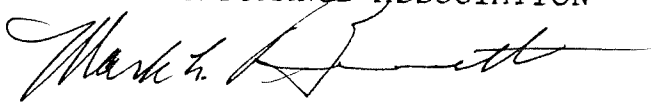
We believe the codification of this proposition is important to Kansas industry and that the holding in Brown v. Keill should be codified; however, we have had problems in understanding whether or not that end is being obtained by the present language in this bill in view of the exceptions made starting at line 57 of the bill. We believe the problem in this regard arises from the fact that the court in Brown held that in negligence cases, the adoption of K.S.A. 60-258a (d)

effectively repealed joint and several liabilty in negligence cases.

In codifying that decision the insertion of the sentence starting at line 55 statutorily eliminating the doctrine of joint and several liability, without the exception starting at line 57, is desirable. The exception starting at line 57 needs to be eliminated because it is inconsistent with the intent, purpose and provision to eliminate joint and several liability, and is not applicable to this situation. For example, by using the first words in the exception, i.e., "intentional tort" we go outside the scope of the problem, i.e., application of joint and several liability of negligent parties. An intentional tort is <u>not</u> a "careless" act or an act which a reasonably prudent man would not commit but it is a deliberate and intentional act causing injury. Thus the exception is outside the scope of the problem of joint and several liability resulting from an act of negligence and has no place in consideration of this problem. The other exceptions have a similar infirmity. As a result the exceptions being inappropriate should be eliminated from the act.

Respectfully submitted,

AMERICAN INSURANCE ASSOCIATION



Mark L. Bennett