HINSHAW

News

In Second Op-Ed, Levitt Reviews Evolution of Fault Apportionment Scheme in Illinois

May 15, 2020

In a follow-up to their initial op-ed calling for a change to the fault apportionment scheme in Illinois, Hinshaw partner David Levitt and Donald Eckler of Pretzel & Stouffer, review the historical evolution of fault apportionment in the state.

The authors describe a "collision of law and politics" that followed a 1981 decision by the Illinois Supreme Court to abandon the common law contributory negligence fault scheme.

In 1986, the Illinois legislature adopted a modified form of comparative negligence, in which the trier of fact could decide the defendants' percentage of fault by considering "fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third-party defendant who could have been sued by the plaintiff." In 1995, the legislature eliminated joint and several liability and replaced it with a pure several liability scheme that was subsequently declared unconstitutional.

Since that decision, the authors describe a series of court decisions and legislative actions that have resulted in a scheme that leaves a minimally responsible defendant jointly and severally liable if a major at-fault party happens to be a dismissed or settled defendant, or is the plaintiff's employer.

The authors conclude that "[i]t hardly achieves the end of justice to have the jury evaluate fault without the presence, or the ability to even consider, all of the potentially at fault persons when assessing fault." To restore fairness to the civil justice system in Illinois, they argue that SB 3148 should be passed to return to the original intention of the 1986 modified comparative negligence scheme.

Read the full op-ed on the *CDLB* website (*subscription required*)

"State's fault scheme evolution shows collision of law, politics" was published by the *Chicago Daily Law Bulletin*, May 6, 2020.

Attorneys

David H. Levitt

Offices

Chicago