

## Joint and Several Liability By State

Certain exceptions may apply and law is subject to change. Contact White and Williams LLP for additional information at 215-864-6322.

### ■ ALABAMA

Joint and several liability. A tortfeasor whose negligent act or acts proximately contribute in causing an injury may be held liable for the entire resulting loss. Holcim (US), Inc. v. Ohio Cas. Ins. Co., 38 So.3d 722 (Ala. 2009).

### ■ ALASKA

Several liability. The court shall enter judgment against each party liable on the basis of several liability in accordance with that party's percentage of fault. Alaska Stat. § 09.17.080(d).

### ■ ARIZONA

Several liability. Each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be entered against the defendant for that amount. Ariz. Rev. Stat. § 12-2506(A). Exceptions: each defendant is responsible for the fault of another person if the two were acting in concert to commit an intentional tort, if the other person was acting as agent or servant of the party, or the party's liability for the fault of another person arises out of a duty created by the federal employers' liability act. Ariz. Rev. Stat. § 12-2506(D).

### ■ ARKANSAS

Several liability. In any action for personal injury, medical injury, property damage, or wrongful death, the liability of each defendant for compensatory or punitive damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault. A separate, several judgment shall be rendered against that defendant for that amount. Ark. Code Ann. § 16-55-201.

### ■ CALIFORNIA

Modified joint and several liability. In any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, tortfeasors are held jointly liable for economic damages and severally liable for non-economic damages. The term "economic damages" means objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities. The term "non-economic damages" means subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation. Cal. Civ. Code § 1431 and 1431.2. However, in strict liability cases involving only damage caused by a defective product, where all of the defendants are in the same chain of distribution, defendants are jointly responsible for all the plaintiff's damages, reduced only by the plaintiff's comparative fault. Bostick v. Flex Equip. Co., Inc., 54 Cal. Rptr. 3d 28 (Cal. Ct. App. 2007); but see Romine v. Johnson Controls, Inc., 169 Cal. Rptr. 3d 208 (Cal. Ct. App. 2014) (recognizing a split of authority over the apportionment statute's application to strict liability cases).

### ■ COLORADO

Modified joint and several liability. In tort actions for death or injury to person or property, no defendant shall be liable for an amount greater than its percentage of the negligence. If two or more individuals conspire to commit a tort, there is joint and several liability, but only up to the degree of fault attributed to the co-conspirator(s). Colo. Rev. Stat. § 13-21-111.5.

### ■ CONNECTICUT

Generally: Several liability. In negligence actions, each party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the damages. If a plaintiff is unable to collect from a liable tortfeasor, the court shall reallocate the uncollectable share among the remaining tortfeasors in proportion to their percentage of liability. Conn. Gen. Stat. § 52-572h(c), (g). Products liability: common-law joint and several liability. Conn. Gen. Stat. § 52-572o; Allard v. Liberty Oil Equip. Co., Inc., 756 A.2d 273 (Conn. 2000) (stating that § 52-572h's apportionment principles do not apply to complaints based on principles other than negligence).

### ■ DELAWARE

Joint and several liability. Plaintiffs may collect the full amount of a judgment from any joint tortfeasor. Del. Code Ann. tit. 10, § 6301; Christiana Care Health Services, Inc. v. Crist, 956 A.2d 622 (Del. 2008); Leishman v. Brady, 3 A.2d 118 (Del. Super. Ct. 1938).

### ■ DISTRICT OF COLUMBIA

Joint and several liability. When two tortfeasors jointly contribute to harm to a plaintiff, both are potentially liable to the injured party for the entire harm. National Health Laboratories, Inc. v. Ahmadi, 596 A.2d 555 (D.C. 1991).

### ■ FLORIDA

Several liability for negligence actions, including strict liability, products liability, and professional malpractice. For these actions, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability. In a negligence action to which Fla. Stat. § 768.81 applies (other than personal injury and wrongful death actions arising out of medical negligence pursuant to chapter 766) any party found to be greater than 50% at fault for his/her own harm may not recover any damages. Joint and several liability for intentional acts and for economic damages caused by pollution. Fla. Stat. § 768.81.

### ■ GEORGIA

Several liability. Damages apportioned by the trier of fact shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution. This applies to all persons who contributed to the injury regardless of whether they are named a party. Ga. Code § 51-12-33.

### ■ HAWAII

Modified joint and several liability. Joint and several liability is generally abolished. Exceptions include (1) economic damages in personal injury cases; (2) both economic and non-economic damages in actions involving: (a) intentional torts; (b) environmental torts; (c) toxic and asbestos-related torts; (d) aircraft-related torts; (e) products liability; and (f) most motor vehicle cases. In other cases, joint and several liability is preserved for non-economic damages arising from personal injury or death if one tortfeasor is 25% or more negligent. Haw. Rev. Stat. § 663-10.9.

### ■ IDAHO

Modified joint and several liability. Joint and several liability is limited to circumstances where two or more parties act together in the commission of an intentional or reckless tortious act or where a person acts as an agent of another party. Idaho Code § 6-803.

### ■ ILLINOIS

Modified joint and several liability. For damages other than medical expenses, several liability if defendant is less than 25% at fault; joint and several liability if defendant is 25% or more at fault. For medical expenses, joint and several liability. 735 Ill. Comp. Stat. 5/2-1117. Joint and several liability for environmental claims. 735 Ill. Comp. Stat. 5/2-1118.

### ■ INDIANA

Several liability. To determine the liability of each defendant, the jury determines the percentage of fault attributable to each party and any non-party, then multiplies that percentage times the amount of damages. Ind. Code § 34-51-2-8; Ind. Code § 34-20-7-1 (products liability claims). Several liability created by the Comparative Fault Act does not apply in medical malpractice actions. Ind. Code § 34-51-2-1; Cavens v. Zaberdac, 849 N.E.2d 526 (Ind. 2006).

### ■ IOWA

Modified joint and several liability. No joint and several liability for a defendant found to be less than 50% at fault. A defendant found to be 50% or more at fault shall only be jointly and severally liable for economic damages but not for noneconomic damages. Iowa Code § 668.4.

### ■ KANSAS

Several liability. When 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 such party's causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed. Kan. Stat. Ann. § 60-258a.

### ■ KENTUCKY

Several liability. Liability for each tortfeasor is limited to equitable share of the obligation to each claimant in accordance with the respective percentages of fault. Ky. Rev. Stat. Ann. § 411.182.

### ■ LOUISIANA

Modified joint and several liability. A joint tortfeasor shall not be liable for more than his degree of fault unless joint tortfeasors conspire to commit an intentional or willful act. La. Civ. Code Ann. art. 2324.

### ■ MAINE

Joint and several liability. In cases involving multiple defendants, each defendant is jointly and severally liable to the plaintiff for the full amount of the plaintiff's damages. Me. Rev. Stat. tit. 14, § 156.

### ■ MARYLAND

Joint and several liability. Concurrent tortfeasors are held jointly and severally liable to prevent the absurd result that would follow from burdening plaintiffs with apportioning damages in cases of indivisible injury. Consumer Prot. Div. v. Morgan, 874 A.2d 919 (Md. 2005).

### ■ MASSACHUSETTS

Joint and several liability. A plaintiff injured by more than one tortfeasor may sue any or all of them for her full damages. Shantigar Foundation v. Bear Mountain Builders, 804 N.E.2d 324 (Mass. 2004).

### ■ MICHIGAN

Modified joint and several liability. In an action seeking damages for personal injury, property damage, or wrongful death involving the fault of more than one person, liability is several only and not joint. A person shall not be required to pay damages greater than his percentage of fault. In medical malpractice actions, if the plaintiff is without fault, or if the plaintiff has fault but a judgment against one defendant is uncollectible, the defendants may be jointly and severally liable. Mich. Comp. Laws §§ 600.6304, 600.6312 (criminal conduct).

### ■ MINNESOTA

Modified joint and several liability. Several liability unless (1) defendant's fault is greater than 50%; (2) two or more persons act in a common scheme or plan; (3) defendant commits an intentional tort; or (4) liability arises under one of several environmental statutes. Also, uncollectible amounts can be reallocated among the parties. Minn. Stat. § 604.02.

### ■ MISSISSIPPI

Modified joint and several liability. The liability for damages caused by two or more persons shall be several only, and not joint and several. A joint tortfeasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault. Joint and several liability with a right of contribution shall be imposed when two or more persons conspire to commit a tortious act. Miss. Code Ann. § 85-5-7.

## ■ MISSOURI

Modified joint and several liability. Several liability if the defendant is found less than 51% liable. Joint and several liability if the defendant is found 51% or more liable. Mo. Rev. Stat. § 537.067.

## ■ MONTANA

Modified joint and several liability. If a party is found to be 50% or less negligent, that party is liable for contribution only up to the percentage of negligence attributed to him. If a party is greater than 50% liable, then there is joint and several liability. Parties acting in concert or as principal/agent may be jointly liable. Mont. Code Ann. § 27-1-703; see Mont. Code Ann. § 27-1-705 (discussing several liability in certain situations and allocation of fault to non-parties).

## ■ NEBRASKA

Modified joint and several liability. When two or more defendants act as part of a common enterprise or in concert to cause harm, the liability of each such defendant for economic and noneconomic damages shall be joint and several. In any other action involving more than one defendant, the liability of each defendant for economic damages shall be joint and several and the liability of each defendant for noneconomic damages shall be several only. Neb. Rev. Stat. § 25-21,185.10. But cf. Neb. Rev. Stat. § 25-21,239 (leased trucks).

## ■ NEVADA

Modified joint and several liability. Where the plaintiff is not at fault, joint and several liability applies. Buck v. Greyhound Lines, Inc., 783 P.2d 437 (Nev. 1989). In cases where the plaintiff is comparatively negligent, each defendant is severally liable only for that portion of the judgment which represents the percentage of negligence attributable to that defendant unless the action is based upon (1) strict liability; (2) an intentional tort; (3) the emission of a hazardous substance; (4) the concerted acts of two or more defendants; or (5) an injury to any person or property resulting from a product. Nev. Rev. Stat. § 41.141. The owner of a motor vehicle is jointly and severally liable for the negligent operation by a family member. Nev. Rev. Stat. § 41.440.

## ■ NEW HAMPSHIRE

Modified joint and several liability. Joint and several liability in all cases where the parties are found to have knowingly pursued or taken an active part in a common plan resulting in harm. In other cases, joint and several liability only for defendants 50% or more at fault. N.H. Rev. Stat. Ann. § 507:7-e.

## ■ NEW JERSEY

Modified joint and several liability. Defendants found 60% or more liable are jointly and severally liable. If liability is less than 60%, then defendant is only severally liable. Joint and several liability is imposed for environmental tort cases, except where the extent of negligence or fault can be apportioned. In such a case and where the recovering party is unable to recover the percentage of compensatory damages attributable to a non-settling insolvent party's negligence or fault, that amount of compensatory damages may be recovered from any non-settling party in proportion to the percentage of liability attributed to that party. N.J. Stat. Ann. § 2A:15-5.3.

## ■ NEW MEXICO

Modified joint and several liability. Each defendant is generally liable for only his share of the negligence. Joint and several liability shall apply (1) to defendants acting with the intention of inflicting injury or damage; (2) to defendants whose relationship to each other would make one person vicariously liable for the acts of the other; (3) to defendants who are strictly liable for the manufacture and sale of a defective product; or (4) to any other situation with a strong public policy for imposing joint and several liability. N.M. Stat. § 41-3A-1.

## ■ NEW YORK

Modified joint and several liability. Generally, defendants are jointly and severally liable, but in personal injury cases, defendants are only responsible for their actual share of non-economic damages if that defendant's percentage of liability is 50 percent or less. The 50 percent exception does not apply in a number of circumstances – including motor vehicle cases, cases of recklessness, pollution, strict product liability when the manufacturer is outside the court's jurisdiction, and in cases of intentional torts in which the defendants acted in concert. N.Y. C.P.L.R. §§ 1601 and 1602; Rangolan v. County of Nassau, 749 N.E.2d 178 (N.Y. 2001).

## ■ NORTH CAROLINA

Joint and several liability. Joint and several liability is allowed when (1) defendants have acted in concert to commit a wrong that caused an injury; or (2) defendants, even without acting in concert, have committed separate wrongs that still produced an indivisible injury. G.E. Betz, Inc. v. Conrad, 752 S.E.2d 634 (N.C. Ct. App. 2013).

## ■ NORTH DAKOTA

Modified joint and several liability. When two or more parties are found to have contributed to the injury, the liability of each party is several only. Each party is liable only for the amount of damages attributable to the percentage of fault of that party. "Fault" includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, failure to avoid injury, and product liability, including product liability involving negligence or strict liability or breach of warranty for product defect. Persons who act in concert in committing a tortious act are jointly liable for all damages attributable to their combined percentage of fault. N.D. Cent. Code § 32-03.2-02.

## ■ OHIO

Modified joint and several liability. In tort cases: several liability for non-economic losses. For economic losses, several liability if fault is 50 percent or less; joint and several liability if fault is greater than 50 percent or if tort is intentional. Ohio Rev. Code Ann. § 2307.22. Principal and agent shall constitute a single party when determining percentages of tortious conduct in a tort action in which vicarious liability is asserted. Statutory modifications do not affect joint and several liability not grounded in tort. Ohio Rev. Code Ann. § 2307.24.

## ■ OKLAHOMA

Several liability. For causes of action arising on or after November 1, 2011 in any civil action based on fault and not arising out of contract, a joint tortfeasor

is liable only for the amount of damages allocated to that tortfeasor. Actions brought by or on behalf of the state are excepted. 23 Okla. Stat. § 15.

## ■ OREGON

Modified joint and several liability. Liability is several and not joint, although if one party's share is uncollectible, that share may be reallocated to the other defendants on the basis of that defendants respective percentage of fault. Liability may be joint and several in cases involving hazardous materials and pollution. Or. Rev. Stat. § 31.610.

## ■ PENNSYLVANIA

Joint and several liability for causes of action accruing before 6/28/2011. 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. 1976, July 9, P.L. 855, No. 152; DeWeese v. Weaver, 880 A.2d 54 (Pa. Commw. Ct. 2005) (finding legislative amendment imposing modified joint and several liability unconstitutional) aff'd, 906 A.2d 1193 (Pa. 2006).

Modified joint and several liability for causes of action accruing on or after 6/28/2011. Defendants found 60% or more liable have joint and several liability. If liability is under 60%, then defendant is only severally liable. Joint and several liability is also imposed for an intentional misrepresentation, an intentional tort, release of a hazardous substance, and a liquor licensee's violation of the Liquor Code, 47 Pa. Stat. § 4-497. Any defendant who is so compelled to pay more than his percentage share may seek contribution. 42 Pa. Cons. Stat. § 7102(a.1).

## ■ RHODE ISLAND

Joint and several liability. A plaintiff may recover 100 percent of his or her damages from a joint tortfeasor who has contributed to the injury in any degree. Roberts-Robertson v. Lombardi, 598 A.2d 1380 (R.I. 1991); R.I. Gen. Laws § 10-6-2 (defining a joint tortfeasor).

## ■ SOUTH CAROLINA

Modified joint and several liability. Subject to certain exceptions, see S.C. Code Ann. § 15-38-15(F), joint and several liability does not apply to any defendant whose conduct is determined to be less than 50 percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of the plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact. S.C. Code Ann. § 15-38-15.

## ■ SOUTH DAKOTA

Modified joint and several liability. If the court enters judgment against any party liable on the basis of joint and several liability, any party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party. S.D. Codified Laws §§ 15-8-11; 15-8-15.1.

## ■ TENNESSEE

Modified several liability. For all causes of action accruing on or after 7/1/13: Several liability only, with joint-and-several exceptions for civil conspiracy, claims for strict product liability or breach of warranty among manufacturers, and vicarious liability. Tenn. Code Ann. § 29-11-107. For causes of action accruing before 7/1/13: Joint and several liability abolished by the Supreme Court. McIntyre v. Balentine, 833 S.W.2d 52 (Tenn. 1992).

## ■ TEXAS

Modified joint and several liability. If a defendant's percentage of the damages is 50% or less of the total liability, the defendant is only responsible for his percentage of responsibility. A defendant is jointly and severally liable, however, if: a) that defendant's percentage of responsibility is greater than 50%, or b) the defendant, with specific intent to do harm to others, acted in concert with another person to commit certain specified, intentional torts, including murder, sexual assault, fraud or other felonies of the third degree or higher. Tex. Civ. Prac. & Rem. Code § 33.013.

## ■ UTAH

Several liability. Defendant is liable only for the percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant. Utah Code Ann. § 78B-5-820. However, if the fault attributable to immune defendants is less than 40%, the fault of the immune defendants shall be reallocated to the other at-fault defendants. Utah Code Ann. §§ 78B-5-818(2); 78B-5-819(2).

## ■ VERMONT

Modified joint and several liability. Multiple joint tortfeasors are jointly and severally liable except where: a) the plaintiff is comparatively negligent, and b) multiple tortfeasors are found liable in one action. Where the plaintiff is comparatively negligent and recovery is allowed against more than one defendant, each defendant is liable only for his percentage of the negligence attributed to all defendants against whom recovery is allowed. 12 Vt. Stat. Ann. § 1036; Plante v. Johnson, 565 A.2d 1346 (Vt. 1989).

## ■ VIRGINIA

Joint and several liability. Where separate and independent acts of negligence of two parties are the direct cause of a single injury to a third person and it is impossible to determine in what proportion each contributed to the injury, either or both are responsible for the whole injury. Dickenson v. Tabb, 156 S.E.2d 795 (Va. 1967); Va. Code Ann. § 8.01-443.

## ■ WASHINGTON

Modified joint and several liability. Liability is several, but joint and several liability applies if the defendants acted in concert; if a person acted as an agent or servant of the party; if the plaintiff was not at fault; as well as in cases of hazardous waste, tortious interference with contracts or business relations, and the manufacture or marketing of fungible products which contain no clearly identifiable shape, color or marking. Wash. Rev. Code § 4.22.070.

## ■ WEST VIRGINIA

Modified joint and several liability. Effective May 25, 2015, several liability for compensatory damages. However, joint liability for two or more defendants who

**WEST VIRGINIA** (continued)

conspire or design to commit a tortious act or omission. W. Va. Code § 55-7-13c(a). Joint liability also applies to a vicariously liable defendant, W. Va. Code § 55-7-13d(b), and to a defendant driving under the influence, who committed a crime, or whose conduct constituted an illegal disposal of hazardous waste. W. Va. Code § 55-7-13c(h). Uncollectible judgments may be reallocated among other parties found to be at fault. W. Va. Code § 55-7-13c(d)(1). In cases of medical malpractice, liability is several, not joint. W. Va. Code § 55-7B-9. In a case in which a political subdivision is a defendant, each defendant is jointly and severally liable if 25 percent or more negligent; severally liable if less than 25 percent negligent. W. Va. Code § 29-12a-7.

■ **WISCONSIN**

Modified joint and several liability. The liability of each person found to be causally negligent whose percentage of causal negligence is less than 51% is limited to the percentage of causal negligence attributed to him. A person whose percentage of liability is 51% or greater is jointly and severally liable. Two or more persons who act in accordance with a common scheme or plan are jointly and severally liable. Wis. Stat. § 895.045. Joint and several liability does not apply to punitive damages. Wis. Stat. § 895.043. In products liability cases, the liability of a party in the chain of distribution may be several, not joint. See Wis. Stat. § 895.046.

■ **WYOMING**

Several liability. Each defendant is liable only to the extent of its proportion of total fault. Wyo. Stat. § 1-1-109.

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