

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1384

S.P. 438

In Senate, March 5, 1997

An Act to Reform Procedure in Multiparty Lawsuits.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

2 not constituting an enforceable express consent, misuse of a
3 product for which a party otherwise is liable and an
4 unreasonable failure to avoid harm.

5 C. In determining relative fault, in percentages or
6 otherwise, the trier of fact must consider both the nature
7 of the conduct of each party at fault and the extent of the
8 causal relation between the conduct and the damages claimed.

9 D. Legal requirements for causal relation apply both to
10 fault as the basis for liability and to contributory fault.

11 3. Harm. "Harm" means an injury, death, damage or loss
12 sufficient to sustain a legal action based on fault.

13 4. Party. "Party" means a person, who at the time the
14 plaintiff's right of action accrues, is potentially liable on the
15 basis of fault to pay damages either to the plaintiff directly or
16 in contribution to another for the same harm. "Party" includes
17 not only those who are before the court but also those who may
18 have been brought without immunity before a court with
19 jurisdiction to impose a fault-based award for the plaintiff's
20 harm.

21 5. Plaintiff. "Plaintiff" means the party that is entitled
22 to make a claim for damages and is so identified in this chapter
23 regardless of whether suit is actually filed and regardless of
24 the procedure by which the claim may be asserted in court, such
25 as, in a counterclaim or cross-claim.

26 6. Settling defendant. "Settling defendant" means a
27 defendant that is released by the plaintiff under an agreement
28 that precludes the plaintiff from collecting against that
29 defendant.

30 7. Tort-feasor. "Tort-feasor" means a party that is liable
31 on the basis of fault to pay damages either to the plaintiff
32 directly or in contribution to another for the same harm.
33 "Tort-feasor" may include, when the context requires, a party
34 whose fault-based liability arises in contract from breach of
35 warranty or under similar circumstances.

36 **§172. Plaintiff's fault; effect**

37 1. Bar. In a claim for harm that results partly from fault
38 attributable to the plaintiff and partly from fault attributable
39 to other parties, the claim is barred if the plaintiff's fault is
40 equal to or greater than that of all other parties to the claim.
41

2 2. Reduce recovery. When fault of the plaintiff is less
3 than that of the other parties, the plaintiff's recovery must be
4 reduced to the extent that is just and equitable regarding the
5 plaintiff's share of fault for the harm.

6 3. Failure to mitigate. The plaintiff's failure to
7 mitigate damages after a wrong has occurred is not contributory
8 fault, but such failure may reduce the total damages that
9 plaintiff can claim that were proximately caused by those found
10 liable for the initial harm.

12 **§173. Procedure for reduction**

14 1. Recovery reduced. When the plaintiff is entitled to a
15 recovery that is reduced for contributory fault, the trier of
16 fact must, unless otherwise agreed by all parties:

18 A. Find the total damages that the plaintiff is entitled to
19 recover if contributory fault is disregarded;

20 B. Reduce the total damages by dollars and cents to an
21 amount determined just and equitable regarding the
22 plaintiff's share of fault; and

24 C. Return both amounts with the knowledge that the lesser
25 figure is the final verdict.

28 **§174. Joint and several liability; findings**

30 When 2 or more defendants are found liable upon the same
31 indivisible claim for the same harm, each defendant is jointly
32 and severally liable to the plaintiff for the full amount of the
33 plaintiff's recovery. Upon timely request of any party, the
34 trier of fact must find in percentage terms the equitable share
35 of fault contributed by each tort-feasor. When the liability of
36 one party is purely vicarious to that of another or when justice
37 otherwise requires, the court may determine that 2 or more
38 parties are to be treated as one.

40 **§175. Right of contribution**

42 1. Existence of right. Except as otherwise stated in this
43 section, when 2 or more parties are at fault for causing the same
44 harm to the same plaintiff there is a right of contribution among
45 the parties even though judgment has not been recovered against
46 all or any of the parties.

48 2. Assertable. The right of contribution may be determined
49 and enforced either in the original action or by a separate
50 action brought for that purpose.

2 3. Basis for claim. The basis for contribution is each
3 tort-feasor's equitable share of the joint obligation. The right
4 of contribution exists only in favor of a tort-feasor who has
5 paid more than the equitable share of the common liability and is
6 limited to the amount of the payment in excess of the equitable
7 share.

8
9 4. Insolvency. If a joint tort-feasor lacks capacity to
10 pay the equitable share, then the resulting loss is distributed
11 among the parties remaining in proportion to the parties'
12 respective equitable shares.

13
14 5. Intentional tort-feasors. There is no right of
15 contribution in favor of any tort-feasor who has intentionally
16 caused the harm.

17
18 6. Arising from settlement. Contribution is available to a
19 joint tort-feasor that enters into a settlement with the
20 plaintiff only:

21 A. If the liability of the party against whom contribution
22 is sought is extinguished; and

23 B. To the extent that the amount paid in settlement is
24 reasonable.

25
26
27 7. Liability insurers. A liability insurer, who by payment
28 has discharged in full or in part the liability of a tort-feasor
29 and has by payment discharged in full its obligation as insurer,
30 is subrogated to the tort-feasor's right of contributions to the
31 extent of the amount it has paid in excess of the tort-feasor's
32 equitable share of the common liability. This provision does not
33 limit or impair rights of subrogation arising from any other
34 relationship.

35
36 8. Indemnity. When one tort-feasor has a right of
37 indemnity against another, neither has the right of contribution
38 against the other.

39
40 9. Breaches of trust. This section does not apply to
41 breaches of trust or breaches of other fiduciary obligations.

42
43 **§176. Enforcement of contribution rights**

44
45 Contribution rights are enforced as follows.

46
47 1. Upon motion. If proportionate fault among joint
48 tort-feasors is previously established, a party paying more than

2 its equitable share may recover judgment for contribution upon
3 motion.

4 2. Separate action. If proportionate fault among joint
5 tort-feasors is not established, contribution may be enforced in
6 a separate action, regardless of whether a judgment is rendered
7 against either the party seeking contribution or the party from
8 whom contribution is sought.

10 3. Assertable after judgment. If a judgment is rendered
11 against the tort-feasor seeking contribution, the action for
12 contribution must be commenced within one year after the judgment
13 is final.

14 4. Assertable if no judgment. If judgment is not rendered,
15 the party bringing the action for contribution either must have:

18 A. Discharged by payment the common liability within the
19 period of the statute of limitations applicable to the
20 claimant's right of action and commenced the action for
21 contribution within one year after payment; or

22 B. Agreed while action was pending to discharge the common
23 liability and within one year after the agreement paid the
24 liability and commenced an action for contribution.

26 5. Effect of judgment and recovery. A plaintiff's recovery
27 of a judgment against one tort-feasor does not discharge other
28 tort-feasors from liability for the same claim unless the
29 judgment is satisfied. Satisfaction of the judgment does not
30 impair rights of contribution.

32 6. Binding effect. A judgment that determines the
33 equitable shares of liability for 2 or more tort-feasors who are
34 parties to the judgment is bonding among the tort-feasors in
35 determining the tort-feasors' respective rights to contribution
36 for those damage claims that are the subject of the judgment.

38 **§177. Release of joint tort-feasors**

40 When recovery is sought for harm caused by 2 or more
41 parties, a release of one or more of the parties does not bar a
42 claim against the other parties. Evidence of a prior release or
43 settlement is not admissible on issues of liability or damages in
44 a subsequent trial. If the plaintiff is awarded a verdict in
45 such a case, the judge shall reduce the plaintiff's recovery by
46 deducting, for each prior settlement, the lesser of the following:
47

2 1. Consideration for settlement. The value of the
3 consideration given to the plaintiff for settlement with the
4 released party; or

6 2. Equitable share. The released party's equitable share
7 of the joint obligation if it was determined by the trier of fact.

8 **§178. Partial proportional settlements**

10 If any defendant is released by the plaintiff under an
11 agreement that precludes the plaintiff from collecting against
12 remaining parties that portion of any damages attributable to the
13 settling defendant's share of responsibility, the following rules
14 apply.

16 1. General rule. A settling defendant is entitled to be
17 dismissed with prejudice from the case. Unless otherwise
18 ordered, this dismissal bars all related claims for contribution
19 or indemnity assertable by remaining parties.

20 2. Postsettlement procedures. The trial court shall
21 preserve for the remaining parties a fair opportunity to
22 adjudicate the liability of the dismissed defendant. Remaining
23 parties may continue to conduct necessary discovery against a
24 settling defendant and may invoke evidentiary rules at trial as
25 though the settling defendant were still a party.

26 3. Binding effect. To apportion responsibility in the
27 pending action for claims that were included in the settlement
28 and presented at trial, a finding on the issue of the settling
29 defendant's liability binds all parties to the suit, but such a
30 finding does not have a binding effect in other actions relating
31 to other damage claims.

32 4. Postverdict adjustments. If a plaintiff recovers a
33 verdict against any of the nonsettling parties, the court shall
34 reduce the plaintiff's judgment by the amount determined at trial
35 to be attributable to the settling defendant's equitable share of
36 fault if any was found. If no finding was requested, the court
37 shall reduce the plaintiff's judgment by the value of the
38 consideration given to the plaintiff's judgment by the value of
39 the consideration given to the plaintiff for the settlement.

40 5. Exceptions. If special circumstances dictate that the
41 issues can not be adjudicated fairly without fuller participation
42 of the settling defendant, the court may grant relief as
43 necessary to protect the rights of the remaining parties for good
44 cause shown. An order for relief may include that:

