SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 1, 1977

The meeting was called to order at 8:10 a.m. Senator Close was in the chair.

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Gojack
Senator Foote
Senator Sheerin

ABSENT: None

SB 365 Grant privilege against disclosure of communications between life insurance underwriters and clients.

Don Heath, Life Insurance Agent stated he has had 6 years experience in the field and 4 years in management, so he feels he can see both sides of the business. He feels this is a good bill, but there are a few minor problems. His concern is the protection and respecting of information given by a client. This would in no way impede the information given that is necessary to approve an application. The way the bill stands now one could get that impression. What we are concerned about is the information that surounds the work we do; accounting, information contained in legal documents, information of a legal nature, information that the client my never have shared with anyone other than the life insurance agent and may not want to share with too many others. This information is needed to properly analyze and identify the insurance needs and problems of the client. Often times, in an interview, we are asked to treat information as confidential and there is nothing in the law to let us do that.

Senator Dodge stated that he felt that most people go to the insurance agent with the knowledge that this information might possibly have to be revealed. There are proposals almost every session for confidentiality and generally the Federal Government has placed a greater emphasis on the right of privacy of information.

Senator Bryan asked if there was any other privilege akin to this in any other type of business relationship other than an attorney/client, doctor/patient, etc.?

Mr. Heath stated that not as far as he could tell. But they had consulted NRS on the professions and felt very strongly that there should be some degree of assurance on the part of both the practitioner or agent and his client or customer. The information that is requested by the company to under-

write an application or to give approval or deny approval, is all that we really forward. For example a divorce is in the offing, or there is a special beneficiary, those kinds of things. Maybe the underwriter doesn't need to know these things, but for the agent to deal realistically with it he needs the information.

Senator Close asked if there were any other states that had this?

Mr. Heath stated he didn't know.

Milo Terzich, representing the American Life Insurance Association stated that they are opposed to this bill as written. It is too broad. The primary objection is that in making or obtaining applications for insurance, the agent is just that. He acts as an agent for a principal and cannot have a priviledged communication with his client. The information that goes to an agent must go to the principal regarding the application or anything to do with the obtaining of insurance. We understand that the purpose of this bill is to limit it to estate planning services and we have no objection to that. Anything, however, to do with the application for insurance or any communications relating to that should not be priviledged.

Jim Wadhams, Life Actuary, Insurance Division stated that his office neither supports nor opposes the bill. They feel it is important to bring to the attention of the Committee, should the bill be passed, that an amendment should be added excluding from this privilege investigations or examinations carried out by the Insurance Commissioner. The Legislature has mandated that the Insurance Commissioner, in an effort to protect the interest of the public, have the the power to examine an agents books and records to make sure he is compling with the laws of the State of Nevada. If an exception to this is not made clear in the law, then that closes the door and would potentially subvert the states power to protect the policyholders in Nevada.

Senator Dodge moved to indefinitely postpone.
Seconded by Senator Ashworth.
Motion carried unanimously.

AB 288 Requires public offenders to pay costs of medical treatment under certain conditions.

Assemblyman Nick Horn, District 15 stated that prior to coming to the Legislature, he had an opportunity to tour the Clark County jail. He talked to several of the guards on duty who informed him of a perplexing problem. As an example, if I were driving down the stree and someone plowed into the back of my car, who happened to be under the influence of alcohol and I was taken to the hospital with whiplash, he was taken to the hospital with cracked ribs. I would be

forced to pay my own medical expenses, either myself or my insurance company. Now the public offender who had been booked for drunk driving and had plowed into the back of my car, his bill is picked up by the taxpayer. This bill simply requires that the public offender pay his own medical bills. This bill also allows that the court may order, as a condition of probation or suspension of sentence, that the criminal make restitution. The guards on duty at the county jail also informed me of the large sums of money that were extended for prisoners with pre-existing conditions. Such as dental care, bridge work, gall bladder, etc. The taxpayer foots these bills as well. Under current law it would almost be worthwhile for a pregnant woman to get arrested just prior to giving birth, so that the taxpayer could pick up the tab. In regard to collecting these hospital bills, I really don't think it should be the roll of the police officers to put on the hat of a bill collecter. This bill also outlines explicitly, who would pay for what.

Bart Jacca, Assistant Sheriff, Las Vegas Metropolitan Police Dept. stated that they are in favor of the bill. Legislation was passed in 1975 upon law enforcement agencies throughout the state, to be responsible to assume all pre-existing conditions of illness or injury for those individuals who we took into custody. In the instance of our department alone the fiscal year after the bill was adopted and we were directed by the Police Commission to assume that responsibility, we spent $200,280 in our department alone, for pre-existing conditions. One example was a parapelgic who came into our custody and we spent $15,653.95 for his treatment while he was in our custody. In the instance of an individual who shot a robbery suspect in the process of a robbery, that suspect cost $17,774.59 while he was in our custody. We will assume the responsibilities for treatment of injurys sustained through his arrest and while he is in custody. We will take care of any treatment for infectious or contagious disease that is contracted while he is in custody. We will take care of those examinations that are naturally predicated or mandated upon us by law. We believe however, that the prisoner should be responsible for his previous conditions, and the law as amended would give us that capability. He stated that Bill Schooley from Washoe County Sheriff's Dept., Chief Hill from Sparks Police Dept. were here with him in support of this bill. Also, Sheriff Rasner of Carson City Sheriff's Dept. wished to support this also, but he had to testify in another committee. The only problem they had with the bill was on line 28, they would like it changed to read "Commissioners shall pay the cost of the medical treatment from County funds". This would remove it from the indigent fund category and give them much more flexibility.

Senator Dodge stated he had one problem with this bill.

If you incarcerate a person, you remove from him the ability to make a living, so on the question of indingency, my only concern would be if there is a limited income by virtue of the fact that you have him locked up, where do you place the priorities of feeding the family or paying the doctor bill. You could go in and attach, but then you might be depriving the guys family of food and necessities.

Mr. Jacca stated that was a concern to them, but it does give the capability for the hospital to do what you are talking about and additionally go to the insurance carrier and in many instances they do have insurance.

Norm Peterson, Assistant Administrator at Washoe Medical Center stated that they are in support of the bill they too have one problem, without going into detail, the most important part of the legislation is that there is a more equitable apportionment of financial responsibility. Often times there are insurance monies available and we feel that when this does exist, it is really unfair to put it on as a part of the taxpayers burden.

Bob Warren, League of Cities stated that he has surveyed the cities on this as to the dollar amounts and the types of pre-arrest injuries and sickness that the cities were paying for. He found this amount to be significant. We feel that the citizens are already paying for the support of the hospitals once and they should not have to pay for them again and pay the cities police departments extra costs in paying these medical costs.

Tom Moore, Deputy District Attorney for Clark County stated that there have been negotiations with the Metropolitan Police Department as to amendments on this bill and they concur with the statements of Mr. Jacca. The only problem they have is where a state agency is the arresting entity. The Wellman situation would be most graphic of that. The cost was somewhere around $40,000 for his treatment, which was caused by bullet wounds by the Nevada Highway Patrol and the county picked up the bill. If it is possible he would like the bill amended to provide that injuries caused by state agencies would be chargable to the state agency.

Senator Dodge moved amend and do pass, as suggested to draw on general county funds rather than the indigent funds.
Seconded by Senator Gojack.
Motion carried unanimously.

SJR 15 Proposes constitutional amendment to prohibit denial or abridgment of rights on account of sex.

Kate Butler, Coordinator of Nevadans for ERA stated they are in support of this bill and submitted her testimony for the record (see exhibit A).

Senator Dodge stated that a few years ago Karen Hayes offered an amendment to a state provision which was similar to what was called the Hayden modification, which sought to give some preferential rights and protections to mothers. As I understood it the pro-ERA lobbyists insisted that come out of the federal amendment, and as I recall it that came out when that suggestion was made in the state constitution. Is that correct?

Ms. Butler stated that is correct. There cannot be a limitation on equality and by limiting equality we will not have equality. Our basic thrust is equality and based on the record will show you that the pro-ERA movement has brought about the greatest benefits for women, mothers, single women and working women. However, equality cannot be compromised, so we take the position of what is equal for both men and women.

Sue Wagner, Assembly District 25 stated that she is here to support SJR 15 and feels that the State of Nevada should go on record as supporting equal rights for all human beings. A State Constitutional amendment would be an important affirmation of our public policy in the state. Having served in the Assembly Judiciary Committee two terms, I have listened to many arguments against a national amendment. Federal intervention came through as being the most important concern. This resolution would represent none of those fears.

Senator Foote stated she had some published material that she wished placed in the record (see exhibit B, C and D).

Senator Dodge moved for indefinite postponement.
Seconded by Senator Ashworth.
Motion carried, voting was as follows:

AYE:	Senator Ashworth	NAY:	Senator Bryan
	Senator Close		Senator Gojack
	Senator Dodge		Senator Sheerin
	Senator Foote		

SB 379 Provides for joint liability of multiple defendants for damages in certain tort actions.

Kent Robison, Lawyer from Reno stated that he is here on behalf of the Nevada Trial Lawyers Association, to express their support of SB 379. The obvious purpose is to eliminate the provision which we now have under the comparative negligence statute which calls for several liability among joint tortfeasors and replace that provision which calls for joint and several liability among joint tortfeasors. The bill also asks for the elimination of the requirement to put the burden on the jury to apportion liability among joint tortfeasors, in relationship to their specific degree of fault. We have three statutes which have to be considered when look-

ing at the proposed legislation. First we have the comparative negligence statute that exists in the no fault law. 698.310 presumably the comparative negligence statute applies to the situation where we have a claim arising out of the operation of a motor vehicle. It has no requirement as does 41.141 to apportion the liability among the joint tortfeasors. All that statute says is that the jury shall consider the cumulative negligence of the defendants and compare that to the negligence if any, or the plaintiff. We believe that is the intent and that is the primary thrust of a comparative negligence statute, and that it should compare the plaintiff's negligence against the combined negligence of the defendants. So right off we have an inherent inconsistency between the no fault comparative and the general comparative. In addition to that we have the problem that exists between the comparative negligence and the joint contribution among joint tortfeasors provision. That provision sets forth the proposition that you shall not consider the respective degrees of fault among joint tortfeasors when you come down to apportioning how much each defendant must pay. In a brief that has been prepared by J. Wourwine on behalf of Baker and Drake, a case recently tried in Reno, Mr. Sourwine argued that there is no conflict whatsoever between the contribution act and the general comparative negligence act. It was his theory in this memorandum that the general comparative negligence act's function is to compare the combined negligence of joint defendants against the negligence of the plaintiff. Once that is established and if the plaintiff is entitled to recovery, then you go to the contribution act and total up the pro-rata liability of the joint tortfeasors. Presumably there should be no conflict, or one statute repealing the other and that they were intended to exist in harmony. I therefore, adopt Mr. Sourwines contentions that the general comparative negligence was intended to give the jury an instrument by which they can compare the combined negligence of the defendants against the negligence of the plaintiff. 6 states go under the contribution situation where relative degrees of fault are considered. The remaining states, including Nevada, does follow their suggestions as contained in the uniform contributions among tortfeasors act and suggest the relative degrees of fault should not be considered. When we come down to a very complex litigation, with multi-parties on both sides, the court jury and indeed the lawyers have a tremendous degree of difficulty in preparing the special verdicts that the jury should consider. A case in example is the recent Sundowners case, where the complexity of the verdict forms were incredible because they had some fifteen defendants, and the jury under NRS 41.141 was instructed to consider the relative degree of fault of each specific defendant. A near impossible verdict which is set forth in an affidavit now on the post trial proceedings that the jury had an incredible time trying to apportion the respective degrees of fault among all those defendants.

Senator Dodge stated he would like to be clear about the options of financial recovery on the part of the plaintiff.

Mr. Robison stated that if the jury came back and apportioned liability among five defendants at 20% each, under the existing statute, one would argue: I can take the judgement and I have to go against each defendant individually. But we feel that is not exactly correct if you look at the contribution statute.

Senator Dodge asked if under a joint, you could get any of them for 100% and what is the equity of that?

Mr. Robison stated the defendants come under the contribution act and share their liability in accord with that act.

Senator Dodge said then you put the burden on the defendant in that case, who only has a 20% amount of the negligence, to recover from his defendants.

Mr. Robison stated that right now under the contribution act it says "except as otherwise provided in 17.215 and 17.325 inclusive, where two or more defendants become jointly and severally liable". So even now if they are severally liable they still have to come in under the contribution act and share the burden of distributing that liability.

Norman Robison, Deputy Attorney General for the State of Nevada assigned to the Dept. of Highways who is here to testify with Norman Herring their research assistant. They are basically in favor of the bill and presented some written amended language into the record (see exhibit E).

Virgil Anderson with Tripple A stated that he had an amendment he wished to submit to the Committee in case the bill were to pass (see exhibit F).

George Vargas, American Insurance Association stated he agrees with the amendment just presented by Mr. Anderson. Their only concern is with the implication of imposing on a person, who might be held in for a very minor amount of negligence, the total bill. His other concern is that there are only 17% to 40% of the drivers on the road that are insured, so the burden will fall on those drivers that are insured, and that will inevitably raise the cost of insurance and he feels inequitably

Bob Warren, Nevada League of Cities stated that the pockets of the cities are becoming rather empty and so they would support the amendment that would retain the present law that would keep us from becoming liable for more than our equitable share of the burden.

Daryll Cappuro, Nevada Motor Transport Association stated that they are in opposition to this bill. They are 100%

insured as required by the Inter-State Commerce Commission and the Nevada Public Service Commission. Therefore our exposure on the highways is probably the greatest of any single group of individuals in the State of Nevada. As an example you have an accident involving drivers A, B, C and D. It was found that A was 40% responsible, driver B was 30% negligent, driver C was 25% negligent and driver D (truck driver for a major company) was found to be 5% negligent. The application of this language here, in the event that driver C with 25% negligence, actually more negligence than the lowest percent, has a right under comparative negligence to file suit. It is possible that drivers A and B are uninsured motorists and have no assets whatsoever that you can get to. Obviously the trucking comapny is heavily insured, at this point it is possible that the individual who had 5% of the liability could be paying 75% of the award of the jury or of the judge. Now this amount is reduced by the plaintiffs negligence which was 25% so the remainder of it could be picked up by the trucking company.

Tom Moore, representing Clark County and the Nevada Association of County Commissioners wished to state that they are in opposition to this bill and concur with the amendments should it be considered.

Dick Garrod, Farmers Insurance Group stated that they are in support of Mr. Anderson's proposed amendment.

After some discussion by the Committee Senator Bryan moved an amend and do pass, going with the AG's bill and see if anything is needed in Virgil's bill and come out with best amendment.
The motion was seconded and carried unanimously.

SB 286 Provides for recovery of welfare payments made for dependent children.

See Minutes of 3/28/77.

Senator Close stated that they would go through the handout from the last meeting as that would be exactly the way the bill would read in amended form. He asked if there was any problem with the age, as if the child is going to college he can receive welfare payments until he is 21. The Committee after some discussion decided to leave the age as is. There was some question on the amount that the person coming in should pay. Senator Close stated that perhaps they could rephrase it to say "an amount up to a sum determined in accordance with the formula", that would give it some flexibility. It would be any sum that they agree upon up to that amount. Senator Bryan question if they want to add in there that the obligator must agree. Senator Sheerin felt that you could never get them to agree. Senator Close stated his problem was that maybe the payments were too high

if the husband had two families that he was supporting. The Committee, after some discussion, felt that puting a limit on it was good and they should check with the Welfare Dept. to see if this would be satisfactory to them.

As they had to go into session the meeting was adjourned and they would meet back here at 12:30 to continue discussions.

Respectfully submitted,

Virginia C. Letts

Virginia C. Letts, Secretary

APPROVED:

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MELVIN D. CLOSE, JR.
CHAIRMAN

I am Kate Butler, Coordinator of Nevadans for ERA.
I appear today in support of SJR 15.

We support the language of this proposed amendment to our State constitution as being a concise and clear prohibition of governmental discrimination on the basis of sex, similar to the proposed 27th Amendment to the US Constitution.

We believe that this resolution, contrary to the proposal embodied in AB 301, is a constitutionally sound and proper use of the vote of the people of Nevada on the issue of equal legal rights for both women and men. It provides the people a binding, and therby meaningful, vote on the principle of equality. By contrast, AB 301 is nothing more than a poll at taxpayer expense without force of law and places no obligation upon the legislature.

Admittedly, this proposed state ERA is no substitute for the national Equal Rights Amendment. It confines equality under law to the boundaries of the state, affords no protection to Nevadans from discriminatory law or pratice promulgated by the federal government, and offers no equal opportunities or protection to Nevadans who by desire or necessity take residence in any of the other 49 states of this county.

It is not our position that legislators ~~xxxtbexxeeoplx~~ choose between this state amendment and the national amendment. If ~~passx~~ SJR 15 is passed by this and the subsequent session of the Nevada legislature, the people's vote on the state amendment would come in the election of 1980, which follows the deadline for ratification of the national ERA. If the 27th amendment has been passed by that time, the vote of Nevadans on a state ERA would be either a confirmation or a denial of the principle without force of law. If the national amendment has not passed, it would at least offer Nevadans a chance to provide themselves a limited equality. The decision on Nevada's ratification of the national ERA would remain in the 1979 session, as is prescribed by the US Constituion, a legislative responsibility.

The men who wrote the Nevada Constitution slightly over a century ago, did not believe in equality under law for men and women. Since those times, ~~protexxiom~~ equalprotection and opportunity has gradually been extended to women on a piecemeal basis through court decision and constitutional and statuatory change at both the federal and state levels. The push for the national ERA has excellerated the effort to eliminate sexual discrimination in the Nevada Constitution and NRS, and we have seen good changes in such things as employment law, credit and housing opportunities, and community property rights. We still have a long ways to go in our review and revision of discriminatory law, administrative rulings and governmental practice. SJR 15 would set a constitutional framework for future legislation, would offer guidance for interpretaion and enforcement of the good laws we have fought hard to obtain and would make possible comprehensive revisions of discriminatory laws not yet eliminated. It would also eliminate the possibility that benefits gained for women could be wiped out in future legislative sessions. It is a logical step in the progress that we have made to date.

With the exception of the obvious inabioity of Stop-ERA to use the argument of federal intervention, a primary objection of the opposition

Exhibit A

Dear Fellow Worker:

The injustices described on the preceding pages are the result of the Federal Equal Employment Opportunity Act of 1972 which says that employers cannot discriminate on the basis of sex.

We thought that meant "equal opportunity" and "equal pay for equal work." We were wrong. It means "equal compulsion." It means forcing women to do men's work that women are not physically able to do.

Some companies are using the law as an excuse to cut expenses by depriving women workers of extra coffee and lunch breaks, larger restrooms, sofas in restrooms, and the option about overtime. Other companies are using the law as an excuse to get rid of women employees over age 40; they just assign them to jobs they physically cannot do, and when the women quit "voluntarily," they don't get unemployment compensation.

The new attitude of the men is becoming: "If you want equality, sister, we'll give it to you in spades." Most companies don't care what the women want; their attitude is: "We must force women to take men's jobs, or we'll be in trouble with the Government."

These problems can all be solved by changing the 1972 law in order to allow men and women to be treated differently for physical-labor jobs. The Air Force Surgeon General reported in 1976 that "an average woman has only 60 percent of the strength of an average man." It is a grievous injustice to force women to do the same physical jobs that men do.

But IF the EQUAL RIGHTS AMENDMENT is ratified, all this injustice and nonsense will be locked forever into the U.S. Constitution.

E.R.A. is the biggest fraud that ever came down the pike. It is promoted by a handful of women who sit at comfortable desks and never lift anything heavier than a stack of papers and already have well-paying jobs. Why should we be forced to pay for their "psychological lift" with our aching backs?

It's time for every working woman to stand up and say, "I want my right to be treated like a woman. ERA should be called the TWERP Amendment: Terminate Women's Extra Rights and Privileges."

Sincerely,

Naomi McDaniel

President, Women of Industry

the REAL WORLD of the WORKING WOMAN

Exhibit B

Ouch! Don't Treat Me Like A Man!

"I've been a supermarket clerk for 20 years. Now I've been ordered to report in at 4:00 A.M. and unload the grocery truck. The temperature has been 11 below zero, and snow and ice are on the dock. I'm a widow 50 years old and I can't afford to quit." *--R.S., Illinois*

"The government ordered our company to have a combined seniority list for men and women. When some workers were laid off, we women were reassigned to men's jobs that require heavy lifting, pushing and pulling. The majority of us do NOT want these jobs. We've been put through a physical, emotional and nervous strain by being forced to do them. We've been writing letters to public officials, but getting nowhere. They tell us the Pennsylvania Equal Rights Amendment nullified all the laws that used to protect us."
--A.L., Pennsylvania

"Every week, army women come to me complaining that they are put on men's jobs such as outside work with shovels and axes. When the women enlisted, they expected to have women's work such as clerks or laundry workers. They don't like being treated like male soldiers." *--Rev. R.C., North Carolina*

"I call the Equal Rights Amendment the liftin' and totin' bill. More than half of the black women with jobs work in service occupations; if the Amendment becomes law, we will be the ones liftin' and totin'."
--J.N., National Council of Negro Women

"It will need more than the 19th Amendment to convince me that there are no differences between men and women, or that legislation cannot take those differences into account." *--Justice Oliver Wendell Holmes*

"Only those who are indifferent to the exacting aspects of women's industrial life will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about 'Equal Rights'."
--Justice Felix Frankfurther

"After 13 years' service, the company assigned me to a man's factory job. I couldn't do the job so they terminated me, and I lost all my seniority. I can't collect unemployment compensation because the employer claims I refused to work. The fact is, I just couldn't do a man's work. At my age, I can't find another job with the wages and benefits I had." *--J.J., Ohio*

"After 25 years of office work, two women in our office were scheduled as janitors in the factory. This means scrubbing floors covered with grease, oil and dirt, cleaning the restrooms and the men's urinals in the plant."
--M.P., Illinois

"The Teamsters Union says that women truckdrivers on overnight trips must stay in the trucking company's terminal facilities where there are only community showers and toilets. The company had been paying for the women drivers to stay in motels, but one male driver complained that was sex discrimination."
--UPI Dispatch

Once the Washington State ERA was passed, the protective legislation for women and children dating from 1913 which restricted such things as enforced overtime work, provided for water and cots in restrooms, limited lifting of weights, etc., was voided. "We're facing a whole new period. It's not the old sweatshop, but the new modern sweatshop."
--C.G., Washington

If you think things are bad now, that is nothing to what working conditions will be if the Equal Rights Amendment is ever ratified! Every company will then be *constitutionally* compelled to treat women and men absolutely equal -- without *any* allowance for differences between women and men in physical strength or family obligations.

Write us about your own experiences in being forced to do men's jobs. We will send you information about the Equal Rights Amendment. Write to:

Mrs. Naomi McDaniel
EAGLE FORUM
Box 618
Alton, Illinois 62002

6490 n.d.c

ERA: Politics of desperation

Patrick Buchanan

650

WASHINGTON — Feminist backers of the "Equal Rights Amendment" have lost in the arena of public opinion. They have failed to convince the country of the necessity or wisdom of what they wish to do to the U.S. Constitution.

The evidence is everywhere. Last month, in an embarrassingly slanted ABC "documentary" booming ERA, opponents — who include former U.S. Senator Sam Ervin and ex-governor Ronald Reagan — were variously described as ultra-conservatives, far rightists and Communists. This is the politics of desperation. When your case is strong, your arguments persuasive, your cause advancing, you do not savage the opposition with slanders and smears.

ERA's failure to win over America was driven home more poignantly during the amendment's recent losing battle in the North Carolina Senate.

State Sen. Bobby Lee Combs, a minister, who had pledged that he would vote against ERA, was heading into the Senate to make good on his word. "My people are two-to-one against it," he said. Then, no less a personage than the President of the United States got on the phone directly to cajole the Rev. Combs to break faith with the people. "I put my head down and cried," said the senator, "It was the President."

But Sen. Combs did not break faith. He voted the way he had promised the people of western North Carolina he would vote — and ERA went down to defeat.

For this writer, that incident pretty much sums it up. When a proposal has popular support you do not need a President of the United States twisting the arms of state legislators.

This shameful episode reflects no credit whatsoever on the President. If Mr. Carter wishes to squander the moral authority of his great office, there is no better way than to use his prestige persuading state legislators to betray their constituents and their consciences, on the most important vote many will ever cast.

Nor is this the only evidence ERA's support is eroding. Even its most avid adherents must concede that the more widely it has been debated, the more broadly it has been discussed, the smaller its base of support.

In 1972, ERA easily swept both Houses of Congress. Before the year was out 22 states had ratified. Eight more followed in 1973, three more in 1974. With five years to go and only five states left, ratifications seemed a certainty. Then, however, people began to study the matter more closely, to take a second look at what they were about to do to the Constitution. From that day forward, ERA has been in trouble.

Since 1974, two states have ratified the amendment; but three others have rescinded earlier ratification. Despite the relentless propaganda of the big media, the boiler room operations run out of the Ford and Carter White House, progress has proceeded at a snail's pace. In 1975, when the people of New Jersey and New York were given an opportunity to vote statewide on ERA, the former rejected it by a clear majority, and New York, perhaps the most liberal state in America, sent it down to defeat by a crushing 400,000 votes.

ERA does not, today, have anything approaching the broad public support the forefathers wanted for an amendment — which would alter the founding document of this republic.

ERA's only hope now is, through arm-twisting, log-rolling and presidential power politics, to ram ERA through three more state legislatures. Which is a helluva way to go about changing the U.S. Constitution.

As for that gathering majority which opposes ERA, they will have to pray that — in the state legislatures of Illinois and Missouri, Oklahoma and Florida — there are enough men and women of the moral and political courage of the Rev. Billy Lee Combs. (Footnote: On Tuesday, the Missouri Senate rejected the amendment).

Reno Evening Gazette 3/17/77

Choose Carefully

Editor, Nevada State Journal:

Many have properly lamented the division which was manifest in our state because of the proposed Equal Rights Amendment to the Constitution of the United States.

Our nation was similarly divided at its beginnings in 1776. The Freemen, those who favored individual rights versus the Kingmen, those who favored increased government interference. Fortunately for us, the Freemen won and established a Constitution and a Bill of Rights that strictly limited and restrained the power of the federal government.

Unfortunately, there is no permanent victory in the human struggle of Freemen versus Kingmen. The battle still rages in 1977 as we see that the proponents of Big Brother and Big Government have torn the constitutional restrictions on their power to shreds.

Tyranny never comes with a banner on its breast declaring its intentions. It always comes as a wolf in sheep's clothing camouflaged by banners such as safety, ecology, welfare, equal rights, etc., that the unwary and unsuspecting good people get hooked on.

With the adoption of each slogan we [illegible] the increase in taxes and the proliferation of bureaucracy to "take care of the people." We see BLM, OSHA, EPA, IRS ad nauseum.

ERA is, of course, primarily a bleeding heart slogan to commandeer another gigantic increase in federal bureaucratic snoopervision and has caused a division of the House. This division was as most apparent within the Democratic Party and is absolutely necessary if freedom is to survive.

The Republican Party, choked to death by Kingmen is gasping its last breath. The Democratic Party, held together by blind tradition, is separating into two camps — Kingmen versus Freemen. This division will continue as ranchers, miners, casino employes, small businessmen and middle class American taxpayers, facing extinction as Freemen, will of necessity choose sides.

The day is nigh at hand when we will all choose sides just as obviously as was done in Carson City with ERA. The day of the fence straddler is gone. Choose carefully which side you serve — the [illegible] and freedom hang in the balance.

[illegible] Daniel M. Hansen

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

April 1, 1977

Dear Senators:

Please find enclosed copies of the proposed amendments to NRS 17.295 and NRS 41.141, with reference to the law of comparative negligence and contribution among joint tort feasors; and also please find enclosed a copy of the recent California case of American Motorcycle Association v. Superior Court.

Sincerely,

ROBERT LIST
Attorney General

By Norman Y. Herring
Norman Y. Herring
Legal Researcher

NYH:llr

SUMMARY--Conforms law relating to contributions among joint tortfeasors to comparative negligence law. (BDR 2-468)
Fiscal Note: Local Government Impact: No.
State or Industrial Insurance Impact: No.

AN ACT relating to contribution among tortfeasors; conforming law relating to contributions among joint tortfeasors to comparative negligence law; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 17.295 is hereby amended to read as follows:

17.295 In determining the pro rata shares of tortfeasors in the entire liability:

1. Their relative degrees of fault shall [not] be considered [;] only when the degree of fault has been determined under NRS 41.141 or 698.310;

2. If equity requires, the collective liability of some as a group shall constitute a single share; and

3. Principles of equity applicable to contribution generally shall apply.

Sec. 2. NRS 41.141 is hereby amended to read as follows:

41.141 1. In any action to recover damages for injury to persons or property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.

2. In such cases, the judge may, and when requested by any party shall instruct the jury that:

(a) The plaintiff may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

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(b) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for his contributory negligence.

(c) If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.

(d) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.

3. Where recovery is allowed against more than one defendant in such an action [:

(a) The defendants are severally liable to the plaintiff.

(b) Each defendant's liability shall be in proportion to his negligence] , each defendant is liable only for that proportion of the total dollar amount awarded as damages which his causal negligence bears to the causal negligence attributed to all the defendants against whom recovery is allowed, as determined by the jury, or judge if there is no jury. [The jury or judge shall apportion the recoverable damages among the defendants in accordance with the negligence determined.]

Corp. Report prepared under a (t from the Nat. Institute of Law Enforcement and Criminal Justice, L.E.A.A., Dept. of Justice, 1975) p. 5 [hereinafter referred to as "Rand study"].)

The reality of criminal investigation, the Rand study reveals, is very different. To determine what factors contribute to case solution the Rand researchers analyzed a large sample of cleared crimes from a variety of crime types. In more than half of the cleared cases, they found, the identification of the offender was available at the time of the initial report because (1) the offender was arrested at the scene; (2) the victim or witness identified the suspect by name and address; or (3) some evidence available at the crime scene, such as a license plate or employee badge number, uniquely determined the identity of the suspect. Most of the remaining cases that were eventually cleared were solved through routine administrative actions: fingerprint search, informant tips, reviewing of mug shots, or arrests in connection with the recovery of stolen property. On the basis of these findings, the Rand study concluded that "with the possible exception of homicide, if investigators performed only the obvious and routine tasks needed to clear the 'easy' cases, they would solve the vast majority (97 percent) of crimes that now get cleared. All their efforts in relation to other cases have a very marginal effect on the number of crimes cleared." (Rand study, pp. 13-14, italics added.)

One of the policy implications of these findings, according to Rand, is that police departments should reduce follow-up investigation on all cases except those involving the most serious offenses. The rationale of this proposal: "Our data consistently reveal that a regular investigator's time is preponderantly consumed in reviewing reports, documenting files, and attempting to locate and interview victims and witnesses on cases that experience shows will not be solved. Our data show, moreover, that most cases that are solved are solved by means of information spontaneously provided by a source other than those developed by the investigator. It follows that a significant reduction in follow-up investigative efforts would be appropriate for all but the most serious offenses in which public confidence demands some type of response." (Rand study, p. 27.) That Rand made this recommendation--that the present level of follow-up investigative effort be reduced--is all the more significant in light of its finding that, under present practice, investigative efforts in over 86 percent of unsolved cases are suspended by the end of the first week. (Rand study, p. 19.)

In light of the Rand study, we can see that more, not less, than reasonable diligence was exercised in the investigation of this case

Despite the length of the majority opinion, this was, after all, not the crime of the century. It was a $15,000 arson and insurance fraud that involved no injury to innocent persons. Nevertheless, several investigators worked on it intensively for over two weeks before suspending their efforts because the suspect had an alibi and no motive was apparent. To demand a higher standard of diligence, given society's limited resources and apparently unlimited propensity to crime, is completely unrealistic.

CLARK, J.

I CONCUR:

McCOMB, J.

Comparative Negligence Applied To Liability of Tortfeasors

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE AMERICAN MOTORCYCLE ASSOCIATION, a nonprofit corporation,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

VIKING MOTORCYCLE CLUB, an unincorp. assn., JERRALD KINDSVOGEL, STEPHEN ELSNER; DENNIS ALDERETTE, CHUCK ALEXANDER, PAUL ASHFORD, DON BOYER, JOHN CRANVILLE, LEE GREENWOOD, DON HARRIS, RAMON LOWE, FRED MacDOUGALL, BOYT MORROW, RICK RAINO, RON PARTON, BENNY PADILLA, GARY REICHENBACK, ED SCHLUP, JIM SOVIZ, ED TOMMASINO, RICHARD TRUSTY, JIM TUCKER, BILL TURNER, BOB PHILLIPS, ROB PHILLIPS, GLEN GREGOS, a minor by and through his Guardian ad litem GORDON GREGOS; GORDON GREGOS and "DOE" GREGOS,

Real Parties in Interest.

2d Civil No. 49032

COURT OF APPEAL-SECOND DIST.
FILED
JUN 10 1977
CLAY ROWLAND, JR. CL
Deputy Clerk

Lawler, Felix & Hall, Thomas K. Workman, Jr., Erwin E. Adler, and Jane H. Barrett for Petitioner.

Association of Southern California Defense Counsel, John W. Baker, Caywood J. Borror, Francis Breidenbach, Richard B. Coethals, Stephen J. Crogan, Henry E. Kappler, Kenneth E. Hoss; W. F. Rylaarsdam, and Lucian A. Van Bolle as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

Jack A. Ross for Real Parties in Interest Glen Gregos a minor by and through his Guardian ad Litem Gordon Gregos, and Gordon Gregos.

Robert E. Cartwright, Edward I. Pollock, Leroy Earsh, David B. Baum, Stephen I. Zetterberg, Robert C. Beloud, Ned Coo Arne Werchick, Sanford M. Gage, Leonard [illegible], and Joseph Pearne as Amici Curiae on behalf of Real Parties in

minor by and through his Guardian ad Litem Gordon Gregoe, and [redacted] Gregoe.

In Li v. Yellow Cab Co. (1975) 13 Cal.3d 804, our Supreme Court: (1) opened for reexamination in light of changed conditions the California statutory law of negligence to the extent that it is declaratory of the common law (13 Cal.3d at pp. 814, 821-822); (2) adopted the rule of "pure comparative negligence" in lieu of the doctrine of contributory negligence codified in Civil Code section 1714 (13 Cal.3d at pp. 827-828); (3) determined the easy questions of the effect of the judicially adopted rule upon the doctrines of last clear chance (13 Cal.3d at pp. 824-825) and assumption of risk (id.); and (4) left the hard questions such as application of the new principle in multi-party situations to the "'trial judges of this State'" unencumbered by specific guidelines (13 Cal.3d at p. 826).

The petition for writ of mandate which is here before us raises the manner in which Li v. Yellow Cab is to be applied to the situation of multiple parties, all of whom are asserted to be negligent in a manner proximately contributing to a plaintiff's injury. Specifically, the petition concerns the right of a named defendant to bring persons not named as defendants into the action by a cross-complaint alleging the negligence of those persons and its proximate causation of the injury for which the complaint seeks to hold the defendant-cross-complainant liable.

We conclude that: (1) Li v. Yellow Cab's rule of "pure comparative negligence" fastens liability upon a person "in direct proportion to his negligence"; (2) the rule of comparative negligence requires modification of California's pre-Li doctrine of joint and several liability of concurrent tortfeasors;[1] and (3) a defendant may cross-complain to bring other persons into the action so that the proportion of his negligence may be compared to theirs and the modified rule of liability of concurrent tortfeasors applied to the situation of multiple parties.

Facts

On January 14, 1973, 16-year-old Glen Gregoe was injured while participating in a cross-country motorcycle race. Acting through Gordon Gregoe, his guardian ad litem, Glen filed an action to recover for his injuries. The lawsuit names as defendants the American Motorcycle Association (AMA), Viking Motorcycle Club (Viking), Jerrald Kindsvogel, Stephen R. Elsner, Continental Casualty Company of Chicago (Continental), and Does 1 through 200.

As eventually amended, the complaint is framed in six causes of action.

The first cause of action is based in negligence. It asserts that AMA, Viking, and other named defendants (excluding Continental) sponsored, managed, administered, and controlled a race for novice motorcycle riders and solicited and encouraged members of the public to participate in it for an entry fee of $5. Glen paid the entry fee and entered the race. The first cause of action claims that by reason of the negligence of the defendants in sponsoring, operating, controlling, and managing the race and in soliciting entrants, Glen suffered personal injuries causing damage of $3,000,000, plus the cost of future medical care.

The second cause of action asserts fraud of the named defendants other than Continental. The fraud is related to the defendants' failure to perform on promises made to Glen to instruct him in racing technique, evaluate his capability, and place him in races with entrants of similar ability.

The third cause of action seeks compensatory and punitive damages from Continental. It alleges the bad faith refusal of Continental to make payments on a $10,000 medical reimbursement policy covering injuries to participants in AMA sanctioned amateur events.

The fourth cause of action sounds in fraud and is based upon the allegedly false and untrue representation that the motorcycle race in which Glen was injured was an event officially sponsored by AMA and Viking. Continental and its agents are asserted to be parties to the fraud.

The fifth cause of action claims that the various defendants intentionally inflicted emotional distress upon Glen by causing his insurance claim against Continental to be dishonored.

The sixth cause of action alleges a conspiracy among the defendants to violate Glen's rights generally in the fashion claimed in the preceding causes of action.

AMA answered the amended complaint denying its charging allegations and asserting affirmative defenses. After an unsuccessful attempt to file a cross-complaint bringing Viking, various of its agents, and Glen's parents, one of whom is his guardian ad litem, into the case on theories of indemnity and comparative negligence, AMA filed a second motion for leave to file a cross-complaint. The proposed cross-complaint is framed in two causes of action asserted against Glen's mother and father.

The first alleges notice to Glen's parents that motorcycle competition is a dangerous sport, that the parents participated in Glen's decision to enter the event, that his entry would not have been received without parental consent, that Glen's father gave his written consent which permitted Glen's participation, that Glen's parents knew of the extent of Glen's training and negligently failed to exercise their powers of supervision over their minor child by allowing his entry in the race, and that while AMA's negligence, if any, was passive, that of Glen's parents was active. The first cause of action seeks indemnity from the parents if AMA is found liable to Glen.

The second cause of action seeks declaratory relief. It alleges that Glen has failed to join his father and mother as defendants in the action, reasserts their negligence, and asks [illegible] of the relative negligence of those who contribu-

[1] We do not consider the impact of the rule of Li upon joint tort-[illegible] Resolu-

to Glen's injury so that the rule of Li v. Yellow Cab may be applied.

Believing itself bound by existing case law pre-dating Li, the trial court denied AHA's motion to file its cross-complaint. AHA petitioned this court for a writ of mandate compelling the trial court to grant its motion. Recognizing that the problem must be a recurring one in which the trial courts are in need of guidance, we issued our alternative writ.

Pre-Li Law

Prior to Li v. Yellow Cab Co., supra, 13 Cal.3d 804, California in general applied an all-or-nothing concept of negligence. If a person's negligence was a proximate cause of damage to a person or property, he was deemed responsible for the entire damage. That responsibility barred a plaintiff whose own negligence was a proximate cause of the damage from recovering any part of it. (4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 683.) That responsibility rendered a joint or concurrent tortfeasor liable for the entire damage and it was improper for a court to apportion damages among tortfeasors. (4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 35; 1 Harper & James, The Law of Torts, §§ 10.1, 10.2.) In either event, the person's negligence precluded his loss from being shifted in part to another who was also at fault. While the all-or-nothing principle was mitigated somewhat as to plaintiffs by rules such as last clear chance (4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 714-721), and to defendants by a limited right of contribution among judgment debtors who, at the plaintiff's election, were named in the lawsuit (Code Civ. Proc., §§ 875, 876; 4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 43-49; cf. Schwartz, Comparative Negligence, § 16.7, pp. 261-263), and by a complex system of equitable indemnity to persons "secondarily" liable from persons whose liability was "primary" (4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 50-52), nevertheless the underlying California principle of negligence was founded on attaching total responsibility to each person whose lack of care contributed to the damage.

Consequences of Li v. Yellow Cab

Demise of all-or-nothing doctrine. In Li v. Yellow Cab Co., supra, 13 Cal.3d 804, our Supreme Court prospectively terminated the operation of the all-or-nothing doctrine as applied to plaintiffs seeking damages for negligence (13 Cal.3d at pp. 812-813), and replaced it with a principle "under which liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault." (13 Cal.3d at p. 813; i.e., "negligence," 13 Cal.3d fn. 6a at p. 813.) Carrying the principle to its ultimate limit, the high court opted for a rule of "pure comparative negligence" rather than the "50% system" of comparative negligence followed by most jurisdictions which had previously abandoned the rule of contributory negligence. (13 Cal.3d at p. 827.) The court's action was taken despite recognition that the superseded rule had been codified in Civil Code section 1714. (13 Cal.3d at p. 821.)

Logical extension of the high court's action in Li, considerations of policy, and the language of the Li opinion itself point to the conclusion that the decision requires a drastic revision of the principles governing liability of concurrent tortfeasors.

Concurrent tortfeasors - traditional bases of joint and several liability. The pre-Li principle of joint and several liability of concurrent tortfeasors is founded: (1) on the "all-or-nothing" concept allocating full responsibility to each person whose negligence contributes to damage without respect to the proportion of his negligent conduct to that of others; (2) the proposition that a plaintiff totally "innocent" because he is not contributorily negligent is entitled to recovery from all "guilty" defendants; (Schwartz, Comparative Negligence, § 16.1); and (3) the assumed inability of the fact finding process to apportion negligent fault. (1 Harper & James, The Law of Torts, § 10.2; see also Anno., The Doctrine of Comparative Negligence and its Relation to the Doctrine of Contributory Negligence, 32 ALR 3d 463, 492, § 15.)

Effect of Li upon Traditional Bases of Joint and Several Liability

The impact of "pure" comparative negligence eliminates totally the all-or-nothing rule on the side of the tort coin which determines the plaintiff's right of recovery. The same reasoning which impelled our Supreme Court to take the step it did is equally applicable to the obverse side of the coin - that which determines the extent of the relative liability of persons who may be liable in negligence to the plaintiff.

That reasoning is synthesized in Li as "the basic objection to the doctrine [of contributory negligence] - grounded in the primal concept that in a system in which liability is based on fault, the extent of fault should govern the extent of liability - remains irresistible to reason and all intelligent notions of fairness." (13 Cal.3d at p. 811.) In a system where the liability of several defendants concurrently causing an injury is based upon fault, the conclusion is equally irresistible that the extent of the fault of each should govern the extent of liability of each.

Li now permits recovery in negligence to a plaintiff who is himself negligent. The rule of comparative negligence dispels any foundation for joint and several liability of concurrent tortfeasors based upon the plaintiff's total "innocence."

In its pure form as adopted in California, the rule eliminates any basis for joint and several liability founded on the proposition that the plaintiff is necessarily less at fault than others whose negligence contributed to his damage.

Li accepts the ability of the fact finding process to apportion degrees of negligence. In so doing, it eliminates the previously assumed inability to apportion fault among tortfeasors as the foundation of joint and several liability.

Policy considerations. Because the underpinning of Li eliminates the pre-Li basis of joint and several liability of

concurrently negligent tortfeasors, we must determine whether sound policy requires continuation or rejection of the principle.

The law of other jurisdictions which have adopted one form or another of comparative negligence is of no help in the policy choice. Examination of the approach of other states shows no discernible pattern of the consequences of the elimination of the complete bar of contributory negligence upon the question of joint versus several liability of concurrent tortfeasors.

The lack of pattern is disclosed in the chart prepared from a cursory examination of the law of sister jurisdictions which appears in the appendix to this opinion. Georgia, Kansas, Nevada, New Hampshire, South Dakota, and Vermont have apparently opted for the principle of several liability. Joint liability has been retained in Arkansas, Colorado, Florida, Hawaii, Idaho, Maine, Mississippi, New Jersey, New York, North Dakota, Pennsylvania, Utah, Wisconsin, and Wyoming. Oregon and Texas preserve the rule of joint liability where a defendant's negligence equals or exceeds that of the plaintiff, but apply the principle of several liability where the defendant's negligence is less than that of the plaintiff. Minnesota provides for joint liability if the plaintiff is free of negligence, but otherwise applies the rule of several liability. (Citations in appendix.)

The policy underpinning of the various rules in other states is not readily apparent. Ascertaining the rationale in other jurisdictions is complicated to the point of impossibility by their variants of comparative negligence.

Finding no guidance in the experience of other states, we approach the issue by reference to the underlying basis of the California law of negligence. That basis is essentially one of loss shifting (Fleming, Foreword: Comparative Negligence at Last - By Judicial Choice, 64 Cal.L.Rev. 239, 242) in a system founded upon socializing the loss incident to tortious conduct. (Kaiser Steel Corp. v. Westinghouse Elec. Corp. (1976) 55 Cal.App. 3d 737.)

Virtually all negligence law involves a decision on the extent of loss shifting from the plaintiff to someone else, and generally from that someone to still others. Where, as in California, tort law is imbedded in the concept of socialization of loss, the "others" are taxpayers, consumers, or purchasers of insurance. To a significant degree, judicial adoption of rules of loss shifting represents a decision whether or not to call upon the finite social fund which represents the tax base upon which the legislative arms of government assert their charge. As judicially enunciated loss shifting calls upon the fund, its availability for use to improve education, to enhance equality of opportunity for the disadvantaged, to reduce street crime, to lessen the burden of local property taxation, and to serve any of the multitude of other growing fiscal needs of government is reduced.

The policy choice must thus be made in light of the social costs involved. The choice is complicated because, by reason of an ingrained system of contingent fees, claims administration costs, and expense incident to a complex procedure of litigation, somewhere between $2.00 and $3.00 of cost must be socialized to cover $1.00 of loss shifted from the individual. (See Keeton, O'Connell and McCord, Crisis in Car Insurance (1968) p. 90; State of New York Insurance Department, Automobile Insurance, pp. 34-36.)

Specifically, then, we must determine whether, in the context of a system of pure comparative negligence, cost at the ratio of two or three to one of loss should be shifted to society to cover a plaintiff's risk that one of several defendants where concurrent negligence caused his damage is insolvent. In our view, it should not.

Plaintiffs have historically borne the risk of insolvency of the defendant where only one defendant negligently caused damage as well as the total loss where they themselves were negligent. Only in the situation where the plaintiff was not negligent, one of the defendants was insolvent, and another responsible in damages was the risk of the negligent insolvent defendant socialized by the rule of joint and several liability.

Adoption of the rule of pure comparative negligence has now shifted a portion of the loss formerly borne by the negligent plaintiff to the social fund. There is good reason not to burden the finite fund further with the risk of insolvency of one of several defendants.

By definition, the policy choice must be made where one of multiple concurrent tortfeasors is financially responsible and another is not. By reason of pure comparative negligence, the plaintiff will necessarily recover something in that situation where prior to Li he would recover nothing if he himself were negligent. It is a small trade-off from the plaintiff's standpoint that he rather than the societal fund bear that portion of his misfortune attributable to insolvency of one of several tortfeasors where the fund rather than the plaintiff now bears a part of the cost of damage to which the plaintiff's negligence contributed.

Unquestionably, the rule of several liability is an imperfection in a system of socialization of loss from tortious conduct if one of the concurrent tortfeasors is unable to respond in damages. But the system is already grossly imperfect. Vicissitudes of a fact finding process not attuned to professional expert witnesses and measures of damage incapable of objective determination result in loss which should be shifted remaining with some plaintiffs while other plaintiffs profit by overcompensation at the expense of the societal fund.

Language of Li. The language of our Supreme Court in Li is consistent with the elimination of the principle of joint liability of concurrent negligent tortfeasors. The Li court said "the extent of fault should govern the extent of liability" (13 Cal.3d at p. 811); "liability for damages will be borne by those whose negligence caused it in direct proportion to their respective fault" (13 Cal.3d at p. 813), and "the fundamental purpose

of [the rule of pure comparative negligence] shall be to assign responsibility and liability for damage in direct proportion to amount of negligence of each of the parties" (13 Cal.3d at 829), while using the term "parties" synonymously with "persons." (Richards, Parties or Persons? Dispelling the Parties in Action Only Myth in Li v. Yellow Cab Company, 16 Cal. Courts Commentary, No. 2, March 1976.)

New rule. We thus conclude that the adoption of the rule of pure comparative negligence in Li abrogates the pre-existing rule of joint and several liability of concurrent tortfeasors. Where the Li rule applies, liability among concurrent tortfeasors must be apportioned according to their respective degrees of negligence with each liable to the plaintiff only for his proportion. (See Prosser, Comparative Negligence, 41 Cal.L.Rev. 1, 33.)

The rule which we here adopt accommodates the principle of comparative negligence to the California statutes governing contribution among tortfeasors in a manner which is simple in application and which preserves separation of powers.

Liability of concurrent tortfeasors in direct proportion to their relative degrees of fault is a highly desirable if not necessary element of any system of comparative negligence. (Fleming, The Supreme Court of California 1974-1975, Foreword: Comparative Negligence at Last - By Judicial Choice, 64 Cal. L.Rev. 239, 252-253 (hereafter Fleming).) Proportionate liability can be achieved in the face of California statutes providing for contribution in equal rather than proportionate shares among only those tortfeasors who have been named as defendants in an action at the plaintiff's option in one of three ways: (1) by adoption of the rule of several liability; (2) by judicially rewriting Code of Civil Procedure sections 875 and 876[2] which codify the rule of contribution among tortfeasors who are jointly liable; or (3) by extending the California rules of indemnity so that they apply to concurrent negligent tortfeasors without reference to the existing distinction between primary and secondary liability. (Fleming, at pp. 253-256.)

Judicially rewriting Code of Civil Procedure sections 875 and 876 treads dangerous ground. Neither section is declaratory of the common law. The jurisprudential concept which allowed the Li court to modify the rule of contributory negligence codified in Civil Code section 1714 thus does not afford the same leeway of judicial decision in the case of sections 875 and 876. To extend the Li concept to statutes which, while not declaratory of the common law, are functionally related to others which are, is to open a great portion of the California substantive law statutes to judicial amendment. That intrusion upon the fundamental principle of separation of powers is one that should not be undertaken if it can be avoided.

Extension of the California concepts of indemnity to achieve proportionate liability of jointly liable tortfeasors also intrudes upon the power of the Legislature. Code of Civil Procedure sections 875 and 876 state that liability is to be borne equally and not proportionately. (Fleming, at p. 255.) The extension has the additional vice of inviting multiplicity of litigation rather than disposing of the entire matter in one proceeding absent a requirement of compulsory joinder or cross-demand which is extremely difficult to formulate.

Several liability, however, satisfies the need simply and without invasion of separation of powers. (Fleming, at p. 256.) Joint liability of concurrent tortfeasors derives from the common law. The common law adaptation of principles to changed circumstances which is the basis of Li is equally applicable to abandonment of joint liability where Li applies. Several liability is simple in application in the Li setting. The jury special verdicts or court findings of fact which are necessary to the application of Li determine the apportionment of liability among concurrent tortfeasors so that the action is resolved in one place, at one time, as to all persons involved.

We recognize that our conclusion of the consequences of the rule of Li to the principle of joint and several liability of concurrent tortfeasors is at variance with language and possibly the rationale of decision of Court of Appeal opinions in Stambaugh v. Superior Court (1976) 62 Cal.App.3d 231, and Safeway Stores, Inc. v. Nest-Kart (1976) 63 Cal.App.3d 934. (See also E. B. Wills Co. v. Superior Court (1976) 56 Cal.App.3d 650.) Neither Stambaugh nor Safeway addresses the policy considerations of loss shifting or the logical extension of Li v. Yellow Cab which we treat as controlling of our decision. Stambaugh seems bottomed on a false analogy to statutory systems accompanying a rule of comparative negligence with fully compatible principles of contribution and indemnity. Stambaugh also rests on the by no means clear assumption that Code of Civil Procedure section 877, dealing with settling tortfeasors, is not limited by Li and its statutory history to tortfeasors who are jointly liable. Neither case considers the undesirable consequences of the rule of comparative negligence without a compatible method

[2] "§ 875. [Existence and incidents of right of contribution]
(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.
(b) Such right of contribution shall be administered in accordance with the principles of equity.
(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.
(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.
(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.
(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.
(g) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor."

"§ 876. [Pro rata share]
(a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.
(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them."

to achieve equality of treatment of defendants. Neither considers the jurisprudential consequences of attempting to reach that equality in the face of a statutory scheme which is inconsistent with the objective if the rule of joint and several liability is retained. Thus, while according deference to the post-Li Court of Appeal decisions, we cannot follow them.

Parties to the Action

The substantive rules which we have here articulated require procedural concessions. Once the principle of allocation of liability among defendants based upon their respective degrees of negligence is accepted, there is a patent interest in having all persons whose fault contributed to the injury before the court in one action. One set of findings of fact or one set of special jury verdicts can then determine the entire matter as to all who are involved. Multiple litigation can be avoided. A thicket of imponderable questions of the consequences of Li to the overly complicated California law of indemnity which preceded Li is penetrated if not skirted.

The policy reasons indicating the adoption of procedural rules which will permit the litigation to include as defendants all persons whose negligence contributed to the injury are particularly pertinent here. AMA, named as a defendant in the litigation, seeks to bring into it as a party defendant the guardian ad litem of the minor who is the plaintiff. Accepting, as we must at this stage of the litigation, AMA's allegation that the guardian ad litem's negligence contributed to Glen's injury (see Gibson v. Gibson (1971) 3 Cal.3d 914, 921), it is hardly conceivable that the guardian ad litem would sue himself. It is not much more likely he would sue his wife, who is the other defendant to whom AMA's motion to file a cross-complaint is directed.

Disposition

Let a peremptory writ of mandate issue directing the superior court to vacate its order denying AMA's motion for leave to file a cross-complaint and to enter a new order granting the motion.

CERTIFIED FOR PUBLICATION.

THOMPSON, J.

We concur:

WOOD, P. J.

LILLIE, J.

Jurisdiction	Type of Comparative: Pure	Adulterated: 50/50 Aggregate	Adulterated: 50/50 Each Defendant	Adulterated: Other	Liability: Joint & Several	Liability: Several Only	Liability: Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Joint Tortfeasors Act Adopted	Defendant Permitted to Join and/or Seek Contribution as to Parties Not Named by Plaintiff	Notes
Alaska	1							2	2	2	
Arkansas		3			4			5	6	7	8
Colorado			9		10					11	
Connecticut		13								14	
Florida	15				16			May be 17/18	19	18	
Georgia				20		21					
Hawaii			22		23			May be 24/25	25	24	
Idaho			27		28			Yes 29		30	
Kansas		31				32				33	
Maine		34			35			Yes 36		37	
Massachusetts		38						No 39	39	39	
Minnesota			40		41	42		Yes 43			44
Mississippi	45				46			No 47	47	47	
Montana			48								
Nebraska				49							
Nevada			50			51		No 52	52	52	
New Hampshire			53			54					
New Jersey			55		56			May be 57/58	53	58	
New York	59				60			Yes 61		62	
North Dakota			63		64			May be 65/66	66	66	
Oklahoma				67							
Oregon		68					69	Yes 70			
Pennsylvania		71			72			May be 73/74	74	74	
Rhode Island	75							No 76	75	76	
South Carolina			77								
South Dakota				78		79		No 80	80	80	
Texas		81					82	Yes 83		84	
Utah			85		86			Yes 87		88	
Vermont		89				90				91	
Washington	92										

Jurisdiction	Type of Comparative: Pure	Adulterated: 50/50 Aggregate	Adulterated: 50/50 Each Defendant	Adulterated: Other	Liability: Joint & Several	Liability: Several Only	Liability: Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Joint Tortfeasors Act Adopted	Defendant Permitted to Join and/or Seek Contribution as to Parties Not Named by Plaintiff	Notes
Wisconsin			93		94			Yes 95			
Wyoming			96		97			Yes 98		99	
The following states and specific Federal Acts apply comparative negligence rules to the limited fact situations indicated:											
Arizona	100										
District of Columbia	101										
Iowa	102										
Kentucky	103										
Michigan	104										
North Carolina	105										
Ohio	106										
Virgina	107										
F.E.L.A.	108										
Jones Act	109										
Death on the High Seas Act	110										

1. Kautz v. State of Alaska (1973) 540 P.2d 1037
2. Alaska Stat. §§ 09.16.010 to 09.16.060
3. Ark. Stat. Ann. §§ 27-1763 to 27-1765, 27-1730.1 to 27-1730.2
4. Walton v. Tull (1962) 356 S.W.2d 20
5. Id., at p. 25
6. Ark. Stats. §§ 34-1001 to 34-1009
7. Lacewell v. Griffin (1949) 219 S.W.2d 227
8. Id.; contribution not limited to parties named by plaintiff; unclear as to whether defendant has right to join parties not named by plaintiff.
9. Colo. Rev. Stat. Ann. §§ 13-21-111, 41-2-14
10. Bass v. United States (1974) 379 F.Supp. 1208, 1209
11. Colo. Rules of Civil Procedure, Rule 22
12. Id.; no contribution, indemnity only.
13. Conn. Gen. Stat. § 52-572h(a)
14. Id., § 52-104
15. Hoffman v. Jones (1973) 280 So.2d 431
16. Stuart v. Hertz Corp. (1974) 302 So.2d 187
17. Lincenberg v. Isaac (1975) 318 So.2d 386, 391
18. Stuart v. Hertz Corp., supra, 302 So.2d at p. 194, fn.
19. Fla. Stats. Ann. § 768.31
20. Ca. Code Ann. §§ 105-603, 94-703; Smith v. American Oil 49 S.E.2d 90; Elk Cotton Mills v. Grant (1913) 79 S.E.
21. Higginbotham v. Ford Motor Co. (5th Cir. 1976) 540 F.2d (no apportionment in strict liability cases)
22. Haw. Rev. Stat. § 663-31
23. Id., §§ 663-31, 663-12, 663-17
24. Id., § 663-12
25. Id., §§ 663-11 to 663-17
26. Id., § 663-17(a)
27. Idaho Code Ann. § 6-801
28. Id., § 6-804
29. Id., § 6-803(3)
30. Id., § 6-803(4)
31. Kan. Stat. Ann. § 60-258a(c)
32. Id., § 60-258a(d)
33. Id., § 60-258a(c)
34. Me. Rev. Stat. Ann., Tit. 14, § 156
35. Id., § 156; see also Packard v. Whitten (1971) 274 A.2d 169, 180
36. Packard v. Whitten, supra, 274 A.2d 169
37. Packard v. Whitten, supra, 274 A.2d at p. 174
38. Mass. Gen. Laws Ann., Ch. 231, § 85; 54 Mass.L.Q. 140
39. Id., Ch. 231 B, §§ 1 to 4
40. Minn. Stat. Ann. § 604.01(1)
41. Id.
42. But see Kowalski v. Armour & Co. (1974) 220 N.W.2d 248
43. Minn. Stat. Ann. § 604.01(1)
44. Where plaintiff contributes by his own negligence to the injury, liability is several only; where there is no contributory negligence attributable to plaintiff, liabil is joint and several.
45. Miss. Code Ann. § 11-7-15
46. Saucier v. Walker (1967) 203 So.2d 299
47. Miss. Code Ann. § 85-5-5
48. Mont. Stat. § 58-607.1
49. Neb. Rev. Stat. § 25-1151
50. Nev. Laws § 41.141(1)
51. Id., § 41.141(3)(a)
52. Id., §§ 17.215 to 17.325
53. N.H. Rev. Stat. Ann. § 507:7-e
54. Id.
55. N.J. Stat. Ann. § 2A:15-5.1
56. Id., § 2A:15-5.3
57. Id., §§ 2A:15-5.2, 2A:15-5.3
58. Id., §§ 2A:53A-1 to 2A:53A-5
59. N.Y. C.P.L.R. § 1411; see also Lowman v. LaCrega (1971) 270 N.E.2d 313
60. N.Y. C.P.L.R. §§ 1401-1402

61. Id., § 1401, 1402; Dole v. Dow Chemical Co. (1972) 282 N.E.2d 288

N.Y. C.P.L.R. §§ 1401-1403; Berliner v. Kacuv (1974) 361 N.Y.S.2d 477

N.D. Cent. Code § 9-10-07

64. Id.

65. Id.

66. Id., §§ 32-38-01 to 32-38-04

67. Okla. Stat. Ann., Tit. 23, § 11

68. Ore. Rev. Stat. § 18.470

69. Id., § 18.485

70. Id.

71. Pa. Stat. Ann. § 2101

72. Id., § 2102

73. Id.

74. Id., §§ 2082-2089

75. R.I. Gen. Laws Ann. § 9.20.4

76. Id., §§ 10-6-1 to 10-6-11

77. S.C. Code § 46-802.1

78. S.D. Comp. Laws § 20-9-2

79. Burmeister v. Youngstrom (1965) 139 N.W.2d 226 (several unless plaintiff has right of recovery against other party)

80. S.D. Comp. Laws §§ 15-8-11 to 15-8-22

81. Tex. Vernon's Civ. Stat. Art. 2212a, § 1

Id., § 2(c); see also Goodyear Tire & Rubber Co. v. Edwards (1974) 512 S.W.2d 748

Tex. Vernon's Civ. Stat. Art. 2212a, §-2(b)

84. Id., § 2(g)

85. Utah Code Ann. § 78-27-37

86. Id., §§ 78-27-40(2), 78-27-41(1); see also 1973 Utah L.Rev. 406, 421

87. Id., § 78-27-40(2)

88. Id., § 78-27-40(3)

89. Vt. Stat. Ann., Tit. 12, § 1036

90. Id.

91. Howard v. Seafford (1974) 321 A.2d 74

92. Wash. Rev. Code, Ch. 4.22.010

93. Wis. Stat. § 895.045; but see Chille v. Howell, 149 N.W.2d 600, suggesting that plaintiff cannot recover if his negligence is greater than that of all defendants, rather than greater than that of any one defendant. See also Vincent v. Pabst Brewing Co. (1970) 177 N.W.2d 513 where, over a strong dissent, the majority refused to switch to pure comparative negligence but suggested that upon failure of the Legislature to so act within a reasonable period of time the court would judicially make the change.

94. Chille v. Howell, supra, 149 N.W.2d 600

95. Bielski v. Schulze (1962) 114 N.W.2d 105

96. Wyo. Stat. Ann. § 1-7.2(a)

97. Id., §§ 1-7.3(d), 1-7.4(a)

Id., § 1-7.3(c); cf. Pure Gas & Chemical Co. v. Cook (1974) 526 P.2d 985, 989, fn. 3

Id., § 1-7.3(d)

100. Ariz. Stat. Rev., §§ 23-801 to 23-808, limited to damages arising from manufacturing, mining, building, etc.

101. Dist. of Col. Code §§ 44-401 to 44-404, limited to damages arising from employment by common carrier only.

102. Iowa Code Ann. §§ 479-124, 479-125, limited to damages arising from employment by railway.

103. Ky. Rev. Stat. §§ 277.310 to 277.320, limited to damages arising from employment by railway.

104. Mich. Stat. Ann., §§ 17-451 to 17-464, limited to damages arising from employment by railway.

105. N.C. Gen. Stat. § 62-242, limited to damages arising from employment by railroad.

106. Ohio Rev. Stat. §§ 4973.07 to 4973.09, limited to damages arising from employment by railroad or other employment not covered by workers compensation.

107. Va. Code §§ 8-641, 8-646, limited to damages arising from employment by railroad and damage to traveler on public highway caused by railroad.

108. 45 U.S.C. §§ 51-60

109. 46 U.S.C. § 688

110. 45 U.S.C. § 766

Contract May Permit Interest Higher Than Legal in California

IN THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COURT OF APPEAL FOURTH DIST.

FILED

DEC 24 1976

ERVIN J. CUSZYNSKI, Clerk

DEPUTY CLERK

PETER P. GAMER, etc.,

Plaintiff and Appellant,

v.

duPONT WALSTON, INC., et al.,

Defendants and Respondents.

4 Civil No. 14578

(Sup. Ct. No. 345904)

APPEAL from a judgment of the Superior Court of San Diego County. Louis M. Welsh, Judge. Affirmed.

Peter P. Gamer; White, Price, Peterson & Robinson for Plaintiff and Appellant.

MacDonald, Halsted & Laybourne, Peter Brown Dolan; Harvey, Mitchell, Ashworth & Keeney and Thomas R. Mitchell for Defendant and Respondent.

Peter P. Gamer, plaintiff, has appealed from a judgment entered February 7, 1975, in his class action against duPont Glore Forgan Incorporated (Glore Forgan), defendant, to recover alleged usurious interest paid to Glore Forgan. The judgment followed the granting of Glore Forgan's motion for summary judgment.

The action was commenced on August 30, 1973.

Plaintiff is a California lawyer who in 1966, while practicing in Beverly Hills, arranged for a securities margin account with Walston & Co., Inc. (Walston) at the Beverly Hills office of the firm.

The agreement signed by plaintiff in opening the margin account was on a printed form prepared by Walston. It contained numbered paragraphs, numbers 4, 18 and 19 of which were as follows:

> "4. All securities and commodities or any other property, now or hereafter held by you, or carried by you for the undersigned (either individually or jointly with others), may from time to time and without notice to the undersigned, be carried in your general loans and may be pledged, repledged, hypothecated or rehypothecated, or loaned by you to either yourselves as brokers or to others, separately or in common with other securities and commodities or any other property, for the sum due to you thereon or for a greater sum and without remaining in your possession and control for delivery a like amount of similar securities or commodities."
>
> "18. The provisions of this agreement shall in all respects be construed according to, and

Proposed amendments to SB 379 to read as follows:

Amendment No 1

On page one, strike lines 1 to 23 in their entirety and on page two, strike lines 1 through 8.

Amendment No 2

Repeal in its entirety, NRS 698.310 as follows;

[In any action in tort brought as a result of bodily injury, death, sickness or disease, caused by accident occurring on or after February 1, 1974, arising out of the ownership, maintenance or use of a motor vehicle within this state, contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to a person or persons if such negligence was not greater than the negligence of the person against whom recovery is sought; but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person recovering.]

Amendment No 3

NRS 17.305 is hereby amended to read as follows;

NRS 17.215 to 17.325, inclusive, do not apply to breaches of trust or of other fiduciary obligation . , nor to any action in tort wherein the several liability of multiple defendants has been determined pursuant to the provisions of NRS 41.141.

Exhibit 662