Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests Present:

Virgil Anderson	AAA
Barbara Bailey	Nevada Trial Lawyers
Daryl E. Capurro	Nevada Motor Transport Assn.; Nevada Franchised Auto Dealers Assn.
Richard Garrod	Farmers Insurance Group
Virgil Getto	Assemblyman
Robert F. Guinn	Nevada Motor Transport Assn.; Nevada Franchised Auto Dealers Assn.
Don Heath	Insurance Division
Michael Malloy	Washoe County District Attorney's Office
Steve McMorris	Douglas County District Attorney
Peter Neumann	Nevada Trial Lawyers
Patsy Redmond	Insurance Division
Norman C. Robinson	Deputy Attorney General; Highway Division
Dan Seaton	Clark County District Attorney's Office
George L. Vargas	American Insurance Association
Richard Wagner	Pershing County District Attorney

Chairman Hayes called the meeting to order at 8:00 a.m.

ASSEMBLY BILL 146

Consolidates and clarifies certain provisions relating to comparative negligence.

ASSEMBLY BILL 333

Consolidates, clarifies and amends certain provisions relating to comparative negligence.

Assemblyman Getto said that he had introduced A.B. 146 at the request of the Highway Department. He said he had been

convinced that the bill would save money for the State of Nevada.

Mr. Robinson said that there is presently a conflict in the State law regarding NRS 17.215 and 41.141. He said that A.B. 146 eliminates that conflict. The conflict was in regard to splitting costs of damages in court cases involving comparative negligence.

Mr. Robinson referred to a large diagram which he used in his presentation to the Committee. He imagined a situation in which two defendants might be involved. One defendant was 10% negligent in the situation, and the other was 90% negligent. In this case, the first defendant was sued for $100,000 since he had the financial ability to pay the judgment, and the second defendant was not touched.

Mr. Robinson said the defendant who had paid the full amount should be able to collect $90,000 from the other person involved due to the division of negligence. He said, however, that NRS 17.295 provides for prorata shares of awards and specifically states that degrees of negligence are not to be considered. Therefore, the defendant that had paid the full $100,000 could only collect half of that amount from the other defendant, who in this case was $90,000 negligent.

Mr. Robinson noted that the same problem was considered by the Supreme Court of Kansas, and it was ruled that a plaintiff could only be liable for the amount of harm which he caused, and a jury could consider the negligence of any party that was not a party to the action.

Mr. Getto said that the first two parts of both bills being considered were identical. He said that the last section of each bill was where the differences arose.

Mr. Vargas spoke in support of A.B. 146 and against A.B. 333. He suggested a situation in which a plaintiff would be 30% negligent; defendant one would be 30% negligent; and defendant two would be 40% negligent. He said that if the 40% negligence was not considered, there would be a standoff between the plaintiff and defendant one.

Mr. Anderson spoke in favor of A.B. 146 and endorsed the remarks made by Mr. Vargas.

Mr. Capurro spoke in favor of A.B. 146 and in opposition to A.B. 333. He noted that people he represents in the Nevada Motor Transport Association and the Nevada Franchised Auto Dealers Association are virtually 100% insured and at times can become the sole defendant in an action that could have involved several parties who might have been negligent. He said that members of the associations have assets that are also at stake when lawsuits arise. Because of the present language, there is a great deal of potential liability to those involved in this industry.

Mr. Garrod said that if A.B. 333 was adopted, it would become much harder for commercial and private automobile owners to obtain insurance. He also stated that the management of his company was contemplating whether or not they would continue to write insurance in Nevada.

Mr. Neumann said he was opposed to A.B. 146 as it was drafted but was in favor of A.B. 333. He said there may have to be a technical amendment to A.B. 333. He stated that the law has said that a plaintiff should not have the burden of proving how much at fault each of a number of defendants might have been.

Mr. Neumann said that defendants in cases have always been jointly and severally liable. He said there has always been a chapter that allows defendants to split costs of a decision among themselves. He said that the problem with the present state of the law is the terrible conflict between NRS 17.215 and 41.141.

Mr. Neumann distributed copies of an article (Exhibit A) written by Kent Robison concerning the problems addressed by these bills.

Mr. Neumann referred to a case in Las Vegas in which a stamp vending machine had fallen on an individual. In attempting to keep the machine from falling, a "Good Samaritan" had stopped to help the victim. The victim sued the installer of the machine, and the jury ruled in favor of the victim. However, under NRS 41.141, the jury found that the installer of the machine was 90% negligent, and the Good Samaritan was 10% negligent. He said that because of this finding and due to the fact that the Good Samaritan was not a party to the case, the plaintiff was only able to collect 90% of the damages. He said it would only be fair for a person to be able to collect all of the damages that would be awarded to him without considering the negligence of a party not in the case.

Mr. Neumann said that A.B. 146 will make sure that a jury would have to allocate negligence among defendants. He said there must be a way to solve a case between the plaintiff and defendants.

Mr. Neumann said that under present law, if a jury determines that two people were a proximate cause, then the plaintiff is entitled to recover damages and look to either defendant. He asked why a plaintiff would not be allowed to go to where the money is and let the defendants go after their money from each other.

Mr. Neumann presented jury instructions (Exhibit B) from a case he was involved in. He said that in order for the plaintiff to prevail, the jury had to fill out a complicated verdict form which he called a "crossword puzzle." He said the verdict form in favor of the defendant was a two-line item.

He said that in this case the jurors were confused about the verdict, and that was the reason why they voted in favor of the defendant.

Mr. Neumann said he would like to see Chapter 17 of NRS amended to give the courts the discretion to allocate among joint defendants the percentage of damages that each one must pay rather than saying this would be divided in prorata amounts.

Mr. Malone said he could be a defendant in an action with another defendant who might be an indigent. He said that because he might be the only one sued due to the plaintiff knowing he had money and the other defendant did not, he could end up paying the whole amount of damages.

Mr. Neumann said that this situation has always been a problem. He asked, however, if it was right to say that a person who is injured should get nothing.

ASSEMBLY BILL 334

Extends jurisdiction of district courts in divorce cases to adjudication of rights in property held in joint tenancy.

Mr. Wagner said this bill has to do with the wording of a recent Nevada Supreme Court decision. He said the decision was that if property being held in a marriage was held in joint tenancy that it was not joint property. He said that the problem is that district courts are refusing to divide community property at the time of the divorce. He said the bill was a clean-up type thing, and he said the courts should have to exercise this jurisdiction.

ASSEMBLY BILL 338

Limits privilege of husband or wife to prevent testimony of other to testimony regarding events occuring after marriage.

Mr. McMorris said that the husband-wife privilege causes a great deal of problems in prosecution of cases. He said it is one of the situations under the present law that is abused by defense attorneys or their clients. He said that if a wife observes her husband commit a criminal act, and she wants to testify against him, his attorney can invoke the husband-wife privilege to prevent her testimony. He said that some couples get married so that one spouse will not have to testify about the actions of the other spouse.

Mr. McMorris said the bill would provide that actions that took place before marriage could not be included in the husband-wife privilege. He said this was a critical bill from the standpoint of prosecutors.

Mr. Wagner said the purpose of the bill is to prevent suppression of evidence. He said there had been a lady in Pershing County who married a man so she would not have to testify against him. Two weeks after the trial was completed, the lady called Mr. Wagner and asked what the process would be for getting an annulment to the marriage.

ASSEMBLY BILL 335

Removes court's power, on its own motion, to set aside conviction and permit defendant to withdraw plea of guilty.

Mr. McMorris said the District Attorneys Association favors the bill. He said the bill would leave a motion for withdrawal of a guilty plea up to the defendant himself. He said this is almost always the case now.

ASSEMBLY BILL 336

Limits requirement for separate penalty hearings in murder trials.

Mr. Malloy said that in the past when a jury rendered a guilty verdict for first degree murder, the judge would set the sentence. In 1977, the law was changed so that if the death penalty was not being sought, the jury would set the sentence.

Mr. Malloy said it was believed by the District Attorneys Association that the intent of the Legislature would have been to permit the judge to continue sentencing in cases where the death penalty was not even being thought of. He said he thought that sometimes juries are swayed by sympathy and prejudice more than a judge would be.

Mr. Stewart asked if defense attorneys know if a death penalty is being sought. Mr. Malloy answered that in Clark County defense attorneys have not been notified of the prosecution's intent. He said, however, that in Washoe County a written notice is sent to defense attorneys stating aggravating circumstances. He said this bill would let everyone know what was going on.

ASSEMBLY BILL 337

Clarifies power of court without jury to establish degree of murder.

Mr. Seaton offered the changes on Lines 16 and 20 of the bill of the word "indicted" to "charged."

Chairman Hayes declared the meeting adjourned at 9:57 a.m.

Respectfully submitted,

Carl R. Ruthstrom Jr.

(Committee Minutes)

Carl R. Ruthstrom, Jr. 8769
Secretary

ADVOCATES FOR JUSTICE
NEVADA TRIAL LAWYERS ASSOCIATION
NTL
100 N. Arlington, Reno, Nv. 89501

NEWSLETTER

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VOL. 1 NO. 9 January 29, 1977

NEVADA'S COMPARATIVE NEGLIGENCE STATUTES

Analyzed in light of the Uniform Contribution Among Tortfeasors Act

Trial lawyers, judges and even jurors are presently confronted with the confusion created by Nevada's Comparative Negligence Statute, NRS 41.141. This statute provides that in actions "in which contributory negligence may be asserted as a defense," the plaintiff's negligence is to be compared to the negligence of the defendant or combined negligence of multiple defendants. Moreover, 41.141 (3a and b) creates "several" liability where recovery is allowed against more than one defendant, and the jury must apportion damages among the defendants in accordance with their respective degree of negligence.

On the other hand, NRS 698.310, the Comparative Negligence statute of Nevada's Motor Vehicle Insurance Act (no fault), does not contain any provision relating to apportionment of damages among multiple defendants. Furthermore, 698.310 does not limit the comparative negligence concept to only those actions "in which contributory negligence may be asserted as a defense."

One may argue that in any action against multiple defendants arising out of the operation of a motor vehicle the jury must not consider the respective negligence of the defendants inter se The only consideration for the jury is the comparison of the combined negligence of the defendants to the negligence of the plaintiff. Once the determination is made that the plaintiff should recover, the defendants must then resort to the Uniform Contribution Among Tortfeasors Act which specifically provides that in determining the pro rata shares of a tortfeasor's liability, the defendants' relative degrees of fault shall not be considered (NRS 17.295, et seq.).

This trilogy of confusion can create as many problems as the fertile defense mind can conjure Why is the liability "several" under 41.141, and yet presumably "joint and several" under 698.310? The injured plaintiff is more likely to recover his damages if 698.310 is applied instead of 41.141. Moreover, if the contribution act (NRS 17.215, et seq.) forbids consideration of relative degrees of fault among defendants, why should a jury be charged with the near impossible chore of apportioning damages among the defendants in accordance with each defendant's negligence?

Legislation is the solution to this statutory paradox. NRS 41.141 (3) should be amended to read as follows: "where recovery is allowed against more than one defendant in such an action the defendants are jointly and severally liable to the plaintiff." In addition, the no-fault comparative negligence statute should be repealed to eliminate the potential of any conflict with the general comparative statute as amended. This way the injured plaintiff's right to recover is enhanced and the multiple defendants are still governed by the Uniform Contribution Act.

The apparent simplicity of this proposal is deceptive. Although the NTLA Judiciary Committee has requested that bills be drafted amending 41.141 and repealing 680.310, the opposition to passing the proposed legislation will be intense The statutes (41.141, 17.215-17.325 and 680.310) creating the existing inconsistencies within and between the comparative negligence statutes and the contribution act were all enacted in 1973. Yet, in the very next legislative session the legislature was requested to amend 41.141 so as to provide joint and several liability against multiple defendants and eliminate the jury's obligation to apportion the amount of liability among defendants. That proposal, A.B. 460, was resoundingly defeated.

Fellow NTLA member Allan Earl was responsible for the introduction of A.B. 460, which was referred to the Judiciary Committee. Allan Earl

(Continued on Page 2)

☆ "NV.'S COMP. NEGL. STAT. ANALYZED IN ★ LIGHT OF UNIFORM CONTRIB. AMONG TORT NTLA wi FEASORS ACT" NTLA NEWSLTR., VOL.I,#9.

Legislators, the press, and all NTLA members on February 15, 1977 from 5:00 P.M. to 8:00 P.M. in Suite #901 at the Ormsby House in Carson City Invitations will not be mailed to NTLA members, so mark your calendars now. We urge all members to take advantage of this chance to meet our legislators. Please plan to attend!!

Comparitive Neg. (Cont. from Page 1)

Pete Neumann appealed to the committee on fundamental concept of fairness to the plaintiff and also pointed out the conflicts and inconsistencies between the existing law and the Contribution Act. Jim Brooke, lobbying for the Nevada Board of Bar Governors, supported A.B.460

Opponents to A.B. 460 were ably represented by Virgil Anderson for AAA, George Vargas for the American Insurance Association, and Daryl Capurro for Nevada Motor Transport Association. The thrust of the opposition was that the joint and several liability concept was unfair to the adequately insured defendant. For instance, if the combined negligence of five defendants was 70% and one heavily insured defendant was 10% negligent, he might be required to pay the entire judgment to a plaintiff who may have been 30% negligent. The opponents also relied on their thoroughly familiar "higher costs to the people" argument. Mr. Vargas even resorted to throwing rocks at the contingent fee system from within his proverbial glass house. The minutes to the April 10, 1975, hearing read, "Mr. Vargas stated that the contingent fee system in Nevada is great to cause one to forget one's ethics." The minutes further read that Mr Vargas suggested "that if the Legislature wants to do something contructive, it should take a look at the lawyers' contingency fee basis."

Notwithstanding the confusion created as to the merits, A.B. 460 came out of the Judiciary Committee with a "do pass" recommendation. However, when voted on by the entire assembly the legislation failed miserably; yeas-8, nays-30. It is not surprising that the predominantly non-lawyer 1975 assembly did not understand the proposed legislation. Olga Korbut would be impressed with the cerebral gymnastics required to coherently discuss the complications presented by 698.310, 41.141 and 17.215 et seq. Notwithstanding the complexities involved, the suggested change in 41.141 and repeal of 680.310 is desirable for both plaintiff and defendant.

In a recent Washoe County case, Rampone v.Baker & Drake, Inc., the insurance carrier for Baker & Drake made a persuasive argument that NRA 41.141 (3a and c) was not intended to establish liability of multiple defendants inter se. Baker & Drake argues that Section 3 of 41.141 governs the determination of each defendant's liability to the plaintiff, not their liability to each other. Thus, 41.141 (comparative) covers the relationship between plaintiff and defendants while 17.215 et seq.(contribution) governs the relationship among defendants. The logic is compelling. It also points out that Section 3 of 41.141 is an entirely meaningless provision.

For example, assume a jury awards plaintiff $100,000.00 and Defendant A is found 80% negligent and Defendant B is found 20% negligent. Defendant A pays plaintiff $80,000.00 and is entitled to recover $30,000.00 from Defendant B under the contribution act. Defendant B pays plaintiff $20,000.00 and Defendant A $30,000.00

The reasoning in and holding of Safeway v. Nest-Kart is appropriate to Nevada's paradox. In 1971, the Nevada Legislature enacted our first contribution statute (which has since been repealed). Chapter 584, Statutes of Nevada 541, pages 1264-1266. Subsection 4 of §2 and subsection 2 of §9 of that act expressly provided that the relative degree of fault of each joint tortfeasor was to be considered in determining the contributive shares of those tortfeasors. This statute was repealed in 1973 when the legislature adopted our current contribution law which does away with the use of relative degrees of fault in contribution issues. Accordingly, Nevada now provides for contribution by simply dividing the total liability by the number of tortfeasors found liable.

So why have the jury determine respective amounts of negligence for each defendant? It has no bearing on contribution. The jury's only consideration is which of the defendants is liable and whether their combined negligence exceeds the compared negligence of the plaintiff The extensive jury instructions and special verdict forms needed to express relative degrees of fault constitute an unnecessary encumbrance of confusion which has no bearing on the ultimate payment by the defendants. The solution is to amend 41.141 to eliminate section 3 and provide for joint and several liability against the defendants, and allow the defendants access to contribution in accordance with the contribution act.

Other problems, such as prolonged and more difficult settlement negotiations, cross claims against marginally liable defendants, compromises, releases and covenants not to execute exist under 41.141 as it is presently written. Indeed the areas of confusion and misunderstanding are too numerous to mention. Clarity and hopefully simplicity would result from the legislation proposed in this article. However, nothing constructive will occur unless conscientious efforts are made to explain the problems to our legislators.

Kent R. Robison
Chairman NTLA Judicial Admin.
& Civil Procedure Comm.

Tort Trends

We plan to publish a regular column describing Nevada court cases that would be of interest to our members. Such cases may be either plaintiff or defense verdicts and may be either District Court or Supreme Court decisions. If you have tried a case or know of a case that poses a unique situation or matters of first impression, please submit a brief description of the case to our State Office. Cases will be reviewed by the Board of Governors and as many as possible will be selected for publication.

Letters to the Editor

NTLA will welcome letters to the editor from members who wish to comment on any article th we have published. Letters should be direct to the State Office and should not exceed 300 words in length.

VERDICT FORM E

(JOHN & BILLIE DAVIES FOR COMPENSATORY DAMAGES - CONTRIBUTORY NEGLIGENCE)

No. 309900 Dept. No. 5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN T. DAVIES and BILLIE J. DAVIES, husband and wife; and PAMELA J. DAVIES,

Plaintiffs,

vs

CHARLES BUTLER; BRENT ESPIL; PAWL HOLLIS; GARY JOHNSON; JERRY LAZARRI; STEVE RAHBECK; MICHAEL SALEE; EMERY AGEE SMITH; THOMAS J. WOOLDRIDGE; THE SUNDOWNERS, an unincorporated association,

Defendants. /

We, the jury, in the above-entitled action, find in favor of plaintiffs, JOHN T. DAVIES and BILLIE J. DAVIES, and assess their compensatory damages at $_____.

However, we further find that decedent was himself contributorily negligent (although not more than the combined negligence of defendants), and that his contributory negligence was a proximate cause of his death.

In comparing the contributory negligence of decedent, JOHN DAVIES, with the combined negligence of the multiple defendants, we find as follows:

Negligence of decedent DAVIES: _____% (Figure "a")

Combined negligence of the defendants: _____% (Figure "b")

Total negligence of decedent plus combined negligence of defendants: 100%

With respect to the combined negligence of the multiple defendants (Figure "b"), we apportion to each defendant who is liable the following percentage of said combined negligence (Figure "b"):

Charles Butler: _____%

Brent Espil: _____%

Pawl Hollis: _____%

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Gary Johnson: _____%

Jerry Lazarri: _____%

Steve Rahbeck: _____%

Michael Salee: _____%

Emery Agee Smith: _____%

Thomas J. Wooldridge: _____%

The Sundowners: _____%

Total: 100% (of Figure "b")

We find against said plaintiffs in favor of any defendants to whom we have determined a "0" percentage (of Figure "b").

DATED: October _____, 1976.

_____
Foreman

VERDICT FORM B

NO. 309900 Dept. No. 5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN T. DAVIES and BILLIE J. DAVIES, husband and wife; and PAMELA J. DAVIES,

Plaintiffs,

v.

CHARLES BUTLER; BRENT ESPIL; PAMELA ANN HARRIS; PAWL HOLLIS; GARY JOHNSON; JERRY LAZARRI; STEVE RAMBECK; MICHAEL SALLEE; EMERY AGEE SMITH; THOMAS J. WOOLDRIDGE; THE SUNDOWNERS, an unincorporated association, et al,

Defendants.

FILED
Oct 27 1976 - 11:00 P.M.
ALEX COOK, Clerk
By [signature]
Deputy Clerk

VERDICT

We, the jury in the above-entitled action, find for all defendants and against plaintiffs JOHN T. DAVIES and BILLIE J. DAVIES.

DATED: October 27, 1976.

[signature]
FOREMAN

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