NO. 126249

IN THE
SUPREME COURT OF ILLINOIS

Thomas Roberts and Diane Roberts, Plaintiffs v. Alexandria Transportation, Inc., et al. Defendants	)	Certif. 7th Cir. Federal Court, Seventh Circuit 19-2395, 19-2414
Alexandria Transportation, Inc., et al. Third-Party Plaintiffs-Appellants, Cross- Appellees, v. Safety International, LLC, Third-Party Defendant-Appellee, Cross- Appellant	)	

On order agreeing to answer question certified by the
7th Circuit Court of Appeals 19-2395, 19-2414

BRIEF OF APPELLANTS/DEFENDANTS/THIRD PARTY PLAINTIFFS, ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC

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NATURE OF THE CASE

A case that initially began as a motor vehicle collision occurring in a construction zone has evolved and presented itself to this Court for the statutory construction of Section 100/3 of the Illinois Joint Tortfeasors and Contribution Act (Contribution Act) regarding the provision for the reallocation of an uncollectable tortfeasor's pro rata liability to remaining tortfeasors. Appellants, Alexandre Solomakha, Alexandria Transportation, Inc., Alexandre Solomakha, and Alex Express, LLC, et. al. (hereinafter collectively referred to as the Alex Parties) were Defendants in the case filed by Thomas and Diane Roberts (Roberts Plaintiffs) in the United States District Court, Southern District of Illinois (USDC). The Alex Parties filed contribution actions pursuant to the Contribution Act against third-party defendants, Edwards Kamaldusky, Inc. (E-K) and Safety International, LLC (Safety).

During the course of the federal litigation, E-K reached a settlement agreement with the Roberts Plaintiffs for a nominal amount ($50,000) and was dismissed with prejudice pursuant to a good faith finding pursuant to Section 100/2(c) and 2(d) of the Contribution Act. Later in the case, the Alex Parties agreed to a settlement with the Roberts Plaintiffs for the amount of $1,850,000.00. This settlement effectively ended the Plaintiffs' case and obtained Plaintiffs release against all Defendants, including the remaining Third Party Defendant in Contribution, Safety.

Thereafter, the Alex Parties continued to trial with their post-claimant settlement contribution claim against Safety. Before the trial, the USDC ordered that E-K be included as a party on the verdict form, along with the Alex Parties and Safety, so that the jury could determine and identify the pro rata liability share of E-K in causing the Roberts Plaintiffs'

damages. The jury returned with a verdict allocation of 10% liability to Safety, 15% liability to the Alex Parties and 75% liability to E-K. (Appendix at p. A19).

Following the verdict, the Alex Parties requested that E-K's designated liability obligation be reallocated on a pro rata basis between the Alex Parties and Safety under Section 3 the Contribution Act which contains the following language:

> "No person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability."
>
> 740 ILCS 100/3 (2019)

Pursuant to 100/2(c) and 2(d) of the Contribution Act, the Alex Parties argued that having settled in good faith, E-K's pro rata obligation and its contribution liability to the Alex Parties was discharged. Thus, the Alex Parties argued that E-K was an "uncollectable party" pursuant to Section 100/3 of the Contribution Act, and its liability share should be reallocated to the Alex Parties and Safety on a pro rata basis.

However, the USDC determined that the term "uncollectable" in Section 100/3 did not apply to a settling defendant who was not an employer, declined to reallocate and entered judgment in favor of the Alex Parties and against Safety for $190,000, which represented 10% (pro rata liability of Safety assigned by jury) of the $1,900,000 common liability (the $1,850,000 payment by the Alex Parties and the $50,000 payment by E-K). The Alex Parties appealed the USDC's decision to the United States Court of Appeals for the Seventh Circuit (Seventh Circuit). The Seventh Circuit, being unable to find any prior decision addressing whether the "obligation" of a settling party is "uncollectable" pursuant to the Contribution Act, requested that this Honorable Court weigh in on the same pursuant to Supreme Court Rule 20(a).

STATEMENT OF THE ISSUES

The question of law certified by the Seventh Circuit:

"Whether the obligation of a settling party is uncollectable pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/3 (2019)."

STANDARD OF REVIEW

The issue under review is regarding statutory interpretation and thus the standard of review is *de novo. Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 18; 129 N.E.3d 1197 (2019).

JURISDICTIONAL STATEMENT

On August 5, 2020, the Seventh Circuit entered an order certifying a question of law to this Court *(Roberts v. Alexandria Transportation, Inc., et al., 19-2414 & 19-2395 Cons.* (R. 1-14 and Appendix at pp. A1-14). On August 11, 2020, this Court entered an order stating that it will answer the question. This Court has jurisdiction over this matter pursuant to Illinois Supreme Court Rule 20.

STATUTES INVOLVED

Illinois Joint Tortfeasor Contribution Act

740 ILCS 100/2 (2019). Right of Contribution.

(a) Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by

him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.

(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.

(e) A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement.

(f) Anyone who, by payment, has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full his obligation to the tortfeasor, is subrogated to the tortfeasor's right of contribution. This provision does not affect any right of contribution nor any right of subrogation arising from any other relationship.

740 ILCS 100/3. Amount of Contribution.

The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.

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

Joint and Several Liability

735 ILCS 5/2-1117 (2019). Illinois Joint Liability.

Except as provided in Section 2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages.

STATEMENT OF THE FACTS

The subject case originated out of a two-vehicle construction zone accident occurring on September 16, 2013, in Madison County Illinois. (R. 35; Doc. 2). The Plaintiff, Thomas Roberts, was operating a box truck going westbound on Interstate 70. (R. 35; Doc. 2, pp. 4-5). As he moved through the construction zone, a work zone flagger who was holding up a “slow” sign suddenly flipped the sign to stop resulting in the Plaintiff slamming on his brakes and being hit by a tractor trailer driven by Defendant, Alexandre Solomakaha. (R. 74; Doc. 349, pp. 95-96). Plaintiffs, Thomas and Diane Roberts, brought suit in the USDC against the Alex Parties and other parties. (R. 35; Doc. 2). During the course of this litigation, the Alex Parties filed a

third party complaint for contribution against E-K, the general contractor for the road construction project where the accident occurred and Safety, who contracted with E-K to provide safety services and consulting for the road construction project. (R. 42, Doc. 62, 63 and 116. A third-party complaint was also filed by the Alex Parties against Safety. (R. 48, Doc. 116)

Approximately half way through the litigation, the Roberts Plaintiffs reached a settlement agreement with E-K for the amount of $50,000.00. (R. 56, Doc. 189). As the case involved multiple potential tortfeasors, the Illinois Joint Tortfeasor and Contribution Act required that the presiding Court find that the agreement was made in good faith. 740 ILCS 100/2(c). The Alex Parties contested this finding on the theory that E-K, being the primary tortfeasor, was not paying its fair share of the potential liability. (R. 57, Doc. 195). Ultimately, the USDC determined that the settlement was in good faith and proceeded to dismiss E-K from the case, including dismissal from the Alex Parties' contribution claim, with prejudice. (R. 58, Doc. 209). That dismissal ended all counterclaims for contribution against E-K, including those that the Alex Parties had filed. (R. 58, Doc. 209).

In 2017, the Alex Parties reached a settlement agreement with the Plaintiffs for $1,850,000.00 in accordance with the Illinois Contribution Act and including Section 100/2(e). (R. 65, Doc. 260 and Doc. 261). Following the settlement and pursuant to their right via Section 100/2(e) of the Contribution Act, the Alex Parties continued forward with their contribution action against Safety. In preparation for trial, the USDC ordered that E-K be placed on the jury form so that all entities that contributed to the accident could have their liability share appropriately evaluated. (R. 67, Doc. 276). This decision was made in consideration of *Barnai v. Walmart Stores, Inc.*, 2017 IL App (1st) 171940 and *Truszewski v. Outboard Motor Marine Corp.*, 292 Ill. App. 3d 558, 685 N.E.2d 992 (1st Dist. 1997). (R. 67, Doc. 276, page 4). During

the pretrial argument of this issue, the Alex Parties raised the issue that if E-K was to be put on the jury verdict form, any liability share that was attributed to E-K should be shared between the Alex Parties and Safety pursuant to Section 3 of the Contribution Act. (R. 68, Doc. 290). This request was made based on the argument that E-K as a settling tortfeasor, qualified as an "uncollectable joint tortfeasor" under 740 ILCS 100/3. (R. 68, Doc. 290).

The USDC disagreed and ultimately ruled that E-K's liability share would not be reallocated between the Alex Parties and Safety following the trial. (R. 17-20). The case was tried in March of 2019 in front of a jury that ultimately concluded that the respective liability shares of each party were:

10% Safety
15% The Alex Parties
75% E-K

(R. 73, Doc. 337 and Appendix at p. A19).

On March 7, 2019, The USDC entered judgment on the verdict as to the jury's respective allocations of fault and judgment in favor of the Alex Parties finding it was entitled to 10% contribution from Safety according to their contribution claim. (R. 21 and Appendix at p. A20). Following the judgment, the Alex Parties moved the Court to reconsider and to amend the judgment to reallocate E-K's liability share between Safety and the Alex Parties on a pro rata basis and amend the judgment in favor of the Alex Parties and against E-K pursuant to 100/3 of the Contribution Act. (R. 137-150). The basis for this request was again, that E-K qualified as an uncollectable party pursuant to Section 100/3 of the Contribution Act. Alternatively, the Alex Parties asked the Court to amend the judgment from reflecting Safety's percentage of liability as determined by the jury to the monetary equivalent of $190,000.00. (R. 137-150). The USDC ultimately denied the Alex Parties' Motion to Amend relative to the reallocation of E-K's

liability, but did enter an Amended Judgment in favor of the Alex Parties and against Safety in the amount of $190,000. (R. 344-345 and Appendix at pp. A25-26). The Alex Parties Appealed to the Seventh Circuit. (R. 15-16). The Seventh Circuit has since requested, and this Court has accepted to answer, the question of whether the obligation of a settling party is uncollectable under Section 100/3 of the Contribution Act.

ARGUMENT

The Contribution Act provides a remedy for a joint tortfeasor to seek contribution against fellow joint tortfeasors who have not paid their *pro rata* share of the common liability. 740 ILCS 100/2 (West 2012). This court has recognized that "the Contribution Act seeks to promote two important public policies—the encouragement of settlements and the equitable apportionment of damages among tortfeasors." *Johnson v. United Airlines*, 203 Ill. 2d 121, 135, 784 N.E.2d 812 (2003) (citing *Dubina v. Mesirow Realty Development, Inc.*, 197 Ill. 2d 185, 193–94, 756 N.E.2d 836 (2001), and *In re Guardianship of Babb*, 162 Ill. 2d 153, 642 N.E.2d 1195 (1994).

With those public policy goals in mind, Section 100/2 of the Contribution Act establishes a right of contribution among two or more persons who are subject to liability in tort arising out of the same injury to person or property or wrongful death. 740 ILCS 100/2(a). Pursuant to the Contribution Act, a tortfeasor (Contribution Plaintiff) who has filed a contribution claim, can recover in contribution against another tortfeasor (Contribution Defendant) an amount paid by the Contribution Plaintiff in excess of its pro rata share. 740 ILCS 100/2(b). Notwithstanding this statutory right to recover in a contribution, the Contribution Act provides that when a claimant gives a release, in good faith, to one or more persons liable in tort arising out of the same injury, said settling torfeasor's/Contribution Defendant's liability to the Contribution

Plaintiff is discharged. 740 ILCS 100/2(c) and 100/2(d). To this point the Contribution Act provides:

> (d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.
>
> 740 ILCS 100/2(d) (2019)

Likewise, the legislature provided for the right of a Contribution Plaintiff to settle with the claimant and continue to pursue its contribution claims against any of the remaining tortfeasors. 740 ILCS 100/2(e). However, the right of a Contribution Plaintiff to seek contribution post settlement from a joint tortfeasor only applies to those tortfeasors released by the Contribution Plaintiff's settlement with the claimant and does not apply to those tortfeasors who had been discharged from all liability in contribution pursuant to a separate good faith settlement under 740 ILCS 100/2(c). 740 ILCS 100/2(c) and 100/2(d); *Guerrero v. Sebastian Contracting Corp.*, 321 Ill.App.3d 32, 254 Ill. Dec. 89, 746 N.E.2d 846.(1st. Dist. 2001); *First of America Trust Company v. First Illini Bancorp, Inc.*, 289 Ill.App.3d 276, 226 Ill.Dec.248, 685 N.E.2d 351 (3rd Dist. 1997).

With the above in mind, the legislature then enacted a statutory scheme to preserve the equitable policy goals of the Contribution Act in multiple tortfeasor cases where a settling tortfeasor's/Contribution Defendant's contribution liability was discharged under 100/2(c) and 2 (d), thereby making its obligation to the Contribution Plaintiff uncollectable. In that regard, the legislature enacted Section 3 of the Contribution Act which provides as follows:

> § 3. Amount of Contribution. The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.
> 740 ILCS 100/3 (2019)

The issue before this Court is whether the term "uncollectable" in Section 3 includes the pro rata liability obligation of a settling tortfeasors/Contribution Defendants whose obligation in contribution has been statutorily discharged based on Section 100/2(d) of the Contribution Act.

As discussed, the jury determined a 75% pro rata liability obligation of E-K, a settling tortfeasor/Contribution Defendant, whose contribution liability to the Alex Parties was discharged under Section 100/2(d) by virtue of E-K's direct settlement with the Roberts Plaintiffs. Said discharge made the obligation of E-K uncollectable in contribution under 740 ILCS 100/3 and thus requires reallocation to the remaining tortfeasors (the Alex Parties and Safety) on a pro rata basis for the following reasons:

1. The term "uncollectable" is unambiguous and its plain and ordinary meaning applies squarely to the obligation of a settling tortfeasor/Contribution Defendant who has been statutorily discharged of its liability to a Contribution Plaintiff under 740 ILCS 100/2(d);
2. Reading the Contribution Act as a whole, Section 100/3 demonstrates the legislature's intent to provide an equitable solution for remaining contribution parties (Contribution Plaintiff and Contribution Defendants) when the obligation of a settling tortfeasor/Contribution Defendant is not recoverable because its contribution liability has been statutorily discharged pursuant to Section 100/2(d);
3. Equity requires a statutory construction of the Contribution Act so that Section 100/3 requires reallocation of a settling tortfeasor's/Contribution Defendant's pro rata share of liability to the remaining tortfeasors.
4. Even if the term "uncollectable" is not clear and unambiguous, tools of statutory interpretation lead to the conclusion that "uncollectable" encompasses obligations of

settling tortfeasors/Contribution Defendants whose liability has been statutorily discharged.

5. A construction of the term "uncollectable" which would exclude settling tortfeasors violates the Illinois Constitution's equal protection clause and the constitutional proscription against special legislation and would render Section 100/3 of the Contribution Act unconstitutional.

I. THE TERM "UNCOLLECTABLE" IS CLEAR AND UNAMBIGUOUS AND INCLUDES THE OBLIGATION OF A SETTLING TORTFEASOR/CONTRIBUTION DEFENDANT WHOSE CONTRIBUTION LIABILITY TO A CONTRIBUTION PLAINTIFF HAS BEEN STATUTORILY DISCHARGED UNDER 740 ICLS 100/2(d)

A court's primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462, 939 N.E.2d 487 (2010). The plain language of a statute is the most reliable indication of the legislature's intent. *Id.* at 462. When the language of a statute is clear, it must be applied as written without resort to aids or tools of interpretation. *Id.* The statute should be read as a whole and construed so that no term is rendered superfluous or meaningless. *Id.* The court shall not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the legislative intent. *Id.* When a term utilized in a statute has a settled legal meaning, the courts will normally infer that the legislature intended to incorporate the established meaning. *Id. citing* 2A N. Singer, Sutherland on Statutory Construction § 46:04, at 152–53 (6th ed. 2000) Reading of the Contribution Act as a whole requires a construction that the pro rata liability obligations of settling tortfeasors/Contribution Defendants whose contribution liability has been discharged under Section 100/2 is uncollectable within the meaning of Section 100/3 and must be reallocated on a pro rata basis to the remaining tortfeasors.

A. The Plain Meaning Of "Uncollectable" Includes The Pro Rata Liability Obligations Of Settling Tortfeasors/Contribution Defendants Whose Contribution Liability Has Been Statutorily Discharged

The legislature does not define the term "uncollectable". However, under rules of statutory construction, the language used in the statute must be given its plain and ordinary meaning. *Ready vs. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 905 N.E.2d 725 (2008). Meriam-Webster Dictionary defines "uncollectable" as follows:

> **Uncollectible: not capable of, or suitable for being collected: not collectible**
>
> Uncollectible, 2020, In Merriam-Webster.com, http://www.merriam-webster.com/dictionary/uncollectible

The plain meaning of the term uncollectable could not be clearer. When a Contribution Plaintiff is legally precluded from recovering a jury determined contribution obligation of a settling tortfeasor/Contribution Defendant, there can be no other construction. That obligation is legally not collectable.

Quite frankly, perhaps the most obvious indicator of what it means to be "uncollectable" is defined by what legal remedies the Alex Parties have to collect against E-K. The answer to that question is – none. A Contribution Plaintiff cannot bring a claim for contribution under 100/2(e) against a tortfeasor who settled separately with the plaintiff. *First of America Trust Company v. First Illini Bancorp*, 289 Ill.App.3d 276, 287(3rd Dist. 1997) (plaintiff bank could not seek contribution against the codefendant tortfeasor who had settled separately with plaintiff regarding alleged tortious conduct in a stock purchase transaction). This result was due to the settling tortfeasor/Contribution Defendant's contribution liability as to all other tortfeasors being statutorily discharged pursuant to 100/2(d). *Id.*

In this case, the USDC, pursuant to Section 100/2(d) and over the Alex Parties' objection, dismissed with prejudice the Alex Parties contribution claim against E-K when Plaintiff and E-K

settled and E-K was granted a good faith finding. (R. 60; Doc 220). At trial, the jury was instructed to consider E-K's proportionate degree of fault along with that of the Alex Parties and Safety. (R. 73; Doc 335, 337 and Appendix at p. A19). Yet, post-verdict, the Alex Parties were barred from collecting against E-K on its obligation arising from its pro rata liability because E-K's contribution liability to the Alex Parties was discharged pursuant to Section 100/2. However, if E-K were still a contribution defendant, it would be liable in contribution to the Alex Parties for $1,425,000.00. The Alex Parties cannot recover the $1,425,000.00 in contribution against E-K and this, by definition, makes E-K's pro rata liability obligation uncollectable.

In summary, considering the plain meaning of Section 100/3, including the term "uncollectable", this Court must find that the pro rata liability obligations of settling tortfeasors/Contribution Defendants, as determined by a jury in allocating fault, are uncollectable and must be reallocated on a pro rata basis to the remaining tortfeasors under 740 ILCS 100/3. Thus E-K's liability of 75% must be reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

B. In Addition To The Clear And Plain Meaning Of "Uncollectable" Under The Contribution Act, It Is Clear That Said Term Applies To The Obligations Of Settling Tortfeasors/Contribution Defendants Because When Reading The Contribution Act As A Whole, The Legislature Enacted A Comprehensive Scheme For Contribution With The Goal Toward Promoting Settlement And Making Sure That Remaining Tortfeasors Share Equitably In The Common Liability When Faced With Uncollectable Obligations Of Settling Tortfeasors/Contribution Defendants

A court's primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill.2d 455, 462, 939 N.E.2d 487 (2010). In construing the statute, the language should be read as a whole and construed so that no term is rendered superfluous or meaningless. *Id.* Thus, this Court's

primary objective in construing the Contribution Act must be to give effect to legislature's intent to ensure equitable sharing of liability among tortfeasors.

1. *Reading the statute as whole clearly reflects the legislature's intent to craft the Contribution Act in such a way so as to provide the mechanism for settling tortfeasors/Contribution Defendants to settle and discharge their contribution liability while at that same time providing for equitable reallocation of the settling tortfeasor/Contribution Defendant's pro rata liability obligation among remaining tortfeasors*

When enacting the Contribution Act, the legislature methodically enacted the provisions of the statute to give effect to its stated goals – promoting settlement and ensuring equitable allocation between tortfeasors of the common liability. The Contribution Act was adopted in Illinois in 1979 to codify this Court's decision in *Skinner v. Reed-Prentice Division Package Machinery Co.*, 70 Ill.2d 1, 374 N.E.2d 437 (1977). *Doyle vs. Rhodes*, 101 Ill.2d 1, 461 N.E.2d 382 (1984). When enacting the Contribution Act, it was the intent of the legislature to promote two important public policies – the encouragement of settlements and the equitable apportionment of damages among tortfeasors. Section 3 of the Contribution Act squarely addresses the legislature's intent to ensure equitable apportionment among tortfeasors and specifically in those situations when one of the tortfeasor's obligation is not collectable. 740 ICLS 100/3. It is the clear legislative intent of equitable sharing that must be at the forefront of the analysis in this case and which leads to the conclusion that the clear and unambiguous meaning of the terms "uncollectable"

First, as a codification of *Skinner*, the legislature's enactment of the Contribution Act allowed for joint tortfeasors to look to each other and seek contribution against each other to make sure they do not pay more than their pro rata share in the event of joint liability. 740 ILCS 100/2(a) and 2(b). However, at the same time, the intent to promote settlement was also important. With that in mind, the legislature provided that if a tortfeasor and the claimant

reached a settlement that the court found to be in good faith, then the tortfeasor who chose to settle in good faith with the plaintiff would be discharged from contribution liability to all other tortfeasors/Contribution Plaintiffs who had sued the settling tortfeasor/Contribution Defendant in contribution. 740 ILCS 100/2(c) and 2(d).

In further advancement of the legislature's public policy goal to promote settlement, it also provided the Contribution Plaintiff with the means to settle with the claimant without the need for trial, but continue with its contribution claim against all other remaining joint tortfeasors/Contribution Defendants to recover those amounts paid toward settlement in excess of its pro rata share. 740 ILCS 100/2(e). Circling back to its public policy goal relative to the equitable allocation of the common liability among joint tortfeasors, the legislature provided for the reallocation of the uncollectable obligation of one tortfeasor to those tortfeasors remaining, on a pro rata basis. 740 ILCS 100/3.

The legislature passed Section 100/3 knowing that by virtue of its own enactment of Sections 100/2(c) and 2(d), it rendered the contribution obligation of a settling tortfeasor's/Contribution Defendant's pro rata liability uncollectable by the Contribution Plaintiff by discharging the settling tortfeasor's/Contribution Defendant's contribution liability. With that knowledge in mind, had the legislature intended to exempt the reallocation of the settling tortfeasor's/Contribution Defendant's uncollectable obligation from Section 100/3, it surely would have done so. The fact that it used the phrase uncollectable without exemption or limitation as to settling tortfeasors/Contribution Defendants is evidence that the settling tortfeasors's/Contribution Defendant's uncollectable obligation is included within the purview of said section.

Considering the clear and plain meaning of Section 100/3, including the term "uncollectable" and reading the statute as a whole, this Court must find that the obligations of settling tortfeasors/Contribution Defendants, as determined by a jury in allocating fault, are uncollectable and must be reallocated on a pro rata basis to the remaining tortfeasors under 740 ILCS 100/3. Thus E-K's liability of 75% must be reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

2. *The legislative intent of promoting equitable sharing and case law demonstrating such an application in the Illinois Courts further demands that a holistic reading of the Contribution Act requires a finding that a settling tortfeasor's/Contribution Defendant's pro rata liability obligation is uncollectable as to the Contribution Plaintiff and must be reallocated on a pro rata basis among remaining tortfeasors*

The intent of the legislature when enacting the Contribution Act to provide equitable sharing of liability among joint tortfeasors is not in dispute and has been clearly recognized by this Court. Those equitable goals are evidenced in the reading of the statute as a whole, but also through the applications of the Act by the state courts. Those cases, discussed below, demonstrate that equity is the overriding concern when determining application of the equitable sharing of liability among tortfeasors, including not only reallocation but also placing settling tortfeasors/Contribution defendants on the verdict form so as to make sure the pro rata fault between the remaining tortfeasors is properly allocated for the ultimate purpose of reallocation.

a. Case law relied upon by the USDC in ordering E-K on the verdict form was based on the equitable goals of the Contribution Act

Over the Alex Parties objection and at the insistence of Safety, the USDC ordered that the verdict form in this post settlement contribution action include E-K. (Appendix at pp. A15-18). The USDC relied upon two cases in that regard, *Barnai vs. Wal-Mart Stores Inc.*, 2017 IL App (1st) 171940, 93 N.E.3d 534 and *Truszewski v. Outboard Motor Marine Corp.*, 292 Ill. App. 3d

558, 685 N.E.2d 992 (1st Dist. 1997). In both *Barnai* and *Truszewski*, the First District Appellate Court addressed the equitable goals of the Contribution Act and held that all tortfeasors who contributed to the common liability fund (the amount actually paid by the parties defendant to the injured party pursuant to a good faith settlement), including settling tortfeasors, must be on the post claimant settlement contribution trial verdict form. *Barnai*, 2017 IL App (1st) at *Id.* at ¶17; *Truszewski*, 292 Ill. App. 3d at 565-66. The USDC reasoned that this action was necessary so that a jury can consider all such tortfeasors in assessing pro rata fault and avoiding a situation where pro rata fault is wrongly assessed due to the absence of a settling tortfeasor. *Id.* Both of those cases ordered a new trial. *Id.* However, because a new trial was ordered, neither case addressed the issue of reallocating the settling tortfeasors' a jury determined pro rata liability that exceeded its contribution to the common liability fund and which was not collectable by the Contribution Plaintiff(s).

Even though *Turszewski* did not formally get to the issue of reallocation, it did address the issue of collectability of the settling tortfeasor when responding to Outboard's (Contribution Plaintiff) argument against settling defendants on the verdict form. In that regard, Outboard argued that Section 100/2(d) of the Contribution Act barred the settling defendant (Lester) from being put on the verdict form because the settling defendant's contribution liability as to any other tortfeasor was discharged. *Truszewski*, 292 Ill.App.3d at 541. The *Truszewski*, court disagreed that the discharge precludes the settling defendant's inclusion on the verdict form, but it explained the limited purpose for which the settling defendant must be included. *Id.* In that regard, the court held that by virtue of Section 100/2(d), the settling defendant's inclusion on the verdict form could not have required the same to pay again. *Id.* Rather, the jury's assessment of

the settling defendant's pro rata share of the common liability was only to facilitate the assessment of the other defendants' pro rata share. *Id.*

The above cases suggest that equitable considerations require the inclusion of the settling tortfeasor on the verdict form so that when the jury determines respective liability out of the universe of 100%, there is a more accurate pro rata assessment between the remaining tortfeasors. This decision effects the pro rata equitable reallocation of the settling tortfeasor's/Contribution defendant's fault to the remaining tortfeasors. It would be nonsensical that equity drives the inclusion of a settling tortfeasor/Contribution defendant on the verdict form, but that those same principles are ignored when it comes to whether the remaining tortfeasors must share equally on a pro rata basis the uncollectable obligation.

Thus, this Court must find that the equitable goals of the Contribution Act require that uncollectable obligations of settling tortfeasors/Contribution Defendants be reallocated to remaining tortfeasors on a pro rata basis. Accordingly this Court should find that E-K is an uncollectable tortfeasor whose liability of 75% must be reallocated on a pro rata basis between Safety and the Alex Parties.

b. *Illinois Tool* applies the equitable considerations espoused in *Turszewski* and the Contribution Act's equitable public policy purposes relative to reallocation of the uncollectable obligation of settling tortfeasors

The First District case of *Illinois Tool Works v. Independent Machine Corp*. set the foundation for applying the reallocation provisions of Section 100/3 to any contribution defendant whose jury determined pro rata liability is not collectable. 345 Ill. App. 3d 645, 802 N.E.2d 1228 (1st Dist. 2003). *Illinois Tool* involved a post settlement contribution action. *See Generally, Id.* Defendant/Contribution Plaintiff, Illinois Tool Works (ITW) filed a contribution claim against its codefendant Independent Machine Corporation (IMC). *Id.* at 647. Both ITW

and IMC filed contribution claims against the plaintiff's employer/Contribution Defendant, Tapecoat Company (Tapecoat). *Id.* Tapecoat settled with Plaintiff before the contribution trial by waiving its worker's compensation lien in the amount of $234,421.97 and obtaining a good faith finding. *Id.* Accordingly, its contribution liability to ITW and IMC was statutorily discharged pursuant to Section 100/2(c) and 2(d). *Id.*

Additionally, ITW settled with the plaintiff, on behalf of ITW and IMC, for $2 million and obtained a good faith finding as to the same. *Id.* Pursuant to Section 100/2(e) of the Contribution Act, the case then proceeded to a bench trial on the cross claims for contribution between ITW and IMC. *Id.* Tapecoat was not, and could not, be a defendant in the contribution trial, but like here, the trial court included Tapecoat in the assessment of pro rata liability between the tortfeasors that contributed to the common liability. *Id.* The trial court assessed Tapecoat as having 35% responsibility, or the monetary equivalent of $782,047.69 (less the $234,421.97 already contributed to the common liability by virtue of waiving its worker's compensation lien). *Id.*

However, as Tapecoat had already settled in good faith with the plaintiff for its worker's compensation lien, it was discharged from liability to ITW under Section 100/2(d) of the Contribution Act. *Id.* Additionally, its liability was capped at the amount of the worker's compensation benefits paid due to *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155, 585 N.E.2d 1023 (1991). While ITW had paid $2 million in settlement, the trial court ruled that it could only collect from Tapecoat the amount it had paid in settlement, which was its worker's compensation lien of $234,421.97. *Id.* Thus, this left ITW holding the bag for the $547,625.72 not collectable from Tapecoat. *Id.* The trial court ruled that ITW would have to pay more than its pro rata share

by virtue of being forced to absorb Tapecoat's obligation that was uncollectable, but that IMC only had to pay the 30% liability attributable to IMC. *Id.*

On appeal, ITW argued that the trial court's decision leaving ITW left to bear the sole responsibility for the amount uncollectable from Tapecoat was contrary to both stated policies of the Contribution Act because it forces ITW to pay more than its pro rata share. *Id.* at 650. ITW argued that in order to avoid that consequence, the liability of Tapecoat had to be reallocated between it and the remaining tortfeasor, IMC pursuant to Section 3 of the Contribution Act. *Id.* Ultimately, *Illinois Tool* held that because Tapecoat's liability was capped to its lien and the amount of its pro rata liability above the lien amount was statutorily not collectable, the uncollectable amount must be reallocated on a pro rata basis between ITW and the other tortfeasor, IMC. *Id.* at 658. The Appellate Court stated directly, "We agree with Illinois Tool Works that the difference between the amount Tapecoat (the employer) paid in settlement and the monetary value of its 35% fault attribution is, indeed, uncollectable." *Id.* at 655.

While the *Illinois Tool* court focused on the fact that Tapecoat was not collectable based on this Court's decision in *Kotecki;* it is also true that it was not collectable because it had been discharged from liability when it obtained a good faith finding on the settlement that occurred before the contribution action proceeded to trial, of which it was not a party. That Tapecoat's liability was capped by its worker's compensation lien or because it could not be subject to contribution liability because it settled and obtained a good faith finding makes no difference. What is important is that under either scenario, ITW could not collect against Tapecoat and was left holding the bag but for the Appellate Court making the right call and enforcing Section 3 of the Contribution Act in accordance with the equitable principles intended by the legislature.

The same outcome is required here. Ultimately, with E-K on the verdict form, E-K's pro rata share of liability was evaluated and determined, even though it had been rendered effectively uncollectable by the prior good faith finding and order of dismissal pursuant to Section 100/2(d) of the Contribution Act. When the jury reached its verdict and found E-K to be 75% responsible, the jury designated E-K as having an actual obligation in contribution. However, because of its statutory discharge of contribution liability under Section 100/2(d), E-K's liability to the Alex Parties for its pro rata obligation of fault is uncollectable. That E-K's uncollectable obligation falls squarely within Section 100/3 cannot be clearer given the above analysis and as such, the reallocation of E-K's 75% liability between the Alex Parties and Safety is mandated by the Contribution Act and the public policies it was enacted to promote.

The USDC suggested that *Illinois Tool* was not on point because the uncollectable defendant was an employer, which is not the case here. However, said argument fails for several reasons. First, as an employer, Tapecoat was not immune from contribution liability. *Doyle vs. Rhodes,* 101 Ill.2d 1, 7-8 (1984). Rather, its liability exposure was merely capped by its worker's compensation lien without a waiver of the cap. That cap precluded ITW from collecting against Tapecoat the amount of its liability which exceeded its cap. However, Tapecoat was also discharged from contribution liability to ITW under Section 100/2(c) and 2(d) because it had settled for the amount of its worker's compensation lien in good faith and was dismissed as a defendant and therefore discharged from all contribution liability to the other tortfeasors by virtue of 100/2(d). Thus, under 100/2(d), any pro rata liability of Tapecoat that exceeded its settlement payment was not collectable.

Additionally, the USDC, when dismissing the precedential effect of *Illinois Tool* inappropriately focused on the type of defendant rather than the legislative intent of equitable

sharing under the Contribution Act effectuated by the *Illinois Tool* decision. Interpreting the term "uncollectable" as only applying to employers whose liability is statutorily capped, is reading an exception or limitation into Section 100/3 of the Act that the Illinois legislature did not include. The equitable goals of the Contribution Act do not change based on the classification of the defendant. It is simply implausible for one to conclude that the limiting language of a statute (Worker's Compensation Act) unrelated to the Contribution Act could make a settling defendant's liability uncollectable under Section 100/3; but that the statutory language within the Contribution Act itself discharging contribution liability would not have the same affect.

It is without question, the legislature intended an equitable reallocation of an uncollectable tortfeasor's obligation amongst those fellow tortfeasors who are remaining. The legislature did not intend for only one liable tortfeasor to hold the bag for the uncollectable discharged settling defendant while the other tortfeasor gets the benefit of the settling defendant on the verdict form but remains only liable for its own pro rata liability.

3. *The justification promulgated by Safety and the USDC against reallocation flies in the face of the very heart and purpose of the Contribution Act – equitable sharing of liability among fellow tortfeasors*

Safety's theory that the uncollectable liability of E-K (75%) must be borne solely by the Alex Parties, ignores the plain language of Section 100/3 and the legislative intent for equitable apportionment of liability amongst tortfeasors. It is clearly not an equitable outcome if the Alex parties have to bare 90% of the liability for a loss the jury found them to be only 15% responsible.

The only reason Safety contends that the Alex Parties should have to bear the liability allocated to E-K is because the Alex Parties chose to settle. This was likewise the reasoning of

the USDC. Under Safety's and the USDC's reasoning, the Alex Parties should be punished for settling and so too should every other defendant/Contribution Plaintiff that chooses to make the plaintiff whole for the injuries caused and pursue contribution against the Contribution Defendant who will not step up and take responsibility for its own actions. Yet, that argument belies the purpose for which the Contribution Act was enacted. This Court has clearly stated that promoting settlement was a clear intention by the legislature when enacting the Contribution Act. Safety's theory which suggests that the Alex Parties should be punished for settling with the injured plaintiffs is in clear derogation of the legislative intent of the Contribution Act.

Moreover, Safety and the USDC's reasoning would have a chilling effect on Contribution Plaintiffs settling with claimants and pursing contribution post settlement. Contribution Plaintiffs would not settle for fear they would be holding the bag on liability that may be attributable to discharged tortfeasors that settled before them. Conversely, Contribution Defendants won't settle because they would be better off letting the Contribution Plaintiff settle and take their chance they will have minimal liability when considering that the liability of discharged tortfeasors will not be reallocated. Additionally, if this Court fails to find the obligation of a settling tortfeasor/Contribution Defendant uncollectable and subject to reallocation, then there will be an inconsistent application for the determination of pro rata liability between cases tried concurrent with a plaintiff's claim and those tried after settlement of a plaintiff's claim. This is because 735 ILCS 5/2-1117 and *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 905 N.E.2d 725 (2008) precludes settling parties on the verdict form in the concurrently tried case. The consequential affect would be that Contribution Plaintiffs would not settle with the plaintiff so as to avoid the risk of absorbing the contribution liability of the settling tortfeasor/Contribution Defendant by themselves.

The purposes of the Contribution Act have not been effectuated by any ruling to date in this case. Clearly, the issue of the construction of a statute that is so pivotal to the entire field of tort litigation in Illinois should be made by this Court. Unless this Court finds that a settling tortfeasor/Contribution Defendant's (E-K's) pro rata share obligation for causing a plaintiff's injuries is "uncollectable" under Section 100/3 and subject to reallocation between remaining tortfeasors, the Alex Parties will be left alone to pay more than their pro rata share in the amount of $1.425 million. This type of inequitable result would be the same for all future Contribution Plaintiffs. Such an outcome would be in derogation of the policies and legislative intent underlying the Contribution Act and would in fact be punitive to the Alex Parties and other Contribution Plaintiffs for exercising their rights under 100/2(e). Such a result cannot stand. As such, the pro rata liability obligation of settling tortfeasors/Contribution Defendants must be found as uncollectable under Section 100/3 of the Contribution Act and subject to reallocation among the remaining tortfeasors on a pro rata basis.

II. EVEN IF THE TERM "UNCOLLECTABLE" IS NOT CLEAR AND UNAMBIGUOUS, THE TOOLS OF STATUTORY CONSTRUCTION DICTATE AN INTERPRETATION THAT INCLUDES STATUTORILY DISCHARGED SETTLING TORTFEASORS/CONTRIBUTION DEFENDANTS WITHIN THE UNIVERSE OF UNCOLLECTABLE TORTFEASORS WHOSE OBLIGATION MUST BE REALLOCATED AMONG REMAINING TORTFEASORS

If the language of a statute is ambiguous, courts may look to tools of interpretation to ascertain the meaning of a provision. *Wade vs. City of North Chicago Police Pension Bd.*, 226 Ill. 2d 485, 511, 877 N.E.2d 1101 (2007). A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *Id.*

As set forth above, the Alex Parties believe the term "uncollectable" is clear and unambiguous. However, even if this Court should disagree, the tools of statutory construction lead to the same conclusion – settling tortfeasors/Contribution Defendants who have been

assessed a pro rata obligation as to liability for the plaintiffs' injuries and damages are uncollectable and their obligation must be reallocated to the remaining tortfeasors on a pro rata basis.

A. If the Court finds the terms "Uncollectable" to be ambiguous, then Legislative History Reflects the Legislature's Intent to Make the Term "Uncollectable" Broad and Encompassing Settling Tortfeasors/Contribution Defendants

As set forth above, when interpreting the Contribution Act as a whole as well as the clear and plain meaning of "uncollectable", the legislature clearly intended "uncollectable" to include settling tortfeasors/Contribution Defendants. There is no ambiguity. However, even if there was any doubt in this regard, the legislative history of the Contribution Act puts this to rest. As a tool of statutory construction relative to an ambiguous statutory provision, this Court has looked to amendments in a statute for clarity. *Ready*, 232. Ill. 2d at 380. There is a presumption that the amendment to a statute was intended to change the law. *Id.*

That "uncollectable" is to be read broadly is supported and reinforced by the legislative history of Senate Bill 0308 that upon ratification became Section 100/3 of the Contribution Act. When the Senate originally drafted the public act, the text of the section read:

> No person shall be required to contribute to one seeking contribution in an amount greater than his pro rata share unless one or more of the joint tortfeasors is **insolvent** in which event the remaining tortfeasors shall share the unpaid portions of the **insolvent**'s pro rata share in accordance with their pro rata liability." Senate Amendment No. 1. Legislative Synopsis and Digest of the 1979 General Assembly, SB0308, Page 236 (Jan 14, 1980). (Appendix at pp. A65-66).

On March 1, 1978 the Bill was then amended (and eventually passed) to singularly change the word "insolvent" to "uncollectible." *Id.* In making this change, the legislature was making their intention clear, that the sharing/reallocation provision was meant to be applied broadly. This is further demonstrated by the difference in meaning between the word "insolvent" and "uncollectable" as reflected below:

Insolvent: Unable to pay debts owed

"Insolvent" in Merriam-Webster.com, Retrieved November 9, 2020, from http://www.merriam-webster.com/dictionary/insolvent

Uncollectible: not capable of, or suitable for being collected: not collectible

"Uncollectible" in Merriam-Webster.com, Retrieved November 9, 2020, from http://www.merriam-webster.com/dictionary/uncollectible

There is a big difference between being unable to pay a debt versus the debt owed not being collectable. One who is unable to pay a debt does not have the money to pay it. One who is not collectable could very well have the money to pay its debt, however, the one attempting to recover on that debt is unable to do so. For example, in *Illinois Tool*, Tapecoat could pay its debt. There was no "inability" to pay that is reflected by the record. Instead, its debt for its pro rata liability was not capable of being collected by ITW because the debt was capped by the Worker's Compensation Act and/or discharged by the Contribution Act. That the legislature did not confine the reallocation provisions of Section 100/3 to only those lacking a money to pay, but instead broadened it to those against whom another is not able to collect, strikes right at the heart of the issue in this case. Because of Illinois law, the Alex Parties are not able to collect against E-K. E-K is uncollectable.

B. If The Court Finds The Term "Uncollectable" To Be Ambiguous, Consideration Of The Contribution Act And Joint Liability Under Section 2-1117 Requires A Finding That Settling Contribution Defendants Are Uncollectable Under Section 100/3 Of The Contribution Act

Another route to statutory construction is to consider similar and related enactments, though not strictly *in para materia*. *Wade vs. City of North Chicago Police Pension Bd.*, 226 Ill.2d at 511. It is presumed that several statutes+ relating to the same subject are governed by one spirit and a single policy and that the legislature intended the several statutes to be consistent

and harmonious. *Id.* at 512. In this respect, the legislature enacted Illinois Code of Civil Procedure, 735 ILCS 5/2-1117 (2-1117) addressing joint liability among tortfeasors. There is a very strong interrelationship between the Contribution Act, Section 2-1117 and this Court's decisions in *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 905 N.E.2d 725 (2008) and *Coney v. J.L.G.*, 97 Ill.2d 104, 454 N.E.2d 197 (1983). Under both statutes, the determination of pro rata liability and which tortfeasor's liability is to be considered in said determination is crucial to both statutes' ultimate application and the achievement of their intended purpose.

The percentage of fault attributable to fellow tortfeasors under both statutes is determined by the finder of fact. However, who is considered a tortfeasor subject to the jury's determination of fault, has been limited by 2-1117 and this Court's interpretation of said statute under *Ready*. In *Ready*, this Court ruled that settling defendants are not "defendants sued by the plaintiff" under the language of 2-1117 and therefore are not permitted on the jury verdict form relative to the allocation of fault between joint tortfeasors.[1] 232 Ill.2d at 383.

The statutory provision of 2-1117 and the consequences of this Court's ruling in *Ready* interpreting the same is directly on point here. First, while *Ready* may have addressed the issue of how joint and several liability is assessed relative to allocations of fault at the time of trial in a trial that includes the plaintiff's claims, the impact of that ruling has a direct consequence on contribution claims that go to trial concurrently with the plaintiff's case. Under the *Ready* ruling, because settling defendants are not permitted on the verdict form for allocation of fault relative to joint liability, they are also not on the verdict form for allocation of fault as to contribution

[1] *Ready* involved a case that went to trial on plaintiff's claims. It did not involve a post settlement contribution claim and thus the trial court in this matter choose to apply the law of *Truszewski* and *Barnai* to this action so that all potentially liable tortfeasors were considered for allocations of fault. However, as discussed herein, in order to have harmonious application of both statutes that address pro rata liability, the outcome in a concurrent contribution claim should be no different than in a post settlement contribution claim. See Generally: *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 905 N.E.2d 725 (2008).

liability. *Ramirez vs. FCL Builders*, 2014 IL App (1st) 123663, 6 N.E.2d 193 (holding that *Ready* and section 2-1117 precludes a settling tortfeasor from being on the verdict form at trial).

Accordingly, when this Court ruled in *Ready* that a settling defendant shall not go on the verdict form, it was also effectively ruling that a settling tortfeasor/Contribution Defendant who has been discharged of liability under Section 100/2(c) and 2(d) of the Contribution Act likewise shall not go on the verdict form in a contribution case tried concurrently with a plaintiff's claim. Accordingly, said settling tortfeasor's/Contribution Defendant's proportionate share of fault would never be ascertained by the jury and considered in the overall analysis of the remaining tortfeasors pro rata share of liability whether it be for joint liability or contribution purposes. *Ready's* effect is that all defendants go to trial in the plaintiff's case are subject to liability, as determined by the jury, for their percentage of fault without consideration of the fault of the settling tortfeasor/Contribution Defendant or any other defendant. Consequently, the fault of the settling tortfeasor/Contribution Defendant is then effectively consumed and/or reallocated into the determination of fault as to the remaining tortfeasors that are permitted on the verdict form. As a result, those defendants that go to trial may be assessed a higher percentage of fault without the settling defendant on the verdict form, even though there has not been a pleading requesting reallocation, such as here.

Nonetheless, that its shall be the defendants which bare a higher liability obligation when settling defendants are not on the verdict form has been recognized as a fair consequence of the enactment of 2-1117 and the Contribution Act. In *Coney v. J.L.G.*, 97 Ill.2d 104, 454 N.E.2d 197 (1983), this Court examined the reasons for retaining joint and several liability after the adoption of comparative negligence in this state. The defendant argued that comparative negligence, which precluded contributory negligence as a complete bar, should give way to the

defendants only being severally as opposed to jointly liable. *Id.* at 122-123. However, the Court recognized that the burden of the insolvent or immune defendant would then fall on the plaintiff rather than the wrongdoers. *Id.* at 123. In rejecting said argument, the court, *quoting American Motorcycle Association vs. Superior Court*, 20 Cal.3d 578, 578 P.2d 899, 906 Cal.Rptr. 182, 189 (1978), stated that "[Fairness] dictates that the 'wronged party should not be deprived of his right to redress'…. '[t]he wrongdoers should be left to work out between themselves any apportionment.'" *Id.*

The *Coney* Court noted that the Contribution Act, although enacted after accrual of the *Coney* action, supports the retainer of joint and several liability and not leaving the wronged partied with the burden of the insolvent or immune defendant. *Id.* In *Coney,* this Court found that the Contribution Act expresses the legislature's intent that the burden of the uncollectable tortfeasor rests on the defendants. *Id.* In so holding the *Coney* Court pointed directly to Section 100/3 of the Contribution Act. The Contribution Act contains no qualifications as to what can be designated as "uncollectable." Per *Coney*, "uncollectable" then must naturally entail insolvency, immunity or any status that could prevent further collection or recovery against a party.

As set forth above, this Court has held that it is presumed that several statutes relating to the same subject are governed by one spirit and a single policy and that the legislature intended the several statutes to be consistent and harmonious. The outcome for a defendant under both statutes, which clearly deal with settling tortfeasors/Contribution Defendants and their pro rata liability, must be harmonized. Considering section 2-1117, the Contribution Act and this Court's discussion of the same in *Ready* and *Coney*, it is clear that the legislature intended that the pro rata liability and obligation of settling defendants be borne by the remaining tortfeasors. There

must not be a different result for a defendant when the contribution claim is tried concurrently with a plaintiff's case compared to when it is tried post settlement.

Given the legislative intent of the Contribution Act, Section 2-1117 as well as this Court's decisions in *Ready* and *Doyle*, this Court must find that the obligations of settling tortfeasors/Contribution Defendants, as determined by a jury in allocating fault, are uncollectable and must be reallocated on a pro rata basis to the remaining tortfeasors under 740 ILCS 100/3. Thus E-K's liability of 75% must be reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

C. If The Court Finds The Term "Uncollectable" To Be Ambiguous, Then Case Law Precedent As Well As Illinois Pattern Jury Instructions And Committee Comments Demonstrate The Application Of Reallocation Under Section 100/3 Of The Contribution Act And There Has Been No Legislative Enactment To Suggest The Contrary

Another cannon of statutory construction used when the provisions of a statute are deemed to be ambiguous is the concept of legislature acquiescence. In that regard, it is well settled that the legislature is presumed to have been aware of decisions interpreting a statute and to have acted with said knowledge should the decision not reflect the intention of the legislature. *Bruso by Bruso v. Alexian Bros. Hosp.*, 178 Ill.2d 445, 459, 687.N.E.2d104 (1997). Illinois case law and the Supreme Court Committee on Jury Instructions has applied and/or stated the principal of reallocation of the statutorily discharged obligation of settling defendants/Contribution Defendants to remaining tortfeasors, without restriction or limitation. The legislature has not amended the Contribution Act to state otherwise.

1. *The rulings in Ready and Coney require the reallocation of a settling defendant's obligation to the remaining tortfeasors and the legislature has not amended the Contribution Act to state otherwise*

This Court's decisions in *Ready* and *Coney* require an interpretation of Section 100/3 of the Contribution Act to require the reallocation of a settling tortfeasor's/Contribution Defendant's pro rata obligation to the remaining tortfeasors. There has been no amendment to the Contribution Act since those decisions to state otherwise and thus, this is evidence of the legislature's acquiescence to said interpretation.

2. *The ruling in Illinois Tool Works v. Independent Machine Corp. provides for reallocation of the settling and statutorily discharged tortfeasor's/Contribution Defendant' pro rata obligation and the legislature has not amended the Contribution Act to state otherwise*

As discussed above, *Illinois Tool*, decided after *Turszewski*, takes the next step and squarely addresses the process of reallocation post contribution claim verdict that included a settling tortfeasor/Contribution Defendant on the verdict form. 345 Ill. App. 3d 645, 802 N.E.2d 1228 (1st Dist. 2003). *Illinois Tool* specifically recognizes the inequitable outcome to the Defendant/Contribution Plaintiff who settles consistent with the public policy goals of the Contribution Act but who would be left holding the bag for uncollectable tortfeasors if reallocation is not applied.

Notably, the *Illinois Tool* decision has been around since 2003 and the legislature has not made any amendments to the Contribution Act to limit the definition of the term "uncollectable" or to otherwise hold that equitable considerations of reallocation do not apply to the pro rata obligation of settling tortfeasors/Contribution Defendants. Its failure to amend is an indication that uncollectable, given the equitable goals of the Contribution Act, applies to any tortfeasor whose pro rata obligation is uncollectable and where the equitable policy goals of the Contribution Act require reallocation of the remaining tortfeasors.

For all of the reasons stated above, this Court must interpret Section 100/3 of the Contribution Act to require the reallocation of a settling tortfeasor's/Contribution Defendant's pro rata obligation to the remaining tortfeasors. There has been no amendment to the Contribution Act since those decisions to state otherwise and thus, this is evidence of the legislature's acquiescence to said interpretation. Thus E-K's liability of 75% must be reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

3. ***Illinois pattern jury instructions, the Supreme Court Committee on Jury Instructions and its reliance on Wisconsin law demonstrate an application of the legislature's intention that settling Contribution Defendants are uncollectable and that their pro rata liability must be reallocated and the legislature has not Amended the Contribution Act to provide otherwise***

The Supreme Court Committee on Jury Instructions in Civil Cases (Committee) drafted the Illinois Pattern Instructions. Those instructions provide committee comments and notes on use with regard to the use and application of said instructions and the basis for the instructions. If a statute or rule is ambiguous a court may consider, other sources, such as its committee comments, to ascertain the purpose of the rule or to determine its application. *Wright v. Desate, Inc.,* 292 Ill.App.3d 952, 954 (3rd Dist. 1997). As to jury instructions, Illinois Courts regularly consult the committee comments to understand how the instructions are intended to be applied. *See Generally*, *People v. Banks,* 287 Ill.App.3d 273 (2nd Dist. 1997). As it relates to parties on the verdict form and the direction to courts in application of the same, given the interaction between 2-1117 and the Contribution Act, this Court's decision in *Ready* and the issue of reallocation, the Committee states as follows:

> The relative fault of the parties has relevance to a number of different issues, but the application of that fault may vary depending upon the use to which it is put. These issues include plaintiff's contributory negligence, joint and several liability, and contribution liability. Section 3 of the Contribution Act, 740 ILCS 100/3 (1994), provides that "the pro rata share of each tortfeasor shall be

> determined in accordance with his relative culpability." Section 3 also deals with joint and several liability.
>
> However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectible. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectible obligation in accordance with their pro rata liability.
>
> IPI, Section 600, p. 4 of 33. (Appendix at pp. A31-63).

Additionally, the Committee provides comments as to the necessity for reallocation amongst defendants for the pro rata liability of nonparties and settling tortfeasors who are included on the verdict form in the case of a plaintiff's claim and contribution claim tried concurrently. In that regard, the Committee proposed IPI B45.03A or 600.14 or 600.14A be used for cases involving contribution claims among defendants tried concurrently with the plaintiff's claim. (IPI, Section 600 at pp. 4-5 of 33; Appendix at pp. A31-63). In the Committee's comments to IPI B45.03A, the Committee explains that although settling defendants or other nonparties should be included on the verdict form for the purposes of ascertaining a plaintiff's contributory negligence, the same should be disregarded for purposes of a 2-1117 calculation pursuant to *Ready*. (IPI, Section 45, pp. 17-19 of 29, Appendix at pp. A31-63). The Committee goes on to state that "For the reasons discussed in this introduction, the committee has formulated new alternative forms of contribution verdict form IPI 600.14 and 600.14A. In an appropriate case, the jury reports all of the applicable percentages as part of its verdict. The trial, court, with the assistance of the parties, is then to compute the percentage applicable for various purposes, e.g., joint and several liability and the contribution percentages." (IPI, Section 600, p. 4 of 33, Appendix at pp. A31-66). Further, the Committee goes on to state that by "Using IPI 600.14 or 600.14A (Verdict Form A in this series), the jury can find and report all applicable percentages and after the verdict the trial and appellate courts can calculate the appropriate

results based upon the decisions made then as to the substantive law." IPI, Section 600, p. 5 of 33, Appendix at pp. A31-66). In support of this comment, the Committee cited to *Larsen v. Wis. Power & Light,* 120 Wis.2d 508, 355 N.W.2d 557 (1984).[2] IPI, Section 600, p. 5 of 33.

In *Larsen*, the jury made findings of fault against immune and nonparties who were placed on the verdict form. The court found the judgment had to be modified so that the liable defendants aggregate responsibility totaled 100% and redistributed to the party defendants, on a pro rata basis, the shares of negligence assigned to immune and nonparty defendants. 120 Wis.2d at 520-521. In doing so, the court stated that:

> "Were the judgment not modified, one defendant would bear a liability resulting from the causal negligence attributed by the jury to the immune and nonparty defendants. This inequitable distribution of damages would be inconsistent with the basic premise of contribution that no defendant should bear "an unequal portion of the common burden." *Hartford Fire Ins. Co. v. Osborn Plumbing,* 66 Wis.2d 454, 460, 225 N.W.2d 628, 631 (1975), *quoted in Ladwig v. Ermanco, Inc.*, 504 F.Supp. 1229, 1238 (E.D.Wis.1981)."
>
> 120 Wis.2d at 520-521.

The *Larsen* court referred to the decision of the *Ladwig* court which distributed the negligence of an immune defendant "among the [other] three [liable defendants] according to their relative percentage share of negligence." 120 Wis.2d at 520-521 *quoting Ladwig*, 504 F.Supp. at 1239. *Larsen* also noted that similar recalculation of responsibility among joint tortfeasors for contribution purposes where defendants are insolvent or not joinable has been urged by various commentators. G. Williams, *Joint Torts and Contributory Negligence* sec. 48, at 172 (1951); Braun, *Contribution: A Fresh Look,* 50 Cal.St.B.J. 166, 206 (1975); Timmons & Silvis, *Pure Comparative Negligence in Florida: A New Adventure in the Common Law*, 28 U.Miami L.Rev.

[2] The Wisconsin Supreme Court disagreed with *Larsen* on other grounds in *C.L. v. Olson,* 143 Wis.2d 701, 422 N.W.2d 614 (1988).

737, 785–86 (1974). 120 Wis.2d at 521-522, *quoting Hartford Fire Ins. Co. v. Osborn Plumbing.* 66 Wis. 2d 454, 460, 225 N.W.2d 628, 631 (1975)."

In summary Section 100/3 of the Contribution Act has been applied implicitly in concurrently tried cases, even if not expressly in any case that we can find. While somewhat at odds with this Court's decision in *Ready* as to whether settling defendants go on the verdict form, the Committee provides guidance to the courts relative to reallocation of a settling tortfeasor liability for purposes of joint liability and contribution when settling defendants are placed on the verdict form for the limited purpose of determining plaintiff's comparative negligence. When referring the courts to the law relative to reallocation between joint tortfeasors, the *Larsen* case cited is directly on point. Again, the legislature has never amended the Contribution Act to exempt or limit which tortfeasor is considered uncollectable under Section 100/3, even given the committee comments and the *Larsen* case providing guidance to the courts in that regard.

Accordingly, this Court must interpret Section 100/3 of the Contribution Act to require the reallocation of a settling tortfeasor's/Contribution Defendant's pro rata obligation to the remaining tortfeasors. Thus E-K's liability of 75% must be reallocated to the Alex Parties and Safety in accordance with their respective pro rata share of liability.

III. A CONSTRUCTION OF SECTION 100/3 IN SUCH A WAY THAT THE TERM "UNCOLLECTABLE" DOES NOT INCLUDE SETTLING TORTFEASORS/CONTRIBUTION DEFENDANTS WOULD VIOLATE CONSTITUTIONAL GUARANTEES OF EQUAL PROTECTION UNDER THE LAW AND THE CONSTITUTIONAL PROSCRIPTION AGAINST SPECIAL LEGISLATION

Under Illinois constitutional law, a person or class of persons is denied equal protection by a State statute when the statute arbitrarily discriminates against that person or class of persons by withholding some benefit or privilege which the State gives to all others. *County of Bureau*

vs. Thompson, 139 Ill.2d 323, 564 N.E.2d 1170 (1990). If a statute's legitimate goal can be achieved without classifying persons, then the classifications created by the statute deny some persons equal protection of the laws and render the statute invalid. 139 Ill.2d at 335-36. Additionally, the Illinois constitution proscribes against special legislation that confers a special benefit or exclusive privilege on a person or class to the exclusion of others similarly situated. *Id.* at 336. More specifically, it prohibits legislation that arbitrarily discriminates in favor of a select group. *Id.*

Here, if Section 100/3 were to be construed in such a way that the term "uncollectable" does not include settling torfeasors in a post settlement contribution action for purposes of reallocation among remaining defendants, then said statute will violate the equal protection rights of the Alex Parties and all Contribution Plaintiffs in a post settlement contribution action. It will likewise violate the Illinois Constitution's proscription against special legislation conferring a special benefit on a person or class to the exclusion of those similarly situated.

First, there are essentially two classes of defendants/Contribution Plaintiffs in any contribution action. There is the class of defendants/Contribution Plaintiffs who go to trial on their contribution claims concurrently with the plaintiff's claim. Then, there are those class of defendants/Contribution Plaintiffs that go to trial on contributions claims post settlement of the plaintiff's claims. The facts of a given case do not change, only the procedural manner in which the contribution action is litigated changes.

In the concurrent contribution action, and as already set forth above under *Ready*, settling defendants are not allowed on the verdict form. Alternatively, if we look to the Illinois Supreme Court Committee on jury instructions, even if settling defendants are allowed on the verdict form it is only for the purposes of assessing a plaintiff's contributory negligence. Under either

scenario – where settling defendants are not on the verdict form or where they are on the verdict form, a settling defendant's pro rata liability in a concurrent case does not diminish any of the remaining defendants pro rata liability. Rather, in a concurrent case, if the settling defendant is not on the verdict form, then the jury determines pro rata liability only among the remaining tortfeasors. If the settling defendant is on the verdict form, the pro rata liability of a settling defendant, as determined by the jury, is absorbed by the remaining tortfeasors on a pro rata basis. Thus, whether that absorption is occurring by was of the consequences of *Ready* or because of Section 100/3, there is no doubt that in those concurrent cases where there is more than one remaining tortfeasor, no one tortfeasor is left to hold the bag alone for the settling defendant.

In a contribution case tried post settlement based on the same facts, if the term "uncollectable" does not include settling tortfeasors, then the same Contribution Plaintiff in the concurrent case who absorbed the setting defendant's pro rata liability with all other remaining tortfeasors, would instead have to bear the absorption of the setting defendant's pro rata share alone. The contribution plaintiff in the post settlement case would have to pay more than its pro rata share in violation of the Contribution Act where the remaining tortfeasors would only have to pay that amount of liability assessed by the jury with no reallocation for the settling tortfeasor.

In the above two actions, under the Contribution Act, all contribution parties are similarly situated to each other and to the settling tortfeasor. Yet, if "uncollectable" does not include settling torfeasors, the Contribution Act arbitrarily favors either 1) contribution plaintiffs who go trial on the contribution claims concurrently with the plaintiff's claims or 2) contribution defendants who chose not to settle with the plaintiff and decide to go to trial on a post settlement contribution action so they do not have to risk reallocation in the concurrent action. The party punished and treated dissimilarly is the post-settlement Contribution Plaintiff who settled with

the plaintiff and made the plaintiff whole – which is a recognized public policy goal of the legislature when enacting the contribution claim.

Such an outcome violates the Illinois Constitution's equal protection clause and the Illinois Constitution's proscription against special legislation. Accordingly, the term "uncollectable", or Section 100/3 as whole, could never be construed to exclude settling defendants for purposes of the rule of reallocation among the remaining the tortfeasors without violating the Illinois Constitution and thus being unconstitutional.

CONCLUSION

In summary, the clear and unambiguous meaning of uncollectable, used in Section 100/3 of the Contribution Act includes the pro rata liability obligation of settling tortfeasors/Contribution Defendants whose contribution liability to the Contribution Plaintiff has been discharged pursuant to its settlement with the claimant under 100/2(c) and 2(d). The legislative intent of the Contribution Act to promote settlement and the strong equitable motivations behind its enactment and the expressed requirement for equitable sharing of liability among tortfeasors supports and requires such a construction.

Even if ambiguous, which is denied, the construction of section 2-1117, this Court's decisions in *Ready* and *Coney* and the Illinois Supreme Court Committee on Jury Instructions comments and instructions on use, *require* the joint liability statute and Contribution Act to be harmonized so that the ultimate pro rata liability of fellow tortfeasors is determined on a consistent basis across both Acts for their intended application. This requires therefore that the tort liability of settling tortfeasors/Contribution Defendants be reallocated to the remaining tortfeasors. This is likewise consistent with the legislative history of expanding the Act to

included "uncollectable" tortfeasors versus merely those that are insolvent. Finally, a decision that would exempt reallocation of a settling tortfeasor's/Contribution Defendant's pro rata liability in a contribution claim tried post settlement would result in unequal protection under the law and unconstitutional special legislation that would have the consequential effect of treating similarly situated Contribution Plaintiffs differently depending on if they tried the contribution case concurrently with the plaintiff's case or post settlement with the plaintiff.

Wherefore, ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC prays that his Court answer the certified question presented by the Seventh Circuit and find that a settling tortfeasor/settling party's pro rata liability obligation, having been discharged by Section 100/2(c) and 2(d) of the Contribution Act is uncollectable and thus must be reallocated on a pro rata basis among remaining tortsfeasors pursuant to Section 100/3 of the Contribution Act.

To the extent the Court makes a ruling related to this case specifically, ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC prays that this Court find that E-K's 75% pro rata liability as determined by the jury (Appendix at p.A19) is uncollectable under Section 100/3 of the Contribution Act and that the same must be reallocated to the Alex Parties and Safety on a pro rata basis as follows and in accordance with the formula set forth in *Illlinios Tool*:

Edwards' actual pro rata share of liability – $\frac{Amount\ Paid\ by\ Edwards}{Common\ Liability\ Paid\ to\ Roberts\ Plaintiffs}$ = 2.6%

Remaining Common Liability fund – 100% – 2.6% = 97.4%

Safety's pro rata share (10%) = $\frac{10}{25}$ = .4 then .4 x .974 = **39%**

Alex Parties' pro rata share (15%) = $\frac{15}{25}$ = .6 then .6 x .974 = **58.4%**

Respectfully submitted,

ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC

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Certificate of Compliance

Pursuant to Supreme Court Rule 341(c), I certify that this Brief of Appellants conforms to the requirements of Rules 341(a) and 341(b). The Length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341 (h)(1) points and authorities and the Rule 341(c) table of contents and statement of certificate of compliance and the certificate of service is 40 pages.

Respectfully submitted,
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NO. 126249

IN THE
SUPREME COURT OF ILLINOIS

Thomas Roberts and Diane Roberts, Plaintiffs v. Alexandria Transportation, Inc., et al. Defendants	)	Certif. 7th Cir. Federal Court, Seventh Circuit 19-2395, 19-2414
Alexandria Transportation, Inc., et al. Third-Party Plaintiffs-Appellants, Cross- Appellees, v. Safety International, LLC, Third-Party Defendant-Appellee, Cross- Appellant	)	

NOTICE OF FILING and CERTIFICATE OF SERVICE

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YOU ARE HEREBY NOTIFIED that on November 10, 2020, we electronically filed with the Clerk of the Supreme Court of Illinois, through Odyssey eFile, Brief of Appellants,

Appendix and Notice of Filing and Certificate of Service, true and correct copies of which are attached hereto and herewith served upon you.

Respectfully submitted,
ALEXANDRIA TRANSPORTATION, INC., ALEXANDRE SOLOMAKHA, and ALEX EXPRESS, LLC

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, on oath state that I served the foregoing Brief of Appellant and Appendix, pursuant to Supreme Court Rule 315(h), by having said copies sent via electronic mail to the above Service List on November 10, 2020

/s/ Lori A. Vanderlaan

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

APPENDIX

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Carolyn Taft Grosboll
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In the

United States Court of Appeals

For the Seventh Circuit

Nos. 19-2414 & 19-2395

THOMAS ROBERTS and DIANE ROBERTS,

Plaintiffs,

v.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Defendants.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Third-Party Plaintiffs-Appellants, Cross-Appellees,

v.

SAFETY INTERNATIONAL, LLC,

Third-Party Defendant-Appellee, Cross-Appellant.

Appeals from the United States District Court for the
Southern District of Illinois.
No. 3:14-cv-1063 — **J. Phil Gilbert**, *Judge.*

ARGUED MAY 19, 2020 — DECIDED AUGUST 5, 2020

Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges.*

ST. EVE, *Circuit Judge*. At a road construction site in Madison County, Illinois, a flagger abruptly turned his sign from "SLOW" to "STOP." Thomas Roberts slammed on his brakes, and Alexandre Solomakha rear-ended him, causing Roberts serious injury and prompting a lawsuit against Solomakha and transportation companies Alexandria Transportation, Inc. and Alex Express, LLC.[1] The Alex Parties filed a third-party complaint for contribution against the general contractor for the construction site, Edwards-Kamalduski ("E-K"), and a subcontractor, Safety International, LLC ("Safety"). E-K settled with the plaintiffs, and the district court dismissed it from the Alex Parties' contribution action with prejudice. The Alex Parties later settled with the plaintiffs, as well.

With E-K out of the picture, though, the Alex Parties' case becomes more complicated. The Alex Parties contend that the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100 (the "Contribution Act"), allows for the court to redistribute E-K's share of liability as determined by a jury between the Alex Parties and Safety, but Safety disagrees. The controversy surrounds the meaning of a particular phrase in the statute—"unless the obligation of one or more of the joint tortfeasors is uncollectable." We can find no decision of an Illinois court that has addressed whether the "obligation" of a settling party is "uncollectable" pursuant to 740 ILCS 100/3. Rather than decide this issue in the first instance, we respectfully request that the Illinois Supreme Court do so.

[1] The parties have referred to Solomakha, Alexandria Transportation, Inc., and Alex Express, LLC collectively throughout this litigation as the "Alex Parties." We continue to do so here.

I. Background

Thomas Roberts was driving a truck westbound through a construction zone on Interstate 70 in Madison County, Illinois, when a work zone flagger suddenly turned a "SLOW" sign to "STOP." When Roberts abruptly slammed on his brakes, Solomakha's tractor rear-ended Roberts's truck. Roberts' injuries resulted in medical bills totaling over $500,000.

Plaintiffs Thomas and Diane Roberts filed a complaint against the Alex Parties for negligence under Illinois common law in the United States District Court for the Southern District of Illinois, which sat in diversity jurisdiction. The Alex Parties, in turn, filed a third-party complaint for contribution against E-K, the general contractor for the road construction project, and Safety, the subcontractor E-K retained through an oral contract to manage (some disputed aspect of) the construction site's worker safety program. The plaintiffs settled with E-K for $50,000, and E-K filed a motion for a good faith finding pursuant to the Contribution Act. The district court granted this motion and dismissed E-K with prejudice. The Alex Parties then settled with the plaintiffs for a confidential amount. That settlement released claims against Safety, as well.

The Alex Parties continued with their contribution action against Safety, which filed a motion for summary judgment, arguing it owed no duty to the plaintiffs based on its oral contract with E-K. The district court denied this motion, and the Alex Parties and Safety proceeded to trial to resolve the Alex Parties' contribution claim. Before trial, the district court determined that, as a matter of Illinois law, the Alex Parties, Safety, and E-K all must appear on the verdict form so that the jury could adequately apportion fault among every party,

even though the court had dismissed E-K. The court also determined, based on its interpretation of the Contribution Act, the share of liability that the jury assigned to E-K should not be redistributed between the Alex Parties and Safety on a pro rata basis—instead, Safety would pay to the Alex Parties only what the jury determined was its portion of fault, and the Alex Parties would remain liable for E-K's entire share along with its own.

At trial, the Alex Parties and Safety disputed the scope of the oral contract in which Safety agreed to provide services to E-K. Safety, on one hand, contended that it agreed to provide only services related to workers' compensation insurance. The Alex Parties, meanwhile, introduced evidence depicting a broader agreement covering all site safety issues. The president of Safety—Mike Sicking—admitted at trial that he authored the Site Specific Safety Plan ("the Plan"), which E-K submitted to the Illinois Department of Transportation. The Plan identified Sicking as the job Safety Director and the "primary" contact "to help assist in day-to-day safety issues." The Plan also stated that "traffic control shall be in accordance with the applicable sections of the standard specs for the road and bridge construction, [and] the applicable guidelines contained in the National Manual on Uniform Traffic Control Devices for Streets and Highways" (the "MUTCD"). Sicking admitted that he had agreed to perform a job hazard analysis for each job description on the site, establish corresponding safety procedures, and perform monthly audits to monitor compliance. He sent a written proposal to E-K offering services for $1,400 a month, and received that amount for his services. Sicking explained, though, that E-K did not take advantage of all the services offered. Sicking admitted, for

example, that he proposed to offer in-service safety training to E-K's employees, but that he never provided such training.

Sicking admitted that if he visited the construction site and saw something unsafe, he had the authority to stop that practice. Thus, if the saw the site was missing a "flagger-ahead" sign, he would have said something about it because it would have presented a safety issue. A flagger failing to give proper notice to oncoming drivers to stop was another such issue where he would have intervened. Sicking further admitted he was not on site on a daily basis and he never confirmed whether the flaggers were compliant with the Plan.

In support of Safety's theory, Sicking testified that the oral contract between Safety and E-K did not involve traffic control or flagger training, as Sicking claimed he did not get involved in flagging operations. Kevin Edwards, on behalf of E-K, testified that the oral contract between E-K and Safety did not provide for flagger training or designing traffic control procedures because the flagger union trains the flaggers and it was the duty of the contractor (in this case, E-K) to have traffic control procedures in place.

After the conclusion of the trial, the jury determined the respective percentage of fault for each party as follows:

10%	Safety International
15%	The Alex Parties
75%	Edwards-Kamadulski

The Alex Parties were therefore on the hook for 90% of the total liability for the accident—their share plus E-K's. Safety, meanwhile, was only obligated to contribute 10%. The district court denied the Alex Parties' post-trial motion to alter or

amend the judgment under Federal Rules of Civil Procedure 59(e) and 52(b), which asked the court to revisit its determination of the reallocation issue. The court also denied Safety's post-trial motion for judgment as a matter of law under Rule 50(b), where Safety renewed its argument that the oral contract it entered into with E-K did not create a duty to the plaintiffs.

The Alex Parties appealed, contesting the district court's resolution of the reallocation issue. Safety cross-appealed, once again arguing that the district court erred in determining it owed a duty to the plaintiffs.

II. Discussion

A federal court sitting in diversity jurisdiction must apply the substantive law of the state in which its sits. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). The parties agree Illinois law governs this matter. We review a district court's interpretation of state law de novo and the application of the legal standard to the facts for clear error. *e360 Insight, Inc. v. Spamhaus Project*, 658 F.3d 637, 648 (7th Cir. 2011).

We review a district court's ruling on a Rule 50(b) motion for judgment as a matter of law de novo, construing "the trial evidence 'strictly in favor of the party who prevailed before the jury.'" *Thorne v. Member Select Ins. Co.*, 882 F.3d 642, 644 (7th Cir. 2018) (quoting *Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.*, 831 F.3d 815, 822 (7th Cir. 2016)). "We give the nonmovant 'the benefit of every inference' while refraining from weighing for ourselves the credibility of evidence and testimony." *Ruiz-Cortez v. City of Chicago*, 931 F.3d 592, 601 (7th Cir. 2019) (quoting *EEOC v. Costco Wholesale Corp.*, 903 F.3d 618, 621 (7th Cir. 2018)). Accordingly, "we must

affirm unless there is 'no legally sufficient evidentiary basis for a reasonable jury to find for the non-moving party.'" *J.K.J. v. Polk Cty.*, 960 F.3d 367, 378 (7th Cir. 2020) (en banc) (quoting *Woodward v. Corr. Med. Servs. of Ill., Inc.*, 368 F.3d 917, 926 (7th Cir. 2004)).

A. Safety's Duty to the Plaintiffs

We begin our analysis with Safety's cross-appeal, in which Safety challenges whether the Alex Parties presented sufficient evidence at trial to show that the oral contract between Safety and E-K created a duty that Safety owed to the plaintiffs to ensure the safety of the construction site. If there is not a sufficient evidentiary basis for the existence of this duty, the Alex Parties' contribution action against Safety is doomed.

Under Illinois law, "the negligent performance of contractual duties causing physical injury can give rise to tort liability regardless of whether privity of contract exists between the plaintiff and the defendant, and the scope of the defendant's duty is dependent on the terms of the contract." *Unger v. Eichleay Corp.*, 614 N.E.2d 1241, 1245 (Ill. App. Ct. 1993) (citations omitted). In many contexts, Illinois courts have noted that a contract defines the scope of a duty between a contractor and the general public. *See Thompson v. Gordon*, 948 N.E.2d 39, 51–52 (Ill. 2011) (contract between a general contractor and engineering firm defined the scope of the engineering firm's duties to the general public); *Ferentchak v. Vill. of Frankfort*, 475 N.E.2d 822, 825–26 (Ill. 1985) (civil engineer had no duty to homeowner to set foundation grades because his contract with the land developer did not require him to do so); *Block v. Lohan Assoc., Inc.*, 645 N.E.2d 207, 224 (Ill. App. Ct. 1993) (structural engineer did not a have a duty to ensure safety to the employees of the general contractor where the contract

with the general contractor was limited to design conformance); *O'Brien v. Musfeldt*, 102 N.E.2d 173, 178 (Ill. App. Ct. 1951) (contract between engineering firm and the state created a duty to the general public to install warning signs). Indeed, contractors have "a duty to protect members of the public from injuries in connection with construction work on highways," in particular. *Mora v. State*, 369 N.E.2d 868, 871–72 (Ill. 1977) (collecting cases).[2]

Where a negligence action derives from a contractual obligation, "[t]he question of whether a duty exists … is determined by the terms of the contract, and the duty, if any, will not extend beyond that described in the contract." *Winters v. Fru-Con Inc.*, 498 F.3d 734, 746 (7th Cir. 2007) (quoting *Putman v. Vill. of Bensenville*, 786 N.E.2d 203, 208 (Ill. App. Ct. 2003)); *see also Melchers v. Total Elec. Constr.*, 723 N.E.2d 815, 818 (Ill. App. Ct. 1999). Ordinarily, the determination of whether a duty exists is a question of law. *Ward v. K Mart Corp.*, 554 N.E.2d 223, 226 (Ill. 1990). But the terms of an oral contract, along with whether it exists, its conditions, and the intent of

[2] Safety cites a handful of cases purporting to contradict the proposition that a contract can establish and define a duty between a contractor and the general public, but none of them refute this statement of the law. Indeed, in two of the cases Safety cites, the court held that a contract did not create a duty to protect the general public from intervening criminal acts specifically. *See Sanchez v. Wilmette Real Estate & Mgmt. Co.*, 934 N.E.2d 1029, 1037 (Ill. App. Ct. 2010) (apartment complex did not undertake a duty to protect tenants from harm by a third-party attacker); *Chelkova v. Southland Corp.*, 771 N.E.2d 1100, 1110 (Ill. App. Ct. 2002) (holding that a franchisee was not liable to an employee who was assaulted on the premises, despite the franchisee undertaking to provide certain security measures). This key factual difference distinguishes those cases from the one we address today.

the parties, are questions of fact for the jury to determine. *Otto v. Variable Annuity Life Ins. Co.*, 134 F.3d 841, 848 (7th Cir. 1998) (citing *Mulliken v. Lewis*, 615 N.Ed.2d 25, 27 (Ill. App. Ct. 1993); *In re Estate of Kern*, 491 N.E.2d 1275, 1280 (Ill. App. Ct. 1986)). If the contract is ambiguous, the parties may introduce extrinsic evidence to help the factfinder interpret the contract. *Kurti v. Fox Valley Radiologists, Ltd.*, 464 N.E.2d 1219, 1226 (Ill. App. Ct. 1984).

Here, there was sufficient evidence for a jury to conclude that Safety entered into an oral agreement to provide E-K general safety services, beyond those strictly pertaining to workers' compensation matters. The jury heard evidence that Safety prepared and submitted a Site Specific Safety Plan to the Illinois Department of Transportation designating Sicking as the site Safety Director, making him responsible for "day-to-day safety issues," and committing to keeping traffic control in compliance with Occupational Safety and Health Administration ("OSHA") mandates and the MUTCD. The Alex Parties also put forth evidence that Safety offered in-service training about safety hazards in its proposal for $1,400 a month, and that E-K paid that $1,400 a month. Sicking also testified that if he saw an employee engaged in an unsafe practice, such as improper flagging procedures, he had the authority to stop that practice. And the jury heard that Sicking had committed to devising safety procedures and performing monthly audits to monitor compliance. All of this amounted to a legally sufficient evidentiary basis for a jury to conclude that the terms of the oral contract obligated Safety to ensure the flaggers executed their duties in accordance with appropriate safety standards, through training, creation of proper procedures, and monitoring.

Safety raises two additional arguments, neither of which succeeds. First, it argues that the Alex Parties failed to prove that its settlement with the plaintiffs released Safety, which the Alex Parties must do to prevail on their contribution claim. But Safety and the Alex Parties stipulated that the settlement released all claims against Safety, and Safety therefore cannot contest this point on appeal. Second, Safety argues that the district court erred in denying Safety's motion for judgment as a matter of law because the Alex Parties alleged in their third-party complaint that Safety had failed to train and supervise *its own* employees and never amended their complaint to allege a failure to train *E-K's* employees. Although Safety raised this argument before the district court, it did so belatedly: the argument appears only in Safety's post-trial motion. Safety's argument therefore came too late, and Safety has waived it. *Anderson v. Flexel, Inc.*, 47 F.3d 243, 247 (7th Cir. 1995) ("We have repeatedly stated that post-judgment motions cannot be used to raise arguments or legal theories that could have been and should have been brought before judgment.").

B. Illinois Joint Tortfeasor Contribution Act

We next turn to whether the district court erred in concluding that, pursuant to the Contribution Act, the share of liability that the jury assigned to E-K should not be redistributed between the Alex Parties and Safety on a pro rata basis. The Contribution Act states that "[n]o tortfeasor is liable to make contribution beyond his own pro rata share of the common liability." 740 ILCS 100/2(b). The Contribution Act continues,

> The pro rata share of each tortfeasor shall be determined in accordance with his relative

> culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share *unless the obligation of one or more of the joint tortfeasors is uncollectable*. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.

Id. § 3 (emphasis added). The district court deemed that E-K was not an uncollectable party, and thus did not reallocate E-K's share of liability between the Alex Parties and Safety. Thus, the key question from the Alex Parties' appeal is the meaning of the exception italicized above.

The Alex Parties point to § 2(d) of the Contribution Act, which provides that a tortfeasor who settles with a claimant in good faith "is discharged from all liability for any contribution to any other tortfeasor." *Id*. § 2(d). The plain language of this provision, the Alex Parties contend, makes a settling defendant—such as E-K—uncollectable in any future contribution action. "Discharged," however, does not necessarily mean "uncollectable." We are unable to find, at least, any instance where an Illinois court has said it does.

Unfortunately, no precedent from the Illinois Supreme Court (nor any appellate court in Illinois) addresses whether the obligation of a settling party is uncollectable pursuant to the Contribution Act. In *Illinois Tool Works, Inc. v. Indep. Mach. Corp*., 802 N.E.2d 1228 (Ill. App. Ct. 2003), a case upon which the Alex Parties heavily rely, Illinois Tool Works settled with the underlying plaintiffs, and then pursued its contribution claim against the remaining unsettled defendant. *Id.* at 1229–30. But that defendant asserted that any liability owed in

contribution was capped according to the amount of its statutory liability under the Workers' Compensation Act, 820 ILCS 305. *Id*. The statutory cap—not a party's settlement, as here—rendered the defendant's obligation uncollectable. *Id.* at 1231 ("[W]hile an employer may be subject to contribution, its liability is strictly limited to the amount of its worker's compensation liability."). *Illinois Tool Works* thus does not answer the question before us.

The Alex Parties also cite to *Ready v. United/Goedecke Servs., Inc.*, 905 N.E.2d 725 (Ill. 2008), but that case dealt with § 2-1117 of the Illinois Code of Civil Procedure, an entirely different provision than the one at issue here. *Id.* at 728 (discussing 735 ILCS 5/2-1117). Indeed, that provision does not even include the pivotal term "uncollectable." And *Coney v. J.L.G. Indus., Inc.*, 454 N.E.2d 197 (Ill. 1983), another case the Alex Parties cite, interprets the relevant section of the Contribution Act, but only as it applies to "insolvent or immune defendant[s]." *Id.* at 206. That case does not define the meaning of the relevant exception, nor does it resolve whether the obligation of a settling party qualifies.

Without much by way of caselaw on their side, the Alex Parties resort to public policy arguments, namely, that the district court's ruling discourages third-party plaintiffs from settling with plaintiffs if they are "left holding the bag" for other settling defendants. Safety counters that it should not be on the hook for an amount to which the Alex Parties voluntarily agreed, as the Alex Parties chose to settle with the plaintiffs for an amount greater than their pro rata share. We agree with the Illinois Supreme Court, however, that "[d]eciding between such competing policy positions is, in our view, a task better left to the legislature." *Ready*, 905 N.E.2d at 733.

Given the possible impact of the resolution of this controlling issue on Illinois citizens, we decline to decide it in the first instance and instead certify it to the Illinois Supreme Court. "'Certification of a controlling issue of state law to the highest court of the state is one method of reducing the possibility of error' in trying to predict what course the state supreme court might choose." *United States v. Glispie*, 943 F.3d 358, 372 (7th Cir. 2019) (quoting *Allstate Ins. Co. v. Menards, Inc.*, 285 F.3d 630, 638 (7th Cir. 2002)). Illinois Supreme Court Rule 20 provides that, when it appears to "the United States Court of Appeals for the Seventh Circuit[] that there are involved in any proceeding before it questions as to the law of this State, which may be determinative of the said cause, and there are no controlling precedents in the decisions of this court, [the Seventh Circuit] may certify such questions of the laws of this State to this court." Ill. S. Ct. R. 20(a). In this case, the question of whether the obligation of a settling party is uncollectable will determine whether the Alex Parties may recover more than Safety's pro rata share to account for E-K's liability, and thus will control the outcome of this appeal. We can find no Illinois cases resolving this issue. We therefore respectfully ask the Illinois Supreme Court to answer the question of whether the obligation of a settling party is uncollectable pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/3 (2019).

We invite the Justices of the Illinois Supreme Court to reformulate our question if they feel that course is appropriate. We do not intend anything in this certification to limit the scope of their inquiry. The Clerk of this Court will transmit the briefs and appendices in this case, together with this opinion, to the Illinois Supreme Court. On the request of that

Court, the Clerk will transmit all or any part of the record as that Court so desires.

QUESTION CERTIFIED.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THOMAS ROBERTS and
DIANE ROBERTS,

Plaintiffs,

v.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Defendants.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Third-Party Plaintiffs,

v.

SAFETY INTERNATIONAL, LLC,

Third-Party Defendant.

Case No. 3:14-cv-01063-JPG-SCW

MEMORANDUM AND ORDER

The Illinois Joint Tortfeasor Contribution Act says that "[n]o tortfeasor is liable to make contribution beyond his own pro rata share of the common liability." 740 ILCS 100/2(b). And a tortfeasor's "pro rata share" is simply their "percentage share [of liability in a case] as assessed by the trier of fact." *Truszewski v. Outboard Motor Marine Corp*., 292 Ill. App. 3d 558, 561, 685 N.E.2d 992, 994 (1997). So in this case—and as the Court more meticulously explained in a prior order (*see generally* ECF No. 276)—there must be three tortfeasors on the verdict form for the trier of fact to assign "pro rata shares" to: (1) defendants/third-party plaintiffs Alexandria Transportation, Alexandre Solomakha, and Alex Express, LLC (collectively, "Alex"); (2) third-

party defendant Safety International, LLC ("Safety"); and (3) third-party defendant Edwards-Kamadulski, LLC ("Edwards").

Edwards has been a problem in this case for a long time, and they rear their head again here. Several years ago, Edwards settled with the original plaintiffs in this case—the Roberts—for a tiny sum that may not reflect their pro rata share of the common liability in this case. And even though that sum was small, the Court found that the settlement was in good faith. (ECF No. 209.) Alex then settled with the original plaintiffs for a very large sum, and now are seeking contribution towards that settlement from Safety—the only remaining third-party defendant in the case. Now, Safety says that they are only required to contribute their percentage share of liability as determined by the jury—which simply amounts to multiplying Safety's percentage share from the verdict from by the settlement amounts in this case. (ECF Nos. 301, 312.) Alex, on the other hand, says that is not fair. They argue that they have voluntarily picked up the tab for both Safety and Edwards via their large settlement with the original plaintiffs, and that if Safety only pays whatever percentage of liability that the jury finds Safety is liable for, then Alex is essentially paying for Edwards's share of liability in this case—meaning Alex is paying more than its own pro rata share. (ECF No. 290.)

There is very little case law on this matter. Alex cites to *Illinois Tool Works, Inc. v. Indep. Mach. Corp*., 345 Ill. App. 3d 645, 802 N.E.2d 1228 (2003)—a case where the plaintiff, defendant/third-party plaintiff, and third-party defendants match up nearly identically to this case. And in *Illinois Tool Works*, one of the third-party defendants settled with the original plaintiff for a small sum and exited the case—just like *Edwards* did here. And then, the defendant/third-party plaintiff settled with the original plaintiff for a much larger sum—just like Alex and the Roberts family did here. So in order to fairly determine each party's pro rata share,

the court in *Illinois Tool Works* came up with a formula that basically just distributes the settling third-party defendant's unpaid portions of the common liability to the remaining parties, in shares proportional to those remaining parties' pro rata shares as determined by the jury. *Id.* at 656–60.

The reason why *Illinois Tool Works* did that, however, is because of this section of the Illinois Joint Tortfeasor Contribution Act:

> The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectible. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectible obligation in accordance with their pro rata liability.

740 ILCS 100/3; *Id.* at 649. In *Illinois Tool Works*, the settling third-party defendant was an "uncollectable" party under the statute because the Workers' Compensation Act, 820 ILCS 305/1 *et seq*., placed a statutory cap on that party's total liability in the case. *Id.* (citing *Kotecki v. Cyclops Welding Corp*., 146 Ill.2d 155, 166 Ill.Dec. 1, 585 N.E.2d 1023 (1991)).

Here, Edwards was not an "uncollectable" party pursuant to 740 ILCS 100/3. There was no statutory cap on Edwards's liability in this case, and unlike in *Illinois Tool Works*, it appears that the original plaintiffs here chose to settle for a small amount with *Edwards* for other reasons—and the Court already found that the settlement was in good faith. (ECF No. 209.) And while it would be beneficial if more Illinois state cases spoke to when a party is "uncollectable" under the statute—neither *Truszewski*, 685 N.E.2d 992 nor *Barnai v. Wal-Mart Stores, Inc.*, 2017 IL App (1st) 171940, 93 N.E.3d 534 (2017), two cases that were previously instructive on the verdict form issue, truly touch on the merits of this particular problem—the Court believes that the statutory cap factor in *Illinois Tool Works* is enough to distinguish it from this case.

To loop back to the first sentence of this order, this holding is in harmony with the text of the Illinois Joint Tortfeasor Contribution Act: "[n]o tortfeasor is liable to make contribution beyond his own pro rata share of the common liability." 740 ILCS 100/2(b). Here, Alex voluntarily chose to settle with the original plaintiffs for a large sum that may be more than their pro rata share. Safety did not. If the principal idea behind the Illinois Joint Tortfeasor Contribution Act is fairness to the parties—which both parties seem to agree about here—then it seems unfair to force Safety to pay more than their pro rata share when they are not the ones who went out and voluntarily settled for more than their own pro rata share, like Alex may have done. While the Court understands that Alex "stuck their neck out" for everyone via their settlement agreement with the original plaintiffs, that settlement agreement makes someone here a loser—and for principles of fairness, it unfortunately must be the party who chose to craft that settlement agreement in the first place. Following trial, Safety will only be liable to contribute whatever percentage of fault the jury assigns to them.

IT IS SO ORDERED.

DATED: JANUARY 22, 2019

s/ J. Phil Gilbert
J. PHIL GILBERT
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Third-Party Plaintiffs,

v.

SAFETY INTERNATIONAL, LLC,

Third-Party Defendant.

Case No. 3:14-cv-01063-JPG-MAB

VERDICT

We, the jury, apportion legal responsibility as follows:

Alexandre Solomakha Alexandria Transportation, Inc. Alex Express, LLC (Collectively, the "Alex Parties")	15 %
Safety International	10 %
Edwards-Kamadulski	75 %
TOTAL	100%

Signature Lines

[redacted]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THOMAS ROBERTS and
DIANE ROBERTS,

Plaintiffs,

v.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Defendants.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Third-Party Plaintiffs,

v.

SAFETY INTERNATIONAL, LLC,

Third-Party Defendant.

Case No. 3:14-cv-01063-JPG-MAB

JUDGMENT

This matter having come before the Court, the issues having been heard, and the jury having rendered a verdict,

IT IS HEREBY DECLARED that, according to the jury's verdict, the apportionment of responsibility in this case is as follows: 15% as to Alexandre Solomakha, Alexandria Transportation, Inc., and Alex Express, LLC (collectively, the "Alex Parties"); 10% as to Safety International, LLC; and 75% as to Edwards-Kamadulski.

IT IS FURTHER ORDERED AND ADJUGDED that the Alex Parties are entitled to a 10% contribution from Safety International, LLC according to their contribution claim.

DATED: March 7, 2019

MARGARET M. ROBERTIE,
Clerk of Court

BY: s/Tina Gray
Deputy Clerk

Approved:
s/ J. Phil Gilbert
J. Phil Gilbert
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THOMAS ROBERTS and
DIANE ROBERTS,

Plaintiffs,

v.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Defendants.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Third-Party Plaintiffs,

v.

SAFETY INTERNATIONAL, LLC,

Third-Party Defendant.

Case No. 3:14-cv-01063-JPG-MAB

MEMORANDUM AND ORDER

Following a trial on Alexandria Transportation's, Alexandre Solomakha's, and Alex Express, LLC's (collectively, "Alex's") contribution claim against remaining third-party defendant Safety International, LLC ("Safety"), each party filed post-trial motions. First, Safety has renewed their motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(b). (ECF No. 342.) That rule allows the Court to direct entry of judgment as a matter of law in favor of a party if "a reasonable jury would not have a legally sufficient evidentiary basis to find for the [opposing] party on that issue." FED. R. CIV. P. 50(a)(1). When deciding whether to do so, the Court should consider all of the evidence, but (1) must draw all reasonable inferences in favor of the non-moving party, (2) must not make credibility determinations, and (3) cannot weigh

the evidence in contravention of what the fact-finder may have done. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). "That is, the court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" *Id.* at 151 (quoting 9A C. Wright & A. Miller, *Federal Practice and Procedure* § 2529, at 300 (2d ed. 1995)). This standard mirrors the standard for granting summary judgment. *Reeves*, 530 U.S. at 150 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986)); *Murray v. Chicago Transit Auth.*, 252 F.3d 880, 887 (7th Cir. 2001).

Here, the Court cannot grant Safety's request. The jury in this case was tasked with determining each party's percentage of liability in tort to the original plaintiff. And they found that Safety was 10% liable, Alex was 15% liable, and Edwards-Kamadulski, LLC ("Edwards")—a former third-party defendant who needed to be on the verdict form in order to accurately determine each party's pro rata share of liability here—was 75% liable. (ECF No. 337.) Safety argues that the jury's verdict cannot stand because there was no evidence in this case that they had any duty to the original plaintiffs—specifically because representatives for both Safety and Edwards testified that the contract between them placed no legal duty on Safety—but the jury in this case believed otherwise. That may be due, at least in part, to the following testimony:

> Q. (By Alex's Counsel) Mr. Edwards, you and I saw each other out in the hall earlier, is that right?
>
> A. Yes, we did.
>
> Q. And you were upset this morning that you would have to come back here this afternoon, weren't you?
>
> A. No, I wasn't upset.
>
> Q. No?
>
> A. No.

> Q. Didn't you, in fact, tell me that I don't want to call you in this case because you will try to destroy my case? Didn't you make that statement, sir?
>
> A. No, I didn't.
>
> Q. Okay. Thank you.

(ECF No. 351, pp. 128:6–18.) The jury in this case was the ultimate finder of fact, and it was entitled to give the testimony in this case whatever weight it deserved. This Court does not have the legal authority to second-guess that. The Court accordingly must deny Safety's motion.

There is one other procedural matter to address in regards to Safety's post-trial motion. Even though Safety filed it 28 days after the verdict, they did not use that time to provide citations to the trial transcript—presumably because they did never ordered it. Instead, Alex ordered the transcript after Safety filed their motion and accurately cited to it in their response brief. Then, Safety filed a reply brief—which Local Rule 7.1 instructs "are not favored and should be filed only in exceptional circumstances"—in which Safety stated "that such [exceptional] circumstances exist based on the fact the transcript of the trial is now available and in the possession of Safety International's counsel." That is in poor taste and is certainly not an exceptional circumstance. Safety could have ordered the transcript after trial, but they instead waited and shifted that financial burden to the opposing party. Alex accordingly filed a motion to strike Safety's reply brief pursuant to Local Rule 7.1 (ECF No. 354), and the Court will grant that request.

Finally, Alex has filed a motion under Federal Rules of Civil Procedure 59(e) and 52(b) asking the Court to reconsider some prior rulings and amend the judgment. (ECF No. 341.) Rule 59(e) allows the Court to amend a judgment if the movant "can demonstrate a manifest error of law or present newly discovered evidence." *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). A "manifest error" is a "wholesale disregard, misapplication, or failure to recognize controlling precedent." *Burritt v. Ditlefsen*, 807 F.3d 239, 253 (7th Cir. 2015) (internal quotations

and citations omitted). This form of relief is only available if the movant clearly establishes the manifest error. *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (citing *Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1122 n. 3 (7th Cir. 2001)).

Here, most of Alex's issues center on the verdict form and how to deal with Edwards: an issue that has permeated this case for a long time. It has resulted in several dedicated motion hearings, along with two written orders from this Court. (*See* ECF Nos. 276, 318.) With all due respect to Alex's impassioned arguments, they have not presented any new law or evidence under Rule 59(e) that would lead this Court to change those rulings. If Alex still believes that the Court has erred, then their arguments at this stage are best suited with the appellate court. The Court will, however, grant Alex's motion insofar as it asks for a second, sealed judgment that reflects the confidential dollar amounts in this case.

So for the foregoing reasons, the Court:

- **DENIES** Safety's motion for judgment as a matter of law (ECF No. 342);
- **GRANTS** Alex's motion to strike Safety's reply brief (ECF No. 354);
- **DIRECTS** the Clerk of Court to **STRIKE** Safety's reply brief (ECF No. 353);
- **GRANTS IN PART** and **DENIES IN PART** Alex's motion to alter the judgment (ECF No. 341); and
- **DIRECTS** the Clerk of Court to enter a second, sealed judgment that reflects the dollar amount of the settlement in this case.

IT IS SO ORDERED.

DATED: JUNE 25, 2019

s/ J. Phil Gilbert
J. PHIL GILBERT
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THOMAS ROBERTS and
DIANE ROBERTS,

Plaintiffs,

v.

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Defendants.

Case No. 3:14-cv-01063-JPG-MAB

FILED UNDER SEAL

ALEXANDRIA TRANSPORTATION, INC., *et al.*,

Third-Party Plaintiffs,

v.

SAFETY INTERNATIONAL, LLC,

Third-Party Defendant.

JUDGMENT

This matter having come before the Court, the issues having been heard, and the jury having rendered a verdict,

IT IS HEREBY DECLARED that, according to the jury's verdict, the apportionment of responsibility in this case is as follows: 15% as to Alexandre Solomakha, Alexandria Transportation, Inc., and Alex Express, LLC (collectively, the "Alex Parties"); 10% as to Safety International, LLC; and 75% as to Edwards-Kamadulski, LLC.

IT IS FURTHER ORDERED AND ADJUGDED that the Alex Parties are entitled to a 10% contribution from Safety International, LLC in the amount of $190,000 according to their contribution claim.

DATED: June 25, 2019

MARGARET M. ROBERTIE,
Clerk of Court

BY: s/Tina Gray
Deputy Clerk

Approved:
s/ *J. Phil Gilbert*
J. Phil Gilbert
U.S. District Judge

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CIVIL LIABILITIES
(740 ILCS 100/) Joint Tortfeasor Contribution Act.

(740 ILCS 100/0.01) (from Ch. 70, par. 300)
Sec. 0.01. Short title. This Act may be cited as the Joint Tortfeasor Contribution Act.
(Source: P.A. 86-1324.)

(740 ILCS 100/1) (from Ch. 70, par. 301)
Sec. 1. This Act applies to causes of action arising on or after March 1, 1978.
(Source: P.A. 81-601.)

(740 ILCS 100/2) (from Ch. 70, par. 302)
Sec. 2. Right of Contribution. (a) Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.

(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.

(e) A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the

settlement.

(f) Anyone who, by payment, has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full his obligation to the tortfeasor, is subrogated to the tortfeasor's right of contribution. This provision does not affect any right of contribution nor any right of subrogation arising from any other relationship.
(Source: P.A. 84-1308.)

(740 ILCS 100/3) (from Ch. 70, par. 303)

Sec. 3. Amount of Contribution. The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.

If equity requires, the collective liability of some as a group shall constitute a single share.
(Source: P.A. 81-601.)

(740 ILCS 100/3.5)

(This Section was added by P.A. 89-7, which has been held unconstitutional)

Sec. 3.5. Contribution against the plaintiff's employer.

(a) If a tortfeasor brings an action for contribution against the plaintiff's employer, the employer's liability for contribution shall not exceed the amount of the employer's liability to the plaintiff under the Workers' Compensation Act or the Workers' Occupational Diseases Act. The tortfeasor seeking contribution from the plaintiff's employer is not entitled to recover money from the employer. The tortfeasor shall receive a credit against his or her liability to the plaintiff in an amount equal to the amount of contribution, if any, for which the employer is found to be liable to that tortfeasor, even if the amount exceeds the employer's liability under the Workers' Compensation Act or the Workers' Occupational Diseases Act.

(b) This Section does not apply in any action in which the plaintiff's employer has no right of reimbursement from the plaintiff under subsection (b) of Section 5 of the Workers' Compensation Act or subsection (b) of Section 5 of the Workers' Occupational Diseases Act.

(c) This amendatory Act of 1995 applies only to causes of action accruing on or after its effective date.
(Source: P.A. 89-7, eff. 3-9-95.)

(740 ILCS 100/4) (from Ch. 70, par. 304)

(Text of Section WITH the changes made by P.A. 89-7, which has been held unconstitutional)

Sec. 4. Rights of Plaintiff Unaffected. Except as provided in Section 3.5 of this Act, a plaintiff's right to recover the full amount of his judgment from any one or more defendants subject to liability in tort for the same injury to person or property, or for wrongful death, is not affected by the provisions of this Act.
(Source: P.A. 89-7, eff. 3-9-95.)

(Text of Section WITHOUT the changes made by P.A. 89-7, which has been held unconstitutional)

Sec. 4. Rights of Plaintiff Unaffected. A plaintiff's right to recover the full amount of his judgment from any one or more

defendants subject to liability in tort for the same injury to person or property, or for wrongful death, is not affected by the provisions of this Act.
(Source: P.A. 81-601.)

(740 ILCS 100/5) (from Ch. 70, par. 305)

(Text of Section WITH the changes made by P.A. 89-7, which has been held unconstitutional)

Sec. 5. Enforcement. Other than in actions for healing art malpractice, a cause of action for contribution among joint tortfeasors is not required to be asserted during the pendency of litigation brought by a claimant and may be asserted by a separate action before or after payment of a settlement or judgment in favor of the claimant, or may be asserted by counterclaim or by third-party complaint in a pending action.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date.
(Source: P.A. 89-7, eff. 3-9-95.)

(Text of Section WITHOUT the changes made by P.A. 89-7, which has been held unconstitutional)

Sec. 5. Enforcement. A cause of action for contribution among joint tortfeasors may be asserted by a separate action before or after payment, by counterclaim or by third-party complaint in a pending action.
(Source: P.A. 81-601.)

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(735 ILCS 5/2-1117) (from Ch. 110, par. 2-1117)
Sec. 2-1117. Joint liability. Except as provided in Section 2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages.
(Source: P.A. 93-10, eff. 6-4-03; 93-12, eff. 6-4-03.)

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CONTRIBUTION

INTRODUCTION

Contribution cases fall into three general categories and these instructions follow those categories: (1) where contribution is sought in the same action, tried either concurrently with the main action or consecutively, but to the same jury; (2) where contribution is sought in a separate trial and to a separate jury; and (3) where contribution is sought after settlement. The contribution action is basically the same in each of the three categories. However, significant differences exist which require separate approaches in the instructions, as explained in the Notes on Use.

Contribution should not be confused with either indemnity or equitable apportionment. Although these instructions deal only with contribution, some of the distinctions that exist among these concepts are discussed later in this introduction.

CONTRIBUTION

Tort practice in Illinois was revolutionized by the Supreme Court's historic decision in *Skinner v. Reed--Prentice Div. Package Mach. Co.,* 70 Ill.2d 1, 374 N.E.2d 437, 15 Ill.Dec. 829 (1977), as modified March 1, 1978, *cert. denied*, 436 U.S. 946, 98 S.Ct. 2849, 56 L.Ed.2d 787 (1978). That decision gave birth to a doctrine of contribution based on "equitable principles," in which the court held that "ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree to which the defective product and the employer's conduct proximately caused them." *Skinner*, 70 Ill.2d at 14, 374 N.E.2d at 442, 15 Ill.Dec. at 834. The opinion gave the doctrine prospective operation to "causes of action arising out of occurrences on and after March 1, 1978." *Skinner*, 70 Ill.2d at 17, 374 N.E.2d at 444, 15 Ill.Dec. at 836.

On September 14, 1979, "An Act in Relation to Contribution Among Joint Tortfeasors" became effective, retroactively applying to all causes of action on and after March 1, 1978. 740 ILCS 100/1-5 (1994).

Skinner and the contribution statute govern only the rights of tortfeasors inter se. They have no application to the liability of the tortfeasors to the injured plaintiff. 740 ILCS 100/4 (1994); *Henry v. St. John's Hosp.,* 138 Ill.2d 533, 542, 563 N.E.2d 410, 414, 150 Ill.Dec. 523, 527 (1990), *cert. denied*, 499 U.S. 976, 111 S.Ct. 1623, 113 L.Ed.2d 720 (1991). Those tortfeasors may, by third-party action, counterclaim, or in a separate suit, ask the trier of fact to apportion the plaintiff's damages among them in accordance with their "relative degree of fault." *Skinner, supra*; 740 ILCS 100/1-5 (1994).

Although *Skinner* was a strict product liability case, a subsequent decision applied the doctrine of contribution in a negligence case. *Erickson v. Gilden,* 76 Ill.App.3d 218, 394 N.E.2d 1076, 31 Ill.Dec. 758 (2d Dist. 1979). The contribution statute has expressly extended the doctrine to all cases "where two or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death." 740 ILCS 100/2(a) (1994). It has

been held that contribution can be based on a violation of the Road Construction Injuries Act (*Doyle v. Rhodes,* 101 Ill.2d 1, 461 N.E.2d 382, 77 Ill.Dec. 759 (1984)) and on a violation of the now repealed Structural Work Act (*Wilson v. Hoffman Group, Inc.,* 131 Ill.2d 308, 546 N.E.2d 524, 137 Ill.Dec. 579 (1989)).

Intentional tortfeasors are not entitled to obtain contribution under the Act. *Gerill Corp. v. J. L. Hargrove Builders,* 128 Ill.2d 179, 206, 538 N.E.2d 530, 542, 131 Ill.Dec. 155, 167 (1989), *cert. denied*, 493 U.S. 894, 110 S.Ct. 243, 107 L.Ed.2d 193 (1989). *Ziarko v. Soo Line R.R. Co.,* 161 Ill.2d 267, 641 N.E.2d 402, 204 Ill.Dec. 178 (1994), held that a tortfeasor whose willful and wanton conduct is "intentional" cannot obtain contribution, but a tortfeasor whose willful and wanton conduct is "reckless" can.

Punitive damages are not subject to contribution. *Hall v. Archer--Daniels--Midland Co.,* 122 Ill.2d 448, 455, 524 N.E.2d 586, 589, 120 Ill.Dec. 556, 559 (1988).

Employers may be subject to contribution but their liability is limited to the amount of their workers' compensation liability. *Kotecki v. Cyclops Welding Corp.,* 146 Ill.2d 155, 585 N.E.2d 1023, 166 Ill.Dec. 1 (1991).

The statute is entitled "An Act in Relation to Contribution Among Joint Tortfeasors" but it does not require that the tortfeasors' actions be joint in the sense that they acted simultaneously or in concert before contribution can be sought. *People v. Brockman,* 148 Ill.2d 260, 268-69, 592 N.E.2d 1026, 1029-30, 170 Ill.Dec. 346, 349-50 (1992). The only requirement is that the liability sought to be imposed arises out of the same injury. Liability in tort, governing the right of contribution among tortfeasors, is determined at the time of injury to the plaintiff. *Joe & Dan Int'l Corp. v. U.S. Fid. & Guar. Co.,* 178 Ill.App.3d 741, 750, 533 N.E.2d 912, 917, 127 Ill.Dec. 830, 835 (1st Dist. 1988).

The words "subject to liability in tort" mean that the persons from whom contribution is sought are potentially liable to the injured person. *People v. Brockman,* 143 Ill.2d 351, 371-72, 574 N.E.2d 626, 633-34, 158 Ill.Dec. 513, 520-21 (1991). For example, the Dramshop Act does not create tort liability for purposes of the Contribution Act because liability under the Dramshop Act does not arise in tort. *Hopkins v. Powers,* 113 Ill.2d 206, 497 N.E.2d 757, 100 Ill.Dec. 579 (1986). Likewise, an action for breach of fiduciary duty is not a tort for purposes of the Contribution Act. *American Environmental, Inc. v. 3--J Co.,* 222 Ill.App.3d 242, 247, 583 N.E.2d 649, 653, 164 Ill.Dec. 733, 737 (2d Dist. 1991). One liable for a breach of fiduciary duty is not subject to liability in tort under the Contribution Act because breach of fiduciary duty is controlled by the substantive laws of agency, contract and equity. *Giordano v. Morgan,* 197 Ill.App.3d 543, 549, 554 N.E.2d 810, 814, 143 Ill.Dec. 875, 879 (2d Dist. 1990).

Defenses which any tortfeasor might have against the injured person as a result of status or immunity do not necessarily bar an action for contribution against that tortfeasor. *People v. Brockman,* 143 Ill.2d 351, 373-74, 574 N.E.2d 626, 634-35, 158 Ill.Dec. 513, 521-22 (1991); *see also Wirth v. City of Highland Park,* 102 Ill.App.3d 1074, 430 N.E.2d 236, 58 Ill.Dec. 294 (2d Dist. 1981) (interspousal immunity not a bar to contribution); *Doyle v. Rhodes,* 101 Ill.2d 1, 461 N.E.2d 382, 77 Ill.Dec. 759 (1984); *Kotecki v. Cyclops Welding Corp.,* 146 Ill.2d 155, 585 N.E.2d 1023, 166 Ill.Dec. 1 (1991) (status as employer not a bar to contribution but the amount of contribution is limited to the amount of the workers' compensation liability); *Larson v.*

Buschkamp, 105 Ill.App.3d 965, 435 N.E.2d 221, 61 Ill.Dec. 732 (2d Dist. 1982) (parental immunity not a bar to contribution); *Hartigan v. Beery,* 128 Ill.App.3d 195, 470 N.E.2d 571, 83 Ill.Dec. 445 (1st Dist. 1984) (same, contribution claim based on negligent supervision); *Stephens v. McBride,* 97 Ill.2d 515, 455 N.E.2d 54, 74 Ill.Dec. 24 (1983) (notice requirement of Local Governmental and Governmental Employees Tort Immunity Act does not apply in contribution action against municipality). Whether other statutory and common law immunities affect the contribution statute remains to be seen.

The right to seek contribution exists from the time of the initial injury, and "may be asserted by a separate action before or after payment, by counterclaim or by third-party complaint in a pending action." 740 ILCS 100/5 (1994). It is not necessary for judgment to be entered against any tortfeasor before that tortfeasor may bring an action seeking contribution. 740 ILCS 100/2(a) (1994). However, the Illinois Supreme Court has interpreted section 5 (740 ILCS 100/5 (1994)) to mean that, if there is an action brought by the injured person(s), then the contribution claim must be asserted by counterclaim or third-party claim in that action, or else it will be barred. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984).

Under section 2(b) (740 ILCS 100/2(b) (1994)), a tortfeasor's liability for contribution may not exceed his pro rata share of the common liability. "Pro rata" as used in this statute merely means the percentage share as assessed by the trier of fact. "Common liability" means the total sum of the liability of all persons who contributed as a cause to the plaintiff's injury, no matter how small each share of that liability might be. *Ziarko v. Soo Line R.R. Co.,* 234 Ill.App.3d 860, 602 N.E.2d 5, 176 Ill.Dec. 698 (1st Dist. 1992); *Mallaney v. Dunaway,* 178 Ill.App.3d 827, 831, 533 N.E.2d 1114, 1116, 128 Ill.Dec. 26, 28 (3d Dist. 1988). One tortfeasor may seek contribution from another, even though the one seeking contribution is more at fault. "Active" or "major" fault does not bar an action for contribution.

Under the Contribution Act, if a settlement is found to be in good faith, the settling party is discharged from liability for contribution to any other tortfeasors. 740 ILCS 100/2(c) & (d) (1994). A party who settles may seek contribution only from parties whose liability was extinguished by that same settlement. *Dixon v. Chicago & N.W. Transp. Co.,* 151 Ill.2d 108, 601 N.E.2d 704, 176 Ill.Dec. 6 (1992).

The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability (740 ILCS 100/3 (1994)) and expressed as a percentage set by the trier of fact.

MODIFIED JOINT AND SEVERAL LIABILITY

At least one provision of the tort reform legislation passed in 1986 has a direct impact on the work of the jury in the contribution area. 735 ILCS 5/2-1117 (1994) provides for joint and several liability only for those parties whose "fault" is found to be 25% or more of the "total fault" attributable to certain parties. The statute originally permitted consideration of the total fault of the plaintiff, the defendants sued by the plaintiff, and any third-party defendant who could have been sued by the plaintiff. It was thereafter amended to exclude plaintiff's employer from the calculation. 735 ILCS 5/2-1117.

735 ILCS 5/2-1118 (1994) provides that this rule of limited joint and several liability does not apply to certain pollution actions nor to medical negligence actions. Both 2-1117 and

2-1118 are silent as to whether the jury should be instructed as to the effect of any percentage findings in this regard. It is the opinion of the Committee that the jury should not be instructed on the concept of joint and several liability, just as there is currently no instruction on that topic. *Accord, Mikolajczyk v. Ford Motor Co.,* 374 Ill.App.3d 646, 859 N.E.2d 201, 222 (1st Dist. 2007), *rev'd on other grounds,* 213 Ill.2d 516 (2008).

The instructions given to the jury must be as simple and direct as possible, consistent with the various rules of law which apply to determinations of relative fault. Furthermore, it is important to guard against inconsistency in verdicts. *See Hackett v. Equip. Specialists, Inc.,* 201 Ill.App.3d 186, 200, 559 N.E.2d 752, 761, 147 Ill.Dec. 412, 421 (1st Dist. 1990) (jury found the defendant to have been 55% at fault with respect to the plaintiff but not at fault at all with respect to this third-party defendant.)

The relative fault of the parties has relevance to a number of different issues, but the application of that fault may vary depending upon the use to which it is put. These issues include plaintiff's contributory negligence, joint and several liability, and contribution liability. Section 3 of the Contribution Act, 740 ILCS 100/3 (1994), provides that "the pro rata share of each tortfeasor shall be determined in accordance with his relative culpability." Section 3 also deals with joint and several liability.

However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectible. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectible obligation in accordance with their pro rata liability.

IPI B45.03A, which informs the jury of the manner in which plaintiff's contributory negligence is to be determined, has been judicially approved. *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053, 1060, 466 N.E.2d 1064, 1069, 81 Ill.Dec. 262, 267 (1st Dist. 1984). The jury is instructed to "determine what proportion or percentage is attributable to that plaintiff or decedent of the total combined negligence of that plaintiff or decedent and the negligence ... of the defendant and of all other persons whose negligence ... proximately contributed to that plaintiff's injury ...." *Bofman*, at 1060. The jury is then instructed to reduce the total damages sustained by the plaintiff only by the percentage of negligence attributable to the plaintiff.

Including absent tortfeasors in the calculation for the purpose of arriving at the percentage of plaintiff's negligence serves to reduce the percentage of negligence attributable to the plaintiff. It does not, however, dilute or reduce the responsibility of the defendants for the entire portion of the damages otherwise not attributable to the plaintiff's negligence. "The purpose of considering the liability of nonparty tortfeasors is not ... to limit defendant's share of responsibility, but to determine the extent of plaintiff's responsibility for his own injuries." *Bofman*, at 1064, 81 Ill.Dec., at 270.

For the reasons discussed in this introduction, the committee has formulated new alternative forms of contribution verdict form, IPI 600.14 and 600.14A. In an appropriate case, by this form the jury reports all of the applicable percentages as part of its verdict. The trial court, with the assistance of the parties, is then to compute the percentages applicable for various purposes, e.g., joint and several liability and the contribution percentages. IPI 600.14 is identical to IPI B45.03A with the exception of the paragraph "Second." For cases involving contribution

claims among defendants, tried concurrently with the plaintiff's claim, use IPI B45.03A or B45.03A2 instead of IPI 600.14 or 600.14A. The Notes on Use found at IPI B45.03A contain illustrative examples and calculations. In those cases where a party has a role as both a plaintiff and a defendant, the percentage of negligence which is determined for that person's comparative negligence is not necessarily equivalent to the percentage of negligence found in the contribution equation. *Ogg v. Coast Catamaran Corp.,* 141 Ill.App.3d 383, 490 N.E.2d 111, 95 Ill.Dec. 638 (4th Dist. 1986); *Laue v. Leifheit,* 120 Ill.App.3d 937, 458 N.E.2d 622, 76 Ill.Dec. 222 (2d Dist. 1983), *rev'd on other grounds*, 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984); *Carter v. Chicago & Ill. Midland Ry. Co.,* 140 Ill.App.3d 25, 487 N.E.2d 1267, 94 Ill.Dec. 390 (4th Dist. 1986). The rationale behind those holdings is that an injured party's negligence relates only to a lack of due care for his own safety while the defendant's negligence relates to a lack of due care for the safety of others. The courts have stated that a defendant's negligence is tortious but that an injured party's contributory negligence is not.

Using IPI 600.14 or 600.14A(Verdict Form A in this series), the jury can find and report all applicable percentages and after the verdict the trial and appellate courts can calculate the appropriate results based upon the decisions made then as to the substantive law. *See Larsen v. Wis. Power & Light,* 120 Wis.2d 508, 355 N.W.2d 557 (1984).

Further caution is given that in an appropriate case, a defendant might attempt to be found only severally liable but yet not wish to seek contribution. Either B45.03A or B45.03A2 should be used in that situation.

Ready v. United/Goedecke Services, Inc., 232 Ill.2d 369, 385 (2008) held that the percentage fault of defendants who settled before trial is not part of the calculation of modified joint and several liability under 735 ILCS 5/2-1117: "We hold that section 21117 does not apply to good-faith settling tortfeasors who have been dismissed from the lawsuit." However, if the issue of plaintiff's contributory fault will be decided by the jury, parties who settled before trial should be listed on the verdict form because the settlors' percentage of fault must be considered to determine the extent of plaintiff's responsibility for his injuries. *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482, 496 (4th Dist. 1988).

The necessity for and value of the use of computational verdict forms was strongly emphasized by the Appellate Court, Fourth District:

> Some prior decisions of this court and the appellate courts of other districts hold that failure to provide the jury with computational verdict forms in comparative negligence cases is not reversible error .... [However,] [t]he use of such verdict forms allows for the correction of jury errors, forces detailed consideration of the case by the jury, and enables the trial court to avoid using long, complicated jury instructions which would invite reversible error.
>
> Where, as in this case, counsel fail to tender proper computational verdict forms, the court should direct counsel to do so; if the court finds their product to be unsatisfactory, then it is the duty of the court *sua sponte* to provide the jury with such verdict forms. Further, in bench trials, we suggest that the trial court make the same findings on the record which are required by computational verdict forms. [Citation omitted]

> In suggesting the use of computational verdict forms in all jury cases where comparative fault is an issue, we are mindful that it generally is not incumbent upon the trial court to give jury instructions on its own motion. [Citation omitted] The Illinois Supreme Court has, however, recognized that there may be exceptions to this rule where "special circumstances" exist. [Citation omitted] The necessity of safeguarding the process of effective review of apportionment of fault is the type of "special circumstance" which justifies a departure from the principle that courts generally have no duty to instruct the jury in a manner not requested by any of the parties; this is likewise the basis of our suggestion that in bench trials comparable findings be made of record. *Johnson v. O'Neal*, 216 Ill.App.3d 975, 985-86, 576 N.E.2d 486, 493-94, 159 Ill.Dec. 817, 824-25 (4th Dist. 1991).

AVAILABILITY OF 100% CONTRIBUTION

In *Doyle v. Rhodes,* 101 Ill.2d 1, 461 N.E.2d 382, 77 Ill.Dec. 759 (1984), the court suggested that there may be instances in which one tortfeasor may receive indemnity or 100% contribution from another. The court indicated that a right of total contribution might exist under circumstances, not before the court in that case, where evidence shows that, if one of the tortfeasors had complied with a safety statute, compliance would have prevented the other tortfeasor from engaging in his "negligent" act. The court also suggested, in *American Nat'l Bank & Tr. Co. v. Columbus--Cuneo--Cabrini Med. Ctr.,* 154 Ill.2d 347, 353-54, 609 N.E.2d 285, 288-89, 181 Ill.Dec. 917, 920-21 (1992), that "in a true action for indemnification arising from vicarious liability, application of the theory of contribution should achieve a result identical to that of implied indemnity--apportionment to the indemnitor of 100% of the fault for the plaintiff's injuries." But, according to the court:

> The statutory contribution scheme is premised on fault-based considerations. As such, it is theoretically 'ill-suited to the task of addressing' quasi-contractual relationships (citation omitted). In cases of vicarious liability, there is only a basis for indemnity, not for apportionment of damages as between the principal and agent (citation omitted). Only the agent is at fault in fact for the plaintiff's injuries (citation omitted). The viability of implied indemnity in the quasi-contractual situation insures that a blameless principal cannot be found legally accountable. We therefore hold that common law implied indemnity was not abolished by the Contribution Act in quasicontractual relationships involving vicarious liability. *American Nat. Bank & Tr. Co. v. Columbus--Cuneo--Cabrini Medical Center*, 154 Ill.2d 347, 353-54, 609 N.E.2d 285, 288-89, 181 Ill.Dec. 917, 920-21 (1992).

Hackett v. Equip. Specialists, Inc., 201 Ill.App.3d 186, 559 N.E.2d 752, 147 Ill.Dec. 412 (1st Dist. 1990), held that 100% contribution was inappropriate under the circumstances of that case. In *Hackett,* the defendant manufacturer of a corn husking system which injured the plaintiff brought a third-party complaint seeking contribution from the plaintiff's employer who had failed to provide a safety guard. The jury found defendant liable to plaintiff, finding that plaintiff had assumed 45% of the risk, and attributing 55% of the fault to defendant. In resolving the third-party claim, the jury apportioned 100% liability to the third-party defendant employer and zero percent to the third-party plaintiff. The appellate court reversed and remanded the case for a new trial, explaining that a tortfeasor's liability is predicated upon his culpability to the plaintiff

and that culpability does not disappear when that tortfeasor proceeds against another. The verdicts were inconsistent, so a new trial was necessary.

INDEMNITY

Before Skinner, there were three types of indemnity in Illinois: (1) implied indemnity based on qualitative differences in the relative fault of the parties (i.e. "active-passive" or "major-minor" fault), which was the most common theory of third-party recovery; (2) indemnity by operation of law or quasi-contractual indemnity, such as where a principal may seek indemnity from an agent whose tortious conduct caused the principal to be vicariously liable; and (3) express indemnity--i.e., where the parties' contract expressly provides that one party will indemnify another under specified circumstances.

Common law implied indemnity was not abolished by the Contribution Act if the parties' liability to plaintiff is based solely upon vicarious liability. *American Nat'l Bank & Tr. Co. v. Columbus--Cuneo--Cabrini Med. Ctr.,* 154 Ill.2d 347, 609 N.E.2d 285, 181 Ill.Dec. 917 (1992); *Faier v. Ambrose & Cushing, P.C.,* 154 Ill.2d 384, 609 N.E.2d 315, 182 Ill.Dec. 12 (1993).

Examples of pre-tort relationships which give rise to a duty to indemnify include: lessor and lessee; employer and employee; owner and lessee; and master and servant. *Coleman v. Franklin Boulevard Hosp.,* 227 Ill.App.3d 904, 908, 592 N.E.2d 327, 329, 169 Ill.Dec. 840, 842 (1st Dist. 1992); *Kemner v. Norfolk & W. Ry.,* 188 Ill.App.3d 245, 250, 544 N.E.2d 124, 127, 135 Ill.Dec. 767, 770 (5th Dist. 1989).

The IPI instructions applicable in indemnity cases begin at 500.00.

EQUITABLE APPORTIONMENT

Equitable apportionment differs from both indemnity and contribution. While contribution deals with the apportionment of damages based on joint liability for the same injury, equitable apportionment focuses on liability for separate and distinct injuries to the injured person. The leading case illustrating this doctrine is *Gertz v. Campbell,* 55 Ill.2d 84, 302 N.E.2d 40 (1973), where the defendant responsible for the plaintiff's fractured leg sought reimbursement from a physician for that part of the plaintiff's damages attributable to the alleged negligence of the physician. Under applicable tort law, defendant was subject to liability for all of plaintiff's damages, including the amputation for which the doctor was responsible; therefore, the court held that the defendant, third-party complainant, had a right to bring an action against the physician for the damages to the plaintiff attributable to the malpractice under the doctrine of equitable apportionment. *See also Burke v. 12 Rothschild's Liquor Mart,* 148 Ill.2d 429, 437-38, 593 N.E.2d 522, 525-26, 170 Ill.Dec. 633, 636-37 (1992) (explaining that *Gertz* applies where there are separate and distinct injuries for which the defendants could not be held jointly liable.) It has been held that equitable apportionment is not available to an intentional tortfeasor. *Neuman v. City of Chicago,* 110 Ill.App.3d 907, 443 N.E.2d 626, 66 Ill.Dec. 700 (1st Dist. 1982).

Cram v. Showalter, 140 Ill.App.3d 1068, 489 N.E.2d 892, 95 Ill.Dec. 330 (2d Dist. 1986), extended the reasoning in *Gertz.* There, a release of one party responsible for the injury, did not, in the absence of specific language, preclude an equitable apportionment action by the injured party against a subsequent treating physician where the tortious conduct resulted in a separate

and distinct injury, and plaintiff had not been fully compensated for the injury. *But see O'Keefe v. Greenwald,* 214 Ill.App.3d 926, 574 N.E.2d 136, 158 Ill.Dec. 342 (1st Dist. 1991) (finding the injury by the physician not to be separate and distinct.)

In *Mayhew Steel Prod., Inc. v. Hirschfelder,* 150 Ill.App.3d 328, 331, 501 N.E.2d 904, 907, 103 Ill.Dec. 587, 590 (5th Dist. 1986), the Appellate Court, Fifth District, disagreed with the Cram court's statement that an original tortfeasor can bring an action to be indemnified for the damage attributable to a subsequent tortfeasor. According to the court, the Contribution Act replaces the common-law concept of equitable apportionment. *See also Cleggett v. Zapianin,* 187 Ill.App.3d 872, 543 N.E.2d 892, 135 Ill.Dec. 324 (1st Dist. 1989).

The medical malpractice statute of limitation and repose, 735 ILCS 5/13-212, 13212(a) (1994), applies to equitable actions in general and equitable apportionment in particular. In *Pederson v. West,* 205 Ill.App.3d 200, 562 N.E.2d 578, 150 Ill.Dec. 48 (1st Dist. 1990), the court found that it was immaterial whether the third-party complaint was for "contribution" or "equitable apportionment," and dismissed the complaint as time barred.

Introduction revised January 2010.

600.01 Apportionment of Responsibility--Contribution--General Statement of Law

One who [is required to pay] [may be required to pay] [has paid] money for causing injury to another may be entitled to contribution for a percentage of that sum from a third-party. The circumstances under which such contribution is permitted will be explained to you in the following instructions.

Notes and Comment revised January 2010.

Notes on Use

If this instruction applies to fewer than all counts, it should be so limited by an introductory phrase.

An action for contribution is available against alleged tortfeasors whose liability is based on theories other than, or in addition to, negligence--e.g., strict liability in tort. The following series of contribution instructions were drafted for use in tort cases. An intentional tortfeasor may not recover contribution, but a reckless tortfeasor may recover contribution. *Ziarko v. Soo Line R.R. Co.,* 161 Ill.2d 267, 280 (1994).

One of the modifications required will be the substitution of an appropriate term in lieu of the terms "negligence" and "fault," such as the term "responsibility" or "legal responsibility." Those terms were selected as alternatives to "negligence" and "fault" because they are broad and meet the problem described in the dissenting opinions in the *Skinner* decision. *See also Heinrich v. Peabody Int'l Corp.,* 99 Ill.2d 344, 349 (1984) and *Mikolajczyk v. Ford Motor Co.,* 373 Ill.App.3d 646, *rev'd on other grounds,* 231 Ill.2d 516 (2008).

> That strict liability is not based on fault is well recognized. In *Suvada v. White Motor Co.* (1965), 32 Ill.2d 612, 210 N.E.2d 182, where this State adopted the doctrine as well as section 402A of the Restatement (Second) of Torts (1965), such considerations as public interest in human life and health, the manufacturer's solicitations to purchase, and the justice of imposing liability on one who creates the risk and reaps the profit, are described as the motivating forces for the adoption of the doctrine.
>
> * * *
>
> Under strict liability, responsibility is imposed because of the character of the product, not because of fault. *Skinner v. Reed-Prentice Div. Package Mach. Co.,* 70 Ill.2d at 24-26, 15 Ill.Dec. at 839-40.

The committee concluded that the terms "responsibility" or "legal responsibility" are readily understandable and do not require definition.

In addition to this substitution, other modifications may be necessary to accommodate any other theory or theories.

If indemnity is also sought, see the indemnity instructions in the 500-series.

Comment

The amount of the settlement or the judgment determines the amount of the common liability to the plaintiff which will be allocated among the contribution parties. *Mallaney v. Dunaway,* 178 Ill.App.3d 827, 533 N.E.2d 1114, 128 Ill.Dec. 26 (3d Dist. 1988). Where there has been a post-verdict settlement, it is the good-faith settlement amount that represents the common liability, not the verdict amount. *Ziarko v. Soo Line R.R. Co.,* 161 Ill.2d 267, 286-288 (1994). Punitive damages are not subject to contribution. *Hall v. Archer-Daniels-Midland Co.,* 122 Ill.2d 448, 524 N.E.2d 586, 120 Ill.Dec. 556 (1988).

No Illinois court has as yet addressed the question of whether a contribution defendant's pro rata liability includes any fault attributable to an absent (non-party) tortfeasor. The Contribution Act makes the contribution defendant responsible only for his "pro rata share of the common liability." The instructions in this chapter may have to be modified depending upon the development of case law on this issue.

600.02 Apportionment of Responsibility--Complaint and Claims for Contribution Tried Concurrently (Same Issues)

If you find that [any of the defendants][the defendant] [are] [is] legally responsible for proximately causing plaintiff's [injuries] [damages], then you must apportion damages by determining the relative degree of legal responsibility of each [person] [and] [entity] named or described on the Verdict Form.

In making that determination, you should consider the degree to which the [condition of the product] [and] [person's] [and] [entity's] conduct proximately caused plaintiff's [injuries] [damages].

In your verdict form, you will state the percentage of legal responsibility of each of the [persons] [and] [entities] named on the verdict form. The total of these percentages must add up to 100%.

Notes and Comment revised January 2010.

Notes on Use

This instruction should be used for all cases where contribution actions are tried concurrently with plaintiff's primary suit. It should also be used in cases where issues arising under 735 ILCS 5/2-1117 need to be decided. This instruction can be used with complaints or third-party complaints having theories of liability other than negligence. Appropriate bracketed phrases should be utilized to reflect the legal theories at issue.

This instruction is intended for use in conjunction with a contribution form of verdict, IPI 600.14 or 600.14A. The trial court should determine as a matter of law which persons or entities should be named on the form of verdict for purposes of allocating fault. Under 735 ILCS 5/2-1117, fault can be allocated among plaintiff, defendant, and third-party defendants other than plaintiff's employer. *See* Comment to IPI 600.14 (form of verdict).

Issues and burden of proof instructions should be used to advise the jury of the claims of the parties and the respective burdens of proof.

Comment

This form of instruction is a change from the prior version. The changes were intended to simplify the instruction and to make the second paragraph consistent with case law concerning apportionment of fault.

This form of instruction was used in *Mikolajczyk v. Ford Motor Co.,* 369 Ill.App.3d 78, 859 N.E.2d 201 (1st Dist. 2006), *rev'd on other grounds,* 231 Ill.2d 516 (2008). It was drafted to conform to *Skinner v. Reed-Prentice,* 70 Ill.2d 1, 14 (1977) and *Heinrich v. Peabody,* 99 Ill.2d 344, 349 (1984).

If there is an action brought by an injured person, then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191 (1984). *Laue* does not address the right to contribution when a suit is settled before defendant files a contribution action.

600.03 Apportionment of Responsibility--Complaint and Claims for Contribution Tried or Submitted Consecutively to Same Jury (Same Issues)

You have found that defendant(s) [is] [are] liable to ____. You must now apportion damages by determining, under the instructions already given you in ____ case, the relative degree of legal responsibility of [each of those defendant's][and] [any persons identified in the verdict form] for ____[injuries] [and] [damages].

In making that determination, you should consider the degree to which the [condition of the product] [and] [person's] [and] [entity's] conduct proximately caused plaintiff's [injuries] [damages].

In your verdict, you will state the percentage of fault of each person identified on the form of verdict and the total of those percentages must add up to 100%.

Instruction, Notes and Comment revised January 2010.

Notes on Use

This instruction should be used when any contribution claims--whether counterclaims between original defendants or third-party claims--are tried consecutively to the same jury which has awarded damages to the plaintiff. All relevant instructions from the primary action should be submitted to the jury.

The jury should receive new issues and burden of proof instructions on each counterclaim or third-party claim with appropriate supporting instructions as to the theories of liability presented.

This instruction is intended for use in conjunction with one of the contribution verdict forms, IPI 600.14 or 600.14A. The trial court should determine as a matter of law which parties (or non-parties) should be named on the form of verdict for purposes of allocating fault. See Comment to IPI 600.14.

Comment

This form of instruction is a change from the prior version. The changes were intended to simplify the instruction and to make the second paragraph consistent with case law concerning apportionment of fault under contribution law.

The language in the second paragraph of this instruction was used in *Mikolajczyk v. Ford Motor Co.,* 369 Ill.App.3d 78, 859 N.E.2d 201 (1st Dist. 2006), *reve'd on other grounds,* 231 Ill.2d 516 (2008). It was drafted to conform to *Skinner v. Reed-Prentice,* 70 Ill.2d 1, 14 (1977) and *Heinrich v. Peabody,* 99 Ill.2d 344, 349 (1984).

600.04 Issues--Apportionment of Responsibility--Third-Party Complaint Tried and Submitted Concurrently

[1] In addition to the claim of ____ against ____, ____ makes a claim against ____. ____ claims that if he is liable to ____ for damages, then he is entitled to contribution from ____ for a percentage of those damages.

[2] If you find [____] [one or more defendants] liable to ____, then you must consider the claim for contribution by [____] [each such defendant].

[3] ____ claims that _____ was negligent in one or more of the following respects:

[*Set forth in simple form, without undue emphasis or repetition, those allegations of the third-party complaint as to the conduct of the third-party defendant which have not been withdrawn or ruled out by the court and which are supported by evidence.*]

____ further claims that one or more of the foregoing was a proximate cause of ____'s [injuries] [and] [damages].

[4] ____ [denies that he did any of the things claimed by ____;] [denies that he was negligent (in doing any of the things claimed by ____);] [and denies that any claimed act or omission on the part of ____ was a proximate cause of ____'s (injuries) (and) (damages)].

[5] [____ also asserts the following affirmative defense(s):

(*Set forth in simple form without undue emphasis or repetition those affirmative defenses in the third-party answer which have not been withdrawn or ruled out by the court and are supported by the evidence.*)]

[6] [____denies (that) (those) affirmative defense(s).]

Notes and Comment revised January 2010.

Notes on Use

This instruction is to be used where parties who were not sued by the plaintiff are brought into the suit in a claim for contribution.

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

As used in this instruction, the term "affirmative defense(s)" refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.05 Issues--Apportionment of Responsibility--Separate or Third-Party Complaint Tried and Submitted Consecutively to Same Jury

[1] You have found that ____ [is] [are] liable to ____. You must now decide ____'s claim that he is entitled to contribution from ____ for a percentage of the damages awarded to ____.

[2] ____ claims that _____ was also negligent in one or more of the following respects:

[*Set forth in simple form, without undue emphasis or repetition, those allegations of the third-party complaint as to the conduct of the third-party defendant which have not been withdrawn or ruled out by the court and which are supported by the evidence.*]

____ further claims that one or more of the foregoing was a proximate cause of ____'s [injuries] [and] [damages].

[3] ____ [denies that he did any of the things claimed by ____;] [denies that he was negligent (in doing any of the things claimed by _____);] [and denies that any claimed act or omission on the part of ____ was a proximate cause of ____'s (injuries) (and) (damages)].

[4] [____ also asserts the following affirmative defense(s):

(*Set forth in simple form, without undue emphasis or repetition, those affirmative defenses in the third-party answer which have not been withdrawn or ruled out by the court and which are supported by the evidence.*)]

[5] [____denies (that) (those) affirmative defense(s).]

Notes and Comment revised January 2010.

Notes on Use

All relevant instructions submitted in the prime action should be resubmitted to the jury.

This instruction is to be used where parties who were not sued by the plaintiff are brought into the suit in a claim for contribution.

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

In this instruction, use only the parties' names; do *not* refer to their pleading status (i.e., plaintiff, counterplaintiff, etc.).

As used in this instruction, the term “affirmative defense(s)” refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative

defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.06 Burden of Proof--Apportionment of Responsibility--Third-Party Complaint Tried and Submitted Concurrently or Consecutively to the Same Jury

As to the claim of ____ against _____, ____ has the burden of proving each of the following propositions:

First, that ____ acted or failed to act in one of the ways claimed in these instructions, and that in so acting, or failing to act, ____ was negligent;

Second, that the negligence of ____ was a proximate cause of ____'s [injuries] [and] [damages].

If you find from your consideration of all the evidence that both of these propositions have been proved, then your verdict should be for ____ and against ____, and you should include ____ in [any] [the] apportionment of damages.

If, on the other hand, you find from your consideration of all the evidence that either one or both of these propositions has not been proved, then your verdict should be for ____ and you will have no occasion to consider the apportionment of damages against ____.

Comment revised January 2010.

Notes on Use

This instruction should be used in conjunction with the contribution verdict form, IPI 600.14.

A burden of proof instruction should be submitted as to each party who is claimed to be responsible for the plaintiff's injury and who the trial court determines should be named on the verdict form.

If more than one legal theory is alleged against any tortfeasor (e.g., negligence and strict products liability), this instruction must be modified to include the burden of proof for those causes of action and to state the burdens in the alternative.

This instruction should be given in conjunction with appropriate issues instructions as well as appropriate definitions, etc. It can be used in cases tried either concurrently or consecutively with the primary action.

Comment

The attribution of a percentage of fault to non-party tortfeasors may be sought by various parties in several different contexts. The plaintiff may seek to establish fault on the part of a non-party in order to reduce the plaintiff's percentage of comparative negligence. A third-party defendant tortfeasor, not subject to liability by judgment to the plaintiff, may seek to apportion fault to a non-party tortfeasor in order to limit the thirdparty defendant's proportionate share of fault to a lesser figure (this has not yet been approved or rejected under Illinois cases).

600.07 Apportionment of Responsibility--Complaint and Claims for Contribution Tried and Submitted Concurrently to the Same Jury--Third Party Complaint--Negligence

This instruction is replaced by IPI 600.02, which has been expanded to include both concurrent submissions of counterclaims for contribution and also third-party complaints. Those two situations were previously split between IPI 600.02 and IPI 600.07.

600.08 Apportionment Of Responsibility--Complaint And Claims For Contribution Tried And Submitted Consecutively To The Same Jury--Third Party Complaint--Negligence

IPI 600.08 has been withdrawn because its function has been superseded by modified IPI 600.03.

600.09 Issues--Contribution Following Settlement

[1] ____ has paid a sum of money to ____ in settlement of ____'s claim for his [injuries] [and] [damages]. ____ now claims that he is entitled to contribution from ____ for a percentage of that sum paid.

[2] [____ further claims that the payment was made in reasonable anticipation of his liability to ____.]

[3] ____ claims that ____ was negligent in one or more of the following respects:

[*Set forth in simple form, without undue emphasis, those allegations as to the conduct of the defendant which are set forth in the complaint for contribution which have not been withdrawn or ruled out by the court and are supported by the evidence.*]

[4] ____ further claims that one or more of the foregoing was a proximate cause of ____'s [injuries] [and] [damages].

[5] ____ [denies that the payment was made in reasonable anticipation of liability;] [denies that he did any of the things claimed by ____;] [denies that he was negligent (in doing any of the things claimed by ____);] [and denies that any claimed act or omission on the part of ____ was a proximate cause of ____'s (injuries) (and) (damages)].

[6] [____ also asserts the following affirmative defense(s):

(*Set forth in simple form, without undue emphasis or repetition, those affirmative defenses in the defendant's answer which have not been withdrawn or ruled out by the court and are supported by the evidence.*)]

[7] [____denies (that) (those) affirmative defense(s).]

[8] [____(also) claims that ____was negligent in one or more of the following respects:

(*Set forth in simple form, without undue emphasis, those allegations as to the conduct of the plaintiff which have been set forth in the defendant's answer which have not been withdrawn or ruled out by the court and are supported by the evidence.*)]

[9] [____ further claims that one or more of the foregoing was (a) (the) proximate cause of ____'s (injuries) (and) (damages).]

[10] [____ (admits) (denies)

(*Set forth in simple form, without undue emphasis, the admissions, if any, and denials contained in plaintiff's reply to defendant's allegations.*)]

Notes and Comment revised January 2010.

Notes on Use

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

The instruction presumes that there is no issue that payment was made. If an issue as to payment arises, the instruction should be modified.

Paragraphs 8, 9 and 10 should be used only if the defendant alleges in his pleadings specific acts or omissions of the plaintiff.

As used in this instruction, the term "affirmative defense(s)" refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

Paragraph 2 is consistent with the requirement in indemnity cases that the plaintiff show that his payment was made in the reasonable anticipation of liability. *St. Paul Fire & Marine Ins. Co. v. Michelin Tire Corp.,* 12 Ill.App.3d 165, 298 N.E.2d 289 (1st Dist. l973); *Nogacz v. Procter & Gamble Mfg. Co.,* 37 Ill.App.3d 636, 347 N.E.2d 112, 122- 24 (1st Dist. l975); *N.E. Finch Co. v. R. C. Mahon Co.,* 54 Ill.App.3d 573, 370 N.E.2d 160, 12 Ill.Dec. 537 (3d Dist. l977); *Houser v. Witt,* 111 Ill.App.3d 123, 443 N.E.2d 725, 66 Ill.Dec. 799 (4th Dist. 1982). This paragraph has been held to be a required element of proof in all contribution actions following settlement. See *Patel v. Trueblood, Inc.,* 281 Ill.App.3d 197, 217 Ill.Dec. 109, 666 N.E.2d 778 (1st Dist. 1996).

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.10 Burden of Proof--Contribution Following Settlement

____ has the burden of proving each of the following propositions:

First, that ____ acted or failed to act in one of the ways claimed in these instructions, and that in so acting, or failing to act, ____ was negligent;

Second, that the negligence of ____ was a proximate cause of [the injury to ____] [and] [the damage to ____'s property][;][.]

[Third, that the payment ____ made was in reasonable anticipation of liability to ____.]

[____ has the burden of proving the affirmative defense(s) that:

(*Concisely state any affirmative defenses.*)]

If you find from your consideration of all the evidence that each of the propositions required of ____ has been proved [and that none of the affirmative defenses has been proved] [and that the affirmative defense has not been proved], then your verdict should be for ____ and you should apportion damages.

If, on the other hand, you find from your consideration of all the evidence that any of the propositions required of ____ has not been proved, [or that any one of the affirmative defenses has been proved,] [or that the affirmative defense has been proved,] then your verdict should be for ____and you will have no occasion to consider the apportionment of damages.

Notes and Comment revised January 2010.

Notes on Use

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

As used in this instruction, the term "affirmative defense(s)" refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.11 Apportionment of Responsibility--Contribution Following Settlement

To apportion damages, you must determine from all the evidence the relative degree of legal responsibility of [each party to this lawsuit] [of any persons identified in the verdict form] who proximately caused ____ [injuries] [damages].

In making that determination, you should consider the degree to which the [condition of the product] [and] [person's] [and] [entity's] conduct proximately caused plaintiff's [injuries] [damages].

In your verdict form, you will state the percentage of legal responsibility of each of these persons. The total of these percentages must add up to 100%.

Instruction, Notes and Comment revised January 2010.

Notes on Use

This instruction should be given in a suit for contribution following a complete settlement with the injured person(s). In cases tried and submitted concurrently (IPI 600.04) or consecutively (IPI 600.05) to the same jury, IPI 600.02 or 600.03 will be given.

If the right of contribution is based on a theory other than negligence, willful and wanton misconduct or product liability, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

For actions for contribution following settlement with the plaintiff by one or more tortfeasors, it is anticipated that consideration of the injured person's contributory negligence or other conduct, such as assumption of the risk, will not be necessary for the proper calculation of the contribution percentages. For that reason, reference to the fault of the injured person is not included in this instruction nor is it included within IPI 600.12. If, in the circumstances of a particular case, consideration of the injured person's fault becomes necessary, this instruction would need to be modified.

The committee recommends that a non-party not be included on the verdict form in contribution cases tried after settlement with the plaintiff. Non-party legal responsibility is only relevant if plaintiff's contributory fault is at issue. *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984); *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988).

Comment

This form of instruction is a change from the prior version. The changes were intended to simplify the instruction and to make the second paragraph consistent with case law concerning apportionment of fault.

The language in the second paragraph of this instruction was used in *Mikolajczyk v. Ford Motor Co.,* 369 Ill.App.3d 78, 859 N.E.2d 201 (1st Dist. 2006), *rev'd on other grounds,* 231 Ill.2d 516 (2008). It was drafted to conform to *Skinner v. Reed-Prentice,* 70 Ill.2d 1, 14 (1977) and Heinrich v. Peabody, 99 Ill.2d 344, 349 (1984).

600.12 Apportionment of Responsibility--Instruction on Use of Verdict Forms--Contribution Following Settlement

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdicts must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate forms of verdict and return them to the court.

Each verdict should be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiffs:	[name of first plaintiff] [name of second plaintiff]
Defendants:	[name of first defendant] [name of second defendant]

You must fill in a percentage for each party. If you find in favor of [the defendant] [one or more defendants], then you must fill in zero percent for [that defendant] [or those defendants]. The total of the percentages must equal 100.

Instruction and Notes revised January 2010.

Notes on Use

See Note on Use at IPI 600.11. This instruction is to be used only in actions for contribution following settlement. Fill in the names of the parties before submitting this instruction to the jury.

600.13 Apportionment of Responsibility--Instruction on Use of Verdict Forms--Contribution Claims Tried Concurrently or Consecutively to Same Jury

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdicts must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate forms of verdict and return them to the court.

Each verdict should be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiffs:	[name of first plaintiff] [name of second plaintiff]
Defendants-3rd Party Plaintiffs	[name of first defendant-3rd party plaintiff] [name of second defendant-3rd party plf.]
3rd Party Defendants	[Name of 3rd party defendant]

You must fill in a percentage for each party. If you find in favor of [the defendant] [one or more defendants], [or the third-party defendant], then you must fill in zero percent for [that defendant] [or those defendants] [or the third-party defendant]. The total of the percentages must equal 100.

Instruction and Notes revised January 2010.

Notes on Use

This instruction is to be used in any action in which contribution is sought, except actions for contribution following a settlement by one alleged tortfeasor that settles the liability of all. In that case, use IPI 600.12. Fill in the names of the parties before submitting this instruction to the jury. IPI 600.14 should be modified and used as the accompanying verdict form.

600.14. Contribution Verdict Form--Comparative Negligence an Issue--Verdict for Plaintiff

Verdict Form A

We, the jury, find for [plaintiff's name] and against the following defendant or defendants:

[name of defendant 1]	Yes __	No __
[name of defendant 2]	Yes __	No __

We further find the following:

First: Without taking into consideration the question of reduction of damages due to the [negligence] [other damage reducing defense] of [name of plaintiff], if any, we find that the total amount of damages suffered by [name of plaintiff] as a proximate result of the occurrence in question is ____, itemized as follows:

List each category of damages, e.g.

The disfigurement resulting from the injury	$_____
Insert other damages categories from IPI 30.05, 30.05.01, 30.07, 30.08, 30.09 or as applicable	$_____
PLAINTIFF'S TOTAL DAMAGES	$_____

Second: As to the contribution claims brought by [third-party plaintiff's name], we find:

Against [third-party defendant 1]	Yes __	No __
Against [third-party defendant 2]	Yes __	No __

Third: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] who [that] proximately caused [name of plaintiff] injury, we find the percentage of legal responsibility attributable to each as follows:

a) [plaintiff's name] ____%

b) [defendant #1 name] ____%

c) [defendant #2 name] ____%

d) [3rd party defendant 1 name] ____%

e) [3rd party defendant 2 name] ____%

f) [other name1]

1The Committee recommends that non-parties be excluded from the verdict form until the trial judge first makes the determination that sufficient evidence has been presented to support a jury finding of fault with respect to that non-party. Assuming such is presented and if the jury will need to decide whether plaintiff was contributorily negligent, then the non-party should be listed on the verdict form based on *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984) and *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988). For contribution cases in which plaintiff's contributory fault is not an issue, use IPI 600.14A.

(*Instructions to Jury: If you find that plaintiff was not [contributorily negligent] [other damage reducing defense], or if you find any other party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a zero (0)% as to that party.*)

Fourth: After reducing the plaintiff's total damages [(from paragraph First)] by the percentage of [negligence] [fault], if any, of ____ [(from line (a) in paragraph Third)], we award ____ recoverable damages in the amount of ____.

[Signature lines]

Verdict Form revised January 2010. Notes revised June 1, 2012.

Notes on Use

This verdict form is appropriate to use in cases where there are contribution claims involving one or more third-party complaints and where the issue of contributory fault will be decided by the jury. However, if the plaintiff suffers multiple, separable injuries and not all of the defeants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. *See Auten v. Franklin,* 404 Ill.App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec.297 (4th Dist. 2010). If there is no issue of contributory fault, use *IPI 600.14A.* This verdict form serves as a basis to determine all fact issues relating to comparative negligence, joint and several liability and contribution.

B45.03A is similar to this verdict form, except it lacks the paragraph "Second" providing for findings for or against third-party defendants. B45.03A is intended for use in cases involving contribution claims among defendants, tried concurrently with the plaintiff's claim.

600.14A Contribution Verdict Form--Comparative Negligence Not an Issue--Verdict for Plaintiff

Verdict Form A

We, the jury, find for _____ and against the following defendant or defendants:

	Yes	No
Defendant #1	__	__

	Yes	No
Defendant #2	__	__

We further find the following:

First: We find that the total amount of damages suffered by [name of plaintiff] as a proximate result of the occurrence in question is $_____, itemized as follows:

List each category of damages, e.g.

The disfigurement resulting from the injury	$_____
Insert other damages categories from IPI 30.05, 30.05.01, 30.07, 30.08, 30.09 or as applicable	$_____
PLAINTIFF'S TOTAL DAMAGES	$_____

Second: As to the contribution claims brought by [name of third-party plaintiff], we find:

		Yes	No
Against	Third-party defendant #1	__	__

		Yes	No
Against	Third-party defendant #2	__	__

Third: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] [who] [that] proximately caused [plaintiff's name] injury, we find the percentage of legal responsibility attributable to each as follows:

a) Defendant #1's name	____%
b) Defendant #2's name	____%
c) Third-party defendant #1's name	____%
d) Third-party defendant #2's name	____%
TOTAL	100%

(*Instructions to Jury: If you find that any party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter zero (0)% as to that party.*) *[Signature lines]*

Verdict Form and Notes adopted January 2010. Notes revised June 1, 2012.

Notes on Use

This verdict form is appropriate to use in cases where there are contribution claims involving one or more third-party complaints and where the issue of contributory fault will not be decided by the jury. However, if the plaintiff suffers multiple, separable injuries and not all of the defendants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. *See Auten v. Franklin,* 404 Ill. App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec. 297 (4th Dist. 2010). If there is an issue of contributory fault, use IPI 600.14. This instruction serves as a basis to determine all fact issues relating to liability of the defendants, third-party defendants, joint and several liability and contribution.

B45.03A2 is similar to this verdict form, except it lacks the paragraph "Second" providing for findings for or against third-party defendants. B45.03A2 is intended for use in cases involving contribution claims among defendants tried concurrently with the plaintiff's claim.

If there is no issue of contributory negligence, the Committee recommends against including non-parties on the verdict form. *Compare Ready v. United/Goedecke Services, Inc.,* 232 Ill.2d 369, 385 (2008) *and Jones v. DHR Cambridge Homes, Inc.,* 381 Ill.App.3d 18, 31-32, 885 N.E.2d 330 (1st Dist. 2008) *with Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984) *and Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988).

600.15 Verdict Form--Verdict for Defendant

IPI 600.15 has been withdrawn because its function has been superseded by the new verdict forms and by the direction to the jury to place a zero on the line for each contribution defendant which the jury finds to be not at fault.

600.16 Verdict Form--Apportionment of Responsibility--Contribution Following Settlement

We, the jury, apportion responsibility as follows:

Name of contribution plaintiff	%
Name of contribution defendant #1	%
Name of contribution defendant #2	%
TOTAL	100%

(Instruction to Jury: If you find that any person or entity was not legally responsible in a way that proximately caused the injured person's injury, then you should enter a zero (0)% as to that person or entity.)

[Signature Lines]

Verdict Form and Notes revised January 2010.

Notes on Use

Fill in the names of all parties to the contribution action, including the contribution plaintiff(s), before submitting this form to the jury.

As stated in the Notes on Use to IPI 600.11, it is anticipated that in contribution actions following settlement, the fault attributable to the injured person will not need to be considered to arrive at the contribution apportionment among the contribution parties.

If there is no issue of contributory negligence, the Committee recommends against including non-parties on the verdict form. *Compare Ready v. United/Goedecke Services, Inc.,* 232 Ill.2d 369, 385 (2008) and *Jones v. DHR Cambridge Homes, Inc.,* 381 Ill.App.3d 18, 31-32, 885 N.E.2d 330 (1st Dist. 2008) with *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984) and *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988).

600.17 Apportionment of Responsibility--Treatment of Parties as a Unit

For the purposes of these instructions, you will consider ____ and ____ as one [defendant] [plaintiff] [party].

Notes revised January 2010.

Notes on Use

This instruction must be given when two or more parties are combined as a unit as described in 740 ILCS 100/3 (1994), which provides, "[i]f equity requires, the collective liability of some as a group shall constitute a single share."

When this instruction is used, place the names of both such parties on a single line of the apportionment verdict form, IPI 600.14, IPI 600.14A or IPI 600.16.

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Sep 12	Governor vetoed
Oct 16	Placed Calendar Total Veto
Oct 17	Motn filed overrde Gov veto BLOOM
	3/5 vote required
	Override Gov veto-Sen pass 055-000-000
Oct 18	Placed Calendar Total Veto
Oct 30	Motn filed overrde Gov veto YOURELL
Oct 31	Consideration postponed OVERRIDE MOTION
Nov 01	Verified
	3/5 vote required
	Override Gov veto-Hse fail 099-026-001
	Hse Journal, Legis. Day No. 91/ROLL CALL #30
	Total veto stands.

SB-0308 BERMAN, DARCO, MERLO, LEMKE, MARAGOS, WALSH,R, BOWERS AND GEO-KARIS.

Creates a right of contribution among joint tortfeasors, provides for the enforcement thereof and provides a 2 year statute of limitations. The right applies to causes of action arising on or after the effective date of the Act. Effective immediately.

SENATE AMENDMENT NO. 1.

Makes revision that this Act applies to causes of action arising on or after March 1, 1978 (change from "on or after the effective date of this Act"). Deletes that there is no right of contribution in favor of any tortfeasor who has intentionally either caused or contributed to the injury or wrongful death. Makes revision that no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability. (Change from "no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless one or more of the joint tortfeasors is or becomes insolvent in which event the remaining tortfeasors shall share the unpaid portions of the insolvent's pro rata share in accordance with their pro rata liability"). Makes revision that a cause of action for contribution among joint tortfeasors may be asserted by a separate action before or after payment, (before or after payment being added) by counterclaim or by third-party complaint in a pending action.

HOUSE AMENDMENT NO. 1.

Makes technical corrections. Changes "of" to "or" in provision of "liability for the injury or wrongful death". Corrects subparagraph "d" to "c".

Mar 20 1979	First reading	Rfrd to Comm on Assignment
Mar 21		Assigned to Judiciary I

Apr 20	Recommnded do pass as amend 007-000-000	
	Placed Calndr,Second Readng	
Apr 23	Second Reading	
	Amendment No.01 JUDICIARY I	Adopted
	Placed Calndr,Third Reading	
May 14	Third Reading - Passed 039-006-005	
May 15	Arrive House	
	Hse Sponsor DANIELS	
	Placed Calendr,First Readng	
May 16	First reading	Rfrd to Comm on Assignment
May 25		Assigned to Judiciary I
Jun 01	Amendment No.01 JUDICIARY I	Adopted
	Do Pass Amend/Short Debate 011-000-000	
	Cal 2nd Rdng Short Debate	
Jun 06	Short Debate Cal 2nd Rdng	
	Cal 3rd Rdng Short Debate	
Jun 14	Short Debate-3rd Passed 122-006-003	
	Hse Journal, Legis. Day No. 66/ROLL CALL #3	
Jun 15	Secretary's Desk Concurence 01	
Jun 23	S Concurs in H Amend. 01/057-000-000	
	Passed both Houses	
Jul 20	Sent to the Governor	
Sep 14	Governor approved	
	Public Act 81-0601	

SB-0309 DALEY, MARTIN, NIMROD, OZINGA, MERLO, NEDZA, GEO-KARIS, MCLENDON, NEGA, DARCO, JOYCE,JEREMIAH AND BLOOM.

Ch. 111, pars. 3603, 3620

Amends Nursing Home Administrators Licensing Act. Deletes references to "Nursing homes, sheltered care homes, and homes for the aged Act" and inserts in lieu thereof references to "Nursing Home Care Reform Act of 1979", enacted by 81st General Assembly. Effective July 1, 1980.

SENATE AMENDMENT NO. 1.

Changes effective date from July 1, 1980 to March 1, 1980.

Mar 20 1979	First reading	Rfrd to Comm on Assignment
Mar 21		Assigned to Public Health,Welfare,Corrections
May 02		Recommnded do pass as amend 008-000-000
	Placed Calndr,Second Readng	
May 08	Second Reading	
	Amendment No.01 PUBLIC HEALTH	Adopted
	Placed Calndr,Third Reading	
May 14	Third Reading - Passed 050-000-000	
May 15	Arrive House	
	Placed Calendr,First Readng	