

UNIFORM APPORTIONMENT OF FAULT ACT

November 9-11, 2001

Seattle, Washington

Welcome to the Uniform Apportionment of Fault Act Drafting Committee Meeting. The following is an agenda that we will attempt to follow, that you will note, follows the items as set forth in Roger's Memo of October 11th. We will proceed by reading the Fifth Tentative Draft section-by-section, followed by a discussion of the items set forth herein.

Unless announced otherwise we will start at 9:00 a.m. on Friday, November 9th. On Saturday morning we will start at 8:30 a.m. If we need to meet on Sunday morning, the time will be announced at the close of the session on Saturday. We will adjourn at approximately 5:00 p.m. on Friday and Saturday and no later than 11:00 a.m. on Sunday.

The meeting room will be posted at the Hotel.

We'll attempt to organize a group dinner on Friday night, so please let me know in advance, if you can, if you (and guest) would like to join us. My wife Pat is coming and I'll put her in charge of making arrangements for that dinner.

AGENDA

Introduction of Committee and Guests

Opening Remarks: Chair
 Reporter
 Others

Line-by-line reading and discussion:

Section 1. Short Title

Uniform or Model Act

Scope of Act
 (Perlman Memo)

OTHER?

Section 2. Definitions (see Perlman Memo)

“Fault” – Alternative A or B?

Does it include strict liability?

- Does it include breach of warranty?
- Is uniformity necessary on this issue?
- Should reference to strict liability and breach of warranty be bracketed?
- Do we want to get back to concept of “negligence” instead of fault?
- Unreasonable assumption of risk or assumption or risk?

“Nonparty at Fault” - What should it include?

- Immune persons or entities?
- Identifiable person
 - o Subject to process?
 - o Existing but not identified?

OTHER?

Section 3. Effect of Contributory Fault

Do we leave Alternative A in the Act?

- bracketed?
- In the Comment?
- Delete completely?

Chose between “greater than” or “equal to”.

Do we define “personal injury or harm to property”?

- Wrongful death cases?
- Other tort cases (common law, statutory)

Do we add the phrase “shall not bar recovery but” between “claimant” and “diminishes”?

What should the jurors be told?

Non-jury trial type cases;

Advisory?

Text?

Bracketed?

Comment?

OTHER?

Section 4. Apportionment of Damages

Treatment of immune parties?

What is meant by “immune”?

Immune to suit or immune to liability

Allocation of damages attributable to immune party

Distinction between “immune party” and “released party”

Moved employer’s fault issue to Section 10 on Workers’ Compensation

In subsection (b), do we need “unless otherwise agreed by all the parties”?

Changes in subsection (c) acceptable?

In subsection (d), do we need “Upon motion of a party”?

Review of need for Notice of intent to allocate fault to a non-party

OTHER?

Section 5. Determining Damages: Reallocating Immune Nonparty’s Fault: Entering Judgment

Does subsection (b) come out?

OTHER?

Section 6. Satisfaction of Judgment: Reallocation of Uncollectible Share

In subsection (b), when does the time start to run for seeking a reallocation?

Treatment of collateral sources?

Treatment of Uninsured or Underinsured motorist coverage

- reallocation rights
- subrogation rights

What is meant by “non collectible”?

Limitation of defendants subject to reallocated damages

Commissioner Concannon’s Memo

- States that have abolished the collateral source rule

Reasonable efforts to collect the judgment before reallocation

Discovery on “unable to satisfy judgment”

- who can do it?

OTHER?

Section 7. Setoff

How does it work in a modified (vs. pure) system?

OTHER?

Section 8. Right of Contribution

Do we need a limitation period for exercising this right?

- if so, what should it be
- from when?

OTHER?

Section 9. Effect of Release

Effect of several liability rather than joint and several liability

- see Roger’s suggested language in his Note

OTHER?

Section 10. Reduction of Worker’s Compensation Lien and Subrogation Right: Notice and Intervention

Should it be included at all?

- In brackets?
- Comment only?

OTHER?

Discussion of Spring Meeting