JOINT AND SEVERAL LIABILITY

50-STATE SURVEY
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The rule of “joint and several liability” makes each of multiple defendants liable for the entirety of the plaintiff’s loss, regardless of each defendants’ degree of fault. For example, a defendant who is only 5 percent at fault might end up paying the entirety of the plaintiff’s damages – especially if the other defendants are insolvent. Obviously, where the rule applies it can have a significant impact on the parties’ assessment of the case.

In cases with multiple defendants, defendants must know whether "joint and several" liability applies. If it does, it might determine the decision to defend or settle a case. In evaluating cases with multiple defendants, to start, defendants are advised to learn the answer to the following key questions:

1. Does “joint and several,” “several” or some modified liability rule apply?
2. Is there a right to contribution among the defendants?
3. In case of a partial settlement, what becomes of the remaining defendants’ liability?
4. If the plaintiff is partially to blame for his own injuries, what effect does that have on the defendants’ liability?

This 50-state overview of the doctrine of joint and several liability provides the answer to these questions for each of the U.S. states. As will be seen, while some states follow pure versions of either the several-only or the joint and several liability rules, most states have adopted a middle-of-the-road approach. States have hybrid liability rules (where joint and several liability applies to some portion of damages, such as the economic loss, and several-only liability applies to the rest) or variable rules (where the type of liability turns on some aspect of the plaintiff’s cause of action, such as joint and several liability being triggered only for intentional and environmental torts, or for a certain percentage of fault).
A PRIMER ON JOINT AND SEVERAL LIABILITY

THE CONCEPT OF “JOINT AND SEVERAL LIABILITY”

“Joint and several liability” allows a plaintiff to “sue for and recover the full amount of recoverable damages from any [defendant].” Restatement (Third) of Torts: Apportionment of Liability § 10 (2000). In its pure form, the practical effect of this doctrine is that the plaintiff can recover the entire amount of damages from any of the jointly and severally liable tortfeasors, regardless of a particular defendant’s percentage share of fault.

Joint and several liability is meant to address the inequity that flows from a responsible actor being unable to pay. In such a case, someone – the plaintiff or another defendant – will end up paying for the insolvent party’s share. States are left with having to decide where to shift the risk created by the judgment-proof defendant. The choice of who (between the remaining defendants and the plaintiff) will ultimately bear the risk is one of policy, which the states pursue according to their own preferences. For states that choose to have defendants bear this burden, joint and several liability is the preferred option.

Where the doctrine applies, the plaintiff is likely to search for a financially viable (that is, well-insured) defendant with a sufficiently “deep pocket” to ensure full recovery.

THE TEST FOR APPLICATION OF THE DOCTRINE

Entities may be joint and several tortfeasors if they are liable to the same person for the same harm. Notably, they need not act at the same time or in any concerted way. Instead, the measure of joint and several liability is whether the tortfeasors’ conduct produced an indivisible, single harm. For example, where multiple contractors build a house and that house collapses due to faulty construction, the contractors are “jointly and severally” liable. Similarly, where two or more drivers negligently cause a collision in which a pedestrian is injured, the drivers are “jointly and severally” liable.

CONTRIBUTION AMONG JOINTLY AND SEVERALLY LIABLE TORTFEASORS

Jointly and severally liable defendants are generally (and theoretically) entitled to recover from one another the percentage of damages attributable to the other’s conduct. The reality, however, is that recovery by way of contribution can be thwarted by a judgment-proof codefendant. Most often, this means a bankrupt party or one over whom jurisdiction could not be had. Even where it is possible to collect from the other party at fault, the process of doing so can have additional, sometimes significant, costs.

The risk of third-party insolvency creates pressure for solvent defendants (or those with higher policy limits) to settle – or else face the possibility of being held liable for the entirety of damages with no codefendant from which to recover. The right to contribution works to deter undue pressure to settle, but it is an imperfect remedy that does not completely eliminate the harshness of joint and several liability for defendants.

VARIATIONS ON A THEME

The Restatement (Third) of Torts discusses five different approaches to dealing with multiple tortfeasors. Restatement (Third) of Torts: Apportionment of Liability § 17, comment a (2000). Each approach allocates the risk of insolvency of one or more of the responsible tortfeasors differently.

The first two approaches systematically favor either defendants or plaintiffs in cases involving the insolvency of one of the responsible actors. Pure joint and several liability places the risk of insolvency and the burden of identifying nonparty tortfeasors on defendants. The second approach is pure several liability. This approach allocates the risk of insolvency entirely to the plaintiff. Under pure several liability, the plaintiff may recover from each, severally liable, defendant only the portion of damages that are attributable to that defendant’s fault.
Because the wholesale risk-shifting of these two approaches can lead to grossly unfair results, many states have adopted varied or hybrid versions of these allocation schemes. Some states attempt to alleviate the burden of insolvency through reallocation of the insolvent party’s liability. Under this track, joint and several liability applies to the solvent defendants but the comparative share of any insolvent tortfeasor is spread out among the remaining parties, sometimes the plaintiff included, in proportion to their share of the fault.

Another approach splits the risk of insolvency between the plaintiff and the solvent defendants: It imposes joint and several liability on each tortfeasor whose share of the harm exceeds a certain percentage of fault. Those tortfeasors who fall below the set threshold are severally liable. The rest are jointly and severally liable. The effectiveness of this approach turns on happenstance, not equity; however, because the more tortfeasors there are, the more likely it is that each will have a relatively small percentage of fault. Consequently, this rule favors defendants when there are many of them and it favors plaintiffs when there are few tortfeasors.

The last major variation is a hybrid one in which liability type is assigned based on the type of harm. Most commonly under this approach, joint and several liability is applied to the plaintiff’s economic loss and several liability is applied to noneconomic damages. The underlying policy consideration here values compensation for the tangible, calculable economic loss and permits the risk of insolvency to rest on the plaintiff for his intangible noneconomic losses.

In addition to these variations, many states draw distinctions between damages based on the type of action in which they are sought. Contract actions are frequently treated differently from tort cases. In some states, distinctions are drawn between tort cases – while the risk of loss might be on the plaintiff in a negligence case, joint and several liability will apply for intentional torts or cases where the defendants act in concert.

THE UNIFORM APPORTIONMENT OF TORT RESPONSIBILITY ACT

In 2003 the National Conference of Commissioners on Uniform Laws adopted the Uniform Apportionment of Tort Responsibility Act. This model legislation calls for apportionment of liability on the several-only model. Exceptions are recognized for parties acting in concert and for those who fail to prevent another from causing intentional harm.

The model rule allows for reallocation of a defendant’s share of the judgment if the plaintiff is unable to collect from that defendant. Under the proposed rule, in such a circumstance the remaining defendants pay the portion of the uncollectable amount that corresponds to their percentage of liability. A party’s payment of an amount greater than its proportionate share gives rise to the right to contribution.

Under this scheme, the plaintiff’s contributing fault diminishes but does not bar the plaintiff’s right to recovery, provided that the plaintiff’s fault does not exceed that of the defendants. With respect to partial settlement, the rule directs a pro rata reduction of the judgment against the non-settling defendants, corresponding to the portion of the settling party’s share of the fault.

THE EFFECT OF PARTIAL SETTLEMENT

Additional differences exist between the jurisdictions in their treatment of partial settlements; that is, cases where the plaintiff reaches a settlement agreement with some, but not all, of the defendants.

Jurisdictions tend to adopt either a pro rata or a pro tanto method of apportionment of the settling defendant’s payment. The different approaches lead to sharply different results and require different consideration by the defendants. As the Eleventh Circuit explains:

Assume, for example, that the negligence of A and B combine to injure C, who then files a lawsuit against A and B. On the morning of trial A settles with C for $50,000. The jury subsequently finds that A was 75% responsible and B was 25% responsible for the accident and that C’s damages totaled $100,000. If neither party had settled, judgment would be entered against A for $75,000 and B for $25,000. But given A’s settlement for $50,000, how much should B pay? Under a pro rata approach, B would receive a credit for 75% of C’s damages ($75,000) because A, the settling joint tortfeasor, was 75% responsible for the accident. Thus, B would owe $25,000 ($100,000 - $75,000) to C. Under the pro tanto approach, B would only receive a credit for the dollar value of A’s settlement ($50,000). Therefore, B would owe $50,000 ($100,000 - $50,000) to C.

Great Lakes Dredge & Dock Co. v. Miller, 957 F.2d 1575, 1579 (11th Cir. 1992)
THE PRO TANTO APPROACH
The pro tanto rule reduces a non-settling defendant’s liability by the amount paid by a settling defendant. This approach allows for gamesmanship between the plaintiff and a favored tortfeasor since the plaintiff can settle with one party (for enough, for example, to finance the rest of the litigation) and rest assured that he will collect the remainder from others if the verdict is in his favor. To prevent such outcomes, some jurisdictions require a hearing on culpability and a showing of good faith before settlements are approved.

THE PRO RATA APPROACHES
A pure pro rata rule divides liability equally among defendants. If there are three liable defendants, each becomes responsible for one third of the plaintiff's damages, regardless of how much they actually contributed to the loss. A modified pro rata or proportional approach is more common, however. Under this approach, liability between defendants is apportioned based on their relative degree of fault as determined by a jury. This apportionment then governs each defendant’s liability to the plaintiff.

Under either approach, if the plaintiff reaches a settlement with some but not all defendants, the plaintiff’s damages award is reduced by the settling defendants’ share of the fault. The non-settling defendants pay their own shares. If a defendant settles and it turns out the settlement is less than its share of liability would have been, the plaintiff may not collect the additional money from the other, non-settling defendants. Conversely, if a defendant pays more in settlement than it would have after verdict, it is barred from seeking contribution from the non-settling tortfeasors.

CONCLUSION
The application of pure joint and several liability is on the decline between the various jurisdictions. In most jurisdictions, the pure form of the doctrine has given way to modified versions, including those that take into account the plaintiff’s comparative fault. Some states have adopted approaches that protect, at least to some degree, the unfairness that might otherwise befall “deep pocket” defendants who become targets simply because they have the means to satisfy a judgment. Regardless of these shifts, however, states remain mindful of the need to continue to ensure the ultimate goal of the joint and several liability doctrine: an innocent plaintiff’s recovery.
OVERVIEW OF STATE LAW

**Alabama**


Where the plaintiff's claims are for negligence (not, for example, wanton conduct), any negligence by the plaintiff defeats his entitlement to recover damages. Otherwise, the plaintiff's damages are reduced by his portion of the fault. John R. Cowley & Bros., Inc. v. Brown, 569 So.2d 375 (Ala. 1990).

**Alaska**

Alaska has adopted several liability and permits the plaintiff to recover from each defendant only that defendant's share of the fault. Alaska Stat. § 09.17.080 (1989); Asher v. Alkan Shelter, LLC, 212 P.3d 772 (Ak. 2009). The plaintiff's total damages are offset by his share of the fault. Alaska Stat. § 09.17.080 (1989); Joseph v. State, 26 P.3d 459 (Ak. 2001).

There is no statutory right to contribution between Alaska's severally liable tortfeasors but a common-law right to contribution is available against non-parties. Alaska Stat. § 09.17.080 (1989); McLaughlin v. Lougee, 137 P.3d 267 (Ak. 2006).

Where there has been a settlement with some but not all defendants, Alaska applies the pro tanto approach and offsets the remaining defendants' liability by the settlement amount. Ex parte Barnett, 978 So.2d 729 (Ala. 2007).

Alaska has a proportionate offset rule for partial settlements. Under this rule, a non-settling defendant's share of the damages is offset by the payment made by the settling defendants in the same ratio as the settling and non-settling defendants' relative degree of fault. [stat]; Diggins v. Jackson, 164 P.3d 647, 648 (Ak. 2007).
Arizona

VARIABLE LIABILITY


There are some notable exceptions to Arizona's several liability rule. Joint and several liability remains the rule in cases where vicarious liability applies; where the tortfeasors acted in concert; for actions brought under the Federal Employers' Liability Act, which addresses compensation of injured railroad workers; and for waste disposal cases. Ariz. Stat. § 12-2506 (1984); Yslava v. Hughes Aircraft Co., 936 P.2d 1274 (Ariz. 1997).

Tortfeasors have a right to contribution only where joint and several liability applies. Ariz. Stat. § 12-2501 (1993); Dietz v. General Electric Co., 821 P.2d 166 (Ariz. 1991). When partial settlements are had, unless the case is one of joint and several liability, the non-settling tortfeasor is not entitled to a setoff. Gemstar Ltd. v. Ernst & Young, 185 Ariz. 493 (Ariz. 1996).

Arkansas

PURE SEVERAL LIABILITY

Arkansas defendants are severally – and not jointly – liable. Ark. Code § 16-55-201 (2003). Assessment is made against the plaintiff if he is also at fault, and the plaintiff's recovery is barred if he is more than 50 percent at fault. Ark. Code § 16-55-216 (2003); Johnson v. Rockwell Automation, Inc., 308 S.W.3d 135 (Ark. 2009). Arkansas permits courts to compensate for any portion of the plaintiff's damages that are deemed "uncollectable" by increasing, within limits, the solvent defendants' share of liability. Ark. Code § 16-55-203 (2003).

In case of a partial settlement, the non-settling tortfeasors remain liable for their proportionate share of the plaintiff's damages. Scalf v. Payne, 583 S.W.2d 51 (Ark. 1979).

The statute gives a defendant whose share has been increased the right to seek contribution from the defendants who are thought to be judgment-proof. Ark. Code § 16-55-203 (2003).
In California, a modified approach to joint and several liability is in place. In any action for personal injury, property damage, or wrongful death, tortfeasors are held jointly and severally liable for economic damages and severally only for noneconomic damages. Cal. Civ. Code §1431 and 1431.2 (1986); Evangelatos v. Superior Court, 753 P.2d 585 (Cal. 1988). The defendants’ liability is offset by the plaintiff’s comparative fault. Diaz v. Carcamo, 253 P.3d 535, 540 (Cal. 2011). In cases of partial settlements, the non-settling defendants are entitled to a setoff of any judgment for which they are jointly and severally liable. Goodman v. Lozano, 223 P.3d 77 (Cal. 2010). For noneconomic damages where each defendant is liable only for its proportionate share, partial settlement does not affect the remaining defendants’ liability. Buttram v. Owens-Corning Fiberglas Corp., 941 P.2d 71 (Cal. 1997).


In Colorado, the defendants’ liability is offset for the plaintiff’s comparative negligence. Colo. Stat. § 13-21-111 (1987); Kussman v. Denver, 706 P.2d 776 (Colo. 1985). Further, where the plaintiff’s action contributed to his own damages to a greater degree than the defendants’ combined negligence, recovery is barred altogether. B.G.’s, Inc. v. Gross, 23 P.3d 691 (Colo. 2001).

Where the damages are punitive, there is no offset for the plaintiff’s comparative share of the fault. Union Pacific Railroad Co. v. Martin, 209 P.3d 185 (Colo. 2009).
Connecticut

VARIABLE LIABILITY

Connecticut defendants in negligence cases are subject to several-only liability. Conn. Stat. § 52-572h (1986); Collins v. Colonial Penn Ins. Co., 778 A.2d 899 (Conn. 2001). Joint and several liability remains the rule for actions that do not sound in negligence. Conn. Stat. § 52-572h (1986); Allard v. Liberty Oil Equip. Co. Inc., 756 A.2d 237 (Conn. 2000). Where the plaintiff is unable to collect from a defendant, however, the uncollectable portion of his damages may be reapportioned among the remaining defendants in the same proportion as their share of liability. Conn. Stat. § 52-572h (1986); Babes v. Bennett, 721 A.2d 511 (Conn. 1998). In case of such reapportionment, the right of contribution exists. Conn. Stat. § 52-572h (1986).

Where the plaintiff’s negligence is an issue, the plaintiff may recover only if his negligence is not greater than the defendants’ combined share of the fault. Conn. Stat. § 52-572h (1986); Juchniewicz v. Bridgeport Hosp., 914 A.2d 511 (Conn. 2007). Where this is true, the plaintiff’s recovery is still reduced by the percentage of his negligence. Conn. Stat. § 52-572h; Fleming v. Garnett, 646 A.2d 1308 (Conn. 1994).

In case of a settlement with fewer than all defendants, the judgment is reduced by the proportion of the settling defendants’ fault. Conn. Stat. § 52-572h (1986); Carlson v. Waterbury Hosp., 905 A.2d 654 (Conn. 2006).

Delaware

PURE JOINT AND SEVERAL LIABILITY

In Delaware, joint and several liability applies, so a plaintiff may recover the entirety of his damages from any one of multiple tortfeasors. 10 Del. Code § 6301 (1953); Blackshear v. Clark, 391 A.2d 747 (Del. 1978). The joint and several tortfeasors have a right of contribution against each other. 10 Del. Code § 6302 (1953); Reddy v. PMA Insurance Co., 20 A.3d 1281 (Del. 2011).

In case of a partial settlement, the non-settling tortfeasor’s liability is reduced by the amount of the settlement or by what would have been the settling tortfeasor’s pro rata share of the judgment, whichever is greater. 10 Del. Code § 6304 (1953); Medical Center v. Mullins, 637 A.2d 6 (Del. 1994).

Where a Delaware plaintiff is more than 50 percent at fault for his own injuries and where the defendants’ conduct was plain negligence (rather than recklessness), the plaintiff’s recovery is barred. Brittingham v. Layfield, 962 A.2d 916 (Del. 2008). Where the plaintiff bears no more than 50 percent of the fault, his recoverable damages are limited proportionately.
Florida

VARIABLE LIABILITY

Florida repealed the doctrine of joint and several liability in negligence cases and replaced it with a system of pure comparative fault. Fla. Stat. § 768.81 (2006); Merrill Crossings Assocs. v. McDonald, 705 So.2d 560 (Fla. 1997). The pure several liability rule does not apply to a host of actions, including those concerning environmental torts, intentional torts and transactions in securities. Fla. Stat. § 768.81 (2006); Smith v. Department of Ins., 507 So.2d 1080 (Fla. 1987).


Georgia

PURE SEVERAL LIABILITY


There is no right to contribution between the codefendants, as each is liable only for its proportionate share. Ga. Code § 51-12-33 (2005); McReynolds v. Krebs, 725 S.E.2d 584 (Ga. 2012). Any settling tortfeasors’ fault is considered in assessing the non-settling tortfeasors’ portion of fault, but no setoff is permitted for the settlement amount. McReynolds v. Krebs, 725 S.E.2d 584 (Ga. 2012).
Hawaii replaced joint and several liability with several-only liability but it did so with significant exceptions and limitations. Haw. Stat. § 663-10.9 (1999); Taylor-Rice v. State, 94 P.3d 659 (Haw. 2004). Joint and several liability remains the rule for noneconomic damages in personal injury cases, all damages in intentional tort cases, strict liability cases, environmental damage cases and lawsuits having to do with the maintenance of highways. Haw. Stat. § 663-10.9 (1999); Kienker v. Bauer, 129 P.3d 1125 (Haw. 2006). In cases where one of these exceptions applies, joint and several liability is the rule, and tortfeasors are entitled to contribution from one another for any payment they made beyond their proportionate share. Haw. Stat. § 663-12 (1984); Gump v. Wal-Mart Stores, Inc., 5 P.3d 407 (Haw. 2000).

A plaintiff who contributed to his own injuries may recover for his loss, less the pro rata share that is his own fault, provided that his fault does not outweigh the defendants’ cumulative share of fault. Haw. Stat. § 663-31 (1984); Steigman v. Outrigger Enterprises, 267 P.3d 1238 (Haw. 2011). Where the plaintiff’s fault is greater than the defendants’ fault, however, the plaintiff may not recover. Haw. Stat. § 663-31 (1984); Ozaki v. Ass’n of Apartment Owners of Discovery Bay, 954 P.2d 644 (Haw. 1998).

Where there is a partial settlement, there is also a right to a setoff, in the amount of the settlement, against any sums payable to the plaintiff by any remaining joint tortfeasors. Haw. Stat. § 663-15.5 (2001); Troyer v. Adams, 77 P.3d 83 (Haw. 2003).

Idaho abolished the common-law doctrine of joint and several liability for all cases except those involving defendants acting in concert and cases where liability is vicarious. Idaho Code § 6-803 (1971); Jones v. HealthSouth Treasure Valley Hosp., 206 P.3d 473 (Idaho 2009). Tortfeasors have a right to contribution from each other for any payment beyond their proportionate share, provided that joint and several liability applies. Idaho Code § 6-803 (1971); Horner v. Sani-Top, Inc., 141 P.3d 1099 (Idaho 2006).


Where the plaintiff is 50 percent or more at fault, he may not recover. Idaho Code § 6-801 (1971); Ross v. Coleman Co., 141 P.3d 1099 (Idaho 1988). Where the plaintiff is at fault to some degree that is less than 50 percent, he may recover his damages less the percentage that is attributable to his own actions. Idaho Code § 6-801 (1971); Salinas v. Vierstra, 695 P.2d 369 (Idaho 1985).
Illinois Variable Liability

Illinois defendants are jointly and severally liable for damages. 735 Ill. Comp. Stat. 5/ 2-1117 (1995); Miller v. Rosenberg, 749 N.E.2d 946 (Ill. 2001). The exception to this rule is for defendants who bear less than a quarter of the plaintiff’s own liability. With some exclusions (such as for medical malpractice cases) these defendants remain liable jointly and severally for plaintiff’s medical and related expenses but are only severally liable for the remainder of the plaintiff’s damages. 735 Ill. Comp. Stat. 5/ 2-1117 (1995); Unzicker v. Kraft Food Ingredients Corp., 783 N.E.2d 1024 (Ill. 2002). The right of contribution exists among jointly and severally liable tortfeasors. 740 Ill. Comp. Stat. 100/ 2 (1987); People v. Brockman, 574 N.E.2d 626 (Ill. 1991).

Damages are discounted by the plaintiff’s comparative negligence. 735 Ill. Comp. Stat. 5/ 2-1116 (1995); Coney v. J.L.G. Industries, 454 N.E.2d 197 (Ill. 1983). Where the plaintiff is more than 50 percent at fault, however, he may not recover at all. 735 Ill. Comp. Stat. 5/ 2-1116 (1995); Burke v. 12 Rothschild’s Liquor Mart, 593 N.E.2d 522 (Ill. 1992).

In case of a partial settlement, the non-settling tortfeasors’ liability is reduced by the amount of the settlement. 740 Ill. Comp. Stat. 100/ 2 (1987); Board of Trustees v. Coopers & Lybrand, 803 N.E.2d 460 (Ill. 2003).

Indiana Variable Liability


If the plaintiff is more than 50 percent at fault, he is barred from recovering damages. Ind. Code § 34-51-2-8 (1985); TRW Vehicle Safety Sys. v. Moore, 936 N.E.2d 201 (Ind. 2010). Otherwise, damages are reduced pro rata by the plaintiff’s percentage of fault. Ind. Code § 34-51-2-5 (1985); Green v. Ford Motor Co., 942 N.E.2d 791 (Ind. 2011).

Where each party is liable only for their percentage of fault, there is no right of contribution among Indiana tortfeasors. Ind. Code § 34-51-2-12 (1998); Simon v. United States, 805 N.E.2d 798 (Ind. 2004).

In addition, a settlement between plaintiff and one defendant does not have an effect on the other tortfeasors. Should the settlement amount be greater than the settling defendant’s liability, the windfall (or, conversely, the loss) is the plaintiff’s; non-settling defendants do not receive a “credit” for another’s settlement. R.L. McCoy v. Jack, 772 N.E.2d 987 (Ind. 2002).
Iowa
HYBRID AND VARIABLE LIABILITY

In Iowa, joint and several liability applies but only to defendants who are 50 percent or more at fault and only with respect to the plaintiff's economic damages. Iowa Code § 668.4 (1984); Estes v. Progressive Classic Ins., 809 N.W.2d 111 (Iowa 2012). Where liability is joint and several, a defendant paying more than its proportionate share is entitled to contribution from the other defendants. Iowa Code § 668.5 (1984); Wilson v. Farm Bureau Mut. Ins., 770 N.W.2d 324 (Iowa 2009).

In all cases, the defendants’ liability is offset by the plaintiff’s share of negligence. Iowa Code § 668.3 (1984); Mulhern v. Catholic Health Initiatives, 799 N.W.2d 104 (Iowa 2011). In no event may the plaintiff recover if he is more than 50 percent at fault. Iowa Code § 668.3 (1984); Franklin v. Andrews, 595 N.W.2d 488 (Iowa 1999).

In case of a partial settlement, the non-settling tortfeasors' liability is reduced by the settling defendants’ percentage share of liability. Iowa Code § 668.7 (1984); Thomas v. Solberg, 442 N.W.2d 73 (Iowa 1989).

Kansas
PURE SEVERAL LIABILITY

In Kansas, each party found liable is responsible to pay only its portion of the awarded damages. Kan. Stat. § 60-258a (1974); Brown v. Keill, 580 P.2d 867, 874 (Kan. 1978). Since defendants do not pay another's share of the damages, there is no right of contribution between them. Mathis v. TG&Y, 751 P.2d 136 (Kan. 1988). For the same reason, a partial settlement has no effect on the liability of the remaining tortfeasors. Dodge City Implement, Inc. v. Board of County Commissioners, 205 P.3d 1265 (Kan. 2009).


Kentucky
PURE SEVERAL LIABILITY

Kentucky has also replaced joint and several liability with several-only liability. Ky. Stat. § 411.182 (1988); Degener v. Hall Contracting, 27 S.W.3d 775 (Ky. 2000). The right of contribution between codefendants was extinguished with joint and several liability. Dix & Assocs. Pipeline Contractors v. Key, 799 S.W.2d 24 (Ky. 1990).

The plaintiff’s negligence is considered in fault allocation under the Kentucky statutory scheme: the defendants’ liability is reduced by the plaintiff’s share of the fault. Ky. Stat. § 411.182 (1988); Koching v. International Armament Corp., 772 S.W.2d 634 (Ky. 1989). Any settling defendants’ share is similarly considered and used to reduce the remaining defendants’ liability. Ky. Stat. § 411.182 (1988); Owens Corning Fiberglass Corp. v. Parrish, 58 S.W.3d 467 (Ky. 2001).
Louisiana

VARIABLE LIABILITY


Defendants who are found to have conspired to commit an intentional tort, however, are jointly and severally liable to the plaintiff. La. Code Art. 2324 (1979); Ross v. Conoco, Inc., 828 So.2d 546 (La. 2002). Further, while severally liable defendants' liability is offset by the plaintiff's percentage of fault, this setoff is unavailable to those defendants who are liable for an intentional tort. La. Code Art. 2323 (1979); Landry v. Bellanger, 851 So.2d 943 (La. 2003).

Regardless of the type of liability, all Louisiana defendants are entitled to a setoff for the percentage share of fault of any settled party. Farbe v. Casualty Reciprocal Exch., 765 So.2d 994 (La. 2000).

Maine

PURE JOINT AND SEVERAL LIABILITY


The defendants' liability for damages is reduced by any negligence attributable to the plaintiff. 14 Ma. Stat. § 156 (1965); Austin v. Raybestos-Manhattan, 471 A.2d 280 (Me. 1984). Where the plaintiff is as much at fault as the defendants, however, the plaintiff may not recover at all. 14 Ma. Stat. § 156 (1965); Amica Mut. Ins. Co. v. Estate of Pecci, 953 A.2d 369 (Me. 2008).

If a partial settlement is reached, the amount of that settlement is deducted from the plaintiff's judgment as against the remaining defendants. Me. Stat. § 163 (1965); Hoitt v. Hall, 661 A.2d 669 (Me. 1995).
Maryland
PURE JOINT AND SEVERAL LIABILITY

In tort cases, Maryland follows the doctrine of pure joint and several liability. Md. Code § 3-1401 (1973); Owens-Illinois, Inc. v. Cook, 872 A.2d 969 (Md. 2005). There is a right to contribution among joint tortfeasors for amounts paid beyond their proportionate share of the judgment. Md. Code § 3-1402 (1973); Parler & Wobber v. Miles & Stockbridge, 756 A.2d 526 (Md. 2000).

Significantly, a Maryland plaintiff who contributes to his own injuries is barred from all recovery. Harrison v. Montgomery County Bd. of Ed., 456 A.2d 894 (Md. 1983). The exception to this rule lies in strict liability cases, in which a plaintiff who contributes to his own injuries may still recover his damages. Ellsworth v. Sherne Lingerie, 495 A.2d 348 (Md. 1985).

Massachusetts
PURE JOINT AND SEVERAL LIABILITY


In a partial settlement, the judgment against non-settling tortfeasors is reduced by the amount of the settlement. Md. Code § 3-1404 (1973); Scapa Dryer Fabrics v. Saville, 16 A.3d 159 (Md. 2011).

**Michigan**

**VARIABLE LIABILITY**


If the plaintiff is partially at fault in his resulting damages, then his recovery is limited to exclude the portion of his loss that is attributable to him. Mich. Comp. L. § 600.6304 (1995); Craig v. Larson, 439 N.W.2d 899 (Mich. 1989).


When a partial settlement is reached in cases where joint and several liability is the rule, the non-settling defendants’ liability is offset by the amount of the settlement. Kaiser v. Allen, 693 N.W.2d 149 (Mich. 2008).

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**Minnesota**

**VARIABLE LIABILITY**

Minnesota largely follows the several-only liability model. Minn. Stat. § 604.02 (2003); Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012). Joint and several liability remains the rule, however, for defendants who are more than 50 percent at fault, where there is collusion among the defendants, and for intentional and environmental tort cases. Minn. Stat. § 604.02 (2003); Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012). In cases of joint and several liability, any defendant that pays more than its proportionate share is entitled to contribution. Tolbert v. Gerber Indus., Inc., 255 N.W.2d 362 (Minn. 1977).

Where there is a partial settlement, the settlement amount is deducted from the jury’s award after apportionment, so that only in cases of joint and several liability does the non-settling tortfeasor benefit from the settlement of another party. Minn. Stat. § 604.01 (2003); Rambaum v. Swisher, 435 N.W.2d 19 (Minn. 1989).

Where the plaintiff is at fault and his fault is less than the defendants’ fault, the defendants’ liability is reduced proportionately. Minn. Stat. § 604.02 (2003); Moorhead Economic Development Authority v. Anda, 789 N.W.2d 860 (Minn. 2010).
Mississippi generally follows the doctrine of several liability. Miss. Code § 85-5-7 (1989); *City of Ellisville v. Richardson*, 913 So.2d 973 (Miss. 2005). However, defendants are jointly and severally liable if they act on a common plan. Miss. Code § 85-5-7 (1989); *J. B. Hunt Transport v. Forrest General Hosp.*, 34 So.3d 1171 (Miss. 2010). When joint and several liability applies, defendants paying more than their proportionate share are entitled to contribution. Miss. Code § 85-5-7 (1989); *DePriest v. Barber*, 798 So.2d 456 (Miss. 2001).

Negligence by the plaintiff does not bar recovery but it does diminish the amount of damages by the proportion of the plaintiff’s fault. Miss. Code § 11-7-15 (1911); *Coho Resources, Inc. v. Chapman*, 913 So.2d 899 (Miss. 2005).

In case of a partial settlement, the settlement amount is deducted from the plaintiff’s award prior to apportionment. *Mack Trucks, Inc. v. Tackett*, 841 So.2d 1107 (Miss. 2003).

In Missouri, joint and several liability applies only to defendants who are 51 percent or more at fault; are employees of another party or are liable by operation of the Federal Employers Liability Act. Mo. Stat. § 537.067 (2005). For all other defendants, Missouri applies several liability. Mo. Stat. § 537.067 (2005); *Burg v. Dampier*, 346 S.W.3d 343 (Mo. Ct. App. W. Dist. Div. 2 2011).

Where joint and several liability applies, defendants paying more than their proportionate share are entitled to contribution. Mo. Stat. § 537.060 (1939); *Missouri Pacific Railroad Co. v. Whitehead & Kales Co.*, 566 S.W.2d 466 (Mo. 1978).

The plaintiff’s negligence, if any, reduces the defendants’ liability by the degree of the plaintiff’s fault. *Gustafson v. Benda*, 661 S.W.2d 11 (Mo. 1983).

If the plaintiff settles with some but not all defendants, the right to contribution is extinguished and the judgment against the remaining defendants is offset by the settlement amount. Mo. Stat. § 537.060 (1939); *Fast v. Marston*, 282 S.W.3d 346 (Mo. 2009).
Montana follows the rule of joint and several liability for defendants who are most at fault. Mont. Code § 27-1-703 (1979); Deere & Co. v. District Court, 730 P.2d 396 (Mont. 1986). Liability is several only for defendants whose negligence is 50 percent or less, provided they did not act in concert with others. Mont. Code § 27-1-703 (1979); Newville v. Department of Family Services, 883 P.2d 793 (Mont. 1994). There is a right to contribution from another defendant where a party pays more than its proportionate share of the plaintiff’s damages. Mont. Code § 27-1-703 (1979); Consolidated Freightways v. Osier, 605 P.2d 1076 (Mont. 1979).

The plaintiff’s negligence, provided it is less than the defendants’ share of the fault, proportionately diminishes his right to recovery. Mont. Code § 27-1-70 (1987). Otherwise, the plaintiff may not recover. Payne v. Knutson, 99 P.3d 200 (Mont. 2004).

In case of a partial settlement, the right to contribution is extinguished and the remaining defendants’ liability is reduced, using the pro tanto approach, by the amount of the settlement. Hulstine v. Lennox Indus., 237 P.3d 1277 (Mont. 2010).

Nebraska
HYBRID AND VARIABLE LIABILITY


Only where the plaintiff’s negligence is less than 50 percent may a plaintiff recover. In these cases, the plaintiff’s comparative negligence proportionally diminishes the amount to which the plaintiff is entitled. Neb. Stat. § 25-21,185.09 (1992); Shipler v. General Motors, 710 N.W.2d 807 (Neb. 2006).

If the plaintiff settles with some, but not all, defendants, the judgment for the remaining jointly and severally liable defendants is reduced by the pro rata share of the settled party. Neb. Stat. § 25-21,185.11 (1992); Tadros v. City of Omaha, 735 N.W.2d 377 (Neb. 2007).
Nebraska

VARIABLE LIABILITY


New Hampshire

VARIABLE LIABILITY

New Hampshire applies joint and several liability to defendants who are 50 percent or more at fault, but applies several-only liability for defendants whose fault is less than 50 percent. N.H. Stat. § 507:7-e (1997); Rodgers v. Colby’s Ol’ Place, 802 A.2d 1159 (N.H. 2002). Liability is joint and several, however, regardless of the parties’ percentage of fault if the defendants acted in concert. N.H. Stat. § 507:7-e (1997); Gouldreault v. Kleeman, 965 A.2d 1040 (N.H. 2009).

A defendant who pays more than its proportionate share is entitled to contribution. N.H. Stat. § 507:7-e (1997); Pike Industries v. Hiltz Construction, 718 A.2d 236 (N.H. 1998). If a judgment for contribution is uncollectable from a defendant, the amount of that judgment is reallocated among the remaining defendants in accordance with their proportionate share of the plaintiff’s damages. N.H. Stat. § 507:7-e (1997); Rodgers v. Colby’s Ol’ Place, 802 A.2d 1159 (N.H. 2002).

Fault by the plaintiff does not bar his recovery provided that it is not greater than the defendants’ fault, but the plaintiff’s damages are reduced by the portion of the fault attributed to the plaintiff. N.H. Stat. § 507:7-d (1997); Ocasio v. Federal Express, 33 A.3d 1139 (N.H. 2011).

If the plaintiff settles with some but not all tortfeasors in a case where the remaining defendants’ liability is joint and several, the settlement amount is deducted from the total damages award. Otherwise, the remaining defendants pay their proportionate share of the judgment, irrespective of the settlement. N.H. Stat. § 507:7-h (1997); N.H. Stat. § 507:7-i (1997); Nilsson v. Bierman, 839 A.2d 25 (N.H. 2003).
New Jersey

VARIABLE LIABILITY

New Jersey draws a distinction between defendants based on their degree of fault: several only liability is applied to a defendant less than 60 percent at fault, while a defendant 60 percent or more at fault is liable jointly and severally. N.J. Stat. § 2A:15-5.3 (1995); Gennari v. Weichert Co., 691 A.2d 350 (N.J. 1997). If judgment is uncollectable from a defendant, the plaintiff may recover the uncollectable amount of his damages from solvent defendants who are responsible to pay their proportionate share of the unrecoverable award. N.J. Stat. § 2A:15-5.3 (1995); Brodsky v. Grinnell Haulers, 853 A.2d 940 (N.J. 2004). A defendant who pays more than its percentage share is entitled to seek contribution from the other defendants. N.J. Stat. § 2A:15-5.3 (1995); Steele v. Kerrigan, 689 A.2d 685 (N.J. 1997).

New Mexico

VARIABLE LIABILITY


A comparatively negligent plaintiff may recover his proportionately reduced damages only if his negligence does not exceed the degree of fault of the defendant from whom the plaintiff seeks to collect. N.J. Stat. § 2A:15-5.3 (1995); Reyes v. Egner, 991 A.2d 216 (N.J. 2010).

If a partial settlement is reached, the remaining defendants’ liability is reduced on a pro rata basis. N.J. Stat. § 2A:15-5.3 (1995); Steele v. Kerrigan, 689 A.2d 685 (N.J. 1997).

The plaintiff contributing to his own damages does not bar his right to recover, but it does diminish his entitlement on a proportionate basis. N.M. Stat. § 41-3A-1 (1987); Barth v. Coleman, 878 P.2d 319 (N.M. 1994).

In case of a partial settlement, the settlement amount is deducted from the total damages in joint and several liability cases only. N.M. Stat. § 41-3-4 (1987); McConal Aviation v. Commercial Aviation Insurance, 799 P.2d 133 (N.M. S. 1990).

Where a tortfeasor has paid more than its proportionate share, it is entitled to contribution. N.Y. Civ. Prac. L. and R. § 1401 (1986); Sommer v. Fed. Signal Corp., 593 N.E.2d 1365 (N.Y. 1992).

In case of a partial settlement, the non-settling defendants’ liability is reduced by the settlement amount. N.C. Stat. § 1B-4 (1967); Brown v. Flowe, 507 S.E.2d 894 (N.C. 1998).
North Dakota has abolished joint and several liability for almost all cases. N.D. Code § 32-03.2-02 (1987); Kavadas v. Lorenzen, 448 N.W.2d 219 (N.D. 1989). The exceptions to this rule are for cases where the defendants act in concert with one another or otherwise aid or ratify the tort. N.D. Code § 32-03.2-02 (1987); Target Stores v. Automated Maintenance Services, 492 N.W.2d 899 (N.D. 1992).

Contribution among the defendants may only be had if there is joint and several liability. N.D. Code § 32-03.2-02 (1987); Pierce v. Shannon, 607 N.W.2d 878 (N.D. 2000).

Ohio


If the plaintiff (by his own negligence) is responsible for his injuries to a greater degree than the defendants, then the plaintiff may not recover. Ohio Code § 2315.33 (2003); Crosby v. Radenko, ___ N.E. ___, 2011 Ohio 4662 (Ohio Ct. App., Montgomery County Sept. 16, 2011). Otherwise, the plaintiff’s recovery is reduced by the amount of his own fault. Ohio Code § 2315.33 (2003); Sauer v. Crews, ___ N.E. ___, 2011 Ohio 3310 (Ohio Ct. App., Franklin County June 30, 2011).

A tortfeasor who is jointly and severally liable for damages and has paid more than its proportionate share is entitled to contribution. Ohio Code § 2307.25 (2003); Hoffman v. Fraser, __ N.E.2d ___, 2011 Ohio 2200 (Oh. Ct. App., Geauga County May 6, 2011). Settlement extinguishes the right to contribution and generally reduces, by the amount of the settlement, the plaintiff’s right to recover from the non-settling defendants. Ohio Code § 2307.28 (2003); Spalla v. Fransen, 936 N.E.2d 559 (Oh. Ct. App. Geauga County July 23, 2010). No setoff may be had, however, if the defendant is liable for an intentional tort. Ohio Code § 2307.25 (2003); Eysoldt v. Proscan Imaging, ___ N.E. ___, 2011 Ohio 6740 (Oh. Ct. App., Hamilton County Dec. 28, 2011).
Oklahoma
PURE SEVERAL LIABILITY

Since 2011, Oklahoma’s rule is one of purely several and not joint liability. 23 Okl. Stat. § 15 (2011). A tortfeasor is entitled to contribution only if it paid more than its proportionate share of the judgment – which is to say, only if its liability arose prior to the recent enactment of pure several liability. 12 Okl .St. § 832 (1991); Barringer v. Baptist Healthcare, 22 P.3d 695 (Okl. 2001).

The plaintiff’s negligence is not a bar to his recovery. 23 Okl .St. § 13 (1979); Bode v. Clark Equipment Co., 719 P.2d 824 (Okl. 1986). It does, however decrease the amount he is entitled to recover by the portion of his damages for which he is responsible. 23 Okl .St. § 14 (1979); Smith v. Jenkins, 873 P.2d 1044 (Okl. 1994).

Oregon
VARIABLE LIABILITY

With an exception for environmental torts, Oregon follows the rule of several-only liability though it does allow for reallocation of uncollectable judgments. Or. Stat. § 31.610 (1971); Lasley v. Combined Transportation, 261 P.3d 1215 (Or. 2011). The right to contribution exists for defendants who pay more than their proportionate share of the damages. Or. Stat. § 31.800 (1975); Lasley v. Combined Transportation, 261 P.3d 1215 (Or. 2011).

Negligence by the plaintiff diminishes his right to recovery, but it does not bar the action. Or. Stat. § 31.600 (1971); Bjorndal v. Weitman, 184 P.3d 1115 (Or. 2008).

After a partial settlement, the settling tortfeasor no longer has any obligation to pay contribution to another and the plaintiff’s recovery from the remaining tortfeasors is reduced by the settlement amount. 12 Okl .St. § 832 (1979); Hoyt v. Paul R. Miller, M.D., Inc., 921 P.2d 350 (Okl. 1996).

A partial settlement affects the non-settling tortfeasors’ liability only where there is joint and several liability, in which case a setoff is had from the damages award. Or. Stat. § 31.610 (1971); Kerry v. Quicahuatl, 162 P.3d 1033 (Or. Ct. of App. 2007).


South Carolina

VARIABLE LIABILITY

A defendant who is less than 50 percent at fault faces several-only liability in South Carolina, provided that its conduct was not willful and that it did not involve illegal drugs or alcohol. S.C. Code § 15-38-15 (2005); Branham v. Ford Motor Co., 701 S.E.2d 5 (S.C. 2010). All other defendants are jointly and severally liable and have a right to contribution when they pay more than their proportionate share provided that they did not commit an intentional tort. S.C. Code § 15-38-20 (1998); First Gen. Servs. v. Miller, 445 S.E.2d 446 (S.C. 1994).

South Carolina offsets the plaintiff’s award by the degree of his own negligence. Berberich v. Jack, 709 S.E.2d 607 (S.C. 2011).

In case of a partial settlement, the right to contribution is extinguished and the damages payable by the non-settling defendants is reduced by the amount of the settlement. S.C. Code § 15-38-50 (1988); Simmons v. Greenville Hosp., 586 S.E.2d 569 (S.C. 2003).

South Dakota

VARIABLE LIABILITY

In South Dakota, defendants 50 percent or more at fault are, without limitation, jointly and severally liable for the plaintiff’s damages. S.D. Codified Laws § 15-8-11 (2005); Centrol, Inc. v. Morrow, 489 N.W.2d 890 (S.D. 1992). Defendants who are less than 50 percent at fault are still jointly and severally liable, but there is a cap on their liability for no more than twice their proportionate share of fault. S.D. Codified Laws § 15-8-15.1 (1987); Landstrom v. Shaver, 550 N.W.2d 699 (S.D. 1996).

Joint tortfeasors have a right to contribution should they pay more than their proportionate share of the plaintiff’s damages. S.D. Codified Laws § 15-8-12 (1960); Freeman v. Berg, 482 N.W.2d 32, 34 (S.D. 1992).

A plaintiff’s negligence does not bar recovery provided that it was “slight.” S.D. Codified Laws § 20-9-2 (1998); Harmon v. Washburn, 751 N.W.2d 297 (S.D. 2008). Whether the plaintiff’s fault is “slight” is determined on a case-by-case basis and not by assignment of a specific percentage of liability. S.D. Codified Laws § 20-9-2 (1998); Schmidt v. Royer, 574 N.W.2d 618 (S.D. 1998). Where the plaintiff’s action is not barred by excessive negligence on his part, his recovery is reduced by the proportion of his negligence. S.D. Codified Laws § 20-9-2 (1998); Steffen v. Schwann’s Sales, 713 N.W.2d 614 (S.D. 2006).

A partial settlement reduces by its amount what the plaintiff may recover from the non-settling tortfeasors. S.D. Codified Laws § 15-8-17 (1960); Fix v. First State Bank, 807 N.W.2d 612 (S.D. 2011).
Joint and Several Liability

**Tennessee**

VARIABLE LIABILITY

In most cases, Tennessee defendants are liable severally, not jointly. *Banks v. Elks Club Pride of Tenn.* 1102, 301 S.W.3d 214 (Tenn. 2010). Exceptions in which joint and several liability remains the rule are for products liability cases and for cases where the defendants act in concert. *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73 (Tenn. 2001).

Where the rule of joint and several liability applies, tortfeasors are entitled to contribution when they pay more than their proportionate share, if they did not commit an intentional tort. Tenn. Code § 29-11-102 (1999); *GE v. Process Control Co.*, 969 S.W.2d 914 (Tenn. 1998).

The plaintiff’s fault does not bar his recovery, but it does proportionately reduce his entitlement to damages. *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992).

In case of a settlement with some but not all tortfeasors, the plaintiff’s recovery from the non-settling defendants is reduced by the amount of the settlement. Tenn. Code § 29-11-105 (1968); *Tutton v. Patterson*, 714 S.W.2d 268 (Tenn. 1986).

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**Texas**

VARIABLE LIABILITY

Texas defendants who are more than 50 percent at fault and those who act with intent to harm, regardless of their proportionate share, are jointly and severally liable in tort. Tex. Civ. Prac. § 33.013 (2003); *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407 (Tex. 2011). A jointly and severally liable defendant that pays more than its proportionate share does have a right to contribution. Tex. Civ. Prac. § 33.015 (1995); *C & H Nationwide v. Thompson*, 903 S.W.2d 315 (Tex. 1994).

A comparatively negligent plaintiff, whose fault is not greater than 50 percent, may recover his damages less the portion attributed to his own fault. Tex. Civ. Prac. § 33.001 (1995); Tex. Civ. Prac. § 33.012 (2005); *Del Lago Partners v. Smith*, 307 S.W.3d 762 (Tex. 2010).

If some defendants settle, the plaintiff’s damages recoverable from the remaining defendants are generally reduced by the amount of the settlement. Tex. Civ. Prac. § 33.012 (2005); *Battaglia v. Alexander*, 177 S.W.3d 893 (Tex. 2005). If the case involves a health care claim, the non-settling defendant’s liability is reduced either by the amount of the settlement or the pro rata share of the discontinued party – defendant’s choice. Tex. Civ. Prac. § 33.012 (2005).
Utah defendants are always severally, and not jointly, liable. Ut. Code § 78B-5-818 (1986); Egbert v. Nissan Motor Co., 228 P.3d 737 (Utah 2010). Utah provides for the reallocation of the portion of fault of those who are immune from suit, provided that the fault of the non-parties is less than 40 percent. Therefore, a defendant may still pay more than its proportionate share of liability. Ut. Code § 78B-5-819 (1986). Additionally, there is no right to contribution. Ut. Code § 78B-5-820 (1986).

Utah adopted a modified version of comparative negligence: the plaintiff may recover, less the portion of his damages attributable to him, if the defendants are at greater fault than the plaintiff. Ut. Code § 78B-5-818 (1986).


In Vermont, defendants are severally, and not jointly, liable only where the plaintiff is also at fault. Vt. Stat. § 1036 (1980); Levine v. Wyeth, 944 A.2d 179 (Vt. 2006). Under such circumstances, the negligent plaintiff may recover for the portion of his loss that is not attributable to him, provided that his fault is less than the defendants’ taken together. Vt. Stat. § 1036 (1980); Smedberg v. Detlef’s Custodial Serv., 940 A.2d 674 (Vt. 2007).

There is no right to contribution among Vermont defendants, even for those who pay more than their proportionate share of the plaintiff’s damages. Howard v. Spafford, 321 A.2d 74 (Vt. 1974).

If the plaintiff settles with some but not all defendants, then the amount of the settlement is deducted from the total damages award. Slayton v. Ford Motor Co., 435 A.2d 946 (Vt. 1981).

Tortfeasors face joint and several liability in Virginia. Va. Code § 8.01-443 (1977); Cox v. Geary, 624 S.E.2d 16 (Va. 2006). They do have a right to contribution provided their liability arises from negligence (not from an intentional tort) and provided that it does not involve an act of moral turpitude. Va. Code § 8.01-34 (1977); Sullivan v. Robertson Drug Co., 639 S.E.2d 250 (Va. 2007).

Virginia follows the rule of contributory negligence: if the plaintiff contributed to his own loss to any degree, then he is barred from recovery. Norfolk & W. R. Co. v. Sonney, 374 S.E.2d 71 (Va. 1988).

Where some but not all defendants settle with the plaintiff, the settling defendants are no longer subject to a claim for contribution and the non-settling defendants’ liability is reduced by the amount of the settlement. Va. Code § 8.01-35.1. (1983); Downer v. CSX Transportation, 507 S.E.2d 612 (Va. 1998).
Washington state defendants are jointly and severally liable in cases where the plaintiff does not bear any of the fault, in cases where the defendants act in concert, where vicarious liability applies, and in cases involving hazardous waste disposal, asbestos and tortious interference with contract. Wash. Code § 4.22.070 (1986); Kottler v. State, 963 P.2d 834 (Wash. 1998).

If none of these exceptions apply, the defendants’ liability is several only. Wash. Code § 4.22.070 (1986); Washburn v. Beatt Equipment Co., 840 P.2d 860 (Wash. 1992).

If joint and several liability applies, the defendants have the right to seek contribution from one another. Wash. Code § 4.22.050 (1981); Wash. Code § 4.22.070 (1986); Mazon v. Krafchick, 144 P.3d 1168 (Wash. 2006).

In a case where the plaintiff contributes to his own damages, his actions are allocated their own percentage share – for which the defendants are not liable. Wash. Code § 4.22.070 (1986); Hiner v. Bridgestone/Firestone, Inc., 978 P.2d 505 (Wash. 1999).

West Virginia defendants are largely jointly and severally liable. W.V. Code § 55-7-24 (2005). There is a limited exception under which several-only liability applies for defendants who are less than 30 percent at fault, did not act in concert with others and are not liable for an intentional or an environmental tort or in products liability. W.V. Code § 55-7-24 (2005). Provisions limiting several liability exist for cases involving political subdivision defendants and for medical malpractice claims. W.V. Code § 55-7B-9 (2003); W.V. Code § 29-12A-7 (1986); Strahin v. Cleavenger, 603 S.E.2d 197 (W.V. 2004). Additionally, uncollectable portions of the plaintiff's damages award may be reallocated to other defendants who are 10 percent or more at fault provided their fault is greater than the plaintiff’s. W.V. Code § 55-7-24 (2005).

If the plaintiff settles with some but not all parties, the settling defendants are no longer subject to any claim for contribution. Wash. Code § 4.22.070 (1987); Wash. State Physicians Ins. Exch. v. Fisons Corp., 858 P.2d 1054 (Wash. 1993). The plaintiff’s entitlement to a recovery from the remaining defendants is reduced by the amount of the settlement only if the settlement is reached after judgment or if the settling defendants are liable under a vicarious liability theory. Wash. Code § 4.22.070 (1987); Washburn v. Beatt Equipment Co., 840 P.2d 860 (Wash. 1992).

The right of contribution exists in favor of defendants who pay more than their share of liability. W.V. Code § 55-7-13 (1923); Rowe v. Sisters of the Pallottine Missionary Soc’y, 560 S.E.2d 491 (W.V. 2001).

The plaintiff may not recover for the portion of his damages that are his own fault. Bradley v. Appalachian Power Co., 256 S.E.2d 879 (W.V. 1979).

In case of a partial settlement, the settlement amount is reduced from the total judgment only where there has been no apportionment of liability between the settling and non-settling defendants. Johnson v. General Motors Corp., 438 S.E.2d 28 (W.V. 1993).
**Wisconsin**  
**VARIABLE LIABILITY**

Defendants who are 51 percent or more at fault and all those who acted in a concerted way that led to the plaintiff’s damages are liable jointly and severally. Wis. Stat. § 895.045 (1995); Richards v. Badger Mut. Ins., 749 N.W.2d 581 (Wis. 2008). Other defendants’ liability is several only where the case is one of strict products liability. Wis. Stat. § 895.045 (1995); Fuchsgruber v. Custom Accessories, 628 N.W.2d 833 (Wis. 2001).

If a defendant pays more than its proportionate share, it is entitled to recover from codefendants in contribution. Wisconsin Natural Gas Co. v. Ford, Bacon & Davis Construction, 291 N.W.2d 825 (Wis. 1980).

A Wisconsin plaintiff’s negligence defeats his entitlement to recovery only if it exceeds the defendant’s share of the fault. When it does not, the damages award is reduced by the portion that correlates to the plaintiff’s share. Wis. Stat. § 895.045 (1995); Matthies v. Positive Safety Mfg., 628 N.W.2d 842 (Wis. 2001).

A partial settlement results in a reduction of the plaintiff’s damages award (recoverable from the remaining defendants) by the settling defendants’ pro rata share. Brandner v. Allstate Ins. Co., 512 N.W.2d 753 (Wis. 1994).

**Wyoming**  
**PURE SEVERAL LIABILITY**


In Wyoming, a negligent plaintiff is not barred from recovery, but his damages will be reduced by the portion of his own fault, as long as his portion of fault is at most 59 percent. Wyo. Stat. § 1-1-109 (1986); Parrish v. Groathouse Construction, 130 P.3d 502 (Wyo. 2006).

If the plaintiff settles with some but not all parties, the remaining, non-settling defendants remain liable for their percentage of the plaintiff’s damages, irrespective of the settlement. Haderlie v. Sondgeroth, 866 P.2d 703 (Wyo. 1993).