JOINT TORTFEASORS UNDER RHODE ISLAND LAW

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INTRODUCTION

In 1940, Rhode Island joined those states which have adopted the Uniform Contribution Among Tortfeasors Act (the "Act"). As will be seen upon review of the existing Rhode Island statutes (copies included), the operative definition is as follows:

> 10-6-2. Joint tortfeasors defined. For purposes of this chapter, the term "joint tortfeasors" means two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them; Provided, however, That a master and servant or principal and agent shall be considered a single tortfeasor.

Those persons who are "joint tortfeasors" are thus, by statute, liable to either (a) the party or parties they have injured and (b) to one another for pro rata contribution. This paper explores some issues relevant to the concept and existing procedure in such circumstances.

CONCURRENT OR CONCURRING CAUSES

Complete appreciation of the Rhode Island view of just who is or is not a "joint tortfeasor" within the meaning of the Act seems first to require review of the State's law concerning concurrent or concurring causation.

There can be more than one legal cause of an injury or damage. Thus where two (2) or more persons harm or injure another, the conduct of each of them may be seen as being a legal or "proximate" cause of the harm suffered. So long as all such conduct was "operative" or active at the time of the injury and acted together to produce the damage, it probably does not matter that one causes more harm than the other(s). That seems to be true even if one of them, acting alone, could have caused the injury.

A party will remain responsible even if there are intervening acts of negligence on the part of another or others unless the intervening acts render the original negligence so "remote" as to be inoperative. Here, "remote" means whether the intervening negligence was reasonably foreseeable as a natural and probable result of the original negligence. If intervening negligence was "foreseeable," it cannot be "remote" and it does not matter that the particular type of injury could not be anticipated.

By way of example, in the absence of any evidence that it had obstructed the view of an approaching motorist, the Rhode Island Supreme Court held that the tragic death of a child was not caused either in whole or in part by a cement truck which was parked at an angle to a curb and obstructed the entire sidewalk. [1]

Where the defendant's truck lacked visible taillights, the uncontradicted evidence that a collision with the truck had taken place due to the blinding headlights of an oncoming bus made the bus an independent or intervening cause. On those facts, it was held that the failure of the truck owner/operator to maintain such taillights was negligent, but had become merely a past condition or circumstance which in no way continued to operate as the proximate or concurring cause of the accident. [2]

Another case with a different result was one in which a Rhode Island State Police officer had been alerted in a radio broadcast to look for a vehicle containing murder suspects. He decided to assume a "post" off Interstate 95, moved to the fourth (high-speed) lane, began to decelerate and activated his red flashing signal lights. He intended to turn left into the island separating north and south-bound lanes of travel and his speed fell below the minimum allowed.

While the officer was making those maneuvers, another vehicle pulled into the high-speed lane to pass a slower-moving vehicle. Just as that was done, the operator became aware of the police vehicle. There was no room to move back into the third lane and after applying his brakes, the car struck the rear of the police cruiser, killing a passenger. It was held that the officer could reasonably have anticipated that another vehicle being negligently driven at a rate of speed in excess of the maximum speed limit would approach him from the rear. Therefore, his original negligence was found to be not so remote as to be considered a past condition or circumstance of both officer and the automobile operator had concurrently caused the passenger injuries/death. [3]

Another situation involved a youngster who had been asked by his father to get something at a market. As the boy and his sister rode their bicycles toward the market door, they noticed a parked van which obstructed the walkway. The boy tried to apply his brakes and turn away from the van, but his bicycle slid on some icy slush. Before the boy could regain control of his bicycle, its handlebars came in contact with a large window which shattered and injured him. The Rhode Island Supreme Court found that the market had assumed an obligation to use reasonable care to keep and maintain the premises in a safe condition for invitees or customers. It disagreed with the trial judge who had termed the van a "condition" as opposed to a "cause." It found that if the market had placed a curbing along the seam where the parking lot met the walkway, it would have been kept free of parked vehicles, one of which proved to be an "insurmountable obstacle" as the boy made his way to the front door. [4]

The Rhode Island Supreme Court also reviewed this topic in a sports or leisure setting. An injury occurred when a tennis player went behind an opaque curtain to retrieve a tennis ball which had lodged in a steel girder channel. A teammate boosted her up so that she could stand on one level of girders. She then reached up into the second girder, got the ball and tossed it to her friend. While still facing the girder, she let go with her right hand and jumped back, but as she did so, the ring which she was wearing on her left little finger caught on the girder lip and injured her. Finding that one needed only reasonably foresee that an injury (i.e., not the particular type) may result from a dangerous condition, it was held that the "unusual" incident involving the ring was still something which could have been foreseen. Therefore, recovery against the tennis club was allowed. [5]

In an important decision, the Court decided a case in which a plaintiff fell and injured herself on some stairs. During the course of her treatment for injuries, several physicians allegedly committed acts of medical malpractice. Rejecting the theory that the doctors were joint tortfeasors with the landlord (the landlord being responsible for the stairs), the Court noted that under Rhode Island law each party must have engaged in "common wrongs," in other words they must be jointly and independently liable for the same injury to the claimant or plaintiff.

Two important factors have been mentioned which are said to assist the Court in determining whether an occurrence between two (2) or more parties constitutes a "common wrong." First, Rhode Island will look to the time at which each party acted or failed to act. Secondly, consideration and great weight will be given to whether or not a party had the ability to guard against the negligence of the other.

In this rather interesting and important decision, it was held that the defendant landlord would only have been held liable for the injury caused by his negligence regarding the condition of the stairs. He would not be liable for any injury caused by subsequent medical malpractice. [6]

INDEMNIFICATION

It has long been held that if a judgment is rendered against one wrongdoer, he or she may seek "indemnity" from another in certain circumstances. At common law, the right to indemnity was generally based upon contract (for example, where a shopkeeper agrees to indemnify and save harmless his landlord from any injuries to customers).

There are situations, however, in which it has been held in Rhode Island that indemnity may also be based upon "equitable" principles. There are three (3) elements in the cases which are found in an equitable indemnity claim: [7]

> (1) The party seeking indemnity must be liable to the claimant;
> (2) The party from whom indemnity is sought must also be liable to the claimant; and
> (3) As between the person seeking indemnity and the party from whom indemnity is sought, "equity" requires the obligation to be discharged by the potential indemnitor (that is, by the person from whom indemnity is requested).

Examples would include the situation in which the party seeking indemnity is blameless, but has been subjected to liability vicariously (a principal bound by the acts of his or her agent), or where liability is incurred because of a breach of duty owed by the person or party sought to be charged with indemnification. (Note that masters and servants as well as principals and agents are considered to be single tortfeasors by section 10-6-2 of the Joint Tortfeasor Act, thus release of one will discharge the other.)

The difference between the theory of "indemnity" and that of contribution among joint tortfeasors is perhaps best illustrated by a Rhode Island case involving a claimant/plaintiff who

had been injured when shot. The pistol-wielding assailant had taken ammunition for his weapon from a store display case which had been maintained in such a negligent location or manner that it could be accessed by customers or patrons.

A third-party complaint was filed by the store against the gunman for "indemnification." He pleaded that no claim could exist due to the fact that a valid joint tortfeasor release had been executed by the plaintiff.

A trial court judge agreed with the pistol toter, but the Rhode Island Supreme Court decided that the joint tortfeasor release was not sufficient in and of itself to relieve him of a claim for indemnification. It noted that the purpose of an action for indemnity was to "have the party primarily liable hold the one secondarily liable harmless" and that could be for the entire amount of a judgment and not merely a pro rata share. [8] Therefore, indemnity remains a separate and distinct theory of contribution or recovery, either by contract or in an equitable fashion.

JOINT TORTFEASOR CONTRIBUTION

It has been said that one is a "joint tortfeasor" if he or she participates in or gives assistance or encouragement to the commission of a tort by another. For example, where two people engage in a drag race and one of the vehicles loses control so as to strike an innocent bystander, both of the persons engaged in the race are liable to the injured party.

Concerted action is not required, so long as the negligence of one party is not rendered remote. An example would be a situation in which a person negligently allows water to escape onto a walkway belonging to a neighbor. Ice forms due to cold weather conditions and the

walkway owner negligently fails to remove or treat the slippery surface. Both may be liable to the person who slips and falls on the dangerous surface.

Under Rhode Island law, each joint tortfeasor is liable to the injured party or plaintiff for the entire loss. Therefore, a plaintiff may join them in one action and recover any judgment from any one of them. The Act has not altered the fundamental principle that an injured person is entitled to recover in full *once*, even though two or more parties contributed to the damages. [9]

For parties to be "joint tortfeasors," the injured person or plaintiff must have a cause of action against all such parties. Liability must be "common to warrant contribution." [10]

The rationale behind the Act is that it would be unfair for one wrongdoer to be totally liable and the other to be exempt due to the plaintiff's choice of defendant. As a practical matter, the Act also serves to simplify litigation. Upon a plaintiff's settlement with one joint tortfeasor, an appropriate release will provide that the claim of the plaintiff against the other, remaining tortfeasors will automatically be reduced in the amount of consideration paid for the release or the proportionate amount by which the release provides that the claim shall be reduced, whichever is greater. [11]

The general practice in providing releases pursuant to the Act is to specify the amount of consideration, but generally describe the reduction of liability as being the "pro rata share" of the person being released. The following illustrations are offered:

> Example 1:
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> A and B have each cased harm to the plaintiff C. Before trial, C settles with A, giving a joint tortfeasor release for $25,000 or a pro rata reduction. Following trial, B is found to be 50% negligent and the Court agrees that the total damages are $100,000.

In this example, the Act would automatically reduce C's claims against B by the greater of the consideration paid or the pro rata proportion of liability. The 50% negligence attributable to A exceeds the $25,000 paid by A to C; therefore, the reduction will be the 50% negligence figure. C will, therefore, collect $50,000 from B.

Example 2:

> A and B have, again, been found to have jointly and severally injured and damaged C. C settles with B for $75,000 and gives a joint tortfeasor release pursuant to the Act. At trial, $100,000 in damages is confirmed and A is found to be 50% negligent.

Here the reduction in damages due C from A will be the monetary amount paid since it was greater than the liability attributed to B. Therefore, C will have a $25,000 recovery from A.

The Court has also considered how pre-judgment interest will be calculated in a joint tortfeasor release situation. It decided that a joint-tortfeasor settlement amount must be deducted from a total verdict before pre-judgment interest is computed. Thus, the non-settling tortfeasor will not have to pay interest on the amount of the settlement, but merely upon the remaining judgment to which he, she, or it must respond following trial. [12]

Essentially, the benefit to be seen from a joint tortfeasor settlement can readily be seen when an insurer has; for example, a limited policy and can make an agreement to resolve its insured's liability within such limits. With an appropriate joint tortfeasor release under the Act and the absence of an indemnity issue (by contract or in equity as described above), the release

should also act to make the presence of the insured as a party in any litigation with remaining tortfeasors entirely unnecessary. In other words, due to the fact that the release provides for an automatic reduction in the claim or liability, the Court will be loathe to allow a party discharged by a valid joint tortfeasor release to be required to remain in litigation. [13] On the other hand a "boilerplate" release of the world at large only discharges unspecified parties if so intended [14], this careful draftsmanship remains important to obtain appropriate joint tortfeasor protection.

A final cautionary note is that the application of the joint tortfeasor law in Rhode Island requires careful consideration of the situation in which an injured party finds themselves. For example, under the state's "dram shop" act an establishment having served alcoholic beverages to a visibly intoxicated patron will be equally responsible with that customer if that patron leaves, drives an automobile and then negligently causes an accident. In this situation, the serving establishment and the drunken motorist are joint tortfeasors. If a "global" settlement cannot be achieved, settling with the customer/motorist (but not with the establishment) can substantially reduce the injured party's prospects of recovery against the establishment since a jury might well attribute a greater percentage of negligence on the impaired operator. (See, for example, *Lawrence, Executrix v. Pokraka*, 1991 WL 789852, R.I. Superior Court, 1991.)

CAVEATS - WARNINGS

Consulting an attorney or law firm experienced in matters of this type is highly recommended (and, as always, recent changes in the law may affect any case thus the discussion

and legal precedent contained in this paper are for informational purposes only and not intended as legal nor should they be construed as furnishing or constituting legal advice.

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END NOTES -REFERENCES

1. Brey v. Rosenfeld, 72 R.I. 28 (1946), aff'd., 72 R.I. 316 (1947).

2. Burr v. Fall River News Co., 75 R.I. 476, 481-82 (1949).

3. Roberts v. Kettelle, 116 R.I. 283, 295 (1976).

4. Casador v. First Nat. Stores, Inc., 478 A.2d 191 (R.I. 1984).

5. Hueston v. Narragansett Tennis Club, Inc., 502 A.2d 827 (R.I. 1986).

6. Wilson v. Krasnoff, 560 A.2d 335 (R.I. 1989).

7. Muldowney v. Weatherking Products, Inc., 509 A.2d 441, 443 (R.I. 1986).

8. Helgerson v. Mammoth Mart, Inc., 114 R.I. 438, 443 (1975).

9. Augustine v. Langlois, 402 A.2d 1187 (R.I. 1979).

10. Cacchillo v. H. Leach Machinery Co., 111 R.I. 593, 595 (1973). See also Hackett v. Hyson, 72 R.I. 132 (1946).

11. LaBounty v. LaBounty, 497 A.2d 302 (R.I. 1985).

12. Margadonna v. Otis Elevator Co., 542 A.2d 232 (R.I. 1988) (This seems to differ from the approach that Rhode Island has taken to underinsured motorist prejudgment interest - see separate summary pertaining to uninsured/underinsured motorist law.)

13. Cooney v. Molis, 640 A.2d 527 (R.I. 1994).

14. McInnis v. Harley-Davidson Motor Co., 625 F.Supp. 943 (D.R.I. 1986).