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Contributory Negligence – LFB Paper #390

The City of Milwaukee supports the deletion of this provision in AB 75 because it would increase property taxpayer liability for cases in which the City was found to be liable by as little as 1%.

The Governor's budget proposal would change the current contributory negligence statute in two major ways. First, it would compare the negligence of the plaintiff against the combined negligence of all the defendants for the purpose of allowing recovery. Secondly, a defendant is jointly and severally liable if the defendant's negligence is equal to or greater than the negligence of the plaintiff. This second proposed change in state law reverts to the law that was present prior to 1995 changes that eliminated joint and several liability if the defendant's negligence was less than 51% (the defendant was only liable for their percentage of negligence).

The way the first proposed change works is with multiple defendants; if the individual defendants' negligence is less than the plaintiff's negligence, but the combined negligence of the multiple defendants is more than the individual plaintiff's negligence, then the individual defendants are not jointly and severally liable. The individual defendant is only responsible for his or her percentage of negligence, and a plaintiff's recovery is still reduced by his or her own contributory negligence. In cases where the City has a co-defendant, its exposure is increased with this change in state law, because a plaintiff would be able to recover against the City in situations where previously recovery was barred, i.e. plaintiff's negligence is 40%, the City's is 30% and the co-defendant is 30%. Currently, the plaintiff would not be able to recover. However, under the change in the Governor's budget proposal, the City would be responsible for 30% of damages subject to monetary caps.

The second change puts contributory negligence back to where it was before 1995. Several City cases that were heard in which the City was found 1% negligent and the co-defendant 99% were cited in support of the 1995 changes to the contributory negligence statute. In one of these cases, the plaintiff was under 7 years of age and therefore not negligent as a matter of law (a crossing guard case where a driver hit a child pedestrian). The other case involved an innocent victim killed by a fleeing felon in a police chase. The chase, if you can call it that, involved the police activating their red lights and siren when they spotted a stolen vehicle. Upon activation, the stolen car driven by the fleeing felon took off down an alley. When the stolen vehicle got to the end of the alley it smashed into a car driven by the plaintiff, killing him. In both of these cases, the City had to pay the whole judgment. Obviously, this change to state law would increase the City's exposure.

For more information, please contact:

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