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Torts; comparative negligence-joint and several liability

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of repair or replacement of the property injured or destroyed, including the direct and indirect costs attributable to repair or replacement.⁸

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8. 1987 Nev. Stat. ch. 234, sec. 1, at ___ (amending NEV. REV. STAT. § 704.805 4). The value, if any, of salvage must be subtracted. *Id.* Direct and indirect costs attributable to repair or replacement include, but are not limited to, costs for: (1) labor; (2) materials; (3) supervision of employees; (4) supplies; (5) tools; (6) taxes; (7) transportation; (8) general and administrative expenses; (9) allocable benefits for employees; (10) allowances for meals; and (11) any other related expenses. 1987 Nev. Stat. ch. 234, sec. 1, at ___ (enacting NEV. REV. STAT. § 704.805 6).

Torts; comparative negligence—joint and several liability

NEV. REV. STAT. § 41.141 (amended).

SB 511 (Committee on Judiciary); 1987 STAT. Ch 709

Existing law provides that in any action to recover damages for the death or injury to a person or for injury to property, contributory negligence may be asserted¹ as a defense.² The contributory negligence of the plaintiff does not bar recovery if that negligence was not greater than the negligence of the person against whom recovery is sought.³ Under existing law, the judge may, or if requested, must, instruct the jury that the plaintiff may not recover if the plaintiff's

1. The defense of contributory negligence and any other matter constituting an avoidance must be set forth affirmatively in the answer to the complaint. Nev. R. Civ. P. § 8(c).

2. NEV. REV. STAT. § 41.141 1 (amended by 1987 Nev. Stat. ch. 709, sec. 1, at ___). See *Young's Mach. Co. v. Long*, 100 Nev. 692, 693, 692 P.2d 24, 25 (1984) (actions in strict products liability are not the type of actions in which contributory negligence may be asserted as a defense). See also *Davies v. Butler*, 95 Nev. 763, 770, 602 P.2d 605, 610 (1979) (the Legislature also intended to leave willful and wanton misconduct outside the purview of the comparative negligence statute).

3. NEV. REV. STAT. § 41.141 1 (amended by 1987 Nev. Stat. ch. 709, sec. 1, at ___) (any allowable damages must be diminished in proportion to the negligence attributable to the plaintiff or the decedent). See *State v. Eaton*, 101 Nev. 705, 715, 710 P.2d 1370, 1377 (1985) (plaintiffs may recover only if their negligence does not exceed that of the defendant or defendants). See also *Moyer v. United States*, 593 F. Supp. 145, 146 (D. Nev. 1984) (plaintiff allowed a diminished recovery although responsible for 50% of the total negligence); *Turnbow v. Wasden*, 608 F. Supp. 237, 243 (D. Nev. 1985) (recovery barred where negligence of plaintiff contributed more to the injury than negligence of defendant).

contributory negligence, has contributed more to the injury than the negligence of the defendant.⁴

Chapter 709 provides that in any action in which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff does not bar recovery if that negligence was not greater than the negligence of the parties to the action against whom recovery is sought.⁵ Chapter 709 also provides that the judge must instruct the jury that the plaintiff may not recover if the plaintiff's comparative negligence is greater than the negligence of the defendant.⁶ Furthermore, if the jury determines that the plaintiff is entitled to recover, the judge must also instruct the jury to return a general verdict total stating the amount of damages the plaintiff would be entitled to recover without regard to the plaintiff's comparative negligence, and a special verdict indicating the percentage of negligence attributable to each party.⁷ In addition, if a defendant settles with the plaintiff before the entry of judgment, the comparative negligence of that defendant and the amount of the settlement must not be admitted into evidence nor considered by the jury.⁸ If a plaintiff and defendant settle before judgment, the judge must deduct the amount of the settlement from the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts.⁹ Under Chapter 709, where recovery is permitted against more than one defendant, each defendant is severally liable to the plaintiff for only that portion of the judgment that represents the percentage of negligence attributable to that defendant.¹⁰ In specified actions, however, Chapter 709 leaves the joint and several liability of multiple defendants unaffected.¹¹

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4. NEV. REV. STAT. § 41.141 2(a) (amended by 1987 Nev. Stat. ch. 709, sec. 1, at ____). See *Verner v. Nevada Power Co.*, 101 Nev. 551, 555, 706 P.2d 147, 151 (1985) (there is no limitation imposed on the requirement that the court must, upon request, give the instruction to the jury).

5. 1987 Nev. Stat. ch. 709, sec. 1, at ____ (amending NEV. REV. STAT. § 41.141 1).

6. *Id.* sec. 1, at ____ (amending NEV. REV. STAT. § 41.141 2(a)).

7. *Id.* sec. 1, at ____ (amending NEV. REV. STAT. § 41.141 2(b)(1)-(3)).

8. *Id.* sec. 1, at ____ (amending NEV. REV. STAT. § 41.141 3).

9. *Id.*

10. *Id.*

11. 1987 Nev. Stat. ch. 709, sec. 1, at ____ (enacting NEV. REV. STAT. § 41.141 5(a)-(e)). Chapter 709 has no effect on joint and several liability of multiple defendants in actions based upon (1) strict liability, (2) an intentional tort, (3) the emission, disposal or spillage of a toxic or hazardous substance, (4) concert of action, and (5) products liability. *Id.*

