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CHAPTER 38

South Carolina Contribution Among Tortfeasors Act

**SECTION 15‑38‑10.** Short title.

 This chapter may be cited as the Uniform Contribution Among Tortfeasors Act.

HISTORY: 1988 Act No. 432, Section 5.

**SECTION 15‑38‑15.** Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

 (A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

 (B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).

 (C) The jury, or the court if there is no jury, shall:

 (1) specify the amount of damages;

 (2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning “comparative negligence”; and

 (3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff’s recoverable damages (as determined under item (2) above).

 (a) For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.

 (b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.

 (D) A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

 (E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant’s percentage of liability as determined pursuant to subsection (C).

 (F) This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.

HISTORY: 2005 Act No. 27, Section 6, eff July 1, 2005; 2005 Act No. 32, Section 16, eff July 1, 2005.

Editor’s Note

2005 Act No. 27, Section 11, provides as follows:

“If any provision of Section 6 [adding this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 6, and to this end, the provisions of Section 6 are not severable.”

2005 Act No. 27, Section 16(4), provides as follows:

“Section 6 [adding this section] takes effect July 1, 2005, and shall only apply to causes of action arising on or after that date except for causes of actions relating to construction torts which would take effect on July 1, 2005, and apply to improvements to real property that first obtain substantial completion on or after July 1, 2005. For purposes of this section, an improvement to real property obtains substantial completion when a municipality or county issues a certificate of occupancy in the case of new construction, or completes a final inspection in the case of improvements to existing improvements;[.]”

2005 Act No. 32, Section 17, provides as follows:

“If any provision of Section 16 [amending this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 16, and to this end, the provisions of Section 16 are not severable.”

2005 Act No. 32, Section 21(A), provides as follows:

“Section 16 [amending this section] takes effect July 1, 2005, and shall only apply to causes of action arising on or after that date except for causes of actions relating to construction torts which would take effect on July 1, 2005, and apply to improvements to real property that first obtain substantial completion on or after July 1, 2005. For purposes of this section, an improvement to real property obtains substantial completion when a municipality or county issues a certificate of occupancy in the case of new construction, or completes a final inspection in the case of improvements to existing improvements.”

Effect of Amendment

The 2005 amendment, in subsection (B)(3), added the last sentence; in subsection (F), added “or the illegal or illicit use, sale, or possession of” preceding “drugs”.

**SECTION 15‑38‑20.** Right of contribution.

 (A) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

 (B) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

 (C) There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

 (D) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

 (E) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor’s right of contribution to the extent of the amount it has paid in excess of the tortfeasor’s pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

 (F) This chapter does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

 (G) This chapter does not apply to breaches of trust or of other fiduciary obligation.

HISTORY: 1988 Act No. 432, Section 5.

**SECTION 15‑38‑30.** Factors determining pro rata liability of tortfeasors.

 In determining the pro rata shares of tortfeasors in the entire liability (1) their relative degrees of fault shall not be considered; (2) if equity requires, the collective liability of some as a group shall constitute a single share; and (3) principles of equity applicable to contribution generally shall apply.

HISTORY: 1988 Act No. 432, Section 5.

**SECTION 15‑38‑40.** Action for contribution.

 (A) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

 (B) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action. Provided, however, contribution may not be enforced in the action until the issue of liability and resulting damages against the defendant or defendants named in the action is determined. Once the issue of liability has been resolved, subject to Section 15‑38‑20(B), a defendant has the right to seek contribution against any judgment defendant and other persons who were not made parties to the action.

 (C) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

 (D) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either (1) discharged by payment the common liability within the statute of limitations period applicable to claimant’s right of action against him and has commenced his action for contribution within one year after payment, or (2) agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

 (E) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

 (F) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

HISTORY: 1988 Act No. 432, Section 5.

**SECTION 15‑38‑50.** Effect of release, covenant not to sue, or not to enforce judgment.

 When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

 (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

 (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

HISTORY: 1988 Act No. 432, Section 5.

**SECTION 15‑38‑60.** Construction of chapter.

 This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those that enact it.

HISTORY: 1988 Act No. 432, Section 5.

**SECTION 15‑38‑65.** Uniform Contribution Among Tortfeasors Act not applicable to governmental entities.

 No payment shall be made from state appropriated funds or other public funds to satisfy claims or judgments against governmental entities or governmental employees acting within the scope of their official duties arising under the Uniform Contribution Among Tortfeasors Act. The South Carolina Tort Claims Act is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of his official duty. The Uniform Contribution Among Tortfeasors Act shall not apply to governmental entities.

HISTORY: 1994 Act No. 497, Part II, Section 107A.

**SECTION 15‑38‑70.** Repeal of inconsistent acts.

 All acts or parts of acts which are inconsistent with the provisions of this chapter are hereby repealed.

HISTORY: 1988 Act No. 432, Section 5.