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.

LIBRARY REFERENCES

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Contribution 5(1)‑5(7).

C.J.S. Contribution Sections 12 to 24, 29.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 21, Illegal or Immoral Transactions and in Pari Delicto Doctrine.

S.C. Jur. Compromise and Settlement Section 6, Covenants‑ Generally.

S.C. Jur. Compromise and Settlement Section 7, Covenant Not to Sue.

S.C. Jur. Compromise and Settlement Section 21, Contribution and Indemnity.

S.C. Jur. Contribution Section 2, Contribution Defined.

S.C. Jur. Cotenancies Section 48, Contribution.

S.C. Jur. Negligence Section 49, Overview.

S.C. Jur. Negligence Section 53, Contribution.

S.C. Jur. Release Section 10, Persons Released.

Forms

Am. Jur. Pl. & Pr. Forms Contribution Section 1 , Introductory Comments.

Treatises and Practice Aids

25 Causes of Action 331, Cause of Action to Obtain Contribution from Tortfeasor Who Has Jointly Caused Motor Vehicle Accident.

Restatement (3d) Torts: Apportionment Liability Section 23, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 32 PFD, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 33 PFD REV, Contribution.

LAW REVIEW AND JOURNAL COMMENTARIES

Brunson. Contribution in South Carolina—venturing into uncharted waters. 41 S.C. L. Rev. 533 (Spring 1990).

NOTES OF DECISIONS

In general 1

Government entities 3

Joint tortfeasors 2

1. In general

Because the Contribution Among Tortfeasors Act is in derogation of the common law, it must be strictly construed. Cowden Enterprises, Inc. v. East Coast Millwork Distributors (S.C.App. 2005) 363 S.C. 540, 611 S.E.2d 259, rehearing denied, certiorari denied. Contribution 5(2)

Because the South Carolina Uniform Contribution Among Tortfeasors Act is in derogation of the common law, it must be strictly construed. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454. Contribution 5(2)

Common law rule against contribution was abrogated when General Assembly enacted the South Carolina Uniform Contribution Among Tortfeasors Act. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454. Contribution 5(2)

The Uniform Contribution Among Tortfeasors Act (UCATA) controls only in situations involving joint tortfeasors, and does not apply in vicarious liability situations. Andrade v. Johnson (S.C.App. 2001) 345 S.C. 216, 546 S.E.2d 665, rehearing denied, certiorari granted, reversed 356 S.C. 238, 588 S.E.2d 588. Contribution 5(2)

The Contribution Among Tortfeasors Act, Sections 15‑38‑10 et seq., was not applicable to a products liability action, even if an alleged tortfeasor had already paid or settled the claim, where the action arose from an accident which occurred before the effective date of the act, since Section 15‑38‑10 provides that the act expressly applies “to those causes of action arising or accruing on or after the effective date of this act.” Cousar v. New London Engineering Co., Inc. (S.C. 1991) 306 S.C. 37, 410 S.E.2d 243.

2. Joint tortfeasors

Salvage yard operator which was a joint tortfeasor with trucking company, with respect to accident that caused communications tower to collapse, was not a joint tortfeasor as to its own injury, and thus trucking company was not entitled to contribution from salvage yard operator under the Uniform Contribution Among Tortfeasors Act for settlement trucking company paid to salvage yard operator, even though trucking company had a right under release signed by salvage yard operator to seek and pursue indemnity and/or contribution rights for all monies paid, where trucking company requested only contribution, and not indemnity; there was no common liability. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454. Contribution 5(6.1)

3. Government entities

The definition of “person” in Section 2‑7‑30 does not necessarily exclude state and other government entities from the operation of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B), since (1) the term “include” suggests that Section 2‑7‑30 is not an exhaustive list of legal entities comprehended by “person,” and (2) a fair reading of the Act indicates that the legislature intended it to apply to all tortfeasors. Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(6.1); States 112.2(1)

**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”.

RESEARCH REFERENCES

ALR Library

92 ALR 691 , Construction and Effect of Comparative Negligence Rule Where There Are More Than One Defendant, or Where Negligence of Nonparties Contributes to the Injury.

Encyclopedias

S.C. Jur. Contribution Section 8, Parties Jointly and Severally Liable.

S.C. Jur. Contribution Section 21, Right to Contribution in Favor of Tortfeasor Against a Nonsettling Tortfeasor.

S.C. Jur. Negligence Section 51, Joint and Several Liability.

S.C. Jur. Negligence Section 53, Contribution.

S.C. Jur. Negligence Section 55, Apportionment.

S.C. Jur. Release Section 10, Persons Released.

Treatises and Practice Aids

American Law of Products Liability 3d Section 52:13, Availability Dependent on Degree of Defendant’s Fault.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Limited Joint and Several Liability Under Section 15‑38‑15: Application of the Rule and the Special Problem Posed by Nonparty Fault. 58 S.C. L. Rev. 627 (Spring 2007).

Notes of Decisions

In general 1

Constitutional issues 1.2

Construction with other laws 1.1

Instructions 2

Non‑party tortfeasor 3

Purpose 1.5

Verdict 4

1. In general

Chemical plant worker’s own negligence in deliberately failing to take safety precautions to protect himself exceeded fault of provider of labor and maintenance at chemical plant, and, thus, under South Carolina law, his comparative negligence barred him from recovering damages for personal injuries he allegedly sustained as result of negligence of provider’s employees in cutting into a line containing hazardous chemical while attempting to remove a potable water line, where he knew dangers associated with the chemical and yet attempted to repair damaged line in a unsafe manner by not properly taping wrist and ankles of his jumpsuit, removing his face mask, and taking a break while wearing contaminated gear. Humphrey v. Day & Zimmerman Intern., Inc., 2014, 997 F.Supp.2d 388, affirmed 589 Fed.Appx. 135, 2015 WL 43915. Negligence 549(11); Negligence 1304

Trial court was required to enroll judgment in patient’s husband’s wrongful death and survival action against emergency room physician and hospital using joint and several liability, in the absence of an agreement between the parties to accept an apportioned verdict. Fay v. Grand Strand Regional Medical Center, LLC (S.C.App. 2015) 412 S.C. 185, 771 S.E.2d 639. Health 782; Health 786; Judgment 240

Jury’s finding that lessee of self‑storage unit was fifty‑percent at fault in causing foot injuries for which she incurred medical expenses, resulting in reduction of damages award, was supported by evidence that she ignored her physician’s medical advice to stay off her foot and keep her cast dry. Lynch v. Carolina Self Storage Centers, Inc. (S.C.App. 2014) 409 S.C. 146, 760 S.E.2d 111. Damages 185(1); Negligence 1684(3)

Comparative negligence encompassed the comparison of all forms of negligence with heightened forms of misconduct such as recklessness, willfulness, and wantonness such that homeowner’s ordinary negligence could be compared to contractor’s recklessness in action by contractor against homeowner stemming from contractor slipping and falling from a wet ladder while working on home; former rule that a plaintiff’s ordinary negligence was not a defense to reckless conduct was meant to ameliorate the harshness of the “all or nothing” result under contributory negligence, since the abandonment of contributory negligence and the adoption of comparative negligence, the need for that concept had been eliminated, and by this method, each party’s relative fault in causing the plaintiff’s injury would be given due consideration. Berberich v. Jack (S.C. 2011) 392 S.C. 278, 709 S.E.2d 607. Negligence 1304

1.1. Construction with other laws

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, the employer cannot be found to be the proximate, or legal, cause of the plaintiff’s injuries because the employer is immune from tort liability under the exclusivity provision of the Workers’ Compensation Act. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2084; Workers’ Compensation 2161

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, the employer can be found by the fact‑finder to have been responsible for the plaintiff’s injuries. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2161

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, if no defense seeks to assign fault to the plaintiff’s employer, there shall be no reference, discussion, evidence, or legal argument relating in any manner to the matter of workers’ compensation; if, however, a defendant asserts a defense that assigns fault for the plaintiff’s injuries to the plaintiff’s employer, the defendant shall, under the well‑established “empty chair” defense, have the right to present such evidence and require the fact‑finder to consider whether the employer’s actions were the cause of the plaintiff’s injuries. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2234

1.2. Constitutional issues

Defendant commercial driver and driver’s employer waived Supreme Court review of claim that trial court’s dismissal of third‑party complaint against other driver with whom injured motorist had settled in motorist’s suit against defendants and denial of request, in alternative, to include other driver in verdict form for purposes of allocation of fault, under South Carolina Contribution Among Joint Tortfeasors Act, violated due process, where brief included only conclusory references to due process considerations of fairness and equity and set forth no substantive legal argument or supporting citations to authority. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Constitutional Law 2488

1.5. Purpose

When read as a whole, with each section and subsection given effect, it is apparent that, by enacting the South Carolina Contribution Among Joint Tortfeasors Act, the legislature was not solely attempting to protect nonsettling defendants; rather, the legislature was attempting to strike a fair balance for all involved—plaintiffs and defendants—and to do so in a way that promotes and fosters settlements. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Negligence 549(8); Torts 125

Achieving a more fair apportionment of damages among joint tortfeasors was one of the policy goals underlying the legislature’s enactment of the South Carolina Contribution Among Joint Tortfeasors Act. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Negligence 549(8); Torts 125

2. Instructions

When any form of negligence is to be compared with heightened forms of misconduct such as recklessness, willfulness, and wantonness for purposes of comparative negligence, a trial court should instruct the jury on the definitions of these various terms, in addition to ordinary negligence, when so requested by a party, even if punitive damages are not at issue. Berberich v. Jack (S.C. 2011) 392 S.C. 278, 709 S.E.2d 607. Negligence 1746

3. Non‑party tortfeasor

Other driver with whom injured motorist settled claims arising out of accident was not necessary party to motorist’s subsequent action against driver of disabled commercial vehicle parked alongside highway that obstructed view of other driver of oncoming traffic while entering highway from nearby gas station and driver’s employer, for purposes of apportioning fault between defendants and other driver, under South Carolina Contribution Among Joint Tortfeasors Act, where, under “plaintiff chooses” rule, motorist chose which defendants to sue, and Act did not abrogate rule. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Automobiles 226(3)

The provision of the South Carolina Contribution Among Joint Tortfeasors Act requiring the fact‑finder to apportion 100% of fault between the plaintiff and each defendant whose actions are the proximate cause of the injury does not create a stand‑alone cause of action for apportionment of fault to a non‑party. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Appeal And Error 1079

A critical feature of the South Carolina Contribution Among Joint Tortfeasors Act is the codification of the “empty chair defense”—a defendant retains the right to assert another potential tortfeasor, whether a party or not, contributed to the alleged injury or damages—which necessarily contemplates lawsuits in which an allegedly culpable person or entity is not a party to the litigation. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Negligence 549(8); Torts 125

Provision of South Carolina Contribution Among Joint Tortfeasors Act requiring fact‑finder to apportion 100% of fault between plaintiff “and each defendant” whose actions were proximate cause of injury did not authorize defendant driver of disabled commercial truck parked alongside highway and driver’s employer to file third‑party complaint against other nonparty driver with whom motorist had previously settled in exchange for covenant not to execute or to have other driver included in verdict form, for purposes of apportioning fault, in motorist’s suit against defendants; Act’s use of terms “defendant,” “defendants,” and “tortfeasor,” when read as whole, clearly indicated General Assembly’s intent to allow only “defendant” or “defendants” to be listed on jury form and included in allocation of fault. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Statutes 1079; Statutes 1108

Under the contribution‑among‑tortfeasors statute, a nonparty may be included in the allocation of fault only where such person or entity is a potential tortfeasor. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2238

4. Verdict

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, the court cannot allow the jury to apportion fault against the non‑party employer by placing the name of the employer on the verdict form. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2243

**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.

CROSS REFERENCES

Defendant’s right to seek contribution from any judgment defendant and other persons who were not made parties to the action once the issue of liability has been resolved, subject to paragraph (B) of this section, see Section 15‑38‑40.

LIBRARY REFERENCES

Westlaw Key Number Searches: 96k5(1) to 96k5(7).

Contribution 5(1)‑5(7).

C.J.S. Contribution Sections 12 to 24, 29.

RESEARCH REFERENCES

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17 ALR 6th 1 , Contribution Between Joint Tortfeasors as Affected by Settlement With Injured Party by One or More Tortfeasors.

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S.C. Jur. Compromise and Settlement Section 21, Contribution and Indemnity.

S.C. Jur. Contribution Section 2, Contribution Defined.

S.C. Jur. Contribution Section 8, Parties Jointly and Severally Liable.

S.C. Jur. Contribution Section 12, Intentional Tortfeasors.

S.C. Jur. Contribution Section 21, Right to Contribution in Favor of Tortfeasor Against a Nonsettling Tortfeasor.

S.C. Jur. Negligence Section 53, Contribution.

S.C. Jur. Release Section 10, Persons Released.

S.C. Jur. South Carolina Rules of Civil Procedure Section 14.2, Discussion.

Treatises and Practice Aids

American Law of Products Liability 3d Section 52:44, Preservation of Indemnity Under Contribution Statutes; Effect of Right to Indemnity Upon Contribution.

American Law of Products Liability 3d Section 52:47, Requirement of Payment in Excess of Share.

American Law of Products Liability 3d Section 52:48, Limitations on Amount Recoverable.

American Law of Products Liability 3d Section 52:49, Availability to Intentional Tortfeasors.

American Law of Products Liability 3d Section 57:42, Overview.

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Restatement (3d) Torts: Apportionment Liability Section 23, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 32 PFD, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 33 PFD REV, Contribution.

NOTES OF DECISIONS

In general 1

Government entities 3

Limitations 4

Settlement 2

1. In general

Under South Carolina law, a company hired to change the oil in a generator installed on a recreational vehicle (RV), which had been converted for use as a mobile dental facility, had no duty to inspect the generator’s exhaust system and warn of problems, thus defeating a claim by the generator installer for contribution pursuant to South Carolina’s Uniform Contribution Among Tortfeasors Act in connection with the installer’s liability for personal injuries suffered by occupants of the RV, who were exposed to carbon monoxide gas as a result of the generator not being properly ventilated. Cummins Atlantic, Inc. v. Sonny’s Camp‑N‑Travel Mart, Inc., 2007, 481 F.Supp.2d 531. Contribution 5(6.1); Negligence 210; Negligence 221

Uniform Contribution Among Tortfeasors Act is applicable only in cases in which tort cause of action and contribution cause of action arose after effective date of Act. Lightner v. Duke Power Co., 1989, 719 F.Supp. 1310. Contribution 5(2)

Reformation of covenants not to execute between automobile insurer and injured pedestrian in order to add language to terminate potential liability of restaurant patronized by driver of insured vehicle prior to accident, so as to permit insurer to pursue contribution claim against restaurant pursuant to Uniform Contribution Among Tortfeasors Act (UCATA), unfairly affected the rights of restaurant, and therefore was not permitted, where statute of limitations for any potential claim against restaurant had already expired at time insurer and pedestrian sought reformation. Progressive Max Ins. Co. v. Floating Caps, Inc. (S.C. 2013) 405 S.C. 35, 747 S.E.2d 178. Reformation of Instruments 28

Installer of underground water line had no right to contribution under Contribution Among Joint Tortfeasors Act in negligence action that was brought by construction company’s employee, who was injured while preparing to tie into line; Act applied if there were two or more persons who were jointly or severally liable in tort, and pursuant to workers’ compensation laws, company could not be liable in tort to employee. Gordon v. Phillips Utilities, Inc. (S.C. 2005) 362 S.C. 403, 608 S.E.2d 425. Workers’ Compensation 2142.15

Legislature violated doctrine of separation of powers by enacting retroactive statutory amendment attempting to overrule Supreme Court decision which held that Legislature impliedly had repealed Tort Claims Act’s damages cap; thus, action filed before amendment’s effective date was not subject to that cap. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. Constitutional Law 2384; Municipal Corporations 743

The basic premise of contribution is commonality; thus, “common liability,” rather than joint negligence, determines the right to contribution. Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp. (S.C.App. 1999) 336 S.C. 53, 518 S.E.2d 301. Contribution 5(1)

Under Section 15‑38‑20(B), the right to contribution does not arise prior to payment; consequently, a plaintiff/contractor did not yet have any right to contribution from the third party/subcontractor where the contractor had not made any payments to the defendant/owner. First General Services of Charleston, Inc. v. Miller (S.C. 1994) 314 S.C. 439, 445 S.E.2d 446.

Sections 15‑78‑100(c) and 15‑78‑120(a)(1) of the Tort Claims Act were repealed by inconsistent provisions of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B). Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(1); Contribution 5(2)

2. Settlement

Uniform Contribution Among Tortfeasors Act created right of contribution and provided that settling defendant is insulated from later contribution claims by co‑tortfeasors if he obtains from plaintiff good faith release or covenant not to sue. South Carolina Nat. Bank v. Stone, 1990, 749 F.Supp. 1419.

Liability of salvage yard operator, from which trucking company sought to recover contribution for amounts paid in settlement of claims arising from accident in which communications tower collapsed, was not extinguished, precluding trucking company’s recovery of contribution under the Uniform Contribution Among Tortfeasors Act, even though statute of limitations had run on injured parties’ claims against salvage yard operator, where trucking company obtained release from only one injured party in connection with settlements, and release purported to release only trucking company; settlement did not cover injured parties’ claims against salvage yard operator. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454. Contribution 8; Limitation Of Actions 170

Running of the statute of limitations on an action arising from an underlying tort would not “extinguish” a joint tortfeasor’s liability so as to entitle a settling tortfeasor to contribution. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454. Limitation Of Actions 170

In order for a tortfeasor to recover contribution from a joint tortfeasor, extinguishment of defending joint tortfeasor’s liability must have resulted directly from settlement itself. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454. Contribution 8

Retailer of allegedly defective wood chipper that caused purchaser’s injuries was not, subsequent to entering into settlement with purchaser, entitled to contribution or indemnification from manufacturer for retailer’s settlement of potential claims by purchaser’s wife; wife never sued either manufacturer or retailer, she was not party to action brought by purchaser, there was no admission of liability concerning wife, neither company was compelled to pay anything to her, and because no portion of settlement was allocated to her for any potential loss of consortium claim, it could not be determined whether retailer paid more than its pro rata share of liability to her. Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp. (S.C.App. 1999) 336 S.C. 53, 518 S.E.2d 301. Contribution 6; Indemnity 81

Injured wood chipper purchaser’s dismissal with prejudice of its claims against chipper manufacturer extinguished any right of contribution that chipper retailer may have had against manufacturer with respect to sums that retailer subsequently paid to purchaser in settlement of purchaser’s claims; retailer did not extinguish any liability of manufacturer to purchaser because no such liability existed, and there was no “common liability” that could have been discharged by settlement agreement, as only liability that could have been discharged by agreement was retailer’s potential liability to purchaser. Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp. (S.C.App. 1999) 336 S.C. 53, 518 S.E.2d 301. Contribution 6

An agreement between a subcontractor and the owner of a pond which suffered siltation due to construction fully satisfied the pond owner’s claims and thus released the construction site owner and general contractor from liability where the pond owner made an informal claim on the subcontractor for the siltation damage, $21,000 was paid in consideration for what purported to be a covenant not to sue and assignment of all claims arising from the siltation damage, the site owner and contractor had refused to participate in the settlement, and the agreement was entered into before the effective date of the Contribution Among Tortfeasors Act. Loyd’s Inc. by Richardson Const. Co. of Columbia, S.C., Inc. v. Good (S.C.App. 1991) 306 S.C. 450, 412 S.E.2d 441.

While contractor’s insurer was permitted to dismiss co‑defendants from contribution action against window manufacturer’s successor in interest, it was inequitable for trial court to ignore insurer’s settlements with window seller and stucco applicator; insurer was afforded a windfall when manufacturer’s pro rata share was added to two prior settlement amounts. Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc. (S.C.App. 2016) 2016 WL 1359188, Unreported. Contribution 5(6.1)

3. Government entities

The definition of “person” in Section 2‑7‑30 does not necessarily exclude state and other government entities from the operation of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B), since (1) the term “include” suggests that Section 2‑7‑30 is not an exhaustive list of legal entities comprehended by “person,” and (2) a fair reading of the Act indicates that the legislature intended it to apply to all tortfeasors. Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(6.1); States 112.2(1)

4. Limitations

Statute of repose bars actions for contribution under the Uniform Contribution Among Tortfeasors Act brought more than 13 years after the completion of an improvement to real property. Florence County School Dist. No. 2 v. Interkal, Inc. (S.C.App. 2002) 348 S.C. 446, 559 S.E.2d 866. Contribution 9(3); Limitation Of Actions 49(6)

**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.

LIBRARY REFERENCES

Westlaw Key Number Searches: 96k5(1) to 96k5(7).

Contribution 5(1)‑5(7).

C.J.S. Contribution Sections 12 to 24, 29.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 21, Contribution and Indemnity.

Treatises and Practice Aids

American Law of Products Liability 3d Section 52:61, No Consideration of Relative Fault.

American Law of Products Liability 3d Section 52:63, Multiple Parties Treated as Single Entity or Share.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

Restatement (3d) Torts: Apportionment Liability Section 23, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 32 PFD, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 33 PFD REV, Contribution.

Notes of Decisions

Construction and application 1

1. Construction and application

While contractor’s insurer was permitted to dismiss co‑defendants from contribution action against window manufacturer’s successor in interest, it was inequitable for trial court to ignore insurer’s settlements with window seller and stucco applicator; insurer was afforded a windfall when manufacturer’s pro rata share was added to two prior settlement amounts. Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc. (S.C.App. 2016) 2016 WL 1359188, Unreported. Contribution 5(6.1)

**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.

LIBRARY REFERENCES

Westlaw Key Number Searches: 96k5(1) to 96k5(7); 96k9.

Contribution 5(1)‑5(7), 9.

C.J.S. Contribution Sections 12 to 25, 29.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contribution Section 2, Contribution Defined.

S.C. Jur. Contribution Section 14, Third Party Practice Under South Carolina Act.

S.C. Jur. Limitation of Actions Section 33, Actions Relating to Property.

S.C. Jur. Negligence Section 53, Contribution.

Treatises and Practice Aids

American Law of Products Liability 3d Section 52:51, Recovery of Judgment Does Not Discharge Other Joint Tortfeasors.

American Law of Products Liability 3d Section 52:54, Binding Nature of Court Judgment on Liability.

American Law of Products Liability 3d Section 52:147, Enforcement in Main or Separate Action.

American Law of Products Liability 3d Section 52:150, Limitations Period in Actions for Contribution.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

Restatement (3d) Torts: Apportionment Liability Section 23, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 32 PFD, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 33 PFD REV, Contribution.

NOTES OF DECISIONS

In general 1

1. In general

One‑year statute of limitations for settling tortfeasor to bring contribution action was not in irreconcilable conflict with and, therefore, did not impliedly repeal thirteen‑year statute of repose to bring an action for contribution based upon or arising out of the defective or unsafe condition of an improvement to real property; thus, the statute of repose barred property owner’s contribution claim against contractor more than thirteen years after completion, but less than one year after settlement of tort claim. Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc. (S.C. 2006) 368 S.C. 137, 628 S.E.2d 38. Contribution 9(3); Limitation Of Actions 49(6)

The basic premise of contribution is commonality; thus, “common liability,” rather than joint negligence, determines the right to contribution. Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp. (S.C.App. 1999) 336 S.C. 53, 518 S.E.2d 301. Contribution 5(1)

Injured wood chipper purchaser’s dismissal with prejudice of its claims against chipper manufacturer extinguished any right of contribution that chipper retailer may have had against manufacturer with respect to sums that retailer subsequently paid to purchaser in settlement of purchaser’s claims; retailer did not extinguish any liability of manufacturer to purchaser because no such liability existed, and there was no “common liability” that could have been discharged by settlement agreement, as only liability that could have been discharged by agreement was retailer’s potential liability to purchaser. Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp. (S.C.App. 1999) 336 S.C. 53, 518 S.E.2d 301. Contribution 6

The definition of “person” in Section 2‑7‑30 does not necessarily exclude state and other government entities from the operation of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B), since (1) the term “include” suggests that Section 2‑7‑30 is not an exhaustive list of legal entities comprehended by “person,” and (2) a fair reading of the Act indicates that the legislature intended it to apply to all tortfeasors. Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(6.1); States 112.2(1)

**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.

LIBRARY REFERENCES

Westlaw Key Number Searches: 96k5(1) to 96k5(7).

Contribution 5(1)‑5(7).

C.J.S. Contribution Sections 12 to 24, 29.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 21, Contribution and Indemnity.

S.C. Jur. Compromise and Settlement Section 22, Set‑Off.

S.C. Jur. Contribution Section 20, Right to Contribution in Favor of Tortfeasor Against a Settling Tortfeasor.

Forms

Am. Jur. Pl. & Pr. Forms Release Section 1 , Introductory Comments.

Treatises and Practice Aids

American Law of Products Liability 3d Section 57:27, View that Co‑Tortfeasors Are Not Discharged from Liability.

American Law of Products Liability 3d Section 57:33, Uniform Contribution Among Tortfeasors Act and Related Provisions.

American Law of Products Liability 3d Section 57:42, Overview.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

Restatement (3d) Torts: Apportionment Liability Section 23, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 32 PFD, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 33 PFD REV, Contribution.

NOTES OF DECISIONS

In general 1

Setoffs 3

Settlement 2

1. In general

Plaintiffs’ settlement with one tortfeasor did not, as a matter of law, release another tortfeasor, where the settlement agreement expressly stated that it did not release any other tortfeasor, and where plaintiffs were seeking greater damages than the amount that they claimed to have recovered in settlement. Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co., 1994, 868 F.Supp. 128. Compromise And Settlement 17(2); Release 37

Covenants not to execute between by automobile insurer and injured pedestrian did not release restaurant from liability, and therefore insurer was precluded from subsequently seeking contribution pursuant to the Uniform Contribution Among Tortfeasors Act (UCATA) from restaurant patronized by driver of insured vehicle prior to accident, where, although covenants recited the fact that parties were aware of a potential claim against restaurant and that insurer desired to pursue a contribution claim against restaurant, it failed to expressly provide that liability of restaurant, or any other party, was released, and covenants expressly stated that they did not constitute not a release of any other person or entity. Progressive Max Ins. Co. v. Floating Caps, Inc. (S.C. 2013) 405 S.C. 35, 747 S.E.2d 178. Contribution 6; Insurance 3390; Release 37

Manufacturer of exterior home cladding obtained release from liability for product defects asserted by homeowners by virtue of class action settlement, and thus, manufacturer was not liable on general contractor’s contribution claim for payment of its fair share of settlement with homeowners; homeowners failed to submit a claim or opt out of nationwide class action settlement, and settlement gave manufacturer full release and dismissed all claims against it. Cowden Enterprises, Inc. v. East Coast Millwork Distributors (S.C.App. 2005) 363 S.C. 540, 611 S.E.2d 259, rehearing denied, certiorari denied. Contribution 8

Releases signed by motorists and passenger involved in automobile collision barred their subsequent negligence suit against South Carolina Department of Transportation (SCDOT); terms of releases were clear and unambiguous, releases did not evince intent to limit their scope to any specifically identifiable parties, and motorists and passenger released “all other persons, firms or corporations liable or, who might be claimed to be liable” and settlement was accepted as “full and final compromise precluding forever any further or additional claims arising out of the aforesaid accident.” Bowers v. Dept. of Transp. (S.C.App. 2004) 360 S.C. 149, 600 S.E.2d 543, rehearing denied, certiorari denied. Release 29(1); Release 38

The definition of “person” in Section 2‑7‑30 does not necessarily exclude state and other government entities from the operation of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B), since (1) the term “include” suggests that Section 2‑7‑30 is not an exhaustive list of legal entities comprehended by “person,” and (2) a fair reading of the Act indicates that the legislature intended it to apply to all tortfeasors. Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(6.1); States 112.2(1)

2. Settlement

Other driver with whom injured motorist settled was not liable to defendants commercial driver and driver’s employer for all or part of motorist’s claims against defendants, within meaning of civil rule authorizing impleader of nonparty “who is or may be liable to [defendants] for all or part of the plaintiff’s claim against him”; other driver’s settlement with motorist included covenant not to execute, which protected driver from additional liability to motorist in excess of agreed settlement amount, and under South Carolina Contribution Among Joint Tortfeasors Act, legislature expanded scope of settling tortfeasor’s immunity to include protection from liability to nonsettling tortfeasors. Smith v. Tiffany (S.C. 2017) 419 S.C. 548, 799 S.E.2d 479. Automobiles 226(3); Automobiles 234

In allocating set off of co‑defendant’s pretrial settlement of $450,000 against judgment entered against neurosurgeon, the trial court did not abuse its discretion in granting neurosurgeon set off of $28,535.88 against survival action and $421,464.12 against wrongful death action, even though settling parties had allocated $5,000 to the wrongful death claim and $445,000 to the survival claim. Welch v. Epstein (S.C.App. 2000) 342 S.C. 279, 536 S.E.2d 408, rehearing denied. Damages 63

Under statute providing that plaintiff’s settlement with one tort‑feasor reduces plaintiff’s claim against nonsettling tort‑feasors, such set‑off arises by operation of law; nonsettling tort‑feasors need not make timely motion pursuant to rules of civil procedure. Ellis v. Oliver (S.C.App. 1999) 335 S.C. 106, 515 S.E.2d 268. Damages 63

Patient’s estate’s agreement to release defendant hospital from medical malpractice action discharged portion of judgment against defendant anesthesiologist by operation of law; there was no need for anesthesiologist to file motion under South Carolina Rules of Civil Procedure. Ellis v. Oliver (S.C.App. 1999) 335 S.C. 106, 515 S.E.2d 268. Damages 63

3. Setoffs

Settlement for $25,000 with at‑fault driver, who was involved in motor vehicle accident in which driver was killed, was reasonably apportioned by allocating $20,000 to survival and $5,000 to wrongful death claims of driver’s estate, and thus automobile manufacturer was entitled to set off only $5,000 of subsequent jury award on estate’s wrongful death claim; allocation for the survival claim was reasonable given evidence in the record regarding driver’s conscious pain and suffering before he died, and fact that the apportionment was favorable to the estate did not alone justify appellate reapportionment. Riley v. Ford Motor Co. (S.C. 2015) 414 S.C. 185, 777 S.E.2d 824. Death 91

Before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury; when the settlement is for the same injury, the nonsettling defendant’s right to a setoff arises by operation of law. Smith v. Widener (S.C.App. 2012) 397 S.C. 468, 724 S.E.2d 188. Damages 63

A plaintiff’s claim for actual and punitive damages arising from the same injury is the same claim for purposes of setoff. Smith v. Widener (S.C.App. 2012) 397 S.C. 468, 724 S.E.2d 188. Damages 63

When a prior settlement involves compensation for a different injury from the one tried to verdict, there is no setoff as a matter of law; on the other hand, when a settlement is argued to involve two claims, one of which involves the same injury as the claim tried to verdict and one of which does not, the circuit court must make the factual determination of how to allocate the settlement between the two claims. Smith v. Widener (S.C.App. 2012) 397 S.C. 468, 724 S.E.2d 188. Damages 63

Ex‑wife’s claim for actual and punitive damages against representatives of ex‑husband’s estate that arose from the same alleged injury were the same claim for purposes of statutory provision that required the reduction of a claim against a joint tortfeasor by the amount of any settlement with another joint tortfeasor, and thus, trial court was required to grant representative’s request for a setoff in the amount of $35,410.38, the amount of ex‑wife’s settlement with ex‑husband’s deferred compensation program, employee benefits provider, where ex‑wife’s claim against benefits provider was for the same alleged injury for which she sought damages from estate’s representatives. Smith v. Widener (S.C.App. 2012) 397 S.C. 468, 724 S.E.2d 188. Damages 63

Provision of contribution among tortfeasors act, which discharges tortfeasor to whom release is given from all liability for contribution to any other tortfeasor, grants the court no discretion in determining the equities involved in applying a set‑off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors. Vortex Sports & Entertainment, Inc. v. Ware (S.C.App. 2008) 378 S.C. 197, 662 S.E.2d 444, rehearing denied. Damages 63

Corporation’s cause of action against former officer’s new employer for tortiously interfering with contract and aiding and abetting breach of fiduciary duty arose out of the same factual scenario as corporation’s claim against former officer, and, thus, settlement with officer entitled the new employer to setoff reducing employer’s liability to corporation under contribution among tortfeasors act. Vortex Sports & Entertainment, Inc. v. Ware (S.C.App. 2008) 378 S.C. 197, 662 S.E.2d 444, rehearing denied. Damages 63

**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.

LIBRARY REFERENCES

Westlaw Key Number Searches: 96k5(1) to 96k5(7).

Contribution 5(1)‑5(7).

C.J.S. Contribution Sections 12 to 24, 29.

**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.

CROSS REFERENCES

South Carolina Tort Claims Act, see Section 15‑78‑10 et seq.

Uniform Contribution Among Tortfeasors Act, see Section 15‑38‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 96k5(1) to 96k5(7).

Contribution 5(1)‑5(7).

C.J.S. Contribution Sections 12 to 24, 29.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 22, Set‑Off.

Attorney General’s Opinions

A contract obligating the Rural Water District to answer for a claim under the South Carolina Tort Claims Act in a manner different from the procedure provided by the Act would violate the public policy of the State; and with regard to claims arising from the acts or omissions of a contractor, an agreement obligating the District in advance to defend the contractor from such claims would be likely to result in an invalid expenditure of public funds for a private purpose. S.C. Op.Atty.Gen. (March 6, 2012) 2012 WL 889087.

NOTES OF DECISIONS

In general 1

1. In general

Where truck driver who struck and killed eight‑year‑old student settled wrongful death and survival claims before trial, after which jury awarded damages against South Carolina Department of Education on wrongful death and survival claims under Tort Claims Act, Department was entitled to set‑off in amount that driver paid in settlement; jury’s verdict represented total amount of damages sustained by student and her survivors, but because driver settled prior to trial, jury only apportioned negligence between student and Department. Smalls v. South Carolina Dept. of Educ. (S.C.App. 2000) 339 S.C. 208, 528 S.E.2d 682. Death 25

**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.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k151.

Statutes 151.

C.J.S. Statutes Section 280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 21, Illegal or Immoral Transactions and in Pari Delicto Doctrine.

S.C. Jur. Compromise and Settlement Section 6, Covenants‑ Generally.

S.C. Jur. Compromise and Settlement Section 7, Covenant Not to Sue.

S.C. Jur. Compromise and Settlement Section 21, Contribution and Indemnity.

S.C. Jur. Contribution Section 2, Contribution Defined.

S.C. Jur. Cotenancies Section 48, Contribution.

S.C. Jur. Negligence Section 49, Overview.

S.C. Jur. Negligence Section 53, Contribution.

S.C. Jur. Release Section 10, Persons Released.

Forms

Am. Jur. Pl. & Pr. Forms Contribution Section 1 , Introductory Comments.

Treatises and Practice Aids

Restatement (3d) Torts: Apportionment Liability Section 32 PFD, Contribution.

Restatement (3d) Torts: Apportionment Liability Section 33 PFD REV, Contribution.