MARIPOSA COUNTY RESOLUTION No. 82-17

A RESOLUTION IN SUPPORT OF SB 1336 PERTAINING TO THE RULE OF JOINT AND SEVERAL LIABILITY

WHEREAS, the Tort Claims Act of 1963 declares that the subject of governmental tort liability shall be entirely controlled by statute; and

WHEREAS, the Tort Claims Act has been substantially changed by recent case law; and

WHEREAS, the rule of joint and several liability as declared by the California Supreme Court in American Motorcycle v Superior Court has imposed liability upon defendants regardless of the comparative degree of fault and has made each defendant an insurer of the other; and

WHEREAS, the rule of joint and several liability is inconsistent with the principle of comparative negligence adopted by the California Supreme Court in the 1975 case of Li v Yellow Cab and is the principal reason public entities have become "target" and "deep pocket" defendants; and

WHEREAS, the rule of joint and several liability has placed a tremendous financial burden upon public agencies, because of the increased number of claims and increased settlement and judgement costs; and

WHEREAS, all such increased costs are paid by the general public from tax revenues decreased by Proposition 13 and limited by Proposition 4; and

WHEREAS, SB 1336 proposes to fairly apportion liability based upon the comparative degree of fault, thereby limiting the expenditure of public funds to the share of a judgment equal to such
Resolution
Joint & Several Liability
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agency's proportionate share of liability;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors
of Mariposa County on behalf of the taxpaying public urges the
California Legislature and the Governor to enact SB 1336 during
the 1981-82 General Legislative Session; and

BE IT FURTHER RESOLVED, that copies of this resolution be
sent to the Governor, the Senate and Assembly Judiciary Committees,
the Legislative delegates representing Mariposa County, and CSAC.

PASSED AND ADOPTED this 2nd day of February, 1982, by
the Board of Supervisors of Mariposa County by the following vote:

AYES: Taber, Dalton, Erickson

NOES: None

EXCUSED: Barrick, Moffitt

ABSTAINED: None

[Signature]
ERIC J. ERICKSON, Vice-Chairman
Board of Supervisors

ATTEST:

[Signature]
ELLEN BRONSON, County Clerk and
Ex Officio Clerk of the Board

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

[Signature]
RICHARD K. DENHALTER, County Counsel
The people of the State of California do enact as follows:

SECTION 1. Section 817 is added to the Government Code, to read:

817. (a) Notwithstanding Section 1714 of the Civil Code, in an action for personal injury, property damage, or wrongful death, where an indivisible injury has been sustained by the plaintiff as a proximate result of the wrongful conduct of two or more persons, at least one of which is a public entity or public employee not immune from tort liability, the total damages sustained by the plaintiff and to which the conduct of all such persons has contributed shall be equitably apportioned among them by the trier of fact, based upon the degree of fault, if any, of such persons that proximately caused the compensable damages. The amount so apportioned shall be stated as a percentage per such person, which shall aggregate 100 percent with respect to all such persons.

(b) The liability of each public entity or public employee tortfeasor shall be several only and shall not be joint.

c) Each public employee and public entity tortfeasor shall be liable only for the percentage of the total compensable damages allocated to it and a separate judgment shall be rendered against the public employee and public entity for that amount.

(d) The liability of each nonpublic entity tortfeasor shall be joint and several with regard to that portion of the damages not attributable to the public entity or public employee.

e) The allocation provided for in subdivision (a) shall be made after deducting the portion of the damages found by the trier of fact attributable to the wrongful conduct, if any, of the plaintiff. The allocation shall be binding only upon persons who are parties to the action.

(f) The allocation provided for by this section does not apply to any person who intentionally injures another. A person who intentionally injures another shall be liable for all damages inflicted and compensable under the law. However, an apportionment shall be made under this section with respect to any other persons liable and not guilty of intentional conduct, including for that purpose an allocation to the intentional actor. Any other person so liable shall have a right of indemnification against the intentional actor.

(g) When one person is vicariously liable for the conduct of another person, they shall be treated as one person for the purpose of this section and the same percentage allocated to each. This section does not affect whatever right of indemnification or contribution, if any, may exist between them.

(h) If two or more persons act in concert with respect to conduct proximately resulting in an indivisible injury to the plaintiff, they shall be treated as one person for the purposes of this section and the same percentage allocated to each, but each shall have a right of contribution against the other or others under Section 1432 of the Civil Code and Title 11 (commencing with Section 875) of Part 2 of the Code of Civil Procedure.
SENATE BILL No. 1336

Introduced by Senator Davis

January 12, 1982

An act to add Section 817 to the Government Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 1336, as introduced, Davis. Comparative fault: public entities.

Under existing law, in an action based upon negligence or product liability against multiple tortfeasors for an indivisible injury, the tortfeasors, including any public employee or public entity tortfeasors, are jointly and severally liable to the plaintiff for all compensable damages attributable to that injury except for damages attributable to the negligence of the plaintiff. However, a tortfeasor who pays more than his or her equitable amount of damages may seek equitable indemnity from other tortfeasors.

This bill would provide that in an action for personal injury, property damage, or wrongful death, where an individual injury is the proximate result of the wrongful conduct of 2 or more persons, at least 1 of which is a public entity or public employee, damages would be apportioned among the tortfeasors, and the public employee and public entity tortfeasor would be liable for only the percentage of the damages allocated to it, and a separate judgment would be rendered for that amount. The liability of the public entity and public employee would be several, and the liability of nonpublic entity tortfeasors would be joint and several with regard to the damages not attributable to the public entity or public employee. However, liability for an intentional injury would be for all compensable injuries. The bill would make related changes.

January 18, 1982

TO: Members, CSAC Board of Directors
    County Administrative Officers
    County Counsels
    County Risk Managers

FROM: Steve Zehner, General Counsel

SUBJECT: Joint and Several Liability Legislation

At CSAC's Annual Meeting, the membership unanimously adopted a resolution requesting that county tort liability exposure be restricted. CSAC is co-sponsoring, with the Attorney General's office, a measure to limit public entity liability to degree of fault.

Senate Bill 1336, by Senator Ed Davis, was introduced earlier this week. A copy is enclosed, and a model resolution of support is attached.

If we are to be successful with this effort, it is imperative that county officials take an immediate, active role.

- Please seek a resolution of support from your board of supervisors.
- Talk to your county's legislators. Seek their support, and urge them to co-author the measure.
- Contact the members of the Senate Judiciary Committee, SB 1336's first stop, to urge their support.
- Circulate this proposal to your colleagues in the cities and other public entities urging immediate, active support. Also, public employee unions should be supportive, because SB 1336 limits individual liability.
- Advise me of your legislators' position on this legislation after you have discussed it with them.

If you have any questions, need additional information, or would like to testify on the measure, please contact me at (916) 441-4011.

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CSAC EXECUTIVE COMMITTEE: President, THERESA COOK, Placer County; First Vice President, JAMES EDDIE, Mendocino County; Second Vice President, SUNSHINE WIGHT MCEAWE, Contra Costa County; Immediate Past President, QUENTIN L. KOPP, City & County of San Francisco; WALT P. ABRAHAM, Riverside County; MICHAEL D. ANTONOVICH, Los Angeles County; FRED F. COOPER, Alameda County; PAUL FORDE, San Diego County; MARY KNAPP, Sutter County; HOWARD MANNING, San Luis Obispo County; DAN McGROODRIGUEZ, Santa Clara County; CAL MCINTYRE, San Bernardino County; STEPHEN ROSS, Shasta County; JOHN M. WARD, San Mateo County; EARL WITHERSPOON, Sierra County; ADVISOR: County Administrative Officer, ALBERT P. BILLETHAM, Mendocino County; Executive Director, LARRY E. NAKAI

Sacramento Office / #201, 11th & L Bldg. / Sacramento, CA 95814 / 916/441-4011 ATSS 473-3727
Robertti Move
Panel Votes Limits On Joint Liability After Compromise

But Rejects Repeal of Market Share Ruling In Product Defect Suit

2 Insurance Bills Pulled

By ALAN ASHBY
SACRAMENTO — A compromise bill to restrict joint liability for civil judgments supported by insurance industry groups but opposed by the plaintiffs' bar won approval late Tuesday on a 5-2 vote in the Senate Judiciary Committee.

It was the first time the panel has approved a measure to restrict the legal doctrine that allows plaintiffs to collect judgments from financially solvent defendants even if they are not primarily at fault for the plaintiff's injury.

But the panel defeated a second insurance-industry backed bill that would have overturned a California Supreme Court decision that makes it easier for plaintiffs to recover in some products liability cases.

The decision — Sindell v. Abbott Laboratories, 26 Cal.3d 588 (1980) — allows plaintiffs' recovery to be based on a manufacturer's market share when the plaintiff's injury cannot be tied to an individual maker of the defective product. The court ruling came in a suit brought against manufacturers of a drug found to cause cancer or birth defects when taken by pregnant women.

Two other bills supported by insurance groups — to abolish the so-called "collateral source rule" and to provide for periodic payments in all judgments over $100,000 — were withdrawn by their author after committee hearings on the bills.

The joint liability measure, SB 509 by Sen. Robert Beverly, R-Redondo Beach, won approval after Beverly accepted a compromise amendment by Senate President Pro Tem David Robertti, D-Hollywood. Under Robertti's amendment, joint liability would not be abolished outright, but it would be imposed for non-economic damages only if the defendant were more than 40 percent at fault for the plaintiff's injury.

The bill goes next to the Senate floor, where approval is likely. But stiff opposition is expected in the Assembly.

Important Doctrine for Plaintiffs
Joint liability is an important doctrine for plaintiffs in cases involving multiple defendants. If the plaintiff is unable to tie his or her injury to an individual defendant, each defendant may be held jointly liable for the total judgment if the plaintiff cannot collect from the others.

Plaintiffs' lawyers say the doctrine ensures compensation for victims. The civil defense bar, including insurance lawyers and attorneys for local governments, claim the doctrine encourages juries to return huge verdicts that will be paid off by financially strong — so-called "deep pocket" — defendants.

As originally proposed last year, Beverly's bill would have abolished joint liability altogether and held defendants liable only for their percentage share of fault. The bill failed 4-3 at a hearing in May 1981.

Robertti opposed the bill at that time, but announced that he would be willing to reconsider the proposal if it could be amended to ensure some remedy for injured plaintiffs for their financial damages even if the "deep pocket" defendant was beyond reach.

The evil of joint and several liability, Robertti and several witnesses had contended, was that defendants such as government agencies who may have been only slightly at fault in an accident are frequently saddled with satisfying an entire judgment because the defendant who is principally at fault has no resources.

In response to the criticisms, Beverly had already amended the bill to restore full joint and several liability for all out-of-pocket damages, but abolish joint liability for non-economic damages such as pain and suffering, loss of consortium, emotional distress, and so forth.

Non-economic damages have also been considered the source of the attorney's fee. Opponents of the bill have argued that limitations on recovery of non-economic damages would therefore deny access to the courthouse for many injured plaintiffs because their cases were no longer financially attractive to attorneys.

Robertti's Support Significant
The California Trial Lawyers Association (CTLA) has adamantly opposed the bill, contending it was unfair to plaintiffs. Robertti acknowledged the significance of the CTLA opposition, but argued the present system is unjust.

"I suspect somewhere along the line you guys are going to win this thing, but there are inequities, terrible inequities," Robertti said. "Whenever you have a governmental entity (as a defendant) the attitude is, 'suck it to him,' Robertti said.

Robertti's support of the bill could be a sig-
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ificant factor, however. Last year, for example, he almost singlehandedly muscled through the Assembly his bill, SB 54, which attempted to abolish the diminished capacity defense in criminal cases. If he pushes as strongly for SB 500, it could counter the strong opposition that can be expected from Assembly Speaker Willie Brown and the plaintiffs-oriented Assembly Judiciary Committee.

Joining Beverly and Roberti in voting in favor of the measure were three Republican lawmakers — Ed Davis of Chatsworth; John Doolittle of Sacramento; and Milton Marks of San Francisco. Two Democrats opposed the bill: committee chairman Omer Rains of Ventura and Alan Sieroty of Beverly Hills.

About two hours of hearing time were devoted to wide-ranging testimony on the effects of the innovative Sindell decision, a ruling intended to allow recovery for the sons and daughters of women who took the anti-miscarriage drug diethylstilbestrol (DES). The drug was given to an estimated one million to four million pregnant mothers between 1940 and 1971, when it was linked to genital abnormalities and cancer in the children of the women who took it.

Little Support for Repeal

Davis contended that his bill overturning the decision, SB 228, was necessary to prevent unnecessarily high litigation costs and restore the need to show actual causation before liability can be assigned. Davis picked up support only from Beverly. Voting in opposition were Marks, Rains, Roberti, Sieroty, and Nicolas Petris, D-Oakland.

The periodic payments and collateral source rule bills, SB 1190 and 1191 respectively, were withdrawn by their sponsor, Sen. Barry Keene, D-Elk. The insurance industry has recently been pushing periodic payments of large judgments as an alternative to lump-sum payments to plaintiffs. It has long sought abolition of the collateral source rule, which bars testimony about any pay-