

## **CHAPTER 32-38**

### **CONTRIBUTION AMONG TORT-FEASORS**

#### **32-38-01. Right to contribution.**

1. 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.
2. The right of contribution exists only in favor of a tort-feasor who has paid more than that tort-feasor's pro rata share of the common liability, and that tort-feasor's total recovery is limited to the amount paid by that tort-feasor in excess of that tort-feasor's pro rata share. No tort-feasor is compelled to make contribution beyond that tort-feasor's own pro rata share of the entire liability.
3. There is no right of contribution in favor of any tort-feasor who has intentionally (willfully or wantonly) caused or contributed to the injury or wrongful death.
4. A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor 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.
5. A liability insurer, who by payment has discharged in full or in part the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.
6. This chapter does not impair any right or indemnity under existing law. Where one tort-feasor 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 the obligor's indemnity obligation.
7. This chapter shall not apply to breaches of trust or of other fiduciary obligation.

**32-38-02. Pro rata shares.** In determining the pro rata shares of tort-feasors 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.
3. Principles of equity applicable to contribution generally shall apply.

#### **32-38-03. Enforcement.**

1. Whether or not judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced by separate action.
2. Where a judgment has been entered in an action against two or more tort-feasors 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.

3. If there is a judgment for the injury or wrongful death against the tort-feasor seeking contribution, any separate action by that tort-feasor 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.
4. If there is no judgment for the injury or wrongful death against the tort-feasor seeking contribution, the tort-feasor's right of contribution is barred unless the tort-feasor has either discharged by payment the common liability within the statute of limitations period applicable to claimant's claim for relief against the tort-feasor and has commenced action for contribution within one year after payment, or agreed while action is pending against such tort-feasor to discharge the common liability and has within one year after the agreement paid the liability and commenced action for contribution.
5. The recovery of a judgment for an injury or wrongful death against one tort-feasor does not of itself discharge the other tort-feasors 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.
6. 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.

**32-38-04. Release or covenant not to sue.** 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 tort-feasors 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.
2. It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.