INDEPENDENT INSURANCE AGENTS
OF NORTH CAROLINA

House Bill 813
Or
Why We Should Thank the Trial Lawyers

North Carolina is one of a hand full of states that continue to settle civil tort claims under a legal theory called "contributory negligence." Black's Law Dictionary defines contributory negligence as follows:

> "The act or omission amounting to want of ordinary care on the part of the complaining party, which, concurring with defendant's negligence, is proximate cause of injury."

Under this theory of law, if two parties are involved in an accident and both parties are, to some degree, negligent, then neither party can collect damages from the other.

Many other states have enacted over the years an alternative theory of law referred to as comparative negligence. Under comparative negligence, there is an effort made to determine the relative degree or comparative degree of fault of the respective parties to an accident. Such a determination often must be made by court action which can substantially slow the settlement process. Once the degree of negligence is determined, the parties could then be compensated in inverse proportion to the degree of fault. In other words, a negligent party that is 10% at fault could collect 90% of their damages. Likewise, in a pure comparative negligence system, the party that is 90% at fault could collect 10% of their damages. In practice, most comparative fault systems eliminate any compensation for damages to the party that is most at fault.

Changing to a comparative fault system in North Carolina has cropped up periodically over the last twenty-five years or so. The change has been favored by the trial attorneys and opposed by the insurance industry. The historical position of the insurance industry has been that comparative fault is a more expensive system and will cause insurance rates to increase.

For many years this was a philosophical position of the insurance industry with little documentation. However, in 1989 two insurance professors at the University of North Carolina at Greensboro, Dr. Joe Johnson and Dr. George Flanagan, studied the differences between contributory negligence and comparative negligence and concluded that comparative is indeed a more expensive system. In fact, there are some estimates that such a change in North Carolina would result in automobile liability insurance rates increasing by as much as five percent (5%) or more. So far there have been no estimates on the effect that comparative fault will have on commercial automobile liability, general liability including products and other forms of liability insurance such as medical malpractice liability rates. But suffice it to say, similar rate increases can be anticipated in these other lines of liability insurance.

It is also interesting that the insurance industry is opposing this change when it would result in higher insurance premiums while the trial lawyers and their friends in the legislature are in favor of this change. Apparently, the perception is that the benefit to some negligent parties is worth the increased cost to the entire premium paying population. If it is necessary to make such a change to our legal system, then every effort should be made to assure that the change maximized to benefits while minimizing the additional costs.

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