



**TO:** MEMBERS OF THE JUDICIARY COMMITTEE

**FROM:** THE CONNECTICUT TRIAL LAWYERS ASSOCIATION  
By Ernest F. Teitell, Esq. President  
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**DATE:** March 24, 2006

**RE:** Connecticut Trial Lawyers Association's Opposition to Raised Bill No. 5732, *AN ACT CONCERNING APPORTIONMENT OF LIABILITY*.

The Connecticut Trial Lawyers Association (CTLA) respectfully urges your Committee to oppose this raised bill for the following reasons:

1. The bill seeks to overrule an 11 year old Connecticut Supreme Court decision, Donner v. Kearsse, 234 Conn. 660 (1995), without justification.
2. In addition, this bill, by its expressed terms, seeks to upset the balance achieved by this body in 1987 when Tort Reform II was passed. Current law balances a defendant's desire to be liable only for his or her share of negligence, with a plaintiff's desire to be made whole. This bill tips the scales in favor of defendants and will make it more difficult for plaintiffs to receive fair compensation.

Under current law, a defendant can seek to have a jury apportion liability against any party or any "settled or released party." See, Conn. Gen. Stat. §§ 52-102b, 52-572h. In practical terms, this means that a jury can apportion liability against all defendants and any former defendant that paid the plaintiff any money whatsoever. This bill seeks to change the law in order to permit the defendant to reduce its share of responsibility by blaming a former defendant against whom the plaintiff withdrew all claims; in essence, ensuring that the plaintiff receives less than full compensation.

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By way of example, assume that a plaintiff commences suit against two physicians, Dr. Smith and Dr. Jones alleging medical malpractice. At the time suit is commenced, the plaintiff has a good faith belief, supported by reports from qualified specialists, that Dr. Smith and Dr. Jones were both negligent. Shortly thereafter, facts become known in discovery that indicate that Dr. Smith was solely responsible for the injuries. Counsel for Dr. Jones would immediately request that his client be withdrawn from the suit. Under current law, the plaintiff would be willing to comply with this request because Dr. Smith would not be permitted to “point the finger” at Dr. Jones at trial if a withdrawal were filed in exchange for no payment. This bill would change the risks involved such that the plaintiff would be much less likely to withdraw against Dr. Jones for fear of counsel for Dr. Smith being able to point at an “empty chair” throughout the trial.

CTLA concedes that a few trial decisions have misconstrued Donner and permitted apportionment in situations where a withdrawn party was not also a “settled or released party.” For that reason, CTLA would support changes to current law, which are consistent with a proper balance between the rights of plaintiffs and defendants. For example, the statute could be amended to require a defendant to provide notice to the plaintiff within six months of the filing of the lawsuit of his or her intention to seek apportionment against any co-defendant.<sup>1</sup> If the plaintiff were to withdraw against a defendant against whom such a notice was filed, the jury could properly apportion liability against that defendant. If, however, the defendant did not file such a notice, apportionment would only be allowed against a withdrawn defendant, if such defendant were a “settled or released party”; i.e., a party that paid damages to the plaintiff.

Without modification which properly balances the interests involved, CTLA respectfully requests that you reject this bill.

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<sup>1</sup> The timing of this change would track current law insofar as defendants now have 180 days to file apportionment complaints against parties that the defendant believes are responsible to the plaintiff, but who were not sued by the plaintiff in the first instance.