

CONNECTICUT DEFENSE LAWYERS ASSOCIATION

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Stamford

March 14, 2008

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300 Capitol Avenue
Hartford, CT 06106

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Dear Senators:

I am writing on behalf of the Connecticut Defense Lawyers Association ("CDLA"), a statewide organization of attorneys primarily engaged in the representation of defendants in civil actions.

Treasurer

Michael L. McDonnell
Farmington

The CDLA strongly supports Raised Senate Bill No. 640, entitled "An Act Concerning the Apportionment of Liability After A Claim Is Withdrawn." The stated purpose of the bill is to allow liability to be apportioned to a person after the plaintiff withdraws a civil action against the person in the same manner as liability is apportioned to parties with whom the plaintiff has settled or whom the plaintiff has released from liability. It is our understanding that this bill was raised by the Senate Judiciary Committee to address the "legislative gap" identified by Justice Katz, writing for the majority, in Viera v. Cohen, 283 Conn. 412, 443 (2007). As Justice Katz points out, as presently written, the statute "leaves the defendant without recourse to obtain apportionment" in certain circumstances in civil lawsuits. Justice Katz noted that the legislature has repeatedly manifested its concern for the overall fairness of our tort law, and she expressed hope that "the legislature will be able to find a place on its busy agenda for inquiry into the consequences and desirability of today's decision." 283 Conn. at 443.



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In 1986, the legislature took decisive steps to eliminate what it considered to be the inequitable consequences of the common law doctrine of joint and several liability among joint tortfeasors. Under this doctrine, a joint tortfeasor whose degree of fault was comparatively small could be held responsible for the entire amount of damages, so long as his negligence was a proximate cause of the plaintiff's injuries. Thus, a plaintiff could collect the entire amount of his judgment from the richest

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defendant, or from the defendant with the deepest pocket. 283 Conn. at 422.

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The legislature reformed the tort recovery statutory scheme in 1986 by enacting "Tort Reform I," No. 86 – 338 of the 1986 Public Acts. Tort Reform I replaced the common law rule of joint and several liability with a system of apportioned liability to ensure that a defendant is liable only for his proportionate share of the damages.

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The "legislative gap" identified in Viera exists when a plaintiff voluntarily withdraws its claims against one of several defendants. By doing so, a plaintiff can deprive a remaining defendant of his right to apportionment. This result may occur due to the interplay between the statutory scheme and the majority opinion in Viera.

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Under § 52-572h(c) of the Connecticut General Statutes, a defendant in a negligence action has a right of apportionment against persons who are not parties to the action by filing an apportionment complaint within 120 days after the return date on the plaintiff's original complaint; See General Statutes § 52-102b(a) or against "settled or released" persons. See General Statutes § 52-102b(c).



A defendant cannot file an apportionment complaint against a co-defendant because § 52-102b applies only to non-parties. Furthermore, because Viera holds that a withdrawal is not a "release, settlement or similar agreement," a plaintiff, in his sole discretion, can deprive a defendant of the right of apportionment against other negligent parties simply by filing an action against them, waiting 120 days, and then withdrawing his claims against them. By engaging in such a strategy, the plaintiff can deprive the defendant of his apportionment rights.

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The result is the same even if the procedure described above is not done by the plaintiff with the intention of frustrating apportionment of liability. We believe that the core premise of Connecticut's tort system – that parties should be responsible only for the harm which they, in fact, caused – is frustrated by the "legislative gap" illustrated in Viera.

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The CDLA believes that Raised Senate Bill No. 640 squarely addresses these concerns and neatly fills the legislative gap in § 52-572h as currently written. We respectfully urge the Committee to issue a favorable report and recommend the

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passage of Raised Senate Bill No. 640.

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Thank you for your consideration.

Very truly yours,

Second Vice President

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