



Maryland's Rule Of Contributory Negligence

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For the past 165 years in Maryland, if a jury found a plaintiff even as little as 1 percent responsible for an alleged injury, any recovery against the defendant(s) was barred.¹ This is known as the contributory negligence doctrine. The Maryland Court of Appeals, the highest court in the state, recently heard oral arguments in *Coleman v. Soccer Association of Columbia* on this topic.² As you might expect, the arguments addressed the long-term ramifications and impact of changing the contributory negligence law in the state versus keeping it.

The Case

The facts of the *Coleman* case look to be straight out of a law school textbook. Mr. Coleman, the plaintiff, was coaching a youth soccer team, and during practice he grabbed the crossbar of the metal goal. The goal tipped over, and the crossbar landed on Mr. Coleman's face, leaving him with severe facial fractures and the insertion of titanium plates in his face. Mr. Coleman sued the soccer association for negligence for not having the soccer goal anchored down.

At trial, a jury found the soccer association liable for negligence for failing to anchor the goal, but the jury also found Mr. Coleman partially responsible for jumping on the crossbar. Under Maryland's currently contributory negligence law, because the jury found Mr. Coleman more than 1 percent responsible for the accident, he was not allowed any economic recovery for his injuries. Looking to change this result, Mr. Coleman's attorneys have gone to the Maryland Court of Appeals for a review and possible change of the law.

¹ See *Irwin v. Sprigg*, 6 Gill 200, 205 (Md. 1847) (adopting contributory negligence doctrine for first time in Maryland).

² You can actually listen to the argument here: <http://www.courts.state.md.us/coappeals/media/2012/coa20120910case9.wmv>

Arguments Supporting Change

Simply put, contributory negligence is an outdated doctrine. Aside from Maryland, only the District of Columbia, Virginia, North Carolina and Alabama still enforce the policy. Proponents of a change also argue fairness; contributory negligence is a harsh all-or-nothing rule that breeds unjust results that can leave a significantly injured plaintiff without a recovery.

Under comparative fault, parties pay for whatever percentage they are found to be responsible. So in a case such as Mr. Coleman's, he would still be able to recover, but his recovery would be reduced based upon how at-fault a jury would find him. Many argue this to be the fairest way to go about tort law, as it remedies injured parties but also takes their own culpable conduct into account.

Arguments Against Change

Numerous political and financial organizations have come to bat for the Soccer Association, arguing to maintain the *status quo* for a number of reasons. First, the opponents cite *stare decisis*, which simply means to leave things as they are and continue following the precedent of prior decisions.³ The opponents cite a 1984 case where the Maryland Court of Appeals had a chance to review contributory negligence and decided to decline changing anything, citing *stare decisis* as its reason. The opponents argue that *stare decisis* allows people and businesses to arrange and conduct their affairs with a sure knowledge of the law's ramifications on them.

³ The full Latin expression is *stare decisis et non quieta movere*, instructing courts "to adhere to precedents and not to unsettle things that are established."

Along those lines, opponents next argue the court should refrain changing the law because it will be infringing on the role of the legislature.⁴ However, other states, such as Michigan,⁵ have already implemented a change to comparative negligence that began with the courts and not the legislature, with relatively little after-shock. So Maryland would not be covering unusual ground if the courts led the way into a new comparative negligence world. In fact, proponents argue that it is best for the courts to handle the change, as they are best prepared to also address any conflicts that may arise with the already established common law.

Additional Commentary and Conclusion

The Maryland Department of Legislative Reference conducted a study to try and determine what impact a comparative negligence system would have and concluded that “it is impossible to state with any certainty the direct and indirect consequences of changing to a comparative negligence system.” Moreover, just as other states have implemented a change to comparative negligence through

the courts, other states have also implemented a comparative negligence system contemporaneously with an already established joint and several liability system. Joint and several liability has coexisted with comparative negligence in other states successfully, and along with the doctrine of contribution, some scholars believe that the three doctrines working together is the most equitable and practical approach to multiple tortfeasor damage allocation.

The Court of Appeals will probably not hand down its decision for at least a few months but should the Court side with the plaintiff and adopt comparative negligence – or if the Maryland legislature does it itself – Maryland litigation will certainly change. Cozen O’Connor’s Subrogation and Recovery Department is continuing to monitor possible key developments and changes in the law such as *Coleman* and is ready to assist you as needed in preparing for such changes and otherwise handling claims in Maryland and elsewhere throughout the United States.

4 Although several bills have been introduced in the Maryland General Assembly to create a comparative negligence system, these bills have failed on multiple occasions, amid heavy lobbying from various plaintiff and defendant-friendly lobbying groups.

5 See *Placek v. City of Sterling Heights*, 275 N.W.2d 511, 517 (Mich. 1979) (noting that courts can handle common law doctrinal change and legislative intervention is not needed).

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact David B. Pizzica at dpizzica@cozen.com or 215.665.2737.