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## NEW JERSEY SUPREME COURT UPHOLDS RULING ON COMPARATIVE NEGLIGENCE (*Brodsky v. Grinell Haulers, Inc.*)

The Washington Legal Foundation (WLF) scored a victory when the New Jersey Supreme Court recently upheld an appellate court ruling that would prevent the jury from being told the particulars of New Jersey's comparative fault statute in a case where a responsible party in a tort action was bankrupt. If the jury were told of the statute, it would likely shift liability to a solvent defendant company in order to compensate the plaintiffs for their injuries.

In *Brodsky v. Grinell Haulers, Inc.*, the plaintiff's car was struck and forced off the road when a company-owned truck negligently veered too close to the vehicle. The driver of the car got out of his car safely, but was then hit by a careless speeding motorist and suffered injuries. However, before trial, the driver of the speeding car declared bankruptcy. New Jersey tort reform law provides that a defendant can be held jointly and severally liable for *all* the damages but only if the jury finds that the defendant was responsible for at least 60 percent of the accident. If the jury finds that particular defendant was responsible for less than 60 percent, then damages are apportioned based on the percentage of fault among the responsible parties.

However, by informing the jury of the specifics of this comparative negligence statute, rather than allowing the jury to arrive at a comparative liability percentage figure on its own, the company argued that the jury unfairly found it to be at least 60 percent at fault even though the insolvent motorist was primarily liable. The appellate court reversed the \$1.6 million damage award against the company, ruling that the jury should not have been given the so-called "ultimate outcome instruction," that is, the jury should not have been told about the 60 percent rule.

On appeal, the New Jersey Supreme Court unanimously agreed with WLF's argument that the appellate court ruling should be upheld. The Supreme Court held that the ultimate outcome instruction given by the trial court was prejudicial to the solvent defendant because it may have led the jury to its findings of a 40-60 allocation, thereby shifting the percentage of fault to assure the plaintiffs a full recovery of their damages.

The Supreme Court stated that it was the duty of the jury to only find the allocation of fault and assess the amount of damages rather than ensure that the injured party will be fully compensated by the tortfeasors.

WLF's brief was filed with the *pro bono* assistance of Edward J. Fanning, Jr., and David R. Kott of McCarter & English, LLP of New Jersey. Joining with WLF on the brief was the New Jersey Business & Industry Association and the New Jersey Defense Association.

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