



## The TRUTH About Joint and Several Liability

By Fred Spivey, Public Policy Analyst  
Edited by Hugh M. Robert, Executive Director

The tort system has two basic purposes: to place the injured victim as close to his or her pre-injury state as possible and to deter tortfeasors from committing future harmful behavior. Elimination of joint and several liability would undoubtedly hinder the two basic purposes as it would relieve tortfeasors of their responsibilities owed to society.

- **An injured plaintiff deserves a full recovery.** Eliminating joint and several liability would mean that the victims will not be fully compensated, simply because one or more additional wrongdoers are also responsible for the injury. When one wrongdoer ends up paying a disproportionate share of compensation to the injured victim, an issue of unfairness among the wrongdoers arises. However, it would be much more unjust if the victim, who was injured by all of the wrongdoers, would not receive the resources needed to rebuild his or her life. It does this even when the injured party is completely innocent of fault.
- A common complaint about the concept of joint and several liability is that it forces defendants with the financial means to pick up the portion of a damage award that would otherwise be uncollectible. But the alternative is to make the injured party bear these costs. That is what this legislation does.
- Just as businesses might tell examples of the unfairness and harm that is caused to them by current law, there are even more examples of how victims – many times the children of parents killed by negligent actions – would be left without adequate compensation for their loss.
- “Despite this burden-shifting, whether abolishing joint and several liability actually reduces the burden on insurance companies is debatable. The results of several studies indicated that eliminating joint and several liability did not reduce lawsuits filed, damages, premium rates, or loss ratios. Empirical evidence thus suggests that abolishing joint and several liability will not necessarily further the aims of the proponents to the abolition of Joint and Several Liability. (Recent Developments - The Medical Malpractice Liability Limitation Bill, Harvard Journal on Legislation (JOL) - Volume 42, Number 1, Winter 2005)
- The Supreme Court has repeated its stance on joint and several liability as recently as 2003. In Norfolk & Western Ry. Co. v. Ayers, the court rejected the assertion that apportionment was the common law rule a century ago and stated that “repeated statements concerning joint and several liability refute that contention.” *The Development of the Law of Joint and Several Liability*, Robert Peck, FDCC Quarterly Summer 2005.