WEST VIRGINIA CODE: §55-7-13D

§55-7-13d. Determination of fault; imputed fault; when plaintiff's criminal conduct bars recovery; burden of proof; damages; stay of action; limitations; applicability; severability.

(a) *Determination of fault of parties and nonparties. —*

(1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged damages regardless of whether the person was or could have been named as a party to the suit;

(2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice no later than one hundred eighty days after service of process upon said defendant that a nonparty was wholly or partially at fault. Notice shall be filed with the court and served upon all parties to the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault;

(3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty. Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff's recovery will be reduced in proportion to the percentage of fault assigned to the settling party or nonparty, rather than by the amount of the nonparty's or party's settlement;

(4) Nothing in this section is meant to eliminate or diminish any defenses or immunities, which exist as of the effective date of this section, except as expressly noted herein;

(5) Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, findings of such fault do not subject any nonparty to liability in that or any other action, or may not be introduced as evidence of liability or for any other purpose in any other action; and

(6) In all actions involving fault of more than one person, unless otherwise agreed by all parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating the percentage of the total fault that is allocated to each party and nonparty pursuant to this article. For this purpose, the court may determine that two or more persons are to be treated as a single person.

(b) *Imputed fault.* — Nothing in this section may be construed as precluding a person from

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being held liable for the portion of comparative fault assessed against another person who was acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed or attributed to such person by statute or common law. In any action where any party seeks to impute fault to another, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, on the issue of imputed fault.

(c) *When plaintiff's criminal conduct bars recovery.* — In any civil action, a person or person's legal representative who asserts a claim for damages may not recover if:

(1) Such damages arise out of the person's commission, attempted commission, or immediate flight from the commission or attempted commission of a felony; and

(2) That the person's damages were suffered as a proximate result of the commission, attempted commission, or immediate flight from the commission or attempted commission of a felony.

(d) *Burden of proof.* — The burden of alleging and proving comparative fault shall be upon the person who seeks to establish such fault. The burden of alleging and proving the defense set forth in subsection (c) of this section shall be upon the person who seeks to assert such defense: *Provided*, That in any civil action in which a person has been convicted or pleaded guilty or no contest to a felony, the claim shall be dismissed if the court determines as a matter of law that the person's damages were suffered as a proximate result of the felonious conduct to which the person pleaded guilty or no contest, or upon which the person was convicted.

(e) *Damages.* — For purposes of this section, "damages" includes all damages which may be recoverable for personal injury, death, or loss of or damage to property, including those recoverable in a wrongful death action.

(f) *Stay of action.* — Any civil action in which the defense set forth in subsection (c) of this section is asserted shall be stayed by the court on the motion of the defendant during the pendency of any criminal action which forms the basis of the defense, including appeals, unless the court finds that a conviction in the criminal action would not constitute a valid defense under said subsection.

(g) *Limitations.* — Nothing in this section creates a cause of action. Nothing in this section alters, in any way, the immunity of any person as established by statute or common law.

(h) *Applicability.* — This section applies to all causes of action arising or accruing on or after the effective date of its enactment. The amendments to this section enacted during the 2016 regular session of the Legislature shall apply to all causes of action accruing on or after the effective date of those amendments.

(i) *Severability.* — The provisions of this section are severable from one another, so that if

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any provision of this section is held void, the remaining provisions of this section shall remain valid.

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