WEST VIRGINIA CODE: §55-7b-9

§55-7B-9. Several liability.

(a) In the trial of a medical professional liability action under this article involving multiple defendants, the trier of fact shall report its findings on a form provided by the court which contains each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties to the action, the jury shall be instructed to answer special interrogatories, or the court, acting without a jury, shall make findings as to:

(1) The total amount of compensatory damages recoverable by the plaintiff;

(2) The portion of the damages that represents damages for noneconomic loss;

(3) The portion of the damages that represents damages for each category of economic loss;

(4) The percentage of fault, if any, attributable to each plaintiff; and

(5) The percentage of fault, if any, attributable to each of the defendants.

(b) The trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff arising out of the same medical injury.

(c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.

(d) To determine the amount of judgment to be entered against each defendant, the court shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted verdict by the amount of any pre-verdict settlement arising out of the same medical injury. The court shall then, with regard to each defendant, multiply the total amount of damages remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum recoverable against the defendant. To determine the amount of judgment to be entered against each defendant when there is no preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a of this article, multiply the total amount of damages remaining with any prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum amount recoverable damages against each defendant.

(e) When any defendant's percentage of the verdict exceeds the remaining amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for the

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defendant's pro rata share of the remainder of the verdict as calculated by the court from the remaining defendants to the action. The plaintiff's total award may never exceed the jury's verdict less any statutory or court-ordered reductions.

(f) 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 in this section.

(g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault attributed by the trier of fact to any person acting as the health care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable to the health care provider under claims of vicarious liability. A health care provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least $1 million for each occurrence.

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