

SUPPORT SENATE BILL 1296 (Cullerton)
2-1117 Apportionment of Fault

CURRENT LAW: Section 2-1117 of the Code of Civil Procedure “. . . Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the *defendants sued by the plaintiff*, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the *defendants sued by the plaintiff*, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages.”

PROPOSED LAW: Add the following language at the end of the section:

“The apportionment of fault under this section only applies to parties still remaining in the case at the time of final determination by the trier of fact. It does not apply to defendants or third party defendants that have been dismissed for any reason including settlement.”

PURPOSE: The purpose of this Bill is to amend Section 2-1117 of the Code of Civil Procedure in order to correct a hypertechnical interpretation of the legislative language by some Illinois Appellate Courts and to restore its original legislative intent. In enacting Section 2-1117, the legislature intended that the apportionment of fault only include those parties who remain in the case when it is submitted to the fact finder. By including the phrase, “*defendants sued by the plaintiff*”, the legislature intended to specifically exclude non-parties from the apportionment of fault. This phrase has now been interpreted by some appellate courts to allow settled defendants to appear on the jury verdict form even though they have been dismissed and are out of the case.

BACKGROUND: It has long been the law in Illinois that settled defendants do not appear on the verdict form. The recent hypertechnical interpretation by some Illinois appellate courts has caused a split among the appellate and federal courts in Illinois. This has created the need for this legislation.

Since 1986 Section 2-1117 has been applied as excluding settled and dismissed defendants by Illinois Trial Courts, Appellate Courts, and the Seventh Circuit Court of Appeals until the recent court decisions. In fact, the *Illinois Appellate Court in Blake v. Hy Ho Restaurant* concluded that reading 2-1117 to require apportioning of fault for settled or dismissed defendants

would be “**a gross contortion of the legislative intent.**” The amendment to Section 2-1117 will create nothing new; it merely clarifies the legislature's original intent.

EFFECT: The enactment of this Bill:

- Restores original Legislative intent.
- Clarifies that only parties that remain in the case are included on the verdict form.
- Prevents settled defendants, defendants named by mistake, and even dismissed defendants from appearing on the verdict form. Continuing to include settled and dismissed defendants on the verdict form only benefits wrongdoers at the cost of injured plaintiffs.
- Prevents the non-settling defendant(s) from receiving a **double benefit and paying less than their apportioned percentage**. See attached example.
- Prevents use of the empty chair defense. (Shift blame away from a defendant in the case by arguing that one who is absent from the trial and not there to defend themselves (settled defendant) is responsible for plaintiffs injuries.)
- Allows injured Plaintiffs the opportunity of recovering the full jury verdict and receiving fair and reasonable compensation for their injuries.
- Continues to encourage out-of-court settlements that save the litigants, and the courts time and money. To require that a defendant's fault be assessed despite its prior settlement with the plaintiff would frustrate Illinois public policy favoring peaceful and voluntary resolutions of claims through settlement agreements. (*Blake v. Hy Ho Restaurant*)

Situation 2—Hypertechnical Interpretation of 2-1117 where Settled Defendants Appear on Jury Verdict Form

- Assume Defendant 1 is 50% at fault for Plaintiff’s injuries and Defendant 2 is 50% at fault for Plaintiff’s injuries.
- Prior to Trial, Defendant 1 settles with the Plaintiff for \$300,000.
- At trial, Defendant 2 utilizes the “Empty Chair Defense” and argues at trial that Defendant 1 was 90% at fault for causing Plaintiff’s injuries.
- Jury then returns a verdict finding Defendant 1 90% liable, and finding Defendant 2 only 10% liable.

1. Verdict \$600,000

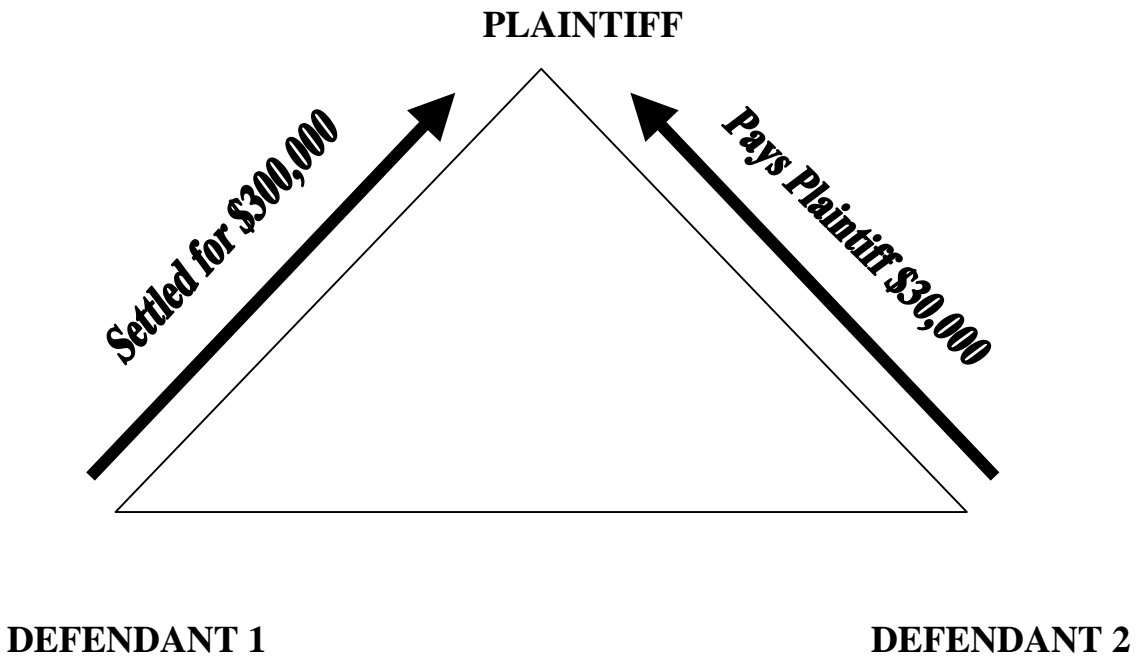
2. Apportionment of Fault at trial

Plaintiff	0%	
Defendant 1	90%	(settled for \$300,000, INCLUDED on J.V. form)
Defendant 2	10%	

Verdict	\$600,000
Less Settlement with Defendant 1	<u>\$300,000</u>
Plaintiff Entitled to Recover	\$300,000

Defendant 2 Severally Liable for 10% \$30,000

JURY VERDICT = \$ 600,000



PLAINTIFF’S NET RECOVERY = \$330,000
DEFENDANT 2 PAYS ONLY 50% OF ITS APPORTIONED FAULT.