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The Evolution of *Pierringer* and Opportunity for Future Development

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When the collective negligence of two or more tortfeasors causes injury to a plaintiff, the extent of those tortfeasors' individual liability partly depends on the state in which the injuries occur and, potentially, the timing of the injuries. Maine statute renders ours a "pure joint and several liability" state, meaning that any joint tortfeasor -- no matter how much fault may be assigned to him by a finder of fact -- will be liable for the full amount of damages suffered by a plaintiff.

Pure joint and several liability is a polarizing doctrine. Proponents argue it serves the public policy goal of fully compensating an injured party for her suffering, which should occur regardless of the source of the compensation. Detractors warn of its potential for unjust (if not absurd) outcomes.

If John and Jane jointly cause a car crash with Sam, and absentminded (but relatively harmless) Jane is arguably only one percent at fault, why should she be on the hook for John's share of the blame? The Maine Legislature spoke clearly on the issue with 14 M.R.S. § 156: Sam's injuries take priority over Jane's pocketbook.

Things change in the case of successive tortfeasors. Let's assume that John (the rascal!) crashes into poor Sam again. This time, Jane -- who happens to be a doctor -- is on call at the hospital to receive and treat him. Dr. Jane (still absentminded, but now more dangerous) commits malpractice while treating Sam's injuries. While Dr. Jane is only liable for her portion of the damages, John is on the hook for them all, regardless of the extent to which each actor injured Sam.

But what happens in each scenario if Sam wants to settle with either John or Jane? In the case of joint tortfeasors, the Legislature again makes his options clear. Title 14 M.R.S. § 163 codifies the *Pierringer* rule, which broadly states that Sam's decision to settle with Jane does not preclude him from pursuing legal action against John. At trial, however, John can elect to either have his penalty offset by Sam's settlement with Jane or ask the jury to assign fault to them both and then only pay his percentage of the award.

Joint Tortfeasors and the *Pierringer* Evolution in Maine

In *Wells v. Gould*, 131 Me. 192 (1932), Plaintiff Eugenia Wells was injured in a car accident with Irene Marsten. Immediately after the collision, she sought medical care from defendants. During her treatment, a nurse, working under one of the doctors, burned Wells after using an electrical appliance on her chest. Wells took action against both Marsten and the doctors and settled with Marsten. In the ensuing suit, the doctors' defense was simple: her damages had already been satisfied. The Court agreed and held that she could not pursue an additional award from her medical providers.

The Law Court revisited *Wells* with a much narrower lens in *Steeves v. Irwin*, 233 A.2d 126 (Me. 1967). There, plaintiff injured his back while working, and the injury was exacerbated by the defendant doctor. The doctor asserted the affirmative defense that because plaintiff had accepted benefits under the Workmen's Compensation Act to compensate him for his losses, he was barred from a later action against the doctor.

The Court held that whether a settlement with one tortfeasor barred an action against a successive tortfeasor was a question of fact that depended on whether plaintiff intended to release the non-settling tortfeasor. The Justices were careful to state, however, that the *Steeves* decision was consistent with *Wells*, as that settlement fully compensated plaintiff for her damages.

Not two decades later, the Law Court clarified their approach -- and abrogated *Wells* -- with *Emery Waterhouse Co. v. Lea*, 467 A.2d 896 (Me. 1983). The property leased by Emery Waterhouse flooded after pipes burst in the building. Emery Waterhouse was reimbursed for its losses by defendant-landlord's insurer as a function of their original lease.

A second defendant, Lea, attempted to argue that it was entitled to offset its penalty by the insurance payment. The Court roundly disagreed, holding that the newly enshrined 14 M.R.S. § 163 (enacted in 1969) clarified the somewhat muddy Maine common law, making it a *Pierringer* jurisdiction and holding that Lea could not offset its penalty by virtue of a pre-suit contract plaintiff had with its landlord.

Successive Tortfeasors: An Open Question

Back to our friends John and Dr. Jane. Let's say Sam is seriously injured in his car accident with John, and then Dr. Jane compounds his injury -- Sam always would have been in bad shape as a result of his accident with John, but Dr. Jane made it worse to some degree. If Sam settles with John, does he need to use a *Pierringer* release?

As described in a [previous Gideon Asen article](#), including a *Pierringer* release

has benefits and risks. Those risks are exacerbated in the case of successive tortfeasors like John and Dr. Jane -- especially if Sam settles with John but pursues a medical malpractice claim against Dr. Jane.

A consideration of the equities suggests Sam's award should be offset somehow by his settlement with John. But if it's done using a *Pierringer* agreement, a later trial would likely result in an undue windfall for Dr. Jane. Imagine if her attorneys are presented with a question at trial: Would their client prefer the jury to assign fault for Sam's injuries and hold Dr. Jane responsible for her portion of the damages, or would they rather Sam's award be offset by John's settlement amount?

Common sense would likely lead Dr. Jane's attorney to elect apportionment

and argue that she should not be assigned any fault for Sam's injuries. John is, legally and factually, responsible for the entirety of Sam's injuries -- Sam never would have been in Dr. Jane's hands had John not caused the crash.

While the question of whether such an approach would be acceptable has been broached in other states, Maine courts have never addressed the issue. A future article will analyze the topic in other jurisdictions and provide suggestions as to how it may be handled here.

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