

IN THE SUPREME COURT OF FLORIDA

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WALT DISNEY WORLD CO. and  
INSURANCE COMPANY OF NORTH  
AMERICA,

CASE NO.: 68,647

Petitioners,

vs.

ALOYSIA WOOD and DANIEL S. WOOD,

Respondents.

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CERTIFIED QUESTION OF GREAT PUBLIC  
IMPORTANCE FROM THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT

BRIEF OF AMICUS CURIAE,  
FLORIDA DEFENSE LAWYERS' ASSOCIATION

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PREFACE

This is a certified question of great public importance from the District Court of Appeal, Fourth District. That court affirmed a final judgment entered in favor of Aloysia Wood and against Walt Disney World Co. and Insurance Company of North America in a personal injury action.

This brief is submitted on behalf of the Florida Defense Lawyers' Association as amicus curiae, in support of the position of petitioners.

The petitioners were the defendants before the trial court. The respondents, Aloysia Wood and Daniel S. Wood, were the plaintiffs before the trial court. In this brief the parties will be referred to as plaintiffs, defendant, the Florida Defense Lawyers' Association or by name.

STATEMENT OF THE CASE AND FACTS

The Florida Defense Lawyers' Association adopts the statements of the case and facts set forth in defendants' brief.

QUESTION PRESENTED

WHETHER THE DOCTRINE OF JOINT AND SEVERAL  
LIABILITY SHOULD BE ABOLISHED OR LIMITED.

SUMMARY OF ARGUMENT

The doctrine of joint and several liability should be abrogated. It has no place in modern tort practice. It produces harsh, unjust results. A defendant should be compelled to pay only for those damages caused by it.

ARGUMENT

WHETHER THE DOCTRINE OF JOINT AND SEVERAL  
LIABILITY SHOULD BE ABOLISHED OR LIMITED.

The time has come for this court to re-examine the doctrine of joint and several liability.<sup>1</sup> Application of principles of joint and several liability produces a very unfair, harsh result under the circumstances of this case. The jury

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1 The Florida Defense Lawyers' Association adopts the argument of defendants on this point. This brief is confined solely to policy reasons why the common law rule of joint and several liability should be abolished.

found Walt Disney World was substantially less negligent than plaintiff or her husband. Nonetheless, by application of principles of joint and several liability Disney World has become liable to plaintiff for a large portion of the damages. There is little or no chance that Walt Disney World can recoup the 85% of damages attributable to plaintiff's husband from him. The award in this case against a minimally liable defendant amounts to unjust enrichment of the plaintiff.

The time has come for this court to free society from the shackles of old, outmoded precedent. This case well illustrates the injustice which can result from application of joint and several liability. The doctrine should be abolished or, at least, modified to prevent inequitable results like those here. In Hoffman v. Jones, 78 ALR 3d 321, 280 So.2d 431 (Fla. 1973) this court recognized that the courts may change a common law rule where great social upheaval dictates. In Lincenberg v. Issen, 318 So.2d 386 at 388-389 (Fla. 1975) this court observed that contemporary conditions must be met with contemporary standards which are realistic and better calculated to obtain justice among all the parties involved.

The trend is in the direction of abrogating joint and several liability. Schwartz, Comparative Negligence, Section 16.4 (2d ed. 1986). Fourteen states have limited or abolished the doctrine in recent years. 71 ABA Journal 61. Some states have abrogated the doctrine by case law, others by statute. Schwartz, §16.4.

Walt Disney World should be held accountable only to the extent it caused plaintiff's injuries. A rule abolishing joint and several liability will have the salubrious effect of discouraging frivolous or nonmeritorious actions against the "deep pocket" who is only marginally liable. Plaintiffs who sue wealthy defendants with minimal liability will be encouraged to settle with them and to pursue only the real, albeit poorer, tortfeasor.

The adoption of comparative negligence permitted many plaintiffs to recover who could never have prevailed under the doctrine of contributory negligence. This court in Hoffman found that comparative negligence was a fairer system. Fairness, however, is a two-way street. A plaintiff who could never have recovered under contributory negligence, should not be permitted to recover more damages from a defendant than that defendant caused. Fairness mandates that a plaintiff, especially one like Aloysia Wood whose negligence vastly exceeds that of the defendant Walt Disney World, bear more of the responsibility for their own negligence. We suggest that joint and several liability should apply only where the plaintiff is not at all negligent. Alternatively, this court should return to a system of contributory negligence or adopt a rule which precludes plaintiff from recovering any damages against a defendant whose negligence is less than the plaintiff's negligence.

Most likely, a different result would have occurred in this case had the jury known that Walt Disney World would be held responsible for the total damages under joint and several

liability. Effect should be given to the intent of the jury. The plaintiff, who was 14 times more negligent than Walt Disney World, should not be given this windfall. There is nothing fair about a defendant who is less negligent than the plaintiff and who is 1 percent at fault paying 86 percent of the damages. There is no social policy which compels a defendant to pay more than his fair share. A plaintiff takes the defendant as he finds him, solvent or insolvent. Because one tortfeasor is richer than the other, he should not be compelled to bear the brunt of the damages, especially where the plaintiff's negligence exceeds that defendant's negligence. This rationale was set forth by the court in Brown v. Keill, 224 Kan. 195, 580 P.2d 867 (Kan. 1978). It should be adopted by this court.

CONCLUSION

This court should abrogate the doctrine of joint and several liability and reverse the appealed final judgment and remand with instructions to enter final judgment for the plaintiff against Walt Disney World Co. for \$750.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail on this 13th day of May, 1986 to: Jack E. Vital, III, Esq., law firm of Sheldon J. Schlesinger, 1212 S.E. Third Avenue, Ft. Lauderdale, Florida 33316; Joel D. Eaton, Esq., 25 W. Flagler Street, Miami, Florida 33130; John L. O'Donnell, Jr., Esq., of DeWolf, Ward & Morris, P.A., 1475 Hartford Building, 200 East Robinson Street, Orlando, Florida 32801; and to William M. Smith, Post Office Box 391, Tallahassee, Florida 32302.

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