Joint Tortfeasors, Full Compensation, and the 1,800 Degree Crucible: Rekindling Rhode Island's Uniform Contribution Among Tortfeasors Act in the Aftermath of the Station Nightclub Fire

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Notes & Comments

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*It was an old wooden dance hall*

*In a blue collar town*

*And an old rock and roll band*

*They burned the place down.*¹

The Station Nightclub fire marked the worst disaster in Rhode Island's history since the hurricane of 1938.² Recognized as the fourth deadliest fire in the nation's history, the February 20, 2003 inferno killed one hundred people, and injured over two hundred.³ In response to this horrific tragedy, Rhode Island lawmakers scrambled to resolve a host of serious problems exposed by the blaze's terrible wake. The forefront of the state's concerns included embarrassingly antiquated fire safety regulations,⁴ a shamefully ineffective workers' compensation

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⁴ Edward Fitzpatrick & Peter B. Lord, *The State is Not Going to Like
compliance system, and "an almost unbearable financial burden on state and local emergency responders and governments." Appropriately, the legislature ranked the massive financial costs imposed on the Station Fire victims and their families high on their agenda. One analyst has valued the potential liability at stake as approaching one billion dollars. To facilitate the settlement of the Station Fire civil actions, in June 2006, the Rhode Island General Assembly passed legislation amending Rhode Island’s Uniform Contribution Among Tortfeasors Act (“RIUCATA”). Named the “Station Fire Bill,” the law was modeled after legislation taking affect shortly after the Rhode Island banking crisis of 1991. Like the 1991 legislation, the 2006 amendments to RIUCATA were designed to encourage out-of-court settlements by denying non-settling joint tortfeasors the right to seek contribution from tortfeasors who settle with the plaintiff prior to trial. The settlement thereby "reduces the claim against the other tortfeasors in the amount of the consideration paid for the release." The recent legislation, however, is limited only to catastrophic disasters resulting in twenty-five or more deaths.

The 2006 amendments to RIUCATA have had a momentous effect on settlement releases brokered in mass tort claims involving multiple defendants. Yet, given the General Assembly’s recent treatment of RIUCATA, coupled with concerns raised by the Rhode Island Supreme Court regarding the statute’s wisdom, one is left wondering why Rhode Island continues to adhere to its

11. R.I. GEN. LAWS § 10-6-7 (1997).
12. Id. See also id. at § 10-6-8.
traditional contribution scheme for joint tortfeasor claims that do not rise to the magnitude of loss specified by 2006 law. The Station Fire Bill eliminates the settlement disincentives effectuated by RIUCATA. Accordingly, it is this author's contention that the bill's application should be extended to all litigants, and not merely those involved in mass disasters causing at least twenty-five deaths. Through adoption of a contribution regime friendlier to the facilitation of out-of-court settlements, several favorable policy goals are likely to be achieved: finality of litigation for settling defendants, conservation of judicial resources, and full compensation for those injured by the wrongful acts of others.

In support of this perspective, Part I of this Comment describes the statutory framework of RIUCATA, and provides an overview of the Act's most prominent features, as well as how these provisions have been construed and applied by Rhode Island's courts. Part II explores the existing dichotomy between the Act's purpose of creating a statutory right of contribution, and Rhode Island's public policy of promoting out-of-court settlements. Part III briefly discusses legislation passed by the General Assembly in 1991 in response to the state banking crisis — laws which later inspired lawmakers to pass the Station Fire Bill. Part IV concludes with a discussion of the Station Fire disaster, the Station Fire Bill, and how the bill's passage represents a move in the right direction towards a fairer, more sensible, contribution system for joint tortfeasors and plaintiffs alike.

I. THE RHODE ISLAND UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

A. The Basics

In Rhode Island, tort claims involving multiple defendants are governed by RIUCATA, which addresses matters concerning contribution among joint tortfeasors and settlement releases. Rhode Island also adheres to the common law maxim of joint and

several liability. Pursuant to the doctrine, a plaintiff who suffers an indivisible injury by the acts or omissions of two or more defendants may recover 100% of her damages from any one defendant individually, irrespective of the particular defendant's degree of culpability. In other words, a plaintiff is entitled to recover her full damage award from any one defendant, even if the defendant's assigned liability is negligible.

Contribution is an equitable remedy available to a joint tortfeasor who has paid more than his "fair share" of damages under the joint and several liability scheme. Historically, Rhode Island common law mandated the application of joint and several liability, but did not recognize the right of contribution among joint tortfeasors. This meant that a joint tortfeasor, having paid 100% of the plaintiff's damage award, could not seek monetary contribution from his co-tortfeasors. One rationale advanced for denying contribution among joint tortfeasors was that "courts should not lend their aid to rascals in adjusting the differences among them." In response to this perceived inequity, within the first half of the twentieth century the National Conference of Commissioners on Uniform State Laws drafted the Uniform Contribution Among Tortfeasors Act of 1939 ("Uniform Act"). Primarily, the model statute was intended "to abandon the common-law rule denying the right of contribution among tortfeasors." Rhode Island adopted the model act, RIUCATA, without substantial modification, in 1940.

Like the Uniform Act, RIUCATA establishes the right of contribution among joint tortfeasors. A joint tortfeasor's right to

15. See id.
contribution vests once he discharges the other tortfeasor's liability, either by settlement with the plaintiff, or by satisfaction of a judgment entered against him.\textsuperscript{22} If, by satisfying the common liability, the paying joint tortfeasor remits more than his equitable share of damages, he can recover the difference from the other tortfeasors.\textsuperscript{23}

RIUCATA also contemplates the mechanics of pre-trial settlements involving joint tortfeasors by allowing a plaintiff to recover his full damage award from a non-settling joint tortfeasor.\textsuperscript{24} Thus, if a plaintiff settles with one joint tortfeasor, his right to sue the second joint tortfeasor is not extinguished by the settlement unless the settlement release states otherwise.\textsuperscript{25} Any award entered against the non-settling tortfeasor, however, will be reduced by either the amount of the settlement received, or, the amount or proportion stipulated in the settlement, \textit{whichever is greater.}\textsuperscript{26} This offset is intended to prevent a plaintiff from receiving a "double recovery," and is generally referred to as the "pro rata" or "proportionate share" rule.\textsuperscript{27}

Finally, a settlement release does not relieve the settling tortfeasor "from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors."\textsuperscript{28} In other words, a joint tortfeasor's settlement with the plaintiff does not shield him from the possibility of later being sued for contribution by a non-settling defendant. Likewise, a joint tortfeasor does not forfeit his right to contribution by entering into a settlement release that

\begin{itemize}
  \item \textsuperscript{22} \textit{Id.} at § 10-6-4.
  \item \textsuperscript{23} \textit{Id.}
  \item \textsuperscript{24} \textit{Id.} at § 10-6-6.
  \item \textsuperscript{25} \textit{Id.} at § 10-6-7.
  \item \textsuperscript{26} \textit{Id.}
  \item \textsuperscript{27} Augustine v. Langlais, 402 A.2d 1187, 1189 (R.I. 1979) (The Rhode Island Supreme Court commented that Section 10-6-7 of RIUCATA is a "verbatim enactment" of Section Four of the Uniform Act; the model statute "predicated upon the fundamental doctrine that an injured person is entitled to only of satisfaction of the tort, even though two or more parties contributed to the loss."). \textit{See also} J.D. Lee & Barry Lindahl, \textit{Modern Tort Law, Liability, and Litigation}, § 20:29 (2d ed. 2002).
  \item \textsuperscript{28} \textit{R.I. Gen. Laws} § 10-6-8 (1997).
\end{itemize}
discharges all of the defendants. 29

As previously noted, Rhode Island’s contribution statute is modeled after the 1939 version of the Uniform Act. Subsequently, in 1955, the National Conference of Commissioners on Uniform State Laws revisited the Uniform Act, making several significant changes to Section Four, the model act’s provisions governing settlement releases. 30 First, the Commissioners inserted a “good faith” requirement in the provision’s preamble, indicating that the revised modifications of Section Four would apply only to those settlement releases executed in good faith. 31 Next, the Uniform Act’s authors rejected the pro rata, or “proportionate share” reduction rule mandated by the 1939 version, noting that it was “one of the chief causes of complaint where the Act has been adopted.” 32 The Commissioners substituted instead a “pro tanto” or “dollar for dollar” offset calculation. 33 Thus, under the 1955 revised Uniform Act, a plaintiff’s judgment against a non-settling joint tortfeasor is simply reduced by the actual amount received from earlier-negotiated settlements. Lastly, the Commissioners explicitly stated in the 1955 revision that a settlement executed in good faith “discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.” 34

In transforming the Uniform Act’s partial-settlement provision, the Commissioners relied on two important observations. First, the Uniform Act’s authors commented that

29. Id. at § 10-6-5.
30. See UNIF. CONTRIBUTION AMONG TORTFEASORS ACT, § 4 cmt. (amended 1955), 12 U.L.A. 264 (1939). Section Four of the 1955 revision of the model act states:

| When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and, (b) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor. |

Id. at § 4.
31. Id.
32. Id.
33. Id.
34. Id.
including a good faith precondition on all settlement releases involving joint tortfeasors would enable courts to take a hard look at settlement releases as way of addressing problems involving collusion, or, "Mary Carter" agreements between the plaintiff and the settling defendant. Second, the authors pointedly emphasized that the pro rata reduction rule's effect "has been to discourage settlements in joint tort cases, by making it impossible for one tortfeasor alone to take a release and close the file."

Plaintiffs' attorneys, in particular, severely criticized the 1939 Uniform Act as a barrier to settlement negotiations "because they [had] no way of knowing what they're giving up." At least under the vision of the 1955 revised Uniform Act, a plaintiff who settles with less than all of the defendants can proceed in the ongoing litigation knowing that any subsequent judgments rendered in his favor will be reduced by a definitive sum, rather than a fuzzy projection representing the settling defendant's degree of culpability. Defendants also complained that the pro rata rule discouraged them from entertaining settlement negotiations, because, as the authors wisely noted, "no defendant wants to settle when he remains open to contribution in an uncertain amount, to be determined on the basis of a judgment against

35. See Resmini, supra note 13, at § 704 ("A 'Mary Carter' agreement is a settlement device used in multi-party litigation. Under the typical Mary Carter agreement, the plaintiff releases his or her cause of action against a joint tortfeasor in return for his or her participation in the trial against another tortfeasor. The plaintiff also promises to pay the settling tortfeasor a portion of the recovery received from the nonsettling tortfeasor. Although the Rhode Island Supreme Court has never considered the validity of the Mary Carter agreement, a number of courts void the agreement on the grounds that it violates public policy intent of both the Uniform Contribution Among Tortfeasors Act and the canon of legal ethics.").

[t]he idea underlying the 1939 provision was that the plaintiff should not be permitted to release one tortfeasor from his fair share of liability and mulct another instead, from motives of sympathy or spite, because it might be easier to collect from than from the other; and that the release from contribution affords too much opportunity for collusion between the plaintiff and the released tortfeasor against the one not released ... if the plaintiff wishes to discriminate as to defendants, the 1939 provision does not prevent him from doing so.

Id.
37. Id.
38. Id.
another in a suit to which he will not be a party."

Unfortunately, despite the convincing reasons articulated by the Uniform Commission in adopting the pro tanto reduction rule, Rhode Island, for the most part, has not followed suit.

B. Who is a Joint Tortfeasor?

Exactly who qualifies as a joint-tortfeasor under RIUCATA is generally a fact-intensive inquiry of which the Rhode Island Supreme Court has had several opportunities to consider. RIUCATA defines "joint tortfeasors" as "two or more persons jointly or severally liable in tort for the same injury to person."

Rhode Island case law has further clarified this proposition and delineated the scope of the definition's reach.

In Wilson v. Krasnoff, the Rhode Island Supreme Court established a two-prong analysis for determining whether a defendant is in fact a joint tortfeasor within the meaning of Rhode Island's contribution act:

First, the parties must be "liable in tort." The phrase "liable in tort" has been construed to mean to have negligently contributed to another's injury. Second, the statute refers to the same injury. The same injury is caused by parties who engage in common wrongs. To constitute joint tortfeasors under the act, both parties must have engaged in common wrongs.

Noting that prior federal court decisions interpreting RIUCATA did not look past the initial inquiry in determining whether two parties were joint tortfeasors (i.e., whether the defendant contributed to the plaintiff's injury), the Wilson court's motivation for imposing the second part of the analysis regarding "common wrongs" was likely influenced by the particular facts presented in the case. The plaintiff injured herself after sustaining a fall down a flight of stairs, which were

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39. Id.
42. Id. (citing Day v. J. Brendan Wynn, D.O., Inc., 702 F.2d 10, 12 (1st Cir. 1983); New Amsterdam Cas. Co. v. Holmes, 435 F.2d 1232, 1234 (1st Cir. 1970)).
allegedly in a state of disrepair. Following the accident, two doctors at Newport Hospital provided the plaintiff with medical care, one of whom recommended that the plaintiff undergo back surgery. The plaintiff later denied receiving any consultation regarding the prospective risks and benefits of back surgery, and allegedly only learned of the surgery about an hour before the operation was scheduled to begin.

Five months following her initial admission, the plaintiff re-injured her back and returned to Newport Hospital, again receiving care from one of the doctors she had treated with following her fall. She also subsequently sought treatment from a chronic back pain specialist, who eventually performed a second back surgery. The results were far from satisfactory, leaving the plaintiff confined to a wheelchair. The plaintiff sued the owner of the building where the initial injury occurred, and the three doctors involved in the surgical treatment of her back.

Prior to trial, the plaintiff settled her claims against the four defendants for a lump sum, which was paid by the building owner’s insurance carrier. Apparently assuming that he had discharged the common liability, the building owner sought contribution against the three doctors. During the contribution action, the doctors disputed their joint tortfeasor status, and moved for a directed verdict. The Rhode Island Supreme Court affirmed the superior court’s issuance of the motion, agreeing that the building owner had “failed to establish a prima facie case [for] contribution.”

Determining that the plaintiff alleged four distinct injuries over a period of one year, the court held that the building owner and three doctors were not joint tortfeasors as contemplated by RIUCATA because their conduct had not contributed to the “same

43. See id. at 337.
44. Id.
45. Id.
46. Id. at 338.
47. Id.
48. Id.
49. Id.
50. Id.; see also R.I. GEN. LAWS § 10-6-4 (1997).
51. See Wilson, 560 A.2d. at 338.
52. Id.
Emphasizing the nature and timing of the plaintiff's injuries – the fall down the stairs, the first surgery at Newport Hospital, the second injury requiring readmission, and the last surgery by the chronic back pain specialist – the court concluded that since neither the building owner nor the doctors had the opportunity to guard against each other's negligence, they had not engaged in "common wrongs."54

Hence, the court must consider two factors in determining whether two or more defendants contributed to a "common wrong," thereby exposing the defendants to joint tortfeasor liability. Specifically, the court must determine "the time at which each party failed to act and whether a party had the ability to guard against the negligence of another."55 Since the building owner's alleged misconduct occurred well before plaintiff's surgeries, and, unlike the doctors, he alone had possession and control of the stairs upon which she was injured, the doctors could not guard against his tortious conduct.56 Along the same line of reasoning, the building owner could not prevent the alleged malpractice of the doctors following the plaintiff's admission to the hospital.57

Additionally, the Rhode Island Supreme Court has extended joint tortfeasor status to reach defendants who otherwise enjoy statutory or common law immunity against civil liability. In one of the earliest published opinions discussing RIUCATA, the Rhode Island Supreme Court, in Zarrella v. Miller, held that a plaintiff's husband, although immune from direct suit by the plaintiff herself by operation of the doctrine of interspousal immunity, nonetheless qualified as a joint tortfeasor subject to contribution.58 The plaintiff, a passenger in an automobile operated by her husband, was injured when their car collided with a vehicle driven by the defendant.59 The plaintiff sued the defendant, and the parties settled the matter.60 Later, the settling defendant sued

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54. Id. at 340.
55. Id.
56. Id.
57. Id.
59. Id. at 674.
60. Id.
the plaintiff's husband for contribution, asserting that the husband was a joint tortfeasor. The husband protested the contribution action, contending that his interspousal immunity insulated him not only from a negligence suit initiated by his wife, but from contribution suits brought against him under RIUCATA as well.

Concluding the term "liable in tort," as expressed in the Uniform Act referred to a defendant's culpability and not the plaintiff's own ability to enforce liability, the court reasoned that the statute "was enacted in this state . . . as a modern mechanism for a fairer administration of justice." Quoting with approval, the wisdom of Dean Prosser, the court further acknowledged that "[t]here is obvious lack of sense and justice in a rule which permits the entire burden of a loss, for which two defendants were equally, unintentionally responsible, to be shouldered onto one alone . . . while the latter goes scot free."

Finally, judicial concern for permitting an otherwise liable defendant to go "scot free" was also apparent in Laird v. Chrysler Corp. In Laird, the court determined that the Rhode Island legislature's abolition of sovereign immunity in 1969 "manifest[ed] the state's consent to liability as a joint tortfeasor and for contribution." Contribution suits against the state and its thirty-nine municipalities, however, would be limited to the statutory cap on damages recoverable from the state or its political subdivisions.

C. What Does Pro Rata Mean?

Because Rhode Island has continued to cling to the pro rata reduction rule, the Rhode Island Supreme Court has experienced some difficulty determining exactly what the concept means,

61. Id.
62. Id. at 675. The court held that "[i]n this state a wife may not maintain a suit against her husband for injuries caused by the latter's negligence." Id. (citations omitted).
63. Id. at 676 (citing Hackett v. Hyson, 48 A.2d 353 (R.I. 1946)).
64. Id. (citations omitted).
66. See id. at 430; see also R.I. GEN. LAWS § 9-3-1 (1969).
67. Laird, A.2d at 430. When Laird was decided, the maximum award recoverable in a tort action against the state was $50,000. That amount has since been increased to $100,000. See R.I. GEN. LAWS § 9-31-2 (1984).
especially in light of modern developments in tort law. Although
the statute clearly preconditions the right to contribution upon a
defendant's payment of money exceeding his "pro rata share," the
original 1940 version of R.I.U.C.A.T.A was silent with respect to
the precise proportion of damages that constitutes one's "pro rata
share."

Initially, Rhode Island courts construed the term to mean
"equal division." For example, assuming two defendants are
jointly liable for the same injury, a joint tortfeasor who paid off
the entire common liability was entitled to contribution
representing one-half of the plaintiff's damage award. The
authors of the 1955 revision of the Uniform Act expressly rejected
this interpretation of the meaning "pro rata share," writing, "in
determining the pro rata shares of tortfeasors in the entire
liability . . . their relative degrees of fault shall not be
considered." Rhode Island judges continued to apply the "equal division"
approach indiscriminately until the early 1970s, when the Rhode
Island General Assembly enacted the state Comparative
Negligence Statute. Chiefly, the statute abolished the common
law rule of contributory negligence, which precluded a plaintiff
from recovering any damages if the plaintiff's own conduct
contributed to his injury. Instead, a plaintiff's damage award
would be "diminished by the finder of fact in proportion to the
amount of negligence attributable to the person injured."

Consequently, the law required Rhode Island juries to assign
percentages representative of each party's degree of fault, the
total sum of liability equaling 100%. As the courts embarked on
this endeavor, however, joint tortfeasor defendants turned against
the "equal division" of damages standard. Preferring instead a

68. See R.I. Gen. Laws § 10-6-4 (1956) (stating that "[a] joint tortfeasor is
    not entitled to a final money judgment for contribution until he or she has by
    payment discharged the common liability or has paid more than his pro rata
    share of the final money judgment") (emphasis added).
71. See id.
72. Id.
73. Id.
74. See, e.g., Leite v. Cartier, No. C.A. 72-1019, 1976 WL 176913, at *2
“comparative share” contribution regime, each joint tortfeasor was required to pay only up to his proportion of damages.\textsuperscript{75} As one judge noted, if a jury determined that the first joint tortfeasor was 99\% at fault, and the second a mere 1\% at fault,

it would appear to be absurd to permit the fact that each [defendant] is a joint tortfeasor to rearrange the jury’s verdict and call upon the 1\% negligent defendant to pay 50\% of the judgment. Likewise, absurdity follow[ed] by permitting the 99\% negligent defendant to be rewarded by virtue of his joint tortfeasor status and have his payment reduced from 99\% to 50\% of the judgment.\textsuperscript{76}

In contrast, at least one other judge commented that the Rhode Island General Assembly’s decision \textit{not} to adopt the 1955 Uniform Act manifested the legislature’s intent that joint tortfeasors should be responsible for paying damages only in proportion to their relative degrees of fault.\textsuperscript{77}

Judges who continued to apply the traditional “equal division” computation reasoned that the General Assembly’s enactment of the Comparative Negligence Statute simply indicated an intent to “ameliorate the harsh results that flow from the contributory negligence rule,” and was not intended to modify the existing contribution statute.\textsuperscript{78} Continued adherence to the equal division contribution standard suggested a strict reading of both RIUCATA and the Comparative Negligence statute. These judges determined that the latter was not intended to “permit apportionment of pro rata shares of liability of the joint tortfeasors as among themselves,”\textsuperscript{79} but rather was to be considered only when the plaintiff’s negligence was at issue.

Finally, in 1977 the General Assembly responded to the inconsistent interpretations advanced by the comparative fault statute by amending Section Three of RIUCATA. Section Three reads: “when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint tortfeasors

\begin{thebibliography}{99}
\bibitem{75} See \textit{Leite}, 1976 WL 176913, at *2; \textit{Hindy}, 1975 WL 169940, at *1.
\bibitem{76} \textit{Hindy}, 1975 WL 169940, at *3.
\bibitem{77} \textit{Leite}, 1976 WL 176913, at *2.
\bibitem{78} Id.
\bibitem{79} Id.
\end{thebibliography}
shall be considered in determining their pro rata shares."\(^{80}\)

Hence, under the present statutory scheme as applied in the vast majority of joint tortfeasor claims, "pro rata share" really means "proportionate share." Yet, as discussed in Part II, this approach has created more than its share of headaches for both judges and litigants alike.

II. COMPETING CONSIDERATIONS

The primary purpose of RIUCATA is to create a right of contribution among joint tortfeasors.\(^{81}\) In Rhode Island, contribution is a statutory remedy that the common law did not afford, and its aim is to promote fairness and justice among wrongdoers.\(^{82}\) On the other hand, an established public policy in Rhode Island is to promote the private settlement of legal disputes.\(^{83}\) Inevitably, on several occasions this dichotomy has challenged the Rhode Island Supreme Court to fashion holdings consistent with the Act’s purpose of ensuring equitable results for wrongdoers, while abstaining from further discouraging litigants from engaging in meaningful out-of-court settlement negotiations.

Unfortunately, Rhode Island’s adherence to the pro rata reduction rule frustrates the task of encouraging settlement agreements in joint tortfeasor claims. Pursuant to Section Seven of RIUCATA, a plaintiff's settlement with one joint tortfeasor does not discharge the other joint tortfeasor defendants, absent language within the release stating otherwise.\(^{84}\) Instead, the plaintiff's claim against the non-settling tortfeasors is reduced by the greater of the amount paid for the earlier settlement, or an

\(^{80}\) R.I. GEN. LAWS § 10-6-3 (1976).

\(^{81}\) See Hackett v. Hyson, 48 A.2d 353, 355 (R.I. 1946) (observing that RIUCATA "was designed to reverse two well-established rules of law, namely, (1) that there was no contribution among joint tortfeasors, and (2) that the discharge of one joint tortfeasor by satisfaction of a judgment or by its equivalent, a release, discharged all the other joint tortfeasors").

\(^{82}\) 18 AM. JUR. 2D Contribution § 6 (2004).

\(^{83}\) See Homar, Inc. v. North Farm Assoc., 445 A.2d 288, 290 (R.I. 1982) (announcing that “[o]ur policy is always to encourage settlement. Voluntary settlement of disputes has long been favored by the courts,” (citations omitted). The court further commented that “[w]here the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle.”).

\(^{84}\) See R.I. GEN. LAWS § 10-6-7 (1956).
amount reflecting the settling tortfeasor's degree of fault.\textsuperscript{85} Consequently, when the settling joint tortfeasor's pro rata proportion of fault exceeds the amount agreed to in the settlement release, the plaintiff risks having his judgment greatly reduced.

To illustrate, consider the following hypothetical. Suppose Pete is hurt by Pancho and Sophie, both of whom are joint tortfeasors within the meaning of RIUCATA. Assume Pete settles with Pancho before trial for $2000. The settlement does not release Sophie of her liability to Pete. Assume further that Pete later sues Sophie, but Pete and Sophie are unable to settle their dispute before trial. After each party presents his case, the jury values Pete's harm in the amount $10,000. The jury additionally finds that Pancho was 80\% at fault, and Sophie 20\% at fault. Because Pancho's pro rata share of the liability is greater than the consideration he paid for the release ($2000), Pete's award is reduced by 80\%, or $8000. Sophie is now required to pay only her proportion of the liability, or, $2000. Hence, Pete will receive only $4000, a mere fraction of the judgment awarded. Because Pete's award will be reduced by Pancho's proportion of fault, the inescapable conclusion is that Pete is actually discouraged from settling prior to trial, as his award risks being substantially reduced by an amount impossible for him to accurately gauge.

In authoring the 1955 revision of the Uniform Act, the National Conference of Commissioners on Uniform State Laws responded to the apparent settlement disincentives advanced by the 1939 version of the model act, and modified the partial settlement provision to allow for a reduction of the plaintiff's jury award equal to the amount paid by the settlement release.\textsuperscript{86} The amendment's effect is that a plaintiff will receive the full value of the judgment entered in her favor, while immunizing the settling tortfeasors from defending later contribution actions instigated by the non-settling defendant.\textsuperscript{87}

As applied in Rhode Island tort cases, the settlement disincentives propounded by the 1939 version of the Uniform Act – the model act which RIUCATA is based on – are exemplified by the 1979 case Augustine v. Langlais. In Augustine, the Rhode

\textsuperscript{85} See id.
\textsuperscript{87} See id.
Island Supreme Court confronted a scenario where the plaintiff settled with one joint tortfeasor prior to trial for $42,000. The trial against the second tortfeasor, the jury found that the settling tortfeasor was 85% negligent, and that the non-settling tortfeasor was 15% negligent, rendering a damage award to the plaintiff for $33,513. The court concluded that the superior court properly reduced the jury award by $42,000, even though this meant that the non-settling defendant—who the jury found 15% at fault—was excused from paying anything to either the plaintiff or the earlier settling defendant. Despite this odd result, the court justified its position on the grounds that the "injured person is entitled to only one satisfaction of the tort, even though two or more parties contributed to the loss."

Notably, the court did not re-state the concerns voiced by the superior court judge who, in reducing the jury award as mandated by the statute, recognized that RIUCATA actually serve[d] to discourage the settlement of litigation involving joint tortfeasors... once [the] one joint tortfeasor bought his peace by settling, the other joint tortfeasor had very little to lose by proceeding to trial, at the great expense of the State, because they knew by experience that a verdict in excess of $42,000 is somewhat of a rarity in this State.

The trial judge further commented that "[h]ad the non-settling defendants been faced with having to actually pay the plaintiffs for the proportion of their jury determined negligence, the possibility of settlement, by reasonable counsel, would have been reasonably expected."

The supreme court's position in Augustine conforms to the statute's purpose of promoting fairness for defendants by proscribing "double recovery" by plaintiffs. This perspective, however, is advanced at the expense of supporting voluntary

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89. Id.
90. Id.
91. Id. at 1189.
93. Id.
settlements among litigants, a policy that the supreme court has enthusiastically embraced. And while the Augustine court was undoubtedly constrained by the General Assembly's legislative mandate, later cases would afford the court greater flexibility in addressing the problems raised by RIUCATA's partial settlement provisions.

In Maragdonna v. Otis Elevator Co., the court addressed the effect of a prejudgment interest on a joint tortfeasor verdict where the plaintiff settled with one joint tortfeasor prior to trial.\textsuperscript{94} In Rhode Island, prejudgment interest on civil actions is recoverable pursuant to statute,\textsuperscript{95} "at the rate of twelve percent (12%) simple interest annually from the date the cause of action accrued, to be included in the entry of judgment."\textsuperscript{96}

While visiting Rhode Island Hospital in September 1980, the plaintiff injured herself as she stepped off an elevator, which failed to stop at floor level.\textsuperscript{97} The plaintiff sued both the hospital and elevator manufacturer.\textsuperscript{98} In February 1986, just five days prior to trial, the hospital settled with the plaintiff for $7,500, and the parties executed a joint tortfeasor release discharging the hospital from further liability.\textsuperscript{99} Following the trial against the elevator manufacturer, the jury returned a verdict for the plaintiff in the sum of $20,000, reduced by 15%, which represented the plaintiff's contributory negligence.\textsuperscript{100}

The precise issue on appeal was whether the trial court erred in first calculating the statutory prejudgment interest on the full $17,000, and then discounting the $7,500 settlement amount.\textsuperscript{101} The court rejected this method, preferring instead the non-settling defendant's reduction method: subtracting first the $7,500 settlement figure from the jury verdict before computing the prejudgment interest, (which, in this case, was substantial given the five and a half year delay between the injury and trial).\textsuperscript{102}

\textsuperscript{94} 542 A.2d 232 (R.I. 1988).
\textsuperscript{95} See R.I. GEN. LAWS § 9-21-10 (1997).
\textsuperscript{96} DAVID J. OLIVERIA & JAMES A. RUGGIERI, DAMAGES IN RHODE ISLAND CIVIL TRIAL PRACTICE 43 (2002).
\textsuperscript{97} See Margadonna, 542 A.2d at 232.
\textsuperscript{98} Id. at 235.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} Id.
\textsuperscript{102} See id. at 236.
Despite RIUCATA’s silence on the issue of prejudgment interest, the court reasoned that this calculation was preferable because it protected the nonsettling tortfeasor from paying “interest on the amount of the settlement.”

In the context of civil actions involving joint tortfeasors, the position established by the *Augustine* and *Margadonna* courts is that the equitable rights of wrongdoers trump the equitable rights of those who suffer injury at the hands of wrongdoers. Although these opinions are technically consistent with RIUCATA’s purpose of promoting fairness and justice among joint tortfeasors, they do so at the expense of plaintiffs. Not only does this attitude discourage parties from engaging in private settlement negotiations, but it also conflicts with a long recognized goal of civil litigation – making the plaintiff whole. Moreover, the court’s application of the prejudgment interest statute in *Margadonna* stretched RIUCATA’s purpose of ensuring fairness for defendants much farther than the Act envisions. By insulating the non-settling defendant from paying the excess of prejudgment interest on the jury award, the court effectively transferred these costs to the plaintiff. Lastly, the *Margadonna* method conflicts with two of the underlying objectives of the prejudgment interest statute: to serve as an incentive to the early settlement of disputed claims and to “compensate plaintiffs for waiting for recompense to which they were legally entitled.”

The supreme court later acknowledged *Margadonna* as unduly obstructive to the private settlement process. In *Merrill v. Trenn*, the litigants asked the court to determine the prejudgment interest on a jury verdict against a non-settling joint tortfeasor when the plaintiff previously settled with a co-joint tortfeasor, yet did not release the non-settling tortfeasor from

103. *Id.*
104. *Id.* at 235. The court specifically emphasized that Rhode Island’s contribution statute is designed to prevent a plaintiff from receiving a double recovery for the same injuries, and that a nonsettling tortfeasor should not be forced to pay interest on the amount of the earlier settlement. *Id.*
108. *Id.*
liability. In a thoughtful analysis examining the policies underlying both RIUCATA and the prejudgment interest statute, the court concluded that the Margadonna interest-computation method "impede[d] the [settlement] process by preventing an injured party who has given a joint tortfeasor release to an earlier-settling defendant from ever recovering any prejudgment interest on the early-settlement funds."10

Turning specifically to the policies underlying the prejudgment interest statute, the court further commented that although "the Margadonna rule . . . stems from § 10-6-7's claim reduction provision - [it] could prove to be a disincentive to early settlements while providing an undeserved windfall in savings to any nonsettling alleged tortfeasors."11 Notably, the court stated that the Margadonna rule

[i]ncreased litigation costs and the vagaries of trial outcomes can operate as a disadvantage to defendants as well as to plaintiffs. In the face of the costly discovery and all the potential expenses, delays, and uncertainties of trial, including the risk of an unexpectedly large verdict, (plus substantial interest accruing thereon), many an alleged joint tortfeasor will be amenable to a pretrial settlement for the entire amount of his or her potential damages liability plus interest thereon. Thus the policies behind the prejudgment interest statute (and the [RI]UCATA) call for a method of interest computation in cases like this one that will not impose disincentives on willing litigants to reach as early and as accurate a settlement as the parties can fashion.12

109. Id. at 1309.
110. Id. at 1312.
111. Id.
112. Id. The court then articulated an entirely novel, three-step formula for computing prejudgment interest when there is an early settlement with a joint tortfeasor yet no settlement release is executed. In such a case, first, the

non-settling or later-settling defendant shall be charged with interest at the statutory rate...on the entire amount of damages from the date on which the plaintiff's cause of action arose to the date of any prejudgment settlement payment by an earlier settling [defendant]." Second, once payment by the settling defendant has been made, "the plaintiff's total damages shall be reduced by the full
Although the court was primarily concerned with the manner by which prejudgment interest affects the settlement landscape in civil actions involving joint tortfeasors, the result in *Merrill* is significant as it represents a seachange in the way Rhode Island's high court approaches the problem of partial settlement releases. Undeniably, the supreme court was concerned with devising a prejudgment interest formula consistent with the preserving the early-settlement rationale underlying the prejudgment interest statute, while further ensuring that all of the parties – and not merely non-settling joint tortfeasors – are treated fairly. Most significantly, by importing the policy arguments of the prejudgment interest statute into the context of partial settlement releases, the *Merrill* court added substantially to the policy arguments favoring pretrial settlements in tort claims involving RIUCATA.

Lastly, the force of RIUCATA's historical purpose of delivering fairness for wrongdoers remains somewhat compromised in light of the court's majority holding in the 2001 case *Calise v. Hidden Valley Condo. Association*.\(^\text{113}\) In *Calise*, not only did the Rhode Island Supreme Court supplement the pro-settlement policy arguments articulated in *Merrill*, but it also clarified RIUCATA's relationship to the state's comparative negligence statute.

Writing for the majority, Justice Bourcier held that a joint tortfeasor who incurs a default judgment is precluded from offering evidence of the settling defendant's alleged negligence at a hearing to determine the plaintiff's damages recoverable against the defaulting joint tortfeasor.\(^\text{114}\) The ruling effectively precludes a defaulting joint tortfeasor from seeking contribution from earlier-settling defendants. Thus, regardless of any settlement proceeds received by the plaintiff from the earlier settling defendant, for purposes of the damage hearing the non-settling defendant is

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\text{amount of the earlier payment and the nonsettling defendant charged with interest on the reduced balance of the remaining damages for the period from the date of entry of judgment on any settlement, verdict or decision.}
\]

Finally, “[t]he interest charged for both periods shall be added together and the sum added to the amount of the remaining alleged tortfeasors’ post-reduction damages liability.” *Id.* at 1313.

\(^{113}\) 773 A.2d 834 (R.I. 2001).

\(^{114}\) *Id.* at 840.
deemed one-hundred percent at fault.\textsuperscript{115} The subsequent judgment, will, however, be offset by the amount paid in the earlier negotiated settlement.

In denying the defaulting joint tortfeasors the opportunity to present evidence tending to show the degree of the settling defendant's negligence, the court announced that the state's comparative negligence statute was \textit{not} a comparative fault statute. Rather, it "permits comparison of either the negligence between a plaintiff and a defendant, or, in the case of multiple defendants, the comparison of any negligence on the part of each particular defendant. It does not contemplate or address the proportionate negligence between the various defendants."\textsuperscript{116} As the court observed, if the defaulting joint tortfeasors were allowed to present evidence of the settling defendants negligence at the damages hearing, the settling defendants "would not want to settle if they thought it possible that they could be forced later to defend themselves against defaulting defendants on the merits of the lawsuit."\textsuperscript{117} Likewise, "the plaintiff would not be made whole because the defaulting party would pay only his or her proportionate amount of damages and, in view of the co-defendant's full release, the plaintiff could not collect the difference from the settling co-defendant."\textsuperscript{118}

In reaching its conclusion, the majority avoided the pro rata reduction rule prescribed by RIUCATA, applying instead a dollar-for-dollar award reduction against the defaulting defendant's liability. Consequently, in the context of defaulting joint

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{115} See \textit{id.} at 838 (citing R.I. GEN. LAWS § 9-20-2 (1956), providing: "In all cases, except where otherwise provided, if judgment is rendered on default ... damages shall be assessed by the court, with the intervention of a jury unless cause is shown why there should be no intervention of a jury. The claimant in any case may waive the intervention to jury.").
\item\textsuperscript{116} \textit{id.} at 837-38.
\item\textsuperscript{117} \textit{id.} at 840.
\item\textsuperscript{118} \textit{id.} Of course, as Justice Flanders correctly points out in his dissenting opinion, the result hypothesized by the majority is still very likely to occur in the normal multi-party tort claim where there is no defaulting defendant. While Section 10-6-5 of RIUCATA, permits a settling joint tortfeasor to collect contribution from all defendants who the settlement releases from liability to the plaintiff, section 10-6-3 and 10-6-4 of the statute also operate to ensure that "a joint tortfeasor held liable and compelled to pay more than his, her, or its 'pro rata share of the final money judgment,' still has a right to seek contribution from the other joint tortfeasors." \textit{Id.} at 846 (citing R.I. GEN. LAWS § 10-6-3 (1956); \textit{id.} at §10-6-4).
\end{enumerate}
\end{footnotesize}
tortfeasors, the court preferred the pro tanto offset calculation prescribed by the 1955 revision of the Uniform Act. Recognizing that the comparative negligence statute itself contains no set-off provision, the majority supported its reasoning on the basis that the pro rata reduction rule should be considered only when the plaintiff conduct contributes to his own injury.\textsuperscript{119} Hence, when the plaintiff's negligence is not at issue, the contribution and comparative negligence statutes should, ideally, be viewed as mutually exclusive.

Following \textit{Calise}, even if one is to keep the two laws separate in like scenarios, the rationale supporting the pro rata reduction rule remains somewhat convoluted. If the General Assembly's primary purpose in adopting RIUCATA was to ensure that a joint tortfeasor who paid above and beyond his calculated share of damages could recoup a portion of his expenses from his co-tortfeasors, then the apportionment of fault to reflect each defendants' degree of liability seems reasonable. But, given the supreme court's treatment of the comparative fault statute in \textit{Calise}, apportioning liability for the purpose of creating a set-off proportional to the settling joint tortfeasor's degree of fault seems misplaced, especially when the plaintiff is not negligent. But this is exactly the result mandated by the General Assembly's 1977 amendment to RIUCATA, which demands that "relative degrees of fault" be consulted in determining each defendant's pro rata share of liability.\textsuperscript{120} Essentially, in designing a formula guaranteed to proscribe the "double recovery" by a plaintiff after she enters into a partial settlement release, the General Assembly effectuated the same result contemplated by the comparative negligence statute, even though the two laws are supposed to be mutually exclusive.

Accordingly, although Rhode Island's courts must continue to apply the pro rata reduction rule in a manner consistent with RIUCATA's language, the court's recent treatment of the statute — both in relation to the state's prejudgment interest and comparative negligence laws — suggests that notions of fairness for all parties, and not just wrongdoers, are likely to weigh in heavily on decisions yet to come.

\textsuperscript{119} See, e.g., \textit{Calise}, 773 A.2d at 838-39 (citing R.I. GEN. LAWS § 9-20-4.1 (1956)).
\textsuperscript{120} R.I. GEN. LAWS § 10-6-3 (1977).
III. THE BANKING CRISIS

The 2006 amendments to RIUCATA are modeled after legislation enacted shortly after the infamous 1991 collapse of the Rhode Island Share and Deposit Indemnity Corporation (RISDIC). On New Year's Day, 1991, former Governor Bruce Sundlun declared a "bank emergency," freezing 300,000 depositors accounts within the state.\footnote{See Fox Butterfield, \textit{Rhode Island Tries to Cope During Bank Emergency}, ALBANY TIMES UNION (NY), Jan. 3, 1991, at C7.} Blaming RISDIC's collapse on "incestuous connections among politics, business, and organized crime,"\footnote{Brian Mooney, Joan Vennochi & Kevin Cullen, \textit{R.I. Officials, Cozy with Bankers, Did Little to Prevent Crisis}, BOSTON GLOBE, Jan. 6, 1991, at M1.} the General Assembly established the Depositor's Economic Protection Corporation (DEPCO), a public corporation designed to reimburse depositors who could not access their bank accounts because of the bank emergency freeze.\footnote{See R.I. GEN. LAWS § 42-116-2 (1993).} Significantly, the legislation developed "an entirely new financial institution receivership law, as well as statutory priorities for prompt payment to people whose deposits were left uninsured due to RISDIC's failure."\footnote{In re \textit{Advisory Opinion to the Governor}, R.I. Depositors Econ. Prot. Co. v. Brown, 659 A.2d 95, 99 (R.I. 1995).}

DEPCO was also charged with "the pursuit of tortfeasors who contributed to the banking crisis."\footnote{See id.; see also Ernst & Young v. Depositors Econ. Prot. Co., 862 F. Supp. 709, 711 (D.R.I. 1994).} Anticipating a high number of potential defendants whose alleged misconduct led to RISDIC's demise, DEPCO's authors devised a contribution provision mirroring, in substance, the 1955 revision of the Uniform Act. Unlike RIUCATA, the DEPCO Act's provision addressing court-approved settlements provided, in pertinent part, that:

[A] person, corporation, or other entity who has resolved its liability to [DEPCO] . . . or the received of any state-chartered financial institution in a judicially approved good faith settlement is not liable for contribution or equitable indemnity regarding matters addressed in the settlement. The settlement does not discharge any other joint tortfeasors unless its terms provide, but it reduces
the potential liability of the joint tortfeasors by the amount of the settlement.\(^{126}\)

Among those suspected of playing a part in RISDIC's downfall was Ernest & Young LLP, a New York accounting firm responsible for auditing RISDIC's financial health.\(^{127}\) Prior to DEPCO's passage, Ernest & Young and other defendants could at least take comfort in the prospect that RIUCATA's pro rata reduction rule provided a cushy result if, for example, it decided not to settle with DEPCO. For example, if Ernest & Young played their odds and proceeded to a trial, and the jury found that Ernest & Young's proportion of liability was less than the amount paid by the settling defendant, then the firm could conceivably go "scot free," excused from paying a dime to either DEPCO or the earlier-settling defendants.\(^{128}\) Likewise, even if Ernest & Young ended up footing DEPCO's entire damage award, it could still seek contribution from both settling and non-settling defendants alike.\(^{129}\)

Surprising Ernest & Young, however, was the fact that the DEPCO Act abruptly replaced the pro rata reduction rule mandated by RIUCATA with a pro tanto, or dollar-for-dollar partial settlement calculation for offsetting subsequent judgments rendered in favor of the plaintiff.\(^{130}\) Under the partial settlement scheme prescribed by the DEPCO legislation, a partial settlement agreement would have the effect of reducing a subsequent judgment by the actual amount contemplated in the release, rather than the non-settling defendant's pro rata share of liability.\(^{131}\) Ernest & Young's statutory right to contribution had also been eliminated by the DEPCO Act's passage.\(^{132}\)

The accounting firm quickly challenged the statute's

\(^{128}\) See R.I. GEN. LAWS § 10-6-7 (1956).
\(^{129}\) See id. at § 10-6-8.
\(^{130}\) See id. at § 42-116-40 (2006).
\(^{131}\) Id.
\(^{132}\) Id.; see also Terri L. Pastori, Banking Crisis Justifies Discriminatory Classification of Nonsettling Joint Tortfeasors, 30 SUFFOLK U. L. REV. 513, 514 (1997) ("[T]he Rhode Island General Assembly modified the initial DEPCO Act, which prohibits a nonsettling defendant, who the trier of fact later finds liable, from seeking contribution from a settling joint tortfeasor.").
constitutionality in federal court, asserting that the law deprived Ernest & Young of their fourteenth amendment rights to due process and equal protection, and that the statute qualified as an unconstitutional bill of attainder. While the federal district court judge concluded that Ernest & Young lacked standing with respect to its fourteenth amendment challenges, it did observe that the “DEPCO Act’s apparent purpose is to encourage settlement of claims brought by DEPCO. To do this, the DEPCO Act prohibits indemnity or contribution suits against joint tortfeasors who settle with DEPCO . . . [t]his is in distinction to Rhode Island’s contribution statute, which allows one joint tortfeasor to sue another for their proportionate share of liability, and not just the amount of the settlement.” The Rhode Island Supreme Court later upheld the constitutionality of the statute in its 1995 advisory opinion to former Governor Lincoln Almond.

The significance of the DEPCO Act lies in the General Assembly’s realization that RIUCATA was poorly equipped at facilitating settlements in complex litigation involving multiple tortfeasors. Admittedly, while the DEPCO Act did not disturb RIUCATA, the statute at least represented a willingness on the part of Rhode Island’s lawmakers to experiment—and perhaps learn from—a different methodology altogether with respect to the manner in which Rhode Island handles partial settlement releases involving joint tortfeasors.

IV. THE STATION FIRE CRISIS

A. Brewing the Perfect Storm

On February 20, 2003, the California-based metal troupe Great White took the stage at The Station, a West Warwick nightclub owned by brothers Jeffery and Michael Derderian.
Perhaps best known for their song "Once Bitten, Twice Shy," Great White attracted close to four hundred concertgoers that evening, most of whom resided in Rhode Island, Massachusetts, and Connecticut.\textsuperscript{137} Taking the stage shortly after 11:00 pm, Great White greeted the revelers with a pyrotechnic display operated by the band's tour manager, Daniel Biechele.\textsuperscript{138} The pyrotechnic devices emitted sparks, which in turn ignited the sound-proofing foam insulating the club's walls and ceiling.\textsuperscript{139} Within seconds, a roaring fire mercilessly ripped its way through the sixty-year-old wood frame structure, pushing the confused crowd toward the building's main entrance.\textsuperscript{140} The fire's thick black smoke rapidly filled the club, blinding and choking victims as they attempted to escape the roaring inferno.\textsuperscript{141} Within ninety seconds, the temperature inside The Station reached an estimated 1,800 degrees.\textsuperscript{142} One hundred people died, over two hundred were injured, and a mere seventy-seven escaped unharmed.\textsuperscript{143} In hindsight, all of the ingredients for a terrible occurrence were firmly in place. The combustible wood frame building had no sprinkler system, poorly marked exits, and was insulated with polyurethane packing foam, a product which fire safety experts have likened to "solid gasoline."\textsuperscript{144} In the three years preceding the inferno, state fire officials failed to note the existence of the highly flammable foam, and also allegedly failed to properly enforce then-existing capacity and exit requirements.\textsuperscript{145} Moreover, Great White did not secure the requisite fire permits.
prior to setting of the indoor firework display.\textsuperscript{146}

\textbf{B. The Station Fire Bill – DEPCO Redux}

Given the fire’s horrific toll on human life and health, the Rhode Island legal community immediately braced itself for an expected mass deluge of personal injury claims. Just days after the fire, Rhode Island Superior Court presiding justice Joseph F. Rodgers, Jr. appointed Superior Court Judge Alice B. Gibney to oversee all civil lawsuits filed as a result of the fire, irrespective of whether they were filed in Rhode Island’s courts.\textsuperscript{147} Rhode Island lawmakers also briefly flirted with the idea of establishing a compensation fund for the Station Fire families and victims modeled after the federal September 11th Victim Compensation Fund,\textsuperscript{148} yet lawmakers ultimately discarded this plan for failure to secure political support from the Governor’s office.\textsuperscript{149}

In April of 2003, the first federal lawsuit relating to the Station Fire was filed in Rhode Island federal district court,\textsuperscript{150} invoking the applicability of the newly-minted federal Multiparty, Multiforum Trial Jurisdiction Act of 2002.\textsuperscript{151} The 2002 law expanded the federal courts’ original jurisdiction over lawsuits arising from accidents causing death to more than seventy-five people at a discrete location, provided certain diversity requirements are satisfied.\textsuperscript{152} Penning the first opinion to explore

\begin{itemize}
\item \textsuperscript{146} See Levitz et. al., supra note 2, at 1.
\item \textsuperscript{147} Id.
\item \textsuperscript{148} See David McPherson, Sept. 11 Compensation Fund Looked at as Model for Fire Victims, PROVIDENCE J., Mar. 6, 2003, at 16.
\item \textsuperscript{150} See Tracy Breton, Lawyer Files Suit in Federal Court, PROVIDENCE J., Apr. 23, 2003, at 1.
\item \textsuperscript{151} See Multiparty, Multiforum Trial Jurisdiction Act, 28 U.S.C. § 1369 (2002).
\item \textsuperscript{152} Id. See also Peter Adomeit, The Station Nightclub Fire and Federal Jurisdictional Reach: the Multidistrict, Multiparty, Multiforum Jurisdiction Act of 2002, 25 W. NEW ENG. L. REV. 243, 247 (2003) (In summarizing the Act, Mr. Adomeit writes:

The Act changes the laws of federal jurisdiction, removal jurisdiction, venue, service of process, and subpoenas ... Once there, the federal court ‘shall abstain jurisdiction’ if the dispute is primarily local, or the federal court could keep the cases for determining liability. If there is a finding of liability, there is a right to immediate appeal; if liability is upheld, the federal court then
the limits of the federal law’s jurisdictional reach, in March 2004 Senior District Court Judge Ronald R. Lagueux held that the Rhode Island district court was not required to abstain in civil claims arising out of the Station Fire because the majority of the plaintiffs were not Rhode Island residents, and the primary defendants were not all from one state. Determining that the federal law was designed to consolidate in a federal court litigation arising from a catastrophic disaster, Judge Lagueux wrote that “Congress’ motivation in passing this legislation was to promote judicial efficiency while avoiding multiple lawsuits concerning the same subject matter strewn throughout the country in various state and federal courts.” Since then, the majority of the Station Fire civil actions have been consolidated in the federal district court for the District of Rhode Island before Judge Lagueux under a master complaint, the latest of which names ninety-seven defendants and 266 plaintiffs.

Because early investigations into the cause of the fire revealed a host of potentially culpable parties, victims’ attorneys quickly realized that Rhode Island’s contribution statute would likely hinder settlement negotiations. Assuming that all the Station Fire defendants are joint tortfeasors within the meaning of RIUCATA, if the victims entered into a settlement with a defendant for $1 million, and a jury then rendered a $50 million verdict, finding that the settling party was 50% responsible for the victim’s injuries, the $50 million verdict would be reduced by half, leaving the victims with just $25 million. Moreover, a settling defendant could not “buy his peace” through the settlement, for there always remained the risk that he would later be liable for contribution if it turned out that his degree of culpability exceeded the amount he paid for the settlement.

Additionally, even if the victims secured a judgment against a

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returns the cases ‘to the State court from which it had been removed,” for determination of damages, but is given discretion to retain the damage issues as well.

citations omitted).

154. Id. at 53-54.
156. See R.I. GEN. LAWS § 10-6-7 (1956) (amended 2006).
157. See id. at § 10-6-8.
defendant, an additional risk remained that the defendant would be financially insolvent and thus unable to satisfy the judgment award. This was particularly true with respect to Great White, the Derderian brothers, and the town of West Warwick. Great White carried insurance coverage worth a mere $1 million dollars.158 The Derderians, who carried a $1 million dollar per-occurrence insurance policy on the nightclub, filed for Chapter 7 bankruptcy protection in September 2005, shortly after being hit with a $1.6 million dollar fine by the State of Rhode Island for failing to carry workers' compensation insurance.159 Although the town of West Warwick — whose agents were charged with adequately inspecting The Station for safety hazards and violations — maintained a $4 million dollar policy, it was of the "wasting asset" variety, meaning that attorneys fees and associated litigation expenses would be deducted directly from its coverage.160 Consequently, the insurance coverage of the club and these other potentially culpable parties would likely fall woefully short of fairly compensating the numerous victims and their families.

Lawmakers, knowing well that no plaintiff's attorney in their right mind would advise their client to agree to settlement under these circumstances, responded to the mass litigation crisis brewing within Rhode Island through enactment of the house bill H. 7109, otherwise known as the "Station Fire Bill."161 Inspired by the DEPCO Act borne in the wake of the 1991 banking emergency, the bill amended RIUCATA itself, incorporating the 1955 Uniform Act's partial settlement revisions, but only for tort claims involving twenty-five or more deaths arising from a single occurrence.162 Pursuant to the 2006 amendments to RIUCATA, a non-settling defendant involved in such a catastrophe may no longer claim an offset against the rendered judgment representing

160. See Levitz et al., supra note 2, at 1. It is worth noting that West Warwick's liability would likely be subject to the statutory cap of $100,000 per victim pursuant to R.I. GEN. LAWS § 9-31-2 (1997).
162. See R.I. GEN. LAWS §§ 10-6-7, 10-6-8 (Supp. 2006); see also Breton, supra note 8, at B1.
the settling defendant's proportionate share of fault.\footnote{163} Instead, the non-settling defendant is simply entitled to a pro tanto, or dollar-for-dollar credit representing a sum equal to any earlier settlement awards received by the plaintiff from the non-settling defendant's co-tortfeasors.\footnote{164} The plaintiffs also receive the full value of the judgment entered in his favor. Additionally, the plaintiff may only claim the benefit of the revised act if the earlier settlements were entered into with good faith.\footnote{165}

Predictably, the bill faced strong opposition from pro-business special interest groups such as the Greater Providence Chamber

\begin{footnotes}
\footnote{163}{See id. The 2006 amendments to RIUCATA, modified section 10-6-7, which now reads:

A release by the injured person of the one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

However, in circumstances where there are twenty-five (25) or more deaths from a single occurrence, then a release by the injured person of one joint tortfeasor given as part of a judicially approved good-faith settlement, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release.

(emphasis added).

Similarly, Section 10-6-8, as amended, provides:

A release by the injured person of one joint tortfeasor does not relieve him or her of liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors, \footnote{164}{See id.}

However, in circumstances where there are twenty-five (25) or more deaths from a single occurrence, a release by the injured person of one joint tortfeasor given as part of a judicially approved good faith settlement does not relieve him or her from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction to the extent of the amount of consideration paid for the release.

(emphasis added).}
\footnote{165}{See id.}
of Commerce and the American Tort Reform Association. Even Rhode Island Governor Donald Carcieri permitted the Station Fire Bill to become a law without his signature. Moreover, among the Station Fire Bill's sharpest critics were the "deep pocket" defendants involved in the Station Fire civil litigation, such as Anheuser Bush and Clear Channel Broadcasting - large, wealthy corporations who sponsored Great White's show. Because Rhode Island's pure joint and several liability regime would allow the victims to collect 100% of their award from any defendant who is found at least one percent at fault, these Fortune 500 companies could end up paying the entire judgment, even if they are determined to be only minimally at fault.

Despite this criticism, the Station Fire Bill represents a comprehensive effort intended to encourage the parties involved in the Station Fire tragedy to settle their claims prior to trial. Although the large, "deep pocket" defendants may have to pay more than their calculated share of fault, the favorable interests embraced by the new law outweigh this drawback. Once any of the Station Fire defendants settles, he becomes immune from later being forced to defend a contribution action initiated by a non-settling defendant. Given the "good faith" requirement of the modified statute, the settling parties will also be keenly aware of the non-settling defendants' interest in ensuring that the settling defendants do not get off "too cheaply"; the good faith provision presumably allows the non-settling defendants the right to contest the amount of the settlement before the court. Furthermore, in

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166. See Breton, supra note 8, at B1; see also Press Release, American Tort Reform Association, Legislative Watch, (May 4, 2006) (on file with author) (ATRA asserts that the 2006 amendments to RIUCATA render the state's joint and several liability law "one of the most unfair in the country.").
167. See Breton, supra note 8, at B1.
169. See R.I. GEN. LAWS §§ 10-6-7, 10-6-8 (Supp. 2006); see also Breton, supra note 8, at B1.

The settling defendant wants the certainty that when he pays a sum of money, he buys his peace once and for all and won't be required to
exchange for foregoing any future contribution actions, the non-settling defendants, if they choose to proceed to trial, will receive the benefit of an offset representing any settlement proceeds received by the victims. Most importantly, the Station Fire victims will be made as close to financially whole as justice dictates. And of course, the new law will likely help reduce the expenses borne by the courts and litigants by encouraging the full and final settlement of these complex and emotionally-charged claims.

Apart from the 2006 amendments’ direct effect on the Station Fire civil actions, the recent legislation also embraces the current reality of Rhode Island’s civil litigation landscape. Admittedly, in 1940, when the General Assembly adopted the initial version of RIUCATA, Rhode Island was a simpler place. Following World War II, however, American tort law expanded to encompass doctrines such as strict products liability and medical malpractice; areas of the law that have seen an increase in multi-party claims.171 Nationally, modern tort claims are more likely to “involve novel legal and factual claims, higher stakes, multiple parties, and greater technical complexity.”172 Moreover, in recent history, America’s courts have accommodated litigation instigated by several mass disasters, including the MGM-Grand Hotel fire,173

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172 McG. Bundy, supra note 171, at 1, 26.

173 See Deborah R. Hensler & Mark A. Peterson, Understanding Mass Personal Injury Litigation: A Socio-Legal Analysis, 59 Brook. L. Rev. 961, 974-76. The article’s authors describe the event as follows: “On the morning of November 21, 1980, faulty wiring in the kitchen of the MGM-Grand Hotel
the terrorist attacks on the World Trade Center on September 11, 2001, and most recently the 2003 stampede at a Chicago nightclub which killed twenty-one people and injured more than fifty others. Unfortunately, time will only tell when the next disaster resulting in loss of life and limb will strike.

As the DEPCO banking crisis illustrated, and the Station Nightclub disaster reaffirms, RIUCATA is ill-equipped to encourage pretrial settlements in tort claims involving multiple defendants. Additionally, both events demonstrate that efforts to foster just and speedy resolutions to complex, and oftentimes emotionally-charged disputes is good public policy for Rhode Island. First, from an institutional perspective, by extending that applicability of the pro-tanto offset rule encapsulated in the DEPCO Act and Station Fire Bill to all joint tortfeasor claims, (and thereby eliminating the settlement barriers present in the general applicability of RIUCATA), Rhode Island’s courts are likely to benefit from the preservation of scarce judicial resources and reductions in docket backlog. Second, from the point of view of individuals involved in multiparty litigation, a partial settlement contribution rule which encourages litigants to settle prior to trial may result in more satisfying results if settlement is achieved. Lastly, settlement may provide a more favorable result than full adjudication of a legal dispute because in negotiation the parties are free to consider the entire spectrum of relevant facts and principles, whether or not they are formally cognizable in law . . . the parties have the flexibility to craft more creative – and potentially more responsive – solutions to their problems,

in Las Vegas started one of the worst hotel fires in history.” Id. “Eighty-four people died, the majority of them from smoke inhalation, and over 500 people were injured.” Id. Notably, in the civil actions that followed, “the settlement by the principle defendants placed great pressure on the remaining defendants. They faced substantial joint and several liability, but would receive credits from the principle defendants that were also limited to the amount of their settlements.” Id. This instance perhaps demonstrates how the Station Fire claims are likely to be resolved.

175. See Margaret Meriwether Cordray, Settlement Agreements and the Supreme Court, 48 HASTINGS L.J. 9, 36 (1996).
176. See id. at 37.
because they are neither limited to the traditional legal remedies nor 'binary', win/lose results.\textsuperscript{177}

V. CONCLUSION

As both DEPCO and the Station Fire Bill illustrate, RIUCATA is an outdated contribution scheme inconsistent with the realities of modern tort litigation. Rhode Island’s litigation landscape is much more complex today than it was in 1940 when RIUCATA was initially adopted. On the bright side, however, is the notion that both laws, coupled with the Rhode Island Supreme Court’s increased willingness to advance public policy goals friendly to the facilitation of pretrial settlements, are indicative of a warming towards the outright adoption of the pro tanto offset rule adopted in the 1955 revision of the Uniform Act – a move which will likely benefit not only Rhode Island’s courts, but its people as well.

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\textsuperscript{177} Id. (citations omitted).

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