



## Are you a comparative negligence expert?

*Answer this AEI exam question and find out.*

[Ref. *Comparative Negligence, Contribution, and Settlements, Para 3.01*]

### AEI Exam Question:

Justin was driving his car when he was involved in a three-car accident. Cars owned and operated by Laurel and Ralph collided with Justin's car and he was injured. Justin filed suit against Laurel and Ralph. If Justin was 30% at fault, Laurel 10% at fault, and Ralph 60% at fault and the modified "not greater than" form of comparative negligence with combined comparison applies, who is liable to Justin?

- A. Ralph, but not Laurel, because Justin's negligence was not greater than Ralph's negligence, but was greater than Laurel's negligence.
- B. Both Laurel and Ralph, because regardless of Justin's negligence, Laurel and Ralph were negligent.
- C. Both Laurel and Ralph, because Justin's negligence was not greater than the combined negligence of Laurel and Ralph.
- D. Neither Laurel nor Ralph, because Justin was also found negligent.

### Answer:

"C" is the best choice because under this form of comparative negligence when a plaintiff's negligence is not greater than the combined negligence of all defendants both defendants are liable and the plaintiff can recover damages from both according to their degrees of fault. See Para. 3.01. "A" is not the best choice because it does not apply combined comparison. "B" is not the best choice because it describes pure form comparative negligence rather than "not greater than" with combined comparison. Therefore, although both defendants are liable, it is because the plaintiff's negligence was not greater than the combined negligence of both defendants. "D" is not the best choice because it describes the common law rule of contributory negligence which bars recovery when any negligence is assessed to the plaintiff.

This issue is explained in AEI's *Comparative Negligence, Contribution, and Settlements* Course, Para. 3.01:

### HOW FAULT IS MEASURED

In claims that involve more than one tortfeasor in a jurisdiction with a modified comparative negligence law, an important question is whether the claimant's negligence will be compared to each tortfeasor separately (individual comparison or "Wisconsin rule"), or to the combined negligence of all tortfeasors (combined comparison or "unit rule"). A clear majority of jurisdictions use combined comparison and compare a claimant's negligence to the total negligence of all tortfeasors. Individual and combined comparison are only issues in modified form jurisdictions. Comparison for the purpose of determining a claimant's right to recover is not an issue in pure form jurisdictions.

When the negligence of a claimant is less than or not greater than the negligence of each tortfeasor, it makes no difference whether the comparison is to the negligence of each individual tortfeasor or to the combined negligence of all tortfeasors. Comparison to the combined negligence of all tortfeasors is, however, important when the negligence of the claimant is as great as or greater than the negligence of at least one tortfeasor.

EXAMPLE: If the negligence of C is 30%, the negligence of T1 20%, and the negligence of T2 50%, C could not recover from T1 if his negligence is compared to the negligence of each individual tortfeasor. If C's negligence is compared to the combined negligence of the tortfeasors, C would recover from both T1 and T2 because his negligence was "not as great as" or "not greater than" their combined negligence.

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Students in AEI's Claims Law Courses and Programs will gain valuable work related knowledge that they can immediately apply to the claims on their desk. Students retain what they learn because the process requires them to identify the legal issue and then apply the applicable law to resolve that issue. When students understand both the legal issue and the rationale for its solution, they get it! And when students get it, they remember. Lastly, AEI counselors are just a phone call away – (800) 631-8183 – to assist students in the process.