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Skinner v. Reed-Prentice Division Package Co.: Adoption of Contribution in Illinois

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**Skinner v. Reed-Prentice Division Package Co.: Adoption of Contribution in Illinois**

**INTRODUCTION**

The common law rule against contribution among joint tortfeasors is based upon the proposition that courts should not offer relief to wrongdoers. Accordingly, courts have refused to apportion damages among tort-feasors in situations involving common liability or fault, and distribution of liability for damages under the rule is consequently controlled, *de facto*, by the plaintiff through the execution of his judgment. The resultant distribution is usually


2. Considerable confusion results from the imprecise use of the term "joint tort-feasors." It "is one of those unhappy phrases of indeterminate meaning whose repetition has done so much to befog the law." Prosser, *Joint Torts and Several Liability*, 25 CALIF. L. REV. 413 (1937). BLACK'S LAW DICTIONARY 973 (Rev. 4th ed. 1968) defines a joint tort as a situation in which "two or more persons owe to another the same duty and by their common neglect such other is injured." For present purposes a broad definition of joint tort-feasor is used: one of two or more persons who unite in committing a tort (jointly committed tort) or who through acts or omissions combine to produce a single indivisible injury to a third person (concurrently committed tort).

3. Other traditional rationales used to justify the existence of this rule in American jurisdictions include such policy considerations as the following: A court will not aid one who comes before it with unclean hands, Wanack v. Michela, 205 Ill. 87, 74 N.E.84 (1905); the risk of one wrong-doer bearing all the consequences will have a prophylactic effect, Peck v. Ellis, 2 Johns, Ch. 131, (N.Y. 1816); the courts will waste time and energy at the expense of honest litigants if it considered apportioning damages, Avery v. Bank, 221 Mo. 71, 119 S.W. 1106 (1909).

4. A plaintiff may sue and execute a judgment he obtains as he pleases. Thus, where tort-feasors are jointly and severally liable, the ultimate result may be that one defendant tort-feasor may pay for the total losses while the other goes scott free. The *laissez faire* attitude of courts toward the distribution of monetary liability in the execution of judgment means that the ingenuity of defendants' attorney will likely influence plaintiffs decision regarding how much of the loss each defendant will bear. The possibilities are limited only by a court's decision to monitor such out-of-court behavior. *See Reese v. Chicago, B. & Q.R. Co., 55 Ill. 2d 356, 303 N.E.2d 382 (1973); Dooley, 1 MODERN TORT LAW § 26.17. (1977); Durree, Has The Loan Receipt Agreement Established Reverse Comparative Negligence Or Indemnity Among Active Tortfeasors In Illinois?, 64 ILL. BAR J. 236 (1975); Michael, "Mary Carter" Agreements*
final, since a tort-feasor who pays a judgment has no action for contribution against a co-tort feasor.

It is apparent that the rule against contribution can no longer be justified for the ultimate distribution of losses has little to do with the relative fault of the tort-feasors. Further, the discharge of judgment by one tort-feasor without proportionate payment from his co-tort-feasors gives the latter an advantage to which he is not equitably entitled. The inequities created by private control over the allocation of losses among joint tort-feasors have led to legislative or judicial repeal of the rule in most jurisdictions. Today few states in Illinois, 64 ILL. BAR J. 514 (1976); Comment, The Allocation of Loss Among Joint Tortfeasors, 41 S. CAL. L. REV. 728 (1968).

5. It is unfortunate that this harsh result follows from a mere maxim of common law: “The plaintiff is Lord of his action.” Uniform Contribution Among Tortfeasors Act, Commissioner’s Prefatory Note 1939 Act, 9 U.L.A. 230-32 (1957 ed.).

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retain an absolute bar to contribution.7

A substantive right to contribution is a legal reform which has been advocated by lawyers and judges in Illinois for sometime.8 The final vestige of the common law rule against contribution was eliminated by the Illinois Supreme Court in Skinner v. Reed-Prentice Division Package Machinery Co.9 The court stated that "there is no valid reason for the continued existence of the no-contribution rule and many compelling arguments against it."10 Although Skinner unequivocally rejects the rule against contribution, the decision raises questions concerning the scope and substance of contribution in Illinois. The supreme court, in two cases decided with Skinner, indicates that it may follow a very restrictive interpretation of the Skinner holding,11 but offers no procedural guidelines for the practice of contribution in the future.

This article will briefly trace the development of the law in Illinois prior to the Skinner decision. The Skinner case will be critically analyzed, with particular emphasis on the arguments raised by the dissent. Finally, the ramifications of the Skinner decision on third-party practice in Illinois will be explored.

Historical Perspective

The rule against contribution among joint tort-feasors has been considered a well-established principle of Illinois law. While the rule
was recognized, however, Illinois courts fashioned various methods of distributing losses among joint tort-feasors to prevent injustice. First, courts expanded the concept of implied indemnity to enable a tort-feasor who had been guilty of passive negligence to maintain an action for indemnity against a joint tort-feasor who had been actively negligent. A qualitative discrepancy between the fault of the parties was a prerequisite for the application of this active-passive negligence doctrine. When effectuated, a passively negligent defendant obtained indemnity from an actively negligent defendant for the total amount of the plaintiff's judgment.

Secondly, courts avoided the impact of the rule against contribution by refining the definition of joint tort-feasor, for once it was determined that the parties were joint tort-feasors, the rule automatically barred contribution among them. At common law, courts considered the intent of the tort-feasors and unity of purpose or concerted action the test for jointness. Determination of concerted action was critical since common law procedural rules did not provide for joinder of parties unless there was such action. In the absence of such action, parties were not considered joint tort-feasors and could not be joined even if the injury produced was indivisible. Under modern procedural rules, with liberal joinder provisions, concurrent wrongdoers became confused with joint tort-feasors, and defendants whose negligence concurred to produce a single result were considered joint tort-feasors. Careless usage of the term joint tort-feasor increased the number of cases which fell within the scope of the rule against contribution. In response to this problem, Illinois courts eventually clarified the definition of joint tort-feasor, indicating that joint liability of concurrent wrongdoers could result only where a single and indivisible harm was caused by their actions.

12. The distinction between contribution and indemnity is that contribution distributes the loss among joint tort-feasors by requiring each to pay his proportionate share, while indemnity shifts the total loss from one tort-feasor to another PROSSER, LAW OF TORTS § 48 (4th ed. 1971) Indemnity arises by express agreement or operation of law. For a discussion of the development of implied indemnity, visit Bua, Third Party Practice in Illinois: Express and Implied Indemnity, 25 DEPAUL L. REV. 287 (1976); R. Michael and N. Appel, Contribution and Indemnity Among Joint Tortfeasors in Illinois, 7 LOY. CHI. L.J. 591 (1976).
13. Gulf, Mobile & Ohio R.R.Co. v. Arthur Dixon Transfer Co., 343 Ill. App. 148, 98 N.E.2d 783 (1951). "The courts have... had to find a way to do justice within the law so that one guilty of an act of negligence—affirmative, active, primary in its character—will not escape scot-free, leaving another whose fault was only technical or passive to assume complete liability." Id. at 156, 98 N.E.2d at 787. See also Chicago & Illinois Midland Ry. Co. v. Evans Constr. Co., 32 Ill. 2d 600, 208 N.E.2d 573 (1965).
14. See note 1 supra.
16. Id. at 420.
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This reform was not a return to the common law test of jointness, rather the touchstone of the reformed definition was indivisibility of result. Thus, parties who acted to cause divisible injuries were not considered joint tort-feasors in Illinois, and would be permitted to shift the losses attributable to another tort-feasor's conduct through partial indemnification.17

Although these alternatives provide relief from the inequities of the no-contribution rule, they serve as an inadequate replacement for the right to contribution among tort-feasors. The active-passive doctrine, for example, precludes relief where justice may dictate that tort-feasors distribute the burden among themselves.18 Because relief is provided through indemnity, the doctrine is necessarily limited to an all or nothing proposition.19 Moreover, courts have had considerable difficulty in consistently applying the elusive conceptual distinctions within the doctrine itself.20 While the second method, refining the definition of joint tort-feasor, reduced the number of parties subject to the bar against contribution it tends to place considerable weight on the nature of the injury.21 Under either alternative, the parties and the courts are forced to pursue a very cumbersome and circuitous path towards the just distribution of losses among joint tort-feasors.

17. Gertz v. Campbell, 55 Ill. 2d 84, 302 N.E.2d 40 (1973). In Gertz, partial indemnification was permissible because the injury to plaintiff was divisible, as opposed to indivisible, and because the tort-feasors did not act concurrently, but independently and successively. See note 2 supra. By allowing partial indemnification for the injuries attributable to each tort-feasor, the court, in effect circumvented the rule against contribution.

18. The active-passive doctrine does not apply if the parties are in pari delicto, Sargent v. Interstate Bakeries, Inc., 86 Ill. App. 2d 187, 229 N.E.2d 769 (1967); if the indemnitee is actively negligent, Carver v. Grossman, 55 Ill. 2d 507, 305 N.E.2d 161 (1973); or if the tort-feasors owed the same duty to the injured party, Harris v. Algonquin Ready Mix, Inc., 59 Ill. 2d 445, 322 N.E.2d 58 (1974).

19. See note 12 supra.

20. The conceptual difficulties are illustrated in the following excerpt from a trial record:

Juror: Could I ask one question? Would you clarify a little further this active and passive, just how that is applied? I mean how it is applied here, active and passive negligence. I mean the difference.

The Court: The Court hesitates to give you an illustration of that which is passive and that which is active for fear that you might construe it to be the only evidence of such a situation.

Juror: It means direct and indirect?

The Court: A person, actually this can pretty well be predicated on the proposition that if one just assumed an indifferent or laissez faire attitude, or something, that could be an active negligence, but indifference, on the other hand, may be construed so as to make a case of passive negligence as opposed to active negligence.


21. For a discussion of the historical development of the term "joint tort-feasor" see Prosser, Joint Torts and Several Liability, 25 CALIF. L. REV. 413 (1937).
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Factual Background

Plaintiff, an employee of Hinckley Plastic, Inc., was injured when a safety device on an industrial machine malfunctioned. The machine was owned by Hinckley Plastic, Inc., and manufactured by Reed-Prentice Division Package Machinery Co. The molding machine was being operated by another Hinckley Plastic employee when a safety gate in front of the molding area became disengaged from its rails.22 While plaintiff assisted in the attempt to replace the safety gate, the molding machine closed and injured her right arm.23 Plaintiff filed suit against Package Machinery based on strict tort liability,24 alleging that the injection molding machine was in an unreasonably dangerous condition when it left the defendant's control and that this condition caused her injuries.

The defendant denied plaintiff's allegations and attempted to implead Hinckley Plastic as a third-party defendant.25 In its third-party complaint against the employer, Package Machinery alleged that it was not wholly responsible for the condition of the machine. More than twenty years had elapsed since the machine had been manufactured, and it had been sold and resold as used equipment three times before Hinckley Plastic acquired it.26 The defendant manufacturer further alleged that if the machine was in an unreasonably dangerous condition when plaintiff was injured, such condition was substantially caused by negligent acts or omissions of the plaintiff's employer and other intermediate owners.27 Package Machinery, therefore, should not be required to bear the burden of

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22. Petition For Leave To Appeal, Package Machinery Company, Third Party Plaintiff-Petitioner, Appendix C., Complaint At Law (Plaintiff), A13-A14, para. 3 [hereinafter cited as Petition To Appeal].
23. Id.
24. Id. See also Brief and Argument for Package Machinery Co., Third-Party Plaintiff-Appellant at 11, Skinner v. Reed-Prentice Division Package Machinery Co., No. 48757 (Ill. Dec. 12, 1977) [hereinafter cited as Brief for Appellant].
27. Petition To Appeal, supra note 22 at 7. Third-Party Complaint, supra note 25, Appendix C., A20-A21, para. 7, 8 and 9. The essence of the third-party complaint is: a) Hinckley Plastic purchased the used machine, and put it into operation when it was in a state of disrepair, b) The machine had been modified or rewired so as to cause the safety devices installed by the manufacturer to become inoperative; c) Hinckley Plastic knowingly allowed said machine to be operated without safety guards originally furnished and failed to inspect the machine in operation to determine if it was in a reasonably safe condition; d) Hinckley Plastic failed to have said machine maintained and repaired by a competent foreman or employee who had knowledge of Reed-Prentice Injection Molding Machines. Id. para. 8.
consequences brought about, in part, by the negligence of the employer. Assuming arguendo that it was guilty of the acts alleged in plaintiff's complaint, defendant Package Machinery asserted that plaintiff's injuries were proximately caused by the combined acts of defendant and the employer. The manufacturer thereby characterized itself and the employer as joint tort-feasors. The relief sought by Package Machinery was contribution from Hinckley Plastic on the basis of relative fault or responsibility.

Hinckley Plastic filed a motion to dismiss the third-party complaint. The trial court granted the motion to dismiss, but filed an opinion expressing the view that Illinois should abandon the "active-passive" doctrine and adopt contribution among joint tort-feasors. The court stated, however, that a definitive ruling on the third-party complaint could only be obtained from a court of review.

The dismissal of the third-party complaint was upheld on appeal. The issue presented to the appellate court was whether a manufacturer, held strictly liable in tort, could obtain contribution from a negligent employer in proportion to the misconduct attributable to

29. Petition To Appeal, supra note 22, at 7.
30. The defendant-manufacturer and employer are joint tort-feasors if the definition of joint tort includes concurrently committed torts. However, if the term is restricted to jointly committed torts, there must be a common duty violated. See note 2 supra.
31. "(T)hird-party plaintiff prays that if judgment be entered in favor of plaintiff and against it that judgment be entered against the third-party defendant and in favor of third-party plaintiff in such amount, by way of contribution, as would be commensurate with the degree of misconduct attributable to the third-party defendant in causing plaintiff's injuries." Third-Party Complaint, supra note 22, A21 para. 9.
32. Brief and Argument for Hinckley Plastic, Inc. Third Party Defendant-Appellee, at 17. Skinner v. Reed-Prentice Division Package Machinery Co., No. 48757 (Ill. Dec. 12, 1977) [hereinafter cited as Brief for Appellee] The Appellee does not address the issue of contribution, but frames its analysis under previous case law. Hinckley's position can be summarized as follows: (1) Fault-weighing concepts cannot be applied as a basis for indemnity in strict liability cases; (2) The manufacturer, if liable to the plaintiff, is necessarily an "active" tortfeasor and cannot recover in indemnity regardless of how Hinckley's negligence is classified; (3) If Package Machinery were allowed to recover from Hinckley, the plaintiff-employee would be permitted to do indirectly what she cannot do directly under Workmens' Compensation laws — sue her employer, Id. para. 1-9.
33. See note 13 supra and accompanying text.
34. Petition To Appeal, supra note 22, Appendix B, Opinion and Judgment Order of Circuit Court, A9-A12.
35. "Although the Court is in sympathy with the third-party plaintiff's position and if it had the power to do so would adopt the rule laid down by . . . [Dole v. Dow Chemical Co., 30 N.Y.2d 143, 282 N.E.2d 288 (1972)], it is of the view that [such relief] . . . must come from the reviewing courts of this state . . . ." Id. at A12. However Dole is distinguishable from Skinner in that Dole dealt with a manufacturer seeking partial indemnification, rather than contribution, from an employer of the plaintiff-decedent. Moreover Dole was a suit for negligence not strict tort liability. The Illinois trial court did not allude to these distinctions.
the employer.\textsuperscript{36} The appellate court discussed the policy considerations underlying strict liability,\textsuperscript{37} and noted that prior Illinois decisions had refused to apply the active-passive negligence doctrine to a manufacturer held strictly liable.\textsuperscript{38} Recognizing that the third-party complaint in Skinner sought contribution\textsuperscript{39} instead of relief under the active-passive doctrine, the court concluded that "a decision to apply the theories of contribution in the instant case would require substantive and procedural formulations beyond the authority of this court."\textsuperscript{40} Package Machinery was given leave to appeal the dismissal of its third-party contribution claim to the Illinois Supreme Court. The threshold issue before the supreme court was whether the court could properly abolish the rule against contribution.

\textit{The Illinois Supreme Court Decision}

Initially, the court considered the employer's argument that the legislature was the appropriate forum for the adoption of contribution among joint tort-feasors.\textsuperscript{41} Although the rule against contribution is a product of judicial interpretation,\textsuperscript{42} the employer contended that the abolition of the rule effects "a substantial change in the fabric of tort law in this state . . . best left to the legislature."\textsuperscript{43} The court summarily rejected this assertion, and concluded "Where this court has created a rule or doctrine which, under present conditions, we consider unsound and unjust, we have not only the power, but the duty to modify or abolish it."\textsuperscript{44}

37. The one who created the risk and reaped the profit by placing the product in the stream of commerce should bear the losses caused by a defective product. See Peterson v. Lou Bachrodt Chevrolet Co., 61 Ill. 2d 17, 329 N.E.2d 785 (1975); Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965).
39. See note 12 supra.
40. 40 Ill. App. 3d 99, 104, 351 N.E.2d 405, 409 (1977). The court noted that the third-party complaint could have been interpreted as a defense to the plaintiff's original complaint rather than as a basis for contribution against a third party. An analogous situation arose in Burke v. Sky Climber, Inc., 57 Ill. 2d 542, 316 N.E.2d 516 (1974). In Burke, a manufacturer sought indemnity from the owner of a scaffold upon which the decedent plaintiff was injured. The court held that the third-party complaint alleged a defense to the original action, rather than a ground for indemnification.
41. Skinner v. Reed-Prentice Division Package Machinery Co. No. 48757, slip op. at 7 (Dec. 12, 1977) [hereinafter slip op.].
42. See materials cited in note 50 infra.
43. Brief for Appellee, supra note 32, at 53.
44. Slip op., supra note 41, at 7. But see Maki v. Frelk, 40 Ill. 2d 193, 239 N.E.2d 445
Having resolved the threshold issue, the court considered the application of the principles of contribution to the facts in *Skinner*. The court reached three significant conclusions. First, the court clearly abolished the rule against contribution among unintentional tort-feasors in Illinois.\(^{45}\) Secondly, a manufacturer, held strictly liable in tort, may obtain contribution from a co-tort-feasor on the basis of relative fault or misconduct.\(^{45}\) Finally, in spite of workmen's compensation laws, a third party action for contribution against an employer is available to recover damages paid to an employee.\(^{47}\)

The foremost result of *Skinner* is the recognition that the rule of no-contribution in Illinois is no longer justifiable. The court adopted the philosophy of Dean Prosser that

> [t]here is obvious lack of sense and justice in a rule which permits the entire burden of loss, for which two defendants were equally, unintentionally responsible, to be shouldered onto one alone according to the accident of a successful levy of execution, the existence of liability insurance, the plaintiff's whim or spite, or his collusion with the other wrongdoer, while the latter goes scott free.\(^ {48}\)

In the system of liability based on fault, there is no longer a place for a principle which ignores relative culpability and places the full...
burden of restitution on one who is only partly responsible. In addition to the fundamental unfairness of no-contribution, the court found the historical origins of the Illinois rule illusory. Further, the continuous difficulties of shifting losses under the active-passive exception cast doubt on the efficacy of the no-contribution rule itself.

The second major conclusion reached by the Skinner court is that a manufacturer held strictly liable in tort may obtain relief through the principles of contribution. The court rejected the contention that because "the duty imposed in strict liability is more stringent than in cases involving negligence" defendant-manufacturer should be precluded from seeking contribution. The court held that the policy considerations underlying strict liability are satisfied when the economic loss is imposed on the defendant-manufacturer. Once the manufacturer has discharged its liability to the plaintiff, the principles of strict liability are not defeated by an equitable apportionment of the liability by way of contribution or indemnity.

49. The original text of the opinion of the court in Skinner expressly stated "In our system of liability based on fault there is obvious sense and justice in a rule that extent of fault should govern the extent of liability among tortfeasors." Slip op., supra note 41, at 7. However, as of March 1, 1978 the Skinner opinion was modified to delete this sentence. The significance of this modification may relate to common liability, see discussion in text accompanying notes 87 through 91 infra.

50. A review of past cases in Illinois indicates that there is no broad prohibition against contribution among unintentional tort-feasors. The following cases compromise the origins of the rule: Skala v. Lehon, 343 Ill. 602, 175 N.E. 832 (1931); John Griffiths & Son Co. v. National Fireproofing Co., 310 Ill. 331, 141 N.E. 739 (1932); Wanack v. Michels, 215 Ill. 87, 74 N.E. 84 (1905); Consolidated Ice Machine Co. v. Keefer, 134 Ill. 481 (1890); Johnson v. Chicago and Pacific Elevator Co., 105 Ill. 462 (1882); Nelson v. Cook, 17 Ill. 443 (1856). In spite of the suspect historical origins of the rule against contribution, recent cases flatly state that there is no contribution among joint tort-feasors: Carver v. Grossman, 55 Ill.2d 507, 305 N.E.2d 161 (1973); Muhlbauer v. Kruzel, 39 Ill. 2d 226, 234 N.E.2d 790 (1968); Miller v. DeWitt, 37 Ill. 2d 273, 226 N.E. 2d 630 (1967); Chicago & Illinois Midland Ry. v. Evans Constr. Co., 32 Ill. 2d 600, 208 N.E. 2d 573 (1965). As one commentator observed, "A historical study of case law does not support the supposedly well-settled proposition that contribution is prohibited between negligent joint tortfeasors in Illinois. The law is considered well-settled largely because it has become an unquestioned shibboleth." Polelle, Contribution Among Negligent Joint Tort-feasors in Illinois: A Squeamish Damsel Comes of Age, 1 Loy. Cm. L.J. 267, 268 (1970).

51. Slip op. supra note 41, at 5-7. See notes 18 through 20 supra and accompanying text.

52. Slip op., supra note 41, at 8.

53. Id. See cases collected in note 37 supra for basic policy behind strict liability.

54. The distinction between "upstream" and "downstream" actions for indemnity within the chain of distribution was important under past case law in Illinois. Upstream means against the flow of commerce within the chain, i.e. purchaser-seller-manufacturer. Downstream directly correlates to the flow of the goods through commerce. Courts allowed recovery through indemnification when the action was upstream. See Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965); Texaco v. McGrew Lumber Co., 117 Ill. App. 2d
The final issue addressed in *Skinner* relates to the conflict between an employer's potential liability for contribution and the workmen's compensation laws. The court stated that "the obligation to contribute should extend to all tort-feasors responsible for the injury." Under this rule, the basis for contribution consists of sufficient proof that the conduct of a co-tort-feasor was a contributing cause of the injury. From this perspective it is immaterial that an employee may not have a cause of action in tort against his employer for negligence because of workmen's compensation laws.

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351, 254 N.E.2d 584 (1969). The ground for indemnification was strict tort liability. The rationale behind upstream relief was that a party whose liability arose because of a defective product was entitled to indemnification from those who supplied the product to him. Downstream actions for indemnity were consistently denied, see cases collected in note 38 supra. A party held strictly liable was not permitted relief under the active-passive doctrine because his liability was construed as active, Stanfield v. Medalist Industries, 17 Ill. App. 3d 996, 309 N.E.2d 104 (1974). See also note 18 supra. *Skinner* permits a downstream action for contribution as opposed to indemnity, see note 12 supra. The question of whether an action for downstream indemnity is permitted after *Skinner* is unclear. The essential issue is whether the court should continue to construe liability based upon strict tort as necessarily constituting "active" conduct. However since there is probably no reason for the continued use of the active-passive doctrine with the advent of contribution, the issue may be moot, see discussion in text accompanying notes 92 through 97 infra. Note, the term indemnity discussed herein does not include actions for breach of warranty.

55. *Id.* at 9. The original text of the *Skinner* opinion stated: "equitable principles require that the ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree of culpability of those whose conduct proximately caused them." The *Skinner* opinion was modified on March 1, 1978 to read: "... on the basis of the relative degree to which the defective product and the employer's conduct proximately caused them." This revision emphasizes that the basis for contribution between the strictly liable manufacturer and employer is comparative responsibility as opposed to fault. There is no requirement that a joint tort be committed, see notes 2 and 30 supra.

56. *Id.* at 9.

57. This position is consistent with the previous law as to indemnity. See Miller v. De-Witt, 37 Ill. 2d 273, 226 N.E.2d 630 (1967). There the court held that a party whose passive conduct rendered him liable to an injured employee, may seek indemnification from the employer. However, in the context of contribution the court's reasoning indicates the rejection of common liability as a prerequisite for contribution among joint tort-feasors. Usually, a party is not liable to the original plaintiff. According to *Skinner*, even if a tort-feasor has immunity from suit by original plaintiff, an action for contribution may be effective. Under such an interpretation the immunity goes to the procedural ability to bring suit, rather than substantive liability. How far the court will extend this principle is unclear. The argument against the rejection of the common liability requirement is that it permits the original plaintiff to do indirectly what he was unable to do directly. The defense of immunity is circumvented by the plaintiff's recovery against another tort-feasor, followed by a suit for contribution. See Uniform Contribution Among Tort-feasors Act (1955 Revised Act), 12 U.L.A. (1955 ed.) § 1b; Restatement (Second) of Torts, § 886A.2, Comment g. It is also worth noting that the Committee Report, supra note 8, recommended against allowing an action for contribution against an employer.

The majority of the Committee believes that the high rates currently imposed on employers under workmen's compensation may be viewed as legislative intent to limit employer liability to the rates indicated. It is therefore felt that contribution should not be extended to these cases, and that where the fault of the employer does
The court concluded, "The fact that the employee's action against the employer is barred by the Workmen's Compensation Act would not preclude the manufacturer's third-party action against the employer for indemnification and should not serve as a bar to its action for contribution." If the employer's conduct is a contributing cause of an injury to his employee, then the employer may be found jointly responsible and liable for contribution.

**DISCUSSION**

The critical arguments raised by the dissenting opinions filed in *Skinner* serve as a useful framework for an initial evaluation of the majority position. The dissenting justices do not extol the virtues of the rule against contribution, but contest the application of contribution to the particular facts in *Skinner*. The result reached is considered objectionable for two substantive reasons. First, the majority does not reconcile the conflict between the strict liability theory and contribution. Secondly, allowing an action for contribution against an employer contravenes the scheme of Workmen's Compensation Laws.

**Contribution in Product Liability Cases**

The *Skinner* decision is criticized for its implications with regard to the policies underlying strict liability. The dissent argues that the majority opinion totally ignores Illinois case law dealing with the doctrine of strict liability and therefore impliedly overrules that body of law. This is not an entirely accurate characterization.

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5. Slip op., supra note 41, at 9 (emphasis added).

60. Mr. Justice Underwood raises a procedural objection against the court's adoption of contribution based on Maki v. Frelk, see note 111 infra. See also note 44 supra.

61. Slip op., supra note 59, at 14 (Dooley, J. dissenting). See cases collected in notes 37 and 38 supra.
Skinner distinguishes the policy considerations which govern the plaintiff's recovery from those that dictate apportionment in third-party practice. Certainly, Skinner permits a manufacturer to obtain contribution from a party more proximate to the injured party in the chain of distribution, but the impact on the policies of strict liability, as articulated in past case law, is not as significant as the dissent maintains.

The minority position emphasizes that strict liability is not predicated on negligent conduct, but the character of the product. The inference to be drawn, then, is that strict liability imposes a non-delegable duty to produce a safe product. Assuredly, the prophylactic effect of strict liability on manufacturers is an important consideration within products liability, but there is no evidence which indicates that the "downstream" action permitted in Skinner frustrates this prohibitive effect.

Moreover the minority analysis is incomplete when considered in the context of third-party actions for contribution or indemnity. The approach stresses that concepts of fault and duty are irrelevant under the doctrine of strict liability; yet such concepts determine the rights of third-parties in loss allocation. The minority position leaves the manufacturer without recourse to third-party actions for the distribution of losses arising out of common liability. Strict liability does not dictate this result.

Manufacturers and distributors are held strictly liable for harm caused by their products because liability based on negligence does not adequately protect consumers from risks of bodily harm caused by modern production and marketing systems. Strict liability is often characterized as liability without negligence, but perhaps it is more appropriately termed liability based on policy considerations. The basic thrust of this policy is the protection of the injured plaintiff from the loss caused by a defective product. Thus, the majority

62. See note 54 supra.
65. See note 54 supra.
66. In fact the action allowed in Skinner may reinforce employee safety vis a vis products at work, see note 76 infra.
68. Id.
70. Id. The idea behind making the manufacturer liable is that he is in a better position
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correctly holds that after this policy goal is satisfied, normal equitable principles may apply to govern distribution of losses.\endnote{71}

\textit{Skinner} provides manufacturers with recourse to third-party actions for the allocation of losses on the basis of relative responsibility.\endnote{72} The majority opinion labels the third-party action against the employer in a peculiar fashion. Although the manufacturer asked for contribution on the ground that it was not solely responsible for the injuries sustained by the plaintiff, the court concluded that

the third-party complaint, . . . pleaded in terms of negligence, alleges misuse of the product and assumption of risk on the part of the employer and states a cause of action for contribution based on the relative degree to which the defective product and the employer's misuse of the product or its assumption of the risk contributed to cause plaintiff's injuries.\endnote{73}

In this context, these terms indicate that if an employer uses a machine which is poorly maintained or in a state of disrepair, and as a result, his employee is injured, the employer has assumed the risk of its use on the premises. Thus, while the injured employee is not barred from recovery against the manufacturer, this "misuse" of the product serves as a basis for contribution from the employer-purchaser.

Mr. Justice Dooley criticizes the use of these concepts by the court:

[Assumption of risk] cannot be the basis of a third-party action, [a]nd the majority fails to show how it could be employed in this context. So also, misuse by [a third-party] is erroneously termed a defense. But it is part . . . of plaintiff's action in strict liability . . . to plead and prove that the product was being used for a reasonably foreseeable purpose.\endnote{74}

The use of these terms as a basis for a third-party action is a clear departure from past practice. The majority opinion does not explain why it chose to discuss the third-party complaint in these terms. If the cause of action seeks apportionment of losses to reflect relative responsibility, it should be inferred that the action is essentially based on equitable principles. Thus, the manufacturer should not be required to bear the burden of losses for which another party is

\begin{footnotes}
\item 71. See text accompanying notes 52 through 54 \textit{supra}.
\item 72. The rule of apportionment applied in \textit{Skinner} is discussed in the text accompanying notes 82 through 86 \textit{infra}.
\item 73. Slip op. \textit{supra} note 41, at 9.
\item 74. Slip op. \textit{supra} note 59, at 14-15 (Dooley, J. dissenting).
\end{footnotes}
Contribution in Illinois

responsible. The labels “misuse” or “assumption of risk” add nothing to the substantive cause of action of contribution.

Perhaps the court used the familiar terminology to remove the necessity of articulating the definition of contribution more exactly. Alternatively the terms may establish the basis for qualitative comparison in assessing the relative roles of the employer and manufacturer in causing plaintiff’s injuries. Regardless of how the court chooses to categorize the employer’s liability, it must be contrasted with the strict liability of the manufacturer. Under contribution, an equitable apportionment based on relative responsibility is possible when the trier of fact can weigh the manufacturer’s liability against the employer’s conduct on policy considerations. It is submitted that the “misuse,” (i.e. disrepair or poor maintenance of the product), constitutes those policy considerations, and serves as the basis for a standard of comparison for contribution.

**Contribution and Workmen’s Compensation**

The second substantive objection raised by the dissents in *Skinner* concerns the application of contribution to an employer in apparent circumvention of workmen’s compensation laws. *Skinner* allows a manufacturer to obtain contribution from plaintiff’s employer. Although the manufacturer advocated specific policy grounds for contribution in strict liability cases where an employee is injured by “defective” machinery, the majority opinion does not use these policy factors to justify the avoidance of workmen’s compensation laws. The majority concludes the result in *Skinner* was consistent with allowing actions for indemnity against an employer under the active-passive doctrine. However, in drawing this analogy the court failed to recognize the distinction between the scope of relief under each of these alternatives. The active-passive doctrine permits relief only when there is a gross disparity in the negligence of the parties. Thus, an employer is subject to liability independent of workmen’s compensation only if his culpability is sub-

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75. Committee Report, *supra* note 8, Recommendations of the Committee IV. B. 2(a).
76. Essentially the manufacturer contended that: (1) Injuries to employees caused by defective products frequently involve employer negligence; (2) The risk of injury created by the manufacturer’s product is relatively insignificant when compared to the risk of injury caused by employer’s negligence in maintenance. (3) An employer can indulge in negligent conduct without suffering any loss where an unreasonably dangerous product is found to be a contributing or causative factor in any injuries to his employees; and (4) The employer has no financial incentive to maintain his tools and machinery in a safe condition for his employees. The manufacturer concluded that these results are against public policy because they undermine employee safety. Brief for Appellant, *supra* note 20, at 50-53.
stantially greater. In contrast, contribution exposes employers to liability in many instances where fault being relatively equal the active-passive doctrine would be inapplicable.\textsuperscript{78} In spite of the importance of this distinction the majority does not consider the issue.

Subsequent to \textit{Skinner} an employer will be subject to potential liability in all products liability work-related situations.\textsuperscript{79} \textit{Skinner} will drastically modify the method of distributing losses in employee injury cases. Whether this modification will undermine the workmen's compensation laws remains to be determined. There are grounds which support the conclusion that the statutory liability should be exclusive. First, employers waive many rights in consideration of limited liability under workmen's compensation. Second, the high compensation rates imposed on employers under workmen's compensation signify the legislative intent to limit liability to the rates prescribed.\textsuperscript{80} It is clear that if an employer's liability consistently exceeds the rate of liability under workmen's compensation, the viability of the statutory compensation scheme will be jeopardized. In order to preserve the integrity of the workmen's compensation scheme, procedural steps may be necessary to insure that an employer's liability is limited to the statutory rate.\textsuperscript{81}

\textbf{The Implications of \textit{Skinner} and Contribution}

\textit{Rule of Apportionment}

Although questions concerning the adoption of contribution in Illinois are left unanswered by \textit{Skinner},\textsuperscript{82} the principle applied by the court in resolving the case is significant. When the court apportioned the losses on the basis of relative responsibility, it established the fundamental principle that will serve as a guide for the development of contribution. If the principles in \textit{Skinner} are applied consistently, courts will gradually implement a liberal policy of apportionment of losses among tort-feasors.

The rule of relative responsibility adopted in \textit{Skinner} is far supe-

\textsuperscript{78} See notes 18 and 57 supra.

\textsuperscript{79} Work-related injuries constitute a class of cases estimated to encompass 85\% of all product liability suits. See Insurance Co. of North America Products Liability: Some Professional Considerations, Booklet HH-8306-3 (1978) quoted in slip op., supra note 59, at 14, 21-22 (Dooley, J. dissenting).

\textsuperscript{80} See note 57 supra.

\textsuperscript{81} Pennsylvania allows contribution against an employer, but limits an employer's liability to rates under workmen's compensation laws. See O'Connor v. Alan Wood Steel Co., 150 F. Supp. 435 (E.D. Pa. 1957); Brown v. Dickey, 397 Pa. 454, 155 A.2d 836 (1959); Maio v. Fahs, 339 Pa. 180, 14 A.2d 405 (1940); It is perhaps significant that in Illinois, an employee's workmen's compensation recovery is not admissible as evidence in the employee's action against a third party, Miller v. DeWitt 37 Ill. 2d 273, 226 N.E.2d 630 (1967).

\textsuperscript{82} See text accompanying note 108.
rior to a pro-rata division of losses. Pro-rata recovery involves the division of losses equally among joint tort-feasors, but ignores the disproportionate fault or causal negligence of the parties. Although apportionment of losses pro-rata is simple, it is inconsistent with the general principle that fault should govern the extent of liability. In addition, the concept of joint tort-feasor, with its inherent definitional problems, retains importance in a pro-rata distribution scheme because once a defendant is considered liable as a joint tort-feasor he is responsible for a pro-rata share of the losses. In relative responsible apportionment, however, the concept is immaterial as the determinative factor is the extent to which a tort-feasor’s conduct contributes to plaintiff’s injury. Usually under a relative fault approach the trier of fact will determine on a percentage basis the degree of responsibility in causing a plaintiff’s injuries, and loss will then be distributed in proportion to the allocable fault. The decision to apply the rule of relative fault emphasizes the essential fairness of dividing damages on the basis of responsibility as opposed to artificial shares. Moreover the application of these principles in Skinner to a strictly liable tort-feasor signifies that the ultimate standard for assessing fault is causative responsibility.

Common Liability

The majority rule is that common liability is a prerequisite to contribution, and that a right of contribution does not accrue

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83. See Kohr v. Allegheny Airlines, 504 F.2d 400, 405 (7th Cir. 1974), cert. denied, 421 U.S. 978 (1975). Admittedly pro rata apportionment is the most widely accepted method because its mechanics are simple and expedient. Herein the relative fault approach is considered superior because apportionment of losses reflect responsibility.

84. The total damages are divided by the number of joint tort-feasors held liable. See Uniform Contribution Among Joint Tort-feasors Act, (1955 version) 12 U.L.A. § 2 (1975 ed.). Relative fault the other traditional method of apportioning damages involves contribution in proportion to responsibility. The Committee Report, supra note 10, recommended that liability be apportioned on the basis of relative fault. The defendant manufacturer in Skinner also argued that if contribution was adopted in Illinois it should be on the basis of relative fault, Brief for Appellant, supra note 22, at 45-57. It is worth noting that although the rule of relative fault is considered the better rule of apportionment, note 83 supra, the choice may have little practical significance where tort-feasors are equally responsible. See Summers v. Tice, 33 Cal. 2d 80, 199 P.2d 1 (1948); PROSSER, LAW OF TORTS § 52 (4th ed. 1971).

85. The majority opinion does not articulate the exact mechanics of the rule of apportionment, but percentage comparison is normally employed. See Schwartz, Comparative Negligence (1974).

86. While there is no requirement that a joint tort be committed, see note 2 supra, the causative responsibility of each party must sound in tort. There is no indication that the principles of contribution in Skinner apply to individuals who are not tort-feasors. This may be another reason for the court’s speaking in terms of “misuse” or “assumption of risk”. New York does not limit its contribution statute to liability in tort. N. Y. Civ. Prac. 1401 § 1 (1974). See also Committee Report, supra note 8, Legislation Proposed V.

87. PERSONAL INJURY, supra note 6, § 4.01.
against a defendant unless he is a tort-feasor originally liable to plaintiff. According to this interpretation contribution is derivative of plaintiff's cause of action. Consequently if, as a matter of law, the injured party has no cause of action against a tort-feasor, there is no basis for contribution against that tort-feasor for his concurring negligence. 

89. *Skinner* rejects the prerequisite of common liability for an action of contribution, and implicitly recognizes that it is a new right of action independent of the original plaintiff's claim. Skinner allows a manufacturer to recover against the employer even though the injured party could not raise a claim directly against the latter because of workmen's compensation laws. While this result supports the inference that immunity from suit by the original plaintiff is only a procedural formality and does not affect substantive liability in third-party suits, it is unlikely that *Skinner* signals a trend toward the abandonment of all distinctions which prevent proportionate fault from governing the extent of liability. Moreover it is unclear whether the court will extend its rejection of common liability beyond the facts of *Skinner*. 

**Contribution and Indemnity**

The recognition of contribution in Illinois should curtail the creative expansion of indemnity, and eliminate the need to provide recovery through implied indemnity under the active-passive negligence doctrine. To the extent that an indemnitor bears consequences brought about by the action or inaction of an indemnitee, the operation of the active-passive doctrine is contradictory to the ideal that fault should govern the scope of liability. The rule of apportionment in *Skinner* will permit a more equitable distribution of damages because the loss imposed will truly reflect the degree of

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88. See Slip op., supra note 59, at 19 (Dooley, J. dissenting).
89. PERSONAL INJURY, supra note 6, § 1.03[3].
90. See note 49 supra.
91. For example the court's reasoning could equally apply to family immunity. Thus, a spouse could be impleaded for contribution by the principal defendant even though interspousal immunity bars plaintiff from suing the third-party defendant, spouse, in a direct action. This view indicates contribution is not a recovery for the tort, but the enforcement of an equitable duty to share liability for the wrong done. See PERSONAL INJURY, supra note 6, § 4.05.
92. Committee Report, supra note 8, Recommendations of the Committee, IV. B.1. The Committee concluded a more restrictive rule of indemnity necessarily follows from the adoption of contribution. See Liberty Mutual Insurance Co. v. Williams Machine & Tool Co. 62 Ill.2d 77, 84, 338 N.E.2d 857, 861 (1975). The active-passive doctrine was created as a "means to do justice within the law" when the rule against contribution was in effect, see note 13 supra.
93. See notes 18 through 21 and accompanying text supra.
However, the adoption of contribution should not imply the elimination of the action for indemnity as it existed at common law. To the contrary, where such a right to indemnity exists, that right should control and contribution should not be permitted. Thus, while Skinner should abolish recovery through implied indemnity, the case should not be interpreted as modifying common law indemnity.

Contribution Among Intentional Tort-feasors

Although the majority opinion concludes that there is no valid reason for the continued existence of the no-contribution rule, Skinner may suggest that the rule against contribution among intentional tort-feasors remains in effect. Skinner predicates the manufacturer's recovery in contribution on a finding that the duty imposed in strict liability is not more stringent than in cases involving negligence. Arguably the policy considerations may be quite different when discussing contribution among intentional tort-feasors. The duty breached in an intentional tort is construed as more stringent than that in negligence. Traditionally the intentional tort-feasor is held liable for all the consequences of his action apart from any question of foreseeability. On this basis some authorities still advocate the application of the rule against contribu-

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94. See Committee Report, supra note 8, Recommendations of the Committee IV. B. 1 and 2. For example, while indemnity is now permitted under the Structural Work Act in favor of the "lesser delinquent party", contribution will permit a more equitable apportionment. Id. at 2(b).

95. For a discussion of the notion of contract indemnity vis a vis the rule against contribution, see Furnish, Distributing Tort Liability: Contribution and Indemnity in Iowa, 52 IOWA L. REV. 31 (1966). See also Committee Report, supra note 8, Recommendations of the Committee IV.B.1.

96. RESTATEMENT (SECOND) OF TORTS § 886 A. 3 (1970), "Where one tortfeasor has a right of indemnity against another neither of them has a right of contribution against the other."

97. Mr. Justice Dooley submits the apparent effect of Skinner "is to abolish indemnity. 'Total indemnification' (Robinson), 'partial indemnification' (Skinner and Stevens) and contribution are all treated interchangeably". Slip op., supra note 59, at 24 (Dooley, J. dissenting) [Mr. Justice Dooley refers to the companion cases decided with Skinner, see note 11 supra]. While the Skinner "trio" may perpetuate considerable confusion over the terms "indemnity" and "contribution", see Prosser, LAW OF TORTS § 51 (4th ed. 1971), the majority does not address question of how contribution will effect recovery through indemnification.

98. See text accompanying note 10 supra.

99. The rule against contribution in its original formulation only barred contribution among joint tort-feasors, see note 1 supra. Moreover while the rule against contribution among unintentional tort-feasors may have questionable historical origins, the rule against contribution among intentional tort-feasors is quite another matter. See note 50 supra.

100. See text accompanying note 52 supra.

101. The classic illustration of this principle is the situation where an "egg shell headed" plaintiff is injured by an act that constitutes intentional battery. The intentional tort-feasor is responsible for the consequences of his action whether foreseeable or not.
tion when the tort was one of intentional misconduct or of concerted action.\textsuperscript{102} Notwithstanding these factors it has been argued that the best rule takes a uniform approach towards all torts, leaving it to the trier of fact to weigh relative culpability.\textsuperscript{103} The majority rule adopts the approach which allows contribution between intentional tort-feasors.\textsuperscript{104} Since \textit{Skinner} does not explicitly distinguish the rule against contribution as it is applied to unintentional and intentional tort-feasors, the question of which position the court has adopted remains somewhat speculative.\textsuperscript{105}

\section*{The Aftermath of \textit{Skinner}}

Originally the \textit{Skinner} opinion lacked guidelines for the implementation of the new principle it adopted. Mr Justice Dooley advocated that the decision be given prospective application to prevent injustices and hardships due to reliance on the over-ruled principles.\textsuperscript{106} On a denial of rehearing the court filed a supplemental opinion that modified its decision in \textit{Skinner} to apply, "prospectively to causes of action arising out of occurrences on or after March 1, 1978."\textsuperscript{107} While this alteration resolved the immediate difficulties presented by \textit{Skinner}, questions concerning the adoption of contribution in Illinois remain unanswered.

\textit{Skinner} fails to indicate the method for practically dividing losses between tort-feasors.\textsuperscript{108} To an extent \textit{Skinner} leaves most basic ques-

\begin{enumerate}
\item[102.] See \textit{Uniform Contribution Among Tortfeasors Act} § 1 (c) (1955 version), "There is no right of contribution in favor of any tort-feasor who has intentionally . . . caused or contributed to the injury or wrongful death."; \textit{Restatement (Second) of Torts} § 886A. "(3) There is no right of contribution in favor of any tort-feasor who has intentionally. . . caused the harm." \textit{Accord}, Iowa, Kentucky, Louisiana, Minnesota, Oregon, Pennsylvania, Tennessee, Virginia. \textit{Personal Injury}, supra note 6 § 1.03 (2), p. 661 n. 4.
\item[103.] See \textit{Committee Report}, supra note 8, Recommendations of the Committee, IV.B.2(e).
\item[104.] See \textit{Personal Injury}, supra note 6, § 1.03 (2), p. 663.
\item[105.] Mr. Chief Justice Ward notes that the majority opinion is equivocal on this point, and concludes "the rule denying contribution [with respect to intentional tort-feasors] should be preserved. I would state that it is being retained." Slip op., supra note 59, at 11 (Ward, C.J. dissenting).
\item[106.] See slip op., supra note 59, at 26 (Dooley, J. dissenting). The doctrine which supports this result is commonly referred to as the "Sunburst" rule. \textit{See Great Northern Ry. Co. v. Sunburst Oil & Refining Co.}, 287 U.S. 358 (1932). \textit{See also Schaefer, The Control of "Sunbursts"}, Techniques of Prospective Overruling, 42 N.Y.U.L. Rev. 631 (1967). Note that a Petition for Certiorari was filed on this prospective application, 77-1494: \textit{Skinner v. Reed-Prentice Division Package Machinery Co.}, 4/19/78.
\item[107.] Slip op., supra note 41, at 9.
\item[108.] Mr. Chief Justice Ward concluded, "Although the majority opinion does not elaborate on its meaning, [the] standard suggests some quantitative comparison of fault, such as 60 percent to 40 percent, instead of the qualitative comparison of active and passive made indemnity cases." Slip op., supra note 59, at 10 (Ward, J. dissenting). He also notes that the
tions of mechanics open to speculation. In this respect the court announces a new doctrine without clarifying how its new teaching shall be put into practice.\textsuperscript{108} In the context of modern tort litigation a reviewing court should consider immediate procedural problems to facilitate the operation of the rule in the trial courts.\textsuperscript{110}

Aside from the practical concerns left unanswered by \textit{Skinner}, there are many other companion procedural problems presented by the adoption of contribution. A reviewing court can not be expected to resolve all these matters in a single pronouncement.\textsuperscript{111} Only a legislative forum presents the opportunity to view an area as a whole, and at one time propose answers to those problems which may be foreseen.\textsuperscript{112} For this reason the legislature is the more appropriate forum for the disposition of these questions. Legislation should consider the three basic contexts within which contribution is exercised:

1. The injured party and all tortfeasors, including impleaded parties, are before the court as active litigants and judgment is rendered establishing liability of all tortfeasors to the injured party;

2. The injured party brings an action against one tortfeasor who then brings a separate action for contribution against the other concurrent tortfeasor upon the judgment rendered against him; and

3. The injured party settles with one tortfeasor who then brings an independent action for contribution against another tortfeasor.\textsuperscript{113}

The legislation should also establish: the effect of a settlement by a tortfeasor;\textsuperscript{114} the effect of a release or covenant not to sue;\textsuperscript{115} the

\textsuperscript{108} Mr. Justice Dooley argues that the majority has an obligation to spell out in detail how its new rule will be put into practice, slip op., \textit{supra} note 59, at 26 (Dooley, J. dissenting). \textit{See} Hoffman v. Jones 280 So.2d 431 (Fla. 1973); Nga Li v. Yellow Cab Co., 13 Cal.3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975). \textit{See also} \textsc{Schwartz, Comparative Negligence}, § 21.7 (1974).

\textsuperscript{109} \textit{See} Keeton, \textit{Creative Continuity In The Law Of Torts}, 75 \textsc{Harv. L. Rev.} 463 484-86 (1962).

\textsuperscript{110} Mr. Justice Underwood concludes that \textit{Skinner} is the obvious forerunner of other equally substantial innovations in the tort law of Illinois, and the legislature is fair preferable for acting upon all of the areas in which this new law will require change, slip op., \textit{supra} note 59, at 13 (Underwood, J. dissenting).

\textsuperscript{111} \textit{See} Committee Report, \textit{supra} note 15, Recommendations of the Committee IV A3.

\textsuperscript{112} \textit{See} \textsc{Personal Injury}, \textit{supra} note 6, § 1.03 at 888-89.

\textsuperscript{113} \textit{See} \textsc{Personal Injury}, \textit{supra} note 6, § 1.04.

\textsuperscript{114} \textit{See} \textsc{Personal Injury}, \textit{supra} note 6, § 1.05.
CONCLUSION

An eventual consequence of *Skinner* on third-party practice in Illinois will be an increase in contribution claims filed by manufacturers against employers in work-related injury cases. Although the adverse impact on employers may be exaggerated, it is clear that if the purpose of workmen's compensation laws is frustrated, the legislature or courts will have to take steps to modify the method of apportioning losses in such cases. While *Skinner* abolished the rule against contribution, the ultimate significance of the decision might well be to prompt the legislature to address the problems of contribution in Illinois. A comprehensive statutory scheme of contribution would reduce the uncertainties produced by *Skinner* and avoid the proliferation of needless litigation. Until legislative action is taken, however, the courts must gradually implement a framework for distributing losses arising out of common responsibility. The principles enunciated in *Skinner* should serve as the basis for either judicial or legislative action.

**Timothy J. Rivelli**

116. See PERSONAL INJURY, *supra* note 6, § 4.08.
117. See PERSONAL INJURY, *supra* note 6, § 4.01.