MARYLAND Association of COUNTIES

MACo Position Statement on Contributory Negligence

Date: March 6, 2013

To: Judiciary Committee
From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) supports the retention of the common law doctrine of contributory negligence for the state of Maryland and would resist the conversion to a comparative fault model. This position statement restates MACo's long-standing position with respect to comparative fault.

With the case of *Coleman v. Soccer Association of Columbia*, the Maryland Court of Appeals is poised to potentially change Maryland's longstanding liability system to a comparative fault model. Such a change could have potentially significant policy and fiscal impacts for the State, local governments, and the private sector.

(1) ***General Assembly Has Spoken on Comparative Fault***
MACo believes that the decision of whether to change Maryland's fault model properly rests with the General Assembly. The issue of whether to adopt a comparative fault model has been before the General Assembly many times in the past, with the last being in 2007 when the Legislature considered House Bill 110 and Senate Bill 267. Attached is a summary of comparative fault negligence considered by the General Assembly from 1983 to 2012 that was included in an *amicus curiae* brief for the *Coleman* case submitted on behalf of local governments. In each instance the Legislature has declined to switch from the contributory negligence standard.

(2) ***Ancillary Statutory Provisions Are Linked to Contributory Negligence***
If Maryland were to consider moving to a comparative fault model, the change would also require modifications to statutory law in addition to the common law. In order to make contributory negligence a fair model for both plaintiffs and defendants, the General Assembly has enacted statutory provisions simplifying plaintiff recovery (including joint and several liability and the joint *tortfeasor* statute) and exceptions to the

169 Conduit Street, Annapolis, MD 21401
410.269.0043 BALT/ANNAP ◆ 301.261.1140 WASH DC ◆ 410.268.1775 FAX
www.mdcounties.org

contributory negligence rule (including the seatbelt rule, drug user against drug dealer, and others).

While these ancillary statutory provisions work well and provide balance under a contributory negligence system, they would create a significant imbalance that would favor the plaintiff's side under a comparative fault system. While the Court of Appeals can change the common law liability standard to that of comparative fault through the *Coleman* case, it would fall to the General Assembly to change these ancillary statutory provisions. In order to avoid the creation of an unbalanced and unfair fault system, it is imperative that any change in the common law fault model be considered concurrently with changes to the ancillary statutory provisions.

Conclusion

Maryland's adherence to a contributory negligence standard is sensible public policy, promoting responsible citizen behavior and a clear legal standard for jury consideration. The principle requires citizens to act responsibly if they seek judicial assistance for injuries. In addition, the principle is easily understood, particularly in contrast to a comparative fault standard.

MACo believes that the decision of whether to change the state's fault model should ultimately rest with the General Assembly because of its significant past history with the issue and because of the many linkages to statutory provisions that would also need to be altered should the State move to a comparative fault standard. Accordingly, MACo urges the Committee to take action to maintain contributory negligence as the State's fault model.

IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2012

No. 9

JAMES COLEMAN,
Petitioner,

v.

SOCCER ASSOCIATION OF COLUMBIA, *et al.*
Respondents.

ON WRIT OF *CERTIORARI* TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF *AMICI CURIAE* LOCAL GOVERNMENT INSURANCE TRUST MARYLAND ASSOCIATION OF COUNTIES MARYLAND MUNICIPAL LEAGUE MAYOR AND CITY COUNCIL OF BALTIMORE

David M. Funk
dfunk@fblaw.com
Karen J. Kruger
kkruger@fblaw.com
Funk & Bolton, P.A.
36 South Charles Street, Twelfth Floor
Baltimore, Maryland 21201-3111
(410) 659-7700
Attorneys for Amicus Curiae
Local Government Insurance Trust
Maryland Association of Counties
Maryland Municipal League
Mayor and City Council of Baltimore

APPENDIX

Comparative Negligence Legislative Activity (1983 – 2012)

Year		Bill No.		Type**		Disposition
1983	*					
1984		S.B. 12		Not As Great As		HSE unf jud
1985		S.B. 21		Not As Great As		HSE 3rg fld
1986		S.B. 589		Not As Great As		HSE unf jud
1987		H.B. 1198		Not As Great As	+	HSE unf jud
		S.B. 218		Not As Great As	+	HSE unf jud
1988		H.B. 1314		Not As Great As	+	HSE unf jud
		S.B. 232		Not As Great As	+	HSE unf jud
1989	*					
1990		H.B. 1013		Not As Great As	+	HSE unf jud
1991	*					
1992	*					
1993		H.B. 1094		Not Greater Than	+	HSE wdr jud
		S.B. 266		Not Greater Than	+	SEN unf jpr
1994	*					
1995	*					
1996		H.B. 836		Not Greater Than	+	HSE wdr jud
1997		H.B. 846		Not As Great As	+	HSE unf jud
1998		S.B. 618		Not As Great As	+	SEN unf jpr
1999		H.B. 551		Not As Great As	+	HSE unf jud
2000		S.B. 779		Not As Great As	+	SEN unf jpr
2001		S.B. 483		Not As Great As	+	SEN unf jpr
2002		S.B. 872		Not As Great As		SEN 1rg sru
2003	*					
2004	*					
2005	*					
2006	*					
2007		H.B. 110		Not As Great As	+	HSE wdr jud
		S.B. 267		Not As Great As	+	SEN 1rg jpr
2008	*					
2009	*					
2010	*					
2011	*					
2012	*					

+ Opposed by local governments in committee testimony.

* No comparative fault legislation introduced.

** *See Harrison*, 295 Md. at 448 n. 3, for a description of types of comparative fault.