

### Facts:

You are a newly-admitted attorney in the State of Nirvana. Nirvana has recently enacted a comparative negligence statute. The comparative negligence statute is effective January 1, 2016. On January 10, 2016, Jeff is injured in an automobile accident and suffers \$200,000.00 in injuries, which includes \$40,000.00 worth of medical/hospital bills. Jeff comes to your office on January 1, 2018. Fortunately for Jeff, you are able to convince Jeff's medical insurance company to pay Jeff \$40,000.00 to cover the medical/hospital bills.

You then file a lawsuit against Dale, the driver of the other automobile in the accident. At trial, the jury determines that Jeff's injuries are indeed worth \$200,000.00, but also finds that Jeff was 30% negligent and that Dale was 70% negligent.

### Questions:

1. How much money should Jeff recover from Dale?
2. Assume Nirvana has enacted a two-year statute of limitation for tort actions, would Jeff's case be time barred?
3. Do the payments made by Jeff's medical insurance company reduce Jeff's recovery?

### Example Answer:

1. \$140,000.00. Compensatory damages for personal injury include the elements of loss of earnings, medical expenses, and pain and suffering. Here, the facts indicate that the jury has found that Jeff's injuries are worth \$200,000.00. The issue is whether Jeff's injuries are somehow reduced by the finding of partial negligence on his part.

In a comparative negligence state, a contributorily negligent plaintiff is allowed to recover his or her damaged reduced by the percentage of negligence attributable to plaintiff. That is, the plaintiff's damages are reduced according to his proportionate share of fault. There are two types of comparative negligence scheme: (1) modified comparative negligence; and (2) pure comparative negligence. In a modified comparative negligence state, plaintiff's negligence cannot be equal to or greater than Defendant's. In a pure comparative negligence state, plaintiff may obtain a reduced recovery even where plaintiff's negligence exceeds a defendant's negligence.

The fact pattern does not indicate whether Nirvana is a modified or pure comparative negligence state. However, that does not matter because Jeff's negligence does not exceed that of Dale's negligence. Consequently, Jeff will be entitled to recover \$140,000.00 (\$200,000.00 - \$60,000.00 [i.e., 30% × \$200,000.00]).

2. No, assuming that the Complaint was filed before January 10, 2006. A statute of limitation is a law which sets the maximum period which one can wait before filing a lawsuit, depending on the type of case or claim. Most states have a two-year statute of limitation for personal injury/tort actions. The question states that Nirvana has enacted a two-year statute of limitation. In the case at hand, the accident occurred on January 10, 2016. Consequently, a Complaint would have to be filed by January 10, 2018. Here, the Complaint would not be time-barred if it was filed before January 10, 2008.

3. At common law, a plaintiff's compensation from collateral sources (e.g., insurance, government benefits) does not reduce plaintiff's recovery of compensatory damages from a defendant. Under this rule, Jeff's recovery is not reduced by the payment by his medical insurance company. However, it is also possible that Jeff's medical insurance company would want to be reimbursed for the monies it paid out. Subrogation is a right held by most insurance companies to legally pursue a third party that caused an insurance loss to the insured.