

**7.16 APPORTIONMENT WHERE THE ACTS, OR INACTIONS, OF AN INDIVIDUAL OR ENTITY SUBSTANTIALLY CONTRIBUTED TO THE ALLEGED HARM** (Approved 10/1991; Revised 09/2018)

In this case, [*one party*] alleges that the acts of [*individual or entity subject to allocation*] were negligent, willful, wanton or malicious, or intentional. If you find that the act, or failure to act, by [*individual or entity subject to allocation*] was negligent, willful, wanton or malicious, or intentional conduct and that his/her/its action, or inaction, substantially contributed to the harm, then you are to apportion the fault of all individuals and entities subject to allocation. In other words, you are to apportion the total responsibility of each individual or entity, depending on the degree of fault you assess to each individual or entity, including the fault attributable to an individual or entity whose acts are negligent, willful, wanton, malicious, in reckless disregard of one's safety, or intentional.

***NOTE TO JUDGE***

If the above is charged, the jury should also be given definitions of negligence, willful, wanton and malicious or of intentional acts as well as proximate cause. Intentional acts include, but are not limited to fraud, Consumer Fraud Act claims, breach of contract, tortious interference, and malicious use of process.

The law expressed in *Draney v. Bachman*, 138 N.J. Super. 503 (Law Div. 1976), was found to have been “eroded by subsequent developments in the law of comparative fault.” See *McCann v. Lester*, 239 N.J. Super. 601, 609 (App. Div. 1990) (holding that overall fault of all parties is to be measured and compared).

In *Blazovic v. Andrich*, 124 N.J. 90 (1990), *McCann* is cited with approval. *Blazovic* then holds that intentional acts are likewise to be compared.

And see *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 608-609 (1997) (applying the requirements of the Comparative Negligence Act to an action alleging the intentional tort of common law fraud, as well as claims under the Consumer Fraud Act); *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 N.J. 67, 88-89 (1954) (holding that a plaintiff's damages for the intentional tort of fraud should be shared on a pro rata basis under the Joint Tortfeasors Contribution Law among five defendants who allegedly participated in the fraud); *Hill v. N.J. Dept. of Corrs. Com'r.*, 342 N.J. Super. 273, 285 (App. Div. 2001), *certif. den.*, 171 N.J. 338 (2002) (noting the comparative fault allocation in a case in which the plaintiff had alleged conspiracy, tortious interference with economic advantage, and intentional infliction of emotional distress).

See also *Baglini v. Lauletta*, 338 N.J. Super. 282, 306 (App. Div.), *certif. den.*, 169 N.J. 607 (2001) (contemplating a jury apportionment of fault among multiple defendants in a malicious use of process case, provided that there was a "rational basis" for an apportionment); *Girl v. Rutgers Cas. Ins. Co.*, 273 N.J. Super. 340, 352 (App. Div.), *certif. den.*, 139 N.J. 185 (1994) (ruling that fault should be apportioned between a malicious civil prosecution and a breach of either a contract or a regulatory duty alleged to have caused the same damages); *Neveroski v. Blair*, 141 N.J. Super. 365, 384-385 (App. Div. 1976) (a pre-comparative-fault case providing for pro rata contribution under the Joint Tortfeasors Contribution Law among one defendant liable under the Consumer Fraud Act and two other defendants liable on a common law fraud theory).

See *Dunn v. Praiss*, 139 N.J. 564, 577-578 (1995) (when a breach of contract is a proximate cause of a personal injury, liability for the injury may be apportioned between the breaching party and a negligent tortfeasor whose conduct contributed to the same injury). See also *Velop, Inc. v. Kaplan*, 301 N.J. Supp. 32, 41, 58 (App. Div. 1991), *app. dism'd*, 153 N.J. 45 (1998) (concluding that contractual fault may be compared to several types of tortious fault when the damages for breach

of contract are the same as the damages under the various tort theories).

“Applied together, the Comparative Negligence Act and the Joint Tortfeasors Contribution Law comprise the statutory framework for the allocation of fault when multiple parties are alleged to have contributed to the plaintiff’s harm.” *Jones v. Morey’s Pier, Inc.*, 230 N.J. 142 (2017); *Town of Kearny v. Brandt*, 214 N.J. 76, 96 (2013).