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Nevada State Legislature
Senate Judiciary Committee

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RE: SB 431, Civil Actions – NAMIC’s Written Testimony in Opposition

Dear Senator Tick Segerblom, Chair; Senator Nicole J. Cannizzaro, Vice-Chair; and honorable members of the Senate Committee on Judiciary:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the April 5, 2017, public hearing.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 162 members in the State of Nevada, who represent 36% of the insurance market.

NAMIC is opposed to SB 431, because the proposed changes to the law on comparative negligence are unnecessary, unfair to defendants, and likely to lead to increased litigation costs for the parties.

From a public policy standpoint, we question what is the legal problem that this proposed legislation is intended to address? Current law allows a defendant to assert comparative negligence as an affirmative defense to be addressed at trial by the trier of fact (often times the jury). If a plaintiff believes that there is no genuine dispute as to any material facts that support defendant’s assertion of the affirmative defense of comparative negligence, the plaintiff may file a motion for a partial summary judgment on the issue and have the judge rule on it *early on* in the litigation process.

The proposed legislation authorizes the judge to decide at the *end* of the defendant’s case in chief (close to the end of the trial process) whether or not to submit the defendant’s affirmative defense to the trier of fact (often the jury). In essence, this would require the parties to have to address the comparative negligence issue at trial with evidence and testimony, without knowing whether the judge is even going to allow the jury to decide whether the plaintiff is comparatively at fault, possibly to a level of comparative negligence where the plaintiff’s claim is barred. NAMIC is concerned that this will needless prolong the litigation process and increase insurance defense costs and expenses, which are an insurance rate cost-driver.

Additionally, NAMIC is concerned that the proposed legislation may have unintended adverse procedural implications for the defendant. Specifically, if a defendant asserts comparative negligence as an affirmative defense and the plaintiff files a motion for partial summary judgment on the issue, the judge will rule on this matter prior to trial and the parties may seek reconsideration of the court order on the motion or file an appeal on the issue before the trial. The proposed legislation would postpone the court’s decision on this important legal issue until after the trial. This could have significant legal and tactical

implications on the parties' respective right to appeal the judge's ruling on the comparative negligence affirmative defense.

Finally, NAMIC is concerned that the proposed legislation may have a chilling effect upon pre-trial settlement negotiations. If the parties, won't know for certain whether the defendant's comparative negligence affirmative defense will go to the jury for decision-making until the end of the trial, the parties will be lacking key information necessary for pre-trial settlement negotiations to be meaningful. For example, if the plaintiff knows early on in the litigation process that their comparative negligence is going to be presented to the jury and could reduce their award or bar recovery, this impacts the parties' motivations for settlement and key details of the settlement, including the amount of the damages.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on SB 431, because the proposed change in law is likely to create, not eliminate legal and procedural problems for litigants.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs, Western Region