

January 19, 1990 LB 159

blame for, do you think that's fair, Senator McFarland, when the plaintiff was 40 percent to blame. Just answer me yes or no.

SENATOR McFARLAND: I think it's incorrect the way it's been answered.

SENATOR SMITH: Oh, see, now...so I'm ignorant, so I...but now whose going to tell me the answer to this? We have two attorneys here that disagree.

SENATOR McFARLAND: Can I respond, am I on?

PRESIDENT: Yes, please do.

SENATOR McFARLAND: My understanding is...

SENATOR SMITH: Briefly, please.

SENATOR McFARLAND: ...if you had a \$100,000 judgment...

SENATOR SMITH: No, I want you to use the percentages I was talking about.

SENATOR McFARLAND: The plaintiff is 40 percent responsible...

SENATOR SMITH: Yes.

SENATOR McFARLAND: ...he actually forfeits \$40,000, he doesn't reccover it. One plaintiff...one defendant is 20 percent responsible and the others don't have enough money to pay, then that \$40,000 that is unpaid would be apportioned between the responsible defendant and the plaintiff. And since the plaintiff was twice as responsible as the 20 percent defendant of that other \$40,000 that would be unpaid, it would be split up two to one, plaintiff would have to, in effect, forfeit two-thirds of that \$40,000.

PRESIDENT: One minute.

SENATOR McFARLAND: The defendant that was 20 percent would have to pay the additional third of that \$40,000.

SENATOR SMITH: So they'd split the difference between the ones that were not, that could not pay their share.