

PRESIDENT: Senator Kristensen, please, would you respond.

SENATOR ELMER: Okay. Senator Pirsch and Senator Smith talked about this a little bit. But taking a possible scenario of something that could happen, say a mother picks up her children after school and is on her way home and she's driving down the highway at...within the speed limit, and a motorcycle rider slides across the highway in front of her, and she, in avoidance of this motorcycle, goes off the road and hits a utility pole, kills one of her children. She brings an action against the motorcycle driver for forcing her off the road, and names as party to this suit the city, because the light pole was there. And jury assigns maybe 5 percent responsibility to the city, because of the light pole, and 95 percent liability to the motorcycle rider and awards them \$500,000. Okay, in trying to get the 95 percent of that from the motorcycle rider they find he is incompetent, he's drunk, he has no insurance, he's been living in a tent under the railroad bridge and has no financial capability. What does that do the city and it's light pole?

SENATOR KRISTENSEN: You're asking me if they cannot collect the debt from the motorcycle operator, and he was 95 percent liable, the plaintiff had no contributory negligence at all.

SENATOR ELMER: None at all.

SENATOR KRISTENSEN: Okay. It would be the same as if we...if it had happened under the current lawsuit system we have today.

SENATOR ELMER: Which is?

SENATOR KRISTENSEN: Which is that the first defendant, which would have been the city or the county, whoever, would be liable for the entire amount of the judgment, up to the amount of their cap, and they have a liability cap for their protection, so they don't have tremendous amounts of awards.

SENATOR ELMER: So, because that motorcyclist, you know and really that light pole being there, a very, very small part of it, but they're going to end up paying to the maximum.

SENATOR KRISTENSEN: ...of their cap, right. Same as they would today under our current system.