

**Where Subsequent Tortfeasor Contributes To Indivisible Injury Initially Caused  
By Prior Tortfeasor, Both Are Fully Liable For Damages**

<b>Reported Case</b>	<b><i>Bradley v. Groves</i></b>
<b>Citation</b>	2010 BCCA 361
<b>The Court</b>	B.C. Court of Appeal
<b>At Issue</b>	Apportionment of damages between successive tortfeasors
<b>Factual Summary</b>	The plaintiff was injured in two successive motor vehicle accidents and was not contributorily negligent in either one. She was 80% recovered from MVA#1 at the time of MVA#2. The trial judge held the MVA#1 defendant liable for all the damages awarded (i.e. from both accidents, as the MVA#2 defendant was unidentified). Had the trial judge been required to apportion damages, he would have apportioned 80% to MVA#1 and 20% to MVA#2.
<b>Decision</b>	<p>The appellant (MVA#1 defendant) argued that, as the injury resulted from successive independent torts, damages ought to have been apportioned between MVA#1 and MVA#2 as set out in <i>Long v. Thiessen</i> (1968), 65 W.W.R. 577 (B.C.C.A.): (a) assess damages in respect of MVA#1 as if that action been tried on the day before MVA#2; (b) assess global damages as of the date of the trial in respect of both accidents; and (c) deduct (a) from (b) and award damages for MVA#2 in the amount of the difference.</p> <p>The Court of Appeal held that the Supreme Court of Canada's decision in <i>Athey v. Leonati</i> has overruled the <i>Long v. Thiessen</i> line of cases on that method of apportioning damages between multiple tortfeasors. The <i>Athey</i> principle, that indivisible injuries require joint and several liability between tortious causes contributing to the same (indivisible) injury, means the <i>Long v. Thiessen</i> approach is no longer available as a means of determining responsibility among multiple tortfeasors. It follows that the <i>obiter</i> comment in <i>Ashcroft v. Dhaliwal</i>, 2008 BCCA 352 (para. 18), to the effect that apportionment of liability under the <i>Negligence Act</i> may be determined by the <i>Long v. Thiessen</i> method (the devaluation or the percentage approach), cannot apply in the case of an indivisible injury. Indivisible injuries, whether occasioned by a combination of non-tortious and tortious causes or solely by tortious causes, result in joint liability for the tortfeasors.</p> <p>"[32] There can be no question that <i>Athey</i> requires joint and several liability for indivisible injuries. Once a trial judge has concluded as a fact that an injury is indivisible, then the tortfeasors are jointly liable to the plaintiff. They can still seek apportionment (contribution and indemnity) from each other, but absent contributory negligence, the plaintiff can claim the entire amount from any of them.</p> <p>[33] The approach to apportionment in <i>Long v. Thiessen</i> is therefore no longer applicable to indivisible injuries. The reason is that <i>Long v. Thiessen</i> pre-supposes <u>divisibility</u>: <i>Long</i> requires courts to take a single injury and divide it up into constituent causes or points in time, and assess damages twice; once on the day before the second tort, and once at trial. Each defendant is responsible only for their share of the injury and the plaintiff can recover only the appropriate portion from each tortfeasor.</p> <p>[34] That approach is logically incompatible with the concept of an <u>indivisible</u> injury. If an injury cannot be divided into distinct parts, then joint liability to the plaintiff cannot be apportioned. It is clear that tortfeasors causing or contributing to a single, indivisible injury are jointly liable to the plaintiff. This in no way restricts the tortfeasors' right to apportionment as between themselves under the <i>Negligence Act</i>, but it is a matter of indifference to the plaintiff, who may claim the entire amount from any defendant."</p>